



State Bar of Georgia

Disciplinary Rules & Procedures Committee

AGENDA

September 19, 2019

Atlanta, Georgia

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<u>I. Welcome & Introductions</u>	(Haubenreich)	1
<u>II. Approval of Minutes from June 6, 2019 meeting</u>	(Haubenreich)	2
<u>III. Informational Item</u>	(Lipscomb)	3
A. Report on Executive Committee action on rules the DRPC considered at its January meeting.		
a. Rule 1.0(e)		
b. Rule 8.4		
<u>IV. Action Items</u>		
A. Rule 1.2	(Ben Greer)	4-9
a. (Request from ITILS.)		
b. (Amendment to address conflict of laws related to cannabis production.)	(Frederick)	10-16
B. Use of term 'grievance'	(Frederick)	17-26
a. (Consider revising the definition of grievance, Rule 1.1(j), to include a matter under investigation even where the Office of the General Counsel has not received a written MOG form.)		
b. (All rules that include the word "grievance" may need to be revised to distinguish between a grievance form and an investigation.)		

C. Client Assistance Program

(Frederick)

27-35

- a. *(By order of June 14, 2019 the Supreme Court approved revisions to Part XII of the Bar Rules to bring the Consumer Assistance Program into the Office of the General Counsel and to rename it the "Client Assistance Program." There are several references to Consumer Assistance in Part IV of the rules that should be amended to reflect the new name.)*

D. Rule 4-228 Receivership

(NeSmith)

36

- a. *(Proposed paragraph k regarding fees and costs incurred by Receivers.)*

V. Adjourn

2019-2020

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

John G. Haubenreich, Atlanta 2020

Vice Chairperson

David S. Lipscomb, Lawrenceville 2020

Members

Harold Michael Bagley, Atlanta 2020

Paul T. Carroll, III, Rome 2020

J. Antonio DelCampo Atlanta 2020

John Kendall Gross, Metter 2021

Patrick H. Head, Marietta 2021

R. Javoyne Hicks, Decatur 2021

William Dixon James, Decatur 2020

William James Keogh, III, Augusta 2020

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Jabu Mariette Sengova, Atlanta 2022

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Christian Joseph Steinmetz, III, Savannah 2020

Jeffrey S. Ward, Savannah 2022

Paige Reese Whitaker, Atlanta 2020

Staff Liaison

Paula J. Frederick , Atlanta 2020

Disciplinary Rules and Procedures Committee
Meeting of June 6, 2019
Orlando, Florida

MINUTES

Chair John Haubenreich called the meeting to order at 2:15 p.m.

Attendance:

Committee members: John G. Haubenreich, David Lipscomb (phone), Jeffery L. Arnold (phone), H. Michael Bagley, Paul T. Carroll, II, R. Keegan Federal, Ashley Fournet (phone), Patrick H. Head, Charles B. Hess (phone), R. Javoyne Hicks, William D. James (phone), William James Keogh, III, David N. Lefkowitz (phone), Jonathan B. Pannell (phone), Jabu M. Sengova (phone), and R. Gary Spencer.

Staff: Paula J. Frederick, William D. NeSmith, III, Jenny K. Mittelman, and Kathya S. Jackson.

The Committee approved the Minutes from the January 11, 2019 meeting.

Action Items:

Trade Names/Rule 7.5

After thorough discussion, the Committee decided not to take action.

Mandatory Written Fee Agreement/Rule 1.5

After thorough discussion, the Committee decided not to take action.

Reporting Professional Misconduct/Rule 8.3

After thorough discussion, the Committee decided not to take action.

Discussion Item:

Receivership/ Rule 4-228

The Committee discussed whether they should add a paragraph to the Rule regarding fees and costs incurred by Receivers. Bar Counsel will email proposed language to the Committee prior to the next meeting for further discussion.

The next meeting will be in Fall 2019.

RULE 1.0. TERMINOLOGY AND DEFINITIONS

...

(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; or
- (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.~~

...

RULE 8.4 MISCONDUCT

...

b. (1) "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

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

- ~~i. — a guilty plea;~~
- ~~ii. — a plea of nolo contendere;~~
- ~~iii. — a verdict of guilty; or~~
- ~~iv. — a verdict of guilty but mentally ill.~~

2. The record of a ~~conviction~~ 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~~ Conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

...

MEMORANDUM

TO: State Bar of Georgia Disciplinary Rules and Procedures Committee (DRPC)

FROM: International Trade in Legal Services Committee Task Force on Money Laundering

DATE: September 16, 2019

I. Introduction.

As the DPRC is doubtless aware, the role of lawyers in illicit money laundering activities has received considerable attention in recent years. Since many - if not the great majority of these activities involve the cross-border movement of money and other assets, earlier this year, the Bar's Committee on International Trade in Legal Services (ITILS) convened a Task Force to examine the general issue and to determine whether or not it would be appropriate to recommend changes to our Disciplinary Rules designed to address the issue. In addition to selected members of the ITILS Committee, the Task Force comprised representatives of the Bar's Real Estate Section and Staff. Leading academics and representatives of the American Bar Association's Gatekeeper Initiative also participated in the deliberations of the Task force.

