

State Bar of Georgia

2013 Report of the
Office of the General Counsel



State Bar
of Georgia

Marriott Hilton Head Resort & Spa
June 20-23 • Hilton Head Island, S.C.

OFFICE OF THE GENERAL COUNSEL
STATE BAR OF GEORGIA
ANNUAL REPORT FOR OPERATIONAL YEAR 2012-2013

Index

I.	Report of the General Counsel	1-3
II.	State Disciplinary Board	
	Investigative Panel.....	4-7
	Review Panel	8-10
III.	Formal Advisory Opinion Board	11-20
IV.	Overdraft Notification Program	21-22
V.	<i>Pro Hac Vice</i> Program.....	23-24
VI.	Amendments to Bar Rules and Bylaws	25-103
VII.	Clients' Security Fund.....	104-109
VIII.	Disciplinary Orders of Supreme Court of Georgia	110-118
	Review Panel Reprimands.....	110
	Public Reprimands	111
	Suspensions	112-115
	Disbarments/Voluntary Surrenders	116-117
	Reinstatements Granted	118

ANNUAL REPORT OF THE OFFICE OF THE GENERAL COUNSEL
FOR BAR YEAR 2012-2013

By: Paula J. Frederick, General Counsel

I am pleased to present the 2012-2013 Report of the Office of the General Counsel. Enclosed herein are reports from the Investigative and Review Panels of the State Disciplinary Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the *Pro Hac Vice* program, and the Trust Account Overdraft Notification Program. Following the reports is a compilation of Supreme Court Orders issued in disciplinary cases between May 1, 2012 and April 30, 2013.

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

Staff

The staff of the Office of the General Counsel continues to be its greatest asset. Former General Counsel Bill Smith continues to work with the office as Ethics Counsel, handling a variety of special projects and some disciplinary cases. Robert E. McCormack, Deputy General Counsel for the Bar Counsel unit, is responsible for drafting changes to the Bar Rules and for staffing the Clients' Security Fund. Paralegal Betty Derrickson conducts the initial review of Clients' Security Fund files and coordinates the work of the Fund. John Shiptenko is Assistant General Counsel for all Bar Counsel matters. He acts as staff liaison to the Formal Advisory

Opinion Board and handles insurance, contractual and employment matters for the Bar. Deloise Mathews provides secretarial support to the Bar Counsel unit.

Deputy General Counsel Jenny Mittelman continues to serve in the managing attorney role for the OGC. She handles a disciplinary caseload in addition to supervising the lawyers who handle disciplinary cases. Senior Assistant General Counsel Jonathan Hewett supervises the grievance counsel in addition to prosecuting disciplinary cases. Assistant General Counsel Becky Hall, Tina Petrig, and Bill Cobb continue to serve as ethics and disciplinary counsel to the Bar assisted by investigators Lamar Jackson and Dean Veenstra.

With assistance from paralegal Kristin Poland, Grievance Counsel Carmen Rojas Rafter conducts the preliminary investigation of the grievances which the office receives each year. Connie Henry, Clerk of the State Disciplinary Board, continues to coordinate the activity of the disciplinary boards. Regina Putman-Kelley serves as Trust Account Overdraft Notification Coordinator. Paralegals Carolyn Williams and Kathy Jackson, legal secretaries Deborah Grant, Cathe Payne, Bobbie Kendall, and Receptionist Jessica Oglesby round out the OGC staff.

Lawyer Helpline

The Office of the General Counsel operates a Lawyer Helpline for members of the State Bar of Georgia to discuss ethics questions on an informal basis with an Assistant General Counsel. This year the Helpline averaged 20 calls or email requests each weekday.

Continuing Legal Education

As always, the Office of the General Counsel provides staff counsel to speak at CLE seminars and to local bar groups upon request. This year OGC lawyers participated in more than 62 CLE presentations.

Committees

OGC staff continues to work with the Disciplinary Rules and Procedures Committee, the Advisory Committee on Legislation, the Fair Market Practices Committee, the OGC Overview Committee, the Judicial Procedure & Administration Committee, the Committee on International Trade in Legal Services, and the Continuity of Law Practice Committee.

Thanks

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

ANNUAL REPORT OF THE INVESTIGATIVE PANEL
STATE DISCIPLINARY BOARD
FOR OPERATIONAL YEAR 2012-2013

By: Larry I. Smith, Chair

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

The 2012-2013 Investigative Panel consisted of two lawyers from each judicial district of the state, six public members, and two at-large members. The president-elect of the State Bar and the president-elect of the Younger Lawyers Division served as ex-officio members. The Panel continued its practice of holding its monthly meetings throughout the state; this year we met in Savannah, Atlanta, Macon, Newnan, Helen, Jekyll Island, Athens, Pine Mountain, Tifton, and Greensboro, Georgia.

The Bar received fewer requests for grievance forms this year (3,277) than last (3,584). The number of grievance forms returned to the Office of the General Counsel also decreased. Last year's figure was 2,105; this year 2,064 forms were returned for screening and further consideration.

After review by an Assistant General Counsel, 1,761 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 264 grievances contained allegations which, if true, would amount to violations of one or more of the Georgia Rules of Professional Conduct found at Bar Rule 4-102. This represents a decrease from 268 such grievances in 2012. Each of those grievances was referred to one of the district Panel members for further investigation.

Investigative Panel members who investigated grievances each handled numerous cases during the Bar year. The Panel also set a goal of having each case reported within 180 days. Each case required investigation and time away from the Panel member’s law practice, all without compensation. At the end of the investigation the Panel member made a report and recommendation to the full Panel. One hundred grievances were dismissed, 44 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and sixty two cases met the “probable cause” test and were returned to the Office of the General Counsel for prosecution. This represents a decrease from 232 such cases last year. One hundred and twenty five cases are still under consideration by the Panel, an increase from 121 such cases last year.

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

The Investigative Panel imposed confidential discipline during 2012-2013 as follows:

<u>Form of Discipline</u>	<u>Cases</u>
Investigative Panel Reprimands	22
Letters of Formal Admonition	25
Cases Dismissed with Letters of Instruction	44
Interim Suspensions	24

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

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

They are:

Christian J. Steinmetz, III, Savannah, District 1

J. Maria Waters, Pooler, District 1

John M. Stephenson, Albany, District 2

Laverne Lewis Gaskins, Valdosta, District 2

William D. NeSmith, Americus, District 3

Donna S. Hix, Columbus, District 3

Katherine K. Wood, Atlanta, District 4

Sherry Boston, Decatur, District 4

Hubert J. Bell, Jr., Atlanta, District 5

Thomas G. Sampson, II, Atlanta, District 5

Delia T. Crouch, Newnan, District 6

Andrew J. Whalen, Griffin, District 6

Christopher A. Townley, Rossville, District 7

Dale Pearson Beardsley, Atlanta, District 7

Donald W. Huskins, Eatonton, District 8 (term expiring)

John D. Newberry, Gray, District 8 (term expiring)

Ramon Alvarado, Lawrenceville, District 9 (term expiring)

Lyle Kilvington Porter, Lawrenceville, District 9 (term expiring)

Larry L. Smith, Augusta, District 10 (term expiring)

Anna Green Bolden, Winder, District 10 (term expiring)

Preyesh K. Maniklal, Atlanta, At Large (term expiring)

John G. Haubenreich, Atlanta, At Large (term expiring)

We have two ex-officio members, the president-elect of the State Bar of Georgia, Charles L. “Buck” Ruffin, Macon (term expiring), and the president-elect of the Younger Lawyers Division, Darrell L. Sutton, Marietta (term expiring).

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

Mark A. Douglas, Atlanta

Michael A. Fuller, Macon

Shelton J. Goode, Conyers

Elizabeth King, Atlanta

Carol Fullerton, Albany (term expiring)

Eunice L. Mixon, Tifton (term expiring)

ANNUAL REPORT OF THE REVIEW PANEL
STATE DISCIPLINARY BOARD
FOR OPERATIONAL YEAR 2012-2013

By: Anthony B. Askew, Chair

The role of the Review Panel of the State Disciplinary Board changed effective June 13, 1997. Before that time, the Review Panel was charged with the responsibility of reviewing the complete record in all disciplinary cases that had been heard by a Special Master. As a result of the changes in 1997, the Panel now hears only those cases in which the Respondent lawyer or the Bar asks for review. This means that the Panel reviews fewer cases, but they are by definition the most contentious cases in the process.

The Panel has authority to make findings of fact and conclusions of law based on the record. In all cases in which disciplinary violations have been found, the Panel makes a recommendation of disciplinary action to the Supreme Court. The Court may follow the Panel's recommendation, but may also render an opinion that modifies our recommendation in some way.

In addition, the Review Panel reviews all matters of reciprocal discipline. The Georgia Supreme Court amended the Bar Rules on June 9, 2004, so that the Review Panel now receives every case in which a Georgia lawyer has been disciplined in another jurisdiction. The Panel is charged with recommending the appropriate disciplinary result in Georgia.

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

The following is a brief summary of public disciplinary action taken by the Supreme Court of Georgia during the period from May 1, 2012, to April 30, 2013:

<u>Form of Discipline</u>	<u>Cases</u>	<u>Lawyers</u>
Disbarments/Voluntary Surrenders	53	28
Suspensions	61	40
Public Reprimands	10	7
Review Panel Reprimands	2	2

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

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

Non-lawyer Members

Thomas C. Rounds, Sandy Springs

Clarence Pennie, Kennesaw (term expiring)

P. Alice Rogers, Atlanta

Stuart F. Sligh, Savannah

Lawyer Members

Northern District:

J. Robert Persons, Atlanta

Anthony B. Askew, Atlanta

C. Bradford Marsh, Atlanta (term expiring)

Middle District:

Jeffery O'Neal Monroe, Macon

Oliver Wendell Horne, Macon

Ralph F. Simpson, Tifton (term expiring)

Southern District:

V. Sharon Edenfield, Statesboro

Thomas R. Burnside, III, Augusta

Sarah Brown Akins, Savannah (term expiring)

Ex-Officio Members

Kenneth L. Shigley, Atlanta (term expiring)

Stephanie J. Kirijan, Atlanta (term expiring)

**ANNUAL REPORT OF THE
FORMAL ADVISORY OPINION BOARD
FOR OPERATIONAL YEAR 2012-2013**

By: James B. Ellington, Chair

The Formal Advisory Opinion Board considers requests for formal advisory opinions and drafts opinions that interpret the Georgia Rules of Professional Conduct. The Board consists of active members of the State Bar of Georgia who are appointed by the President of the Bar, with the approval of the Board of Governors. The Formal Advisory Opinion Board for the 2012-2013 Bar year is comprised of the following lawyers:

Members at Large

Term

James B. Ellington, Chair, Augusta	2011 - 2013
Edward B. Krugman, Atlanta	2011 - 2013
Honorable Edward E. Carriere, Jr., Decatur (deceased)	2012 - 2014
William Thomas Clark, Atlanta	2012 – 2014
Letitia A. McDonald, Atlanta	2012 - 2014

Georgia Trial Lawyers Association

Jack J. Helms, Jr., Vice-Chair, Homerville	2011 - 2013
--	-------------

Georgia Defense Lawyers Association

Evelyn Fletcher Davis, Atlanta <i>(Appointed to fill the unexpired term of Theodore Freeman)</i>	2012 – 2013
---	-------------

Georgia Association of Criminal Defense Lawyers

Joseph Scott Key, Decatur	2012 - 2014
---------------------------	-------------

Georgia District Attorney’s Association

Kenneth W. Mauldin, Athens 2012 – 2014

Young Lawyers Division

Christopher R. Abrego, Atlanta 2011 - 2013

Emory University

Professor James B. Hughes, Jr., Atlanta 2012 - 2014

University of Georgia

Professor Lonnie T. Brown, Jr., Athens 2011 - 2013

Mercer University

Professor Patrick E. Longan, Macon 2011 - 2013

Georgia State University

Professor Roy M. Sobelson, Atlanta 2012 - 2014

John Marshall Law School

Professor Jeffrey Alan Van Detta, Atlanta 2011 - 2013

Investigative Panel

Laverne Lewis Gaskins, Valdosta 2012 - 2013

Review Panel

Charles B. Marsh, Atlanta 2012 - 2013

Factors that the Formal Advisory Opinion Board considers in determining whether a request is accepted for the drafting of a formal advisory opinion include whether a genuine ethical issue is presented in the request, whether the issue raised in the request is of general interest to the members of the Bar, and whether there are existing opinions that adequately

address the issue raised in the request. Following is a synopsis of the Board's activities during the 2012-2013 Bar year.

The Formal Advisory Opinion Board received six (6) new requests for formal advisory opinions. The Board accepted one (1) request and is in the process of drafting a proposed opinion. The issue addressed in the request is:

- Formal Advisory Opinion Request No. 12-R8 - 1) If a Georgia attorney, who is not employed by the Georgia Attorney General, provides legal advice to an official or employee of a State agency concerning a State agency matter, are these communications between the attorney and the official or employee of the State agency protected by the attorney-client privilege? 2) Would the Georgia attorney's disclosure of this legal advice – without a waiver by the official or employee of the State agency – violate Georgia Rule of Professional Conduct 1.6 and subject the Georgia attorney to potential disbarment?

The Board has two (2) requests under consideration to determine whether they should be accepted for the drafting of a proposed opinion. The issues raised in the requests are:

- Formal Advisory Opinion No. 13-R1 - Is it ethically permissible for an attorney to disclosed certain facts – even privileged facts – if a client or former client posts a negative (and false) online review about an attorney if that information is directly relevant to the defense/response to the (false) allegation? Will adding a clause to the engagement agreement in which the client acknowledges he or she understands he/she will or may be waiving certain privileges/expectations of confidentiality if he or she posts a negative online review change the analysis?

- Formal Advisory Opinion No. 13-R2 - May a lawyer contact and interview former employees of an organization represented by counsel when the former employees are bound by separation agreements governing non-disclosure, non-disparagement, etc.

The Board declined three (3) requests. The issues raised in the requests are:

- Formal Advisory Opinion Request No. 12-R5 - Ethical obligation of lawyers to redact confidential information about third parties from client files when returning the file to the client.
- Formal Advisory Opinion Request No. 12-R6 - Ethical obligations of attorneys under Georgia Rule of Professional Conduct 1.15(I)(b)(2)(i) as it relates to claimed attorney liens by prior counsel.
- Formal Advisory Opinion No. 12-R7 - The requestor was seeking a formal advisory opinion regarding Georgia Rule of Professional Conduct 1.15(I)(b).

The Board also declined three (3) requests for formal advisory opinions received in the 2011-2012 Bar year. The issues raised in the requests are:

- Formal Advisory Opinion Request No. 12-R1 - Regarding the application of FAO No. 10-2 in specific termination of parental rights scenarios, and the applicability of FAO No. 10-2 in other cases, particularly deprivation cases.
- Formal Advisory Opinion Request No. 12-R3 - Since the preamble to the Georgia Rules of Professional Conduct in paragraph [3] requires lawyers in all professional functions to be prompt and diligent, what is the penalty for a prosecuting attorney that will not return telephone calls to a defense attorney trying to discuss the client's upcoming court appearance? Does this not violate

Rule 1.1 Competence, and Rule 1.3 Diligence for which the maximum penalty is disbarment?

- Formal Advisory Opinion Request No. 12-R4 - Do the Georgia Rules of Professional Conduct permit a prosecutor to enter into an agreement with a criminal defendant to dismiss criminal charges in exchange for the defendant's release of any civil claims arising out of the defendant's arrest, prosecution, and/or conviction?

The following request for a formal advisory opinion was received and declined in a previous Bar year. However, the Board received a request to reconsider its decision to decline the request, which was granted. Upon reconsideration, the Board accepted the request for the drafting of a formal advisory opinion, and is in the process of drafting a proposed opinion.

- Formal Advisory Opinion Request No. 11-R1 - (1) May a plaintiff's attorney be required to execute a Release requiring that attorney to ensure medical expenses and liens involving the plaintiff are paid from the settlement proceeds, when the representation has been made during settlement negotiations that an agreement with the medical lien holder has been reached for repayment from the proceeds? (2) May an attorney representing a plaintiff in a personal injury litigation be required to indemnify and hold harmless any party being released as a result of the settlement negotiations from any medical expenses and/or liens which that attorney has represented will be satisfied and/or settled from applicable settlement proceeds, or which the law requires to be satisfied from settlement?

One (1) proposed opinion, requested in a previous year, remains pending with the Formal Advisory Opinion Board. The issue addressed in the proposed opinion is:

- Proposed Formal Advisory Opinion No. 10-R2 - Does a Georgia lawyer who participates in a piecemeal element of a Georgia residential real estate transaction where neither he nor other Georgia lawyers will supervise the other aspects of the closing process violate the Georgia Rules of Professional Conduct.

In June 2012, the Formal Advisory Opinion Board approved a proposed opinion addressing the issue raised in the request. The proposed opinion appeared in the August 2012 issue of the Georgia Bar Journal for first publication. Bar members were given an opportunity to file comments regarding the proposed opinion with the Board. Several comments from Bar members and non-attorneys were received. Upon further review and consideration of the proposed opinion, the Board determined that revisions were needed. A revised proposed opinion was reviewed and approved by the Board in April 2013. The Question Presented was amended to read as follow:

1. Does a lawyer violate the Georgia Rules of Professional Conduct when he/she conducts a "witness only" closing for real estate?
2. Can a lawyer who is closing a real estate transaction meet his/her obligations under the law and the Georgia Rules of Professional Conduct by reviewing, revising as necessary, and adopting documents sent from the lender or from other sources?
3. May a lawyer deliver funds from a real estate closing directly to the seller or lender, without depositing them into his/her IOLTA account?

The revised proposed opinion appears in the June 2013 issue of the Georgia Bar Journal for first publication giving Bar members an opportunity to file comments with the Board.

One (1) formal advisory opinion issued during a prior Bar year was approved by the Supreme Court of Georgia during the 2013-2013 Bar year. The issue addressed in the opinion is:

- Formal Advisory Opinion No. 10-1 - May different lawyers employed in the circuit public defender office in the same judicial circuit represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so?

On April 15, 2013, the Supreme Court of Georgia issued an order approving FAO No. 10-1. *(NOTE: In light of its approval of this FAO No. 10-1, the Supreme Court of Georgia also issued an order denying the State Bar of Georgia's motion to amend Georgia Rule of Professional Conduct 1.10. Rule 1.10 is the rule implicated in FAO No. 10-1.)* Subsequent to the Court's approval of FAO No. 10-1, the requestor filed a motion for reconsideration or clarification. Several responses and amicus briefs have been filed. The motion remains pending with the Supreme Court.

Following the adoption of the Georgia Rules of Professional Conduct in 2001, the Formal Advisory Opinion Board reviewed all existing formal advisory opinions to determine to what extent, if any, the newly adopted rules impacted the opinions. The outcome for two of the 42 opinions reviewed remained pending with the Supreme Court of Georgia. The issues addressed in the opinions and the status of each is as follows:

- Formal Advisory Opinion No. 05-1 - Ethical propriety of a lawyer interviewing the officers and employees of an organization when that organization is the opposing party in litigation without consent of organization.

This opinion, a redrafted version of Formal Advisory Opinion No. 87-6, was filed with the Supreme Court on August 29, 2008, pursuant to Bar Rule 4-403(d). The opinion addressed issues governed by Rule 4.2. Because a proposed amendment to Rule 4.2 was pending, the Supreme Court was asked to suspend further consideration of the FAO No. 05-1 until a final determination was made regarding the amendment to Rule 4.2. On November 13, 2012, the Supreme Court of Georgia issued an order approving the amendment to Rule 4.2. The Board subsequently reviewed Formal Advisory Opinions Nos. 87-6 and 05-1 in light of the amendment to Rule 4.2. The Board determined that since Rule 4.2 no longer contains the “managerial responsibility” language found in Comment 4A, for which FAO No. 05-1 was drafted to address, FAO No. 05-1 was no longer necessary. The Board also determined that the amendment to Rule 4.2 did not substantially impact FAO No. 87-6, so that redrafting the opinion was not necessary; however a headnote should be added to the opinion that 1) explains and preserves the institutional history of the opinion; 2) addresses the third category of individuals to which attorneys cannot speak (that was added to the Rule but is not listed in the opinion); and 3) addresses the reference to proposed RPC 4.2 found in Footnote 1 of the opinion. At the Board’s request, on July 10, 2012, the Office of the General Counsel filed a petition in the Supreme Court to withdraw FAO No. 05-1, which was granted on July 12, 2012. The Board approved headnote language for FAO No. 87-6, which remains an opinion of the Court and is binding on all members of the State Bar of Georgia.

- Formal Advisory Opinion No. 86-1 - Lawyer Serving Simultaneously as State Legislator and Part-time Solicitor.

At its March 25, 2010 meeting, the Formal Advisory Opinion Board was asked to review this opinion to determine whether it was impacted by the application of O.C.G.A. § 16-10-9a(1). During its review, the Board noted errors within both the opinion and the headnote language that was added to the opinion following adoption of the Georgia Rules of Professional Conduct. The Board also determined that O.C.G.A. §16-10-9a(1) and advisory opinions issued by the Georgia Attorney General's Office answer the question presented in the opinion, thus providing adequate guidance to Georgia attorneys. Accordingly, the Board decided that FAO No. 86-1 should be withdrawn. On July 14, 2010, the State Bar of Georgia filed a petition for withdrawal of Formal Advisory Opinion No. 86-1 with the Supreme Court. On June 25, 2013, the Supreme Court of Georgia issued an order withdrawing FAO No. 86-1.

On November 3, 2011, the Supreme Court of Georgia issued an order amending the Georgia Rules of Professional Conduct. Again, the Formal Advisory Opinion Board has been asked to review existing formal advisory opinions to determine whether the amendments to the rules impact the substance and/or conclusion of the opinions. The Formal Advisory Opinion Board is in the process of reviewing and assessing the opinions in light of the amendment to the rules.

Formal Advisory Opinions can be found in the [2012-2013 State Bar of Georgia Directory & Handbook](#) and on the State Bar of Georgia's website at www.gabar.org.

I would like to thank the members of the Board for their dedication and service. These members have volunteered their time and knowledge in order to ensure that lawyers are provided with an accurate interpretation of the ethics rules. In addition, it is essential that

I express my sincere gratitude and appreciation to General Counsel Paula Frederick, Ethics Counsel William P. Smith III, Assistant General Counsel John Shiptenko, and Betty Derrickson of the Office of the General Counsel of the State Bar of Georgia. Their unfailing dedication and assistance have been invaluable to the Board.

**ANNUAL REPORT OF THE OVERDRAFT NOTIFICATION
PROGRAM FOR FISCAL YEAR 2012-2013**

By: Regina Putman-Kelley, Trust Account Overdraft Notification Coordinator

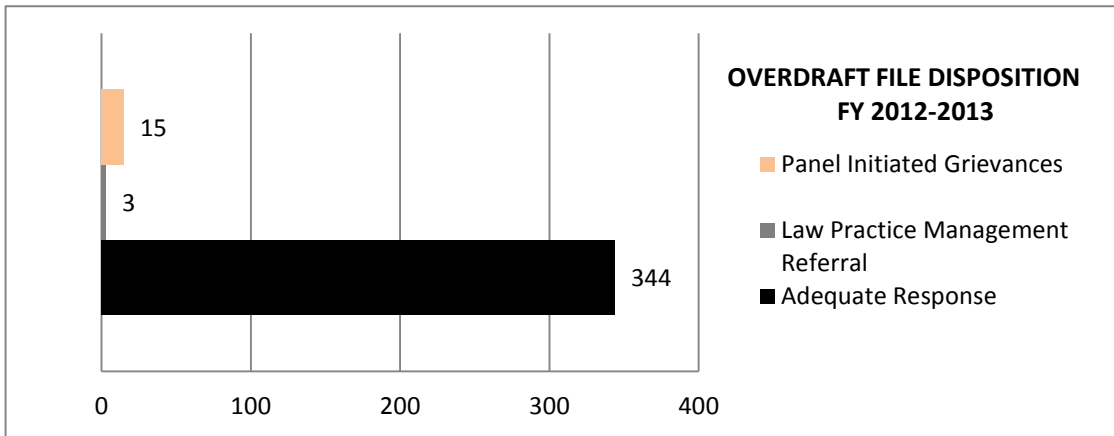
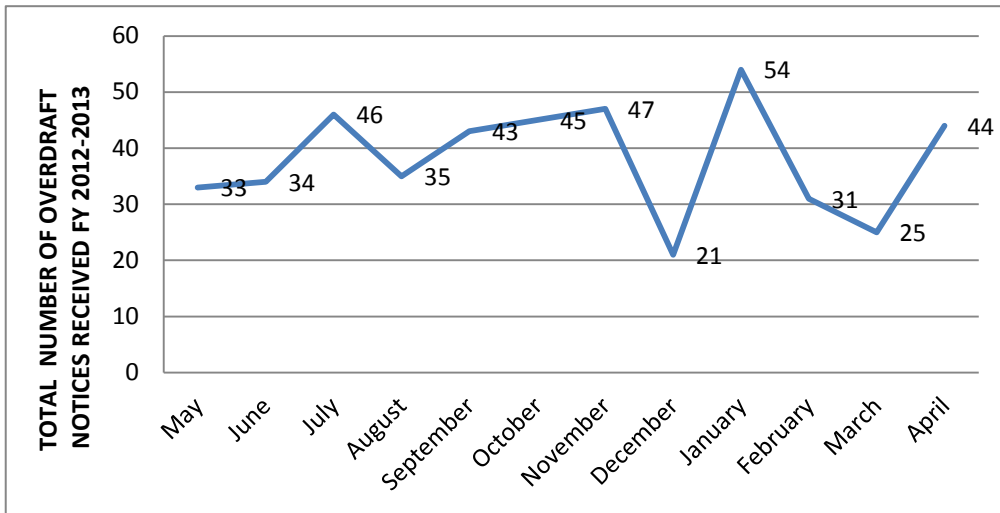
The Overdraft Notification Program received 458 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, one overdraft was reported to the State Bar on the trust account of a lawyer licensed to practice in another jurisdiction, one notice was received in error on the general business account of a non-lawyer entity, and five notices were reported to the State Bar on the trust accounts of two disbarred lawyers. 344 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, 3 files were referred to the Law Practice Management Program, and 15 files were forwarded to the Investigative Panel of the State Disciplinary Board for possible disciplinary action. (Several attorney overdraft files contained more than one overdraft notice regarding the same IOLTA. Some overdraft files opened during the latter part of FY 2012 – 2013 remain open, pending final review and disposition.)

**FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES
FOR ATTORNEY TRUST ACCOUNTS**

Recent bank failures and mergers have greatly affected the number of financial institutions currently approved as depositories for attorney trust accounts. Accordingly, lawyers should refer to the *List of Approved Financial Institutions*, which can be found on the State Bar of Georgia’s website, www.gabar.org, under the “Attorney Resources” tab located on the home page.

**ATTORNEY TRUST ACCOUNT OVERDRAFT REPORT
FISCAL YEAR 2012-2013**

Month 2012/2013	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
May	33	36	0	0	36
June	34	9	0	2	11
July	46	20	0	2	22
August	35	38	0	1	39
September	43	34	0	0	34
October	45	49	1	3	53
November	47	15	0	0	15
December	21	24	0	0	24
January	54	43	0	1	44
February	31	13	0	0	13
March	25	31	1	1	33
April	44	32	1	5	38
TOTALS:	458	344	3	15	362
PERCENTAGES:		91%	0.63%	8.59%	



ANNUAL REPORT OF THE
PRO HAC VICE PROGRAM

FOR OPERATIONAL YEAR 2012-2013

By: Kathy S. Jackson, *Pro Hac Vice* Paralegal

By order of November 10, 2005, the Supreme Court of Georgia amended Rule 4.4 of the Uniform Superior Court Rules to require out-of-state lawyers applying for *pro hac vice* admission in Georgia to serve a copy of their application for admission *pro hac vice* on the Office of the General Counsel, State Bar of Georgia. The applicant must pay a \$200 fee to the Bar, unless the applicant seeks pro bono waiver of fee from the court.

Subject to certain exceptions, the Uniform Superior Court Rules are applicable in the State Courts of Georgia. Attorneys seeking to appear *pro hac vice* in State Courts must comply with Rule 4.4.

In 2007 the State Board of Workers' Compensation adopted State Board of Workers' Compensation Rule 102 (A)(2). In July 2011, Rule 102 (A)(2) was renumbered to Rule 102 (A)(3) which requires attorneys seeking to appear *pro hac vice* before the Board to comply with Rule 4.4.

The Office of the General Counsel may object to the application or request that the court impose conditions to its being granted. Among other reasons, the Bar may object to an application if the lawyer has a history of discipline in his or her home jurisdiction, or if the lawyer has appeared in Georgia courts so frequently that he or she should become a member of the bar in this state. Lawyers admitted *pro hac vice* agree to submit to the authority of the State Bar of Georgia and the Georgia courts.

In its April 9, 2009 order the Supreme Court of Georgia amended Rule 4.4 to require applicants to disclose all formal, written disciplinary proceedings and court orders regarding contempt and sanctions. Prior to the amendment, the Rule only required disclosure of discipline, contempt and sanctions received in the past five years.

In its September 8, 2011 order the Supreme Court of Georgia amended Rule 4.4 to require foreign lawyers applying for *pro hac vice* admission in Georgia to serve a copy of their application for admission *pro hac vice* on the Office of the General Counsel, State Bar of Georgia, comply with all relevant immigration laws and maintain valid immigration status. The Office of the General Counsel has not received any applications for *pro hac vice* admission from foreign lawyers.

During the period of May 1, 2012 through April 30, 2013, the Office of the General Counsel reviewed 754 *pro hac vice* applications. Ten applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel has filed twenty-three objections with Georgia courts regarding the eligibility of the applicant. The Office of the General Counsel received a total of \$147,600.00 from *pro hac vice* applicants.

AMENDMENTS TO THE RULES, REGULATIONS
AND POLICIES & BYLAWS OF THE STATE BAR OF GEORGIA

By: Robert McCormack

Since the last annual meeting, the following amendments to the Rules and Bylaws of the State Bar of Georgia have been approved by the Supreme Court of Georgia:

I.

At the request of the Board of Governors, the Georgia Supreme Court amended State Bar of Georgia Rule 1-206.1 regarding Law Student Members as follows:

Rule 1-206.1. Law Student Members

In addition to the membership and classes of membership provided in this Chapter, the State Bar may recognize as law student members, without the rights and privileges of membership, those law students currently enrolled in a law school approved by the American Bar Association or any law school approved by the Georgia Board of Bar Examiners. Law Student members may be furnished copies of appropriate publications *electronically* and may be entitled to attend and participate, without the right to vote or hold office, in those meetings and activities conducted by the State Bar and any of its component parts or sections.

The new Rule 1-206.1 reads as follows:

Rule 1-206.1. Law Student Members

In addition to the membership and classes of membership provided in this Chapter, the State Bar may recognize as law student members, without the rights and privileges of membership, those law students currently enrolled in a law school approved by the American Bar Association or any law school approved by the Georgia Board of Bar Examiners. Law Student members may be

furnished copies of appropriate publications electronically and may be entitled to attend and participate, without the right to vote or hold office, in those meetings and activities conducted by the State Bar and any of its component parts or sections.

II.

At the request of the Board of Governors, the Georgia Supreme Court amended Rule 5.5 of the Georgia Rules of Professional Conduct as follows:

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

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

(b) A Domestic Lawyer shall not:

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

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

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

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

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if

the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

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

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

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

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

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

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

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

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by

law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

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

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

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

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

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

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

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

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

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

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

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See Rule 5.3; ~~Responsibilities Regarding Nonlawyer Assistants.~~*

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. *See also Rules 7.1(a) and 7.5(b).*

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the

interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies five such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign or Domestic Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Foreign or Domestic Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e) and (f) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic

Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and Paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

a) The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer;
or

b) The Domestic or Foreign Lawyer's client may be resident in, ~~or~~ have an office in or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

c) The matter, although involving other jurisdictions, may have a significant connection with ~~that~~ the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

d) ~~In other cases,~~ Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in ~~that~~ the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or

e) ~~a~~ A significant aspect of ~~the~~ a matter may involve the law of ~~that~~ the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

f) Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or

g) The lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or

~~h) The necessary relationship might arise when~~ The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or.

~~i) In addition,~~ The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject

to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) ~~or (e)~~ or otherwise is subject to the disciplinary authority of this jurisdiction. *See Rule 8.5(a).*

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. *See Rule 1.4.*

[21] Paragraphs (c), (d), ~~and (e)~~ and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

The new Rule 5.5 of the Georgia Rules of Professional Conduct reads as follows:

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW**

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

(b) A Domestic Lawyer shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See Rule 5.3.*

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. *See also Rules 7.1(a) and 7.5(b).*

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies five such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign or Domestic Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Foreign or Domestic Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e) and (f) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes

that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and Paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation,

or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

- a) The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or
- b) The Domestic or Foreign Lawyer's client may be resident in, have an office in or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

c) The matter, although involving other jurisdictions, may have a significant connection with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

d) Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or

e) A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

f) Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or

g) The lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or

h) The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or

i) The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by,

or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this jurisdiction. *See Rule 8.5(a)*.

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. *See Rule 1.4*.

[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

III.

At the request of the Board of Governors, the Georgia Supreme Court amended State Bar of Georgia Rule 4-109 regarding the refusal of an attorney to appear for a reprimand as follows:

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

Either panel of the State Disciplinary Board based on the knowledge or belief that a respondent has refused, or failed without just cause, to appear in accordance with Bar Rule 4-220 before a panel or the superior court for the administration of a reprimand may file in the Supreme Court a motion for suspension of the respondent. A copy of the motion shall be ~~sent to the respondent by registered mail~~ served on the respondent as provided in Rule 4-203.1. The Supreme Court may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

The amended Rule 4-109 reads as follows:

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

Either panel of the State Disciplinary Board based on the knowledge or belief that a respondent has refused, or failed without just cause, to appear in accordance with Bar Rule 4-220 before a panel or the superior court for the administration of a reprimand may file in the Supreme Court a motion for suspension of the respondent. A copy of the motion shall be served on the respondent as provided in Rule 4-203.1. The Supreme Court may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

IV.

At the request of the Board of Governors, the Georgia Supreme Court amended State Bar of Georgia Rule 4-402 regarding the Formal Advisory Opinion Board as follows:

Rule 4-402. The Formal Advisory Opinion Board

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

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

- (1) Five members of the State Bar of Georgia at-large;
- (2) One member of the Georgia Trial Lawyers Association;
- (3) One member of the Georgia Defense Lawyers Association;
- (4) One member of the Georgia Association of Criminal Defense Lawyers;
- (5) One member of the Young Lawyers Division of the State Bar of Georgia;
- (6) One member of the Georgia District Attorneys Association;
- (7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;
- (8) One member of the Investigative Panel of the State Disciplinary Board; and
- (9) One member of the Review Panel of the State Disciplinary Board.

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

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

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

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

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

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

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

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

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

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

The amended Rule 4-402 reads as follows:

Rule 4-402. The Formal Advisory Opinion Board

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

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

expires, the successor appointee shall be appointed for a term of two years;

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

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

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

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

V.

At the request of the Board of Governors, the Georgia Supreme Court created the new position of Coordinating Special Master by amending the following Rules of the State Bar of Georgia:

(1) The Supreme Court amended Rule 4-106 regarding the conviction of a crime by an attorney as follows:

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

(a) Upon receipt of information or evidence that an aAttorney has been convicted of any felony or misdemeanor involving moral

turpitude, whether by verdict, plea of guilty, plea of *nolo contendere* or imposition of first offender probation, the Office of the General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Georgia Supreme Court for the appointment of a sSpecial mMaster to conduct a show cause hearing.

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

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

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

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

(f) (1) If the Supreme Court of Georgia orders the rRespondent suspended pending the appeal ~~of the conviction~~, upon the termination of the appeal the State Bar of Georgia may petition the sSpecial mMaster to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended rRespondent should:

(i) be disbarred under Rule 8.4, or

(ii) be reinstated, or

(iii) remain suspended pending retrial as a protection to the public, or

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

(2) Reports of the ~~s~~Special ~~m~~Master shall be filed with the Review Panel as provided hereafter in Rule 4-217. The Review Panel shall make its findings and recommendation as provided hereafter in Rule 4-218.

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

The new Rule 4-106 reads as follows:

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

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

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

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

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

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

(f) (1) If the Supreme Court of Georgia orders the Respondent suspended pending the appeal, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended Respondent should:

(i) be disbarred under Rule 8.4, or

(ii) be reinstated, or

(iii) remain suspended pending retrial as a protection to the public, or

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

(2) Reports of the Special Master shall be filed with the Review Panel as provided hereafter in Rule 4-217. The Review Panel shall make its findings and recommendation as provided hereafter in Rule 4-218.

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

(2) The Supreme Court amended Rule 4-108 regarding emergency suspensions as follows:

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

(a) Upon receipt of sufficient evidence demonstrating that an aAttorney's conduct poses a substantial threat of harm to his clients or the public and with the approval of the Immediate Past President of the State Bar of Georgia and the Chairperson of the Review Panel, or at the direction of the Chairperson of the Investigative Panel, the Office of General Counsel shall petition the Georgia Supreme Court for the suspension of the aAttorney pending disciplinary proceedings predicated upon the conduct causing such petition.

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

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

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

(e) The ~~Court~~ Coordinating Special Master will ~~nominate~~ appoint a Special Master pursuant to Rule 4-209(b) to conduct a hearing where the State Bar shall show cause why the Respondent should be suspended pending disciplinary proceedings.

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

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

The amended Rule 4-108 reads as follows:

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

(a) Upon receipt of sufficient evidence demonstrating that an Attorney's conduct poses a substantial threat of harm to his clients or the public and with the approval of the Immediate Past President of the State Bar of Georgia and the Chairperson of the Review Panel, or at the direction of the Chairperson of the Investigative Panel, the Office of General Counsel shall petition the Georgia Supreme Court for the suspension of the Attorney pending disciplinary proceedings predicated upon the conduct causing such petition.

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

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

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

(e) The Coordinating Special Master will appoint a Special Master pursuant to Rule 4-209(b) to conduct a hearing where the State Bar shall show cause why the Respondent should be suspended pending disciplinary proceedings.

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

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

(3) The Supreme Court amended Rule 4-204.4 regarding probable cause and referral to a special master by eliminating the current rule and substituting a new rule as follows:

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

~~(a) In all cases wherein the Investigative Panel, or subcommittee of the Panel, finds probable cause of the respondent's violation of one or more of the provisions of Part IV, Chapter 1 of these rules and refers the matter to the Supreme Court for appointment of a special master, it shall file with the Clerk of the Supreme Court of Georgia the following documents in duplicate:~~

~~(1) notice of its finding of probable cause;~~

~~(2) a petition for the appointment of a special master and proposed order thereon;~~

~~(3) a formal complaint, as herein provided.~~

~~(b) The documents specified in paragraph (a) above shall be filed with the Clerk of the Supreme Court within thirty (30) days of the finding of probable cause unless the Investigative Panel, or subcommittee of the Panel, or its Chairperson grants an extension of time for the filing of the documents.~~

In the event the Investigative Panel, or a subcommittee of the Panel, finds Probable Cause of the Respondent's violation of one or more of the provisions of Article IV, Chapter 1 of these rules it may refer the matter to the Supreme Court by directing the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

(a) (1) A formal complaint, as herein provided;

(2) A petition for the appointment of a Special Master; and

(3) A notice of its finding of Probable Cause.

The documents specified above shall be filed in duplicate within thirty (30) days of the finding of Probable Cause unless the Investigative Panel, or its subcommittee of the Panel, or its Chairperson grants an extension of time for the filing.

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

The amended Rule 4-204.4 reads as follows:

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

In the event the Investigative Panel, or a subcommittee of the Panel, finds Probable Cause of the Respondent's violation of one or more of the provisions of Article IV, Chapter 1 of these rules it may refer

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

- (a) (1) A formal complaint, as herein provided;
- (2) A petition for the appointment of a Special Master; and
- (3) A notice of its finding of Probable Cause.

The documents specified above shall be filed in duplicate within thirty (30) days of the finding of Probable Cause unless the Investigative Panel, or its subcommittee of the Panel, or its Chairperson grants an extension of time for the filing.

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

(4) The Supreme Court amended Rule 4-208.1 regarding Notice of

Discipline as follows:

Rule 4-208.1. Notice of Discipline

(a) In any case where the Investigative Panel or a subcommittee of the Panel finds ~~p~~Probable ~~e~~Cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.

(b) Unless the Notice of Discipline is rejected by the ~~r~~Respondent as provided in Rule 4-208.3, (1) the ~~r~~Respondent shall be in default; (2) the ~~r~~Respondent shall have no right to any evidentiary hearing; and (3) the ~~r~~Respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court.

The new Rule 4-208.1 reads as follows:

Rule 4-208.1. Notice of Discipline

(a) In any case where the Investigative Panel or a subcommittee of the Panel finds Probable Cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.

(b) Unless the Notice of Discipline is rejected by the Respondent as provided in Rule 4-208.3, (1) the Respondent shall be in default; (2) the Respondent shall have no right to any evidentiary hearing; and (3) the Respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court.

(5) The Supreme Court amended Rule 4-208.2 regarding the contents of a Notice of Discipline as follows:

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

(a) The Notice of Discipline shall state the following:

(1) The ~~Standards~~ Rules which the Investigative Panel found that the ~~Respondent~~ violated,

(2) The facts, which if unrefuted, support the finding that such ~~Standards~~ Rules have been violated,

(3) The level of public discipline recommended to be imposed,

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

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

(6) A copy of the Memorandum of Grievance,

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

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

(c) This subparagraph is reserved.

(d) This subparagraph is reserved.

(e) This subparagraph is reserved.

(f) This subparagraph is reserved.

(g) The Office of General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.

(h) The level of disciplinary sanction in any Notice of Discipline rejected by the Respondent or the Office of General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

The amended Rule 4-408.2 reads as follows:

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

(a) The Notice of Discipline shall state the following:

(1) The Rules which the Investigative Panel found that the Respondent violated,

(2) The facts, which if unrefuted, support the finding that such Rules have been violated,

(3) The level of public discipline recommended to be imposed,

(4) The reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other

considerations deemed by the Investigative Panel to be relevant to such recommendation,

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

(6) A copy of the Memorandum of Grievance,

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

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

(c) This subparagraph is reserved.

(d) This subparagraph is reserved.

(e) This subparagraph is reserved.

(f) This subparagraph is reserved.

(g) The Office of General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.

(h) The level of disciplinary sanction in any Notice of Discipline rejected by the Respondent or the Office of General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

(6) The Supreme Court of Georgia amended Rule 4-208.3 regarding

the rejection of a Notice of Discipline as follows:

Rule 4-208.3. Rejection of Notice of Discipline

(a) In order to reject the Notice of Discipline, the ~~Respondent~~ Respondent or the Office of General Counsel must file a Notice of Rejection of the

Notice of Discipline with the Clerk of the Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline. ~~In the event service was accomplished by certified mail, the respondent shall have thirty three (33) days from the date the Notice of Discipline was mailed to file the Notice of Rejection.~~

(b) Any Notice of Rejection by the ~~Respondent~~ shall be served by the Respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the ~~Respondent~~. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. The Respondent must also file A a copy of such written response ~~must also be filed~~ with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the ~~Supreme Court~~ Coordinating Special Master to appoint a Special Master and the matter shall thereafter proceed pursuant to Rules 4-209 through 4-225.

The new Rule 4-408.3 reads as follows:

Rule 4-208.3. Rejection of Notice of Discipline

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

(b) Any Notice of Rejection by the Respondent shall be served by the Respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the Respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. The Respondent must also file a copy of such written response with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the Coordinating Special Master to appoint a Special

Master and the matter shall thereafter proceed pursuant to Rules 4-209 through 4-225.

(7) The Supreme Court of Georgia amended Rule 4-208.4 regarding the filing of a Formal Complaint as follows:

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

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within thirty days following the filing of a Notice of Rejection. ~~At the same time a Petition for Appointment of Special Master and proposed order thereon shall be filed.~~ The Notice of Discipline shall operate as the notice of finding of Probable Cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

The amended Rule 4-408.4 reads as follows:

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

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

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

(8) The Supreme Court of Georgia amended Rule 4-209 regarding the appointment of a Special Master as follows:

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

(a) Upon receipt of a finding of ~~p~~Probable ~~e~~Cause, a petition for appointment of a ~~s~~Special ~~m~~Master ~~and proposed order thereon~~ and a formal complaint from the Investigative Panel, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, give the matter a Supreme Court docket number and notify the ~~Court~~ Coordinating Special Master that appointment of a ~~s~~Special ~~m~~Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the finding of ~~p~~Probable ~~e~~Cause need not be filed.

(b) ~~Upon~~ Within a reasonable time after receipt of a petition/motion for appointment of a ~~s~~Special ~~m~~Master or notification that a ~~s~~Special ~~m~~Master previously appointed has been disqualified, the ~~Court~~ Coordinating Special Master will ~~n~~ominate appoint a ~~s~~Special ~~m~~Master to conduct formal disciplinary proceedings in such complaint ~~within fourteen days~~. The ~~Court~~ Coordinating Special Master shall select as ~~s~~Special ~~m~~Masters experienced members of the State Bar of Georgia who possess a reputation in the Bar for ethical practice; provided, that a ~~s~~Special ~~m~~Master may not be appointed to hear a complaint against a ~~r~~Respondent who resides in the same circuit as that in which the ~~s~~Special ~~m~~Master resides.

(c) Upon being advised of appointment of a ~~s~~Special ~~m~~Master by the ~~Court~~ Coordinating Special Master, the Clerk of the Court shall return the original ~~n~~Notice of ~~d~~Discipline, rejection of ~~n~~Notice of ~~d~~Discipline, if applicable, formal complaint, ~~p~~Probable ~~e~~Cause finding, petition for appointment of ~~s~~Special ~~m~~Master ~~and the signed order thereon~~ to the Office of General Counsel of the State Bar of Georgia. Upon notification of the appointment of a ~~s~~Special ~~m~~Master, the ~~State Bar~~ Office of General Counsel shall immediately serve the ~~r~~Respondent with the order of appointment

of a ~~s~~Special ~~m~~Master and with its formal complaint as hereinafter provided.

(d) Within ten days of service of the notice of appointment of a ~~s~~Special ~~m~~Master, the ~~r~~Respondent and the State Bar ~~shall~~ may lodge any and all objections or challenges they may have to the competency, qualifications or impartiality of the Special Master with the chairperson of the Review Panel. ~~A~~ The party filing such objections or challenges must also serve a copy of the objections or challenges shall be served upon the opposing counsel, the Coordinating Special Master and the Special Master, who may respond to such objections or challenge. Within a reasonable time ~~T~~the chairperson of the Review Panel shall, ~~within fifteen days,~~ consider the challenges, the responses of ~~counsel~~ Respondent, the State Bar, the Coordinating Special Master and of the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Coordinating Special Master and the Special Master of his the chairperson's decision. Exceptions to the chairperson's denial of disqualification are subject to review by the entire Review Panel and, thereafter, by the Supreme Court when exceptions arising during the evidentiary hearing and exceptions to the report of the Special Master and the Review Panel are properly before the Court. In the event of disqualification of a Special Master by the chairperson of the Review Panel, said chairperson shall notify the Clerk of the Supreme Court, the Coordinating Special Master, the Special Master and the parties, the State Bar and the Respondent shall be notified of the disqualification and ~~nominatio~~ appointment of a successor Special Master shall proceed as provided in this rule.

The amended Rule 4-209 reads as follows:

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

(a) Upon receipt of a finding of Probable Cause, a petition for appointment of a Special Master and a formal complaint from the Investigative Panel, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the finding of Probable Cause need not be filed.

(b) Within a reasonable time after receipt of a petition/motion for appointment of a Special Master or notification that a Special Master previously appointed has been disqualified, the Coordinating Special Master will appoint a Special Master to conduct formal disciplinary proceedings in such complaint. The Coordinating Special Master shall select as Special Masters experienced members of the State Bar of Georgia who possess a reputation in the Bar for ethical practice; provided, that a Special Master may not be appointed to hear a complaint against a Respondent who resides in the same circuit as that in which the Special Master resides.

(c) Upon being advised of appointment of a Special Master by the Coordinating Special Master, the Clerk of the Court shall return the original Notice of Discipline, rejection of Notice of Discipline, if applicable, formal complaint, Probable Cause finding, petition for appointment of Special Master to the Office of General Counsel of the State Bar of Georgia. Upon notification of the appointment of a Special Master, the Office of General Counsel shall immediately serve the Respondent with the order of appointment of a Special Master and with its formal complaint as hereinafter provided.

(d) Within ten days of service of the notice of appointment of a Special Master, the Respondent and the State Bar may lodge any and all objections or challenges they may have to the competency, qualifications or impartiality of the Special Master with the chairperson of the Review Panel. The party filing such objections or challenges must also serve a copy of the objections or challenges upon the opposing counsel, the Coordinating Special Master and the Special Master, who may respond to such objections or challenge. Within a reasonable time the chairperson of the Review Panel shall, consider the challenges, the responses of Respondent, the State Bar, the Coordinating Special Master and the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Coordinating Special Master and the Special Master of the chairperson's decision. Exceptions to the chairperson's denial of disqualification are subject to review by the entire Review Panel and, thereafter, by the Supreme Court when exceptions arising during the evidentiary hearing and exceptions to the report of the Special Master and the Review Panel are properly before the Court. In the event of disqualification of a Special Master by the chairperson of the Review Panel, said chairperson shall notify the Clerk of the Supreme Court, the Coordinating Special Master, the Special Master, the State Bar and the Respondent of the disqualification and appointment of a successor Special Master shall proceed as provided in this rule.

(9) The Supreme Court of Georgia added a new Rule 4-209.1 regarding the Coordinating Special Master to the Rules of the State Bar of Georgia. The new Rule reads as follows:

Rule 4-209.1 Coordinating Special Master

(a) The appointment of and the determination of the compensation of the Coordinating Special Master shall be the duty of the Coordinating Special Master Selection and Compensation Commission. The Commission shall be comprised of the second, third and fourth immediate past presidents of The State Bar of Georgia. If any of the above named ex officio individuals should be unable to serve, the vacancy shall be filled by appointment by the Supreme Court.

(b) The Coordinating Special Master shall be selected by the Coordinating Special Master Selection and Compensation Commission, with the approval of the Supreme Court. The Coordinating Special Master shall serve as an independent contractor at the pleasure of the Coordinating Special Master Selection and Compensation Commission.

(c) The Coordinating Special Master shall be compensated by the State Bar of Georgia from the general operating funds of the State Bar of Georgia in an amount specified by the Coordinating Special Master Selection and Compensation Commission. The Coordinating Special Master's compensation shall be approved by the Supreme Court. On or before the first day of each calendar year, the Coordinating Special Master Selection and Compensation Commission shall submit to the Supreme Court for approval the hourly rate to be paid to the Coordinating Special Master during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar.

(d) The Coordinating Special Master shall have such office space, furniture and equipment and may incur such operating expenses in such amounts as may be specified by the Supreme Court. Such amounts shall be paid by the State Bar of Georgia from the general operating funds. On or before the first day of each calendar year,

the Supreme Court will set the amount to be paid for the above items during the fiscal year beginning the first day of July of that year.

(e) If the Coordinating Special Master position is vacant or the Coordinating Special Master has recused or been disqualified from a particular matter, the Supreme Court may appoint a temporary Acting Coordinating Special Master to act until the position can be filled or to act in any particular matter.

(10) The Supreme Court amended former Rule 4-209.1 regarding Special Masters by re-designating it as Rule 4-209.2. Current Rule 4-209.1 would be eliminated in its entirety. The amended text reads as follows:

Rule 4-209.1~~2~~ Special Masters

(a) The Coordinating Special Master, subject to the approval of the Supreme Court, shall select and maintain a limited pool of qualified lawyers to serve as Special Masters for the State Disciplinary Board and Hearing Officers for the Board to Determine Fitness of Bar Applicants pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia. The names of those so selected shall be placed on a list maintained by the ~~Supreme Court~~ Coordinating Special Master. Said list ~~and~~ shall be published annually in a regular State Bar of Georgia publication. Although not mandatory, it is preferable that a lawyer so selected shall only remain on such list for five years, so that the term may generally be considered to be five years. Any lawyer whose name is removed from such list shall be eligible to be selected and placed on the list at any subsequent time.

(b) Training for Special Masters and Hearing Officers is ~~required~~ expected, subject to the terms of this Rule. ~~Special Masters shall~~ and shall consist of ~~attend one Special Master~~ training session within twelve months after selection ~~by the Supreme Court to serve as Special Master.~~ The Special Master and Hearing Officer training shall ~~consist of a minimum of a six hour planned session conducted by ICJE or ICLE with input from the Office of General Counsel, the Respondent's Bar and the Supreme Court of Georgia~~ be planned and conducted by the Coordinating Special Master. Special Masters and Hearing Officers who fail to attend such a minimum training

session shall periodically be removed from consideration for appointment in future cases. Failure to attend such a training session shall not be the basis for a disqualification of any Special Master or Hearing Officer; as such qualifications shall remain in the sole discretion of the Supreme Court. ~~Attorneys who are serving as Special Masters at the time this Rule is amended to require Special Master training shall be exempt from the provisions of this subparagraph; however, they are encouraged to participate in such training sessions.~~

(c) The Special Masters may be paid by the State Bar of Georgia from the general operating funds on a per case rate to be set by the Supreme Court. Hearing Officers may be paid pursuant to Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia.

(d) On or before the first day of March of each calendar year, the Supreme Court may set the amount to be paid to the Special Masters during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar.

~~Rule 4-209.2. Special Masters in Emergency Suspension Proceedings; Qualifications, Training, Terms, Powers and Duties~~

~~(a) In addition to the pool of Special Masters described in Rule 4-209.1, the Supreme Court shall appoint six members of the State Bar, and such additional number of members as the Court may feel to be desirable or necessary from time to time, to serve as Special Masters in emergency suspension show cause hearings and in such other matters as may be designated by the Supreme Court. Two (2) bar members shall be selected from each of the three federal judicial districts in Georgia, additional members shall be selected from appropriate federal judicial districts in Georgia as determined by the Court, and all appointees shall serve for five-year terms. A Special Master shall be eligible for reappointment.~~

~~(b) Training for Special Masters who serve in emergency suspension proceedings is required as provided in Bar Rule 4-209.1(b).~~

~~(c) A Special Master in an emergency suspension proceeding shall have the following powers and duties:~~

~~(1) to exercise general supervision over proceedings assigned to him or her and to perform all duties specifically enumerated in these Rules;~~

~~(2) to permit negotiations between the State Bar of Georgia and the Respondent;~~

~~(3) to receive and evaluate any Petition for Voluntary Discipline filed by a Respondent, to receive and evaluate responses to such petition from the Office of General Counsel and to make recommendations to the Supreme Court on such petition;~~

~~(4) to grant continuances and to extend any time limit provided for herein as to any matter pending before him or her;~~

~~(5) to apply to the Supreme Court of Georgia for an order naming a successor in the event that the Special Master becomes incapacitated to perform his or her duties;~~

~~(6) to sign subpoenas and exercise the powers described in Rule 4-221(b);~~

~~(7) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings; and~~

~~(8) to make a recommendation as to whether the Respondent should be suspended pending further disciplinary proceedings.~~

The amended Rule 4-209 reads as follows:

Rule 4-209.2 Special Masters

(a) The Coordinating Special Master, subject to the approval of the Supreme Court, shall select and maintain a limited pool of qualified lawyers to serve as Special Masters for the State Disciplinary Board and Hearing Officers for the Board to Determine Fitness of Bar Applicants pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia. The names of those so selected shall be placed on a list maintained by the Coordinating Special Master. Said list shall be published annually in a regular State Bar of Georgia publication. Although not mandatory, it is preferable that a lawyer so selected shall only remain on such list

for five years, so that the term may generally be considered to be five years. Any lawyer whose name is removed from such list shall be eligible to be selected and placed on the list at any subsequent time.

(b) Training for Special Masters and Hearing Officers is expected, subject to the terms of this Rule and shall consist of training session within twelve months after selection. The Special Master and Hearing Officer training shall be planned and conducted by the Coordinating Special Master. Special Masters and Hearing Officers who fail to attend such a minimum training session shall periodically be removed from consideration for appointment in future cases. Failure to attend such a training session shall not be the basis for a disqualification of any Special Master or Hearing Officer; as such qualifications shall remain in the sole discretion of the Supreme Court.

(c) The Special Masters may be paid by the State Bar of Georgia from the general operating funds on a per case rate to be set by the Supreme Court. Hearing Officers may be paid pursuant to Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia.

(d) On or before the first day of March of each calendar year, the Supreme Court may set the amount to be paid to the Special Masters during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar.

(11) The Supreme Court of Georgia added a new Rule 4-209.3 regarding the powers of the Coordinating Special Master to the Rules of the State Bar of Georgia. The new Rule reads as follows:

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

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

- (1) to establish requirements for and supervise Special Master and Hearing Officer training;

(2) to assign cases to Special Masters and Hearing Officers from the pool provided in Rule 4-209(b);

(3) to exercise all of the powers and duties provided in Rule 4-210 when acting as a Special Master under sub-paragraph (8) below;

(4) to monitor and evaluate the performance of Special Masters and Hearing Officers;

(5) to remove Special Masters and Hearing Officers for such cause as may be deemed proper by the Coordinating Special Master;

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

(7) to administer Special Master and Hearing Officer compensation, if authorized as provided in Rule 4-209.2 or Part A, section 14 of the Rules Governing the Admission to the Practice of Law in Georgia;

(8) to hear pretrial motions when no Special Master has been assigned; and

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

(12) The Supreme Court amended Rule 4-210 regarding the authority of a Special Master as follows:

Rule 4-210. Powers and Duties of Special Masters

In accordance with these rules a duly appointed sSpecial mMaster shall have the following powers and duties:

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

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

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

(d) to receive and evaluate any Petition for Voluntary Discipline;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter ~~pending before him~~;

(f) to apply to the ~~Supreme Court of Georgia for an order naming~~ his Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to perform his or her duties or in the event that he or she learns that he or she and the Respondent reside in the same circuit;

~~(g) to defer action on any complaint pending before him when he learns of the docketing of another complaint against the same respondent and believes that the new complaint will be assigned to him by the Supreme Court;~~

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

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

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

~~(k)~~ (j) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel;

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

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

(m) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written findings of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

The amended Rule 4-210 reads as follows:

Rule 4-210. Powers and Duties of Special Masters

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

(a) to exercise general supervision over assigned disciplinary proceedings and to perform all duties specifically enumerated in these Rules;

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

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

(d) to receive and evaluate any Petition for Voluntary Discipline;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter;

(f) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to perform his or her duties or in the event that he or she learns that he or she and the Respondent reside in the same circuit;

(g) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a Respondent growing out of different transactions, whether they involve one or more

complainants, and may proceed to make recommendations on each complaint as constituting a separate offense;

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

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

(j) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel;

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

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

(m) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written findings of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

(13) The Supreme Court amended Rule 4-211 regarding the filing of a Formal Complaint as follows:

Rule 4-211. Formal Complaint; Service

(a) Within thirty days after a finding of ~~p~~Probable ~~e~~Cause, a formal complaint shall be prepared by the Office of the General Counsel which shall specify with reasonable particularity the acts complained of and the grounds for disciplinary action. A formal complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the ~~r~~Respondent after ~~nominatio~~ appointment of a Special Master by the ~~Supreme Court~~ Coordinating Special Master. In those cases

where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Rule 4-208.4. The formal complaint shall be served pursuant to Bar Rule 4-203.1.

(b) This subparagraph is reserved.

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

The amended Rule 4-211 reads as follows:

Rule 4-211. Formal Complaint; Service

(a) Within thirty days after a finding of Probable Cause, a formal complaint shall be prepared by the Office of the General Counsel which shall specify with reasonable particularity the acts complained of and the grounds for disciplinary action. A formal complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the Respondent after appointment of a Special Master by the Coordinating Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Rule 4-208.4. The formal complaint shall be served pursuant to Bar Rule 4-203.1.

(b) This subparagraph is reserved.

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

VI.

At the request of the Board of Governors, the Georgia Supreme Court completed revised and amended the State Bar Rules governing the Fee Arbitration Program as follows:

**IN THE SUPREME COURT
STATE OF GEORGIA**

**IN RE: STATE BAR OF GEORGIA
State Bar of Georgia's Fee Arbitration Rules**

**PART VI
ARBITRATION OF FEE DISPUTES**

PREAMBLE

The purpose of ~~this~~ the State Bar of Georgia's program for the arbitration of fee disputes is to provide a convenient mechanism for ~~(1) the resolution of disputes~~ (1) between lawyers and clients over fees; (2) the resolution of disputes between lawyers in connection with the dissolution of a practice or the withdrawal of a lawyer from a partnership or the dissolution and separation of a partnership, practice; or (3) the resolution of disputes between lawyers concerning the entitlement to portions allocation of fees earned from joint services. ~~It is a process which may be invoked by either side after~~ If the parties to such a dispute have been unable to reach an agreement between or among themselves, either side may petition the State Bar Committee on the Arbitration of Attorney Fee Disputes ("Committee") to arbitrate the dispute pursuant to these rules.

Regardless of whether ~~it is the~~ a lawyer or the a client who takes ~~initiates~~ the initiative of filing of a petition requesting arbitration of the disputes, the petitioner must agree to be bound by the result of the arbitration. This is intended to discourage the filing of complaints ~~which that~~ are frivolous or which that seek to invoke the process simply to obtain an "advisory opinion".² If the respondent also agrees to be bound, the resulting arbitration award will be enforceable under the ~~general arbitration laws of the State~~ Georgia Arbitration Code, O.C.G.A. §§ 9-9-1 et seq.

A unique feature of this program ~~provides that where the petitioner is that, if a client whose claim after investigation appears to warrant a hearing, initiates the arbitration process and agrees to be bound by the result of the arbitration and the respondent lawyer refuses to be bound by any resulting award, the matter will not be dismissed, but an ex parte still be submitted to arbitration if, after investigation by the Committee or its staff, the client's claim appears to warrant a hearing may be held.~~

If the ~~outcome of this hearing is client prevails in the client's favor arbitration,~~ the State Bar will of Georgia, upon the written request of the client, may provide a lawyer at no cost, other than actual litigation expenses, to the client to represent the client in subsequent litigation to adjust the fee in accordance with the arbitration award. This is intended to relieve the client of the burden of paying a second lawyer to recover fees determined to have been excessively charged by the first lawyer post-award proceedings at no cost other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings.

CHAPTER 1
COMMITTEE ON RESOLUTION OF FEE DISPUTES

Rule 6-101. Committee.

~~The~~This program will be administered by the State Bar Committee on the Arbitration of Attorney Fee Disputes (“Committee”).

Rule 6-102. Committee Membership.

The Committee shall consist of six lawyer members and three public members who are not lawyers. The six lawyer members shall be appointed by the President of the State Bar, and the three public members shall be appointed by the Supreme Court of Georgia.

Rule 6-103. Terms.

Initially, two members of the Committee, including one of the public members, shall be appointed for a period of three years; two members, including the remaining public members, for a period of two years; and one member for a period of one year. As each member’s term of office on the Committee expires, his or her successor shall be appointed for a period of three years. The President of the State Bar shall appoint the ~~Chairperson~~ chair of the Committee each year from among the members. Vacancies in unexpired terms shall be filled by their respective appointing authorities.

Rule 6-104. Responsibility Powers and Duties of Committee.

~~The Committee shall be responsible for determining jurisdiction to handle complaints which it receives, administering the selection of arbitrators, the conduct of the arbitration process, and the development and implementation of fee arbitration procedures.~~

The Committee shall have the following powers and duties:

- (a) To determine whether to accept jurisdiction over a dispute;
- (b) To appoint and remove lawyer and nonlawyer arbitrators and panels of arbitrators;
- (c) To oversee the operation of the arbitration process;
- (d) To develop and implement fee arbitration procedures;
- (e) To interpret these rules and to decide any disputes regarding the interpretation and application of these rules;
- (f) To determine challenges to the neutrality of an arbitrator where the arbitrator does not voluntarily withdraw;
- (g) To maintain the records of the State Bar of Georgia’s Fee Arbitration Program; and

(h) To perform all other acts necessary for the effective operation of the Fee Arbitration Program.

Rule 6-105. Staff's Responsibilities.

State Bar staff shall be assigned to assist the Committee. ~~The staff so assigned~~ staff will have ~~the~~ such administrative responsibilities as may be delegated by the Committee, which may include the following:

- (a) Receive and review ~~complaints~~ arbitration requests and discuss them with the parties, if necessary;
- (b) Conduct inquiries to obtain ~~any~~ additional information ~~required~~ as needed;
- (c) Make recommendations to the Committee ~~to dismiss complaints or whether to accept or decline jurisdiction;~~ and
- (d) ~~Mail~~ Transmit notices ~~of~~ of arbitration hearings, arbitration awards, and other Committee correspondence.

~~The Committee shall review all of the available evidence, including the recommendations of the staff, and make a determination by majority vote whether to dismiss a complaint or to accept jurisdiction. All decisions of the Committee shall be final, subject only to review by the Executive Committee of the State Bar of Georgia pursuant to its powers, functions, and duties under the Rules governing the State Bar (241 Ga. 643).~~

Rule 6-106. Waiting Period.

~~If, following a preliminary investigation by the staff and review by the Committee, the Committee concludes that it has jurisdiction and that the petitioner's claim appears to have merit, the Committee shall notify the parties that it has assumed jurisdiction. The Committee will then delay any further steps until the expiration of thirty calendar days following such notice during which time the parties will be urged to exert their best efforts to resolve the dispute.~~

**CHAPTER 2
JURISDICTIONAL GUIDELINES**

Rule 6-201. Petition.

A request for arbitration of a fee dispute is initiated by the filing of a petition with the Committee. Each petition shall be filed on the Fee Arbitration Petition Form supplied by Committee staff and shall contain the following elements:

- (a) A statement of the nature of the dispute and the petitioner's statement of facts, including relevant dates;
- (b) The names and addresses of the client(s) and the attorney(s);
- (c) A statement that the petitioner has made a good faith effort to resolve the dispute and the

details of that effort;

(d) A statement that the petitioner agrees to be bound by the result of the arbitration;

(e) The date of the petition; and

(f) Each petitioner's signature.

Rule 6-202. Service of Petition.

If a petition has been properly completed and appears to have merit, Committee staff shall serve a copy of the petition, along with a fee arbitration answer form and an acknowledgement of service form, upon the respondent by first class mail addressed to such party's last known address. A signed acknowledgment of service form or a written answer from the respondent or respondent's attorney shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

In the absence of an acknowledgment of service or a written response from the respondent or respondent's counsel, service shall be certified mail, return receipt requested, addressed to such party's last known address.

In unusual circumstances as determined by the Committee or its staff, when service has not been accomplished by other less costly measures, service may be accomplished by the Sheriff or a court-approved agent for service of process.

If service is not accomplished, the Committee shall not accept jurisdiction of the case.

Rule 6-203. Answer.

Each respondent shall have 20 calendar days after service of a petition to file an answer with the Committee. Staff, in its discretion, may grant appropriate extensions of time for the filing of an answer.

The answer shall be filed on or with the Fee Arbitration Answer Form supplied by Committee staff and shall contain the following elements:

(a) A statement as to whether the respondent agrees to be bound by the result of the arbitration;

(b) The respondent's statement of facts;

(c) Any defenses the respondent intends to assert;

(d) The date of the answer; and

(e) Each respondent's signature.

The Committee staff shall serve a copy of the answer upon each petitioner by first class mail, addressed to such party's last known address.

The failure to file an answer shall not deprive the Committee of jurisdiction and shall not result in a default judgment against the respondent.

Rule 6-~~201~~ 204. Accepting Jurisdiction.

The Committee ~~or its designee~~ may accept jurisdiction over a fee dispute only if ~~all~~ of the following requirements are satisfied:

- (a) ~~The fee in question, whether paid or unpaid, has been charged~~ was for legal services rendered by a lawyer who is, ~~or who was~~ was at the time of rendition of the service ~~had been licensed~~ the services were rendered, a member of the State Bar of Georgia or otherwise authorized to practice law in the State of Georgia ~~or who has been duly licensed as a foreign legal consultant in the State of Georgia.~~
- (b) The legal services in question were performed:
 - (1) in the State of Georgia; or
 - (~~2~~) ~~The services in question were performed either in the State of Georgia or from an office located in the State of Georgia.,~~ or
 - (3) by a lawyer who is not admitted to the practice of law in any U.S. jurisdiction other than Georgia, and the circumstances are such that if the State Bar of Georgia does not accept jurisdiction, no other U.S. jurisdiction will be available to a client who has filed a petition under this program.
- (c) ~~At the time the legal services in question were performed there existed between the lawyer and the client an expressed or implied contract establishing between them a lawyer/client relationship. A relative or other person paying the legal fees of the client may request arbitration of disputes over those fees provided both the client and the payor join as co-petitioners or co-respondents and both agree to be bound by the result of the arbitration.~~
- (d) ~~The disputed fee:~~
 - (~~1c~~) ~~The disputed fee exceeds (\$750) seven hundred and fifty dollars.~~
 - (~~2d~~) ~~is not one the~~ The amount of which the disputed fee is not governed by statute or other law, nor ~~one~~ has any court fixed or approved the full amount or all terms of the disputed fee or all terms of which have already been fixed or approved by order of a court.
 - (e) The fee dispute is not the subject of litigation in court at the time the petition for arbitration is filed or when the Committee determines jurisdiction.
 - (~~ef~~) ~~A~~ The petition seeking arbitration of the fee dispute is filed with the Committee by the lawyer or the client no more than two (2) years following the date on which the

controversy arose. If this date is disputed, it shall be determined in the same manner as the commencement of a cause of action on the underlying contract.

~~(f) The client, whether petitioner or respondent, agrees to be bound by the result of the arbitration.~~

~~(g) The fee dispute is not the subject of litigation in court at the time the Petition for arbitration is filed.~~

(g) In the case of disputes between lawyers and clients, a lawyer/client relationship existed between the petitioner and the respondent at the time the legal services in question were performed. A relative or other person paying the legal fees of the client may request arbitration of disputes over those fees, provided both the client and the payor join as co-petitioners or co-respondents and both agree to be bound by the result of the arbitration.

(h) The client, whether petitioner or respondent, agrees to be bound by the result of the arbitration. If the respondent attorney does not agree to be bound by the result of the arbitration, the Committee in its discretion may determine that it is in the best interest of the public and the legal profession to accept jurisdiction. When the Committee accepts jurisdiction under these circumstances, the nonconsenting lawyer shall be considered a "party" for purposes of these rules.

(i) In case of disputes between lawyers, the lawyers who are parties to the dispute are all members of the State Bar of Georgia, and have all the lawyers involved agreed to arbitrate the dispute under this program and to be bound by the result of the arbitration.

Additionally, where the parties to a fee dispute have signed a written agreement to submit fee disputes to binding arbitration with the State Bar of Georgia's Attorney Fee Arbitration Program, the Committee will consider the agreement enforceable if it is:

(1) set out in a separate paragraph;

(2) written in a font size at least as large as the rest of the contract; and

(3) separately initialed by the client and attorney.

In deciding whether to accept jurisdiction, the Committee shall review available evidence, including the recommendations of the staff, and make a determination whether to accept or decline jurisdiction. The Committee's decisions on jurisdiction are final, except that such decisions are subject to reconsideration by the Committee upon the request of either party made within 30 days of the initial decision. Staff shall notify the parties of the Committee's decision on jurisdiction by first class mail.

~~(h) The petition contains the following elements:~~

~~(1) A statement of the nature of the dispute and the particulars of the petitioner's~~

~~position, including relevant dates.~~

~~(2) The identities of both the client and the lawyer and the addresses of both.~~

~~(3) A statement that the petitioner has made a good faith effort to resolve the dispute and the details of that effort.~~

~~(4) The agreement of the petitioner to be bound by the result of the arbitration.~~

~~(5) The signature of the petitioner and date of the petition.~~

~~(6) The petition shall be filed on a form which will be supplied by the Committee. Such petition shall be served upon the opposite party at such party's last known address by certified mail, return receipt requested.~~

Rule 6-~~202~~205. Termination or Suspension of Proceedings.

The Committee may ~~decline, suspend, or terminate arbitration proceedings or may decline or terminate jurisdiction if the client, in addition to disputing the fee, claims any other form of relief pursuing arbitration of a fee dispute under these rules, asserts a claim against the lawyer in any court arising out of the same set of circumstances, including any claim of malpractice or professional misconduct.~~ Any claim or evidence of professional misconduct within the meaning of the Code of Professional Responsibility may be ~~referred in a separate report~~ reported by the arbitrators or the Committee to the General Counsel's Office for consideration under its normal procedures.

Rule 6-~~203~~206. Revocation.

After ~~a petition has been filed,~~ jurisdiction has been accepted by the Committee and the other party has agreed in writing to be bound by the award, the submission to arbitration shall be irrevocable except by consent of all parties ~~to the dispute~~ or by action of the Committee or the arbitration panel for good cause shown.

**CHAPTER 3
SELECTION OF ARBITRATORS**

Rule 6-301. Roster of Arbitrators.

~~(a)~~ The Committee shall maintain a roster of lawyers available to serve as arbitrators on an "as needed" basis in appropriate geographical areas throughout the state. To the extent possible, the arbitration should take place in the same geographical area where the services in question were performed; however, the final decision as to the location of the arbitration remains with the Committee.

~~(b)~~ The Committee shall likewise maintain a roster of nonlawyer public members selected by the Supreme Court of Georgia.

Rule 6-302. Neutrality of Arbitrators.

No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest. ~~Each~~ Upon appointment to a particular arbitration, each arbitrator shall disclose to the Committee any ~~bias-circumstance~~ that he or she may have affect his or her neutrality in regard to the dispute in question, or any circumstances likely to create an appearance of bias which might disqualify that person as an impartial arbitrator. Either party may state any reason why he or she feels that an arbitrator should withdraw or be disqualified.

If an arbitrator becomes aware of any circumstances that might preclude that arbitrator from rendering an objective and impartial determination of the proceeding, the arbitrator must disclose that potential conflict as soon as practicable. If the arbitrator becomes aware of the potential conflict prior to the hearing, the disclosure shall be made to the Committee, which shall forward the disclosure to the parties. If the potential conflict becomes apparent during the hearing, the disclosure shall be made directly to the parties.

If a party believes that an arbitrator has a potential conflict of interest and should withdraw or be disqualified, and the arbitrator does not voluntarily withdraw, the party shall promptly notify the Committee so that the issue may be addressed and resolved as early in the arbitration process as possible.

Rule 6-303. Selection of Arbitrators.

~~Except under special procedures outlined in Chapter 6, arbitrators shall be selected as follows:~~

~~(a) The lawyer arbitrators shall be selected by the following process: the Committee shall furnish the petitioner a list of the names of four (4) possible lawyer arbitrators from which the petitioner shall strike one (1) name; the Committee shall then supply the respondent with a list of the three (3) remaining names from which the respondent shall strike one (1); the two persons whose names remain will be the lawyer members of the arbitration panel.~~

~~(b) The non-lawyer public members shall be selected by the following process: the Committee shall furnish a list of the names of three (3) possible nonlawyer public arbitrators from which the petitioner shall strike one (1) name; the Committee shall then supply the respondent with a list of the two (2) remaining names from which the respondent shall strike one (1); the person whose name remains will be the non-lawyer member of the arbitration panel.~~

~~(c) If either party fails to exercise the foregoing strikes, the Committee is authorized to establish procedures to strike for that party.~~

The arbitrator panel shall be selected by the Committee or its staff. Except as provided below, the arbitration panel shall consist of two attorney members who have practiced law actively for at least five years and one nonlawyer public member.

In cases involving disputed amounts greater than \$750 but not exceeding \$2,500, the Committee in its sole discretion may appoint an arbitration panel consisting of one lawyer who has practiced law actively for at least five years.

~~(d)~~—Petitioner and respondent by mutual agreement shall have the right to select the three ~~(3)~~ arbitrators; ~~and~~. They also may mutually ~~may~~ agree to have the dispute determined by a sole arbitrator jointly selected by them, provided any such sole arbitrator shall be one ~~(1)~~ of the persons on the roster of arbitrators or shall have been approved in advance by the Committee upon the joint request of petitioner and respondent.

Rule 6-304. Qualifications of Lawyer Arbitrators.

The lawyer arbitrators shall, ~~in~~ In addition to being impartial, ~~have the following qualifications~~ lawyer arbitrators shall:

~~(a) Have some experience in, or knowledge of, the field of law involved in the dispute.~~

~~(ba)~~ Have practiced law actively for at least five ~~(5)~~ years; and

~~(eb)~~ Be an active member in good standing of the State Bar of Georgia.

Rule 6-305. Powers and Duties of Arbitration Panel.

The panel of arbitrators shall have the following powers and duties:

(a) To compel by subpoena the attendance of witnesses and the production of documents and things;

(b) To decide the extent and method of any discovery;

(c) To administer oaths and affirmations;

(d) To take and hear evidence pertaining to the proceeding;

(e) To rule on the admissibility of evidence;

(f) To interpret and apply these rules insofar as they relate to the arbitrators' powers and duties; and

(g) To perform all acts necessary to conduct an effective arbitration hearing.

Rule 6-305306. Compensation.

All arbitrators shall serve voluntarily and without fee or expense reimbursement. ~~Provided;~~ provided, however, that arbitrators selected to serve in disputes in which all the parties are lawyers may at the discretion of the Committee be compensated, with such compensation to be paid by the lawyer parties as directed by the Committee.

CHAPTER 4 RULES OF PROCEDURE

Rule 6-401. Representation by Counsel.

Parties may be represented throughout the arbitration by counsel at their own expense, or they may represent themselves.

Rule 6-401402. Time and Place of Arbitration Hearing.

The Upon their appointment by the Committee, the arbitrators shall elect a chairperson chair and then shall fix a time ~~which~~ and place for the arbitration hearing. To the extent feasible, the hearing shall be held no more than sixty (60) days after the appointment of the last arbitrator ~~and place for each arbitration hearing.~~ At least ten (10) calendar days prior thereto to the hearing, the Committee shall mail notices, ~~certified mail return receipt,~~ of the time and place of the hearing to each party by first class mail, addressed to each party's last known address.

Rule 6-402403. Attendance and Participation at Hearing.

~~If a lawyer will not agree to be bound by the arbitrators' decision, the lawyer waives the right to participate in the hearing. The lawyer shall have the right to attend the hearing. However, he or she may not participate in it without the express consent of the arbitrators.~~

~~It is the individual responsibility of each party to arrange for, at their own expense, the attendance of themselves, their witnesses and, if desired, their counsel.~~

The parties shall have the right to attend and participate in the arbitration hearing at their own expense. It shall be discretionary with the arbitrators whether to allow the attendance of any persons who are not parties, witnesses, or counsel to one of the parties.

At the discretion of the arbitrators, a party may be permitted to appear or present witness testimony at the hearing by telephone conference call, video conference, computer-facilitated conference, or similar telecommunications equipment, provided all persons participating in the hearing can simultaneously hear each other during the hearing.

Rule 6-403. Counsel.

~~Parties may be represented at the hearing by counsel at their own expense, or they may represent themselves.~~

Rule 6-404. Stenographic Record.

~~Any party may request ask the Committee to arrange for the taking of a stenographic record of the proceeding. If such a record is stipulated to be the official record of the proceedings by the parties, or in appropriate cases determined to be such by the arbitrators, it must be made available to the arbitrators and to the other party for inspection at a time and place determined by the arbitrators. The total cost of such a record shall be shared equally by those parties who ordered copies a party orders a transcript, that party shall acquire and provide a certified copy of the transcript for the record at no cost to the panel. Other parties are entitled at their own expense to acquire a copy of the transcript by making arrangements directly with the court reporter.~~ However, it shall not be necessary to have a stenographic record of the hearing.

Rule 6-405. Death, Disability, or Resignation of Arbitrator.

If an arbitrator dies, resigns, or becomes unable to continue to act while ~~a matter~~ an arbitration is pending, the remaining two arbitrators shall not proceed with the arbitration. The Committee or its designee shall ~~make a determination as to~~ determine the course of further proceedings and may appoint a substitute or replacement arbitrator; or, by agreement of the parties, may proceed with one ~~(1)~~ arbitrator. ~~Two (2) arbitrators shall not attempt to conduct the arbitration.~~

Rule 6-406. Discovery, Subpoenas, and Witnesses.

~~Discovery is limited in type and scope to that deemed necessary by the arbitrators in their sole discretion upon their own motion or the written request of either party. Persons having a direct interest in the arbitration shall be entitled to attend the hearing. The arbitrators shall have the power to require the retirement of any witness during the testimony of other witnesses. It shall be discretionary with the arbitrators to determine the propriety of the attendance of any other persons.~~

Upon the written request of a party or the panel's own motion, discovery may be allowed to the extent deemed necessary by the arbitrators in their sole discretion.

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of documents and things, and may do so either upon the arbitrators' own initiative or upon the request of a party. These subpoenas shall be served and, upon application to the Superior Court in the county in which the arbitration is pending by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.

Rule 6-407. Adjournments.

The arbitrators for good cause shown may adjourn the hearing upon the request of either party or upon the arbitrators' own initiative.

Rule 6-408. Oaths Arbitrators' Oath.

Before proceeding with the hearing, the arbitrators shall take an oath of office. The arbitrators have the discretion to require witnesses to testify under oath or affirmation, and, if requested by either party, shall so require.

Rule 6-409. Order of Proceedings.

~~(a) The hearing shall be opened by the filing of the oath of the arbitrators and by. Next, the recording of panel shall record the place, time, and date of the hearing; the names of the arbitrators and, the parties, and of witnesses or parties' counsel if any are present, and any witnesses who will be presenting evidence during the hearing.~~

~~(b) The normal order of proceedings shall be the same as in at a trial, with the petitioner first presenting his or her petitioner's claim being presented first. However, the arbitrators shall have the discretion to vary the normal order of proceedings and, in any case, shall afford full and equal opportunity to all parties for presentation of relevant proofs.~~

~~(c) The petitioner shall have the burden of proof by a preponderance of the evidence.~~

Rule 6-410. Arbitration in the Absence of a Party.

The arbitration may proceed in the absence of a party, who, after due notice, fails to be present in person or by telephonic or electronic means. An award shall not be made solely on the default of a party; the arbitrators shall require the other party or parties to present such evidence as the arbitrators may require for the making of an award.

Rule 6-411. Evidence.

- (a) ~~The parties~~ Parties may offer such relevant and material evidence as they desire and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. ~~The arbitrators are authorized to subpoena witnesses and documents and may do so either upon the arbitrators' own initiative or upon the request of a party. These subpoenas shall be served and, upon application to the Superior Court in the county wherein the arbitration is pending by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action provided that the Court shall not enforce subpoenas in the event that it determines that the effect of such subpoenas would be unduly burdensome or oppressive to any party or person.~~ The arbitrators shall be the judge of the relevancy and materiality of the evidence offered. The rules of evidence shall be liberally interpreted and hearsay may be utilized at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.
- (b) ~~Exhibits, when offered by either party, may be~~ A list shall be made of all exhibits received into evidence by the arbitrators. The names and addresses of all witnesses, and a listing of all exhibits Exhibits shall be listed in the order in which they were received, and the list shall be made a part of the record.
- (c) The names and addresses of all witnesses who testify at the arbitration shall be made a part of the record. Upon their own motion or at the request of any party, the arbitrators shall have the power to require the retirement of any witness during the testimony of other witnesses.
- (ed) The arbitrators may receive and consider the evidence of witnesses by affidavit (copies of which shall be served on the opposing party at least five (5) days prior to the hearing), but shall give such evidence only such weight as the arbitrators deem proper after consideration of any objections made to its ~~admissions~~ admissibility.
- (de) The petition, answer, and other pleadings, ~~and~~ including any documents attached thereto, may be considered as evidence at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.
- (ef) The receipt of testimony by ~~written interrogatories~~ deposition, conference telephone calls, and other procedures are within the discretion of the arbitrators upon their own motion or at the ~~written~~ request of ~~either~~ any party.

Rule 6-412. Written Contract.

~~No arbitrator shall have authority to enter an award contrary to terms of an executed written contract between the parties except on the grounds of fraud, accident, mistake, or as being contrary to the laws of this state governing contracts.~~

Arbitrators shall give due regard to the terms of any written contract signed by the parties.

Rule 6-413. Closing of Hearings.

Prior to the closing of ~~the an arbitration~~ hearing, the arbitrators shall inquire of all parties whether they have any further ~~proofs~~ evidence to offer or additional witnesses to be heard. If ~~they have none~~ no further evidence is to be presented by either party, the arbitrators shall declare the hearing closed and make a record of that fact.

Rule 6-414. Reopening of Hearings.

~~The hearing may be reopened by the arbitrators either upon their own motion, or upon~~ Upon the motion of ~~either the arbitrators or of a party, an arbitration may be reopened~~ for good cause shown; at any time before an award is made. However, if the reopening of the hearing would prevent the ~~making of an award from being rendered~~ within the time provided by these rules, the matter may not be reopened; unless both parties agree upon the extension of such time limit.

Rule 6-415. Waiver of Rules.

Any party who, ~~proceeds with the arbitration after knowledge that any provisions,~~ knowing of a failure to comply with a provision or requirement of these rules ~~has not been complied with, and who,~~ fails to state an objection on the record or in writing prior to the closing of the hearing, shall be deemed to have waived any right to object.

Rule 6-416. Waiver of Oral Hearings.

The parties may provide by written agreement for the waiver of oral hearings.

Rule 6-417. Award.

If both parties have agreed to be bound by the arbitration, the award of the arbitrators is final and binding upon ~~them and may be enforced as provided by the general arbitration laws of the state~~ the parties.

In cases in which a lawyer refuses to be bound by the result of the arbitration, the award rendered will be considered as prima facie evidence of the fairness of the award in any action brought to enforce the award, and the burden of proof shall shift to the lawyer to prove otherwise.

Rule 6-418. Time of Award.

~~The award shall be rendered promptly by the arbitrators~~ shall make all reasonable efforts to render their award promptly and not later than thirty (30) days from the date of the closing of the hearing, unless otherwise agreed upon by the parties with the consent of the arbitrators or an extension is obtained from the Committee or its ~~Chairman~~ chair. If oral hearing has been waived, then the time period for rendering the award shall begin to run from the date of the receipt of final statements and ~~proofs~~ evidence by the arbitrators.

Rule 6-419. Form of Award.

The award shall be in writing and shall be signed by the arbitrators or by a concurring majority. The parties shall advise the arbitrators in writing prior to the close of the hearing if they request the arbitrators to accompany the award with an opinion.

Rule 6-420. Award Upon Settlement.

If the parties settle their dispute during the course of the arbitration proceeding, the arbitrators, the Committee, or the Committee's designee, upon the written consent of all parties, may set forth the terms of the settlement in an award.

Rule 6-421. Delivery Service of Award to upon Parties.

~~The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the Committee addressed to each party at its last known address by certified mail with return receipt requested or to its counsel, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.~~

Service of the award upon the parties shall be the responsibility of Committee staff. Service of the award shall be accomplished by depositing a copy of the award in United States Mail in a properly addressed envelope with adequate first class postage thereon and addressed to each party at his or her last known address.

Rule 6-422. Communication with Arbitrators.

There shall be no ex parte communication between ~~the parties~~ a party and ~~the arbitrators~~ an arbitrator.

Rule 6-423. Interpretation and Application of Rules.

~~The~~ If the arbitrators shall interpret and apply these rules insofar as they relate on a panel disagree as to the interpretation or application of any rule relating to the arbitrators' powers and duties. Any, such dispute among the arbitrators on a panel shall be decided by a majority vote of the arbitrators. If the dispute cannot be so resolved, ~~either the arbitrators in that manner, an arbitrator or a party may refer the question to the Committee for its determination. All other rules shall be interpreted and applied by the Committee, and its decision shall be final, subject only to review by the Executive Committee of the State Bar of Georgia pursuant to its powers, function, and duties under the Rules governing the State Bar. The Committee's decision on the interpretation or application of these rules shall be final.~~

CHAPTER 5
POST-DECISION ACTIVITY- -AWARD PROCEEDINGS

Rule 6-501. ~~Where Both Parties Agree~~ Confirmation of Award in Favor of Client.

In cases where both parties agreed to be bound by the result of the arbitration and ~~the an~~ an award is in favor of a client has not been satisfied within thirty (30) days after the date of its mailing or other service by the Committee, either party may request the filing of the award on the records of the Superior Court of the county of residence of the party who has failed to satisfy the award. If not a Georgia resident, the award shall be entered in the county where the award was made. The

~~said request shall be in writing with a copy mailed to the opposing party, shall be accompanied by all filing fees, and shall designate the appropriate county in which the award is to be entered. The Committee shall then mail the original award to the Clerk of the Superior Court of the designated county who shall file it in the same manner as the commencement of a new civil action and shall serve a copy bearing the civil action number and judge assignment by certified mail on all parties, with notice that if no objection under oath, including facts indicating that the award was the result of accident, or mistake, or the fraud of some one or all of the arbitrators or parties, or is otherwise illegal, is filed within thirty (30) days, the award shall become final. Upon application of the party filing the award, the Clerk of the Superior Court shall issue a Writ of FiFa. The FiFa may then be entered on the general execution docket in any jurisdiction. three months after it was served upon the parties, the client may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. §§ 9-9-1 et seq.~~

~~All filing fees shall be furnished by the party or parties who requested that the award be so entered.~~

Upon the written request of a client, the Committee may provide a lawyer to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. Alternatively, the Office of General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses.

~~In the event an objection is properly filed, the Superior Court shall cause an issue to be made up which issue shall be tried by the court sitting without a jury under the same rules and regulations as are prescribed for the trials of appeals. Thus, the Superior Court shall render its decision from the record without a de novo trial on the merits and shall affirm the award, vacate the award, or return the award to the arbitrators with specific directions for further consideration. The decision of the Superior Court shall be final and not subject to appeal.~~

Rule 6-502. Confirmation of Award in Favor of Attorney.

In cases where both parties agreed to be bound by the result of the arbitration and an award has been issued in favor of an attorney, the attorney may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. §§ 9-9-1 et seq.

~~The General Counsel or an Assistant General Counsel of the State Bar of Georgia, or other volunteer lawyer may represent, assist, or advise any party in the collection of a final judgement or in the Superior Court's review of awards.~~

The State Bar will not represent, assist, or advise the attorney except to provide copies of any necessary papers from the fee arbitration file pursuant to State Bar policies.

Rule 6-502503. Procedure Where Lawyer Refuses to be Bound.

In cases where an attorney refuses to be bound by the result of an arbitration and an award in favor of a client remains unsatisfied three months after service of the award upon the parties, the

State Bar, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. Alternatively, the Office of General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses.

~~If an award is made to the client and the respondent lawyer refuses to be bound thereby, the State Bar will provide the General Counsel, Assistant General Counsel, or other volunteer lawyer at no cost, other than actual litigation expenses, to the client to represent him or her in any litigation necessary to adjust the fee in accordance with the award.~~

~~(a) In such cases, the An award rendered in favor of a client in a case in which the attorney refused to be bound by the result of the arbitration will be considered as prima facie evidence of the fairness of the award, and the burden of proof shall shift to the lawyer to prove otherwise.~~

~~(b) In such cases, an award made in favor of the client will terminate the right of the lawyer to oppose the substitution of another lawyer designated by the client in any pending litigation pertaining to the subject matter of the arbitration.~~

CHAPTER 6

SPECIAL PROCEDURES

CONFIDENTIALITY, RECORD RETENTION, AND IMMUNITY

Rule 6-601. Special Case Procedure.

~~After considering the complexity of the issues, the amount in controversy, the location of the arbitration, and all other factors, the Committee may, upon its own motion or the request of either party, assign any case to be arbitrated by the following special procedure:~~

~~(a) The waiting period of Rule 6-106, the arbitrator selection process of Rule 6-303, and the arbitrator qualifications of Rule 6-304, shall not apply.~~

~~(b) The arbitrator panel shall be selected by the Committee or its staff, and~~

~~(1) in cases involving amounts in dispute over \$2,500 shall consist of two (2) attorneys who have practiced law actively for at least five (5) years and one (1) non-lawyer public member.~~

~~(2) in cases involving amounts in dispute of \$2,500 or less, the arbitration panel may consist of one arbitrator who shall be a lawyer who has practiced law actively for at least five (5) years.~~

~~(c) All other rules of the Fee Arbitration program shall apply as in any other case.~~

CHAPTER 7

CONFIDENTIALITY

Rule 6-701601. Confidentiality.

~~With the exception of the award itself, all records, documents, files, proceedings, and hearings pertaining to arbitrations of any fee dispute under these rules in which both the complainant and the attorney have consented to be bound by the result, shall not be opened to the public or any~~

~~person not involved in the dispute without the written consent of both parties to the arbitration. However, the Committee, its staff, or representative may reveal confidential information in those circumstances in which the Office of General Counsel is authorized by Rule 4-221 (d) to do so.~~

All records, documents, files, proceedings, and hearings pertaining to the arbitration of a fee dispute under this program are the property of the State Bar of Georgia and, except for the award itself, shall be deemed confidential and shall not be made public.

A person who was not a party to the dispute shall not be allowed access to such materials unless all parties to the arbitration consent in writing or a court of competent jurisdiction orders such access. However, the Committee, its staff, or representative may reveal confidential information in those circumstances in which the Office of General Counsel is authorized by Rule 4-221(d) to do so.

Rule 6-602. Record Retention.

The record of any fee dispute under these rules shall be retained by the Committee in accordance with policies adopted by the Committee.

Rule 6-603. Immunity.

Committee members, arbitrators, staff, and appointed voluntary counsel assisting the program shall be immune from suit for any conduct in the course and scope of their official duties under this program. Parties and witnesses shall have such immunity as is applicable in a civil action in Georgia.

The new amended Rules governing the Fee Arbitration Program read as follows:

**PART VI
ARBITRATION OF FEE DISPUTES**

PREAMBLE

The purpose of the State Bar of Georgia's program for the arbitration of fee disputes is to provide a convenient mechanism for the resolution of disputes (1) between lawyers and clients over fees; (2) between lawyers in connection with the dissolution of a practice or the withdrawal of a lawyer from a partnership or practice; or (3) between lawyers concerning the allocation of fees earned from joint services. If the parties to such a dispute have been unable to reach an agreement between or among themselves, either side may petition the State Bar Committee on the Arbitration of Attorney Fee Disputes ("Committee") to arbitrate the dispute pursuant to these rules.

Regardless of whether a lawyer or a client initiates the filing of a petition requesting arbitration of the dispute, the petitioner must agree to be bound by the result of the arbitration. This is intended to discourage the filing of complaints that are frivolous or that seek to invoke the process simply to

obtain an “advisory opinion.” If the respondent also agrees to be bound, the resulting arbitration award will be enforceable under the Georgia Arbitration Code, O.C.G.A. §§ 9-9-1 et seq.

A unique feature of this program is that, if a client initiates the arbitration process and agrees to be bound by the result of the arbitration and the respondent lawyer refuses to be bound by any resulting award, the matter will still be submitted to arbitration if, after investigation by the Committee or its staff, the client’s claim appears to warrant a hearing.

If the client prevails in the arbitration, the State Bar of Georgia, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings.

CHAPTER 1

COMMITTEE ON RESOLUTION OF FEE DISPUTES

Rule 6-101. Committee.

This program will be administered by the State Bar Committee on the Arbitration of Attorney Fee Disputes (“Committee”).

Rule 6-102. Committee Membership.

The Committee shall consist of six lawyer members and three public members who are not lawyers. The six lawyer members shall be appointed by the President of the State Bar, and the three public members shall be appointed by the Supreme Court of Georgia.

Rule 6-103. Terms.

Initially, two members of the Committee, including one of the public members, shall be appointed for a period of three years; two members, including the remaining public members, for a period of two years; and one member for a period of one year. As each member’s term of office on the Committee expires, his or her successor shall be appointed for a period of three years. The President of the State Bar shall appoint the chair of the Committee each year from among the members. Vacancies in unexpired terms shall be filled by their respective appointing authorities.

Rule 6-104. Powers and Duties of Committee.

The Committee shall have the following powers and duties:

- (a) To determine whether to accept jurisdiction over a dispute;
- (b) To appoint and remove lawyer and nonlawyer arbitrators and panels of arbitrators;
- (c) To oversee the operation of the arbitration process;
- (d) To develop and implement fee arbitration procedures;

- (e) To interpret these rules and to decide any disputes regarding the interpretation and application of these rules;
- (f) To determine challenges to the neutrality of an arbitrator where the arbitrator does not voluntarily withdraw;
- (g) To maintain the records of the State Bar of Georgia's Fee Arbitration Program; and
- (h) To perform all other acts necessary for the effective operation of the Fee Arbitration Program.

Rule 6-105. Staff's Responsibilities.

State Bar staff shall be assigned to assist the Committee. The assigned staff will have such administrative responsibilities as may be delegated by the Committee, which may include the following:

- (a) Receive and review arbitration requests and discuss them with the parties, if necessary;
- (b) Conduct inquiries to obtain additional information as needed;
- (c) Make recommendations to the Committee whether to accept or decline jurisdiction; and
- (d) Transmit notices of arbitration hearings, arbitration awards, and other Committee correspondence.

**CHAPTER 2
JURISDICTIONAL GUIDELINES**

Rule 6-201. Petition.

A request for arbitration of a fee dispute is initiated by the filing of a petition with the Committee. Each petition shall be filed on the Fee Arbitration Petition Form supplied by Committee staff and shall contain the following elements:

- (a) A statement of the nature of the dispute and the petitioner's statement of facts, including relevant dates;
- (b) The names and addresses of the client(s) and the attorney(s);
- (c) A statement that the petitioner has made a good faith effort to resolve the dispute and the details of that effort;
- (d) A statement that the petitioner agrees to be bound by the result of the arbitration;
- (e) The date of the petition; and
- (f) Each petitioner's signature.

Rule 6-202. Service of Petition.

If a petition has been properly completed and appears to have merit, Committee staff shall serve a copy of the petition, along with a fee arbitration answer form and an acknowledgement of service form, upon the respondent by first class mail addressed to such party's last known address. A signed acknowledgment of service form or a written answer from the respondent or respondent's attorney shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

In the absence of an acknowledgment of service or a written response from the respondent or respondent's counsel, service shall be certified mail, return receipt requested, addressed to such party's last known address.

In unusual circumstances as determined by the Committee or its staff, when service has not been accomplished by other less costly measures, service may be accomplished by the Sheriff or a court-approved agent for service of process.

If service is not accomplished, the Committee shall not accept jurisdiction of the case.

Rule 6-203. Answer.

Each respondent shall have 20 calendar days after service of a petition to file an answer with the Committee. Staff, in its discretion, may grant appropriate extensions of time for the filing of an answer.

The answer shall be filed on or with the Fee Arbitration Answer Form supplied by Committee staff and shall contain the following elements:

- (a) A statement as to whether the respondent agrees to be bound by the result of the arbitration;
- (b) The respondent's statement of facts;
- (c) Any defenses the respondent intends to assert;
- (d) The date of the answer; and
- (e) Each respondent's signature.

The Committee staff shall serve a copy of the answer upon each petitioner by first class mail, addressed to such party's last known address.

The failure to file an answer shall not deprive the Committee of jurisdiction and shall not result in a default judgment against the respondent.

Rule 6-204. Accepting Jurisdiction.

The Committee or its designee may accept jurisdiction over a fee dispute only if the following requirements are satisfied:

- (a) The fee in question, whether paid or unpaid, was for legal services rendered by a lawyer who is, or was at the time the services were rendered, a member of the State Bar of Georgia or otherwise authorized to practice law in the State of Georgia.
- (b) The legal services in question were performed:
 - (1) in the State of Georgia; or
 - (2) from an office located in the State of Georgia, or
 - (3) by a lawyer who is not admitted to the practice of law in any U.S. jurisdiction other than Georgia, and the circumstances are such that if the State Bar of Georgia does not accept jurisdiction, no other U.S. jurisdiction will be available to a client who has filed a petition under this program.
- (c) The disputed fee exceeds \$750.
- (d) The amount of the disputed fee is not governed by statute or other law, nor has any court fixed or approved the full amount or all terms of the disputed fee.
- (e) The fee dispute is not the subject of litigation in court at the time the petition for arbitration is filed or when the Committee determines jurisdiction.
- (f) The petition seeking arbitration of the fee dispute is filed with the Committee no more than two years following the date on which the controversy arose. If this date is disputed, it shall be determined in the same manner as the commencement of a cause of action on the underlying contract.
- (g) In the case of disputes between lawyers and clients, a lawyer/client relationship existed between the petitioner and the respondent at the time the legal services in question were performed. A relative or other person paying the legal fees of the client may request arbitration of disputes over those fees, provided both the client and the payor join as co-petitioners or co-respondents and both agree to be bound by the result of the arbitration.
- (h) The client, whether petitioner or respondent, agrees to be bound by the result of the arbitration. If the respondent attorney does not agree to be bound by the result of the arbitration, the Committee in its discretion may determine that it is in the best interest of the public and the legal profession to accept jurisdiction. When the Committee accepts jurisdiction under these circumstances, the nonconsenting lawyer shall be considered a “party” for purposes of these rules.
- (i) In disputes between lawyers, the lawyers who are parties to the dispute are all members of the State Bar of Georgia and have all agreed to arbitrate the dispute under this program and to be bound by the result of the arbitration.

Additionally, where the parties to a fee dispute have signed a written agreement to submit fee disputes to binding arbitration with the State Bar of Georgia's Attorney Fee Arbitration Program, the Committee will consider the agreement enforceable if it is:

- (1) set out in a separate paragraph;
- (2) written in a font size at least as large as the rest of the contract; and
- (3) separately initialed by the client and attorney.

In deciding whether to accept jurisdiction, the Committee shall review available evidence, including the recommendations of the staff, and make a determination whether to accept or decline jurisdiction. The Committee's decisions on jurisdiction are final, except that such decisions are subject to reconsideration by the Committee upon the request of either party made within 30 days of the initial decision. Staff shall notify the parties of the Committee's decision on jurisdiction by first class mail.

Rule 6-205. Termination or Suspension of Proceedings.

The Committee may suspend or terminate arbitration proceedings or may decline or terminate jurisdiction if the client, in addition to pursuing arbitration of a fee dispute under these rules, asserts a claim against the lawyer in any court arising out of the same set of circumstances, including any claim of malpractice. Any claim or evidence of professional misconduct within the meaning of the Code of Professional Responsibility may be reported by the arbitrators or the Committee to the General Counsel's Office for consideration under its normal procedures.

Rule 6-206. Revocation.

After jurisdiction has been accepted by the Committee and the other party has agreed in writing to be bound by the award, the submission to arbitration shall be irrevocable except by consent of all parties or by action of the Committee or the arbitration panel for good cause shown.

**CHAPTER 3
SELECTION OF ARBITRATORS**

Rule 6-301. Roster of Arbitrators.

The Committee shall maintain a roster of lawyers available to serve as arbitrators on an "as needed" basis in appropriate geographical areas throughout the state. To the extent possible, the arbitration should take place in the same geographical area where the services in question were performed; however, the final decision as to the location of the arbitration remains with the Committee.

The Committee shall likewise maintain a roster of nonlawyer public members selected by the Supreme Court of Georgia.

Rule 6-302. Neutrality of Arbitrators.

No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest. Upon appointment to a particular arbitration, each arbitrator shall disclose to

the Committee any circumstance that may affect his or her neutrality in regard to the dispute in question.

If an arbitrator becomes aware of any circumstances that might preclude that arbitrator from rendering an objective and impartial determination of the proceeding, the arbitrator must disclose that potential conflict as soon as practicable. If the arbitrator becomes aware of the potential conflict prior to the hearing, the disclosure shall be made to the Committee, which shall forward the disclosure to the parties. If the potential conflict becomes apparent during the hearing, the disclosure shall be made directly to the parties.

If a party believes that an arbitrator has a potential conflict of interest and should withdraw or be disqualified, and the arbitrator does not voluntarily withdraw, the party shall promptly notify the Committee so that the issue may be addressed and resolved as early in the arbitration process as possible.

Rule 6-303. Selection of Arbitrators.

The arbitrator panel shall be selected by the Committee or its staff. Except as provided below, the arbitration panel shall consist of two attorney members who have practiced law actively for at least five years and one nonlawyer public member.

In cases involving disputed amounts greater than \$750 but not exceeding \$2,500, the Committee in its sole discretion may appoint an arbitration panel consisting of one lawyer who has practiced law actively for at least five years.

Petitioner and respondent by mutual agreement shall have the right to select the three arbitrators. They also may mutually agree to have the dispute determined by a sole arbitrator jointly selected by them, provided any such sole arbitrator shall be one of the persons on the roster of arbitrators or shall have been approved in advance by the Committee upon the joint request of petitioner and respondent.

Rule 6-304. Qualifications of Lawyer Arbitrators.

In addition to being impartial, lawyer arbitrators shall:

- (a) Have practiced law actively for at least five years; and
- (b) Be an active member in good standing of the State Bar of Georgia.

Rule 6-305. Powers and Duties of Arbitration Panel.

The panel of arbitrators shall have the following powers and duties:

- (a) To compel by subpoena the attendance of witnesses and the production of documents and things;
- (b) To decide the extent and method of any discovery;
- (c) To administer oaths and affirmations;

- (d) To take and hear evidence pertaining to the proceeding;
- (e) To rule on the admissibility of evidence;
- (f) To interpret and apply these rules insofar as they relate to the arbitrators' powers and duties; and
- (g) To perform all acts necessary to conduct an effective arbitration hearing.

Rule 6-306. Compensation.

All arbitrators shall serve voluntarily and without fee or expense reimbursement; provided, however, that arbitrators selected to serve in disputes in which all the parties are lawyers may at the discretion of the Committee be compensated, with such compensation to be paid by the lawyer parties as directed by the Committee.

**CHAPTER 4
RULES OF PROCEDURE**

Rule 6-401. Representation by Counsel.

Parties may be represented throughout the arbitration by counsel at their own expense, or they may represent themselves.

Rule 6-402. Time and Place of Arbitration Hearing.

Upon their appointment by the Committee, the arbitrators shall elect a chair and then shall fix a time and place for the arbitration hearing. To the extent feasible, the hearing shall be held no more than 60 days after the appointment of the last arbitrator. At least ten calendar days prior to the hearing, the Committee shall mail notices of the time and place of the hearing to each party by first class mail, addressed to each party's last known address.

Rule 6-403. Attendance and Participation at Hearing.

The parties shall have the right to attend and participate in the arbitration hearing at their own expense. It shall be discretionary with the arbitrators whether to allow the attendance of any persons who are not parties, witnesses, or counsel to one of the parties.

At the discretion of the arbitrators, a party may be permitted to appear or present witness testimony at the hearing by telephone conference call, video conference, computer-facilitated conference, or similar telecommunications equipment, provided all persons participating in the hearing can simultaneously hear each other during the hearing.

Rule 6-404. Stenographic Record.

Any party may ask the Committee to arrange for the taking of a stenographic record of the proceeding. If a party orders a transcript, that party shall acquire and provide a certified copy of the transcript for the record at no cost to the panel. Other parties are entitled at their own expense to acquire a copy of the transcript by making arrangements directly with the court reporter. However, it shall not be necessary to have a stenographic record of the hearing.

Rule 6-405. Death, Disability, or Resignation of Arbitrator.

If an arbitrator dies, resigns, or becomes unable to continue to act while an arbitration is pending, the remaining two arbitrators shall not proceed with the arbitration. The Committee or its designee shall determine the course of further proceedings and may appoint a substitute or replacement arbitrator or, by agreement of the parties, may proceed with one arbitrator.

Rule 6-406. Discovery, Subpoenas, and Witnesses.

Upon the written request of a party or the panel's own motion, discovery may be allowed to the extent deemed necessary by the arbitrators in their sole discretion.

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of documents and things, and may do so either upon the arbitrators' own initiative or upon the request of a party. These subpoenas shall be served and, upon application to the Superior Court in the county in which the arbitration is pending by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.

Rule 6-407. Adjournments.

The arbitrators for good cause shown may adjourn the hearing upon the request of either party or upon the arbitrators' own initiative.

Rule 6-408. Arbitrators' Oath.

Before proceeding with the hearing, the arbitrators shall take an oath of office. The arbitrators have the discretion to require witnesses to testify under oath or affirmation, and, if requested by either party, shall so require.

Rule 6-409. Order of Proceedings.

The hearing shall be opened by the filing of the oath of the arbitrators. Next, the panel shall record the place, time, and date of the hearing; the names of the arbitrators, the parties, parties' counsel, and any witnesses who will be presenting evidence during the hearing.

The normal order of proceedings shall be the same as at a trial, with the petitioner's claim being presented first. However, the arbitrators shall have the discretion to vary the normal order of proceedings.

The petitioner shall have the burden of proof by a preponderance of the evidence.

Rule 6-410. Arbitration in the Absence of a Party.

The arbitration may proceed in the absence of a party, who, after due notice, fails to be present in person or by telephonic or electronic means. An award shall not be made solely on the default of a party; the arbitrators shall require the other party or parties to present such evidence as the arbitrators may require for the making of an award.

Rule 6-411. Evidence.

- (a) Parties may offer such relevant and material evidence as they desire and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and

determination of the dispute. The arbitrators shall be the judge of the relevancy and materiality of the evidence offered. The rules of evidence shall be liberally interpreted and hearsay may be utilized at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.

- (b) A list shall be made of all exhibits received into evidence by the arbitrators. Exhibits shall be listed in the order in which they were received, and the list shall be made a part of the record.
- (c) The names and addresses of all witnesses who testify at the arbitration shall be made a part of the record. Upon their own motion or at the request of any party, the arbitrators shall have the power to require the retirement of any witness during the testimony of other witnesses.
- (d) The arbitrators may receive and consider the evidence of witnesses by affidavit (copies of which shall be served on the opposing party at least five days prior to the hearing), but shall give such evidence only such weight as the arbitrators deem proper after consideration of any objections made to its admissibility.
- (e) The petition, answer, and other pleadings, including any documents attached thereto, may be considered as evidence at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.
- (f) The receipt of testimony by deposition, conference telephone calls, and other procedures are within the discretion of the arbitrators upon their own motion or at the request of any party.

Rule 6-412. Written Contract.

Arbitrators shall give due regard to the terms of any written contract signed by the parties.

Rule 6-413. Closing of Hearing.

Prior to the closing of an arbitration hearing, the arbitrators shall inquire of all parties whether they have any further evidence to offer or additional witnesses to be heard. If no further evidence is to be presented by either party, the arbitrators shall declare the hearing closed and make a record of that fact.

Rule 6-414. Reopening of Hearing.

Upon the motion of the arbitrators or of a party, an arbitration may be reopened for good cause shown at any time before an award is made. However, if the reopening of the hearing would prevent the award from being rendered within the time provided by these rules, the matter may not be reopened unless both parties agree upon the extension of such time limit.

Rule 6-415. Waiver of Rules.

Any party who, knowing of a failure to comply with a provision or requirement of these rules, fails to state an objection on the record or in writing prior to the closing of the hearing, shall be deemed to have waived any right to object.

Rule 6-416. Waiver of Oral Hearings.

The parties may provide by written agreement for the waiver of oral hearings.

Rule 6-417. Award.

If both parties have agreed to be bound by the arbitration, the award of the arbitrators is final and binding upon the parties.

In cases in which a lawyer refuses to be bound by the result of the arbitration, the award rendered will be considered as prima facie evidence of the fairness of the award in any action brought to enforce the award, and the burden of proof shall shift to the lawyer to prove otherwise.

Rule 6-418. Time of Award.

The arbitrators shall make all reasonable efforts to render their award promptly and not later than 30 days from the date of the closing of the hearing, unless otherwise agreed upon by the parties with the consent of the arbitrators or an extension is obtained from the Committee or its chair. If oral hearing has been waived, then the time period for rendering the award shall begin to run from the date of the receipt of final statements and evidence by the arbitrators.

Rule 6-419. Form of Award.

The award shall be in writing and shall be signed by the arbitrators or by a concurring majority. The parties shall advise the arbitrators in writing prior to the close of the hearing if they request the arbitrators to accompany the award with an opinion.

Rule 6-420. Award Upon Settlement.

If the parties settle their dispute during the course of the arbitration proceeding, the arbitrators, the Committee, or the Committee's designee, upon the written consent of all parties, may set forth the terms of the settlement in an award.

Rule 6-421. Service of Award upon Parties.

Service of the award upon the parties shall be the responsibility of Committee staff. Service of the award shall be accomplished by depositing a copy of the award in United States Mail in a properly addressed envelope with adequate first class postage thereon and addressed to each party at his or her last known address.

Rule 6-422. Communication with Arbitrators.

There shall be no ex parte communication between a party and an arbitrator.

Rule 6-423. Interpretation and Application of Rules.

If the arbitrators on a panel disagree as to the interpretation or application of any rule relating to the arbitrators' powers and duties, such dispute shall be decided by a majority vote of the arbitrators. If the dispute cannot be resolved in that manner, an arbitrator or a party may refer the

question to the Committee for its determination. The Committee's decision on the interpretation or application of these rules shall be final.

CHAPTER 5 POST-AWARD PROCEEDINGS

Rule 6-501. Confirmation of Award in Favor of Client.

In cases where both parties agreed to be bound by the result of the arbitration and an award in favor of a client has not been satisfied within three months after it was served upon the parties, the client may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. §§ 9-9-1 et seq.

Upon the written request of a client, the Committee may provide a lawyer to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. Alternatively, the Office of General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses.

Rule 6-502. Confirmation of Award in Favor of Attorney.

In cases where both parties agreed to be bound by the result of the arbitration and an award has been issued in favor of an attorney, the attorney may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. §§ 9-9-1 et seq.

The State Bar will not represent, assist, or advise the attorney except to provide copies of any necessary papers from the fee arbitration file pursuant to State Bar policies.

Rule 6-503. Procedure Where Lawyer Refuses to be Bound.

In cases where an attorney refuses to be bound by the result of an arbitration and an award in favor of a client remains unsatisfied three months after service of the award upon the parties, the State Bar, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. Alternatively, the Office of General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses.

An award rendered in favor of a client in a case in which the attorney refused to be bound by the result of the arbitration will be considered as prima facie evidence of the fairness of the award, and the burden of proof shall shift to the lawyer to prove otherwise.

CHAPTER 6
CONFIDENTIALITY, RECORD RETENTION, AND IMMUNITY

Rule 6-601. Confidentiality.

All records, documents, files, proceedings, and hearings pertaining to the arbitration of a fee dispute under this program are the property of the State Bar of Georgia and, except for the award itself, shall be deemed confidential and shall not be made public.

A person who was not a party to the dispute shall not be allowed access to such materials unless all parties to the arbitration consent in writing or a court of competent jurisdiction orders such access. However, the Committee, its staff, or representative may reveal confidential information in those circumstances in which the Office of General Counsel is authorized by Rule 4-221(d) to do so.

Rule 6-602. Record Retention.

The record of any fee dispute under these rules shall be retained by the Committee in accordance with policies adopted by the Committee.

Rule 6-603. Immunity.

Committee members, arbitrators, staff, and appointed voluntary counsel assisting the program shall be immune from suit for any conduct in the course and scope of their official duties under this program. Parties and witnesses shall have such immunity as is applicable in a civil action in Georgia.

**ANNUAL REPORT OF THE
CLIENTS' SECURITY FUND
FOR OPERATIONAL YEAR 2012-2013**

**By: Robert E. McCormack
Staff Liaison to the Clients' Security Fund**

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

On behalf of the Trustees of the Clients' Security Fund, it is a pleasure to present the 2012-2013 Clients' Security Fund Annual Report to the Board of Governors of the State Bar of Georgia. The Trustees of the Fund are proud of the efforts put forth to maintain the integrity of the legal profession.

Creation of the Fund

The Board of Governors of the State Bar of Georgia created the Clients' Security Fund by Resolution on March 29, 1968. The Fund was formed "for the purpose of promoting public confidence in the administration of justice, and maintaining the integrity and protecting the good name of the legal profession by reimbursing, to the extent deemed proper and feasible by the Trustees of the Fund, losses caused by the dishonest conduct of members of the State Bar of Georgia." In 1991, the Supreme Court of Georgia adopted the Rules of the Clients' Security Fund (Part X) making it an official part of the Rules of the State Bar of Georgia. That same year, pursuant to the Rules, the Board of Governors assessed each of the members of the State Bar the sum of \$100.00, to be paid over a five-year period, to fully fund and stabilize the Fund.

Administration of the Fund

The Clients' Security Fund Board of Trustees performs all acts necessary and proper to fulfill the purposes of and effectively administer the Fund. The Rules, issued by order of the Supreme Court of Georgia, establish a Board of Trustees consisting of six (6) lawyers and one (1) non-lawyer member who are appointed to staggered terms by the President of the State Bar of Georgia. The Trustees serve five-year terms, and receive no compensation or reimbursement for their service. The Trustees select the Chair and Vice-chair to serve as officers for the Fund. The Fund receives part-time assistance from one attorney, one paralegal and one legal secretary from the Office of the General Counsel. In addition to your Chair, the following lawyers served as Trustees for the 2012-2013 Bar-year:

Elena Kaplan, Atlanta, Georgia

Vera Sharon Edenfield, Statesboro, Georgia

Byung Jin Pak, Atlanta, Georgia

Denny C. Galis, Athens, Georgia

Charles Edward Peeler, Albany, Georgia

Randall H. Davis, Cartersville, Georgia

Vince Clanton, Atlanta, Georgia (non-lawyer member)

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

Funding

Members of the State Bar of Georgia provide the primary funding for the Clients' Security Fund. On April 2, 1991, the Supreme Court of Georgia approved the motion to amend the Bar Rules to provide for an assessment of \$100.00 per lawyer to be paid over a period of five

years. On October 6, 2010, the Rules were amended making the assessment payable over four years. Fund revenues are supplemented by interest income, restitution payments from disbarred lawyers, and miscellaneous contributions.

The assessment provides a relatively substantial source of income; however, to ensure a secure source of funding to sustain the integrity of the Fund, the Bar Rules provide for future assessments triggered whenever the fund balance falls below a minimum of \$1,000,000.00. The Bar Rules also limit the aggregate amount that can be paid to claimants in any one year to \$350,000.00.

The Board of Trustees also adopted certain administrative rules to help stabilize and manage the Fund. These rules provide that the maximum amount the Trustees will pay on any individual claim is \$25,000.00. Also, the aggregate amount the Trustees will pay to all claimants victimized by a single lawyer is limited to 10% of the Fund balance as it existed on the date the first claim against the lawyer was paid. Both of these rules may be overridden by a unanimous vote of the Trustees in cases of undue hardship or extreme unfairness.

Other efforts to maintain the stability of the fund include an amendment to the Bar Rules, which was adopted by the Supreme Court on November 8, 2003. As the result of changes in the admissions rules that allow attorneys in reciprocal states to be admitted to the State Bar of Georgia upon motion, the amended bar rules provide that all members who are admitted to the State Bar of Georgia as a Foreign Law Consultant or who join without taking the Georgia Bar Examination are required to pay the full assessment of \$100.00 prior to or upon registration with the State Bar.

The efforts of the State Bar of Georgia and the Trustees of the Fund have proven successful over the years. The Fund's balance has grown from a low of \$361,823.00 in 1992 to \$2,390,693.00 as of May 28, 2013. The average fund balance has stabilized at approximately

\$2,500,000.00. These funds are held in the name of the Fund and the Trustees of the Fund maintain exclusive control of disbursements from the Fund.

Loss Prevention Efforts

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

Overdraft Notification

In November 1992, the Board of Trustees joined the Investigative Panel of the State Disciplinary Board in urging the Board of Governors to approve amendments to Disciplinary Standard 65 to create a trust account overdraft notification program. On August 22, 1995, the Supreme Court of Georgia approved the amendment to Standard 65, which became effective January 1, 1996. The primary purpose of the overdraft notification rule is to prevent misappropriation of clients' funds by providing a mechanism for early detection of improprieties in the handling of attorney trust accounts. Standard 65 was subsequently replaced with Rule 1.15(III) with the Supreme Court's adoption of the Georgia Rules of Professional Conduct on January 2, 2001. See, 2012-2013 State Bar of Georgia Directory & Handbook, Rule 1.15(III), p. H-42.

Payee Notification

During the 1993 legislative session, with the urging of the Board of Trustees, the Board of Governors endorsed legislation specifically designed to prevent lawyer theft of personal injury settlement funds. As a result of these efforts, the "payee notification rule" was approved in the form of an amendment to the Insurance Code. This statute requires insurers to send notice to the payee of an insurance settlement at the time the check is mailed to the payee's attorney. This

places the client on notice that the attorney has received settlement funds. The adoption of this procedure has substantially reduced claims involving theft of insurance funds.

Claims Process

Before the Clients' Security Fund will pay a claim, the Trustees must determine that the loss was caused by the dishonest conduct of the lawyer who has been disbarred, indefinitely suspended, or has voluntarily surrendered his or her license, and arose out of the client-lawyer relationship. The Rules define "dishonest conduct" as acts "committed by a lawyer in the nature of theft or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value." Typically, claims filed by corporations or partnerships, government entities, and certain members of the attorney's family are denied. Losses covered by insurance, or that result from malpractice or financial investments are also not considered reimbursable by the Fund. Claimants are responsible for providing sufficient documentation to support their claims.

Following is the statistical report the Fund for the 2012-2013 operational year:

Annual Statistics for Operational Year 2012-2013

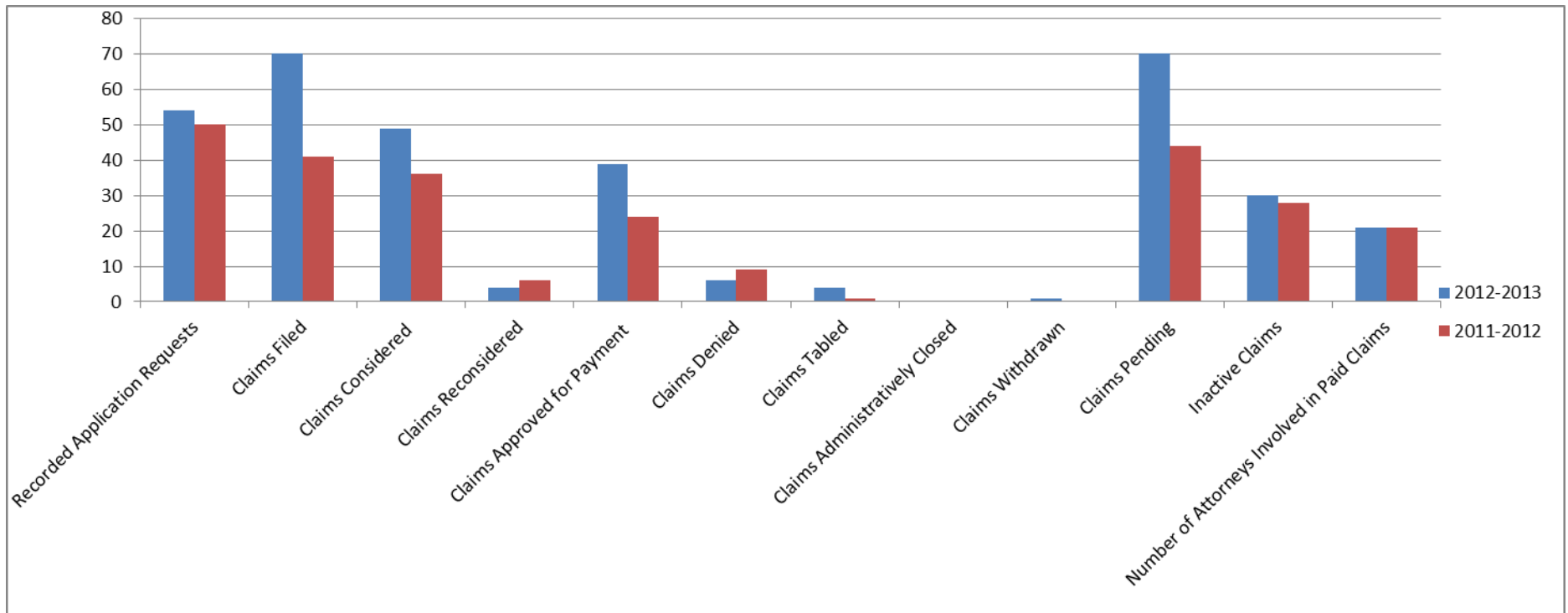
Financial Summary for 11 months ending May 28, 2013
(most recent information available at the time this report was generated)

Fund Balance	\$ 2,390,693.00
Assessment Income	\$ 177,131.00
Restitution Income	\$ 5,634.00
Interest Income	\$ 10,078.00
Claims Paid	\$ 122,539.00
Expenses	\$ 60,833.00

ACTIVITY SUMMARY

2012-2013 **2011-2012**

Recorded Application Requests	54	50
Claims Filed	70	41
Claims Considered	49	36
Claims Reconsidered	4	6
Claims Approved for Payment	39	24
Claims Denied	6	9
Claims Tabled	4	1
Claims Administratively Closed	0	0
Claims Withdrawn	1	0
Claims Pending	70	44
Inactive Claims	30	28
Number of Attorneys Involved in Paid Claims	21	21



REVIEW PANEL REPRIMANDS

DATE OF ORDER	RESPONDENT	DOCKET
5/29/12	Dock H. Davis	6021
6/18/12	Ted H. Reed (w/conditions)	5956

PUBLIC REPRIMANDS

DATE OF ORDER	RESPONDENT	DOCKET
5/7/12	Beryl B. Faris	5870 5871
5/29/12	Jefferson Lee Adams (w/conditions)	5288 5392 5393
10/1/12	Clark Jones-Lewis (+ 6-month suspension)	6029
10/1/12	Paul Troy Wright (+ 6-month suspension)	5459
10/15/12	Jerry Wayne Moncus	6168
2/4/13	Neal Henry Howard	5759
4/15/13	Kenneth A. Glenn	5999

SUSPENSIONS

INDEFINITE

DATE OF ORDER	RESPONDENT	DOCKET
5/7/12	Scott Chandler Huggins (6 months w/conditions)	5931 5968 6091
6/25/12	Lisa M. Cummings (18 months w/conditions)	5965
10/1/12	Lawrence Edward Madison (pending appeal of criminal conviction)	6300
10/15/12	Amjad Muhammad Ibrahim (18 months w/conditions)	5840 6365
10/15/12	Kathryn Jean Jaconetti (3 years w/conditions)	5560 5667 5785 5786 5787 5868 5869 5948
11/5/12	James H. Dickey (2 years w/conditions)	6226
1/7/13	Tony C. Jones (additional 6 months for a total of 24 months w/conditions)	6301 6302 6303
1/22/13	George D. Houser (pending appeal of criminal conviction)	6267
1/22/13	Cassandre M. Galette (pending appeal of criminal conviction)	6282
3/4/13	Carol Chandler (18 months w/conditions)	6145
3/18/13	Michael Rory Proctor (3 years w/conditions)	5860 5944 6006 6073 6087

DEFINITE

DATE OF ORDER	RESPONDENT	DOCKET
5/7/12	Michael Lawrence Terrell (6 months)	6104
5/29/12	Charles Matthew Hutt (45 days)	6224
10/1/12	Clark Jones-Lewis (6 months + public reprimand)	6029
10/1/12	Paul Troy Wright (6 months + public reprimand)	5459
10/1/12	Barbara S. Arthur (6 months)	6151
10/1/12	Richard R. Buckley Jr. (4 months)	6107
10/1/12	Chima Earnest Okene (9 months)	5326 6027
10/15/12	Christopher Todd Adams (18 months)	6289
10/29/12	Warner Russell Hodges (60 days)	6225

INTERIM SUSPENSIONS

DATE OF ORDER	RESPONDENT	DOCKET
6/19/12	John Ramsay Wall	120021
6/19/12	Dana Posey Gentry	110304
6/19/12	Romin Vincent Alavi	120078
6/19/12	Thomas Edward Dixon	110152
6/20/12	James Paul Peters	120073
7/17/12	R. Kipling Jones	120051
9/11/12	William Charles Lea	120121
9/11/12	Sarah Spence Cooksey	120056
11/19/12	Thomas William Dickson	120176
11/19/12	Scott Patrick Archer	120186
11/19/12	Benjamin Christopher Free	120211
11/19/12	Ralph Jones Hiers	120066
11/19/12	Eric Jerome Carter	120003 120102
1/7/13	Michael David Mann	120193
1/7/13	DeVona Bryant Roseberry	120220
2/11/13	S. Quinn Johnson	120117 120258 120259
3/11/13	Brent Edward Sherota	120254 120161
3/12/13	Mary Jo Workman	120291
4/29/13	Michael René Berlon	120300
4/29/13	Jonathan O. Oden	130002

INTERIM SUSPENSIONS LIFTED

ORDER DATE	RESPONDENT	DOCKET
6/5/12	Lorraine Ruth Silvo	110183
7/9/12	Thomas Edward Dixon	110152
8/1/12	R. Kipling Jones	120051
8/29/12	Kenneth H. Schatten	110230
10/2/12	William Charles Lea	120121
12/20/12	Thomas William Dickson	120176
12/20/12	Eric Jerome Carter	120003 120121
2/25/13	DeVona Bryant Roseberry	120220
4/8/13	Brent Edward Sherota	120254 120161
4/8/13	Mary Jo Workman	120291

DISBARMENTS / VOLUNTARY SURRENDERS

DATE OF ORDER	RESPONDENT	DOCKET
5/7/12	Nerrylle Manning-Wallace	5576
5/7/12	Scott Michael Herrmann	6136
5/7/12	A. Lee Hayes	6221
5/7/12	Robert E. Bach	6076 6077 6078 6079 6080 6081 6082 6083
6/18/12	John Lee Scott	6127
6/25/12	Steven Hyman Hurwitz	6249
7/2/12	William M. Peterson	6219 6240
7/2/12	Marcus L. Vickers	5717
10/1/12	Gregory E. Stuhler	6125
10/1/12	Romin Vincent Alavi	6163
10/1/12	Arthur L. Gibson	6250
10/1/12	Wayne Andrew Williams	5933
10/1/12	Lisa M. Cummings	6263 6264 6262
10/1/12	Wendel Lawrence Bowie	6285 6230 6286
10/15/12	Dana Posey Gentry	6279 6280 6281
10/29/12	Patrick Jeffery Stubbs	6213

11/19/12	Joseph Seth Shaw	6291
1/22/13	Benjamin Christopher Free	6310 6311 6312 6313 6314
1/22/13	David Alan Friedman	6287
3/4/13	Scott Patrick Archer	6359 6360
3/4/13	Zondra Taylor Hutto	6268
3/18/13	Charles Bailey Mullins II	6373
3/25/13	Thomas W. Dickson	6377
4/15/13	Kevin Eugene Hooks	6044 6045 6140 6141 6142 6143 6215
4/15/13	Marion Jeanne Browning-Baker	6041
4/29/13	Charles W. Field	6251

REINSTATEMENTS GRANTED

DATE OF ORDER	RESPONDENT	DOCKET
1/7/13	Morris P. Fair Jr.	5681
1/22/13	Benjamin Lanier Bagwell	5726 5727 5728 5729 5730