From the President—Help Make the 2019 Nationals in Athens Another Winner for Georgia High School Mock Trial

2018 Legislative Review

We Salute Our Pro Bono All-Stars

2018 Fiction Competition Winner: Trudy’s Last Ride

THE LEGAL

An Introduction to Tax Litigation
Georgia Lawyers Helping Lawyers (LHL) is a new confidential peer-to-peer program that will provide 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.

The program is seeking not only peer volunteers who have experienced particular mental health or substance use issues, but also those who have experience helping others or just have an interest in extending a helping hand.

For more information, visit: www.GeorgiaLHL.org
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This month, we bring you our annual Fiction Writing Competition winner, “Trudy’s Last Ride” by Jameson L. Gregg. Always a favorite!

Recent issues of the Georgia Bar Journal have focused on pro bono opportunities for Georgia attorneys, and this issue continues in that vein with a feature article on Superior Court Judge Regina Quick. Judge Quick is the first woman appointed as a Superior Court judge in the Western Judicial Circuit, and she spearheaded the Athens Access to Justice (AATJ) Initiative. The AATJ helps provide support to those in the community who cannot afford legal assistance, through monthly volunteer “pop up” legal clinics and through a self-represented litigant center in the Athens-Clarke County Courthouse to assist pro se litigants with forms and understanding court procedures. Also along those lines, the President’s Page highlights the successes of the Georgia High School Mock Trial Program. This highly successful program would not exist but for the dedicated volunteerism of all those judges and attorneys who contribute so much time and effort into coaching, training, judging and evaluating these exceptionally talented high school students.

On a related note, Rebecca Christian Smith, the executive director of the State Bar of Georgia Diversity Program, writes about her interview of Neil H. Wasser, chair of the executive committee of Constangy, Brooks, Smith & Prophete, LLP, on the creation, and more importantly, the sustainability of, a diverse work environment. To Wasser, it is more than just demographics; it is diversity of backgrounds, ideas and talents “woven into the fabric” of the firm, which leads to better employee performance, and therefore better business performance.

The Georgia Bar Journal’s regular columns offer a wealth of practice-related information and practice management tips. This month’s legal article, “An Introduction to Tax Litigation,” provides a primer on litigation in the U.S. Tax Courts and the Georgia Tax Tribunal. The article gives an overview of the “nuances” of practice in those courts from initiation of a case through appeal. The Member Benefits column will give you tips on the search function of Fastcase, the State Bar of Georgia’s legal research platform included with your Bar dues. The Law Practice Management column will give you tips on how to avoid 10 technology “pitfalls” in your practice. Finally, the Writing Matters column offers tips on how to be more creative in your legal writing, and how to adapt your legal writing for your audience.

The Professionalism Page is also a regular part of the Journal, but this month, it goes beyond professionalism to the personal and recognizes that we lawyers are humans first. Michelle Barclay has written a very personal and poignant tribute to her late friend Robin Nash in a piece titled “The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness.” Nash suffered from mental illness, and his friend Barclay reflects on ways she could have helped him if she had another chance to do so. Through Barclay’s insights, Nash’s story will cause you to look more closely at your own personal and professional relationships for, as she points out, “[n]one of us can truly know what we mean to other people.”

BRIDGETTE E. ECKERSON
Editor-in-Chief, Georgia Bar Journal
journal@gabar.org
Help Make the 2019 Nationals in Athens Another Winner for Georgia High School Mock Trial

In less than a year, the eyes of the nation will be on Georgia’s legal community as we host the 2019 National High School Mock Trial Championship in Athens May 16-18. The national competition will draw teams from at least 45 states and U.S. territories and bring more than 1,000 team members, coaches and spectators to our state.

This will be another proud moment for the Georgia High School Mock Trial Program, which previously hosted the national championship in Atlanta in 1993 and 2009. A project of our Young Lawyers Division, the program is funded in part by the State Bar of Georgia and is endorsed by the Georgia Department of Education and the Judicial Council of Georgia. Organized in 1988, the ultra-successful program is now 30 years old.

According to Georgia High School Mock Trial Program Director Michael Nixon, approximately 1,700 students from public and private high schools and homeschool associations participate each year. For the 2018 season, a total of 103 teams competed at the regional level, with 48 advancing to the district competition and eight district winners competing for the state championship. Jonesboro High School took home the state trophy this year and represented Georgia at this year’s national competition in Reno, Nev.

The annual competition involves teams of students working together to prepare their presentations from court case materials provided by the YLD’s High School Mock Trial Committee. The students play the roles of attorneys and witnesses based on the witness statements and evidence provided in the case materials.

Mock trial competitors not only gain a greater understanding of the law, legal issues and judicial process, they are also impacted academically by improved proficiency in basic skills such as listening, speaking, reading and reasoning. The experience of preparing for and participating in a mock trial is one benefit of the competition, along with the invaluable learning experiences for each student. Teams are actually evaluated on their ability to make a logical, cohesive and
persuasive presentation, rather than on the legal merits of their case.

Along with the statewide competition, the High School Mock Trial Program also oversees the annual Law Academy and the Craig Harding Memorial Court Artist Contest, both of which are designed to increase students’ understanding of and appreciation for the law, court procedures and the legal system.

The success of the High School Mock Trial Program is primarily dependent on the participation of Bar members to serve as volunteer coaches, judges or evaluators (jurors). As Nixon states, “We are always looking for attorneys to be involved on a judging panel at any of our competitions, behind the scenes at the competitions or as an attorney coach for a team.”

For their time, Bar members who serve on a judging panel or as attorney coaches are now eligible to claim CLE credit. For serving at one level of competition in a season, attorneys can receive one hour of general/trial practice credit and one hour of professionalism credit. Attorneys volunteering at a second level of competition the same season can claim an additional hour of general/trial practice credit. Attorneys who spend a minimum of 10 hours coaching a team are eligible for three general CLE hours, including one hour in ethics, one hour in trial practice and one hour in professionalism. Active Superior Court, State Court or Probate Court judges who volunteer for High School Mock Trial service are eligible for ICJE credit as well.

Volunteering with the Georgia High School Mock Trial Competition can be rewarding in many ways other than continuing education credit, of course. I want to thank the following mock trial volunteers for sharing these testimonial statements about their service with the program:

**Chatham County Assistant District Attorney Brittany Padgett:**
“[I] decided to volunteer for the High School Mock Trial Competition because it is nice to see young adults doing something positive with their lives. As an ADA, I regularly see people violating the law and over time it’s easy to fall into the rut that

**BRIAN D. “BUCK” ROGERS**
President

After an exceptionally busy year as president, the only reading I plan to do is to read the road signs along the highway as I take a little summer break.

**KENNETH B. “KEN” HODGES III**
President-Elect

My reading outside of work consists of books picked by Margaret or Jack involving fun adventures, but the first book I plan to read this summer is “Tommy Malone, Trial Lawyer,” the biography of a great lawyer and friend. Of course I will also revisit my favorite read, “Sartor Resartus.”

**DARRELL L. SUTTON**
Treasurer

My 2018 summer reading list is a close race between “Lawyering for Dummies” and “How to Survive the Toddler Years Without Going Bald” (too late!).

**DAWN M. JONES**
Secretary

I pray I will have time to relax this summer, and to read purely for entertainment purposes. I have several books in mind for that very occasion. The first book on my list is “A Lesson Before Dying” by Ernest J. Gaines.

**PATRICK T. O’CONNOR**
Immediate Past President

I have interrupted my several monthlong attempt to conquer “Les Miserables” by reading “The Sun Does Shine,” the autobiographical true story of Anthony Ray Hinton—an innocent man who spent 27 years on death row in Alabama. I highly recommend both books to anyone who appreciates the law.
all kids are ‘up to no good.’ That’s simply not true and watching the students argue their points is truly exhilarating. The teams were so strong that I wanted to recruit a few for our office.”

Louis Cohan of the Cohan Law Group LLP in Atlanta: “I started coaching mock trial 10 years ago because our youngest daughter was entering high school and expressed interest in law. Today, that daughter is a first-year student at the Georgia State University College of Law. You bet we are proud. In fact, a number of my mock trial kids are practicing law. High School Mock Trial is one of the best programs our State Bar has. It creates opportunities for learning, growth and self-esteem for the kids, opportunities for parents, teachers and family members to have positive exposure to and interaction with lawyers and judges. Coaching and judging mock trial allows lawyers to think about, work on and practice courtroom basics. Next year, Georgia will host the national tournament. I will be encouraged and assisted, especially when it involves our legal system and profession. Selfishly, I like it because I always enjoy watching a trial, real or mock, and these participants never disappoint.”

Brenda Youmas of Edwards & Youmas LLC in Macon: “I have been involved with the high school mock trial competition for more than 10 years. I served as a team coach, judge and attorney evaluator on the district and regional level. The mock trial competition provides a diverse group of students with exposure to the operation of our jury trial system. I am always impressed by the students’ skill levels, professionalism and sportsmanship. I highly recommend the mock trial competition to students and volunteer attorneys as a great learning experience.”

Joshua Schiffer of ChancosShiffer P.C. in Atlanta: “Mental athleticism is a source of deep embarrassment for many kids like me. Showing it set us apart too often, and we hid it from peers to fit in. High school mock trial gives ‘smart-letes’ the venue to perform and be acknowledged on a field most folks only know from TV or movies. They are special, just like the kid on the field. It has been a deep pleasure to watch my former teenage students succeed in college as well as join my Bar as colleagues. Having that success on my resume is a huge source of pride, since each one of them was driven by the law to do something. Not watch but do. And to be a small part of that is an incredible personal reward. This program is one of the best projects our Bar undertakes to open our courts to all citizens of Georgia.”

Allen Shulman, emeritus Bar member from Canton: “I’ve coached mock trial for some 10 years now, and it’s one of the most rewarding experiences I’ve had. Because many high school classes are designed to primarily transmit
known facts, for many students mock trial becomes their first serious attempt to confront a question to which there is no objectively correct answer. Guiding the students’ acquisition of both the reasoning power and the presentation skills required to persuade, as well as the ability to rapidly adjust to the unexpected, is very much its own reward.”

The need for volunteer lawyers and judges will be greater than ever when the National High School Mock Trial Championship comes to Athens in May 2019. Over two days, teams from across the country will compete in four preliminary rounds at the Athens-Clarke County Courthouse and the Classic Center in downtown Athens, culminating with the championship round Saturday evening in the Hatton Lovejoy Courtroom at the University of Georgia School of Law.

A total of 92 judging panel members will be needed for each round, which would put one presiding judge and three evaluators for each of the 23 trial sessions. A Judging Panel Reception will be held for the volunteers on Friday night at the Richard B. Russell Building Special Collections Library on campus.

“We need anyone who will be helping on a panel in Athens to have had previous high school mock trial panel or coaching experience, so the 2019 Georgia competition season is a great way to get geared up for nationals,” Nixon said. “We will need a lot of help on the panels, that’s the biggest thing. We will also need help during the week in crowd management positions, such as the registration table, giving directions and event workers. We will also need 23 courtroom liaisons for each round, assisting the panels in getting to and from the courtrooms and managing the scoring paperwork for each round.”

The fundraising goal for the national competition is $200,000. There are opportunities to give specific dollar amounts at various levels, or sponsor the cost of specific events, in whole or in part. It’s easy to get on board to volunteer or make a donation through the competition’s website, athens2019.nhsmtc.org or by emailing athens2019@gabar.org.

“This will be a showcase event for Athens, UGA, Georgia and especially the State Bar of Georgia to many people coming in from all over the country,” Nixon said. “There will be attorneys and judges traveling in to help on judging panels, so we want to provide the best competition experience possible for both the teams and the delegations from other states. We want to make a lasting impression on everyone’s mind and set the bar for what a National Championship experience should be. The Bar’s support has been instrumental, and we need the Bar membership to help pull it off.”

I encourage you to help out as a volunteer and/or a financial supporter to continue the success of this worthy State Bar program and its positive influence on the future of the legal profession.

Congratualtions to the 2018 State Champion Mock Trial Team from Jonesboro High School!

The Jonesboro mock trial team placed fourth in a field of 46 state champion teams during the 2018 National High School Mock Trial Championship in Reno, Nev., in May.

A special thanks to all of our financial donors for the 2018 season, including the State Bar of Georgia Young Lawyers Division.

A full list of 2018 season donors will be published on our website by the end of August.

Visit www.georgiamocktrial.org for more information about the program.

@GeorgiaMockTrial @GA_MockTrial
From the YLD President

I have been honored to serve as president of the Young Lawyers Division of the State Bar of Georgia for the past Bar year. It has been an amazing year working with young lawyers across the state to advance this year’s theme of pro bono service, and the YLD has exceeded expectations for a successful year. When the YLD (then the Younger Lawyers Section) was created in 1947, its purpose was to further the goals of the State Bar, increase interest and participation of young lawyers and foster the principals of duty and service to the public. The YLD has continued to advance its mission through the hard work of its officers, directors, district representatives, committee chairs, and—most importantly—its members.

While this article could be solely dedicated to listing all of the great works the YLD has done this year, there frankly is not enough room. And while the individual projects and initiatives have continued to grow and serve the public and the profession, the YLD’s strongest asset has also grown and demonstrated its unwavering commitment to fulfilling the YLD’s mission. This article is dedicated to recognizing the YLD’s strongest asset—its members. At almost 10,000 members, young lawyers continue to grow in numbers across the state. And with the increase in numbers, young lawyers have also strengthened their commitment to public service. This year, YLD members embraced the theme of pro bono service and demonstrated not only a commitment to put in the hours, but a willingness to knock through perceived barriers to pro bono service and find a way to make such service work for them. YLD members also embraced serving their community, demonstrating ways to give back to the public and highlight the true professional spirit of the legal community.

In engaging with the YLD, young lawyers across the state have stepped up to demonstrate leadership. Leadership is more than simply being the head of an organization. Being a leader means bringing people together for a common purpose or goal—big or small. One of the most important aspects of leadership is the actions one takes when being a leader. My mother has been telling me that “actions speak louder than words” for as long as I can remember. Being a leader certainly follows the adage that actions speak louder than words.

I have been fortunate to have many predecessors who have led by example and provided examples of leadership that were both inspiring and aspirational. My first YLD event was the annual mass swearing-in that the YLD holds every year. That year in the Old Freight Depot, I, along with many new lawyers, heard then-YLD President Amy Howell speak about the YLD and service. Her words were inspiring, but it was her willingness to speak to every young lawyer who approached her at the YLD table after the
event that spoke even louder than her speech. Amy’s passion for the YLD, and genuine interest in engaging with new lawyers, was demonstrated in her actions.

I would not have attended a YLD meeting without the encouragement of YLD Immediate Past President Jennifer Mock, who personally invited me to a YLD meeting in Athens. At that meeting, then-YLD President Michael Geoffroy made it a point to get to know my name, and he has never forgotten it since. Michael’s actions in being genuinely welcoming to everyone, and his passion for the YLD and the Bar have always been on display. There have been many other leaders since, in the YLD, the State Bar and in practice, who have provided examples of leadership through their actions.

Being a leader is a huge responsibility. Part of that responsibility is to lead by your actions, not just words. When you lead by example, it inspires others to push themselves, and thus the organization, further toward greatness. This global effect is key for effectively coalescing people together to move forward as a whole. It also has a trickle-down effect, as leading by actions can inspire others to come forward and lead. I am frequently reminded that you never truly know who is watching you and learning from what you do. Leading by actions means you may be influencing and inspiring those around you, even if you do not have direct contact with them.

OFFICERS’ BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, “As we move into the summer and take some time to relax, what’s on your summer reading list?”

NICOLE C. LEET | YLD President

Too many to list! I’m looking forward to catching up on some recent releases including: “What Should Be Wild” by Julia Fine, “Less: A Novel” by Andrew Sean Greer, “Shelter in Place” by Nora Roberts and “Every Single Secret” by Emily Carpenter.

RIZZA O’CONNOR | YLD President-Elect

At a family gathering, my uncle, Pat O’Connor, introduced us to the book, “Praying for Sheetrock.” It is a compelling real-life look into the struggle for justice and civil rights in the small town community of McIntosh County, Ga., in the 1970s.

WILLIAM T. “WILL” DAVIS | YLD Treasurer

I’m a firm believer that summer reading should be light and fun in order to take your mind off having to work in the summer. I’ll probably re-read some of my favorite comedic autobiographies by David Sedaris, Tina Fey and the like. “Bossypants” is one of my favorites.

BERT HUMMEL | YLD Secretary

Since our first born is due June 15, all reading outside of the office has been and will remain books on parenting and raising a baby! Although, I have managed a few children’s books, too.

JENNIFER C. MOCK | YLD Immediate Past President

I am reading the Harry Potter books with my children this summer. It has come with a sacrifice as I have not been able to read much on my own, but spending that time with them each night is totally worth it. I have also secretly enjoyed re-reading the series!

SHAMIRACLE J. RANKIN | YLD Newsletter Co-Editor

“An American Marriage” by Tayari Jones and “David Ball on Damages 3” are at the top of my list. I have read “An American Marriage” once and intend to re-read it this summer. Similarly, I have read portions of “David Ball on Damages 3,” but I plan to take a deep dive into it again.

HEATHER RIGGS | YLD Newsletter Co-Editor

I’m a lover of non-fiction, so this summer I’ll be reaching for classic business tomes, like “The Millionaire Mindset” and “Getting Things Done.”
This year, I have watched as our amazing members have stepped up and led by example—whether by organizing the first statewide day of service or continuing to engage with the community by setting up volunteer wills clinics. YLD members also continue to lead by example by demonstrating a commitment to learning—presenting or attending CLEs to further their practical skills; writing substantive articles for The YLD Review and other organizations to aid practitioners and demonstrate subject area mastery; and other steps to continue to increase the legal skill and professionalism of young lawyers in their respective practice areas.

Young lawyers have demonstrated leadership in the community by stepping up and continuing to serve on community boards, volunteer organizations and social clubs while balancing practicing law. All of these actions demonstrate that young lawyers are positioning themselves to be leaders through their actions, and demonstrating to their colleagues and the public what young lawyers value as well as their ideas to continue to advance and innovate. Actions do speak louder than words, and I believe young lawyers across the state have demonstrated by their actions this year that they have a commitment to the profession and the public and will continue to step up to make the YLD, and the State Bar, stronger each and every year.

It has been a privilege to serve with YLD members across the state and share in the success of this year. I am looking forward to passing the gavel to incoming YLD President Rizza O’Connor as I know she will continue to lead the YLD with the grace and passion she has brought to everything she does.

I knew when he said he was going to kill me that I had to do something for me and my daughter. I was scared, but as soon as I met my lawyer I felt hope.

Who needs lawyers? We do.

Jasmine* — Georgia
From Victim of Abuse to Triumphant in College and Motherhood.

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

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

The Georgia Legal Services Program (GLSP) is a 501(c)(3) nonprofit law firm. Gifts to GLSP are tax-deductible to the fullest extent allowed by law. The client story is used with permission. The name and photo does not necessarily represent the actual client.

Ten (10) GLSP offices outside metro Atlanta serve 154 of Georgia’s 159 counties. Your gift makes a difference!
New Member Benefit:
Cyber Security Protection

A lawyer’s duty to maintain and protect confidential information on behalf of his or her clients is as old as the legal profession itself. In the age of electronic record keeping and information storage technology, however, this responsibility is more challenging than ever. We’ve gone far beyond the good old days of simply locking the office filing cabinets at the end of the day.

The fact that many of the nation’s most prominent financial institutions, retail companies and governmental agencies have fallen victim to cyber security failures is well known. With one in four law firms with at least 100 lawyers having experienced a data breach, according to a 2015 ABA legal technology survey, attorneys should be aware that our profession is as vulnerable to a cyber attack as the rest of the business world.

“As attorneys, our clients trust us with confidential information,” Jeffrey A. Franklin writes for GP Solo. “Criminals are attracted by confidential information such as financial records, health records, Social Security numbers, intellectual property, depositions and criminal records. Loss of such information may result from a malicious attack (e.g., hacking, malware or deliberate espionage), a dishonest employee, or theft of a notebook, tablet or smartphone. Loss can also result from innocent mistakes such as losing a smartphone, unintended transmissions, or other human error that can occur in any busy practice.”

According to David L. Hudson Jr., writing for the ABA Journal, “The loss of such data can have many negative repercussions, including lawsuits, regulatory investigations, fines and penalties, and the loss of a good reputation as a trusted fiduciary of client confidentiality. For this reason, more and more law firms are following in the footsteps of other industries and purchasing or considering the purchase of cyber liability insurance.”

Hudson quotes Chris Andrews, vice president of professional liability at AIG, as saying, “Law firms today are responsible for massive amounts of electronic and nonelectronic information. Depending on a firm’s areas of practice, this information can range from personally identifiable information to protected health information to confidential corporate information, such as intellectual property, contracts, and details on mergers and acquisitions. This information represents significant liability exposure in the event of a security failure. Even if the failure doesn’t lead to an actual lawsuit, a firm may still need to deal with costs associated with notification, possible regulatory investigations, fines and penalties, forensic expenses, public relations expenses and more.”

Lawyers should also know it’s not just client information at risk, Andrews added. “We’ve seen instances where the firm’s own proprietary information was completely wiped out, leading to costly data restoration and re-creation expenses,” he said. Additionally, federal and
state laws dictate how a business must respond to a breach, which can be costly but also time consuming.

“The bottom line is that firm leaders have both a professional and business responsibility to treat the data security practices of their firm as mission critical,” concludes ALM Intelligence Senior Analyst Steve Kovalan, writing for Law.com.

“First, as to their professional responsibility, the ability to protect and maintain client confidences is fundamental to providing effective counsel. Second, with regard to their business responsibility, the increasing importance of data security presents an opportunity for those firms that invest time and resources developing a comprehensive and process-oriented approach to information security to differentiate themselves from their competition. . . . (L)aw firms are not immune from the growing cyber threat, and going forward, stories of the hacking of electronic communications will continue to make headlines and capture the public’s attention. Firm leaders would be well advised to do everything in their power to ensure the proper security infrastructure and incident response protocols are in place when the inevitable attack occurs. It is not hyperbole to say that the future of their firm depends on it.”