The outcome of the deliberations was to recommend an amendment to Disciplinary Rule 1.2. The Task force and the full membership of ITILS unanimously recommend adoption of the amendment. We believe that an essential element of the rule of law is the maintenance of the attorney client relationship and the trust and confidence that underlie that relationship. At the same time, we believe that the public interest requires that our profession not be perceived as an active participant in illicit activities - either knowingly or through willful ignorance.

II. Discussion.

Lawyers' potential role in money-laundering - knowing or otherwise - has been a controversial topic following the Panama Papers disclosures and the 60 Minutes report discussed in the ABA Journal here: "Group goes undercover at 13 law firms to show how US laws facilitate anonymous investment."

http://www.abajournal.com/news/article/group_goes_undercover_at_13_law_firms_to_show_how_us_laws_facilitate/<http://www.abajournal.com/news/article/group_goes_undercover_at_13_law_firms_to_show_how_us_laws_facilitate/<http://www.abajournal.com/news/article/group_goes_undercover_at_13_law_firms_to_show_how_us_laws_facilitate/<http://www.abajournal.com/news/article/group_goes_undercover_at_13_law_firms_to_show_how_us_laws_facilitate/<http://www.abajournal.com/news/article/group_goes_undercover_at_13_law_firms_to_show_how_us_laws_facilitate/>

The Financial Action Task Force (FATF) is an intergovernmental working group of which the United States is an important member. FATF's mission is to encourage its members to adopt laws and regulations designed to prevent terrorist financing and money laundering. A key element of FATF's work is to identify weaknesses in professional regulation, including regulation of the legal profession and to recommend changes thereto designed to eliminate illicit activities. Among its recommendations is to require the legal profession in the FATF member countries to report

suspicious activities to law enforcement authorities ("whistleblowing"). The FATF Gatekeeper Initiative has resulted in increased regulation of lawyers in many jurisdictions, and in its review of the regulation of lawyers in the US, it has expressly found that the regulation of the legal profession in this regard is inadequate. Partly in response to this, proposed legislation, including the True Incorporation Transparency for Law Enforcement ("TITLE") Act, S. 1454, 115th Cong. (2017-18) and the Corporate Transparency Act of 2017, H.R. 3089, 115th Cong. (2017-18) has been introduced in Congress. These would impose specific due diligence requirements on lawyers as gatekeepers.

Because of increased law enforcement focus on the issue, we believe that the pressure in the legal profession will only increase in the future.

Against this backdrop, the committee members present at the April 2 meeting unanimously agreed that pre-emptive self-regulatory action may be the best means to prevent legislative action potentially disruptive to the loyalty and confidentiality obligations arising out of the attorney-client relationship. Those present also agreed unanimously that Bar Rule 1.2 should be revised to include a "willful blindness"/"deliberate ignorance" standard - a standard already imposed in RICO cases under Georgia and federal law.

The group discussed several different potential revisions to Rule 1.2. The attached proposed revision adds to the rule an express statement that "[a] lawyer's knowledge may be inferred from the circumstances. See 1.0(m). Knowledge of the fact in question may be shown by actual knowledge or deliberate ignorance." The group also considered an alternative proposal, which would add the boldfaced language to the rule's commentary while adding to the rule itself the language "or reasonably should know," as follows: "conduct that the lawyer knows [or reasonably should know] is criminal or fraudulent. . . ." We also considered changing the commentary without changing the rule.

On a first vote, a majority favored the longer addition, with several noting that the longer addition was more precise in applying a willful blindness standard rather than a negligence standard, which might be inferred from the use of the phrase "reasonably should know." Three of those present preferred the "or reasonably should know" addition, pointing out that it would add fewer words to the existing rule. One member favored changing only the comment to the rule, rather than the rule itself. Following additional discussion, however, all members present or participating by telephone (as well as all members of the ITILS Committee who were not participating in the work of the Task Force) unanimously agreed to support the proposed revision shown on the attached proposal.

III. Recommendation.

Because we believe that the attorney-client relationship is essential to preservation of the rule of law and that the public's confidence that the legal profession must be based on the knowledge that it is not knowingly engaged in the facilitation of illicit transactions, we recommend the adoption of the proposed amendment to Rule 1.2.

We are grateful for your consideration.

1 RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
2 BETWEEN CLIENT AND LAWYER

- 3 a. Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning
4 the scope and objectives of representation and, as required by Rule 1.4, shall consult
5 with the client as to the means by which they are to be pursued. A lawyer may take such
6 action on behalf of the client as is impliedly authorized to carry out the representation. A
7 lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the
8 lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea
9 to be entered, whether to waive jury trial and whether the client will testify.
- 10 b. A lawyer's representation of a client, including representation by appointment, does not
11 constitute an endorsement of the client's political, economic, social or moral views or
12 activities.
- 13 c. A lawyer may limit the scope and objectives of the representation if the limitation is
14 reasonable under the circumstances and the client gives informed consent.
- 15 d. A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal
16 or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the
17 legal consequences of any proposed course of conduct with a client and may counsel or
18 assist a client to make a good faith effort to determine the validity, scope, meaning or
19 application of the law. A lawyer's knowledge may be inferred from the circumstances.
20 See 1.0(m). Knowledge of the fact in question may be shown by actual knowledge or
21 deliberate ignorance.

