

# Fisher Broyles

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**Practice Areas:** Media & Communications Law; Employment; Products Liability Litigation & Counseling

**Bar Admissions:** Georgia; New York

**Education:** University of Georgia, JD, 1992; University of North Carolina, BA, 1989

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Cynthia L. Counts has more than 25 years of trial and appellate experience. Her media law practice serves both corporate and individual clients nationwide. She is best known for an aggressive motions practice, and has had consistent success in winning cases in the early stages of litigation.

She focuses on libel and defamation, privacy, false advertising, newsgathering torts, copyright, government access matters (FOIA) and First Amendment law.

Ms. Counts defends not only media, telecom companies, and other corporate clients but also individuals, newspapers, websites, television stations and small businesses in libel, copyright and trademark infringement claims, as well as breach of contract, prior restraint, invasion of privacy, fraud and promissory estoppel cases. Ms. Counts has been at the forefront of the quest for a broad application of anti-SLAPP statutes, enacted to provide an early mechanism for the dismissal of harassing libel litigation.

Ms. Counts also has litigated successfully for clients with a variety of free speech concerns: from those arrested for uttering profanities in a public meeting to individuals facing anti-gay discrimination in their choice of vanity license plates. She provides pre-publication review services for all media platforms. She regularly advises clients on issues including reputation management, social media policies, copyright clearance, fair use, employment law, privacy, public records access, reporter's privilege, the emerging area of drone law and Section 230 of the Communications Decency Act.

Her clients include corporations, news publishers, entertainment companies, authors, reality television producers, social media personalities and documentary filmmakers, among others.

Ms. Counts is a sought-after commentator and writer on libel, internet privacy, the First Amendment and open government law. She also has been selected as one of Georgia's Super Lawyers and is AV® Preeminent Peer Review rated by Martindale-Hubbell. She is also listed in Chambers USA: America's Leading Lawyers for Business.

Memberships include the governing board of the ABA Forum on Communications Law; the board of the Georgia First Amendment Foundation; and co-chair of the Media Law Resource Center's Newsgathering Committee and annual Conference Planning Committee; and the annual Georgia Bar Media & Judicial Conference Planning Committee.

### Teaching Experience

Counts has been an adjunct professor teaching media law at Emory University Law School and has also taught in the undergraduate journalism program at Emory.

### Publications

- Written at a time when the Internet was uncharted legal territory, Ms. Counts' law review article on jurisdictional issues in Internet libel cases is still frequently cited by law school professors and other law review articles., Co-Author, Libel in Cyberspace: Liability and Jurisdictional Issues in this New Frontier, Albany Law Review, 1996
- Co-Author, Handbook on Georgia Appellate Procedure, 1996
- 5th Annual Product Liability Seminar, Co-Author, Litigating Product Liability Case Under the Banks "Risk/Utility" Test: Predicting the Line Between Summary Judgment and Triable Claims and Outlying Trial Strategies for a Risky but Utilitarian World, 1996
- Curbing Discovery Abuse Seminar, Speaker, Answering Discovery Requests, Georgia Institute for Continuing Legal Education, 1998
- Speaker, Ways to Improve Relationships Between the Bar, Media and Judiciary, Libel Defense Resource Center, 2000
- Author, [Georgia's Anti-SLAPP Statute Applied in Media Case: First Published Decision Applying Statute to Media Defendant](#), Media Law Resource Center, 2008
- Fifty-state survey of privacy law, Co-Author, Survey of Georgia Privacy Law, Media Law Resource Center, 2001
- Author, Georgia TV Station Wins Summary Judgment: News Broadcast was True; Plaintiff Failed to Show Fault, Media Law Resource Center, 2009
- Speaker/panelist at the University of Georgia's annual Digital News Workshop at the Grady College of Journalism and Mass Communication on legal and ethical issues journalists face today, the increased significance of social media in news reporting and the risks of relying on internet information resources. , Speaker , Digital News Blue Jeans Workshop, University Georgia Grady College of Journalism, 2011

