

2017 Report of the
**OFFICE OF THE
GENERAL COUNSEL**

◀◀◀ State Bar of Georgia ▶▶▶



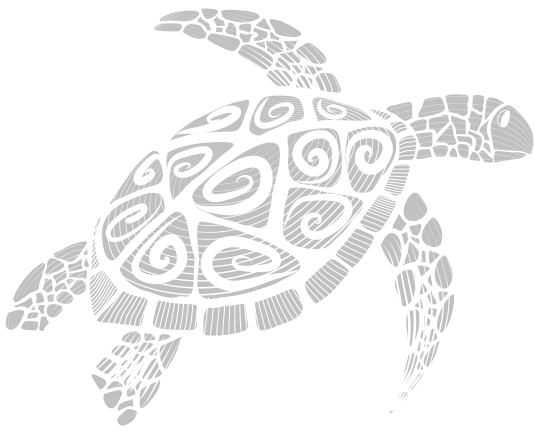
State Bar
of Georgia

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Jekyll Island Convention Center
Jekyll Island, Ga.

June 8-11



▶▶▶ REPORT INDEX

I.	Report of the General Counsel	3
II.	State Disciplinary Board	
	Investigative Panel	6
	Review Panel	8
III.	Formal Advisory Opinion Board.....	10
IV.	Overdraft Notification Program.....	14
V.	<i>Pro Hac Vice</i> Program	16
VI.	Amendments to Bar Rules and Bylaws	17
VII.	Clients' Security Fund.....	19
VIII.	Disciplinary Orders of the Supreme Court of Georgia	
	Review Panel Reprimands	23
	Public Reprimands	23
	Suspensions.....	23
	Emergency Suspensions.....	23
	Indefinite Suspensions	23
	Definite Suspensions.....	24
	Interim Suspensions.....	24
	Interim Suspensions Lifted	25
	Disbarments/Voluntary Surrenders.....	26

▶▶▶ REPORT OF THE GENERAL COUNSEL

by Paula J. Frederick, General Counsel

I am pleased to present the 2016-17 Report of the Office of the General Counsel. Enclosed herein are reports from the Investigative and Review Panels of the State Disciplinary Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the *Pro Hac Vice* program and the Trust Account Overdraft Notification Program. Following the reports is a list of the Supreme Court Orders issued in disciplinary cases between May 1, 2016, and April 30, 2017; to access an order simply click on the lawyer's name in the Member Directory. My quarterly reports to the Board of Governors contain additional updates on our work; they are available in each board meeting agenda book. If you have any questions about the work of the Office feel free to contact me.

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

Staff

This year saw unprecedented staff departures from OGC. We bade farewell to Ethics Counsel Bill Smith upon his retirement at the end of December, and celebrated his 34 year tenure with a special dinner at the Board of Governors Spring Meeting. Connie Henry, Clerk of the State Disciplinary Board, also retired after 36 years with the Bar. Longtime Assistant General Counsel Becky Hall moved to the newly structured Institute of Continuing Legal Education to take a job as Associate Director. I hope you will join me in thanking them for their service to the Bar and wishing them well in their new endeavors.

I have attached a staff roster as the last page of this report so that you know who to contact when you need help. Remember that in addition to investigating and prosecuting disciplinary cases the Office also:

- Provides legal advice to the staff, Executive Committee and Board of Governors;
- Represents the Bar and its volunteers or monitors outside counsel in threatened or pending litigation;



▶▶▶ REPORT OF THE GENERAL COUNSEL

- Drafts and amends bar rules, contracts, and policies;
- Provides guidance to supervisors on employment matters, proposes and drafts amendments to the Employee Manual, provides HR advice and training;
- Files and manages receiverships.

Staff of the Office of the General Counsel also provide advice and support to a number of other Bar entities, including the:

- Investigative Panel,
- Review Panel,
- Disciplinary Rules Committee,
- Formal Advisory Opinion Board,
- Clients' Security Fund,
- Advisory Committee on Legislation,
- Uniform Rules Committee,
- Elections Committee,
- Insurance Committee,

- Committee on International Trade in Legal Services,
- Wellness Committee,
- Continuity of Law Practice Committee, and the
- OGC Overview Committee.

Lawyer Helpline

The Office of the General Counsel operates a Lawyer Helpline for members of the State Bar of Georgia to discuss ethics questions on an informal basis with an Assistant General Counsel. The Helpline averages 21 calls, letters or email requests each weekday.

Continuing Legal Education

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

Thanks

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

▶▶▶ REPORT OF THE GENERAL COUNSEL

Office of the General Counsel Staff Roster

404-527-8720

General Counsel

Paula Frederick x8730 paulaf@gabar.org

Legal Assistant to the General Counsel

Deborah Grant x8722 deborahg@gabar.org

Bar Counsel Unit

(In-house counsel work, drafting amendments to Bar rules or bylaws, contract review, receiverships, Clients' Security Fund, Formal Advisory Opinion Board, letters of good standing)

Deputy General Counsel

Bill NeSmith x8728 billn@gabar.org

Senior Assistant General Counsel

John Shiptenko x8739 johns@gabar.org

Paralegal

Betty Derrickson x8771 bettyd@gabar.org

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Karen Cooper x8634 karenc@gabar.org

Disciplinary Unit

(Screening Office—initial investigation and review of grievances)

Assistant General Counsel/Grievance Counsel

Adrienne Nash x8757 adriennen@gabar.org

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Paralegal/Pro Hac Vice Program

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Legal Secretary

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Clerk, State Disciplinary Board

Jessica Oglesby x8721 jessicao@gabar.org

Legal Assistant/Receptionist

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▶▶▶ INVESTIGATIVE PANEL

by Sherry Boston, 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 2016-17 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 Athens, Atlanta, Greensboro, Helen, Macon, Madison, Savannah, Pine Mountain and Amelia Island, Fla.

