

2018 REPORT OF THE

# OFFICE OF THE GENERAL COUNSEL



State Bar  
of Georgia

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STATE BAR OF GEORGIA

JUNE 7-10

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# REPORT OF THE GENERAL COUNSEL

by Paula J. Frederick, General Counsel

I am pleased to present the 2017-18 Report of the Office of the General Counsel. Enclosed herein are reports from the Investigative and Review Panels of the State Disciplinary Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the Pro Hac Vice program and the Trust Account Overdraft Notification Program. For the first time there is a report on the number of receiverships that the Office has filed or is processing. Following the reports is a list of the Supreme Court orders issued in disciplinary cases between May 1, 2017, and April 30, 2018. Simply click on the lawyer's name in the Member Directory to see a copy of the order.

For more detailed information about the work of the Office please take a look at our quarterly reports to the Board of Governors in each Board meeting agenda book.

The enclosed reports document an impressive array of cases handled and services rendered to the Bar and to the public; however, they represent only a fraction of the work done by you and other dedicated Bar volunteers along with the staff of the Office of the General Counsel each year. The Office is indebted to each of you, and to every Georgia lawyer who volunteers his or her time in service to the legal profession.

## Staff

Senior Assistant General Counsel Jonathan Hewett retired in May. The Office collected an impressive \$1,000 in donations from Jonathan's coworkers at the Bar and donated it in his honor to the Georgia Legal Services Program, where Jonathan's wife Phyllis Holmen served as Executive Director until her retirement earlier this year. Assistant General Counsel William "Bill" Cobb was promoted to Senior Assistant and has taken over Jonathan's job duties. We brought in James "Jim" Lewis, a lawyer with more than 20 years' experience in criminal defense and domestic practice, to fill the vacancy left by Bill's promotion.

In other changes, Jessica Oglesby became Clerk of the State Disciplinary Board after Connie Henry retired last summer. Longtime staffers Deborah Grant and Carolyn Williams were promoted to Senior Legal Assistant and Senior Paralegal, respectively. Legal Assistant Deloise Mathews moved to ICLE, where she serves as Assistant Director for Meetings. Melis Andrade took Deloise's spot and is currently a Legal Assistant in the Bar Counsel unit. A new employee, Asia Brown, now serves as the OGC Legal Assistant/Receptionist.

# REPORT OF THE GENERAL COUNSEL

I have attached a staff roster at the end of this report so that you know who to contact when you need something from the Office. Remember that in addition to investigating and prosecuting disciplinary cases the Office:

- Provides legal advice to the staff, Executive Committee and Board of Governors;
- Represents the Bar and its volunteers or monitors outside counsel in threatened or pending litigation;
- Drafts and amends bar rules, contracts, and policies;
- Provides guidance to supervisors on employment matters, proposes and drafts amendments to the Employee Manual, provides HR advice and training;
- Files and manages receiverships.

Staff of the Office of the General Counsel also provide advice and support to a number of other Bar entities, including the:

- Investigative Panel,
- Review Panel,
- Disciplinary Rules Committee,
- Formal Advisory Opinion Board,
- Clients' Security Fund,
- Advisory Committee on Legislation,
- Uniform Rules Committee,

- Elections Committee,
- Insurance Committee,
- Committee on International Trade in Legal Services,
- Wellness Committee,
- Continuity of Law Practice Committee, and the
- OGC Overview Committee.

## Ethics Helpline

The Office of the General Counsel operates a Ethics Helpline for members of the State Bar of Georgia to discuss ethics questions on an informal basis with an Assistant General Counsel. The Helpline averages 21 calls, letters or email requests each weekday.

## Continuing Legal Education

As always, the Office of the General Counsel provides staff counsel to speak at CLE seminars and to local bar groups upon request. This year OGC lawyers participated in more than 60 CLE presentations.

## Thanks

The staff and I remain committed to serving each member of the State Bar of Georgia with efficiency and professionalism. Please call upon us whenever we can be of help to you.

# REPORT OF THE GENERAL COUNSEL

## Office of the General Counsel Staff Roster

Main: 404-527-8720 Fax: 404-527-8744

### General Counsel

Paula Frederick x8730 paulaf@gabar.org

### Senior Legal Assistant

Deborah Grant x8722 deborahg@gabar.org

### Bar Counsel Unit

(In-house counsel work, drafting amendments to Bar Rules or Bylaws, contract review, receiverships, Clients' Security Fund, Formal Advisory Opinion Board, letters of good standing.)

### Deputy General Counsel

Bill NeSmith x8728 billn@gabar.org

### Senior Assistant General Counsel

John Shiptenko x8739 johns@gabar.org

### Paralegal

Betty Derrickson x8771 bettyd@gabar.org

### Legal Assistant

Melis Andrade x8627 melisa@gabar.org

### Part-time Assistant/Receiverships

Karen Cooper x8634 karenc@gabar.org

### Disciplinary Unit

(Screening Office—initial investigation and review of grievances.)

### Assistant General Counsel/Grievance Counsel

Adrienne Nash x8757 adriennen@gabar.org

### Assistant General Counsel/Assistant Grievance Counsel

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### Legal Secretary

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### Disciplinary Counsel

### Deputy General Counsel

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### Senior Assistant General Counsel

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### Program Coordinator

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### Legal Secretary

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### Clerk, State Disciplinary Board

Jessica Oglesby x8721 jessicao@gabar.org

### Legal Assistant/Receptionist

Asia Brown x8735 asiab@gabar.org



# INVESTIGATIVE PANEL

by Daniel S. Reinhardt, Chair

As chair of the Investigative Panel, I would like to thank the panel members for their long hours of very hard work grappling with the serious issues we have faced this year. The panel must investigate and review a never-ending stream of cases and does so more efficiently than ever.

The 2017-18 Investigative Panel consisted of two lawyers from each judicial district of the state, six public members and two at-large members. The panel continued its practice of holding its monthly meetings throughout the state. This year we met in Atlanta, Augusta, Banning Mills, Columbus, Greensboro, Helen, Jekyll Island and Macon.

The Bar received more requests for grievance forms this year (3,142) than last (3,105). The number of grievance forms returned to the Office of the General Counsel also increased. Last year's figure was 1,842; this year 1,991 forms were returned for screening and further consideration.

After review by an assistant general counsel, 1,844 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 193 grievances contained allegations which, if true, would amount to violations of one or more of the Georgia Rules of Professional Conduct. This represents an increase from 188 such grievances in 2017. Each of those grievances was referred to one of the district panel members for further investigation.