22
23 The maximum penalty for a violation of this rule is disbarment.

24
25 Comment

26
27 Allocation of Authority between Client and Lawyer

28 [1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be
29 served by legal representation, within the limits imposed by law and the lawyer's professional
30 obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter.

31 must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with
32 the client about such decisions. With respect to the means by which the client's objectives are to
33 be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take
34 such action as is impliedly authorized to carry out the representation.

35
36 [2] On occasion, however, a lawyer and a client may disagree about the means to be used to
37 accomplish the client's objectives. Clients normally defer to the special knowledge and skill of
38 their lawyer with respect to the means to be used to accomplish their objectives, particularly with
39 respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client
40 regarding such questions as the expense to be incurred and concern for third persons who might
41 be adversely affected. Because of the varied nature of the matters about which a lawyer and
42 client might disagree and because the actions in question may implicate the interests of a tribunal
43 or other persons, this rule does not prescribe how such disagreements are to be resolved. Other
44 law, however, may be applicable and should be consulted by the lawyer. The lawyer should also
45 consult with the client and seek a mutually acceptable resolution of the disagreement. If such
46 efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer
47 may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve
48 the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

49
50 [3] At the outset of a representation, the client may authorize the lawyer to take specific action
51 on the client's behalf without further consultation. Absent a material change in circumstances and
52 subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may,
53 however, revoke such authority at any time.

54
55 [4] In a case in which the client appears to be suffering from diminished capacity, the lawyer's
56 duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

57
58 Independence from Client's Views or Activities

59 [5] Legal representation should not be denied to people who are unable to afford legal services,
60 or whose cause is controversial or the subject of popular disapproval. By the same token,
61 representing a client does not constitute approval of the client's views or activities.

62
63 Agreements Limiting Scope of Representation

64 [6] The scope of services to be provided by a lawyer may be limited by agreement with the client
65 or by the terms under which the lawyer's services are made available to the client. When a lawyer
66 has been retained by an insurer to represent an insured, for example, the representation may be
67 limited to matters related to the insurance coverage. A limited representation may be appropriate
68 because the client has limited objectives for the representation. In addition, the terms upon which
69 representation is undertaken may exclude specific means that might otherwise be used to
70 accomplish the client's objectives. Such limitations may exclude actions that the client thinks are
71 too costly or that the lawyer regards as repugnant or imprudent.

72
73 [7] Although this rule affords the lawyer and the client substantial latitude to limit the
74 representation, the limitation must be reasonable under the circumstances. If, for example, a
75 client's objective is limited to securing general information about the law the client needs in
76 order to handle a common and typically uncomplicated legal problem, the lawyer and client may
77 agree that the lawyer's services will be limited to a brief telephone consultation. Such a
78 limitation, however, would not be reasonable if the time allotted was not sufficient to yield
79 advice upon which the client could rely. Although an agreement for a limited representation does
80 not exempt a lawyer from the duty to provide competent representation, the limitation is a factor
81 to be considered when determining the legal knowledge, skill, thoroughness and preparation
82 reasonably necessary for the representation. See Rule 1.1.

83
84 [8] All agreements concerning a lawyer's representation of a client must accord with the Georgia
85 Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

86
87 Criminal, Fraudulent and Prohibited Transactions

88 [9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a
89 crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest
90 opinion about the actual consequences that appear likely to result from a client's conduct. Nor
91 does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself
92 make a lawyer a party to the course of action. There is a critical distinction between presenting

an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Georgia Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (5).



MEMORANDUM

To: Members, Disciplinary Rules Committee

From: Paula Frederick

Date: September 12, 2019

Re: Ethics issues from Georgia's Hope Act

Georgia's new Hope Act legalizes production and distribution of low-THC CBD oil in Georgia. A new state commission will license and regulate six private companies and two state universities that will grow marijuana and produce medical cannabis oil. I have attached an article that describes the new law in more detail.

The federal Controlled Substances Act classifies marijuana as a schedule 1 drug, so that growing it is a federal offense. Congress has considered decriminalizing marijuana but has not yet gotten beyond the stage of holding hearings on the issue.

Bar Rule 1.2(d) provides that a lawyer may not "counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct...". The rule makes it difficult, if not impossible, for a Georgia lawyer to provide any legal help regarding the Hope Act.

Other jurisdictions have dealt with state legalization of cannabis or marijuana by amending their version of Rule 1.2 or by issuing advisory opinions that create exceptions to the Rule:

Pennsylvania added a new paragraph (e) to Rule 1.2:

(e): A lawyer may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.

(I don't see a comment that explains this any further)

Washington State has a comment to Rule 1.2—

[18] Under Paragraph (d), a lawyer may counsel a client regarding Washington's marijuana laws and may assist a client in conduct that the lawyer reasonably believes is permitted by those laws. If Washington law conflicts with federal or tribal law, the lawyer shall also advise the client regarding the related federal or tribal law and policy.

