INTRODUCTION TO THE NEW GEORGIA EVIDENCE CODE

Program Materials 2011

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FOREWORD

The Institute is especially grateful to our outstanding Seminar Chairperson, Thomas M. Byrne, for providing the necessary leadership, organization and supervision that has brought this program into a reality. Indeed a debt of gratitude is particularly due our articulate and knowledgeable faculty without whose untiring efforts and dedication in the preparation of papers and in appearing on the program as speakers, this program would not have been possible. Their names are listed on the program at page iv of this book and their contributions to the success of this seminar are immeasurable.

I would be remiss if I did not extend a special thanks to each of you who are attending this seminar and for whom the program was planned. All of us hope your attendance will be most beneficial as well as enjoyable. Your comments and suggestions are always welcome.

October, 2011

Lawrence F. Jones
Executive Director
Institute of Continuing Legal Education in Georgia
8:15  REGISTRATION AND CONTINENTAL BREAKFAST
(All attendees must check in upon arrival. A jacket or sweater is recommended.)

9:00  INTRODUCTION AND OPENING REMARKS
Thomas M. Byrne

9:15  OVERVIEW OF NEW CODE IN CIVIL CASES
Prof. Paul Milich, Georgia State University College of Law, Atlanta

10:05 EXPERTS IN CIVIL CASES
Robin Frazer Clark, Robin Frazer Clark, P.C., Atlanta
W. Ray Persons, King & Spalding LLP, Atlanta

10:55 BREAK

11:10 THE NEW CODE IN CRIMINAL CASES
Donald F. Samuel, Garland, Samuel & Loeb, P.C., Atlanta
Michael Scott Carlson, Deputy Chief - Assistant District Attorney, DeKalb County, Decatur

12:00 QUESTIONS AND ANSWERS

12:15 ADJOURN

Presiding: Thomas M. Byrne, Program Chair, Sutherland Asbill & Brennan LLP, Atlanta
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INTRODUCTION TO THE NEW GEORGIA EVIDENCE CODE

Tom Byrne
Sutherland Asbill & Brennan LLP
Atlanta, Georgia

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Introduction to the New Georgia Evidence Code

Tom Byrne
October 26, 2011

Effective Date

• Motions made

• Hearings or trials commenced
  ▪ On or After January 1, 2013
### History of Legislation

- Existing law based on 1863 Code
- State Bar effort to enact FRE / 1987
- Passed Senate in early 90s
- Speaker Murphy opposition
- Resumed in 2003-04
- State Bar committee report 2005
- Endorsed by Board of Governors 2008
- Legislative study committee / summer of 2008
- HB 24/ passed House in 2010, stalled in Senate
- Enacted during 2011 session, signed by Gov. Deal
- Became 44th state to enact version of FRE in 2011

### General Approach

- Consistent Title 24 provisions remain
- Inconsistent with FRE Repealed
- 2005 tort reform provisions undisturbed
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THE NEW GEORGIA EVIDENCE RULES
ILLUSTRATING SOME OF THE CHANGES IN CIVIL CASES

Paul S. Milich
Professor of Law and Director of Litigation Program
Georgia State University, College of Law
Atlanta, Georgia
(1) This is an action for money owed on account. The plaintiff is a condominium homeowners association, the defendant is an owner who allegedly has not paid his assessments. The plaintiff’s only proof of damages is hearsay evidence but the defendant never objects to the evidence at trial. After the jury returns a verdict for the plaintiff, the defendant moves for a judgment notwithstanding the verdict on the grounds that since the only evidence on damages was inadmissible hearsay, and hearsay is “illegal” evidence with no probative value under Georgia law, there was no legal proof of damages.


New Georgia Rules: Motion denied. New O.C.G.A. § 24-8-802: “Hearsay shall not be admissible except as provided by this article; provided, however, that if a party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible.”

Hypothetical Case:

(2) This is a personal injury case arising out of a collision between plaintiff’s PT Cruiser and a bakery truck owned and operated by Little Freddie Snack Cakes. Plaintiff Sue Smart has filed an action for negligence against the bakery and for products liability against General Motors, the manufacturer of the bakery truck, claiming defects in the design of the truck’s braking system.

Plaintiff calls the plaintiff’s husband, Max Smart, who would testify that while he was waiting in the ER a few hours after the accident, the driver of the bakery truck, Jim Marley, approached him and said: “I’m so sorry. This was all my fault. I was trying to light a joint and I wasn’t watching the road.”

The defense objects that this is inadmissible hearsay. Plaintiff responds that it is an agent admission.

New Georgia Rules: Overruled. New O.C.G.A. § 24-8-801(d)(2)(D) defines an agent admission as:

A statement by the party's agent or employee, but not including any agent of the state in a criminal proceeding, concerning a matter within the scope of the agency or employment, made during the existence of the relationship.

The new rule sets forth two simple requirements for an agency or employee admission: (1) the statement was made during the agency or employment relationship; and, (2) the subject matter of the statement concerns a matter the agent or employee would know about by virtue of his agent or employee duties. The truck driver was an employee of the company at the time he made the statement and the subject matter of the statement (driving the bakery truck) falls within the scope of his employment. See, Corley v. Burger King Corp., 56 F.3d 709 (5th Cir. 1995).

(3) Plaintiff offers into evidence a properly certified copy of a police report written by Officer Muldoon. Muldoon wrote that he arrived at the accident scene less than five minutes after the incident. When he arrived, an excited witness ran up to him and said: “The bakery truck ran the red light!”

The defense objects that the report is double hearsay (the report said, the witness said) and inadmissible.

Current Georgia rules: Sustained. Georgia does not allow “narrative statements” in a police report, even in civil cases. Scott v. LaRosa & LaRosa, Inc., 253 Ga. App. 489, 559 S.E.2d 525 (2002). An officer’s report of what third parties told him are considered “narrative” and thus inadmissible even if the third party statements fall under a hearsay exception. Luong v. Tran, 280 Ga.App. 15, 633 S.E.2d 797 (2006). In other words, if the officer testified, he could repeat what the bystander told him because the bystander’s statement falls under the res gestae rule. But without the officer’s testimony at trial, the report cannot get in.

