GEORGIA BAR
JOURNAL

THE LEGAL
Georgia’s New Mediation Law:
Harmonization and Innovation
1 in 4 people will become disabled before reaching age 67.

If you were suddenly diagnosed with a long-term disability (LTD) would you be able to make ends meet despite losing your paycheck?

As a member of the State Bar of Georgia, you have access to a Member Group LTD Plan that can help protect your income if you become disabled as the result of a covered accident or illness—including pregnancy. The plan offers up to $10,000 of monthly own-occupation coverage*, and there is no annual fee. Get the protection you need to safeguard your future.

Get an instant quote at memberbenefits.com/gabar

*Income and underwriting limits apply. Disability statistics courtesy of the U.S. Social Security Administration. Products sold and serviced by the State Bar of Georgia’s recommended broker, Member Benefits. The State Bar of Georgia is not a licensed insurance entity and does not sell insurance.
The State Bar of Georgia announces its annual Fiction Writing Competition. Deadline: Jan. 14, 2022

The Editorial Board of the Georgia Bar Journal is pleased to announce that it will sponsor its Annual Fiction Writing Contest in accordance with the rules set forth below. The purposes of this competition are to enhance interest in the Journal, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. For more information, contact Jennifer Mason, Director of Communications, 404-527-8761 or jenniferm@gabar.org.

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.

2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the Journal, and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.

3. All articles submitted to the competition become the property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.

4. Articles should not be more than 7,500 words in length and should be submitted electronically.

5. Articles will be judged without knowledge of the author’s identity. The author’s name and Bar number should be placed on a separate cover sheet with the name of the story.

6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on a date specified by the Board. Submissions received after that date and time will not be considered. Please direct all submissions to: Jennifer Mason, Director of Communications, by email to jenniferm@gabar.org. If you do not receive confirmation that your entry has been received, please call 404-527-8761.

7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.

8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted.
DECEMBER 2021

HEADQUARTERS
104 Marietta St. NW, Suite 100
Atlanta, GA 30303
800-334-6865 | 404-527-8700
Fax 404-527-8717
www.gabar.org

COASTAL GEORGIA OFFICE
18 E. Bay St.
Savannah, GA 31401-1225
877-239-9910 | 912-239-9910
Fax 912-239-9970

SOUTH GEORGIA OFFICE
244 E. Second St. (31794)
P.O. Box 1390
Tifton, GA 31793-1390
800-330-0446 | 229-387-0446
Fax 229-382-7435

MANUSCRIPT SUBMISSION
The Georgia Bar Journal welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (19th ed. 2010). Please address unsolicited articles to: Megan Hodgkiss, State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Authors will be notified of the Editorial Board’s decision regarding publication.

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

DISABILITIES
If you have a disability which requires printed materials in alternate formats, please call 404-526-8608 for assistance.

PUBLISHER’S STATEMENT
The Georgia Bar Journal (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Copyright State Bar of Georgia 2021. One copy of each issue is furnished to members as part of their State Bar license fees. Subscriptions: $36 to non-members. Single copies: $6. Periodicals postage paid in Atlanta, Georgia, and additional mailing offices. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.

The Georgia Bar Journal seeks to provide a forum for the discussion of subjects pertaining to the regulation of the legal profession and improving the quality of legal services, as well as other matters of general interest to Georgia lawyers. The statements, views and opinions expressed herein are those of the authors and do not necessarily reflect those of the State Bar of Georgia, its officers, Board of Governors, Sections, Committees, Editorial Board or staff. For additional guidelines regarding submissions to the Georgia Bar Journal, please visit www.gabar.org/journal.

MANUSCRIPT SUBMISSION
The Georgia Bar Journal welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (19th ed. 2010). Please address unsolicited articles to: Megan Hodgkiss, State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Authors will be notified of the Editorial Board’s decision regarding publication.

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

DISABILITIES
If you have a disability which requires printed materials in alternate formats, please call 404-526-8608 for assistance.

PUBLISHER’S STATEMENT
The Georgia Bar Journal (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Copyright State Bar of Georgia 2021. One copy of each issue is furnished to members as part of their State Bar license fees. Subscriptions: $36 to non-members. Single copies: $6. Periodicals postage paid in Atlanta, Georgia, and additional mailing offices. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.

The Georgia Bar Journal seeks to provide a forum for the discussion of subjects pertaining to the regulation of the legal profession and improving the quality of legal services, as well as other matters of general interest to Georgia lawyers. The statements, views and opinions expressed herein are those of the authors and do not necessarily reflect those of the State Bar of Georgia, its officers, Board of Governors, Sections, Committees, Editorial Board or staff. For additional guidelines regarding submissions to the Georgia Bar Journal, please visit www.gabar.org/journal.

MANUSCRIPT SUBMISSION
The Georgia Bar Journal welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (19th ed. 2010). Please address unsolicited articles to: Megan Hodgkiss, State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Authors will be notified of the Editorial Board’s decision regarding publication.

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

DISABILITIES
If you have a disability which requires printed materials in alternate formats, please call 404-526-8608 for assistance.

PUBLISHER’S STATEMENT
The Georgia Bar Journal (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Copyright State Bar of Georgia 2021. One copy of each issue is furnished to members as part of their State Bar license fees. Subscriptions: $36 to non-members. Single copies: $6. Periodicals postage paid in Atlanta, Georgia, and additional mailing offices. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.

The Georgia Bar Journal seeks to provide a forum for the discussion of subjects pertaining to the regulation of the legal profession and improving the quality of legal services, as well as other matters of general interest to Georgia lawyers. The statements, views and opinions expressed herein are those of the authors and do not necessarily reflect those of the State Bar of Georgia, its officers, Board of Governors, Sections, Committees, Editorial Board or staff. For additional guidelines regarding submissions to the Georgia Bar Journal, please visit www.gabar.org/journal.
GBJ | The Features

32 2022 Legislative Preview  
CHRISTINE BUTCHER HAYES

34 An Exciting October for the Georgia Diversity Program  
HALIMA H. WHITE

36 The Carroll County Courthouse at Carrollton: The Grand Old Courthouses of Georgia  
WILBER W. CALDWELL

GEORGIA’S NEW MEDIATION LAW: HARMONIZATION AND INNOVATION | 16  
Shelby S. Guilbert Jr., Tracy Johnson, Stephen F. McKinney and Douglas H. Yarn

COVID-19-INDUCED COURTHOUSE WORKAROUNDS: ADOPTING TEMPORARY CHANGES FOR THE PERMANENT GOOD—VIRTUAL VOIR DIRE | 26  
Hon. Gail S. Tusan and Tierney Sharpe
<table>
<thead>
<tr>
<th>60</th>
<th>GBJ</th>
<th>In Every Issue</th>
</tr>
</thead>
</table>
| 5  | Editor’s Letter | **38 Georgia Lawyer Spotlight**  
A Conversation with  
Douglas Burrell  
*Jacob E. Daly* |
| 6  | From the President |  **46 Office of the General Counsel**  
Sprechen Sie Deutsch?  
*Paula Frederick* |
| 10 | From the YLD President |  **54 Law Practice Management**  
Start 2022 With a Bang!  
Seven Things You Can Do  
Right Now to Start the New Year Strong  
*Nkoyo-Ene R. Effiong* |
| 14 | From the Executive Director |  **56 Pro Bono**  
Rural Justice and Poverty Summit Raises Awareness of Issues Facing Georgia Communities  
*Mike Monahan* |
| 42 | Bench & Bar |  **58 Member Benefits**  
Find a Lawyer Gets a New Look  
*Sheila Baldwin* |
| 47 | Attorney Discipline |  **60 Attorney Wellness**  
A New Resolve on  
New Year’s Resolutions  
*Megan Murren Rittle* |
| 52 | Legal Tech Tips |  **64 Writing Matters**  
Don’t Leave It to the Zombies to Act: Knowing When to Use Passive Voice  
*David Hricik and Karen J. Sneddon* |
| 70 | In Memoriam |  **66 Professionalism Page**  
Professionalism After the Statewide Judicial Emergency Order  
*Karlise Y. Grier* |
| 72 | Book Reviews |  |
| 76 | ICLE Calendar |  |
| 78 | Notices |  |
| 79 | Classified Resources |  |
| 80 | Advertisers Index |  |
**EDITOR’S LETTER**

The December Issue

**Welcome to the final Georgia Bar Journal of 2021!** As I write this Editor’s Letter, the Editorial Board is planning its first in-person meeting in nearly two years. I’m so excited about the board’s holiday luncheon, and I hope that it’s a sign of more in-person events to come in 2022.

The new year and planning for 2022 are major themes in this issue. In her President’s Message, “Planning for the Unexpected,” State Bar of Georgia President Elizabeth L. Fite writes about the Sudden Health Crisis Succession Plan project and how January is a great time to begin succession planning for your firm. In “It’s OK Not to Be OK” YLD President Elissa B. Haynes shares the results of her informal survey on challenges that young lawyers face—and how to reshape the narrative about professional and emotional support. In the Wellness Committee article, “A New Resolve on New Year’s Resolutions,” committee member Megan Murren Rittle suggests how we can resolve to rethink our approach to 2022 resolutions. And if you’re ready to make some resolutions and new business plans for 2022, be sure to read the Law Practice Management article, “Start 2022 With a Bang! Seven Things You Can Do Right Now to Start the New Year Strong.”

Speaking of the new year, the Georgia General Assembly is back in session in January. Take a look at the “2022 Legislative Preview” for information on bills and issues that will be considered in the upcoming session.


Other features include “The Carroll County Courthouse at Carrollton: The Grand Old Courthouses of Georgia,” and our Georgia Lawyer Spotlight of Douglas Burrell, who discusses his college football days at the University of Iowa, as well as student-athletes’ control over their image and likeness, and other lessons he’s brought from the gridiron to the courtroom.

If you’re looking for a book recommendation for your holiday break, be sure to read Beth Gilchrist’s review of the murder mystery “A Flicker in the Dark” by Stacey Willingham, or my review of Mab Segrest’s “Administrations of Lunacy: Racism and the Haunting of American Psychiatry from Georgia’s Milledgeville Asylum.”

Thank you for reading the December issue. The Georgia Bar Journal Editorial Board wishes you Happy Holidays and a Happy New Year!

MEGAN HODGKISS
Editor-in-Chief, Georgia Bar Journal
journal@gabar.org
Planning for the Unexpected

As of Nov. 1, the nearly 52,400 members of the State Bar of Georgia includes just less than 8,200 inactive members in good standing and some 3,600 emeritus members who have retired from the practice of law.

Not counting 300 or so affiliate members, student members and foreign law consultants, that leaves approximately 40,300 active members in good standing, most of whom likely have our futures in the legal profession mapped out, if only in our minds.

Some of us might already have a specific age or date picked out to ride off into the sunset of retirement. But many lawyers—more, it seems than those in other professions—love what we’re doing so much we plan to keep on practicing until we are no longer physically or mentally able to do so.

Either way, though, we are planning our future—and that of our law practices—based on something over which we have no control. Too often, sudden health crises do not comply with the retirement date we’ve put on our calendar. Indeed, since being sworn in as president, I have received more calls than I ever anticipated from the friends and family of lawyers who have experienced an unexpected and sudden health crisis. Those family members and friends all ask the same question related to that lawyer’s practice: “What do I do?”

I was prepared for many facets of this year, but I will freely admit that I was not prepared for this aspect of the State Bar presidency.

As you can imagine, those conversations have left an indelible mark on me, and reinforced what I have long believed that every lawyer—especially those in solo practices or small firms without the support structure of a large firm—needs to have an exit strategy for the protection of our clients, our employees and our families in the event of a sudden health crisis that brings an unexpected change of plans and a temporary halt or permanent end to our ability to practice law.

Fortunately, the State Bar of Georgia is ready to assist members with creating such an exit strategy. The Sudden Health Crisis Succession Plan is a project of our Senior Lawyers Committee, in conjunction with the Office of the General Counsel. As stated on the Bar’s website, its dual purpose is to assist lawyers in preparing their own sudden health crisis emergency (or succession) plan; and to assist designated individuals who are helping a lawyer who has undergone a sudden health crisis, especially if that lawyer had no emergency succession plan.

There are many different things a Bar member can do now to establish a plan for a sudden health crisis. These are presented in more detail on the Bar’s website at www.gabar.org/healthcrisis.

- Give serious consideration to entering into a reciprocity agreement with
a fellow lawyer who is similarly situated so that you and the other lawyer agree to provide succession plan services for each other in the event of a sudden health crisis.

You should also notify the State Bar of Georgia of your selection. On your annual license fee renewal notice, the State Bar requests that you identify the name and Bar number of someone who has agreed to serve in this capacity for you. However, you need not wait until the next license fee billing cycle to notify the State Bar; you can do so at any time by either emailing membership@gabar.org or logging in to the Members Only section of the Bar’s website and adding a Designated Attorney under the “Edit Personal Preferences” icon.

- You should educate a key staff member on what will need to be done if you have a sudden health crisis. This person should be empowered and educated as you create your sudden health crisis succession plan. As part of educating and empowering your key staff person in your succession plan, assure your staff that they will be paid if they stick with your practice during any transitional period after your sudden health crisis.

- You will need to ensure those who would implement your succession plan have continued access to key items like software and passwords, checking accounts and any post office box, safe deposit box or office safe.

- You should provide a “things to do” checklist for whoever is going to manage these transitional issues for you.

- In addition to your successor Designated Attorney and your key staffer, you should clearly designate someone who will handle personal transition issues. This will likely be a spouse, an adult child, a sibling, a close friend or a significant other. This person

In this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, “What is it about the holiday season that fills you with joy?”

**ELIZABETH L. FITE**
President

I believe that joy comes from gratitude, and for me, the holiday season is an opportunity to reflect on the people in my life and the experiences of the past year and to express my gratitude for them. To whomever may be reading this, I am grateful for you.

**SARAH B. “SALLY” AKINS**
President-Elect

The extra kindness and grace people show to each other is what fills me with joy during the holiday season.

**HON. J. ANTONIO “TONY” DELCAMPO**
Treasurer

Time spent with family. We usually split the Thanksgiving and Christmas holidays with my family and my wife’s family. They are usually large affairs with extended family which brings lots of cheer, games and dancing. It is a wonderful time of the year at the DelCampo household, for sure!

**IVY N. CADLE**
Secretary

Family and food are my favorite parts of the holiday season. I am grateful for the opportunity to slow down and spend time with family while we create and enjoy our favorite holiday traditions.

**DAWN M. JONES**
Immediate Past President

Traditions, including annual family gatherings and holiday celebrations, along with the new memories created each year, bring me great joy during the holidays!
“Giving serious consideration to creating and implementing a succession plan is especially important for sole practitioners and attorneys in small firms. In the event of a sudden health crisis, establishing a succession plan will help protect your clients, employees, family members and potentially the practice itself.”

You can do other things in advance to help smooth the transition. The succession plan pages on the Bar’s website list these in great detail, and I encourage you to review them and follow them as appropriate for your particular situation. If you are in position to assist a lawyer who has suffered a sudden health crisis, first check to see if he or she has a sudden health crisis emergency plan. If so, the designated attorney named in the plan should immediately refer to and begin implementing that plan.

When no such plan exists, an employee or family member of the lawyer should contact the State Bar of Georgia at 404-527-8700 for help. Regardless of whether the disabled lawyer has a plan in place, you may still wish to review the article “What to Do if Your Lawyer Has a Sudden Health Crisis” on the succession plan page of our website at www.gabar.org/healthcrisis. Here is a condensed version of recommended next steps under several scenarios.

1 Contact the Bar at 404-527-8700 to check whether a suddenly disabled lawyer has designated a successor. If, as the designated successor attorney, you are not willing or able to handle these duties, the Bar might be able to help you with finding a volunteer lawyer to serve in that capacity.

2 If the disabled lawyer does not have a sudden health crisis succession plan, you should immediately review the designated attorney's checklist found on our website.

3 After reviewing the checklist, you should create an action plan on the disabled lawyer's behalf, keeping in mind the disabled lawyer's clients, family members, estate and law firm staff.

4 This action plan should first include checking for looming deadlines and upcoming court hearings on cases or other matters being handled by the disabled lawyer and seek an extension for them. A sample letter to courts and judges can be found on our website.

5 Notify the disabled lawyer's clients of his or her disability and arrange for the return of client files either to the clients themselves or to new lawyers the clients may select, emphasizing that the client is free to use the designated successor lawyer or any other lawyer the client may choose.

6 Send out bills to current clients quickly after the disabled lawyer's sudden health crisis, no more than 30 days after its onset of the health crisis. In matters that the disabled lawyer was handling on retainer or with a flat fee, the client may be entitled to a refund for work that was not completed before the lawyer’s health crisis.

7 If the disabled lawyer has died or become unable to manage his or her affairs, you should consider contacting a probate lawyer, who can help close the disabled lawyer’s practice from a business perspective and perhaps even begin the process of selling the practice, if possible. If the disabled lawyer had a will, you will need to contact the executor. If there was no will, you need to contact the person most likely to serve as the administrator of the lawyer’s estate.

8 One of the next most important issues to be dealt with is paying the disabled lawyer's bills, which includes paying the staff. It is critically important to reassure the staff that they will continue to be paid for a certain period of time to adequately transition the disabled lawyer's practice to another lawyer or lawyers.

As stated earlier, giving serious consideration to creating and implementing a succession plan is especially important for sole practitioners and attorneys in small firms. In the event of a sudden health crisis, establishing a succession plan will help protect your clients, employees, family members and potentially the practice itself.

Planning in advance for either the temporary management or the permanent closing of a law practice in the event of a sudden health crisis ensures that ongoing client matters will be handled in a timely manner and clients are better protected. Such an arrangement makes it less likely to cause a court date or other deadline to be missed. Creation of a succession plan also helps assure that your family's financial interests in your law practice are protected.

We are about ready to take down the 2021 calendar and put up a new one for 2022. The start of a new year is as good a time as any to take the steps to create a succession plan for the peace of mind of being prepared for the unexpected and to protect our loved ones, co-workers and the people we serve.
The SOLACE program is designed to assist any member of the legal community (lawyers, judges, law office and court staff, law students and their families) in Georgia who suffer serious loss due to a sudden catastrophic event, injury or illness. Visit www.gabar.org for more information on SOLACE, or email solace@gabar.org.

When life doesn’t make sense.
It’s OK Not to Be OK

On a Sunday afternoon in late October, I laced up my running shoes, hopped on my Peloton Tread and took one of my favorite instructor’s (Selena Samuela) World Mental Health Day Run. I had recently gotten back in town after a five-day work conference in Boston and my stress and anxiety were at an all-time high as I tried to work my way through a mountain of missed emails and upcoming deadlines. Running has always been my outlet and a quick run usually does wonders for my overall attitude, especially when the right music is involved. I do not know if it was the perfectly curated playlist, the instructor’s raw and heart wrenching revelation about her partner’s suicide, or a combination of both, that led to one of the most cathartic workouts I have ever had. The tears started to flow, and I gave myself permission to completely let go and unload all the negative energy that had been building up that week, month and year.

As we are about to enter the two-year mark since our world was turned upside down by the COVID-19 pandemic, it should come as no surprise that the pandemic has been associated with an array of mental health challenges. While people of all ages have experienced an increase in post-pandemic mental illness, our younger population has proven especially vulnerable. A recent study from the Centers for Disease Control and Prevention (CDC) revealed that 62.9% of young adults between 18 and 24 years old reported experiencing symptoms of anxiety or depression, the highest among all age groups.¹

The practice of law is stressful and young lawyers often face unique stressors that our more experienced counterparts may not. As I began brainstorming ideas for this article, I interviewed several young lawyers spanning various areas of practice and levels of experience and split them into groups for questioning purposes. In one group, I asked each lawyer to describe the legal profession in one word. In the other, I asked what they viewed as the best and worst parts of practicing law. I had three goals for these interviews: (1) to identify common themes; (2) to spread awareness of the challenges young lawyers face on a daily basis; and (3) to show our young lawyers that they are not alone, that we are all in this together, and simply put, that it is OK not to be OK.

While some had upbeat and encouraging things to say about the practice of law, the majority sounded defeated, exhausted and apathetic. “Crippling,” “toxic,” “contentious,” “hostile,” “controlling” and “burnout” ranked highest among the adjectives those surveyed used to describe the practice of law. For the group that was asked about the best and worst parts of practicing law, many reported the worst parts were the non-existent work-life balance, billable hours, being at the mercy of the partner/supervisor’s work schedule, dealing with disrespectful opposing coun-

ELISSA B. HAYNES
YLD President
State Bar of Georgia
haynese@deflaw.com
OFFICERS’ BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, “What is it about the holiday season that fills you with joy?”

ELISSA B. HAYNES | YLD President
Spending meaningful time with friends and family, “Christmas Vacation” and “Love Actually” on repeat, holiday light displays, and the crackers and peppermint ice cream at the annual YLD Leadership Academy Alumni Luncheon at the Piedmont Driving Club.

RON DANIELS | YLD President-Elect
“It is the season of the heart. A special time of caring. The ways of love made clear. And it is the season of the spirit. The message—if we hear it—is make it last all year. It’s in the giving of a gift to another.” —The Muppets

BRITTANIE D. BROWNING | YLD Treasurer
The holidays are my favorite time of year because the slower pace allows for reconnecting and spending time with my loved ones—especially if we can bake while watching a movie marathon!

BERT HUMMEL | YLD Immediate Past President
There’s nothing better over the holidays than spending time with my family, especially my two daughters as we reflect on the year. I also love seeing colleagues, friends and family at holiday parties where we can gather outside the adversarial system.

ASHLEY AKINS | YLD Newsletter Co-Editor
I love spending time with my family during the holiday season!

LAKEISHA R. RANDALL | YLD Newsletter Co-Editor
I am particularly excited about gaining a sense of normalcy this holiday season—traveling, spending time with family and friends, and planning for the new year. The COVID era has made me especially grateful for the little things.
involvement were all commonly reported stressors with this group. As a 10th year lawyer and partner at a large law firm, I, too, have struggled with each of these things. I will be the first to admit that I am not the best at delegating work, asking others for help, managing my stress and anxiety, or having a healthy work-life balance. These are all things that I continue to work on. And like many lawyers, I have had my share of mental breakdowns where I have repeatedly asked myself why I continue to practice law.

To be fair, young lawyers (myself included) also had favorable things to say about our profession. As I anticipated, many reported money as the best part of practicing law, while others valued the ability to establish close relationships with people from all different walks of life, the intellectual stimulation, having an outlet to be creative and perhaps my favorite response: the opportunity to bring peace of mind to those who find themselves in tough situations and to embody what it means to be "counsel." Practicing law can be incredibly rewarding.

So, what can we as lawyers do to improve our profession and the lives of those in it? For starters, check in on your colleagues, associates, law partners and friends. I have found that young lawyers are especially hesitant to proactively speak up when they are struggling, but they are more likely to do so if someone else starts the conversation. This can be as simple as popping into your associate’s office for a quick chat, sending a text message, grabbing coffee or lunch, or sending a quick email. I cannot begin to describe how lucky I am to have a strong support system of former and current law partners who have become my closest friends. Find your people and be there for each other.

