SUPREME COURT OF GEORGIA

Atlanta January 12, 2018

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2017-3 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 1.0 (Terminology); Rule 9.4 (Jurisdiction and Reciprocal Discipline); Rule 4-103 (Multiple Violations); Rule 4-104 (Mental Incapacity and Substance Abuse); Rule 4-105 (Deceased, Incapacitated, Imprisoned and Disappearing Attorneys); Rule 4-106 (Conviction of a Crime; Suspension and Disbarment); Rule 4-107 (Reserved); Rule 4-108 (Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension); Rule 4-109 (Refusal or Failure to Appear for Reprimand; Suspension); Rule 4-110 (Definitions); Rule 4-111 (Audit for Cause); Chapter 2, Rule 4-201 (State Disciplinary Board); Rule 4-201.1 (State Disciplinary Review Board); Rule 4-202 (Receipt of Grievances; Initial Review by Bar Counsel); Rule 4-203 (Powers and Duties); Rule 4-203.1 (Uniform Service Rule); Rule 4-204 (Preliminary Investigation by Investigative Panel – Generally); Rule 4-204.1 (Notice of Investigation); Rule 4-204.2 (Service of the Notice of Investigation); Rule 4-204.3 (Answer to Notice of Investigation Required); Rule 4-204.4 (Finding of Probable Cause; Referral to Special Master); Rule 4-204.5 (Letters of Instruction); Rule 4-205 (Confidential Discipline; In General); Rule 4-206 (Confidential Discipline; Contents); Rule 4-207 (Letters of Formal Admonition and Investigative Panel Reprimands; Notification and Right of Rejection); Rule 4-208 (Confidential Discipline; Effect in Event of Subsequent Discipline); Rule 4-208.1 (Notice of Discipline); Rule 4-208.2 (Notice of Discipline; Contents; Service); Rule 4-208.3 (Rejection of Notice of Discipline); Rule 4-208.4 (Formal Complaint Following Notice of Rejection of Discipline); Rule 4-209 (Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master); Rule 4-209.1 (Coordinating Special Master); Rule 4-209.2 (Special Masters); Rule 4-209.3 (Powers and Duties of the Coordinating Special Master); Rule 4-210 (Powers and Duties of Special Masters); Rule 4-211

(Formal Complaint; Service); Rule 4-211.1 (Dismissal after Formal Complaint); Rule 4-212 (Answer of Respondent; Discovery); Rule 4-213 (Evidentiary Hearing); Rule 4-214 (Reserved); Rule 4-215 (Reserved); Rule 4-216 (Reserved); Rule 4-217 (Report of the Special Master to the Review Panel); Rule 4-218 (Findings by the Review Panel); Rule 4-219 (Judgments and Protective Orders); Rule 4-220 (Notice of Punishment or Acquittal; Administration of Reprimands); Rule 4-221 (Procedures); Rule 4-221.1 (Confidentiality of Investigations and Proceedings); Rule 4-221.2 (Burden of Proof; Evidence); Rule 4-221.3 (Pleadings and Communications Privileged); Rule 4-222 (Limitation); Rule 4-224 (Expungement of Records); Rule 4-226 (Immunity); Rule 4-227 (Petitions for Voluntary Discipline); and Rule 4-228 (Receiverships); be amended to read as set forth below;

It is further ordered that these amendments shall be effective as of July 1, 2018 and shall apply to disciplinary proceedings commenced on or after that date, except amended Rules 4-201 (b) and 4-201.1 (b), which concern the composition of the State Disciplinary Board and the State Disciplinary Review Board;

It is further ordered that amended Rule 4-201 (b) shall be effective as of July 1, 2020 and that the provisions of the Appendix attached hereto shall govern the composition of the State Disciplinary Board from July 1, 2018 through June 30, 2020;

It is further ordered that amended Rule 4-201.1 (b) shall be effective as of July 1, 2018, provided that persons appointed to the Review Panel prior to that date for terms expiring after July 1, 2018 shall serve on the State Disciplinary Review Board until the expiration of their terms, at which time their seats shall be filled as provided in amended Rule 4-201.1 (b);

It is further ordered that the former rules shall continue to apply to disciplinary proceedings commenced before July 1, 2018, provided that, after July 1, 2018, the State Disciplinary Board shall perform the functions and exercise the powers of the Investigative Panel under the former rules, and the State Disciplinary Review Board shall perform the functions and exercise the powers of the Review Panel under the former rules;

It is further ordered that any scrivener's errors in the amended rules may be corrected, and any changes in other provisions of Part IV of the State Bar Rules

necessary to conform those provisions to these amended rules may be made, by the State Bar of Georgia without motion and approval of the Court, provided that any such corrections or conforming changes are not substantive, and provided that the State Bar give the Court written notice of such corrections or changes, such notice to be filed with the Court no less than 30 days before the correction or change is made and to include an explanation of why the correction or change is not substantive. Substantive changes may be made only by motion and approval of the Court.

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct

(a) The Rules of Professional Conduct to be observed by the members of the State Bar of Georgia and those authorized to practice law in Georgia are set forth herein and any violation thereof, any assistance or inducement directed toward another for the purpose of producing a violation thereof, or any violation thereof through the acts of another, shall subject the offender to disciplinary action as hereinafter provided.

(b) The levels of discipline are set forth below. The power to administer a more severe level of discipline shall include the power to administer the lesser:

(1) Disbarment: A form of public discipline that removes removes the respondent from the practice of law in Georgia. This level of discipline would be appropriate in cases of serious misconduct. This level of discipline includes publication as provided by Rule 4-219 (a).

(2) Suspension: A form of public discipline that removes the respondent from the practice of law in Georgia for a definite period of time or until satisfaction of certain conditions imposed as a part of the suspension. This level of discipline would be appropriate in cases that merit

more than a Public Reprimand but less than disbarment. This level of discipline includes publication as provided by Rule 4-219 (a).

(3) Public Reprimand: A form of public discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A Public Reprimand shall be administered by a judge of a Superior Court in open court. This level of discipline would be appropriate in cases that merit more than a State Disciplinary Board Reprimand but less than suspension. This level of discipline includes publication as provided by Rule 4-219 (a).

(4) State Disciplinary Review Board Reprimand: A form of public discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A State Disciplinary Review Board Reprimand shall be administered by the State Disciplinary Review Board at a meeting of the State Disciplinary Review Board. This level of discipline would be appropriate in cases that merit more than a Confidential Reprimand but less than a Public Reprimand. This level of discipline includes publication on the official State Bar of Georgia website as provided by Rule 4-219 (a).

(5) Confidential Reprimand: A form of confidential discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A Confidential Reprimand shall be administered by the State Disciplinary Board at a meeting of the Board. This level of discipline would be appropriate in cases that merit more than a Formal Letter of Admonition but less than a State Disciplinary Board Reprimand.

(6) Formal Letter of Admonition: A form of confidential discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A Formal Letter of Admonition shall be administered by letter as provided in Rules 4-205 through 4-208. This level of discipline would be appropriate in cases that merit the lowest form of discipline.

(c)

(1) The Supreme Court of Georgia may impose any of the levels of discipline set forth above following formal proceedings against a respondent; however, any case where discipline is imposed by the Court is a matter of public record despite the fact that the level of discipline would have been confidential if imposed by the State Disciplinary Board.

(2) As provided in Part IV, Chapter 2 of the State Bar Rules, the State Disciplinary Board may impose any of the levels of discipline set forth above provided that a respondent shall have the right to reject the imposition of discipline by the Board pursuant to the provisions of Rule 4-208.3;

(d) The Table of Contents, Preamble, Scope, Terminology and Definitions and Georgia Rules of Professional Conduct are as follows:

. . .

RULE 1.0. TERMINOLOGY AND DEFINITIONS

(a) "Belief" or "believes" denotes that the person involved actually thought the fact in question to be true. A person's belief may be inferred from the circumstances.

(b) "Confidential Proceedings" denotes any proceeding under these Rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) "Confirmed in writing" when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (l) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(e) “Conviction” or “convicted” denotes any of the following accepted by a court, whether or not a sentence has been imposed:

(1) a guilty plea;

(2) a plea of nolo contendere;

(3) a verdict of guilty;

(4) a verdict of guilty but mentally ill; or

(5) a plea entered under the Georgia First Offender Act, OCGA § 42-8-60 et seq., or a substantially similar statute in Georgia or another jurisdiction.

(f) “Domestic Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia.

(g) “Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(h) “Foreign Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia.

(i) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to

deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.

(j) "Grievance/Memorandum of Grievance" denotes an allegation of unethical conduct filed against a lawyer.

(k) "He," "him" or "his" denotes generic pronouns including both male and female.

(l) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(m) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(n) "Lawyer" denotes a person authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia including persons admitted to practice in this State pro hac vice.

(o) "Nonlawyer" denotes a person not authorized to practice law by either the:

(1) Supreme Court of Georgia or its Rules (including pro hac vice admission), or

(2) duly constituted and authorized governmental body of any other State or Territory of the United States, or the District of Columbia, or

(3) duly constituted and authorized governmental body of any foreign nation.

(p) "Notice of Discipline" denotes a Notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

(q) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Rule 1-203 (d), or a member of an association authorized to practice law.

(r) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this State. A voluntary surrender of license is tantamount to disbarment.

(s) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the Bar Rules.

(t) “Public Proceedings” denotes any proceeding under these Rules that has been filed with the Supreme Court of Georgia.

(u) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(v) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(w) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(x) “Respondent” denotes a person whose conduct is the subject of any disciplinary investigation or proceeding.

(y) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(z) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(aa) "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

(bb) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

RULE 9.4. JURISDICTION AND RECIPROCAL DISCIPLINE

(a) Jurisdiction. Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or removal from practice on any of the grounds provided in Rule 4-104 of the State Bar of Georgia, or with respect to acts subsequent thereto that amount to the practice of law or constitute a violation of the Georgia Rules of Professional Conduct or any Rules or Code subsequently adopted by the Supreme Court of Georgia in lieu thereof, and any Domestic or Foreign Lawyer specially admitted by a court of this jurisdiction for a particular proceeding and any Domestic or Foreign Lawyer who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the State Bar of Georgia.

(b) Reciprocal Discipline. Upon being suspended or disbarred in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of the General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been suspended or disbarred in another jurisdiction, the Office of the General Counsel shall obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Boards. Nothing in this Rule shall prevent a lawyer suspended or disbarred in another jurisdiction from filing a Petition for Voluntary Discipline under Rule 4-227.

(1) Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Georgia has been disbarred or suspended in another jurisdiction, the Clerk of the State Disciplinary Boards shall assign the matter a State Disciplinary Board docket number.

(2) The Clerk of the State Disciplinary Boards shall issue a notice to the respondent that shall show the date of the disbarment or suspension in the other jurisdiction and shall include a copy of the order therefor. The notice shall direct the respondent to show cause to the State Disciplinary Review Board within 30 days from service of the notice why the imposition of substantially similar discipline in this jurisdiction would be unwarranted. The notice shall be served upon the respondent pursuant to Rule 4-203.1, and any response thereto shall be served upon the Office of the General Counsel.

(3) If neither party objects within 30 days, the State Disciplinary Review Board shall recommend imposition of substantially similar discipline and shall file that recommendation with the Supreme Court of Georgia within 60 days after the time for the filing of objections expires. The Office of the General Counsel or the respondent may object to imposition of substantially similar discipline by demonstrating that:

(i) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) The discipline imposed would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(iv) The reason for the original disciplinary status no longer exists; or

(v)

(A) The conduct did not occur within the State of Georgia; and

(B) The discipline imposed by the foreign jurisdiction exceeds the level of discipline allowed under these Rules; or

(vi) The discipline would if imposed in identical form be unduly severe or would require action not contemplated by these Rules.

If the State Disciplinary Review Board finds that it clearly appears upon the face of the record from which the discipline is predicated that any of those elements exist, the State Disciplinary Review Board shall make such other recommendation to the Supreme Court of Georgia as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

(4) The State Disciplinary Review Board may consider exceptions from either the Office of the General Counsel or the respondent on the grounds enumerated at paragraph (b) (3) of this Rule and may in its discretion grant oral argument. Exceptions and briefs shall be filed with the State Disciplinary Review Board within 30 days of service of the Notice of Reciprocal Discipline. The responding party shall have 30 days after service of the exceptions within which to respond. The State Disciplinary Review Board shall file its report and recommendation within 60 days of receiving the response to exceptions.

(5) In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct, or has been removed from practice on any of the grounds provided in Rule 4-104 of the State Bar of Georgia, shall establish conclusively the misconduct or the removal from practice for purposes of a disciplinary proceeding in this State.

(6) Discipline imposed by another jurisdiction but of a lesser nature than disbarment or suspension may be considered in aggravation of discipline in any other disciplinary proceeding.

(7) For good cause, the Chair of the State Disciplinary Review Board in a reciprocal discipline proceeding may make an interim recommendation to the Supreme Court of Georgia that the respondent be immediately suspended pending final disposition.

(8) For purposes of this Rule, the word "jurisdiction" means any State, Territory, country, or federal court.

Comment

[1] If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure that so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

[2] Reserved.

[3] The imposition of discipline in one jurisdiction does not mean that Georgia and every other jurisdiction in which the lawyer is admitted must necessarily impose discipline. The State Disciplinary Review Board has jurisdiction to recommend reciprocal discipline on the basis of public discipline imposed by a jurisdiction in which the respondent is licensed.

[4] A judicial determination of misconduct by the respondent in another jurisdiction is conclusive, and not subject to re-litigation in the forum jurisdiction. The State Disciplinary Review Board should recommend substantially similar discipline unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in paragraph (b) (3) exists. This Rule applies whether or not the respondent is admitted to practice in the foreign jurisdiction. See also Rule 8.5, Comment [1].

[5] For purposes of this Rule, the suspension or placement of a lawyer on inactive status in another jurisdiction because of want of sound mind, senility, habitual intoxication or drug addiction, to the extent of impairment of competency as a

lawyer shall be considered a disciplinary suspension under the Rules of the State Bar of Georgia.

Rule 4-103. Multiple Violations

A finding of a third or subsequent disciplinary infraction under these Rules shall, in and of itself, constitute discretionary grounds for suspension or disbarment. A Special Master and the State Disciplinary Review Board may exercise this discretionary power when the question is appropriately before them. Any discipline imposed by another jurisdiction as contemplated by Rule 9.4 may be considered a disciplinary infraction for the purpose of this Rule.

Rule 4-104. Mental Incapacity and Substance Abuse

(a) Mental illness, cognitive impairment, alcohol abuse, or substance abuse, to the extent of impairing competency as a lawyer, shall constitute grounds for removing a lawyer from the practice of law.

(b) Upon a determination by the State Disciplinary Board that a lawyer may be impaired or incapacitated to practice law as a result of one of the conditions described in paragraph (a) above, the Board may, in its sole discretion, make a confidential referral of the matter to an appropriate medical or mental health professional for the purposes of evaluation and possible referral to treatment and/or peer support groups. The Board may, in its discretion, defer disciplinary findings and proceedings based upon the impairment or incapacity of a lawyer to afford the lawyer an opportunity to be evaluated and, if necessary, to begin recovery. In such situations the medical or mental health professional shall report to the State Disciplinary Board and the Office of the General Counsel concerning the lawyer's progress toward recovery. A lawyer's refusal to cooperate with the medical or mental health professional or to participate in the evaluation or recommended treatment may be grounds for further proceedings under these Rules, including emergency suspension proceedings pursuant to Rule 4-108.

Rule 4-105. Reserved

Rule 4-106. Conviction of a Crime; Suspension and Disbarment

(a) Upon receipt of information or evidence that a conviction for any felony or misdemeanor involving moral turpitude has been entered against a lawyer, the Clerk of the State Disciplinary Boards shall immediately assign the matter a State Disciplinary Board docket number. The Office of the General Counsel shall petition the Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.

(b) The petition shall show the date of the conviction and the court in which the conviction was entered, and shall be served upon the respondent pursuant to Rule 4-203.1.

(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(d) The Coordinating Special Master shall appoint a Special Master, pursuant to Rule 4-209 (b).

(e) The show cause hearing should be held within 15 days after service of the Petition for Appointment of Special Master upon the respondent or appointment of a Special Master, whichever is later. Within 30 days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia which may order such discipline as deemed appropriate.

(f) If the Supreme Court of Georgia orders the respondent suspended pending any appeal, upon the termination of the appeal (or expiration of time for appeal if no appeal is filed) the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended respondent should:

(1) be disbarred under Rule 8.4; or

(2) be reinstated; or

(3) remain suspended pending retrial as a protection to the public; or

(4) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these Rules.

Reports of the Special Master shall be filed with the Supreme Court of Georgia, which may order such discipline as deemed appropriate.

(g) For purposes of this Rule, a certified copy of a conviction in any jurisdiction shall be prima facie evidence of a violation of Rule 8.4 of Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

Rule 4-107. Reserved

Rule 4-108. Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension

(a) Upon receipt of sufficient evidence demonstrating that a lawyer's conduct poses a substantial and immediate threat of harm to his clients or the public and at the direction of the Chair or Vice-Chair of the State Disciplinary Board, the Office of the General Counsel shall petition the Supreme Court of Georgia for the suspension of the lawyer pending disciplinary proceedings predicated upon the conduct causing such petition.

(b) The petition for emergency suspension shall state the evidence justifying the emergency suspension.

(c) The petition for emergency suspension shall be served upon the respondent pursuant to Rule 4-203.1.

(d) Upon receipt of the petition for emergency suspension, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall assign the matter a Supreme Court docket number, and shall notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(e) The Coordinating Special Master shall appoint a Special Master pursuant to Rule 4-209 (b) to conduct a hearing where the State Bar of

Georgia shall show cause why the respondent should be suspended pending disciplinary proceedings.

(f) Within 15 days after service of the petition for emergency suspension upon the respondent or appointment of a Special Master, whichever is later, the Special Master shall hold a hearing on the petition for emergency suspension.

(g) Within 20 days of the hearing, the Special Master shall file his or her recommendation with the Supreme Court of Georgia. The Court may suspend the respondent pending final disposition of disciplinary proceedings predicated upon the conduct causing the emergency suspension, or order such other action as it deems appropriate.

Rule 4-109. Refusal or Failure to Appear for Reprimand; Suspension

If a respondent fails to appear for imposition of a Confidential Reprimand without just cause, the State Disciplinary Board shall reconsider the matter to determine whether the case should proceed with a public filing pursuant to Rule 4-208 et seq. If a respondent fails to appear before the State Disciplinary Board or the Superior Court for imposition of a State Disciplinary Board Reprimand or a Public Reprimand, the Office of the General Counsel may file in the Supreme Court of Georgia a motion for suspension of the respondent. A copy of the motion shall be served on the respondent as provided in Rule 4-203.1. The Supreme Court of Georgia may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

Rule 4-110. Reserved

Rule 4-111. Audit for Cause

Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause of the lawyer's trust and escrow accounts with the written approval of the Chair of the State Disciplinary Board and the President-elect of the State Bar of Georgia. Before approval can be granted, the lawyer shall be given notice that approval is being sought and be given an opportunity to appear and be heard. The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the persons giving the approval.

The State Disciplinary Board must inform the person being audited that the audit is an Audit for Cause.

CHAPTER 2
DISCIPLINARY PROCEEDINGS

Rule 4-201. State Disciplinary Board

(a) The powers to investigate and discipline lawyers for violations of the Georgia Rules of Professional Conduct are hereby vested in the State Disciplinary Board.

(b) The State Disciplinary Board shall 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 nonlawyer members appointed by the Supreme Court of Georgia; and two nonlawyer members appointed by the President of the State Bar of Georgia with the approval of the Board of Governors. The Court and the President of the State Bar of Georgia are encouraged to make appointments that will ensure the geographic, gender, racial, and generational diversity of the State Disciplinary Board. No State Disciplinary Board member may serve for more than two consecutive terms, including a term underway at the time this Rule goes into effect.

(1) The President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia shall serve only during the term of their office, shall serve as members ex officio, and shall not increase the quorum requirement.

(2) All other members shall be appointed for three-year terms, except as provided in paragraph (b) (3) below. When the term of appointment of a member expires, the seat shall be filled by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia with the approval of the Board of Governors, whichever appointed the member whose term has expired.

(3) Whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(4) The State Disciplinary Board shall remove a member for failure to attend meetings of the State Disciplinary Board or for other good cause, and the seat of a member so removed shall be filled as provided in paragraph (b) (3) above.

(5) At the first meeting following an Annual Meeting of the State Bar of Georgia the State Disciplinary Board shall elect a Chair and Vice-Chair.

(c) Upon request, State Disciplinary Board members shall be reimbursed for their reasonable travel expenses in attending meetings of the State Disciplinary Board. The Internal Rules of the State Disciplinary Board provide further explanation of the travel and reimbursement policies.

(d) State Disciplinary Board members may request reimbursement for postage, copying, and other expenses necessary for their work investigating cases.

Rule 4-201.1. State Disciplinary Review Board

(a) The power to review for error final reports and recommendations of Special Masters in public proceedings arising under the Georgia Rules of Professional Conduct is hereby vested in the State Disciplinary Review Board.

(b) The State Disciplinary Review Board shall consist of the Immediate Past President of the State Bar of Georgia; the Immediate Past President of the Young Lawyers Division of the State Bar of Georgia or a member of the Young Lawyers Division designated by its Immediate Past President; seven members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia and one at large appointed as described below; and two nonlawyer members appointed as described below. The Supreme Court of Georgia and the President of the State Bar of Georgia are encouraged to make appointments that

will ensure the geographic, gender, racial, and generational diversity of the State Disciplinary Review Board. No State Disciplinary Review Board member may serve for more than two consecutive terms, including a term underway at the time this Rule goes into effect.

(1) The Immediate Past President of the State Bar of Georgia and the Immediate Past President of the Young Lawyers Division of the State Bar of Georgia (or member of the Young Lawyers Division designated by its Immediate Past President) shall serve only during the term of their office, shall serve as members ex officio, and shall not increase the quorum requirement.

(2) All other members shall be appointed for three-year terms, except as provided in paragraph (b) (3) below. When the term of appointment of a member expires in an even-numbered year, the seat shall be filled by the appointment of the Supreme Court of Georgia for a term of three years; and when the term of appointment of a member expires in an odd-numbered year, the seat shall be filled by the appointment of the President of the State Bar of Georgia with the approval of the Board of Governors.

(3) Whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(4) The State Disciplinary Review Board shall remove a member for failure to attend meetings of the State Disciplinary Review Board or for other good cause, and the seat of a member so removed shall be filled as provided in paragraph (b) (3) above.

(5) At the first meeting following an Annual Meeting of the State Bar of Georgia the State Disciplinary Review Board shall elect a Chair and Vice-Chair.

(c) Upon request, State Disciplinary Review Board members shall be reimbursed for their reasonable travel expenses in attending meetings of the State

Disciplinary Review Board. The Internal Rules of the State Disciplinary Review Board provide further explanation of the travel and reimbursement policies.

(d) State Disciplinary Review Board members may request reimbursement for postage, copying, and other expenses necessary for their work reviewing cases.

Rule 4-202. Receipt of Grievances; Initial Review by Bar Counsel

(a) Grievances shall be filed in writing with the Office of the General Counsel of the State Bar of Georgia. In lieu of a Memorandum of Grievance the Office of the General Counsel may begin an investigation upon receipt of an Intake Form from the Consumer Assistance Program. All grievances must include the name of the complainant and must be signed by the complainant.

(b) The Office of the General Counsel may investigate conduct upon receipt of credible information from any source after notifying the respondent lawyer and providing a written description of the information that serves as the basis for the investigation. The Office of the General Counsel may deliver the information it obtains to the State Disciplinary Board for initiation of a grievance under Rule 4-203 (2).

(c) The Office of the General Counsel shall be empowered to collect evidence and information concerning any grievance. The screening process may include forwarding a copy of the grievance to the respondent in order that the respondent may respond to the grievance.

(d) The Office of the General Counsel may request the Chair of the State Disciplinary Board to issue a subpoena as provided by OCGA § 24-13-23 requiring a respondent or a third party to produce documents relevant to the matter under investigation. Subpoenas shall be enforced in the manner provided at Rule 4-221 (c).

(e) Upon completion of its screening of a grievance, the Office of the General Counsel shall be empowered to dismiss those grievances that do not present sufficient merit to proceed. Rejection of such grievances by the Office of the General Counsel shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the respondent.

(f) Those grievances that appear to allege a violation of Part IV, Chapter 1 of the Georgia Rules of Professional Conduct may be forwarded to the State Disciplinary Board pursuant to Rule 4-204. In lieu of forwarding a matter to the State Disciplinary Board, the Office of the General Counsel may refer a matter to the Consumer Assistance Program so that it may direct the complaining party to appropriate resources.

Rule 4-203. Powers and Duties of the State Disciplinary Board

In accordance with these Rules, the State Disciplinary Board shall have the following powers and duties:

(1) to receive and evaluate any and all written grievances against lawyers and to frame such charges and grievances as shall conform to the requirements of these Rules. A copy of any grievance serving as the basis for investigation or proceedings before the State Disciplinary Board shall be furnished to the respondent by the procedures set forth in Rule 4-203.1;

(2) to initiate grievances on its own motion, to require additional information from a complainant, where appropriate, and to dismiss and reject such grievances as they may seem unjustified, frivolous, or patently unfounded. However, the rejection of a grievance by the State Disciplinary Board shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the respondent;

(3) to issue letters of instruction when dismissing a grievance;

(4) to delegate the duties of the State Disciplinary Board enumerated in paragraphs (1), (2), (8), (9), (10), and (11) hereof to the Chair of the State Disciplinary Board or such other members as the State Disciplinary Board or its Chair may designate subject to review and approval by the full State Disciplinary Board;

(5) to conduct Probable Cause investigations, to collect evidence and information concerning grievances, and to certify grievances to the Supreme Court of Georgia for hearings by Special Masters as hereinafter provided;

(6) to prescribe its own Rules of conduct and procedure;

(7) to receive, investigate, and collect evidence and information, and review and accept or reject Petitions for Voluntary Discipline pursuant to Rule 4-227 (b) (1);

(8) to sign and enforce, as hereinafter described, subpoenas for the appearance of persons and the production of documents, things and records at investigations both during the screening process and the State Disciplinary Board's investigation;

(9) to issue a subpoena as provided in this Rule whenever a subpoena is sought in this State pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, where the issuance of the subpoena has been duly approved under the law of the other jurisdiction. Upon petition for good cause the State Disciplinary Board may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service of the subpoena shall be as provided in the Georgia Civil Practice Act. Enforcement or challenges to the subpoena shall be as provided at Rule 4-221 (c);

(10) to extend the time within which a formal complaint may be filed;

(11) to issue Formal Letters of Admonition and Confidential Reprimands as hereinafter provided;

(12) to issue a Notice of Discipline providing that unless the respondent affirmatively rejects the notice, the respondent shall be sanctioned as ordered by the Supreme Court of Georgia;

(13) to refer a lawyer who appears to be impaired for an evaluation by an appropriate medical or mental health professional; and

(14) to use the staff of the Office of the General Counsel in performing its duties.

Rule 4-203.1. Uniform Service Rule

(a) Lawyers shall inform the Membership Department of the State Bar of Georgia, in writing, of their current name, official address and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official address on file with the Membership Department in all efforts to contact, communicate with, and perfect service upon a lawyer. The choice of a lawyer to provide only a post office box or commercial equivalent address to the Membership Department of the State Bar of Georgia shall constitute an election to waive personal service. Notification of a change of address given to any department of the State Bar of Georgia other than the Membership Department shall not satisfy the requirement herein.

(b) In all matters requiring personal service under Part IV of the Bar Rules, service may be perfected in the following manner:

(1) Acknowledgment of Service: An acknowledgment of service from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(2) Written Response from Respondent: A written response from the respondent or respondent's counsel shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(3) In the absence of an acknowledgment of service or a written response from the respondent or respondent's counsel, and subject to the provisions of subparagraph (b) (4) below, the respondent shall be served in the following manner:

(i) Personal Service: Service may be accomplished by the Sheriff or any other person authorized to serve a summons under the provisions of the Georgia Civil Practice Act, as approved by the Chair of the State Disciplinary Board or the Chair's designee. Receipt of a Return of Service Non Est Inventus shall constitute conclusive proof that service cannot be perfected by personal service.

(ii) Service by Publication: If personal service cannot be perfected, or when the respondent has only provided a post office box or commercial equivalent address to the Membership Department and the respondent has not acknowledged service within 10 days of a

mailing to respondent's post office box or commercial equivalent address, service may be accomplished by publication once a week for two weeks in the legal organ of the county of respondent's address, as shown on the records of the Membership Department of the State Bar of Georgia, and, contemporaneously with the publication, mailing a copy of the service documents by first class mail to respondent's address as shown on the records of the Membership Department of the State Bar of Georgia.

(4) When it appears from an affidavit made by the Office of the General Counsel that the respondent has departed from the State, or cannot, after due diligence, be found within the State, or seeks to avoid the service, the Chair of the State Disciplinary Board, or the Chair's designee, may authorize service by publication without the necessity of first attempting personal service. The affidavit made by the Office of the General Counsel must demonstrate recent unsuccessful attempts at personal service upon the respondent regarding other or related disciplinary matters and that such personal service was attempted at respondent's address as shown on the records of the Membership Department of the State Bar of Georgia.

(c) Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a respondent represented by a lawyer, the service shall be made upon the respondent's lawyer. Service upon the respondent's lawyer or upon an unrepresented respondent shall be made by hand-delivery or by delivering a copy or mailing a copy to the respondent's lawyer or to the respondent's official address on file with the Membership Department, unless the respondent's lawyer specifies a different address for the lawyer in a filed pleading. As used in this Rule, the term "delivering a copy" means handing it to the respondent's lawyer or to the respondent, or leaving it at the lawyer's or respondent's office with a person of suitable age or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion. Service by mail is complete upon mailing and includes transmission by U.S. Mail, or by a third-party commercial carrier for delivery within three business days, shown by the official postmark or by the commercial carrier's transmittal form. Proof of service may be made by certificate of a lawyer or of his employee, written admission, affidavit, or other satisfactory proof. Failure to make proof of service shall not affect the validity of service.

Rule 4-204. Investigation and Disposition by State Disciplinary Board - - Generally

(a) Each grievance that presents sufficient merit to proceed may be referred with a Notice of Investigation to the State Disciplinary Board for investigation and disposition in accordance with its Rules. The Clerk of the State Disciplinary Boards shall assign a lawyer member of the State Disciplinary Board to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist the State Disciplinary Board member with the investigation. If the investigation of the State Disciplinary Board establishes Probable Cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these Rules, it shall:

(1) issue a Formal Letter of Admonition;

(2) issue a Confidential Reprimand;

(3) issue a Notice of Discipline;

(4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided; or

(5) refer a respondent for evaluation by an appropriate medical or mental health professional pursuant to Rule 4-104 upon the State Disciplinary Board's determination that there is cause to believe the lawyer is impaired.

All other cases may be either dismissed by the State Disciplinary Board or referred to the Consumer Assistance Program so that it may direct the complaining party to appropriate resources.

(b) The primary investigation shall be conducted by the member of the State Disciplinary Board responsible for the investigation, assisted by the staff of the Office of the General Counsel, upon request of the State Disciplinary Board member. The Board of Governors of the State Bar of Georgia shall fund the

Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

Rule 4-204.1. Notice of Investigation

(a) A Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a reasonable opportunity to respond to the charges in writing. The Notice shall contain:

(1) a statement that the grievance is being transmitted to the State Disciplinary Board;

(2) a copy of the grievance;

(3) a list of the Rules that appear to have been violated;

(4) the name and address of the State Disciplinary Board member assigned to investigate the grievance and a list of the State Disciplinary Board members; and

(5) a statement of the respondent's right to challenge the competency, qualifications or objectivity of any State Disciplinary Board member.

(b) The form for the Notice of Investigation shall be approved by the State Disciplinary Board.

(c) The Office of the General Counsel shall cause the Notice of Investigation to be served upon the respondent pursuant to Rule 4-203.1.

Rule 4-204.2. Reserved

Rule 4-204.3. Answer to Notice of Investigation Required

(a) The respondent shall deliver to the State Disciplinary Board member assigned to investigate the grievance a written response under oath to the Notice of Investigation within 30 days of service.

(b) The written response must address specifically all of the issues set forth in the Notice of Investigation.

(c) The State Disciplinary Board member assigned to investigate the grievance may, in the State Disciplinary Board member's discretion, grant extensions of time for the respondent's answer. Any request for extension of time must be made in writing, and the grant of an extension of time must also be in writing. Extensions of time shall not exceed 30 days and should not be routinely granted.

