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# THE FAMILY LAWYER

Official publication of the  
Atlanta Bar Association's  
Family Law Section

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### Quote of the Month

"Good advice is something  
a man gives when he is too  
old to set a bad example."

Francois de La Rochefoucauld

## GEORGIA SUPREME COURT JUSTICE HAROLD MELTON SPEAKS AT MAY BREAKFAST

By Alice Limehouse Mason, The McNaull Law Firm

According to Justice Harold Melton, and most of us can probably agree, the two disciplines within the practice of law where attorneys are constantly asked, "How can you do that?" are criminal defense and family law. Criminal defense attorneys respond to this question by explaining our adversarial system of justice and that each side deserves equal advocacy, but many do not understand this ratio-

nale. Family lawyers understand that people get into mix-ups in their lives everyday. At their most vulnerable, people in mixed-up personal situations need and deserve good representation. If these explanations do not quiet the inquirer, turn the tables and ask them why they do what they do every day.

Justice Melton shared that he is the son

of divorced parents and acknowledged that family law practitioners play a critical role in the divorce process. Society wants lawyers who are knowledgeable about the law, familiar with the system, and who are responsive to clients. Just as importantly, people look for a lawyer who has sense and something to bring to table. His Honor said, "We as lawyers make our living taking

other people's problems and we handle that and it's incredibly stressful." The Justice also acknowledged that no area of the law is more stressful than domestic law because of the emotional turmoil involved. It is important to have attorneys involved who can be "above the fray."

Justice Melton shared four observations concerning the practice of family law:

**SEE MELTON, page 2**

## Unraveling the DNA of E-mails: Electronic Discovery CLE Presentation at the Family Law Breakfast

By Jon W. Hedgpeith, Hedgpeith & Heredia, LLC

Ronni S. Abramson, Esq., a litigator of 12 years and current discovery consultant, addressed the Family Law Section's June breakfast to discuss the latest in electronic discovery and practice. Formerly with Powell, Goldstein, Frazer & Murphy, LLP and a member of the National Discovery Council, Ms. Abramson entered the consulting business, given her experience with the Discovery Council, and currently is with Applied Discovery, which is owned by Lexis/Nexis.

"Looking at a typical e-mail, you can't tell much about it," Ms. Abramson explained. "Specifically, one cannot tell whether the e-mail had been printed before, whether or not it had an attachment, and who actually wrote it." "Now, we have Meta Data, which is the DNA of data." Apparently an e-mail contains much more than what is printed on the printout. A thorough forensic analysis of an e-mail message can show a whole lot more than simply what is on the page.

Ms. Abramson explained that companies involved in complex litigation, when subpoenaed, are typically producing e-mails, printing them out, and giving them

to the attorney to Bates stamp or burn to a disc, and produce to the other side with no further analysis. Companies, such as Applied Discovery, are now, more than ever, hired to unravel the "DNA" within the e-mail for a more honest look at what has been communicated by e-mail.

"The volume of e-data is increasing, and most of e-data is not printed," Abramson. "In fact", she continued, "99% of all company data is electronic, and only 70% is actually printed." This leaves a great deal of data remaining.

Ms. Abramson laid out the three dimensions of electronic documents: 1) the face, which is the page one sees, and, as you would guess, looks like a page; 2) the actual text of the document; and 3) the "DNA." Analyzing this third dimension reveals when the document was initially created, whether it has ever been modified, whether someone was blind copied, who the original author was, whether it contained links or whether there were attachments.

When dealing with complex litigation, typically in a corporate setting but occasionally in the domestic

**SEE DNA, page 5**

## MESSAGE FROM THE CHAIR

This is my first opportunity to address you as chair.

First let me say that I am honored to find myself in this position. Second, let me challenge all of you to land in this position. I think I ended up here after innocently agreeing several years ago to write up the speaker's presentations for the newsletter. Next thing I knew I had agreed to be a board member at large, bringing up the number of women on the board to 3! Oddly enough, we have never surpassed that number, even today. But that can be another article later.

Back to my challenge. We often become complacent about our professional involvements. In 1965 we began as a bar section charging a membership fee of \$2.00. Today, we have eased ourselves up to \$35.00, but our membership numbers have been stagnant at just over 300 members. The highest number we reached was in 1999, with 437 members (under Deborah Lubin's leadership).

This year we are going to try to do a few new things to stimulate your interest and hopefully increase your involvement.