The Bar received slightly fewer requests for grievance forms this year (3,105) than last (3,219). The number of grievance forms returned to the Office of the General Counsel decreased. Last year's figure was 2,253; this year 1,842 forms were returned for screening and further consideration.

After review by an assistant general counsel, 1,623 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 188 grievances contained allegations which, if true, would amount to violations of one or more of the Georgia Rules of Professional Conduct found at Bar Rule 4-102. This represents a decrease from 231 such grievances in 2016. Each of those grievances was referred to one of the district panel members for further investigation.

Investigative Panel members who investigated grievances each handled numerous cases during the Bar year. The panel also set a goal of having each case reported within 180 days. Each case required investigation and time away from the panel member's law practice, all without compensation. At the end of the investigation, the panel member made a report

and recommendation to the full panel. One hundred and seven grievances were dismissed, 49 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and twenty-nine cases met the "probable cause" test and were returned to the Office of the General Counsel for prosecution. This represents an increase from 116 such cases last year. Eighty-three cases are still under consideration by the panel, a decrease from 127 such cases last year.

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

The Investigative Panel imposed the following during 2016-17:

Cases

Investigative Panel Reprimands	24
Letters of Formal Admonition	24
Cases Dismissed with Letters of Instruction	49
Interim Suspensions	15

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

Charles E. Peeler, Albany
Laverne Lewis Gaskins, Valdosta

District 3

Donna S. Hix, Columbus
G. Bardin Hooks Jr., Americus

District 4

Zulma P. Lopez, Atlanta
Sherry Boston, Decatur

District 5

William Hickerson Thomas Jr., Atlanta (*term expiring*)
Karen Brown Williams, Atlanta (*term expiring*)

District 6

Delia T. Crouch, Newnan (*term expiring*)
Andrew J. Whalen, Griffin, District 6 (*term expiring*)

District 7

Christopher A. Townley, Rossville (*term expiring*)
Dale Pearson Beardsley, Atlanta (*term expiring*)

District 8

Kimberly A. Reid, Cordele
John D. Newberry, Gray

District 9

Dana Pagan, Lawrenceville
Melody A. Glouton, Duluth

District 10

Amanda Heath, Augusta
Anna Green Bolden, Winder

At-Large

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

We have two ex-officio members, the president-elect of the State Bar of Georgia, Brian D. “Buck” Rogers, Atlanta (*term expiring*), and the president-elect of the Young Lawyers Division, Nicole Leet, Atlanta (*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 (*term expiring*)
Michael A. Fuller, Macon
Carol Fullerton, Albany
Elizabeth King, Atlanta (*term expiring*)
David Richards, Stone Mountain





▶▶▶ REVIEW PANEL

by Anthony B. Askew, Chair

The Review Panel of the State Disciplinary Board currently serves as an appellate review board in our disciplinary system. After a disciplinary case has been heard by a special master, the parties may request review by the Review Panel before the case is filed with the Supreme Court. The Review Panel has authority to review the complete record and make findings of fact and conclusions of law. 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 cases involving reciprocal discipline. The Supreme Court of Georgia amended the Bar Rules on June 9, 2004, so that the Review Panel reviews 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. These cases present many interesting issues for the panel. In many instances the lawyer objects to reciprocal discipline and the panel must consider whether the case is in the correct procedural posture to be reviewed, whether the lawyer was afforded due process in the underlying disciplinary proceeding, whether the misconduct would result in similar discipline under our rules and recommend discipline which would be substantially similar to the discipline imposed in the foreign jurisdiction.

The Review Panel also issues Review Panel reprimands when directed by the Supreme Court, approves publication of notices of suspension and disbarment and makes recommendations in reinstatement cases involving suspensions with conditions for reinstatement as directed by the Supreme Court.

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, 2016, to April 30, 2017:

<i>Form of Discipline</i>	<i>Cases</i>	<i>Lawyers</i>
Disbarments/Voluntary Surrenders	24	18
Suspensions	39	25
Public Reprimands	14	2
Review Panel Reprimands	8	6

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 (*term expiring*)

Lawyer Members

Northern District

J. Robert Persons, Atlanta (*term expiring*)
Anthony B. Askew, Atlanta
C. Bradford Marsh, Atlanta

Middle District

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

Southern District

Aimee Pickett Sanders, Augusta (*term expiring*)
Thomas R. Burnside III, Augusta
Sarah Brown Akins, Savannah

Ex-Officio Members

Robert J. Kauffman, Douglasville (*term expiring*)
John R. B. "Jack" Long, Augusta (*term expiring*)