Because of these risks, a growing number of lawyers and law firms are adding the protection of cyber liability insurance. According to Franklin, cyber insurance is generally designed to assist before, during and after an attack, by providing risk management resources to prevent an attack, data risk liability and defense coverage to protect compromised data, and breach incident services and remedies to respond to a data loss.

“Cybersecurity can no longer be ignored,” Franklin adds. “Take action today to protect your clients, your firm, and yourself from this ever-growing threat to your pocketbook, privacy and reputation. There is no silver bullet. Sound law firm cyber risk management includes people, policies, procedures, technology and insurance solutions.”

To address this need, the State Bar of Georgia is now offering cyber liability insurance policy options as a new member

Know Your Bar

CloudLawyers

New Enhanced Online Member Directory

Last month, the State Bar launched a newly redesigned website. In hopes of helping those seeking lawyers find them easily in a trusted environment, one of our new features is the addition of an enhanced member directory. We’ve collaborated with CloudLawyers to help provide this new service.

CloudLawyers is a website where people can find lawyers, and lawyers can find each other. This is a platform for lawyers to provide potential clients with good information about each lawyer’s background, experience and services. Consumers can search by lawyer name or practice area, browse results and contact lawyers, including optional online appointment booking. An online search is now virtually inevitable when hiring a lawyer, whether to check out a previous referral or to find a lawyer for a particular legal need, so a reliable online presence is key.

Our online member directory is the No.1 most utilized feature on our website by far. The “classic” member directory as you know it will remain the same because that’s what our members and courts depend on. From your member directory listing, there is now a link to view more detailed information. That detailed information is your enhanced member directory listing at CloudLawyers.

Your CloudLawyers page will consist of the information in your State Bar “classic” listing (your member directory listing as it is on gabar.org), plus three practice areas of your choosing. That’s free. For a nominal fee of $95 per year, you can add a plethora of additional practice information to your CloudLawyers listing to showcase the depth and breadth of your practice, including a biography, awards, influential cases, payment options, articles, and links to websites and social media.

If you have any questions about your CloudLawyers enhanced directory listing, the State Bar and CloudLawyers staff are ready to help. You may contact Director of Communications Sarah Coole at sarahc@gabar.org, or you can contact the CloudLawyers help desk at support@zeekbeek.com or 844-899-9335.

You always have the option to opt out of the CloudLawyers listing. Simply log in at www.gabar.org and choose “Edit Personal Preferences.” From there, under the “CloudLawyers Directory Preferences” heading, you may choose to make your listing visible to all, visible only to other attorneys or opt out completely.
benefit through our recommended broker, Member Benefits, Inc. According to our Law Practice Management Program Director Natalie Kelly, Georgia lawyers have three program options. Bar members can pick any one or all of the options:

1. **Data Breach Risk and Compliance Assessment**
   This is a comprehensive security assessment questionnaire done online to determine the firm’s current level of compliance with federal, state and industry data security regulations and best practices. It includes an executive summary report for key decision makers showing the firm’s current level of risk, their compliance scorecard results, plus key recommendations and the estimated financial impact of a breach to the organization. Also included is a full assessment review and compliance consultation with an advisor. For State Bar members, the discounted risk and compliance assessment price is $495 per firm assessment (regularly $695).

2. **Compliance and Certification Program**
   This provides firms with a complete information security Compliance Management System (CMS). It includes the essential tools, resources and ongoing expert coaching and support team to help firms get and stay compliant with all major federal, state and industry regulations including HIPAA, GLBA, PCI, SOC2, ISO 27001 and state laws. The program is a cloud-based compliance management program together with expert support to identify data security risks and compliance gaps, close the security gaps and implement required safeguards, verify successful implementation of safeguards and manage ongoing compliance support and certification procedures.

   The certification provides critical third-party validation and reporting on an ongoing basis that the organization meets or exceeds the minimum recommended security and privacy standards for protecting client and employee data against data breaches and identity fraud.

   The Compliance and Certification Program includes compliance management software, expert support through a dedicated compliance specialist/account manager, annual risk and compliance assessments, an information security plan with annual updates, an implementation checklist for required safeguards, an online employee training and testing program, an employee handbook for information safety, business associate agreements and security assessments, semiannual vulnerability and compliance scans for the firm’s network and website, quarterly desktop and laptop security and compliance checkups, a certification website seal and information security risk management compliance reports.

   Discounted Compliance and Certification Program pricing ranges—by firm size—from $90 to $725 monthly or $975 to $7,995 annually (regularly $1,295 to $8,995 annually).

3. **Cyber and Data Breach Insurance, Insured by BCS Insurance**
   This coverage is specifically designed to protect businesses or organizations from liability claims involving the unauthorized release of information for which the organization has a legal obligation to keep private, claims alleging invasion of privacy and/or copyright/trademark violations in a digital, online or social media environment and claims alleging failures of computer security that result in deletion/alteration of data, transmission of malicious code, denial of service, etc.

   The insurance also covers defense costs in state or federal regulatory proceedings that involve violations of privacy law and provides expert resources and monetary reimbursement to the insured for the out-of-pocket (first party) expenses associated with the appropriate handling of these types of incidents. While the term “cyber” implies coverage only for incidents that involve electronic hacking or online activities, when in fact this product is much broader, covering private data and communications in many different formats—paper, digital or otherwise.

   While there is presently no law or Bar Rule that requires a business or organization to carry cyber liability, there is a national trend in business contracts for proof of this coverage. In addition, the SEC is encouraging disclosure of this coverage as a way of demonstrating sound information security risk management. Laws such as HIPAA-HITECH and Gramm-Leach-Bliley and state-specific data breach laws are continually driving demand as requirements for notification in the wake of a data breach become more expensive.

   For much more on the new cyber and data breach prevention, compliance and insurance protection available to members of the State Bar, visit www.memberbenefits.com/gabar or call 1-800-282-8626.
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An Introduction to Tax Litigation

This article provides a brief overview of some of the nuances of litigating a case before the U.S. Tax Court or the Georgia Tax Tribunal.

BY BRIAN GARDNER

The U.S. Tax Court and the Georgia Tax Tribunal are unfamiliar forums for most practitioners. Many attorneys are surprised to find out that there is a dedicated courtroom for the U.S. Tax Court located on the 11th Floor of the Richard B. Russell Federal Building. They are even more surprised to find out that Georgia is one of 34 states with their own tribunal dedicated to handling state tax issues. The Georgia Tax Tribunal opened its doors in January 2013 and was largely modeled after the U.S. Tax Court, along with other state tax tribunals. These forums have several unique characteristics, such as specialized judges, informal discovery and extensive stipulations, which attorneys should know about before initiating litigation either as petitioners themselves or as representatives of petitioners.

Overview of the U.S. Tax Court
The U.S. Tax Court (the Tax Court) is an Article I court established by statute by the U.S. Congress. The Tax Court’s jurisdiction is
defined and limited by statute. The Tax Court is a court of national jurisdiction, meaning that taxpayers in Georgia generally follow the same precedent as those in New York or California. The court sits in Washington, D.C., and judges travel to 74 cities across the United States to hear tax disputes. A Tax Court judge typically travels to Atlanta four to six times a year for regular trial calendars. For example, in 2017 the Tax Court came to Atlanta for a regular trial calendar in January, April, September and November.

There are 19 judges appointed by the president to serve 15-year terms. Judges can be reappointed for additional terms. When a judge’s term expires or the judge reaches 70 years of age, the judge assumes senior status. Every two years the Tax Court judges elect a chief judge to serve a two-year term. The chief judge has the authority to appoint special trial judges, who typically hear small tax cases. They also occasionally hear large tax cases, as well as help manage cases that have not yet been assigned a judge by deciding pretrial motions. The Tax Court currently comprises 11 senior judges, five special trial judges and 16 presidentially appointed judges. Tax Court judges have extensive tax backgrounds, with experience working in private practice, academia, the Internal Revenue Service, the Department of Justice, the Joint Committee on Taxation and the Senate Finance Committee.

Overview of the Georgia Tax Tribunal

The Georgia Tax Tribunal (the Tribunal) was established by the Georgia Tax Tribunal Act of 2012. The Tribunal has jurisdiction to decide appeals of tax matters involving the Georgia Department of Revenue, including the ability to review decisions of the Georgia Department of Revenue relating to corporate and individual Georgia income tax, sales and use tax, and withholding taxes. Notably, the Tribunal does not have jurisdiction to review federal income tax liabilities or county property tax assessments.

The Tribunal can hear a case anywhere in Georgia, but trials are typically held in Fulton County at the Office of State Administrative Hearings. There are no juries for cases tried before the Tribunal. The Tribunal may review official assessments and state tax executions issued by the Georgia Department of Revenue. Unlike the U.S. Tax Court, the Georgia Tax Tribunal also has jurisdiction to hear cases seeking a refund of tax that was previously paid.

Cases filed in the Georgia Tax Tribunal are automatically remanded to the Georgia Department of Revenue for up to 90 days to allow the parties to resolve any issues that can be settled without trial. The provisions of the Civil Practice Act governing discovery and depositions apply to cases before the Tribunal. The Georgia Tax Tribunal, however, just like the U.S. Tax Court, has a strong preference for the parties to conduct discovery by informal consultation before using formal discovery requests and depositions. The Tribunal also places an emphasis on filing a robust stipulation of facts by requiring that the parties stipulate all relevant and nonprivileged matters to the fullest extent to which complete or qualified agreement can fairly be reached.

Other Tax Jurisdictions

Taxpayers contesting Georgia tax liabilities do not have to go to the Georgia Tax Tribunal to contest their liability. They still have the opportunity to file their case in superior court in their county of residence. In order to file a tax appeal...
in superior court, a taxpayer must post a surety bond that covers the entire proposed liability, including tax, penalty and interest, unless the taxpayer owns an interest in real property in Georgia that is in excess of the amount of the tax dispute.16

At the federal level, a taxpayer could file suit in district court or the Court of Federal Claims. Taxpayers are often discouraged, however, when they discover that they will need to pay their tax in full and file an administrative claim for refund before they can sue the IRS for a refund.17

**Receptiveness to Pro Se Taxpayers**

Both the U.S. Tax Court and the Georgia Tax Tribunal recognize that although there are a number of complex tax matters brought before them by counsel, there are a number of cases brought by unrepresented taxpayers. Both of the forums provide an abundance of resources for taxpayers to bring an action pro se. Their websites provide detailed lists of frequently asked questions detailing applicable procedures and necessary documents.18 Both websites provide form petitions in fillable pdf format to allow taxpayers to fill in the relevant information and submit the documents to the court.19

Both courts also provide special procedures for small cases, with relaxed evidentiary rules and a more informal procedure for taxpayers to present their evidence. To qualify for small case procedures in U.S. Tax Court, the amount of the deficiency and any additions to tax or penalties that the taxpayer disputes cannot exceed $50,000.20 Most taxpayers in small cases bring their case pro se, so the Federal Rules of Evidence are relaxed, and judges will typically consider any evidence that is relevant. The Georgia Tax Tribunal waives the filing fee for filing a small claims case.21 To qualify to elect a small claims case in the Georgia Tax Tribunal, the amount of income tax liability in dispute and the amount of penalty must be less than $15,000.22 For all other taxes, the amount of the tax and penalty in dispute must be less than $50,000.23

One notable resource for low-income taxpayers who would likely have to bring their federal tax matter pro se is the Philip C. Cook Low-Income Taxpayer Clinic at the Georgia State University College of Law. The clinic is an excellent alternative for taxpayers who would not otherwise be able to afford an attorney to handle their federal income tax matter. There are several requirements for taxpayers to be eligible for this resource, including income level (typically, 250 percent of the Federal Poverty Income Guidelines), available assets and amount in controversy, among other factors.24 The clinic provides a service to the community by representing taxpayers who are unable to afford representation, while giving law students valuable client experience.

**Starting a Case**

Unlike federal district court, the Tax Court is a prepayment forum, meaning that taxpayers have an opportunity to litigate their case before paying the proposed liability. A Tax Court case normally starts with the IRS issuing a Statutory Notice of Deficiency, which gives the taxpayer 90 days to file a petition with the U.S. Tax Court.25 A Notice of Deficiency is a letter from the IRS informing the taxpayer of any tax, additions to tax and penalties being imposed. The Notice of Deficiency is a defining moment in tax litigation. It is the taxpayer’s one and only opportunity to contest the proposed assessment in court without having to pay the liability and sue for a refund. If the taxpayer does not file a petition within 90 days, the IRS will assess the proposed tax, penalties and interest against the taxpayer and begin the collection process.26

Cases in the Georgia Tax Tribunal typically start when the Georgia Department of Revenue issues an Official Assessment and Demand for Payment, which gives the taxpayer 30 days to file a petition with the Tribunal. If the taxpayer does not file a petition timely, then the Department of Revenue can issue a state tax lien (also known as a State Tax Execution) and file it with the clerk of superior court in the taxpayer’s county of residence to begin collection of the tax.27 Unlike U.S. Tax Court, which lacks jurisdiction over a taxpayer’s underlying liability when the taxpayer fails to petition the Tax Court within 90 days of the Notice of Deficiency, the Georgia Tax Tribunal also has jurisdiction to hear cases challenging a State Tax Execution.28 Upon the issuance of a State Tax Execution, the taxpayer has 30 days to file an appeal with the Georgia Tax Tribunal.29

**Settlement Opportunities**

After a case is docketed in U.S. Tax Court, IRS counsel may agree to transfer the case to the IRS Office of Appeals for settlement consideration, unless the case went to the IRS Office of Appeals prior to the issuance of the Notice of Deficiency or if the case is designated for litigation by the IRS.30 The IRS Office of Appeals functions independently within the IRS and settles many cases before they go back to the IRS attorney assigned to the case. Appeals officers may resolve an issue based on the uncertainty of outcome at trial, also referred to as “hazards of litigation.”31

The Georgia Tax Tribunal follows a similar procedure. The Tribunal issued a Standing Remand Order in January 2013, providing that every case be automatically remanded to the Georgia Department of Revenue for a period ending 90 days following the filing of the petition.32 During the remand period, the parties are instructed to meet and confer in good faith to resolve the case by settlement, if possible.33 The vast majority of cases filed in the Tribunal settle without trial.34

**Tax Court Discovery**

One of the biggest differences between litigation in U.S. Tax Court or the Georgia Tax Tribunal and other venues is the emphasis on informal discovery. Once a case moves past the appeals phase, the parties typically meet for a Brenner conference.35 The IRS usually starts the process by sending the taxpayer a Brenner letter requesting an introductory meeting to discuss the factual background of the case as well as informal requests for answers to various questions and may also request production of certain documents. The parties then continue the exchange of informal discovery until they are able to finalize a
The parties usually negotiate an extensive stipulation of facts to be submitted to the Tax Court prior to trial. The stipulation sets the stage for the trial with relevant facts and documents presented by the parties. Evidentiary objections are typically noted in the stipulation and are normally addressed at trial and, in some instances, post-trial briefs. The Tax Court requires that the parties stipulate to all evidence that fairly should not be in dispute.  

If the parties agree that the stipulations address all necessary facts and are comfortable that the only remaining issues are issues of law, then they can file a motion to submit the case on stipulations. If the judge grants the motion, then the parties will still have an opportunity to address the issues in post-trial briefs, but they will waive their ability to go to trial. 

In addition to submitting the stipulation of facts, the parties are required to file a pretrial memorandum in a regular case. The pretrial memorandum functions much like an opening statement for the parties. It allows the parties to submit an organized presentation of the relevant facts and law in order to explain their position to the judge. The parties are required to submit the pretrial memorandum to the court and the opposing party at least 14 days before the first day of the trial session. The court provides a form pretrial memorandum attached to the Standing Pretrial Order. 

In more complex litigation, taxpayers usually rely on the testimony of one or more experts to address issues such as valuation or scientific testimony. The expert's report is critical in a Tax Court case. Any expert reports being relied on by the parties are required to be submitted to the court in advance for a time and date certain during the week of trial. 

Tax Court trials are conducted without a jury. Some judges allow the parties to make opening statements. With some exceptions, the taxpayer generally has the burden of proving that the determinations in the Notice of Deficiency are incorrect. Because the parties largely use stipulations to introduce relevant documents, trials themselves can be quite short. The parties may need witnesses to overcome objections to facts or documents proposed for stipulation or to present other relevant facts to the court. As the finder of fact, the judge determines whether a witness's testimony is credible and whether the evidence supports the taxpayer's claims. Tax Court judges are also permitted to examine witnesses brought by the parties. 

Post-Trial 

In many ways, the end of the trial is the beginning of the case in Tax Court. Typically, the court will order simultaneous post-trial briefs followed by simultaneous reply briefs. Tax Court judges also can require seriatim briefs (opening, answer and reply briefs). Tax Court briefing is extensive, containing each party's proposed findings of fact and legal arguments. 

The Tax Court has five different types of opinions. The first type is the bench opinion, where the judge orally states the opinion in court during the trial session. Bench opinions are rare in regular Tax Court cases. They cannot be relied on as precedent. The second type of opinion is a summary opinion. A summary opinion is only issued for small tax cases. Summary opinions are released and made available online by the Tax Court, but cannot be relied on as precedent. Summary opinions cannot be appealed. 

All regular case opinions are reviewed by the chief judge and divided into three groups: memorandum opinions, division opinions and court-reviewed opinions. A memorandum opinion is issued in a regular case that does not involve a novel legal issue. Memorandum opinions are typically written by the judge who oversaw the trial of the case. They can be appealed. Memorandum opinions are not technically binding, but are often cited by judges and practitioners. Memorandum opinions are published electronically on the Tax Court's website but are not published in the official U.S. Tax Court Reports. 

The two types of precedential opinions released by the Tax Court are fully reviewed opinions and division opinions. These usually involve important legal issues, an issue of first impression or a reversal of a prior decision. As its name indicates, a fully reviewed opinion is reviewed by all 19 Tax Court judges and is published in the U.S. Tax Court Reports. Fully reviewed opinions are typically written by the trial judge but can contain dissents and concurrences from the other Tax Court judges. The court only issues a few fully reviewed opinions each year. A division opinion is also precedential and will be included in the officially published U.S. Tax Court Reports. Unlike fully reviewed opinions, division opinions provide the opinion of only one of the Tax Court judges. 

Every Tax Court opinion is made available to all of the judges of the Tax Court as a report for consideration on the day before the opinion is scheduled to be released to the public. If one or more of the judges objects to the release of a report, it can be rewritten, published as a different type of opinion or designated for review by the entire Tax Court in a court conference. The court conference is attended only by the judges, who sit around a conference table to discuss the cases designated for review. The 19 presidentially appointed judges vote, and the report can be filed as the opinion of
the Tax Court along with any dissenting or concurring opinions. 54

Appeals
A Tax Court decision can be appealed to the U.S. Court of Appeals where the tax-
payer resides or has its principal place of business when the petition is filed. 55 Tax-
payers residing in Georgia would appeal the decision to the U.S. Court of Appeals
for the 11th Circuit. The Court of Appeals will review questions of fact for clear er-
ror, but questions of law will be reviewed de novo. In order to stay collection pend-
ing the outcome of an appeal, the taxpayer must file a bond or other security in an
amount fixed by the Tax Court, but not exceeding double the amount of the defi-
ciency for which the appeal is filed. 56

Appellate court jurisdiction presents another interesting component of the Tax
Court. In circuits with established prec-
cedent on a particular issue to be decided in
Tax Court, the Tax Court will follow the
decision of that U.S. Court of Appeals. 57
This can create a unique situation where a
Tax Court case can be overturned by one
U.S. Court of Appeals on a particular is-
supe, and the IRS can challenge a taxpayer
residing in a different circuit on the same
issue in Tax Court.

Regular cases in the Tribunal are ap-
pealable to the Superior Court of Fulton
County. 58 As previously noted, small
claims cases cannot be appealed. 59 On
review, the superior court is confined
to the record unless there are alleged
irregularities in procedure before the
Tribunal not shown in the record. 60 The
superior court will not substitute its
judgment for that of the Tribunal’s as to
the weight of the evidence on questions
of fact and conducts de novo review of
claimed errors of law. 61

Attorney’s Fees in a Tax Court Case
Civil litigators involved in a tax dispute
often ask about the possibility of attor-
ney’s fees in the event that they win the
case. Attorney’s fees are available in some
Tax Court cases, but there are strict re-
quirements for taxpayers to be eligible
to recover fees. 62 First, the taxpayer
must be the prevailing party. A taxpayer
meets the prevailing party requirement
by substantially prevailing with respect
to the amount in controversy or with
respect to the most significant issue(s)
in the case. 63 Even if the taxpayer over-
comes this hurdle, the IRS can avoid
paying attorney’s fees if it shows that its
position was substantially justified. 64 The
IRS’s position is substantially justified
if it has a reasonable basis in both fact
and law. 65 The taxpayer must also show
that he or she did not unreasonably pro-
tract the proceedings and exhausted all
administrative remedies. 66

The substantial justification standard
is a hotly contested issue in attorney’s fee
cases and is often a difficult position
for a taxpayer to win. There is an alter-
native provision in the statute allowing
a taxpayer to circumvent the substantial justification requirement provided that the taxpayer makes a qualified offer that is rejected by the IRS and wins an amount that is equal to or greater than the qualified offer.67

Last, and perhaps most important in complex tax litigation, the taxpayer must have a net worth that does not exceed $2 million for individuals, $4 million for joint filers and $7 million for more than 500 employees for businesses.68 These obstacles make recovery of attorney’s fees difficult in many Tax Court cases.

For taxpayers prevailing in the Georgia Tax Tribunal, there is not currently any Georgia law analogous to 28 U.S.C. § 2412 or 26 U.S.C. § 7430 that allows for the recovery of attorney’s fees against the Georgia Department of Revenue.69

Conclusion
This article provides a brief overview of some of the nuances of litigating a case before the U.S. Tax Court or the Georgia Tax Tribunal. The two forums provide taxpayers the opportunity to have their case heard by judges thoroughly knowledgeable about a specific, and particularly complex, area of the law. Both forums provide logical rules and procedures to handle large and small tax disputes fairly and efficiently.

