

The background of the cover is a photograph of the Georgia State Capitol building, featuring its iconic gold-domed cupola. To the right, a bronze equestrian statue of a man on a horse is visible, standing on a stone pedestal. The sky is blue with some clouds.

# Georgia Bar Journal



February 2006 ■ Volume 11 ■ Number 5

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# Why Judicial Elections Are Different

by Richard D. Reaves

**J**udicial elections are different. Operation of the rule of law requires it; and the practicing bar must appreciate and advance this principle,

while the wider society should demand it.

Nevertheless, beyond fashioning a conclusory claim that judicial elections are different, few defenders of electing judges elaborate on such distinctiveness. This essay attempts to do so.

It does not debate whether appointive or elective judicial selection furnishes the best procedure, because Georgia's judiciary functions with judicial elections; and change from that fact is not visible on the political horizon.

## Judicial Independence Cannot Be Compromised

It must be asked . . . will public confidence in the detached, objective, neutral and impartial decision-making of the courts be enhanced by qualifying judicial candidates through: (i) political party affiliation, [*a current proposal in the Georgia Legislature*], (ii) campaigns in which the judicial candidates pledge ideological affinity with certain decisional outcomes, [*a logical result of judicial election speech changes forged by the U.S. Supreme Court in Minnesota Republican Party vs. White, 536 U.S. 765 (2002)*], (iii) questionnaires defining narrow, wedge- or even single-issue, litmus tests for holding office [*currently employed by various special interest groups*], (iv) funding of judicial elections via direct, personal, solicitation for campaign monies by Georgia judicial candidates from individual contributors and economic interest groups [*a consequence of the Federal Appellate court's holding in Weaver vs. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002)*]? Judiciary traditionalists reject

these *current* propositions of "reform" for judicial selection in Georgia. Their implementation, in whole or in part, would spell an end to what makes judicial elections distinct from elections of candidates for the representative branches of government. They also portend the end for decisional judicial independence, and an end to any reason for public confidence in the presence of a rule of law in society.

Such reforms for judicial elections might pave the way to legitimizing judicial decisions based on regard for the: (i) political (or economic, vocational, or social) position of litigants, (ii) cult of personality, or trend of morality discourse popular in civic life at any given moment, (iii) religious or ethnic (and racial or gender) identification among disputants, (iv) coercive force exercisable by persons invested in the outcome of a specific case or dispute. These possibilities depart radically from traditional aspirations for justice and Georgia courts.

## Partisan Affiliation Misleads

Is there a Republican or a Democratic Party position, a Green or an Independent Party policy, on: proper sentencing for a convicted armed robber, correct jury instructions on the meaning of reasonable doubt, presence of articulable suspicion to support a police officer's investigative stop . . . determining custody for a minor child in the context of a marital dissolution, bond to be posted by the guardian of a person or that ward's estate . . . a garnishee's obligation to comply with legal rights accorded to a creditor, fixing the location for a boundary line, an appropriate rate for accruing interest on a defaulted loan or other contractual obligation . . . freedom to speak out as an aggrieved citizen in opposition to governmental policy?

To these dilemmas, queries commonly resolved through courts rather than the law-making arms of government, *there is no partisan ideology more satisfactory than*



*norms of created law.* The representative authorities of government (e.g., legislative bodies, constitutional conventions, executive agency rule-making procedures) are tasked to set discerning policy parameters of fair results *generally* acceptable to the citizenry-electorate. The judiciary is asked to apply such democratically created standards to the resolution of *individual* cases and *specific* controversies. For more than 200 years, American democracy has embraced the need for an independent structure to stand between the majoritarian, law-making powers in government and the private citizen as well as local community institutions. Courts have furnished this intermediating reality.

## Sustaining the Rule of Law

The main duty of judges is to uphold the operation of law in both interpersonal and commercial relationships, enabling it to serve as a stable, predictable, positive presence strengthening the societal commonweal. Correspondingly, the primary loyalty asked of judges is to the rule of law. Good governance gets reflected, among other things, in courts functioning as impartial decision making institutions directed predominately by the law. *Judicial decision making*, along with *judicial independence*, is inextricably tied to applying the *rule of law*. Impair one of these three principles, and the other two are hobbled as well. Selecting the candidate best equipped to preserve these realities is the main purpose of judicial elections.

Judges are not supposed to represent partisan constituencies in the day-to-day course of fulfilling their public duties—which is accepted practice for officials in the legislative and executive arms of government. Judges are admonished not to become beholden to particular societal interest groups—though this is universally regarded as laudable for politicians in the representative branches of

government. Nor are judges to be identified with advancing particular calls for social change—this is the common rallying cry for governors and presidents, or senators and representatives. To preserve the integrity of courts, judicial election candidates are limited in campaigning, similarly to judges performing court business.

Now, thinkers from the “critical legal scholars” movement, traditional “legal realists”, authentic Marxists, or contemporary social cynics authoritatively claim that judges do not decide issues objectively, impartially or by applying neutral principles derived from law. To these philosophers or commentators, personal power, social position, economic privilege, moral preference . . . some form of non-legal predisposition, or venal predilection, colors and trumps any independent, law-based, neutral basis for judicial decision-making. To them, rule of law is nothing more than fiction—a mere concept that facilitates operation of a legal doctrine or idealized social policy, but that otherwise lacks reality, or perhaps delusionally masks human infirmity. Asserting that judicial elections are different than partisan representative elections does embrace a measure of idealism. It affirms a high expectation for attaining the common good from all the people associated with the processes of democratic elections. It reflects one of the nation’s more enduring traditional values.

## Conducting Informative Judicial Elections

Judicial elections long have been criticized as lacking substance and shielding incumbents’ beliefs and practices. The present judicial ethics rules encouraging freer campaign speech [*Note: previously cited appellate cases; Georgia’s Code of Judicial Conduct, Canon 7B, 3B(9) & the Terminology section, “comment”, & the Preamble; along with germane Judicial Qualifications Advisory*

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*Opinions*], can be waged about the *qualifications* of the judicial candidates to uphold the *rule of law* as well as their *commitment* to the detached, objective, neutral and impartial application of extant law to issues before the court for decision. Judicial election campaigns can be contested over the *understanding* of candidates concerning *judicial independence* and the various roles fulfilled by judges that enable different courts to meet the needs of the local citizenry. Judicial election campaigns can address the operation of courts, justice's *administration*, to reassure the public that judges will work diligently to strengthen the effectiveness of this public resource. The Bar occupies a unique position to construct public education about little-appreciated aspects of judging that make courts work to benefit the community, by orchestrating use of: op-ed articles in local print media, public access TV narrow-casts, candidate forums and debate panels, radio interviews, public service announce-

ments, commercial advertising, school and community LRE events, Law Day commemorations, and other creative means for achieving public information outreach. Such judicial election campaigning assures the public that there is a *rule of law* governing dispute resolution, available locally to promote harmony out of discord.

Traditionally, courts have fashioned: rules of procedure and rationales governing evidence, appropriate forums and alternative methods of decision-making, quality control mechanisms (e.g., qualifying norms of professional competence, lawyer and judicial disciplinary procedures, appellate review practices), use of equitable as well as inherent powers in pursuing justice, and prudent limits on personnel association and speech—all consistent with maintaining a *neutral* status for judges, even when faced by an increasingly partisan and ideologically intense world. The wisdom, scope and implementation of these

actions, which make contemporary courts operate, merit candidate comment in judicial elections. Yet, all are creations of the law; and none is better explained or understood through a lense emphasizing economic special interest, ideological belief or political partisanship.

These modern views of judicial administration, judicial independence and judicial elections furnish a basis for public confidence that there is a *rule of law* the individual can rely upon, which is subject to *systematic change as needed* by the democratically representative branches of government. Public trust in the courts, and corresponding confidence in the *rule of law*, becomes undermined by failing to acknowledge and conduct judicial elections as different. GBJ

**Richard D. Reaves** is the executive director of the Institute of Continuing Judicial Education of Georgia at the University of Georgia Law School.



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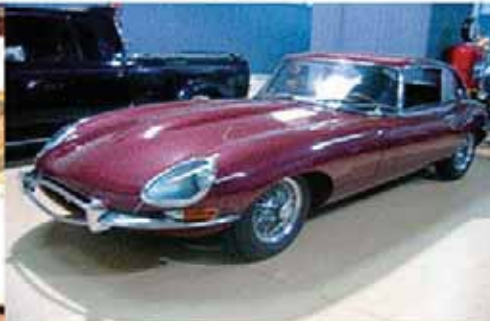
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by Robert D. Ingram

# Partisan Politics Not Welcome in the Courtroom

## Georgia Should Avoid “Musical Bench” in the Courtroom

**T**he trial judge “musical bench” routine that has been playing out in the criminal case against U.S. Rep. Tom DeLay (R-Texas)

underscores the problems faced by states that hold partisan judicial elections. DeLay’s case has been repeatedly reassigned to different judges because of their political party affiliations.

Congressman DeLay—who, until his indictment, served as house Majority Leader—was successful in removing the first judge assigned to preside over his criminal case by raising concerns about the judge’s political party affiliation. The judge had been elected to the bench as a Democrat and had openly supported a num-

ber of Democratic candidates and causes such as MoveOn.org that are the polar opposite of those supported by Congressman DeLay. The Democratic prosecutor successfully challenged the next judge assigned to the case because of his support for Republican candidates and causes. The third judge then passed on the case after his links to the Republican Party were questioned.

Texas is one of only eight states still electing judges through partisan balloting. The Georgia Constitution was amended in 1983 to switch to non-partisan judicial

elections, but new legislation was introduced in the 2005 legislative session which would return our courts to the rough and tumble theater of party politics.

## Bar Opposes Return to Partisan Judicial Races

House Resolution 855, one of the final pieces of legislation introduced during the 2005 session of the Georgia General Assembly, will be under consideration when

lawmakers reconvene in the 2006 Legislative Session. At our Fall 2005 meeting in November, the State Bar of Georgia’s Board of Governors voted to oppose HR 855, reaffirming the Bar’s previous support for non-

**“A judge representing one political party or the other presiding over a trial would resemble a baseball umpire calling balls and strikes while wearing the uniform of one of the teams.”**





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partisan judicial elections by Board votes in 1975, 1981, 1985, 1997 and January 2005.

The Bar leadership has taken a position on this issue because of its potential negative impact on the public's trust and confidence in our justice system.

The State Bar's opposition to partisan judicial elections is based on a basic principle: A fair and impartial justice system must remain unaffiliated with the political parties which play such a prominent role with the other two branches of government. Simply put, judges should not be dependent upon the other two branches of government nor the political parties which seek to influence their decisions.

In drafting the Declaration of Independence, Alexander Hamilton and many others rejected allegiance to the British crown because the judiciary was dependent upon the king, and the Parliament could override any judicial decision it disliked.

Our Founding Fathers got it right when they divided power among three separate branches of government in an effort to create a system of checks and balances. Like a three-legged stool, each branch was dependent upon the strength and equality of the other to create balance. Our founders also demonstrated great vision in seeking to remove the third branch from the divisiveness and pressure of party politics by providing for the lifetime appointment of federal judges.

As officers of the court, Georgia lawyers should do all within their power to ensure that cases are decided based on the facts and evidence without regard to race, economic status or political party affiliation. Although political parties may appropriately pressure and influence the decisions of elected representatives in the executive and legislative branches, can anyone seriously argue such pressure is appropriate when their case is being decided by a judge?

## **An Umpire Should Not Be Wearing One Team's Uniform**

In making this case for HR 855, some have argued that voters in judicial elections could better predict how a candidate might rule in certain cases because after running on a party platform, "a judge (is) generally going to follow that philosophy."

If this is true, it is yet another reason not to return to partisan judicial races. Judicial decisions should be made based upon the rule of law and evidence presented and not based upon the platform of any political party. In order to be fair and impartial, judges must be free from political interference and pressure to adhere to a party platform. A judge representing one political party or the other presiding over a trial would resemble a baseball umpire calling balls and strikes while wearing the uniform of one of the teams.

## **Georgia is Now a Two Party System**

Another argument that has been made in favor of partisan judicial races is that they were held in Georgia prior to 1983 with no visible negative impact on the quality of the judiciary or public confidence in the justice system. To this, I would reply that while those elections were technically partisan, they were practically non-partisan.

Between Reconstruction and the "Reagan Revolution," nearly all elected officials in Georgia, including judges, campaigned as Democrats. With few exceptions, the winners were decided in the Democratic Primary instead of in the General Election.

As a long time Cobb County Republican, for years I longed for a two-party system in our state. Now we have it. The Republican Party currently holds a majority of statewide legislative offices, but it is by a much slimmer margin than the Democrats enjoyed for about

100 years. Georgia is clearly a two-party state, with deeper divisions than ever before. Partisan influence on the judiciary would be much stronger than it was before, when virtually all judges ran on the same side of the ballot.

## **Non-Partisan Judicial Elections Should Be Truly Non-Partisan**

Those who support HR 855 also point to a recent surge in partisan interest in certain judicial races. In 2004, for example, the Democratic Party of Georgia spent approximately \$150,000 for campaign advertising on behalf of an incumbent Supreme Court Justice—an apparent effort to counter the Republican Governor's active and public support of the challenger in that race. The point has been made that if we are going to hold non-partisan elections, they should be purely non-partisan. On that we agree.

Consistent with its opposition to HR 855, the State Bar's Board of Governors also voted to support another piece of legislation, House Bill 46, which would ban the practice of political parties making campaign contributions to judicial candidates. The present loophole that allows political parties to circumvent legal limits on individual donations should be closed so that the influence of political parties, political correctness, and even the temporarily popular movement of the day are removed (to the extent possible) from the judicial branch of government.

The State Bar's Court Futures Committee stated it well in the recommendations it made to the Bar in May 2005:

"...while the Executive and the Legislative Branches enact and enforce the will of the majority as to policy and law, the judiciary checks that will to see that fundamental rights of all members of society are not infringed. This is perhaps the most important



element of the checks and balances envisioned by the Founding Fathers. While the Executive and Legislative Branches balance each other, making sure that policies adopted are, in fact, the will of the majority and not just a single individual or a small clique, they merely conform each other to that popular consensus reigning at the moment. The judiciary is called upon to take a broader view, ensuring that the actions of the present do not contravene the values, the common liberties and common responsibilities, set forth in the documents which serve as the bedrock of our society, to wit: the Constitutions of the United States and the State of Georgia.”<sup>1</sup>

## Judicial Activism Would Be Encouraged by Partisan Judicial Elections

Supporters of a return to partisan judicial races also contend it is necessary to counter judicial activism. A judicial activist is a judge who refuses to fairly interpret and apply the law if it differs from his or her personal prefer-

ences whether the preference be from a liberal or conservative perspective. Fortunately in Georgia, the vast majority of judges are capable lawyers who are committed to honestly and impartially interpreting the law. The goal of Georgia lawyers should be to create an environment which discourages judicial activism from the left or the right.

Do the supporters of HR 855 truly believe that a return to partisan judicial elections will encourage judges to interpret and apply the law as it is written even when it differs with the platform of his or her political party?


## The Wall Separating the Rule of Law and Anarchy Should Not Be Weakened

The former United States Solicitor General for President George W. Bush, Theodore Olson, recently stated:

“The wall between the rule of law and anarchy is fragile; if it is penetrated, freedom, property and liberty cannot long endure.”

Judges play a pivotal role in maintaining and protecting the wall to which former Solicitor General Olson refers. Approximately 1,500

Georgia judges assume their position on this wall each day when they fairly interpret and apply the law in rendering justice and peacefully resolving disputes. Their decisions are rarely celebrated nor widely embraced because they are not rendered on the basis of popularity or political correctness, and for every party that wins there is a party that loses.

A return to partisan elections and the negative campaigns which would inevitably follow would weaken the wall by undermining the public’s trust and confidence in the decisions being rendered by judges. “A strong and independent judiciary is not something that, once established, maintains itself” according to Chief Justice John Roberts of the U.S. Supreme Court. In his first year-end assessment of the judiciary, Chief Justice Roberts pointed out that more judges are leaving the bench and returning to private practice than ever before. Partisan judicial elections would only encourage more to vacate their positions on the wall. 

1. State Bar of Georgia, Court Futures Committee Report – “Paths to Justice: The Future of Judicial Selection in Georgia” – reporter Patrick Longan.

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by Cliff Brashier



# The State Bar and the Legislative Process

**T**he State Bar of Georgia is very active every year in the legislative process. We usually rank second behind the governor in the volume of

bills addressed. The expertise and experience of Georgia lawyers have contributed significantly to the advancement of our statutory law. Some examples are: Corporations; Limited Liability Corporations; Non-profit Corporations; Partnerships; Limited Liability Partnerships; Uni-

form Commercial Code (UCC); Guardianship; Evidence; Civil Procedure; Criminal Procedure; Guardians ad litem; Family; Real Estate; Appellate Procedure; Torts; Contracts; Will, Trusts and Probate; and Uniform Gifts to

Minors. The State Bar has supported pilot family and business courts. Most proposals are researched and written by one of our 38 law sections, which focus on specif-

ic areas of the law.

The State Bar's legislative positions are set by the 147-person Board of Governors who are elected by active members in each judicial circuit. Members participate by electing and offering suggestions to their representatives on the Board. The procedure Board members follow is set forth in Standing Board Policy 100, which is printed in the State Bar Directory and on the State Bar's website. It requires a majority vote as to whether the matter is "germane to the legitimate purposes of the State Bar." In addition, it requires a two-

thirds majority on the merits before any position is taken. This is designed to limit the State Bar's political involvement to matters directly related to the administration of justice and upon which most of our members agree. Your representatives on the Board would welcome your input on legislation and any other State Bar matter.


**"If you look at the legislative program over the long term, I hope you will agree that this program allows Georgia lawyers to share their education and experience for the good of Georgia's citizens and businesses."**

Most important matters addressed by the State Bar deal with Georgia's statutory laws that are of little interest to the general public. Consequently, the media rarely mentions these. On the other hand, a small number of the State Bar's legislative positions receive extensive coverage. A recent example is tort reform, although it is certainly not a new issue. The State Bar has consistently taken the same position since the issue first arose 20 years ago. In short, the State Bar supports changes that reduce frivolous suits or that make the judicial system more fair and efficient. The State Bar opposes changes that limit or deny the public's access to justice. Artificial caps on damage and immunities for selected groups are classic examples that deny access by closing the courthouse door to citizens who may have valid claims. Every time the Board has voted on tort reform, the vote margin has been around 95 percent and sometimes even higher. However, some

members do oppose the State Bar's position on tort reform, as they frequently do on other issues. That is the reason Standing Board Policy 100 requires a two-thirds, rather than a simple, majority vote before the State Bar takes any legislative position. We recognize that most positions are not supported by 100 percent of Georgia's 37,000 lawyers. Nevertheless, if you look at the State Bar's total legislative program over the long term, I hope you will agree that this program allows Georgia lawyers to share their education and experience for the good of Georgia's citizens and businesses.

You are encouraged to support the State Bar's legislative program by (1) keeping your representatives on the Board of Governors informed about your opinions on proposed legislation upon which they will vote, (2) voluntarily contributing to the legislative fund when you pay your annual State Bar dues, and (3) developing a personal relationship with your sena-

tors and representatives so that you may help explain the State Bar's positions on various matters.

As always, your thoughts and suggestions are always welcome. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home). My e-mail is [cliff@gabar.org](mailto:cliff@gabar.org). 

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by Damon E. Elmore

# Ten Years—Ten Lessons

It continues to amaze me that 2006 marks my 10th anniversary practicing law. Upon reflection, I remain astounded at how quickly it has come and gone, and yet, how much more I have to experience, endure and enjoy. Frankly, it almost seems as if my life had really only begun then.

Mistakes . . . I've made a few. At the same time, I have had a ton of fun, and have been blessed with unique career opportunities and a wonderful family—the “real” fun stuff. And yet, I never realized how my life as a lawyer and the events of the world are so intertwined. I mean, not just the real estate transaction involved with purchasing a home or, the waivers of liability to be signed when being admitted to a hospital or renting a car, but true “world” events. So much so, I want to highlight 10 that have had a significant effect upon me, as well as a direct impact upon our system of justice or laws in general. Ten events of the last 10 years that will become those proverbial “remember where you were when...” moments.

Understand, these are in no particular order and certainly don't create an exhaustive list. After all, I don't specifically reference that: a sitting president of the United States was deposed; a new chief justice of the U.S. Supreme Court was appointed; that Teri Schaivo and Stan Williams highlighted obverse views of per-

mitted passing; that tobacco litigation planted significant amounts of cash into the public coffers of many states, made several lawyers millionaires hundreds of times over and still, many people are addicted; the release of “Jay-Z Unplugged” and the Range Rover Sport; the opening of your Bar Center; Y2K; the deaths of Jam Master Jay, Biggie and Tupac; Barton Corbin and Lynn Turner; or the alarming decline of lawyer legislators in our general assembly. Well, I won't specifically reference them anymore.

Indeed they are all significant events, worthy of acknowledgment and reference, unto themselves. How could I find 10 more deserving of reference? Well, what about . . .

**“I never realized how my life as a lawyer and the events of the world are so intertwined.”**

**1. The trials of O.J. Simpson, Michael Jackson, Scott Peterson, Robert Blake, Martha Stewart and others.** No, not because of the celebrity defendants but, instead, because of the reality CLE created through them for the public at large. Our media

mediums broadcast these trials directly into the homes of everyone in the world. Good. However, it is the resulting effect that amazes me; the determination of guilt or innocence, the evaluation and weighing of evidence (or lack thereof), the reliance on the opinion of “legal experts,” most of whom were created by the networks. Those things. Meaning? The meaning...my bank-telling cousin, my priest, my pilot, my bartender and my doctor telling me, with passion, the trial was this—the verdict was that—the law is the other. I don't tell you how to fly a plane.

