

STATE BAR OF GEORGIA

2022 REPORT OF THE
OFFICE
OF THE
GENERAL
COUNSEL



State Bar
of Georgia



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REPORT OF THE GENERAL COUNSEL

BY PAULA FREDERICK, GENERAL COUNSEL

I am pleased to present the 2021-22 Report of the Office of the General Counsel. Enclosed herein are reports from the State Disciplinary Boards, the Clients' Security Fund, the Formal Advisory Opinion Board, the *Pro Hac Vice* program and the Trust Account Overdraft Notification Program. There is also a report detailing this year's amendments to the Bar Rules and Bylaws of the State Bar of Georgia.

Following the reports is a list of the Supreme Court orders issued in disciplinary cases between July 1, 2021, and June 30, 2022. Simply click on the lawyer's name in the Member Directory to see a copy of the order.

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 time in service to the legal profession.

Staff

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, and provides HR advice and training; and,
- 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:

- State Disciplinary Board;
- State Disciplinary Review Board;
- Disciplinary Rules & Procedures Committee;
- Formal Advisory Opinion Board ;
- Clients' Security Fund;
- Advisory Committee on Legislation;
- Elections Committee;
- Insurance Committee;
- Committee on International Trade in Legal Services;
- Special Committee on the Business Court;
- Attorney Wellness Committee;
- OGC Overview Committee; and the
- Judicial Procedure & Administration/Uniform Rules Committee.

Lawyer Helpline

The Office of the General Counsel operates a Lawyer 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 22 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 40 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. ●

CLIENT ASSISTANCE PROGRAM OF THE OFFICE OF THE GENERAL COUNSEL

BY MERCEDES BALL, DIRECTOR

The Client Assistance Program of the Office of the General Counsel (CAP) is the first point of contact for a member of the public who has a problem with their lawyer. CAP seeks to resolve communication issues between attorneys and their clients outside of the formal grievance process. Each year, CAP receives thousands of complaints via telephone calls, letters and emails. By facilitating direct communication between attorneys and their clients, CAP is able to resolve approximately 80% of the complaints it receives without members of the public having to utilize the formal grievance process. CAP's annual statistics are based on the 2021 calendar year. ●

CAP CONTACTS



CALLS RECEIVED BY CAP

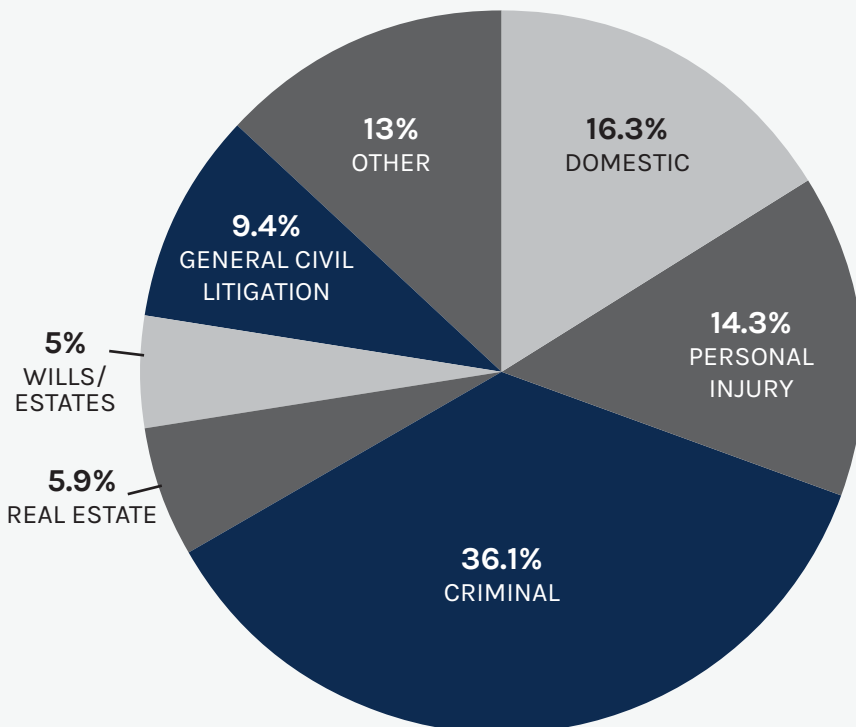
11,623

TOTAL # OF NEW MATTERS HANDLED IN 2021

9,627

WRITTEN COMPLAINTS RECEIVED BY CAP

2,634



Approximately 36% of the complaints received were about issues in criminal cases, 16% involved issues in domestic cases, 14% involved issues in personal injury cases, 9% involved general civil litigation, almost 6% involved real estate and 5% involved wills/estates.

STATE DISCIPLINARY BOARD

BY PATRICIA AMMARI, CHAIR

The State Disciplinary Board is charged with investigating grievances for potential violations of the Georgia Rules of Professional Conduct, issuing confidential discipline and determining whether there is probable cause to bring formal charges against an attorney. The work of the Board is an essential part of the State Bar of Georgia’s regulatory function. As the chair of the State Disciplinary Board, I would like to thank each Board member for their service.

The 2021-22 State Disciplinary Board consisted of two ex-officio members—the president-elect of the State Bar of Georgia and the president-elect of the Young Lawyers Division; 12 investigating members—four lawyers from each of the three federal judicial districts of Georgia; and four non-lawyer, public members. During the 2021-22 Bar year, the Board held 10 meetings and managed three in-person gatherings (Savannah, Athens and Amelia Island). The remaining meetings were virtual.

The Bar received more grievance forms this year (2,394) than last year (2,126). After review and screening by the Office of General Counsel, 2,131 grievances were closed or dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar (the number includes some grievances that were pending when the fiscal year began). A total of 179 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 92 such grievances in 2021. Each of those grievances was referred to one of the district Board members for further investigation.