But more importantly, I firmly believe we need to actively demonstrate healthy behaviors and take care of ourselves, both mentally and physically. Encourage your colleagues and associates to disconnect when they are on vacation as opposed to forwarding them hundreds of emails as an "FYI for when they return." Offer to help the new mom or dad who just returned from maternity or paternity leave with a case or an assignment. Prioritize your own work-life balance so that those who work for or with you will feel comfortable doing the same. Start incentivizing young lawyers for simply doing good work, not for billing 2,500 hours. Respect the boundaries and workloads of not only the young lawyers with children, but those without children as well. Listen to the lawyer who tells you they do not have the capacity to help with another case or assignment. Educate your colleagues and associates about available mental health resources, including the State Bar’s Lawyer Assistance Program and the #UseYour6 campaign, which provides six prepaid and completely confidential clinical sessions per year with a licensed counselor. Speak up and use your voice to effectuate real change so that when those who come after us are asked to describe the practice of law, they will have far more positive things to say than negative. And lastly, normalize the full spectrum of emotions—the good and the bad. Because sometimes, it really is OK not to be OK. We’re only human, after all.

Endnotes
We all have to start somewhere.

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

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

Questions? Please contact one of our Wellness Committee members, listed at gabar.org/committees under Attorney Wellness.
I cheated. For weeks, I wrote and rewrote this article. In the beginning, I thought about a general update of our work. It was a modified version of our report to the Board of Governors as part of the Fall Meeting in October.

That report was a reminder of how we do things better in Georgia. Key highlights included recent changes in the area of continuing legal education that are designed to make things better for our members. We are grateful to our CLE department and members of the Commission on Continuing Legal Education for their work and vote to lift the cap on distance and in-house learning going forward. I shared special thanks to my fellow YLD Past President Joe Dent in Albany, and CLE Director Dee Dee Worley for recognizing how and why this is important.

I mentioned how we had some new faces on the Bar staff since our last report. We asked the Board members then, and we ask you now, that when you see them—LaCara Reddick (South Georgia Office), Nkoyo Effiong (Law Practice Management), Rebecca Stills (Executive Office), Jada Pettus (Communications), Erica Dean (Coastal Georgia Office) and Justin Lasseter (CAP)—tell them hello! At the same time, we lost an important piece of the work we do due to the untimely passing of Betty Sims, executive director of our General Practice & Trial Law Section. Please keep her family in your thoughts. By the time you read this, we will have also said goodbye to Michelle Garner, our director of meetings. While Michelle has left the State Bar to tackle another role, she will still work to support Georgia lawyers. We recognize and appreciate her 20 years of service with the Bar.

But that did not feel adequate enough. At the end of the day, while I have added something here that is sincere and genuine, the truth is that it is an updated version of an article I penned in my role as president of the YLD in December 2005. It was good then. It is good now.

In that article, I looked back on the previous 12 months. I gave thanks as we are naturally inclined to do this time of year. I shared my thoughts on planning and preparation for the road ahead. There are, however, some major differences.

My role supporting Georgia lawyers and the work I am charged with—to focus our mission on the quality of legal services—has changed. My experiences and views have changed. The good news is that I learned from that exercise, and the process has remained meaningful. It is not something I take for granted and, as President Elizabeth L. Fite and YLD President Elissa B. Haynes have reminded in their contributions, planning and a simultaneous focus on being present are essential.

As it was 16 years ago, the calendar year had numerous twists and turns. Then, I mentioned communicating by BlackBerry (ha!). Then, Hurricane Katrina proved to
be a life-altering event for many in the region, the Gulf and other parts of the world. Those events then “caused for me a serious gut check in the form of retrospect.” As I read the article, it also “taught me to be more grateful for the things I have, and the importance of some old fashioned planning and preparedness.”

Today, so much is the same and different at the same time. I remain amazed at our ability to come together and bond in many areas to work through difficult times, challenges and strife. In 2020 and 2021, we learned how many Georgia lawyers planned and took action in the wake of forced change. We know many stories of good and necessary work by Georgia lawyers in communities all across the state.

The same happened within the Bar. Our staff has continually shifted and adapted to support our members and take good care of Georgia lawyers. I am grateful that in a year that saw new leadership and different voices, presented complications caused by remote or alternative work arrangements, focused on the critical need for attention to the health and well-being of our families, fellow members, friends and selves, and endured regular starts, stops and shifts that make planning nearly impossible, this team remained committed to finding solutions and making things better. I believe in them and cannot wait to share what happens next.

The immediate future will require constant tweaks with the way we work. Continued implementation of changes in technology, communication and the way we gather, are at the top of that list. We are also committed to analyzing the way we deliver our services, with a focus on efficiencies and strategic planning. No, not with SWOT analyses or mission and vision language, but with an eye on making incremental and necessary improvements to everything we do and keeping the needs of all of our members top of mind.

No matter what it may bring, we are focused on the future and grateful to all of the essential elements of our success. This work cannot happen without our Executive Committee members and all of the other Bar leaders, nor without the partnership with our liaisons at the Supreme Court of Georgia, Justices Peterson and Warren. Their additional work and insight may go unnoticed in real time, but it makes the Bar’s business better.

We are ready for 2022. Until then, we wish you well. We hope you will never hesitate to let us know how we can help you and your work, and, as I closed in 2005, “take some meaningful time to spend with those who are important to you, and soak in the soul of the season so that you are indisputably full.”
This article explains the genesis of the new Georgia Uniform Mediation Act, outlines its scope and function and discusses some important practice points for attorneys and mediators.

BY SHELBY S. GUILBERT JR., TRACY JOHNSON, STEPHEN F. MCKINNEY AND DOUGLAS H. YARN

Each year, thousands of mediations take place in Georgia. Some are court-ordered, many are administered privately pursuant to voluntary agreements by the parties and an increasing number involve parties in international disputes arising from business activities in Georgia. Although reliable statistics are hard to come by given the proliferation of voluntary mediations and the growth in mediations in which the parties are unrepresented, most practitioners would agree that, over the last two decades in Georgia, far more civil disputes have been resolved through mediation than jury verdicts. Given the current backlog in the courts due to the COVID-19 pandemic, and the escalating costs associated with civil litigation, this trend will likely continue in the years ahead, not only in Georgia but around the country.

In most mediations, the decisive factor in whether the mediation will prove successful is the parties’ willingness to be open and candid with each other and the mediator about their underlying interests and the strengths and weaknesses of their respective claims and defenses. And the willingness to be candid depends on assurances by the parties and the mediator that what happens in mediation stays in mediation.

Most Georgia lawyers are familiar with the assurances of confidentiality that mediators give in their introductio-
Generally, there are three mechanisms available to help keep mediation communications confidential: (1) confidentiality agreements, (2) evidentiary exclusion and (3) evidentiary privilege. With respect to confidentiality agreements, it is common practice to include confidentiality provisions in an agreement to mediate, at least when the parties are represented by lawyers, which is not always the case. A confidentiality agreement may bind the parties with a duty to maintain secrecy and restricts what they can reveal to the public or others about the mediation. A confidentiality agreement cannot, however, bind non-signatories, and the mediator may or may not be a signatory. A confidentiality agreement also cannot insulate mediation communications from being introduced in court proceedings unless a court chooses to recognize and enforce the agreement.

With respect to evidentiary exclusion, Section 408 of Georgia’s evidence code makes “[e]vidence of conduct or statements made in compromise negotiations or mediation” inadmissible. But Section 408 applies only to proceedings governed by Georgia’s evidence code. It does not protect mediation communications from discovery, and it contains loopholes that allow mediation communications to be offered as evidence for “another purpose,” such as “proving bias or prejudice of a witness, negating a contention of undue delay or abuse of process, or proving an effort to obstruct a criminal investigation or prosecution.” Moreover, only parties to the litigation may invoke Section 408, which does little to protect a non-party mediator-witness who feels ethically bound not to disclose what occurred in the mediation.

In contrast to confidentiality agreements and evidentiary exclusion, evidentiary privilege provides more protection from disclosure because it creates (1) a right not to disclose, and (2) a right to keep others from disclosing mediation communications, in both discovery and

“Generally, there are three mechanisms available to help keep mediation communications confidential: (1) confidentiality agreements, (2) evidentiary exclusion and (3) evidentiary privilege. Lawyers, which is not always the case.”
at trial. Prior to the GUMA, the law on the existence of an evidentiary privilege for mediation in Georgia was murky and inconsistent at best. Murky, because the Georgia ADR Rules, which regulate court-connected mediation in Georgia, indirectly establish a hybrid rule of evidentiary exclusion and privilege that insulates court-connected mediation communications from discovery and protects the mediator from subpoenas. Inconsistent, because the ADR Rules do not apply to private, voluntary mediations, which are thus denied the same protections. The resulting confusion came to a head in Wilson v. Wilson, where the Supreme Court of Georgia confronted a mediation that may or may not have been court-connected and raised significant questions about the admissibility of the mediator’s voluntary testimony in a subsequent trial. In light of the murky and inconsistent state of the law on mediation confidentiality, the Court justified its decision to allow the evidence by citing the Uniform Mediation Act (UMA), which was not Georgia law at the time.

Naturally, the Court’s policy-making body for court-connected mediation, the Georgia Commission on Dispute Resolution (GCDR), became interested in a Georgia version of the UMA to fill the gaps left open by confidentiality agreements and evidentiary exclusion and to provide more clarity and consistency to the law governing confidentiality in mediation. The Uniform Law Commission promulgated and approved the UMA in 2001, in collaboration with the American Bar Association’s Section on Dispute Resolution. The ABA approved the UMA the following year, and all the major national providers of dispute resolution services have endorsed it. Twelve other states have passed versions of the UMA, and other states currently have it under consideration. Other states, such as Florida, have drawn on the UMA’s principles when devising or revising their mediation confidentiality schemes. The UMA is remarkably stable having generated very little case law over its meaning and application.

In 2017, the Atlanta International Arbitration Society (AtlAS) began exploring draft legislation on confidentiality in international mediations. The primary goal of AtlAS is to promote Georgia as a venue for international dispute resolution. One way to achieve this goal is to create an attractive legal environment for the resolution of international disputes by promoting legislation familiar to international practitioners. One obvious candidate was the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Conciliation, which was promulgated in 2002 to serve as a model law for international mediation. But adopting this legislation would not have solved Georgia’s problems with confidentiality in domestic mediations.

A 2003 amendment of the UMA incorporated the UNCITRAL Model Law on International Commercial Conciliation. Adopting the UMA in Georgia would therefore allow the GCDR and AtlAS to kill two birds with one stone. Thus, representatives of both bodies formed a joint working group to study and report on the efficacy of the UMA for both domestic and international mediations in Georgia. After several months of study, discussion and revision, the working group recommended adopting a version of the UMA. Since 2018, GCDR, AtlAS and the Dispute Resolution Section of the State Bar of Georgia worked with other stakeholders to garner support for the Act. This group effort ultimately obtained the support of the Judicial Council of Georgia, the Atlanta Chamber of Commerce, numerous sections of the State Bar and the Atlanta Bar Association, the State Bar’s Board of Governors and the Association of Conflict Resolution’s Georgia Chapter, as well as important input from the Georgia Trial Lawyers Association. The State Bar of Georgia voted to include the GUMA in its
legislative package in 2019 and 2021. The General Assembly passed the GUMA on March 25, 2021, and the governor signed it into law on May 10, 2021.\(^{20}\)

**Scope of the GUMA**

The GUMA covers “mediation communications,” including verbal and non-verbal statements made during a mediation or for the purposes of mediating.\(^{21}\) “Mediation communications” also includes documents and other materials created for purposes of the mediation.\(^{22}\) Consistent with the evidentiary exclusion rule, the privilege created by the GUMA does not extend to the underlying facts of the dispute, and otherwise discoverable or admissible information and evidence does not become privileged merely because it was disclosed in mediation.\(^{23}\)

While the GUMA broadly defines the term “mediation,” it applies only to formal mediations such as:

- mediations required by statute or rule or referred by an adjudicative body or administrative agency;
- private, voluntary mediations where the parties and mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged; or
- any mediation conducted by someone who holds themselves out as a mediator or provider of mediation.\(^{24}\)

The GUMA does not cover mediations involving collective bargaining, programs for minors in primary and secondary schools, programs in prisons for inmates and judicial settlement conferences conducted by a judge who may make a ruling on the dispute.\(^{25}\) Consistent with mediation’s core principle of party autonomy, parties can opt out of the GUMA’s coverage.\(^{26}\)

**Operation of the Mediation Privilege**

The GUMA creates a mediation privilege by providing that mediation communications are neither subject to discovery nor admissible in evidence in any adjudicative or legislative process.\(^{27}\) Furthermore, all the participants in a mediation can invoke the privilege\(^{28}\) in ways limited to their status as parties in the dispute and process. For example, “mediation parties” (actual disputants) may use the privilege to protect mediation communications from disclosure by themselves or by others.\(^{29}\) A “mediator” may use the privilege to refuse to disclose a mediation communication or to keep others from disclosing the mediator’s communication.\(^{30}\) “Non-party participants” (including an attorney) may use the privilege to refuse to disclose a mediation communication or keep others from disclosing their communication.\(^{31}\)

The GUMA also provides that holders of the mediation privilege can explicitly waive it.\(^{32}\) Waivers operate as follows:

- For testimony about a party’s mediation communications, all parties hold the privilege, and therefore all parties must waive the privilege before a party or nonparty participant may testify or provide evidence about a party’s mediation communication. If a mediator seeks to provide that testimony, then all parties and the mediator must waive the privilege.\(^{33}\)
- For testimony about a mediator’s mediation communications, both the parties and the mediator hold the privilege, and therefore both the parties and the mediator must waive the privilege before a party, mediator or nonparty participant may testify or provide evidence of a mediator’s mediation communications.\(^{34}\)
- For testimony about a nonparty’s mediation communications, both the parties and the nonparty participants hold the privilege, and therefore both the parties and the nonparty participant must waive the privilege before a party or nonparty participant may testify. If that testimony is to be offered through the mediator, then the mediator must also agree to waive the privilege.\(^{35}\)

Finally, if a person makes a disclosure that prejudices another, that person is precluded from asserting a privilege to the extent necessary for the prejudiced person to respond.\(^{36}\) Similarly, a person who uses a mediation in furtherance of a crime is precluded from asserting the privilege.\(^{37}\)

**Exceptions to the Privilege and Confidentiality**

The GUMA sets out a limited number of categorical exceptions to the mediation privilege for situations where society’s interest in the information outweighs the parties’ interest in maintaining confidentiality.\(^{38}\) These include: (1) signed agreements relating to the conduct of the mediation or the resolution of the dispute; (2) communications covered by the open records or open meetings laws; (3) communications involving threats of violence; (4) communications in furtherance of crimes; (5) communications relating to a professional malpractice claim against a mediator; (6) communications relating to a professional malpractice claim against a participant; and (7) information necessary to protect children or vulnerable elders.\(^{39}\)

Moreover, a party can seek a limited exception to the privilege in a court proceeding involving a felony or to contest a mediated settlement agreement.\(^{40}\) In a hearing in camera, the party must convince the adjudicator that the evidence is not available otherwise and that the need for it outweighs the parties’ interest in protecting confidentiality.\(^{41}\)

Despite these exceptions, mediators cannot be compelled to reveal mediation communications related to contested mediated agreements or ethics or malpractice claims against other participants in the mediation.\(^{42}\) If a mediation communication is excepted from the privilege, only the portion necessary for the excepted purpose can be admitted, and the communication does not become discoverable or admissible for any other purpose.\(^{43}\)

**Mediators’ Responsibilities**

In addition to the privilege, which confers a right upon the mediator to refuse to disclose evidence in a subsequent proceeding, the GUMA imposes certain responsibilities upon mediators. Like the current ADR Rules,\(^{44}\) the GUMA prohibits communications between mediators and courts or
other adjudicative bodies that may rule on the matter. This rule is designed to reinforce party confidence in the neutrality of both the mediator and any subsequent adjudicator. This rule insulates the adjudicator from information that might prejudice their subsequent judgment. Specifically, mediators cannot “make a report, assessment, evaluation, recommendation, finding, or other communication” to an adjudicator; however, a mediator can disclose information necessary for administrative purposes, such as whether the mediation occurred, who attended, and whether a settlement occurred. Of course, the mediator is allowed to disclose the exceptions discussed above and report evidence of neglect, abuse or abandonment to an agency responsible for protecting vulnerable individuals.

The GUMA also includes a consumer protection element by imposing on a mediator the responsibility to disclose any existing or potential conflicts of interest that may cast doubt on the fairness of the proceeding. Before accepting a mediation, the mediator has a duty to make a reasonable inquiry to determine whether there is a past or existing relationship or some other fact that would lead a reasonable person to believe that the mediator may have an interest in the outcome. After accepting a mediation, the mediator has a continuing duty to disclose any such facts that may come to the mediator’s attention. This rule is consistent with mediation’s core values of promoting party autonomy and informed consent. Mediators who fail to make timely disclosures waive their right to assert the privilege in that case.

Finally, mediators must disclose their qualifications to serve upon request by a mediation party. This allows parties to make informed decisions about the person they select to help them resolve their dispute. Importantly, the GUMA does not impose any special qualifications upon mediators. As long as the parties are informed, they may select lawyers or non-lawyers, experienced or inexperienced mediators, and mediators who use different styles. Mediators in court-connected programs, however, are still required to meet the qualification standards under the ADR Rules.

### Promoting International Mediation in Georgia

A key feature of the GUMA that sets Georgia apart from other states that have adopted the Uniform Mediation Act is its express incorporation of the United Nations Commission on International Trade Law’s (UNCITRAL) 2018 Model Law on International Commercial Mediation and Settlement Agreements Resulting from Mediation (the Model Law). The Model Law amended and modernized UNCITRAL’s earlier 2002 Model Law on International Commercial Conciliation to reflect recent innovations in international dispute resolution and to address issues surrounding the enforcement of international mediated settlement agreements. Section 10 of the GUMA expressly provides that if a mediation is an “international commercial mediation” as defined by Article 2 of the Model Law, then the mediation is governed by the Model Law unless the parties agree in advance that all or part of the mediation is not privileged, or the parties otherwise agree that the Model Law shall not apply, in which case the rest of the provisions in Chapter 17 shall apply. Georgia is the first state in the United States to enact the Model Law.

The Model Law represents a significant innovation in the field of international commercial dispute resolution. Mediation is increasingly seen as a cost-effective mechanism for resolving cross-border business disputes, but the use of mediation around the globe is uneven. For a mediation to be successful, the parties must understand and trust the process and also know that what they say in the mediation may not be used against them, whether in the actual dispute being mediated, or in a collateral proceeding that may take place halfway around the globe at some point in the future. Further, parties from different countries may agree conceptually with the idea of using a neutral party to facilitate a settlement discussion, but because they come from different legal traditions, they may disagree about the ground rules that should govern the mediation. Finally, the goal of mediation is to produce a settlement, but if the mediation results in a settlement agreement that is difficult to enforce across international boundaries, there may be little incentive to mediate in the first place. The Model Law attempts to address these issues in several ways.

First, the Model Law addresses numerous procedural aspects pertaining to international mediation, such as the process for commencing a mediation, the appointment of the mediator, the conduct of the mediation, and the termination of the mediation. Because foreign parties may have less familiarity with mediators outside their home jurisdiction, the Model Law provides that “[w]hen a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.” While the Model Law allows parties to agree to conduct the mediation by reference to the rules of a particular institution, in the absence of such an agreement, the mediator “may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, and any wishes that the parties express and the need for a speedy settlement of the dispute,” as long as the mediator seeks “to maintain fair treatment of the parties” in so doing. The mediator also is empowered to make “mediator’s proposals” for a settlement at any stage of the mediation, a tool that U.S.-based mediators frequently use in domestic mediations.

Second, the Model Law addresses confidentiality concerns by providing that, unless the parties otherwise agree, “all information relating to the mediation proceedings shall be kept confidential.” In addition, the Model Law prohibits parties, the mediator and any third persons involved in the administration of the mediation proceedings from relying on, introducing as evidence or giving testimony or evidence in another arbitral or judicial proceeding about an invitation to mediate, views expressed in the mediation about settlement, statements or admissions made during the mediation, mediator proposals and documents prepared solely for purposes of mediation.
Get published. Earn CLE credit.

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

Submit articles to Jennifer R. Mason:
Director of Communications
jenniferm@gabar.org | 404-527-8761
104 Marietta St. NW, Suite 100, Atlanta 30303
Third, Section 3 of the Model Law provides mechanisms for the enforcement of international commercial settlement agreements resulting from a mediation. For example, Article 18 sets forth a non-exhaustive list of criteria that courts may rely upon to determine whether to enforce an international settlement agreement governed by the Model Law. Article 19 then enumerates a limited set of factors that courts may consider when asked to refuse enforcement of an international settlement agreement governed by the Model Law, such as the incapacity of a party to the settlement agreement; evidence that the settlement agreement is null and void, not final and binding, or has subsequently been modified; evidence that the obligations in the settlement agreement have been performed or are not clear and comprehensible; evidence of mediator misconduct or a failure of the mediator to disclose conflicts of interest; or public policy. These enforcement mechanisms for mediated international settlement agreements that can now be used in Georgia courts go hand in hand with the 2018 United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation). The Singapore Convention on Mediation established a legal framework for the enforcement of mediated international settlement agreements across jurisdictions, in much the same way that international arbitral awards are now enforceable in most countries pursuant to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). In the two and half years since the General Assembly adopted the Singapore Convention, 54 countries have signed the Convention, including leading trading powers like the United States, Brazil, China, India, Nigeria, the Republic of Korea, Singapore and Saudi Arabia. Although the United States has not yet ratified the Convention, and most European countries have not yet signed it, the Singapore Convention is now in force in the countries that have ratified it, and the Convention is expected to promote international mediation in much the same way that the New York Convention fostered an explosion in the use of international commercial arbitration in the decades following its adoption in 1958.

Georgia has long been one of the leading jurisdictions in the United States for the resolution of international business disputes due to its incorporation of the UNCITRAL Model Law on International Commercial Arbitration into its international arbitration code. Georgia’s strong public policy in favor of international arbitration, pro-international arbitration decisions from the Eleventh Circuit, and the State Bar’s adoption of inclusive rules that allow foreign lawyers to practice in Georgia, Georgia’s enactment of the Model Law continues that trend and places Georgia on the leading edge of international dispute resolution. Global businesses that operate in Georgia can now be confident that the international mediations they conduct in Georgia will be confidential, governed by well-recognized, streamlined international standards that now represent best-practice in international dispute resolution, and that Georgia courts will enforce mediated settlement agreements in much the same way that arbitration awards are enforced under the New York Convention.

Important Practice Pointers for Lawyers and Mediators Operating Under the GUMA

For attorneys, the GUMA should not have an appreciable effect on best practices in mediation representation. The Act specifically recognizes the right of parties to have their attorneys participate in a mediation. Although parties might consider opting out of the statutory protections afforded under the Act, there seems little reason to do so. The biggest question for attorneys is how best to manage the three confidentiality mechanisms now available. Under the GUMA, the mediation privilege does not supplant traditional confidentiality agreements or existing rules of evidentiary exclusion. This allows all three confidentiality mechanisms to come into play as needed. Attorneys can continue to use and enforce confidentiality provisions in mediation agreements. Such agreements are particularly important if subsequent related litigation might occur outside Georgia or in federal courts, though parties may wish to provide expressly that the GUMA governs their mediations, which may trigger enforcement of the GUMA in non-Georgia jurisdictions. Further, attorneys can continue to invoke O.C.G.A. § 24-4-408 at trial to exclude evidence of conduct and statements made in mediation. Moreover, there may be other statutes, court rules or agency rules that provide for confidentiality in particular circumstances.

