

STATE BAR OF GEORGIA

2021 REPORT OF THE

OFFICE
OF THE
GENERAL
COUNSEL



State Bar
of Georgia



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REPORT OF THE GENERAL COUNSEL

BY PAULA FREDERICK, GENERAL COUNSEL

What a year! Most of the staff of the Office of the General Counsel spent the entire year working remotely, but I am proud to report that the Office adapted quickly to the challenges presented by the pandemic. We will return to the building in July 2021 with a new appreciation for the camaraderie and collaboration of in-person work, and a better understanding of how technology can make our lives easier.

The impact of the pandemic is reflected in the enclosed reports. Following a nationwide trend, we received fewer grievances than in previous years. Judicial stays and logistical headaches made it difficult to investigate and prosecute cases, and they took more time than ever. On the other hand, Bar counsel who handle the in-house counsel work were busier than ever because of the need to revise policies as the COVID-19 guidance changed.

Enclosed herein are reports from the Boards and Programs staffed by the Office of the General Counsel—the Client Assistance Program, the State Disciplinary Board, the Disciplinary Review Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the Pro Hac Vice Program and the Trust Account Overdraft Notification Program. There is also a report on the Receiverships that the Office handled this year, and a description of the year's revisions to the Bar Rules.

Following the reports is a list of the Supreme Court orders issued in public disciplinary cases between May 1, 2020 and April 30, 2021. To read the order in any of the cases, just click on the lawyer's name in the Member Directory.

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 OGC staff continues to be its greatest asset. I have attached a staff roster at the end of this report so that you know who to contact when you need something from the Office. Remember that in addition to investigating and prosecuting disciplinary cases, the Office:

- Provides assistance to consumers who are having a problem with their lawyer, through the Client Assistance program;

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

- State Disciplinary Board;
- State Disciplinary Review Board;
- Disciplinary Rules & Procedures Committee;
- Formal Advisory Opinion Board ;
- Clients' Security Fund;
- Professional Liability Insurance Committee;
- Unified Bar Committee;
- Advisory Committee on Legislation;
- Uniform Rules Committee;
- Elections Committee;
- Insurance Committee;
- Committee on International Trade in Legal Services;
- Attorney 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 a lawyer in the office. The Helpline averages 22 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.

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.

CLIENT ASSISTANCE PROGRAM OF THE OFFICE OF THE GENERAL COUNSEL

The Client Assistance Program of the Office of the General Counsel (CAP) is the first point of contact for a member of the public who has a problem with their lawyer. CAP seeks to resolve communication issues between attorneys and their clients outside of the formal grievance process. Each year, CAP receives thousands of complaints via telephone calls, letters and emails. By facilitating direct communication between attorneys and their clients, CAP is able to resolve approximately 80% of the complaints it receives without members of the public having to utilize the formal grievance process. CAP's annual statistics are based on the 2020 calendar year.

CAP CONTACTS



CALLS RECEIVED BY CAP

CALLS FROM THE PUBLIC	CALLS FROM ATTORNEYS	FOLLOW UP CALLS FROM THE PUBLIC	TOTAL
9,582	418	910	10,910

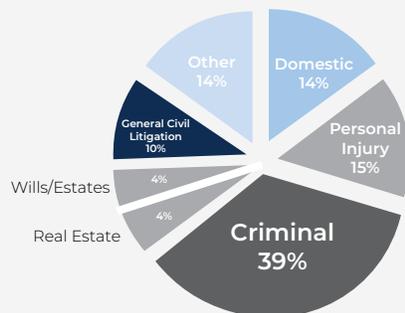
TOTAL # OF CASES HANDLED IN 2020

9,458

Approximately 39% of the complaints received were about issues in criminal cases, 15% involved issues in personal injury cases, 14% involved issues in domestic cases, 10% involved general civil litigation, 4% involved wills/estates and 4% involved real estate.

CALLS PLACED BY CAP

CALLS TO THE PUBLIC	CALLS TO ATTORNEYS	TOTAL
8,402	165	8,567



EMAILS | LETTERS | FAXES

RECEIVED	SENT	TOTAL
2,773	1,815	4,588

STATE DISCIPLINARY BOARD

BY MAGGIE PUCCINI, CHAIR

As the chair of the State Disciplinary Board, I would like to thank each Board member for the time and effort he or she has committed to serving. Each year, the State Disciplinary Board is charged with investigating a significant number of grievances for potential violations of the Georgia Rules of Professional Conduct. The work of the State Disciplinary Board is an essential component of the State Bar of Georgia.

The 2020-21 State Disciplinary Board consisted of the president-elect of the State Bar of Georgia and the president-elect of the Young Lawyers Division of the State Bar of Georgia; 12 members of the State Bar of Georgia (four from each of the three federal judicial districts of Georgia) and four non-lawyer members. In previous years, the Board held monthly in-person meetings throughout the state. With the advent of the COVID-19 pandemic and its far-reaching effects, the Board switched to virtual meetings and continued its work seamlessly with an overall attendance rate of 80%.

The Bar received fewer grievance forms this year (2,126) than last year (2,639). After review and screening by the Office of General Counsel, 1,734 grievances were closed or dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 92 grievances contained allegations which, if true, would amount to violations of one or more of the Georgia Rules of Professional Conduct. This represents a decrease from 237 such grievances in 2020. Each of those grievances was referred to one of the district Board members for further investigation.

State Disciplinary Board members who investigated grievances each handled numerous cases during the Bar year. The Board worked diligently and efficiently to report each case within 180 days of service on the Respondent. Each case required investigation and time away from the Board member's law practice, all without compensation. At the conclusion of each investigation, the Board member made a report and recommendation to the full Board. The Board dismissed 67 grievances, 44 of those with a letter of instruction to educate and inform

the lawyer about the Rules of Professional Conduct. One hundred and seven cases met the "probable cause" standard and were returned to the Office of the General Counsel for prosecution.

In matters that met the standard for probable cause, 19 of the Respondents received confidential discipline in the form of Formal Letters of Admonition or State Disciplinary Board Reprimands. In 80 more serious cases, the Board issued a Notice of Discipline for some level of public discipline, or made a referral to the Supreme Court of Georgia for a hearing before a special master.

