

February 2017

Volume 22, Number 5

GEORGIA BAR

# JOURNAL

Calculating Economic Damages in Georgia Personal Injury and Wrongful Death Cases

How Companies Can Keep Their Sensitive Information Away from Adversaries but Still Cooperate with Auditors

Leroy Johnson: In the Center Ring of Change

Writing Matters: Our 10-Year Anniversary

STATE BAR OF GEORGIA

FROM THE EXECUTIVE DIRECTOR

**Meeting  
Expectations:  
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Accommodate  
Members' Needs**

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**JOURNAL**

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The *Georgia Bar Journal* welcomes the submission of news about local and voluntary bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; phone: 404-527-8791; sarahc@gabar.org.

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# The February Issue

**This new year, the *Journal* has resolved** to continue bringing Bar members quality and pertinent information.

In the From the President column, Bar President Pat O'Connor discusses the State Bar's recent assumption of the ICLE's administrative duties and why the transition is a win-win for Bar members.

YLD President Jennifer Mock, in her From the YLD President column, addresses the scarcity of rural lawyers and recent attempts to ameliorate issues posed by the scarcity. The column highlights one program in particular—the Succession Planning Pilot Program—that seeks to match seasoned attorneys transitioning out of full-time practice with newer attorneys interested in succeeding to an established law practice.

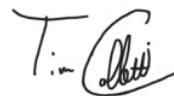
The Georgia Lawyer Spotlight column continues its series of interviews with influential Bar members. For this issue, *Journal* Editorial Board member Jacob Daly sat down with Chief Justice P. Harris Hines of the Supreme Court of Georgia. Chief Justice Hines was appointed to the Court on July 26, 1995, by Gov. Zell Miller, and was elected presiding judge on Aug. 15, 2013, in which capacity he served until sworn in as chief justice on Jan. 4, 2017.

This issue's Pro Bono Star Story features Michael D. Hurtt, who—with nearly 40 years of pro bono work under his belt—explains why “no good deed goes unpunished” does not apply to pro bono work.

We are pleased to offer two legal articles for your reference, both of which are packed with practical, state-of-the-law information. The article “How Companies Can Keep Their Sensitive Information Away from Adversaries but Still Cooperate with Auditors” addresses the battle-within-a-battle of keeping confidential information confidential while also complying with financial disclosure obligations. For those of us who never have to worry about financial disclosures, the article also doubles as a good primer on privileged information and the work-product doctrine.

Those whose practice involves personal injury and general tort law—either on the plaintiff side or the defense side—will find the “Calculating Economic Damages in Georgia Personal Injury and Wrongful Death Cases” article an invaluable repository of information on the nuts and bolts of calculating economic damages.

Thank you for reading, and as always, please let us know what you think. ●



**TIM COLLETTI**

Editor-in-Chief, Georgia Bar Journal  
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## ON THE COVER

STATE BAR CENTER, ATLANTA, GA

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**PATRICK T.  
O'CONNOR**

President  
State Bar of Georgia  
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## ICLE Transition a Win-Win for Bar Members

Since 1965, the Institute of Continuing Legal Education (ICLE) has existed as the not-for-profit educational service for members of the State Bar of Georgia and, until the end of 2016, was a fully self-supporting consortium of the State Bar and the law schools at the University of Georgia, Emory University, Mercer University, Georgia State University and Atlanta's John Marshall Law School.

For more than three decades, ICLE was generously hosted by the University of Georgia. Effective Dec. 31, 2016, the administrative relationship between ICLE and the University of Georgia ended. Under the prior arrangement, the University handled employee salaries and benefits, with ICLE providing reimbursement of payroll and program planning costs.

Since the beginning of this year, the State Bar of Georgia has assumed the administrative duties for ICLE. With much gratitude to all of the law schools in Georgia for their support and guidance over the years, I see a very positive outlook for both ICLE and the State Bar as we make this transition.

ICLE's revenue is derived from tuition charges and the sale of publications. ICLE receives no revenue from State Bar dues and exists solely to serve the educational needs of practicing lawyers. Income from registration fees are allocated toward CLE credit reporting, marketing and bro-

chures, books and publications, food and beverage, professional speaker expense reimbursement and ICLE overhead. Any surplus funds are used entirely for the improvement of continuing legal education products and services.

All of the institute's activities are designed to promote a well organized, properly planned, and adequately supported program of continuing legal education by which members of our profession are afforded a means of enhancing skills and keeping abreast of developments in the law, and engaging in the study and research of the law, so we as lawyers are able to fulfill our responsibilities to the profession, the courts and the public.

Georgia is one of 46 states that require mandatory CLE for attorneys admitted to practice in their jurisdictions. Bar Rule 8-101 states, "It is of utmost importance to members of the Bar and to the public that attorneys maintain their professional competence throughout their active practice of the law."

Bar members are required to keep abreast of changes in the law by attending a minimum of 12 hours of education sessions each year. At least one hour must be in ethics, one hour must be in professionalism and, for trial lawyers, three hours of class time must be in litigation. Since 1965, the State Bar has helped facilitate this process through ICLE.



During fiscal year 2016, the institute offered 226 live CLE seminars covering dozens of practice areas, with approximately 83 percent of those taking place at the Bar Center headquarters in Atlanta. When possible, those sessions are simulcast to the Coastal Georgia Office in Savannah and/or the South Georgia Office in Tifton through videoconferencing.

The 16-member Commission for Continuing Lawyer Competency (CCLC), which is authorized by the Supreme Court of Georgia to supervise and administer rules and regulations of the continuing legal education requirements for Bar members, has approved self-study, or “distance learning,” as a method of satisfying up to six hours of the annual mandate. Approved self-study formats include live CLE activities presented via video or audio, replays of live CLE activities, online CLE activities, CD-ROM and DVD interactive CLE activities, telephone CLE activities and written correspondence CLE courses.

According to former ICLE Interim Executive Director Douglas G. Ashworth, the institute served a total of 29,023 Bar members in FY 2016, with 18,864 attending live seminars, 8,646 participating online and 1,513 utilizing rented DVDs.

In addition to the majority of CLE courses offered at one or more of the State Bar’s offices, other sessions are scheduled in conjunction with the Bar’s Annual Meeting or other meetings at various locations.

ICLE maintains a good relationship and works closely with the chairs and executive committee members of each of the Bar’s 48 sections, the Young Lawyers Division (YLD) and its committees to coordinate schedules and hold audience-appropriate seminars when and where those groups are meeting. The institute also directs independent CLE program providers to contact and work with Bar section and YLD leaders to prevent the scheduling of competing seminars.

In addition to offering conveniently located sessions for Bar members, ICLE’s registration fees are the least expensive of any CLE provider, whether for-profit or not-for-profit, when considering the average mandatory CLE hourly cost (see accompanying chart on page 8). This is

## OFFICERS’ BLOCK

*In this issue of the Georgia Bar Journal, we’re sticking with the traditional February theme. We asked our State Bar of Georgia officers, “When did you first fall in love with the law?”*



**PATRICK T. O’CONNOR**

*President*

When I saw Hugh McNatt and Wilton Harrington try a land line dispute in the Superior Court of Wheeler County, with my Uncle J.B. O’Connor sitting as judge, I knew I was hooked.



**KENNETH B. “KEN” HODGES III**

*Treasurer*

I don’t remember my “first” but it happened frequently when I was a prosecutor. It was every time a victim hugged me, often times with tears in their eyes, thanking me for standing up for them. And it continues today when I am able to help clients solve their problems.



**DARRELL L. SUTTON**

*Secretary*

During my first day as a lawyer. Although intangible, there was something rewarding about practicing law, a feeling of accomplishment. And I have felt the same every day since. Nearly all those days have been difficult—in one way or another. But each has included that same love for the law.



**ROBERT J. “BOB” KAUFFMAN**

*Immediate Past President*

As simple as it sounds, I fell in love with the law my very first week of practicing, as soon as I was able to help a client. I’ve loved it every day since. (That first paycheck after receiving my first student loan bill wasn’t too bad either!)

# How Do ICLE's Seminar Fees Compare to Others?

	PROVIDER	COST PER MCLE HOUR		PROVIDER	COST PER MCLE HOUR
1.	ICLE in Georgia	\$23.33	12.	Oklahoma CLE	\$33.33
2.	Florida Bar CLE	\$27.33	13.	Pennsylvania Bar Institute	\$49.83
3.	National Academy for CLE	\$28.17	14.	Colorado CLE	\$51.50
4.	Minnesota CLE	\$30.00	15.	Likeable Lawyer	\$53.69
5.	Texas Bar CLE	\$31.20	16.	National Business Institute	\$59.83
6.	Michigan ICLE	\$32.50	17.	Alabama CLE (U of A Law)	\$63.17
7.	South Carolina Bar CLE	\$32.50	18.	CLE of British Columbia	\$66.15
8.	Missouri Bar CLE	\$32.71	19.	Tennessee Bar Assoc. CLE	\$70.00
9.	Lawline	\$33.17	20.	Practising Law Institute	\$71.43
10.	Wisconsin CLE	\$33.20	21.	West LegalEd Center	\$99.17
11.	Mississippi Bar CLE	\$33.33	22.	Tennessee Comm. on CLE	\$260.77

This is a simplified comparison figure, to wit: the average cost per MCLE hour for other CLE providers, which includes for-profit and nonprofit organizations. These figures were derived by comparing similar programs offered by 21 other providers based on the information readily available on their websites. All of the rates were calculated based on a typical 6-8 hour program (not including beginning lawyer classes). Many providers have seminars with widely varying registration fees; only one or two seem to have a base

fee structure like ICLE. The rates above are for the lowest priced seminar per provider that was discovered in our review. These figures were compiled in March and April of 2016.

For most of the organizations, their registration fee does not include continental breakfast, lunch or printed materials. Some also did not include the cost of the attendee's MCLE fees. ICLE registration fees include all of those things.

made possible in part by using the Bar Center and other State Bar facilities for a majority of programs, which eliminates the added charges associated with the rental of hotel meeting rooms and audio/visual equipment, and utilizing food-and-beverage caterers whose services are less expensive than those provided at hotels or other conference centers. Additional savings are realized by ICLE's ability to spread out overhead costs among its high volume of programs and passed on to Bar members in the form of reduced registration fees.

Activity feedback is another critical component of ICLE's commitment to conducting educational programs of the highest quality. ICLE has developed questionnaires intended to produce valuable insight as to Bar members' satisfaction with their CLE experiences and whether the sessions meet attorneys' needs and future expecta-

tions. Constructive input from participants through seminar and speaker evaluation forms help ICLE and partnering organizations with the planning and speaker selections for future events.

The continued cooperation and support of Georgia's appellate court judges and Bar leaders also contribute to ICLE's success. Supreme Court justices and Court of Appeals judges often participate as speakers or panelists for CLE seminars. State Bar officers past and present are among the Georgia lawyers who fill many of the seats on the ICLE Board of Trustees, the institute's governing body.

My immediate predecessor as State Bar president, Robert J. "Bob" Kauffman, is the board's current chair. Other members include current State Bar officers Brian D. "Buck" Rogers, Darrell L. Sutton, Kenneth B. Hodges III and myself; past State

Bar Presidents Patrise M. Perkins-Hooker, Charles L. Ruffin, Kenneth L. Shigley and J. Vincent Cook; YLD officers Jennifer C. Mock, Nicole C. Leet and John R. B. "Jack" Long; law school representatives Dean Peter B. "Bo" Rutledge and David E. Shipley of the University of Georgia, Dean Robert A. Schapiro and A. James Elliott of Emory University, Dean Daisy Hurst Floyd and Oren Griffin of Mercer University, Roy M. Sobelson and Dr. E. R. "Ray" Lanier of Georgia State University and Dean Malcolm L. Morris and Michael Mears (the board's vice chair) of Atlanta's John Marshall Law School; and other at-large trustees Thomas C. Chambers III, Patricia D. Shewmaker, Geoffrey Allen Alls, Paul V. Balducci, Hon. Rizza O'Connor and John W. Timmons Jr.

Thanks to ICLE, the continuing legal education program in Georgia is a source

of great pride for State Bar members. As do many others, I believe we have the finest state-level continuing legal education system in the nation. We are certainly fortunate to enjoy access to a wide variety of high-quality, low-cost CLE programming ranging from the most basic subject matter to the most sophisticated areas of law practice, and most of us can do so within a short drive of our own hometowns.

Your State Bar leaders are committed to continuing to work closely with ICLE's Board and staff and the Supreme Court to ensure that Georgia lawyers maintain the skills and knowledge necessary to provide the best legal services for their clients. I encourage you to visit ICLE's website, [www.iclega.org](http://www.iclega.org), for a complete schedule of CLE seminars and satellite program offerings, along with a wealth of information about ICLE and Georgia's requirements for continuing legal education.

The transfer of ICLE's administrative functions to the State Bar is, in my view, a win-win situation for the continuing legal education program and for Bar members. By realizing economies of scale, we will be able to continue to hold down seminar costs while delivering the same great product that ICLE has produced in the past. We will also be positioned to join with our law schools in preparing Georgia lawyers for the rapidly changing legal landscape.

I would like to express appreciation to Bob Kauffman and the ICLE Board of Trustees, Doug Ashworth, Interim Executive Director Tangela S. King and the ICLE staff, Past State Bar President and ICLE Study Committee Chair Hal Daniel, Executive Director Jeff Davis and many others for their diligent efforts toward what has so far been a most successful transition. Importantly, the fact that we are a unified bar provides us with the resources and expertise to bring ICLE under the auspices of the State Bar, similar to the CLE operations in Texas and Florida, which both also have unified bars.

ICLE's transition to the Bar was not on our agenda when I took office last June. But as an unexpected addition, we are making the best of it in a way that will benefit both the Bar and ICLE and thus the justice system and the public now and for generations to come. ●

# *Forty Years & Beyond*



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JENNIFER C. MOCK

YLD President  
State Bar of Georgia  
[jennifer@mocklaw.com](mailto:jennifer@mocklaw.com)

## Addressing the Scarcity of Rural Lawyers

**It is a privilege for me to live and** practice law in Statesboro, a relatively small town in rural Georgia. As a solo practitioner, I am able to work with clients on a wide range of legal issues while staying active in a number of professional and community organizations.

Compared to many towns its size, Statesboro has a vibrant economy, thanks in large part to the tremendous growth in recent years of my alma mater, Georgia Southern University. And the people of our community are well served by a strong local bar and judiciary. I am one of more than 90 active members of the State Bar of Georgia who are based in Statesboro.

This is not the case in some small towns and rural areas in Georgia, or elsewhere in the United States for that matter. According to recent estimates nearly 20 percent of the U.S. population lives in rural areas, but only 2 percent of small law practices are located in those communities. Even that number is dwindling, as an increasing number of small-town lawyers reach retirement age without having anyone to take over their practices.<sup>1</sup>

This causes a significant number of rural Americans to travel long distances to meet

with an attorney for even the most routine of legal services—an economic and logistical hardship for the working class and lower-income residents of those areas. When people cannot find or afford a lawyer, this widens the justice gap; legal needs go unmet simply because of where someone lives.

For several years now, the legal community—including Georgia's—has been working to address the lack of lawyers in rural areas. In 2012, the American Bar Association adopted a resolution encouraging governments and bar groups to seek solutions to the problems associated with the loss of lawyers and access-to-justice issues in rural America.

Data from the ABA's Legal Education and Admissions to the Bar Section shows an increase in law school graduating class size over the last three decades, so the problem is not a lack of new attorneys.<sup>2</sup> Active membership in the State Bar of Georgia has been on the increase of approximately 1,000 new members in each of the last several years. The challenge is to find ways to steer adequate numbers of these new attorneys toward consideration of practicing law in our state's rural communities.

Senior lawyers in small towns and rural areas can be hesitant to fully retire because of the lack of younger lawyers who can succeed them. At the same time, new attorneys are hesitant to start their careers in such communities without the foundation of a successful practice.

In 2015, the YLD launched an effort to assist the growing number of Bar members who are nearing retirement by connecting them with younger counterparts who would potentially join and later take over their practices. We joined forces with the law schools in Georgia on a Succession Planning Pilot Program to link new and recent graduates with seasoned attorneys who are working on succession plans.

The Succession Planning Pilot Program seeks to match Georgia attorneys who intend to transition out of full-time practice with new attorneys and recent graduates who may be interested in succeeding the attorney. Eligible participants include licensed attorneys and new attorneys graduating from law school during the prior three years, but may be expanded depending on needs. As Meredith Hobbs wrote in the *Daily Report* recently, "It's a way that boomer-generation lawyers can transition their practices to recent law graduates who want a solo practice—whether by hiring the younger lawyer, offering referrals or selling the practice."<sup>3</sup>

Stephanie Powell, assistant dean for career services at Mercer University's Walter F. George School of Law, coordinates communications between attorneys and the law schools for the pilot program. She reports that while she has received interest from lawyers in both target groups over the past 18 months, the program has yet to realize its first success story.

"It has definitely been a little bit of a slow start," Powell said. "At the beginning, I was talking with far more recent graduates and younger lawyers as opposed to the group looking to phase out of their practice. When the Bar sent a mailing to a targeted group of members, we got an uptick of response from folks. In general, the idea is really good."

Thus far, the supply of opportunities has not kept up with demand. The primary obstacle, Powell said, is that the seasoned attorneys she has spoken with "may not be ready

## OFFICERS' BLOCK

*In this issue of the Georgia Bar Journal, we're sticking with the traditional February theme. We asked our State Bar of Georgia officers, "When did you first fall in love with the law?"*



**JENNIFER C. MOCK** | YLD President

I first fell in love with the law after my first law school class—Contracts with Professor Coenen. The world was suddenly a little less black and white, and the notion that there was always a right and wrong answer disappeared.



**NICOLE C. LEET** | YLD President-Elect

I fall in love with the law all over again every day I get to practice. I am constantly grateful to practice in an area where people put their minds and passion together to try and provide a balanced framework for our society.



**RIZZA O'CONNOR** | YLD Treasurer

I fell hard for the law during my first solo felony jury trial. All the time researching and preparing for my case had all culminated in that moment, and I found it exciting. That experience showed me my role as a lawyer was not insignificant in the judicial process.



**WILLIAM T. "WILL" DAVIS** | YLD Secretary

I fell in love with the law during my 2L year at Ole Miss when I enrolled in Introduction to Family Law under Prof. Debbie Bell. In that course, I finally saw where I wanted my career to head and it instantly became an exciting and achievable goal.



**JOHN R. "JACK" LONG** | YLD Immediate Past President

I fell in love with the law at an early age, watching my dad litigate a nationwide class action against a bank who had abused their customers. It was then I realized that becoming a lawyer would let me help others make it right when things had gone terribly wrong.



**SHAMIRACLE S. JOHNSON** | YLD Newsletter Co-Editor

Aug. 3, 2010, normally a day spent celebrating my birthday, I spent hours arguing a complex motion. After the hearing, my client, an elderly disabled woman, thanked me for "being her voice." While being a voice for the voiceless, I fell in love with the law.



**HEATHER RIGGS** | YLD Newsletter Co-Editor

I first fell in love with the law when I learned that, because of a lawyer, my parents were able to adopt me. I knew right then that I wanted to be one. I fell in love yet again when I discovered my passion for developing legal marketing content.

to hit the go button just yet. One interesting thing I run into about half the time is that people want to do this anonymously. They don't want their clients to know they are thinking about phasing out a practice, which I understand, but is not as effective in drawing interest from a young lawyer."

According to Powell, the challenge is "not insurmountable. We're just trying to figure out the best way to get the word out." Anyone interested in learning more about the Succession Planning Pilot Program should contact Stephanie Powell at [careerservices@law.mercer.edu](mailto:careerservices@law.mercer.edu) or 478-301-2615. She will be happy to discuss your individual need and answer any questions about the program.

Georgia is by no means the only state dealing with and seeking solutions to the consequences of the inadequate number of lawyers in many rural areas. A few examples:

- South Dakota's Rural Attorney Recruitment Program is a government initiative that promises young attorneys an incentive of \$12,000 a year (or 90 percent of the annual cost of resident tuition and fees at the University of South Dakota School of Law) for five years, if they move to and practice in a qualifying county of 10,000 or fewer people. The state puts up half of the funding, participating counties 35 percent and the South Dakota Bar Foundation 15 percent. The program took effect in July 2013, and within nine months, it already had one participant practicing law, two others awaiting bar exam results and several interested law students. Legislation creating the program includes an end date of June 30, 2022, with a maximum of 32 participating attorneys.
- The Iowa Bar Association's program matches law students with rural lawyers who are looking for summer clerks or new associates. The summer clerkships meet an additional goal: giving the established lawyer time to get to know the young lawyer. If it's a good match, the established lawyer may be able to offer

a higher starting salary to account for the fact that the student already knows the office.

- The Nebraska State Bar Association's approach is to invite law students and lawyers with fewer than two full years of practice to apply for its Rural Practice Initiative bus tours. Held each year, the bus tours typically bring young lawyers to two small towns, where the students meet with town leaders, tour local landmarks and, in the evening, have "speed dating" interviews with local attorneys. In 2015, an ABA grant supplemented the program and partially funded 15 summer clerkships.
- In Maine, there is one law school, at the University of Maine in Portland, and graduates tend to stay in that area, creating a void in the state's northern counties, where older lawyers were reaching retirement age without successors. State Bar Association leaders took an approach similar to Georgia's Succession Planning Pilot Program—connecting law students with rural attorneys who were looking for successors. They also encouraged the law school to introduce students to rural Maine with a road trip for law students up the coast. The following year, lawyers from one rural county returned the favor by visiting the law school. And one law student took the initiative to help organize the Maine Law Student/Bar Networking Society, designed to connect law students with rural job opportunities.
- The economic development coordinator in tiny Wishek, N.D., where the only attorney in town retired the previous year, took the unusual step of offering to pay for office space and other business expenses if a young lawyer agreed to move to town. The plan soon bore fruit, thanks to a visionary local official who simply thought that local residents shouldn't have to drive 90 miles to Bismarck in order for their basic legal needs to be met.<sup>4</sup>

There are rural counties in Georgia like that, and the efforts to deal with the lack of lawyers in those communities must continue. If you are a new lawyer looking to start your career, I encourage you to consider a small town in a rural area. Your services are needed. ●

## Endnotes

1. Ethan Bronner, "No Lawyer for Miles, So One Rural State Offers Pay," *New York Times*, April 8, 2013.
2. Lorelei Laird, "In Rural America, There Are Job Opportunities and a Need for Lawyers," *ABA Journal*, Oct. 1, 2014.
3. Meredith Hobbs, "New Lawyers Target Lower Income Clients to Build Practices," *Daily Report*, Aug. 31, 2016.
4. Laird.



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## Meeting Expectations: Bar Conference Facilities Accommodate Members' Needs

**Even in today's world of advanced** technology, mobile communications and virtual offices, in the legal profession, there is still a need to conduct business face-to-face in the same room with clients or fellow counsel. To save time and travel costs for one party or the other, these sessions often need to be held away from the office at a neutral site geographically convenient to all.

This is why one of the most popular resources available to members of the State Bar of Georgia is the free use of the conference facilities at the Bar Center in Atlanta and our satellite offices in Savannah and Tifton for professional meetings.

In addition to serving as the central headquarters for the State Bar of Georgia, the Bar Center at 104 Marietta St. in downtown Atlanta is the home away from home for the lawyers and judges of Georgia. Licensed Bar members may reserve any of the rooms in our Conference Center on a first-come, first-served basis.

The Conference Center is located on the third floor, and additional rooms are located on the second floor and sub-basement of the Bar Center. There is no charge for law-related meetings, and soft drinks and coffee can be provided at a reasonable cost for groups of 20 or less. Depending on individual needs, the Conference Center can accommodate meetings and events ranging from two people to 300 people.

The Conference Center's floor plan includes the following accommodations and meeting setups: Auditorium, classroom for 192 people; Conference A, Classroom for 92; Room 1, conference for 20; Room 2, conference for 12; Room 3, 10 square tables of 4 for 40; Room 4, conference for eight; Room 5, classroom for 32; Room 6, depositions/hearings for up to 10; the YLD Presidents Boardroom, conference for 18; the Presidents Boardroom, Conference for 20; and the Mock Courtroom, which holds up to 42 spectators.

Additionally, the Bar Center's Lawyers Lounge provides an attractive environment for attorneys who may have occasion to be downtown and need a place to relax between meetings. Such visitors may help themselves to a fresh cup of coffee, enjoy the daily newspaper or check phone or email messages.

Weekday hours for the Conference Center are 8 a.m. to 5 p.m. For members who need to host events after hours or on weekends, there will be charges to cover cleaning, security, heating/air, engineering services, etc.

Conference Center Manager Faye First and the members of her team—Audio/Visual Manager Kyle Gause, A/V Administrative Assistant Mark Brayfield, Third Floor Porter Conroy Jackson and Security Officer Joyce Jarvis—are ready, willing and able to help make your meeting a success.

According to Faye, the motto for the Conference Center is "We strive for perfection, though we are never perfect." She proudly adds, "But we sure do come close. I have repeated this personal motto to my staff so many times that I now find I need to say it far less often."

The Conference Center opened its doors Jan. 15, 2005. In the early days, State Bar Past Presidents Hal Daniel (the current chair of the Bar Center Committee), Linda Klein (the current president of the American Bar Association) and the late Frank Jones were among those who took a strong interest in the center's success—along with my predecessor as executive director, the late Cliff Brashier.

"Cliff was so excited, a tad nervous, and he often walked up to the third floor to see that things were going to satisfaction," Faye recalled. "Mostly, 99 percent of the time, they were. At least twice I went to his office to tell him that I had 'messed up' and learned from it. Never did he chastise or scorn."

Faye added, "From the beginning, I have found the expression 'we are busier this year than last and we will be busier next year' to be an accurate prophecy." She said the biggest annual increase in usage of the Conference Center has been the 20 percent jump from 2015 to 2016.

More than 30,000 State Bar members and guests attend meetings, seminars and events in the Conference Center each year. Attendance is heaviest in March due to the race to meet annual CLE requirements at the end of that month. July, August and December are the least busy months because of vacation and holiday schedules.

ICLE seminars bring the largest number of attendees. Meetings of State Bar sections and committees, local and specialty bar associations and judicial organizations—along with Bar members' depositions, mediations, arbitrations, client meetings, mock trials and focus groups, etc.—will often fill the Conference Center's daily, weekly and monthly schedules.

Additionally, the Bar hosts many receptions throughout the year as well as the Law-Related Education Program which brings approximately 10,000 Georgia students to the "Journey Through Justice" program at the Bar Center each year.

Thanks to the addition in 2012 of nine rooms, accommodating between four and 15 people each, plus a small courtroom, all on the second floor of the Bar Center, the staff rarely has to say "no" to a lawyer wishing to schedule a meeting at the Conference Center. Although walk-ins can be accommodated on a space available basis, we strongly recommend that you call in advance to make a reservation.

Our facilities feature up-to-date technology to accommodate all attorneys' audio/visual and video conferencing needs at no additional charge. Printing services are also provided at 10 cents per page.

Outside organizations and members of the public can rent space when not being used by State Bar members. Additional information is available on the Bar's website, along with the following Conference Center policies.

### Mediations

If an attorney mediates for a commercial service or if he/she mediates as their primary means of practice, rent applies. If he/she conducts mediations as an oc-

casional part of his/her law practice there is no rent charge.

### Movies, Videos, Photographs and Press Conferences

The Bar Center, including its signage, is not available to members, the public, law firms, non-State Bar organizations and others for use in movies, videos, photographs and press conferences. This restriction may be waived by a majority of the five State Bar officers upon a showing of good cause. Requests for waivers should be in writing and contain a detailed description of the purpose, distribution, visual and text script, list of participants, list of equipment to be used, insurance coverage, and other information as requested by the State Bar's general counsel and executive director.

### Non-Bar Events

For events scheduled by attorneys or other parties that are not client related, invoices will be sent once the event has been scheduled. Payment must be received in advance of the meeting. Space may be released if payment is not received by the appropriate date.

### Teaching Events

Normally an attorney's use of the Conference Center for personal, non-professional activities includes a rental fee charge. However, when an attorney uses the Bar Center for public law-related education purposes that is a non-commercial, non-profit activity, then space is offered free of charge. Groups must still pay for food and drink.

As I detailed in the August 2016 edition of the *Georgia Bar Journal*, Bar members may park free of charge, subject to space availability when visiting and using the Bar Center, in the Bar Center parking deck located at the corner of Ted Turner Drive (formerly Spring St.) and Marietta St.

Bar members are also eligible for discounted rates at hotels in close proximity to the State Bar of Georgia offices located in downtown Atlanta and Savannah. To





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receive these special rates, make sure you ask for the State Bar of Georgia discount upon making reservations. You can find a list of the hotels with negotiated special rates on our website.

To schedule your next meeting at the Bar Center, contact Faye First at 404-419-0155 or [fayef@gabar.org](mailto:fayef@gabar.org). If you leave a voicemail or send an email, please make sure to provide the date of the meeting, the number of people attending, the beginning and ending time as well as your contact information. For video conferencing needs, contact Kyle Gause at 404-419-0160 or [kyleg@gabar.org](mailto:kyleg@gabar.org).

Bar members are also encouraged to utilize our conference facilities at the Coastal Georgia Office in Savannah and/or the South Georgia Office in Tifton when one of those locations is more convenient for your needs.

The Coastal Georgia Office is located at 18 E. Bay St. overlooking Savannah's riverfront and offers a large training room accommodating up to 30 people for CLE sessions or featured speakers; a boardroom-style conference room for up to 10 people, which is often used for depositions; and two smaller offices for up to four people for client meetings or a quiet workspace for attorneys.