For mediators, the Act simply encourages what should already be accepted best practices for conflicts and qualifications disclosures. The GCGR has formed a working group to review the ADR Rules to ensure conformity with the GUMA; however, the GCGR remains free to impose additional provisions on confidentiality, disclosure and qualifications. Georgia courts with mediation programs can do likewise through their local rules in conformity with the ADR Rules.

Conclusion

Practitioners are increasingly comfortable using mediation as a mechanism for resolving disputes. The GUMA harmonizes the law governing court-connected and voluntary mediations in Georgia, thereby creating greater protections for party-participants, lawyers and mediators alike. It promotes uniformity of the law across state boundaries given the growing acceptance of the UMA around the country. It also further solidifies Georgia’s position as a leading innovator in the field of international dispute resolution and should benefit all members of the Bar, as well as the state’s economy, by encouraging more foreign businesses to keep Georgia on their mind when deciding where to conduct trade and resolve international business disputes.

Shelby S. Guilbert Jr. is a partner in the Complex Commercial Litigation Group at McGuireWoods LLP and the president-elect of the Atlanta International Arbitration Society (AIAS).
Tracy Johnson is the Executive Director of the Georgia Office of Dispute Resolution and the immediate past president of the Georgia Council of Court Administrators.

Stephen F. McKinney is an arbitrator and mediator and is the managing director of Dispute Management Services, LLC. He is the immediate past chair of the Dispute Resolution Section of the State Bar of Georgia.

Douglas H. Yarn is a professor of law emeritus, Georgia State University College of Law, and a former Atlanta bar board member. He co-drafted Georgia’s domestic and international arbitration codes and served as an advisor on the adoption of the Uniform Mediation Act.

Endnotes
1. Georgia courts that reported their activity referred 31,228 cases to mediation in 2019. See Georgia Administrative Office of the Courts, Georgia Office of Dispute Resolution 2019 Caseload Data 2 (2020). This total excludes private voluntary mediations for which there is no reliable data available.
2. DOUGLAS H. YARN, GEORGIA ALTERNATIVE DISPUTE RESOLUTION § 7:30 (2021).
5. Georgia Uniform Mediation Act (“GUMA”), O.C.G.A. §§ 9-17-1 to 9-17-17.
7. See generally Yarn, supra note 3, at § 6:56.
9. See Georgia Evidence Code, O.C.G.A. § 24-4-408(b).
10. For example, offers to compromise are admissible in claims for litigation expenses based on bad faith, stubborn litigiousness and abuse of process against defendants under O.C.G.A. §§ 13-6-11, 24-4-408. See Christie v. Rainmaster Irr., Inc., 299 Ga. App. 383, 390, 682 S.E.2d 687, 693 (2009) (plaintiff’s statement allegedly made in the course of settlement correspondence and subsequently elicited during cross-examination admissible to support defendant’s claim for attorney’s fees); see also Reid v. Reid, 348 Ga. App. 550, 556, 823 S.E.2d 860, 866 (2020) (settlement offers were admissible for the purpose of determining whether husband’s actions constituted delay or abuse of process). An example of “other purpose” can be found in Agio Corp. v. Coosawatee River Resort Ass’n, Inc., 328 Ga. App. 642, 646, 760 S.E.2d 691, 695 (2014), where evidence of discussions about installing a firewall to settle a claim was admissible because the court did not consider the evidence as an admission, but as evidence that the installation of the firewall might result in corruption of the shared server. See also Rogers v. Dupree, 340 Ga. App. 811, 820, 799 S.E.2d 1, 9 (2017) (allegedly extortionist demand letter made by attorney in sexual harassment claim not protected by exclusionary rule nor was the amount of money demanded by that attorney’s client during the mediation). The 2017 Rogers decision was vacated and remanded on other grounds and in light of State v. Cohen, 302 Ga. 616, 807 S.E.2d 861 (2017), and Cohen v. Rogers (Case Nos. S17C1376–S17C1380) (April 16, 2018) (order), but on remand the Court of Appeals of Georgia did not revisit the evidentiary issues because the Supreme Court of Georgia had ruled that the demand letter did not constitute evidence of extortion.
14. Id. at 733.
15. Details relating to the Uniform Law Commission’s drafting history of the UMA and an annotated version of the UMA are available on the ULC’s website at https://www.uniformlaws.org (last visited Aug. 1, 2021).
16. See, e.g., FLA. STAT. ANN. §§ 44.401 et seq. (LexisNexis 2021), and Me. R. Evid. 514.
22. Id.
23. O.C.G.A. § 9-17-3(c).
25. O.C.G.A. § 9-17-2(b).
27. O.C.G.A. § 9-17-3(a). See also O.C.G.A. § 9-17-1(7) (defining “proceeding”).
28. See O.C.G.A. § 9-17-3. O.C.G.A. § 9-17-1 defines the participants as either a “mediator,” a “mediation party” or a “nonparty participant.” In somewhat of a redundancy, Georgia’s version of the UMA expressly includes mediators in court-connected mediations to emphasize coverage of the Act over those mediations. In another redundant but useful clarification, the GUMA expressly includes lawyers, in their representative capacity, as nonparty participants. See O.C.G.A. § 9-17-1(5).
29. O.C.G.A. § 9-17-3(b).
30. Id.
31. Id.
32. O.C.G.A. § 9-17-4(a).
33. Id.
34. Id.
35. Id.
36. O.C.G.A. § 9-17-4(b).
37. O.C.G.A. § 9-17-4(c).
38. O.C.G.A. § 9-17-5.
<table>
<thead>
<tr>
<th>Section</th>
<th>Citation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>39.</td>
<td>O.C.G.A. § 9-17-5(a).</td>
<td>This is equivalent to the UMA section that the Georgia Supreme Court specifically approved of and referenced in Wilson v. Wilson, 282 Ga. 728, 733 (2007).</td>
</tr>
<tr>
<td>40.</td>
<td>O.C.G.A. § 9-17-5(b).</td>
<td></td>
</tr>
<tr>
<td>41.</td>
<td>Id.</td>
<td>This is equivalent to the UMA section that the Georgia Supreme Court specifically approved of and referenced in Wilson v. Wilson, 282 Ga. 728, 733 (2007).</td>
</tr>
<tr>
<td>42.</td>
<td>O.C.G.A. § 9-17-5(c).</td>
<td></td>
</tr>
<tr>
<td>43.</td>
<td>O.C.G.A. § 9-17-5(d).</td>
<td></td>
</tr>
<tr>
<td>45.</td>
<td>O.C.G.A. § 9-17-6(c).</td>
<td></td>
</tr>
<tr>
<td>46.</td>
<td>O.C.G.A. § 9-17-6 (a).</td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>O.C.G.A. § 9-17-6(b).</td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>Id.</td>
<td></td>
</tr>
<tr>
<td>49.</td>
<td>O.C.G.A. § 9-17-8(a)(1).</td>
<td></td>
</tr>
<tr>
<td>50.</td>
<td>O.C.G.A. § 9-17-8(a).</td>
<td></td>
</tr>
<tr>
<td>51.</td>
<td>O.C.G.A. § 9-17-8(b).</td>
<td></td>
</tr>
<tr>
<td>52.</td>
<td>O.C.G.A. § 9-17-8(d).</td>
<td></td>
</tr>
<tr>
<td>53.</td>
<td>O.C.G.A. § 9-17-8(c).</td>
<td></td>
</tr>
<tr>
<td>54.</td>
<td>O.C.G.A. § 9-17-8(f).</td>
<td></td>
</tr>
<tr>
<td>55.</td>
<td>Ga. Alt. Dispute Resolution R. V.</td>
<td></td>
</tr>
<tr>
<td>56.</td>
<td>Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, UNCITRAL, U.N. Doc. A/73/17, Annex II (2018) (the &quot;Model Law&quot;). The United Nations General Assembly established UNCITRAL in 1966 to promote the harmonization and modernization of the law of international trade. See GA Res 2205, UNGAOR, 21st Sess, Annex II, U.N. Doc A/6394. Over the last 55 years, UNCITRAL has worked with member states of the United Nations, non-member states, and intergovernmental and nongovernmental organizations to negotiate and prepare model laws, international treaties and other legal instruments regarding numerous aspects of international commercial law, including international dispute resolution, the international sale of goods, international contracting, international transport, electronic commerce and international transport. See A GUIDE TO UNCITRAL: BASIC FACTS ABOUT THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (2013), at 1. UNCITRAL's model laws and instruments have been widely adopted across the globe in part because they can help countries accommodate differences and resolve disputes that sometimes arise when countries from different legal traditions and in different stages of economic development engage in international commerce.</td>
<td></td>
</tr>
<tr>
<td>57.</td>
<td>O.C.G.A. § 9-17-10(a)–(b).</td>
<td></td>
</tr>
<tr>
<td>58.</td>
<td>Under Article 2 of the Model Law, a mediation is &quot;international&quot; if: (a) the parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or (b) the State in which the parties have their places of business is different from either: (i) the State in which a substantial part of the obligations of the commercial relationship is to be performed; or (ii) the State with which the subject matter of the dispute is most closely connected.</td>
<td></td>
</tr>
<tr>
<td>59.</td>
<td>O.C.G.A. § 9-17-10(c).</td>
<td></td>
</tr>
<tr>
<td>60.</td>
<td>O.C.G.A. § 9-17-10(d).</td>
<td></td>
</tr>
<tr>
<td>61.</td>
<td>Model Law, Art. 5.</td>
<td></td>
</tr>
<tr>
<td>63.</td>
<td>Model Law, Art. 7.</td>
<td></td>
</tr>
<tr>
<td>64.</td>
<td>Model Law, Art. 18.</td>
<td></td>
</tr>
<tr>
<td>65.</td>
<td>Model Law, Art. 6(5).</td>
<td></td>
</tr>
<tr>
<td>66.</td>
<td>Model Law, Art. 7(1).</td>
<td></td>
</tr>
<tr>
<td>67.</td>
<td>Model Law, Art. 7(2).</td>
<td></td>
</tr>
<tr>
<td>68.</td>
<td>Model Law, Art. 7(3).</td>
<td></td>
</tr>
<tr>
<td>69.</td>
<td>Model Law, Art. 7(4).</td>
<td></td>
</tr>
<tr>
<td>70.</td>
<td>Model Law, Art. 10.</td>
<td></td>
</tr>
<tr>
<td>71.</td>
<td>Model Law, Art. 11(1).</td>
<td></td>
</tr>
<tr>
<td>72.</td>
<td>See generally Model Law, § 3. Section 3 on international settlement agreements expressly does not apply to certain categories of settlement agreements involving consumer transactions, “family, inheritance or employment law,” court approved settlements or settlement agreements that are enforceable as an arbitral award. See Model Law Art. 16(2)–(4).</td>
<td></td>
</tr>
<tr>
<td>73.</td>
<td>Model Law, Art. 19 (listing factors).</td>
<td></td>
</tr>
<tr>
<td>74.</td>
<td>Model Law, Art. 19.</td>
<td></td>
</tr>
<tr>
<td>75.</td>
<td>United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018</td>
<td></td>
</tr>
<tr>
<td>78.</td>
<td>For a discussion of the Georgia International Arbitration Code and other innovations in Georgia designed to facilitate international commercial dispute resolution in Georgia, see generally, Stephen L. Wright &amp; Shelby S. Guilbert Jr., Recent Advances in International Arbitration in Georgia: Winning the Race to the Top, Ga.St.B.J., June 2013, at 18.</td>
<td></td>
</tr>
<tr>
<td>79.</td>
<td>See O.C.G.A. § 9-9-20, et seq.</td>
<td></td>
</tr>
<tr>
<td>80.</td>
<td>See O.C.G.A. § 9-9-20(b) (stating that the purpose of the international arbitration code is &quot;to encourage international commercial arbitration in the state, to enforce arbitration agreements and arbitration awards, to facilitate prompt and efficient arbitration proceedings . . . and to provide a conducive environment for international business and trade&quot;).</td>
<td></td>
</tr>
<tr>
<td>81.</td>
<td>Indus. Risk Insurers v. M.A.N. Gutheoffnungshutte GmbH, 141 F.3d 1434, 1445 (11th Cir. 1998) (holding that an international arbitration award issued in a U.S. proceeding is subject to vacatur only on the grounds set forth in Article V of the New York Convention); Bautista v. Star Cruises, 396 F.3d 1289, 1302 (11th Cir. 2005) (eliminating domestic arbitration law as a basis for vacating international arbitration awards).</td>
<td></td>
</tr>
<tr>
<td>82.</td>
<td>See, e.g., Ga. Super. Ct. R. 4.4 (authorizing pro hac vice admission of foreign lawyers) and Ga. R. Prof. Cond. 5.5(e) (authorizing temporary practice of law by foreign lawyers).</td>
<td></td>
</tr>
<tr>
<td>84.</td>
<td>O.C.G.A. § 9-17-7.</td>
<td></td>
</tr>
<tr>
<td>85.</td>
<td>See, e.g., O.C.G.A. § 12-10-100 (confidentiality of mediation under the Apalachicola-Chattahoochee-Flint River Basin Compact, Art. XIII (a) (8) &amp; (9), and O.C.G.A. § 12-10-110 (confidentiality of mediation under the Alabama-Coosa-Tallapoosa River Basin Compact, Art. XIII (a)(8)&amp;(9)).</td>
<td></td>
</tr>
<tr>
<td>86.</td>
<td>See, e.g., ADR Rule VII. B.</td>
<td></td>
</tr>
<tr>
<td>87.</td>
<td>See, e.g., Rule 100 of the Board of Workers’ Compensation (confidentiality of mediation of workers; compensation claims).</td>
<td></td>
</tr>
</tbody>
</table>
COVID-19-Induced Courthouse Workarounds: Adopting Temporary Changes for the Permanent Good—Virtual *Voir Dire*

Like many COVID-19-induced judicial workarounds, we have learned that the former methods for jury selection can and should be modernized through the utilization of technology.

**BY HON. GAIL S. TUSAN AND TIERNEY SHARPE**

*Chief Justice Harold D. Melton of the Supreme Court of Georgia announced a Statewide Judicial Emergency on March 14, 2020 ("the judicial branch of government to suspend all but essential court functions"). Judges across the state of Georgia complied as best able. While judges directed court personnel to postpone motion hearings and jury trial calendars and attorneys canceled depositions and work-related travel, alternative dispute resolution (ADR) service providers such as JAMS worked through the judicial pause and continued to help their clients resolve disputes using technology and existing virtual platforms. Other public and private institutions, including law schools, recalibrated and transitioned to virtual platforms for their clients, employees and students. Bracing for what was to come, court administrators and government, in general, conservatively estimated this unprecedented judicial pause would last just a few months. In hindsight, most everyone was unrealistically optimistic, thinking that by the summer of 2020 the legal profession would return to normal and resume the hectic pace of business as usual. In the wake of the protracted pandemic and national shut down, court officials across the nation, and in the state of Georgia, recognized the need to reopen the jurisdictional system. The pressing civil rights of both criminal and civil parties demanded that courts find a way to get the wheels of justice moving again. In light of continued public health concerns and public hesitancy, it became imperative for courts to utilize technology and administrative creativity. A great example of the marriage of necessity and invention can be found in the advent of the virtual *voir dire*. In this article, I will share my perspective based on the personal experience of conducting a virtual *voir dire*, as well providing the reader with broader authority and references for its use by other locales and jurisdictions.*
Although jury trials resumed earlier in other parts of the country and a federal jury trial was held in Columbus, Georgia, in October, there was otherwise a moratorium on all state Georgia jury trials until Oct. 10, 2020. On that date, Chief Justice Melton provided for jury trials to resume with proper precautions in place. Unfortunately, just before Christmas, Chief Justice Melton was again forced to suspend jury trials, as a spike in coronavirus cases had made it too dangerous for jury trials to resume in person. Thus, voir dire was again suspended, and jury trials were once again placed on hold until the moratorium was finally lifted on March 9, 2021. Chief Justice Melton directed that “all courts are again urged to use technology, when practicable and lawful, to conduct remote judicial proceedings as a safer alternative to in-person proceedings. Where remote proceedings are not practicable or lawful, courts are reminded that in-person proceedings must be conducted in full compliance with public health guidance and the other requirements set forth in this order and in light of local conditions.”

Fortunately, early on—even before the moratorium was temporarily lifted—Atlanta Judicial Circuit Chief Judge Christopher S. Brasher and the Immediate Past Chief Judge, Robert C. McBurney, initiated what has been described by Fulton County Jury Services Director Amy von Kelsch as “metered, measured and methodical” planning for the recommencement of jury trials. Von Kelsch, a former litigator, appreciated the need to proceed cautiously, with the safety of the jurors, parties, attorneys and court staff being paramount. In May 2020, Chief Justice Melton established the Jury Trial Plan. Fulton County courts were proactive in their preparedness to safely recommence jury trials when authorized by the Supreme Court of Georgia. Fulton County State Court Judge Wes Tailor led the effort to develop a workable plan for use of virtual voir dire in civil cases.

Tailor and Superior Court Judge Rachel Krause took over the planning of how to recommence jury trials in the age of COVID-19. They formed a jury task force that included the Superior Court’s IT Director Adejuwon Amjooorin and von Kelsch, supported by their respective teams. It took approximately 10 months of planning and trial runs, but by April 2021, the jury task force was ready to test the new jury selection process. Finally, the jury stakeholders devised a feasible way for attorneys and their clients to examine and ultimately select jurors through an efficient, creative process utilizing Zoom. As Tailor put it, “We had an arrow to keep in our quiver.”

The Process
Since May 2021, trial courts in Atlanta have employed a virtual voir dire process in which citizens are qualified, questioned and advised as to their ultimate fate as petit jurors—all through Zoom, email and text communications. Here, instead of the traditional jury summons with information about where to park, potential civil trial jurors receive a postcard with information regarding the actual jury selection process and a QR code. Von Kelsch recalls pulling an all-nighter as she researched and used Adobe Photoshop to design the postcard currently mailed to prospective jurors. Citizens seeking further information are directed to the jury services website, www.fultoncourt.org/jurors. On the day a juror is subpoenaed
As we in Fulton County began to consider the benefits of virtual voir dire, other jurisdictions provided pilot programs that helped highlight the benefits of virtual voir dire. Texas courts kicked off their pilot program with both a virtual civil jury trial and a virtual criminal misdemeanor trial. Voir dire for a Collins County civil trial regarding an insurance dispute occurred on a much smaller scale than usual. Only about 25 potential jurors made up the original pool, from which the final 12 were selected. The jurors were then split into two groups of six, and they logged into the summary jury trial via smartphones, tablets and laptops. As a summary jury trial, it was the perfect test case, and both groups of jurors gave separate decisions to the parties, allowing the parties to decide whether to proceed to trial or work together toward a settlement with a more realistic picture of how a jury might decide. When asked about the procedural success of the trial, a judge close to the virtual civil trial, Judge Emily Miskel, noted, “I was pleasantly surprised to learn how much the jurors liked this. They were enthusiastic about it. And jurors who had served on traditional juries in the past said there were things they preferred about remote jury service. They said it was more respectful of their time and [that] the witnesses and exhibits were easier to see.”

The court solved the public access issue for the trial by streaming the public part of the proceedings via YouTube. The plaintiff’s lawyer noted that the jurors appeared to be more willing to answer questions, something he attributed to the increased comfort level of being in their own homes. Questions regarding potential biases were answered using Zoom technology “Raise Hand” feature, which jurors used to respond affirmatively. Additionally, there seemed to be few auditory issues, meaning everyone could hear each other clearly. This was significant since some in-person trials held since March 2020 have experienced auditory issues due to mask usage and the fact that parties, attorneys, jurors and judges were physically farther away from each other due to social distancing requirements.
Likewise, the first virtual criminal jury trial occurred in Austin, Texas, also via Zoom and with the approval of the defendant, his attorneys and the prosecutors. The court obtained additional iPads in case any potential jurors needed them. There were some hiccups, but Travis County Justice of the Peace Nicholas Chu, who presided over the case, considered it to be mostly a success, adding that some of the jurors disclosed that if they had been required to show up in person, they would not have participated.

In the same manner, Fulton County citizens may now receive a summons for jury duty and then be able to appear from their homes or offices rather than braving early-morning rush-hour traffic and spending a very long day in the courthouse with hundreds of other potential jurors. As you might imagine, the overall general reception by jurors who have experienced this innovative approach to voir dire has been positive. Judge Rachel Krause remarked, “Using this new method, jurors arrive at the courthouse ready to do their job,” pointing out that the uncertainty of how jury selection will impact their plans for the rest of the week has been removed. Potential jurors participate in voir dire from their homes or office on the first day and are informed at the end of the day whether they should plan to report in person on a future day to begin the trial.

I had the opportunity to conduct one of the first virtual jury selections in the Superior Court of Fulton County. Overall, my experience was very encouraging. I was excited to give it a try because of my success as an arbitrator/mediator in resolving matters using Zoom and because I had the unique learning experience of teaching Emory law students how to conduct an entire jury trial using Zoom for their final examination.

In fact, there has been a high level of cooperation by the citizens who received Fulton County’s new jury summons postcard. While some attorneys have been less impressed with juror decorum, my own observation was that the jurors timely complied, dressed appropriately, stayed alert and were ready to answer truthfully questions from the court and the attorneys. You may wonder how the bailiff oversight detail is incorporated into the virtual process. In Fulton County, the sheriff deputies have been present in the courtroom with the judge, attorneys and their parties to protect and serve as needed. No doubt, they would be on hand if a “home visit” or attachment is needed to secure a juror’s presence or participation. Fortunately, it has been sufficient for the trial judge to warn citizens that the continuation of this new convenient process for voir dire depends largely on an honor system where their conduct will influence whether virtual voir dire is retained once courthouses are fully open again.

Although not perfect, each trial brings improved technique and enhanced proficiency by the court and the attorneys. Therefore, my sense is that despite the extra administrative detail attendant to virtual voir dire, which is shouldered largely by judges’ chambers staff, judges and court professionals see the value in developing this creative, proactive method of jury selection into a more permanent option where circumstances warrant using it. The continued dialogue will focus on defining those circumstances.

Balancing Constitutional Factors Against Practical Ones

The success of pilot efforts using virtual voir dire and desire by court officials to get the wheels of justice turning again does not mean there are no issues with this option for jury selection. According to Matthew Bender, one of the scholars researching the constitutional issues with virtual voir dire, these include the inability to see the jurors in person, which some believe could obstruct body language, facial expressions and other non-verbal communication that may indicate when a potential juror is being untruthful. Furthermore, where it is impractical to provide technology for potential jurors, as has been done in Texas and Georgia, those from low-income areas or with inadequate technology will be systematically excluded from the jury pool. The cost of reliable technology plus reliable internet could be a barrier for many potential jurors. Mindful of the need to preserve the diversity of our jury pools, any citizens summoned for virtual voir dire but unable to do so due because of lack of access to the requisite technology or equipment should be afforded the opportunity to report to the courthouse to participate virtually using court-issued equipment.

