

The background of the entire page is a collage of various US dollar bills, including one-dollar and five-dollar bills, some of which are partially torn or layered over each other. The colors are primarily green and yellow.

# Georgia Bar Journal

June 2016 • Volume 21 • Number 7

The Issue of Double Taxation in Georgia



## The Issue of Double Taxation in Georgia





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by Robert J. "Bob" Kauffman



Photo by Zach Porter Photography

# Catching Up With Changing Times

**T**echnological advancements have changed the world in ways we could not have imagined before entering the 21st century. The

impact that these dramatic changes have had on the practice of law should have come as no surprise, either.

The level of venture capital funding in legal technology companies rose 1,500 percent—from \$66 million to \$1 billion—in just two years from 2012 to 2014. The tech companies that reaped the low-hanging fruit in the beginning of the technology boom through the development of online forms and company formations are now expanding their scope and reach.

"My, oh my, how the world has changed," wrote Basha Rubin in the August 2014 edition of *Forbes* magazine. "... (L)aw has been slow to adapt to technological change, but don't confuse its tardiness with intractability. As consumers expect technology to make everything easier, law will not be immune."

"We all realize that technology is already affecting the delivery of legal services in our state. It is good to know that Georgia is catching up with the changing times."

As Rubin points out, "The tools lawyers use to conduct research, review documents, assemble documents, communicate with clients, and invoice and accept payment are inefficient. Inefficiencies are costly, and consumers are more and more vocal about wanting to keep

legal costs down. . . . I have no idea which of the current crop of startups will be successful, but the status quo will not stand and companies that take advantage of that opportunity will thrive."

The biggest point, according to Rubin is that "the boom hasn't even started yet." These are still the early days of the technology tsunami that's about to hit the legal profession, if it hasn't already.

## Legal Analytics

A recent survey conducted by Huron Legal of more than 125 legal technology professionals revealed that 68 percent of

respondents expect their organizations' investments in legal data analytics to increase over the next two years. Huron Legal managing directors Laurie A. Fischer and Nathalie Hofman, writing for the Law360 blog, reports that 90 percent of the organizations surveyed are already using data analytics in the legal context.

E-discovery and litigation management issues, including case strategy and staff, are among the most popular



uses of data analytics in the legal realm. "Most of the recent discussion in the media has been about the use of analytics such as predictive coding . . . when culling documents for production during the discovery process," Fischer and Hofman write. "There is a range of available analytical tools beyond predictive coding, however, and their use can aid in litigation in many other ways, such as by potential plaintiffs to evaluate the strength of a case and when or whether to file, by defendants in early case assessment in order to develop a case strategy, to test search terms or identify the best analytical tools to use for discovery purposes, to analyze documents received from another party, and more."

The survey also found 29 percent of survey respondents using analytics for information governance. According to Fischer and Hofman, "As organizations need to address ever-increasing amounts of data, they are eagerly searching for tools to help manage and control that data. The use of analytics has considerable promise for automatic classification of data, which may be useful for data clean-up, classification of existing information, and classification of information when it is created. If information can be automatically classified according to established rules, the level of manual, human intervention needed to determine the disposition of that information will be greatly reduced. Of course, organizations with strong information governance frameworks in place and an understanding of the range of their organizations' information will be best able to use analytics on a sustainable, long-term basis." According to the survey responses, other burgeoning areas of data analytics use include:

- Law department management, i.e., matter budgeting, legal project management
- Outside counsel/law firm management
- Rate/fee negotiation

"Electronic billing has been around for years and law departments and law firms now have extensive data available to them, from their organizations' billing information and from external sources," write Fischer and Hofman. "They can look at their own historic rates as well as external metrics when negotiating fees rates, can look at historic information when developing budgets, and can review historic task and staffing data for project management and matter staffing determinations." Cost management and savings was most commonly cited by survey respondents as a benefit to applying legal analytics, along with improved decision making, predicting outcomes, and risk reduction and management. Conversely, the most commonly cited challenge to effectively implementing legal analytics was securing buy-in from senior leadership.

According to Fisher and Hofman, ". . . this reluctance will diminish very quickly, as leaders see others obtaining results. In corporations, law department leaders may receive pressure from elsewhere within their organizations where the use of analytics is already an accepted practice. Similarly, law firms are likely to receive direct or indirect pressure from their clients who use data analytics to manage fees and other aspects of their representation." In conclusion, Hofman makes the point that "analytics, like many other forms of technology, are a tool in a lawyer's toolbox that can streamline tasks and provide information for more informed decisions, allowing lawyers to focus on the nuances of substantive practice."

## Good Apps, Bad Apps

The technological advancements taking our world by storm do present the legal profession with both challenges and opportunities. For example, on avvo.com, you can, after a few clicks of the mouse, find yourself on the phone with a "highly reviewed" lawyer in your area, for 15 minutes

of legal advice for only \$39—in a variety of law practice areas, including business, family, immigration, bankruptcy and debt, criminal defense, landlord and tenant, employment and labor, real estate and estate planning. Also, technology is increasing pro se representation due to the Home Depot/YouTube "do-it-yourself" phenomenon via LegalZoom, Willmaker and other online services that show individuals how to get around hiring a lawyer for estate planning, living trusts, trademark applications, bankruptcy, forming an LLC or corporation, getting a divorce and, in some states, real estate transactions, among other services.

As a profession, we must be vigilant against the unlicensed practice of law. In 2010, there were 62 million smartphones in the United States. By 2018, an estimated 220 million Americans will use smartphones. Already, more than 80 percent of people below poverty level have a cell phone. How would the consumer know if the person on the other end of the smartphone app is licensed to practice law in Georgia, or is even a lawyer at all?

That we will be able to reach more people with technology is good news, but it is essential that we develop new platforms for the delivery of legal services. Books, banking, shopping, travel and delivery services all operate differently. Einstein said, "The measure of intelligence is the ability to change." And as Darwin would surmise: It's not the smartest species or the strongest that survive, but rather the ones most adaptable to change. Still, we as a Bar and individually as attorneys must remind people that lawyers have values, moral code and judgment that machines don't have.

What is not in question is that technological advancements have the potential for great improvement in our infrastructure to improve the delivery of legal services as well as make things easier for lawyers.

Are you using any of these must-have apps for lawyers, as identified by the *ABA Journal*?:

- GoodReader for syncing your documents for use on your iPad
- Reminders for your to-do lists
- Documents to Go for reviewing Word files on our iPhone or iPad
- LogMeIn, to access your PC when you're away from the office
- Fastcase for free legal research with a tablet or smartphone
- Dropbox, to carry files or access information across a variety of devices
- ExPDF reader, which adds annotation functionality and several other dynamic capabilities
- SignMyPad, for electronic document signing
- WestLawNext, for simple legal research when you are in court or otherwise out of the office
- Depose, which gives attorneys the ability to prepare for and take depositions using their Android device

## E-Filing in Georgia

For several years, the State Bar has been one of several groups working on the effective implementation of electronic filing in Georgia's courts—including the Judicial Council Standing Committee on Technology, under the leadership of Supreme Court Justice Harold Melton, the General Assembly and the Council of Superior Court Clerks.

Approximately 180 court jurisdictions in Georgia are now utilizing e-filing. There are two major vendors: PeachCourt, which is presently operating providing e-filing services for 118 court systems in 93 counties scattered across the state, and Tyler Technologies, which is the vendor for more than 60 courts, including the Fulton County Superior Court and a number of other metro-Atlanta counties. PeachCourt is the vendor of preference for the Council of Superior Court Clerks, with several courts

choosing to contract with Tyler Technologies instead. According to Justice Melton, as more counties have signed on with one vendor or another, the Judicial Council and Clerks Council have begun to "do a better job now of finding common ground. With the blessing of the clerks, we are now meeting with both vendors fairly regularly, and that's been very helpful."

E-filing has brought greater efficiency to the judicial system at all levels, Justice Melton said. "We have been able to speed up the filing of an appeal from a months-long process to 10 minutes," he noted. "This has been an astronomical step forward. Other than the time factor for filings, which is a big deal, what I try to emphasize with lawyers is the ability for lawyers to enter record cites in their appellate briefs without having to leave their office."


"While historically, they have had to drive to Atlanta and meet with the clerk in person to get the record, now they can go online, from their office and do it any time day or night. This has been working well for about a year. Fulton County has recently come on board, and they are a major prize."

For attorneys, the goal should be the most efficient system: a single portal for universal filing. Hopefully, this will allow attorneys to have one account that will then communicate directly with all counties, regardless of the vendor used by each county. While it has been a long time coming, the process is now moving forward.

"We are trying to identify the steps and all the bells and whistles that would be included in a portal that allows an attorney to log in one time, choose a court and interact with that court directly," Justice Melton said. "The portal wouldn't do anything but hand the request to the vendor that handles that court—not much beyond that. Where we are now is trying to determine the quickest way, requiring the least amount of funding, that meets the need for a single fil-

ing portal. We are closer to having something to present to the Bar in a matter of months, rather than an uncertain number of years, which was how we had been operating until recently."

Justice Melton added there will be a learning curve before the system is running at maximum efficiency. "Judges will have to decide whether they want to hit 'print' with everything that comes in, or if they will adjust to reading online, signing documents online, etc. Long-term, the usage rate has to get up there high enough for the economies of scale to work. We ultimately need a mandatory system, but we need a proven system, one that works, before we can get to that point."

We all realize that technology is already affecting the delivery of legal services in our state. It is good to know that Georgia is catching up with the changing times. 


**Robert J. "Bob" Kauffman** is president of the State Bar of Georgia and can be reached at [president@gabar.org](mailto:president@gabar.org).

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by John R. B. "Jack" Long

# Give Lawyers a Break!

**L**et's face it: lawyers are busy people. Most of us knew that before we ever applied to law school. Whether we are trying to meet billable-hour requirements at a big law firm or simply pay the bills in a solo practice, success in our profession means maintaining a uniquely demanding schedule that too often causes our coveted work/life balance to be decidedly unbalanced.

Even as I write this article for the *Georgia Bar Journal*, I can't help but think about the 30 or so things I need to accomplish today to stay on track, knowing that realistically only half of them will actually get done; taking a break is the last thing on my mind.

Lawyers are human, despite any occasional fantasies to the contrary, and just like everyone else, an all-work-and-no-play lifestyle takes its toll on our

physical health, mental health, our relationships and, ironically, our work performance. Simply put, lawyers need a break. By that, do I mean a week-long vacation or some time each day, away from the office, to recharge our productive batteries? Actually, both, and you don't have to take my word for it. The experts on the subject agree: having a life outside the law is

necessary for a lawyer's body and mind and, as a bonus, is usually good for business.

Desiree Moore, president of Greenhorn Legal LLC, an intensive training program for law students and new lawyers as they transition from academics into private practice, writes that in the face of lawyers' myriad of daily pressures and demands, it is easy to compromise fundamental aspects of life outside of work, including health and wellness. "This is especially true early in a legal career, where the focus is on developing a good reputation and a respectable practice. While hard work and dedication are admirable—and indeed required of legal professionals—maintaining good health is essential, too. Without it, being a top practitioner, or even meeting minimum expectations in your practice, will be difficult, if not impossible." So how can lawyers get it all done and have a life outside the law, too?

**"Living well means you are taking care of business in both your professional and personal lives. The first step might be realizing it's OK to give yourself a break."**

tation and a respectable practice. While hard work and dedication are admirable—and indeed required of legal professionals—maintaining good health is essential, too. Without it, being a top practitioner, or even meeting minimum expectations in your practice, will be difficult, if not impossible." So how can lawyers get it all done and have a life outside the law, too?

Making a positive change in our work/life balance might first require a change in attitude. Lawyer and professional business coach Irene Leonard writes that over the years she has noticed that lawyers:

- Think of fun and recreation as a big block of time outside of work.
- Believe that the one-week vacation—a complete break for a number of days is the best way to have fun.
- Don't really know how to enjoy their leisure time.
- Worry about taking time off because it will be hard to get back into the high-pressure groove of their practice.
- Generally do not give themselves high satisfaction levels on fun and recreation.
- Fill their time with pursuits which include work, marketing, volunteering—or anything that keeps them busy.

- Have a critical voice reminding them they should be working even when their brain won't let them.

"My experience is that lawyers seem to focus their planned leisure time on taking vacations rather than taking time off during the week," Leonard writes. "That creates the potential for an unbalanced lifestyle. For my clients who agree with that thinking, the shift has been in making a decision to choose leisure as an ongoing priority. One of my clients is consciously scheduling one day off per month. Because there are so many demands on lawyers for their time—by their clients, their staff, other attorneys, and responsibilities outside the firm—it comes down to how a lawyer chooses to spend their time."

According to Laura A. Calloway, director of the Alabama State Bar's Practice Management Assistance Program, "taking time away from

work can actually lead to greater productivity and greater satisfaction with the daily grind. . . . (B)ut you'll have to take the initiative to leave the office behind for a little while to seek out activities that replenish your energy and restore your soul."

Writing for the ABA's *Law Practice* magazine, Calloway contends that "when you force yourself to work, or worry about work, during all your waking hours, the result will almost always be inefficiency, stress, depression and, eventually, burnout . . . . (I)t's important to find an outlet or two during the workweek. Even the most dedicated lawyers should be able to find something removed from daily practice that interests them. Adopting a hobby or, better yet, a sport—if only something as low impact as walking—helps to clear your mind and change your focus, and it can bring you into contact with people, places and ideas that are unrelated to your



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daily routines. Outside activities, pursued with passion, provide a release from workplace pressure and enable fresh perspectives that can recharge your mind."

As a solo practitioner, I have the flexibility to take time off when I need it; the hard part is making the decision to take it. Unless you are also your own boss, it is likely that you would need the cooperation of your employer to make some of these choices. Research into lawyers' needs for leisure time suggests most employers should be willing and eager to do so. Dan DeFoe, owner and lead consultant of Adlitem Solutions, cites a study that investigated leisure as a coping resource in response to job demands for reducing depression.


"Stressed out, anxious, unrested, and unhappy lawyers will not provide their greatest service for clients nor will they drive success for their teams or organizations," DeFoe writes, noting "the growing body of evidence from social and psychological and organizational sciences that the '24/7' mentality of lawyers and their leaders occupies the 'unsustainable' pile of directives and presents what some may call a clear and present danger. A key take-away for lawyers offered in the details is: 'Take a time-out from work, make it healthy and make it count!'"

How does one get started with establishing a better work/life balance? Jen Uscher, writing for WebMD, offers these five tips:

- **Build downtime into your schedule.** When you plan your week, make it a point to schedule time with your family and friends, and activities that help you recharge. If a date night with your spouse or a softball game with friends is on your calendar, you'll have something to look forward to and an extra incentive to manage your time well so you don't have to cancel.
- **Drop activities that sap your time or energy.** Take stock of any activities that don't enhance your career or personal life, and minimize the time you spend on them. You may even be able to leave work earlier if you make a conscious effort to limit the time you spend on the web and social media sites, making personal calls or checking your bank balance.
- **Rethink your errands.** Consider whether you can outsource any of your time-consuming household chores or errands. Could you order your groceries online and have them delivered? Hire a kid down the street to mow your lawn? Have your dry cleaning picked up and dropped off at your home or office? Order your stamps online so you don't have to go to the post office? Even if you're on a tight budget, you may discover that the time you'll save will make it worth it.

- **Get moving.** It's hard to make time for exercise when you have a jam-packed schedule, but it may ultimately help you get more done by boosting your energy level and ability to concentrate.
- **Remember that a little relaxation goes a long way.** Don't assume that you need to make big changes to bring more balance to your life. Even during a hectic day, you can take 10 or 15 minutes to do something that will recharge your batteries.

One of State Bar President Bob Kauffman's major initiatives for the past year was to establish a Lawyer Wellness Program for Bar members. To get the program off the ground, he appointed a task force, chaired by Ken Hodges. The task force is scheduled to unveil a new "Lawyers Living Well" website during this month's Annual Meeting at Amelia Island and continue its work in the coming year to fully develop the program.

Living well means you are taking care of business in both your professional and personal lives. The first step might be realizing it's OK to give yourself a break. 

**John R. B. "Jack" Long** is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at [jlongattorney@aol.com](mailto:jlongattorney@aol.com).



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# The Issue of Double Taxation in Georgia

by James V. Burgess Jr. and Michael B. Brown

In most states, there is a legal distinction between the service delivery role of municipal and county governments. Cities exist by charter as creatures of the state legislature for the purpose of providing certain urban type services, such as police and fire protection, water and sewer utilities, street maintenance, etc. By contrast, counties serve as an administrative arm of the state and provide certain state mandated functions such as county courts, health and welfare services, bridge and road maintenance, and agricultural services and programs. This traditional service delivery distinction between cities and counties continued in Georgia until 1972.

This city-county service distinction began to erode as urban populations left cities for unincor-

porated suburban areas following World War II. As a result, Georgia's most populous counties faced pressure from new citizens desiring the same type of urban or municipal services that they had previously enjoyed as city residents. However, county governments were confronted by a legal dilemma. They possessed no authority under the Georgia Constitution or general laws to provide police, fire, refuse collection or other types of municipal services requested by the new residents in unincorporated areas. As a result, many of Georgia's urban counties sought special constitutional amendments to grant permissive authority for provision of municipal type services. Cities were also powerless to serve new unincorporated suburban residents because of the absence of legal authority to provide municipal services outside their corporate boundaries and, moreover, their powers of annexation were severely limited.

The growing urbanization of unincorporated areas in Georgia's counties continued throughout the 1960s and 1970s. The problems associated with this urban growth were brought to the attention of the State Planning and Community Affairs Committee during the 1971-72 session of the Georgia General Assembly. The Committee was authorized to function as an interim study committee, and to facilitate its work, the Committee established five subcommittees, two of which dealt with community development and urban growth.<sup>1</sup>

The Community Development Subcommittee found,

In terms of the quality of our environment, we are suffering from the effects of unplanned, uncoordinated, haphazard growth and development. The results are urban sprawl, congestion, pollution and accelerating social ills which have hastened the white flight to the suburbs, leaving the decaying central cities to the poor, the black, and the elderly.<sup>2</sup>

The Subcommittee further predicted: "The problems associated with population growth, migration, and physical development of the 1960's will multiply and intensify during the present decade. The State has an opportunity to formulate comprehensive innovative approaches to these problems."<sup>3</sup>

### Equalization of Authority

The Urban Growth Subcommittee found that although structural remedies such as the consolidation of Columbus and Muscogee County or annexation of unincorporated areas in Macon and Albany had been successfully achieved, the use of these approaches might not be politically feasible in other urban areas.<sup>4</sup> The Subcommittee stated,

Other alternatives, at least for service delivery, should be made available for urban areas, particularly one which precludes the need for local governments to return to the General Assembly for permissive authority. This is also a recognition of the profusion of local legislation which has already indicated the need for an equalization of authority among local governments.<sup>5</sup>

The Urban Growth Subcommittee proposed an amendment to the Georgia Constitution that would equalize service delivery authority among local governments. This amendment was intended as an "effort to provide

local governments with the authority by which they may structure their service functions and delivery systems in such a way as local situations and experience may dictate."<sup>6</sup> It included permissive authority to allow the use of special districts for both inter-county and intra-county purposes, given the type of service and degree of urbanization. It was entirely permissive in authority and did not require any action by local governments.

Amendment 19, herein referred to as "the equalization amendment," was approved by the 1972 General Assembly and adopted by Georgia's voters the following November.<sup>7</sup> The equalization amendment enumerated 15 specific urban services that both counties and cities were authorized to perform at their discretion.<sup>8</sup> It granted to counties the power to provide the same urban services that previously only municipalities could provide pursuant to their charter authority.

### Service Delivery Role Distinction Eliminated

With the passage of the equalization amendment, the historical distinction between the service delivery role of cities and counties in Georgia was eliminated. This was one of the most significant developments in the history of Georgia local government law. It literally changed the service delivery relationships between cities and counties in the state. As a constitutional grant of legal authority to local governments for the provision of the enumerated services, any changes to or revisions of such authority can only be made by the voters of Georgia.<sup>9</sup> The Subcommittee's intent with the amendment is best explained by the following:

An important effect of the amendment is to put the state in a position to encourage local governments to provide a level or standard of service delivery . . . . The local government equal-

ization amendment provides the framework within which the state government may begin to expect local governments to improve their service functions . . . . [I]t is not an attempt to force local governments to accept a loss of authority which would preclude their responsibility to the local citizens.<sup>10</sup>

The Urban Growth Subcommittee reasoned that expansion of urban services to county unincorporated areas occurred only if alternative service delivery approaches were implemented, such as annexation, city-county consolidation, or functional consolidation, "the last approach being one of the effects of the local government equalization amendment."<sup>11</sup> It concluded, "It will be necessary for the local governments to review the most feasible, politically, and advantageous route" to achieve the desired service expansion.<sup>12</sup>

With the expansion of urban services, county governing bodies determined that levying county-wide property taxes was (and continues to be) the most politically feasible way for counties to fund unincorporated area services. While the equalization amendment prohibited counties from providing services within cities without a county-city contract, the amendment did not prohibit county taxation of properties within cities for unincorporated area urban services. Even though city residents and businesses were already paying for urban services in their city tax bills, city taxpayers began to also pay in their county tax bills for the same type of services provided primarily for the benefit of unincorporated area residents and businesses. Instead of promoting cooperation between cities and counties through functional consolidation, the amendment fostered even further competition in city-county service delivery. While city taxpayers may object to this tax inequity, they have had little recourse except through litigation.

In short, the equalization amendment had the unintended consequence of allowing double taxation and tax inequities for city residents and businesses.

Following approval of the amendment and continuing to the present, counties have significantly expanded unincorporated area services to include law enforcement patrol, fire, roads, water, sewers, sanitation and recreation. In 2013, annual expenditures by Georgia counties (excluding consolidated governments) for these services amounted to \$3.18 billion. This was an increase of \$2.61 billion from 1985 until 2013.<sup>13</sup>

### Remedies for Tax Inequity

A number of legal remedies exist for resolving the issue of double taxation in Georgia. These include the use of special service districts authorized by the equalization amendment, the Service Delivery Act of 1997, the Local Option Sales Tax Act and the 1983 insurance premium statute.

### Special Service Districts

The special service district provision of the Georgia Constitution authorizes the creation of special districts for the provision and financing of local government services within such districts.<sup>14</sup> Fees, assessments and taxes may be levied and collected within such districts to pay the cost of providing services therein. This authorization is broad and permissive and may be implemented by general law or by local ordinance or resolution. Counties are not mandated by this authority to create special districts; however, such districts could be directly created by general law or under conditions specified by general law.<sup>15</sup>

Some counties have used this constitutional authority to create special service districts to finance urban services in unincorporated county areas. For example, 23 counties have established fire service districts. Eight counties have multipurpose special service districts

for the provision of urban services in unincorporated areas.<sup>16</sup> Of these, several, such as Fulton and Gwinnett counties, implemented special services districts only in the face of litigation or the threat of legislative action. A few counties, including Henry and DeKalb Counties, use differential county-wide property tax millage rates to mitigate municipal double taxation.

### Service Delivery Act

In 1997 the General Assembly took broader action to address the issue of double taxation through enactment of the Service Delivery Act (SDA).<sup>17</sup> The SDA specifically addresses the funding of services that primarily benefit inhabitants of unincorporated areas. The intent of the law was to establish a county and city service delivery system that minimizes inefficiencies resulting from duplication of services, local government competition and funding inequities.<sup>18</sup> To eliminate double taxation of city taxpayers,

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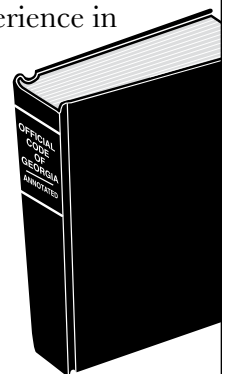
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the law requires the preparation and adoption of a comprehensive strategy to identify all local government services, the unit of government providing such services, the geographic areas where the services are provided (including maps), the funding sources for each service, and the identification of mechanisms and steps needed to achieve the intent of the SDA along with the time frame for such steps.<sup>19</sup>

Addressing the specific complaint of cities and incorporated taxpayers, the SDA provides,

The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents, individuals, and property owners who receive the service. Further, when the county and one or more municipalities jointly fund a county-wide service, the county share of such funding shall be borne by the unincorporated residents, individuals, and property owners that receive the service.<sup>20</sup>

The SDA also specifies the funding sources for such unincorporated area services:

Such funding shall be derived from special service districts created by the county in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed or through such other mechanism agreed upon by the affected parties which complies with the intent of subparagraph (A) of this paragraph[.]<sup>21</sup>

The Georgia Department of Community Affairs (DCA) requires counties and cities, adopting their plans, to formally stipulate that double taxation and inequities have been remedied:

Our service delivery strategy ensures that the cost of any services the county government

provides (including those jointly funded by the county and one or more municipalities) primarily for the benefit of the unincorporated area of the county are borne by the unincorporated area residents, individuals, and property owners who receive such service.<sup>22</sup>

Pursuant to the SDA, once a service delivery strategy agreement has been adopted by the county and the requisite cities, it is filed by the county with the DCA.<sup>23</sup> The DCA has 30 days to review the strategy and to verify that it contains the required elements and addresses the mandatory criteria.<sup>24</sup>

Although the DCA must receive and certify service delivery agreements, the law specifically prohibits it from approving or disapproving their components or outcomes.<sup>25</sup> Consequently, the DCA's role as an enforcer of the SDA's requirements is limited. Furthermore, counties and cities face substantial sanctions for noncompliance by failing to jointly submit and agree to a service delivery agreement. These include loss of state funding of essentially all types and inability to obtain state permits.<sup>26</sup>

Recognizing that counties and cities may have difficulty agreeing to the details of a service delivery plan, the SDA provides specific procedures for resolving disputes arising from preparation of the plan; such procedures include alternative dispute resolution, mediation and superior court review of items in dispute (including evidentiary hearings).<sup>27</sup> The court "[i]s authorized to utilize its contempt powers to obtain compliance with its decision relating to the disputed items under review. The judge shall be authorized to impose mediation and court costs against any party upon a finding of bad faith."<sup>28</sup>

Counties and cities have not generally sought court relief to resolve service delivery disputes. The most notable exception is *Gwinnett County v. City of Auburn, et al.*,<sup>29</sup> in which the

court conducted a comprehensive review and analysis of numerous county services to determine service delivery tax equity according to the SDA. Judge David E. Barrett issued a series of orders compelling Gwinnett County to establish service and tax districts in order to remedy tax inequities determined by the court. The court prescribed specific funding sources and accounting and budgetary procedures for each service. Judge Barrett's orders were not appealed. The Gwinnett case reveals that cities may achieve substantial relief for county-city tax inequities through litigation. However, cities that assert tax inequities may face an extended and expensive process of fiscal analysis and legal claims.