Brain Gardner is an attorney at Taylor English Duma LLP and focuses his practice on federal, state and international tax controversy and litigation matters. He represents taxpayers in IRS audits, appeals, refund claims and in U.S. Tax Court. Gardner has advised clients on a variety of tax issues concerning, among other things, defense of conservation easements, passive activity losses, net operating losses, hobby losses, accounting method issues, estate tax issues and trust fund penalty disputes. He also helps individuals and businesses with international tax matters including offshore compliance programs, foreign asset reporting and foreign entity issues.

Endnotes
3. 26 U.S.C. § 7447 (2018). Senior judges are important to helping the Tax Court manage its caseload because they are able to hear cases and author opinions. They are not, however, permitted to vote on cases in conference unless they authored the opinion.
4. 26 U.S.C § 7444(b) (2018).
7. O.C.G.A. § 50-13A-9(a) (2017). The Tribunal also has jurisdiction to review real estate transfer taxes and intangible recording taxes. Id.
10. Id. The Tribunal has jurisdiction over refund petitions filed pursuant to O.C.G.A. § 48-2-35 (2017).
13. Id. (“the parties shall make every effort to conduct discovery by informal consultation or communication before utilizing formal discovery and depositions”); see Tax Ct. R. 70(a) (1) (“[T]he Court expects the parties to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules.”).
18. See Georgia Tax Tribunal FAQs, supra note 8.
21. See Georgia Tax Tribunal FAQs, supra note 8.
22. O.C.G.A. § 50-13A-16(c) (2017). The threshold amount is determined by the rules of the Tribunal. See Georgia Tax Tribunal FAQs, supra note 8.
23. See Georgia Tax Tribunal FAQs, supra note 8.
25. 26 U.S.C. § 6213(a) (2018). Taxpayers may also find themselves in Tax Court after a Collection Due Process hearing. The intricacies of Collection Due Process and the related procedures are outside the scope of this article. Taxpayers residing outside the United States get 150 days to petition the U.S. Tax Court. See id.
27. O.C.G.A. § 48-3-13(a) (2017).
28. Id.; O.C.G.A. § 50-13A-9(a) (2017). Whenever the Georgia Department of Revenue issues a writ of execution for collection of tax, penalty or interest the taxpayer may petition the Georgia Tax Tribunal to obtain a determination of whether the amount is legally due. O.C.G.A. § 48-2-59(b) (2017).
29. O.C.G.A. § 48-2-59(b).
32. Standing Remand Order, supra note 11.
33. Id.
36. TAX CT. R. 91(a)(1).

35. See Branerton Corp. v. Comm'r, 64 T.C. 191 (1975); Internal Revenue Manual pt. 35.4.3.2 (Aug. 11, 2004).


37. Id. R. 122. The parties do not have to wait for a calendar and do not have to appear at trial to submit the case on stipulations. Id.

38. Id. R. 143(g)(2). There are several stringent requirements for expert reports in Tax Court trials, including that the report be prepared and signed by the witness and that it contain (1) a complete statement of all opinions the witness expresses and the basis for them; (2) the facts or data considered by the witness in forming them; (3) any exhibits used to summarize or support them; (4) the witness’s qualifications, including a list of all publications authored in the previous 10 years; (5) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and (6) a statement of the compensation to be paid for the study and testimony in the case. Id. R. 143(g)(1).

39. Id. R. 143(g)(2).

40. Id. R. 132. The Tax Court is permitted to schedule specific court sessions by motion or at its own initiative. Id. Practitioners can request a specific time and date within the already scheduled calendar session or, for larger trials, they can request a special trial session for the judge to travel to Atlanta outside of the scheduled calendar session. Id.

41. See Euzett v. Comm’r, No. H-77-2023, 1978 U.S. Dist. LEXIS 15021, at *6-7 (D. Md. 1978) (“It is well settled that the Seventh Amendment does not require a jury trial in civil tax matters.”) (citing Wickwire v. Reinecke, 275 U.S. 101, 105-06 (1927); Olshausen v. Comm’r, 273 F.2d 23, 27 (9th Cir. 1959)).

42. Tax CT. R. 142(a)(1); Welch v. Helvering, 290 U.S. 111, 115 (1933); see also INDOPCO, Inc. v. Comm’r, 503 U.S. 79, 85 (1992) (“In exploring the relationship between deductions and capital expenditures, this Court has noted the ‘familiar rule’ that ‘an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer.’”) (citing Interstate Transit Lines v. Comm’r, 319 U.S. 590, 593 (1943); Deputy v. Du Pont, 308 U.S. 488, 493 (1940); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934)).

43. Tax CT. R. 91(a), 143(b) & (e).

44. See Diaz v. Comm’r, 58 T.C. 560, 565 (1972) (“In the final analysis, our decision herein rests upon our evaluation of the entire record and the credibility of the witnesses who appeared before us.”).

45. See U.S. Tax Court Taxpayer Information: During Trial, https://www.ustaxcourt.gov/taxpayer_info_during.htm (last visited Feb. 2, 2018) (“Throughout the trial, the Judge may ask questions and request clarification of evidence from both sides.”).

46. Tax CT. R. 151(b).

47. Id. R. 50(f).


49. Id.


52. 26 U.S.C. § 7460 (2018). The Chief Judge reviews all proposed reports (unreleased opinions) before they are officially released by the Tax Court. On review, the Chief Judge can select a proposed report to be considered by all of the presidentially appointed judges at the Court Conference. Id.


54. See Dubroff & Hellwig, supra note 51, at 759-60.


58. O.C.G.A. § 50-13A-17(b) (2017). A party wishing to appeal the final judgment of the Tribunal must file its appeal within 30 days of the Tribunal’s final judgment or within 30 days after the Tribunal’s decision on a rehearing, if requested. Id.

59. Id.

60. O.C.G.A. § 50-13A-17(f).

61. O.C.G.A. § 50-13A-17(g). The superior court may reverse or modify the judgment if substantial rights of the petitioner have been prejudiced because the Tribunal judge’s findings, inferences, conclusions or judgments are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the Tribunal; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.; Inglett & Stubb Int’l, Ltd. v. Riley, 339 Ga. App. 375, 376-77, 791 S.E.2d 642, 644 (2016) (physical precedent only), cert. denied (Ga. May 30, 2017).


67. 26 U.S.C. § 7430(g). There are several technical requirements defining what constitutes a qualified offer and whether the IRS can avoid the rule by conceding the issue on the eve of trial, which are outside the scope of this article.

68. 26 U.S.C. § 7430(c)(4)(ii); 28 U.S.C. § 2412(d)(2)(B) (2018); Treas. Reg. § 301.7430-5(g)(1) (2018). There are additional limitations on the types of costs and amount of fees that can be recovered, which are outside the scope of this article.

Athens Access to Justice Initiative: Judicial Leadership + Bar Support + Local Resources = Powerful Synergy

Through the Athens Access to Justice Initiative, Hon. Regina Quick is providing a helping hand to members of her own community.

BY PROF. ELEANOR C. LANIER

One thing Superior Court Judge Regina Quick is most passionate about is access to legal services for the poor. She knows first-hand how poverty affects children and families. Growing up as the daughter of a coal miner in rural Alabama, Quick saw how education and a helping hand could change a person’s path in life. Through the Athens Access to Justice Initiative, Quick is providing that helping hand to members of her own community.

In 2017, Quick became the first woman appointed as Superior Court judge in the Western Judicial Circuit, which covers Athens. She wasted no time marshalling local resources to fulfill her long-time dream of providing support to those in the community who cannot afford legal help. She convened a steering committee consisting of local bar leadership, the managing attorney of the Athens office of the Georgia Legal Services Program and faculty representatives from the University of Georgia School of Law. The end result was the establishment of the Athens Access to Justice (AATJ) Initiative, a local effort that builds upon efforts of the State Bar Pro Bono Resource Center and the Bar’s Access to Justice Committee, led by Hon. Jill Pryor.
Pop-Up Legal Clinic

In December 2017, the AATJ hosted its first pop-up legal clinic at a public housing community center in Athens. Members of the local bench, including Quick, were on hand to explain the operations of their respective courts. Volunteer lawyers provided free legal advice and limited scope assistance or referrals to those in need on a wide range of topics, including family law, landlord-tenant, expungements, etc. The clinics “pop up” at various locations in the community once a month to make it easy for those who need help to reach the clinic.

The response from the local bar has been overwhelming. Dozens of attorneys have donated their time and resources to this initiative. Word has spread about the clinics within the community and the number of people at each clinic continues to increase.

Debra Finch is one of the volunteer attorneys with AATJ, the current chair of the Western Circuit’s Family Law Section and a founding member of the steering committee.

“At the last clinic we had 25 people from the community seeking help within the first 25 minutes of opening our doors that day. The numbers have continued to grow,” said Finch, an adoption attorney and child advocate in Athens. “People come in with questions, often stressed out about their situation, but after spending one-on-one time with an attorney and discussing their options, their relief is palpable.”

Finch said one man had come to the clinic to help complete his uncontested divorce. He had been to court 11 times for a final divorce hearing, but was turned away each time because he did not have a Child Support Worksheet. After conferring with one of the volunteer attorneys, this individual left the clinic on Saturday with his child support worksheet in hand, and was able to resolve his divorce the following week.

Clinic visitors are welcomed by members of the local bench who explain the role that each of the courts plays in our system. Representatives of the clerk of superior court are available to answer questions about filing fees and procedures. Participants are asked to complete a brief information sheet about their legal problem or issue. They are then directed to a table for a free consultation with an attorney who has expertise in that area of law. There is a portable printer and a notary available for forms completion, and packets of commonly requested forms are available on site, as well. Model Rule 6.5 helps avoid the need for extensive conflict checks and linking with the Georgia Legal Services Program to serve clients who are eligible for their services but cannot be served by their office provides insurance coverage for volunteers who handle cases that the program cannot take.

Volunteers and visitors to the monthly pop-up clinics feel the strong sense of community spirit that underlies this initiative. Breakfast and coffee are available for visitors and volunteers and Due Justice Do 50 mugs, T-shirts, bags and bumper stickers are available to visitors and volunteers alike thanks to the State Bar’s Access to Justice Committee. In addition to the bench and bar, volunteers include law students, paralegals and undergraduate students who have an interest in law. The number of volunteers and clinic visitors has grown with each session.

Self-Represented Litigant Center

The second aspect of the AATJ Initiative is a self-represented litigant center in the Athens-Clarke County Courthouse. The center occupies the space that housed the law library and was recently renovated with the support of the law library board and court administration to be a more inviting community space where self-represented litigants can obtain forms and assistance understanding court procedures. This project has been several years in development.
The cause of justice requires an army of volunteers. Answer the call. Do Pro Bono. Because You Can.

"I am a first generation American of Dominican descent. When my best friend in high school revealed to me that she and her family were undocumented aliens, I realized that I had to go to law school so I could help families like hers. Today, as an attorney with Kids in Need of Defense, I have the privilege of helping children every day in one of the most meaningful ways possible."

— Maria Rodriguez, Immigration Attorney, Kids In Need of Defense (KIND)

*Rule 6.1 Voluntary Pro Bono Public Service: A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. No reporting rules or requirements may be imposed without specific permission of the Supreme Court granted through amendments to these Rules. There is no disciplinary penalty for a violation of this Rule.
Beginning in the summer of 2016, two post-graduate law fellows researched successful self-help office models in Georgia and interviewed judges and clerks to learn more about the most common questions and problems raised by pro se litigants. They then developed forms packets and FAQs to address common problems and after review by local judges, this material was posted on the website.

The effort was expanded by University of Georgia School of Law students under the direction of Clinical Prof. El-lie Lanier, who directs UGA Law’s mediation practicum. The students this semester worked as “court navigators” for credit under the supervision of Lanier and alongside a local volunteer attorney. Visitors to the self-represented litigant center get one-on-one assistance from the center facilitators.

Court facilitators do not provide legal advice or representation but can assist visitors with locating forms and they point them to helpful material and explanations. The center currently is staffed one day each week, and plans are underway to add lunch hour staffing by local pro bono attorneys. There is a conference space in the self-help office that can be used for clinics and guided instruction in common problems, and explanatory material and videos are being added continuously to the center and website by law students who work in the center under the supervision of law school staff and volunteer attorneys. Data from the center including the nature of the problem and source of the referral will help inform future efforts. Visitors who need more help than the center can provide are referred to local attorneys with expertise in the area of law needed and who have agreed to accept cases from the AATJ Initiative.

Consolidated Pro Se Docket
The third component of the initiative is a consolidated pro se docket, developed and managed by Quick. This docket includes a listing of all cases where one or both parties are unrepresented and contains cases that have stalled, typically for procedural reasons. Law student navigators under Quick’s guidance identify the procedural barrier presented by each file and contact the unrepresented party to notify them of the status and missing documents in the file. They are then invited to attend the next pop-up clinic or visit the self-represented litigant center. Navigators report back to the court about the status of these efforts.

While more remains to be done, under Quick’s leadership and with support of the bench and local bar, self-represented litigants have increased access to justice and service from the court, law students have an opportunity to work alongside and learn from local attorneys to help those in need and our local office of the Georgia Legal Services Program has partners in service to help expand their reach and impact in the community. For more information on the Athens Access to Justice Initiative, please contact Hon. Regina Quick at regina.quick@accgov.com; Debbie Finch at debbie@debrafinch.com, or Prof. Ellie Lanier at eclanier@uga.edu.

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Endnote
Much to the surprise of capitol gadflies and perhaps many of the legislators themselves, the 2018 session of the Georgia General Assembly was a very productive one. With a big election year in 2018, many had expectations that the Legislature would spend time on a few headline grabbing, partisan bills that would motivate voters in November. While the majority passed a bill to decrease the state income tax by 0.5 percent to great fanfare, the General Assembly also took up legislation on distracted driving, adoption and regional transit. Not to mention the State Bar passed five bills in its legislative package by the final gavel on day 40.

The state’s diverse revenue sources and steadfast focus on economic growth have placed Georgia on strong fiscal footing at a time when a number of other states have faced budget cuts. The Legislature approved $26 billion in state spending for FY19, which includes the State Bar funding requests for grants to civil legal services providers for victims of domestic violence and continued funding of the Georgia Appellate Resource Center. Most notably, the FY19 budget fully funds the state’s Quality Basic Education Formula for the first time in more than 10 years, pumping $9.9 billion into K-12 schools.

In addition to the State Bar’s legislative package, the legislative team was busy tracking a variety of issues that affect lawyers in Georgia. Be on the lookout for these recent updates in the code, along with a number of others that span across practice areas.

Mandatory Civil E-filing
Luddites take note—pursuant to SB 407, Georgia state and superior courts will require pleadings and related documents in civil cases to be electronically filed as of Jan. 1, 2019. The issue of mandatory e-filing lay dormant until Day 38 of the 40-day session, when language was inserted into SB 407, the 2018 criminal justice reform bill. Given its hasty attachment, there was little time to perfect the provisions of the e-filing amendment, leaving some unanswered questions by those who will be mandated to e-file on Jan. 1.

Here’s what we do know—attorneys and support staff will have two options to file: (1) remotely through an e-filing vendor used by that court, or (2) in person at the courthouse via an electronic kiosk. SB 407 allows litigants filing at the courthouse kiosk to file for free. For those who chose to file remotely, e-filing vendors can charge no more than $30 per filer, per party for the first 10 filings. A vendor may charge a “supplemental fee” of $5 per filing after that.

The civil e-filing mandate does not apply in connection with a pauper’s affidavit, any validation of bonds as otherwise provided for by law, pleadings or documents filed under seal or presented to a court in camera or ex parte, or pleadings or documents to which access is otherwise restricted by law or court order. SB 407 delegates rulemaking authority to the Judicial Council of Georgia.

Fiduciary Law
For those attorneys who dabble in trusts and estates, make note of the trust code updates in HB 121 that will take effect July 1. The bill extends the Rule Against Perpetuities to a 360-year permissible vesting pe-
period for a nonvested property interest, like a trust, created after June 30, 2018. The bill also provides five methods for modifying an irrevocable trust, among other things. HB 121 was sponsored by Rep. Chuck Efstration (R-Dacula) and was part of the State Bar’s legislative package.

For those of you who are familiar with the 2017 revamp of Georgia’s power of attorney laws, HB 897 provides cleanup language to iron out a few wrinkles in the new statute. The bill clarifies the exceptions to the act, specifies how a power of attorney must “substantially reflect” the statutory form, and amends the section addressing an agent’s specific and general authority, among other things. HB 897 was also sponsored by Rep. Chuck Efstration (R-Dacula) and was part of the State Bar’s legislative package.

As of July 1, Georgia law will allow a fiduciary to manage digital property like computer files, virtual currency and digital photos like they would tangible property. Under SB 301, the Uniform Access to Digital Assets Act, internet users have the power to plan for the management and disposition of digital communication that is stored by a custodian, like Facebook or Google, subject to the custodian’s terms of service. SB 301 was sponsored by Sen. John Kennedy (R-Macon) and was part of the State Bar’s legislative package.

Family and Juvenile Law
A number of bills that affect children and families saw final passage and have been signed by the governor. Those bills include HB 190 (codifying that antenuptial agreements must be in writing, signed by both parties and attested by at least two witnesses, at least one of which must be a notary); SB 131 (amending the juvenile code so that an appeal of an order terminating parental rights stays a pending adoption proceeding related to that child until the termination appeal is finalized); HB 834 (allowing a tenant to terminate a lease when a civil or criminal family violence order has been issued protecting the tenant or his or her minor child); HB 159 (a rewrite of Georgia’s adoption code); and SB 427 (corrects the statute on multiple child support worksheets to make it permissive rather than mandatory).

Criminal Justice Reform
Gov. Deal’s final criminal justice reform bill, SB 407, was signed into law on May 7. The new legislation requires a judge to consider a criminal defendant’s financial resources and obligations when setting bail for an individual charged with a misdemeanor offense. The bill also gives courts discretion to allow defendants to satisfy the payment of probation fees with community service and creates a statewide data exchange between law enforcement agencies.

Garnishment
The Legislature passed SB 194 this session to cleanup a few provisions arising out of the 2016 update to the garnishment statute. The new law amends the proper calculation of the minimum wage to $217.50 and fixes a loophole in O.C.G.A. § 18-4-19 (c) and (d) that may allow a defendant to stand in the shoes of his or her creditor.

Real Property
The Legislature passed HB 661 early in the session to repeal language requiring
a seller of real property to obtain a certificate of clearance from the Georgia Department of Revenue indicating that there are no active liens on his or her property at the time of sale.

Litigation and the Courts
The Legislature passed two bills, HB 790 and HR 993, that address the issues studied in Attorney General Chris Carr’s November 2017 Court Reform Report. HB 790 makes changes to the Administrative Procedure Act by providing administrative law judges with the authority to issue final decisions, impose civil sanctions and enforce subpoenas. Lawyers should also keep an eye out for HR 993, the constitutional amendment that will create a statewide business court and will appear on the November 2018 ballot in Georgia.

In the wake of the Supreme Court of Georgia’s recent decision in Mayor & Alderman of Garden City v. Harris, the Legislature also passed HB 904, which will revise the Recreational Property Act so that the exception in 51-3-25(b) applies to any individual who lawfully enters a property on a date when the landowner charges for recreational use and the individual is injured in connection with the recreational use for which the charge was made.

Vetos, Retirements, Odds and Ends
Gov. Deal was not afraid to use his veto power this year, issuing 21 vetoes in May. Among them were three bills the Bar watched throughout the session: HB 410 (capping fees a condo association can charge for an accounting statement of outstanding dues and payments), HB 441 (creating self-settled asset protection trusts in Georgia) and SB 315 (criminalizing intentional access to a computer network without the authority).

A handful of noteworthy bills did not make it across the finish line but will likely re-emerge during next year’s session. Legislators have struggled to compromise on the parameters of sovereign immunity legislation and were unable to agree on language before the conclusion of day 40. Likewise, HB 605, the Hidden Predator Act, did not make it to the governor’s desk due to differences between the House and Senate on the language of the bill.

With the two-year legislative cycle coming to a close, 2018 will mark the retirement of three attorneys who have truly made their mark on our justice system in Georgia: Gov. Nathan Deal, House Judiciary Chairman Wendell Willard (R-Sandy Springs) and House Judiciary Non-Civil Chairman Rich Golick (R-Smyrna). Each of them has worked selflessly over many years to improve the utility of our statutes. Collectively, they are responsible for some of the most significant updates to Georgia law in decades, including the 2011 rewrite of the evidence code, criminal justice reform, 2013 revisions to the juvenile code and the 2016 garnishment bill, among others. Their service to the profession and to the state has been invaluable and the Bar is grateful for their contributions.

Our 2018 successes are attributable to leadership of the State Bar sections, who are the brain trust of the Bar during the legislative session. The objective input by members of the Family Law Section, Real Property Law Section and the Fiduciary Law Section proved once again to be invaluable to the lawmaking process in Georgia.

Finally, I would like to thank the other members of the State Bar’s legislative team—Rusty Sewell, Mark Middleton and Roy Robinson—who’s sage advice and zealous advocacy are indispensable to the State Bar during the legislative session. The Advisory Committee on Legislation will meet to discuss the State Bar’s 2019 legislative package in September and December 2018. We look forward to working with you during the 2018-19 Bar year.

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The Editorial Board of the Georgia Bar Journal is in regular need of scholarly legal articles to print in the Journal.

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We hear the words diversity and inclusion often and in industries across the board, but we don’t always see the work behind the words. The State Bar of Georgia Diversity Program’s (GDP) commitment to diversity and inclusion means, in part, that we recognize our member firms who are not only talking the talk, but most importantly, walking the walk. In this issue, GDP recognizes Constangy, Brooks, Smith & Prophete, LLP.

As the leader of Constangy, what does diversity and inclusion mean to you?
Diversity and inclusion means hiring and retaining individuals who come from different backgrounds. This is achieved by creating an environment where employees can be themselves, and where people are respected and appreciated for what makes them different as much as for the things that they have in common. Diversity and inclusion requires a work environment that values individuals with different ideas and perspectives, borne from their different backgrounds, which in turn, has a positive impact on business.

How has Constangy created a diverse and inclusive environment?
Unlike most firms, Constangy has adopted a top down approach to diversity by adding diverse partners and then bringing in associates, instead of adding entry-level lawyers who are minorities or female and hoping they’ll rise to the top. We encourage a collaborative work environment that addresses business challenges through an understanding that differences in people can be a source for new ideas and creative solutions that might otherwise be missed.