There may be additional issues with enforcing the formality and respect voir dire deserves and normally receives when conducted in-person. Some courts that attempted to hold virtual voir dire reported unusual instances of potential jurors applying makeup, playing video games with a headset, and cooking or eating food. And others were in bed or went to sleep, took other phone calls and even appeared to drink alcohol. As such, there is some concern as to whether prospective jurors are paying attention and answering truthfully. But, as discussed above, juror misconduct was not a factor in my case, nor do I believe it would be a problem in most cases. Due to these considerations, the right to a fair trial for all parties in civil and criminal cases alike could be cause for concern with virtual voir dire. For criminal trials especially, the constitutional rights of the defendant must always be protected. Thus, based on the nature of virtual voir dire in particular, it is not reasonable to assume there can be a widespread implementation in criminal trials at this time.

Of the Georgia attorneys I surveyed, most agree that there are certain types of cases for which virtual voir dire would not be appropriate. And while they were split on whether virtual voir dire should be continued irrespective of the current pandemic conditions, there was almost unanimous agreement that the primary benefit of virtual voir dire is juror convenience. This has constitutional impor-
tance since if *voir dire* is more convenient, participation from eligible citizens may increase.22 As this rate increases, parties may have more success selecting a jury of their peers which is important since one of the remaining bastions of racism in jury selection hides in the discretion of peremptory challenges.23 Yet for this to work, courts must ensure access to reliable technology as these communities usually also have less access to technology and wireless internet.24

One approach is for courts to offer the option of virtual *voir dire* to criminal defendants. If defendants agree to it and waive future objections tied to that forum, it may be a viable option that would be more attractive to potential jurors and help with in court time for all parties involved. There is also a possibility that a hybrid option could be implemented. If criminal defense attorneys can effectively object and make appellate records to preserve errors for appellate review, it is likely that virtual *voir dire* proceedings could survive a constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge. Luckily for civil trials, the lighter burden of proof eases the constitutional challenge.

**Endnotes**


2. When called to sit as a senior judge and preside over a jury trial in Fulton County Superior Court, my only prior experience with doing so on a virtual platform arose from having to instruct the students in our Emory University College of Law Advanced Civil Litigation Spring Semester 2020 class on how to complete their final exam requirement by conducting a jury trial all of Zoom. It took a lot of creativity and hard work, but the law students performed admirably and graduated equipped with virtual litigation skills most of the attorneys at their firms had not yet had as of June 2020.


9. Id.

10. Id.

11. Id.


13. Id.

14. Id.


17. Id.


20. Id.

21. Google Form Survey from Judge Gail Tusun to Georgia attorneys experienced with virtual voir dire (July 2, 2021) (on file with author).


24. “The internet has the power to tie the nation together, reenergize the economy and open the doors of education, employment, health and civic participation to all.” Tom Conway, How Does Closing the Digital Divide Help U.S. Workers?, July 8, 2021, https://www.laprogressive.com/internet-access/. Impoverished communities could also include potential jurors that are not just historically disenfranchised due to race or people from rural areas with no reliable access to broadband internet service. Id.

25. Survey Monkey survey from Judge Gail Tusun to American Bar Association (ABA) and Georgia Association of Black Women Attorney (GABWA) contacts about experience and comfort with virtual voir dire (June 23, 2021) (on file with author).
On Jan. 10, 2022, the Georgia General Assembly will convene for year two of the legislative biennium. The 40-day session is likely to be over by the end of March, with many members eager to switch into campaign mode ahead of the primary election on May 24.

For all you lawyers out there contemplating a run for legislative office, save this date—qualifying for state races starts March 7, 2022.

The legislative team has their work cut out for them in 2022. We have two bills that will carry over from the 2021 legislative session in addition to new legislation that the Board of Governors may vote to support at its Midyear Meeting on Jan. 8, 2022.

Here’s a current overview of the issues the State Bar of Georgia will give attention to with its 2022 legislative package.

**Increased Funding for Civil Legal Services**
During the early pandemic in June 2020, the state budget was cut back in contemplation of declining state revenues. This included a nearly $1 million cut to state-
funded grants that cover civil legal services for victims of domestic violence. At its Fall Meeting, the Board of Governors voted to support the Judicial Council’s fiscal year 2023 budget request for $3 million to fund civil legal services grants for victims of domestic violence. The appropriation for this grant for the current fiscal year is roughly $1.6 million. This request would ask for an increase of approximately $1.4 million, for a total of $3 million.

**Advanced Psychiatric Directive Legislation**
The Bar’s Board of Governors approved the Fiduciary Law Section’s proposal to support the codification of an Advanced Psychiatric Directive in January 2021. The bill was filed during the 2021 legislative session as HB 752. Georgia’s current Advanced Healthcare Directive statute (O.C.G.A. § 31-32-4) expressly excludes matters related to mental health. The legislation would permit an agent to make decisions during a mental health crisis.

**Remote Online Notary**
Rep. Joseph Gullet (R-Dallas) filed HB 334 in January 2021, which would create a statutory framework permitting remote online notarization in Georgia. The State Bar’s Real Property Law Section, with input from the Family Law Section and the Fiduciary Law Section, has worked with Rep. Gullet throughout the process to ensure that the provisions of the legislation allow for the proper execution of legal documents requiring a notary or a witness. Many aspects of the bill closely track the language from the Mortgage Bankers Association and American Land Title Institute model act on Remote Online Notarization.

The State Bar’s Advisory Committee on Legislation met on Nov. 30 to finalize the Bar’s legislative package for the upcoming year and discuss other bills of interest to the legal profession. Please check out the legislative page on the State Bar website for the final list of the Bar’s positions after the Board of Governors meeting on Jan. 8, 2022.

**Legislation Affecting the Judiciary and the Practice of Law**
Since 2022 is year two of the biennium, any bill that was filed in 2021 and did not pass is still active. We expect to see movement on the following familiar legislation from last year affecting the judiciary and the practice of law:

- **HB 409** (Rep. Stan Gunter, R-Blairsville) creates a Judicial Legal Defense Fund to pay for legal counsel for judges who are sued for actions relating to their official duties. The bill passed in both the House and the Senate, but was sent to conference committee so both chambers could reconcile a provision that was added in the Senate. The bill did not ultimately reach final passage during the 2021 session.
- **HB 411** (Rep. Joseph Gullet, R-Dallas) creates the Prosecuting Attorneys Oversight Commission, which shall have the power to discipline, remove and cause the involuntary retirement of elected district attorneys or solicitors-general. Similar to the Judicial Qualifications Commission, the bill creates an investigative panel and a hearing panel with appointed members who serve to investigate and adjudicate the conduct of district attorneys. HB 411 passed by a vote of 104-61 in the House but did not get a vote in the Senate by Sine Die 2021.
- **HB 620** (Rep. Rob Leverett, R-Elberton) clarifies and revises procedures and requirements for the payment of certain settlements involving minors. HB 620 passed in the House but did not make it out of the Senate by Sine Die 2021.

This coming year will be another important one for the State Bar under the Gold Dome. The Legislative and Grassroots Program not only advocates changes that affect the practice of law, but also issues affecting the judiciary, public safety and a host of other areas that attorneys regularly encounter. We encourage you to join us, either with your local bar associations or individually, for a “Lobby Day” at the Capitol. Lawyers are important and productive members of our communities and legislators find it meaningful to hear from their engaged, concerned constituents. We are grateful to those who donate to the Legislative and Grassroots Program, which is funded entirely through voluntary contributions upon renewal of your Bar dues. We appreciate your continued support as we continue to ensure a strong and unified voice for the profession under the Gold Dome. ●

*The State Bar of Georgia’s Legislative Program is exclusively funded by voluntary contributions from our members. Any official position by the State Bar of Georgia, including its sections and committees, must follow the process outlined in Standing Board Policy 100, www.gabar.org/SBP100, and meet the standard set out by the U.S. Supreme Court in Keller v. State Bar of California. The State Bar and it’s affiliated entities cannot take an official position on legislation without following these policies and standards.*

**Christine Butcher Hayes**
Director, Governmental Affairs
State Bar of Georgia
christineh@gabar.org
An Exciting October for the Georgia Diversity Program

The State Bar of Georgia Diversity Program hosted two well-attended CLEs with help from GDP member firms in the month of October.

BY HALIMA H. WHITE

The State Bar of Georgia Diversity Program (GDP) had a busy and exciting October. The GDP planned and hosted two informative and well-received CLEs. On Oct. 12, the program presented “Mediators Speak: The Present and Future of ADR.” Moderated by Shuli Green, mediator with Miles Mediation & Arbitration, panelists included Hon. Gino Brogdon Sr. with Henning; Hon. Gail Tusan with JAMS; Hon. Bianca Motley-Broom, mayor of College Park and mediator...
with Miles; and Anandhi Rajan, partner with Swift Currie and mediator with Bay Mediation & Arbitration.

Green asked insightful questions, including how mediators deal with the “unofficial” decision-maker who may or may not even be in the room. In addition, Brogdon hilariously illustrated how important it is to get all key terms on the table, recalling how he once had a divorce mediation derail over who would take custody of the puppy. Brogdon noted he mediates civil matters now, as opposed to family matters, but Tusun explained that she willingly mediates divorce cases. We appreciate our panelists who shared their insight. Our sponsors were Bay Mediation & Arbitration, Swift Currie and Bovis & Kyle.

The program’s Fall CLE was held virtually on Oct. 26. The first panel was “Lawyers with Physical Disabilities and Thriving Legal Practices.” Moderator Craig Ehrlich—who represents plaintiffs in wheelchair accessibility cases—navigated an interesting discussion that included how to recruit and retain lawyers with disabilities. Other panelists included Social Security Disability Judge David Cornelius who joined us from Macon; Americans with Disabilities Act expert William Goren; and Kareem Dale, director and senior counsel with Discover Financial Services, who was a key policy advisor in the Obama Administration. “Just do it,” Dale explained when asked how employers can hire lawyers with disabilities, noting the importance of having accessible websites where lawyers with disabilities can apply for positions easily.

The second panel included bar association presidents who discussed how they balance such intensive, unpaid positions with their demanding legal careers and personal lives. The panel also shared the importance of bar associations from a networking perspective as well as how bar leadership honed their own leadership skills and provided an opportunity for them to foster leadership in others. Other highlights included learning about the community service work these organizations perform as well as their interbar activities. Panelists for this session included Cristina Leon, managing partner with The Partners Group and former president of the Georgia Association for Women Lawyers; Javier Becerra, senior counsel with Global Payments, Inc., and former president of the Georgia Hispanic Bar Association; Timothy Wang, associate general counsel with Delta Air Lines and outgoing president of the Georgia Asian Pacific American Bar Association; Candis Jones Smith, partner with Lewis Brisbois and president of The Gate City Bar Association; and D. Barret Broussard with Broussard Law, president of the Stonewall Bar Association.

The Fall CLE concluded with an interview of Hon. Glenda Hatchett by Joiava Philpott, senior vice president, general counsel of Cox Communications. Hatchett recounted her legal work at Delta Air Lines and the other work she performed before becoming a judge. “Ask for what you want,” she explained. Hatchett shared how she attended a meeting with Sony designed to persuade her to do a pilot of a television show, and Sony asked her what she would need to do the show. Hatchett asked Sony to pay for drug treatment programs if she ordered juveniles to attend them and to provide other resources designed to help those appearing before her. Hatchett would work on a situation until it was resolved; it was up to the producers to edit the work to fit a television show, but she focused on the legal matter at-hand and the people in front of her. Through her law firm, The Hatchett Firm, based in Atlanta, Hatchett focuses on civil rights work, and after the tragic death of her daughter, she plans to focus on maternal death cases as well. In addition to her current books, she anticipates a children’s book on the horizon. Hatchett is launching a conference in various cities, designed to encourage women to pursue their dreams.

The sponsors of the Fall CLE were Kilpatrick Townsend, The Equifax Foundation, Nelson Mullins and Parker Hudson. We appreciate our sponsors and our Steering Committee members. The Steering Committee is co-chaired by Martine Cumbermack with Swift Currie and Rhonda Sadler Collins with the U.S. Department of Education.

Programming is supported by Georgia Diversity Program member firms. We are grateful to these firms, a list of which can be found at www.gabar.org/diversity, for their continued support and acknowledge that without their dedication, the work of the program would not be possible.

Halima H. White
Executive Director, Georgia Diversity Program
State Bar of Georgia

gadiversityprogram@gmail.com
Carroll County was created in 1826, and her first court building was a 20' by 20' log structure erected at Carrollton around 1829, shortly after the county seat had been moved from its original site at “Old Carrollton.” In 1837, Adiel Sherwood in his Gazetteer of Georgia reports that Carrollton consisted of eight or 10 houses and two stores. In that year, a frame courthouse replaced the first crude building. By 1851, as the west Georgia fields turned white with cotton, a typical brick vernacular court building rose to meet the growing administrative and judicial needs of the Carroll County’s 9,357 residents, only 250 of whom lived in Carrollton, the county’s largest town. The broad cornice and paired brackets supporting the eaves are typical of vernacular rural public buildings of the era. A particularly elegant air was achieved using bold brick pilasters that divided the facade into narrow vertical bays. The use of tied pairs of these great pier-like members to close the end bays and stress the sides of the composition is a rather sophisticated device for such a crude building. It is a technique that was often used in Italian Renaissance palaces and was most likely inspired by one of the many builders’ guides or pattern books available to builders of the day.

With the arrival of The Central of Georgia’s Savannah, Griffin and North Alabama Railroad in 1874, Carrollton would experience her own brief boom as an area cotton market. One historian contends that the number of businesses in town doubled between 1871 and 1873. Whatever the case, Carrollton’s boom was brief. The Central abandoned work on the westward extension after its arrival in Carrollton, and the town was destined to occupy the end of this lonely spur for almost 15 years. Still, with the railroad’s arrival, Carrollton prospered, shipping more than 15,000 bales annually from this depot in the late 1880s. As the decade ended, Carrollton had her own bank and a population of nearly 1,500. But, as always, dreams of a New South would eventually crumble when supported only by the flimsy foundations of cotton.

In 1888, rising prospects created by the long-awaited arrival of The Chattanooga, Rome and Columbus Railroad sparked a new courthouse movement in Carrollton. Only a little more than a year after the new rails arrived, county leaders put a bond issue to fund a new courthouse before the voters of Carroll County. Although the bonds failed to pass, beginning in 1891, two successive grand juries recommended a new courthouse, and in July of 1892, The Free Press reported that the county commissioners were “resolved to build a new courthouse,” and had set up a meeting with an unnamed architectural firm. Even though the issue of how to pay for the building was still unresolved, a plan was selected, and a contract for the construction of Bruce and Morgan’s grand 1893 Carroll County Courthouse was let on Dec. 9, 1892. There followed the predictable political squabble, including a second bond election which also failed to achieve the necessary voter support. In the end, the building was funded by a direct tax.

Just as the impetus behind the movement to build the 1893 Carroll County Courthouse had arrived on the rails of The Chattanooga, Rome and Columbus, the Romanesque Revival style flowed down to Carrollton on the same railroad. Beginning with William Parkins’s 1888 Gordon County Courthouse at Calhoun, we can trace a line of Romanesque court buildings along the railroads of northwest Georgia. Parkins’ 1889 Polk
County Courthouse rose at Cedartown followed by Walter Chamberlain’s 1891 Whitfield County Courthouse at Dalton. Only a year later, Bruce and Morgan Romanesque courthouses were going up at Rome and at Buchanan, only 20 miles up the line from Carrollton. Similarly, the same stylistic impetus must have flowed down the rails of The East Tennessee, Virginia and Georgia from Rome to Dallas where Bruce and Morgan designed the highly Picturesque Paulding County Courthouse in 1892. Finally, it wandered over to Douglasville where the bold Romanesque walls of Andrew Bryan’s Douglas County Courthouse rose in 1896.

The 1893 Carroll County Courthouse owed a debt to a number these buildings. Although devoid of much of Alexander Bruce’s earlier Queen Anne frippery, this structure was in many ways like Bruce and Morgan’s Haralson County Courthouse at nearby Buchanan, completed only a year earlier. The side elevation, with its shaped parapet flanked by small turrels and the three bold arches of the courtroom windows, clearly mirrors the firm’s earlier work at Buchanan. The stone banding and the great entrance arches reflect the work of H. H. Richardson in general, and the paired arches of the front entrance specifically recall Parkins’ 1891 Polk County Courthouse at neighboring Cedartown. The round tower with its conical cap is unique among Bruce and Morgan’s many Romanesque court buildings. But towers of all sorts characterized the Romanesque Revival in America, and the massive square tower with its arched window groupings and pyramidal roof is typical of all this Atlanta firm’s work in the style.

Here in Carrollton, we find another conspicuous example of the intense competitive spirit that Georgia’s counties exhibited as the railroads were beginning to tie these places together for the first time. The 1893 Carroll County Courthouse, and indeed the long string of 1890s Romanesque court buildings that stretched from Dalton to Franklin, Georgia, south of Carrollton in Heard County, stood in monumental testament to these place’s compelling need to first emulate and then outdo their neighbors with architectural flights of fancy, which often far exceeded any practical consideration. These buildings not only stood for a uniquely Southern version of the promise of prosperity imported by the railroads they also broadcast a boastful pride.

Even though most of these buildings represented a hollow promise and a false pride, for a brief moment Carrollton appeared to be the fulfillment of promises imported back in 1888 by The Chattanooga, Rome and Columbus. As the new courthouse neared completion, a devastating fire swept through Carrollton destroying 15 wooden buildings. All of these were replaced by brick structures. By 1905, Carrollton’s population, which had stood at around 1,500 in 1890, had more than doubled, and the town boasted 53 business houses, 3 hotels 2 newspapers and 10 passenger trains a day.” Along the way, a cotton mill had been added in 1898, and 10 years later the plant’s capacity had almost doubled. Still, this was hardly the stuff of the modern age. All the while, Carroll remained a county of farmers, and cotton production continued to mushroom. In 1905, the county was the second largest producer in the state, and by 1914 Carroll produced an incredible 43,000 bales. Three years later the boll weevil arrived, and by 1921, countywide cotton production was down to 26,000 bales. It was a disaster, for despite all her fine new clothes, Carrollton’s very soul was still inexorably bound to the production of cotton. Almost symbolically, Bruce and Morgan’s grand symbol for the mythical bounty of The New South burned to the ground in 1928.
You are originally from Iowa, and you have three degrees from the University of Iowa, so what brought you to Georgia?

I love Iowa, and I didn’t ever think I would move. My now-wife got a job as a television news anchor in Macon, and so I followed her to Georgia.

A lot of people may not know that you played outside linebacker for the University of Iowa in the mid-1980s. What was it like playing for a major college football program?

It was an absolute thrill. We were No. 1 in the nation for most of 1985, until we went to Ohio State late in the year. We were winning the game, but when the weather changed, our fortunes changed. That was our only loss in the regular season. Because of that loss, our quarterback [Chuck Long] lost the Heisman Trophy to Bo Jackson in the closest vote at that time, and we lost the national title. It was great to be on a team that was chasing the national championship. The biggest takeaway from those years was the camaraderie among the players, and that remains to this day.

The 1985 season ended with Iowa playing in the Rose Bowl against UCLA. What was it like to play in front of more than 100,000 people?

I really don’t remember much because we lost that game. When we played in the Rose Bowl, our chances of winning the national title were gone because back then one loss late in the season really derailed you. And so I don’t think that, as a team, we were mentally prepared to play that game, and we lost. I’ve erased it from my memory for the most part.

The coaching staff on that 1985 Iowa team was impressive in terms of the number of assistants who went on to be successful head coaches.

Yeah, I’m really proud of that fact. Bob Stoops, the former head coach at Oklahoma, was a graduate assistant in 1985. Barry Alvarez, who is now the athletics director at Wisconsin, was our inside linebackers coach and went on to win a national title as an assistant at Notre Dame and then was the head coach at Wisconsin. Dan McCarney, who later coached at Iowa State and North Texas State, was the defensive line coach. Bill Snyder was our offensive coordinator, and he ended up turning Kansas State around and was a long-time head coach there. Don Patterson ended up coaching at Western Illinois for several years.
Last but not least, Kirk Ferentz coached the offensive line, and now he’s the dean of Big Ten coaches. Also, several guys I played with have become coaches. Jay Norvell is the head coach at Nevada, Mike Stoops was the head coach at Arizona and his brother Mark is the head coach at Kentucky. What we experienced was pretty magical.

As a former player, what do you think about student-athletes now being able to sell the rights to their name, image and likeness? Do you think ultimately that’s going to be a good thing or a bad thing for college athletics?

I think it’s a good thing that players today receive money when you look at the millions of dollars that the coaches and universities make. Players deserve money, but I’m wary about name, image and likeness because it’s uncontrolled and unregulated right now. It’s going to be an arms race because some schools will deal with car dealerships and other local businesses, but if you’re Oregon, you have Nike. If you’re Maryland, you have Under Armour. Alabama is going to find money in the state to keep getting good players to go there. Every program will have to find some big-money boosters who are willing to buy the name, image and likeness of recruits. I think that’s bad for the game overall. It has to be regulated somehow, but I’m not sure how that’s going to happen.

What lessons have you brought with you from the gridiron to the courtroom?

Preparation. Every time I go to trial, I pull out my trial books and go back to basics. That’s what we did every season and every spring when I played football; we started with the basics.

Every time I go to trial, I pull out my trial books and go back to basics. That’s what we did every season and every spring when I played football; we started with the basics.

There aren’t that many undefeated teams, are there?

Or undefeated trial lawyers.

When you lived in Macon, you were involved in an effort to get an NBA developmental team for the city. Tell us the story behind that.

I was working in the city attorney’s office while I was waiting to take the Georgia bar exam, and an opportunity came to Macon because the NBA was going to create a developmental league team in the southeast. When I did the research, I realized that the NBA was going to make more money and the city was going to lose and that in order for the city to just break even, the team would have to average about 3,500 fans a game. I looked at minor league basketball, and there were only two teams in the country that averaged more than 3,500 fans a game. So I thought the deal was a loser for the city, and my recommendation was not to accept the team. Despite my recommendation, the city council voted to take the team, but the NBA decided to place the team in another city. I think that was one of the best things that happened to Macon because the NBA D-League for the southeast failed.
You are now the president of the Defense Research Institute. Tell everyone about the DRI as an organization and why it’s been important in your career.

DRI is the leading organization of civil defense attorneys and in-house counsel in the country with more than 13,000 members. DRI has been important for me because it has taught me most of the things I have learned in terms of business development. It has also provided me with educational materials that have helped me become a better lawyer.

What are your goals for your term as president of the DRI?
One of the main goals is to increase the awareness of the organization. A lot of people don’t know what DRI is and how it can help them grow as an attorney and learn business development. For instance, one of my biggest fears when it came to business development was how to ask for business. One day I saw a person ask someone for business and I realized it’s that easy. I talked with him about his approach, and it became easier for me to ask people for business and to set rates that are higher than what you typically see in insurance defense because I was able to look at who I am as an attorney and the value I bring to clients.

I read about a dinner you recently had in Washington, D.C., with Carlos Moore, Navan Ward and Reginald Turner. Tell us about your new friendship with those guys.
I was very excited to meet with these gentlemen. We’re all African American men and leaders of major bar associations. Navan Ward is the president of the American Association for Justice. Reginald Turner is the president of the American Bar Association. Carlos Moore is the president of the American Bar Association.