Another statewide county-city tax inequity arises from the provision of law enforcement patrol services and a legislative exemption from the SDA. Most Georgia cities receive law enforcement patrol services from police departments, funded with city taxes. Most county unincorporated areas receive law enforcement patrol services from their county sheriff's departments which provide little or no patrol services within most cities. Since sheriff patrol services are funded with county-wide taxes, incorporated taxpayers end up paying for both city and county law enforcement patrol services. This practice is contrary to the general intent of the SDA, but the SDA specifically exempts services provided by county sheriffs.<sup>30</sup>

In summary, the SDA provides clearly defined standards for the determination and remediation of tax inequities,<sup>31</sup> and these standards have now been affirmed in the Gwinnett County litigation. However, the procedures and processes for remediation provided in the statute are essentially impracticable. Cities seeking redress for tax inequities face onerous burdens, including state sanctions for failing to have an approved service delivery agreement and, potential-

ly, an extended dispute resolution process and litigation with county governments. While the SDA has established the criteria for developing a service delivery strategy, it has largely been ineffective in alleviating tax inequities in urban service delivery by counties.

### Local Option Sales Tax Act

In addition to the SDA, the Local Option Sales Tax Act<sup>32</sup> (LOST) requires that tax subsidies be considered and addressed in determining rational shares of LOST proceeds. LOST provides the following as one of eight allocation criteria:

The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision[.]<sup>33</sup>

The Legislature clearly intended to address counties' use of county-wide taxes to subsidize the cost of services provided by the county for the benefit of the unincorporated area of the county. Nevertheless, achieving tax equity through the LOST allocation process is problematic and ineffective. The tax equity criterion is only one of eight criteria which have to be considered in a demanding, contentious and time-limited county-city process of negotiation.<sup>34</sup> In most disputed cases between cities and counties, counties simply refute the existence of tax inequities, and cities are hard-pressed to present and receive court acceptance of their equity arguments.

### Insurance Premium Statute

A final remedy addressing double taxation is found in insurance premium legislation adopted in 1983.<sup>35</sup> While the SDA refers to insurance premium taxes as a source of county revenue to be used in special service districts, there is no mandate that counties use the funds for specific services. By contrast, the 1983 insurance premium statute mandates

that the proceeds of insurance premium taxes be used by counties to fund the following specific services within their unincorporated areas:

- (A) Police protection, except such protection provided by the county sheriff;
- (B) Fire protection;
- (C) Curbside or on-site residential or commercial garbage and solid waste collection;
- (D) Curbs, sidewalks, and street lights; and
- (E) Such other services as may be provided by the county governing authority for the primary benefit of the inhabitants of the unincorporated area of the county.<sup>36</sup>

If the county does not provide any of these enumerated services, the county is required to reduce ad valorem taxes on the inhabitants of the unincorporated area by the amount it receives from the insurance premium tax.<sup>37</sup> The statutory provisions relating to this requirement were litigated in a recent class action lawsuit against Montgomery County, Georgia.<sup>38</sup>

This law further requires county budgets to reflect such financial information along with a record thereof in the minutes of the meeting at which the budget was adopted.<sup>39</sup> Counties are thus required by law to provide budgetary information clearly showing the services that primarily benefit their unincorporated areas. Counties must notify the Department of Revenue (DOR) of their compliance with statutory requirements. DOR records generally show no record of county noncompliance.

Nevertheless, many counties ignore the special requirements of the insurance premium statute. Most counties do not show separately this source of revenues in their budgets, nor do they account for the specific services funded. They fail to enumerate which services are primarily for the benefit of the unincorporated area. Finally, they do not identify insur-

ance premium taxes in their budget adoption resolutions.

## Conclusion

Georgia counties and cities have state policy direction as well as multiple opportunities to achieve service delivery efficiency and equity—through the equalization amendment and the service district clauses of the Constitution, the SDA, LOST and the insurance premium statute. A statewide review of county and city service delivery and funding demonstrates that these remedies have not achieved the General Assembly's goal of developing an equitable and responsive local government service delivery system in Georgia.

Of Georgia's 159 counties, 116 counties levy the same or higher county incorporated area (municipal) property tax rates as compared to the unincorporated areas.<sup>40</sup> Most counties have not addressed such tax rate differentials or inequities through functional consolidation, special unincorporated area tax districts, use of LOST allocations, insurance premium taxes or

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other remedial measures. While 32 Georgia counties have unincorporated area special service districts, 23 of these districts are only for fire services and not for other urban services. Twenty-eight Georgia counties impose higher property tax rates in their incorporated areas than in the unincorporated area.<sup>41</sup> These counties are effectively asserting that no county service is primarily for the benefit of the unincorporated areas, and therefore the insurance premium tax revenues are available to roll-back property tax millage rates in the unincorporated areas.

In summary, taxpayers within Georgia cities face systemic tax inequities which are the result of county urban service delivery and funding practices within unincorporated areas. In their county tax bills, city taxpayers fund services which primarily benefit unincorporated areas. They also pay for city services which are of county-wide benefit, such as fire services outside city boundaries, city streets and road maintenance, parks and recreation, economic development and tourism promotion. This dual urban service delivery system has accommodated the demand for urban services in unincorporated areas, but it has also caused duplication of local government services among cities and counties and resulted in fiscal inequities in the financing of urban services in many areas of the state.

In the 2014 session of the Georgia General Assembly, legislation for strengthening the enforcement provisions of the SDA was introduced in the House of Representatives.<sup>42</sup> Representatives from the Georgia Municipal Association and the Association County Commissioners of Georgia were unable to agree on the proposed legislation; the House did not vote on the legislation. The proposed legislation would have strengthened the sanctions provided by the SDA by allowing the DOR to retain 10 percent of all sales tax revenues distributed to any local government for noncompliance.

The SDA requires local governments to agree upon on a service delivery strategy to minimize conflicts by specifying which local governments would deliver which services and the method of funding such services. Every local government in Georgia is now required to adopt a "service delivery strategy" that ostensibly eliminates duplication and assures that the costs of services are borne by the residents receiving the service. However, without sufficient enforcement for noncompliance, the SDA has fallen far short of its legislative intent.

In its report to the State Planning and Community Affairs Committee in 1972, the Urban Growth Subcommittee did not anticipate that the equalization of service delivery authority among counties and municipalities would result in double taxation in the provision of urban services. The special district authorization in the Constitution is a remedy for resolving the issue of double taxation in Georgia. However, this authorization is permissive, and the creation of special districts can only be mandated by general law. The Urban Growth Subcommittee could have included such a mandate in its recommendations to the State Planning and Community Affairs Committee in 1972. The mandate would have required that the cost of any service provided primarily for the benefit of the county unincorporated area would be borne solely by the residents who receive the service. 



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## Endnotes

1. See REP. OF THE STATE PLANNING AND CMTY. AFFAIRS COMM., 131ST GEN. ASSEMBLY, REG. SESS. (GA. 1972), *reprinted in* JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF GEORGIA, 131ST GEN. ASSEMBLY, REG. SESS., AT 4456 (1972).
2. *Id.* at 4465.
3. *Id.* at 4464.
4. *Id.* at 4459.
5. *Id.*
6. *Id.*
7. See 1972 Ga. Laws 1552; GEORGIA OFFICIAL AND STATISTICAL REGISTER 1971-1972, AT 1900.
8. See 1972 Ga. Laws at 1552-53; GA. CONST. OF 1976 ART. IX, § 4, ¶ 2 (THE PREDECESSOR TO CURRENT GA. CONST. ART. IX, § 2, ¶ 3(A)). This amendment empowers counties and municipalities to provide the following services: police and fire protection; garbage and solid waste collection and disposal; public health facilities and services, including hospitals, ambulances, emergency rescue and animal control; street and road construction, including curbs, sidewalks, and street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof; parks, recreational areas, programs and facilities; storm water and sewage collection and disposal systems; development, storage, treatment and purification and distribution of water; public housing; public transportation system; planning and zoning; libraries; terminal and dock facilities and parking facilities; building, housing, plumbing, and



- electrical codes; and air pollution control.
9. See GA. CONST. ART. X, § 1, ¶ 2.
  10. REP. OF THE STATE PLANNING AND CMTY. AFFAIRS COMM., *supra* note 1, at 4460.
  11. *Id.*
  12. *Id.*
  13. These dollar figures are based on unpublished analysis (available upon request from the authors) of data available to the public at the Carl Vinson Institute of Government's Tax and Expenditure Data Center for Georgia Local Governments, <https://ted.cviog.uga.edu>.
  14. See GA. CONST. ART. IX, § 2, ¶ 6.
  15. *Id.*
  16. These counties include Camden, Chatham, Crisp, Coffee, Dougherty, Emanuel, Fulton and Gwinnett. See GA. DEP'T OF REVENUE, LOCAL GOV'T SERVS. DIV., 2012 GEORGIA COUNTY AD VALOREM TAX DIGEST MILLAGE RATES, [https://dor.georgia.gov/sites/dor.georgia.gov/files/related\\_files/document/LGS/Property%20Tax%20Digest/LGS\\_Georgia\\_County\\_Ad\\_Valorem\\_Tax\\_Digest\\_Millage\\_Rates\\_2012.pdf](https://dor.georgia.gov/sites/dor.georgia.gov/files/related_files/document/LGS/Property%20Tax%20Digest/LGS_Georgia_County_Ad_Valorem_Tax_Digest_Millage_Rates_2012.pdf).
  17. 1997 Ga. Laws 1567, 1571 (codified as amended at O.C.G.A. tit. 36, ch. 70, art. 2 (O.C.G.A. §§ 36-70-20 to -28 (2012))).
  18. O.C.G.A. § 36-70-20.
  19. *Id.* § 36-70-24.
  20. *Id.* § 36-70-24(3)(A).
  21. *Id.* § 36-70-24(3)(B).
  22. GA. DEP'T CMTY. AFFAIRS, SERVICE DELIVERY STRATEGY FORM 4: CERTIFICATIONS, AT ¶ 4. (citing O.C.G.A. § 36-70-24(3)). This form is available at <http://www.dca.state.ga.us/development/planningqualitygrowth/DOCUMENTS/Forms/SDS.Forms/SDSForm4.dot>.
  23. O.C.G.A. § 36-70-26.
  24. *Id.*
  25. *Id.*
  26. See *id.* § 36-70-27(a)(1).
  27. See *id.* § 36-70-25.1.
  28. *Id.* § 36-70-25.1(d)(2).
  29. Gwinnett Cty. v. City of Auburn, *et al.*, Case No. 09-A-01923-9 (Sup. Ct. Gwinnett Cty).
  30. See O.C.G.A. § 36-70-2(5.2).
  31. See *id.* § 36-70-24(3).
  32. O.C.G.A. §§ 48-8-80 to -96 (2013 & Supp. 2015).
  33. O.C.G.A. § 48-8-89(b)(7) (2013 & Supp. 2015).
  34. See *id.* § 48-8-89(b)(1)-(8).
  35. 1983 Ga. Laws 1602 (codified as amended at O.C.G.A. § 33-8-8.3 (2014 & Supp. 2015)).
  36. O.C.G.A. § 33-8-8.3(a)(1). Notably, subparagraph (E) was revised in 1997 to replace the words "solely for" with the words "for the primary benefit." See 1997 Ga. Laws 561, 562.
  37. See O.C.G.A. § 33-8-8.3(a)(2).
  38. Hamilton v. Montgomery Cty., Case No. 13-CV-159 (Sup. Ct. Montgomery Cty.). This was a class action lawsuit seeking refunds of property taxes paid as a result of the county's use of insurance premium tax proceeds to fund garbage collection centers rather than reducing the millage rate for the inhabitants of the unincorporated areas of the county. The outcome of the case centered on an interpretation of O.C.G.A. § 33-8-8 (a)(1)(C) and (E). The court granted plaintiff's motion for summary judgment, which argued that the county's collection centers do not qualify as "curbside or on-site" residential or commercial garbage and solid waste collection and thus the county must provide an ad valorem tax millage rate reduction for property owners in its unincorporated areas in an amount equal to all insurance premium tax proceeds that it used to fund the centers.
  39. See O.C.G.A. § 33-8-8.3(b).
  40. See GA. DEP'T OF REVENUE, LOCAL GOV'T SERVS. DIV., 2013 GEORGIA COUNTY AD VALOREM TAX DIGEST MILLAGE RATES, [https://dor.georgia.gov/sites/dor.georgia.gov/files/related\\_files/document/LGS/Property%20Tax%20Digest/2013%20mill%20rate.pdf](https://dor.georgia.gov/sites/dor.georgia.gov/files/related_files/document/LGS/Property%20Tax%20Digest/2013%20mill%20rate.pdf).
  41. See *id.*
  42. H.B. 855, 152nd Gen. Assembly, Reg. Sess. (Ga. 2014).



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# 2016 Legislative Review

by W. Thomas Worthy

**T**he 2016 Regular Session of the Georgia General Assembly adjourned *sine die* at approximately 12:40 a.m. on Friday, March 25. In what was one of the quickest legislative sessions in recent years, as members are up for re-election this year and were eager to return to their districts to campaign prior to the May 24 primaries.

Perhaps the most important State Bar issue during this year's session was the constitutional amendment (HR 1113) and enabling legislation (HB 808) that abolishes the existing Judicial Qualifications Commission (JQC) and reconstitutes it under provisions contained in general law rather than the Constitution.

The General Assembly took up HR 1113, the constitutional amendment, late in the evening on legislative day 39. The State Bar's lobbying efforts defeated the measure on the first vote, but the Senate voted to reconsider its action, and after hours of horse-trading and political negotiations, one senator's vote was switched and HR 1113 passed 38-18—the bare minimum to reach the required two-thirds vote to adopt a constitutional amendment. The House then immediately agreed to the Senate version by a vote of 120-40, also barely making the two-thirds vote requirement. As a result, the constitutional amendment will be on the ballot in November, and the citizens of Georgia will vote to determine whether or not it passes.



Then, late in the evening on legislative day 40, the Senate passed its version of HB 808, the enabling legislation that accompanies HR 1113 and provides for the composition of the new JQC as well as policies and procedures by which it must operate. The

version passed by the Senate contained two attorney appointments made by the State Bar Board of Governors. When it returned to the House, the House amended the bill, removing the Board of Governors appointees and instead providing that the Speaker of the House and the lieutenant governor each appoint attorney members to the JQC from a list of 10 names provided by the Board of Governors. The bill also provides that the governor appoint an attorney as chairman, the Supreme Court appoint two judges of any court of record and the speaker and lieutenant governor each appoint a civilian member. All of these appointments will be subject to Senate confirmation. The House and Senate agreed to the House version of HB 808 shortly before the *sine die* hour, and Gov. Deal signed HB 808 into law on May 3.

While we are pleased that the State Bar's important role in judicial discipline is at least acknowledged under this new paradigm, we still have significant concerns about the level of the Bar's involvement as well as other policies contained in HB 808. The Board of Governors will continue to discuss strategies about moving forward to address these concerns over the next few months, but these bills underscore the importance of a well-funded Legislative Program and involvement by lawyers with their local legislators to ensure that the Bar's voice is heard as we work to maintain continuity and public confidence in judicial discipline.

In other news, the State Bar did enjoy many strong successes under the Gold Dome. The record-breaking \$23.7 billion FY17 state budget includes the State Bar funding requests such as: restoring grants to civil legal services providers for victims of domestic violence to the pre-Recession level of \$2.5 million per year, an increase in funding at the Department of Law, an increase in funding for the Prosecuting Attorneys Council and the Georgia Public Defenders Council, and con-

tinuation funding of the Appellate Resource Center.

Five State Bar bills saw final passage and have been signed by the governor: SB 206 (a bill requiring binding notice of water indebtedness to closing attorneys); SB 64 (a bill that repeals administrative legitimization in domestic relations matters); SB 367 (this year's installment of Georgia's unmatched justice reform and reinvestment initiatives); SB 290 (a bill that clarifies that attorneys who counsel on or sell title insurance do not need to be dually licensed as insurance agents); and SB 128 (a bill that amends the corporate code). Other bills of interest to the legal profession that saw final passage and were signed by the governor include: HB 927, which changes jurisdiction of the appellate courts and adds two new justices to the Supreme Court; SB 255, which updates Georgia's garnishment laws and procedures; HB 941, which provides sweeping overhauls of Georgia's grand jury system; and HB 954, which adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.


Gov. Deal issued 16 vetoes this year including three high-profile bills. HB 757, the religious liberty bill; HB 859, the bill that would have authorized concealed carry on college campuses by weapons permit holders; and HB 59, which would have created waiver of sovereign immunity as to claims seeking a declaratory judgment or injunctive relief against the state or local governments were all vetoed by the governor on May 3.

State Bar President Bob Kauffman visited the Capitol often this session and did a fine job representing the Bar in his testimony before various committees. The entire Executive Committee as well as Section leaders who graciously volunteered their time to testify before committees are also to be commended. In addition, we owe a debt of gratitude to the State Bar's lobbying team, which also includes Rusty Sewell, Roy Robinson and Meredith Weaver,

for their capable, professional and zealous advocacy.

As in every election year, many members of the General Assembly decide to retire to pursue other opportunities. This year, seven lawyer-legislators announced that they will not be returning to the Gold Dome next year: Rep. Stephen Allison, Rep. Alex Atwood, Rep. LaDawn Jones, Rep. Ronnie Mabry, Rep. B.J. Pak, Rep. Matt Ramsey and Rep. Tom Weldon. I thank them for representing the very best of our profession in the General Assembly and wish them well in their future endeavors.

On that note, I would like to take a point of personal privilege to announce that I will be leaving the State Bar this summer to pursue a new opportunity as vice president of Piedmont Healthcare. The opportunity to represent my profession under the Gold Dome has been one of the highest professional honors for which one can ask. I thank the State Bar leadership, Board of Governors, lobbying team and every member of this dynamic organization for the privilege to work with you.

I encourage you to continue your political engagement at the local level and by signing up for the State Bar Action Network on the Legislative Program website. As our Grassroots Program continues to grow with great success, so will our voice at the Capitol. In the meantime, look for Bar leadership and governmental affairs staff in your area soon as we seek to bring this important service that the Bar provides you to local and voluntary bar associations around the state. 



**W. Thomas Worthy** is director of Governmental Affairs for the State Bar of Georgia and team leader for the State Bar's lobbying team.



# Fulfilling Promises:

## Celebrating the First Decade of Georgia's Public Defender System

by Sara J. Totonchi

*"If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pencil and paper to write a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in that one crude petition . . . the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter, the Court did look into his case . . . and the whole course of American legal history has been changed."* – Attorney General Robert F. Kennedy, Speech before the New England Conference on the Defense of Indigent Persons Accused of Crimes, Nov. 1, 1963

**O**n March 18, 1963, the U.S. Supreme Court issued its decision in *Gideon v. Wainwright*, unanimously holding that people facing serious criminal charges have a right to counsel at state expense if they cannot afford to hire an attorney. Since the enactment of *Gideon*, it has become clear that not just the appointment of counsel, but the appointment of *effective* legal assistance for all defendants, is critical to ensure a just and fair criminal justice system.

In 2005, through the work of then-Chief Justice Norman Fletcher and the Supreme Court of Georgia's Commission on Indigent Defense, and with the support of the State Bar of Georgia, Georgia took an important step in fulfilling *Gideon's* promise by implementing a statewide public defender system, the Georgia Public Defender Council (GPDC). On March 4, 2016, the Indigent Defense Committee of the State Bar of Georgia (IDC) hosted an event marking the 10th anniversary of Georgia's statewide public defender system entitled "Fulfilling Promises: The Next Decade of Public Defense in Georgia."



Former Chief Justice Norman Fletcher was the keynote speaker, offering his reflections on how far the public defender system has progressed in the last decade.

Photo by Rachel Stanley, Southern Center for Human Rights

The event, held in the Marjorie and Ralph Knowles Conference Center at the Georgia State University College of Law, reflected on the transformation of indigent defense over the last decade through the creation of the GPDC and its initiatives that have sought to fulfill the promise of *Gideon* across the state of Georgia. It also served as an opportunity to highlight important legislative changes and work that individual public defender offices are engaged in across the state to ensure quality representation for indigent defendants.

"*Gideon's* promise is about more than just guaranteeing that defendants have a lawyer; it's a promise of effective and meaningful representation," said Lauren Sudeall Lucas, a member of the IDC and assistant professor of law and director of the soon-to-be-introduced Center for Access to Justice at Georgia State. "The discussion at 'Fulfilling Promises' centered on what Georgia can do and is doing to ensure that promise is being kept."

Attendees were greeted by GSU Law Dean Steven Kaminshine. State Bar President Robert J. "Bob" Kauffman shared a letter of welcome from Gov. Nathan Deal that commended the IDC for organizing the event. Under the guidance of Gov. Deal, Georgia has become a leader in reforming the criminal justice system. His support for a strong indigent defense system was made clear during the 2016 legislative session. Gov. Deal's FY17 budget included \$1.7 million in salary increases for GPDC employees as well as, for the first time, funding to create 15 new juvenile defender positions.

Former Chief Justice Norman Fletcher offered reflective and inspiring keynote remarks. He described Georgia's formerly piecemeal and broken system of providing counsel for poor people accused of crimes, assessed unanimously as a failure by the Chief Justice's Commission on Indigent Defense. He recounted the mas-



The organizers of "Fulfilling Promises" (left to right) Sara Totonchi, Nicki Vaughan, Lauren Sudeall Lucas and Claudia Saari.



(Left to right) Panelists Russell Gabriel, Atteeyah Hollie, Leisa Johnson and Vernon Pitts respond to questions from audience members.

sive coalition effort that resulted in the passage of the 2003 Indigent Defense Act. He acknowledged that the last 10 years have been a struggle but shared that he is optimistic about the future of the public defender system, largely due to the dedication of individual public defenders across Georgia.

"Our public defenders and assistant public defenders have made great personal sacrifices," Fletcher said. "They continue to do it because they believe in the system; they believe that equal justice under the law means and requires equal justice for all, not just those who can pay for it."

At the core of "Fulfilling Promises" was a panel featuring indigent defense experts and advocates moderated by Stone Mountain Circuit Public Defender and IDC member Claudia Saari. The panel weighed in on a range of topics, including the role of public defenders in rural and urban areas, public defender workloads and special concerns with regard to the representation of juveniles.

Panelists included Russell Gabriel, director, Criminal Defense Clinic, University of Georgia School of Law; Atteeyah Hollie, staff attorney, Southern Center for Human Rights; Vernon Pitts,

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Photo by Cheryl Karounos, Georgia Public Defender Council

Circuit Public Defenders from across Georgia pose with new GPDC Director, Bryan Tyson. (Front row, left to right) Robert Persse; Bryan Tyson, executive director, GPDC; Brandon Clark; Charlie Brown; David Dunn; Tom Driggers; Claudia Saari, IDC member; Vernon Pitts, IDC member; Renata Newbill-Jallow; and Nicki Vaughan, IDC member. (Back row, left to right) Chris Paul, IDC member; Gary Bowman; Brad Morris; and Leisa Johnson.

Atlanta Circuit Public Defender; and Leisa Johnson, Dougherty Circuit Public Defender.