2. Sept. 11, the Olympic Park bombings, Hurricane Katrina and the other acts of domestic terrorism and disaster. Thousands of lives lost. Billions of dollars in claims against insurance. The evaluation of which came first—the act of terror or the fire. Likewise, the hurricane or the flood. Did I mention the lives lost?

3. The armed conflict in Iraq.

4. SB3 and the other “tort reform” efforts across the country. Millions of dollars spent on behalf of groups who aver these measures are necessary to protect innocent Americans. Advocacy on behalf of the public by legislators with, I pray, noble intentions. Access to justice. One concurrence: an issue worthy of evaluation and assessment. However, were things made any better?

5. The tragic deaths of Judge Rowland Barnes, Julie Ann Brandau, Deputy Hoyt Teasley, Agent David Wilhelm, and Michael Lefkow and Donna Humphrey (husband and mother of U.S. District Judge Joan Humphrey Lefkow). Safety + Security + Serving the public.

6. The contested 2000 election of President Bush.

7. The removal of a symbol of secession from Georgia’s 1956 flag. The “courage to change the things I can.”

8. Sarbanes-Oxley, USA Patriot Act, HIPPA. Hear no evil. Speak no evil. See no evil.

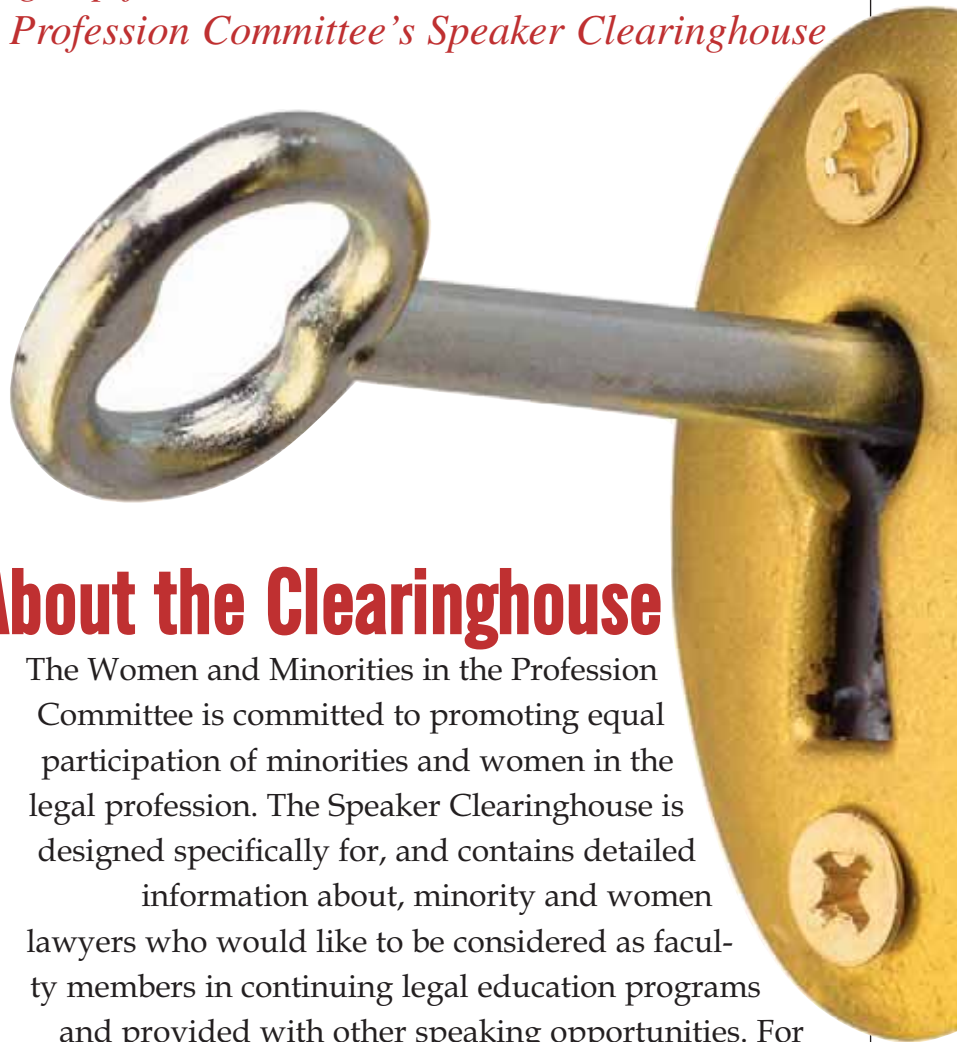
9. The Georgia Innocence Project. While we spread democracy and freedom thousands of miles around the world, it is good to know we are doing some of the same at home.

10. Technology. E-filing, e-mailing, e-discovery; Casemaker; video depositions; computers in the courtroom; BlackBerries; the Internet; iPods. My, how far we have come.

(Breathe) Well, what’s next? 

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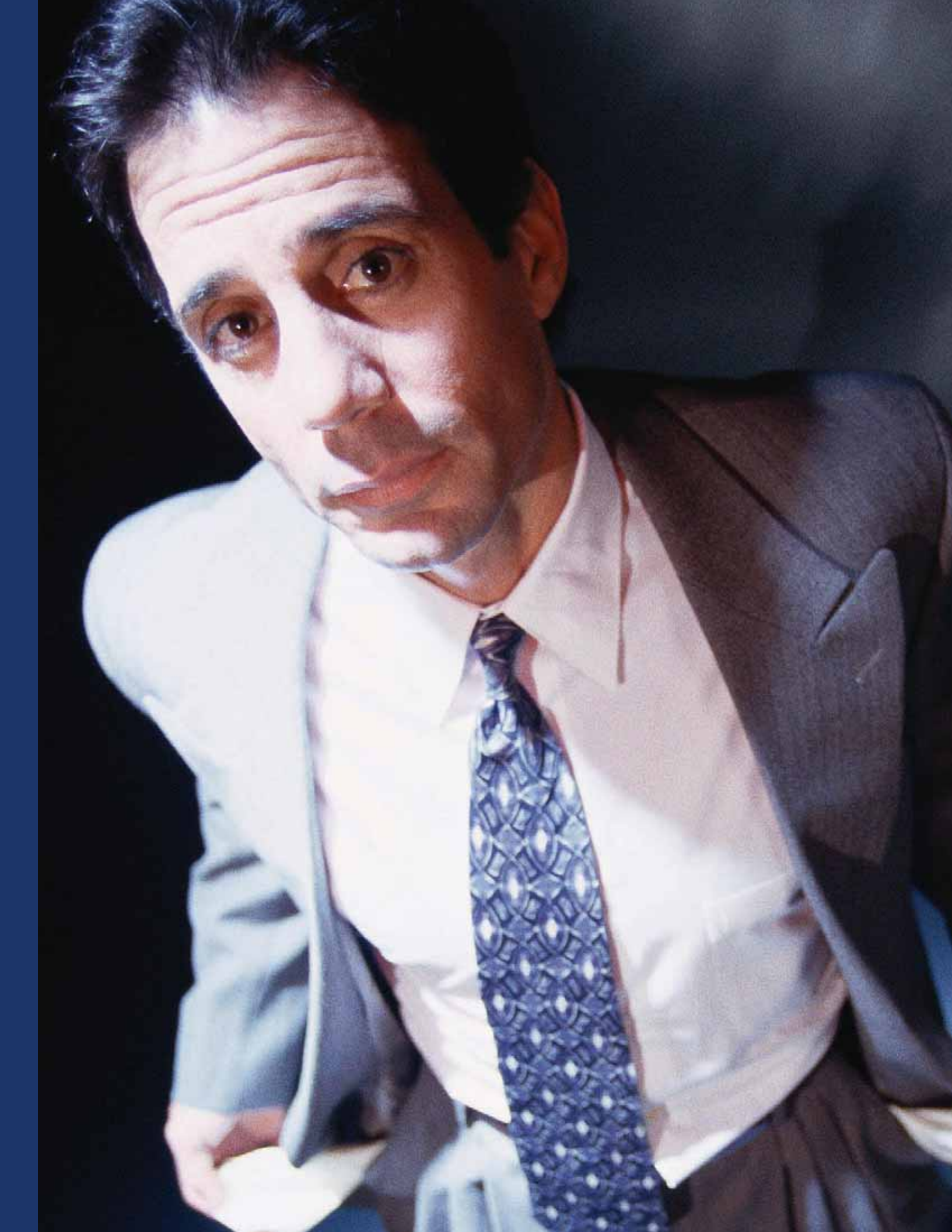
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To search the Speaker Clearinghouse, which provides contact information and information on the legal experience of minority and women lawyers participating in the program, visit [www.gabar.org](http://www.gabar.org).





# Changes to the Automatic Stay Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

by Michael J. McCormick

**A**s counsel for both debtors and creditors are surely aware, the automatic stay provisions contained in Section 362(a) of the U.S. Bankruptcy Code (herein, the Bankruptcy Code),<sup>1</sup> provide eligible debtors, and most notably individual homeowners, with a powerful weapon in stopping a foreclosure sale and other collection efforts. In fact, the automatic stay is probably the most fundamental aspect of our bankruptcy system in that it provides an opportunity for a debtor to obtain relief from the collection efforts of his or her creditors and also serves as the first step toward obtaining a discharge or providing for an orderly liquidation or reorganization.<sup>2</sup>

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005<sup>3</sup> (the Act) put in place fundamental changes to the Bankruptcy Code, including the adoption of a means test for filing bankruptcy, increased filing requirements, and the imposition of mandatory credit counseling requirements. Some of the most important changes brought about by the Act, however, were the numerous changes to the automatic stay provisions set forth in Section 362 of the Bankruptcy Code. These key changes to the automatic stay, which affect cases filed on or after Oct. 17, 2005,<sup>4</sup> concern the following areas: (1) automatic termination of the stay, (2) two-year relief from the stay for creditors seeking to enforce certain liens, (3) termination of the automatic stay with regard to certain

personal property, and (4) the addition of several new exceptions to the automatic stay. This article discusses the changes in each of these areas and, in particular, notes those areas in which the practical effect of the Act on the processes and procedures concerning the automatic stay will need to be further fleshed out through legislative and judicial processes.

## Automatic Termination of the Stay

The Act effected key changes regarding the circumstances under which the automatic stay terminates. Section 362(e) of the Bankruptcy Code has been amended to add a new paragraph<sup>5</sup> that provides for the expiration of the automatic stay 60

days after a creditor's request for relief in cases involving individual debtors, unless a final decision on the request is rendered by the court during the 60-day period, the period is extended by agreement of the parties, or the period is extended for good cause, as determined by the court. Perhaps the most significant changes in the Act, however, concern the termination of the automatic stay in cases in which the debtor has filed for bankruptcy on multiple occasions.

Turning first to the changes directed at individuals with multiple bankruptcy filings, the new Section 362(c)(3) of the Bankruptcy Code provides for termination of the automatic stay 30 days after a debtor files a bankruptcy petition, if a Chapter 7, 11 or 13 petition was pending and dismissed within the preceding year. The court may extend the stay, but only if the case filed last in time by the debtor (referred to herein as the Later-Filed Case) is filed in good faith.<sup>6</sup> Any hearing on the issue of continuing the stay must take place within 30 days after the filing of the Later-Filed Case.<sup>7</sup>

The following new provisions of the Bankruptcy Code also come into play in situations in which the debtor has had more than one case pending within the previous year:

- Section 362(c)(3)(C) provides that when a debtor has had more than one case pending within the previous year, there is a presumption that the Later-Filed Case has not been filed in good faith. This presumption, however, can be rebutted by "clear and convincing evidence."
- Section 362(c)(4)(A)(i) further provides that if the Later-Filed Case follows two previously dismissed cases within the year, then the stay does not take effect at all and can be imposed only upon the motion of a party-in-interest (e.g., a debtor, trustee or creditor), and then

only if the debtor can rebut the presumption of bad faith by clear and convincing evidence. Any request to impose the stay must be made within 30 days after the date on which Later-Filed Case was filed,<sup>8</sup> and any order imposing the stay is effective only upon entry.<sup>9</sup>

- Section 362(c)(4)(A)(ii) states that upon the request of a party-in-interest, a court is required to promptly enter an order confirming that there is no stay in effect. This procedure would presumably "require the court to verify without the benefit of a hearing that the request for such an order was based upon correct facts."<sup>10</sup>

It is important to note that previous bankruptcy cases dismissed pursuant to Section 707(b) of the Bankruptcy Code<sup>11</sup> do not count for purposes of determining application of the automatic stay. Therefore, when using electronic court docket monitoring services such as ADS, Banko, or PACER, it is important to know why any previous cases were dismissed.

## How is good faith determined?

Per Bankruptcy Code Section 362(c), it is presumed that a case was *not* filed in good faith in the following circumstances:

- (i) as to all creditors,
  - (I) if more than one previous case under any of chapters 7, 11 and 13 in which the individual was a debtor was pending within the preceding one-year period;
  - (II) a previous case under any of chapters 7, 11 and 13 in which the individual was a debtor was dismissed within such one-year period, after the debtor failed to—

aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

bb) provide adequate protection as ordered by the court; or

cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded —

aa) if a case under chapter 7, with a discharge; or

bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under [Section 362(d)] in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor.<sup>12</sup>

Note, however, that new Bankruptcy Code Section 362(i) provides that if a prior case was dismissed because the debtor worked out a "debt repayment plan" (e.g., loss mitigation or a non-bankruptcy workout), then in any subsequent case filed by the debtor, there is no presumption that the subsequent case was not filed in good faith. Accordingly, the importance of knowing why a

previous case was dismissed should not be underestimated.

Creditors need to be cautioned that the new Bankruptcy Code provisions dealing with debtors who have filed multiple bankruptcies make no mention of Section 1301 of the Bankruptcy Code. This section sets forth the co-debtor stay, which prohibits creditors from acting "to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt."<sup>13</sup> In the absence of explicit guidance, the effect of these new code provisions in the case of a Chapter 13 petition will be open to interpretation by the courts. On one hand, some judges may choose to interpret the provisions of Section 362(c) broadly and hold that the co-debtor stay provided by Section 1301 terminates at the same time as the automatic stay provided by Section 362(a). On the other hand, it should be kept in mind that Section 1301 does not incorporate the provisions of Section 362, but is rather a separate stay provision in itself.<sup>14</sup> Accordingly, although the automatic stay may terminate 30 days after the filing of the Later-Filed Case, if the Later-Filed Case is a Chapter 13 case, the co-debtor stay, when viewed as a separate stay, may not terminate automatically. Courts adopting such an interpretation may require creditors to move for co-debtor relief (where a co-debtor exists) before proceeding with a foreclosure, repossession or other collection efforts. In any event, creditors need to be aware that the issue of whether the co-debtor stay terminates at the same time as the automatic stay is one that will be open to litigation and will likely result in different decisions among the various jurisdictions. Therefore, creditors need to be cautious in determining whether a co-debtor exists, and move for relief under Section 1301(c) of the Bankruptcy Code, as appropriate, before pro-

ceeding on the assumption there is no stay in effect.<sup>15</sup>

## Comfort Orders

Recently added Bankruptcy Code provisions also address the issue of documenting the termination of the automatic stay. Specifically, new Section 362(j) provides that upon a request by a party-in-interest, the court shall issue an order confirming that the automatic stay has been terminated. Creditors, such as mortgage servicers, may wish to obtain such "Comfort Orders" confirming that the stay has been terminated before proceeding with foreclosure, especially in cases in which title companies are reluctant to insure title without an order or some other document confirming that there is no longer an automatic stay in place.

Unfortunately, Congress provided little direction as to the procedure for filing the request for such a Comfort Order and did not specify upon whom the Comfort Order should be served. Judges may be reluctant to issue a Comfort Order confirming that the stay has terminated without giving the debtor an opportunity to respond, even though the Bankruptcy Code specifically provides in Section 362(c)(3)(B) that any hearing to extend the stay in the Later Filed Case must take place within 30 days after that case was filed. Alternatively, a judge could find that although the debtor might

have to be served with the request for a Comfort Order, the debtor would not necessarily be afforded a hearing, and thus the process for requesting a Comfort Order would be similar to the process in most jurisdictions for requesting an order authorizing an oral examination of the debtor under Federal Bankruptcy Rule 2004. A third possibility is that the process for requesting Comfort Orders will be similar to requesting a copy of an order for relief from the stay from the court clerk, in which case the issuance of Comfort Orders may be carried out quickly and without the benefit of a hearing. In any event, because the procedure for requesting Comfort Orders was not included as a part of the Interim Federal Rules adopted by most bankruptcy courts shortly before the effective date of the Act,<sup>16</sup> the procedure will likely vary across the country.

## Two-year Relief from the Stay

Newly added Section 362(d)(4) of the Bankruptcy Code provides that a bankruptcy court is to grant two-year relief from the automatic stay upon request of a party-in-interest in connection with certain efforts to enforce liens in real property. Specifically, the court is to grant this relief if it finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that

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involved either (i) the transference of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval, or (ii) multiple bankruptcy filings affecting such real property.<sup>17</sup>

In essence, Section 362(d)(4) authorizes *in rem* relief.<sup>18</sup> It is important to note, however, that an order entered under this provision is binding in any other case under the Bankruptcy Code “purporting to affect such real property filed not later than two years after the date of the entry of such order by the court” only if the order is recorded in accordance with state law(s) governing notices of interests or liens in real property.<sup>19</sup> Moreover, the Bankruptcy Code specifically provides that any federal, state or local government unit that accepts notices of interests or liens in real property shall accept a certified copy of any order under Section 362(d)(4) for indexing and recording.<sup>20</sup> Congress, however, specifically provided that a debtor in a subsequent case can move for relief from an order under Section 362(d)(4) “based upon changed circumstances or for good cause shown, after notice and a hearing.”<sup>21</sup> Nevertheless, under this new provision, it will now be the debtor seeking relief, as opposed to the creditor.

## Personal Property

New Section 362(h) of the Bankruptcy Code provides that the automatic stay terminates as to personal property that is collateral for a loan if the debtor fails to timely and properly declare his or her intentions with regard to the collateral securing a loan.<sup>22</sup> In addition, the automatic stay will terminate if the debtor fails to perform in accordance with a timely and properly filed statement of intention.<sup>23</sup> It appears, however, under Bankruptcy Code Section 362(h)(1)(B), that if the secured creditor does not agree to a reaffirmation proposed by the debtor, then the stay will not terminate automatically. In any event,

Section 362(k)(2) provides that if a creditor violates the automatic stay in the good faith belief that the stay was lifted as a result of a debtor’s failure to file a statement of intention or perform according to the stated intention, then the damages recoverable by the debtor will be limited to actual damages.

## Exceptions to the Automatic Stay

Several new exceptions to the automatic stay have been added by the Act, the majority of which appear as subsections of Section 362(b) of the Bankruptcy Code. First, Section 362(b)(2) states that the automatic stay will no longer apply to the collection of child support from the debtor’s wages or the interception of income tax refunds. Thus a support creditor may impact any Chapter 13 case that is dependent upon tax refunds.<sup>24</sup> Moreover, because the automatic stay will not apply to the withholding, suspension, or restriction of a driver’s license, a professional or occupational license, or a recreational license under state law,<sup>25</sup> creditors owed child support will have even greater ability to affect the success of Chapter 13 cases.<sup>26</sup>

Under Section 362(b)(18), the automatic stay will not apply to the creation or perfection of a statutory lien for *ad valorem* taxes on personal property or “special” taxes upon real property (whether or not they are *ad valorem* taxes) imposed by a government unit when such tax or assessment comes due after the filing of the petition. In addition, per Section 362(b)(19), the automatic stay will not apply to the withholding of income from a debtor’s wages and collection of amounts withheld towards repayment of a loan against an ERISA-qualified retirement plan or a thrift-savings plan recognized by the Internal Revenue Code. This provision ultimately will serve to benefit debtors because debtors will be able to repay their retirement loans instead of facing the tax conse-

quences of failing, or rather, not being allowed, to pay back such loans after the filing of the bankruptcy case.<sup>27</sup>

Under newly added Section 362(b)(21), any act to enforce any lien against or security interest in real property is excepted from operation of the automatic stay in situations in which the debtor is ineligible under Section 109(g) to be a debtor in a bankruptcy case, or if the bankruptcy case was otherwise filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case.<sup>28</sup> Accordingly, in cases in which the creditor has an order from a prior case declaring the debtor ineligible to be a debtor in a future case, or the debtor is ineligible to file a bankruptcy case pursuant to Section 109(g), the creditor should be free to foreclose without first having to obtain a Comfort Order or filing a motion to validate should the debtor file a subsequent case during the prohibited period.<sup>29</sup>

Per Section 362(b)(22), the automatic stay does not apply to the enforcement of a residential eviction judgment entered prior to the commencement of the bankruptcy case. This exception to the automatic stay is subject to Section 362(l) and is not effective until 30 days after the petition is filed if the debtor (i) “files with the petition and serves on the lessor” a certification that under applicable non-bankruptcy law, circumstances exist that permit cure of the default; and (ii) deposits with the clerk any rent that would accrue during that 30-day period.<sup>30</sup> The exception under 362(b)(22) also does not apply if, during the 30-day period, the debtor files a certification that the debtor has cured the monetary default pursuant to applicable non-bankruptcy law.<sup>31</sup> If the lessor contests the debtor’s certification, the court must hold a hearing within 10 days.<sup>32</sup> If the court upholds the lessor’s objection or the debtor fails to file a certification, then the stay is

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terminated immediately and the lessor may continue the action to obtain possession.<sup>33</sup>

Section 362(b)(23) states that the automatic stay does not apply to the continuation of a residential eviction action based on endangerment of the property or illegal use of drugs on the property, if the lessor certifies in writing to the court (with a copy to the debtor) that an eviction action has been commenced, or that such activity has occurred in the 30 days preceding the filing of the certification. This exception to the automatic stay is subject to Section 362(m) and goes into effect 15 days after the lessor files the certification, unless the debtor files an objection to the truth or legal sufficiency of the lessor's certification.<sup>34</sup> If the debtor does object, the court must hold a hearing on the matter within 10 days.<sup>35</sup> To prevail, the debtor must establish that the circumstances giving rise to the lessor's certification did not exist or have been remedied.<sup>36</sup> If the debtor does not object or the court does not uphold the debtor's objection, then the stay is terminated and the lessor may continue the eviction action.<sup>37</sup>

Finally, under Section 362(b)(26), the automatic stay will not apply to the setoff of a pre-petition tax refund against a pre-petition tax liability, unless the court, on the motion of the trustee and after notice and hearing, grants the taxing authority adequate protection for the secured claim of such authority.

