

**MINUTES OF THE SEPTEMBER 26, 2006 MEETING
OF THE
SUPREME COURT OF GEORGIA
EQUAL JUSTICE COMMISSION
COMMITTEE ON CIVIL JUSTICE**

The fourth meeting of the Supreme Court of Georgia Equal Justice Commission Committee on Civil Justice was held on Tuesday, September 26, 2006 beginning at 10:00 a.m. in Meeting Room 3 of the State Bar of Georgia Headquarters, 104 Marietta Street, Atlanta, Georgia. Marc Gary, Chair, presided.

Welcoming Remarks

Chief Justice Sears apologized for missing the August meeting due to a business meeting out of town during that time. She thanked Chair Marc Gary and Vice Chair Anne Lewis for their work on the Committee and for organizing the meetings. The Chief Justice emphasized that the Committee's work is important to her personally, to the Supreme Court, and to the citizens of Georgia who will benefit from the results of the Committee's work. Chief Justice Sears concluded her remarks noting that she is looking forward to her continued involvement with the Committee.

Introductions

Mr. Gary introduced Committee guest, Ms. Julie Ingram, a Staff Attorney with the Fulton County Probate Court Information Center.

Roll Call

Karlise Grier circulated the roll for signature. Committee members who signed the roll and who were present for the meeting were as follows: Hon. Leah Ward Sears; Marc Gary; Anne W. Lewis; Richard H. Deane, Jr.; Terence A. Dicks; Hon. William S. Duffey, Jr.; Prof. Timothy W. Floyd; Thomas D. Hills; Linda A. Klein; Victor Lai; Charles T. Lester, Jr.; Edward H. Lindsey, Jr.; Hon. Willie E. Lockette; Hon. Wayne M. Purdom; Rita A. Sheffey; and Cubbedge Snow, Jr. Advisory Council Members who signed the roll and who were present for the meeting were as follows: Steven Gottlieb; Sharon N. Hill; Phyllis Holmen; Michael L. Monahan.

The signed roll is attached to the original minutes as Appendix A.

Approval of Minutes

The Committee approved without correction the minutes of the August 22, 2006, meeting.

Introduction of Panel Moderator

Anne Lewis, Committee Vice Chair, introduced the moderator for the meeting, the Honorable Wayne M. Purdom.

Presentations and Questions & Answers

Judge Purdom introduced each of the panelists before they spoke. The panelists were as follows: Mr. Steve Kaczkowski, Director, Unauthorized Practice of Law Department of the State Bar of Georgia; Ms. Jill Radwin, Staff Attorney, Georgia Child Support Commission; Ms. Johanna Kiehl, Director, Hall County Family Law Information Center; and Ms. Granvette Matthews, Director, Fulton County Superior Court Family Division.

Mr. Steve Kaczkowski
Director, Unlicensed Practice of Law Department
State Bar of Georgia (“Bar”)

Mr. Kaczkowski began the presentations with an overview of Georgia’s Unauthorized Practice of Law (“UPL”) statutes and rules. According to Mr. Kaczkowski Rule 14 of the Rules and Regulations for Organization of the State Bar of Georgia (“Bar Rules”) governs the unauthorized practice of law in Georgia. In addition, state statutes, copies of which were sent to the Committee prior to the meeting, criminalize the unauthorized practice of law in Georgia.

Mr. Kaczkowski told the Committee that the Bar’s UPL program was established in 2001 in response to concerns about the enforcement of Georgia’s UPL statutes. The Bar has two types of UPL committees. The first type of UPL committee is the district committee, of which there are 10. The members of the district UPL committees are all Supreme Court appointees; members are both lawyers and non-lawyers. The Bar’s UPL Department investigates allegations and present its findings to district committee committees, which meet every four to five months. The goal of the Bar’s UPL Department is to resolve cases at the lowest level possible. The district committee may elect to do one of several things. For example, the district committee may meet and decide that the allegation is not the unlicensed practice of law and do nothing further after reviewing an allegation. If the district committee decides that there is a UPL violation but does not believe that action is warranted after the Bar’s UPL Department talks to the violator and explains the law, the committee may also decide that the Bar should take no further action.

On the other hand, if a district committee determines that the violator’s actions are serious enough, the district committee may refer the case to the Bar’s UPL standing committee. The standing committee has 23 members, and of those 11 are not lawyers.

The standing committee can vote to bring an action for injunctive relief in the state’s superior courts. All actions brought in the superior courts are brought in the name of the State Bar of Georgia, and to date the Bar has obtained 20 injunctions against UPL violators. In addition, the Bar’s UPL Department has obtained approximately 106 cease and desist affidavits from UPL violators. Information about the injunctions and the cease and desist affidavits are located on the Bar’s web site. [*See generally* http://www.gabar.org/programs/unlicensed_practice_of_law/].

The standing committee can also entertain requests for advisory opinions. [The standing committee has issued five advisory opinions to date.] The advisory opinions are only issued after a period of notice and comment and after a public hearing. [See Bar Rule 14-9.1].

Mr. Kaczkowski reiterated that the approach of the Bar's UPL Department is to first attempt to help a person violating the UPL statute to understand the law and not to refer the matter to the criminal authorities unless there are no other options. The general statute, which governs the unlicensed practice of law in Georgia and which proscribes certain activities, is O.C.G.A. § 15-19-50.