(d) In cases where the maximum sanction is disbarment or suspension and the respondent fails to properly respond within the time required by these Rules, the Office of the General Counsel may seek authorization from the Chair or Vice-Chair of the State Disciplinary Board to file a motion for interim suspension of the respondent.

(1) When an investigating member of the State Disciplinary Board notifies the Office of the General Counsel that the respondent has failed to respond and that the respondent should be suspended, the Office of the General Counsel shall, with the approval of the Chair or Vice-Chair of the State Disciplinary Board, file a Motion for Interim Suspension of the respondent. The Supreme Court of Georgia shall enter an appropriate order.

(2) When the State Disciplinary Board member and the Chair or Vice-Chair of the State Disciplinary Board determine that a respondent who has been suspended for failure to respond has filed an appropriate response and should be reinstated, the Office of the General Counsel shall file a Motion to Lift Interim Suspension. The Supreme Court of Georgia shall enter an appropriate order. The determination that an adequate response has been filed is within the discretion of the investigating State Disciplinary Board member and the Chair of the State Disciplinary Board.

Rule 4-204.4. Finding of Probable Cause; Referral to Special Master

In the event the State Disciplinary Board finds Probable Cause of the respondent's violation of one or more of the provisions of Part IV, Chapter 1 of these Rules, it may refer the matter to the Supreme Court of Georgia by directing

the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

(a) A formal complaint, as herein provided, along with a petition for the appointment of a Special Master and a notice of its finding of Probable Cause, within 30 days of the finding of Probable Cause unless the State Disciplinary Board or its Chair grants an extension of time for the filing; or

(b) A Notice of Discipline pursuant to Rules 4-208.1, 4-208.2 and 4-208.3.

Rule 4-204.5. Letters of Instruction

(a) In addition to dismissing a complaint, the State Disciplinary Board may issue a letter of instruction to the respondent upon the following conditions:

(1) the case has been thoroughly investigated, the respondent has been notified of and has had an opportunity to answer the charges brought against him, and the case has been reported to a quorum of the State Disciplinary Board assembled at a regularly scheduled meeting; and

(2) the State Disciplinary Board, as evidenced through the majority vote of its members present and voting, is of the opinion that the respondent either:

(i) has not engaged in conduct that is in violation of the provisions of Part IV, Chapter 1 of these Rules; or

(ii) has engaged in conduct that although technically in violation of such Rules is not reprehensible, and has resulted in no harm or injury to any third person, and is not in violation of the spirit of such Rules; or

(iii) has engaged in conduct in violation of any recognized voluntary creed of professionalism.

(b) A letter of instruction shall not constitute a finding of any disciplinary infraction.

Rule 4-205. Confidential Discipline; In General

The State Disciplinary Board may issue a Formal Letter of Admonition or a Confidential Reprimand in any disciplinary case upon the following conditions:

(a) the case has been thoroughly investigated, the respondent has been notified of and has had an opportunity to answer the charges brought against him, and the case has been reported to a quorum of the State Disciplinary Board assembled at a regularly scheduled meeting;

(b) the State Disciplinary Board, as evidenced through the majority vote of its members present and voting, is of the opinion that the respondent has engaged in conduct that is in violation of the provisions of Part IV, Chapter 1 of these Rules; and

(c) the State Disciplinary Board, as evidenced through the majority vote of its members present and voting, is of the opinion that the conduct referred to in paragraph (b) hereof was engaged in:

(1) inadvertently; or

(2) purposefully, but in ignorance of the applicable disciplinary rule or rules; or

(3) under such circumstances that it is the opinion of the State Disciplinary Board that the protection of the public and rehabilitation of the respondent would be best achieved by the issuance of a Formal Letter of Admonition or a Confidential Reprimand rather than by any other form of discipline.

Rule 4-206. Confidential Discipline; Contents

(a) Formal Letters of Admonition and Confidential Reprimands shall contain a statement of the specific conduct of the respondent that violates Part IV, Chapter 1 of these Rules, shall state the name of the complainant, if any, and shall state the reasons for issuance of such confidential discipline.

(b) A Formal Letter of Admonition shall also contain the following information:

(1) the right of the respondent to reject the Formal Letter of Admonition under Rule 4-207;

(2) the procedure for rejecting the Formal Letter of Admonition under Rule 4-207; and

(3) the effect of an accepted Formal Letter of Admonition in the event of a third or subsequent imposition of discipline.

(c) A Confidential Reprimand shall also contain information concerning the effect of the acceptance of such reprimand in the event of a third or subsequent imposition of discipline.

Rule 4-207. Formal Letters of Admonition and Confidential Reprimands; Notification and Right of Rejection

In any case where the State Disciplinary Board votes to impose discipline in the form of a Formal Letter of Admonition or a Confidential Reprimand, such vote shall constitute the State Disciplinary Board's finding of Probable Cause. The respondent shall have the right to reject, in writing, the imposition of such discipline.

(a) Notification to respondent shall be as follows:

(1) in the case of a Formal Letter of Admonition, the letter of admonition;

(2) in the case of a Confidential Reprimand, the letter notifying the respondent to appear for the administration of the reprimand;

sent to the respondent at his or her address as reflected in the membership records of the State Bar of Georgia, via certified mail, return receipt requested.

(b) Rejection by respondent shall be as follows:

(1) in writing, within 30 days of notification; and

(2) sent to the State Disciplinary Board via any of the methods authorized under Rule 4-203.1 (c) and directed to the Clerk of the State Disciplinary Boards at the current headquarters address of the State Bar of Georgia.

(c) If the respondent rejects the imposition of a Formal Letter of Admonition or Confidential Reprimand, the Office of the General Counsel may file a formal complaint with the Clerk of the Supreme Court of Georgia unless the State Disciplinary Board reconsiders its decision.

(d) Confidential Reprimands shall be administered before the State Disciplinary Board by the Chair or his designee.

Rule 4-208. Confidential Discipline; Effect in Event of Subsequent Discipline

In the event of a subsequent disciplinary proceeding, the confidentiality of the imposition of confidential discipline shall be waived and the Office of the General Counsel may use such information as aggravation of discipline.

Rule 4-208.1. Notice of Discipline

(a) In any case where the State Disciplinary Board finds Probable Cause, the State Disciplinary Board may issue a Notice of Discipline requesting that the Supreme Court of Georgia impose any level of public discipline authorized by these Rules.

(b) Unless the Notice of Discipline is rejected by the respondent as provided in Rule 4-208.3, (1) the respondent shall be in default; (2) the respondent shall have no right to any evidentiary hearing; and (3) the respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court of Georgia. The Supreme Court of Georgia is not bound by the State Disciplinary Board's recommendation and may impose any level of discipline it deems appropriate.

Rule 4-208.2. Notice of Discipline; Contents; Service

(a) The Notice of Discipline shall include:

(1) the Rules that the State Disciplinary Board found the respondent violated;

(2) the allegations of facts that, if unrebutted, support the finding that such Rules have been violated;

(3) the level of public discipline recommended to be imposed;

(4) the reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the State Disciplinary Board to be relevant to such recommendation;

(5) the entire provisions of Rule 4-208.3 relating to rejection of a Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing the same in the notice;

(6) a copy of the Memorandum of Grievance; and

(7) a statement of any prior discipline imposed upon the respondent, including confidential discipline under Rules 4-205 to 4-208.

(b) The Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the respondent pursuant to Rule 4-203.1.

(c) The Office of the General Counsel shall file documents evidencing service with the Clerk of the Supreme Court of Georgia.

(d) The level of disciplinary sanction in any Notice of Discipline rejected by the respondent or the Office of the General Counsel shall not be binding on the Special Master, the State Disciplinary Board or the Supreme Court of Georgia in subsequent proceedings in the same matter.

Rule 4-208.3. Rejection of Notice of Discipline

(a) In order to reject the Notice of Discipline, the respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within 30 days following service of the Notice of Discipline.

(b) Any Notice of Rejection by the respondent shall be served upon the opposing party. In accordance with Rule 4-204.3 if the respondent has not previously filed a sworn response to the Notice of Investigation the rejection must include a sworn response in order to be considered valid. The respondent must also file a copy of such written response with the Clerk of the Supreme Court of Georgia at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the matter to proceed pursuant to Rule 4-208.4 et seq.

Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within 30 days following the filing of a Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by the State Disciplinary Board.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chair of the State Disciplinary Board or his designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the State Disciplinary Board may reconsider the grievance and take appropriate action.

Rule 4-209. Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master

(a) Upon receipt of a notice of finding of Probable Cause, a petition for appointment of a Special Master and a formal complaint, the Clerk of the Supreme

Court of Georgia shall file the matter in the records of the Court, give the matter a Supreme Court of Georgia docket number, and notify the Coordinating Special Master that appointment of a Special Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the notice of finding of Probable Cause need not be filed.

(b) Within a reasonable time after receipt of a petition for appointment of a Special Master or notification that a Special Master previously appointed has been disqualified, withdrawn, or is otherwise unable to serve, the Coordinating Special Master shall appoint a Special Master to conduct formal disciplinary proceedings in such complaint. The Coordinating Special Master shall select a Special Master from the list approved by the Supreme Court of Georgia.

(c) The Clerk of the Supreme Court shall serve the signed Order Appointing Special Master on the Office of the General Counsel of the State Bar of Georgia. Upon notification of the appointment of a Special Master, the State Bar of Georgia shall immediately serve the respondent with the order of appointment of a Special Master and with its formal complaint as hereinafter provided.

(d) Within 10 days of service of the notice of appointment of a Special Master, the respondent and the State Bar of Georgia may file any and all objections or challenges either of them may have to the competency, qualifications or impartiality of the Special Master with the Coordinating Special Master. The party filing such objections or challenges must also serve a copy of the objections or challenges upon the opposing party and the Special Master, who may respond to such objections or challenges. Within a reasonable time, the Coordinating Special Master shall consider the challenges and the responses of respondent, the State Bar of Georgia, and the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Clerk of the Supreme Court of Georgia and the Special Master of the decision. Exceptions to the Coordinating Special Master's denial of disqualification are subject to review by the Supreme Court of Georgia at the time the record in the matter is filed with the Court pursuant to Rule 4-216 (e). If a Special Master is disqualified, appointment of a successor Special Master shall proceed as provided in this Rule.

Rule 4-209.1. Appointment of Coordinating Special Master and Special Masters

(a) The Supreme Court of Georgia shall appoint a lawyer to serve as the Coordinating Special Master for disciplinary cases.

(b) The Supreme Court of Georgia annually shall appoint up to 20 lawyers to serve as Special Masters in disciplinary cases. The Court may reappoint lawyers appointed in prior years, although it generally is preferable for a lawyer to serve as a Special Master for no more than five consecutive years. When a case is assigned to a lawyer appointed as Special Master, such lawyer shall continue to serve as Special Master in that case until final disposition, unless the Coordinating Special Master or the Court directs otherwise, irrespective of whether such lawyer is reappointed to serve as Special Master for another year.

(c) The Coordinating Special Master and Special Masters shall serve at the pleasure of the Supreme Court of Georgia.

(d) No member of the State Disciplinary Board, State Disciplinary Review Board, Special Master Compensation Commission, or Executive Committee of the State Bar of Georgia shall be appointed to serve as Coordinating Special Master or as a Special Master.

(e) A list of the lawyers appointed by the Supreme Court of Georgia as Special Masters shall be published on the website of the State Bar of Georgia and annually in a regular publication of the State Bar of Georgia.

(f) Training for Special Masters is expected, and the Coordinating Special Master shall be responsible for the planning and conduct of training sessions, which the State Bar of Georgia shall make available without cost to Special Masters. At a minimum, a lawyer appointed for the first time as a Special Master should attend a training session within six months of his appointment. The failure of a Special Master to complete the minimum required training session shall not be a basis for a motion to disqualify a Special Master.

(g) A Special Master (including the Coordinating Special Master) shall be disqualified to serve in a disciplinary case when circumstances exist, which, if the Special Master were a judge, would require the recusal of the Special Master

under the Code of Judicial Conduct. In the event that the Coordinating Special Master is disqualified in any case, the Supreme Court of Georgia shall assign the case to a Special Master, and the Court shall designate another Special Master to act as Coordinating Special Master for purposes of that case only.

Rule 4-209.2. Compensation of Coordinating Special Master and Special Masters

(a) The Coordinating Special Master and the Special Masters shall be paid by the State Bar of Georgia from the general operating fund at rates to be set by the Supreme Court of Georgia, which the Court may adjust from time to time.

(b) To advise the Supreme Court of Georgia with respect to the compensation of the Coordinating Special Master and Special Masters, the Court shall appoint a Special Master Compensation Commission, which shall consist of the current Treasurer of the State Bar of Georgia; the second, third, and fourth immediate past presidents of the State Bar of Georgia, unless any such past president should decline to serve; and such other persons as the Court may designate. The Commission shall make annual recommendations to the Court about the rate to be paid to the Coordinating Special Master and the rate to be paid to the Special Masters, and the Commission shall report such recommendations to the Court no later than January 1 of each year.

Rule 4-209.3. Powers and Duties of the Coordinating Special Master

The Coordinating Special Master shall have the following powers and duties:

(a) to establish requirements for, conduct, and supervise Special Master training;

(b) to assign cases to Special Masters from the list provided in Rule 4-209 (b);

(c) to exercise all of the powers and duties provided in Rule 4-210 when acting as a Special Master under paragraph (h) below;

(d) to monitor and evaluate the performance of Special Masters and to submit a report to the Supreme Court of Georgia regarding such performance annually;

(e) to remove Special Masters for such cause as may be deemed proper by the Coordinating Special Master;

(f) to fill all vacancies occasioned by incapacity, disqualification, recusal, or removal;

(g) to administer Special Master compensation, as provided in Rule 4-209.2 (b);

(h) to hear pretrial motions when no Special Master is serving;

(i) to perform all other administrative duties necessary for an efficient and effective hearing system;

(j) to allow a late filing of the respondent's answer where there has been no final selection of a Special Master within 30 days of service of the formal complaint upon the respondent;

(k) to receive and pass upon challenges and objections to the appointment of Special Masters; and

(l) to extend the time for a Special Master to file a report, in accordance with Rule 4-214 (a).

Rule 4-210. Powers and Duties of Special Masters

In accordance with these Rules a duly appointed Special Master shall have the following powers and duties:

(a) to exercise general supervision over assigned disciplinary proceedings, including emergency suspension cases as provided in Rule 4-108, and to perform all duties specifically enumerated in these Rules;

(b) to rule on all questions concerning the sufficiency of the formal complaint;

(c) to encourage negotiations between the State Bar of Georgia and the respondent, whether at a pretrial meeting set by the Special Master or at any other time;

(d) to receive and evaluate any Petition for Voluntary Discipline filed after the filing of a formal complaint;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter subject to Rule 4-214 (a);

(f) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he becomes incapacitated or otherwise unable to perform his duties;

(g) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a respondent growing out of different transactions, whether they involve one or more complainants, and to make recommendations on each complaint as constituting a separate offense;

(h) to sign subpoenas and to exercise the powers described in Rule 4-221 (c);

(i) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;

(j) to make findings of fact and conclusions of law and a recommendation of discipline as hereinafter provided and to submit his findings for consideration by the Supreme Court of Georgia in accordance with Rule 4-214;

(k) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases; and

(l) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the respondent should be suspended pending further disciplinary proceedings.

Rule 4-211. Formal Complaint; Service

(a) Within 30 days after a finding of Probable Cause, the Office of the General Counsel shall file a formal complaint that specifies with reasonable particularity the acts complained of and the grounds for disciplinary action. A copy of the formal complaint shall be served upon the respondent after appointment of a Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Rule 4-208.4. The formal complaint shall be served pursuant to Rule 4-203.1.

(b) Reserved.

(c) At all stages of the proceeding, both the respondent and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints, and certificates for and in behalf of the State Bar of Georgia and the State Disciplinary Board.

Rule 4-211.1. Dismissal after Formal Complaint

At any time after the State Disciplinary Board finds Probable Cause, the Office of the General Counsel may dismiss the proceeding with the consent of the Chair or Vice-Chair of the State Disciplinary Board or with the consent of any three members of the State Disciplinary Board.

Rule 4-212. Answer of Respondent; Discovery

(a) The respondent shall file and serve his answer to the formal complaint of the State Bar of Georgia pursuant to Rule 4-221 (b) within 30 days after service of the formal complaint. If the respondent fails to answer or to obtain an extension of time for his answer, the facts alleged and violations charged in the formal complaint shall be deemed admitted. In the event the respondent's answer fails to address specifically the issues raised in the formal complaint, the facts

alleged and violations charged in the formal complaint and not specifically addressed in the answer shall be deemed admitted. A respondent may obtain an extension of time not to exceed 15 days to file the answer from the Special Master. Extensions of time for the filing of an answer shall not be routinely granted.

(b) The pendency of objections or challenges to one or more Special Masters shall provide no justification for a respondent's failure to file his answer or for failure of the State Bar of Georgia or the respondent to engage in discovery.

(c) Both parties to the disciplinary proceeding may engage in discovery under the rules of practice and procedure then applicable to civil cases in the State of Georgia.

(d) In lieu of filing an answer to the formal complaint of the State Bar of Georgia, the respondent may submit to the Special Master a Petition for Voluntary Discipline as provided in Rule 4-227 (c). Each such petition shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline. As provided in Rule 4-227 (c) (1), the Special Master shall allow Bar counsel 30 days within which to respond.

Rule 4-213. Evidentiary Hearing

(a) Within 90 days after the filing of respondent's answer to the formal complaint or the expiration of the time for filing of the answer, whichever is later, the Special Master shall proceed to hear the case. The evidentiary hearing shall be reported and transcribed at the expense of the State Bar of Georgia. When the hearing is complete, the Special Master shall proceed to make findings of fact, conclusions of law and a recommendation of discipline and file a report with the Clerk of the State Disciplinary Boards as hereinafter provided. Alleged errors in the hearing may be reviewed by the Supreme Court of Georgia when the findings and recommendations of discipline are filed with the Court. There shall be no interlocutory appeal of alleged errors in the hearing.

(b) Upon respondent's showing of necessity and financial inability to pay for a copy of the transcript, the Special Master shall order the State Bar of Georgia to purchase a copy of the transcript for respondent.

Rule 4-214. Report of the Special Master

(a) Unless the Coordinating Special Master extends the deadline for good cause, the Special Master shall prepare a report within 45 days from receipt of the transcript of the evidentiary hearing. Failure of the Special Master to issue the report within 45 days shall not be grounds for dismissal. The report shall contain the following:

(1) findings of fact on the issues raised by the formal complaint;

(2) conclusions of law on the issues raised by the pleadings of the parties; and

(3) a recommendation of discipline.

(b) The Special Master shall file his or her original report and recommendation with the Clerk of the State Disciplinary Boards and shall serve a copy on the respondent and counsel for the State Bar of Georgia pursuant to Rule 4-203.1.

(c) The Clerk of the State Disciplinary Boards shall file the original record in the case directly with the Supreme Court of Georgia, unless any party files with the Clerk a request for review by the State Disciplinary Review Board and exceptions to the report within 30 days of the date the report is filed as provided in Rule 4-216 et seq. The Clerk shall inform the State Disciplinary Review Board when a request for review and exceptions are filed.

(d) In the event any party requests review, the responding party shall file a response to the exceptions within 30 days of the filing. Within 10 days after the receipt of a response or the expiration of the time for responding, the Clerk shall transmit the record in the case to the State Disciplinary Review Board.

Rule 4-215. Powers and Duties of the State Disciplinary Review Board

In accordance with these Rules, the State Disciplinary Review Board shall have the following powers and duties:

(a) to review reports of Special Masters, and to recommend to the Supreme Court of Georgia the imposition of punishment and discipline or dismissal of the complaint;

(b) to adopt forms for notices and any other written instruments necessary or desirable under these Rules;

(c) to prescribe its own rules of conduct and procedure;

(d) to receive Notice of Reciprocal Discipline and to recommend to the Supreme Court of Georgia the imposition of punishment and discipline pursuant to Bar Rule 9.4 (b) (3); and

(e) to administer State Disciplinary Review Board reprimands.

Rule 4-216. Proceedings Before the State Disciplinary Review Board

(a) Upon receipt of the record and exceptions to the report of the Special Master pursuant to Rule 4-214, the State Disciplinary Review Board shall consider the record, review findings of fact and conclusions of law, and determine whether a recommendation of disciplinary action will be made to the Supreme Court of Georgia and the nature of such recommended discipline. The findings of fact made by a Special Master may be reversed if the State Disciplinary Review Board finds them to be clearly erroneous or manifestly in error. Conclusions of law and determinations of appropriate sanctions shall be reviewed de novo.

(b) The respondent shall have the right to challenge the competency, qualifications, or objectivity of any member of the State Disciplinary Review Board considering the case under a procedure as provided for in the Rules of the State Disciplinary Review Board.

(c) There shall be no de novo hearing before the State Disciplinary Review Board.

(d) The State Disciplinary Review Board may consider exceptions to the report of the Special Master and may in its discretion grant oral argument if requested by any party within 15 days of transmission of the record and exceptions to the State Disciplinary Review Board. Exceptions and briefs shall be filed with

the Clerk of the State Disciplinary Boards, in accordance with Rule 4-214. The responding party shall have 30 days after service of the exceptions within which to respond.

(e) Within 90 days after receipt of the record including any exceptions to the report of the Special Master and responses thereto the State Disciplinary Review Board shall file its report with the Clerk of the State Disciplinary Boards. The 90-day deadline may be extended by agreement of the parties or with the consent of the Chair of the State Disciplinary Review Board for good cause shown. A copy of the State Disciplinary Review Board's report shall be served upon the respondent, and the Clerk shall file the record in the case with the Supreme Court of Georgia within 10 days after the report is filed. If no report is filed by the State Disciplinary Review Board within 90 days of receipt by it of the record and no extension is granted, the Clerk shall file the original record in the case with the Clerk of the Supreme Court of Georgia, and the case shall be considered by the Court on the record.

Rule 4-217. Reserved

Rule 4-218. Judgments

After the Special Master's report and any report of the State Disciplinary Review Board are filed with the Supreme Court of Georgia, the respondent and the State Bar of Georgia may file with the Court any written exceptions, supported by written argument, either may have to the reports. All such exceptions shall be filed with the Court within 30 days of the date that the record is filed with the Court and a copy served upon the opposing party. The responding party shall have an additional 30 days to file a response with the Court. The Court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The Court will promptly consider the report of the Special Master, any report of the State Disciplinary Review Board, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's judgment shall be transmitted to the State Bar of Georgia and the respondent by the Court.

Rule 4-219. Publication and Protective Orders

(a) In cases in which a lawyer is publicly reprimanded, suspended, disbarred, or voluntarily surrenders his license, the Office of the General Counsel shall publish notice of the discipline in a local newspaper or newspapers. The Office of the General Counsel shall publish notice of all public discipline on the official State Bar of Georgia website, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(b)

(1) After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within 30 days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within 45 days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court of Georgia, upon its own motion or upon motion of the Office of the General Counsel, and after 10 days' notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interests. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

(2) After a final judgment of disbarment or suspension under Part IV of these Rules the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not represent himself as a lawyer or person with similar status and shall not provide any legal advice to clients of the law office.

Rule 4-220. Notice of Punishment or Acquittal; Administration of Reprimands

(a) Upon a final judgment of disbarment or suspension, notice of the action taken shall be given by the Office of the General Counsel of the State Bar of Georgia to the clerks of all courts of record in this State and to the Membership Department of the State Bar of Georgia, and the name of the respondent in question shall be stricken from the rolls of said courts and from the rolls of the State Bar of Georgia for the prescribed period.

(b) State Disciplinary Review Board Reprimands shall be prepared by the Office of the General Counsel based upon the record. State Disciplinary Review Board Reprimands shall be issued by the Chair of the State Disciplinary Review Board, or his designee, at a regular meeting of the Board.

(c) Public Reprimands shall be prepared by the Office of the General Counsel based upon the record in the case. They shall be read in open court in the presence of the respondent by the judge of the Superior Court in the county in which the respondent resides or the county in which the disciplinary infraction occurred, with the location to be specified by the Special Master subject to the approval of the Supreme Court of Georgia. Notice of issuance of the reprimand shall be published in advance in the legal organ of the county of the respondent's address as shown on the Membership Records of the State Bar of Georgia, and provided to the complainant in the underlying case.

(d) After a Public Reprimand has been administered, a certificate reciting the fact of the administration of the reprimand and the date of its administration shall be filed with the Supreme Court of Georgia. There shall be attached to such certificate a copy of the reprimand. Both the certificate and the copy of the reprimand shall become a part of the record in the disciplinary proceeding.

(e) In the event of a final judgment in favor of the respondent, the State Bar of Georgia shall, if directed by the respondent, give notice thereof to the clerk of the Superior Court in the county in which the respondent resides.

Rule 4-221. Hearing Procedures

(a) Oaths. Before entering upon his duties as herein provided, each member of the State Disciplinary Board, each member of the State Disciplinary Review Board, and each Special Master shall swear or affirm to the following oath

by signing a copy and returning it to the Clerk of the Boards or to the Clerk of the Supreme Court of Georgia, as appropriate.

> "I do solemnly swear or affirm that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of the State Disciplinary Board of the State Bar of Georgia/member of the State Disciplinary Review Board of the State Bar of Georgia/Special Master according to the best of my ability and understanding and agreeable to the laws and Constitution of this State and the Constitution of the United States."

The Clerk of the Boards shall maintain the completed Oaths of Board members, and the Clerk of the Supreme Court of Georgia shall file the completed Oaths of Special Masters.

(b) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the Boards at the headquarters of the State Bar of Georgia, and the parties shall serve copies upon the Special Master and the opposing party pursuant to the Georgia Civil Practice Act. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

(c) Witnesses and Evidence; Contempt.

(1) The respondent and the State Bar of Georgia shall have the right to require the issuance of subpoenas for the attendance of witnesses to testify or to produce books and papers. The Special Master shall have the power to compel the attendance of witnesses and the production of books, papers, and documents relevant to the matter under investigation, by subpoena, and as further provided by law in civil cases under the laws of Georgia.

(2) The following shall subject a person to rule for contempt of the Special Master or State Disciplinary Board:

(i) disregard, in any manner whatsoever, of a subpoena issued pursuant to Rules 4-203 (9), 4-210 (h) or 4-221 (c) (1);

(ii) refusal to answer any pertinent or proper question of a Special Master; or

(iii) willful or flagrant violation of a lawful directive of a Special Master.

It shall be the duty of the Chair of the State Disciplinary Board or Special Master to report the facts supporting contempt to the Chief Judge of the Superior Court in and for the county in which the investigation, trial or hearing is being held. The Superior Court shall have jurisdiction of the matter and shall follow the procedures for contempt as are applicable in the case of a witness subpoenaed to appear and give evidence on the trial of a civil case before the Superior Court under the laws in Georgia.

(3) Any Special Master shall have power to administer oaths and affirmations and to issue any subpoena herein provided for.

(4) Depositions may be taken by the respondent or the State Bar of Georgia in the same manner and under the same provisions as may be done in civil cases under the laws of Georgia, and such depositions may be used upon the trial or an investigation or hearing in the same manner as such depositions may be used in civil cases under the laws of Georgia.

(5) All witnesses attending any hearing provided for under these Rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil cases in the Superior Courts of this State under subpoena.

(d) Venue of Hearings.

(1) The hearings on all complaints and charges against a resident respondent shall be held in the county of the respondent's main office or the county of residence of the respondent unless he otherwise agrees.

(2) Where the respondent is a nonresident of the State of Georgia and the complaint arose in the State of Georgia, the hearing shall be held in the county where the complaint arose.

(3) When the respondent is a nonresident of the State of Georgia and the offense occurs outside the State, the hearing may be held in the county of the State Bar of Georgia headquarters.

Rule 4-221.1. Confidentiality of Investigations and Proceedings

(a) The State Bar of Georgia shall maintain as confidential all disciplinary investigations and proceedings pending at the screening or investigative stage, unless otherwise provided by these Rules.

(b) After a proceeding under these Rules is filed with the Supreme Court of Georgia, all evidentiary and motions hearings shall be open to the public and all documents and pleadings filed of record shall be public documents, unless the Special Master or the Supreme Court of Georgia orders otherwise.

(c) Nothing in these Rules shall prohibit the complainant, respondent, or a third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court of Georgia or a Special Master in proceedings under these Rules.

(d) The Office of the General Counsel of the State Bar of Georgia or the State Disciplinary Board may reveal or authorize disclosure of information that would otherwise be confidential under this Rule under the following circumstances:

(1) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board, the State Disciplinary Review Board, or any person who is otherwise connected with the disciplinary proceeding in any way, the State Disciplinary Board or its Chair or his designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.

(2) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.

(3) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.

(4) A complainant and/or lawyer representing the complainant shall be notified of the status or disposition of the complaint.

(5) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

(e) The Office of the General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:

(1) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;

(2) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;

(3) The Judicial Nominating Commission or the comparable body in other jurisdictions;

(4) The Lawyer Assistance Program or the comparable body in other jurisdictions;

(5) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;

(6) The Judicial Qualifications Commission or the comparable body in other jurisdictions;

(7) The Executive Committee with the specific approval of the following representatives of the State Disciplinary Board: the Chair, the Vice-Chair, and a third representative designated by the Chair;

(8) The Formal Advisory Opinion Board;

(9) The Consumer Assistance Program;

(10) The General Counsel Overview Committee;

(11) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and

(12) The Unlicensed Practice of Law Department.

(f) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a receiver to administer the files of a lawyer, shall not be confidential under this Rule.

(g) The Office of the General Counsel may reveal confidential information when required by law or court order.

(h) The authority or discretion to reveal confidential information under this Rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar of Georgia or the State Disciplinary Board under Bar Rules or applicable law.

(i) Nothing in this Rule shall prohibit the Office of the General Counsel or the State Disciplinary Board from interviewing potential witnesses or placing the Notice of Investigation out for service by the sheriff or other authorized person.

(j) Members of the Office of the General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent, or third parties but are otherwise

confidential under these Rules by acknowledging the existence and status of the proceeding.

(k) The State Bar of Georgia shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court of Georgia Rules that was confidential when imposed, unless authorized to do so by said prior Rules.

Rule 4-221.2. Burden of Proof; Evidence

(a) In all proceedings under this Chapter, the burden of proof shall be on the State Bar of Georgia, except for proceedings under Rule 4-106.

(b) In all proceedings under this Chapter occurring after a finding of Probable Cause as described in Rule 4-204.4, the procedures and rules of evidence applicable in civil cases under the laws of Georgia shall apply, except that the quantum of proof required of the State Bar shall be clear and convincing evidence.

Rule 4-221.3. Pleadings and Communications Privileged

Pleadings and oral and written statements of members of the Boards, members and designees of the Lawyer Assistance Program, Special Masters, Bar counsel and investigators, complainants, witnesses, and respondents and their counsel made to one another or filed in the record during any investigation, intervention, hearing, or other disciplinary proceeding under this Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.

Rule 4-222. Limitation

(a) No proceeding under Part IV, Chapter 2, shall be brought unless a Memorandum of Grievance or a Consumer Assistance Program referral form has been received at the State Bar of Georgia headquarters or instituted pursuant to these Rules within four years after the commission of the act; provided, however, this limitation shall be tolled during any period of time, not to exceed two years, that the offender or the offense is unknown, the offender's whereabouts are unknown, or the offender's name is removed from the roll of those authorized to practice law in this State.

(b) Referral of a matter to the State Disciplinary Board by the Office of the General Counsel shall occur within 12 months of the receipt of the Memorandum of Grievance at the State Bar of Georgia headquarters or institution of an investigation.

Rule 4-224. Expungement of Records

(a) The record of any grievance against a respondent under these Rules which does not result in discipline against the respondent shall be expunged by the Office of the General Counsel in accordance with the following:

(1) those grievances closed by the Office of the General Counsel after screening pursuant to Rule 4-202 (e) shall be expunged after one year;

(2) those grievances dismissed by the State Disciplinary Board after a Probable Cause investigation pursuant to Rule 4-204 (a) shall be expunged after two years; and

(3) those complaints dismissed by the Supreme Court of Georgia after formal proceedings shall be expunged after two years.

(b) Definition. The term "expunge" shall mean that all records or other evidence of the existence of the complaint shall be destroyed.

(c) Effect of Expungement. After a file has been expunged, any response to an inquiry requiring a reference to the matter shall state that any record of such matter has been expunged and, in addition, shall state that no inference adverse to the respondent is to be drawn on the basis of the incident in question. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that the grievance or formal complaint was dismissed and thereafter expunged.

