

Legal Ethics

by Patrick Emery Longan*

I. INTRODUCTION

Between June 1, 2001 and June 1, 2002, the Georgia Court of Appeals and the Georgia Supreme Court decided over two hundred cases concerning legal ethics. The great majority of these cases involved claims by criminal defendants of ineffective assistance of counsel, and the courts rejected almost all of these claims on various routine grounds. Of the remaining cases, there were decisions of note concerning attorney discipline, legal malpractice, and other civil liabilities, and a few cases in which the courts upheld claims of ineffective assistance of counsel. The courts also decided several cases on miscellaneous topics that are worth noting.

II. DISCIPLINARY CASES

A. *Trust Accounts and Other Financial Problems*

Trust account violations and other money-related problems were the leading causes of professional discipline. The Supreme Court of Georgia disbarred four lawyers because of such problems and accepted a voluntary surrender of another's license. In *In re Ruskaup*,¹ the lawyer settled a client's personal injury claim for over \$18,000, but after depositing the money in his trust account, he failed to inform the client and used the money for himself. Not until the client filed a civil action

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1. 274 Ga. 702, 558 S.E.2d 392 (2002).

did the lawyer send the client any of the money, and even then he sent only \$3,000.²

In *In re Burton*,³ a lawyer persuaded a client to write a check payable to the Fulton County Superior Court “to limit the client’s liability,” but after telling the client that she could not deposit the check with the court and would destroy the check, the lawyer altered the check and deposited it in her personal account.⁴ The same lawyer concluded a personal injury case for a client, signed her client’s name to the settlement check, and notarized the signature herself. That money also went to the lawyer’s personal account rather than to the client or the client’s medical creditors.⁵

In *In re Adams*,⁶ similar activities resulted in the disbarment of Christopher David Adams, although Mr. Adams had gone the extra step of settling the client’s claims without authorization before converting the client’s money.⁷ Small amounts of money led to the disbarment of another lawyer in *In re Randolph*.⁸ Randolph misappropriated a \$175 check for filing fees and misrepresented to a bankruptcy court that he had not received any fees when in fact he had been paid \$275 as a “partial retainer.” Randolph’s “aggravation factors” included failure to pay bar dues for several years.⁹ Finally, in *In re Davidson*,¹⁰ a lawyer with drug problems voluntarily surrendered his license after writing checks over a four-month period to himself out of his client’s trust account.¹¹

Two cases of financial impropriety led to suspensions rather than disbarments at least in part because the lawyers got in trouble as a result of substance abuse in one case and personal problems in the other. In *In re Champion*,¹² unspecified “personal and emotional factors” motivated a lawyer to withdraw client funds from her trust account and delay for five months sending the client his money.¹³ The lawyer did not initially admit the violation but eventually showed remorse and

2. *Id.* at 703, 558 S.E.2d at 393.

3. 274 Ga. 319, 553 S.E.2d 579 (2001).

4. *Id.* at 320, 553 S.E.2d at 580.

5. *Id.* at 321, 553 S.E.2d at 580. This lawyer’s discipline also resulted in part from one case of client neglect. *Id.* at 322, 553 S.E.2d at 581.

6. 274 Ga. 756, 559 S.E.2d 459 (2002).

7. *Id.* at 757-58, 559 S.E.2d at 460-61.

8. 274 Ga. 482, 554 S.E.2d 485 (2001).

9. *Id.* at 484, 554 S.E.2d at 487.

10. 275 Ga. 1, 561 S.E.2d 412 (2002).

11. *Id.* at 2, 561 S.E.2d at 413.

12. 275 Ga. 140, 562 S.E.2d 179 (2002).

13. *Id.* at 140, 562 S.E.2d at 180.

made restitution to the client.¹⁴ That lawyer received a twelve-month suspension.¹⁵

Finally, in *In re Drucker*,¹⁶ a very experienced lawyer received a six-month suspension after he collected money on behalf of a client but never informed the client and converted the funds.¹⁷ The court noted that “personal and emotional factors may have contributed” to his behavior and also noted, in mitigation, that he had repaid the money.¹⁸

Suspensions also resulted from negligent mishandling of client money in two cases. In *In re Dansby*,¹⁹ a lawyer with no more than seven years experience admitted during a fee arbitration that he had not kept a client’s settlement funds separate from his own (he had closed his trust account) and that he had paid the client some of the settlement proceeds out of his operating account.²⁰ The special master appointed to his case and Justices Hunstein and Thompson believed that disbarment was appropriate, but the court concluded that a three-year suspension would suffice.²¹

In *In re Porges-Dodson*,²² a lawyer overdrew her trust account twice—once because money that was to be deposited into the account was stolen and never recovered, and once because the lawyer entrusted a deposit to another who neglected to make it. The lawyer received a twelve-month suspension.²³

The final case involving discipline and money, *In re Spence*,²⁴ concerned a lawyer who had been disbarred in 1985 but was attempting to re-enter the profession. The Board to Determine Fitness of Bar Applicants denied him a certificate of fitness to practice law because it deemed the lawyer to be fiscally irresponsible. He had stopped paying his law school loans for a period of four months in order to pay for his daughter to attend an overseas study abroad program. By the time the Board convened an informal conference about the matter, he had resumed payments and made up the arrearage.²⁵ The Georgia Supreme Court noted that the applicant had severe financial problems

14. *Id.*

15. *Id.* at 141, 562 S.E.2d at 180.

