



## SUPREME COURT OF GEORGIA

Atlanta December 1, 2012

The Honorable Supreme Court met pursuant to adjournment.  
The following order was passed:

The Court having considered motions to amend the Rules and Regulations of the State Bar of Georgia, 2011-2 and 2011-3, it is ordered that the State Bar's motion to amend Rule 1-206.1 of Part I, Chapter 2 (Law Student Members); Rule 5.5 of the Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law); Rule 4-106 of Part IV, Chapter 1 (Conviction of a Crime; Suspension and Disbarment); Rule 4-108 of Part IV, Chapter 1 (Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension); Rule 4-109 of Part IV, Chapter 1 (Refusal or Failure to Appear for Reprimand; Suspension); Rule 4-204.4 of Part IV, Chapter 2 (Finding of Probable Cause; Referral to Special Master); Rule 4-208.1 through Rule 4-208.4 of Part IV, Chapter 2 ( Notice of Discipline); Rule 4-209 through Rule 4-210 of Part IV, Chapter 2 (Special Masters); Rule 4-211 of Part IV, Chapter 2 (Formal Complaint; Service); Rule 4-402 of Part IV, Chapter 4 (The Formal Advisory Opinion Board); Arbitration of Fee Disputes, Part VI (Preamble); Rule 6-101 through Rule 6-105 of Part VI, Chapter 1 (Committee on Arbitration of Attorney Fee Disputes); Rule 6-201 through Rule 6-206 of Part VI, Chapter 2 (Jurisdictional Guidelines); Rule 6-301 through Rule 6-306 of Part VI, Chapter 3 (Selection of Arbitrators); Rule 6-401 through Rule 6-423 of Part VI, Chapter 4 (Rules of Procedure); Rule 6-501 through Rule 6-503 of Part VI, Chapter 5 (Post-Award Proceedings); Rule 6-601 through Rule 6-603 of Part VI, Chapter 6 (Confidentiality, Record Retention, and Immunity) of the Rules of the State Bar of Georgia is hereby approved, effective December 1, 2012, to read as follows:

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### **Rule 1-206.1. Law Student Members**

In addition to the membership and classes of membership provided in this Chapter, the State Bar may recognize as law student members, without the rights and privileges of membership, those law students currently enrolled in a law school approved by the American Bar Association or any law school approved by the Georgia Board of Bar Examiners. Law student members may be furnished copies of appropriate publications electronically and may be entitled to attend and participate, without the right to vote or hold office, in those meetings and activities conducted by the State Bar and any of its component parts or sections.

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;  
MULTIJURISDICTIONAL PRACTICE OF LAW**

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

(b) A Domestic Lawyer shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Comment**

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to

members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies four such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Domestic or Foreign Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Domestic or Foreign Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e), (f) and (g) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while

technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to

practice. The Domestic Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so requires.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

- (a) The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or
- (b) The Domestic or Foreign Lawyer's client may be resident in, have an office in or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- (c) The matter, although involving other jurisdictions, may have a significant connection with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- (d) Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or
- (e) A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- (f) Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or
- (g) The lawyer's work on the specific matter in this jurisdiction is authorized by the

jurisdiction in which the lawyer is admitted; or

(h) The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or

(i) The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this

jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4.

[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

#### **Rule 4-106. Conviction of a Crime; Suspension and Disbarment**

(a) Upon receipt of information or evidence that an attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of nolo contendere or imposition of first offender probation, the Office of the General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.

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

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

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

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

(f) (1) If the Supreme Court of Georgia orders the Respondent suspended pending the appeal, upon the termination of the appeal the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended Respondent should:

(i) be disbarred under Bar Rule 8.4, or

- (ii) be reinstated, or
  - (iii) remain suspended pending retrial as a protection to the public, or
  - (iv) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these rules.
- (2) Reports of the Special Master shall be filed with the Review Panel as provided hereafter in Bar Rule 4-217. The Review Panel shall make its findings and recommendation as provided hereafter in Bar Rule 4-218.
- (g) For purposes of this rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea of guilty or plea of nolo contendere or the imposition of first offender treatment shall be prima facie evidence of an infraction of Bar Rule 8.4 of Bar Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