The State Disciplinary Board took the following action during 2020-2021:

Cases	
Confidential Reprimands	5
Formal Letters of Admonition	14
Cases Dismissed with Letters of Instruction	40
Interim Suspensions	12

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

This last year created unprecedented challenges for our Board; however, each Board member met those challenges with an unmatched level of professionalism. It has been a privilege to work with such an outstanding group of volunteers to accomplish this important work on behalf of the State Bar of Georgia.



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STATE DISCIPLINARY BOARD (CONT.)

I would like to recognize those members of the State Disciplinary Board who have unselfishly devoted so much of their personal and professional time to this necessary task. They are as follows:

Patricia Fortune Ammari

Sherry Boston *(term expiring)*

C. Sutton Connelly

Kayla Cooper

Tomieka Daniel

Jennifer Dunlap

Elizabeth Fite *(term expiring)*

Jeffrey R. Harris

Elissa Haynes *(term expiring)*

Elizabeth Pool O'Neal

Brandon Peak

Margaret S. Puccini

Casey C. Santas

Christian J. Steinmetz III

Finally, I want to recognize and thank the four non-lawyer members appointed by either the Supreme Court or the president of the State Bar of Georgia:

Dr. Connie Cooper

Michael Fuller

Rev. David F. Richards III

Jennifer D. Ward

STATE DISCIPLINARY REVIEW BOARD

BY ANTHONY B. ASKEW, CHAIR

The State Disciplinary Review Board plays an important role in our disciplinary system and serves several functions. Under the Bar Rules, the Review Board offers an additional level of appellate review after a disciplinary case has been heard by a special master. The parties may elect to file exceptions and request review by the Review Board before the case is filed with the Supreme Court. In these cases, the Review Board considers the complete record, reviews the findings of fact and conclusions of law, and determines whether a recommendation of disciplinary action will be made to the Supreme Court of Georgia. The Board has the discretion to grant oral argument if requested by either party. The Supreme Court may follow the Review Board's recommendation, but may also render an opinion that modifies the recommendation in some way.

In addition, the Review Board reviews all cases involving reciprocal discipline. If a Georgia lawyer has been disciplined in another jurisdiction resulting in a suspension or disbarment, the lawyer is subject to reciprocal discipline in Georgia. The Review Board is charged with reviewing the record from the foreign jurisdiction and recommending the appropriate reciprocal disciplinary result in Georgia. These cases present many interesting issues for the Board and can be challenging when the lawyer objects to reciprocal discipline. In all cases, the Board 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 Board also issues Review Board Reprimands when directed by the Supreme Court, and makes recommendations in reinstatement cases, which involve suspensions with conditions for reinstatement as directed by the Supreme Court. The Board also provides input on amendments to the Bar Rules involving the disciplinary process.

The Supreme Court approved amendments to the disciplinary rules, which became effective July 1, 2018.

Under these rules, the former Review Panel was renamed the State Disciplinary Review Board, and the size of the Board was reduced from 15 to 11 members. In particular, the number of lawyer members who serve on the Board from around the state was reduced from nine to seven. The Review Board is currently composed of two lawyers from each of the three Federal Judicial Districts in Georgia, one at-large lawyer member and two non-lawyer members. These members are appointed in alternate years by the Supreme Court of Georgia and the president of the State Bar. Two ex-officio members also serve on the Board in their capacity as officers of the State Bar.

The following is a brief summary of public disciplinary action taken by the Supreme Court of Georgia during the period from May 1, 2020, to April 30, 2021:



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STATE DISCIPLINARY REVIEW BOARD (CONT.)

Form of Discipline	Cases	Lawyers
Disbarments/Voluntary Surrenders	31	18
Suspensions	18	15
Public Reprimands	1	1
Review Board Reprimands	2	2

The foregoing summary does not begin to reflect the important issues that were carefully considered by the Review Board over the past year. In addition to attending regular meetings, each Board 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 Board member, all of whom acted with the highest degree of professionalism and competency during their terms.

I would like to recognize the members of the Board 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	
P. Alice Rogers, Atlanta	(2021)
Clarence Pennie, Kennesaw	(2022)

Lawyer Members

Northern District:

Aimee Sanders, Atlanta	(2022)
Halsey G. Knapp, Atlanta	(2023)

Middle District:

Caroline Herrington, Macon	(2022)
Alfreda Sheppard, Albany	(2023)

Southern District:

John R. Long, Augusta	(2023)
Paul Threlkeld, Savannah	(2022)

At-Large

Anthony B. Askew, Atlanta	(2021)
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Ex-Officio Members

William Thomas Davis, Atlanta	(2020)
Darrell Lee Sutton	(2021)

SPECIAL THANKS

A special thanks to Tony Askew, whose term on the Review Board ended this year. Tony used his encyclopedic knowledge of disciplinary case law to seek Board results that were consistent and fair. Under Tony's leadership, the Board acquired professional staff so that it operates independently of the Office of the General Counsel. We truly appreciate Tony's 20-year service on the Review Board and his decades of Bar service; the profession and the public are better for it.

CLIENTS' SECURITY FUND

BY TYRONIA MONIQUE SMITH, 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 contributes to this Fund.

On behalf of the Trustees of the Clients' Security Fund, it is a pleasure to present the 2020-21 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 Clients' Security Fund (Part X) rules, making it an official part of the rules of the State Bar of Georgia.

Administration of the Fund

The Clients' Security Fund Board of Trustees performs all acts necessary to effectively administer the Fund. The rules establish a Board of Trustees consisting of six-lawyer members and one non-lawyer member 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 lawyer and one paralegal from the Office of the General Counsel.

Trustees for the 2020-2021 Bar Year

- Tyronia Monique Smith, Atlanta
- Robert J. Kauffman, Douglasville
- Michael G. Geoffroy, Covington
- R. Javoyne Hicks, Decatur
- Karl David Cooke Jr., Macon
- LaToya Simone Bell, Warner Robins
- Sammy Strode, Savannah (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

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 amended the Bar Rules to provide for an assessment of \$100 per lawyer to be paid over five years. In 2010, the Court amended the rules to make the assessment payable over four years. A subsequent amendment in 2018, allows new members of the State Bar of Georgia admitted after May 15 of each year to defer payment of the Clients' Security Fund assessment until the second full fiscal year following their admission to the Bar, giving them more time to seek employment and settle into the practice of law before being required to pay the assessment. In addition to the assessment, the Bar Rules provide for future assessments whenever the fund balance falls below \$1,000,000.