Investigative Panel members who investigated grievances each handled numerous cases during the Bar year. The panel also set a goal of having each case reported within 180 days. Each case required investigation and time away from the panel member's law practice, all without compensation. At the end of the investigation, the panel member made a report and recommendation to the full panel. Fifty-six grievances were dismissed, 39 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and nineteen cases met the "probable cause" test and were returned to the Office of the General Counsel for prosecution. This represents a decrease from 129 such cases last year. Ninety-three cases are still under consideration by the panel, an increase from 83 such cases last year.

Twenty-four of the Respondents named in grievances where there was a finding of probable cause received confidential discipline in the form of Formal Letters of Admonition or Investigative Panel Reprimands. In the more serious cases, the panel issued a Notice of Discipline or made a referral to the Supreme Court of Georgia for a hearing before a special master.

The Investigative Panel imposed the following during 2017-18:

## Cases

Investigative Panel Reprimands	10
Letters of Formal Admonition	14
Cases Dismissed with Letters of Instruction	39
Interim Suspensions	15

*Public discipline imposed by the Supreme Court of Georgia is described in the Annual Report of the Review Panel of the State Disciplinary Board on page 8.*

The Supreme Court of Georgia approved amendments to the disciplinary rules that will become effective July 1, 2018. The Investigative Panel will become the State Disciplinary Board and the composition of the Board will change. The State Disciplinary Board will consist of the president-elect of the State Bar of Georgia and the president-elect of the Young Lawyers Division of the State Bar of Georgia; six members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, appointed by the Supreme Court of Georgia; six members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, appointed by the president of the State Bar of Georgia with the approval of the Board of Governors; two non-lawyer members appointed by the Supreme Court of Georgia; and two non-lawyer members appointed by the president of the State Bar of Georgia with the approval of the Board of Governors. The ex-officio members will serve only during their terms of office. All other members will be appointed for three-year terms and may serve for no more than two consecutive terms.

I would like to recognize those members of the Investigative Panel who have unselfishly devoted so much of their personal and professional time to this necessary task. They are:

## **District 1**

Christian J. Steinmetz III, Savannah (*term expiring*)

J. Maria Waters, Pooler (*term expiring*)

## **District 2**

Charles E. Peeler, Albany (*term expiring*)

Laverne Lewis Gaskins, Valdosta (*term expiring*)

## **District 3**

Donna S. Hix, Columbus (*term expiring*)

G. Bardin Hooks, Jr., Americus (*term expiring*)

## **District 4**

William Gilmore Gainer, Conyers (*term expiring*)

Sherry Boston, Decatur (*term expiring*)

## **District 5**

William Hickerson Thomas Jr., Atlanta

Karen Brown Williams, Atlanta

## **District 6**

Gerald Alan Dodson, Griffin

Elizabeth Pool O'Neal, Jackson

## **District 7**

Lawrence Alan Stagg, Ringgold

Dale Pearson Beardsley, Atlanta

## **District 8**

Kimberly A. Reid, Cordele

John D. Newberry, Gray

## **District 9**

Dana Pagan, Lawrenceville

Melody A. Glouton, Duluth

## **District 10**

Amanda Heath, Augusta

Anna Green Bolden, Winder

## **At-Large**

Daniel S. Reinhardt, Atlanta

John G. Haubenreich, Atlanta

Finally, I want to recognize and thank the six non-lawyer members appointed by the Supreme Court:

Connie S. Cooper, Pooler (*term expiring*)

Jennifer M. Davis, Atlanta

Michael A. Fuller, Macon (*term expiring*)

Carol Fullerton, Albany

Elizabeth King, Atlanta

David Richards, Stone Mountain

# REVIEW PANEL

by Anthony B. Askew, Chair

The Review Panel of the State Disciplinary Board currently serves as an appellate review board in our disciplinary system. After a disciplinary case has been heard by a special master, the parties may request review by the Review Panel before the case is filed with the Supreme Court. The Review Panel has authority to review the complete record and make findings of fact and conclusions of law. In all cases in which disciplinary violations have been found, the panel makes a recommendation of disciplinary action to the Supreme Court. The Court may follow the panel's recommendation, but may also render an opinion that modifies our recommendation in some way.

In addition, the Review Panel reviews all cases involving reciprocal discipline. The Supreme Court of Georgia amended the Bar Rules on June 9, 2004, so that the Review Panel reviews every case in which a Georgia lawyer has been disciplined in another jurisdiction. The panel is charged with recommending the appropriate disciplinary result in Georgia. These cases present many interesting issues for the panel. In many instances the lawyer objects to reciprocal discipline and the panel must consider whether the case is in the correct procedural posture to be reviewed, whether the lawyer was afforded due process in the underlying disciplinary proceeding, whether the misconduct would result in similar discipline under our rules and recommend discipline which would be substantially similar to the discipline imposed in the foreign jurisdiction.

The Review Panel also issues Review Panel Reprimands when directed by the Supreme Court, approves publication of notices of suspension and disbarment, and makes recommendations in reinstatement cases involving suspensions with conditions for reinstatement as directed by the Supreme Court.

At the present time, the Review Panel is a 15-member panel composed of three lawyers from each of the three federal judicial districts in Georgia, appointed by the Supreme Court of Georgia, and by the president of the State Bar. Two ex-officio members also serve on the panel in their capacity as officers of the State Bar. Four of the panel members are non-lawyers who were appointed by the Supreme Court. Counsel for the Review Panel is Bridget B. Bagley of Atlanta.

The Supreme Court recently approved amendments to the Disciplinary Rules which will become effective July 1, 2018. Under these Rules, the Review Panel will be renamed the Review Board. The Board will have many of the same functions just described, including review of special master cases and reciprocal discipline. Of note, the size of the Review Board will be reduced from 15 to 11 members. In particular, the number of lawyer members on the Board who participate from around the state, will be reduced from nine to seven.

The following is a brief summary of public disciplinary action taken by the Supreme Court of Georgia during the period from May 1, 2017, to April 30, 2018:

Form of Discipline	Cases	Lawyers
Disbarments/Voluntary Surrenders	51	24
Suspensions	28	24
Public Reprimands	3	3
Review Panel Reprimands	3	3

The foregoing summary does not begin to reflect the voluminous records and important issues that were carefully considered by the Panel over the past year. In addition to attending lengthy meetings, each Panel member must review material for each case prior to the meeting in order to make a fair and well-reasoned decision. This represents a major commitment of time and energy on the part of each Panel member, all of whom acted with the highest degree of professionalism and competency during their terms.

