MUNICIPAL COURT
Judges Bulletin

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President's Corner

Charles L. Barrett, III
Lilburn

It is again my pleasure and privilege to report to you in this my first report of 2004. I trust that you have all had a pleasant holiday season, and, as I, look forward to a busy and productive 2004.

On Thursday, February 5, 2004, at the Fairfield Inn in downtown Atlanta the business meeting took place followed by our "fifth" Legislative reception. The reception was held across the way at the Sheraton Atlanta Hotel. We invited all Senators and Representatives, the Governor, the Lieutenant Governor, Justices of the Supreme Court, Judges of the Court of Appeals, Judicial Council Members, and, of course, the Municipal Court Judges and were pleased with the turnout. I look forward to seeing you at these events.

Although Judge William Coolidge has a more detailed report on legislative and related matters affecting our Courts, I want to report to you that House Bill 821, "the Pre-trial Diversion Bill," was favorably reported out of the House Judiciary Committee at its meeting on January 27, 2004, at which Judge Coolidge and I were in attendance in support of the measure. Through the good works of Representatives Stephanie Benfield and Mary Margaret Oliver, this Bill is now positioned for (we hope) a smooth legislative journey during the remainder of the session. Passage of House Bill 821 will provide legal authority for our Courts to create and administer Pre-trial diversion and intervention programs, acting through our Courts' prosecuting officials.

The executive committee, primarily through Judge Coolidge, continues to monitor the activities of the Public Defenders Standards Council, as that body undertakes to develop standards for indigent defense as mandated by the Georgia Indigent Defense Act of 2003. One of the things that the Standards Council has thus far adopted is the definition of a "case" which is a rather broad definition, and could encompass probation revocation proceedings. If that is the appropriate interpretation of "case," our Courts may be appointing a fairly significant number of lawyers to represent indigent persons in such proceedings. I will report to you, further, as clarification is developed with respect to the adoption of these standards.

The matter of the "decriminalization" continues to be of significant interest and concern. In this connection, the President of the Council of State Court Judges has put together a committee, known for the present as the "Infractions Committee," with rep-

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Professionalism in the Principle-Centered Law Practice

By: Presiding Judge G. Alan Blackburn
Georgia Court of Appeals

III. The Principle-Centered Law Practice

What is the public perception of lawyers? Do you think that we are generally viewed as Atticus Finch, the lawyer in To Kill a Mockingbird? Or does Samuel Taylor Coleridge's perception more accurately represent the public attitude? Coleridge, wrote of the devil, who upon seeing a lawyer killing a viper, smiled, for it put him in mind of Cain and Abel.

We are collectively responsible for our public perception. None of us practice in isolation. We each contribute to the reputation of the other, and we rise or fall as a group, in the collective eye of the public. The presence or absence of professionalism by those lawyers with whom they come in contact, is, in large measure, determinative of the public's perception of us as lawyers.

I encourage lawyers to take the time to consider and adopt underlying principles upon which they will conduct their business. By doing this, they will have a basic foundation to which they can refer in determining their actions. These principles give the lawyer guidance at a time when other pressures may be present. The adoption of the attached aspirational goals of professionalism as the basic principles of operation of the law practice would be a sound beginning. Those who do not do so are like rudderless ships floating on a sea of self-interest and greed, responding to those pressures, without regard to the morality or correctness of the decision.

IV Helpful Hints for the Principle-Centered Lawyer

1. Initial Employment:

It is during the initial employment discussions that the lawyer should come to a complete understanding with the client as to all important elements in the handling of the case. This agreement should be reduced to writing and signed by the parties. In addition to addressing such matters as fees and costs, the agreement should outline communications between attorney and client (and any charges therefor), decisions on routine matters during the conduct of the litigation (continuances, extensions, stipulations, etc.), a recognition that the lawyer is bound by ethical standards and that the litigation will be conducted as required by such standards and the highest level of professionalism. The lawyer should explain generally what this means and why it is ultimately in the best interest of the client for the litigation to be conducted in this manner.

