Disciplinary Rules & Procedures Committee

AGENDA

October 17, 2023

Atlanta, GA

I. Welcome (Bagley) 3

II. Approval of Minutes from 6/9/23 meeting (Bagley) 4-6

III. Action Items (Frederick)

A. Use of the term “counsel” (The Committee asked Bar staff to identify every time the word “counsel” is used in the rules, so that it could decide whether to substitute the word “lawyer” instead. More than 20 rules refer to “counsel.” One alternative is to define it so that it is synonymous with “lawyer” when used as a noun. Another alternative is to amend the definition of “lawyer.”)
   i. Proposed changes to the rules 7-16
   ii. Rule 1.0 17-23

B. Rule 1.8 (e)—(The Committee discussed making changes to lines 12-13 and 51-52 before sending the amendments to the BOG for approval.)
   i. Executive Committee version 24-27
IV. Discussion Items (Frederick)
   A. Request for Briefing and Oral Argument on Part VII
      i. Supreme Court Orders 28-30

   B. Maxwell v. State (discuss possible amendments to clarify the scope of Rule 4.2 as raised in Judge McFadden’s concurrence)
      i. Maxwell v. State 31-40
      ii. GRPC 4.2 41-43

   C. Justice presence and participation in DRPC meetings
      i. Email from Justice Bethel 44

V. Informational Items (Frederick)
   A. Report on status of previously amended rules
      i. Motion 2023-1 45-185
      ii. Supreme Court Order 186-207

   B. Next meeting is January 12, 2024 in conjunction with MidYear BOG Meeting.

VI. Adjourn
Disciplinary Rules & Procedures

This standing committee shall advise the Executive Committee and Board of Governors with respect to all procedural and substantive disciplinary rules, policies, and procedures.

Chairperson
Harold Michael Bagley 2025

Vice Chairperson
R. Gary Spencer 2026

Members
Erin H. Gerstenzang 2024
Mazie Lynn Guertin 2024
John G. Haubenreich 2024
Patrick H. Head 2024
R. Javoyne Hicks 2024
William Dixon James 2024
Seth David Kirschenbaum 2024
Catherine Koura 2024
Edward B. Krugman 2024
David Neal Lefkowitz 2025
Patrick E. Longan 2024
David O’Neal 2024
Viraj Kanuji Parmar 2026
William Hickerson Thomas, Jr. 2024
Julayaun Maria Waters 2025
Peter Werdesheim 2024
Patrick John Wheale 2024
Hon. Paige Reese Whitaker 2026

Executive Committee Liaison
David Lipscomb 2024

Staff Liaison
Paula J. Frederick 2024
Chair Michael Bagley called the meeting to order at 2:06 p.m.

Attendance:

Committee members: Michael Bagley, R. Gary Spencer, Erin H. Gerstenzang, Mazie Lynn Guertin, Patrick H. Head, William D. James, Edward B. Krugman (phone), David N. Lefkowitz (phone), Patrick E. Longan (phone), David O’Neal (phone), William Thomas, Jr., J. Maria Waters, Peter Werdesheim, and Judge Paige Whitaker.

Executive Committee Liaison: David S. Lipscomb


Guests: Supreme Court Justices Bethel, Colvin, and Warren.

Approval of Minutes:

The Committee approved the April 26, 2023 Minutes.

Action Items:

Rule 4-221.1

After further discussion, the Committee made additional changes to the proposed amendments. By unanimous vote, the Committee voted to adopt the changes discussed during the meeting. A copy of the Rule as amended appears at the end of these minutes.

Rule 1.8(j)

If the Committee wishes to proceed with this amendment, Bar Counsel should provide a memo regarding the constitutionality of the proposed changes.

Use of the term “counsel”

After further discussion, the Committee considered amending the definition of “lawyer.” The Committee would like to consider possible amendments at its next meeting.
Rule 1.8(e)

The Committee agreed to have Bar Counsel pull the proposed amendments from the Board of Governor’s agenda. The Committee would like to make additional edits to the first sentence of proposed section (e)(3) and comment (6).

Rule 4-204.3

The Committee decided not to take any action on the proposed changes.

The meeting adjourned at 1:35 p.m.
Rule 4-221.1 Confidentiality of Investigations and Proceedings

...e. The Office of the General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:

1. The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;

2. The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;

3. The Judicial Nominating Commission or the comparable body in other jurisdictions;

4. The Lawyer Assistance Program or the comparable body in other jurisdictions;

5. The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;

6. The Judicial Qualifications Commission or the comparable body in other jurisdictions;

7. The Executive Committee with the specific approval of the following representatives of the State Disciplinary Board: the Chair, the Vice-Chair, and a third representative designated by the Chair;

8. The Formal Advisory Opinion Board;

9. The Client Assistance Program;

10. The General Counsel Overview Committee;

11. An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and

11. The Unlicensed Practice of Law Department of the State Bar of Georgia;

12. Agencies, jurisdictions, or courts responsible for disciplinary investigations and proceedings regarding lawyers or judges and engaged in a lawful investigation or proceeding related to the discipline or regulation of a lawyer or judge;

12. Or otherwise with specific approval of the following representatives of the State Disciplinary Board: the Chair, the Vice-Chair, and a third representative designated by the Chair.

...
[6] Many of the Georgia Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2 (c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of another lawyer. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by another lawyer. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by another lawyer is assumed to have given informed consent.

Rule 1.1 comment 4 (no change; it is clear this is a lawyer)

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person subject to Rule 6.2: Accepting Appointments.

Rule 1.9 comment 4
[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change lawyers.

**Rule 1.13 comment 14**

[14] The question can arise whether a lawyer counsel for the organization may defend such an action. The proposition that the organization is the lawyer’s client does not alone resolve the issue. Most derivative actions are a normal incident of an organization’s affairs, to be defended by the organization’s lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer’s duty to the organization and the lawyer’s relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

**Rule 1.14 comment 10**

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other lawyer involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

**Rule 1.16(d) and comment 5**
(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of a new lawyer or counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

... [5] Whether a client can discharge appointed counsel may depend on applicable law. To the extent possible, the lawyer should give the client an explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor lawyer counsel is unjustified, thus requiring the client to be self-represented.

Rule 1.17(c)(3) and comment 5

(3) the client’s right to retain another lawyer or counsel, or to take possession of the file; and

... [5] The rule requires a single purchaser. The prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure another lawyer or counsel if a sale could be limited to substantial fee-generating matters. The purchaser is required to undertake all client matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter respecting which the purchaser is not permitted by Rule 1.7: Conflict of Interest or another rule to represent the client, the requirement that there be a single purchaser is nevertheless satisfied.

Rule 3.3 comment 7

[7] The duties stated in paragraphs (a), (b) and (c) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required the lawyer counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if the lawyer counsel knows that the testimony or statement will be false. The obligation of the advocate under the Georgia Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

Rule 3.7 comment 3
[3] Paragraph (a) (1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a) (2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with a new lawyer to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Rule 3.8(b), and comments 7 and 8

(b) refrain from making any effort to prevent the accused from exercising a reasonable effort to obtain a lawyer;

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor’s jurisdiction was convicted of a crime that the person did not commit, paragraph (h) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor’s jurisdiction, paragraph (h) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of a lawyer to assist the defendant in taking such legal measures as may be appropriate.

[8] Under paragraph (i), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint a lawyer for an unrepresented indigent defendant and, where appropriate, notifying the court that the
prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

Rule 4.2 comments 3, 4A, 5, 6, 6A, 8

[3] This Rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer counsel concerning the matter to which the communication relates.

[4A] In the case of an organization, this Rule prohibits communications with an agent or employee of the organization who supervises, directs or regularly consults with the organization’s lawyer concerning the matter or has authority to obligate the organization with respect to the matter, or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. If an agent or employee of the organization is represented in the matter by his or her own lawyer counsel, the consent by that lawyer counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4 (f). Communication with a former employee of a represented organization is discussed in Formal Advisory Opinion 20-1.