At this time, I would like to recognize the members of the Panel who have unselfishly devoted so much of their time to the implementation of the disciplinary system of the State Bar of Georgia. I would also like to say farewell and heartfelt thanks to the members noted below whose terms on the Review Panel will expire this year.

## Non-Lawyer Members

P. Alice Rogers, Atlanta (*term expiring*)

Clarence Pennie, Kennesaw



**Lawyer Members***Northern District*

Anthony B. Askew, Atlanta (*term expiring*)

C. Bradford Marsh, Atlanta

Halsey G. Knapp, Atlanta

*Middle District*

Oliver Wendell Horne, Macon (*term expiring*)

Jeffery O'Neal Monroe, Macon

Ralph F. Simpson, Tifton

*Southern District*

Thomas R. Burnside III, Augusta (*term expiring*)

Aimee Pickett Sanders, Augusta

Sarah Brown Akins, Savannah

**Ex-Officio Members**

Patrick T. O'Connor, Savannah (*term expiring*)

Jennifer C. Mock, Statesboro (*term expiring*)

# FORMAL ADVISORY OPINION BOARD

by Jeffrey Hobart Schneider, Chair

The Formal Advisory Opinion Board considers requests for formal advisory opinions and drafts opinions that interpret the Georgia Rules of Professional Conduct.

## Board Members

The Board consists of active members of the State Bar of Georgia who are appointed by the president of the State Bar, with the approval of the Board of Governors. For the 2017-18 Bar year, the Board is comprised of the following lawyers:

<i>Members at Large</i>	<i>Term Expires</i>
Jeffrey Hobart Schneider, Chair, Atlanta	2018
David N. Lefkowitz, Vice Chair, Atlanta	2019
Edward B. Krugman, Atlanta	2019
Mary A. Prebula, Duluth	2018
Letitia A. McDonald, Atlanta	2018
<i>Georgia Trial Lawyers Association</i>	
C. Andrew Childers, Atlanta	2019
<i>Georgia Defense Lawyers Association</i>	
Jacob Edward Daly, Atlanta	2019
<i>Georgia Association of Criminal Defense Lawyers</i>	
Holly Wilkinson Veal, McDonough	2018
<i>Georgia District Attorney's Association</i>	
Donald R. Donovan, Dallas	2018
<i>Young Lawyers Division</i>	
Jennifer C. Mock, Statesboro	2019
<i>Emory University</i>	
Professor Melissa D. Carter, Atlanta	2018
<i>University of Georgia</i>	
Professor Lonnie T. Brown Jr., Athens	2019
<i>Mercer University</i>	
Professor Patrick E. Longan, Macon	2019
<i>Georgia State University</i>	
Professor Nicole G. Iannarone, Atlanta	2018

*John Marshall Law School*  
Prof. Jeffrey Alan Van Detta, Atlanta 2019

*Investigative Panel*  
William Hickerson Thomas Jr., Atlanta 2018

*Review Panel*  
C. Bradford Marsh, Atlanta 2018

## Procedures

When the Board receives a request for a formal advisory opinion, it decides whether to accept or decline the request. Factors that the board considers in determining whether a request is accepted for the drafting of a formal advisory opinion include whether a genuine ethical issue is presented, whether the issue raised is of general interest to the members of the State Bar, whether there are existing opinions that adequately address the issue, and the nature of the prospective conduct.

If the board decides to accept the request for the drafting of a formal advisory opinion, the board selects one or more of its members to draft a proposed opinion. The draft is carefully reviewed by the board in an effort to determine whether the proposed opinion should be approved. Once the board approves the proposed opinion it is published in an official publication for the State Bar. Members of the State Bar are invited to review the proposed opinion and submit comments to the board. The board reviews all comments before making a final determination to issue an opinion.

A board-approved opinion is filed with the Supreme Court of Georgia and published in an official publication of the State Bar. Upon the filing of the opinion, the State Bar and the person who requested the opinion can seek discretionary review from the Supreme Court. If review is not sought, or the Court declines to review the opinion, the opinion is an opinion of the board, and is binding only on the State Bar and the requestor, and not on the Supreme Court. If the Supreme Court grants discretionary review and disapproves the opinion, it shall have absolutely no effect. However, if the Court grants review and approves or modifies the opinion, the opinion is an opinion of the Supreme Court, and shall be binding on all members of the State Bar. The opinion shall be published in the official Georgia Reports and the Supreme Court shall give the

opinion the same precedential authority given its other regularly published judicial opinions.

## Summary of the Board's Activities During the 2017-18 Bar Year

The board received three new requests for formal advisory opinions. Following are the issues presented and the status of each request:

### *Formal Advisory Opinion Request No. 17-R2*

Does Rule 1.6 extend to unsolicited statements made by a potential client with whom there is not a pre-existing relationship? Does Rule 1.6(b)(1)(ii) apply to communications that indicate there may be ongoing inappropriate behavior by the potential client?

*After considering this request, the board determined that the interpretation of ABA Model Rule 1.18 in ABA Formal Opinion 10-457 correctly addresses the issue presented in the first question of this request. Accordingly, the board referred this issue to the Disciplinary Rules and Procedures Committee and asked them to consider adopting Rule 1.18. Regarding the second question presented in this request, the board determined that the current Georgia Rules of Professional Conduct adequately address the question, and took no action on the question.*

### *Formal Advisory Opinion Request No. 18-R1*

Ethical consideration of Rule 1.7. Conflict of Interests in issues related to the representation of an insurance company and the insurance company's insured party.

*The board will consider this request at its next meeting and decide whether to accept or decline the request for the drafting of a formal advisory opinion.*

### *Formal Advisory Opinion Request No. 18-R2*

Ethical consideration of Rule 4.2. Communication with Person Represented by Counsel when the lawyer no longer serves as opposing counsel in the action.

*The board will consider this request at its next meeting and decide whether to accept or decline the request for the drafting of a formal advisory opinion.*

The following requests for a formal advisory opinion were received in a prior Bar year and acted upon during the 2017-18 Bar year. Following are the issues presented and the status of each request:

### *Formal Advisory Opinion Request No. 17-R1*

Can a former in-house attorney use client confidences and privileged information in establishing his own whistleblower claims against his former employer in Georgia?

*This request was received during the 2016-17 Bar year. The board declined the request after determining that the issue raised in the request is addressed by existing Georgia Rules of Professional Conduct.*

### *Formal Advisory Opinion Request No. 16-R3*

Must a Georgia attorney representing a seller, purchaser/borrower, or lender in a commercial transaction (being a transaction that does not involve a consumer purchasing, selling or refinancing one- to four-family residential property to be used as his or her primary residence) involving Georgia real estate receive and disburse funds through an IOLTA trust account when one or more of the parties are represented by legal counsel and the parties and/or their counsel agree on an alternate method of disbursement?