## Conclusion

As can be seen by the foregoing discussion, there are many ways in which the Act has significantly changed the way the automatic stay may or may not operate in bankruptcy cases filed on or after Oct. 17, 2005. Unfortunately, until clarity is provided through local or national rules, a technical amendments bill, or the bankruptcy courts, counsel will have to wait to see the practical effect of Congress' changes, particularly with regard to cases in which there is a co-

debtor or a creditor seeks an order confirming that the automatic stay has terminated. 



**Michael J. McCormick** is an associate in the Bankruptcy Department of McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC. He represents lenders and servicers in court in Georgia and assists in bankruptcy representation for 350 lenders and investors nationwide. He attended the University of Western Ontario (B.A., 1989) and Wake Forest University (J.D., 1994).

1. 11 U.S.C. § 101 *et seq.* (2005).
2. *Singley v. Am. Gen'l Finance* 233 B.R. 170, 172-73 (Bankr. S.D. Ga. 1999) (purpose of automatic stay is to protect debtor from pressure of creditors' collection efforts and to protect creditors by preventing individual creditors from dismembering a debtor's assets).
3. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-08, 119 Stat. 23 (2005).
4. *Id.* at 119 Stat. 216 (providing that the "Act and the amendments made by [the] Act shall take effect 180 days after the date of enactment of [the] Act [on April 20, 2005]").
5. 11 U.S.C. § 362(e)(2).
6. *Id.* § 362(c)(3)(B).
7. *Id.*
8. *Id.* § 362(c)(4)(B).
9. *Id.* § 362(c)(4)(C).
10. WILLIAM HOUSTON BROWN & LAWRENCE R. AHERN, III, 2005 BANKRUPTCY REFORM LEGISLATION WITH ANALYSIS, 53 (2005).
11. Section 707(b) of the Bankruptcy Code includes the provisions for the newly adopted means test under the Act, as well as other provisions that provide for dismissal of a Chapter 7 case for abuse.
12. 11 U.S.C. § 362(c)(3)(C); *see also In re Charles*, 332 B.R. 538, 541 (Bankr. S.D. Tex. 2005) (holding that a movant under Section 362(c)(3) must satisfy the good faith requirement and additionally, must demonstrate sufficient equitable factors to justify the court's exercise of its discretion); *In re Montoya*, 333 B.R. 449, 458 (Bankr. D. Utah 2005) (holding that in evaluating a motion to extend stay, a bankruptcy court should apply "good faith" test formulated in context of a motion to dismiss or convert a Chapter 13 cases for a debtor's alleged lack of good faith, and should consider totality of circumstances); *In re Galanis*, 2005 WL 3454411 (Bankr. D. Utah 2005) (holding that the determination as to whether debtors' latest petition was filed in "good faith" should be based on totality of circumstances); *In re Collins*, 2005 WL 3529144 (S.D. Tex. 2005) (holding that a finding that the new case is unlikely to result in a discharge means the case fails an objective good faith standard and ends the inquiry).
13. 11 U.S.C. § 1301(a).
14. *Id.*; *see also In re Sommersdorf*, 139 B.R. 700, 701-02 (Bankr. S.D. Ohio 1992) ("On its face and as a whole, the stay created by § 1301 is not as broad as the stay created by § 362. But the policies of the two provisions are related and the two provisions must be read together. Section 1301 is designed primarily for the protection of the principal debtor by insulating that individual from indirect pressures exerted by creditors on friends, relatives and fellow employees of the Chapter 13 debtor.").
15. *See Harris v. Margaretten & Co., Inc.*, 203 B.R. 46, 50 (Bankr. E.D. Va. 1994) (holding that foreclosure was void because creditor had not sought relief from co-debtor stay, but granting creditor relief from the stay to begin new foreclosure proceeding).
16. Because the time between the date the president signed the Act into law on April 20, 2005, and the effective date of the Act 180 days later did not provide sufficient time to promulgate rules under the Rules Enabling Act, 28 U.S.C. §§ 2071-77



(2005), a process that ordinarily requires three years, bankruptcy courts were urged to adopt Interim Bankruptcy Rules (available at [www.uscourts.gov/rules/interim.html](http://www.uscourts.gov/rules/interim.html)), which were approved by the Advisory Committee on Bankruptcy Rules and the Committee on Rules of Practice and Procedure. These Interim Bankruptcy Rules were prepared by the Advisory Committee on Bankruptcy Laws and are designed to implement substantive and procedural changes mandated by the Act. Most bankruptcy courts, including the bankruptcy courts in Georgia, have adopted the Interim Bankruptcy Rules by general order. The Interim Rules are expected to apply to bankruptcy cases from Oct. 17, 2005 until final rules are promulgated and effective under the regular Rules Enabling Act process. The Advisory Committee and Committee on Rules of Practice and Procedure expect to publish for public comment proposed new and amended Federal Rules of Bankruptcy Procedure, as well as any additional revisions to the official bankruptcy forms in August 2006.

17. 11 U.S.C. § 362(d)(4).
18. See *Aurora Loan Services, Inc. v. Amey*, 314 B.R. 864, 868 (Bankr. N.D. Ga. 2004) (“[I]n rem relief makes the automatic stay in any future bankruptcy cases filed within a specified time inapplicable to the lender’s foreclosure, regardless of who files the case.”).
19. 11 U.S.C. § 362(d)(4).
20. *Id.*
21. *Id.* § 362(d)(4)(a)(B).
22. *Id.* § 362(h)(1)(A).
23. *Id.* § 362(h)(1)(B).
24. *Id.* §§ 362(b)(2)(A)-(C).
25. *Id.* § 362(b)(2)(D).
26. This ability of creditors owed child support to affect Chapter 13 cases will be particularly dramatic given that the debtor must certify that he or she is current on post-petition child support payments to obtain confirmation (see 11 U.S.C. § 1325(a)(8)) and discharge (see 11 U.S.C. § 1328))

of a Chapter 13 plan, and the failure to remain current on post-petition support obligations is grounds for dismissal or conversion of the case (see 11 U.S.C. § 1307(c)(11)).

27. See *In re Beall*, 264 B.R. 512, 517 (Bankr. S.D. Ill. 2001) (“Administrative inconvenience in altering the [pension] loan repayment procedure, . . . is not a factor bearing on whether pension loan payments should be continued in Chapter 13, [citation omitted] nor is the possibility that debtor may suffer adverse tax consequences for failure to repay the 401k loan.”); *In re Estes*, 254 B.R. 261 (Bankr. D. Idaho 2000) (holding that the mere fact that debtor’s failure to repay her pre-petition loan from employee retirement account would subject her to income tax and tax penalties was insufficient to affect voluntary nature of debtor’s loan repayments, or to prevent the bankruptcy court from considering such payments in deciding whether debtor was devoting all of her disposable income to payments under Chapter 13 plan); *In re Padro*, 252 B.R. 809, 811 (Bankr. M.D. Fla. 2000) (holding, “It is well settled that voluntary repayments to retirements plans are not reasonably necessary for the maintenance of debtors,” and will prevent plan from satisfying disposable income requirement) (citing *Harshbarger v. Pees*, 66 F.3d. 775, 777 (6th Cir. 1995)).
28. For example, the automatic stay would not apply if a bankruptcy case was filed in violation of an order under Section 349 of the Bankruptcy Code prohibiting a debtor from filing for a period greater than 180 days. See *In re LeSane*, 301 B.R. 625, 626 (Bankr. M.D. Ga. 2003) (enjoining a *pro se* Chapter 13 debtor who filed six cases in 18 months, each of which was dismissed prematurely, from filing any future cases in the court for 36 months); *In re Penny*, 243 B.R. 720, 729-30 (Bankr. W.D. Ark. 2000) (“A Section 349 injunction may issue indefinitely into the future . . . or it may issue for a time certain.”); *In re Belden*, 144

B.R. 1010, (Bankr. D. Minn. 1992) (barring a debtor, whose ninth bankruptcy case and sixth Chapter 13 case in less than 15 years was dismissed for cause, from filing another case under any Chapter for the next two years).

29. See *In re Feldman*, 309 B.R. 422, 426 (Bankr. E.D.N.Y. 2004) (holding that a grant of “prospective relief from the automatic stay does not prevent a debtor from filing another (subsequent) bankruptcy petition” and that prospective relief “prevents a debtor from relying on the imposition of the automatic stay to forestall a scheduled foreclosure and delay a mortgagee’s enforcement of its rights under state law”); *In re Stuart*, 297 B.R. 665, 668 (Bankr. S.D. Ga. 2003) (“[Under Section 109(g)(2)] Congress intended to make debtors who dismiss and refile in the face of a motion for relief ineligible, regardless of their subjective state of mind or intent, and did not intend for a bankruptcy court to condition [the provision’s] application upon a judicial determination regarding a debtor’s intent.”); *In re Simmons*, 149 B.R. 586, 591 (Bankr. W.D. Mo. 1993) (dismissing debtor’s Chapter 13 case under Section 1307(c) as bad faith filing and allowing mortgagee to proceed with foreclosure proceedings); *In re Charter First Mortg., Inc.*, 42 B.R. 380, 385 (Bankr. D. Or. 1984) (holding that a party wishing to proceed against a debtor under exceptions set forth in Section 362(b) after debtor has filed a bankruptcy petition may do so without petitioning court because “the filing of a bankruptcy petition has no stay effect”) (citing H.REP. NO. 95-595, at 342-3 (1977); S.REP. NO. 95-989, at 51-2 (1978), as reprinted in 1978 U.S.C.A.N. 5837, 6298).
30. 11 U.S.C. § 362(l)(1).
31. *Id.* § 362(l)(2).
32. *Id.* § 362(l)(3)(A).
33. *Id.* § 362(l)(3)(B).
34. *Id.* § 362(m).
35. *Id.* § 362(m)(2)(B).
36. *Id.* § 362(m)(2)(C).
37. *Id.* § 362(m)(2)(d) & (3).

# Midyear Meeting Mixes Business and Pleasure

by C. Tyler Jones

**D**espite the addition of the Georgia Aquarium to Atlanta's numerous entertainment options, one of the hottest tickets in town was to the Jan. 5-7 State Bar of Georgia Midyear Meeting at the Renaissance Waverly Hotel. Bar members participated in numerous CLE presentations, section meetings, receptions and were invited to a highly entertaining presentation by Robert L. Steed at the board dinner.

## Conference Highlights

Recipients of the **Justice Robert Benham Awards for Community Service** were honored during a ceremony on the opening day of the meeting. The objective of the awards are: to recognize that volunteerism remains strong among Georgia's lawyers; to encourage lawyers to become involved in serving their communities; to improve the quality of life of lawyers through the satisfaction they receive from helping others; and to raise the public image of lawyers. This year's recipients include:

- **Upshaw C. Bentley Jr. of Athens** (Lifetime Achievement Award)
- **Carlton A. DeVoight of Brunswick**
- **Roy W. Copeland of Valdosta**
- **Charles P. Taylor of Warner Robbins**
- **Judge Gregory A. Adams of Decatur**
- **Judge Herbert E. Phipps of Atlanta**
- **Judge William Hal Craig of McDonough**
- **Robert A. Cowan of Dalton**
- **Samantha F. Jacobs of Metter**
- **Judge Cliff L. Jolliff of Gainesville**
- **Judge Duncan D. Wheale of Augusta**

For more information on the Benham Awards, see page 64.

During the board dinner, **John T. Marshall of Atlanta** received the 2005 State Bar of Georgia's



Photos by C. Tyler Jones and Sarah I. Bartleson

Board Dinner Guest Speaker Robert L. Steed kept the audience laughing with his witty comments and unique perspective on life.

**Distinguished Service Award.** The Distinguished Service Award is the highest honor bestowed by the Bar for conspicuous service to the cause of jurisprudence and the advancement of the legal profession in the state.

Marshall has a distinguished and honorable career of service to the profession that spans more than 40 years. Since joining the Bar in 1962, he has exemplified the qualities celebrated by the State Bar of Georgia's Distinguished Service Award. He received his bachelor's degree from Vanderbilt University in 1956. Following his graduation Marshall served three years with the United States Marine Corps, attaining the rank of captain. He received his LL.M. from Yale Law School in 1962, and was admitted to the State Bar of Georgia that same year.

As the chair of the State Bar of Georgia Standards of the Profession Committee, Marshall played a pivotal role in the conception and creation of the Transition Into Law Practice Program, which was officially authorized by the Supreme Court of Georgia, on Feb. 2, 2005, whose purpose is to afford every beginning lawyer newly admitted to the State Bar of Georgia with meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment, and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner. (See page 31 to read the resolution presented to Marshall).

Earlier on Friday, the **Women and Minorities in the Profession Committee** hosted the third annual Commitment to Equality Awards Luncheon to recognize the efforts of lawyers and legal employers who are committed to providing opportunities that foster a more diverse legal profession for women and lawyers of color. **Supreme Court of Georgia Presiding Justice Carol W. Hunstein** and the law firm of **Nelson Mullins Riley and Scarborough, LLP**, received the 2006 Commitment to Equality Award. The late **Lewis Slaton** was awarded the Randolph Thrower Lifetime Achievement Award.

The Bar wants to thank the following luncheon sponsors for their support:

- **Alston & Bird LLP**
- **Holland & Knight LLP**
- **Kilpatrick Stockton LLP**
- **King & Spalding LLP**
- **Nelson Mullins Riley & Scarborough, LLP**
- **Sutherland Asbill & Brennan LLP**
- **Troutman Sanders LLP**

## Board Meeting Highlights

State Bar President Robert D. Ingram presided over the 206th meeting of the Board of Governors of the State Bar of Georgia on Jan. 7 at the Renaissance Waverly Hotel.



Distinguished Service Awardee John T. Marshall cannot help but grin as Immediate Past President Rob Reinhardt shows pictures from John's high school yearbook.

Following is an abbreviated overview of the meeting:

In regards to legislation issues, the Board approved the following legislative proposals:

- Appellate Practice and Education Resource Center FY '07 Budget
- Fiduciary Law Section—Corrections to revised Guardianship Code of 2005
- Georgia Public Defender Standards FY '07 Budget
- Ratification of Standards Adopted by the Standards Council
- HB 763—Caps on Contingency Fee

Additionally, Board members were provided with a list of their local legislators. Robert Ingram asked the senior Board member in each judicial circuit to meet with his/her local legislator and report back to Tyler Jones by March 15 so he can compile a list for the next Board agenda showing which circuits and legislators were able to get together.

### 2006-07 Dues Check Offs

- Approved a \$100 negative (opt out) checkoff for legislation on the 2006-07 dues notice.

- Approved a positive (opt in) check off for GLSP on the 2006-07 dues notice, with the suggested contribution amount determined by the Executive Committee.

### Nomination of State Bar Officers

The Board received the following nominations for officer positions:

- Bryan M. Cavan, Treasurer
- Jeffrey O. Bramlett, Secretary
- Gerald M. Edenfield, President-elect

### Nomination of ABA Delegates

The Board nominated the following attorneys to a two-year term to the Georgia ABA Delegation:

- Rudolph N. Patterson, Post 1
- Cubbedge Snow Jr., Post 3
- (reserved for YLD), Post 5
- Linda A. Klein, Post 7

### Small Business Health Fairness Act of 2005

The Board received information on the Small Business Health

*continued on page 30*





2006 Women and Minorities in the Profession Committee Commitment to Equality Awards Committee Members and Award Recipients.



Supreme Court of Georgia Justice Robert Benham congratulates Presiding Justice Carol W. Hunstein on receiving the Women and Minorities in the Profession Committee's 2006 Commitment to Equality Award.



Judge Willis B. Hunt introduces the keynote speaker Robert L. Steed at the Board Dinner.



Bar President Robert D. Ingram speaks to local and specialty bar presidents and section chairs about his Foundations of Freedom initiative.



General Counsel William P. Smith III and Bar President Robert D. Ingram at the Board Dinner.



YLD President Damon E. Elmore speaks from the podium during the Board meeting while President Robert D. Ingram looks on.



The YLD Aspiring Youth Committee cochairs Amber Walden and Brandy Daswani, and past chair Doug Kertscher, presented a \$500 college scholarship to Aisel Smith.



Immediate Past President Rob Reinhardt presents Natalie R. Kelly with the 2005 Employee of the Year award.



YLD President Damon E. Elmore presents one of the High School Mock Trial's Supporter Appreciation Awards to Charles T. Lester Jr.



Lawyers from Nelson Mullins Riley and Scarborough, LLP attend the Women and Minorities in the Profession awards luncheon.



## State Bar of Georgia Employee of the Year

WHEREAS, Natalie R. Kelly, Law Practice Management Director of the State Bar of Georgia is an exemplary employee, having provided consistently outstanding service to the legal profession of Georgia since July 1995; and

WHEREAS, her tireless dedication and hard work enabled her to be promoted from her first position as Law Practice Management Resource Administrator to the position she holds today; and

WHEREAS, because of her positive attitude, friendly nature, extensive knowledge of law practice management best practices and understanding of legal and general business software applications, Natalie R. Kelly has proven herself to be an outstanding resource to the members of the State Bar of Georgia; and

WHEREAS, Natalie R. Kelly continually stays abreast of the latest technological changes through memberships with the American Bar Association's Law Practice Management and General Practice, Solo and Small Firm sections; the National Association of Legal Administrators and the National Association of Bar Executives; and

WHEREAS, she regularly contributes articles to the Georgia Bar Journal; the Law Practice Management Program's departmental newsletters, Law Practice Management News and LPM CyberNews; and ABA publications; and

WHEREAS, Natalie R. Kelly is admired by her colleagues for her thoughtfulness, professionalism and courtesy;

NOW THEREFORE BE IT RESOLVED that the Executive Committee of the State Bar of Georgia does hereby express its sincere appreciation to Natalie R. Kelly for her accomplishments and dedication to the State Bar of Georgia.

Fairness Act of 2005, which would allow small businesses to join together through trade associations to purchase health insurance for their employees. The U.S. Congress is expected to vote on the act in August or September.

### YLD

Damon Elmore shared two special presentations with the Board. The first presentation was from the Aspiring Youth Committee, which assists at-risk middle school students by increasing their aspirations to graduate from high school and college by demonstrating the importance of education, hard work and commitment. The committee's cochairs Amber Walden and Brandy Daswani, and past chair Doug Kertscher, presented a \$500 college scholarship to Aisel Smith. Following that, Damon Elmore presented the High School Mock Trial's *Supporter Appreciation Awards* to the following individuals and organizations that have supported the program for at least 10 years: Charles T. Lester Jr., Leanne Beutler, the Georgia Civil Justice Foundation, and the Savannah College of Art and Design. 2006 is the 18th statewide high school mock trial season and there are 119 teams scheduled to compete in this year's competition.

### Employee of the Year

Rob Reinhardt presented the 2005 Employee of the Year to Natalie R. Kelly, director of the Law Practice Management Program.

### Bar Center Law Related Education

Charles T. Lester Jr. and Christine Ledvinka provided an update on the law-related educational component of the Bar Center, which includes tours of the Law Museum and Woodrow Wilson exhibit, mini-law school

classes and mock student trials. Marlene Melvin, the Bar's curriculum and activities consultant, and Stacy Rieke, High School Mock Trial Coordinator, were also recognized. Board members were encouraged to sign up as attorney docents for the tours, lesson plans and mock trials.


### Pro Hac Vice, Uniform Rules 4.4 and 4.11

William P. Smith III provided a report on the Georgia Supreme Court's amendments to the Uniform Superior Court Rules that add a new Rule 4.4 regarding Admission Pro Hac Vice and amend Rule 4.11 involving attorneys appearance at court.

### Gramm-Leach-Bliley Act Litigation

Smith also announced that the U.S. Court of Appeals for the District of Columbia Circuit ruled that the privacy provisions of Title V of the Gramm-Leach-Bliley Act do not apply to the legal profession.

### Georgia Bar Foundation

Rudolph N. Patterson presented the annual James M. Collier Award to Harold G. Clarke for his outstanding contributions to the IOLTA program. 

C. Tyler Jones is the director of communications for the State Bar of Georgia.





## State Bar of Georgia Distinguished Service Award



Photo by C. Tyler Jones

John T. Marshall accepts the Distinguished Service Award from Immediate Past Bar President Rob Reinhardt.