[5] The prohibition on communications with a represented person only applies, however, in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See 1.0. Such an inference may arise in circumstances where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of counsel by ignoring the obvious. (no change)

[6] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.(no change)
A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a represented person represented by counsel is necessary to avoid reasonably certain injury.

The anti-contact rule serves important public interests which preserve the proper functioning of the judicial system and the administration of justice by a) protecting against misuse of the imbalance of legal skill between a lawyer and layperson; b) safe-guarding the client-lawyer relationship from interference by adverse counsel; c) ensuring that all valid claims and defenses are raised in response to inquiry from adverse counsel; d) reducing the likelihood that clients will disclose privileged or other information that might harm their interests; and e) maintaining the lawyers ability to monitor the case and effectively represent the client. (no change)

Parties to a matter may communicate directly with each other because this Rule is not intended to affect communications between parties to an action entered into independent of and not at the request or direction of a lawyer counsel.

Rule 4.3 (b) and comment 2

(b) give advice other than the advice to secure a lawyer counsel, if a lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of a client.

...
explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer’s client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

**Rule 6.1 comment 3**

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but who nevertheless cannot afford a lawyer. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

**Rule 6.2 comments 2 and 3**

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain a lawyer or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1: Competence, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as a retained lawyer, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

**Rule 6.5 comment 2**

[2] A lawyer who provides free short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the
circumstances, the lawyer may offer advice to the client but must also advise the client of
the need for further assistance of a lawyer counsel. Except as provided in this Rule, the
Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited
representation.

**Rule 7.3 (2)(i) and comment 4**

(2)(i) the lawyer referral service shall be operated in the public interest for the purpose of referring
prospective clients to lawyers, pro bono and public service legal programs, and government, consumer
or other agencies who can provide the assistance the clients need. Such organization shall file annually
with the State Disciplinary Board a report showing its rules and regulations, its subscription charges,
agreements with counsel, the number of lawyers participating and the names and addresses of the
lawyers participating in the service; (no changes since rules are changing)

... [4] Certain narrowly-drawn restrictions on this type of communication are justified by a
substantial state interest in facilitating the public's intelligent selection of a lawyer counsel,
including the restrictions of paragraphs (a) (3) and (a) (4) which proscribe direct mailings to
persons such as an injured and hospitalized accident victim or the bereaved family of a
deceased.

**Rule 4-211(3) (no changes)**

3. 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 4-214(b) (no changes)**

(b) The Special Master shall file his or her original report and recommendation with the Clerk of the
State Disciplinary Boards and shall serve a copy on the respondent and counsel for the State Bar of
Georgia pursuant to Rule 4-203.1.

**Rule 4-219 (b)(1)**
After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within 30 days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within 45 days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court of Georgia, upon its own motion or upon motion of the Office of the General Counsel, and after 10 days' notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interests. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

Rule 4-221(b) (no changes)

(b) Pleadings and Copies. Original pleadings shall be filed with the Clerk of the Boards at the headquarters of the State Bar of Georgia, and the parties shall serve copies upon the Special Master and the opposing party pursuant to the Georgia Civil Practice Act. Depositions and other original discovery shall be retained by counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

Rule 4-221.3

Pleadings and oral and written statements of members of the Boards, members and designees of the Lawyer Assistance Program, Special Masters, Bar counsel and investigators, complainants, witnesses, and respondents and their counsel made to one another or filed in the record during any investigation, intervention, hearing, or other disciplinary proceeding under this Part IV, and pertinent to the disciplinary proceeding, are made in performance of a legal and public duty, are absolutely privileged, and under no circumstances form the basis for a right of action.

Rule 4-224 (d) (no changes)

(d) Retention of Records. Upon application to the State Disciplinary Board by the Office of the General Counsel, for good cause shown, with notice to the respondent and an opportunity to be heard, records
which would otherwise be expunged under this Rule may be retained for such additional period of time not exceeding three years as the Board deems appropriate. Counsel may seek a further extension of the period for which retention of the records is authorized whenever a previous application has been granted for the maximum period permitted hereunder.
RULE 1.0. TERMINOLOGY AND DEFINITIONS.

(a) “Belief” or “believes” denotes that the person involved actually thought the fact in question to be true. A person’s belief may be inferred from the circumstances.

(b) “Confidential Proceedings” denotes any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) “Confirmed in writing” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (l) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(e) “Conviction” or “convicted” denotes any of the following accepted by a court, whether or not a sentence has been imposed:

   (1) a guilty plea;
   (2) a plea of nolo contendere;
   (3) a verdict of guilty;
   (4) a verdict of guilty but mentally ill; or
   (5) A plea entered under the Georgia First Offender Act, OCGA § 42-8-60 et seq., or a substantially similar statute in Georgia or another jurisdiction.

(f) “Domestic Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any state or territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.

(g) “Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Bar Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
(h) “Foreign Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.

(i) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.

(j) “Grievance” denotes an allegation of unethical conduct filed against a lawyer.

(k) “He,” “Him” or “His” denotes generic pronouns including both male and female.

(l) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(m) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(n) “Lawyer” denotes a person authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia including persons admitted to practice in this state pro hac vice.

(o) “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203 (2).

(p) “Nonlawyer” denotes a person not authorized to practice law by either the:

1. Supreme Court of Georgia or its rules (including pro hac vice admission), or
2. duly constituted and authorized governmental body of any other state or territory of the United States, or the District of Columbia, or
3. duly constituted and authorized governmental body of any foreign nation.

(q) “Notice of Discipline” denotes a notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

(r) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Bar Rule 1-203 (d), or a member of an association authorized to practice law.
(s) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this state. A voluntary surrender of license is tantamount to disbarment.

(t) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the rules.

(u) "Prospective Client" denotes a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.

(v) “Public Proceedings” denotes any proceeding under these rules that has been filed with the Supreme Court of Georgia.

(w) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(x) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(y) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(z) “Respondent” denotes a person whose conduct is the subject of any disciplinary investigation or proceeding.

(aa) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

(bb) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(cc) “Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

(dd) “Writing” or “written” denotes a tangible or electronic record of a communication or
representation, including but not limited to handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

[1] Bar Rule 4-110 includes additional definitions for terminology used in the procedural section of these rules.

Confirmed in Writing

[1A] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (e) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Georgia Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by
which the members of the department are directly employed. A similar question can arise
concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services
organizations. Depending upon the structure of the organization, the entire organization or
different components of it may constitute a firm or firms for purposes of these rules.

Fraud

[5] When used in these rules, the terms "fraud" or "fraudulent" refers to conduct that is
characterized as such under the substantive or procedural law of the applicable jurisdiction and
has a purpose to deceive. This does not include merely negligent misrepresentation or negligent
failure to apprise another of relevant information. For purposes of these rules, it is not necessary
that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Georgia Rules of Professional Conduct require the lawyer to obtain the informed
consent of a client or other person (e.g., a former client or, under certain circumstances, a
prospective client) before accepting or continuing representation or pursuing a course of conduct.
See, e.g., Rules 1.2 (c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent
will vary according to the rule involved and the circumstances giving rise to the need to obtain
informed consent. The lawyer must make reasonable efforts to ensure that the client or other
person possesses information reasonably adequate to make an informed decision. Ordinarily, this
will require communication that includes a disclosure of the facts and circumstances giving rise
to the situation, any explanation reasonably necessary to inform the client or other person of the
material advantages and disadvantages of the proposed course of conduct and a discussion of the
client's or other person's options and alternatives. In some circumstances it may be appropriate
for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need
not inform a client or other person of facts or implications already known to the client or other
person; nevertheless, a lawyer who does not personally inform the client or other person assumes
the risk that the client or other person is inadequately informed and the consent is invalid. In
determining whether the information and explanation provided are reasonably adequate, relevant
factors include whether the client or other person is experienced in legal matters generally and in
making decisions of the type involved, and whether the client or other person is independently
represented by other counsel in giving the consent. Normally, such persons need less information
and explanation than others, and generally a client or other person who is independently
represented by other counsel in giving the consent should be assumed to have given informed
consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other
person. In general, a lawyer may not assume consent from a client's or other person's silence.
Consent may be inferred, however, from the conduct of a client or other person who has
reasonably adequate information about the matter. A number of Rules require that a person's
consent be confirmed in writing. See Rules 1.7 (b) and 1.9 (a). For a definition of "writing" and
"confirmed in writing," see paragraphs (s) and (b). Other Rules require that a client's consent be
obtained in a writing signed by the client. See, e.g., Rules 1.8 (a) (3) and (g). For a definition of
"signed," see paragraph (s).