California's format varies from the ABA Model and so their rule is 1.2.1 (which is substantially similar if not identical to Georgia's 1.2(d). They added a comment as follows:

[6] Paragraph (b) permits a lawyer to advise a client regarding the validity, scope, and meaning of California laws that might conflict with federal or tribal law. In the event of such a conflict, the lawyer may assist a client in drafting or administering, or interpreting or complying with, California laws, including statutes, regulations, orders, and other state or local provisions, even if the client's actions might violate the conflicting federal or tribal law. If California law conflicts with federal or tribal law, the lawyer must inform the client about related federal or tribal law and policy and under certain circumstances may also be required to provide legal advice to the client regarding the conflict (see rules 1.1 and 1.4)

This matter will be on the agenda for the Committee meeting on September 19 so that you may consider whether to revise Rule 1.2 or its comments.

pjf

**RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LAWYER**

...
d. A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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

Comment

...
Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client

31 in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be
32 necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion,
33 document, affirmation or the like. See Rule 4.1.

34
35 [11] Where the client is a fiduciary, the lawyer may be charged with special obligations in
36 dealings with a beneficiary.

37
38 [12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence,
39 a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax
40 liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general
41 retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that
42 determining the validity or interpretation of a statute or regulation may require a course of action
43 involving disobedience of the statute or regulation or of the interpretation placed upon it by
44 governmental authorities.

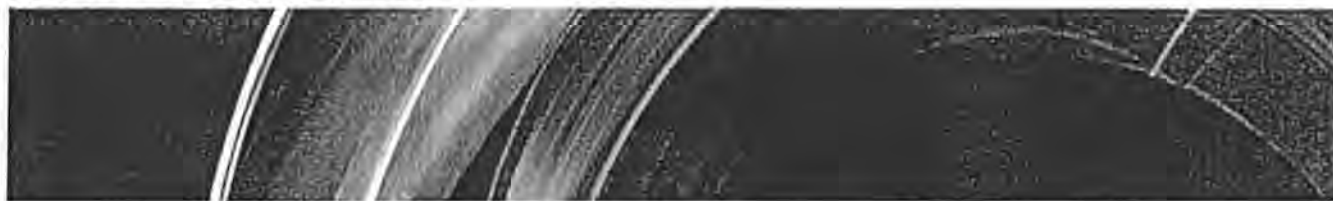
45
46 [13] If a lawyer comes to know or reasonably should know that a client expects assistance not
47 permitted by the Georgia Rules of Professional Conduct or other law or if the lawyer intends to
48 act contrary to the client's instructions, the lawyer must consult with the client regarding the
49 limitations on the lawyer's conduct. See Rule 1.4 (a) (5).

July 10, 2019

New Hope in Georgia – The Landscape for the Application/Licensing Process for Cannabis

Michael Williams

Baker Donelson

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On April 2, 2019, the Georgia General Assembly passed monumental cannabis-related legislation for the state, HB 324 titled "Georgia's Hope Act," which legalizes the limited in-state cultivation, production, manufacturing, sale and purchase of low-THC CBD oil. Governor Kemp signed the bill on April 17, 2019. This new legislation is indicative of the country's shift towards the general acknowledgement and acceptance of the medicinal properties contained in the cannabis plant.

Since 2015 it has been legal for certain registered Georgia residents that suffer from at least one ailment (out of several listed in the statute) to possess and ingest cannabis-derived cannabidiol oil (more commonly known as CBD oil) containing "low amounts" – less than five percent – of tetrahydrocannabinol (more commonly known as THC). Despite what appeared to be a victory for patients seeking alternative treatment options (typically used in addition to the "normal" pharmaceutical-based treatment(s)), the cultivation, production, distribution and purchase/sale of CBD oil in the state of Georgia still remained against the law.

Georgia's Hope Act creates the Georgia Access to Medical Cannabis Commission (the Commission), to facilitate the licensing process to prospective operators and to oversee the regulation of ongoing operations of the licensees, which will include a comprehensive data aggregating tracking system from "seed to sale" of the low-THC CBD oil. The Commission will consist of seven members, three appointed by the Governor, two appointed by the Lieutenant Governor and two appointed by the Speaker of the House of Representatives, each to serve a four-year term.

Georgia's Hope Act permits the issuance of two Class 1 production licenses, which will allow a licensee to grow cannabis only in indoor facilities limited to 100,000 square feet of "cultivation space," for use in producing low-THC CBD oil, and to manufacture low-THC CBD oil. To apply for this Class 1 license, each applicant is required to pay a non-refundable application fee in the amount of \$25,000, and if awarded the license, an initial license fee of \$200,000 (with a \$100,000 annual renewal fee). The Class 1 license shall be revoked if the licensee is not operational within 12 months of the effective date of the license. In addition, Georgia's Hope Act permits the issuance of four Class 2 production licenses, which will allow a licensee to grow cannabis only in indoor facilities limited to 50,000 square feet of "cultivation space," for use in producing low-THC CBD oil, and to manufacture low-THC CBD oil. To apply for this Class 2 license, each applicant is required to pay a non-refundable application fee in the amount of \$5,000, and if awarded the license, an initial license fee of \$100,000 (with a \$50,000 annual renewal fee). The Class 2 license shall be revoked if the licensee is not operational within 12 months of the effective date of the license.

One major difference between the initial bill that was introduced in the Georgia House of Representatives, and Georgia's Hope Act that was ultimately signed into law (after extensive committee revisions in the Senate), is the creation of a specialty dispensing license for pharmacies to be developed by the State Board of Pharmacy, and to permit pharmacies to dispense low-THC CBD oil to registered patients. Georgia's Hope Act also authorizes the Commission to develop dispensing licenses for retail outlets.

