

JUNE

16-19

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2016 REPORT OF THE

OFFICE OF THE GENERAL COUNSEL

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REPORT OF THE GENERAL COUNSEL

by Paula J. Frederick, General Counsel

I am delighted to present the Annual Report of the Office of the General Counsel (OGC). Inside you will find 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. We have also included a summary of this year's changes to the Bar Rules. Following the reports is a list of the Supreme Court orders issued in disciplinary cases between May 1, 2015, and April 30, 2016; 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, who continues to work with the office as Ethics Counsel, has announced that he will retire at the end of 2016. You will have the opportunity to celebrate Bill and mark his tenure as General Counsel during the midyear meeting in January 2017.

Deputy Bar Counsel William "Bill" NeSmith 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. Senior Assistant General Counsel John Shiptenko 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 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 Wolanda Shelton conducts the preliminary investigation of the grievances which the office receives each year with assistance from paralegal Len Carlin and legal secretary Cathe Payne. Connie Henry, Clerk of the State Disciplinary Board, continues to coordinate the activity of the disciplinary boards. Regina Putman-Kelley serves as Trust Account Overdraft Notification Coordinator. Paralegals Carolyn Williams and Kathy Jackson, legal secretaries Deborah Grant 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. OGC lawyers participated in more than 60 CLE presentations again this year.

COMMITTEES

OGC staff also worked with the Wellness Task Force, the Disciplinary Rules and Procedures Committee, the Advisory Committee on Legislation, the Insurance Committee, the Discovery of Electronically Stored Information Task Force, 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.

STATE DISCIPLINARY BOARD

INVESTIGATIVE PANEL

by John D. Newberry, 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 2015-16 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 Young 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 Stone Mountain, Albany, Augusta, Helen, Savannah, Macon, Palmetto, Buford, Americus and Lookout Mountain.

The Bar received slightly fewer requests for grievance forms this year (3,219) than last (3,224). The number of grievance forms returned to the Office of the General Counsel increased. Last year's figure was 1,997; this year 2,253 forms were returned for screening and further consideration.

After review by an assistant general counsel, 1,998 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 231 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 207 such grievances in 2015. 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. Seventy-two grievances were dismissed, 28 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and sixteen cases met the "probable cause" test and were returned to the Office of the General Counsel for prosecution. This represents a decrease from 136 such cases last year. One

hundred twenty-seven cases are still under consideration by the Panel, an increase from 90 such cases last year.

Thirty-four 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 2015-16:

CASES

Investigative Panel Reprimands	13
Letters of Formal Admonition	21
Cases Dismissed with Letters of Instruction	28
Interim Suspensions	13

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

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

DISTRICT 1

Christian J. Steinmetz III, *Savannah*

J. Maria Waters, *Pooler*

DISTRICT 2

Laverne Lewis Gaskins, *Valdosta*

Charles E. Peeler, *Albany*

STATE DISCIPLINARY BOARD

INVESTIGATIVE PANEL

DISTRICT 3

Donna S. Hix, *Columbus*

G. Bardin Hooks, *Americus*

DISTRICT 4

Sherry Boston, *Decatur*

Zulma P. Lopez, *Atlanta*

DISTRICT 5

William Hickerson Thomas Jr., *Atlanta*

Karen Brown Williams, *Atlanta*

DISTRICT 6

Delia T. Crouch, *Newnan*

Andrew J. Whalen, *Griffin*

DISTRICT 7

Dale Pearson Beardsley, *Atlanta*

Christopher A. Townley, *Rossville*

DISTRICT 8

Donald W. Huskins, *Eatonton*

John D. Newberry, *Gray*

DISTRICT 9

Ramon Alvarado, *Lawrenceville*

Melody A. Glouton, *Duluth*

DISTRICT 10

Anna Green Bolden, *Winder*

Larry L. Smith, *Augusta*

AT-LARGE

John G. Haubenreich, *Atlanta*

Daniel S. Reinhardt, *Atlanta*

We have two ex-officio members, State Bar of Georgia President-Elect Patrick T. O'Connor, Savannah (term expiring), and the Young Lawyers Division President-Elect Jennifer Campbell Mock, Statesboro (term expiring).

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

Connie S. Cooper, *Pooler*

Jennifer M. Davis, *Atlanta*

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 Supreme Court of Georgia 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 15-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, 2015, to April 30, 2016:

FORM OF DISCIPLINE	CASES	LAWYERS
Disbarments/Voluntary Surrenders	41	28
Suspensions	33	25
Public Reprimands	5	5
Review Panel Reprimands	4	4

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

Clarence Pennie, *Kennesaw*

Deanna Onuoha Richardson, *Atlanta*

P. Alice Rogers, *Atlanta*

Thomas C. Rounds, *Sandy Springs*

LAWYER MEMBERS

Northern District

Anthony B. Askew, *Atlanta*

C. Bradford Marsh, *Atlanta*

J. Robert Persons, *Atlanta*

Middle District

Oliver Wendell Horne, *Macon*

Jeffery O'Neal Monroe, *Macon*

Ralph F. Simpson, *Tifton*

Southern District

Sarah Brown Akins, *Savannah*

Thomas R. Burnside III, *Augusta*

Aimee Pickett Sanders, *Augusta*

Ex-Officio Members

V. Sharon Edenfield, *Statesboro* (term expiring)

Patrise Perkins-Hooker, *Atlanta* (term expiring)

FORMAL ADVISORY OPINION BOARD

*by Jeffrey H. Schneider, Vice Chair
on behalf of 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 2015-2016 Bar year, the Formal Advisory Opinion Board is comprised of the following lawyers:

MEMBERS AT LARGE	TERM
Edward B. Krugman, <i>Atlanta</i>	2015-2017
Letitia A. McDonald, <i>Atlanta</i>	2014-2016
Dennis C. O'Brien, <i>Marietta</i>	2015-2017
Mary A. Prebula, <i>Duluth</i>	2014-2016
Jeffrey Hobart Schneider, Vice Chair, <i>Atlanta</i>	2014-2016

GEORGIA TRIAL LAWYERS ASSOCIATION

David N. Lefkowitz, *Atlanta* 2015-2017

GEORGIA DEFENSE LAWYERS ASSOCIATION

Jacob Edward Daly, *Atlanta* 2015-2017

GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Holly Wilkinson Veal, *McDonough* 2014-2016

