

**ATLANTA BAR ASSOCIATION**  
**Reputation and the Public Trust Committee**

**2013-2014 Annual Report**  
**May 13, 2014**

Chair: Rita A. Sheffey

Vice-Chair: Nicole Iannarone

Members: James Bonner, Judge Susan Edlein, Dean James Elliott, Henry D. (Hank) Fellows, Justice Carol W. Hunstein, Seaborn Jones, Dean Richardson Lynn, Judge Robert McBurney, Judge Christopher McFadden, Jenny Mittelman, Justice David Nahmias, William U. Norwood, Dean Roy Sobelson, Michael B. Terry, Judge Gail Tusan, Judge Mel Westmoreland

Atlanta Bar Staff: Terri D. Beck, Executive Director, and Mariana Pannell, Committee and Special Programs Coordinator

**Purpose and Goals**

**“To enhance the reputation of lawyers, judges, and the legal system.”** This is one of five goals adopted by the Atlanta Bar Association in its 2008-2011 Strategic Plan. The Reputation and the Public Trust Committee, initially established in 2007, focuses on this goal by identifying public criticisms and perceptions of lawyers, educating lawyers and the public about our profession, and developing practical programs and remedial measures, both directly and by collaborating with stakeholders, to enhance the reputation of our profession and to improve the public’s trust in it.

During the past fiscal year, the Reputation and the Public Trust Committee has focused on the following tasks:

**Identifying the Problem**

We continue to monitor news articles and other information brought to our attention regarding perceived issues with lawyers and judges that adversely impact our profession. One such issue related to judicial elections and how campaigns are financed, specifically instances where a party or a lawyer for a party had complained that a particular judge was influenced by campaign contributions made by the opposing party. With input from a number of judges, the Director of the Judicial Qualifications Commission, and the State Bar Office of General Counsel, we prepared an article outlining the state judicial election process. The article’s intended audience is broad based, including lawyers, judges and the public, and discusses all aspects of state judicial elections, including how campaigns are financed. On March 3, 2014, the Daily Report published the article, “The Hows and Whys of Judicial Elections – a citizen’s primer.” Attached as **Exhibit A** is the text of the article. We continue to seek publication in papers with general circulation, in metro Atlanta and around the state, to ensure that all of the intended audiences are reached.

## **Discouraging Lawyer Misconduct and Educating Stakeholders**

We continue to seek meaningful ways to discourage lawyer misconduct, starting with educating stakeholders.

State Bar Resources for Judges: Jenny Mittelman of the State Bar of Georgia Office of General Counsel (“OGC”), a member of our Committee, prepared a summary of State Bar resources available to judges, including Membership Information and Disciplinary History, the Grievance Process, Help for Impaired Lawyers, Practice Management Help for Lawyers, Ethics Advice, and the Judicial District Professionalism Program. With thanks to a number of judges and court administrators, this very useful summary has been made available electronically to all Georgia judges in the state court system, as well as the federal court system. Jenny Mittelman periodically checks the links in the document to ensure they are active and updated.

Councils of State & Superior Court Judges: We continue to engage in dialogue with the Councils of State and Superior Court Judges on issues affecting the profession, specifically this Committee’s previous surveys and what can be done about instances of attorney misrepresentations which do not rise to the level of State Bar discipline. Our work on this effort is ongoing, and may include additional presentations to groups of judges and participation in training for new judges.

Information Sharing: We have begun discussing the possibility of information sharing among the State Bar, the Fitness Board, and Law Schools, and whether available data could help predict characteristics that may lead to discipline issues. Members of the Committee have met with Sally Lockwood, Director of the Office of Bar Admissions, and we have begun to gather rules that may prevent or impede information sharing among these stakeholders. We also have contacted a psychologist who is interested in studying red flags in the admissions process. Work on this effort is ongoing and we are excited to be part of this important project.

## **Managing Client Expectations**

Consumer Pamphlets: We are simplifying our consumer pamphlet entitled “Personal Injury and Property Damage Lawsuits” for consumers in need of an attorney, and plan to continue pursuing approval of the State Bar to include the pamphlet as part of its consumer brochure series. The pamphlet will also again be translated into Spanish.

We have drafted “How to Make the Most of the Client/Lawyer Relationship,” to help clients and litigants know what to expect when working with lawyers. An initial set of copies was made available through the Fulton County Self-Help Center. We intend to seek further distribution through the Atlanta Bar Association’s Lawyer Referral & Information Service, on the Atlanta Bar website, and through the Sections of the Atlanta Bar, among other avenues. See **Exhibit B**, attached. This is also being translated into Spanish.

