



State Bar of Georgia

Disciplinary Rules & Procedures Committee

AGENDA

June 3, 2022

Hybrid

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2021-2022

Disciplinary Rules & Procedures

This standing committee shall advise the Executive Committee and Board of Governors with respect to all procedural and substantive disciplinary rules, policies, and procedures.

Chairperson

Harold Michael Bagley	2022
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Vice Chairperson

R. Gary Spencer	2022
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Members

Hon. J. Antonio DelCampo	2022
Erin H. Gerstenzang	2023
Mazie Lynn Guertin	2022
John G. Haubenreich	2022
Patrick H. Head	2022
R. Javoyne Hicks	2022
William Dixon James	2022
Seth David Kirschenbaum	2022
Catherine Koura	2024
Edward B. Krugman	2022
David Neal Lefkowitz	2022
David S. Lipscomb	2022
Patrick E. Longan	2022
David O'Neal	2023
Jabu Mariette Sengova	2022
H. Craig Stafford	2023
William Hickerson Thomas, Jr.	2023
Peter Werdesheim	2024
Patrick John Wheale	2024
Hon. Paige Reese Whitaker	2022

Staff Liaison

Paula J. Frederick	2022
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Disciplinary Rules and Procedures Committee
Meeting of April 1, 2022
Hybrid meeting

MINUTES

Chair Michael Bagley called the meeting to order at 2:04 p.m.

Attendance:

Committee members: Michael Bagley, R. Gary Spencer (virtual), Hon. J. Antonio DelCampo (virtual), Erin H. Gerstenzang (virtual), John G. Haubenreich (virtual), Patrick H. Head (virtual), William D. James (virtual), Catherine Koura (virtual), Edward B. Krugman, David N. Lefkowitz, David S. Lipscomb, Patrick E. Longan (virtual), David O’Neal (virtual), Jabu M. Sengova (virtual), Peter Werdesheim (virtual), and Hon. Paige Reese Whitaker.

Staff: Paula J. Frederick, Jenny K. Mittelman, William D. NeSmith, III, Kathya S. Jackson., and Carolyn Williams (virtual)

Guests: Supreme Court Justices Peterson, Warren, and Colvin.

Approval of Minutes:

The Committee approved the Minutes from the January 7, 2022 meeting.

Action Items:

Formal Advisory Opinion Board request:

David Lefkowitz and Patrick Longan presented the Committee with the revised drafts of Rules 1.5 and 1.8. After a thorough discussion, the Committee agreed to add additional language addressing the possibility of clients having to pay an unreasonable amount for arbitration.

David Lefkowitz will provide the Committee with revised drafts of Rules 1.5 and 1.8, which will include language from Bar Rule 6-204(j).

Rule 4-203.1

The Committee would like examples from other states on how they accomplish service of process upon lawyers living outside of their state. The Office of the General Counsel will provide the Committee with proposed narrow language regarding email service at the next meeting.

Subcommittee on In-House Counsel:

Paula Frederick requested volunteers for a subcommittee to address this matter.

Discussion Items:

Proposed changes to Part VII

The Committee agreed to have the OGC post the proposed rules changes on the SBG website and give a date to receive comments from the Bar before moving forward with the process. Justice Peterson would like the Committee to consider the constitutionality of the proposed rules.

Special General Counsel:

By unanimous vote, the Committee voted to create a Special General Counsel Rule (Rule 4-217) to address situations where the OGC has a conflict. A copy of the Rule as adopted appears at the end of these minutes.

Information Items:

Rule 8.4:

Bar Counsel will provide a draft of the proposed revisions at the next meeting.

Report:

Paula Frederick provided the Committee with a report regarding the status of previously amended rules.

The meeting adjourned at 2:59 p.m.

4-217: ~~Reserved~~ Special General Counsel

If the Office of the General Counsel has a conflict in performing duties listed in Part IV of these rules, the General Counsel must notify the Supreme Court and ask the Court to appoint Special General Counsel to perform those duties.

From: [Patrick Longan](#)
To: [Kathy Jackson](#); [mbagley@deflaw.com](#); [bagley@deflaw.com](#); [mazielynn@gacdl.org](#); [tony@dwglawfirm.com](#); [Damon Elmore](#); [Paula Frederick](#); [erin@ehglawfirm.com](#); [jgh@sktblaw.com](#); [cobbda1@gmail.com](#); [rjavoynehicks@gmail.com](#); [dixonjames@dixonjameslaw.com](#); [seth@nlsklaw.com](#); [ckoura@constangy.com](#); [krugman@bmelaw.com](#); [dnl@lefkowitzfirm.com](#); [david@lipscomblaw.com](#); [Jenny Mittelman](#); [Bill NeSmith](#); [david.oneal@usdoj.gov](#); [shannon@lipscomblaw.com](#); [jsengova@atlantaga.gov](#); [gary@rgaryspencer.com](#); [cstafford@coastallawyers.com](#); [bill@whtomasfirm.com](#); [pete@werdlaw.com](#); [patrick@whealelaw.com](#); [paige.whitaker@fultoncountyga.gov](#); [Carolyn Williams](#)
Cc: [Betty Derrickson](#); [petersonn@gasupreme.us](#); [barnest@gasupreme.us](#); [miltont@gasupreme.us](#)
Subject: Re: Disciplinary Rules and Procedures Committee - proposed revisions relating to arbitration
Date: Monday, May 23, 2022 1:10:34 PM
Attachments: [Proposed changes to Rules 1.5 and 1.8 and related comments re arbitration.SK comments.docx](#)

Fellow Committee members,

We have received suggested edits to these proposals from Seth Kirschenbaum. Seth's suggestions appear in the attached version of the proposal I sent you last week, marked to show changes. David Lefkowitz and I agree with Seth that these are improvements. Please feel free to send us your comments or suggestions ahead of next week's meeting. Thank you.