New Georgia Rules: Overruled. An officer’s reporting of what a witness said is a “matter observed” pursuant to the officer’s duty and thus is admissible in a civil case, new O.C.G.A. § 24-8-803(8)(B), though the witness’s statement also must be admissible under a hearsay exception, as here, where it qualifies as an excited utterance. New O.C.G.A. § 24-8-803(2). See, U.S. v. Sallins, 993 F.2d 344, 347 (3d Cir. 1993).

(4) Through the testimony of a records custodian at State Hospital, the plaintiff offers a properly certified copy of an Emergency Room record with the notation of the ER physician that Sue Smart was admitted and treated for, among other things, “a zygomatic fracture” (broken cheek bone) a “vertebral compression fracture at T-11,” and “several broken ribs.”
The defense objects that the record is inadmissible hearsay. The plaintiff responds that the record is admissible under the business records exception.


New Georgia Rules: Overruled with proper foundation. New O.C.G.A. § 24-8-803(6) admits:

*Records of regularly conducted activity.* Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness and subject to the provisions of Chapter 7 of this title, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, if (A) made at or near the time of the described acts, events, conditions, opinions, or diagnoses; (B) made by, or from information transmitted by, a person with personal knowledge and a business duty to report; (C) kept in the course of a regularly conducted business activity; and (D) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, ... .

(5) Plaintiff offers into evidence records apparently generated at Peachtree Spinal Care listing medications prescribed plaintiff. Peachtree Spinal Care is no longer in business. To lay foundation for the record, plaintiff calls the records custodian at her primary physician’s office who testifies that her office received a copy of the records from Spinal Care two years ago and now keeps them in the ordinary course of its business. Plaintiff offers the records under the business records exception. Defense objects that the foundation is insufficient.


New Georgia Rules: Sustained. The “integrated records” rule applied in federal courts does allow one business to lay foundation for the admission of another business’s records but only if the witness has sufficient knowledge about how the record was made by the other business to testify that it was made in the ordinary course of that business at or near the time of the events described and was based on the personal knowledge of persons with a duty to report those events. See, e.g., *U.S. v. Bueno-Sierra*, 99 F.3d 375 (11th Cir. 1996); *Kolmes v. World Fibers Corp.*, 107 F.3d 1534 (Fed. Cir. 1997).

The testifying witness’s knowledge of the originating business’s routine record procedures may be based on hearsay. Under the new rules, the question of whether a
record falls under the rule 803(6) hearsay exception for business records is a question solely for the trial judge and in making its determination, the trial court “is not bound by the rules of evidence except those with respect to privileges.” New O.C.G.A. § 24-1-104(a). (Rule 104(a) applies to questions of admissibility generally).

(6) The defendant calls Betty, the Smart’s next door neighbor, to testify that Max (the plaintiff’s brother) phoned her at what would have been about five minutes before the accident. Max sounded very upset and told Betty that Sue and he had had a terrible fight and that Sue “drove out of here like a bat out of hell.” The defense objects that Betty’s testimony about what Max said is hearsay.

**Current Georgia rules:** *Res Gestae* ??? (a statement before the accident? by a person who did not witness the accident?)

As Professor Morgan wrote nearly a hundred years ago: “The marvelous capacity of a Latin phrase to serve as a substitute for reasoning, and the confusion of thought inevitably accompanying the use of inaccurate terminology, are no where better illustrated than in the decisions dealing with the admissibility of evidence as ‘res gestae.’” Morgan, “A Suggested Classification of Utterances Admissible as Res Gestae,” 31 Yale L.Rev. 229 (1922).

**New Georgia Rules:** Overruled. New O.C.G.A. § 24-8-803(2). The “excited utterance” exception applies to a “statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” See, *David v. Pueblo Supermarket*, 740 F.2d 230 (3rd Cir. 1984).

(7) A witness for the defense, Larry, would testify that he personally reviewed a video recording that caught the accident on camera and that recording showed that the plaintiff’s car, not the bakery truck, ran the red light. The witness admits that he did not bring the recording to trial so that the plaintiff or the jury could view it. Plaintiff makes a best evidence objection to this testimony.

**Current Georgia rules:** Overruled, the best evidence rule does not apply to photos or videos. *Perkins v. State*, 260 Ga. 292, 392 S.E.2d 872 (1990). Georgia’s best evidence rules date from 1860 when photography was in its infancy.

**New Georgia Rules:** Sustained. The best evidence rule applies to all recordings, written and otherwise. The witness would be able to describe what he saw on the video if and only if foundation was first laid showing that the video recording had been lost or destroyed with no bad faith on the defendant’s part. New O.C.G.A. § 24-10-1002.

(8) Larry also would testify for the defense that he looked up the phone number for Sue Smart and called that number. A woman answered and when Larry asked if he had reached Sue Smart, the woman said “Yes.” Larry then asked the woman if she or the bakery truck ran the red light. She said “I, not the bakery truck, ran the red light.”

Plaintiff objects that this is hearsay. Plaintiff argues that it is a party admission. Plaintiff
responds that the phone call is insufficiently authenticated to establish that it was really Sue who spoke with Larry.


**New Georgia Rules:** Overruled. Phone conversation may be authenticated by “evidence that a call was made to a number assigned at the time ... to a particular person ... if circumstances, including self-identification, show the person answering be the one called.” New O.C.G.A. § 24-9-901(b)(6).

(9) The defense offers a report by the NHTSA on the kind of braking system employed by the GM truck involved in this accident. The report concludes that the braking system is safe and effective for trucks of the size involved in this accident. Plaintiff objects that the report is hearsay.