Other efforts to maintain the stability of the Fund included a 2003 amendment that provides that all members who are admitted as Foreign Law Consultants or who are admitted on motion are required to pay the full assessment of \$100 when they register with the State Bar. Fund revenues are also supplemented by interest income, restitution payments from disbarred lawyers and occasional contributions.

In January 1996, the Board of Trustees adopted certain administrative rules to manage the Fund. These rules provide that the maximum amount the Trustees will pay on any individual claim is \$25,000. Also, the aggregate amount the Trustees will pay to all claimants victimized by a single lawyer is limited to 10% of the Fund balance as it existed on the date the first claim against the lawyer was paid. Both of these rules may be overridden by a unanimous vote of the Trustees in cases of undue hardship or extreme unfairness.

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 Fund's stability. These issues included the

CLIENTS' SECURITY FUND (CONT.)

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 substantial claims by clients of several Georgia attorneys. The Trustees were concerned that this combination of occurrences would cause the Fund balance to drop below \$1,000,000, 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 address pending claims adequately.

To address these issue, at its 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 Fund's balance caused by several successive years of little to no interest income, and replenish the Fund after 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 from \$350,000 to \$500,000. On March 3, 2016, the proposed amendment was approved by order of the Supreme Court of Georgia.

While the Trustees had hoped these measures would stabilize the Fund, the corpus of the Fund has continued to decline significantly over the past few years. The Trustees are currently considering other options to provide a more stable source of funding.

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 designed to prevent losses. Two significant programs exist that are intended to avoid lawyer theft of clients' funds.

Overdraft Notification

Effective January 1, 1996, the Supreme Court created a Trust Account Overdraft Notification Program. The Program helps prevent misappropriation of clients' funds by providing a mechanism for early detection of improprieties in the handling of attorney trust accounts. For more information and statistics for the 2020-2021 Bar year, see the Annual Report of the Trust Account Notification Program.

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 when the check is mailed to the payee's attorney. This places the client on notice that the attorney has received settlement finds, and reduces the likelihood that theft of funds will go undetected.

Claims Process

Before the Clients' Security Fund pays a claim, the Trustees must determine that the loss was caused by the dishonest conduct of a lawyer who has been disbarred, indefinitely suspended, or who has voluntarily surrendered his or her license. 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 resulting from malpractice or financial investments are also not considered reimbursable by the Fund. Claimants are responsible for providing sufficient documentation to support their claims.



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CLIENTS' SECURITY FUND (CONT.)

The last meeting for the 2020-2021 Bar Year was held on June 10, 2021. The Statement of Fund Balance, Income and Expenses for the period ending April 30, 2021, is below.

Annual Financial Statistics

Balance on April 30, 2021	2020-2021 \$1,843,124
<i>Income to Fund</i>	
Assessments	\$77,379
Restitution	\$12,895
Interest	\$11,033
Misc. Income (transfer from ICLE)	\$1,000,000
Gain/Loss Investment Assessment	\$8,043
<i>Distributions from Fund</i>	
Claims Paid	\$193,767
Restricted Expenses	\$60,833
Bond Premium Amortization	\$5,126
Investment Service Fee	\$1,864

Summary of Claims Activity

The following summarizes claims activity beginning May 1, 2020, and ending April 30, 2021. The Trustees have met two times during this period to consider pending claims.

ACTIVITY	2020-21
Recorded Application Requests	31
Claims Filed	31
Claims Considered	26
Claims Approved	20
Claims Denied	5
Claims Tabled	4
Claims Reconsidered	3
Claims Administratively Closed	4
Claims Withdrawn	0
Claims Pending	61
Inactive Claims	3
Number of Attorneys Involved in Paid Claims	13

FORMAL ADVISORY OPINION BOARD

BY DAVID N. LEFKOWITZ, CHAIR

The Formal Advisory Opinion Board (hereinafter “Board”) considers requests for formal advisory opinions and drafts opinions that interpret the Georgia Rules of Professional Conduct.

Board Members

The Board consists of active members of the State Bar of Georgia (hereinafter “State Bar”) who are appointed by the president of the State Bar, with the approval of the Board of Governors. For the 2020-2021 Bar year, the Board is comprised of the following lawyers:

<i>Members at Large</i>	<i>Term</i>
David N. Lefkowitz, Chair, Athens	2019 – 2021
Mary A. Prebula, Duluth	2020 – 2022
Jeffrey Hobart Schneider, Atlanta	2020 – 2022
Letitia A. McDonald, Atlanta	2020 – 2022
Edward B. Krugman, Atlanta	2019 – 2021
<i>Georgia Trial Lawyers Association</i>	
C. Andrew Childers, Atlanta	2019 – 2021
<i>Georgia Defense Lawyers Association</i>	
Jacob Edward Daly, Atlanta	2019 – 2021
<i>Georgia Association of Criminal Defense Lawyers</i>	
Amanda Rourk Clark Palmer, Atlanta	2020 – 2022
<i>Georgia District Attorney’s Association</i>	
Sherry Boston, Decatur	2020 – 2022
<i>Young Lawyers Division</i>	
Elissa Blache Haynes, Atlanta	2019 – 2021
<i>Emory University</i>	
Professor Jennifer Murphy Romig, Atlanta	2020 – 2022
<i>University of Georgia</i>	
Professor Lonnie T. Brown, Jr., Athens	2019 – 2021
<i>Mercer University</i>	
Professor Patrick E. Longan, Macon	2019 – 2021
<i>Georgia State University</i>	
Professor Megan Elizabeth Boyd, Atlanta	2020 – 2022
<i>John Marshall Law School</i>	
Professor Jeffrey Alan Van Detta, Atlanta	2019 – 2021
<i>State Disciplinary Board</i>	
Christian J. Steinmetz, III, Savannah	2020 – 2021

State Disciplinary Review Board
Alfreda Lynette Sheppard, Albany 2020 – 2021

Executive Committee
Norbert D. Hummel, IV, Atlanta 2020 – 2021

Procedures

When the Board receives a request for a formal advisory opinion, it decides whether to accept or decline the request. 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, whether the issue raised is of general interest to the members of the State Bar, whether there are existing opinions that adequately address the issue, and the nature of the prospective conduct.