2. Settlement:

In evaluating settlement vs. trial, trial should generally be the least preferred option. When a case is tried, that means there has been a failure in the case. Either the plaintiff=s lawyer has failed to convince the defendant of the justness of the claim, the amount of the damages, or that there is a greater risk to defendant in trying the case than in settling it; or the defendant's lawyer has failed to either apprise his client of the risks of trial, or convince the client of such potential. If the parties are able to settle the case, then they have kept the decision-making process within the control of the parties. It is generally true that parties are far more likely to voluntarily abide by a resolution to which they have agreed than one which is dictated by a judge or jury

Someone once said that "a reasonable settlement is one in which each of the parties is equally dissatisfied."

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President's Corner continued

resentatives of all classes of trial courts, including the Municipal Courts. An organizational meeting was held in Decatur on January 23, 2004, and was well attended by judges from the various classes of trial courts in our state. One of the purposes of the committee is to provide a resource for legislators with regard to proposed legislation in the "decriminalization" area, so as to be able to identify potential problem areas and matters of particular concern inherent in this type of proposed legislation. The committee does not, at present, anticipate introducing any "decriminalization" legislation. Your legislative committee will continue to monitor proposed legislation dealing with "decriminalization" of traffic and related offenses, will report to the membership, accordingly.

Many thanks to all executive committee members, liaison committee members, and everyone else who continues to work towards the betterment of our courts, and the fair and effective administration of justice for our citizens.

Legislative Tracking

The 2004 Georgia General Assembly began on Monday January 12, with a flurry of new bills and old bills that were recommitted from the 2003 Legislative Session. Log onto our web site at www.georgiacourts.org and click "Track Legislation" to receive up to date information on bills the AOC is tracking. Below are examples of some of the "hot" bills that are listed on our web site:

• HB 821 This bill amends Article 4 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to pretrial intervention and diversion programs, so as to allow certain courts to create and administer pretrial intervention and diversion programs; and for other purposes.

• HB 618- Magistrate Retirement - This Bill creates the Board of Commissioners of the Magistrates Retirement Fund of Georgia. The Board shall create and manage a retirement fund. It shall be funded by the Magistrates ($105/month) and by an additional $3 filing fee on all civil cases. The retirement fund will monthly pay 5% of the Magistrates' final monthly salary from the date of retirement, if retirement is approved by the board.

• HB 869- Fees - This bill calls for the clerk of each court (or other responsible officer) to collect the fees, and at the end of each month the entire amount of the fees shall be paid to the Administrative Office of the Courts. The Office of the Courts shall disperse the monies quarterly to the appropriate trust funds. The Office of the Courts shall keep a small percentage (2%) for administrative services.

• HB 1169- Sentence Reform - This bill provides for more uniform sentencing codes throughout Georgia. It categorizes all felony offenses into levels, as well as categorizing the severity of past offenses. These factors can then be applied to a sentencing grid that will enable judges to sentence more uniformly.

If you have questions or comments on any of the bills, please contact Debra Nesbit (404.651.7616) or Tonya Griesbach (404.656.6404).

Savings = Pain ... Not Necessarily!

Many people relate savings with "pain" and postponed gratification. That's why advertisers use every ploy imaginable to distract you from your "pain" in order to win you over to pleasure and of course, a resulting new purchase. We are all aware of this and unfortunately the vast array of products that we want (not need) often overcomes our real objective. That objective being wealth that provides real family security, family enjoyment and maximum gratification!

It's no wonder that so many of us associate "pain" with savings. The products and strategies promoted the most aggressively by financial institutions teach us there must be "pain" (long-term gratification postponement) in order to be successful. It is the financial institutions that teach us to give up control of our money for long periods of time.

This is not the way it has to be! Sure, we may have to postpone some immediate gratification today, but then it may be possible in as little as 2 or 3 years to acquire assets that are non-depreciating and will offer much to your lifestyle. New homes, beach condominiums, lake homes, antiques, etc. are but a few of the assets that can provide increasing wealth and additional family enjoyment.

Remember your true objectives and goals in life and avoid the pitfalls of irrational consumption. This type spending adds little to your true happiness and even less to your financial bottom line.