WHEREAS, John T. Marshall has served the legal profession and the State Bar of Georgia with unfailing commitment, enthusiasm and pride since he first entered the practice of law in 1962; and

WHEREAS, the State Bar of Georgia recognizes John T. Marshall for his outstanding and commendable service as a private practice lawyer in Atlanta, and as the chair of the State Bar of Georgia Standards of the Profession Committee since 1996; and

WHEREAS, John T. Marshall played a pivotal role in the conception and creation of the Transition Into Law Practice Program, which was officially authorized by the Supreme Court of Georgia, on Feb. 2, 2005, whose purpose is to afford every beginning lawyer newly admitted to the State Bar of Georgia with meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment, and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner; and

WHEREAS, his long-standing commitment to the legal profession and community includes serving as president of the Atlanta Bar Association, as chair of the Georgia Commission on Continuing Lawyer Competency, as founding Master of the Joseph Henry Lumpkin Inn of Court, as Master in the Logan E. Bleckley Inn of Court, as a member of the American Bar Association's House of Delegates, as a member of the American College of Trial Lawyers, as an Atlanta Bar Foundation Fellow and Board Member, as a Georgia Bar Foundation Fellow, and a member of the Supreme Court of Georgia's Commission on Public Trust and Confidence; and

WHEREAS, John T. Marshall has been recognized for his contributions to the advancement of continuing legal education by the American Law Institute-American Bar Association Harrison Tweed Award for teaching evidence and by the State Bar of Georgia A. Gus Cleveland Award for Excellence in Continuing Legal Education; and

WHEREAS, he has been recognized for his contributions to the legal profession by State Bar of Georgia Tradition of Excellence Award, the Atlanta Bar Association Leadership Award and Professionalism Award, and the American Inns of Court Professionalism Award presented at the 2005 Eleventh Circuit Judicial Conference; and

WHEREAS, the legal community and citizens of Georgia owe a debt of thanks to John T. Marshall for giving of himself selflessly for the betterment of our communities through decades of service; and

NOW THEREFORE BE IT RESOLVED that the State Bar of Georgia does express its gratitude and appreciation to John T. Marshall for his many years of devotion to the legal profession and to the people of Georgia by presenting him with the Distinguished Service Award—the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia.

## Former Chief Justice Harold G. Clarke Wins 2006 James M. Collier Award

by Len Horton

**F**ormer Chief Justice Harold G. Clarke was named recipient of the third annual James M. Collier award at the State Bar of Georgia's Board of Governor's meeting on Jan. 7. The award was presented to him by Rudolph Patterson, president of the Georgia Bar Foundation, at the Renaissance Waverly Hotel in Atlanta.

The award recognizes an individual who has done extraordinary work to assist the Georgia Bar Foundation in accomplishing its mission. It is named for James M. Collier, a Dawson lawyer who found extraordinary ways to expand the Georgia Bar Foundation's ability to assist law-related organizations helping needful people throughout the state.

Judge Clarke is one of Georgia's best-known jurists. His record of accomplishment is familiar to anyone who knows about Georgia's legal system. Less well known is his extraordinary success in giving Georgia's Interest On Lawyer Trust Accounts (IOLTA) program enough resources to provide significant support to those law-related organizations.



Rudolph Patterson, president of the Georgia Bar Foundation, presents Former Chief Justice Harold G. Clarke with the third annual James M. Collier award.

Photo by Sarah I. Bartleson

"He was a major advocate for the Georgia Bar Foundation and for expanding IOLTA during a time when many lawyers accepted the status quo," said Patterson. "He redefined and dramatically increased what was possible for the Bar Foundation to accomplish."

With the assistance of Jim Elliott, Cubbedge Snow and Doug Stewart, Judge Clarke guided the Georgia Bar Foundation to new heights, converting IOLTA from a voluntary program bringing in \$50,000 per month to a mandatory program with eight times the revenue.

More than merely guide the Bar Foundation, he defined how it was to operate. He was particularly concerned that the Georgia Bar Foundation be managed with sensitivity to minimize any interference in the way lawyers practice law. To this day, his influence provides impetus to avoid bureaucracy and to not be heavy handed in the way the Georgia Bar Foundation deals with lawyers and bankers.

One challenge perhaps best reveals Judge Clarke's extraordinary support for the Bar Foundation. In 1993 the Georgia Department of Banking and Finance concluded that IOLTA accounts were in violation of Federal law. The IOLTA rules required immediate availability of client trust funds, but Federal law required banks to reserve the right to require a seven-day notice before withdrawal. Since banks could not comply with both, the

department decided to advise all Georgia banks to stop offering IOLTA accounts.


But for a tip from a friendly banker, the Bar Foundation would have learned of the shutdown after it occurred and after IOLTA had been badly damaged. I immediately met with Bob Moler of the Department of Banking and Finance and asked if he would give me time to get the Supreme Court of Georgia to change the IOLTA rule. "You don't have time," he told me. "The notice is going out tomorrow morning, and there is no way the Supreme Court of Georgia can act fast enough to revise an order before tomorrow morning," he asserted.

"But will you give me a chance?" I asked. He said he would, and he and I jointly wrote wording that he considered to be a fix for the problem.

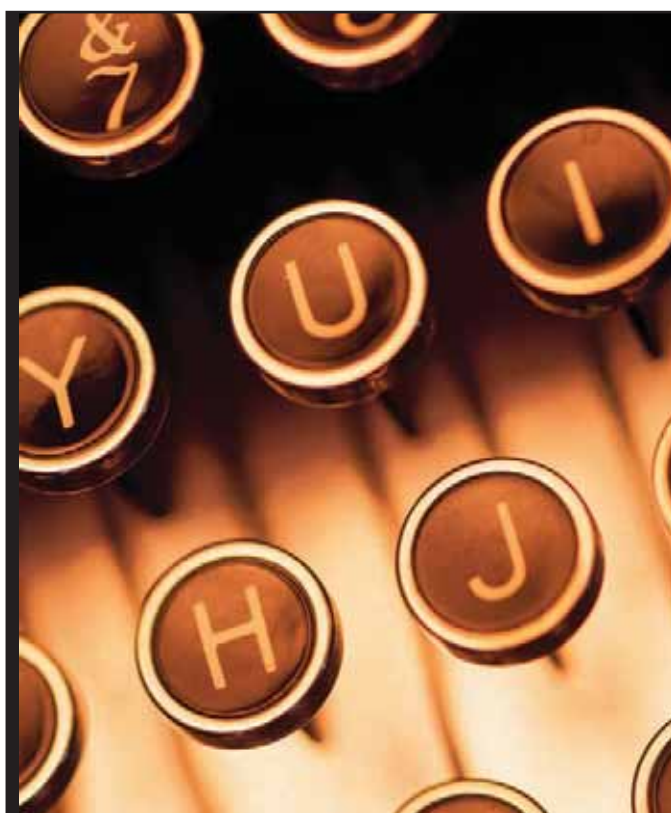
When I was told by Chief Justice Clarke's administrative assistant

that he was in an important meeting and could not be interrupted, I explained that this was an emergency. I can still hear the chief justice's voice when he came on the line: "Len, this had better be good."

When he learned the seriousness of the threat to IOLTA, he went into action. I don't know how he managed to do the impossible, but he did. That order was in Moler's hands early the next morning, and Bob Moler was a man of his word. The threat to IOLTA was over.

It is fitting that Judge Clarke, having worked so hard to define the Georgia Bar Foundation and to protect IOLTA, is now on the Foundation's Board of Trustees, being of additional service to the organization that owes him so much. Even more fitting is the fact that he is this year's recipient of the James M. Collier award. 

**Len Horton** is the executive director of the Georgia Bar Foundation.



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# Celebrating the First Distinguished Fellows Award

The Lawyers Foundation of Georgia honors Frank Love Jr. as the first awardee.

by Lauren Larmer Barrett

**O**n Jan. 5, the Lawyers Foundation of Georgia celebrated the first Distinguished Fellows Award at the brand new Georgia Aquarium. Around 500 gathered in the Oceans Ballroom to honor Frank Love Jr. as the Distinguished Fellow.

The Aquarium is an incredible place full of the most amazing sights you could hope to see, from the tiniest fish to the most tremendous whales. Its 8 million gallons of water and 100,000 animals will enchant and delight even the most jaded visitor as they visit the five different and wondrous exhibits. From the large viewing window that greeted attendees as they entered the Oceans Ballroom to the Beluga whales exhibit that captivated viewers with their interactive play, the Aquarium did not disappoint. Among the highlights were the tropical coral reef viewing room, the otter, sea lion and seal habitats, and the 100 ft. long underwater viewing tunnel

that gave everyone a unique view of the magnificent animals. In addition, large touch-tanks



Frank Love Jr. was the first recipient of the Distinguished Fellows award. Pictured here with Lauren Larmer Barrett, executive director of the Lawyers Foundation of Georgia.



Photo by Phillip McGinnis

Photos by Jennifer R. Mason



Families and friends gathered at the new Georgia Aquarium for the Lawyers Foundation Reception. Top left: Frankie and Jay Cook. Top middle: Gwendolyn S. Fortson Waring and family. Top right: Mike and Beverly McRae.





President Robert D. Ingram, Ruth and Joe Brackett, Kelly Ingram and Morgan Ingram enjoy their time at the aquarium.

allowed everyone the opportunity to hold a horseshoe crab or gently pet a stingray. The sights and sounds of this event made it clear why the Georgia Aquarium is the hottest ticket in town.

The Fellows of the Lawyers Foundation and their guests, joined for the first time at a Foundation event by non-Fellows, enjoyed the Aquarium for two hours after it closed to the public. Afterwards, they gathered in the Pacific Ballroom to honor and thank Frank Love Jr. for his support of the profession, the State Bar of Georgia, and the Lawyers Foundation of Georgia. He was presented with the first Distinguished Fellow Award by Linda A. Klein, chairperson of the

Lawyers Foundation of Georgia. Love was introduced by Jim McAlpin, managing partner of Powell Goldstein, LLP, Love's law firm for more than five decades. Love has been a guiding influence in the lives of countless attorneys in Georgia through his work as a litigator as well as CLE instructor and State Bar of Georgia President (1982-83). His contributions will always be appreciated by those who follow in his foot-



Back row: Frank Love Jr., Past Bar President Linda Klein, and Jim McAlpin. Front row: Chief Justice Leah Ward Sears, Presiding Justice Carol W. Hunstein, Justice Robert Benham, Justice George H. Carley, Justice Hugh P. Hines.

steps at the Lawyers Foundation of Georgia and the State Bar of Georgia.

The Distinguished Fellow Award was created to honor those Fellows who have played a significant role in the history of the State Bar and the Lawyers Foundation. The award recognizes those Fellows who exemplify the epitome of service to the public and dedication to the pursuit of justice. An endowment fund was established to honor Love, and will be used to further the mission of the Lawyers Foundation of Georgia: to enhance the system of justice, to serve the community and to assist the lawyers of the state of Georgia. Over \$35,000 has been raised in




Kay and John Marshall, Sylvia and Conley Ingram



honor of Love, and the Foundation will continue to accept donations in his honor.

The reception was a benefit for the Grants Program of the Lawyers Foundation of Georgia, and the proceeds will support the good works of the foundation. More information is available at [www.gabar.org/related\\_organizations/lawyers\\_foundation/](http://www.gabar.org/related_organizations/lawyers_foundation/). In addition to the support of the many attorneys and firms which purchased tickets to the reception, the reception was supported by the sponsors of the Foundation, including its Platinum Sponsor, The Georgia Fund, and its Gold Sponsors, IKON Legal Documents and Lexis.

For more information about the Lawyers Foundation of Georgia, please contact us at [lfg\\_lauren@bell-south.net](mailto:lfg_lauren@bell-south.net), or (404) 659-6867. 

**Lauren Larmer Barrett** is the executive director of the Lawyers Foundation of Georgia.

## Ways to Give to the LFG

### Legacy

A planned gift allows you to have an even greater impact than through your previous gifts.

### Gifts of Stock

Stocks and bonds that have increased in value are an excellent vehicle for charitable gifts to the Lawyers Foundation.

### Sponsorship

An individual or corporation may sponsor a variety of activities for the Foundation.

### Contributing Supporter

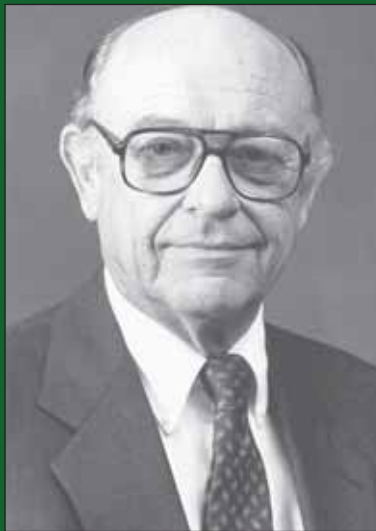
Any individual or company may donate to the Foundation and receive a tax deduction for their contribution. They will be listed in the annual report as a contributing supporter.

### Memorials and Tributes

The Lawyers Foundation of Georgia's Memorials and Tributes Program is offered as a unique way to honor and remember a Georgia lawyer, his or her spouse, child or friend who has died. It is also a wonderful way to honor an attorney or firm for reaching a particular milestone, such as making partner, retiring, or a significant anniversary.

### Cy Pres Awards

Funds remaining after a class action distribution can be given to a Not for Profit.



## First Distinguished Fellows Award to Frank Love Jr.

Frank Love Jr. is a retired partner with Powell Goldstein, LLP, and former chairman of the firm's Litigation Department. He specialized in commercial litigation, including First Amendment rights, professional and product liability, personal

injury, sports and entertainment, patent infringement and condemnation proceedings. Love is experienced in mediation and arbitration, and is a panelist with the American Arbitration Association and Closure ADR Group.

Clients of Love included one of the nation's largest broadcast and publishing companies, a major producer of gypsum, a major automotive parts manufacturer and a national veterans organization.

Love has conducted nearly two dozen seminars on trial skills for Georgia's Institute for Continuing Legal Education, and co-founded Georgia's Bridge the Gap seminar. He has written numerous articles for the Institute's publications as well as for the Georgia Defense Lawyers Journal.

He was born in Fayetteville, W.V., in 1927. His father was a lawyer in Fayetteville. Frank and Libby Love have been happily married 51 years and have two children, Cindy Jernigan and Chip Love. Cindy is an environmental engineer with Kimberly-Clark and is married to Ben Jernigan, who practices dentistry in Decatur. Chip is a computer analyst with Northrop Grumman. He is married to Amrita. Frank and Libby have four grandchildren, whom he is or will be teaching to fish and play golf, always his best talents.

Love is legendary at Powell Goldstein for not only his experience but for his judgment. He is unsurpassed at cutting the knot of the most intractable legal problems, sometimes in unusual ways. The American Legion, a long-time client of his, was enjoined from hosting a national baseball tournament, the morning it was to start. He got the Supreme Court of Georgia to reverse the injunction that afternoon, a record that still stands we believe. In another case for the American Legion, after detailed legal arguments to and fro did not move the judge, Love convinced her to grant summary judgment by pointing out that: "Your Honor, this plaintiff is crazy, and if you don't grant summary judgment, we're all going to be crazy."

# Bar Strives to Become More Involved in Legislative Process

by C. Tyler Jones

**T**he Georgia Legislature convened on Jan. 9 for the 2006 General Assembly session, and the Bar's legislative consultants were there to begin noting issues of interest to Georgia attorneys. Throughout the session, a tracking document will be posted to the Bar's website to keep members apprised of any relevant legislative developments. As a reminder, any bill can be reviewed at the state's website at [www.state.legis.ga.us](http://www.state.legis.ga.us).

The State Bar takes great pride in its legislative program, funded solely on voluntary contributions, which benefits Georgia businesses and citizens, as well as the legal profession, the judiciary and our system of justice. The State Bar has been particularly effective in passing legislation and funding initiatives that serve the public and improve the delivery of legal services to all Georgians, but to continue being effective, the Bar needs more member involvement in the process.

With fewer lawyers in the Georgia Legislature than any other time in history, it is more important than ever that members regularly communicate with their respective legislators with the goals of building relationships to better understand legislators' concerns, exchange ideas, offer input on proposed legislation and ultimately improve communications between the judicial and legislative branches of government.

To that end, President Robert D. Ingram has charged Board of Governor's members with taking a personal interest in building relationships with legislators by

arranging a meeting with them, not to lobby any particular issue, but to build a bridge for future grass root efforts.

Another Ingram initiative is the creation of the State Bar of Georgia Legislative Action Network, which has been created to make it easy for Bar members to contact their respective legislators to share their experiences and recommendations on proposed or pending legislation.

For the LAN to be effective member involvement is essential. The first step in this process of being involved is providing the Bar with your home address—it is used to match members with their respective legislators. If you have not provided your home address to the State Bar of Georgia, or if you need to update it, please do so at [www.gabar.org/member\\_essentials/address\\_change](http://www.gabar.org/member_essentials/address_change). By providing a home address, members will receive periodic e-mail alerts about critical legislative issues on which the Bar needs your help. Your support of the Bar's Legislative Program and your communication with legislators will help ensure that members collective voices are heard.

The State Bar of Georgia regularly takes positions on legislative proposals that are germane to its legitimate purposes when at least two-thirds of the members' elected representatives (Board members) present and voting agree that the profession should speak. While the Bar's legislative program is supported by voluntary contributions, it has historically elected to operate in the manner described in Standing Board Policy 100.

In order to comply with these self-imposed benchmarks the policy provides for initial consideration and recommendation by the Advisory Committee on Legislation after which the matter receives a second consideration by the Board of Governors. Because neither the ACL nor the Board meets while the Legislature is in session, the policy further provides that during that period of time the Executive Committee addresses legislative issues.

Recent legislative highlights include the creation and funding of a statewide public defender system; substantial

revisions and adoption of UCC Articles (2A, 3, 4, 5, 8 and 9); modernization of the probate, corporate, non-profit, and guardianship codes; and the creation of family and business law courts. The State Bar has also effectively defended against efforts to eliminate education requirements for taking the Bar exam, objected to initiatives that limit access to justice in the civil courts and defeated efforts to impose a higher business/occupation tax for attorneys.

For more information on the Bar's legislative initiatives, contact the Bar's Executive Director Cliff Brashier, at (404) 527-8755, the Bar's President Robert D. Ingram, at (770) 795-5035 or the Bar's legislative consultant Tom Boller, at (404) 872-0335.

## 2006 State Bar Legislative Tracking Document for the Week Ending January 13

### Senate Bills Carried Over From 2005

**SB 2:** This bill by Sen. Bill Hamrick (R-Carrollton) would equalize the number of peremptory challenges in a criminal proceeding. The bill passed the Senate on March 11, and remains in the House Non-Civil Judiciary Committee.

**SB 25:** This bill by Sen. Mitch Seabaugh (R-Sharpsburg) would extend the time period for a divorce proceeding from 30 days to six months for matters involving minor children. The bill was favorably reported by House Judiciary on Jan. 12.

**SB 30:** This bill regarding inverse condemnation proceeding is in Senate Judiciary Committee. Numerous hearings were held over the interim to discuss inverse condemnation.

**SB 94:** This bill by Sen. Seth Harp (R-Columbus) would disallow a custodian parent from bringing an action for child support, etc. in instances where the visitation rights of the non-custodial parent were not being adhered to under the terms of the previous order. The bill passed the Senate on March 11, 2005, and has been recommitted to the House Judiciary Non-Civil Committee after passing through that committee earlier.

**SB 101:** This bill by Sen. John Wiles (R-Marietta) would allow a plaintiff to insist on having his/her matter heard by an elected judge rather than by a judge sitting by designation. The bill has been recommitted to the Special Judiciary Committee.

**SB 193:** This is the Patriot Jury Act by Sen. John Wiles (R-Marietta), which would create a fund for lengthy trials, create a new offense for failing to appear for duty and change other provisions relating to jury service. The bill was assigned to the Senate Judiciary Committee.



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**SB 203:** This bill by Sen. John (R-Marietta) Wiles would require individuals who have wrongfully received indigent defense services to reimburse the system for those costs. The bill passed out of the Senate on March 10, and the House Judiciary Committee amended the bill to include technical revisions of the indigent defense council act. **A House/Senate conference committee report was adopted by the Senate on Thursday, Jan. 12** and House approval is expected this week the week Jan. 23. The measure will then go to the governor for signature.

**SB 232:** This bill by Sen. Joe Carter (R-Tifton) would revise the language of SB 3 regarding emergency room liability. The bill received a “do-pass” recommendation from Senate Judiciary Committee on March 3, and was recommitted to the committee upon the Legislature’s adjournment.

**SB 238:** This bill by Sen. Judson Hill (R-Marietta) would grant immunity for volunteers in non-profit organizations, provided the entity had minimal insurance and the behavior was not willful and wanton. The bill passed the Senate on March 10 and was favorably reported out by the Special Committee on Civil Justice Reform on March 24. It was recommitted to the House committee upon session adjournment.

**SB 241:** This bill by Sen. David Shafer (R-Duluth) seeks to change the law relating to the use of electronic signature by notaries. The bill was favorably reported by the Senate Science & Technology Committee and was recommitted to the committee upon adjournment.

**SB 253: This is the Property Section’s initiative that is part of the State Bar Agenda.** The purpose of the proposal is to provide for the immediate conversion of a mobile home that is permanently attached

to the ground from a personal property interest to a real property interest. This bill amends O.C.G.A. 8-2-181, et seq. The bill will benefit closing attorneys by clarifying that underlying assets are “real property.” The bill passed the Senate on March 10 and was favorably reported by House Judiciary. It was recommitted to House Judiciary at the end of the last session. The matter is expected to be favorably reported in the near future.

**SB 301:** This bill by Sen. Jeff Mullis (R-Chickamauga) imposes a “technology fee” on civil filings and criminal penalties to be used for providing technology needs in the judicial circuit in which the filing fees/fines were collected. This bill was favorably reported by the Senate Judiciary Committee and was recommitted to that committee upon session adjournment.

## 2006 Filings

**SB 372, SB377, SB378:** This package of bills by Senators Wiles, Rogers, and Hill revises the sexual offender registry requirements, the criminal punishment for certain crimes against children and changes some of the distance requirements where sexual offenders can reside. These bills are in the Senate Judiciary. A comprehensive House bill is expected to be filed by House Majority leader Jerry Keen.

**SB 382:** This bill by Sen. Seth Harp (R-Midland) would further revise the child support guidelines, allow for a direct appeal in domestic cases and allow for juries to determine deviations from guidelines.