(d) Retention of Records. Upon application to the State Disciplinary Board by the Office of the General Counsel, for good cause shown, with notice to the respondent and an opportunity to be heard, records that would otherwise be expunged under this Rule may be retained for such additional period of time not exceeding three years as the Board deems appropriate. Counsel may seek a further

extension of the period for which retention of the records is authorized whenever a previous application has been granted for the maximum period permitted hereunder.

(e) A lawyer may respond in the negative when asked if there are any complaints against the lawyer if the matter has been expunged pursuant to this Rule. Before making a negative response to any such inquiry, the lawyer shall confirm that the record was expunged and shall not presume that any matter has been expunged.

(f) A lawyer may respond in the negative when asked if he has ever been professionally disciplined or determined to have violated any professional disciplinary rules if all grievances filed against the lawyer have either been referred to the Consumer Assistance Program, dismissed, or dismissed with a letter of instruction.

Rule 4-226. Immunity

The Supreme Court of Georgia recognizes the disciplinary proceedings of the State Bar of Georgia to be judicial and quasi-judicial in nature and within the Court's regulatory function, and in connection with such disciplinary proceedings, members of the State Disciplinary Boards, the Coordinating Special Master, Special Masters, Bar counsel, special prosecutors, investigators, and staff are entitled to those immunities customarily afforded to persons so participating in judicial and quasi-judicial proceedings or engaged in such regulatory activities.

Rule 4-227. Petitions for Voluntary Discipline

(a) A Petition for Voluntary Discipline shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline.

(b) Prior to the issuance of a formal complaint, a respondent may submit a Petition for Voluntary Discipline seeking any level of discipline authorized under these Rules.

(1) Those petitions seeking confidential discipline shall be served on the Office of the General Counsel and assigned to a member of the State

Disciplinary Board. The State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Rule 4-203 (7).

(2) Those petitions seeking public discipline shall be filed directly with the Clerk of the Supreme Court of Georgia. The Office of the General Counsel shall have 30 days within which to file a response. The Court shall issue an appropriate order.

(c) After the issuance of a formal complaint a respondent may submit a Petition for Voluntary Discipline seeking any level of discipline authorized under these Rules.

(1) The petition shall be filed with the Clerk of the State Disciplinary Boards at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. The Special Master shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefor. The Office of the General Counsel shall serve a copy of its response upon the respondent.

(2) The Special Master shall consider the petition, the State Bar of Georgia's response, and the record as it then exists and may accept or reject the Petition for Voluntary Discipline.

(3) The Special Master may reject a petition for such cause or causes as seem appropriate to the Special Master. Such causes may include but are not limited to a finding that:

(i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline;

(ii) the petition fails to request appropriate discipline;

(iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;

(iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

(4) The Special Master's decision to reject a Petition for Voluntary Discipline does not preclude the filing of a subsequent petition and is not subject to review by the Supreme Court of Georgia. If the Special Master rejects a Petition for Voluntary Discipline, the disciplinary case shall proceed as provided by these Rules.

(5) The Special Master may accept the Petition for Voluntary Discipline by entering a report making findings of fact and conclusions of law and delivering same to the Clerk of the State Disciplinary Boards. The Clerk of the State Disciplinary Boards shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Court shall issue an appropriate order.

(6) Pursuant to Rule 4-210 (e), the Special Master may, in his discretion, extend any of the time limits in these Rules in order to adequately consider a Petition for Voluntary Discipline.

Rule 4-228. Receiverships

(a) Definitions.

Absent Lawyer: A member of the State Bar of Georgia (or a Domestic or Foreign lawyer authorized to practice law in Georgia) who has disappeared, died, been disbarred, disciplined or incarcerated, become so impaired as to be unable to properly represent clients, or who poses such a substantial threat of harm to clients or the public that it is necessary for the Supreme Court of Georgia to appoint a receiver.

(b) Appointment of Receiver.

(1) Upon a final determination by the Supreme Court of Georgia, on a petition filed by the State Bar of Georgia, that a lawyer has become an absent lawyer, and that no partner, associate, or other appropriate

representative is available to notify his 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 lawyer's files and records. Such receiver shall review the files, notify the absent lawyer's clients and take such steps as seem indicated to protect the interests of the clients and the public. A motion for reconsideration may be taken from the issuance or denial of such protective order by the respondent, his partners, associates, or legal representatives or by the State Bar of Georgia.

(2) If the receiver should encounter, or anticipate, situations or issues not covered by the order of appointment, including but not limited to, those concerning proper procedure and scope of authority, the receiver may petition the Supreme Court of Georgia for such further order or orders as may be necessary or appropriate to address the situation or issue so encountered or anticipated.

(3) The receiver shall be entitled to release to each client the papers, money, or other property to which the client is entitled. Before releasing the property, the receiver may require a receipt from the client for the property.

(c) Applicability of Lawyer-Client Rules.

(1) Confidentiality. The receiver shall not be permitted to disclose any information contained in the files and records in his care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia or, upon application, by order of the Supreme Court of Georgia.

(2) Lawyer-Client Relationship; Privilege. The receiver relationship standing alone does not create a lawyer-client relationship between the receiver and the clients of the absent lawyer. However, the lawyer-client privilege shall apply to communications by or between the receiver and the clients of the absent lawyer to the same extent as it would have applied to communications by or to the absent lawyer.

(d) Trust Account.

(1) If after appointment the receiver should determine that the absent lawyer maintained one or more trust accounts and that there are no provisions extant that would allow the clients, or other appropriate entities, to receive from the accounts the funds to which they are entitled, the receiver may petition the Supreme Court of Georgia or its designee for an order extending the scope of the receivership to include the management of the said trust account or accounts. In the event the scope of the receivership is extended to include the management of the trust account or accounts, the receiver shall file quarterly with the Supreme Court of Georgia or its designee a report showing the activity in and status of said accounts.

(2) Service on a bank or financial institution of a copy of the order extending the scope of the receivership to include management of the trust account or accounts shall operate as a modification of any agreement of deposit among such bank or financial institution, the absent lawyer and any other party to the account so as to make the receiver a necessary signatory on any trust account maintained by the absent lawyer with such bank or financial institution. The Supreme Court of Georgia or its designee, on application by the receiver, may order that the receiver shall be sole signatory on any such account to the extent necessary for the purposes of these Rules and may direct the disposition and distribution of client and other funds.

(3) In determining ownership of funds in the trust accounts, including by subrogation or indemnification, the receiver should act as a reasonably prudent lawyer maintaining a client trust account. The receiver may (i) rely on a certification of ownership issued by an auditor employed by the receiver; or (ii) interplead any funds of questionable ownership into the appropriate Superior Court; or (iii) proceed under the terms of the Disposition of Unclaimed Property Act (OCGA § 44-12-190 et seq.). If the absent lawyer's trust account does not contain sufficient funds to meet known client balances, the receiver may disburse funds on a pro rata basis.

(e) Payment of Expenses of Receiver.

(1) The receiver shall be entitled to reimbursement for actual and reasonable costs incurred by the receiver for expenses, including, but not limited to, (i) the actual and reasonable costs associated with the

employment of accountants, auditors, and bookkeepers as necessary to determine the source and ownership of funds held in the absent lawyer's trust account, and (ii) reasonable costs of secretarial, postage, bond premiums, and moving and storage expenses associated with carrying out the receiver's duties. Application for allowance of costs and expenses shall be made by affidavit to the Supreme Court of Georgia, or its designee, who may determine the amount of the reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the Supreme Court of Georgia or its designee. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be paid to the receiver by the State Bar of Georgia. The State Bar of Georgia may seek from a court of competent jurisdiction a judgment against the absent lawyer or his or her estate in an amount equal to the amount paid by the State Bar of Georgia to the receiver. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be considered as prima facie evidence of the fairness of the amount, and the burden of proof shall shift to the absent lawyer or his estate to prove otherwise.

(2) The provision of paragraph (e) (1) above shall apply to all receivers serving on the effective date of this Rule and thereafter.

(f) Receiver-Client Relationship. With full disclosure and the informed consent, as defined in Rule 1.0 (l), of any client of the absent lawyer, the receiver may, but need not, accept employment to complete any legal matter. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver.

(g) Unclaimed Files.

(1) If upon completion of the receivership there are files belonging to the clients of the absent lawyer that have not been claimed, the receiver shall deliver them to the State Bar of Georgia. The State Bar of Georgia shall store the files for six years, after which time the State Bar of Georgia may exercise its discretion in maintaining or destroying the files.

(2) If the receiver determines that an unclaimed file contains a Last Will and Testament, the receiver may, but shall not be required to do so, file

said Last Will and Testament in the office of the Probate Court in such county as to the receiver may seem appropriate.

(h) Professional Liability Insurance. Only lawyers who maintain errors and omissions insurance, or other appropriate insurance, may be appointed to the position of receiver.

(i) Requirement of Bond. The Supreme Court of Georgia or its designee may require the receiver to post bond conditioned upon the faithful performance of his duties.

(j) Immunity.

(1) The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and the appointed receiver to be within the Court's regulatory function, and being regulatory in nature, the State Bar of Georgia and the receiver are entitled to that immunity customarily afforded to court-appointed receivers.

(2) The immunity granted in paragraph (j) (1) above shall not apply if the receiver is employed by a client of the absent lawyer to continue the representation.

(k) Service. Service under this Rule may be perfected under Rule 4-203.1.

APPENDIX
COMPOSITION OF THE STATE DISCIPLINARY BOARD
INTERIM PROVISIONS

Under current Rules, the Investigative Panel includes two ex officio members, twenty-two members of the State Bar of Georgia (two from each of the ten state judicial districts and two at large), and six nonlawyers. Under amended Rule 4-201 (b), the State Disciplinary Board will consist of two ex officio members, twelve members of the State Bar of Georgia (four from each of the three federal judicial districts), and four nonlawyers. The provisions of this Appendix are to provide for an orderly transition of the Investigative Panel to the State Disciplinary Board and to permit persons previously appointed to the Investigative Panel to serve on the State Disciplinary Board until the expiration of their terms of appointment.

(a) The Investigative Panel shall continue as presently constituted through June 30, 2018.

(b) Beginning on July 1, 2018, and continuing through June 30, 2019, the State Disciplinary Board shall consist of:

(1) The President-elect of the State Bar of Georgia;

(2) The President-elect of the Young Lawyers Division of the State Bar of Georgia;

(3) Eight members of the State Bar of Georgia, appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2019, two from the 8th Judicial District, two from the 9th Judicial District, two from the 10th Judicial District, and two at large;

(4) Seven members of the State Bar of Georgia, appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020, one from the 4th Judicial District, two from the 5th Judicial District, two from the 6th Judicial District, and two from the 7th Judicial District;

(5) Two nonlawyers appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2019;

(6) Two nonlawyers appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020;

(7) Two members of the State Bar of Georgia from the Northern District of Georgia, to be appointed for a term of three years by the Supreme Court of

Georgia; and

(8) Two members of the State Bar of Georgia from the Southern District of Georgia, to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors.

(c) Beginning on July 1, 2019, and continuing through June 30, 2020, the State Disciplinary Board shall consist of:

(1) The President-elect of the State Bar of Georgia;

(2) The President-elect of the Young Lawyers Division of the State Bar of Georgia;

(3) Seven members of the State Bar of Georgia, appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020, one from the 4th Judicial District, two from the 5th Judicial District, two from the 6th Judicial District, and two from the 7th Judicial District;

(4) Two nonlawyers appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020;

(5) Four members of the State Bar of Georgia, previously appointed under provisions (b) (7) and (b) (8) of this Appendix;

(6) Two members of the State Bar of Georgia from the Middle District of Georgia, to be appointed for a term of three years by the Supreme Court of Georgia;

(7) Two members of the State Bar of Georgia from the Northern District of Georgia, to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors;

(8) One nonlawyer to be appointed for a term of three years by the Supreme Court of Georgia; and

(9) One nonlawyer to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors.

(d) Amended Rule 4-201 (b) shall become effective on July 1, 2020, at which time the State Disciplinary Board shall consist of:

(1) The President-elect of the State Bar of Georgia;

(2) The President-elect of the Young Lawyers Division of the State Bar of Georgia;

(3) Eight members of the State Bar of Georgia, previously appointed under provisions (b) (7), (b) (8), (c) (6), and (c) (7) of this Appendix;

(4) Two nonlawyers, previously appointed under provisions (c) (8) and (c) (9) of this Appendix;

(5) Two members of the State Bar of Georgia from the Southern District of Georgia, to be appointed for a term of three years by the Supreme Court of

Georgia;

(6) Two members of the State Bar of Georgia from the Middle District of Georgia, to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors;

(7) One nonlawyer to be appointed for a term of three years by the Supreme Court of Georgia; and

(8) One nonlawyer to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors.

(e) Beginning on July 1, 2018, and continuing through June 30, 2020, the President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia shall serve only during their term of office, shall serve as members ex officio, and shall not increase the quorum requirement.

(f) Beginning on July 1, 2018, and continuing through June 30, 2020, whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(g) Beginning on July 1, 2018, and continuing through June 30, 2020, the State Disciplinary Board shall remove a member for failure to attend meetings of the State Disciplinary Board or for other good cause, and the seat of a member so removed shall be filled as provided in provision (f) of this Appendix.

(h) Beginning on July 1, 2018, and continuing through June 30, 2020, at the first meeting of the State Disciplinary Board following the Annual Meeting of the State Bar of Georgia, the State Disciplinary Board shall elect a Chair and Vice-Chair.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta June 15, 2017

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2017-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part I – Creation and Organization, Chapter 5, Rule 1-501 (License Fees), Rule 1-501.1 (License Fees – Late Fee), Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law); and Chapter 4, Rule 4-402 (The Formal Advisory Opinion Board); be amended effective June 15, 2017, to read as follows:

PART I
CREATION AND ORGANIZATION

CHAPTER 5
FINANCE

Rule 1-501. License Fees

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of Georgia as a result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall automatically be reinstated to the status of member in good standing, except as provided in subsection (b) of this Rule.

(b) In the event a member of the State Bar of Georgia is delinquent in the payment of any license fee, late fee, assessment, reinstatement fee, or cost, charge or penalty incurred by the State Bar of Georgia as a result of a cancelled or dishonored payment of any type or kind and of any nature for a period of one year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(1) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(2) provision to the membership section of the State Bar of Georgia of the following:

(i) a certificate from the Office of the General Counsel of the State Bar of Georgia that the suspended member is not presently subject to any disciplinary procedure;

(ii) a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education;

(iii) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(3) payment to the State Bar of Georgia of a non-waivable reinstatement fee as follows:

(i) $150 for the first reinstatement paid within the first year of suspension, plus $150 for each year of suspension thereafter up to a total of five years;

(ii) $250 for the second reinstatement paid within the first year of suspension, plus $250 for each year of suspension thereafter up to a total of five years;

(iii) $500 for the third reinstatement paid within the first year of suspension, plus $500 for each year of suspension thereafter up to a total of five years; or

(iv) $750 for each subsequent reinstatement paid within the first year of suspension, plus $750 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

A member who has been suspended pursuant to this Rule may submit in writing to the Executive Committee a request for an extension of time to complete any of the requirements contained in subsection (b). The request must state with particularity the reasons and need for the extension. The Executive Committee, upon sufficient and reasonable cause, may grant such an extension.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. The terminated member shall not be entitled to a hearing as set out in subsection (d) below. The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b) (3) above plus an additional $750 as a readmission fee to the State Bar of Georgia.

(d) Prior to suspending a member under subsection (b) above, the State Bar of Georgia shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership

records. It shall specify the years for which the license fee is delinquent and state that unless either the fee and all penalties related thereto are paid within 60 days or a hearing to establish reasonable cause is requested within 60 days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within 90 days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it, and a copy thereof shall be furnished to the Executive Committee. The presiding member or Special Master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship, short of adjudicated bankruptcy, shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar of Georgia. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court of Georgia. The Executive Committee may delegate to a Special Master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the

Special Master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the respondent attorney. The respondent attorney may file with the Court any written exceptions (supported by the written argument) said respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee by service on the General Counsel within 20 days of the date that the findings were served on the respondent attorney. Upon the filing of exceptions by the respondent attorney, the Executive Committee shall within 20 days of said filing file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court of Georgia. The Supreme Court of Georgia may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Supreme Court of Georgia may grant oral argument on any exception filed with it upon application for such argument by the respondent attorney or the Executive Committee. The Supreme Court of Georgia shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgment. A copy of the Supreme Court of Georgia's judgment shall be transmitted to the Executive Committee and to the respondent attorney by the Supreme Court of Georgia.

Within 30 days after a final judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of Georgia take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member

of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia.

Rule 1-501.1. License Fees – Late Fee

Any member who has not paid his or her license fee for the State Bar of Georgia on or before August 1 shall be penalized in the amount of $75, which will be added to the member's outstanding license fee. Any member who has not paid his or her license fee on or after January 1 of each year shall be penalized an additional amount of $100 for a total of $175, which will be added to the member's outstanding license fee.

A member may submit a request for waiver of any late fees in writing to the Executive Committee of the State Bar of Georgia. Upon good cause shown, any late fee or penalty imposed by this Rule may be waived by a majority vote of the Executive Committee.

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct

Rule 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURIS-DICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (e) (2) or (e) (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of

that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in subsections (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision Of Legal Services Following Determination Of Major Disaster, may provide legal services in this state to the extent allowed by said Rules.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice

Rule, may provide legal services in this state to the extent allowed by said Rules.

(j) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rules.

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rules.

(l) Any domestic or foreign lawyer who has been admitted to the practice of law in Georgia pro hac vice, pursuant to the Uniform Rules of the various classes of courts in Georgia, shall pay all required fees and costs annually as set forth in those Rules. Failure to pay the annual fee by January 15 of each year of admission pro hac vice will result in a late fee of $100 that must be paid no later than March 1 of that year. Failure to pay the annual fees may result in disciplinary action, and said lawyer may be subject to prosecution under the unauthorized practice of law statutes of this state.

The maximum penalty for a violation of this Rule is disbarment.

CHAPTER 4
ADVISORY OPINIONS

Rule 4-402. The Formal Advisory Opinion Board

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be

selected as follows:

(1) Five members of the State Bar of Georgia at-large;

(2) One member of the Georgia Trial Lawyers Association;

(3) One member of the Georgia Defense Lawyers Association;

(4) One member of the Georgia Association of Criminal Defense Lawyers;

(5) One member of the Young Lawyers Division of the State Bar of Georgia;

(6) One member of the Georgia District Attorneys Association;

(7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;

(8) One member of the Investigative Panel of the State Disciplinary Board;

(9) One member of the Review Panel of the State Disciplinary Board; and

(10) One member of the Executive Committee of the State Bar of Georgia.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board and the Executive Committee shall serve for a term of one year;

(3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar of Georgia following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Defense Lawyers Association, the Georgia Association of Criminal Defense Lawyers, the Young Lawyers Division of the State Bar of Georgia and the Georgia District Attorneys Association) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large Members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial members from the American Bar Association Accredited Law Schools shall be appointed to one-year terms; two of the initial law school members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems it appropriate to reappoint a member for one or more additional terms.

(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta April 13, 2017

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2017-2 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that new Part XVI – Institute of Continuing Legal Education of the State Bar of Georgia, be approved effective April 13, 2017, to read as follows:

PART XVI

INSTITUTE OF CONTINUING LEGAL EDUCATION OF THE STATE BAR OF GEORGIA

Rule 16-101. Preamble and Establishment of the Institute of Continuing Legal Education.

Pursuant to an agreement executed on December 30, 2016, between the Institute of Continuing Legal Education in Georgia, an unincorporated Georgia nonprofit association, and the State Bar of Georgia Foundation, Inc. a Georgia nonprofit corporation, the Institute of Continuing Legal Education of the State Bar of Georgia ("ICLE") is hereby established as a program of the State Bar of Georgia. The purpose of ICLE is to promote a well-organized, properly planned, and adequately supported program of continuing legal education by which members of the legal profession may enhance their skills, keep abreast of developments in the law, ethics, and professionalism, engage in the study and research of the law, and disseminate the knowledge thus obtained.

Rule 16-102. ICLE Board.

(a) ICLE shall be overseen by a Board composed of 13 members, all of whom shall be members of the State Bar of Georgia as follows: the Immediate Past President of the State Bar of Georgia, seven members of the State Bar of Georgia appointed by the State Bar of Georgia President with the approval of the State Bar of Georgia Board of Governors, and one member from each of the American Bar Association ("ABA")accredited law schools operating in the State appointed by the dean of the respective law school. Each Board member shall serve for three years with the terms staggered so that the terms of approximately one-third of the members expire each year. No State Bar of Georgia member may serve more than two full terms except that such a member appointed to fill a vacancy may fill the unexpired term of the member replaced in addition to two full terms, if reappointed. There shall be no term limits for the ABA accredited law school members.

(b) All members of the predecessor ICLE Board of Trustees will be eligible for appointment to serve on the ICLE Board described herein. The State Bar of Georgia President shall appoint seven members to the ICLE Board in staggered terms. Each of the deans of the ABA accredited law schools operating in Georgia shall name one Board member to serve a three-year term. Each year thereafter, the incoming Bar President and the deans of the ABA accredited law schools shall appoint or reappoint members as necessary to fill the seats of those members with expiring terms. The Immediate Past President of the State Bar of Georgia shall serve a one-year term.

(c) The Board shall meet in conjunction with each regularly scheduled meeting of the State Bar of Georgia Board of Governors. The Chair or any seven members of the Board, which must include at least one ABA accredited law school member, may call a special meeting of the Board at a time and place convenient to the Board and upon conditions described in the Internal Operating Procedures of the Board.

(d) At the first meeting after July 1 of each year, the Board shall elect a Chair, Vice-Chair, and such other officers, as it deems necessary. No Board member may serve as Chair for more than two consecutive terms.

(e) Seven Board members, including one ABA accredited law school member, shall constitute a quorum of the Board. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Board. The Director of ICLE shall attend meetings of the Board and shall serve as Secretary to the Board but shall have no vote.

(f) No compensation shall be paid to members of the ICLE Board for their service.

(g) A Board member may be removed from the Board for failure to attend meetings or for other good cause as defined in the Internal Operating Procedures of the Board. The vacancy shall be filled by the original appointing authority.

Rule 16-103. Powers and Duties of the ICLE Board.

The ICLE Board shall have the following powers and duties:

(a) to prepare a proposed budget for the annual operation of ICLE;

(b) to develop policies and Internal Operating Procedures for the operation of the Board;

(c) to recommend topics and speakers to the Director for continuing legal education ("CLE") programs to be sponsored by the State Bar of Georgia or its Sections;

(d) to review qualifications for proposed speakers;

(e) to encourage CLE programming by the Sections of the State Bar of Georgia;

(f) to review evaluations from CLE programs; and

(g) to submit an annual report to the State Bar of Georgia Board of Governors describing ICLE's activity for the year, including programs presented, attendance, and income generated from each program.

Rule 16-104. Director.

The Executive Director of the State Bar of Georgia, with the advice and consent of the ICLE Board, shall hire a Director for ICLE and shall serve as the immediate supervisor of the Director. The Director shall oversee the day-to-day operations of ICLE.

Rule 16-105. Finances.

(a) ICLE shall fund its operations from the fees that it charges for CLE programs and may use any of its surplus funds to fund the purpose of ICLE. Its funds and accounts shall be maintained by the State Bar of Georgia separately from other funds or accounts of the State Bar of Georgia. The State Bar of Georgia, after consultation with the ICLE Board, may charge ICLE for its costs in housing and administering ICLE as determined by the State Bar of Georgia Board of Governors.

(b) The Board shall provide a financial report to the State Bar of Georgia Board of Governors at each of its meetings and shall provide an audit report to the State Bar of Georgia Board of Governors at the Annual Meeting each year.

Rule 16-106. Staff Liaison.

The Office of the General Counsel for the State Bar of Georgia shall serve as legal advisor for the Board and for the ICLE program.

I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta November 2, 2016

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2016-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part I – Creation and Organization, Chapter 2, Rule 1-203 (Practice By Active Members; Nonresidents); and Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 1.7 – Conflict of Interest: General Rule; Rule 4.4 (Respect for Rights of Third Persons), and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants); be amended effective November 2, 2016 to read as follows:

PART I
CREATION AND ORGANIZATION

CHAPTER 2
MEMBERSHIP

Rule 1-203 Practice By Active Members; Nonresidents

No person shall practice law in this state unless such person is an active member of the State Bar of Georgia in good standing, except as provided below:

(a) A person who is not a member of the State Bar of Georgia, but who is licensed to practice in a state or states other than Georgia, and is in good standing in all states in which such person is licensed, may be permitted to appear in the courts of this state in isolated cases in the discretion of the judge of such court; or

(b) A person who is not a member of the State Bar of Georgia, but who is licensed to practice in a state or states other than Georgia, and is in good standing in all states in which such person is licensed, may be permitted to appear in the courts of this state if such person:

(1) is enrolled in a full time graduate degree program at an accredited law school in this state; and

(2) is under the supervision of a resident attorney; and

(3) limits his or her practice to the appearance in the courts of this state to the extent necessary to carry out the responsibilities of such graduate degree program.

(c) A person who is admitted to the State Bar of Georgia as a foreign law consultant pursuant to Part E of the Rules Governing Admission to the Practice of Law as adopted by the Supreme Court of Georgia, www.gasupreme.us, may render legal services in the state of Georgia solely with respect to the laws of the foreign country (i.e., a country other than the United States of America, its possessions and territories) where such person is admitted to practice, to the extent provided by and in strict compliance with the provisions of Part D of the Rules Governing Admission to the Practice of Law, but shall not otherwise render legal services in this state.

(d) Persons who are authorized to practice law in this state are hereby authorized to practice law as sole proprietorships or as partners, shareholders, or members of:

(1) partnerships under OCGA § 14-8-1 et seq.; or

(2) limited liability partnerships under OCGA § 14-8-1 et seq.; or

(3) professional corporations under OCGA § 14-7-1 et seq.; or

(4) professional associations under OCGA § 14-10-1 et seq.; or

(5) limited liability companies under OCGA § 14-11-100 et seq.

(e) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule.

(f) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rules.

(g) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rules.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision of Legal Services Following Determination of Major Disaster.

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102 Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct

Rule 1.7 CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

(b) If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent, confirmed in writing, to the representation after:

(1) consultation with the lawyer, pursuant to Rule 1.0 (c);

(2) having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation; and

(3) having been given the opportunity to consult with independent counsel.

(c) Client informed consent is not permissible if the representation:

(1) is prohibited by law or these Rules;

(2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or

(3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

(d) Though otherwise subject to the provisions of this Rule, a part-time prosecutor who engages in the private practice of law may

represent a private client adverse to the state or other political subdivision that the lawyer represents as a part-time prosecutor, except with regard to matters for which the part-time prosecutor had or has prosecutorial authority or responsibility.

The maximum penalty for a violation of this Rule is disbarment.

Comment

Loyalty to a Client

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. If an impermissible conflict of interest exists before representation is undertaken the representation should be declined. The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

[2] Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (a) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

[3] If an impermissible conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. *See Rule 1.16.* Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, *see Comment 4 to Rule 1.3 and Scope*.

[4] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. Paragraph (d) states an exception to that general rule. A part-time prosecutor does not automatically have a conflict of interest in representing a private client who is adverse to the state or other political subdivision (such as a city or county) that the lawyer represents as a part-time prosecutor, although it is possible that in a particular case, the part-time prosecutor could have a conflict of interest under paragraph (a).

Simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require informed consent of the respective clients.

Consultation and Informed Consent

[5] A client may give informed consent to representation notwithstanding a conflict. However when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client’s informed consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain informed consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to give informed consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to give informed consent. If informed consent is withdrawn, the lawyer should consult Rule 1.9 and Rule 1.16.

[5A] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. *See Rule 1.0(b). See also Rule 1.0(s)* (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed

consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. *See Rule 1.0(b)*. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Lawyer's Interests

[6] The lawyer's personal or economic interests should not be permitted to have an adverse effect on representation of a client. *See Rules 1.1 and 1.5*. If the propriety of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation

[7] Paragraph (c)(2) prohibits representation of opposing parties in the same or a similar proceeding including simultaneous representation of parties whose interests may conflict, such as co-plaintiffs or co-defendants. An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal, the requirements of paragraph (b) are met, and consent is not prohibited by paragraph (c).

[8] Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients give informed consent as required by paragraph (b). By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government entity is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

[9] A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases while they are pending in different trial courts, but it may be improper to do so should one or more of the cases reach the appellate court.

Interest of Person Paying for a Lawyer's Service

[10] A lawyer may be paid from a source other than the client, if the client is informed of that fact and gives informed consent and the arrangement does not compromise the lawyer's duty of loyalty to the client. *See Rule 1.8(f)*. For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients give informed consent and the arrangement ensures the lawyer's professional independence.

Non-litigation Conflicts

[11] Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for material and adverse effect include the duration and extent of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise.

[12] In a negotiation common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

[13] Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

[14] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict Charged by an Opposing Party

[15] Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has

neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call into question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. *See Scope*.

[16] For the purposes of 1.7 (d), part-time prosecutors include but are not limited to part-time solicitors-general, part-time assistant solicitors-general, part-time probate court prosecutors, part-time magistrate court prosecutors, part-time municipal court prosecutors, special assistant attorneys general, part-time juvenile court prosecutors and prosecutors *pro tem*.

[17] Pragmatic considerations require that the rules treat a lawyer serving as a part-time prosecutor differently. See *Thompson v. State*, 254 Ga. 393, 396-397 (1985).

Special Considerations in Common Representation

[18] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. *See Rule 1.4*. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

Rule 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships.

[2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an e-mail or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of

these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, ‘‘document or electronically stored information’’ includes, in addition to paper documents, e-mail and other forms of electronically stored information, including embedded data (commonly referred to as “metadata”), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

Rule 5.3 RESPONSIBILITIES REGARDING NONLAYWER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer;

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which

the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) a lawyer shall not allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer to:

(1) represent himself or herself as a lawyer or person with similar status; or

(2) provide any legal advice to the clients of the lawyer either in person, by telephone or in writing.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Georgia Rules of Professional Conduct. *See Comment [1] to Rule 5.1.* Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Georgia Rules

of Professional Conduct if engaged in by a lawyer.

[3] The prohibitions of paragraph (d) are designed to prevent the unauthorized practice of law in a law office by a person who has been suspended or disbarred. A lawyer who allows a suspended or disbarred lawyer to work in a law office must exercise special care to ensure that the former lawyer complies with these Rules, and that clients of the firm understand the former lawyer's role.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta May 5, 2016

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2015-3 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part I – Creation and Organization, Chapter 2, Rule 1-204 (Good Standing); Chapter 5, Rule 1-501 (License Fees); Part VII – Lawyer Assistance Program, Chapter 2, Rule 7-202 (Volunteers); and Chapter 3, Rule 7-301 (Contacts Generally), be amended effective May 5, 2016 to read as follows:

PART I
CREATION AND ORGANIZATION

CHAPTER 2
MEMBERSHIP

Rule 1-204. Good Standing.

No lawyer shall be deemed a member in good standing:

(a) while delinquent after September 1 of any year for nonpayment of the annual license fee and any costs or fees of any type as prescribed in Chapter 5, Rule 1-501 (a)-(c);

(b) while suspended for disciplinary reasons;

(c) while disbarred;

(d) while suspended for failure to comply with continuing legal education requirements; or

(e) while in violation of Rule 1-209 for failure to pay child support obligations.

CHAPTER 5
FINANCE

Rule 1-501. License Fees.

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall automatically be reinstated to the status of member in good standing, except as provided in subsection (b) of this Rule.

(b) In the event a member of the State Bar of Georgia is delinquent in the payment of any license fee, late fee, assessment, reinstatement fee, or cost, charge or penalty incurred by the State Bar of Georgia as the result of a cancelled or dishonored payment of any type or kind and of any nature for a period of one year, the member shall be automatically suspended and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(1) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(2) provision to the membership section of the State Bar of Georgia of the following:

(i) a certificate from the Office of the General Counsel of the State Bar of Georgia that the suspended member is not presently subject to any disciplinary procedure;

(ii) a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education;

(iii) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(3) payment to the State Bar of Georgia of a non-waivable reinstatement fee as follows:

(i) $150.00 for the first reinstatement paid within the first year of suspension, plus $150.00 for each year of suspension thereafter up to a total of five years;

(ii) $250.00 for the second reinstatement paid within the first year of suspension, plus $250.00 for each year of suspension thereafter up to a total of five years;

(iii) $500.00 for the third reinstatement paid within the first year of suspension, plus $500.00 for each year of suspension thereafter up to a total of five years; or

(iv) $750.00 for each subsequent reinstatement paid within the first year of suspension, plus $750.00 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. The terminated member shall not be entitled to a hearing as set out in subsection (d) below. The terminated member shall be required to apply to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b)

(3) above plus an additional $750.00 as a readmission fee to the State Bar of Georgia.