Investigating members of the Board handled an average of 12-15 cases during the Bar year. Members worked diligently and efficiently to report each case within 180 days. Each case required investigation and time away from the Board member’s law

practice, without compensation other than reimbursement of travel expenses. At the conclusion of each investigation, the Board member made a report and recommendation to the full Board. The Board dismissed 93 grievances, 30 of those with a letter of instruction to educate and inform the lawyer about the Rules of Professional Conduct. Eighty-six cases met the “probable cause” standard and were returned to the Office of the General Counsel for prosecution.

In matters that met the standard for probable cause, 18 respondents received confidential discipline in the form of Formal Letters of Admonition or State Disciplinary Board Reprimands. In more serious cases, the Board issued a Notice of Discipline for some level of public discipline, or made a referral to the Supreme Court of Georgia for a hearing before a special master.

The State Disciplinary Board took the following action during the 2021-22 Bar year:

ACTION TAKEN	# OF CASES
Confidential Reprimands	0
Formal Letters of Admonition	21
Cases Dismissed with Letters of Instruction	30

Public discipline imposed by the Supreme Court of Georgia is further described in the Annual Report of the State Disciplinary Review Board of the State Bar of Georgia.

This last year created unprecedented challenges for our Board; however, each Board member met those challenges with an unmatched level of professionalism. It has been a privilege to work



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STATE DISCIPLINARY BOARD (CONT.)

with such an outstanding group of volunteers to accomplish this important work on behalf of the State Bar of Georgia. I would like to recognize those members of the State Disciplinary Board who have unselfishly devoted so much of their personal and professional time to this necessary task. They are as follows:

Sarah B. “Sally” Akins (*term expiring*)

Patricia Fortune Ammari

John Cranford

C. Sutton Connelly

Kayla Cooper

Tomieka Daniel

Ronald Edward “Ron” Daniels (*term expiring*)

Jennifer Dunlap

Robert Giannini

Jeffrey R. Harris

Elizabeth Pool O’Neal (*term expiring*)

Brandon Peak

Margaret S. Puccini

Christian J. Steinmetz III

Finally, I want to recognize and thank the four non-lawyer members appointed by either the Supreme Court or the president of the State Bar of Georgia:

Dr. Connie Cooper

Michael Fuller (*term expiring*)

Rev. David F. Richards III (*term expiring*)

Jennifer D. Ward ●

STATE DISCIPLINARY REVIEW BOARD

BY JOHN R. B. LONG, CHAIR

The State Disciplinary Review Board plays an important role in our disciplinary system and serves several functions. Under the Bar Rules, the Review Board offers an additional level of appellate review after a disciplinary case has been heard by a special master. The parties may elect to file exceptions and request review by the Review Board before the case is filed with the Supreme Court. In these cases, the Review Board considers the complete record, reviews the findings of fact and conclusions of law, and determines whether a recommendation of disciplinary action will be made to the Supreme Court of Georgia. The Board has the discretion to grant oral argument if requested by either party. The Supreme Court may follow the Review Board's recommendation, but may also render an opinion that modifies the recommendation in some way.

In addition, the Review Board reviews all cases involving reciprocal discipline. If a Georgia lawyer has been disciplined in another jurisdiction resulting in a suspension or disbarment, the lawyer is subject to reciprocal discipline in Georgia. The Review Board is charged with reviewing the record from the foreign jurisdiction and recommending the appropriate reciprocal disciplinary result in Georgia. These cases present many interesting issues for the Board and can be challenging when the lawyer objects to reciprocal discipline. In all cases, the Board 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 Board also issues Review Board Reprimands when directed by the Supreme Court, and makes recommendations in reinstatement cases which involve suspensions with conditions for reinstatement as directed by the Supreme Court. The Board also provides input on amendments to the Bar Rules involving the disciplinary process.

The Supreme Court approved amendments to the disciplinary rules which became effective July 1, 2018. Under these rules, the former Review Panel was renamed the State Disciplinary Review Board, and the size of the Board was reduced from 15 to 11 members. In particular, the number of lawyer members who serve on the Board from around the state was reduced from nine to seven.

The Review Board is currently composed of two lawyers from each of the three federal judicial districts in Georgia, one at-large lawyer member and two non-lawyer members. These members are appointed in alternate years by the Supreme Court of Georgia and the president of the State Bar. Two ex-officio members also serve on the Board in their capacity as officers of the State Bar.



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STATE DISCIPLINARY REVIEW BOARD (CONT.)

The following is a brief summary of public disciplinary action taken by the Supreme Court of Georgia during the period from July 1, 2021, to June 30, 2022:

Form of Discipline	Cases	Lawyers
Disbarments/Voluntary Surrenders	15	13
Suspensions	7	7
Public Reprimands	3	3
Review Board Reprimands	1	1

The foregoing summary does not begin to reflect the important issues that were carefully considered by the Review Board over the past year. In addition to attending regular meetings, each Board 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 Board member, all of whom acted with the highest degree of professionalism and competency during their terms.

I would like to recognize the members of the Board who have unselfishly devoted so much of their time to the implementation of the disciplinary system of the State Bar of Georgia.

Non-Lawyer Members

Susan Leger-Boike, Cordele	2024
Clarence Pennie, Kennesaw	2022

Lawyer Members

Northern District

Aimee Sanders, Atlanta	2022
Halsey G. Knapp Jr., Atlanta	2023

Middle District

Caroline Herrington, Macon	2022
Alfreda Sheppard, Albany	2023

Southern District

John R. Long, Augusta	2023
Paul Threlkeld, Savannah	2022

At-Large

D. Pearson Beardsley, Atlanta	2021
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Ex-Officio Members

Norbert "Bert" Hummel IV, Atlanta	2022
Dawn M. Jones	2022

CLIENTS' SECURITY FUND

BY WILLIAM D. NESMITH III, DEPUTY GENERAL COUNSEL AND STAFF LIAISON TO THE CLIENTS' SECURITY FUND

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, up to \$25,000. 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 2021-22 Clients' Security Fund Annual Report. 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 Clients' Security Fund (Part X) rules, making it an official part of the rules of the State Bar of Georgia.