The first breakfast meeting in June was a CLE meeting, offering 1 hour of credit. We learned about electronic information and how it remains in a computer, regardless of whether we think our clients think they have erased it. We will have 2 more CLE breakfasts during the year. We will be offering 3 seminars, on August 19, 2006, November 1, 2006 and February of next year. There will be several community service projects to volunteer for as well as pro bono opportunities. For anyone who wants to be more involved, there are lots of opportunities.

So, let me extend this challenge to all of you. Like Gary Graham, who offered to help out and has been designated to handle the community service projects, Carla Schiff who offered to help out and is working on the electronic newsletter and legislative issues along with Andrea Knight, and Alice Limehouse Mason and Anita Lynn who offered to help out and are working on the newsletter, please make that offer to help out. We should be a viable section of the Atlanta Bar and we should be a visible positive force in the community. On June 24<sup>th</sup>, I was a volunteer at the Hands On Atlanta "Service Juris" Project. While there were hundreds of volunteers from the legal community, I did not recognize one family lawyer. Let's change that this year.

I look forward to working with all of you in the upcoming year and invite anyone with suggestions or an interest in becoming more involved to email me at [Lauren@collaborativelawoffice.com](mailto:Lauren@collaborativelawoffice.com). Those of you that know me knew the word "collaborative" would appear somewhere and there it is!

Lauren G. Alexander  
Section Chair

## MELTON, continued from page 1

- 1) While he was serving as a law clerk to Judge P. Harris Hines, a divorce case came before the Court that involved a family heirloom from the husband's side of the family. The parties previously agreed that the heirloom would be given to their son when he turned 18. This child was 17 at the time of the divorce and the Wife had physical custody of the children. The fight was over who would have physical custody of the heirloom until the child turned 18. The kids ended up taking the stand and Judge Hines walked off bench and said, "sometimes this job just makes your tummy hurt."
- 2) The only time Justice Melton ever served on a jury was for the division of assets in a divorce case. The couple had been together for many years and Wife put Husband through medical school. By the end of the trial, each party had relented and they had divided almost all of the assets between themselves. This made the job of the jury easier, but raised the question of why they could not have worked out the case prior to going to trial.
- 3) Justice Melton attended the swearing in ceremony for a Superior Court judge. A speaker at the ceremony, also a judge, brought up a case that had been before his Court with a difficult custody issue: neither parent wanted the child. Justice Melton wondered aloud to the breakfast group what was a judge to do under those circumstances?
- 4) When his Honor's parents divorced in the early 1970's, divorce was not as common and it was not discussed. His parents told the children that it was a personal matter between them. They also agreed between themselves that they would not speak badly about each other in front of the children, which Justice Melton appreciated and feels that it made a big difference for his life.

Justice Melton closed by thanking us for what we do and noted that family lawyers appreciate that divorce is the end of one season and is the beginning of another for families and that the transition between the two is extremely important. Family lawyers are vital to making this transition smooth and to starting the next step on the right foot and on a bright note.

Justice Melton was appointed to the Georgia Supreme Court by Governor Sonny Perdue on July 1, 2005. Prior to joining the Court, Justice Melton served as Executive Counsel to Governor Perdue, representing the Governor on legal issues covering the entire scope of state government.

Justice Melton went to Auburn University and later University of Georgia School of Law graduating in 1991. He is currently a Board Member of Atlanta Youth Academies and the Director of Teen Ministry at Southwest Christian Fellowship Church. A native of Washington, D.C., Justice Melton grew up in East Point and Marietta.

## RECENT DECISIONS

By Anita H. Lynn, Anita H. Lynn, PC

In the case of Benton v. Benton, *S06A0605 (4/25/06)*, the Supreme Court considered the issue of partial summary judgment on Wife's counterclaim for alimony and equitable division, under the doctrine of federal judicial estoppel. During the pendency of the parties' divorce, Wife filed a voluntary petition for Chapter 7 bankruptcy; she filed a "Statement of Financial Affairs," Schedule B, in which she stated that she was not receiving and was not entitled to receive any alimony, support, maintenance, or property settlement in her divorce action. Wife was granted a discharge by the bankruptcy court in May 2005. Husband then filed for a partial summary judgment in the divorce case, claiming that Wife's failure to disclose to the bankruptcy court that she may be entitled to support and property in the divorce action precluded her from pursuing these claims in the divorce action; Husband asserted that federal "... judicial estoppel precludes a party from asserting a position in one judicial proceeding after having successfully asserted a contrary position in a prior proceeding." The trial court denied Husband's motion for partial summary judgment, and the Supreme Court affirmed; after Husband's Motion was denied, Wife had moved to reopen the bankruptcy case and filed an Amended Schedule B in December 2005, which allowed her to avoid the consequences of judicial estoppel. It could no longer be said that her position in the trial court was inconsistent with her position in the bankruptcy proceeding and, also, there was a genuine issue as to a material fact concerning the existence of any omission. Justice Carley dissented from the majority and felt that Wife had misled the bankruptcy court, plus her amended Schedule was filed after the trial Judge denied Husband's motion and not before.