Pat

Fellow Committee members,

In light of the discussion at the last meeting, David Lefkowitz and I have made some changes to the proposed amendments to Rules 1.5 and 1.8, with related comments, regarding arbitration of fee disputes and malpractice claims. We are hoping that the Committee at the upcoming meeting will discuss and vote on a final version of the changes. In the interest of facilitating that conversation, I am attaching for you the latest versions of those proposals. Please feel free to share any comments or suggestions ahead of the meeting. Thank you.

Pat

1 Rule 1.5

2 (b) The scope of the representation and the basis or rate of the fee and
3 expenses for which the client will be responsible shall be communicated to the
4 client, preferably in writing, before or within a reasonable time after
5 commencing the representation, except when the lawyer will charge a
6 regularly represented client on the same basis or rate. Any changes in the basis
7 or rate of the fee or expenses shall also be communicated to the client. **To the**
8 **extent that agreements to arbitrate disputes over fees or expenses are**
9 **enforceable, a lawyer may enter into such an agreement with a client or**
10 **prospective client if the client or prospective client gives informed consent in**
11 **a writing signed by the client or prospective client. The agreement to**
12 **arbitrate and the attorney's disclosures regarding arbitration must be set out**
13 **in a separate paragraph, written in a font size at least as large as the rest of**
14 **the contract, and separately initialed by the client and the lawyer.**

15
16 **Comment 5A**

17
18 **[5A] Paragraph (b) requires informed consent to an agreement to arbitrate**
19 **disputes over fees and expenses. See Rule 1.0(l). In obtaining such informed**
20 **consent, the lawyer should reveal to the client or prospective client the**
21 **following: (1) in an an arbitration, the client or prospective client waives the**
22 **right to a jury trial, because the dispute will be resolved by an individual**
23 **arbitrator or a panel of arbitrators; (2) generally, there is no right to an**
24 **appeal from an arbitration decision; (3) arbitration may not permit the broad**
25 **discovery that would be available in civil litigation; (4) how the costs of**

26 arbitration compare to the costs of litigation in a public court, including the
27 requirement that the arbitrator or arbitrators be compensated; and (5) who
28 will bear the costs of arbitration. The lawyer should also inform the client or
29 prospective client regarding the existence and operation of the State Bar of
30 Georgia's Attorney Fee Arbitration Program, regardless of whether the
31 attorney seeks an agreement to submit any future fee disputes to that
32 program. The lawyer should also inform the client or prospective client that
33 an agreement to arbitrate a dispute over fees and expenses is not a waiver of
34 the right to make a disciplinary complaint regarding the lawyer.
35

Rule 1.8

(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 by counsel 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. **To the extent that agreements to arbitrate disputes over a lawyer's liability for malpractice are enforceable, a lawyer may enter into such an agreement with a client or a prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the attorney's disclosures regarding arbitration must be set out in a separate paragraph, written in a font size at least as large as the rest of the contract, and separately initialed by the client and the lawyer.**

Arbitration

[8A] Paragraph (h) requires informed consent to an agreement to arbitrate malpractice claims. See Rule 1.0(l). In obtaining such informed consent, the lawyer should reveal to the client or prospective client the following ~~that~~ (1) in an arbitration, the client or prospective client waives the right to a jury trial, because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would be

61 available in civil litigation; (4) how the costs of arbitration compare to the costs
62 of litigation in a public court, including the requirement that the arbitrator or
63 arbitrators be compensated; and (5) who will bear the costs of arbitration. The
64 lawyer should also inform the client or prospective client that an agreement to
65 arbitrate a dispute over fees and expenses is not a waiver of the right to make a
66 disciplinary complaint regarding the lawyer.

1 **ABA Rule 1.8: Current Clients: Specific Rules**

2 *Client-Lawyer Relationship*

3 (a) A lawyer shall not enter into a business transaction with a client or knowingly
4 acquire an ownership, possessory, security or other pecuniary interest adverse to a
5 client unless:

6 (1) the transaction and terms on which the lawyer acquires the interest are fair and
7 reasonable to the client and are fully disclosed and transmitted in writing in a
8 manner that can be reasonably understood by the client;

9 (2) the client is advised in writing of the desirability of seeking and is given a
10 reasonable opportunity to seek the advice of independent legal counsel on the
11 transaction; and

12 (3) the client gives informed consent, in a writing signed by the client, to the
13 essential terms of the transaction and the lawyer's role in the transaction, including
14 whether the lawyer is representing the client in the transaction.

15 (b) A lawyer shall not use information relating to representation of a client to the
16 disadvantage of the client unless the client gives informed consent, except as
17 permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(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;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law

37 school clinical or pro bono program may provide modest gifts to the client for
38 food, rent, transportation, medicine and other basic living expenses. The lawyer:
39 (i) may not promise, assure or imply the availability of such gifts prior to retention
40 or as an inducement to continue the client-lawyer relationship after retention;
41 (ii) may not seek or accept reimbursement from the client, a relative of the client
42 or anyone affiliated with the client; and
43 (iii) may not publicize or advertise a willingness to provide such gifts to
44 prospective clients.

