

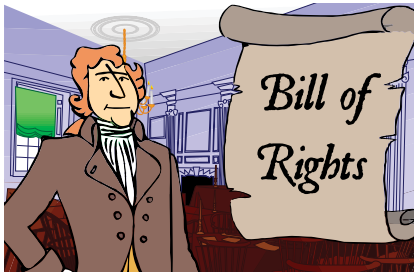


J  Georgia Bar
Journal

June 2014 ■ Volume 19 ■ Number 7

**Lenders Rejoice:
Foreclosure Confirmation Statute
May be Waived by Guarantor**

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.

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You may view "Trial By Jury: What's the Big Deal?" at www.gabar.org/forthepublic/forteachersstudents/lre/teacherresources. For a free DVD copy, email stephaniew@gabar.org or call 404-527-8792. For more information on the LRE Program, contact Deborah Craytor at deborahcc@gabar.org or 404-527-8785.





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

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Photo by Zach Porter Photography

by Charles L. Ruffin

Why Every Vote Matters to Pay the Debt We Owe

In Remembrance, 70th Anniversary: D-Day, June 6, 1944

On numerous occasions during the past year, when speaking or writing about this being the 225th anniversary of

the ratification of the U.S. Constitution, I have referred to a statement made by Benjamin Franklin at the end of the Constitutional Convention of 1787. Asked whether the new nation would be “a republic or a monarchy,” Franklin responded, “A republic, if you can keep it.”

In that era, it seems to me that Franklin, in his reference to keeping the republic, could only have been talking about three things:

- Physically keeping it safe from foreign powers – no small task at the time for a relatively small population isolated along the east coast, or today in a world that is more complex than even Ben Franklin could have imagined.

“What a huge responsibility the Founding Fathers left us, that of ‘keeping’ a republic. This election year, let’s make sure we each do our small part at the ballot box.”

- An informed citizenry that understands the effect of casting a vote based on knowledge of the issues and the qualifications of the candidates.

- The need for people to act responsibly in their everyday lives – taking care of and providing for their own homes, property and families.

I will address two of those implied meanings below because the third is self-evident and does not need an explanation.

In connection with the second admonition implied in Franklin’s statement, if you read the newspaper or watch television, or have a home telephone or mailbox, or simply ride along our highways, then you don’t need me to tell you this is an election year in Georgia.

The party primaries were held on May 20, the runoffs for those primaries will be July 22, and the General Election will be Nov. 4. Georgia voters will



Assault at Omaha Beach, D-Day, June 6, 1944.

be making many important decisions, including the election of a governor, a U.S. senator and a host of other statewide, district and local offices.

While the State Bar of Georgia does not take positions on political issues that do not have a direct bearing on the practice of law and certainly does not endorse candidates for public office as an organization, Bar members do understand the vital connection between the results of an election and a nation's ability to function and exist under a set of laws.

The national theme for Law Day 2014 was "American Democracy and the Rule of Law: Why Every Vote Matters." On April 22, the State Bar of Georgia hosted an all-day, statewide program for students and adults focusing on the right to vote as the very foundation of government by the people. As we observe the 50th anniversary of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, we are reminded that striving to establish and protect every citizen's right to vote has been a

central theme of American legal and civic history.

A distinguished array of speakers, including Georgia Secretary of State Brian Kemp, civil rights leader Dr. C.T. Vivian, U.S. Attorney for the Northern District of Georgia Sally Quillian Yates, U.S. League of Women Voters President Elisabeth MacNamara, Georgia Republican Party General Counsel Anne Lewis and Georgia Democratic Party General Counsel Michael Jablonski participated in the program, held at the Bar Center in Atlanta and simulcast to the Coastal Georgia Office of the State Bar in Savannah and the South Georgia Office in Tifton.

One of the sessions, "Challenges of Maintaining a Democracy," explored, among other topics, the fact that "the integrity of this governmental structure is diminished when there is not an educated and engaged electorate." This is the very essence of Ben Franklin's admonition about whether we would have a monarchy or a republic. In my view, the State Bar has a significant role to play in educating the public about our Constitutional Republic; thus, our emphasis this

year on the ratification of the Constitution and the planning and holding of our Constitutional Symposium in March.

Being an informed and active voter, we should remember, however, is not only a *duty* but a *privilege*, one bestowed on us by those who have put on the uniform and gone into battle to establish and defend this nation and to protect our freedoms. This fact, of course, deals with the first admonition implied in Franklin's statement.

In early May, I had the opportunity to travel, along with members of the State Bar's Military/Veterans Law Section, to Normandy, France, site of the D-Day invasion by the U.S. military and its allies 70 years ago—the turning point of World War II in Europe. (To say that the visit to Omaha Beach and the U.S. Cemetery at Normandy was sobering would be an exercise in extreme understatement.)

During World War II, our nation, our Constitution and our civilization were literally under assault. Whether we could keep our republic was uncertain. The gravity of the situation can be realized through a

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segment of the Ken Burns documentary, "The War," which *The New York Times* described thusly in 2007:

"In a rare story with larger implications, another soldier, Ray Leopold, captured a young German soldier during the Battle of the Bulge who spoke almost perfect, unaccented English. The prisoner not only knew of Mr. Leopold's town of Waterbury, Conn., but could also name a stream that ran by it. 'I was in training for the administration,' the prisoner explained, 'the administration of the territories.' Hitler was planning an American occupation."

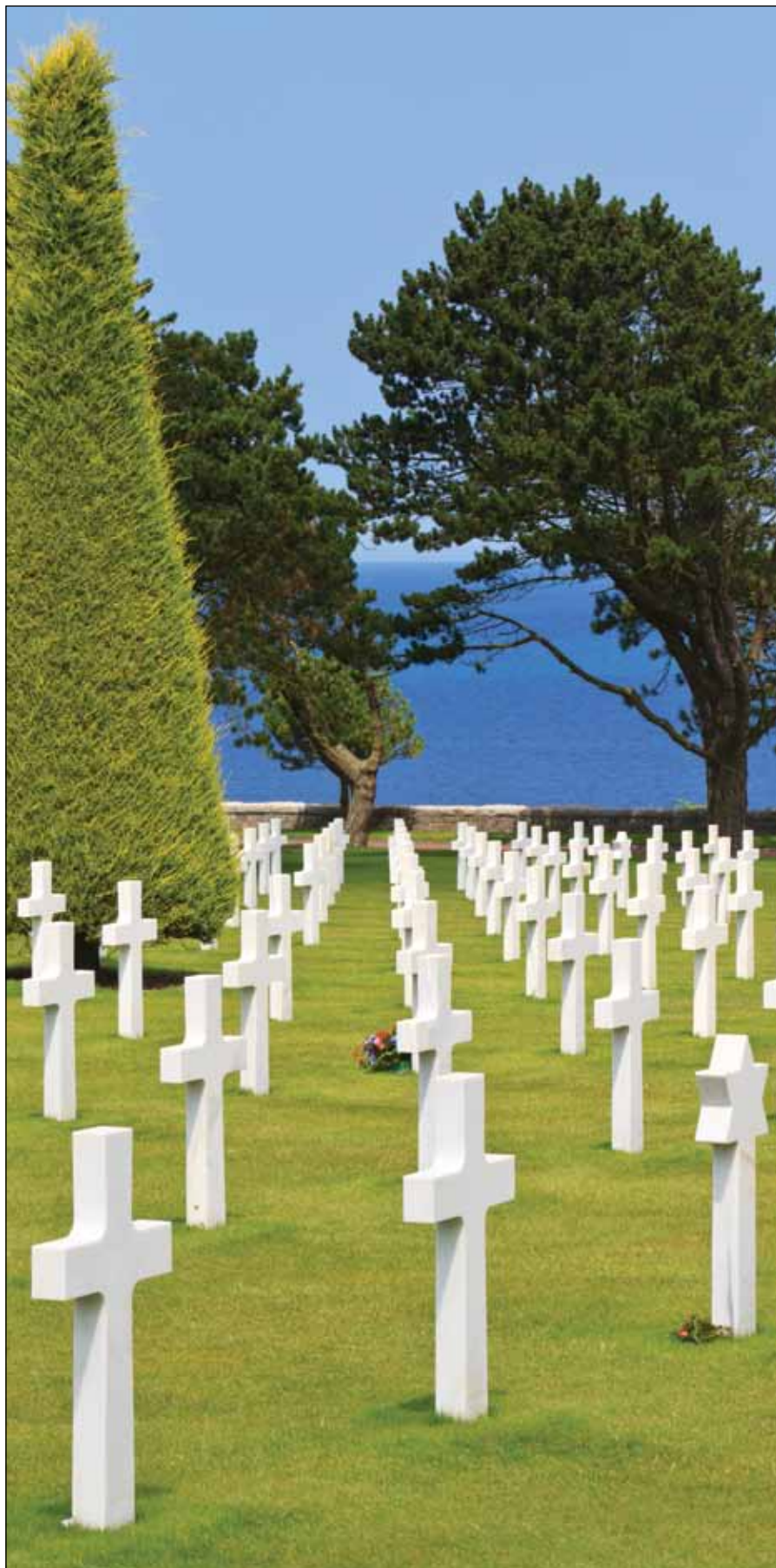
But thanks to the courage of 160,000 Allied troops who stormed the Nazi-occupied beaches of Normandy on June 6, 1944, and the sacrifices of the more than 9,000 who were killed or wounded, Hitler's plans were foiled. It was the beginning of victory in Europe. Half a world away, similar valor and sacrifice were resulting in similar triumphs throughout the war's Pacific Theater.

A year later, the war was over. The American way of life had been saved and was prepared for the next challenge. For that, we should all say a word of thanks every day.

What a huge responsibility the Founding Fathers left us, that of "keeping" a republic. This election year, let's make sure we each do our small part at the ballot box. Let's always remember our responsibility to take care of our personal lives, and please thank our veterans and service members anytime you can. Finally, let's give special thanks to the "Greatest Generation," who literally put their lives on the line to allow us to "keep" this republic.

Indeed, every vote matters. 

Charles L. Ruffin is president of the State Bar of Georgia and can be reached at cruffin@bakerdonelson.com.



Normandy American Cemetery overlooking Omaha Beach.



by Darrell L. Sutton

Just One More Moment

For as long as I can remember I have had a passion for U.S. history. The history of our country is fascinating in so many respects,

and there are few individuals who have done more to shape that history than the 44 men who have served as our nation's chief executive. It is no wonder, then, that my passion for American history has led to an equal, if not greater, passion for American presidential history.

Save for one, the beginning of each presidency coincides with the end of another, and the transition of presidential power is almost as interesting as the presidents themselves. After all, in only a matter of a few hours one man's belongings are packed and moved from the Oval Office while another's are

brought in, unpacked and set-up. The transition is seamless, especially for the incoming president, who returns from his inauguration to an Oval Office in every respect ready for him to begin work.

As you can imagine, some have been less willing than others to leave the post of the most powerful man on Earth. For example, it is well-documented that Bill Clinton had to be all but forcibly removed from the Oval Office; his desire to remain in power so great that he simply could not bring himself to relinquish it when the time came for him to do so. A photographer with a keen eye captured Clinton's reluctance to leave perfectly when, on the morning of George W. Bush's inauguration, he photographed Clinton at his desk in the Oval Office going over papers that long before should have been packed and readied for removal; seeking to prolong by even just a moment his time in office.

“ . . . he or she will find me at the desk going over papers that long before should have been packed and readied for removal; reluctant to relinquish my role at the helm of this incredible organization and finding every way I can to prolong my time as YLD president by just one more moment.”

There is certainly no comparison between my office and that of the president of the United States. The latter is filled with power, significance and consequence, while the former is filled with, well, none of those. But just as Clinton did in late January 2001, I now find

myself at the precipice of transition. And albeit to a much lesser degree, for me, too, it is bitter-sweet. How could it not be when I look back on all that the YLD has accomplished during my year at its helm?

We committed this Bar year to serving Georgia's current and future young lawyers, and set out to do so through five initiatives: create and implement a Law School Fellows program; outreach to the YLD's local affiliates; expand the YLD Leadership Academy; endow the YLD Public Interest Internship Program; and recruit more young lawyers to participate in the legislative process. To borrow the words of Clinton's successor: mission accomplished.

With the cooperation of each of Georgia's five law schools, a 2L and 3L from each school were selected to serve as the inaugural class of YLD Law School Fellows. Each 3L has served this year as his or her school's YLD Executive Council Representative, while each 2L has served alongside them in preparation for serving in that role next year. In August, a new class of 2L fellows will be selected, finally creating continuity among the law student representatives to the YLD Executive Council that has for so long eluded us.

Just as elusive has been sustained outreach to our affiliate YLDs. Acting under the premise that all Bar involvement is local, while at the same time understanding that an inability to consistently get the state's young lawyers from the local YLD to the state YLD requires a bringing of the state YLD to the local level, this year we renewed and revamped our effort at outreach to our local YLD affiliates. Outreach cannot be done well unless you actually reach out, so over the course of this Bar year the YLD officers visited our local YLD affiliates. We began with a visit to the Cobb County Bar Association YLD in August, and concluded with a visit to the


Savannah Bar Association YLD in April. In between we traveled to Macon, Decatur, Augusta, Columbus, Rome and St. Simons Island. We also hosted members of what we hope will be a new affiliate YLD in Dalton at our Fall Meeting in Chattanooga, and in May we granted affiliate status to the new Houston County YLD.

The YLD has long been distinguished by its award-winning programs, and the YLD Leadership Academy is first among those. We sought this year to expand its reach by increasing the number of scholarships available to young lawyers who qualify for participation in the Leadership Academy but otherwise cannot afford its tuition. Thanks to the generosity of the Board of Governors, 11 (or 20 percent) of the 55 members of the 2014 Academy class received scholarships so that they could obtain the training and tools necessary to propel them into leadership roles in the YLD, State Bar and their communities.

Also an award-winning and signature program of the YLD, the Public Interest Internship Program (PIIP) was founded during the 2009-10 Bar year to help alleviate coinciding decreases in the number of legal employment opportunities for young lawyers and in staffing at Georgia's public interest legal organizations by providing law students and new lawyers with funding to pursue internships at these organizations. Funding for PIIP expired with the placement of the 2014 class of PIIP interns, so it was necessary for PIIP's long-term continuation that permanent funding be secured this year. PIIP was therefore designated the beneficiary of the 2014 Signature Fundraiser, which raised a record amount of more than \$96,000, nearly \$24,000 more than any prior fundraiser, and resulted in a record donation of \$66,000 to the PIIP endowment. These funds were then used to pursue a grant from CCLC, which on April 17, approved a \$100,000

grant to the PIIP endowment; bringing the total contribution to the PIIP endowment to nearly \$170,000 this year!

Lawyers are essential to the legislative process. This year the YLD set out to increase the involvement of Georgia's young lawyers, and in the process increase their interest in offering themselves for elected office. After months of planning, our Legislative Recruitment Committee will host its first lawyer-legislator outreach happy hour from 5:30-7:30 on June 19 at the Lawyers Club of Atlanta. Georgia's lawyer-legislators will be invited to attend and connect with young lawyers interested in public office and to otherwise encourage young lawyers to become civically involved. Meanwhile, in November, young lawyer Graham McDonald was elected to a seat on the Sandy Springs City Council, and in December, young lawyer Chuck Efration won a special election to represent District 104 in the Georgia House of Representatives. And as this issue of the *Journal* goes to press, young lawyers Catherine Bernard and James Clifton are waging campaigns to become the next representative from Georgia House District 80 and senator from Georgia Senate District 16, respectively.

There is no reason for a photographer to be nearby on June 30 as I empty the YLD president's office of my personal belongings and prepare for my great friend Sharri Edenfield to assume the YLD presidency. But if there is, he or she will find me at the desk going over papers that long before should have been packed and readied for removal; reluctant to relinquish my role at the helm of this incredible organization and finding every way I can to prolong my time as YLD president by just one more moment. 

Darrell L. Sutton is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at dls@sutton-law-group.com.



Lenders Rejoice: Foreclosure Confirmation Statute May be Waived by Guarantor

by Matthew R. Brooks

A recent Court of Appeals of Georgia opinion has significantly weakened the protections provided to guarantors of real estate loans under Georgia's confirmation statute. The case, *HWA Properties, Inc. v. Community & Southern Bank*,¹ involved a typical scenario in the midst of the Great Recession: borrower defaults on commercial real estate loan, lender forecloses on real property and pursues deficiency against borrower and guarantor. The end result, however, was anything but typical. In a surprise decision, the Court of Appeals of Georgia held, on the basis of waiver language in a personal guaranty, that the failure of the mortgage lender to first obtain confirmation of a foreclosure sale did not bar an action against the guarantor for a deficiency judgment.²

Georgia's confirmation statute³ provides, in relevant part, as follows:

(a) When any real estate is sold on foreclosure, without legal process, and under powers contained in security deeds, mortgages, or other lien contracts and at the sale the real estate does not bring the amount of the debt secured by the deed, mortgage, or contract, *no action may be taken to obtain a deficiency judgment* unless the person instituting the foreclosure proceedings shall, within 30 days after the sale, report the sale to the judge of the superior court of the county in which the land is located for confirmation and approval and shall obtain an order of confirmation and approval thereon.⁴

Two cases in particular have defined the parameters of the confirmation statute. In *First National Bank & Trust Co. v. Kunes*,⁵ the Supreme Court of Georgia held that guarantors were entitled to notice of a confirmation hearing.⁶ The Court noted that the purpose of the statute was "to limit and abate deficiency judgments in suits and foreclosure proceedings on debts."⁷ As such, "it would not matter for purposes of this statute whether the debtors were primarily or secondarily liable on the debt as they would still have to be notified of the confirmation proceedings to be held accountable for the deficiency, or balance due on the indebtedness."⁸ Since *Kunes*, the prevailing practice has been to

seek confirmation of a foreclosure sale before pursuing a deficiency judgment against any secondary obligor.

In *Taylor v. Thompson*,⁹ the Court of Appeals of Georgia addressed the application of the confirmation statute where a lender first obtains a money judgment on the underlying note against the obligors before foreclosing on the collateral. In such cases, the court held that “there [is] no purpose to be served by [the lender] filing the petition for confirmation of the sale under power because no action for deficiency was necessary.”¹⁰ Thus, *Taylor* effectively repealed the confirmation statute where judgment is first obtained by the lender before foreclosure of the collateral.¹¹

More than 30 years after *Taylor*, *HWA Properties* presents another limitation on the applicability of the confirmation statute. The procedural history of *HWA Properties* involved litigation in two forums: Fulton County (underlying suit on the note and guaranty) and Fannin County (location of collateral). In 2010, Appalachian Community Bank filed suit on the note and guaranty in the Superior Court of Fulton County. The note was executed by HWA Properties, Inc., in favor of Appalachian Community Bank. Repayment of the note was guaranteed by Harry W. Albright, and the loan was secured by property located in Fannin County, Georgia. Shortly after the Fulton County suit was initiated, Community & Southern Bank was substituted as the real party plaintiff-in-interest following a takeover of Appalachian Community Bank by the FDIC. During the pendency of the Fulton County action, Community & Southern Bank foreclosed on the collateral and on Nov. 1, 2011, filed a petition for confirmation of the foreclosure sale with the Superior Court of Fannin County.¹²

The foreclosure sale was confirmed on March 28, 2012, and Community & Southern Bank

subsequently filed a motion for summary judgment in the Fulton County Action, contending that it was entitled to a judgment against the obligors for the balance of the indebtedness due under the note, less proceeds received at the foreclosure sale of the property, plus statutory attorneys’ fees and costs. HWA and Albright timely appealed the confirmation order, arguing the trial court based its determination of value on inadmissible hearsay.¹³ On March 13, 2013, the Court of Appeals of Georgia issued an opinion reversing the Fannin County court’s confirmation order, holding the confirmation record contained insufficient evidence to support the trial court’s determination that the foreclosure sale brought at least fair market value for the collateral.¹⁴

While the confirmation appeal was pending, on June 7, 2012, the Fulton County court entered summary judgment in favor of Community & Southern Bank and against HWA Properties and Albright for the deficiency balance of the note indebtedness plus statutory attorneys’ fees and costs.¹⁵ HWA and Albright timely appealed the summary judgment order, asserting two arguments. First, the bank failed to offer sufficient evidence to show that it was entitled to enforce the loan documents. Second, after the Court of Appeals of Georgia reversed the confirmation order, the appellants argued via a supplemental brief that the bank had failed to comply with the confirmation statute and was barred from seeking a deficiency judgment against HWA Properties or Albright.¹⁶

On July 15, 2013, the Court of Appeals of Georgia issued its opinion, reversing judgment as to HWA Properties, but affirming as to Albright based on waiver provisions contained in the guaranty.¹⁷ After quoting a large portion of the Albright guaranty, the Court stated, “Albright’s personal guaranty includes an express and comprehensive waiver of any and

all defenses to his liability on the entire balance due on the note.”¹⁸ The Court held that guarantors may waive failure to confirm a foreclosure sale as a defense to liability on a deficiency judgment.¹⁹ Of the part of the opinion discussing the guaranty, well over half is a direct quotation of the guaranty. The Court’s two paragraphs of analysis on this point include citations to three of its opinions, none of which involves a guarantor’s waiver of rights under the confirmation statute, and none of which addresses whether failure to obtain confirmation is a jurisdictional bar to seeking a deficiency judgment against secondary obligors.²⁰

The confirmation statute expressly bars actions by lenders to obtain deficiency judgments against obligors unless any previous foreclosure sales of real estate securing the subject indebtedness have been confirmed. Likely recognizing this seemingly clear and longstanding jurisdictional bar, neither appellants nor the appellee raised or briefed the waiver issue. The Court discussed the waiver *sua sponte*. The initial briefs of the parties focused primarily on whether the bank was entitled to enforce the security documents. Only after the confirmation order was reversed on appeal did appellants submit a supplemental brief contending that failure to confirm the foreclosure sale was a complete defense to a deficiency judgment as to both obligors. On Nov. 18, 2013, the Supreme Court of Georgia declined to grant the appellant’s petition for certiorari.²¹

The waiver holding in *HWA Properties* is significant for several reasons. First, it departs from case law holding that compliance with the confirmation statute is jurisdictional and, therefore, may not be waived. For example, in *Archer Capital Fund, LP v. TKW Partners, LLC*,²² the U.S. District Court for the Northern District of Georgia granted the obligors’ motion to dismiss a deficiency suit when the sale was confirmed only after the

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suit was filed.²³ The Court noted binding authority (i) “specifically stat[ing] that O.C.G.A. § 44-14-161(a) creates a condition precedent for a deficiency judgment,”²⁴ and (ii) “specifically equat[ing] a condition precedent to suit to a jurisdictional issue.”²⁵ Because the confirmation statute creates a condition precedent for a deficiency judgment, and because a court does not have jurisdiction over suits with unfulfilled conditions precedent, the Court held that the deficiency suit at issue was void *ab initio*.²⁶ Applying the reasoning of *Archer* to O.C.G.A. § 15-1-2,²⁷ it follows that because subject matter jurisdiction may not be consented to or waived, a guarantor may not waive the requirements of the confirmation statute by agreement.