Municipal Court: We have prepared a detailed summary of key practical information about the Court to help inform everyone who uses the Court to make their experience more

pleasant. We have shared this with the Municipal Court Judges, asking for their input and assistance in making this available to all Court users. We hope to finalize it in the near future. In addition, Municipal Court Judge Gary Jackson wants to present a CLE program for attorneys regarding practice in Municipal Court. We connected him with Kristin Zielmanski, 2013-2014 President of the ACYL, and that Section is coordinating with him for a program in the coming fiscal year.

### **Collaborating With Related Organizations and Encouraging Other Bar Leaders to Follow Our Lead**

We have recognized from the beginning that we could not single-handedly improve the public's view of lawyers. It is critical to collaborate with others in our work, as well as to encourage others to undertake similar efforts.

Chief Justice's Commission on Professionalism: The Chair of RaPT serves as a liaison to the Chief Justice's Commission on Professionalism. During the past year, we have made a combination of written and oral reports to the CJCP at its meetings on September 20, 2013, February 18, 2014, and May 2, 2014.

Educating Lawyers: We are working to educate lawyers through CLE and other presentations. In 2013, RaPT members created an interactive CLE focusing on social media and professionalism. As the result of this successful presentation, the RaPT members who designed the program have been asked to participate in subsequent CLEs on this topic and other topics related to the Committee's work. Below is a list of programs in which one or more RaPT Committee members were involved during the past year:

- **ETHICS AND PROFESSIONALISM**, State Bar of Georgia Young Lawyer's Division Leadership Academy (Charlotte, NC) (May 16, 2014)
- **SOCIAL MEDIA: PRACTICE DEVELOPMENT THROUGH VERDICT**, Atlanta Bar Association Litigation Section (April 4, 2014)
- **ETHICAL AND PROFESSIONAL ISSUES IN AN ELECTRONIC WORLD**, Lawyers' Club of Atlanta (March 20, 2014)
- **ETHICS UPDATE**, Georgia-Alabama Chapter of American Immigration Lawyers Association Annual Meeting (March 7, 2014)
- **THE ETHICS OF CLOUD COMPUTING AND MODERN TECHNOLOGIES**, presented by Atlanta Bar Association Reputation and Public Trust Committee, State Bar of Georgia Young Lawyers' Division Ethics & Professionalism Committee, Savannah Young Lawyers Committee (March 6, 2014)
- **ETHICAL DILEMMAS AND SOCIAL MEDIA**, presented by Atlanta Bar Association Litigation Section, Atlanta Council of Younger Lawyers, Sole Practitioner & Small Firm Section (June 11, 2013)

Reaching Younger Lawyers: We were invited by the State Bar YLD to present the Professionalism portion of their Leadership Academy program in 2014. The CLE, to be presented May 16, 2014, will introduce the professionalism issue through recent high profile lawyer missteps in electronic media and end by discussing client expectations. By shifting the focus from what lawyers must do to what clients may expect from the relationship, younger lawyer leaders will learn how to make the most of the client-lawyer relationship and positively impact the reputation of lawyers. RaPT Committee members Nicole Iannarone and Jenny Mittelman will be the presenters.

Presentations to Other Bar Leaders: We continue to seek other opportunities to speak with bar leaders. Currently, we are pursuing an opportunity to speak at the National Bar Association's annual meeting to be held in Atlanta later this year. In addition, we have connected with the American Bar Association Committee on Ethics and Professionalism, and hope to plan a program or webinar for their members.

List of Topics and Speakers: We have undertaken to compile a list of topics related to the work of the Committee on which one or more members are prepared to speak, and will make this available to various organizations, seeking to further expand the reach of the Committee.

### **New Topics**

Recently, the Committee began to look at several additional issues which may be impacting the public's view of lawyers:

Mandatory Malpractice Coverage / Mandatory Disclosure: We are reviewing national data reflecting states requiring that attorneys maintain minimum malpractice insurance or at least disclose whether they maintain such insurance, to determine whether to recommend any such requirements in Georgia.

Clients' Security Fund: We have reviewed reports compiled by the ABA concerning these funds around the country, as well as data regarding the Georgia clients' security fund, to determine whether to recommend any changes in how Georgia funds and handles the fund.

### **Ongoing Efforts**

The Atlanta Bar Association has made a commitment to make the work of this Committee a priority and an essential part of our work. The Committee will continue its work, expanding the efforts undertaken to date and exploring new avenues to enhance the reputation of lawyers and increase the public's trust.

## The Hows And Whys of Judicial Elections in Georgia—A Citizens' Primer



Courtroom

One of the Atlanta Bar Association's stated goals is "To enhance the reputation of lawyers, judges, and the legal system." Toward that, the Atlanta Bar's Reputation and the Public Trust Committee identifies public perceptions of lawyers, educates the public and lawyers about our profession, and develops practical programs and remedial measures.