**Current Georgia rules:** Sustained. Georgia does not have a general hearsay exception for public records and unless there is a specific Georgia statute regarding the specific record, public records are run through the business record exception which does not allow opinions in the record.

**New Georgia Rules:** Overruled. New O.C.G.A. § 24-8-803(8)(C) provides a hearsay exception for “factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.” See, e.g., *Guild v. General Motors Corp.* 53 F.Supp.2d 363 (W.D.N.Y. 1999). (This exception is not available to the prosecution in criminal cases due to Confrontation Clause concerns).

(10) Plaintiff offers evidence that the owner of the defendant bakery company called her a few weeks after the accident and told her: “Look, there is no question my driver was at fault, how about I pay you $10,000 plus all your medical expenses and we don’t get those nasty lawyers involved?” Plaintiff declined the offer. The defendant objects that his offer to settle for $10,000 is inadmissible.

**Current Georgia rules:** Unclear. There are cases in Georgia that say if a party admits liability and is only trying to reach an agreement on damages, that is an “offer to settle” as opposed to an “offer to compromise” and therefore is not protected under current O.C.G.A. § 24-3-37. See, e.g., *Pacific Nat. Fire Ins. v. Beavers*, 87 Ga. App. 294, 73 S.E.2d 765 (1952). Other cases hold that if the parties still dispute the amount of damages (though not liability) efforts to compromise that dispute are protected. See, e.g., *Stover v. Candle Corp. of America*, 238 Ga.App. 637, 520 S.E.2d 7 (1999).

**New Georgia Rules:** Sustained. New O.C.G.A. § 24-4-408 provides broader and more definitive protection for any discussions of settlement of a disputed claim as to liability or damages. As long as the parties are engaged in compromise negotiations or mediation, all their statements and conduct as well as the statements of nonparties who
participate in the discussions are protected from disclosure. See, e.g., *Blu-J, Inc. v. Kemper C.P.A. Group*, 916 F.2d 637 (11th Cir. 1990).

(11) Plaintiff offers evidence that after this accident, defendant General Motors changed the design of its small truck braking system to address apparent defects that appear to have contributed to the subject accident. The defense objects.


**Federal Rules of Evidence:** Sustained. The 1997 amendments to Federal Rule 407 clarified that the subsequent remedial measure rule applies in product cases.


(12) The jury returns a large verdict against General Motors. Counsel for General Motors learns, after the jury has been discharged, that the bailiff brought the jury several articles he had downloaded off the internet. The articles, from various dubious sources, are highly critical of GM. One article alleges that an unnamed, highly placed source at GM told the author: “Wrecks are good! The more crashes we cause, the more replacement vehicles we sell.”

Counsel for GM files a motion for a new trial with affidavits attached from several jurors detailing what the bailiff brought into the jury room. Plaintiff’s counsel moves to strike the affidavits as incompetent to impeach the verdict.

**Current Georgia rules:** Sustained. In civil cases, the prohibition against a juror impeaching the verdict is absolute. *Newson v. Foster*, 261 Ga. App. 16, 581 S.E.2d 666 (2003).

**New Georgia Rules:** Overruled. New O.C.G.A. § 24-6-606(b) includes an exception to the rule that jurors may not impeach their verdict when “extraneous prejudicial information was improperly brought to the jury’s attention” or “any outside influence was brought to bear upon any juror.” This exception currently is recognized in criminal cases in Georgia, see, e.g., *Spencer v. State*, 260 Ga. 640, 643, 398 S.E.2d 179 (1990), but for inexplicable reasons does not apply in civil cases. The new rule applies to all jury trials, civil or criminal.
**Some Georgia Rules That Will Not Change in Civil Cases**

Evidentiary Privileges.
Evidentiary Presumptions in Civil Cases.
Inadmissibility of Liability Insurance, Collateral Benefits.
“Apology Statute” in Medical Malpractice Cases.
Authentication of Public Records.
Wide Open Cross-Examination Rule.
Impeachment by Prior Conviction.
Sequestration of Witnesses.
Lay Opinion Rules.
Proving Value.
Expert Opinion Rules.
Basic Definition of Hearsay.
Personal Admission Rule.
Routine Practice Rule.
Hearsay Exceptions for Past Recollection Recorded, Statements for Medical Diagnosis or Treatment, Medical Narratives, Reputation Evidence, Former Testimony, Dying Declarations, Statements by Victim of Child Abuse, Necessity Exception (though pre-trial notice required).

The new Georgia Rules of Evidence will go into effect on **January 1, 2013**.

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EXPERTS IN CIVIL CASES
UNDER GEORGIA’S NEW EVIDENCE CODE

W. Ray Persons
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Atlanta, Georgia
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INTRODUCTION

When House Bill 24 was signed by Governor Nathan Deal, Georgia became the 44th state to adopt a version of the Federal Rules of Evidence. Among the rules affected by these changes are those which govern expert testimony. This paper addresses those changes as they relate to expert testimony in civil cases. The text of each new rule is set out, followed by a discussion of its contents and what changes, if any, are wrought by the new rule. Hopefully, this will serve as a useful reference to the practitioner.
24-7-701. OPINION TESTIMONY BY LAY WITNESSES

(a) If the witness is not testifying as an expert, the witness’s testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness;

(2) Helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue; and

(3) Not based on scientific, technical, or other specialized knowledge within the scope of Code Section 24-7-702.

(b) Direct testimony as to market value is in the nature of opinion evidence. A witness need not be an expert or dealer in an article or property to testify as to its value if he or she has had an opportunity to form a reasoned opinion.

Discussion

24-7-701(a) is identical to Federal Rule of Evidence 702. It replaces the current O.C.G.A. § 24-9-65, which provides:

Where the question under examination, and to be decided by the jury, shall be one of opinion, any witness may swear to his opinion or belief, giving his reasons therefor. If the issue shall be as to the existence of a fact, the opinions of witnesses shall be generally inadmissible.