To close the program, Bryan Tyson, director of GPDC, gave a "State of the State" address. Tyson offered insight regarding the funding status of GPDC. When Gov. Deal took office, GPDC was receiving \$38 million in state funds. In FY16, GPDC's budget from state funds will be more than \$51 million, 34 percent higher than it was when Gov. Deal took office and the most Georgia has ever spent on indigent defense. Next fiscal year, GPDC's budget is on track to be more than \$15 million higher than the collections from the Indigent Defense Fund.

To illustrate the quality of indigent defense now versus before GPDC came into effect, Tyson used the example of death penalty cases and the work of the Georgia Capital Defender, one of GPDC's units. In the decade before GPDC was created in 2005, death-noticed cases ended in a death verdict about 25 percent of the time. Over the last 10 years with our capital defender handling more than 200 cases, those ended in a death verdict only 4 percent of the time.

"In short, you're far better off being represented by a public defender—because we are the

subject matter experts and we get results for our clients," said Tyson.

Tyson gave an overview of the priorities of GPDC in the coming years. He discussed the launch of training programs and leadership development initiatives for public defenders across the state.

"We want to zealously represent our clients," stated Tyson. "We strive to make indigency irrelevant in every courtroom of this state because of that overarching vision: no one should be able to tell whether our client is indigent based on the quality of representation he or she receives."

"The Indigent Defense Committee is thrilled at the success of this symposium," said Nicki Vaughan, long-time member of the Indigent Defense Committee. "Having the visionary leaders of the past along with the present leaders, including so many of the circuit public defenders from around the state, enabled the event to take on significance as a milestone in assuring that Georgia is committed to striving to fulfill the promises of *Gideon*." 



**Sara J. Totonchi** is the executive director of the Southern Center for Human Rights. She can be reached at [stotonchi@schr.org](mailto:stotonchi@schr.org).

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# Pro Bono E-evolution

by Michael Monahan

**E**very spring, the American Bar Association hosts its Equal Justice Conference. I recall wandering into a session at the conference in 2001 that caught my attention. The 90-minute session promised to deliver information about a website that supports volunteer attorneys. It seemed like it would be a pretty straightforward presentation, maybe a little dry for someone like me who was just getting used to the switch from 5 1/4" floppy storage disk to the cooler, new 3 1/2" disk, and who was just beginning to appreciate all the features of WordPerfect.

That 2001 ProBono.Net website presentation turned my work world upside down.

The presenters described a website template they had recently launched in Minnesota that was a particularly useful tool for rural pro bono attorneys and legal service providers to connect and share information and materials with other providers and volunteers across the state. The template consisted of a resource



library, a shared events and trainings calendar, group listserv capacity and news—and which could be developed and shared by multiple nonprofit legal aid and pro bono programs in a collaborative justice community fashion.

As I staffed the State Bar's Access to Justice Committee, upon my return, I made a report to the committee and excitedly laid out the details and the possibilities for implementing the template in Georgia to unite and support our legal aid programs in their pro bono development efforts. My enthusiasm could not overcome the estimated price tag of \$10,000-\$15,000 for the purchase and implementation and the skepticism of addressing pro bono as a statewide issue rather than a regional one. I persisted for a few years and ultimately won over the naysayers. In 2003, we launched GeorgiaAdvocates.org, our statewide volunteer lawyers support website.

From 2003 on, we have made significant changes to the site. We pioneered live-streaming for online pro bono trainings in 2005 by incorporating and testing a video module in the ProBono.net template. For the first time in Georgia, volunteer lawyers could attend pro bono trainings without leaving their office. Pro bono programs could create a storehouse of online trainings and materials available to volunteers on a 24/7 basis.

A few years later, again at the ABA Equal Justice Conference, I was in the exhibitor area chatting with the ProBono.net staffers at their table. As I turned, I saw the Georgia Legal Services Program case management system vendor for PS Technology/LegalServer at a neighboring table. We all struck up a conversation together. I offhandedly told the LegalServer CEO that it would be great if we could get the GLSP case management system website they supported and our ProBono.net website to talk to each other—to share data such as our resource library and calendar. Both vendor reps looked at each other

and said, "We could do that!" Thus was born in Georgia a new venture in data sharing across the two platforms via API feeds.

These early days of technology development were not easy, though. Enthusiasm and persistence were usually sufficient to overcome limited staff resources. The Georgia volunteer support website and enhancement projects have been funded by the Technology Initiatives Grant Program of the federal Legal Services Corporation, the most significant source of dollars and positive disruptive change in the national legal aid community.

Prior to 2001, the legal aid and public interest advocacy community was making important strides in the burgeoning digital revolution, frequently besting their peers in private practice. In the late 1990s, for example, Georgia Legal Services Program, in partnership with the Fund for the City of New York, became the first legal aid program in the country to automate the protective order process for family violence survivors. Georgians and trained shelter advocates could go online, answer a series of questions and print the completed petition and related documents for a protective order. The successful pilot project lasted well over seven years serving thousands of Georgians and firmly establishing a foothold for virtual legal services for the poor and the lower middle-income household.


The future of technology in support of pro bono delivery in Georgia is uncertain. There are some wonderful new developments such as the Available Cases app from the Pro Bono Partnership of Atlanta and our "Text to Know" services for volunteer lawyers on family violence, court interpreters and pro bono support. To move forward and ensure sustainability of technology projects, the Georgia pro bono community of providers needs your assistance.

You can help by donating to programs to support the devel-

opment of virtual services delivery, introducing programs to your technology contacts and IT staff, participating in a technology advisory committee for the community or by helping our pro bono programs access affordable, low-cost technology training.

For its part, the State Bar of Georgia Access to Justice Committee is planning a fall Justice Hack-a-thon to bring together pro bono program leaders and technology coders and developers for two days of brainstorming on creating apps and online resources to overcome barriers to access to justice. Keep an eye out for that exciting justice event.

Take a few minutes and join our statewide volunteer lawyer support site, [www.GeorgiaAdvocates.org](http://www.GeorgiaAdvocates.org). Become part of a larger community of pro bono lawyers. You'll find training materials, a directory of all the pro bono programs in Georgia, training events and, importantly, a place to call home for all the good work that you do.

If you have any questions about pro bono in Georgia, please contact me at [probono@gabar.org](mailto:probono@gabar.org). I'm available to help. 



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



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# Georgia Probate Judges Receive Certification from CVIOG

by Catherine N. Fitch

**W**hen Barrow County Probate Judge Tammy Brown became president of The Council of Probate Court Judges of Georgia (CPCJ) in 2009, she announced at the annual meeting that she had a vision for a new kind of judicial education. She wanted to provide probate judges with courses that would go deeper than traditional continuing judicial education, which often teaches judges what to do but not the reasons behind why they do it.

Over the next three years, an ad hoc certification committee developed Brown's vision into what has become the Georgia Probate Court Judges Certificate Program, aimed at enhancing the proficiency of the state's probate court judges. At this year's CPCJ annual meeting, the first 90 graduates received their certification for completing the program's 72-hour professional development curriculum.

Brown says the Certification Committee decided early on to bring in an outside source to validate the new training program. The committee reached out to The Carl Vinson Institute of Government (CVIOG), which was already providing certificate

programs to Superior and State Court clerks. CVIOG initiated the probate certificate program in 2012, in collaboration with the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia (ICJE).

Initially, Brown sought to offer additional training for judges to take on a voluntary basis. However, when the program was presented to the CPCJ Executive Committee for approval, the members decided to make the certificate program mandatory for all probate judges.

According to former Probate Judges Training Council Chair Keith Wood, Georgia's probate judges are required to receive at least 12 hours of training each year, much of which is provided by ICJE. The Probate Judges Training Council is statutorily responsible for advising and coordinating with ICJE concerning educational programs for Georgia's probate judges, as well as helping the judges improve the operation of their courts.

"There was a need to go deeper into the subject matter than we could go in traditional ICJE training, so Carl Vinson provided 18 hours of training a year for four years," said Wood, Cherokee County Probate Judge. "At the end of a course, judges are tested and must receive a passing score to get credit."

The program's curriculum was developed by the Certification Committee and CVIOG, according to Wood. The committee chose the traditional legal topics offered, like wills and estates, guardianships and civil procedure. CVIOG added courses intended to improve



Photo by Ashley Stollar, AOC Communications office

On April 19, the first graduates of the Georgia Probate Court Judges Certificate Program celebrated their completion of the program's 72-hour professional development curriculum. This in-depth judicial training program was begun in 2012 to enhance the proficiency of the state's probate court judges and was coordinated by the University of Georgia's Carl Vinson Institute of Government, in collaboration with the Probate Judges Training Council and the Institute of Continuing Judicial Education at UGA.

the service provided by probate courts, such as office administration and leadership.

Despite having practiced law for more than a decade before becoming a judge, Wood found the training valuable. He said that when attorneys get on the other side of the Probate Court counter, there are a lot more things they need to know.

"Probate Court is the court closest to the people because of the estate work, the marriage licenses, the weapons carry licenses and all of the administrative duties," Wood said.

Shawn Rhodes, an attorney and magistrate judge who took the probate bench in Wilcox County last year, finds the program's training on procedural and rule-based responsibilities especially helpful. He says the training has improved his office management abilities and streamlined court procedures.

Brown had hoped the program would equip probate judges to provide better service to the public and give them confidence in their decisions, especially the "non-attorney judges." The pro-

gram achieved Brown's goals, according to Suzanne Carter Johnson, Tift County Probate Judge. Like most Georgia probate judges, Johnson did not attend law school. She served as chief clerk of her court before taking the bench.

"The program was intense and increased our knowledge of primary probate court functions," Johnson said. "It gave us the skills necessary to provide a high standard of service in every county probate court in Georgia. Serving our citizens is important to us."


Like Johnson, Jackson County Probate Judge Sherry Moore is a non-attorney judge, who previously served for 10 years as probate court clerk in Clarke County. She said new probate judges have several resources available to them to make sure they do their job correctly.

"As new judges, we are assigned a mentor and attend a lengthy new judges' orientation. There is also a probate judges listserv that allows all probate judges to ask each other questions," Moore said. "Even with all that, the in-depth certification courses, like civil

procedure and statutory interpretation, provide additional assurance that those of us who haven't attended law school have the legal knowledge required to carry out our duties effectively."

Rhodes says because Georgia is a large and diverse state, with counties that vary greatly in population, the certification program was needed to ensure all probate judges have a common understanding of their responsibilities. He believes the program's success will be evidenced by "the consistency of procedures in probate courts throughout the state."

Probate judges who have not yet completed the full curriculum will continue to receive training through CVIOG and ICJE.

More information about The Council of Probate Court Judges of Georgia can be found at [www.GaProbate.gov](http://www.GaProbate.gov). 



**Catherine N. Fitch** is the executive director of The Council of Probate Court Judges of Georgia.

# Transition Into Law Practice Program (TILPP) Celebrates 10 Years

by Michelle West

**T**his upcoming Bar year, the Georgia legal community commemorates and celebrates the 10th anniversary of the first class to complete the Transition Into Law Practice Program (TILPP). TILPP, also known as “The Mentoring Program,” is the mandatory continuing legal education (CLE) requirement comprised of both mentoring and CLE for lawyers newly admitted to the State Bar of Georgia after June 23, 2005, unless exempted. TILPP seeks to aid in yielding results such as practical skills, seasoned judgment, sensitivity to ethics and an understanding of professionalism. TILPP’s 10th anniversary is significant in that it provides a chance to reflect on its development, operations and successes, while envisioning its future growth and enhancement opportunities to further its goals.

## A Look Back . . . 10 Years in the Making . . . 1996-2006

- 1996: State Bar of Georgia creates the Standards of the Profession Committee (SPC) to investigate and report to the Board of Governors (BOG) as to whether the State Bar should require beginning



lawyers to complete a period of internship or other supervised work prior to admission.

- 1997: SPC recommends pilot project to test feasibility of a program combining mentoring and CLE.
- 1998-99: Pilot project logistics are planned and funding secured.
- 2000-01: The State Bar conducts a two-year pilot project with 100 mentors and 100 beginning lawyers.
- 2002: Pilot project is deemed successful in conveying to beginning lawyers the practical skills and professional values necessary to practice law in a highly competent manner.
- 2003: SPC formally recommends a mandatory program combining mentoring with CLE for newly admitted lawyers in Georgia. The BOG approves the concept of a mandatory TILPP and forwards to the Supreme Court of Georgia for final approval.



- 2004: Supreme Court of Georgia approves the concept of a mandatory TILPP and authorizes the SPC to propose an Implementation Plan, which is subsequently approved by the BOG.
- 2005: Supreme Court of Georgia approves implementation plan calling for a mandatory TILPP to commence Jan. 1, 2006.

## TILPP Today . . . Thriving and Evolving

Over the past 10 years, 9,214 beginning lawyers have completed TILPP and 5,086 mentor appointments have been made by the Supreme Court of Georgia. Annually, TILPP enrolls approximately 1,200 beginning lawyers and administers programs to both new attorneys and mentors. Specifically, TILPP co-chairs the mandatory Beginning Lawyer Program each February with rebroadcasts in March and October; chairs three Group Mentoring seminars annually in March, May and August; and presents a complimentary Mentor Orientation every other year for volunteer mentors.

In addition to the aforementioned programming, TILPP collaborates with various bar associations and other groups in presenting material that is relevant to new lawyers as well as seasoned attorneys. Over the past few years, TILPP has presented at or partnered with the following:

- National Bar Association Annual Meeting
- Savannah Law School Orientation
- Gwinnett Legal Aid Pro Bono Project
- Georgia Association of Black Women Attorneys Professional Development Academy
- Georgia Association for Women Lawyers—New Lawyers Affinity Group
- Fulton County Superior Court Mass Swearing-In
- Institute of Continuing Judicial Education

- GAWLedu—New lawyer low-cost boot camp
- Family Law Section of the State Bar of Georgia—Diversity Committee
- GAWL Leadership Academy
- Emory Legal Association of Women Law Students
- Georgia Legal Services—Eliminating Barriers to Justice II CLE
- Law School Outreach Initiative
- National Association of Bar Executives
- Connecticut Bar Foundation
- Gwinnett County Bar Association
- University of Georgia Career Services
- Mercer University School of Law Career Services
- National Legal Mentoring Consortium

## Looking Ahead . . . TILPP Raising the Bar

TILPP is striving to keep the program engaging and current with the changing times. TILPP envisions the following as future additions to the program:

### A Paperless Office

TILPP is currently working toward a paperless program. Eventually, we hope that new lawyers will be able to enroll and submit compliance materials electronically. The program is also working to institute compliance updates through the existing online CLE reporting platform.

### The Mentor Database

In an effort to decrease the mentor pairing wait time, TILPP is creating an up-to-date database of lawyers throughout the state who have committed in advance to being a mentor.

### Honoring our Mentors

TILPP is truly appreciative of the time, commitment and dedication given by all of the mentors who volunteer to assist new attorneys. As a gesture of this appreciation TILPP will begin accepting “Mentor of the

Year” nominations starting Jan. 1, 2017, from all lawyers who currently or in the past had a one-on-one mentor through the program.

## Mentoring Meals

We know that providing additional opportunities to meet more experienced attorneys outside of their practice and work environment is of crucial importance to the new lawyer. Thus, TILPP is looking forward to implementing its new Mentoring Meals pilot program. This program will provide an open dialogue setting for those experienced attorneys who would like to participate in TILPP, but have limited time.

## Focus Groups


In an effort to gather constructive feedback, discussion forums are being created. These focus groups will afford the opportunity to hear firsthand the benefits of the program, as well as the opportunity to solicit comments in an informal setting.

## Mentoring and Wellness

TILPP embraces the State Bar of Georgia’s wellness initiative and looks forward to implementing such concepts into its Model Mentoring Plan.

## Call to Action

### Mentors and Past TILPP Participants

If you are an experienced attorney who is interested in becoming a mentor, hosting a mentoring meal or speaking at a TILPP seminar, or a past participant who is willing to offer feedback on your TILPP experience, we would be delighted to hear from you. Please contact Michelle West at [michellew@gabar.org](mailto:michellew@gabar.org). 



**Michelle West** is the director of the Transition Into Law Practice Program of the State Bar of Georgia and can be reached at [michellew@gabar.org](mailto:michellew@gabar.org).



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# The Lost Confederate Gold

by Mark Roy Henowitz

## 25th Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "The Lost Confederate Gold," by Mark Roy Henowitz of Buford, as the winner of the *Journal's* 25th annual Fiction Writing Competition.

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

It was curtains for the old courthouse. Eighteen-wheelers circled the crumbling edifice. Men in coveralls wheeled, pushed, pulled, carried, hauled, dragged, lugged and shoved a century of courthouse detritus out of the timeworn structure.

The building was simply worn out. It was used up. The sheriff had jumped ship years ago, favoring a storefront around the corner. State Court had slipped away to a brick building across the street. The tax assessor was housed up the hill in the old high school. The ornate, classic and classy turn-of-the-century courtroom, which comprised the entire second floor, had been sliced into three considerably less stately chambers. One Superior Court judge had relocated his bench to the old post office down the street. Another dispensed justice from a former movie theatre. The urban sprawl oozing our way had created a situation that the old relic on the courthouse square had no capacity to address.

My own bailiwick was the real property record room. This division of the clerk's office had long ago outgrown its original home. The deed room had been shunted into the courthouse basement, an ill-lit, low-ceilinged affair, with exposed pipes overhead. It was stifling in summer, flooded in spring and autumn, and freezing in winter. Stella, the deputy clerk, had terminated a mouse down there, in close combat, by whacking it with a Swingline stapler.



I stood on the courthouse lawn, leaning against a granite monument, watching the workers like so many swarming ants empty the obsolete hall of justice. Although I came to the courthouse every workday, I had never paid the slightest bit of attention to the unusual monument that I now reclined against. Daily, I breezed right by at a hearty clip, on a mission; I had real property titles to search. My diurnal destination was that moldy basement with its books and indexes. That day was different. I was in no hurry. That day the books were not waiting for me. No work could be done on that moving day. Nothing could be searched or researched. As the movers swarmed by me, I took a step back from the singular monument and studied it for the first time.

At ground level was a square granite block, maybe four feet high. Positioned atop that foundation was a stone structure that was too squat to be an obelisk, yet too thin to be a pyramid. It was some kind of granite hybrid obelisk-pyramid with trapezoidal sides. This was capped by a small true pyramid. The structure rose to twice my height.

There was an inscription on the base. It read: To the memory of the brave members of the company of mounted volunteers, Ensign Jasper Adams, Sergeant Asa Wade, Privates Adam Cain, James Vance, RW Eaves, David Tanner, Isaac and EG Lafon, brothers, who, under the command of Captain Thomas O'Shay, were slain in battle with a party of Creek Indians at Shepherd's in Stewart County, Georgia, on June 9, 1836.

Was I standing in a graveyard? Were the eight men buried there on that spot? Then again, no, the monument was not a gravestone. It was a memorial. Surely, they were elsewhere. Most likely they were interred where the skirmish occurred, at Shepherd's, in Stewart County.

I shrugged and walked into the courthouse. I took the stairs to the basement.

The real property record room was upside down. The ancient leather bound deed books and indexes along with the more recent, more sterile computer print-out versions were stacked like so much cordwood. Movers jostled each other and the books as they wrestled their loads out the narrow doorway and up the even narrower stairs.

"You can't work here today, Noble," said Stella, the deputy clerk, peering at me disapprovingly over reading glasses. "Knowing you, though, it figures that you would show up and try."

"I'm not here to work, Stella. I just wanted to be in the old courthouse on the last day."

She shook her head at me, then slipped off the reading glasses and let them hang on a silver chain around her neck. "Why do you come here every day, anyway, Noble? No one else does anymore. It's all on the Internet. You can search a title at home in your pajamas."

"I don't wear pajamas."

"Spare me the details," she laughed.

"You know how this business is," I said. "During boom times the record room is filled with the kind of people who come from out of nowhere. In bust times they go right back there."

"Not anymore, Noble." She stacked two more books onto an already unsteady, five-foot-high pile. "You're the last of the dinosaurs, searching a title at the courthouse. Don't you know it can be done from Bangalore?"

"What do you know about Bangalore? Since when are you such an authority on all things Internet?"

"I'm on Facebook, Noble. You should friend me. Then you could enjoy the pictures of my grandbabies that I post every day."

"Sounds like I'm missing out."

She frowned at me. "Have you been to the new courthouse?" she said.

I shook my head.

"Actually, it's not a courthouse."

"No?"

"No. It's the Justice and Administration Building. They're calling it the Jay Bee for short."

"Who is?"

"Everybody. Yes, either the Jay Bee or the Law Mall, because it has a four-story foyer with an escalator. It reminds people of a mall."

"The Law Mall?"

She nodded.

"I'll see it on Monday," I said. "That will be soon enough. You'll be open for business?"

"Yes."

"Good luck with the move."

I left the basement, climbed the stairs and walked across the hall to the Probate Court. The place was even more torn apart than the clerk's haunt. Not only were the books in huge stacks and the furniture and machines in a heap, but the very counters and bookcases had been ripped clean off the walls to which they had been attached. It looked as if a tornado had torn through the place, upending the world.

"Anybody here?" I hollered. No answer. "Marie, are you hidden under a pile of minute books?" No answer.

I gingerly picked my way through the rubble. Skirting around an unsteady stack of chairs, I came to a counter that was about half peeled off the wall. Jammed between the shorn counter and the wall, I spied an old leather volume. It looked as if it had been wedged there since the counter had been cobbled together; decades, maybe longer. Avoiding the protruding rusty nails, I gingerly slipped the volume out of its place of concealment.

It was a thin black book with a red binding. The cover was hanging on by two hairs. Embossed on the front in gold were the words Pension Record.

I rested it on the teetering counter and flipped it open. The pages were yellow ledger leaves with rows and columns. The columns were labeled Name, Company, Regiment, Time of Enlistment, When and Where Discharged and then a series of years from 1867 through 1917.

The rows were filled in with blue ink. Page after page of entries. The first column listed the pensioners alphabetically from Abner to Webb. Next, the companies and regiments were shown as Company A 19th Ga or Company C Cobb's Legion or Company B 16th Ga or 9 Ga Artillery. Most entries showed enlistments in 1861 or 1862. The entry for discharge for nearly all said simply Close War. Under each year was the handwritten sum of the pension. Sixty dollars. For each man. For each year. Sixty dollars. Or if the numbers stopped, the word DIED was inscribed.

As I flipped through the book, several loose pages tumbled out. I snatched up the fallen leaves. Typed at the top of the first sheet, I read, Registration of Old Soldiers Reunion held on this twenty-third day of August 1917. On three pages were the handwritten names of 33 souls from our county who had survived to attend a reunion of War Between the States veterans held during the First World War.

I reinserted the reunion papers into the Pension Record book. Still alone in the topsy-turvy Probate Court, I continued to thumb through the venerable volume.

Then another page literally leapt out of the timeworn book and into my hand. It was a folded sheet.

I unfolded it. It was some kind of a hand drawn map. Chennault Crossroads was written in the center. The map showed that at a distance of 40, I assumed miles, from the crossroads, following a fairly straight line, curving only slightly, was located a series of triangles. Near to the triangles were two irregular lines sketched in blue, possibly creeks or rivers, which nearly intersected. That was the totality of the map.

"Anyone here?" I hollered.

No one answered.

I placed the rescued pension record on top of a tottering stack of books. I silently slipped the map into my pocket. I left the old courthouse for the last time.



I had no clue as to the map's meaning, but I had access to someone supremely capable of unlocking the mystery. The man I had in mind was Karl Oliver Smith. The Professor, as I called him, came from a long, illustrious line. One of his forebears had been a South Carolina colonial governor. Before being kicked out of the Citadel, for reasons he never disclosed, the Professor had earned the sobriquet K.O. (which were also his initials) after knocking out seven consecutive opponents in inter-collegiate boxing competitions. He

was made of armor plate. Presently he was the distinguished occupant of the Senator Richard B. Russell Endowed Chair in History at the university. His lectures were well attended. His presentations were laser-like. His voice was rusty shrapnel. He knew more history than any man this side of Toynbee. He knew more Georgia history than any man. Period.

I was certain that I would find the Professor in his office and I did. He sat behind a desk chaotic with books and papers. He was dressed, as always, in his Harris-tweed jacket and a black bowtie. His hair was uncombed. He needed a shave.

"Noble," he rasped, upon glancing up from his papers and seeing me enter his habitat. Then wasting no words on salutations, he demanded, "What have you got for me?"

"What makes you think I have anything?"

"Oh, you've got something. You always have something. Now, what is it?"

I unfolded the map and laid it out on his cluttered desk.

"They're tearing apart the old courthouse," I explained. "This was in a Civil War pension book. The book was jammed between a shelf and the wall. Probably been hidden there for nearly a hundred years."

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He squinted at the document. Then he produced a magnifying glass and subjected the paper to a Sherlock-like examination. Next, he brought his nose right down to the instrument and studied it for some time.

"The trail begins at Chennault Crossroads," he said. "What does Chennault Crossroads mean to you, Noble?"