What value does a diverse and inclusive environment bring to your organization?
It adds value to client relations by allowing us to bring broad perspectives...
and creativity to help employers meet the challenges of today’s workplaces. A diverse environment has also made us more of a destination in terms of attracting new, talented attorneys.

What’s your business case for promoting a diverse and inclusive environment within your firm?
Studies have shown that diversity and inclusion within the workforce leads to greater employee performance, stimulated creativity, increases in business and reduces the chances of lengthy and costly litigation. Diverse and inclusive work environments promote more ideas, more innovation and better problem solving. Diversity attracts clients, as well as attracts, cultivates and retains top talent. It is commonplace for clients to inquire about firms’ diversity efforts through requests for proposals.

A diverse executive team sends a message to employees about advancement within the organization. How would you describe Constangy’s executive team?
Women and minorities make up more than 50 percent of the firm’s executive committee as well as its current attorney roster. Women and minorities make up more than 40 percent of firm partners. Women and minorities make up 80 percent of firm associates poised for growth.
“Diversity” isn’t a new word for Constangy. The firm has a tradition of being at the forefront of diversity efforts. Constangy was one of the first firms in the country to have a female attorney in labor law in the 1940s. Also before joining the firm in the 1960s, Jim Smith served on the American Bar Association’s inaugural committee advising the early efforts of the EEOC—helping them lead the way in fostering diversity in the modern workplace. In 2015, Don Prophete was the first African-American name partner among the largest 350 law firms in the United States.

How has Constangy expressed its commitment to diversity and inclusion?
We’re a smaller firm by design, and careful in our hiring practices to focus on attracting the best and brightest talent at all levels. We aggressively recruit talented women and diverse attorneys. We strive to see that the younger attorneys coming up through the firm receive mentorship and guidance—giving them the tools they need to succeed.

Have you encountered any obstacles or barriers that have impeded the creation and sustainability of a diverse and inclusive environment? If so, what are/were the obstacles or barriers and how will/did the firm overcome them?
Despite increased awareness for diversity in all industries across our country, there is room for much more progress in the legal profession to ensure that it is a welcoming environment for all lawyers regardless of their gender, race, ethnicity, age, national origin, sexual orientation, religion or disability status.

When the firm added Prophete’s name on the door, it signaled to the marketplace that we’re a different kind of firm. Diversity should not be a “checked box” initiative; instead, it should be woven into the fabric of each firm. We were the pioneer law firm out of the National Law Journal 350 firms to take bold steps to re-envision the model for diversity in law firms. Constangy didn’t stop there, as the firm continues to make strides to hire and retain the best talent, both diverse and non-diverse.

How does Constangy hold itself accountable to meet its diversity goals?
Because of our commitment to assemble the best diverse and non-diverse talent, as of today, more than half of our attorneys are women and minorities. This was not accomplished through a single “initiative” or individual, but instead through a commitment by our firm’s partnership. This is only the beginning for our firm—we will continue to identify and retain the best employment lawyers.

“Diverse and inclusive work environments promote more ideas, more innovation and better problem solving. Diversity attracts clients, as well as attracts, cultivates and retains top talent.”

—Neil H. Wasser

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Trudy’s Last Ride

The Editorial Board of the Georgia Bar Journal is proud to present “Trudy’s Last Ride,” by Jameson L. Gregg of Dahlonega, as the winner of the Journal’s 27th Annual Fiction Writing Competition.

BY JAMESON L. GREGG

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

“Mac—come quick,” Trudy Mullinax, my secretary, shouted from the lobby of my law office. I had just straightened my tartan bowtie and was preparing to slip into my black judge’s robe to officiate a wedding.

I bolted towards the hullabaloo to discover the bride and the groom’s mother wrestling on the floor. Trudy and the men were trying to pry them apart. I jumped into the scrum to break up the skirmish when a flying karate chop sent my toupee sailing across the room.

We broke up the melee and sequestered the combatants to separate rooms as they...
hissed at one another over their shoulders. “Mac,” Trudy whispered to me, “go work on your hair and let me see what I can do.” A natural-born mediator, she engaged in shuttle diplomacy during the respite while I re-fastened my rug. (Which, by the way, is waterproof and can be financed and insured.) The disheveled parties finally agreed to proceed. The women scowled at one another through drooling mascara as I conducted the fastest ceremony ever.

MacTavish is the name. Judge W. T. MacTavish. But most folks call me Mac. That episode illustrates the resourcefulness of Trudy Mullinax, the best dern legal secretary in all of Georgia. She juggled balls like a Cirque du Soleil act for my solo law practice; making quantum physics look like child’s play.

One of Trudy’s ambitions was to depart this Earthly Kingdom in a most outrageous fashion, and friends, allow me to share how she did just that.

We’re up here in “God’s country” in these north Georgia mountains. Sequoyah County’s population is barely 20,000. We are not an affluent bunch and folks up here don’t take much starch in their collars, if you know what I mean.

My Jacobite Scottish ancestors settled here in the early 1800s to escape English tyranny during the Highland Clearances. Many of our clan still reside in these hills. I cling to my Scottish heritage, but I’m southern to the bone.

I have never seriously entertained practicing elsewhere. After law school, Atlanta beckoned like a shiny ornament, but I was steadfastly intent on building a small-town, solo practice. Maybe I inherited a certain stubborn individualism from my “half-wild” Scottish ancestors. I have evolved in at least one sense—for ages, our clan rebuked the yoke of law, and now, as an officer of the court, I am duty bound to enforce it.

Deep family connections and minimal competition paved the way for bountiful business prospects, so why go elsewhere?

That was 20 years ago. Looking back, I learned less from cases won than from those lost, and there were a few of the latter in the beginning. Experienced lawyers were besting me on procedures and technicalities, but alas, this being a noble profession, a couple of older squires closed ranks around me and, for the price of lunch, I drew most favorably on their sage counsel.

On a typical day, with Trudy’s heretofore proficient organization, I may close a real estate deal in the morning, meet with a divorce client over lunch, argue a criminal hearing that afternoon and coach our daughter’s softball team that evening.

Some may deem me a Podunk country lawyer, but I prefer “Renaissance Man.” Of course, when a client’s needs fall outside my wheelhouse, I readily make referral down the highway to an expert.

The wide variety of work suits me just fine. I could not practice like a former law school colleague who scans the vast Atlanta skyline from his big firm, skyscraper perch. He is the authority on not one section of the Internal Revenue Code, but on one sub-section.

He’ll make in a year what I’ll make in five, but I make plenty. I haven’t missed many meals, if you get my drift. Though I never longed for accumulated wealth or conspicuous consumption, I do own One of Trudy’s ambitions was to depart this Earthly Kingdom in a most outrageous fashion, and friends, allow me to share how she did just that.
a vast fortune—a wee bit in coin and the balance in experience and a pocketful of stories for the ages.

When I passed the bar exam and prepared to hang my shingle, fortune rained gold when Trudy’s boss retired the same year. She’d been his legal secretary for 10 years and already knew a heap. I guess that’s about the best thing a rookie can do—team up with a well-informed secretary.

Ever the Swiss Army knife, Trudy worked her magic behind the scenes, drafting documents, telephoning and emailing, serving as tech support, bookkeeper and maestro to all the moving parts of a Swiss watch. I’m here to tell you, friends, her draft pleadings, wills and deeds were masterpieces.

Trudy’s curiosity about the law inspired her to curl up on my leather sofa at lunchtime with a hamburger and fries and read my law school hornbooks. She never married, but did enjoy one real passion—a benevolent calling to comfort and aid fellow souls who walked through our front door. Bankruptcy, divorce or criminal prosecution is hard on a person. She was always on call and quick with a hug and “bless your heart” with that twinkle in her eye and cherubic smile.

Our family considered Trudy to be one of us and it gives me no pleasure to report that toward the end, her *sine qua non* became feats of the knife and fork. Evermore Belk Hudson fashionable, the wider her beam spread, the more she favored the easy-fit muumuu dress.

She loved to plaster her work area and the office kitchen with clever sayings discovered on the internet. Her favorite, framed and displayed on the wall above her computer:

> Life is not a journey to the grave with the intention of arriving safely in a pretty and well-preserved body, but rather to skid in broadside, thoroughly used up, totally worn out, screaming, “Woo Hoo, What a Ride!”

As Sequoyah County magistrate judge, if you litigate a small claim or certain minor criminal offenses, you’ll appear before me at the county courthouse, room 201. We hold court at 10 a.m. the first and third Wednesday of each month. Come see me; we serve donuts and coffee.

The courthouse is a popular venue for weddings, but I’ll officiate in my office, in people’s homes, at City Park by the river, you name it. Anywhere except high altitudes.

I hold the county record for conducting the most weddings in one day—seven last Valentine’s Day. A honky-tonk watering hole served as the venue for an unforgettable one. When I arrived, the bride-to-be was horsing around at the bar and drinking PBRs in cowgirl boots and her wedding dress.

The zenith—and nadir—of my matrimonial calling occurred a few years ago in a hot air balloon floating 500 feet above town square. I forgot my hat and feared the balloon’s jet burners would singe my toupee. (Waterproof—yes. Fireproof—no.) As we ascended, a gust of wind nearly sent my topper sailing. Our pilot came to my rescue by lending me his cap.

My acrophobic butterflies never ceased, so the whole affair was a white knuckler. Scared out of my wits, I hardly recall much more, except that the champagne served upon landing never tasted so good.

Trudy’s favorite nuptials occurred in my office. She stored special accessories to ensure that the bride wore something old, new, borrowed and blue. You’d be surprised by how many youngsters these days don’t know their folklore.

She’d sneak out and tie tin can-laden strings onto couples’ auto bumpers. Afterward, we’d all toast with Trudy’s signature pink lemonade.
Couples usually seek me out because they are a bit short on cash, may not want a large affair or prefer a secular service. I do not charge to officiate weddings, but I'm allowed to accept a gratuity. When I did, I would always deposit it into the special coffee can for Trudy's beloved Bahama cruises.

Weddings are momentous events in people's lives, so I usually add some degree of pomp and savoir-faire to the ceremony. I've donned a tuxedo at the country club, full-blown camo at a deer camp, and even chaps and my Stetson on horseback. Officiating weddings requires different calculus than bagpiping for funerals, and I've performed hundreds of each.

My father bequeathed to me his Great Highland bagpipe, revered amongst pipers with its double chanter reed, two tenor drones and one bass drone. Papa was a firefighter and a top-notch piper in a Scottish pipe band out of Atlanta. They played in parades and all sorts of big events and I loved to tag along.

He also piped at funerals for family and friends. When he grew too weak to play, I honored the family tradition. Unlike Papa, I accepted requests to pipe at anyone's funeral, including perfect strangers.

Piping at funerals is one way in which I give back. Because it is not a "legal service," I know it technically doesn't qualify for pro bono publico in the eyes of the Bar, but I surely believe it enhances our image. I'll troop all over these mountain roads, swerving on switch-backs and dodging deer to pipe at a funeral. Many around these parts know me as the "Bagpiping Barrister."

Oh, I do my fair share of legal pro bono work. Many clients are stone-cold broke and living on the razor's edge. I often charge nothing, or accept a sack of corn and turnips or such. I've never turned anyone away with a legitimate need because they couldn't pay full fare.

One time I accepted two live chickens as my fee. Word got out that I'd exchange legal work for fowl. We had a burgeoning backyard coop until my wife put her foot down. Now, when it comes time to settle an invoice, my office policy is "no live animals."

It's not unusual for me to officiate a wedding and pipe a funeral in the same day. Therein is irony writ large, Alpha and Omega, a beginning and ending in the blink of an eye.

I've never charged for piping, and stopped accepting gratuities a few years ago. (Business really picked up when word got out that I wouldn't even take a tip.) I've since scaled it back due to time constraints and the call for more pro bono privatus.

Stretched too thin and running hither and yon from pillar to post can result in calamity. For instance, I once committed to pipe at a mountain funeral on a Thursday afternoon, though I was due first thing that morning at the Sloppy Floyd Building in Atlanta to present a prisoner's clemency claim. Should have been plenty of time to make the funeral.

I had forgotten that a bridge was out in Atlanta. That day I came to believe that the orange construction barrel is the Georgia state flower. Once I cleared the city, I raced to the church but arrived an hour late. Everyone had departed except the diggers.

Better late than never, I thought. I rushed to the fresh mound of dirt and belted out Amazing Grace, "putting my soul into it," as Papa instructed. The diggers and a few stragglers gathered and bowed their heads out of respect.

As I started for my car, one of the diggers walked over.

"Mister," he said, "I ain't never seen anything like that and I've been puttin' in septic tanks for 30 years."

I shared that experience with a funny-man lawyer buddy and he got a real charge out of it. He embellished it, emailed it and next thing I knew, the incident went viral.

That's okay. If I can serve as fodder for some good-spirited humor, so be it.
We're in a bad predicament if we can't laugh, especially at ourselves. As a fraternity, I believe lawyers like to laugh more than any other because of the nature of our profession. We are bestowed special insight into the absurdity of our human condition, that great chasm between the ideal and the real. We witness it every day.

Laughter is also a great stress buster.

Trudy died suddenly and tragically while on lunch break. Poor thing choked on a chili dog down at Joe's Weenie Wagon. Some brave soul attempted the Heimlich maneuver to no avail.

After three days of immeasurable grief and sorrow commiserating with Trudy's family at their house and again last night at the funeral home, it was time to blow the pipes for Trudy's journey to her final resting place.

I donned my red-and-blue Clan MacTavish tartan kilt that I inherited from Papa, and a full array of accessories—jacket speckled with clan badges and pins, sporran, Highland hose and the rest and best—all the sartorial splendor I could muster for our beloved Trudy.

Little Hope Baptist Church stood several miles outside of town on a ribbon of two-lane rolling mountain blacktop. A January storm hit the day before, leaving pregnant, low-hanging gray clouds. Barren hardwoods and evergreen pines sparkled in their blankets of ice and snow like a Christmas card in motion.

There it stood nestled on a snow-covered hillside, the red brick church with its white steeple and window frames—your country Baptist standard issue. The concrete slab parking lot was jammed and my purple-suited friends from Sequoyah Funeral Home directed new arrivals toward the adjacent field.

“Holy mackerel,” I said to my wife, “there are people galore. I didn’t know she was this popular.” Women straightened their hats and men adjusted their coats as they shuffled across the parking lot-cum-skating rink.

Since I was piping, they waved us through and I parked by the side of the church next to the preacher’s car. Ice crunched under my brogues when I stepped onto the frozen earth.
Organ music blared inside the sanctuary. My second cousin, John “Baloney” Stoney, funeral director and certified mortician, winked and rushed over.

We dubbed him “Baloney” back in high school for his prodigious and nimble imagination. It’s good that only a handful of us know him as Baloney, because it just wouldn’t sound professional if the nom de plume of the person sitting across the desk selling you a funeral package was “Baloney.” I should note that he is honest to a fault. His southern roots run just as deep as mine and he loves to credit Jimmy Carter as being the only U.S. president without an accent.

Baloney hugged my wife, then pulled me close as we shook hands. “Mac, I’m a-tellin’ you, your legs is gonna freeze wearing that dress.”

“Nonsense, laddie. You know that from where our people hail, this would be a fine day for a picnic.”

We were all ushered toward the queue in front to view Trudy and to pay our last respects. Inching forward, I could see Trudy’s nose above the ridge of the extra-wide coffin. The woman in front of us mumbled, “Don’t she look natural.”

When I caught full sight of Trudy, though a sobering moment indeed—cheerful remembrances flooded my mind. Just a few days earlier, she had gushed about plans for her upcoming Bahama cruise. “Maybe I’ll meet Mr. Right this time.”

Trudy’s favorite perfume greeted me, long, black eyelashes, ruby-red lipstick and that baked-on tanning booth sheen.

Multiple fragrances competed for airtime as the woman beside us whispered, “Don’t she look purty in that blue dress.”

“Tellin’ you, your legs is gonna freeze wearing that dress.”

When I caught full sight of Trudy, though a sobering moment indeed—cheerful remembrances flooded my mind. Just a few days earlier, she had gushed about plans for her upcoming Bahama cruise. “Maybe I’ll meet Mr. Right this time.”

Trudy’s favorite perfume greeted me, that all-too-familiar Bahamian Breeze. They dressed her in a festive blue dress and a pink scarf. Her dark hair fanned and arced around her face. Her trademarks were on full display—long, black eyelashes, ruby-red lipstick and that baked-on tanning booth sheen.

Multiple fragrances competed for airtime as the woman beside us whispered, “Don’t she look purty in that blue dress.”

After everyone settled in the pews, robed singers shuffled into the choir box. One lone seat remained vacant—that of soprano Trudy.

Preacher Joseph delivered a tearjerker of an eulogy, then raised the roof with a fiery sermon as a warning to the living to right the ship. Intermittently, Music Director Elrod led the choir in beautifully rendered classic hymns, some melancholy, some as uplifting as Elrod’slavishly puffy hair.

After the service, eight pallbearers lifted, strained and struggled down the center aisle toward the black hearse in waiting. I hustled out into driving snow to my car to assemble my pipes. I was to slowly walk just in front of the hearse while mourners followed on foot.

I assumed the position and Baloney gave me the nod. I fired up the pipes and launched into Amazing Grace as we reverently began our ascent up the rise to Trudy’s final home.

Patches of black ice slicked the shaded driveway and the foot ting turned treacherous as I carefully inched along. Naturally, I couldn’t see the procession behind me, so I glanced back and found myself several paces ahead of the hearse. Baloney gave me the “slit throat” sign and my bag complained as I silenced the drones and reeds.

Hearse tires spun and squalled as the smell of burning rubber wafted. Pallbearers gathered to rock and push from behind to no avail. They eased Trudy and her casket from the hearse. Everyone leapt aside as the hearse slid backwards down to the parking lot.

Pallbearers grunted and hoisted. I primed the pipes and we all recommended our trek up the hill with the casket-toters tight on my heels.

By and by, commotion caught my eye and I turned to spot a pallbearer on the ground. Another pinwheeled his free arm and dropped like a rock. The remainder flailed and skidded as Trudy and her casket popped loose from their grip.

“Look out,” I hollered. In the blink of an eye, Trudy slid down the hill, picking up bobsled speed, knocking people over like bowling pins, bodies flying ass over tea kettle.

She jumped the ditch, ricocheted off a telephone pole, and skidded broadside into a pickup truck with a metal-crunching thunk. The truck rocked on its shocks but the casket held true.

Trudy’s family screeched and chaos ensued. I laid down my pipes and helped mourners to their feet.

In due time, everybody calmed down, regrouped and assessed injuries. Some...
Among the numerous awards you’ve received is being named as one of the 100 Most Influential Atlantans by the Atlanta Business Chronicle. Very few lawyers have been named to this list, and among those who have are Billy Payne, Sam Nunn and Griffin Bell. How does it feel to be included in such select company?

I grew up in St. Louis, Mo., which at the time was a very different economic environment for people of color. In particular, you didn’t see a lot of lawyers, doctors and other diverse individuals in the professional business community. When I came to Atlanta, I found a vibrant, diverse business community with tremendous opportunity for me to become an active participant. I feel really good about what I have done as a volunteer and a leader in Atlanta because there’s an affirmation that I’m having a direct impact on our community, beyond just my firm and the legal industry.

Who are your personal and professional role models?

My parents were important role models in my life, both growing up as a kid and continuing today. My father taught me the importance of humility and candor. Even when our family struggled with finances and paying bills, my father would tell people what he was going to do, and every time people would accept it because he honored his commitment. My deceased brother was also an important role model because he made me realize that I can achieve all things with faith and effort. Professionally, I have had role models such as Gary Snyder and David Minkin, two people who gave me the opportunity to join their firm when I left Alston & Bird.

You’ve said before that you sometimes struggle to maintain a balance among your family, your work and your community involvement, so how have you been able to find time for all of these things? What advice would you give others who are experiencing the same struggle for work-life balance?

I’m reminded of a good friend of mine who is now general counsel at one of our clients. At the time he was up for partner, he decided that he didn’t want to do it. He came in one day and said, “Ernest, I don’t want to be like you.” The advice I would give is don’t do what I do. It’s like the scales of justice. On one hand you have the work, and you have to do it. You typically let that scale go further down and the other scale goes up. I stopped struggling with it. I just accept that they are of equal importance, and I just go at it from that perspective. I have a wife and kids who understand my efforts and are very supportive.

Why is community involvement so important to you?

When I was growing up and you went to a store alone, you knew not to act up or steal because you didn’t know who in town knew your parents. If you stepped out of line, somehow before you got home your parents had already received a call. I think we’ve lost that tight-knit perspective in our communities. Too many people see it as somebody else’s problem. I am a big believer in the importance of bringing back that sense of community because it’s important to every aspect of our lives from the education of our children to the health care services in our community. For example, if the community hadn’t gotten behind Grady Hospital, it would have failed. And if the community hadn’t got behind the Atlanta History Center, then it would not be doing all the
wonderful things that it’s doing. These things don’t happen because of individuals alone. They all happen by galvanizing community support, and that’s why community is so important to me.

*How do you motivate and inspire people to be best they can be?*

Everyone wants to have some kind of vision for success and a roadmap for where their lives are going. When I meet people, I try to articulate to them what opportunities I see for their future growth, and that’s typically a very positive message. I try to own, in some respect, people’s tomorrow. For example, if you were here working as a law clerk and you’re doing a good job, I may tell you what a great job you’re doing and try to help you move up the ladder to be a junior paralegal and then a paralegal. If you want to go to law school, we’ll do our best to help you. For every individual that I spend time with, my focus is on forming a relationship and a personal business plan that helps them to achieve their full potential.

*In a 2013 interview by The Harvard Crimson, your undergraduate alumni magazine, you said that Atlanta was one of the best cities in the country for African-American economic progress, but you also noted that Atlanta fell short in terms of the number of African-Americans in high-level positions with the city’s Fortune 500 companies and law firms. How would you grade Atlanta’s progress during the last five years?*

I don’t think there’s been much progress, and the numbers will bear it out. I’m talking about at the C-suite level, not middle management.

