

“Lawyer owes same duty to ‘flat fee’ clients that lawyer would own to any other client.” “Lawyers may not accept a fee so low as to compel the conclusion that insurer was seeking to shirk its duties to insureds and to enlist lawyer’s assistance in doing so.”; Wisconsin State Bar Ethics Opinion E-83-15 (Fixed fee for each case of insurance defense is permissible; attorney reminded of duty to represent a client both competently and zealously.

<sup>3</sup> Rule 5.4(c) similarly commands that: “A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”

<sup>4</sup> Silver, note 1 at 236.

<sup>5</sup> Ga. R. P. C. 1.1 requires that a lawyer “provide competent representation to a client.” Comment [5] spells out the thoroughness and preparation that a lawyer must put forth, noting that “[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. **It also includes adequate preparation.**” (emphasis added)

<sup>6</sup> See ABA Formal Opinion 06-441 (May 2006) titled “Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation,” suggesting that if a caseload becomes too burdensome for a lawyer to handle competently and ethically the lawyer “must decline to accept new cases rather than withdraw from existing cases if the acceptance of a new case will result in her workload becoming excessive.”

<sup>7</sup> “. . . When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” Ga. R.P.C. 1.16(c).

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## PART VI ARBITRATION OF FEE DISPUTES PREAMBLE

The purpose of this program is to provide a convenient mechanism for (1) the resolution of disputes between lawyers and clients over fees, (2) the resolution of disputes between lawyers in connection with the withdrawal of a lawyer from a partnership or the dissolution and separation of a partnership, or (3) the resolution of disputes between lawyers concerning the entitlement to portions of fees earned from joint services. It is a process which may be invoked by either side after the parties have been unable to reach an agreement between themselves. Regardless of whether it is the lawyer or the client who takes the initiative of filing a petition requesting arbitration of the disputes, the petitioner must agree to be bound by the result of the arbitration. This is intended to discourage the filing of complaints which are frivolous or which seek to invoke the process simply to obtain an “advisory opinion”. If the respondent also agrees to be bound, the resulting arbitration award will be enforceable under the general arbitration laws of the State.

A unique feature of this program provides that where the petitioner is a client whose claim after investigation appears to warrant a hearing, and the respondent lawyer refuses to be bound by any resulting award, the matter will not be dismissed, but an ex parte arbitration hearing may be held. If the outcome of this hearing is in the client’s favor, the State Bar will provide a lawyer at no cost, other than actual litigation expenses, to the client to represent the client in subsequent litigation to adjust the fee in accordance with the arbitration award.

## CHAPTER 1 COMMITTEE ON RESOLUTION OF FEE DISPUTES

### Rule 6-101. Committee.

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

### Rule 6-102. Membership.

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

### Rule 6-103. Terms.

Initially, two members of the Committee, including one of the public members, shall be appointed for a period of three years; two

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

### Rule 6-104. Responsibility.

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

### Rule 6-105. Staff.

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

(a) Receive and review complaints and discuss them with the parties, if necessary.

(b) Conduct inquiries to obtain any additional information required.

(c) Make recommendations to the Committee to dismiss complaints or to accept jurisdiction.

(d) Mail notices or arbitration hearings, arbitration awards, and other Committee correspondence.

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

### Rule 6-106. Waiting Period.

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

## CHAPTER 2 JURISDICTIONAL GUIDELINES

### Rule 6-201. Jurisdiction.

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

(a) The fee in question, whether paid or unpaid, has been charged for legal services rendered by a lawyer who is or who at the time of rendition of the service had been licensed to practice law in the State of Georgia or who has been duly licensed as a foreign legal consultant in the State of Georgia.

(b) The services in question were performed either in the State of Georgia or from an office located in the State of Georgia.

(c) At the time the legal services in question were performed there existed between the lawyer and the client an expressed or implied contract establishing between them a lawyer/client relationship. A relative or other person paying the legal fees of the client may request arbitration of disputes over those fees provided both the client and the payor join as co-petitioners or co-respondents and both agree to be bound by the result of the arbitration.

(d) The disputed fee:

(1) Exceeds (\$750) seven hundred and fifty dollars.