Second, the *HWA Properties* decision also leads to inconsistent results under Georgia law applicable to personal property foreclosure. Under Georgia’s Uniform Commercial Code,²⁸ both the primary obligor and the secondary obligor are entitled to the same protections with respect to a deficiency claim. Neither a borrower

nor a guarantor can waive the obligation of a secured party to conduct a commercially reasonable foreclosure sale. A “commercially reasonable disposition” includes the method, manner, time, place and other terms (including sale price).²⁹ Any waiver pre- or post-default is not enforceable.³⁰ Although failure to conduct a commercially reasonable foreclosure sale is not an absolute bar to enforcing a deficiency claim against an obligor, neither the borrower nor the guarantor is liable for a deficiency that is greater than the amount that would have been realized in a compliant foreclosure sale.³¹ Accordingly, *HWA Properties* now marks a clear divide between real property non-judicial foreclosure sales, in which guarantors may waive the protections granted obligors under O.C.G.A. § 44-14-161, and personal property foreclosure actions, in which guarantors cannot waive similar protections.

Third, the *HWA Properties* ruling, along with *Taylor*, expands the ability of lenders to circumvent the confirmation statute. Following default, lenders may now either (i) pursue a judgment before fore-

closure or (ii) foreclose before judgment and pursue the guarantor for any remaining deficiency under a waiver theory. Given that the comprehensive waiver provisions in the Albright guaranty are quite common in most commercial loan transactions, the latter option may become the new norm, particularly given the time and expense required for most confirmation proceedings.

The Court’s consideration and enforcement of the waiver provisions might curtail the long-standing protections that the confirmation statute provides. Can potential guarantors avoid the waiver issue by suggesting to the lender that they become co-borrowers instead of guarantors? Perhaps the most important question, though, is whether *HWA Properties* is the first part of a slippery slope. Will the courts find enforceable waivers by borrowers of the protections afforded by the confirmation statute—thus effectively repealing that statute due to the widespread inclusion of waiver language in loan documents? While that remains to be seen, at a minimum lenders like-

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ly will begin reviewing their form loan documents to assess whether revisions are necessary in light of *HWA Properties*. 



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Endnotes

1. 322 Ga. App. 877, 746 S.E.2d 609 (2013).
2. *Id.* at 887-88, 746 S.E.2d at 617.
3. O.C.G.A. § 44-14-161 (2002) (emphasis added).
4. *Id.* at § 44-14-161(a).
5. 230 Ga. 888, 199 S.E.2d 776 (1973).
6. *Id.* at 889, 199 S.E.2d. at 778 ((holding that guarantors and sureties are "'debtors' within the meaning of [the confirmation] statute immediately upon the default on the promissory notes"). The *Kunes* opinion was decided under Ga. Code Ann. § 67-1503 (1973), which is substantively identical to the current confirmation statute.
7. *Id.* at 890, 199 S.E.2d. at 778.
8. *Id.*
9. 158 Ga. App. 671, 282 S.E.2d 157 (1981).
10. *Id.* at 673, 282 S.E.2d at 159.
11. *See id.* ("For the benefit of bench and bar we restate the holding of this case as follows: When a creditor who holds a promissory note secured by a deed to secure debt containing a power of sale sues on the note and obtains a

money judgment and thereafter elects to exercise the power of sale in the deed to secure debt, and the proceeds of such sale are not sufficient to satisfy the judgment, he is not required to comply with Code Ann. § 67-1503 before attempting to enforce further his judgment.").

12. *HWA Props., Inc. v. Community & Southern Bank*, 322 Ga. App. 877, 878-79, 746 S.E.2d 609, 611-12 (2013).
13. *Id.* at 879, 746 S.E.2d at 612.
14. *Id.* at 880, 746 S.E.2d at 612 (citing *HWA Props., Inc. v. Cmty. & S. Bank*, 320 Ga. App. 334, 739 S.E.2d 770 (2013)).
15. *Id.* at 879-880, 746 S.E.2d at 612.
16. *See id.* at 880, 746 S.E.2d at 612.
17. *Id.* at 877, 746 S.E.2d at 611.
18. *Id.* at 887, 746 S.E.2d at 617. Further quoting the guaranty, the Court noted, "[i]n fact, the guaranty specifically provides that Albright shall remain liable for any deficiency remaining after the foreclosure of any property securing the note, 'whether or not the liability of the borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. [Albright] shall remain obligated to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.'"
 19. *See id.* at 887-88, 746 S.E.2d at 617 ("Consequently, given these provisions [of the guaranty], we conclude that [Community & Southern Bank's] failure to obtain a valid confirmation of the foreclosure sale . . . does not impair its authority to collect the difference between the amount due on the note and the foreclosure sale proceeds from Albright based upon his personal guaranty.").
 20. The three opinions are *Baby Days, Inc. v. Bank of Adairsville*, 218 Ga. App. 752, 463 S.E.2d 171 (1995), *General Motors Acceptance Corp. v. Newton*, 213 Ga. App. 405, 444 S.E.2d 805 (1994), and *Worth v. First Nat'l Bank of Alma*, 175 Ga. App. 297, 333 S.E.2d 173 (1985). *See HWA Props.*, 332 Ga. App. at 887-88, 746 S.E.2d at 617.
 21. *See HWA Props., Inc. v. Cmty. & S. Bank*, No. S13C1731 (Ga. Nov. 18, 2013) (docket reviewable

- at http://www.gasupreme.us/docket_search/results_one_record.php?caseNumber=S13C1731).
22. No. 1:08-CV-2747-TWT, 2009 WL 2356072 (N.D. Ga. July 27, 2009).
23. *Id.* at *4.
24. *Id.* (citing Commercial Exch. Bank v. Johnson, 197 Ga. App. 529, 530, 398 S.E.2d 817, 819 (1990)).
25. *Id.* (citing Crane v. Cheeley, 270 Ga. App. 126, 127, 605 S.E.2d 824, 826 (2004)).
26. *Id.*
27. O.C.G.A. § 15-1-2 (2012) (providing, "Parties may not give jurisdiction to a court by consent, express or implied, as to the person or subject matter of an action.").
28. O.G.C.A. §§ 11-9-101, *et seq.* (2002 & Supp. 2013).
29. O.C.G.A. § 11-9-610 (2002).
30. *See* O.C.G.A. § 11-9-602 (2002).
31. *See* O.C.G.A. § 11-9-615 (2002); O.C.G.A. § 11-9-626(a) (2002).

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The Attorney-Client Privilege for Lawyers: Planning is Paramount

by Jake Evans and Stan Hill

As long as attorneys have clients, they possess a vested interest in understanding and maintaining the attorney-client privilege with not only their clients, but also their own lawyers. Maintaining the attorney-client privilege between attorneys and “in-house” law firm counsel is particularly important because such communications are often requested in the discovery phase of legal malpractice cases.

In *St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*,¹ the Supreme Court of Georgia ruled that the familiar four-prong test for the attorney-client privilege applies to communications between attorneys and their in-house counsel. Conceptually, at least, the attorney-client privilege applies uniformly across all attorney-client relationships.

This article aims to survey the *Hunter Maclean* decision and provide an analytical framework to enhance the likelihood that the attorney-client privilege will be maintained between attorneys and their in-house counsel. Notably, how in-house law firm counsel establish each of the four elements of the attorney-client privilege may depend upon the size and resources of the law firm. This article explores these differences,



suggests procedures for maintaining attorney-client privilege, and identifies pitfalls to be avoided. The guidance of *Hunter Maclean* is also instructive for in-house corporate counsel seeking to maintain the attorney-client privilege in the context of internal investigations.

Attorneys should also carefully consider the discussion of the work product doctrine in *Hunter Maclean*. In light of the statute codifying the work product doctrine and precedent case law expressly preserved by *Hunter Maclean*, the scope of the work product doctrine may, depending upon the circumstances, be broader or narrower than the circumstances addressed in *Hunter Maclean*.

Various Approaches to Attorney-Client Privilege with In-House Law Firm Counsel

Prior to *Hunter Maclean*, Georgia courts had not established the parameters of the attorney-client privilege in the context of law firm in-house counsel, while other state and federal courts had adopted a variety of approaches. Some jurisdictions rejected applying the attorney-client privilege to intra-firm communications regarding current clients because of the fiduciary relationship between the law firm and client.² Other courts applied the attorney-client privilege only to communications preceding the client's assertion of an adverse claim.³ Yet others carved out an exception to the privilege for "good cause,"⁴ and some treated an in-house attorney's assertion of attorney-client privilege the same as any other assertion of attorney-client privilege.⁵

Endorsing no particular approach, the Supreme Court of Georgia in *Hunter Maclean* held that "the best course is simply to analyze the privilege issue [as] in any other lawsuit in which the privilege was asserted,"⁶ through the familiar four-element test for attorney-client privilege. Those ele-

ments are: (1) the existence of an attorney-client relationship, (2) the communication is related to the purpose for which legal advice is sought, (3) the communication is maintained in confidence, and (4) no exception applies.⁷ The Court further held that applying the attorney-client privilege, an evidentiary rule, did not depend upon ethical issues implicated by in-house counsel advising attorneys concerning a potential or pending dispute with a client.⁸

How best to preserve the attorney-client privilege between attorneys and in-house counsel may depend upon the unique organization and structure of each firm, including the law firm's size, resources and the scope of the client representation at issue. All firms, however, can benefit from careful advance planning for how the attorney-client privilege will be maintained.

Satisfying Four Elements of Attorney-Client Privilege

Hunter Maclean offers several examples of how a law firm's in-house counsel may satisfy each element of the attorney-client. Nonetheless, scarcity of time and resources may force a time-pressured attorney to incorrectly apply the attorney-client privilege's elements. Judicious forethought about these issues may minimize exposure to the unchartered contours of the in-house attorney-client privilege.

Existence of Attorney-Client Relationship

Satisfying the first element of the attorney-client privilege requires a "genuine" attorney-client relationship between the law firm and in-house counsel.⁹ The purported in-house counsel must be "actually acting in that capacity with regard to anticipated legal action against the firm or other matters related to the firm's compliance with its legal and ethical obligations."¹⁰ In addi-

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tion, the law firm should be “clearly established as the client before or in the course of the in-firm communication.”¹¹ Although the attorney-client relationship may be self-evident from the communication’s content, laying the procedural foundation for establishing an attorney-client relationship reduces overall expenses and engenders confidence that the attorney-client privilege will in fact attach.

Attorneys can prospectively implement measures to increase the likelihood that a court will recognize an intra-firm attorney-client relationship. In *Hunter Maclean*, the Supreme Court of Georgia noted that billing procedures denoting the law firm as the client, as well as separate files for communications and work product on the matter which the attorney seeks advice, “help[] to distinguish the firm as the in-house counsel’s client,” independent of the underlying representation.¹² Separate file maintenance is vital, as a client presumably owns the contents of its file, and the attorney cannot assert the work product doctrine to preclude document production to the client.¹³

The formality of the in-house counsel position is also relevant. The Supreme Court of Georgia in *Hunter Maclean* noted that a bona fide attorney-client relationship is “easier” to establish with an attorney devoted full-time to the in-house counsel role, to the exclusion of other work.¹⁴ On the other hand, the less formality associated with the position (*i.e.*, the less time an attorney devotes to in-house counseling), “the greater will be the significance of other facts, such as billing and record-keeping.” Typically, then, the smaller the law firm, the greater the reliance on billing and record-keeping practices, and the greater the incentive to strictly comply with procedural guideposts.

Even with entire in-house legal counsel departments, large law firms are not sheltered. Interstate in-house legal advice may trigger multiple states’ standards for main-

taining the attorney-client privilege or engender choice-of-law problems.¹⁵ Interstate clients might seek to defeat the attorney-client privilege attaching in one state by seeking discovery of the communication in a jurisdiction that dilutes the attorney-client privilege by a fiduciary exception or other doctrine. Notably, a large law firm’s Georgia office may be keen to both seek and render in-house legal advice within Georgia to avail itself of the strong attorney-client privilege rule set forth in *Hunter Maclean*.

Communications Related to Purpose for Which Legal Advice is Sought

A second mandate for recognizing the attorney-client privilege is “the communication must have been made for the purpose of getting or giving legal advice.”¹⁶ This requirement makes for an interesting dynamic given the unique relationship between a law firm’s in-house counsel and a law firm’s counsel. The Supreme Court of Georgia noted in *Hunter Maclean* that, for the attorney-client privilege to attach within a corporation, the “communications with counsel by employees must be regarding subject matter within the employee’s scope of employment.”¹⁷ The Court molded this framework to the context of communications between a firm’s in-house counsel and attorneys.

Ultimately, the Court concluded that the pertinent communications must be intended to advance the firm’s interests in limiting liability exposure.¹⁸ This is in sharp contrast to communications aimed at representing the client’s interests. A communication indicative of furthering the client’s interest is emphatically not protected by the attorney-client privilege. It is, therefore, critically important that attorneys artfully utilize verbiage not suggestive of legal representation in communications desired to be privileged. To maintain the attorney-client privilege, in-house counsel should be acting in “its

capacity as firm counsel and the firm’s attorneys in their capacity as representatives of the client, the law firm, regarding matters within the scope of the attorneys’ employment with the firm.”¹⁹

Communications Maintained in Confidence

The communication at issue must be maintained in confidence.²⁰ Careless behavior can compromise the confidentiality of a communication, thereby negating attorney-client privilege recognition. Within a corporation, confidentiality means the communications are confined to “employees within the corporate structure who are authorized, expressly or by business practice, to receive and act thereon.”²¹ Similarly, intra-firm communications concerning client claims against the firm “should generally involve only in-house counsel, firm management, firm attorneys, and other firm personnel with knowledge about the representation that is the basis for the client’s claims against the firm.”²²

Given the rather precise nature of this element, attorneys should regimentally document their communications, showing that they were delivered only to personnel recognized by the Court to foster confidentiality. Labeling written communications as “CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION—IN-HOUSE LEGAL ADVICE” serves as evidence that the attorney-client privilege is intended to apply with the law firm as the client. In the end, possessing the foresight and vigilance to carefully and properly direct communications sought to be protected is vital to maintaining the privilege.

No Exception to the Privilege Applies

The final mandate is that no exception to the privilege applies. Many exceptions apply to the attorney-client privilege in Georgia. Of note, the attorney-client privilege does not apply to communications

in furtherance of a crime, fraud or other unlawful end.²³ Significantly, the Court expressly established that, “to the extent there is an allegation that in-house counsel has been employed by firm’s attorneys in an effort to defraud rather than merely defend against a client, the privilege may be waived.”²⁴ The Court arguably presages the potential abuses of its decision; namely, designating a pretextual in-house counsel merely to protect communications that otherwise would not receive attorney-client protection. Given this express admonition, attorneys are encouraged to designate in-house counsel appropriately and precisely.

The Court discussed at relative length the “fiduciary” or “fiduciary duty” exception, which some jurisdictions recognize. Under this exception, “one who is acting in a fiduciary capacity cannot assert privilege to shield its communications with counsel from the beneficiary of the fiduciary relationship.”²⁵ The “fiduciary exception” is rooted in 19th century English trust

law. The rationale was that “the benefit of any legal advice obtained by a trustee regarding matters of trust administration runs to the beneficiaries.”²⁶ Two principles support the adoption of this exception. First, the trustee’s duty to the beneficiaries trumps goals served by the attorney-client privilege. Second, the trustee acts as the beneficiaries’ representative, making the beneficiaries the attorney’s “real client.”²⁷

In *Hunter Maclean*, the Court declined to adopt the “fiduciary duty” exception.²⁸ The Court discards the applicability of the “fiduciary duty” exception to the firm in-house counsel context for two primary reasons. First, “the ‘real client’ rationale clearly does not apply in the law firm in-house counsel context, because it depends on the existence of a mutuality of interest between the firm/firm attorneys as fiduciaries and the firm client as beneficiary of the fiduciary relationship.”²⁹ The Court recognized that the “fiduciary trumps privilege” rationale is more tenable in the in-house counsel context. However,

the court concluded that the breach of an attorney’s duty of loyalty “is an issue of legal ethics and professional responsibility collateral to, and not directly bearing on, privilege law.”³⁰ Accordingly, the Court declined “to engraft [Georgia’s] Rules of Professional Conduct onto our privilege law, [rejecting] the notion that the attorney’s duty of loyalty should automatically trump the privilege.”

Work Product Doctrine for Lawyers

The Supreme Court of Georgia’s decision in *Hunter Maclean* addressed the work product doctrine in the in-house law firm context. The work product doctrine, codified at O.C.G.A. § 9-11-26(b)(3), encompasses materials “prepared in anticipation of litigation.”³¹ “Material is prepared in anticipation of litigation if reasonable grounds exist to believe that litigation is probable.”³² Attorney participation, alone, is insufficient to warrant work product doctrine protection.³³

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¹Profile of Legal Malpractice Claims: 2008–2011, American Bar Association, September 2012.
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The Court in *Hunter Maclean* stated that work product protection will attach to intra-firm work product “once the relationship between the attorney and client develops into an adversarial one.”³⁴ The codified definition of work product suggests that the formation of an adversarial relationship between attorney and client is sufficient, but not indispensable, for the application of the work product doctrine. The Court in *Hunter Maclean* implicitly acknowledged the same by noting that the work product doctrine attaches to materials generated “for purposes of defending against *perceived* or actual legal action by the firm’s outside client.”³⁵

When a law firm reasonably anticipates litigation with a client,³⁶ documents generated by the firm in anticipation of the adversarial relationship should qualify as work product, provided that those documents are not maintained as part of the client file. Because the client owns an attorney’s client file, its contents cannot be withheld from the client on the basis of the work product doctrine.³⁷

Interestingly, the Court in *Hunter Maclean* did not address whether the work product doctrine may apply to materials created before the client had knowledge of facts upon which an adversarial relationship might form. The issue of whether materials are prepared “in anticipation of litigation” depends in part upon whether the opposing party has made a statement related to or foreseeing litigation, which statement is necessarily predicated on knowledge of some or all of the material underlying facts.³⁸ Accordingly, an attorney may be precluded from claiming the work product doctrine regarding documents created before the client is informed of the facts upon which an adversarial relationship might form. However, even when the client has not been informed of the facts potentially giving rise to an adversarial relationship,

such documents may nevertheless contain confidential communications subject to the attorney-client privilege.

Conclusion

The extent to which a firm may maintain the attorney-client privilege and work product doctrine by improvising between the lines of *Hunter Maclean* is unclear, and in this regard, attorneys should tread lightly. That said, the reasoning in *Hunter Maclean* provides several foundational guideposts for maintaining the attorney-client privilege and work product doctrine where a law firm is advised by its in-house counsel. How firms, large and small, adopt procedures in accordance with these guideposts is best accomplished with careful thought before the prospect of an adversarial relationship with a firm client. 



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Endnotes

1. *St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*, 293 Ga. 419, 746 S.E.2d 98 (2013).

2. *Hunter Maclean*, 293 Ga. at 422-23 (citing *Koen Book Distribs. v. Powell, Trachtman, Logan, Carrle, Bowman & Lombardo, P.C.*, 212 F.R.D. 283, 285-86 (E.D. Pa. 2002); *Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 220 F. Supp. 2d 283, 287 (S.D.N.Y. 2002); *In re SonicBlue, Inc.*, 2008 WL 170562, at *9 (Bankr. N.D. Cal. Jan. 18, 2008)).
3. *Id.* at 423 (citing *Thelen Reid & Prise, LLP v. Marland*, 2007 WL 578989 (N.D. Cal. Feb. 21, 2007)).
4. *Id.* (citing *TattleTale Alarm Sys. v. Calfee, Halter & Griswold, LLP*, 2011 WL 382627 (S.D. Ohio Feb. 3, 2011)).
5. *Id.* (citing *Garvy v. Seyfarth Shaw LLP*, 966 N.E.2d 523, 528 (Ill. 2012)).
6. *Id.*
7. *Id.* (citing Paul S. Milich, *Georgia Rules of Evidence*, § 21.1 *et seq.* (2012-2013 ed.)).
8. *Id.* at 426 n.4. In like manner, the authors of this article express no opinion on any ethical issues that may be implicated by in-house counsel advising attorneys with respect to a potential or pending dispute with a client.
9. *Id.* at 429.
10. *Id.* at 423.
11. *Id.* at 423-24.
12. *Id.* at 424.
13. *Swift, Currie, McGhee & Hiers v. Henry*, 276 Ga. 571, 573 (2003).
14. *Hunter Maclean*, 293 Ga. at 424.
15. *See P. Rice*, 2 *Attorney-Client Privilege in the U.S. § 12:2* (2013) (noting that choice of law principles vary by state and federal jurisdictions, and that the choice of attorney-client privilege law may depend upon the location the advice is given, the law of the judicial forum, and/or the weight of the various implicated states’ respective interests in the issue).
16. *Hunter Maclean*, 293 Ga. at 426 (citations omitted).
17. *Id.*
18. *Id.* at 419.
19. *Id.* at 426 (citing *Upjohn Co. v. United States*, 449 U.S. 383, 403 (1981) (Burger, C.J., concurring)).
20. *See Southern Guar. Ins. Co. of Ga. v. Ash*, 192 Ga. App. 24, 28, 383 S.E.2d 579, 583 (1989).
21. *Id.*
22. *Hunter Maclean*, 293 Ga. at 427.
23. *Id.*
24. *Id.*

25. *See, e.g.,* United States v. Mett, 178 F.3d 1058, 1062-64 (9th Cir. 1999).
26. *See* Solis v. Food Employers Labor Relations Ass'n, 644 F.3d 221, 226 (4th Cir. 2011).
27. Mett, 178 F.3d at 1063.
28. Hunter Maclean, 293 Ga. at 428.
29. *Id.*
30. *Id.* at 429.
31. *Accord* Wellstar Health Sys., Inc. v. Jordan, 293 Ga. 12, 17, 743 S.E.2d 375, 379-80 (2013) ("Under Georgia law, documents and tangible things prepared in anticipation of litigation constitute highly protected work product discoverable only if the party moving to compel discovery demonstrates a substantial need for the materials and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means." (citing O.C.G.A. § 9-11-26(b)(3))).
32. Fulton DeKalb Hosp. Authority v. Miller & Billips, 293 Ga. App. 601, 603, 667 S.E.2d 455, 457 (2008) (internal quotation omitted).
33. *Id.*
34. *Id.* at 430.
35. Hunter Maclean, 293 Ga. at 430.
36. The authors express no opinion as to the circumstances under which a lawyer may be ethically obligated to inform a client of facts upon which an adversarial relationship might form.
37. Swift, Currie, McGhee & Hiers v. Henry, 276 Ga. 571, 573, 581 S.E.2d 37, 39 (2003).
38. *Compare* Miller & Billips, 293 Ga. App. at 604 (affirming trial court's ruling that work product doctrine did not apply to internal investigation documents created by in-house counsel because the investigation was "routine" and prompted by pleas for help, rather than threats of litigation) *with* Lowe's of Ga. v. Webb, 180 Ga. App. 755, 756-57, 350 S.E.2d 292, 293-94 (1986) (materials generated during internal investigation following customer's injury at store were work product, rather than the result of a routine investigation, because shortly after the injury, customer's son stated that the store must pay for the injury and all expenses; noting that anticipation of litigation "surely could be nothing more than speculation until the demands of the injured visitor are made known").