GEORGIA DISTRICT ATTORNEY'S ASSOCIATION

Kenneth W. Mauldin, *Athens* 2014-2016

YOUNG LAWYERS DIVISION

John B. Manly, *Savannah* 2015-2017

EMORY UNIVERSITY

Prof. Melissa D. Carter, *Atlanta* 2014-2016

UNIVERSITY OF GEORGIA

Prof. Lonnie T. Brown Jr., *Athens* 2015-2017

MERCER UNIVERSITY

Prof. Patrick E. Longan, *Macon* 2015-2017

GEORGIA STATE UNIVERSITY

Prof. Nicole G. Iannarone, *Atlanta* 2014 -2016

JOHN MARSHALL LAW SCHOOL

Prof. Jeffrey Alan Van Detta, *Atlanta* 2015-2017

INVESTIGATIVE PANEL

Katherine K. Wood, *Atlanta* 2015-2016

REVIEW PANEL

C. Bradford Marsh, Chair, *Atlanta* 2015-2016

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 2015-16 Bar year.

The Formal Advisory Opinion Board received seven (7) new requests for formal advisory opinions. The issues presented and the status of the requests are as follows:

- **Formal Advisory Opinion Request No. 15-R2** – Under what circumstances can a lawyer be permitted to liquidate a client's escrow account upon demand from opposing counsel? Would the lawyer be shielded from liability for liquidating said escrow account without the client's consent? Would it be more proper to seek an order from the Court for liquidating the escrow account?

FORMAL ADVISORY OPINION BOARD

The Formal Advisory Opinion Board declined this request pursuant to Rule 4-403(b) determining the request did not address prospective conduct.

- **Formal Advisory Opinion Request No. 15-R3** – Is it ethically permissible under Rule 1.8(e) for a lawyer to advance the cost of a premium for an insurance policy that would cover the eventuality of a judgment for adverse attorney fees secured pursuant to a proposal for settlement filed under O.C.G.A. § 9-11-68?

The Formal Advisory Opinion Board declined this request pursuant to Rule 4-403.

- **Formal Advisory Opinion Request No. 15-R4** – Pursuant to Georgia Rules of Professional Conduct 1.6 and 1.7, can a law firm represent a client in a legal matter in which the law firm previously consulted with the opposing party to the matter, wherein privileged information was shared?

The Formal Advisory Opinion Board declined this request pursuant to Rule 4-403, determining the Georgia Rules of Professional Conduct, particularly Rules 1.6 and 1.7 adequately address the issue raised in the request.

- **Formal Advisory Opinion Request No. 15-R5** – Does an attorney commit an ethical violation if he (1) evades services of process in litigation in which he is a party; or (2) assists a client in evading service of process?

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.

- **Formal Advisory Opinion Request No. 16-R1** – Does an attorney acquire a proprietary interest in the cause of action or subject matter of litigation in violation of Georgia Rule of Professional Conduct 1.8(j) by obtaining a post-litigation interest in the underlying judgment?

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.

- **Formal Advisory Opinion Request No. 16-R2** – Once an attorney, who is a subscriber to an internet marketing service along with multiple other lawyers, is provided with a potential client's full name, does a violation of Rule 7.1 and/or Rule 7.3 occur when the attorney then searches for the person's phone number and calls the potential client directly if found - even if the potential client did not submit their phone number when given the option to provide it to attorneys who respond to their request?

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.

- **Formal Advisory Opinion Request No. 16-R3** – Must a Georgia attorney representing a seller, purchaser/borrower, or lender in a commercial transaction (being a transaction that does not involve a consumer purchasing, selling or refinancing one to four family residential property to be used as his or her primary residence) involving Georgia real estate receive and disburse funds through an IOLTA trust account when one or more of the parties are represented by legal counsel and the parties and/or their counsel agree on an alternate method of disbursement?

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 requests for a formal advisory opinion were received and accepted in the 2014-15 Bar year. The issue presented in the requests and the status of the request are as follow:

- **Formal Advisory Opinion Request No. 14-R3** – May an attorney who is employed as a part-time prosecutor simultaneously represent individuals in criminal offenses or civil offenses?

The Board determined that the rule implicated in this request (Georgia Rule of Professional Conduct 1.7)

FORMAL ADVISORY OPINION BOARD

appears to conflict with existing statutes and case law. Accordingly, the Board asked the Disciplinary Rules and Procedures Committee to consider whether a rule should be enacted to address this issue. The Board suspended its work on drafting a proposed opinion. The Disciplinary Rules and Procedures Committee proposed an amendment to Georgia Rule of Professional Conduct 1.7, which was approved by the Board of Governors of the State Bar of Georgia. Notice of the proposed amendment appears in the June 2016 issue of the *Georgia Bar Journal* and will be filed with the Supreme Court of Georgia. The Board continues to suspend its actions regarding this request.

- **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.

Pursuant to Bar Rule 4-403(c), the Board made a preliminary determination to approve a proposed opinion (Proposed Formal Advisory Opinion No. 15-R1), which appeared in the April 2016 issue of the *Georgia Bar Journal* for first publication. At their next meeting, the Board will make a final determination whether the opinion should be issued and filed with the Supreme Court of Georgia.

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 November 3, 2011, impact the substance and/or conclusion of the opinions. The Formal Advisory Opinion Board determined the November 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, is treating the redrafted versions like new opinions. The opinions are being processed and published in compliance with Bar Rule 4-403(c).