**Rule 4-108. Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension**

- (a) Upon receipt of sufficient evidence demonstrating that an Attorney's conduct poses a substantial threat of harm to his clients or the public and with the approval of the Immediate Past President of the State Bar of Georgia and the Chairperson of the Review Panel, or at the direction of the Chairperson of the Investigative Panel, the Office of the General Counsel shall petition the Supreme Court of Georgia for the suspension of the Attorney pending disciplinary proceedings predicated upon the conduct causing such petition.
- (b) The petition for emergency suspension shall state the evidence justifying the emergency suspension.
- (c) The petition for emergency suspension shall be served upon the Respondent pursuant to Bar Rule 4-203.1.
- (d) Upon receipt of the petition for emergency suspension, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall assign the matter a Supreme Court docket number, and shall notify the Coordinating Special Master that appointment of a Special Master is appropriate.
- (e) The Coordinating Special Master will appoint a Special Master pursuant to Bar Rule 4-209(b) to conduct a hearing where the State Bar of Georgia shall show cause why the Respondent should be suspended pending disciplinary proceedings.
- (f) Within fifteen days after service of the petition for emergency suspension upon the Respondent or appointment of a Special Master, whichever is later, the Special Master shall hold a hearing on the petition for emergency suspension.
- (g) Within twenty days of the hearing, the Special Master shall file his or her recommendation with the Supreme Court of Georgia. The Court sitting en banc may suspend the Respondent pending final disposition of disciplinary proceedings predicated upon the conduct causing the emergency suspension, or order such other

action as it deems appropriate.

**Rule 4-109. Refusal or Failure to Appear for Reprimand; Suspension**

Either panel of the State Disciplinary Board based on the knowledge or belief that a respondent has refused, or failed without just cause, to appear in accordance with Bar Rule 4-220 before a panel or the superior court for the administration of a reprimand may file in the Supreme Court a motion for suspension of the respondent. A copy of the motion shall be served on the respondent as provided in Bar Rule 4-203.1. The Supreme Court may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

**Rule 4-204.4. Finding of Probable Cause; Referral to Special Master**

(a) In the event the Investigative Panel, or a subcommittee of the Panel, finds Probable Cause of the Respondent's violation of one or more of the provisions of Part IV, Chapter 1 of these rules it may refer the matter to the Supreme Court by directing the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

- (1) A formal complaint, as herein provided;
- (2) A petition for the appointment of a Special Master; and
- (3) A notice of its finding of Probable Cause.

The documents specified above shall be filed in duplicate within thirty (30) days of the finding of Probable Cause unless the Investigative Panel, or a subcommittee of the Panel, or its Chairperson grants an extension of time for the filing.

(b) A Notice of Discipline and the matter shall thereafter proceed pursuant to Bar Rules 4-208.1, 4-208.2 and 4-208.3.

**Rule 4-208.1. Notice of Discipline**

(a) In any case where the Investigative Panel or a subcommittee of the Panel finds Probable Cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.

(b) Unless the Notice of Discipline is rejected by the Respondent as provided in Bar Rule 4-208.3, (1) the Respondent shall be in default; (2) the Respondent shall have no right to any evidentiary hearing; and (3) the Respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court of Georgia.

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

(a) The Notice of Discipline shall state the following:

- (1) The Rules which the Investigative Panel found that the Respondent violated;

- (2) The facts which, if unrefuted, support the finding that such Rules have been violated;
  - (3) The level of public discipline recommended to be imposed;
  - (4) The reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the Investigative Panel to be relevant to such recommendation;
  - (5) The entire provisions of Bar Rule 4-208.3 relating to rejection of Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing same in the Notice;
  - (6) A copy of the Memorandum of Grievance; and
  - (7) A statement of any prior discipline imposed upon the Respondent, including confidential discipline under Bar Rules 4-205 to 4-208.
- (b) The original Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the Respondent pursuant to Bar Rule 4-203.1.
  - (c) This subparagraph is reserved.
  - (d) This subparagraph is reserved.
  - (e) This subparagraph is reserved.
  - (f) This subparagraph is reserved.
  - (g) The Office of the General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.
  - (h) The level of disciplinary sanction in any Notice of Discipline rejected by the Respondent or the Office of the General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

**Rule 4-208.3. Rejection of Notice of Discipline**

- (a) In order to reject the Notice of Discipline, the Respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline.
- (b) Any Notice of Rejection by the Respondent shall be served by the Respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the Respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. The Respondent must also file a copy of such written response with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

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

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

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within thirty (30) days following the filing of a Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

**Rule 4-209. Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master**

(a) Upon receipt of a finding of Probable Cause, a petition for appointment of a Special Master and a formal complaint from the Investigative Panel, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the finding of Probable Cause need not be filed.