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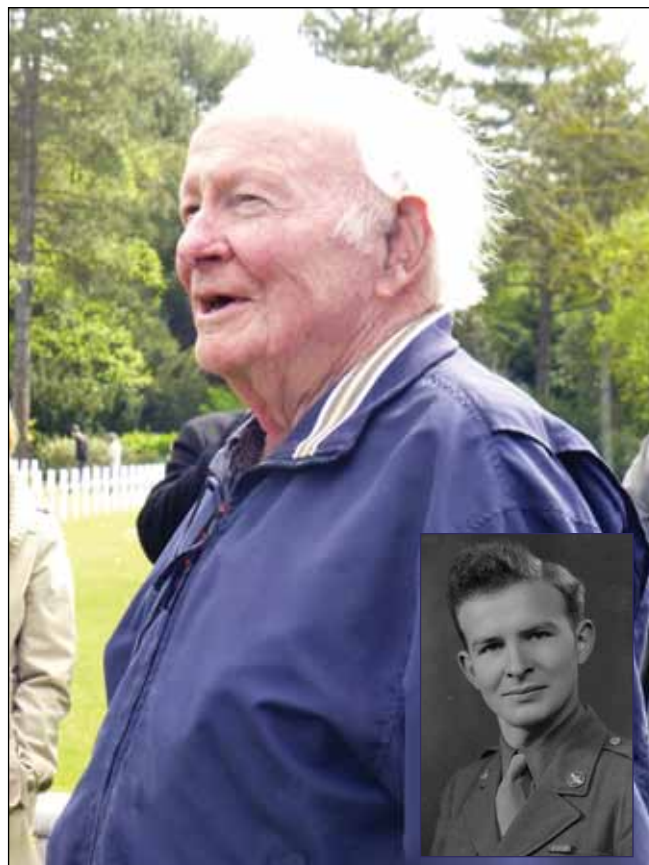
Lawyers Retrace Landings at Normandy Beaches, Study French and Continental Systems of Law

by Norman E. Zoller

Shortly after Charles L. “Buck” Ruffin began his term last summer as president of the State Bar, he asked leadership of the Military/Veterans Law Section and the Military Legal Assistance Program (MLAP) Committee whether the Bar might undertake a trip of Georgia lawyers to the beaches of Normandy, France. It would commemorate the 70th anniversary of the D-Day Landings in June 1944.

After briefly consulting, those section and MLAP Committee members enthusiastically undertook the mission. There were early questions: would enough lawyers be interested to warrant such a trip? Who would have sufficient experience to plan and then lead such a trip? Would costs to lawyers be reasonable? How could a CLE program also be incorporated?

Early on, “what if” questions were posed to the more than 34,000 lawyers with whom ICLE in Georgia regularly communicates. Those preliminary surveys indicated that many lawyers were potentially interested, enough then to assemble and circulate requests for proposal (RFP) to reputable destination management (travel) companies (DMCs). From those RFPs, four highly qualified DMCs submitted bids that were analyzed by a nine-member trip “exploratory committee,” including Steve Harper, executive director of ICLE in Georgia.



Photos by Norman E. Zoller

Judge Jim Hill recounts the courage and sacrifice of Allied service members at the memorial ceremony overlooking Omaha Beach.

Inset photo—SSG James Hill, circa 1943

Ultimately, Road Scholar of Boston, the nonprofit successor organization to Elderhostel, was selected to lead and make the necessary arrangements at a ground cost of about \$2,500 per person.

In anticipation of this trip, elder law attorney and six-year Air Force veteran Victoria Collier of Decatur

said, "I am excited about the trip to France for so many reasons. Being a veteran and having been stationed in Germany, I saw many military artifacts of the events of WWII. However, I didn't think I would ever have the chance to go to Normandy. But when the Georgia Bar made it possible, and added Paris, I thought 'this is my chance to do it.' Also, since I produce the TV talk show, 'Senior Salute,' I thought it would be an exceptional opportunity to highlight the veterans of our greatest generation 'where the action was.' The memories and lifetime derivatives will be so much more valuable than what we spend monetarily."

West Point graduate Drew Early, now a VA benefits award specialist said, "I think this is significant as it indicates the State Bar's continued support for our military and veterans population and their families. The MLAP initiative as envisioned and put into place by Jay Elmore and Jeff Bramlett and supported by the Bar is great for our serving service people and their families, as well as military retirees. Here, we honor and respect those past serving members of the Armed Forces. This was a super idea by the current president of the Bar, Buck Ruffin, and I am delighted to be playing a role in it."

And Cary King, twice deployed to Vietnam as an infantry company commander and also an artillery battery commander, said, "This trip is a fitting tribute to the brave souls who served us so well in World War II and specifically on the beaches of Normandy on D-Day, June 6, 1944."

And so, over the period May 1 - 9, a group of (coincidentally) 70 lawyers and their spouses and guests flew from Atlanta to Paris, and then traveled to Normandy. Once in Normandy, the group was inspired, emotionally touched, and saw and did much. The group included Ruffin and his wife, Sally; past president Ken Shigley and his wife, Sally; U.S. Senior Circuit Judge James Hill, and Georgia Chief Municipal Court and Associate Juvenile Court Judge Jim Barfield and his wife, Beverly.

WWII Vet Judge Jim Hill Returns to his Airbase at Framlingham, England

It's been 70 years since former Staff Sergeant Jim Hill, now U.S. Senior Circuit Judge James Hill of the U.S. Court of Appeals for the 11th Circuit, served at the grassy base at Parham Airfield in Framlingham, England, from 1943 until 1945. In those days, he was a cryptographer with the 390th Bomb Group, cyphering through the coded decoy and true messages. Besides his cryptography work, he also spoke periodically with military and civilian groups about America as a nation, and about her history and people.

The 390th bombed the coast near Caen 15 minutes before the landings in Normandy on June 6, 1944. The Bomb Group operated as part of the Eighth Air Force's strategic bombing campaign and operated chiefly against strategic objectives, flying many missions with the aid of pathfinders. The 390th entered combat on Aug. 12, 1943. Five days later, the group attacked the Messerschmitt aircraft complex at Regensburg and received a Distinguished Unit Citation (DUC) for the mission. The 390th received a 2d DUC for a mission on Oct. 14, 1943, when the group braved unrelenting assaults by enemy fighters to bomb the antifriction-ball-bearing plants at Schweinfurt. Its motto was *Sur Le Nez* ("On the Nose"), emblematic of where the group intended to deliver its deadly cargo.

From time to time, German V1 rockets (with their distinctive buzz sound) and V2 rockets (which flew silently) bombed Framlingham and the surrounding British villages. One B-17 was shot down by Nazi aircraft right above Parham Field. Many lives were tragically lost there and in adjoining villages.

But just a few weeks ago on May 1, Kathleen and Peter Kindred, the curators of the Parham Airfield Museum, opened their gates to Hill, where he retraced many of the steps between his barracks, bunkered office (which now is literally a pigsty on the Kindred farm), and the adjoining runways on which now is grown the vibrantly yellow rapeseed processed for canola oil. The Kindreds, who lovingly tend this base, could not have been more hospitable and welcoming.

Zoller, who coordinates the State Bar's Military Legal Assistance Program, helped organize, plan and conduct the Bar's recent trip to Normandy and Paris, France, in observance of the 70th anniversary of the D-Day Landings. When it became clear that Hill also planned to take this trip with the other Georgia lawyers, Zoller helped arrange this side trip for him to Framlingham. Hill contacted airbase officials to schedule an opportunity to walk those grounds again. And so they did. Parham Airfield is open to the general public on Sundays from April to October.

Hill was appointed a U.S. circuit judge on May 21, 1976. Previously he served as a U.S. district judge for the Northern District of Georgia from 1974 to 1976. He practiced law privately in Atlanta from 1948 until 1974. He served on the U.S. Judicial Conference's Committee on Intercircuit Assignments, has chaired the Federal Judicial Center's Appellate Education Committee, is a fellow of the American College of Trial Lawyers, a life fellow of the ABA's Bar Foundation, and a member of the ABA and of the Lawyers Club of Atlanta.



Judge Hill stands in front of his former office on the Kindred farm.

About this trip Hill said, "Although this was not my first trip to Parham Airfield or to Normandy, every time is different and memorable in its own way. For example, I recall that for the people who live in these villages, their highest goal may be a cottage, a garden and a pint once or twice a week. For Americans, however, that may not be their highest ambition." By virtue of these battles fought, however, these heroes of WWII helped preserve both ways of life.



Robert Pimont, deputy mayor of Caen, France (*middle*) and Jean Pierre Benamou (*right*), former curator of Battle of Normandy Museum, thank Charles L. Ruffin (*left*) for the commemorative plaque displaying Georgia challenge coins.

Reflections

by William John Camp

To silently and humbly walk the sacred ground of what we Americans know as Omaha Beach and the American Cemetery at Normandy, France, is to honor our nation and its “Greatest Generation.” Almost 70 years ago, an extraordinarily high price was paid as 73,000 of our fellow Americans stormed the beaches known as “Omaha” and “Utah” in what was part of Operation Overlord to free Europe and World War II. On June 6, 1944, alone, there were 6,603 American casualties (wounded, killed and M.I.A.) of which 2,499 were confirmed as killed during the first 24 hours of the invasion.

Mere numbers are but abstract statistics having no meaning to us unless someone we loved is counted among them. To ponder the enormous loss of life of so many husbands, fathers, brothers and loved ones who fought the mightiest of battles that day dwarfs every visitor. Bravery, valor and sacrifice combined with American blood to make Omaha and Utah Beaches the greatest victory for freedom and liberty.

I had the personal honor to salute our flag as it was lowered at the Normandy American Cemetery and to hold that salute as “Taps” played on the evening of May 3. I walked among the hundreds of rows of white crosses and Stars of David to place American and Georgia flags to honor those of my fellow Georgians who died at Omaha and Utah Beaches. Many of the gravesites bore no name to identify the fallen and stated only that a “person known only unto God” lay beneath. I placed an American and a Georgia flag at the foot of one, thinking proudly that it might be a fellow Georgian who paid the ultimate price for our freedom. Sadly, he laid there unconnected by name to a

family who loved him. Standing there, among an ocean of heroes, I felt the hand of God touch my face as the wind whispered, “Here lies the true soul of all Americans who honor freedom and cherish liberty.” The statue at the American Memorial at the Cemetery is of a young man rising out of the waters off the coast of Omaha Beach, his soul being lifted into Heaven. What a fitting icon to the bravery and sacrifice of those who died there so all of us could be free men and women today.

As lawyers we must never forget the ideals we all pledge to uphold in our practice of law . . . those of “freedom, justice and liberty” are but mere words if not also remembered for how they were won by the greatest and noblest of sacrifices of many, many, many other Americans. It is often said that each generation must make their own installment of blood. For each of our fellow Georgians and Americans who laid down their lives in the name of freedom, we must remember and honor them for their sacrifice.



William John Camp is a partner at Westmoreland, Patterson, Moseley & Hinson, LLP, in Macon. His primary office is in Warner Robins. Since 1995, Camp has devoted himself to the developing area of military family law. A 1971 high honors graduate of Auburn University, Camp was commissioned as a distinguished military graduate into the Regular Air Force. In 1974, he graduated from the University of Georgia’s School of Law, and was then designated as an Air Force judge advocate in which capacity he served in a variety of military assignments over a period of 24 years.



Many Nazi defensive structures called pillboxes can still be seen at landing sites on Omaha Beach.



(Left to right) Drew Early, chair of the Military/Veterans Law Section, expresses appreciation and presents Georgia challenge coins to Jonathan Truelove, speaker at the CLE program in Paris.

At Normandy, the American landing beaches, Omaha, Utah and Pointe du Hoc were trod with reflection, and the American cemetery at Colleville-sur-Mer was soberly visited. While at the Normandy American Cemetery, Jean Pierre Benamou, former curator of the Battle of Normandy Museum and patron of the Normandy Veterans Association, spoke, along with Hill and Ruffin. Ruffin said, “We are here to pay tribute and to remember what happened on the hallowed grounds nearly 70 years ago . . . and the enormous task the Allied Forces faced. But our civilian and military heroes, one of whom (Judge Jim Hill) has joined us on this trip, rose to and overcame those monumental and life-altering challenges. And the world survived. And the values and the ideals that we all hold dear were preserved.”

During the war, when our population was 129 million, the United States suffered 300,000 deaths or missing and another 300,000 wounded. From Georgia alone, 1,040 soldiers died in combat, 13 died in prison camps, 1,824 were wounded and 41 were eventually released from prison camps.¹

France with her then-population of 42 million, experienced 250,000 deaths or missing and 350,000 wounded.² Russia with her then-population of 194 million, experienced 9 million deaths or missing and 18 million wounded.³ Germany with her then-population of 78 million, experienced 3.5 million deaths or missing and 4.6 million wounded.⁴

The trip also featured an opportunity to take advantage of the knowledge and experience of three Georgia-licensed lawyers living in France. There are, in fact, eight lawyers admitted to practice in Georgia who live in France. Bill Glover,⁵ formerly of St. Simons Island, who lives literally in a magnificent limestone cave in Lavardin, France, spoke about the European Union Paradox and the Continental System of Law. Jonathan A. Kindred Truelove, now living near Geneva, spoke on the structure of the French legal and court and case processing structures. He is a former law clerk to U.S. Senior Circuit Judge Emmett R. Cox. And Barton Legum, who lives in Paris, spoke on Investment Treaty Arbitration.

In addition to the emotionally powerful visits to the beaches and

to the American Cemetery, the group also visited:

- Mont Saint-Michel, a UNESCO World Heritage Site and monastery constructed over a period of a thousand years from about 708 until the 19th century;
- the Bayeux tapestry, a historic document of embroidery on linen cloth, 76 yards in length, depicting the conquest of England in 1066 by William, Duke of Normandy, who later became King of England;
- Honfleur, a picturesque old port located in Lower Normandy on the southern bank of the estuary of the River Seine, painted many times by the Impressionist painters Eugene Boudin, Gustave Courbet, Claude Monet and Johan Jongkind;
- Rouen, where stands a historic cathedral, which was also painted many times by Claude Monet, and where the French heroine Jeanne d’Arc at age 19 was burned at the stake on May 30, 1431; and
- In and around Paris, the group toured Notre Dame Cathedral; the D’Orsay Museum; Montmartre, the neighborhood



Victoria Collier peers through protective barbed wire in a Nazi tunnel network at Pointe du Hoc.



From the air control tower Peter Kindred, curator of Parham Airfield Museum, points out former B-17 runways and support facilities to Judge Hill.

of many artists and hotbed of political thought; Sacre Coeur; Monet's home and his iconic gardens at Giverny; and the splendid Chateau of Versailles.

Thus, although this trip had many educational components, it was a pleasurable and a life-affirming experience for its participants who said:

- "The visit to Normandy was an emotional experience without equal—from Omaha Beach to the American cemetery. I will never forget the solemnity and inherent dignity surrounding those hallowed grounds." —Chris Olmstead, Atlanta
- "I cannot adequately express the whole of my experience and what it meant to me. I can say that once an opportunity that presents itself as large as this, you should take advantage of it because it may never be offered again. Being a veteran and helping seniors and veterans of WWII, I was interested in 'seeing' the places where the war took place. Of course I knew the history, read about the battles and have seen pictures and heard stories. However, unless you are

there, on the beaches, and see for yourself the cliffs that had to be scaled, you have no idea of the magnitude of what our military men experienced and the gravity of their bravery. I will forever be changed and will see my clients and their family members differently from now on because of this trip. Also, I had given no thought to the bonding that would take place among my colleagues and their spouses on the trip. I met many new lawyers and their family members and enjoyed getting to know them, many of whom I will continue to fortify a friendship." —Victoria Collier, Decatur

- "Having a WWII vet (Judge Jim Hill) within our midst as we remembered 'the boys of Pointe du Hoc,' riding in period vehicles; wonderful choice of travel through Northern France; mission accomplished." —Gary and Janie Smith, Tucker
- "This was my first time to attend a CLE with the Military/Veterans Law Section, and I found the members to be a most special collection of experienced lawyers, uniquely bonded by their past. In short, I found this group of men and women to be

the most interesting and engaging lawyers I've ever encountered. Throughout the week I found this section's own war stories to be fascinating on a level equal to the history of the Normandy Invasion, yet when these soldiers walked along Omaha Beach, I observed them to walk silently in reverence.

"One of the aspects of the trip which provided me with calm and relief was that the geography I described in my recently published novel, 'Boxcars,' ending with D-Day, was true to foot." —Jim Barfield, Palmetto

- "As a Vietnam combat veteran who served with the 1st Infantry Division and as a student of military history, the experience of standing on Omaha Beach where the 1st Infantry Division landed and on the Pointe Du Hoc battle site with many of the bunkers and gun emplacements unchanged from the June 6, 1944, D-Day invasion, was extremely moving and equally educational. After visiting the beaches and having the great honor of participating in a memorial ceremony at the American military cemetery at Normandy with 11th Circuit Judge Hill, a WWII vet-

eran, is an experience that I will always cherish.


“As a member of the Military/Veterans Law Section of the State Bar of Georgia, I had the opportunity to share the experiences of Normandy as well as the excitement of Paris with other attorneys and their families, to make new friends and to strengthen bonds with existing friends. I will always feel that this trip represents a life experience that will remain in my memory forever. My thanks to Buck Ruffin for his leadership, and to all of the people who spent so many hours planning an executing a ‘perfect trip.’” – Cary King, Sandy Springs

- “Although there were many unforgettable experiences along the way, the trip to the American Cemetery and Memorial in Normandy stands out. To have our group, through our own veterans, lay a wreath on the memorial, to sing the National Anthem together, to hear the haunting notes of Taps played, to reflect on the service of thousands of our troops in the liberation of Europe and for the freedom of all nations, to see the thousands of graves of those whose mortal remains are buried in that beautiful, hallowed ground within sight of the English Channel—I know that I was one among many who unashamedly shed tears during that time together. It also made me think of what an important link this memorial symbolizes from the origin of our country and to the present where our military forces continue to make sacrifices for all of us. I hope that it’s going to inspire me (and others) to do more for those who are now and have in the past served our nation in this way.” –Drew Marshall, Athens

Ruffin concluded saying, “This was a stellar trip for many reasons: it helped mark and celebrate the preservation of our Constitution, we retraced the places where so



(Left to right) Drew Early, Cary King, Judge Hill, John Camp and Seth Harp lay a wreath at Normandy American Cemetery.

many of our armed forces gave their lives for our liberty and freedom, we studied the French and Continental systems of law and we had an enjoyable time: extraordinary historic and also modern sights, good food, good companionship and we had fun. Special thanks go to our State Bar’s planning committee, to the Road Scholar staff in Boston and to our knowledgeable and gifted local guides, especially Julian Brown, Maevon Canter and Jean Pierre Benamou.” 



Norman E. Zoller has devoted the majority of his legal career to public service.

Previously, he managed the Hamilton County, Ohio, courts for nearly a decade. He served as the first clerk of court for the U.S. Court of Appeals for the 11th Circuit from 1981 to 1983, when he was named circuit executive, a post he held until his retirement in 2008. An Army veteran, Zoller served almost seven years on active duty as a field artillery officer, including two tours of duty in Vietnam, first with Special Forces in 1964-65 and then with the 82nd Airborne Division in 1968-69. He also served 15 years in

the National Guard and Army Reserves as a judge advocate officer. He has coordinated the State Bar’s Military Legal Assistance Program since its inception in 2009.

Endnotes

1. United States National Archives and Records Administration, Military Records, State of Georgia Summary of World War II Casualties.
2. France Ministry of Defense, — Memoire des hommes; Michael Clodfelter, “Warfare and Armed Conflict: A Statistical Reference to Casualties and Other Figures, 1500-2000,” 2002, p. 582.
3. G.I Krivosheev, Soviet Casualties and Combat Losses, Greenhill 1997, pp. 85-86.
4. Metropolitan Life Insurance Company Statistical Bulletin, January 1946, p. 7.
5. William Glover is a native of St. Simons Island, Ga., who practiced law for 25 years in Jacksonville, Fla., and Brunswick, Ga. He graduated from Furman University in 1968 with a B.A. and from the University of South Carolina School of Law in 1973. He is currently a freelance writer living in Lavardin, France. His first book, *Cave Life in France*, was published in the year 2000. He has also written *Deep France: Tales from the Loir* (2002), and *Walking with a French Ass: A Pilgrimage to Santiago* (2014). He writes a syndicated column, “Tales from the Loir.”

2014 Legislative Review

by W. Thomas Worthy and Russell N. "Rusty" Sewell

The 2014 regular session of the Georgia General Assembly adjourned *sine die* on March 20. This was a very successful session for the State Bar of Georgia and demonstrated the effectiveness of the Bar's Legislative Program. In a session that was accelerated due to the fact that Georgia was required to move its primary elections to May 20, the Bar's lobbying team effectively advocated for our agenda while also successfully responding to issues that arose during the frenzied 40 legislative days.