This section requires that the opinion must be based on the perception of the witness. It cannot be based on inadmissible hearsay. See, e.g., McCorkle v. Dep’t of

This section imposes the requirement that the lay opinion be rational. Current Georgia law does not specifically require that a lay witness’s opinion be “rational,” generally leaving that a matter for the jury.

Section (a) requires that any opinions on scientific, technical or other specialized matters be properly qualified under 24-7-702.

And as under current Georgia law, lay witnesses are not allowed to state their conclusions in legal terms such as testimony that someone was “negligent.” See, e.g., Garner v. Salter, 168 Ga. App. 520, 520, 309 S.E.2d 638, 638 (1983). Such opinions are not helpful to the trier of fact and only confuse the jury when the court later instructs them on the law.

Section (b) of 27-7-701 does not appear in Federal Rule of Evidence 701. It renders admissible lay witness opinion testimony on market value, provided the witness has had an opportunity to form a reasoned opinion.
24-7-702. TESTIMONY BY EXPERTS

24-7-702

(a) Except as provided in Code Section 22-1-14 and in subsection (g) of this Code section, the provisions of this Code section shall apply in all civil proceedings. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses.

(b) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.

(c) Notwithstanding the provisions of subsection (b) of this Code section and any other provision of law which might be construed to the contrary, in professional malpractice actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard of conduct of the professional whose conduct is at issue, shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teach in the profession at such time; and
(2) In the case of a medical malpractice action, had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(A) The active practice of such area of specialty of his or her profession for at least three of the last five years, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in performing the procedure, diagnosing the condition, or rendering the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; or

(B) The teaching of his or her profession for at least three of the last five years as an employed member of the faculty of an educational institution accredited in the teaching of such profession, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in teaching others how to perform the procedure, diagnose the condition, or render the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; and

(C) Except as provided in subparagraph (D) of this paragraph:

(i) Is a member of the same profession;

(ii) Is a medical doctor testifying as to the standard of care of a defendant who is a doctor of osteopathy; or

(iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who is a medical doctor; and

(D) Notwithstanding any other provision of this Code section, an expert who is a physician and, as a result of having, during at least three of the
last five years immediate preceding the time the act or omission is alleged to have occurred, supervised, taught, or instructed nurses, nurse practitioners, certified registered nurse anesthetists, nurse midwives, physician assistants, physical therapists, occupational therapists, or medical support staff, has knowledge of the standard of care of that health care provider under the circumstances at issue shall be competent to testify as to the standard of that health care provider. However, a nurse, nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician assistant, physical therapist, occupational therapist, or medical support staff shall not be competent to testify as to the standard of care of a physician.

(d) Upon motion of a party, the court may hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert’s testimony satisfies the requirements of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16.

(e) An affiant shall meet the requirements of this Code section in order to be deemed qualified to testify as an expert by means of the affidavit required under Code Section 9-11-9.1.

(f) It is the intent of the legislature that, in all civil proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner,
522 U.S. 136 (1997); Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.

(g) This Code section shall not be strictly applied in proceedings conducted pursuant to Chapter 9 of Title 34 or in administrative proceedings conducted pursuant to Chapter 13 of Title 50.

Discussion

In 2005, the Georgia General Assembly, as part of tort reform legislation, enacted O.C.G.A. § 24-9-67.1 to adopt the United States Supreme Court’s decision in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), which was codified as Federal Rule of Evidence 702. Daubert requires that the court perform a gatekeeping function, excluding unreliable scientific, technical or otherwise specialized expert opinions.

Unlike Federal Rule of Evidence 702, current O.C.G.A. § 24-9-67.1(b)(1) contains the following language: “if (1) the testimony is based upon sufficient facts or data which are or will be admitted into evidence at the hearing or trial.” (Emphasis added). This language contradicts Federal Rule 703 which is O.C.G.A. § 24-9-67.1(a), and allows an expert to base an opinion on facts reasonably relied upon by experts even through the facts are not admissible in evidence.

In Mason v. Home Depot U.S.A., Inc., 283 Ga. 271, 658 S.E.2d 603 (2008), the Georgia Supreme Court found unconstitutional the portion of O.C.G.A. § 24-9-67.1 that required the underlying facts to serve as the bases of an expert’s testimony and struck it from the Code provision.
The drafters of the new Code recognized the inconsistency and deleted the contradictory provision from the new law. Thus, under the new evidence code, an expert is allowed to base an opinion on facts reasonably relied upon by experts even though the facts are not admissible in evidence.

[Like the current Code, the new Code’s Daubert provisions only apply in civil cases.]

Subsection (c) of 24-7-702 was taken verbatim from current O.C.G.A. § 24-9-67.1(c), (d) and (e). These provisions are commonly referred to as the “super Daubert” rules for professional negligence cases, particularly medical negligence cases. They were enacted in 2005 as part of the tort reform legislation. They primarily implemented a “three of five” rule, requiring that experts in medical negligence cases have requisite and certain experience within three of the five years preceding the date of the incident at issue. See O.C.G.A. § 24-9-67.1(c)(2)(A)-(D) of the current Code and § 24-7-702(c)(2)(A)-(D) of the new Code.

In Craig v. Azizi, 301 Ga. App. 181, 687 S.E.2d 198 (2009), the court held that once an expert received a medical degree and began his or her residency, the clock started on “active practice” in his or her specialty for purposes of this Code provision. The court also interpreted the provision’s requirement of licensure “by an appropriate regulatory agency to practice . . . in the state in which such expert was practicing . . . in the profession” at the time of the alleged negligence to mean that the expert “must be licensed and practicing (or teaching) in one of the states of the United States at the time the alleged negligent act occurred.” 301 Ga. App. at 186-87; 687 S.E. 2d at 203.