(2) Is not one the amount of which is governed by statute or other law, nor one the full amount or all terms of which have already been fixed or approved by order of a court.

(e) A petition seeking arbitration of the dispute is filed with the Committee by the lawyer or the client no more than two (2) years following the date on which the controversy arose. If this date is disputed, it shall be determined in the same manner as the commencement of a cause of action on the underlying contract.

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

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

(h) The petition contains the following elements:

(1) A statement of the nature of the dispute and the particulars of the petitioner’s position, including relevant dates.

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

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

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

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

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

(i) In case of disputes between lawyers, the lawyers who are parties to the dispute are all members of the State Bar of Georgia, and all the lawyers involved agree to the arbitration.

**Rule 6-202. Termination or Suspension of Proceedings.**

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

**Rule 6-203. Revocation.**

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

**CHAPTER 3  
SELECTION OF ARBITRATORS**

**Rule 6-301. Roster of Arbitrators.**

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

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

**Rule 6-302. Neutrality of Arbitrators.**

No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest. Each arbitrator shall disclose to the Committee any bias that he or she may have in regard to the dispute in question, or any circumstances likely to create an appearance of bias which might disqualify that person as an impartial arbitrator. Either party may state any reason why he or she feels that an arbitrator should withdraw or be disqualified.

**Rule 6-303. Selection of Arbitrators.**

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

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

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

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

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

**Rule 6-304. Qualifications.**

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

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

(b) Have practiced law actively for at least five (5) years.

(c) Be an active member of the State Bar of Georgia.

**Rule 6-305. Compensation.**

All arbitrators shall serve voluntarily and without fee or expense reimbursement. Provided, however, that arbitrators selected to serve in disputes in which all the parties are lawyers may at the discretion of the

Committee be compensated with such compensation to be paid by the lawyer parties as directed by the Committee.

**CHAPTER 4  
RULES OF PROCEDURE**

**Rule 6-401. Time and Place of Hearing.**

The arbitrators shall elect a chairperson and then shall fix a time [which shall be no more than sixty (60) days after the appointment of the last arbitrator] and place for each arbitration hearing. At least ten (10) calendar days prior thereto, the Committee shall mail notices, certified mail return receipt, of the time and place of the hearing to each party.

**Rule 6-402. Attendance at Hearing.**

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

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

**Rule 6-403. Counsel.**

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

**Rule 6-404. Stenographic Record.**

Any party may request the Committee to arrange for the taking of a stenographic record of the proceeding. If such a record is stipulated to be the official record of the proceedings by the parties, or in appropriate cases determined to be such by the arbitrators, it must be made available to the arbitrators and to the other party for inspection at a time and place determined by the arbitrators. The total cost of such a record shall be shared equally by those parties who ordered copies. However, it shall not be necessary to have a stenographic record of the hearing.

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

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

**Rule 6-406. Discovery and Witnesses.**

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

**Rule 6-407. Adjournments.**

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

**Rule 6-408. Oaths.**

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

**Rule 6-409. Order of Proceedings.**

(a) The hearing shall be opened by the filing of the oath of the arbitrators and by the recording of the place, time, and date of the hearing, the names of the arbitrators and parties, and of witnesses or counsel if any are present.

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

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

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

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

**Rule 6-411. Evidence.**

(a) The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. The arbitrators are authorized to subpoena witnesses and docu-

ments and may do so either upon the arbitrators' own initiative or upon the request of a party. These subpoenas shall be served and, upon application to the Superior Court in the county wherein the arbitration is pending by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action provided that the Court shall not enforce subpoenas in the event that it determines that the effect of such subpoenas would be unduly burdensome or oppressive to any party or person. The arbitrators shall be the judge of the relevancy and materiality of the evidence offered. The rules of evidence shall be liberally interpreted and hearsay may be utilized at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.

(b) Exhibits, when offered by either party, may be received in evidence by the arbitrators. The names and addresses of all witnesses, and a listing of all exhibits in the order in which they were received, shall be made a part of the record.

(c) The arbitrators may receive and consider the evidence of witnesses by affidavit (copies of which shall be served on the opposing party at least five (5) days prior to the hearing), but shall give such evidence only such weight as the arbitrators deem proper after consideration of any objections made to its admissions.