We hope this information about the judicial election process and its transparency will serve ultimately to protect the independence of the judiciary and the public's trust in its impartiality. We aim to ensure that lawyers and others in the legal profession as well as the general public are fully informed regarding how Georgia's judges are selected, how their campaigns are funded, the ethical rules that apply to them and their campaigns and the important role each of us plays in the process.

For many people, including lawyers, how judges become and keep their jobs is a mystery.

Are judges elected? Are they appointed? The answer is both.

Are elections partisan or nonpartisan? It depends.

Are judges elected in popular elections or retention elections? That too, depends.

How are judicial elections funded? They are funded like any other election campaign—through donations to campaign funds.

## **Selection of state court judges**

Unlike judges in the federal court system, most of whom hold lifetime appointments, most judges in the state court judicial system are elected by citizens in nonpartisan races. Trial court judges (state and superior courts) are elected to four-year terms in nonpartisan races during the primary elections. State court judges are elected by county. Superior court judges are elected by judicial circuits. In metro Atlanta, these circuits consist only of one county, but in less densely populated areas, circuits consist of multiple counties. Judicial circuits can be found at [www.cscj.org/circuits/find](http://www.cscj.org/circuits/find).

Appellate court judges (the Georgia Supreme Court and Georgia Court of Appeals) are elected to six-year terms in statewide nonpartisan races during the primary elections.

Some judges of other courts, such as probate court judges, are elected in partisan races. Magistrate court judges also may be elected in partisan races.

Some municipal court judges, such as city of Atlanta judges, are appointed (often by the mayor), and may face election first in retention elections, in which citizens vote to keep or reject an incumbent judge. Details about municipal courts are beyond the scope of this article, because they differ from city to city. Other types of judges, such as juvenile court judges, associate magistrate judges and administrative law judges, are appointed to their positions.

Although all trial and appellate court judges eventually must run for election, many judges first are appointed by the governor to their judicial positions. The governor has the authority to make appointments to fill vacancies caused by the death, resignation or retirement of sitting judges or the creation of additional judgeships within a county or circuit.

In recent years, both Republican and Democratic governors have relied on the Judicial Nominating Commission to interview and recommend candidates to the governor, although there is no requirement that the governor utilize the JNC or follow its recommendations. The governor appoints the members of the JNC, which generally includes lawyers and judges from around the state. The JNC's members and procedures can be found at [www.jnc.georgia.gov](http://www.jnc.georgia.gov).

When there is a judicial vacancy, the JNC publishes notice of the vacancy and opens the application process. Various groups, such as the State Bar of Georgia, the Atlanta Bar Association, the Georgia Association for Women Lawyers, the Gate City Bar Association and other local bar associations, weigh in, making presentations about the applicants to the JNC. After interviewing the applicants, the JNC sends the governor a recommended short list, usually between three and five names. The governor interviews the applicants on the short list and makes the appointment to fill the vacancy. Although the governor is not bound to appoint one of the candidates recommended by the JNC, or even to use the JNC, appointments virtually always come from the JNC's short list.

An appointed judge who wants to remain on the bench runs as the incumbent for election in the next election for that seat.

## **Financing judicial elections**

When judicial candidates run for election, they must follow the same campaign finance rules as all other candidates. Election campaigns cost money, and like other candidates, sitting and prospective judges are permitted to raise money for their campaigns. All judicial candidates are required to file campaign disclosure reports that list each contribution and expenditure that exceeds \$100. These reports are available to the public at [www.ethics.ga.gov](http://www.ethics.ga.gov).

As with other elections, there are contribution limits for judicial races. The maximum annual contribution a donor can

make to any one statewide judicial candidate is \$6,300 and an additional \$3,700 in the event of a runoff election. For county- and circuitwide races, the annual contribution limit per donor is \$2,500 and an additional \$1,300 for runoff elections.

Lawyers often are active participants and donors in judicial campaigns, because they are most involved with and knowledgeable about the judicial system. A lawyer's assistance with or financial contribution to a judicial election does not automatically require a judge to recuse from cases involving that lawyer. Judges and lawyers are mindful of the importance of impartiality of the judiciary and the potential effect that even the appearance of impropriety could have on public confidence in the judicial system.

Our legal system is based upon the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. For that reason, judges are required to disclose financial and in-kind contributions exceeding \$100 to their campaigns. If the contributions are within legal limits, a judge is not automatically required to recuse from presiding over a case solely because one or more of the lawyers donated to, or otherwise were involved with, the judge's election campaign.

However, if a situation arises where there is a reasonable question as to the judge's impartiality, because of considerations concerning the amount, timing, or impact of the contribution, then recusal or disqualification may be appropriate.

Similarly, there are ethical and professional rules that govern the conduct of Bar members, and a lawyer should not suggest to anyone, either clients or opposing parties, that he or she has the ability to affect a judge's decisions because of the lawyer's involvement in or monetary contribution to a judicial campaign. A copy of Georgia's ethical and professional rules that govern lawyers' conduct can be found at [www.gabar.org/barrules/ethicsandprofessionalism](http://www.gabar.org/barrules/ethicsandprofessionalism).