Thus, no longer will parties be able to use experts licensed only in Canada or Europe. Furthermore, where an expert is licensed at the time of trial is immaterial. See
In another development, the Georgia Supreme Court overruled previous case law and held that the evidence of an expert witness’s personal practices is admissible as substantive evidence to impeach the expert’s testimony regarding the standard of care. *Condra v. Atlanta Orthopaedic Group, P.C.*, 285 Ga. 667, 681 S.E. 2d 152 (2009).

Subsection (d), (e) and (f) of 24-7-702 are identical to current O.C.G.A. § 24-9-67.1(d), (e) and (f).

Subsection (g) of 24-7-702 is a new provision. It prohibits the strict application of Section 702’s provisions in proceedings conducted pursuant to Chapter 9 of Title 34 [Workers’ Compensation] or in administrative proceedings conducted pursuant to Chapter 13 of Title 50 [Georgia Administrative Procedure Act].
24-7-703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular proceeding upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Such facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweigh their prejudicial effect.

Discussion

This provision is identical to current O.C.G.A. § 24-9-67.1(a). It also mirrors Federal Rule of Evidence 703.

The factual bases for an expert's opinion fall into three categories: (1) the expert’s own personal knowledge, (2) facts admitted at trial, and (3) facts that will not or cannot be formally proven at trial. Historically, Georgia law permitted the first two categories of evidence to be the bases for an expert’s opinion, but not the third.

In the aftermath of the Georgia Supreme Court’s decision in Mason, and the adoption of the new Code, there is no doubt that the third category of evidence can serve as the bases for an expert’s opinion.
24-7-704. OPINION ON ULTIMATE ISSUE

24-7-704

(a) Except as provided in subsection (b) of this Code section, testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of an accused in a criminal proceedings shall state an opinion or inference as to whether the accused did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Discussion

This section is new. It is identical to Federal Rule of Evidence 704 and generally abolishes the “ultimate issue” rule. Current Georgia law embraces a limited form of the ultimate issue rule by prohibiting lay or expert opinion that mixes law and fact. See, e.g., Metro. Life Ins. Co. v. Saul, 189 Ga. 1, 5 S.E.2d 214 (1939); Reed v. Heffernan, 171 Ga. App. 83, 318 S.E.2d 700 (1984), overruled on other grounds by Brown v. State, 274 Ga. 31, 549 S.E.2d 107 (2001). For example, under current Georgia law, an expert is permitted to testify that a defendant in a medical negligence case failed to exercise the degree of care and skill expected of an ordinary physician practicing in Georgia. As the standard of care of physicians is beyond the ken of ordinary jurors, and thus, they require expert assistance in drawing opinions and inference from the evidence. See, e.g., Bilt Rite of Augusta, Inc. v. Gardiner, 221 Ga. App. 817, 472 S.E.2d 709 (1996).
But an expert would not be allowed in Georgia to testify that the defendant “committed malpractice” since this is a mixed question of law and fact. *See, e.g., Allen v. Columbus Bank & Trust Co.*, 244 Ga. App. 271, 277, 534 S.E.2d 917, 924-25 (2000); *Hinson v. Dep’t of Transp.*, 135 Ga. App. 258, 260-61, 217 S.E.2d 606, 608-09 (1975).

Subsection (b) retains a piece of the ultimate issue rule in prohibiting an expert from testifying that a criminal defendant did or did not have the requisite mental state to support a crime or defense. This is the so-called “Hinkley amendment,” which was added by Congress in 1984 in the wake of the public outcry over the finding of insanity in the shooting of President Ronald Reagan.
**24-7-705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION**

**24-7-705**

An expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. An expert may in any event be required to disclose the underlying facts or data on cross-examination.

**Discussion**

This section is identical to Federal Rule of Evidence 705. It is consistent with current Georgia practice which does not require that an expert disclose the basis for his opinion before stating it. See, e.g., *Dimambro Northend Assocs. v. Williams*, 169 Ga. App. 219, 220-21, 312 S.E.2d 386, 388-89 (1983).

This section dispenses with any requirement that an expert be examined by way of hypothetical questions, though they are permitted if desired. The hypothetical question was required at common law so that the trier of fact would more clearly understand the factual bases of the expert’s opinion. But the experience with the requirement in Georgia and elsewhere showed it was often an unnecessary impediment to the clear presentation of expert testimony and an unnecessary generator of courtroom quibbling and appeals. See, e.g., *Hyles v. Cockrill*, 169 Ga. App. 132, 312 S.E.2d 124 (1983), overruled on other grounds by *Ketchup v. Howard*, 247 Ga. App. 54, 543 S.E.2d 371 (2000). This section reflects the modern view that opposing counsel’s competing motives to present a clear, persuasive direct examination of an expert and a
thorough and sifting cross-examination, are sufficient to ensure that the trier of fact understands the bases and limits of the expert’s testimony.
24-7-706. COURT APPOINTED EXPERTS

24-7-706

Except as provided in Chapter 7 of Title 9 or Code Section 17-7-130.1, 17-10-66, 29-4-11, 29-5-11, 31-14-3, 31-20-3, or 44-6-166.1, the following procedures shall govern the appointment, compensation, and presentation of testimony of court appointed experts:

(1) The court on its own motion or on the motion of any party may enter an order to show cause why an expert witness should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. Each appointed expert witness shall be informed of his or her duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. Each appointed expert witness shall advise the parties of his or her findings, if any. Except as provided in Article 3 of Chapter 12 or Article 6 of Chapter 13 of this title, such witness’s deposition may be taken by any party. Such witness may be called to testify by the court or any party. Each expert witness shall be subject to cross-examination by each party, including a party calling the witness.

(2) Appointed expert witnesses shall be entitled to reasonable compensation in whatever sum the court allows. The compensation fixed shall be payable from funds which may be provided by law in criminal proceedings and civil proceedings and proceedings involving just compensation for the taking of property. In other civil proceedings, the compensation shall be paid by the
parties in such proportion and at such time as the court directs and thereafter
class manner as other costs;
(3) In the exercise of its discretion, the court may authorize disclosure to the
jury of the fact that the court appointed the expert witness; and
(4) Nothing in this Code section shall limit a party in calling expert witnesses
of the party’s own selection.