▶▶▶ FORMAL ADVISORY OPINION BOARD

by Jeffrey Hobart Schneider, 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 State Bar of Georgia, with the approval of the Board of Governors. For the 2016-17 Bar year, the Board was comprised of the following lawyers:

	<i>Term Expires</i>
Members at Large	
Edward B. Krugman, Atlanta	2017
Jeffrey Hobart Schneider, Chair, Atlanta	2018
Letitia A. McDonald, Atlanta	2018
Mary A. Prebula, Duluth	2018
Dennis C. O'Brien, Marietta	2017
Georgia Trial Lawyers Association	
David N. Lefkowitz, Vice Chair, Atlanta	2017
Georgia Defense Lawyers Association	
Jacob Edward Daly, Atlanta	2017
Georgia Association of Criminal Defense Lawyers	
Holly Wilkinson Veal, McDonough	2018
Georgia District Attorney's Association	
Donald R. Donovan, Dallas	2018
Young Lawyers Division	
John B. Manly, Savannah	2017
Emory University	
Prof. Melissa D. Carter, Atlanta	2018
University of Georgia	
Prof. Lonnie T. Brown Jr., Athens	2017
Mercer University	
Prof. Patrick E. Longan, Macon	2017
Georgia State University	
Prof. Nicole G. Iannarone, Atlanta	2018
Atlanta's John Marshall Law School	
Prof. Jeffrey Alan Van Detta, Atlanta	2017

Investigative Panel

J. Maria Waters, Savannah 2017

Review Panel

C. Bradford Marsh, Atlanta 2017

Factors that the 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 State Bar of Georgia, 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 2016-17 Bar year.

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

Formal Advisory Opinion Request No. 16-R4

Ethical consideration regarding Rule 3.1 and Rule 3.5 when an attorney files a lawsuit based on unwarranted claims on behalf of a plaintiff who previously had access to confidential information related to the opposing party's litigation strategy and work product.

Shortly after receiving this request, the requestor decided to withdraw the request. The Formal Advisory Opinion Board took no action on this request.

Formal Advisory Opinion Request No. 16-R5

1. Is it ethically permissible for the governing board of directors of a non-profit, tax exempt legal services organization to include both lawyers and nonlawyers as members?
2. Is it ethically permissible for a staff lawyer employed by a nonprofit, tax-exempt legal services organization whose governing board of directors includes both lawyers and nonlawyers to provide legal services related to the public

▶▶▶ FORMAL ADVISORY OPINION BOARD

interest purposes of the organization to low- and moderate-income third parties without violating Rule 5.4, so long as the staff lawyer reports to the director of the organization, who also is a lawyer, and so long as the organizational documents and operational policies of the organization prohibit interference by the board of directors with the lawyer-client relationship between, and exercise of independent professional judgement by, a staff lawyer or a volunteer lawyer and the client, and protect the confidentiality of the client?

3. Is it ethically permissible for a nonprofit, tax-exempt legal services organization whose governing board of directors includes both lawyers and nonlawyers to charge a reasonable or below market rate legal fee for legal services related to the public interest purposes of the organization without violating the “fee splitting” provisions of Rule 5.4(a), so long as any such fees are reinvested in the charitable or public interest purposes of the organization?
4. Is it ethically permissible for a staff lawyer employed by a nonprofit, tax-exempt legal services organization whose governing board of directors includes both lawyers and nonlawyers to assign to the organization, as a condition of such lawyer’s employment, any legal fees earned by, awarded, or assigned to the staff lawyer or the organization in the performance of legal services related to the public interest purposes of the organization, without violating the “fee splitting” provisions of Rule 5.4(a), so long as any such fees are reinvested in the charitable or public interest purposes of the organization?
5. Is it ethically permissible for a volunteer attorney who has accepted a referral from a nonprofit, tax-exempt legal services organization whose governing board of directors includes both lawyers and nonlawyers to pay a referral fee to

such organization, whether such fee is fixed or is calculated as a percentage of legal fees actually earned and collected by the lawyer to whom such matter was referred by the organization, without violating the “fee-splitting” provisions of Rule 5.4(a)(5)?

Shortly after receiving this request, the requestor decided to withdraw the request. The Formal Advisory Opinion Board took no action on this request.

Formal Advisory Opinion Request No. 16-R6

Ethical propriety of an attorney/doctor being compensated for expert medical advice (expert witness) based on a percentage of an amount recovered in the case.

The Formal Advisory Opinion Board declined this request after determining the request is not of general interest to members of the State Bar of Georgia and does not present a genuine ethical issue since the Georgia Rules of Professional Conduct expressly address the issue raised in the request.

Formal Advisory Opinion Request No. 17-R1

Can a former in-house attorney use client confidences and privileged information in establishing his own whistleblower claims against his former employer in Georgia?

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 in a prior Bar year and, during 2016-17 the board took further action on these requests. The issue presented in the requests and the status of the request are as follow:

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





▶▶▶ FORMAL ADVISORY OPINION BOARD

violates any Georgia Rule of Professional Conduct if there is only one attorney in the firm.