The production licenses will be issued to applicants selected by the Commission following "a competitive application and review process" and each licensee will be required to be a Georgia entity and maintain a bank account with a bank located in Georgia.

Georgia's Hope Act provides some initial requirements that the Commission will seek in any application for a Class 1 or Class 2 license:

1. Class 1 license applicant must provide written documentation showing that on the date of application and on the date of the award of the license, the applicant holds at least \$2,000,000 (\$1,250,000 for Class 2 applicants) in available cash reserves to invest in operations in Georgia;
2. Written production plan, which, at a minimum, must include details about the chain of custody of the low-THC CBD oil;
3. Comprehensive security plan, which must include 24/7 interior/exterior video monitoring and a centralized controlled access system;
4. Written plan for secured transportation and tracking of delivered products;

5. Detailed employment plan, including the jobs and salaries of employees and the expected economic impact of proposed activities in Georgia;
6. Written plan to assure no pesticides are used, other than those certified by the Organic Materials Review Institute (or similar body);
7. Detailed designs of all production facilities;
8. Letters of support from one or more local governmental entities, where the applicant's primary facility will be located;
9. Demonstration of significant involvement in the business by one or more minority business enterprises (as defined in Georgia Code Section 50-5-131), either as co-owners or as significant suppliers of goods and services. Further, applicants shall be encouraged to form business relationships with Georgia agricultural businesses and military veterans;
10. Documentation of industry capabilities and management experience;
11. Sufficient documentation to prove that a \$1.5 million (\$625,000 for Class 2 applicants) cash bond payable to the State of Georgia or irrevocable letter of credit can be obtained within 30 days of obtaining a license (and the failure to obtain the bond or the letter of credit is cause for revocation of the license);
12. At least one set of classifiable electronically recorded fingerprints; and
13. Description of any efforts to create jobs or locate facilities in tier 1 or tier 2 counties (as defined in Georgia Code Section 48-7-40).

Further, applicants may not have an ownership interest in more than one license.

In addition to the above considerations, there are other requirements relating to product testing, location of facilities in proximity to "Covered Entities," prohibition on advertising/marketing, on-demand access by certain law enforcement agencies, prohibition on the use of certain tax credits, criminal history and rules surrounding the subsequent transfer or sale of a license.

Applicants also need to consider the federal implications of operating in this industry, such as federal banking laws and regulations and the Internal Revenue Code.

 Send Report

LATEST POSTS

1 **RULE 1.0 TERMINOLOGY AND DEFINITIONS**

2
3 (j) "Grievance/Memorandum of Grievance" denotes an allegation of unethical conduct filed against
4 a lawyer.
5

6
7
8 **Rule 9.3 COOPERATION WITH DISCIPLINARY AUTHORITY**

9 During the investigation of a grievance filed under these Rules, the lawyer complained against shall
10 respond to disciplinary authorities in accordance with State Bar Rules.
11

12 The maximum penalty for a violation of this Rule is a public reprimand.
13

14 Comment
15

16 [1] Much of the work in the disciplinary process is performed by volunteer lawyers and lay persons. In
17 order to make good use of their valuable time, it is imperative that the lawyer complained against
18 cooperate with the investigation. In particular, the lawyer must file a sworn response with the member of
19 the Investigative Panel charged with the responsibility of investigating the complaint.
20

21 [2] Nothing in this Rule prohibits a lawyer from responding by making a Fifth Amendment objection, if
22 appropriate. However, disciplinary proceedings are civil in nature and the use of a Fifth Amendment
23 objection will give rise to a presumption against the lawyer.
24
25

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

27a. **Grievances** shall be filed in writing with the Office of the General Counsel of the State Bar of Georgia. In
28 lieu of a **Memorandum of Grievance** the Office of the General Counsel may begin an investigation upon
29 receipt of an Intake Form from the Consumer Assistance Program. All **grievances** must include the name
30 of the complainant and must be signed by the complainant.

- 31b. The Office of the General Counsel may investigate conduct upon receipt of credible information from any
32 source after notifying the respondent lawyer and providing a written description of the information that
33 serves as the basis for the investigation. The Office of the General Counsel may deliver the information it
34 obtains to the State Disciplinary Board for initiation of a **grievance** under Rule 4-203 (2).
- 35c. The Office of the General Counsel shall be empowered to collect evidence and information concerning
36 any **grievance**. The screening process may include forwarding a copy of the **grievance** to the respondent
37 in order that the respondent may respond to the **grievance**.
- 38d. The Office of the General Counsel may request the Chair of the State Disciplinary Board to issue a
39 subpoena as provided by OCGA § 24-13-23 requiring a respondent or a third party to produce documents
40 relevant to the matter under investigation. Subpoenas shall be enforced in the manner provided at Rule 4-
41 221 (c).
- 42e. Upon completion of its screening of a **grievance**, the Office of the General Counsel shall be empowered to
43 dismiss those **grievances** that do not present sufficient merit to proceed. Rejection of such **grievances** by
44 the Office of the General Counsel shall not deprive the complaining party of any right of action he might
45 otherwise have at law or in equity against the respondent.
- 46f. Those **grievances** that appear to allege a violation of Part IV, Chapter 1 of the Georgia Rules of
47 Professional Conduct may be forwarded to the State Disciplinary Board pursuant to Rule 4-204. In lieu of
48 forwarding a matter to the State Disciplinary Board, the Office of the General Counsel may refer a matter
49 to the Consumer Assistance Program so that it may direct the complaining party to appropriate resources.
50