(b) Within a reasonable time after receipt of a petition/motion for appointment of a Special Master or notification that a Special Master previously appointed has been disqualified, the Coordinating Special Master will appoint a Special Master to conduct formal disciplinary proceedings in such complaint. The Coordinating Special Master shall select as Special Masters experienced members of the State Bar of Georgia who possess a reputation in the Bar for ethical practice; provided, that a Special Master may not be appointed to hear a complaint against a Respondent who resides in the same circuit as that in which the Special Master resides.

(c) Upon being advised of appointment of a Special Master by the Coordinating Special Master, the Clerk of the Court shall return the original Notice of Discipline, rejection of Notice of Discipline, if applicable, formal complaint, Probable Cause finding, petition for appointment of Special Master and the signed order thereon to the Office of the General Counsel of the State Bar of Georgia. Upon notification of the appointment of a Special Master, the Office of the General Counsel shall immediately

serve the Respondent with the order of appointment of a Special Master and with its formal complaint as hereinafter provided.

(d) Within ten days of service of the notice of appointment of a Special Master, the Respondent and the State Bar of Georgia shall lodge any and all objections or challenges they may have to the competency, qualifications or impartiality of the Special Master with the chairperson of the Review Panel. The party filing such objections or challenges must also serve a copy of the objections or challenges upon the opposing counsel, the Coordinating Special Master and the Special Master, who may respond to such objections or challenges. Within a reasonable time the chairperson of the Review Panel shall consider the challenges, the responses of Respondent, the State Bar of Georgia, the Coordinating Special Master and the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Coordinating Special Master and the Special Master of the chairperson's decision. Exceptions to the chairperson's denial of disqualification are subject to review by the entire Review Panel and, thereafter, by the Supreme Court of Georgia when exceptions arising during the evidentiary hearing and exceptions to the report of the Special Master and the Review Panel are properly before the Court. In the event of disqualification of a Special Master by the chairperson of the Review Panel, said chairperson shall notify the Clerk of the Supreme Court of Georgia, the Coordinating Special Master, the Special Master, the State Bar of Georgia and the Respondent of the disqualification and appointment of a successor Special Master shall proceed as provided in this rule.

#### **Rule 4-209.1. Coordinating Special Master**

(a) The appointment of and the determination of the compensation of the Coordinating Special Master shall be the duty of the Coordinating Special Master Selection and Compensation Commission. The Commission shall be comprised of the second, third and fourth immediate past presidents of the State Bar of Georgia. If any of the above named ex officio individuals should be unable to serve, the vacancy shall be filled by appointment by the Supreme Court of Georgia.

(b) The Coordinating Special Master shall be selected by the Coordinating Special Master Selection and Compensation Commission, with the approval of the Supreme Court of Georgia. The Coordinating Special Master shall serve as an independent contractor at the pleasure of the Coordinating Special Master Selection and Compensation Commission.

(c) The Coordinating Special Master shall be compensated by the State Bar of Georgia from the general operating funds of the State Bar of Georgia in an amount specified by the Coordinating Special Master Selection and Compensation Commission. The Coordinating Special Master's compensation shall be approved by the Supreme Court

of Georgia. On or before the first day of each calendar year, the Coordinating Special Master Selection and Compensation Commission shall submit to the Supreme Court of Georgia for approval the hourly rate to be paid to the Coordinating Special Master during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar of Georgia.

(d) The Coordinating Special Master shall have such office space, furniture and equipment and may incur such operating expenses in such amounts as may be specified by the Supreme Court of Georgia. Such amounts shall be paid by the State Bar of Georgia from the general operating funds. On or before the first day of each calendar year, the Supreme Court of Georgia will set the amount to be paid for the above items during the fiscal year beginning the first day of July of that year.

(e) If the Coordinating Special Master position is vacant or the Coordinating Special Master has recused or been disqualified from a particular matter, the Supreme Court of Georgia may appoint a temporary Acting Coordinating Special Master to act until the position can be filled or to act in any particular matter.

#### **Rule 4-209.2. Special Masters**

(a) The Coordinating Special Master, subject to the approval of the Supreme Court of Georgia, shall select and maintain a limited pool of qualified lawyers to serve as Special Masters for the State Disciplinary Board and Hearing Officers for the Board to Determine Fitness of Bar Applicants pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia. The names of those so selected shall be placed on a list maintained by the Coordinating Special Master. Said list shall be published annually in a regular State Bar of Georgia publication. Although not mandatory, it is preferable that a lawyer so selected shall only remain on such list for five years, so that the term may generally be considered to be five years. Any lawyer whose name is removed from such list shall be eligible to be selected and placed on the list at any subsequent time.