This request was received in the 2014-15 Bar year. Following the first publication of Proposed Formal Advisory Opinion No. 15-R1 in the April 2016 issue of the Georgia Bar Journal, the Formal Advisory Opinion Board made a final determination that Proposed Formal Advisory Opinion No. 15-R1 should be issued and filed with the Supreme Court of Georgia pursuant to Bar Rule 4-403(d). The opinion (now known as Formal Advisory Opinion No. 16-3) was published in the August 2016 issue of the Georgia Bar Journal and filed with the Supreme Court of Georgia on Nov. 10, 2016. No request for discretionary review was made and the Supreme Court declined to review the opinion on its own motion. Accordingly, Formal Advisory Opinion No. 16-3 is an opinion of the Formal Advisory Opinion Board and is binding on the requestor and the State Bar of Georgia, and not the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

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 was received in the 2015-16 Bar year. The Formal Advisory Opinion Board declined this request after determining the existing rules adequately address the issues raised in the request.

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 was received in the 2015-16 Bar year. The Formal Advisory Opinion Board declined this request after determining the existing rules, specifically GRPC 1.8(a) and

other conflict rules, adequately address the issues raised in the request.

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 was received in the 2015-16 Bar year. The Formal Advisory Opinion Board declined this request pursuant to Bar Rule 4-403.

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 was received in the 2015-16 Bar year. The Formal Advisory Opinion Board continues to have this request under consideration and has not yet determined whether to accept or decline the request for the drafting of a formal advisory opinion.

In December 2012, the Formal Advisory Opinion Board began a review of existing formal advisory opinions to determine whether the amendments to the Georgia Rules of Professional Conduct, issued by the Supreme Court of Georgia on Nov.

3, 2011, impact the substance and/or conclusion of the opinions. The Formal Advisory Opinion Board determined the Nov. 3, 2011 amendments to the Georgia Rules of Professional Conduct impacted the substance and/or conclusion of FAO No. 10-2 and FAO No. 03-2, which warranted a redrafting of the opinions. The Board approved the redrafted versions and, with the approval of the Supreme Court of Georgia, treating the redrafted versions like new opinions. The opinions were processed and published in compliance with Bar Rule 4-403(c). Following is the status of each opinion:

Formal Advisory Opinion No. 16-1 (redrafted version of FAO No. 03-2)

Does the obligation of confidentiality described in Rule 1.6, Confidentiality of Information, apply as between two jointly represented clients?

This opinion was published in the June 2016 issue of the Georgia Bar Journal for second publication and filed with the Supreme Court of Georgia on July 1, 2016. No petition for discretionary review was filed within the 20-day review period, and on July 25, 2016, the Supreme Court of Georgia issued an order declining to review the opinion on its own motion. Accordingly, pursuant to Rule 4-403(d), Formal Advisory Opinion No. 16-1 is an opinion of the Formal Advisory Opinion Board and is binding on the requestor and the State Bar of Georgia, and not the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

Formal Advisory Opinion No. 16-2 (redrafted version of FAO No. 10-2)

May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child's objection?

This opinion was published in the August 2016 issue of the Georgia Bar Journal for second publication and filed with the Supreme Court of Georgia on Nov. 10, 2016. The

State Bar of Georgia filed a petition for discretionary review with the Supreme Court of Georgia on Nov. 29, 2016, pursuant to Rule 4-403(c). The matter remains pending with the Supreme Court of Georgia.

Formal Advisory Opinions can be found in the State Bar of Georgia *2016-17 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 unfailing dedication and assistance have been invaluable to the board.



▶▶▶ OVERDRAFT NOTIFICATION PROGRAM

by Regina Putman, Trust Account Overdraft Notification Coordinator

The Overdraft Notification Program received 329 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, two overdrafts were reported to the State Bar on the trust accounts of lawyers licensed to practice in other jurisdictions, one notice was received in error on a general operating account, three notices were received on the trust accounts of deceased lawyers, three notices were received on the trust accounts of disbarred lawyers and two attorney trust accounts were erroneously reported to the State Bar as overdrawn. A total of 266 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, three files were referred to the Law Practice Management Program, and 14 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 2016-17 remain open, pending final review and disposition.)