There is no parking in front of the Savannah office, but Bar members may park in either the Bryan St. or Whitaker St. public garages and bring your ticket to the meeting you are attending for validation. To reserve a room at the Coastal Georgia Office, contact Kindall Harville at 912-239-9910 or [kindallh@gabar.org](mailto:kindallh@gabar.org).

The South Georgia Office at 244 E. Second St., across from the Tift County Courthouse in downtown Tifton, has two larger meeting rooms, one for up to 30 people and one for up to 15, and a private office for attorney/client use. Street parking is available in front of the office at no charge. Set up your meeting at the South Georgia Office by contacting Bonne Cella at 229-387-0446 or [bonnec@gabar.org](mailto:bonnec@gabar.org).

The use of our conference facilities is one of the many services funded by your annual Bar dues. I encourage you to take advantage of this valuable resource any time you need it. ●

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# Calculating Economic Damages in Georgia Personal Injury and Wrongful Death Cases

This article reviews the methods economists typically use to address economic losses in damages calculations and whether those methods are acceptable within Georgia's legal framework.

BY CHARLES L. BAUM II, PH.D.

**Georgia's 2005 Tort Reform Act (the Act)** capped noneconomic damages, such as for pain and suffering, at \$350,000 in medical malpractice cases<sup>1</sup> until the Supreme Court of Georgia held the Act unconstitutional in 2010, holding that it denies the right to a jury trial.<sup>2</sup> Since then, some Georgia legislators have explored other ways to limit noneconomic damages. For example, SB 86, which never made it out of committee to a full vote, would have created a system outside the courts to administer patient injury claims.<sup>3</sup> Regardless, throughout this time, economic damages have not been challenged with caps, and legislators do not seem to view them as needing reform. This potentially makes economic damages relatively more important in personal injury (PI) and wrongful death (WD) cases. Attorneys frequently elect to hire an economics expert to assist in PI and WD cases to calculate the present value of economic damages. Common



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sources of economic losses in these cases include lost earnings and employment benefits and lost household services. In this article, I review the methods economists typically use to address the key elements of economic losses in damages calculations, and I evaluate whether these methods are acceptable within Georgia's legal framework.

### Earnings Capacity

Forensic economists typically measure economic losses from lost earnings using "lost earnings capacity." Earnings capacity is an individual's ability to earn income when working to their potential, measured by the amount the individual is able to earn.<sup>4</sup> Essentially, the economist will compare earnings capacity before an event, such as an injury, with earnings capacity after the event.<sup>5</sup> Earnings capacity should be not be affected—or reduced—by an individual's decision to stay home to care for a child or sick family member (instead of working), or to work a job paying less than the maximum amount the individual has the ability to earn.<sup>6</sup>

Most economists agree that a good measure of earnings capacity is actual earnings. When an individual's past earnings are not deemed to be an accurate reflection of their earnings capacity (or when information on past earnings is unavailable), the economist may use occupation-specific average earnings reported by the Bureau of Labor Statistics. This information is available in the Bureau's report, *Occupational Employment Statistics*, for each state and for each metropolitan and nonmetropolitan area.<sup>7</sup>

Georgia law establishes the "full value" of the decedent's life as the appropriate measure of damages in WD cases.<sup>8</sup> Georgia case law makes it clear that the full value of the decedent's life includes tangible and quantifiable losses, such as economic losses from lost earnings, as well as intangible aspects.<sup>9</sup> The full value of the decedent's life may also include other sources of lost income, such as lost business income, Social Security income<sup>10</sup> and veteran's disability income.<sup>11</sup> Juries consider the following factors when awarding losses from lost earnings:

the age of the deceased at the time of his death, his health, his habits, the amount of money he was earning, his expectation of life, the probable loss of employment, voluntary abstinence from work, dullness in business, reduction of wages, the increasing infirmities of age, with a corresponding diminution of earning capacity, and other causes which may contribute to illustration of the gross earnings of a lifetime.<sup>12</sup>

In Georgia PI cases, injured plaintiffs can recover past earnings losses from the date of injury to the trial,<sup>13</sup> and future lost earnings incurred after the trial, whether or not the injuries are permanent.<sup>14</sup> However, there is a distinction in Georgia between "diminished capacity to labor," which is part of pain and suffering and occurs from the date of the injury to the trial, and "lost earnings capacity," which is a separate element of damages and affects future lost earnings after the trial.<sup>15</sup> In either instance, losses from lost earnings capacity must be shown with reasonable certainty to be awarded as damages.<sup>16</sup> This requires the injured party to establish earnings before the injury and the amount by which earnings are diminished after the injury.<sup>17</sup> The measure of damages for lost earnings capacity "involves numerous considerations [such as] the earnings before the injury, earnings after the injury, probability of increased or decreased earnings in the future, considering the capacity of the injured party, effects of sickness and old age, etc."<sup>18</sup> Damages from lost earnings cannot be awarded when juries must speculate as to the amount, unless the injured party is too young to have established a history of earnings, in which case the damages are within the jury's discretion.<sup>19</sup> Georgia recognizes that it is more difficult to establish lost earnings for plaintiffs without a fixed salary, as is typical for professionals whose compensation is in the form of commissions and fees, and these plaintiffs may be allowed more latitude in proving their losses.<sup>20</sup>

### Employment Benefits

Common employment benefits include various types of insurance (e.g., health,

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dental, vision, disability) and employer contributions to retirement funds and government programs (e.g., Social Security programs, workers' compensation and unemployment insurance). Each has value, so forensic economists often include lost employment benefits as part of economic losses.<sup>21</sup> The pecuniary value of an individual's employment benefits could be the amount the employer actually paid to provide them. However, this amount may be different than the cost the individual (or their survivors) would incur to replace them in the market due to group rates and tax deductibility. Market quotes can help identify the replacement cost for some benefits, such as health insurance. Alternatively, the economist may identify the value of lost fringe benefits using national or occupation-specific averages. The Bureau of Labor Statistics regularly provides information on the cost of employment benefits in its report, *Employer Costs for Employee Compensation*, which outlines benefits separately for civilian, private industry and state and local government workers, and for workers by occupation.<sup>22</sup> Currently, the employer

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cost of fringe benefits is 43.2 percent of wages and salaries on average for private sector workers.<sup>23</sup>

Georgia courts have considered and awarded economic damages from lost fringe benefits, as part of the full value of a life, including health insurance benefits, pension and retirement benefits, Social Security benefits and veterans' disability benefits.<sup>24</sup> This includes instances in which the decedent had been receiving employer contributions toward fringe benefits while employed and in which the decedent had been drawing upon accumulated fringe benefits in retirement. Georgia statutes have not provided specific instructions for calculating the fringe benefits, but in several cases involving both adults and minors, Georgia courts have accepted an approach taken by economists in which the value of fringe benefits is assumed to be proportional to earnings (e.g., 20 percent of earnings).<sup>25</sup> In general, the value of lost employment benefits should likely be calculated in a manner consistent with the calculation of lost earnings.

### Household Services

It might seem that lost household services are recoverable for the same reasons that lost earnings are recoverable. Georgia statutes do not explicitly mention lost household services, but Georgia courts have applied a definition for the monetary value of a life for damages calculations that includes "services."<sup>26</sup> In

turn, damages for lost household services that otherwise would have been provided by adults have been awarded in Georgia WD and PI cases.<sup>27</sup> For minors, lost household services have been awarded in some cases,<sup>28</sup> but in others, this source of damages has been deemed too speculative.<sup>29</sup> One method economists have used to estimate the monetary value of lost household services in Georgia courts is to multiply the amount of time that the injured party would have spent providing household services, potentially derived from the *American Time Use Survey*,<sup>30</sup> by an hourly wage rate.<sup>31</sup> In WD cases, the portion of the decedent's household services that would have been to the decedent's benefit need not necessarily be deducted from the losses,<sup>32</sup> consistent with Georgia basing damages on the full value of a life.

Generally, economists understand lost household services to be household chores that the injured party otherwise would have provided, such as cleaning, cooking, lawn and garden work, shopping and consumer goods purchasing, household management and caring and helping other household or family members. The time that the injured party otherwise would have spent providing household services may be projected using Expectancy Data, which is based on average time spent on various activities as reported by the U.S. Bureau of Labor Statistics from the *American Time Use Survey* and corresponding average occupation and industry wages as reported by the U.S. Bureau of Labor Statistics' *Occupational Employment Statistics*.

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### Growth Rates

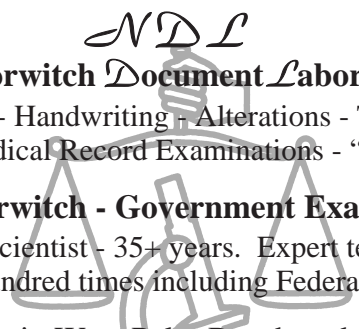
Earnings typically increase over time with inflation to maintain purchasing power. Earnings also typically increase over time due to increased worker productivity brought on by additional experience and skills and new technology, although wage growth often slows or stops as workers approach retirement.<sup>33</sup> When information on an individual's past earnings is not available, however, economists may predict future earnings increases using historical growth

rates experienced by all or part of the labor force. The Bureau of Labor Statistics provides this kind of information regularly in two reports: *Employment and Earnings*, and *Employment Cost Index*.<sup>34</sup> In addition, analysts forecast earnings growth rates for several federal agencies (the Congressional Budget Office, the Social Security Advisory Board, and the Economic Report of the President), and these forecasts are publicly available.<sup>35</sup>

Georgia courts allow lost future earnings to grow in PI and WD cases, recognizing that such growth is due to price inflation and productivity gains over the progression of a career.<sup>36</sup> Georgia statutes do not specify a particular growth rate to use, however, allowing the forensic economist discretion over selecting the appropriate rate. When establishing an earnings growth rate, experts have relied on the decedent's history of wage growth<sup>37</sup> and on data from the federal government (such as when the decedent is a child and does not have an earnings history).<sup>38</sup>

### Worklife and Life Expectancies

Forensic economists often use "worklife expectancy" when calculating front pay to estimate the number of years an individual would have remained in the labor force and been employed. Many forensic economists identify worklife expectancy using tables published by researchers who have projected worklife expectancies using federal government data, accounting for the probability of living, having the ability to work, and willingness to work.<sup>39</sup> These researchers typically provide projections separately by age, gender, race and education for individuals currently in and not in the labor force. Alternatively, some economists use the "LPE" method, which estimates the annual probability an individual would have lived (L), participated in the labor force (P) and been employed (E). The forensic economist will often tailor the probabilities used for the L, P and E factors to the individual's gender, race, age and education. In still other instances, the



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forensic economist will project worklife expectancy using a fixed point, such as the Social Security Normal Retirement Age, which ranges from 65 to 67 depending on date of birth.

Georgia courts recognize the propriety of examining losses from "lost potential lifetime earnings" over one's worklife,<sup>40</sup> but they state no preference for which methodology to use when approximating the number of remaining years of employment absent the tort. For example, in Georgia cases, economists have used worklife tables<sup>41</sup> and fixed points representing common retirement ages (such as ages 65 or 70).<sup>42</sup> Otherwise, Georgia statutes reference specific mortality tables for determining life expectancy,<sup>43</sup> but using these sources is not required,<sup>44</sup> and an economist would likely assert that remaining worklife expectancy—not life expectancy—is the appropriate measure to use when calculating lost earnings from employment.

### Mitigating Factors

Forensic economists typically assume that those harmed take reasonable actions to limit damages and offset losses with mitigating factors.<sup>45</sup> In PI cases, eventually returning to work to receive earnings and employment benefits after an injury, when possible, is a primary way of mitigating damages. For example, in *Dossie v. Sherwood*, an injured contractor returned to work in a different occupation—as a contractor's helper—with reduced earnings capacity.<sup>46</sup> Economists may also consider deducting collateral

sources of income from losses to prevent double recovery.<sup>47</sup> Deducting collateral sources of income that the defendant does not provide or finance, however, may become a windfall for the defendant. If any party is to receive a windfall, then the injured party, not the tortfeasor, should be the beneficiary.<sup>48</sup> A notable exception to this is that, to prevent a double recovery, the tortfeasor is not liable for damages that it has already paid, that have been paid on its behalf by its insurer or that have been paid by another defendant.<sup>49</sup>

### Personal Consumption Expenditures

In WD cases, but not PI cases, forensic economists may deduct from the economic losses an amount that the decedent is projected to have spent on his own consumption, had he lived. However, Georgia law does not allow the deduction of personal consumption or personal maintenance expenses from economic losses, as these are a component of the "full value of the life of the decedent."<sup>50</sup> One exception is that business expenses may be deducted from revenue for those who are self-employed, such as crop production costs for a self-employed farmer.<sup>51</sup>

### Discount Rate

With rare exceptions, forensic economists discount future losses to their present value to identify the lump-sum payment—paid in the present—that will



grow when invested to the amount lost earnings and benefits would have been in the future. If the nominal amount of future losses were paid in the present without discounting, then this payment plus interest when invested would grow to a larger amount in the future than the losses. Amounts in the more distant future are discounted by more than losses in the nearer future because a longer period is available over which to earn interest.

Rates of return are higher on riskier investments (e.g., stocks) than on less risky assets (e.g., bonds), all else being equal, to compensate the investor for assuming greater risk. Many forensic economists<sup>52</sup>—but not all<sup>53</sup>—intend for those with losses to bear no risk to attain a sufficiently high rate of return to be made whole from a lump-sum payment made in the present. In turn, most economists intend to discount using the risk-free rate of return, so that those with losses are not penalized by incurring risk. Many forensic economists believe that the investment closest to being risk-free is a U.S. Treasury Security, and so will use as their discount rate the rate on a three-month Treasury bill, a 10-year Treasury note or a 30-year Treasury bond, or the rates on a mix of treasuries.

Economists may base their discount rate on historical averages, current rates or forecasted future rates. Historical averages may be taken over the past 20 or 30 years, or over a past period whose length mirrors the period into the future over which losses are projected. Current rates represent the rates at which a lump-sum payment could be invested today, but current rates may not accurately reflect future rates.<sup>54</sup> Forecasted future rates are inevitably based on historical rates and are provided by economists for the Social Security Advisory Board, the Congressional Budget Office and the Economic Report of the President.<sup>55</sup>

Some economists use a net discount rate instead of separately incorporating earnings growth rates and nominal discount rates. A net discount rate is the nominal discount rate (referred to as the discount rate above) minus the earnings growth rate. In rare instances, economists will use the total offset method, which as-

sumes wage growth equals the nominal risk-free interest rate, in which case there is no net discounting.

Until 2013, Georgia mandated the use of a 5 percent discount rate in PI and WD cases when adjusting future economic losses (such as from lost earnings or services, but not for noneconomic intangible elements of the full value of the decedent's life) to present value.<sup>56</sup> The 2013 amendments to O.C.G.A. § 51-12-13 removed this requirement so that a five percent discount rate—or any other rate deemed appropriate—is allowed.<sup>57</sup> No longer are plaintiffs undercompensated from present value discounting when market rates are below 5 percent, or overcompensated when rates are above 5 percent.

### Interest

Just as economists discount future losses to their present value, economists may add interest to past losses.<sup>58</sup> A lump sum received today can grow, when invested, to the projected amount lost in the future, and past losses, if invested, could have grown to a larger amount today. In PI and WD cases, Georgia does not allow prejudgment interest on economic damages (because such damages are considered to be unliquidated at the time of the trial) except where a plaintiff specifically requests it following a prescribed statutory procedure.<sup>59</sup> This procedure does not include calculations to be performed by economics experts and, as such, economists are not to include prejudgment interest in their analysis. Instead, the court adds prejudgment interest later, after damages have been determined at trial.<sup>60</sup> The court is to use the prime rate (as reported by the Federal Reserve System's Board of Governors) plus 3 percent.<sup>61</sup>

### Taxes

Lost earnings in PI and WD cases would have been taxed absent the tort, but any award for economic damages likely will not be taxed.<sup>62</sup> As a consequence, forensic economists may deduct projected income taxes from the measure of economic losses. However, in PI and WD cases, Georgia

does not allow taxes to be deducted from economic losses.<sup>63</sup> Essentially, Georgia treats taxes in PI and WD cases in a similar manner to its treatment of personal consumption expenses in WD cases.

### Conclusions

Economics experts seem to have been of assistance in calculating economic losses—and their opinions and conclusions appear to have been influential—in Georgia PI and WD cases.<sup>64</sup> Parties are not required to retain economics experts in order to calculate pecuniary economic damages, and courts have made such awards without their input.<sup>65</sup> Nevertheless, in some cases, juries and courts have not awarded economic damages from lost earnings because of insufficient evidence to determine the amount of wage loss,<sup>66</sup> and because any award for lost wages would have required the jury to speculate as to the amount of the wage loss.<sup>67</sup> Above are common approaches economists use to quantify economic losses from lost earnings and benefits, which have not been capped and which are unlikely to be addressed in tort reform efforts. ●



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# How Companies Can Keep Their Sensitive Information Away from Adversaries but Still Cooperate with Auditors

This article explores the tension that exists between a company's duty to disclose information to auditors about litigation exposure while also guaranteeing the confidentiality necessary to ensure that such communications remain protected from discovery.

BY JOHN JETT AND JOSHUA C. HESS

**Companies with audited financial statements** increasingly find themselves between the proverbial rock and a hard place. On one hand, these companies wish to cooperate with their auditors, who are increasingly asking for confidential—even privileged—information about the companies' litigation exposure. On the other hand, a company's candid assessment to auditors about potential litigation losses, or a document a company discloses to an auditor on that subject, may find its way into an adversary's hands during discovery. Simply put, a tension exists between a company's duty to disclose information to auditors about litigation exposure while also guaranteeing the confidentiality necessary to ensure that such communications remain protected from discovery. This article explores this tension and discusses approaches companies and their counsel may consider to address auditors' requests for confidential information about litigation.

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## Background

Financial accounting standard ASC 450-20 requires companies' financial statements to disclose information about possible litigation losses.<sup>1</sup> If a company will "probab[ly]" suffer a loss and can "reasonably estimate[]" the loss amount, the financial statements must disclose the loss as a "charge to income."<sup>2</sup> The financial statements also must disclose a potential litigation loss that is a "reasonable possibility," though not necessarily probable.<sup>3</sup> In such disclosures, the company's financials must include "[a]n estimate of the possible loss or range of loss or a statement that such an estimate cannot be made."<sup>4</sup> Concerning "unasserted claim[s]" (e.g., a possible but not pending lawsuit), a company must disclose such claims if they are "probable" and the company faces a "reasonable possibility that the outcome will be unfavorable."<sup>5</sup>

Auditors verify that financial statements comply with these obligations to disclose potential litigation losses. Historically, auditors have done so by requesting that companies' lawyers provide au-

ing Oversight Board faulted Deloitte & Touche LLP for failing to obtain "a copy of a letter to the issuer from its counsel containing legal advice on which the issuer had based its conclusions" that "an accrual was not required."<sup>11</sup>

## The Risks of Disclosing to Auditors Confidential Information About Litigation

Pressure from auditors to disclose sensitive information, even privileged documents, is a potential problem for companies embroiled in litigation with adversaries who might seek that information. Under some circumstances, complying with those requests makes the sensitive information easier for an adversary to obtain in discovery. For example, consider an auditor's request for a pre-existing, attorney-client privileged document such as a confidential memorandum from an attorney to the company analyzing an adversary's claims. Such documents remain privileged only if they remain confidential.<sup>12</sup>

A minority of states (including Georgia<sup>15</sup>) do recognize an accountant-client privilege that might make a company's communications with auditors confidential.<sup>16</sup> In those jurisdictions, a company might argue that it may disclose to auditors attorney-client privileged documents without waiving that privilege. That is little comfort, however, to companies who face litigation in varying jurisdictions because most states do not recognize an accountant-client privilege.<sup>17</sup>

Companies may also invoke the work-product doctrine to protect a document about litigation they disclose to, or create for, auditors. That doctrine protects from discovery documents or communications a lawyer or client prepares in anticipation of litigation.<sup>18</sup> Compared with the attorney-client privilege, that doctrine's protections are harder to waive. Generally, one may do so only by disclosing the communication or document to an adversary or a conduit to an adversary.<sup>19</sup> Most (but not all) courts—including the D.C. Circuit Court of Appeals in a relatively recent decision—hold that auditors are not companies' adversaries for those purposes.<sup>20</sup> They explain that whatever "tension" might arise "from an auditor's need to scrutinize and investigate a corporation's records" does not make an auditor a company's true adversary.<sup>21</sup> Those courts further explain that an auditor is not a conduit to a company's adversaries because the auditors' code of professional conduct requires auditors to obtain client consent before disclosing confidential information.<sup>22</sup>

By way of illustration, a company might invoke the work-product doctrine to protect an internal attorney memorandum about pending litigation even though the company has forwarded the memorandum to an auditor (thus waiving any attorney-client privilege). The memorandum is work product, the argument goes, because the attorney had prepared the memorandum to help with pending litigation and thus "in anticipation of litigation." Because the auditor is not (according to most courts) an adversary or conduit to an adversary, the company does not waive the work-product doctrine's protections by disclosing the

## A minority of states (including Georgia) do recognize an accountant-client privilege that might make a company's communications with auditors confidential.

dit letters about the company's litigation (and potential losses in litigation).<sup>6</sup> These audit letters traditionally provide limited information, likely because the American Bar Association's "Auditor's Letter Handbook" encourages counsel to minimize disclosures to auditors.<sup>7</sup>

Since Congress passed Sarbanes-Oxley, however, auditors have sought more detailed, sensitive information about possible litigation losses.<sup>8</sup> Reportedly, auditors sometimes seek even attorney-client privileged information.<sup>9</sup> And no wonder. Regulators have ratcheted up pressure on auditors to investigate advice attorneys have given to audited companies about possible losses.<sup>10</sup> For example, the Public Company Account-

In most jurisdictions, auditors do not have a confidential relationship with companies or companies' counsel.<sup>13</sup> So a company or attorney would waive the privilege by disclosing the memorandum to the auditor, thus placing an adversary one step closer to obtaining the documents.<sup>14</sup> Similarly, consider a scenario in which counsel responds to an auditor's inquiry by memorializing sensitive information in a letter counsel created specifically for the auditor. Because a letter to an auditor is not sufficiently confidential, the letter was never attorney client-privileged at all—which again increases an adversary's odds of obtaining the sensitive information in discovery.

memorandum to an auditor. For similar reasons, a company might argue that the doctrine protects a letter an attorney prepares specifically for an auditor about ongoing litigation.<sup>23</sup>

But the work-product doctrine is no guarantee against an adversary's discovery requests for sensitive, litigation-related information that a company or attorney discloses to, or creates for, an auditor. To begin, the "in anticipation of litigation" requirement is more complicated than it appears. It requires two things, one about timing and one about motivation. First, as to timing, the litigation must be sufficiently likely when the attorney or client prepares the documents or communications. Courts are inconsistent about how likely is likely enough,<sup>24</sup> but at a minimum a company would need to show that the expectation of litigation was reasonable.<sup>25</sup> Second, as to motivation, in some (but not all) jurisdictions, the work-product doctrine applies only if an attorney or client sends a communication or creates a document primarily to assist with litigation rather than for a business purpose.<sup>26</sup> For example, in *United States v. Gulf Oil Corporation*, the court held that the work-product doctrine did not protect a letter from a company's general counsel to an auditor because the counsel's "primary motivating purpose" was to help the auditor prepare a financial report, not to help with litigation.<sup>27</sup>

What documents might these rules leave vulnerable to an adversary once a company discloses them to an auditor (thus waiving any attorney-client privilege)? One example is an attorney memorandum to a client about a hypothetical case that someone might file, but that does not yet appear likely. In that example, the threat of litigation might be too remote for the attorney to contend that he sufficiently anticipated litigation when he wrote it and thus too remote for the attorney to assert the work-product doctrine. Likewise, these rules might withhold work-product protection from, for example, a memorandum that is about pending litigation, but that the attorney prepared specifically for the auditor rather than to help with the litigation.<sup>28</sup> In that

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instance, the attorney might be unable to show that litigation was his primary motivation in preparing the memorandum and thus unable to show that the work-product doctrine applies.

The work-product doctrine has still other limitations. According to a minority of courts, the work-product doctrine protects written materials only rather than oral communications.<sup>29</sup> So courts in those jurisdictions would hold that neither the work-product doctrine nor the attorney-client privilege would protect sensitive oral communications between an auditor and corporate counsel about pending litigation.

Additionally, the work-product doctrine provides limited protections even when applicable. For example, if a document or communication qualifies as work product, but discloses factual information (or information other than legal opinions or legal strategy), the document or communication is likely ordinary fact work product, rather than opinion work product.<sup>30</sup> An adversary may obtain ordinary work product if he shows “substantial need” for it, which generally depends on the evidence’s relevance and the risk that the party will suffer prejudice without the evidence.<sup>31</sup> According to the D.C. Circuit, showing substantial need does not require proof that the evidence is “essential to [his] claim or probative of a critical element.”<sup>32</sup>

This rule might make the following examples of documents vulnerable to discovery, even if a lawyer or client prepares the document in anticipation of litigation: portions of a memorandum that a lawyer creates for an auditor and that discusses a witness’s statements in an interview with an attorney; portions of a similar memorandum that reflect large data compilations from which one could not discern an attorney’s theories or strategy; or litigation-cost forecasts that an attorney prepares for an auditor and that project costs for groups of cases rather than what an attorney estimates for a particular case.<sup>33</sup> All of those things provide factual information rather than opinion or analysis.

Even if work product does reflect an attorney’s opinion or strategy,<sup>34</sup> an adversary may still obtain the work product in exceptional circumstances, such as when

a party places the attorney’s opinion at issue in a case.<sup>35</sup> For example, in *RCA Corp. v. Data General Corp.*, a company disclosed to an auditor an attorney’s opinion about a patent’s validity and whether the company had infringed the patent.<sup>36</sup> The company’s litigation adversary later requested that the auditor disclose the attorney’s opinion. The court ordered the auditor to disclose the document, even if “attorney work product,” because the company had placed the attorney’s advice at issue by asserting an advice-of-counsel defense.<sup>37</sup>

We do not wish to overstate the risks of relying on the work-product doctrine to protect litigation-related documents one discloses to, or creates for, an auditor. In most jurisdictions, the work-product doctrine will likely keep an adversary from discovering a company’s or lawyer’s oral or written communication with an auditor (or disclosed to an auditor) about a pending or reasonably imminent case—especially communications that predict a case’s outcome.<sup>38</sup> Indeed, most courts would hold that the company or lawyer sent such communications or prepared such documents “in anticipation of litigation” because litigation was sufficiently likely or ongoing and because the company or lawyer sent the communication “because of” litigation.<sup>39</sup> Moreover, if those communications are about a case’s outcome, they are opinion work product rather than less secure fact work product.<sup>40</sup> Most courts would hold that one does not waive these work-product protections by disclosing the communications or documents to an auditor because auditors are neither a company’s adversaries nor conduits to those adversaries.

But companies and counsel do face some appreciable risk, as explained above. They may therefore wish to take precautions that minimize an adversary’s chances of obtaining sensitive information or documents that the company or counsel prepares for an auditor.

### How to Minimize Risk in Audit Disclosures

Companies and counsel should consider the following precautions to minimize the risks: (1) that an adversary may use

discovery to obtain a document or communication that a company or counsel provides to, or creates for, an auditor, and (2) that a document or communication an adversary does obtain is one with sensitive information.

First, avoid disclosing to an auditor any confidential communication between the company and counsel, such as an attorney memorandum to the company or emails between company personnel and counsel. Such communications are likely attorney-client privileged in the first instance, but would lose their privilege if the company or counsel divulges them to an auditor. Companies can likely find alternative ways to provide auditors the necessary information.

Second, consult the ABA’s “Auditor’s Letter Handbook.” The Handbook advises companies and counsel to limit disclosures about litigation to auditors. For example, the Handbook says that “the lawyer should normally refrain from expressing judgments as to outcome except in [the] relatively few clear cases.”<sup>41</sup> Further, the Handbook advises that, usually, companies should ask counsel to provide auditors information about “unasserted” claims (i.e., hypothetical lawsuits) only if a claim is “probable” and “there is a reasonable probability that the outcome . . . will be unfavorable” and “material.”<sup>42</sup>

Following the Handbook may help in many respects. For example, if a company or counsel follows the Handbook’s advice and keeps disclosures (like audit letters) to the point, they are more likely to create documents that omit extraneous, sensitive information of interest to an adversary. Likewise, a company that limits disclosures also limits opportunities to inadvertently disclose attorney-client communications, thus avoiding a waiver. If an attorney follows the ABA’s guidance to opine about pending cases only rather than hypothetical cases, then he is more likely to create documents that satisfy the work-product doctrine’s “in anticipation of litigation” requirement.

Third, draft audit disclosures as attorney-opinion work product rather than less-protected, fact work product. To that end, disclosures should not include detailed factual summaries (especially



of nonpublic facts), disclose verbatim witness statements, include litigation-cost projections that lump multiple cases' costs into one estimate, or discuss the adequacy of a company's aggregate litigation reserves.

Fourth, anticipate the risk that the company could litigate in one of the minority jurisdictions that applies the work-product doctrine only to those materials a client or attorney prepares primarily to assist with litigation. If an attorney gives an opinion in an audit letter, for instance, then he could state that he formulated that opinion in the course of the litigation rather than for the auditor's benefit.

