State Bar of Georgia Young Lawyers Division

THE YLD REVIEW

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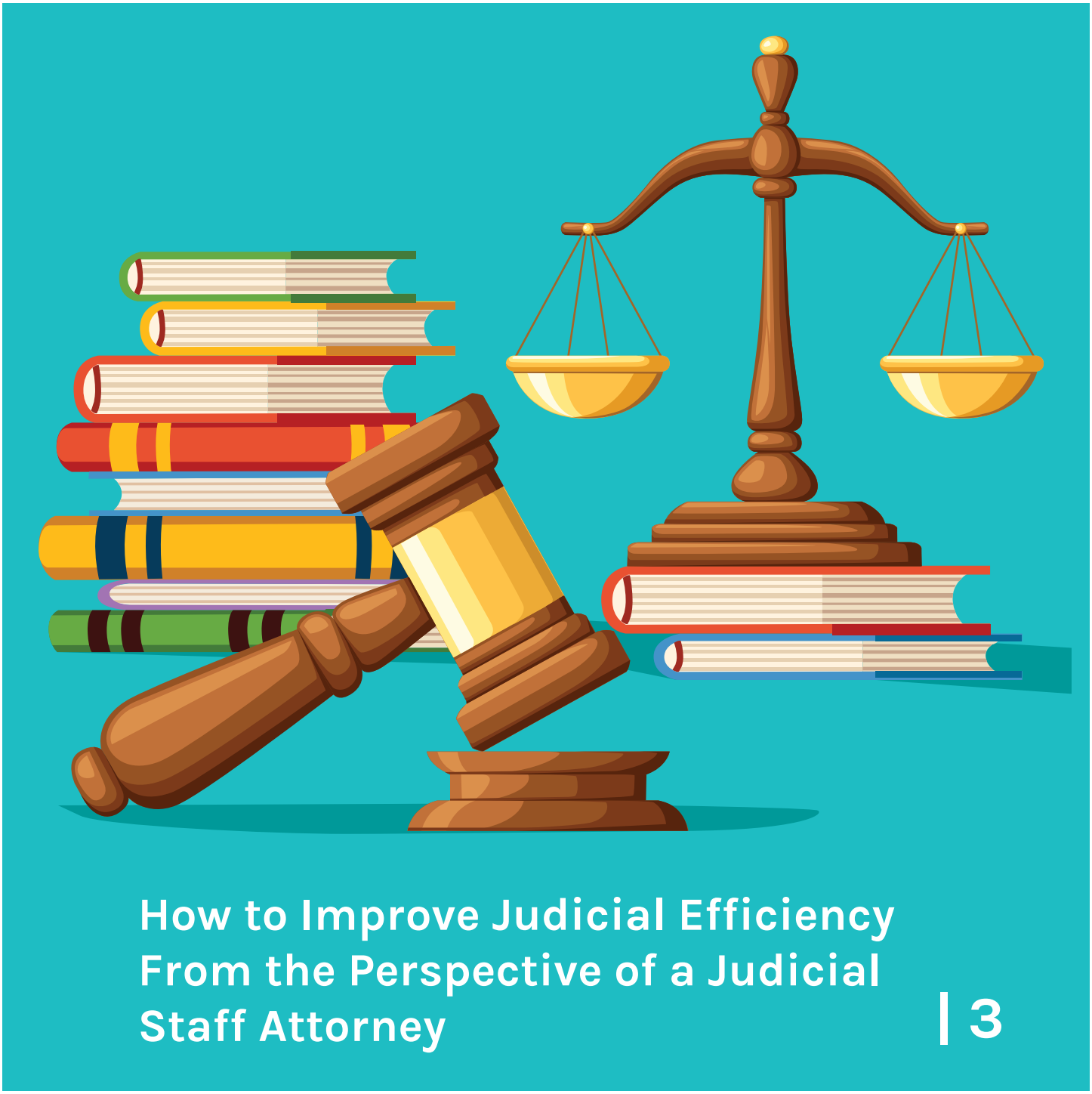
Working for the Profession and the Public



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How to Improve Judicial Efficiency From the Perspective of a Judicial Staff Attorney

In this Issue

From the President

The Benefits of YLD Involvement

Nicole Leet

Why should lawyers become involved in the YLD? That's a good question, and it just so happens there are plenty of good answers.

For this article, I asked my fellow officers and directors to share how their activity in YLD leadership over the years has not only been beneficial to their careers and professional development, but also rewarding through opportunities to better serve the public and the justice system. Their positive, inspiring responses touched a number of areas.

Peer Networking

Our healthy schedule of meetings, networking happy hours, CLE programs, community and pro bono service projects, and other events provide opportunities for real-life connections with thousands of other young Georgia lawyers—truly an upgrade from relying on LinkedIn.

YLD President-Elect Rizza O'Connor put it this way, "Five years ago, I was a rural prosecutor and was looking for ways to network with other young lawyers in ways that my small town could not provide. I remember reading one of the YLD newsletters and seeing all the fun activities and good service projects that young lawyers were doing all over the state and I decided to go to my first YLD meeting in the spring of 2013. I eventually joined several committees and started attending more YLD meetings. The YLD meetings were always in a very attractive location where I could receive CLE credit and gain professional contacts as well. Going to YLD meetings every year became an easy decision."

As a result of those opportunities, YLD Director Audrey Bergeson added, "My relationships with other attorneys who are active members of the YLD have added incredible value to my professional and personal life. Attorneys get a lot of flak and tend to have a less than stellar reputation in popular culture. When I look around at my fellow YLD leaders, I see the opposite. These attorneys make me proud to call myself a lawyer. Their kindness, enthusiasm, leadership and integrity inspire me."

Professional Development

Once you've met, worked and established relationships with other lawyers from around the state, suddenly you have a new group of colleagues with whom to share legal knowledge and experience. The YLD's practice area committees, CLE seminars and Leadership Academy provide additional opportunities to broaden your expertise and sharpen your skills. The YLD also provides opportunities to learn from "big Bar" lawyers and find and develop professional mentors.

"My colleagues in the YLD provide me with a sounding board for legal strategy, career choices and even personal issues," said YLD Director Mandy Moyer. "The YLD has provided me an opportunity to position myself as a leader in my practice area by taking on the responsibility of leading relevant YLD committees, and to lead the charge in creating pro bono opportunities for my practice area colleagues. Most importantly, my involvement with the YLD has resulted in great friendships that I can, and do, rely on when I'm faced with challenges in my practice or elsewhere. The YLD has been impactful in my legal career and my life. Through relationships I've made in the YLD, I've received so much more than just referrals—though I've gotten those, too."