Formal Advisory Opinions can be found in the 2015-16 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, Deputy General Counsel William D. NeSmith III, Senior Assistant General Counsel John Shiptenko and Betty Derrickson of the Office of the General Counsel of the State Bar of Georgia. Their unflinching 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 414 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, one overdraft was reported to the State Bar on the trust account of a lawyer licensed to practice in another jurisdiction, one notice was received in error on the general business account of a lawyer, one notice was received on the trust account of a deceased lawyer, four notices were received on the trust accounts of disbarred lawyers, one notice was received on the trust account of a lawyer who resigned his membership, and three attorney trust accounts were erroneously reported to the State Bar as overdrawn. A total of 264 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, six files were referred to the Law Practice Management Program, and nine files were forwarded to the Investigative Panel of the State Disciplinary Board for possible disciplinary action. (Several

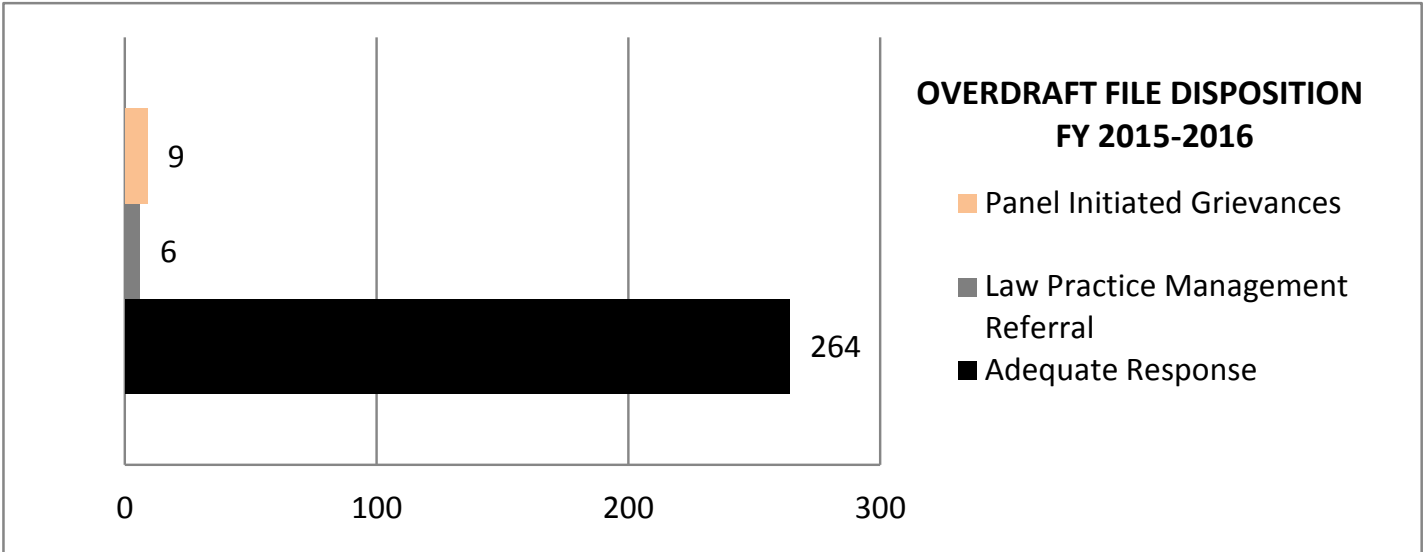
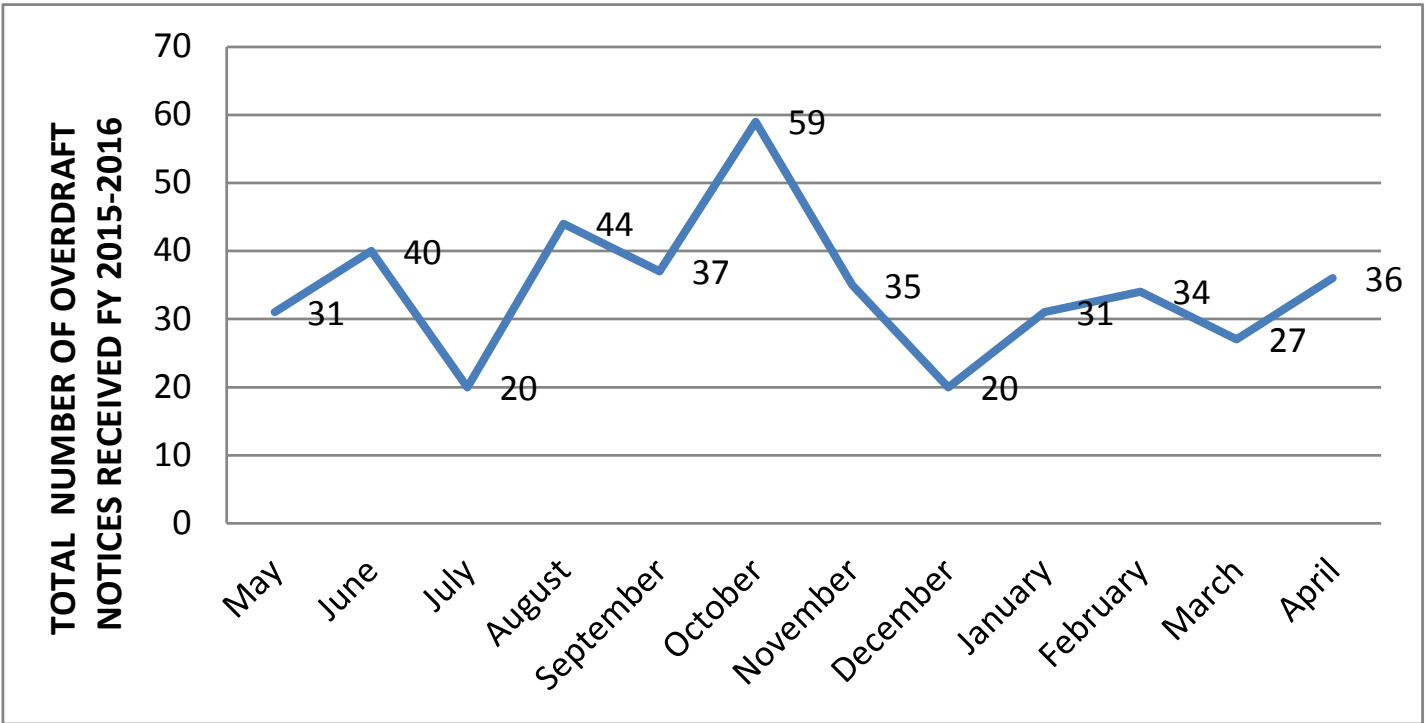
attorney overdraft files contained more than one overdraft notice regarding the same IOLTA. Some overdraft files opened during the latter part of FY 2015-16 remain open, pending final review and disposition.)