I read an article that you were quoted in recently about how racial, cultural and ethnic issues affect claim handling and the need for greater diversity among claim handlers and mediators. You said in the context of why some mediations fail that “sometimes there are subtle clues that people wouldn’t pick up unless you are from that culture.” Can you elaborate on that?
As lawyers, it is incumbent upon us to gather as much information as we can and get all the tools that we can to help us be successful and bring value to our clients. If you’re having a mediation with a person of a different culture or race, it’s important to understand that person’s culture or race or to have someone in the room who can help you understand that, whether it’s the mediator or someone else with your law firm, because there are subtle clues that the person could give off that could make a difference in regards to whether you can get the case settled or not. Understanding those clues is imperative.

As lawyers, we do our homework on the law, on the mediator, on the facts, but often we don’t do our homework on culture and race because people believe that’s taboo. Well, if that’s going to be a factor in whether a case is resolved, then it’s something we need to do our homework on. Sometimes that means having a woman mediator if the plaintiff is a woman. Sometimes that means having an African American mediator, or a Hispanic mediator or sometimes that means having a white male mediator who understands the cultural issues or at least is going to ask the questions. It doesn’t always have to be a diverse mediator, but it has to be a mediator who’s willing to learn and understand and ask the questions to pick up the subtle clues that may help lead to a resolution of a case.

How do we get improvement in that area?
I think there’s two things. One, we have to understand that everybody is different. Part of culture could simply be someone growing up in a different part of the country. How do you connect with that person? Two, you have to talk to people. You have to get to know people. You have to be inquisitive. As a defense attorney, it’s my job to educate the claim handler, but the plaintiff’s attorney has to help me. We can’t be afraid to work through the issues. All we want are fair-minded people who are willing to listen and learn about things that are different than their life experience. They don’t have to agree, but they have to accept that those things matter. If they’re willing to do that, then you can be successful getting cases resolved.

Is DRI doing anything about this?
Yes. DRI has been asked by several insurance companies to partner with them because they are frustrated with the lack of diverse mediators around the country. They are looking at it from the standpoint of mediators who can understand cultural, language and racial differences and how that can help get cases resolved. For example, we recently had a webinar with Ken Feinberg [the attorney who oversaw the September 11th Victim Compensation Fund, which required him to assign dollar values to the lives of the victims] about how to value a life and how cultural and racial issues come into play when the value of someone’s life is being evaluated. This is one of the things that the insurance companies want to learn from, and DRI is helping them do that.

Do you have any parting words of wisdom?
Us older lawyers, we need to give our time to the younger lawyers, and younger lawyers need to reach out and ask for information, both within and outside their firms. If we do more of that, we’re going to be a better profession.
"I love LawPay! I’m not sure why I waited so long to get it set up."

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

- 22% increase in cash flow with online payments
- Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA
- 62% of bills sent online are paid in 24 hours

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA, Synovus Bank, Columbus, GA., and Fifth Third Bank, N.A., Cincinnati, OH.

Supported by Visa, Mastercard, American Express, Discover, eCheck

Get started at lawpay.com/gabar
866-343-2217

Data based on an average of firm accounts receivables increases using online billing solutions.
Kudos

The National Elder Law Foundation (NELF) announced that Chris Brannon and Kelley Napier, both of Brannon Napier Elder Law, LLC, in Atlanta, earned the designation of Certified Elder Law Attorneys. NELF is the only organization approved by the American Bar Association to offer certification in Elder Law.

Moye White LLP announced that it is the first Georgia firm to become a Certified B Corporation. The designation is awarded to companies that use the power of business to solve social and environmental problems and meet higher standards of social and environmental performance, transparency and accountability. Certified B Corporations meet rigorous standards of social and environmental performance, legally expand their corporate responsibilities to include consideration of stakeholder interests and build collective voice through the power of the unifying B Corporation brand.

Baker Donelson announced that shareholder Michelle A. Williams was named leader of the firm’s Health Care Regulatory Center of Excellence. The firm also announced that they were recognized by the Mortgage Bankers Association (MBA) as a 2021 Diversity, Equity, and Inclusion (DEI) Residential Leadership Award recipient. The firm won in the non-lender category and was recognized for its efforts in creating a robust program to recruit, retain, and promote women and minority attorneys, with a particular emphasis on women. The MBA specifically cited Baker Donelson’s Women-to-Equity cohort program that provides opportunities for women to advance within the firm. The MBA also noted the firm’s status as a Mansfield Plus Certified firm, a voluntary initiative among law firms to ensure at least 30% of job applicants are women, attorneys of color, LGBTQ+ or attorneys with disabilities. The annual awards recognize MBA members for their leadership efforts in DEI in three award categories: organizational DEI, market outreach strategies and non-lender.

Arnall Golden Gregory announced that Partner Lori Wright was appointed to the Advisory Board of the international nonprofit organization, Women Who Code (WWCode). WWCode is dedicated to inspiring women to excel in technology careers by building a world where diverse women are better represented as technologists and leaders.

Mozley, Finlayson & Loggins LLP announced the election of Wayne Taylor as president of the American College of Coverage Counsel (ACCC), the country’s leading honorary organization for practicing insurance coverage and bad faith attorneys. The ACCC’s mission is to advance the creative, ethical and efficient resolution of insurance coverage and extra-contractual disputes; to enhance the civility and quality of the practice of insurance law; to provide peer-reviewed scholarship; and to improve the relationships among the members of our profession.

Ragsdale, Beals, Seigler, Patterson & Gray, LLP, announced the election of Herbert H. “Hal” Gray III to a Fellowship in the American College of Construction Lawyers. Fellowship is extended by invitation to those who are found to have mastered the practice or the teaching of construction law and dispute resolution in the complex technical and legal fields pertaining to the built environment.

Chamberlain Hrdlicka announced that Gina Vitiello is the new national chair of the Construction Law Section. Vitiello will lead the 15-attorney section to counsel clients during all phases of the construction litigation process to help them accomplish their goals and objectives.

On the Move

IN ATLANTA

Tobin Injury Law announced the addition of Caroline Monsewicz and Campbell Walker as associates. Monsewicz’s practice focuses on helping those who have been injured by someone else’s negligence. Walker’s practice focuses on personal injury cases including automobile collisions, trucking accidents, and insurance coverage issues. The firm is located at 49B Lenox Pointe Atlanta, GA 30324; 404-587-8423; www.tobininjurylaw.com.
MendenFreiman LLP announced the addition of Harrison B. "Harry" Alex as an associate. Alex’s practice focuses on tax controversy and collection. The firm is located at 5565 Glenridge Connector NE, Suite 850, Atlanta, GA 30342; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.

Baker Donelson announced the addition of Theresa L. Kitay as a shareholder. Kitay’s practice focuses on defense and preventative representation of clients in the housing industry in all civil rights matters, including fair housing, Section 504, Title VI and the Americans with Disabilities Act. The firm is located at 3414 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-443-6745; Fax 404-221-6501; www.bakerdonelson.com.

Carlton Fields announced the addition of James E. Mitchell as an associate. Mitchell’s practice focuses on business litigation with experience in commercial disputes, product liability matters, constitutional law litigation and health law. The firm is located at 1201 W. Peachtree St. NW, Suite 3000, Atlanta, GA 30309; 404-815-3400; www.carltonfields.com.

Weathington, LLC, announced the addition of Kimberly B. Debrow and Seleta M. Griffin as of counsel. Debrow and Griffin focus their practice on civil litigation, most specifically medical malpractice defense. The firm is located at 191 Peachtree St. NE, Suite 3900, Atlanta, GA 30303; 404-524-1600; www.weathington.com.

Attorneys Nick Lotito and Seth Kirschenbaum announced the formation of Lotito & Kirschenbaum. Lotito focuses his practice on federal and state criminal defense, white collar crimes, computer and internet crimes, fraud, theft, drug offenses and criminal appeals. Kirschenbaum focuses his practice on criminal defense, specifically fraud, theft, embezzlement, federal crimes including bank fraud, wire fraud, program fraud, tax fraud, antitrust violations and other white collar crimes, as well as drug crimes, sex offenses, impaired driving and other state charges. The firm is located at 1800 Peachtree St. NW, Suite 300, Atlanta, GA 30309; 404-471-3177; www.atlanta-criminal-law.com.

Kilpatrick Townsend & Stockton announced the addition of Ruming "Leo" Wen as an associate. Wen’s practice focuses on patent preparation, prosecution and counseling, and assists technology companies in protecting their most valuable in-
tangibles. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-532-6876; Fax 404-953-6064; www.kilpatricktownsend.com.

Womble Bond Dickinson announced the promotion of Joe D. Whitley to partner and the addition of Brett Switzler as an associate. Whitley’s practice focuses on white collar criminal matters and regulatory enforcement, corporate internal investigations, the Foreign Corrupt Practices Act, and United States export controls and compliance. He also advises clients on corporate compliance, health care fraud and FDA-related matters. Switzler’s practice focuses on litigating commercial disputes in state and federal courts, and arbitration. The firm is located at 271 17th St. NW, Suite 2400, Atlanta, GA 30363; 404-872-7000; Fax 404-888-7490; www.womblebonddickinson.com.

Goggans, Stutzman, Hudson, Wilson & Mize, LLP, announced the addition of an office in Buckhead. The firm is located at 2921 Piedmont Road, Suite C, Atlanta, GA 30305; 404-574-2780; www.gshattorneys.com.

Hunton Andrews Kurth LLP announced that Douglass P. Selby, partner and co-chair of the firm’s national public finance practice, was named managing partner of the Atlanta office. Selby’s practice focuses on public finance including serving as bond and disclosure counsel to issuers and underwriters’ counsel to investment banks for governmental and private activity bonds, and corporate representation of governmental authorities as outside general counsel. The firm is located at 600 W. Peachtree St. NW, Suite 2400, Atlanta, GA 30308; 404-888-4000; Fax: 404-888-4190; www.huntonak.com.

Carroll Daniel Construction Company announced the addition of Doug Tabeling as general counsel. His experience includes drafting and negotiating construction contracts and related agreements; mitigating and resolving claims and disputes; and advising on compliance matters and the unique aspects of public contract law and procurements. The office is located at 3330 Cumberland Blvd. SE, Suite 350, Atlanta, GA 30339; 770-536-3241; www.carrolldaniel.com.

IN ALPHARETTA
Morgan & Morgan announced the formation of its sixth Georgia location in Alpharetta. The office will be managed by Partner Evan Rosenberg and will include eight attorneys handling all types of personal injury cases, including those involving commercial trucks and other motor vehicles, pedestrian accidents, premises liability, medical malpractice and wrongful death. The firm is located at 178 S. Main St., Unit 300, Alpharetta, GA 30009; www.forthepeople.com.

Andrew R. Fiddes, lieutenant commander, U.S. Coast Guard Reserve, was named Executive Officer of Port Security Unit 313 and named regional counsel for the U.S. Department of Commerce’s Economic Development Administration. Fiddes will serve as the second in command for the unit sustaining material and personnel deployment capabilities and readiness. In the role of regional counsel, he will provided legal supervision and advice on administration projects across 13 states and throughout all U.S. territories in the Caribbean.

IN ATHENS

IN AUGUSTA

IN BRUNSWICK
Hall Booth Smith, P.C., announced the addition of J. Keith Pollette as of counsel. Pollette focuses his practice on business litigation, construction and transportation, and real estate matters. The firm is located at 3528 Darien Highway, Suite 300, Brunswick, GA 31525; 912-554-0093; Fax 912-554-1973; www.hallboothsmith.com.

IN COLUMBUS
Hall Booth Smith, P.C., announced the addition of Roger C. Grantham Jr. as an associate. Grantham focuses his practice on medical malpractice defense, insurance coverage and general liability litigation. The firm is located at 1301 1st Ave., Suite 100, Columbus, GA 31901; 706-494-3818; Fax 706-494-3828; www.hallboothsmith.com.
Maj. Gen. David Bligh Assumes Duties as Staff Judge Advocate to the Commandant of the U.S. Marine Corps

Maj. Gen. David J. Bligh, a member of the State Bar of Georgia since 1998, and an active duty U.S. Marine Corps judge advocate, was promoted to his current rank on Sept. 1, 2021, and assumed duties as the staff judge advocate (SJA) to the Commandant of the Marine Corps.

In his new assignment, Bligh provides independent legal advice to the Secretary of the Navy, the Commandant of the Marine Corps and other senior officials at U.S. Marine Corps Headquarters. At the Pentagon, he leads a staff providing service-level legal and policy advice on military justice; civil and administrative law; military personnel law; international and operational law; intelligence law; cyber law; and legal assistance. He also manages the Marine Corps legal community, a diverse force of more than 1,600 active duty and reserve judge advocates and legal service specialists stationed across the globe. Additionally, Bligh supervises three independent Marine Corps legal organizations—the Defense Services Organization, the Trial Services Organization and the Victims’ Legal Counsel Organization.

Bligh was commissioned as a second lieutenant in 1988. He served as an assault amphibian vehicle platoon commander, company executive officer and company commander at 2d Assault Amphibian Battalion, 2d Marine Division at Camp Lejeune, North Carolina, and subsequently as series commander at Marine Corps Recruit Depot, Parris Island, South Carolina. After attending the University of Georgia School of Law through the Marine Corps Law Education Program, Bligh completed numerous judge advocate assignments and a deployment in support of Operation Iraqi Freedom.

In recent years, he served as the SJA, 3d Marine Division and the SJA, III Marine Expeditionary Force in Okinawa, Japan. He then served as SJA, U.S. Marine Corps Forces Command in Norfolk, Virginia, and as the Deputy SJA to the Commandant of the Marine Corps at the Pentagon. Maj. Gen. Bligh most recently completed an assignment as the Assistant Judge Advocate General of the Navy for Military Law.
Sprechen Sie Deutsch?

BY PAULA FREDERICK

“I’m surprised to see we took Ms. Rahman’s case,” you say to your partner as you enter her office. “I thought you decided the language barrier was just too much to deal with?”

“Two minutes into our ‘conversation’ I realized I’d completely forgotten the Urdu my Nana taught me,” your partner admits. “But I told Ms. Rahman she had to find an interpreter, and she came back with her brother-in-law. From what I could tell, he did a pretty good job explaining things, so we agreed to use him. The price is right—he’s doing it for free!”

“But how do you know he’s accurately translating?” you ask. “He might be biased. Does he have any legal training? Did you talk to him about confidentiality?”

“Not yet, but we’ll figure it out,” your partner assures you.

“Um … I don’t think that’s how it’s supposed to work,” you say doubtfully.

What are a lawyer’s obligations when she and her client do not speak the same language?

The American Bar Association recently issued Formal Opinion 500, Language Access in the Client-Lawyer Relationship (Oct. 6, 2021), to help answer that question. The opinion finds that a lawyer’s duties do not change because of communication problems; in fact, communication barriers often require the lawyer to take extra steps to ensure compliance with the Rules of Professional Conduct.

Georgia Rule of Professional Conduct 1.4, Communication, sets out the basics. A lawyer and client must be able to communicate in order to establish and maintain the relationship. Without appropriate communication, the lawyer may not fully understand the client’s needs, and the client may not be able to participate meaningfully in the representation.

When the lawyer and client speak different languages, Formal Opinion 500 says that “the lawyer must take measures to establish a reasonably effective mode of communication” by using a qualified, properly trained, and impartial translator or interpreter. In some circumstances electronic translation services or apps may be all that is needed.

The opinion cautions that “a lawyer may not … passively leave the decision [whether to engage an interpreter] to the client or thrust the responsibility to make arrangements for interpretation or translation entirely upon the client.” Finally, it warns lawyers to take special care when using relatives of the client to bridge language barriers, because they may have a personal interest in the outcome of the client’s matter.

The opinion does not break new ground, but it is a reminder that we have a professional responsibility to accommodate language differences, and that lawyers must work with clients to resolve language-based problems with communication.

Paula Frederick
General Counsel
State Bar of Georgia
paulaf@gabar.org

Endnote
1. For help with selecting a properly trained interpreter in Georgia, visit the website of the Georgia Commission on Interpreters: https://ocp.georgiacourts.gov/commission-on-interpreters/.
Suspending William Leslie Kirby III
211 Ninth St.
Columbus, GA 31901
Admitted to the Bar 2008

On Aug. 24, 2021, the Supreme Court of Georgia accepted the petition for voluntary discipline of William Leslie Kirby III (State Bar No. 220475) and ordered Kirby be suspended from the practice of law in Georgia for six months.

Prior to its consideration of this petition, the Court had rejected three previous petitions for voluntary discipline. In his fourth petition, Kirby sought voluntary discipline in connection with his admitted misconduct in four separate State Bar matters, constituting violations of Rules 1.2, 1.3, 1.4 and 1.16 of the Georgia Rules of Professional Conduct. The Court first rejected the proposed imposition of a State Disciplinary Review Board reprimand, then rejected a proposed 30-day suspension and finally rejected a four-month suspension, concluding that each proposed sanction was insufficient given the gravity of Kirby’s pattern of conduct.

Regarding the facts of the underlying matters and circumstances surrounding Kirby’s misconduct, the Court had previously recounted that with regard to State Disciplinary Board Docket (SDBD) 6926, Kirby admitted he was retained in 2014 to represent a client in a child-support modification action and was paid $375. He filed the modification action, albeit later than he promised. When a motion for contempt was filed against his client, Kirby failed to appear at a 2016 hearing on the motion. The client was held in contempt for failing to pay child support and had income deductions entered against her. Kirby failed to respond to the client’s multiple requests for information and failed to perform necessary work on the matter. Kirby admitted that by this behavior he violated Rules 1.2, 1.3 and 1.4.

With regard to SDBD 6977, Kirby admitted that a client retained him in 2012 to defend her against criminal charges. After the client was convicted, Kirby advised her to seek appointed counsel for the appeal but failed to file a notice of withdrawal even though he had no plans to represent her. Although Kirby gave a copy of the file to the client’s family, he failed to respond to new counsel’s request for a copy of the file after counsel was ap-
pointed in July 2015. New counsel filed a motion in March 2016 to compel Kirby to produce the file, but Kirby failed to respond. He admitted that his conduct violated Rules 1.4 and 1.16.

With regard to SDBD 6978, Kirby admitted that in February 2014, he was retained to represent a client in divorce proceedings. After a March 2015 mediation, the client refused to sign a negotiated agreement and informed Kirby that he wished to retain new counsel. Kirby gave the client a copy of his file and told the client that he was withdrawing, but he failed to file a notice of withdrawal with the court and failed to communicate with the client. As a result of Kirby’s failure to withdraw properly, the client was unable to retain another attorney. Kirby admitted that his conduct violated Rules 1.4 and 1.16.

With regard to SDBD 6979, Kirby admitted that in 2011, a client hired him to file an uncontested divorce and paid him a $700 retainer. Although Kirby filed the petition for divorce in January 2012, he stopped communicating with the client and did not perform any additional work on the case until July 2013, when the parties negotiated and signed an agreement. Kirby prepared a final judgment and decree but did not file it with the court because the court required the parties to attend a seminar for divorcing parents. Although Kirby informed the client of this requirement, the client did not attend the seminar. In February 2016, the client notified Kirby that he was terminating Kirby’s services. Kirby failed to send the client his file, although he had promised to do so and did not properly withdraw from representation. He then failed to respond to the client’s inquiries and requests for a refund. Kirby admitted that his conduct violated Rules 1.2, 1.3, 1.4 and 1.16.

In connection with his initial petition for voluntary discipline, Kirby submitted under seal the March 2018 report of a psychologist who performed an evaluation and found Kirby fit to practice law. The report discusses Kirby’s statements regarding particular stress he was under and made specific mental health recommendations. The petition did not provide any indication that Kirby was following the psychologist’s recommendations. In his second petition, Kirby included under seal a February 2019 letter from a licensed psychologist confirming that Kirby was under his care. In his third petition, in which Kirby again requested the imposition of a Review Board reprimand but also stated he was willing to accept a suspension of up to four months, the Court noted that, “[w]hile all indicators reflect that Kirby has taken the necessary steps to address the mental health and practice management problems that contributed to his misconduct,” it was troubled by his attempt to seek discipline already rejected by the Court.

In the current petition, the Court noted that Kirby had abandoned his attempt to seek discipline already rejected by the Court and agreed that a six-month suspension was the appropriate sanction in the matter. As there are no conditions on Kirby’s reinstatement other than the passage of time, there is no need for him to take any action either through the State Bar or the Court to effectuate his return to the practice of law.

**Carl S. Von Mehren**

1025 Rose Creek Drive, Suite 620-361
Woodstock, GA 30189
Admitted to the Bar 1987

On Aug. 24, 2021, the Supreme Court of Georgia accepted the petition for voluntary discipline of Carl S. Von Mehren (State Bar No. 728840) and ordered Von Mehren be suspended from the practice of law in Georgia for six months.

According to the Special Master, Von Mehren proposed to resolve two grievances (SDBD No. 7195 and No. 7196) in which the State Bar had filed a formal complaint against him. With regard to SDBD No. 7195, the record shows that Von Mehren conducted a real estate closing in which his clients were the purchasers. Pursuant to the agreement, Von Mehren was to retain $70,000 in his escrow account for later distribution. In the spring of 2017, the seller and Von Mehren’s clients demanded the funds, but Von Mehren declined to distribute the money to either party because he was aware that a dispute had arisen between the parties as to their entitlement to the funds and they were negotiating a resolution to the dispute. In the fall of 2017, the seller sued Von Mehren and the purchasers for fraud, and Von Mehren deposited the funds into the trial court’s registry pursuant to a motion for interpleader. Although the Special Master found that Von Mehren acted reasonably in declining to distribute the funds to either party, the record showed that during the time he was supposed to be retaining those funds, the balance of his trust account often dropped below $70,000 and that, while he denied ever using any trust funds for personal benefit, he acknowledged that he did not keep accurate records. The Special Master noted that Von Mehren admitted the money should have stayed in his escrow account until he moved for interpleader and that between May 2017 and August 2017, his escrow account balance repeatedly fell below $70,000, sometimes for extended periods of time and at one point was as low as $21,227.26. The Special Master also noted Von Mehren’s assertions that throughout this time his firm was closing various real estate transactions involving...
large sums of money; that no client was ever harmed; and that LandTech (the management system used by his firm) is a common system used by real estate practitioners but that the system identifies the funds by transaction, rather than attributing them to a particular person. The Special Master found that Von Mehren violated Rule 1.15 (I) (a) by failing to keep accurate records that would have prevented the trust account balance from falling below the required level of $70,000 and would have allowed him to determine how much he was holding for each client or third party.

With regard to SDBD No. 7196, in February 2015, a man approached Von Mehren about pursuing a claim of adverse possession on his behalf against a business that owned an adjacent property. Von Mehren agreed to initiate that proceeding but failed to do so because he misplaced the affidavit the man provided him in support of the claim and never took steps to obtain a replacement. In the meantime, the business mailed the man a letter complaining about an outbuilding, which it contended was encroaching on its property. Von Mehren communicated with the business on behalf of the man, even though he had not been retained or paid to do so, but the business nonetheless filed suit against the man for trespass. Von Mehren and the man then executed an engagement letter covering Von Mehren’s representation of the man in the lawsuit.