"Nothing," I said. "Where is Chennault?"

"Where indeed." His eyes lit up like candles. "And where does the road from Chennault lead? The map is clear. It goes a certain distance and ends close by the place where two rivers join near a series of triangles. Do you know where the rivers meet? Do you know where the triangles are?"

He didn't wait for my negative response to his rhetorical inquires. He snatched a book from a nearby shelf. Then he flipped the volume open to a page containing a detailed map of Georgia. Retrieving a ruler from the clutter on his desk, he made some measurements on the Georgia map.

Satisfied with his calculations, the Professor leaned back in his chair.

"On Saturday, April 1, 1865," he said, "General Robert E. Lee reluctantly decided to abandon his defense of Richmond. Do you know what it meant, Noble, to discontinue the defense of Richmond?"

"Yes," I offered. "The capital of the Confederacy would fall."

"Precisely. In a rather understated message, Lee telegraphed Confederate President Jeff Davis 'I advise that all preparations be made for leaving Richmond tonight.' That very last train out of Richmond carried much more than just Davis and the dolorous remnants of the fleeing Confederate government. On board, Noble, was the Confederate treasury. And in addition to the treasury, the train carried the considerable assets of six Richmond banks. The treasury contained gold and silver coin and gold and silver bars worth more than \$500,000."

"How much would that be in today's money?" I asked.

"Maybe \$10 million. The value of the Richmond banks' assets, put on the train for safe keeping, totaled another \$10 million in silver and gold coin. The banks' coins were packed into socks at the rate of \$5,000 each. The socks were deposited in wooden kegs. The kegs were then sealed.

"And there was more," he went on, "including a chest of jewelry contributed by southern women for the purchase of an ironclad warship. That coffer was crammed full of not only gold and silver, but diamonds and other gemstones. There were other boxes loaded with the contents of the banks' safety deposit boxes. There was a chest containing the gold and silver floor sweepings from the Dahlonega mint.

"Barely ahead of the Yankee cavalry, who were in hot pursuit," continued the Professor, "the treasure train raced south out of Richmond. It crossed the state line into North Carolina and arrived in Greensboro. Here the tracks ended. The Yankees had torn up the railroad."

"End of the line," I said.

"Yes, Noble, it was the end of the line. The treasure had to be offloaded from the train. It was put onto horse-drawn wagons. As the caravan laboriously moved southwest, one by one, the Confederate cabinet officers and the other high officials slipped quietly away, trying to melt into the countryside and to avoid capture by the Union troops breathing down their necks. Bereft of nearly all of the government dignitaries, the treasure train crossed into South Carolina. Next stop was the Savannah River. On the other side was Georgia."

"Where on the river?"

"They crossed on a pontoon bridge just south of Lisbon. They went into camp about three miles from the river, near the first house on the Old Washington Road.

"Jefferson Davis arrived in Washington, Georgia, ahead of the treasure train. He held a last meet-

ing with those few officials still hanging around. Then, in the morning, barely noticed, he slipped out of town, ending the last semblance of Confederate governance.

"The wagon train continued towards Washington and arrived at Chennault Crossroads in Lincoln County with the treasure just after sundown."

"Chennault Crossroads! The map."

"Calm down, Noble. Listen. The wagon train, at this point, after several minor robberies and a mutiny or two, consisted of five wagons loaded with the loot. About a dozen men remained. They made camp near the home of Dionysius Chennault, a Methodist minister and plantation owner. Horses were unhitched. A meal was prepared. The men lay down for the night.

"Near midnight, raiders on horseback, maybe 20 men charged the camp. With guns blazing, the robbers simply and swiftly took the treasure. The kegs of gold and silver coins, the chests of gold and silver bars, and the other treasures were in an instant spirited away."

"Who were they?" I asked. "The raiders. Who were they?"

"Don't know," said the Professor, grinning a sly grin. "Could have been renegade members of Jeff Davis' guard. They knew the game was up. Why let the Yankees take the loot? Might have been an unofficial advance visit from the Massachusetts Yankees who stormed up to the Chennault place the next day. Perhaps they showed up just a little bit early and took the stuff. Why not? Possibly it was folks from the neighborhood. It was no secret that the treasure was at the Chennault plantation.

"In any event, the Yankee troops arrived in the morning looking for the gold. Unfortunately for them, they were a few hours late.

"The newly minted conquerors roughly interrogated the Chennault family as well as the other locals—both white and black. A few of the freed slaves had retrieved a couple of coins that had fallen into the dirt during the robbery. The Yankees,



using considerably more violence than was necessary, confiscated these few coins from the hands of the browbeaten freedmen. As to the interrogations, they revealed nothing. Nobody, it seemed, had any information."

"And the treasure?"

"The treasure, the gold and silver, the multi-million dollar horde of the Confederate treasury and the Virginia banks, has never been found.

"Now grab your hat, Noble."

"I don't have a hat," I said.

"We're going to Rock Hawk."

"What and where is Rock Hawk?"

"No time for that now. You drive, Noble."



We paused at a hardware store to acquire a few supplies. We chose a couple of round-point digging shovels. I added a pickax. Then I grabbed a flashlight and a handful of batteries.

"We'll take these, too," the Professor said, showing the cashier three sticks of beef jerky.

The Professor claimed he had no cash on him, so I paid.

I tossed the tools into the back of my pickup. The Professor pointed out the road to take. I motored south at a pretty good clip, but not so swiftly as to be tagged. The Professor didn't say much. He stared straight through the windshield and gnawed his beef jerky.

It was after dark when we crossed into Putnam County and then arrived at the entrance to Rock Hawk Park. The gate was closed.

"We're too late," I said. "It's closed for the night."

Wordlessly, the Professor turned toward me. His eyes chewed me up and spit me out. I took his meaning. I backed up a dozen car lengths. I floored it and smashed through the bolted gate.

"Park over there," he said.

I pulled into the empty parking lot. Shovels and pickax over my shoulder, I followed the Professor.

After hiking a short distance, we arrived at the effigy. It was a massive sculpture. Easily a hundred

feet from beak to tail feather and with another hundred feet of wing span. A gigantic mound formed into the shape of a flying hawk rising 10 or 15 feet out of the earth. Composed of thousands of milky quartz rocks, in the bright moonlight it had more the appearance of polished stainless steel.

"What is it?" I said.

"It's a New World Stonehenge and easily of the same vintage," the Professor said. "It was created by the Swift Creek people as a site for their sacred rites and used by them for that purpose for several thousand years.

"The distance on the treasure map matches the distance from the Chennault place to here," he said.

"What about the confluence of the rivers shown on the map?"

"The Oconee River and the Apalachee River meet not far away."

"I don't think so," I said. "They don't converge."

"The entire river system has been dammed up and altered, Noble. Lake Oconee and Lake Sinclair have been created. It wasn't that way in 1865. The rivers joined. And not far away."

I conceded that point, but raised another. "The map shows a series of triangles. I see a giant flying bird."

"Step over here," the Professor said walking southwesterly for about 50 paces.

He stopped at a small mound composed of the same milky quartz rocks, only this one was in the shape of four triangles. He grinned.

"The Confederate treasure is here. Right here. Under this mound," he declared with absolute certainty.

"I'm not tearing up a 2,000-year-old sacred site," I protested.

He shook his head. "The triangles, Noble, are not a part of the Indian mound. The white men who discovered Rock Hawk in 1820 make no mention of the triangle mound. That's because the triangles were not here in 1820. The first time the quartz triangle mound is mentioned is after 1865."

"Maybe the smaller mound was simply overlooked at first."

"That is possible. It is also unlikely. It is more likely that the mound did not exist before 1865. Then, Noble, the raiders, after leaving Chennault Crossroads, brought the Confederate treasure here. They buried it here. On top of the treasure, they created a new mound and covered it with quartz rocks to match the nearby effigy. That way they could easily identify the location when they returned. The ruse also acted as camouflage. Others, they reasoned, thinking that the triangle mound was a part of the larger Indian holy site, would not disturb it. In fact the mound, as we see, is untouched. The raiders never returned. They never reclaimed the treasure. The quartz triangle mound built in 1865 remains just as when it was created. The gold, Noble, is beneath our feet."

I handed a shovel to the Professor. He didn't take it.

"There are two kinds of people in this world, Noble," he said. "Those who can interpret maps, and those who dig. You dig."

And dig I did, hour after sweaty hour. I moved the quartz rocks forming the triangle mound and dug a six-foot-deep hole. I dug another pit to the north. At some point, the Professor threw off his tweed jacket and joined in. We dug another shaft to the south. Then we returned to the original crater and made it deeper and wider.

Besides red Georgia clay, the only thing we unearthed was yellow Georgia clay.

"It's not here," I said, exhausted. I wiped my face for the thousandth time on my shirt sleeve. "It's just not here. Nothing is here. Nothing."

The Professor stood in a chest deep hole. His white tuft was matted with sweat.

"We'd better hit the road, Noble," he said. "The sun is about to come up. The rangers will be here soon. It's surely a crime to bust through a locked park gate."

"Surely," I said.

"Definitely against the law to excavate state land."



"I would think so."

"Probably a federal rap under the Antiquities Act to destroy an ancient Indian effigy mound."

"You said the triangles weren't part of the effigy."

"I have a feeling you don't want to explain that theory to the authorities."

"True, besides, I've got nobody to post my bail," I said.

Then, without further discourse, we grabbed our shovels and vacated the scene.



Monday morning. I dragged myself to the new courthouse, or more accurately the Justice and Administration Building. The Jay Bee. The Law Mall.

I pulled my pickup into the expansive parking lot, which was easily the size of 10 football fields. I hiked across the blacktop to the four-story glass and concrete edifice. After traversing several layers of doors I arrived in the cavernous lobby.

The old courthouse had no security. No one inspected or scrutinized an entrant. Now, in the new environs, security awaited. In front of me was a metal-detecting arch. Adjacent to that device was a conveyor belt going in one end and out the other of some kind of x-ray machine.

Four people were ahead of me. I stood restlessly in the line.

"Everything out of your pockets," a deputy sheriff intoned in an unfriendly voice.

The first person in line stood there motionless. He was a bald man with a reddish mustache. The sleeves on his jacket were too long. He was 35, but looked 45.

"Everything out of your pockets," the deputy repeated.

The bald man emptied the contents of his pockets into a plastic basket that he placed on a platform made of steel rollers leading to the conveyor belt. He then assumed a position blocking anyone behind from proceeding, while he waited

for the plastic basket to spontaneously leap from the rollers onto the conveyor belt. Obeying the laws of physics, the basket refused to make the jump.

"Put the basket on the conveyor belt," the deputy urged.

The man stared dumbfounded at the deputy. The deputy reached around and tossed the basket onto the belt, which sent it through the x-ray machine. The man proceeded through the arch of the metal detector.

The next person in line was a young lady with more piercings than a pin cushion. The metal detector was quite displeased with her. It beeped, chirped and honked loudly. A deputy then checked her out by running a wand over and around her. The wand made a series of wild noises, but they let her in anyway.

The next lady spoke no English. She refused to surrender a gigantic shoulder bag to x-ray examination. Her daughter, after several intense paragraphs of explanation, explication and pleading in some eastern European tongue, persuaded the woman to place the mammoth handbag on the conveyor.

I was next.

"Everything out of your pockets," said the deputy with the unfriendly voice.

I put my wallet, my cell phone, a comb, a pen, my truck keys, a quarter and two dimes into a plastic basket. I put the basket on the conveyor. I slapped a file folder containing my work on the conveyor belt as well. It all disappeared through flaps into the heart of the x-ray.

I walked through the metal detecting frame. It beeped.

"It's your belt," a different deputy, in an even less friendly intonation, said.

I took off the belt and sent it into the x-ray. I walked through the detecting frame. It beeped.

"Take off your watch," the second deputy demanded.

I set my watch on the conveyor. I gingerly went through the frame. No beep. Like an ancient traveler

solving the sphinx's riddle, I had met the challenge. I could enter the building.

On its journey through the x-ray, the basket containing my possessions had capsized. I retrieved most of the scattered items. I never saw the 45 cents again.

Following overhead informational signs, I made my way to the real estate record room. The most glaring and astounding feature of this modern, state-of-the-art, high-tech research facility was that it contained not a single book. Not one. Instead of housing indexes and deed books, the room consisted of 20 cubicles, each with a computer screen, a mouse and a keyboard.

"You said you would be up and running this morning," I said in my best accusatory tone to Stella.

"Hello to you, too, Noble. Nice to see you. We are up and running. Running at full speed. Just as promised."

"There are no indexes. There are no deed books."

Stella eyed me condescendingly over her reading glasses. "I've been telling you for years now Noble, that you don't need any of that old stuff. All the information has been entered into the database. All of the deeds, back to 1871, have been scanned."

"But, where are the actual books located?"

"Off-site. In storage. If you ever find a problem with the data or the image, you can order the book. I can have it here in two days. This is the new reality, Noble. You're welcome to use one of our work stations. Or if you prefer, you can work from your office or your home. It's all the same."

"I don't like it," I protested.

She looked at me with about as much compassion as a chain gang guard has for his charges.

I did as I was told. I sat at a station. I clicked with the mouse. I typed in names and numbers. My mind was elsewhere. I took the treasure map out of my pocket. What was wrong with the Professor's reasoning? The distance from Chennault's to

Rock Hawk as well as the location of the convergence of the rivers was all consistent with the depiction on the treasure map. I fiddled with the map. I turned it 90 degrees clockwise. Then another 90. Then another quarter turn. Then back to its original orientation.

"Have you got a map of Georgia?" I hollered to Stella.

"No," she said. "There might be one in the law library."

"Where is that?"

"On the second floor."

I retraced my steps back to the four-story high foyer. I took a smooth escalator ride to the second floor. The law library was to the left.

The law library was neither state-of-the-art nor high-tech. It was chock full of books. There were 294 issues of the Georgia Reports bound in tan with red trim. There were 328 editions of the green trimmed Georgia Appeals Reports. There were two complete sets of the black bound Georgia code, thousands of volumes of the Federal Reports and hundreds of law review books.

The librarian was a brunette in the second half of her thirties with long straight hair and ice blue eyes. She sat behind an oak veneer desk.

"Do you have a Georgia map?" I asked.

She looked me over and decided that neither I nor my query merited a verbal answer. She pointed with a red painted fingernail to an alcove jammed with varied and assorted volumes.

I thanked her. I pulled down a Georgia atlas and sat at a table. I flipped to a page showing the physical features of the central part of the state. I pulled the folded treasure map from my pocket and spread it out. Nothing looked right. I reoriented the treasure map. I experimented with various alignments. I measured the distances in the atlas.

I pulled out my cell phone to call the Professor. Then I thought better about disturbing the funereal silence of the library. I left the room and glided down the escalator. The deputies were interrogat-

ing an 80-year-old grandmother with a walker concerning a nail clipper that x-ray had revealed was concealed in her purse. I exited the building.

I called the Professor. I told him when and where to meet me.



It was midnight. The same time and exactly 150 years to the day since the raiders had spirited the Confederate treasure away from Chennault Crossroads. I was on the old courthouse square next to the monument honoring the eight militiamen who had perished in the fight with the Creek Indians at Shepherd's. It was two days off a full moon. There was haze in the air and mist near the ground.

I was wearing an orange vest and a white hard hat. The hard hat had a decal on the front reading Walton EMC. Leaning against the monument I had placed a flat-end shovel and the two round-point shovels.

The Professor parked his car at the curb and came strolling up.

"Are you auditioning for the Village People?" he said, appraising my hard hat and vest.

I said nothing.

"What's with the getup?"

"In case we are asked why the courthouse lawn is being dug up in the middle of the night, we say there's an electrical problem."

"Won't the over-curious inquisitor wonder why we have no utility truck?"

"We'll tell them that the boss went for coffee."

I jammed a hard hat onto the Professor's head. He looked ridiculous.

"You should lose the tweed jacket," I suggested.

He shed the jacket and tossed it aside.

"And the bowtie."

He slipped it off. He put on the orange vest.

"So, Noble, what have you got?" he said.

"This location is the same distance from Chennault Crossroads as Rock Hawk, but going northwest instead of southwest. Rotate the



map one quarter turn clockwise. This, Professor, is the place. This is the spot where the Confederate treasure is buried."

"Where are the two rivers shown on the map as converging?" the Professor said, skeptically.

"The headwaters of both the Alcovy River and the Yellow River are close at hand. They both flow south from here and after about 60 miles converge to form the Ocmulgee. But, the important point is that the map, if looked at correctly, shows the rivers diverging not converging. Rivers, either coming together or going apart, would look the same on the map."

"Point taken, but where are the triangles?" he queried.

I shined my flashlight at the apex of the monument. "There you have it, Professor. One, two, three, four triangles. Forming a pyramid. Four triangles. Equilateral even."

"What is this monument?"

I illuminated the inscription. He read silently about the militia led by Captain O'Shay, the skirmish with the Creeks at Shepard's and the deaths of the eight men in battle.

"A monument to O'Shay is a complete travesty," the Professor said spitting out the words.

"You seem to be familiar with the incident," I said.

"It was O'Shay's poor soldiering that cost the militiamen their lives. He doesn't deserve a monument."

"The engraving," I pointed out, "does not say that the monument honors O'Shay. It is dedicated to the memory of the dead men that he led."

The Professor ignored my clarification. "Twenty years before the skirmish at Shepherd's Plantation, the Creek Nation was coerced into giving up more than 20 million acres of land in Georgia. Ten years after that, an additional 40 million acres was forcibly taken from them. The Creeks, to their eternal misfortune, had encountered a land-hungry slice of humanity whose hunger could not be sated.

"What land the Creeks by treaty retained was then invaded and

overrun by speculators, scoundrels, rascals and rogues. The Creeks, as you would say, Noble, had perfect title to this land."

"No one would say that."

"What then?"

"Marketable title."

"Have it your way. Marketable title. This didn't stop the rapscallions from taking it. Homesteads, farms, even whole towns were erected on Creek land. Finally a few bands of Creeks had more than they could take. They raided a couple of farms. They even torched the town of Roanoke and burned it to the ground.

"The Georgia militia was called out. They bivouacked at Shepherd's Plantation in Stewart County. They bunked in the slave quarters and other outbuildings. Captain O'Shay, violating sensible military tactics, divided his force several times over. He dispatched troops to a nearby fort to obtain supplies. Other men he sent out to scout. Still others he sent away on routine, mundane and unnecessary tasks. When the Creeks observed the militia sufficiently scattered and weakened by O'Shay's ill-thought-out actions, they made their move. They used the oldest trick in the book. The tactic was so ancient that it had been employed by Joshua at the Battle of Ai."

"Joshua who?"

"Didn't you ever go to Sunday school, Noble? After the Battle of Jericho, Joshua fought the Battle of Ai. He hid his main force to the west of the walled city. Then, with a small band, he went before the town and made moves suggesting that he was about to attack. Seeing this, the men of the city went out to fight. Joshua fled as if beaten. The men of Ai pursued him and were led away from their city.

"At the prescribed moment, Joshua's main army rose from its hiding place, entered the undefended city, took it and set it on fire. When the men of Ai saw the smoke rising from their citadel, it was too late. Joshua turned around and attacked them from one side, while his main force stormed out

of the burning town and attacked them from the other.

"The Creeks, using the same tactic as Joshua, went in front of Shepherd's and fired a few shots in an attempt to lure the militia out of the fortified camp. O'Shay obliged them. He left camp and pursued the Indians. A short distance away, the main body of Creeks fell on the militia's front and rear with devastating effect. As the fight raged, reinforcements arrived, which saved the militia from total destruction. Still 22 militiamen were killed, including the eight named on the monument here. End of story."

"Not quite," I said. "What happened to the Creeks?"

"The fight at Shepherd's was their last stand. All of the Creek land was taken. Every last man, woman and child, grandmother and infant was rounded up and slapped in chains and shackles. Under armed guard they were brutally marched to Oklahoma."

We were silent for a long minute as the mist swirled around the base of the monument.

The spell was sharply broken, as if by the crack of a bullwhip.

"I accept your hypothesis, Noble," the Professor growled. "The treasure is here. The monument marks the spot. The gold is right beneath our feet." He grabbed a shovel and handed it to me. "Start digging."

"There are two kinds of people in this world, Professor," I said, "Those who can interpret maps and those who dig. You dig."

Before I could hand the shovel back to him, a black and white city police car pulled to the curb. The cop leaned out of the window and motioned for us to approach.

"Let me handle this," I said. Still holding the shovel, I walked to the patrol car.

"What's going on?" the cop said. He was a pale, fresh-faced kid maybe 25 with buzz cut hair and fuzz on his chin trying to be a goatee. He was chewing gum.

I pointed to the Walton EMC decal on my hard hat. "Electrical problem," I said.

"What kind of problem?"

"All those movers here the last few days. Closing down the courthouse. They tripped over a ground wire. Grounding the transformer." I pointed to the cylindrical transformer perched on the power pole. "Pulled the ground clear out. The transformer could blow." It sounded so plausible, I almost believed it myself.

"Couldn't wait until morning?"

"I just do what I'm told."

"Where's your truck?"

"Boss went to get coffee. At the Waffle House. He'll be back in a minute."

"My brother-in-law has the contract to restore the old courthouse," the cop said, apparently not wanting to conclude our chat.

"Yeah?"

"Yeah. He's a contractor. Says he's going to make it look the way it did a hundred years ago. Going to sandblast it. Strip off all the stucco and whitewash. Take it back down to the bricks. Pull out all of the drop ceilings. Tear out the carpet. Refinish the hardwood floors. He's even going to fix the clock tower. It's said three o'clock for years."

"At least it's right twice a day."

"How do you figure?"

"It's not important. I should get to work. The transformer and all."

I took two tentative steps. He didn't stop me, so I kept walking. The cop drove away.

I grabbed the flat-end shovel and sliced a line across the grass. Then I peeled back and rolled up the turf. I handed a round-end shovel to the Professor and took hold of the other one myself.

"I thought you said that you interpret maps and I dig," he said.

"No time for that now. Let's find the gold and get out of here. That cop will be back. He's lonely."

We dug furiously, hurling and tossing dirt all around. Then I heard it. A thud. The Professor's shovel had hit something other than dirt.

"I've hit something. Wood, I think," he said.

"The treasure," I said.

"Probably just O'Shay's bloody coffin," he said.

"I don't think so."

I dove face down into the hole. I clawed the dirt off the wood.

"It's round," I said.

"Like a barrel top?"

I didn't answer. I grabbed the shovel from the Professor's hands. I smashed it into the wood. It gave way easily. I reached inside. I pulled out a sock. As I drew it out of the barrel, the rotted toe dissolved. Gold coins spilled from my hands.

I placed my upended hard hat on the ground. I reached back into the keg and pulled out a double handful of gold coins. I dumped the loot into the hat. Mesmerized, I scooped up handful after handful. I continued until the hat disappeared under a mountain of gold.

"Snap out of it, Noble," the Professor growled.

I swung around. He had uncovered another keg, two chests, a trunk and a couple of strong boxes.

"Pull your truck up here," he said, motioning to a spot. "Let's load this stuff up and get out of here. Now."

I flew to my truck, bumped it up over the curb, backed up to the hole and flipped down the tailgate.

We loaded up the barrels, the trunk, the chests, the strong boxes and the hard hat full of gold.

"That's all of it," the Professor said. "Or at least enough of it. Let's book."

I needed no urging. I floored it, tearing up the grass, skidding over

the curb onto the street and fleeing the scene faster than thought or time.




I received a letter from the Professor today. It was from the Forbidden City in Beijing. He writes that he's taking a week off from his extended sabbatical in Tahiti. He's become a regular Gauguin. Taken up oil painting. Even has a Polynesian girlfriend.

While he is away, the Professor is having a house built on Lake Burton. The place is nearly complete. It's 7,000 square feet and has eight bathrooms. There is also a matching two-story boathouse.

As for me, I've been trying to not call attention to myself. To keep a low profile. To fly under the radar. To keep my head down.

Maybe next year I'll join the Professor on a Post-Impressionist South Sea trip. Possibly, I'll buy that lot next to his on the lake. I hear it's for sale.

Today, I've got a land title to search, so I'll be heading over to the new courthouse.

Tomorrow? We'll see. 



**Mark Roy Henowitz** graduated from the University of Florida with Phi Beta Kappa honors. He received his law degree from


Columbia Southern. With more than 30 years of experience, he specializes in the area of real property title law. He may be reached at [mhenowitz@comcast.net](mailto:mhenowitz@comcast.net).

## Kudos

> **Morris, Manning & Martin, LLP**, received the **Law Firm of the Year Award** from the **Pro Bono Partnership of Atlanta (PBPA)** at an awards reception in March. PBPA is an organization that matches volunteer lawyers with local nonprofits in need of free legal counsel. The organization honored Morris, Manning & Martin, LLP, for its outstanding work on the many legal matters PBPA matched with the firm's volunteers.

>  **The Burgoon Law Firm, LLC**, announced that **Brian D. Burgoon** was elected **2016-17 vice president** of the **University of Florida Alumni Association**, a network of nearly 100 Gator Clubs® in Florida, across the United States and internationally.