16. 274 Ga. 536, 556 S.E.2d 129 (2001).

17. *Id.* at 537, 556 S.E.2d at 130.

18. *Id.*

19. 274 Ga. 393, 553 S.E.2d 157 (2001).

20. *Id.* at 394, 553 S.E.2d at 158.

21. *Id.* at 395, 553 S.E.2d at 159.

22. 274 Ga. 764, 558 S.E.2d 721 (2002).

23. *Id.* at 764-65, 558 S.E.2d at 722.

24. 275 Ga. 202, 563 S.E.2d 129 (2002).

25. *Id.* at 202-03, 563 S.E.2d at 130-32.

related to student loans but had not sought bankruptcy protection and in fact worked several jobs to satisfy his creditors.²⁶ In light of those efforts and the applicant's remorse, the court ordered that he be granted his certificate of fitness to practice law.²⁷

B. Problems of Client Neglect and Lack of Communication

The second leading cause of problems for lawyers was client neglect in various forms. Five lawyers were disbarred over such matters. In *In re Bradley*,²⁸ a lawyer neglected to respond to a client's messages and correspondence for six months, and even with the help of a private investigator, the client was unable to locate the lawyer.²⁹ Over a dissent from Justices Benham and Carley, which noted that this was the lawyer's first disciplinary case and that the client had suffered no harm, the court ordered disbarment.³⁰

Two cases of neglect, compounded by lies to the clients, led to the disbarment of another lawyer in *In re Bowie*.³¹ In this case the lawyer never served the defendant but sent the client a copy of an answer purportedly filed by the defendant, while in another, the lawyer failed to file suit on behalf of a client but nevertheless gave the client a "case number," which, of course, was invalid.³² Similarly, in *In re Pike*,³³ Douglas Harry Pike was disbarred for abandoning a client's case in a divorce matter and failing to return the fee that had been paid.³⁴

Similar circumstances of neglect, failure to communicate, and failure to return either papers or money led to the disbarment of another lawyer in *In re Vogel*.³⁵ Finally, in *In re Bagley*,³⁶ a lawyer handling an appeal from an action to terminate his client's parental rights failed to file any enumerations of error or a brief, failed to respond to the State's motion to dismiss the appeal, did not inform the client that the appeal had been dismissed, and despite promising that he would do so, the

26. *Id.* at 204, 563 S.E.2d at 131.

27. *Id.* at 205, 563 S.E.2d at 132.

28. 274 Ga. 244, 552 S.E.2d 844 (2001).

29. *Id.* at 245, 552 S.E.2d at 845.

30. *Id.* at 245-46, 552 S.E.2d at 845.

31. 274 Ga. 355, 554 S.E.2d 153 (2001).

32. *Id.* at 355, 356, 554 S.E.2d at 154.

33. 274 Ga. 535, 555 S.E.2d 731 (2001).

34. *Id.* at 535-36, 555 S.E.2d at 732.

35. 274 Ga. 538, 538, 555 S.E.2d 733, 733 (2001).

36. 273 Ga. 874, 548 S.E.2d 295 (2001).

lawyer never filed a motion to set aside the dismissal.³⁷ The court unanimously ordered disbarment.³⁸

The court ordered suspensions in three cases involving client neglect. In *In re Harvey*,³⁹ Harold Michael Harvey engaged in a pattern of neglecting client matters, including allowing a statute of limitations to pass on one case and allowing other cases to be dismissed by failing to respond to motions. Despite the pattern, the special master and the Review Panel ordered only a one-year suspension.⁴⁰ The court increased the sanction to a two-year suspension.⁴¹

The other two suspensions involved the familiar mitigating factors of mental incapacity and alcoholism. In the first, *In re Ward*,⁴² a lawyer with a history of disciplinary problems accepted an indefinite suspension after he failed to respond to a motion for summary judgment and his client's personal injury case was dismissed.⁴³ One condition for reinstatement will be a certification from the Lawyer Assistance Program that he is mentally fit to return to the practice of law.⁴⁴