In his petition for voluntary discipline, Von Mehren asserted that he initially believed the man had a viable legal argument based on the man’s staunch belief that his outbuilding was located entirely on his own property. However, after learning that the results of a survey showed the man’s outbuilding to be located mostly or entirely on the property owned by the business, Von Mehren felt that the survey destroyed the man’s claim of adverse possession as well as his defense to the trespass suit. He contended that even though he communicated these concerns, the man remained convinced he could prevail, requiring Von Mehren to orally advise the man that he would not continue representation. However, Von Mehren did not specifically tell the man that he would not communicate with opposing counsel or file an answer on his behalf as agreed upon in the engagement letter. Von Mehren admitted that the better practice would have been to inform the man in writing that the professional representation had been terminated, but Von Mehren asserts he was never paid any fees and that the man did not communicate a desire for Von Mehren to continue representing him. Von Mehren did not communicate with the man after that meeting and did not ensure that he had retained new counsel. Thereafter, the man went into default. Although the man hired another attorney who was able to get the default open, he ultimately had to settle the lawsuit after spending a substantial sum of money because his defense was not viable. Based on these facts, the Special Master concluded that Von Mehren violated Rules 1.3 and 1.16.

The Special Master noted that Von Mehren filed his petition for voluntary discipline after negotiations with the Bar; that he requested the imposition of a public reprimand as discipline, but agreed to accept a suspension of up to six months; and that the Bar did not object to acceptance of the petition, but argued that a six-month suspension was the appropriate level of discipline. The Special Master found that a six-month suspension was appropriate and consistent with prior similar cases; would best serve the purpose of sanctioning Von Mehren for failing to maintain proper records for a trust account, failing to maintain property in trust and failing to ensure that a client’s interests were protected; and would remind practitioners that lawyer discipline also functions to protect clients, courts and the public. Although she considered the aggravating factors of multiple offenses and substantial experience in the practice of law and the mitigating factors of no prior disciplinary history and no dishonest motive, the Special Master found that these factors did not warrant modification of the recommended level of discipline.

The Court concluded that a six-month suspension was the appropriate sanction in this case. Because there are no conditions on Von Mehren’s reinstatement other than the passage of time, there is no need for him to take any action either through the State Bar or the Court to effectuate his return to practice.

Public Reprimand
Leonard T. Mathis
235 Peachtree St. NE, Suite 400
Atlanta, GA 30303
Admitted to the Bar 2014

On Oct. 5, 2021, the Supreme Court of Georgia accepted the petition for voluntary discipline of Leonard T. Mathis (State Bar No. 976925) and directed that Mathis receive a public reprimand in accordance with Bar Rules 4-102 (b) (3) and 4-220 (c).

In his petition, Mathis recounted that in April 2020, he settled, without his client’s authorization, a personal injury matter for $125,000 and shortly thereafter received a check for the settlement funds and deposited those in his trust account. Approximately one month later, he issued a check to the client for approximately $47,000, which was the client’s share of
the settlement proceeds. Unbeknownst to Mathis, the client did not promptly negotiate the check, waiting four months to do so. When the client did seek to negotiate the check, Mathis’s account contained only $18,000, which resulted in the automatic generation by the bank of a notice of insufficient funds which was directed to the State Bar. Mathis contacted the client and made deposits from his operating and personal checking account to restore the balance of the trust account to $65,956. Mathis then wrote the client a new check, which he successfully negotiated. Mathis explained that he had relied on a CPA to handle finances associated with his practice and thought the CPA would alert him to any issues with the trust account. He admitted that, partly due to his misplaced reliance on the CPA, on numerous occasions, he withdrew earned fees from his trust account without referencing a ledger detailing the amount of earned fees attributed to each client. He also said on several occasions he transferred funds from his operating and personal accounts and many of these transfers were in response to his realization that the trust account did not contain sufficient funds to pay outstanding checks. He acknowledged that the facts reflect his own misunderstanding of proper trust account management.

In his petition, Mathis admitted that by his conduct in failing to ensure his trust account was properly maintained, he violated Rules 1.15 (I) (a) and 1.15 (II) (b) of the Georgia Rules of Professional Conduct and requested a State Disciplinary Review Board reprimand or a public reprimand. Mathis noted that the client did not file a grievance and has not alleged any actual injury occurred. He cited no factors in aggravation and in mitigation noted that he had no prior disciplinary record; that his actions did not demonstrate a selfish or dishonest motive; that he accepted responsibility for his reliance on his CPA and for managing his trust account without a proper understanding of bookkeeping and account procedures; that he quickly moved to remedy any potential harm caused by his conduct; that he implemented additional controls to ensure proper maintenance of his trust account; that he cooperated fully with the State Bar; that he was inexperienced in the practice of law having only been practicing for seven years with only three years as a solo practitioner; that his character and reputation in the community were “stellar;” and that he was remorseful and embarrassed about the incident.

In its response, the Bar recommended that the Court accept the petition and impose a public reprimand. The Bar agreed that Mathis violated Rules 1.15 (I) (a) and 1.15 (II) (b). The Bar noted that it did not appear that Mathis had any intention of withholding client funds as the incident appeared to have arisen from mismanagement of his trust account. Although it acknowledged Mathis’s assertions related to the role played by the CPA, the Bar noted Mathis was conscious of the ongoing shortfalls in his account which he remedied by depositing his own personal and business funds to make up for deficiencies. Nevertheless, the Bar acknowledged that Mathis’ failing may have been due to inexperience and ignorance rather than an intention to improperly convert client funds. The Bar noted that Mathis acknowledged at least some minimal injury to the client and that his mismanagement of his trust account posed a general risk of potential injury to his clients. The Bar asserted that it was “somewhat material” that no client had claimed an actual injury but stated that such was neither a mitigating nor aggravating factor. The Bar cited no aggravating factors. As to mitigation, the Bar did not contest Mathis’s assertions regarding the applicable mitigating factors. The Court agreed that the imposition of a public reprimand was the appropriate sanction in this matter.

For the most up-to-date information on lawyer discipline, visit www.gabar.org/forthepublic/recent-discipline.cfm

State Bar of Georgia

Jessica Oglesby
Clerk, State Disciplinary Boards
State Bar of Georgia
jessicaog@gabar.org
The State Bar of Georgia is transitioning to electronic ballots starting with the 2022 State Bar election.

- All eligible voting members will receive an electronic ballot in March 2022.
- If you prefer to vote by mail, you may change your ballot mailing preference via your online account by selecting “edit personal preferences” and indicating “no” next to “receive electronic ballot.” If you prefer to vote electronically, no action is needed.
- Need assistance? Contact membership@gabar.org.
Legal Tech TIPS

BY MIKE MONAHAN AND NKOYO-ENE R. EFFIONG

1 ReliaGuide Directory
www.gabar.org/reliaguide

Have you seen the Need a Lawyer banner on the State Bar’s homepage? It connects to a pretty neat member benefit that can help your ideal clients find you. Simply go to the member benefits and discounts section of the Bar website and find the ReliaGuide directory. Claim your profile and give potential clients another way to find your law practice online. If you get stuck, there are numerous resources available to help you put your best foot forward.

2 Otter.ai
otter.ai

Need more content for your website? A notetaking system for your video conferences, Otter.ai (and other transcription apps) can help you get ideas out of your head and onto paper quickly. With Otter.ai you can easily record your thoughts on your phone and download them. With the business plan, you can download straight to word or pdf. Viola! Connect Otter.ai to your virtual meeting platforms like Zoom, Microsoft Teams, Google Meet and Cisco Webex and to generate meeting notes in minutes.

3 Notion
notion.so

Create your internal team wiki. Notion, the self-dubbed “all-in-one-workspace,” allows you to centralize information for your whole team. This tool is useful for teams working remotely. Notion has a variety of templates and views to keep track of information. It’s a great place to send your new hires to gain context and get up to speed. You can create a client-facing page that answers frequently asked questions. Easily bookmark websites, images and more. If you ever wanted to a general knowledge hub for your firm or clients, this is a great place to start.

4 Client Portals

Communicate securely with a client portal. Client portals are a great tool for modern law firms that want to create accessibility with boundaries, maintain a record of communications and transmit sensitive information securely. Most law practice management software includes a client portal and are even improving the aesthetics to make it more enticing to use. If you have not switched over to client portals (or law practice management software in general) contact the law practice management program at lpm@gabar.org or 404-527-8770 to learn about the options and opportunities this tech provides.

5 Atlanta Legal Tech
 Atlantalegaltech.com

What is that saying? Birds of a feather, flock together. If you want to stay up to date and in the know about how law professionals are leveraging technology, surround yourself with like-minded legal tekkies. ATL Legal Tech is an amazing community of legal professionals moving the legal profession forward one innovation at a time. They host an impactful
NEED A LAWYER?  SEARCH

summit, Reboot Your Firm, that not only shows you how you can move your firm forward but offers time and space for you to implement what you learn. This signature event returns January 2022.

6 Townscaper
play.google.com/store/apps
Need something to keep you or maybe the kids occupied during your holiday travels? Townscaper, available in Google Play, is a calm, digital playground for building landscapes.

7 Guest Accessible Wi-Fi and Password
The holiday season usually means you’ll be having guests over for parties or casual get-togethers. They may want to hop on your Wi-Fi and Instagram their pics of your party or start an online gathering for others who could not attend. Make it easy by displaying your Wi-Fi network and password so you’re not answering the “what’s your password?” question when you’re trying to get the wine open or avoiding a turkey disaster. Tip: If you are having a large party that includes people you may not know well, change your Wi-Fi password after your guests leave.

8 Add Holidays in Outlook
Ever thought of adding common holidays to your Outlook Calendar? With the holiday season upon us, you may find that you are having trouble keeping up with all of those dates in Outlook, not to mention other holidays throughout the year. Wouldn’t it be nice if you could add holidays to your Outlook Calendar without having to trudge through each and every week click by click adding them? Follow these steps: In Outlook, click File, then Options, then Calendar, then Add Holidays and choose United States.

9 Charitable Gift Giving
Many online retailers offer shoppers an opportunity to align their purchasing with their charitable interests. This holiday season, sign up where available (like Amazon) to have the retailer gift some portion of your total purchase to your favorite law-related charity—and that’s in line with the Bar Rule 6.1, which encourages lawyers to financially support legal aid and pro bono programs.

10 Holiday Wellness Tips
www.gabar.org/wellness
The holidays bring cheer—and stress. Take advantage of the State Bar’s wellness resources at www.gabar.org/wellness. If you’re taking time off for the holidays, remember to take time off for just you—time for mindfulness, time for whatever your faith culture asks of you, time to rest.

GEORGIA LAWYERS LIVING WELL

2021 DECEMBER  53
Start 2022 With a Bang! Seven Things You Can Do Right Now to Start the New Year Strong

The Law Practice Management Program is here to help you run a profitable and purpose-filled law practice with less stress.

BY NKYO-EENE R. EFFIONG

Imagine returning to work in January after a restful, work-free break to find your law practice running like a well-oiled machine. Your matters are in order. Your accounts are up to date. You have quality leads contacting your office and being added to your calendar for consultations. Your current clients are raving about your services. You feel refreshed and ready to hit the ground running.

Sounds like a fairy tale. Yet, with a bit of planning and preparation, that fairy tale can be a reality for you.

This new year presents numerous opportunities for you to build a law practice that you love. We want to help you do just that. Before you turn the page on 2021, we curated seven tips to help you start the new year strong. Read on to position yourself for success in 2022.

Reflect On Your Data
Healthy law practices make decisions based on facts, not [just] feelings. To gain a complete picture of how successful you were, you need to first define success for yourself and then determine what key performance indicators (KPIs) will help you gauge your progress to that success. KPIs provide targets for you to measure in all the critical areas of your law practice, from finances to marketing to business development and more. Not sure what KPIs you should track? Here are a few to get you started:
- Revenue.
- Budget expenses.
- Net promoter score (NPS).
- Client retention rate.
- Organic traffic to your website.
- Number of leads generated.
- Client conversion rates.
- Client acquisition costs.
- Number of new clients each month.
- Profit percentage.
- Accounts receivable over 30 days.
- Cash on hand.
- Realization rate (collected fees).
- Utilization rates.

Pull your data and reflect on your glows (strengths) and grows (areas for improvement). Not sure where to get this information, LPM can help you find intelligent tools that make it easier to find.

Celebrate Your Wins
Now that you have data reflect on what went well this year. Take a few minutes and list out all of your wins. No, really, make a list. If you did not celebrate your
Closeout Old Matters
All good things must come to an end. So too should your old matters. If you resolved the legal issue defined in your engagement letter, it is time to organize the file and send a disengagement letter. Sending one does not mean clients cannot re-engage you in the future. Your disengagement letter can state just that. For your sake and theirs, however, you want to show that you resolved the matter successfully for them. Not only is this an excellent CYA record for you, it also helps clients achieve closure. This allows you to create a final touchpoint for you and your client to reflect on how the matter went. Your matter closing process might just open the door to a stellar review and a referral.

Need help drafting a disengagement letter? We have samples on the LPM website.

Get Your Accounts in Order ... Especially Your Trust Account
According to Clio’s 2021 Legal Trends Report, only around half of solo attorneys, managing partners and senior partners are very confident about their knowledge of finances in their firms. If you are going to run a law practice with more ease and excitement, you have to know your numbers. Without your financial books in order, it is almost impossible to understand what services are growing or slowing your revenue, where to invest your time energy and money, or even when to bring on more staff. You need your financial data in real time. Up-to-date accounts are the key to business clarity.

Also, friendly reminder, you have an ethical duty to maintain your trust account. Failure to do so correctly could implicate your law license. Shudder. We do not want that. Up-to-date financial reports saves licenses (and hairlines). So, let’s agree—we are keeping our operating and trust accounts in order in 2022.

If you have not reconciled all of your financial accounts yet, make a plan to get it done. Outsource it if you can. Then, let LPM help connect you to the right resource(s) to solve this problem once and for all.

Assess Your Processes and Tech
You knew it was coming. This would not be an LPM article if we did not talk about systems and software. Now is an excellent time to review your current processes and all of your tech. One surefire way to cut the chaos in your firm is to develop a process for how things get down and put it down on paper. This simple act frees up precious space in your mind (goodbye mental load) and positions you to delegate more effectively. Once you have your processes down, you can leverage technology to get more done in less time. Here’s the trick—you have to have your process in place first. Your process defines what tech capabilities you need and whether your current tech stack is suitable for your practice. Need to talk this through? LPM offers general and technical consultations to help you make the best next step for you. You can always contact us to ask questions or request a consultation.

Set Goals and Targets for the New Year
Define what a successful year looks like for you. How much revenue will you generate? How many clients will you serve? Planned pro bono hours? I know I am not the only one who accidentally worked for free. When will you take a vacation? What wellness rituals will you incorporate into your practice? The beauty of running your own practice is that you get to make these decisions (and countless others ...). Don’t throw away the opportunity to design your ideal practice conditions by running on autopilot. Decide what you want and go after it. You got this.

If you need to bounce ideas off someone, schedule a general consultation and start practicing by design.

Rest and Rejuvenate
Last but certainly not least. R E S T. Your brain needs a break. Research shows that taking breaks can improve your mood, increase your performance and boost your ability to concentrate. Rest can also prevent burnout and chronic stress. High performers need time away to recuperate. You have earned some leisure time. Give your mind and body time to recharge so you can start the new year in a great space. Health is wealth. So make some big deposits in your wellness bucket.

For more helpful resources to jumpstart your law practice in the new year, check out our website at www.gabar.org/lpm.

Wishing you and yours a Merry Everything and a Happy New Year! ●

A Word From the New Law Practice Management Director
Helloooo, Georgia legal pros! Congrats on making it to the end of yet another “interesting” year. I am Nkoyo (in-KO-yo), director, Law Practice Management (LPM), and like you, I wanted to feel more ease and excitement while I was running my law firm. Having been where you are, the LPM team and I are dedicated to helping you design the law practice of your dreams. ●

Nkoyo-Ene R. Effiong
Director, Law Practice Management Program
State Bar of Georgia
nkoyoe@gabar.org
Rural Justice and Poverty Summit Raises Awareness of Issues Facing Georgia Communities

The summit addressed legal topics handled by Georgia Legal Services Program, including education, domestic violence, health, housing, pro bono law and public benefits.

BY MIKE MONAHAN

There is pro bono but then there is an institution behind that pro bono. Public service work for lawyers is developed and nurtured by structured programs with deep roots in communities starved for attention and for the legal help only lawyers can provide. One such program is Georgia Legal Services, which provides pro bono services throughout most of Georgia and is celebrating its 50th Anniversary this year.

Georgia Legal Services Program (GLSP) held its virtual Rural Georgia Justice and Poverty Summit in September as part of its 50th Anniversary celebration. The summit highlighted the many legal and social issues facing communities across the state of Georgia from housing to education to public health. The summit was conducted with support from Georgia State University School of Law.

“The summit was an incredible day of information and stories about how access to justice through organizations like GLSP can truly change lives,” said Rick Rufolo, GLSP executive director. “Since our early beginnings in 1968, when a group of young lawyers began working together on our vision, providing pro bono services has been an integral part of who we are as lawyers.”
More than 250 people participated in the summit, including researchers, state agencies, the philanthropic community, policy makers and legal advocates who gained insight in complex problems facing low-income rural communities and marginalized populations as related to GLSP’s mission to provide access to justice and opportunities out of poverty.

“It was an honor to join Georgia Legal Services Program for their Rural Georgia Justice and Poverty Summit,” said keynote speaker Stacey Abrams. “I thank the GLSP for the opportunity to speak to summit attendees about the sorely needed solutions that, by working together, we can deliver to people across all corners of Georgia—and particularly to our rural communities.”

The summit addressed legal topics handled by Georgia Legal Services Program, including education, domestic violence, health, housing, pro bono law and public benefits. More than 250 people participated in the summit, including researchers, state agencies, the philanthropic community, policy makers and legal advocates who gained insight in complex problems facing low-income rural communities and marginalized populations as related to GLSP’s mission to provide access to justice and opportunities out of poverty.

“The discussions at the summit about emerging civil legal issues could not have been any timelier,” continued Rufolo. “The solutions presented and discussed during this summit impact the well-being and protections of impoverished rural communities, as well as providing continuing education opportunities for attorneys across the state.”

GLSP is also engaged in an extensive transformation of its pro bono services during this anniversary year. Since its inception, GLSP has relied on a pro bono coordinator in each of its field offices supported from its central office in Atlanta. GLSP is rolling out pro bono signature projects at the statewide level, each staffed by a full-time attorney responsible for recruiting and supporting volunteers and for connecting large-city lawyers to rural clients.

Founded in 1971, GLSP has provided free civil legal services for people with low incomes, creating equal access to justice and opportunities out of poverty for residents in 154 of the 159 counties across the state of Georgia. GLSP has offices in Atlanta, Albany, Augusta, Brunswick, Columbus, Dalton, Gainesville/Athens, Macon and Savannah. To reach GLSP, call 1-833-GLSP-LAW (833-457-7529) or visit the website at glsp.org.

Mike Monahan
Director, Pro Bono Resource Program
State Bar of Georgia
mikem@gabar.org

Let us help you do pro bono.

Go to the Pro Bono Resource Center for all your pro bono needs:
- Law practice management support on pro bono issues
- Professional liability insurance coverage
- Free or reduced-cost CLE programs and webinars
- Web-based training and support for pro bono cases
- Honor roll and pro bono incentives

Find a Lawyer Gets a New Look

A collaboration between the State Bar of Georgia and ReliaGuide (formerly CloudLawyers), the site aims to assist the public in finding a lawyer right for their case and to help lawyers gain quality clients.

BY SHEILA BALDWIN

Find A Lawyer, the Bar’s enhanced lawyer search tool, has launched a new website. A collaboration between the State Bar of Georgia and ReliaGuide (formerly CloudLawyers), the site aims to assist the public in finding a lawyer right for their case and to help lawyers gain quality clients. Access ReliaGuide for Bar Members from the bars home page under For Lawyers > Member Benefits & Discounts (see fig. 1).

It is estimated that up to 25% of adults have a legal need in any given year. Of this group, more than half search for a lawyer on their own. In the state of Georgia, that means that at least 1,013,964 people will turn to the internet as one of their self-search options. Many will ultimately arrive at the State Bar of Georgia’s website, which is why the Bar collaborated with ReliaGuide to create this accessible, straightforward and invaluable directory to help poten-
With thousands of potential customers looking for a lawyer right now, increasing your web presence is not just a good thing, it is essential to growing your practice.

The site’s clean, modern layout and simplified profile editing help members tailor their profile content to provide the information potential clients seek. All Bar members receive a free Find A Lawyer Basic Profile, which provides the lawyer’s contact information, headshot, title, up to three practice areas, and education history. The user-friendly photo editor makes it simple to add headshots, office pictures, award photos, conference and other photos. Members can choose from more than 300 practice areas to perfectly describe their practice.

For a fee of $8 per month ($96 per year), members can upgrade to Profile Plus to provide a more complete picture of themselves and their practice. This option helps lawyers display the depth and breadth of their practice, showcase their firm personality and includes the ability to add a detailed biography, rates and billing information, awards received, influential cases handled, languages spoken, website, speaking engagements and more (see fig. 3).

Members can visit their robust dashboard to view analytics on how their profile is performing. The analytics track interactions such as views and contact requests. Additionally, comprehensive reporting functionality provides insight into the number and type of searches that return a member’s profile in the results.

To help members stand out in search results, the newly designed business cards put a member’s tagline, practice areas, biography, languages spoken, contact information and whether they are accepting clients or offer a free consultation, front and center.

Find A Lawyer Profile Plus is also a great option for lawyers who do not have a web presence. Forty percent of small law firms do not have a website due to the expense and expertise required to create one, while other firms have a website, yet struggle to keep the content current. Find A Lawyer Profile Plus offers a way for these firms to build a comprehensive online presence that is easy to update. Members can buy a firm domain name and forward it to their profile.

With thousands of potential customers looking for a lawyer right now, increasing your web presence is not just a good thing, it is essential to growing your practice. Use the Find A Lawyer to enhance your web presence today.

For assistance with this member benefit or any of the other Bar benefits, please feel free to contact me at sheilab@gabar.org or 404-526-8618. You can also access the Find A Lawyer user guide at zeekbeek.zendesk.com/hc/en-us/sections/360000130143-State-Bar-of-Georgia-Members.
A New Resolve on New Year’s Resolutions

As we embark on our journeys to prioritize our physical health, we are sure to stumble along the way, whether it’s with a pint of beer or a pint of ice cream. Be kind to yourself, and don’t give up.

BY MEGAN MURREN RITTLE

Should auld acquaintance be forgot, And never brought to mind? Should auld acquaintance be forgot, And days o’ lang syne!

For many of us, these are the last lyrics that we hear (or for some of you, sing) before we lay our pretty little heads to sleep only to wake in a new year and begin the yearly ritual of starting a new (or another) New Year’s resolution. Well, maybe we actually start that resolution on Jan. 2. After all, midnight is a lot later than it used to be and there’s pork, black-eyed-peas and collard greens to be eaten on New Year’s Day to ensure that we live high on the hog, with much luck and prosperity for the year to come, right?