Fifth, if an auditor insists on an attorney's analysis to support a company's conclusion about a likely case outcome, then the attorney could stick to facts and analyses that are already public. For example, he could rely on points that are already in briefs filed with the court or in court opinions. The attorney could also explain in generic terms how he reaches such conclusions typically. These steps will ensure that, if an adversary does obtain an audit disclosure, the disclosure will contain little sensitive information about which the adversary was previously unaware.

Finally, consider explaining to the auditor the company's quandary in disclosing potentially privileged information. Work with the auditor to find a mutually agreeable way to give the auditor the information needed.

In sum, today's companies face increasing pressure to disclose sensitive information about litigation to auditors. If they do so, then they increase an adversary's odds of obtaining that information in litigation, although the work-product doctrine still offers significant protections. To minimize that risk, companies should work with auditors collaboratively to balance the auditor's need for information and the company's need to avoid privilege waivers. ●



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## Endnotes

1. See generally Aaron J. Rigby, *The Attorney-Auditor Relationship: Responding to Audit Inquiries, the Disclosure of Loss Contingencies and the Work-Product Privilege*, 35 SEC. REG. L. J. 176, at § I.c. (2007).
2. FASB ASC 450-20-25-2.
3. FASB ASC 450-20-50-3.
4. FASB ASC 450-20-50-4.
5. FASB ASC 450-20-50-6.
6. Rigby, *supra* n.1, at § I.d.
7. Rigby, *supra* n.1, at § I.d.
8. See generally Rigby, *supra* n.1, at § II; David M. Brodsky, Pamela S. Palmer & Robert J. Malione, *The Auditor's Need For The Client's Detailed Information vs. The Client's Need to Preserve the Attorney-Client Privilege and Work Product Protection: The Debate, The Problems and Proposed Solutions*, at 3-6 (Apr. 2006), <https://www.lw.com/thoughtLeadership/auditors-vs-clients-needs-attorney-client-privilege>; Daniel M. Reach, Note, *Keep Your Friends Close but Your Auditors Closer: Corporations Risk Waiver When Independent Auditors Request Work Product*, 23 U. FLA. J.L. & PUB. POL'Y 29, 30-31 (2012).
9. Brodsky, Palmer & Malione, *supra* n.8, at 3-4.
10. Brodsky, Palmer & Malione, *supra* n.8, at 3-5.
11. PUB. CO. ACCOUNTING OVERSIGHT BD., *Report on 2003 Limited Inspection of Deloitte & Touche LLP*, at 21 (Aug. 26, 2004), [http://pcaobus.org/Inspections/Reports/Documents/2003\\_Deloitte\\_and\\_Touche.pdf](http://pcaobus.org/Inspections/Reports/Documents/2003_Deloitte_and_Touche.pdf); Brodsky, Palmer & Malione, *supra* n.8, at 3-5.
12. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 68(3) (AM. LAW INST. 2000).
13. See, e.g., *United States v. El Paso Co.*, 682 F.2d 530, 540 (5th Cir. 1982).
14. See, e.g., *id.* at 539-41; *United States v. S. Chicago Bank*, No. 97-849-1, 1998 WL 774001, at \*2-3 (N.D. Ill. Oct. 30, 1998); *First Fed. Sav. Bank of Hegewisch v. United States*, 55 Fed. Cl. 263, 269 (Ct. Fed. Cl. 2003); *SEC v. Brady*, 238 F.R.D. 429, 439-40 (N.D. Tex. 2006); *Vacco v. Harrah's Operating Co.*, No. 07-0663, 2008 WL 4793719, at \*5 (N.D.N.Y. Oct. 29, 2008); see also Brodsky, Palmer & Malione, *supra* n.8, at 11 (stating that most courts hold that disclosing to auditors communications between a client and an attorney waives the attorney-client privilege); Rigby, *supra* n.1, at § I.a.i. ("Courts have consistently held that sharing information with independent third parties, including outside auditors, that are not agents of the client or counsel waives the attorney client privilege.");
15. See O.C.G.A. § 43-3-29 (2014); *In re Tidewater Grp., Inc.*, 65 B.R. 179, 182 (Bankr. N.D. Ga. 1986); *Say v. Deloitte & Touche, LLP*, 295 Ga. App. 128, 130, 670 S.E.2d 818, 821 (2008).
16. Brodsky, Palmer & Malione, *supra* n.8, at 11-12, 29 & n.89.
17. Robert J. Tepper, *New Mexico's Accountant-Client Privilege*, 37 N.M. L. REV. 387, 425 & n.317 (2007) (noting that only about 15 states have an accountant-client privilege); Brodsky, Palmer & Malione, *supra* n.8, at 29 & n.89.
18. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, § 87 & cmt. a.
19. *Id.* § 91(4).
20. *United States v. Deloitte, LLP*, 610 F.3d 129, 140 (D.C. Cir. 2010); *Merrill Lynch & Co. v. Allegheny Energy, Inc.*, 229 F.R.D. 441, 447-48 (S.D.N.Y. 2004); *In re JDS Uniphase Corp. Secs. Litig.*, No. 02-1486, 2006 WL 2850049, at \*1 (N.D. Cal. Oct. 5, 2006); *SEC v. Roberts*, 254 F.R.D. 371, 381-82 (N.D. Cal. 2008); but see, e.g., *Medinol, Ltd. v. Boston Scientific Corp.*, 214 F.R.D. 113, 114-16 (S.D.N.Y. 2002); *United States v. Hatfield*, No. 06-0550, 2010 WL 183522, at \*3 (E.D.N.Y. Jan. 8, 2010); *In re Diasonics Secs. Litig.*, No. C-83-4584-

- RFP (FW), 1986 WL 53402, at \*1 (N.D. Cal. June 15, 1986); *SEC v. RJ Reynolds Tobacco Holdings, Inc.*, No. 03-1651, 2004 WL 3168281, at \*7 (D.D.C. June 29, 2004).
21. *Deloitte*, 610 F.3d at 140 (citation omitted).
  22. *See, e.g., id.* at 142.
  23. *See, e.g., Lawrence E. Jaffe Pension Plan v. Household Int'l.*, 237 F.R.D. 176, 180-83 (N.D. Ill. 2006); *Tronitech, Inc. v. NCR Corp.*, 108 F.R.D. 655, 656-57 (S.D. Ind. 1985).
  24. 2 EDNA EPSTEIN, AM. BAR ASS'N, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE, 839 (5th ed. 2007).
  25. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 87, cmt. i.
  26. *See, e.g., United States v. El Paso Co.*, 682 F.2d 530, 542-43 (5th Cir. 1982) (holding that whether someone prepared tax analysis in anticipation of litigation depends on the creator's "primary motivating force"); *United States v. Textron Inc. & Subsidiaries*, 577 F.3d 21, 28-32 (1st Cir. 2009); *see also generally* Richard P. Swanson, *Status of Attorney-Client Work Product Privilege Protection of Litigation Reserve and Tax Accrual Workpapers Turned Over to Outside Auditors*, ST004 ALI-ABA 235, 239-40 (2011); *but see Deloitte*, 610 F.3d at 136-37 (noting that "most circuits" hold that an attorney or client prepares a documents in anticipation of litigation if the attorney or client does so "because of" litigation).
  27. *United States v. Gulf Oil Corp.*, 760 F.2d 292, 296-97 (Temp. Emer. Ct. App. 1985).
  28. *See, e.g., Gulf Oil Corp.*, 760 F.2d at 296-97; *Indep. Petrochem. Corp. v. Aetna Cas. & Sur. Co.*, 117 F.R.D. 292, 298 (D.D.C. 1987); *Cantu v. TitleMax, Inc.*, No. 5:14-CV-628 RP, 2015 WL 5944258, at \*3-5 (W.D. Tex. Oct. 9, 2015); *but see, e.g., Lawrence E. Jaffe Pension Plan*, 237 F.R.D. at 180-83.
  29. *E.g., In re Pfohl Bros. Landfill Litig.*, 175 F.R.D. 13, 27 (W.D.N.Y. 1997); *In re EchoStar Comm'ns Corp.*, 448 F.3d 1294, 1301 (Fed. Cir. 2006); *Informatica Corp. v. Bus. Objects Data Integration, Inc.*, 454 F. Supp. 2d 957, 963 (N.D. Cal. 2006), *aff'd*, No. C 02-3378 JSW, 2006 WL 2329460 (N.D. Cal. Aug. 9, 2006).
  30. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 87(2); *Deloitte*, 610 F.3d at 136; *Lake Shore Radiator, Inc. v. Radiator Express Warehouse, No. 3: 05-cv-1232-J-12 MCR*, 2007 WL 842989, at \*4 (M.D. Fla. Mar. 19, 2007); *United States ex rel. (Redacted) v. (Redacted)*, 209 F.R.D. 475, 478 (D. Utah 2001).
  31. *See generally* 8 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2025 (3d ed.); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 88 cmt b.
  32. *FTC v. Boehringer Ingelheim Pharm., Inc.*, 778 F.3d 142, 156 (D.C. Cir. 2015); *but see Nevada v. J-M Mfg. Co., Inc.*, 555 F. App'x 782, 785 (10th Cir. 2014) ("A substantial need exists where the information sought is essential to the party's defense, is crucial to the determination of whether the defendant could be held liable for the acts alleged, or carries great probative value on contested issues.") (quotation marks and citation omitted).
  33. *See, e.g., In re John Doe Corp.*, 675 F.2d 482, 493 (2d Cir. 1982); *SEC v. Cuban*, No. 3:08-CV-2050D, 2013 WL 1091233, at \*5 (N.D. Tex. Mar. 15, 2013); *Portis v. City of Chicago*, No. 02-3139, 2004 WL 1535854, at \*3 (N.D. Ill. July 7, 2004); *SEC v. R.J. Reynolds Tobacco Holdings, Inc.*, No. 03-1651, 2004 WL 3168281, at \*7 (D.D.C. June 29, 2004).
  34. Although documents that reflect an attorney's opinion or strategy are the most common opinion work product, Federal Rule 26(b)(3)(B) indicates that work product reflecting other client representatives' opinions or strategy are also highly protected, opinion work product.
  35. *See generally* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 89; 8 WRIGHT & MILLER, *supra* n.31, at § 2026.
  36. *RCA Corp. v. Data Gen. Corp.*, No. 84-270, 1986 WL 15693, at \*1, 2 (D. Del. July 2, 1986).
  37. *Id.* at \*2.
  38. *See In re Pfizer Sec. Litig.*, No. 90-1260, 1993 WL 561125, at \*4 (S.D.N.Y. Dec. 23, 1993); *see also S. Scrap Material Co. v. Fleming*, No. 01-2554, 2003 WL 21474516, at \*9 (E.D. La. June 18, 2003).
  39. *See Deloitte*, 610 F.3d at 136-37 (noting that "most circuits" hold that an attorney or client prepares a document in anticipation of litigation if the attorney or client does so "because of" litigation).
  40. *See In re Pfizer Sec. Litig.*, 1993 WL 561125, at \*4; *S. Scrap Material Co.*, 2003 WL 21474516, at \*9.
  41. AM. BAR ASS'N AUDIT RESPONSES COMM., AUDITOR'S LETTER HANDBOOK 5 (2d ed. 2013).
  42. *Id.* at 4.



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# Leroy Johnson: In the Center Ring of Change

Since the founding of the nation, lawyers have been consistently in the forefront of making America “a more perfect union.” Many Georgia lawyers have figured prominently in that pursuit. One of those is Leroy Johnson. His contributions in public service and as a private practitioner remind us of the distinctive role our profession has in the betterment of society and the difference we as lawyers can make through the quest for social justice.

BY DERRICK ALEXANDER POPE



*Negro and white people of Atlanta and the South must alter the lines which have divided them. There must be a change in policy. A new generation . . . is coming upon the stage of action in the South. They know little or nothing of the regulations or the horrors of the past regime . . . and they question the right of their equals to oppose and defraud them.<sup>1</sup>*

Other lawyers in other cities had tried. For three years and in more than 70 cities, they had tried—and failed. The challenge before them seemed to grow more insurmountable with each passing attempt.

Muhammad Ali had been stripped of his heavyweight boxing title in 1967 following his refusal a year earlier to be inducted into the armed services. Ali, citing conscientious objector status based on his Islamic religious beliefs, was tried and found guilty of draft evasion. His conviction would be overturned in 1971 by the U.S. Supreme Court,<sup>2</sup> but in the meantime, no state would grant him a license to box.

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Portrait of Leroy Johnson, located near the Senate chamber in the State Capitol.

That changed when in August 1970, Robert Kassel, owner of New York-based Sports Action, Inc., called his father-in-law Harry Pett, who lived in Atlanta, to see if an Ali fight could be held in the capitol city of Georgia. Without hesitation, Pett responded, "The man to see about that is Leroy Johnson."<sup>3</sup>

Sen. Johnson recalls the moment vividly. "When Pett called me at my law office to talk about getting a boxing match for Muhammad Ali, at first I didn't think anything about it," he said.<sup>4</sup> "But I told him I would look into it and get back to him." After researching the law, he was surprised to discover that granting a boxing license was within the purview of municipal government. He lit one of his trademark Tabacalera cigars, called Pett and said, "I can get him a license."<sup>5</sup>

Johnson did get the license. Ali would return to the ring. Yet, before "the Greatest" stepped into the ring at the Atlanta Municipal auditorium on Oct. 26, 1970, to regain his title, Kassel had come to learn what so many others already knew; if something needed to get done—or if anything was being done—it was a good bet that Leroy Johnson would be right in the middle of it all making things happen.

It was just eight years earlier that Leroy Johnson had made history with his election to the Georgia State Senate. In 1962 he became the first African-American to be elected to that body since 1868, the era of Reconstruction, and the first to serve in the Georgia General Assembly since 1907, when William Rogers would resign in protest over disenfranchisement laws.<sup>6</sup> His victory at the polls was the result of a series of judicial decisions affecting or directly involving Georgia voting laws. However, when Leroy Reginald Johnson was born on July 28, 1928, in a West End neighborhood of the city, both Atlanta and the peach state were a far cry from the places where he would make history.

### Modest Beginnings

Atlanta in the 1920s was a farrago of progressive inclinations and past infatuations. The city was yearning to be the face of the new South all the while wearing the cloaks of its old customs. A young

## "I THOUGHT DR. MAYS SAW ME!"

In his teens, Leroy Johnson spent a number of weekend afternoons at the Fox Theatre. At that time, black patrons were relegated to the balcony.

"The Sunday before I was to begin my studies at Morehouse College," Johnson recalls, "I did as I usually would. I went to the Fox, paid for my ticket, and went outside and up the stairs to the balcony to watch the show. Dr. Mays had a practice of addressing the students every Tuesday. On that first occasion hearing him speak, I was sitting on the front seat and

Dr. Mays started talking about the evil of segregation saying that it was predicated on one race being better than the other. He said when you pay in the front and go around back you make the admission that the people downstairs are better than you. When he said Morehouse men did not pay for discrimination, I honestly thought that Dr. Mays saw me that past Sunday and was talking to me. After that, I never paid to be treated differently ever again." —Leroy Johnson

Leroy Johnson would likely have been a patron on a segregated bus<sup>7</sup> accompanying his mother, Elizabeth, to a downtown department store where she no doubt would have been invited to a segregated area if she wanted to try on a pair of shoes.<sup>8</sup>

His parents would have had their voter registration cards filed on paper of a different color than their white counterparts to indicate their race and they would not have been permitted to serve on any municipal jury.<sup>9</sup> He definitely endured the disheartening norm of watching a show at the Fox Theatre seated in the segregated balcony,<sup>10</sup> a way of life he says he accepted unconsciously until, as a freshman at Morehouse College, he heard Dr. Benjamin E. Mays admonish the practice.<sup>11</sup>

He credits Dr. Mays with providing the spark to eradicate social injustice and his mentor A.T. Walden with the understanding of the interplay between political activism and legal expertise.<sup>12</sup> "Dr. Mays said that you had to grasp hold of an ideal and be iron-clad and steel girded. I got it in my mind that I

had to do something to eliminate segregation and A. T. Walden encouraged me to attend law school to better equip myself for the effort," Johnson recalls.<sup>13</sup>

It was his work with Walden, a black lawyer who was head of the Atlanta Negro Voters League, where he whetted his appetite for the political process. Walden had him conduct a clinic for black voters on the use of voting machines and in 1954 urged him to attend law school at North Carolina Central University from which he graduated in 1957.<sup>14</sup> After graduation, Walden helped him gain employment with the Fulton County Solicitor (now District Attorney) as a criminal investigator, an accomplishment that made him the first black person in the Southeast to be employed in such a capacity.<sup>15</sup> He would work there for five years until history beckoned.

### Answering the Call

Early 1962 ushered in a wave of momentous change to the electoral contours of the South. Federal courts were

awash in a sea of legal challenges to laws and customs relating to voting and elections. In March, the U.S. Supreme Court determined that the manner in which states conducted reapportionment was a “justiciable question.”<sup>16</sup> The next month, Judge Griffin Bell ruled unconstitutional Georgia’s county unit system, the decades-old noxious method of allocating votes in statewide elections.<sup>17</sup> However, the May lawsuit challenging the inequalities affecting the state Legislature ultimately paved the way for Johnson’s election.<sup>18</sup>

In *Toombs v. Fortson*, the Court examined the history of the Georgia Senate and acknowledged that “for at least the last 125 years election to the Senate has been on the basis of geographical areas, rather than on the basis of population.”<sup>19</sup> Consequently, the Court ordered the General Assembly to reconstitute the Legislature so as to “have at least one house elected by the people of the State apportioned to population.”<sup>20</sup> Besting four primary candidates, Johnson would go on to be elected on Nov. 6, 1962, to represent the people of the 38th District.

Almost immediately, he would feel the burden of being first. In the beginning, “not one senator would even talk to me because of my color,” Johnson remembers.<sup>21</sup> “I would walk down the corridors of the Senate and senators would be coming in the opposite direction and I would say, ‘Good morning, senator, and

the reply would be ‘humph.’” With the give-and-take environs of politics, things changed quickly, especially when the end of the session brought about a flurry of activity to get bills passed.

“The interesting thing was that just before the session ended, some of the same senators who had not spoken to me rushed toward me in the doorway of a committee meeting saying, ‘Senator, I need your vote.’ All of a sudden, I wondered what happened to my blackness.”<sup>22</sup> With aplomb, Johnson would use this moment to negotiate three of his bills out of committee in exchange for his support.

Employing the same stateliness, Johnson would stamp out the ways of color distinction that haunted the halls of the Capitol. He would dine in the state cafeteria. He would have his pages drink from the water fountains reserved for whites until the signs came down. There was no media fanfare, no mass protestation, just his intent and focused efforts. “I felt this was my burden, my duty,” he said.<sup>23</sup>

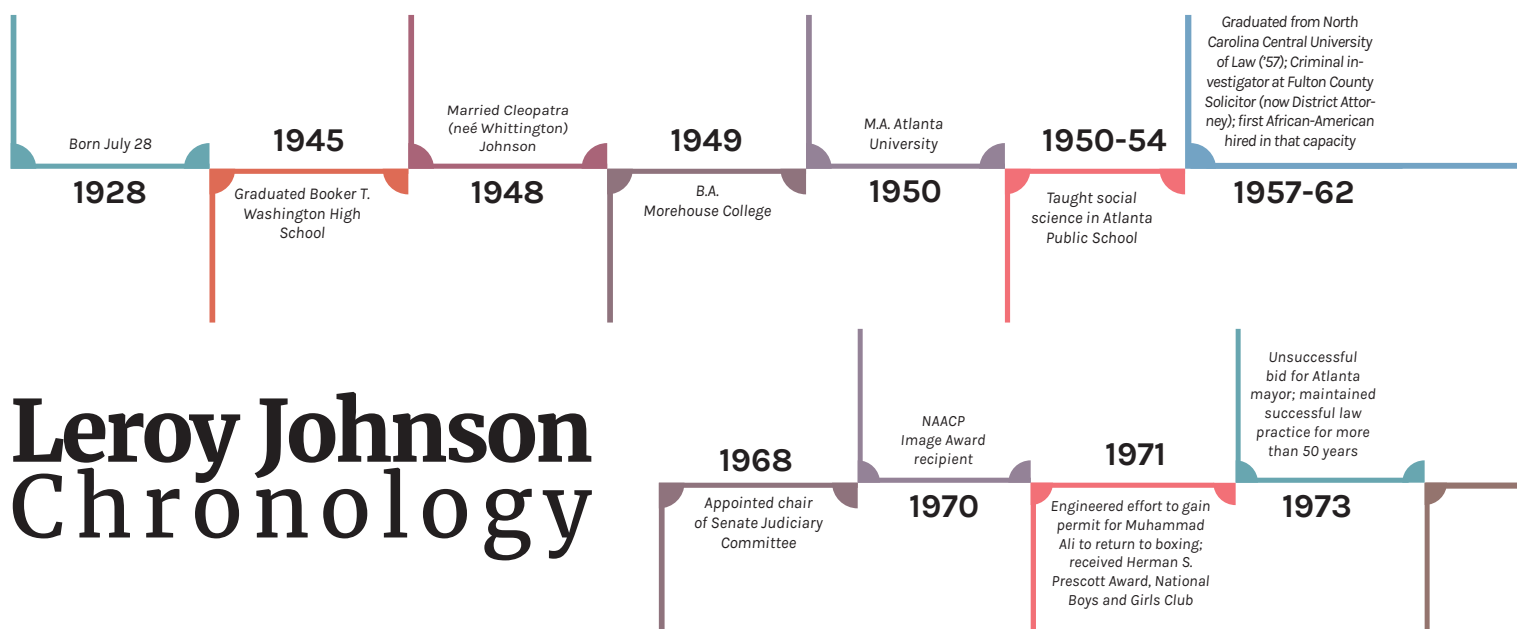
### In the Arena

Equally important, he would push for changes in the law. The gentleman from the 38th (a common practice in the General Assembly is to refer to a representative by his or her district) spearheaded the effort to repeal the constitutional amendment to block school desegregation.<sup>24</sup> He

would also play a key role in reducing the impact of the recommendations of the Election Laws Study Committee that would have enacted harsh voting practices to the 1964 election code.<sup>25</sup>

Later, Johnson would see adopted legislation he sponsored; bills that pressed for the dignity of others that he sought for himself. Among them were bills that removed from the tax digest all references to race and a measure that prevented personal property from being placed on the street when a dispossessionary warrant was executed. In addition, he advocated for a moratorium on the imposition of the death penalty and a bill that sought the teaching of Negro and other minority history in the public schools. One of his finest hours came when he single-handedly defeated the “Abolish Atlanta bill.”<sup>26</sup>

Dexterity for negotiation and a knack for making things happen became a trademark for Leroy Johnson. He honed his innate ability to find consensus where he could broker a compact with friend and foe alike. One legendary example occurred when the Senate was considering changing its rules to strip the lieutenant governor of the conventional power of appointing committee chairs. Johnson became a central figure in thwarting this effort, and as a result, he was named chairman of the Senate Judiciary Committee—another first—by an appreciative Lt. Gov. Lester Maddox. Time and again, he would summon these





negotiating skills, all of which were on full display when he got the support of both Maddox and then-Mayor Sam Massell to secure the Ali fight.

## At the Bar

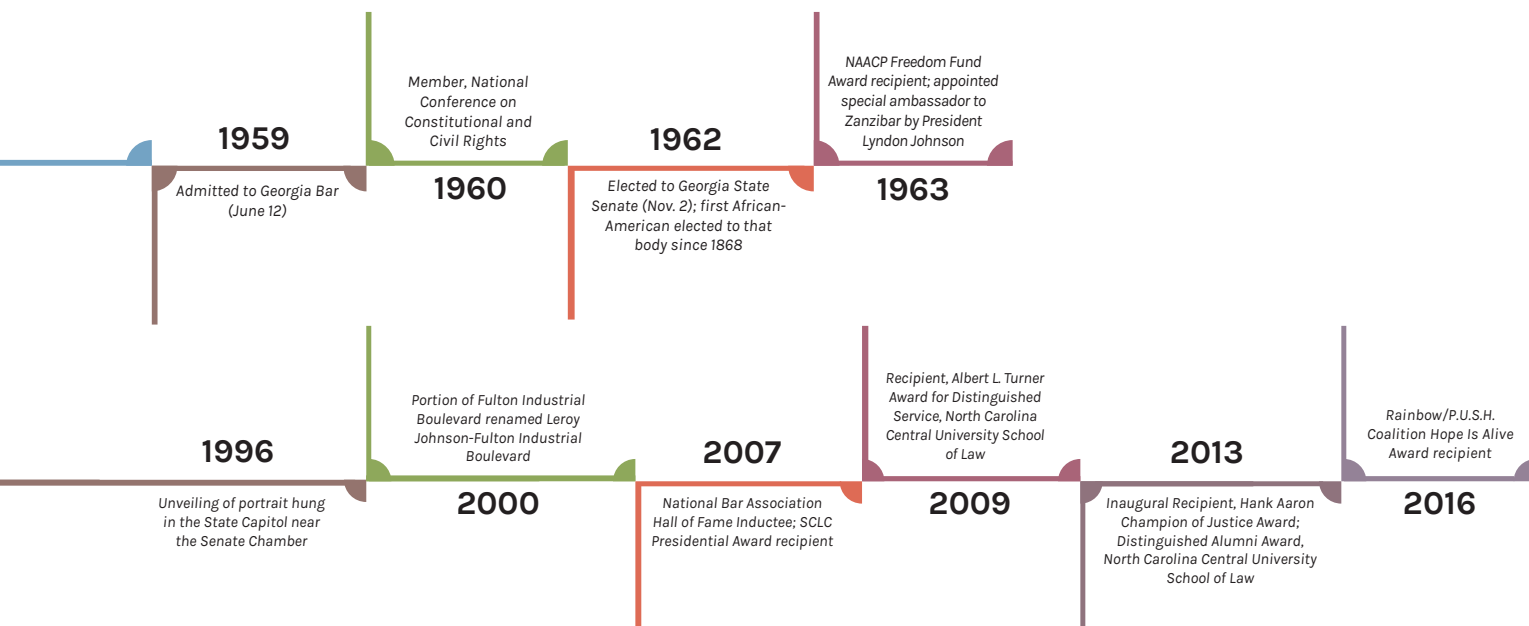
His reputation in the public arena is the stuff from which legends are made. He has been called a “gifted politician”<sup>27</sup> and “the closest thing to a political godfather in the black community.”<sup>28</sup> Yet, it would be a mistake of mammoth proportion to overlook the work of Leroy Johnson, attorney-at-law. “While he made a tremendous impact during his years in the Legislature,” says Marvin S. Arrington Sr., retired Superior Court judge and former president of the Atlanta City Council, “his most lasting contribution might be the leadership he provided young black lawyers.”<sup>29</sup> Clarence Cooper, senior judge for the U.S. District Court for the Northern District of Georgia agrees.

“His reputation as a political powerhouse overshadowed the fact that he had a keen legal mind,” says Cooper, who worked as a clerk at Johnson’s law firm while in his third year at Emory University School of Law.<sup>30</sup> “He had a presence in the courtroom and he was comfortable in the courtroom. I learned so much about politics and law from him, but what I remember most was his tremendous legal mind and skills.”<sup>31</sup>

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(Left to right) Atlanta Mayor Sam Massell and Leroy Johnson.



He would employ that acumen in his law practice—Leroy Johnson and Associates—for nearly 50 years, and it benefited those seeking representation and counsel in the areas of probate and estate, criminal, domestic relations and personal injury. During this time, his clients included James Brown, Johnny Taylor and Otis Redding. One of his most memorable cases, however, he says is one “I thought I had to take because of the imbalance of power.”<sup>32</sup>

lieved that their loved one had obtained justice when it appeared all hope was lost.

### Still Going Strong

The man who *The New York Times Magazine* once called “the single most powerful black politician in Dixie”<sup>33</sup> has been feted with numerous awards and honors, including the inaugural Hank Aaron Champion for Justice award, an NAACP Freedom Fund award, having a street named

wife of 68 years, who earned her doctorate in communications from Georgia State University), go to law school and become a lawyer, run for the Georgia State Senate and get Muhammad Ali’s boxing license.<sup>35</sup>

Perhaps, however, a tribute from a former governor and past member of the State Bar of Georgia is most revealing. On reflecting of the tumultuous 1960s Carl Sanders offers a striking reminder of Johnson’s legacy. In a letter to Johnson thanking him for his comments about Sanders to Georgia Public Television, Sanders wrote:

You were there, my friend, and helped as much as anybody I know to create an orderly atmosphere in Georgia in the Sixties. Those were perilous times . . . without your help and guidance, the peaceful transition within our public schools and public institutions could never have taken place. Your career in public life is another good example of what can be accomplished when you concentrate on the positives and eliminate the negatives.<sup>36</sup>

We have today more than a fair share of nettlesome legal, political and cultural issues that strain and groan for sensible resolution. Sadly, far too many of them bear a more than faint resemblance to the ones Leroy Johnson confronted as a young college student, a gifted lawyer and a seasoned, ground-breaking lawmaker. A few even hint at those “perilous times” Sanders referenced. However, we can derive comfort from some advice Sen. Johnson gave a group of college students in 1967; counsel that is worth remembering—and practicing—today.

“But above all, let us meet this challenge as one people—not two—there must be only one America. It is up to all of us to make it so.”<sup>37</sup> ●



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(Left to right) Vice-Mayor Maynard Jackson, Sen. Leroy Johnson and Muhammad Ali (circa 1970).