*This request was received in the 2015-16 Bar year. The board declined the request after determining that there are no Georgia Rules of Professional Conduct to interpret in addressing the request and therefore, the issue raised in this request is not within the purview of the board.*

During the 2017-18 Bar year, the Board also addressed the following matters related to existing formal advisory opinions:

### *Formal Advisory Opinion No. 16-2 (redrafted version of FAO No. 10-2)*

May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child's objection?

*Prior to the 2017-18 Bar year, the Board reviewed existing formal advisory opinions to determine whether the Nov. 3, 2011, amendments to the Georgia Rules of Professional Conduct impacted the substance and/or conclusion of the opinions. The board determined that Formal Advisory Opinion No. 10-2 was impacted by the amendments, redrafted the opinion and processing it as a new opinion. The State Bar of Georgia filed a petition for discretionary review with the Supreme Court of Georgia,*



## FORMAL ADVISORY OPINION BOARD

*which the Court granted. On April 16, 2018, the Supreme Court of Georgia issued an order approving Formal Advisory Opinion No. 16-2 and retracting Formal Advisory Opinion No. 10-2.*

### ***SDB Opinion No. 47***

Contingency fees to collect past due alimony and/or child support.

*This matter was brought to the board's attention during the 2016-17 Bar year. The board was asked to consider whether this opinion should be withdrawn or redrafted because it seems to conflict with Georgia Rule of Professional Conduct 1.5 (d)(1). After careful consideration, the Board determined that Georgia Rule of Professional Conduct 1.5 (d)(1) does not conflict with the opinion and decided to take no action on this matter.*

### ***Formal Advisory Opinion No. 87-6***

Ethical Propriety of a Lawyer Interviewing the Officers and Employees of an Organization When That Organization is the Opposing Party in Litigation Without Consent of Organization.

*This matter was brought to the board's attention during the 2016-17 Bar year. The Formal Advisory Opinion Board was asked to consider revising Formal Advisory Opinion No. 87-6 to clarify that when an entity is represented by a lawyer in a matter, the consent discussed in the opinion must come from only that lawyer. This matter is still pending with the board and will be considered at its next meeting.*

Formal Advisory Opinions and the rules governing the Formal Advisory Opinion Board can be found in the State Bar of Georgia *2017-18 Directory & Handbook* and on the State Bar of Georgia's website at [www.gabar.org](http://www.gabar.org).

I would like to thank the members of the board for their dedication and service. These members have volunteered their time and knowledge in order to ensure that lawyers are provided with an accurate interpretation of the ethics rules. In addition, I express my sincere gratitude and appreciation to General Counsel Paula Frederick, Deputy General Counsel William D NeSmith III, Senior Assistant General Counsel John Shiptenko and Betty Derrickson of the Office of the General Counsel of the State Bar of Georgia. Their commitment and assistance have been invaluable to the board.

# OVERDRAFT NOTIFICATION PROGRAM

by Regina Putman, Trust Account Overdraft Notification Coordinator

The Overdraft Notification Program received 274 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, one overdraft was reported to the State Bar on the trust account of a lawyer who surrendered his license to practice in an unrelated State Bar of Georgia disciplinary matter, one notice was received in error on a general operating account, six notices were received on the trust accounts of three deceased lawyers and one attorney trust account was erroneously reported to the State Bar regarding an overdraft matter previously investigated and dismissed. A total of 196 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, six files were referred to the Law Practice Management Program and 16 files were forwarded to the Investigative

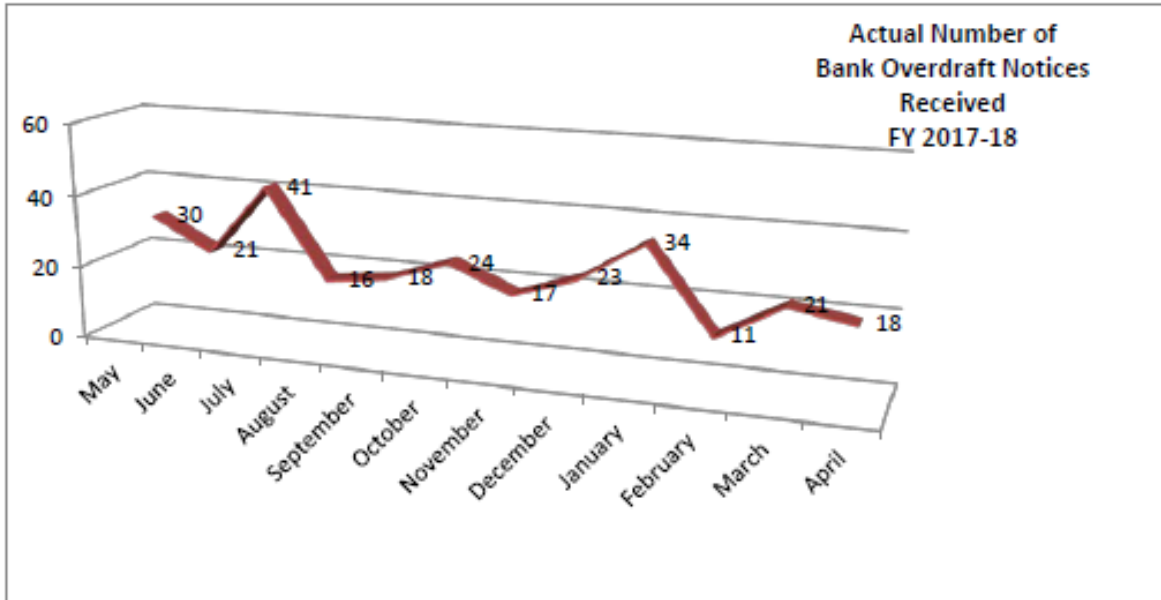
Panel of the State Disciplinary Board for possible disciplinary action. (Several attorney overdraft files contained more than one overdraft notice regarding the same IOLTA. Some overdraft files opened during the latter part of FY 2017-18 remain open, pending final review and disposition.)