In the second, *In re Williams*,⁴⁵ a lawyer abandoned clients in two cases and failed to notify them that their cases had been dismissed. This lawyer's actions apparently resulted from depression and alcoholism for which he sought treatment, and the court ordered an indefinite suspension.⁴⁶ He, too, will need a certification of fitness from the Lawyer Assistance Program if he is to return to the practice of law.⁴⁷

C. Other Disciplinary Cases

Criminal prosecutions resulted in discipline in several cases. In *In re Abdullah Frederick*,⁴⁸ a lawyer petitioned successfully for a voluntary suspension of his license pending his appeal from a conviction for several federal felonies.⁴⁹ Another lawyer did the same after pleading nolo contendere to federal felonies in *In re Haugabrook*.⁵⁰ Three lawyers

37. *Id.* at 874-75, 548 S.E.2d at 295-96.

38. *Id.*

39. 275 Ga. 28, 560 S.E.2d 646 (2002).

40. *Id.* at 28-29, 560 S.E.2d at 648.

41. *Id.* at 31-32, 560 S.E.2d at 650.

42. 274 Ga. 323, 553 S.E.2d 796 (2001).

43. *Id.* at 323, 553 S.E.2d at 796.

44. *Id.*

45. 274 Ga. 485, 554 S.E.2d 496 (2001).

46. *Id.* at 486, 554 S.E.2d at 497.

47. *Id.*

48. 274 Ga. 120, 549 S.E.2d 709 (2001).

49. *Id.* at 120, 549 S.E.2d at 709.

50. 275 Ga. 201, 201, 563 S.E.2d 844, 844 (2002).

voluntarily surrendered their licenses after their convictions, one for mail fraud and money laundering,⁵¹ one for murder and aggravated assault,⁵² and one for mail fraud and making a false statement on a tax return.⁵³ Another lawyer received an eighteen-month suspension after he pleaded guilty to a misdemeanor charge of solicitation of sodomy from a prospective client.⁵⁴

Three other lawyers received discipline in miscellaneous matters. Two of these were for activities in other states. In *In re Powell*,⁵⁵ a lawyer was disbarred in Georgia after he surrendered his license to practice in West Virginia as part of a plea agreement involving various prostitution-related charges.⁵⁶ In *In re Wright*,⁵⁷ another was disbarred in Georgia because he had been disbarred in New Jersey.⁵⁸ Finally, in *In re Maniscalco*,⁵⁹ a lawyer successfully petitioned for a voluntary suspension of his license for twelve months after it was discovered that he had entered into a business arrangement with a nonlawyer who sent him clients for a fee.⁶⁰

III. LEGAL MALPRACTICE AND OTHER CIVIL LIABILITY

The Georgia Court of Appeals decided seven cases involving claims against lawyers for malpractice, fraud, and breach of fiduciary duty. The lawyers were victorious in three of these cases but were unsuccessful in the others.

In Georgia, every case of professional malpractice must be accompanied by an expert affidavit unless the statute of limitations is about to run.⁶¹ In *Smith v. Morris, Manning & Martin LLP*,⁶² plaintiffs sued

51. *In re Bates*, 274 Ga. 243, 244, 552 S.E.2d 845, 846 (2001).

52. *In re Baumhammers*, 274 Ga. 760, 760, 559 S.E.2d 482, 482 (2002).

53. *In re Evans*, 275 Ga. 164, 164, 562 S.E.2d 512, 512 (2002).

54. *In re Stewart*, 275 Ga. 199, 200, 563 S.E.2d 859, 860 (2002).

55. 274 Ga. 89, 548 S.E.2d 615 (2001).

56. *Id.* at 90, 548 S.E.2d at 615.

57. 274 Ga. 759, 559 S.E.2d 481 (2002).

58. *Id.* at 759, 559 S.E.2d at 481.

59. 275 Ga. 238, 564 S.E.2d 186 (2002).

60. *Id.* at 238, 564 S.E.2d at 187.

61. O.C.G.A. § 9-11-9.1 (1993 & Supp. 2002). O.C.G.A. § 9-11-9.1 provides:

In any action for damages alleging professional malpractice against a professional licensed by the State of Georgia and listed in subsection (f) of this Code section or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of Georgia and listed in subsection (f) of this Code section, the plaintiff shall be required to file with the complaint an affidavit of an expert competent to testify, which affidavit shall set forth specifically at least one negligent act or omission claimed to exist and the factual basis for each such claim.