In this case, Johnson obtained an acquittal for a young black man accused of attacking four police officers while in custody. After the outcome of the weeklong trial, conducted near the Georgia-South Carolina border, a group wanted to showcase the black lawyer who got a favorable verdict from an all-white jury in representation of a black defendant accused of assaulting white police officers. But what really satisfied Johnson was the visit paid to his office by the client’s mother, sister and other family members who were re-

after him and having his portrait placed near the Senate chamber in the State Capitol. Most recently, he was presented the Hope Is Alive award.

Yet, of himself he says he was just “one who sought to prove that if given the opportunity the ceiling would not fall in, the chairs would not disintegrate” and “one who changed the impression” of black people’s capabilities.<sup>34</sup> Most interestingly, he points with pride to what he calls “the five greatest decisions I ever made: attend Morehouse College, marry Cleopatra (his



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9. *Id.* at 58, 59.
10. *Id.* at 45.
11. *Supra*, note 4. See also, A Senator Reveals his Source of Inspiration, Posting of Charles S. Johnson to Voice of Experience, <http://voice-of-experience.blogspot.com/2012/1/senator-leroy-johnson-credits-benjamin.html>.
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13. *Id.*
14. *Supra*, note 4. LESHER, *supra* note 3, at 35.
15. *Id.*
16. *Baker v. Carr*, 369 U.S. 248 (1962).
17. *Gray v. Sanders*, 203 F. Supp. 158 (1962). The Neill Primary Act, Ga. L. 1917, p. 183, Ga. Code. §§34-3212-3218, established the County Unit System. Under this method, population in all 159 counties was classified into one of three categories: urban, town, and rural. Urban counties received six unit votes, town counties were allotted four unit votes, and rural counties got two. Based on statewide population, rural counties controlled primary elections and statewide contests. For an excellent historical description of the county unit system, see, Gray at 161-164. Georgia-born Griffin Bell was appointed Judge to the Fifth Circuit of the United States Court of Appeals in 1961 by President John F. Kennedy serving until 1976. He was later appointed the 72nd Attorney General of the United States by President Jimmy Carter, holding that post until 1979. He died in 2009.
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# Georgia's BASICS Program: A Continuing Testament to Our Enduring Commitment to Justice

BASICS—Bar Association Support to Improve Correctional Services—is designed to offer a helping hand, not a handout. Help support BASICS by attending their Gala & Silent Auction on March 4.

BY TARA LEE ADYANTHAYA



PHOTO BY MICHELLE J. MENIFEE

**We all make bad decisions, but some** decisions yield greater consequences: lasting harm to others, a downward spiral, financial ruin, lost relationships, lost support systems and/or jail. A benefit of facing the consequences is that, done properly, you can seek redemption and forgiveness and earn the chance to move past the circumstances that caused the need for redemption. How can you help people make the most of their shot at redemption? The State Bar of Georgia has been actively supporting that effort for the last 40 years.

Moving past circumstances sometimes requires a helping hand: a hand to pull you up, not a handout. The State Bar's BASICS program—Bar Association Support to Improve Correctional Services—provides that service. BASICS is a 10-week rehabilitation program for both male and female state prisoners. They become eligible in

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(Left to Right) BASICS Founder/Director, the late Edward "Ed" Meniffee, with instructors Linda Cannon and Ron Agee.

the year before their release. Its mission is to help participants rehabilitate by replacing dysfunctional habits with life-enhancing skills. BASICS is designed to offer a helping hand to increase the likelihood that people who have completed their sentences are in a position to move forward as productive citizens. Students are taught to develop career, education and/or work plans, prepare resumes, set goals and develop interview skills. After graduation, BASICS assists with job research, applications for colleges or vocational schools, completing or changing personal action plans, and developing financial plans. The goal is to lower the recidivism rate and help each person meet his or her full potential as a contributing member of society. The success of this program is in all of our best interests.

### Brief History of the BASICS Program

The BASICS Program was initiated in 1976 by the American Bar Association in answer to a Supreme Court challenge to attorneys to have a more active role in criminal reform. About 22 bar associations around the country started BASICS programs. Forty years later, Georgia's program is the only one remaining. We have much to be proud of in this regard.

BASICS is offered at 21 correctional facilities throughout Georgia and has graduated more than 13,000 participants in 40 years. According to the most recent statistics, 85 percent of BASICS graduates have not been reconvicted after three years.<sup>1</sup> The BASICS program hopes to improve tracking of graduates going forward when more resources become available. Another value of the program can be found in comparing the yearly cost of a person in the program to that of one who is incarcerated. The cost per person to implement the BASICS program varies slightly from year to year, usually \$300-\$400. Conversely, the yearly incarceration cost per person ranges between \$18,000-\$25,000.

### Ed Meniffee's Legacy

For the late Ed Meniffee, a founding father of the BASICS program, every



PHOTO BY ISAIAH "IKE" WASHINGTON

The Meniffee Family (back row, left to right) Nicholas Meniffee, grandson; Illya Meniffee, daughter; Michelle Meniffee, wife; and Terese Meniffee, daughter; (middle row, left to right) Edward "Chief" Meniffee Jr., son; Ed Meniffee, founder; and Joshua Meniffee, son; (front row, left to right) Teyahni Meniffee, granddaughter; Evan Meniffee, grandson; and Drew Meniffee, granddaughter.

day was the best day of his life. Each day was a new day and another chance to get it right.<sup>2</sup> He was a man deeply committed to his community, a man of action, not just words. In the 1980s, Meniffee founded the Southwest Atlanta Youth Business Organization. Known as SWAYBO, its mission was to teach young people between the ages of 12 and 18 about business, finance and free enterprise. Participants learned how to start their own businesses and a productive way of life. Meniffee's mission—to empower everyone to motivate themselves and make their community

better—extended to his involvement in the BASICS program. After his death in 2014, Michelle Meniffee, Ed's wife, said she believes all of her husband's work will continue. "He empowered enough people in the community that these things will live on."<sup>3</sup>

### For Some, Their First Graduation

It was a joyous occasion the Friday before Thanksgiving at the Metro Women's Transitional Center. About 40 women graduated or received participa-

## 2016-17 BASICS Committee

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tion certificates from the BASICS program. They marched in caps and gowns past loving family and friends who came to see them graduate. Also present were members of the BASICS Committee and then-State Bar President Patrise M. Perkins-Hooker, who presented the commencement address.

The graduates planned the entire program. Class leaders made heartfelt remarks, sang songs that had special meaning to them and performed dances choreographed to express emotions for which there were no words. It was clear that bonds had been formed and confidence had been nurtured. There was hope for a better future. The two women who oversee BASICS, Michelle

Menifee and Cheryl Smith, were smiling, eloquent and energetic as they began the program.

### Masters of Strength: Only the Strong Survive

For me, the most spectacular moment of the Nov. 21 graduation came when two women stood at center stage to sing Jessie J's "Who Are You?". They had planned to sing with recorded accompaniment, but interference from the microphones was making it impossible. The frustration was palpable. After several failed attempts, it appeared they were going to give up. I was sad because I could tell from an earlier performance that this display was not indicative of their talent. But then one of the women breathed deeply, looked commandingly at the person who was handling the audio, and indicated that they were going to sing the song a capella. The audience began clapping in rhythm as each woman sang her part beautifully, including lyrics that may resonate with many lawyers:

I stare at my reflection in the mirror:  
"Why am I doing this to myself?"  
Losing my mind on a tiny error,  
I nearly left the real me on the shelf.

It was a triumph. In a single performance, they captured the importance of what the BASICS program teaches—resilience, confidence in taking charge and figuring out how to make the best of a bad situation. These are all qualities some of us take for granted, but no small feat for many.

### I Am Somebody Special.

"I am somebody special." During the ceremony, both the graduates and the audience were asked to repeat this affirmation many times. This is something that the Menifees want to instill in the BASICS participants. I watched the faces of the women as they repeated this phrase. Their smiles and energy evidence that this program made them feel special. In a cynical moment, one might think, "If everyone is special, nobody is really special."

After spending an evening experiencing a sliver of what the Menifees and the State Bar have fostered, I am convinced that each woman who graduated that night is indeed special, and so is the program that brought me together with them. We must work hard to grow this program that has helped so many.

### Forty Years and Beyond— Reintroducing Productive Community Members

BASICS needs our support to continue. Please join the BASICS Committee for our inaugural Fundraising Gala & Silent Auction celebrating 40 years of BASICS at Druid Hills Golf Club on Saturday, March 4, at 6:30 p.m. There will be dining, dancing and performances by program graduates. CNN Anchor Fredericka Whitfield will serve as the master of ceremonies and special honoree Gov. Nathan Deal will receive an award for his commitment to criminal justice reform. For more information on sponsorship opportunities, ticket purchases and how to donate items for the silent auction, contact BASICS at 404-691-9993 or [www.gabar.org](http://www.gabar.org).



**Tara Lee Adyanthaya** owns TLA Healthcare Ethics Consulting & Mediation, LLC, and is special counsel in the health care group at Morris, Manning & Martin, LLP. She graduated from Boston College, and has a J.D. from the Mercer University Walter F. George School of Law and a Masters in Bioethics from the University of Pennsylvania School of Medicine.

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# Leveraging State Bar Resources to Strengthen Resilience

Lawyers typically test low for resilience, but the trait can be learned. The State Bar of Georgia provides resources to help lawyers do and be their best.

BY MICHELLE E. WEST



PHOTO BY ISTOCK.COM/ PAMELAJOEMCFARLANE

**The beginning of the year can be as stressful as the end.** With the holidays behind us, many now set out to make the year their best ever. In doing so, sometimes we really pile it on. We become true *resolutionaries* as we begin a new journey to conquer our worlds. As objectives for the year are established, goal-setting is essential. However, it is also important to include and acknowledge our victories. As we chart the course against many unknowns, it is our triumphs that provide an anchor in times of challenge and adversity.

Resilience is the ability to recover from difficulties, and continue to grow and joyfully thrive in the face of it all. The stress imposed by the legal profession warrants the need for a high level of resilience. Surprisingly, lawyers rank lower on the resilience scale than the average person. Lawyers rank in the 30th percentile for the psychological trait of resilience, while the average person ranks in the 50th percentile. The five most common adjectives used to describe lawyers by non-attorney peers are: cynical, skeptical, critical, pessimistic and negative.<sup>1</sup> The preceding information garnered from Dr. Larry Richard's studies on resilience offers a starting point from which to train, learn and grow.

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Resiliency is not a static trait. It can be taught, but there are innate characteristics that contribute to our level of resilience, which are “hard-wired” into us as humans. Some of these “self-righting and transcending” protective traits are: service, life skills, optimism, love of learning, creativity, persistence, self-motivation, perceptiveness, self-awareness and relationship-building.<sup>2</sup> Regardless, opportunities are always present to further cultivate, develop and strengthen these factors based upon our overall practice of well-being and how we confront our challenges.

Just as we practice law or train at the gym, we can strengthen our well-being and resilience capacity. Resilience can be furthered bolstered when individual traits work in tandem with external factors to increase the propensity toward the trait. Outside supports and opportunities can range from supportive programs and engaging educational seminars to opportunities to give back and initiatives for self-awareness. By virtue of your State Bar of Georgia membership, access to external opportunities to aid in the cultivation or reinforcement of resilience is at your fingertips.

The State Bar of Georgia has made wellness a priority for its members. The State Bar’s Wellness Committee works to assist lawyers with resources that will increase their sense of well-being. In addition to CLEs, programming and activities, the website [www.lawyerslivingwell.org](http://www.lawyerslivingwell.org) serves as an interactive guide to provide quick and easy access to information geared toward increasing wellness.

Additionally, as an emotional resource, the Lawyer Assistance Program provides free independent, confidential counseling

assistance to attorneys whose personal challenges interfere with their professional responsibilities. Such challenges may include stress, chemical dependency, domestic issues, and mental or emotional impairment. Certified and licensed mental health providers administer these services through an independent crisis mediation and counseling center. Bar members may receive up to six clinical sessions per condition or concern each year. Referrals to a wide range of public and private resources are also available. The confidential hotline can be reached at 800-327-9631.

The pressure of an attorney’s practice schedule sometimes leaves limited time for comprehensive firm management. This contributes to the stresses of running a law office. The Law Practice Management (LPM) Program houses a comprehensive and robust library of practice management and legal technology resources, which can be borrowed or reviewed onsite. These resources have been vetted so as to limit the need for extensive research from our attorneys. LPM also provides free or low-cost on-location law office management consulting to Bar members and their staff to aid in the efficiency of running a practice. All services provided by the program are confidential. Call 404-527-8772 to take advantage of LPM’s services

There are numerous volunteer opportunities available throughout the community; however, there are times when the logistics of volunteering can be overwhelming. The State Bar provides many ways to give back to the community and the profession. The Military Legal Assistance Program (MLAP) provides Bar members with the opportunity to assist veterans with their legal needs by providing pro bono or reduced cost legal services. Retired military service members with varying legal needs are connected to lawyers in their geographic areas. MLAP can be reached at 404-527-8765.

Additionally, the Pro Bono Resource Center co-sponsored by the State Bar and the Georgia Legal Services Program provides support to legal aid and pro bono programs through the involvement of the private bar. The center assists with information on additional volunteer opportunities available to attorneys. It also

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By virtue of your State Bar of Georgia membership, access to external opportunities to aid in the cultivation or reinforcement of resilience is at your fingertips.

provides technical assistance to the courts and local bar associations looking to develop or revise a pro bono program. The Pro Bono Resource Center can be reached at [probono@gabar.org](mailto:probono@gabar.org).

The Transition Into Law Practice Program (TILPP), also known as the Mentoring Program, satisfies the mandatory continuing legal education requirement for all beginning lawyers newly admitted to the State Bar of Georgia. TILPP consists of both continuing legal education and mentoring. The program seeks to provide an opportunity and forum whereby practical skills, professional judgment and sensitivity to ethics are explored and developed. Experienced lawyers have the opportunity to mentor new lawyers or contribute to the program by participating as speakers at various seminars. Interested in being a TILPP speaker or mentor? Please call 404-527-8704 or email [tilpp@gabar.org](mailto:tilpp@gabar.org).

The State Bar of Georgia has 48 sections, which provide service to the legal profession and the public. Membership in sections allows you to be an active participant in sharing information regarding a particular area of the law. Sections afford the opportunity to work with other practitioners in the exchange of ideas, creation of programs, newsletter publishing and influencing legislation. For questions about sections, email [derricks@gabar.org](mailto:derricks@gabar.org).

In life, we will continue to face stressors and challenges. However, it is how we chose to live our daily life, which will assist us in confronting adversities as they arise. The key to resilience is well-being, and the key to well-being is resilience. In the midst of our hectic schedules, we must remember to search inward and draw from our arsenal of strengths and look outward for available support systems. A managed and introspective life generates satisfaction, fulfillment and purpose, which promotes well-being and resilience. Cultivating resiliency skills fosters collaboration, compassion, engagement, joy, diplomacy, optimism, hope and trust. Resiliency is about more than just surviving; it encompasses thriving while still maintaining a capacity for joy. ●



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#### Individual Traits that Facilitate Resilience

Relationships  
Love of Learning  
Service/Helpfulness  
Flexibility  
Life Skills  
Self-Motivation  
Humor  
Competence  
Inner Direction  
Self-Worth  
Perceptiveness  
Spirituality  
Independence  
Perseverance  
Positive View of Personal Future  
Creativity  
Flexibility

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# The State Bar of Georgia Diversity Program: Fueling the Pipeline and Looking to Future Generations of Lawyers to Lead the Profession

The State Bar of Georgia Diversity Program works to introduce high school students to the law, and create opportunities for attorneys to incorporate diversity into their practice.

BY MARIAN COVER DOCKERY



PHOTO BY ROGER WASHINGTON

The 2016 Pipeline students pose after the oral and written competition hosted by Sutherland. (Front row, left to right) Darius Logan, Keila Hewits, Shakeidra Tucker, Keyrell Wingfield, Jordan Patten and Malik Bells; (back row, left to right) Jordan Hartgens (2016 Pipeline instructor), Quincy Jean-Louis, Alisha Chranya, Tyler Henderson, Ardrianna Caldwell, Sierra Woodard, Oucté Wright, Reghan Lewis and Ayanna Gaines.

Nine years ago, members of the Georgia Diversity Program (GDP) Steering Committee decided to launch a program for high school students who desired to attend law school. Realizing that most high school students do not have long-term career goals etched in stone, the program evolved into an opportunity to expose the attendees to successful attorneys, to provide students advice on preparing for college, and teach skills on properly handling credit, using social media and understanding dining room etiquette. Students learned study techniques, and strategies on preparing for the college application process as well as the critical skills of grammar, writing and public speaking to improve their academic performance. Approximately 200 students have participated in the Pipeline Program since it was launched. Not only do the students benefit from the nine-day program, but the pipeline instructors and program volunteers benefit as well. Over the years, pipeline instructors and volunteers have continued their legal education

at Harvard, Cornell, Howard, University of Pennsylvania, Georgia State, Duke and American University. Former pipeline students attended the University of Georgia School of Law; and one recent Georgia Tech graduate is pursuing a Ph.D in Engineering and plans to attend law school upon completion of his studies.

The 2016 program was held May 31 - June 10, and was sponsored in partnership with Atlanta's John Marshall Law School and the Leadership Institute for Women of Color Attorneys, Inc. (LIW-OCA). Fifteen students participated and included: Malik Bells (South Atlanta), Ardrianna Caldwell (Langston Hughes), Alisha Chranya (Woodward Academy), Armani Dabney (Westlake), Ayanna Gaines (Wheeler), Reghan Lewis (Cherokee), Darius Logan (Arabia Mountain), Keila Hewits (Union Grove), Tyler Henderson (Pace Academy), Jordan Patten (Our Lady of Mercy), Quincy Jean-Louis (Jonesboro), Shakeidra Tucker (South Atlanta), Keyrell Wingfield (North Atlanta), Oucté Wright (South Atlanta) and Sierra Woodard (Arabia Mountain).

Daily instruction included grammar and writing courses taught by 2016 instructor Jordan Hartgens, and speech classes with volunteer attorney coaches. The daily schedule included lunch hosted by the GDP sponsors at their firms or corporate law offices where lawyers engaged the students in a variety of exercises and presentations ranging from dining room etiquette to social media etiquette. Members of the GDP's Steering Committee recruited volunteers from their law firms and law offices who evaluated three-minute speeches prepared by the students daily on a different topic. The final day of the program, students competed in an oral and written competition on the topic "Affirmative Action: What Is It and Should It Be Part of the Selection Process?", judged by James Johnson, of counsel, Sutherland; Anandhi Rajan, partner, Swift Currie McGhee & Hiers; and Andrew Stevens, associate, Arnall Golden Gregory. The winners were: Tyler Henderson, Pace Academy, first place; Jordan Patten, North Atlanta, second place; and Quincy Jean-Louis, Jonesboro, third place. Special thanks to LIWOCA,



PHOTO BY ROGER WASHINGTON

(Left to right) The 2016 oral and written competition judges: James Johnson, of counsel, Sutherland; Anandhi Rajan, partner, Swift Currie, McGhee & Hiers; and Andrew Stevens, associate, Arnall Golden Gregory.

## Thoughts from the Pipeline

"I want to extend my sincerest thanks to you for giving me the opportunity to work with the Pipeline Program this summer. It has truly instilled in me a desire to pursue a career in law. Witnessing all of the African-American lawyers in positions of prestige was truly inspiring. This was such a great professional development opportunity for me..." —**Jordan Hartgens, 2016 Pipeline Instructor**

"I enjoyed every second of it and learned a lot. I can't wait to tell my friends about it. Thank you!!" —**Jordan Patten, 11th grade, Lady of Our Mercy**

"Thank you for allowing us to participate in the Pipeline Program. I enjoyed all of the various law firms we visited. I learned so much from *How to Select a College* and *How to Use Credit*." —**Sierra Woodard, 9th grade, Arabia Mountain**

"... It is apparent to me that I had no idea what I was doing before this camp, but at least now I have a head start in preparing for the rest of my life." —**Tyler Henderson, 9th grade, Pace Academy**





Clyde Mize Jr. with Moanica Caston before their conversation about generational differences in the workplace begins.



Kelley Park, senior vice president, Inclusivity and Human Services, Southwire Company LLC, presents the keynote luncheon address.



Members of the afternoon roundtable (left to right): John Lewis Jr., moderator; Hon. Asha Jackson, Wab Kadaba, Sherry Boston and Leo Reichert, panelists.

who funded the monetary awards for the three competition winners and graduating senior Ayanna Gaines.

Pipeline students had the privilege of attending a sentencing hearing at the Fulton County Superior Court where the Hon. Kimberly Esmond-Adams presided. Esmond-Adams took the students to the holding cells where each defendant waited to be sentenced. Another highlight of the program was the speech workshop held at the Alliance Theatre coordinated by GDP member Rick Goerss, former chief privacy officer of Equifax and member of the Alliance Board, and Chris Moses, director of education and associate artistic director, The Alliance Theatre. Actors J.L. Reed and Vallea E. Woodbury led the students in creative activities to improve their presentation skills. And on the final day, Kilpatrick Townsend & Stockton LLP hosted a closing party for the students and parents.

Thanks to our GDP sponsors, the attorneys, firm administrators and the many volunteers who make this program a success every year (see page 49). In 2017, we look forward to celebrating 10 years of mentoring, instructing and inspiring high school students.

## 24th Annual State Bar Diversity CLE and Luncheon

The State Bar of Georgia presented its annual diversity program on Sept. 22, 2016. "Generational Diversity: Techniques and Strategies on Managing Diversity of Generations in the Workplace" was a timely topic that produced quality discussion and provided attendees with a number of real-life solutions to take back to their law firms and practices.

The morning session featured a conversation with Moanica Caston, vice president, Diversity and Inclusion, Georgia Power, led by GDP Chair Clyde Mize Jr., partner at Morris, Manning & Martin, LLP. It highlighted the ways millennials challenge their baby boomer and GenX managers and discussed strategies millennials must take to ensure success in the workplace without compromising the technological skills



they bring to the table. The discussion groups that followed continued speaking on the issues raised by Caston, who drew upon hard data and her experiences in her role as diversity and inclusion vice president on what GenXers expect in the workplace and how millennials deliver.

The second session of the morning was a roundtable featuring Hon. Asha Jackson, Superior Court, DeKalb County; Wab Kadaba, chair, intellectual property department, Kilpatrick Townsend; Leo Reichert, executive vice president and general counsel, Wellstar Health System; moderated by John Lewis Jr., partner, Lawrence & Bundy, LLC. The roundtable members had interesting and differing perspectives on how each generational group approaches a number of situations and variables, including dress code, the ability to work from home and the use of technology.

Keynote Speaker Kelley Park, senior vice president, inclusivity and human services, Southwire Company LLC, presented a comprehensive overview of millennials' and baby boomers' expectations in the workplace and a profile of the generation that will, in a few years, manage our law firms, lead our corporate law offices and run our government entities. Her presentation brought life to the perspectives and approach of baby boomers to challenges in the workplace that differ from the approach of their senior baby boomer co-workers and managers.

The program provided an intriguing perspective on how the future will unfold with millennials at the helm, their perspective on the world, and how the GenXers and baby boomers can assist them in their future success. ●



**Marian Cover Dockery**

Executive Director, Diversity Program  
State Bar of Georgia  
lexikonmcd@aol.com

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## A Conversation with Chief Justice P. Harris Hines

BY JACOB E. DALY

In this installment of the Georgia Lawyer Spotlight, Editorial Board Member Jacob Daly interviews Chief Justice P. Harris Hines, who was sworn into office Friday, Jan. 4.

***What are the policy objectives that you have for the judiciary during your term as chief justice?***

One of the things that I would like to see would be an emphasis on our “courts of first resort.” Municipal courts, magistrate courts, probate courts and juvenile courts—a lot of people come to those courts, and they are in many ways the face of the judiciary. When I was a superior court judge, I saw many more

people—jurors, parties, witnesses, lawyers—than I have seen since I’ve been on the Supreme Court. Those courts need some help and some resources, and I hope I can speak on their behalf to do that. They are doing a good job, but quite often they are understaffed and dealing with a large volume of people. We need to find a way to get more law clerks to our trial-level judges. The law is complex, and we are seeing more and more self-represented persons, particularly in domestic cases. We have child support guidelines and a lot of forms that need to be filled out, and it is difficult to preside over a contested hearing when one party is not represented by counsel, and so I

think one way is to get some more law clerks to these judges. Finally, we need to bring more technology to the courts.

***In addition to providing more resources, including law clerks, for our “courts of first resort,” what does the judiciary need from the Legislature in order to maximize its effectiveness?***

We need to look carefully at how judges are compensated. Do I think that some of the salaries should be raised? Yes, I certainly do. I also think we need to look at bringing uniformity to our trial judges’ salaries.

***What about additional judgeships?***

I would like to see a movement toward full-time judges as much as possible, particularly in the juvenile courts. Juvenile law is complex, and juvenile courts deal with complex problems, such as children who have psychological problems and children who have aged out of foster care. This is an area where full-time judges are needed very much. As for other trial-level judgeships, we need to look at how they are apportioned and where they should be. There may be a situation in the future where a judge retires but we don’t need to fill that judgeship because of the workload. But another place may need more judges, so we need to be honest and look at the apportionment of judges throughout the state.

***You served about 20 years as a trial judge, and you’ve now served a little more than 20 years as an appellate judge. Is there anything you miss about being a trial judge?***

I miss the interchange with the attorneys and the public as well as the atmosphere of the courtroom. Here at the Supreme Court, we do not see near as many attorneys. I probably saw more attorneys in

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one day on the superior court bench in Cobb County for a calendar call than I see in three months here. So I do miss that part very much.

***What qualities do you think make for good trial judges and appellate judges?***

A lot of the qualities are overlapping or are the same, but there are certain differences. One, anybody who believes trial judges engage in a slow, reflective process is not thinking accurately. Things come at trial judges every day, and so it is fast paced. For both types of judges you hope to have bright people, people with ability. But on the trial bench we need people who can think quickly and clearly. One of the most important things a trial judge needs is the ability to decide. Parties and lawyers want decisions made timely and quickly, and so the trial bench is a tough place for a person who has a hard time making decisions quickly. Also, all judges need to have courage. Socrates said four qualities belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially. Of those four, only one takes real ability, and that is to answer wisely. Trial judges have to make decisions out there, and those decisions take courage. But sitting on an appellate bench is a more reflective situation, and appellate judges have to have the ability to delve deeper into issues. One of the most difficult things for a trial judge is how to exercise discretion, especially in sentencing. You have to treat people fairly even when they haven't been fair to other people. One of the critical things appellate judges have to do is make tough decisions when deciding between two correct principles. Also, in a lot of our cases we may be establishing precedent that will be really important for an area of the law.

***How does the Supreme Court of 1995, when you were appointed, compare to the Supreme Court of 2017?***

I've been blessed to serve on good courts. They are very similar as far as the attitudes and thought processes of the justices. One of the differences is that some of the justices who are coming on now have not served on a trial bench, whereas some of the other ones had. So that's a difference, but let me say this—the people that are coming on this bench now are extraordinarily bright, they are hard workers and they will be good colleagues. We have always had a collegial bench. We may differ on certain aspects of the law, which is as it should be, but the collegiality has been tremendous. Our newest colleagues, Justices Grant, Boggs and Peterson, are good people and bring tremendous intellect to the Court. Another change is that we're having more people who have had federal clerkship experience on a high level, so they have had a chance to look at the law from courts right below the U.S. Supreme Court. Because of these differences, I think it's going to be a great combination of backgrounds. I know my colleagues work hard, and I know they want to get the right answer. Sometimes we differ on what the right answer is, but the collegiality will be fine.

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We have always had a collegial bench. We may differ on certain aspects of the law, which is as it should be, but the collegiality has been tremendous.

—Chief Justice P. Harris Hines



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***Given that you were appointed to two of your judicial positions and won an open election for the other, how do you feel about the way Georgia selects judges?***

I think the appointment process has worked well, but I also believe in the election of judges. I think the terms should be long enough to reduce the pressure that comes from having to decide a highly charged, political issue. But let me say that if you can't stand the heat, you need to get out of the kitchen and not be a judge. I think both methods have merit, but we should not have judges who are appointed and never stand for election, so maybe we do it a pretty good way now. I do think the judiciary should ultimately be answerable to the people. I would probably make the appellate court terms a little longer and the trial court terms a little longer too. But I do think the electorate needs to have at some time an opportunity to express approval or disapproval of a judge. I think that's important. I have faith in the electorate.

***What are some of the responsibilities of the chief justice that most people do not see?***

One of the things I think all judges see today is the increasing administrative demands. Members of the Supreme Court are liaisons to many commissions and committees of the Administrative Office of the Courts, the judicial council and the Bar, and one of the roles of the chief justice is to make sure those appointments are made. So some of the responsibilities that people do not realize are the tremendous administrative responsibilities the chief justice has. I didn't anticipate that when I came up here, but it is a lot. You set schedules, and you know we now have nine members, so you try to accommodate as much as you can the members of our Court when determining the dates that arguments will take place, the dates that bancs will take place and which cases are voted out and the membership of committees and commissions. Also, the chief justice is the principal spokesperson for the Court.

***What advice do you have for practitioners in the Supreme Court?***

I would try to narrow the issues that I thought were my best issues and argue

them. I wouldn't try to give it a shotgun approach. I would give it a more concise, surgical approach. The other thing I would do is address contra authority head on. Even if the law is not on your side but you think it should be, then give a policy reason why you think maybe it should be changed. While some decisions may be adverse to you, you should address them head on, and if you have to make a policy argument, be candid with the Court. The Legislature makes the law, and we interpret the law. I believe in the separation of powers very much, but the common law is judge-made law, so when you have that I think you can argue policy.