(b) Training for Special Masters and Hearing Officers is expected, subject to the terms of this Rule, and shall consist of one training session within twelve months after selection. The Special Master and Hearing Officer training shall be planned and conducted by the Coordinating Special Master. Special Masters and Hearing Officers who fail to attend such a minimum training session shall periodically be removed from consideration for appointment in future cases. Failure to attend such a training session shall not be the basis for a disqualification of any Special Master or Hearing Officer; as such qualifications shall remain in the sole discretion of the Supreme Court of Georgia.

(c) The Special Masters may be paid by the State Bar of Georgia from the general operating funds on a per case rate to be set by the Supreme Court of Georgia. Hearing

Officers may be paid pursuant to Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia.

(d) On or before the first day of March of each calendar year, the Supreme Court of Georgia may set the amount to be paid to the Special Masters during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar of Georgia.

### **Rule 4-209.3. Powers and Duties of the Coordinating Special Master**

The Coordinating Special Master shall have the following powers and duties:

(1) to establish requirements for and supervise Special Master and Hearing Officer training;

(2) to assign cases to Special Masters and Hearing Officers from the pool provided in Bar Rule 4-209(b);

(3) to exercise all of the powers and duties provided in Bar Rule 4-210 when acting as a Special Master under subparagraph (8) below;

(4) to monitor and evaluate the performance of Special Masters and Hearing Officers;

(5) to remove Special Masters and Hearing Officers for such cause as may be deemed proper by the Coordinating Special Master;

(6) to fill all vacancies occasioned by incapacity, disqualification, recusal or removal;

(7) to administer Special Master and Hearing Officer compensation, if authorized as provided in Bar Rule 4-209.2 or Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia;

(8) to hear pretrial motions when no Special Master has been assigned; and

(9) to perform all other administrative duties necessary for an efficient and effective hearing system.

### **Rule 4-210. Powers and Duties of Special Masters**

In accordance with these Rules a duly appointed Special Master or Hearing Officer shall have the following powers and duties:

(a) to exercise general supervision over assigned disciplinary proceedings and to perform all duties specifically enumerated in these Rules;

(b) to rule on all questions concerning the sufficiency of the formal complaint;

(c) to conduct the negotiations between the State Bar of Georgia and the Respondent, whether at a pretrial meeting set by the Special Master or at any other time;

(d) to receive and evaluate any Petition for Voluntary Discipline;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter;

(f) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to

perform his or her duties or in the event that he or she learns that he or she and the Respondent reside in the same circuit;

- (g) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a Respondent growing out of different transactions, whether they involve one or more complainants, and may proceed to make recommendations on each complaint as constituting a separate offense;
- (h) to sign subpoenas and exercise the powers described in Bar Rule 4-221(b);
- (i) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;
- (j) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel;
- (k) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases;
- (l) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the Respondent should be suspended pending further disciplinary proceedings; and
- (m) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written findings of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

**Rule 4-211. Formal Complaint; Service**

(a) Within thirty days after a finding of Probable Cause, a formal complaint shall be prepared by the Office of the General Counsel which shall specify with reasonable particularity the acts complained of and the grounds for disciplinary action. A formal complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the Respondent after appointment of a Special Master by the Coordinating Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Bar Rule 4-208.4. The formal complaint shall be served pursuant to Bar Rule 4-203.1.

(b) This subparagraph is reserved.

(c) At all stages of the proceeding, both the Respondent and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints, and certificates for and in behalf of the State Bar of Georgia and the State Disciplinary Board.

#### **Rule 4-402. The Formal Advisory Opinion Board**

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

- (1) Five members of the State Bar of Georgia at-large;
- (2) One member of the Georgia Trial Lawyers Association;
- (3) One member of the Georgia Defense Lawyers Association;
- (4) One member of the Georgia Association of Criminal Defense Lawyers;
- (5) One member of the Young Lawyers Division of the State Bar of Georgia;
- (6) One member of the Georgia District Attorneys Association;
- (7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;
- (8) One member of the Investigative Panel of the State Disciplinary Board; and
- (9) One member of the Review Panel of the State Disciplinary Board.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

- (1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;
- (2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board shall serve for a term of one year;
- (3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar of Georgia following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:
  - (i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Defense Lawyers Association, the Georgia Association of Criminal Defense Lawyers, the Georgia District Attorneys Association and the Young Lawyers Division of the State Bar of Georgia) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;
  - (ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large Members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;
  - (iii) Two of the initial Representatives from the American Bar Association Accredited Law Schools shall be appointed to one-year terms; two of the initial law school representatives shall be appointed to two-year terms. As each initial term expires, the

successor appointee shall be appointed for a term of two years;

(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems it appropriate to reappoint a member for one or more additional terms.

