



November 2020 Newsletter

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President's Corner

By Dodie Sachs
November is a time that everyone traditionally spends thinking of what they are thankful for. While I could go on at some length about the many blessings I have to be thankful for, I want to touch on some things I'm thankful for as GCBA President. First, and most importantly, I am thankful for the Board I have. Each of the officers on my board are wonderful attorneys, but they have really leaned into this difficult Bar Year and really do a lot to make sure everything keeps running smoothly. I am thankful for all the wonderful GCBA Past Presidents. I know I lean on some of you more than others, but everyone is always willing to help. I love to listen to my questions and answer them, and I appreciate how I am thankful for all our Members who join the bar year after year, and who participate in our events virtually and online. We have a great legal community in Gwinnett, and I'm proud to be a part of it.



This month at our luncheon, we are taking the time to say THANK YOU to the Law Enforcement Community in Gwinnett County. If you haven't already, please participate in our LEAD Luncheon this year. If you would like to donate so that we can give presents to the Law Enforcement Community we have in years past, please do so. There is a donation link in the luncheon announcement below. Please attend the luncheon on Friday, November 20, either in person or virtually to listen to Judge Keith Miles speak, and to show the Law Enforcement Community how we appreciate what they do. Please contact Anna Peacor or myself if you have questions.

On December 4th, we are having our Annual Winter Holiday Party. Thank you to everyone who has RSVP'd to attend in person. We are not planning a Zoom option at this time for this event. If you would like a Zoom option, please contact Anna Peacor to discuss. We have one spot left, if you would like to attend and have not RSVP'd, please contact Danielle Mays to let her know.

Thank you to all of you for everything you do to make Gwinnett a great place to live and work. I appreciate you all.

ANNOUNCEMENTS

October Luncheon Recap

State Bar President Dawn Jones Headlines GCBA October 2020 Luncheon

State Bar President Dawn Jones headlined our October luncheon. She spoke about the State Bar's challenges in operating during the pandemic. Below is an article by Attorney Jones that echoed many of her key comments about the challenges faced by the State Bar in the current environment:

Friends and Colleagues,
2020 has been a whirlwind. It will be remembered as a year that has rearranged our plans again and again, bringing with it a plethora of thoughts and feelings, many of them too painful to name. And although we are already well into the month of October, I would like to take a few moments of your valuable time to address you, the membership of the State Bar of Georgia, and offer a ray of hope.

When the acronym "COVID-19" entered the mainstreams vocabulary earlier this year, we did not know what was coming. The Bar Center closed in mid-March, along with innumerable organizations and businesses across the country and world. Another crisis, having smoldered over 400 years, developed on the heels of the killings of George Floyd, Ahmaud Arbery, Breonna Taylor and many others in the Black community. People were hurting. People are hurting.

In the midst of this pain—which those of us in the legal profession experience daily in our own lives and encounter often in those we serve—is my desire to serve you as best I can. Until we are able to gather together in person, we must be creative. We must find safe ways to serve, support and connect with one another. We must help each other survive and thrive.

I have partnered with the State Bar's Wellness Committee and Lawyer Assistance Program to create a series of monthly "hushes," virtual events where you can interact with other Bar members, learn from guest speakers and possibly find some laughter or joy during these extremely challenging times. I invite you to participate in the upcoming "hush" event in October, "Help Us Out: There's Why Don't We Use It?," shown below, as a way to improve your own well-being and help others improve theirs.

Future events will be posted on the Lawyers Living Well website, shared on the Bar's social media channels and highlighted in the monthly emailed newsletter. Please be sure to note these events and register to attend. It is our honor to serve you and offer opportunities like these for your benefit. For more than five decades, the State Bar of Georgia has weathered many storms, and 2020 has brought some of the worst. If we can find ways to support and encourage one another, while fighting for better health and well-being, we will continue to sustain a sound Bar this year.

Sincerely,
Dawn T. Jones
President, State Bar of Georgia
president@gabar.org



Attend the November 2020 Luncheon

GCBA November 2020 Luncheon
November 20, 2020 at 12pm, at
The 1818 Club
6502 Sugarloaf Pkwy.
Duluth, GA 30097

Our November luncheon will be our Law Enforcement Appreciation Day (LEAD). Our speaker will be Gwinnett County Magistrate Court Judge Keith Miles. He will be speaking about the continuing contributions of law enforcement to Gwinnett County.

We have invited all of the chiefs of the police departments in Gwinnett County. We will be presenting them with certificates of appreciation and giveaways.