By: Chris Ellington, CLU, ChFC, CFP

AOC Research Division Website

The Research Division of the Administrative Office of the Courts (AOC) has developed a website for distribution of court-related information. The website includes court caseload reports, legislative and legal research documents, and the Research staff directory. The website address is http://research.georgiacourts.org

The website will serve as the official publication vehicle for caseload reports for the Superior, Magistrate, State, Juvenile, Probate, and Municipal courts. Information from the website can be copied and pasted into most popular software programs such as Microsoft Excel and Word. Printable versions of the reports (pdf format) have been included for your convenience. If you need to download the Adobe Acrobat Reader, it is available at the following web address: http://www.adobe.com/products/acrobat/readstep2.html

If you have any questions or suggestions regarding the website, please contact Greg Arnold at 404-656-6413 or arnoldg@gaaoc.us

Indigent Defense

How Much Will it Cost and What Do We Have to Do?

By Judge William M. Coolidge, III
Duluth Municipal Court

As you should be aware by now, pursuant to OCGA § 36-32-1(f)-(h), effective January 1, 2005, if a municipal court does not "provide" an indigent defendant with counsel "at no cost to the accused," with "such representation" being "subject to all applicable standards adopted by the Georgia Public Defender Standards Council (GPDSC)," the municipal court may NOT "impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty..."

Officers of our Council and Marla Moore recently met with Mike Mears, the executive director of the GPDSC, Jim Martin, its chief legal counsel, and Sarah Haskin, its legislative and governmental affairs director, to get some idea of what our courts will have to do by January 1, 2005, to retain the ability to impose meaningful sentences and to get some idea of what amount city councils should budget for these programs. We found these officials, who have been appointed for less than two months, to be cooperative and willing to work with us.

Compliance with the statute can be achieved by contracting with local circuit public defenders, who will begin opening their offices by July 1, 2004. The cost of such an arrangement has not been determined, but compensation could either be on an hourly basis or pursuant to a retainer arrangement. Each circuit will also have a mechanism for handling conflict cases which, in most circuits, will be a panel of attorneys. Cities will be able to contract with these attorneys, as well.

While a compensation standard has not been issued yet, it is likely that GPDSC will mandate hourly rates of approximately $45.00 for out of court services and $65.00 for in-court services. It is unlikely that flat fees or per-case fees, like many of us currently use, will be approved. The above hourly rates will also apply to attorneys who are not a part of the new indigent defense system who are retained by cities for their indigent defense programs.

The Council has already established a standard for determining indigence. A misdemeanor defendant will be presumed indigent if he/she earns less than 150% of the Federal Poverty Guidelines. Because this is higher than what many indigent defense programs currently provide, it could result in more appointed cases and greater expense to the cities. GPDSC's standards are on the internet at www.gpdsc.com. The 2004 poverty guidelines are at: http://aspe.hhs.gov/poverty/04poverty.shtml

Another factor affecting the volume of appointed cases and resulting expense will be an anticipated standard requiring appointment of counsel to all indigent defendants in probation revocation cases who request counsel. This is not the current practice and could easily double the number of cases requiring appointed counsel in our courts. OCGA §17-12-23 already will require the circuit public defender to provide representation in revocations in superior court, so it appears that the same will be required for revocations in all courts.

Noting that many cities are beginning to prepare their 2004-2005 budgets now, even though we cannot provide a firm cost of what the mandatory indigent defense program will be, at a minimum, you can determine the number of defendants in your court who would qualify for appointed counsel and perform a mathematical calculation based upon the anticipated hourly rates and a reasonable number of hours for handling cases, based on your current experience. The final decision about the rates for appointed attorneys will be made within a month or two.

The performance standards and qualifications for attorneys who will be employees of the circuit defenders or who will be conflict defenders should be established in a couple of months. These standards will also apply to attorneys who are not a part of the new system but who will be taking appointments in our courts. However, those attorneys will not be subject to special training requirements for public defenders and conflict defenders. Even so, efforts will be made to allow "outside" counsel to take advantage of this training, if they desire.

As a result of our meeting, it is anticipated that a document will be produced that will inform municipal courts of exactly what standards have to be met by January 1, 2005 in order to meet the requirements of 36-32-1(f)-(h). It is likely that some standards will not be deemed to be "applicable" pursuant to the statute until

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You Have the Right … But at Whose Expense?