The case of Waters v. Waters, *S06F0071 (4/25/06)*, once again holds that equitable division does not necessarily mean an equal division. Additionally, the Supreme Court upheld the trial court's decision to award Husband a sum of money that represented repayment of a loan to his mother, which was to be repaid from husband's mother's estate upon her death; it was proper for the trial court to award this "contingent asset" to husband as personal property.

In Findley v. Findley, *S06A0424 (4/25/06)*, the Supreme Court held that Husband's obligation to pay Wife alimony until her death or remarriage terminates upon Husband's death, unless their settlement agreement clearly and expressly provides that the obligation extends beyond his death. Silence as to the effect of the obligor's death does not evidence the necessary "manifest intention of the parties" to reverse the normal rule that the death of the obligor terminates the obligation to pay alimony. Dolvin v. Dolvin *248 Ga. 439, 441 (1981)*. Wife argued that previous case law in effect at the time of their divorce held otherwise and that she had justifiably relied on this old law; therefore, any such changes in the law regarding the termination of alimony should not be applied retroactively. The Supreme Court disagreed with Wife and held that her reliance on previous case law was not "justifiable" and that any inequity

caused by the retroactive application of *Dolvin* did not amount to the injustice or hardship that would authorize a holding of nonretroactivity. Consequently, the Court refused to depart from the general rule authorizing retroactivity of judicial decisions. Also, the award of attorney's fees assessed against Wife in favor of Husband's estate was reversed, since there was no finding made in support of such an award pursuant to OCGA § 9-15-14 (b) and there was no evidence of the parties' financial circumstances to support an award under OCGA § 19-6-2.

The Supreme Court in the case of Walker v. Walker, *S06F0577 (05/17/06)*, held that a party can impliedly waive a previously filed written request for a jury trial. In this case, Husband, acting *pro se*, filed an Answer and Counterclaim and a written jury trial demand. He entered into settlement negotiations with Wife's counsel the day immediately prior to the trial calendar, and they verbally reached an agreement to engage in mediation. They also agreed to meet 30 minutes prior to the call of the trial calendar, i.e., at 8:30 a.m. However, Husband not only failed to appear at 8:30, but he also failed to timely appear at 9:00 a.m. for the call of the trial calendar. At 9:30 a.m., the Court proceeded with a bench trial in Husband's absence. The trial court subsequently refused to grant Husband a new trial or to set aside the judgment, which is a matter within the discretion of the trial court. The Supreme Court affirmed the trial court's decision to deny Husband's motion for a new trial, holding that the right to a jury trial may be waived by conduct indicative of the fact that the right is not being asserted. Bonner v. Smith, *226 Ga. App. 3, 5(4) (485 SE2d 214) (1997)*. A party cannot complain of a judgment or ruling of the trial court which his own conduct aided in causing. The dissent held that tardiness to court, in and of itself, does not amount to a waiver of the jury trial demand.

In the case of Pate v. Pate, *S06F0326, S06X0438 (05/17/06)*, Wife filed a contempt action alleging that Husband violated a provision in the divorce Decree requiring him to pay twenty five percent (25%) of his gross income each month as child support. In this case, the Husband incorporated his surgical practice, and the corporation paid him a salary, for which he received a W-2 Form. Husband calculated his child support obligation based upon the W-2 wages, rather than the gross income assigned to the corporation. Since the Georgia Child Support Guidelines hold that "gross income" shall include one hundred percent (100%) of wage and salary income and other compensation for personal services, the Supreme Court affirmed the trial court's decision to define "gross income" as Husband's gross earnings less reasonable expenses. Husband had admitted that he knew his child support would be based on the child support guidelines and, therefore, it was not error for the trial court to find that Husband's "gross income" significantly exceeded his W-2 wages. The Wife argued that the trial court should not have allowed certain business expenses claimed by Husband in calculating his gross income. However, when the evidence is conflicting, a trial court in a contempt action is vested with broad discretionary power; Wife failed to produce clear evidence demonstrating that the trial court should have found differently.

