

State Bar of Georgia Board of Governors

Report of the Office of the General Counsel

June 18-21, 2009
Amelia Island Plantation
Amelia Island, Florida

Photo by Brian Parsley



State Bar of Georgia

OFFICE OF THE GENERAL COUNSEL STATE BAR OF GEORGIA

ANNUAL REPORT FOR OPERATIONAL YEAR 2008-09

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REPORT OF THE GENERAL COUNSEL

June 1, 2009

To: Members of the Board of Governors
Bar Volunteers
Friends

I am pleased to present the 2008-09 Report of the General Counsel. Enclosed are reports from the Investigative and Review Panels of the State Disciplinary Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the Trust Account Overdraft Notification Program and the *Pro Hac Vice* Program. Following the reports is a compilation of Supreme Court Orders issued in disciplinary cases between May 1, 2008, and April 30, 2009.

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

Staff

The staff of the Office of the General Counsel (OGC) continues to be its greatest asset. Paula Frederick, deputy general counsel for disciplinary matters and managing attorney for the OGC, celebrated her 20th year with the office in August. Paula writes the ethics column for the *Georgia Bar Journal* and handles the bulk of our CLE presentations in addition to her disciplinary caseload. Senior Assistant General Counsel Jenny Mittelman helps manage the office and supervises the lawyers who handle disciplinary cases in addition to her duties as ethics and disciplinary counsel. Senior Assistant General Counsel Jonathan Hewett supervises the grievance counsel in addition to prosecuting disciplinary cases. Assistant General Counsel Kellyn McGee, Rebecca Hall and Christina Petrig continue to serve as ethics and disciplinary counsel to the Bar. Grievance Counsel Carmen Rojas Rafter conducts the preliminary investigation of the grievances that the office receives each year.

Robert McCormack, deputy general counsel for the Bar Counsel unit, is responsible for drafting changes to the Bar Rules and for staffing the Clients' Security Fund. Paralegal Betty Derrickson conducts the initial review of Clients' Security Fund files and coordinates the work of the Fund. Deloise Matthews provides secretarial and administrative assistance, particularly with attorney disciplinary status requests, Fee Arbitration and Clients' Security Fund matters. John Shiptenko is assistant general counsel for all Bar Counsel matters. He acts as staff liaison to the Formal Advisory Opinion Board and the Fellows Foundation and handles insurance, contractual and employment matters for the Bar.

As for our nonlawyer staff, Connie Henry, clerk of the State Disciplinary Board, continues to coordinate the activity of the disciplinary boards. Regina Putnam Kelly serves as trust account overdraft notification coordinator. Investigators Dan O'Sullivan and Lamar Jackson, paralegals Carolyn Williams, Kristin Poland and Kathya St. Louis, legal secretaries Deborah Grant, Cathe Payne, Bobbie Kendall, and receptionist Jessica Oglesby round out the OGC staff.

Lawyer Helpline

The Office of the General Counsel operates a lawyer helpline for members of the State Bar of Georgia to discuss ethics questions on an informal basis with an assistant general counsel. This year the helpline averaged 25 calls each weekday.

Continuing Legal Education

The Office of the General Counsel continues to accept requests to speak at CLE seminars. This year OGC lawyers participated in more than 60 presentations on a variety of ethics topics.

Committees

The office staffed several bar-wide committees this year, including a committee to review lawyer advertisements. OGC staff continues to work with the Disciplinary Rules and Procedures Committee, the Organization of the State Bar Committee, the General Counsel Overview Committee, the Court Futures Committee and the Membership Services 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. P. Smith III', with a long, sweeping horizontal line extending to the right.

William P. Smith III
General Counsel

STATE DISCIPLINARY BOARD

INVESTIGATIVE PANEL

by Hubert J. Bell Jr., 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 an ever-increasing number of cases and does so more efficiently than ever.

The 2008-09 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 Tifton, Athens, Cedartown, Elberton, Helen, Cordele, Pine Mountain, Atlanta, Savannah, Greensboro, Perry and at Amelia Island, Fla., in conjunction with the 2008 Annual Meeting of the Bar.

The Bar received fewer requests for grievance forms this year (3,094) than last (3,562). The number of grievance forms returned to the Office of the General Counsel also decreased. Last year's figure was 2,453; this year 2,100 forms were returned for screening and further consideration.

After review by an assistant general counsel, 1,809 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 350 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 340 such grievances in 2008. Each of those grievances was referred to one of the district Panel members for further investigation.

Investigative Panel members who investigated grievances handled an average of 15 cases each during the Bar year. The Panel also set a goal of having each case reported within 180 days. Each case required extensive 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 thirty-one grievances were dismissed, 59 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and sixty-two cases met the "probable cause" test and were returned to the Office of the General Counsel for prosecution. This represents a decrease from 170 such cases last year. One hundred and thirty-six cases are still under consideration by the Panel, a decrease from 173 such cases last year.

Sixty-one 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. Ten cases were referred to Ethics School.