Discussion

This section is substantially the same as Federal Rule of Evidence 706 with a
clause added at the beginning referring to other Georgia statutes, specifically, Chapter 7
of Title 9 [Auditors], O.C.G.A. §§ 17-7-130.1 [Appointment of physician, psychologist or
clinical social worker to evaluate ward in guardianship proceedings], 17-10-66
[Appointment of an expert to determine mental competency to be executed], 29-4-11
[Appointment of medical witnesses on cases involving insanity defense], 29-5-11
[Appointment of physician, psychologist or clinical social worker to evaluate ward in
conservatorship proceedings], 31-14-3 [Appointment of physician to evaluate patient
with active tuberculosis in connection with commitment proceedings], 31-20-3
[Appointment of psychologist or psychiatrist and a physician to examine patient in
sterilization procedures], and 44-6-166.1 [Appointment of persons to make appraisals
for partitioning of property].
PRELIMINARY CONSIDERATIONS ON EVIDENTIAL PRINCIPLES AND CONCEPTS UNDER FEDERAL, OLD AND NEW GEORGIA EVIDENCE LAW FOR GEORGIA CRIMINAL LAW PRACTITIONERS

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INTRODUCTION TO THE NEW GEORGIA EVIDENCE CODE

Special thanks to Ronald L. Carlson, Fuller E. Callaway Chair of Law Emeritus, University of Georgia School of Law, for his indispensable efforts, contributions and guidance in preparing these materials.


**Featured Presenters**

- **Donald F. Samuel** has practiced with Garland, Samuel & Loeb since 1982. His practice is devoted primarily to criminal defense and appeals in both the state and federal courts. He has appeared in federal courts throughout the country and participated in one United States Supreme Court case, *State of Georgia v. Scott Fitz Randolph*. He has an active trial practice, having tried over 100 cases in the state and federal trial courts in matters as diverse as tax evasion, money laundering, mail fraud, murder, and public corruption cases. He has tried death penalty cases (none of his clients has ever been sentenced to death), and was teamed up with his long-time partner, Ed Garland, in the defense of Ray Lewis, Jamal Lewis, Dany Heatley, and Rapper T.I. Don is ranked among the Top 100 Georgia Super Lawyers, has been listed in Best Lawyers since 1991, and was recognized in Georgia Trend magazine's Legal Elite for his work in criminal defense law. He is a past President of the Georgia Association of Criminal Defense Lawyers (GACDL), is a member of the National Association of Criminal Defense Lawyers (NACDL), was elected in 1999 to membership in the American Board of Criminal Lawyers, and was inducted into the American College of Trial Lawyers in 2000. He is known for his scholarship: He has authored three books on criminal law that are relied on by judges, prosecutors and lawyers throughout the southeast. They are *Georgia Criminal Law Case Finder*, *Eleventh Circuit Criminal Handbook*, and *Federal Criminal Law Digest*. He has also just completed a new Georgia Criminal Law Form Book that will be published by Lexis this winter and is the editor of a new volume on Georgia Evidence that Lexis published this fall. He is the author of several law review articles in the *Georgia Bar Journal*. The most recent is *The Fourth Amendment and Computers: Is a Computer Just Another Container or Are New Rules Required to Reflect New Technologies?* (February 2009). He also teaches an upper level criminal law course at Georgia State University School of Law.

- **Michael Scott Carlson** is the Deputy Chief for the DeKalb County District Attorney’s Office’s Gang Prosecution Unit. After earning his undergraduate degree from the University of Georgia, Mr. Carlson received his law degree from Washington and Lee University, earning, among other distinctions, the Virginia Trial Lawyers Association Award for his “demonstrating the talents and attributes of the trial advocate.” After initial years in private practice focusing in the areas of civil litigation and media law, Mr. Carlson began a career in prosecution. In addition to trial and appellate experience in numerous high-profile cases, Mr. Carlson has authored articles in legal journals, lectured and taught on the subjects of evidence law and trial practice and procedure. In 2005, the Prosecuting Attorneys’ Council of Georgia awarded Mr. Carlson its J. Roger Thompson award for his efforts in training beginning-level prosecutors. In 2009, Mr. Carlson accepted the Georgia Gang Investigators Association’s President’s Award on behalf of the Office of the DeKalb County District Attorney, which was honored for its successful efforts in combating and preventing criminal street gang crime in Georgia. The Joseph Henry Lumpkin Inn of American Court recognized Mr. Carlson’s abilities as an attorney and contributor to the legal profession in 2010 by inducting him as a Master of the Lumpkin Inn. Mr. Carlson has previously served on the adjunct faculty of the Emory University School of Law and scheduled to start as adjunct faculty at Atlanta’s John Marshall Law School in Spring 2012. Beginning in 2011, Mr. Carlson has been a faculty mentor and featured speaker at the Gary Christy Memorial Georgia Trial Skills Clinic at the University Of Georgia School Of Law.
A. Introduction

1. History of the Georgia’s New Evidence Rules

Georgia’s current evidence code was originally drafted by a single author in 1860 and first published in 1863, during the American Civil War. Since the passage of the Federal Rules of Evidence in 1975, no American State, territory or jurisdiction has used Georgia’s 1863 Code as its base or model in creating theirs.

After the Evidence Code of 1863, Georgia’s evidence rules went unreconstructed for almost 150 years. In 2011, the 20-year quest by the State Bar of Georgia paid off resoundingly. New rules of evidence were enacted, effective on January 1, 2013. House Bill 24 passed the House of Representatives by a vote of 162-5, in the Senate by a 50-3 vote and was signed into law by Governor Nathan Deal on May 3, 2011.