Should our old failed resolutions be forgot, And never brought to mind? Should old resolutions be forgot, And days o’ lang syne!

I want to encourage you to listen to these lyrics, take them to heart and forget what you may perceive as your past resolution failures. This year I want you to resolve to rethink how you approach this year’s resolution.

The New Year’s resolution is a mostly western tradition where individuals seek to improve their lives or accomplish a personal goal at the start of the new year. The part of that I want you to rethink is the “start” of the new year. Why do we pressure ourselves to completely change our lives in the first 31 days of the new year? Why do we expect that we can change habits or make life style changes in a mere four weeks that may have taken a whole year, or even many years, to develop? We crowd the gyms and clear out the produce section of the grocery store, only to donate $39.99 to [insert name of Mega Gym] for the remaining 11 months of your contract and for that second bundle of kale and avocados to shrivel in your crisper.

As I woke up on Jan. 1, 2021, with the melody of “Auld Lang Syne” still stuck in my head, I, for the first time in memory, made New Year’s Resolutions.

My family background includes Italian roots. As a result, I love to eat, especially around a table with wine and great conversation. I am also a fast eater, so when everyone else is halfway through their first helping, I am usually polishing off my second and debating whether I should grab a third or request the dessert menu.

However, in somewhat contrast to being a voracious eater, I am also physically active (or at least I was, once upon a time, in a year far away, before COVID). Two weeks before March 16, 2020, I had just completed my 10th half marathon. I love running, but I’m also a swimmer, and, in the past few years, I learned to love cycling as well. I’ve completed three Half Ironman triathlons, so I think I can humbly call myself a triathlete. Unfortunately, racing was shut down along with everything else in the wake of the pandemic. And while I do love running just for running’s sake, without a specific goal to work toward I tend to be sporadic with my motivation. While I had been running about 25 miles a week prior to the pan-
emic; post pandemic I was maybe clearing 10 miles a week. Pools were closed, therefore no swimming. And, I don’t have an excuse for why I stopped biking, so we’ll call it lack of motivation (insert shrug emoji).

My motivation to eat well tends to be directly linked to my need to eat well in order to fuel my body for physical activity. Once I lost my motivation to take care of myself physically, my will power to eat right went away with it. Plus, I discovered my new best friend, Postmates delivery (you mean I don’t have to leave my house to get ramen, cook or do dishes? Sign me up!).

After nine months of slow decline in my physical health, I faced 2021 knowing and resolving that I could not continue in the same direction and I needed to make a change. So I came up with a plan. My plan was to eat better and exercise more, all with the ultimate goal of losing weight and feeling better.

Spoiler: by Jan. 31, I felt like I had failed my New Year’s Resolutions. Instead of getting outside to move my body, I’d spent most of my weekends curled up on my couch binge watching British period dramas and ordering contactless delivery comfort foods straight to my front porch. I spent my weekday mornings hitting snooze on all my workouts and giving up on any post-work, evening exercise.

But, as February began, I decided not to throw in the towel on myself just yet. After feeling sorry for myself and eating a pint of cookies and cream ice cream on the couch, I decided to regroup and make a new plan. This time, I did a little research. In my Google sleuthing, I discovered information about motivation and habits. This is what I learned: in order to successfully change a habit, or develop a new one, you must develop a plan that is SMART. Seems obvious? Well, that’s actually an acronym for Specific, Measurable, Attainable, Relevant and Timely.

Why did my first plan fail? “Eat better” while objectively attainable, is too vague to be helpful or measurable. While relevant to my ultimate goal of dropping the COVID weight and feeling better, it was not a timely goal.

When I revisited my goal I changed it to two mini goals. The first, that I would leave the comfort of my couch and reserve Sunday for grocery shopping and meal prepping my breakfast and lunch for Monday through Friday. This required me to say no to some Sunday Fun Day events, but after a few months of safeguarding Sunday for me and my wellness, I realized that my week went a lot more smoothly when I stuck to my Sunday routine. And, once I got used to have that time to myself, I realized I did not miss Sunday Fun Day at all.

Second, I decided I would work toward eating plant-based meals for lunch during the week, but only after I was able to establish my Sunday meal-prep practice. To keep my goal attainable, I made small changes each week. I started by adding a salad as a side to my chili or baked chicken. After a few weeks, I made my lunch meat portions smaller and my veggie portions...
When it comes to thinking through your own journey to improve your physical health, it is important to find something that works for you.

bigger. In order to measure my progress, I decided to use a calorie tracking app and start weighing myself more regularly (which may have been the hardest part of the whole plan). I also set a specific time frame for when I hoped to reach my desired weight, but with monthly increments of pounds lost to meet the time frame.

One thing that helped me on this journey was an investment I made in four cookbooks. Instead of spending an hour scrolling through Pinterest trying to find an interesting recipe that fit within my goals, I took some of the mental work out of my meal-prep by picking recipes from one of the cookbooks. Along the way, I’ve learned some new and interesting techniques. I can now whip up some pretty and fun salads and I love making soups (did you know you can turn just about anything into a soup?). I also want to point out that in my research I learned that completely restricting a food or activity is a great way to feel like a failure. Although I did not want to order in as much as I had been, I did not make that a goal because I knew that I would order in eventually. I also did not restrict any food groups or make any foods off limits. I made a point to focus on what I should do rather than what I should not do. My other resolution, “get more exercise,” was also too vague to be accomplished and did not contemplate a time frame to complete the goal. With hope and fingers crossed, I signed up for an Olympic triathlon to get me back in working-toward-a-goal mode. This gave me a specific time frame where I would be able to reach specific distances in the swim, bike and run.

I also made a plan to write out my training plan for the week on Sunday nights, taking into consideration my schedule for the week and the weather. Through trial and error I have realized that if I anticipate the events that may derail my progress (such as an after work event or torrential downpour) and plan around them, I am more likely to stick with the plan all week, rather than calling the whole week a wash because of something that got in my way on Tuesday morning. I’ve also realized that if I go through the process of writing down my plan and then complete the first task, I am more likely to follow through the rest of the week. If I don’t get that Monday work out in, I am more likely to find an excuse or give up on the rest of the week.

Luckily, the Olympic triathlon I registered for did happen in May, but I had not quite met my goals to improve my diet and lose the COVID weight. Undeterred, I wanted to capitalize on my momentum, so I decided to sign up for my first marathon. At the time of writing this article, I am three weeks away from the race that I have been training for since June. Upping the ante on my goal helped me get my diet closer to where I want it to be. That’s not to say that I don’t still eat more than my fair share of tortilla chips at lunch when we go out for Mexican, but I’m now a little better about ordering grilled chicken and veggies instead of five tacos (with extra queso, of course).

Revisiting what I said above about “feeling better,” it occurred to me a few weeks ago, that lately I have been feeling pretty darn good. I realized that I have not been feeling the fog and constant exhaustion that I had been feeling for so long. My work load and life commitments have not changed, but I wholeheartedly believe that focusing my attention on improving my physical health has helped my mental health immensely. And since we are talking about resolutions, and these were my resolutions, I want to point out that it took me 10 months to get to this point where I feel like I have been successful.

When it comes to thinking through your own journey to improve your physical health, it is important to find something that works for you. I hate lifting weights. Therefore, I know that planning to lift weights is not a sustainable plan for me. I also know that when it comes to nutrition, I cannot isolate entire food groups and expect to keep it up forever. I will always love ice cream and Thai iced tea and I don’t want to live a life where I can’t ever have either.

Instead of trying to force yourself to do something just for the sake of doing it, find something you like. Or better yet, combine exercise with something that you really love. If you love binge-watching the latest shows, take your phone/iPad/tablet with you to the gym or set up your at-home equipment in front of your television. Start out small. Try to make it through one episode three days a week for 30 minute shows or half an episode for hour-long shows. If you need to make time for friends or family, instead of meeting up for a bottomless mimosa brunch, meet up for a weekly, weekend hike and pack a lunch to eat somewhere...
along the way. If you love podcasts, listen to a podcast while you walk, or jump rope, or hula hoop. Take a ball room dancing class with your partner and learn a new skill together. Loved roller blading as a kid? Get on Amazon and order you a pair (pick up a helmet too!) and see if you can still grind that curb.

There really are limitless possibilities to get exercise. Just this morning, I saw a woman walking her dog and playing the violin! I also ran past a father and daughter who, while on their walk, were making music together. Daughter was singing and dad was giving her the beat with mouth percussions (I’m not crying, you’re crying!). According to his autobiography, “Long Walk to Freedom,” while incarcerated, Nelson Mandela ran in place for an hour every morning and did pushups to stay in shape. In 2020, Chris Nikic became the first person with Down syndrome to complete a full Ironman triathlon (he also just finished the 2021 Boston Marathon). Where there is a will, there is a way.

The important thing is to find something that is sustainable for you and to make it a habit that you can keep up. If you start in manageable increments, and bundle your existing preferred habits with your desired habit, you can build to whatever your marathon, or ultimate goal, is.

The same goes for trying to improve your diet. If you love coffee, don’t try to cut out coffee. But maybe trade that French vanilla creamer for milk and vanilla extract. If you’re trying to add more water to your day, start with one 20 ounce water bottle and try to finish one per day. Eat one boiled egg for breakfast if you usually skip. Trade your evening bowl of Rocky Road for Greek yogurt mixed with fruit. Have a plan and give yourself time and space to work through your plan. Don’t give up because you had one Oreo (or a whole sleeve) today.

The final verse of “Auld Lang Syne” is this:

And surely ye’ll buy your pint-cup,
And surely I’ll buy mine;
And we’ll take a cup o’ kindness yet,
For auld lang syne.

As we embark on our journeys to prioritize our physical health, we are sure to stumble along the way, whether it’s with a pint of beer or a pint of ice cream. Be kind to yourself, and don’t give up. You have the whole year, and, really your whole life, to continuously improve.

Cheers to you and Happy New Year!

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

Megan Murren Rittle is a partner at the law firm of Smith, Welch, Webb and White, LLC, practicing in the education and general civil litigation groups. She is an avid runner and swimmer, and her favorite food is sushi or ice cream. Rittle lives in Atlanta with her husband, Tom, and their fur babies.

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

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

Find your people.
Don’t Leave It to the Zombies to Act: Knowing When to Use Passive Voice

As legal writers, we make choices all the time. Each choice can and should promote the purpose of the text. This installment of “Writing Matters” returns to a subject that we visited more than a decade ago, but which remains an elusive goal even for the best writers: eliminating uses of the passive voice that interfere with the purpose of the text.

BY DAVID HRICIK AND KAREN J. SNEDDON

As legal writers, we make choices all the time. Each choice can and should promote the purpose of the text. This installment of “Writing Matters” returns to a subject that we visited more than a decade ago, but which remains an elusive goal even for the best writers: eliminating uses of the passive voice that interfere with the purpose of the text. We’ll describe passive voice, highlight its problems and its utility, and share some tips to identify passive voice so that you can be deliberate about its use. Spoiler alert: there will be zombies.

What is the Passive Voice?

In English, verbs are action words. In the active voice, the subject of the sentence performs the verb and so comes before it. So: Matthew filed the motion. The judge issued an order. Those illustrate the active voice: subject (Matthew, the judge), verb (filed, issued), and then the direct object (motion, order). The actor (Matthew, the judge) is identified as doing the act and is the subject of the sentence.

With passive voice, the order flips and the object becomes the subject: The motion was filed by Matthew. Now the first word, which is the grammatical subject of the sentence, is the motion. The motion isn’t
“doing” the action of filing, and Matthew, who did the action, is now relegated to the end of the sentence.

In that sentence, we know Matthew filed the motion because Matthew is identified in it. Consider this further example of the passive voice: The motion was filed. Again, the object of the sentence (i.e., the motion) is the subject of the sentence. But the actor is now missing entirely from the sentence.

There’s nothing inherently wrong with passive voice. After all, passive voice is not a grammatical error. It is instead a matter of style. Style should be a matter of choice. The use of passive voice must be deliberate because there are reasons to choose, and reasons to avoid, the passive voice.

**Why Avoid the Passive Voice and Why Use It?**

Why avoid the passive voice? First and foremost, passive voice is often wordier, and brevity and word count can matter. In active voice, the four-word sentence Matthew filed the motion is two words shorter than the passive construction The motion was filed by Matthew. In other words, the active voice construction conveys the same information in fewer words, or, in the alternative, more information in the same number of words.

Second, passive sentences can be more difficult to read because of the altered word order. Active voice is the dominant and common form of English. Readers comprehend and process active voice constructions easier than passive voice constructions. Sentences written in passive voice often require the reader to reread the sentence. The more concerning issue for legal writing, however, is the potential ambiguity. Passive voice often leads to ambiguity, particularly if the identity of the actor is omitted.

Wordiness and ambiguity are generally poor qualities in legal writing. Nevertheless, used intentionally, passive voice can be effective. For example, the passive voice construction can be used to avoid assigning responsibility. By tacking the actor onto the end of the sentence, or even omitting the actor entirely, the blame can be hidden. The infamous example is the following sentence: Mistakes were made. No individual, entity, or party takes ownership of making the mistakes. Thus, if a motion should have been filed but was not, compare Matthew did not file the motion with The motion was not filed.

In addition, passive voice can be used to stress the importance of the object of the sentence. Consider the example of The motion was filed. If it is not important who actually filed the motion, the necessary information is that the motion had been filed. The identity of the actor is irrelevant for that purpose.

**Zombies and Technology Can Help Spot the Passive Voice**

Now that you know the problems and utility of passive voice, you can be purposeful in its use. The following tips will help you identify it so you can decide if it is effective.

Perhaps the most entertaining way to identify passive constructions made the rounds on the internet a few years ago: ask if the sentence makes sense if you insert “by zombies” after the verb. If so, you have a passive construction: The motion was filed by zombies.

Less fun but likely more efficient, Microsoft Word has a “Spelling and Grammar” tool that will help you identify the readability and conciseness of your text and as part of that will identify passive constructions. You need to ensure in settings you have enabled it for your particular version of the program (or other word processor). That tool will catch many passive constructions.

Finally, using your “find” command to search for words and phrases can be a great way to spot passive voice. Because passive voice often uses a form of the verb to be, some writers search for to be verbs (is, was, are, and were). Between zombies, your spelling and grammar feature, and that “find” command, you should be able to spot most passive constructions and decide whether it is effective or not.

**Conclusion**

As legal writers, we aim to use the strongest sentence constructions. Passive voice is often a weak sentence construction that accumulates words and injects ambiguity in the text. Used selectively, however, passive voice can be the best choice. The key is to be deliberate with it, rather than relying on what is a potentially weak construction.

David Hricik is a professor of law at Mercer University School of Law who has written several books and more than a dozen articles. The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.

Karen J. Sneddon is interim dean and professor of law at Mercer University School of Law.
On Sept. 28, 2021, the Chief Justice’s Commission on Professionalism hosted a free CLE to explore the issue of professionalism after the statewide judicial emergency order. The CLE program was co-chaired by State Bar of Georgia President Elizabeth L. Fite and by Hon. T. Russell McClelland, vice chair of the Judicial Council COVID-19 Task Force; chair of the Task Force’s Civil Sub-Committee; past president of the Council of State Court Judges; and chief judge, State Court of Forsyth County. Judges from each class of court, as well lawyers from diverse practice areas from around Georgia participated in the CLE.

Program Co-Chair Judge Russ McClelland gave opening remarks. He traced the history of the previous Statewide Judicial Emergency Orders (SJEOs) and reminded the audience that on March 14, 2020, the Supreme Court of Georgia entered its first SJEO in response to the COVID-19 pandemic. Approximately 15 months later, the final SJEO ended on June 30, 2021. McClelland told the audience that at the time of the CLE, the Supreme Court did not anticipate entering future SJEOs since the Supreme Court’s authority by statute [O.C.G.A. § 38-3-60, et seq.] to enter the SJEO was based on the governor determining that a Public Health State of Emergency existed. When the pandemic first began, McClelland said, “We as lawyers and judges came together to learn how to work in this new environment, how to keep the courts open, how to continue representing our clients, presenting our cases to the court, having the court decide cases and dispose of cases. It took all of us coming together as lawyers and judges and as associations of lawyers and associations of judges to learn how to do this and to operate in this new environment.”

“Now we have to learn how to operate without an SJEO,” he said, “and we hope we will not have a need for another SJEO. Therefore, processes and procedures that were previously provided for under Supreme Court’s SJEO are now up to local courts to do.”

McClelland said confidently that he anticipated that the local bench and Bar would work together going forward to determine the processes and procedures that would work best in each local judicial circuit. Finally, McClelland discussed the ongoing work of the Judicial COVID-19 Task Force and resources available from the Administrative Office of the Courts to assist lawyers and judges during the ongoing pandemic.

A panel of judges from each class of court then addressed the audience after McClelland concluded his remarks. The judges explained the work that each class of court was considering in terms of changes to court rules or the Georgia statutes and/or court rules related to the class of court. The purpose of the changes would be to maintain the practices that the Court wanted to continue post-SJEO. The judges also explained to the audience how the proposed statutory or rule changes helped to preserve and improve the law, the legal system and other dispute resolution processes as instruments for the common good. The judges shared a wide range of ideas for how lawyers and judges could continue to work together post-SJEO, including holding voir dire in alternate locations other than a courtroom, having smaller calendar calls and more calendars, and continuing virtual proceedings where possible. During the panel, the judges challenged both their colleagues on the bench and lawyers to
be flexible and creative. The judges also wrote papers to explain in more detail their class of court’s thoughts on post-SJEO considerations. Subsequent to the CLE on Oct. 28, 2021, the Judicial Council of Georgia/Administrative Office of the Courts announced that Gov. Brian Kemp had allocated up to $110 million in federal American Rescue Plan Act funds to address backlogs of court cases, particularly cases involving serious violent felonies.

After the judges spoke, a member from the Georgia Trial Lawyers Association, the Georgia Defense Lawyers Association, the Prosecuting Attorneys Council and the Georgia Association of Criminal Defense Lawyers presented on professionalism during the pandemic. The practitioners panel discussed a wide range of challenges facing lawyers, including the difficulty of balancing the interests of clients with the public good. The panel also shared a variety of professionalism tips. One attorney commented that she wanted to be someone that an opposing counsel wanted to work with again. Another attorney said that we as professionals need to be reasonable, accommodating and respectful. The panelist said, “I check myself by asking if I stated my position to a judge, would the judge think that my position was reasonable, accommodating and respectful?” Yet another panelist noted that her professional association had begun to examine whether its programs, policies and practices promote equity and inclusion and mitigate biases. A female litigator panelist discussed some of the special challenges she faced as a mother and trial attorney during the pandemic. A parents’ ability to work is directly tied to the schools staying open, having child care and having her children to stay healthy, she noted. She said the profession needed to work to find solutions so that we can keep parents in the litigation field. The panelists agreed that lawyers and judges should continue to look for and retain creative solutions post-SJEO. The practitioners panel shared other thoughts that are included in the papers they wrote for the CLE.

A third and final panel discussed the importance of lawyers engaging in the legislative process. The panel began by discussing the nexus between professionalism and legislative advocacy. One panelist referenced a line from A Lawyer’s Creed which says, “I will strive to improve the law and our legal system ... .” He continued by stating that it is a charge to us as lawyers to improve the law. Another attorney advised the audience that when considering legislative advocacy to think about the role which the person is advocating. Are you advocating on behalf of a client, are you advocating as a citizen and voter in a particular legislative district, or are you advocating as a representative of the State Bar of Georgia? The role in which you are advocating impacts how you engage with legislators. He said regardless of your role, however, some professionalism tenants are universal, such as competency, trustworthiness, candor and disclosure of conflicts of interests. Another panelist explained the importance of lawyers helping legislators to understand the ramifications of legislation and offered his opinion that lawyers outside of the metro-Atlanta area could be especially helpful since most of the current legislative leadership lived outside of metro-Atlanta. The panel also discussed the role of judges and the Judicial Council of Georgia in the legislative process. One legislative tip that the audience found particularly
At the conclusion of the panels, President Fite introduced Chief Justice David E. Nahmias. Chief Justice Nahmias told the audience, “Because professionalism is so important to our legal system, especially as it gets larger and more complex, the Supreme Court of Georgia created this professionalism program for Georgia lawyers in 1989. It was the first one in the country although most states have now followed our lead. We want lawyers to focus on not only their minimal ethical duties but on the higher standards of our profession, and we want to provide training and encouragement to do that.” He also said that the Supreme Court’s May 2020 SJEO emphasized the importance of professionalism among lawyers and judges as the legal system faced the pandemic and all of the consequences that flowed from it. That provision emphasizing professionalism was repeated in every subsequent extension of the SJEO, although the Court also later added a line focused on the obligation to engage in discovery in good faith and in a safe manner because we heard that civil discovery was a particular point of concern. Chief Justice Nahmias also shared that he, former Chief Justice Melton and the other Supreme Court of Georgia justices all tried to emphasize the importance of professionalism at almost every opportunity to address Georgia judges and lawyers about the pandemic. He said the justices realized that in this time of heightened professional and personal stress, it’s more important than ever for lawyers and judges to think about and live up to the aspirations of our profession.

Chief Justice Nahmias also addressed some questions lawyers had shared with him about a small number of judges whose conduct had raised public health concerns. He told the audience we have a pretty good system in place to address those concerns informally, as long as those concerns get communicated to the COVID-19 Task Force, the State Bar leadership, the leadership for the council for the relevant class of court, or to Justice LaGrua, Presiding Justice Boggs or himself. You should feel free to raise safety concerns in that way so we have the opportunity to address them with the judge involved. “With that said,” he continued, “I don’t want to suggest that we have seen a large number of problems with the professionalism of lawyers or judges. To the contrary—I’ve been incredibly impressed with the overall high level of professionalism our colleagues at the Bar and on the bench have displayed throughout this challenging time, which we have endured now for almost 18 months. Indeed, your work has often been inspirational.”

Chief Justice Nahmias concluded, “When we finally emerge from this pandemic, we are going to be in a new normal. We won’t go back to the pre-COVID ways of doing things and we shouldn’t do that. We’ve learned a lot of valuable lessons and we have realized some new and better ways of making our legal system function … No matter where we go from here, we are going to need a high level of professionalism from our lawyers and judges to keep our justice system functioning effectively on behalf of the citizens we serve. I thank all of you for being professional … I thank you for encouraging professionalism among your colleagues and holding them to a high standard.”

Endnotes
4. Id.
Serve the Bar. Earn CLE credit.

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

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

Earn up to six CLE credits for having your legal article published in the Georgia Bar Journal. Contact jenniferm@gabar.org to learn more.
**In Memoriam** honors those members of the State Bar of Georgia who have passed away. As we reflect upon the memory of these members, we are mindful of the contributions they made to the Bar. Each generation of lawyers is indebted to the one that precedes it. Each of us is the recipient of the benefits of the learning, dedication, zeal and standard of professional responsibility that those who have gone before us have contributed to the practice of law. We are saddened that they are no longer in our midst, but privileged to have known them and to have shared their friendship over the years.