defendant for malpractice three times. The first two filings did not include expert affidavits and were dismissed voluntarily by plaintiffs. The third was also filed without an expert affidavit, and defendants moved for dismissal. Plaintiffs replaced their counsel of record and then filed an expert affidavit forty-five days after their third start on the case. The expert was their original counsel and had been representing them at that point for five years. In an amended complaint, plaintiffs sought to bring their situation within the exception that permits a filing without an affidavit if the statute of limitations is about to run and grants a grace period of forty-five days.⁶³ Although it was apparent that these plaintiffs could have obtained the same affidavit before they filed, plaintiffs took the position that the forty-five day extension was automatic as long as they recited the incantation that the affidavit could not be prepared in time.⁶⁴ The court rejected this argument and the plurality opinion in *Works v. Aupont*⁶⁵ and concluded that the trial court could look behind the pleading.⁶⁶ Finding that the trial court had ample reason to conclude that plaintiffs' claim of an inability to obtain the expert report was "patently false and a sham," the court upheld the dismissal of the malpractice claim.⁶⁷

Another case involved a claim that a closing attorney committed malpractice by not disclosing to his client that the property being sold was being "flipped," or sold at a substantially higher price than it commanded at a recent sale.⁶⁸ The jury returned a verdict for the attorney, and the court of appeals affirmed.⁶⁹ The appellate court concluded that it was for the jury to decide whether the lawyer had used the "degree of skill and care . . . ordinarily used by other closing attorneys in similar situations."⁷⁰ The court of appeals rejected the notion that the jury had been improperly instructed when the trial court told it that "malpractice" and failure to adopt "the better practice" are not the same thing.⁷¹

62. 254 Ga. App. 355, 562 S.E.2d 725 (2002), *cert. denied*, No. 502C1087, 2002 Ga. LEXIS 559 (Ga. June 21, 2002).

63. O.C.G.A. § 9-11-9.1(b).

64. 254 Ga. App. at 355-57, 562 S.E.2d at 726-27.

65. 219 Ga. App. 577, 465 S.E.2d 717 (1995).

66. 254 Ga. App. at 357-58, 562 S.E.2d at 727-28.

67. *Id.* at 358-59, 562 S.E.2d at 728.

68. *First Bancorp Mortgage Corp. v. Giddens*, 251 Ga. App. 676, 676-77, 555 S.E.2d 53, 56 (2001).

69. *Id.* at 676, 555 S.E.2d at 55.

70. *Id.* at 681, 555 S.E.2d at 59.

71. *Id.*

In *Ross v. Edwards*,⁷² the court of appeals affirmed a summary judgment in favor of a lawyer who had been sued for malpractice and fraud.⁷³ The alleged malpractice was the failure of the attorney to present an engineering expert in a nuisance trial. The trial court granted summary judgment on the basis that even if there had been malpractice, the client had not shown any evidence that would have entitled him to damages.⁷⁴ The court of appeals affirmed on different grounds.⁷⁵ The court concluded that the client had not produced evidence that there was any engineer who could have and would have been an expert witness in the nuisance case.⁷⁶ Without that, any conclusion about how the case would have come out would be “pure conjecture.”⁷⁷ The court of appeals also held that there was no evidence that the lawyer committed fraud with respect to the expert or with respect to a rejected settlement offer.⁷⁸

The lawyer in *Dyer v. Honea*⁷⁹ was not so fortunate. In that case, the trial court rejected the lawyer’s motion for summary judgment because there was evidence of the following sequence of events: Two parties negotiated the sale of a restaurant. One of them retained a lawyer who drew up a complicated agreement. The other party’s lawyer reacted angrily to that draft and stated that he could draft an appropriate agreement and represent both parties. The deal closed without the buyer being informed of various liens against the conveyed property and without the buyer having a correct understanding of the restaurant’s financial condition.⁸⁰ The court of appeals held that there was an issue of fact regarding the reasonableness of the buyer’s belief that the attorney was representing him and that, therefore, summary judgment properly had been denied.⁸¹

The propriety of summary judgment was also the issue in *Wright v. Cook*.⁸² The trial court granted summary judgment to a lawyer who had closed a real estate purchase for plaintiffs. Plaintiffs later discovered a title defect on the property, and one of them testified by deposition that the lawyer assured them that he would take care of the

72. 253 Ga. App. 773, 560 S.E.2d 343 (2002).

73. *Id.* at 773, 560 S.E.2d at 343-44.

74. *Id.*, 560 S.E.2d at 344.

75. *Id.* at 774, 560 S.E.2d at 344.

76. *Id.*

77. *Id.*

78. *Id.* at 775, 560 S.E.2d at 345.

79. 252 Ga. App. 735, 557 S.E.2d 20 (2001).

80. *Id.* at 742-43, 557 S.E.2d at 27-28.

81. *Id.* at 743-44, 557 S.E.2d at 28-29.