Making a Difference

The YLD has long been known as "the service arm" of the State Bar. Thanks to the vision and hard work of our predecessors,

the YLD is an established presence in professional and community service. From local causes supported by our YLD affiliates around the state to our major projects with statewide impact, such as the High School Mock Trial Program and the Georgia Legal Food Frenzy, young lawyers are paving the way for a better future for the justice system and the public it serves.

According to YLD Newsletter Co-Editor Heather Riggs, "I started participating in the YLD to grow my network and develop referrals for my practice. Once I got involved, I became a part of some incredibly meaningful programs and projects that have made a real difference in the profession and in our communities. It's that service element that is such an integral part of my life now and keeps me committed to the Division."

YLD Director Kerry Nicholson said, "I became involved in the YLD because I was seeking meaningful community involvement. Also, my job did not offer many opportunities to be a leader and work with others. Consequently, I joined the Public Interest Internship Program (PIIP) committee. The next year, I became its co-chair, a position I held for three years. During that time, I also participated in Leadership Academy. This year I am on the YLD Executive Committee. The YLD has given me what I was seeking—meaningful community involvement and leadership opportunities, as well as a great network of lawyer friends."

O'Connor added, "As I got more involved, I began to see the power of the collective group of active young lawyers and

▸ SEE **BENEFITS**, PAGE 12

How to Improve Judicial Efficiency From the Perspective of a Judicial Staff Attorney

Chi Chi Anachebe

Leadership Academy, Class of 2018

It is no secret that each judge has his or her preferences and pet peeves when it comes to certain filings with the court. Knowing what a judge likes to see in a specific filing makes the judicial process easier for the attorney who makes the filing, but even easier on the judge's staff attorney who reviews the filing. Though the judge's preference supersedes the staff attorney's preference, it is important to remember that the staff attorney will have the last say in persuading the judge before he or she issues her ruling.

Aside from assisting in drafting orders, my role as a staff attorney is to ease the judge's docket, scouring through civil motions and flagging any procedural errors that require a hearing. With my judge's preferences in mind, I am able to look through these filings to know which ones will continue to the next round for a substantive review, and which others require an email to counsel because of a potential insufficiency. To avoid this unexpected email from chambers, it is to your advantage to learn the judge's preferences.

With respect to motions, oftentimes I come across those that are so specific in their requests that they essentially walk me through what the party is asking the court to do. I love these kinds of motions! However, for every perfect motion, there are others that are not so perfect and ultimately impede the court's efficiency. These motions trigger a red flag in my mind, causing me to suggest to my judge, Hon. Ben W. Studdard, that he order the parties to appear for a hearing.

I am not the only one with this perspective. I consulted with three fellow staff attorneys—Michael Profit, Faatima Ally and Brett Duvall—all with Henry County State Court, to learn more about their prefer-

▸ SEE **EFFICIENCY**, PAGE 8

From the Editors

See You Later

ShaMiracle Rankin & Heather Riggs

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The past two years, we have been honored to serve the YLD as co-editors of *The YLD Review*. During our time as your editors, we have led the charge in updating *The YLD Review's* layout, encouraged the submission of practice-based articles and increased our readership. We also established the YLD's first blog (https://theyldreview.wordpress.com/), where our committees and YLD affiliate chapters provided important updates to the YLD and the Bar. While we helped usher *The YLD Review* into the digital news age, we could not have done so without you!

To every YLD member who submitted a piece for inclusion in *The YLD Review*, thank you! Our readership is much wiser, thanks to you. You have covered topics that span from the equitable division of embryos to how one may remain in a judge's good graces. When we requested articles, you answered in abundance. *The YLD Review* would not be possible without you! In fact, thanks to your contributions, in 2017, *The YLD Review* received the American Bar Association's highest award: First Place Award of Achievement.

The YLD Review will always hold a special place in our hearts. We have truly enjoyed serving you. Although this is our last newsletter issue writing as your editors, please do not take this as our goodbye. You will certainly see us later!

With sincere love and appreciation,
H & M (Heather & Miracle) YLD

Rizza O'Connor: In Her Own Words

ShaMiracle Rankin

2018-19 YLD President Rizza O'Connor

For the past three years, I have had the pleasure of serving members of the YLD with Judge Rizza O'Connor. O'Connor wears many hats—wife, mother, chief magistrate judge of Toombs County and workout enthusiast. On June 8, 2018, O'Connor put on a new hat as president of the State Bar of Georgia's Young Lawyers Division. Prior to her investiture, I had the pleasure of speaking with O'Connor regarding her path to the bench and her vision for the YLD. During her interview, O'Connor shared nuggets of wisdom that are sure to inspire attorneys, young and seasoned, who seek to shatter goals. Enjoy!

When you were a child, what did you want to be when you grew up? Did your dream career change over the years?

As a child, I always wanted to be a doctor. My decision to be a doctor was strongly influenced by my mother, who is a nurse. Like many, my mother's ticket out of the Philippines was through the medical field. Naturally, I grew up around a lot of nurses and volunteered at my local hospital in middle school and high school. My senior year of high school, I was a part of the medical magnet program and had determined that I would be a dermatologist.

However, as fate would have it, my plans changed the summer before my senior year of college. I was selected as a juror in an aggravated assault case that involved a shooting. I along with two friends were picked for the jury. District Attorney Isabelle Pauley was amazing! As she prosecuted the case, I sat there in awe—she was smart and eloquent. I was so fascinated by Isabelle Pauley and from that day, I knew that I wanted to be a lawyer. I volunteered to be the foreperson and we reached a guilty verdict. Serving on that jury was one of my most rewarding moments and it literally changed the trajectory of my life. When the trial concluded, I followed Isabelle Pauley to her office and told her that "I want to be just like you." She is still one of my most treasured mentors.

That is a notable example of the influence one can have on someone's life. Did you ever prosecute?

Yes! Following graduation from law school, I worked with Isabelle as a prosecutor in the Chatham County DA's office. That was truly a full circle moment for me.

That story could not have been written better! How did you transition from prosecutor to Magistrate Court judge? Had you set your sights on serving in the judiciary?

No, being a judge was not on my radar. When I moved to Toombs County, my intent was to gain felony prosecution experience. Once I gained this experience, I intended to move back to my home town and become a felony prosecutor. Again, my plans changed when I was presented with the opportunity to serve as Magistrate Court judge. In Toombs County, magistrates are appointed and not elected. I just happened to be in the right place at the right time.

How did you find out that you were appointed to your court?

I knew that I was being considered. After I submitted my application, the waiting game began. I was waiting and waiting and waiting and weeks had gone by without a decision. One day, after concluding a criminal calendar, I was in the clerk's office when I saw Chief Superior Court Judge for the Middle Judicial Circuit Kathy Palmer, walk in. She said hello and passed me an order. It was my appointment! Judge Palmer offered her congratulations and gave me a big hug. I will never forget that day. I walked into the courthouse as an attorney and walked out as a judge.