The Investigative Panel authorized the following during 2008-09:

<u>Form of Discipline</u>	<u>Cases</u>
Investigative Panel Reprimands	15
Letters of Formal Admonition	28
Cases Dismissed with Letters of Instruction	59
Interim Suspensions	25

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:

Christopher L. Ray, Savannah, District 1	(term expiring)
Wade W. Herring, II, Savannah, District 1	(term expiring)
Joseph W. Dent, Albany, District 2	(term expiring)
Gregory C. Sowell, Tifton, District 2	(term expiring)
William D. NeSmith, Americus, District 3	(term expiring)
William C. Rumer, Columbus, District 3	(term expiring)
R. Javoyne Hicks White, Decatur, District 4	(term expiring)
Tara Lee Adayanthaya, Atlanta, District 4	(term expiring)
Hubert J. Bell Jr., Atlanta, District 5	
Tywanda L. Harris Lord, Atlanta, District 5	
H. Emily George, Forest Park, District 6	
Andrew J. Whalen, Griffin, District 6	
Christopher A. Townley, Rossville, District 7	
W. Wright Gammon, Cedartown, District 7	
Donald W. Huskins, Eatonton, District 8	
Reginal L. Bellury, Milledgeville, District 8	
Christine Ann Koehler, Lawrenceville, District 9	
Lyle Kilvington Porter, Lawrenceville, District 9	
Larry L. Smith, Augusta, District 10	
Dennis C. Sanders, Thomson, District 10	
Kenneth G. Menendez, Atlanta, At-Large	
John G. Haubenreich, Atlanta, At-Large	

We have two ex-officio members, the president-elect of the State Bar of Georgia, Bryan M. Cavan, Atlanta (term expiring), and the president-elect of the Younger Lawyers Division, Amy Howell, Decatur (term expiring).

Finally, I want to recognize and thank the six nonlawyer members appointed by the Supreme Court of Georgia:

Carol Jackson, Cleveland
Eunice L. Mixon, Tifton
Elizabeth King, Atlanta
Michael A. Fuller, Macon (term expiring)
Lynn R. Smith, Newnan
Mark A. Douglas, Atlanta (term expiring)

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 of Georgia. 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 now 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 nonlawyers 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, 2008, to April 30, 2009:

<u>Form of Discipline</u>	<u>Cases</u>	<u>Lawyers</u>
Disbarments/Voluntary Surrenders	30	18
Suspensions	51	32
Public Reprimands	5	5
Review Panel Reprimands	2	2

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

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

Nonlawyer Members

Thomas C. Rounds, Sandy Springs
Clarence Pennie, Kennesaw
Marlene E. Melvin, Monroe (term expiring)
P. Alice Rogers, Atlanta (term expiring)

Lawyer Members

Northern District

Lisa Rosenblum Strauss, Atlanta
Anthony B. Askew, Atlanta (term expiring)
C. Bradford Marsh, Atlanta

Middle District

Gregory L. Fullerton, Albany
Oliver Wendell Horne, Macon (term expiring)
Ralph F. Simpson, Tifton

Southern District

Jeffrey S. Ward, Brunswick
James B. Ellington, Augusta (term expiring)
Judd Thomas Drake, Metter

Ex-Officio Members

Gerald M. Edenfield, Statesboro (term expiring)
Elena Kaplan, Atlanta (term expiring)

FORMAL ADVISORY OPINION BOARD

by Edward Krugman, Chair

The Formal Advisory Opinion Board considers requests for formal advisory opinions and drafts opinions that interpret the Georgia Rules of Professional Conduct. The Board consists of active members of the State Bar of Georgia who are appointed by the president of the Bar, with the approval of the Board of Governors. The membership of the Formal Advisory Opinion Board for the 2008-09 Bar year was composed of the following lawyers:

<i>Members at Large</i>	<i>Term</i>
Edward B. Krugman, Chair, Atlanta	2007-09
James W. Friedewald, Marietta	2008-10
Harry Raymond Tear III, Marietta	2007-09
Rebecca M. Lamberth, Atlanta	2008-10
Nancy E. Rafuse	2008-10
 <i>Georgia Trial Lawyers Association</i>	
Jack J. Helms Jr., Homerville	2007-09
 <i>Georgia Defense Lawyers Association</i>	
Theodore Freeman, Atlanta <i>(Appointed to fill the unexpired term of Christopher Douglas Gunnels)</i>	2008-09
 <i>Georgia Association of Criminal Defense Lawyers</i>	
Christopher A. Townley, Rossville	2008-10
 <i>Georgia District Attorneys' Association</i>	
Patrick H. Head, Marietta	2008-10
 <i>Young Lawyers Division</i>	
Claire C. Murray, Atlanta	2007-09
 <i>Emory University</i>	
James B. Hughes Jr., Atlanta	2008-10
 <i>University of Georgia</i>	
Professor C. Ronald Ellington, Athens	2007-09
 <i>Mercer University</i>	
Patrick E. Longan, Macon	2007-09
 <i>Georgia State University</i>	
Roy M. Sobelson, Atlanta	2008-10
 <i>John Marshall Law School</i>	
Jeffrey Alan Van Detta, Atlanta	2007-09

Investigative Panel

John G. Haubenreich, Atlanta

2009-09

(Appointed to fill the unexpired term of Reginald Bellury)

Review Panel

James B. Ellington, Vice-Chair, Augusta

2008-09

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

During the 2008-09 Bar year, the Board received three (3) new requests for formal advisory opinions. The issues addressed in the requests and their current status are as follows:

- Formal Advisory Opinion Request No. 08-R3—Regarding Implied Disqualification Rule 1.10 as it relates to governmental offices such as circuit public defenders' office.

The requestor withdrew his request for the drafting of a formal advisory opinion before the Board made a determination as to whether it would accept the request for the drafting of a formal advisory opinion.

- Formal Advisory Opinion Request No. 08-R4—What is the ethical obligation of members of the State Bar of Georgia who are employed as public defenders, assistant public defenders, as well as of those who supervise them, including the director and assistant director of the Georgia Public Defender Standards Council, when confronted with cuts in their respective budgets and/or caseloads, which they consider excessive?