**DECISIONS, continued from page 4**

The Court of Appeals upheld the trial court's authority to prohibit a party from removing a minor child from leaving the jurisdiction of the United States in the case of Curtis v. Klimowicz, *A06A0899 (05/16/06)*. The parties shared joint legal and physical custody of their two (2) year old daughter. In a modification of custody action, the trial court awarded primary physical custody to the father who was enlisted in the U.S. Army and stationed at Fort Riley, Kansas; previously, he had served in Iraq. The father appealed that portion of the trial court's decision prohibiting him from removing his daughter from the United States, alleging that if he was assigned duty outside the United States, he would be deprived of custody of his daughter. Husband argued that this restriction amounted to the trial court improperly attempting to retain jurisdiction over this action and there was no finding that removal from the United States would harm the child. The Court of Appeals made a distinction between an Order that prevents a child from being taken outside the United States versus an Order that prohibits a child's removal from the State. Had the court included a provision that the child was not to be taken from the jurisdiction of the court, then that would have constituted an improper attempt on the part of the trial court to retain exclusive jurisdiction; because there is such a distinction, the trial court has the right to preclude a party from taking a child outside the jurisdiction of the United States, into a foreign jurisdiction, also taking into consideration that the non-custodial Mother's parental rights would be difficult, if not impossible, to enforce in this foreign country.

In Drake v. Drake, *A06A0771 (05/25/06)* the parties were awarded joint legal and physical custody of their two (2) minor children. Their Settlement Agreement acknowledged that the Father had been a stay-at-home Dad, and it provided that neither party would pay child support to the other; however, if Dad secured fulltime employment, the parties acknowledged their rights to petition a court for an award of child support. Since the Settlement Agreement was not silent as to child support, the proper procedure would be a modification action rather than an initial petition to establish a support obligation. Only when a divorce Decree is silent as to child support does O.C.G.A. § 19-7-2 provide the right to institute an original action for an award. Additionally, the responsibility to pay a portion of a child's medical and/or dental expenses counts as an obligation to pay child support, therefore, requiring the movant to file a modification action.

In King v. Lusk, *A06A0375 (05/24/06)*, the trial court found the common law Husband to be the legal father of the child at issue even though the DNA test revealed that another man's paternity, i.e., the appellant, was 99.9999%. The legal father had established a paternal bond with the child and had made all of his child support payments, whereas the biological father, Michael King, had been uninvolved with the child for a year and a half and was in arrears on his child support. The trial court used the best interest of the child standard. Mr. King filed a motion for new trial, which was denied by the trial court; however, in his appeal he failed to include the transcript of the hearing before the trial court. As

such, the appellate court had no information upon which it could review the basis for the trial court's decision and, therefore, had to assume that the trial court's findings were supported by sufficient and competent evidence. An appellate court's decision cannot be made based upon the briefs of counsel.

On remand from the Supreme Court for reconsideration of its prior holding, the Court of Appeals adhered to its previous decision in the case of Anderson v. Deas, *A05A1013 (06/01/06)*. The court held that Georgia does not have personal jurisdiction over a non-resident under the Family Violence Act even when the non-resident places telephone calls to a resident of this State, threatening to kill her and hurt her child. The conduct giving rise to the offense occurs at the location where the maker of the telephone call speaks into the telephone. Therefore, this "conduct" is not engaged in within the State of Georgia. Secondly, the non-resident did not engage in a "persistent course of conduct" within the State of Georgia. As such, the Georgia long arm statute, codified at O.C.G.A. § 9-10-91, does not authorize Georgia to exercise personal jurisdiction over the non-resident.

In Ciraldo v. Ciraldo, *S06A0083 (06/12/06)*, the parties engaged in arbitration. At the time the Final Judgment and Decree of Divorce was entered, the arbitration award had not been issued; in fact, it was not delivered to the parties or filed with the court until the month following the entry of the Decree. The Supreme Court held that the trial court cannot incorporate into a Final Judgment a "then-nonexistent" arbitration award. The time to appeal this issue begins to run when the Final Judgment is entered, not when the arbitration award is delivered to the parties.