[8] This definition applies to situations where screening of a personally disqualified lawyer is
permitted to remove imputation of a conflict of interest under Rules 1.11 and 1.12.

[9] The purpose of screening is to assure the affected parties that confidential information known
by the personally disqualified lawyer remains protected. The personally disqualified lawyer
should acknowledge the obligation not to communicate with any of the other lawyers in the firm
with respect to the matter. Similarly, other lawyers in the firm who are working on the matter
should be informed that the screening is in place and that they may not communicate with the
personally disqualified lawyer with respect to the matter. Additional screening measures that are
appropriate for the particular matter will depend on the circumstances. To implement, reinforce
and remind all affected lawyers of the presence of the screening, it may be appropriate for the
firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any
communication with other firm personnel and any contact with any firm files or other materials
relating to the matter, written notice and instructions to all other firm personnel forbidding any
communication with the screened lawyer relating to the matter, denial of access by the screened
lawyer to firm files or other materials relating to the matter and periodic reminders of the screen
to the screened lawyer and all other firm personnel.
[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

[11] The purpose of this definition is to permit a lawyer to use developing technologies that maintain an objective record of a communication that does not rely upon the memory of the lawyer or any other person. See OCGA § 10-12-2(8).
RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

... e. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

2. a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client;

3. a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization pro bono or a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses. The lawyer:

   i. may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the
client-lawyer relationship or any other client-lawyer relationship after retention; ii. may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and iii. may not publicize or advertise a willingness to provide such gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee shifting statute.

. . .

COMMENTS

. . .

Financial Assistance to Clients

[4] Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above.
[5] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

[6] Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization, and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) include modest contributions for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.
The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective to clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

Financial assistance, including modest gifts pursuant to paragraph (e) (3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e) (3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.
The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN RE: MOTION TO AMEND 2023-1.

The State Bar of Georgia has moved to amend Part Seven – Information about Legal Services, Rules 7.1 – 7.5 of the Georgia Rules of Professional Conduct regarding lawyer advertising. Specifically, the proposed amendments – which can be found at https://www.gasupreme.us/wp-content/uploads/2023/09/Amend-Motion-2023.pdf – pertain to current Rule 7.1 (Communications Concerning a Lawyer’s Services); Rule 7.2 (Advertising); Rule 7.3 (Solicitation of Clients), 7.4 (Communication of Fields of Practice), and 7.5 (Firm Names and Letterheads).

Having considered the substantial modifications proposed in the motion, the Court believes that briefing and oral argument are warranted. Accordingly, it is hereby ordered that Motion to Amend 2023-1 be placed on the February 2024 oral argument calendar.

The State Bar shall submit to the Court a brief in support of its motion to amend of no more than 30 pages by Monday, December 4, 2023. The brief must include legal analysis explaining whether and how the proposed amendments are consistent with the Georgia Constitution and the United States Constitution, and in particular Article I, Section I, Paragraph V of the Georgia Constitution and the First Amendment to the United States Constitution.
Amici interested in the regulation of attorney advertising are invited to submit an amicus curiae brief in support of, or in opposition to, the proposed amendments. Amici may file an amicus brief of no more than 30 pages without leave of Court by **Monday, December 18, 2023**. The Court is particularly (but not exclusively) interested in analysis of the constitutional issues noted above.

The State Bar shall transmit a copy of this order to all Bar members by e-mail within 5 days of the date this order is issued.
September 25, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN RE: MOTION TO AMEND 2023-1.

Upon consideration, it is ordered that this case be placed on the February 2024 oral argument calendar. A calendar will issue at least 20 days before the scheduled argument date.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk’s Office, Atlanta

I 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 above written.

, Clerk
Background: Defendant was convicted in the Superior Court, Chatham County, Timothy R. Walmsley, J., of two counts of rape, two counts of false imprisonment, criminal attempt to commit rape, aggravated sodomy, and aggravated assault. Defendant appealed.

Holdings: The Court of Appeals, Land, J., held that:

1) defendant's Sixth Amendment right to counsel had not yet attached with respect to sexual assaults of two separate victims at time of interview and thus investigator's custodial interview with...
defendant did not violate Sixth Amendment;

(2) trial court’s error, if any, in declining to interpret right to counsel provision of Georgia Constitution more broadly than Sixth Amendment right to counsel and thus denying defendant’s motion to suppress was not plain error;

(3) trial court properly considered relevant factors in determining whether severance would promote a fair determination of guilt or innocence as to each offense and did not abuse its discretion in denying severance; and

(4) defendant failed to show that uncalled witness charge likely affected outcome of proceedings and thus trial court’s error, if any, in instructing jury with uncalled witness charge was not plain error.

Affirmed.

McFadden, P.J., concurred specially, with opinion.

1. Criminal Law ⇐1144.13(2.1)
   On appeal from criminal conviction, evidence is viewed in light most favorable to verdict.

2. Criminal Law ⇐1144.13(3), 1159.1
   On appeal from criminal conviction, Court of Appeals neither weighs evidence nor judges witness credibility, but determines only whether, after viewing evidence in light most favorable to prosecution, any rational trier of fact could have found essential elements of crime beyond reasonable doubt.

3. Criminal Law ⇐1722
   Defendant’s Sixth Amendment right to counsel had not yet attached with respect to sexual assaults of two separate victims at time of interview and thus investigator’s custodial interview with defendant did not violate Sixth Amendment, though defendant had already been arrested and was represented by counsel; defendant had been arrested on charges relating to sexual assault of one victim but interview related to sexual assaults of two separate victims, and defendant had not yet been charged with any offenses related to the sexual assaults of the two separate victims. U.S. Const. Amend. 6.

4. Criminal Law ⇐1712
   When the Sixth Amendment right to counsel attaches, it includes offenses that, even if not formally charged, would be considered the same offense under the relevant test; where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. U.S. Const. Amend. 6.

5. Criminal Law ⇐1044.2(1)
   Defendant waived for ordinary appellate review his argument that investigator’s custodial interview of defendant was in violation of his right to counsel under the Georgia Constitution because the Georgia Constitution’s right to counsel provision should be interpreted more broadly than the Sixth Amendment; defendant’s motion to suppress generally raised Sixth Amendment issues but did not cite to relevant caselaw or advance any argument that Georgia Constitution’s right to counsel provision should be given more expansive interpretation than Sixth Amendment. U.S. Const. Amend. 6; Ga. Const. art. 1, § 1, para. 14.

6. Criminal Law ⇐912.5
   Constitutional challenge may not be raised for first time in motion for new trial.

7. Criminal Law ⇐1044.2(1), 1045
   In challenging a trial court’s denial of a motion to suppress, a defendant may not argue on appeal grounds that he did not argue (and obtain a ruling on) below.