If the Board decides to accept the request for the drafting of a formal advisory opinion, the Board selects one or more of its members to draft a proposed opinion. The draft is carefully reviewed by the Board in an effort to determine whether the proposed opinion should be approved. If the Board approves the proposed opinion, it is published in an official State Bar publication. Members of the State Bar are invited to review the proposed opinion and submit comments to the Board. The Board reviews all comments before making a final determination to issue an opinion.

A Board approved opinion is filed with the Supreme Court of Georgia (hereinafter Supreme Court) and published in an official State Bar publication. Upon the filing of the opinion, the State Bar and the person who requested the opinion can seek discretionary review from the Supreme Court. If review is not sought, or the Supreme Court declines to review the opinion, the opinion is an opinion of the Board and is binding only on the State Bar and the person who requested the opinion, and not on the Supreme Court. If the Supreme Court grants discretionary review and disapproves the opinion, it shall have absolutely no effect. However, if the Supreme Court grants review and approves or modifies the opinion, the opinion is an opinion of the Supreme Court of Georgia, and shall be binding on all members of the State Bar. The opinion shall be published in the official Georgia Reports and the Supreme Court shall give the opinion the same precedential authority given its other regularly published judicial opinions.

Summary of the Board’s Activities During the 2020-2021 Bar Year

No new requests for a formal advisory opinion were received during the 2020-2021 Bar year.

The following requests for a formal advisory opinion were received in a prior Bar year and acted upon during the 2020-2021 Bar year. Following are the issues presented and the status of each request:

FORMAL ADVISORY OPINION BOARD (CONT.)

Formal Advisory Opinion Request No. 20-R2 Mandatory Arbitration Clause in Fee Contracts

On Sept. 8, 2020, the Supreme Court of Georgia issued an order in *Innovative Images, LLC v. James Darren Summerville, et al.*, Case No. S19G1026 (Ga. Sept. 8, 2020). Although referenced in the case, the Supreme Court did not address the following ethics issue:

Under Georgia Rule of Professional Conduct 1.4 (b), is an attorney required to fully apprise his or her client of the advantages and disadvantages of arbitration before including a clause mandating arbitration of legal malpractice claims in the parties' engagement agreement?

Instead, the Supreme Court indicated that it would leave it to the State Bar of Georgia to determine whether the ethics issue is worthy of a formal advisory opinion or an amendment to the Georgia Rules of Professional Conduct.

The Office of the General Counsel requested that the Board determine whether it should draft a formal advisory opinion addressing the ethics issue referenced above.

The Board accepted this request for the drafting of a formal advisory opinion, and appointed a subcommittee to draft a proposed opinion for the Board's consideration. While working on the proposed opinion, the subcommittee realized that an amendment to Georgia Rules of Professional Conduct 1.5 (b) and 1.8 (h) might best address the ethics issue or provide the Board with ethics rules that it could utilize in better addressing the ethics issue. The subcommittee discussed the request with the Disciplinary Rules and Procedures Committee, and asked the committee to consider amending the rules. The subcommittee wants to review the proposed amended rules to determine what bearing they might have on addressing the ethics issue. This matter remains pending with the Disciplinary Rules and Procedures Committee.

Formal Advisory Opinion Request No. 19-R2

(1) Does an attorney violate the Georgia Rules of Professional Conduct if she advises a client on the

cultivation, processing, manufacture, distribution, or sale of a hemp or cannabis plant, or derivative thereof, that has a delta 9 tetrahydrocannabinol ("THC") content of more than 0.3% on a dry weight basis?

(2) Does an attorney violate the Georgia Rules of Professional Conduct if she assists a client with legal transactions (such as contract drafting and review, negotiations, real estate acquisition, etc.) to facilitate the cultivation, processing, manufacture, distribution or sale of a hemp or cannabis plant or derivative thereof that has a THC content of more than 0.3% on a dry weight basis?

(3) Does an attorney violate the Georgia Rules of Professional Conduct if she invests or accepts ownership interest in lieu of attorney's fees in a company that cultivates, processes, manufactures, distributes, or sells hemp or cannabis plants, or derivatives thereof, that have a THC content of more than 0.3% on a dry weight basis?

This request was received on or about Sept. 4, 2019. Additionally, the requestor submitted a rule change request to the Disciplinary Rules and Procedures Committee. The committee decided to amend Georgia Rule of Professional Conduct 1.2 to address the ethics issues. The Board tabled consideration of this request pending the disposition of the amendment to the rule implicated in the request. The Board of Governors approved the proposed amendment to Georgia Rules of Professional Conduct 1.2 (d) and (e). On June 30, 2020, the proposed amendment was published on the State Bar of Georgia website pursuant to Bar Rule 5-101, setting forth the proposed amendment. The motion to amend Rule 1.2 was filed with the Supreme Court of Georgia on May 7, 2021 (Motion 2021-3). On June 21, 2021, the Supreme Court of Georgia issued an order denying the motion to amend Rule 1.2, stating the Court has long prohibited Georgia lawyers from counseling and assisting clients in the commission of criminal acts, and that the passage of a Georgia statute purporting to permit and regulate conduct that constitutes federal crimes does not change that long-standing principle.

In light of the Court's decision, the Formal Advisory Opinion Board needs to determine whether it will accept or decline this request for the drafting of a formal advisory opinion.



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FORMAL ADVISORY OPINION BOARD (CONT.)

Formal Advisory Opinion Request No. 19-R1

Is it a violation of the Georgia Rules of Professional Conduct (Rules 7.1 (a) and 8.4 (a) (4)) for a Georgia attorney to purchase Google Ad Words selecting the name of a competing attorney to be used in his own keyword advertising?

This request was received on or about Aug. 26, 2019. The Board appointed a subcommittee to evaluate whether the request raises an ethical issue that requires an advisory opinion interpreting the Georgia Rules of Professional Conduct. After considering the subcommittee's report, the Board determined the current rules adequately address the question presented and declined the request for the drafting of a formal advisory opinion.

The Board also addressed the following matter related to Formal Advisory Opinion No. 94-3—May a lawyer properly contact and interview former employees of an organization represented by counsel to obtain information relevant to litigation against the organization?

Formal Advisory Opinion No. 20-1

(redrafted version of Formal Advisory Opinion No. 94-3)

Whether a lawyer may properly communicate with a former employee of a represented organization to acquire relevant information, without obtaining the consent of the organization's counsel.