*Why do you think there hasn’t been any better progress?*

I think everybody wants to see that progress. I think people typically see it not at their doorstep. What I try to do is sensitize people to the issue. If you think you have the best and most diverse environment, then that’s fine. If you don’t and you’re here, then maybe you’ll do something about it. But there are different factors that impact decisions at different companies. A lot of times, decisions are made internally to promote people. If you started off with a non-diverse workforce 20 years ago and people are typically promoted up through the workforce, then even if you started adding diverse people 10 years ago at lower levels, then they may not have yet advanced to the top management levels. I think we need to look at each situation individually, but I do think this is something we all have to focus on.

*Is there anything about law firms as opposed to other types of businesses that make them different in how this plays out?*

No. I think all the data shows that law firms are doing a pretty poor job at diversity, particularly when it comes to people of color. There is some improvement as

“Everyone wants to have some kind of vision for success and a roadmap for where their lives are going. When I meet people, I try to articulate to them what opportunities I see for their future growth, and that’s typically a very positive message. I try to own, in some respect, people’s tomorrow.”

—Ernest Greer
it relates to women, but I don’t think that improvement is enough when you take into account that more than 50 percent of law school students are women.

From your vantage point as a leader of a law firm, what are law firms doing well and not well?

One thing law firms are doing well is focusing on improving the model for the delivery of services. Historically, law firms didn’t care as much about how much time it took to do something, but the economy and the clients have made us be more programmatic in regard to how we deliver legal services. Law firms are doing better at listening to their clients. There used to be a time when law firms would say, “this is what we’re going to give you,” as opposed to the client necessarily getting what it wanted. Part of the reason that’s happening is that more partners at law firms are going in-house. The in-house market used to be a lot of young lawyers, but now we have an unbelievable skillset in corporations like never before, and it’s really peer to peer in a way that I don’t think it’s ever been. What law firms are not doing well is that they are not truly analyzing the value they can bring to certain clients. Law firms seem to believe that because they have such a wide-range of practice areas, that all those practice areas can work for their clients. I don’t agree with that. I think certain clients need certain services, and not all law firms are placing enough focus on the value that they can bring to clients.

How is your firm addressing that issue?

We are a law firm that can handle your most complex matters, but we also have a platform to handle your rate-sensitive matters. That’s why we bring value to our clients. You don’t have to go to a different firm because you have a rate-sensitive matter. We will work with you to figure it out because we know it’s best for your business to keep the consistency of law firms. We’re not like other law firms who say just give us your complex matters and send all that other stuff away. What makes us unique is that we offer a large, sophisticated platform with a wide-range of practice areas, but we tell our clients that we’re here for both the most complex matters and the rate-sensitive matters. We’re trying to create the entire value proposition.

A couple of your colleagues wrote an article that appeared in the April 23, 2018, issue of the Daily Report about law firms investing in associates. What are your thoughts about that?

Our today and our future are our associates. A lot of law firms forget that associates are adults with the same obligations that every partner has. My fundamental belief is that they have an opportunity to represent us well. We encourage them to join boards, and we try to support those organizations as much as we can. We encourage them to take clients or prospective clients out for drinks or meals. This is their firm. As long as they are here, we believe it is critically important to treat them as we would want to treat any other key employee.

What lessons did you learn while playing varsity football at Harvard that you apply to your professional life now?

I was hurt in the next to last game of my sophomore year. My ability was more God-gifted, and then it came to a crashing end because I had put no effort into working out. I’ve come to learn from this experience that when you have God-gifted skills, you can’t take them lightly. You have to continue to hone them, to work with them and to make them stronger. It’s not enough to take it for granted that you can just roll out of bed and get something done. I’m very introspective, so I think about what I’ve done, what I can do better, what I should do better and how I can do better.
The State Bar of Georgia and its Young Lawyers Division are excited to host the 2019 National High School Mock Trial Championship! Athens, “The Classic City,” is a beautiful southern college town and will be a perfect setting for crowning the 2019 National Champion.

Volunteer

> With about 46 teams coming in from all over the country, we will need a lot of help to make the 2019 Nationals a success.
> We need lawyers, legal professionals and community members to serve in a variety of roles, including 368 spots on judging panels.

Donate

> Our fundraising goal is $200,000.
> Sponsorship opportunities are available at varying financial levels.
> Donations are tax-deductible if made through the State Bar of Georgia Foundation.
Kudos

FordHarrison LLP announced that Patrick L. Ryan was selected as a member of the Leadership Council on Legal Diversity’s (LCLD) 2018 class of fellows. LCLD’s landmark fellows program works by identifying high-potential attorneys from diverse backgrounds and setting them on the path to leadership of their organizations.

Emory University announced that alumnus John L. Latham, partner, Alston & Bird, was elected to the Board of Trustees. The Board of Trustees governs the university by establishing policy and exercising fiduciary responsibility for the long-term well-being of the institution.

Rockdale County Chief Magistrate Judge Phinia Aten received the Jean Williams Community Service Award from the Rockdale Chapter of the NAACP at the 30th Annual Freedom Fund Banquet. Aten was selected to receive the award due to her substantial efforts to engage, educate and empower children and young adults as well as improve judicial outcomes in the Rockdale Judicial Circuit.


The Center for Access to Justice in Atlanta was a recipient of an American Bar Endowment Opportunity Grant. The American Bar Endowment is a tax-exempt charitable organization that was established in 1942 for purposes including, particularly, “to advance legal study and research and to promote the administration of justice and uniformity of judicial decision throughout the United States.” The goal of the opportunity grants program is to assist eligible grantees in the development or enhancement of innovative programs and projects that address issues of immediate and critical interest to the public and members of the legal profession.

Taylor English Duma LLP announced that it has partnered with The Military Family Support Center of Georgia (MFSC) to create opportunities that support active and retired military members and their families. MFSC is a nonprofit organization dedicated to supporting military members, active and retired, and their families by providing access to a multitude of services, including a commissary, in order to address the diverse living needs of these families. Its mission is to permanently ensure that the commissary store and related services that it helped bring back to North Georgia remain available for active and retired service members and their families, even when government services are no longer available.

Steven Ginsburg of Litchfield Cavo LLP was a participant on the panel “Successors in Interest: Ready, Set, Implement!” at the Mortgage Bankers Association’s National Mortgage Servicing Conference and Expo in February. The panel helped present solutions to the challenges of operationalizing the new requirements, policies, procedures and documents needed to identify potential successors in interest, the documents needed to confirm a person’s identity and ownership interest in the property, how to determine and communicate confirmation decisions in a timely manner and how bankruptcies affect these requirements.

Swift, Currie, McGhee & Hiers LLP announced that partner Michael Rosetti was elected to The College of Workers’ Compensation Lawyers (CWCL) by the organization’s board of governors. CWCL was established to honor those attorneys who have distinguished themselves in their practice in the field of workers’ compensation. Members have been nominated for the outstanding traits they have developed in their practice of 20 years or longer, representing plaintiffs, defendants, serving as judges or acting for the benefit of all in education, overseeing agencies and developing legislation.

DLA Piper announced that partner Kevin Gooch was named to Leadership Atlanta’s 2019 class. It is the mission of Leadership Atlanta to build a better community for everyone in the Atlanta region through education about the key issues facing the region and inspiring members and others to take on and exercise real leadership committed to serving the common good. Leadership Atlanta is the oldest continuously running training program of its type in the country.
On the Move
IN ATLANTA

Rick Baker and Simon Jenner announced the formation of Baker Jenner LLLLP, a boutique business litigation and transactions firm. Baker’s practice includes business transactions and litigation. Jenner’s practice includes business and commercial litigation, trademarking and false advertising, intellectual property, and food and drug law. The firm is located at RiverEdge One, 5500 Interstate North Parkway, Suite 460, Atlanta, GA 30328; 404-400-5955; www.bakerjenner.com.

Kilpatrick Townsend & Stockton LLP announced the addition of Virginia Ring as a senior attorney and Brittany Nash as an associate. Ring focuses her practice on e-discovery, including data mapping, data preservation strategies, early case assessment, conducting custodian interviews, data collections and managing complex document reviews. Nash focuses her practice on complex commercial litigation. The Atlanta office is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.

Barnes & Thornburg LLP announced the addition of David A. Kelly as a partner in the intellectual property department. Kelly represents clients on a variety of intellectual property matters in the life sciences and technology industries, including medical device, pharmaceutical and molecular diagnostic as well as synthetic biology and biotech companies. Kelly’s experience includes managing IP due diligence, international patent prosecution dockets and acting as trial, appellate and inter partes review counsel in front of the U.S. Patent and Trademark Office and federal district courts. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-264-4031; Fax 404-264-4033; www.btlaw.com.

Polsinelli PC announced that David Gordon joined as an attorney in the bankruptcy and financial restructuring practice group. Gordon focuses his practice on the distressed health care industry and will support the firm’s nationwide work representing REITs, hospitals, lenders, health care systems, skilled nursing and assisted living facilities. He routinely represents private equity and lenders in all areas of creditors’ rights litigation, and his transactional experience includes representing purchasers in 363 sales and representing various parties in problem loan workouts, bridge loans and other financings, forbearance agreements and other distressed transactions. The firm is located at 1201 W. Peachtree St. NW, Suite 1100, Atlanta, GA 30309; 404-253-6000; www.polsinelli.com.

Swift, Currie, McGhee & Hiers LLP announced that William T. Casey Jr., Richie Foster and Erica Morton joined the firm as partners. Casey’s practice focuses on insurance defense litigation. Foster focuses his practice on motor carrier liability, commercial insurance coverage and general commercial insurance defense. Morton focuses her practice in the areas of premises liability, automobile liability, product liability, construction law and insurance coverage disputes. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; www.swiftcurrie.com.

L. Lin Wood, P.C., announced that Jonathan D. Grunberg and G. Taylor Wilson were promoted to partners. Grunberg focuses his practice on complex civil litigation in federal court. Wilson focuses on complex civil litigation in both federal and state court. His principal areas of representation include business and commercial litigation in both contract and tort, false claims act cases and actions for defamation and related first amendment issues. The firm is located at 1180 W. Peachtree St., Suite 2400, Atlanta, GA 30309; 404-891-1402; Fax 404-506-9111; www.linwoodlaw.com.

DLA Piper announced that Jeremy Corcoran was promoted to partner. Corcoran’s experience includes advising private equity and venture capital funds and their portfolio companies in a variety of complex transactions, including leveraged buyouts, mergers and acquisitions, minority and control investments, recapitalizations, growth equity financings, strategic partnerships and joint ventures, restructurings and dispositions. The firm is located at One Atlantic Center, 1201 W. Peachtree St., Suite 2800, Atlanta, GA 30309; 404-736-7800; Fax 404-682-7800; www.dlapiper.com.

Hedgepeth, Heredia & Rieder LLC announced that Katie Ehrlich joined the firm as an associate. Her practice focuses on family law. The firm is located at 3330 Cumberland Blvd., Suite 450, Atlanta, GA 30339; 404-846-7025; Fax 404-846-7027; www.hhrfamilylaw.com.
Squire Patton Boggs announced the opening of an Atlanta office and the addition of Wayne Bradley, Petrina Hall McDaniel and Ann-Marie McGaughy as partners. Bradley advises domestic and global, public and private companies in a variety of strategic transactions including mergers, acquisitions, divestitures and joint ventures. His practice spans the additional areas of corporate finance, distress and commercial contracts. Hall McDaniel's practice blends complex litigation, regulatory compliance and privacy counseling. McGaughy represents both publicly and privately held companies, including family businesses, in a wide array of industries, including technology, retail, manufacturing, automotive, energy, travel, health and beauty, financial services and other service-oriented industries. The firm is located at 1372 Peachtree St. NW, Atlanta, GA 30309; www.squirepattonboggs.com.

BakerHostetler announced that Jason D’Cruz, Brian Harris and Mark Zisholtz joined as partners and Ashley Guffey and Tali Hershkovitz joined as associates in the employment and labor group. D’Cruz represents public and private companies, management teams and senior executives in executive compensation matters. Harris focuses on advising public and private companies, as well as executives and management teams, on matters relating to corporate mergers and acquisitions, executive compensation, restrictive covenants and human resources. Zisholtz advises executive and management teams, provides key support to the private equity and corporate transaction teams as a subject matter expert, counsels clients on day-to-day employment law matters, negotiates a wide variety of business and commercial contracts, provides outsourced general counsel and litigation management services and also has experience in contingent labor and alternative workforce arrangements. Guffey concentrates her practice on executive compensation and restrictive covenants, including representing public and private companies on drafting incentive arrangements and separation agreements, as well as negotiating disputes involving employment contracts, employment discrimination issues and more. Hershkovitz focuses her practice on employment law, where she works with public and private companies and senior executives to negotiate and draft a wide range of agreements, including executive employment, separation, change-in-control, and retention and bonus agreements. The firm is located at 1170 Peachtree St., Suite 2400, Atlanta, GA 30309; 404-459-0050; Fax 404-459-5734; www.bakerlaw.com.

Lewis Brisbois Bisgaard & Smith LLP announced that Christopher Meeks and V. Ashley Spires were named partners. Meeks, a member of the insurance coverage and bad faith litigation practices, has experience claim counseling and litigating in a wide variety of insurance coverage areas, including general liability, pollution, construction defect, first party property and employment. Spires, a member of the toxic tort and environmental litigation practice, has experience defending complex toxic tort claims involving asbestos, diacetyl and other industrial exposures to toxic substances. The firm is located at 1180 Peachtree St. NE, Suite 2900, Atlanta, GA 30309; 404-348-8585; Fax 404-467-8845; www.lewisbrisbois.com.

Bey & Associates, LLC, announced that Kevin A. James joined the firm as a litigation attorney. His areas of practice include trucking accidents, motorcycle accidents, wrongful death cases, nursing home abuse cases and medical malpractice cases. The firm is located at 191 Peachtree St. NE, #3230, Atlanta, GA 30303; 404-344-4448; www.beyandassociates.com.

Hunton & Williams LLP and Andrews Kurth Kenyon LLP announced that they have combined to become Hunton Andrews Kurth LLP. The firm also announced the addition of Daniel J. Grucza as counsel. Grucza's clients turn to him for advice on matters related to process safety management, occupational safety and environmental issues in petroleum, chemical and industrial manufacturing and mining. The firm is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.

James-Bates-Brannan-Groover-LLP announced the addition of attorney Lyn Gunter Schroeder to the firm’s financial institutions practice group. Schroeder’s practice focuses on advising financial institutions and their boards regarding strategic corporate transactions, federal and state security law matters, and regulatory compliance. The firm is located at 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; www.jamesbatesllp.com.

Morris, Manning & Martin, LLP, announced the addition of Mark A. Block as a partner and the appointment of Anthony C. Roehl as co-chair of the insurance and reinsurance practice. Block’s practice focuses in the real estate development and finance and real estate capital markets. Roehl’s experience includes assisting insurance companies and insurance
agencies with mergers and acquisitions as well as corporate consolidations. He also advises insurance companies, private equity investors, entrepreneurs, insurtech companies and alternative risk transfer vehicles regarding all aspects of company formation, licensing and regulatory compliance, holding company act filings and transactions and managing the approval of form and rate filings. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326, 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

Drew Eckl & Farnham announced the addition of James F. Cook and Linda Yu as of counsel and Belle-Anne Bowen, Patrick Leed and Rafaela Wilson as associates. Cook has more than three decades of trial experience with general liability cases, truck wrecks, car wrecks, construction defects, construction injuries, products liability, fist fights, dog bites, premises liability cases including shootings, rapes and murders, professional liability and a myriad of other areas. Yu focuses her practice on civil litigation, with an emphasis on general liability defense. Bowen’s practice focuses on civil litigation including general casualty, premise liability and insurance coverage. Leed focuses his practice on workers’ compensation. Wilson focuses her practice on workers’ compensation defense, representing employers and insurance carriers. The firm is located at 1600 Peachtree St. NE, Suite 500, Atlanta, GA 30361; 404-885-1400; Fax 404-876-0992; www.deflaw.com.

Adams and Reese LLP announced the addition of Roy E. Hadley Jr. as special counsel to its transactions team. Hadley’s practice includes counseling clients on complex corporate transactions, including those involving technology, information management, life sciences, e-commerce, economic development, telecommunications, outsourcing and intellectual property. The firm is located at 3424 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 470-427-3700; Fax 404-500-5975; www.adamsandreese.com.

Dentons US LLP announced the promotion of Amanda Leech to partner and the addition of Samuel S. Olens as counsel. Leech focuses her practice on general corporate counseling of both privately held and public companies. Olens’ practice focuses on state attorneys general and local government affairs matters. He is a registered arbitrator, general civil mediator and early neutral evaluator with the Georgia Office of Dispute Resolution and offers guidance to clients on federal and state business and regulatory issues, investigations and litigation. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.dentons.com.

Taylor English Duma LLP announced the addition of Alison Ballard, Stephanie Ford Capezzuto, Thomas V. Chorey and Tamika R. Nordstrom as partners. Ballard focuses on representing corporations, executives and individuals across a diverse range of industries in all types of commercial disputes and litigation, including contractual disputes and business tort claims such as fraud, negligence, breach of fiduciary duties and professional liability. Capezzuto’s practice focuses on litigating personal injury claims, including premises liability, automobile liability and prosecution claims. Chorey serves as outside general counsel to multiple southeastern and Atlanta-based middle market businesses, addressing legal and strategic planning issues throughout their life cycles. Nordstrom brings 20 years of experience working with corporate clients on a wide range of employment litigation and arbitration matters. The firm is located at 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.

Eversheds Sutherland (US) LLP announced the addition of Shawn Rafferty as a partner. Rafferty’s practice spans a broad range of general finance issues and operational matters involving the aviation, rail, shipping, energy and logistics sectors, including corporate restructurings, project development, securities offerings, and mergers and acquisitions. He also regularly assists clients in disputes arising out of aviation, transportation and equipment finance transactions, including litigation and arbitration. The firm is located at 999 Peachtree St. NE, Suite 2300, Atlanta, GA 30309; 404-853-8000; Fax 404-853-8806; www.us.eversheds-sutherland.com.

Trusted Counsel (Ashley), LLC, announced that Thomas Wardell joined the firm as senior counsel. His focus includes adding his transactional expertise as well as providing clients with unparalleled knowledge in public securities and corporate operations and governance. His corporate counseling background includes corporate finance and securities, mergers and acquisitions, and corporate reorganizations and restructurings. The firm is located at 1201 Peachtree St. NE, Suite 500, Atlanta, GA 30361; 404-898-2900; www.trusted-counsel.com.
Hall Booth Smith, P.C., announced that Terrance C. "Terry" Sullivan rejoined the firm as of counsel. He focuses his practice on medical malpractice litigation. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.

Miller & Martin PLLC announced that Jeff Cunningham joined as a member and Christine H. Lee joined as a litigation associate. Cunningham serves as a vice-chair of the firm’s corporate department, while focusing his practice on serving as outside corporate counsel to mid-sized businesses and concentrating a portion of his practice in the firm’s significant practice areas of mergers and acquisitions, venture capital and corporate finance. Lee’s practice focuses on representing companies in business and commercial litigation, business torts and trademark disputes, as well as general litigation. The firm is located at Regions Plaza, Suite 2100, 1180 W. Peachtree St. NW, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; www.millermartin.com.

Smith, Gambrell & Russell, LLP, announced the addition of Ansly P. Moyer and Gregory K. Smith as counsel and Christopher J. Raymond as an associate. Moyer joined the firm’s bond and public finance practice and represents financial institutions, lenders, state and local governmental entities, and borrowers in leveraged finance, public finance and other secured and unsecured lending transactions, with a focus on municipal finance transactions, including tax-exempt and taxable financings with a wide range of structures for the benefit of not-for-profit organizations, governmental entities and public and private companies and on economic incentive transactions. Smith joined the firm’s construction practice and focuses on all areas of construction law, government procurement and contract law. Raymond joined the global transport practice group and focuses on commercial and corporate aviation, including contract preparation and negotiation and FAA regulatory advice and compliance. The firm is located at Promenade, Suite 3100, 1230 Peachtree St. NE, Atlanta, GA 30309; 404-815-3500; www.sgrlaw.com.

FordHarrison LLP announced the addition of Destiny S. Washington as a senior associate. Washington focuses her practice on the representation and counsel of management in employment law and labor relations disputes. She has an extensive background representing clients in both state and federal courts and before administrative agencies, as well as advising clients in all manner of employment law disputes, including claims of discrimination, harassment, retaliation, and wage and hour violations. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.

FisherBroyles LLP announced that Keats Quinalty joined the firm as a partner. Quinalty has more than 20 years of experience working with patents, including all aspects of patent application preparation and prosecution, client counseling regarding IP protections and strategies, and drafting opinions. The firm is located at 1200 Abernathy Road, Building 600, Northpark Town Center, Suite 1700, Atlanta, GA 30328; 866-211-5914; www.fisherbroyles.com.

Smith Moore Leatherwood LLP announced that Michael S. Rosenthal and R. Scott Tobin joined as partners and A. Binford “Bin” Minter joined as an associate. Rosenthal’s practice focuses on the representation of franchise, professional and service industry clients, providing day-to-day business counseling and advice, in addition to litigation services when necessary. Tobin focuses a large portion of his business practice on managing risk and capitalizing on growth opportunities for privately held technology companies and their investors. His litigation work is concentrated largely upon disputes involving business sales and acquisitions and among private company investors and lenders, directors and management. Minter represents small businesses and their owners in a broad range of matters, such as governance, private investment, contract drafting, trademarks and trade secrets, litigation and collection. The office is located at 1180 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.

IN ATHENS
Hall Booth Smith, P.C., announced that Christian G. Henry joined the firm as of counsel. Henry specializes in government liability, government contracting, general liability, construction, business litigation, insurance coverage and a variety of appellate matters. The firm is located at 440 College Ave. N, Suite 120, Athens, GA 30601; 706-316-0231; Fax 706-316-0111; www.hallboothsmith.com.

IN AUGUSTA
Crowder Stewart LLP announced that C. Troy Clark joined the firm as a partner. Clark focuses his practice in the areas of federal criminal law and complex civil litigation, including appeals. The firm is located at 540 James Brown
Nicholson Revell LLP announced that A. Dixon Revell joined the firm as an associate. Revell’s practice focuses on personal injury, wrongful death, medical malpractice, class action and property rights litigation. The firm is located at 4137 Columbia Road, Augusta, GA 30907; 706-722-8784; Fax 706-722-6495; www.nicholsonrevell.com.