82. 252 Ga. App. 759, 556 S.E.2d 146 (2001).

problem, although he never did.⁸³ The court of appeals concluded that a jury might reasonably find that the lawyer did make such an assurance, but because the lawyer failed to live up to it with reasonable care, he subjected himself to malpractice liability.⁸⁴

*Joel v. Chastain*⁸⁵ is a breach of fiduciary duty case against a lawyer who operated a high volume practice. The lawyer generated hundreds of cases through heavy advertising but did not handle the cases himself. He employed one other lawyer and numerous nonlawyers to handle over 500 cases. The plaintiff was a former client whose case was “handled” by one of the nonlawyer “case negotiators” who represented to the client that he was a lawyer and accepted a settlement offer without her consent.⁸⁶ After her numerous phone calls were not returned, the client filed a grievance. That got the firm’s attention, and they settled her claim eventually, for no fee, for \$25,000. The client sued to recover for the mental distress caused by this experience, and a jury awarded her \$4,000 and attorney fees.⁸⁷ The court of appeals affirmed the damage award and stated:

[T]he jury was authorized by the evidence to conclude that [defendant] deliberately organized his P.C. in a manner [that] allowed [his employee], without adequate supervision by an attorney, to mishandle Chastain’s case and that this breached the P.C.’s fiduciary duty to apply its best skill, zeal, and diligence in representing Chastain.⁸⁸

The court also found that the trial judge did not err in instructing the jury on the State Bar Rules.⁸⁹

Finally, a lawyer also suffered an adverse result in *Rapid Group, Inc. v. Yellow Cab, Inc.*⁹⁰ In the underlying case, two passengers sued Yellow Cab for injuries they sustained in a traffic accident. Yellow Cab’s lawyer failed to respond to discovery, and plaintiffs obtained a default judgment for \$101,000. Yellow Cab, in turn, claimed that its lawyer’s malpractice in not responding to discovery caused it to lose a valid defense to the tort claim. The defense would have been that Yellow Cab was not liable for the driver’s negligence because he was an independent contractor rather than an employee. The malpractice defendants claimed that Yellow Cab would have lost the underlying claim anyway

83. *Id.* at 759, 556 S.E.2d at 147.

84. *Id.* at 761, 556 S.E.2d at 148.

85. 254 Ga. App. 592, 562 S.E.2d 746 (2002).

86. *Id.* at 593, 562 S.E.2d at 748.

87. *Id.* at 592-95, 562 S.E.2d at 747-49.

88. *Id.* at 596, 562 S.E.2d at 750.

89. *Id.* at 597, 562 S.E.2d at 750-51.

90. 253 Ga. App. 43, 557 S.E.2d 420 (2001).

because the “independent contractor” defense does not apply to claims like this.⁹¹ The court of appeals held, however, that Yellow Cab might have been able to establish the defense if the default judgment had not intervened because the rule of law that eliminated the defense was not well established until years later.⁹² The jury in the malpractice case returned a verdict for Yellow Cab for \$244,431, and the court of appeals affirmed.⁹³

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Convicted criminals who claim ineffective assistance of counsel have a high standard to meet: They must show both a deficient performance by their counsel and that the performance prejudiced them.⁹⁴ As mentioned, the court of appeals and the Supreme Court of Georgia rejected well over one hundred claims of ineffective assistance between June 2001 and May 2002. In three cases, however, the court of appeals found that there had been ineffective assistance, while the supreme court accepted two such claims.

In *Youngblood v. State*,⁹⁵ defendant was convicted of three counts of battery and of aggravated assault and was sentenced to fifteen years imprisonment.⁹⁶ The court of appeals determined that the indictment for aggravated assault, however, was defective because it did not make the allegations required by Georgia law.⁹⁷ Trial counsel did not make a timely objection to this void indictment, and because of that ineffective assistance, the conviction on that count was reversed.⁹⁸ In *Mann v. State*,⁹⁹ defendant was convicted of aggravated sodomy primarily on the testimony of the victim, a young child. The child’s credibility was a central issue in the case. Defense counsel did not object to the testimony of a witness who stated that she believed the victim. However, counsel objected to similar testimony of a second witness, but only after the testimony was given, and did not request a curative instruction.¹⁰⁰ Because such testimony was clearly inadmissible, but potentially so central to the conviction, the court upheld the claim of ineffective

91. *Id.* at 43, 557 S.E.2d at 422 (citing *Yellow Cab of Chatham County v. Karwoski*, 226 Ga. App. 63, 486 S.E.2d 39 (1997)).

92. *Id.* at 47, 557 S.E.2d at 424-25.

93. *Id.* at 44, 48, 557 S.E.2d at 422, 425-26.

94. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

95. 253 Ga. App. 327, 558 S.E.2d 854 (2002).

96. *Id.* at 327, 558 S.E.2d at 855.

97. *Id.* at 328, 558 S.E.2d at 856 (citing O.C.G.A. § 16-5-21(a)(2) (1999 & Supp. 2002)).

98. *Id.* at 329, 558 S.E.2d at 856-57.

99. 252 Ga. App. 70, 555 S.E.2d 527 (2001).