The Board declined this request for the drafting of a formal advisory opinion determining that the Georgia Rules of Professional Conduct adequately address the issue raised in the request.

- Formal Advisory Opinion Request No. 08-R5—Do the Independent Contractor Agreements utilized by the Georgia Public Defender Standards Council violate the Georgia Rules of Professional Conduct?

The Board initially declined this request for the drafting of a formal advisory opinion determining that the question presented did not address an ethical issue or prospective conduct, and was not of general interest to the members of the Bar. However, the Board rephrased the question presented to allow the Board to better address the ethical concerns related to issues raised in the request. The rephrased question presented is: Ethical consideration applicable to a lawyer asked to enter into fixed fee agreement for the provision of legal services that obligates the lawyer providing the services to render an indeterminate amount of legal services without any condition or limitation on the amount of work to be undertaken. A proposed opinion is pending with the Board.

Three (3) requests for formal advisory opinions were received and accepted in previous bar years, but remain pending. The issues addressed in the requests and their current status are as follows:

- Formal Advisory Opinion Request No. 05-R6—Is a lawyer obligated to notify a client’s creditors or third persons when the lawyer receives the proceeds of a client’s settlement or judgment? If the lawyer is obligated to notify a third person, is the lawyer then obligated to pay that third person, even over the client’s objections?

The issues raised in this request are governed by Rule 1.15(I). The Board approved a proposed opinion in March 2007, which appeared in the June 2007 issue of the *Georgia Bar Journal* for 1st publication. Comments were received in response to the publication. Because a proposed amendment to 1.15(I) is pending with the State Disciplinary Rules and Procedures Committee, the Board tabled any further action regarding the request.

- Formal Advisory Opinion Request No. 06-R1—What is the difference between a “lawyer referral service,” as referenced in Bar Rules 7.3(c)(1) and (2) and a “lay public relations or marketing organization,” as referenced in Bar Rule 7.3(c)(4)?

The Board approved the proposed opinion for 2nd publication and filing with the Supreme Court of Georgia. The proposed opinion appears in the June 2009 issue of the *Georgia Bar Journal* for 2nd publication and will be filed with the Supreme Court on or after June 15, 2009.

- Formal Advisory Opinion Request No. 07-R1—May different public defenders employed by the same agency represent co-defendants when a single public defender would have an impermissible conflict of interest in doing so?

A proposed opinion appeared in the October 2008 issue of the *Georgia Bar Journal* for 1st publication. In light of comments received in response to the publication, the Board modified the proposed opinion. The modified proposed opinion is pending with the Board.

One (1) formal advisory opinion was filed with the Supreme Court of Georgia during the 2008-09 Bar year. This opinion is a redrafted version of Formal Advisory Opinion No. 87-6. The issue addressed in the opinion and the current status are as follows:

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

This opinion, filed with the Supreme Court of Georgia on Aug. 29, 2008, addresses issues governed by Bar Rule 4.2. Because a proposed amendment to Rule 4.2 is pending with the State Disciplinary Rules and Procedures Committee, the Supreme Court of Georgia was asked to suspend further consideration of the opinion until a final determination is made regarding the amendment to Rule 4.2.

Formal Advisory Opinions can be found in the *2008-2009 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 Bill Smith, John Shiptenko and Betty

Derrickson of the Office of the General Counsel of the State Bar of Georgia. Their unfailing efforts and assistance have been invaluable to the Board.

OVERDRAFT NOTIFICATION PROGRAM

by Regina M. Putman-Kelley, Overdraft Notification Coordinator

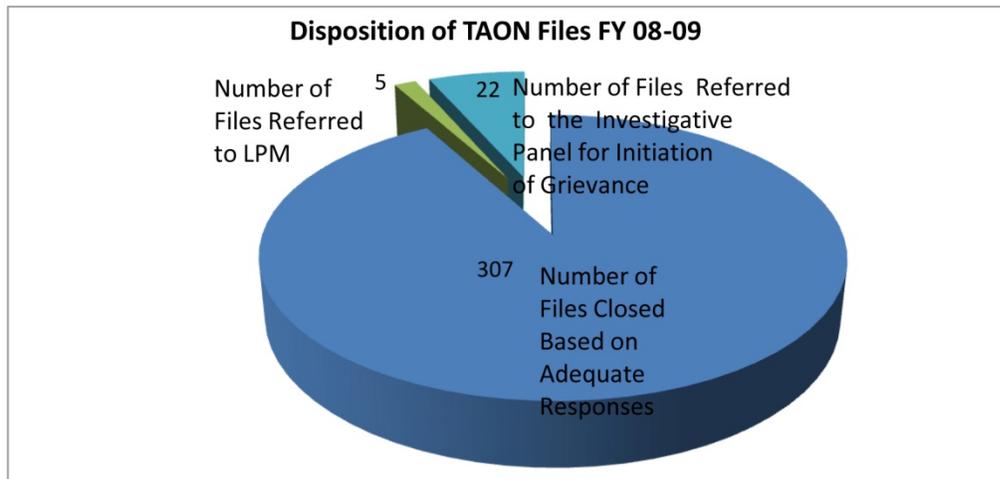
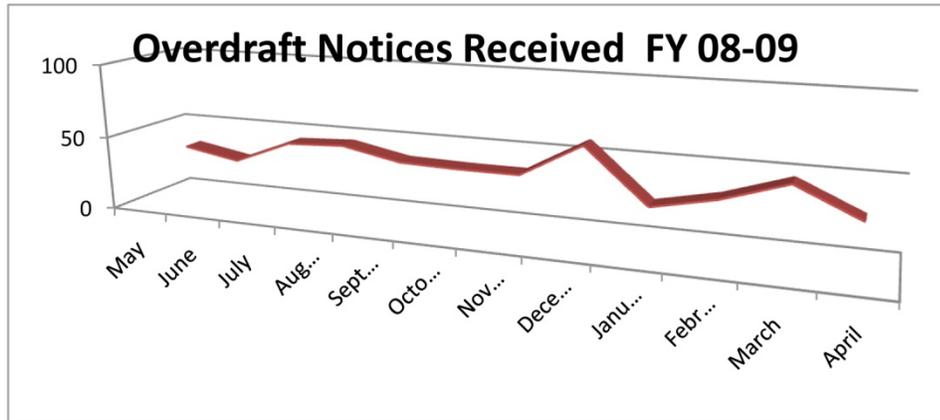
The Overdraft Notification Program received 433 notices from financial institutions approved as depositories for attorney trust accounts. Three hundred and seven files were dismissed following the initial inquiry, five files were referred to Law Practice Management, and 22 files were forwarded to the Investigative Panel of the State Disciplinary Board for possible disciplinary action. (Several attorney files contained more than one overdraft notice. Of the total number of notices received from financial institutions, 16 overdraft notices were received on the trust accounts of disbarred attorneys. Some files opened during the latter part of FY 2008-09 remain open, pending disposition.)

FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES FOR ATTORNEY TRUST ACCOUNTS

There are currently 284 Georgia financial institutions approved as depositories for attorney trust accounts. The List of Approved Financial Institutions can be found on the State Bar of Georgia's website at www.gabar.org.

Trust Account Overdraft Report FY 2008-2009

2008/2009	NOTICES RECEIVED	ADEQUATE RESPONSE	LPMP	INITIATED FILES	CLOSED
May	33	38	0	1	39
June	26	18	0	0	18
July	42	23	0	2	25
August	44	25	1	2	28
September	36	40	1	0	41
October	35	23	0	2	25
November	35	20	0	6	26
December	58	6	0	1	7
January	22	18	2	3	23
February	31	44	0	2	46
March	45	20	0	2	22
April	26	32	1	1	34
TOTALS:	433	307	5	22	334
PERCENTAGES:		92%	1.50%	6.59%	



PRO HAC VICE PROGRAM

by Kathya St. Louis, *Pro Hac Vice* Paralegal

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

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

In 2007 the State Board of Workers' Compensation adopted State Board of Workers' Compensation Rule 102 (A)(2). Rule 102 (A)(2), renumbered to Rule 103 (A)(3), requires attorneys seeking to appear *pro hac vice* before the Board to comply with Rule 4.4.

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

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

During the period of May 1, 2008, through April 30, 2009, the Office of the General Counsel reviewed 860 *pro hac vice* applications. Nine applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel has filed 20 notices with Georgia courts regarding the eligibility of the applicant.

AMENDMENTS TO BAR RULES AND BYLAWS

AMENDMENTS TO THE RULES OF THE STATE BAR OF GEORGIA

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

Rule 8-105 of Part VIII of the Rules of the State Bar of Georgia regarding continuing legal education requirements was amended by deleting the current rule in its entirety and substituting a new rule as follows:

Rule 8-105. Annual Report

- A. The Commission shall provide at the end of each year to all non-exempt active members an Annual Report of their CLE record in such form as the Commission shall prescribe.
- B. A member whose record contains credit for unearned hours shall report corrections on or before January 31st. A member whose record fails to include credit for earned hours may report corrections on or before January 31st.

Rule 1-202 (d) of Part I of the Rules of the State Bar of Georgia regarding Emeritus Members was amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

(d) **Emeritus Members.** Any member in good standing of the State Bar of Georgia who shall have attained the age of 70 years and who shall have been admitted to the practice of law in the State of Georgia for 25 years, may retire from the State Bar upon petition to and approval by the Executive Committee. Such a retired member shall hold emeritus status ~~and shall annually confirm in writing this emeritus status.~~ An emeritus member of the State Bar shall not be required to pay dues or annual fees. An emeritus member of the State Bar shall not be privileged to practice law except that an emeritus member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar or a non-profit corporation that delivers legal services to the poor. An emeritus member may be reinstated to active *or inactive* membership upon application to the Executive ~~Committee~~ Director and payment of non-prorated dues for the year in which the emeritus members returns to active or inactive service.

AMENDMENTS TO THE BYLAWS OF THE STATE BAR OF GEORGIA

Since the last annual meeting, the follow amendments to the Bylaws of the State Bar of Georgia were approved by the membership:

Article III, Section 8 of the Bylaws of the State Bar of Georgia regarding New Positions, Unfilled Positions, Vacancies and Lost Positions was amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

ARTICLE III

Section 8. New Positions, Unfilled Positions, Vacancies, and Lost Positions.

- (a) If any new position is created in a circuit because of an increase in membership of such circuit, or if any new position is created as a result of legislation establishing a new judicial circuit, the President shall appoint an active member of the State Bar in such circuit to hold office for the remaining term.
- (b) If no successor is elected as provided for in Section 3 of this Article III, the President shall, at the annual meeting or within thirty days thereafter, appoint a successor to the Board from the circuit so failing to elect, or in the case of a nonresident member, from the active nonresident members of the State Bar.
- (c) If any other vacancy on the Board of Governors occurs *at or* between annual meetings of the State Bar, the President shall appoint an active member of the circuit in which the vacancy occurs to hold office for the unexpired term.
- (d) In the event a position is eliminated for any reason under this Article III, the representative filling the post to be eliminated shall serve for the remainder of the term for which said representative was elected.
- (e) If as a result of a change in the geographical boundaries of any judicial circuit a board member is no longer located within the geographic boundaries of the post to which the member was elected, the president shall appoint such representative to the circuit in which the member is actually located if a vacancy is created or exists in such circuit. If no vacancy exists in the circuit, the board member shall serve out the remainder of his or her term as described in subsection (d) above.