45 Financial assistance under this Rule may be provided even if the representation is
46 eligible for fees under a fee-shifting statute.

47 (f) A lawyer shall not accept compensation for representing a client from one
48 other than the client unless:

- 49 (1) the client gives informed consent;
- 50 (2) there is no interference with the lawyer's independence of professional
51 judgment or with the client-lawyer relationship; and
- 52 (3) information relating to representation of a client is protected as required by
53 Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or 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 the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) 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 authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment

Business Transactions between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and

lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not 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.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives

111 and should explain why the advice of independent legal counsel is desirable. See
112 Rule 1.0(e) (definition of informed consent).

113 [3] The risk to a client is greatest when the client expects the lawyer to represent
114 the client in the transaction itself or when the lawyer's financial interest otherwise
115 poses a significant risk that the lawyer's representation of the client will be
116 materially limited by the lawyer's financial interest in the transaction. Here the
117 lawyer's role requires that the lawyer must comply, not only with the requirements
118 of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the
119 lawyer must disclose the risks associated with the lawyer's dual role as both legal
120 adviser and participant in the transaction, such as the risk that the lawyer will
121 structure the transaction or give legal advice in a way that favors the lawyer's
122 interests at the expense of the client. Moreover, the lawyer must obtain the client's
123 informed consent. In some cases, the lawyer's interest may be such that Rule 1.7
124 will preclude the lawyer from seeking the client's consent to the transaction.

125 [4] If the client is independently represented in the transaction, paragraph (a)(2) of
126 this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is
127 satisfied either by a written disclosure by the lawyer involved in the transaction or
128 by the client's independent counsel. The fact that the client was independently

represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

147 Gifts to Lawyers

148 [6] A lawyer may accept a gift from a client, if the transaction meets general
149 standards of fairness. For example, a simple gift such as a present given at a
150 holiday or as a token of appreciation is permitted. If a client offers the lawyer a
151 more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it,
152 although such a gift may be voidable by the client under the doctrine of undue
153 influence, which treats client gifts as presumptively fraudulent. In any event, due to
154 concerns about overreaching and imposition on clients, a lawyer may not suggest
155 that a substantial gift be made to the lawyer or for the lawyer's benefit, except
156 where the lawyer is related to the client as set forth in paragraph (c).

157 [7] If effectuation of a substantial gift requires preparing a legal instrument such
158 as a will or conveyance, the client should have the detached advice that another
159 lawyer can provide. The sole exception to this Rule is where the client is a relative
160 of the donee.

161 [8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a
162 partner or associate of the lawyer named as executor of the client's estate or to
163 another potentially lucrative fiduciary position. Nevertheless, such appointments
164 will be subject to the general conflict of interest provision in Rule 1.7 when there is
165 a significant risk that the lawyer's interest in obtaining the appointment will

166 materially limit the lawyer's independent professional judgment in advising the
167 client concerning the choice of an executor or other fiduciary. In obtaining the
168 client's informed consent to the conflict, the lawyer should advise the client
169 concerning the nature and extent of the lawyer's financial interest in the
170 appointment, as well as the availability of alternative candidates for the position.

171 Literary Rights

172 [9] An agreement by which a lawyer acquires literary or media rights concerning
173 the conduct of the representation creates a conflict between the interests of the
174 client and the personal interests of the lawyer. Measures suitable in the
175 representation of the client may detract from the publication value of an account of
176 the representation. Paragraph (d) does not prohibit a lawyer representing a client in
177 a transaction concerning literary property from agreeing that the lawyer's fee shall
178 consist of a share in ownership in the property, if the arrangement conforms to
179 Rule 1.5 and paragraphs (a) and (i).

180 Financial Assistance

181 [10] Lawyers may not subsidize lawsuits or administrative proceedings brought on
182 behalf of their clients, including making or guaranteeing loans to their clients for
183 living expenses, because to do so would encourage clients to pursue lawsuits that

might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

[11] Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) include modest contributions for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite

203 abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or
204 implying the availability of financial assistance prior to retention or as an
205 inducement to continue the client-lawyer relationship after retention; (ii) seeking or
206 accepting reimbursement from the client, a relative of the client or anyone
207 affiliated with the client; and (iii) publicizing or advertising a willingness to
208 provide gifts to prospective to clients beyond court costs and expenses of litigation
209 in connection with contemplated or pending litigation or administrative
210 proceedings.

211 [13] Financial assistance, including modest gifts pursuant to paragraph (e)(3), may
212 be provided even if the representation is eligible for fees under a fee-shifting
213 statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in
214 other contemplated or pending litigation in which the lawyer may eventually
215 recover a fee, such as contingent-fee personal injury cases or cases in which fees
216 may be available under a contractual fee-shifting provision, even if the lawyer does
217 not eventually receive a fee.

218 Person Paying for a Lawyer's Services

219 [14] Lawyers are frequently asked to represent a client under circumstances in
220 which a third person will compensate the lawyer, in whole or in part. The third
221 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).

[15] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client,

241 unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the
242 informed consent must be confirmed in writing.