- Column regarding risks associated with a Georgia Senate Bill that would have trumped the right of citizens to learn about tax breaks or deals offered to recruit private companies to Georgia. The proposed law would have effectively permitted government officials to make secret deals and withhold details about how tax-payer money was being spent., Guest Columnist, Taxpayer Money Always Needs Public Scrutiny -- No Exceptions, Atlanta Journal Constitution, 2011
- Co-author of a newsletter article sharing strategies about how to quickly and efficiently win media cases with minimal cost to her clients., Co-Author, Strategies for Efficiently and Economically Winning a Media Case, ABA Media, Privacy, & Defamation Law Committee Newsletter, 2011
- Panelist during discussion sponsored by the Atlanta Press Club with Georgia Attorney General Sam Olens regarding how open record requests were used to uncover a cheating scandal in the Atlanta public school system and how the revised open records bill will affect the future of investigative reporting., Atlanta Press Club, 2011
- Presentation to authors explaining how libel and privacy claims could be brought against them for using real-life individuals in both fiction and non-fiction, and how they can minimize their risk of being sued., Speaker, Libel & Privacy 101 for Authors, BookLogix, 2011
- The Supreme Court's 1990 decision in Milkovich does not deserve the scarlet letter it has received from the libel defense bar., Co-author, Communications Lawyer, Winter 2016, American Bar Association, 2016
- The Court's emphasis on the need to set forth a plausible claim for relief makes particular sense in public figure defamation cases because it helps ensure that those exercising their First Amendment rights will not be unduly burdened with expensive and baseless litigation., Co-author, [Palin's Suit Against The New York Times Dismissed by Federal Court Weighing in on Defamation and Political Editorials](#), Media Law, 2017
- In its recent decision in [Cottrell v. Smith](#), S16A0013, 2016 Ga. LEXIS 473 (July 8, 2016), the Georgia Supreme Court addressed a number of topics that are common in many defamation cases and clarified the law in the areas of defamation per se, limited purpose public figures and actual malice. The court's ruling acknowledged the constitutional safeguards that protect our free speech rights when commenting on public controversies., Co-author, [Supreme Court of Georgia Clarifies Constitutional Protections for Commenting on Public Controversies](#), Media Law, 2016

### Representative Matters

- Obtained unanimous jury verdict in favor of a Maine newspaper and two reporters accused of defamation for reporting on adolescent boys' accusations of sexual abuse by a former police captain. Jury took just an hour to determine that plaintiff had not proven the news articles at issue to be false. *Gaudette, et al. v Mainely Media, LLC, et al.* (Superior Court of York, State of Maine, Docket No. CV-15-123) 2022
- Secured appellate affirmation of trial court decision dismissing with prejudice a defamation claim against two television reporters and their station for stories about the appellant's social media posts surrounding the "Alt-Right Rally" in Charlottesville. *Reilly v. WNEP A/K/A Channel 16, et al.* (Superior Court Middle District, State of Pennsylvania, No 557 MDA) 2022
- Obtained dismissal of a defamation claim filed against a New York television station and Nexstar Media Group regarding the erroneous identification of the plaintiff as a man sentenced in a sexual misconduct case. Photo at issue was provided by the sheriff's department, and defendants, who apologized for the error, employed state's expanded anti-SLAPP statute to successfully argue for the dismissal. *Michael Henry v. Nexstar Media Group, INC. and WIVB No. 813882/2020* (N.Y. Erie Cty.) 2021
- Obtained summary judgment dismissal of libel lawsuit against Maine's largest two newspapers filed by former podiatrist who became embroiled in accusations that veterans were receiving poor medical treatment from the federal government. Judge concluded plaintiff "had not pleaded facts allowing for an inference of actual malice" and that the serious issues raised about veterans' health care were legitimate matters of public concern. *Franchini v. Pipes, et al.* (U.S. District Court of Maine, Case No. 1:18-cv-00477-GZS) 2021
- Obtained a dismissal with prejudice in an action alleging defamation and related claims of tortious interference and intentional infliction of emotional distress against Defendant NexStar Broadcasting, Inc. over a News Report allegedly falsely accusing the Plaintiff, a self-proclaimed public figure, of being a scam artist. Court found Plaintiff had failed to show actual malice and that, in the full context of the News Report at issue, a reasonable viewer could only understand "scam artists" to be an opinion based on disclosed facts. *Holland v. Wood TV 8* (State of Michigan, In the 9th Circuit Court of Kalamazoo County, Case No. 2019-0122-CB), 2019
- Obtained an order granting an anti-SLAPP motion and awarding our media client all of their attorneys' fees. *Levine v. ALM Media, LLC, et al.* (Superior Court of Fulton County, State of Georgia, Case No. 2019CV320847), 2019