***You've been an advocate for children's issues, and you recently received an award from the Voices for Georgia's Children recognizing your work in this area. Why has this been so important to you?***

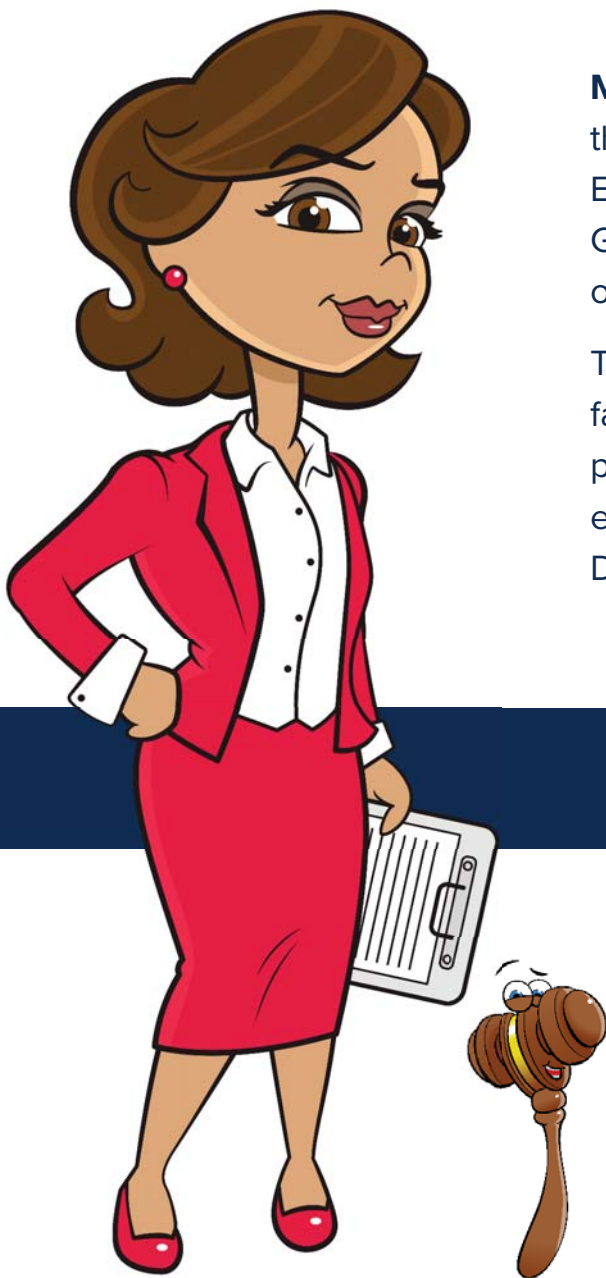
I was blessed to come up in a wonderful household. I had a deliriously happy childhood. It was all sunshine, green grass, roses, apple pie, hot dogs and baseball. My parents, I knew they loved me. They loved each other and respected each other, and they respected me and I respected them. I was taught early on that I wasn't better than anybody else and that nobody was better than me. Then I saw bad things once I was in the judiciary. I have never been able to understand how somebody could harm a child. It's hard to comprehend. I have seen horrible things happen to children, and I thought if I could have some small part in making the lives of children better, I want to do it. ●



**Jacob E. Daly** is of counsel with Freeman Mathis & Gary, LLP, in Atlanta and a member of the *Georgia Bar Journal*

Editorial Board. He represents private companies, government entities and their employees in personal injury litigation with a focus on defending property owners, management companies and security companies in premises liability lawsuits.

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 State Bar  
of Georgia



## Kudos



Lawrence & Bundy, LLC, announced that partner John Lewis Jr. received the George Washington University Black Alumni Association's (GWBAA) IMPACT Award. The award is the highest form of recognition bestowed on distinguished black alumni by the GWBAA Executive Committee.

Through professional endeavors and community engagement, IMPACT Award recipients have made indelible contributions to their alma mater, their local communities and society at large.



Atlanta attorney Laura Lundy Wheale, with Childers, Schlueter & Smith, walked the red carpet at the New York Film Festival for the world premiere of Ang Lee's "Billy Lynn's Long Halftime Walk." Wheale got the attention of Oscar-winning director Ang Lee because of her acting abilities and perfect Southern accent—so genuine, Lee picked Wheale over several Los Angeles-based actors. She was also cast in Clint Eastwood's "Sully" in a supporting role interviewing Tom Hanks as pilot Chesley Sullenberger. Wheale plans to maintain her legal career in mass tort litigation while continuing to pursue her acting career.



Brian D. Burgoon of the Burgoon Law Firm in Atlanta was elected to the University of Florida College of Law's Board of Trustees. The Board of Trustees serves as a primary support and advisory board for the law school, assists in the budgetary process, provides financial and volunteer resources, facilitates student mentoring programs, and supports student and faculty programs, scholarships and activities. Burgoon previously served as president of the UF College of Law Alumni Council.



Patrise M. Perkins-Hooker, the county attorney for Fulton County, was appointed to the Board of Directors of Atlanta's John Marshall Law School. In her capacity as county attorney, she is responsible for all of the civil legal needs of one of the largest counties in Georgia. She supervises a staff of more than 30 professionals and provides legal advice to seven commissioners and more than 40 departments. Perkins-Hooker was the 52nd president of the State Bar of Georgia and the first person of color elected to that position.



Frank O. Brown Jr., a shareholder at Weissman PC, a real estate and litigation law firm, received the Greater Atlanta Home Builder Association's (HBA) top honor, the 2016 Lewis Cenko Award. This is the HBA's most prestigious award honoring an individual's lifetime achievements and contributions to the advancement of the housing industry. Committed to a responsible housing industry, Brown has provided legal counsel to the HBA for more than 25 years.



A ceremony was held in November at the City of Savannah's Daffin Park tennis courts to unveil a dedication plaque and sign officially naming the tennis courts for former Savannah mayor and tennis player Malcolm Maclean. Maclean's son, Judge John Maclean, members of the Savannah City Council and employees of HunterMaclean attended the event where several individuals including current Mayor Eddie DeLoach and City Alderman Julian Miller spoke about Malcolm Maclean's impact on the community. Maclean served as mayor of Savannah from 1960-66.



Bouhan Falligant associate Luke Bradley became an associate member of the Maritime Law Association (MLA) of the United States, a national professional organization of lawyers who practice in maritime or admiralty law. The MLA exists as a venue for maritime lawyers to discuss news and issues in the practice, as a source of opinion and information to the public and as a representative to the international legal community. Its members include law students, lawyers, industry representatives and judges.

Kilpatrick Townsend & Stockton, LLP, announced that it received a perfect score of 100 percent on the 2017 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices related to LGBT workplace equality, administered by the Human Rights Campaign Foundation. The 2017 CEI rated 1,043 businesses in the report, which evaluates LGBT-related policies and practices including non-discrimination workplace protections, domestic partner benefits, transgender-inclusive health care benefits, competency programs and public engagement with the LGBT community.



## On the Move

### IN ATLANTA



CAMPBELL



MITCHELL



SIPPEL

McAngus Goudelock & Courie, a regional insurance defense firm, opened an office in Atlanta anchored by partners John Campbell, Trula Mitchell and Thomas Sippel. Campbell practices liability and commercial litigation, with a focus on products liability, premises liability and business tort litigation. Mitchell's practice focuses on workers' compensation defense. Sippel brings more than 20 years of litigation and insurance defense experience to the firm. The firm is located at 3399 Peachtree Road NE, Suite 1625, Atlanta, GA 30326; 678-500-7300; Fax 678-669-3546; [www.mgclaw.com](http://www.mgclaw.com).



SPEED



BRYAN



CLARK



KEGLEY

Drew Eckl & Farnham, LLP, announced that Bryant G. Speed II joined the firm as of counsel and Colin Bryan, Natalie Clark and Thomas Kegley joined the firm as associates. Speed specializes in workers' compensation law, and has represented parties before the State Board of Workers' Compensation for most of the last 19 years. Prior to joining the firm, Bryan worked for the Atlanta Center for Arbitration and Mediation and continues to be involved with the Atlanta International Arbitration Society. Upon graduation from law school, Clark immediately began defending employers and insurers at a small, boutique law firm that practiced workers' compensation defense almost exclusively. Kegley has spent his entire legal career litigating both criminal and civil cases, and brings that litigation experience to workers' compensation defense.

Drew Eckl & Farnham also announced that their Atlanta office has moved. The firm is now located at 303 Peachtree St. NE, Suite 3500, Atlanta, GA 30308; 404-885-1400; Fax 404-876-0992; [www.deflaw.com](http://www.deflaw.com).



Mark A. B. Carlson, former general counsel and Baker Donelson alumnus, rejoined the firm to serve as managing director of Baker Donelson's business department. He previously was with the firm for more than 10 years and served as the chair of the firm's corporate/mergers and acquisitions group. As managing director, Carlson focuses on the busi-

ness of law, growth, alternative pricing and profitability within the firm's business department. The firm is located at Monarch Plaza, 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; [www.bakerdonelson.com](http://www.bakerdonelson.com).



JURKIEWICZ



KNOTT

Kilpatrick Townsend & Stockton, LLP, announced the election of Sarah Jurkiewicz as a partner and the addition of Ethan Knott as an associate. Jurkiewicz is a member of the firm's real estate investment and development team. She has experience in all aspects of commercial real estate including acquisitions, dispositions, development, and leasing and operations of office, retail and hotel properties. Knott is a member of the construction and infrastructure projects team within the litigation department. Knott focuses his practice on construction and infrastructure projects and government contracting. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; [www.kilpatricktownsend.com](http://www.kilpatricktownsend.com).



REIF



STRANG



RATANI

Nelson Mullins Riley & Scarborough LLP announced that Joshua F. Reif, Aleksandra Strang and April R. Ratani joined the firm's real estate capital markets team as associates. Reif concentrates his practice on commercial lending and real estate capital markets, with experience in corporate and commercial finance and capital markets. Strang focuses her practice on commercial real estate development and real estate capital markets. Ratani focuses her practice on real estate capital markets. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; [www.nelsonmullins.com](http://www.nelsonmullins.com).



WATSON



BONANDER

The Watson Firm, LLC, announced that it changed its name to Watson Bonander, LLC. The new name reflects Laura Kennedy Bonander becoming a named partner in the firm. Founded in 2015 by Wade H. Watson III and Laura Kennedy Bonander, the firm specializes in fiduciary litigation, business litigation and appeals. The firm is located at 2200 Century Parkway NE, Suite 910, Atlanta, GA 30345; 404-876-0049; [www.watsonbonander.com](http://www.watsonbonander.com).



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REARDEN

Morris, Manning & Martin, LLP, announced that Richard Boswinkle, Jason Cummings, Patrick Lowther, Catherine Morgen and Tyler Wolf were elected partners and Robert Rearden joined the firm as a partner. Boswinkle focuses his practice on SBA-guaranteed loans and small business lending, real estate lending and restaurant finance. Cummings' practice covers a range of industries including IT, payments, business services and health care IT, as well as traditional sales, manufacturing and distribution organizations. Lowther represents clients in a variety of complex litigation matters across the United States, including general commercial disputes, real estate, personal injury and bankruptcy matters. Morgen represents clients engaged in the acquisition, development, leasing and disposition of commercial real estate. Wolf's practice focuses on representing lending institutions in a variety of finance transactions including agent credit facilities, acquisition financings and note offerings. Rearden's practice focuses on the representation of owners and developers in connection with the acquisition, sale and financing of real estate assets, the representation of investors in structuring real estate equity investments, joint ventures and fund formation. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; [www.mmmlaw.com](http://www.mmmlaw.com).



The Sladkus Law Group, a boutique law firm specializing in trademark prosecution, IP litigation and anti-counterfeiting, announced that Marcy Sperry joined their team as of counsel. In this role, Sperry is responsible for trademark prosecution, trademark enforcement and general IP litigation matters. In addition, she assists clients with copyright disputes, social media and related Internet IP enforcement, and domain name disputes. The firm is located at 1827 Powers Ferry Road SE, Building 6, Atlanta, GA 30339; 404-252-0900; Fax 404-252-0970; [sladlaw.com](http://sladlaw.com).



Sutherland Asbill & Brennan LLP announced that Kristina Kopf Thomas joined the firm's real estate practice group as a partner in the Atlanta office. Prior to joining Sutherland, Thomas was a partner at King & Spalding LLP. Thomas is a commercial real estate and fund formation attorney with more than 13 years of experience working with real estate industry clients on a broad spectrum of transactions. The firm is located at 999 Peachtree St. NE, Suite 2300, Atlanta, GA 30309; 404-853-8000; Fax 404-853-8806; [www.sutherland.com](http://www.sutherland.com).



HULL



SICK

FordHarrison LLP announced that Brad Hull and Kristina Sick joined the firm as associates in the Atlanta office. Hull concentrates his practice on the representation of employers in issues related to labor and employment law. Sick's legal practice is focused on providing advice and counsel to management clients in employment law matters. The firm is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; [www.fordharrison.com](http://www.fordharrison.com).



McGuireWoods LLP announced that Gerum Yilma was elevated to partner in the firm's Atlanta office. Yilma concentrates his practice on corporate lending transactions, including syndicated, club and single-lender credit facilities, acquisition financings, leveraged recapitalization, cash-flow and asset-based financings, and asset securitizations. The firm is located at 1230 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; [www.mcguirewoods.com](http://www.mcguirewoods.com).



MCGOVERN



SATCHER

Coleman Talley LLP announced the growth of its litigation practice in the firm's Atlanta office with the arrival of partners Annarita Leigh McGovern and M. B. Satcher III. McGovern has practiced law for 19 years in the areas of professional liability, employment law, premises liability, civil rights, government law and general civil litigation. Satcher's civil litigation practice includes experience in professional liability, general personal injury liability, premises liability, trucking litigation and products liability. The firm is located at 3475 Lenox Road NE, Suite 400, Atlanta, GA 30326; 770-698-9556; Fax 770-698-9729; [www.colemantalley.com](http://www.colemantalley.com).



Carlock, Copeland & Stair, LLP, named Shannon Sprinkle as the firm's managing partner. Sprinkle previously served as general counsel and co-chair of the commercial litigation practice group. In addition to firm leadership, Sprinkle will continue her practice as a partner in the commercial litigation practice group. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; [carlockcopeland.com](http://carlockcopeland.com).



Stout Kaiser Matteson Peake & Hendrick, LLC, announced that Joseph K. McGhee joined the firm. McGhee is a commercial transaction attorney and provides counsel in the areas of commercial real estate, commercial contract law, business formation and corporate governance. The firm is located at 1117 Perimeter Center W, Suite 400 West, Atlanta, GA 30338; 770-349-8200; [stoutkaiser.com](http://stoutkaiser.com).



JOHNSON

Barnes & Thornburg LLP announced that Stuart C. Johnson was re-elected as managing partner of the firm's Atlanta office. Johnson is a member of the firm's management committee, chairman of the firm's private equity practice group and a member of the firm's corporate department. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; [www.btlaw.com](http://www.btlaw.com).



JOHNSON

Davis, Matthews & Quigley, P.C., announced that Matthew J. Johnson and Lee M. Paris joined the firm as associates in the Atlanta office. Both Johnson and Paris practice in the domestic relations and family law section of the firm. Johnson represents clients in a variety of family law matters including divorce, child custody, child support, alimony, modification, enforcement and equitable division of property. Paris represents clients in a variety of family law matters including divorce, child custody, child support, alimony and equitable division of property. The firm is located at 3400 Peachtree Road NE, Suite 1400, Atlanta, GA 30326; 404-261-3900; Fax 678-904-3169; [www.dmqlaw.com](http://www.dmqlaw.com).



PARIS



Webb, Zschunke, Neary & Dikeman, LLP, announced that Robert Winters joined the firm as an associate. Winters was previously at King & Spalding where he was a project attorney in the firm's document discovery group. The firm is located at 3490 Piedmont Road NE, Suite 1210, Atlanta, GA 30305; 404-264-1080; Fax 404-264-4520; [www.wznd.net](http://www.wznd.net).



PARK



RALSTON

Weinberg Wheeler Hudgins Gunn & Dial announced the arrival of two new associates in the firm's Atlanta office: Amy Park and Ben Ralston. Park's practice focuses on civil litigation with an emphasis on medical malpractice, products liability and catastrophic injury. Ralston's practice includes civil litigation with an emphasis on catastrophic injury, professional liability and premises liability. The firm is located at 3344 Peachtree Road NE, Suite 2400, Atlanta, GA 30326; 404-876-2700; Fax 404-875-9433; [www.wwhgd.com](http://www.wwhgd.com).



BakerHostetler announced that Porsche D. Austin joined the firm as counsel. An experienced employment lawyer, Austin builds strategic partnerships with clients in order to assist with employment law compliance and achieve clients' business goals. She also represents management clients in litigation involving disputes between employees and employers at all levels. The firm is located at 1170 Peachtree St. NE, Suite 2400, Atlanta, GA 30309; 404-459-0050; Fax 404-459-5734; [www.bakerlaw.com](http://www.bakerlaw.com).



FRIEDMAN



MERRETT



RODMAN

Jones Day announced that three Atlanta lawyers were named to the firm's partnership: Craig S. Friedman, Daniel J. Merrett and Heith D. Rodman. Friedman represents employers in a wide variety of labor and employment matters and defends employers in single and multi-plaintiff actions. Merrett focuses on corporate and municipal restructurings, bankruptcy and other insolvency-related matters. Rodman practices commercial and corporate law, with a primary focus on transactions, product development and regulatory issues facing the financial services industry; financial technology; and payment systems. The firm is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; [www.jonesday.com](http://www.jonesday.com).



CARMON



HERNDON



HOWARD



RAEHN

Hall Booth Smith, P.C., announced that Whit Carmon, Annie Herndon, JD Howard and Jacob Raehn joined the firm as associates in the Atlanta office. Carmon's practice areas include aging services and professional negligence/medical malpractice. Herndon concentrates her practice in health care, insurance coverage and medical malpractice. Howard focuses his practice on agriculture. Raehn's practice areas include aging services, health care, insurance coverage and professional negligence/medical malpractice. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; [hallboothsmith.com](http://hallboothsmith.com).

Gilbert, Harrell, Sumerford & Martin, P.C., announced that Judson H. "Jud" Turner joined the firm as of counsel. Turner's practice focuses on environmental, civil and commercial litigation. The firm is located at 50 Hurt Plaza SE, Suite 1450-A, Atlanta, GA 30303; 770-377-4092; [www.gilbertharrelllaw.com](http://www.gilbertharrelllaw.com).

#### IN ALBANY



Lee Durham, LLC, announced that Lindsey Cannon Padgett joined the firm as an associate. Her practice concentrates on Social Security law, including Supplemental Security Income (SSI) and Disability Insurance for adults, children, widows/widowers and survivors. She represents claimants through all stages of the adjudicative process. The firm is located at 1604 W. Third Ave., Albany, GA 31707; 229-431-3036; Fax 229-431-2249; [leedurham.com](http://leedurham.com).





Hall Booth Smith, P.C., announced that Kathryn Dunnam joined the firm as an associate in the Albany office. She focuses her practice on medical malpractice and health care. The firm is located at 2417 Westgate Drive, Albany, GA 31708; 229-436-4665; Fax 229-888-2156; [hallboothsmith.com](http://hallboothsmith.com).

#### IN BLUE RIDGE

Thompson, Meier & King, P.C., announced the firm's expansion with the opening of a new office located at 730 E. Second St., Suite 105, Blue Ridge, GA 30513; 706-946-1844; [www.thompsonmeierking.com](http://www.thompsonmeierking.com).

#### IN BRUNSWICK



Hall Booth Smith, P.C., announced that Joseph Padgett joined the firm as an associate in the Brunswick office. He concentrates his practice on correctional health care and transportation law. The firm is located at 3528 Darien Highway, Suite 300, Brunswick, GA 31525; 912-554-0093; Fax 912-554-1973; [hallboothsmith.com](http://hallboothsmith.com).

Gilbert, Harrell, Sumerford & Martin, P.C., announced that James B. "Jim" Gilbert Jr. and Janet A. Shirley joined the firm as of counsel, and Kenneth M. "Kenny" Henson III joined the firm as an associate. Gilbert practices in the areas of business law and general litigation. Shirley concentrates her practice on trust and estate planning and administration. Henson's practice areas include residential and commercial real estate. The firm is located at 777 Gloucester St., Suite 200, Brunswick, GA 31520; 912-265-6700; Fax 912-264-0244; [www.gilbertharrelllaw.com](http://www.gilbertharrelllaw.com).

#### IN BUFORD



The McGarity Group, LLC, announced that Katherine M. Wheat joined the firm as an associate. Formerly with Meriwether & Tharp, LLC, Wheat has assisted in the successful mediation and litigation of a variety of family law cases, including divorce, child custody and modification of child support. The firm is located at 1305 Mall of Georgia Blvd., Suite 100, Buford, GA 30519; 877-851-4261; Fax 770-932-8437; [www.mcgaritylaw.com](http://www.mcgaritylaw.com).

#### IN CANTON

Thompson, Meier & King, P.C., announced the election of Ashley T. Carlile to partnership and the addition of Rachel D. Conley as an associate. Carlile's practice areas include family law and criminal law. Conley focuses her practice on family law. The firm is located at 341 E. Main St., Canton, GA 30114; 770-479-1844; [www.thompsonmeierking.com](http://www.thompsonmeierking.com).

#### IN COLUMBUS



Hall Booth Smith, P.C., announced that Drew Brooks joined the firm as an associate in the Columbus office. He concentrates his practice on business litigation, education, government liability, insurance coverage and professional negligence/medical malpractice. The firm is located at Corporate Center, 233 12th St., Suite 500, Columbus, GA 31901; 706-494-3818; Fax 706-494-3828; [hallboothsmith.com](http://hallboothsmith.com).

#### IN DULUTH



GHOLAMHOSSEINI



TONGE

Andersen, Tate & Carr, PC, announced that Heidi Gholamhosseini and Jonathan Tonge joined the firm as associates. Gholamhosseini joined the firm's commercial real estate and banking group. She specializes in assisting banks, corporations, LLCs and other business entities with the purchase, sale and lending aspect of commercial real estate law. Tonge joined the firm's litigation team. He focuses his practice on business and commercial litigation, employment and property disputes and representing individuals in civil suits. The firm is located at 1960 Satellite Blvd., Suite 4000, Duluth, GA 30097; 770-822-0900; Fax 770-822-9680; [www.atclawfirm.com](http://www.atclawfirm.com).

#### IN EVANS



Hull Barrett, P.C., announced that John I. "Jay" Harper joined the firm as a partner. He focuses his practice on estate planning and business law. The firm is located at 7004 Evans Town Center Blvd., Third Floor, Evans, GA 30809; 706-722-4481; Fax 706-650-0925; [hullbarrett.com](http://hullbarrett.com).

#### IN MACON



Martin Snow, LLP, announced that Michael E. Mayo was named the firm's most recent partner. Mayo, who has extensive experience in complex business litigation, insurance defense litigation, construction law, personal injury litigation and property disputes, joined the firm as an associate in 2011. The firm is located at 240 Third St., Macon, GA 31201; 478-749-1700; Fax 478-743-4204; [www.martinsnow.com](http://www.martinsnow.com).

#### IN MARIETTA



GILBERT



MILES

Gregory, Doyle, Calhoun & Rogers, LLC, announced that Melissa W. Gilbert and William P. "Billy" Miles were elected partner. Gilbert focuses on estate planning, probate court proceedings and estate administration. She manages the firm's fiduciary litigation practice. Miles focuses his practice on defending employers in litigation involving claims of discrimination, retaliation, failure to accommodate and other leave-related disputes. The firm is located at 49 Atlanta St., Marietta, GA 30060; 770-422-1776; Fax 770-426-6155; [www.gregorydoylefirm.com](http://www.gregorydoylefirm.com).

#### IN SAVANNAH



Bouhan Falligant named Lucinda Gryzenia as an associate. She brings her unique experience in both law and health care to the firm's medical malpractice group. After establishing her legal career, Gryzenia began pursuing an interest in health care, obtaining a Master of Science degree in nursing from the University of Illinois at Chicago in 2013. She is a board-certified nurse practitioner specializing in end-of-life care and the care of older adults. The firm is located at 447 Bull St., Savannah, GA 31401; 912-232-7000; Fax 912-233-0811; [bouhan.com](http://bouhan.com).

#### IN TIFTON



Hall Booth Smith, P.C., announced that Nick Kinsely joined the firm as an associate in the Tifton office. He concentrates his practice on general liability, government affairs, government liability and health care. The firm is located at 1564 King Road, Tifton, GA 31793; 229-382-0515; Fax 229-382-1676; [hallboothsmith.com](http://hallboothsmith.com).

#### IN CHATTANOOGA, TENN.



Evans Harrison Hackett, PLLC, announced that William R. "Bill" Hannah joined the firm as a member. Hannah represents parties in state and federal trial and appellate courts in connection with disputes involving commercial, business and creditors' rights, disputes involving product liability, personal injury and wrongful death claims, and disputes involving employment, insurance coverage and claims, construction, transportation and professional liability issues. The firm is located at One Central Plaza, Suite 800, 835 Georgia Ave., Chattanooga, TN 37402; 423-648-7890; [www.ehhlaw.com](http://www.ehhlaw.com).



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# Let it Go!

BY PAULA FREDERICK

**“The Court of Appeals just affirmed the dismissal of your case,”** you tell your client. “I have to admit that I am not really surprised. We knew it was a longshot when we appealed—just like we knew the odds were against us when we filed the case in the first place.”

“What’s next?” your client asks, as though he has not heard a word you have said. “The Supreme Court, right?”

“The Supreme Court is not going to take this case,” you say forcefully. “It’s really time to let it go—we gave it our best shot, and we lost. I cannot recommend that you file another appeal—the law is just not on our side.”

“If it’s about the money, don’t worry,” your client assures you. “I can pay you whatever it takes to keep this thing going. I know I might lose again, *but it’s the principle of the thing!*”

“Nooooo!” screams the little voice inside your head.

What’s a lawyer to do when faced with a client who insists on keeping a dying case on life support?

Rule 3.1 of the Georgia Rules of Professional Conduct is titled Meritorious Claims and Contentions. It prohibits a lawyer from knowingly advancing a claim that is unwarranted under existing law,

unless the claim can be supported by good faith argument for an extension, modification or reversal of existing law.

You made your good faith argument, and against your better judgment the client persuaded you to appeal when you lost. But how far do you have to go with what you now know is a losing case?

You probably would not violate the rule by filing a petition for certiorari in the hypothetical posed above. The rule encourages lawyers to work “for the fullest benefit of the client’s cause,” and a case is not frivolous just because it is a likely loser.

On the other hand, you certainly would not violate the rules by deciding *not* to file a petition and taking steps to withdraw from the case. Rule 3.1 prohibits conduct that amounts to an abuse of legal procedure. If by prolonging the litigation your client intends to harass or maliciously injure another, or if you cannot make a good faith argument on the law or the facts, it’s time to pull the plug. ●



**Paula Frederick**

General Counsel  
State Bar of Georgia

paulaf@gabar.org



PHOTO BY ISTOCK.COM/KOLBZ



# Attorney Discipline Summaries

(Oct. 17, 2016, through Jan. 19, 2017)

BY CONNIE P. HENRY

## SUSPENSIONS

### Michelle Ann Hickerson

205 Westhampton Way  
Chapel Hill, NC  
Admitted to Bar 1993

On Oct. 17, 2016, the Supreme Court accepted the petition for voluntary discipline filed by attorney Michelle A. Hickerson (State Bar No. 111074) and ordered that she be suspended for an indefinite period as reciprocal discipline for a suspension imposed in North Carolina. The North Carolina suspension arose after Hickerson self-reported that she testified falsely in a deposition in a divorce action involving third parties and filed pleadings containing false statements in a civil damages suit in which she was a defendant. Her false statements were not made in the course of her practice of law, but related to personal conduct. Hickerson and the North Carolina State Bar entered into a consent order that imposed a five-year suspension, with the provision that she can apply for a stay and seek reinstatement after one year, if she complies with certain conditions. If Hickerson wishes to seek reinstatement in Georgia, she must offer proof that the suspension in North Carolina has been stayed or completed, that she has complied with the conditions

for reinstatement in that matter and that she has been reinstated in that state.

### Alvis Melvin Moore

541 S. Evelyn Place NW  
Atlanta, GA 30316  
Admitted to Bar 1994

On Oct. 17, 2016, the Supreme Court ordered that attorney Alvin Melvin Moore (State Bar No. 518375) be suspended for one year with conditions for reinstatement. Moore's reinstatement is conditioned upon his providing a detailed, written evaluation by a licensed psychologist or psychiatrist certifying that he is mentally competent to practice law. He must also arrange for an evaluation by the State Bar's Law Practice Management Program, and, within six months of reinstatement, implement its recommendations.

This matter arose from a grievance filed by a superior court judge after discovering that Moore, who was representing a criminal defendant in her court, had failed to serve the District attorney with defensive pleadings, had falsely stated in certificates of service that the D.A. had been served, and had misrepresented his communications with the D.A. Moore denied that he had failed to serve the D.A. Moore believed that he was entitled to rely on the word of

*"He who is his own lawyer  
has a fool for a client."*

## Warren R. Hinds, P.C.

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State Bar  
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the Clerk of Court that a copy of his filings would be hand delivered to the D.A. by the clerk's office, and thus his certificates of service were accurate. Moore also denied making any misrepresentation to the trial court.