Article V, Section 2 regarding the President and Article V, Section 6 regarding the Treasurer of the Bylaws of the State Bar of Georgia were amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

ARTICLE V. OFFICERS

Section 2. The President.

The President shall:

- (a) preside at all meetings of the State Bar;
- (b) chair the Board of Governors and preside at all of its meetings;
- (c) submit ~~in writing~~ to the Board of Governors *no later than the second* meeting of the Board which the President chairs, a proposed program of activities for the year, a list of the appointments of chairpersons and members of standing committees for the year as provided by the Rules and these Bylaws, and budgetary recommendations as deemed appropriate; and

(d) deliver a report at the annual meeting of the members on the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia.

.....

Section 6. The Treasurer.

The Treasurer shall:

(a) deposit in accordance with the investment policy approved by the Board of Governors ~~the name of the State Bar~~ all funds received by the State Bar in a bank, or banks, or investment firm or firms designated by the Board of Governors; by means of checks or vouchers signed by the Treasurer and by one of the following: the Secretary, the President, the Immediate Past President, the President-elect, the Executive Director, the Acting Executive Director, the Assistant Executive Director or the General Counsel; however, in the absence of the Treasurer, the President or the Secretary shall sign all checks or vouchers;

(b) disburse all funds of the State Bar pursuant to the budget Treasurer, the President or the Secretary shall sign all checks or vouchers;

(c) keep regular accounts which at all times shall be open to inspection by the members of the State Bar;

(d) report annually, and more frequently if required by the President or the Board of Governors, with regard to the financial affairs of the State Bar; and

(e) direct an annual audit of all funds, property and accounts of the State Bar performed by an independent certified public accountant selected by the Board of Governors, the report of which shall be delivered to the officers and made available to the membership.

Article VII of the Bylaws of the State Bar of Georgia regarding Committees was amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

ARTICLE VII. Committees

Section 1. Standing Committees.

(a) Creation of Standing Committees; Statement of Purpose. The Board of Governors may create standing committees for such purposes as it deems ~~deemed~~ appropriate. The ~~the~~ members of each standing committee which shall be appointed by the President. Any request for the creation of a standing committee shall be accompanied by a statement of purpose. A listing of the standing committees of the State Bar shall be published annually in the State Bar *Directory*. The publication shall include a description of each committee's purpose, the names of current committee members and their respective terms.

~~(b) Number of Members. There shall be nine members of each standing committee, provided that the President may appoint no more than four additional members to each standing committee who shall serve only during that President's term. There may be non voting advisory and liaison appointments to standing committees appointed by the President for his or her term.~~

(b) Appointment of Members.

(i) Three-year terms. There shall be a minimum of nine members of each standing committee appointed for three-year terms. Regardless of when the appointment was made, such term shall begin on July 1 of the year the appointing President took office, and expire on June 30 three years later, except for the Finance Committee which term shall begin on January 1 of the Bar year the appointing President took office, and expire on December 31 three years later. All such appointments shall be for staggered terms of three years so that, as reasonably as possible, one-third of all committee members appointed for three year terms shall retire at the end of each year.

(ii) One-year terms. The President may appoint additional members of each standing committee as the President deems appropriate. Regardless of when such additional committee members are appointed, the term of such appointees shall begin on July 1 of the year the appointing President took office and shall expire on the following June 30, except for the Finance Committee which term shall begin on January 1 and expire on the following December 31.

(iii) Non-voting advisory members. The President may appoint non-voting advisory and liaison members to each standing committee as the President deems appropriate. Regardless of when appointed, such term shall begin on July 1 of the year the appointing President took office and shall expire on the following June 30, except for the Finance Committee which term shall begin on January 1 and expire on the following December 31.

(iv) Appointments to fulfill quorum requirements. In the event of any appointee's resignation, incapacitation, or persistent inability to perform committee business, the President shall have the authority to appoint a replacement to serve for the duration of the original appointee's term. The President shall exercise all foregoing discretionary powers of appointment to advance the objective of enabling committees to obtain quorums and conduct regular committee business.

(v) Notice of Three-Year Term Appointments. Incoming Presidents shall inform the Board of appointments to fill expiring or vacant three-year terms on standing committees at the State Bar's Annual Meeting.

(vi) Notice of Other Appointments. Appointments to one-year terms or to non-voting advisory or liaison capacity on any standing committee shall be published in the State Bar Directory, provided, however, that nothing in this provision shall prohibit a President from exercising discretion to make additional such appointments after the Directory has been published or sent for publication.

(vii) Executive Committee Liaison Members. Not later than the second Board of Governors meeting during the President's term in office, the President may appoint an Executive Committee Liaison member to such standing committees as the President chooses. Such Executive Committee Liaison Members shall serve for a term of one year, with such term expiring on the first June 30 after such appointment.

except for the Finance Committee which term shall begin on January 1 and expire on the following December 31. Such members shall have full voting privileges and count towards a quorum at any meeting of a standing committee.