8. Criminal Law ⇐1035(7)
   Trial court’s error, if any, in declining to interpret right to counsel provision of Georgia Constitution more broadly than Sixth Amendment right to counsel and thus denying defendant’s motion to suppress was not plain error, in prosecution for rape and aggravated assault; Supreme Court had yet to
decide whether right to counsel provision of Georgia Constitution should be interpreted more broadly than Sixth Amendment, Supreme Court had been presented with issue but declined to decide it given posture of case before it, and trial court’s alleged error was not clear or obvious given the lack of authority supporting defendant’s position. U.S. Const. Amend. 6; Ga. Const. art. 1, § 1, para. 14.

9. Criminal Law ⇐1030(1)
   Satisfying the plain-error standard is difficult, as it should be.

10. Criminal Law ⇐1141(2)
    The burden of establishing plain error falls squarely on the defendant.

11. Criminal Law ⇐1030(1)
    An error is plain only if it is clear or obvious under current law.

12. Criminal Law ⇐1030(1)
    An error cannot be plain where there is no controlling authority on point.

13. Criminal Law ⇐620(6)
    Trial court properly considered relevant factors in determining whether severance would promote a fair determination of guilt or innocence as to each offense and did not abuse its discretion in denying severance, in prosecution for rape, false imprisonment, criminal attempt to commit rape, aggravated sodomy, and aggravated assault; court found there were only eight counts of indictment related to three discrete cases, that there was not much overlap in the evidence aside from DNA evidence, and that the cases were not terribly complex and the evidence fairly straightforward such that jury would have little difficulty parsing evidence and applying law with regard to each charge.

14. Criminal Law ⇐620(5)
    A defendant has a right to severance where the offenses are joined solely on the ground that they are of the same or similar character because of the great risk of prejudice from a joint disposition of unrelated charges.

15. Criminal Law ⇐620(4)
    Where joinder is based upon same conduct or on series of acts connected together or constituting parts of single scheme or plan, severance lies within sound discretion of trial judge since facts in each case are likely to be unique.

16. Criminal Law ⇐620(5)
    Where evidence of one charge would be admissible in trial of another, trial court does not abuse its discretion by denying motion for severance.

17. Criminal Law ⇐620(5)
    When exercising discretion to grant or deny motion for severance, the trial court must determine if severance of the charges would promote a fair determination of the defendant’s guilt or innocence of each charge.

18. Criminal Law ⇐620(5)
    When exercising discretion to grant or deny motion for severance, the court should consider whether in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense, and balance the interest of the defendant with the interest of the State.

19. Criminal Law ⇐1038.1(5)
    Defendant failed to show that uncalled witness charge likely affected outcome of proceedings and thus trial court’s error, if any, in instructing jury with uncalled witness charge was not plain error, in prosecution for rape and aggravated assault; court instructed jury that State bore burden of proving every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt, court instructed jury that burden of proof never shifted to defendant, court’s instruction did not prohibit defense counsel from commenting on State’s failure to call certain witnesses, defense counsel in fact did comment on State’s uncalled witnesses during closing arguments, and there was no evidence jury misunderstood instructions.
20. Criminal Law 822(1)

Jury instructions must be read and considered as a whole in determining whether the charge contained error.

David T. Lock, Savannah, for Appellant.

Michael Lanier Edwards, Assistant District Attorney, Shalena Cook Jones, District Attorney, for Appellee.

Land, Judge.

After a jury trial, Antonio Cecil Maxwell was convicted of two counts of rape, two counts of false imprisonment, criminal attempt to commit rape, aggravated sodomy, and aggravated assault. Maxwell appeals from the denial of his motion for new trial, arguing that the trial court erred by (1) denying his motion to suppress his custodial statement; (2) denying his motion for severance of the offenses; and (3) instructing the jury on the State’s uncalled witness charge. We disagree and affirm.

[1, 2] “On appeal from a criminal conviction, the evidence is viewed in a light most favorable to the verdict.” Stephens v. State, 247 Ga. App. 719, 719, 545 S.E.2d 325 (2001). We neither weigh the evidence nor judge witness credibility, but determine only “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis omitted.) Jackson v. Virginia, 443 U. S. 307, 319 (III) (B), 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

So viewed, the record shows that, in July 2014, Maxwell met the first victim, A. V., on a bus, and the two agreed to have drinks together. Maxwell told A.V. that he had left his ID at his house, and the two went to a house that appeared to be abandoned to retrieve it. When A. V. asked to leave, Maxwell pulled her down onto a bed and removed her clothes. A. V., who was married at the time, told Maxwell to stop and let her go, but he grabbed her by the throat and raped her. Maxwell followed A.V. back to the bus stop then called her while she was on the bus to “make sure” that she was not going to “say anything.” A. V. immediately disclosed to her friend that she had been raped by someone named Tony. The friend called the police, and A. V. gave a description of Maxwell. A. V. then went to the hospital, where she received a sexual assault examination. No arrests were made in connection with A. V.’s sexual assault, and it was assigned to the cold case unit.

In March 2017, Maxwell and a second victim, J. I., met up at a McDonald’s and then went to J. I.’s apartment to smoke marijuana. Maxwell and J. I. went to her bedroom; Maxwell asked J. I. to perform oral sex and J. I., who was in a relationship at the time, refused. Maxwell then pulled his pants down, pushed J. I. down onto the bed, and began “grinding” on top of her while she cried and told him no. J. I. was able to push Maxwell off of her and told him to leave. Maxwell told J. I. that “nobody had to know” what had happened. J. I. reported the assault to police that same day and picked Maxwell out of a photo lineup. Although Maxwell was questioned by police in connection with the incident, he was not arrested.

Two months later, in May 2017, Maxwell met a third victim, C. L., at a bus stop. The two exchanged phone numbers and some time later made plans to meet at a McDonald’s to talk. When C. L. arrived, Maxwell told her that he needed to change his shoes at his grandmother’s house, and the two went to the same abandoned house where Maxwell had assaulted A.V. In one of the bedrooms, Maxwell told C. L. that he wanted “to spend more time with [her].” C. L., who was married at the time, told Maxwell that she was not interested and attempted to leave. Maxwell told C. L. that she wasn’t “goin’ nowhere,” slapped her face, choked her, and threw her onto the bed. He then removed and hid her clothes, took her phone, raped her, and forced her to perform oral sex. The next morning, Maxwell had C. L. call her husband’s aunt and reassure her that she was okay. He then took C. L. to the aunt’s house. Thirty minutes later, Maxwell called C. L. C. L. told the aunt what had happened, reported the rape to police, and identified Maxwell as her assailant by name. C. L. also received a sexual assault examina-
tion kit at the hospital. Maxwell was taken into custody and on May 31, 2017, was interviewed by a special victims unit investigator with the Savannah Police Department in connection with C. L.’s rape.

After Maxwell was taken into custody, he was identified through CODIS as a DNA match to A. V.’s sexual assault examination kit. As a result of the CODIS match, a different special victims unit investigator, Adina Ripley, was assigned to do a follow-up investigation of A. V.’s case. In January 2018, Ripley interviewed A. V., learned that Maxwell was also a suspect in J. I.’s sexual assault, and interviewed J. I. regarding her assault.

On February 7, 2018, while Maxwell was in custody for charges related to C. L.’s rape and represented by counsel for those charges, Ripley questioned Maxwell about both A. V. and J. I. At the beginning of the interview, Ripley informed Maxwell that she did not wish to speak with him about the charges for which he was incarcerated. Maxwell was advised of his constitutional rights, and he agreed to speak with Ripley. Ripley showed Maxwell four photographs of A.V. and asked whether Maxwell knew her. Maxwell replied that he did not. Ripley then showed Maxwell two photographs of J. I. and asked whether Maxwell knew her. Maxwell replied that he did not. Ripley then showed Maxwell two photographs of J. I. and asked if Maxwell had ever met the woman. Maxwell replied that he had not. Ripley then asked Maxwell whether he had ever met the two women, had a relationship with them, or had sex with them. Maxwell again stated that he had not. The interview then concluded. Ripley also reviewed data from Maxwell’s cell phone and discovered four audio files from April 2017 where Maxwell had recorded himself saying “kidnap a woman and tie her up.”