## THE COLLABORATIVE LAW INSTITUTE OF GEORGIA

Proudly congratulates the newest  
collaborative professionals:

Norma Cloe, Atlanta, Mental Health Professional  
Donald Cook, Jr., Atlanta, Attorney  
Regina Edwards, Atlanta, Attorney  
Lee Kyser, Atlanta, Mental Health Professional  
Damond J. Logsdon, Roswell, Mental Health Professional  
Virginia McKenna, Athens, Mental Health Professional  
Lynn Slotchiver, Charleston, SC, Attorney  
Elizabeth Stringer-Nettles, Charleston, SC, Attorney  
Guy Vitetta, Charleston, SC, Attorney  
Deborah Wilder, Atlanta, Mental Health Professional  
Danna Wolfe, Marietta, Attorney  
Charles Zimmerman, Atlanta, Financial Consultant

**DNA, continued from page 1**

realm, it is helpful to have an electronic analysis done on communications, and ultimately it saves money. If, for example, there is a subpoena for 5 years worth of e-mails, Applied Discovery would take the responses, burn to a CD, and upload that information to a data base. The attorneys would then review the documents within the data base and mark specific ones for privilege, responsiveness to the request, etc., and produce the rest to opposing counsel. "You can tag a number of documents one time and mark as privileged. This allows counsel to fine tune their search, tag duplicates, and find a "conversation thread," i.e., who sent it, who forwarded it, who was cc'd, bcc'd, etc.

Ms. Abramson discussed what is termed the "Parent/Child Relationship" within the context of electronic date. "The parent is the actual document or e-mail. The child is/are the attachments." E-discovery is using this technology to ferret out parent/child relationships within documents.

Ms. Abramson discussed preventative measures that firms and companies can take to avoid the appearance of impropriety. "Have a good document retention policy which reduces the risk by ensuring that date is handled properly. Also, know how many computers, laptops and BlackBerries are connected with the system." An improper document retention policy will result in documents being retained longer than necessary, and leads to haphazard destruction. Ms. Abramson suggests that the document retention policy be coordinated with the company's legal department.

Again, while this type of service initially may seem more tailored with large companies, there are many common-sense parallels with our discovery when dealing with corporate partners, officers, and company owners, and the type of analysis done by Applied Discovery will become more and more prevalent as we continue to modernize our business practices.

**WHAT'S COMING UP...**

July 13 - Family Law Section Breakfast -  
Judge Tom Davis, Gwinnett County Superior Court

August 10 - Family Law Section Breakfast -  
Justice Carol W. Hunstein, Supreme Court of Georgia

August 18 - "Cutting Edge Issues in Family Law"

September 14 - Family Law Section Breakfast -  
Vivian Hoard on Tax Issues  
1 CLE Hour will be available

October 12 - Family Law Section Breakfast -  
Melissa McMorries on Life Insurance  
1 CLE Hour will be available

**Jon W. Hedgepeth** and **Hannibal H. Heredia** are pleased to announce the formation of **Hedgepeth & Heredia, LLC**, effective June 15, 2006. The firm is located at Buckhead Centre, 2964 Peachtree Road, Suite 450, Atlanta, 30305, 404-846-7025, [jhedgepeth@hhfamilylaw.com](mailto:jhedgepeth@hhfamilylaw.com).

**Cutting Edge Issues in Family Law - Not Your Usual CLE Topics**

Join your fellow practitioners on Friday, August 18 and learn more about the issues that affect you.

**What you need to know:**

**Date:** Friday, August 18, 2006

**Time:** 8:30 a.m. – 1:00 p.m. Registration available at 8:00 a.m.

**Location:** State Bar of Georgia Conference Center--Auditorium, 6th Floor, 104 Marietta Street (at Spring Street)

**CLE credit:** 4 CLE hours

**Cost:** Atlanta Bar Family Law Section members: \$119; Atlanta Bar members: \$129; non-members: \$159; law students: \$25

**Topics:**

- Digging Deep into the Child Support Guidelines - The Bottom Line for You and Your Clients
- The Do's and Don'ts of Private Investigations, including Computer Forensics: "Delete" Really Means "See Ya Later"
- Custodial Issues Unique to Same-Sex Couples
- Hot Tips You Need to Know: Where Family Law Intersects with Other Areas of Practice
  - Criminal Aspects of TPO
  - Immigration
  - Business Law
  - Real Estate
  - Bankruptcy

**To register**, please complete the form below and return it to the Atlanta Bar Association, or register by phone or email ( 404-832-6203; [mljohn@atlantabar.org](mailto:mljohn@atlantabar.org)).

**REGISTRATION: Cutting Edge Issues in Family Law, 8-18-06**

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**Family Law Section Breakfast**  
**Speaker: The Honorable Tom Davis**  
*Superior Court of Gwinnett County*

Thursday, July 13, 2006 at 7:30am  
*The Buckhead Club, 3343 Peachtree Road*  
\$15 pre-registered; \$18 at door

Name \_\_\_\_\_

Yes, I would like \_\_\_\_\_ reservation(s)  
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