(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

**PART VI**  
**ARBITRATION OF FEE DISPUTES**  
**PREAMBLE**

The purpose of the State Bar of Georgia’s program for the arbitration of fee disputes is to provide a convenient mechanism for the resolution of disputes (1) between lawyers and clients over fees; (2) between lawyers in connection with the dissolution of a practice or the withdrawal of a lawyer from a partnership or practice; or (3) between lawyers concerning the allocation of fees earned from joint services. If the parties to such a dispute have been unable to reach an agreement between or among themselves, either side may petition the State Bar Committee on the Arbitration of Attorney Fee Disputes (“Committee”) to arbitrate the dispute pursuant to these rules. Regardless of whether a lawyer or a client initiates the filing of a petition requesting arbitration of the dispute, the petitioner must agree to be bound by the result of the arbitration. This is intended to discourage the filing of complaints that are frivolous or that 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 Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq.

A unique feature of this program is that, if a client initiates the arbitration process and agrees to be bound by the result of the arbitration and the respondent lawyer refuses to be bound by any resulting award, the matter will still be submitted to arbitration if, after investigation by the Committee or its staff, the client’s claim appears to warrant a hearing.

If the client prevails in the arbitration, the State Bar of Georgia, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings.

## **CHAPTER 1**

### **COMMITTEE ON ARBITRATION OF ATTORNEY FEE DISPUTES**

#### **Rule 6-101. Administration of Program**

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

#### **Rule 6-102. Committee 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 of Georgia, 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 chair of the Committee each year from among the members. Vacancies in unexpired terms shall be filled by their respective appointing authorities.

#### **Rule 6-104. Powers and Duties of Committee**

The Committee shall have the following powers and duties:

- (a) To determine whether to accept jurisdiction over a dispute;
- (b) To appoint and remove lawyer and nonlawyer arbitrators and panels of arbitrators;
- (c) To oversee the operation of the arbitration process;
- (d) To develop and implement fee arbitration procedures;
- (e) To interpret these rules and to decide any disputes regarding the interpretation and application of these rules;
- (f) To determine challenges to the neutrality of an arbitrator where the arbitrator does not voluntarily withdraw;
- (g) To maintain the records of the State Bar of Georgia’s Fee Arbitration Program; and
- (h) To perform all other acts necessary for the effective operation of the Fee Arbitration Program.

#### **Rule 6-105. Staff’s Responsibilities**

State Bar of Georgia staff shall be assigned to assist the Committee. The assigned staff

will have such administrative responsibilities as may be delegated by the Committee, which may include the following:

- (a) Receive and review arbitration requests and discuss them with the parties, if necessary;
- (b) Conduct inquiries to obtain additional information as needed;
- (c) Make recommendations to the Committee whether to accept or decline jurisdiction; and
- (d) Transmit notices of arbitration hearings, arbitration awards, and other Committee correspondence.

## **CHAPTER 2 JURISDICTIONAL GUIDELINES**

### **Rule 6-201. Petition**

A request for arbitration of a fee dispute is initiated by the filing of a petition with the Committee. Each petition shall be filed on the Fee Arbitration Petition Form supplied by Committee staff and shall contain the following elements:

- (a) A statement of the nature of the dispute and the petitioner's statement of facts, including relevant dates;
- (b) The names and addresses of the client(s) and the attorney(s);
- (c) A statement that the petitioner has made a good faith effort to resolve the dispute and the details of that effort;
- (d) A statement that the petitioner agrees to be bound by the result of the arbitration;
- (e) The date of the petition; and
- (f) Each petitioner's signature.

### **Rule 6-202. Service of Petition**

If a petition has been properly completed and appears to have merit, Committee staff shall serve a copy of the petition, along with a Fee Arbitration Answer Form and an acknowledgment of service form, upon the respondent by first class mail addressed to such party's last known address. A signed acknowledgment of service form or a written answer from the respondent or respondent's attorney shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

In the absence of an acknowledgment of service or a written response from the respondent or respondent's counsel, service shall be certified mail, return receipt requested, addressed to such party's last known address.

In unusual circumstances as determined by the Committee or its staff, when service has not been accomplished by other less costly measures, service may be accomplished by the Sheriff or a court-approved agent for service of process.

If service is not accomplished, the Committee shall not accept jurisdiction of the case.

**Rule 6-203. Answer**

Each respondent shall have 20 calendar days after service of a petition to file an answer with the Committee. Staff, in its discretion, may grant appropriate extensions of time for the filing of an answer.