Exceptions to the unlicensed practice of law are also found in that statute and in other statutes as well. One of the exceptions that will most commonly apply is the preparation of legal instruments at no charge. Georgia law provides that a non-lawyer may prepare a legal instrument for another as long as the preparation is done without fee. There are also other types of document preparation that a non-lawyer may do for a *pro se* litigant by statute or by court rules. For example, in family violence situations, pursuant to O.C.G.A. § 19-13-3 (d), family violence shelter or social service agency staff members under the auspices of the court may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court. In addition, family law centers set up by the courts are also authorized by law. Mr. Kaczkowski reported that from time to time the Bar's UPL Department will get complaints about the family law centers, and the UPL Department will have to explain why the family law centers are not engaging in the unlicensed practice of law. In DeKalb, for instance, a person can go to the family law information center and speak to an attorney about their case for a charge of \$10.00. The family law information center is operated pursuant to that court's rule, so the Bar's UPL Department does not pursue complaints about those cases. Instead, because the center is operated under the general supervision of the court, if a person has a concern about the unauthorized practice of law in a court-supervised center, then the judges of that court can take any action that it deems appropriate. On the other hand, if a private non-lawyer, individual establishes an office and prepares divorce paperwork for a fee, for example, then that action would constitute the unlicensed practice of law.

The ultimate goal of the Bar's UPL Department said Mr. Kaczkowski is the protection of the public and to ensure that the public gets the best possible representation possible. Expounding on the example of non-attorneys who assist family violence victims with paperwork, Mr. Kaczkowski stated that if a person has a problem with the non attorney, then the person can go to the judge, who provides oversight, and the judge can establish an apparatus to address grievances.

Committee member Cubbedge Snow asked Mr. Kaczkowski how the Bar's UPL Department handled complaints if someone out of New York or Arizona was running an Internet operation, offering "document preparation" services for example. Mr. Kaczkowski stated that in Arizona, there is no prohibition on UPL, and as a result, if the computer server is based in Arizona, the Bar would face jurisdictional issues. He continued that if someone sent out advertising or a document that was

distributed in Georgia, the bar might attempt to obtain jurisdiction via Georgia's long arm statute. However, he admitted that the Bar cannot police everything that happens on the Internet.

Committee member Judge William Duffey, asked for clarification about the numbers of cases that the Bar handled over what period of time. He also wanted to determine if Mr. Kaczkowski thought that the UPL cases arose because people were ignorant of the law.

Mr. Kaczkowski responded that west of the Mississippi River, individuals had a different attitude than east of the Mississippi River about the unauthorized practice of law. He stated that if the operation is located west of the Mississippi River, when the Bar notifies the individual of a potential UPL violation, the individual will usually cease the operation. He said that the individuals east of the Mississippi River were unfortunately often times "con-men" and "rip-off" artists. He stated that often times these individuals will not return "client" files or gives "clients" their money back.

Judge Duffey inquired about the main problem areas for the UPL Department. Chief Justice Sears asked if there were problems with paralegals and "Notarios."

Mr. Kaczkowski responded that the UPL Department's program had been phased in over a period of three years and that , after the program was fully implemented, the UPL Department received approximately 200 cases per year on average. Mr. Kaczkowski noted that the Bar obtained approximately 30 cease and desist affidavits per year and 10 injunctions per year. He reminded the Committee that the goal of the Bar's UPL program is to talk to people first and try to work out any violations of the UPL law, so the Bar does not always immediately try to obtain a cease and desist affidavit from an individual or begin by seeking an injunction. He continued that problems with "Notarios" are expanding and that at least 10 percent of the Bar's UPL cases involve an immigration scenario. Mr. Kaczkowski emphasized that the immigrant population is most vulnerable to UPL operations because of language problems. He stated that the immigrant population will usually turn to someone who can speak their language, and if a person is in their community for nefarious purposes, then immigrants are vulnerable because the immigrants are in a country where they may not trust the law because of cultural reasons. If an immigrant is the target of a UPL scam, continued Mr. Kaczkowski, then the immigrant will not go to the police. He also stated that when an immigrant seeks legal assistance in the first instance, he or she will trust someone who speaks their language.

Mr. Kaczkowski next educated the Committee about SB 529, a bill which became law in 2006. According to Mr. Kaczkowski, SB 529 will allow non-lawyers to prepare immigration documents. He indicated that several attorneys who work in the immigrant community had concerns about the bill.

Judge Purdom asked how many advisory opinions the Bar's UPL Standing Committee had issued, and if the Standing Committee planned to issue any advisory

opinions about the new child support guidelines. Mr. Kaczkowski said that the Bar's UPL Standing Committee had issued five advisory opinions.

In addressing Judge Purdom's second concern, Mr. Kaczkowski acknowledged that the line between providing information about legal matters and the line between giving legal advice is not always clear. He stated that if one person gives information only to a person, and then that person is responsible for preparing a legal document on the basis of that information, then that is acceptable.

Committee Chair Marc Gary noted that in California, paralegals are allowed to provide some legal assistance because the idea is that the paralegal can provide lower cost assistance to the public. Mr. Gary inquired if there have been efforts by paralegals in Georgia seeking to provide lower cost legal services.

Mr. Kaczkowski answered that there have been many paralegal offices established in Georgia by individuals who come to Georgia from other jurisdictions, generally Florida. He noted that Florida is a jurisdiction that does not have a prohibition on certain activities by paralegals. Mr. Kaczkowski reiterated, however, that nothing in Georgia law allows a paralegal to prepare legal documents, unless the paralegal is doing so at the direction of and under the supervision of an attorney who is licensed to practice law in Georgia. He further advised the Committee that California has had a problem with freestanding paralegal offices because the practice has gotten "a little out of control." He stated that California had recently gotten a search warrant for a paralegal service in which the authorities determined that an attorney had abandoned control of a "satellite" office that was staffed by a paralegal.

Mr. Kaczkowski then responded to a question about pre-paid legal services by stating that it was considered an insurance product; therefore, the Office of the Commissioner of Insurance regulates pre-paid legal insurance companies and products. He continued that the Insurance Commissioner's office does keep the UPL Department informed, but that in his experience, offering prepaid legal services was basically selling an insurance product, and the product appears to work well for a certain segment of the population.