243 Aggregate Settlements

244 [16] Differences in willingness to make or accept an offer of settlement are among
245 the risks of common representation of multiple clients by a single lawyer. Under
246 Rule 1.7, this is one of the risks that should be discussed before undertaking the
247 representation, as part of the process of obtaining the clients' informed consent. In
248 addition, Rule 1.2(a) protects each client's right to have the final say in deciding
249 whether to accept or reject an offer of settlement and in deciding whether to enter a
250 guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph
251 is a corollary of both these Rules and provides that, before any settlement offer or
252 plea bargain is made or accepted on behalf of multiple clients, the lawyer must
253 inform each of them about all the material terms of the settlement, including what
254 the other clients will receive or pay if the settlement or plea offer is accepted. See
255 also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of
256 plaintiffs or defendants, or those proceeding derivatively, may not have a full
257 client-lawyer relationship with each member of the class; nevertheless, such
258 lawyers must comply with applicable rules regulating notification of class

259 members and other procedural requirements designed to ensure adequate
260 protection of the entire class.

261 Limiting Liability and Settling Malpractice Claims

262 [17] Agreements prospectively limiting a lawyer's liability for malpractice are
263 prohibited unless the client is independently represented in making the agreement
264 because they are likely to undermine competent and diligent representation. Also,
265 many clients are unable to evaluate the desirability of making such an agreement
266 before a dispute has arisen, particularly if they are then represented by the lawyer
267 seeking the agreement. This paragraph does not, however, prohibit a lawyer from
268 entering into an agreement with the client to arbitrate legal malpractice claims,
269 provided such agreements are enforceable and the client is fully informed of the
270 scope and effect of the agreement. Nor does this paragraph limit the ability of
271 lawyers to practice in the form of a limited-liability entity, where permitted by law,
272 provided that each lawyer remains personally liable to the client for his or her own
273 conduct and the firm complies with any conditions required by law, such as
274 provisions requiring client notification or maintenance of adequate liability
275 insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that
276 defines the scope of the representation, although a definition of scope that makes

277 the obligations of representation illusory will amount to an attempt to limit
278 liability.

279 [18] Agreements settling a claim or a potential claim for malpractice are not
280 prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take
281 unfair advantage of an unrepresented client or former client, the lawyer must first
282 advise such a person in writing of the appropriateness of independent
283 representation in connection with such a settlement. In addition, the lawyer must
284 give the client or former client a reasonable opportunity to find and consult
285 independent counsel.

286 Acquiring Proprietary Interest in Litigation

287 [19] Paragraph (i) states the traditional general rule that lawyers are prohibited
288 from acquiring a proprietary interest in litigation. Like paragraph (e), the general
289 rule has its basis in common law champerty and maintenance and is designed to
290 avoid giving the lawyer too great an interest in the representation. In addition,
291 when the lawyer acquires an ownership interest in the subject of the representation,
292 it will be more difficult for a client to discharge the lawyer if the client so desires.
293 The Rule is subject to specific exceptions developed in decisional law and
294 continued in these Rules. The exception for certain advances of the costs of
295 litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth

exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[20] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal

relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[21] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[22] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises,

333 directs or regularly consults with that lawyer concerning the organization's legal
334 matters.

335 Imputation of Prohibitions

336 [23] Under paragraph (k), a prohibition on conduct by an individual lawyer in
337 paragraphs (a) through (i) also applies to all lawyers associated in a firm with the
338 personally prohibited lawyer. For example, one lawyer in a firm may not enter into
339 a business transaction with a client of another member of the firm without
340 complying with paragraph (a), even if the first lawyer is not personally involved in
341 the representation of the client. The prohibition set forth in paragraph (j) is
342 personal and is not applied to associated lawyers.

1 **Amendments previously approved by the DRPC in January 2022.

2 **Amendments proposed by the FAOB.

3
4 **RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS**

5 a. A lawyer shall neither enter into a business transaction with a client if the
6 client expects the lawyer to exercise the lawyer's professional judgment
7 therein for the protection of the client, nor shall the lawyer knowingly
8 acquire an ownership, possessory, security or other pecuniary interest
9 adverse to a client unless:

- 10 1. the transaction and terms on which the lawyer acquires the interest are
11 fair and reasonable to the client and are fully disclosed and
12 transmitted in writing to the client in a manner which can be
13 reasonably understood by the client;
- 14 2. the client is advised in writing of the desirability of seeking and is
15 given a reasonable opportunity to seek the advice of independent
16 counsel in the transaction; and
- 17 3. the client gives informed consent, in a writing signed by the client, to
18 the essential terms of the transaction and the lawyer's role in the
19 transaction, including whether the lawyer is representing the client in
20 the transaction.