## Financial Institutions Approved as Depositories for Attorney Trust Accounts

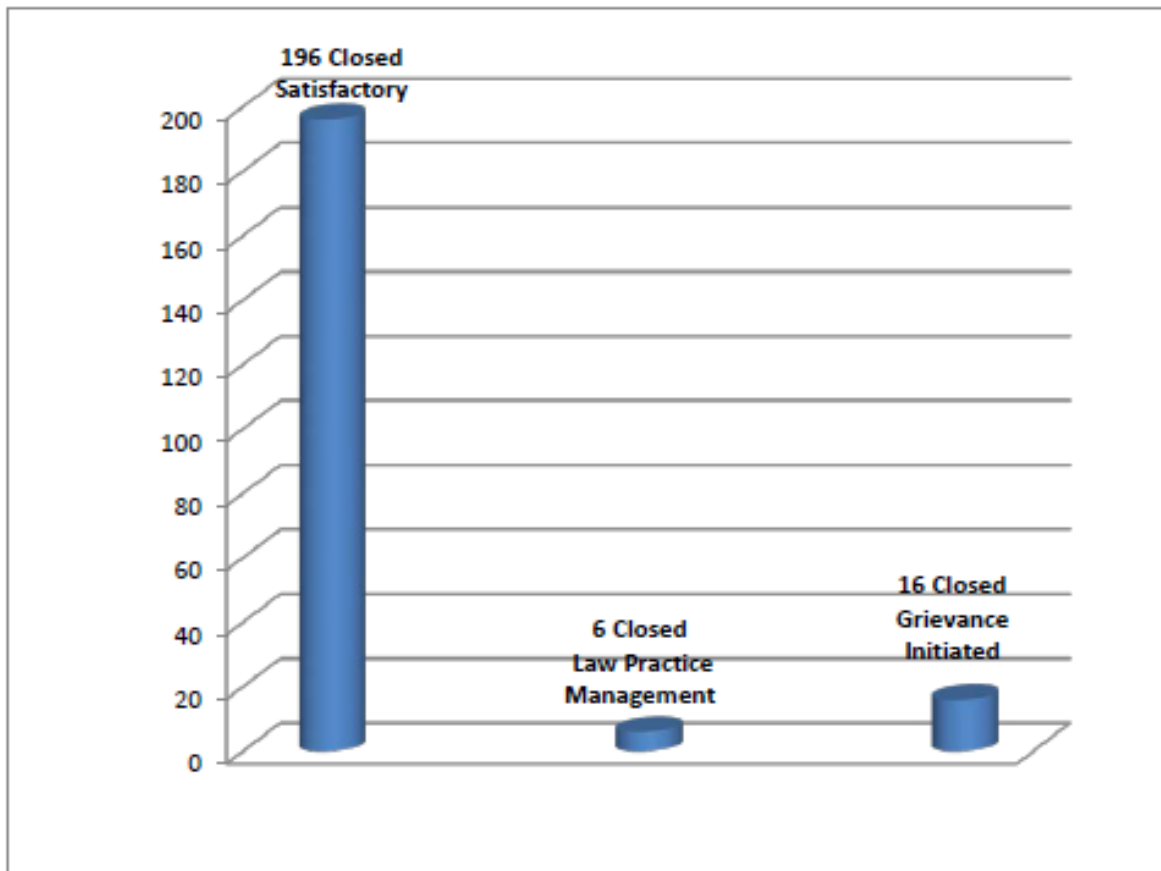
Bank failures and mergers over the past few years have greatly affected the number of financial institutions currently approved as depositories for attorney trust accounts. Accordingly, lawyers should refer to the List of Approved Financial Institutions, which can be found on the State Bar of Georgia's website, [www.gabar.org](http://www.gabar.org), under For Lawyers > Attorney Resources.

Month 2017-18	Actual # Notices Received	Files Closed/ Adequate Response	Files Closed/ LPMP	Grievances Initiated	Total Closed
May	30	3	0	0	3
June	21	17	0	1	18
July	41	29	0	2	31
August	16	24	1	3	28
September	18	16	0	2	18
October	24	7	2	2	11
November	17	24	1	1	26
December	23	4	0	4	8
January	34	12	0	0	12
February	11	17	0	0	17
March	21	15	0	1	16
April	18	28	2	0	30
<b>TOTAL</b>	<b>274</b>	<b>196</b>	<b>6</b>	<b>16</b>	<b>218</b>
<b>PERCENTAGE</b>		<b>91</b>	<b>0.63</b>	<b>8.59</b>	

# OVERDRAFT NOTIFICATION PROGRAM



## TRUST ACCOUNT OVERDRAFT FILE DISPOSITION FY 2017-2018





# PRO HAC VICE PROGRAM

by Kathy S. Jackson, Pro Hac Vice Paralegal

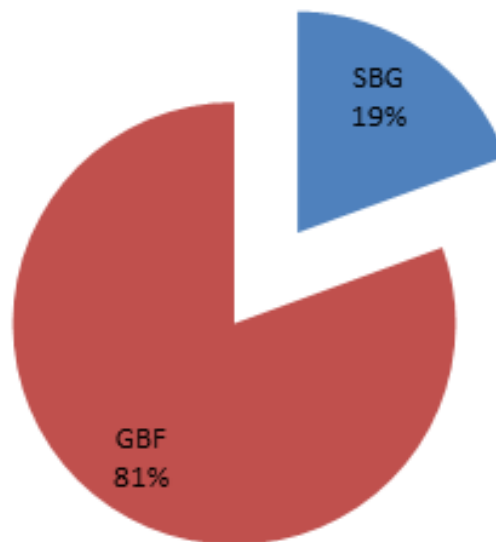
By order of Nov. 10, 2005, the Supreme Court of Georgia amended Rule 4.4 of the Uniform Superior Court Rules to require out-of-state lawyers applying for *pro hac vice* admission in Georgia to serve a copy of their application for admission *pro hac vice* on the Office of the General Counsel, State Bar of Georgia. Attorneys seeking to appear *pro hac vice* in Magistrate, State and Superior Courts and the State Board of Workers' Compensation must comply with Rule 4.4.

The Supreme Court of Georgia has amended the rule three times since 2005. The most recent amendment came after the Civil Legal Services Task Force proposed increasing the *pro hac vice* fee to generate money for civil legal services. In its Sept. 4, 2014 order, the Supreme Court of Georgia amended Rule 4.4 to adopt the proposed changes from the Civil Legal Services Task Force.

The Supreme Court of Georgia amended Georgia Rule of Professional Conduct 5.5(l) on June 15, 2017. The amendment requires applicants to pay a late fee of \$100 if they do not pay the annual fee by Jan. 15. The annual fee and late fee must be paid no later than March 1 of that year. Failure to pay the annual fee and late fee may result in disciplinary action.