On Feb. 18, 2019, the Supreme Court of Georgia issued an order withdrawing Formal Advisory Opinion No. 87-6. Formal Advisory Opinion No. 87-6 is referenced in Formal Advisory Opinion No. 94-3. Subsequent to the withdrawal of Formal Advisory Opinion No. 87-6, the Board decided to redraft Formal Advisory Opinion No. 94-3, primarily to remove the reference to Formal Advisory Opinion No. 87-6. Formal Advisory Opinion No. 20-1 is the redrafted version of Formal Advisory Opinion No. 94-3. The question presented in Formal Advisory Opinion No. 20-1 is slightly different than the question presented in Formal Advisory Opinion No. 94-3, however, Formal Advisory Opinion No. 20-1 addresses the same ethics issue addressed in Formal Advisory Opinion No. 94-3, but does so by providing an interpretation of the Georgia Rules of Professional Conduct rather than the Standards of Conduct. Formal Advisory Opinion No. 20-1 reaches the same conclusion as Formal Advisory Opinion No. 94-3.

Formal Advisory Opinion No. 20-1 was published on the State Bar of Georgia website for 1st publication on Nov. 16, 2020, pursuant to Bar Rule 4-403 (c). Fifteen comments were received in response to the publication. After reviewing the comments, the Board made a final

determination that the opinion should be issued and filed with the Supreme Court of Georgia. On March 25, 2021, Formal Advisory Opinion No 20-1 was filed with the Supreme Court of Georgia. Pursuant to Bar Rule 4-403 (c), on March 31, 2021, the State Bar of Georgia filed a petition for discretionary review with the Supreme Court. On May 3, 2021, the Supreme Court of Georgia issued an order granting review of Formal Advisory Opinion No. 20-1, directing the State Bar of Georgia and other interested parties to address 1) whether FAO No. 20-1 should be approved and 2) whether FAO No 94-3 should be withdrawn. On May 21, 2021, the State Bar of Georgia filed its brief in support of the Court approving FAO No. 20-1 and withdrawing FAO No. 94-3.

On June 1, 2021, the Georgia Defense Lawyers Association filed a motion with the Supreme Court of Georgia seeking a 20-day extension to file its brief in this matter. On June 3, 2021, the Court granted the request, extending the time to file the brief until July 6, 2021. On June 1, 2021, the Georgia Defense Lawyers Association filed a motion requesting oral argument, stating that given the importance of the attorney-client privilege and other rules of confidentiality, oral argument will allow the Court to better explore the foundation of FAO Nos. 94-3 and 20-1. The Supreme Court of Georgia granted the request for oral argument on June 24, 2021, and ordered that oral argument in the matter be deferred to the Court's September 2021 oral argument calendar.

On June 29, 2021, the Georgia Defense Lawyers Association filed a motion for an additional extension to file its brief. On June 30, 2021, the Supreme Court issued an order granting the request for an additional extension until July 20, 2021.

Formal Advisory Opinions and the rules governing the Board can be found 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, I express my sincere gratitude and appreciation to General Counsel Paula J. Frederick, 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 commitment and assistance have been invaluable to the Board.

PRO HAC VICE PROGRAM

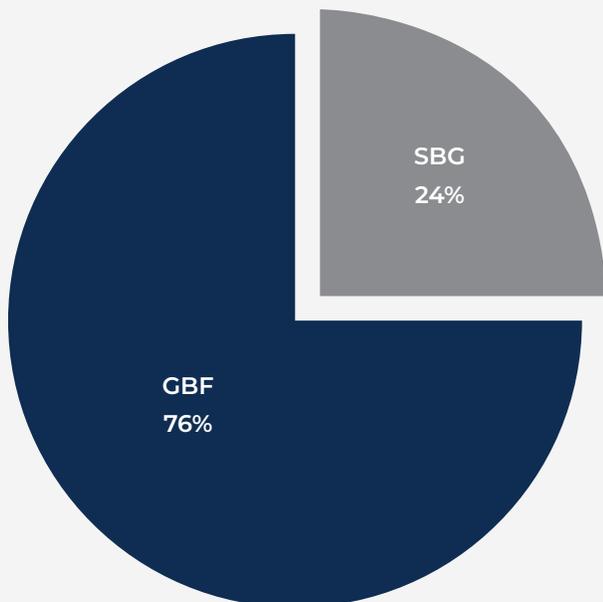
BY KATHYA S. JACKSON, PRO HAC VICE PARALEGAL

Attorneys seeking to appear *pro hac vice* in State and Superior Courts, the State Board of Workers' Compensation, and the Georgia Statewide Business Court must comply with Uniform Superior Court Rule 4.4. Attorneys seeking to appear *pro hac vice* in Magistrate Court must comply with Uniform Magistrate Court Rule 7.5. Pursuant to both rules, attorneys applying for *pro hac vice* admission in Georgia must serve a copy of their application for admission on the Office of the General Counsel, State Bar of Georgia. The Office of the General Counsel verifies the attorneys' status with their home jurisdiction(s), collects the associated fees, and reviews the contents of the application. The Office of the General Counsel informs the Court whether the application complies with Appendix A of the rule.

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

On June 15, 2017, the Supreme Court of Georgia amended Georgia Rule of Professional Conduct 5.5 (l). The amendment requires *pro hac vice* applicants to pay a late fee of \$100 if they do not pay the annual fee by Jan. 15. The annual fee and late fee must be paid no later than March 1st of that year. Failure to pay the annual fee and late fee may result in disciplinary action.

During the period of May 1, 2020 through April 30, 2021, the Office of the General Counsel reviewed 1,062 *pro hac vice* applications. The Office of the General Counsel filed 13 formal responses with Georgia courts regarding the apparent non-eligibility of the applicant. Ten applicants sought exemption from the application fee due to *pro bono* representation. The Office of the General Counsel collected a total of \$401,928 from *pro hac vice* applicants. The fees were divided between the State Bar of Georgia and the Georgia Bar Foundation. The State Bar of Georgia received \$97,128 from the total collected. The Georgia Bar Foundation received \$304,800 from the total collected.



TOTAL PRO HAC VICE FEES RECEIVED

The State Bar of Georgia ("SBG") collected a total of \$401,928 for *pro hac vice* fees. The fees were divided between the SBG and the Georgia Bar Foundation ("GBF"). The SBG received \$97,128 from the total collected. The GBF received \$304,800 from the total collected.