- 21 b. A lawyer shall not use information gained in the professional relationship
22 with a client to the disadvantage of the client unless the client gives
23 informed consent, except as permitted or required by these rules.
- 24 c. A lawyer shall not prepare an instrument giving the lawyer or a person
25 related to the lawyer as parent, grandparent, child, grandchild, sibling, or
26 spouse any substantial gift from a client, including a testamentary gift,
27 except where the client is related to the donee.
- 28 d. Prior to the conclusion of representation of a client, a lawyer shall not make
29 or negotiate an agreement giving the lawyer literary or media rights to a
30 portrayal or account based in substantial part on information relating to the
31 representation.
- 32 e. A lawyer shall not provide financial assistance to a client in connection with
33 pending or contemplated litigation, except that:
- 34 1. a lawyer may advance court costs and expenses of litigation, the
35 repayment of which may be contingent on the outcome of the matter;
36 or
- 37 2. a lawyer representing a client unable to pay court costs and expenses
38 of litigation may pay those costs and expenses on behalf of the client^{7.2}
39 or

40 3. a lawyer representing an indigent client pro bono, a lawyer
41 representing an indigent client pro bono through a nonprofit legal
42 services or public interest organization or a lawyer representing an
43 indigent client pro bono through a law school clinical or pro bono
44 program may provide modest gifts to the client for food, rent,
45 transportation, medicine, and other basic living expenses. The lawyer:

- 46 (i) may not promise, assure or imply the availability of
47 such gifts prior to retention or as an inducement to
48 continue the client-lawyer relationship after retention;
49 (ii) may not seek or accept reimbursement from the client,
50 a relative of the client or anyone affiliated with the
51 client; and
52 (iii) may not publicize or advertise a willingness to
53 provide such gifts to prospective clients.

54 Financial assistance under this Rule may be provided even if the representation is
55 eligible for fees under a fee-shifting statute.

56 f. A lawyer shall not accept compensation for representing a client from one
57 other than the client unless:

- 58 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 lawyers 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 by counsel 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. To the extent that agreements to arbitrate disputes over a lawyer's liability for malpractice are enforceable, a lawyer may enter into such an agreement with a client or a prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the

79 attorney's disclosures regarding arbitration must be set out in a separate
80 paragraph, written in a font size at least as large as the rest of the contract,
81 and separately initialed by the client and the lawyer.

82 i. A lawyer related to another lawyer as parent, grandparent, child, grandchild,
83 sibling or spouse shall not represent a client in a representation directly
84 adverse to a person whom the lawyer has actual knowledge is represented by
85 the other lawyer unless his or her client gives informed consent regarding
86 the relationship. The disqualification stated in this paragraph is personal and
87 is not imputed to members of firms with whom the lawyers are associated.

88 j. A lawyer shall not acquire a proprietary interest in the cause of action or
89 subject matter of litigation the lawyer is conducting for a client, except that
90 the lawyer may:

91 1. acquire a lien granted by law to secure the lawyer's fees or expenses
92 as long as the exercise of the lien is not prejudicial to the client with
93 respect to the subject of the representation; and

94 2. contract with a client for a reasonable contingent fee in a civil case,
95 except as prohibited by Rule 1.5.

96 The maximum penalty for a violation of Rule 1.8 (b) is disbarment. The maximum
97 penalty for a violation of Rule 1.8 (a) and 1.8 (c)-(j) is a public reprimand.

99 Comment

100 Transactions Between Client and Lawyer

101 [1A] As a general principle, all transactions between client and lawyer should be
102 fair and reasonable to the client. The client should be fully informed of the true
103 nature of the lawyer's interest or lack of interest in all aspects of the transaction. In
104 such transactions a review by independent counsel on behalf of the client is often
105 advisable. Furthermore, a lawyer may not exploit information relating to the
106 representation to the client's disadvantage. For example, a lawyer who has learned
107 that the client is investing in specific real estate may not, without the client's
108 informed consent, seek to acquire nearby property where doing so would adversely
109 affect the client's plan for investment. Paragraph (a) does not, however, apply to
110 standard commercial transactions between the lawyer and the client for products or
111 services that the client generally markets to others, for example, banking or
112 brokerage services, medical services, products manufactured or distributed by the
113 client, and utilities' services. In such transactions, the lawyer has no advantage in
114 dealing with the client, and the restrictions in paragraph (a) are unnecessary and
115 impracticable.

116 Use of Information to the Disadvantage of the Client

117 [1B] It is a general rule that an attorney will not be permitted to make use of
118 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

139 Rule 1.5 and paragraph (j) of this rule.

140 Financial Assistance to Clients

141 [4] Paragraph (e) eliminates the former requirement that the client remain
142 ultimately liable for financial assistance provided by the lawyer. ~~It further limits~~
143 ~~permitted~~

144 [5] Lawyers may not subsidize lawsuits or administrative proceedings brought on
145 behalf of their clients, including making or guaranteeing loans to their clients for
146 living expenses, because to do so would encourage clients to pursue lawsuits that
147 might not otherwise be brought and because such assistance to gives lawyers too
148 great a financial stake in the litigation. These dangers do not warrant a prohibition
149 on a lawyer lending a client court costs and expenses directly related to litigation.
150 ~~Accordingly, permitted expenses would include, including the~~ expenses of
151 ~~investigation, medical diagnostic work connected with the matter under litigation~~
152 ~~and treatment necessary for the diagnosis, examination~~ and the costs of obtaining
153 and presenting evidence. ~~Permitted expenses, because these advances are virtually~~
154 indistinguishable from contingent fees and help ensure access to the courts.
155 Similarly, an exception allowing lawyers representing indigent clients to pay court
156 costs and litigation expenses regardless of whether these funds will be repaid is
157 warranted.