>  **Hall Booth Smith, P.C.**, announced that partner **Melanie Slaton** was selected to be in the **Litigation Counsel of America** due to her professional excellence and integrity along with her commitment to diversity. The purpose of the society is to recognize deserving, experienced and highly qualified lawyers.

>  Macon attorney **Christopher N. Smith** was appointed a **Knight of the Order of Dannebrog** by **Her Majesty The Queen, Margrethe II of Denmark** in recognition for his valuable services as Consul of Denmark in Georgia.

>      
English Hoard Trotter Hricik

  **Taylor English Duma LLP** announced that founding partner **Joseph M. English** joined **Kennesaw State University (KSU) Entrepreneurship Center's Executive Advisory Council**, a senior-level task force established for the purpose of promoting and advancing the KSU Entrepreneurship Center.


Partner **Vivian D. Hoard** was elected to the **Fellows of the American Bar Foundation**. This honor is limited to one percent of the legal profession in each


jurisdiction, and represents a group of peer-selected attorneys, judges, law school faculty and legal scholars who have demonstrated outstanding leadership in the profession and service to society.


Senior counsel **Michael H. Trotter** was honored with a **proclamation** from the **City of Atlanta** during the March 21 Atlanta City Council meeting for his significant contributions to the local community.

Counsel **David Hricik** was named as a member of the **American Law Institute**, an organization whose members include prominent judges, lawyers and law professors from across the country, that works to clarify, modernize and improve the law.

Attorneys **Eric S. Fisher** and **Alison M. Ballard** were honored by the **Georgia Appleseed Center for Law and Justice** with the **2016 Good Apple Award** in recognition of their pro bono efforts in facilitating the Student Tribunal Project/Foster Child Representation. The program assesses the fairness of the administrative hearing (tribunal) used when students and their parents seek review of proposed school discipline involving out of school suspensions of greater than 10 days. Fisher was also named an **associate fellow** in the **Litigation Counsel of America**.

>  **Jackson Lewis P.C.** announced that principal **Roz Hall** was elected to the **Anti-Defamation League's Southeast Region Board of Directors**. The Anti-Defamation League is the nation's premier civil rights/human relations agency, striving to fight all forms of bigotry and defend democratic ideals.

>  **Kilpatrick Townsend & Stockton** announced that partner **Adria Perez** was selected as a member of the **2016 Class of Fellows** to participate in the landmark program created by the **Leadership Council on Legal Diversity** to identify, train and advance the next generation of leaders in the legal profession.

>  **Leadership Georgia** announced the election of **Joy Lampley-Fortson**, U.S. Department of Homeland Security, as the **2016 president** of the **Leadership Georgia Board of Trustees**. Leadership Georgia stands as one of the nation's oldest leadership training programs for young business, civic and community leaders who have the desire and potential to work together to create a better Georgia.





> **Hunter Maclean** announced that partner **Mills Fleming** was honored by the **State Bar of Georgia** and the **Chief Justice's Commission on Professionalism** with the **Justice Robert Benham Award for Community**

**Service**. The award recognizes judges and lawyers from the 10 judicial districts across Georgia who have made outstanding contributions in the area of community service.



> **Smith Moore Leatherwood** announced that partner **Barry Herrin** received the **Robert E. Burt Boy Scout Volunteer Award** from the **National Society, Sons of the American Revolution (SAR)**.

The Burt Award honors members of SAR who act as role models and provide outstanding and continuing dedicated service to the youth involved in the Boy Scouts of America.



> **Morris A. Nunes**, of counsel to **The Silverbach Group of Kennesaw**, announced the publication of his sixth book (co-authored with Andrew Pressman), "**Designing Profits**," a guide to business management for architects, engineers and other design professionals, in line with his practice of counseling private-held businesses, professional practices and nonprofits.

> **Miller & Martin PLLC** announced that the **Italian Republic** named attorney **Ryan Kurtz** **Honorary Consul General of Italy in Atlanta**. The purpose of the office is to develop economic, commercial, scientific and cultural relations between Italy and Atlanta and to safeguard the interests of Italy and its citizens traveling or residing in the consular district.

## On the Move In Atlanta



Fleming



Burch



Dev-Sidhu



Lasseter



Bloomfield



Weinstein

**Nelson Mullins Riley & Scarborough LLP** announced the addition of **Rusty A. Fleming** and **David J. Burch** as **partners**, **Meena Dev-Sidhu** as **of counsel**, and **Jenna L.**

**Lasseter, Seth M. Bloomfield** and **David E. Weinstein** as **associates**. Fleming represents major commercial banks and other lenders in a variety of single-asset and multi-asset credit facilities, CMBS, mezzanine and other structured debt arrangements. Burch practices in all areas of real estate capital markets and development. Dev-Sidhu focuses her practice on loan originations, assumptions and complex debt restructurings, with an emphasis on CMBS loans and subordinated debt structures. Lasseter focuses her practice on representing lending institutions in a variety of finance transactions, including agent credit facilities, acquisition financings and note offerings in various industries. Bloomfield focuses his practice in the areas of real estate capital markets and commercial finance. Weinstein focuses on real estate with a concentration in commercial development, zoning, land use and leasing. 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).

> **Lewis Brisbois Bisgaard and Smith LLP** announced the addition of **Kelly Eisenlohr-Moul** as **partner**. Eisenlohr-Moul's practice focuses on the defense of management clients in employment-related litigation. The firm is located at 1180 Peachtree St. NE, Suite 2900, Atlanta, GA 30309; 404-348-8585; Fax 404-467-8845; [www.lewisbrisbois.com](http://www.lewisbrisbois.com).



> **Carlton Fields** announced the addition of **David W. Adams** as **of counsel**. Adams represents national, regional and community banks in a host of regulatory and financial matters. The firm is located at 1201 W. Peachtree St. NW, Suite 3000, Atlanta, GA 30309; 404-815-3400; Fax 404-815-3415; [www.carltonfields.com](http://www.carltonfields.com).



> **Hooper & Honoré, LLC**, announced the addition of **N. Casey Brewton** as an **associate**. Brewton's practice focuses on criminal defense and civil litigation. The firm is located at 887 W. Marietta St. NW, Suite S107, Atlanta, GA 30318; Fax 800-684-0564; 404-480-8304; [www.hooperhonore.com](http://www.hooperhonore.com).

> **Seyfarth Shaw LLP** announced the addition of **John L. Telford Jr.**, **John A. "Jack" Lambremont** and **Tom Schramkowski** as **partners**, **Kyllan Kershaw** as a **senior associate** and **Kaitlyn Whiteside** as an **associate**. Telford represents employers in traditional labor union-related matters, including collective bargaining, labor arbitrations, election campaigns, proceedings before

the NLRB and matters governed by the Railway Labor Act. Lambremont focuses his practice on labor relations and collective bargaining under the National Labor Relations Act. Schramkowski represents private and public businesses in corporate matters across a wide range of industries such as agriculture, technology, manufacturing, energy, real estate, entertainment and hospitality, among others. Kershaw and Whiteside both focus their practice primarily on representing management in labor relations matters arising under the National Labor Relations Act, addressing positive employment and union-related issues such as collective bargaining, labor arbitrations, election campaigns, proceedings before the National Labor Relations Board and preventative labor relations practices. The firm is located at 1075 Peachtree St. NE, Suite 2500, Atlanta, GA 30309; 404-885-1500; Fax 404-892-7056; [www.seyfarth.com](http://www.seyfarth.com).



**Carlock, Copeland & Stair, LLP**, announced the addition of **John Merritt** as of

counsel and **J.T. Gallagher, Jennifer Guerra, Alyssa Rogers, Stephanie Vari, Winter Wheeler, Emily Ward, T. Peyton Bell, Tracy W. Baker, Quinn Curtis Bennett** and **Tawny D. Mack** as associates. Merritt's practice includes a substantial amount of complex commercial litigation and other general liability causes of action. Gallagher focuses his practice in the area of construction litigation. Guerra's practice focuses exclusively on civil litigation and litigation-related issues, including the appellate process, in both state and federal courts. Rogers handles civil litigation defense matters including general liability, premise liability, and trucking and transportation. Vari focuses on civil litigation defense including gen-

eral liability, medical malpractice and commercial litigation. Wheeler practices in the firm's health care and commercial litigation groups. Ward focuses on civil litigation defense including general liability, medical malpractice and commercial litigation. Bell practices in the firm's general liability and health care litigation groups. Baker's practice focuses on worker's compensation practice. Bennett's litigation practice is concentrated in general liability, premises liability and health care litigation. Mack's practice focuses primarily in the areas of construction litigation and general liability defense. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; [www.carlockcopeland.com](http://www.carlockcopeland.com).

> **Hedgepeth, Heredia & Rieder** announced the election of **Jessica Reece Fagan** to partner. Fagan practices exclusively in the area of family law. The firm is located at 3330 Cumberland Blvd., Suite 450, Atlanta, GA 30339; 404-846-7025; Fax 404-846-7027; [www.hhrfamilylaw.com](http://www.hhrfamilylaw.com).







**Drew Eckl & Farnham** announced the addition of **John Beck, Frank Wasser, Payton D. Bramlett, Erika C. Oates** and **Christopher Jackson** as associates. Beck's practice focuses on representing insurance companies, corporations, school boards and hospitals in workers' compensation claims. Wasser focuses his practice on workers' compensation and civil tort litigation. Bramlett practices in the areas of civil tort litigation and represents individuals, corporations and insurance companies in state and federal courts. Oates practices primarily in workers' compensation defense. Jackson practices in workers' compensation and appellate law. The firm is located at 880 W. Peachtree St., Atlanta, GA 30309; 404-885-1400; 404-876-0992; [www.deflaw.com](http://www.deflaw.com).

> **Jones Day** announced the addition of **Ginger R. Burton** as partner. Burton represents institutional lenders and companies in a variety of secured and unsecured financing transactions, including acquisition financings, syndicated credit facilities and asset based financings. 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).

- > **DLA Piper** announced the election of **Jamie Konn** to **partnership**. Konn's practice focuses on employment-related aspects of corporate transactions, advising companies on how to defend themselves against strategic union campaigns, litigating fast-paced restrictive covenants cases and counseling clients through day-to-day employment questions and crises. The firm is located at 1201 W. Peachtree St., Suite 2800, Atlanta, GA 30309; 404-736-7800; Fax 404-682-7800; [www.dlapiper.com](http://www.dlapiper.com).

- >   **Barnes & Thornburg** announced the addition of **Gary S. Freed** as **partner** and **Malcom Cox** as **counsel**. Freed counsels clients on business matters ranging from restrictive covenants and trade secrets to business dissolution, lending and real estate matters, among others. Cox's litigation practice focuses on advising corporations and their employees on diverse issues, including complex commercial contracts, land use, antitrust, and intentional and negligence-based torts. 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).

- >   **Miller & Martin PLLC** announced the addition of **Kevin O'Mahony** and **Laura Ashby** as **members**. O'Mahony's practice focuses on health care in both transactional and litigation matters. Ashby focuses her practice on intellectual property, business and tort litigation. The firm is located at 1180 W. Peachtree St. NW, Suite 2100, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; [www.millermartin.com](http://www.millermartin.com).

- > **Chamberlain, Hrdlicka, White, Williams & Aughtry** announced the addition of **Peter N. Hall** as **senior counsel**. Hall focuses his practice on labor and employment law with an emphasis on litigation matters. The firm is located at 191 Peachtree St. NE, 34th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; [www.chamberlainlaw.com](http://www.chamberlainlaw.com).

- > **BakerHostetler** announced the election of **Joann Gallagher Jones** to **managing partner**. Jones' practice focuses on real estate development and finance

practice with emphasis in the health care industry. 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).



Angersola

Clayton

Crawford

Ficker



Holloway

Webb

**Swift, Currie, McGhee & Hiers, LLP**, announced the addition of **Joseph J. Angersola**, **D. Lee Clayton**, **Michael O. Crawford IV**, **R. Alex Ficker**, **Preston D. Holloway** and **K. Mark**

**Webb** as **partners**. Angersola's practice includes products liability, catastrophic injury and wrongful death claims, premises liability and commercial litigation with experience varying from complex, large exposure matters to contract disputes. Clayton's practice focuses primarily on products liability, general civil litigation, bad faith insurance litigation, commercial litigation and insurance coverage defense. Crawford litigates commercial general liability, premises liability, trucking/transportation, excess coverage, automobile, fire, explosion, contract, toxic tort and construction defect claims, as well as a variety of subrogation claims. Ficker, Holloway and Webb all concentrate their practice in the area of workers' compensation defense. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; [www.swiftcurrie.com](http://www.swiftcurrie.com).

- > **Heninger Garrison Davis, LLC**, announced the election of **Jim McDonough** to **partner**. McDonough's practice centers on intellectual property, mass torts, multi-district litigation, class actions and products liability. The firm is located at 3621 Vinings Slope, Suite 4320, Atlanta, GA 30339; 404-996-0864; Fax 205-326-3332; [www.hgdllawfirm.com](http://www.hgdllawfirm.com).

- >  **Kilpatrick Townsend & Stockton** announced the addition of **Ronald McKenzie** and **Kimberly Scott** as **associates**. McKenzie joins the government enforcement and investigations team in the firm's litigation department. Scott focuses her practice on outsourcing agreements, technology licensing, and contracts and commercial agreements. 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).



Arnold



Paupeck



Cooper



Adler



Dial

**Weinberg Wheeler Hudgins Gunn & Dial** announced the election of **Brannon Arnold**, **Michael Paupeck** and **Derick Cooper** to **partnership**, **Jennifer Adler** as **partner of counsel** and the addition of **Jad Dial** as an **associate**. Arnold practices in the areas of product liability, catastrophic injury and premises liability. Paupeck focuses his practice on construction litigation, professional liability litigation, commercial litigation and catastrophic injury. Cooper focuses his practice on catastrophic injury, premises liability and product liability. Adler's practice focuses primarily on health care litigation, commercial litigation and employment litigation, including complex class actions. Dial's practice area includes construction litigation, environmental and toxic tort, premises liability, product liability, professional liability and transportation. 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).



**Smith Moore Leatherwood** announced the election of **Matthew Stone** to **partnership**. Stone joins the transportation practice group. The firm is located at 1180 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; [www.smithmoorelaw.com](http://www.smithmoorelaw.com).



Babcock



Hosack



Green

**Freeman Mathis & Gary, LLP**, announced the addition of **Ryan Babcock** and **Coleen**

**Hosack** as **of counsel** and **Parker M. Green** as an **associate**. Babcock joins the commercial and complex litigation practice section and the life sciences litigation group. Hosack's practice focuses on providing a strategic legal defense to local governments in civil litigation matters involving constitutional and civil rights issues. Green joins the trans-

portation law practice group with experience defending motor carriers, CDL drivers and transportation insurers. The firm is located at 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339-5948; 770-818-0000; [www.fmglaw.com](http://www.fmglaw.com).

**Elarbee Thompson** announced the election of **Justin Connell** to **equity partner** and **Tracy Glanton** and **Douglas Miller** to **partnership**. Connell's practice focuses primarily on complex litigation matters, including high level labor and employment litigation and corporate litigation, including shareholder derivative actions and private equity disputes. Glanton focuses her practice on defending employers against claims involving all aspects of workplace discrimination, ERISA actions and various other federal and state law claims. Miller counsels and represents companies in the full range of employment-related issues and also regularly advises and represents management in traditional labor relations matters. The firm is located at 229 Peachtree St. NE, Atlanta, GA 30303; 404-659-6700; Fax 404-222-9718; [www.elarbeethompson.com](http://www.elarbeethompson.com).



Maxwell



May



Sineway



Merchant



Wilson

**Morris, Manning & Martin, LLP**, announced the election of **Chris Maxwell**, **Corey May**, **Daniel Sineway**, **Mary Merchant** and **Lynn Wilson** to **partnership**. Maxwell is active principally in the firm's general corporate practice, concentrating in mergers and acquisitions, venture capital transactions and general corporate governance matters. May's practice focuses on commercial real estate, representing real estate investment funds, institutional landlords, tenants, developers and property managers in the acquisition, disposition, financing, leasing and management of retail, multi-family, office, commercial and industrial projects. Sineway practices in all areas of intellectual property law. Merchant focuses on IP services for products and inventions in life sciences sectors. Wilson focuses her practice on the representation of the FDIC in its foreclosure of primarily commercial real estate assets. The main office is located at 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; [www.mmmlaw.com](http://www.mmmlaw.com).



Ware



Brubaker

**Hall Booth Smith, P.C.**, announced the addition of **David Ware** and **Dana Brubaker** as of counsel. Ware represents clients ranging from Fortune 500 companies and large governmental entities to high-profile professional athletes and other high net worth individuals in complex litigation matters and multimillion-dollar negotiations and transactions. Brubaker practices in all areas of medical malpractice litigation and personal injury defense. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; [www.hallboothsmith.com](http://www.hallboothsmith.com).



**Jeff Kerr**, formerly of Mays & Kerr, announced the launch of **CaseFleet**, a cloud-based legal practice management solution that integrates tools for litigation and business workflows to better manage the practice of law regardless of a firm's size or practice areas. CaseFleet is located at 655 Highland Ave. NE, Suite 8, Atlanta, GA 30312; [www.casefleet.com](http://www.casefleet.com).



Dang



Thompson

**Fish & Richardson** announced the election of **Ajit Dang** and **Ben Thompson** to **principals**. Dang focuses his practice on patent litigation and licensing. Thompson's practice focuses on patent litigation practice involving various technologies, including computer network security and encryption. The firm is located at 1180 Peachtree St. NE, 21st Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; [www.fr.com](http://www.fr.com).



Davey



Levy

**Stites & Harbison, PLLC**, announced the election of **Melissa Davey** to **counsel** and the addition of **Brian Levy** as an **attorney**. Davey is in the creditors' rights and bankruptcy service group, representing institutional lenders and other creditors in all areas including bankruptcy, workouts and commercial litigation. Levy's practice focuses on representing financial institutions, including national and regional banks, as well as other creditors, in state and federal courts throughout Georgia. The firm is located at 303 Peachtree St. NE, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; [www.stites.com](http://www.stites.com).



Bogue



Cooper

**Howick, Westfall & Kaplan, LLP**, announced the election of **Virginia B. Bogue** and **Christopher S. Cooper** to **partners**. Bogue's practice focuses on bankruptcy and creditors' rights litigation. Cooper's practice focuses on commercial finance and real estate law. The firm is located at 3101 Towercreek Parkway, Suite 600, Atlanta, GA 30339; 678-384-7000; Fax 678-384-7034; [www.hwkllp.com](http://www.hwkllp.com).

**The Toth Law Firm, LLC**, announced that it has relocated. The firm will continue to focus on plaintiff's personal injury and medical malpractice. The office is now located at 3475 Lenox Road NE, Suite 740, Atlanta, GA 30326; 404-250-1564; Fax 404-995-3950; [www.waynetothlaw.com](http://www.waynetothlaw.com).

### In Albany



Hooper



Edge

**Moore, Clarke, DuVall & Rodgers, P.C.**, announced the election of **Michael E. Hooper** and **James H. "Jim" Edge** to **partnership**. Hooper's practice lies in taxation, trusts and

estate planning, corporate law, partnership law, probate and the administration of estates and trusts. Edge's practice involves the handling of a broad range of business-related disputes, including derivative actions, non-compete and other business matters. The firm is located at 2829 Old Dawson Road, Albany, GA 31707; 229-888-3338; Fax 229-888-1191; [www.mcdr-law.com](http://www.mcdr-law.com).



**Watson Spence, LLC**, announced the election of **Alfreda Sheppard** to **partnership**. Sheppard's practice focuses on labor and employment litigation, government liability litigation and white collar criminal defense. The firm is located at 320 Residence Ave., Albany, GA 31701; 229-436-1545; Fax 229-436-6358; [www.watsonspence.com](http://www.watsonspence.com).

### In Alpharetta

**Merbaum Law Group, P.C.**, announced it has changed its name to **Merbaum & Becker, P.C.** The firm will continue to represent contractors, subcontractors and owners relating to construction issues as well as business transactions and disputes, real estate litigation, landlord-tenant law and commercial collections.

The firm also announced the election of **Andrew J. Becker** to **partnership**. Becker's practice areas include

construction law, business litigation, landlord and tenant, creditor and debtor, and civil appeals. The firm is located at 5755 North Point Parkway, Suite 284, Alpharetta, GA 30022; 678-393-8232; Fax 678-393-0410; [www.merbaumlawgroup.com](http://www.merbaumlawgroup.com).

## In Athens



**Hall Booth Smith, P.C.**, announced the addition of **Allen Orr** as an **associate**. Orr represents corporate and individual clients in business disputes, estate litigation and commercial loan workouts.

The firm is located at 440 College Ave.

N, Suite 120, Athens, GA 30601; 706-316-0231; Fax 706-316-0111; [www.hallboothsmith.com](http://www.hallboothsmith.com).

## In Augusta



**Dunstan, Cleary & West, LLP**, announced the addition of **Jennifer Hamilton Hawkins** as **partner**. Hawkins' practice areas include representation of creditors in bankruptcy proceedings as well as personal injury, contract disputes, probate matters and general civil litigation. The firm is located at 1223 George C. Wilson Drive, Augusta, GA 30909; 706-860-9995; Fax 706-860-4335.

## In Columbus



Hudson

**Morris, Manning & Martin, LLP**, announced the election of **Nicholas Stutzman** and **Edward Hudson** to **partnership**. Stutzman represents a variety of lenders, developers, builders, investors, buyers and sellers in residential real estate matters. Hudson's practice

focuses on residential and commercial real estate. The firm is located at 5650 Whitesville Road, Suite 206, Columbus, GA 31904; 706-317-3440; Fax 706-317-3441; [www.mmmmlaw.com](http://www.mmmmlaw.com).

**Hall Booth Smith, PC**, announced the addition of **Bradley R. Coppedge**, **Gregory S. Ellington**, **Robert C. Martin Jr.**, **John M. Sheftall** and **Melanie V. Slaton** as **partners**, **William B. Hardegree** and **Charles T. Staples** as **of counsel** and **Tyler Pritchard**, **Carl A. Rhodes Jr.** and **Elizabeth Wise** as **associates**. Coppedge focuses his practice on business, tax and personal planning. Ellington concentrates his practice in the areas of medical malpractice defense, education law, business litigation and consumer class action litigation in state and federal courts. Martin's practice involves medical malpractice, products liability and commercial litigation in state and federal courts. Sheftall practices in the area of trusts and estates, and fiduciary law. Slaton practices in general civil litigation with an emphasis

on labor and employment law, including employment discrimination and employment harassment. Hardegree's litigation and appellate practice is concentrated in the areas of commercial and business, insurance and personal injury, and employment. Staples' areas of practice include corporate and business organizations and related areas, entity selection/formation, estate planning and probate. Pritchard's areas of practice include general liability, governmental liability and employment. Rhodes specializes in business and taxation, estate planning and administration, and real estate areas. Wise's practice area includes business litigation education, employment, general liability and workers' compensation. The firm is located at 233 12th St., Suite 500, Columbus, GA 31901; 706-494-3818; Fax 706-494-3828; [www.hallboothsmith.com](http://www.hallboothsmith.com).

## In Cumming



**Banks, Stubbs & McFarland, LLP**, announced the election of **Cindy English** to **partnership**. English's practice areas include family law, civil litigation, business law and mediation. The firm is located 309 Pirkle Ferry Road, Building F, Cumming, GA 30040; 770-887-1209; [www.banksstubbs.com](http://www.banksstubbs.com).

## In LaFayette



**Womack, Gottlieb & Rodham, P.C.**, announced the addition of **Ryan L. Ray** as an **associate**. Ray's practice centers on defending governmental entities on complex issues including labor law and civil rights disputes through litigation, mediation and appeal in federal, state and appellate courts. The firm is located at 109 E. Patton Ave., LaFayette, GA 30728; 706-638-2234; Fax 706-638-3173; [www.wgrlawfirm.com](http://www.wgrlawfirm.com).

## In Macon



Noland



Schultz

**James-Bates-Brannan-Groover-LLP** announced the addition of **William H. Noland** as **of counsel** and **Lauren N. Schultz** as an **associate**. Noland represents individual, corporate and government clients in matters involving

civil litigation, commercial litigation, insurance litigation and local government liability. Schultz focuses her practice on general, commercial, and insurance litigation, as well as local government liability defense. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; [www.jamesbatesllp.com](http://www.jamesbatesllp.com).



### In Savannah



**HunterMaclean** announced the election of **Brad Harmon** to **managing partner**. Harmon focuses his practice on business litigation and logistics law. The firm is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; [www.huntermaclean.com](http://www.huntermaclean.com).