(d) The petition, answer, other pleadings, and any documents attached thereto may be considered as evidence at the discretion of the arbitrators and given such weight as the arbitrators deem appropriate.

(e) The receipt of testimony by written interrogatories, conference telephone calls, and other procedures are within the discretion of the arbitrators upon their own motion or the written request of either party.

#### **Rule 6-412. Written Contract.**

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

#### **Rule 6-413. Closing of Hearings.**

Prior to the closing of the hearing, the arbitrators shall inquire of all parties whether they have any further proofs to offer or additional witnesses to be heard. If they have none, the arbitrators shall declare the hearing closed and make a record of that fact.

#### **Rule 6-414. Reopening of Hearings.**

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

#### **Rule 6-415. Waiver of Rules.**

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

#### **Rule 6-416. Waiver of Oral Hearings.**

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

#### **Rule 6-417. Award.**

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

#### **Rule 6-418. Time of Award.**

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

#### **Rule 6-419. Form of Award.**

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

#### **Rule 6-420. Award Upon Settlement.**

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

#### **Rule 6-421. Delivery of Award to Parties.**

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

#### **Rule 6-422. Communication with Arbitrators.**

There shall be no ex parte communication between the parties and the arbitrators.

#### **Rule 6-423. Interpretation and Application of Rules.**

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

### **CHAPTER 5 POST DECISION ACTIVITY**

#### **Rule 6-501. Where Both Parties Agree.**

In cases where both parties agreed to be bound by the result of the arbitration and the award is not satisfied within thirty (30) days after the date of its mailing or other service by the Committee, either party may request the filing of the award on the records of the Superior Court of the county of residence of the party who has failed to satisfy the award. If not a Georgia resident, the award shall be entered in the county where the award was made. The said request shall be in writing with a copy mailed to the opposing party, shall be accompanied by all filing fees, and shall designate the appropriate county in which the award is to be entered. The Committee shall then mail the original award to the Clerk of the Superior Court of the designated county who shall file it in the same manner as the commencement of a new civil action and shall serve a copy bearing the civil action number and judge assignment by certified mail on all parties, with notice that if no objection under oath, including facts indicating that the award was the result of accident, or mistake, or the fraud of some one or all of the arbitrators or parties, or is otherwise illegal, is filed within thirty (30) days, the award shall become final. Upon application of the party filing the award, the Clerk of the Superior Court shall issue a Writ of FiFa. The FiFa may then be entered on the general execution docket in any jurisdiction.

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

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

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

#### **Rule 6-502. Where Lawyer Refuses to be Bound.**

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

(a) In such cases, the award rendered will be considered as prima facie evidence of the fairness of the award and the burden of proof shall shift to the lawyer to prove otherwise.

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

### **CHAPTER 6 SPECIAL PROCEDURES**

#### **Rule 6-601. Special Case Procedure.**

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

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

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

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

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

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

## CHAPTER 7 CONFIDENTIALITY

### **Rule 6-701. Confidentiality.**

With the exception of the award itself, all records, documents, files, proceedings, and hearings pertaining to arbitrations of any fee dispute under these rules in which both the complainant and the attorney have consented to be bound by the result, shall not be opened to the public or any person not involved in the dispute without the written consent of both parties to the arbitration. However, the Committee, its staff, or representative may reveal confidential information in those circumstances in which the Office of General Counsel is authorized by Rule 4-221 (d) to do so.

## PART VII LAWYER ASSISTANCE PROGRAM

### PREAMBLE

The purpose of the Lawyer Assistance Program is to confidentially identify and assist Bar members who are experiencing problems which negatively impact their quality of life and their ability to function effectively as members of the Bar through education, intervention, peer support and professional clinical treatment.

## CHAPTER 1 LAWYER ASSISTANCE COMMITTEE

### **Rule 7-101. Committee.**

The program will be administered by the State Bar's Lawyer Assistance Committee ("Committee"). The Committee shall monitor and render advice to the staff, Executive Committee, and Board of Governors with respect to the rules, procedures, policies and operation of a Lawyer Assistance Program ("LAP").