The answer shall be filed on or with the Fee Arbitration Answer Form supplied by Committee staff and shall contain the following elements:

- (a) A statement as to whether the respondent agrees to be bound by the result of the arbitration;
- (b) The respondent's statement of facts;
- (c) Any defenses the respondent intends to assert;
- (d) The date of the answer; and
- (e) Each respondent's signature.

Committee staff shall serve a copy of the answer upon each petitioner by first class mail, addressed to such party's last known address.

The failure to file an answer shall not deprive the Committee of jurisdiction and shall not result in a default judgment against the respondent.

**Rule 6-204. Accepting Jurisdiction**

The Committee or its designee may accept jurisdiction over a fee dispute only if the following requirements are satisfied:

- (a) The fee in question, whether paid or unpaid, was for legal services rendered by a lawyer who is, or was at the time the services were rendered, a member of the State Bar of Georgia or otherwise authorized to practice law in the State of Georgia.
- (b) The legal services in question were performed:
  - (1) in the State of Georgia; or
  - (2) from an office located in the State of Georgia; or
  - (3) by a lawyer who is not admitted to the practice of law in any United States jurisdiction other than Georgia, and the circumstances are such that if the State Bar of Georgia does not accept jurisdiction, no other United States jurisdiction will be available to a client who has filed a petition under this program.
- (c) The disputed fee exceeds \$750.
- (d) The amount of the disputed fee is not governed by statute or other law, nor has any court fixed or approved the full amount or all terms of the disputed fee.
- (e) The fee dispute is not the subject of litigation in court at the time the petition for arbitration is filed or when the Committee determines jurisdiction.
- (f) The petition seeking arbitration of the fee dispute is filed with the Committee no more than two 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.

(g) In the case of disputes between lawyers and clients, a lawyer/client relationship existed between the petitioner and the respondent at the time the legal services in question were performed. 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 other person pay or join as co-petitioners or co-respondents and both agree to be bound by the result of the arbitration.

(h) The client, whether petitioner or respondent, agrees to be bound by the result of the arbitration. If the respondent attorney does not agree to be bound by the result of the arbitration, the Committee in its discretion may determine that it is in the best interest of the public and the legal profession to accept jurisdiction. When the Committee accepts jurisdiction under these circumstances, the nonconsenting lawyer shall be considered a “party” for purposes of these rules.

(i) In disputes between lawyers, the lawyers who are parties to the dispute are all members of the State Bar of Georgia and have all agreed to arbitrate the dispute under this program and to be bound by the result of the arbitration.

Additionally, where the parties to a fee dispute have signed a written agreement to submit fee disputes to binding arbitration with the State Bar of Georgia’s Attorney Fee Arbitration Program, the Committee will consider the agreement enforceable if it is:

- (1) set out in a separate paragraph;
- (2) written in a font size at least as large as the rest of the contract; and
- (3) separately initialed by the client and the attorney.

In deciding whether to accept jurisdiction, the Committee shall review available evidence, including the recommendations of the staff, and make a determination whether to accept or decline jurisdiction. The Committee’s decisions on jurisdiction are final, except that such decisions are subject to reconsideration by the Committee upon the request of either party made within 30 days of the initial decision. Staff shall notify the parties of the Committee’s decision on jurisdiction by first class mail.

#### **Rule 6-205. Termination or Suspension of Proceedings**

The Committee may suspend or terminate arbitration proceedings or may decline or terminate jurisdiction if the client, in addition to pursuing arbitration of a fee dispute under these rules, asserts a claim against the lawyer in any court arising out of the same set of circumstances, including any claim of malpractice. Any claim or evidence of professional misconduct within the meaning of the Code of Professional Responsibility may be reported by the arbitrators or the Committee to the Office of the General Counsel for consideration under its normal procedures.

**Rule 6-206. Revocation**

After 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 or by action of the Committee or the arbitration panel for good cause shown.

### **CHAPTER 3 SELECTION OF ARBITRATORS**

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

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.

The Committee shall likewise maintain a roster of nonlawyer 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. Upon appointment to a particular arbitration, each arbitrator shall disclose to the Committee any circumstance that may affect his or her neutrality in regard to the dispute in question.

If an arbitrator becomes aware of any circumstances that might preclude that arbitrator from rendering an objective and impartial determination of the proceeding, the arbitrator must disclose that potential conflict as soon as practicable. If the arbitrator becomes aware of the potential conflict prior to the hearing, the disclosure shall be made to the Committee, which shall forward the disclosure to the parties. If the potential conflict becomes apparent during the hearing, the disclosure shall be made directly to the parties.