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 2015/2016	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
May	31	6	0	0	6
June	40	8	2	2	12
July	20	22	0	1	23
August	44	24	0	3	27
September	37	23	0	0	23
October	59	23	0	0	23
November	35	28	1	2	31
December	20	20	2	0	22
January	31	23	0	0	23
February	34	48	0	0	48
March	27	21	1	1	23
April	36	18	0	0	18

OVERDRAFT NOTIFICATION PROGRAM



PRO HAC VICE PROGRAM

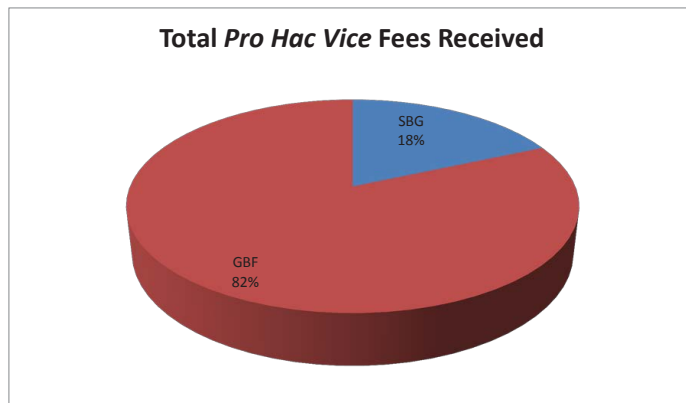
by Kathya S. Jackson, Paralegal

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. Attorneys seeking to appear *pro hac vice* in Magistrate, State and Superior Courts and the State Board of Workers' Compensation must comply with Rule 4.4.

The Supreme Court has amended the rule three times since 2005. The most recent amendment came after the Civil Legal Services Task Force proposed increasing the *pro hac vice* fee to generate money for civil legal services. Applicants would pay \$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 in the amount of \$200 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, 2015, through April 30, 2016, the Office of the General Counsel reviewed 702 *pro hac vice* applications. Sixteen applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel has filed 25 responses with Georgia courts regarding the eligibility of the applicant. The Office of the General Counsel collected a total of \$276,975 from *pro hac vice* applicants. Below is a chart with a breakdown of the fees received.



The State Bar of Georgia (SBG) collected a total of \$276,975 for *pro hac vice* fees. The fees were divided between the State Bar of Georgia and the Georgia Bar Foundation (GBF). The SBG received \$50,975 from the total collected. The GBF received \$226,000 from the total collected.

AMENDMENTS TO BAR RULES AND BYLAWS

by William D. NeSmith III, Deputy General Counsel

The Supreme Court of Georgia ordered the following amendments to the Rules, Regulations and Policies of the State Bar of Georgia during the 2015-2016 Operational Year.

In addition to the substantive changes described after each rule in the “Explanation” section, most of the amendments include minor wording changes to improve clarity and to comport with stylistic guidelines adopted by the Bar. The stylistic changes are not substantive.

STATE BAR GOVERNANCE RULES

Rule 1-204. Good Standing

No lawyer shall be deemed a member in good standing:

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

(b) while suspended for disciplinary reasons;

(c) while disbarred;

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

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

Explanation

The Membership Department of the State Bar of Georgia sometimes receives checks and other forms of payment that are declined or cancelled. When that happens the Bar may incur costs associated with the declination of payment. This amendment adds a provision that allows the State Bar of Georgia to add those costs or fees to the amounts a lawyer must pay before he or she is deemed to be in good standing.

Rule 1-501. License Fees

(a) Annual license fees for membership in the State Bar of Georgia shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees, including any late fees, costs, charges or penalties incurred by the State Bar of

Georgia as the result of a cancelled or dishonored payment of any type or kind for the current and prior years have been paid in full, the member shall automatically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

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

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

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

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

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

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

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

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

(ii) \$250.00 for the second reinstatement paid within the first year of suspension,

AMENDMENTS TO

BAR RULES AND BYLAWS

plus \$250.00 for each year of suspension thereafter up to a total of five years;

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

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

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

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar of Georgia. The terminated member shall not be entitled to a hearing as set out in section (d) below. The terminated member shall be required to apply to the Office of Bar Admissions for readmission to the State Bar of Georgia. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b) (3) above plus an additional \$750.00 as a readmission fee to the State Bar of Georgia.

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

If a hearing is requested, it shall be held at State Bar of Georgia Headquarters within 90 days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten days in advance. The party cited may be represented by counsel.

Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it, and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

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

After a finding of delinquency, a copy of the finding shall be served upon the respondent attorney. The respondent attorney may file with the Court any written exceptions (supported by the written argument) said respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court of Georgia and served on the Executive Committee

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

Within 30 days after a final judgment which suspends membership, the suspended member shall, under the supervision of the Supreme Court of Georgia, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court of Georgia, upon its motion, or upon the motion of the State Bar of Georgia, and after ten days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar of Georgia take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar of Georgia appointed by the Supreme Court of Georgia to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Court.

Explanation

From time to time, the State Bar of Georgia receives a Bar dues payment that is subsequently declined, dishonored or cancelled. Often these payments cause the State Bar of Georgia to incur bank and credit card costs. The amendment to this Rule allows the State Bar of Georgia to charge those costs and fees to the responsible member.

STATE BAR PROGRAM RULES

Rule 7-202. (Lawyer Assistance Program) Volunteers

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

Explanation

The amendment to this Rule adds a provision that allows the Lawyer Assistance Committee to create a peer-support system for the Lawyer Assistance Program (LAP). The peer-support system is composed of attorneys who are members of the State Bar of Georgia but are not trained in impairment counseling, treatment or rehabilitation. These volunteers provide support to lawyers who are suffering with mental or substance abuse impairments by sharing their own life experiences, providing the impaired lawyer with a person to rely on for support and encouragement as the lawyer struggles to overcome the effects of mental or substance abuse impairment.

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Rule 7-301. (Lawyer Assistance Program) Contacts Generally

The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-202, or by any other procedure through which appropriate counseling or assistance to such attorneys may be provided.

Explanation

The purpose of this amendment is to provide increased flexibility to the Lawyer Assistance Committee and the Lawyer Assistance Program (LAP) so that a clinical determination of impairment is not required before a lawyer can access the benefits of the LAP. The State Bar of Georgia believes that this was the original intent of this Rule, but clarity is needed to help guide the current and future members of the Lawyer Assistance Committee as to proper administration of this valuable program.