On February 21, 2018, Maxwell was indicted for two counts of rape, three counts of false imprisonment, and one count each of criminal attempt to commit rape, aggravated sodomy, and aggravated assault. Maxwell filed a motion for severance of the offenses and a motion to suppress the statements he made to Ripley on February 7, 2018. The trial court denied Maxwell’s motion to suppress because Maxwell had not been charged with the alleged offenses against A. V. or J. I. at the time of the interview, and thus, his Sixth Amendment right to counsel with respect to those offenses had not yet attached, and because Maxwell gave the statements freely, knowingly, and voluntarily, without any hope of benefit. The trial court also denied Maxwell’s motion to sever, finding that the offenses showed a common motive, plan, or scheme; that evidence in each case would be admissible in the trial of the others pursuant to OCGA §§ 24-4-413 and 24-4-403; and that the jury would be able to fairly and intelligently judge each of the offenses.

During the jury trial, the State requested the jury be instructed that it was not reasonable to infer from the fact that there were uncalled witnesses that the uncalled witnesses would have exonerated Maxwell. The trial court stated that it did not intend to give an “uncalled witness” charge unless the defense made an argument regarding such uncalled witnesses. Defense counsel confirmed that he would be making an argument during closing about uncalled witnesses, but objected to the charge, stating “it is confusing and could be misleading to the jury. But I understand it’s the law.” During closing arguments, defense counsel stated:

[Y]ou’re gonna hear a jury charge on witnesses not called by the State. Well, here’s one, Detective Nicole Khalis. You heard me on cross ask about her to [A.V.], right. And she was the lead detective on that case. Never called here as a witness. She’s on the witness list . . . And we never heard from Detective Nicole Khalis and you need to ask yourself why not. Why didn’t they want you to hear from her[?] After closing arguments, the trial court gave the following charge to the jury:

I charge you that it is not reasonable to infer that the State’s failure to produce all available witnesses means that their testimony would not have been inculpatory or would have been exculpatory. For a variety of reasons the State might choose to call only some of the witnesses at trial even though others, if called, might have given corroborating testimony against the defendant. It is not reasonable to infer from the fact that there were uncalled witnesses
that the uncalled witnesses would have exonerated the defendant. Defense counsel stated no objections to the charge as read. The jury found Maxwell not guilty of one count of false imprisonment but guilty of two counts of rape, two counts of false imprisonment, and one count each of criminal attempt to commit rape, aggravated sodomy, and aggravated assault. He was convicted and sentenced to serve life without parole on both counts of rape, 10 years on both counts of false imprisonment, 30 years on criminal attempt to commit rape, 25 years on aggravated sodomy, and 20 years on aggravated assault. Maxwell filed a motion for new trial, and after a hearing, his motion was denied. This appeal followed.

1. Maxwell argues that the trial court erred in denying his motion to suppress his February 7, 2018 custodial statement made to an investigator about A. V. and J. I. after Maxwell had already been arrested and was represented by counsel on offenses related to the sexual assaults of C. L. Specifically, Maxwell argues that this interview was in violation of his right to counsel under the United States and Georgia Constitutions, citing to Texas v. Cobb, 532 U. S. 162, 121 S.Ct. 1335, 149 L.Ed.2d 321 (2001), and Chenoweth v. State, 281 Ga. 7, 635 S.E.2d 730 (2006). We disagree.

As a preliminary matter, Maxwell's argument that the February 7, 2018 custodial interview violated his Sixth Amendment right under the United States Constitution is foreclosed by Texas v. Cobb, 532 U. S. 162, 121 S.Ct. 1335, 149 L.Ed.2d 321 (2001). In Cobb, the Supreme Court held that the Sixth Amendment right to counsel attaches only to charged offenses and that there is no exception for uncharged crimes that are “factually related” to a charged offense. 532 U. S. at 167-168, 121 S.Ct. 1335. Further, when the Sixth Amendment attaches, it includes offenses that, even if not formally charged, would be considered the same offense under the test set forth in Blockburger v. United States, 284 U. S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932): “where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” (Citation and punctuation omitted.) Cobb, 532 U. S. at 173, 121 S.Ct. 1335. At the time of the custodial interview, Maxwell had not been charged with any offenses related to the sexual assaults of A. V. or J. I., and thus his Sixth Amendment right to counsel under the United States Constitution had not yet attached. See Cobb, 532 U. S. at 167-168, 121 S.Ct. 1335; see also Lewis v. State, 311 Ga. 650, 658–59 (1) (e) (2) (b) n. 9, 859 S.E.2d 1 (2021) (because “a defendant's Sixth Amendment right to counsel is offense-specific . . . even to the extent Lewis's Sixth Amendment right to counsel had attached with respect to the unrelated crimes for which he was [previously] indicted . . . they did not attach with respect to the crimes at issue in this appeal”).

[5-7] With regard to Maxwell’s argument that the interview was in violation of his right to counsel under the Georgia Constitution because the Georgia Constitution’s right to counsel provision should be interpreted more broadly than the Sixth Amendment, Maxwell has waived this argument for ordinary appellate review. Maxwell did not make this argument prior to or during trial, and it is well accepted that “a constitutional challenge may not be raised for the first time in a motion for new trial.” Rogers v. Barnett, 237 Ga. App. 301, 302 (3), 514 S.E.2d 443 (1999). Further, “[i]n challenging a trial court's denial of a motion to suppress, a defendant may not argue on appeal grounds that he did not argue (and obtain a ruling on) below.” (Citation and punctuation omitted.) Runnells v. State, 357 Ga. App. 572, 573, 851 S.E.2d 196 (2020). Although Maxwell’s motion to suppress generally raises Sixth Amendment issues, it does not cite to Cobb, mention the Blockburger test, or advance any argument that the Georgia Constitution’s right to counsel provision should be given a more expansive interpretation than the Sixth Amendment.

MAXWELL v. STATE

Cite as 885 S.E.2d 39 (Ga.App. 2023)

(2021), citing State v. Herrera-Bustamante,
304 Ga. 259, 263 (2) (a), 818 S.E.2d 552 (2018). “However, the unavailability of ordinary review does not end our analysis . . . because our new Evidence Code permits plain error review of certain unpreserved evidentiary errors affecting substantial rights.” (Citation and punctuation omitted.) Bernal, 358 Ga. App. at 691 (2) (c) (ii), 856 S.E.2d 64. Our Supreme Court has established the following test for determining whether there is plain error:

First, there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant’s substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the trial court proceedings. Fourth and finally, if the above three prongs are satisfied, the appellate court has the discretion to remedy the error—discretion which ought to be exercised only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

(Citation and punctuation omitted; emphasis in original.) State v. Kelly, 290 Ga. 29, 33 (2) (a), 718 S.E.2d 232 (2011). “[A]s our Supreme Court has emphasized, satisfying the plain-error standard is difficult, as it should be. And the burden of establishing plain error falls squarely on the defendant.” (Citation and punctuation omitted.) State v. Crist, 341 Ga. App. 411, 415, 801 S.E.2d 545 (2017).