OVERDRAFT NOTIFICATION PROGRAM

BY REGINA PUTMAN, TRUST ACCOUNT OVERDRAFT NOTIFICATION COORDINATOR

Georgia lawyers are required to have their trust accounts in financial institutions that agree to report overdrafts to the State Bar of Georgia. Approved financial institutions agree to notify the Office of the General Counsel when a properly payable instrument is presented against a trust account containing insufficient funds. This can be an early warning regarding conduct likely to injure clients. The Overdraft Notification Program received 235 overdraft notices from financial institutions approved as depositories for Georgia attorney trust accounts. Of the total number of notices received, one notice was received on the trust account of a disbarred lawyer. A total of 132 files were dismissed based on the receipt of satisfactory responses following the initial State Bar inquiry, eight files were referred to the Law Practice Management Program, and 16 files were forwarded to the State Disciplinary Board for possible disciplinary action. (Several attorney overdraft files contained more than one overdraft notice regarding the same IOLTA account number. Some overdraft files opened during the latter part of FY 2020 – 2021 remain open, pending final review and disposition.)

Recent Amendment to Rule 1.15 (III) of the Georgia Rules of Professional Conduct

Until recently, banks were not required to report overdrafts to the State Bar of Georgia if the bank instrument was honored within three business days.

On May 14, 2021, the Supreme Court of Georgia issued an order amending Rule 1.15 (III) of the Georgia Rules of Professional Conduct to eliminate that three-day grace period. The elimination of the three-day grace period will create a more effective loss prevention tool. Previously a steady stream of trust account deposits and disbursements could mask problems in the trust account. Now the Office of the General Counsel will be alerted sooner regarding trust account issues in order to counsel corrective measures or initiate a disciplinary investigation where necessary.

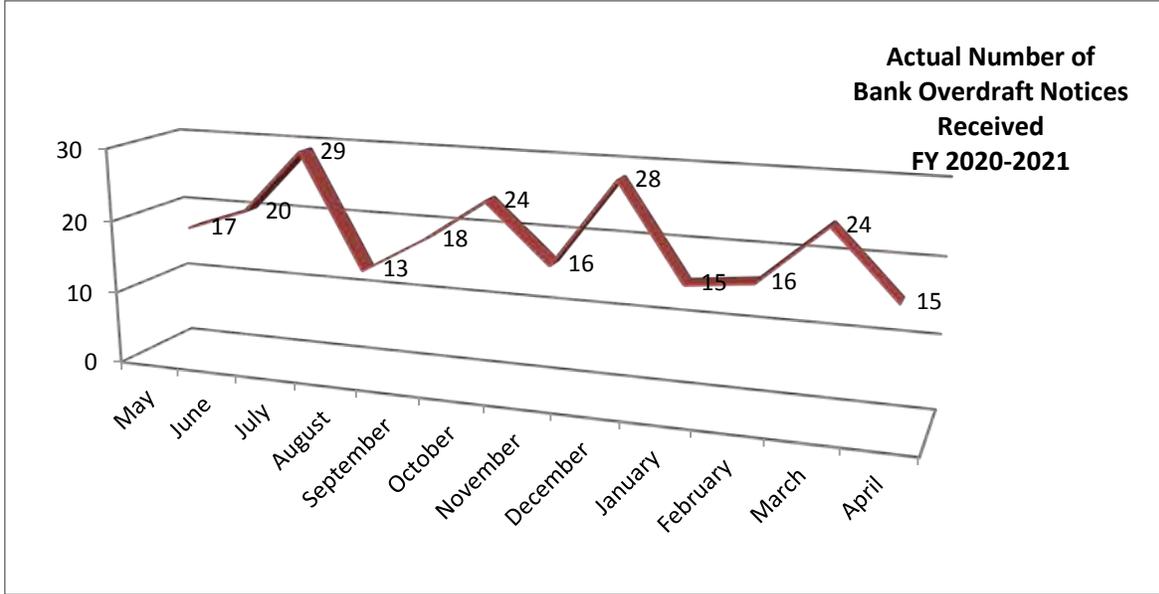
Financial Institutions Approved as Depositories for Attorney Trust Accounts

Because of the elimination of the three-day grace period, the Office of the General Counsel will have to obtain new trust account reporting agreements from banks currently listed as approved depositories for lawyer trust accounts. The office has started that process. 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, to verify that their banks are included in the list.

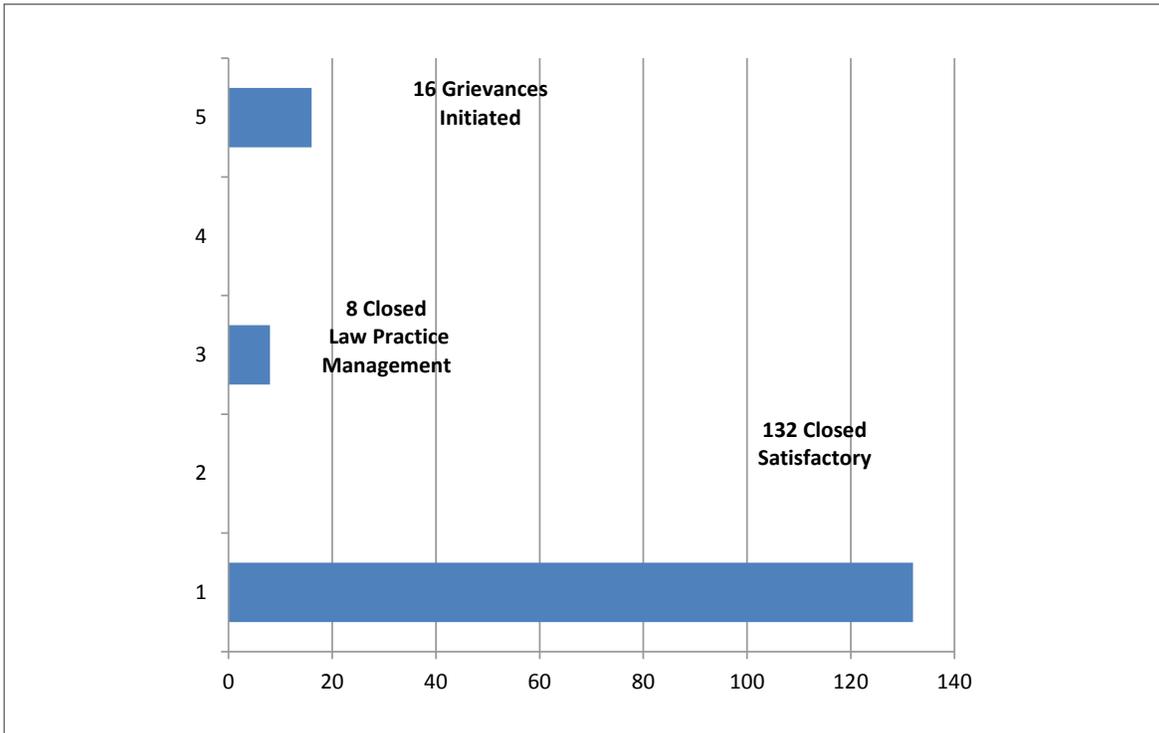
MONTH 2020-21	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
May	17	11	1	1	13
June	20	12	0	2	14
July	29	12	1	2	15
August	13	14	1	1	16
September	18	13	1	1	15
October	24	10	0	1	11
November	16	9	1	0	10
December	28	11	0	2	13
January	15	9	1	4	14
February	16	7	1	0	8
March	24	18	1	2	21
April	15	6	0	0	6
TOTAL	235	132	8	16	156
PERCENTAGE		91	0.63	8.59	