~~(e) Staggered Terms. With the exception of the one year presidential term appointments described in subsection (b), all appointments shall be for staggered terms of three years so that one third of the members of each committee shall retire at the end of each year. Initially, committee members will be appointed for one, two and three year terms to achieve the staggered rotation of committee members. Committee members appointed for three year and two year terms may be reappointed for only one successive three year term. A committee member appointed for a one year term may be reappointed for two successive three year terms.~~

~~(c) (d) Chairperson, Co-chairs and Vice Chairperson or Vice Co-chairs. Each year the President shall appoint a chairperson or co-chairs and a vice chairperson or vice co-chairs of each standing committee. ~~The chairperson may be reappointed for only one successive term.~~~~

A chairperson or, in the absence of the chairperson, the vice-chairperson may act on behalf of the committee when it is not practical or possible to confer with the committee.

~~(d) (e) Abolition of Standing Committees. Standing Committees may be abolished by the Board of Governors following written notice to the chairperson and members of the Committee.~~

Section 2. Special Committees.

(a) Creation of Special Committees; Statement of Purpose. The President may create special committees for such purposes as deemed appropriate. A list of the special committees of the State Bar shall be published annually in the State Bar *Directory*. The publication shall include a description of each committee's purpose and the names of current committee members. The President shall designate a specific term, not to exceed three years, for the work of the committee. The incoming President shall review the special committees whose terms are expiring to determine whether such committee or committees should continue. The President may extend the term of such special committees for a specific term, not to exceed three years.

~~(b) Number of Non-voting and Liaison Members. There shall be no more than twenty one members of each special committee. There may be non-voting advisory and liaison appointments to special committees appointed by the President at his or her discretion.~~

(c) Terms of Members. All appointments shall be for the term of the committee as established by the appointing President. Should the President extend the term of the committee for a specific term, the President may reappoint any current members he or she may choose, appoint new members to replace the original members, or appoint additional members to the special committee. The terms of the new or additional members shall be for the extended term as established by the appointing President.

(d) Chairperson, Co-chairs, ~~and~~ Vice Chairperson and Vice Co-chairs. The President shall appoint a chairperson or co-chairs and a vice-chairperson or vice co-chairs of each special committee.

The chairperson or, in the absence of the chairperson, the vice-chairperson may act on behalf of the committee when it is not practical or possible to confer with the committee.

(e) Executive Committee Liaison Members. Not later than the second Board of Governors meeting during the President's term in office, the President may appoint an Executive Committee Liaison member to such special committees as the President chooses. Such Executive Committee Liaison Members shall serve for a term of one year, with such term expiring on the first June 30 after such appointment. Such members shall have full voting privileges and count towards a quorum at any meeting of a special committee.

Section 3. Meetings Program Committees and Boards.

Committees and Boards created by Part IV and Parts VI through XIV of these rules to oversee Programs of the State Bar shall have such terms and members as set out in said rules. Members of such committees and boards shall be appointed according to the rules establishing such committees and boards.

Section 4. Meetings.

Committees shall meet when necessary to perform their duties and may act in writing or by ~~telephone~~ electronic conferencing in accordance with Article XII, Section 7 of these Bylaws.

Article XII of the Bylaws of the State Bar of Georgia was amended by adding a new Section 7 regarding Electronic Conferencing as follows:

Article XII

Section 7. Electronic Conferencing.

If prior notice has been provided, and if such facilities are available, any member of a Section or Committee may attend a meeting by electronic conferencing; provided that the device used enables the absent member to hear the comments of the Section or Committee members present at the meeting and to speak to those present at the meeting; and that the members present at the meeting can hear the comments of and speak to the absent member. Any member attending by electronic conferencing shall count towards a quorum of such meeting, shall have full rights to the floor, and shall be entitled to vote at such meeting as if physically present.

CLIENTS' SECURITY FUND

by Charles Lee Davis, 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 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 2008-09 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 a 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, 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 that the Board of Trustees shall consist of six (6) lawyers and one (1) non-lawyer member who are appointed to staggered terms by the president of the State Bar of Georgia. The Trustees serve five-year terms, and receive no compensation or reimbursement for their service. The Trustees select the chair and vice-chair to serve as officers for the Fund. The Fund receives part-time assistance from one attorney, one paralegal and one legal secretary from the Office of the General Counsel. In addition to your chair, the following lawyers served as trustees for the 2008-09 operational year:

William T. McKenzie
Denny C. Galis
Dana F. Braun
Byung Jin Pak
Vera Sharon Edenfield
John A. Isakson (non-lawyer member)

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

Funding

The membership of the State Bar of Georgia provides the principal funding for the Clients' Security Fund. These funds are held in the name of the Fund and the Trustees of the Fund maintain exclusive control of disbursements from the Fund.

During the years following the inception of the Fund in 1968, the number of claims filed with the Fund increased dramatically. Reasons for the increase in the number of claims included, but were not limited to, an increased lawyer population and increased disciplinary efforts by the Office of the General Counsel. In response to the certainty that the Fund would very shortly be depleted, in 1989 and 1990 the trustees and the Executive Committee of the State Bar of Georgia began to study various funding mechanisms. The trustees also studied measures designed to prevent losses from occurring such as random audit of attorney trust accounts and overdraft notification rules. While these measures helped to identify problems, the trustees recognized that even these measures would not prevent theft from occurring. The most immediate solution was adequate funding.

For two years, the trustees studied a number of different funding options, and ultimately proposed an assessment of \$100 per lawyer to be paid over a period of five years. New members of the Bar would also be assessed the same amount, again payable over five years. The Board of Governors of the State Bar of Georgia approved this proposal at its June 15, 1991, meeting, and the Supreme Court of Georgia approved the motion to amend the Bar Rules to provide for the assessment on April 2, 1992.