Committee member, Representative Edward Lindsey, asked if there was a mechanism the Committee could use to determine if some of the ideas that the Committee might want to implement would conflict with Georgia's UPL laws. As an example, Representative Lindsey talked about a bill introduced in the legislature for "stand alone" nurses that met with some resistance in the legislature because some believed that it was inappropriate for nurses to provide medical care without the supervision of doctors. He wondered how the bar would "get ahead" of the problem so that it could respond to unmet demands with proper regulation to ensure that the public does not get "ripped off."

Chief Justice Sears stated that traditionally courts have been extremely protective of lawyers, but said that this view is changing nationally. The Chief Justice informed the Committee that the National Council of Chief Justices ("NCCJ") believes that *pro se* concerns are a huge national issue facing the NCCJ. In the past, the courts have generally taken their cues from the bar, which has been protective of

lawyers. Chief Justice Sears said that courts must address the issues because of the growing number of *pro se* cases. For example, she stated that around the state, forty percent of the superior court judges' caseload was domestic relations, and of that, 70 percent of the cases were *pro se*.

Judge Duffey said that the Committee needed to get a better understanding of what non-lawyers can do versus what lawyers must do. He suggested that the Committee might want to focus on the "gray" areas, cases in which non-lawyers are currently prohibited from doing work that lawyers may not want to do. The Committee then might want to consider changing the laws to permit non-lawyers to undertake some work in those areas. Therefore, he asked if Mr. Kaczkowski could provide the Committee with additional information about what is expressly allowed and what is expressly prohibited.

Mr. Kaczkowski stated that he would provide the Committee's staff person with a binder of information that is typically distributed to the UPL district Committees, so that it could be made available to the Committee. Chief Justice Sears suggested that the Committee's staff person work with Mr. Kaczkowski to post the information to the Committee's web site.

Materials that Mr. Kaczkowski presented to the Committee are attached to the original minutes as Appendix B.

Ms. Jill Radwin
Staff Attorney
Georgia Child Support Commission

Ms. Radwin addressed the Committee on how the Georgia Child Support Commission ("GCSC") plans to "get the word out" to the public, and especially to *pro se* litigants, about changes to Georgia's child support guidelines. Ms. Radwin began by telling the Committee that Georgia's child support guidelines are changing dramatically. Beginning in January 2007, Georgia is shifting to a method of calculating child support called "income shares," which is a method of calculating child support that is currently in use in 36 other states. According to Ms. Radwin, this calculation method looks at expenses that Georgia courts currently do not consider when deciding child support.

Therefore, once the Governor signed the bill into law, the question became how to educate the public about the new child support guidelines. Ms. Radwin stated that it was fairly easy to get the word out to lawyers and judges; however, getting the word out to litigants was more challenging. The GCSC determined that the best solution was using a question-driven online form that was easy to understand in "plain English." The GCSC also decided that the form should also be translated into Spanish and easy to translate into other languages. The GCSC has developed an interactive dialogue computer program that asks the user a series of questions and the user's responses "populate" the form. Ms. Radwin stated that Arizona has the best example of this computer program and that Arizona has an interactive computer program that is similar to Turbo Tax.

The GCSC also considered developing a videotape or presenting information via a Power Point presentation because the GCSC learned that these were “non-threatening” methods of presenting complex information to individuals. The GCSC decided to use a Power Point presentation that an individual may download from the GCSC web site. In addition, the GCSC will put forms and self-help information on the web site. Ms. Radwin also advised the Committee that California uses family law facilitators to assist with child support issues. The facilitators are part-time lawyers who assist litigants with that state’s child support calculator. The budget for the facilitators alone is \$12 million. Other methods that various states have used to educate *pro se* litigants about child support issues include community outreach programs at libraries; clinics and training; attorney unbundled services, in which an attorney helps *pro se* clients with only certain portions of the case; an “attorney of the day” program in which attorneys volunteer to assist individuals for one day; and telephone help lines.

In Tennessee, when that state changed to an income shares model, the state instituted a help telephone line for 3 months. The telephone helpline was for judges to call and ask technical questions. In Georgia, GCSC faced budgetary and other limitations on educating the public. For example, in Georgia, there are currently only three self-help centers in Fulton County, DeKalb County, and Hall County. Chatham County recently hired a new *pro se* attorney that will assist the court with habeas corpus petitions and issues of custody, divorce, and legitimation. In addition, Ms. Radwin understands that the attorney will respond to “jail mail,” assist litigants with the child support calculator, and post-conviction motions.

In Georgia, the GCSC has created a web site that will contain a section for Frequently Asked Questions. The Family Law Section of the State Bar of Georgia has agreed to help with statewide trainings. The GCSC is also developing a resource guide that the GCSC will distribute to public libraries. Finally, the GCSC is considering holding clinics and seminars in collaboration with the Family Law Section, ICJE, and ICLE. The Family Law Section has agreed to undertake community training as its community service project, during the next year.

The GCSC has also initiated an outreach campaign with the Georgia Public Library Association. Ms. Radwin informed the Committee that each public library has high-speed Internet access, including libraries in the most rural communities in southwest Georgia. In addition, court clerks will receive a colorful packet of information to give to *pro se* litigants. The clerk’s packets will have different information on how to use the materials, a resource guide of local libraries, a litigant information card that provides an individual with a step-by-step guide for calculating child support. The clerk’s packet will also include an implementation guide for frequent users, such as judges and attorneys. The GCSC is in the process of finalizing an interactive child support calculator, similar to Turbo Tax, which is question driven. As the *pro se* litigant answers a question, the program guides the individual through the form. The judges will have a different version.