100. *Id.* at 72, 555 S.E.2d at 529.

assistance.¹⁰¹ Finally, defendant in *Thorpe v. State*¹⁰² won a remand on the basis of his claim that his attorney did not tell him that he had a right to appeal after a guilty plea.¹⁰³ A right to appeal existed because the trial court did not give defendant an opportunity to withdraw the plea when the court announced it was rejecting the plea agreement.¹⁰⁴

In *Kirkland v. State*,¹⁰⁵ defendant was convicted of burglaries of Home Depot stores and armed robbery of a Home Depot employee. During jury selection, eight potential jurors affirmed that they had some relationship to Home Depot, as an officer, director, shareholder, or employee. Defendant's counsel had the right to strike these venire members for cause but did not do so. Instead, the lawyer used peremptory strikes to remove five of them. As a result, one of the panel members with an affiliation to Home Depot served on the jury.¹⁰⁶ The supreme court concluded that defendant was convicted by a biased jury because of his lawyer's incompetent performance and remanded the case for a new trial.¹⁰⁷

The supreme court also found that there had been ineffective assistance of counsel in *Stanford v. Stewart*¹⁰⁸ because defendant's counsel had not objected to a jury charge that permitted the jury to convict defendant on grounds not alleged in the indictment.¹⁰⁹ Because an objection would have resulted in a new trial, the court concluded that counsel's performance was deficient and defendant was prejudiced because he would have been entitled to a new trial.¹¹⁰

V. MISCELLANEOUS DECISIONS

The court of appeals and the supreme court also decided a number of miscellaneous cases involving attorneys. For example, *Hill v. Centennial/Ashton Properties Corp.*¹¹¹ and *Villani v. Edwards*¹¹² both involved attorneys' liens. In *Hill* an attorney made a written agreement with her client for a contingent fee in a nursing home case, but the

101. *Id.* at 72-73, 555 S.E.2d at 529-30.

102. 253 Ga. App. 263, 558 S.E.2d 804 (2002).

103. *Id.* at 263, 558 S.E.2d at 805.

104. *Id.* at 263-64, 558 S.E.2d at 805-06.

105. 274 Ga. 778, 560 S.E.2d 6 (2002).

106. *Id.* at 778, 560 S.E.2d at 7.

107. *Id.* at 780, 560 S.E.2d at 8.

108. 274 Ga. 468, 554 S.E.2d 480 (2001).

109. *Id.* at 470, 554 S.E.2d at 482-83.

110. *Id.* at 471, 554 S.E.2d at 483.

111. 254 Ga. App. 176, 561 S.E.2d 853 (2002).

112. 251 Ga. App. 293, 554 S.E.2d 184 (2001).

contract also provided for the attorney to recover in quantum meruit (measured by an hourly rate) if their relationship terminated.¹¹³ The lawyer moved to another state while the case was pending and transferred the case to another lawyer. When the case settled, the first lawyer asserted an attorney's lien on the proceeds, and the trial court foreclosed the lien and awarded the attorney \$40,530.¹¹⁴ The court rejected arguments that she had to follow the strict procedures required for attorney liens on papers and personal property of a client because those procedures are not applicable to liens such as this one, on actions, judgments, or decrees.¹¹⁵ The court also found that the lawyer's testimony about the hours she worked, even though she did not keep contemporaneous time records, was sufficient evidence to support the award.¹¹⁶

The court's decision in *Villani* was not as favorable to the lawyer.¹¹⁷ There, an attorney tried to assert a lien on the money paid in settlement, but asserted the lien only after the case had been dismissed.¹¹⁸ The court of appeals held that the dismissal of the action extinguished the lien.¹¹⁹ In the alternative, it held that the lawyer was attempting to recover on an unenforceable oral contingency contract.¹²⁰ Either way, the lawyer lost.

The court of appeals rejected two claims of unauthorized practice of law. In *Interstate North Sporting Club v. Cobb County Board of Tax Assessors*,¹²¹ a tax consulting firm filed a notice of appeal on behalf of a taxpayer with the Board of Equalization, a quasi-judicial administrative body.¹²² The court found that such a filing was not "the unauthorized practice of law."¹²³ The court also determined that the taxpayer's appeal could proceed on two other, alternative grounds. The court found first that the statutory procedures for perfecting the appeal are ambiguous regarding who may file the notice of appeal.¹²⁴ The court

113. 254 Ga. App. 176, 177, 561 S.E.2d 853, 855.

114. *Id.* at 176-77, 561 S.E.2d at 854-55.

115. *Id.* at 178, 561 S.E.2d at 855 (compare O.C.G.A. § 15-19-14 (2001), which creates both types of attorneys liens, to O.C.G.A. § 15-19-15 (2001), which imposes special procedures, by reference, on foreclosure of liens on a client's personal property).