### In Statesboro



Colson



Mathews

**Edenfield, Cox, Bruce & Classens, P.C.**, announced the election of **Benjamin J. Colson** to **partnership** and the addition of **Joe E. "Matt" Mathews Jr.** as an **associate**. Colson focuses

his practice on civil trial practice, business litigation, plaintiff's personal injury claims, criminal law, contract disputes and estate law. Mathews focuses his practice on civil trial practice, litigation, real estate, and estates and trusts. The firm is located at 115 Savannah Ave., Statesboro, GA 30458; 912-764-8600; Fax 912-764-8862; [www.edenfieldlaw.com](http://www.edenfieldlaw.com).

### In Vidalia



**Troy Lance Greene** announced the opening of his practice **Troy Lance Greene, P.C.** Greene represents several insurance companies and self-insurers in Georgia. The firm is located at 602 Church St., Vidalia, GA 30475; 912-537-9343; Fax 912-537-265; [www.lancegreenelaw.com](http://www.lancegreenelaw.com).

### In Birmingham, Ala.



**Heninger Garrison Davis, LLC**, announced the addition of **Jeff Leonard** as **partner**. Leonard's practice focuses on representing individuals and businesses in civil litigation, including contract and commercial disputes, wrongful death, catastrophic injury, medical malpractice, class actions, products liability, premises liability and trucking/vehicle collision cases. The firm is located at 2224 1st Ave. N, Birmingham, AL 35203; 205-326-3336; Fax 205-326-3332; [www.hgdllawfirm.com](http://www.hgdllawfirm.com).

### In Tuscaloosa, Ala.



**Browder & Welborn, LLC**, announced the election of **David B. Welborn** to **partner**. Welborn's practice focuses primarily on estate, business and tax planning, probate and elder law. The firm is located at 2315 9th St., Suite 5A, Tuscaloosa, AL 35401; 205-349-1910; Fax 205-349-1552; [www.browderwelborn.com](http://www.browderwelborn.com).

### In Lake Success, N.Y.



**Garden City Group, LLC**, announced the addition of **Kenneth Cutshaw** as **interim president** and **chief executive officer**. Cutshaw employs his global business expertise to guide the firm's leadership, strategy and growth while enhancing the efficiency of the company's class action settlement administrations, restructuring and bankruptcy matters, mass tort settlements, regulatory settlements, legal notice programs and data breach response programs. The firm is located at 1985 Marcus Ave., Lake Success, NY 11042; 800-327-3664; [www.gardencitygroup.com](http://www.gardencitygroup.com).

### In Greenville, S.C.



**Burroughs | Elijah** announced the addition of **Katherine Willett** as **managing attorney**. Willett focuses her practice in the areas of construction/business litigation, as well as landlord/tenant matters, collections work and plaintiff's personal injury. The firm is located at 330 E. Coffee St., Greenville, SC 29601; 864-501-3205; [www.burroughselijah.com](http://www.burroughselijah.com).

**Gallivan, White & Boyd, P.A.**, announced the addition of **Carson Bacon Penney** as an **associate**. Penney practices as a member of the firm's business and commercial litigation group and workplace practices group, focusing on the representation of clients in employment issues related to federal and state employment laws. The firm is located at 55 Beattie Place, Suite 1200, Greenville, SC 29601; 864-271-9580; Fax 864-271-7502; [www.gwblawfirm.com](http://www.gwblawfirm.com).

### In Karnataka, India



**GokareLPO** announced the opening of its **Bangalore office**, offering additional India specific legal services for U.S. Companies based in India. The firm is located at #3 Ground Floor, GR Queens Amber Building, Bannerghatta Main Road, Bangalore 560076, Karnataka, India; 678-961-0896; [www.gokarelaw.com](http://www.gokarelaw.com).

# All By Myself

by Paula Frederick

**M**s. Jackson, I'm going to need to ask the court to reschedule that hearing in your case," you announce as your client picks up the telephone. "It is scheduled for June 8, but I'm going to be in the middle of a murder trial that week. We should be able to get your case wrapped up in July."

"I'm disappointed," your client responds. "But—you said it was a routine hearing. Can't you get one of your associates to handle it?"

"Ms. Jackson, I'm a solo practitioner," you reply proudly. "What made you think I have associates?"

"Aren't you Joe Blow & Associates?" your client asks.

"That's just the firm name," you reply. "There's no one here but me."

"Well I assumed there were other lawyers practicing with you—you know, *associates* . . ."

Does a solo practitioner violate the Rules of Professional Conduct by using a firm name that includes "& Associates?"

Yes.

Rule 7.5 of the Georgia Rules of Professional Conduct (GRPC) prohibits a lawyer from using a firm name that is false, fraudulent, deceptive or misleading. A new




proposed formal advisory opinion, 15-R1, finds that it is misleading for a solo practitioner to practice under a name that implies her firm is larger than it truly is.

The draft opinion further opines on two other designations commonly used in firm names—"Firm" and "Group."

Because the word "firm" is defined in Rule 1.0 as "*a lawyer or lawyers in a . . . private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law (Rule 1.0(e)),*" the opinion finds no problem with a sole practitioner practicing as "The Joe Blow Law Firm."

It's a different story for "group." There is no definition of the word "group" in the GRPC. Relying on dictionary definitions the Board concludes that a sole practitioner may *not* call his or her practice a group.

Even a cursory check of the web reveals that dozens, if not hundreds, of Georgia solos currently practice under one of the names that will be prohibited if the Supreme Court approves the proposed opinion. Recognizing "the practical difficulties associated with changing a firm's name," the Formal Advisory Opinion Board recommends that Georgia treat such situations with flexibility and allow a reasonable time for solos to bring their firm names into compliance.

The draft opinion is available on the Bar's website (just search for 15-R1). Comments were due to the Formal Advisory Board by May 31, 2016. The Board will consider any comments received and decide whether to issue the opinion. A final version will then be published and filed in the Supreme Court. 



**Paula Frederick** is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.



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## ETHICS DILEMMA?

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.



# Attorney Discipline Summaries

(Feb. 13, 2016 through April 15, 2016)

by Connie P. Henry

## Disbarment

**Jarlath Robert MacKenna**

Decatur, Ga.

Admitted to Bar 2009

On April 4, 2016, the Supreme Court of Georgia disbarred attorney Jarlath Robert MacKenna (State Bar No. 136109). The following facts are deemed admitted by default. On Nov. 4, 2013, MacKenna was suspended from the practice of law for 18 months. Nonetheless, MacKenna represented two clients and, instead of informing the first one that he was suspended and could not represent her, he simply did not appear for a hearing in the case. He continued to represent the second client.

## Suspension

**Ricky W. Morris Jr.**

McDonough, Ga.

Admitted to Bar 1998

On April 11, 2016, the Supreme Court of Georgia accepted the voluntary petition for emergency suspension of attorney Ricky W. Morris (State Bar No. 525160) pending the resolution of disciplinary and criminal matters against him. Morris is currently impaired due to addiction and mental health issues.

## Reinstatement Granted


**James A. Meaney III**

Dalton, Ga.

Admitted to Bar 1973

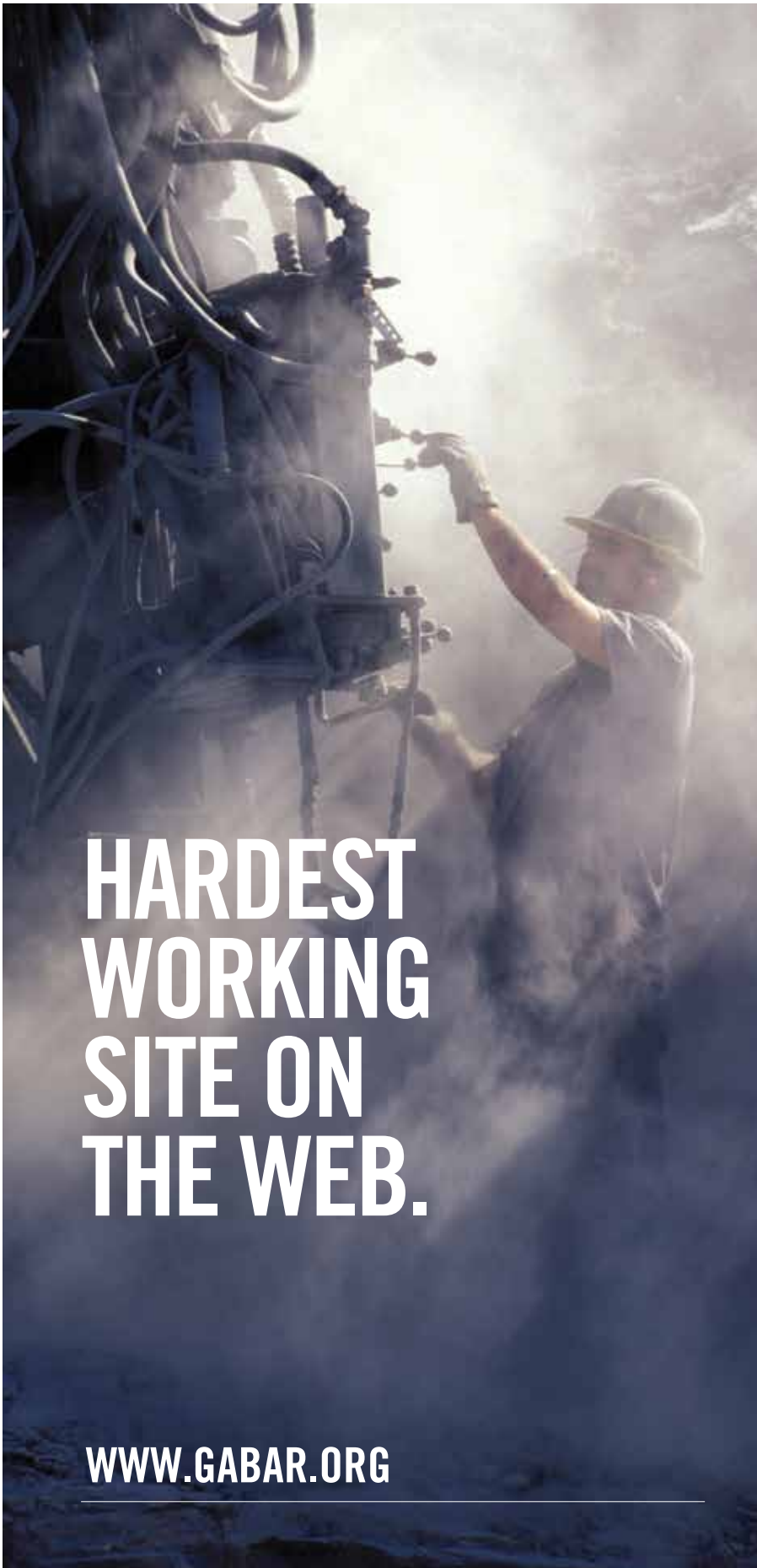
On April 6, 2016, the Supreme Court of Georgia determined that attorney James A. Meaney III (State Bar No. 500491) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law.

## 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 Feb. 13, 2016, no lawyers have been suspended for violating this Rule and one has been reinstated. 



**Connie P. Henry** is the clerk of the State Disciplinary Board and can be reached at [connieh@gabar.org](mailto:connieh@gabar.org).



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# Solo and Small Firm Institute Set to Repeat in July

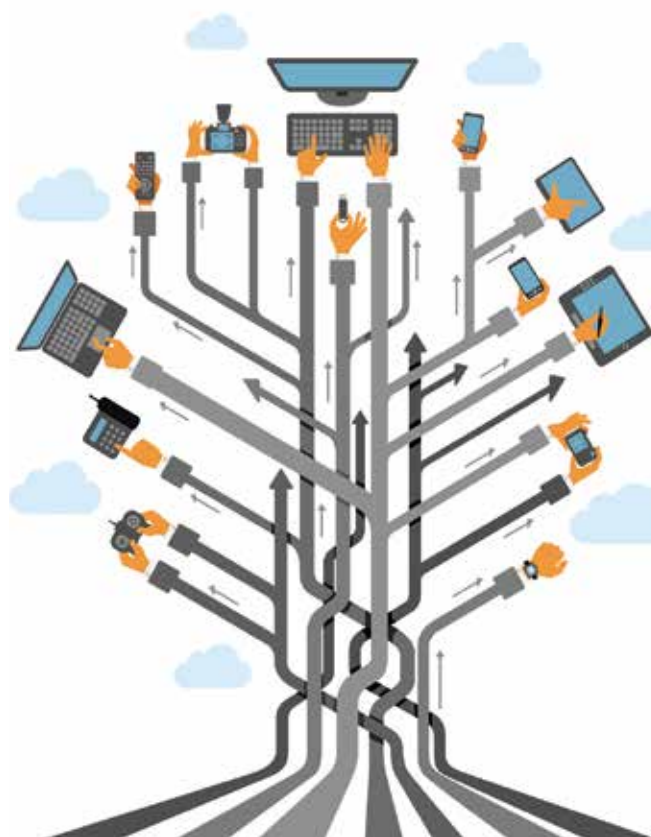
by Natalie R. Kelly

**W**hat's cooler than an icicle in summer? Perhaps it will be this year's Solo and Small Firm Institute. The two-day CLE event focusing on the technology and practice management needs of sole practitioners and smaller law firms will take place at the State Bar July 15-16. And what's so cool about this conference? Well, it's what's in store for conference attendees.

If you missed last year's event, you missed the following conference attractions which are scheduled to return this year.

## Track Programming

The Solo and Small Firm Institute features a full year's worth of CLE—12 hours—including ethics and professionalism credits based on session selection. There will be simultaneous sessions for practice management, technology and substantive law, all designed to provide the latest and most important information of use to solo and small firms. Attendees may choose to attend all of the programs in a single track or move from one track to another as desired throughout the duration of the conference. One hour of CLE credit is awarded for attending each session. (Find the full agenda online at <http://tinyurl.com/k5f5uqh> for scheduling purposes.)



## Special Guest Speakers

Sharon Nelson, John Simek and Jim Calloway will be the special guest speakers for this year's institute. In addition, Nelson and Simek, owners of the computer forensics company, Sensei Enterprises, Inc., will present a don't miss plenary session on Friday eve-



ning involving murder, robbery, massеuses, bondage and suicide as they tell the tale of digital forensics in the case of the Craigslist Killer. As a finale for the first day (and just before an evening reception) the three presenters will be joined by legal technology consultant and Georgia lawyer Nancy Duhon for a fast-paced session showcasing 60 practice tips, apps, sites and gadgets.

## Professionalism Plenary

The institute welcomes Hon. Shukura Ingram Millender of the Magistrate Court of Fulton County as this year's professionalism speaker, scheduled for Saturday. Millender is sure to have the full attention of conference attendees. This session will allow conference attendees to receive one hour of professionalism CLE credit.

## Exhibit Hall

Attendees in 2015 had an opportunity to visit with more than 30 legal product and service vendors in the conference's dedicated exhibit hall. The vendors will be

back this year to give live demonstrations of their latest products and services. The exhibit hall presents an opportunity to learn about a new service or product, or to catch up with a vendor or supplier you may already be using in your solo or small firm practice.

## Networking Reception

To finish off the first day, attendees, presenters and exhibitors will all gather for a pre-dinner reception. Additional networking is highly encouraged during the reception as the attendees get to spend a few more minutes with the speakers and exhibitors.

Attendees returning to the conference and those attending for the first time will also enjoy a few new things this year.


## New Exhibitors

With more than 30 exhibitors last year, the planners are working hard to get even more product and service vendors to come to this year's conference. The exhibitors will be asked to provide prizes which will be awarded along with

a grand prize over breakfast on day two.

## Updated Vendor Showcase

Sometimes the exhibit hall and the other designated networking places do not suffice for getting a larger message across to the conference audience, and some special time is warranted. At this year's conference the vendor showcase schedule has been tweaked and more offerings will be available for these very specials sessions, many of which will allow attendees to get a general CLE credit.

We hope you plan to attend this year's Solo and Small Firm Institute, and we look forward to seeing you there. 



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



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**JULY 15-16, 2016**

State Bar of Georgia Headquarters

Check the conference website at <http://tinyurl.com/k5f5uqh> as well as [iclega.org](http://iclega.org) for updates!

# We Salute Our Pro Bono All-Stars

The Pro Bono Resource Center of the State Bar of Georgia salutes the following attorneys who demonstrated their commitment to equal access to justice by volunteering their time to represent low-income Georgians in civil pro bono programs during 2015.

\*denotes attorneys who have accepted three or more cases

*Italicized denotes deceased*

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David Lowance	Cecilia Oh	Maya Rivera-Diaz	Lynn Stewart	Kerry Yun
Glenn Lyon*	Aisha Oliver-Staley	Tracy Rivers	Petra Stewart*	Matthew Yungwirth
Jessica MacAllister	Julie Olvin	Madison Roberts	Bryan Stillwagon*	David Zimmerman
Jon Maddison	Shola Omojokun	Pat Roberts	Eric Stolze	Laura Zschach
Sonya Madison	Kara Ong	Erinn Robinson	Lin Stradley	Jenny Zupec
Lindsey Magaro	Shayne O'Reilly	Ami Rodrigues	Bo Strauss	
Rohani Mahyera	Bob Orenstein*	Candace Rodriguez	Hunter Street	
Thobeka Makaula	W. Scott Ortwein	Kathleen Rodriguez	Holly Stroud	
Christina Weatherford Malone	Austin Padgett	Joel Rogers	Bob Stupar	
Lindsey Mann	Jessica Paletsky	Daniel Rollman	Deepa Subramanian*	
Michelle Marchiony	Michael Parisi	Kelly Romich	Robert Swanton	
Scott Mario	Brian Park	Kacy Romig	Karli Swift	
John Martin	Douglas Park	Paul Rosenblatt	Juliet Sy	
Lillian Martin	Steven Park	Steve Rosenboro	Cory Takeuchi	
Andrew Masak	Yane Park	Alan Rosselot	Virginia Tate	
Samuel Matchett	Chris Parker	Nick Rueter	Dené Terry	
Ellen Padesky Matures	Shequitta Parker	James Rusert	Jaime Theriot	
Chris Maxwell*	Sarah Parker*	Val Rusk*	Marion Tilson	
Kathleen McCarthy	Rey Pascual	Suzanne Russo	Buddy Toliver	
Lindsay McClelland	Nick Passarello	Paul Ryan	Eric Tresh	
Joseph McCain	Monica Patterson	S. Fahad Saghir	James Trigg	
Kathryn McConnell*	Catherine Paulson	Linda Sanchez	Jonielle Turner	
Jason McCoy	Mike Pavento*	Lorene Schaefer	Stacey Turner	
Stephen McCullers	Rett Peaden	Benjamin Schlesinger	Michael Turton	
Amy McCullough	Kevin Pearson	Grant Schnell	Nwa'ndo Ume-Nwagbo	
Petrina McDaniel	Lee Peifer	Devin Schoonmaker*	Jeff Upshaw	
Theresa McDaniel	Lindsey Perry	Stephen Schrock	Nick Valponi	

# Fastcase Training:

## Part of Your Technology Toolbox

by Shelia Baldwin


**T**echnology is becoming fully integrated in the practice of law. Successful lawyers, and by extension law firms, depend on the ability to use technology in and out of the office. Your office technology can be thought of in terms of a toolbox. Knowing what's inside your toolbox and how to make the best use of it should be a regular consideration. State Bar of Georgia members have two advantages enabling them to accomplish these goals. Fastcase is one such tool available to all Bar members. The Law Practice Management Program also offers help in choosing technology to meet your needs and will assist in its ongoing use.

Fastcase offers the following means of training: online webinars, live chat, short instructional vid-

eos and user guides, in addition to the dedicated research representatives that can be reached by phone or email. Fastcase is located in Washington, D.C., and has extended hours of 8 a.m. to 8 p.m., which works well for Georgia lawyers. All these options are available within Fastcase from the help menu (see fig. 1). Live Chat is arguably the most convenient option for several reasons. Once you start the chat session you can indicate your specific jurisdiction and then cut and paste your search query into the live chat dialog box. The dialog box will minimize while you go about your business. When the representative responds, the box reappears on your screen allowing for further dialog, or the support associates can send you links to search results, cases and more. Once you complete your session the conversation can be sent to your email for a point of reference. The Fastcase webinars include three levels of expertise and each offers one hour of free CLE credit. Find these on the State Bar of Georgia website calendar (see fig. 2).

The Law Practice Management Program also offers Fastcase training here at the Bar and by phone or email. These opportunities can also be found on the website calendar. The *Bar Journal* offers a Member Benefits column in each issue which features strategies, new developments and training to help our readers gain competency. We also make ourselves available at

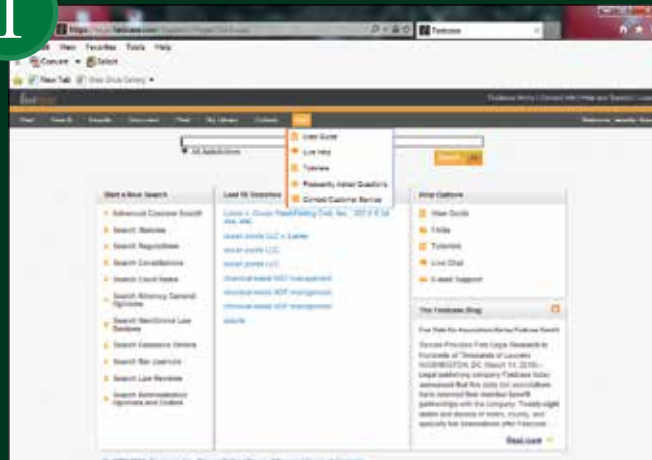
Bar meetings such as Annual and Midyear, in addition to various CLE programs. One such event is our Solo and Small Firm Institute, which will be held at the Bar Center July 15-16. Chuck Lowry, a noted expert in legal research, will be our featured speaker for Fastcase. Lawyers and legal professionals will have time to check out the latest in legal technology from more than 30 exhibitors. The educational presentations will take place in four simultaneous tracks that allow attendees to learn from some of the best national and local speakers on topics that are particularly relevant for solo and small firms. American Bar Association (ABA) authors and speakers Sharon D. Nelson and John W. Simek are experts in the field of digital forensics, information security and information technology. Jim Calloway, a noted ABA author, blogger and speaker will join us from the Oklahoma Bar Association. The cost is affordable, \$185 (early registration), for a conference that completes an entire year's worth of CLE credit and is conveniently held at the Bar Center. Last year's attendees enjoyed the exhibitor door prizes, good food and networking opportunities. Full details are found on the Bar website under Law Practice Management (see fig. 3).

Technology training is an ongoing process. Take advantage of the opportunities offered through Fastcase or the Law Practice Management Program. If you have any technology questions, or would like to know more about any of your other member benefits, visit [www.gabar.org](http://www.gabar.org), or contact me at [sheilab@gabar.org](mailto:sheilab@gabar.org) or 404-526-8618. 



**Sheila Baldwin** is the member benefits coordinator of the State Bar of Georgia and can be reached at [sheilab@gabar.org](mailto:sheilab@gabar.org).

1



2



3



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 on site classes for local and specialty bar associations.



# Summer Reading

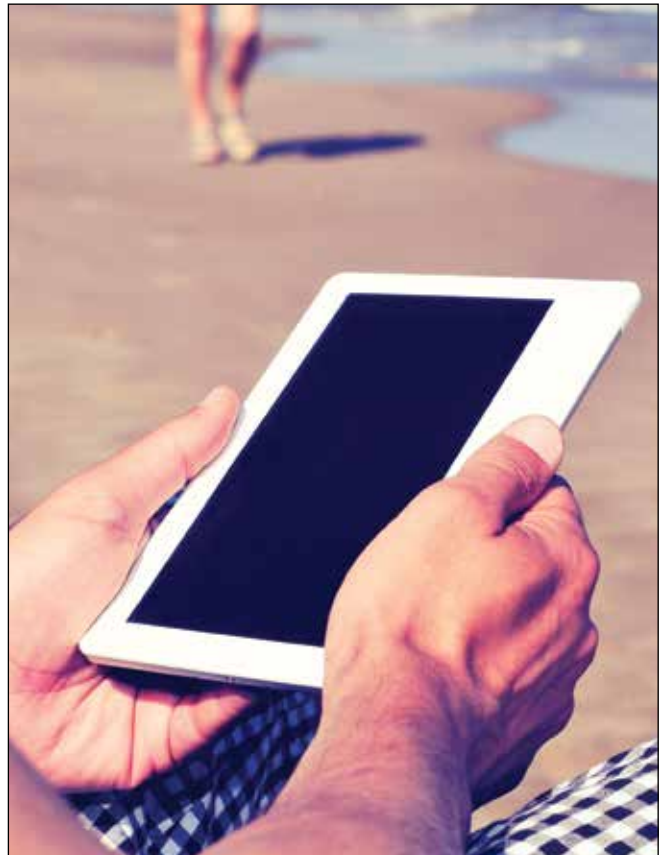
by Karen J. Sneddon and David Hricik

**R**ays of sunshine cut through the humid air as lawn mower engines drone and cicadas hum. That's right. Summer is here! And what better time to improve your legal writing by reading! (We're sure that's exactly what you were thinking.) Seriously. One way to become a better writer is to become a better reader. This installment shares selected reading suggestions from books to blogs. We've categorized them and tried to provide some guidance depending on your particular interests. Enjoy!