During the period of May 1, 2017, through April 30, 2018, the Office of the General Counsel reviewed 788 *pro hac vice* applications. The Office of the General Counsel filed 16 responses with Georgia courts regarding the eligibility of the applicant. Six applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel collected a total of \$335,060 from *pro hac vice* applicants. Below is a chart with a breakdown of the fees received.

Total Pro Hac Vice Fees Received



The State Bar of Georgia collected a total of \$335,060 for *pro hac vice* fees. The fees were divided between the State Bar and the Georgia Bar Foundation. The State Bar received \$65,060 from the total collected. The Georgia Bar Foundation received \$270,000 from the total collected.

# AMENDMENTS TO BAR RULES & BYLAWS

by William D. NeSmith III, Deputy General Counsel

The Supreme Court of Georgia ordered the following amendments to the Rules, Regulations and Policies of the State Bar of Georgia during the 2017-18 Operational year. In addition to the substantive changes, the amendments include minor wording changes to improve clarity and to comport with stylistic guidelines approved by the Supreme Court of Georgia and adopted by the State Bar of Georgia. The most current version of the Rules is on the State Bar of Georgia website at [www.gabar.org](http://www.gabar.org).

## **Rule 1-501. License Fees**

*(Amended by Order of the Supreme Court of Georgia on June 15, 2017)*

The amendment to this rule adds language to subsection (b) (3) that allows the Executive Committee for the State Bar of Georgia to grant extensions of time for a lawyer suspended under this Rule to complete any of the requirements under subsection (b) of the Rule, and removes language from subsection (c) that states a terminated member is not entitled to a hearing as set out in subsection (d).

## **Rule 1-501.1. License Fees—Late Fee**

*(Amended by Order of the Supreme Court of Georgia on June 15, 2017)*

The amendment to this rule allows the Executive Committee to waive late fees and penalties for lawyers that are delinquent in paying dues, allowing for consideration of hardships and other good cause for waiver.

## **Georgia Rules of Professional Conduct.**

### **Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law**

*(Amended by Order of the Supreme Court of Georgia on June 15, 2017)*

The amendment to this rule adds a penalty provision for lawyers admitted to the practice of law in Georgia pro hac vice for failure to pay annual pro hac vice fees.

## **Rule 4-402. The Formal Advisory Opinion Board**

*(Amended by Order of the Supreme Court of Georgia on June 15, 2017)*

The amendment to this rule increases the number of Board members to allow for a representative from the Executive Committee to be a member of the Board.

## **Comprehensive Amendments to the Disciplinary Procedures**

*(Amended by Order of the Supreme Court of Georgia on Jan. 12, 2018; effective July 1, 2018)*

The amendments to the rules governing the disciplinary process and the procedural rules that regulate the investigation and disposition of grievances involving Georgia lawyers decreases the overall time to screen, investigate, process and prosecute grievances filed against a lawyer. The amendments enhance the timely protection of the public from ongoing harm by more efficiently disciplining lawyers while still fully protecting and respecting the due process rights of lawyers accused of misconduct.

# CLIENTS' SECURITY FUND

by William D. NeSmith III, Deputy General Counsel

The Clients' Security Fund is a public service of the legal profession in Georgia. The purpose of the Clients' Security Fund is to repay clients who have lost money due to a lawyer's dishonest conduct. Every lawyer admitted to practice in Georgia, including those admitted as a foreign law consultant or those who join the State Bar of Georgia without taking the Georgia Bar Examination, contributes to this fund.

On behalf of the trustees of the Clients' Security Fund, it is a pleasure to present the 2017-18 Clients' Security Fund Annual Report to the Board of Governors of the State Bar of Georgia. The trustees of the fund are proud of the efforts put forth to maintain the integrity of the legal profession.

## Creation of the Fund

The Board of Governors of the State Bar of Georgia created the Clients' Security Fund by resolution on March 29, 1968. The fund was formed "for the purpose of promoting public confidence in the administration of justice, and maintaining the integrity and protecting the good name of the legal profession by reimbursing, to the extent deemed proper and feasible by the trustees of the fund, losses caused by the dishonest conduct of members of the State Bar of Georgia." In 1991, the Supreme Court of Georgia adopted the rules of the Clients' Security Fund (Part X) making it an official part of the Rules of the State Bar of Georgia. That same year, pursuant to the rules, the Board of Governors assessed each of the members of the State Bar the sum of \$100, to be paid over a five-year period, to fully fund and stabilize the fund.

## Administration of the Fund

The Clients' Security Fund Board of Trustees performs all acts necessary and proper to fulfill the purposes of and effectively administer the fund. The rules, issued by order of the Supreme Court of Georgia, establish a Board of Trustees consisting of six lawyer members and one non-lawyer member who are appointed to staggered terms by the president of the State Bar of Georgia. The trustees serve five-year terms, and receive no compensation or reimbursement for their service. The trustees select the chair and vice chair to serve as officers for the fund. The fund receives part-time assistance from one attorney and one paralegal from the Office of the General Counsel. The following lawyers served as trustees for the 2017-18 Bar year:

- Roy B. Huff Jr. Peachtree City
- Paul H. Threlkeld, Savannah
- Tyronia Monique Smith, Atlanta
- Katherine K. Wood, Decatur
- Robert J. Kauffman, Douglasville
- Thomas Reuben Burnside III, Augusta
- Sammy Strode, Savannah (*non-lawyer member*)

The trustees strive to meet at least quarterly during the year. If circumstances warrant, special meetings may be called to ensure that claims are processed in a timely fashion. These trustees have served tirelessly and their dedication to this program is greatly appreciated.

## Funding

Members of the State Bar of Georgia provide the primary funding for the Clients' Security Fund. On April 2, 1991, the Supreme Court of Georgia approved the motion to amend the Bar Rules to provide for an assessment of \$100 per lawyer to be paid over a period of five years. On Oct. 6, 2010, the Rules were amended making the assessment payable over four years. Fund revenues are supplemented by interest income, restitution payments from disbarred lawyers and miscellaneous contributions.

The assessment provides a relatively substantial source of income; however, to ensure a secure source of funding to sustain the integrity of the fund, the Bar Rules provide for future assessments triggered whenever the fund balance falls below a minimum of \$1 million. In January 1996, the Board of Trustees adopted certain administrative rules to help stabilize and manage the fund. These rules provide that the maximum amount the trustees will pay on any individual claim is \$25,000. Also, the aggregate amount the trustees will pay to all claimants victimized by a single lawyer is limited to 10 percent of the fund balance as it existed on the date the first claim against the lawyer was paid. Both of these rules may be overridden by a unanimous vote of the trustees in cases of undue hardship or extreme unfairness.