## **Ethical rules**

The conduct of judges is governed by the Georgia Code of Judicial Conduct. The Code can be found at [www.gajqc.com](http://www.gajqc.com). Intrinsic to the Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

The Code sets forth an ethical framework for judges and requires sitting judges and candidates for the judiciary to behave in such a manner as to avoid even the appearance of impropriety. Canon 3(E) of the Code establishes standards as to when a judge should recuse from hearing a case. While there are some bright-line rules, such as prohibiting a judge from hearing a case when he or she is related to a party or an attorney in that case, the application of other factors depends on the circumstances presented.

Canon 7 governs campaign conduct by judges and judicial candidates.

Judges are held accountable to the public through both the election process and the Judicial Qualifications Commission. The JQC is a constitutional commission comprised of members appointed by the governor, the Georgia Supreme Court and the State Bar of Georgia. It investigates complaints from citizens about judges. If the JQC believes that a judge has violated his oath of office or violated one of the canons in the Code, the JQC can seek discipline or removal of a sitting judge. More information about the JQC can be found at [www.gajqc.com](http://www.gajqc.com).

One of the most fundamental principles in our legal system is that everyone has the right to a fair trial and that impartial and unbiased judges will interpret and apply the laws. This concept is important to everyone—citizens, lawyers and judges alike—and a perception or suggestion that judges would be swayed by campaign contributions would damage the reputation of the judiciary and the public's faith in it.

Education about how our judges become judges and keep their jobs, and transparency in the election process, including public disclosure of campaign contributions and compliance with the Judicial Code of Conduct, thus help

protect the independence of the judiciary and the public's faith in its impartiality.

*The Atlanta Bar Association's Reputation and the Public Trust Committee prepared this article in consultation with Jeff Davis, the director of the Judicial Qualifications Commission. The members of the Reputation and the Public Trust Committee for 2013-2014 are: James C. Bonner, Jr., Fulton County State Court Judge Susan E. Edlein, Emory University Law School Associate Dean A. James Elliott, Henry D. Fellows, Georgia Supreme Court Justice Carol W. Hunstein, Nicole G. Iannarone (vice chairwoman), W. Seaborn Jones, John Marshall Law School Dean Richardson Lynn, Fulton County Superior Court Judge Robert C. McBurney, Georgia Court of Appeals Judge Christopher J. McFadden, Jenny K. Mittelman, Georgia Supreme Court Justice David E. Nahmias, William U. Norwood III, Georgia State University College of Law Associate Dean Roy M. Sobelson, Rita A. Sheffey (chairwoman), Michael B. Terry, Fulton County Superior Court Chief Judge Gail S. Tusan and Fulton County Superior Court Senior Judge Melvin K. Westmoreland.*

# Atlanta Bar Association

## Reputation and the Public Trust Committee



**ATLANTA BAR  
ASSOCIATION**  
LAWYERS WHO SERVE

### How to Make the Most of the Client/Lawyer Relationship

---

Dealing with a legal problem can be difficult and emotional. Here is some information to help you make the most of the client/lawyer relationship.

#### You may expect:

- That your lawyer is competent to handle your legal matter.
- That your lawyer is free of conflicts of interest and can be loyal to you.
- That your lawyer will keep your information confidential, disclosing information only when it is necessary to pursue your legal matter.
- A clear description of fees, expenses and billing schedules.
- An explanation of your available legal options conveyed in terms you understand.
- An estimate of the length of time the lawyer will take to complete your matter and the variables that might affect that estimate.
- A summary of what the lawyer will do next and what you must do next.
- A description of how and when your lawyer will communicate with you and directions about when you should contact your lawyer.
- Periodic updates on the status of your case and sufficient information to help you make informed decisions regarding the representation.
- An explanation of the decisions your lawyer will make without your input and those your lawyer will make only after consulting with you.
- Courteous conduct from the lawyer and the lawyer's staff.

#### Your lawyer may expect:

- That you are prepared for your first meeting.
- That you deliver a comprehensive and honest description of the facts of your legal matter.
- That you will ask questions if there is something you do not understand.
- That you will follow through as the lawyer directs.
- That you understand the lawyer has other clients and on certain occasions may be assisting those clients before responding to your inquiries.
- Prompt payment of bills and notice if you have questions or concerns about the bill.
- Courteous conduct when dealing with the lawyer and the lawyer's staff.

#### If your lawyer does not meet your expectations:

- Communicate your concerns to your lawyer and give the lawyer a reasonable amount of time to respond to those concerns.
- Consult the State Bar of Georgia website at <http://www.gabar.org/forthepublic/> if you remain dissatisfied with your lawyer.