Most notable of the Bar's accomplishments was the successful defeat of SB 209. SB 209 was first introduced during the 2013 regular session in the Senate as a consumer protection bill that authorized entities to make available, design, create, publish, assemble, complete, distribute, display and sell self-help documents, information and forms. It passed the Senate in 2013. The bill was taken up by the House Agriculture and Consumer Affairs Committee this year. During the committee hearing, the bill was amended to reflect the proponents' true intent—to provide immunity from unauthorized practice of law lawsuits for entities that provide legal self-help documents and services, such as Legalzoom.com. Despite opposition from the Bar and from the overwhelming majority of lawyer-legislators on both sides of the aisle, SB 209 was brought to the House floor for debate on March 6. After hours of debate, the measure was tabled. Thanks to the diligent work of the



Bar's lobbying team and the assistance of Bar allies in the House, it remained tabled and did not pass.

In addition, a number of bills supported by the State Bar passed the General Assembly and have received the governor's signature. HB 654, a proposal by the Family Law and Fiduciary Law Sections was sponsored by Rep. Mary Margaret Oliver (D-Decatur). The bill changed provisions for the appointment of a testamen-

tary guardian and provided a narrow procedure whereby objections to an appointment could be filed in Probate Court. The bill passed the House unanimously. Due to the monumental number of House bills in the Senate Rules Committee during the final weeks of session, the bill did not pass out to be brought for a vote in the Senate. The language of HB 654, however, was added to SB 364 as an amendment, and was passed with SB 364.

SB 364 and SB 365, both sponsored by Sen. Jesse Stone (R-Waynesboro), were the result of recommendations made by the Georgia Council on Criminal Justice Reform. SB 364 contained provisions that corrected, updated and modernized the adult sentencing reforms from 2012 and the juvenile justice reform/code rewrite from 2013. Gov. Deal signed SB 364 on April 28. SB 365 contained recommendations made by the Council relating to the successful re-entry of ex-offenders into society after release from incarceration. The bill is also aimed at reducing recidivism rates to make Georgia communities safer. The governor signed SB 365 on April 13.

Also part of the State Bar's 2014 legislative agenda recommended by the Advisory Committee on Legislation and approved by the Board of Governors were two important funding requests. First, the State Bar supported increased funding to the Judicial Council for legal representation of victims of domestic violence after that program received three years of cuts. The FY15 budget passed by the General Assembly and signed by the governor includes an appropriation of \$2.12 million, which is approximately \$386,000 more than its FY14 level of \$1.73 million. Second, the State Bar supported maintaining the funding of the Georgia Appellate Resource Center at \$800,000, to which the General Assembly also agreed.

Three initiatives proposed by the State Bar were introduced but did not secure final passage. Bar section

leaders will work this summer and fall to perfect these proposals so that they can be reintroduced in the 2015 regular session. The first, supported by the Real Property Law Section, would create a cause of action and make damages available for those harmed by the unauthorized practice of law. This proposal was introduced this year as HB 889 by Rep. Tom Weldon (R-Ringgold). HB 685, introduced by Rep. Edward Lindsey (R-Atlanta), was a proposal by the Military/Veterans Law Section. The bill would update the Uniform Deployed Parents Custody and Visitation Act to make it consistent with the uniform law. Lastly, the Indigent Defense Committee promulgated a proposal that would dedicate funding for prosecutors and public defenders in juvenile courts statewide. That proposal was introduced by Rep. Andy Welch (R-McDonough) as HB 674.

There was a host of other important pieces of legislation that, while the Bar did not have an official position on them, were of great interest to lawyers and the legal profession. HB 837, sponsored by Rep. Mark Hamilton (R-Cumming) provided updates and certain expansions to the role of private companies that administer misdemeanor probation in many communities around the state. Although HB 837 passed the General Assembly, Gov. Deal vetoed the bill on the basis of concerns that the bill thwarted transparency in the private probation business. Judiciary Chairman Wendell Willard (R-Sandy Springs) introduced HB 643, a bill containing rules and procedures for electronic discovery. The bill passed the House, but after changes were made to it in the Senate Judiciary Committee, it was defeated on the Senate floor. HB 504, sponsored by Rep. B.J. Pak (R-Lilburn), allowed the introduction of proof of failure to use seatbelts into evidence. Although the bill was passed out of the House Judiciary Committee, it was ultimately recommitted for further work and never came to a vote on the floor.

State Bar President Charles L. Ruffin frequently visited the Capitol during session and did a fine job representing the Bar. The entire Executive Committee as well as section leaders who graciously volunteered their time to testify before committees are to be commended for their legislative efforts. This was a successful session for the State Bar's lobbying team, which also includes Jim Collins, Roy Robinson and Meredith Weaver. The State Bar's Grassroots Coordinator, Zach Johnson, once again organized "lobby days" for local and voluntary bar associations from around the state. These were well-attended, successful events and we encourage you to attend one of them next year. In the meantime, look for us in your area soon as we seek to expand the Bar's grassroots program and provide you with more political and legislative updates. 



W. Thomas Worthy is the director of governmental affairs for the State Bar of Georgia and team leader for the State

Bar's lobbying team.



Russell N. "Rusty" Sewell is the president of Capital Partners Public Affairs Group and has represented the Bar under the Gold

Dome for more than 20 years.

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Business Development Symposium:

General Counsels and Law Firm Partners Share Tips on Developing Business

by Marian Cover Dockery

The State Bar Diversity Program (GDP) presented a two-part symposium designed to provide attorneys in private practice insight into best practices in securing corporate clients. Both sessions offered one CLE, including one professionalism credit and a networking reception with the panelists.


On Feb. 20, Morris, Manning & Martin, LLP, hosted Part I of the symposium, a panel discussion that featured corporate general counsels who presented their views on how attorneys can successfully develop business for their law practices. The panel, moderated by Clyde Mize, of counsel at Morris, Manning & Martin and vice-chair of the GDP, included Rick Rufolo, vice-president, UPS; Tom Best, senior counsel, Home Depot; Debra Page Coleman, GVP and associate general counsel, Macy's; Tanya Hairston-Whitner, vice-president and general counsel, Concessions International; and Colin S. Wright, senior IP attorney, McKesson. Whether diversity of attorneys seeking business is essential may depend upon the client and the goals of the corporation seeking outside counsel. In-house counsels have changed their strategies in the selection process in recent years because of the declining economy. Corporations offer lower hourly fees to outside counsel depending on the type of lawsuit,

but still use large firms to handle more complex cases where the stakes are high. The panel emphasized how preparation is key in developing business that includes doing some research on the company before the pitch so as to develop an understanding of the company's business. It takes time to get business, and part of that process is building relationships with the key players. Corporate panelists stated they are more comfortable giving work to attorneys they know and with whom they already have a business relationship. Sometimes it is necessary to rely on the referrals of other attorneys, and the panelists agreed that contacting peers who have worked with outside counsel is another means of selecting attorneys to handle legal work. So making those contacts and building relationships is a critical part of the process.

Part II of the symposium was held on March 13, and was hosted by Alston & Bird LLP. It featured experienced, successful shareholders and partners in a panel discussion moderated for the third year by Christopher J. Chan, an IP partner at Sutherland Asbill & Brennan LLP.

The distinguished panelists included William Hill, shareholder at Polsinelli PC and a former Fulton County Superior Court judge; Philippa V. Ellis, partner, Owen, Gleaton, Egan, Jones & Sweeney, LLP; and Sonjui L. Kumar, founding member, Kumar, Prabhu, Patel & Banerjee LLC. These experienced partners discussed critical errors that attorneys have made in their attempts to secure business. Panelists also provided attendees advice regarding their successes and gave tips on land-

mines to avoid during the business development process.

All panelists recommended that those who are seeking work know their craft, understand the business they are soliciting and develop relationships with the general counsels from whom they seek business. Persistence and preparation are also key in the process of securing clients. It is not an overnight process and takes years to develop relationships, but those years will go by very quickly. 



Marian Cover Dockery is an attorney with a background in employment discrimination and the executive director of

the State Bar of Georgia Diversity Program. For more information on the Diversity Program, visit www.gabar.org.

2014 GDP CALENDAR

May 27 - June 6

High School Pipeline Program
Atlanta's John Marshall Law School

June 19

Summer Associates
and Judiciary Reception
Nelson Mullins Riley & Scarborough

Sept. 25

Annual GDP CLE
and Luncheon

Keynote Speaker:

Teresa Wynn Scarborough
Sr. VP, general counsel and secretary,
The Home Depot Corporation



(Left to right) William Hill speaks at Part II of the Symposium while fellow panelists Sonjui L. Kumar and Philippa V. Ellis look on.



(Left to right) General Counsel panelists Colin S. Wright; Clyde Mize, moderator; Tanya Hairston-Whitner; Debra Page Coleman; Tom Best; and Rick Rufolo.



(Left to right) Panelists from Part II of the Business Symposium, Sonjui L. Kumar, Moderator Christopher J. Chan, Philippa V. Ellis and William Hill.



The Virgin of Guadalupe

by Gerard "Gerry" Carty

23rd Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "The Virgin of Guadalupe," by Gerard "Gerry" Carty of Atlanta, as the winner of the *Journal's* 23rd 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 Carty and all of the other entrants for their participation and excellent writing.

Do you believe in miracles? There was a time when I did not and a time when I was not sure.

There are people who consider miracles to be big, important, even cataclysmic events—Moses parting the Red Sea as choirs of angels sing. I prefer to think of them as small fortunate happenings. Yet, most dictionaries will define miracles as events so unusual they are not ascribable to human power. So, that's not so small, is it?

My friend Kinchil Gutierrez thought that miracles were supernatural, that they must be ascribed to a heavenly power—even though, at the same time, he professed to be a *Zapatista* and a non-believer.

I did not know then what a *Zapatista* was.

I met him back in the year 2000. I was a new lawyer then, and while my practice was small, my ignorance was great, so I signed up almost everything that walked in the door. One day I would be handling a divorce case, the next I'd be at the immigration office, the next at a social security disability hearing. In between, of course, there would be endless hours at the library or on the Internet—for it seemed that every new case required tons of research.

As the years went on I grew wiser and whittled this down. Six years later I found that almost all I did was workers' compensation and immigration. The one field of law nicely dovetailed into the other. As most of my immigration cases dealt with bringing future

employers and professionals into the country and workers' compensation involved mostly blue collar representation, I had a practice that covered a wide cross-section of the work force, and with this I was content.

Kinchil first came to see me about a car wreck. He spoke little English and was accompanied by his son, Yum. The case was a minor one involving a fender-bender. Three months later it was settled, and he returned to my office to sign a release and pick up a check for \$2,000. He was a man of about 50 then—short and muscular, with jet black hair and a complexion like mahogany. His kindly face was wrinkled and wizened beyond its years by the power of the sun.

When I gave him his check he pushed it back across the table to me and turning to his son, he raised his eyebrows.

"My father wants you to do one more thing for him," Yum said. "He's illegal. You probably know that, so he wants you to get him his papers."

Yum almost always spoke for Kinchil. He was in his late 20s then. I knew him about as well as I knew the father, as he accompanied his dad each time he came to my office. At one time he too had been undocumented but he had obtained a graduate business degree and got permission to work and now he was marrying a girl from Norcross; so he had covered his bases and a green card would be coming to him soon. He ran a food distribution company and was one of my successful immigration cases. Kinchil, on the other hand, remained undocumented, worked as a gardener and spoke little English. This was not unusual. He was the man operating the leaf blower, the man who knelt in the flower beds in the office parks. Having no opportunity for conversation, he had little opportunity to learn.

I pushed the check back across the table to him.

"I don't mean to be demeaning," I said, "but the chances of getting

papers for a Mexican laborer at this time are impossible. It would take a miracle."

Kinchil perked up at the word "miracle."

"A miracle," he said. He nodded in approval, as if I had suggested it as a course of action.

"Kinchil, I don't do miracles," I said. "I'm a lawyer, not a saint."

Father and son exchanged conversation for a moment. I knew a little Spanish, having struggled to learn it for my immigration practice, so I knew enough to know that Spanish was not what they were speaking.

Yum turned back to me.

"My father says that by the intercession of the Virgin of Guadalupe you will get him papers."

"I thought your father was a nonbeliever," I said.

"He believes in the Virgin of Guadalupe."

I thought for a moment. How do you frame legal advice at a moment like this?

"Yum, I'm not trying to be flip or disrespectful, but please tell your dad that immigration won't respond to intercessions by the Virgin of Guadalupe. At the present time, he would need labor certification, which is only given when there's a scarcity of workers for a particular job. As you know, there are many landscapers out there."

Yum spoke to his dad again, then turned back to me.

"He wants you to try."

I sighed.

"Yum, do you understand how difficult it will be? Perhaps impossible."

"I understand," Yum said, "but if you try it will make him happy."

I considered for a moment.

"All right," I said. I pushed the \$2,000 check back across the desk to him. "Give me a retainer of \$500 and I'll look into it. Let me get some forms for him to sign and I'll get the information I need."

By the time they left the office I knew a lot more about Kinchil Gutierrez, more than I had needed to know for his car wreck case. He

was Mayan, from a tiny village called San Martín Isolda Blanco, near Ocosingo, a city close to the famous Mayan ruins of Palenque, in the state of Chiapas in the south of Mexico. He had an elementary school education. The language he was speaking with his son was Chontal, one of many Mayan languages still in use and one of several he spoke. He was named after Ah Kinchil, the Mayan god of the sun, and his son named after Yum, the Mayan god of corn. Kinchil told me that the sun and corn were, next to his family, the two most important things in his life.

He had come to the United States originally by crossing the bridge over the Rio Grande, between Matamoros and Brownsville, Texas, making this passage in the back of a truck, buried under several tons of milled sorghum with a plastic breathing tube leading out of it to a hole in the side panel.

He had returned to Chiapas only three times in the 10-year period following—each time by taking a bus to Albuquerque, New Mexico, then a second bus to the border, then making contact with a coyote—the (questionably) human kind—to lead him across to Ciudad Juárez. Once in that city he hitched his way south to his village, a journey that took him about three weeks. The return journey took him as long.

When they left my office I went back to my chair behind the desk and sat staring at the \$500 check the son had written to me. The price of happiness, it seemed. I hated taking money from people when I had no confidence that I could help them. After a while of pondering whether I shouldn't just write Kinchil an apologetic letter and enclose the check, I decided to at least start the process. When it failed, I would send him his money back. I took a new file folder from the drawer and put the sheets of paper with Kinchil's information and the \$500 check into it. On a yellow post-it note I wrote "Miracle File" and attached it to the file. I

left the file on the corner of the desk where it waited to be formally opened by my secretary.

That night I was putting my kids to bed. I had a Rand McNally World Atlas which served most of its natural life as a coffee table book, but often the kids would beg me to open it and go through countries with them, telling them about the places and people, such as I knew. After I put them to bed that night I kept the atlas open and turned to the United States map. With my fingers I traced Kinchil's journey to Ciudad Juárez, across the border. Then I turned the pages to old Mexico and traced the rest of his journey from there to Ocosingo, the Chiapan town near where Kinchil's wife and daughter lived. His little village, San Martín Isolda Blanco, was six miles from there and not even on the map.

The miracle to me at that moment was not that he was able to make this journey, but that he had the fortitude to come back.

Before I went to bed I did one more thing—I googled the Virgin of Guadalupe. The legend has it that on the morning of Dec. 9, 1531, Juan Diego, a Mexican peasant, was collecting wood on a hillside called Tepeyac in Mexico City when the Virgin appeared to him. Juan told the Spanish archbishop of Mexico City about this. The archbishop sent him back to the hillside to ask the Virgin for a sign, or miracle, to prove that what Juan said was true. He returned to the hill. The Virgin appeared to him again and told him to gather flowers. He collected them in his cloak or *tilma* and when he laid this out for the archbishop they saw that none of the flowers were native to Mexico, nor were they flowers that would bloom in December. They fell from the *tilma* to the floor, and there on the surface of the fabric was the image of the Virgin of Guadalupe. This *tilma* is on show in the Basilica of Our Lady of Guadalupe in Mexico City and has more visitors than any Christian shrine worldwide.

I envied Kinchil in the strength of his belief no matter how irrational it seemed to me. For that alone I would work hard to get him results. Perhaps I was beginning to believe in miracles.



In the weeks that followed I researched his case thoroughly but could find no grounds to support his immigration petition.

This is when the first miracle began to happen.

I was at the time attending Spanish classes at the Latin American Association on Buford Highway in Atlanta and my teacher would tear sections from classified ads in Spanish language newspapers and distribute them through the class, then have the students try to translate them.

One evening the ad she handed me was from a newspaper called *El Norte*, which the teacher explained was from the city of Monterrey, Mexico. I was able to stumble through a rough translation of the ad. Apparently someone was selling small lots of land, fee simple, in the United States for \$1,500 or less to Mexican citizens. We had a lot of to and fro about the meaning of fee simple. The teacher, who was Mexican herself, explained somewhat the complicated business of land transactions in Mexico.

I knew a little about this for I had investigated a scam working in Atlanta at that time, and probably to this day, where unscrupulous notary publics would gouge Mexican migrant workers several hundred dollars to notarize documents. The workers rarely complained because they believed a notary in the United States was the same as a *notario* in Mexico, when in fact a *notario* was more akin to a real estate closing lawyer and performed a far more substantial service than a notary public, one that was worthy of their fee.

"Why would anyone want to buy a fee simple piece of land in the United States for less than

\$1,500?" I asked her. "What could you possibly get for that?"

She shrugged.

"I'm a teacher," she said, "not a realtor."

Which reminded me of my statement to Kinchil: "I'm a lawyer, not a saint."



For some reason, I couldn't let this go. I kept the classified ad and next day I stopped in at one of the large law firms higher up in my office building to talk to a friend. I knew they had a diverse practice and even a few Mexican lawyers.

I repeated the question to one of them.

"I can't imagine," she said. She echoed my question, "What could you do with a piece of property worth less than \$1,500?"

Obviously, my curiosity had been contagious, for that afternoon the same lawyer called me and said, "Take a look at the North American Free Trade Agreement."

This was easier said than done. The North American Free Trade Agreement, commonly known as NAFTA, is 1,700 pages long. My curiosity dissipated.

Next day, however, it revived, for the Mexican lawyer called me again and, with a hint of triumph in her voice, explained to me that she had a friend who buys and sells real estate in Monterrey and this friend explained that there is a loophole in NAFTA that allows citizens of the treaty countries, that is, the United States, Canada and Mexico, to obtain visas from each other to visit their investment properties.

Rich folks from Monterrey, she said, had latched on to this seeming loophole and began buying small freehold properties in the U.S., allowing them to get a visa quickly and with little fuss. This lawyer agreed with me that a freehold property for less than \$1,500 was taking it to extremes. They were typically buying \$80,000 foreclosure properties or raw land along the Texas border, but the language seemed to indicate that there was no downward

limit to the value of the property you owned.



Now, I don't know for sure if there ever was such a loophole in the NAFTA treaty. If there was, I couldn't find it. But I have to admit I wasn't prepared to read all 1,700 pages of the document. But, once again, I couldn't let this go. The "Miracle File" still sitting on my desk told me there was more to pick at here. On a hunch, I called Yum Gutierrez.

"Does your father still have the \$2,000 check I gave him?" I asked.

"Less the \$500 I gave you to open his immigration case," Yum said. "Why?"

"Ask him to hold on to it. Let me call you back."

I put the phone down and thought: he has exactly \$1,500; could this be an omen?



It had been right under my nose all along. In the latter part of the 1990s, when my children were very small, my wife and I purchased a share in a "dude ranch" just outside Helen, Georgia. There were 1,500 shares to the thousand-acre property. It had some cabins and a stable of about 30 horses, a clubhouse and a swimming pool. We thought it would be good for the kids to get out of the city on weekends and we were right. We rode horses in the cool mornings and swam in the pool on long summer afternoons. We barbecued at night and slept in the rustic cabins. My daughter learned to walk on the parquet dance floor of the clubhouse; my son met the first crush of his life there.

We paid about \$7,000 at the time for our share of this ranch and considered it money well spent as we used it frequently. But as the millennium approached the property's developer went bust before the project sold out. The bankruptcy trustee took possession of the 600 unsold shares and began to sell them for whatever he could get.

Our \$7,000 share became worth less than \$1,000. This seemed to happen almost overnight and I never gave it much thought, for we continued to enjoy the ranch and we felt that more owners would mean more annual assessments coming in, which would make for a stronger maintenance budget.

That night I dug out my personal documents and retrieved the deed I had bought for the "The Triple Creek," as it was called. Sure enough, I was staring at a yellowing warranty deed conveying to me a "one fifteen hundredth undivided share" of a 1,000-acre tract. This looked like fee simple to me.

I called Yum.

"Fifteen hundred dollars is a lot of money for my father to spend on something as frivolous as a share in a dude ranch," he said.

"If this works, your dad won't have to make that trip through Ciudad Juárez any more—that's a 5,000-mile journey which probably costs him more than \$1,500 each time he does it."

There was silence on the line as Yum thought about it. Eventually he said, "Frankly, I don't think he has it in him to make that trip again. What if this doesn't work?"

"Expect a miracle," I said.

Next day he called me back. He had bought a share in his dad's name for \$1,150 from the bankruptcy trustee.

"Good. Now you tell him to get back to Mexico and go to the US Consulate in Monterrey with his deed and apply for a visa."



Two months passed. I didn't hear from either of them. Then one day I came to the office to find them both waiting for me. Kinchil could barely restrain himself from showing me his new visa.

"Now you should believe in miracles," he said, "and in the Virgin of Guadalupe."

I didn't want to pour cold water on the heat of his enthusiasm but I felt as his lawyer I should bring him back to earth.

"Kinchil, listen, by working here you're breaking the law. The only thing this visa changes is the ease by which you can come and go. It doesn't give you the right to work. If you get caught working, not only will you be imprisoned and deported but you will also lose this visa."

"Be happy for me, *licenciado*," he said. "Now I can visit my wife and daughter without worrying about getting bitten by rattle snakes, coyotes and scorpions."



I thought that this was the end of it. But it was not. Perhaps miracles come in small doses. As my children grew older, weekends were taken up with soccer, baseball leagues and birthday parties and years passed without us visiting the ranch. We did not return there until the summer of 2006. As we entered its gates I was struck by how particularly well-cared for it looked. I figured all the money flowing in from the spike in shares being sold had helped but later that day, as we sat by the pool, we began to hear there was another reason for this renaissance.