Rule 7-303. (Lawyer Assistance Program) Confidentiality

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

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

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

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

Explanation

The purpose of this amendment is to better define the confidentiality and exceptions that exist between the Lawyer Assistance Committee*, the designees of the Committee, any third-party clinical provider of mental health services and the members of the State Bar of Georgia who are in need of mental health or substance abuse help. The Rule change provides certain exceptions allowing confidential information to be disclosed. Setting forth the exceptions to confidentiality is necessary so that lawyers seeking assistance from the Lawyer Assistance Program, LAP volunteers and the third party clinical workers will know when confidentiality may not apply. (*The Lawyer Assistance Committee administers the Lawyer Assistance Program, usually referred to as "LAP.")

Rule 7-305. (Lawyer Assistance Program) Emergency Suspension

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

Explanation

The purpose of this amendment is to provide that any information obtained by a designee of the Lawyer Assistance Committee who is acting as a member of a volunteer network or peer network, shall not be considered "evidence" in a

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disciplinary case. The intent of this change is to increase the level of comfort for lawyers seeking help through the Lawyer Assistance Program and any of its volunteers or designees. Lawyers seeking help from LAP may otherwise fear that being candid could result in their statements and other things being used as evidence against them if prosecuted by the Office of the General Counsel for an ethics violation.

Rule 10-103. (Clients' Security Fund) Funding

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

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

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

Explanation

This amendment increases the aggregate amount the Clients' Security Fund Trustees may spend in any year from \$350,000 to \$500,000. The Clients' Security Fund was initially created by Resolution of the Board of Governors of the State Bar of Georgia on March 29, 1968, for the purpose of maintaining the integrity and protecting the good name of the legal profession by reimbursing to the extent deemed proper and feasible 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 as Part X of the State Bar Rules.

The \$350,000 aggregate limit had not been increased since the adoption of the Rules in 1991. Recent demands on the Clients' Security Fund have left many claimants without reimbursement until the next Bar year due to the \$350,000 monetary limit. This amendment should reduce that wait time and further the purpose of the Clients' Security Fund.

Rule 12-107. (Consumer Assistance Program) 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.

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

Explanation

This was a housekeeping amendment to replace the outdated wording “Standard 28” with “Rule 1.6” and “Standards of Conduct” with “Rules,” meaning the Georgia Rules of Professional Conduct. There are no substantive changes in this amendment.

ETHICS AND DISCIPLINARY RULES

Rule 4-102. Georgia Rules of Professional Conduct

Rule 1.6. Confidentiality of Information

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

(b)

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

- (i) to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;
- (ii) to prevent serious injury or death not otherwise covered by subparagraph (i) above;
- (iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against

the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

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

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

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

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

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

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

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

Explanation

This amendment clarifies that the requirements of 1.6(b)(3) (lawyer must attempt to persuade the client not to act, or must warn the victim before revealing confidential information) only apply to subparts (b)(i) and (b)(ii), and not to the remaining provisions of the Rule.

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

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permitted by law;

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

- (1) the communication is prohibited by law or court order;
- (2) the juror has made known to the lawyer a desire not to communicate; or
- (3) the communication involves misrepresentation, coercion, duress or harassment.

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

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

Comment

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

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

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

[3B] A lawyer who obtains a judge's signature on a decree in the absence of the opposing lawyer where certain aspects of the decree are still in dispute may have violated Rule 3.5.

Impartiality and Decorum of the Tribunal, regardless of the lawyer's good intentions or good faith.

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

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

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

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

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

Explanation

This amendment renumbered former subparagraph (c) so that it is now (d). The new subparagraph (c) sets forth the rules when a lawyer may or may not communicate with a juror after the conclusion of a trial. This amendment will prevent aggressive conduct towards a juror or former juror. Comment [7] further explains the new subparagraph (c). This amendment makes the Georgia Rule of Professional

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Conduct 3.5 identical to the American Bar Association Model Rule 3.5.

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:

(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) A lawyer may:

(1) Provide legal services to clients while working with other lawyers or law firms practicing in, and organized under the rules of, other jurisdictions, whether domestic or foreign, 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 client and the lawyer, 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 Conduct, or to alter the forms in which a lawyer is permitted to practice, including but not limited to the creation of an alternative business structure in Georgia.

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

Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] The provisions of paragraph (e) of this Rule are not intended to allow a Georgia lawyer or law firm to create or participate in alternative business structures (ABS) in Georgia. An alternative business structure is a law firm where a non-lawyer is a manager of the firm, or has an ownership-type interest in the firm. A law firm may also be an ABS where another body is a manager of the firm, or has an ownership-type interest in the firm. This Rule only allows a Georgia lawyer to work with an ABS outside of the state of Georgia and to share fees for that work.

Explanation

The amendment allows a Georgia attorney or law firm to work with, be associated by or associate another law firm that is an alternative business structure (ABS). An alternative business structure law firm has owners, shareholders or partners who are not lawyers.

As ABS firms become more prevalent worldwide, this change was needed for Georgia lawyers to work with firms in jurisdictions where ABS is allowed. This amendment does not permit Georgia lawyers and law firms to be or create an alternative business structure law practice.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

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

(b) A Domestic Lawyer shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule, may provide legal services in this state to the extent allowed by said Rule.

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

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a

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limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rule.

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

Explanation

New sections (h) and (i) cross-reference the Supreme Court of Georgia Rules that allow a person who is not admitted to the practice of law in Georgia to practice here on a limited basis. The Supreme Court of Georgia suggested that the cross-references would be helpful to lawyers who may naturally seek guidance through the Georgia Rules of Professional Conduct.

Rule 7.3. Direct Contact With Prospective Clients

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

- (1) it has been made known to the lawyer that a person does not desire to receive communications from the lawyer;
- (2) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;
- (3) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; or
- (4) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

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

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

- (1) A lawyer may pay the usual and reasonable fees or dues charged by a lawyer referral service, if the service:
 - (i) does not engage in conduct that would violate these rules if engaged in by a lawyer;
 - (ii) provides an explanation to the prospective client regarding how 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) lawyer may pay the usual and reasonable fees for 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

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agencies that can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

- (ii) the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;
- (iii) the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and
- (iv) a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than \$100,000 per occurrence and \$300,000 in the aggregate.

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

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

(d) A lawyer shall not solicit professional employment as a private practitioner for the lawyer, a partner or associate through direct personal contact or through live telephone

contact, with a nonlawyer who has not sought advice regarding employment of a lawyer.