**SB 383:** This bill by Senate Judiciary Chairman Preston Smith (R-Rome) would provide for the Superior Court Clerk to also serve as clerk of the state, magistrate and juvenile courts. The bill is in the Senate Insurance and Labor Committee.

**SB 376:** This bill would exempt spouses and children of deceased

military from jury service. The bill is in the Senate Judiciary Committee.

**SB 391, SR652:** The Eminent Domain measures by Sen. Jeff Chapman (R-Brunswick) are two of the dozens of bills and resolutions filed in regard to the imminent domain/condemnation issue. The State Bar will be monitoring these bills and will focus on the measures that begin to move forward.

## House Bills Carried Over from 2005

**HB 103:** This bill by Rep. Robert Ray (D-Fort Valley) relating to tax sales would increase the notice provision from 10 days to 30 days and require the posting of a notice on the property 30 days prior to the sale. This bill passed House Ways & Means Committee and was recommitted to that committee upon adjournment.

**HB 142:** This bill by Rep. Tommy Smith (R-Hazlehurst) would allow for post-majority support for disabled children in domestic relations cases. The bill is in House Judiciary.

**HB 150:** This bill by Rep. Bobby Franklin (R-Marietta) and Republican House leadership would amend the statute to require the Board of Bar Examiners to seat students from unaccredited law schools to take the bar exam if they had been admitted to practice in any other state. This bill passed the House on March 11 and remains in the Senate Special Judiciary Committee.

**HB 265:** This bill by Judiciary (Non-Civil) Chairman David Ralston (R-Blue Ridge) relates to the apportionment of taxes between counties when a parcel is in multiple counties. Currently, the owner files in one county and the apportionment is done later between the counties. This measure would require the owner to apportion the land and pay taxes to each accordingly. This bill is in the House Judiciary Committee.

**HB 375:** This bill revises the law relating to prepaid legal services. This bill was favorably reported by House Insurance Committee and was recommitted to the committee upon the Legislature's adjournment.

**HB 514:** This bill by Rep. Mack Crawford (R-Zebulon) and signed by the Speaker would discontinue the bound version of the compilation of court rules, and would instead make them available by electronic means. The bill was favorably reported by the House Judiciary Committee and was recommitted to the committee upon adjournment.

**HB 535:** This bill by Judiciary (Non-Civil) Chairman David Ralston (R-Blue Ridge) would remove the criminal penalties for failing to remit indigent defense funds to the council. The bill was favorably reported by House Non-Civil Judiciary and was recommitted to the committee upon the Legislature's adjournment.

**HB 571:** This bill by Rep. Ed Lindsey (R-Atlanta) would create new provisions relating to medical malpractice claims. A new 9-16-2 would require the plaintiff to conduct an investigation, including a written report from a medical expert determining the reasonableness of a claim before filing a notice that would initiate litigation. The bill would also create an obligation to file a "notice of intent to initiate litigation," which would trigger an obligation of the defendant to investigate the claims and obtain expert reports. The bill provides for pre-litigation discovery, a requirement that the plaintiff provide the names of all health care providers in the past two years in the notice and a 90-day period between notice and litigation. During the 90 day notice period, the defendant's insurer must either 1) reject the claim, 2) make a settlement offer, or 3) make an offer to arbitrate the issue of damages. The bill also has provisions for binding arbitration. The bill is

in the Special Committee on Civil Justice Reform.

**HB 572:** The bill by Rep. Ed Lindsey (R-Atlanta) would revise the expert witness rules passed in Senate Bill 3. The bill is in the Special Committee on Civil Justice Reform.

**HB 573:** This bill by Rep. Ed Lindsey (R-Atlanta) would allow joint defendants to choose the venue of the trial among any venue that is otherwise proper. The bill is in the Special Committee on Civil Justice Reform.

**HB 574:** This bill by Rep. Wendell Willard (R-Atlanta), Chairman of House Judiciary, would clarify the offer of judgment to state that a defendant that files an offer of judgment will receive attorneys' fees and expenses of litigation if there is a defense verdict or a plaintiff's judgment less than 80 percent of the offer. Rejection of a plaintiff's offer would result in fees if the final judgment were 120 percent of the offer. The bill is in the Special Committee on Civil Justice Reform.

**HB 575:** This bill by Rep. Ed Lindsey (R-Atlanta) would require the plaintiff to file a medical authorization form with the complaint. The bill would also authorize the defense attorneys to discuss the case with the plaintiff's health care providers. The bill is in the Special Committee on Civil Justice Reform.

**HB 609:** This bill by Rep. Mack Crawford (R-Zebulon) changes the provisions relating to senior judges by requiring that the governor appoint a senior judge for a two-year term. The compensation of the judges is changed from a daily rate based upon a full salary to an hourly basis calculated at 80 percent of a salary. The bill is in House Judiciary.

**HB 631:** This bill by Rep. Bob Lane (R-Statesboro) would allow counties to add an additional real estate transfer tax for local use.

The bill was assigned to the House Ways & Means Committee.

**HB 672:** This bill by House Judiciary Chairman Wendell Willard (R-Atlanta) would revise the probate code to provide for a forfeiture of an intestate share for a parent that has abandoned a child. The bill was assigned to the House Judiciary Committee.

**HB 763:** This bill limiting contingency fees by Rep. Tom Rice (R-Norcross) was assigned to the Special Committee on Civil Justice Reform.

**HB 771:** This bill, by Rep. Gail Buckner (D-Jonesboro), provides for a civil filing fee of \$10 to be used for county indigent defense services. The bill was assigned to House Judiciary Committee.


## 2006 Filings

**HB 986:** This bill by Rep. John Lunsford (R-McDonough) relates to the taking of depositions to preserve testimony in a criminal proceeding. The bill is in the judiciary non-Civil Committee.

**HB 987:** This bill by Rep. Ed Lindsey (R-Atlanta) would allow for concurrent jurisdiction in juvenile and Superior court for certain adoption proceedings. The bill is in Judiciary Non-Civil Committee.

**HB 989:** This bill creates a new sunset provision for the \$5.00 fee dedicated to the automated information system maintained by the Clerk's Authority. The bill is in the Judiciary Committee.

## House Resolutions

**HR 855:** This resolution by Rep. Bill Hembree (R-Douglasville) would amend the Georgia Constitution to require partisan election of all judges. 

**C. Tyler Jones** is the director of communications for the State Bar of Georgia.

# HOT New Features in Georgia Casemaker

by Natalie R. Kelly

**N**ot only is Casemaker one of the best member benefits the Bar has to offer, but it is also being updated with new features that you won't want to miss. The updated user manual explains the new caseCheck feature (available at [www.gabar.org](http://www.gabar.org)). Also, the Georgia Casemaker library contains the feature SuperCODE, and you will want to know more on Casemaker NetSnippets.

These features can help make your Casemaker research easier and more productive. But don't take our word for it. Log on and use these features personally, and experience their added benefit to your online legal research.

## caseCheck

While not exactly new, the caseCheck feature is available in the Caselaw search results area, and it lists all of the subsequent cases that cite the case you select in your search results. By example, if you look for cases relating to "dog bite," in your results list, you can click on and open the first case in the list, and if applicable, you will see the caseCheck area with a list of cases decided after the initial case in chronological order. If no cases exist beyond the case you select, you will see the notation "No references found." If cases are found, you are able to click the cases listed in caseCheck, and find your initial case's citation highlighted in red throughout the text of the case.

With the added caseCheck list, you can explore the treatment of your initial case and expand the information base for your research. While you are not formally shepardizing your results, you are quickly finding the application of your case in subsequent and related case law.

## SuperCODE

With information flowing at varying paces from legislative bodies, the SuperCODE feature has been


added to Casemaker to keep track of the changes to the Code and legislative session work. Updates to the Code are indicated in the system within a SuperCODE panel similar to that of caseCheck for caselaw. You are able to review the status of enacted legislation or see what, if any, has been amended in any legislation you are reviewing. As with caseCheck, if no changes have been made to statutes or session laws, "No references found" will appear in the SuperCODE panel.

SuperCODE helps you stay informed of changes along the codification process and allows you to monitor amendments or changes that might require closer scrutiny from manual research efforts.

## NetSnippets

Researchers need to keep track of their research and keep the information they locate in an organized format for easy retrieval and future review. With NetSnippets in Casemaker, researchers are able to capture the cases and information they locate in Casemaker, and then organize that information in a more useful manner. NetSnippets even has advanced capabilities that allow users to generate a bibliographical report from the entries saved from its screen capture areas. You are not only able to capture information from within Casemaker, but you can also attach web pages, pictures, text, e-mail and various other items.

With NetSnippets, you are able to develop an easy "Favorites" listing of search history and results folders. You can even organize all aspects of a given matter file or specialized area of law. Go to [www.casemaker.us/net-snippets](http://www.casemaker.us/net-snippets) for more details.

Casemaker is one of the best member benefits of the State Bar of Georgia. You can log on and experience the benefit and its newer features in the Members Only area of the Bar's website, [www.gabar.org](http://www.gabar.org). 

**Natalie R. Kelly** is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at [natalie@gabar.org](mailto:natalie@gabar.org).





Dear Members of the Bar:

I am pleased to have this opportunity to tell you about the Georgia Law-Related Education (LRE) Consortium, and to invite you to consider joining our organization.

The Consortium is an association of institutions, agencies, organizations, and individuals who believe law-related education is essential to the development

of productive, law-abiding citizens. To that end, it:

- initiates, encourages, develops, and supports LRE programs in Georgia;
- promotes the inclusion of LRE in pre-K, K-12, post-secondary, and adult curricula;
- promotes public awareness concerning the benefits of comprehensive law-related education programs; and
- collects and disseminates information about state and national LRE programs and resources.

Members of the Consortium include primary and secondary school educators; those in higher education; the legal community; the judiciary; and those in government (including law enforcement), business, and community organizations.

Formally, the Consortium meets one time each year; however, most of its work is conducted through committees which meet more often. Annual projects include a newsletter, *The LRE Circuit*; promotion of LRE Week activities; a poster contest; awards for outstanding LRE teachers, supporters, and students; teacher training; curriculum development; and support of other LRE activities throughout the state. The Consortium also has a long-standing partnership with the Young Lawyers Division of the Bar, having collaborated on 20 annual teacher workshops and the publication of a law-based high school textbook.

As you can see, the Consortium is an active, multi-faceted organization with a worthy mission, and we need your help. Please consider joining us. I believe you will be greatly rewarded.

Sincerely,

A handwritten signature in dark ink that reads "Christine B. Ledvinka".

Christine Ledvinka, Law-Related Education Coordinator  
Georgia LRE Consortium

- ☐ I'd like to represent my firm as a member of the Georgia LRE Consortium at the following level:
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- ☐ I am available to serve as a guest speaker or resource person for a teacher/class/school in my area.

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# The Putnam County Courthouse at Eatonton

## The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

**T**he history of the first Putnam County Courthouse is obscure. The county had been carved from Baldwin County in 1807, and Eatonton, the county seat, was laid out in the following year. In 1810, the town had a population of only 107 whites and 73 slaves, while the rural population of the newly formed Putnam County was above 10,000. Adiel Sherwood lists a courthouse “of considerable taste” in his 1828 inventory of buildings in Eatonton, but sources vary as to the date of construction of the large vernacular brick building he described. According to *The Eatonton Messenger*, the age of the old brick courthouse, which still stood on the square in Eaton in early 1905, had long been a mystery in Eatonton.

Eatonton had remained a typical Georgia Piedmont town throughout the nineteenth century, and despite her early railroad aspirations she languished at the end

of a lonely 1850 Central of Georgia spur for most of the second half of that century. Finally she closed the loop with the creation of a rail extension to Athens in 1891 followed by a branch to Covington in 1894. The fresh air of perceived progress that flowed into Eaton following these connections is apparent in newspaper articles of the era. Most to the point, these new winds of hope were elegantly manifest in James W. Golucke’s monumental 1905 Putnam County Courthouse. A bond issue for a new court building had been proposed first in 1902 and then again in 1904, when it received the overwhelming endorsement of most of Putnam County’s 758 registered voters.

A search of *The Messenger* details the county commissioners’ subsequent quest for a design for their new courthouse. Just a week after the passage of the bond issue, they traveled to Forsyth to view Bruce and Morgan’s 1896 Monroe County Courthouse, and not two weeks later *The Messenger* reported an excursion to Newnan by the commissioners to view J. W. Golucke’s newly completed Neoclassical creation there. A drawing of Golucke’s 1900 DeKalb County Courthouse in Decatur appeared in the same issue identifying this building as the model for the new Putnam County Courthouse. The hiring of Golucke was reported on Dec. 12, 1904, and the budget for the new “brick, stone, terra-cotta and iron” building was set at \$28,000. Some sources indicate that this was technically a remodeling, and that Golucke designed his grand courthouse at Eatonton around the old building. If this was the case,

it was a remodeling in name only, for the new structure completely encased the old. The cornerstone was laid in May of 1905, and the building was completed around the end of the year.

Today James Wingfield Golucke's neoclassical courthouses are windows on their times, revealing the collective mind of the people for whom they were designed. Golucke was undoubtedly aware of the monumental thrust of the Neoclassical and Beaux-Arts American buildings that were being constructed outside of the South around the turn of the century. Most of his ornamental vocabulary was derivative and flowed from the styles of day. Surely he was equally aware of the antebellum, Classical tradition of the South beginning with the designs of Thomas Jefferson and culminating in the Southern celebration of the Greek Revival. At a fundamental level, his elevations are Georgian. Golucke must have known that any local appeal that the New Classicism might enjoy would be realized by recalling the architecture of the Old South. Accordingly his general plans always begin with a pedimented, Classical portico attached to a horizontal rectangular mass in the popular style of older so-called Southern Colonial architecture.

Additionally, it appears that Golucke was no stranger to the brick vernacular style, that rudimentary translation of the old Federal Style that was itself a simplification of Georgian models. It was in the vernacular that Georgia first saw the rectangular courthouse at the center of the square with four more or less equal entranceways, one for each side of the square.

In addition to the Old South and vernacular forces that molded Golucke's four-sided approach, the Palladian tradition is undeniable here. Golucke may have lacked formal architectural training, but it is unlikely that any serious American designer, of this or any other era, could have overlooked Palladio. Golucke replaced Palladio's low,




Built in 1905, James W. Golucke, architect.

saucer-like domes with fanciful towers of more Baroque origin, packaged it all in Georgian symmetry, decorated it with Beaux-Arts finery, added a touch of Jefferson, a touch of the brick vernacular, and thus hammered out models for so many of the familiar local monuments that we still find on so many Georgia courthouse squares today.

At Eatonton, Golucke decorated his creation with the ornament of the 1893 Chicago World's Fair: rusticated quoining, splayed window lintels with broad voussoirs, Corinthian capitals, roundels in the clerestory. Nonetheless, despite all of their up-to-date ornament, the courthouses of James Golucke spoke a uniquely Southern language that was largely foreign to the mainstream critics of turn-of-the-century American architecture. James Wingfield Golucke designed 27 courthouses in Georgia between 1894 and 1907. His designs at Decatur (1900), Hartwell (1901), Cartersville (1903), Greenville (1903), Newnan (1904) and Sylvester (1906) follow the same general plan found at Eatonton.

With her embrace of the turn-of-the-century mainstream style, the South would reaffirm her attachment to classical forms, but once again she would find the progres-

sive national symbolism inappropriate. Attaching her peculiar mythology, she draped the new Classicism in her own evolving romantic imagery.


By 1900, the columns of Southern Neoclassicism were clothed in not just the myth of a New South but in the myth of the Old South as well. Here at last was the Architecture the Lost Cause, and if a little *Beaux-Arts* decoration crept into the blend, then all the better. The South had no problem with the ornaments of "progress" as long as she could manipulate their symbols on her own terms. 

Excerpted by **Wilber W. Caldwell**, author of *The Courthouse and the Depot, The Architecture of Hope in an Age of Despair, A Narrative Guide to Railroad Expansion and its Impact on Public Architecture in Georgia, 1833-1910*, (Macon: Mercer University Press, 2001). Hardback, 624 pages, 300 photos, 33 maps, 3 Appendices, complete Index. This book is available for \$50 from book sellers or for \$40 from the Mercer University Press at [www.mupress.org](http://www.mupress.org) or call the Mercer Press at (800) 342-0841 inside Georgia or (800) 637-2378.

Photo by Wilber W. Caldwell




## Kudos

- >  Emory Law Council member **Nancy Van Sant** has been named in the 2006 **"Top Lawyers in South Florida"** survey produced for the South Florida Legal Guide. Van Sant is a director with the law firm Sacher, Zelman, Van Sant, Paul, Beiley, Hartman, Rolnick & Greif, PA, of Miami, Fla. Van Sant was recognized by her peers for her work in the field of securities law and civil litigation. The winners must be practicing law a minimum of 15 years. Her practice concentrates in the securities arena and the prosecution and defense of federal and state securities litigation and arbitrations, defense of SEC, NASD and other regulatory matters.
- > **Sherry V. Neal** announced her affiliation with **Momentum, Inc.**, and its president, Wendy Ellin. Momentum helps attorneys and other professionals create a more productive environment through a variety of customized time, space, and information management techniques. Each Momentum productivity consultant has experience in the demanding and competitive professional environment and is committed to helping clients get more life out of life. Workshops and private consultations are offered.
- > **Jones Day** topped **BTI Consulting Group's national Survey of Client Service Performance for Law Firms** for the third time in its five-year history with its highest margin of victory yet. As a result, Jones Day was inducted into the BTI Client Service Hall of Fame. The study noted that Jones Day showed particularly outstanding performance in the categories of "Understanding the Client's Business," "Bringing Together National Resources" and "Advising on Business Issues."
- > For the second year in a row, **Holland & Knight LLP** has been named a **"Go-To Law Firm"** for litigation in an annual survey conducted by *Corporate Counsel* magazine. The results of the survey, published in the September 2005 issue, rank Holland & Knight among the top 12 law firms in the United States based on the number of *Fortune* 250 companies which list the firm as the one they "turn to most" for litigation matters. Holland & Knight was named in the survey by a number of clients, including BellSouth, The Coca-Cola Company, CVS Corp., Marriott International, Inc., New York Life Insurance Company, Publix Super Markets and Raytheon.
- > **Kilpatrick Stockton LLP** announced it has been named the **"best place to work"** in Atlanta among all

AmLaw 100/Global 100 firms in *The American Lawyer's Annual Midlevel Associates Survey*. Surveying 12 key areas that contribute to job satisfaction, the AmLaw survey consisted of a comprehensive examination of what makes a firm the "best place to work." This year's survey report is based on responses from almost 6,000 midlevels at 185 participating firms.

- > **Jennifer Hackemeyer**, an attorney with more than two decades of government experience, has joined the **Georgia Department of Education** as **general counsel**. Hackemeyer has spent the past 11 years with the Department of Technical and Adult Education. She served as the executive director of legal services for DTAE since 1996 and also worked as the director of human resources. Prior to joining DTAE she worked in the Office of the Georgia Attorney General for over a decade. Hackemeyer will supervise the Georgia Department of Education's legal division.

- >  **Barry Herrin**, a partner in **Smith Moore LLP's** Atlanta office, was named **co-leader** of the **American Health Lawyers Association's Health Information Technology practice group's Privacy and Security Compliance and Enforcement Affinity Group** for the coming program year. The health information and technology practice group provides a forum for members to exchange information and become educated about legal issues arising from the use of information and communications technology in health care. Herrin's responsibilities will include coordinating the group's efforts to write and publish article in AHLA publications, as well as other research projects involving health information privacy and security. His practice is devoted primarily to health care and hospital law and policy, health information management issues, and medical records privacy and security.



**Elarbee Thompson** partner **Vic Cavanaugh** was inducted as a **fellow** into the **College of Labor & Employment Lawyers**, a professional association honoring the leading lawyers nationwide in the practice of labor and employment law. Election as a fellow is the highest recognition by one's colleagues

of sustained outstanding performance in the profession, exemplifying integrity, dedication and excellence. Cavanaugh has represented employers in labor and employment law matters since 1970.

**Stanford G. Wilson**, managing partner of the firm, has been selected by his peers as one of *Georgia Trend's* "Legal Elite" for 2005 in the area of labor and employment law. Additionally, he was selected to be in the 2006 edition of **The Best Lawyers in America®**. A fellow in the College of Labor and Employment Lawyers, he has represented employers in labor and employment law matters since 1980. He is also vice chair of the Board of Trustees of Georgia College and State University.

Elarbee Thompson is also pleased to announce that **Amy Snell Auffant**, **Rich Escoffery** and **Oren Griffin** were named **Georgia Rising Stars** by *Law & Politics*, which surveyed *Georgia Super Lawyers* to ask for nominations of the best up-and-coming attorneys they have personally observed in action.

- **Georgia Legal Services Program** was selected as a **national grand prize winner** in the non-profit category of the **Cisco Growing with Technology Awards 2005** during a ceremony in San Jose, Calif. GLSP will deploy a wide-area network (WAN) that will link all of its 10 field offices together in real time. The WAN allows staff and volunteers to manage and share resources more efficiently and provide services to clients more effectively. Lawyers and paralegals will take legal resources and services on laptop computers out to clients in very remote and sparsely populated rural areas. Attorneys will provide clients with information, forms, documents, and perform casehandling tasks while at the client's location, via connections from a laptop in a remote area to the home office server.
- **William Lee Dawkins Jr.** was recently appointed **vice president—land and legal** for Stephens Production Company, a division of Stephens Group, Inc. Prior to this appointment, Dawkins was general counsel for the company. Stephens and its affiliates explore for and develop natural gas reserves in the continental United States and offshore Gulf of Mexico.