Judge Duffey asked who developed the interactive software, the cost, and how it was funded. Ms. Radwin responded that the Department of Human Resources Office of Child Support Enforcement developed the software. She stated that the software

was extremely expensive because no other state had a program that was as question-driven as the program that Georgia intends to use. She reported that the total cost to develop the software program was \$500,000.00. Federal funding was obtained to support the project through Title IV-D of the Social Security Act because the federal government provides sixty-six percent of the funding for the state's child support efforts. Ms. Radwin stated that much of the money provided by the federal government went toward the development of the software. In addition, Ms. Radwin stated that the legislature also earmarked monies for this service.

The GCSC anticipates that the public version of the child support calculator will be available in November. The GCSC does have a training version of the calculator available now; however, the GCSC does not want to release this version of the calculator to the public at this time because the programmers are still refining the program. Ms. Radwin advised the Committee that beginning in January 2007, the GCSC would distribute a monthly survey to judges asking about *pro se* issues and how litigants and courts are adjusting to the new child support guidelines. She indicated that Alabama has been using income shares for a while and in that state, litigants just knew what to bring to court with them so that they were prepared for their child support case.

Ms. Radwin also informed the Committee that the GCSC considered producing a videotape regarding the child support issues but after determining that the cost of the videotape would be approximately \$30,000.00, the GCSC was not convinced that the videotape would be a cost-effective method of providing information to litigants. The GCSC may revisit the issue if the GCSC determines that there is a need for a videotape. One of the questions the GCSC had about a videotape, however, is whether *pro se* litigants would have access to it.

Committee Chair Marc Gary commented that the GCSC seemed to place a great deal of reliance on the Internet and the GCSC web site. He noted that the Committee's focus was on *pro se* litigants who were below the poverty line and asked if he were an individual who was below the poverty line, then what tools would he have available to him, if he could not find a legal aid lawyer to help him?

Ms. Radwin responded that the GCSC believed that most low-income individuals might be receiving services through child support enforcement. In addition, she stated that if the individual receives TANF, then child support enforcement would work with them. She told the Committee that Child Support Services is creating a **conciliator (?)** program. She said that the child support agents represent the interest of the child, not the mother or the father of the child. The child support agents will advise qualified individuals to come to the child support office and the child support agents will assist the individual with the child support calculator. If an individual does not receive TANF and is not eligible for child support services, then she stated that an individual could access the child support calculator via the Internet in the public library. Ms. Radwin emphasized that even the most rural communities in Southwest Georgia have high-speed Internet access. She stated that most of the clients using child support services are younger individuals who tend to be comfortable with the computer. Ms. Radwin acknowledged, however, that many older individuals, such as grandmothers who are raising their grandchildren, might

not know how to use the computer and that is a concern; however, older individuals could then use the instruction card. If an individual cannot read, that raises another concern. The GCSC has considered the creation of a voice-activated calculator, but it may be too costly. In addition, she doesn't know if the public libraries would want a voice-activated computer program in the library.

Ms. Radwin stated that the worst nightmare is that the court is spending court-time assisting *pro se* litigants with completing the child support worksheets. But she stated that this hasn't happened in other states such as Tennessee and Alabama that use the income shares approach.

Committee member, Terence Dicks, asked Ms. Radwin to whom the GCSC was aiming the "get the word out" materials. Ms. Radwin responded that the GCSC was aiming the materials at "everybody." She stated that the reason that the GCSC had several different versions of the calculator, the instruction cards, the Power Point is because the GCSC wanted to make the information accessible in as many different forms as possible.

Representative Lindsey asked when the GCSC expected to have the child support calculator on-line, and Ms. Radwin responded that the goal was November 10, 2006. She also stated that ICLE was conducting a statewide attorney training on October 13, 2006 and at that training, the attorneys will get a URL link so that they can access an Excel version of the calculator. She indicated that at one time the GCSC had considered whether each clerk should have Internet access available, but the GCSC determined that it was cost prohibitive, and because each library already had internet access, the GCSC decided that the Internet access via the public libraries was the best method. Nevertheless, Ms. Radwin noted that many courthouses are becoming wired for public Internet access. She also said that the GCSC had considered placing a kiosk in each courthouse, but the GCSC determined that this was cost prohibitive because it would cost in excess of \$20,000.00 per kiosk per courthouse.

Representative Lindsey stated that the changes in the child support guidelines were analogous to going from doing 2nd or 3rd grade mathematics to doing calculus. He commented that probably many of the 70 percent of *pro se* divorce litigants were lower, middle-class, working class people. He wondered if the Committee should consider adjusting court rules to make certain that legal services were available from non-lawyers as child support calculations were needed by over fifty percent of all Georgia families.

Chief Justice Sears stated that many of the judges at the judicial conference in St. Simons tried the calculator and when the judges started going through it, the judges discovered that it was not that bad. Ms. Radwin said that in St. Simons, the GCSC received many comments about the calculator and based on the judges' comments, the programmers went back to the development stage to make improvements in the calculator. She said that the calculator "does a lot for you," but, as a result, you have to be careful about ensuring that the "human element" and thought process is not missing from the calculations. Ms. Radwin gave an example of parents who have a child in private school and the non-custodial parent pays child support

directly to the school. She stated that if you “just put the numbers” into the calculator, the parent paying child support might end up paying part of the tuition via child support to the custodial parent, as well as paying child support via direct tuition payments to the private school. Ms. Radwin stated that the programs were in the process of trying to correct that problem, but she reiterated that this was but one example of why judicial discretion and review were still important in making child support awards.

Committee member, Professor Floyd, asked if the new law allowed for an automatic modification of child support based solely on the change in the law. Representative Lindsey responded that the legislature had serious discussions about that issue and reached a compromise. He advised that the new child support guidelines alone were not a basis for a modification. In addition, Ms. Radwin stated that GCSC has gotten a great many calls from the public, and that many people think that their child support will automatically change in January. She stated that if a client is a Child Support Services client, then Child Support Services may review the matter to determine if a modification is appropriate, but a child support award will not automatically change beginning on January 1, 2007.