That is a powerful story of how quickly your circumstances can change. Have you gained

▶ SEE **O'CONNOR**, PAGE 10

National Labor Relations Board Goes Back to the Future

Cary Burke

Leadership Academy, Class of 2018

On Feb. 26, 2018, the National Labor Relations Board (NLRB) issued an order vacating its recent decision on the issue of joint-employer in *Hy-Brand Industrial Contractors & Brandt Construction Co.*, 365 NLRB No. 156 (2017). The 3-0 decision by the NLRB, in which member William Emanuel did not participate, effectively reinstates the NLRB's controversial "indirect control" joint-employment test from the *Browning-Ferris* decision.[1]

The NLRB's *Hy-Brand* decision, issued 3-2 along party lines on Dec. 14, 2017, had sought to overturn the NLRB's previous *Browning-Ferris* joint-employer jurisprudence. In *Browning-Ferris*, the NLRB departed from long-established jurisprudence and determined that a joint-employment relationship could be found where an entity maintained "indirect control" over another entity's employees' terms and conditions of employment, or where "industrial realities" dictated the finding of a joint-employment relationship.

Critically, Emanuel was a shareholder working at the same law firm that represented a party to the *Browning-Ferris* decision, yet still participated in the *Hy-Brand* decision. Upon issuance of the *Hy-Brand* decision, the charging parties sought reconsideration from the NLRB and the recusal of Emanuel from any further case proceedings on the grounds that his former law firm was involved in the *Browning-Ferris* decision.

Given the request for recusal, the NLRB's designated agency ethics official investigated the propriety of Emanuel's participation in the *Hy-Brand* decision. The ethics official determined that because Emanuel would have been prohibited from participating in the *Browning-Ferris* decision as a result of his former firm's involvement in the case, he was likewise barred from participating in the *Hy-Brand* decision because *Hy-Brand* involved the same legal arguments as *Browning-Ferris*. Accordingly, based upon the ethics official's determination, the NLRB vacated *Hy-Brand* and disqualified Emanuel from any further case proceedings.

Companies that rely on contingent staff or temporary workforces should proceed carefully—for now, as the NLRB's "indirect control" joint-employment test from *Browning-Ferris* is once again the state of the law. To complicate matters further, the seemingly mooted challenge to *Browning-Ferris* will now return to the U.S. Court of Appeals for the District of Columbia Circuit for further proceedings.

However, all of this may be much ado about nothing. Labor watchers almost uniformly expect the NLRB will revisit the joint-employment issue in a different case once nominee John Ring, a management-side labor and employment attorney, is confirmed as the NLRB's fifth member and third Republican. Ring's confirmation has been slowed down significantly by questions regarding Ring—and his law firm's—extensive client list. Indeed, Ring is currently a partner at mega-firm Morgan, Lewis & Bockius LLP, whose client list includes such heavy hitters as Google and Amazon. During a recent Health, Education, Labor and Pension Committee (HELP) hearing regarding Ring's nomination to the NLRB, Senate Democrats pressed Ring repeatedly regarding the potential he would be forced to recuse himself from NLRB proceedings. In response, Ring promised he would provide the HELP Committee a complete list of his firm's clients, and would further recuse himself from any NLRB decisions that involve those clients. YLD

Endnote

1. 362 NLRB No. 186 (2015).

The Future of Access and Our Profession Is Shaped by L4EJ

Heather Riggs

Lawyers for Equal Justice Executive Director Sarah Babcock

Access to justice is a topic that's near and dear to my heart, and I'm fascinated by the different perspectives we can take when working to address it. We are fortunate in Georgia to have so many amazing organizations, like Georgia Legal Services Program and Atlanta Volunteer Lawyers Foundation, among others, that are focused specifically on the "gap"—those Georgians who qualify under certain financial criteria and who could not otherwise afford legal help at all. But what about the rest of our population, now estimated to be in the majority, who would not qualify for assistance programs but for whom the services of an attorney are, realistically, out of reach? That's where Lawyers for Equal Justice (L4EJ) comes in.

I recently caught up with Sarah Babcock, L4EJ's executive director, over an afternoon coffee to get an update on the program and learn how it's developed since its inception as a new lawyer incubator program with a pro bono twist. Indeed, it is much more than that today, with layers of benefit that reach far beyond the attorneys who participate and even those they serve.

L4EJ is truly shaping the future of law practice, as it places an emphasis on business processes and efficiency for its lawyer-participants while highlighting the practical benefits clients can receive as the result. Streamlined, cloud-based automation in case management helps the attorneys balance their time and stay organized, while the client receives more regular communication and ultimately save costs. Retainer agreements with built-in deadlines set clear expectations for everyone involved in each case. Alternative fee arrangements, the most critical and revolutionary aspect of the L4EJ methodology, strike a chord between predictability for a client who may struggle financially month to month and profitability for a new solo practitioner who undoubtedly appreciates the steady income. Alternative options range from unbundled services and limited scope representation to flat or sliding scale fees. What many law firms have been slow to adopt is second nature for L4EJ participants.

And they're spreading the word. Babcock and her growing army of modern attorneys are teaching others how to implement these tools in their practices, and with tremendous success. Teaching is a vital part of the L4EJ program, and just one of the many ways it's benefit goes beyond those who are directly involved. Practice management and marketing, another topic of particular interest to me as a legal marketing service provider, is also a strong emphasis, as is the importance of mentoring and, of course, pro bono work. Participants are required to complete a certain number of pro bono hours during the program. In doing so they are not only narrowing the gap even further, but are also broadening their skill sets and developing servant-mindedness that will carry throughout the rest of their careers, not to mention setting a great example for the rest of us.

Speaking of the rest of us, there are a myriad of ways young lawyers like us can help to support L4EJ. To start, we can embrace its mission by implementing client-centered practice tools at our firms and committing to do more pro bono work, where possible. We can serve as ambassadors of the program to our colleagues who may be interested in becoming a participant, and we can encourage and mentor those who are already a part. We can also donate our time (or funds, if you or your firm have the funds to donate) to volunteering alongside the L4EJ attorneys during a help-a-thon or clinic.

Although L4EJ seems to have really found its groove, I'm eager to see how it continues to grow and develop in the years to come. With Babcock's pragmatic passion at the helm and a Board of Directors that reads like a who's who of the Georgia legal community, including two former YLD presidents, there's no doubt in my mind that L4EJ has a very bright future. Because of the work they're doing, the public and the profession—the entire profession—will benefit.