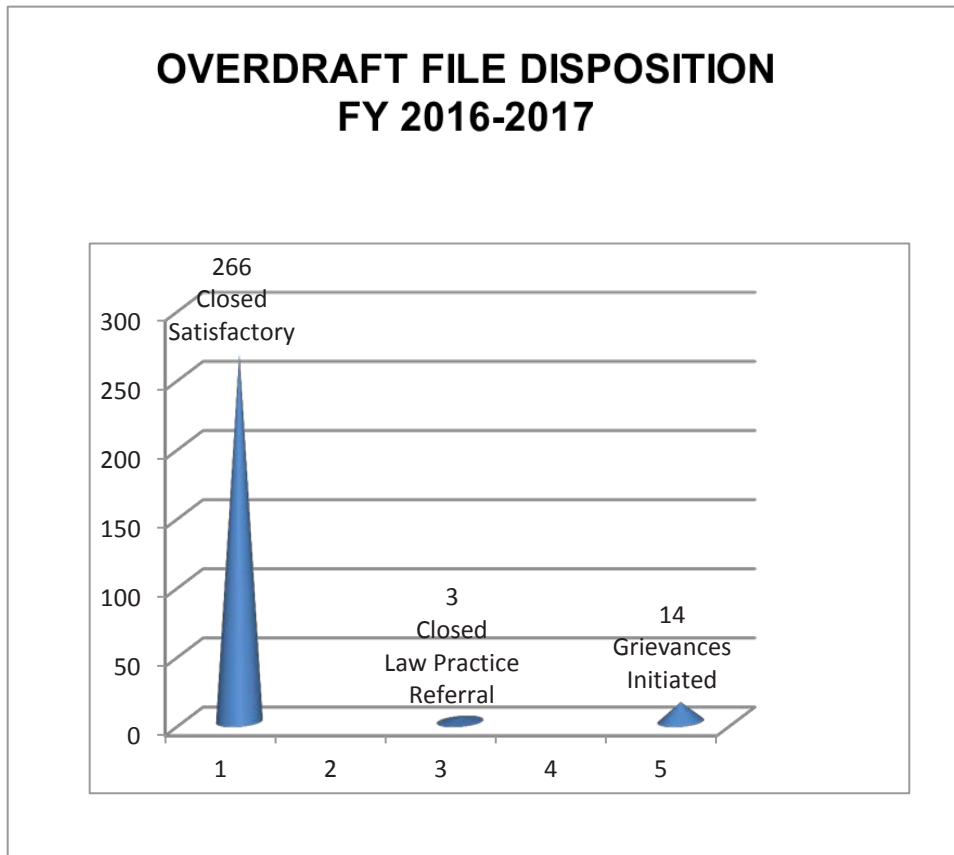
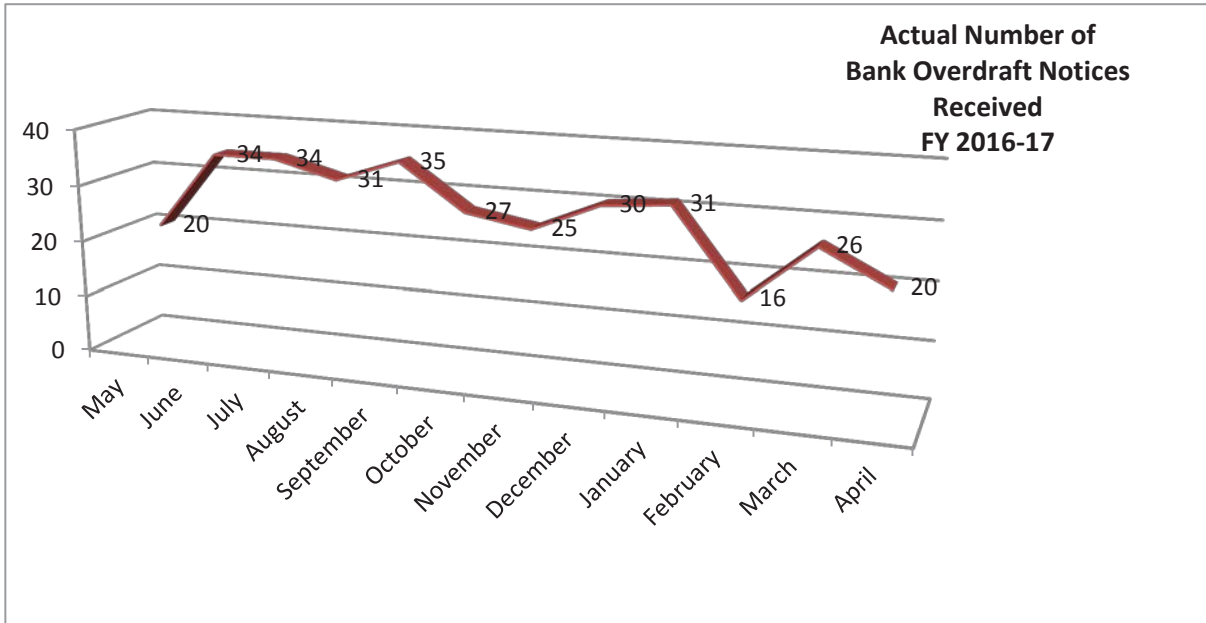
Financial Institutions Approved as Depositories for Attorney Trust Accounts

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.

ATTORNEY TRUST ACCOUNT OVERDRAFT REPORT FISCAL YEAR 2016-2017

Month 2016/2017	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
May	20	22	0	2	24
June	34	20	0	1	21
July	34	29	0	3	32
August	31	26	0	0	26
September	35	27	0	3	30
October	27	9	1	0	10
November	25	19	1	0	20
December	30	8	0	0	8
January	31	36	1	3	40
February	16	16	0	1	17
March	26	40	0	0	40
April	20	14	0	1	15
TOTALS:	329	266	3	14	283
PERCENTAGES:		91%	0.63%	8.59%	

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.