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

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

Comment

Direct Personal Contact

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

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

Direct Written Solicitation

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

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means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

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

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

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

Paying Others to Recommend a Lawyer

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

Explanation

The purpose of this amendment is to remove the requirement that the State Bar of Georgia certify lawyer referral services. The proliferation of internet referral services operating from outside Georgia has made it difficult, if not impossible, to certify these entities.

The amendment requires Georgia attorneys who use a lawyer referral service to determine if using the particular referral service would violate any of the Georgia Rules of Professional Conduct.

Rule 8.4. Misconduct

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

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

(2) be convicted of a felony;

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

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

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

(6)

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

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

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

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

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

(b)

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

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

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

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

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

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

Explanation

The amendment added language to subpart (d) to clarify that Rule 8.4(a)(1) does not apply to any of the Georgia Rules of Professional Conduct for which there is not a disciplinary penalty.

Rule 4-104. Mental Incapacity and Substance Abuse.

(a) Want of a sound mind, senility, habitual intoxication or drug addiction, to the extent of impairing competency as an attorney, when found to exist under the procedure outlined in Part IV, Chapter 2 of these Rules, shall constitute grounds for removing the attorney from the practice of law.

Notice of final judgment taking such action shall be given by the Review Panel as provided in Rule 4-220 (a).

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

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

Explanation

The purpose of this amendment is to change the program name from "Committee on Lawyer Impairment" to the current program name, "Lawyer Assistance Program" (also referred to as LAP).

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

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for the appointment of a Special Master to conduct a show cause hearing.

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

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

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

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

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

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

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

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

Explanation

The previous version of Rule 4-106 (f) (2) required Review Panel review of a Special Master's report in cases involving a criminal conviction, regardless of whether a party requested such review. The amended rule ensures the availability of Review Panel review, but only if a party requests it in accordance with Rule 4-217.

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.

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(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.

Explanation

The purpose of this amendment is to replace the outdated wording “Standards of Conduct” with “Georgia Rules of Professional Conduct.” The Standards of Conduct were repealed and replaced on Jan. 1, 2001, with the Georgia Rules of Professional Conduct.

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.

Explanation

The purpose of this amendment is to change the reference to “Standard 65.5” to the equivalent Rule of Professional Conduct. The deletion of this language does not obviate disciplinary action if a lawyer fails to submit to an audit for cause.

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

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General

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

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

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

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

Explanation

The purpose of this amendment is to change the program name from “Committee on Lawyer Impairment” to the current program name, “Lawyer Assistance Program” (also referred to as LAP).

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

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Panel by serving a Notice of Investigation upon the respondent.

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

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

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

Explanation

The purpose of this amendment is to replace the outdated wording "Standards of Conduct" with "Rules," meaning the Georgia Rules of Professional Conduct. The Standards of Conduct were repealed and replaced on Jan. 1, 2001, with the Georgia Rules of Professional Conduct.

Rule 4-208.3. Rejection of Notice of Discipline

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

(b) Any Notice of Rejection by the respondent shall be served by the respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the respondent. No rejection by the respondent shall

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

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

Explanation

This amendment prevents a respondent in a disciplinary matter from rejecting a Notice of Discipline without first filing a response to the Notice of Investigation with the Investigative Panel. The amendment clarifies the prerequisites for rejecting a Notice of Discipline under the present Georgia Rules of Professional Conduct.

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.

Explanation

This amendment removed the requirement that a hearing be recorder "stenographically" to allow more modern methods of take-down by a court reporter. Further, the amendment

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specifies that the State Bar will pay the cost of transcription.

The change allows the Special Master to order the State Bar of Georgia to pay for a copy of the transcript and provide the transcript to the respondent provided that the respondent shows “necessity and financial inability to pay for a copy of the transcript.”

The amendment provides the court reporter with the assurance that the State Bar is always responsible for the cost of transcription; making the hiring of a court reporter easier and making the discipline process utilizing a Special Master process more efficient.

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

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

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

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

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

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

Explanation

This amendment eliminates confusion by expanding the time for responding to a request for review by the Review Panel, and any exceptions thereto filed with the Review Panel, from ten days to 30 days, which is consistent with all of the other response times contained within this rule.

Rule 4-219. Judgments and Protective Orders

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

(b) In cases in which the Supreme Court of Georgia orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on

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a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar of Georgia website, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c)

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

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

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

Explanation

The purpose of this amendment is to increase the time for filing a written exception, supported by written argument, to a report of a Special Master with the Supreme Court, from 20 days to 30 days. This change provides consistency in filing deadlines in disciplinary matters.

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.

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

- (i) disregard, in any manner whatsoever, of a subpoena issued pursuant to Rule 4-221 (b) (1);
- (ii) refusal to answer any pertinent or proper question of a Special Master or Board member; or
- (iii) willful or flagrant violation of a lawful directive of a Special Master or Board member.

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

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

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

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

(6) Whenever the deposition of any person is to be taken in this State pursuant to the laws of another state, territory, province or commonwealth, or of the United States or of another country for use in attorney discipline, fitness or disability proceedings there, the chairperson of the Investigative Panel, or his or her designee upon petition, may issue a summons or subpoena as provided in this Rule to compel the attendance of witnesses and production of documents at such deposition.

(c) Venue of Hearings.

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

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

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

(d) Confidentiality of Investigations and Proceedings.

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

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

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

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

- (i) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board or any person who is otherwise connected with the disciplinary proceeding in any way, either Panel of the Board or its chairperson or his or her designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.
- (ii) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.
- (iii) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.
- (iv) A complainant or lawyer representing the complainant may be notified of the status or disposition of the complaint.
- (v) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

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

- (i) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;
- (ii) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;
- (iii) The Judicial Nominating Commission or the comparable body in other jurisdictions;
- (iv) The Lawyer Assistance Program or the comparable body in other jurisdictions;
- (v) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;
- (vi) The Judicial Qualifications Commission or the comparable body in other jurisdictions;
- (vii) The Executive Committee with the specific approval of the following representatives of the Investigative Panel of the State Disciplinary Board: the chairperson, the vice-chairperson and a third representative designated by the chairperson;
- (viii) The Formal Advisory Opinion Board;
- (ix) The Consumer Assistance Program;
- (x) The General Counsel Overview Committee;
- (xi) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and
- (xii) The Unlicensed Practice of Law Department.