To learn more about the Lawyers for Equal Justice program or to apply, visit their website at https://lawyersforequaljustice.legal.io. YLD

Limited Scope Pro Bono for Family Law Practitioners

Lori Anderson

Leadership Academy, Class of 2018

When most attorneys think of pro bono, they picture taking on a full case and all that litigation entails: tight deadlines, discovery requests, mediation and maybe even a trial. That's a big commitment, and it is one that can prevent attorneys, especially newer lawyers who have to make their billable hours, from taking on pro bono work. However, there are plenty of ways that with only a small investment of time, attorneys can do what they do best—help.

Pro se parties often need just a little bit of help overcoming very specific stumbling blocks. Offering "unbundled" brief services pro bono can be an enormous help to a pro se litigant who is stuck on a particular task. For example, I recently had a client at Atlanta Legal Aid whom we were unable to represent because her case was outside of our service area. The case was pretty manageable for her overall, but she had been served with a pile of discovery requests. She felt overwhelmed, and the jargon in the discovery instructions was confusing. Having no idea what to do, she called Atlanta Legal Aid for help. I spent about two hours helping her complete her responses. I also explained to her that discovery is a standard part of the process, and that she didn't need to be alarmed or concerned by requests for information from the opposing party's attorney. We completed the responses, and I gave her a checklist of responsive documents to attach. I also prepared a quick filing cheat-sheet so she would know what to file, what to serve and what to keep. She was so grateful for just a couple hours of my time helping her overcome that obstacle. With her discovery responses complete, she felt confident that she could continue to manage the remainder of the case herself.

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If you are looking for a more structured pro bono opportunity, consider volunteering with an established program. For attorneys in the metro-Atlanta area, volunteering with the Fulton County Family Law Information Center (FLIC) is a great low-commitment opportunity. On the last Friday of every month, FLIC hosts a walk-in family law clinic for pro se litigants. The monthly walk-in clinic lasts from 9 a.m. until 12 p.m., but volunteers are appreciated for any length of time—there is no need to stay the full three hours. During that time, we meet with up to 50 walk-in clients who need advice about a family law issue. At the clinic, we answer questions, provide legal advice and help people fill out court forms. Each meeting lasts about five to 15 minutes. The walk-in clinic is primarily staffed by Atlanta Legal Aid attorneys, which means that we always need volunteers to assist litigants who may be conflicts of interest for Atlanta Legal Aid. Having attorneys on-site who can advise conflicts ensures that nobody is turned away and that everyone who shows up has access to high-quality legal advice.

If you are looking for something even more flexible, you could also consider volunteering with the Georgia Child Support Helpline. In conjunction with the Georgia Legal Services Program, the Family Law Section of the State Bar established the helpline to enable low-income pro se litigants in rural counties to get help completing a child support worksheet. Consultations are done over the phone, so you can do them from any location and at your convenience. It typically takes anywhere from 10 to 30 minutes to talk with the client and complete the child support worksheet. With that little time investment, you will have helped a party overcome a technical roadblock so that they can keep moving their case forward. Because you have helped a client complete a prerequisite to finalizing his or her case, you have also helped the court by ensuring that the case does not stall.

If you are interested in volunteering for either of the above programs, you can get more information by calling me at 404-614-3955, or emailing me at leanderson@atlantalegalaid.org. YLD

▶ **EFFICIENCY**, FROM PAGE 3

ences and pet peeves. In sharing their likes and dislikes, my colleagues also provided suggestions for what they wish attorneys would do more often to help make their jobs easier, ensuring the preservation of judicial efficiency.

Default Judgment Motions

As most staff attorneys will tell you, their least favorite filing involves seeing a motion for default judgment. Many of these filings ask for an award of liquidated damages that can be shown through attached exhibits demonstrating the amount that is in default. However, sometimes the plaintiff will submit the governing contract that is, for example, 20 pages in length without marking the provisions that it wants the court to enforce. Any documentation submitted to the court lacking any highlighting or pinpoint tabs/flags for a lengthy contract is more likely to draw the ire of the staff attorney reviewing the motion.

To avoid this issue, Ally suggests the plaintiff "have all exhibits present, detailing every calculation made for the requested attorney's fees, interest amounts and court costs. Such detailed information helps to reduce problems in the long run and precisely clarifies what the defendant has to pay." Ally further adds that in the accompanying proposed order submitted by the plaintiff, she loves seeing a chart that shows exactly what the plaintiff is requesting the court to award. "Having the chart allows me to point to the contract and see that the principal, attorney's fees and interest amounts all match with the supporting exhibits."

Status Conference Calls

Twice a month, upon the close of discovery for each case, Henry County staff attorneys hold a status conference call in lieu of counsel personally appearing before the judge to discuss jury trial scheduling matters. These calls usually last between five and 10 minutes but can sometimes last longer if all the parties do not join the call in a timely manner. It is Profit's practice when he schedules status conferences to tell the attorneys "they are responsible for initiating the call and conferencing-in the court. I do not mind the occasional five-minute delay because of minor technical difficulties, but it is annoying when I join the call and everyone is present except for one tardy attorney." This scenario can surely irritate the staff attorney, especially when he or she has other conferences that are scheduled to take place.

To avoid such delay, Profit advises, "test[ing] your phone's capabilities prior to the scheduled call to figure out if it can handle multiple parties on the line. If it cannot, then the parties should consider using a free conference call service that allows participating parties to dial a private access code to join the call."

Courtesy Copies

For each motion, pretrial order, conflict letter or leave of absence filed, a courtesy copy is mailed to the judge for the staff attorney to review. While every court is different in how it treats courtesy copies, the general consensus among my colleagues is that avoiding the multiple versions of the same document would be more efficient. Duvall explains, "I understand and appreciate counsel considering the judge and me, but I am not a fan of receiving printed courtesy copies. I would rather have counsel email them to me as opposed to mailing a physical copy that is immediately sent to the recycling bin." With Duvall's suggestion in mind, it is best to confirm with the judge's staff attorney to learn how they prefer to receive courtesy copies.

While each judge and their staff attorney have their preferences and pet peeves, it is good practice to speak with each staff attorney to gauge their likes and dislikes before submitting particular filings with the court. YLD

Save the Date: GDPR Enforcement Date Is Finally Here

Kaushal Amin

Leadership Academy, Class of 2018

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On May 25, 2018, the General Data Protection Regulation (GDPR), the largest European Union (EU) data protection law reform in the past 20 years, will come into force and overhaul how businesses process and handle personal data of EU residents. The purpose of the new regulations is to harmonize data privacy laws across Europe as well as create a regulatory floor—not ceiling—for privacy protections and rights of individuals.

For many companies and lawyers who have transactional practices, regularly deal with regulated EU client or customer data, or just generally keep up with privacy laws or new regulations, you are likely familiar with the GDPR but may have forgotten about the upcoming enforcement period. After years of negotiations, the European Council adopted the GDPR and released the compliance deadline back in May 2016 to allow businesses and the public a two-year preparation period to adopt and implement compliance measures.