(d) Prior to suspending a member under subsection (b) above, the State Bar of Georgia shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that unless either the fee and all penalties related thereto are paid within 60 days or a hearing to establish reasonable cause is requested within 60 days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within 90 days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it, and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee (1) shall make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship short of adjudicated bankruptcy shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar of Georgia. Alleged errors of law in the proceedings or findings of the

Executive Committee or its delegate shall be reviewed by the Supreme Court of Georgia. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the respondent attorney. The respondent attorney may file with the Court any written exceptions (supported by the written argument) said respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee by service on the General Counsel within 20 days of the date that the findings were served on the respondent attorney. Upon the filing of exceptions by the respondent attorney, the Executive Committee shall within 20 days of said filing, file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court of Georgia. The Court may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Court may grant oral argument on any exception filed with it upon application for such argument by the respondent attorney or the Executive Committee. The Court shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgment. A copy of the Court's judgment shall be transmitted to the Executive Committee and to the respondent attorney by the Court.

Within 30 days after a final judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of Georgia take charge of the files and records of said suspended member and proceed to notify all clients

and take such steps as seem indicated to protect their interests. Any member of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Court.

PART VII
LAWYER ASSISTANCE PROGRAM

CHAPTER 2
GUIDELINES FOR OPERATION

Rule 7-202. Volunteers.

The Committee may establish a network of attorneys and lay persons throughout the state of Georgia who are experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in counseling and intervention programs and services. The Committee may also establish a network of peer-support volunteers who are members of the State Bar of Georgia who are not trained in impairment counseling, treatment or rehabilitation, who can provide support to impaired or potentially impaired attorneys by sharing their life experiences in dealing with (a) mental or emotional health problems, (b) substance abuse problems or (c) other similar problems that can adversely affect the quality of attorneys' lives and their ability to function effectively as lawyers.

CHAPTER 3
PROCEDURES

Rule 7-301. Contacts Generally.

The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-202, or by any

other procedure through which appropriate counseling or assistance to such attorneys may be provided.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta March 3, 2016

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2015-2 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct) – Rule 5.5 (Unauthorized Practice of Law); Part VII – Lawyer Assistance Program, Chapter 3, Rule 7-303 (Confidentiality); Rule 7-305 (Emergency Suspension); and Part X – Clients' Security Fund, Rule 10-103 (Funding), be amended effective March 3, 2016 to read as follows:

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct.

PART FIVE
LAW FIRMS AND ASSOCIATIONS

Rule 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction

that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in

a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision Of Legal Services Following Determination Of Major Disaster, may provide legal services in this state to the extent allowed by said Rule.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice

Rule, may provide legal services in this state to the extent allowed by said Rule.

(j) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rule.

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rule.

The maximum penalty for a violation of this Rule is disbarment.

PART VII
LAWYER ASSISTANCE PROGRAM

CHAPTER 3
PROCEDURES

Rule 7-303. Confidentiality.

Except as provided in this Rule and in Rule 4-104 (b), Rule 4-104 (c), Rule 7-203 and Rule 7-305, all proceedings and records of the Committee, its members, staff, consultants (including without limitation its contractor for clinical services) and other designees, including any information provided to any of them, shall be confidential unless the attorney who has provided the information or caused the record to be created otherwise elects, except that any such person may reveal (i) to police or emergency responders, or any person in imminent danger, information needed to avoid or prevent death or substantial bodily harm, and (ii) information:

(a) which is mandated by statute to be reported;

(b) to respond in any proceeding to allegations of misfeasance concerning the assistance he or she has provided to an impaired attorney as part of a volunteer network established pursuant to Rule 7-202; and

(c) to secure legal advice about his or her compliance with these Rules.

Rule 7-305. Emergency Suspension.

Upon receipt of sufficient evidence demonstrating that an impaired attorney's conduct poses a substantial threat of immediate or irreparable harm to the attorney's clients or the public, or if an impaired attorney refuses to cooperate with the Committee after an authorized intervention or referral, or refuses to take action recommended by the Committee, and said impaired attorney poses a substantial threat to the attorney, the attorney's clients, or the public, the Committee may request that the Office of the General Counsel petition the Supreme Court of Georgia for the suspension of the attorney pursuant to Rule 4-108. All proceedings under this part which occur prior to the filing of a petition in the Supreme Court of Georgia pursuant to this Rule shall remain confidential and shall not be admissible against the attorney before the State Disciplinary Board of the State Bar of Georgia. Information from a designee of the Committee acting as a member of a volunteer network established pursuant to Rule 7-202 shall not constitute "evidence" within the meaning of the Rule.

PART X
CLIENTS' SECURITY FUND

Rule 10-103. Funding.

(a) The State Bar of Georgia shall provide funding for the payment of claims and the costs of administering the Fund. In any year following a year in which the gross aggregate balance of the Fund falls below $1,000,000, the State Bar of Georgia shall assess and collect from each dues-paying member a pro rata share of the difference between the actual Fund balance and $1 million, provided that such assessments shall not exceed $25 in any single year. The aggregate amount paid to claimants from the Fund in any year shall not exceed $500,000. The Board of Governors may from time to time adjust the Fund's minimum aggregate balance, maximum annual

payout, or maximum annual assessment to advance the purposes of the Fund or to preserve the fiscal integrity of the Fund.

(b) All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

(c) No disbursements shall be made from the Fund except by the Board of Trustees.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last written above

SUPREME COURT OF GEORGIA

Atlanta July 9, 2015

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2015-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct) – Rules 1.6 (b) (3) (Confidentiality of Information); 3.5 (c) and (d) and Comment [7] (Impartiality and Decorum of the Tribunal); 7.3 (c) and Comments [2], [3], [7] and [8] (Direct Contact With Prospective Clients); 8.4 (d) (Misconduct); Rule 4-104 (b) and (c) (Mental Incapacity and Substance Abuse); Rule 4-106(f) (Conviction of a Crime; Suspension and Disbarment); Rule 4-110 (i) (Definitions); Rule 4-111 (Audit for Cause); Rule 4-204 (a) (Preliminary Investigation by Investigative Panel – Generally); Rule 4-204.1 (b) (Notice of Investigation); Rule 4-208.3 (b) (Rejection of Notice of Discipline); Rule 4-213 (Evidentiary Hearing); Rule 4-217 (d) (Report of the Special Master to the Review Panel); Rule 4-219 (a) (Judgments and Protective Orders); Rule 4-221 (g) (Procedures); Rule 4-227 (c) (1) (Petitions for Voluntary Discipline); Rule 4-403 (c) and (d) (Formal Advisory Opinions); and Rule 12-107 (b) and (c) (Confidentiality of Proceedings), be amended effective July 9, 2015 to read as follows:

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct.

PART ONE
CLIENT-LAWYER
RELATIONSHIP

Rule 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the court.

(b)

(1) A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

(i) to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;

(ii) to prevent serious injury or death not otherwise covered by subparagraph (i) above;

(iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(iv) to secure legal advice about the lawyer's compliance with these Rules.

(2) In a situation described in paragraph (b) (1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.

(3) Before using or disclosing information pursuant to paragraph (b) (1) (i) or (ii), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.

(c) The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.

(d) The lawyer shall reveal information under paragraph (b) as the applicable law requires.

(e) The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

The maximum penalty for a violation of this Rule is disbarment.

PART THREE
ADVOCATE

Rule 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment.

(d) engage in conduct intended to disrupt a tribunal.

The maximum penalty for a violation of paragraph (a) or paragraph (c) of this Rule is disbarment. The maximum penalty for a violation of paragraph (b) or paragraph (d) of this Rule is a public reprimand.

Comment

[1] Many forms of improper influence upon the tribunal are proscribed by criminal law. All of those are specified in the Georgia Code of Judicial Conduct with which an advocate should be familiar. Attention is also directed to Rule 8.4. Misconduct., which governs other instances of improper conduct by a lawyer/candidate.

[2] If we are to maintain the integrity of the judicial process, it is imperative that an advocate's function be limited to the presentation of evidence and argument, to allow a cause to be decided according to law. The exertion of improper influence is detrimental to that process. Regardless of an advocate's innocent intention, actions which give the appearance of tampering with judicial impartiality are to be avoided. The activity proscribed by this Rule should be observed by the advocate in such a careful manner that there is no appearance of impropriety.

[3A] The Rule with respect to ex parte communications limits direct communications except as may be permitted by law. Thus, court rules or case law must be referred to in order to determine whether certain ex parte communications are legitimate. Ex parte communications may be permitted by statutory authorization.

[3B] A lawyer who obtains a judge's signature on a decree in the absence of the opposing lawyer where certain aspects of the decree are still in dispute

may have violated Rule 3.5. Impartiality and Decorum of the Tribunal., regardless of the lawyer's good intentions or good faith.

[4] A lawyer may communicate as to the merits of the cause with a judge in the course of official proceedings in the case, in writing if the lawyer simultaneously delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer, or orally upon adequate notice to opposing counsel or to the adverse party if the party is not represented by a lawyer.

[5] If the lawyer knowingly instigates or causes another to instigate a communication proscribed by Rule 3.5, Impartiality and Decorum of the Tribunal., a violation may occur.

[6] Direct or indirect communication with a juror during the trial is clearly prohibited. A lawyer may not avoid the proscription of Rule 3.5. Impartiality and Decorum of the Tribunal., by using agents to communicate improperly with jurors. A lawyer may be held responsible if the lawyer was aware of the client's desire to establish contact with jurors and assisted the client in doing so.

[7] A lawyer may on occasion want to communicate with a juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[8] While a lawyer may stand firm against abuse by a judge, the lawyer's actions should avoid reciprocation. Fairness and impartiality of the trial process is strengthened by the lawyer's protection of the record for subsequent review and this preserves the professional integrity of the legal profession by patient firmness.

PART SEVEN
INFORMATION ABOUT LEGAL SERVICES

Rule 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(1) it has been made known to the lawyer that a person does not desire to receive communications from the lawyer;

(2) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

(3) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; or

(4) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

(b) Written communications to a prospective client, other than a close friend, relative, former client or one whom the lawyer reasonably believes is a former client, for the purpose of obtaining professional employment shall be plainly marked "Advertisement" on the face of the envelope and on the top of each page of the written communication in type size no smaller than the largest type size used in the body of the letter.

(c) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client; except that the lawyer may pay for public communications permitted by Rule 7.1 and except as follows:

(1) A lawyer may pay the usual and reasonable fees or dues charged by a lawyer referral service, if the service:

(i) does not engage in conduct that would violate these Rules if engaged in by a lawyer;

(ii) provides an explanation to the prospective client regarding how the lawyers are selected by the service to participate in the service; and

(iii) discloses to the prospective client how many lawyers are participating in the service and that those lawyers have paid the service a fee to participate in the service.

(2) A lawyer may pay the usual and reasonable fees or dues charged by a bar-operated non-profit lawyer referral service, including a fee which is calculated as a percentage of the legal fees earned by the lawyer to whom the service has referred a matter, provided such bar-operated non-profit lawyer referral service meets the following criteria:

(i) the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies that can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

(ii) the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

(iii) the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and

(iv) a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than $100,000 per occurrence and $300,000 in the aggregate.

(3) A lawyer may pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer's services, the lawyer's partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(4) A lawyer may pay for a law practice in accordance with Rule 1.17.

(d) A lawyer shall not solicit professional employment as a private practitioner for the lawyer, a partner or associate through direct personal contact or through live telephone contact, with a nonlawyer who has not sought advice regarding employment of a lawyer.

(e) A lawyer shall not accept employment when the lawyer knows or reasonably should know that the person who seeks to employ the lawyer does so as a result of conduct by any person or organization that would violate these Rules if engaged in by a lawyer.

The maximum penalty for a violation of this Rule is disbarment.

Comment

Direct Personal Contact

[1] There is a potential for abuse inherent in solicitation through direct personal contact by a lawyer of prospective clients known to need legal services. It subjects the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services, and may have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

[2] The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. The potential for abuse inherent in solicitation of prospective clients through personal contact justifies its prohibition, particularly since the direct written contact permitted under paragraph (b) of this Rule offers an alternative means of communicating necessary information to those who may be in need of legal services. Also included in the prohibited types of personal contact are direct, personal contacts through an intermediary and live contact by telephone.

Direct Written Solicitation

[3] Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

[4] Certain narrowly-drawn restrictions on this type of communication are justified by a substantial state interest in facilitating the public's intelligent selection of counsel, including the restrictions of paragraphs (a) (3) and (a) (4) which proscribe direct mailings to persons such as an injured and hospitalized accident victim or the bereaved family of a deceased.

[5] In order to make it clear that the communication is commercial in nature, paragraph (b) requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the traditional exception for contact

with close friends, relatives and former clients is recognized and permits elimination of the disclaimer in direct written contact with these persons.

[6] This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[7] A lawyer is allowed to pay for communications permitted by these Rules, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization may pay to advertise legal services provided under its auspices.

PART EIGHT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 MISCONDUCT

(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:

(1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) be convicted of a felony;

(3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;

(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

(5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;

(6)

(i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;

(ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio, the commission of such act.

(b)

(1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:

(i) a guilty plea;

(ii) a plea of nolo contendere;

(iii) a verdict of guilty; or

(iv) a verdict of guilty but mentally ill.

(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of nolo contendere, a verdict of guilty, or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a) (1), (a) (2) and (a) (3) above.

(d) Rule 8.4 (a) (1) does not apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.

The maximum penalty for a violation of Rule 8.4 (a) (1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4 (a) (2) through (c) is disbarment.

Rule 4-104. Mental Incapacity and Substance Abuse.

(a) Want of a sound mind, senility, habitual intoxication or drug addiction, to the extent of impairing competency as an attorney, when found to exist under the procedure outlined in Part IV, Chapter 2 of these Rules, shall constitute grounds for removing the attorney from the practice of law. Notice of final judgment taking such action shall be given by the Review Panel as provided in Rule 4-220 (a).

(b) Upon a finding by either panel of the State Disciplinary Board that an attorney may be impaired or incapacitated to practice law due to mental incapacity or substance abuse, that panel may, in its sole discretion, make a confidential referral of the matter to the Lawyer Assistance Program for the purposes of confrontation and referral of the attorney to treatment centers and peer support groups. Either panel may, in its discretion, defer disciplinary findings and proceedings based upon the impairment or incapacitation of an attorney pending attempts by the Lawyer Assistance Program to afford the attorney an opportunity to begin recovery. In such situations the Program shall report to the referring panel and Office of the General Counsel concerning the attorney's progress toward recovery.

(c) In the event of a finding by the Supreme Court of Georgia that a lawyer is impaired or incapacitated, the Court may refer the matter to the Lawyer Assistance Program, before or after its entry of judgment under Bar Rules 4-219 or 4-220 (a), so that rehabilitative aid may be provided to the impaired or incapacitated attorney. In such situations the Program shall be authorized to report to the Court, either panel of the State Disciplinary

Board and Office of the General Counsel concerning the attorney's progress toward recovery.

Rule 4-106. Conviction of a Crime; Suspension and Disbarment.

(a) Upon receipt of information or evidence that an attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of nolo contendere or imposition of first offender probation, the Office of the General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.

(b) The petition shall show the date of the verdict or plea and the court in which the respondent was convicted, and shall be served upon the respondent pursuant to Rule 4-203.1.

(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(d) The Coordinating Special Master as provided in Rule 4-209.3 will appoint a Special Master, pursuant to Rule 4-209 (b).

(e) The show cause hearing should be held within 15 days after service of the Petition for Appointment of Special Master upon the respondent or appointment of a Special Master, whichever is later. Within 30 days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia, which shall be empowered to order such discipline as deemed appropriate.

(f) If the Supreme Court of Georgia orders the respondent suspended pending the appeal, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended respondent should:

(1) be disbarred under Rule 8.4; or

(2) be reinstated; or

(3) remain suspended pending retrial as a protection to the public; or

(4) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these Rules.

The Report of the Special Master shall be filed with the Review Panel or the Supreme Court of Georgia as provided hereinafter in Rule 4-217.

(g) For purposes of this Rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea of guilty or plea of nolo contendere or the imposition of first offender treatment shall be prima facie evidence of an infraction of Rule 8.4 of Bar Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

Rule 4-110. Definitions.

(a) Respondent: A person whose conduct is the subject of any disciplinary investigation or proceeding.

(b) Confidential Proceedings: Any proceeding under these Rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) Public Proceedings: Any proceeding under these Rules which has been filed with the Supreme Court of Georgia.

(d) Grievance/Memorandum of Grievance: An allegation of unethical conduct filed against an attorney.

(e) Probable Cause: A finding by the Investigative Panel that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the Bar Rules.

(f) Petition for Voluntary Surrender of License: A Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this State. A voluntary surrender of license is tantamount to disbarment.

(g) He, Him or His: Generic pronouns including both male and female.

(h) Attorney: A member of the State Bar of Georgia or one authorized by law to practice law in the State of Georgia.

(i) Notice of Discipline: A Notice by the Investigative Panel that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

Rule 4-111. Audit for Cause.

Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause with the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia. Before approval can be granted, the lawyer shall be given notice that approval is being sought and be given an opportunity to appear and be heard. The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the persons giving the approval. The State Disciplinary Board must inform the person being audited that the audit is an Audit for Cause.

CHAPTER 2
DISCIPLINARY PROCEEDINGS

Rule 4-204. Preliminary Investigation by Investigative Panel – Generally.

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of its members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these Rules, it shall:

(1) issue a letter of admonition;

(2) issue an Investigative Panel Reprimand;

(3) issue a Notice of Discipline; or

(4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided.

All other cases may be either dismissed by the Investigative Panel or referred to the Fee Arbitration Committee or the Lawyer Assistance Program.

(b) The primary investigation shall be conducted by the staff investigators, the staff lawyers of the Office of the General Counsel, and the member of the Investigative Panel responsible for the investigation. The Board of Governors of the State Bar of Georgia shall fund the Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

Rule 4-204.1. Notice of Investigation.

(a) Upon completion of its screening of a grievance under Rule 4-202, the Office of the General Counsel shall forward those grievances which appear to invoke the disciplinary jurisdiction of the State Bar of Georgia to the Investigative Panel, or subcommittee of the Investigative Panel by serving a Notice of Investigation upon the respondent.

(b) The Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a reasonable opportunity to respond to the charges in writing and shall contain:

(1) a statement that the grievance is being transmitted to the Investigative Panel, or subcommittee of the Investigative Panel;

(2) a copy of the grievance;

(3) a list of the Rules which appear to have been violated;

(4) the name and address of the Panel member assigned to investigate the grievance and a list of the Panel or subcommittee of the Panel, members;

(5) a statement of respondent's right to challenge the competency, qualifications or objectivity of any Panel member.

(c) The form for the Notice of Investigation shall be approved by the Investigative Panel.

Rule 4-208.3. Rejection of Notice of Discipline.

(a) In order to reject the Notice of Discipline the respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within 30 days following service of the Notice of Discipline.

(b) Any Notice of Rejection by the respondent shall be served by the respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the respondent. No rejection by the respondent shall be considered valid unless the respondent files a written response as required by Rule 4-204.3 at or before the filing of the rejection. The respondent must also file a copy of such written response with the Clerk of the Supreme Court of Georgia at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the Coordinating Special Master to appoint a Special Master and the matter shall thereafter proceed pursuant to Rules 4-209 through 4-225.

Rule 4-213. Evidentiary Hearing.

(a) Within 90 days after the filing of respondent's answer to the formal complaint or the time for filing of the answer, whichever is later, the Special Master shall proceed to hear the case. The evidentiary hearing shall be reported and transcribed at the expense of the State Bar of Georgia. When the hearing is complete, the Special Master shall proceed to make findings of fact, conclusions of law and a recommendation of discipline and

file a report with the Review Panel or the Supreme Court of Georgia as hereinafter provided. Alleged errors in the trial may be reviewed by the Supreme Court of Georgia when the findings and recommendations of discipline of the Review Panel are filed with the Court. There shall be no direct appeal from such proceedings of the Special Master.

(b) Upon respondent's showing of necessity and financial inability to pay for a copy of the transcript, the Special Master shall order the State Bar of Georgia to purchase a copy of the transcript for respondent.

Rule 4-217. Report of the Special Master to the Review Panel.

(a) Within 30 days from receipt of the transcript of the evidentiary hearing, the Special Master shall prepare a report which shall contain the following:

(1) findings of fact on the issues raised by the formal complaint; and

(2) conclusions of law on the issues raised by the pleadings of the parties; and

(3) a recommendation of discipline.

(b) The Special Master shall file his or her original report and recommendation with the Clerk of the State Disciplinary Board and shall serve a copy on the respondent and counsel for the State Bar of Georgia pursuant to Rule 4-203.1.

(c) Thirty days after the Special Master's report and recommendation is filed, the Clerk of the State Disciplinary Board shall file the original record in the case directly with the Supreme Court of Georgia unless either party requests review by the Review Panel as provided in paragraph (d) of this Rule. In the event neither party requests review by the Review Panel and the matter goes directly to the Supreme Court of Georgia, both parties shall be deemed to have waived any right they may have under the Rules to file exceptions with or make request for oral argument to the Supreme Court of Georgia. Any review undertaken by the Supreme Court of Georgia shall be solely on the original record.

(d) Upon receipt of the Special Master's report and recommendation, either party may request review by the Review Panel as

provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board in accordance with Rule 4-221(f) and serve them on the opposing party within 30 days after the Special Master's report is filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report with the Review Panel. The responding party shall have 30 days after service of the exceptions within which to respond.

Rule 4-219. Judgments and Protective Orders.

(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court of Georgia, the respondent and the State Bar of Georgia may file with the Court any written exceptions, supported by written argument, each may have to the report subject to the provisions of Rule 4-217 (c). All such exceptions shall be filed with the Court within 30 days of the date that the report is filed with the Court and a copy served upon the opposing party. The responding party shall have an additional 30 days to file its response with the Court. The Court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The Court will promptly consider the report of the Review Panel or the Special Master, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's judgment shall be transmitted to the State Bar of Georgia and the respondent by the Court.

(b) In cases in which the Supreme Court of Georgia orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar of Georgia website, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c)

(1) After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in

Georgia and shall, within 30 days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within 45 days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court of Georgia, upon its own motion or upon motion of the Office of the General Counsel, and after ten days notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interests. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

(2) After a final judgment of disbarment or suspension under Part IV of these Rules, including a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

(i) have any contact with the clients of the office either in person, by telephone, or in writing; or

(ii) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

Rule 4-221. Procedures.

(a) Oaths. Before entering upon his duties as herein provided, each member of the State Disciplinary Board and each Special Master shall subscribe to an oath to be administered by any person authorized to administer oaths under the laws of this State, such oath to be in writing and

filed with the Executive Director of the State Bar of Georgia. The form of such oath shall be:

> "I do solemnly swear that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of the State Disciplinary Board of the State Bar of Georgia/Special Master according to the best of my ability and understanding and agreeable to the laws and Constitution of this State and the Constitution of the United States so help me God."

(b) Witnesses and Evidence; Contempt.

(1) The respondent and the State Bar of Georgia shall have the right to require the issuance of subpoenas for the attendance of witnesses to testify or to produce books and papers. The State Disciplinary Board or a Special Master shall have power to compel the attendance of witnesses and the production of books, papers, and documents, relevant to the matter under investigation, by subpoena, and as further provided by law in civil cases under the laws of Georgia.

(2) The following shall subject a person to rule for contempt of the Special Master or Panel:

(i) disregard, in any manner whatsoever, of a subpoena issued pursuant to Rule 4-221 (b) (1);

(ii) refusal to answer any pertinent or proper question of a Special Master or Board member; or

(iii) willful or flagrant violation of a lawful directive of a Special Master or Board member.

It shall be the duty of the chairperson of the affected Panel or Special Master to report the fact to the Chief Judge of the superior court in and for the county in which said investigation, trial or hearing is being held. The superior court shall have jurisdiction of the matter and shall follow the procedures for contempt as are applicable in the case of a witness subpoenaed

to appear and give evidence on the trial of a civil case before the superior court under the laws in Georgia.

(3) Any member of the State Disciplinary Board and any Special Master shall have power to administer oaths and affirmations and to issue any subpoena herein provided for.

(4) Depositions may be taken by the respondent or the State Bar of Georgia in the same manner and under the same provisions as may be done in civil cases under the laws of Georgia, and such depositions may be used upon the trial or an investigation or hearing in the same manner as such depositions are admissible in evidence in civil cases under the laws of Georgia.

(5) All witnesses attending any hearing provided for under these Rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil cases in the superior courts of this State under subpoena, and said fees shall be assessed against the parties to the proceedings under the rule of law applicable to civil suits in the superior courts of this State.

(6) Whenever the deposition of any person is to be taken in this State pursuant to the laws of another state, territory, province or commonwealth, or of the United States or of another country for use in attorney discipline, fitness or disability proceedings there, the chairperson of the Investigative Panel, or his or her designee upon petition, may issue a summons or subpoena as provided in this Rule to compel the attendance of witnesses and production of documents at such deposition.

(c) Venue of Hearings.

(1) The hearings on all complaints and charges against resident respondents shall be held in the county of residence of the respondent unless he otherwise agrees.

(2) Where the respondent is a nonresident of the State of Georgia and the complaint arose in the State of Georgia, the hearing shall be held in the county where the complaint arose.

(3) When the respondent is a nonresident of the State of Georgia and the offense occurs outside the State, the hearing may be held in the county of the State Bar of Georgia headquarters.

(d) Confidentiality of Investigations and Proceedings.

(1) The State Bar of Georgia shall maintain as confidential all disciplinary investigations and proceedings pending at the screening or investigative stage, unless otherwise provided by these Rules.

(2) After a proceeding under these Rules is filed with the Supreme Court of Georgia, all evidentiary and motions hearings shall be open to the public and all reports rendered shall be public documents.

(3) Nothing in these Rules shall prohibit the complainant, respondent or third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court of Georgia or a Special Master in proceedings under these Rules.

(4) The Office of the General Counsel of the State Bar of Georgia or the Investigative Panel of the State Disciplinary Board may reveal or authorize disclosure of information which would otherwise be confidential under this Rule under the following circumstances:

(i) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board or any person who is otherwise connected with the disciplinary proceeding in any way, either Panel of the Board or its chairperson or his or her designee, may authorize the use of information concerning disciplinary investigations or

proceedings to aid in the defense against such charge.

(ii) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.

(iii) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.

(iv) A complainant or lawyer representing the complainant may be notified of the status or disposition of the complaint.

(v) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

(5) The Office of the General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:

(i) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;

(ii) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;

(iii) The Judicial Nominating Commission or the comparable body in other jurisdictions;

(iv) The Lawyer Assistance Program or the comparable body in other jurisdictions;

(v) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;

(vi) The Judicial Qualifications Commission or the comparable body in other jurisdictions;

(vii) The Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;

(viii) The Formal Advisory Opinion Board;

(ix) The Consumer Assistance Program;

(x) The General Counsel Overview Committee;

(xi) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and

(xii) The Unlicensed Practice of Law Department.

(6) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a receiver to administer the files of a member of the State Bar of Georgia, shall not be confidential under this Rule.

(7) The Office of the General Counsel may reveal confidential information when required by law or court order.

(8) The authority or discretion to reveal confidential information under this Rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar of Georgia or the State Disciplinary Board under the Bar Rules or applicable law.

(9) Nothing in this Rule shall prohibit the Office of the General Counsel or the Investigative Panel from interviewing potential witnesses or placing the Notice of Investigation out for service by sheriff or other authorized person.

(10) Members of the Office of the General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent or third parties but are otherwise confidential under these Rules by acknowledging the existence and status of the proceeding.

(11) The State Bar of Georgia shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court Rules that was confidential when imposed, unless authorized to do so by said prior rules.

(e) Burden of Proof; Evidence.

(1) In all proceedings under this chapter, the burden of proof shall be on the State Bar of Georgia except for proceedings under Rule 4-106.

(2) In all proceedings under this chapter occurring after a finding of probable cause as described in Rule 4-204.4, the procedures and rules of evidence applicable in civil cases under the laws of Georgia shall apply, except that the quantum of proof required of the State Bar of Georgia shall be clear and convincing evidence.

(f) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

(g) Pleadings and Communications Privileged. Pleadings and oral and written statements of members of the State Disciplinary Board, members and designees of the Lawyer Assistance Program, Special Masters, Bar counsel and investigators, complainants, witnesses, and respondents

and their counsel made to one another or filed in the record during any investigation, intervention, hearing or other disciplinary proceeding under this Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.

Rule 4-227. Petitions for Voluntary Discipline.

(a) A petition for voluntary discipline shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline.

(b) Prior to the issuance of a formal complaint, a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these Rules.

> (1) Those petitions seeking private discipline shall be filed with the Office of the General Counsel and assigned to a member of the Investigative Panel. The Investigative Panel of the State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Rule 4-203 (a) (9).
>
> (2) Those petitions seeking public discipline shall be filed directly with the Clerk of the Supreme Court. The Office of the General Counsel shall have 30 days within which to file a response. The court shall issue an appropriate order.

(c) After the issuance of a formal complaint a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these Rules.

> (1) The petition shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. The Special Master shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefor. The Office of the General Counsel shall serve a copy of its response upon the respondent.

(2) The Special Master shall consider the petition, the State Bar of Georgia's response, and the record as it then exists and may accept or reject the petition for voluntary discipline.

(3) The Special Master may reject a petition for such cause or causes as seem appropriate to the Special Master. Such causes may include but are not limited to a finding that:

(i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline;

(ii) the petition fails to request appropriate discipline;

(iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;

(iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

(4) The Special Master's decision to reject a petition for voluntary discipline does not preclude the filing of a subsequent petition and is not subject to review by either the Review Panel or the Supreme Court of Georgia. If the Special Master rejects a petition for voluntary discipline, the disciplinary case shall proceed as provided by these Rules.

(5) If the Special Master accepts the petition for voluntary discipline, he or she shall enter a report making findings of fact and conclusions of law and deliver same to the Clerk of the State Disciplinary Board. The Clerk of the State Disciplinary Board shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Supreme Court of Georgia shall issue an appropriate order.

(6) Pursuant to Rule 4-210 (5), the Special Master may, in his or her discretion, extend any of the time limits in these

Rules in order to adequately consider a petition for voluntary discipline.

CHAPTER 4
ADVISORY OPINIONS

Rule 4-403. Formal Advisory Opinions.

(a) The Formal Advisory Opinion Board shall be authorized to draft Proposed Formal Advisory Opinions concerning a proper interpretation of the Georgia Rules of Professional Conduct or any of the grounds for disciplinary action as applied to a given state of facts. The Proposed Formal Advisory Opinion should address prospective conduct and may respond to a request for a review of an Informal Advisory Opinion or respond to a direct request for a Formal Advisory Opinion.

(b) When a Formal Advisory Opinion is requested, the Formal Advisory Opinion Board should review the request and make a preliminary determination whether a Proposed Formal Advisory Opinion should be drafted. Factors to be considered by the Formal Advisory Opinion Board include whether the issue is of general interest to the members of the State Bar of Georgia, whether a genuine ethical issue is presented, the existence of opinions on the subject from other jurisdictions, and the nature of the prospective conduct.

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion either in an official publication of the State Bar of Georgia or on the website of the State Bar of Georgia, and solicit comments from the members of the State Bar of Georgia. If the Proposed Formal Advisory Opinion is published on the State Bar of Georgia website only, the State Bar of Georgia will send advance notification by e-mail to the entire membership that have provided the State Bar with an e-mail address, that the proposed opinion will be published on the State Bar of Georgia website. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as

drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished either in an official publication of the State Bar of Georgia or on the website of the State Bar of Georgia. If the Proposed Formal Advisory Opinion is to be republished on the State Bar of Georgia website only, the State Bar of Georgia will send advance notification by e-mail to the entire membership that have provided the State Bar with an e-mail address, that the proposed opinion will be republished on the State Bar of Georgia website. Unless the Supreme Court of Georgia grants review as provided hereinafter, the opinion shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal Advisory Opinion or the date the official publication is mailed to the members of the State Bar of Georgia (if the opinion is published in an official publication of the State Bar of Georgia), or first appears on the website of the State Bar of Georgia (if the opinion is published on the website), whichever is later, the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court of Georgia grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the State Bar of Georgia. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court of Georgia Rule 10, counting from the date of the order granting review. The final determination may be either by written opinion or by order of the Supreme Court of Georgia and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

(e) If the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. If the Supreme Court of Georgia grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court of Georgia approves or modifies the opinion, it shall be binding on all members of the State Bar of Georgia and shall be published in the official Georgia Reports. The Supreme Court of Georgia shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

(f) The Formal Advisory Opinion Board may call upon the Office of the General Counsel for staff support in researching and drafting Proposed Formal Advisory Opinions.