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

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

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

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

(10) Members of the Office of the General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent or third parties but are otherwise confidential under these Rules by acknowledging the existence and status of the proceeding.

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

(e) Burden of Proof; Evidence.

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

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

(f) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary

proceeding. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

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

Explanation

The purpose of this amendment is to change the program name in subsection (g) from “Committee on Lawyer Impairment” to the current program name, “Lawyer Assistance Program” also referred to as LAP. There are no substantive changes in this amendment.

Rule 4-227. Petitions for Voluntary Discipline

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

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

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

(2) Those petitions seeking public discipline shall be filed directly with the Clerk of the Supreme Court. The Office of the General Counsel shall have

AMENDMENTS TO BAR RULES AND BYLAWS

30 days within which to file a response. The court shall issue an appropriate order.

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

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

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

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

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

(4) The Special Master's decision to reject a petition for voluntary discipline does not preclude the filing of a subsequent petition and is not subject to review

by either the Review Panel or the Supreme Court of Georgia. If the Special Master rejects a petition for voluntary discipline, the disciplinary case shall proceed as provided by these Rules.

(5) If the Special Master accepts the petition for voluntary discipline, he or she shall enter a report making findings of fact and conclusions of law and deliver same to the Clerk of the State Disciplinary Board. The Clerk of the State Disciplinary Board shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Supreme Court of Georgia shall issue an appropriate order.

(6) Pursuant to Rule 4-210 (5), the Special Master may, in his or her discretion, extend any of the time limits in these Rules in order to adequately consider a petition for voluntary discipline.

Explanation

The purpose of this amendment is to provide consistency to the Georgia Rules of Professional Conduct by removing the requirement that a petition for voluntary discipline be filed exclusively with the Special Master and adding the requirement that a petition for voluntary discipline be filed with the Clerk of the State Disciplinary Board. This change eliminates the inconsistency with Rule 4-221(f). Rule 4-221(f) states in part: "(f) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the State Disciplinary Board at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding . . ."

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

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Informal Advisory Opinion or respond to a direct request for a Formal Advisory Opinion.

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

(c) When the Formal Advisory Opinion Board makes a preliminary determination that a Proposed Formal Advisory Opinion should be drafted, it shall publish the Proposed Formal Advisory Opinion either in an official publication of the State Bar of Georgia or on the website of the State Bar of Georgia, and solicit comments from the members of the State Bar of Georgia. If the Proposed Formal Advisory Opinion is published on the State Bar of Georgia website only, the State Bar of Georgia will send advance notification by e-mail to the entire membership that have provided the State Bar with an e-mail address, that the proposed opinion will be published on the State Bar of Georgia website. Following a reasonable period of time for receipt of comments from the members of the State Bar of Georgia, the Formal Advisory Opinion Board shall then make a final determination to either file the Proposed Formal Advisory Opinion as drafted or modified, or reconsider its decision and decline to draft and file the Proposed Formal Advisory Opinion.

(d) After the Formal Advisory Opinion Board makes a final determination that the Proposed Formal Advisory Opinion should be drafted and filed, the Formal Advisory Opinion shall then be filed with the Supreme Court of Georgia and republished either in an official publication of the State Bar of Georgia or on the website of the State Bar of Georgia. If the Proposed Formal Advisory Opinion is to be republished on the State Bar of Georgia website only, the State Bar of Georgia will send advance notification by e-mail to the entire membership that have provided the State Bar with an e-mail address, that the proposed opinion will

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

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

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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.

Explanation

In an increasingly electronic media and internet world, the purpose of this amendment is to allow a proposed Formal Advisory Opinion to be published in the official publication of the State Bar of Georgia or electronically published on the State Bar of Georgia's official website or both. This would provide a more efficient publication of the proposed opinion to members of the State Bar of Georgia for comment.

The amendment only affects Rule 4-403(c) and (d) and contains non-substantive, stylistic changes to the entire rule to provide uniformity to the Rules of the State Bar of Georgia.

CLIENTS' SECURITY FUND

by Paul Threlkeld, Chair

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 2015-16 Clients' Security Fund Annual Report to the Board of Governors of the State Bar of Georgia. The Trustees of the Fund are proud of the efforts put forth to maintain the integrity of the legal profession.

CREATION OF THE FUND

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

ADMINISTRATION OF THE FUND

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

Counsel. The following lawyers served as Trustees for the 2014-15 Bar-year:

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

Randall H. Davis, *Cartersville*

Roy B. Huff, *Peachtree City*

Hon. Rizza Palmaris O'Connor, *Lyons*

Tyronia Monique Smith, *Atlanta*

Paul H. Threlkeld, *Savannah*

Katherine K. Wood, *Decatur*

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 per lawyer to be paid over a period of five years. On Oct. 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 million. In January 1996, the Board of Trustees 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. 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.

CLIENTS' SECURITY FUND

Other efforts to maintain the stability of the fund include an amendment to the Bar Rules, which was adopted by the Supreme Court on Nov. 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 had proven successful over the years. 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 million, 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 would leave the Fund unable to adequately address all currently pending claims.

To address this issue, at their 2015 Spring meeting, the Board of Governors approved a one-time contribution of \$500,000 from the State Bar of Georgia's unrestricted surplus to the Clients' Security Fund, reasoning 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 Board also approved a proposed amendment to Bar Rule 10-103, which would increase the annual claims payment cap of \$350,000 to \$500,000. On March 3, 2016, by order of the Supreme Court of Georgia, the proposed amendment was approved.

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.

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 Jan. 2, 2001. See, 2015-2016 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 of 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 finds. The adoption of this procedure has substantially reduced claims involving theft of insurance funds.

CLIENTS' SECURITY FUND

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 April 2016.