IN DALTON

Nemirow Perez P.C. announced that Christopher P. Brown was elected shareholder. Brown’s practice focuses in the areas of professional malpractice defense, employment law, insurance coverage and bad faith, and HOA law. He also serves small businesses as a virtual general counsel. The firm is located at 2201 Executive Park Drive, Dalton, GA 30720; 706-537-4601; www.nemirowperez.com.

IN GAINESVILLE

Weymon H. Forrester and James E. Brim III, founding partners of Forrester & Brim, announced their merger with Huff Powell Bailey, LLC. Forrester, Brim and Elizabeth F. Latta will continue their civil trial practice, including the defense of health care professionals. The firm is located at 459 E.E. Butler Parkway, Gainesville, GA 30501; 678-897-4100; Fax 404-892-4033; www.huffpowellbailey.com.

IN MILLEDGEVILLE

The Cansino Law Firm, LLC, announced that former Ocmulgee Judicial Circuit District Attorney Fredric D. Bright joined the firm as of counsel. Bright’s practice focuses on all types of criminal defense, personal injury and other civil litigation. The firm is located at 150 W. Washington St., Milledgeville, GA; 478-451-3060; Fax 478-451-3073; www.cansinolaw.com.

IN SAVANNAH

HunterMaclean announced that Richard A. Fisher joined the firm as special counsel for the corporate law, mergers and acquisitions, and business transactions groups. Fisher’s more than 40 years of experience includes serving as counsel for multiple companies. The firm is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

IN WASHINGTON, D.C.

Dentsons US LLP announced that Benjamin Keane was promoted to partner. Keane is a member of the political law, ethics and disclosure team, and focuses his practice on the representation of elected officials, political candidates, PACs, political parties, corporations, nonprofit organizations and other entities with respect to federal, state and local election law, political contributions, lobbying and ethics matters. The firm is located at 1900 K St. NW, Washington, DC 20006; 202-496-7500; Fax 202-496-7756; www.dentons.com.

IN JACKSONVILLE, FLA.

Smith, Gambrell & Russell, LLP, announced that Jonathon Pressley joined the firm as a partner. Pressley focuses his practice on litigation and intellectual property and represents clients in civil litigation matters in state and federal courts, focusing on complex business disputes. The firm is located at 50 N. Laura St., Suite 2600, Jacksonville, FL 32202; 904-598-6100; Fax 904-598-6300; www.sgrlaw.com.

IN CHARLESTON, S.C.

Graybill, Lansche & Vinzani, LLC, announced that Brett D. Budlong was elected a member of the firm. His practice focuses primarily on commercial real estate development and financing transactions, advising developers, investors, lenders, buyers and sellers with regard to financing, leasing, land use and development, planned unit developments, construction, real estate title insurance and all aspects of structuring commercial loan, CMBS and business transactions. The firm is located at 225 Seven Farms Drive, Suite 207, Charleston, SC 29492; 843-628-7732; www.glvlawfirm.com.

IN GREENVILLE, S.C.

Nelson Mullins Riley & Scarborough LLP announced that Daniel S. Sanders Jr. joined as a partner. His focus will be in both the corporate and litigation areas of the firm. The office is located at 104 S. Main St., Suite 900, Greenville, SC 29601; 864-373-2300; Fax 864-373-2925; www.nelsonmullins.com.

IN DALLAS, TEXAS

Provasi Capital Partners LP announced that Kamal Jafarnia joined the firm as managing director, legal and business development. Jafarnia is a veteran compliance professional and capable financial services executive with more than 25 years of experience advising public and private companies in complex securities offerings, regulatory issues, mergers and acquisitions, and corporate governance matters. The office is located at 14675 Dallas Parkway, Suite 600, Dallas, TX 75254; 866-655-3600; Fax 469-341-2401; www.provasicapital.com.
Your second-year associate drives you crazy—she spends more time begging other lawyers for forms to use as a “go-by” than it would take to draft a document from scratch. This time, however, she spotted a mistake in a form contract that the firm has been using for years. . . .

You congratulate her on catching the error. “Good eye, Gina! I don’t know how many times I’ve used this contract without noticing that we cited the wrong statute.”

“Thank goodness I double-checked the cite,” Gina says. “According to Joe, we used that form four or five times last year alone. So—are you going to let those clients know the contract needs to be corrected?” Gina asks.

“I hadn’t even gotten that far,” you muse. “Do we have to?”

Must a lawyer notify a client of the lawyer’s own mistake?

It depends . . . .

The American Bar Association’s Standing Committee on Ethics recently issued Formal Opinion 481 addressing that question.

The opinion speaks in terms of “material error” in a representation. It requires a lawyer to tell a current client about a mistake if an independent lawyer would conclude it was reasonably likely to harm or prejudice a client, or if it is the type of error that might reasonably cause a client to consider terminating the representation even where there has been no harm or prejudice.

The duty to inform the client comes from Rule 1.4, which requires a lawyer to inform the client of significant developments regarding a representation, even if the information is harmful to the lawyer. Not to inform the client creates an impermissible conflict of interest.

Interestingly, the opinion finds no ethical obligation to inform a former client of errors committed during the representation, even if the mistake was material. Here, since the representation has ended there is no ethics violation if you decide not to notify past clients that their contract includes the wrong citation.

Even though it is not required by the ethics rules, a lawyer could (and sometimes should) decide to inform a former client of a mistake in order to avoid malpractice liability or harm to the former client.

Paula Frederick
General Counsel
State Bar of Georgia
paulaf@gabar.org
Disbarments
Gregory Reece Barton
P.O. Box 2077
Douglasville, GA 30133

On April 16, 2018, the Supreme Court of Georgia disbarred attorney Gregory Reece Barton (State Bar No. 040717) in two underlying cases. The facts were admitted by virtue of the default.

In Supreme Court Docket No. S18Y0601, Barton was appointed in November 2015 to represent a defendant on charges of theft by taking, but he failed to communicate with the client or to take any action on the client’s behalf. After both the client and the client’s grandmother contacted the judge overseeing the client’s case to complain about Barton’s failure to communicate or take action on the case, the court scheduled a hearing to address the matter. Barton contacted the judge’s assistant to say that he would be unable to attend because he was ill, but was told that his appearance would nonetheless be required. Barton failed to appear and was removed from the client’s case.

In Supreme Court Docket No. S18Y0602, Barton represented a different criminal defendant, but he failed to appear at two separate calendar calls and did not notify either his client or the court that he would be absent. Barton did later appear at a status hearing ordered by the court and resolved the client’s case with the prosecutor. In both matters, Barton admits that he is unable to remember the events in question because of his abuse of alcohol. Barton violated Rules 1.3, 1.4, and 3.2 of the Georgia Rules of Professional Conduct. The special master also noted that Rule 4-104 provides that “want of a sound mind” and “habitual intoxication” may constitute grounds for removing an attorney from the practice of law.

In mitigation, the special master noted Barton lacked prior disciplinary history. In aggravation, the special master noted Barton’s failure to respond to the disciplinary proceedings; the special master further noted that Barton’s failure to respond to the disciplinary proceedings deprived the special master of any additional evidence in mitigation of discipline.

Ronald John Doeve
1473 Bristolwood Court
Lilburn, GA 30047

On May 7, 2018, the Supreme Court of Georgia disbarred attorney Ronald John Doeve (State Bar No. 224735) for financial misconduct and misrepresentations.
made in the Bar disciplinary proceedings, in three underlying cases: State Disciplinary Board (SDB) Docket Numbers 6851, 6853 and 6854. All three matters are related to Doeve’s representation of Vivify Holdings Inc. and Jason Herring, a Vivify corporate officer.

In SBD No. 6851, Doeve agreed to act as escrow agent for a $100,000 investment that an investor wished to make in Vivify. Doeve agreed not to disburse the funds without the investor’s approval. However, he disbursed the funds to Vivify the same day the funds were wired to his trust account. Doeve failed to communicate with the investor to confirm receipt of the funds or disbursement of the funds and failed to respond to the investor’s inquiries and to provide an accounting.

In SBD No. 6853, Doeve agreed to represent a former client in obtaining funds owed by Herring. He also agreed to assist the former client’s husband, the husband’s company and the former client’s lawyer in obtaining funds owed by Herring. Doeve and Herring falsely represented to these individuals that Herring had $2,000,000 in available funds and that he had deposited $460,000 into Doeve’s Chase Private Client account, which was not a trust account; Doeve wrote checks totaling $460,000 to the former client and others from the Chase account, but those checks were returned for insufficient funds. Doeve failed to provide an accounting and provided misleading information about the cause of the non-payment and when they could expect to be paid. Doeve also provided misleading information regarding this matter in the Bar disciplinary proceedings.

In SBD No. 6854, Doeve agreed to assist Herring in paying legal fees to a lawyer who had represented Herring’s girlfriend. An intermediary was needed because the lawyer would not accept Herring’s check since he had previously provided the lawyer with an insufficient funds check. Doeve misled the lawyer about whether he had received funds from Herring, and although Doeve later agreed to pay the lawyer $15,000, he wrote the lawyer an insufficient-funds check from an account that was not a trust account. Doeve continued to mislead the lawyer about the cause for the returned check and when he could expect to be paid.

The special master found that by these actions, Doeve violated Rules 1.15 (I) and (II), 1.15 III (b) (2) and 8.4 (a) (4) of the Georgia Rules of Professional Conduct.

In aggravation, Doeve acted with a selfish or dishonest motive; he showed indifference to making restitution; he made false statements in the disciplinary process; he had substantial experience in the practice of law; and that the facts in the three matters showed a pattern of misconduct.

Suspensions
Christopher Aaron Corley
118 Sugarhill Drive
Graniteville, SC 29829

On March 5, 2018, the Supreme Court of Georgia accepted a petition for voluntary discipline filed by Christopher Aaron Corley (State Bar No. 940383), and imposed a two-year suspension with conditions.

Corely admitted he violated Rule 8.4 (a) (2) of the Georgia Rules of Professional Conduct, after entering a plea of guilty in August 2017 to Domestic Violence First Degree, in violation of South Carolina Code § 16- 25-20 (A) (2015), related to an incident of domestic violence against his wife. Corley was sentenced to six years, with the balance suspended on probation for five years.

In mitigation, Corley has a documented history of mental health issues, which contributed in part to his out-of-character behavior resulting in the criminal plea. He adds that his recognition and treatment of his mental health issues are mitigating factors. Corey sought help

For the most up-to-date information on lawyer discipline, visit www.gabar.org/forthepublic/recent-discipline.cfm
through the State Bar and was ultimately diagnosed as having Bipolar II disorder, resulting in a new daily prescription. He asserts that the doctor he sought treatment from through the State Bar informed him that the medication he was previously prescribed exacerbated the symptoms of his Bipolar II disorder and that, while certainly not an excuse for his conduct, his inability to have his mental health condition properly diagnosed and medicated was a contributing factor to his criminal conduct.

Additionally, Corley asserted in mitigation that he is still married to and living with his wife, the victim of his domestic violence, who has forgiven him; they have known each other all of their lives, attending school and church together since a young age; his wife is a 38-year-old, stay-at-home mother of their three children; his oldest child is on the Autism Spectrum, with a form of Asperger’s Syndrome, and both parents spend a substantial amount of time taking care of him; and his wife and children rely solely upon him to make a living and provide for their family. Corley further asserted in mitigation that prior to this incident, he had an unmarred public and professional reputation, including no prior disciplinary or criminal history, and that he served his community as a state legislator from 2014-17 in the South Carolina House of Representatives. He asserts that, although convicted of a felony with a potential sentence of incarceration for many years, he received a probated sentence; this isolated incident caused no harm to any of his clients; he has made every effort to complete the terms and conditions of his probation, including paying all fines imposed, completing all community service and currently being in the process of completing anger management courses; and that based upon his compliance credits, he has been informed that he may have his probation terminated as early as Aug. 16, 2020.

Before reinstatement, Corley must demonstrate that he has completed his probation, that a board-certified and licensed mental health professional has certified that he is fit to return to the practice of law, and that he is continuing to receive mental health treatment by a board-certified and licensed mental health professional. When Corley believes that the conditions of his reinstatement have been met, he may submit a petition for reinstatement to the State Disciplinary Review Board.

Andre Keith Sanders
6702 Gulf Blvd.
St. Petersburg, FL 33706

On March 5, 2018, the Supreme Court of Georgia issued an order imposing a five-year suspension with conditions for reinstatement against attorney Andre Keith Sanders (State Bar No. 625241), as reciprocal discipline following the imposition of a “Disciplinary Revocation of Admission” to practice in Florida. Sanders was the subject of numerous disciplinary matters in Florida, principally but not exclusively related to fraudulent debt collection practices. In response, Sanders filed a Petition for Disciplinary Revocation with Leave to Apply for Readmission, pursuant to Rule 3-7.12 of the rules regulating admission to practice in Florida. Sanders’ petition, imposing the disciplin ary matter evidenced a pattern of deception intended to avoid culpability for his conduct, and further noted that several provisions of the Georgia Rules seem to point to the importance of a finding or admission of misconduct to the resolution of the disciplinary matter—namely Rules 4-227 (a), 9.4 (b) (5) and 9.4 (b) (3). The Review Panel concluded, however, that Florida’s disciplinary revocation procedure was otherwise “essentially identical to a petition for voluntary discipline in Georgia requesting either disbarment or a lengthy suspension with readmission based on compliance with rules regulating admission to the Bar.” Based on these considerations, the Review Panel concluded that the disciplinary revocation procedure was sufficient to warrant the imposition of reciprocal discipline and recommended as sufficiently similar reciprocal discipline a five-year suspension, with reinstatement in Georgia conditioned on proof of compliance with the Florida Rules relating to admission to the Bar and reinstatement to practice in Florida.

John Benneth Iwu
845 Bell Road, Suite 120
Antioch, TN 37013

In the second appearance of this matter, the Supreme Court of Georgia on April 16, 2018, issued an order suspending attorney John Benneth Iwu (143125) from the practice of law for three years. Iwu had earlier petitioned the Court to receive a public reprimand for his admitted violation of Rule 5.5 (a) of the Georgia Rules of Professional Conduct for having filed an answer and counterclaim on behalf of a client while ineligible to practice law because of the non-payment of his State Bar membership fee. The Court rejected Iwu’s petition because he failed to admit to a violation of either Rule 8.1 (a) or 8.4 (a) (4), because his statements regarding the disciplinary matter evidenced a pattern of deception intended to avoid culpability for his conduct, and because the disciplinary standards referenced by the Bar and the special master in connection...
with Iwu’s petition addressed negligent rather than intentional conduct. He admitted then that statements he made in response to the formal complaint—to the effect that he was unaware of his suspension because someone else had received the notice and not transmitted it to him and that he believed that he was eligible to practice law despite his non-payment of dues—were incorrect.

In mitigation, the special master noted that Iwu had no prior disciplinary history in Georgia and had no disciplinary history in Tennessee, except for a public reprimand imposed by that state for the same misconduct that is the subject of the Rule 5.5 (a) violation in this matter, and that he has been under suspension in Georgia since July 1, 2014.

In aggravation, the special master noted that Iwu’s conduct involved multiple, independent offenses; that he submitted false statements during the disciplinary proceedings; that he has refused to acknowledge, and has consistently sought to diminish the wrongful nature of his conduct; and that he possesses substantial experience in the practice of law. The special master explained that, had the matter remained merely the underlying Rule 5.5 (a) violation, he would have been (and was previously) inclined to conclude that a much less serious sanction of a public reprimand would have been appropriate, but that, given Iwu’s intentionally false and misleading statements and that he possessed substantial experience in the practice of law. Morgan unconditionally admits that in 2010, his client left an estate to his heirs that included 366 acres of undivided timberland. In 2012, he was appointed executor of the client’s estate and was responsible for managing the sale of harvested timber, collecting rent from a tenant-farmer and paying the property taxes. Morgan admits that on May 24, 2017, a hearing was convened in the probate court to settle the estate’s accounts; that prior to the hearing, Morgan filed with the probate court bank statements, timber sales information and a check in the amount of $77,027.21 payable to the estate from his trust account; that during the hearing, he admitted he had withdrawn funds from the estate checking account and deposited those funds into his trust account for personal use; and that the $77,027.21 check was provided to the probate court as full repayment of the stolen estate funds before anyone was aware of his misconduct. Accordingly, the probate court entered a judgment, as the executor, breached his fiduciary duties in transferring estate funds into an account under his control for his personal use. Morgan further states that, in 2010, his wife of 30 years, for whom he provided long-term care due to a terminal illness, passed away; that he suffered from anxiety and depression and often had suicidal thoughts as a result of his loss but never sought treatment; and that in response to his loss he developed an intimate relationship with and in 2011 married a family friend and began spending excessively.

In mitigation, Morgan offers that he has no prior disciplinary record; that with the loss of his wife, he experienced personal and emotional problems during the time of his misconduct; that before the hearing, he made a good faith effort to make restitution by providing the probate court a full repayment of the estate funds; that he was cooperative with the disciplinary process by providing a complete accounting of the estate checking account to the State Bar; and that he has expressed remorse.

Morgan’s reinstatement conditions are: continue attending weekly Alcoholics Anonymous meetings; attend the State Bar’s Law Practice Management courses; and submit a petition for reinstatement to the Review Panel showing compliance with these conditions for reinstatement.

Reinstatement Granted

Robert Bruce Richbourg
1814 Murray Ave.
Tifton, GA 31794

On April 13, 2018, the Supreme Court of Georgia determined that attorney Robert Bruce Richbourg (State Bar No. 604415) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law.

LaXavier Reddick-Hood
P.O. Box 451035
Atlanta, GA 31145

On April 18, 2018, the Supreme Court of Georgia determined that attorney LaXavier Reddick-Hood (State Bar No. 597285) had complied with all of the conditions for reinstatement following her suspension, and reinstated her to the practice of law.

Jessica Oglesby
Clerk, State Disciplinary Board
State Bar of Georgia
jessicoa@gabar.org
Visit www.gabar.org for the most up-to-date information on committees, members, courts and rules.
Legal Tech Tips

By Natalie R. Kelly and Mike Monahan

1. UberConference
   www.uberconference.com
   This free Android app makes it easy to start and schedule conference calls on the go. Create instant calls with a click and schedule calls by simply selecting contacts and choosing a meeting time. No need for the organizer to remember a PIN and conference recordings are free. Know who’s on the call and who’s talking. See LinkedIn, Facebook and Google+ profiles for everyone on the call.

2. Qustodio
   www.qustodio.com/en
   Qustodio is a parental control software that makes it easy to manage your child’s mobile activity, especially with its well-designed companion app. Its best features are its browser-independent web content filters and ability to set device usage time limits. The software includes location tracking, call and SMS logging, and mobile application blocking. Parents will also appreciate the instant device-locking and panic button options. Works on Windows, Mac OS X, Android, iOS, Kindle and Nook.

3. Duolingo
   www.duolingo.com
   Duolingo gamifies language learning with bite-sized lessons and a friendly interface. Starting with simple vocabulary and building from there, Duolingo is your guide to learning a new language or brushing up on one you already know. The more you use the app, the more you unlock and—with practice—the more you learn. This free iOS and Android app currently supports Danish, Dutch, French, German, Irish, Italian, Portuguese, Spanish and Swedish.

4. Microsoft Office Lens
   Microsoft Office Lens lets you turn physical documents into digital ones using your phone. This free Android or iOS app can even capture doodles and notes from a whiteboard. If you want portable document scanning, but aren’t keen on getting an Evernote account, this might be the solution for you.

5. HappyCow
   www.happycow.net
   HappyCow serves up a list of vegan and vegetarian restaurants, cafes and stores. You can choose different filters to suit your diet and find something close to your location with directions and everything else you need to get fed.

6. Simple Macro
   Visit Google Play
   Tracking your macros is an important aspect of fitness. Whether you’re trying to lose weight, gain mass or maintain your body composition, eating the right balance of protein, fats and carbs is key. Macro tracker lets you set your preferred macro ratio, and track the foods you’ve eaten.
Sideways Dictionary
sidewaysdictionary.com
This website provides easy ways to explain complicated tech concepts.

Use a Privacy Screen to Protect Your Client Information
Working on a client matter during a long flight? Use a privacy screen. Visual hacking—when individuals look at your screen to steal information—is a danger to you and your clients. Keep your documents away from prying eyes. With smartphones, tablets and laptops now being used outside of the office just as much as inside, you have to take precautions if you don’t want to fall victim to this type of hacking. As for tablets, laptops and desktop screens, you just buy the product for the appropriate screen size, but vendors will offer brand specific protectors.

CloudLawyers
www.zeekbeek.com/gabar
You may have received a few emails about this new State Bar member benefit—an enhanced online member directory. Make it easier to allow consumers—and other lawyers—to find you. Go to www.gabar.org and log in to your membership account, then go to the CloudLawyers option in the list. Set your preferences there.

Dragon Anywhere Dictation
www.nuance.com/dragon/dragonanywhere.html
For $15 per month, use Dragon Anywhere professional-grade mobile dictation to create documents of any length and edit, format and share them directly from your mobile device—whether visiting clients, a job site or your local coffee shop. Dragon claims 99 percent accuracy with its voice editing and formatting. Save time using dictation.

Sarah Babcock
Director, Lawyers for Equal Justice

Sideways Dictionary
Sideways Dictionary is great for non-techie lawyers who are trying to hang with the legal tech crowd. It uses analogies to explain concepts like Blockchain and Doxing, and there are multiple analogies posted, so you can scroll through until you find one that makes sense to you.
Modern Technology “Gotchas” and How to Avoid Them

Not doing tech right can be costly. The Law Practice Management Program can help you identify common technology “gotchas” and provide you with the tools you need to avoid them.

BY NATALIE R. KELLY
1 Oversharing or failing to manage your data on a file sharing or collaboration platform.