There are many things that we hope we never have to hear. One of the biggest things is something that is read from a small card placed firmly in the hand of a man (or woman) with a badge. As s/he reads from the card, you begin to hear those words that you hoped you never would. *You have the right to remain silent. You have the right to an attorney. If you cannot afford an attorney, one will be appointed to represent you.* Despite the fact that none of us ever want to hear these words, unless they are being uttered by Andy Sipowitz as you rest comfortably in the old lazy boy, the content of these words is extremely important should you find your self in this position.

It was known many, many years ago about the importance of everyone receiving legal representation should they be accused of a crime. The whole notion of "innocent until proven guilty" are words that we should always defend. Those who have found themselves in the position of the accused know full well the importance of legal representation. For those who have never been in this position, you will have to take my word on it. While we all, for the most part, agree that everyone is entitled to a lawyer whether they can afford it or not, the method that the representation is established varies from place to place. Some systems rely on a formal public defender's office that operates similar to the District Attorney's Office, except for the fact that their purpose is seeking acquittals rather than guilty pleas or verdicts. But, for the most part they operate in similar fashion. Other areas rely on appointed council, made by the judge, if the person cannot afford to hire a lawyer on their own. The question remains as to which system is the most effective and the answer to that question is quite complex.

In my judicial circuit, we currently utilize the appointed council method. Admittedly, this may not be the best system for all of Georgia, but in the judicial circuit that I work in it works quite well. The talent pool of lawyers in Gwinnett is very deep and many of those are included in the appointed system. The purpose of going to a public defender system is based on inadequacies that exist in smaller jurisdictions. To make this change-over mandatory would possibly put in place a less productive system than what many judicial circuits already have. Caseloads spread over a large number of attorneys are disposed of quicker than the same caseload would be if it were given to a handful of attorneys who would be employed in a public defender system. Furthermore, who is going to pay for this system? In many counties, the funds are probably available, but statewide this implementation will have to be picked up by the state. In a time where we are cutting programs and services, it seems unreasonable to start creating another layer of government services through this mandate.

The biggest concern of all should be rumors that are circulating that monies for this program may actually come from funds that have been earmarked for crime victims. In 1995, the state created legislation known as the Crime Victims Bill Of Rights that requires a 5% add-on fee for victims services for any criminal case that has been adjudicated. That money is then forward to services and programs that directly benefit victims of crime. To divert that money to assist the person who committed the crime seems like a further victimization. This would cause a lack of confidence in a system that already has lost some support from those who have always tried to be on the right side of the law, only to see the defendant get more attention than the victim.

Believe me, should any of us get into a position where we are looking for a criminal lawyer, all of us want to get the best lawyer possible. There is little doubt that situations exist in the state of Georgia where people are being offered little in the way of legal representation unless they can afford to go out and hire their own attorney. These jurisdictions need to be looked at on a case-by-case basis as to how those problems can be erased. However, by requiring the entire state to go to a system that is intended to benefit the minority may possibly be detrimental to the majority. Any program that practices that philosophy is sure to be a failure. At a minimum, leave these decisions to the county governments who know better than anyone what works best for them. In most Georgia counties, the system is not only "not broken," it is running quite well.

by: Stan Hall, Director of the Victim Witness Program, Gwinnett County District Attorney's Office; host of the Gwinnett County Communication Network's television show "Behind the Badge."

Case Law Update

By Mickey Roberts, Esq.
770-923-4948

CHEMICAL TESTING

**** FLA CASE: FLA v. Herring (5/19/03)** Trial court's granting of MTS affirmed as the officer who administered the breathalyzer test did not strictly comply with the rules and regs set forth by the Department.

CONSTITUTIONAL QUESTIONS

*** Ferguson v. St. S03A1527 (11/17/03)** See *Cooper* below.

*** Cooper v. St. S03A1255 (10/6.03) OCGA 40-5-55 (10/6/03)** OCGA 40-5-55 (a) is unconstitutional to the extent is allows the taking of a person's blood, breath or urine simply because that person was involved in an accident involving fatalities or serious injuries. An officer must have probable cause to believe suspect is under the influence to request the test(s).