The Court found Moore's refusal to express remorse or acknowledge the wrongful nature of his conduct is an aggravating factor. The Court found his lack of prior discipline a mitigating factor.

**Christopher Mark Miller**

2985 Camp Road

Jasper, GA 30143

Admitted to Bar 1990

On Nov. 7, 2016, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Christopher Mark Miller (State Bar No. 506428) for a suspension of his license to practice law pending the resolution of multiple felony charges against him in the Superior of Pickens County.

**Bonnie Monique Youn**

4720 Peachtree Industrial Blvd.

Suite 4201

Norcross, GA 30071

Admitted to Bar 1996

On Nov. 7, 2016, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Bonnie Monique Youn (State Bar No. 781445) for an 18-month suspension with conditions for reinstatement. Youn pled guilty on Jan. 20, 2016, in the U.S. District Court for the Northern District of Georgia, to a misdemeanor count of having counseled, commanded, and induced a client, who was not a Georgia resident, to possess a Georgia driver's license. In May 2016 Youn was sentenced to two years on probation and a \$5,245 fine.

The Court found the following mitigating factors: Youn's lack of a disciplinary history; her cooperation with the State Bar; her professional reputation for integrity, as attested to by numerous character references; her efforts on behalf of many civic and service-related organizations, and her demonstration of remorse and acknowledgment of wrongdoing. Reinstatement is conditioned on Youn's release from probation.

**William D. Hentz**

205 W. Villanow St.

P.O. Box 1466

LaFayette, GA 30728

Admitted to Bar 2007

On Dec. 8, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney William D. Hentz (State Bar No. 348206) for a two-year suspension with conditions for reinstatement.

The State Bar filed formal complaints in five matters against Hentz. In a petition for voluntary discipline, Hentz admitted that he voluntarily surrendered his license in July 2001, and that he was reinstated in November 2007.

As to State Disciplinary Board Docket No. 6760, a client retained Hentz to provide representation regarding the client's brother's life insurance policy. Although he investigated the matter, he failed to keep the client informed, failed to respond to the client's phone calls and letters, and failed to refund the unearned fee.

In Docket 6761, a client retained Hentz to help her obtain visitation with her son during the holidays. He told the client he would be able to file the appropriate motion. He failed to respond to the client's phone calls until after the holidays, and although he worked on the case, he failed to get the client visitation with her son during the holidays.

In Docket 6762, Hentz failed to file an answer on a client's behalf and allowed the lawsuit to go into default. In his response to the opposing party's motion for default and in his motion for new trial, he stated that at that time he lacked the mental capacity to practice law. He abandoned the client's legal matter without just cause and to the client's detriment.

In Docket 6763, a client retained Hentz to represent her grandson in a probation revocation. Hentz refused to assist the grandson with a blind plea after the court denied bond to the grandson, who then discharged Hentz.

In Docket 6764, a client retained Hentz to represent him in a legitimation and custody case. Although he filed the client's case, he took no subsequent action;

he failed to respond to the client's phone calls and letters; he failed to refund the unearned fee; and he abandoned the client's legal matter without just cause and to the client's detriment.

In all the above cases Hentz was personally served with the Notices of Investigation, but he failed to respond.

Hentz requested a 12-month suspension, with conditions on reinstatement that he repay the unearned fees in each case and that he provide the Bar with certification from a licensed psychologist or psychiatrist stating that he is mentally competent to return to the practice of law. Reinstatement is subject to the details in his petition.

In mitigation of discipline, Hentz stated that he suffered significant personal and emotional problems. He contacted the State Bar's Lawyers' Assistance Program and has been in therapy with a psychologist for approximately nine months.

The State Bar noted aggravating factors including prior disciplinary offenses, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law.

#### **PUBLIC REPRIMAND**

##### **Michael Anthony Eddings**

P.O. Box 501453

Atlanta, GA 30350

Admitted to Bar 2002

On Dec. 15, 2016, the Supreme Court of Georgia ordered that attorney Michael Anthony Eddings (State Bar No. 238751) receive a Public Reprimand. This matter arose out of the theft of \$2.3 million from his law firm's trust account by his wife (now ex-wife). At the time, Sonya Eddings was the law firm's financial manager. The Court found that Eddings did not participate in the theft and was unaware of Sonya's wrongful actions.

The Court found the following mitigating factors: the absence of a prior disciplinary record; the absence of a dishonest or selfish motive; the existence of personal and emotional issues; Eddings' timely good faith effort to make restitution or to rectify the consequences of his misconduct; Eddings' cooperative attitude in the disciplinary proceedings;

proof of Eddings' good character and reputation, including serving his country during 12 years in the military and his significant service to his community through his church, the Boys Scouts, and other charitable institutions; and his sincere expression of remorse.

Eddings must comply with the following additional terms: accept the services of the State Bar's Law Practice Management Program in setting up his financial accounts and law practice; take the next available Multistate Professional Responsibility Examination and obtain a passing score; and make full restitution within five years to the victims who have not been compensated by First American Title Insurance Company.

#### **REVIEW PANEL REPRIMAND**

##### **David Edmund Ralston**

P.O. Box 1196

Blue Ridge, GA 30513

Admitted to Bar 1980

On Dec. 8, 2016, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney David Edmund Ralston (State Bar No. 592850) and ordered that he receive a Review Panel reprimand for his provision of financial assistance to a couple who were his clients, and the use of his trust account in providing that assistance.

In April 2006, an associate in Ralston's firm was retained by the clients to represent them in a personal injury action arising out of a March 2006 car accident. Ralston was not involved in the initial representation, but became actively involved in 2008 and filed suit on behalf of the clients in March 2008. In May 2010, the clients told Ralston that one of them had become unemployed and that they were having difficulty meeting the basic necessities for themselves and their minor child, and asked Ralston to advance them money to be repaid from the proceeds of a settlement or trial. Ralston advanced to them funds at no interest from an earned, but undisbursed, fee of \$24,050.09 remaining in his IOLTA account from an unrelated matter. Between May 26, 2010, and Oct. 31, 2011, he made 12 disbursements totaling \$22,000 to the clients.

Ralston stated that he was unaware that his actions violated Bar Rules; he was forthcoming with the State Bar in disclosing the advances; he obtained no financial gain from advancing the funds at no interest; he is not seeking reimbursement for the \$22,000; and he has released any claim to a fee from the settlement of the case. Ralston also stated that he has since established safeguards to prevent commingling of client and personal funds or retention of earned fees in his trust account.

The special master found the following factors in mitigation: absence of a prior disciplinary record; absence of a selfish or dishonest motive; full and free disclosure to the disciplinary authority and cooperative attitude toward the proceedings; remorse; and Ralston's lengthy career in public service as a legislator and legislative leader. The sole aggravating factor found by the special master is Ralston's substantial experience in the practice of law.

#### **REINSTATEMENT GRANTED**

##### **W. Burrell Ellis Jr.**

5614 Mountain View Point

Stone Mountain, GA 30087

Admitted to Bar 1985

On Oct. 5, 2016, the Supreme Court of Georgia suspended attorney W. Burrell Ellis Jr. (State Bar No. 246085) pending the termination of the appeal of his felony conviction. On Nov. 30, 2016, the Court reversed those convictions and on Dec. 8, 2016, reinstated him to the practice of law in Georgia.

#### **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 Nov. 1, 2016, one lawyer has been suspended for violating this Rule and none have been reinstated. ●



**Connie P. Henry**

Clerk, State Disciplinary Board  
State Bar of Georgia

connieh@gabar.org



# Legal Tech TIPS

BY NATALIE R. KELLY  
AND MICHAEL MONAHAN

## 1 Red Stamp Cards

[www.redstamp.com](http://www.redstamp.com)

So you're stuck late at the office and realize you forgot to send Valentine's Day cards. Here's your solution: Use the Red Stamp Cards app. Red Stamp allows you to personalize and send digital or paper cards. Choose your card and have it sent straight to your valentine—all for less than \$3.

## 2 Law Dojo

[www.lawschooldojo.com](http://www.lawschooldojo.com)

Here's an app for law students or that budding lawyer in your family. This app gamifies the law—you can focus in on specific areas of law like constitutional law, criminal law, torts, contracts, ethics and more, or you can check out the Law School Boot Camp, take a legal vocabulary test or study the law for a driver's license exam.

## 3 Best Law Quotes App

Search: Best Law Quotes

Download this free app for content to spice up your speeches, legal presentations and reception chatter. The app advertises more than 1,000 quotes from famous lawyers, philosophers, writers and other great minds "whose brilliant words inspired many human beings." (Android only.)



## 4 VolOps App

Search: Volops

Here's an app to help you find a pro bono opportunity. The Pro Bono Partnership of Atlanta makes finding pro bono work easy for transactional lawyers in Georgia! This app provides convenient access to a current list of available volunteer opportunities from PBPA. Simply select any matter that interests you and the app will generate an email to PBPA. The app also allows you to contact PBPA with any questions. (iTunes only.)

## 5 What's that flower?

Search: What's that flower

What? Yes, flowers. We'll categorize this free app under lawyer #wellness. First, head on over to LawyersLivingWell.org and see what the State Bar of Georgia has put together to help you take charge of your health and wellness. Now, as for What's that flower? The message is to take time and smell the roses. Sometimes there aren't any roses on those long recharging walks on which you'll want to stop and check out the flowers—and actually know what you're smelling. Download the app, stop and smell the flowers. Breathe. Relax. (Android only.)

## 6 Stand Up and Practice!

Standing Desks

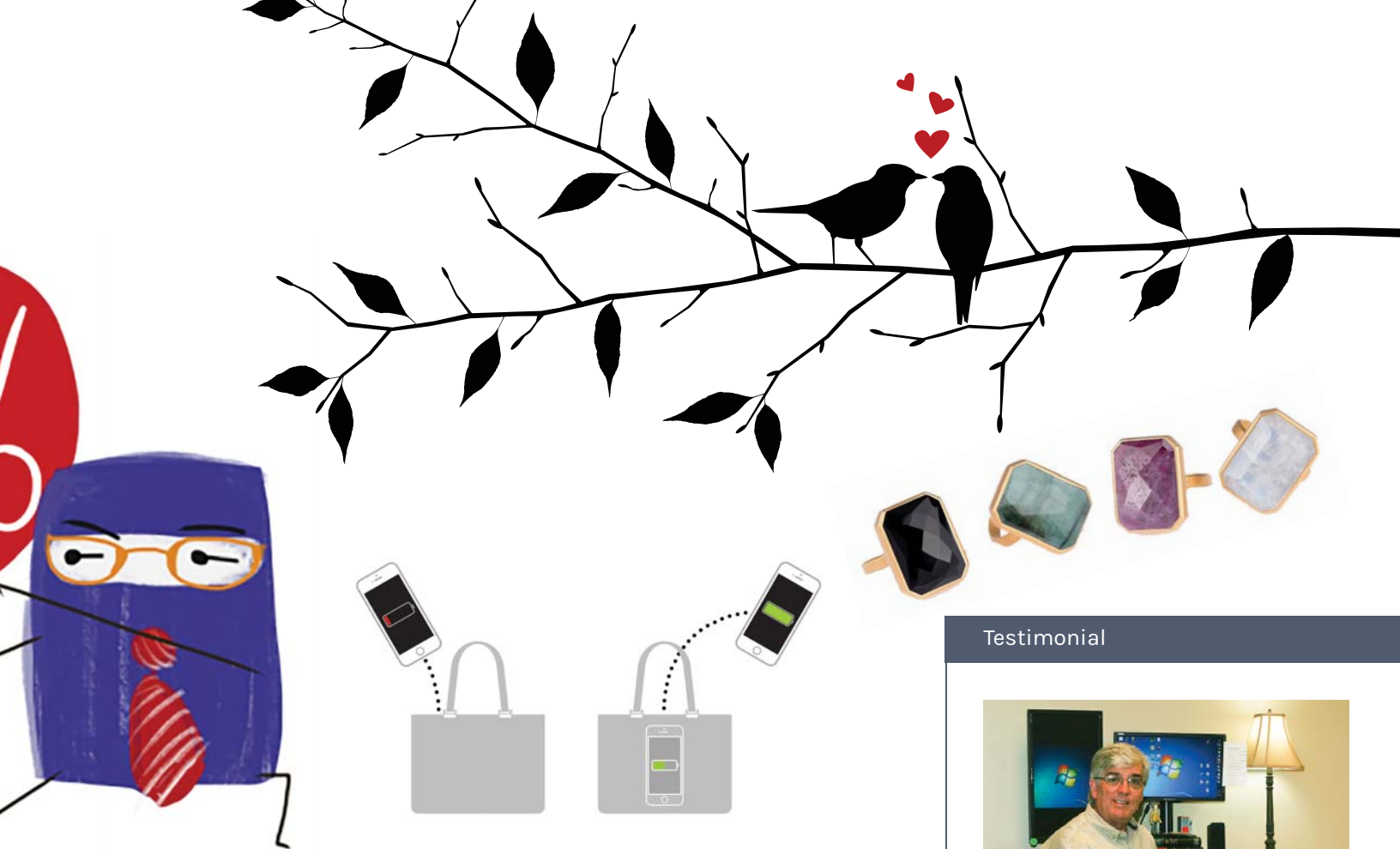
Called height-adjustable or sit-stand desks, standing desks are one latest trend in office furniture for lawyers. Cool tech ones like the \$299 SmartDesk2 by Autonomous ([www.autonomous.ai/smartdesk.com](http://www.autonomous.ai/smartdesk.com)) have SmartKey Pad features which remember heights for its user's sitting or standing positions. The many fitness benefits of standing desks have been touted to include better posture, less obesity risk, reduced cancer risk and a longer life!

## 7 Unroll.Me

<https://unroll.me>

Get your email inbox more organized with Unroll.Me. Go through your inbox email messages and select to either RollUp, Unsubscribe or Keep the message in your inbox. Selecting RollUp will put emails into a daily, easy-to-read digest or a "RollUp" message which can be delivered to the inbox each day at whatever time you'd like. For subscriptions you don't want, just unsubscribe, or if you want to keep the messages coming to your inbox without





being rolled up, then just instruct the program to Keep the message. Just don't forget that you must check your RollUp every day.

## 8 Cold Turkey

[getcoldturkey.com](http://getcoldturkey.com)  
"You need to focus!" Heard that before? Well, it can be hard not to get distracted knowing there is a tweet, email message or some other post out there just waiting for you. Cold Turkey is a productivity program which blocks systems and services that can distract you. Setting time frames and which programs and services you want to keep at bay, you can build up uninterrupted time on your computer which can force you to focus. The free version blocks websites and includes a timer feature.

## 9 Valentine's Day Tech Gifts

[Cool Tech Gifts](#)  
Don't know what to get him or her? All out of thoughts after the holidays? Check out some of these cool tech items for your sweetheart! Wearables are all the rave! Try chargeable units and

even handbags like the VanDerWalls and the Kate Spade charging handbags. Prefer jewelry—then see items like the Bellabeat Leaf Activity Tracker or smart rings that sync, vibrate and track activity from Ringly.com. Let your loved one listen to music over new wireless headphones like the Beats Powerbeats2 or cancel out the noise with a set of the Bose QuietComfort 35. Google Home or Amazon Echo make for an even larger tech gift.

## 10 Clicky Web Analytics

[www.getclicky.com](http://www.getclicky.com)  
Want to see if your website is getting any love? Go to [www.getclicky.com](http://www.getclicky.com) for real-time web analytics. The real-time analysis of users' sites include reports on links to tell you how many visitors you've had on a particular page of your website, the average number of actions taken on the page, the average amount of time and total time spent on the page and more! There is even a cool Heatmaps feature which shows in real time what individual users are up to and are most interested in on your website.

### Testimonial



Robby Hughes  
Robert W. Hughes & Associates, P.C.

### Stand Up Desks

I've used a stand up desk since the very first day I became a lawyer. I don't have a bad back, but instead decided to use the desk because it allowed me to move, which seems to keep the creative juices flowing better than simply sitting behind a desk.

I remember going to an efficiency seminar in my pre-lawyer days, and the speakers talked about having meetings without chairs in the room. Without a traditional sit down desk with chairs in my office, people don't come in, sit down and want to chat, which increases productivity. Meetings seem to end quickly when everyone is standing. Last, I seem to stay focused on the "job at hand" when standing.

# A Key Resource for Starting a Law Practice in Georgia

If you are looking to start a law practice in Georgia, order a copy of *Starting Your Georgia Law Practice* to use as a helpful reference.

BY NATALIE R. KELLY

**The Law Practice Management Program's** booklet, "Starting Your Georgia Law Practice," is one of the first tools lawyers should seek out if they are looking to hang out their own shingle. Affectionately called, "the other Blue Book," the office startup kit was created by the Law Practice Management Program in late 1995 with help from the Office of the General Counsel and recognized contributing authors to answer basic questions about what is needed to start a law office in Georgia. As times have changed, so has the startup kit. Now, up to almost 250 pages, this comprehensive guide is updated regularly to deal with office start up issues for Georgia lawyers.

The startup kit first addresses the advantages of hanging one's own shingle and the specifics of where to do so. In keeping with the times, there is a section in the booklet on how to create a virtual law office where a physical office is not contemplated. Practical information about what is needed on the first day in a new office space, what choice of entity and business



PHOTO BY ISTOCK.COM/FERTNIG



requirements must be met, and information on managing files and money is included, too. The Law Practice Management Program trust accounting booklet is included with the list of approved institutions where trust accounts can be set up. The malpractice insurance section of the kit includes a full list of Georgia providers, a breakdown of the coverage they offer, and contact information for agents and brokers, including Member Benefits, Inc., the State Bar's recommended broker. The kit also contains sections on marketing and automation, as well as a list of the items available in the Law Practice Management Program Resource Library.

Because changes occur frequently in many areas of office setup, like in technology for instance, the kit is revised almost every other month. Assistance is sought from the Office of the General Counsel to ensure the contents are ethically compliant and text of rules are included where appropriate. The office startup kit frequently suggests the reader consult with the Office of the General Counsel's Ethics Helpline. Advice on technology suggests vendors and lists their contact informa-

tion and general price ranges. The Automation section of the kit includes articles: "Improving Your Computer Skills," "Legal Research," "Say Yes to a Practice Management System" and "Software Suitable for the Sole Practitioner or Small Law Firm." The software recommended is categorized into sections for desktop and web-based (cloud) practice management; time, billing and accounting software; collaboration and productivity suites; encryption software; PDF programs; digital signatures; document management; website providers; logo makers; legal research; and specialty packages for bankruptcy, collections, divorce settlement evaluation, immigration, personal injury and real estate.

Ultimately, if you are looking to start a law practice in Georgia, request a copy of the office startup kit to use as a reference when drafting your office business plan. You can supplement your planning by visiting the Law Practice Management Program to discuss your business plan with a member of the Law Practice Management Program team after having read the office startup kit.

"Starting Your Georgia Law Practice" can be obtained by calling the Law Practice Management Program at 404-527-8772 and requesting a copy be mailed to you after paying a \$5 shipping fee. Likewise, a copy can be obtained by visiting the Law Practice Management department at the Bar Center. There is no charge for copies obtained in this fashion. Lawyers attending Law Practice Management Program-sponsored CLE events and programs such as the annual Solo and Small Firm Institute or State Bar meetings can also get copies free of charge by visiting Law Practice Management Program exhibit tables found at these events. If you have questions or ideas for updates to the office startup kit, please contact Natalie Kelly, program director, at 404-527-8770 or [nataliek@gabar.org](mailto:nataliek@gabar.org). ●



**Natalie R. Kelly**

Director, Law Practice Management  
State Bar of Georgia

[nataliek@gabar.org](mailto:nataliek@gabar.org)



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Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741, 800-682-9806 or log in to [www.gabar.org](http://www.gabar.org) and submit your question by email.

# Due Justice. Do Pro Bono.

“It is one of the most beautiful compensations in life that no man can sincerely try to help another without helping himself.”—Ralph Waldo Emerson

BY MICHAEL MONAHAN AND MATTHEW PORTER

**The State Bar of Georgia has launched** its first statewide message campaign to encourage more lawyers to think about pro bono service.

In the last half of 2016, the Bar’s Access to Justice Committee and the Pro Bono Resource Center invested time and energy in developing messages that resound with lawyers. The effort arose out of the State Bar’s strategic plan that called for more attention to access to justice and to pro bono service. With the goal to promote and increase pro bono volunteerism among State Bar attorneys, the State Bar approached Good Thinking, a local nonprofit, about creating a short film to be shared prior to continuing legal education seminars offered by ICLE in Georgia. That concept blossomed into a full ad campaign.

“Due Justice. Do Fifty.” is our new pro bono campaign that now appears in film, print, social media, signage and promotional premium give-aways. The “do fifty” is a clear reference to Georgia Bar Rule 6.1, which calls lawyers to perform at least 50 hours of pro bono service each year.

The goal of the campaign is simple: drive up awareness of and participate in pro bono service obligations among State Bar attorneys and create an easy way for new recruits to take on pro bono cases. To address some of the common misperceptions about the nature of and difficulty of pro bono services that inhibit volunteerism, the campaign show-

cases real attorneys sharing the reasons why they serve others and what it brings to their lives. The message campaign is simple, clear and unified. Rather than a one-off film that could be easily forgotten, the State Bar and Good Thinking developed and built an integrated campaign that can spread awareness and drive up pro bono volunteerism for the next several years.

The campaign encourages without shaming. It inspires without becoming maudlin or lofty. It is grounded by the words of real, work-a-day attorneys from all walks of life who offer their personal, heartfelt messages about what pro bono service means to them. Conveyed in film and print, it helps others understand that pro bono service is not only a moral obligation carried under oath, it is a brilliant way for them to expand horizons, step beyond comfort zones and gain experiences that bring enduring benefits to their personal and professional lives.

More than 40 professionals attended the campaign’s first planning get-together in July 2016—a “charrette”—a technical design meeting that brought together designers and users from different perspectives, including lawyers, writers, artists and others who spent a day exploring the topics of pro bono and public service and brainstorming for compelling ways to talk about pro bono.



**Do Your Duty.**

**Due Justice.**

**Do Pro Bono.**



# Do Your Duty.



Due Justice.

Do Pro Bono.

In the end, we developed a call to action, a pro bono resource page and a simple process for routing volunteer lawyers to civil legal aid and pro bono programs:

- The call to action: Due Justice. Do Pro Bono. Do Fifty.
- The short video: <https://vimeo.com/198936633>.
- The next step: <http://duejusticedo50.org>.

We've also created posters, banners, social media memes and more, examples of which you'll see here in the artwork accompanying this article.

We are now reaching out to sections and local voluntary bar associations to provide them with the video and supporting materials for their websites and listservs. We are also working closely with our legal aid and pro bono programs to ensure that volunteers generated through this campaign receive the special welcome designed into the campaign.

So, let's do justice and do fifty.

I am available to answer questions you might have about pro bono in Georgia. Contact me at [probono@gabar.org](mailto:probono@gabar.org). •



**Michael Monahan** is the director of the Pro Bono Resource Center of the State Bar of Georgia and can be reached at [probono@gabar.org](mailto:probono@gabar.org).



**Matthew Porter**, president, Good Thinking, Inc., is a writer and consultant. Porter is a graduate of Druid Hills High, Georgetown University and Poynter Institute for Media Studies. PorterWrite, a creative writing consulting company, opened in 1997. Porter is a contributing editor to *CA Magazine*, *Neenah Paper's Against the Grain* and *Adobe Create*. He co-founded Good Thinking in 2011.

## PRO BONO STAR STORY



### MICHAEL D. HURTT



Michael D. Hurtt  
Attorney at Law  
Hurtt & Johnson, LLC

There is no saying that I despise more than "no good deed goes unpunished." It's just not true.

I can say with complete confidence that I have received a lot of rewards and no punishment from the pro bono work I have done. Pro bono clients are usually very appreciative of the work that you do for them. I have had many destitute pro bono clients cry when I told them that I would handle their bankruptcy, consumer case or uncontested divorce on a pro bono basis. I found them to be very appreciative of my work and many have referred paying cases to me. Many of these cases have been the elderly and single parents.

My pro bono work began when I first started practicing law. All of the new lawyers were assigned to do the indigent criminal defense for the county. We learned early on, don't bother to submit a time sheet, it's a waste of time. Yet, we country lawyers got a lot of good out of that work, including trial experience. But you also developed a certain respect and a certain disrespect for the system. Most importantly, we developed comradeships with others in the young bar. There was a great

feeling derived from helping those that were getting steamrolled by the system. After rotating off the court appointed list, I began doing pro bono cases as they came to me in my practice.

I do have a favorite pro bono client. She was a really nice, elderly lady whose husband passed away at a relatively young age. She was left with three young daughters to raise, and she did a terrific job.

The company she had been working for as a bookkeeper was going out of business. Management needed her to close out the business and she was only able to work one or two days a week for a couple of months after the business shut down. She had some student loans that she had been paying for years. Her chapter 7 case had a lot of medical debt but we had to file an adversary case, proving an undue hardship, in order to discharge the student loan debt. Those are not easy to discharge as the Department of Education vigorously fights those, frequently spending multiple times the amount of the debt in the costs of defense.

I have found that, in fact, no good deed goes unrewarded. Don't expect rewards, but they will come, and in many different ways. •

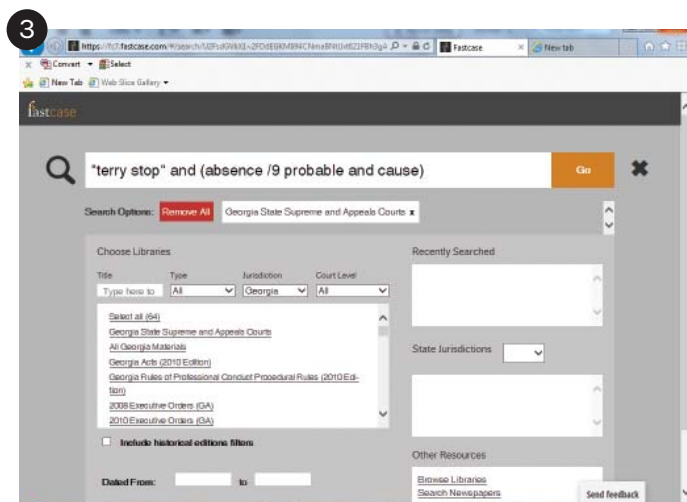
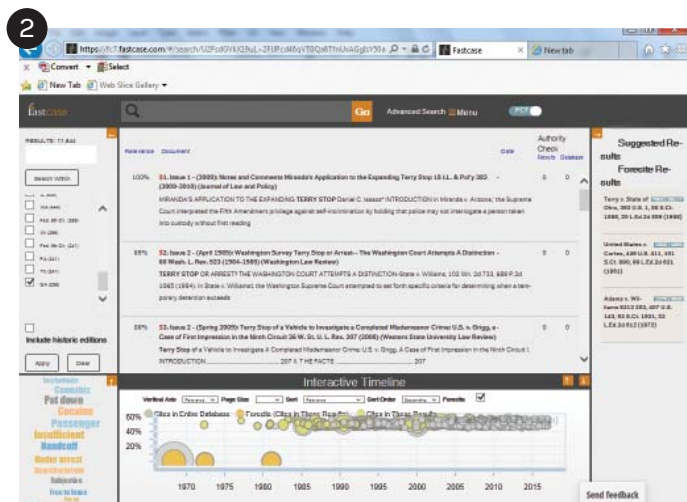
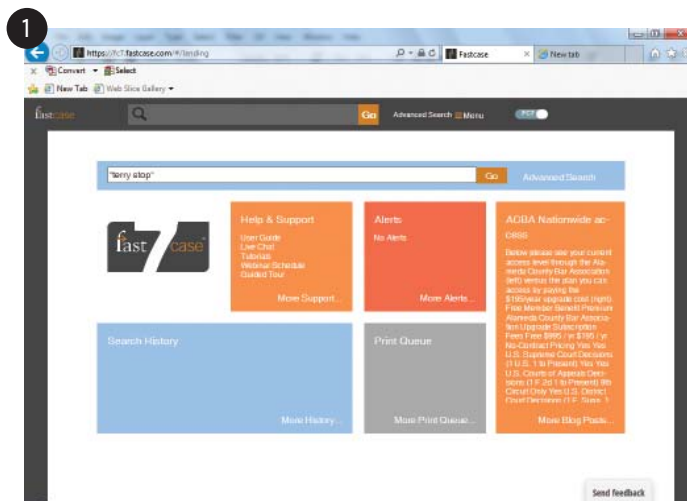


# How to Search a Case in Fastcase 7

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

BY SHEILA BALDWIN

**Fastcase 7 has now been available to** all members of the State Bar since the end of last year. Hopefully, most of you have taken a look at the new features and advantages it offers lawyers in conducting comprehensive research. You may ask “Why change something that works well?” For one thing, Fastcase owners and developers did recognize that users like the simplicity of the “old” platform, now referred to as Fastcase 6. In fact, no significant changes have been made to its intuitive design since 2003, which is almost unheard of in the tech world. According to Fastcase CEO Ed Walters, Fastcase 7 promises greater speed, expanded search, more intuitive functionality and a more readable interface. For the first time you can search across different types of materials at the same time. Cases, state constitutions, attorney general opinions—choose to search everything or filter results down to just a select category. You can also choose to search across all materials associated with a particular state jurisdiction simultaneous-



ly. The data is presented in blocks all on one screen to give a variety of information in one view. Fastcase describes this as “search without borders.” This change creates a more streamlined approach with integrated concept driven searching.