Materials that Ms. Radwin presented to the Committee are attached to the original minutes as Appendix C.

Ms. Johanna Kiehl
Director
Hall County Family Law Information Center

Ms. Kiehl first ensured that the Committee had received and reviewed the two-pages of written materials that provided detailed statistical information about the Hall County Family Law Information Center (“Hall County FLIC”). Ms. Kiehl stated that prior to developing the Hall County FLIC, *pro se* litigants would type up a one or two page document requesting a divorce and then just show up in court. On average, the judge’s law clerks were spending approximately 10 hours per *pro se* case drafting orders and providing other assistance to *pro se* litigants. The judges would often have to tell litigants in court that the court could not dispose of their case because of jurisdictional and service problems.

In addition, many times litigants would think that they had reached an agreement about issues such as child support, but the court would discover that the child support calculations were incorrect, outside of the child support guidelines, and/or that the parties’ agreement did not contain the child support information required by statute. The judges determined that for *pro se* cases it would take at least an hour to prepare an order from scratch, assuming the case was ready. In addition, the judges learned that it took an inordinate amount of time to adjudicate fairly because the parties had not received any legal advice about issues that were relevant to the case.

As a result, the judges decided to implement the Hall County FLIC. Hall County FLIC, which serves Hall and Dawson counties, began with a \$24,000.00 grant from

the Council of Superior Court Judges. Judge Kathlene Gosselin oversees the staff and the development of Hall County FLIC. Hall County FLIC had a great deal of judicial support prior to its development. Prior to developing the center, the court held meetings with the local bar and the court did not receive any negative feedback about the center.

In Hall County FLIC, a *pro se* divorce plaintiff must visit Hall County FLIC prior to his or her court date. As a result, the judges have discovered that the plaintiff is more prepared for court. One concern that the judges now have is that *pro se* litigants may be negotiating child support agreements under the current child support guidelines, but when they go to court in January 2007, the new child support guidelines will be in place. Ms. Kiehl stated that the staff of Hall County FLIC is sensitive to UPL issues. She stated that the staff is trained on UPL issues. If a lay staff person gets a legal question, the staff person may speak to the litigant, ask Ms. Kiehl the question, and then relay to the litigant the legal answer that Ms. Kiehl provides. Ms. Kiehl stated that in her position as the staff attorney, she supervises the non-attorney staff to ensure that no UPL issues arise. Ms. Kiehl stated that the center did not collect data on how many of their clients come from rural areas in Hall County, but she stated that Hall County FLIC sees people from all parts of Hall County. She stated that Hall County FLIC does not see as many people from Dawson County because it is more difficult for those individuals to get to the Hall County Courthouse. Therefore, Ms. Kiehl may start meeting with people in the Dawson County Courthouse, if the arrangements can be worked out.

The average income of the person using Hall County FLIC is between \$18,000.00 per year to \$19,000.00 per year. Ms. Kiehl reported that Hall County FLIC serves people from other countries. The primary country of immigrant litigants is Mexico. She said that 27 percent of the immigrant population that Hall County FLIC serves appears to be Hispanic. She stated that the court interpreter assists Hall County FLIC once or twice per week.

Currently, Hall County FLIC does consultations in divorce cases only. For other types of cases, Hall County FLIC will refer individuals to Child Support Services, Catholic Charities, and others. She stated that a small portion of the domestic relations bar might believe that the bar is losing business, and so Hall County FLIC has considered adding an income guideline. Ms. Kiehl stated that she does not believe that it would affect Hall County FLIC numbers if an income guideline were added.

She stated that the clerk's office still assists individuals who are getting a divorce by publication. The judicial staff has noticed a positive impact since the implementation of Hall County FLIC. For example, *pro se* litigants are coming to court more prepared and informed. Because the *pro se* litigants are using standard paperwork, the orders are easier to prepare. Many members of the domestic relations bar have stated that they are glad that they can send people that they cannot assist to Hall County FLIC. The Hall County judges have determined that Hall County FLIC is worth the cost. Ms. Kiehl also reported that other judicial circuits contact Hall County FLIC from time to time to get information about the program.

Representative Lindsey asked if the Hall County judges are seeing more *pro se* litigants or if the court is simply seeing *pro se* litigants that are better prepared. Ms. Kiehl stated that their court defines a *pro se* case as a case in which there is no legal representation on either side. She stated that in 2005, 43 percent of the court's cases involved *pro se* litigants, whereas in 2006, 46 percent of the court's cases involved *pro se* litigants. So, she stated that the court had noticed a slight increase in *pro se* cases. She also stated that Hall County has had a great influx of immigrants into the county, and this also might account for the slight increase. Ms. Kiehl stated that Hall County FLIC does not see a lot of middle-income individuals in their family law information center.

Committee Chair Marc Gary, asked if there were gaps in certain substantive areas, such as contempt and legitimation cases. Ms. Kiehl acknowledged that there is a gap because the center currently only handles divorce cases. She stated that she is currently working with Deborah Johnson at DeKalb FLIC in developing non-divorce forms.

Professor Floyd asked if Hall County FLIC talks to defendants. Ms. Kiehl stated that Hall County FLIC usually does not see defendants because of conflict issues. She stated that if the defendant does not "conflict out" then they would see the defendant. Otherwise Hall County FLIC will refer the defendant to Fulton County FLIC or GLSP.

Chief Justice Sears asked if the funding for Hall County FLIC came from the Hall County Superior Court budget. Ms. Kiehl stated that the majority of the funding did come from the Hall County Superior Court Budget and a little funding also came from the Dawson County Superior Court budget. She also stated that the program receives some funding from the Council of Superior Court Judges, which the Council allocates to the Superior Courts to use at their discretion. Finally, she stated that Hall County FLIC generates some income from the sale of information packets.