FIELD SOBRIETY

*** Disharoon v St. A03A2117 (10/24/03)** After giving Disharoon a warning for speeding, and offering her a ride home because her license was suspended, the officer smelled alcohol on Disharoon, and then detained her for field sobriety test; Disharoon filed a motion to suppress on the basis that she was not free to leave and should hve been given Miranda warning. HELD: Fild tests are not evidence of a testimonial or communicative nature and are not subject to 5th amendment; also, Disharoon's 4th amendment right against unlawful searches and seizures was not violated because officer had probable cause to detain once he smelled alcohol on Disharoon.

IMPLIED CONSENT

***Buchanan V. St. A03A1494 (11/14/03)** Buchanan was involved in a one car accident. The officer testified that he did not know whether Buchanan's incoherence, bloodshot eyes, or slurred speech were from drugs or alcohol or from injuries sustained in accident. Without arresting Buchanan for DUI, the officer requested a blood test because the accident "involved serious injuries." Because there was no probable cause to arrest, the blood test should have been excluded since that portion of 40-5-55 has been ruled unconstitutional.

*** Cole v. St. A03A946 (9/16?03)** Per Cole's request for an independent blood test, officer took Cole to the hospital where blood was drawn; however, the lab ws closed for Memorial Day, and officer did not take reasonable steps to find another lab for Cole; therefore the State's test was suppressed.

ROADBLOCKS

*** Fraser v. St. A03A1238 (10/20/03)** An auxiliary roadblock, set up by police to stop drivers turning off the main road to avoid the primary roadblock, is still valid as long as it meets the same requirements for a valid roadblock under Ga law.

Indigent Defense continued

later. The anticipated document should include deadlines for these other standards. When it is released, the Council of Municipal Court Judges will make sure that it is widely disseminated, so we can get started as soon as possible with the development of new programs or the revision of existing ones.

The GPDSC is also charged with collecting data and statistics regarding indigent defense issues. The AOC, which has already been planning an expansion of its data collection efforts at the municipal court level, is likely to assist in this effort.

It is not clear exactly what our courts will have to do in order to demonstrate that they have in fact complied with "applicable standards" by January 1, 2005. However, some mechanism will be developed for this purpose. It is a sure bet that a policy of binding indigent cases over to state or superior court will not constitute compliance with the "applicable standards."

In addition, we can expect that the current standards and requirements for interpreters will be part of the GPDSC's focus with the result being the greater use of qualified or certified interpreters and the resulting increase in expense to our courts.

The GPDSC, our courts, and our cities have a lot to do in a short period of time. However, based on our recent meeting with Messrs. Mears and Martin and Ms. Haskin, we are optimistic that we can work together with the GPDSC and that our concerns will receive due consideration.

I Hear You Knocking

Recently, I read with interest about the December 2, 2003, Supreme Court's reversal of *Banks v. United States*, 282 F.3d 699 (2002) concerning how long police officers must wait before they can enter the residence of a suspected drug dealer. Prior to the decision, it has been a back-and-forth argument about what constitutes a reasonable time before the police can forcibly enter a residence. Some of our more liberal minded friends had been upset that the police would enter the residence forcibly at all. In other words, why not simply knock, identify yourself as the POLICE and wait on the appropriate response of the resident opening the door? What city in the state of Utopia are these people residing? Remember, we are not talking about the Avon representative or the friendly face from Welcome Wagon; we are talking about the POLICE. You know, the guys that we have entrusted to put people in jail who violate the law. Let's get serious. Should we be expected to notify drug dealers by telegram? It is obvious that some believe that this is what is needed, in order to give reasonable notice.

Having spent some considerable time on the outside of that very door, let me give you a first hand look at how these situations occur. First of all, let's lay down the ground rules:

Rule number 1: Illegal drugs are against the law. With the exception of a few cities on the west coast who have authorized medicinal marijuana to be in the home, there are no exceptions to this rule. If you are in possession of illegal drugs, you are a criminal.

Rule number 2: Police are sworn to uphold the law and arrest those who violate those laws. This is their creed. If you are involved in illegal drugs, the police are going to focus that creed on you.

Rule number 3: Drug offenders have been known, on occasion, to flush those illegal drugs down the toilet when they think the police are at the door.