2. The Embracing of Federal Law

The 2011 enactment recites in Section 1 that “[i]t is the intent of the General Assembly to adopt the Federal Rules of Evidence,” consistent with the Constitution of Georgia. In over 90% of the cases there will be a clearly defined federal approach to an evidentiary issue. At the margins, however, there may be a conflict of federal authority. Where federal courts have differed in interpreting a particular federal rule, “the General Assembly considered the decisions of the 11th Circuit Court of Appeals” as persuasive.


3. Adoption of Federal Standard of Prejudice and Presumptive Admissibility

24-4-402: All relevant evidence shall be admissible, except as limited by constitutional requirements or as otherwise provided by law or by other rules, as prescribed pursuant to constitutional or statutory authority, applicable in the court in which the matter is pending. Evidence which is not relevant shall not be admissible.

24-4-403: Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
4. **Previous Reliance on Federal Authority**


5. **Ex Post Facto Concerns**

Because evidence code provisions are procedural rather than substantive and, thus, do not, in-and-of-themselves, subject a criminal defendant to greater punishment or diminish the State’s burden of proof, they are not barred by the doctrine of *ex post facto*. HB24’s provisions, then, can be applied in all cases upon their effective date of January 1, 2013. See generally *Hall v. Vargas*, 278 Ga. 868, 608 S.E.2d 200 (2005) (noting that the issue of admissibility differs from that of the quantum of evidence needed to convict in denying a challenge to Georgia’s child hearsay statute on *ex post facto* grounds); *Chandler v. State*, 281 Ga. 712, 642 S.E.2d 646 (2007) (changes to rules regarding jury selection, final argument and impeachment all pertain to procedural matters and, thus, do not offend *ex post facto* restrictions).

**B. Reference and Research Material**

- Carlson, R. et al., *Objections at Trial*, 5th Ed., 2008 (National Institute of Trial Advocacy/LexisNexis)
- Samuel, D., *Georgia Criminal Law Case Finder*, 2011 Ed. (Lexis/Nexis)

**C. Specific Areas of Immediate Interest**

1. **Adoptive Admissions**

   - **HB24 Reference**: O.C.G.A. § 24-8-801(d)(2)(B) follows the Federal pattern
   - **Objections at Trial Reference**: Page 95
   - **Trial Handbook for Georgia Lawyers Reference**: §§ 26:8-11
   - **Eleventh Circuit Criminal Handbook Reference**: § 314
   - **Criminal Law Case Finder Reference**: § 31-4
Impact on Georgia Criminal Law Practitioners

- Proof of a party's conduct that is inconsistent with a his/her position at trial is admissible under FRE 801(d)(2)(B) and adoptive admissions are widely admitted in criminal cases in federal courts. See *Rahn v. Hawkins*, 464 F.3d 813 (8th Cir. 2006); *United States v. Joshi*, 896 F.2d 1303 (11th Cir. 1990).

- Because reference to pre-*Miranda* silence has been inconsistently adjudicated by Georgia appellate courts, adherence to the Federal Rule will usher in predictability, continuity and the opportunity to introduce additional evidence at trial.

2. Excited Utterances from Bystanders

- **HB24 Reference:** O.C.G.A. § 24-8-803(2) follows the Federal pattern
- **Objections at Trial Reference:** Page 99
- **Trial Handbook for Georgia Lawyers Reference:** § 25:30
- **Eleventh Circuit Criminal Handbook Reference:** § 318
- **Criminal Law Case Finder Reference:** § 31-4(k) and § 31-4(l)

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- Provided the proper foundation is established, hearsay from unidentified bystanders can be admitted federally. See *Miller v. Keating*, 754 F.2d 507, 510 (3d Cir. 1985); *United States v. Alexander*, 331 F.3d 116, 122 (D.C. Cir. 2003).

- Because evidence of declarations by unidentified witnesses has been inconsistently adjudicated by Georgia appellate courts, adherence to the Federal Rule will usher in predictability, continuity and the opportunity to introduce additional evidence at trial.

3. Scope of Cross-Examination

- **HB24 Reference:** O.C.G.A. § 24-6-611(b) retains Georgia’s current rule
- **Objections at Trial Reference:** Page 233-6
- **Trial Handbook for Georgia Lawyers Reference:** §§ 16:1, 2 and 11
- **Eleventh Circuit Criminal Handbook Reference:** § 340
- **Criminal Law Case Finder Reference:** § 31-3(f)

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- Federal practice is controlled by FRE 611(b) which restricts cross-examination to “the subject matter of the direct examination and matters affecting the credibility of witnesses.”

- “Wide open” cross-examination allowed by O.C.G.A. § 24-9-64 that provides for the “right of a thorough and sifting cross-examination by all parties.”
4. Flight, Evading Capture and Avoidance of Authorities

- **HB24 Reference:** O.C.G.A. § 24-8-801(d)(2)(A) follows the Federal pattern
- **Objections at Trial Reference:** Page 95
- **Trial Handbook for Georgia Lawyers Reference:** § 26:11
- **Eleventh Circuit Criminal Handbook Reference:** no specific section on this topic
- **Criminal Law Case Finder Reference:** § 31-15

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- Because evidence of a criminal defendant's flight, evading capture and avoidance of authorities has been inconsistently adjudicated by Georgia appellate courts, adherence to the Federal Rule will usher in predictability, continuity and the opportunity to introduce additional evidence at trial.

5. Party Hearsay

- **HB24 Reference:** O.C.G.A. § 24-8-801(c) follows the Federal pattern
- **Objections at Trial Reference:** Page 94
- **Trial Handbook for Georgia Lawyers Reference:** §§ 25: 1, 2; 29:21
- **Eleventh Circuit Criminal Handbook Reference:** § 309
- **Criminal Law Case Finder Reference:** § 31-4(a), (b)

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- Party self-quotation is not allowed under FRE 801(c). See generally U.S. *Mitchell*, 502 F. 3d 931, 964 (9th Cir. 2007).