(g) The name of a lawyer requesting an Informal Advisory Opinion or Formal Advisory Opinion will be held confidential unless the lawyer elects otherwise.

PART XII
CONSUMER ASSISTANCE PROGRAM

Rule 12-107. Confidentiality of Proceedings.

(a) All investigations and proceedings provided for herein shall be confidential unless the respondent otherwise elects or as hereinafter provided in this Rule and Part IV of the Bar Rules.

(b) Except as expressly permitted by these Rules, no person connected with the Consumer Assistance Program shall disclose information concerning or comment on any proceeding under Part XII of these Rules.

> (1) Nothing in the Rules shall prohibit truthful and accurate public statements of fact about a proceeding under Part XII of these Rules, provided however, that in the event of such statement any other person involved in the proceeding may make truthful and accurate public statements of fact regarding

the proceeding, including information otherwise confidential under the provisions of Rule 4-102 (d), Rule 1.6, as may be reasonably necessary to defend that person's reputation;

(2) Willful and malicious false statements of fact made by any person connected with a proceeding under Part XII of these Rules may subject such person to rule for contempt by the Supreme Court of Georgia.

(c) In the event the conduct of the attorney appears to violate one or more of the Georgia Rules of Professional Conduct set forth in Part IV of the Bar Rules, and Consumer Assistance staff in its sole discretion makes a determination under Rule 12-106 that the matter cannot be resolved informally, then the Consumer Assistance staff shall inform callers of their option to file a grievance and shall advise the Office of the General Counsel to send the appropriate forms to the callers.

(d) The Consumer Assistance Committee and staff may reveal confidential information when required by law or court order.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta April 14, 2015

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2014-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Rule 1.15(I) (Safekeeping Property – General); Rule 1.15(II) (Safekeeping Property – Trust Account and IOLTA); and Rule 1.15(III) (Record Keeping; Trust Account Overdraft Notification; Examination of Records) be amended and that new Part XV regarding the Georgia Bar Foundation be approved, effective January 1, 2016 to read as follows:

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

PART ONE
CLIENT-LAWYER RELATIONSHIP

…

RULE 1.15(I). SAFEKEEPING PROPERTY – GENERAL.

(a) A lawyer shall hold funds or other property of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own funds or other property. Funds shall be kept in one or more separate accounts maintained in an approved institution as defined by Rule 1.15(III)(c)(1). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) For the purposes of this Rule, a lawyer may not disregard a third person's interest in funds or other property in the lawyer's possession if:

(1) the interest is known to the lawyer, and

(2) the interest is based upon one of the following:

(i) A statutory lien;

(ii) A final judgment addressing disposition of those funds or property; or

(iii) A written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property.

The lawyer may disregard the third person's claimed interest if the lawyer reasonably concludes that there is a valid defense to such lien, judgment, or agreement.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(d) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and a client or third person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property as to which the interests are not in dispute.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration or interpleader. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[3A] In those cases where it is not possible to ascertain who is entitled to disputed funds or other property held by the lawyer, the lawyer may hold such disputed funds for a reasonable period of time while the interested parties attempt to resolve the dispute. If a resolution cannot be reached, it

would be appropriate for a lawyer to interplead such disputed funds or property.

[4] A "clients' security fund" provides a means through the collective efforts of the State Bar of Georgia to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

RULE 1.15(II). SAFEKEEPING PROPERTY – TRUST ACCOUNT AND IOLTA.

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available one or more trust accounts as required by these Rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from a trust account.

(b) No personal funds shall ever be deposited in a lawyer's trust account, except that unearned lawyer's fees may be so held until the same are earned. Sufficient personal funds of the lawyer may be kept in the trust account to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or third person. No funds shall be withdrawn from such trust accounts for the personal use of the lawyer maintaining the account except earned lawyer's fees debited against the account of a specific client and recorded as such.

(c) All client's funds shall be placed in either an interest-bearing account at an approved institution with the interest being paid to the client or an interest-bearing (IOLTA) account at an approved institution with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-

bearing trust account in an approved institution as defined in Rule 1.15(III)(c)(1), with the interest to be paid to the client.

(i) No earnings from such an interest-bearing account shall be made available to a lawyer or law firm.

(ii) Funds in such an interest-bearing account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, such that there can be no reasonable expectation of a positive net return to the client or third person, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) at an approved institution as defined in Rule 1.15(III)(c)(1) in compliance with the following provisions:

(i) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.

(ii) Funds in each IOLTA Account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.

(iii) As required by Rule 15-103, the rate of interest payable on any IOLTA Account shall not be less than the rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time periods or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a

lawyer or law firm on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

(iv) Lawyers or law firms shall direct the depository institution:

(A) to remit to the Georgia Bar Foundation interest or dividends, net of any allowable reasonable fees as defined in Rule 15-102(c), on the average monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of interest earned on that account for any month, and any charges or fees that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution;

(B) to transmit with each remittance to the Georgia Bar Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is being applied, the gross interest earned, the types and amounts of service charges of fees applied, and the amount of the net interest remittance;

(C) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest clients' funds in a pooled interest-bearing account.

(4) Whether the funds are designated short-term or nominal or not, a lawyer or law firm may, at the request of the client, deposit funds into a separate interest-bearing account and remit all interest earned, or interest earned net of charges, to the client or clients.

The maximum penalty for a violation of Rule 1.15(II)(a) and Rule 1.15(II)(b) is disbarment. The maximum penalty for a violation of Rule 1.15(II)(c) is a public reprimand.

Comment

[1] The personal money permitted to be kept in the lawyer's trust account by this Rule shall not be used for any purpose other than to cover the bank fees and if used for any other purpose the lawyer shall have violated this Rule. If the lawyer wishes to reduce the amount of personal money in the trust account, the change must be properly noted in the lawyer's financial records and the monies transferred to the lawyer's business account.

[2] Nothing in this Rule shall prohibit a lawyer from removing from the trust account fees which have been earned on a regular basis which coincides with the lawyer's billing cycles rather than removing the fees earned on an hour-by-hour basis.

[3] In determining whether funds of a client or other beneficiary can earn income in excess of costs, the lawyer may consider the following factors:

(a) the amount of funds to be deposited;
(b) the expected duration of the deposit, including the likelihood of delay in the matter with respect to which the funds are held;

(c) the rates of interest or yield at financial institutions where the funds are to be deposited;
(d) the cost of establishing and administering a non-IOLTA Trust Account for the benefit of the client or other beneficiary, including service charges, the costs of the lawyer's services and the costs of preparing any tax reports that may be required;
(e) the capability of financial institutions, lawyers, or law firms to calculate and pay earnings to individual clients; and
(f) any other circumstances that affect the ability of the funds to earn a net return for the client or other beneficiary.

[4] The lawyer or law firm should review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

RULE 1.15(III). RECORD KEEPING; TRUST ACCOUNT OVERDRAFT NOTIFICATION; EXAMINATION OF RECORDS.

(a) Required Bank Accounts: Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution as defined by this Rule, a trust account or accounts, separate from any business and personal accounts. Funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited into this account. The financial institution shall be in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person.

(b) Description of Accounts:

(1) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as an "Attorney Trust Account," "Attorney Escrow Account," "IOLTA Account," or "Attorney Fiduciary Account." The name of the lawyer or law firm responsible for the account shall also appear on all deposit slips and checks drawn thereon.

(2) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," an "Operating Account" or a "Regular Account."

(3) Nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any other fiduciary capacity.

(c) Procedure:

(1) Approved Institutions:

(i) A lawyer shall maintain his or her trust account only in a financial institution approved by the State Bar of Georgia, which shall annually publish a list of approved institutions.

(A) Such institutions shall be located within the State of Georgia, within the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person. The institution shall be authorized by federal or state law to do business in the jurisdiction where located and shall be federally insured. A financial institution shall be approved as a depository for lawyer trust accounts if it abides by an agreement to report to the Office of the General Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the Office of General Counsel. The agreement shall be filed with the Office of the

General Counsel on a form approved by the Investigative Panel of the State Disciplinary Board. The agreement shall provide that all reports made by the financial institution shall be in writing and shall include the same information customarily forwarded to the depositor when an instrument is presented against insufficient funds. If the financial institution is located outside of the State of Georgia, it shall also agree in writing to honor any properly issued State Bar of Georgia subpoena.

(B) In addition to the requirements above, the financial institution must also be approved by the Georgia Bar Foundation and agree to offer IOLTA Accounts in compliance with the additional requirements set out in Part XV of the Rules of the State Bar of Georgia.

(ii) The Georgia Bar Foundation may waive the provisions of this Rule in whole or in part for good cause shown. A lawyer or law firm may appeal the decision of the Georgia Bar Foundation by application to the Supreme Court of Georgia.

(2) Timing of Reports:

(i) The financial institution shall file a report with the Office of the General Counsel of the State Bar of Georgia in every instance where a properly payable instrument is presented against a lawyer trust account containing insufficient funds and said instrument is not honored within three business days of presentation.

(ii) The report shall be filed with the Office of the General Counsel within fifteen days of the date of the presentation of the instrument, even if the instrument is

subsequently honored after the three business days provided in paragraph (2)(i) above.

(3) Nothing shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule.

(4) Every lawyer and law firm maintaining a trust account as provided by these Rules is hereby and shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule and shall indemnify and hold harmless each financial institution for its compliance with the aforesaid reporting and production requirements.

(d) Effect on Financial Institution of Compliance: The agreement by a financial institution to offer accounts pursuant to this Rule shall be a procedure to advise the State Disciplinary Board of conduct by lawyers and shall not be deemed to create a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

(e) Availability of Records: A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Investigative Panel of the State Disciplinary Board or the Supreme Court. This obligation shall be in addition to and not in lieu of the procedures contained in Part IV of these Rules for the production of documents and evidence.

(f) Audit for Cause: A lawyer shall not fail to submit to an Audit for Cause conducted by the State Disciplinary Board pursuant to Bar Rule 4-111.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] Each financial institution wishing to be approved as a depository of client trust funds must file an overdraft notification agreement with the Office of the General Counsel of the State Bar of Georgia. The State Bar of Georgia will publish a list of approved institutions at least annually.

[2] The overdraft agreement requires that all overdrafts be reported to the Office of the General Counsel of the State Bar of Georgia whether or not the instrument is honored. It is improper for a lawyer to accept "overdraft privileges" or any other arrangement for a personal loan on a client trust account, particularly in exchange for the institution's promise to delay or not to report an overdraft. The institution must notify the Office of the General Counsel of all overdrafts even where the institution is certain that its own error caused the overdraft or that the matter could have been resolved between the institution and the lawyer within a reasonable period of time.

[3] The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional errors. The provision merely intends that the Office of the General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken.

Waiver

[4] A lawyer may seek to have the provisions of this Rule waived if the lawyer or law firm has its principal office in a county where no bank, credit union, or savings and loan association will agree or has agreed to comply with the provisions of this Rule. Other grounds for requesting a waiver may include significant financial or business harm to the lawyer or law firm, such as where the unapproved bank is a client of the lawyer or law firm or where the lawyer serves on the board of the unapproved bank.

[5] The request for a waiver should be in writing, sent to the Georgia Bar Foundation, and should include sufficient information to establish good cause for the requested waiver.

[6] The Georgia Bar Foundation may request additional information from the lawyer or law firm if necessary to determine good cause.

Audits

[7] Every lawyer's financial records and trust account records are required records and therefore are properly subject to audit for cause. The audit provisions are intended to uncover errors and omissions before the public is harmed, to deter

those lawyers who may be tempted to misuse client's funds and to educate and instruct lawyers as to proper trust accounting methods. Although the auditors will be employed by the Office of the General Counsel of the State Bar of Georgia, it is intended that disciplinary proceedings will be brought only when the auditors have reasonable cause to believe discrepancies or irregularities exist. Otherwise, the auditors should only educate the lawyer and the lawyer's staff as to proper trust accounting methods.

[8] An audit for cause may be conducted at any time and without advance notice if the Office of the General Counsel receives sufficient evidence that a lawyer poses a threat of harm to clients or the public. The Office of the General Counsel must have the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia to conduct an audit for cause.

. . .

PART XV

GEORGIA BAR FOUNDATION

Preamble

The Georgia Bar Foundation ("the Foundation") is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive and distribute Interest On Lawyer Trust Account ("IOLTA") funds to support legal services for the poor, to improve the administration of justice, to provide legal education to Georgia's children, to provide educational programs for adults in order to advance understanding of democracy and our system of government, to aid children involved in the justice system, and to promote professionalism in the practice of law.

CHAPTER 1

IOLTA ACCOUNTS

Rule 15-101. BANK ACCOUNTS.

(a) Every lawyer who practices law in Georgia, whether as a sole practitioner or as a member of a firm, association or professional corporation, who receives money or other property on behalf of a client or in any other fiduciary

capacity shall maintain or have available an interest-bearing trust account or accounts.

(b) An "IOLTA Account" is a trust account benefiting the Foundation. The interest generated by an IOLTA Account shall be paid to the Georgia Bar Foundation, Inc. as hereinafter provided.

Rule 15-102. DEFINITIONS.

(a) An "IOLTA Account" means a trust account benefiting the Foundation, established in an approved institution for the deposit of pooled nominal or short-term funds of clients or third persons, and meeting the requirements of the Foundation as further detailed below. The account product may be an interest-bearing checking account; a money market account with, or tied to, check writing; a sweep account, portions of which are regularly moved into a government money market fund or daily overnight financial institution repurchase agreement invested solely in, or fully collateralized by, United States government securities; or an open-end money market fund solely invested in, or fully collateralized by, United States government securities.

(1) "Nominal or short-term" describes funds of a client or third person that the lawyer has determined cannot provide a positive net return to the client or third person.

(2) "Open-end money market fund" is a fund that identifies itself as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, having total assets of at least $250,000,000.

(3) "United States government securities" are United States Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(b) An "approved institution" is a bank or savings and loan association which is an approved institution as defined in Rule 1.15(III)(c)(1) and which voluntarily chooses to offer IOLTA Accounts consistent with the additional requirements of this Rule, including:

(1) to remit to the Foundation interest or dividends, net of any allowable reasonable fees on the IOLTA Account, on the average

monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of the interest earned on that account for any month, and any fees or charges that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution.

(2) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is applied, the gross interest earned, the types and amounts of service charges or fees applied, and the amount of the net interest remittance.

(3) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(4) to pay comparable interest rates on IOLTA Accounts, as defined below at Rule 15-103.

(c) "Allowable reasonable fees" for IOLTA Accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, Federal deposit insurance fees, and sweep fees. ("Allowable reasonable fees" do not include check printing charges, NSF charges, overdraft interest charges, account reconciliation charges, stop payment charges, wire transfer fees, and courier fees. Such listing of excluded fees is not intended to be all inclusive.) All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts. Approved financial institutions may elect to waive any or all fees on IOLTA Accounts.

Rule 15-103. IOLTA ACCOUNTS; INTEREST RATES.

On any IOLTA Account, the rate of interest payable shall be:

(a) not less than the highest interest rate or dividend generally available from the approved institution to its non-IOLTA customers for each IOLTA Account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from

the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers. The institution also shall consider all product option types that it offers to its non-IOLTA customers, as noted at Rule 15-102(a), for an IOLTA Account by either establishing the applicable product as an IOLTA Account or paying the comparable interest rate or dividend on the IOLTA Account in lieu of actually establishing the comparable highest interest rate or dividend product; or

(b) alternatively, if an approved institution so chooses, a rate equal to the greater of (A) 0.65% per annum or (B) a benchmark interest rate, net of allowable reasonable fees, set by the Foundation, which shall be expressed as a percentage (an "index") of the federal funds target rate, as established from time to time by the Federal Reserve Board. In order to maintain an overall comparable rate, the Foundation will periodically, but not less than annually, publish its index. The index shall initially be 65% of the federal funds target rate.

(c) Approved institutions may choose to pay rates higher than comparable rates discussed above.

CHAPTER 2

INTERNAL RULES

Rule 15-201. MANAGEMENT AND DISBURSEMENT OF IOLTA FUNDS; INTERNAL PROCEDURES OF FOUNDATION.

(a) Mandatory Grants. The Georgia Bar Foundation, Inc. (the "Foundation"), which is the charitable arm of the Supreme Court of Georgia, is the named recipient of IOLTA funds. The Foundation shall pay to the Georgia Civil Justice Foundation ("GCJF") a grant of ten percent (10%) of all IOLTA revenues received, less administrative costs, during the immediately preceding calendar quarter. GCJF must maintain its tax-exempt charitable/educational status under Sections 115 and 170(c)(1) or under Section 501(c)(3) of the Internal Revenue Code, and the purposes and activities of the organization must remain consistent with the exempt purposes of the Foundation. If GCJF is determined either by the Internal Revenue Service or by the Georgia Department of Revenue to be a taxable entity at any time, or its purposes and activities become inconsistent with the

exempt purposes of the Foundation, then the Foundation shall retain all IOLTA funds which would have been granted to GCJF.

(b) Reporting by Organizations. As a condition to continued receipt of IOLTA funds, the Foundation and GCJF shall each present a report of its activities including an audit of its finances to the Supreme Court of Georgia annually. GCJF shall also send to the Foundation a copy of its annual report and audit.

(c) Discretionary Grants. The Foundation shall develop procedures for regularly soliciting, evaluating, and funding grant applications from worthy law-related organizations that seek to provide civil legal assistance to needful Georgians, to improve the working and the efficiency of the judicial system, to provide legal education to Georgia's children, to provide assistance to children who are involved with the legal system, to provide educational programs for adults intended to promote a better understanding of our democratic system of government, or to foster professionalism in the practice of law.

(d) IOLTA Account Confidentiality. The Foundation will protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained in the course of managing IOLTA operations.

(e) Report to the Office of the General Counsel. The Foundation will provide the Office of the General Counsel with a list of approved financial institutions which have agreed to abide by the requirements of this Part XV of the Rules of the State Bar of Georgia. Such list will be updated with such additions and deletions as necessary to maintain its accuracy.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

SUPREME COURT OF GEORGIA

Atlanta March 21, 2014

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2012-2 First Amended Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Rule 7.2 (Advertising) and Rule 4-219 (Judgments and Protective Orders) be amended and that new Rule 4-228 (Receiverships) be approved, effective March 21, 2014, to read as follows:

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

. . .

PART SEVEN
INFORMATION ABOUT LEGAL SERVICES

. . .

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through:
(1) public media, such as a telephone directory, legal directory, newspaper or other periodical;
(2) outdoor advertising;
(3) radio or television;
(4) written, electronic or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) *Prominent disclosures.* Any advertisement for legal services directed to potential clients in Georgia, or intended to solicit employment for delivery of any legal services in Georgia, must include prominent disclosures, clearly legible and capable of being read by the average person, if written, and clearly intelligible by an average person, if spoken aloud, of the following:

(1) *Disclosure of identity and physical location of attorney.* Any advertisement shall include the name, physical location and telephone number of each lawyer or law firm who paid for the advertisement and who takes full personal responsibility for the advertisement. In disclosing the physical location, the responsible lawyer shall state the full address of the location of the principal bona fide office of each lawyer who is prominently identified pursuant to this paragraph. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm

from which the lawyer or law firm furnishes legal services on a regular and continuing basis. In the absence of a bona fide physical office, the lawyer shall prominently disclose the full address listed with the State Bar of Georgia or other Bar to which the lawyer is admitted. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's bona fide office, or the registered bar address, when a referral is made.

(2) *Disclosure of referral practice.* If the lawyer or law firm will refer the majority of callers to other attorneys, that fact must be disclosed and the lawyer or law firm must comply with the provisions of Rule 7.3(c) regarding referral services.

(3) *Disclosure of spokespersons and portrayals*. Any advertisement that includes a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, portrayal of a client by a non-client, or any paid testimonial or endorsement, shall include prominent disclosure of the use of a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, or of a client by a non-client.

(4) *Disclosures regarding fees.* A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service.

(5) *Appearance of legal notices or pleadings*. Any advertisement that includes any representation that resembles a legal pleading, notice, contract or other legal document shall include prominent disclosure that the document is an advertisement rather than a legal document.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that

may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.
[4] Neither this Rule nor Rule 7.3: Direct Contact with Prospective Clients prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule.

CHAPTER 2
DISCIPLINARY PROCEEDINGS

. . .

RULE 4-219. Judgments and Protective Orders
(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court of Georgia, the respondent and the State Bar may file with the Court any written exceptions, supported by written argument, each may have to the report subject to the provisions of Rule 4-217(c). All such exceptions shall be filed with the Court within twenty days of the date that the report is filed with the Court and a copy served upon the opposing party. The responding party shall have an additional twenty days to file its response with the Court. The court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The Court will promptly consider the report of the Review Panel or the Special Master, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's judgment shall be transmitted to the State Bar and the respondent by the Court.

(b) In cases in which the Supreme Court of Georgia orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar website, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c) (1) After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within thirty days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within forty-five days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court of Georgia, upon its own motion or upon motion of the Office of the General Counsel, and after ten days notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Bar Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interests. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

(2) After a final judgment of disbarment or suspension under Part IV of these Rules, including a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

(i) have any contact with the clients of the office either in person, by telephone, or in writing; or

(ii) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

RULE 4-228. Receiverships

(a) Definitions

Absent Attorney — a member of the State Bar of Georgia (or a foreign or domestic lawyer authorized to practice law in Georgia) who shall have disappeared, died, become disbarred, disciplined or incarcerated, or become so impaired as to be unable to properly represent his or her clients or as to pose a substantial threat of harm to his or her clients or the public as to justify appointment of a Receiver hereunder by the Supreme Court of Georgia.

(b) Appointment of a Receiver

(1) Upon a final determination by the Supreme Court of Georgia, on a petition filed by the State Bar of Georgia, that an attorney has become an Absent Attorney, and that no partner, associate or other appropriate representative is available to notify his or her 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. Such Receiver shall review the files, notify the Absent Attorney's clients and take such steps as seem indicated to protect the interests of the clients and the public. A motion for reconsideration may be taken from the issuance or denial of such protective order by the respondent, his or her partners, associates or legal representatives or by the State Bar of Georgia.

(2) If the Receiver should encounter, or anticipate, situations or issues not covered by the Order of appointment, including but not limited to, those concerning proper procedure and scope of authority, the Receiver may petition the Supreme Court of Georgia or its designee for such further order or orders as may be necessary or appropriate to address the situation or issue so encountered or anticipated.

(3) The Receiver shall be entitled to release to each client the papers, money or other property to which the client is entitled. Before releasing the property, the Receiver may require a receipt from the client for the property.

(c) Applicability of Attorney-Client Rules

(1) Confidentiality — The Receiver shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia or, upon application, by order of the Supreme Court of Georgia.

(2) Attorney-Client Relationship; Privilege — The Receiver relationship standing alone does not create an attorney-client relationship between the Receiver and the clients of the Absent Attorney. However, the attorney-client privilege shall apply to communications by or between the Receiver and the clients of the Absent Attorney to the same extent as it would have applied to communications by or to the Absent Attorney.

(d) Trust Account

(1) If after appointment the Receiver should determine that the Absent Attorney maintained one or more trust accounts and that there are no provisions extant that would allow the clients, or other appropriate entities, to receive from the accounts the funds to which they are entitled, the Receiver may petition the Supreme Court of Georgia or its designee for an order extending the scope of the Receivership to include the management of the said trust account or accounts. In the event the scope of the Receivership is extended to include the management of the trust account or accounts, the Receiver shall file quarterly with the Supreme Court of Georgia or its designee a report showing the activity in and status of said accounts.

(2) Service on a bank or financial institution of a copy of the order extending the scope of the Receivership to include management of the trust account or accounts shall operate as a modification of any agreement of deposit among such bank or financial institution, the Absent Attorney and any other party to the account so as to make the Receiver a necessary signatory on any trust account maintained by the Absent Attorney with such bank or financial institution. The Supreme Court of Georgia or its designee, on application by the Receiver, may order that the Receiver shall be sole signatory on any such account to the extent necessary for the purposes of these Rules and may direct the disposition and distribution of client and other funds.

(3) In determining ownership of funds in the trust accounts, including by subrogation or indemnification, the Receiver should act as a reasonably prudent lawyer maintaining a client trust account. The Receiver may (1) rely on a certification of ownership issued by an auditor employed by the Receiver; or (2) interplead any funds of questionable ownership into the appropriate Superior Court; or (3) proceed under the terms of the Disposition of Unclaimed Property Act (O.C.G.A. §44-12-190 et seq.). If the Absent Attorney's trust account does not contain sufficient funds to meet known client balances, the Receiver may disburse funds on a pro rata basis.

(e) Payment of Expenses of Receiver

(1) The Receiver shall be entitled to reimbursement for actual and reasonable costs incurred by the Receiver for expenses, including, but not limited to, (i) the actual and reasonable costs associated with the employment of accountants, auditors and bookkeepers as necessary to determine the source and ownership of funds held in the Absent Attorney's trust account, and (ii) reasonable costs of secretarial, postage, bond premiums, and moving and storage expenses associated with carrying out the Receiver's duties. Application for allowance of costs and expenses shall be made by affidavit to the Supreme Court of Georgia, or its designee, who may determine the amount of the reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the Supreme Court of Georgia or its designee. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be paid to the Receiver by the State Bar of Georgia. The State Bar of Georgia may seek from a court of competent jurisdiction a judgment against the Absent Attorney or his or her estate in an amount equal to the amount paid by the State Bar of Georgia to the Receiver. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be considered as prima facie evidence of the fairness of the amount, and the burden of proof shall shift to the Absent Attorney or his or her estate to prove otherwise.

(2) The provision of paragraph (1) above shall apply to all Receivers serving on the effective date of this Rule and thereafter.

(f) Receiver-Client Relationship

With full disclosure and the informed consent, as defined in Bar Rule 1.0 (h), of any client of the Absent Attorney, the Receiver may, but need not, accept employment to complete any legal matter. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the Receiver.

(g) Unclaimed Files

(1) If upon completion of the Receivership there are files belonging to the clients of the Absent Attorney that have not been claimed, the Receiver shall deliver them to the State Bar of Georgia. The State Bar of Georgia shall store the files for six years, after which time the State Bar of Georgia may exercise its discretion in maintaining or destroying the files.

(2) If the Receiver determines that an unclaimed file contains a Last Will and Testament, the Receiver may, but shall not be required to do so, file said Last Will and Testament in the office of the Probate Court in such county as to the Receiver may seem appropriate.

(h) Professional Liability Insurance

Only attorneys who maintain errors and omissions insurance that includes coverage for conduct as a Receiver may be appointed to the position of Receiver.

(i) Requirement of Bond

The Supreme Court of Georgia or its designee may require the Receiver to post bond conditioned upon the faithful performance of his or her duties.

(j) Immunity

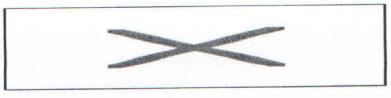
(1) The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and the appointed Receiver to be within the Court's judicial and regulatory functions, and being regulatory and judicial in nature the State Bar of Georgia and Receiver are entitled to judicial immunity.

(2) The immunity recognized in paragraph (1) above shall not apply if the Receiver is employed by a client of the Absent Attorney to continue the representation.

(k) Service

Service under this Rule may be perfected under Bar Rule 4-203.1.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.



SUPREME COURT OF GEORGIA

Atlanta September 4, 2013

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2013-2 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that the State Bar's motion to amend Rule 1-208 (Resignation from Membership) is hereby approved, effective September 4, 2013 to read as follows:

PART I
CREATION AND ORGANIZATION

CHAPTER 2
MEMBERSHIP

Rule 1-208. Resignation from Membership

(a) **Resignation while in good standing.** A member of the State Bar in good standing may, under oath, petition the Executive Committee for leave to resign from the State Bar. Upon acceptance of such petition by the Executive Committee by majority vote, such person shall not practice law in this state nor be entitled to any privileges and benefits accorded to active members of the State Bar in good standing unless such person complies with part (f) or part (g) of this Rule.

(b) **Resignation while delinquent or suspended for failure to pay dues or for failure to comply with continuing legal education requirements.** Resignation while delinquent or suspended for failure to pay dues or for failure to comply with continuing legal education requirements: A member of the State Bar who is delinquent or suspended (but not terminated) for failure to pay dues or failure to comply with continuing legal education requirements may, under oath, petition the Executive Committee for leave to resign from the State Bar. Upon acceptance of such petition by the Executive Committee by majority vote, such person shall not practice law in this state nor be entitled to any privileges and benefits accorded to active members of the State Bar unless such person complies with part (f) or part (g) of this Rule.

(c) **A petition for leave to resign from membership with the State Bar shall comply with the following:**

(1) the petition shall be filed under oath with the Executive Director of the State Bar and shall contain a statement that there are no disciplinary actions or criminal proceedings pending against the petitioner; and

(2) the petition shall contain a statement as to whether the petition is being filed under part (a) or part (b) of this Rule. If the petition is being filed under part (b), the petition shall state the term of the delinquency and/or suspension for failure to pay dues or to comply with continuing legal education requirements.

(d) No petition for leave to resign shall be accepted if there are disciplinary proceedings or criminal charges pending against the member, or if the member is not in good standing for failure to pay child support obligations under Bar Rule 1-209.

(e) A petition filed under this Rule shall constitute a waiver of the confidentiality provisions of Rule 4-221(d) as to any pending disciplinary proceedings.

(f) **Readmission within five years after resignation.** For a period of five years after the effective date of a voluntary resignation, the member of the State Bar who has resigned pursuant to this Rule may apply for readmission to the State Bar upon completion of the following terms and conditions:

(1) payment in full of any delinquent dues, late fees and penalties owing at the time the petition for leave to resign was accepted, and payment in full of the current dues for the year in which readmission is sought;

(2) payment of a readmission fee to the State Bar equal to the amount the member seeking readmission would have paid during the period of resignation if he or she had instead elected inactive status;

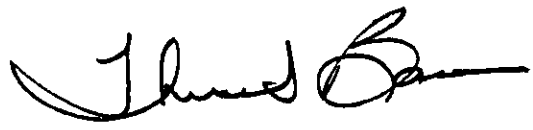
(3) for resignations while suspended for failure to comply with continuing legal education requirements under part (b) of this Rule, submission of a certificate from the Commission on Continuing Lawyer Competency declaring that the suspended member is current on all requirements for continuing legal education; and

(4) submission to the membership department of the State Bar of a determination of fitness from the Board to Determine Fitness of Bar Applicants. Provided the former member seeking readmission has applied to the Board to Determine Fitness of Bar Applicants before the expiration of the five year period after his or her resignation, the former member shall be readmitted upon submitting a determination of fitness even if the five year period has expired.

(g) **Readmission after five years.** After the expiration of five years from the effective date of a voluntary resignation, the former member must comply with the Rules governing admission to the practice of law in Georgia as adopted by the Supreme Court of Georgia.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk

SUPREME COURT OF GEORGIA

Atlanta June 12, 2013

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the 2013-1 Motion to Amend the Rules and Regulations of the State Bar of Georgia, it is ordered that the State Bar's motion to amend Rule 1-202 (e) (Disabled Members); Rule 6.5 (Nonprofit and Court-Annexed Limited Legal Services Programs); and Rule 7.5 (Firm Names and Letterheads) is hereby approved, effective June 12, 2013, to read as follows:

PART I
CREATION AND ORGANIZATION

CHAPTER 2
MEMBERSHIP

Rule 1-202. Classes of Members

. . .

(e) **Disabled Members.** Any member of the State Bar of Georgia may petition the Executive Committee for disabled status provided the member meets one of the following criteria:

(1) the member has been determined to be permanently disabled by the Social Security Administration; or
(2) the member is in the process of applying to the Social Security Administration for permanent disability status; or
(3) the member has been determined to be permanently disabled or disabled for a period in excess of one year by an insurance company and is receiving payments pursuant to a disability insurance policy; or
(4) the member has a signed statement from a medical doctor that the member is permanently disabled, or disabled for a period in excess of one year, and unable to practice law.