Since its announcement in 2016, there has been no shortage of literature on the details of the GDPR and breakdown of the changes and potential impact and scope of the regulations. It has also resulted in revamped compliance departments and launching of numerous startup companies promising to help update and overhaul policies and procedures for organizations as they prepared for the May 2018 deadline.

A natural question you may have is why should a young lawyer practicing in the United States monitor or be particularly concerned about European data protection regulations? To start, unlike under the previous EU directive, these new regulations not only apply to organizations that collect, store or process the personal data of individuals residing in the EU, but they also apply to organizations based outside the EU that offer goods or services to any EU residents, monitor their behavior or process their data. As a result, in today's increasingly connected global economy, the compliance obligations of the GDPR have a potentially broad reach that will impact thousands of U.S. companies. This impact could be directly through its customers and clients, or through first- or second-party vendors, such as a payroll processor or a cloud provider who offers data storage for your law firm or small business.

The full text of the GDPR includes 99 articles which set out the rights of EU individuals to protect their personal information and obligations on organizations that process personal data of those covered under the laws. Some examples of the scope of the regulations include concepts such as the "right to be forgotten" (See Art. 17 GDPR), which grants an individual the right to request that their personal data be erased if certain requirements are met such as: (1) if the data is no longer necessary in relation to the purposes of the processing, (2) consent has been withdrawn, or (3) the legal retention period has expired. Additionally, Article 8 of the GDPR creates a parental consent requirement when offering information services directly to a child under the age of 16. Other changes include stringent data breach notification requirements—within 72 hours of awareness (See Art. 33 GDPR)—and hefty penalties for some infringements, including fines up to 4 percent of the organization's annual global turnover or €20 million, whichever is higher.

However, even with the two-year notice period prior to the May 25, 2018, enforcement date, the true impact of the GDPR is unknown and many organizations in Europe and the United States are still scrambling to update their policies and procedures in anticipation of the new requirements. Similarly, the trickle-down effects of the laws on areas such as consumer prices and the policy changes of organizations maneuvering to comply with them in order to avoid the potentially crippling penalties for non-compliance are yet to be seen. The only thing that is certain is that May 25 has passed, and the ripple effects may last for years before organizations are able to fully adjust to the new standard for data protection in the EU and for those organizations that wish to do business with its residents. YLD

▶ **O'CONNOR**, FROM PAGE **4**

any judicial role models or mentors during your time on the bench?
Yes, of course! Judge Kathy Palmer is one of my role models. I am in awe at how she has been a trailblazer for women attorneys in small towns. I cannot imagine the challenges she had to face as the only female attorney in a rural area.

You have been in your role for four years, what do you perceive as the greatest obstacles to justice, if any?
Access to affordable (or free) legal services is the greatest obstacle in rural counties. There are more than 1,800 civil cases filed in my court every year and 90 percent of the litigants are pro se. Most of the people who come through the court can barely afford a lawyer, let alone pay a judgment. That is one of the reasons why during my YLD presidency I want to try a pilot program through the Lawyers for Equal Justice. Through this program, attorneys can represent clients in rural counties, like Toombs County, through video conference from the Lawyers for Equal Justice office in Atlanta. Clients will be able to utilize those services for less than what they would typically pay a lawyer in the area.

I cannot wait to learn more about this pilot program. Judge O'Connor, you hold a lot of firsts—you are the first Filipino-American judge in Georgia, the youngest Asian-American to serve as a judge in Georgia and the first Asian-American president of the YLD. How does it feel to be a trailblazer? And what legacy do you desire to leave for those following in your footsteps?
It does not really seem like I am one. I am very blessed to come from a Filipino heritage. I am first-generation American. My family in the Philippines still live in a single-family concrete home without running water and by trade my family members are sugar cane farmers. My parents came here for the sole reason of providing a better life for my family, and that was one of the main reasons my mom became a nurse. In the Philippines, my Dad was an accountant by trade but when we moved to the United States there was a language barrier because he spoke little English. My parents sacrificed a lot for my sisters and me. They also gave us every opportunity that they could to succeed. I see God working through me and every day I hope that God guides me through my decisions and that people will be able to see Him through me and what I do.

Miracle, I am completely grateful for this country because I am living the American dream. So many opportunities have been given to me and that is one of the reasons I wanted to be YLD president. As YLD president, I have a platform to do good and to influence others. So, I am hopeful that my legacy will be one of influence and bringing about positive change.

Judge O'Connor, you are quite the inspiration. Who is one person, alive or deceased, that if given the opportunity you would most like to have dinner with?
Just one? I cannot pick just one. There are two people I would like to have dinner with, Princess Kate and my grandfather. I did not know my grandparents well on my mom's side because they lived in the Philippines and my grandfather passed away when I was four years old. However, I hear that he always wanted to be a lawyer. He was a teacher and wanted to go to law school but did not have the funds. He prayed that one of his kids or grandchildren would one day have the opportunity to become a lawyer. I am glad that I could fulfill his dream.

As a new wife, I sometimes find myself mulling over the idea of having it all (i.e. a great marriage, raising admirable children and flourishing in my career). As a wife, mother of two and the chief judge of your court, what advice would you offer the younger attorney who desires to have it all?
It is incredibly challenging and requires a lot of energy. If you work at it, you will figure out the balance. The best help I have is my husband, Daniel. He is incredibly supportive and selfless. When you have two people who are supportive of each other it really works. There are some things that you miss but you have to make the most of the time that you are together. It is valuable to me having a professional career and I think I am a better wife and mother by being able to pursue my professional goals.

Health and wellness are also important to you. How do you consistently carve out time for physical fitness and mental well-being?
I wake up at 5:30 a.m. every morning and do cross fit, and when I do not, I run at lunch or in the afternoon. This is my "me time." I am going to incorporate a fitness/health group activity at every YLD meeting. Physical activity is important to me because I am a better thinker when I am active and working out helps provide clarity.

What are some of your main goals for your year as YLD president?
The pilot program that we discussed is one of my main goals. I also hope to make the events and meetings more accessible and to keep them here in Georgia. This year, some of our meetings are in South Georgia and Northeast Georgia. Hopefully, by hosting meetings in various parts of the state we can get more members involved with the YLD statewide. Similarly, I hope to get more groups of young lawyers involved in the YLD that typically are not involved, like prosecutors and defenders.