51

52 **Rule 4-203 Powers and Duties**

- 53 In accordance with these Rules, the State Disciplinary Board shall have the following powers and duties:
- 54 (1) to receive and evaluate any and all written **grievances** against lawyers and to frame such charges and
55 **grievances** as shall conform to the requirements of these Rules. A copy of any **grievance** serving as the
56 basis for investigation or proceedings before the State Disciplinary Board shall be furnished to the
57 respondent by the procedures set forth in Rule 4-203.1;
- 58 (2) to initiate **grievances** on its own motion, to require additional information from a complainant, where
59 appropriate, and to dismiss and reject such **grievances** as they may seem unjustified, frivolous, or patently
60 unfounded. However, the rejection of a **grievance** by the State Disciplinary Board shall not deprive the
61 complaining party of any right of action he might otherwise have at law or in equity against the
62 respondent;

- (3) to issue letters of instruction when dismissing a grievance;
- (4) to delegate the duties of the State Disciplinary Board enumerated in paragraphs (1), (2), (8), (9), (10), and (11) hereof to the Chair of the State Disciplinary Board or such other members as the State Disciplinary Board or its Chair may designate subject to review and approval by the full State Disciplinary Board;
- (5) to conduct Probable Cause investigations, to collect evidence and information concerning grievances, and to certify grievances to the Supreme Court of Georgia for hearings by Special Masters as hereinafter provided;
- (6) to prescribe its own Rules of conduct and procedure;
- (7) to receive, investigate, and collect evidence and information, and review and accept or reject Petitions for Voluntary Discipline pursuant to Rule 4-227 (b) (1);
- (8) to sign and enforce, as hereinafter described, subpoenas for the appearance of persons and the production of documents, things and records at investigations both during the screening process and the State Disciplinary Board's investigation;
- (9) to issue a subpoena as provided in this Rule whenever a subpoena is sought in this State pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, where the issuance of the subpoena has been duly approved under the law of the other jurisdiction. Upon petition for good cause the State Disciplinary Board may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service of the subpoena shall be as provided in the Georgia Civil Practice Act. Enforcement or challenges to the subpoena shall be as provided at Rule 4-221 (c);
- (10) to extend the time within which a formal complaint may be filed;
- (11) to issue Formal Letters of Admonition and Confidential Reprimands as hereinafter provided;
- (12) to issue a Notice of Discipline providing that unless the respondent affirmatively rejects the notice, the respondent shall be sanctioned as ordered by the Supreme Court of Georgia;
- (13) to refer a lawyer who appears to be impaired for an evaluation by an appropriate medical or mental health professional; and
- (14) to use the staff of the Office of the General Counsel in performing its duties.

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

931. Each **grievance** that presents sufficient merit to proceed may be referred with a Notice of Investigation to
94 the State Disciplinary Board for investigation and disposition in accordance with its Rules. The Clerk of
95 the State Disciplinary Boards shall assign a lawyer member of the State Disciplinary Board to be
96 responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff
97 investigator to assist the State Disciplinary Board member with the investigation. If the investigation of
98 the State Disciplinary Board establishes Probable Cause to believe that the respondent has violated one or
99 more of the provisions of Part IV, Chapter 1 of these Rules, it shall;
1001. issue a Formal Letter of Admonition;
1012. issue a Confidential Reprimand;
1023. issue a Notice of Discipline;
1034. refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal
104 complaint with the Supreme Court of Georgia, all as hereinafter provided; or
1055. refer a respondent for evaluation by an appropriate medical or mental health professional pursuant to Rule
106 4-104 upon the State Disciplinary Board's determination that there is cause to believe the lawyer is
107 impaired.
- 108 All other cases may be either dismissed by the State Disciplinary Board or referred to the Consumer
109 Assistance Program so that it may direct the complaining party to appropriate resources.
1102. The primary investigation shall be conducted by the member of the State Disciplinary Board responsible
111 for the investigation, assisted by the staff of the Office of the General Counsel, upon request of the State
112 Disciplinary Board member. The Board of Governors of the State Bar of Georgia shall fund the Office of
113 the General Counsel so that the Office of the General Counsel will be able to adequately investigate and
114 prosecute all cases.

115

116

117 **Rule 4-204.1. Notice of Investigation**

- 118a. A Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a
119 reasonable opportunity to respond to the charges in writing. The Notice shall contain:
- 120
1211. a statement that the **grievance** is being transmitted to the State Disciplinary Board;
1222. a copy of the **grievance**;
1233. a list of the Rules that appear to have been violated;

1244. the name and address of the State Disciplinary Board member assigned to investigate the grievance and a
125 list of the State Disciplinary Board members; and
1265. a statement of the respondent's right to challenge the competency, qualifications or objectivity of any
127 State Disciplinary Board member.
128b. The form for the Notice of Investigation shall be approved by the State Disciplinary Board.
129c. The Office of the General Counsel shall cause the Notice of Investigation to be served upon the
130 respondent pursuant to Rule 4-203.1.