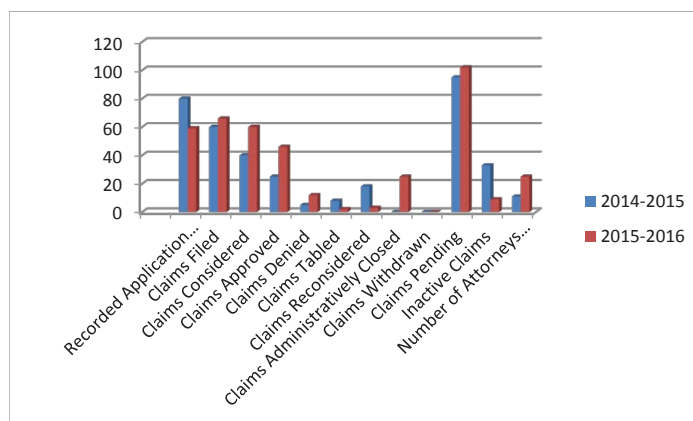
ANNUAL STATISTICS FOR OPERATIONAL YEAR 2014-15

Balance on 4/30/2016	\$2,032,543
Deposits to fund	
Assessments	\$144,907
Restitution	\$ 9,124
Interest	\$ 8,160
Distributions from Fund	
Claims Paid	\$495,338
Expenses	\$ 66,917

SUMMARY OF CLAIMS ACTIVITY

The following summary of claims activity for the 2015-16 operational year is for a period beginning May 2015 and ending April 2016. The Trustees met three times during the 2015-16 Bar year to consider pending claims. The next meeting is tentatively scheduled for Sept. 21, 2016.

Activity	2014-15	2015-16
Recorded Application Requests	80	59
Claims Filed	60	66
Claims Considered	40	60
Claims Approved	25	46
Claims Denied	5	12
Claims Tabled	8	2
Claims Reconsidered	18	3
Claims Administratively Closed	0	25
Claims Withdrawn	0	0
Claims Pending	95	102
Inactive Claims	33	9
Number of Attorneys Involved in Paid Claims	11	25



DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

REVIEW PANEL REPRIMANDS

Date of Order	Respondent	Docket
06/01/15	Neville Tevor Francis	6615
07/06/15	S. Carlton Rouse	6695
10/05/15	Thomas J. Ford III	6700
01/09/16	Nicholas Pagano	6645

PUBLIC REPRIMANDS

Date of Order	Respondent	Docket
06/01/15	William F. Heitmann III	6644
10/05/15	Hugh O. Nowell (plus two-month suspension)	6576
10/19/15	Susan Michele Brown	6494
02/01/16	Michael Anthony Eddings	6653
02/08/16	Robert Benjamin Eddleman	6610

DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

SUSPENSIONS

Date of Order	Respondent	Docket
<i>Emergency Suspension</i>		
04/11/16	Ricky W. Morris Jr. (Through pendency of disciplinary criminal matters)	6824
<i>Definite</i>		
09/14/15	Clifford E. Hardwick IV (90 days)	6384
04/26/16	Mary E. Franklin (Three months)	6782
<i>Indefinite</i>		
05/11/15	Kimberly L. Copeland (Six months with conditions)	6634
06/01/15	David P. Rachel (Pending outcome of appeal)	6693
09/14/15	Peggy Ruth Goodnight (Until RP Rep administered)	6468
10/05/15	Hugh O. Nowell (Two months plus administration of public reprimand)	6576
10/05/15	W. Burrell Ellis Jr. (Pending outcome of appeal)	6740
11/16/15	James A. Meaney III (Three months with conditions)	6608
12/01/15	Tony Curtis Jones (Additional one year with conditions)	6484 6485 6486
01/09/16	Nakata S. Smith Fitch (Six months with conditions)	6502 6637
04/26/16	Gayle S. Graziano (Six months with conditions)	6701

DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

SUSPENSIONS

Date of Order	Respondent	Docket
<i>Interim Suspensions</i>		
06/30/15	Michael Lawrence Terrell	150019
06/30/15	Morris P. Fair Jr.	150046
06/30/15	Steven Paul Smith	140088
06/30/15	Stephen Bailey Wallace II	150001
07/27/15	Nolen Arthur Hamer	150055
07/27/15	Steven Salcedo	150070
07/27/15	Anthony Sylvester Kerr	150053 150058
09/29/15	Julian H. Toporek	150095
12/03/15	Jennifer L. Wright	150130
12/22/15	Donald Carlton Gibson	150029 150071 150082 150154 150155 150197
01/08/16	Martin Mariano Del Mazo	150182
01/13/16	David P. Hartin	150196
04/26/16	Richard R. Buckley Jr.	150221

DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

SUSPENSIONS

Date of Order	Respondent	Docket
<i>Interim Suspensions Lifted</i>		
07/27/15	Morris P. Fair Jr.	150046
07/27/15	Steven Paul Smith	140088
07/27/15	Nolen Arthur Hamer	150055
09/23/15	Anthony Sylvester Kerr	150053 150058
02/25/16	Martin Mariano Del Mazo	150182

DISBARMENTS/VOLUNTARY SURRENDERS

Date of Order	Respondent	Docket
05/11/15	Robert Gist	6642 6643
06/01/15	Charles B. Merrill Jr.	6691
06/15/15	James Alan Langlais	6692
06/15/15	Perrin Bowie Lovett	6687
06/15/15	Melissa Jill Starling	6278 6575
07/05/15	Russ Floyd Barnes	6594
07/06/15	Wayne Peter Merisotis	6587 6588
07/27/15	Tanya Yvette Brockington	6714 6715 6716
09/14/15	Tesha Nicole Clemmons	6725
09/14/15	Steven Salcedo	6708

DISCIPLINARY ORDERS OF THE SUPREME COURT OF GEORGIA

DISBARMENTS/VOLUNTARY SURRENDERS

Date of Order	Respondent	Docket
10/05/15	William Charles Lea	6676 6677 6716
10/05/15	Joel David Myers	6722 6723
10/05/15	Tony L. Axam	6246
10/05/15	Dennis S. Childers	6689
10/05/15	John R. Thompson	5940
10/05/15	Jin Choi	6244 6245 6616
10/05/15	Paul L. Koehler	6465
10/19/15	Douglas J. Mathis	6736 6737
11/02/15	Michael Lawrence Terrell	6752 6753
11/16/15	Wilson R. Smith	6690
01/19/16	Dianne Cook	6765
02/01/16	TaShawna Lacher Griffieth	6792
02/01/16	Jay Harvey Morrey	6680
02/01/16	Donald Carlton Gibson	6803
02/08/16	Stephen B. Taylor	6544 6744
04/04/16	Jarlath Robert MacKenna	6721
04/26/16	Stephen Bailey Wallace II	6785
04/26/16	David P. Hartin	6743