- Under current Georgia law, a party repeating what he/she says is “not hearsay.” As such, adherence to the Federal Rule will alter the current interpretation of what constitutes hearsay.

6. Expert Witnesses Qualifications

- **HB24 Reference:** O.C.G.A. § 24-9-67 retains Georgia’s current rule
- **Objections at Trial Reference:** Page 70-82
- **Trial Handbook for Georgia Lawyers Reference:** §§ 24: 17-18
- **Eleventh Circuit Criminal Handbook Reference:** § 306 and § 307
- **Criminal Law Case Finder Reference:** § 31-5
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• Although Georgia civil cases employ the Daubert test for the admissibility of expert opinion, criminal cases follow the less strident Harper standard and will continue to do so under O.C.G.A. § 24-9-67.

• Georgia having different thresholds for expert testimony in criminal and civil cases was upheld in Mason v. Home Depot USA, Inc., 283 Ga. 271, 658 S.E.2d 603 (2008).

7. Prior Crime Impeachment

- HB24 Reference: O.C.G.A. § 24-6-609 closely follows the Federal pattern
- Objections at Trial Reference: Page 181; 286
- Trial Handbook for Georgia Lawyers Reference: § 16.11
- Eleventh Circuit Criminal Handbook Reference: § 302
- Criminal Law Case Finder Reference: § 31-3(e)(2) and § 31-3(e)(3)

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• Impeachment via prior conviction for felony (10 year limit) or crime involving dishonesty (no time limit allowed) under FRE 609. United States v. Jumping Eagle, 515 F.3d 794 (8th Cir. 2008)

• Prior convictions are controlled by OCGA 24-9-84.1, which aligns Georgia with Federal Evidence Rule 609. In 2013, the Georgia statute will be replaced by OCGA 24-6-609, cast in almost identical terms to the current statute. Nolo contendere pleas do not constitute convictions under the new statute.

8. Impeachment by Contradiction: Correcting Mischaracterizations

- HB24 Reference: O.C.G.A. §§ 24-4-403 and 24-6-607 follow the Federal pattern
- Objections at Trial Reference: Pages 124—7; 178-80
- Trial Handbook for Georgia Lawyers Reference: §§ 7:3-4
- Eleventh Circuit Criminal Handbook Reference: no specific section
- Criminal Law Case Finder Reference: § 31-3(e)(5)

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• FRE's 607 and 403 combine to allow “impeachment by contradiction” which is “a means of policing the defendant's obligation to speak the truth in response to proper questions.” See U.S. v. Gilmore, 553 F.3d 266 (3rd Cir. 2008). Misrepresentations in opening statement are fully subject to correction by the opposing side in federal court. See United States v. Parkin, 917 F.2d 313, 316 (7th Cir. 1990).

• Because the introduction of rebuttal evidence is inconsistently adjudicated by Georgia appellate courts, adherence to the Federal Rule will usher in predictability, continuity and will discourage misrepresentations by parties and counsel at trial.
9. **Forfeiture by Wrongdoing**

- **HB24 Reference:** O.C.G.A. § 24-8-804(b)(5) follows the Federal pattern
- **Objections at Trial Reference:** Page 318
- **Trial Handbook for Georgia Lawyers Reference:** § 25:32
- **Eleventh Circuit Criminal Handbook Reference:** § 329.1
- **Criminal Law Case Finder Reference:** No specific section

**Impact on Georgia Criminal Law Practitioners**

- Under FRE 804(b)(6) (“forfeiture by wrongdoing”), where the intent was to silence a witness, the defendant cannot benefit from his misconduct, causing that witness’s statement to be admissible at trial. Forfeiture by wrongdoing is specifically excluded from the proscriptions of *See Crawford v Washington*, 541 U.S. 36 (2005).

- Georgia statutory law currently does not recognize forfeiture by wrongdoing. Adherence to the Federal Rule will allow application of this doctrine for the State and defendants in criminal cases.

10. **Prior Bad Act Evidence (similar transactions)**

- **HB24 Reference:** O.C.G.A. § 24-6-404(b); 24-4-417 (special rule for DUI “refusal” cases)
- **Objections at Trial Reference:** Page 19-22
- **Trial Handbook for Georgia Lawyers Reference:** § 29:11-17
- **Eleventh Circuit Criminal Handbook Reference:** § 293
- **Criminal Law Case Finder Reference:** § 31-2

**Impact on Georgia Criminal Law Practitioners**


- O.C.G.A. § 24-6-404(b) does not include “course of conduct” and “bent of mind” as categories for the admission of the evidence. Adhering to the Federal Rule would remove these as bases for admission of “prior bad act” evidence but would add specific categories and lower the threshold for admission of this evidence, due to moving to a two (federal) part from a three (current Georgia) part test for admissibility and changing the prejudice threshold to what is contained in FRE 403.
APPENDIX
INSTITUTE OF CONTINUING LEGAL EDUCATION IN GEORGIA
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The State Bar of Georgia and the Law Schools of The University of Georgia, Emory University and Mercer University established the Institute of Continuing Legal Education in Georgia in August 1965. In 1984, Georgia State University College of Law was added to the consortium, and in 2005, John Marshall Law School was added. The purpose of the Institute is to provide an outstanding continuing legal education program so that members of the legal profession are afforded a means of enhancing their skills and keeping abreast of developments of the law. The Institute is governed by a Board of Trustees composed of twenty-eight members consisting of the Immediate Past President, the President, the President-elect, the Secretary, and the Treasurer, all of the State Bar of Georgia; the President, President-elect and the Immediate Past President of the Young Lawyers Division; nine members to be appointed by the President of the State Bar of Georgia, each for a term of three years (the President has three appointments each year); two representatives of each of the participating law schools; and the Immediate Past Chairperson of the Institute. The Immediate Past President of the State Bar of Georgia serves as Chairperson of the Board of Trustees of the Institute.

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