- Defeated a motion to compel for our client's California television station from having to produce documents or provide testimony on grounds of a federal reporter's privilege. *Harrison v. Roman Catholic Faithful, Inc., et al.* (Superior Court of California, County of Kern, Case No. BCV-19-102204), 2019
- Filed motions to quash and successfully argued that reporters should not have to testify at hearings in high-profile murder trial supported by the reporter's privilege on behalf of reporters from FOX 5 and the Fulton County Daily Report. The Judge ruled that the reporters would not be excluded by the rule of sequestration and ultimately refused to allow the prosecution to call the reporters to the stand. After counsel was told to come back to court for a second hearing, the Court encouraged the State to pay the media companies attorney fees for "having wasted" counsel's time. *State v. McIver* (Superior Court of Fulton County, State of Georgia, Criminal Case No. 17SC153902, 2018), 2018
- Using Connecticut's anti-SLAPP statute, secured dismissal in a libel case for a local television company. *Georgetti v. Nexstar Media Group, Inc., et al.* (Superior Court of Connecticut, J.D. of New Haven at New Haven, Docket Number: NNH-CV18-6087491.), 2018
- Represented a media outlet in a defamation suit involving an investigative television report. Plaintiff agreed to dismiss case in exchange for an agreement that the media company would not file motion seeking sanctions/attorney's fees for false pleading of material facts *Arnie's Inc. v. Wood Television, LLC, et al.*, (State of Michigan, In the Kent County Circuit Court, Case No. 18-04220), 2018
- Obtained dismissal of libel complaint - Used amended Georgia anti-SLAPP statute to secure early-stage dismissal of libel complaint in which plaintiff alleged that defendant's notification to insurance company about possible arson in a house fire constituted defamation. *Gauthier v. Vaughn* (Ga. Superior Court, Forsyth County, 2017). Civil action 16CV-21633., 2017
- Defamation Claim Against Cox Communications in Nevada Dismissed --Prevailed on a motion to dismiss in the Nevada District Court arguing that Cox Communications was immune from liability under the Communications Decency Act ("CDA") for passively hosting websites containing information regarding an expunged criminal conviction. CDA 230 holds that online intermediaries that host or republish speech are not legally responsible for what other publishers say or do. *Wilson v. Web Express LLC* (District Court of Nevada. Eighth Judicial District Court Clark County). Civil Action WL1145422017. , 2017
- Website Defamation Claim Against Cox Communications In Michigan Dismissed -- Prevailed on a motion to dismiss in the Michigan Circuit Court arguing that Cox Communications was immune from liability under the Communications Decency Act ("CDA") for passively hosting websites

containing information regarding an expunged criminal conviction. Court found that all of Plaintiff's claims against Cox were barred by Section 230 of the CDA and dismissed them with prejudice. *John Doe v. Perfect Privacy LLC* (Michigan 7th Circuit Court, 2017) Case No. 17-108537-CZ. , 2017

- Obtained dismissal of a libel suit against a community newspaper by an individual who alleged that the newspaper's report of her arrest was false and defamatory. *Wilkerson v. Langston Chapel Middle School, et al.* (S.D. Ga. August 17, 2016)., 2016
- Successfully defended Telemundo Atlanta in a libel suit arising from the station's investigative news reports about the plaintiff's involvement in running an unaccredited school. The plaintiff voluntarily dismissed the case upon threat of a motion to strike under Georgia's anti-SLAPP statute. *Beltran, et al. v. Korean American Television Broadcasting Group, et al.* (Ga. Superior, Gwinnett County, September 6, 2016)., 2016
- Obtained dismissal of a libel lawsuit by a local Assistant District Attorney upon threat of a motion to strike under Georgia's newly amended anti-SLAPP statute. *Ferguson v. New World Communications of Atlanta, Inc.* (Ga. Superior, Fulton County, September 9, 2016)., 2016
- Obtained summary judgment for television news station and reporter following a veteran's claim of defamation and libel after station reported veteran had lied about receiving a Purple Heart. *Ladner v. New World Communications of Atlanta, Inc.*, 2016 WL 6560868 (Ga. State Court, DeKalb County October 25, 2016). Decision affirmed in client's favor by Georgia Court of Appeals (2017). , 2016
- Summary Judgment for Reality TV Performer Sued over Comments on Show -- *Mickey Wright, Jr. v. Kimberly Michelle Pate, et al.* (Ga. Superior Court. Fulton County, 2015) Civil Action 2012CV225263 A singer and cast member of a reality television show that documents the lives of performers trying to "make it" in the music industry was sued for defamation by her former manager regarding comments that were broadcast on the show about their personal and professional relationship several years before the show began. Counts Law Group represented Ms. Pate and, working with co-counsel, was granted summary judgment after uncovering "tweets" and other evidence supporting Ms. Pate's account and establishing early on that the plaintiff was a public figure and thus subject to the constitutional "actual malice" standard. , 2015
- Summary Judgment Granted in Defamation Case Against Radio Hosts -- *Gabriela Gonzalez-Lamberson v. Davis Broadcasting Company* ( Ga. State Court, Gwinnett County, 2015). Civil Action No. 11C-8425-4. Our clients were two radio program hosts and the station that aired their program, a satirical show that discussed issues particularly relevant to a Hispanic audience. They were sued in a defamation and false light claim brought by the executive director of an agency