131 **Rule 4-204.3 Answer to Notice of Investigation Required**

132a. The respondent shall deliver to the State Disciplinary Board member assigned to investigate the grievance
133 a written response under oath to the Notice of Investigation within 30 days of service.
134b. The written response must address specifically all of the issues set forth in the Notice of Investigation.
135c. The State Disciplinary Board member assigned to investigate the grievance may, in the State Disciplinary
136 Board member's discretion, grant extensions of time for the respondent's answer. Any request for
137 extension of time must be made in writing, and the grant of an extension of time must also be in writing.
138 Extensions of time shall not exceed 30 days and should not be routinely granted.
139d. In cases where the maximum sanction is disbarment or suspension and the respondent fails to properly
140 respond within the time required by these Rules, the Office of the General Counsel may seek
141 authorization from the Chair or Vice-Chair of the State Disciplinary Board to file a motion for interim
142 suspension of the respondent.
1431. When an investigating member of the State Disciplinary Board notifies the Office of the General Counsel
144 that the respondent has failed to respond and that the respondent should be suspended, the Office of the
145 General Counsel shall, with the approval of the Chair or Vice-Chair of the State Disciplinary Board, file a
146 Motion for Interim Suspension of the respondent. The Supreme Court of Georgia shall enter an
147 appropriate order.
1482. When the State Disciplinary Board member and the Chair or Vice-Chair of the State Disciplinary Board
149 determine that a respondent who has been suspended for failure to respond has filed an appropriate
150 response and should be reinstated, the Office of the General Counsel shall file a Motion to Lift Interim
151 Suspension. The Supreme Court of Georgia shall enter an appropriate order. The determination that an
152 adequate response has been filed is within the discretion of the investigating State Disciplinary Board
153 member and the Chair of the State Disciplinary Board.
154

155 **Rule 4-208.2 Notice of Discipline; Contents; Service**

156a. The Notice of Discipline shall include:

157

1581. the Rules that the State Disciplinary Board found the respondent violated;

1592. the allegations of facts that, if unrebutted, support the finding that such Rules have been violated;

1603. the level of public discipline recommended to be imposed;

1614. the reasons why such level of discipline is recommended, including matters considered in mitigation and

162 matters considered in aggravation, and such other considerations deemed by the State Disciplinary Board

163 to be relevant to such recommendation;

1645. the entire provisions of Rule 4-208.3 relating to rejection of a Notice of Discipline. This may be satisfied

165 by attaching a copy of the Rule to the Notice of Discipline and referencing the same in the notice;

1666. a copy of the **Memorandum of Grievance**; and

1677. a statement of any prior discipline imposed upon the respondent, including confidential discipline under

168 Rules 4-205 to 4-208.

169

170b. The Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the

171 Notice of Discipline shall be served upon the respondent pursuant to Rule 4-203.1.

172c. The Office of the General Counsel shall file documents evidencing service with the Clerk of the Supreme

173 Court of Georgia.

174d. The level of disciplinary sanction in any Notice of Discipline rejected by the respondent or the Office of

175 the General Counsel shall not be binding on the Special Master, the State Disciplinary Board or the

176 Supreme Court of Georgia in subsequent proceedings in the same matter.

177

178

179 **Rule 4-208.4 Formal Complaint Following Notice of Rejection of Discipline**

1801. The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal

181 complaint and a Petition for Appointment of Special Master within 30 days following the filing of a

182 Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by

183 the State Disciplinary Board.

1842. The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint

185 from the Chair of the State Disciplinary Board or his designee.

1863. After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the
187 State Disciplinary Board may reconsider the **grievance** and take appropriate action.

188

189

190 **Rule 4-222 Limitation**

191a. No proceeding under Part IV, Chapter 2, shall be brought unless a **Memorandum of Grievance** or a
192 Consumer Assistance Program referral form has been received at the State Bar of Georgia headquarters or
193 instituted pursuant to these Rules within four years after the commission of the act; provided, however,
194 this limitation shall be tolled during any period of time, not to exceed two years, that the offender or the
195 offense is unknown, the offender's whereabouts are unknown, or the offender's name is removed from
196 the roll of those authorized to practice law in this State.

197b. Referral of a matter to the State Disciplinary Board by the Office of the General Counsel shall occur
198 within 12 months of the receipt of the **Memorandum of Grievance** at the State Bar of Georgia
199 headquarters or institution of an investigation.

200

201

202 **Rule 4-223 Advisory Opinions**

203 (a) Any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by
204 the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board,
205 and the person who requested the opinion, in any subsequent disciplinary proceeding involving that
206 person. Formal Advisory Opinions which have been approved or modified by the Supreme Court
207 pursuant to Rule 4-403 shall also be binding in subsequent disciplinary proceedings which do not involve
208 the person who requested the opinion.

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

213

214 **Rule 4-224 Expungement of Records**

215a. The record of any grievance against a respondent under these Rules which does not result in discipline
216 against the respondent shall be expunged by the Office of the General Counsel in accordance with the
217 following:

218

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

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

223.3. those complaints dismissed by the Supreme Court of Georgia after formal proceedings shall be expunged
224 after two years.