To donate, please click on this [link](#).

We will be observing COVID Safety protocols at the luncheon. We have capped our registration at 50 members, and once we meet that limit we will not allow additional people to attend in person. The luncheon tables will be spaced out and there will be a limited number of people at each table so we can social distance.

We will also broadcast the luncheon via Zoom. See registration for more information.

To register, click [here](#).

Happy Veterans Day

Veterans Day was observed on Wednesday, November 11, 2020. GCBA thanks all of our former and current armed forces members for their service. Gwinnett County currently has two veterans serving on the bench, and we would like to feature them in this month's newsletter.

Gwinnett County Superior Court Judge Angela Durcan served in the U.S. Army Reserve, 1987-1995. Her unit, 802nd Airborne Company, Light Weight Vehicle Mechanic, Cross trained and an Ammunition Specialist. Honorable Discharge as an E-4.

Gwinnett County Superior Court Judge Talia Whitner joined the United States Air Force immediately upon graduating from Howard Law School. Judge Whitner served from 1995 until 2006 as a Judge Advocate General Officer. She was honorably discharged as a Major.

Eighth Order Extending Statewide Judicial Emergency

Chief Justice Harold D. Melton today signed his eighth order extending for one month the Statewide Judicial Emergency he first declared on March 14, 2020 due to COVID-19. The Chief Justice is authorized under state law to declare such an emergency for a period of 30 days. He has continued to do so every month since March. Today's order, which will expire Dec. 9, is largely unchanged from the previous one, which he signed in October. The order lifted the suspension on jury trials across the state. The order he signed in September lifted the suspension on grand jury proceedings.

Today's order reiterates that jury trials may resume only after the Chief Judge of each superior court in the state has convened a local committee of judicial system participants, who subsequently develop and publish a detailed plan for resuming in-person proceedings if they can be done safely and in compliance with public health guidance based on local conditions. "This order again delineates the health precautions required for all in-person judicial proceedings and requires courts to adopt and maintain operating guidelines consistent with the Georgia Court Reopening Guide and any more specific public health guidance," the order states. "Courts have discretion to conduct in-person judicial proceedings, but only in compliance with public health guidance and with the requirements of the United States and Georgia Constitutions and applicable statutes and court rules, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and an open courtroom. Also, Chief Judges have the discretion to declare more restrictive local judicial emergencies, if local conditions require," the order says.

Due to the substantial backlogs of untried and untried cases and because grand jury proceedings and jury trials will not proceed at the same rate as before the pandemic, "deadlines for jury trial proceedings (including statutory speedy trial demands), deadlines for grand jury proceedings, and deadlines calculated by reference to the date of a civil or criminal jury trial or grand jury proceeding shall remain suspended and tolled," today's order says.

As in previous orders, courts are urged to increase their use of technology such as teleconferencing to conduct remote judicial proceedings "as a safer alternative to in-person proceedings, unless required by law to be in person or unless it is not practicable for technical or other reasons for persons participating in the proceeding to participate remotely." Today's order also encourages lawyers to help keep cases moving by engaging in the discovery process in good faith and in a safe manner. Discovery is the pre-trial process in which parties are required to share documents and information about their case.

"Throughout this process, I have been impressed by, and am grateful for, how diligently judges preside this morning. I have worked to keep the wheels of justice going while protecting the public health of all involved," Chief Justice Melton said. "But this virus has not finished with us yet, and I encourage judges to use their discretion wisely when it comes to resuming jury trials and other in-person proceedings. We all must take the steps necessary to protect the health and safety of every individual who comes into our courthouses."

[Read the Order](#) | [Read the Order](#) | [Read the Appendix](#) | [in its entirety here](#).

GCBA GGC Scholarship Update

The bar received the following letter from Georgia Gwinnett College regarding the scholarship fund established by GCBA benefiting GGC students:

Dear Ms. Sachs,
Thank you for the Gwinnett County Bar Association's generous support of Georgia Gwinnett College. This annual stewardship report outlines the status of the endowed fund established by member firms of the Gwinnett County Bar and distributions made during the 2019-2020 fiscal year.

Endowed funds provide support for students in perpetuity while helping to build the overall endowment for the college. As you know, supporting GGC in this way is a critical step in sustaining the college's future for generations to come.

Your scholarship recipient, DeQuentin, says, "The Gwinnett County Bar Association scholarship will help me to achieve my career goal of being an attorney. I believe I can be an advocate for people that may have experienced inequalities within their communities. Receiving this scholarship can reduce the debt for my undergraduate program, which can be beneficial for me to pay for law school."