[11, 12] “[A]n error is plain only if it is clear or obvious under current law. An error cannot be plain where there is no controlling authority on point.” (Citation and punctuation omitted.) Davis v. State, 312 Ga. 870, 874 (2), 866 S.E.2d 390 (2021). Here, our Supreme Court has yet to decide whether the right to counsel provision of the Georgia Constitution should be interpreted more broadly than the Sixth Amendment and in accordance with the argument advanced by Maxwell. When previously presented with this issue, our Supreme Court declined to decide it given the posture of the case before it. See Chenoweth, 281 Ga. at 10 (2), 635 S.E.2d 730 (“We need not decide . . . whether to construe the right to counsel under the Georgia Constitution to be consistent with the majority or the dissenting opinion[ ] in Cobb, as, even under the dissenting opinion in Cobb, Chenoweth was not denied his right to counsel.”). Given the lack of authority supporting Maxwell’s position, there was no clear or obvious error in the trial court’s denial of his motion to suppress his February 7, 2018 custodial statements. See Beasley v. State, 305 Ga. 231, 236 (3), 824 S.E.2d 311 (2019) (no obvious error where Georgia Supreme Court had not decided the issue on appeal and prior Court of Appeals case on issue remained good law).

[13] 2. Maxwell argues that the trial court erred in denying his motion for severance of the offenses, contending that the trial court did not consider whether severance of the offenses would promote a fair determination of guilt or innocence as to each offense. We disagree.1

[14–18] As our Supreme Court has held, a defendant has a right to severance where the offenses are joined solely on the ground that they are of the same or similar character because of the great risk of prejudice from a joint disposition of unrelated charges. However, where the joinder is based upon the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, severance lies within the sound discretion of the trial judge since the facts in each case are likely to be unique. Furthermore, where evidence of one charge would be admissible in the trial of another, a trial court does not abuse its discretion by denying a motion for severance.

(Citation and punctuation omitted.) Lowe v. State, 314 Ga. 788, 791-792 (2) (a), 879 S.E.2d 492 (2022). “When exercising that discretion, the trial court must determine if severance of the charges would promote a fair determina-

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1. Maxwell also argues that the State should not have been permitted to join the trials of the three cases because the State acquired evidence in violation of his right to counsel under the United States and Georgia Constitutions, but as discussed in Division 1, this enumeration fails.
tion of the defendant’s guilt or innocence of each charge.” (Citation and punctuation omitted.) *Harris v. State*, 314 Ga. 238, 281 (4), 875 S.E.2d 659 (2022). “The court should consider whether in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense, and balance the interest of the defendant with the interest of the State.” (Citations and punctuation omitted.) *Quenga v. State*, 270 Ga. App. 141, 145 (2), 605 S.E.2d 860 (2004).

Contrary to Maxwell’s assertion, the trial court’s pretrial order denying Maxwell’s motion to sever did analyze whether the jury would be able to fairly and intelligently judge each of the offenses. The court found that there were only eight counts to the indictment related to three discrete cases; that there was not much overlap in the evidence aside from DNA evidence; and that the cases were “not terribly complex” and the evidence “fairly straightforward” such that “the jury should have little difficulty parsing the evidence and applying the law with regard to each charge.” Thus, the trial court properly considered the relevant factors in determining whether severance would promote a fair determination of guilt or innocence as to each offense and did not abuse its discretion in denying severance. See *Quenga*, 270 Ga. App. at 146 (2), 605 S.E.2d 860 (2004).

Before the trial court charged the jury, Maxwell objected to the uncalled witness charge as misleading and confusing. “[W]hile he did not object again after the final instructions were given, that does not show that [Maxwell] intentionally relinquished his known rights with regard to the [uncalled witness] instruction.” *Grullon*, 313 Ga. at 46 (2), 867 S.E.2d 95. Because Maxwell’s claim of error was not affirmatively waived and survives the first step of plain error review, we consider the remaining plain error factors. *Kelly*, 290 Ga. at 33 (2) (a), 718 S.E.2d 232.

We need not decide whether the trial court’s charge constituted an obvious error, however, because Maxwell has failed to show that the charge likely affected the outcome of the proceedings. “It is a fundamental rule in Georgia that jury instructions must be read and considered as a whole in determining whether the charge contained error.” (Citation and punctuation omitted.) *Henderson v. State*, 320 Ga. App. 553, 562 (8), 740 S.E.2d 280 (2013). Further, our Supreme Court has held that “defense and prosecuting counsel are equally able to comment on the failure of the other to present certain witnesses as long as that argument is derived from evidence properly before the factfinder, that is, if there is competent evidence before the jury that a missing witness has knowledge of material and relevant facts.” (Citation and punctuation omitted.) *Spear v. State*, 270 Ga. 628, 630 (3), 513 S.E.2d 489 (1999); see also *Morgan v. State*, 267 Ga. 203, 476 S.E.2d 747 (1996). Here, the trial court instructed the jury that the State bore the burden of proving “every material allegation of the indict-
ment and every essential element of the crimes charged beyond a reasonable doubt” and that “the burden [of proof] never shifts to the defendant to introduce evidence or to prove innocence.” Moreover, the trial court’s instruction did not prohibit defense counsel from commenting on the State’s failure to call certain witnesses, and defense counsel in fact did comment on the State’s uncalled witnesses during closing arguments. Given the charges as a whole, we can find no evidence that the jury misunderstood the instructions on uncalled witnesses or the burden of proof; instead, the record, including the acquittal of Maxwell on one charge of false imprisonment, shows that the jury understood the law and the evidence before it. See Crist, 341 Ga. App. at 418, 801 S.E.2d 545. Accordingly, the trial court did not err by denying Maxwell’s motion for new trial on this basis.

Judgment affirmed.

Gobell, J., concurs. McFadden, P. J., concurs specially.

McFadden, Presiding Judge, concurring specially.

I agree that the questioning of Maxwell that is at issue was permissible under the Sixth Amendment, as construed in Texas v. Cobb, 532 U. S. 162, 121 S.Ct. 1335, 149 L.Ed.2d 321 (2001). And I agree that whether it was permissible under the Georgia Constitution is not properly before us. But whether that questioning was permissible under the Georgia Rules of Professional Conduct is another matter.

As explained by the majority, Cobb holds that the Sixth Amendment right to counsel applies only to “charged offenses” within “the four corners of a charging instrument” or “offenses that, even if not formally charged, would be considered the same offense under” the test used “to delineate the scope of the Fifth Amendment’s Double Jeopardy Clause[,]” Cobb, 532 U.S. at 172–73, 121 S.Ct. 1335, citing Blockburger v. United States, 284 U. S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), which addressed double jeopardy.

But it appears that the Georgia Bar Rule governing communication with persons represented by counsel “imposes ethical restrictions that go beyond” the federal constitutional minimum identified in Cobb. See Rule 4.2 of the Georgia Rules of Professional Conduct, Bar Rule 4-102, Comment 2.

Rule 4.2 provides:

(a) A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

(b) Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.

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

A comment accompanying that rule is responsive to Cobb. It provides that ethically permissible “communications authorized by law” include “investigative activities” deemed by authoritative case precedent like Cobb to be “constitutionally permissible” — but only when there is judicial precedent holding that those activities do not violate Rule 4.2. And it provides that Rule 4.2 exceeds the constitutional minimum.

Communications authorized by law also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings, when there is applicable judicial precedent that either has found the activity permissible under this Rule or has found this Rule inapplicable. However, the Rule imposes ethical restrictions that go beyond those imposed by constitutional provisions.

Rule 4.2, Comment 2 (emphasis supplied).

“The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.” Georgia State Bar Rules and Regu-
If Rule 4.2 means what the comment says it means, the district attorney or assistant district attorney may have violated it when they directed their investigator to question Maxwell outside the presence of his attorney and without notice to his attorney — at least to the extent that they planned to secure impeachment evidence to be used in the trial of the offense for which he had already been charged.

At oral argument, counsel for the state pointed out that there are no relevant cases construing Rule 4.2. And I agree with the majority that we need not construe that rule to decide this case. So it is up to the State Bar of Georgia to address this matter in the first instance. See Innovative Images, LLC v. Summerville, 309 Ga. 675, 679 (2), 848 S.E.2d 75 (2020).