If a party believes that an arbitrator has a potential conflict of interest and should withdraw or be disqualified, and the arbitrator does not voluntarily withdraw, the party shall promptly notify the Committee so that the issue may be addressed and resolved as early in the arbitration process as possible.

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

The arbitration panel shall be selected by the Committee or its staff. Except as provided below, the arbitration panel shall consist of two attorney members who have practiced law actively for at least five years and one nonlawyer public member.

In cases involving disputed amounts greater than \$750 but not exceeding \$2,500, the Committee in its sole discretion may appoint an arbitration panel consisting of one lawyer who has practiced law actively for at least five years.

Petitioner and respondent by mutual agreement shall have the right to select the three arbitrators. They also may mutually agree to have the dispute determined by a sole arbitrator jointly selected by them, provided any such sole arbitrator shall be one 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 of Lawyer Arbitrators**

In addition to being impartial, lawyer arbitrators shall:

- (a) Have practiced law actively for at least five years; and
- (b) Be an active member in good standing of the State Bar of Georgia.

#### **Rule 6-305. Powers and Duties of Arbitration Panel**

The panel of arbitrators shall have the following powers and duties:

- (a) To compel by subpoena the attendance of witnesses and the production of documents and things;
- (b) To decide the extent and method of any discovery;
- (c) To administer oaths and affirmations;
- (d) To take and hear evidence pertaining to the proceeding;
- (e) To rule on the admissibility of evidence;
- (f) To interpret and apply these rules insofar as they relate to the arbitrators' powers and duties; and
- (g) To perform all acts necessary to conduct an effective arbitration hearing.

#### **Rule 6-306. 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. Representation by Counsel**

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

#### **Rule 6-402. Time and Place of Arbitration Hearing**

Upon their appointment by the Committee, the arbitrators shall elect a chair and then shall fix a time and place for the arbitration hearing. To the extent feasible, the hearing shall be held no more than 60 days after the appointment of the last arbitrator. At least ten calendar days prior to the hearing, the Committee shall mail notices of the time and place of the hearing to each party by first class mail, addressed to each party's last known address.

#### **Rule 6-403. Attendance and Participation at Hearing**

The parties shall have the right to attend and participate in the arbitration hearing at their own expense. It shall be discretionary with the arbitrators whether to allow the attendance of any persons who are not parties, witnesses, or counsel to one of the parties.

At the discretion of the arbitrators, a party may be permitted to appear or present witness testimony at the hearing by telephone conference call, video conference, computer-facilitated conference, or similar telecommunications equipment, provided all persons participating in the hearing can simultaneously hear each other during the hearing.

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

Any party may ask the Committee to arrange for the taking of a stenographic record of the proceeding. If a party orders a transcript, that party shall acquire and provide a certified copy of the transcript for the record at no cost to the panel. Other parties are entitled at their own expense to acquire a copy of the transcript by making arrangements directly with the court reporter. 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 an arbitration is pending, the remaining two arbitrators shall not proceed with the arbitration. The Committee or its designee shall determine the course of further proceedings and may appoint a substitute or replacement arbitrator or, by agreement of the parties, may proceed with one arbitrator.

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

Upon the written request of a party or the panel's own motion, discovery may be allowed to the extent deemed necessary by the arbitrators in their sole discretion.

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of documents and things, 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 in which 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.

**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. Arbitrators' Oath**

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**

The hearing shall be opened by the filing of the oath of the arbitrators. Next, the panel shall record the place, time, and date of the hearing, the names of the arbitrators, the parties, parties' counsel, and any witnesses who will be presenting evidence during the hearing.

The normal order of proceedings shall be the same as at a trial, with the petitioner's claim being presented first. However, the arbitrators shall have the discretion to vary the normal order of proceedings.

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 in person or by telephonic or electronic means. An award shall not be made solely on the default of a party; the arbitrators shall require the other party or parties to present such evidence as the arbitrators may require for the making of an award.

**Rule 6-411. Evidence**

(a) Parties may offer such relevant and material 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 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) A list shall be made of all exhibits received into evidence by the arbitrators. Exhibits shall be listed in the order in which they were received, and the list shall be made a part of the record.

(c) The names and addresses of all witnesses who testify at the arbitration shall be made a part of the record. Upon their own motion or at the request of any party, the arbitrators shall have the power to require the sequestration of any witness during the testimony of other witnesses.

(d) 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 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 admissibility.