158 [6] Paragraph (e)(3) provides another exception. A lawyer representing an
159 indigent client without fee, a lawyer representing an indigent client pro bono
160 through a nonprofit legal services or public interest organization and a lawyer
161 representing an indigent client pro bono through a law school clinical or pro bono
162 program may give the client modest gifts. Gifts permitted under paragraph (e)(3)
163 include modest contributions for food, rent, transportation, medicine and similar
164 basic necessities of life. If the gift may have consequences for the client, including,
165 e.g., for receipt of government benefits, social services, or tax liability, the lawyer
166 should consult with the client about these. See Rule 1.4.

167 [7] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific
168 circumstances where it is unlikely to create conflicts of interest or invite abuse.

169 Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the
170 availability of financial assistance prior to retention or as an inducement to
171 continue the client-lawyer relationship after retention; (ii) seeking or accepting
172 reimbursement from the client, a relative of the client or anyone affiliated with the
173 client; and (iii) publicizing or advertising a willingness to provide gifts to
174 prospective to clients beyond court costs and expenses of litigation in connection
175 with contemplated or pending litigation or administrative proceedings.

176 [8] Financial assistance, including modest gifts pursuant to paragraph (e)(3), may
177 be provided even if the representation is eligible for fees under a fee-shifting

statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

Arbitration

[8A] Paragraph (h) requires informed consent to an agreement to arbitrate malpractice claims. See Rule 1.0(l). In obtaining such informed consent, the lawyer should reveal to the client or prospective client the following (1) in an arbitration, the client or prospective client waives the right to a jury trial because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would not include living expenses or medical be available in civil litigation; (4) how the costs of arbitration compare to the costs of litigation in a public court, including the requirement that the arbitrator or arbitrators be compensated; and (5) who will bear the costs of arbitration. The lawyer should also inform the client or prospective client that an agreement to arbitrate a dispute over fees and expenses other than those listed above is not a waiver of the right to make a disciplinary complaint regarding the lawyer.

Payment for a Lawyer's Services from One Other Than The Client

[59] 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

[610] 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

[711] 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.

[812] 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

[913] 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

[4014] Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary 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).

Memorandum to: Members, Executive Committee
From: Paula Frederick
Date: April 22, 2022
Re: Revisions to pending rule change, Rule 1.2 Comment 9

The Board of Governors approved the following proposed amendment to Comment 9 of Rule 1.2 at the Spring 2020 meeting:

**Rule 1.2. Scope of Representation and Allocation of Authority
Between Client and Lawyer**

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. A lawyer's knowledge may be inferred from the circumstances. See Rule 1.0 (m). Knowledge of the fact in question may be shown by actual knowledge or deliberate ignorance. 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.

After publication, Bar Counsel filed the proposal with the Court in November 2020. The Court has not yet approved the amendment but Justice Peterson reached out to Bar Counsel to discuss the possibility of rewording it. He has twice met with representatives of the International Trade in Legal Regulation Committee (who originally proposed the amendment). The ITLS Committee has approved a revised version of the proposed amendment and would like to take the proposal to the Board at the Annual Meeting.

**Rule 1.2. Scope of Representation and Allocation of Authority
Between Client and Lawyer**

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. Depending on the circumstances, deliberate ignorance or willful blindness may

be evidence of actual knowledge. 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.

Instead of returning to the Disciplinary Rules & Procedures Committee (which does not meet until June), ITLS asks that the Executive Committee approve this revised amendment so that it can go on the agenda for the Annual Meeting for Board approval. In the meantime Bar Counsel will circulate this memo to the members of the Disciplinary Rules Committee so that they can raise any objection at the Board level.

pjf

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April 28, 2022

Ms. Elizabeth Fite, President

State Bar of Georgia

104 Marietta St. NW, Suite 100

Atlanta, GA 30303

Submitted via email to: elf@rogersfite.com

Re: Revision of Disciplinary Rules 7.1, 7.2, and 7.3

Dear President Fite,

The Georgia Association of Criminal Defense Lawyers (GACDL) thanks the State Bar for the opportunity to comment on the proposed changes to Rules 7.1, 7.2, and 7.3 of the Disciplinary Rules and writes to offer that feedback. GACDL's key concerns relate to Rules 7.1 and 7.2; there are no concerns currently regarding Rule 7.3. The page numbers, comments, and line numbers, listed below, refer to the redlined version you provided and is attached here for reference.

1. Rule 7.1: Comment 5, Page 4, & Line 105

If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

This sentence directly addresses geographical references in trade names but then seems to conflate the use of such references with the use of terms connoting that an organization offers public legal aid. If the concern this comment intends to address is the potentially misleading use of terms in a trade name that typically identify a legal aid organization, GACDL respectfully suggests a slight modification to this proposed language:

If a firm uses a trade name that includes a geographical name or other language which suggests that it is a public aid organization such as "Springfield Legal Clinic" or "Smith's Legal Center," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

or

If a firm uses a trade name that includes a geographical name language which suggests that it is a public aid organization such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

2. Rule 7.1: Comment 8, Page 4, Line 112

[8] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

GACDL is concerned that Comment 8 to Rule 7.1 could discourage attorneys from holding elected office, which would be to the detriment of our electorate given the dearth of lawyers currently crafting, vetting, and passing legislation in the General Assembly. Coupled with this Comment, the fact that legislative leave is available to lawyer-legislators for the duration of each legislative session arguably means that it would be deemed misleading to maintain a lawyer-legislator's name in her law firm name, or even on firm letterhead, during a legislative session. Unfortunately, GACDL has no alternative language to suggest due to its direct opposition to the very concept proposed.