Rule number 4: This process takes about 10 seconds.

Rule number 5: If there are no drugs, there is no evidence, there is no case.

Rule number 6: Although this may comes as a complete surprise to drug violators, the police are aware of this flushing process.

Rule number 7: The Police are going to try and seize the drugs before they go down the Tidy Bowl Highway.

Rule number 8: This attempt to seize those drugs may come as they enter an opened door or as they step over one that has been knocked down.

Rule number 9: It is up to the criminal as to how entry is made.

Now that we know the rules, we come back to the original problem. How long do the police have to wait before they hear the loud swoosh that alerts them that their case just went down the toilet (no pun intended)? The Supreme Court, in its infinite wisdom, has decided that twenty seconds is a fair amount of time. Even though they actually set this time for the serving of a warrant, it applies to how drug enforcement officers will do their business (once again, no pun intended).

In defense of some who have been unfairly targeted by the police concerning bad addresses, the police must be as sure as they possibly can, that they are at the right address. There have been cases where the police have gone in forcibly only to find out that they are at the wrong address and in some cases innocent people have been seriously injured. When police utilize these methods, they must also be fully prepared to take responsibility for those wrongful entries. Remember, that most intelligence, and I use that word loosely, concerning narcotics comes from people who are also users themselves. You can see the dilemma here. But, despite what we may think or see in our favorite television cop show, most drug offenders are not fond of hanging out with police officers and telling them when they will have a fresh supply of drugs in their home. Is it a perfect system? Not by a long shot. Is it the best one we have available? I am afraid so.

Of course, as always, there is a moral to this story. So here it goes. If you are a drug dealer and you have drugs in your home, be sure of two things. Be sure that you have a fortified door and a 20 second stop watch and be sure that your toilet is not stopped up. A failure on either of these can end up with some very ugly results.

by: Stan Hall, Director of the Victim Witness Program for the Gwinnett County District Attorney's Office

You're Invited!

5th Annual Council of Municipal Court Judges Tournament

The 5th Annual Council of Municipal Court Judges Golf Tournament has been set for June 14, 2003, at 4:20 p.m. at the Lake Lanier Golf Course.
The registration fee of $85.00, ($10.00 less than last year) covers green fees, range balls and two (2) cart drinks. Please fill out the registration form, remembering to include your handicap if you have one, or your average score if you do not. The tournament will be fully handicapped so everyone will have an equal chance to win a trophy. There will also be prizes for Long Drive and Closest to the Pin. Please submit your registration along with a check in the amount of $85.00, payable to J. Tillman Payne, Jr., Trust Account, by May 15, 2004.

Renaissance Pineisle • Lake Lanier, Georgia

June 24, 2004 • 4:20 p.m. • Fee $85.00*

NAME: _____

ADDRESS:_____

_____

PHONE#: _____

U.S. Handicap Index or average score:_____

Mail Registration Form & Fee to: Jim Payne
4807 South Main Street
Acworth, GA 30101

For Inquiries, call 770-974-6911; Fax 770-974-0949

* Fee includes range balls and two (2) cart drinks

ENTRIES DUE BY MAY 15, 2004

Notification of Change in Municipal Court Personnel

CHIEF JUDGE __ JUDGE __

PRO HAC __ PRO TEM __ CLERK __ DEPUTY CLERK __

CITY (List all)_____

NAME_____

ADDRESS_____

_____

PHONE(____)_____ FAX (___)_____

EMAIL_____

GENDER: Female __ Male __

ATTORNEY: Yes __ No __

ELECTION/APPOINTMENT DATE:_____ TERM from_____to_____

Replacing Someone ?_____ If So, Who?_____

RACE (optional): African American (Black) __ Asian \ Pacific __

Euro American (White) __ Native American __

Multi Racial __ Hispanic / Latin __

Fax or mail this form to the Administrative Office of the Courts at the address below.