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 the Supreme Court of Georgia, establish a Board of Trustees consisting of six-lawyer members and one non-lawyer member appointed to staggered terms by the president of the State Bar of Georgia. Trustees of the Fund receive no compensation or reimbursement for their service. The Trustees select the Chair and Vice-chair to serve as officers for the Fund. On March 30, 2022, the Supreme Court of Georgia issued an order approving an amendment to Bar

Rule 10-104, changing the term length that subsequently appointed Trustees serve from five years to three years. The Fund receives part-time assistance from one lawyer and one paralegal from the Office of the General Counsel.

Trustees for the 2021-22 Bar Year

- Tyronia Monique Smith, Atlanta
- Robert J. Kauffman, Douglasville
- Michael G. Geoffroy, Covington
- R. Javoyné Hicks, Decatur
- Karl David Cooke Jr., Macon
- LaToya Simone Williams, Warner Robins
- 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 promptly. 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. At the beginning of the 2021-22 Bar year, the rules specified that newly admitted members of the State Bar of Georgia pay a \$100 assessment over four years beginning their second full year of practice. Also, members admitted as a foreign law consultant or who join without taking the Georgia Bar examination pay the full \$100 assessment upon registration. The rules also provided for future assessments should the Fund's balance fall below \$1 million. Interest income, restitution payments from disbarred lawyers and miscellaneous contributions supplement the Fund income.

These funding methods had proven successful for many years; however, over the past few years, the corpus of the Fund steadily declined. Studies were conducted and other approaches were implemented to stabilize the Fund further. Despite these efforts, the Fund continued to experience a sustained reduction in the corpus

CLIENTS' SECURITY FUND (CONT.)

of the Fund. To address this issue, on Nov. 23, 2021, the Board of Governors approved a proposed amendment to Bar Rules 1-506 and 10-103. The proposed amendments would change the aforementioned assessments for the Clients' Security Fund to a \$15 annual assessment for all dues-paying lawyers. The proposed amendments would also change the \$500,000 per year maximum payout to an amount not to exceed the total amount received through the annual assessment in a Bar year. The Supreme Court of Georgia approved the proposed amendments in an order dated Jan. 28, 2022.

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

A crucial role of the Trustees of the Fund is to promote and endorse rules and educational programs designed to prevent losses. Two significant programs exist to avoid 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 the 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 (www.gabar.org/handbook).

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 a result of these efforts, the "payee notification rule" was approved as an amendment to the Insurance Code. This statute requires insurers to send notice to the payee of an insurance settlement when the check is mailed to the payee's attorney. This places the client on notice that the attorney has received settlement funds. Adopting this procedure has substantially reduced claims involving the theft of insurance funds.

Claims Process

Before the Clients' Security Fund pays a claim, the Trustees must determine that the loss arose out of the client-lawyer relationship or fiduciary relationship and was caused by the dishonest conduct of the lawyer. The rules define "dishonest conduct" as acts "committed by a lawyer like theft or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value. The lawyer's "dishonest" conduct must result in their disbarment, indefinite suspension, or voluntary surrender of their license. On May 26, 2022, the Supreme Court of Georgia issued an order approving an amendment to the rules specifying the final disposition need not result from a filed memorandum of grievance but can be attained when credible information is presented from any source without a memorandum of grievance being filed. Claimants are responsible for providing sufficient documentation to support their claims.

Claims filed by corporations or partnerships, government entities, and certain members of the attorney's family are typically denied. Losses covered by insurance or resulting from malpractice or financial investments are also not reimbursable by the Fund.



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CLIENTS' SECURITY FUND (CONT.)

The last meeting for the 2021-22 Bar Year was held on April 12, 2022. The Statement of Fund Balance, Income and Expenses for the period ending June 30, 2022, is below.

ANNUAL FINANCIAL STATISTICS	2021-22	2020-21
Balance on July 1, 2021	\$1,646,404	\$1,798,187
Income to Fund		
Assessments	\$77,591	\$78,279
Restitution	\$85,621	\$23,095
Interest	\$19,211	\$17,568
Miscellaneous Income (transfer from ICLE)	n/a	\$1,000,000
Gain/Loss Investment Assessment	\$(64,534)	\$(9,942)
Distributions from Funds		
Claims Paid	\$186,737	\$238,713
Restricted Expenses	\$73,000	\$73,000
Bond Premium Amortization	\$5,787	\$5,630
Investment Service Fee	\$4,148	\$3,056

Summary of Claims Activity

The following summarizes claims activity beginning July 1, 2021, and ending June 30, 2022. The Trustees met two times during this period to consider pending claims. ●

ACTIVITY	2021-22	2020-21
Recorded Application Requests	34	31
Claims Filed	19	31
Claims Considered	28	26
Claims Approved	20	20
Claims Denied	4	5
Claims Tabled	3	4
Claims Reconsidered	3	3
Claims Administratively Closed	0	4
Claims Withdrawn	0	0
Claims Pending	61	75
Inactive Claims	3	3
Number of Attorneys Involved in Paid Claims	13	13

FORMAL ADVISORY OPINION BOARD

BY DAVID N. LEFKOWITZ, CHAIR

The Formal Advisory Opinion Board (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 (State Bar) who are appointed by the president of the State Bar, with the approval of the Board of Governors. For the 2021-2022 Bar year, the Board was comprised of the following lawyers:

<i>Members-at-Large</i>	<i>Term</i>
David N. Lefkowitz, Chair, Athens	2021 – 2023
Mary A. Prebula, Vice Chair, Duluth	2020 – 2022
Jeffrey Hobart Schneider, Atlanta	2020 – 2022
Letitia A. McDonald, Atlanta	2020 – 2022
Edward B. Krugman, Atlanta	2021 – 2023
<i>Georgia Trial Lawyers Association</i>	
C. Andrew Childers, Atlanta	2021 – 2023
<i>Georgia Defense Lawyers Association</i>	
Jacob Edward Daly, Atlanta	2021 – 2023
<i>Georgia Association of Criminal Defense Lawyers</i>	
Amanda Rourk Clark Palmer, Atlanta	2020 – 2022
<i>Georgia District Attorney's Association</i>	
Sherry Boston, Decatur	2020 – 2022
<i>Young Lawyers Division</i>	
Donavan Keith Eason, Kennesaw	2021 – 2023
<i>Emory University</i>	
Prof. Jennifer Murphy Romig, Atlanta	2020 – 2022
<i>University of Georgia</i>	
Prof. Lonnie T. Brown Jr., Athens	2021 – 2023