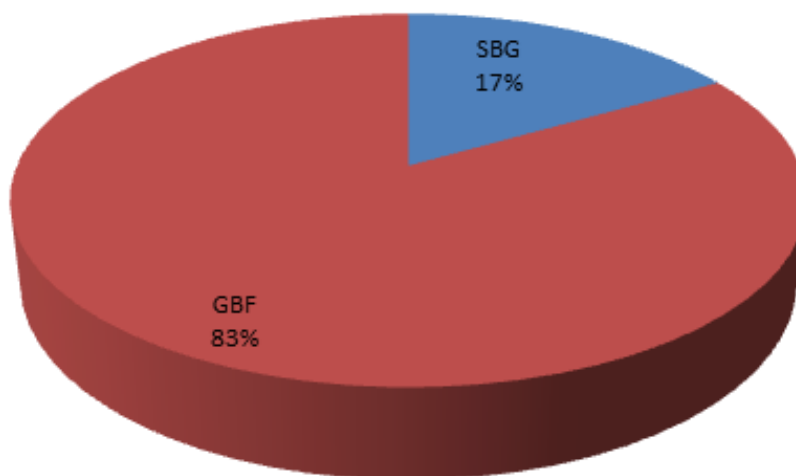
The Supreme Court has amended the rule three times since 2005. The most recent amendment came after the Civil Legal Services Task Force proposed increasing the *pro hac vice* fee to generate money for civil legal services. Applicants would pay a \$275 for the first application filed in a calendar year and \$75 for any additional applications filed in the same calendar year. Applicants would also be required to pay a \$200 annual fee on or before Jan. 15 for each subsequent

year the applicant remains admitted *pro hac vice*. All fees 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, 2016, through April 30, 2017, the Office of the General Counsel reviewed 669 *pro hac vice* applications. The Office of the General Counsel has filed seven responses with Georgia courts regarding the eligibility of the applicant. Eleven applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel collected a total of \$289,475 from *pro hac vice* applicants. Below is a chart with a breakdown of the fees received.

Total Pro Hac Vice Fees Received



The State Bar of Georgia (SBG) collected a total of \$289,475 for *pro hac vice* fees. The fees were divided between the State Bar of Georgia and the Georgia Bar Foundation (GBF). SBG received \$48,075 from the total collected. GBF received \$241,400 from the total collected.

▶▶▶ AMENDMENTS TO BAR RULES & 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 2016-17 Operational Year. In addition to the substantive changes, most of the amendments include minor wording changes to improve clarity and to comport with stylistic guidelines adopted by the State Bar. The most current version of the Rules is on the State Bar of Georgia website at www.gabar.org.

State Bar Georgia Governance Rules

Rule 1-203. Practice By Active Members;

Nonresidents

(Amended by order of the Supreme Court of Georgia on November 2, 2016.)

The amendment to this rule added paragraphs (e) through (h), which cross reference Supreme Court of Georgia Rules Part XV, Rules 91-95, *Student Practice Rule* and Part XXI, Rule 121 *Provision of Legal Services Following Determination of Major Disaster*.

State Bar Program Rules

Part XVI. Institute of Continuing Legal Education of the State Bar of Georgia

(Amended by order of the Supreme Court of Georgia on April 19, 2017.)

This amendment added a new Part XVI to the State Bar of Georgia Program Rules. In 2016, the board of directors for the Institute of Continuing Legal Education in Georgia, a nonprofit association, ceased operations. On Jan. 1, 2017, the Institute of Continuing Legal Education in Georgia transferred all of its assets to the State Bar of Georgia Foundation, Inc. The State Bar of Georgia Foundation, Inc., subsequently contracted with the State Bar of Georgia to run a continuing legal education program for Georgia lawyers. In

order to provide continuing legal education to Georgia lawyers, the State Bar of Georgia created a new program called the Institute of Continuing Education of the State Bar of Georgia. The newly created rules under Part XVI are designed to guide the administration of the program and provide oversight by creating an advisory Board that reports directly to the Board of Governors of the State Bar of Georgia.

Ethics and Disciplinary Rules

Rule 4-102. Georgia Rules of Professional Conduct

Rule 1.7. Conflict of Interest: General Rule

(Amended by order of the Supreme Court of Georgia on November 2, 2017.)

This rule was amended to add paragraph (d) and additional comments to the Rule that allows lawyers to simultaneously serve as part-time prosecutors and represent individual clients in criminal and civil matters. The amended rule and comments, though otherwise subject to the provision of the Rule, are consistent with the Supreme Court of Georgia's ruling in *Thompson v. State*, 254 Ga. 393, 396-397 (1985).

Rule 4.4. Respect for Rights of Third Parties

(Amended by order of the Supreme Court of Georgia on November 2, 2017.)

This rule was amended to add paragraph (b), which tracks the language of the ABA Model Rule concerning the inadvertent disclosure of documents or electronically stored information. The amended rule provides guidance to lawyers on how to proceed if there is an inadvertent disclosure of confidential materials. The changes to the comments also track the ABA language and provide additional guidance for the lawyers who receive such a disclosure.



▶▶▶ AMENDMENTS TO BAR RULES & BYLAWS

Rule 5.3. Respect for Rights of Third Parties

(Amended by order of the Supreme Court of Georgia on November 2, 2017.)

This rule was amended to add clarity regarding employment of disbarred lawyers by members of the State Bar of Georgia. The rule previously prohibited a disbarred lawyer from having any contact with persons who have legal dealings with the office, whether in person, by telephone or in writing. Amid concerns that the rule was broader than necessary to protect the public, it was narrowed to prohibit a disbarred lawyer from providing legal advice to clients of a law office or from holding themselves out to clients as a lawyer. Comment [3] provides additional clarity and further instructions to State Bar of Georgia members who hire disbarred lawyers. The amended rule follows the dicta in *Wilson v. State Bar of Georgia*, 132 F.3d 1422 (1988).