3. Rule 7.2(b)(3)(iv): Page 7; line 87

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

GACDL objects to this provision. Requiring errors and omissions insurance contravenes the recent Board of Governors' decision rejecting mandatory professional liability insurance for Bar members. Moreover, GACDL questions the efficacy of mandating an attorney secure insurance when she is a member of a qualified referral source but not when receiving referrals in any other fashion. GACDL recognizes and would support increased client/consumer protections when non-regulated lawyer-originating marketing and referral services are interacting with licensed Bar members; however, the onus of that protection ought to be born by such services rather than the Bar member. GACDL can conceive of several ways such protections could be secured (e.g., the service providing insurance for its lawyer-members, regulation of such services, etc.) and would welcome an opportunity to engage in a larger conversation about the changing dynamics of legal marketing and the impact on client/consumers because the status quo is troubling.

I welcome any further discussion that would be helpful to you as the process for finalizing a modified version of Rules 7.1, 7.2, and 7.3 continues. You can reach me by phone (404-218-4590) or email (jasonsheffieldattorney@gmail.com). Thank you, again, for your engagement and consideration.

Sincerely yours,



Jason B. Sheffield
President

cc: Kim Dymecki, Immediate Past President, GACDL (dymecki@bellsouth.net)
Amanda Clark Palmer, Member, GACDL (aclark@gslaw.com)
Joseph Cargile, Member, GACDL (jcargile@wbwk.com)
Joshua Schiffer, Member, GACDL (josh@csfirm.com)
Mike Jacobs, Member, GACDL (mikejacobsesq@hotmail.com)

Enclosure (1) Ad Rules - Part 7--Redline[100][26].pdf (as provided to GACDL by Ms. Fite)



SUPREME COURT OF GEORGIA

FILED
Administrative Minutes
Atlanta May 26, 2022

Thérèse S. Barnes
Clerk/Court Executive
SUPREME COURT OF GEORGIA
Thérèse S. Barnes

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

The Court having considered the 2021-2 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 & Organization, Chapter 6, Rule 1-601(Bylaws); Part IV – Georgia Rules of Professional Conduct, Chapter 1, Georgia Rules of Professional Conduct and Enforcement Thereof, Rule 1.0 (Terminology and Definitions); Rule 3.8 (Special Responsibilities of a Prosecutor), Rule 8.4 (Misconduct), Rule 9.3 (Cooperation with Disciplinary Authority); Chapter 2, Rule 4-202 (Receipt of Grievances; Initial Review by Bar Counsel); Rule 4-203 (Powers and Duties of the State Disciplinary Board); Rule 4-204 (Investigation and Disposition by State Disciplinary Board – Generally); Rule 4-204.1 (Notice of Investigation); Rule 4-204.3 (Answer to Notice of Investigation Required); Rule 4-208.2 (Notice of Discipline; Contents; Service); Rule 4-208.4 (Formal Complaint Following Notice of Rejection of Discipline); Rule 4-222 (Limitation); Rule 4-223 (Advisory Opinions); Rule 4-224 (Expungement of Records); and Part X – Client’s Security Fund, Rule 10-106 (Eligible Claims), be amended, effective May 26, 2022, to read as follows:

**PART I
CREATION & ORGANIZATION**

**CHAPTER 6
BYLAWS**

Rule 1-601. Bylaws

The State Bar of Georgia may adopt or amend the bylaws at any members meeting not inconsistent with these Rules or the bylaws.

. . .

**PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT**

**CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND
ENFORCEMENT THEREOF**

. . .

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 Bar 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” 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) “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203 (2).

(p) “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.

(q) “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.

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

(s) “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.

(t) “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 Rules.

(u) “Prospective Client” denotes a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.

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

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

(x) “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.

(y) “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.

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

(aa) “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.

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

(cc) “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.

(dd) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including but not limited to handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. 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 3.8. SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) refrain from making any effort to prevent the accused from exercising a reasonable effort to obtain counsel;

(c) comply with Rule 4.2;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or that mitigates the offense;

(e) exercise reasonable care to prevent persons who are under the direct supervision of the prosecutor from making an extrajudicial statement that the prosecutor would be prohibited from making under paragraph (g) of this Rule;

(f) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information.

(g) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve

a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused;

(h) promptly disclose new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted to an appropriate court or authority. If the conviction was obtained in the prosecutor's jurisdiction, the prosecutor shall promptly disclose that evidence to the defendant unless a court authorizes delay and undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit;

(i) seek to remedy a conviction obtained in the prosecutor's jurisdiction when the prosecutor knows of clear and convincing evidence establishing that a defendant did not commit the offense.

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

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4: Misconduct.

[2] Reserved.

[3] Reserved.

[4] Paragraph (f) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (g) supplements Rule 3.6: Trial Publicity, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6 (b) or 3.6 (c): Trial Publicity.

[6] Reserved.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (h) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (h) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an

unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[8] Under paragraph (i), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of paragraphs (h) and (i), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

...

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 have the meaning set forth in Rule 1.0 (e).

(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.

Comment

[1] The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prevent a lawyer from 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.

[2] This 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 and 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.

...

RULE 9.3. COOPERATION WITH DISCIPLINARY AUTHORITY

During the investigation of a matter pursuant to these Rules, the lawyer complained against shall respond to disciplinary authorities in accordance with State Bar Rules.