225b. Definition. The term "expunge" shall mean that all records or other evidence of the existence of the
226 complaint shall be destroyed.

227c. Effect of Expungement. After a file has been expunged, any response to an inquiry requiring a reference
228 to the matter shall state that any record of such matter has been expunged and, in addition, shall state that
229 no inference adverse to the respondent is to be drawn on the basis of the incident in question. The
230 respondent may answer any inquiry requiring a reference to an expunged matter by stating that the
231 grievance or formal complaint was dismissed and thereafter expunged.

232d. Retention of Records. Upon application to the State Disciplinary Board by the Office of the General
233 Counsel, for good cause shown, with notice to the respondent and an opportunity to be heard, records that
234 would otherwise be expunged under this Rule may be retained for such additional period of time not
235 exceeding three years as the Board deems appropriate. Counsel may seek a further extension of the period
236 for which retention of the records is authorized whenever a previous application has been granted for the
237 maximum period permitted hereunder.

238e. A lawyer may respond in the negative when asked if there are any complaints against the lawyer if the
239 matter has been expunged pursuant to this Rule. Before making a negative response to any such inquiry,
240 the lawyer shall confirm that the record was expunged and shall not presume that any matter has been
241 expunged.

242f. A lawyer may respond in the negative when asked if he has ever been professionally disciplined or
243 determined to have violated any professional disciplinary rules if all grievances filed against the lawyer
244 have either been referred to the Consumer Assistance Program, dismissed, or dismissed with a letter of
245 instruction.

246

247 **Client Security Fund Rule 10-106**

248 a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and
249 because of a lawyer-client relationship, or a fiduciary relationship, between the lawyer and the claimant.

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

253 (c) There must be a final disposition of a **grievance** filed with the State Disciplinary Board of the State
254 Bar of Georgia resulting in indefinite suspension, disbarment, or voluntary surrender of license.

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

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

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

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

266 (3) losses incurred by any financial institution, which are recoverable under a "banker's blanket
267 bond" or similar commonly available insurance or surety contract;

268 (4) losses incurred by any business entity controlled by the lawyer, or any person or entity
269 described in part (e) (1) hereof;

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

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

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

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

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



SUPREME COURT OF GEORGIA

August 1, 2019

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

The Court having considered the 2019-2 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part XII – Consumer Assistance Program, Preamble and Rules 12-101 through Rule 12-109 be deleted and new Part XII — Client Assistance Program, Preamble, and Rules 12-101 and 12-102, be approved, effective August 1, 2019, to read as follows:

PART XII CLIENT ASSISTANCE PROGRAM

Preamble.

The purpose of the Client Assistance Program is to respond to inquiries from the public regarding State Bar members and to assist the public through informal methods including the resolution of inquiries that may involve minor violations of the Georgia Rules of Professional Conduct.

Rule 12-101. Client Assistance Committee.

The advisory responsibility for this program will be vested in the General Counsel Office Overview Committee.

Rule 12-102. Supervision.

The Client Assistance Program shall operate under the supervision of the General Counsel of the State Bar of Georgia. Program staff may be used to help clients understand their rights, obligations, and options.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 Clerk

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

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

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

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

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

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

(f) Those grievances that appear to allege a violation of Part IV, Chapter 1 of the Georgia Rules of Professional Conduct may be forwarded to the State Disciplinary

28 Board pursuant to Bar Rule 4-204. In lieu of forwarding a matter to the State
29 Disciplinary Board, the Office of the General Counsel may refer a matter to the
30 ~~Consumer-Client~~ Assistance Program so that it may direct the complaining party to
31 appropriate resources.

32

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

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

- (1) issue a Formal Letter of Admonition;
 - (2) issue a Confidential Reprimand;
 - (3) issue a Notice of Discipline;
 - (4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided; or
 - (5) refer a respondent for evaluation by an appropriate medical or mental health professional pursuant to Bar Rule 4-104 upon the State Disciplinary Board's determination that there is cause to believe the lawyer is impaired.
- All other cases may be either dismissed by the State Disciplinary Board or referred to the ~~Consumer~~-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.

27 The Board of Governors of the State Bar of Georgia shall fund the Office of the
28 General Counsel so that the Office of the General Counsel will be able to adequately
29 investigate and prosecute all cases.

30

1 **Rule 4-221.1 Confidentiality of Investigations and Proceedings**

2 . . .

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

6 . . .

7 (9) The ~~Consumer~~Client Assistance Program;

8 . . .

1 **Rule 4-222. Limitation**

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

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

Rule 4-224. Expungement of Records

...

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

1 **Rule 4-228. Receiverships**

2
3 ...
4 (k) State Bar of Georgia as receiver.

5
6 If a lawyer with the State Bar of Georgia is appointed as receiver of an Absent Lawyer's client
7 files, the State Bar upon motion may request that the Supreme Court of Georgia enter an order
8 assessing the disbarred lawyer the costs of receivership including personnel, not to exceed
9 \$5,000. The assessed amount must be paid in full by the disbarred lawyer before the Court will
10 consider any application for reinstatement to the practice of law in this state.
11