Judge Duffey, in referring to the written materials provided by Ms. Kiehl, noted that the number of divorces filed had remained constant, while the number of *pro se* cases had increased over time.

Materials that Ms. Kiehl presented to the Committee are attached to the original minutes as Appendix D.

Ms. Granvette Matthews
Director
Fulton County Superior Court Family Division

Ms. Matthews presented information about the many *pro se* initiatives in the Fulton County Superior Court Family Division, which started in 1998. First, Ms. Matthews informed the Committee about the resources in the Fulton County Family Law Information Center ("Fulton County FLIC"). Ms. Matthews indicated that individuals could obtain various domestic relations forms from Fulton County FLIC. The forms

are also available on the Fulton County FLIC web site, www.fultonfamilydivision.com. In addition, she explained, an individual could seek a free one-half hour consultation with an Atlanta Legal Aid Attorney. Attorneys who work for the Atlanta Legal Aid Society (“ALAS”) staff Fulton County FLIC. When a person seeks a consultation, Fulton County FLIC will obtain information from the individual and send the information to ALAS to conduct a conflict check before an attorney can see the individual. Recently, a new program was started in which an attorney from Atlanta Volunteer Lawyers Foundation (“AVLF”) will assist an individual if ALAS has a conflict.

Ms. Matthews also told the Committee about an initiative to assist victims of domestic violence called “One Stop,” which was started in 2003. One Stop allows victims of family violence to come to one place to obtain a Temporary Protective Order (“TPO”). Prior to “One Stop,” victims of domestic violence, who were under stress anyway, had to wander over the courthouse to obtain a TPO. Now, in collaboration with the Partnership Against Domestic Violence (“PADV”) and the AVLF, the Family Division offers “One Stop.”

The Family Division has a staff of 16 persons. There is a staff attorney for domestic violence cases. None of the Family Division staff gives legal advice. Because of the volume of cases at “One Stop,” a judge holds ex-parte hearings on the TPOs at 11:00 a.m., 1:00 p.m., and 3:00 p.m. The court handles a domestic violence calendar two days per week on Mondays and Tuesdays. There is an average of 40 cases per calendar. If a TPO is issued, then the Respondent is ordered to attend a Family Violence Intervention program. Prior to “One Stop,” if a TPO was issued, no one tracked compliance with this requirement. Now, the Family Division has someone in place to track the Respondents compliance with this requirement.

The Family Division is in the process of developing nine computer I-CAN modules for some of its forms. The modules are response driven, in that the answers to the questions “populate” the form. The I-CAN modules will be unveiled to the public shortly. Ms. Matthews also gave the Committee a brief on-line demonstration of the I-CAN modules.

The Family Division also offers the Families in Transition seminar (“FIT”), which is mandatory for parents and guardians in domestic relations cases involving children. FIT started in 1989 in the Alternative Dispute Resolution Section, but it is now part of the Family Division. FIT meets at least one day each month and costs the participants \$30.00. Assisting Children in Transition (“ACT”) is the child version of FIT, and the program is designed to assist children with the transition. The children are divided into three age groups of five to eight, nine to twelve, and thirteen to seventeen. It is a free program. The children may attend either the evening meeting or the Saturday morning program with their parents.

Ms. Matthews also told the Committee about the free on-site mediation that the Family Division offers. She explained that when an individual files a domestic relations case in Fulton County, the case is automatically set for a court date called a 30-day status conference date. Cases are randomly assigned to the three family division judges. When the case is filed, the plaintiff receives a packet of information

and mandatory discovery forms called the Domestic Relations Initiation Packet. The court has a mediator on-site at the courthouse at the 30-day status conferences and *pro se* parties can participate in a mediation session at no cost to the litigants. The mediators are often able to assist the parties to resolve outstanding issues. Usually, said Ms. Matthews, a domestic relations case is resolved or ready for trial in approximately 120 days. In addition, the Family Division also offers late case evaluation to the parties at no cost to the litigants. The Family Division employs a psychologist and indigent individuals can obtain a free psychological evaluation. The psychologist also does parent coordination in high conflict cases. Paternity testing is offered on the first Monday of each month at a cost of \$195.00.

Ms. Matthews said that the above programs were the main projects of the Family Division. She stated that most of the programs were located within the Fulton County courthouse complex. According to Ms. Matthews, Fulton County FLIC serves everyone, regardless of income level and regardless of the jurisdiction in which they live. She stated the Fulton County FLIC was started with grants; however, it is now funded solely by Fulton County. She informed the Committee that the Family Division has a total budget of approximately \$1 million and a budget of approximately \$86,000.00 for staff attorneys. With the assistance of the Administrative Office of the Courts, the Family Division is developing the I-CAN modules, at a cost of approximately \$85,000.00 for the nine modules.

The Family Division has three superior court judges and 10 judicial officers. The judicial officers work three days per week and assist the judges with the status conferences. The Alternative Dispute Resolution office provides the mediators for the status conferences. Members of the public can obtain forms from the Fulton County FLIC office, which is located on the 7th Floor of the Fulton County courthouse, for \$2.00 per packet.

Ms. Matthews also stated that she has found www.selfhelpsupport.org is a great resource for professionals who work to serve *pro se* litigants.

Committee Vice Chair, Anne Lewis, asked if most people were ready to finalize their cases after 30 days. Ms. Matthews indicated that people tend to be ready for the 30-day status conference. She continued that if the judicial officer can work with the parties to iron out any outstanding issues then the court could finalize the case as soon as it is ripe.