## On the Move

### In Atlanta

- **Sherry V. Neal** announced the opening of her law practice, the **Law Firm of Sherry V. Neal LLC**. Neal recently left her position as director of the Atlanta Legal Aid Society's Grandparent/Relative Caregiver

Project, through which she represented adoptive parents, to enter private practice. She will focus on domestic adoptions and adoption assistance benefits cases. The office contact information is P. O. Box 5207, Atlanta, GA 31107; (678) 596-3207; Fax (404) 377-4705.

- **Joseph C. Mandarino** and **Rich Sanders** have joined the Atlanta office of **Balch & Bingham LLP** in the firm's health care and tax practice groups, respectively. Mandarino has previously worked in the tax groups at Steptoe & Johnson in Washington, D.C., and King & Spalding in Atlanta. He joined Balch in October 2005. He writes and speaks on a variety of tax topics. Sanders joined the firm in October 2005, after spending more than two years with a regional law firm based in Atlanta as the head of its health care practice group. Prior to that, he owned his own firm specializing in health care law and maintained offices in both Atlanta and Birmingham. Sanders speaks regularly to health care associations throughout the Southeast on a variety of legal issues. The Atlanta office is located at 14 Piedmont Center, Suite 1100, 3535 Piedmont Road NE, Atlanta, GA 30305; (404) 261-6020; Fax (404) 261-3656; [www.balch.com](http://www.balch.com).
- **Lord, Bissell & Brook LLP** welcomes four new attorneys to the Atlanta office. **Leigh Els Wilde** joined as an **associate** in the corporate practice focusing on securities law compliance, corporate finance, and mergers and acquisitions, with an emphasis on venture capital, strategic alliances, public offerings, private placements, corporate governance, SEC reporting and blue sky compliance. **Lydia M. Hilton** joined as an **associate** in the litigation practice with experience in securities, toxic tort, bankruptcy and business litigation. **William M. Winter** joined as an **associate** in the corporate practice focusing on addressing U.S. tax matters for growing businesses, with an emphasis on helping U.S. and foreign companies expand their business overseas. **Brandon J. Witkow** joined as an **associate** in the litigation practice focusing on general commercial litigation, including complex business litigation, intellectual property litigation, white-collar defense, criminal and civil investigations, employment litigation, entertainment litigation and sports law. The office is located at The Proscenium, Suite 1900, 1170 Peachtree St. NE, Atlanta, GA 30309; (404) 870-4600; Fax (404) 872-5547; [www.lordbissell.com](http://www.lordbissell.com).
- **Seven** attorneys at **Morris, Manning & Martin, LLP**, were elected to become **partners**. **Ross A. Albert**, a former SEC senior enforcement attorney

and federal prosecutor, focuses on securities and complex commercial litigation, internal investigations, and the representation of corporations and individuals in connection with SEC investigations and enforcement actions. **G. Brian Butler** works within the firm's hospitality and real estate development and finance groups, counseling clients in a wide range of hospitality and commercial real estate development, acquisition and disposition and financing matters. **John A. Earles** practices in the firm's corporate and real estate capital markets groups, focusing on securities and corporate governance issues for companies in both the public and private markets. **Simon R. Malko**, in the firm's litigation group, represents corporations, investment banks and other business entities in a wide variety of commercial disputes. **Vanessa G. Morris** is in the firm's finance and commercial lending group, representing lenders in multifamily and commercial loan transactions. **Douglas D. Selph** practices in the firm's commercial lending and real estate development and finance groups, representing large money center banks, life insurance companies and other institutional lenders. **Sandra C. Sheets'** practice includes representing companies in their development, acquisition, use, license, and distribution of technology and technology-related services and the protection and management of intellectual property assets. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; (404) 233-7000; Fax (404) 365-9532; [www.mmmmlaw.com](http://www.mmmmlaw.com).

- > **The Appleseed Foundation**, one of the nation's largest legal pro bono networks, announced that **Judge Sharon Nelson Hill** of the Fulton County Juvenile Court in Atlanta joined its staff to help further the mission of building a just society through education, legal advocacy, community activism, and policy expertise. Judge Hill comes to Appleseed having served on the Fulton County Court since 1997. Before joining the court, Judge Hill worked both in private practice and served as staff attorney for the Atlanta Legal Aid Society. Judge Hill brings a history of dedication to pro bono work and advancing the public interest through law. She also developed in-house pro bono wills and advance directives forms in conjunction with the Atlanta Volunteer Lawyers Foundation and organized materials and speakers for the largest pro bono wills training seminar in Atlanta. The launch of Georgia Appleseed marks the 18th public interest center connected to the pro bono network. Kilpatrick Stockton has provided donated

space to house the office. To date, the initial board of directors has been formed and is currently recruiting additional prominent attorneys and professionals in the area.

- > **Robins, Kaplan, Miller & Ciresi LLP** announced that intellectual property trial attorneys **Stephen R. Risley** and **J. Scott Culpepper** have joined the firm's Atlanta office as **partners** and both were previously partners with Thomas, Kayden, Horstemeyer & Risley, LLP, where Risley was a founding partner and head of the litigation practice group. Risley focuses his practice on business and patent and trademark litigation, as well as disputes concerning licensing, trade secrets, copyrights, and unfair competition, in matters concerning biotech, chemical, mechanical and electrical/computer technologies. Culpepper concentrates his practice in business, patent, trademark/trade dress, copyright, and trade secret litigation. He is experienced in litigating and licensing matters relating to a variety of technologies and industries. Additionally, **Marla Butler** has been named a **partner** with the firm. Butler's practice focuses on intellectual property litigation, and she has been the lead lawyer in matters that have been resolved by trial, mediation and arbitration. She joined the firm in 1997. The Atlanta office is located at 2600 One Atlanta Plaza, 950 East Paces Ferry Road NE, Atlanta, GA 30326; (404) 760-4300; Fax (404) 233-1267; [www.rkmc.com](http://www.rkmc.com).

- > **Elarbee, Thompson, Sapp & Wilson LLP** announced that **Brendalyn B. Lumpkins** and **Lisa H. Bauer** have joined the firm as **associates**. The firm is located at 800 International Tower, 229 Peachtree St. NE, Atlanta, GA 30303; (404) 659-6700; Fax (404) 222-9718; [www.elarbeethompson.com](http://www.elarbeethompson.com).

- >  **Holland & Knight LLP** announced that Atlanta attorney **Howard S. Hirsch** was elected to the **partnership**. A member of the firm's business section, Hirsch practices in the areas of securities law and commercial transactions, general corporate law, and mergers and acquisitions. He has represented clients in public securities offerings, private placements, SEC reporting, Sarbanes-Oxley compliance, Blue Sky compliance and mergers and acquisitions. The Atlanta office is located at 1201 West Peachtree St. NE, One Atlantic Center, Suite 2000, Atlanta, GA 30309; (404) 817-8500; Fax (404) 881-0470; [www.hklaw.com](http://www.hklaw.com).



- **Womble Carlyle Sandridge & Rice, PLLC**, announced that **George Kurlyandchik** has joined the firm's capital markets practice group as an **associate** in the Atlanta office. Kurlyandchik has significant experience working with lenders, borrowers and commercial real estate developers. Kurlyandchik comes to Womble Carlyle from Schulten, Ward & Turner LLP, where he was an associate. The Atlanta office is located at One Atlantic Center Suite 3500, 1201 West Peachtree St., Atlanta, GA 30309; (404) 872-7000; Fax (404) 888-7490; [www.wcsr.com](http://www.wcsr.com).

#### In Macon

- **Edward J. Harrell**, managing partner of Martin Snow, LLP, in Macon and **Larry O'Neal**, attorney with O'Neal, Long & Hall in Warner Robbins, announced the **merger** of their firms. The Macon based firm of Martin Snow, LLP, will retain offices in Macon. The Warner Robbins office will now conduct business under the new name, **Martin, Snow, O'Neal & Long**, a division of Martin Snow, LLP. Bringing over 100 years experience and 24 attorneys to the merger, Martin Snow brings expertise in litigation, real estate, corporations and other business organizations, business mergers and acquisitions, banking law, estate planning and taxation. O'Neal, Long & Hall brings experience in real estate, governmental law and litigation. The Macon offices are located at 240 Third St., Macon, GA 31201; (478) 749-1700; and 4008 Vineville Ave., Macon, GA 31210; (478) 749-1753; [www.martinsnow.com](http://www.martinsnow.com).

#### In Milledgeville

- **Frier and Oulsnam, PC** announced that **J. Lance Stribling** joined the firm as an **associate**. Stribling will support the other firm attorneys and staff in their general civil practice representing clients in the areas of commercial and residential real estate, estate planning, elder law, estate probate and administration, complex business transactions and litigation, small business and corporate law, federal and state tax law, 1031 tax deferred exchanges and collections law. The Milledgeville office is located at 110 South Jefferson St., Milledgeville, GA 31061; (478) 454-5444.

#### In Fayetteville, N.C.

- **Hutchens, Senter & Britton, PA**, a leading creditors' rights and civil litigation law firm based in Fayetteville, N.C., announced that **Joseph J. Vonnegut** has been named a **partner**. Vonnegut is admitted to all federal courts in North Carolina, the United States District Court, Middle District of Illinois, the United States Court of Appeals, Seventh Circuit,

the United States Army Court of Criminal Appeals, and the bar's of North Carolina and Georgia. Vonnegut served on active duty with the United States Army Judge Advocate General Corps from 1989 to 1998 and continues to serve in the United States Army Reserves. The office is located at 4317 Ramsey St., Fayetteville, NC 28311; (910) 864-6888; Fax (910) 864-0562; [www.hutchensandsenter.com](http://www.hutchensandsenter.com).



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# Living with Pro Se Opponents

by Paula Frederick



"I'm starting to think Big Landlord Co. would be better off firing me and handling their eviction cases pro se," you declare as you walk into your partner's office. "The way the court bends the rules for those pro se tenants, a real lawyer doesn't stand a chance!"

"Today Judge Smith actually allowed the defendant to submit a bunch of unsworn written statements from neighbors complaining about Big Landlord! No way would she let *me* get away with that! This tenant has never even *heard* of authentication!"

"You ought to be used to it by now," your partner advises. "I can't remember the last time any of the tenants in your Big Landlord cases actually had representation. But I do sympathize. Do you know that Daisy May's husband had the nerve to tell the judge he thought I was representing both sides in the divorce case? He told the court I had advised him to settle and explained the agreement to him, so he thought I was his lawyer!"

"Man, what I wouldn't give for a case with opposing counsel," you sigh.

Courts nationwide have documented a startling rise in the number of pro se litigants in the past few years. In a study undertaken in 2005, Georgia's Administrative Office of the Courts reports that 34 percent of all domestic relations cases are adjudicated without counsel.

Conflicts of interest are the most common ethics problem for lawyers dealing with an unrepresented party.

Rule 1.7 of the Georgia Rules of Professional Conduct prohibits a lawyer from undertaking representation that involves a concurrent conflict of interest. It specifically prohibits a lawyer from representing both sides in a case.

Rule 4.3, while not strictly a “conflicts” rule, is based upon the same concept of loyalty and undivided interest. A lawyer may not give legal advice to an unrepresented opposing party, except for the advice to obtain counsel. The rule also requires a lawyer to correct any misunderstanding an unrepresented person may have about either the lawyer’s role in a matter or the lawyer’s impartiality.

It’s impossible to settle a case without talking to the other side, and it’s hard to negotiate with a self-represented person without at least explaining your proposal. How does a lawyer go about resolving a dispute with a self-represented person without running afoul of Rule 4.3? What


steps can a lawyer take to minimize confusion about his or her role?

There is some relief to be found in the distinction between legal information and legal advice. Legal *information* is a factual statement that requires no interpretation—what a particular statute says, or what a court’s procedural rules require. Legal *advice*, on the other hand, is an opinion—an interpretation based upon the lawyer’s knowledge, experience and training.

So, while you do not violate Rule 4.3 by telling a pro se opposing party what the court’s child support guidelines are, you do violate the rule when you opine on how the judge might vary from those guidelines in light of the particular facts of the case.

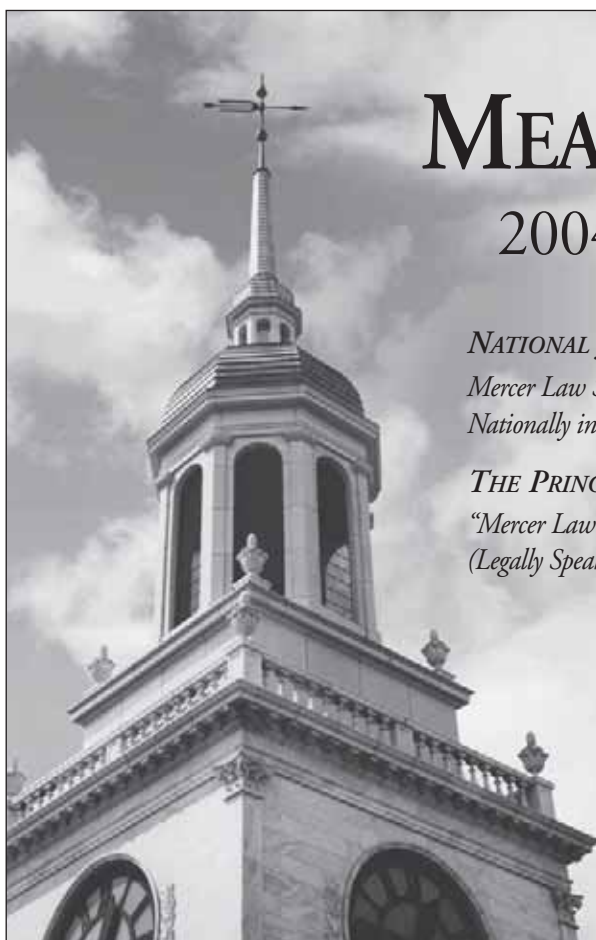
Lawyers dealing with a pro se litigant walk a fine line in negotiating. If the pro se is completely distrustful, the chances of settlement are nil. On the other hand, you make a mistake when you “buddy

up” to a pro se opponent. The pro se may become confused about your role. It is not uncommon for a pro se litigant to file a disciplinary grievance against opposing counsel, claiming they received bad legal advice or were misled into signing a settlement agreement.

If you are in this situation, explain to the pro se litigant that you represent only the adverse party. It’s best to require the pro se to sign a simple form verifying that they understand who you represent, that they did not obtain any legal advice from you, and that you instructed them to hire a lawyer. It’s wise to document the disclaimers and warnings in writing as insurance in the event of a Bar grievance. 



**Paula Frederick** is the deputy general counsel for the State Bar of Georgia.



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# Discipline Summaries

(October 15, 2005 through November 30, 2005)

by Connie P. Henry

## Disbarments/Voluntary Surrenders

### Barry Roberts

Atlanta, Ga.

On Oct. 24, 2005, the Supreme Court of Georgia accepted the Voluntary Surrender of License of Barry Roberts (State Bar No. 004790). Rogers pled guilty to the felony charge of making a false statement to an IRS agent in the United States District Court for the Northern District of Texas, Dallas Division. He was sentenced on April 20, 2005.

### Patrick Scott Brown

Atlanta, Ga.

Patrick Scott Brown (State Bar No. 089121) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 24, 2005. Several years after Brown chose to become an inactive member of the State Bar, he engaged in the practice of law by representing a client in a drug condemnation case. Brown failed to reject the Notice of Discipline and his conduct was deemed admitted.

### Harold Michael Harvey

Atlanta, Ga.

Harold Michael Harvey (State Bar No. 335425) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 24, 2005. In 2002 the Court suspended Harvey from the practice of law for two years. Harvey certified to the Court that he had notified his clients and that he had immediately ceased the practice of law. Harvey continued to maintain his law office as The Harvey Law Firm and his staff wrote letters on the firm's letterhead with Harvey's approval despite a warning from the Office of the General Counsel. Harvey opened new accounts after his suspension where he continued to deposit client funds. Harvey also signed pleadings with the name of a friend and practicing lawyer without permission. As a result, in February 2004 the Court imposed an additional two-year suspension. Harvey demonstrated a pattern of neglect in his handling of legal matters and an obvious disregard for the rules and ethics.

### William W. Gardner

Atlanta, Ga.

William W. Gardner (State Bar No. 284625) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 24, 2005. Gardner acknowledged service of a Formal Complaint but failed to respond. Gardner was hired in September 2003 to represent a client regarding claims arising from construction defects in her home. The client paid Gardner \$2,500 as an advance retainer but he performed no work on her claim. In response to her repeated inquiries, Gardner acknowledged that he had yet to begin work but assured her that he would do so promptly. He failed to take any action on her case and never contacted her again. He essentially terminated his attorney-client relationship but did not officially withdraw from representing her. Although Gardner never earned any portion of the retainer, he failed to refund the fee. The Court noted in aggravation of discipline that Gardner had prior disciplinary offenses.

### Wallace Anthony Kitchen

Columbus, Ga.

Wallace Anthony Kitchen (State Bar No. 424350) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 24, 2005. On March 25, 2005, Kitchen pled guilty in the Superior Court of Muscogee County to misdemeanor driving under the influence of alcohol (Count 1) and felony habitual violator (Count 2). Kitchen was sentenced to 12 months probation on Count 1 and five years probation under the First Offender Act on Count 2. In mitigation of discipline the Court and Special Master found that Kitchen is attempting to address his addiction to alcohol. In aggravation of punishment, the Court noted that Kitchen not only has two prior disciplinary matters involving four separate grievances, but also that he has another disciplinary matter pending before the Court; that Kitchen's actions display a pattern of misconduct; that Kitchen does not acknowledge the wrongful nature of his conduct or appreciate the serious threat that his conduct poses to himself, his clients, the public and the legal profession; and the presence of multiple offenses in this case.

### **Audrey Johnson**

Jonesboro, Ga.

Audrey Johnson (State Bar No. 064448) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 24, 2005.

A client retained Johnson to domesticate a child support order. The trial court orally granted the domestication and directed Johnson to draft the order. Johnson failed to submit a draft order. The trial court drafted and filed its own order granting the domestication. Later Johnson asked the client to execute an affidavit stating that the affidavit was needed to attach to the domestication order, but the domestication order had already been entered and filed by the court.

In another case Johnson was retained to represent a client in a personal injury matter. Thereafter, the client was unable to communicate with Johnson.

Johnson was paid \$1,100 to represent a client in modifying visitation rights. Johnson filed a petition for modification and opposing counsel responded. The case was dismissed for want of prosecution. Johnson did not inform her client of the dismissal.

Another client paid Johnson \$750 to represent her in a probate matter. Johnson advised the client that she could interplead in the matter of her husband's estate. Johnson failed to timely respond to discovery or file pleadings relating to the matter. The client contends that she lost her home, her car and \$120,000.

In aggravation of punishment, the Court found that Johnson had multiple disciplinary matters pending which evidenced a pattern of wrongful behavior.

### **Dakeer A. Farrar**

Elmont, N.Y.

Dakeer A. Farrar (State Bar No. 255707) has been disbarred from the practice of law in Georgia by Supreme Court order dated Nov. 7, 2005. Farrar pled guilty in the Superior Court of Douglas County on June 6, 2005 to three counts of

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unlawful use of a communication device and one count each of the sale of marijuana, the sale of methylenedioxymethamphetamine, and trafficking in cocaine. The Court found in aggravation of discipline that Farrar had multiple offenses, and that there were no mitigating circumstances.

#### **D. John Skandalakis**

Marietta, Ga.

D. John Skandalakis (State Bar No. 649620) has been disbarred from the practice of law in Georgia by Supreme Court order dated Nov. 7, 2005. Skandalakis, who served on the Fulton County Commission, knowingly and willingly made a false statement to an agent of the FBI who was investigating corruption in the Fulton County government. During the investigation, Skandalakis was asked if he had participated in a vote by the Commission to approve a contract between Fulton County and a proposed vendor at a time when the vendor was confidentially paying him as a "consultant." Although he asserted that he "did not know," he later admitted that his statement was false and that he knew it to be false when he made it. The Court found that Skandalakis knowingly and willingly lied in an attempt to avoid being held accountable for a breach of his public trust; that his lie was for a dishonest and selfish motive; that his plea arose out of his actions as an elected public official; and that he appears to have breached the public trust not only by voting on the contract when he harbored a conflict of interest, but also by making a false statement about his vote.

#### **John Clark Whatley VI**

Norcross, Ga.

John Clark Whatley VI (State Bar No. 750962) has been disbarred from the practice of law in Georgia by Supreme Court order dated Nov. 7, 2005.

A client hired Whatley's law firm in September 2000 to represent her in a Chapter 13 bankruptcy matter.

Whatley filed the Chapter 13 case in November 2000 at a time when the client owed a mortgage arrearage of more than \$3,000. Although the client paid Whatley's firm \$4,350 with the understanding that most of that money would go toward her mortgage arrearage, Whatley did not remit the money for the mortgage arrearage. In January 2004, the bankruptcy court issued an order requiring the client to satisfy the arrearage and set out a payment plan, but Whatley did not advise the client. When the client defaulted, the mortgage company notified Whatley's client directly that it had obtained an order lifting the bankruptcy stay. The client then filed a grievance and hired another attorney to file an emergency motion to re-impose the stay. The Court then held a show cause hearing for Whatley to account for the funds. The bankruptcy court found that Whatley could not account for \$1,600 and ordered him to refund that amount.

Whatley failed to respond to a Notice of Investigation and was interim suspended. Subsequently Whatley responded that he had established the law firm in 1997, with a law school graduate who never passed the Bar exam. Whatley claimed this man was responsible for setting up the firm, taking client calls, interviewing clients, opening and maintaining the bank accounts, controlling incoming mail, maintaining client files, and conducting the business of the firm. Whatley was only required to complete the bankruptcy filings and appear in court. Initially, the man paid Whatley a \$100 per bankruptcy case filed through the firm but later he paid Whatley \$1,500 a month. The law firm operated in this way until 2004, when the firm began to suffer from a lack of business. In May 2004, the man allegedly converted the firm's operating and other bank accounts for his own personal use. Whatley asserts that the man stole the client's funds and the funds paid to the law firm for submission to the bankruptcy court in eight other matters.