▶▶▶ 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 2016-17 Clients' Security Fund Annual Report to the Board of Governors of the State Bar of Georgia. The Trustees of the Fund are proud of the efforts put forth to maintain the integrity of the legal profession.

Creation of the Fund

The Board of Governors of the State Bar of Georgia created the Clients' Security Fund by Resolution on March 29, 1968. The Fund was formed "for the purpose of promoting public confidence in the administration of justice, and maintaining the integrity and protecting the good name of the legal profession by reimbursing, to the extent deemed proper and feasible by the Trustees of the Fund, losses caused by the dishonest conduct of members of the State Bar of Georgia." In 1991, the Supreme Court of Georgia adopted the Rules of the Clients' Security Fund (Part X) making it an official part of the Rules of the State Bar of Georgia. That same year, pursuant to the Rules, the Board of Governors assessed each of the members of the State Bar the sum of \$100, to be paid over a five-year period, to fully fund and stabilize the Fund.

Administration of the Fund

The Clients' Security Fund Board of Trustees performs all acts necessary and proper to fulfill the purposes of and effectively administer the Fund. The Rules, issued by order of the Supreme Court of Georgia, establish a Board of Trustees consisting of six lawyers and one non-lawyer member who

are appointed to staggered terms by the president of the State Bar of Georgia. The Trustees serve five-year terms, and receive no compensation or reimbursement for their service. The Trustees select the chair and vice chair to serve as officers for the Fund. The Fund receives part-time assistance from one attorney and one paralegal from the Office of the General Counsel. The following lawyers served as Trustees for the 2016-17 Bar year:

Randall H. Davis, Cartersville

Roy B. Huff, Jr. Peachtree City

Tyronia Monique Smith, Atlanta

Sammy Stroke, Savannah (non-lawyer)

Paul H. Threlkeld, Savannah

Rebecca Ashley Wright, Augusta

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



CLIENTS' SECURITY FUND

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 percent of the Fund balance as it existed on the date the first claim against the lawyer was paid. Both of these rules may be overridden by a unanimous vote of the Trustees in cases of undue hardship or extreme unfairness.

Other efforts to maintain the stability of the fund include an amendment to the Bar Rules, which was adopted by the Supreme Court on 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 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

▶▶▶ CLIENTS' SECURITY FUND

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.

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 2017.

Annual Financial Statistics

Balance on 4/30/2017 \$1,843,073

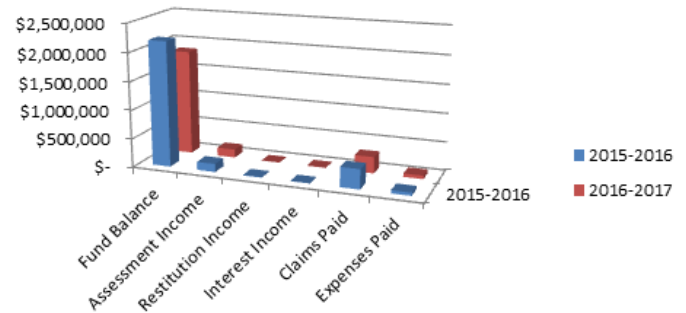
Income to Fund

1) Assessments	\$146,642
2) Restitution	\$4,431
3) Interest	\$5,953

Distributions from Fund

1) Claims Paid	\$437,812
2) Expenses	\$60,833

Comparison Chart Between Bar Year 2015-16 and Bar Year 2016-17



Summary of Claims Activity

The following summary of claims activity for the 2016-17 operational year is for a period beginning May 1, 2016 and ending April 30, 2017. The Trustees met three times during the 2016-2017 Bar year to consider pending claims.

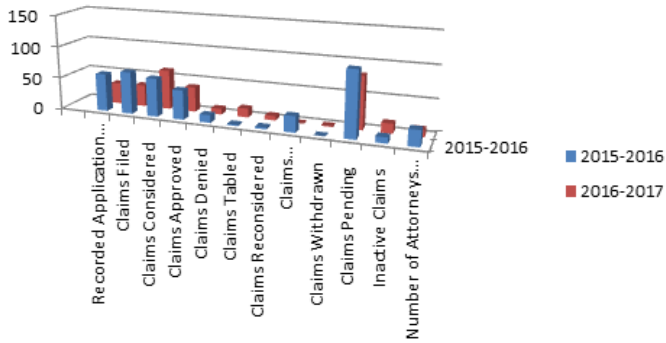
Activity	2015-16	2016-17
Recorded Application Requests	59	33
Claims Filed	66	34
Claims Considered	60	62
Claims Approved	46	39
Claims Denied	12	9
Claims Tabled	2	14
Claims Reconsidered	3	7



CLIENTS' SECURITY FUND

Activity	2015-16	2016-17
Claims Administratively Closed	25	0
Claims Withdrawn	0	1
Claims Pending	102	82
Inactive Claims	9	15
Number of Attorneys Involved in Paid Claims	25	11