Submitted by: NAME_____

ADDRESS_____

PHONE #_____

The Administrative Office of the Courts
Suite 300 • 244 Washington Street, S.W.
Atlanta, Georgia 30334-5900
404-656-5171 • FAX: 404-651-6449

It is a rare case in which a party is totally successful in obtaining all of the relief sought through settlement. There is little benefit to a defendant in such a settlement, as a jury would do no worse at trial and the defendant just might win. Plaintiffs' personal injury lawyers should also keep in mind that while they will have many future trials in the event of a loss, a plaintiff who loses at trial after having turned down a settlement offer, will never have another opportunity to recover for that claim.

3. Counseling the Client:

Remember, lawyers are also counselors to their clients and owe to them a duty to be straight-forward in discussing the strengths and weaknesses of their position. It is unprofessional to exaggerate the potential value of a claim in order to obtain employment, and such exaggeration likely will come back to haunt you, as it will make a reasonable pre-trial settlement difficult. It also assures an unhappy client even if a reasonable verdict is obtained, as the award will generally be far less than you have led the client to believe that it would be.

Rather, it is far better to explain to the client that the recovery at trial will be the result of a number of unknown factors, such as: the make-up of the jury, the testimony and credibility of the fact witnesses, and the expert witnesses, the jury's evaluation of any comparative negligence evidence, the natural sympathies of the case and the jury's attitude toward the parties, their lawyers and witnesses (do they like them or dislike them?). Juries tend not to make meaningful awards to plaintiffs they don't like, or to award large sums against defendants that they do like and vice versa. It is easy to predict where the natural sympathies would lie if a lawyer/plaintiff sued an elderly, gray-haired grandmother in a fender-bender involving minor damage.

The lawyer should anticipate matters unique to the client's representation, and be sure that the client understands and agrees to the manner in which the case will be handled. This is the time for the lawyer to prevent future misunderstandings and problems.

4. Communications:

A lawyer should counsel with the client at the time of employment concerning communications during the handling of the case. The lawyer's policy concerning telephone calls and any charges therefor should be fully discussed. The advantage to the client of communicating through staff should be fully explained. The benefits of such communication could be cost, speed of response and efficiency. It is a good idea to routinely copy the client with copies of pleadings and correspondence, with information and instruction forms attached, i.e. forward a copy of interrogatories received with a cover sheet telling the client what to do. It is good policy to review all cases on an appropriate time basis and to communicate with the clients, so they will know they have not been forgotten.

5. Controlling the Case and Decision-Making:

The client has sought your representation because of your knowledge, experience and skill, talents the client generally does not possess. It is for this reason, that decisions concerning the conduct of the case should generally be made by the lawyer. The client is not familiar with, or bound by the lawyer's canons of ethics or basic standards of professional conduct. Too often, clients are so emotionally involved in their case that they seek only to cause misery for the other side. We have all dealt with such clients, who seem to resent their attorney even being civil to the other side or their attorney.

Clearly, such people are not the ones who should decide those matters which routinely arise during the conduct of litigation, such as: the granting of extensions, stipulations of law and fact, and dealing with your opponent's tardiness at a calendar call. It is for this reason that decisions concerning procedural matters should be made by the lawyer, with the consent of the client. It is you, the lawyer, who can best evaluate what action is required by professional standards of conduct and what is ultimately in the best interest of the client.

6. Appeal and Post-Trial Evaluation:

The only appropriate legal basis for an appeal is that there has been a reversible error committed by the trial court which has harmed your client. It is unprofessional to appeal a case where no such bona fide claim exists.

Attempting to gain leverage for negotiation is not an appropriate basis for appeal. The fact that your client has suffered a major award against it is not a basis for appeal absent reversible error. Neither is the fact that a defendant's verdict was returned in the plaintiff's "million-dollar" case, a basis for appeal, absent reversible error. It is unethical and unprofessional to appeal an adverse result absent reversible error, and may expose the appellant to sanctions under the rules of the appellate courts.

Gifts of Stock Can Brighten Your Family's or Your Client's Holiday or Birthday

The holidays have come and gone. But, if you're having trouble thinking of the perfect gift for next year or for a birthday for a loved one, consider something you can't find at the mall: stocks.

Stocks can be excellent gifts for children and adults. When you give stocks to kids, they may be excited about owning companies that produce their clothes, their food and their movies. If you give stocks to your children under 14, though, be aware that some of the resulting earnings may be taxable to you.