The Court found that Whatley engaged in a pattern of misconduct; that he displayed a cavalier and arrogant attitude toward the disciplinary process; and that he did not appear to understand his obligations under the Bar Rules.

#### **Charles Douglas Best**

Atlanta, Ga.

Charles Douglas Best (State Bar No. 055783) has been disbarred from the practice of law in Georgia by Supreme Court order dated Nov. 21, 2005. Best was served with Notices of Investigation by publication, and failed to reject such Notices. In eight cases Best accepted representation and fees, but took little or no action to pursue his clients' cases. His telephone numbers were disconnected and he moved from his office with no forwarding address. He did not contact or communicate with his clients, nor did he take any action to protect their rights.

#### **Spurgeon Green III**

Warner Robins, Ga.

Spurgeon Green III (State Bar No. 307345) has been disbarred from the practice of law in Georgia by Supreme Court order dated Nov. 21, 2005. Six Notices of Discipline were filed against Green. In one case Green was hired to assist a client in a guardianship case. The client paid Green \$600. Green entered an appearance but failed to take any further action. Green did not return the client's calls or communicate with him in any way and failed to refund his attorney fees or the client's file.

In another case Green was retained to represent a client in a personal injury matter. Green informed the client that his case had settled for \$10,000. Green gave the client one-third of the proceeds and told him that he would provide the remainder in 90 days. Green never delivered or accounted for the balance of the funds.

Green was paid \$750 to represent another client in a criminal case. Green failed to communicate with the client regarding the case.



Another client paid Green \$459 to represent her in an uncontested divorce. Green delivered the divorce papers to the client's incarcerated husband who returned the papers indicating that he intended to contest the divorce. The client then paid Green an additional \$626 for Green to represent her in the contested divorce. Green failed to further communicate with the client.

Another client paid Green \$399 to represent her in a divorce. Green did not file anything on the client's behalf. He told her that he had filed the divorce papers and that the divorce had not yet been finalized because the judge was behind.

Finally in another case a client paid Green \$1,200 to represent him in a divorce. Green told the client that his divorce would be finalized on January 10, 2005 and that he would be in touch if anything changed. Green never took any action on the client's case.

In aggravation of punishment, the Court noted that Green has a prior disciplinary record, and the fact that multiple disciplinary matters were being pursued simultaneously evidenced a pattern and practice of wrongful behavior.

**Frank B. Perry**  
Ringgold, Ga.

Frank B. Perry (State Bar No. 572536) has been disbarred from the practice of law in Georgia by Supreme Court order dated Nov. 21, 2005. Perry, who resides in Tennessee but is not licensed to practice law in Tennessee, has been a member of the State Bar of Georgia since 1980. A client, who was not fluent in English, hired Perry to represent her in two Tennessee personal injury claims, but Perry did not investigate or develop the claims, file a lawsuit in either case, or advise the client of the impending expiration of the statute of limitations. The statute expired on both of her claims and she was barred from taking any further action on her claims.

The Court noted in aggravation that Perry had received Public Reprimands in 1998 and 2000. This

matter involved similar disciplinary offenses, a pattern of misconduct, the submission of misleading or false statements, a refusal to acknowledge the wrongful nature of his conduct, and vulnerability of the victim. The Court found no mitigating circumstances.

## Suspensions

**Mark Sherman Fraser**  
Atlanta, Ga.

Mark Sherman Fraser (State Bar No. 274225) has been suspended from the practice of law in Georgia for nine months with conditions for reinstatement by Supreme Court order dated Nov. 21, 2005. Fraser wrote six checks totaling approximately \$218 on his firm's escrow account. The checks were dishonored for insufficient funds. Fraser must petition the Review Panel for certification for any request for readmission following nine months, and as a condition must attend Ethics School and submit an audit of his escrow account for the three-year period prior to July 7, 2004.

## Review Panel Reprimand

**Adam J. Conti**  
Atlanta, Ga.

On Oct. 24, 2005, the Supreme Court of Georgia ordered that Adam J. Conti (State Bar No. 182475) be administered a Review Panel Reprimand. Conti represented a client in an employment discrimination claim. After initially rejecting a settlement offer, the client later told Conti to settle the case for whatever he could get. After the case was set for an evidentiary hearing and pre-trial conference, Conti tried unsuccessfully to contact his client. At the pre-trial hearing Conti told the judge and opposing counsel that his client would testify at the hearing, despite having been unable to contact the client. Following the pre-trial hearing, opposing counsel made a settlement offer. Conti accepted the offer and signed the settlement documents on behalf of his client without revealing

an agency capacity. Opposing counsel subsequently learned that the client had died the previous year. Conti admitted the forgery and false statements. The government then withdrew the settlement offer and the client's widow hired new counsel.


The special master found that Conti has a good reputation, has been active in professional groups and church, and has volunteered with his alma mater. He expressed remorse, has no prior disciplinary record, was not motivated by a dishonest or selfish motive, made full disclosure when the grievance was filed and cooperated fully with the State Bar. The special master found in aggravation that Conti had substantial experience in the practice of law.

## Investigative Panel Reprimand

**James A. Meaney**  
Atlanta, Ga.

On Oct. 24, 2005, the Supreme Court of Georgia ordered that James A. Meaney (State Bar No. 500491) be administered an Investigative Panel Reprimand as discipline reciprocal to that imposed by the Supreme Court of Tennessee. Meaney received a "Public Censure" by the Supreme Court of Tennessee for failing to file a client's lawsuit within the statute of limitation and failing to communicate adequately with his client, and in a separate case, for engaging in conduct that is prejudicial to the administration of justice.

## Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Oct. 15, 2005, one lawyer has been suspended for violating this rule and none have been reinstated. 

**Connie P. Henry** is the clerk of the State Disciplinary Board.

# *Love* and the *Law*: Managing Your Practice and Your Life

by Natalie R. Kelly

**W**hat do doves and the practice of law have to do with each other? Well, the theme of love and peace may immediately come to mind. Perhaps even balance is what you think about when you think of doves and your practice? No, not at all, you say! Well, below are some general tips and suggested resources to help you better manage your practice and develop a healthy balance between your work in the law and your life. You could even learn to love the law again.

Many lawyers burn out from practice, and quite often it is not necessarily the practice, but the management of the practice that is the culprit. For instance, always having to deal with short deadlines and having to recreate numerous wheels gets in the way of the lawyer even getting to “practice” law. So, life as a whole can grow to unmanageable, uncomfortable, and sometimes, unbearable levels. The key to avoiding this situation for you is to learn how to manage better.

## **Better Manage Your Time**

Missed deadlines and appointments can happen. But it is up to you and your staff to implement systems that help you to best organize and manage your time. Examine the length of the various meetings you take part in and make this your calendaring default. Be sure to allow time for unexpected periods of time that might logically follow trial dates and the like. Also, make sure you allow yourself time to actually do the work that might be generated from meetings and appointments you attend. You can log this work time on your calendar too. Long hours are to be expected on many days, but do not make the mistake of not taking advantage of down time, or even a vacation from your practice! If you better manage your time, you should feel more balanced in your work and time away from work.

## **Better Manage Your Office and Staff**

While many firms are large enough to have staff who handle the daily operational oversight of the practice, some solo and small practitioners do not have this luxury. Regardless of firm size, however, having a written policies and procedures manual that has been reviewed by your employment lawyer is a good start for managing workings of the office and the staff.





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## Did you Know?

- ▶ 789 State Bar of Georgia members have been admitted to practice for 50 years or more.

Large firms and departmental attorneys who have delegated the responsibility of working with staff to another should ensure they have given the appropriate authority for effective action and decisions. A good office manager or firm administrator can be an invaluable resource for a modern law practice with the right level of authority. In the smaller law firm environment, it is just as important to make sure you are dealing with office operations and staff issues appropriately. Again, regardless of firm size, do not delegate blindly or without appropriate follow up or oversight. Remember, it is your law license, and this makes managing a part of what you should be doing!

## Better Manage Your Caseload


Taking on too many cases or not having enough work to keep the doors open are problems that can happen to the best of lawyers. Managing the caseload is necessary and can be accomplished with legal practice management and contact systems, or even a very good system for tracking files and their status. While the technology route can be more effective, good habits in terms of entering information correctly and in an organized fashion can also play a role in exactly how effective you are at managing your caseload. You should understand how much work is required to either meet your billable hours goals or maintain the appropriate cash flow levels to pay your staff and yourself! Tracking not only the time worked, but the time developing work and the revenue generated from billed work is also very important. Do not overlook the need for budgets, even in the simplest form, in your practice. Do not continue to take on new cases if you are unable to handle the load you currently have. Even knowing what your load is can help you determine if you have to say yes. Use a practice manage-

ment system or some other file-based system to keep track.

## Better Manage Yourself

While the legal industry is very good about fostering goodwill amongst peers, sometimes practice can isolate a lawyer from the rest of the legal world. Stop and look around on a regular basis to make sure this is not happening to you. If you are experiencing difficulties, be honest with yourself and reach out for the help that is most definitely there. Do not try to go it alone when you do not have to and when help is just a click or a call away. A part of being a responsible professional is that you are honest about your shortcomings or weaknesses, and work to remedy or deal with them so as not to harm yourself or others (clients, staff, the public). The State Bar of Georgia's resources run the gamut from help with the very personal issues you may have to the ethical and office operation concerns that might come up. Visit the Bar's website or the Bar Center in person and familiarize yourself with the services available to you.

If you are still wondering, 'What's love go to do with it?,' go back to the notes or journals you wrote to yourself before entering law school or when you simply dreamed of your life as a lawyer. Are you there yet? Have you gone past it? How happy are you in your practice? What can you work on in terms of managing to make you love the law all over again? Remember, help is here.

For more detailed resources or direct assistance with your management concerns, contact the State Bar's Law Practice Management Program a.k.a. The Lawyers' Cupid at (404) 527-8770. 

**Natalie R. Kelly** is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at [natalie@gabar.org](mailto:natalie@gabar.org).

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## *Sections Meet in Puerto Rico*

by Johanna B. Merrill

**T**he 2005 Southern Regional Entertainment Law Conference and IP Institute, held at the Ritz-Carlton Hotel Casino & Spa in San Juan, Puerto Rico from Nov. 10-14, was the largest conference to date, with close to 300 lawyers and guests in attendance.

Conference organizer Darryl Cohen said that Puerto Rico was selected for the 2005 conference due to its accessibility from Atlanta and the warm weather. Also, San Juan has a great history with several points of interest that served as backdrops for conference events.

The long weekend kicked off with a poolside reception at the Ritz. Attendees were able to mingle and get introduced before the panels began the following day. The continuing legal education portion began Friday with panels such as ethics and professionalism; entertainment copyright law update; trademark law update; IP From the Bench: Judges' Panel Discussion; and "Topic/Book to Film/TV—Obstacles and Issues."

Friday night was open, leaving attendees and their guests the opportunity to visit Old San Juan or the nearby world-famous El San Juan Hotel and Casino.

The conference continued on Saturday with such panels as "Reality TV—Real Life or Real Interesting?"; open

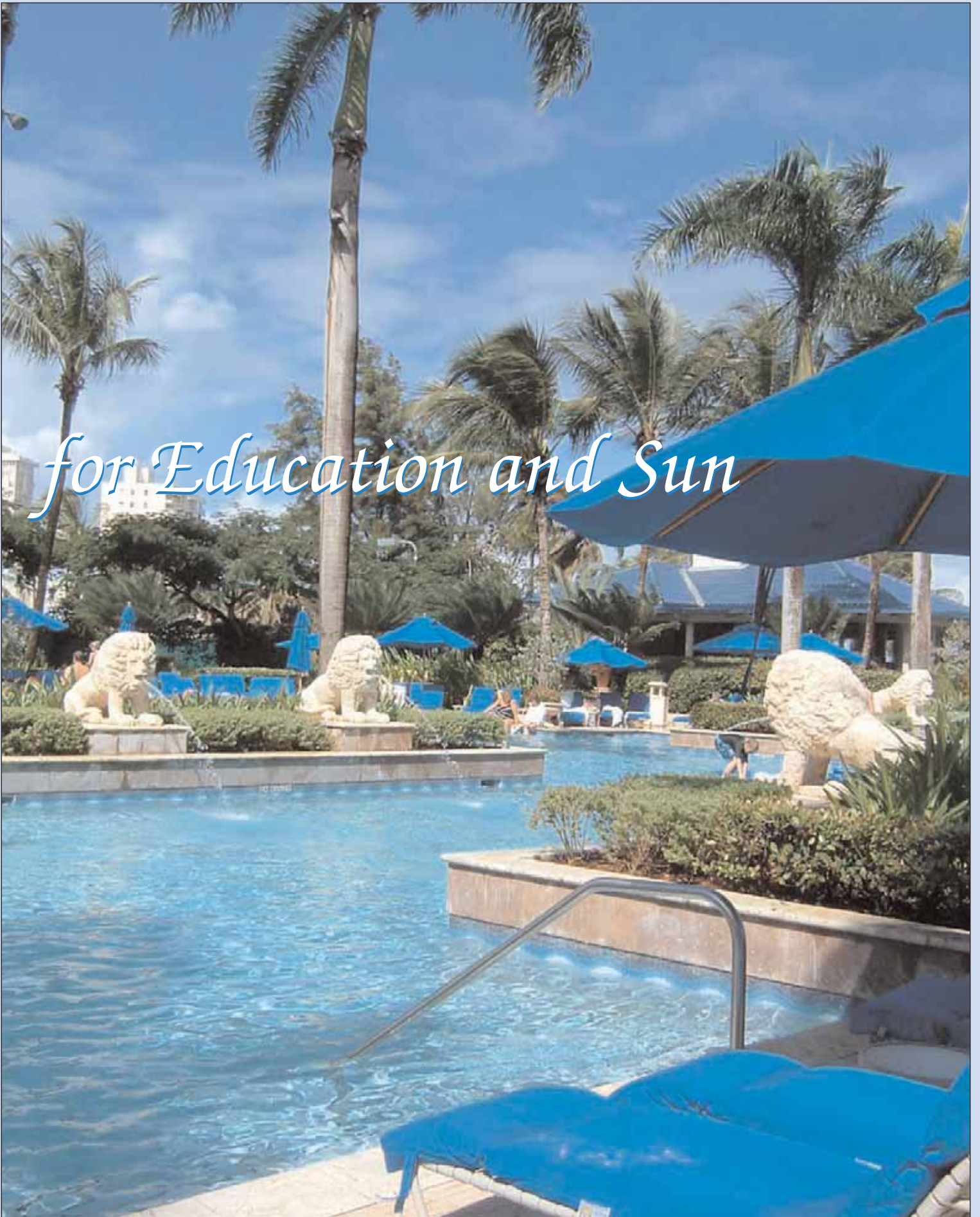


Photos by Johanna B. Merrill

Above: Bruce and Bailey Siegal. Right: The 2005 Southern Regional Entertainment Law Conference and IP Institute was held at the Ritz-Carlton Hotel Casino & Spa in San Juan, Puerto Rico.



*for Education and Sun*






source software; patent law update; "What To Do When the Deal Goes Bad;" and lessons on international licensing.

Doug Isenberg, chair of the Intellectual Property Law Section, said that the IP Institute is successful for a number of reasons, "including the fact that the event allows Georgia IP lawyers a unique opportunity to obtain a full year's worth of CLE in one attractive setting that also offers professional and social networking."

On Saturday night the group journeyed into Old San Juan for a cocktail reception at the historic site "La Princesa," before making the short walk to El Convento for dinner. Located inside the walls of the old city, El Convento, now a hotel, is a 346-year-old building that once housed a convent.

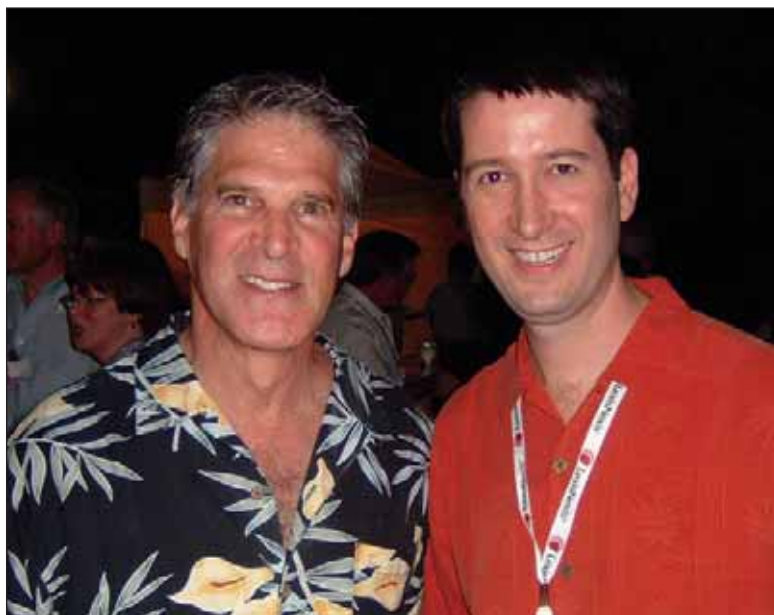
The conference concluded on Sunday morning, leaving the afternoon free for enjoying final moments at the pool and in the Atlantic Ocean. That night rain pushed the farewell reception and dinner from the beach to under a tent on a Ritz rooftop, where attendees enjoyed tropical drinks and authentic Latin cuisine on their final night on the island.

If you have suggestions for future locations or locations for the ELAW Conference/IP Institute, contact Darryl Cohen at [dcohen@coco-law.tv](mailto:dcohen@coco-law.tv). For more information on past conferences, or to stay abreast of future planning, visit [www.selaw.org](http://www.selaw.org). 

**Johanna B. Merrill** is the section liaison for the State Bar of Georgia.



Above: Past Chair of the Entertainment & Sports Law Section Alan Clarke and Michael Bishop. Below: Conference organizers Darryl Cohen and IP Law Section Chair Doug Isenberg. Right: Old San Juan played host to several conference functions, including a cocktail reception and dinner at El Convento, a 346-year-old building that once housed a convent.



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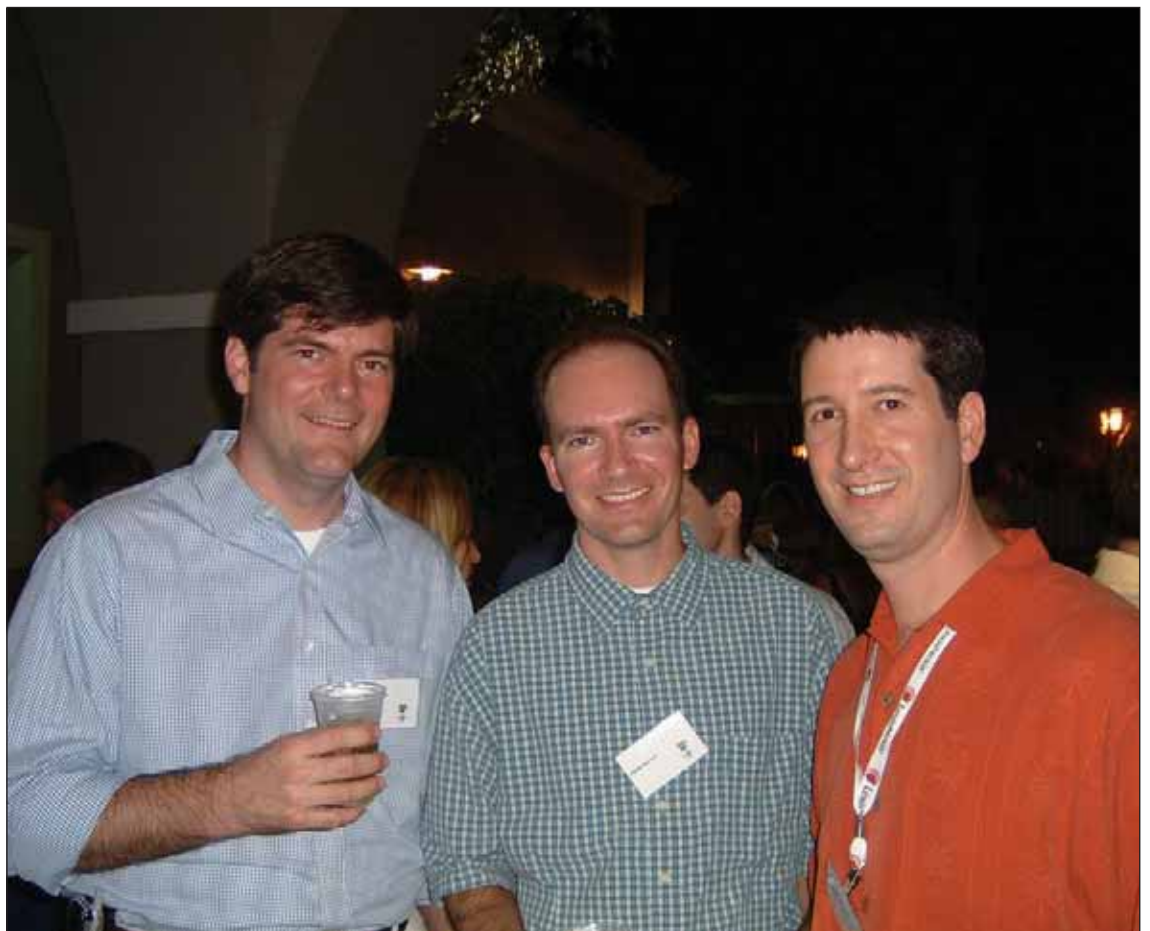
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Above: Guests along with Bill and Christine Ragland enjoy the reception in the city of Old San Juan.  
Below: Griff Griffin, Phillip Burrus and Doug Isenberg.





