

compensated at attorney's regular hourly rate.); Michigan Bar Ethics Opinion RI-343 (January 25, 2008) (Not a violation of the Rules of Professional Conduct for a lawyer to contract with an insurance company to represent its insureds on a fixed fee basis, so long as the arrangement does not adversely affect the lawyer's independent professional judgment and the lawyer represents the insured with competence and diligence.); New Hampshire Bar Association Formal Ethics Opinion 1990-9115 (Fixed fee for insurance defense work is not *per se* prohibited; but attorney, no matter what the fee arrangement, is duty bound to act with diligence.); Ohio Supreme Court Board of Commissioners on Grievances and Discipline Opinion 97-7 (December 5, 1997) (Fixed fee agreement to do all of liability insurer's defense work must provide reasonable and adequate compensation. The set fee must not be so inadequate that it compromises the attorney's professional obligations as a competent and zealous advocate); Oregon State Bar Formal Ethics Opinion No. 2005-98 (Lawyer may enter flat fee per case contract to represent insureds but this does not limit, in any way lawyer's obligations to each client to render competent and diligent representation. "Lawyer owes same duty to 'flat fee' clients that lawyer would owe to any other client." "Lawyers may not accept a fee so low as to compel the conclusion that insurer was seeking to shirk its duties to insureds and to enlist lawyer's assistance in doing so."); Wisconsin State Bar Ethics Opinion E-83-15 (Fixed fee for each case of insurance defense is permissible; attorney reminded of duty to represent a client both competently and zealously).

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

⁴ Silver, note 1 at 236.

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

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

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

The second publication of this opinion appeared in the June 2011 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about June 6, 2011. The opinion was filed with the Supreme Court of Georgia on June 23, 2011. No review was requested within the 20-day review period, and the Supreme Court of Georgia has not ordered review on its own motion. In accordance with Rule 4-403(d), this opinion is binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

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 RESOLUTION OF 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 of Georgia 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:

- To determine whether to accept jurisdiction over a dispute;
- To appoint and remove lawyer and nonlawyer arbitrators and panels of arbitrators;
- To oversee the operation of the arbitration process;
- To develop and implement fee arbitration procedures;
- To interpret these rules and to decide any disputes regarding the interpretation and application of these rules;
- To determine challenges to the neutrality of an arbitrator where the arbitrator does not voluntarily withdraw;
- To maintain the records of the State Bar of Georgia's Fee Arbitration Program; and
- 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:

- Receive and review complaints and discuss them with the parties, if necessary;
- Conduct inquiries to obtain any additional information as needed;
- Make recommendations to the Committee whether to accept or decline jurisdiction; and
- 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 statement of the nature of the dispute and the petitioner's statement of facts, including relevant dates;
- The names and addresses of the client(s) and the attorney(s);
- A statement that the petitioner has made a good faith effort to resolve the dispute and the details of that effort;
- A statement that the petitioner agrees to be bound by the result of the arbitration;
- The date of the petition; and
- 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 of Georgia 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.

**PART VII
LAWYER ASSISTANCE PROGRAM**

PREAMBLE

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

**CHAPTER 1
LAWYER ASSISTANCE COMMITTEE**

Rule 7-101. Committee.

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

Rule 7-102. Membership.

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

Rule 7-103. Responsibility.

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

Rule 7-104. Funding.

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

**CHAPTER 2
GUIDELINES FOR OPERATION**

Rule 7-201. Education, Information and Awareness.

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

Rule 7-202. Volunteers.

The Committee may establish a network of attorneys and lay persons throughout the state of Georgia, experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in counseling and intervention programs and services.

Rule 7-203. Intervention and Counseling.

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

Rule 7-204. Definitions.

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