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

(f) The receipt of testimony by deposition, conference telephone calls, and other procedures is within the discretion of the arbitrators upon their own motion or at the request of any party.

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

Arbitrators shall give due regard to the terms of any written contract signed by the parties.

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

Prior to the closing of an arbitration hearing, the arbitrators shall inquire of all parties whether they have any further evidence to offer or additional witnesses to be heard. If no further evidence is to be presented by either party, the arbitrators shall declare the hearing closed and make a record of that fact.

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

Upon the motion of the arbitrators or of a party, an arbitration may be reopened for good cause shown at any time before an award is made. However, if the reopening of the hearing would prevent the award from being rendered 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, knowing of a failure to comply with a provision or requirement of these rules, 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 the parties.

In cases in which a lawyer refuses to be bound by the result of the arbitration, the award rendered will be considered as prima facie evidence of the fairness of the award in any action brought to enforce the award, and the burden of proof shall shift to the lawyer to prove otherwise.

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

The arbitrators shall make all reasonable efforts to render their award promptly and not later than 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 evidence 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. Service of Award Upon Parties**

Service of the award upon the parties shall be the responsibility of Committee staff. Service of the award shall be accomplished by depositing a copy of the award in the United States Mail in a properly addressed envelope with adequate first class postage thereon and addressed to each party at his or her last known address.

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

There shall be no ex parte communication between a party and an arbitrator.

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

If the arbitrators on a panel disagree as to the interpretation or application of any rule relating to the arbitrators' powers and duties, such dispute shall be decided by a majority vote of the arbitrators. If the dispute cannot be resolved in that manner, an arbitrator or a party may refer the question to the Committee for its determination. The Committee's decision on the interpretation or application of these rules shall be final.

**CHAPTER 5  
POST-AWARD PROCEEDINGS**

**Rule 6-501. Confirmation of Award in Favor of Client**

In cases where both parties agreed to be bound by the result of the arbitration and an award in favor of a client has not been satisfied within three months after it was served upon the parties, the client may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq.

Upon the written request of a client, the Committee may provide a lawyer to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses.

**Rule 6-502. Confirmation of Award in Favor of Attorney**

In cases where both parties agreed to be bound by the result of the arbitration and an award has been issued in favor of an attorney, the attorney may apply to the appropriate Georgia superior court for confirmation of the award in accordance with the Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq.

The State Bar will not represent, assist, or advise the attorney except to provide copies of any necessary papers from the fee arbitration file pursuant to State Bar policies.

**Rule 6-503. Procedure Where Lawyer Refuses to be Bound**

In cases where an attorney refuses to be bound by the result of an arbitration and an award in favor of a client remains unsatisfied three months after service of the award upon the parties, the State Bar of Georgia, upon the written request of the client, may provide a lawyer to represent the client in post-award proceedings at no cost to the

client other than court filing fees and litigation expenses. Alternatively, the Office of the General Counsel of the State Bar of Georgia may represent, assist, or advise a client in post-award proceedings, provided the client shall be responsible for all court filing fees and litigation expenses. An award rendered in favor of a client in a case in which the attorney refused to be bound by the result of the arbitration 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.

## **CHAPTER 6**

### **CONFIDENTIALITY, RECORD RETENTION, AND IMMUNITY**

#### **Rule 6-601. Confidentiality**

All records, documents, files, proceedings, and hearings pertaining to the arbitration of a fee dispute under this program are the property of the State Bar of Georgia and, except for the award itself, shall be deemed confidential and shall not be made public. A person who was not a party to the dispute shall not be allowed access to such materials unless all parties to the arbitration consent in writing or a court of competent jurisdiction orders such access. However, the Committee, its staff, or representative may reveal confidential information in those circumstances in which the Office of the General Counsel is authorized by Bar Rule 4-221(d) to do so.

#### **Rule 6-602. Record Retention**

The record of any fee dispute under these rules shall be retained by the Committee in accordance with policies adopted by the Committee.

#### **Rule 6-603. Immunity**

Committee members, arbitrators, staff, and appointed voluntary counsel assisting the program shall be immune from suit for any conduct in the course and scope of their official duties under this program. Parties and witnesses shall have such immunity as is applicable in a civil action in Georgia.

## **CHAPTER 7**

### **CONFIDENTIALITY**

The current provisions of Chapter 7 of the Rules of the Fee Arbitration Program shall be eliminated under these amendments, and the provisions formerly found in this Chapter are relocated to Chapter 6 of the amended Rules.

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from  
the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court  
hereto affixed the day and year last written.

 Clerk