# Celebrating Community Servants

by Sally Evans Lockwood

**L**awyers and judges from all 10 Judicial Districts in Georgia gathered at a special ceremony held during the Midyear Meeting of the State Bar of Georgia. They came to honor 11 recipients of the Justice Robert Benham Awards for Community Service. One recipient was selected from each judicial district, and in addition, the Lifetime Achievement Award was presented to Upshaw C. Bentley Jr. of Athens. The Western Circuit Bar Association with the assistance of president Kenneth Kalivoda nominated Bentley.

The Lifetime Achievement Award, the highest recognition given by the State Bar of Georgia's Justice Robert Benham Community Service Awards Selection Committee, is reserved for a lawyer or judge who, in addition to meeting the criteria for receiving the Justice Robert Benham Award for Community Service, has demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout his or her legal career. According to the nomination of Bentley, "There are very few individuals who have played a more important role in all aspects of the development of the Athens-Clarke County community. Through his volunteering in the community and numerous affiliations—from president of the Northeast Georgia Boy Scout Council, to president of the Athens Area Chamber of Commerce, to being elected mayor, the



Photos by C. Tyler Jones

Supreme Court of Georgia Justice Robert Benham presents Upshaw C. Bentley Jr. with the Lifetime Achievement Award.

actions he has taken in his career and life have made a positive impact upon every citizen of Athens-Clarke County for the last six decades."

The Justice Robert Benham Awards for Community Service were created in 1997 by the State Bar in honor of the Hon. Robert Benham who, during his term as Chief Justice of the Supreme Court of Georgia (1995-2001), made community service a primary focus of the professionalism movement in Georgia. These statewide awards honor lawyers and judges who have combined professional careers with outstanding service and dedi-

## Justice Robert Benham Awards for Community Service



### Judicial District 1: Carlton DeVooght, Brunswick

President of the Brunswick-Golden Isles Chamber of Commerce and Rotary Glynn, chairman of Glynn County Partners in Education, swim team coach, Leadership Georgia, Coastal Medical Access Project, Glynn County Boys and Girls Club, St. Simons Methodist Church Council

*Nominated by Gilbert, Harrell, Sumerford & Martin, P.C., submitted by Joseph F. Strength*



### Judicial District 2: Roy W. Copeland, Valdosta

Founding president of the Valdosta Chapter of 100 Black Men of Valdosta, creator of Valdosta Metropolitan SAT Preparation Program and Mentoring Program for underprivileged youth, Board of Trustees of the Haven (battered women's shelter)

*Nominated by Karla Walker*



### Judicial District 3: Charles P. Taylor, Warner Robins

Dedicated volunteer with the Epilepsy Association, provider of pro bono or reduced fee legal services to those who are disabled and those who are underserved by the legal system

*Nominated by Houston County Bar Association, submitted by Fred Graham, President*



### Judicial District 4: Judge Gregory A. Adams, Superior Court, Stone Mountain Judicial Circuit, Decatur

Innovator of Juvenile Court initiatives such as Youth Achievement Program, Mental Health Screening, Crisis Counseling, Child Advocacy Unit, founder of Summer Job Fair for Youth and One Church/One Child (foster and adoptive parent recruitment)

*Nominated by DeKalb County Juvenile Court, submitted by Dale Phillips, Director of Court Services*



### Judicial District 5: Judge Herbert E. Phipps, Court of Appeals of Georgia, Atlanta

President of Albany Association for Retarded Citizens, Albany Sickle Cell Foundation, Faith Fund Foundation, Criterion Club, Dougherty Circuit Bar Association, State Bar of Georgia Board of Governors, Supreme Court of Georgia Commission on Racial and Ethnic Bias, Leadership Albany, Albany Technical Institute Board of Directors, Albany/Dougherty Chamber of Commerce, Bethel A. M. E. Church

*Nominated by Kenneth B. Hodges III, District Attorney, Dougherty Judicial Circuit*



### Judicial District 6: Judge William Hal Craig, Superior Court, Flint Judicial Circuit, McDonough

Henry County Board of Education, Executive Committee of Council of Superior Court Judges, First Methodist Church of McDonough, girls softball coach

*Nominated by Henry County Bar Association, submitted by Mary M. House, President*



### Judicial District 7: Robert A. Cowan, Dalton

Board of Directors, American Red Cross, Whitfield Dalton Daycare Center, Georgia River Network, Whitfield County Hospital Authority, president of Temple Beth-El, Conasauga Bar Association, High School Mock Trial Team Coach

*Nominated by Conasauga Bar Association, submitted by Curtis Kleem, President*



### Judicial District 8: Samantha F. Jacobs, Metter

Big Brothers Big Sisters, American Red Cross, American Cancer Society's Relay for Life, Habitat for Humanity, Metter Kiwanis Club and Lt. Governor for Division 22 of Georgia Kiwanis Club, president of Middle Judicial Bar Association

*Nominated by Bobby Jones*



### Judicial District 9: Judge Cliff L. Jolliff, Juvenile Court of Hall and Dawson Counties, Gainesville

Founding member of Hall County Commission on Children and Families, president and board member of Hall County Humane Society, Boards of Hall County Jaycees, Gateway House Shelter for Battered Women, Georgia Court Appointed Special Advocates ("CASA")

*Nominated by Wendy Glasbrenner*



### Judicial District 10: Judge Duncan D. Wheale, Augusta Judicial Circuit, Augusta

Chairman of the Advisory Board of Salvation Army, Georgia Commission on Family Violence, Augusta Port Authority, President of the Augusta-Richmond County Museum, Cub Scout Master, Chamber of Commerce Board of Directors, Deacon of the Warren Baptist Church, Fellowship of Christian Athletes Advisory Board


*Nominated by C. Thompson Harley*



Pictured are: Presiding Judge G. Alan Blackburn, Court of Appeals of Georgia; Samantha F. Jacobs; Carlton A. DeVooght; Robert A. Cowan; Judge William Hal Craig; Charles P. Taylor; Upshaw C. Bentley Jr.; Judge Herbert E. Phipps; Judge Duncan D. Wheale; Judge Gregory A. Adams; Judge Cliff L. Joliff; Roy W. Copeland; and Supreme Court of Georgia Justice Robert Benham.

cation to their communities. The objectives of the awards are: to recognize that volunteerism remains strong among Georgia's lawyers and judges; to encourage lawyers and judges to become involved in serving their communities; to improve the quality of life of lawyers and judges through the satisfaction they receive from helping others; and to raise the public image of lawyers.

The five practicing lawyers and five judges named as recipients of the Seventh Annual Awards and a partial list of their community contributions appear in the sidebar.

The selection committee requests nominations for the Eighth Annual Justice Robert Benham Awards for Community Service, to be presented in January 2007. Please consider making a nomination to ensure that all worthy candidates are nominated for these prestigious awards. The Call for Nominations appearing with this article outlines the awards criteria and procedures. 

**Sally Evans Lockwood** is the executive director of the Chief Justice's Commission on Professionalism.

## Coming Soon — State Bar of Georgia Legislative Action Network

The State Bar of Georgia Legislative Action Network has been created to make it easy for Bar members to contact their respective legislators to share their experiences and recommendations on proposed or pending legislation.

The State Bar of Georgia regularly takes positions on legislative proposals that are germane to its legitimate purposes when at least two-thirds of the members' elected representatives present and voting agree that the profession should speak. While the Bar's legislative program is supported by voluntary contributions, it has historically elected to operate in the manner described in Standing Board Policy 100.

In order to comply with these self-imposed benchmarks the policy provides for initial consideration and recommendation by the Advisory Committee on Legislation after which the matter receives a second consideration by the Board of Governors. Because neither the ACL nor the Board meets while the Legislature is in session, the policy further provides that during that period of time the Executive Committee addresses legislative issues.

The State Bar of Georgia's Legislative Program is funded solely by voluntary contributions. For more information on the Bar's legislative initiatives, contact the Bar's Executive Director Cliff Brashier, at (404) 527-8755, the Bar's President Robert D. Ingram, at (770) 795-5035 or the Bar's legislative consultant Tom Boller, at (404) 872-0335.





# EIGHTH ANNUAL JUSTICE ROBERT BENHAM AWARDS FOR COMMUNITY SERVICE

*"The outstanding contributions of lawyers to their local communities often go unrecognized by their peers and the public. This award is designed to recognize those lawyers, who in addition to practicing law, also deserve recognition for their valuable contributions to their communities."*

Robert Benham, Justice  
Supreme Court of Georgia

## PRELIMINARY CALL FOR NOMINATIONS

The Community Service Awards Selection Committee and the State Bar of Georgia invite nominations for the Eighth Annual Justice Robert Benham Awards for Community Service.

## NOMINATING GUIDELINES

To be eligible a nominee must: 1) be a member in good standing of the State Bar of Georgia; 2) have carried out outstanding work in community service; 3) not be a member of the Selection Committee; and 4) not be engaged in a contested judicial or political contest in calendar year 2006.

### Nomination should include:

- I. **Nominator:** Name (contact person for law firm, corporate counsel or other legal organization), address, telephone number and e-mail address.
- II. **Nominee:** Name, address, telephone number, e-mail address. Nominee's resume or description of nominee's background and relevant activities should be included.
- III. **Nomination Narrative:** Explain how the nominee meets the following criteria:

*These awards recognize judges and lawyers who have combined a professional career with outstanding service and dedication to their communities through voluntary participation in community organizations, government sponsored activities or humanitarian work outside of their professional practice. These judges' and lawyers' contributions may be made in any field, including but not limited to: social service, education, faith-based efforts, sports, recreation, the arts, or politics. Continuous activity over a period of time is an asset.*

Specify the nature and time frame of the contribution and identify those who have benefitted.

- IV. **Biographical Information:** Nominee's resume must be included.
- V. **Letters of Support:** Include two (2) letters of support from individuals or organizations in the community that are aware of the nominee's work.

Awards will be presented at a special ceremony in Atlanta in January.

## SUBMISSION OF MATERIALS

**Send Nomination materials to:** Mary McAfee, Chief Justice's Commission on Professionalism, Suite 620, 104 Marietta Street, N.W., Atlanta, Georgia 30303, (404) 225-5040.

**Nominations must be postmarked by October 1, 2006.**

**T**he Lawyers Foundation of Georgia Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 104 Marietta St. NW, Suite 630, 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.

**Richard Bell**

Decatur, Ga.  
Admitted 1950  
Died November 2005

**Bryant H. Bower**

Fitzgerald, Ga.  
Admitted 1953  
Died October 2005

**Samuel D. Hewlett III**

Atlanta, Ga.  
Admitted 1977  
Died November 2005

**Glenn Icard Jr.**

Jonesboro, Ga.  
Admitted 1985  
Died November 2005

**Charles Ku Yong Kim**

Atlanta, Ga.  
Admitted 2000  
Died October 2005

**Robert Maxwell**

Stone Mountain, Ga.  
Admitted 1987  
Died November 2005

**Sebastian Mazzarella**

Brunswick, Ga.  
Admitted 2004  
Died December 2005

**Grady Lee Randolph**

Atlanta, Ga.  
Admitted 1954  
Died October 2005

**Robert B. Thompson**

Dawsonville, Ga.  
Admitted 1948  
Died November 2005



Retired State Supreme Court Justice **Richard Bell**, 85, of Decatur, died in November. Bell, a long-time resident of Decatur, graduated from Presbyterian College of South Carolina and received his legal training at the Emory University School of Law. He was an infantryman in the U.S. Army in World War II, and served as a captain in three campaigns in the South Pacific. He continued his service in the Army Reserve and rose to the rank of Lt. Colonel. Bell won a race for the Georgia Legislature right after graduating from Emory University School of Law. He was DeKalb County district attorney from 1956 to 1976,

executive director of the State Bar of Georgia from 1976 to 1979, a Superior Court judge, then a state Supreme Court justice from 1982 to 1992. He prosecuted the notorious and sat in judgment of the infamous. A kidnapping case he successfully prosecuted reached the White House and prompted a personal telephone call from FBI Director J. Edgar Hoover, said son Rick Bell of Decatur. It was the kidnapping case he talked about for years to come. Survivors include his wife, Naomi Bell; a son, Rick Bell of Decatur; three daughters, Carol Ann Chapman of Lilburn, Jane Ollis of Columbus and Jean Bush of Ponte Vedra, Fla.; a sister, Margaret Bloodworth of Decatur; and 12 grandchildren. GBJ



**Lawyers Foundation  
of Georgia Inc.**  
104 Marietta St. NW  
Suite 630  
Atlanta, GA 30303  
P: (404) 659-6867  
F: (404) 225-5041

**Memorial Gifts**

The Lawyers Foundation of Georgia furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia.

A meaningful way to honor a loved one or to commemorate a special occasion is through a tribute and memorial gift to the Lawyers Foundation of Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers Foundation of Georgia provides a lasting remembrance. Once a gift is received, a written acknowledgement is sent to the contributor, the surviving spouse or other family member, and the *Georgia Bar Journal*.

**Information**

For information regarding the placement of a memorial, please contact the Lawyers Foundation of Georgia at (404) 659-6867 or 104 Marietta St. NW, Suite 630, Atlanta, GA 30303.

*"And Justice for All"*



2006 State Bar Campaign for the Georgia Legal Services Program, Inc. (GLSP)

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Your contribution helps GLSP provide critical legal assistance to thousands of low-income families who cannot afford a private attorney. Give to our State Bar's only campaign for justice for low-income Georgians. Use the coupon below and mail your gift today!

**YES.** I would like to support the State Bar of Georgia Campaign for the Georgia Legal Services Program. I understand my tax-deductible gift will provide legal assistance to low-income Georgians.

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| <input type="checkbox"/> Leadership Circle \$500-\$749       | for a pledge of \$ _____   |

Pledge payments are due by December 31st. Pledges of \$500 or more may be paid in installments with the final installment fulfilling the pledge to be paid by December 31st. Gifts of \$150 or more will be included in the Honor Roll of Contributors in the *Georgia Bar Journal*.

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# February-April

<b>FEB 2</b>	ICLE <i>Meet the Judges</i> Atlanta, Ga. 3 CLE hours	<b>FEB 10-11</b>	ICLE <i>Estate Planning Institute</i> Athens, Ga. 9 CLE hours
<b>FEB 2</b>	ICLE <i>Advanced Debt Collection</i> Atlanta, Ga. 6 CLE hours	<b>FEB 10</b>	ICLE <i>Plaintiff's Medical Malpractice</i> Atlanta, Ga. 6 CLE hours
<b>FEB 2</b>	ICLE—GPTV—Rebroadcast <i>Working Smarter, Not Harder</i> See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE hours	<b>FEB 10</b>	ICLE <i>Georgia Auto Insurance</i> Savannah, Ga. 6 CLE hours
<b>FEB 3</b>	ICLE <i>Georgia Foundations and Objections</i> Atlanta, Ga. 6 CLE hours	<b>FEB 16</b>	ICLE <i>Abusive Litigation</i> Atlanta, Ga. 6 CLE hours
<b>FEB 3</b>	ICLE <i>Antitrust Law Basics</i> Atlanta, Ga. 6 CLE hours	<b>FEB 16</b>	ICLE <i>Elder Law</i> Atlanta, Ga. 6 CLE hours
<b>FEB 3</b>	ICLE—GPTV—LIVE <i>Real Estate Issues at Closing</i> See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE hours	<b>FEB 16</b>	ICLE <i>License Revocation &amp; Suspension</i> Atlanta, Ga. 6 CLE hours
<b>FEB 5-10</b>	ICLE <i>Update on Georgia Law</i> Park City, Utah 12 CLE hours	<b>FEB 17</b>	ICLE <i>Georgia Auto Insurance</i> Atlanta, Ga. 6 CLE hours
<b>FEB 8-12</b>	ICLE <i>Caribbean Seminar</i> Cabo San Lucas, Mexico 12 CLE hours	<b>FEB 17</b>	ICLE <i>Hot Topics for Tax Attorneys and CPAs</i> Atlanta, Ga. 3 CLE hours
<b>FEB 9</b>	ICLE—GPTV—Rebroadcast <i>Real Estate Issues at Closing</i> See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE hours	<b>FEB 17</b>	ICLE <i>Bankruptcy Law Update</i> Atlanta, Ga. 6 CLE hours

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*Paul Milich on Evidence*  
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*Paul Milich on Evidence*  
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**FEB 23** ICLE  
*Advanced Criminal Practice*  
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**FEB 24** ICLE  
*Secured Lending*  
 Atlanta, Ga.  
 6 CLE hours

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*Entertainment Law Institute*  
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 6 CLE hours

**FEB 24** ICLE  
*Negotiations & Conflict Resolutions*  
 Atlanta, Ga.  
 6 CLE hours

**FEB 28** ICLE  
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 10.5 CLE hours

**MAR 2** ICLE  
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# Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, 2005-2006 *State Bar of Georgia Directory and Handbook*, p. H-6 to H-7 (hereinafter referred to as “*Handbook*”).

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6.

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-6.

Cliff Brashier  
Executive Director  
State Bar of Georgia

## IN THE SUPREME COURT STATE OF GEORGIA

IN RE:      **STATE BAR OF GEORGIA**  
              **Rules and Regulations for its**  
              **Organization and Government**

## MOTION TO AMEND 2006-1

## MOTION TO AMEND THE RULES AND REGULATIONS OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a regular meeting held on November 18, 2005, and upon the concurrence of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of

Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, 2005-2006 *State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

### I.

It is proposed that Rule 8-104 of Part VIII of the Rules of the State Bar of Georgia regarding continuing legal education requirements be amended by adding a new subsection (b)(4) thereto as follows:

### **Rule 8-104. Education Requirements and Exemptions.**

(A) ...

(B) Basic Legal Skills Requirement.

(1) ...

(2) ...

(3) ...

(4) Confidentiality of proceedings.

(a) *The confidentiality of all inquiries to, decisions of, and proceedings by the Transition Into Law Practice Program shall be respected. No disclosure of said inquiries, decisions and proceedings shall be made in the absence of the agreement of all participating.*

(b) *Except as expressly permitted by these rules, no person connected with the Transition Into Law Practice Program operated under the auspices of the Standards of the Profession*

*Committee of the Commission on Continuing Lawyer Competency shall disclose any information concerning or comment on any proceeding under these rules.*

(c) *The Transition Into Law Practice Program operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency may reveal private records when required by law, court rule, or court order.*

(d) *Any records maintained by the Transition Into Law Practice Program operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency, as provided herein, shall be available to Counsel for the State Bar only in the event the State Bar or any department thereof receives a discovery request or properly executed subpoena requesting such records.*

## II.

It is proposed that Rule 8-110 of Part VIII of the Rules of the State Bar of Georgia regarding continuing legal education requirements be amended by striking the current Rule in its entirety and substituting the following Rule in its place:

### **Rule 8-110. Immunity.**

*The State Bar, its employees, the Standards of the Profession Committee members and advisors, the Commission on Continuing Lawyer Competency, its employees, members and advisors, the Chief Justice's Commission on Professionalism, its employees, members, and advisors shall be absolutely immune from civil liability for all acts in the course of their official duties.*

SO MOVED, this \_\_\_\_ day of \_\_\_\_\_, 2006

Counsel for the State Bar of Georgia

\_\_\_\_\_  
William P. Smith, III  
General Counsel  
State Bar No. 665000

\_\_\_\_\_  
Robert E. McCormack  
Deputy General Counsel  
State Bar No. 485375

OFFICE OF THE GENERAL COUNSEL  
State Bar of Georgia  
104 Marietta Street, NW – Suite 100  
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# Postage Summary

United States Postal Service

## Statement of Ownership, Management, and Circulation

1. Publication Title Georgia Bar Journal	2. Publication Number 0217 - 560	3. Filing Date September 23, 2005
4. Issue Frequency Bimonthly	5. Number of Issues Published Annually 7	6. Annual Subscription Price \$36
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State Bar of Georgia  
104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743

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104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743

Editor (Name and complete mailing address)

Marcus D. Liner  
10 Glenlake Parkway  
Atlanta, GA 30328

Managing Editor (Name and complete mailing address)

C. Tyler Jones  
State Bar of Georgia  
104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743

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11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box ☒ None

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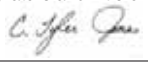
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☐ Has Not Changed During Preceding 12 Months

☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

PS Form 3526, October 1999

(See Instructions on Reverse)

13. Publication Title Georgia Bar Journal		14. Issue Date for Circulation Data Below August 2005	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies ( <i>Net press run</i> )		31,668	32,130
b. Paid and/or Requested Circulation	(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. ( <i>Include advertiser's proof and exchange copies</i> )	30,758	31,119
	(2) Paid In-County Subscriptions Stated on Form 3541 ( <i>Include advertiser's proof and exchange copies</i> )	0	0
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c. Total Paid and/or Requested Circulation <i>[Sum of 15b. (1), (2), (3), and (4)]</i>		30,758	31,119
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e. Free Distribution Outside the Mail <i>(Carriers or other means)</i>		80	73
f. Total Free Distribution ( <i>Sum of 15d. and 15e.</i> )		210	226
g. Total Distribution ( <i>Sum of 15c. and 15f.</i> )		30,968	31,345
h. Copies not Distributed		700	785
i. Total ( <i>Sum of 15g. and h.</i> )		31,668	32,130
j. Percent Paid and/or Requested Circulation <i>(15c. divided by 15g. times 100)</i>		99.3	99.3
16. Publication of Statement of Ownership <input checked="" type="checkbox"/> Publication required. Will be printed in the <u>December 2005</u> issue of this publication. <input type="checkbox"/> Publication not required.			
17. Signature and Title of Editor, Publisher, Business Manager, or Owner  Managing Editor			Date September 20, 2005
I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).			

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