This funding mechanism was a significant development in the life of the Fund. The assessment appeared for the first time on the 1992-93 dues notice. In the first year, the assessment generated \$508,688.26 in revenue for the Fund. Fund revenue is supplemented by interest income, restitution payments from disbarred lawyers and miscellaneous contributions.

Even with relatively substantial sources of income, there continued to be concerns about the stability of the fund. It was determined that a secure source of funding is essential to the integrity of the Fund. This has been accomplished by the support of the Board of Governors and the Supreme Court. On June 13, 1997, the Supreme Court of Georgia approved an amendment to the Bar Rules that provides for future assessments triggered whenever the fund balance falls below a minimum of \$1,000,000. A cap of \$350,000 was also placed upon the aggregate amount that could be paid to claimants in any one year.

The trustees also adopted certain administrative rules to help stabilize and manage the Fund. These rules provided 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.

More recent 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 have proved successful over the years. The Fund's balance has grown from a low of \$361,823 in 1992 to \$2,688,866 as of May 30, 2009. The average fund balance has stabilized at approximately \$2,500,000.

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, creating a trust account overdraft notification program. The program was approved by the Supreme Court of Georgia on Aug. 22, 1995, and became effective Jan. 1, 1996. The primary purpose of the overdraft notification rules is to prevent misappropriation of clients' funds by providing a mechanism for early detection of improprieties in the handling of attorney trust accounts. See, *2007-2008 State Bar of Georgia Directory & Handbook* Rule 1.15(III), p. H-36.

Payee Notification

During the 1993 legislative session, with the urging of the trustees of the Fund, the Board of Governors endorsed legislation specifically designed to prevent lawyer theft of personal injury settlement funds. As a result of these efforts, the "payee notification rule" was approved in the form of an amendment to the Insurance Code. This statute requires insurers to send notice to the payee of an insurance settlement at the time the check is mailed to the payee's attorney. This places the client on notice that the attorney has received settlement funds. The adoption of this procedure has substantially reduced claims involving theft of insurance funds.

Claims Process

Before the Clients' Security Fund will pay a claim, the trustees must determine that the loss was caused by the dishonest conduct of the lawyer who has been disbarred, indefinitely suspended, or has voluntarily surrendered his or her license, and arose out of the client-lawyer relationship. The Rules define "dishonest conduct" as acts "committed by a lawyer in the nature of theft or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value." Typically, claims filed by corporations or partnerships, government entities and certain members of the attorney's family are denied. Losses covered by insurance or that result from malpractice or financial investments are also

not considered reimbursable by the Fund. Claimants are responsible for providing sufficient documentation to support their claims.

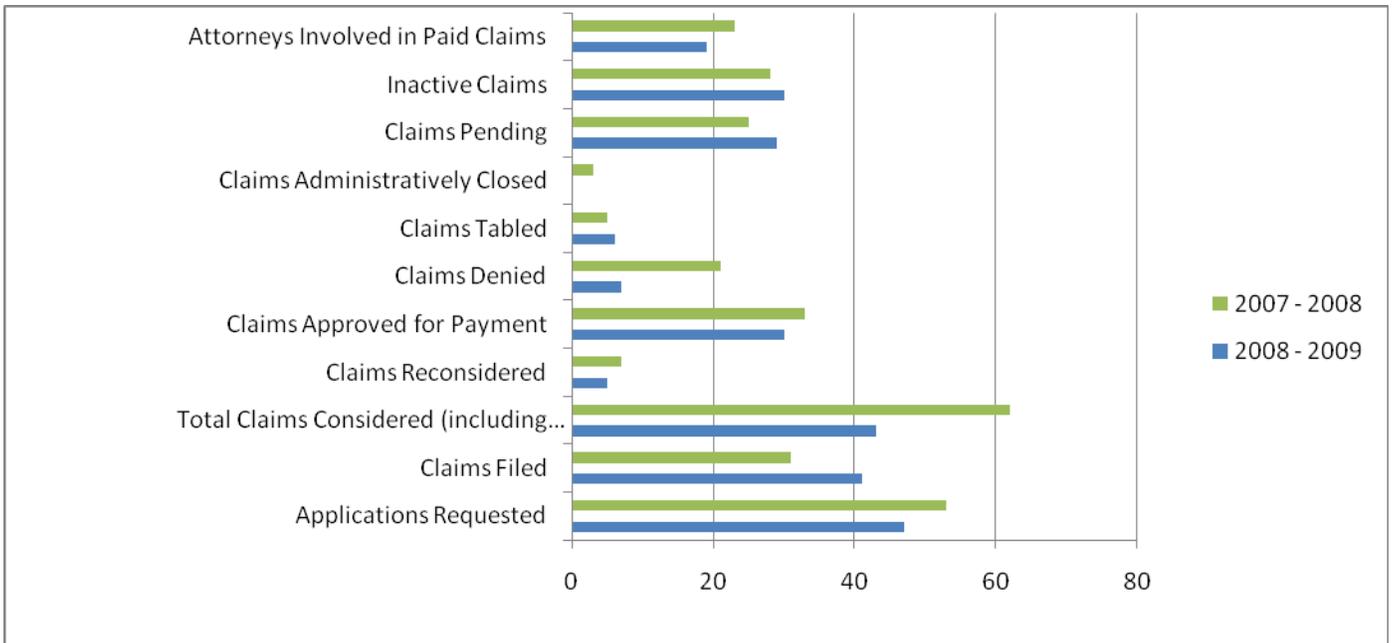
Following is the statistical report the Fund for the 2008-09 operational year through May 30, 2009.