Involvement is important. For the reader that is new to the YLD, what advice would you offer regarding becoming engaged in the YLD and the Big Bar?
Just tell one of the leaders and we can help you find your footing and assist with involvement. The best way to get involved is to just ask. YLD

Witness Charts: A Useful Cross-Examination Preparation Technique

Jacqueline Kennedy-Dvorak

Leadership Academy, Class of 2018

Recently a partner in my litigation practice group asked me to prepare a comprehensive witness chart consisting of information obtained from the deposition transcripts of three key witnesses, which he planned to use for cross-examination purposes at trial. I had no idea what a witness chart was, but my boss quickly pointed me to a book that has since become instrumental in my practice, and which I highly recommend to any litigator, no matter their level of experience: Larry Pozner and Roger J. Dodd's "Cross-Examination: Science and Techniques." It is worth every penny.

Although my boss asked me to prepare the witness chart, he had never used one before, so it was new to both of us. Obviously, I devoured the chapters on witness charts before diving into the project and found two useful steps in preparing my own. First, read each deposition without highlighting, underlining or otherwise putting pen to paper. Second, create an incident play-by-play wherein you identify the major events leading to the matter at issue. For example, in my case there was a nasty three-car accident that occurred while traveling at interstate speeds of 75-80 miles per hour. As with every incident, each witness had a slightly—and in some cases significantly—different recollection of the accident, how it happened and what caused it. I read each deposition slowly and carefully to generally familiarize myself with the scene.

Later, after I felt comfortable enough with the facts to distill the accident into a series of events, I created a sequence-of-events chart which, although it sounds simple enough, was harder to do than I thought, but payed dividends when I needed to further distill the accident into even fewer events. In the end, events I initially thought crucial became less crucial as they were purified into their separate events, and events that appeared somewhat trivial or ones I was not initially sure how to categorize became critically important and required separate treatment. From those sequence-of-events charts, which I made for each deponent, I was able to condense the accident into nine events, separated in color and column by the deponent, with references to each place in the deposition the event was discussed by that witness. It looked something like this:

Event	Description of Event	Despondent #1	Despondent #2	Despondent #3
1	Description of Event	Statement #1 Statement #2 Etc.	*	Statement #1 Statement #2 Etc.
2	Description of Event	Statement #1 Statement #2 Etc.	Statement #1 Statement #2 Etc.	Statement #1 Statement #2 Etc.
3	Description of Event	Statement #1 Statement #2 Etc.	Statement #1 Statement #2 Etc.	Statement #1 Statement #2 Etc.
4	Description of Event	Statement #1 Statement #2 Etc.	Statement #1 Statement #2 Etc.	Statement #1 Statement #2 Etc.

**If a witness does not address the event, leave that box blank.*

This technique is useful for numerous reasons, not the least of which is that it forces you to pick which events or actions are pivotal to the issue at hand. It also gives you pinpointed references to what each witness says about those few crucial events and how you can best prepare for that witness' cross-examination at trial. For easier reference, I included a brief description of what the witness said about the event, and every transcript reference for that event in bold print. Remember, the end goal is preparation for cross-examination. To that end, the chart gave me a better picture of where the witnesses differed, how they differed and where the break in causality occurred for our client which was supported by the witness' testimony. It is a useful tool in choosing what— and how—to prepare cross-examine questions, and in getting your partner or senior attorney immediately up-to-speed in the case. And, as a plus, it is impressive to look at and afforded me some brownie points.

Of course, the caveat to this extremely helpful cross-examination preparation technique is that you must be confident about your understanding of the incident and your understanding of the causal chain so that you can narrow it into a few small, critical events. The upswing is that witness charts are useful in a variety of fields and cases, and shows diligence, dedication and a high degree of attention to detail, all of which will raise eyebrows in your favor.

Although the witness chart did not originate with me, and although it is only a small part of their book, I want other young litigators to know how beneficial "Cross-Examination: Science and Techniques" is, especially when you are trying to prepare your partner or a senior attorney for a case on which they may not have had the same time or opportunity to study and learn it. YLD

▶ **BENEFITS**, FROM PAGE **3**

the influence the YLD had in serving the profession and the public. Those active in the YLD were some of the most dynamic young lawyers in the state and these were my friends and together all of us were working on projects and programming that was creating so much good in our profession and in our communities. It is thrilling to see the YLD positively influence so many lives through our volunteer efforts."

'A Better Lawyer'

You are encouraged to increase your YLD involvement and take advantage of these opportunities. As Rizza noted, "I believe that the YLD covers all the aspects to make a young lawyer well rounded. There is also the opportunity to participate in activities that you might not otherwise experience had it not been through the YLD. For me, some of those activities have been learning about entertainment law in Nashville, Tenn., eating meals with lawyer-legislators and the justices of the Supreme Court of Georgia, and going to the home of famed attorney Bobby Lee Cook."

YLD Director Win Cook stated, "I became active in the YLD due to the encouragement of a more senior lawyer at my previous firm, and while I was skeptical at first, the experience has made me a better lawyer and created friendships across the state that I know will last a lifetime."

YLD Director Kevin Patrick added, "This organization truly helped me gain a sense of purpose within the legal community and an even greater appreciation for the State Bar. I have also been able to forge lasting relationships with other attorneys throughout our state. Looking back on this journey, I can say without any hesitation that the YLD was— and still is—the foundation for a fulfilling legal career."

While there may be many different motivating factors to get involved in the YLD, by getting involved you will meet talented and amazing attorneys across the state and develop a lifelong network of personal and professional support as you continue on in your career. I will end with my personal attestation—becoming involved with the YLD has provided professional development opportunities, service programs and leadership training to help me not only be a better practitioner, but allows me to help make a difference in both our profession and the community. Get involved! YLD

Lessons Learned From Clerking

Eleanor Kasper

Leadership Academy, Class of 2018

Before I started my one-year clerkship in the Southern District of Georgia, lawyers of all ages told me how beneficial it would be for my career and how fortunate I was to have the experience. My future law firm fully supported it and even provided a financial incentive to clerk. Still, I did not fully understand just how invaluable it would be. What is so great about clerking and why do law students all across the country apply to do it? I can only speak for myself, but my clerkship experience left me with numerous takeaways that have become crucial components of my litigation practice.

First, my clerkship taught me that judges are confined by the same laws as attorneys. While they are charged with the critical task of applying the law to complicated fact patterns involving real people and real problems, judges do not have a magic book of laws that differs from what attorneys are able to access. I realized that attorneys have an obligation to find and present the most significant authorities to the court for review, which includes tackling the negative cases as well. The court will find those negative cases on its own and failing to acknowledge them can appear deceptive.

I also learned to look at the facts and the laws through the lens of a judge. It is no surprise that judicial clerks take the first pass at reviewing motions and drafting orders. I found myself in the position, as a recent law school graduate, of reviewing stacks of motions and supporting exhibits to determine which side was correct in important dispositive motions. While moderately terrifying at first, I took my obligation to perform sound research and analysis very seriously and got to experience the process of legal decision-making. From a practical standpoint, through reading the never-ending stacks of deposition transcripts and exhibits, I learned how to review documents carefully and with a critical eye. Processing large amounts of information effectively is a critical skill for attorneys, and I began honing that skill on day one of my clerkship.