Mercer University
Prof. Patrick E. Longan, Macon 2021 – 2023

Georgia State University
Prof. Megan Elizabeth Boyd, Atlanta 2020 – 2022

John Marshall Law School
Prof. Jeffrey Alan Van Detta, Atlanta 2021 – 2023

State Disciplinary Board
Christian J. Steinmetz III, Savannah 2021 – 2022

State Disciplinary Review Board
Alfreda Lynette Sheppard, Albany 2021 – 2022

Executive Committee
Martin Enrique Valbuena, Dallas 2021 – 2022

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. If the Board approves the proposed opinion, it is published in an official State Bar publication. 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.

FORMAL ADVISORY OPINION BOARD (CONT.)

A Board-approved opinion is filed with the Supreme Court of Georgia (the Supreme Court) and published in an official State Bar publication. 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 Supreme Court declines to review the opinion, the opinion is an opinion of the Board and is binding only on the State Bar and the person who requested the opinion, 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 Supreme 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 2021-22 Bar Year

The Board received two new requests for a formal advisory opinion during the 2021-22 Bar year.

Formal Advisory Opinion Request No. 21-R2

Can an attorney fulfill his or her duties of “physical presence” at a real estate closing as required by Formal Advisory Opinion No. 00-3 and of “overseeing and participating in the execution of instruments conveying title” and “[being] in control of the closing process from beginning to end” as required by Formal Advisory Opinion No. 13-1 when using “communication technology” as such term is defined by proposed O.C.G.A. § 45-17-1 (3)?

This request, received on Sept. 17, 2021, regards an issue that related to pending legislation in the Georgia General Assembly. Consequently, the Board tabled this request until the General Assembly reached a final decision on the pending legislation. On April 4, 2022, the 2022 legislative session ended without an agreement being made on the pending legislation. Accordingly, HB 334 failed to pass. This request remains pending with the Board.

Formal Advisory Opinion Request No. 22-R1

Ethical considerations for a lawyer who is a party in a legal matter communicating directly with an adverse party concerning the matter.

This request was received on April 7, 2022. The Board was presented with the following scenarios that an opinion could possibly address:

- (1) Under Rule 4.2, may a lawyer who is a party in a legal matter but is not representing himself or herself in the matter (the lawyer/party is represented by counsel in the matter) communicate directly with a represented adverse party concerning the matter without the consent of the adverse party's lawyer?
- (2) Under Rule 4.2, may a lawyer who is a party in a legal matter and is representing himself or herself in the matter communicate directly with a represented adverse party concerning the matter without the consent of the adverse party's lawyer?
- (3) Application of Rule 4.3, when a lawyer who is a party in a legal matter but is not representing himself or herself in the matter (the lawyer/party is represented by counsel in the matter) wants to communicate directly with an unrepresented adverse party concerning the matter.
- (4) Application of Rule 4.3, when a lawyer who is a party in a legal matter and is representing himself or herself in the matter wants to communicate directly with an unrepresented adverse party concerning the matter.

The Board created a subcommittee to study the issues and advise the Board as to how the rules addressing the underlying ethics issues could be interpreted. The Board will then decide whether to accept or decline the request for the drafting of a formal advisory opinion. This request remains pending with the Board.

The following requests for a formal advisory opinion were received in a prior Bar year and acted upon during the 2021-22 Bar year. Following are the issues presented and the status of each request:

FORMAL ADVISORY OPINION BOARD (CONT.)

Formal Advisory Opinion Request No. 21-R1

Under what circumstances may lawyers admitted only in jurisdictions other than Georgia practice law by remote means while physically residing in Georgia?

On June 3, 2021, following the Supreme Court of Florida's issuance of an opinion regarding lawyers working from home, the Board was asked to examine this issue to determine whether Georgia lawyers currently have clear guidance or if a formal advisory opinion is needed. The Board accepted this request for the drafting of a formal advisory opinion and is in the process of drafting a proposed opinion.

Formal Advisory Opinion Request 20-R

Mandatory Arbitration Clause in Fee Contracts

On Sept. 8, 2020, the Supreme Court of Georgia issued an order in *Innovative Images, LLC v. James Darren Summerville, et al.*, Case No. S19G1026 (Ga. Sept. 8, 2020). Although referenced in the case, the Supreme Court did not address the following ethics issue:

Under Georgia Rule of Professional Conduct 1.4 (b), is an attorney required to fully apprise his or her client of the advantages and disadvantages of arbitration before including a clause mandating arbitration of legal malpractice claims in the parties' engagement agreement?

Instead, the Supreme Court indicated that it would leave it to the State Bar to determine whether the ethics issue is worthy of a formal advisory opinion or an amendment to the Georgia Rules of Professional Conduct.

The Board accepted this request for the drafting of a formal advisory opinion and appointed a subcommittee to draft a proposed opinion for the Board's consideration. While working on the proposed opinion, the subcommittee realized that an amendment to Georgia Rules of Professional Conduct 1.5 (b) and 1.8 (h) might best address the ethics issue. The subcommittee dis-

cussed the request with the Disciplinary Rules and Procedures Committee and asked the committee to consider amending the rules. The Disciplinary Rules and Procedures Committee approved the proposed amendments Rules 1.5 (b) and 1.8 (h). The work of the Board remains pending until the conclusion of the rule amendment process.