Other efforts to maintain the stability of the fund included an amendment to the Bar Rules adopted by the Supreme Court of Georgia on Nov. 8, 2003. The amended rules



## CLIENTS' SECURITY FUND

provide that all members who are admitted to the State Bar of Georgia as a foreign law consultant or who join without taking the Georgia Bar Examination are required to pay the full assessment of \$100 prior to or upon registration with the State Bar.

The efforts of the State Bar of Georgia and the trustees of the fund had proven successful over the years. However, in September 2014, the trustees of the Clients' Security Fund brought to the attention of the State Bar of Georgia Executive Committee several coinciding issues that threatened the stability of the fund. These issues included the sustained reduction in the amount of interest income generated by the fund's corpus and the resulting reduction in that corpus, and the filing of several substantial claims by clients of several Georgia attorneys. The trustees were concerned that this combination of occurrences would cause the fund balance to drop below \$1million, which would trigger an automatic assessment from the members of the Bar pursuant to Bar Rule 10-103. The trustees also expressed their concern that the current annual claims payment cap of \$350,000 would leave the fund unable to adequately address pending claims.

To address these issues, at their 2015 Spring Meeting, the Board of Governors approved a one-time contribution of \$500,000 from the State Bar of Georgia's unrestricted surplus to the Clients' Security Fund, reasoning the contribution would compensate for the reduction in the fund's balance caused by several successive years of little to no interest income, and replenish the significant reduction in the fund balance caused by the payment of claims currently under the trustees' consideration. The Board also approved a proposed amendment to Bar Rule 10-103, which would increase the annual claims payment cap of \$350,000 to \$500,000. On March 3, 2016, by order of the Supreme Court of Georgia, the proposed amendment was approved.

While the Trustees had hoped these measures would stabilize the fund, the efforts proved to be less than effective in stabilizing the fund. The corpus of the fund continued to decline significantly over the past few years. The trustees are currently investigating other options to provide a more stable source of funding.

All monies held in the name of the Clients' Security Fund are maintained by the trustees of the fund who exclusively control the disbursement of the funds.

### Loss Prevention Efforts

An important role of the trustees of the fund is to promote and endorse rules and educational programs that are designed to prevent losses from occurring. In 1992 and 1993 respectively, the trustees actively urged the adoption of two significant programs designed to prevent lawyer theft of clients' funds.

### Overdraft Notification

In November 1992, the Board of Trustees joined the Investigative Panel of the State Disciplinary Board in urging the Board of Governors to approve amendments to Disciplinary Standard 65 to create a trust account overdraft notification program. On Aug. 22, 1995, the Supreme Court of Georgia approved the amendment to Standard 65, which became effective Jan.1, 1996. The primary purpose of the overdraft notification rule is to prevent misappropriation of clients' funds by providing a mechanism for early detection of improprieties in the handling of attorney trust accounts. Standard 65 was subsequently replaced with Rule 1.15(III) with the Supreme Court's adoption of the Georgia Rules of Professional Conduct on Jan. 2, 2001. *See, 2017-2018 State Bar of Georgia Directory & Handbook*, Rule 1.15(III), p. H-44.

### Payee Notification

During the 1993 legislative session, with the urging of the Board of Trustees, the Board of Governors endorsed legislation specifically designed to prevent lawyer theft of personal injury settlement funds. As of result of these efforts, the "payee notification rule" was approved in the form of an amendment to the Insurance Code. This statute requires insurers to send notice to the payee of an insurance settlement at the time the check is mailed to the payee's attorney. This places the client on notice that the attorney has received settlement finds. The adoption of this procedure has substantially reduced claims involving theft of insurance funds.

### Claims Process

Before the Clients' Security Fund will pay a claim, the trustees must determine that the loss was caused by the dishonest conduct of the lawyer who has been disbarred, indefinitely suspended, or has voluntarily surrendered his or her license, and arose out of the client-lawyer

## CLIENTS' SECURITY FUND

relationship. The Rules define “dishonest conduct” as acts “committed by a lawyer in the nature of theft or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value.” Typically, claims filed by corporations or partnerships, government entities and certain members of the attorney’s family are denied. Losses covered by insurance, or that result from malpractice or financial investments are also not considered reimbursable by the fund. Claimants are responsible for providing sufficient documentation to support their claims.

The last meeting for the 2017-18 Bar year will be held in conjunction with the 2018 State Bar of Georgia Annual Meeting. However, following is the most recent Statement of Fund Balance, Income and Expenses for the period ending April 30, 2018.

### Annual Financial Statistics

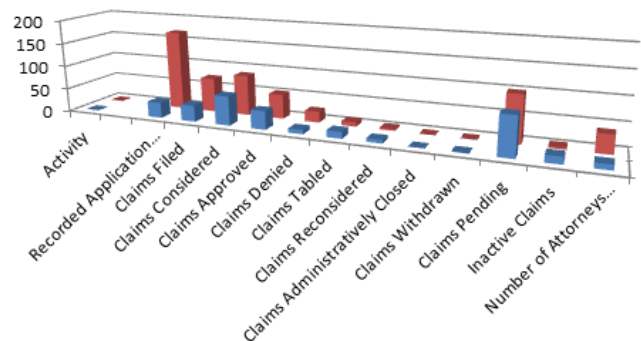
	2017-18	2016-17
Balance on April 30	\$1,551,007	\$1,843,073
Income to Fund		
Assessments	\$139,064	\$146,642
Restitution	\$3,626	\$4,431
Interest	\$4,660	\$5,953
Distributions from Fund		
Claims Paid	\$372,472	\$437,812
Expenses	\$60,865	\$60,833

### Summary of Claims Activity

The following summary of claims activity for the 2017-18 operational year is for a period beginning May 1, 2017, and ending April 30, 2018. The trustees met four times during the 2017-18 Bar year to consider pending claims.

Activity	2016-17	2017-18
Recorded Application Requests	33	169
Claims Filed	34	73
Claims Considered	62	76
Claims Approved	39	52
Claims Denied	9	23
Claims Tabled	14	9
Claims Reconsidered	7	4
Claims Administratively Closed	0	0
Claims Withdrawn	1	0
Claims Pending	82	99
Inactive Claims	15	4
# of Attorneys Involved in Paid Claims	11	39

### Comparison Chart Between Bar Year 2016-17 and 2017-18



# RECEIVERSHIPS

by William D. NeSmith III, Deputy General Counsel

Pursuant to Rule 4-228, a member of the State Bar of Georgia, or any foreign or domestic lawyer authorized to practice law in Georgia, becomes an “Absent Attorney” if he or she disappears, dies, is disbarred, disciplined or incarcerated, becomes so impaired as to be unable to properly represent his or her clients, or poses a substantial threat of harm to clients or the public.