"There's this Mexican dude who bought in a couple of years ago," one of my co-owners told me, as we sat by the pool. "He's a whiz with the horses and knows everything about running a stable and a large ranch. Have you seen the new entranceway and the banks of flowers?"

I knew immediately. I found him at the stables later that day.

"I thought I would see you here before, *licenciado*." Kinchil beamed at me. His English had improved tremendously. He told me his daughter had made the border crossing and was now working in Atlanta. With both his children working, they had been able to help him reduce his working hours.

"I spend most weekends at the ranch. They know so little about animals and plants. When I speak to the horses and the flowers,"—he hesitated and took a deep breath—

"it's good for my soul. Do you understand this?"

I understood this completely. Though I was better at speaking to people than to horses and flowers I had often come to this ranch, wishing I could do what Kinchil was now doing.

As I left the stable, I met the chairman of the ranch owners' association. "I understand Kinchil's a friend of yours," he said. "I wish we could hire him. He says you've helped him in the past. Is there anything you can do?"

I said no. I had exhausted all avenues. But one day, a few weeks later after giving it a lot of thought, I called the chairman.

"We're more interested in hiring him than ever," he said. "He's totally transformed the ranch this summer and saved us thousands of dollars. He even saved two horses from dying of colic."

The ranch hands who worked there were in awe of his skills, he said.

"So, why don't you hire him as ranch manager?" I asked. I knew they didn't have one. The committee ran everything—and not very well, one of the reasons there had been much to improve.

"What about his papers?" he asked.

"You could apply for him," I said. "As a farm hand he has no chance of getting permission to work. As a ranch manager he might have."

The owners' association sponsored him. They flooded Immigration with letters of support, financial and otherwise. They advertised for a ranch manager within a 100-mile radius of Helen and found no one who fit the bill. Four months later Kinchil got his labor classification. Soon he had his green card.



This is an end. But sadly, this is also a beginning.



Labor Day of 2006 was the last day of that year we went to the ranch. I did not see or hear from Kinchil or Yum until spring of the following year.

One morning in my office my new receptionist buzzed me and said, "There's someone here to see you. He doesn't have an appointment. A Mr. Gutierrez."

I was trying to get out to a hearing. "Father or son?" I asked.

I could hear her asking, and then I heard a soft voice in the background say, "My father is dead."

I was shocked. I hoped I'd heard wrong. I jumped up and ran out to the reception area.

"What happened?"

"He was bush-hogging the creek bank at the ranch," Yum said. "Trying to clear a beaver dam. He should have known better. He tried to do it with a front-end loader. The bucket got caught under some heavy branches. When he tried to lift them the tractor flipped sideways on top of him. It pinned him under the water. At this time of year the river is flowing fast and high. He drowned."

"Yum, I am so sorry. Is there anything I can do?"

"There is," he said. "I understand that he might be entitled—his widow and children might be entitled—to workers' compensation benefits—not me, but the young ones."

I led him to my office.

"I didn't know there were young ones? I thought just you and your sister."

"Since you got him the visa he goes back—went back—to Chiapas in January and returned in late February. Four times in four years. Nine months after each visit I have a new brother or sister at home. That visa you got him, it's like a—what do you *gringos* call it—a fertility doll."



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Yum laughed through his grief and covered his mouth and nose. There was a box of Kleenex on the table. I pulled a few sheets and handed them to him. He blew at his nose and wiped his eyes before going on.

"Maybe you're the fertility doll. I should blame you, you know."

I smiled.

"His widow and your brothers and sisters should be entitled to survivor benefits," I said quietly. "I'll see what I can do."

"I hope you're right. Things are very tough in Chiapas right now. My father only began to save a little money when he started working at The Triple Creek. Before that he sent \$150 dollars a week Western Union to my mom and another \$50 was what he had to live on. You know that little house by the stables at the ranch? They gave it to him free and he was fixing it up and working on my mom's green card and expecting it any day. But now?"

He shrugged and shook his head.

"I promise you I'll do what I can," I said.

I filed the claim with the State Board of Workers' Compensation and got a call shortly thereafter from the insurance company's lawyer.

"Look," he said, "this all seems relatively straightforward. As soon as we get the proof of marriage and the birth certificates of the kids, we can hash things out."

I called Yum and we discussed how we should set about getting the necessary documentation.

"My mom and dad were never married," he said.

Ouch. Kinchil was a man who had not believed in formalities.

"Does that mean she can't get anything?" he asked.

"No. She should be able to get the same benefits for the children. We still need documentation. Birth certificates for a start."

"I'll look into it," he said and I agreed to meet with him the following week.

The news was not good when he returned. The birth certificates and the records for the little community of San Martín Isolda Blanco, population 80, were kept by a *junta* in the village. Yum had tried to get them from the *junta* without success. I did not understand any of this. Incredibly, the explanation went back to NAFTA.

The day NAFTA was signed the price of Chiapan corn dropped to near nothing. With this, the livelihood of Chiapan farmers, Kinchil among them, disappeared. An armed insurgence broke out around Ocosingo and in many other parts of Chiapas, including the village of San Martín Isolda Blanco. This was led by Subcommandante Marcos, the charismatic leader of the EZLN—the *Zapatista* movement.

I remembered this for it made news headlines around the world at the time. But I thought it had all blown over years before.

This conflict continued, Yum told me, and led up to the San Andrés Accords in 2001, a treaty between the Mexican government and the *Zapatistas*. This gave autonomy of sorts to areas of Mayan lands and they were then administered by *juntas*. "So the documents you need are in the hands of the junta known as the *Junta del Buen Gobierno*. Committee for Good Government," he said.

"So, how do I get them?"

"Look," Yum said, "The essence of Mayan self-government is to be left alone. Mostly from Mexican government interference but also from foreign interference. So a request from us for documents is likely to be ignored."

I considered this.

"Someone will have to go get them," he said.

"Well, you're the 'someone,'" I said, after a moment. "How long will it take you?"

"It can't be me. I can't take time off to go to Chiapas. This is my busiest time of year."

"Well, who then?" I asked.

"I was thinking you," he said. "You're the lawyer. Didn't you say once you liked Mexico?"

"Yum, I haven't been farther than Cancún."

Yum laughed. "Cancún is Mexico. Just not the Mexico you'll be going to."

It was madness, I know this now. I knew it then. But I could not let this go and no amount of persuasion could get Yum to make the trip. I had serious misgivings about whether it was even worth it. After all, if the insurance company didn't accept that the birth certificates were genuine, we would still have hurdles to jump, proof-wise. But that night I told myself, some lawyers in Atlanta will regularly fly to L.A. for a deposition, so why should I not travel the same distance in this case?

It took me 14 hours and two planes to get to Ocosingo. I took a hotel room for the night. Yum had given me the name of a local priest in San Martín Isolda Blanco—Father Dominic—who spoke English, Spanish and a variety of Mayan languages.

Next morning I drove my rental car to San Martín Isolda Blanco over roads barely identifiable as such. Yum had suggested I find Father Dominic first and he would take me to meet his mother as she spoke no English and very little Spanish. As I came over the hill into the little town, I stopped to read a sign on a roadside fence. It said "*Está usted en territorio Zapatista en rebelda. Aquí manda el pueblo y el gobierno obedece.*" Even with my meager Spanish I figured this out to mean "*you are in Zapatista territory in rebellion. Here the people command and the government obeys.*"

As Yum had said, this was the other Mexico.

San Martín Isolda Blanco consisted of no more than 30 dwellings, most of which were square huts about six feet high, built from some kind of straight, thick cane, set perpendicularly and tight-

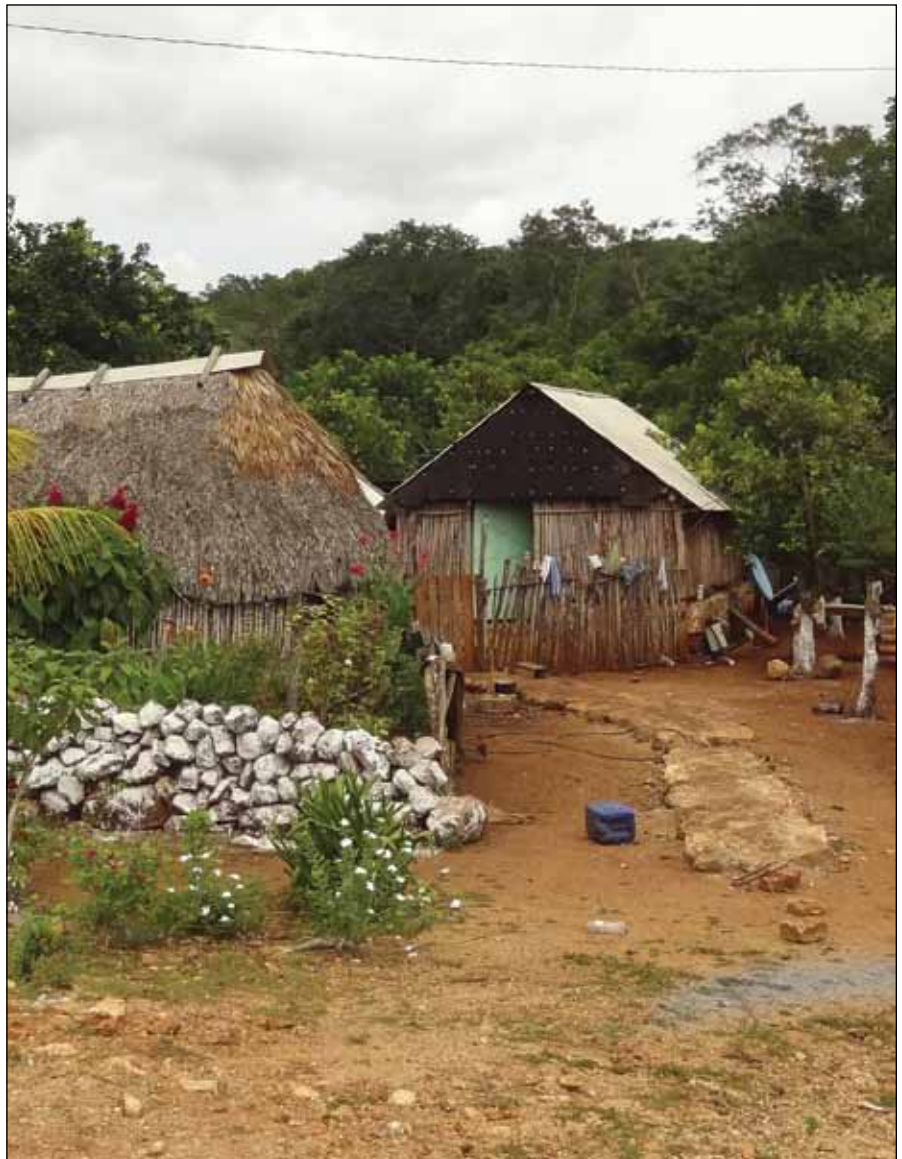
ly woven with palm fronds to form walls. Each structure had a thatched roof. There were a few whitewashed cinderblock buildings. There was one larger structure shaped like a church that sat on a little hill. As I passed it I noted the sign on the door, three letters painted in white—"JGB." The good government committee?

Father Dominic's house was at the end of the main street on the left of a sign that read "*Taller Mecánico*"—mechanic's workshop. The temperature was in the high 90s. The priest was young, perhaps in his 20s. I had expected an older man. He listened to my story. He had already been informed generally of the issue, he said, by the Señora Gutierrez, but he had no sway with the local junta. He had arrived only two months before from San Cristóbal de las Casas, from the seminary, as the old priest, Father Benito, had died. Nothing he said was reassuring. There had been a church—that was the building with the "JGB" sign on it. It had been shut down in the initial throes of the *Zapatista* rebellion and never opened up again. Now it was "city hall."

He took me to the Gutierrez home. There was no need to drive. We walked down the main street dodging chickens and the occasional donkey. Though the town was dirt poor it was curiously bright and pretty. There were no cars. The entrance to each little house was surrounded by vines of coral flower—jacaranda, bougainvillea, lantana.

The Gutierrez home had a small courtyard. As we entered we saw a child of about five years of age, swinging in a tire swing from a tree. A dog and a goat slept underneath his swinging feet. The priest said something to him and he answered back. I didn't catch any of it.

"We can go in," the priest said. There was no door, just a curtain of paisley patterned fabric. The woman in the corner did not get up from her seat. She was breast-feeding a child. Two other children lay



on mats side by side, asleep in front of a 36-inch LG TV on which was playing *Sesame Street*. The Cookie Monster spoke in Spanish. On a small table sat a baseball cap with an Atlanta Braves logo—other than the children, the only evidence of Kinchil having been here.

The priest introduced me to Kinchil's widow. She stopped feeding the child and placed him face down across her lap and patted his back. He slept quietly, burping occasionally. Priest and widow spoke for some time in a local language. Then he turned to me and said, "Father Benito baptized all four children—in fact, all six children including Yum, and several years ago, after the initial rebellion with Subcommandante Marcos, the

Mexican army came into these villages with the intention of drafting every Mayan boy who came of age. This is classic counter-insurgency. But the army also has a strict rule that no one without documentation can join it. Father Benito was a resourceful man. The records disappeared. That way, no boy from here would ever join the Mexican army."

Father Dominic sighed and looked down.

"You see, even here we are undocumented."



I went back to my hotel in Ocosingo. I found a little Internet café as my phone was not working there, and I sent Yum an email explaining the problem. There



wasn't much to do in Ocosingo. That evening I went back to the Internet café and checked my emails. There was a reply from Yum. All it said was "Expect a miracle."

I went back to my hotel room and lay on the bed. It was still early evening. I turned on the news. I watched CNN for a bit then turned to a Mexican station, deciding I might as well practice my Spanish while I was there and gain something from my experience. Halfway through the local Spanish language news, I noticed there was some video of the town of San Martín Isolda Blanco. I was intrigued but the video came and went as rapidly as the announcer spoke. I had not understood a thing she said.

I fell asleep early and woke early. At breakfast in the small hotel's dining room while I sat eating my huevos rancheros, two men sat down at the table next to me and nodded "good day." They were dressed in full military garb and appeared to be high ranking officers, considering the brass and ribbons on their chests and shoulders. I thought for a moment it might be a feast day and there was going to be a parade. As they ate breakfast, however, lesser soldiers came and went delivering missives which they read, discussed

and responded to in Spanish. I caught only a word or two but among the words I caught were "*la iglesia de San Martín Isolda Blanco.*" I had already begun to think of it as the "*junta church.*"

What was going on?

I took longer than usual over my breakfast. The two officers got up and left. My waitress appeared and presented the check for me to sign. I said to her in my awful Spanish, "What is happening at the church of San Martín Isolda Blanco?" I asked her to repeat her response several times. I had my Spanish dictionary with me. I wrote down what I could and I understood her to have said, "There is no such thing as the church of San Martín Isolda Blanco. The church in that town is called the Church of the Virgin of Guadalupe. Right now it is under siege because of the insurgency."

I left quickly. The street outside my hotel was full of soldiers. It seemed the entire population had come out to watch them. There was a sullen, pervasive silence among the people. Whatever the Mexican Army was doing here, it was not welcome. I got my rental car from the garage and headed back to the village. As I got close I began to see

more and more military vehicles. At one point, as I stopped and moved aside to let some of them pass, I noticed on either side of the road the forests were full of soldiers laying rolls of barbed wire. For the first time I thought, wouldn't it be wiser to head in the opposite direction?

I found Father Dominic in the garden of his little house. He was celebrating Mass before a makeshift altar for about six women. I waited at the back till it was over. His incantations were drowned out by the growl of engines and the cries of soldiers. Diesel fumes stunk up the air of what the day before had been a sweet smelling town.

"What is going on?" I asked him, when he had finished and was removing his vestments.

"Last night in the suburb of Buen Samaritano in Ocosingo two soldiers were shot and killed as they were trying to evict families from their property. The army flushed out whoever did the shooting, and they believe they have taken refuge in the church here. You should leave immediately. There will be repercussions which will affect this entire community. You don't want to get caught up in it."

I got in the car and headed back to Ocosingo. But as I got closer to the little hill where the church stood—no more than three hundred yards from the priest's house—the street was now full of military vehicles and I was waved over by a uniformed man who shouldered a Kalashnikov AK-47. Like most members of the Mexican Army I had seen, he looked about 14 years of age.

He examined my passport.

"What are you doing here?" he asked.

When I told him, he said, "You cannot go forward. You have to go back."

"I need to get to Ocosingo," I said. "I don't know where 'back' is."

"Step out of the car, please."

He stood back a few paces and unshouldered his Kalashnikov in a move that said he did not intend to ask twice. My heart was beating like a bass drum in my chest. As I got

out, a tank trundled up alongside of my car. This increased my alarm for the road was narrow and I was now locked into this 18-inch space with a boy with a Kalashnikov.

Like many lawyers, I have often stopped in the middle of doing something to ask myself, "When I took the bar exam, did I think I would be doing this particular thing in pursuit of my profession?"

At this moment, if my mind had not been in a tizzy, I might have asked it again.

The tank came to a stop. I could feel the heat pulsing from it and felt sickened by its diesel fumes mingled with the raw earth smell kicked up by its iron treads. The soldier began to poke at my calf with the muzzle of his AK-47. "Move," he said. He prodded me to an armored vehicle of some sort which had pulled in behind my car.

I followed his bidding and got into it. There were four vacant seats in the front directly behind a driver and another man. I got into one of these and realized that I did not have my passport. All the rows behind were filled with soldiers in full SWAT gear. From this position, I could see that the soldiers operating the tank were calibrating its big gun. I don't know how old it was, but I could hear it cranking as the long barrel rose higher. From my line of sight, it appeared they were aiming it at the church tower.

The door shut then opened again and Father Dominic, with the AK-47-toting soldier behind him, slid into the seat beside me.

"What are you doing here? I told you to leave!" he said through clenched teeth.

"They won't let me," I said, feeling like a scolded child. "I'm stuck."

He looked up at the bell tower. "We should pray that if there is anyone in the tower, they don't have the fire power to shoot back," he said.

Outside, someone began to speak through a bullhorn. I couldn't tell if the language was Spanish.

"What is he saying?" I asked.

"He's giving them 30 seconds."

There was no response.

There followed a thunderous bang. The entire tank rig jumped about six inches off the ground and its shell made a whizzing sound. The tank hit the ground with a thud, shaking it like an earth tremor and our armored vehicle shuddered and rocked.

I didn't see where the shell landed. It missed the church. Perhaps it was meant to. The man with the bullhorn spoke again. Thirty seconds later another deafening bang. This time the tank bounced back, not up, and almost hit us. The tower disappeared in a sky-high explosion of gray concrete and dust. Its bell came to ground with a series of clangs.

But there was something else, something more. Papers. Thousands of sheets of paper floating high in the air then slowly, ever so slowly, like snow, falling to the ground through the fog created by the dust.

This branch of the Mexican Army was obviously more interested in combat than recruitment. The papers meant nothing to them. The SWAT team poured out of our vehicle and rushed what remained of the church. Soon I could hear shots being fired.

We watched in silence, for hours it seemed, till the activity quieted down and the army began to withdraw. Finally our vehicle was the only one left. The soldier who had first accosted me pulled open the door and handed me my passport. "It was for your own safety, señor," he said. Nice to know. I was still shaking.

"There is a tunnel from the church into the jungle," Father Dominic said quietly. "There was no one in the church."

"And you know this — how?"

"This is my town," he said. "I was born here."

"You never told me."

"You never asked. Come, our glorious army is leaving — let us see if we can find your children's birth certificates among this litter."

As we spoke and walked among the papers with the smell of car-bide in our noses, the people of the

village came out and began to help gather up the documents.

"You never told me the real name of this church was the Virgin of Guadalupe."

"What does that matter?" he asked.

"It depends," I said.

"On what?"

"On whether you believe in miracles."




When I showed up next day at my office with all four birth certificates, Yum called to say his mother's green card had just arrived. Miracles apparently come in small doses.

The Ocosingo insurgency took place on Aug. 18, 2007. The Señora Gutierrez came to Atlanta fully documented in September. The case resolved at the end of that month.

I thought she would bring her children and set up a new life. But this was not her intention. She came only to testify, she said, for she loved her village and with \$550 a week for 400 weeks, the workers' compensation benefits they were awarded, she could not only raise her children, she could put them through college if she remained in Chiapas. In Atlanta on this amount she could barely sustain them.

So, she went back. I never heard from her again. From time to time I hear from Yum. Each year, when I return to the Triple Creek Ranch, I am always impressed by how good it looks. Kinchil's legacy. This and the weekly check that goes to his children. The aggregate of small miracles.


I am now a believer. 




Gerard "Gerry" Carty is from Glasgow, Scotland, and has been practicing plaintiff's personal injury litigation in

Georgia since 1980. This is the third time he has won the Fiction Writing Competition.

Kudos

>  **Herbert H. "Hal" Gray III** of Ragsdale Beals Seigler Patterson & Gray, LLP, was elected to the **Board of Directors of The College of Commercial Arbitrators**. The College, comprised of nationally and internationally recognized commercial arbitrators, promotes the highest standards of integrity, professionalism and practice in the field of commercial arbitration.

>  The **Sam Olens Attorney General re-election campaign** announced that **Robert D. Ingram**, partner of the law firm of **Moore Ingram Johnson & Steele**, will again serve as **campaign chair**. Ingram currently serves as the chair of the Judicial Qualifications Commission. He is a past president of the State Bar of Georgia, the Cobb Bar Association, and has served on the State Bar Board of Governors and Executive Committee.

> **Hedgepeth, Heredia, Crumrine & Morrison LLC** announced that partner **Rebecca Crumrine Rieder** was granted **fellowship** to the **American Academy of Matrimonial Lawyers (AAML)**. Rieder joins an elite group of 42 family law attorneys in Georgia who have attained fellowship in AAML. Membership is by application only and members must fulfill the criteria and standards established by the AAML Board of Examiners and Board of Governors, including passing state and national testing.

Founding partner **Wayne A. Morrison** was named **president** of the **Cobb County Bar Association Family Law Section**. Organized to promote excellence and professionalism among family law practitioners in Cobb County, the section also fosters collegiality between judges and attorneys, which extends to courtrooms and mediation sessions.