---

**BARSCHALL ANDREWS**  
Columbus, Georgia  
University of Georgia School of Law (1961)  
Admitted 1961  
Died October 2021

**VERNITA LEE BENDER**  
Valdosta, Georgia  
University of Georgia School of Law (1996)  
Admitted 1996  
Died December 2020

**MILLARD L. BILLOON**  
Savannah, Georgia  
Mercer University Walter F. George School of Law (1978)  
Admitted 1978  
Died April 2021

**M. V. BOOKER**  
Washington, Georgia  
Mercer University Walter F. George School of Law (1982)  
Admitted 1984  
Died October 2021

**DEONNA MICHELLE BRITT**  
Kennesaw, Georgia  
Western Michigan University Cooley Law School (2013)  
Admitted 2020  
Died August 2021

**H. EUGENE BROWN**  
Rockmart, Georgia  
Atlanta’s John Marshall Law School (1963)  
Admitted 1965  
Died June 2021

**B. CARL BUICE**  
Milledgeville, Georgia  
Mercer University Walter F. George School of Law (1957)  
Admitted 1954  
Died September 2021

**AUSTIN E. CATT**  
Brunswick, Georgia  
University of Georgia School of Law (1970)  
Admitted 1971  
Died October 2021

**COURTNEY CAMILLE COX**  
Atlanta, Georgia  
Georgetown University Law Center (2016)  
Admitted 2016  
Died October 2021

**EDWARD R. DOWNS JR.**  
Jonesboro, Georgia  
George Washington University Law School (1973)  
Admitted 1974  
Died September 2021

**DAVID E. GALLER**  
Roswell, Georgia  
Georgia State University College of Law (1986)  
Admitted 1987  
Died July 2021

**GEORGE R. HALL**  
Augusta, Georgia  
University of South Carolina School of Law (1983)  
Admitted 1987  
Died September 2021

**THOMAS BERTRAND HAMILTON**  
Monroe, Georgia  
University of Georgia School of Law (1985)  
Admitted 2012  
Died September 2021

**SAMUEL H. HARRISON**  
Lawrenceville, Georgia  
University of Georgia School of Law (1981)  
Admitted 1981  
Died April 2021

**WILLIAM DAVID HOFFER**  
Gainesville, Georgia  
Liberty University School of Law (2008)  
Admitted 2008  
Died June 2021

**S. BRADLEY HOUCK**  
Atlanta, Georgia  
Atlanta’s John Marshall Law School (1997)  
Admitted 1997  
Died August 2021

**ADRIAN LEANDER JACKSON**  
Atlanta, Georgia  
Duke University School of Law (1999)  
Admitted 1999  
Died April 2021

**J. WYMAN LAMB**  
Tucker, Georgia  
Emory University School of Law (1967)  
Admitted 1967  
Died September 2021

**EVELYN POLLARD LUTON**  
Milledgeville, Georgia  
Mercer University Walter F. George School of Law (1989)  
Admitted 1990  
Died August 2021

**STEPHEN M. MCCUSKER**  
Savannah, Georgia  
Cecil C. Humphreys School of Law—The University of Memphis (1980)  
Admitted 1984  
Died August 2021

**JOHN T. MCTIER**  
Valdosta, Georgia  
Emory University School of Law (1956)  
Admitted 1956  
Died September 2021

**WILLIS NEWTON MOORE**  
Dawsonville, Georgia  
Mercer University Walter F. George School of Law (1975)  
Admitted 1975  
Died August 2021

**JOHNNY RAY MOORE**  
Melbourne, Florida  
Emory University School of Law (1974)  
Admitted 1974  
Died September 2021

**ROBERT E. MOZLEY**  
Decatur, Georgia  
Emory University School of Law (1966)  
Admitted 1965  
Died October 2021

**J. ARTHUR MOZLEY**  
Atlanta, Georgia  
Emory University School of Law (1952)  
Admitted 1952  
Died September 2021

**MICHAEL T. NEWTON**  
Albertville, Alabama  
University of Virginia School of Law (1972)  
Admitted 1973  
Died September 2021

**GEORGE A. PENNEBAKER**  
Dallas, Georgia  
Woodrow Wilson College of Law (1974)  
Admitted 1975  
Died October 2021
OBITUARY

George R. Hall, 59, of Augusta, passed away in September. Born in Red Springs, North Carolina, Hall graduated *summa cum laude* from Presbyterian College in 1986 where he was a member of Theta Chi Fraternity and the Track & Field Team, as well as serving as Interfraternity Council president. He received his JD from the University of South Carolina School of Law in 1986.

Hall relocated in Augusta in 1986 and joined the Hull Barrett law firm. Of his 35 years practicing, he spent 30 years as a partner where he successfully tried over 120 cases and mediated many more. He was chosen multiple times by his fellow partners to serve on the firm’s management board.

Hall was elected a fellow to the prestigious American College of Trial Lawyers and was recognized by his peers in several notable publications. He was past president of the Augusta Bar Association and was recently sworn in as president of the Georgia Defense Lawyers Association.

His counsel was sought by lawyers within his firm and across the profession. Hall put into practice what he had learned as an eagle scout: to keep himself physically strong, mentally awake and morally straight.

He was an active member of Reid Memorial Presbyterian Church where he served as a deacon, a stephen minister, and an elder—including tenures as clerk of session and moderator of various committees. Hall also served several years on the board of the Augusta Sports Counsel, was recognized as a Paul C. Harris Fellow of Rotary International, and as a board member of the Augusta Rotary Hull Fund.

Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. Memorial contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, Atlanta, GA 30303, stating in whose memory they are made.

The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam contributions will be used for Fellows programs of the Georgia Bar Foundation.
“A Flicker in the Dark” is an artfully written murder mystery set in modern-day Louisiana, focusing on “whodunit” 20 years after a string of murders that have started again. It has been optioned for a limited series by Emma Stone.

If you are looking for a thriller to escape reality, “A Flicker in the Dark” by Stacy Willingham should be on your reading list. Although I may seem biased because it’s written by a fellow UGA classmate (go Dawgs!), Willingham’s debut novel truly is a must-read story. The novel should appeal to a wide variety of segments of the population of Georgia because of its lyrical writing. However, lawyers will find it particularly intriguing for its problem-solving elements, albeit without the client drama.

The novel is set in Louisiana. Chloe manages the trauma, guilt and embarrassment surrounding a string of murders tied to her family two decades ago. When Chloe was 12, six girls went missing in her small town. By the end of that fateful summer, her dad had confessed to the murders and was sentenced to life in prison. Chloe and her family had to face the truth and move forward with the consequences. Now, 20 years later, as Chloe has built a professional practice as a psychologist in Baton Rouge and plans her wedding, her world comes crashing down. Murders begin again in a copycat manner, and she starts to question her sanity and truths. She tries to shake off any connection to her past, but “when two girls go missing within the course of a month, it’s not a coincidence. It’s not an accident. It’s not circumstance. It’s calculated and cunning and far more terrifying. ...” Then, an influential journalist shows up to report on the anniversary and recent murders, and Chloe states, “It’s been twenty years and nothing has changed. Those girls are still dead, and my father is still in prison. Why are you interested?” With this statement, the author tempts the...
If you are looking for a thriller to escape reality, “A Flicker in the Dark” by Stacy Willingham should be on your reading list.

reader to buckle up for the soon to be wild ride. Chloe’s addiction to numbing her past comes face-forward to her present.

As Chloe tries to discern the connection of the murders, Willingham takes the reader on a winding path of “whodunnit.” When another body turns up in a familiar location, Chloe questions if anyone in her inner circle is responsible for these murders. Just when I thought I knew the next part of the story, a new clue or fork in the road would surface. The story beautifully weaves between the past and the present, and between Chloe’s mind and reality. At one point in the story, Chloe understandably laments that sometimes “it’s hard for [her] to determine what’s real and what’s not.”

During Chloe’s quest for resolution, she also transforms as a person. Willingham wonderfully designed a character who brings the truth out from her dark world, from a “darkness” inside of the killer. She becomes “a flicker in the dark,” you might say. Like a firefly buzz, the last few chapters of the book pass with a “familiar electrical charge.” The book is compiled of short chapters, so readers can easily squeeze in one to two chapters before bed.

Writing-style wise, the novel opens with an immediately relatable protagonist. At one point, after meeting with a client, Davis talks about technology and describes how she tracks the billable client time via her smartwatch and how it syncs to her laptop. With that type of writing, Willingham brilliantly brings the reader into Chloe’s mind and forms a bond. Similarly, she presents notions that many in the legal profession might face, like how we protect ourselves in public by clutching our bags “to our chest with one hand” and “hold our keys between our fingers in the other, like a weapon” if we have to leave the office at night. The development of the main character wasn’t life-changing, but I really enjoyed it and would recommend it to a best friend. The end definitely flew by for me, and I probably got a little too excited when all of the dots started connecting for me in the last third. It’s a very satisfying and fun read. The book will be sold at major retailers in January 2022.

Beth Gilchrist is an associate in Weissman’s residential real estate practice and a member of the Georgia Bar Journal Editorial Board. She works with agents, lenders, buyers, sellers, builders and investors, assisting with home purchases and sales and refinancing.
Administrations of Lunacy: Racism and the Haunting of American Psychiatry From Georgia’s Milledgeville Asylum

By Mab Segrest
384 pages, The New Press

REVIEWED BY MEGAN HODGKISS

Milledgeville, Georgia, was once home to the largest mental asylum in the world. Opened in 1842, the Georgia State Lunatic, Idiot, and Epileptic Asylum grew to an expansive 2,000 acres, 200 buildings and 12,000 patients. It’s now known as Central State Hospital, Georgia’s custodial center for justice system referrals. “Administrations of Lunacy” unpacks the history of this iconic and infamous Southern institution. Author Mab Segrest seeks to tell the patients’ stories through the founding of Georgia and the asylum, post-Civil War and Reconstruction, the advent of the convict lease system and the evolution of psychiatric treatment in the United States.

One of the first questions Segrest presents to the reader is: how can a state that conquered and enslaved then be responsible for deciding the sanity of others? She describes Milledgeville, Georgia’s former capital, as being on a political fault line in the early 1800s. On one hand, Georgia just received federal funds that it could use to build an asylum and care for the less fortunate. On the other, those funds were payment for lands taken from the Muscogee and Cherokee tribes during the Trail of Tears. Segrest explains that this “conquest mentality” shaped Georgia’s justice system at the time and would also shape how the asylum operated.

A large portion of “Administrations of Lunacy” focuses on race relations pre-Civil War and during Reconstruction. As Segrest describes it, “the state asylum is where there’s a mediation between the psyche of the individual, and the culture, and the needs of the state.” When African Americans were first admitted to the asylum, their patient records often read “no history provided.” Segrest argues that this is an attempt to remove any responsibility and blame from the state—the asylum chose not to acknowledge the distress of slavery, war, lynchings, loss and other traumas. At the time, doctors did not understand post-traumatic stress disorder; those suffering from mental ailments were often called insane or the product of poor genetics. (Asylum superintendents would later lobby for sterilization and eugenics legislation). Segrest also claims that segregation inside the asylum and assigned “occupational therapy” roles worked to re-create the plantation system. The asylums relied on their African American patients for agricultural production, and in return, they were given disparate lodging, supplies and medical care. Segrest connects the post-war racial tensions to the development of the convict lease system, describing it as a “black penal system” in which Georgia residents were rounded up into chain gangs (rather than the state paying for a spot at the asylum) and used for cheap labor.

In addition to examining how politics, law and race relations shaped the asylum system, “Administrations of Lunacy” also looks at the evolution of psychiatric treatment—both at the asylum and in the country. The author explains the three major therapies employed at the asylum. Heroic therapy is focused on balance; patients are forced to expel bodily fluids in order to bring their energy levels down. (This treatment caused germs to spread, and disease outbreaks were common.) Moral therapy is the use of routine and nature to transform the environment into
curative spaces. The asylum’s occupational therapy involved assigning tasks to the patients based on their interests and ability levels. However, some of these work assignments lead to significant physical injuries—especially for those working in agriculture and farming. While Segrest is highly critical of the asylum’s diagnostic systems and therapies, she does give credit to the asylum’s achievements in the identification and eradication of pellagra, a disease caused by lack of vitamins that ravaged the Southeast in the early 1900s.

While the Georgia’s Bar Journal’s readers will undoubtedly be shocked to learn about the laws that avoided or allowed the atrocities happening at the asylum, it is the patients’ stories that may resonate the strongest. Segrest is an activist, and she takes an aggressive and critical approach to the material. But she also clearly cares for these patients. She wants to make sure that their stories are heard. In “Administrations of Lunacy,” you’ll learn about 34-year-old Frances Edwards, whose husband brought her to the asylum in 1856 after he beat her with a horsewhip, and she “alienated” him. Patient John Wade, also 34 years old, was admitted to the asylum in 1844 for hallucinations of a slave revolt. He was treated with heroic therapy (constant vomiting, diarrhea, bloodletting) until he calmed down enough for the paranoia—and everything else—to go away. Eliza Busy was admitted to the asylum in the early 1870s after she tried to kill herself. Eliza had just lost her husband in the Civil War. She lost her home. She had no means to take care of herself or her six children. She was diagnosed as being overly excited.

In writing “Administrations of Lunacy,” author Mab Segrest wanted to understand Georgia’s scrubbed history and how politics, economics, race relations and culture have shaped our modern psychiatric practice. In writing “Administrations of Lunacy,” author Mab Segrest wanted to understand Georgia’s scrubbed history and how politics, economics, race relations and culture have shaped our modern psychiatric practice.

About the Author
Mab Segrest is an activist, writer and scholar. Born in Alabama (near the Georgia border) in 1949, Segrest says she learned about Central State Hospital as a child when it was commonplace to tease each other with threats of “being dragged off to Milledgeville.” Segrest was inspired to write about the asylum after reading an Atlanta Journal-Constitution article about the campus conditions in the 1990s. She said that she had a strong emotional response for the patients; she felt they were shunned while alive and then abandoned in death. It called to mind her great-grandfather, a Civil War veteran who was admitted to an Alabama asylum for shooting at hallucinations of soldiers. He later died in the asylum from an infection. Segrest spent 15 years working on “Administrations of Lunacy.”

Mab Segrest earned her Ph.D. in English literature from Duke University. She’s worked for the World Council of Churches and National Humanities Center, chaired the Gender and Women’s Studies Department at Connecticut College, and has taught at Tulane University, Emory University, and Georgia College and State University. She currently lives in Durham, North Carolina. You can learn more about her writing and activism at mabsegrest.com.

Touring the Central State Hospital Campus
The Milledgeville-Baldwin County Convention & Visitors Bureau offers guided trolley tours of the Central State Hospital (CSH) campus. Led by a former CSH employee, the tour explores the grounds while educating guests about the historical buildings, significant figures, and certain periods of growth and development. The trolley also stops at the Chapel of All Faiths and Cedar Lane Cemetery (both on the CSH campus). Central State Hospital currently serves more than 200 existing patients; the campus encompasses 2,000 acres of land. For those interested in the themes discussed in “Administrations of Lunacy,” the tour presents an interesting in-person perspective and experience. For more information about tours and ticketing, visit visitmilledgeville.org.

Megan Hodgkiss is the current editor-in-chief of the Georgia Bar Journal. She is the CEO and principal writer of Hodgkiss Consulting LLC, a strategic communication company. She can be reached at megan@hodgkissconsulting.com.
### DECEMBER

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>CLE</th>
<th>Registration Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Premises Liability</td>
<td>6 CLE</td>
<td>Register at <a href="http://www.gabar.org/premises-liability">www.gabar.org/premises-liability</a></td>
</tr>
<tr>
<td>17</td>
<td>Professionalism, Ethics &amp; Malpractice</td>
<td>3 CLE</td>
<td>Register at <a href="http://www.gabar.org/ICLEcourses">www.gabar.org/ICLEcourses</a></td>
</tr>
</tbody>
</table>

### JANUARY

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>CLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Jury Trial</td>
<td>6 CLE</td>
</tr>
<tr>
<td>19</td>
<td>Wrongful Death</td>
<td>6 CLE</td>
</tr>
<tr>
<td>26</td>
<td>Adoption Law</td>
<td>6 CLE</td>
</tr>
<tr>
<td>28</td>
<td>School and College Law</td>
<td>6 CLE</td>
</tr>
</tbody>
</table>

### FEBRUARY

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>CLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Advanced Debt Collection</td>
<td>6 CLE</td>
</tr>
<tr>
<td>4</td>
<td>Plaintiff’s Personal Injury</td>
<td>6 CLE</td>
</tr>
<tr>
<td>9</td>
<td>Zoning Law</td>
<td>6 CLE</td>
</tr>
<tr>
<td>18</td>
<td>Abusive Litigation</td>
<td>6 CLE</td>
</tr>
<tr>
<td>25</td>
<td>Trial Advocacy</td>
<td>6 CLE</td>
</tr>
</tbody>
</table>

*Please note: Not all programs listed are open for registration at this time.*

By registering for in-person attendance, you agree to comply with State Bar of Georgia safety measures, which include social distancing and wearing a mask that covers your nose and mouth.

---

**A NEW YEAR ... A NEW ICLE**

By Michelle E. West

The Institute of Continuing Legal Education of the State Bar of Georgia (ICLE) is looking forward to 2022. This is an introduction to the 2022 visionary series, A New Year ... A New ICLE. It will be a year of evaluating, assessing, aligning and transforming the CLE experience as we currently know it. ICLE continues to evolve as it settles into its home as a State Bar of Georgia department. The pandemic has provided an opportunity for ICLE to examine efficiencies and member content accessibility in the ever-changing CLE industry. New this spring, members will encounter a fresh approach to access ICLE programs. ICLE is currently at work planning and implementing this new rollout that we hope will improve your CLE content experience. As we usher in this year of change, we hope that you will welcome the improvements that will make us better as a Bar. Here’s to 2022! ●

---

Note: ICLE courses listed here are subject to change and availability. For the most up-to-date ICLE program details, please visit our page at www.gabar.org/ICLEcourses. For questions and concerns regarding course postings, please email ICLE@gabar.org.
Lawyers Living Well, a podcast for all things wellness.

Available now.
Supreme Court of Georgia Approves Amendments to the Rules and Regulations for the Organization and Government of the State Bar of Georgia

The Supreme Court of Georgia, having considered the 2021-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, orders that Part I – Creation & Organization, Chapter 3, Rule 1-303 (Meetings), Chapter 8, Rule 1-801 (Annual Meeting), Rule 1-801.1 (Annual Midyear Meeting), Rule 1-802 (Special Meetings), and Rule 1-803 (Notice) be amended effective Nov. 17, 2021.

The exact text of the Order can be found on the Supreme Court’s website at www.gasupreme.us/wp-content/uploads/2021/11/Order_2021-1_Issued.pdf

Notice of and Opportunity for Comment on Amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit. The public comment period is from Monday, Dec. 6, 2021, to Wednesday, Jan. 5, 2022.

A copy of the proposed amendments may be obtained on and after Monday December 6, 2021, from the court’s website at http://www.ca11.uscourts.gov/rules/proposed-revisions. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 [phone: 404-335-6100].

Comments on the proposed amendments may be submitted in writing to the Clerk at the above address, or electronically at http://www.ca11.uscourts.gov/rules/proposed-revisions, by 5:00 PM Eastern Time on Wednesday, Jan. 5, 2022.

Expand your network.

Join a State Bar Section.
POSITION WANTED

Monge & Associates is hiring litigating attorneys at all experience levels. Recognized as a top place to work, we offer flexible in-office schedules, flexible work from home options as well as top rates of compensation for handling personal injury cases from start to finish. Email inquiries to hr@monge.lawyer.

Littler Mendelson P.C. is seeking an attorney with a minimum of 1-3 years of labor and employment law experience to join the Greenville office. Prior employment litigation experience is preferred but not required. The candidate should possess excellent academic credentials and demonstrate strong research and writing skills. The candidate must be licensed to practice law in South Carolina.

We offer a generous benefits package to all full-time employees. Benefits include comprehensive health, dental and vision plan for you and your dependents or domestic partners. In addition, we provide a superior 401(k) plan, ample time off programs, generous paid parental leave, life insurance, disability insurance, a wellness program, flexible spending accounts, pretax commuter programs and an employee referral bonus program. For more information, visit: www.littler.com/culture-benefits.

Littler is the largest global employment and labor law practice in the world exclusively devoted to representing management. With more than 1,600 attorneys in 100 offices worldwide, Littler serves as the single source solution provider to the global employer community. Consistently recognized in the industry as a leading and innovative law practice, Littler has been litigating, mediating and negotiating some of the most influential employment law cases and labor contracts on record for 75 years. Littler Mendelson is proud to be an equal opportunity employer.

Littler’s unparalleled commitment to labor and employment law helps clients navigate a complex business world with nuanced legal issues—building better solutions for clients’ toughest challenges. With deep experience and resources that are local, everywhere, Littler is fully focused on its clients. With a diverse team of the brightest minds, Littler fosters a culture that celebrates original thinking. And with powerful proprietary technology, Littler disrupts the status quo—delivering bold, groundbreaking innovation that prepares employers not just for what’s happening today, but for what’s likely to happen tomorrow. For more information, visit www.littler.com.

Apply online at www.littler.com/careers.

BAR BENEFITS

Legislative Program

DID YOU KNOW?
The State Bar’s legislative team serves as eyes and ears for the profession at the Gold Dome and connects specialized attorneys from the State Bar’s sections with legislators seeking advice on complex areas of the law. The Bar has also been responsible for spearheading critical bills that affect lawyers.

CONTACT
Christine Hayes
Director of Governmental Affairs
404.526.8608 | christineh@gabar.org

State Bar of Georgia
PROPERTY/RENTALS/OFFICE SPACES
www.LawSpaceMatch.com: Find a LawSpace within a law firm to sublease. Search for free by zip code. Connect with lawyers with empty space to lease instantly. Created by lawyers for lawyers.

Prime downtown Atlanta location with office space available to rent in the State Bar of Georgia building. Space available is from 5,000 square feet to 15,000 square feet. Will subdivide for your needs. Includes break room/server room/copy room. Also available are seven individual offices ranging from 200-400 square feet, includes access to shared break room. Prefer law-related tenant. Space is available immediately. Building is technology-equipped. The rent includes all taxes, standard utility costs and common area maintenance costs as well. Guaranteed parking based upon amount of space occupied. Additional non-guaranteed parking available at predetermined rates. Easy access to: federal, state and local government offices; State Farm Arena; CNN; and Mercedes Benz Stadium. Contact Steve at Steven.Hallstrom@cis.cushwake.com.

Are you attracting the right audience for your services?

Advertisers are discovering a fact well known to Georgia lawyers. If you have something to communicate to the lawyers in the state, be sure that it is published in the Georgia Bar Journal.

Contact Ashley Stollar at 404-527-8792 or ashleys@gabar.org.
Wherever you are, stay updated at gabar.org.
You’re not alone.

We care about your well-being. Take advantage of the free services provided to all Georgia attorneys by the State Bar of Georgia. We are here for you.

LAWYER ASSISTANCE PROGRAM

#UseYour6: Six pre-paid counseling sessions per calendar year.
gabar.org/lap

LAWYERS HELPING LAWYERS

Confidential, peer-to-peer program for lawyers, by lawyers.
GeorgiaLHL.org

SUICIDE AWARENESS CAMPAIGN

If you are thinking about suicide or worried for a friend, call the LAP Hotline: 1-800-327-9631

LAWYERS LIVING WELL PODCAST

A podcast created to be a resource for all things wellness, just for lawyers.
lawyerslivingwell.org