Comparison Chart Between Bar Year 2015-16 and Bar Year 2016-17



▶▶▶ DISCIPLINARY ORDERS

Review Panel Reprimands

Date of Order	Respondent	Docket
5/23/16	Tiffini Colette Bell	6843
10/3/16	Nicole Jones	6780 6795
12/8/16	David Edmund Ralston	6523
2/27/17	Gary Lanier Coulter	6874
3/20/17	John Andrew Leslie	6900 6901
3/2017	Jon Gary Branan (and one-month suspension)	6934

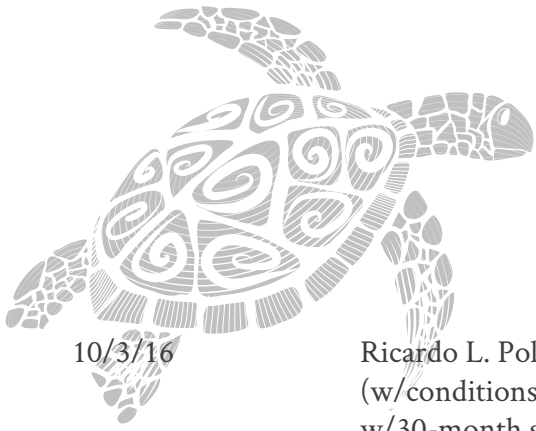
Public Reprimands

Date of Order	Respondent	Docket
12/15/16	Michael Anthony Eddings	6324-6331 6341 6363 6505
2/27/17	David J. Farnham	6581 6705 6706

Suspensions

Date of Order	Respondent	Docket
<i>Emergency Suspension</i>		
9/1/16	Chalmer Edwin Detling II	6879
<i>Indefinite</i>		
9/12/16	Nathan Everette Hardwick IV (during pendency of criminal charges)	6832
10/3/16	L. Nicole Brantley (180 days w/conditions)	5984 5985 6019 6156 6157





▶▶▶ DISCIPLINARY ORDERS

10/3/16	Ricardo L. Polk (w/conditions concurrent w/30-month suspension)	6733
10/17/16	Alvis Melvin Moore (1 year w/conditions)	6119
10/17/16	Michelle A. Hickerson	6880
11/7/16	Christopher Mark Miller (pending felony charges)	6906
11/7/16	Bonnie Monique Youn (18 months w/conditions)	6846
12/8/16	William D. Hentz (2 years w/conditions)	6760 6761 6762 6763 6764
1/23/17	Shanina Nashae Lank (1 year w/conditions)	6808 6809 6810
<i>Definite</i>		
10/3/16	Daniel J. Saxton (3 months)	6828
10/27/16	Richard J. Storrs (3 months)	6660
3/20/17	Jon Gary Branan (1month and Review Panel Reprimand)	6934
4/17/17	Jeffrey L. Sakas (6 months)	6786
<i>Interim Suspensions</i>		
5/18/16	Holly De Rosa Hogue	160018
5/18/16	Earnest Redwine	160023
6/30/16	Anthony Sylvester Kerr	150228 160033

▶▶▶ DISCIPLINARY ORDERS

7/25/16	S. Quinn Johnson	160090
8/30/16	Jeffrey L. Sakas	160014 160118
10/11/16	Craig S. Bonnell	160086
12/8/16	Brenden E. Miller	160100
1/30/17	Melvin T. Johnson	160126
3/6/17	Miguel Angel Garcia Jr.	160238
3/6/17	Anthony Sylvester Kerr	160210 160234
3/9/17	James Edward Rambeau Jr.	160247
4/12/17	Ali Forrest Morad	160262
<i>Interim Suspensions Lifted</i>		
5/12/16	Jennifer L. Wright	150130
6/30/16	Julian H. Toporek	150095
7/21/16	Ernest Redwine	160023
8/16/16	Anthony Sylvester Kerr	150228
8/22/16	Debra Faye Coleman	130060
9/29/16	Shanina Nashae Lank	140135
9/29/16	Anthony Sylvester Kerr	160033
9/29/16	Jeffrey L. Sakas	160014 160118
10/11/16	Craig S. Bonnell	160086
1/30/17	S. Quinn Johnson	160090
3/9/17	Melvin T. Johnson	160126
4/11/17	Anthony Sylvester Kerr	160210 160234
4/12/17	Ali Forrest Morad	160262





▶▶▶ DISCIPLINARY ORDERS

4/12/17 Shannon Briley-Holmes 160257
170007

Disbarments/Voluntary Surrenders

Date of Order	Respondent	Docket
5/23/16	Jennifer L. Wright	6747
6/20/16	George Houser	6267
6/20/16	Kurt A. Raulin	6800 6801
9/12/16	C. Michael Rose	6781
9/12/16	Timothy Eugene Moses	6439
9/12/16	Holly De Rosa Hogue	6850
10/03/16	Christopher G. Nicholson	6698
10/3/16	Ted B. Herbert	6684
10/3/16	Lyle Vincent Anderson	6605
10/31/16	Chalmer E. Detling II	6908
1/23/17	Joanna Temple	6825
1/23/17	Trent Carl Gaines	6822
2/27/17	Ted H. Reed	6252
2/27/17	Lawrence Edward Madison	6300
2/27/17	Morris P. Fair Jr.	6829 6830
3/20/17	Keith Brian Harkleroad	6859
3/30/17	Samuel Elias Skelton	6961
4/17/17	Richard Buckley Jr.	6914 6915 6916 6917 6918