116. *Id.*, 561 S.E.2d at 855-56.

117. *See* 251 Ga. App. 293, 294, 554 S.E.2d 184, 185.

118. *Id.* at 293, 554 S.E.2d at 185.

119. *Id.* at 294, 554 S.E.2d at 185.

120. *Id.* at 294-95, 554 S.E.2d at 186.

121. 250 Ga. App. 221, 551 S.E.2d 91 (2001).

122. *Id.* at 221, 551 S.E.2d at 92.

123. *Id.* at 225, 551 S.E.2d at 95.

124. *Id.* at 224, 551 S.E.2d at 94.

resolved the ambiguity in favor of the taxpayer and held that the taxpayer's consulting firm could file the notice.¹²⁵ The court also held that the Board of Tax Assessors had waived its right to claim that filing the notice of appeal was the unauthorized practice of law.¹²⁶

In *Huzzie v. State*,¹²⁷ a probation officer filed a petition for revocation of probation. The year before the court of appeals had held that (1) a probation officer was a public official and essentially a party to the case and (2) filing a petition for revocation was not the unauthorized practice of law.¹²⁸ The probation officer in *Huzzie* was an employee of a private company that had contracted with the State to provide probation services, but the court held that the officer nevertheless was an officer of the court who was not engaged in the practice of law.¹²⁹

The Supreme Court of Georgia decided one case involving judicial ethics. In *Lewis v. State*,¹³⁰ defendant was convicted of murder. He filed a motion for new trial, alleging several errors and including a claim that the trial judge had responded to notes from the jury without consulting defense counsel. Another judge heard that part of the motion for new trial, and the original trial judge testified that she had received no notes from the jury during deliberations. That same judge, however, heard and rejected the other parts of the defendant's motion for new trial.¹³¹ The supreme court held that defendant was entitled to have a different judge hear all of his grounds for new trial because the Code of Judicial Conduct requires disqualification in all proceedings in which "their impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has been a material witness."¹³²

The court of appeals decided two cases involving misconduct of lawyers. In *Threlkeld v. State*,¹³³ the trial court denied "first offender" status to an attorney who pleaded guilty to fondling a seventeen-year-old client who was detained at a juvenile detention center.¹³⁴ The trial court denied that status in part because defendant was an attorney who

125. *Id.*

126. *Id.* at 225, 551 S.E.2d at 95.

127. 253 Ga. App. 225, 558 S.E.2d 767 (2002).

128. *Id.* at 225, 558 S.E.2d at 768 (citing *Leverette v. State*, 248 Ga. App. 304, 306, 546 S.E.2d 63, 65 (2001)).

129. *Id.* at 226, 558 S.E.2d at 768.

130. 275 Ga. 194, 565 S.E.2d 437 (2002).

131. *Id.* at 194-95, 565 S.E.2d at 437-38.

132. *Id.* at 195-96, 565 S.E.2d at 438-39 (quoting CODE OF JUDICIAL CONDUCT, Canon 3(E) (1983)).

133. 250 Ga. App. 44, 550 S.E.2d 454 (2001).

134. *Id.* at 46, 550 S.E.2d at 456.

abused his relationship with his client, and the court of appeals approved.¹³⁵ The court in *In re Longino*¹³⁶ approved the criminal contempt conviction of a lawyer who intentionally introduced evidence at trial in violation of the trial court's ruling on a motion in limine.¹³⁷

The issue in *State v. Thomas*¹³⁸ was prosecutorial misconduct. Defendant was being tried for murder and offered the testimony of an expert who had concluded that defendant caused the death as a result of "battered woman's syndrome."¹³⁹ On cross-examination of the expert, the prosecutor asked, "Isn't it true that [defendant] told you something regarding her child, that she abused her child?"¹⁴⁰ The defense motion for a mistrial was granted, and when the prosecution tried to bring the case to trial again, the trial court sustained the defense of former jeopardy. The trial court concluded that the prosecutor's question was a deliberate attempt to "goad" defendant into moving for a mistrial.¹⁴¹ Over a vigorous dissent from Justices Carley and Hunstein, the supreme court affirmed.¹⁴²

In *State v. Dodge*,¹⁴³ the court of appeals reversed an acquittal that the trial court entered based on defendant's right to a speedy trial.¹⁴⁴ Defendant had demanded a speedy trial, but her counsel filed a notice of leave of absence that covered much of the time period in which defendant could receive her requested speedy trial. The State requested that the case be set on the first available trial date, but when the time came, lead defense counsel sent an associate to court. The trial court gave this lawyer the choice of trying the case, finding another lawyer to try the case, or waiving speedy trial. Lead counsel sent the trial judge a fax that day rejecting all these options, and the court continued the trial, later granting a motion for discharge and acquittal based on the speedy trial demand.¹⁴⁵ The court of appeals found that defendant had waived her right to a speedy trial because of her counsel's extended absences and noted disapprovingly that "it is clear to this Court that the practice of postponing trial through a series of extended absences is

135. *Id.*

136. 254 Ga. App. 366, 562 S.E.2d 761 (2002).