that has provided essential services to the Mexican consulate in Atlanta and to Mexican nationals in three southern states. A Gwinnett County State Court Judge granted our early motion for summary judgment and dismissed the claim, finding that the jokes about the Plaintiff were constitutionally protected satire and that the Plaintiff was a limited purpose public figure and could not show actual malice., 2015

- Obtained judgment on the pleadings in favor of the producers of the COPS television show in a defamation, invasion of privacy, and emotional distress claim. *Butler v. Gwinnett County et al.*, No. 1:15-CV-3289 (N.D. Ga. June 3, 2016)., 2016
- Free Speech Defense Prompts Disorderly Conduct Case Dismissal --- *State of Georgia v. Kenneth Ray Chiavone* (Ga. State Court, Fayette County, 2015) Case No. 2014SR-0451. Our client was accused of disorderly conduct following a verbal confrontation with his neighbors, who recorded the interaction, which included profanities, on video. Counts Law Group successfully argued that the statements did not rise to the level of "fighting words" as required by the statute, and the charges were dismissed., 2015
- Anti-SLAPP Defense Leads to Quick Libel Case Dismissal --- *Nedra Dodds v. Adam Murphy, CBS46, Channel 2 Action News, and Unknown John Does* (Ga. Superior Court, Cobb County 2015) Civil Action No. 14-1-5746. An anti-SLAPP defense mounted by the Counts Law Group on behalf of our broadcast clients led to the early dismissal of a physician's libel claim that investigative television news coverage of the deaths of several of her cosmetic surgery patients was the reason her license was suspended. The trial court agreed with our contention that the news reports met both the "commenting" and "petitioning" speech provisions of the anti-SLAPP statute and dismissed the claim., 2015
- Anti-SLAPP Prompts Dismissal in Claim Against Whistleblower --- *Torres Advanced Enterprise Solutions, LLC v. Christopher G. Herman* (Ga. State Court, Fulton County, 2014) Civil Action File No. 14EV000671H. Successful use of an anti-SLAPP defense in a libel case involving a whistleblower's emails led the plaintiffs to voluntarily dismiss their claim against our client. Mr. Herman was a former employee of the plaintiff who reported to federal officials that plaintiffs made it a practice to illegally cut out joint venture partners after securing significant government contracts. Counts Law Group argued that the defendant's emails to federal officials regarding a \$25 million Department of State contract in Uganda were protected under anti-SLAPP, and the trial court emphatically agreed, prompting the dismissal., 2014
- County Settles Client's Free Speech Claim for \$100,000 --- *Amy Barnes v. Cobb County et al.* (N D. Georgia 2014) Case No. 1:2014cv00948. On Easter Sunday, 2012, Amy Barnes was biking to the store for butter. She became upset at the way police officers were detaining a burglary

suspect and yelled an epithet at them. They abandoned the suspect to chase after Ms. Barnes, arrested her and jailed her for nearly 24 hours. Counts Law Group helped secure a dismissal of the criminal charge in State Court and then pursued a free speech claim in federal district court that concluded in 2014 with a \$100,000 settlement in favor of Ms. Barnes., 2014