## Books

There are a lot of general books on legal writing and particularly persuasive legal writing. From those masses, we've identified a few that we think are worth cuddling up with in your hammock this summer. Why? Not only are they written by experienced advocates for practicing lawyers, these books provide useful advice by using examples from filed briefs and motions.

- ROSS GUBERMAN, *POINT MADE: HOW TO WRITE LIKE THE NATION'S TOP ADVOCATES* (2011) (also available on Kindle).



- NOAH MESSING, *THE ART OF ADVOCACY: BRIEFS, MOTIONS, AND WRITING STRATEGIES OF AMERICA'S BEST LAWYERS* (2013).
- ANTONIO SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* (2008) (also available on Kindle).

## Law Review and Bar Journal Articles

For younger lawyers or older lawyers wanting a refresher, these recent articles provide primers, reminders and tips on the basics of good legal writing:

- Chad Baruch, *Everything You Wanted to Know about Legal Writing But Were Afraid to Ask*, 17 J. CONSUMER & COM. L. 9 (2013).
- Judith D. Fischer, *A Contemporary Take on Strunk and White for Legal Writers*, 15 SCRIBES J. LEGAL WRITING 127 (2013).
- Bryan A. Garner, *10 Tips for Better Legal Writing: You'll Be Glad You Found Your Mistakes Before Your Readers Do*, A.B.A. J. 24 (Oct. 2014).
- Elizabeth Ruiz Frost, *Decoding Hyphens, Dashes and Ellipses: Dashes and Dots*, OR. ST. B. BULL. 13 (July 2015).
- Charles N. Insler, *Opening Lines*, 42 NO. 2 LITIGATION 11 (Winter 2016).
- Gerald Lebovits, *Legal-Writing Myths*, 16 SCRIBES J. LEGAL WRITING 113 (2014-2015).
- David A. Rasch & Meehan Rasch, *Overcoming Writer's Block and Procrastination for Attorneys, Law Students, and Law Professors*, 43 N.M. L. REV. 193 (2013).
- Jessica Ronay, *A Mother Goose Guide to Legal Writing*, 36 U. LA VERNE L. REV. 119 (2014).

There are also plenty of articles for seasoned advocates who want to become better at helping younger lawyers to become stronger writers. One good way to become a better mentor is to provide better feedback. These recent articles provide insights into providing feedback and mentoring others in their legal writing:

- Stephen D. Easton & Julie A. Oseid, *"And Bad Mistakes? I've Made a Few": Sharing Mistakes to Mentor New Lawyers*, 77 ALB. L. REV. 499 (2013-2014).

- Jane Kent Gionfriddo, Daniel L. Barnett, & E. Joan Blum, *A Methodology for Mentoring Writing in Law Practice Using Textual Clues to Provide Effective and Efficient Feedback*, 27 QUINNIPIAC L. REV. 171 (2009).
- Mary B. Trevor, *The Care and Feeding of the Twenty-First-Century Developing Legal Writer*, 12 LEGAL COMM. & RHETORIC: JALWD 219 (2015).

If you're looking for more advanced articles, these recent articles discuss cutting edge concerns and issues in legal writing. And, no, they're not for academics only!

- Ian Gallacher, *"When Numbers Get Serious": A Study of Plain English Usage in Briefs Filed Before the New York Court of Appeals*, 46 SUFFOLK U. L. REV. 451 (2013).
- Lindsey P. Gustafson, *Texting and the Friction of Writing*, 19 LEGAL WRITING: J. LEGAL WRITING INST. 161 (2014).
- Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 LEGAL COMM. & RHETORIC: JALWD 1 (2015).
- Osler McCarthy, *Break Convention to Write Shorter and More Effectively*, 27 APP. ADVOC. 23 (2014).
- Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687 (2014).
- Jennifer Murphy Romig, *Legal Blogging and the Rhetorical Genre of Public Legal Writing*, 12 LEGAL COMM. & RHETORIC: JALWD 29 (2015).
- Suzanne E. Rowe, *Writing in a Brave New World: Future Shock*, OR. ST. B. BULL. 13 (Dec. 2012).

## Blogs and Websites


Finally, if you only have a few minutes or just want to add things to your reading list to fill the time while waiting for the afternoon rain shower to pass, there are a number of high-quality web sites devoted to legal writing. These blogs and websites provide helpful

commentary, advice and suggestions on legal writing:

- Bryan Garner's Law Prose showcases lessons on legal writing at <http://www.lawprose.org/lawprose-blog/>
- Megan Boyd shares tips, strategies and commentary at <http://ladylegalwriter.blogspot.com/>.
- All volumes of the *Legal Writing Journal* are available at <http://www.legalwritingjournal.org/>.
- The current volume and archives of *Legal Communication & Rhetoric* are available at <http://www.alwd.org/lcr/>.

Finally, although not a website about legal writing, Grammar Girl shares practical and humorous perspectives on grammar at <http://www.quickanddirtytips.com/grammar-girl>. It is worth adding to your RSS feed!

## Conclusion

Don't forget that another great resource—if we do say so ourselves—are the past issues of "Writing Matters," available online at the State Bar of Georgia's website. (The archives are available at <https://www.gabar.org/newsand-publications/georgiabarjournal/archive.cfm>.) Enjoy your summer and we'll be back, like you, tan, fit and ready to tackle what's next. 



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



**David Hricik** is a professor 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.

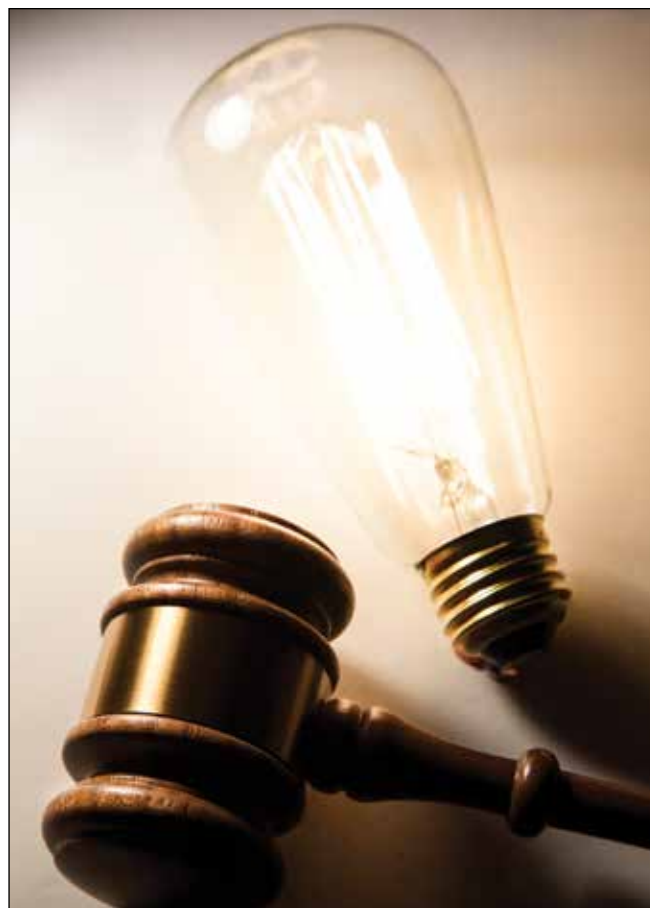
# Today's Chief Justice's Commission on Professionalism: What's Going On?

by Avarita L. Hanson

**S**pring often brings renewed energy and focus. Now in its 27th year, and third year under the leadership of Chief Justice Hugh P. Thompson, the Chief Justice's Commission on Professionalism (the Commission) remains a strong force for Georgia's bench and bar to focus on issues—past, present and future—of professionalism and the future of the legal profession.

With its 22 members, the Commission looks at “big picture” issues in its biennial convocations on professionalism, and through its executive director, presenting innovative timely CLE programs and initiatives. Members represent most segments of the legal profession including State Bar leadership, Georgia courts, Georgia law schools, lawyers both at-large and in practice areas (prosecutors, defense attorneys, in-house and government) and the public. A list of the 2015-16 Commission members can be found on page 67.

The Commission's two signature annual programs continue to be impactful and inspiring. The Justice Robert Benham Awards for Community Service are presented in late February to deserving Georgia judges and lawyers from across the state. In August, the Law School Orientations on Professionalism are conducted with the assistance of the State Bar's Committee on Professionalism at all Georgia law schools. Similar



programs are also presented at Emory and Atlanta's John Marshall law schools in January. The orientations engage more than 200 Georgia lawyers, law school faculty, and administrators and judges with incoming, transfer and visiting students. The main focus of the



program is to discuss hypothetical challenges of ethics and professionalism based on their student codes of conduct and in practice settings.

Linda A. Klein, past president of the State Bar of Georgia and president-elect of the American Bar Association, will be featured at the Commission's Convocation on Professionalism to be held Aug. 30. This full-day CLE program will address current and future issues in the delivery of legal services with local and national experts. Program chairs include Prof. Timothy Floyd, Avarita L. Hanson, Prof. Nicole Iannarone and Dean Rita Sheffey, supported by a large, inclusive and diverse planning committee. More information will be included in the Bar's Enews and through the Institute of Continuing Legal Education in Georgia's (ICLE) communications network.

The convocation held in November 2014 focused on issues of aging in the practice of law. Recommendations culled from that event are now under consideration by the Bar's leadership, members and administration. Issues under discussion include peer assistance to lawyers experiencing declining cognitive competence, their families and staff; appropriate discipline; and preparing for transition out of practice. Spawned by the convocation, ICLE and other CLE providers are increasing CLE course offerings that address succession planning and other issues of transitioning out of practice.

On the other side of practice, the Commission supports efforts to provide incoming and newly minted lawyers with training and opportunities through the State Bar's Transition Into Law Practice and Law Practice Management programs. Executive Director Avarita Hanson also serves as an ex-officio member of Lawyers for Equal Justice, Inc., the nonprofit organization that administers the collaborative incubator project to train solo practitioners to represent low-income and modest means clients and improve access to justice.

## 2015-16 Chief Justice's Commission on Professionalism Members


Chief Justice Hugh P. Thompson, *Chair*  
Prof. Frank S. Alexander, *Emory*  
Prof. Nathan S. Chapman,  
*University of Georgia*  
Prof. Clark D. Cunningham,  
*Georgia State*  
Hon. David P. Darden,  
*Cobb County State Court*  
Jennifer M. Davis, *Public Member*  
Hon. J. Antonio DelCampo, *At-Large*  
Gerald M. Edenfield, *At-Large*  
Dean A. James Elliott, *At-Large*  
Hon. Steve C. Jones,  
*U.S. District Court*  
Robert J. "Bob" Kauffman,  
*State Bar President*

C. Joy Lampley-Fortson,  
*U.S. Government*  
John R. B. "Jack" Long, *YLD President*  
Prof. Patrick E. Longan, *Mercer*  
Hon. Kellie K. McIntyre, *Prosecutor*  
Hon. Carla W. McMillian,  
*Court of Appeals*  
Dean Malcolm L. Morris,  
*Atlanta's John Marshall/Savannah*  
Wanda M. Morris, *In-House*  
Hon. Kathy S. Palmer,  
*Superior Court, Middle Judicial District*  
Claudia S. Saari,  
*DeKalb County Public Defender*  
Lynne E. Scroggins, *Public Member*  
R. Kyle Williams, *At-Large*

Chief Justice Thompson has stated that the Supreme Court has found the increased need for interpreters and others to improve access to justice for Georgia's diverse population and address the needs of deaf and hard of hearing persons. It is likely that the Commission will approve funding in FY16-17 for CLE programming to support this initiative.

The Commission continues to not only enjoy its rich history as the first court-created program to address lawyer professionalism, it also continues to present award-winning programs while seeking new initiatives to focus the bench and bar's attention on professionalism. Not wanting to see incivility as the "new normal," the Commission will continue to focus its efforts on the pillars of professionalism as set out by Justice Robert Benham: competence, civility, pro bono and community service, and ensuring access to justice. It is our goal that the Commission's programs and the ideals of professionalism translate into better practice, client representation and improve access to justice, while continuing to remain true to its mission:

To support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system.

Please feel free to share your ideas about CLE programs and activities. The Commission is located at 104 Marietta St. NW, Suite 620, Atlanta, GA 30303, or you can send your ideas to [professionalism@cjcpga.org](mailto:professionalism@cjcpga.org). Let's work together and continue making a difference with timely, innovative and impactful professionalism programs and initiatives. 



**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@cjcpga.org](mailto:professionalism@cjcpga.org) or 404-225-5040.

## In Memoriam

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.

**John K. Anderson**

Brunswick, Ga.  
Duke University School of Law  
(1969)  
Admitted 1974  
Died March 2016

**Ann Poe Angel**

Greenville, S.C.  
Boston University School of Law  
(1978)  
Admitted 1978  
Died February 2016

**Verlyn C. Baker**

Ellijay, Ga.  
Atlanta's John Marshall Law  
School (1953)  
Admitted 1956  
Died December 2015

**Glenn Scott Buff**

Lawrenceville, Ga.  
University of Alabama School  
of Law (1992)  
Admitted 1992  
Died February 2016

**William L. Cawthon Jr.**

Eufaula, Ala.  
University of Georgia School  
of Law (1976)  
Admitted 1976  
Died March 2016

**Frank E. Coggin**

Winter Haven, Fla.  
Woodrow Wilson College of Law  
(1954)  
Admitted 1954  
Died March 2016

**Roger Allan Cone**

Conyers, Ga.  
Woodrow Wilson College of Law  
(1976)  
Admitted 1976  
Died May 2016

**Jack L. Cooper**

Augusta, Ga.  
University of South Carolina  
School of Law (1954)  
Admitted 1956  
Died April 2016

**David M. Cox**

Atlanta, Ga.  
Emory University School of Law  
(1983)  
Admitted 1985  
Died April 2016

**Remer C. Daniel**

Macon, Ga.  
Mercer University Walter F.  
George School of Law (1965)  
Admitted 1966  
Died January 2016

**Telford Edwin Elders**

Monroe, Mich.  
Western Michigan University  
Cooley Law School (1991)  
Admitted 1993  
Died May 2016

**Susan Cohen Emmons**

Atlanta, Ga.  
Emory University School of Law  
(1980)  
Admitted 1980  
Died March 2016

**Larry D. Estridge**

Greenville, S.C.  
Harvard Law School (1969)  
Admitted 1969  
Died October 2015

**Arleen Evans**

Warrenton, Ga.  
University of Georgia School  
of Law (1984)  
Admitted 1985  
Died March 2016

**Charles Edward Feder**

Atlanta, Ga.  
Wayne State University Law  
School (1979)  
Admitted 1999  
Died February 2016

**James E. Fusha**

Columbus, Ga.  
Woodrow Wilson College of Law  
(1983)  
Admitted 1985  
Died March 2016

**Oliver Francis Garrett**

Doraville, Ga.  
Woodrow Wilson College of Law  
(1958)  
Admitted 1965  
Died October 2015

**Daniel Ray Gaskin**

Savannah, Ga.  
Gilbert Johnson Law School (1962)  
Admitted 1962  
Died April 2016

**Bruce Raymond Geer**

Hanover, Ind.  
Emory University School of Law  
(1989)  
Admitted 1990  
Died January 2016

**C. Olen Gunnin**

Fayetteville, Ga.  
Atlanta's John Marshall Law  
School (1947)  
Admitted 1950  
Died March 2016

**Steven D. Harris**

Atlanta, Ga.  
Emory University School of Law  
(1979)  
Admitted 1979  
Died April 2016

**Julian Hartridge Jr.**

Savannah, Ga.  
University of Georgia School  
of Law (1950)  
Admitted 1950  
Died March 2016

**Kurt Allen Kegel**

Atlanta, Ga.  
Georgia State University College  
of Law (1991)  
Admitted 1991  
Died April 2016

**Eva Catherine Kimmel**

Atlanta, Ga.  
Atlanta's John Marshall Law  
School (1965)  
Admitted 1966  
Died April 2016

**Robert Walter Lange**

Atlanta, Ga.  
Atlanta's John Marshall Law  
School (2013)  
Admitted 2014  
Died March 2016

**Gale McKenzie**

Atlanta, Ga.  
University of Georgia School  
of Law (1972)  
Admitted 1972  
Died April 2016

**Edward T. Murray**

Dallas, Ga.  
Woodrow Wilson College of Law  
(1975)  
Admitted 1976  
Died March 2016

**T. Brooks Pearson Jr.**

Atlanta, Ga.  
Emory University School of Law  
(1984)  
Admitted 1984  
Died January 2016

**Jay M. Sawilowsky**

Augusta, Ga.  
University of Georgia School  
of Law (1957)  
Admitted 1956  
Died March 2016

**Bobby Lee Scott**

Columbus, Ga.  
University of Georgia School  
of Law (2003)  
Admitted 2003  
Died April 2016

**William Leon Slaughter**

Columbus, Ga.  
Mercer University Walter F.  
George School of Law (1950)  
Admitted 1949  
Died May 2016

**David Stach**

McDonough, Ga.  
Vanderbilt University Law School  
(2001)  
Admitted 2001  
Died April 2016

**Richard J. Tuneski**

Alpharetta, Ga.  
Atlanta's John Marshall Law  
School (1974)  
Admitted 1974  
Died July 2015

**Horace T. Ward**

Atlanta, Ga.  
Northwestern University School  
of Law (1959)  
Admitted 1960  
Died April 2016

**Timothy Williams**

Lawrenceville, Ga.  
University of Georgia School  
of Law (1979)  
Admitted 1979  
Died February 2016

**Joel E. Williams Jr.**

Atlanta, Ga.  
Mercer University Walter F.  
George School of Law (1983)  
Admitted 1983  
Died April 2016

**Gus L. Wood III**

Newnan, Ga.  
University of Georgia School  
of Law (1961)  
Admitted 1960  
Died April 2016

**Charles B. Zirkle Jr.**

Atlanta, Ga.  
Emory University School of Law  
(1978)  
Admitted 1978  
Died March 2016




**Retired U.S. District  
Judge Horace Ward**  
passed away in April  
2016 at age 88. Ward  
earned degrees from  
Morehouse College

and Atlanta University. His appli-  
cation to the University of Georgia  
School of Law was rejected in  
1951. Ward later launched a legal  
challenge against UGA that helped  
pave the way for the civil rights  
movement.

Ward, from LaGrange, earned  
his law degree from Northwestern  
University. He returned to Georgia  
in the late '50s and became the first  
African-American to challenge the  
racially discriminatory practices at  
UGA, leading to the admission of  
two black students, Hamilton E.  
Holmes and Charlayne Hunter.

Ward served in the Georgia  
Senate between 1965 and 1974 and  
was the first African-American  
to serve on the federal bench in  
Georgia in 1979, appointed by  
President Jimmy Carter.

He took senior judge status  
in 1994 and retired from the  
Northern District of Georgia in  
2012. Ward received an honor-  
ary degree from the University of  
Georgia in 2014. 



# June-July

**JUN 14**

ICLE  
*Webinar: Trial Practice*  
1 CLE

**JUN 23-26**

ICLE  
*Gary Christy Memorial Georgia Trial Skills*  
Athens, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
24 CLE

**JUN 24**

ICLE  
*Powerful Witness Preparation*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
6 CLE

**JUN 28**

ICLE  
*Webinar: TBD*  
1 CLE

**JUL 12**

ICLE  
*Webinar: Georgia's Hottest Evidentiary*  
*Issues*  
1 CLE

**JUL 14-16**

ICLE  
*Fiduciary Law Institute*  
St. Simons Island, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
12 CLE

**JUL 15-16**

ICLE  
*Solo Small Firm Institute*  
Atlanta, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
12 CLE

**JUL 26**

ICLE  
*Webinar: Damages*  
1 CLE

**JUL 29-30**

ICLE  
*Environmental Law Section*  
*Summer Seminar*  
St. Simons Island, Ga.  
See [www.iclega.org](http://www.iclega.org) for location  
8 CLE

## 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.



**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.

# NEED HELP?

Let CAP lend you a hand.

## WHAT IS THE CONSUMER ASSISTANCE PROGRAM?

The State Bar's Consumer Assistance Program (CAP) helps people with questions or problems with Georgia lawyers. When someone contacts the State Bar with a problem or complaint, a member of the Consumer Assistance Program staff responds to the inquiry and attempts to identify the problem. Most problems can be resolved by providing information or referrals, calling the lawyer, or suggesting various ways of dealing with the dispute. A grievance form is sent out when serious unethical conduct may be involved.

### Does CAP assist attorneys as well as consumers?

Yes. CAP helps lawyers by providing courtesy calls, faxes or letters when dissatisfied clients contact the program. Most problems with clients can be prevented by returning calls promptly, keeping clients informed about the status of their cases, explaining billing practices, meeting deadlines, and managing a caseload efficiently.

### What doesn't CAP do?

CAP deals with problems that can be solved without resorting to the disciplinary procedures of the State Bar, that is, filing a grievance. CAP does not get involved when someone alleges serious unethical conduct. CAP cannot give legal advice, but can provide referrals that meet the consumer's need utilizing its extensive lists of government agencies, referral services and nonprofit organizations.

### Are CAP calls confidential?

Everything CAP deals with is confidential, except:

- Where the information clearly shows that the lawyer has misappropriated funds, engaged in criminal conduct, or intends to engage in criminal conduct in the future;
- Where the caller files a grievance and the lawyer involved wants CAP to share some information with the Office of the General Counsel; or
- A court compels the production of the information.

The purpose of the confidentiality rule is to encourage open communication and resolve conflicts informally.



[www.gabar.org/cap](http://www.gabar.org/cap)

Call the State Bar's Consumer Assistance Program at  
**404-527-8759 or 800-334-6865**

# Notice of Filing Formal Advisory Opinion in Supreme Court

## Second Publication of Proposed Redrafted Formal Advisory Opinion No. 03-2 Hereinafter known as "Formal Advisory Opinion No. 16-1"

*(Note: This opinion, which was published in the April 2016 issue of the Georgia Bar Journal, is being published again for 2nd publication to correct a typographical error. Proposed Redrafted Formal Advisory Opinion No. 03-2 will hereinafter be known as **Formal Advisory Opinion No. 16-1**.)*

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after June 30, 2016.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia.** The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10,

counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simultaneously served upon the Board through the Office of the General Counsel of the State Bar or Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.



# Second Publication of Formal Advisory Opinion No. 16-1

STATE BAR OF GEORGIA  
ISSUED BY THE FORMAL ADVISORY OPINION BOARD  
PURSUANT TO RULE 4-403 ON JANUARY 26, 2016  
FORMAL ADVISORY OPINION NO. 16-1 (Redrafted  
Version of FAO No. 03-2)

## Question Presented:

Does the obligation of confidentiality described in Rule 1.6, Confidentiality of Information, apply as between two jointly represented clients?

## Summary Answer:

The obligation of confidentiality described in Rule 1.6, Confidentiality of Information, applies as between two jointly represented clients. An attorney must honor one client's request that information be kept confidential from the other jointly represented client. Honoring the client's request will, in almost all circumstances, require the attorney to withdraw from the joint representation.

## Opinion:

Unlike the attorney-client privilege, jointly represented clients do not lose the protection of confidentiality described in Rule 1.6, Confidentiality of Information, as to each other by entering into the joint representation. See, e.g., D.C. Bar Legal Ethics Committee, Opinion No. 296 (2000) and Committee on Professional Ethics, New York State Bar Association, Opinion No. 555 (1984). Nor do jointly represented clients impliedly consent to a sharing of confidences with each other.

When one client in a joint representation requests that some information relevant to the representation be kept confidential from the other client, the attorney must honor the request and then determine if continuing with the representation while honoring the request will: a) be inconsistent with the lawyer's obligations to keep the other client informed under Rule 1.4, Communication; b) materially and adversely affect the representation of the other client under Rule 1.7, Conflict of Interest: General Rule; or c) both.

The lawyer has discretion to continue with the joint representation while not revealing the confidential information to the other client only to the extent that he or she can do so consistent with these rules. If maintaining the confidence will constitute a violation of Rule 1.4 or Rule 1.7, as it almost certainly will, the lawyer should maintain the confidence and discontinue the joint representation.<sup>1</sup>

Consent to conflicting representations, of course, is permitted under Rule 1.7. Consent to continued joint representation in these circumstances, however, ordinarily would not be available either because it would be impossible to obtain the required informed consent without disclosing the confidential information in question<sup>2</sup> or because consent is not permitted under Rule 1.7 in that the continued joint representation would "involve circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients." Rule 1.7(c) (3).

The potential problems that confidentiality can create between jointly represented clients make it especially important that clients understand the requirements of a joint representation prior to entering into one. When an attorney is considering a joint representation, informed consent of the clients, confirmed in writing, is required prior to the representation "if there is a significant risk that the lawyer's . . . duties to [either of the jointly represented clients] . . . will materially and adversely affect the representation of [the other] client." Rule 1.7. Whether or not informed consent is required, however, a prudent attorney will always discuss with clients wishing to be jointly represented the need for sharing confidences between them, obtain their consent to such sharing, and inform them of the consequences of either client's nevertheless insisting on confidentiality as to the other client and, in effect, revoking the consent.<sup>3</sup> If it appears to the attorney that either client is uncomfortable with the required sharing of confidential information that joint representation requires, the attorney should reconsider whether joint representation is appropriate in the circumstances. If a putative jointly represented client indicates a need for confidentiality from another putative jointly represented client, then it is very likely that joint representation is inappropriate and the putative clients need individual representation by separate attorneys.