Thank you again for all you do for Georgia Gwinnett and for students like DeQuentin. Please don't hesitate to call me with any questions or comments regarding this report. Warmest regards,
Jennifer Handrickson Associate Vice President of Advancement, Georgia Gwinnett College President, Georgia Gwinnett College Foundation

SECTION UPDATES

Criminal Defense Section Toy Raiser

Mark your calendars for the 2020 Toyraiser happening THIS FRIDAY!
On Friday, November 20, from 11:30 am to 1:30 pm, the Gwinnett Criminal Defense Bar is excited to host the Gwinnett District Attorney's Office, the Gwinnett Solicitor's office, and Gwinnett Judges and their staff for our annual Toyraiser. Just like years past, the toys are donated to Children's Healthcare of Atlanta at Egleston.

In light of the pandemic and social distancing guidelines, there are quite a few changes to the event this year. What is new this year:

1. LOCATION- this year we will be OUTSIDE at 368 S. Perry St. Please park across the street if you are driving. It is also in walking distance from GJAC. We will have tents in case of rain, but hopefully we will have beautiful weather for the event.
2. FOOD- We will have a food truck at the event (Strange Taco Bar) - the Criminal Defense Bar is picking up the check for the food and beverages, so come hungry!
3. TIME COMMITMENT- this is a DROP-IN event. Hopefully everyone will find a few minutes to drop off a toy, grab a few tacos, and see some (masked) faces you haven't seen much during this crazy year.
4. MASKS- Even though we will be outside, please wear a mask to the event.
5. TOY DONATIONS- Please bring a new, unwrapped toy (approximate value of \$20 or more) to be donated to CHOC at Egleston. We will be delivering all of the donations to CHOC the week after Thanksgiving. CHOC does have some restrictions on what they do and do not accept. To view CHOC guidelines, click [here](#).
6. MONETARY DONATIONS- If you prefer to give a monetary donation (check, gift card, cash), we are also happy to accept those! We will use the money raised to purchase new toys to donate.
7. As always, if you cannot attend but still want to donate, please feel free to contact Anna Peacor to schedule a pick up from your home. If you can drop off at Anna's office (680 S. Perry St.), if you would like to drop online and have the toy delivered to Anna's office, please just send her an email (anna@annapeacor.com) so she can be on the lookout for it!

Solo/Small Firm Update

The solo/small firm section is going to hold a virtual game night at 7:30 PM on November 24. Melaney LaGrone will be the hostess and will send out a zoom link close to the time. Contact Section Melaney LaGrone at mel@lagronelaw.com for more information.

Pro Bono Update

Gwinnett Legal Aid would like to recognize the following pro bono volunteers for exceptional service:
Pro Bono Representation

September
Cheryl A. Ballard-Gayle
Tracy S. Drake
Vanessa I. Kosky
Michael C. Murphy
Steven B. Shewmaker
Gloria Smith-Grimes

October
Tracy S. Drake
Stacy M. Elvinsman
Vanessa I. Kosky
Michael C. Murphy

Thank you, volunteers!

JOBS

Gwinnett County Magistrate Court Judge Openings

Chief Magistrate Kristina Hammer Blum is pleased to announce the opening of two full time Magistrate Judge positions that will become open as early as January 1, 2021.

To meet the minimum legal qualifications (O.C.G.A. § 15-10-22 and § 15-6-4), each Applicant must:

- * be at least 25 years of age;
- * be a citizen of the State of Georgia for at least three (3) years;
- * be a citizen of the United States;
- * have been a member, in good standing, of the State Bar of Georgia for at least seven (7) years;
- * be a registered voter; and
- * have been a resident of Gwinnett County for at least two (2) years.

To be eligible for consideration, a completed Application Package must be delivered via email to the Administrative Office of the Courts on or before 4:00 PM on Friday, November 13, 2020. Each Applicant must submit the Administrative Application Package, which consists of the following: (1) resume with cover letter, (2) completed Magistrate Court Application & Questionnaire; (3) signed Authorization Form; and (4) completed Judicial Ethics Quiz. Even if you have applied in the past, you must submit a new Application Package to be considered.

The Magistrate Court Application Package and Judicial Ethics Quiz can be found by clicking above and a available online at the court's website (www.gwinnettcourts.com).

Should you have any questions about the application process, please direct them to the Administrative Office of the Courts at 770.922.9564.

Please email the completed Application Package to the Administrative Office of the Courts at courtsinfo@gwinnettcourts.com.