Chief Justice Sears asked if there is any attempt by the court to assist the parties with reconciliation after a divorce is filed. Ms. Matthews responded that when the parties attend mediation, they sometimes decide to reconcile, but she stated that there is no emphasis on getting people to reconcile. Ms. Matthews also stated that the court employs three social services coordinators who can refer the parties to various social services, if they need them.

Representative Lindsey asked if Fulton County FLIC kept track of the counties from which individuals come. He was told that this information is collected on the intake sheets that persons who request a consultation with an attorney complete for the conflict check. Therefore, that information should be available from ALAS.

Ms. Matthews briefly demonstrated I-CAN. She stated that the Family Division was developing two versions, one in English and one in Spanish. She stated that although you could not see it in this demonstration, the program also came with a “talking head” that would ask the user questions to assist the individual in completing the form.

Judge Duffey asked if the forms could be used by anyone in the state. Ms. Matthews said yes.

Ms. Matthews also informed the Committee that the Family Division planned to place one personal computer in the Fulton County FLIC office. In addition, she stated that the Family Division will have one kiosk in or near each of the three superior court Family Division judge’s chambers, once I-CAN is up and running. She stated that the Family Division had considered putting a personal computer in the clerk’s office, but decided against it. She mentioned that there were concerns about what happened, for example, if the computer goes down, or runs out of paper or print cartridges – who would take responsibility for fixing these things. Because of these types of concerns, the decision was made not to put the personal computer in the clerk’s office.

Judge Duffey asked if there was a “clearinghouse” of information on *pro se* issues. Ms. Matthews stated that there is a great deal of information on www.selfhelpsupport.org. In addition, Committee member Linda Klein stated that the American Bar Association (“ABA”) also had information about *pro se* initiatives. She stated that the ABA had explored some *pro se* initiatives in bankruptcy court, but that the initiatives were easier to accomplish in family cases. Mr. Gary stated that in Washington, D.C. there were also *pro se* initiatives apart from family cases. Mike Monahan also suggested that the Committee review the web site www.lsnatp.org and www.lri.lsc.gov for additional information on *pro se* resources.

Materials that Ms. Matthews presented to the Committee are attached to the original minutes as Appendix E.

Honorable Wayne M. Purdom
Judge
State Court of DeKalb County

Judge Purdom provided the Committee with an overview of *pro se* issues throughout the judicial system and within the various classes of court. He told the Committee that there is a fundamental breakdown in *pro se* cases subject to summary adjudication and those that are not subject to summary judgment. In cases that are not subject to summary judgment, a *pro se* litigant can at least get his day in court; however, in cases in which summary judgment is available, the *pro se* litigant may not get his day in court.

Magistrate court is a court of general jurisdiction that, among other things, hears civil claims, in which exclusive jurisdiction is not vested in the superior court and the amount demanded or the value of the property claimed does not exceed \$15,000.00 and dispossessory actions. Judge Purdom stated that magistrate court is

a friendly forum for non-lawyers, in part because the culture among the judges is friendly to *pro se* litigants. In general, the judges in magistrate courts are comfortable doing things to bring out the merits of the case. In addition, summary judgment motions are banned, and there is no right to a jury trial. The Civil Practice Act does not automatically apply in magistrate court cases, and discovery is disfavored. He stated that in many cases, if a non-lawyer plaintiff can “shoehorn” his case into magistrate court, he or she might choose to pursue the case in magistrate court. Judge Purdom stated that “unbundled” attorney services are also not uncommon in magistrate court proceedings. Judge Purdom also pointed out that if a litigant comes to magistrate court and does not like the result, then the litigant might request a de novo appeal in state court. So, in some ways, according to Judge Purdom, magistrate court is like a non-binding arbitration.

Judge Purdom noted that he would not discuss the probate courts in depth, but noted in probate courts, the litigants can usually be expected to handle their business without an attorney. He also noted that the probate court had developed several standard forms for use in those courts.

Judge Purdom also recognized Julie Ingram, Staff Attorney for the Fulton County Probate Court Information Center. Ms. Ingram told the Committee that the Fulton County Probate Information Center started in the spring 2005. It is open from Monday through Friday from 12:30 p.m. until 5:00 p.m. Attorneys meet with *pro se* litigants who the probate court clerks cannot assist. The probate court has 30 clerks that can assist *pro se* litigants with completing blanks on the standard forms, but beyond that, the clerks cannot offer *pro se* litigants much assistance. In addition, the attorneys can help litigants in contested cases. The attorneys offer free forty-five minute consultations and 39 volunteer attorneys who practice probate law staff the center. The Probate Information Center has received positive feedback from both customers and lawyers. Ms. Ingram made herself available to the Committee to answer any questions about that project.

Judge Purdom said that in superior court domestic relations cases, summary judgment is usually not used, and there is no divorce by summary judgment. He also stated that Requests for Admission also are not usually used; therefore, the issues in those cases are not foreclosed, and a litigant will get his or her day in court.

According to Judge Purdom, the judiciary’s views about *pro se* litigation vary greatly from circuit to circuit and judge to judge. He stated that in most metropolitan areas, judges are resigned to *pro se* litigation. He acknowledged that there is a certain segment of the population that could afford legal representation but who chose not to secure it. He also told the Committee that he believes that the legal services market is horrible in terms of providing consumers with information about the legal services that are available and how to obtain them. He also stated that there is much concern about the new child support guidelines. He said that some judges do not use computers, so even if there is a child support program similar to Turbo Tax, it is still something that would be unfamiliar to some judges. In addition, Judge Purdom noted that because of the complexity of the new child support guidelines, there was some concern about whether judges would award child support in TPO cases. He suggested that the Committee might want to consider whether it would be

the practice of law if a paralegal service (similar to an H & R Block for taxes) assisted lay persons with child support calculations.