Kilpatrick Townsend & Stockton LLP announced that partner **Miles J. Alexander** was the recipient of **Georgia State University College of Law's 2014 Ben F. Johnson Jr. Public Service Award**. The award is presented each year to a Georgia attorney whose overall accomplishments reflect the high tradition of selfless public service that founding dean, Ben F. Johnson Jr., exemplified during his career and life.

Partner **Alicia Grahn Jones** was awarded the **Volunteer Legal Team of the Year Award for 2013** by the **Georgia Asylum and Immigration Network (GAIN)**. GAIN provides pro bono legal representation through volunteer attorneys to asylum seekers, immigrant victims of human trafficking, domestic violence, sexual assault and other crimes.

Partner **Joe Henner** was named to the **Board of HOPE Atlanta**. HOPE Atlanta, the programs of Travelers Aid of metro-Atlanta, provides housing, outreach, prevention and emergency services and is proud to be one of the premiere social service agencies in metro-Atlanta. Since its inception in 1900, it has provided assistance to more than 1 million individuals.


Associate **Charles "Chad" Pannell** was awarded the **Distinguished Service Medal** by the **Linn Inn Alliance** at the annual New York Intellectual Property Law Association's Judges Dinner. The Linn Inn Alliance was founded in 2008 by Hon. Richard Linn, U.S. Court of Appeals for the Federal Circuit, to unite the existing intellectual property law focused American Inns of Court. There are now 22 intellectual property law American Inns of Court in the United States and in Japan.


>  **Walker, Hulbert, Gray & Moore, LLP**, announced that founding partner **Larry Walker** received the **American Bar Association Solo, Small Firm and General Practice Division's 2014 Lifetime Achievement Award**. The award recognizes solo and small-firm attorneys who are widely accepted by their peers as having significant lifetime distinction, exceptional achievement and distinction in an exemplary way. Walker's award was presented during the Solo and Small Firm Awards Luncheon in May in Las Vegas.


>  In April, **Laverne Lewis Gaskins**, university attorney for **Valdosta State University**, traveled to **North-West University, Potchefstroom Campus in South Africa** to attend the international conference "Education and the Constitution at 20" where she **presented a paper**, "*Fisher v. Texas: Pedagogical Concerns, Diversity, and Grutter Reexamined.*"

> **Hunton & Williams LLP** announced that Atlanta managing partner **Kurt Powell**, partner **Roth Kehoe** and senior attorney **Robert Green** helped launch the **American Transaction Processors Coalition**. The coalition was created to protect, promote and

preserve the interests of the payment processing and financial technology industries through proactive government and public affairs activities. The group represents the interests of more than 70 Georgia-based companies that develop products and provide resources that support the financial service industry's technology needs.

>  **Greenspoon Marder** announced that **Tina Dunsford**, chair of the health care law practice group in the firm's Tampa office, was **appointed** to the **Audit Committee** of the **University of South Florida's Physicians Group**. Through this appointment, Dunsford serves as a voting member on the Board of Directors of the USF Physicians Group of the USF College of Medicine, the University Medical Service Association, Inc., and the USF Medical Services Support Corporation.

>  **Ford Harrison LLP** announced that **Herb Gerson**, the firm's co-managing partner, was elected to serve on the **Executive Committee** of **Ius Laboris**, where he will also **chair** the **Americans Committee**. Ius Laboris is the world's largest, integrated alliance of human resources and pensions law firms. Through membership in Ius Laboris, FordHarrison provides its clients with highly specialized advice and support worldwide, with the ability to collaborate with more than 1,300 leading global HR law practitioners. FordHarrison is the sole U.S. member of Ius Laboris.


>  **Cobb Judicial Circuit Superior Court Judge Mary Staley** became **president** of the **Council of Superior Court Judges of Georgia**. Staley takes the reins from Chatham County Superior Court Judge Louisa Abbott, who finished a one-year term. Staley is the most senior member of the Cobb Superior Court bench, having served there since her first election in 1992. She began practicing law in Cobb County in 1978 as an assistant district attorney. She won election to the Cobb County State Court in 1983 and served there until she moved to superior court. She is presiding judge of the Cobb County Superior Court Mental Health Court.

On the Move

Atlanta

> **Leitner, Williams, Dooley & Napolitan, PLLC**, announced that **Charles G. Hoey** became associated with the firm as **of counsel**. His practice focuses

on insurance coverage and defense, workers' compensation, and he handles subrogation cases, and other defense matters such as motor vehicle accidents, or slip and fall cases. Hoey is also a licensed mediator. The firm is located at Two Ravinia Drive, Suite 1630, Atlanta, GA 30346; 770-557-3360; Fax 770-810-3560; www.leitnerfirm.com.

>   **Lewis Brisbois Bisgaard & Smith LLP** announced that **Thomas C. Grant** and **Tracy L. Steele** were named **partners** with the firm. Grant specializes in the areas of technology, intellectual property and real estate litigation. Steele focuses her practice on general liability and insurance defense matters. The firm is located at 1180 Peachtree St. NE, Suite 2900, Atlanta, GA 30309; 404-348-8585; Fax 404-467-8845; lewisbrisbois.com.

>    **Boyd Collar Nolen & Tuggle, LLC**, announced that **Margaret R. Martin** was named a **partner** with the firm. In addition, **William A. Alexander** and **Meagan M. Hanson** joined the firm as **associates**. Martin serves clients with a variety of needs, including divorce, pre- and post-nuptial agreements, custody and post-divorce matters. Alexander and Hanson serve clients with a range of family law issues, including divorce, custody arrangements, child support and alimony issues. The firm is located at 3330 Cumberland Blvd., 100 City View, Suite 999, Atlanta, GA 30339; 770-953-4300; Fax 770-953-4700; www.bcctlaw.com.

>    **Berman Fink Van Horn P.C.** announced the promotion of **Neal Weinrich** and **Kristin Ziemanski** to **principal**. In addition, **Michelle Marchiony** joined the firm as an **associate**. Weinrich concentrates his practice on commercial litigation involving restrictive covenants, trade secrets, computer fraud and other competition-related issues. Ziemanski's areas of practice include business and real estate litigation, labor and employment and legal ethics. Marchiony's expertise includes business litigation,

general corporate, non-compete, trade secrets and unfair competition litigation, real estate transactions and mergers, acquisitions and corporate finance. The firm is located at 3475 Piedmont Road, Suite 1100, Atlanta, GA 30305; 404-261-7711; Fax 404-233-1943; www.bfvlaw.com.



Robinson

Silk

Hall Booth Smith, P.C., welcomed **Todd Robinson** and **Josh Silk** as **associates**. Robinson specializes in the defense of high exposure cases, including medical malpractice, construction,

commercial litigation, mass torts, complex business disputes, and products liability for national corporations and major insurance carriers. Silk's prior experience includes employment at W. Pitts Carr & Associates, where he focused on professional liability defense, general liability and class actions. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.



Berman

Andersen

Barber

Chang

Taylor English Duma LLP announced that **Ilene W. Berman** was named as chief operating officer at the 130-attorney firm. Berman was previously chair of the firm's employment, labor and immigration practice. In addition, the firm welcomed **Donald R. Andersen**, **Jay Michael Barber**, **Lisa E. Chang** and **Riccarda Heising**. Andersen joined the firm's intellectual property, aviation and product liability practices. Barber joined the firm's product liability, construction, aviation, environmental and employment litigation practices. Chang joined the firm's litigation and dispute resolution practice. Heising joined the firm's corporate and business practice group. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.



McFadden, White, Sprattlin & Davis, LLC, announced that **Tennille C. Hoover** joined the firm as an **associate**. Hoover concentrates her practice on serving business clients in employment law matters. The firm is located at One Ninety One Peachtree Tower, 191 Peachtree St. NE, Suite

3300, Atlanta, GA 30303; 404-419-7287; Fax 404-795-1070; www.theemploymentlawsolution.com.



Sutherland Asbill & Brennan LLP announced that **Robert O. Ball III** joined the firm's corporate practice group as a **partner**. Ball previously served as chief financial officer and chief operating officer of a private equity-backed predictive analytics and software services provider. The firm is located at 999 Peachtree St. NE, Suite 2300, Atlanta, GA 30309; 404-853-8000; Fax 404-853-8806; www.sutherland.com.



Baker Donelson announced that **Michael W. Horst** was elected **shareholder**. Horst is a member of the firm's transportation practice group, where he represents motor carriers, truck drivers and their insurers. He also represents clients in a broad range of commercial litigation matters including construction disputes, privately owned automobile dealerships, commercial lenders and finance companies. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.



Warner, Bates, McGough, McGinnis & Portnoy announced the addition of **Nancy Ingram Jordan** as **of counsel**. Jordan handles all areas of family law, including appellate matters. A native of Cobb County, she spent 15 years in the Cobb County District Attorney's office before going into private practice in Marietta to represent clients in domestic, civil and criminal trial and appellate litigation. The firm is located at 3350 Riverwood Parkway, Riverwood 100 Building, Suite 2300, Atlanta, GA 30339; 770-951-2700; Fax 770-951-2200; wbmfamilylaw.com.



Merchant & Gould announced that **W. Brook Lafferty** joined the firm as **senior counsel**. Lafferty's practice encompasses patent preparation and prosecution, IP agreement drafting and negotiation, opinions, due diligence investigations and litigation support with respect to patents, trademarks, trade secrets and trade dress. He specializes in the areas of electrical software, mechanical and licensing. The firm is located at 191 Peachtree St. NE, Suite 4300, Atlanta, GA 30303; 404-954-5100; Fax 404-954-5099; www.merchantgould.com.



Linley Jones, P.C., announced that **Angela Forstie** joined the firm as an **associate**. She worked previously for both a small boutique law firm specializing in civil litigation and a mid-sized firm in Atlanta, where she focused on legal malpractice and medical malpractice defense law for nearly four years. The firm is located at 3455 Peachtree Road NE, Suite 675, Atlanta, GA 30326; 404-418-0000; Fax 404-418-0044; linleyjones.com.



Clay



Bryan

Nelson Mullins Riley & Scarborough LLP announced that **Charles C. "Chuck" Clay** and **Marquetta J. Bryan** joined the firm as **of counsel**. Clay has experience in civil litigation, including defending class actions. A former Georgia State senator and Senate Minority Leader, he also assists clients in the public policy arena, facilitating changes in law to benefit clients and help businesses secure relationships with government agencies. Bryan focuses her litigation practice in the areas of education, employment and general litigation. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; nelsonmullins.com.



Wade

Kilpatrick Townsend & Stockton LLP announced that **Dr. Kathryn H. Wade** was elevated to **counsel** and **Meredith Francis** joined the firm as an **associate**. Wade, a member of the firm's health, life sciences & chemistry team, focuses her practice on intellectual property law. Francis joined the firm's global sourcing and technology team in the corporate, finance and real estate department. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



Maher




Murray


Mays & Kerr LLC announced that **David J. Maher** joined the firm as **of counsel** and **Winfield W. Murray** joined as an **associate**. Both focus on cases involving employment, litigation and wage and hour issues, including individual and collective actions, misclassification, unpaid hours claims and discrimination suits that violate the Fair Labor Standards Act. The firm is located at 235 Peachtree St. NE, Suite 202, Atlanta, GA 30303; 404-410-7998; www.maysandkerr.com.


WANT TO SEE YOUR NAME IN PRINT?

How to Place an Announcement in the Bench & Bar column

If you are a member of the State Bar of Georgia and you have moved, been promoted, hired an associate, taken on a partner or received a promotion or award, we would like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the *Georgia Bar Journal* will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, Chambers USA, Who's Who, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not members in good standing of the State Bar of Georgia will not be printed. For more information, please contact Stephanie Wilson, 404-527-8792 or stephaniew@gabar.org.


>  **Constangy, Brooks & Smith, LLP**, welcomed **Veronica L. Richardson** as an **associate**. She focuses her practice in workers' compensation defense. Richardson's practice includes work in defending employers, insurers and self-insurers in all workers' compensation matters. The firm is located at 230 Peachtree St. NW, Suite 2400, Atlanta, GA 30303; 404-525-8622; Fax 404-525-6955; www.constangy.com.

>  **MendenFreiman LLP** announced that **James R. Kanner** joined the firm as a **partner** in the firm's business, estates and trust practice areas. Prior to joining the firm, he was a partner at Nelson Mullins Riley & Scarborough LLP. The firm is located at Two Ravinia Drive, Suite 1200, Atlanta, GA 30346; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.

>  **DLA Piper** announced that **Daniel Rollman** was promoted to **partnership**. Rollman is a corporate and private equity lawyer with an international practice focused on representing corporations and private equity firms in connection with M&A and corporate matters, including control acquisitions and dispositions, corporate finance transactions, growth equity investments, commercial contracting, joint ventures, private securities offerings and securities compliance matters. The firm is located at One Atlantic Center, 1201 W. Peachtree St., Suite 2800, Atlanta, GA 30309; 404-736-7800; Fax 404-682-7800; www.dlapiper.com.

> **Atlanta's John Marshall Law School** announced that the Board of Directors granted **tenure to associate professors K. Lee Adams, Kari Mercer Dalton, Andrea Doneff, Patrice Fulcher, Jace C. Gatewood, Elizabeth M. Jaffe, N. Browning Jeffries and Kelly Casey Mullally**. The law school is located at 1422 W. Peachtree St. NW, Atlanta, GA 30309; 404-872-3593; Fax 404-873-3802; www.johnmarshall.edu.

In Athens

>    John W. Timmons Jr. and James C. Warnes announced that **Cecilia P. Mercer** became a named **partner** of **Timmons, Warnes & Mercer, LLP**, formerly known as Timmons, Warnes &


Associates, LLP. **Doyle L. Johnson** and **Samuel E. Thomas** joined the firm as **associates**. The firm is located at 244 E. Washington St., Athens, GA 30601; 706-548-8668; www.classiccitylaw.com.

In Augusta

>  **Burroughs|Elijah** announced that **Stephen M. Donaldson** joined the firm as **of counsel**. Donaldson represents and advises clients on a wide range of corporate and business matters including corporate governance, organization and reorganization, shareholder relations, contracts, nonprofit organizations, administrative and regulatory compliance and planning, business planning and operations. He also currently serves as general counsel and vice president of business development for DataFinch Technologies, Inc., in Atlanta. The firm is located at 924 Stevens Creek Road, Suite 107, Augusta, GA 30907; 706-364-3764; burroughselijah.com.

>    Brennan & Wasden LLC expanded its medical and professional negligence practice with the addition of three attorneys and the opening of an office in Augusta. **James V. Painter** joined as **managing partner** of the firm's new Augusta office and the firm will now operate as **Brennan, Wasden & Painter, LLC**. **F. Michael Taylor** joined the firm as a **partner** and **Amanda D. Lynde** joined as an **associate**. All three attorneys were previously with Hull Barrett, PC, in Augusta. The firm is located at 801 Broad St., Suite 501, Augusta, GA 30901; 706-250-7373; Fax 706-550-0614; www.brennanandwasden.com.

In Macon

>  **Gautreaux & Adams, LLC**, announced that **Mary Beth Hand** joined the firm's Macon office as **of counsel**. She practices in the areas of personal injury, premises liability, products liability and wrongful death. Hand previously practiced with Sell & Melton, LLP. The firm is located at 502 Mulberry St., Macon, GA 31201; 478-752-4759; www.thegalawfirm.com.

In Savannah



> **Savannah Law School**, a branch of Atlanta's John Marshall Law School, announced that the **Board of Directors** granted **tenure** to **Prof. Elizabeth Megale**. Megale teaches advanced appellate advocacy, pretrial advocacy and transactional drafting and art of advocacy. The law school is located at 516 Drayton St., Savannah, GA 31401; 912-525-3900; Fax 912-525-3915; www.savannahlawschool.org.

In Valdosta

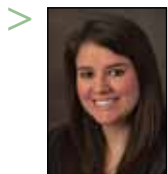


> **J. Stephen Gupton Jr. P.C.** announced a **merger** with **Coleman Talley LLP** effective April 2014. The merger is consistent with Coleman Talley's strategic goal of growing its real estate practice areas. Gupton continues to work from the office on East Gordon Street, which became Coleman Talley's dedicated residential real estate closing facility. The office is located at 201 E. Gordon St., Valdosta, GA 31601; 229-244-8850; Fax 229-333-0885; www.colemantalley.com.



> **George F. McCranie IV** announced the opening of a **second office** of the **McCranie Law Firm, P.C.** His practice concentration is on DUI and criminal defense. The new office is located at 1400 Baytree Road, Valdosta, GA 31602; 229-232-4114; Fax 229-232-4116; www.mccranielawfirm.com.

In Chattanooga, Tenn.



> **Hudson Cook, LLP**, announced that **K. Dailey Wilson** joined the firm's Chattanooga office as an **associate**. Wilson focuses her practice on compliance with state and federal consumer financial services law. The

firm is located at 6005 Century Oaks Drive, Suite 500, Chattanooga, TN 37416; 423-490-7560; Fax 423-490-7558; hudco.com.

In Raleigh, N.C.



> **Nelson Mullins Riley & Scarborough LLP** announced the addition of **R. Scott Tobin** as a **partner**. Tobin assists clients in North Carolina, Georgia and beyond in corporate matters, including venture capital and mergers and acquisitions.

He concentrates his practice in the areas of technology finance, mergers and acquisitions, corporate governance and business litigation. The firm is located at GlenLake One, Suite 200, 4140 Parklake Ave., Raleigh, NC 27612; 919-877-3800; Fax 919-877-3799; nelsonmullins.com.

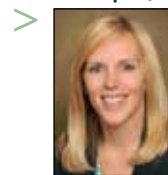
In Tallahassee, Fla.



> **Baker Donelson** announced the opening of a new office in Tallahassee. In addition, **Dena H. Sokolow** joined the firm as a **shareholder** and a member of the firm's labor and employment group.

The firm is located at 101 N. Monroe St., Suite 925, Tallahassee, FL 32301; 850-425-7500; www.bakerdonelson.com.

In Tampa, Fla.



> **Smolker, Bartlett, Schlosser, Loeb & Hinds, P.A.**, announced that **Shannon Sheppard** was promoted to **equity shareholder**. Since 2004, Sheppard has concentrated her practice in the area of commercial real estate transactions. The

firm is located at 500 E. Kennedy Blvd., Suite 200, Tampa, FL 33602; 813-223-3888; Fax 813-228-6422; www.smolkerbartlett.com.



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Lawyer Advertising: Get to Know the New Rules

by Paula Frederick

“I told you we need a marketing director,” your paralegal declares as she enters your office. “Check this out!” She appropriates your computer and brings up the Bar’s website.

“It’s right here under Latest News,” she says, scrolling down the homepage. “Did you know that there are new Rules of Professional Conduct dealing with lawyer advertising?”

“Ummm . . . no,” you admit. “Anything we need to worry about?”

“Nothing major, but we definitely need to review all of our marketing materials to be sure they comply. Aren’t you glad I’m paying attention? Your license could be on the line if you miss stuff like this!”

“I hereby proclaim thee director of marketing,” you announce.

By order of March 21, 2014, the Supreme Court of Georgia approved amendments to Rule 7.2. The changes require additional disclaimers and disclosures for ads directed to potential clients in Georgia or offering to provide legal services in the state.


Advertisements must now include the name, telephone number and full office address of each lawyer or law firm who paid for the ad and who takes responsibility for it. If an ad includes a non-attorney spokesperson or uses actors to portray either lawyers or clients, that fact must be prominently disclosed.

If the advertising lawyer refers most potential clients to other lawyers, he must disclose that fact and comply with the rules regarding referral services. There are additional requirements for lawyers who advertise fixed fees for services, or who send ads that resemble legal documents.



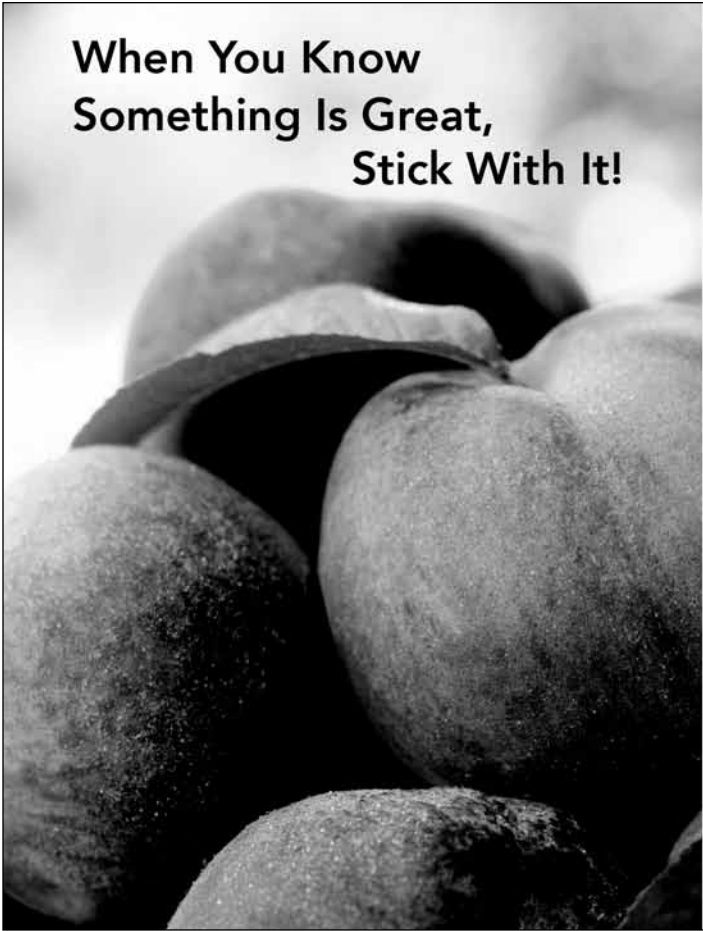
The Bar’s Fair Market Practices Committee recommended the changes as part of its ongoing mission to protect consumers of legal services from false or misleading advertisements.

Lawyers have a reasonable time (which will vary based upon the type of ad) to bring their advertisements into compliance.

Please take a moment to check your marketing materials to be sure that they meet the requirements of the new rules. 



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



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Discipline Summaries

(Feb. 25, 2014 through April 25, 2014)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Leah Rochelle Brown

Alpharetta, Ga.

Admitted to Bar 1988

On March 3, 2014, the Supreme Court of Georgia disbarred attorney Leah Rochelle Brown (State Bar No. 088515). The following facts are deemed admitted by default: Brown was paid to represent four different clients in domestic relations cases. In each case she completely abandoned the client's matter. The Court found an extensive pattern of client neglect.