OVERDRAFT NOTIFICATION PROGRAM (CONT.)

ACTUAL NUMBER OF BANK OVERDRAFT NOTICES RECEIVED | FY 2020-21



TRUST ACCOUNT OVERDRAFT FILE DISPOSITION | FY 2020-21



RECEIVERSHIPS

BY WILLIAM D. NESMITH III, DEPUTY GENERAL COUNSEL

If a Georgia lawyer is disbarred, disappears, dies, is incarcerated or becomes so impaired that he or she cannot properly represent clients, the Office of the General Counsel may petition the Supreme Court of Georgia for the appointment of a receiver. This generally happens when there is no partner or associate available to notify the lawyers' clients of the situation, or to complete the representation. In most cases a volunteer lawyer serves as the receiver, but lawyers in the Office of the General Counsel sometimes serve as receivers when there is no volunteer who is willing to do so—usually when the absent attorney has been disbarred.

After the Court enters an order appointing a receiver, the receiver takes charge of the absent attorney's files and records, reviews the files, and takes the necessary steps to protect the interests of clients, usually by returning their file and advising them of the need to seek new counsel. The scope of the receivership can be extended to include the management of the lawyer's trust accounts, if necessary.

Once the receiver has completed his or her duties, all unclaimed files are delivered to the State Bar of Georgia. The State Bar stores the files until the Court issues an order allowing for their destruction.

There are currently 16 open cases in which either the State Bar or a volunteer lawyer is serving as receiver. During the 2020-2021 Bar year, one petition to appoint the State Bar of Georgia as a receiver was filed with the Supreme Court of Georgia. The State Bar of Georgia maintains thousands of files from current and past receivership cases, and manages the systematic destruction of those files after holding the files for six years.

On behalf of the State Bar of Georgia, I would like to thank those lawyers who serve as receivers. It is time-consuming work, but a significant service to the public and the profession.



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AMENDMENTS TO BAR RULES & BYLAWS

BY WILLIAM D. NESMITH III, DEPUTY GENERAL COUNSEL

Rules Amended by Order of the Supreme Court of Georgia

The Supreme Court of Georgia ordered the following amendments to the Rules and Regulations of the State Bar of Georgia during the 2020-2021 Bar year. Many of the amendments are housekeeping changes that create stylistic consistency; this report will focus on the substantive amendments. The most current version of the Rules is on the State Bar of Georgia website at www.gabar.org.

Motion 2020-1 (Order entered by the Supreme Court of Georgia on May 14, 2021)

Rule 1.6. Confidentiality of Information

The changes to this rule are consistent with recent changes to the ABA Model Rule of Professional Conduct.

- Rule 1.6 (b) (1) (v); Comments 18 and 19: New subpart (v) clarifies that a lawyer may reveal limited confidential information to do a conflicts change before switching jobs, so long as the information revealed would not harm the client.
- Comments 22 and 23 are from the ABA Model rules. They help lawyers determine whether and how to exercise the discretion allowed by Rule 1.6 (b).
- Comments 24 and 25 are from the ABA Model Rules. They remind lawyers to take reasonable steps to keep confidential information secure from cyberattack or inadvertent disclosure.

Rule 1.15(III). Record Keeping; Trust Account Overdraft Notification; Examination of Records

The change to Rule 1.15 (III) removes the 3-day grace period for a bank to report an overdraft from a lawyer's trust account. Under the previous rule, banks were not required to report overdrafts to the State Bar of Georgia if the bank instrument was honored within three business days. The elimination of the three-day grace period creates a more effective loss prevention tool. Previously a steady stream of trust account deposits and disbursements could mask problems in a trust account. Now the Office of the General Counsel will be alerted sooner regarding trust account issues, and may be able to counsel corrective measures or initiate a disciplinary investigation where necessary.

Rule 1.18. Duties to Prospective Client

This new rule is the American Bar Association Model Rule 1.18, without the provision for screening conflicts. The rule gives lawyers guidance on the obligations owed to a person who consults with, but does not hire, the lawyer.

Bar Rule 4-204.1. Notice of Investigation

This housekeeping amendment was necessary because of the comprehensive changes to the procedural rules for disciplinary cases that went into effect July 1, 2018. The old rule required that the Bar send a respondent a copy of the underlying Memorandum of Grievance when issuing a Notice of Investigation. As of July 1, 2018, the Bar may investigate conduct upon receipt of credible information. As a result, some investigative files do not include a Memorandum of Grievance.

Rule Amendments Pending with the Supreme Court of Georgia (as of July 1, 2021)

Motion 2020-1

Rule 1.1. Competence

The proposed change to this rule rewrites Comment [6] to remind lawyers that being competent includes keeping abreast of the benefits and risks associated with technology relevant to their law practice.

Motion 2020-4

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

The proposed amendment to Comment 9 reminds lawyers that they are ethically bound to ask questions when confronted with "red flags" that should alert them to a money-laundering scheme. Failure to do so could result in the lawyer being accused of knowingly assisting in a criminal or fraudulent scheme. The amendment was the suggestion of the International Trade in Legal Services Committee, following a study of the role of lawyers in illicit money laundering activity involving the cross-border movement of money and assets.