Judge Purdom also gave the Committee information about landlord-tenant cases, which are usually filed in the magistrate court. In 99 percent of these cases, the defendant is *pro se*. In the past, ALAS represented some defendants in these cases in Atlanta, but not anymore, said Judge Purdom. In landlord-tenant cases, the litigation is often decisive. In most cases, the issue for poor tenants is getting property repaired. Most tenants stop paying rent when a landlord fails to repair the property, so the tenant is almost automatically evicted in a “repair problem case” because the tenant is unfamiliar with Georgia law in repair cases. The parameters for judicial discretion are narrow in these cases, but according to Judge Purdom, 19 times out of 20 times, if the rent is paid in court, the case will settle, and the court will not need to have a hearing.

Judge Purdom said that historically the landlords had a form on which to file the dispossessory action. It is only in recent years, however, that the magistrate courts have begun to offer forms for tenants to respond to a dispossessory action. When the forms were first used, the forms got much resistance because certain people felt the forms gave the tenants the defenses available to them. But, when people observed that the transaction costs for dispossessory actions went down, the forms became more accepted. In DeKalb County, said Judge Purdom, attorneys have decided that the dispossessory answer forms are a good thing.

In the State Court, which is a court of record, most of the *pro se* cases are debt collection cases. In addition, judges often see *pro se* litigation in car wreck cases, in business contract cases, and in various other cases that may begin with an attorney representing a party and then withdrawing. Judge Purdom stated that in the debt collection cases, a defendant might have a valid defense in three situations as follows: breach of warranty, mistaken identity, and identity theft. Sometimes, a *pro se* litigant might be at a disadvantage in a debt collection case if he or she has a valid defense, but does not know how to present it to the court. In the absence of one of the three defenses mentioned above, it has been Judge Purdom’s experience that a debt collection case results in a decision adverse to the *pro se* litigant.

Based on Georgia law, a *pro se* litigant is entitled to consideration in the pleadings. In addition, a *pro se* litigant might get some consideration regarding notice issues because based on the rules of professional responsibility, a lawyer must ensure that a *pro se* litigant actually receives notice of a hearing.

Nevertheless, with respect to all other issues, said Judge Purdom, a *pro se* litigant does not receive any other special latitude. Therefore, a *pro se* litigant is held to the same standard as an attorney when it comes to responding to Requests for Admission and summary judgment motions. In 90 percent of cases, a *pro se* litigant will not respond to these types of documents. So, a judge might get a case in which the *pro se* litigant responds to the initial complaint, but fails to respond to Requests for Admission when the Plaintiff asks for them. As a result, the Requests for Admission are automatically admitted, pursuant to Georgia law. *Pro Se* litigants do not understand this nor do they understand the need for affidavits or evidence.

Judge Purdom therefore suggested that the Committee might want to consider reviewing the rules that provide for the withdrawal of admissions. He said that the Supreme Court and the Court of Appeals has offered a window for the oral withdrawal of admissions, but that this requires a certain amount of “judicial activism” with which most judges are uncomfortable.

Judge Purdom told the Committee that clerk’s offices are also leery of providing information to *pro se* litigants. He stated that in his experience, clerks will not give *pro se* litigants information that they would give to an attorney. Finally, Judge Purdom cautioned the Committee about using paralegals or other non-lawyers to provide services. He stated that in Arizona, there is not a prohibition on the unauthorized practice of law, but he had heard one story in which a lawyer stated that he would have provided a service for \$1,500.00 - for which a paralegal charged the client \$7,000.00. So, he said such a solution might also have some negative aspects.

Materials that Judge Purdom presented to the Committee are attached to the original minutes as Appendix F.

New and Old Business

Mr. Gary thanked the panelist for their participation. He stated that the Committee’s next meeting would be held on October 31, 2006, and said that Helaine Barnett, the President of the Legal Services Corporation would be the featured speaker. He directed the Committee to page two of the Agenda. He also noted that the December 4, 2006 meeting would be an all day meeting of the Committee, in which the Committee would hear from other Access to Justice Commissions. He stated that these meetings would give the Committee a baseline to begin thinking about 2007.

Mr. Gary stated that he wanted the Committee members to begin considering a proposal for five Subcommittees to tackle the five most important issues. The committees were as follows: the Delivery Coordination Subcommittee, which would look at the potential for coordination of services as well as address other questions, such as whether the Committee should undertake a needs assessment; the Resource Development Subcommittee, which would explore alternative areas of funding; the Pro Bono Subcommittee, which would look at ways of increasing pro bono representation; the Pro Se Subcommittee, which would explore many of the questions raised at this meeting; and the Public Education Subcommittee, which would consider how the Committee could raise the public consciousness about these issues.

Mr. Gary asked the Committee members to think about the subcommittee on which they wanted to serve. He asked that each Committee member serve on at least one subcommittee. In addition, he stated that if the Committee members believed that there was a major function, which was not covered by one of the subcommittees, to please let him or Vice Chair, Anne Lewis, know.

Mr. Gary stated that the Committee would mostly meet in subcommittees next year. He also stated that the issue of a legal needs assessment was one of the key topics that the Committee needed to consider soon.

Mr. Gary directed the Committee members' attention to the proposed meeting schedule for 2007, and stated that the Committee needed to decide on 2007 meeting dates as soon as possible. He asked that the Committee members review the Committee web site, which was designed by the Committee's web master Brian Collins. He advised that the web site was an ongoing project and that it would be updated soon to include Committee member contact information.

Finally, Mr. Gary told the Committee that Ms. Grier was looking for opportunities to get the word out about the Committee via newsletter articles like the recent article about Judge Purdom in the DeKalb County Bar Association newsletter. He asked that Committee members let Ms. Grier know about any opportunities to highlight the Committee's activities in any future publications.

Adjournment

There being no further business, the meeting was adjourned at approximately 1:20 p.m.

Respectfully submitted,

Karlise Y. Grier, Executive Director