Sharla Monique Gorman

Savannah, Ga.

Admitted to Bar 2007

On March 3, 2014, the Supreme Court of Georgia disbarred attorney Sharla Monique Gorman (State Bar No. 149925). The following facts are deemed admitted by default:

Gorman represented a client and her daughter in an automobile accident case. The case settled and Gorman received two checks totaling \$5,000 from the insurance company in March 2012. Gorman sent her client release forms and the checks with instructions to deposit the checks into an account number, which was Gorman's personal or business account. Gorman was supposed to pay the medical providers out of those funds but she did not do so, nor did she pay her client the client's share of the settlement funds. The client attempted to contact Gorman but she never responded. The medical providers began contacting the client for payment, so she filed a grievance with the State Bar. Gorman stated that she failed to make a proper accounting of the funds but offered to repay her client on a monthly basis. Gorman did not make those payments or account to her client for the funds. Gorman co-mingled the funds with her personal funds and used them to pay personal expenses. In January 2013, the client filed

suit against Gorman in magistrate court demanding payment of her settlement funds. By consent order, Gorman agreed to pay \$6,850 in monthly installments beginning in May 2013. As of the date of the formal complaint Gorman had made three payments, but was late in doing so.

Arjun S. Kapoor

Macon, Ga.

Admitted to Bar 1995

On March 10, 2014, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Arjun S. Kapoor (State Bar No. 407514). Kapoor entered a First Offender plea to one count of the sale of methamphetamine in the Superior Court of Bibb County.

Eric Jerome Carter

Atlanta, Ga.

Admitted to Bar 2000

On March 3, 2014, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Eric Jerome Carter (State Bar No. 113916). In two matters Carter was appointed to represent defendants in post-conviction criminal proceedings. Although he filed appeals in the cases, he failed to take steps to ensure that the transcripts were transmitted to the court, failed to take the actions necessary to proceed with his clients' appeals, and, in one case, failed to communicate with his client about the status of his appeal. When one of the clients filed a grievance, he made misrepresentations to the State Bar.

In a third matter Carter represented a family in personal injury claims arising from an automobile accident in which the parents and their two children were injured. Carter filed suit after the family was not satisfied with the initial settlement offer. The father later authorized Carter to settle the claims for the amounts originally offered provided that a chiropractor's bill

would be reduced by 40 percent. The insurer sent Carter settlement checks and releases for each client and in spite of the insurer's direction that the checks not be negotiated until the releases were executed, Carter deposited the checks into his trust account. Carter notified the father that he had received the checks, and negotiated some reductions of the family's medical bills, but did not provide any documentation or any information about liens as to the medical bills. Carter has not obtained the signatures on any releases, and has not disbursed payments. Carter received a Formal Letter of Admonition in 2006 and an Investigative Panel reprimand in 2008.

Denise L. Majette

Stone Mountain, Ga.
Admitted to Bar 1983

On March 28, 2014, the Supreme Court of Georgia disbarred attorney Denise L. Majette (State Bar No. 746843). Majette submitted fraudulent time sheets and invoices in connection with litigation involving an estate case in 2010. The special master found that by submitting unsupported and misleading time sheets and invoices to her client, misrepresenting her hours and fees to the Court, and misrepresenting in the disciplinary process the payments received, Majette committed several violations of the Bar rules. In mitigation of discipline, the special master found that Majette had no prior discipline, but found in aggravation that there were multiple offenses, submission of false statements or evidence in the trust litigation and the disciplinary process, refusal to acknowledge the wrongful nature of her conduct and substantial experience in the practice of law.

Justices Thompson and Melton dissented. Benham not participating.

Edward T. Murray

Dallas, Ga.
Admitted to Bar 1976

On March 28, 2014, the Supreme Court of Georgia disbarred attorney

Edward T. Murray (State Bar No. 531725). In four cases, Murray failed to properly communicate with his clients, and failed to properly supervise his staff and monitor his cases.

In the first case, Murray failed to notify his client about hearings in the client's divorce case or about the status of the case, and did not respond to the client's attempts to contact him.

In another case, Murray represented a client in Georgia who obtained a divorce in Alabama. Murray filed documents, with numerous mistakes, in the wrong county. Opposing counsel attempted to communicate with Murray and offered to file a motion to transfer, but Murray failed to correct his errors.

In another case, Murray was retained to file a divorce action for a client, but sent her an incomplete complaint without a case number. She terminated Murray and hired new counsel. New counsel asked Murray to dismiss the original complaint. Murray refused to refund the retainer and did not dismiss the complaint until after the client filed a grievance. Murray blamed others in his office for the errors.

In the last case, Murray failed to appear at a hearing and a default judgment was entered against his client.

Justices Thompson Benham and Melton dissented.

Sarah Spence Cooksey

Atlanta, Ga.
Admitted to Bar 2009

On April 22, 2014, the Supreme Court of Georgia disbarred attorney Sarah Spence Cooksey (State Bar No. 388668). The following facts are deemed admitted by default:

Cooksey began representing a client in October 2010 while she was associated with a law firm. Cooksey resigned from the firm in December 2010 and informed the firm that the client wished her to continue to represent him. In January 2011, Cooksey failed

to attend two hearings held in the trial court in the client's case, but she did file a USCR Rule 5.2 certificate of service indicating that she had provided discovery requests to opposing counsel. Cooksey did appear at a Feb. 28, 2011 hearing, but thereafter the client was unable to communicate with Cooksey. Cooksey did not respond to the client's calls or emails, and she vacated her office. Cooksey failed to attend subsequent hearings held in the client's case, but wrote to the trial judge, falsely claiming that the client had not retained her, that she had filed no pleadings with the court after her resignation from the law firm, and that the client had met with attorneys at the law firm, including her replacement.

Suspensions

Pamela Michelle Bounds

Ocala, Fla.
Admitted to Bar 1991

On March 3, 2014, the Supreme Court accepted the petition for voluntary discipline of attorney Pamela

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



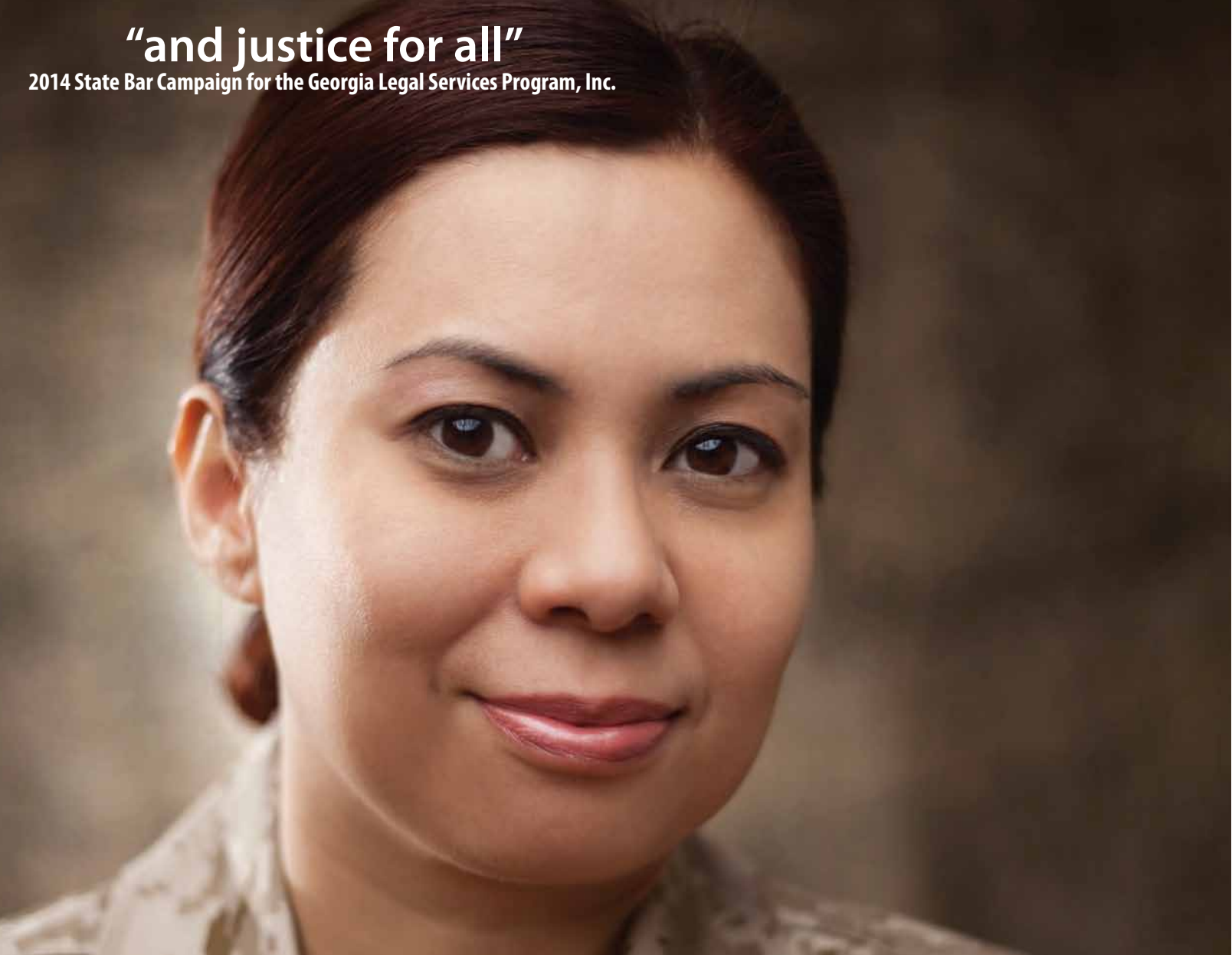
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After serving nine years in the Army, Ms. Jones had back and spine injuries, limitations on her mobility and a 30 per cent Veterans Administration disability rating. She landed a job with the Veterans Administration, but found she was having problems getting from her assigned parking lot to her work site. She sought a permit to park in handicapped parking but was turned down by her supervisor. She asked for help from her union representative and the human relations staff, but those efforts resulted in her dismissal. Further, when she applied for unemployment benefits, the Georgia Department of Labor denied the claim. Her GLSP lawyer represented her at an administrative hearing and succeeded in getting her benefits as well as back payments.



State Bar of Georgia



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(The client story is used with permission. The photograph and name do not necessarily represent the actual client.)

Michelle Bounds (State Bar No. 070325) after the imposition of discipline in Florida, but before reciprocal discipline proceedings were initiated in Georgia for a 30-day suspension with conditions for reinstatement. The Supreme Court of Florida entered an order on Nov. 27, 2013, finding that while Bounds was working for a law firm, she referred clients who approached her with cases outside her firm's area of expertise to other law firms and retained referral fees from those firms for herself. When Bounds learned that her employer claimed the right to such fees, she reimbursed the firm for all referral fees that she had retained. The Florida Supreme Court suspended Bounds for 30 days; placed her on probation for one year following her reinstatement; required her to attend Ethics School; and required her to pay the costs associated with the disciplinary action. Bounds then filed this petition for voluntary discipline seeking the same discipline in Georgia. Georgia's disciplinary system does not include probation. The Supreme Court of Georgia suspended Bounds for 30 days with reinstatement in Georgia conditioned upon her reinstatement in Florida.

Fred T. Hanzelik

Chattanooga, Tenn.
Admitted to Bar 1976

As reciprocal discipline, on March 5, 2014, the Supreme Court of Georgia suspended attorney Fred T. Hanzelik (State Bar No. 323950) for six months retroactive to April 1, 2013, followed by a 45-day suspension with the first 24 days to run concurrently with the six-month suspension and the last 21 days to run consecutively.

S14Y0549—The Supreme Court of Tennessee suspended Hanzelik on Oct. 18, 2012, for a period of one year, with six months to be served with an actual suspension and the remaining six months to be served on probation. The suspension was based on a petition for voluntary discipline in three separate disciplinary proceedings involving

abandonment, failure to communicate and failure to account for fees.

S14Y0550—Hanzelik was suspended in Tennessee for 45 days effective Oct. 27, 2012, for attempting to charge his client and estate twice for the same legal services in one case, and for failing to act with diligence and not communicating clearly with his client in a divorce proceeding in another matter.

Given the fact that Hanzelik was reinstated to practice in Tennessee on April 28, 2013, that he ceased practicing in Georgia on April 1, 2013, and that 24 days of his Tennessee suspensions overlapped, the Supreme Court of Georgia ordered Hanzelik suspended for six months retroactive to April 1, 2013, followed by a 45-day suspension with the first 24 days to run concurrently with the six-month suspension and the last 21 days to run consecutively.

Reinstatement Granted

Christopher Todd Adams

Lawrenceville, Ga.
Admitted to Bar 1992

On April 3, 2014, the Supreme Court of Georgia determined that attorney Christopher Todd Adams (State Bar No. 002715) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law in Georgia effective April 15, 2014.

Ronald James Kurpiers II

Riverview, Fla.
Admitted to Bar 2004


On April 7, 2014, the Supreme Court of Georgia determined that attorney Ronald James Kurpiers II (State Bar No. 430474) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law in Georgia effective April 7, 2014.

Dale Anthony Calomeni

Roswell, Ga.
Admitted to Bar 2000

On April 22, 2014, the Supreme Court of Georgia determined that attorney Dale A. Calomeni (State Bar No. 105311) had complied with all of the conditions for reinstatement following his suspension, and reinstated him to the practice of law in Georgia effective April 22, 2014.

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 February 25, 2014, one lawyer has been suspended for violating this Rule and three have been reinstated. 



Connie P. Henry is the clerk of the State Disciplinary Board and can be reached at connieh@gabar.org.

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Why Lawyers Hate to Track Time and What They Should Do About It

by Natalie R. Kelly

Tracking time is the bane of many a lawyer's existence. The whining, complaining and outright refusals to track time, sound something like this:

- "I don't need to track time because I flat-fee bill all of my clients."
- "I just do it when I need to get the bills out, and that's not every day."
- "Why would anyone ever track time for a contingency matter? That's why I don't do it."
- "Well, I try to, but lots of times I just forget."
- "I'm just not going to do it!"

While sentiments like these may hit home with you, there is a valid business reason that you should track time. Here's how tracking time can be done with less angst, and some of the benefits one can derive from putting on paper—or screen—what one does in six-minute increments.

Six Really Good Reasons You Should Track Your Time

Tracking is a habit you can learn

Like most other work habits, tracking time is something you learn to do by repetition, and with practice you find yourself doing it almost effortlessly. The frustrating part of doing things you don't care to do is getting started. So like working out or planning a visit to the doctor, you should find someone to hold you accountable and then just do it.



Helps you understand your work habits

Do you find you are more productive in the early afternoons? Or do you prefer to manage several smaller billable tasks as soon as you get to your office in the morning? Tracking time and then reviewing your entries will show you how you work and substantiate what you already felt about how you work. This is important because you can then plan future projects and revamp your blocked scheduling to become even more productive.

Gives the client, and often the court, a good record of what has been done

Having to stall and dance around producing your billing statement happens when you don't have your

time tracked properly. You can avoid this by using the time entries as your working status report for every matter you handle. This can save embarrassment and frustration on the part of your clients, as well as keep the court from asking you "What's going on in this case?"

Works to eliminate cash flow bottlenecks

If the bookkeeping staff is tracking you down for time entries, then there's a serious problem. You are holding up the flow of cash for the practice. Many firms use time tracking as a tool to achieve timely billing. This links directly to when and how clients are likely to pay the firm. If the firm has to wait on your time entries to complete a client's billing, it's waiting on money.

Shows where non-billable time is spent

Not every time entry will be for billable work. Just to see how much time you've put into developing a particular business area or working in the community goes a long way toward long-range planning. Seeing where non-billable time is spent can help grow and direct the firm.

Helps budget time and resources for similar work in the future

Even if the work is now done on a flat-fee or value-based system, understanding how much time you've put into the process can be invaluable in determining exactly how profitable certain work is. Being able to compare the firm's former billable hourly rates to the structures in place for alternative billing schemes lets the firm know it's on the right track in terms of profitability. It is also the way the firm can know it is offering the right pricing structure for new matters.

Tips for Time Tracking

Track time daily (yes, daily)

Tracking your time every day allows you to capture more billable time and to work from a more profitable angle. The time spent trying to remember how long things from the past lasted are much more difficult, and the absolute best way to capture a truer measure of how long it took you to do something is to do it as you work. Even those who claim weekly time tracking works best for them are experiencing time leakage.

Keep time tracking tools handy wherever you work

Generally, you won't have to worry about having waterproof notes, but you should be able to easily capture the time for the call you took or email you answered from a hotel room or airport lobby. Time tracking on smartphones and tablets is easy via apps and entry programs that link back to the firm's larger time billing and accounting programs.

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Demonstrating that professionalism is the hallmark of the practice of law, the Law School Orientations have become a central feature of the orientation process for entering students at each of the state's law schools for more than 20 years.

The Professionalism Committee is now seeking lawyers and judges to volunteer to return to your alma maters or to any of the schools to help give back part of what the profession has given you by dedicating a half day of your time this August.

You will be paired with a co-leader and will lead students in a discussion of hypothetical professionalism and ethics issues.

Minimal preparation is necessary for the leaders. Review the provided hypos, which include annotations and suggested questions, and arrive at the school 20 minutes prior to the program. Pair up with a friend or classmate to co-lead a group

Please consider participation in this project and encourage your colleagues to volunteer.



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Note: phone, fax numbers & email addresses may be shared with group leaders and law schools.

Return form to: State Bar Committee on Professionalism: Attn: Nneka Harris-Daniel • Suite 620 • 104 Marietta Street, NW • Atlanta, GA 30303 • ph: (404) 225-5040 • fax: (404) 225-5041 • email: Nneka@cjcpga.org

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Saturday, August 16
9:30-12:00 (tentative)



Georgia State University College of Law
Tuesday, August 12
3:00-5:45 (tentative)



Mercer University School of Law
Friday, August 15
1:30-3:30



Savannah Law School
Saturday, August 16
10:15-12:45



University of Georgia School of Law
Friday, August 15
2:00-4:30 (tentative)



Check out time tracking apps

Time tracking apps are available for both standalone work and as a part of larger time and billing applications. Take advantage of these easy to use systems to not miss a beat in tracking time while you are on the go. Some of the apps we keep hearing about are iTimekeep, Toggl, Taskbiller and Timesheet, but there are many more you can explore. Find one or two that makes it easy for you to capture time from wherever you are working.

Don't do it alone

Have your staff track time, too. Getting an idea of how your staff is spending their time can be invaluable in determining needs for resources and growth of the firm. If you are billing the work of staff, be sure to monitor the entries for accuracy. You can also count on them to remind you to track time on matters as you work on it, and even attach rewards to the process to make it more game-like if necessary.

Learn to navigate shortcuts in time and billing programs

Time entries can become repetitive. Mastering abbreviations and other short cuts in input can help save even more time. Most tracking programs—at least those attached to larger time and billing systems—have the ability to expand text from “TC” to “telephone conference with client concerning” or something similar.

Use time and billing software to make the process less onerous

Time and billing software can make billing as easy as the push of a button. But it will only be successful if every billable item is recorded before that button is pushed. Today's time and billing products, whether cloud-based or of the traditional variety, have the ability to easily capture time and interact with your calendaring and other productions tools to deter-

mine if time entries are missing, or that you need to track time on completed items. This can be beneficial in making sure all time is properly captured.

Go the extra mile with productivity and time reports

Tracking the time is just the beginning. Look beyond the entries to gain insight into your habits, trends and practice concerns. Reporting is generally available in time tracking tools and apps, too!

Do sample profitability tracking

If you flat-fee bill everything or manage only contingency matters, then use time tracking to check profitability. The only way to really determine if you're as profitable as you think you are is to compare it to traditional hourly billing models so you are able to put a price tag on your services. While it may not be necessary to continue to track time after you've seen your profitability, you should do this periodically to make sure your pricing is on track.

Try a three-day time-tracking challenge

If you are not already required to track time, then plan a three-day period where you will track time for everything you do related to your law practice. Note when you are eating lunch, taking breaks, reading the newspaper and answering email. Don't forget phone calls and drafting documents or even

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just reviewing files and delegating work to staff. Track your time for *everything* and do it for three days without skipping a day. Examine the results from this exercise, and if results are meaningful in any way, then plan to keep going or put on your calendar to repeat the exercise in a week or month.

Enter your own time

Many lawyers still record time and have staff re-enter it. However, this is more time-consuming than allowing for immediate capture as soon as the work is completed. Learning to type entries directly into an app or time and billing program can result in net gains in terms of overall time and productivity. The time it takes staff to re-enter data can be spent on other billable work most likely.

Perhaps there's just no convincing some lawyers that tracking time is well worth their time, but it's definitely an area of concern for most practitioners. Interestingly enough, it's an area that they themselves can control, even if it is just minute by minute. If you need more assistance with tracking your time, just give a call or send us an email, but remember to start your timer! 



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.

Pro Bono Honor Roll



The Pro Bono Project 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 the indigent in civil pro bono programs during 2013.

** denotes attorneys who have accepted three or more cases*

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The State Bar of Georgia Website:

One of Your Member Benefits

by Sheila Baldwin

The 44,856 active and inactive members in good standing of the State Bar of Georgia may not fully appreciate one of their most valuable benefits, the Bar website. The wealth of information and beautiful design earned the website a 2012 Luminary Award as the best website in the large bar division. The Luminaries are presented by the Communications Section of NABE (National Association of Bar Executives) to honor achievement by bar associations. The judges considered the website to be a, “very appealing, well organized, and informative website, without being cluttered . . . a great use of color and graphics.” Besides recognizing this achievement by Sarah Coole, director of communications, and the Communications Department, this overview of the website is meant to highlight resources and information that may be helpful to you in your practice.

The precise number of attorneys referenced in the first sentence of this article is an example of one of many facts stored on the website. More practically,

lawyers can find resources available at the conference center on the third floor, what hotels in the area offer discounts, how to locate professional liability or private health insurance, which banks are approved for our members’ trust accounts and where to get a free cup of gourmet coffee at the Bar. How would you find this information most quickly?