While lawyers have found a true love for working from anywhere and having instant access to data from wherever they might be, you must ensure you don’t inadvertently disclose confidential client or other protected information. This comes from not paying attention to what rights or access privileges you assigned to shared information and files when using file-sharing services and collaboration platforms. If you use popular file-sharing programs like Dropbox, Google or OneDrive, be careful with the settings and level of access you pass along to others. Also, be careful when navigating the folder or storage structures of these services, so you don’t accidentally put information where it should not be, and consequently, making it inappropriately accessible to unintended parties.

2 Thinking that practice management software would fix everything wrong with your office.

I love practice management software systems! I'll say that again. I love practice management software systems! However, I am keenly aware of the shortcomings of these programs and users who believe that implementing these systems will solve everything as advertised. These programs take time to implement, are not typically out-of-the-box ready for complete firm integration and may simply not be the apple of everyone’s eye. Practice management can help with many of the more common firm issues with managing data, specifically client matter management concerns. But, it is not the cure for poor and inefficient procedures, inadequate buy-in from users or the lack of proper training. Treat your system and implementation plans with care to get the most out of these programs. Remember, it is more of a process than just another system. You need clear and workable procedures, buy-in from key firm members and training to get the most from today’s practice management programs.

3 Using a new computer without installing system updates.

Shiny new computers are still a joy when being pulled from a box. But what’s on them? New machines might have aged before getting to you, and so might have the applications preloaded on them. Plus there is a quick turn around on updates, patches and fixes in the present computing climate. So, not installing updates, particularly Windows updates on new machines, and launching right into work could open you up to security vulnerabilities. Hackers and tech evildoers lurk everywhere and act quickly where they find an opening. Always apply updates, patches and fixes as soon as possible when working on new (Windows) machines. If you work with vendors, ensure they are managing these updates for you promptly, too.

4 Ignoring the danger warning about open Wi-Fi networks.

Most users seem to have taken heed to the warnings against using just any old Wi-Fi connection. However, the number of lawyers who get burned from middleman attacks and other technology intrusions are still surprising. To secure access to your own Wi-Fi signal when working remotely, master the use of a personal hotspot or a reputable VPN (virtual private network).

5 Falling for a phishing scam.

Like the open Wi-Fi warnings, you’ve likely heard or have constantly received the warning to be careful when opening email from someone you don’t know or an email claiming to contain something you were not expecting. Opening a phishing email can lead to inadvertently leaking information via your reply. You might open up your network for attack if the email includes malware or spyware that can load onto your system without your prompting. Be vigilant and set up firm computing policies and procedures to aid everyone in the office with steering clear of these types of dangers.
6 Paying (or not) to have your system unlocked or data returned due to ransomware.
So it’s too late to tell you not to click the link, but now you must decide whether or not to pay for the key to decrypt your data. The FBI generally advises not to pay, but to instead focus on prevention and business continuity efforts and to test these efforts regularly. Don’t fall victim of paying and not getting your encryption key or not paying and attempting to piece together what data you can from places not affected by the attack. Instead, do as the FBI says and focus on your efforts for prevention. Backup your data, perform test restores and train employees on best practices for safely computing on your firm’s network. Do those common sense things that can help you avoid an attack.

7 Signing up for a fake VPN service.
We’ve already said you must use a VPN if you have no private hotspot for internet access. But did you know the bad guys have infiltrated the VPN space, too? There are fake VPNs available that can be purchased to the user’s detriment. The information relayed across this network is often stolen and then found for sale on the dark web. Be careful in selecting a VPN service; use reputable services as ranked on popular technology publications like PC World and CNET. Some to consider are NordVPN, TorGuard, ExpressVPN, PureVPN and IPVanish VPN. Most services are designed for mobile devices and not just computer/laptop VPN setups.

8 Failing to notify everyone after a firm data breach.
Data breach laws and policies relating to client notification can hint at what steps lawyers must take if their firm is the victim of a data breach. (See O.C.G.A. § 10-1-910 et seq.) Notification laws for businesses in Georgia and regulatory schemes should be checked regularly for compliance. Also, the Ethics Helpline is available at 404-527-8741 or 800-682-9806 to assist when discussing your obligations to clients. You can even consider putting your data management policy in your initial fee agreements or engagement letters along with provisions for data and file retention.

9 Thinking that your office would be back up and running quickly after restoring data from backups.
Sometimes, it can take days to rebuild your servers and local machines and restore the data from backups. So plan accordingly and do test restore batches to remain realistic about how long it would take you to get back up and running. You might consider truncated redundancy for key programs so you can get certain information back online quicker.

10 Sending data without using an encryption service.
Encryption is one arrow in the quiver for lawyers. Use encryption services from companies like Absio, McAfee, SafeGuard, Symantec, ShareFile, Virtru, Zix and Zone Alarm to protect email, files, network drives and more. Even Windows and Mac files can be encrypted by end users. Despite having been a clunky process in the past, encryption has become easier and more necessary in today’s technologically driven world.

Bonus: Failing to protect your firm with cyber security and data breach insurance.
Never fear. The State Bar has worked with its recommended broker to approve a number of cyber security and data breach insurance products for members and their firms. Check these product offerings out at www.memberbenefits.com/gabar.

Natalie R. Kelly
Director, Law Practice Management
State Bar of Georgia
nataliek@gabar.org
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STATE BAR OF GEORGIA

Lawyers serving the public good.
With the recent retirement of Georgia Legal Services Program Executive Director Phyllis Holmen, and upcoming retirement of Brunswick GLSP’s own Elouise Clinch, both true servants of the public and personal heroes, I have been more reflective on what makes some people so willing to help others. Pro bono work usually involves assisting low-income individuals with some of the most basic human necessities—housing, education, governmental services and benefits, domestic violence protection. While some attorneys choose to volunteer with this type of work and others do not, I think we can all agree that justice and fairness for all individuals are really ideals that none of us are against, correct?

As a defense attorney, I have heard “they sue our clients” more than once as a reason to avoid doing volunteer legal work. Pro bono work generally does not involve traditional tort representation—i.e., a personal injury case—rather, it could be an heir property matter, an estate administration issue, assistance to a veteran, housing problems or an uncontested divorce involving no assets and domestic violence allegations. Often there is not another attorney involved. Regarding the low-income individuals who may oc-
 occasional have an issue with your client, wouldn’t you rather have a represented party than a pro se plaintiff? Often resolving these matters is a win-win situation for all parties, including your client.

Time is usually the largest factor as to why more attorneys don’t consider pro bono work. After all, most of us are generally working at capacity and taking another case basically means using up more of our nonexistent time. We may measure our work by the billable hour and have billable hour requirements. We also serve our communities in many volunteer capacities that consume more precious time. Attorneys frequently serve on nonprofit boards, advisory committees, homeowners associations and participate in activities for their communities, their churches and their children’s schools. And if you have children, add another full-time job to your life. How could I possibly take yet another case, especially one for free?

Money is another factor often cited, and attorneys in solo or small practices especially cite “pro bono clients” that are behind on payment. I have been a solo practitioner and can say, “been there and done that.” The difference is pro bono work through an entity such as GLSP means the clients have been thoroughly vetted and meet financial guidelines that place these clients in a position where they could never even meet initial retain-er requirements. And in defense of my solo practitioner colleagues, it certainly feels like they do a disproportionate share of the pro bono volunteer work.

So Why Pro Bono?

It can help you and your career.

Maybe you want to be in the courtroom and have been stuck in an office drafting motions, or perhaps you just want to do something different. Early in my career the judge for whom I clerked often appointed me as a court-appointed fiduciary. For every compensable matter, I also was assigned indigent cases, mentally ill clients and incarcerated individuals. My first hearings were at mental health institutions. Those varied experiences made me a better lawyer and more importantly, a better person.

Faith or service in action.

At a time when religion seems to be under fire, I will affirm that my faith requires me to reach out and lift up, and the easiest way I can give is through pro bono work. Through my family I have watched faith in action throughout my life, from an aunt who is a nun to my mother and aunt and uncle that still work the St. Vincent de Paul food pantry, provide communion at the local hospital and perform other acts of service in their retirement. Whether your faith calls you to serve or not, or even if you believe in karma or just “doing the right thing,” equal justice for all doesn’t just happen. Reach out and lift others up and you too will be rewarded, even if it is just the self-realization that no matter how bad your day was, there are millions in this world that would rather be you.

Because you can.

Growing up in a small Kentucky town, I can vividly recall “John D,” a colorful local figure who was both terrifying and fascinating. He talked to himself, scowled and waved a big stick at everyone, followed by a small pack of barking dogs as he walked the streets. Amazingly I saw him one day in one of my dad’s best 1970s style dress shirts—silk with graphic, groovy designs—and my father’s winter coat. I ran home to tell my mother, who immediately warned that I shouldn’t embarrass my dad by making too big of a deal about it. Of course I immediately did. When asked why John D was wearing his best shirt and winter coat, my dad looked at me with his big kind brown eyes and said, “Honey he needed them and I don’t.” I learned two important life lessons that day—first, you don’t do good deeds in expectation of notice or praise or recognition, and second, sometimes you just do things because it is the right thing to do and you can. Your children, your family, your coworkers and your community all benefit from your actions, not by telling your children, your family, your coworkers and your community what should be done for others. Just do it because you can.

GLSP attorneys are my heroes.

Most of us sit through magistrate or state court hearings until our client’s matter is called, and exit immediately after. However, it is impossible to not notice the humanity in these courts. Courtrooms full of people that struggle to get there, catching rides and taking off from often low paying jobs. Injured, disabled and elderly litigants, are often frightened and intimidated by the formality and strict rules. No one there to assist in explaining the often foreign terms, deadlines and procedures in the law. GLSP attorneys are often some of the lowest paid in our profession, and they travel great distances and cover large geographical areas to advocate for real things like quality of life and personal safety. There is no Christmas bonus for great numbers or monetary reward in hitting a big jury verdict, just the true dedication and belief in justice for all, not just those with money.

A wise friend once told me that the practice of law is a noble profession. Admittedly I don’t see that sometimes. However, I remain inspired and encouraged about the legal profession in large part by the commitment and dedication of GLSP attorneys across the state. The retirement of Phyllis Holmen is so bitter-sweet, such an eloquent and humble practitioner who has long been the voice and face of this statewide nonprofit law firm. Elouise Clinch has served the Brunswick office of GLSP for 44 years, a gentle and firm advocate for her clients and her community, more active in the local bar than most attorneys. Phyllis, Elouise and their colleagues create access to justice and opportunities out of poverty for people across the state of Georgia, and make the practice of law indeed a noble profession. They are exactly why pro bono work will always be a priority for me.

Beth Boone is a partner in the Brunswick office of Hall Booth Smith, P.C., where she practices in all areas of professional negligence and medical malpractice defense, as well as premises liability, probate, estate planning and administration, fiduciary law and general civil litigation.
We Salute Our Pro Bono All-Stars

The Pro Bono Resource Center of the State Bar of Georgia salutes the following attorneys who demonstrated their commitment to equal access to justice by volunteering their time to represent low-income Georgians in civil pro bono programs during 2017.

* denotes attorneys who have accepted three or more cases

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Fastcase: Boolean Operators and Algorithms

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

BY SHEILA BALDWIN

Fastcase Legal Research platform is provided to the members of the State Bar of Georgia as a member benefit and included free with your Bar dues. Many attorneys think of this as their best benefit. Fastcase is, for the most part, a primary law database that contains cases, statutes, regulations, court rules and constitutions. In Georgia you can also access attorney general opinions, law reviews and the Georgia Bar Journal.

Several times a month I conduct Fastcase training at the Bar Center. The training covers methods of searching caselaw by Boolean operators or keywords in context of the algorithms that Fastcase uses to process your search. I am often asked what an algorithm is or what Boolean means. Algorithms are the rules or formulas that the computer software uses to solve a problem, or in our case, a search query. Boolean is a type of logic developed by English mathematician George Boole in the mid-19th century. His ideas were used to develop operators or
symbols to tell a search engine how to relate keywords to one another. Boolean searches allow you to combine words and phrases using the words AND, OR, NOT and a few other indicators like parenthesis or within to limit, widen or define your search. Fortunately, the Boolean terms are easy to find in the Advanced Caselaw Search page under the query box with search tips explaining how to use them effectively.

In Fastcase, the order of operations (algorithm) runs the within operator (w/2) first, the AND operator is run second, the NOT operator runs third and the OR operator runs last. You can change this protocol by placing parenthesis around words or phrases to change the way the search engine interprets your query. This is akin to algebra in mathematics; any numbers within parenthesis are solved first. Searching for car or vehicle and getaway in Georgia, Fastcase understands the query as “vehicle and getaway or car” because it follows the rules and runs the AND operator first and then the OR operator last bringing 22,280 results. When using parentheses around the words (car OR vehicle) AND getaway, Fastcase looks for all cases that have the terms car or vehicle and then narrows to the ones that also have the term getaway bringing 308 cases (see fig 1).

Here are a few more things to keep in mind when you are performing a keyword search on Fastcase:

- The search engine automatically omits certain common words (e.g., the, it, etc.) from your query. The search runs more efficiently without these common “noise” words.
- Fastcase uses an “implied and” operator. This means that if there are multiple words in your search query and you do not specify a Boolean operator to connect them, Fastcase will treat your search as if you had placed an “and” between each term. For example, if you type: summary judgment order, Fastcase will read that as: summary and judgment and order. Only cases containing all of those terms will be returned as results. Use quotation marks to search for cases that contain the exact phrase “summary judgment order.”
- Generally, a wildcard operator must be preceded by at least three characters.
- At the moment, the search engine will accommodate a search up to 500 words long. For the purposes of search length, a Boolean operator counts as a word.

Fastcase uses its own sophisticated legal research algorithm to determine not only how the system interprets your query but how it orders the results. The Fastcase algorithms define relevancy as the first factor to list on the results page. Four factors that are considered in determining relevancy: numerosity—the raw number of times each term is used; proximity—the distance between each instance of a search term in a document; density—the number of search term hits called for the length of the document; and diversity—the measure of the mix of hits of different search terms in a document. What if you decide you are more interested in viewing the most recently decided case or the most highly cited case? You can change this algorithm as well by reordering the results list by clicking the column headings Decision Date or Authority Check (citing cases) at the top of the results list (see fig. 2).

Hopefully this article will help you better understand how to make the best use of Fastcase. If you have questions, we can help. CLE approved classes are offered at the Bar, or sign up for a webinar presented by Fastcase. If you are in the midst of your research, simply click on the “Need Help?” dialog box that hovers near the bottom of the page (see fig. 3). You may also contact me at 404-526-8618 or sheilab@gabar.org.

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Creativity Can Help You Write What Your Client Needs

This installment of Writing Matters reminds you that creativity is a key attribute of a successful legal writer and shares five tips to help rekindle your creative legal writing fire.

BY KAREN J. SNEDDON AND DAVID HRICIK

Most lawyers solve problems. Excelling at solving problems requires many forms of creativity, including defining, analyzing and determining the steps needed to solve each one. Over time, of course, virtually all lawyers specialize, and so each problem begins to look more like the last, making it more difficult to see beyond the tried-and-true, to look for creative alternatives to what worked the last time, and the time before that, too.

Legal writing may be more vulnerable to calcification than the other skills needed to solve problems. Creativity can be crushed further with the crunch
of time constraints—caused by deadlines and the need to keep legal fees low—and the weight of conventions. All three of these exert tremendous pressure on a legal writer.

This makes it hard for legal writing to remain what it must be—an inherently creative process. Whether it is the first will or the 500th, legal documents begin as a blank screen or piece of paper. Onto that blank page words are shaped into sentences. Sentences are woven into paragraphs. Paragraphs are crafted into pages.

This installment of Writing Matters reminds you that creativity is a key attribute of a successful legal writer and shares five tips to help rekindle your creative legal writing fire.

1 Structure Your Writing for This Audience, Not Your Last One
Legal writing always has a purpose. That purpose usually involves the reader relying upon the text to do or refrain from doing something. The purpose may be to inform the reader about potential causes of action to decide whether to file a suit. The purpose may be to persuade a court to grant or deny a motion.

Both organization and content are informed by the purpose. A creative legal writer will recognize that a structure—both large and small—that fits the needs of one audience will fail miserably if used for another.

The typical office memorandum provides a simple example. The structure of the sections in a typical office memorandum are as follows: heading, question presented, brief answer, statement of the facts, discussion and conclusion. Think about that for a moment. That is not the order in which a lawyer writes a typical memorandum. Instead, the order reflects the needs of the reader to be able, just from the first page of the memorandum, to understand the issues and the ultimate conclusions. The discussion within the discussion section typically follows the paradigm commonly referred to as “IRAC.” It encourages legal writers to identify the question to be analyzed, present a curated understanding of the rules and relevant authorities, apply those rules thoughtfully to the facts and predict the answer. Again, think about this: the structure is not for the benefit of the writer, but for the reader.

Both the order of the sections and IRAC are effective and accepted because—generally—they serve the purpose of a memorandum and its intended audience. Yet, this is not always true.

Both the large- and small-scale structures are there to benefit the reader, and so are implicit guidelines for writers. Both structures should be modified as the audience needs change. For instance, a lawyer may be drafting a memorandum to be used, not to predict how a court will rule, but to explain the impact of a recent statutory amendment. The typical memorandum structure, including IRAC, likely would not be effective for that purpose. A background section and redlined example of the text might be the better starting point, for example.

Use the structure best for this audience, not your last one.

2 If Appropriate, Adapt Forms for This Audience
The blank pages of most legal documents are quickly populated by text copied from “forms.” Forms allow for effective drafting of litigation documents, such as a complaint, or transactional documents, such as a contract. These forms carry the wisdom of many lawyers solving their former clients’ problems.

For these reasons, when starting a writing project it is helpful to review a form because it embodies a solution for similar problems. The example can become a checklist for the appropriate content, length and organization. In fact, the law may require, or at least strongly suggest, that the form’s structure be followed. In a will, the pre-residuary gifts should be identified before the residuary gift in a will.

But, in some measure, the form reflects the choices of a previous writer, not the requirements of law. For instance, not every appellate brief needs to present arguments using two main point headings. The rule structure and nature of argu-
ments to be advanced should inform the number of point headings.

Forms are a helpful coach, but they should not be allowed to become an inflexible bully. The needs of the audience should overcome the demands of the form.

Adapt forms to advance the purpose of the particular text.

Know the Rules, but Break One When Effective
Every genre of writing has conventions. After all, a novel is different from a short story. A newsletter update is different from a law review article. Within each genre (or sub-genre) are a series of conventions relating to organizational structures, use of authorities, attribution conventions and tone.

For instance, a legal letter follows the conventions of a general business letter. But some typical conventions, such as the use of in-text citations for appellate briefs, can be changed—even within a document that otherwise adheres to them. For instance, footnotes in appellate briefs are generally distracting. But, using a footnote to cite to a lengthy website address, or some other confusing block of text, may be the exception to that general rule.

Critically consider the conventions—and don’t be afraid to break one!

Re-evaluate the Role of Innovation in Drafting
Lawyers are creative—and cautious. Although form documents and tested phrases can be compiled to create a new document, don’t forget about the role of innovation when drafting.

Critically evaluate the decision to use a particular form or copy language from a form. Consider whether the particular form or language furthers the purpose of the draft document. It may be that your client needs an entirely new approach.

Just because language has been duplicated from one form to another in the past doesn’t mean that that language is perfect for a particular document. Innovation can be stifled by over-reliance on “tried and true” choices.

New, innovative text may be better than ill-fitting, overused old text.

Read Good Writing
We can all get stuck in a rut. We rely upon patterns. They may be a particular phrasing, sentence structure, paragraph length or even punctuation usage. Imagining an alternative may be difficult.

Reading someone else’s contract or brief can inspire change. They may use different phrasing, different transitions or different sentence structures. They may even use a different font, more white space or fewer footnotes. They may reveal to you alternatives that your own mind cannot see because it has lost creativity from years of “routine” work.

Reading examples of strong legal writing can nurture creativity in our own legal writing.

Creativity has a role in the practice of law. Lawyers are creative when defining problems, developing approaches to resolutions and constructing arguments. Legal writing can be creative too. We aren’t advocating for the inclusion of gimmicky hooks, contrived metaphors and cute theories of the case. Instead, we are advocating for deliberate, thoughtful and innovative writing. Use these five tips to be creative with confidence!

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

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

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The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness

One tenet of the Chief Justice’s Commission on Professionalism’s “A Lawyer’s Creed” is “To my colleagues in the practice of law, I offer concern for your welfare.” If you are aware of a colleague that may be experiencing difficulties, ask questions and offer to help them contact the Lawyer Assistance Program for help.

BY MICHELLE BARCLAY

January is the month when Robin Nash, my dear friend and lawyer colleague, godfather to my child, officiate for my brother’s marriage and former director of the Barton Center at Emory University, left the world. Positive reminders of him are all around, including a child law and policy fellowship in his name, but January is a tough month.

Robin’s suicide, 12 years ago, was a shock to me. As time passed and I heard stories about Robin from others who knew him and I learned more about suicide, I can see in hindsight the risk looming for him. Today, I think his death was possibly preventable.

In 2006, Robin wrote this essay about himself for Emory’s website:

“Robin Nash, age 53, drew his first breath, attended college and law school and now works at Emory University. He loves to travel to places like Southeast Asia and the Middle East but he always returns home to Emory and his hometown of Decatur. Robin majored in Economics and Mathematics. He began his law practice in 1980 in Decatur surviving mostly on court appointed cases for mentally ill patients in commitment hearings.

His practice expanded to working with institutionalized developmentally delayed clients, special education cases, wills and estate litigation and representing banks in the hugely interesting area of commercial real estate closings.

In 1995, he was appointed as a juvenile court judge in DeKalb County. He resigned from the bench effective December 2005. He sold most of his personal belongings, paid off his remaining debts and moved overseas to think and travel. After thinking and traveling for three months, he returned to the active world of Decatur. He was appointed director of the Barton Clinic effective April 15, 2006.”

When Robin came back from traveling, he told his friends—“I can be more impactful here.”—which was and is true. Robin’s impact continues today through the work of young lawyers serving as Robin Nash Fellows and through the lives of the thousands of mothers, fathers, daughters and sons he touched, helping people traumatized by child abuse, neglect, addiction and crime.