Additionally, I practiced the art of being unbiased while reading persuasive briefs. When I first began clerking, I remember thinking how both sides' briefs were often compelling, and how it was easy to believe what was argued on paper. I learned, however, that the words on the paper did not matter if the law did not support those words. I learned that I had to research every case that was cited and make sure the arguments comported with the law before I would consider them. This taught me to read every brief with a fresh new lens that was not tainted by flowery words, but that merely traveled in the direction of the law. Now I research, draft and review my own briefs with the same critical eye that I used when reviewing briefs as a clerk. Moreover, I learned to spend valuable paper space on arguments that the clerk and judge needed to make a correct ruling. This usually meant

▶ SEE **CLERKING**, PAGE 13

Recent Developments in First-Party Bad Faith Actions

Mary Alice Jasperse

Leadership Academy, Class of 2018

In first party lawsuits brought by policyholders against their insurance carriers, allegations of bad faith are often included in the complaint. These allegations are often included in an effort to recover extra-contractual damages such as attorney's fees and other expenses of litigation. The ability of a policyholder plaintiff to recover these extra-contractual damages is governed by Georgia statute, which authorizes the award of attorney's fees "[i]n the event of a loss which is covered by a policy of insurance and the refusal of the insurer to pay the same within 60 days after demand has been made" and when "a finding has been made that such refusal was in bad faith."[1]

The insured bears the onus of proving that an insurer's refusal to pay or resist payment was in bad faith.[2] Under Georgia law, the test for bad faith is "whether the insurer had reasonable and probable cause for defending against the claim."[3] Georgia courts have held that insurers are entitled to summary judgment on bad faith claims "where the insurance company has any reasonable ground to contest the claim."[4]

This "reasonable grounds" test was recently considered, and affirmed, in the 2017 *Portis v. State Farm Fire and Cas. Co.* decision.[5] *Portis* involved a homeowner's claim for coverage from insurer State Farm for complained-of hail damage to the roof of a commercial property. After inspecting the property on multiple occasions, State Farm did not provide coverage for the alleged hail damage because its representatives could not locate such damage. Portis, its contractor and roofing consultant, disagreed with State Farm's determination and filed suit alleging breach of contract and bad faith damages under O.C.G.A. § 33-4-6. On State Farm's motion, the Northern District of Georgia granted summary judgment in favor of the insurer. Specifically, the court found that Portis "produced no evidence in support of his claim for bad faith."[6] Indeed, because State Farm's representatives inspected the property on multiple occasions and had the agreement of experts that the roof did not suffer hail damage, State Farm's refusal to pay was not based upon "frivolous" or "unfounded" reasons. Absent any identifiable evidence of bad faith, summary judgment was appropriate.

Other states agree with Georgia courts that barebones allegations of bad faith are not sufficient to survive summary judgment in first party actions. In 2017, Colorado courts evaluated a laundry list of bad faith allegations brought against a first party property insurer.[7] In that case, the plaintiff policyholders alleged the insurer "knowingly misrepresented" facts and policy language, failed to promptly acknowledge claim communication, failed to attempt claim resolution in good faith where liability was reasonably clear and refused to pay claims without conducting a reasonable investigation. The court found that such "conclusory statements" contained in the complaint could not constitute summary judgment evidence. Because the policyholder's response to the insurer's motion for summary judgment did not provide specific facts supporting its bad faith claim, the court found that the insurer was entitled to summary judgment as a matter of law as to the bad faith breach of contract claim and statutory bad faith claim.

These recent rulings encourage policyholders to only bring bad faith allegations if identifiable evidence supporting these allegations exists at the time the complaint is filed or is likely to be uncovered during discovery. If such evidence does not exist and is not uncovered, insurers should move for summary dismissal of these claims. YLD

Endnotes

1. O.C.G.A. § 33-4-6(a).
2. *See* Interstate Life & Accident Insurance Co. v. Williamson, 220 Ga. 323, 138 S.E.2d 668 (1964).
3. Winningham v. Centennial Ins. Co., 708 F.2d 658, 659 (11th Cir. 1983).
4. Moon v. Mercury Ins. Co. of Ga., 253 Ga. App. 506, 559 S.E.2d 532 (2002).
5. *See* Portis v. State Farm Fire and Cas. Co., 2017 WL 3499873 (N.D. Ga. April 11, 2017).
6. *Id.* at *10.
7. *See* 5555 Boatworks Drive LLC v. Owners Ins. Co., No. 16-cv-027949, 2017 WL 6361398 (D. Colo., Dec. 13, 2017).

▶ **CLERKING**, FROM PAGE 12

not spending much space on legal standards for dispositive motions or obvious propositions but making sure to spend significant space comparing and/or distinguishing any legally significant cases.

Finally, my clerkship taught me that all attorneys are not equally diligent, and that lazy lawyers do exist. I was shocked by how many pleadings and briefs had typos and misstatements of the law. In the same vein, I was also shocked by some of the unprofessionalism I saw in court. After watching attorneys attempt to speak over the judge and show up late to court hearings, I am determined never to be one of them. Overall, while all judges are different and different clerks have different experiences, I would highly recommend a clerkship to anyone considering a career in litigation because it gives you takeaways that might take years of practice to learn otherwise. YLD

Closing Argument Do's and Don'ts

Prince N. Njoku

Leadership Academy, Class of 2018

There are many ways to present a closing argument, and each attorney should develop a style that is most comfortable to him or her. Below are some do's and don'ts that I have incorporated in my practice.

Closing Argument Do's

Do Show the Jury Why They Should Decide in Your Favor

Establish a rapport with the jury by reminding the jury of the facts and/or documents you promised to introduce at trial in your opening statement and take them through the chronology of the case from your perspective. Consider preparing a chronology of events to use during closing argument. I have used elaborate chronologies prepared by professional artists that help tell the story of the case. However, not every case justifies this expense. Software is now available to aid attorneys in creating their own timelines.

Do Incorporate Charts, Graphs and Diagrams

Almost any demonstrative evidence used during closing argument is better than none. The goal is to keep the jurors' attention. Attorneys should determine what types of demonstrative evidence can help the jury decide the case and consult with professional artists in creating them. Once again, if a case does not justify hiring an artist, an attorney can create simple but effective charts on a personal computer. It is almost always helpful to prepare a chart regarding damages, setting forth the types of damages at issue and the amounts the attorney wants the jury to award.

Do Play Animations

If a case permits it, an animation can be useful not only during trial, but also during closing argument. Almost anything can be animated, from car accidents to the steps necessary to construct a concrete floor. Even more captivating than a chart or a diagram is an animation that keeps the jurors' attention and effectively communicates a key issue of liability or damages.