Upon the Executive Committee's granting of the member's petition for disability status, the disabled member shall be treated as an inactive member of the State Bar of Georgia and shall not be privileged to practice law. A member holding disabled status shall not be required to pay dues or annual fees. A disabled member shall continue in such status until the member requests reinstatement by written application to the membership department of the State Bar of Georgia.

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

. . .

PART SIX
PUBLIC SERVICE

. . .

RULE 6.5. NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client, normally through a one-time consultation, without expectation by either lawyer or the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided by paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) The recipient of the consultation authorized under paragraph (a) is, for purposes of Rule 1.9, a former client of the lawyer providing the service, but that lawyer's disqualification is not imputed to lawyers associated with the lawyer for purposes of Rule 1.10.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as consultation clinics for advice or help with the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides free short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

PART SEVEN
INFORMATION ABOUT LEGAL SERVICES

. . .

RULE 7.5. FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) A trade name may be used by a lawyer in private practice if:

(1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; and

(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] Firm names and letterheads are subject to the general requirement of all advertising that the communication must not be false, fraudulent, deceptive or misleading. Therefore, lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

[2] Trade names may be used so long as the name includes the name of at least one or more of the lawyers actively practicing with the firm. Firm names consisting entirely of the names of deceased or retired partners have traditionally been permitted and have proven a useful means of identification. Sub-paragraph (e)(1) permits their continued use as an exception to the requirement that a firm name include the name of at least one active member.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

Clerk

SUPREME COURT OF GEORGIA

Atlanta April 15, 2013

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

MOTION TO AMEND 2012-1

The Court having considered the motion to amend the Rules and Regulations of the State Bar of Georgia filed on February 21, 2012, it is ordered that the State Bar's motion to amend Rule 1.10 of Part IV, Chapter 1 of the Georgia Rules of Professional Conduct by adding the proposed subsection (d) is hereby denied in light of this Court's approval of State Bar Formal Advisory Opinion 10-1, see S10U1679, which addresses the same issue, and the disagreement between the parties in that matter as to whether the proposed subsection (d) is consistent with Formal Advisory Opinion 10-1.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the
minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court
hereto affixed the day and year last above written.

Clerk

SUPREME COURT OF GEORGIA

Atlanta December 1, 2012

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered motions to amend the Rules and Regulations of the State Bar of Georgia, 2011-2 and 2011-3, it is ordered that the State Bar's motion to amend Rule 1-206.1 of Part I, Chapter 2 (Law Student Members); Rule 5.5 of the Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law); Rule 4-106 of Part IV, Chapter 1 (Conviction of a Crime; Suspension and Disbarment); Rule 4-108 of Part IV, Chapter 1 (Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension); Rule 4-109 of Part IV, Chapter 1 (Refusal or Failure to Appear for Reprimand; Suspension); Rule 4-204.4 of Part IV, Chapter 2 (Finding of Probable Cause; Referral to Special Master); Rule 4-208.1 through Rule 4-208.4 of Part IV, Chapter 2 (Notice of Discipline); Rule 4-209 through Rule 4-210 of Part IV, Chapter 2 (Special Masters); Rule 4-211 of Part IV, Chapter 2 (Formal Complaint; Service); Rule 4-402 of Part IV, Chapter 4 (The Formal Advisory Opinion Board); Arbitration of Fee Disputes, Part VI (Preamble); Rule 6-101 through Rule 6-105 of Part VI, Chapter 1 (Committee on Arbitration of Attorney Fee Disputes); Rule 6-201 through Rule 6-206 of Part VI, Chapter 2 (Jurisdictional Guidelines); Rule 6-301 through Rule 6-306 of Part VI, Chapter 3(Selection of Arbitrators); Rule 6-401 through Rule 6-423 of Part VI, Chapter 4 (Rules of Procedure); Rule 6-501 through Rule 6-503 of Part VI, Chapter 5 (Post-Award Proceedings); Rule 6-601 through Rule 6-603 of Part VI, Chapter 6 (Confidentiality, Record Retention, and Immunity) of the Rules of the State Bar of Georgia is hereby approved, effective December 1, 2012, to read as follows:

Rule 1-206.1. Law Student Members

In addition to the membership and classes of membership provided in this Chapter, the State Bar may recognize as law student members, without the rights and privileges of membership, those law students currently enrolled in a law school approved by the American Bar Association or any law school approved by the Georgia Board of Bar Examiners. Law student members may be furnished copies of appropriate publications electronically and may be entitled to attend and participate, without the right to vote or hold office, in those meetings and activities conducted by the State Bar and any of its component parts or sections.

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;
(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;
(4) are not within paragraphs (2) or (3) and
(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or
(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or
(iii) are governed primarily by international law or the law of a non-United States jurisdiction.
(f) A Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:
(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and
(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.
(g) For purposes of the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.
The maximum penalty for a violation of this rule is disbarment.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.
[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to

members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies four such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Domestic or Foreign Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Domestic or Foreign Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e), (f) and (g) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while

technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to

practice. The Domestic Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so requires.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

(a) The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or

(b) The Domestic or Foreign Lawyer's client may be resident in, have an office in or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

(c) The matter, although involving other jurisdictions, may have a significant connection with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

(d) Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or

(e) A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

(f) Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or

(g) The lawyer's work on the specific matter in this jurisdiction is authorized by the

jurisdiction in which the lawyer is admitted; or
(h) The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or
(i) The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.
[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.
[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.
[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.
[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.
[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this

jurisdiction. See Rule 8.5(a).
[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4.
[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

Rule 4-106. Conviction of a Crime; Suspension and Disbarment
(a) Upon receipt of information or evidence that an attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of nolo contendere or imposition of first offender probation, the Office of the General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.
(b) The petition shall show the date of the verdict or plea and the court in which the Respondent was convicted, and shall be served upon the Respondent pursuant to Bar Rule 4-203.1.
(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate.
(d) The Coordinating Special Master as provided in Bar Rule 4-209.3 will appoint a Special Master, pursuant to Bar Rule 4-209(b).
(e) The show cause hearing should be held within fifteen days after service of the Petition for Appointment of Special Master upon the Respondent or appointment of a Special Master, whichever is later. Within thirty days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia which shall be empowered to order such discipline as deemed appropriate.
(f) (1) If the Supreme Court of Georgia orders the Respondent suspended pending the appeal, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended Respondent should:
(i) be disbarred under Bar Rule 8.4, or

(ii) be reinstated, or
(iii) remain suspended pending retrial as a protection to the public, or
(iv) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these rules.
(2) Reports of the Special Master shall be filed with the Review Panel as provided hereafter in Bar Rule 4-217. The Review Panel shall make its findings and recommendation as provided hereafter in Bar Rule 4-218.
(g) For purposes of this rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea of guilty or plea of nolo contendere or the imposition of first offender treatment shall be prima facie evidence of an infraction of Bar Rule 8.4 of Bar Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

Rule 4-108. Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension

(a) Upon receipt of sufficient evidence demonstrating that an Attorney's conduct poses a substantial threat of harm to his clients or the public and with the approval of the Immediate Past President of the State Bar of Georgia and the Chairperson of the Review Panel, or at the direction of the Chairperson of the Investigative Panel, the Office of the General Counsel shall petition the Supreme Court of Georgia for the suspension of the Attorney pending disciplinary proceedings predicated upon the conduct causing such petition.
(b) The petition for emergency suspension shall state the evidence justifying the emergency suspension.
(c) The petition for emergency suspension shall be served upon the Respondent pursuant to Bar Rule 4-203.1.
(d) Upon receipt of the petition for emergency suspension, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall assign the matter a Supreme Court docket number, and shall notify the Coordinating Special Master that appointment of a Special Master is appropriate.
(e) The Coordinating Special Master will appoint a Special Master pursuant to Bar Rule 4-209(b) to conduct a hearing where the State Bar of Georgia shall show cause why the Respondent should be suspended pending disciplinary proceedings.
(f) Within fifteen days after service of the petition for emergency suspension upon the Respondent or appointment of a Special Master, whichever is later, the Special Master shall hold a hearing on the petition for emergency suspension.
(g) Within twenty days of the hearing, the Special Master shall file his or her recommendation with the Supreme Court of Georgia. The Court sitting en banc may suspend the Respondent pending final disposition of disciplinary proceedings predicated upon the conduct causing the emergency suspension, or order such other

action as it deems appropriate.

Rule 4-109. Refusal or Failure to Appear for Reprimand; Suspension

Either panel of the State Disciplinary Board based on the knowledge or belief that a respondent has refused, or failed without just cause, to appear in accordance with Bar Rule 4-220 before a panel or the superior court for the administration of a reprimand may file in the Supreme Court a motion for suspension of the respondent. A copy of the motion shall be served on the respondent as provided in Bar Rule 4-203.1. The Supreme Court may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

Rule 4-204.4. Finding of Probable Cause; Referral to Special Master

(a) In the event the Investigative Panel, or a subcommittee of the Panel, finds Probable Cause of the Respondent's violation of one or more of the provisions of Part IV, Chapter 1 of these rules it may refer the matter to the Supreme Court by directing the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

(1) A formal complaint, as herein provided;

(2) A petition for the appointment of a Special Master; and

(3) A notice of its finding of Probable Cause.

The documents specified above shall be filed in duplicate within thirty (30) days of the finding of Probable Cause unless the Investigative Panel, or a subcommittee of the Panel, or its Chairperson grants an extension of time for the filing.

(b) A Notice of Discipline and the matter shall thereafter proceed pursuant to Bar Rules 4-208.1, 4-208.2 and 4-208.3.

Rule 4-208.1. Notice of Discipline

(a) In any case where the Investigative Panel or a subcommittee of the Panel finds Probable Cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.

(b) Unless the Notice of Discipline is rejected by the Respondent as provided in Bar Rule 4-208.3, (1) the Respondent shall be in default; (2) the Respondent shall have no right to any evidentiary hearing; and (3) the Respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court of Georgia.

Rule 4-208.2. Notice of Discipline; Contents; Service

(a) The Notice of Discipline shall state the following:

(1) The Rules which the Investigative Panel found that the Respondent violated;

(2) The facts which, if unrefuted, support the finding that such Rules have been violated;
(3) The level of public discipline recommended to be imposed;
(4) The reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the Investigative Panel to be relevant to such recommendation;
(5) The entire provisions of Bar Rule 4-208.3 relating to rejection of Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing same in the Notice;
(6) A copy of the Memorandum of Grievance; and
(7) A statement of any prior discipline imposed upon the Respondent, including confidential discipline under Bar Rules 4-205 to 4-208.
(b) The original Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the Respondent pursuant to Bar Rule 4-203.1.
(c) This subparagraph is reserved.
(d) This subparagraph is reserved.
(e) This subparagraph is reserved.
(f) This subparagraph is reserved.
(g) The Office of the General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.
(h) The level of disciplinary sanction in any Notice of Discipline rejected by the Respondent or the Office of the General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

Rule 4-208.3. Rejection of Notice of Discipline
(a) In order to reject the Notice of Discipline, the Respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline.
(b) Any Notice of Rejection by the Respondent shall be served by the Respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the Respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. The Respondent must also file a copy of such written response with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the Coordinating Special Master to appoint a Special Master and the matter shall thereafter proceed pursuant to Bar Rules 4-209 through 4-225.

Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within thirty (30) days following the filing of a Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

Rule 4-209. Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master

(a) Upon receipt of a finding of Probable Cause, a petition for appointment of a Special Master and a formal complaint from the Investigative Panel, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the finding of Probable Cause need not be filed.

(b) Within a reasonable time after receipt of a petition/motion for appointment of a Special Master or notification that a Special Master previously appointed has been disqualified, the Coordinating Special Master will appoint a Special Master to conduct formal disciplinary proceedings in such complaint. The Coordinating Special Master shall select as Special Masters experienced members of the State Bar of Georgia who possess a reputation in the Bar for ethical practice; provided, that a Special Master may not be appointed to hear a complaint against a Respondent who resides in the same circuit as that in which the Special Master resides.

(c) Upon being advised of appointment of a Special Master by the Coordinating Special Master, the Clerk of the Court shall return the original Notice of Discipline, rejection of Notice of Discipline, if applicable, formal complaint, Probable Cause finding, petition for appointment of Special Master and the signed order thereon to the Office of the General Counsel of the State Bar of Georgia. Upon notification of the appointment of a Special Master, the Office of the General Counsel shall immediately

serve the Respondent with the order of appointment of a Special Master and with its formal complaint as hereinafter provided.
(d) Within ten days of service of the notice of appointment of a Special Master, the Respondent and the State Bar of Georgia shall lodge any and all objections or challenges they may have to the competency, qualifications or impartiality of the Special Master with the chairperson of the Review Panel. The party filing such objections or challenges must also serve a copy of the objections or challenges upon the opposing counsel, the Coordinating Special Master and the Special Master, who may respond to such objections or challenges. Within a reasonable time the chairperson of the Review Panel shall consider the challenges, the responses of Respondent, the State Bar of Georgia, the Coordinating Special Master and the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Coordinating Special Master and the Special Master of the chairperson's decision. Exceptions to the chairperson's denial of disqualification are subject to review by the entire Review Panel and, thereafter, by the Supreme Court of Georgia when exceptions arising during the evidentiary hearing and exceptions to the report of the Special Master and the Review Panel are properly before the Court. In the event of disqualification of a Special Master by the chairperson of the Review Panel, said chairperson shall notify the Clerk of the Supreme Court of Georgia, the Coordinating Special Master, the Special Master, the State Bar of Georgia and the Respondent of the disqualification and appointment of a successor Special Master shall proceed as provided in this rule.

Rule 4-209.1. Coordinating Special Master
(a) The appointment of and the determination of the compensation of the Coordinating Special Master shall be the duty of the Coordinating Special Master Selection and Compensation Commission. The Commission shall be comprised of the second, third and fourth immediate past presidents of the State Bar of Georgia. If any of the above named ex officio individuals should be unable to serve, the vacancy shall be filled by appointment by the Supreme Court of Georgia.
(b) The Coordinating Special Master shall be selected by the Coordinating Special Master Selection and Compensation Commission, with the approval of the Supreme Court of Georgia. The Coordinating Special Master shall serve as an independent contractor at the pleasure of the Coordinating Special Master Selection and Compensation Commission.
(c) The Coordinating Special Master shall be compensated by the State Bar of Georgia from the general operating funds of the State Bar of Georgia in an amount specified by the Coordinating Special Master Selection and Compensation Commission. The Coordinating Special Master's compensation shall be approved by the Supreme Court

of Georgia. On or before the first day of each calendar year, the Coordinating Special Master Selection and Compensation Commission shall submit to the Supreme Court of Georgia for approval the hourly rate to be paid to the Coordinating Special Master during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar of Georgia.
(d) The Coordinating Special Master shall have such office space, furniture and equipment and may incur such operating expenses in such amounts as may be specified by the Supreme Court of Georgia. Such amounts shall be paid by the State Bar of Georgia from the general operating funds. On or before the first day of each calendar year, the Supreme Court of Georgia will set the amount to be paid for the above items during the fiscal year beginning the first day of July of that year.
(e) If the Coordinating Special Master position is vacant or the Coordinating Special Master has recused or been disqualified from a particular matter, the Supreme Court of Georgia may appoint a temporary Acting Coordinating Special Master to act until the position can be filled or to act in any particular matter.

Rule 4-209.2. Special Masters
(a) The Coordinating Special Master, subject to the approval of the Supreme Court of Georgia, shall select and maintain a limited pool of qualified lawyers to serve as Special Masters for the State Disciplinary Board and Hearing Officers for the Board to Determine Fitness of Bar Applicants pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia. The names of those so selected shall be placed on a list maintained by the Coordinating Special Master. Said list shall be published annually in a regular State Bar of Georgia publication. Although not mandatory, it is preferable that a lawyer so selected shall only remain on such list for five years, so that the term may generally be considered to be five years. Any lawyer whose name is removed from such list shall be eligible to be selected and placed on the list at any subsequent time.
(b) Training for Special Masters and Hearing Officers is expected, subject to the terms of this Rule, and shall consist of one training session within twelve months after selection. The Special Master and Hearing Officer training shall be planned and conducted by the Coordinating Special Master. Special Masters and Hearing Officers who fail to attend such a minimum training session shall periodically be removed from consideration for appointment in future cases. Failure to attend such a training session shall not be the basis for a disqualification of any Special Master or Hearing Officer; as such qualifications shall remain in the sole discretion of the Supreme Court of Georgia.
(c) The Special Masters may be paid by the State Bar of Georgia from the general operating funds on a per case rate to be set by the Supreme Court of Georgia. Hearing

Officers may be paid pursuant to Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia.
(d) On or before the first day of March of each calendar year, the Supreme Court of Georgia may set the amount to be paid to the Special Masters during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar of Georgia.

Rule 4-209.3. Powers and Duties of the Coordinating Special Master
The Coordinating Special Master shall have the following powers and duties:
(1) to establish requirements for and supervise Special Master and Hearing Officer training;
(2) to assign cases to Special Masters and Hearing Officers from the pool provided in Bar Rule 4-209(b);
(3) to exercise all of the powers and duties provided in Bar Rule 4-210 when acting as a Special Master under subparagraph (8) below;
(4) to monitor and evaluate the performance of Special Masters and Hearing Officers;
(5) to remove Special Masters and Hearing Officers for such cause as may be deemed proper by the Coordinating Special Master;
(6) to fill all vacancies occasioned by incapacity, disqualification, recusal or removal;
(7) to administer Special Master and Hearing Officer compensation, if authorized as provided in Bar Rule 4-209.2 or Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia;
(8) to hear pretrial motions when no Special Master has been assigned; and
(9) to perform all other administrative duties necessary for an efficient and effective hearing system.

Rule 4-210. Powers and Duties of Special Masters
In accordance with these Rules a duly appointed Special Master or Hearing Officer shall have the following powers and duties:
(a) to exercise general supervision over assigned disciplinary proceedings and to perform all duties specifically enumerated in these Rules;
(b) to rule on all questions concerning the sufficiency of the formal complaint;
(c) to conduct the negotiations between the State Bar of Georgia and the Respondent, whether at a pretrial meeting set by the Special Master or at any other time;
(d) to receive and evaluate any Petition for Voluntary Discipline;
(e) to grant continuances and to extend any time limit provided for herein as to any pending matter;
(f) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to

perform his or her duties or in the event that he or she learns that he or she and the Respondent reside in the same circuit;
(g) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a Respondent growing out of different transactions, whether they involve one or more complainants, and may proceed to make recommendations on each complaint as constituting a separate offense;
(h) to sign subpoenas and exercise the powers described in Bar Rule 4-221(b);
(i) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;
(j) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel;
(k) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases;
(l) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the Respondent should be suspended pending further disciplinary proceedings; and
(m) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written findings of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

Rule 4-211. Formal Complaint; Service
(a) Within thirty days after a finding of Probable Cause, a formal complaint shall be prepared by the Office of the General Counsel which shall specify with reasonable particularity the acts complained of and the grounds for disciplinary action. A formal complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the Respondent after appointment of a Special Master by the Coordinating Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Bar Rule 4-208.4. The formal complaint shall be served pursuant to Bar Rule 4-203.1.
(b) This subparagraph is reserved.
(c) At all stages of the proceeding, both the Respondent and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints, and certificates for and in behalf of the State Bar of Georgia and the State Disciplinary Board.

Rule 4-402. The Formal Advisory Opinion Board

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

(1) Five members of the State Bar of Georgia at-large;

(2) One member of the Georgia Trial Lawyers Association;

(3) One member of the Georgia Defense Lawyers Association;

(4) One member of the Georgia Association of Criminal Defense Lawyers;

(5) One member of the Young Lawyers Division of the State Bar of Georgia;

(6) One member of the Georgia District Attorneys Association;

(7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;

(8) One member of the Investigative Panel of the State Disciplinary Board; and

(9) One member of the Review Panel of the State Disciplinary Board.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board shall serve for a term of one year;

(3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar of Georgia following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Defense Lawyers Association, the Georgia Association of Criminal Defense Lawyers, the Georgia District Attorneys Association and the Young Lawyers Division of the State Bar of Georgia) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large Members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial Representatives from the American Bar Association Accredited Law Schools shall be appointed to one-year terms; two of the initial law school representatives shall be appointed to two-year terms. As each initial term expires, the

successor appointee shall be appointed for a term of two years;
(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems it appropriate to reappoint a member for one or more additional terms.
(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.
(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

PART VI
ARBITRATION OF FEE DISPUTES
PREAMBLE

The purpose of the State Bar of Georgia's program for the arbitration of fee disputes is to provide a convenient mechanism for the resolution of disputes (1) between lawyers and clients over fees; (2) between lawyers in connection with the dissolution of a practice or the withdrawal of a lawyer from a partnership or practice; or (3) between lawyers concerning the allocation of fees earned from joint services. If the parties to such a dispute have been unable to reach an agreement between or among themselves, either side may petition the State Bar Committee on the Arbitration of Attorney Fee Disputes ("Committee") to arbitrate the dispute pursuant to these rules. Regardless of whether a lawyer or a client initiates the filing of a petition requesting arbitration of the dispute, the petitioner must agree to be bound by the result of the arbitration. This is intended to discourage the filing of complaints that are frivolous or that seek to invoke the process simply to obtain an "advisory opinion." If the respondent also agrees to be bound, the resulting arbitration award will be enforceable under the Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq.
A unique feature of this program is that, if a client initiates the arbitration process and agrees to be bound by the result of the arbitration and the respondent lawyer refuses to be bound by any resulting award, the matter will still be submitted to arbitration if, after investigation by the Committee or its staff, the client's claim appears to warrant a hearing.
If the client prevails in the arbitration, the State Bar of Georgia, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings.

CHAPTER 1
COMMITTEE ON ARBITRATION OF ATTORNEY FEE DISPUTES

Rule 6-101. Administration of Program

This program will be administered by the State Bar Committee on the Arbitration of Attorney Fee Disputes ("Committee").

Rule 6-102. Committee Membership

The Committee shall consist of six lawyer members and three public members who are not lawyers. The six lawyer members shall be appointed by the President of the State Bar of Georgia, and the three public members shall be appointed by the Supreme Court of Georgia.

Rule 6-103. Terms

Initially, two members of the Committee, including one of the public members, shall be appointed for a period of three years; two members, including the remaining public members, for a period of two years; and one member for a period of one year. As each member's term of office on the Committee expires, his or her successor shall be appointed for a period of three years. The President of the State Bar shall appoint the chair of the Committee each year from among the members. Vacancies in unexpired terms shall be filled by their respective appointing authorities.

Rule 6-104. Powers and Duties of Committee

The Committee shall have the following powers and duties:
(a) To determine whether to accept jurisdiction over a dispute;
(b) To appoint and remove lawyer and nonlawyer arbitrators and panels of arbitrators;
(c) To oversee the operation of the arbitration process;
(d) To develop and implement fee arbitration procedures;
(e) To interpret these rules and to decide any disputes regarding the interpretation and application of these rules;
(f) To determine challenges to the neutrality of an arbitrator where the arbitrator does not voluntarily withdraw;
(g) To maintain the records of the State Bar of Georgia's Fee Arbitration Program; and
(h) To perform all other acts necessary for the effective operation of the Fee Arbitration Program.

Rule 6-105. Staff's Responsibilities

State Bar of Georgia staff shall be assigned to assist the Committee. The assigned staff

will have such administrative responsibilities as may be delegated by the Committee, which may include the following:
(a) Receive and review arbitration requests and discuss them with the parties, if necessary;
(b) Conduct inquiries to obtain additional information as needed;
(c) Make recommendations to the Committee whether to accept or decline jurisdiction; and
(d) Transmit notices of arbitration hearings, arbitration awards, and other Committee correspondence.

CHAPTER 2
JURISDICTIONAL GUIDELINES

Rule 6-201. Petition
A request for arbitration of a fee dispute is initiated by the filing of a petition with the Committee. Each petition shall be filed on the Fee Arbitration Petition Form supplied by Committee staff and shall contain the following elements:
(a) A statement of the nature of the dispute and the petitioner's statement of facts, including relevant dates;
(b) The names and addresses of the client(s) and the attorney(s);
(c) A statement that the petitioner has made a good faith effort to resolve the dispute and the details of that effort;
(d) A statement that the petitioner agrees to be bound by the result of the arbitration;
(e) The date of the petition; and
(f) Each petitioner's signature.

Rule 6-202. Service of Petition
If a petition has been properly completed and appears to have merit, Committee staff shall serve a copy of the petition, along with a Fee Arbitration Answer Form and an acknowledgment of service form, upon the respondent by first class mail addressed to such party's last known address. A signed acknowledgment of service form or a written answer from the respondent or respondent's attorney shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.
In the absence of an acknowledgment of service or a written response from the respondent or respondent's counsel, service shall be certified mail, return receipt requested, addressed to such party's last known address.
In unusual circumstances as determined by the Committee or its staff, when service has not been accomplished by other less costly measures, service may be accomplished by the Sheriff or a court-approved agent for service of process.

If service is not accomplished, the Committee shall not accept jurisdiction of the case.

Rule 6-203. Answer

Each respondent shall have 20 calendar days after service of a petition to file an answer with the Committee. Staff, in its discretion, may grant appropriate extensions of time for the filing of an answer.

The answer shall be filed on or with the Fee Arbitration Answer Form supplied by Committee staff and shall contain the following elements:

(a) A statement as to whether the respondent agrees to be bound by the result of the arbitration;

(b) The respondent's statement of facts;

(c) Any defenses the respondent intends to assert;

(d) The date of the answer; and

(e) Each respondent's signature.

Committee staff shall serve a copy of the answer upon each petitioner by first class mail, addressed to such party's last known address.

The failure to file an answer shall not deprive the Committee of jurisdiction and shall not result in a default judgment against the respondent.

Rule 6-204. Accepting Jurisdiction

The Committee or its designee may accept jurisdiction over a fee dispute only if the following requirements are satisfied:

(a) The fee in question, whether paid or unpaid, was for legal services rendered by a lawyer who is, or was at the time the services were rendered, a member of the State Bar of Georgia or otherwise authorized to practice law in the State of Georgia.

(b) The legal services in question were performed:

(1) in the State of Georgia; or

(2) from an office located in the State of Georgia; or

(3) by a lawyer who is not admitted to the practice of law in any United States jurisdiction other than Georgia, and the circumstances are such that if the State Bar of Georgia does not accept jurisdiction, no other United States jurisdiction will be available to a client who has filed a petition under this program.

(c) The disputed fee exceeds $750.

(d) The amount of the disputed fee is not governed by statute or other law, nor has any court fixed or approved the full amount or all terms of the disputed fee.

(e) The fee dispute is not the subject of litigation in court at the time the petition for arbitration is filed or when the Committee determines jurisdiction.

(f) The petition seeking arbitration of the fee dispute is filed with the Committee no more than two years following the date on which the controversy arose. If this date

is disputed, it shall be determined in the same manner as the commencement of a cause of action on the underlying contract.
(g) In the case of disputes between lawyers and clients, a lawyer/client relationship existed between the petitioner and the respondent at the time the legal services in question were performed. A relative or other person paying the legal fees of the client may request arbitration of disputes over those fees, provided both the client and the other person pay or join as co-petitioners or co-respondents and both agree to be bound by the result of the arbitration.
(h) The client, whether petitioner or respondent, agrees to be bound by the result of the arbitration. If the respondent attorney does not agree to be bound by the result of the arbitration, the Committee in its discretion may determine that it is in the best interest of the public and the legal profession to accept jurisdiction. When the Committee accepts jurisdiction under these circumstances, the nonconsenting lawyer shall be considered a "party" for purposes of these rules.
(i) In disputes between lawyers, the lawyers who are parties to the dispute are all members of the State Bar of Georgia and have all agreed to arbitrate the dispute under this program and to be bound by the result of the arbitration.
Additionally, where the parties to a fee dispute have signed a written agreement to submit fee disputes to binding arbitration with the State Bar of Georgia's Attorney Fee Arbitration Program, the Committee will consider the agreement enforceable if it is:
(1) set out in a separate paragraph;
(2) written in a font size at least as large as the rest of the contract; and
(3) separately initialed by the client and the attorney.
In deciding whether to accept jurisdiction, the Committee shall review available evidence, including the recommendations of the staff, and make a determination whether to accept or decline jurisdiction. The Committee's decisions on jurisdiction are final, except that such decisions are subject to reconsideration by the Committee upon the request of either party made within 30 days of the initial decision. Staff shall notify the parties of the Committee's decision on jurisdiction by first class mail.

Rule 6-205. Termination or Suspension of Proceedings
The Committee may suspend or terminate arbitration proceedings or may decline or terminate jurisdiction if the client, in addition to pursuing arbitration of a fee dispute under these rules, asserts a claim against the lawyer in any court arising out of the same set of circumstances, including any claim of malpractice. Any claim or evidence of professional misconduct within the meaning of the Code of Professional Responsibility may be reported by the arbitrators or the Committee to the Office of the General Counsel for consideration under its normal procedures.

Rule 6-206. Revocation

After jurisdiction has been accepted by the Committee and the other party has agreed in writing to be bound by the award, the submission to arbitration shall be irrevocable except by consent of all parties or by action of the Committee or the arbitration panel for good cause shown.

CHAPTER 3
SELECTION OF ARBITRATORS

Rule 6-301. Roster of Arbitrators

The Committee shall maintain a roster of lawyers available to serve as arbitrators on an "as needed" basis in appropriate geographical areas throughout the state. To the extent possible, the arbitration should take place in the same geographical area where the services in question were performed; however, the final decision as to the location of the arbitration remains with the Committee.

The Committee shall likewise maintain a roster of nonlawyer public members selected by the Supreme Court of Georgia.

Rule 6-302. Neutrality of Arbitrators

No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest. Upon appointment to a particular arbitration, each arbitrator shall disclose to the Committee any circumstance that may affect his or her neutrality in regard to the dispute in question.

If an arbitrator becomes aware of any circumstances that might preclude that arbitrator from rendering an objective and impartial determination of the proceeding, the arbitrator must disclose that potential conflict as soon as practicable. If the arbitrator becomes aware of the potential conflict prior to the hearing, the disclosure shall be made to the Committee, which shall forward the disclosure to the parties. If the potential conflict becomes apparent during the hearing, the disclosure shall be made directly to the parties.

If a party believes that an arbitrator has a potential conflict of interest and should withdraw or be disqualified, and the arbitrator does not voluntarily withdraw, the party shall promptly notify the Committee so that the issue may be addressed and resolved as early in the arbitration process as possible.

Rule 6-303. Selection of Arbitrators

The arbitration panel shall be selected by the Committee or its staff. Except as provided below, the arbitration panel shall consist of two attorney members who have practiced law actively for at least five years and one nonlawyer public member.

In cases involving disputed amounts greater than $750 but not exceeding $2,500, the Committee in its sole discretion may appoint an arbitration panel consisting of one lawyer who has practiced law actively for at least five years.
Petitioner and respondent by mutual agreement shall have the right to select the three arbitrators. They also may mutually agree to have the dispute determined by a sole arbitrator jointly selected by them, provided any such sole arbitrator shall be one of the persons on the roster of arbitrators or shall have been approved in advance by the Committee upon the joint request of petitioner and respondent.

Rule 6-304. Qualifications of Lawyer Arbitrators
In addition to being impartial, lawyer arbitrators shall:
(a) Have practiced law actively for at least five years; and
(b) Be an active member in good standing of the State Bar of Georgia.

Rule 6-305. Powers and Duties of Arbitration Panel
The panel of arbitrators shall have the following powers and duties:
(a) To compel by subpoena the attendance of witnesses and the production of documents and things;
(b) To decide the extent and method of any discovery;
(c) To administer oaths and affirmations;
(d) To take and hear evidence pertaining to the proceeding;
(e) To rule on the admissibility of evidence;
(f) To interpret and apply these rules insofar as they relate to the arbitrators' powers and duties; and
(g) To perform all acts necessary to conduct an effective arbitration hearing.

Rule 6-306. Compensation
All arbitrators shall serve voluntarily and without fee or expense reimbursement; provided, however, that arbitrators selected to serve in disputes in which all the parties are lawyers may at the discretion of the Committee be compensated, with such compensation to be paid by the lawyer parties as directed by the Committee.

CHAPTER 4
RULES OF PROCEDURE

Rule 6-401. Representation by Counsel
Parties may be represented throughout the arbitration by counsel at their own expense, or they may represent themselves.

Rule 6-402. Time and Place of Arbitration Hearing
Upon their appointment by the Committee, the arbitrators shall elect a chair and then shall fix a time and place for the arbitration hearing. To the extent feasible, the hearing shall be held no more than 60 days after the appointment of the last arbitrator. At least ten calendar days prior to the hearing, the Committee shall mail notices of the time and place of the hearing to each party by first class mail, addressed to each party's last known address.