### **Rule 7-102. Membership.**

The Committee shall be appointed by the President of the State Bar in accordance with Article VIII, Section 1, of the bylaws of the State Bar of Georgia. In addition, the President, at his or her discretion, may appoint up to four non-lawyers to serve on the Committee, provided that such non-lawyers are licensed, certified addiction counselors, certified employee assistance professionals, licensed therapists, or other persons who have experience in conducting alcohol and drug rehabilitation intervention programs or mental health assistance programs. The term of such non-lawyer appointment shall be one year. Any member of the Committee who is a recovered chemical or alcohol dependent person must have a period of sobriety of at least five years.

### **Rule 7-103. Responsibility.**

The Committee shall be responsible for implementing an impairment program that provides education, referral and intervention.

### **Rule 7-104. Funding.**

The work of the Committee and any treatment provider selected to assist the Committee in carrying out the work of the program shall be funded from the general budget of the State Bar and/or through donations and grants from the Georgia Bar Foundation or other public or private sources.

## CHAPTER 2 GUIDELINES FOR OPERATION

### **Rule 7-201. Education, Information and Awareness.**

The Committee shall promote and implement procedures to communicate to impaired attorneys and the Bar in general the fact that there is a program available and ready to assist in helping the impaired attorneys to overcome their problem.

### **Rule 7-202. Volunteers.**

The Committee may establish a network of attorneys and lay persons throughout the state of Georgia, experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct

education and awareness programs and assist in counseling and intervention programs and services.

### **Rule 7-203. Intervention and Counseling.**

The members of the Committee shall establish, design and implement all procedures necessary to receive information concerning impaired attorneys. Upon a determination that an attorney is impaired, the Committee shall implement such resources as to the Committee appear appropriate in each individual case. In carrying out its duties under this rule, the Committee, subject to the approval of the Executive Committee, is authorized to outsource the clinical portion of the Lawyer Assistance Program to private sector health care professionals. Such health care professionals and their related staff, consultants and other designees shall be authorized to communicate with each other and with the Committee regarding the program or persons referred to the program by the Committee. Said communications shall not constitute a violation of the confidentiality rules established herein.

### **Rule 7-204. Definitions.**

(a) Attorney, as used in this Part VII, shall include active, inactive, emeritus and foreign law consultant members of the State Bar of Georgia.

(b) An impaired attorney is an attorney who, in the opinion of the members of the Committee, the State Disciplinary Board, the Supreme Court of Georgia, or the members of the professional health care provider selected in accordance with Rule 7-203 above, who suffers from a psychological, emotional, or stress-related disease or problem, or who is actively abusing alcohol or other chemical substances, or has become dependent upon alcohol or such substances, such that the attorney poses a substantial threat of harm to the attorney or the attorney's clients, or the public.

## CHAPTER 3 PROCEDURES

### **Rule 7-301. Contacts Generally.**

The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-102, or by any other procedure through which appropriate counseling or assistance to an impaired attorney may be provided.

### **Rule 7-302. Referrals from the State Disciplinary Board.**

Upon the referral of any case to the Committee by the State Disciplinary Board of the State Bar of Georgia, the Committee shall provide assistance to the impaired attorney referred by the Disciplinary Board as otherwise authorized by these rules. The Committee shall report to the Board, from time to time, the progress or lack of progress of the attorney so referred.

### **Rule 7-303. Confidentiality.**

Except as provided in Bar Rule 4-104(b), Bar Rule 4-104(c) and Bar Rule 4-108, and Bar Rule 7-203, all proceedings and records of the Committee, its members, staff, consultants and other designees shall be confidential unless the attorney who is the subject of the proceedings and records otherwise elects.

### **Rule 7-304. Reports.**

The Committee shall implement and design such reports and documentation as it deems necessary or as is requested by the president of the State Bar, subject to the confidentiality provisions of Rule 7-303.

### **Rule 7-305. Emergency Suspension.**

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

### **Rule 7-306. Immunity.**

The State Bar, its employees, and members of the Committee and its selected clinical outsource private health care professionals shall be absolutely immune from civil liability for all acts taken in the course of their official duties pursuant to this part.