Formal Advisory Opinion Request 19-R2

(1) Does an attorney violate the Georgia Rules of Professional Conduct if she advises a client on the cultivation, processing, manufacture, distribution, or sale of a hemp or cannabis plant, or derivative thereof, that has a delta 9 tetrahydrocannabinol ("THC") content of more than 0.3% on a dry weight basis?

(2) Does an attorney violate the Georgia Rules of Professional Conduct if she assists a client with legal transactions (such as contract drafting and review, negotiations, real estate acquisition, etc.) to facilitate the cultivation, processing, manufacture, distribution, or sale of a hemp or cannabis plant or derivative thereof that has a THC content of more than 0.3% on a dry weight basis?

(3) Does an attorney violate the Georgia Rules of Professional Conduct if she invests or accepts ownership interest in lieu of attorney's fees in a company that cultivates, processes, manufactures, distributes, or sells hemp or cannabis plants, or derivatives thereof, that have a THC content of more than 0.3% on a dry weight basis?

This request was received on or about Sept. 4, 2019. The requestor withdrew the request for a Formal Advisory Opinion on July 9, 2021. No further action was taken by the Formal Advisory Opinion Board.

Formal Advisory Opinion No. 20-1

(redrafted version of Formal Advisory Opinion No. 94-3)

Whether a lawyer may properly communicate with a former employee of a represented organization to acquire relevant information, without obtaining the consent of the organization's counsel.



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FORMAL ADVISORY OPINION BOARD (CONT.)

On Feb. 18, 2019, the Supreme Court issued an order withdrawing Formal Advisory Opinion No. 87-6. Formal Advisory Opinion No. 87-6 is referenced in Formal Advisory Opinion No. 94-3. Subsequent to the withdrawal of Formal Advisory Opinion No. 87-6, the Board decided to redraft Formal Advisory Opinion No. 94-3, primarily to remove the reference to Formal Advisory Opinion No. 87-6. Formal Advisory Opinion No. 20-1 is the redrafted version of Formal Advisory Opinion No. 94-3. The question presented in Formal Advisory Opinion No. 20-1 is slightly different than the question presented in Formal Advisory Opinion No. 94-3, however, Formal Advisory Opinion No. 20-1 addresses the same ethics issue addressed in Formal Advisory Opinion No. 94-3 but does so by providing an interpretation of the Georgia Rules of Professional Conduct rather than the Standards of Conduct. Formal Advisory Opinion No. 20-1 reaches the same conclusion as Formal Advisory Opinion No. 94-3.

On March 25, 2021, Formal Advisory Opinion No. 20-1 was filed with the Supreme Court. Pursuant to Bar Rule 4-403 (c), on March 31, 2021, the State Bar filed a petition for discretionary review with the Supreme Court. On May 3, 2021, the Supreme Court issued an order granting review of Formal Advisory Opinion No. 20-1. On June 1, 2021, the Georgia Defense Lawyers Association (the GDLA) filed a motion requesting oral argument. The Supreme Court granted the request for oral argument on June 24, 2021.

The GDLA filed its response brief on July 20, 2021. The State Bar filed its reply brief on August 13, 2021. Oral arguments were held on Oct. 19, 2021.

On May 3, 2022, the Supreme Court issued an order approving Formal Advisory Opinion No. 20-1 with certain modifications, as the redrafted version of Formal Advisory Opinion No. 94-3, and retracted Formal Advisory Opinion No. 94-3. An explanation of the modifications appears in footnote 6 of the Supreme Court's order.

On May 13, 2022, the GDLA filed a motion for reconsideration. The Supreme Court denied GDLA's motion on June 1, 2022.

Pursuant to Bar Rule 4-403 (e), Formal Advisory Opinion No. 20-1 is binding on all members of the State Bar and shall be published in the Official Georgia Reports. The Supreme Court shall accord the opinion the same precedential authority given to the regularly published judicial opinion of the Supreme Court.

Formal advisory opinions and the rules governing the Board are located on the State Bar's website at 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 J. Frederick, Deputy General Counsel William D. NeSmith III, Senior Assistant General Counsel John Shiptenko and Senior Paralegal Betty Derrickson of the Office of the General Counsel of the State Bar. Their commitment and assistance have been invaluable to the Board. ●

PRO HAC VICE PROGRAM

BY KATHYA S. JACKSON, PRO HAC VICE PARALEGAL

Attorneys seeking to appear *pro hac vice* in State and Superior Courts, the State Board of Workers' Compensation and the Georgia Statewide Business Court must comply with Uniform Superior Court Rule 4.4. Attorneys seeking to appear *pro hac vice* in Magistrate Court must comply with Uniform Magistrate Court Rule 7.5. Pursuant to both rules, attorneys applying for *pro hac vice* admission in Georgia must serve a copy of their application for admission on the Office of the General Counsel, State Bar of Georgia. As of December 2021, applicants can upload their applications and submit the required fees online via the State Bar's website. The Office of the General Counsel verifies the attorney's status with their home jurisdiction(s), collects the associated fees and reviews the contents of the application. The Office of the General Counsel informs the Court whether the application complies with Appendix A of the rule.

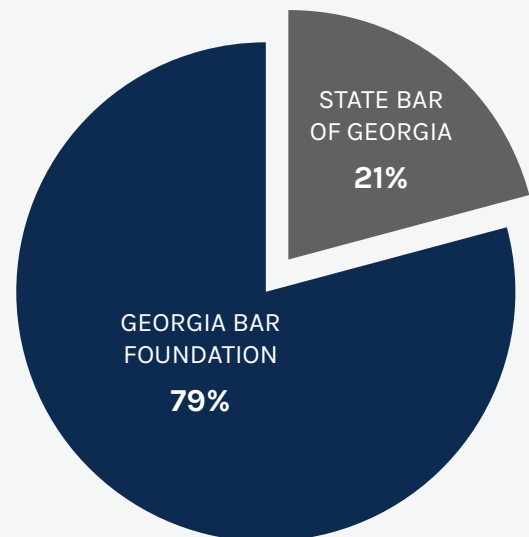
The Supreme Court of Georgia has amended Rule 4.4 three times since 2005. The most recent amendment came after the Civil Legal Services Task Force proposed increasing the *pro hac vice* fee to generate money for civil legal services. In its Sept. 4, 2014, order, the Supreme Court of Georgia amended Rule 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 *pro hac vice* 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 July 1, 2021, through June 30, 2022, the Office of the General Counsel reviewed 989 *pro hac vice* applications. The Office of the General Counsel filed 24 formal responses with Georgia courts regarding the apparent non-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 \$431,211 from *pro hac vice* applicants. The fees were divided between the State Bar of Georgia and the Georgia Bar Foundation. The State Bar of Georgia received \$89,611 from the total collected. The Georgia Bar Foundation received \$341,600 from the total collected. ●

TOTAL PRO HAC VICE FEES RECEIVED

The State Bar of Georgia (SBG) collected a total of \$431,211 for *pro hac vice* fees. The fees were divided between the SBG and the Georgia Bar Foundation (GBF). The SBG received \$89,611 from the total collected. The GBF received \$341,600 from the total collected.



OVERDRAFT NOTIFICATION PROGRAM

BY REGINA PUTMAN, TRUST ACCOUNT OVERDRAFT NOTIFICATION COORDINATOR

The Overdraft Notification Program received 255 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, one notice was received on the trust account of a deceased lawyer, one notice was received on the trust account of a disbarred lawyer, one notice was received on the trust account of a resigned State Bar member, one notice was received in error on a non-IOLTA bank account and four notices were received in error on trust accounts maintained by lawyers in other states. A total of 182 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, two files were referred to the Law Practice Management Program and 10 files were forwarded to the State Disciplinary Board for possible disciplinary action. (Several attorney overdraft files contained more than one overdraft notice regarding the same IOLTA account number. Some overdraft files opened during the latter part of FY 2021-22 remain open, pending final review and disposition.)

Financial Institutions Approved as Depositories for Attorney Trust Accounts

The number of financial institutions approved as depositories for attorney trust accounts is affected by bank failures, bank mergers and a bank's willingness to execute the Office of the General

Counsel's overdraft reporting agreement and the Georgia Bar Foundation's interest rate comparability agreement. Currently, 145 banks and credit unions are reflected on the State Bar of Georgia's List of Approved Financial Institutions, which can be found on the State Bar of Georgia's website, www.gabar.org, under the "Attorney Resources" tab.

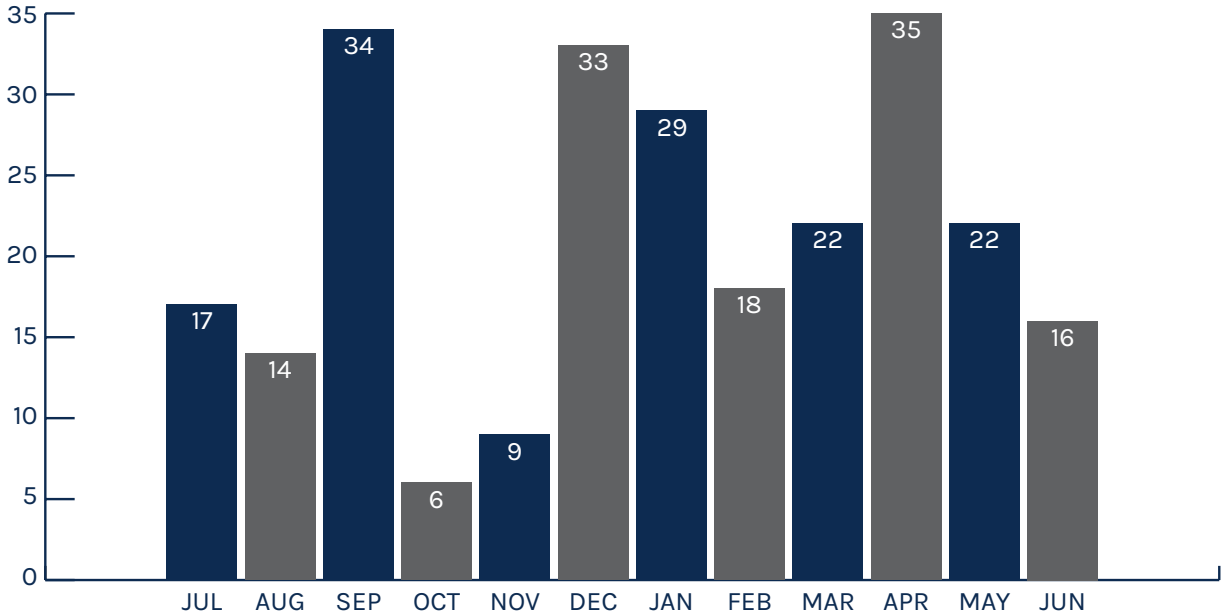
The Supreme Court of Georgia's Amendment to Rule 1.15 (III) of the Georgia Rules of Professional Conduct

On May 14, 2021, the Supreme Court of Georgia issued an order amending Rule 1.15 (III) of the Georgia Rules of Professional Conduct, which eliminates the three-day grace period it previously granted banks to report overdrafts to the State Bar of Georgia. Accordingly, the Office of the General Counsel has obtained new trust account reporting agreements from banks currently listed as depositories approved for Georgia attorney trust accounts. The elimination of the three-day grace period will create a more effective loss prevention tool to identify trust accounting problems that could otherwise be masked in a lawyer's IOLTA account because of a steady stream of trust account deposits and disbursements. Moreover, the Office of the General Counsel will now be alerted sooner regarding trust account issues in order to provide discipline and/or corrective measures. ●

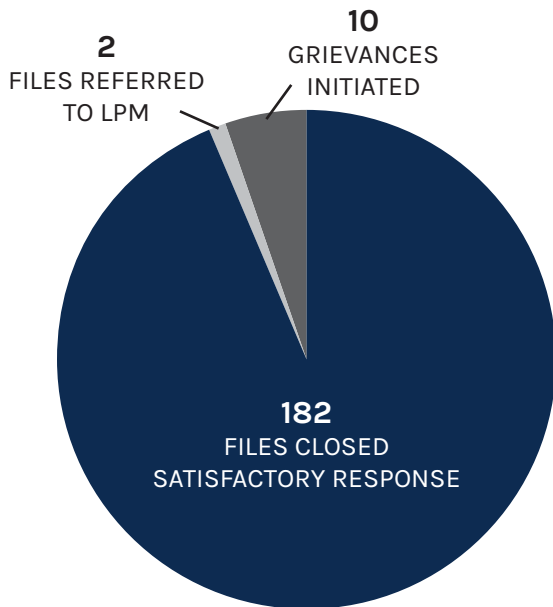
MONTH 2021-22	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ADEQUATE RESPONSE	FILES CLOSED/LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
July	17	7	1	1	9
August	14	8	0	0	8
September	34	17	0	4	21
October	6	17	0	1	18
November	9	15	0	0	15
December	33	11	0	1	12
January	29	27	1	0	28
February	18	15	0	0	15
March	22	15	0	2	17
April	35	26	0	0	26
May	22	10	0	0	10
June	16	14	0	1	15
TOTAL	255	182	2	10	194
PERCENTAGE		91	0.63	8.59	

OVERDRAFT NOTIFICATION PROGRAM (CONT.)

ACTUAL NUMBER OF BANK OVERDRAFT NOTICES RECEIVED | FY 2021-22



TRUST ACCOUNT OVERDRAFT FILE DISPOSITION | FY 2021-22



A total of 182 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, two files were referred to the Law Practice Management Program and 10 files were forwarded to the State Disciplinary Board for possible disciplinary action.

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, becomes disbarred, disciplined or incarcerated, or becomes so impaired as to be unable to properly represent his or her client or poses a substantial threat of harm to the client or the public.

Upon petition by the State Bar of Georgia, the Supreme Court of Georgia shall determine that a lawyer has become an absent attorney. If there is no partner, associate or other appropriate representatives 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 the clients and the public. The Supreme Court of Georgia can extend the scope of the receivership to include the management of the lawyer’s IOLTA, trust and escrow accounts. The Court may expand the scope of the receivership if the receiver determines that the absent attorney maintained such accounts and provided no provision to allow the clients or other appropriate entities to receive 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 the Supreme Court of Georgia issues an order to destroy the stored client files properly.

During the 2021-22 Bar year, the State Bar of Georgia was appointed as receiver for three deceased attorneys that the Supreme Court of Georgia, upon petition, determined to be absent. The State Bar of Georgia has been appointed as receiver for 21 absent attorneys and has mailed out notices to hundreds of clients in an attempt to return files to those clients. In addition, the State Bar of Georgia receivership department and Bar Council have advised several lawyers, courts and nonlawyers each month on the proper handling of client files of an absent lawyer when a receivership may not be necessary. The State Bar receivership department is cataloging and storing files for two deceased lawyers, where it was determined that receivership was inappropriate under the circumstances. Those files will be properly disposed of in the future.

The State Bar of Georgia expresses its gratitude and appreciation to the members of the State Bar of Georgia who were appointed as a receiver during a previous Bar year and continue to selflessly 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. ●



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AMENDMENTS TO BAR RULES & BYLAWS

BY WILLIAM D. NESMITH III, DEPUTY GENERAL COUNSEL

Rules Amended by Order of the Supreme Court of Georgia

The Supreme Court of Georgia ordered the following amendments to the Rules and Regulations of the State Bar of Georgia during the 2021-22 Bar year. Many of the amendments are housekeeping changes that create stylistic consistency. This report focuses on substantive amendments. The most current version of the Bar Rules is on the State Bar of Georgia website at www.gabar.org/rules.

Motion 2020-4

Order entered by the Supreme Court of Georgia on March 30, 2022

- **Bar Rule 1-202. Classes of Members**

The amendments to this rule clarify some existing parts of the rule and modernize and update other parts to better comply with various state and federal laws. All membership categories are renamed to a particular status, and a new membership status, “retired status members,” is created, taking membership from five to six membership statuses.

- The amendments to the following Bar Rules change the word “Consumer” to “Client” as the Consumer Assistance Program was renamed to the Client Assistance Program by order of the Supreme Court of Georgia on Aug. 1, 2019:

- Rule 4-202. Receipt of Grievances; Initial Review by Bar Counsel
- Rule 4-204. Investigation and Disposition by State Disciplinary Board—Generally
- Rule 4-221.1. Confidentiality of Investigations and Proceedings
- Rule 4-222. Limitation

- **Bar Rule 10-104. Board of Trustees**

The amendment to this rule changes the term length of a trustee from five years to three years to encourage trustees to serve more than one term.

Motion 2021-1

Order entered by the Supreme Court of Georgia on Nov. 17, 2021

- **Rule 1-303. Meetings**

The amendments to this rule divide the rules into two subparts. In subpart (a), the word “Bar” is added in front of the word “year” to make clear that “year” means “Bar year,” which begins on July

1 and ends on June 30 of each calendar year. In subpart (b), language is added to allow the Board of Governors to conduct meetings electronically.

- **Rule 1-801. Annual Meeting**

This amendment allows annual meetings to be held electronically as an alternative to a live meeting.

- **Rule 1-801.1. Annual Midyear Meeting**

This amendment allows annual midyear meetings to be held electronically as an alternative to a live meeting.

- **Rule 1-802. Special Meetings**

The amendments to this rule divide the rule into three parts. The amendment within subpart (a) allows the President of the State Bar to call special meetings, including Board of Governors and membership meetings; the changes within subpart (b) add language that provides greater clarity, and subpart (c) is created to allow the Board of Governors to hold special meetings solely electronically or in a hybrid manner.

- **Rule 1-803. Notice**

The amendments to this rule change the wording to clarify when the rule refers to the annual or midyear meeting. Also, language is added, allowing meeting notices to be posted on the State Bar of Georgia website.

Motion 2021-2

Order entered by the Supreme Court of Georgia on May 26, 2022

- **Rule 1.0. Terminology**

The amendment to this rule redefines the term “Memorandum of Grievance” in a separate subsection and reorders the subsections designations accordingly.

- **Rule 3.8. Special Responsibilities of a Prosecutor**

The amendments to this rule require prosecutors to disclose newly discovered credible and material exculpatory information even after conviction. New Comments 7, 8 and 9 provide additional guidance on when the obligations of the rule are triggered and steps that a prosecutor might take to comply.

- **Rule 8.4. Misconduct**

This amendment removes the list of convictions in subsection (b) (1) and directs the reader to Rule 1.0. Terminology and Definitions, specifically, 1.0 (e) to remove redundant and conflicting language within the rules.

AMENDMENTS TO BAR RULES & BYLAWS (CONT.)

- **Rule 9.3. Cooperation with Disciplinary Authority**

The amendments to this rule replace the words “grievance filed” with the word “matter” so that the rule applies to a written memorandum of grievance, an intake form from the Client Assistance Program, or upon receipt of credible evidence from any source as set forth in Rule 4-202 (a), as the rule was amended by the Supreme Court of Georgia on Jan.12, 2018.

- The amendments to the following rules replace the term “grievance” with “matter” or delete the reference to a Memorandum of Grievance since a disciplinary matter can be initiated when credible information is presented from any source without a Memorandum of Grievance being filed:

- Rule 4-202. Receipt of Grievances; Initial Review by Bar Counsel
- Rule 4-203. Powers and Duties
- Rule 4-204. Investigation and Disposition by State Disciplinary Board—Generally
 - Rule 4-204.1. Notice of Investigation
 - Rule 4-204.3. Answer to Notice of Investigation Required
- Rule 4-208.2. Notice of Discipline; Contents; Service
- Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline
- Rule 4-222. Limitation
- Rule 4-223. Advisory Opinion
- Rule 4-224. Expungement of Records

- **Bar Rule 10-106. Eligible Claims**

The amendment to this rule removes language that specifies the final disposition of a matter must result from a filed grievance since the specified final disposition can now be attained without filing a memorandum of grievance.

Motion 2021-4

Order entered by the Supreme Court of Georgia on Jan. 28, 2022

- The amendments to the following fee arbitration rules change certain provisions so that the program can only be utilized when the petitioner and respondent consent to participate and be bound by the award:
 - Rule 6-104. Powers and Duties of Committee
 - Rule 6-201. Petition
 - Rule 6-202. Service of Petition
 - Rule 6-203. Answer
 - Rule 6-204. Accepting Jurisdiction
 - Rule 6-205. Termination or Suspension of Proceedings

- Rule 6-206. Revocation
- Rule 6-303. Selection of Arbitrators
- Rule 6-417. Award
- Rule 6-501. Confirmation of Award in Favor of Client
- Rule 6-502. Confirmation of Award in Favor of Lawyer
- Rule 6-503. Enforcement of Arbitration Awards
- Rule 6-601. Confidentiality
- Rule 6-603. Immunity
- The amendments to the following rules change the assessment for the funding of the Clients’ Security Fund to an annual payment of \$15 for each dues-paying lawyer and the amount the Clients’ Security Fund can pay out in awards in a single year.
 - Rule 1-506. Clients’ Security Fund Assessment
 - Rule 10-103. Funding ●



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DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

BY NUVIA BALL, CLERK, STATE DISCIPLINARY BOARDS

Reinstatements Granted

<i>Date of Order</i>	<i>Respondent</i>
Sept. 1, 2021	Hudson Owen Maddux
Dec. 22, 2021	Matthew Thomas Dale

Review Board Reprimands

<i>Date of Order</i>	<i>Respondent</i>
April 19, 2022	Debra Kaye Scott

Public Reprimands

<i>Date of Order</i>	<i>Respondent</i>
Oct. 5, 2021	Leonard T. Mathis
Nov. 2, 2021	Monte Kevin Davis
Jan. 19, 2022	Justin Grey Woodward

Suspensions

<i>Date of Order</i>	<i>Respondent</i>
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Indefinite

Jan. 11, 2022	Cory Howerton Fleming
Jan. 19, 2022	Sawand Palmer
Feb. 1, 2022	Anthony O. Van Johnson
May 3, 2022	Phillip Norman Golub

Definite

Aug. 24, 2021	William Leslie Kirby III
Aug. 24, 2021	Carl S. Von Mehren
May 3, 2022	Reginald J. Lewis

Interim Suspension

Aug. 10, 2021	Candice Valerie Blain
Aug. 16, 2021	Justin B. Grubbs
Jan. 13, 2022	Michael Williams Capron
March 9, 2022	Sanjay Patel
May 20, 2022	Keith Chance Hardy
June 9, 2022	Nathaniel Watson Cochran
June 9, 2022	Odis William Williams II

Interim Suspensions Lifted

Feb. 4, 2022	Michael Williams Capron
May 26, 2022	Sanjay Patel
June 28, 2022	Nathaniel Watson Cochran

Disbarments/Voluntary Surrenders

<i>Date of Order</i>	<i>Respondent</i>
July 7, 2021	Joel S. Wadsworth
Aug. 10, 2021	Timothy Walter Boyd
Aug. 10, 2021	Matthew Alexander Bryan
Dec. 14, 2021	Billy Reid Zeh III
Jan. 19, 2022	Waymon Sims
Feb. 15, 2022	Jerry Boykin
March 22, 2022	Donald Richard Donovan
March 30, 2022	Mark Preston Jones
April 19, 2022	Tiffini Colette Bell
May 3, 2022	Evelyn Proctor
May 17, 2022	David J. Farnham
June 22, 2022	Donald Francis Hawbaker
June 22, 2022	Sherri Len Washington

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