The above guidelines, derived from the requirements of the Georgia Rules of Professional Conduct and consistent with the primary advisory opinions from other jurisdictions, are general in nature. There is no doubt that their application in some specific contexts will create additional specific concerns seemingly unaddressed in the general ethical requirements. We are, however, without authority to depart from the Rules of Professional Conduct that are intended to be generally applicable to the profession. For example, there is no doubt that the application of these requirements to the joint representation of spouses in estate planning

will sometimes place attorneys in the awkward position of having to withdraw from a joint representation of spouses because of a request by one spouse to keep relevant information confidential from the other and, by withdrawing, not only ending trusted lawyer-client relationships but also essentially notifying the other client that an issue of confidentiality has arisen. See, e.g., Florida State Bar Opinion 95-4 (1997) ("The attorney may not reveal confidential information to the wife when the husband tells the attorney that he wishes to provide for a beneficiary that is unknown to the wife. The attorney must withdraw from the representation of both husband and wife because of the conflict presented when the attorney must maintain the husband's separate confidences regarding the joint representation.") A large number of highly varied recommendations have been made about how to deal with these specific concerns in this specific practice setting. See, e.g., Pearce, *Family Values and Legal Ethics: Competing Approaches to Conflicts in Representing Spouses*, 62 Fordham L. Rev. 1253 (1994); and, Collett, *And The Two Shall Become As One . . . Until The Lawyers Are Done*, 7 Notre Dame J. L. Ethics & Public Policy 101 (1993) for discussion of these recommendations. Which recommendations are followed, we believe, is best left to the practical wisdom of the good lawyers practicing in this field so long as the general ethical requirements of the Rules of Professional Conduct as described in this Opinion are met.

## Endnotes

1. See ABA MODEL RULES OF PROF'L CONDUCT, R. 1.7, cmt. 31 ("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.")
2. See GEORGIA RULES OF PROF'L CONDUCT, R. 1.0(h) (defining "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct"); see also *id.*, cmt. 6 ("The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives.")
3. See ABA MODEL RULES OF PROF'L CONDUCT, R. 1.7, cmt. 31 (advising that "[a] 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).

# LAWYER ASSISTANCE PROGRAM

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or substance abuse?

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*The Lawyer Assistance Program is a free program providing confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law.*

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

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, *2015-2016 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, and may include non-substantive, stylistic changes to provide consistency with the existing Bar Rules. 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 must 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 2016-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization of its Board of Governors at its regularly-called meetings on January 9, 2016 and May 6, 2016, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as originally set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), and as amended by subsequent Orders, published at *2014-2015 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.* The State Bar respectfully moves that the Rules and Regulation of the State Bar of Georgia be amended in the following respect:

## I.

### Proposed Amendments to Part I, Creation and Organization; Chapter 2, Membership; Rule 1-203. Practice By Active Members; Nonresidents

It is proposed that Rule 1-203. Practice By Active Members; Nonresidents of Part I, Chapter 2 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

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:

~~(1)(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

~~(2)(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:

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

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

~~(iii)(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.

~~(3)(c)~~ A person who is admitted to the Bar as a foreign law consultant pursuant to Part E of the Rules Governing the Admission to the Practice of Law as adopted by the Supreme Court of Georgia, Ga. Ct. & Bar Rules, p. 12-1 *et seq.*, may render legal ser-



vices 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 Practice, but shall not otherwise render legal services in this ~~S~~state.

~~(4)(d)~~ Persons who are authorized to practice law in this ~~S~~state are hereby authorized to practice law as sole proprietorships or as partners, shareholders, or members of:

~~(i)(1)~~ partnerships under O.C.G.A. § 14-8-1 et. seq.; or

~~(ii)(2)~~ limited liability partnerships under O.C.G.A. § 14-8-1 et. seq.; or

~~(iii)(3)~~ professional corporations under O.C.G.A. § 14-7-1 et. seq.; or

~~(iv)(4)~~ professional associations under O.C.G.A. § 14-10-1 et. seq.; or

~~(v)(5)~~ limited liability companies under O.C.G.A. § 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 XXI, Rule 121, Provision of Legal Services Following Determination of Major Disaster.~~

If the proposed amendments to the Rule are adopted, the amended Rule 1-203. Practice By Active Members; Nonresidents would read as follows:

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 Bar as a foreign law consultant pursuant to Part E of the Rules Governing the Admission to the Practice of Law as adopted by the Supreme Court of Georgia, Ga. Ct. & Bar Rules, p. 12-1 et seq., 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 Practice, 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 O.C.G.A. § 14-8-1 et. seq.; or

(2) limited liability partnerships under O.C.G.A. § 14-8-1 et. seq.; or

(3) professional corporations under O.C.G.A. § 14-7-1 et. seq.; or

(4) professional associations under O.C.G.A. § 14-10-1 et. seq.; or

(5) limited liability companies under O.C.G.A. § 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 XXI, Rule 121, *Provision of Legal Services Following Determination of Major Disaster*.

## II.

### **Proposed Amendments to 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 5.3. Responsibilities Regarding Nonlawyer Assistants**

It is proposed that Georgia Rule of Professional Conduct 5.3 of Part IV; Chapter 1, Rule 4-102 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **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:

(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 have any contact with the clients of the lawyer either in person, by telephone or in writing; or

~~—(3)—make reasonable efforts to ensure that the suspended or disbarred person's conduct is compatible with the professional obligations of the lawyer have any contact with persons who have legal dealings with the office 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, ~~suspended or disbarred persons~~ 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) ~~apply to professional conduct and not to social conversation unrelated to the representation of clients or legal dealings of the law office, or the gathering of general information in the course of working in a law office. The thrust of the restriction is~~ are 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.

If the proposed amendments to the Rule are adopted, the amended Georgia Rule of Professional Conduct 5.3. Responsibilities Regarding Nonlawyer Assistants would read as follows:

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:

(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 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.

III.

**Proposed Amendments to Part IV, Georgia Rules of Professional Conduct; Chapter 2, Disciplinary Proceedings; Rule 4-210. Powers and Duties of Special Masters.**

It is proposed that Rule 4-210 of Part IV; Chapter 2 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:



#### Rule 4-210. Powers and Duties of Special Masters.

In accordance with these Rules a duly appointed Special Master or Hearing Officer shall have the following powers and duties:

- (1) to exercise general supervision over assigned disciplinary proceedings and to perform all duties specifically enumerated in these Rules;
- (2) to rule on all questions concerning the sufficiency of the formal complaint;
- (3) to conduct the negotiations between the State Bar of Georgia and the **R**espondent, whether at a pretrial meeting set by the Special Master or at any other time;
- (4) to receive and evaluate any Petition for Voluntary Discipline;
- (5) to grant continuances and to extend any time limit provided for herein as to any pending matter;
- (6) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to perform his or her duties or in the event that he or she learns that he or she and the **R**espondent reside in the same circuit;
- (7) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a **R**espondent growing out of different transactions, whether they involve one or more complainants, and may proceed to make recommendations on each complaint as constituting a separate offense;
- (8) to sign subpoenas and exercise the powers described in Bar Rule 4-221(b);
- (9) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;
- (10) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel or the Supreme Court of Georgia in accordance with Bar Rule 4-217;
- (11) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the

law of Georgia applicable to discovery in civil cases;

(12) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the **R**espondent should be suspended pending further disciplinary proceedings; and

(13) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written findings of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

If the proposed amendments to the Rule are adopted, the amended Rule 4-210. Powers and Duties of Special Master would read as follows:

#### Rule 4-210. Powers and Duties of Special Masters.

In accordance with these Rules a duly appointed Special Master or Hearing Officer shall have the following powers and duties:

- (1) to exercise general supervision over assigned disciplinary proceedings and to perform all duties specifically enumerated in these Rules;
- (2) to rule on all questions concerning the sufficiency of the formal complaint;
- (3) to conduct the negotiations between the State Bar of Georgia and the respondent, whether at a pretrial meeting set by the Special Master or at any other time;
- (4) to receive and evaluate any Petition for Voluntary Discipline;
- (5) to grant continuances and to extend any time limit provided for herein as to any pending matter;
- (6) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to perform his or her duties or in the event that he or she learns that he or she and the respondent reside in the same circuit;
- (7) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a respondent growing out of different transactions, whether they involve one or more complainants, and may proceed to make recommendations on each complaint as constituting a separate offense;

(8) to sign subpoenas and exercise the powers described in Bar Rule 4-221(b);

(9) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;

(10) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel or the Supreme Court of Georgia in accordance with Bar Rule 4-217;

(11) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases;

(12) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the respondent should be suspended pending further disciplinary proceedings; and

(13) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written findings of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

#### IV.

#### **Proposed Amendments to Part IV, Georgia Rules of Professional Conduct; Chapter 2, Disciplinary Proceedings; Rule 4-227. Petitions For Voluntary Discipline.**

It is proposed that Rule 4-227 of Part IV; Chapter 2 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

##### **Rule 4-227. Petitions for Voluntary Discipline.**

...

(b) Prior to the issuance of a formal complaint, a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these rules.

(1) Those petitions seeking private discipline shall be ~~filed with~~ served on the Office of ~~the~~ General Counsel and assigned to a member of the Investigative Panel. The Investigative Panel of the

State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Bar Rule ~~4-203 (a)~~ (9).

...

If the proposed amendments to the Rule are adopted, the amended Rule 4-227. Petitions For Voluntary Discipline would read as follows:

##### **Rule 4-227. Petitions for Voluntary Discipline.**

(a) A petition for voluntary discipline shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline.

(b) Prior to the issuance of a formal complaint, a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these rules.

(1) Those petitions seeking private discipline shall be served on the Office of the General Counsel and assigned to a member of the Investigative Panel. The Investigative Panel of the State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Bar Rule 4-203 (a) (9).

(2) Those petitions seeking public discipline shall be filed directly with the Clerk of the Supreme Court of Georgia. The Office of the General Counsel shall have 30 days within which to file a response. The Court shall issue an appropriate order.

(c) After the issuance of a formal complaint a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these Rules.

(1) The petition shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. The Special Master shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefor. The Office of the General Counsel shall serve a copy of its response upon the respondent.

(2) The Special Master shall consider the petition, the State Bar of Georgia's response, and the record as it then exists and may accept or reject the petition for voluntary discipline.

(3) The Special Master may reject a petition for such cause or causes as seem appropriate to the Special Master. Such causes may include but are not limited to a finding that:

(i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline;

(ii) the petition fails to request appropriate discipline;

(iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;

(iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

(4) The Special Master's decision to reject a petition for voluntary discipline does not preclude the filing of a subsequent petition and is not subject to review by either the Review Panel or the Supreme Court of Georgia. If the Special Master rejects a petition for voluntary discipline, the disciplinary case shall proceed as provided by these Rules.

(5) If the Special Master accepts the petition for voluntary discipline, he or she shall enter a report making findings of fact and conclusions of law and deliver same to the Clerk of the State Disciplinary Board. The Clerk of the State Disciplinary Board shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Supreme Court of Georgia shall issue an appropriate order.

(6) Pursuant to Rule 4-210 (5), the Special Master may in his or her discretion extend any of the time limits in these Rules in order to adequately consider a petition for voluntary discipline.

## V.

### **Proposed Amendments to Part VIII, Continuing Legal Education; Chapter 1, Minimum Requirements For Continuing Legal Education; Rule 8-106. Hours and Accreditation; Subsection (A)(7), Hours;**

It is proposed that Rule 8-106 of Part VIII; Chapter 1 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

## Rule 8-106. Hours and Accreditation.

### (A) Hours

...

(7) *Trial Observation. Every trial encompasses many aspects of the practice of law that are consistently taught in both law school and continuing legal education seminars. Observing how this education is applied into actual practice in the form of a current trial is, in and of itself, very educational. Its importance in achieving competency as a lawyer cannot be emphasized enough. To encourage this, CLE credit for observing trials is available under the following guidelines*

*a. Jury trials, bench trials, motion hearings and appellate court arguments in any Federal or State court are eligible. Administrative hearings, trials and probate court, and mediations/arbitrations are also eligible.*

*b. Proceedings in magistrate court and pro se matters are not eligible.*

*c. Credit is not available for trials in which the member takes an active role in the trial or any phase thereof.*

*d. The credit shall be treated as In-House and subject to the limitations of Regulation 5e 8 (e) under Rule 8-106 (B).*

*e. The credit is not eligible for ethics or professionalism CLE.*

*f. The credit is self-reported to the CCLC and must include:*

- *member's name and bar number*
- *the name of the court, parties, date of trial and type of trial*
- *the credit applicable (actual time rounded to nearest tenth of an hour)*
- *the administrative fee required by Rule 8-103.(C) (2) (currently \$5 per credit hour)*

If the proposed amendments to the Rule are adopted, the amended Rule 8-106 (A) (7) would read as follows:

### (A) Hours

...

(7) *Trial Observation. Every trial encompasses many aspects of the practice of law that are consistently taught in both law school and continuing legal education seminars. Observing how this education is applied into actual practice in the form of a current trial is, in and of itself, very educational. Its importance in achieving competency as a lawyer cannot be emphasized*



enough. To encourage this, CLE credit for observing trials is available under the following guidelines

a. Jury trials, bench trials, motion hearings and appellate court arguments in any Federal or State court are eligible. Administrative hearings, trials and probate court, and mediations/arbitrations are also eligible.

b. Proceedings in magistrate court and pro se matters are not eligible.

c. Credit is not available for trials in which the member takes an active role in the trial or any phase thereof.

d. The credit shall be treated as In-House and subject to the limitations of Regulation 8 (e) under Rule 8-106 (B).

e. The credit is not eligible for ethics or professionalism CLE.

f. The credit is self-reported to the CCLC and must include:

- member's name and bar number
- the name of the court, parties, date of trial and type of trial
- the credit applicable (actual time rounded to nearest tenth of an hour)
- the administrative fee required by Rule 8-103 (C) (2) (currently \$5 per credit hour)

## VI.

### Proposed Amendments to 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

It is proposed that Georgia Rule of Professional Conduct 1.7 of Part IV; Chapter 1, Rule 4-102 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### 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:

...

[4] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's informed consent. ~~Paragraphs (b) and (c) express that general rule.~~ 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.

...

[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 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.

If the proposed amendments to the Rule are adopted, the amended Georgia Rule of Professional Conduct 1.7 would read as follows:

#### 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 proceed-



ing including simultaneous 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 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.

## VII.

**Proposed Amendments to 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 4.4. Conflict of Interest: General Rule**

It is proposed that Georgia Rule of Professional Conduct 1.7 of Part IV; Chapter 1, Rule 4-102 of the Rules and Regulations of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### 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 email 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, email 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.

If the proposed amendments to the Rule are adopted, the amended Georgia Rule of Professional Conduct 4.4 would read as follows:

#### 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 email 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, email 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.

SO MOVED, this \_\_\_\_ day of \_\_\_\_\_, 2016.

Counsel for the State Bar of Georgia

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# Supreme Court 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 Motion 2015-3 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 1-204 (Good Standing); Chapter 5, Rule 1-501 (License Fees); Part VII – Lawyer Assistance Program, Chapter 2, Rule 7-202 (Volunteers); and Chapter 3, Rule 7-301 (Contracts Generally), be amended effective May 5, 2016 to read as follows:

## PART I CREATION AND ORGANIZATION

### CHAPTER 2 MEMBERSHIP

#### Rule 1-204. Good Standing.

No lawyer shall be deemed a member in good standing:

- (a) while delinquent after September 1 of any year for nonpayment of the annual license fee and any costs or fees of any type as prescribed in Chapter 5, Rule 1-501 (a)-(c);
- (b) while suspended for disciplinary reasons;
- (c) while disbarred;
- (d) while suspended for failure to comply with continuing legal education requirements; or
- (e) while in violation of Rule 1-209 for failure to pay child support obligations.

### CHAPTER 5 FINANCE

#### 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 the 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.

(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 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.

## **Congratulations to the 2016 State Champion Mock Trial Team from Jonesboro High School!**

**The Jonesboro mock trial team finished 17th out of a field of 46 state  
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State Bar  
of Georgia



The Executive Committee (1) shall 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 of Georgia. 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 Court 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 Court may grant oral argument on any exception filed with it upon application for such argument by the respondent attorney or the Executive Committee. The Court 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 Court's judgment shall be transmitted to the Executive Committee and to the respondent attorney by the Court.

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 Court.

## **PART VII LAWYER ASSISTANCE PROGRAM**

### **CHAPTER 2 GUIDELINES FOR OPERATION**

#### **Rule 7-202. Volunteers.**

The Committee may establish a network of attorneys and lay persons throughout the state of Georgia who are experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in counseling and intervention programs and services. The Committee may also establish a network of peer-support volunteers who are members of the State Bar of Georgia who are not trained in impairment counseling, treatment or rehabilitation, who can provide support to impaired or potentially impaired attorneys by sharing their life experiences in dealing with (a) mental or emotional health problems, (b) substance abuse problems or (c) other similar problems that can adversely affect the quality of attorneys' lives and their ability to function effectively as lawyers.

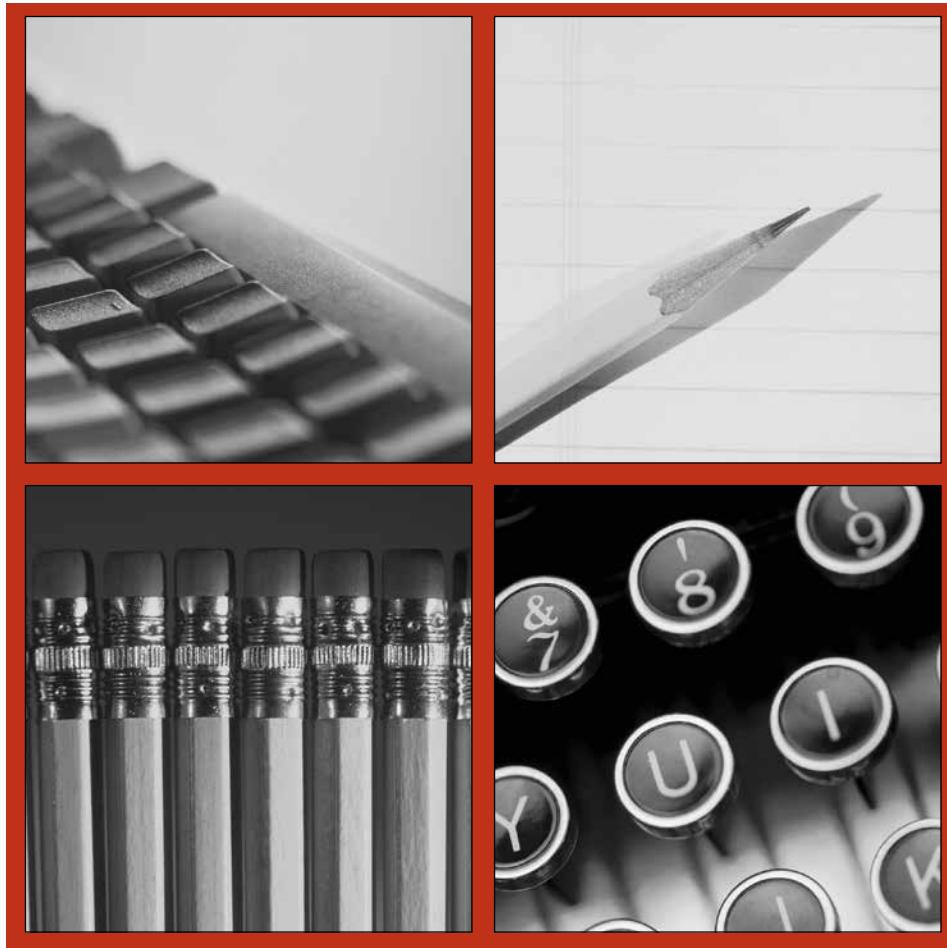
### **CHAPTER 3 PROCEDURES**

#### **Rule 7-301. Contacts Generally.**

The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-202, or by any other procedure through which appropriate counseling or assistance to such attorneys may be provided.



# GET PUBLISHED



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

Earn CLE credit, see your name in print and help the legal community by submitting an article today!\*

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If you have additional questions, you may call 404-527-8791.

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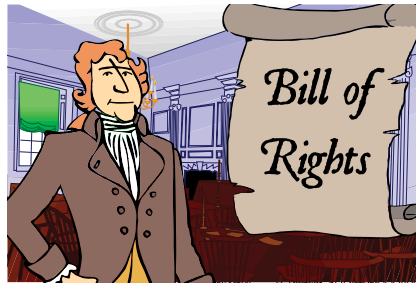
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# Trial By Jury: What's the Big Deal?

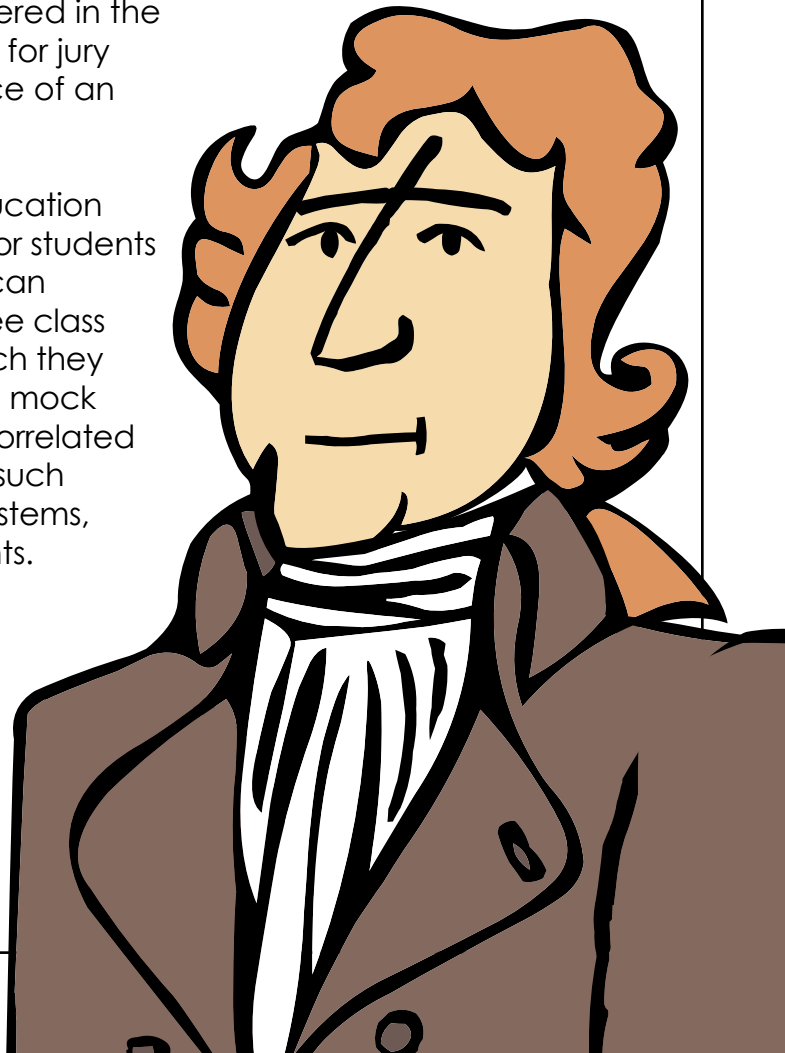


"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics and Government performance standards.

This animated presentation reviews the history and importance of trial by jury through a discussion of the Magna Carta, the Star Chamber, the trial of William Penn, the Constitutional Convention in 1787, the Constitution and the Bill of Rights. Also covered in the presentation are how citizens are selected for jury duty, the role of a juror, and the importance of an impartial and diverse jury.

The State Bar of Georgia's Law-Related Education Program offers several other opportunities for students and teachers to explore the law. Students can participate in Journey Through Justice, a free class tour program at the Bar Center, during which they learn a law lesson and then participate in a mock trial. Teachers can attend free workshops correlated to the Georgia Performance Standards on such topics as the juvenile and criminal justice systems, federal and state courts, and the Bill of Rights.

**You may view "Trial By Jury: What's the Big Deal?" at [www.gabar.org/forthepublic/forteachersstudents/lre/teacherresources](http://www.gabar.org/forthepublic/forteachersstudents/lre/teacherresources). For a free DVD copy, email [laurenf@gabar.org](mailto:laurenf@gabar.org) or call 404-527-8736. For more information on the LRE Program, contact Deborah Craytor at [deborahcc@gabar.org](mailto:deborahcc@gabar.org) or 404-527-8785.**







State Bar  
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STATE BAR OF GEORGIA

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