Background: County filed action against county airport authority seeking declaration that the authority could not move forward with an application for a commercial airport operating certificate from the Federal Aviation Administration without county’s consent. Company that entered into a commercial lease and airport use agreement with authority intervened and filed a counterclaim against county for declaratory relief and seeking damages pursuant to § 1983. County amended its complaint to add claims against authority including a claim for breach of contract for failure to make certain escrow payments, and company filed amended cross-claim against authority seeking indemnification. The Superior Court, Paulding County, G. Grant Brantley, Senior Judge, granted authority’s motion to dismiss the cross-claim, denied company’s motion to substitute or join county as a defendant, and denied as moot company’s motion for summary judgment on the cross-claim. Company appealed.

Holdings: The Court of Appeals, Doyle, P.J., held that:

1. Judgment

In case involving multiple parties or multiple claims, a trial court decision adjudicating fewer than all claims or rights and liabilities of less than all parties is not a “final judgment.” See publication Words and Phrases for other judicial constructions and definitions.

2. Appeal and Error

For a party to obtain appellate review of a decision adjudicating fewer than all the claims or the rights and liabilities of fewer than all the parties in a case involving multiple claims or parties, there must be either an express determination by the trial court that there is no just reason for delay or compliance with the interlocutory appeal requirements. Ga. Code Ann. §§ 5-6-34(b), 9-11-54(b).

3. Appeal and Error

Trial court order granting county airport authority’s motion to dismiss cross-claim...

Appeal dismissed.
RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

a. A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

b. Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.

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

Comment

[1] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government entity and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government entity to speak with government officials about the matter.

[2] Communications authorized by law also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings, when there is applicable judicial precedent that either has found the activity permissible under this Rule or has found this Rule inapplicable. However, the Rule imposes ethical restrictions that go beyond those imposed by constitutional provisions.

[3] This Rule applies to communications with any person, whether or not a party to a formal
an adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the
matter to which the communication relates.

[4A] In the case of an organization, this Rule prohibits communications with an agent or
employee of the organization who supervises, directs or regularly consults with the organization's
lawyer concerning the matter or has authority to obligate the organization with respect to the
matter, or whose act or omission in connection with the matter may be imputed to the
organization for purposes of civil or criminal liability. If an agent or employee of the
organization is represented in the matter by his or her own counsel, the consent by that counsel to
a communication will be sufficient for purposes of this Rule. Compare Rule 3.4 (f).
Communication with a former employee of a represented organization is discussed in Formal
Advisory Opinion 20-1.

[4B] In administering this Rule it should be anticipated that in many instances, prior to the
beginning of the interview, the interviewing lawyer will not possess sufficient information to
determine whether the relationship of the interviewee to the entity is sufficiently close to place
the person in the "represented" category. In those situations the good faith of the lawyer in
undertaking the interview should be considered. Evidence of good faith includes an immediate
and candid statement of the interest of the person on whose behalf the interview is being taken, a
full explanation of why that person's position is adverse to the interests of the entity with which
the interviewee is associated, the exploration of the relationship issue at the outset of the
interview and the cessation of the interview immediately upon determination that the interview is
improper.

[5] The prohibition on communications with a represented person only applies, however, in
circumstances where the lawyer knows that the person is in fact represented in the matter to be
discussed. This means that the lawyer has actual knowledge of the fact of the representation; but
such actual knowledge may be inferred from the circumstances. See 1.0. Such an inference may
arise in circumstances where there is substantial reason to believe that the person with whom
communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot
evade the requirement of obtaining the consent of counsel by ignoring the obvious.
In the event the person with whom the lawyer communicates is not known to be represented
by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

A lawyer who is uncertain whether a communication with a represented person is
permissible may seek a court order. A lawyer may also seek a court order in exceptional
circumstances to authorize a communication that would otherwise be prohibited by this Rule, for
example, where communication with a person represented by counsel is necessary to avoid
reasonably certain injury.

The anti-contact rule serves important public interests which preserve the proper functioning
of the judicial system and the administration of justice by a) protecting against misuse of the
imbalance of legal skill between a lawyer and layperson; b) safeguarding the client-lawyer
relationship from interference by adverse counsel; c) ensuring that all valid claims and defenses
are raised in response to inquiry from adverse counsel; d) reducing the likelihood that clients will
disclose privileged or other information that might harm their interests; and e) maintaining the
lawyers' ability to monitor the case and effectively represent the client.

Parties to a matter may communicate directly with each other because this Rule is not
intended to affect communications between parties to an action entered into independent of and
not at the request or direction of counsel.
From: Justice Bethel <bethelc@gasupreme.us>
Sent: Tuesday, September 12, 2023 2:29 PM
To: mbagley@deflaw.com; gary@rgaryspencer.com
Cc: Paula Frederick <PaulaF@gabar.org>; Justice Warren <warrens@gasupreme.us>
Subject: FW: Disciplinary Rules and Procedures Committee meeting

Mike and Gary,

As Gary will recall and Mike (I believe) has been informed, the topic of Justice presence and participation in the meetings of this committee came up in the joint meeting of the court and the executive committee at Barnsley.

I am writing to follow up on that conversation and to suggest a course of action. None of the members of our court will be in attendance at the October 17 committee meeting owing to our oral arguments scheduled that day. We proposed that occasion to be a good opportunity for the committee to discuss the pros/cons and relative value of having members of the court present at the meetings of the committee. We are open to any number of thoughts on how this model could be altered to produce the best product.

Following consideration by the committee, we look forward to hearing how the committee thinks we can work together to accomplish this important work.

I greatly appreciate the investment you and the other members of the committee make in this service to the profession.

Please let me know if I can be of assistance to you in this or any other matter.

Charlie

From: Kathy Jackson <KathyJ@gabar.org>
Sent: Tuesday, September 12, 2023 11:39 AM
To: Assistant, Shannon <shannon@lipscomblaw.com>; Justice Bethel <bethelc@gasupreme.us>; Betty Derrickson <BettyD@gabar.org>; Bill NeSmith <BillN@gabar.org>; Carolyn Williams <CarolynW@gabar.org>; Damon Elmore <DamonE@gabar.org>; gary@rgaryspencer.com; erin@ehlawfirm.com; mazielynn@gacdl.org; Haubenreich, John <jgh@haubenreichlaw.com>; cobbda1@gmail.com; dixonjames@dixonjameslaw.com; Jenny Mittelman <jennyM@gabar.org>; Kathy Jackson <KathyJ@gabar.org>; seth@nlsklaw.com; ckoura@constangy.com; Edward Krugman <krugman@bmelaw.com>; David Lefkowitz <dnl@lefkowitzfirm.com>; david@lipscomblaw.com; Patrick Longan <longan_p@law.mercer.edu>; mbagley@deflaw.com; Tia Milton <milton@casupreme.us>; O’Neal, David <david.oneal@usdoj.gov>; Parmar, Viraj <viraj.parmar@cobbcounty.org>; Paula Frederick <PaulaF@gabar.org>; pete@werdlaw.com; Presiding Justice Peterson <petersonn@casupreme.us>; rjavoynehicks@gmail.com; bill@whthomasfirm.com; Justice Warren <warrens@gasupreme.us>; Waters, Julayaun
IN THE SUPREME COURT

STATE OF GEORGIA

IN RE: STATE BAR OF GEORGIA
Rules and Regulations for its
Organization and Government

AMENDED MOTION TO AMEND 2023-1

AMENDED MOTION TO AMEND THE RULES AND REGULATIONS
OF THE STATE BAR OF GEORGIA

SUBMITTED this 2nd day of May, 2023.