- Consumer Rights to Post Online Reviews Upheld --- Viking Fence Company, LLC v. Charles Denyer and Megan Denyer, Ga. Superior Court, Fulton County, (2014). Civil Action File No. 2014-CV-248699. A fencing contractor acknowledged to our clients that the problems and mistakes that occurred during construction of a fence on their property amounted to “a disaster.” Nevertheless, he still sued them for libel when they quoted from his letter to them in online reviews they posted regarding his company’s performance. Counts Law Group won a judgment on the pleadings, referencing a voluminous record of cases protecting a consumer’s right to voice an opinion of the service received., 2014
- Client Wins Free Speech Case over Vanity License Plate --- Gilbert v. Mikell, Case No. 1:13-cv-00110 (N.D. Ga. 2013) Our client sought prestige license plates but was denied because the Georgia Department of Driver Services had determined the requested tags (ex. 4GAYLIB) were obscene. Counts Law Group and co-counsel filed suit in federal court. In settling our claim, the state paid all the costs of the litigation, changed the rules for vanity license plates to make them less arbitrary and enabled our client to get the tag he wanted. , 2013
- Dismissing Actions under Georgia’s anti-SLAPP Statute: Georgia’s anti-SLAPP statute was enacted in 1996 to provide an early mechanism for the dismissal of harassing libel litigation. Counts Law Group has been at the forefront of the fight for a broad application of the statute to various types of claims and defendants. For example, in Boxcar Development Corp. et al. v. New World Communications of Atlanta, Inc., we won a full stay of discovery and dismissal with prejudice on grounds that Plaintiff’s failure to comply with verification requirements under Georgia’s anti-SLAPP statute barred claims against FOX 5 for libel, invasion of privacy, fraudulent misrepresentation, and intentional infliction of emotional distress. (Ga. Super. Ct., DeKalb County May 1, 2008).
- Godfrey v. Cobb County and New World Communications of Atlanta, No. 06CV2362-01 (Ga. Super. Ct. Cobb Co., July 13, 2009) Based upon Defendant’s introduction of undisputed evidence discovered solely by counsel’s informal investigation, won a decisive summary judgment on a former public official’s claims for defamation, false light invasion of privacy, and public disclosure of private facts against defendant television news station. Rather than simply deny summary judgment based upon the existence of apparently conflicting facts presented by the parties, the Court determined that the substance of the newscast was objectively true, and therefore, no

genuine issue of material fact existed for determination by a jury. Despite finding Plaintiff to be a public figure, the Court notably held that the Plaintiff's evidence would have failed as a matter of law even to establish negligence.

- *Annisman v. Window Media*, 00A73809-1 (State Ct. DeKalb Co, Oct. 22, 2001) Obtained a summary judgment order dismissing all of Plaintiff Lee Annisman's libel claims without engaging in formal discovery. The claims were based on a newspaper article describing numerous medical malpractice lawsuits filed against Annisman, a doctor who regularly treated HIV patients in the Atlanta area. The Court flatly rejected all of Plaintiff's libel claims, finding that Defendants' newspaper article was not defamatory as a matter of law and noting that "libel by omission" is not a recognized legal theory in Georgia.
- *Fighting Subpoenas served on Reporters*: Reporters cannot be compelled to testify or produce their notes unless the strict requirements set forth in Georgia's Reporter's Shield Law are met. O.C.G.A. § 24-9-30. In *Hendrix v. Highsmith*, we successfully quashed Plaintiff's motion to compel disclosure of documents and information a FOX 5 investigative reporter obtained from an anonymous source during newsgathering. In applying Georgia's Reporter's Shield law, the Court held that a plaintiff must demonstrate that his claims are viable and that the disclosure of the information would be critical to his case. (Ga. Super. Ct., Hall County May 14, 2008).
- *Koly v. Enney*, 3:06-CV-68-JTC (N.D. Ga. April 18, 2007) Won a judgment on the pleadings without the use of any formal discovery to successfully defeat a \$1 million federal libel lawsuit brought by a Connecticut medical products company and its former CEO over criticism the CEO received for his involvement in a Rolls-Royce club. Elizabeth Enney, the defendant in the suit, is a Georgia resident and volunteer officer in the Rolls-Royce Owners Club and had written an internal club memo raising concerns about an undisclosed conflict of interest involving M.S. Koly, then the CEO of Delcath Systems, Inc., and another member of the car club's board of directors. In the ruling, Judge Jack T. Camp of the Northern District of Georgia agreed that Ms. Enney's memo was "substantially true" and granted her motion to dismiss the suit.