You can also brighten the day of your adult family members by giving them stocks. Try to find ones that meet their interests and can help them achieve their financial goals.

You can give up to $11,000 per year to as many people as you want without incurring gift taxes - so be generous to your loved ones. Your gifts of stock will be remembered long after birthdays and the holidays are over.

Ray Rumble
Investment Representative
Lawrenceville,Ga. (800)280-1937

Professionalism continued

7. Handling Client's Money:
Failure to keep a client's money in a separate account may result in disciplinary action by the state bar, since commingling is a violation of Rule 1.15 of the mandatory State Bar Standards of Conduct. In addition, keep a complete record of all funds disbursed to or received from a client.

8. Stay Out of Business with Your Client:
This is particularly true in situations where your clients are relying on you, as their lawyer, to protect or oversee their interest, so that you are both business partner and lawyer. Although the bar standards do not absolutely prohibit this under all circumstances, it is better to avoid such situations altogether.

9. Avoid Conflicts of Interest:
Rules 1.8 and 1.9 in the State Bar of Georgia Handbook deal directly with defining what conflicts of interest to avoid. Generally, if it feels bad, it is bad, and should be avoided. If you are caught in a "grey area," seek advice from one who is experienced and knowledgeable. And remember, the mere fact that you are concerned that a conflict of interest exists may be a sufficient indication that you should stay out of a particular matter.

10. Do Not Make False Representations:
Even if it is to ease the pain of unpleasant news, the outcome of such dishonesty could be devastating to your career as an attorney. Rule 2.1 strictly prohibits false representations, and the penalty for violating this standard may be disbarment. In fact, a review of recent disbarment cases shows that lying about the progress of a case is surprisingly common cause of disbarments and voluntary surrenders of licenses. See also Rule 1.3.

11. Handle or limit Your Workload:
There is no doubt that case load management is the cause of many client complaints. The lawyer becomes overburdened with work and fails to communicate with the client. Too often lawyers do not meet their obligation to properly handle those cases they accept. Organize to handle the cases you accept, or accept fewer cases.

These are the concluding articles in a four part series. Reprinted with Judge Blackburn's permission.

Condolences

The family of Judge Bert Waln, Norcross, who passed away on January 2, 2004. Judge Waln sustained injuries in August from a motorcycle accident and did not recover.

Please keep Ms. Marla Moore of the Administrative Office of the Courts and her family in your thoughts as they grieve the loss of her father who passed on February 23.

PLEASE RECYCLE

From the Judicial Council Information Services Division

All Georgia Municipal Courts:

Recently many of you may have heard rumors or may have been the recipients of various types of misinformation being spread about the Court Information System software programs offered by the Administrative Office of the Courts. One such rumor would have you believe that the CIS programs are no longer being offered to the local courts or that the programs are being abandoned by the AOC. The truth is that these programs were being installed at a rapid pace in court offices all around the state and were gaining wide spread acceptance as was evidenced by the demand for their installation. In November 2003, it was determined that the CIS programs had become unstable and the AOC Information Services Division was forced to withdraw the offering of the programs until the problems could be resolved. An AOC IS team was assembled to review the programs to determine the exact cause of the problems and make the necessary repairs to the code. This review resulted in a major debugging and redevelopment effort requiring major rewrites of the individual programs to eliminate the problems. All installations of the CIS programs were halted while this code was being reviewed and corrected.

The repair phase of these programs is almost complete. The CIS version 5 software is expected to be released to the AOC IS field installation group for testing in March 2004. The installation team should be ready to begin installation of the new version of the software in the local courts April 1, 2004. Installation will begin in those courts determined to have the most critical need. Other courts will be contacted and scheduled according to availability of local computer equipment capable of supporting the software and the availability of local court staff to work with the installation team members for this installation and training.

We are preparing for four prerelease demonstrations of the CIS v.5 software throughout the state to give you a preview of the product and to get your input on any final revisions. If you have questions regarding an existing installation or a new installation you can contact the AOC Client Service Center at 800-298-8203 or on the web at www.georgiacourts.org. From the web site you will click on Contact at the bottom of the page and then TO REPORT A PROBLEM OR REQUEST SERVICE to submit an AOC Technology Request.

Council of Municipal Court Judges

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