Do Argue With a Theme

Ideally, closing argument will expand on a case theme introduced in opening statement. Do not be afraid to argue in closing argument—juries expect it. Appealing to emotions is important if the case facts justify it.

Do Argue the Jury Instructions

Pick out the top five or six jury instructions supporting your case and argue them. Sometimes it is helpful to enlarge the jury instructions or project them on a screen. Failing to argue the key instructions can be fatal because the jury may misunderstand them.

Do Tell the Jury How to Answer the Questions on the Verdict Form

The best way to ensure the jury understands the verdict form (and answers the questions correctly) is to take them through the form, question by question, and fill in the blanks as you explain it. You could even project a verdict form on a screen during this process.

Do Ask for Money

Juries have no idea how much money to award for certain damages such as pain and suffering. Left to their own ideas of compensation, juries will almost always award a figure that is significantly different than if the attorney had requested a particular sum. Accordingly, your closing argument should conclude with a specific request for damages or at least a range. Of course, it is important to justify the request.

Closing Argument Don'ts

Don't Attack Opposing Counsel

Attacking opposing counsel does not help your client and does nothing to advance your case. Moreover, you may offend the jury by making personal attacks.

Don't Summarize the Evidence Witness by Witness

This style is not persuasive. It is boring.

Don't Bore the Jurors

Closing argument is supposed to be the climax of the case. It is your chance to be free from the rules that bound you during voir dire and the presentation of evidence. There are few rules that govern closing argument; accordingly, it should be fun to watch. If you bore the jurors, they may miss the point of your closing argument. Most jurors are accustomed to watching two-minute closing arguments on television. If you plan to argue for an hour or more, you better entertain the jurors or you will lose them.

Don't Overstate (or Fabricate) Evidence

Some overly aggressive attorneys overstate or simply make up evidence to support their closing argument. This can ruin your credibility and prompt a sustainable (and embarrassing) objection.

Don't Read the Closing Argument

Some nervous attorneys read their prewritten closing argument to the jury. This is boring. If you use charts, graphs, etc., you will be able to free yourself from notes.

Don't Write Your Closing Argument at the Last Minute

You cannot prepare a coherent closing argument on the fly. I prepare my closing argument before trial starts. Then, I modify the closing argument as the trial progresses, practicing it as often as possible. YLD

You've Made Me Proud, YLD

Mary McAfee

It was a little more than 10 years ago that I sat in a conference room at the State Bar headquarters in front of then-YLD President Elena Kaplan and YLD President-Elect Josh Bell to interview for the position of YLD director. I remember that it was a Saturday. I remember that I wore a black and red suit (go Dawgs!). And I remember that I said I was excited about the opportunity to work for an organization whose mission was one of service. That excitement was always with me as I carried out my duties as YLD director. I have very much enjoyed helping you all in your endeavors to give back to the public and the profession. It is bittersweet that I announce I have accepted a new position at the State Bar. As of June 18, I have moved across the hall to serve as State Bar office manager. While I am looking forward to this new adventure, I will greatly miss my young lawyers! I would like to share a few highlights from the past 10 years and remind the Bar how amazing our young lawyers really are.

Model Juvenile Code

In 2004, the YLD secured funding to create a model juvenile code, and the YLD's Juvenile Law Committee spearheaded an entire overhaul of the previous code. The governor's Criminal Justice Reform Council focused on reforming Georgia's juvenile law and legislation was passed unanimously by the Georgia General Assembly during the 2013 legislative session to rewrite and recognize Georgia's juvenile law.

Leadership Academy

Founded in 2006, the YLD Leadership Academy is a program for young lawyers who are interested in developing their leadership skills as well as learning more about their profession, their communities and their state. The Leadership Academy has more than 480 alumni. Those alumni members include solo practitioners, judicial law clerks, partners in large and small law firms, assistant district attorneys, public defenders, nonprofit lawyers, ADR specialists and in-house counsel for Fortune 500 companies. The Leadership Academy has been recognized by the American Bar Association (ABA) with an Award of Achievement for Service to the Bar.

Legal Food Frenzy

The Legal Food Frenzy is an initiative of the State Bar YLD, the attorney general and the Georgia Food Bank Association. Created in 2011, the Legal Food Frenzy is a two-week food and fund drive competition among the legal community to help replenish food banks across the state. The Legal Food Frenzy has shined a light on the hunger epidemic of Georgia's children and to date, has raised more than $1.5 million for Georgia's food banks, the equivalent of 6 million meals for those in need.

Wills Clinics

Each year, the YLD's Estate and Elder Law Committee, in partnership with local YLD affiliates, host Wills Clinics across the state to provide Georgia's first responders and their spouses with basic estate planning documents on a pro bono basis. To date, the Wills Clinics has served more than 400 first responders across the state!

Public Interest Internship Program

Founded in 2010, the YLD's Public Interest Internship Program (PIIP) was created to provide law students and new lawyers with opportunities for legal experience in Georgia and encourage them to develop an interest in public service. To date, the program has given 39 law students and young lawyers grants to participate in summer internship programs in the public interest sector. This equates to approximately 15,600 hours of work to help those in need. The ABA recognized PIIP in 2010 with a first-place Award of Achievement for Service to the Bar.

Signature Fundraisers

One of the ways the YLD gives back to Georgia communities is through its annual Signature Fundraiser. Typically, it is a black-tie gala held in the winter, which encourages members of the legal community to get dressed up, network and have fun all while giving back. Over the years, this event has donated more than half a million dollars to various nonprofits all over the state.

These are just a *few* of the significant contributions that our young lawyers have made on behalf of Georgia citizens and the legal community. The amazing work done by our young lawyers is why I have proudly served as your YLD director. I know that the YLD will continue to do wonderful things under our future leadership and with the assistance from your new YLD Director Stephanie Wilson.

Stephanie received a bachelor's in music from Kennesaw State University and a Master's in music from Georgia State University. She has worked for the State Bar for 12 years in the Communications Department. As a liaison to the YLD, Stephanie has attended many YLD events, including those held at the Annual Meeting, and since its inception, the YLD Signature Fundraiser. She currently formats all of the YLD publications, including the newsletter and meeting brochures. She also serves as an administrator for the YLD's Facebook and Twitter accounts and helps manage the YLD website. In fact, Stephanie's work on behalf of the YLD has garnered her three YLD Awards of Excellence. I have no doubt that Stephanie is a perfect fit for the position of YLD director!

As she gets settled into her new role, Stephanie hopes to meet many of you and welcomes your questions, comments and suggestions. She can be reached at 404-527-8778 or stephaniew@gabar.org.

Continue being awe-inspiring, YLD! Hope to see you around the Bar Center or at the next State Bar meeting! YLD

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