### Search from the Quick Caselaw Screen

Let’s look at an example using a search for cases relating to a police stop of a citizen. From the Quick Caselaw start screen (see fig. 1). I entered “terry stop” since this case is the seminal authority on this topic and found more than 11,500 document types in a wide variety of jurisdictions. Once I filter to just Georgia from the left side bar, it narrows to 238, which includes 227 case law, and a few outliers in law reviews and ancillary materials. At this point you can select Case Law (227) under document type to just see cases in Georgia which includes state and appeals courts (see fig. 2). If you extend the search to “terry stop” and (absence /9 probable and cause) you narrow to 44 cases. Look for the cloud tag feature on the bottom left. When you click on one of those terms, let’s use “field test,” it narrows down to 27 cases. From this example, it’s

evident that you can perform a search from the start screen in the Quick Caselaw search box, but I have found it to be somewhat confusing and not as dependable. This area is best used to find specific case citations, statutes or case names. Try searching 226 Ga.App. 714 from the start page (Quick Caselaw) and find the exact case you are looking for, *McClain v. State*, 487 S.E.2d 471, 226 Ga.App. 714 (Ga. App., 1997).

### Search from the Advanced Search Screen

Try building a comprehensive search using Boolean keywords from the Advanced Search screen (see fig. 3) to see if you can more easily find your target cases. This area of Fastcase 7 is constructed to show easy-to-view filters and links that include your personal history and links to specific resources within your most often viewed jurisdictions. Running the previous search in Advanced Search you will easily find our 44 cases in Georgia with fewer steps. Enter your terms, “terry stop” and (absence /9 probable and cause), then select Georgia from the jurisdiction filter under Choose Libraries. A group of Georgia materials will appear in the box below.

Simply choose Georgia State Supreme and Appeals Courts and you will find the 44 cases (see fig.3).

### The Results Screen

When you run a search in Fastcase 7 the main results are accompanied by several tools, all on the same page. These panels can be hidden or expanded without any load time; everything is pre-loaded. You can also move panels and customize your research experience. You control which results are displayed with the Filter pane and can clear and apply filters to your heart’s content without ever leaving the results page.

Now that you can see the different functionality offered in the two search types, Quick Caselaw and Advanced Search, try doing your own research and enjoy the enhanced features offered by Fastcase 7’s integrated system. Check our calendar on the State Bar website to view Fastcase training dates and registration. Happy searching! ●



**Sheila Baldwin**

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STATE BAR OF GEORGIA

## Member Benefits

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# Writing Matters: Our 10-Year Anniversary

Here are the 10 favorite tips over the last 10 years from the Writing Matters authors.

BY KAREN J. SNEDDON AND DAVID HRICIK



**This year marks our 10th anniversary** of “Writing Matters.” When we began this regular column way back then, we had no idea that 10 years later we would still be coming up with (what at least we think are) helpful writing tips. As a recap, we thought we’d give you our 10 favorite revising and editing tips from our first decade. In no specific order, here they are.

## **1** Search for words ending with “ion.”

You can improve your writing by simply searching for “ion.” Often, a word ending in “ion” is a nominalized verb: it’s a verb that’s been turned into a noun. So, searching for “ion” would pull up “he conducted the examination of the witness” and allow you to turn the noun “examination” into a verb: “he examined the witness.”

This search will often, but not always, also help you find when you have used the passive voice. For example, an “ion” search would highlight a sentence reading, “The examination was conducted,” allowing you to decide whether to keep the passive voice, or not.



## **2** Edit for “there are,” “there is,” “it is” and “it was” constructions.

There are times when using “there are” in a sentence is useful. At other times, however, using “there are” may needlessly lengthen a sentence, and may indicate a passive voice or weak construction. For example, the sentence “There are three reasons why the court affirmed,” could be re-written as “The court affirmed for three reasons.” Likewise, “it is” and “it was” can indicate weak constructions. Search for “there are,” “there is,” “it is” and “it was” to spot a sentence that could be improved, depending on its purpose.

## **3** Look for long words.

George Orwell famously advised “never use a long word when a short word will do.” That advice is critical for legal writing, where often long words must be used because they are part of the legal landscape. But that means that avoiding long words whenever possible can markedly increase readability. Learn to spot and replace long words like approximately, utilize, terminate, substantiate, facilitate and commence. Your readers will appreciate it; maybe they’ll like it, too.

## **4** Minimize use of pronouns.

A pronoun is a word that substitutes for a noun: “he” for “Bob,” for example. Pronouns can be helpful shortcuts. But pronouns force readers to correctly associate the pronoun with the intended noun. For example, who is “he” in this sentence: “Bob and Ernie discussed Bob’s position, and he decided to change the contract price.” The reader may struggle to connect “he” to the intended person because “he” could refer to Bob or Ernie. Thus, pronouns create the risk that the reader will link the pronoun to the wrong noun, or to not know which noun is the right one.

Of course, not all pronouns are bad. They serve a purpose, and repeating a noun may result in a stilted construction. Finally, when you do use a pronoun, make sure the pronoun agrees with the noun. A “court” is a singular

collective noun. Hence, a court is an “it,” not a “they.”

## **5** Avoid legalese and jargon.

The law has a vocabulary all of its own. Legal writers become comfortable with legalese and jargon. But legalese and jargon can alienate a reader not grounded in the law. (Of course, sometimes legalese and jargon need to go. “Heretobefore” and “herewith” have little place in modern legal writing.) Consider your audience before using legalese and jargon.

## **6** Be careful with acronyms.

In the search for brevity, legal writers should use acronyms to shorten text. Most lawyers know what the EPA is. But too many acronyms can be difficult for a reader to absorb, particularly when some are unfamiliar.

## **7** Watch for unnecessary modifiers.

Adverbs and adjectives help describe people, places, events and circumstances. But relying too heavily on adverbs and adjectives as modifiers, rather than picking the stronger word can actually erode the persuasive power of the text. One thing to watch for and be wary of are words ending in “-ly,” including clearly, obviously and surely. Rather than write, “Clearly, the plaintiff’s argument is legally incorrect under Georgia law.” Simply state, “The plaintiff’s argument contradicts Georgia law.” Strong verbs and appropriate nouns will more strongly convey images to the reader; they might even do so decisively.

## **8** Vary sentence constructions.

A sentence construction of subject-verb-direct object is strong. But it’s possible to have too much of a good thing. Using the same structure leads to monotony. So, vary sentence constructions. Use an introductory clause and combine multiple sentences with a coordinating conjunc-

tion. Even consider using a semi-colon or colon to vary sentence constructions.

## **9** Consider denotations and connotations.

Words convey images and emotions, and they do so by what is called “denotation” and “connotation.” Denotation refers to the explicit or direct meaning or set of meanings of a word or expression. Connotation refers to the associated or secondary meaning of a word or expression in addition to its explicit or primary meaning.

When selecting words, consider the word’s denotation and connotation. For example, consider the word “home.” “Home” denotes “a place where someone resides.” At the same time, “home” connotes “a place of safety and comfort.” Depending on the purpose of the writing, “home” may not be the right word.

## **10** Use transitions.

As a final tip from our first 10 years, consider using transitions between paragraphs, much like the introductory clause of this sentence. A writer should help the reader understand the connections between sentences, between paragraphs and between sections. Use of transitions helps the reader see the connections that may be obvious to the writer who is generating the text, but which may not be obvious to the recipient. ●



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



**David Hricik** is a professor of law at Mercer University School of Law who has written several books and more than a dozen articles.

The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.

# In a Season of Change, Emotional Intelligence and Resilience Count in the Success Column

Navigating through life, careers and change often requires tact and cleverness, especially to be successful.

BY AVARITA L. HANSON



PHOTO BY ISTOCK.COM/JILKAR

**Today's somewhat volatile social** and political climate requires lawyers to handle change in a professional way. Professionalism in the legal occupation connotes higher and more aspirational standards of lawyer behavior, compared to the minimum standards set forth in the Georgia Rules of Professional Conduct.<sup>1</sup> What does this really mean? I like to say it means doing the right thing right. This is akin to doing the right thing when no one else is watching, or even if it could hurt you in some way. It means being able to look at yourself in the mirror and like what you have done. It is not always easy to do the right thing right and it is a lifetime journey.

Supreme Court of Georgia Justice Robert Benham has defined the pillars of professionalism as competency; civility; ensuring access to justice through pro bono work; and community and public service. A lawyer's professional identity has many aspects and may include a personal value system in addition to what the legal profession teaches and the profession expects of us. Dean Daisy Floyd, Mercer University School of Law, having studied law students

and their “authenticity,” says that we enter law school largely for altruistic reasons (we want to “make a difference”) and are largely healthy in mind, body and spirit.<sup>2</sup> Yet, once we graduate, some have become greedy and hungry, have fallen into poor health or have succumbed to unhealthy habits, including substance abuse.<sup>3</sup>

As we progress in the profession, we must have the ability to reinvent ourselves. We are now hearing that those with emotional intelligence—resilience, focus and staying power—become the most successful (however success is defined). And what is emotional intelligence? *Psychology Today* defines emotional intelligence as “the ability to identify and manage your own emotions and the emotions of others,” and that includes three skills: emotional awareness, including the ability to identify your own emotions and those of others; the ability to harness emotions and apply them to tasks like thinking and problem solving; and the ability to manage emotions, including the ability to regulate your own emotions, and the ability to cheer up or calm down another person.<sup>4</sup> Emotional intelligence then, is the capacity to be aware of, control and express your emotions, to be aware of how others perceive you, and to handle interpersonal relationships judiciously and empathetically. We all have different personalities, wants and needs, and different ways of showing our emotions. Navigating through life, careers and change often requires tact and cleverness, especially to be successful. This is where emotional intelligence becomes important.

U.S. Supreme Court Justice Ruth Bader Ginsburg provided a great example of emotional intelligence when she shared advice from her mother-in-law that has helped her in the workplace. On her wedding day, her mother-in-law told her: “In every good marriage, it helps sometimes to be a little deaf.”<sup>5</sup> Justice Ginsburg explained: “I have followed that advice assiduously, and not only at home through 56 years of marital partnership nonpareil, I have employed it as well in every workplace, including the Supreme Court. When a thoughtless or unkind word is spoken, best tune out. Reacting in anger

or annoyance will not advance one’s ability to persuade.”

The Commission on Professionalism, found in the Lawyer’s Creed and Aspirational Statement on Professionalism, focuses attention on how to manage our relationships with clients, opposing parties and their counsel, the courts and other tribunals, our colleagues in the practice of law, the public and our systems of justice. These are excellent documents to read frequently, commit to memory or post in your office as a guide to successfully navigating our important relationships as lawyers. I would add that we have to put ourselves on this list, along with our family members, friends and others with whom we work, to round out the relationships that are truly important to us. Relationships matter and with emotional intelligence they can be better managed and strengthened.

To make our personal experiences and workplace positive for all with whom we interact employing emotional intelligence will help, as will learning and respecting differences in people and changes in our greater society. Change is both a noun and a verb. As a noun, it is defined as: the act or fact of changing and the fact of being changed. As a verb, it is defined as: to make the form, nature, content, future course, etc., of something different from what it is or from what it would be if left alone. However you choose to look at change, consider the following:

- “There is nothing permanent except change.” —Heraclitus
- “Just when I think I have learned the way to live, life changes.” —Hugh Prather
- “If you change the way you look at things, the things you look at change.” —Dr. Wayne Dyer
- “If you don’t like something, change it. If you can’t change it, change your attitude.” —Dr. Maya Angelou
- “God, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.” —The Serenity Prayer, Reinhold Niebuhr.

In parting, contemplate on what President John F. Kennedy said about change. “Change is the law of life. And those who look only to the past or present are certain to miss the future.”

I believe Georgia lawyers will seize the opportunities and embrace the challenges and changes of the future. We will do so positively and professionally—to the benefit of clients, colleagues, the public and our judicial system. The key to our success just might not be knowledge, education, experience or intelligence. It may be the resilience of the law, rule of law and the emotional intelligence of lawyers who strive for professionalism every day. ●



**Avarita L. Hanson**, Atlanta attorney, has served as the executive director of the Chief Justice’s Commission on Professionalism since May of 2006. She can be reached at [professionalism@jcpcga.org](mailto:professionalism@jcpcga.org) or 404-225-5040.

## Endnotes

1. Chief Justice’s Commission on Professionalism, *A Lawyer’s Creed and Aspirational Statement on Professionalism*, Part IX of the Rules and Regulations of the State Bar of Georgia, Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tunc July 3, 1990.
2. See, Daisy Hurst Floyd, *The Authentic Lawyer: Merging the Personal and the Professional*, in Paul Haskins, Ed., *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER*, at 19-32, American Bar Association (2013).
3. Lisa F. Smith, *The Most Terrifying Part of My Drug Addiction? That My Law Firm Would Find Out*, *THE WASHINGTON POST* (March 24, 2016).
4. *PSYCHOLOGY TODAY*, <https://www.psychologytoday.com/basics/emotional-intelligence> (last accessed December 2, 2016); Travis Bradberry & Jean Graves, *EMOTIONAL INTELLIGENCE 2.0*, TalentSmart (2009).
5. Ruth Bader Ginsburg, *Ruth Bader Ginsburg’s Advice for Living*, *NY TIMES* (posted October 1, 2016): [http://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html?\\_r=0](http://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html?_r=0).



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

---

**PAUL HENRY ANDERSON**  
Atlanta, Ga.  
Emory University School  
of Law (1940)  
Admitted 1940  
Died December 2016

**PATRICK J. ARAGUEL JR.**  
Midway, Utah  
Tulane University Law  
School (1966)  
Admitted 1970  
Died November 2016

**JIMMIE ELDRIDGE  
BAGGETT JR.**  
Duluth, Ga.  
Georgia State University  
College of Law (1990)  
Admitted 1990  
Died December 2016

**JEFFREY ROBERT BERRY**  
Brunswick, Ga.  
San Fernando Valley  
College of Law (1978)  
Admitted 1980  
Died December 2016

**CHARLES E. BLALOCK**  
Lilburn, Ga.  
Woodrow Wilson College  
of Law (1975)  
Admitted 1976  
Died January 2017

**RICHARD ALLEN BUNN**  
Hamilton, Ga.  
Atlanta's John Marshall  
Law School (1979)  
Admitted 1979  
Died December 2016

**ARTHUR L. COOPER**  
Savannah, Ga.  
Atlanta's John Marshall  
Law School (1979)  
Admitted 1979  
Died December 2016

**GARRETT JAMES  
DELEHANTY JR.**  
West Hartford, Conn.  
Columbia Law School  
(1976)  
Admitted 1989  
Died November 2016

**RICHARD SAMUEL EGOSI**  
North Wales, Pa.  
Emory University School  
of Law (1988)  
Admitted 1988  
Died November 2016

**ALISA W. ELLENBURG**  
Atlanta, Ga.  
Vanderbilt University Law  
School (1997)  
Admitted 1999  
Died December 2016

**JACK P. ETHERIDGE**  
Atlanta, Ga.  
Emory University School  
of Law (1955)  
Admitted 1954  
Died November 2016

**LUKE FRANK GORE**  
Mableton, Ga.  
Atlanta Law School (1970)  
Admitted 1971  
Died December 2016

**FRANCIS D. HAND JR.**  
Albany, Ga.  
Emory University School  
of Law (1960)  
Admitted 1959  
Died November 2016

**JOHN B. LYLE**  
Marietta, Ga.  
University of Georgia  
School of Law (1983)  
Admitted 1983  
Died December 2016

**STEPHANIE B. MANIS**  
Atlanta, Ga.  
Emory University School  
of Law (1977)  
Admitted 1977  
Died December 2016

**BEN BARRON ROSS**  
Lincolnton, Ga.  
Mercer University Walter  
F. George School of Law  
(1949)  
Admitted 1948  
Died December 2016

**CUBBEDGE SNOW JR.**  
Macon, Ga.  
Mercer University Walter  
F. George School of Law  
(1952)  
Admitted 1952  
Died December 2016

**JOHN W. SPENCE**  
Monroe, Ga.  
Woodrow Wilson College  
of Law (1978)  
Admitted 1979  
Died December 2016

**JAMES HUNTLEY WATSON**  
Grayson, Ga.  
Vanderbilt University Law  
School (1975)  
Admitted 1999  
Died June 2016

**VIRGINIA WEBB**  
Columbus, Ga.  
Private Study  
Admitted 1951  
Died December 2016

## OBITUARIES



**Hon. Jack P. Etheridge passed away peacefully** in November 2016 at his home after a brief battle with cancer. He was born on March 16, 1927, in Atlanta, the son of Jessie Shepherd Brown and Anton Lee “Jack” Etheridge. He grew up on Peachtree Road and attended The Darlington School, Davidson College

and Emory University School of Law. During World War II, he enlisted in the Merchant Marine and was deployed to the Pacific; later, during the Korean War, he was commissioned as a lieutenant in the Army. Following World War II, Etheridge spent a year in Germany assisting in the resettlement of war refugees. It was on the ship to Germany that he met the love of his life, Ursula Schlatter, who was travelling back to her homeland, Switzerland. He courted her during his year in Europe and they were married in February of 1952 in the chapel of North Avenue Presbyterian Church by Dr. Vernon Broyles.

Etheridge began his career in law with the firm of Smith, Kilpatrick, Cody, Rogers, McClatchey and Regenstien before opening his own firm, Huie and Etheridge, with his dear friend W. Stell Huie. During the 1960s, he served two terms in the Georgia House of Representatives. He then followed in the footsteps of his beloved father and presided as a Fulton County Superior Court judge. Following his 10-year career on the bench, Etheridge taught at several institutions of higher learning including the National Judicial College, University of South Carolina, Emory University, Philips Exeter Academy and the University of the Witwatersrand School of Law in Johannesburg, South Africa. He was an associate dean of the Emory University School of Law and a fellow at Harvard’s Kennedy Institute of Politics. While at Harvard he worked to develop a system of mediation as an alternative form of dispute resolution. Upon his return to Atlanta, he founded The Justice Center of Atlanta, opened the Atlanta office of Judicial Arbitration and Mediation Services (JAMS) and authored “Coming to the Table, A Primer for Lawyers on Mediation Skills.”

In recent years, Etheridge served as special master in national class action lawsuits. He enjoyed serving his community and opening doors for others. He was a member of the Atlanta Rotary Club; a past president of the Atlanta Bar Association; and chairman of the National Conference of State Trial Judges. He served on the Board of Trustees of Davidson College and of Atlanta University, and was appointed to the Board of Directors of Fuqua Industries, Inc., Initiatives for Change based in Caux, Switzerland, and The National Endowment for the Humanities.

Etheridge’s hobbies included golf and flying planes when he was younger, and cooking classes and extensive international travel. On weekends, he retreated to the family’s cabin on Lake Burton. Throughout his life, he loved books, tending to his woodpile, classical music and opera. He especially enjoyed Thursday nights at the Atlanta Symphony with Ursula. ●



**Judge Stephanie B. Manis, beloved mother and friend, distinguished lawyer and judge, passed away peacefully** at her home surrounded by her adoring family in December 2016. Manis was born on Jan. 8, 1940, in Denver, Colo., to parents Col. Dudley Brody and Amelia (Marx) Brody. She graduated magna cum

laude with a Bachelor of Arts degree in History, and a Master of Education degree, from the University of Florida in 1967. She graduated from Emory University School of Law in 1977, after which she clerked for two years for Supreme Court of Georgia Justice Harold Nelson Hill Jr.

Manis served in the Office of the Georgia Attorney General for 16 years, including service as deputy attorney general for the state of Georgia from 1988 until she assumed the bench as judge of the Superior Court of Fulton County, Atlanta Judicial Circuit, after her appointment by Gov. Zell Miller on May 31, 1995. As a superior court judge, Manis handled major criminal felony cases, civil litigation and family/domestic relation cases.

Manis served as editor-in-chief of the *Georgia State Bar Journal* from 1993-95. She also served as an instructor at Emory University School of Law, with the National Institute of Trial Advocacy. Manis inspired many as she was one of the first women to earn a law degree while raising a family, and to join the Kiwanis Club. She managed it all with dignity and grace and her legacy will live on in the many lives she influenced.

Prior to her death, Manis requested that her obituary note her strong opposition to the death penalty. ●

## Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the Georgia Bar Journal with memorials to honor deceased members of the State Bar of Georgia.

Memorial Contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam Contributions will be used for Fellows programs of the Georgia Bar Foundation.



**Cubbedge Snow Jr. of Macon, who served as the 12th president of the State Bar of Georgia in 1974-75, died in December 2016. He was 87.**

Snow graduated magna cum laude from the Walter F. George Law School at Mercer University, where he was president of the Phi Alpha Delta law fraternity, and was admitted to the State Bar of Georgia in 1952. During his career of more than 50 years, he practiced alongside his father and later, his son, in the law firm of Martin, Snow, Grant & Napier in Macon. He was a member of the American College of Trial Lawyers and was a leader in the Georgia Defense Lawyers Association.

During the effort to establish the unified State Bar of Georgia in the early 1960s, Snow was an effective voice in support of stronger regulation and discipline within the legal profession, reflecting on the era as follows, "There was quite a bit of frustration here in Macon because prior to the unified bar, unless a full-blown court case was instituted, the only disciplinary methods we could apply involved the Macon Bar Association. I do recall working on the Macon Bar Disciplinary Committee, and the strongest punishment we could impose was to remove someone's name from the roll, which we did on at least two occasions."

In addition to serving as State Bar president, Snow served the legal profession at the local level as president of the Macon Bar Association in 1967 and at the national level as a member of the American Bar Association's Board of Governors and House of Delegates for two decades.

He was especially committed to the principle of justice for all and was honored in 1988 by the State Bar of Georgia Access to Justice Committee with his Sol Clark Award, among other honors, for his work with the Georgia Legal Services Program, which provides civil representation to those who cannot afford to hire a lawyer.

A past president of the Georgia Bar Foundation, Snow helped establish Georgia's Interest on Lawyer Trust Accounts (IOLTA) program, which provides funding to support legal services for the poor, to improve the administration of justice, promote professionalism in law practice, to aid children involved in the justice system and advance the legal system through historical study. Because of his continued commitment to the IOLTA program, he was honored with the James M. Collier Award, the foundation's highest honor.

He also served as a legal officer in the Air Force and retired in 1989 as a "full bird" colonel in the Air Force Reserve. An Eagle Scout himself, he served the Boy Scouts of America as leader of the local Explorer Post and was president of the Central Georgia Council, receiving the Silver Beaver Award for leadership, character and service.

Snow was a lifelong member of the Mulberry Street United Methodist Church, where he taught Sunday School and served as chairman of both the Administrative Board and the Board of Trustees. He was a charter member and past president of the Macon Civic Club and served on the Board of Directors of the Idle Hour Golf and Country Club. ●

## COMMITTEE TO PROMOTE Inclusion in the Professionalism's

### Speaker Clearinghouse



### Unlock your potential and sign up

*The Committee to Promote Inclusion in the Professionalism is committed to promoting equal participation of minorities and women in the legal profession. The Speaker Clearinghouse is designed specifically for, and contains detailed information about, minority and women lawyers who would like to be considered as faculty members in continuing legal education programs and provided with other speaking opportunities. For more information and to sign up, visit [www.gabar.org](http://www.gabar.org). 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).*



## FEBRUARY

8	ICLE: <b>Special Needs Trusts</b> Atlanta, Ga.   6 CLE
8	ICLE: <b>Administrative Law for Attorneys</b> Atlanta, Ga.   6 CLE
9	ICLE: <b>Abusive Litigation</b> Atlanta, Ga.   6 CLE
9	ICLE: <b>Residential Real Estate</b> Statewide Satellite Rebroadcast   6 CLE
10	ICLE: <b>Solo Small Firm Boot Camp</b> Atlanta, Ga.   6 CLE
10-11	ICLE: <b>62nd Annual Estate Planning Institute</b> Athens, Ga.   10 CLE
15	ICLE: <b>Advanced Securities Law</b> Atlanta, Ga.   6 CLE
16-17	ICLE: <b>Social Security Institute</b> Atlanta, Ga.   10.5 CLE
16	ICLE: <b>Nuts &amp; Bolts of Appellate Practice</b> Atlanta, Ga.   6 CLE
17	ICLE: <b>Advanced Negotiation Strategies</b> Atlanta, Ga.   6 CLE
17	ICLE: <b>Gwinnett General Practice CLE</b> Duluth, Ga.   6 CLE
22	ICLE: <b>25th Annual Product Liability Seminar</b> Atlanta, Ga.   6 CLE
22	ICLE: <b>Attorney First Aid Kit</b> Atlanta, Ga.   6 CLE
23	ICLE: <b>Negotiated Corporate Acquisitions</b> Atlanta, Ga.   6 CLE
23	ICLE: <b>Eminent Domain Law</b> Atlanta, Ga.   6 CLE
24	ICLE: <b>Georgia Auto Insurance Claims Law</b> Atlanta, Ga.   6 CLE
24	ICLE: <b>26th Annual Georgia Bar Media and Judiciary Conference</b> Atlanta, Ga.   6 CLE

24	ICLE: <b>Plaintiff's Personal Injury</b> Statewide Satellite Broadcast   6 CLE
24	ICLE: <b>24th Annual Criminal Practice Seminar</b> Kennesaw, Ga.   6 CLE
27	ICLE: <b>Beginning Lawyer Program</b> Atlanta, Savannah and Tifton, Ga.   6 CLE

## MARCH

TBD	ICLE: <b>Walton County Bar Association Seminar</b> Monroe, Ga.   6 CLE
1	ICLE: <b>Changes in War and Law</b> Atlanta, Ga.   6 CLE
1	ICLE: <b>Advanced Topics in Franchising and Distribution</b> Atlanta, Ga.   3 CLE
2	ICLE: <b>Family Immigration Law</b> Atlanta, Ga.   6 CLE
2	ICLE: <b>Plaintiff's Personal Injury</b> Statewide Satellite Rebroadcast   6 CLE
3	ICLE: <b>Truck Wreck Cases</b> Atlanta, Savannah and Tifton, Ga.   6 CLE
3	ICLE: <b>Professionalism and Ethics Update</b> Statewide Satellite Broadcast   3 CLE
3-4	ICLE: <b>27th Annual Urgent Legal Matters</b> St. Simons Island, Ga.   12 CLE
8	ICLE: <b>Narcissism in the Law</b> Atlanta, Ga.   6 CLE
8	ICLE: <b>Post Judgment Collection</b> Atlanta, Ga.   6 CLE
9	ICLE: <b>13th Annual Nonprofit Law Seminar</b> Atlanta, Ga.   6 CLE
9	ICLE: <b>Landlord and Tenant Law</b> Atlanta, Ga.   6 CLE

*Note: To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 800-422-0893. For ICLE seminar locations, please visit [www.iclega.org](http://www.iclega.org).*

9	<b>ICLE: Professionalism and Ethics Update</b> Statewide Satellite Rebroadcast   3 CLE	22	<b>ICLE: Georgia Law of Torts</b> Atlanta, Ga.   6 CLE
10	<b>ICLE: Milich on Evidence</b> Atlanta, Ga.   6 CLE	22	<b>ICLE: 24th Annual Family and Trial Law Convocation on Professionalism</b> Atlanta, Ga.   3 CLE
10	<b>ICLE: Fundamentals of Health Care Law</b> Atlanta, Ga.   7 CLE	23	<b>ICLE: Professional and Ethical Dilemmas in Litigation</b> Atlanta, Ga.   6 CLE
10	<b>ICLE: Trial and Error</b> Statewide Satellite Broadcast   6 CLE	24	<b>ICLE: Mediation Advocacy</b> Atlanta, Ga.   6 CLE
14	<b>ICLE: One Law Thing—The Basics of Closing Your Law Practice</b> Webinar   1 CLE	24	<b>ICLE: Basic Fiduciary Practice</b> Atlanta, Ga.   6 CLE
15	<b>ICLE: Georgia’s False Claim Act/Whistleblower</b> Atlanta, Ga.   7 CLE	24	<b>ICLE: Recent Developments in Georgia Law</b> Statewide Satellite Rebroadcast   6 CLE
15	<b>ICLE: Proving Damages</b> Atlanta, Ga.   6 CLE	27	<b>ICLE: Beginning Lawyers Program Video Replay</b> Atlanta, Savannah and Tifton, Ga.   6 CLE
16	<b>ICLE: 6th Annual Same Sex Legal Issues</b> Atlanta, Ga.   6 CLE	28	<b>ICLE: Trials of the Century</b> Atlanta, Ga.   6 CLE
16	<b>ICLE: Medicine for Lawyers</b> Atlanta, Ga.   6 CLE	28	<b>ICLE: Depositions</b> Webinar   1 CLE
16	<b>ICLE: Trial and Error</b> Statewide Satellite Rebroadcast   6 CLE	29	<b>ICLE: 8th Annual Employee Benefits Law Section Seminar</b> Atlanta, Ga.   6 CLE
16–18	<b>ICLE: 15th Annual General Practice and Trial Institute</b> St. Simons Island, Ga.   12 CLE	30	<b>ICLE: Not Your Typical CLE</b> Atlanta, Ga.   6 CLE
17	<b>ICLE: Jury Trial</b> Statewide Satellite Rebroadcast   6 CLE	30	<b>ICLE: Toxic Torts</b> Atlanta, Ga.   6 CLE
17	<b>ICLE: Agriculture Law</b> Macon, Ga.   6 CLE	31	<b>ICLE: Advanced Cross-Examination</b> Atlanta, Ga.   6 CLE
20	<b>ICLE: YLD Litigation Committee CLE</b> Atlanta, Ga.   6 CLE	31	<b>ICLE: Banking Law</b> Atlanta, Ga.   6 CLE
21	<b>ICLE: Importance of Diversity and Inclusion in the Profession</b> Webinar   1 CLE		

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

The Supreme Court of Georgia having considered the 2016-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part I – Creation and Organization, Chapter 2, Rule 1-203 (Practice By Active Members; Nonresidents); and Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 1.7 – Conflict of Interest: General Rule; Rule 4.4 (Respect for Rights of Third Persons), and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants); be amended effective November 2, 2016 to read as follows:

### PART I CREATION AND ORGANIZATION

#### CHAPTER 2 MEMBERSHIP

##### **Rule 1-203 Practice By Active Members; Nonresidents**

No person shall practice law in this state unless such person is an active member of the State Bar of Georgia in good standing, except as provided below:

(a) A person who is not a member of the State Bar of Georgia, but who is licensed to practice in a state or states other than Georgia, and is in good standing in all states in which such person is licensed, may be permitted to appear in the courts of this state in isolated cases in the discretion of the judge of such court; or

(b) A person who is not a member of the State Bar of Georgia, but who is licensed to practice in a state or states other than Georgia, and is in good standing in all states in which such person is licensed, may be permitted to appear in the courts of this state if such person:

(1) is enrolled in a full time graduate degree program at an accredited law school in this state; and

(2) is under the supervision of a resident attorney; and

(3) limits his or her practice to the appearance in the courts of this state to the extent necessary to carry out the responsibilities of such graduate degree program.