Rule 6-403. Attendance and Participation at Hearing
The parties shall have the right to attend and participate in the arbitration hearing at their own expense. It shall be discretionary with the arbitrators whether to allow the attendance of any persons who are not parties, witnesses, or counsel to one of the parties.
At the discretion of the arbitrators, a party may be permitted to appear or present witness testimony at the hearing by telephone conference call, video conference, computer-facilitated conference, or similar telecommunications equipment, provided all persons participating in the hearing can simultaneously hear each other during the hearing.

Rule 6-404. Stenographic Record
Any party may ask the Committee to arrange for the taking of a stenographic record of the proceeding. If a party orders a transcript, that party shall acquire and provide a certified copy of the transcript for the record at no cost to the panel. Other parties are entitled at their own expense to acquire a copy of the transcript by making arrangements directly with the court reporter. However, it shall not be necessary to have a stenographic record of the hearing.

Rule 6-405. Death, Disability, or Resignation of Arbitrator
If an arbitrator dies, resigns, or becomes unable to continue to act while an arbitration is pending, the remaining two arbitrators shall not proceed with the arbitration. The Committee or its designee shall determine the course of further proceedings and may appoint a substitute or replacement arbitrator or, by agreement of the parties, may proceed with one arbitrator.

Rule 6-406. Discovery, Subpoenas, and Witnesses

Upon the written request of a party or the panel's own motion, discovery may be allowed to the extent deemed necessary by the arbitrators in their sole discretion.

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of documents and things, and may do so either upon the arbitrators' own initiative or upon the request of a party. These subpoenas shall be served and, upon application to the Superior Court in the county in which the arbitration is pending by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.

Rule 6-407. Adjournments

The arbitrators for good cause shown may adjourn the hearing upon the request of either party or upon the arbitrators' own initiative.

Rule 6-408. Arbitrators' Oath

Before proceeding with the hearing, the arbitrators shall take an oath of office. The arbitrators have the discretion to require witnesses to testify under oath or affirmation, and, if requested by either party, shall so require.

Rule 6-409. Order of Proceedings

The hearing shall be opened by the filing of the oath of the arbitrators. Next, the panel shall record the place, time, and date of the hearing, the names of the arbitrators, the parties, parties' counsel, and any witnesses who will be presenting evidence during the hearing.

The normal order of proceedings shall be the same as at a trial, with the petitioner's claim being presented first. However, the arbitrators shall have the discretion to vary the normal order of proceedings.

The petitioner shall have the burden of proof by a preponderance of the evidence.

Rule 6-410. Arbitration in the Absence of a Party

The arbitration may proceed in the absence of a party, who, after due notice, fails to be present in person or by telephonic or electronic means. An award shall not be made solely on the default of a party; the arbitrators shall require the other party or parties to present such evidence as the arbitrators may require for the making of an award.

Rule 6-411. Evidence

(a) Parties may offer such relevant and material evidence as they desire and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. The arbitrators shall be the judge of

the relevancy and materiality of the evidence offered. The rules of evidence shall be liberally interpreted, and hearsay may be utilized at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.
(b) A list shall be made of all exhibits received into evidence by the arbitrators. Exhibits shall be listed in the order in which they were received, and the list shall be made a part of the record.
(c) The names and addresses of all witnesses who testify at the arbitration shall be made a part of the record. Upon their own motion or at the request of any party, the arbitrators shall have the power to require the sequestration of any witness during the testimony of other witnesses.
(d) The arbitrators may receive and consider the evidence of witnesses by affidavit (copies of which shall be served on the opposing party at least five days prior to the hearing), but shall give such evidence only such weight as the arbitrators deem proper after consideration of any objections made to its admissibility.
(e) The petition, answer, and other pleadings, including any documents attached thereto, may be considered as evidence at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.
(f) The receipt of testimony by deposition, conference telephone calls, and other procedures is within the discretion of the arbitrators upon their own motion or at the request of any party.

Rule 6-412. Written Contract
Arbitrators shall give due regard to the terms of any written contract signed by the parties.

Rule 6-413. Closing of Hearing
Prior to the closing of an arbitration hearing, the arbitrators shall inquire of all parties whether they have any further evidence to offer or additional witnesses to be heard. If no further evidence is to be presented by either party, the arbitrators shall declare the hearing closed and make a record of that fact.

Rule 6-414. Reopening of Hearing
Upon the motion of the arbitrators or of a party, an arbitration may be reopened for good cause shown at any time before an award is made. However, if the reopening of the hearing would prevent the award from being rendered within the time provided by these rules, the matter may not be reopened unless both parties agree upon the extension of such time limit.

Rule 6-415. Waiver of Rules
Any party who, knowing of a failure to comply with a provision or requirement of these rules, fails to state an objection on the record or in writing prior to the closing of the hearing, shall be deemed to have waived any right to object.

Rule 6-416. Waiver of Oral Hearings
The parties may provide by written agreement for the waiver of oral hearings.

Rule 6-417. Award
If both parties have agreed to be bound by the arbitration, the award of the arbitrators is final and binding upon the parties.
In cases in which a lawyer refuses to be bound by the result of the arbitration, the award rendered will be considered as prima facie evidence of the fairness of the award in any action brought to enforce the award, and the burden of proof shall shift to the lawyer to prove otherwise.

Rule 6-418. Time of Award
The arbitrators shall make all reasonable efforts to render their award promptly and not later than 30 days from the date of the closing of the hearing, unless otherwise agreed upon by the parties with the consent of the arbitrators or an extension is obtained from the Committee or its chair. If oral hearing has been waived, then the time period for rendering the award shall begin to run from the date of the receipt of final statements and evidence by the arbitrators.

Rule 6-419. Form of Award
The award shall be in writing and shall be signed by the arbitrators or by a concurring majority. The parties shall advise the arbitrators in writing prior to the close of the hearing if they request the arbitrators to accompany the award with an opinion.

Rule 6-420. Award Upon Settlement
If the parties settle their dispute during the course of the arbitration proceeding, the arbitrators, the Committee, or the Committee's designee, upon the written consent of all parties, may set forth the terms of the settlement in an award.

Rule 6-421. Service of Award Upon Parties
Service of the award upon the parties shall be the responsibility of Committee staff. Service of the award shall be accomplished by depositing a copy of the award in the United States Mail in a properly addressed envelope with adequate first class postage thereon and addressed to each party at his or her last known address.

Rule 6-422. Communication with Arbitrators
There shall be no ex parte communication between a party and an arbitrator.

Rule 6-423. Interpretation and Application of Rules.
If the arbitrators on a panel disagree as to the interpretation or application of any rule relating to the arbitrators' powers and duties, such dispute shall be decided by a majority vote of the arbitrators. If the dispute cannot be resolved in that manner, an arbitrator or a party may refer the question to the Committee for its determination. The Committee's decision on the interpretation or application of these rules shall be final.

CHAPTER 5
POST-AWARD PROCEEDINGS

Rule 6-501. Confirmation of Award in Favor of Client
In cases where both parties agreed to be bound by the result of the arbitration and an award in favor of a client has not been satisfied within three months after it was served upon the parties, the client may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq.
Upon the written request of a client, the Committee may provide a lawyer to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses.

Rule 6-502. Confirmation of Award in Favor of Attorney
In cases where both parties agreed to be bound by the result of the arbitration and an award has been issued in favor of an attorney, the attorney may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq.
The State Bar will not represent, assist, or advise the attorney except to provide copies of any necessary papers from the fee arbitration file pursuant to State Bar policies.

Rule 6-503. Procedure Where Lawyer Refuses to be Bound
In cases where an attorney refuses to be bound by the result of an arbitration and an award in favor of a client remains unsatisfied three months after service of the award upon the parties, the State Bar of Georgia, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost to the

client other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses. An award rendered in favor of a client in a case in which the attorney refused to be bound by the result of the arbitration will be considered as prima facie evidence of the fairness of the award, and the burden of proof shall shift to the lawyer to prove otherwise.

CHAPTER 6
CONFIDENTIALITY, RECORD RETENTION, AND IMMUNITY

Rule 6-601. Confidentiality
All records, documents, files, proceedings, and hearings pertaining to the arbitration of a fee dispute under this program are the property of the State Bar of Georgia and, except for the award itself, shall be deemed confidential and shall not be made public. A person who was not a party to the dispute shall not be allowed access to such materials unless all parties to the arbitration consent in writing or a court of competent jurisdiction orders such access. However, the Committee, its staff, or representative may reveal confidential information in those circumstances in which the Office of the General Counsel is authorized by Bar Rule 4-221(d) to do so.

Rule 6-602. Record Retention
The record of any fee dispute under these rules shall be retained by the Committee in accordance with policies adopted by the Committee.

Rule 6-603. Immunity
Committee members, arbitrators, staff, and appointed voluntary counsel assisting the program shall be immune from suit for any conduct in the course and scope of their official duties under this program. Parties and witnesses shall have such immunity as is applicable in a civil action in Georgia.

CHAPTER 7
CONFIDENTIALITY

The current provisions of Chapter 7 of the Rules of the Fee Arbitration Program shall be eliminated under these amendments, and the provisions formerly found in this Chapter are relocated to Chapter 6 of the amended Rules.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last written.

SUPREME COURT OF GEORGIA

Atlanta November 3, 2011

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the motion to amend the Rules and Regulations of the State Bar of Georgia, it is ordered that the State Bar's Motion to Amend Rule 1-207 (Change of Address); Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct); Rule 1.0 (Terminology); Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer); Rule 1.3 (Diligence); Rule 1.4 (Communication); Rule 1.5 (Fees); Rule 1.6 (Confidentiality of Information); Rule 1.7 (Conflict of Interest: General Rule); Rule 1.8 (Conflict of Interest: Prohibited Transactions); Rule 1.9 (Conflict of Interest: Former Client); Rule 1.11 (Successive Government and Private Employment); Rule 1.12 (Former Judge or Arbitrator); Rule 1.13 (Organization as Client); Rule 1.14 (Client with Diminished Capacity); Rule 1.15(I) (Safekeeping Property – General); Rule 1.15(III) (Record Keeping; Trust Account Overdraft Notification; Examination of Records); Rule 2.2 (Intermediary); Rule 2.3 (Evaluation for Use by Third Persons); Rule 2.4 (Lawyer Serving as Third-Party Neutral); Rule 3.3 (Candor Toward the Tribunal); Rule 3.4 (Fairness to Opposing Party and Counsel); Rule 4.2 (Communication With Person Represented by Counsel); Rule 4.3 (Dealing With Unrepresented Person); Rule 4.4 (Respect For Rights of Third Persons); Rule 5.1 (Responsibilities of Partners, Managers and Supervisory Lawyers); Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants); Rule 8.4 (Misconduct); Rule 9.1 (Reporting Requirements); Rule 9.2 (Restrictions on Filing Disciplinary Complaints); Rule 9.4 (Jurisdiction and Reciprocal Discipline); Rule 4-106 (Conviction of a Crime; Suspension and Disbarment); Rule 4-201 (State Disciplinary Board); Rule 4-203.1 (Uniform Service Rule); Rule 4-208.3 (Rejection of Notice of Discipline); Rule 4-210 (Powers and Duties of Special Masters); Rule 4-213 (Evidentiary Hearing); Rule 4-217 (Report of the Special Master to the Review Panel); Rule 4-218 (Findings by the Review Panel); Rule 4-221 (Procedures); are hereby approved, effective November 3, 2011, to read as follows:

PART I
CREATION AND ORGANIZATION

CHAPTER 1
CREATION AND PURPOSE

Rule 1-207. Change of Address

All members of the State Bar of Georgia shall keep the Membership Department of the State Bar of Georgia informed of their current name, official address and telephone number. The Court and the State Bar of Georgia may rely on the official address given to the Membership Department and failure on the part of a member to notify the Membership Department may have adverse consequences to a member. The choice of a member to use only a post office box address on the Bar membership records shall constitute an election to waive personal service in any proceedings between the Bar and the member. Notification given to any department of the Bar other than the Membership Department shall not satisfy this requirement.

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102 Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct

RULE 1.0 TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually thought the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing" when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (h) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "Domestic Lawyer" denotes a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia.

(e) "Firm" or "law firm" denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Bar Rule 1-203(4); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(f) "Foreign Lawyer" denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia.

(g) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.

(h) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(i) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(j) "Lawyer" denotes a person authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia, including persons admitted to practice in this state pro hac vice.

(k) "Nonlawyer" denotes a person not authorized to practice law by either the:

(1) Supreme Court of Georgia or its Rules (including pro hac vice admission), or

(2) duly constituted and authorized governmental body of any other State or Territory of the United States, or the District of Columbia, or

(3) duly constituted and authorized governmental body of any foreign nation.

(l) "Partner" denotes a member of a partnership, a shareholder in a law firm organized pursuant to Bar Rule 1-203(4), or a member of an association authorized to practice law.

(m) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(n) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(o) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(p) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(q) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(r) "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

(s) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

[1] Bar Rule 4-110 includes additional definitions for terminology used in the procedural section of these Rules.

Confirmed in Writing

[1A] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (e) can depend on the specific facts. For

example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the term "fraud" or "fraudulent" refers to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. *See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b)*. The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general,

a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. *See Rules 1.7(b) and 1.9(a).* For a definition of "writing" and "confirmed in writing," see paragraphs (s) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. *See, e.g., Rule 1.8(a)(3) and (g).* For a definition of "signed," see paragraph (s).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11 and 1.12.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Writing

[11] The purpose of this definition is to permit a lawyer to use developing technologies that maintain an objective record of a communication that does not rely upon the memory of the lawyer or any other person. *See OCGA § 10-12-2(8).*

PART ONE
CLIENT-LAWYER RELATIONSHIP

RULE 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

The maximum penalty for a violation of this Rule is disbarment.

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. *See Rule 1.4(a)(1)* for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. *See Rule 1.16(b)(4)*. Conversely, the client may resolve the disagreement by discharging the lawyer. *See Rule 1.16(a)(3)*.

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and the client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. *See Rule 1.1.*

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. *See, e.g., Rules 1.1, 1.8 and 5.6.*

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. *See Rule 1.16(a).* In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. *See Rule 4.1.*

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent voidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. *See Rule 1.4(a)(5).*

RULE 1.3. DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not without just cause to the detriment of the client in effect wilfully abandon or wilfully disregard a legal matter entrusted to the lawyer.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. *See Rule 1.2.* The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load should be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will serve on a continuing basis. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

RULE 1.4. COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(h), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's informed consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See Rule 1.2(a).*

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations — depending on both the importance of the action under consideration and the feasibility of consulting with the client — this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged. The timeliness of a lawyer's communication must be judged by all the controlling factors. "Prompt" communication with the client does not equate to "instant" communication with the client and is sufficient if reasonable under the relevant circumstances.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, where there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(h).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See Rule 1.14*. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric

diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client.

RULE 1.5. FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) (1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

(i) the outcome of the matter; and

(ii) if there is a recovery, showing:

(A) the remittance to the client;

(B) the method of its determination;

(C) the amount of the attorney fee; and

(D) if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the lawyer’s firm or law office, the amount of the fee received by each and the manner in which the division is determined.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of the share that each lawyer is to receive and does not object to the participation

of all the lawyers involved; and
(3) the total fee is reasonable.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in paragraphs (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

[1A] A fee can also be unreasonable if it is illegal. Examples of illegal fees are those taken without required court approval, those that exceed the amount allowed by court order or statute, or those where acceptance of the fee would be unlawful, e.g., accepting controlled substances or sexual favors as payment.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. *See Rule 1.16(d)*. A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made, the terms of which might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns. *See Formal Advisory Opinions 36 and 47*.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well. Joint responsibility for the representation entails financial and ethical responsibility for the representation.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

RULE 1.6. CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the Court.

(b) (1) A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

(i) to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;

(ii) to prevent serious injury or death not otherwise covered by subparagraph (I) above;

(iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(2) In a situation described in paragraph (b)(1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.

(3) Before using or disclosing information pursuant to paragraph (b)(1), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.

(iv) to secure legal advice about the lawyer's compliance with these Rules.

(c) The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.

(d) The lawyer shall reveal information under paragraph (b) as the applicable law requires.

(e) The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

[2] The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

[3] Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[4] A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

[4A] Information gained in the professional relationship includes information gained from a person (prospective client) who discusses the possibility of forming a client-lawyer relationship with respect to a matter. Even when no client-lawyer relationship ensues, the restrictions and exceptions of these Rules as to use or revelation of the information apply, e.g., Rules 1.9 and 1.10.

[5] The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. Rule 1.6 applies not merely to matters communicated in confidence by the client but also to all information gained in the professional relationship, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. *See also Scope*. The requirement of maintaining confidentiality of information gained in the professional relationship applies to government lawyers who may disagree with the client's policy goals.

Authorized Disclosure

[6] A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

[7] Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[7A] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about

the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized paragraph (b)(1)(iv) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Disclosure Adverse to Client

[8] The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.

[9] Several situations must be distinguished. First, the lawyer may not knowingly assist a client in conduct that is criminal or fraudulent. *See Rule 1.2(d)*. Similarly, a lawyer has a duty under Rule 3.3(a)(4) not to use false evidence.

[10] Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated Rule 1.2(d), because to "knowingly assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

[11] Third, the lawyer may learn that a client intends prospective conduct that is criminal and likely to result in death or substantial bodily harm. As stated in paragraph (b)(1), the lawyer has professional discretion to reveal information in order to prevent such consequences. The lawyer may make a disclosure in order to prevent death or serious bodily injury which the lawyer reasonably believes will occur. It is very difficult for a lawyer to "know" when such a heinous purpose will actually be carried out, for the client may have a change of mind.

[12] The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. Where practical, the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to take preventive action permitted by paragraph (b)(1) does not violate this Rule.

Withdrawal

[13] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1).

[14] After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

[15] Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Dispute Concerning a Lawyer's Conduct

[16] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(1)(iii) does not require the lawyer to await the commencement of an action or proceeding

that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[17] If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by paragraph (b)(1)(iii) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures Otherwise Required or Authorized

[18] The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, paragraph (a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

[19] The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. *See Rules 2.2, 2.3, 3.3 and 4.1.* In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

RULE 1.7. CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

(b) If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent confirmed in writing to the representation after:

(1) consultation with the lawyer pursuant to Rule 1.0(c);

(2) having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation; and

(3) having been given the opportunity to consult with independent counsel.

(c) Client informed consent is not permissible if the representation:

(1) is prohibited by law or these Rules;

(2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or a substantially related proceeding; or

(3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate

representation to one or more of the affected clients.

The maximum penalty for a violation of this Rule is disbarment.

Comment

Loyalty to a Client

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. If an impermissible conflict of interest exists before representation is undertaken the representation should be declined. The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

[2] Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (a) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

[3] If an impermissible conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. *See Rule 1.16.* Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, *see Comment 4 to Rule 1.3 and Scope.*

[4] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's informed consent. Paragraphs (b) and (c) express that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require informed consent of the respective clients.

Consultation and Informed Consent

[5] A client may give informed consent to representation notwithstanding a conflict. However when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's informed consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain informed consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to give informed consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to give informed consent. If informed consent is withdrawn, the lawyer should consult Rules 1.9 and 1.16.

[5A] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. *See Rule 1.0(b). See also Rule 1.0(s)* (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. *See Rule 1.0(b).* The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any,

of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Lawyer's Interests

[6] The lawyer's personal or economic interests should not be permitted to have an adverse effect on representation of a client. *See Rules 1.1 and 1.5.* If the propriety of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation

[7] Paragraph (c)(2) prohibits representation of opposing parties in the same or a similar proceeding including simultaneous representation of parties whose interests may conflict, such as co-plaintiffs or co-defendants. An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal, the requirements of paragraph (b) are met, and consent is not prohibited by paragraph (c).

[8] Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients give informed consent as required by paragraph (b). By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government entity is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

[9] A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases while they are pending in different trial courts, but it may be improper to do so should one or more of the cases reach the appellate court.

Interest of Person Paying for a Lawyer's Service

[10] A lawyer may be paid from a source other than the client, if the client is informed of that fact and gives informed consent and the arrangement does not compromise the lawyer's duty of loyalty to the client. *See Rule 1.8(f).* For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients give informed consent and the arrangement ensures the lawyer's professional independence.

Non-litigation Conflicts

[11] Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for material and adverse effect include the duration and extent of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise.

[12] In a negotiation common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

[13] Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

[14] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict Charged by an Opposing Party

[15] Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call into question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. *See Scope*.

RULE 1.8. CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

(a) A lawyer shall neither enter into a business transaction with a client if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, nor shall the lawyer knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information gained in the professional relationship with a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, grandparent, child, grandchild, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or

(2) a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims for or against the clients, nor in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, grandparent, child, grandchild, sibling or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer has actual knowledge is represented by the other lawyer unless his or her client gives informed consent regarding the relationship. The disqualification stated in this paragraph is personal and is not imputed to members of firms with whom the lawyers are associated.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fees or expenses as long as the exercise of the lien is not prejudicial to the client with respect to the subject of the representation; and

(2) contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5.

The maximum penalty for a violation of Rule 1.8(b) is disbarment. The maximum penalty for a violation of Rule 1.8(a) and 1.8(c)-(j) is a public reprimand.

Comment

Transactions Between Client and Lawyer

[1A] As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. The client should be fully informed of the true nature of the lawyer's interest or lack of interest in all aspects of the transaction. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's informed consent, seek to acquire nearby property where doing so would adversely affect the client's plan for

investment. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

Use of Information to the Disadvantage of the Client

[1B] It is a general rule that an attorney will not be permitted to make use of knowledge or information acquired by the attorney through the professional relationship with the client, or in the conduct of the client's business, to the disadvantage of the client. Paragraph (b) follows this general rule and provides that the client may waive this prohibition. However, if the waiver is conditional, the duty is on the attorney to comply with the condition.

Gifts from Clients

[2] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the objective advice that another lawyer can provide. Paragraph (c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

Literary Rights

[3] An agreement by which a lawyer acquires literary or media rights concerning the subject of the representation creates a conflict between the interest of the client and the personal interest of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraph (j) of this Rule.

Financial Assistance to Clients

[4] Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above.

Payment for a Lawyer's Services from One Other Than The Client

[5] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. *See also Rule 5.4(c)* (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Settlement of Aggregated Claims

[6] Paragraph (g) requires informed consent. This requirement is not met by a blanket consent prior to settlement that the majority decision will rule.

Agreements to Limit Liability
[7] A lawyer may not condition an agreement to withdraw or the return of a client's documents on the client's release of claims. However, this paragraph is not intended to apply to customary qualifications and limitations in opinions and memoranda.

[8] A lawyer should not seek prospectively, by contract or other means, to limit the lawyer's individual liability to a client for the lawyer's malpractice. A lawyer who handles the affairs of a client properly has no need to attempt to limit liability for the lawyer's professional activities and one who does not handle the affairs of clients properly should not be permitted to do so. A lawyer may, however, practice law as a partner, member, or shareholder of a limited liability partnership, professional association, limited liability company, or professional corporation.

Family Relationships Between Lawyers
[9] Paragraph (i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1.9 and 1.10.

Acquisition of Interest in Litigation
[10] Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a propriety interest in litigation. This general rule, which has its basis in the common law prohibition of champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these Rules, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for lawyer's fees and for certain advances of costs of litigation set forth in paragraph (e).

RULE 1.9. CONFLICT OF INTEREST: FORMER CLIENT
(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:
(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c), that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

The maximum penalty for a violation of this Rule is disbarment.

Comment
[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor

could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. *See Comment [9].* Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or

information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. *See Rule 1.10(b)* for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See Rules 1.6 and 1.9(c).*

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). *See Rule 1.0(b) and (h)*. With regard to disqualification of a firm with which a lawyer is or was formerly associated. *See Rule 1.10.*

RULE 1.11. SUCCESSIVE GOVERNMENT AND PRIVATE EMPLOYMENT

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government entity gives informed consent, confirmed in writing. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is duly given to the client and to the appropriate government entity to enable it to ascertain compliance with the provisions of this Rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as lawyer for a party in

a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(d) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government entity.

(e) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

The maximum penalty for a violation of this Rule is disbarment**.**

Comment

[1] This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to lawyers moving from one firm to another.

[2] A lawyer representing a government entity, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is subject to Rule 1.11 and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government entity may give consent under this Rule.

[3] Where the successive clients are a public entity and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. However, the rules governing lawyers presently or formerly employed by a government entity should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

[4] When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

[5] Paragraphs (a)(1) and (b) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[6] Paragraph (a)(2) does not require that a lawyer give notice to the government entity at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer.

Such notice is, however, required to be given as soon as practicable in order that the government entity will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying.

[7] Paragraph (b) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[8] Paragraphs (a) and (c) do not prohibit a lawyer from jointly representing a private party and a government entity when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[9] Paragraph (c) does not disqualify other lawyers in the entity with which the lawyer in question has become associated.

RULE 1.12. FORMER JUDGE OR ARBITRATOR

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator. In addition, the law clerk shall promptly provide written notice of acceptance of employment to all counsel of record in all such matters in which the prospective employer is involved.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not "act as a lawyer in any proceeding in which he served as a judge or in any other proceeding related thereto." Although phrased differently

from this Rule, those rules correspond in meaning.

RULE 1.13. ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

The Organization as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the

corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(I), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant consideration. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which

the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyers' representation of the organization. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Governmental Organization

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. *See Scope [16]*. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. *See Scope [16]*.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions
[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

RULE 1.14. CLIENT WITH DIMINISHED CAPACITY
(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment
[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the lawyer should consider such participation in terms of its effect on the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family

members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. *See Rule 1.2(d).*

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer’s position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

[11] This Rule is not violated if a lawyer acts in good faith to comply with the Rule.

RULE 1.15(I). SAFEKEEPING PROPERTY — GENERAL

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own funds or other property. Funds shall be kept in a separate account maintained in an approved institution as defined by Rule 1.15(III)(c)(1). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) For the purposes of this rule, a lawyer may not disregard a third person's interest in funds or other property in the lawyer's possession if:

(1) the interest is known to the lawyer, and

(2) the interest is based upon one of the following:

(i) A statutory lien;

(ii) A final judgment addressing disposition of those funds or property; or

(iii) A written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property.

The lawyer may disregard the third person's claimed interest if the lawyer reasonably concludes that there is a valid defense to such lien, judgment, or agreement.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(d) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and a client or a third person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property as to which the interests are not in dispute.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration or interpleader. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[3A] In those cases where it is not possible to ascertain who is entitled to disputed funds or other property held by the lawyer, the lawyer may hold such disputed funds for a reasonable period of time while the interested parties attempt to resolve the dispute. If a resolution cannot be reached, it would be appropriate for a lawyer to interplead such disputed funds or property.

[4] A "clients' security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

RULE 1.15(III). RECORD KEEPING; TRUST ACCOUNT OVERDRAFT NOTIFICATION; EXAMINATION OF RECORDS

(a) Required Bank Accounts: Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution as defined by this Rule, a trust account or accounts, separate from any business and personal accounts. Funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited into this account. The financial institution shall be in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person.

(b) Description of Accounts:

(1) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as an "Attorney Trust Account," "Attorney Escrow Account," "IOLTA Account" or "Attorney Fiduciary Account." The name of the attorney or law firm responsible for the account shall also appear on all deposit slips and checks drawn thereon.

(2) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," "Operating Account" or a "Regular Account."

(3) Nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any other fiduciary capacity.

(c) Procedure:

(1) Approved Institutions:

(i) A lawyer shall maintain his or her trust account only in a financial institution approved by the State Bar, which shall annually publish a list of approved institutions. Such institutions shall be located within the State of Georgia, within the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or fiduciary. The institution shall be authorized by federal or state law to do business in the jurisdiction where located and shall be federally insured. A financial institution shall be approved as a depository for lawyer trust accounts if it abides by an agreement to report to the State Disciplinary Board whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the State Disciplinary Board. The agreement shall be filed with the Office of General Counsel on a form approved by the State Disciplinary Board. The agreement shall provide that all reports made by the financial institution shall be in writing and shall include the same information customarily forwarded to the depositor when an instrument is presented against insufficient funds. If the financial institution is located outside of the State of Georgia, it shall also agree in writing to honor any properly issued State Bar of Georgia subpoena.

(ii) The State Disciplinary Board shall establish procedures for a lawyer or law firm to be excused from the requirements of this Rule if the lawyer or law firm has its principal office in a county where no bank, credit union, or savings and loan association will agree to comply with the provisions of this Rule.

(2) Timing of Reports:

(i) The financial institution shall file a report with the Office of General Counsel of the State Bar of Georgia in every instance where a properly payable instrument is presented against a lawyer trust account containing insufficient funds and said instrument is not honored within three business days of presentation.

(ii) The report shall be filed with the Office of General Counsel within fifteen days of the date of the presentation of the instrument, even if the instrument is subsequently honored after the three business days provided in (2)(i) above.

(3) Nothing shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule.

(4) Every lawyer and law firm maintaining a trust account as provided by these Rules is hereby and shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule and shall indemnify and hold harmless each financial institution for its compliance with the aforesaid reporting and production requirements.

(d) Effect on Financial Institution of Compliance: The agreement by a financial institution to offer accounts pursuant to this Rule shall be a procedure to advise the State Disciplinary Board of conduct by attorneys and shall not be deemed to create a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of lawyers overdrawing attorney trust accounts.

(e) Availability of Records: A lawyer shall not fail to produce any of the records required to be maintained by these Standards at the request of the Investigative Panel of the State Disciplinary Board or the Supreme Court. This obligation shall be in addition to and not in lieu of the procedures contained in Part IV of these Rules for the

production of documents and evidence.

(f) Audit for Cause: A lawyer shall not fail to submit to an Audit for Cause conducted by the State Disciplinary Board pursuant to Bar Rule 4-111.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] Each financial institution wishing to be approved as a depository of client trust funds must file an overdraft notification agreement with the State Disciplinary Board of the State Bar of Georgia. The State Bar of Georgia will publish a list of approved institutions at least annually.

[2] The overdraft agreement requires that all overdrafts be reported to the Office of General Counsel of the State Bar of Georgia whether or not the instrument is honored. It is improper for a lawyer to accept "overdraft privileges" or any other arrangement for a personal loan on a client trust account, particularly in exchange for the institution's promise to delay or not to report an overdraft. The institution must notify the Office of General Counsel of all overdrafts even where the institution is certain that its own error caused the overdraft or that the matter could have been resolved between the institution and the lawyer within a reasonable period of time.

[3] The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional errors. The provision merely intends that the Office of General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken.

Audits

[4] Every lawyer's financial records and trust account records are required records and therefore are properly subject to audit for cause. The audit provisions are intended to uncover errors and omissions before the public is harmed, to deter those lawyers who may be tempted to misuse client's funds and to educate and instruct lawyers as to proper trust accounting methods. Although the auditors will be employed by the Office of General Counsel of the State Bar of Georgia, it is intended that disciplinary proceedings will be brought only when the auditors have reasonable cause to believe discrepancies or irregularities exist. Otherwise, the auditors should only educate the lawyer and the lawyer's staff as to proper trust accounting methods.

[5] An audit for cause may be conducted at any time and without advance notice if the Office of General Counsel receives sufficient evidence that a lawyer poses a threat of harm to clients or the public. The Office of General Counsel must have the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia to conduct an audit for cause.

PART TWO
COUNSELOR

RULE 2.2. INTERMEDIARY

Reserved.

RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) the client gives informed consent.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

Definition

[1] An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government entity; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government entity action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

[3] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person

[4] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer’s responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[5] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation

should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

RULE 2.4. LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

(c) When one or more of the parties in a mediation is a current or former client of the neutral lawyer or the neutral's law firm, a lawyer may serve as a third-party neutral only if the matter in which the lawyer serves as a third-party neutral is not the same matter in which the lawyer or law firm represents or represented the party and all parties give informed consent, confirmed in writing.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For

some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as a third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (*see Rule 1.0(r)*), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

PART THREE
ADVOCATE

RULE 3.3. CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, other than grand jury proceedings, a lawyer shall inform the tribunal of all material facts known to the lawyer that the lawyer reasonably believes are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. *See Rule 1.0(r)* for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(4) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the

integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. *Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).*

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (c) allows that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer may refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit from the witness the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a), (b) and (c) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. *See also Comment [9].*

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. *See Rule 1.0(I).* Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(4) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. *See also Comment [7]*.