137. *Id.* at 368, 562 S.E.2d at 763.

138. 275 Ga. 167, 562 S.E.2d 501 (2002).

139. *Id.* at 167, 562 S.E.2d at 502.

140. *Id.*

141. *Id.*

142. *Id.* at 168, 562 S.E.2d at 503.

143. 251 Ga. App. 361, 553 S.E.2d 831 (2001).

144. *Id.* at 361-63, 553 S.E.2d at 832-33.

145. *Id.* at 361-62, 553 S.E.2d at 832-33.

becoming more common.”¹⁴⁶ The court also noted that defendant had failed to show that a jury was impaneled and qualified to try her during all the time periods relevant to her speedy trial claim.¹⁴⁷

In *Jackson v. Ford*,¹⁴⁸ a former associate sued his former firm for incentive compensation that he claimed he was promised. The court of appeals upheld summary judgment against him and agreed with the trial court that the promises of incentive compensation were too vague and uncertain to form the basis of a contract or to support recovery for fraud.¹⁴⁹ The court also rejected his claims for quantum meruit compensation for work he did after he left the firm.¹⁵⁰ The former associate had also lost his attempt in the trial court to obtain a summary judgment on two counterclaims against him. In the first, his former employer sought a portion of a fee that the associate earned on a case while he was still employed with the firm. When the associate left, the lawyers made an agreement with the client that they would collaborate on the case and split the fee. The lawyers’ differences made it impossible to work together, however, and the former employer withdrew. He claimed that he was entitled to a larger fee than his former associate paid him, and the trial court and the court of appeals agreed that there were factual issues to be resolved.¹⁵¹ Both courts also found summary judgment inappropriate on a counterclaim for conversion by the associate of work papers and computer disks.¹⁵²

Finally, in *Georgia Baptist Health Care System, Inc. v. Hanafi*,¹⁵³ the court of appeals reversed a trial court’s order disqualifying a law firm.¹⁵⁴ Dr. Magda Hanafi had been attempting for years to secure privileges with Georgia Baptist Hospital. He sought reinstatement in an administrative proceeding before the Hospital’s peer review board. In that hearing, he was represented by Jim Kelly & Associates. An associate in that firm, William Pike, worked on that matter for Hanafi. Pike later went to work for Duvall, McCumber & Doverspike (DMD), counsel for Georgia Baptist in the litigation that ensued after the administrative proceeding. DMD erected a “Chinese Wall” to screen him from any contact with the litigation and notified Hanafi’s counsel.¹⁵⁵

146. *Id.* at 365, 553 S.E.2d at 835.

147. *Id.* at 366, 553 S.E.2d at 835.

148. 252 Ga. App. 304, 555 S.E.2d 143 (2001).

149. *Id.* at 306-07, 555 S.E.2d at 147.

150. *Id.* at 308-09, 555 S.E.2d at 148.

151. *Id.* at 309-10, 555 S.E.2d at 148-49.

152. *Id.* at 311, 555 S.E.2d at 150.

153. 253 Ga. App. 540, 559 S.E.2d 746 (2002).

154. *Id.* at 543, 559 S.E.2d at 749.

155. *Id.* at 541, 559 S.E.2d at 747.

Seventeen months later, Hanafi filed a motion to disqualify. While that motion was pending, DMD merged with Arnold, Golden & Gregory (AGG), which continued as Georgia Baptist's counsel. The motion to disqualify was denied, and eventually Pike went to work for Georgia Baptist. Hanafi voluntarily dismissed his case but refiled it six months later. AGG again represented Georgia Baptist. Eight months later, Hanafi again moved to disqualify AGG because of Pike's connections to both sides of the case.¹⁵⁶ The appellate court found that the conflict had been waived by his delay in raising the claim and noted that there was "some evidence that the disqualification motion may have been interposed for harassment and delay."¹⁵⁷ The court of appeals reversed the trial court's order disqualifying AGG.¹⁵⁸

VI. CONCLUSION

The law of lawyering encompasses a broad field and includes rules of professional conduct, statutory obligations, common law duties, and constitutional requirements. The cases surveyed in this Article represent what the Georgia Court of Appeals and the Georgia Supreme Court decided during the survey period in their regulation of lawyers, and not surprisingly, they reflect the varied sources of the lawyer's duties to clients and others.

156. *Id.* at 540-43, 559 S.E.2d at 747-49.

157. *Id.* at 542, 559 S.E.2d at 749.

158. *Id.* at 543, 559 S.E.2d at 749.