Bar Rule 1-202. Membership Status

The proposed amendment would add a "Retired" status to the membership categories.

AMENDMENTS TO BAR RULES & BYLAWS (CONT.)

Bar Rule 4-202. Receipt of Grievances; Initial Review by Bar Counsel

Bar Rule 4-204. Investigation and Disposition by State Disciplinary Board – Generally

Bar Rule 4-221.1. Confidentiality of Investigations and Proceedings

Bar Rule 4-222. Limitations

The proposed amendments to Bar Rules 4-202, 4-204, 4-221.1 and 4-222 are housekeeping in nature to change the word “Consumer” to “Client” as the Consumer Assistance Program has recently been renamed “Client Assistant Program.”

Bar Rule 10-104. Board of Trustees

The proposed changes to Bar Rule 10-104 change the length of a trustee’s term from five years to three years.

Rule Amendments Pending Filing with the Supreme Court of Georgia

(These proposed amendments have been approved by the Board of Governors and, as of July 1, 2021, are either in the publication process or in the process of being filed with the Court.)

Motion 2021-1

The proposed amendments to Bar Rules 1-303, 1-801, 1-801.1 and 1-802 allow for meetings to be conducted by electronic means that allow for discussion, debate and voting.

The proposed amendments to Bar Rule 1-803 adds electronic notification as an acceptable means of informing Bar members of Annual and Midyear Meetings.

Motion 2021-2

Bar Rule 1-601. Bylaws

The proposed amendment to this rule would allow the membership to amend the bylaws at any member meeting of the State Bar of Georgia rather than just at Annual and Midyear meetings.

Rule 1.0. Terminology and Definitions

This proposed amendment defines the term “Memorandum of Grievance” and re-letters subsequent subsections accordingly.

Rule 3.8. Special Responsibilities of a Prosecutor

The proposed amendment requires prosecutors to disclose information that a defendant was wrongfully convicted and to seek a remedy for the conviction. The change also provides guidance as to how the disclosure should be made.

Rule 8.4. Misconduct

The proposed amendment makes the definition of “conviction” consistent with the definition at Rule 1.0. The proposed amendments to the following rules are housekeeping amendments to replace the term “grievance” with “matter,” or to delete the reference to a Memorandum of Grievance, since a disciplinary matter can be initiated when credible information is presented from any source without a Memorandum of Grievance being filed.

Rule 9.3. Cooperation with Disciplinary Authority

Bar Rule 4-202. Receipt of Grievances; Initial Review by Bar Counsel

Bar Rule 4-203. Powers and Duties

Bar Rule 4-203.3. Answer to Notice of Investigation Required

Bar Rule 4-204. Investigation and Disposition by State Disciplinary Board—Generally

Bar Rule 4-204.1. Notice of Investigation

Bar Rule 4-208.2. Notice of Discipline; Contents; Service

Bar Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline

Bar Rule 4-222. Limitation

Bar Rule 4-223. Advisory Opinions

Bar Rule 4-224. Expungement of Records

Bar Rule 10-106. Eligible Claims

Proposed Amendment Rejected by the Supreme Court of Georgia

Motion 2021-3

By order of June 21, 2021, the Supreme Court of Georgia denied the Bar’s motion to amend Rule 1.2 to add a new subpart (e), which would have allowed Georgia lawyers to counsel clients regarding conduct that is lawful under Georgia law but that may violate the law of another jurisdiction. The motion to amend was made in the context of the Georgia law allowing cannabis production even though cannabis is a Schedule 1 drug that is illegal under the federal Controlled Substances Act. In denying the Motion, the Court stated that it would not change its longstanding prohibition on Georgia lawyers counseling and assisting clients in the commission of criminal acts.

DISCIPLINARY ORDERS

Reinstatements Granted

<i>Date of Order</i>	<i>Respondent</i>
6/3/2020	Preston B. Kunda
2/5/2021	David E. Morgan

Review Board Reprimands

<i>Date of Order</i>	<i>Respondent</i>
3/1/2021	Daveniya Elisse Fisher
4/19/2021	Misty Oaks Paxton

Public Reprimands

<i>Date of Order</i>	<i>Respondent</i>
4/5/2021	Edward S. Cook

Suspensions

<i>Date of Order</i>	<i>Respondent</i>
Indefinite	
10/5/2020	David G. Rigdon
Definite	
5/18/2020	Howard L. Sosnik
11/16/2020	Thomas W. Veach
Interim Suspension	
6/26/2020	Eston William Hood Jr.
6/26/2020	Kara Sherrisse Lawrence
6/26/2020	Keren Happuc Sohahong-Kombet
7/8/2020	Joseph Roger Davis
7/8/2020	Charles V. Loncon
7/8/2020	Evelyn Proctor
7/8/2020	Mark Thomas
7/29/2020	Evelyn Proctor
7/29/2020	Debra Kaye Scott
11/16/2020	Amber Holly Bunch
12/2/2020	Ken Jones
2/9/2021	Joseph Harold Turner
3/19/2021	L. Elizabeth Lane

Interim Suspensions Lifted

6/19/2020	David J. Farnham
7/28/2020	Eston William Hood Jr.
7/28/2020	Kara Sherrisse Lawrence
7/28/2020	Charles V. Loncon
7/29/2020	Mark Thomas
8/3/2020	Franklin David McCrea
8/7/2020	Keren Happuc Sohahong-Kombet
11/23/2020	Amber Holly Bunch
12/18/2020	Ken Jones

Disbarments/Voluntary Surrenders

<i>Date of Order</i>	<i>Respondent</i>
5/4/2020	Timothy Paul Healy
6/29/2020	Don Smart
7/15/2020	Neil Richard Flit
8/10/2020	Vincent Chidozie Otuonye
8/10/2020	Elizabeth Vila Rogan
9/8/2020	Leighton Reid Berry
9/8/2020	Dennis W. Hartley
9/28/2020	Pamela Sturdivant Stephenson
10/5/2020	Daniel Lee Dean
2/15/2021	Jeffrey Bull Grable
2/15/2021	Patrick Anthony Powell
2/15/2021	David R. Sicay-Perrow
3/1/2021	Evelyn A. Miller
3/1/2021	George Michael Plumides
4/5/2021	Earnest Redwine
4/5/2021	Joseph Harold Turner
4/19/2021	Majd M. Ghanayem
4/19/2021	Cynthia Ann Lain

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