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. *See Rule 1.2(d)*. Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the

lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also *see Rule 1.16(b)* for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

RULE 3.4. FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) (1) falsify evidence;
(2) counsel or assist a witness to testify falsely; or
(3) pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
(i) expenses reasonably incurred by a witness in preparation, attending or testifying; or
(ii) reasonable compensation to a witness for the loss of time in preparing, attending or testifying;or
(iii) a reasonable fee for the professional services of an expert witness;

(c) Reserved;

(d) Reserved;

(e) Reserved;

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
(1) the person is a relative or an employee or other agent of a client, or the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information; and
(2) the information is not otherwise subject to the assertion of a privilege by the client;

(g) use methods of obtaining evidence that violate the legal rights of the opposing party or counsel; or

(h) present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the

like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

[3] Reserved.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. *See also Rule 4.2.*

[5] As to paragraph (g), the responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of the opposing party or counsel. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence.

PART FOUR
TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RULE 4.2. COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

(b) Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government entity and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government entity to speak with government officials about the matter.

[2] Communications authorized by law also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings, when there is applicable judicial precedent that either has found the activity permissible under this Rule or has found this Rule inapplicable. However, the Rule imposes ethical restrictions that go beyond those imposed by constitutional provisions.

[3] This Rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the matter to which the communication relates.

[4A] In the case of an organization, this Rule prohibits communications with an agent or employee of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter, or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. See Formal Advisory Opinion 87-6. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). Communication with a former employee of a represented organization is discussed in Formal Advisory Opinion 94-3.

[4B] In administering this Rule it should be anticipated that in many instances, prior to the beginning of the interview, the interviewing lawyer will not possess sufficient information to determine whether the relationship of the interviewee to the entity is sufficiently close to place the person in the "represented" category. In those situations the good faith of the lawyer in undertaking the interview should be considered. Evidence of good faith includes an immediate and candid statement of the interest of the person on whose behalf the interview is being taken, a full explanation of why that person's position is adverse to the interests of the entity with which the interviewee is associated, the exploration of the relationship issue at the outset of the interview and the cessation of the interview immediately upon determination that the interview is improper.

[5] The prohibition on communications with a represented person only applies, however, in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. *See Rule 1.0.* Such an inference may arise in circumstances where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of counsel by ignoring the obvious.

[6] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer’s communications are subject to Rule 4.3.

[6A] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] The anti-contact rule serves important public interests which preserve the proper functioning of the judicial system and the administration of justice by a) protecting against misuse of the imbalance of legal skill between a lawyer and layperson; b) safe-guarding the client-lawyer relationship from interference by adverse counsel; c) ensuring that all valid claims and defenses are raised in response to inquiry from adverse counsel; d) reducing the likelihood that clients will disclose privileged or other information that might harm their interests; and e) maintaining the lawyer’s ability to monitor the case and effectively represent the client.

[8] Parties to a matter may communicate directly with each other because this Rule is not intended to affect communications between parties to an action entered into independent of and not at the request or direction of counsel.

RULE 4.3. DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:
(a) state or imply that the lawyer is disinterested; when the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding; and

(b) give advice other than the advice to secure counsel, if a lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

The maximum penalty for a violation of this Rule is disbarment.

Comment
[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent. *See Rule 1.13(f)*

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

RULE 4.4. RESPECT FOR RIGHTS OF THIRD PERSONS
In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment
[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships.

PART FIVE
LAW FIRMS AND ASSOCIATIONS

RULE 5.1. RESPONSIBILITIES OF PARTNERS, MANAGERS AND SUPERVISORY LAWYERS
(a) A law firm partner as defined in Rule 1.0(l), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Georgia Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Georgia Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Georgia Rules of Professional Conduct if:
(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. *See Rule 1.0(e)*. This includes members of a partnership; the shareholders in a law firm organized as a professional corporation; and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Georgia Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See Rule 5.2*. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. *See also Rule 8.4(a)*.

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of

the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Georgia Rules of Professional Conduct. *See Rule 5.2(a).*

RULE 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) a lawyer shall not allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer, to:

(1) represent himself or herself as a lawyer or person with similar status;

(2) have any contact with the clients of the lawyer either in person, by telephone or in writing; or

(3) have any contact with persons who have legal dealings with the office either in person, by telephone or in writing.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Georgia Rules of Professional Conduct. *See Comment [1] to Rule 5.1.* Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Georgia

Rules of Professional Conduct if engaged in by a lawyer.

[3] The prohibitions of paragraph (d) apply to professional conduct and not to social conversation unrelated to the representation of clients or legal dealings of the law office, or the gathering of general information in the course of working in a law office. The thrust of the restriction is to prevent the unauthorized practice of law in a law office by a person who has been suspended or disbarred.

PART EIGHT
MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.4. MISCONDUCT

(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:

(1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) be convicted of a felony;

(3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;

(4) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio the commission of such act;

(5) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

(6) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten (10) days after the time appointed in the order or judgment;

(7)

(i) state an ability to influence improperly a government agency or official by means that violate the Rules of Professional Conduct or other law;

(ii) state an ability to achieve results by means that violate the Rules of Professional Conduct or other law;

(iii) achieve results by means that violate the Rules of Professional Conduct or other law; or

(8) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(b) (1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:

(i) a guilty plea;

(ii) a plea of nolo contendere;

(iii) a verdict of guilty; or

(iv) a verdict of guilty but mentally ill.

(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of nolo contendere, a verdict of guilty, or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a)(1), (a)(2) and (a)(3) above.

(d) Rule 8.4(a)(1) does not apply to Part Six of the Georgia Rules of Professional Conduct.

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through 8.4(c) is disbarment.

Comment

[1] The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prohibit a lawyer from knowingly attempting to violate the Georgia Rules of Professional Conduct or from knowingly aiding or abetting, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a nonlawyer, who is not subject to the rules, to act where the lawyer cannot. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] The Rule, as its predecessor, is drawn in terms of acts involving "moral turpitude" with, however, a recognition that some such offenses concern matters of personal morality and have no specific connection to fitness for the practice of law. Here the concern is limited to those matters which fall under both the rubric of "moral turpitude" and involve underlying conduct relating to the fitness of the lawyer to practice law.

[3] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud, theft or the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[4] Reserved.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[6] Persons holding public office assume responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

PART NINE
MISCELLANEOUS

RULE 9.1. REPORTING REQUIREMENTS

(a) Members of the State Bar of Georgia shall, within sixty days, notify the State Bar of Georgia of:

(1) being admitted to the practice of law in another jurisdiction and the dates of admission;

(2) being convicted of any felony or of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law; or

(3) the imposition of discipline by any jurisdiction other than the Supreme Court of Georgia.

(b) For the purposes of this rule the term "discipline" shall include any sanction imposed as the result of conduct that would be in violation of the Georgia Rules of Professional Conduct if occurring in Georgia.

(c) For the purposes of this rule the term "jurisdiction" shall include state, federal, territorial and non-United States courts and authorities.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] The State Bar of Georgia is the regulatory authority created by the Supreme Court of Georgia to oversee the practice of law in Georgia. In order to provide effective disciplinary programs, the State Bar of Georgia needs information about its members.

RULE 9.2. RESTRICTIONS ON FILING DISCIPLINARY COMPLAINTS

A lawyer shall not enter into an agreement containing a condition that prohibits or restricts a person from filing a disciplinary complaint, or that requires the person to request dismissal of a pending disciplinary complaint.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] The disciplinary system provides protection to the general public from those lawyers who are not morally fit to practice law. One problem in the past has been the lawyer who settles the civil claim/disciplinary complaint with the injured party on the basis that the injured party not bring a disciplinary complaint or request the dismissal of a pending disciplinary complaint. The lawyer is then free to injure other members of the general public.

[2] To prevent such abuses, this Rule prohibits a lawyer from entering into any agreement containing a condition which prevents a person from filing or pursuing a disciplinary complaint.

RULE 9.4. JURISDICTION AND RECIPROCAL DISCIPLINE

(a) Jurisdiction. Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or removal from practice on any of the grounds provided in Rule 4-104 of the State Bar, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of the Georgia Rules of Professional Conduct or any Rules or Code subsequently adopted by the court in lieu thereof, and any Domestic or Foreign Lawyer specially admitted by a court of this jurisdiction for a particular proceeding and any Domestic or Foreign Lawyer who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the State Bar of Georgia State Disciplinary Board.

(b) Reciprocal Discipline. Upon being suspended or disbarred in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been suspended or disbarred in another jurisdiction, the Office of General Counsel shall obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Board. Nothing in this Rule shall prevent a lawyer suspended or disbarred in another jurisdiction from filing a petition for voluntary discipline under Rule 4-227.

(1) Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Georgia has been disbarred or suspended in another jurisdiction, the Clerk of the State Disciplinary Board shall docket the matter and forthwith issue a notice directed to the lawyer containing:

(i) A copy of the order from the other jurisdiction; and

(ii) A notice approved by the Review Panel that the lawyer inform the Office of General Counsel and the Review Panel, within thirty days from service of the notice, of any claim by the lawyer predicated upon the grounds set forth in paragraph (b)(3) below, that the imposition of substantially similar

discipline in this jurisdiction would be unwarranted and the reasons for that claim.

(2) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this jurisdiction shall be deferred until the stay expires.

(3) Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph (b)(1), the Review Panel shall recommend to the Georgia Supreme Court substantially similar discipline, or removal from practice on the grounds provided in Rule 4-104, unless the Office of General Counsel or the lawyer demonstrates, or the Review Panel finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(i) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) The discipline imposed would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(iv) The reason for the original disciplinary status no longer exists; or

(v) (a) the conduct did not occur within the state of Georgia; and,

(b) the discipline imposed by the foreign jurisdiction exceeds the level of discipline allowed under these Rules.

(vi) The discipline would if imposed in identical form be unduly severe or would require action not contemplated by these Rules.

If the Review Panel determines that any of those elements exists, the Review Panel shall make such other recommendation to the Georgia Supreme Court as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

(4) The Review Panel may consider exceptions for either the Office of General Counsel or the respondent for the grounds enumerated at Paragraph (b)(3) of this Rule, and may, in its discretion, grant oral argument. Exceptions in briefs shall be filed with the Review Panel within 30 days from notice of the Notice of Reciprocal Discipline. The responding party shall have 10 days after service of the exceptions within which to respond.

(5) In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct, or has been removed from practice on any of the grounds provided in Rule 4-104 of the State Bar, shall establish conclusively the misconduct or the removal from practice for purposes of a disciplinary proceeding in this state.

(6) Discipline imposed by another jurisdiction but of a lesser nature than disbarment or suspension may be considered in aggravation of discipline in any other disciplinary proceeding.

(7) For purposes of this Rule, the word "jurisdiction" means any state, territory, county or federal court.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure which so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

[2] Reserved.

[3] The imposition of discipline in one jurisdiction does not mean that Georgia and every other jurisdiction in which

the lawyer is admitted must necessarily impose discipline. The Review Panel has jurisdiction to recommend reciprocal discipline on the basis of public discipline imposed by a jurisdiction in which the respondent is licensed.

[4] A judicial determination of misconduct by the respondent in another jurisdiction is conclusive, and not subject to relitigation in the forum jurisdiction. The Review Panel should recommend substantially similar discipline unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in paragraph (b)(3) exists. This Rule applies whether or not the respondent is admitted to practice in the foreign jurisdiction. *See also Rule 8.5, Comment [1].*

[5] For purposes of this Rule, the suspension or placement of a lawyer on inactive status in another jurisdiction because of want of sound mind, senility, habitual intoxication or drug addiction, to the extent of impairment of competency as an attorney shall be considered a disciplinary suspension under the Rules of the State Bar of Georgia.

Rule 4-106. Conviction of a Crime; Suspension and Disbarment

(a) Upon receipt of information or evidence that an attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of nolo contendere or imposition of first offender probation, the Office of General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Georgia Supreme Court for the appointment of a Special Master to conduct a show cause hearing.

(b) The petition shall show the date of the verdict or plea and the court in which the respondent was convicted, and shall be served upon the respondent pursuant to Bar Rule 4-203.1.

(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, shall give the matter a docket number and notify the Court that appointment of a Special Master is appropriate.

(d) The Court will appoint a Special Master, pursuant to Rule 4-209(b).

(e) The show cause hearing should be held within fifteen days after service of the Petition for Appointment of Special Master upon the respondent or appointment of a Special Master, whichever is later. Within thirty days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia which shall be empowered to order such discipline as deemed appropriate.

(f) (1) If the Supreme Court of Georgia orders the respondent suspended pending the appeal of the conviction, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended respondent should:

(i) be disbarred under Rule 8.4, or

(ii) be reinstated, or

(iii) remain suspended pending retrial as a protection to the public, or

(iv) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these Rules.

(2) Reports of the Special Master shall be filed with the clerk of the State Disciplinary Board and the matter shall proceed thereafter as outlined at Rule 4-217.

(g) For purposes of this Rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea of guilty or plea of nolo contendere or the imposition of first offender treatment shall be prima facie evidence of an infraction of Rule 8.4 of Bar Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

CHAPTER 2
DISCIPLINARY PROCEEDINGS

Rule 4-201. State Disciplinary Board

The powers to investigate and discipline members of the State Bar of Georgia and those authorized to practice law in Georgia for violations of the Standards of Conduct set forth in Bar Rule 4-102 are hereby vested in a State Disciplinary Board and a Consumer Assistance Program. The State Disciplinary Board shall consist of two panels. The first panel shall be the Investigative Panel of the State Disciplinary Board (Investigative Panel). The second panel shall be the Review Panel of the State Disciplinary Board (Review Panel). The Consumer Assistance Program shall operate as described in Part XII of these Rules.

(a) The Investigative Panel shall 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, one member of the State Bar of Georgia from each judicial district of the State appointed by the President of the State Bar of Georgia with the approval of the Board of Governors of the State Bar of Georgia, one member of the State Bar of Georgia from each judicial district of the State appointed by the Supreme Court of Georgia, one at-large member of the State Bar of Georgia appointed by the Supreme Court, one at-large member of the State Bar of Georgia appointed by the President with the approval of the Board of Governors, and six public members appointed by the Supreme Court to serve as public members of the Panel.

(1) All members shall be appointed for three-year terms subject to the following exceptions:

(i) any person appointed to fill a vacancy caused by resignation, death, disqualification or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(ii) ex-officio members shall serve during the term of their office and shall not increase the quorum requirement; and

(iii) certain initial members as set forth in paragraph (2) below.

(2) It shall be the goal of the initial appointments that one-third (1/3) of the terms of the members appointed will expire annually.

(3) A member may be removed from the Panel pursuant to procedures set by the Panel for failure to attend regular meetings of the Panel. The vacancy shall be filled by appointment of the current President of the State Bar of Georgia.

(4) The Investigative Panel shall annually elect a chairperson, a vice-chairperson, or a vice-chairperson for any subcommittee for which the chairperson is not a member to serve as chairperson for that subcommittee, and such other officers as it may deem proper. The Panel shall meet in its entirety in July of each year to elect a chairperson. At any time the Panel may decide to divide itself into subcommittees or to consolidate after having divided. A majority shall constitute a quorum and a majority of a quorum shall be authorized to act. However, in any matter in which one or more Investigative Panel members are disqualified, the number of members constituting a quorum shall be reduced by the number of members disqualified from voting on the matter.

(5) The Investigative Panel is authorized to organize itself into as many subcommittees as the Panel deems necessary to conduct the expeditious investigation of disciplinary matters referred to it by the Office of General Counsel. However, no subcommittee shall consist of fewer than seven (7) members of the Panel and each such subcommittee shall include at least one (1) of the public members.

(b) The Review Panel shall consist of the Immediate Past President of the State Bar, the Immediate Past President of the Young Lawyers Division or a member of the Young Lawyers Division designated by its Immediate Past President, nine (9) members of the State Bar, three (3) from each of the three federal judicial districts of the State appointed as described below, and four (4) public members appointed by the Supreme Court of Georgia.

(1) The nine (9) members of the Bar from the federal judicial districts shall be appointed for three (3) year

terms so that the term of one Panel member from each district will expire each year. The three (3) vacant positions will be filled in odd years by appointment by the President, with the approval of the Board of Governors, and in even years by appointment by the Supreme Court of Georgia.

(2) The Panel members serving at the time this rule goes into effect shall continue to serve until their respective terms expire. New Panel members shall be appointed as set forth above.

(3) Any person appointed to fill a vacancy caused by resignation, death, disqualification or disability shall serve only for the unexpired term of the member replaced unless reappointed.

(4) Ex-officio members shall serve during the term or terms of their offices and shall not increase the quorum requirement.

(5) The Review Panel shall elect a chairperson and such other officers as it may deem proper in July of each year. The presence of six (6) members of the Panel shall constitute a quorum. Four members of the Panel shall be authorized to act except that a recommendation of the Review Panel to suspend or disbar shall require the affirmative vote of at least six (6) members of the Review Panel, with not more than four (4) negative votes. However, in any case in which one or more Review Panel members are disqualified, the number of members constituting a quorum and the number of members necessary to vote affirmatively for disbarment or suspension, shall be reduced by the number of members disqualified from voting on the case. No recommendation of disbarment or suspension may be made by fewer than four (4) affirmative votes. For the purposes of this rule the recusal of a member shall have the same effect as disqualification.

Rule 4-203.1. Uniform Service Rule

(a) Attorneys authorized to practice law in Georgia shall inform the Membership Department of the State Bar of Georgia, in writing, of their current name, official address and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official address on file with the Membership Department in all efforts to contact, communicate with, and perfect service upon an attorney. The choice of an attorney to provide only a post office box or equivalent commercial box address to the Membership Department of the State Bar of Georgia shall constitute an election to waive personal service. Notification of a change of address given to any department of the State Bar of Georgia other than the Membership Department shall not satisfy the requirement herein.

(b) In all matters requiring personal service under Part IV of the Bar Rules, service may be perfected in the following manner:

(1) Acknowledgment of Service: An acknowledgment of service from the Respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(2) Written Response from Respondent: A written response from the Respondent or Respondent's counsel shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(3) In the absence of an acknowledgment of service, or a written response from the Respondent or Respondent's counsel, and subject to the provisions of paragraph (4) below, the Respondent shall be served in the following manner:

(i) Personal service: Service may be accomplished by the Sheriff, or a Court approved agent for service of process, or any person approved by the Chairperson of the Investigative Panel or the Chair's designee. Receipt of a Return of Service Non Est Inventus from the Sheriff or any other person approved for service of the service documents, shall constitute conclusive proof that service cannot be perfected by personal service.

(ii) Service by publication: In the event that personal service cannot be perfected, or when the Respondent has only provided a post office box to the Membership Department and Respondent has not acknowledged service within twenty (20) days of a mailing to Respondent's post office box, service may be accomplished by publication once a week for two weeks in the legal organ of the county of Respondent's address, as shown on the records of the Membership Department of the State Bar of Georgia, and, contemporaneously with the publication, mailing a copy of the service documents by first class mail to Respondent's address as shown on the records of the Membership

Department of the State Bar of Georgia.

(4) When it appears from an affidavit made by the Office of General Counsel that the Respondent has departed from the state, or cannot, after due diligence, be found within the state, or seeks to avoid the service, the Chairperson of the Investigative Panel, or the chair's designee, may authorize service by publication without the necessity of first attempting personal service. The affidavit made by the Office of General Counsel must demonstrate recent unsuccessful attempts at personal service upon the Respondent regarding other or related disciplinary matters and that such personal service was attempted at Respondent's address as shown on the records of the Membership Department of the State Bar of Georgia.

(c) Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is otherwise required by these Rules. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address. As used in this rule, the term "delivery of a copy" means handing it to the attorney or to the party, or leaving it at his office with his clerk or other person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

Rule 4-208.3. Rejection of Notice of Discipline

(a) In order to reject the Notice of Discipline the Respondent or the Office of General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline. *See Rule 4-203.1.*

(b) Any Notice of Rejection by the Respondent shall be served upon the Office of General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of General Counsel of the State Bar of Georgia shall be served upon the Respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. A copy of such written response must also be filed with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the Supreme Court to appoint a Special Master and the matter shall thereafter proceed pursuant to Rules 4-209 through 4-225.

Rule 4-210. Powers and Duties of Special Masters

In accordance with these Rules a duly appointed Special Master shall have the following powers and duties:

(a) to exercise general supervision over disciplinary proceedings assigned to him and to perform all duties specifically enumerated in these Rules;

(b) to pass on all questions concerning the sufficiency of the formal complaint;

(c) to conduct the negotiations between the State Bar of Georgia and the Respondent, whether at a pretrial meeting set by the Special Master or at any other time;

(d) to receive and evaluate any Petition for Voluntary Discipline;

(e) to grant continuances and to extend any time limit provided for herein as to any matter pending before him;

(f) to apply to the Supreme Court of Georgia for an order naming his successor in the event that he becomes incapacitated to perform his duties or in the event that he learns that he and the Respondent reside in the same circuit;

(g) to defer action on any complaint pending before him when he learns of the docketing of another complaint against the same Respondent and believes that the new complaint will be assigned to him by the Supreme Court;

(h) to hear and determine action on the complaints, where there are multiple complaints against a Respondent growing out of different transactions, whether they involve one or more complainants, as separate counts, and may proceed to make recommendations on each count as constituting a separate offense;

(i) to sign subpoenas and exercise the powers described in Rule 4-221(b);

(j) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;

(k) to make findings of fact, conclusions of law and a recommendation of discipline as hereinafter provided and to submit his findings for consideration by the Review Panel or the Supreme Court; and

(l) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases.

Rule 4-213. Evidentiary Hearing

(a) Within ninety (90) days after the filing of Respondent's answer to the formal complaint or the time for filing of the answer, whichever is later, the Special Master shall proceed to hear the case. The evidentiary hearing shall be stenographically reported and may be transcribed at the request and expense of the requesting party. When the hearing is complete, the Special Master shall proceed to make findings of fact, conclusions of law and a recommendation of discipline and file a report with the Review Panel or the Supreme Court as hereinafter provided. Alleged errors in the trial may be reviewed by the Supreme Court when the findings and recommendations of discipline of the Review Panel are filed with the Court. There shall be no direct appeal from such proceedings of the Special Master.

(b) Upon a showing of necessity and a showing of financial inability by the Respondent to pay for the transcription, the Special Master shall order the State Bar of Georgia to provide the transcript.

Rule 4-217. Report of the Special Master to the Review Panel

(a) Within thirty (30) days from receipt of the transcript of the evidentiary hearing, the Special Master shall prepare a report which shall contain the following:

(1) findings of fact on the issues raised by the formal complaint;
(2) conclusions of law on the issues raised by the pleadings of the parties; and
(3) a recommendation of discipline.

(b) The Special Master shall file his or her original report and recommendation with the Clerk of the State Disciplinary Board and shall serve a copy on the Respondent and counsel for the State Bar pursuant to Rule 4-203.1.

(c) Thirty (30) days after the Special Master's report and recommendation is filed, the Clerk of the State Disciplinary Board shall file the original record in the case directly with the Supreme Court unless either party requests review by the Review Panel as provided in paragraph (d) of this rule. In the event neither party requests review by the Review Panel and the matter goes directly to the Supreme Court, both parties shall be deemed to have waived any

right they may have under the Rules to file exceptions with or make request for oral argument to the Supreme Court. Any review undertaken by the Supreme Court shall be solely on the original record.

(d) Upon receipt of the Special Master's report, either party may request review by the Review Panel as provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board in accordance with Bar Rule 4-221(f) and serve them on the opposing party within thirty (30) days after the Special Master's report is filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report with the Review Panel. The responding party shall have ten(10) days after service of the exceptions within which to respond.

Rule 4-218. Findings by the Review Panel

(a) Upon receipt of the report from a Special Master pursuant to Rule 4-217(d), the Review Panel shall consider the record, make findings of fact and conclusions of law and determine whether a recommendation of disciplinary action will be made to the Supreme Court and the nature of such recommended discipline. The findings of fact and conclusions of law made by a Special Master shall not be binding on the Panel and may be reversed by it on the basis of the record submitted to the Panel by the Special Master.

(b) The Respondent shall have the right to challenge the competency, qualifications, or objectivity of any member of the Review Panel considering the case against him under a procedure as provided for in the rules of the Panel.

(c) There shall be no de novo hearing before the Review Panel except by unanimous consent of the Panel.

(d) The Review Panel may grant rehearings, or new trials, for such reasons, in such manner, on such issues and within such times as the ends of justice may require.

(e) The Review Panel may consider exceptions to the report of the Special Master and may in its discretion grant oral argument. Exceptions and briefs shall be filed with the Clerk of the State Disciplinary Board in accordance with Bar Rules 4-217(d) and 4-221(f).

(f) The Review Panel shall file its report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court. A copy of the Panel's report shall be served upon the Respondent.

Rule 4-221. Procedures

(a) Oaths. Before entering upon his duties as herein provided each member of the State Disciplinary Board and each Special Master shall subscribe to an oath to be administered by any person authorized to administer oaths under the laws of this State, such oath to be in writing and filed with the Executive Director of the State Bar of Georgia. The form of such oath shall be:

> "I do solemnly swear that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of the State Disciplinary Board of the State Bar of Georgia/Special Master according to the best of my ability and understanding and agreeable to the laws and Constitution of this State and the Constitution of the United States so help me God."

(b) Witnesses and Evidence; Contempt.

(1) The Respondent and the State Bar shall have the right to require the issuance of subpoenas for the attendance of witnesses to testify or to produce books and papers. The State Disciplinary Board or a Special Master shall have power to compel the attendance of witnesses and the production of books, papers, and documents, relevant to the matter under investigation, by subpoena, and as further provided by law in civil cases under the laws of Georgia.

(2) The following shall subject a person to rule for contempt of the Special Master or Panel:

(i) disregard, in any manner whatsoever, of a subpoena issued pursuant to Rule 4-221(b)(1),
(ii) refusal to answer any pertinent or proper question of a Special Master or Board member, or
(iii) willful or flagrant violation of a lawful directive of a Special Master or Board member.

It shall be the duty of the chairperson of the affected Panel or Special Master to report the fact to the Chief Judge of the superior court in and for the county in which said investigation, trial or hearing is being held. The superior court shall have jurisdiction of the matter and shall follow the procedures for contempt as are applicable in the case of a witness subpoenaed to appear and give evidence on the trial of a civil case before the superior court under the laws in Georgia.

(3) Any member of the State Disciplinary Board and any Special Master shall have power to administer oaths and affirmations and to issue any subpoena herein provided for.

(4) Depositions may be taken by the Respondent or the State Bar in the same manner and under the same provisions as may be done in civil cases under the laws of Georgia, and such depositions may be used upon the trial or an investigation or hearing in the same manner as such depositions are admissible in evidence in civil cases under the laws of Georgia.

(5) All witnesses attending any hearing provided for under these Rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil cases in the superior courts of this State under subpoena, and said fees shall be assessed against the parties to the proceedings under the rule of law applicable to civil suits in the superior courts of this State.

(6) Whenever the deposition of any person is to be taken in this State pursuant to the laws of another state, territory, province or commonwealth, or of the United States or of another country for use in attorney discipline, fitness or disability proceedings there, the chairperson of the Investigative Panel, or his or her designee upon petition, may issue a summons or subpoena as provided in this section to compel the attendance of witnesses and production of documents at such deposition.

(c) Venue of Hearings.

(1) The hearings on all complaints and charges against resident Respondents shall be held in the county of residence of the Respondent unless he otherwise agrees.

(2) Where the Respondent is a nonresident of the State of Georgia and the complaint arose in the State of Georgia, the hearing shall be held in the county where the complaint arose.

(3) When the Respondent is a nonresident of the State of Georgia and the offense occurs outside the State, the hearing may be held in the county of the State Bar of Georgia headquarters.

(d) Confidentiality of Investigations and Proceedings.

(1) The State Bar shall maintain as confidential all disciplinary investigations and proceedings pending at the screening or investigative stage, unless otherwise provided by these Rules.

(2) After a proceeding under these Rules is filed with the Supreme Court, all evidentiary and motions hearings shall be open to the public and all reports rendered shall be public documents.

(3) Nothing in these Rules shall prohibit the complainant, Respondent or third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court or a Special Master in proceedings under these Rules.

(4) The Office of General Counsel of the State Bar or the Investigative Panel of the State Disciplinary Board may reveal or authorize disclosure of information which would otherwise be confidential under this rule under the following circumstances:

(i) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board or any person who is otherwise connected with the disciplinary proceeding in any way, either Panel of the Board or its Chairperson or his or her designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.

(ii) In the event the Office of Gereral Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.

(iii) In the event of subsequent disciplinary proceedings against a lawyer, the Office of Gereral Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.

(iv) A complainant or lawyer representing the complainant may be notified of the status or disposition of the complaint.

(v) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of General Counsel may disclose all information necessary to correct such false or misleading statements.

(5) The Office of General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:

(i) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;

(ii) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;

(iii) The Judicial Nominating Commission or the comparable body in other jurisdictions;

(iv) The Lawyer Assistance Program or the comparable body in other jurisdictions;

(v) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;

(vi) The Judicial Qualifications Commission or the comparable body in other jurisdictions;

(vii) The Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;

(viii) The Formal Advisory Opinion Board;

(ix) The Consumer Assistance Program;

(x) The General Counsel Overview Committee;

(xi) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and

(xii) The Unlicensed Practice of Law Department.

(6) Any information used by the Office of General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a Receiver to administer the files of a member of the State Bar, shall not be confidential under this Rule.

(7) The Office of General Counsel may reveal confidential information when required by law or court order.

(8) The authority or discretion to reveal confidential information under this Rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar or the State Disciplinary Board under Bar Rules or applicable law.

(9) Nothing in this Rule shall prohibit the Office of General Counsel or the Investigative Panel from interviewing potential witnesses or placing the Notice of Investigation out for service by sheriff or other authorized person.

(10) Members of the Office of General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, Respondent or third parties but are otherwise confidential under these Rules by acknowledging the existence and status of the proceeding.

(11) The State Bar shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court Rules that was confidential when imposed, unless authorized to do so by said prior Rules.

(e) Burden of Proof; Evidence.

(1) In all proceedings under this Chapter the burden of proof shall be on the State Bar of Georgia, except for proceedings under Bar Rule 4-106.

(2) In all proceedings under this chapter occurring after a finding of probable cause as described in Rule 4-204.4, the procedures and rules of evidence applicable in civil cases under the laws of Georgia shall apply,

except that the quantum of proof required of the State Bar shall be clear and convincing evidence.

(f) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

(g) Pleadings and Communications Privileged. Pleadings and oral and written statements of members of the State Disciplinary Board, members and designees of the Committee on Lawyer Impairment, Special Masters, Bar counsel and investigators, complainants, witnesses, and Respondents and their counsel made to one another or filed in the record during any investigation, intervention, hearing or other disciplinary proceeding under this Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk

SUPREME COURT OF GEORGIA

Atlanta March 9, 2012

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court having considered the motion to amend the Rules and Regulations of the State Bar of Georgia, it is ordered that the State Bar's motion to renumber Part Eight, Rule 8.4 (a)(4)-(a)(8) (Misconduct) is hereby approved, effective March 9, 2012, to read as follows:

PART EIGHT
MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.4. MISCONDUCT

(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:

(1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) be convicted of a felony;

(3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;

(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

(5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten (10) days after the time appointed in the order or judgment;

(6) (i) state an ability to influence improperly a government agency or official by means that violate the Rules of Professional Conduct or other law;

(ii) state an ability to achieve results by means that violate the Rules of Professional Conduct or other law;

(iii) achieve results by means that violate the Rules of Professional Conduct or other law;

(7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio the commission of such act.

(b) (1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:

(i) a guilty plea;

(ii) a plea of nolo contendere;

(iii) a verdict of guilty; or

(iv) a verdict of guilty but mentally ill.

(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of nolo contendere, a verdict of guilty, or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in

paragraphs (a)(1), (a)(2) and (a)(3) above.

(d) Rule 8.4(a)(1) does not apply to Part Six of the Georgia Rules of Professional Conduct.

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through 8.4(a)(8) is disbarment.

Comment

[1] The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prohibit a lawyer from knowingly attempting to violate the Georgia Rules of Professional Conduct or from knowingly aiding or abetting, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a nonlawyer, who is not subject to the rules, to act where the lawyer cannot. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] The Rule, as its predecessor, is drawn in terms of acts involving "moral turpitude" with, however, a recognition that some such offenses concern matters of personal morality and have no specific connection to fitness for the practice of law. Here the concern is limited to those matters which both fall under the rubric of "moral turpitude" and involve underlying conduct relating to the fitness of the lawyer to practice law.

[3] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud, theft or the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[4] Reserved.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[6] Persons holding public office assume responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta
I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk