



State Bar
of Georgia

Atlanta Evergreen Marriott • June 18-21 • Stone Mountain, GA

STATE BAR OF GEORGIA

2015 REPORT OF THE

OFFICE OF THE

GENERAL COUNSEL

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REPORT OF THE GENERAL COUNSEL

by Paula J. Frederick, General Counsel

I hope that you will review the Annual Report of the Office of the General Counsel when it is posted to the Bar's website later this month. It includes 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 list of the Supreme Court Orders issued in disciplinary cases between May 1, 2014, and April 30, 2015; for access to an order simply click on the lawyer's name in the Member Directory. If you have any questions about the work of the Office feel free to contact me.

You and other dedicated Bar volunteers work along with the staff of the Office of the General Counsel each year to ensure that the disciplinary process operates smoothly. 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, retired in September after 15 years with the Bar and a 37-year legal career. We were able to persuade longtime Bar volunteer William "Bill" NeSmith to leave his solo practice in Americus and join us in the Office of the General Counsel, where he assumed Bob's duties as Deputy General Counsel in October. Bill is responsible for drafting changes to the Bar Rules, staffing the Clients' Security Fund, and

managing the Bar Counsel unit. Paralegal Betty Derrickson conducts the initial review of Clients' Security Fund files and coordinates the work of the Fund. Longtime Assistant General Counsel John Shiptenko was promoted to Senior Assistant General Counsel this Fall in recognition of his 18 years of service and increasing responsibility for all Bar Counsel matters. John 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 and prosecutes disciplinary cases. Assistant General Counsel Becky Hall, Tina Petrig and William "Bill" Cobb continue to serve as ethics and disciplinary counsel to the Bar assisted by investigators Lamar Jackson and Dean Veenstra.

Grievance Counsel Carmen Rojas Rafter resigned and moved to Florida early in the Bar year. Her replacement, Wolanda Shelton, started with the Office in July. Wolanda brings a wealth of experience to her new role as Grievance Counsel, including 13 years of experience as a public defender, federal defender and owner of her own law practice. With assistance from paralegal Len Carlin and legal secretary Cathe Payne, Wolanda 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 Putnam Kelly serves as Trust Account Overdraft Notification Coordinator.

REPORT OF THE GENERAL COUNSEL

Paralegals Carolyn Williams and Kathy Jackson, legal secretaries Deborah Grant and 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. The Helpline averages 21 calls, letters or email requests each weekday.

CONTINUING LEGAL EDUCATION

As always, the Office of the General Counsel provides staff counsel to speak at CLE seminars and to local bar groups upon request. This year OGC lawyers participated in more than 60 CLE presentations.

COMMITTEES

OGC staff also worked with the Civil Legal Services Task Force, the Disciplinary Rules and Procedures Committee, the Advisory Committee on Legislation, the Insurance Committee, the Task Force on E-Discovery, the International Trade in Legal Services Committee and the Elections 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.

REPORT OF THE GENERAL COUNSEL

Year-to-Date Report on Lawyer Regulation May 1, 2014, through April 30, 2015

Grievance forms requested and sent to public.....	3,224
Grievance forms sent back to Office of General Counsel for screening.....	1,997
Grievances pending as of 4/30/2014.....	403
TOTAL.....	2,400
Grievances referred to State Disciplinary Board members.....	207
Grievances being screened by Grievance Counsel (GC)	349
Grievances closed by Grievance Counsel.....	1,808
Grievances moved to moot status by GC after attorney was disbarred.....	36
TOTAL.....	2,400

Regulatory Action May 1, 2014, through April 30, 2015

	<u>Attorneys</u>	<u>Cases</u>
Letters of Admonition Accepted	18	19
Investigative Panel Reprimands Administered	16	19
Review Panel Reprimands	8	11
Public Reprimands	4	7
Suspensions	26	32
Disbarments/Voluntary Surrenders	<u>22</u>	<u>35</u>
TOTAL	94	123
Reinstatements Granted	8	
Reinstatements Denied	0	

INVESTIGATIVE PANEL

by Laverne Lewis Gaskins, 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 2014-15 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 Columbus, Athens, Clarkesville, Jekyll Island, Atlanta, Adairsville, Cartersville, Young Harris and Amelia Island, Fla.

The Bar received more requests for grievance forms this year (3,224) than last (3,192). The number of grievance forms returned to the Office of the General Counsel also increased. Last year's figure was 1,857; this year 1,997 forms were returned for screening and further consideration.

After review by an Assistant General Counsel, 1,808 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 207 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 an increase from 188 such grievances in 2014. 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. Fifty-seven grievances were dismissed, 19 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and thirty-six cases met the "probable cause" test and were returned to the Office of the General Counsel for prosecution. This represents a decrease from 151 such cases last year. Ninety cases are still under consideration by the Panel, an increase from 73 such cases last year.

Thirty-eight 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 the following during 2014-15:

CASES

Investigative Panel Reprimands.....	19
Letters of Formal Admonition.....	19
Cases Dismissed with Letters of Instruction.....	19
Interim Suspensions.....	16

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

STATE DISCIPLINARY BOARD

INVESTIGATIVE PANEL

this necessary task. They are:

DISTRICT 1

Christian J. Steinmetz, III, *Savannah*
J. Maria Waters, *Pooler*

DISTRICT 2

John M. Stephenson, *Albany*
Laverne Lewis Gaskins, *Valdosta*

DISTRICT 3

Donna S. Hix, *Columbus*

DISTRICT 4

Katherine K. Wood, *Atlanta*
Sherry Boston, *Decatur*

DISTRICT 5

William Hickerson Thomas, Jr., *Atlanta*
Karen Brown Williams, *Atlanta*

DISTRICT 6

Delia T. Crouch, *Newnan*
Andrew J. Whalen, *Griffin*

DISTRICT 7

Christopher A. Townley, *Rossville*
Dale Pearson Beardsley, *Atlanta*

DISTRICT 8

Donald W. Huskins, *Eatonton*
John D. Newberry, *Gray*

DISTRICT 9

Ramon Alvarado, *Lawrenceville*
Melody A. Glouton, *Duluth*

DISTRICT 10

Larry L. Smith, *Augusta*
Anna Green Bolden, *Winder*

AT LARGE

Daniel S. Reinhardt, *Atlanta*
John G. Haubenreich, *Atlanta*

We have two ex-officio members, the president-elect of the State Bar of Georgia, Robert J. Kauffman, *Douglasville* (term expiring), and the president-elect of the Young Lawyers Division, John R.B. (Jack) Long (term expiring).

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

Jennifer M. Davis, *Atlanta*

Mark A. Douglas, *Decatur*

Michael A. Fuller, *Macon*

Carol Fullerton, *Albany*

Elizabeth King, *Atlanta*

David Richards, *Stone Mountain*

STATE DISCIPLINARY BOARD REVIEW PANEL

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, 2014, to April 30, 2015:

FORM OF DISCIPLINE	CASES	LAWYERS
Disbarments/ Voluntary Surrenders	35	22
Suspensions	32	26
Public Reprimands	7	4
Review Panel Reprimands	11	8

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*

P. Alice Rogers, *Atlanta*

Stuart F. Sligh, *Savannah*

STATE DISCIPLINARY BOARD REVIEW PANEL

LAWYER MEMBERS

Northern District

J. Robert Persons, *Atlanta*
Anthony B. Askew, *Atlanta*
C. Bradford Marsh, *Atlanta*

Middle District

Jeffery O'Neal Monroe, *Macon*
Oliver Wendell Horne, *Macon*
Ralph F. Simpson, *Tifton*

Southern District

Aimee Pickett Sanders, *Augusta*
Thomas R. Burnside III, *Augusta*
Sarah Brown Akins, *Savannah*

EX-OFFICIO MEMBERS

Charles L. Ruffin, *Macon* (term expiring)
Darrell L. Sutton, *Marietta* (term expiring)

FORMAL ADVISORY OPINION BOARD

by C. Bradford Marsh, 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. For the 2014-15 Bar year, the Formal Advisory Opinion Board is comprised of the following lawyers:

MEMBERS AT LARGE TERM

Edward B. Krugman, <i>Atlanta</i>	2013–2015
William Travis Sakrison, <i>Atlanta</i>	2013–2015
Vice-chair	
Jeffrey Hobart Schneider, <i>Atlanta</i>	2014–2016
Letitia A. McDonald, <i>Atlanta</i>	2014–2016
Mary A. Prebula, <i>Duluth</i>	2014–2016

GEORGIA TRIAL LAWYERS ASSOCIATION

David N. Lefkowitz, <i>Atlanta</i>	2014–2016
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GEORGIA DEFENSE LAWYERS ASSOCIATION

Jacob Edward Daly, <i>Atlanta</i>	2013–2015
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GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Holly Wilkinson Veal, <i>McDonough</i>	2014–2016
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GEORGIA DISTRICT ATTORNEY'S ASSOCIATION

Kenneth W. Mauldin, <i>Athens</i>	2014–2016
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YOUNG LAWYERS DIVISION

Christopher R. Abrego, <i>Atlanta</i>	2013–2015
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EMORY UNIVERSITY

Melissa D. Carter, <i>Atlanta</i>	2014–2016
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UNIVERSITY OF GEORGIA

Prof. Lonnie T. Brown Jr., <i>Athens</i>	2013–2015
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MERCER UNIVERSITY

Prof. Patrick E. Longan, <i>Macon</i>	2013–2015
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GEORGIA STATE UNIVERSITY

Prof. Nicole G. Iannarone, <i>Atlanta</i>	2014–2016
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ATLANTA'S JOHN MARSHALL LAW SCHOOL

Prof. Jeffrey Alan Van Detta, <i>Atlanta</i>	2013–2015
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INVESTIGATIVE PANEL

Katherine K. Wood, <i>Atlanta</i>	2014–2015
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REVIEW PANEL

Chair	
C. Bradford Marsh, <i>Atlanta</i>	2014–2015

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, whether there are existing opinions that adequately address the issue raised in the request, and the nature of the prospective conduct. This report is a synopsis of the Board's activities during the 2014-15 Bar year.

The Formal Advisory Opinion Board received four new requests for formal advisory opinions.

FORMAL ADVISORY OPINION BOARD

The issues presented and the status of the requests are as follows:

Formal Advisory Opinion Request No. 14-R2

Regarding the appearance of impropriety and unfairness in a civil family law matter where opposing counsel is a member of the Board of Commissioners in the County in which the case was heard.

The Formal Advisory Opinion Board declined this request determining the request did not address prospective conduct, but related to a matter that was the subject of ongoing litigation.

Formal Advisory Opinion Request No. 14-R3

Ethical propriety of an attorney employed as a part-time prosecutor serving as counsel in other criminal and/or civil matters.

The Formal Advisory Opinion Board accepted this request for the drafting of a formal advisory opinion and is in the process of drafting a proposed opinion based on the current Georgia Rules of Professional Conduct.

Formal Advisory Opinion Request No. 14-R4

Should superior court judges recuse themselves on any contested matter in which an attorney has aided and advised their client to file a judicial complaint against the judge?

The Formal Advisory Opinion Board declined this request determining the issues raised in the request regard judicial matters, which should be addressed by the Judicial Code of Conduct, and do not regard matters that invoke the jurisdiction of the Board.

Formal Advisory Opinion Request No. 15-R1

Whether a Georgia Bar member's use of the word "group" in his or her firm's name is misleading or violates any Georgia Rule of Professional Conduct if there is only one attorney in the firm.

This request is pending the Board's review. At its next meeting, the Board will consider whether to accept or decline the request for the drafting of a formal advisory opinion.

The following request for a formal advisory opinion was received and initially accepted in the 2013-14 Bar year. However, after further consideration, the Board declined the request determining the question presented cannot be answered without interpreting substantive law issues, which is outside the purview of the Board. The issue presented in the request is:

Formal Advisory Opinion Request 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.?

During the 2013-14 Bar year, the Formal Advisory Opinion Board approved Proposed Formal Advisory Opinion No 10-R2, filed it with the Supreme Court of Georgia and sought discretionary review from the Court. The Court issued an order granting discretionary review on May 19, 2014. On Sept. 22, 2014, the Supreme Court of Georgia approved the proposed opinion and it became Formal Advisory Opinion No. 13-1. Pursuant to Bar Rule 4-403(e), the opinion is binding all members of the State Bar of Georgia. The Supreme Court shall accord the opinion with

OPINION BOARD

the same precedential authority given to the regularly published judicial opinions of the Court. The ethical questions addressed by the opinion are found below.

Formal Advisory Opinion No. 13-1 (previously known as Proposed Formal Advisory Opinion No 10-R2)

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?*

In December 2012, the Formal Advisory Opinion Board began a review of existing formal advisory opinions to determine whether the amendments to the Georgia Rules of Professional Conduct, issued by the Supreme Court of Georgia on Nov. 3, 2011, impact the substance and/or conclusion of the opinions. The Formal Advisory Opinion Board has completed its review of the opinions. Following is the result of the review:

The following opinions were impacted by the Nov. 3, 2011, amendments to the Georgia Rules of Professional Conduct; however, the amendments did not change the substance or conclusion of the opinions. The Board determined that Bar members can be notified of the impact the amendments have on the opinions by adding headnotes to the

opinions or modifying existing headnotes to the opinions:

FAO No. 87-6	FAO No. 03-3
FAO No. 91-1	FAO No. 05-7
FAO No. 91-2	FAO No. 05-8
FAO No. 98-4	FAO No. 05-9
FAO No. 01-1	FAO No. 05-11

The Nov. 3, 2011, amendments to the Georgia Rules of Professional Conduct impacted the substance and/or conclusion of FAO No. 10-2 and FAO No. 03-2, which warranted a redrafting of the opinions. The Board has approved the redrafted versions and, with the approval of the Supreme Court of Georgia, shall treat the redrafted versions like new opinions that will be processed and published in compliance with Bar Rule 4-403(c).

Formal Advisory Opinions can be found in the *2014-2015 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, Senior 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.

OVERDRAFT NOTIFICATION PROGRAM

by Regina Putman-Kelley, Trust Account Overdraft Notification Coordinator

The Overdraft Notification Program received 443 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, two overdrafts were reported to the State Bar on the trust accounts of lawyers licensed to practice in other jurisdictions, three notices were received in error on the general business account of a non-lawyer entity, two notices were received on the trust accounts of two deceased lawyers, one notice was received on the trust account of a disbarred lawyer, and two attorney trust accounts were erroneously reported to the State Bar as overdrawn. A total of 285 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, 1 file was referred to the Law Practice Management Program, and 28 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 2014-15 remain open, pending final review and disposition.)

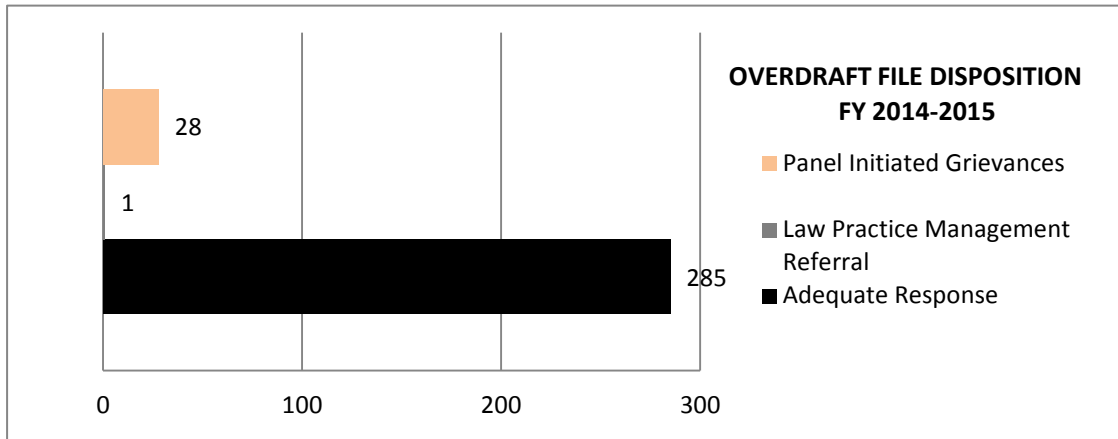
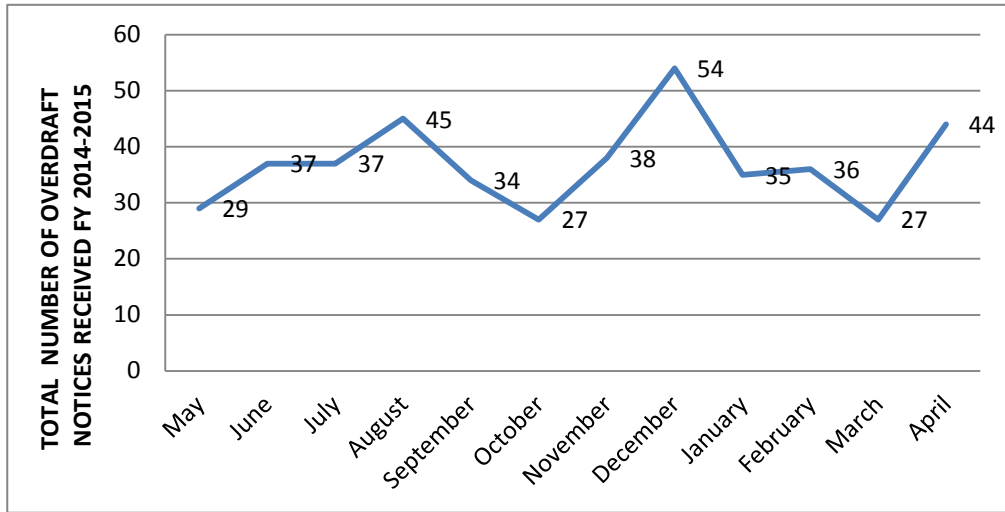
FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES FOR ATTORNEY TRUST ACCOUNTS

Bank failures and mergers over the past few years 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.

Month	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
2014/2015					
May	29	32	1	1	34
June	37	19	0	1	20
July	37	12	0	1	13
August	45	28	0	3	31
September	34	15	0	4	19
October	27	38	0	1	39
November	38	17	0	0	17
December	54	24	0	5	29
January	35	22	0	6	28
February	36	17	0	1	18
March	27	23	0	3	26
April	44	38	0	2	40
TOTALS:	443	285	1	28	314
PERCENTAGES:		91%	0.63%	8.59%	

OVERDRAFT

NOTIFICATION PROGRAM



PRO HAC VICE PROGRAM

by Kathy S. Jackson, Paralegal

By order of Nov. 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 Sept. 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.

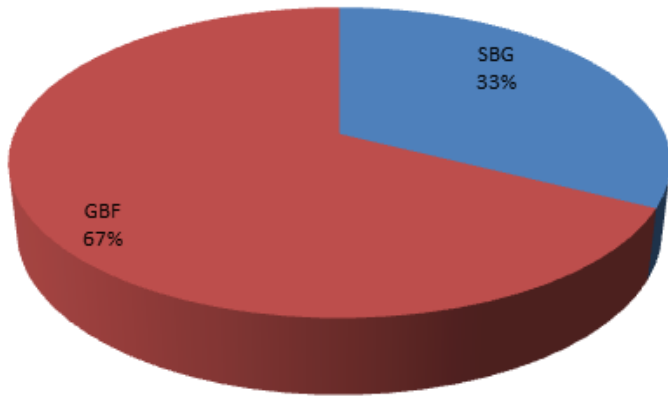
Following its Feb. 27, 2014 meeting, the Civil Legal Services Task Force proposed increasing the *pro hac vice* fee to generate money for civil legal services. Applicants would pay a \$275 for the first application filed in a calendar year and \$75 for any additional applications filed in the same calendar year. Applicants would also be required to pay a \$200 annual fee on or before Jan. 15 for each subsequent year the applicant remains admitted *pro hac vice*. All fees above \$75 would be transferred to the Georgia Bar Foundation.

In its Sept. 4, 2014, order, the Supreme Court of Georgia amended Rule 4.4 to adopt the proposed changes from the Civil Legal Services Task Force.

During the period of May 1, 2014, through April 30, 2015, the Office of the General Counsel reviewed 719 *pro hac vice* applications. Fifteen applicants sought exemption from the application fee due to *pro bono* representation. The Office of the General Counsel has filed 34 responses with Georgia courts regarding the eligibility of the applicant. The Office of the General Counsel collected a total of \$260,920 from *pro hac vice* applicants. Charts with a breakdown of the fees received may be found on page 14.

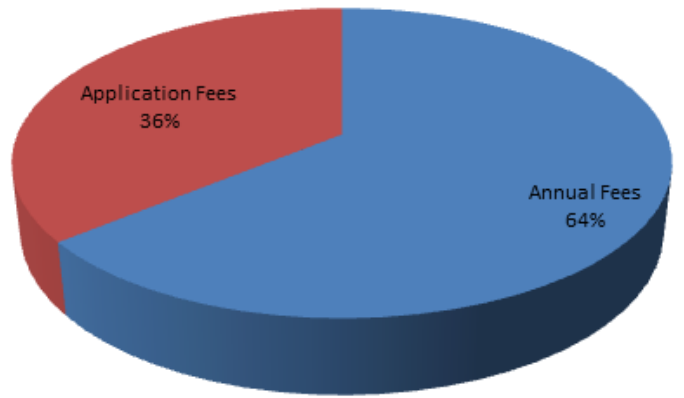
PROGRAM

Total Pro Hac Vice Fees Received



The State Bar of Georgia (SBG) collected a total of \$260,920 for pro hac vice fees. The fees were divided between the SBG and the Georgia Bar Foundation (GBF). The SBG received \$84,920 from the total collected. The GBF received \$176,000 from the total collected.

Georgia Bar Foundation Fees Received



The GBF received a total of \$176,000 from pro hac vice annual and application fees. The GBF received \$112,800 from annual fees and \$63,200 from application fees.

AMENDMENTS TO BAR RULES AND BYLAWS

by William D. NeSmith III, Deputy General Counsel

Since the last operational year there has been a change to Rule 1.15(I) (Safekeeping Property–General); Rule 1.15(II) (Safekeeping Property–Trust Account and IOLTA); Rule 1.15(III) (Record Keeping; Trust Account Overdraft Notification; Examination of Records; and Part XV regarding the Georgia Bar Foundation, effective Jan. 1, 2016, to read as follows:

PART IV

GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1

GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

PART ONE

CLIENT-LAWYER RELATIONSHIP

...

RULE 1.15(D). SAFEKEEPING PROPERTY– GENERAL.

(a) A lawyer shall hold funds or other property of clients or third persons that are in a lawyer’s possession in connection with a representation separate from the lawyer’s own funds or other property. Funds shall be kept in one or more separate accounts maintained in an approved institution as defined by Rule 1.15(III) (c)(1). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) For the purposes of this Rule, a lawyer may not disregard a third person’s interest in funds or other property in the lawyer’s possession if:

- (1) the interest is known to the lawyer, and
- (2) the interest is based upon one of the following:
 - (i) A statutory lien;

- (ii) A final judgment addressing disposition of those funds or property; or
- (iii) A written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property.

The lawyer may disregard the third person’s claimed interest if the lawyer reasonably concludes that there is a valid defense to such lien, judgment, or agreement.

(c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(d) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and a client or third person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property as to which the interests are not in dispute.

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

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer’s business and personal property and, if monies, in one or more trust accounts. Separate trust accounts

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may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration or interpleader. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[3A] In those cases where it is not possible to ascertain who is entitled to disputed funds or other property held by the lawyer, the lawyer may hold such disputed funds for a reasonable period of time while the interested parties attempt to resolve the dispute. If a resolution cannot be reached, it would be appropriate for a lawyer to interplead such disputed funds or property.

[4] A "clients' security fund" provides a means through the collective efforts of the State Bar of Georgia to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

RULE 1.15(II). SAFEKEEPING PROPERTY – TRUST ACCOUNT AND IOLTA.

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner,

or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available one or more trust accounts as required by these Rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from a trust account.

(b) No personal funds shall ever be deposited in a lawyer's trust account, except that unearned lawyer's fees may be so held until the same are earned. Sufficient personal funds of the lawyer may be kept in the trust account to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or third person. No funds shall be withdrawn from such trust accounts for the personal use of the lawyer maintaining the account except earned lawyer's fees debited against the account of a specific client and recorded as such.

(c) All client's funds shall be placed in either an interest-bearing account at an approved institution with the interest being paid to the client or an interest-bearing (IOLTA) account at an approved institution with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-bearing trust account in an approved institution as defined in Rule 1.15(III)(c)(1), with the interest to be paid to the client.

(i) No earnings from such an interest-bearing account shall be made available to a lawyer or law firm.

(ii) Funds in such an interest-bearing account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.

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(2) With respect to funds which are nominal in amount or are to be held for a short period of time, such that there can be no reasonable expectation of a positive net return to the client or third person, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) at an approved institution as defined in Rule 1.15(III)(c)(1) in compliance with the following provisions:

- (i) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.
- (ii) Funds in each IOLTA Account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.
- (iii) As required by Rule 15-103, the rate of interest payable on any IOLTA Account shall not be less than the rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time periods or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.
- (iv) Lawyers or law firms shall direct the depository institution:
 - (A) to remit to the Georgia Bar Foundation interest or dividends, net of any allowable reasonable fees as defined in Rule 15-102(c), on the average monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of interest earned on

that account for any month, and any charges or fees that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution;

- (B) to transmit with each remittance to the Georgia Bar Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is being applied, the gross interest earned, the types and amounts of service charges or fees applied, and the amount of the net interest remittance;
- (C) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest clients' funds in a pooled interest-bearing account.

(4) Whether the funds are designated short-term or nominal or not, a lawyer or law firm may, at the request of the client, deposit funds into a separate interest-bearing account and remit all interest earned, or interest earned net of charges, to the client or clients.

The maximum penalty for a violation of Rule 1.15(II)(a) and Rule 1.15(II)(b) is disbarment. The maximum penalty for a violation of Rule 1.15(II)(c) is a public reprimand.

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Comment

[1] The personal money permitted to be kept in the lawyer's trust account by this Rule shall not be used for any purpose other than to cover the bank fees and if used for any other purpose the lawyer shall have violated this Rule. If the lawyer wishes to reduce the amount of personal money in the trust account, the change must be properly noted in the lawyer's financial records and the monies transferred to the lawyer's business account.

[2] Nothing in this Rule shall prohibit a lawyer from removing from the trust account fees which have been earned on a regular basis which coincides with the lawyer's billing cycles rather than removing the fees earned on an hour-by-hour basis.

[3] In determining whether funds of a client or other beneficiary can earn income in excess of costs, the lawyer may consider the following factors:

- (a) the amount of funds to be deposited;
- (b) the expected duration of the deposit, including the likelihood of delay in the matter with respect to which the funds are held;
- (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
- (d) the cost of establishing and administering a non-IOLTA Trust Account for the benefit of the client or other beneficiary, including service charges, the costs of the lawyer's services and the costs of preparing any tax reports that may be required;
- (e) the capability of financial institutions, lawyers, or law firms to calculate and pay earnings to individual clients; and
- (f) any other circumstances that affect the ability of the funds to earn a net return for the client or other beneficiary.

[4] The lawyer or law firm should review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

RULE 1.15(III). RECORD KEEPING; TRUST ACCOUNT OVERDRAFT NOTIFICATION; EXAMINATION OF RECORDS.

(a) Required Bank Accounts: Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution as defined by this Rule, a trust account or accounts, separate from any business and personal accounts. Funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited into this account. The financial institution shall be in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person.

(b) Description of Accounts:

(1) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as an "Attorney Trust Account," "Attorney Escrow Account," "IOLTA Account," or "Attorney Fiduciary Account." The name of the lawyer or law firm responsible for the account shall also appear on all deposit slips and checks drawn thereon.

(2) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," an "Operating Account" or a "Regular Account."

(3) Nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any other fiduciary capacity.

(c) Procedure:

(1) Approved Institutions:

- (i) A lawyer shall maintain his or her trust account only in a financial institution approved by the State Bar of Georgia,

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which shall annually publish a list of approved institutions.

(A) Such institutions shall be located within the State of Georgia, within the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person. The institution shall be authorized by federal or state law to do business in the jurisdiction where located and shall be federally insured. A financial institution shall be approved as a depository for lawyer trust accounts if it abides by an agreement to report to the Office of the General Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty days notice in writing to the Office of General Counsel. The agreement shall be filed with the Office of the General Counsel on a form approved by the Investigative Panel of the State Disciplinary Board. The agreement shall provide that all reports made by the financial institution shall be in writing and shall include the same information customarily forwarded to the depositor when an instrument is presented against insufficient funds. If the financial institution is located outside of the State of Georgia, it shall also agree in writing to honor

any properly issued State Bar of Georgia subpoena.

(B) In addition to the requirements above, the financial institution must also be approved by the Georgia Bar Foundation and agree to offer IOLTA Accounts in compliance with the additional requirements set out in Part XV of the Rules of the State Bar of Georgia.

(ii) The Georgia Bar Foundation may waive the provisions of this Rule in whole or in part for good cause shown. A lawyer or law firm may appeal the decision of the Georgia Bar Foundation by application to the Supreme Court of Georgia.

(2) Timing of Reports:

(i) The financial institution shall file a report with the Office of the General Counsel of the State Bar of Georgia in every instance where a properly payable instrument is presented against a lawyer trust account containing insufficient funds and said instrument is not honored within three business days of presentation.

(ii) The report shall be filed with the Office of the General Counsel within fifteen days of the date of the presentation of the instrument, even if the instrument is subsequently honored after the three business days provided in paragraph (2)(i) above.

(3) Nothing shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule.

(4) Every lawyer and law firm maintaining a trust account as provided by these Rules is hereby and shall be conclusively deemed to have consented to the reporting and production

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requirements mandated by this Rule and shall indemnify and hold harmless each financial institution for its compliance with the aforesaid reporting and production requirements.

(d) **Effect on Financial Institution of Compliance:** The agreement by a financial institution to offer accounts pursuant to this Rule shall be a procedure to advise the State Disciplinary Board of conduct by lawyers and shall not be deemed to create a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

(e) **Availability of Records:** A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Investigative Panel of the State Disciplinary Board or the Supreme Court. This obligation shall be in addition to and not in lieu of the procedures contained in Part IV of these Rules for the production of documents and evidence.

(f) **Audit for Cause:** A lawyer shall not fail to submit to an Audit for Cause conducted by the State Disciplinary Board pursuant to Bar Rule 4-111.

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

Comment

[1] Each financial institution wishing to be approved as a depository of client trust funds must file an overdraft notification agreement with the Office of the General Counsel of the State Bar of Georgia. The State Bar of Georgia will publish a list of approved institutions at least annually.

[2] The overdraft agreement requires that all overdrafts be reported to the Office of the General Counsel of the State Bar of Georgia whether or not the instrument is honored. It is improper for a lawyer to accept “overdraft privileges” or any other arrangement for a personal loan on a client trust account, particularly in exchange for the institution’s promise to delay or not to report an overdraft. The institution must notify the Office of the General Counsel of all overdrafts even where the institution is certain that its

own error caused the overdraft or that the matter could have been resolved between the institution and the lawyer within a reasonable period of time.

[3] The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional errors. The provision merely intends that the Office of the General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken.

Waiver

[4] A lawyer may seek to have the provisions of this Rule waived if the lawyer or law firm has its principal office in a county where no bank, credit union, or savings and loan association will agree or has agreed to comply with the provisions of this Rule. Other grounds for requesting a waiver may include significant financial or business harm to the lawyer or law firm, such as where the unapproved bank is a client of the lawyer or law firm or where the lawyer serves on the board of the unapproved bank.

[5] The request for a waiver should be in writing, sent to the Georgia Bar Foundation, and should include sufficient information to establish good cause for the requested waiver.

[6] The Georgia Bar Foundation may request additional information from the lawyer or law firm if necessary to determine good cause.

Audits

[7] Every lawyer’s financial records and trust account records are required records and therefore are properly subject to audit for cause. The audit provisions are intended to uncover errors and omissions before the public is harmed, to deter those lawyers who may be tempted to misuse client’s funds and to educate and instruct lawyers as to proper trust accounting methods. Although the auditors will be employed by the Office of the General Counsel of the State Bar of Georgia, it is intended that disciplinary proceedings will be brought only when the auditors have reasonable cause to believe discrepancies or irregularities exist. Otherwise, the auditors should only educate the lawyer and the lawyer’s staff as to proper trust accounting methods.

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[8] An audit for cause may be conducted at any time and without advance notice if the Office of the General Counsel receives sufficient evidence that a lawyer poses a threat of harm to clients or the public. The Office of the General Counsel must have the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia to conduct an audit for cause.

...

PART XV

GEORGIA BAR FOUNDATION

Preamble

The Georgia Bar Foundation (“the Foundation”) is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive and distribute Interest On Lawyer Trust Account (“IOLTA”) funds to support legal services for the poor, to improve the administration of justice, to provide legal education to Georgia’s children, to provide educational programs for adults in order to advance understanding of democracy and our system of government, to aid children involved in the justice system, and to promote professionalism in the practice of law.

CHAPTER 1

IOLTA ACCOUNTS

Rule 15-101. BANK ACCOUNTS.

(a) Every lawyer who practices law in Georgia, whether as a sole practitioner or as a member of a firm, association or professional corporation, who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain or have available an interest-bearing trust account or accounts.

(b) An “IOLTA Account” is a trust account benefiting the Foundation. The interest generated by an IOLTA Account shall be paid to the Georgia Bar Foundation, Inc. as hereinafter provided.

Rule 15-102. DEFINITIONS.

(a) An “IOLTA Account” means a trust account benefiting the Foundation, established in an approved institution for the deposit of pooled nominal or short-

term funds of clients or third persons, and meeting the requirements of the Foundation as further detailed below. The account product may be an interest-bearing checking account; a money market account with, or tied to, check writing; a sweep account, portions of which are regularly moved into a government money market fund or daily overnight financial institution repurchase agreement invested solely in, or fully collateralized by, United States government securities; or an open-end money market fund solely invested in, or fully collateralized by, United States government securities.

(1) “Nominal or short-term” describes funds of a client or third person that the lawyer has determined cannot provide a positive net return to the client or third person.

(2) “Open-end money market fund” is a fund that identifies itself as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, having total assets of at least \$250,000,000.

(3) “United States government securities” are United States Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(b) An “approved institution” is a bank or savings and loan association which is an approved institution as defined in Rule 1.15(III)(c)(1) and which voluntarily chooses to offer IOLTA Accounts consistent with the additional requirements of this Rule, including:

(1) to remit to the Foundation interest or dividends, net of any allowable reasonable fees on the IOLTA Account, on the average monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of the interest earned on that account for any month, and any fees or charges that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution.

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(2) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is applied, the gross interest earned, the types and amounts of service charges or fees applied, and the amount of the net interest remittance.

(3) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(4) to pay comparable interest rates on IOLTA Accounts, as defined below at Rule 15-103.

(c) "Allowable reasonable fees" for IOLTA Accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, Federal deposit insurance fees, and sweep fees. ("Allowable reasonable fees" do not include check printing charges, NSF charges, overdraft interest charges, account reconciliation charges, stop payment charges, wire transfer fees, and courier fees. Such listing of excluded fees is not intended to be all inclusive.) All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts. Approved financial institutions may elect to waive any or all fees on IOLTA Accounts.

Rule 15-103. IOLTA ACCOUNTS; INTEREST RATES.

On any IOLTA Account, the rate of interest payable shall be:

(a) not less than the highest interest rate or dividend generally available from the approved institution to its non-IOLTA customers for each IOLTA Account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution

may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers. The institution also shall consider all product option types that it offers to its non-IOLTA customers, as noted at Rule 15-102(a), for an IOLTA Account by either establishing the applicable product as an IOLTA Account or paying the comparable interest rate or dividend on the IOLTA Account in lieu of actually establishing the comparable highest interest rate or dividend product; or

(b) alternatively, if an approved institution so chooses, a rate equal to the greater of (A) 0.65% per annum or (B) a benchmark interest rate, net of allowable reasonable fees, set by the Foundation, which shall be expressed as a percentage (an "index") of the federal funds target rate, as established from time to time by the Federal Reserve Board. In order to maintain an overall comparable rate, the Foundation will periodically, but not less than annually, publish its index. The index shall initially be 65% of the federal funds target rate.

(c) Approved institutions may choose to pay rates higher than comparable rates discussed above.

CHAPTER 2

INTERNAL RULES

Rule 15-201. MANAGEMENT AND DISBURSEMENT OF IOLTA FUNDS; INTERNAL PROCEDURES OF FOUNDATION.

(a) **Mandatory Grants.** The Georgia Bar Foundation, Inc. (the "Foundation"), which is the charitable arm of the Supreme Court of Georgia, is the named recipient of IOLTA funds. The Foundation shall pay to the Georgia Civil Justice Foundation ("GCJF") a grant of ten percent (10%) of all IOLTA revenues received, less administrative costs, during the immediately preceding calendar quarter. GCJF must maintain its tax-exempt charitable/educational status under Sections 115 and 170(c)(1) or under Section 501(c)(3) of the Internal Revenue Code, and the purposes and activities of the organization must remain consistent with the exempt

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purposes of the Foundation. If GCJF is determined either by the Internal Revenue Service or by the Georgia Department of Revenue to be a taxable entity at any time, or its purposes and activities become inconsistent with the exempt purposes of the Foundation, then the Foundation shall retain all IOLTA funds which would have been granted to GCJF.

(b) Reporting by Organizations. As a condition to continued receipt of IOLTA funds, the Foundation and GCJF shall each present a report of its activities including an audit of its finances to the Supreme Court of Georgia annually. GCJF shall also send to the Foundation a copy of its annual report and audit.

(c) Discretionary Grants. The Foundation shall develop procedures for regularly soliciting, evaluating, and funding grant applications from worthy law-related organizations that seek to provide civil legal assistance to needful Georgians, to improve the working and the efficiency of the judicial system, to provide legal education to Georgia's children, to provide assistance to children who are involved with the legal system, to provide educational programs for adults intended to promote a better understanding of our democratic system of government, or to foster professionalism in the practice of law.

(d) IOLTA Account Confidentiality. The Foundation will protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained in the course of managing IOLTA operations.

(e) Report to the Office of the General Counsel. The Foundation will provide the Office of the General Counsel with a list of approved financial institutions which have agreed to abide by the requirements of this Part XV of the Rules of the State Bar of Georgia. Such list will be updated with such additions and deletions as necessary to maintain its accuracy.

PROPOSED AMENDMENTS

Additionally, there are proposed amendments to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-104, Rule 4-106(f)(2), Rule 4-110, Rule 4-111, Rule 4-204, Rule 4-204.1, Rule 4-208.3, Rule 4-213, Rule 4-217, Rule 4-219, Rule 4-221, Rule 4-227, Rule 4-403(c) and (d), Rule 12-107, Rule 1.6, Rule 3.5, Rule 5.4, Rule 7.3 and Rule 8.4(d) be amended as set out herein below.

I.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-104. Mental Incapacity and Substance Abuse.

The Board of Governors of the State Bar of Georgia proposes that—Rule 4-104. Mental Incapacity and Substance Abuse.—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-104. Mental Incapacity and Substance Abuse.

...

(b) Upon a finding by either panel of the State Disciplinary Board that an attorney may be impaired or incapacitated to practice law due to mental incapacity or substance abuse, that panel may, in its sole discretion, make a confidential referral of the matter to the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance Program** for the purposes of confrontation and referral of the attorney to treatment centers and peer support groups. Either panel may, in its discretion, defer disciplinary findings and proceedings based upon the impairment or incapacitation of an attorney pending attempts by the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance**

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Program to afford the attorney an opportunity to begin recovery. In such situations the **Program** shall report to the referring panel and Bar counsel concerning the attorney's progress toward recovery.

(c) In the event of a finding by the Supreme Court of Georgia that a lawyer is impaired or incapacitated, the court may refer the matter to the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance Program**, before or after its entry of judgment under Bar Rules 4-219 or 4-220(a), so that rehabilitative aid may be provided to the impaired or incapacitated attorney. In such situations the ~~committee~~ **Program** shall be authorized to report to the court, either panel of the State Disciplinary Board and Bar counsel concerning the attorney's progress toward recovery.

If the proposed amendments to the Rule are adopted by the court, the amended-Rule 4-104. Mental Incapacity and Substance Abuse.-would read as follows:

Rule 4-104. Mental Incapacity and Substance Abuse.

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

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

Bar counsel concerning the attorney's progress toward recovery.

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

II.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-106(f)(2). Conviction of a Crime; Suspension and Disbarment.

The Board of Governors of the State Bar of Georgia proposes that-Rule 4-106(f) (2). Conviction of a Crime; Suspension and Disbarment.-be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

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

...

(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:

(i1) be disbarred under Rule 8.4, or

(ii2) be reinstated, or

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

...

If the proposed amendments to the Rule are adopted, the amended-Rule 4-106. Conviction of a Crime; Suspension and Disbarment.-would read 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 Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.

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

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

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

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

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

- (1) be disbarred under Rule 8.4; or
- (2) be reinstated; or
- (3) remain suspended pending retrial as a protection to the public; or
- (4) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these rules.

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

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

III.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of

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Professional Conduct and Enforcement Thereof; Rule 4-110. Definitions.

The Board of Governors of the State Bar of Georgia proposes that ~~Rule 4-110. Definitions.~~ be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-110. Definitions.

...

- (i) Notice of Discipline: A Notice by the Investigative Panel that the respondent will be subject to a disciplinary sanction for violation of one or more ~~Standards of Conduct~~ **Rules of Professional Conduct** unless the respondent affirmatively rejects the notice.

If the proposed amendment to the Rule is adopted, the amended ~~Rule 4-110. Definitions.~~ would read as follows:

Rule 4-110. Definitions.

- (a) Respondent: A person whose conduct is the subject of any disciplinary investigation or proceeding.
- (b) Confidential proceedings: Any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.
- (c) Public proceedings: Any proceeding under these rules which has been filed with the Supreme Court of Georgia.
- (d) Grievance/Memorandum of Grievance: An allegation of unethical conduct filed against an attorney.
- (e) Probable cause: A finding by the Investigative Panel that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the Bar Rules
- (f) Petition for Voluntary Surrender of License: A Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice

law in this State. A voluntary surrender of license is tantamount to disbarment.

(g) He, him or his: Generic pronouns including both male and female.

(h) Attorney: A member of the State Bar of Georgia or one authorized by law to practice law in the State of Georgia.

(i) Notice of Discipline: A Notice by the Investigative Panel that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

IV.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-111. Audit for Cause.

The Board of Governors of the State Bar of Georgia proposes that ~~Rule 4-111. Audit for Cause.~~ be amended by deleting the struck-through portions as set out below:

Rule 4-111. Audit for Cause.

Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause with the written approval of the Chairman of the Investigative Panel of the State Disciplinary Board and the President-elect of the State Bar of Georgia. Before approval can be granted, the lawyer shall be given notice that approval is being sought and be given an opportunity to appear and be heard. The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the persons giving the approval. The State Disciplinary Board must inform the person being audited that the audit is an Audit for Cause. ~~The failure of a lawyer to submit to an Audit for Cause shall be grounds for discipline pursuant to Standard 65.5.~~

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If the proposed amendment to the Rule is adopted, the amended-Rule 4-111. Audit for Cause.-would read as follows:

Rule 4-111. Audit for Cause.

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

V.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2, Disciplinary Proceedings; Rule 4-204. Preliminary Investigation by Investigative Panel-Generally.

The Board of Governors of the State Bar of Georgia proposes that-Rule 4-204. Preliminary Investigation by Investigative Panel-Generally.-be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-204. Preliminary Investigation by Investigative Panel - Generally.

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of its

members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these rules, it shall:

- (1) issue a letter of admonition;
- (2) issue an Investigative Panel Reprimand;
- (3) issue a Notice of Discipline; or
- (4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided.

All other cases may be either dismissed by the Investigative Panel or referred to the Fee Arbitration Committee or the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance Program**.

...

If the proposed amendment to the Rule is adopted, the amended-Rule 4-204. Preliminary Investigation by Investigative Panel-Generally-would read as follows:

Rule 4-204. Preliminary Investigation by Investigative Panel-Generally.

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of its members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these rules, it shall:

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- (1) issue a letter of admonition;
- (2) issue an Investigative Panel Reprimand;
- (3) issue a Notice of Discipline; or
- (4) refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided.

All other cases may be either dismissed by the Investigative Panel or referred to the Fee Arbitration Committee or the Lawyer Assistance Program.

(b) The primary investigation shall be conducted by the staff investigators, the staff lawyers of the Office of the General Counsel, and the member of the Investigative Panel responsible for the investigation. The Board of Governors of the State Bar of Georgia shall fund the Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

VI.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-204.1. Notice of Investigation.

The Board of Governors of the State Bar of Georgia proposes that—Rule 4-204.1. Notice of Investigation.—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-204.1. Notice of Investigation.

...

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

- (1) a statement that the grievance is being transmitted to the Investigative Panel, or subcommittee of the Investigative Panel;

- (2) a copy of the grievance;
- (3) a list of the ~~Standards of Conduct~~ **Rules** which appear to have been violated;
- (4) the name and address of the Panel member assigned to investigate the grievance and a list of the Panel, or subcommittee of the Panel, members;
- (5) a statement of respondent's right to challenge the competency, qualifications or objectivity of any Panel member;

...

If the proposed amendment to the Rule is adopted, the amended—Rule 4-204.1. Notice of Investigation.—would read as follows:

Rule 4-204.1. Notice of Investigation.

(a) Upon completion of its screening of a grievance under Rule 4-202, the Office of the General Counsel shall forward those grievances which appear to invoke the disciplinary jurisdiction of the State Bar of Georgia to the Investigative Panel, or subcommittee of the Investigative Panel by serving a Notice of Investigation upon the respondent.

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

- (1) a statement that the grievance is being transmitted to the Investigative Panel, or subcommittee of the Investigative Panel;
- (2) a copy of the grievance;
- (3) a list of the Rules which appear to have been violated;
- (4) the name and address of the Panel member assigned to investigate the grievance and a list of the Panel, or subcommittee of the Panel, members;
- (5) a statement of respondent's right to challenge the competency, qualifications or objectivity of any Panel member;

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(c) The form for the Notice of Investigation shall be approved by the Investigative Panel.

VII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-208.3. Rejection of Notice of Discipline.

The Board of Governors of the State Bar of Georgia proposes that–Rule 4-208.3. Rejection of Notice of Discipline.–be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-208.3. Rejection of 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 **as required by Rule 4-204.3** at or before the filing of the rejection. The respondent must also file a copy of such written response with the Clerk of the Supreme Court of Georgia at the time of filing the Notice of Rejection.

...

If the proposed amendment to the Rule is adopted, the amended – Rule 4-208.3. Rejection of Notice of Discipline. – would read 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 the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within 30 days following service of the Notice of Discipline.

(b) Any Notice of Rejection by the respondent shall be served by the respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the respondent. No rejection by the respondent shall be considered valid unless the respondent files a written response as required by Rule 4-204.3 at or before the filing of the rejection. The respondent must also file a copy of such written response with the Clerk of the Supreme Court of Georgia at the time of filing the Notice of Rejection.

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

VIII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-213. Evidentiary Hearing.

The Board of Governors of the State Bar of Georgia proposes that–Rule 4-213. Evidentiary Hearing.–be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-213. Evidentiary Hearing.

(a) Within 90 days after the filing of respondent’s answer to the formal complaint or the time for filing of the answer, whichever is later, the Special Master shall proceed to hear the case. The evidentiary hearing shall be stenographically reported and may be transcribed at the request and expense of the requesting party **and transcribed at the expense of the State Bar of Georgia**. When the hearing is complete, the Special Master shall proceed to make findings of fact, conclusions of law and a recommendation of discipline and file a report with the Review Panel or the Supreme Court of Georgia as hereinafter provided. Alleged

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errors in the trial may be reviewed by the Supreme Court of Georgia when the findings and recommendations of discipline of the Review Panel are filed with the court. There shall be no direct appeal from such proceedings of the Special Master.

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

If the proposed amendments to the Rule are adopted, the amended-Rule 4-213. Evidentiary Hearing.-would read as follows:

Rule 4-213. Evidentiary Hearing.

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

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

IX.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-217. Report of the Special Master to the Review Panel.

The Board of Governors of the State Bar of Georgia proposes that-Rule 4-217. Report of the Special Master to the Review Panel.-be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-217. Report of the Special Master to the Review Panel.

...

(d) Upon receipt of the Special Master's report and recommendation, either party may request review by the Review Panel as provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board in accordance with Bar Rule 4-221(f) and serve them on the opposing party within 30 days after the Special Master's report is filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report with the Review Panel. The responding party shall have ~~ten (10) days~~ **30 days** after service of the exceptions within which to respond.

If the proposed amendments to the Rule are adopted, the amended-Rule 4-217. Report of the Special Master to the Review Panel.-would read as follows:

Rule 4-217. Report of the Special Master to the Review Panel.

(a) Within 30 days from receipt of the transcript of the evidentiary hearing, the Special Master shall prepare a report which shall contain the following:

- (1) findings of fact on the issues raised by the formal complaint; and
- (2) conclusions of law on the issues raised by the pleadings of the parties; and
- (3) a recommendation of discipline.

(b) The Special Master shall file his or her original report and recommendation with the Clerk of the

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State Disciplinary Board and shall serve a copy on the respondent and counsel for the State Bar of Georgia pursuant to Rule 4-203.1.

(c) Thirty days after the Special Master's report and recommendation is filed, the Clerk of the State Disciplinary Board shall file the original record in the case directly with the Supreme Court of Georgia unless either party requests review by the Review Panel as provided in paragraph (d) of this Rule. In the event neither party requests review by the Review Panel and the matter goes directly to the Supreme Court of Georgia, both parties shall be deemed to have waived any right they may have under the rules to file exceptions with or make request for oral argument to the Supreme Court of Georgia. Any review undertaken by the Supreme Court of Georgia shall be solely on the original record.

(d) Upon receipt of the Special Master's report and recommendation, either party may request review by the Review Panel as provided in Rule 4-218. Such party shall file the request and exceptions with the Clerk of the State Disciplinary Board in accordance with Bar Rule 4-221(f) and serve them on the opposing party within 30 days after the Special Master's report is filed with the Clerk of the State Disciplinary Board. Upon receipt of a timely written request and exceptions, the Clerk of the State Disciplinary Board shall prepare and file the record and report with the Review Panel. The responding party shall have 30 days after service of the exceptions within which to respond.

X.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-219. Judgments and Protective Orders.

The Board of Governors of the State Bar of Georgia proposes that—Rule 4-219. Judgments and Protective Orders.—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-219. Judgments and Protective Orders.

(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court of Georgia, the respondent and the State Bar of Georgia may file with the court any written exceptions, supported by written argument, each may have to the report subject to the provisions of Rule 4-217(c). All such exceptions shall be filed with the court within ~~twenty days~~ 30 days of the date that the report is filed with the court and a copy served upon the opposing party. The responding party shall have an additional ~~twenty days~~ 30 days to file its response with the court. The court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The court will promptly consider the report of the Review Panel or the Special Master, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the court's judgment shall be transmitted to the State Bar of Georgia and the respondent by the court.

...

If the proposed amendments to the Rule are adopted, the amended—Rule 4-219. Judgments and Protective Orders—would read as follows:

Rule 4-219. Judgments and Protective Orders.

(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court of Georgia, the respondent and the State Bar of Georgia may file with the court any written exceptions, supported by written argument, each may have to the report subject to the provisions of Rule 4-217(c). All such exceptions shall be filed with the court within 30 days of the date that the report is filed with the court and a copy served upon the opposing party. The responding party shall have an additional 30 days to file its response with the court. The court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The court will promptly consider the report of the Review Panel or the Special Master, any exceptions,

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and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the court's judgment shall be transmitted to the State Bar of Georgia and the respondent by the court.

(b) In cases in which the Supreme Court of Georgia orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar of Georgia website, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c)

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

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

- (i) have any contact with the clients of the office either in person, by telephone, or in writing;
- (ii) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

XI.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-221. Procedures.

The Board of Governors of the State Bar of Georgia proposes that Rule 4-221. Procedures, be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-221. Procedures.

...

(g) Pleadings and Communications Privileged. Pleadings and oral and written statements of members of the State Disciplinary Board, members and designees of the ~~Committee on Lawyer Impairment~~ **Lawyer Assistance Program**, Special Masters, Bar Counsel and investigators, complainants, witnesses, and respondents and their counsel made to one another or filed in the record during any investigation, intervention, hearing or other disciplinary proceeding under this Part IV, and

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pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.

If the proposed amendments to the Rule are adopted, the amended–Rule 4-221. Procedures–would read as follows:

Rule 4-221. Procedures.

(a) Oaths. Before entering upon his duties as herein provided each member of the State Disciplinary Board and each Special Master shall subscribe to an oath to be administered by any person authorized to administer oaths under the laws of this State, such oath to be in writing and filed with the Executive Director of the State Bar of Georgia. The form of such oath shall be:

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

(b) Witnesses and Evidence; Contempt.

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

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

(i) disregard, in any manner whatever, of a subpoena issued pursuant to Rule 4-221(b) (1);

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

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

It shall be the duty of the chairperson of the affected Panel or Special Master to report the fact to the Chief Judge of the superior court in and for the county in which said investigation, trial or hearing is being held. The superior court shall have jurisdiction of the matter and shall follow the procedures for contempt as are applicable in the case of a witness subpoenaed to appear and give evidence on the trial of a civil case before the superior court under the laws in Georgia.

(3) Any member of the State Disciplinary Board and any Special Master shall have power to administer oaths and affirmations and to issue any subpoena herein provided for.

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

(5) All witnesses attending any hearing provided for under these rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil cases in the superior courts of this State under subpoena, and said fees shall be assessed against the parties to the proceedings under the rule of law applicable to civil suits in the superior courts of this State.

(6) Whenever the deposition of any person is to be taken in this State pursuant to the laws of another state, territory, province or commonwealth, or of the United States or of another country for use in attorney discipline,

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fitness or disability proceedings there, the chairperson of the Investigative Panel, or his or her designee upon petition, may issue a summons or subpoena as provided in this section to compel the attendance of witnesses and production of documents at such deposition.

(c) Venue of Hearings.

(1) The hearings on all complaints and charges against resident respondents shall be held in the county of residence of the respondent unless he otherwise agrees.

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

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

(d) Confidentiality of Investigations and Proceedings.

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

(2) After a proceeding under these rules is filed with the Supreme Court of Georgia, all evidentiary and motions hearings shall be open to the public and all reports rendered shall be public documents.

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

(4) The Office of the General Counsel of the State Bar of Georgia or the Investigative Panel of the State Disciplinary Board may reveal or authorize disclosure of information which

would otherwise be confidential under this rule under the following circumstances:

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

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

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

(iv) A complainant or lawyer representing the complainant may be notified of the status or disposition of the complaint.

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

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

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

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- (ii) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;
 - (iii) The Judicial Nominating Commission or the comparable body in other jurisdictions;
 - (iv) The Lawyer Assistance Program or the comparable body in other jurisdictions;
 - (v) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;
 - (vi) The Judicial Qualifications Commission or the comparable body in other jurisdictions;
 - (vii) The Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;
 - (viii) The Formal Advisory Opinion Board;
 - (ix) The Consumer Assistance Program;
 - (x) The General Counsel Overview Committee;
 - (xi) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and
 - (xii) The Unlicensed Practice of Law Department.
- (6) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a receiver to administer the files of a member of the State Bar of Georgia, shall not be confidential under this rule.
- (7) The Office of the General Counsel may reveal confidential information when required by law or court order.
- (8) The authority or discretion to reveal confidential information under this rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar of Georgia or the State Disciplinary Board under the Bar rules or applicable law.
- (9) Nothing in this rule shall prohibit the Office of the General Counsel or the Investigative Panel from interviewing potential witnesses or placing the Notice of Investigation out for service by sheriff or other authorized person.
- (10) Members of the Office of the General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent or third parties but are otherwise confidential under these rules by acknowledging the existence and status of the proceeding.
- (11) The State Bar of Georgia shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court Rules that was confidential when imposed, unless authorized to do so by said prior rules.
- (e) Burden of Proof; Evidence.
- (1) In all proceedings under this chapter, the burden of proof shall be on the State Bar of Georgia except for proceedings under Bar Rule 4-106.
- (2) In all proceedings under this chapter occurring after a finding of probable cause as described in Rule 4-204.4, the procedures and rules of evidence applicable in civil cases under the laws of Georgia shall apply, except that the quantum of proof required of the State Bar of Georgia shall be clear and convincing evidence.
- (f) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies

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served upon the Special Master and all parties to the disciplinary proceeding. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

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

XII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 2 Disciplinary Proceedings; Rule 4-227. Petitions for Voluntary Discipline.

The Board of Governors of the State Bar of Georgia proposes that—Rule 4-227. Petitions for Voluntary Discipline—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 4-227. Petitions for Voluntary Discipline.

...

(c) After the issuance of a formal complaint a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these rules.

(1) the petition shall be filed with the ~~Special Master who~~ **Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary**

proceeding. **The Special Master** shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefore. The Office of the General Counsel shall serve a copy of its response upon the respondent.

...

If the proposed amendments to the Rule are adopted, the amended—Rule 4-227. Petitions for Voluntary Discipline—would read as follows:

Rule 4-227. Petitions for Voluntary Discipline.

(a) A petition for voluntary discipline shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these rules sufficient to authorize the imposition of discipline.

(b) Prior to the issuance of a formal complaint, a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these rules.

(1) Those petitions seeking private discipline shall be filed with the Office of the General Counsel and assigned to a member of the Investigative Panel. The Investigative Panel of the State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Bar Rule 4-203(a)(9).

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

(c) After the issuance of a formal complaint a respondent may submit a petition for voluntary discipline seeking any level of discipline authorized under these rules.

(1) The petition shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served

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upon the Special Master and all parties to the disciplinary proceeding. The Special Master shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefore. The Office of the General Counsel shall serve a copy of its response upon the respondent.

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

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

- (i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these rules sufficient to authorize the imposition of discipline;
- (ii) the petition fails to request appropriate discipline;
- (iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;
- (iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

(4) The Special Master's decision to reject a petition for voluntary discipline does not preclude the filing of a subsequent petition and is not subject to review by either the Review Panel or the Supreme Court of Georgia. If the Special Master rejects a petition for voluntary discipline, the disciplinary case shall proceed as provided by these rules.

(5) If the Special Master accepts the petition for voluntary discipline, he or she shall enter a

report making findings of fact and conclusions of law and deliver same to the Clerk of the State Disciplinary Board. The Clerk of the State Disciplinary Board shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Supreme Court of Georgia shall issue an appropriate order.

(6) Pursuant to Bar Rule 4-210(e), the Special Master may, in his or her discretion, extend any of the time limits in these rules in order to adequately consider a petition for voluntary discipline.

XIII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 4 Advisory Opinions; Rule 4-403. Formal Advisory Opinions.

The Board of Governors of the State Bar of Georgia proposes that -Rule 4-403. Formal Advisory Opinions. - be amended by adding the language in bold underlined text as set out below:

Rule 4-403. Formal Advisory Opinions.

...

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion **either** in an official publication of the State Bar of Georgia **or on the State Bar of Georgia's website**, and solicit comments from the members of the State Bar of Georgia. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

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(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished **either** in an official publication of the State Bar of Georgia **or on the State Bar of Georgia’s website**. Unless the Supreme Court of Georgia grants review as provided hereinafter, the opinion shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court or Georgia, which shall treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the State Bar of Georgia (**if the opinion is published in an official publication of the State Bar of Georgia**), **or first appears on the State Bar of Georgia’s website (if the opinion is published on the website)**, whichever is later, the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court of Georgia grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the State Bar of Georgia. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court of Georgia Rule 10, counting from the date of the order granting review. The final determination may be either by written opinion or by order of the Supreme Court of Georgia and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

...

If the proposed amendments to the Rule are adopted, the amended–Rule 4-403. Formal Advisory Opinions.–would read as follows:

Rule 4-403. Formal Advisory Opinions.

(a) The Formal Advisory Opinion Board shall be authorized to draft Proposed Formal Advisory Opinions concerning a proper interpretation of the Georgia Rules of Professional Conduct or any of the grounds for disciplinary action as applied to a given state of facts. The Proposed Formal Advisory Opinion should address prospective conduct and may respond to a request for a review of an Informal Advisory Opinion or respond to a direct request for a Formal Advisory Opinion.

(b) When a Formal Advisory Opinion is requested, the Formal Advisory Opinion Board should review the request and make a preliminary determination whether a Proposed Formal Advisory Opinion should be drafted. Factors to be considered by the Formal Advisory Opinion Board include whether the issue is of general interest to the members of the State Bar of Georgia, whether a genuine ethical issue is presented, the existence of opinions on the subject from other jurisdictions, and the nature of the prospective conduct.

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion in an official publication of the State Bar of Georgia and solicit comments from the members of the State Bar of Georgia. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished in an official publication of the State Bar of Georgia. Unless the Supreme Court of Georgia grants review as provided hereinafter, the opinion shall be binding only on the State Bar of Georgia and the person who requested

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the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. Within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the State Bar of Georgia, whichever is later, the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court of Georgia grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the State Bar of Georgia. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in the Rules of the Supreme Court of Georgia, Rule 10, counting from the date of the order granting review. The final determination may be either by written opinion or by order of the Supreme Court of Georgia and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

(e) If the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only. If the Supreme Court of Georgia grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court of Georgia approves or modifies the opinion, it shall be binding on all members of the State Bar of Georgia and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court of Georgia shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

(f) The Formal Advisory Opinion Board may call upon the Office of the General Counsel for staff

support in researching and drafting Proposed Formal Advisory Opinions.

(g) The name of a lawyer requesting an Informal Advisory Opinion or Formal Advisory Opinion will be held confidential unless the lawyer elects otherwise.

XIV.

Proposed Amendment to Part XII Consumer Assistance Program; Rule 12-107. Confidentiality of Proceedings.

The Board of Governors of the State Bar of Georgia proposes that ~~Rule 12-107. Confidentiality of Proceedings.~~ be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 12-107. Confidentiality of Proceedings.

(a) All investigations and proceedings provided for herein shall be confidential unless the respondent otherwise elects or as hereinafter provided in this rule and Part IV of the Bar Rules.

(b) Except as expressly permitted by these rules, no person connected with the Consumer Assistance Program shall disclose information concerning or comment on any proceeding under Part XII of these rules.

(1) Nothing in the rules shall prohibit truthful and accurate public statements of fact about a proceeding under Part XII of these rules, provided however, that in the event of such statement any other person involved in the proceeding may make truthful and accurate public statements of fact regarding the proceeding, including information otherwise confidential under the provisions of Rule 4-102(d), ~~Standard 28~~ **Rule 1.6**, as may be reasonably necessary to defend that person's reputation;

(2) Willful and malicious false statements of fact made by any person connected with a proceeding under Part XII of these rules may

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subject such person to rule for contempt by the Supreme Court of Georgia.

(c) In the event the conduct of the attorney appears to violate one or more of the ~~standards of conduct~~ Georgia **Rules of Professional Conduct** set forth in Part IV of the Bar Rules, and Consumer Assistance staff in its sole discretion makes a determination under Rule 12-106 that the matter cannot be resolved informally, then the Consumer Assistance staff shall inform callers of their option to file a grievance and shall advise the Office of the General Counsel to send the appropriate forms to the callers.

(d) The Consumer Assistance Committee and staff may reveal confidential information when required by law or court order.

If the proposed amendments to the Rule are adopted, the amended – Rule 12-107. Confidentiality of Proceedings. – would read as follows:

Rule 12-107. Confidentiality of Proceedings.

(a) All investigations and proceedings provided for herein shall be confidential unless the respondent otherwise elects or as hereinafter provided in this rule and Part IV of the Bar Rules.

(b) Except as expressly permitted by these rules, no person connected with the Consumer Assistance Program shall disclose information concerning or comment on any proceeding under Part XII of these rules.

(1) Nothing in the rules shall prohibit truthful and accurate public statements of fact about a proceeding under Part XII of these rules, provided however, that in the event of such statement any other person involved in the proceeding may make truthful and accurate public statements of fact regarding the proceeding, including information otherwise confidential under the provisions of Rule 4-102(d), Rule 1.6, as may be reasonably necessary to defend that person’s reputation;

(2) Willful and malicious false statements of fact made by any person connected with a

proceeding under Part XII of these rules may subject such person to rule for contempt by the Supreme Court of Georgia.

(c) In the event the conduct of the attorney appears to violate one or more of the Georgia Rules of Professional Conduct set forth in Part IV of the Bar Rules, and Consumer Assistance staff in its sole discretion makes a determination under Rule 12-106 that the matter cannot be resolved informally, then the Consumer Assistance staff shall inform callers of their option to file a grievance and shall advise the Office of the General Counsel to send the appropriate forms to the callers.

(d) The Consumer Assistance Committee and staff may reveal confidential information when required by law or court order.

XV.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part One Client-Lawyer Relationship; Rule 1.6. Confidentiality of Information.

The Board of Governors of the State Bar of Georgia proposes that – Rule 1.6. Confidentiality of Information. – be amended by adding the language in bold underlined text as set out below:

Rule 1.6. Confidentiality of Information.

...

(b)

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

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

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- (ii) to prevent serious injury or death not otherwise covered by subparagraph (i) above;
- (iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (iv) to secure legal advice about the lawyer's compliance with these rules.

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

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

...

If the proposed amendments to the Rule are adopted, the amended-Rule 1.6. Confidentiality of Information.-would read as follows:

Rule 1.6. Confidentiality of Information.

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

- (b)
 - (1) A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:
 - (i) to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;
 - (ii) to prevent serious injury or death not otherwise covered by subparagraph (i) above;
 - (iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (iv) to secure legal advice about the lawyer's compliance with these rules.
 - (2) In a situation described in paragraph (b) (1), if the client has acted at the time the lawyer learns of the threat of harm or loss to a victim, use or disclosure is permissible only if the harm or loss has not yet occurred.
 - (3) Before using or disclosing information pursuant to paragraph (b)(1) (i) and (ii), if feasible, the lawyer must make a good faith effort to persuade the client either not to act or, if the client has already acted, to warn the victim.
 - (c) The lawyer may, where the law does not otherwise require, reveal information to which the duty of confidentiality does not apply under paragraph (b) without being subjected to disciplinary proceedings.
 - (d) The lawyer shall reveal information under paragraph (b) as the applicable law requires.

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

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

XVI.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part Three Advocate; Rule 3.5. Impartiality and Decorum of the Tribunal. and Comment [7] of Rule 3.5.

The Board of Governors of the State Bar of Georgia proposes that—Rule 3.5. Impartiality and Decorum of the Tribunal., and Comment [7] of Rule 3.5—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 3.5. Impartiality and Decorum of the Tribunal.

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

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

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

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

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

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

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

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

The maximum penalty for a violation of part (a) **and part (c)** of this Rule is disbarment. The maximum penalty

for a violation of part (b) or part (e) **(d)** of this Rule is a public reprimand.

Comment

...

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

...

If the proposed amendments to the Rule are adopted, the amended—Rule 3.5. Impartiality and Decorum of the Tribunal., and Comment [7] of Rule 3.5—would read as follows:

Rule 3.5. Impartiality and Decorum of the Tribunal.

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

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

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

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

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

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

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

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

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

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Comment

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

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

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

[3B] A lawyer who obtains a judge's signature on a decree in the absence of the opposing lawyer where certain aspects of the decree are still in dispute may have violated Rule 3.5. Impartiality and Decorum of the Tribunal., regardless of the lawyer's good intentions or good faith.

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

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

[6] Direct or indirect communication with a juror during the trial is clearly prohibited. A lawyer may not avoid the proscription of Rule 3.5. Impartiality and Decorum of the

Tribunal., by using agents to communicate improperly with jurors. A lawyer may be held responsible if the lawyer was aware of the client's desire to establish contact with jurors and assisted the client in doing so.

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

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

XVII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part Five Law Firms and Associations; Rule 5.4. Professional Independence of a Lawyer.

The Board of Governors of the State Bar of Georgia proposes that—Rule 5.4. Professional Independence of a Lawyer.—be amended by adding the language in bold underlined text as set out below:

Rule 5.4. Professional Independence of a Lawyer.

...

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof; or

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(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Notwithstanding the provisions of paragraph (d) above, but subject to (3) below, a lawyer may:

(1) Provide legal services to clients while working in association with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, including any such rules that permit non-lawyers to participate in the management of such firms, have equity ownership in such firms, or share in legal fees generated by such firms, and

(2) Share legal fees arising from such legal services with such other lawyers or law firms to the same extent as the sharing of legal fees is permitted under applicable Georgia Rules of Professional Conduct.

(3) The activities permitted under the preceding portion of this paragraph (e) are subject to the following:

(i) The association shall not compromise or interfere with the lawyer's independence of professional judgment, the client-lawyer relationship between the lawyer and the client, or the lawyer's compliance with these rules; and

(ii) Nothing in this paragraph (e) is intended to affect the lawyer's obligation to comply with other applicable rules of professional ethics, or to alter the forms in which a lawyer is permitted to practice.

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

If the proposed amendments to the Rule are adopted, the amended-Rule 5.4. Professional Independence of a Lawyer.-would read as follows:

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer or law firm who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer who undertakes to complete unfinished business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(5) a lawyer may pay a referral fee to a bar-operated non-profit lawyer referral service where such fee is calculated as a percentage of legal fees earned by the lawyer to whom the service has referred a matter pursuant to Rule 7.3. Direct Contact with Prospective Clients.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

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(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Notwithstanding the provisions of paragraph (d) above, but subject to (3) below, a lawyer may:

(1) Provide legal services to clients while working in association with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, including any such rules that permit non-lawyers to participate in the management of such firms, have equity ownership in such firms, or share in legal fees generated by such firms, and

(2) Share legal fees arising from such legal services with such other lawyers or law firms to the same extent as the sharing of legal fees is permitted under applicable Georgia Rules of Professional Conduct.

(3) The activities permitted under the preceding portion of this paragraph (e) are subject to the following:

(i) The association shall not compromise or interfere with the lawyer's independence of professional judgment, the client-lawyer relationship between the lawyer and the client, or the lawyer's compliance with these rules; and

(ii) Nothing in this paragraph (e) is intended to affect the lawyer's obligation to comply with other applicable rules of professional ethics, or to alter the forms in which a lawyer is permitted to practice.

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

XVIII.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4-102; Part Seven Information About Legal Services; Rule 7.3. Direct Contact with Prospective Clients., and Comments 3, 7 and 8, of Rule 7.3.

The Board of Governors of the State Bar of Georgia proposes that—Rule 7.3. Direct Contact with Prospective Clients., and Comments 3, 7 and 8 of Rule 7.3—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 7.3. Direct Contact with Prospective Clients.

...

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

(1) A lawyer may pay the usual and reasonable fees or dues charged by a ~~bona fide~~ lawyer referral **service, if the service:** ~~service operated by an organization authorized by law and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board, at least annually, a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service;~~

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

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

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

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

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

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

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

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

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

~~(4) A lawyer may pay the usual and reasonable fees charged by a lay public relations or marketing organization provided the activities of such organization on behalf of the lawyer are otherwise in accordance with these Rules.~~

~~(5) A lawyer may pay for a law practice in accordance with Rule 1.17: Sale of Law Practice.~~

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

(e) A lawyer shall not accept employment when the lawyer knows or it is obvious **or reasonably should know** that the person who seeks to employ the lawyer does so as a result of conduct by any person or organization **that would violate these Rules if engaged in by a lawyer.** ~~prohibited under Rules 7.3(c)(1), 7.3(c)(2) or 7.3(d): Direct Contact with Prospective Clients.~~

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

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Comment

Direct Personal Contact

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

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

Direct Mail Written Solicitation

[3] Subject to the requirements of Rule 7.1: ~~Communications Concerning a Lawyer's Services~~ and paragraphs (b) and (c) of this Rule 7.3: ~~Direct Contact with Prospective Clients~~, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

[4] Certain narrowly-drawn restrictions on this type of communication are justified by a substantial state interest in facilitating the public's intelligent selection of counsel, including the restrictions of sub-paragraph (a)(3) & (4) which proscribe direct mailings to persons such as an

injured and hospitalized accident victim or the bereaved family of a deceased.

[5] In order to make it clear that the communication is commercial in nature, paragraph (b) requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the traditional exception for contact with close friends, relatives and former clients is recognized and permits elimination of the disclaimer in direct written contact with these persons.

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

Paying Others to Recommend a Lawyer

[7] A lawyer is allowed to pay for communications permitted by these rules, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization may pay to advertise legal services provided under its auspices. ~~Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs, provided the programs are in compliance with the registration requirements of sub-paragraph (e)(1) or (e)(2) of this Rule 7.3: Direct Contact with Prospective Clients and the communications and practices of the organization are not deceptive or misleading.~~

~~[8] A lawyer may not indirectly engage in promotional activities through a lay public relations or marketing firm if such activities would be prohibited by these Rules if engaged in directly by the lawyer.~~

If the proposed amendments to the Rule are adopted, the amended-Rule 7.3. Direct Contact With Prospective Clients-would read as follows:

Rule 7.3. Direct Contact With Prospective Clients.

(a) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written

BAR RULES AND BYLAWS

communication to a prospective client for the purpose of obtaining professional employment if:

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The combined fees charged by a lawyer and the lawyer referral service

AMENDMENTS TO BAR RULES AND BYLAWS

to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and,

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

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

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

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

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

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

Comment

Direct Personal Contact

[1] There is a potential for abuse inherent in solicitation through direct personal contact by a lawyer of prospective clients known to need legal services. It subjects the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client

often feels overwhelmed by the situation giving rise to the need for legal services, and may have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

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

Written Solicitation

[3] Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule 7.3, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

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

[5] In order to make it clear that the communication is commercial in nature, paragraph (b) requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the traditional exception for contact with close friends, relatives and former clients is recognized and permits elimination of the disclaimer in direct written contact with these persons.

AMENDMENTS TO BAR RULES AND BYLAWS

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

Paying Others to Recommend a Lawyer

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

XIX.

Proposed Amendment to Part IV Georgia Rules of Professional Conduct; Chapter 1 Georgia Rules of Professional Conduct and Enforcement Thereof; Rule 4.102; Part Eight Maintaining the Integrity of the Profession; Rule 8.4. Misconduct.

The Board of Governors of the State Bar of Georgia proposes that—Rule 8.4. Misconduct—be amended by deleting the struck-through portions and adding the language in bold underlined text as set out below:

Rule 8.4. Misconduct.

...

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

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

If the proposed amendment to the Rule is adopted, the amended—Rule 8.4. Misconduct.—would read as follows:

Rule 8.4. Misconduct.

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

- (1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) be convicted of a felony;
- (3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
- (4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;
- (6)
 - (i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;
 - (ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
 - (iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
- (7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio, the commission of such act.

AMENDMENTS TO BAR RULES AND BYLAWS

(b)

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

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

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

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

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

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

CLIENTS' SECURITY FUND

by Vincent Clayton, Chair, and Deputy General Counsel William D. NeSmith III,
State Bar 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 2014-15 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, 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 lawyers and one 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 and one paralegal from the Office of the General Counsel. The following lawyers served as Trustees for the 2014-15 Bar-year:

Charles Edward Peeler, *Albany*

Randall H. Davis, *Cartersville*

Paul H. Threlkeld, *Savannah*

Roy B. Huff, *Peachtree City*

Rizza Palmaris O'Connor, *Lyons*

Tyronia Monique Smith, *Atlanta*

H. Vincent Clanton, *Atlanta* (non-lawyer member)

*Denny C. Galis, *Athens*

(*Trustee Denny C. Galis' term expired in 2014; however, President Patrise Perkins-Hooker reappointed him for an additional one-year term, which expires at this conclusion of this 2015 State Bar Annual Meeting.)

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.

In January 1996, 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 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 average fund balance had stabilized at approximately \$2,300,000. However, in September 2014, the Trustees of the Clients' Security Fund brought to the attention of the State Bar of Georgia Executive Committee several coinciding issues that threatened the stability of the Fund. These issues included the sustained reduction in the amount of interest income generated by the Fund's corpus and the resulting reduction in that corpus, and the filing of several and substantial claims by clients of several Georgia attorneys. The Trustees were concerned that this combination of occurrences would cause the Fund balance to drop below \$1,000,000.00, which would trigger an automatic assessment from the members of the Bar pursuant to Bar Rule 10-103. The Trustees also expressed their concern that the current annual claims payment cap of \$350,000.00 would leave the Fund unable to adequately address all currently pending claims.

State Bar President Patrise Perkins-Hooker appointed a task force to investigate these issues and make recommendation to address them. After several meetings that included task force members, the chairs of the Fund, and representatives from the Office of the General Counsel of the State Bar of Georgia, the following recommendations were made to the Task Force:

CLIENTS' SECURITY FUND

1. Change Bar Rule 10-03 to increase the annual claims paid cap from \$350,000 to \$500,000 to allow the Fund to adequately compensate, at least within the confines of Rule 7A of the Clients' Security Fund Internal Operating Rules that limits payment of each claim to \$25,000, pending claims before the Trustees; and
2. Implement a one-time assessment of \$8 to \$10 person State Bar member in order to address the decrease in the Fund's balance caused by the decrease in interest income over the past several years and the payment of claims this year.

After considering the above listed recommendations, the Task Force decided to present the first recommendation to increase the annual claims paid cap from \$350,000 to \$500,000 to the Executive Committee. However, in lieu of presenting the second recommendation to implement a one-time assessment to all State Bar Members, the Task Force decided to recommend that a one-time contribution of \$500,000 be made from the State Bar of Georgia's unrestricted surplus to the Clients' Security Fund. The Task Force reasoned that the contribution would compensate for the reduction in the Funds' balance caused by several successive years of little to no interest income, and replenish the significant reduction in the Fund balance caused by the payment of claims currently under the Trustees' consideration. The Executive Committee unanimously adopted the Task Force's recommendations and voted to recommend to the Board of Governors that they approve and adopt the recommendations, indicating,

"The CSF has been very well managed, especially under the leadership of Mr. Clanton and Mr. Threlkeld. So much so that they anticipated and sought to address the issues outlined above before they became actual problems. The State Bar of Georgia prefers and needs leaders such as this, especially for funds, such as the CSF, that it houses and oversees. Just as Mr. Clanton and Mr. Threlkeld anticipated these issues before they became actual problems, so should the Board of Governors consider and address them now so that these anticipated problems never arise."

At their 2015 Spring meeting, the Board of Governors considered, and adopted the recommendations. The recommended amendment to Bar Rule 10-103 must go through the amendment process outlined in Bar Rule 5-101 and be approved by the Supreme Court of Georgia before it is implemented. Until the amendment to Bar Rule 10-103 is approved by the Supreme Court of Georgia, the Trustees of the Fund will operate under the current rule.

All monies held in the name of the Clients' Security Fund are maintained by the Trustees of the Fund who exclusively control the disbursement of the funds.

LOSS PREVENTION EFFORTS

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.

CLIENTS' SECURITY FUND

OVERDRAFT NOTIFICATION

In November 1992, the Board of Trustees joined the Investigative Panel of the State Disciplinary Board in urging the Board of Governors to approve amendments to Disciplinary Standard 65 to create a trust account overdraft notification program. On Aug. 22, 1995, the Supreme Court of Georgia approved the amendment to Standard 65, which became effective Jan. 1, 1996. The primary purpose of the overdraft notification rule is to prevent 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, *2013-2014 State Bar of Georgia Directory & Handbook*, Rule 1.15(III), p. H-44.

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 most recent Statement of Fund Balance, Income and Expenses for the period ending May 2015.

Annual Statistics for Operational Year 2014-15	
Beginning Balance on 6/30/2014.....	\$2,141,983
Deposits to fund	
Assessments.....	\$167,803
Restitution	\$12,988
Interest.....	\$9,776
Contribution from State Bar of Georgia Unrestricted Surplus.....	\$500,000
Distributions from Fund	
Claims Paid.....	\$328,986
Expenses	\$60,833
Ending Balance on 5/27/2015	\$2,442,731

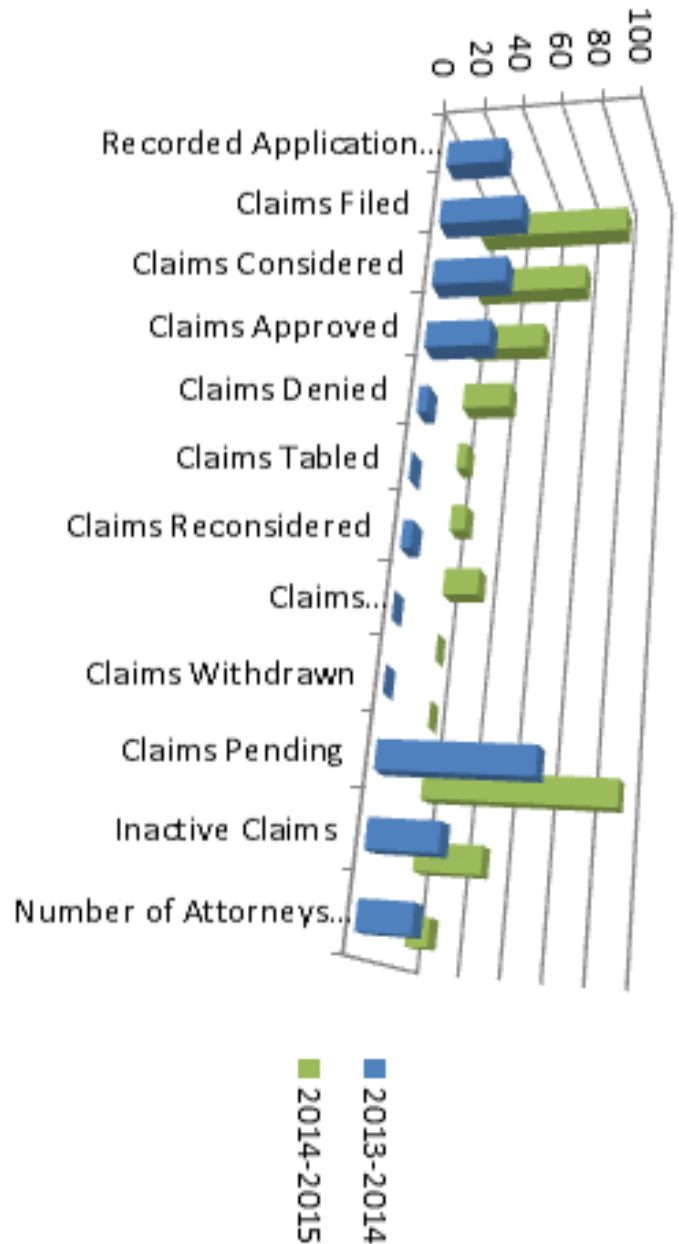
CLIENTS' SECURITY FUND

SUMMARY OF CLAIMS ACTIVITY

The following summary of claims activity for the 2014-15 operational year is for a period beginning May 2014 and ending April 2015. The Trustees met three times during the 2014-15 Bar year to consider pending claims, and have scheduled future meetings for July 31, 2015, Sept. 25, 2015, and Nov. 13, 2015.

Activity	2013-14	2014-15
Recorded Application Requests	30	80
Claims Filed	42	60
Claims Considered	37	40
Claims Approved	32	25
Claims Denied	5	5
Claims Tabled	1	8
Claims Reconsidered	5	18
Claims Administratively Closed	0	0
Claims Withdrawn	0	0
Claims Pending	72	95
Inactive Claims	33	33
Number of Attorneys Involved in Paid Claims	25	11

Comparison Chart Between 2014-15 Bar Year and 2013-14 Bar Year



DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

REVIEW PANEL REPRIMANDS

Date of Order	Respondent	Docket
05/05/14	Edward R. Mashek III	6400
05/19/14	Peggy Ruth Goodnight	6468
09/22/14	Daniel J. Saxton	6457
10/20/14	Kenneth H. Schatten	6212
11/17/14	Mary J. Workman	6453 6454 6455 6456
01/20/15	Maurice Brown	5489
01/20/15	Tanya Y. Brockington	6565

PUBLIC REPRIMANDS

Date of Order	Respondent	Docket
05/19/14	Margaret A. Skinner	6243
10/06/14	David P. Hartin	6458
11/03/14	Jerry Wayne Moncus	6556
03/02/15	Jeffery L. Sakas	6217 6254 6284 6410

DICIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

SUSPENSIONS

Date of Order	Respondent	Docket
<i>Emergency Suspension</i>		
02/28/15	Melissa Jill Starling	6652
<i>Indefinite</i>		
05/05/14	Hudson Owen Maddux (Nine months with conditions)	6490
05/19/14	Eric Charles Lang (12 months with conditions)	6513
05/19/14	Ricardo L. Polk (30 months with conditions)	5978 5879 6242
06/16/14	Robert Bruce Richbourg (Three years with conditions)	6306
09/22/14	Amjad Muhammad Ibrahim (Additional six months – retroactive to April 14, 2014, with conditions)	6338
10/06/14	LaXavier P. Reddick-Hood (Three years with conditions)	6236
10/20/14	William Charles Lea (Three years with conditions)	6336 6637
02/16/15	Wesley Kent Hill (Indefinitely with conditions)	6650
02/16/15	Lyle Vincent Anderson (Pending termination of appeal)	6605
04/20/15	Wilson R. Smith (Pending outcome of criminal charges)	6690

DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

SUSPENSIONS

Date of Order	Respondent	Docket
<i>Definite</i>		
06/16/14	John B. Tucker (Six months)	6507
10/06/14	William Slater Vincent (12 months)	6374
<i>Interim Suspensions</i>		
06/30/14	S. Quinn Johnson	140036
07/11/14	Gerald W. Bassett	130242
08/26/14	Robert T. Thompson Jr.	140055
10/06/14	Robert T. Thompson Jr.	140074
10/06/14	Tanya Yvette Brockington	140054
10/06/14	Anthony Sylvester Kerr	140039
10/06/14	Perrin Bowie Lovett	140038
10/06/14	Kurt A. Raulin	140011 140012
12/01/14	Rand Jason Csehy	140133
12/01/14	Joel David Myers	140094
12/22/14	Christopher G. Nicholson	140173
03/31/15	Shanina Nashae Lank	140135
03/31/15	Melvin T. Johnson	140194
04/29/15	Douglas J. Mathis	150003 150004

DICIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

SUSPENSIONS

Date of Order	Respondent	Docket
<i>Interim Suspensions Lifted</i>		
05/20/14	Peggy Ruth Goodnight	110203
08/21/14	Gerald W. Bassett	130242
08/22/14	S. Quinn Johnson	140036
11/04/14	Anthony Sylvester Kerr	140039
01/15/15	Christopher G. Nicholson	140173
04/23/15	Melvin T. Johnson	140194

DISBARMENTS/VOLUNTARY SURRENDERS

Date of Order	Respondent	Docket
05/05/14	Xavier Cornell Dicks	5901
06/16/14	Michael René Berlon	6437
06/30/14	Ronald Pak	6254
06/30/14	William V. Hall Jr.	6435
06/30/14	Barbara W. Willis	6527
10/06/14	Clark Jones-Lewis	6487 6488
10/06/14	Ted Webster Wooten III	6601 6602
10/06/14	Robert Anthony McDonald	6549 6650 6651 6652

DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

DISBARMENTS/VOLUNTARY SURRENDERS

Date of Order	Respondent	Docket
10/06/14	Ashley A. Davis	6560
10/06/14	Gergory A. Bartko	5963
10/06/14	Lauren Gordon Garner	6589
10/06/14	Michael B. Shankle	6515
11/03/14	Donald L. Jones	6539 6540 6541 6542
11/03/14	Stephen L. Minsk	6572
11/03/14	Henry T. Swann III	6536
11/03/14	Joseph Kizito	6415
02/02/15	Rand Jason Csehy	6562
02/02/15	Robert T. Thompson Jr.	6621
02/16/15	Douglas Grant Exley	6592 6593
02/16/15	Rodd Walton	6627 6628
03/02/15	Joseph Citron	6606
04/20/15	Tracey Dawn Gibson	6622 6623 6624 6625