He was impactful in part because he had so much empathy for others. He was...
well regarded and well loved. He was a person you could count on who did extraordinary things for others—helping a student obtain a TPO in the middle of the night to stop a stalker; quietly helping a refugee family get stable and connected to services; and of course, his consistent care of his friend Vinny. Vinny was a severely disabled adult Robin befriended and with whom he had a deep connection. Because he was a lawyer, Robin was able to help Vinny obtain full access to available medical services without being institutionalized.

So why did Robin leave? He lost his battle with mental illness. He masked it well and as a private person, did not share his struggles. His friends had some insight into his struggles but it was always complicated. While a judge, Robin was known for saying things like, "I am a manager of misery" or "I manage the competition not to serve the most vulnerable families and children." But he also said, "Talk like this is just dark humor which is a useful coping mechanism for an emotionally draining job."

I know today that a low serotonin level in his body was dangerous for his depression and that the medications he took waxed and waned in effectiveness. I also now know that he had not slept well for days before he acted. We'd had a work meeting the day before he died. Who makes a long 'to do' list when one is contending with depression? Plenty of people, I have learned. I saw that 'to do' list on his table when I was in his apartment after his death.

What could have helped? Abandoning the shame and stigma of mental illness is a good start. I have been heartened by the social movement campaign, Time to Change, designed to help people speak up about mental illness. A safety plan shared with a reasonably wide network of people can also help. Antidepressant medications can help. Recent studies about anti-depression drugs "puts to bed the controversy on anti-depressants, clearly showing that these drugs do work in lifting mood and helping most people with depression." Science is advancing better treatments at a rapid pace. And some experts advise that directly asking whether a person has considered killing themselves can open the door to intervention and saving a life.

Before becoming a lawyer, I worked as a nurse in a variety of settings at both Grady and Emory hospitals. I saw attempted suicides. I witnessed a number of those people who were grateful they were not successful. I saw safety plans work when enough people knew about the risks. Sometimes, medicines were changed, new treatments tried and I saw people get better.

I feel like with my background I could have and should have probed Robin more. But at the time, I thought I was respecting his privacy by not asking too many questions. Today I know that a person can be fine one day and then chemicals in their brain can wildly change within 24 hours, and they're no longer ok. I learned that not sleeping can be deadly. I have also learned that just talking about it can help a person cope.

A book that has helped me is called "Stay: A History of Suicide and the Philosophies Against It," by Jennifer Michael Hecht. If I had a second chance, I would try to use some of the arguments in that book, such as:

None of us can truly know what we mean to other people, and none of us can know what our future self will experience. History and philosophy ask us to remember these mysteries, to look around at friends, family, humanity, at the surprises life brings—the endless possibilities that living offers—and to persevere.

Of course, first I would have just asked about his mental health with love and listened. I still wish for that chance to try.

Afterword by Chief Justice's Commission on Professionalism Executive Director Karlise Grady.

Michelle Barclay, J.D., has more than 20 years experience working in Georgia's judicial branch. She is currently the division director of Communications, Children, Families, and the Courts within the Judicial Council of Georgia's Administrative Office of the Courts. Before becoming a lawyer, she was a nurse for 10 years, specializing in ICU and trauma care. Her degrees include a Juris Doctor from Emory University School of Law, a Bachelor of Science in Nursing from Emory University and a Bachelor of Interdisciplinary Studies from Georgia State University. She is also co-founder along with her husband Andrew Barclay of the Barton Child Law and Policy Center at Emory University School of Law. She can be reached at 404-657-9219 or barclay@georgiacourts.gov.

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

C. THOMAS ARCHBOLD
Atlanta, Ga.
Atlanta’s John Marshall Law School (1967)
Admitted 1968
Died March 2018

EMANUEL L. BALAMS JR.
Atlanta, Ga.
University of Alabama School of Law (2007)
Admitted 2007
Died February 2018

WILLIAM BREK BARKER
Macon, Ga.
Mercer University Walter F. George School of Law (1981)
Admitted 1981
Died January 2018

JOHN R. BARMEYER
Ranger, Ga.
Harvard Law School (1971)
Admitted 1972
Died April 2018

FRANK BARRAGAN JR.
Savannah, Ga.
Gilbert Johnson Law School (1951)
Admitted 1951
Died March 2018

GEORGE L. BARRON JR.
Tyrone, Ga.
Woodrow Wilson College of Law (1972)
Admitted 1973
Died February 2018

JAMES LAMAR BASS
Smyrna, Ga.
Atlanta Law School (1977)
Admitted 1977
Died January 2018

ANDREW THAD BELL
Hamilton, Ga.
Mercer University Walter F. George School of Law (2016)
Admitted 2016
Died March 2018

JOHN A. BLACKMON
Pine Mountain, Ga.
Emory University School of Law (1961)
Admitted 1961
Died April 2018

DAVID WILLIAM BOONE
Atlanta, Ga.
Samford University Cumberland School of Law (1978)
Admitted 1987
Died March 2018

DAVID B. BRENNAN
Roswell, Ga.
Woodrow Wilson College of Law (1978)
Admitted 1979
Died February 2018

MARILYN SUE BRIGHT
Atlanta, Ga.
Atlanta Law School (1975)
Admitted 1975
Died February 2018

W. M. BROGDON JR.
Fernandina Beach, Fla.
Mercer University Walter F. George School of Law (1982)
Admitted 1982
Died October 2017

VERNER F. CHAFFIN
Athens, Ga.
University of Georgia School of Law (1942)
Admitted 1942
Died April 2018

RUOYING CHEN
Duluth, Ga.
Georgia State University School of Law (2011)
Admitted 2012
Died March 2018

HAN CHUN CHOI
Atlanta, Ga.
Emory University School of Law (1993)
Admitted 1993
Died March 2018

MURPHY A. COOPER
Savannah, Ga.
Mercer University Walter F. George School of Law (1982)
Admitted 1984
Died April 2018

HERMAN F. CORBIN
East Point, Ga.
Woodrow Wilson College of Law (1977)
Admitted 1979
Died February 2018

HEWITT H. COVINGTON
Atlanta, Ga.
University of Virginia School of Law (1955)
Admitted 1956
Died November 2017

KAREN KELLY DANIELS
Macon, Ga.
Mercer University Walter F. George School of Law (1988)
Admitted 1988
Died March 2018

ROBERT FRANK DOLPH SR.
Jonesboro, Ga.
Georgia State University College of Law (1989)
Admitted 1990
Died February 2018

MALFORD JOHN FAGAN
Norcross, Ga.
Atlanta Law School (1976)
Admitted 1980
Died March 2018

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Newnan, Ga.
University of Georgia School of Law (1973)
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Admitted 1988
Died March 2018

CORRECTION
In the April 2018 issue of the Georgia Bar Journal, we inadvertently listed Hon. Clarence D. Blount of Waycross, Ga., as deceased. We sincerely apologize for this error.
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.
John Alfred Blackmon, 84, died in April 2018. He was born in 1933 to Mary Jo Hilton and John Alfred Blackmon. He received a B.S. degree from Auburn University in 1955 where he was a member of Sigma Alpha Epsilon. After graduation, he was commissioned as a second lieutenant in the U.S. Air Force. He graduated from the Air Force Navigation and Radar Observer schools in 1957. After three years of active duty service, he attended the Lamar School of Law at Emory University and received an LL.B. degree in 1961.

After law school, he remained in Atlanta where he raised his family and had a long, successful law career until retiring in 1999. Following law school, he served as an attorney in the Georgia State Law Department where he rose to the position of assistant attorney general. He was appointed deputy commissioner of the Georgia Department of Revenue in 1968. In 1970, Gov. Maddox appointed him state revenue commissioner. Gov. Carter reappointed him in 1971, and he served through Carter’s term. His service in state government was marked by his work to support Carter’s reorganization plan. This work included an internal reorganization of the Revenue Department that modernized the state’s money management system.

Following his state government career, Blackmon joined the Atlanta law firm of Smith, Cohen, Ringel, Kohler & Martin (now Smith, Gambrell & Russell) where he became an equity partner in the firm in 1978 and a retired partner in 1999. He maintained high levels of civic engagement throughout his life. Notably, he is a founding member of St. Nicholas Episcopal Church.

Han Chun Choi, 52, passed away in March 2018. Born in Gangneung, South Korea, in 1966, he immigrated as a toddler with his parents eventually settling in Little Rock, Ark. Choi attended Northwestern University in Evanston, Ill., where he graduated with honors as a religion major in 1988. Shortly after graduating, Choi joined the staff of then-Gov. Bill Clinton, eventually becoming a policy advisor to the governor. At Gov. Clinton’s urging, he attended law school. After graduating from Emory University School of Law with honors in 1993, Choi joined the public and corporate finance practice group of King & Spalding in Atlanta. Choi became one of the first Asian-American partners in a large law firm and ultimately, one of the first Asian-American office managing partners of an American Lawyer top 100 law firm. He channeled his energy serving his community, volunteering for several nonprofit organizations and completing many hours of pro bono work. Choi was a member of North Avenue Presbyterian Church where he served as a deacon and on the Endowment Committee.

He worked countless hours as a volunteer, officer and board member of the Georgia Asian Pacific American Bar Association, the National Asian Pacific American Bar Association and the Korean American Bar Association of Georgia.

Gould B. Hagler, 93, died in February 2018. Hagler was a native of Augusta and a life-long resident of the city. He attended the Academy of Richmond County, the University of Georgia and the University of Georgia School of Law.

Hagler practiced law in Augusta from 1948 until his retirement in 1989. He began the practice of law with the firm of Fulcher and Fulcher and was with that firm, which continues to operate under the name Fulcher Hagler LLP, for his entire career. For several years prior to his retirement he was the firm’s senior partner.

Hagler was president of the State Bar of Georgia Younger Lawyers Section (1957-58). He was a member of the American College of Trial Lawyers and a co-founder of the Georgia Defense Lawyers Association. He served as a member of the Board of Governors of the State Bar of Georgia and president of the Augusta Bar Association. He served a five-year term as a member of the State Board of Bar Examiners, one year as chairman.

Hagler was a combat veteran of World War II, volunteering for service in the army at the age of 18 and serving in the European Theater of Operations. In 2008 and 2009 he volunteered to interview other World War II veterans in the Augusta area as part of a project organized by the Library of Congress to make a video record of veterans’ war time experiences.

Hon. A. J. Welch Jr. of McDonough died in March 2018. He was born in Atlanta to the late Cap and Cola Pope Welch. He was a graduate of The Georgia Military Academy (1963), The University of Georgia (1966) and the Walter F. George School of Law at Mercer University (1969). After receiving his J.D. degree he returned to McDonough to join Earnest Smith, where he was instrumental in growing the largest firm on the south side of Atlanta. Welch served as counsel to his local community while also being sworn in as the youngest juvenile judge in the state of Georgia. He served as the Flint Judicial Circuit judge for more than 38 years. His dedication and passion to serving his community, family and church reached no describable boundaries.
### JUNE

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<th>Date</th>
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<td>22</td>
<td>ICLE: Trials: Tips, Tactics and Tales</td>
<td>Atlanta, Ga.</td>
<td>6 CLE</td>
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<tr>
<td>29-30</td>
<td>ICLE: Southeastern Admiralty Law Institute Seminar</td>
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### JULY

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<td>ICLE: 53rd Annual Fiduciary Law Institute</td>
<td>St. Simons Island, Ga.</td>
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<td>20</td>
<td>ICLE: Building Winning Appeals Cases</td>
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### AUGUST

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<td>ICLE: Real Property Law Institute—Residential Real Estate Replay</td>
<td>Atlanta, Ga., and via satellite in Savannah and Tifton, Ga.</td>
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<td>7-8</td>
<td>ICLE: Real Property Law Institute—Commercial Real Estate Replay</td>
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<td>ICLE: Federal False Claims Act</td>
<td>Atlanta, Ga.</td>
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<td>ICLE: Child Welfare Attorney Training</td>
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<td>ICLE: Nuts and Bolts of Family Law</td>
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<td>ICLE: School and College Law</td>
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<tr>
<td>30</td>
<td>ICLE: Trial of Leo Frank</td>
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<td>31</td>
<td>ICLE: 29th Annual Urgent Legal Matters</td>
<td>St. Simons Island, Ga.</td>
<td>12 CLE</td>
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*Note: To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 678-529-6688. For ICLE seminar locations, please visit www.iclega.org.*
Formal Advisory Opinion Issued Pursuant to Rule 4-403

The second publication of this opinion appeared in the August 2016 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about August 8, 2016. FAO No. 16-2 is the redrafted version of FAO No. 10-2. FAO No. 16-2 was filed with the Supreme Court of Georgia on November 10, 2016. A petition for discretionary review was filed with the Supreme Court of Georgia on November 29, 2016, which the Court granted on January 23, 2017. On April 16, 2018, the Supreme Court of Georgia issued an order approving FAO No. 16-2 and retracting FAO No. 10-2. In accordance with Rule 4-403 (e) FAO No. 16-2 is binding upon all members of the State Bar of Georgia, and the Supreme Court of Georgia shall accord the opinion the same precedential authority given to the regularly published judicial opinions of the Court.

STATE BAR OF GEORGIA
FORMAL ADVISORY OPINION NO. 16-2
Approved And Issued On April 16, 2018 Pursuant to Bar Rule 4-403 By Order of the Supreme Court of Georgia Thereby Replacing FAO No. 10-2
Supreme Court Docket No. S17U0553

Question Presented:
May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child’s objection?

Summary Answer:
When it becomes clear that there is an irreconcilable conflict between the child’s wishes and the attorney’s considered opinion of the child’s best interests, the attorney must withdraw from his or her role as the child’s guardian ad litem.

Opinion:
Relevant Rules
This question squarely implicates several of Georgia’s Rules of Professional Conduct, particularly, Rule 1.14. Rule 1.14, dealing with an attorney’s ethical duties towards a child or other client with diminished capacity, provides that “the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” Comment 1 to Rule 1.14 goes on to note that “children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”

This question also involves Rule 1.2, Scope of Representation, and Rule 1.7, governing conflicts of interest. Comment 2 to Rule 1.7 indicates that “[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer’s other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.”

This situation also implicates Rule 3.7, the lawyer as a witness, to the extent that the guardian ad litem must testify and may need to advise the court of the conflict between the child’s expressed wishes and what he deems the best interests of the child. Finally, Rule 1.6, Confidentiality of Information, may also be violated if the attorney presents the disagreement to the Court.

Statutory Background
Georgia law requires the appointment of an attorney for a child as the child’s counsel in a termination of parental rights proceeding. The statute also provides that the court shall additionally appoint a guardian ad litem for the child, and that the child’s counsel is eligible to serve as the guardian ad litem unless there is a conflict of interest between the lawyer’s duty as an attorney for the child and the lawyer’s “considered opinion” of the child’s best interest as the guardian ad litem. In addition to the child’s statutory right to counsel, a child in a termination of parental rights proceedings also has a federal constitutional right to counsel.

In Georgia, a guardian ad litem’s role is “to protect the interests of the child and to investigate and present evidence to the court on the child’s behalf.” The best interests of the child standard is paramount in considering changes or termination of parental custody. See, e.g., Scott v. Scott, 276 Ga. 372, 377 (2003) (“[t]he paramount concern in any change of custody must be the best interests and welfare of the minor child”). The Georgia Court of Appeals held in In re A.P. based on the facts of that case that the attorney-guardian ad litem dual representation provided for under O.C.G.A. § 15-11-98(a) (the predecessor to O.C.G.A. § 15-11-262(d)) does not result in an inherent conflict of interest, given that “the fundamental duty of both a guardian ad litem and an attorney is to act in the best interests of the [child].”

This advisory opinion is necessarily limited to the ethical obligations of an attorney once a conflict of interest in the representation has already arisen. Therefore, we need not address whether or not the dual representation provided for under O.C.G.A. § 15-11-262(d) results in an inherent conflict of interest.
Discussion

The child’s attorney’s first responsibility is to his or her client.10 Rule 1.2 makes clear that an attorney in a normal attorney-client relationship is bound to defer to a client’s wishes regarding the ultimate objectives of the representation.11 Rule 1.14 requires the attorney to maintain, “as far as reasonably possible . . . a normal client-lawyer relationship with the [child].”12 An attorney who “reasonably believes that the client cannot adequately act in the client’s own interest” may seek the appointment of a guardian or take other protective action.13 Importantly, the Rule does not simply direct the attorney to act in the client’s best interests, as determined solely by the attorney. At the point that the attorney concludes that the child’s wishes and best interests are in conflict, the attorney must petition the court for removal as the child’s guardian ad litem. The attorney must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney’s view of the child’s best interests and the child’s view of his or her own interests is severe, the attorney may seek to withdraw entirely under Rule 1.16(b)(3).14

The attorney may not withdraw as the child’s counsel and then seek appointment as the child’s guardian ad litem, as the child would then be a former client to whom the former attorney/guardian ad litem would owe a continuing duty of confidentiality.15

This conclusion is in accord with many other states.16 For instance, Ohio permits an attorney to be appointed both as a child’s counsel and as the child’s guardian ad litem.17 Ohio ethics rules prohibit continued service in the dual roles when there is a conflict between the attorney’s determination of best interests and the child’s express wishes.18 Court rules and applicable statutes require the court to appoint another person as guardian ad litem for the child.19 An attorney who perceives a conflict between his role as counsel and as guardian ad litem is expressly instructed to notify the court of the conflict and seek withdrawal as guardian ad litem.20 This solution (withdrawal from the guardian ad litem role once it conflicts with the role as counsel) is in accord with an attorney’s duty to the client.21

Connecticut’s Bar Association provided similar advice to its attorneys, and Connecticut’s legislature subsequently codified that position into law.22 Similarly, in Massachusetts, an attorney representing a child must represent the child’s expressed preferences, assuming that the child is reasonably able to make “an adequately considered decision . . . even if the attorney believes the child’s position to be unwise or not in the child’s best interest.”23 Even if a child is unable to make an adequately considered decision, the attorney still has the duty to represent the child’s expressed preferences unless doing so would “place the child at risk of substantial harm.”24 In New Jersey, a court-appointed attorney needs to be “a zealous advocate for the wishes of the client . . . unless the decisions are patently absurd or pose an undue risk of harm.”25 New Jersey’s Supreme Court was skeptical that an attorney’s duty of advocacy could be successfully reconciled with concern for the client’s best interests.26
In contrast, other states have developed a “hybrid” model for attorneys in child custody cases serving simultaneously as counsel for the child and as their guardian ad litem. This “hybrid” approach “necessitates a modified application of the Rules of Professional Conduct.” That is, the states following the hybrid model, acknowledge the “hybrid' nature of the role of attorney/guardian ad litem which necessitates a modified application of the Rules of Professional Conduct,” excusing strict adherence to those rules. The attorney under this approach is bound by the client’s best interests, not the client’s expressed interests. The attorney must present the child’s wishes and the reasons the attorney disagrees to the court.

Although acknowledging that this approach has practical benefits, we conclude that strict adherence to the Rules of Professional Conduct is the sounder approach.

Conclusion

At the point that the attorney concludes that the child’s wishes and best interests are in conflict, the attorney must petition the court for removal as the child’s guardian ad litem and must consider Rule 1.6 before disclosing any confidential client information other than that there is a conflict which requires such removal. If the conflict between the attorney’s view of the child’s best interests and the child’s view of his or her own interests is severe, the attorney may seek to withdraw entirely following Rule 1.16(b)(3).

Endnotes

4. O.C.G.A. § 15-11-262(b) (“The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child”).
5. O.C.G.A. § 15-11-262(d) (“The court shall appoint a guardian ad litem for a child in a termination proceeding; provided, however, that such guardian ad litem may be the same person as the child’s attorney unless or until there is a conflict of interest between the attorney’s duty to such child as such child’s attorney and the attorney’s considered opinion of such child’s best interests as guardian ad litem”).
9. See, e.g., Wis. Ethics Op. E-89-13 (finding no inherent conflict of interest with the dual representation of an attorney and guardian but concluding that if a conflict does arise based on specific facts, the attorney’s ethical responsibility is to resign as the guardian).
13. Id.
14. Rule 1.16 (b)(3) of the Georgia Rules of Professional Conduct provides that a lawyer may seek to withdraw if “the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent.”
15. See Rule 1.6(e) of the Georgia Rules of Professional Conduct.
16. See, e.g., Wis. Ethics Op. E-89-13, Conflicts of Interests; Guardians (1989) (providing that dual representation as counsel and guardian ad litem is permitted until conflict between the roles occurs, and then the attorney must petition the court for a new guardian ad litem); Ariz. Ethics Op. 86-13, Juvenile Proceedings; Guardians (1986) (providing that a "lawyer may serve as counsel and guardian ad litem for a minor child in a dependency proceeding so long as there is no conflict between the child’s wishes and the best interests of the child").
18. Id. at *2.
19. Id.
21. Id. See also Baxter, 17 Ohio St. 3d at 232 (“[w]hen an attorney is appointed to represent a person and is also appointed guardian ad litem for that person, his first and highest duty is to zealously represent his client within the bounds of the law and to champion his client’s cause”).
24. Mass Comm. For Public Counsel Servs., Performance Standards, Standard 1.6(d) at 11.
27. See Clark v. Alexander, 953 P.2d 145, 153-54 (Wyo. 1998); In re Marriage of Rolf, 216 Mont. 39, 51-53, 699 P.2d 79, 86-87 (Mont. 1985); In re Christina W., 639 S.E.2d at 777 (requiring the guardian to give the child’s opinions consideration “where the child has demonstrated an adequate level of competency [but] there is no requirement that the child’s wishes govern.”); see also Veazy v. Veazy, 560 P.2d 382, 390 (Alaska 1977) (“[i]t is equally plain that the guardian is not required to advocate whatever placement might seem preferable to a client of tender years.”) (superseded by statute on other grounds); Alaska Bar Assn Ethics Committee Op. 85-4 (November 8, 1985)(concluding that duty of confidentiality is modified in order to effectuate the child’s best interests); Utah State Bar Ethics Advisory Opinion Committee Op. No. 07-02 (June 7, 2007) (noting that Utah statute requires a guardian ad litem to notify the Court if the minor’s wishes differ from the attorney’s determination of best interests).
29. Id.
30. Id.
31. Id. at 153-54; Rolfe, 699 P.2d at 87.
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