The website is equipped with two tools to help you navigate our site—the Search function and the Site Map. The Search function can be found at the top of each page and allows a search over the entire site for information (see fig. 1). Running a search using a keyword such as “forms” will result in a wide number of practice management forms, but you will also find forms that apply to other subject matters as well. If it’s practice management forms you are interested in, you can narrow to fewer, more relevant results by choosing a category such as “attorney resources” utilizing the Site Map, a detailed listing of all major areas of the Bar’s website found at the bottom of each page. It provides the big picture of what resources are available and contains a link to each page. This might be a good way to find the answers to the resources mentioned in the previous paragraph; conference center, discounts, insurance and banks (see fig. 2).


The navigation toolbar offers the option to search eight areas utilizing their drop down menus. Icons also link to content in some cases. Clicking the Bar’s logo at the top left of any page will bring you back to the home page and clicking the Fastcase logo will open up one of your best member benefits, Fastcase Legal Research.

Networking is important in today’s competitive market. Perhaps you’d like to connect with real estate attorneys in your area who are former law school alumni. Use the membership drop down list in the navigation toolbar and select “Member Directory.” Choose “Real Property Law” from the section dropdown menu, and enter your law school name and your city to find a list of attorneys that fit

those criteria (see fig. 3). Maybe you are refocusing your practice to a specific area of law and want to network with other like-minded lawyers. The Sections tab under “Committees, Programs & Sections” list 48 sections that provide service to the legal profession through meetings, newsletters and discussion boards.

Some of the best resources are found under the practice management tab under the “Attorney Resources” dropdown menu. Browse our online forms and articles collections, check out a book or videotape from our library or learn more about our on-site management consultations and training sessions. The new “Solo and Small Firm Resources” page includes a place for small firm owners to discuss daily issues. Find links to videos under the “Law Office Start Up Resources” with topics such as *Starting a Practice, Budgeting and Finance, Building a Client Base, Money Talks and Managing the Matter*.

The calendar is the place to look for ICLE classes, committee meetings, Young Lawyers Division and Section events and Fastcase Training. Under “My Account” members can edit their profile, pay dues, check CLE status and even visit the online Store. Under “News and Publications” you can read a current or archived online version of the *Georgia Bar Journal* as well as a selection of other publications. The “Bar Rules” tab provides you with access to all of the State Bar’s Rules, which are provided in an indexed format for easy searching.

This article presents a modicum of what is available to our members through the Bar website. Take time to visit www.gabar.org and you will find that this site can be one of your most helpful member benefits. For questions or comments please call me at 404-526-8618 or sheilab@gabar.org. 

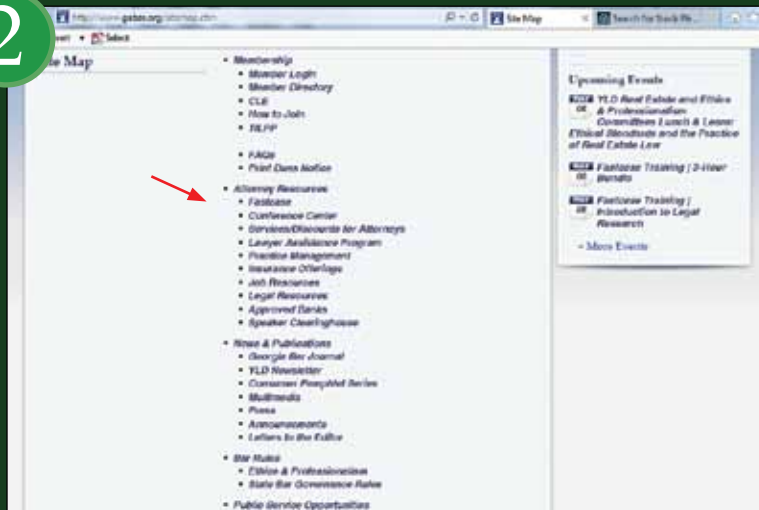


Sheila Baldwin is the member benefits coordinator of the State Bar of Georgia and can be reached at sheilab@gabar.org.

1



2



3



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

“Breaking Up Is Hard to Do”— Withdrawal Letters

by Karen Sneddon and David Hricik

Many legal representations conclude after most, if not all, of the client’s goals are achieved. Sometimes, however, the representation concludes before the client’s matter is fully resolved. This installment of “Writing Matters” continues to focus on the letters that lawyers write by exploring the withdrawal letter. Withdrawal letters are important documents that can be tricky to write. After all, as Neil Sedaka sang, “Breaking up is hard to do.” This installment shares some suggestions.

The ethical framework in which withdrawal occurs in some measure informs the content of a withdrawal letter. There are three conditions for withdrawal. First, if the rules do not permit or require withdrawal, then it is unethical for a lawyer to do so. Withdrawal may be mandatory or permissive. In general, a lawyer must withdraw if: (1) continuing the representation would require the lawyer to violate the law or disciplinary rules; (2) the lawyer’s physical or mental condition impairs the lawyer’s ability to represent the client; or (3) the client terminates the lawyer-client relationship.¹ A lawyer may withdraw from representation for a variety of reasons, including: (1) when

the client insists on a course of action the lawyer finds repugnant or with which the lawyer fundamentally disagrees; (2) the client is using the lawyer’s services to perpetuate a crime or fraud; (3) the representation will result in “an unreasonable financial burden” on the lawyer; or (4) the client has rendered the representation “unreasonably difficult.”² Second, if withdrawal is proper *and* the matter is pending before a tribunal, a lawyer must follow any applicable procedural rules. Tribunals often require approval before a lawyer may withdraw, and sometimes mandate specific procedures to do so. Third, if withdrawal is proper and, if pending before a court is permitted by that tribunal, a lawyer must take steps reasonably practicable to protect the client’s interests.³

These conditions frame the contents of a withdrawal letter. It should explain the basis for withdrawal and identify the steps the lawyer will take to protect the client, and those steps that the client needs to take to protect the client’s own interests.

The withdrawal letter should follow the standard business format, including a notation of the manner of delivery. In some instances, such as when the lawyer-client relationship has deteriorated, the client’s signature should be required to acknowledge delivery. With respect to the letter’s tone, an objective and professional tone is key. Even if withdrawal is taking place when either the lawyer or client do not want it to occur, the lawyer should refrain from using the withdrawal letter to do anything other than address the withdrawal.

With respect to substance, the withdrawal letter should focus on three broad topics: (1) notifying the client of the withdrawal; (2) seeking the client’s per-

mission or acknowledgment, as the case may be; and (3) describing the implications of the withdrawal, including particularly the client's obligations to protect the client's own interests.

The withdrawal letter provides notice to the client of the impending withdrawal of legal representation. Even if the lawyer and the client have discussed withdrawal during an in-person meeting, a letter should memorialize the event. The letter will also identify the reasons for the lawyer's withdrawal. Often, a client must be given reasonable time to prepare for withdrawal in order to avoid material foreseeable prejudice. As such, the effective date of withdrawal should be set to provide time for the client to hire another lawyer, if needed.


The implications of the withdrawal should be the core of the letter. To minimize the adverse effects of withdrawal, the letter should advise the client to find replacement counsel, if needed. The letter should explain that the lawyer will reasonably cooperate with any new counsel. For instance, the letter can inform the client that the client's file may be either given directly to the client or to new counsel.

The letter should also summarize the status of the matter. For instance, if a deadline is approaching, the lawyer should identify what steps are needed to meet it. The letter should be clear if the lawyer is not going to take steps to meet that deadline and identify any obvious consequences of failing to meet it. The letter should reassure the client of the lawyer's continuing duty to preserve and protect the client's confidences.

Describing the handling of outstanding legal fees may also be appropriate. Similarly, if applicable, the letter should note that unearned fees, payment for expenses not incurred will be refunded to the client, and any client property held by the lawyer will be returned.

"Breaking up may be hard to do," but a lawyer withdrawing



from a representation must satisfy the ethical rules and communicate effectively. This installment shares some tips on how to do so. 



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



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

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

Endnotes

1. ABA Model R. Prof'l Conduct 1.16 (a).
2. *Id.* at 1.16 (b).
3. *Id.* at 1.16(d).

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The Chief Justice's Commission on Professionalism at 25: Celebrates, Commemorates and Elevates Professionalism

by Avarita L. Hanson

"Things do not happen. Things are made to happen." – John F. Kennedy

There are moments in life that cause us to pause and give thanks and recognition to individuals, groups and events. The 25th anniversary of the Chief Justice's Commission on Professionalism was such an occasion. On March 25, well-wishers from around Georgia gathered at the Commerce Club in Atlanta to celebrate, commemorate and elevate the cause of legal professionalism in Georgia. It was also an opportunity to advance access to justice by raising more than \$41,000 for the benefit of the Georgia Legal Services Program (GLSP) to make justice more accessible to low-income Georgians.

Since 1989, Georgia lawyers have had an institution to address all things professional: the Chief Justice's Commission on Professionalism (the Commission). The Commission has remained steadfast and loyal to its mission, which is 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



Photos by Don Morgan Photography

Supreme Court of Georgia Chief Justice Hugh P. Thompson, current Commission chair, addresses the attendees.

the law and the legal system and to ensure access to that system. Over its 25 years the Commission has been led by 10 chief justices: Robert Benham, George H. Carley, Harold G. Clarke, Norman S. Fletcher, Carol W. Hunstein, Willis B. Hunt Jr., Thomas O. Marshall, Leah Ward Sears, Hugh P. Thompson and Charles L. Weltner.

The Commission is currently made up of 22 members: one representative each from the federal district court, supreme court, court of appeals, superior court and state court; a representative from the five law schools; four lawyers representing segments of the bar (in-house counsel, prosecutors, defense lawyers and government attorneys); four lawyers at-large; two public members; and the State Bar and YLD presidents.

Chief Justice Hugh P. Thompson, current Commission chair, is focusing attention on the Commission's charge to consider efforts by lawyers and judges to improve the administration of justice and to examine ways of making the system of justice more accessible to the public. As he said at the event:

I believe that in our increasingly diverse and growing state, another component of professionalism is the work we do to ensure that all people have access to justice. As I said earlier this year in the annual State of the Judiciary Address to the Georgia Legislature, those of us who grew up saying the Pledge of Allegiance never believed that when we promised liberty and justice for all, we really meant liberty and justice only for those who can afford it. To safeguard the future of our legal and justice system, we must do all that we can do to guarantee access to justice, as our laws are not made just for a few.

Chief Justice Thompson pointed out the worthy champions of justice recognized on this evening



(Left to right) Alex Booth, A. James Elliott, Chief Justice Hugh P. Thompson and Attorney General Sam Olens



(Left to right) Avarita L. Hanson, R. William (Bill) Ide and A. James Elliott



(Left to right) YLD President Darrell Sutton, Brantley Rowlen and Jennifer Davis



(Left to right) Terrica Redfield Ganzy, C. Joy Lampley Fortson, Avarita L. Hanson, Hon. Kimberly Esmond Adams, President-Elect Patrise Perkins-Hooker and Dawn M. Jones

for providing representation to Georgia's most vulnerable citizens—GLSP Executive Director Phyllis Holmen and Jim Elliott. He said, "Jim has done perhaps more than anyone to uplift our profession and demand that we keep our sights on ensuring access to justice for all citizens not just those who can afford it."

The evening's program began with the celebration of the Commission's 25th anniversary, followed by the recognition of GLSP's role in providing access to justice to low-income Georgians and ended with a tribute to Commission co-founder, A. James Elliott. State Bar President-Elect Patrise M. Perkins-Hooker and YLD President Darrell Sutton gave opening remarks, followed by an invocation from John T. Marshall.

The audience was treated to three video presentations highlighting the history of the Commission, the current work of GLSP and a depiction of the life and contributions of A. James Elliott.

The event's beneficiary, GLSP, was represented by Holmen and

board members C. Ben Garren Jr. and Terrica Redfield Ganzy. They accepted a mock check from Avarita L. Hanson, Commission executive director, who in jest said the check was left blank because they wanted to see how high the final amount could go.

The evening culminated with a tribute to Emory Law School Associate Dean A. James Elliott, one of five co-founders of the Chief Justice's Commission on Professionalism. Elliott is the primary architect of Georgia's mandatory Interest on Lawyers Trust Accounts Program (IOLTA) for funding legal aid and public interest projects. Since its inception, the IOLTA Program has raised more than \$100 million for legal aid. He is also a past State Bar president, past YLD President and co-founder of GLSP.

The Elliott tribute began with comments by R. William (Bill) Ide, past president of the American Bar Association, current partner at McKenna Long & Aldridge, past YLD president and co-founder of GLSP. Ide recounted GLSP's beginnings and the challenges

of providing access to justice in rural Georgia. Of Elliott, Ide said: "It has been special to watch this man do these wonderful projects you've heard about tonight and take such leadership, all for the good of others. . . . And it's always clear, he's not acting out of his ego but he's acting for the better good, where he really sees something that could make a difference."

In response, Elliott first asked all present who had not been recognized to stand. Some were family, friends, bar colleagues, Emory colleagues and admirers of Elliott. Some were current and former attorneys and staff members, or current and former board members of GLSP. Many were current and former members, staff and honorees of the Commission. It was a reunion of sorts of those connected to professionalism and access to justice.

To the point of access to justice, Elliott took a more serious stance, saying:

We are the eighth most populous state and the 10th poor-

est. The need is great. What can we do? Well Buck [Ruffin, State Bar president] appointed a commission to look into alternative funding sources, and the first two they identified dealt with raising *pro hac vice* fees and an interest equalization which would require lawyers to put their money in banks that agreed to pay the same amount of money on those IOLTA funds as they do to other savers. Of course, right now, since the banks aren't paying anybody anything we probably won't hear much of an objection from the banks, but it may be a while before that ends up raising money. We're still 4 million dollars short.

Where do we go? Well, I don't think there is but one answer and I understand that heavy objects may get thrown quickly. We need a dues increase from members of the State Bar, all of which goes to support legal services. Think about it. If dues were increased by \$50 a year, that would raise close to two and a half million dollars. For those of you who are quick with math, you could probably say, 'well if it were \$100 it would raise all the money.' That might be going a little quickly. Maybe something over a three-year period, that might get to that. But it's the only source that I know that we're going to be able to get back the funding necessary. . . . We have been given temporary custody of the judicial system. The people grant us that, but they expect something in return. Fortunately, our Supreme Court has been dedicated, as long as I've been aware of, to access to justice and as we all know, our current chief made that the hallmark of his term. It is critical. So if you believe the same way, join with me in encouraging that we seek a dues increase.

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Elliott acknowledged that his position "would not be popular but it would be the right thing to do." He graciously thanked all of those who made the evening special for him, particularly Commission staff Avarita Hanson, Terie Latala and Nneka Harris-Daniel. He left much food for thought and opportunity for Georgia lawyers to consider making a greater commitment to access to justice.

After the evening, Holmen said: "I am still savoring and treasuring the memories of that evening, and I hope you (Avarita Hanson) know how grateful we are that you and the Commission chose to make GLSP your beneficiary. And wouldn't you know Jim Elliott would choose that moment to push even harder to generate support for GLSP. The event drew old and new friends, many of whom I had no idea were supporters of GLSP."

Thank you to our Diamond Level Sponsors: the *Daily Report* and King & Spalding; Gold Level Sponsors: Alston & Bird LLP and Sutherland; and Silver Level Sponsors: Anderson, Walker & Reichert LLP, Baker Donelson, Georgia-Pacific, Hall Booth Smith, P.C., Mauldin & Jenkins, Leibel Law, Oliver Maner LLP, Schiff-Hardin LLP and the Young Lawyers Division of the State Bar. Their generous contributions will help provide legal services to more low-income Georgians,

increasing the ability to positively resolve their legal matters.

Special thanks to the 25th Anniversary Committee: Frank S. Alexander, Elizabeth L. Fite, Avarita L. Hanson, Charles L. Ruffin, Claudia S. Saari, Lynne E. Scroggins, Hon. Leah Ward Sears (Ret.) and Darrell L. Sutton. We thank our partner and beneficiary, GLSP for the contributions of its board members: Terrica Redfield Ganzy, Damon Elmore, and C. Ben Garren Jr., and GLSP staff: Phyllis Holmen, Jeannette Burroughs, Sandy Wei and Darlene Rushing. We also appreciate the work of the State Bar of Georgia staff: Stephanie Wilson, Mary McAfee and Jennifer Mason, as well as photographer Don Morgan, and videographer Vince Bailey, in making the program a success.

The 25th anniversary of the Commission is cause for celebration, commemoration and elevation of all things professional to Georgia's bench and bar. It is also a confirmation of what I often say: "Ultimately, what counts is not what we do for a living; it is what we do for the living." Now for our next act. 



Avarita L. Hanson is the executive director of the Chief Justice's Commission on Professionalism and Ethics and can be reached at ahanson@cjcpga.org.

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 A. Beall IV

Senoia, Ga.
Woodrow Wilson College of Law
(1984)
Admitted 1984
Died March 2014

Mary C. Brooks

Atlanta, Ga.
Atlanta Law School (1950)
Admitted 1950
Died April 2014

Aaron L. Buchsbaum

Savannah, Ga.
Emory University School of Law
(1954)
Admitted 1954
Died April 2014

C. David Butler

Big Canoe, Ga.
University of Georgia School
of Law (1967)
Admitted 1966
Died April 2014

R. Elliott Dunn Jr.

Dade City, Fla.
University of Georgia School
of Law (1965)
Admitted 1964
Died September 2013

Carol A. Fekete

Alexandria, Va.
University of Georgia School
of Law (1985)
Admitted 1985
Died January 2014

Walter C. Hartridge

Savannah, Ga.
Harvard Law School (1961)
Admitted 1961
Died April 2014

Lori Ann Olejniczak Haydu

Atlanta, Ga.
Emory University School of Law
(1988)
Admitted 1988
Died June 2013

Stephen J. Kaplan

Albany, Ga.
University of Georgia School
of Law (1969)
Admitted 1970
Died May 2014

Robert L. Kennerly

Lawrenceville, Ga.
Woodrow Wilson College of Law
(1974)
Admitted 1975
Died May 2014

Wilbur Branch King

Niceville, Fla.
Emory University School of Law
(1956)
Admitted 1956
Died June 2013

Joshua Jonathan Kohner

New York, N.Y.
Emory University School of Law
(2002)
Admitted 2002
Died April 2014

George S. Lamb

Decatur, Ga.
Emory University School of Law
(1968)
Admitted 1968
Died March 2014

Ninette S. McGowin

Savannah, Ga.
University of Georgia School
of Law (1972)
Admitted 1972
Died January 2014

Bradley Reed McMillan

Powder Springs, Ga.
Atlanta Law School (1992)
Admitted 1993
Died April 2013

Herbert D. Shellhouse

Traverse City, Mich.
Emory University School of Law
(1975)
Admitted 1975
Died September 2013

Stuart Lee Sims

Marietta, Ga.
Samford University Cumberland
Law School (2005)
Admitted 2005
Died April 2014

Paul T. Stagliano

Atlanta, Ga.
Duke University School of Law
(1986)
Admitted 1986
Died May 2014

Betty Walker-Lanier

Tifton, Ga.
Boston University School of Law
(1978)
Admitted 1979
Died May 2014

Timothy J. Warfel

Tallahassee, Fla.
Harvard Law School (1977)
Admitted 1977
Died April 2014

Beryl Harold Weiner

Atlanta, Ga.
University of Georgia School
of Law (1955)
Admitted 1957
Died April 2014

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Congratulations to the 2014 State Mock Trial Team from Jonesboro High School!

This was the team's seventh trip to the National High School Mock Trial Championships, where they placed 34th during the tournament in Madison, WI, in May.

A special thanks to all of our financial donors for the 2014 season, including the

*State Bar of Georgia
Young Lawyers Division*

A full list of 2014 season donors will be published on our website by the end of August.

Visit our website, www.georgiamocktrial.org, for more information about the program and opportunities to volunteer with a team or with the program itself.



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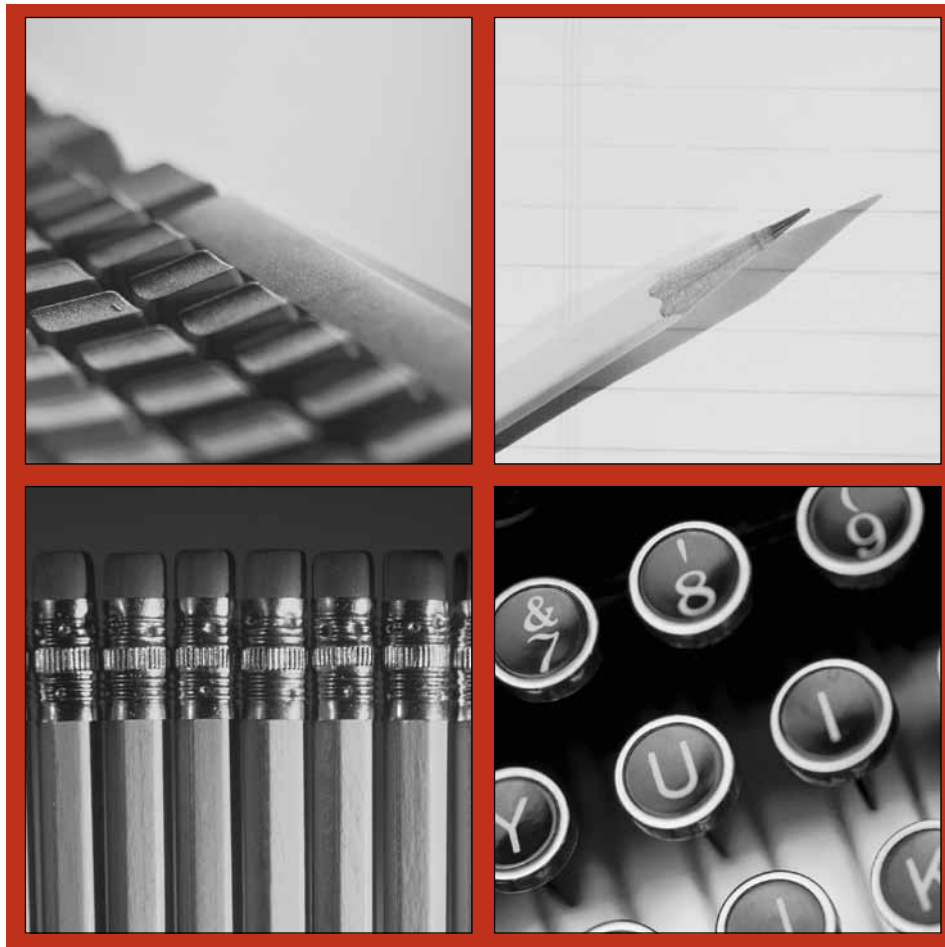
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