Annual Statistics for Operational Year 2008-09

Financial Summary as of May 30, 2009

Fund Balance	\$2,688,866.00
Assessment Income	\$150,106.00
Restitution Income	\$15,118.00
Interest Income	\$76,744.00
Claims Paid	\$162,506.45
Expenses	\$64,914.00

<u>Activity Summary</u>	<u>2008-09</u>	<u>2007-08</u>
Applications Requested	47	53
Claims Filed	41	31
Total Claims Considered (including reconsidered)	43	62
Claims Reconsidered	5	7
Claims Approved for Payment	30	33
Claims Denied	7	21
Claims Tabled	6	5
Claims Administratively Closed	0	3
Claims Pending	26	25
Inactive Claims	30	28
Attorneys Involved in Paid Claims	19	23



**DISCIPLINARY ORDERS OF
SUPREME COURT OF GEORGIA**

REVIEW PANEL REPRIMANDS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
10/06/08	Waymon Sims	5475
1/26/09	Bradley J. Taylor (reprimand and 6 months suspension)	5319

PUBLIC REPRIMANDS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
10/6/08	Stephen Lee Stincer (and 1 month suspension)	5387
10/27/08	Neil Lovett Wilkinson (and 1 month suspension)	5458
1/26/09	Mara Sacks Dewrell	5418
2/23/09	Ashutosh S. Joshi (and ethics school)	5437
3/9/09	Gregory E. Stuhler (and ethics school)	4928

SUSPENSIONS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
<i>Indefinite</i>		
6/30/08	Anthony Brett Williams (6 months w/conditions)	5483
6/30/08	Michael Anthony Edmunds (3 years w/conditions)	4839 5123 5124 5203 5220 5367 File No. 060367 File No. 070291
10/6/08	Gary Dale Simpson (4 years w/conditions)	5037 5038 5039
2/23/09	Richard R. Harste (1 year w/conditions)	5400
<i>Definite</i>		
6/2/08	Jennifer Nichole Favors (3 years)	5318
6/2/08	Timothy O. McCalep (3 years)	5136
7/7/08	Russell William Pope (6 months)	5410 5431 5468
10/6/08	Stephen Lee Stincer (1 month & public reprimand)	5387
10/6/08	John Alfred Roberts (6 months)	4884
10/27/08	Neil Lovett Wilkinson (1 month & public reprimand)	5458
11/17/08	James A. Elkins (6 months)	5301 5302
1/26/09	Lester Christopher Solomon (6 months)	4868
1/26/09	Bradley J. Taylor (6 months and Review Panel reprimand)	5319

Interim Suspensions

6/3/08	Coleman C. Eaton	060064
6/3/08	Wendell S. Henry	080053
6/3/08	Leonanous A. Moore	070294 070295
6/3/08	Morris P. Fair	070244 070292 070352
6/10/08	Neal Harley Landers	080006
6/27/08	Daniel Richard Hayes	080015
8/5/08	Patrick Jeffrey Stubbs	080066
8/5/08	George R. Moss	080068
8/7/08	David A. Harris	080039
9/4/08	Kevin Schumaker	080170 080171
9/4/08	Nina A. Lambert Roberts	080052
9/4/08	Joe Louis Brown	080165
9/25/08	James M. Kimbrough	080137
10/27/08	Clark Jones-Lewis	080087
10/28/08	Michael H. Graham	080217
12/3/08	Leonanous A. Moore	080179
12/4/08	Richard Allen Hunt	080207
4/9/09	Coleman C. Eaton	080182
4/9/09	William F. Hinesley III	080267
4/9/09	William M. Peterson	080297

Interim Suspensions Lifted

5/15/08	Jan Mealus Smith	070308
5/15/08	Daniel Lloyd Parr	070245
5/15/08	Martha F. Dekle	070312
7/18/08	Morris P. Fair	070244 070292 070352
8/20/08	Daniel Richard Hayes	080015
8/21/08	Patrick Jeffrey Stubbs	080066

10/8/08	Joe Louis Brown	080165
10/8/08	Wendell S. Henry	080053
10/17/08	Wendell S. Henry	080054
11/19/08	Michael H. Graham	080217
12/18/08	Richard Allen Hunt	080207
3/9/09	Clark Jones-Lewis	080087
3/9/09	George R. Moss (deceased)	080068
4/2/09	Coleman C. Eaton	080064

DISBARMENTS/VOLUNTARY SURRENDERS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
6/2/08	Donahue Scott Silvis	5426 5427
7/7/08	Daniel J. Levy	5402 5403 5436 5462
7/7/08	Charles Houston Richards	5416 5417
10/6/08	Keino Dwan Campbell	5384
10/6/08	Jamila Harrison	5398 5399
10/6/08	R. Scott Cunningham	5113
10/6/08	Richard A. Bramhall	5441
10/6/08	Ulysses Thomas Ware	5422
10/6/08	Christopher A. Frazier	5492
11/3/08	Louis Dante DiTrapano	5407
1/26/09	James A. Elkins	5488
1/26/09	Earl Dean Clark Jr.	5528 5530 5531 5533
2/9/09	Martha F. Dekle	5500 5501

2/9/09	John M. Shinall	5381
2/9/09	James F. Stovall III	5405
2/9/09	Neal Harley Landers	5490 5491
3/9/09	Pierce Winningham III	5323 5324
4/28/09	Paul L. Hanes	5524

REINSTATEMENTS DENIED

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
11/17/08	Lisa Paige Lenn	5047