(c) A person who is admitted to the State Bar of Georgia as a foreign law consultant pursuant to Part E of the Rules Governing Admission to the Practice of Law as adopted by the Supreme Court of Georgia, [www.gasupreme.us](http://www.gasupreme.us), may render legal services in the state of Georgia solely with respect to the laws of the foreign country (i.e., a country other than the United States of America, its possessions and territories) where such person is admitted to practice, to the extent provided by and in strict compliance with the provisions of Part D of the Rules Governing Admission to the Practice of Law, but shall not otherwise render legal services in this state.

(d) Persons who are authorized to practice law in this state are hereby authorized to practice law as sole proprietorships or as partners, shareholders, or members of:

(1) partnerships under OCGA § 14-8-1 et seq.; or

(2) limited liability partnerships under OCGA § 14-8-1 et seq.; or

(3) professional corporations under OCGA § 14-7-1 et seq.; or

(4) professional associations under OCGA § 14-10-1 et seq.; or

(5) limited liability companies under OCGA § 14-11-100 et seq.

(e) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule.

(f) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rules.

(g) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rules.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision of Legal Services Following Determination of Major Disaster.



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**PART IV**  
**GEORGIA RULES OF PROFESSIONAL CONDUCT**

**CHAPTER 1**  
**GEORGIA RULES OF PROFESSIONAL CONDUCT**  
**AND ENFORCEMENT THEREOF**

**Rule 4-102 Disciplinary Action; Levels of Discipline;**  
**Georgia Rules of Professional Conduct**

**RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE**

(a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

(b) If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent, confirmed in writing, to the representation after:

(1) consultation with the lawyer, pursuant to Rule 1.0 (c);

(2) having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation; and

(3) having been given the opportunity to consult with independent counsel.

(c) Client informed consent is not permissible if the representation:

(1) is prohibited by law or these Rules;

(2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or

(3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

(d) Though otherwise subject to the provisions of this Rule, a part-time prosecutor who engages in the private practice of law may represent a private client adverse to the state or other political subdivision that the lawyer represents as a part-time prosecutor, except with regard

to matters for which the part-time prosecutor had or has prosecutorial authority or responsibility.

The maximum penalty for a violation of this Rule is disbarment.

**Comment**

*Loyalty to a Client*

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. If an impermissible conflict of interest exists before representation is undertaken the representation should be declined. The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

[2] Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (a) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

[3] If an impermissible conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. *See Rule 1.16.* Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, *see Comment 4 to Rule 1.3 and Scope.*

[4] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. Paragraph (d) states an exception to that general rule. A part-time prosecutor does not automatically have a conflict of interest in representing a private client who is adverse to the state or other political subdivision (such as a city or county) that the lawyer represents as a part-time prosecutor, although it is possible that in a particular case, the part-time prosecutor could have a conflict of interest under paragraph (a).

Simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require informed consent of the respective clients.

#### *Consultation and Informed Consent*

[5] A client may give informed consent to representation notwithstanding a conflict. However when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's informed consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain informed consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to give informed consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to give informed consent. If informed consent is withdrawn, the lawyer should consult Rule 1.9 and Rule 1.16.

[5A] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. *See Rule 1.0(b)*. *See also Rule 1.0(s)* (writing includes electronic transmission). If it is not feasible to obtain

or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. *See Rule 1.0(b)*. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

#### *Lawyer's Interests*

[6] The lawyer's personal or economic interests should not be permitted to have an adverse effect on representation of a client. *See Rules 1.1 and 1.5*. If the propriety of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

#### *Conflicts in Litigation*

[7] Paragraph (c)(2) prohibits representation of opposing parties in the same or a similar proceeding including simultaneous



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representation of parties whose interests may conflict, such as co-plaintiffs or co-defendants. An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal, the requirements of paragraph (b) are met, and consent is not prohibited by paragraph (c).

[8] Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients give informed consent as required by paragraph (b). By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government entity is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

[9] A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases while they are pending in different trial courts, but it may be improper to do so should one or more of the cases reach the appellate court.

#### *Interest of Person Paying for a Lawyer's Service*

[10] A lawyer may be paid from a source other than the client, if the client is informed of that fact and gives informed consent and the arrangement does not compromise the lawyer's duty of loyalty to the client. *See Rule 1.8(f)*. For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients give informed consent and the arrangement ensures the lawyer's professional independence.

#### *Non-litigation Conflicts*

[11] Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for material and adverse effect include the duration and extent of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise.

[12] In a negotiation common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

[13] Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

[14] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

#### *Conflict Charged by an Opposing Party*

[15] Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call into question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. *See Scope*.

[16] For the purposes of 1.7 (d), part-time prosecutors include but are not limited to part-time solicitors-general, part-time assistant solicitors-general, part-time probate court prosecutors, part-time magistrate court prosecutors, part-time municipal



court prosecutors, special assistant attorneys general, part-time juvenile court prosecutors and prosecutors *pro tem*.

[17] Pragmatic considerations require that the rules treat a lawyer serving as a part-time prosecutor differently. See *Thompson v. State*, 254 Ga. 393, 396-397 (1985).

#### *Special Considerations in Common Representation*

[18] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See *Rule 1.4*. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

#### **RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS**

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

The maximum penalty for a violation of this Rule is a public reprimand.

#### **Comment**

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights,

but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships.

[2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an e-mail or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document or electronically stored information" includes, in addition to paper documents, e-mail and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

#### **RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:

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(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) a lawyer shall not allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer to:

(1) represent himself or herself as a lawyer or person with similar status; or

(2) provide any legal advice to the clients of the lawyer either in person, by telephone or in writing.

The maximum penalty for a violation of this Rule is disbarment.

### Comment

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Georgia Rules of Professional Conduct. *See Comment [1] to Rule 5.1.* Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer.

[3] The prohibitions of paragraph (d) are designed to prevent the unauthorized practice of law in a law office by a person who has been suspended or disbarred. A lawyer who allows a suspended or disbarred lawyer to work in a law office must exercise special care to ensure that the former lawyer complies with these Rules, and that clients of the firm understand the former lawyer's role.

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# Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

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No earlier than 30 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, *2016-2017 State Bar of Georgia Directory and Handbook*, p. 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-7.

This Statement and the following verbatim text are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-7.

Jeffrey R. Davis  
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 2017-1

#### 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, 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, and published at *2016-2017 State Bar of Georgia Directory and Handbook*, pp. H-1, *et seq.*, respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended as follows:

#### I.

#### **Proposed Amendments to Part I, Creation and Organization; Chapter 5, Finance; Rule 1-501. License Fees**

It is proposed that the following Rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### Rule 1-501. License Fees

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall automatically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

(b) In the event a member of the State Bar of Georgia is delinquent in the payment of any license fee, late fee, assessment, reinstatement fee, or cost, charge or penalty incurred by the State Bar of Georgia as a result of a cancelled or dishonored payment of any type or kind and of any nature for a period of one year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(1) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(2) provision to the membership section of the State Bar of Georgia of the following:

(i) a certificate from the Office of the General Counsel of the State Bar of Georgia that the suspended member is not presently subject to any disciplinary procedure;

(ii) a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education; (iii) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(3) payment to the State Bar of Georgia of a non-waivable reinstatement fee as follows:

(i) \$150.00 for the first reinstatement paid within the first year of suspension, plus \$150.00 for each year of suspension thereafter up to a total of five years;

(ii) \$250.00 for the second reinstatement paid within the first year of suspension, plus \$250.00



for each year of suspension thereafter up to a total of five years;

(iii) \$500.00 for the third reinstatement paid within the first year of suspension, plus \$500.00 for each year of suspension thereafter up to a total of five years; or

(iv) \$750.00 for each subsequent reinstatement paid within the first year of suspension, plus \$750.00 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

A member that has been suspended pursuant to this Rule, may submit in writing to the Executive Committee, a request for an extension of time to complete any of the requirements contained in section (b). The request must state with particularity the reasons and need for the extension. The Executive Committee, upon sufficient and reasonable cause, may grant such an extension.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. ~~The terminated member shall not be entitled to a hearing as set out in section (d) below.~~ The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b) (3) above plus an additional \$750.00 as a readmission fee to the State Bar of Georgia.

(d) Prior to suspending a member under subsection (b) above, the State Bar of Georgia shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that unless either the fee and all penalties related thereto are paid within 60 days or a hearing to establish reasonable cause is requested within 60 days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within 90 days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten days in advance. The party cited may be represented by counsel.

Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it, and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship, short of adjudicated bankruptcy, shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar of Georgia. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the respondent attorney. The respondent attorney may file with the Court any written exceptions (supported by the written argument) said respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee by service on the General Counsel within 20 days of the date that the findings were served on the respondent attorney. Upon the filing of exceptions by the respondent attorney, the Executive Committee shall within 20 days of said filing, file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court of Georgia. The Supreme Court of Georgia may grant

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extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Supreme Court of Georgia may grant oral argument on any exception filed with it upon application for such argument by the respondent attorney or the Executive Committee. The Supreme Court of Georgia shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgement judgment. A copy of the Supreme Court of Georgia's judgement judgment shall be transmitted to the Executive Committee and to the respondent attorney by the Supreme Court of Georgia.

Within 30 days after a final judgement judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of Georgia take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia.

If the proposed amendments to the Rule are adopted, the amended Rule would read as follows:

#### **Rule 1-501. License Fees**

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall auto-

matically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

(b) In the event a member of the State Bar of Georgia is delinquent in the payment of any license fee, late fee, assessment, reinstatement fee, or cost, charge or penalty incurred by the State Bar of Georgia as a result of a cancelled or dishonored payment of any type or kind and of any nature for a period of one year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(1) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(2) provision to the membership section of the State Bar of Georgia of the following:

(i) a certificate from the Office of the General Counsel of the State Bar of Georgia that the suspended member is not presently subject to any disciplinary procedure;

(ii) a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education; (iii) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(3) payment to the State Bar of Georgia of a non-waivable reinstatement fee as follows:

(i) \$150 for the first reinstatement paid within the first year of suspension, plus \$150 for each year of suspension thereafter up to a total of five years;

(ii) \$250 for the second reinstatement paid within the first year of suspension, plus \$250 for each year of suspension thereafter up to a total of five years;

(iii) \$500 for the third reinstatement paid within the first year of suspension, plus \$500 for each year of suspension thereafter up to a total of five years; or

(iv) \$750 for each subsequent reinstatement paid within the first year of suspension, plus \$750 for each year of suspension thereafter up to a total of five years.

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The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

A member that has been suspended pursuant to this Rule, may submit in writing to the Executive Committee, a request for an extension of time to complete any of the requirements contained in section (b). The request must state with particularity the reasons and need for the extension. The Executive Committee, upon sufficient and reasonable cause, may grant such an extension.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b) (3) above plus an additional \$750 as a readmission fee to the State Bar of Georgia.

(d) Prior to suspending a member under subsection (b) above, the State Bar of Georgia shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that unless either the fee and all penalties related thereto are paid within 60 days or a hearing to establish reasonable cause is requested within 60 days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within 90 days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it, and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation

of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship, short of adjudicated bankruptcy, shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar of Georgia. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the respondent attorney. The respondent attorney may file with the Court any written exceptions (supported by the written argument) said respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee by service on the General Counsel within 20 days of the date that the findings were served on the respondent attorney. Upon the filing of exceptions by the respondent attorney, the Executive Committee shall within 20 days of said filing, file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court of Georgia. The Supreme Court of Georgia may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Supreme Court of Georgia may grant oral argument on any exception filed with it upon application for such argument by the respondent attorney or the Executive Committee. The Supreme Court of Georgia shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgment. A copy of the Supreme Court of Georgia's judgment shall be transmitted to the Executive Committee and to the respondent attorney by the Supreme Court of Georgia.



Within 30 days after a final judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of Georgia take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia.

## II.

### **Proposed Amendments to Part I, Creation and Organization; Chapter 5, Finance; Rule 1-501.1. License Fees – Late Fee**

It is proposed that the following Rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **Rule 1-501.1. License Fees – Late Fee**

Any member who has not paid ~~his or her~~ their license fee ~~for the Bar year,~~ on or before August 1, shall be penalized in the amount of ~~seventy-five (\$75.00), which will be added to the member's outstanding license fee.~~ Any member who ~~is delinquent in his or her~~ has not paid their license fee on or after January 1 of each year shall be penalized ~~in the an~~ additional amount of one hundred dollars (\$100) for a total of ~~one hundred seventy-five dollars (\$175), which will be added to the member's outstanding license fee.~~

A member may submit a request for waiver of any late fees in writing to the Executive Committee of the State Bar of Georgia. Upon good cause shown, any late fee or penalty imposed by this Rule may be waived by a majority vote of the Executive Committee.

If the proposed amendments to the Rules are adopted, the amended Rule would read as follows:

#### **Rule 1-501.1. License Fees - Late Fee**

Any member who has not paid their license fee for the Bar year, on or before August 1, shall be penalized in the amount of \$75, which will be added to the member's outstanding license fee. Any member who has not paid their license fee on or after January 1 of each year shall be penalized an additional amount of \$100 for a total of \$175, which will be added to the member's outstanding license fee.

A member may submit a request for waiver of any late fees in writing to the Executive Committee of the State Bar of Georgia. Upon good cause shown, any late fee or penalty imposed by this Rule may be waived by a majority vote of the Executive Committee.

## III.

### **Proposed Amendments to Part IV, Georgia Rules of Professional Conduct; Chapter 4, Advisory Opinions; Rule 4-402, The Formal Advisory Opinion Board**

It is proposed that the following Rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **Rule 4-402. The Formal Advisory Opinion Board**

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

- (1) Five members of the State Bar of Georgia at-large;
- (2) One member of the Georgia Trial Lawyers Association;
- (3) One member of the Georgia Defense Lawyers Association;
- (4) One member of the Georgia Association of Criminal Defense Lawyers;
- (5) One member of the Young Lawyers Division of the State Bar of Georgia;
- (6) One member of the Georgia District Attorneys Association;

(7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;

(8) One member of the Investigative Panel of the State Disciplinary Board; ~~and~~

(9) One member of the Review Panel of the State Disciplinary Board; ~~and~~;

(10) One member of the Executive Committee of the State Bar of Georgia.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board, ~~and the Executive Committee~~ shall serve for a term of one year;

(3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar of Georgia following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Association of Defense Lawyers, the Georgia Association of Criminal Defense Lawyers, the Georgia District Attorneys Association and the Young Lawyers Division of the State Bar of Georgia) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large Members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial Representatives from the American Bar Association Accredited Law Schools shall be appointed to one-year terms; two of the initial law school representatives shall be appointed to two-year terms. As

each initial term expires, the successor appointee shall be appointed for a term of two years;

(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems it appropriate to reappoint a member for one or more additional terms.

(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

If the proposed amendments to the Rule are adopted, the amended Rule would read as follows:

#### **Rule 4-402. The Formal Advisory Opinion Board**

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

(1) Five members of the State Bar of Georgia at-large;

(2) One member of the Georgia Trial Lawyers Association;

(3) One member of the Georgia Defense Lawyers Association;

(4) One member of the Georgia Association of Criminal Defense Lawyers;

(5) One member of the Young Lawyers Division of the State Bar of Georgia;

(6) One member of the Georgia District Attorneys Association;

(7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;

(8) One member of the Investigative Panel of the State Disciplinary Board;

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(9) One member of the Review Panel of the State Disciplinary Board; and

(10) One member of the Executive Committee of the State Bar of Georgia.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board, and the Executive Committee shall serve for a term of one year;

(3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar of Georgia following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Association of Defense Lawyers, the Georgia Association of Criminal Defense Lawyers, the Georgia District Attorneys Association and the Young Lawyers Division of the State Bar of Georgia) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large Members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial Representatives from the American Bar Association Accredited Law Schools shall be appointed to one-year terms; two of the initial law school representatives shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems

it appropriate to reappoint a member for one or more additional terms.

(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

#### IV.

#### **Proposed Amendments to Part IV, Georgia Rules of Professional Conduct; Chapter 1, Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law**

It is proposed that the following Rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **RULE 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;



(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision Of Legal Services Following Determination Of Major Disaster, may provide legal services in this state to the extent allowed by said Rule.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule, may provide legal services in this state to the extent allowed by said Rule.

(j) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rule.

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a

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limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rule.

(l) Any domestic or foreign lawyer that has been admitted to the practice of law in Georgia pro hac vice, pursuant to the Uniform Rules of the various classes of courts in Georgia, shall pay all required fees and costs annually as set forth in those Rules. Failure to pay the annual fee by January 15 of each year of admission pro hac vice, will result in a late fee of \$100 that must be paid no later than March 1 of that year. Failure to pay the annual fees may result in disciplinary action, and said lawyer may be subject to prosecution under the unauthorized practice of law statutes of this state.

The maximum penalty for a violation of this **rRule** is disbarment.

#### Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer

must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1\_(a) and 7.5\_(b).

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies four such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)\_(1) and (d)\_(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Domestic or Foreign Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Domestic or Foreign Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e), (f) and (g) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)\_(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)\_(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)\_(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this

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jurisdiction requires a Domestic Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so requires.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has

a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

- a. The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or
- b. The Domestic or Foreign Lawyer's client may be resident in, have an office in, or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- c. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- d. Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or
- e. A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- f. Some aspect of the matter may be governed by international law or the law of a non-United State jurisdiction; or
- g. The Lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or
- h. The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or
- i. The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.



[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including

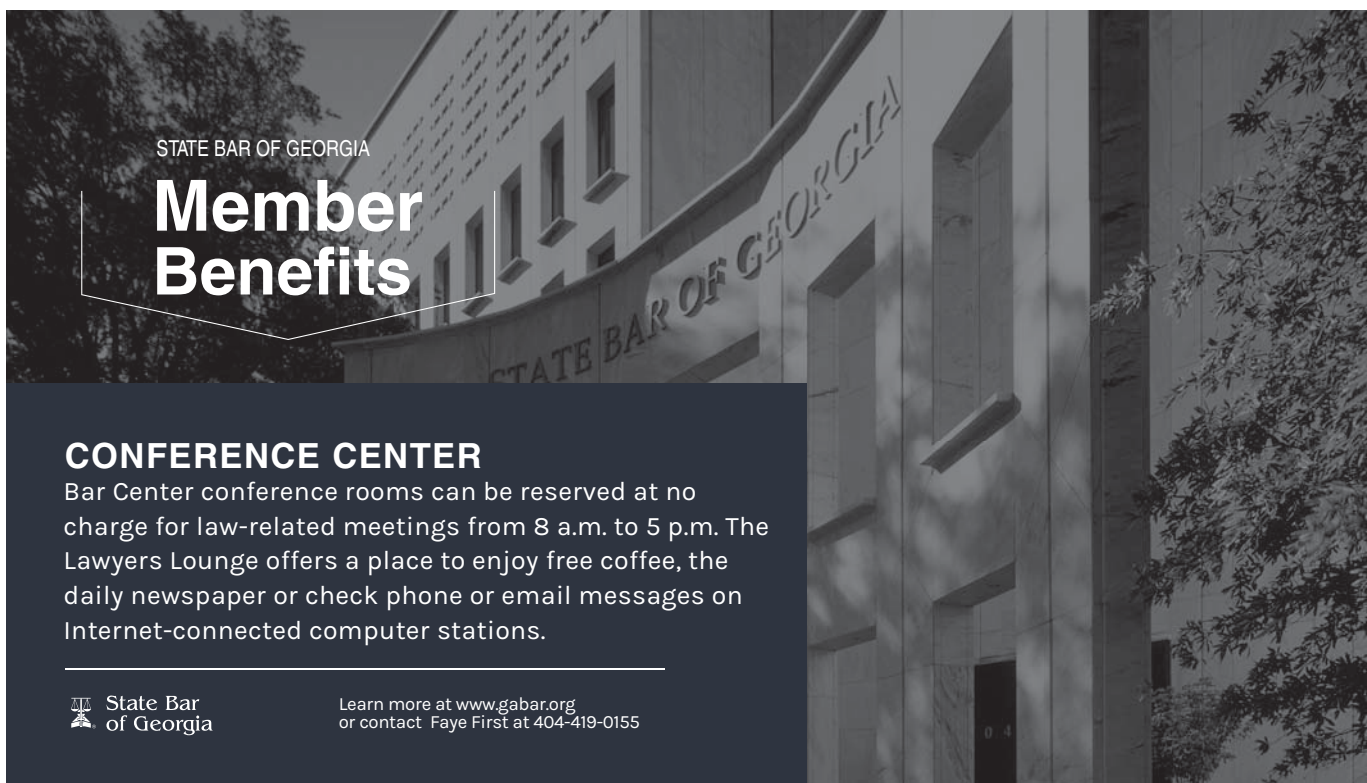
assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4.

[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.




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 State Bar of Georgia

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If the proposed amendments to the Rule are adopted, the amended Rule would read as follows:

**RULE 5.5. UNAUTHORIZED PRACTICE OF LAW;  
MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision Of Legal Services Following Determination Of Major Disaster, may provide legal services in this state to the extent allowed by said Rule.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule, may provide legal services in this state to the extent allowed by said Rule.

(j) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rule.

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rule.

(l) Any domestic or foreign lawyer that has been admitted to the practice of law in Georgia pro hac vice, pursuant to the Uniform Rules of the various classes of courts in Georgia, shall pay all required fees and costs annually as set forth in those Rules. Failure to pay the annual fee by January 15 of each year of admission pro hac vice, will result in a late fee of \$100 that must be paid no later than March 1 of that year. Failure to pay the annual fees may result in disciplinary action, and said lawyer may be subject to prosecution under the unauthorized practice of law statutes of this state.

The maximum penalty for a violation of this Rule is disbarment.

#### Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 (a) and 7.5 (b).

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies four such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d) (1) and (d) (2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Domestic or Foreign Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Domestic or Foreign Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e), (f) and (g) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domes-



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tic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c) (1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e) (1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph (c) (2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c) (2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c) (2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c) (3) permits a Domestic Lawyer, and paragraph (e) (3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are

in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so requires.

[13] Paragraph (c) (4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c) (2) or (c) (3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e) (4) (i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e) (4) (ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c) (3) and (c) (4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e) (3) and (e) (4) (ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

- a. The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or
- b. The Domestic or Foreign Lawyer's client may be resident in, have an office in, or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- c. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- d. Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or

e. A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

f. Some aspect of the matter may be governed by international law or the law of a non-United State jurisdiction; or

g. The Lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or

h. The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or

i. The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d) (1) and (d) (2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d) (1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d) (2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e) (4) (iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5 (a).

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4.

[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

SO MOVED, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Counsel for the State Bar of Georgia

\_\_\_\_\_  
William D. NeSmith, III  
Deputy General Counsel  
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# Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

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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, *2016-2017 State Bar of Georgia Directory and Handbook*, p. 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-7.

This Statement and the following verbatim text are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-7.

Jeffrey R. Davis  
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 2017-2

#### 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, 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, and published at *2016-2017 State Bar of Georgia Directory and Handbook*, pp. H-1, *et seq.*, The State Bar respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended to add a new Part XVI regarding the Institute for Continuing Legal Education (ICLE) set out as follow:

#### Part XVI

#### Institute for Continuing Legal Education

#### Rule 16-1. Preamble and Establishment of the Institute for Continuing Legal Education.

Pursuant to an agreement executed on December 30, 2016, between the Institute for Continuing Legal Education in Georgia, an unincorporated non-profit Georgia association and the State Bar of Georgia Foundation, Inc. a Georgia nonprofit corporation, the Institute for Continuing Legal Education (“ICLE”) is hereby established as a Program of the State Bar of Georgia. The purposes of ICLE are to promote a well-organized, properly planned, and adequately supported program of continuing legal education by which members of the legal profession may enhance their skills, keep abreast of developments in the law, ethics and professionalism, engage in the study and research of the law and disseminate the knowledge thus obtained.

#### Rule 16-2. ICLE Board.

(a) ICLE shall be overseen by a Board composed of 13 members, all of whom shall be members of the State Bar of Georgia as follows: the Immediate Past President of the State Bar of Georgia, seven members of the State Bar of Georgia appointed by the President with the approval of the Board of Governors, and one member from each of the ABA accredited law schools operating in the State appointed by the dean of the respective law school. Each Board member shall serve for three years with the terms staggered so that the terms of approximately one-third of the members expire each year. No State Bar of Georgia member may serve more than two full terms except that such a member appointed to fill a vacancy may fill the unexpired term of the member replaced in addition to two full terms, if reappointed. There shall be no term limits for the ABA accredited law school members.

(b) All members of the predecessor ICLE Board of Trustees will be eligible for appointment to serve on the ICLE Board described herein. The President of the State Bar of Georgia shall appoint seven members to the ICLE Board in staggered terms. Each of the deans of the ABA accredited law schools operating in Georgia shall name one Board member to serve a three-year term. Each year thereafter, the incoming Bar President and the deans of the ABA accredited law schools shall appoint or reappoint members as necessary to fill the seats of those members with expiring terms. The Immediate Past President of the State Bar of Georgia shall serve a one-year term.

(c) The Board shall meet in conjunction with the Fall, Mid-year, Spring and Annual meetings of the State Bar of Georgia Board of Governors. The Chair or any seven members of the Board, which must include at least one ABA accredited law school member, may call a special meeting of the Board at a time and place convenient to the Board and upon conditions described in the Internal Operating Procedures of the Board.

(d) At the first meeting after July 1 of each year the Board shall elect a Chair, Vice-Chair, and such other officers as it deems necessary. No Board member may serve as Chair for more than one year.



(e) Seven Board members shall constitute a quorum of the Board. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Board. The Director of ICLE shall attend meetings of the Board and shall serve as Secretary to the Board but shall have no vote.

(f) No compensation shall be paid to members of the ICLE Board for their service.

(g) A Board member may be removed from the Board for failure to attend meetings or for other good cause as defined in the Internal Operating Procedures of the Board. The vacancy shall be filled by the original appointing authority.

**Rule 16-3. Powers and Duties of the ICLE Board.**

The ICLE Board shall have the following powers and duties:

(a) to prepare a proposed budget for the annual operation of the Institute;

(b) to develop policies and Internal Operating Procedures for the operation of the Board;

(c) to recommend topics and speakers to the Director for continuing legal education programs to be sponsored by the State Bar of Georgia or its Sections;

(d) to encourage CLE programming by the Sections of the State Bar of Georgia;

(e) to review qualifications for proposed speakers;

(f) to review evaluations from CLE programs; and

(g) To submit an annual report to the Board of Governors describing ICLE's activity for the year, including programs presented, attendance, and income generated from each program.

**Rule 16-4. Director.**

The Executive Director of the State Bar of Georgia, with the advice and consent of the ICLE Board, shall hire a Director for ICLE and shall serve as the immediate supervisor of the Director. The Director shall oversee the day-to-day operations of ICLE.

**Rule 16-5. Finances.**

(a) ICLE shall fund its operations from the fees that it charges for CLE programs. It shall receive no general revenue funds from the State Bar of Georgia. Its funds and accounts shall be maintained by the State Bar of Georgia separately from other funds or accounts of the State Bar of

Georgia. The State Bar of Georgia, after consultation with the ICLE Board, may charge ICLE for its costs in housing and administering the Institute as determined by the Board of Governors.

(b) The Board shall provide a financial report to the Board of Governors at each of its meetings and shall provide an audit report to the Board of Governors at the Annual Meeting each year.

**Rule 16-6. Staff Liaison.**

The General Counsel and/or Bar Counsel for the State Bar of Georgia shall serve as legal advisor for the Board and for the ICLE program.

**Rule 16-7. Immunity.**

The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and this program to be within the court's judicial and regulatory functions, and being regulatory and judicial in nature, the State Bar of Georgia, its employees, the Office of the General Counsel, its staff liaison to the program, the ICLE Board members, and any outside counsel advising and assisting the program are entitled to judicial immunity.

SO MOVED, this \_\_\_\_ day of \_\_\_\_\_, 2017.

Counsel for the State Bar of Georgia

\_\_\_\_\_  
William D. NeSmith, III  
Deputy General Counsel  
State Bar No. 535792

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