LEGAL UPDATES AND ARTICLES

Interesting Jurisdiction Questions Raised in 2020
By: **Margaret Gettle Washburn**

Paul v Paul: Did you file your civil case disposition form? If not, Surprise!
Paul v. Paul, 846 S.E.2d 130 (Ga. Ct. App. 2020)

Procedural summary: The Pauls were divorced in 2015. On November 2, 2018, the Wife filed in the divorce case a motion to vacate the final decree. Relying on OCGA § 9-11-60(f) (2), which allows for judgments to be set aside due to a clerical error, she alleged that the Husband had concealed assets from her during settlement negotiations. The Wife's motion was timely filed three days before the expiration of the three-year period for filing such motions and she provided Husband's attorney with a copy of the motion to set aside. The trial court granted the motion, arguing that the motion should have been filed as a new action and that the motion was timely served. The trial court granted the motion.

Question: Does a court that has issued a divorce decree lack jurisdiction to rule on a subsequent motion to set aside the decree based on fraud?
No separate action required; the trial court erred by concluding that the Wife was required to file her motion to set aside as a separate action.
OCGA § 9-11-60 provides in relevant part:

(a) Collateral attack. A judgment void on its face may be attacked in any court by any person. In all other instances, judgments shall be subject to attack only by a direct proceeding brought for that purpose in one of the methods prescribed in this Code section.
(b) Methods of direct attack. A judgment may be attacked by motion for a new trial or motion to set aside. Judgments may be attacked by motion only in the court of rendition...

7th Rowles v. Rowles. 8th Circuit held that the court that issued the parties' divorce decree did not lack jurisdiction to rule on a subsequent motion to set aside the decree based on fraud. Finding merit in the appellee's argument that the movant "was required to file a separate lawsuit to set aside the decree" 9th Circuit affirmed the trial court's ruling. In such cases, "the juvenile court may award temporary custody of [a] child adjudicated to be in need of services." Ermer v. Dunbar, 292 Ga. 103, 105, 754 S.E.2d 403 (2012). Juvenile courts also have exclusive original jurisdiction over proceedings for a permanent guardianship. See OCGA § 15-11-10 (3) (B).

Question: Does the juvenile court have authority to award permanent custody without a transfer order from a superior court?
Only superior courts, however, have original jurisdiction to hear custody matters. See Ga. Const. Art. VI, Sec. IV, Par. 1. See also Ermer, 292 Ga. at 105, 754 S.E.2d 403.

A superior court may transfer a custody matter to juvenile court under OCGA § 15-11-15 (a) (4). In such cases, the juvenile court has concurrent jurisdiction of the custody matter. See OCGA § 15-11-11 (2) (5). However, the juvenile court "does not have authority to award permanent custody without a transfer order from a superior court." Ermer, 292 Ga. at 105, 754 S.E.2d 403. See C.A. v. S3J Ga. App. at 792 (2), 771 S.E.2d 457.

Therefore, when the superior court did not transfer the custody matter to the juvenile court, the superior court retained jurisdiction and erred by dismissing the Kaspers' petition for permanent custody for lack of jurisdiction.

Question: Is a permanent custody proceeding in superior court the equivalent of a permanent guardianship proceeding in juvenile court?
The Court of Appeals did not agree with the trial court's ruling that a permanent custody proceeding in superior court is the equivalent of a permanent guardianship proceeding in juvenile court and therefore, the rule of "priority jurisdiction" dictates that the juvenile court had jurisdiction of the custody matter.

The Court of Appeals found, first, that there was no evidence that the juvenile court appointed a permanent guardian for the child; in fact, the superior court concluded that the child did not have a guardian. Second, the Juvenile Code clearly distinguishes between permanent guardianship and permanent custody. Juvenile Court has original jurisdiction for permanent guardianship and Superior Court has original jurisdiction for permanent custody.

"The juvenile court shall have concurrent jurisdiction to hear... [t]he issue of custody and support when the issue is transferred by proper order of the superior court; provided, however, that if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred to superior court for the jury trial." OCGA § 15-11-21 (3).

Encourage your clients to join to get going and not make things more complicated than the situation already is with regard to all of the moving pieces. The Courts are working to facilitate and ensure the best interests of the child. The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, is one of the most important factors in the child's best interests. See Ga. Code Ann. § 19-9-3 (West).

Articles and Updates Welcome!

If you would like to contribute to the GCBA Monthly Newsletter, e-mail submissions to the SA at each month's Editor: SA@Gwinnettsb.com

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