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

Comment

[1] Much of the work in the disciplinary process is performed by

volunteer lawyers and lay persons. In order to make good use of their valuable time, it is imperative that the lawyer complained against cooperate with the investigation. In particular, the lawyer must file a sworn response with the member of the Investigative Panel charged with the responsibility of investigating the complaint.

[2] Nothing in this Rule prohibits a lawyer from responding by making a Fifth Amendment objection, if appropriate. However, disciplinary proceedings are civil in nature, and the use of a Fifth Amendment objection will give rise to a presumption against the lawyer.

...

CHAPTER 2

DISCIPLINARY PROCEEDINGS

...

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

(a) The Office of the General Counsel may begin an investigation upon receipt of a Memorandum of Grievance, an Intake Form from the Client Assistance Program, or credible information from any source. If the investigation is based upon receipt of credible information, the Office of the General Counsel must first notify the respondent lawyer and provide a written description of the information that serves as the basis for the investigation.

(b) The Office of the General Counsel may also deliver the information from any source 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 matter under investigation. The screening process may include forwarding information received to the respondent so that the respondent may respond.

(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 the respondent or a third party to produce documents relevant to the matter under investigation. Subpoenas shall be enforced in the manner provided in Rule 4-221 (c).

(e) Upon completion of its screening of a matter, the Office of the General Counsel shall be empowered to dismiss those matters that do not present sufficient merit to proceed.

(f) Those matters 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 Client Assistance Program so that it may direct the complaining party to appropriate resources.

Rule 4-203. Powers and Duties

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 the information 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 matters that seem unjustified, frivolous, or patently unfounded;

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

(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 matters under investigation, and to certify matters 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 4-204. Investigation and Disposition by State Disciplinary Board - Generally

(a) Each matter 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 Board 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 the 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 Client 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 or written description pursuant to Bar Rule 4-202 (a) is being transmitted to the State Disciplinary Board;

(2) a copy of the grievance or written description pursuant to Bar Rule 4-202 (a);

(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 4-204.3. Answer to Notice of Investigation Required

(a) The respondent shall deliver to the State Disciplinary Board member assigned to investigate the matter 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 matter may, in the State Disciplinary Board member's discretion, grant extensions of time for 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 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 the 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 4-208.2. 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 or written description pursuant to Bar Rule 4-202 (a); 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 4-208.4. 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 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 State Disciplinary Board may reconsider the matter and take appropriate action.

...

Rule 4-222. Limitation

(a) No proceeding under Part IV, Chapter 2, shall be brought unless a Memorandum of Grievance, a written description pursuant to Rule 4-202 (a), or a Client 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 shall occur within 12 months of receipt of the Memorandum of Grievance by the Office of the General Counsel or notification to the respondent of the written description pursuant to Rule 4-202 (a).

Rule 4-223. Advisory Opinions

(a) Any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person. Formal Advisory

Opinions which have been approved or modified by the Supreme Court pursuant to Rule 4-403 shall also be binding in subsequent disciplinary proceedings which do not involve the person who requested the opinion.

(b) It shall be considered as mitigation to any matter being investigated under these Rules that the respondent has acted in accordance with and in reasonable reliance upon a written Informal Advisory Opinion requested by the respondent pursuant to Rule 4-401 or a Formal Advisory Opinion issued pursuant to Rule 4-403, but not reviewed by the Supreme Court of Georgia.

Rule 4-224. Expungement of Records

(a) The record of any matter against the 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 matters closed by the Office of the General Counsel after screening pursuant to Rule 4-202 (e) shall be expunged after one year;

(2) those matters 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 matter 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 which 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 the lawyer 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 Client Assistance Program, dismissed, or dismissed with a letter of instruction.

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PART X

CLIENT'S SECURITY FUND

...

Rule 10-106. Eligible Claims

(a) The loss must be caused by the dishonest conduct of the

lawyer and shall have arisen out of and because of a lawyer-client relationship, or a fiduciary relationship, between the lawyer and the claimant.

(b) As used in these Rules, “dishonest conduct” means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value.

(c) There must be a final disposition resulting in indefinite suspension, disbarment, or voluntary surrender of license.

(d) The claim shall be filed no later than two years after the date of final disciplinary action by the Supreme Court of Georgia. In the event disciplinary action cannot be prosecuted due to the fact that the attorney is either deceased or cannot be located, the claim shall be filed no later than five years after the dishonest conduct was first discovered by the applicant; provided, however, the claim shall be filed no later than seven years after the dishonest conduct occurred.

(e) Except as provided by paragraph (f) of this Rule, the following losses shall not be reimbursable:

(1) losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(2) losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) losses incurred by any financial institution, which are recoverable under a “banker’s blanket bond” or similar commonly available insurance or surety contract;

(4) losses incurred by any business entity controlled by the

lawyer, or any person or entity described in paragraph (e) (1) hereof;

(5) losses incurred by any governmental entity or agency;

(6) losses incurred by corporations or partnerships, including general or limited.

(f) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim that otherwise would be excluded under these Rules in order to achieve the purpose of the Fund.

(g) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Board, in its discretion, may deny the claim.

(h) The Board shall require the applicant to exhaust his or her civil remedies unless the Board determines that the pursuit of the civil claim is not feasible or practical.

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