Upon petition by the State Bar of Georgia, the Supreme Court of Georgia shall make the determination that a lawyer has become an absent attorney. If there is no partner, associate or other appropriate representative available to notify the lawyer’s clients of this fact, the Supreme Court of Georgia may order that a member or members of the State Bar of Georgia be appointed as receiver to take charge of the absent attorney’s files and records. The receiver is responsible for reviewing the files, notifying the clients and the public of the receivership, and taking the necessary steps to protect the interests of clients and the public. By petition to the Supreme Court of Georgia, the scope of a receivership can be extended to include the management of the lawyer’s IOLTA, trust and escrow accounts if the receiver determines that the absent attorney maintained such accounts and there is no present provision that would allow clients or other appropriate entities to receive from the accounts the funds to which they are entitled.

Once the receiver has completed his or her duties, all unclaimed files are delivered to the State Bar of Georgia where they are held until such time the Supreme Court of Georgia issues an order allowing for their destruction.

Currently, the State Bar of Georgia is serving as receiver for 14 absent attorneys and has mailed out notices to hundreds of clients to return files to those clients.

During the 2017-18 Bar year the following members of the State Bar of Georgia served as receivers by the order of the Supreme Court of Georgia:

Bruce W. Baggarly

Charles Adam Carvin

Jessica Handley Frost

Michael Gorinshteyn

Matthew Scott Harman

Campbell Kirbo

Jennifer Perlman Moore

C. Alan Nicholson

Paula Marie Rafferty

Clifford J. Steele

Martin Enrique Valbuena

Quinton Washington

Craig A. Webster

It is with great pleasure that the State Bar of Georgia expresses its gratitude and appreciation to these members of the State Bar of Georgia for their selfless efforts and willingness to serve the State Bar of Georgia, the legal profession and the public in this capacity. It is essential to the practice of law and the administration of justice that members of the State Bar of Georgia step up to protect clients of absent attorneys and the public.

# DISCIPLINARY ORDERS

## Reinstatements

Date of Order	Respondent	Docket
5/17/2017	Nakata S. Smith Fitch	5447 6502
6/30/2017	L. Nicole Brantley	5984 5985 6019 6156 6157
11/15/2017	Michelle Ann Hickerson	6880
12/5/2017	Michael Bernard King	6920
4/13/2018	Richard Bruce Richbourg	6306
4/18/2018	LaXavier Reddick-Hood	6236

## Review Panel Reprimands

Date of Order	Respondent	Docket
8/28/17	Emmanuel L. West	6784
10/16/17	Melissa M. Clyatt	6816
2/19/2018	Donald Edward Smart	7069

## Public Reprimands

Date of Order	Respondent	Docket
5/15/17	Thomas E. Stewart	6548
8/14/2017	Michael Bernard King	6920
8/28/2017	Lakeisha Tennille Gantt	6871

## Suspensions

Date of Order	Respondent	Docket
<b>Emergency Suspension</b>		
2/08/2018	Walter Linton Moore	7099
<b>Indefinite</b>		
6/30/2017	David Sicay-Perrow	6847
6/30/2017	John Michael Spain	6887
8/14/2017	Michael Bernard King	6920
8/28/2017	Fincourt B. Shelton	6959
8/28/2017	John D. Duncan	6922 6984

10/16/2017	Vincent C. Otuonye	7005
3/5/2018	Andre Keith Sanders	6960
3/5/2018	Christopher Aaron Corley	7032

## Definite

5/15/2017	Michael Robert Johnson	6930
12/11/2017	John F. Meyers	6537
1/29/2018	Clarence R. Johnson Jr.	6794
4/16/2018	John Benneth Iwu	6770

## Interim Suspensions

5/8/2017	Elizabeth Jane Nunnelley	170010
5/8/2017	Lorraine Ruth Silvo	170013
5/8/2017	Perry Andrew Bailey	170028
7/27/2017	Natalie Dawn Mays	170023
10/10/2017	Nolen Arthur	170081 170080
12/4/2017	Bennett L. Kight	170102
12/4/2017	Anthony E. Cheatham	170122
12/4/2017	Cynthia Lain	170121 170125 170129

1/10/2018	Walter L. Moore	170141
3/12/2018	George W. Snipes	170152
3/20/2018	Ken Jones	170149
3/20/2018	Michael Robert Johnson	170162

## Interim Suspensions Lifted

6/16/2017	Lorraine Ruth Silvo	170013
6/16/2017	Perry Andrew Bailey	170028
1/12/2018	Anthony E. Cheatham	170122
1/16/2018	Cynthia Lain	170121 170125 170129
4/24/2018	Ken Jones	170149
4/24/2018	Michael Robert Johnson	170162



## DISCIPLINARY ORDERS

### Disbarments/Voluntary Surrenders

<b>Date of Order</b>	<b>Respondent</b>	<b>Docket</b>			
			1/29/2018	Ricky W. Morris	6935
					6936
5/15/2017	Everett H. Mechem	6953			6937
6/5/2017	Jeffery W. Harris	6869			6938
8/14/2017	Gerald Fudge	6973			6939
8/28/2017	Cassandre M. Galette	6282			6940
9/13/2017	Anthony S. Kerr	6787			6941
		6788			6942
		6987			6943
10/2/2017	James E. Watkins Sr.	6957	2/5/2018	Adam Lorenzo Smith	7062
		6958	2/19/2018	Natalie Dawn Mays	7034
10/16/2017	David Wesler Fry	6848	3/5/2018	Walter Linton Moore	7063
10/16/2017	Brenden E. Miller	6999			7064
10/16/2017	James E. Rambeau Jr.	7020			7065
		7021			7066
		7022			7067
12/11/2017	Nolen A. Hamer	6813	3/5/2018	Sam Louis Levine	7081
		6814			6866
		6815			6878
12/11/2017	April Dabney-Froe	7008	4/16/2018	Miguel Angel Garcia	6891
1/29/2018	Richard V. Merritt	7078			7010
1/29/2018	Lorne H. Cragg	7060	4/16/2018	Gregory Reece Barton	7011
1/29/2018	Christopher M. Miller	6906			7015
1/29/2018	Larry Bush Hill	7061			7016
1/29/2018	Robert Jutzi Howell	6924			
1/29/2018	Cameron Shahab	6798			
		6799			





State Bar  
of Georgia

### **HEADQUARTERS**

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