Counsel for the State Bar of Georgia

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Deputy General Counsel

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IN THE SUPREME COURT

STATE OF GEORGIA

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IN THE SUPREME COURT

STATE OF GEORGIA

IN RE: STATE BAR OF GEORGIA
Rules and Regulations for its
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AMENDED MOTION TO AMEND 2023-1

AMENDED MOTION TO AMEND THE RULES AND REGULATIONS
OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and
direction of its Board of Governors, and respectfully moves that the Rules and
Regulations of the State Bar of Georgia be amended\(^1\) as follows:

On April 24, 2023, the State Bar of Georgia filed Motion to Amend the
Rules and Regulations of the State Bar of Georgia, Motion 2023-1. Inadvertently,
a draft of the motion was filed with the Court instead of the finalized version of
Motion 2023-1. Therefore, the State Bar of Georgia respectfully moves that the
Court substitute the following Amended Motion 2023-1 in its entirety for Motion
2023-1 filed on March 24, 2023.

\(^1\) See the order of this Court providing for such amendments dated December 6, 1963 (219 Ga. 873), and amended
by subsequent Orders, and published online in the State Bar of Georgia Handbook
(https://www.gabar.org/barrules/).
Preface

On January 14, 2023, the Board of Governors for the State Bar of Georgia met at a regularly scheduled meeting and approved the rules changes listed below.

Proposed Amendments to the Georgia Rules of Professional Conduct 1.0, 1.2, 1.5, 1.8, and Part VII

It is proposed that the following Georgia Rules of Professional Conduct be amended by deleting the struck-through sections and inserting the underlined sections as follows:

I. Rule 1.0. Terminology and Definitions.

(a) “Belief” or “believes” denotes that the person involved actually thought the fact in question to be true. A person’s belief may be inferred from the circumstances.

(b) “Confidential Proceedings” denotes any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) “Confirmed in writing” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the
person confirming an oral informed consent. See paragraph (l) for the
definition of “informed consent.” If it is not feasible to obtain or transmit
the writing at the time the person gives informed consent, then the lawyer
must obtain or transmit it within a reasonable time thereafter.

(d) “Consult” or “consultation” denotes communication of
information reasonably sufficient to permit the client to appreciate the
significance of the matter in question.

(e) “Conviction” or “convicted” denotes any of the following
accepted by a court, whether or not a sentence has been imposed:

(1) a guilty plea;
(2) a plea of nolo contendere;
(3) a verdict of guilty;
(4) a verdict of guilty but mentally ill; or
(5) A plea entered under the Georgia First Offender Act,
OCGA § 42-8-60 et seq., or a substantially similar statute
in Georgia or another jurisdiction.

(f) “Domestic Lawyer” denotes a person authorized to practice
law by the duly constituted and authorized governmental body of any
state or territory of the United States or the District of Columbia but not
authorized by the Supreme Court of Georgia or its rules to practice law in
the state of Georgia.

(g) “Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Bar Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(h) “Foreign Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.

(i) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.

(j) “Grievance” denotes an allegation of unethical conduct filed against a lawyer.

(k) “He,” “Him” or “His” denotes generic pronouns including both male and female.

(l) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate
information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(m) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(n) “Lawyer” denotes a person authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia including persons admitted to practice in this state pro hac vice.

(o) “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203 (2).

(p) “Nonlawyer” denotes a person not authorized to practice law by either the:

   (1) Supreme Court of Georgia or its rules (including pro hac vice admission), or

   (2) duly constituted and authorized governmental body of any other state or territory of the United States, or the District of Columbia, or

   (3) duly constituted and authorized governmental body of
any foreign nation.

(q) “Notice of Discipline” denotes a notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

(r) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Bar Rule 1-203 (d), or a member of an association authorized to practice law.

(s) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this state. A voluntary surrender of license is tantamount to disbarment.

(t) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the rules.

(u) "Prospective Client" denotes a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.

(v) “Public Proceedings” denotes any proceeding under these rules that has been filed with the Supreme Court of Georgia.
“Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

“Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

“Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

“Respondent” denotes a person whose conduct is the subject of any disciplinary investigation or proceeding.

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

“Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

“Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body
acting in an adjudicative capacity. A legislative body, administrative
agency or other body acts in an adjudicative capacity when a neutral
official, after the presentation of evidence or legal argument by a party or
parties, will render a legal judgment directly affecting a party's interests
in a particular matter.

(dd) “Willful blindness” denotes awareness of a high probability
that a fact exists and deliberate action to avoid learning of the fact.

(ee) “Writing” or “written” denotes a tangible or electronic
record of a communication or representation, including but not limited to
handwriting, typewriting, printing, photostating, photography, audio or
video recording and electronic communications. A “signed” writing
includes an electronic sound, symbol or process attached to or logically
associated with a writing and executed or adopted by a person with the
intent to sign the writing.

Comment

[1] Bar Rule 4-110 includes additional definitions for terminology used in the
procedural section of these rules.

Confirmed in Writing

[1A] If it is not feasible to obtain or transmit a written confirmation at the time
the client gives informed consent, then the lawyer must obtain or transmit it
within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (e) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department
constitute a firm within the meaning of the Georgia Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

When used in these rules, the terms "fraud" or "fraudulent" refers to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

Many of the Georgia Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or,
under certain circumstances, a prospective client) before accepting or
continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2
(c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent
will vary according to the rule involved and the circumstances giving rise to the
need to obtain informed consent. The lawyer must make reasonable efforts to
ensure that the client or other person possesses information reasonably adequate
to make an informed decision. Ordinarily, this will require communication that
includes a disclosure of the facts and circumstances giving rise to the situation,
any explanation reasonably necessary to inform the client or other person of the
material advantages and disadvantages of the proposed course of conduct and a
discussion of the client's or other person's options and alternatives. In some
circumstances it may be appropriate for a lawyer to advise a client or other
person to seek the advice of other counsel. A lawyer need not inform a client or
other person of facts or implications already known to the client or other
person; nevertheless, a lawyer who does not personally inform the client or
other person assumes the risk that the client or other person is inadequately
informed and the consent is invalid. In determining whether the information and
explanation provided are reasonably adequate, relevant factors include whether
the client or other person is experienced in legal matters generally and in
making decisions of the type involved, and whether the client or other person is
independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7 (b) and 1.9 (a). For a definition of "writing" and "confirmed in writing," see paragraphs (s) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8 (a) (3) and (g). For a definition of "signed," see paragraph (s).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11 and 1.12.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to
communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Writing

[11] The purpose of this definition is to permit a lawyer to use developing technologies that maintain an objective record of a communication that does not
rely upon the memory of the lawyer or any other person. See OCGA § 10-12-2(8).

Discussion

The proposed change to Rule 1.0 is the addition of a definition for “Willful Blindness,” beginning at line 117. The term “willful blindness” is later found in a proposed rule change to Rule 1.2 beginning at line 261. This proposed change, defining the term “willful blindness,” should only be approved if the Court approves the proposed changes to Rule 1.2, excluding the proposed change at line 360 correcting a typographical error. The only other proposed change is lettering (ee) at line 119.

II.

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

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's
decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not either knowingly or with willful blindness counsel a client to engage in criminal or fraudulent conduct that the lawyer knows is criminal or fraudulent, nor knowingly or with willful blindness assist a client in such conduct. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

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

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law.
and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental
disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to
represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might State Bar Handbook 58/298 otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and the client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the
client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Georgia Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (5).
Discussion

The role of lawyers in illicit money laundering activities has received considerable attention in recent years, and preemptive self-regulation may be the best way to forestall legislative action disruptive to the loyalty and confidentiality obligations of the attorney-client relationship. The Corporate Transparency Act of 2020 already potentially imposes beneficial ownership information reporting on law firms, and more changes appear to be on the horizon. The Financial Action Task Force (FATF), an intergovernmental working group of which the United States is an important member, has identified weaknesses in professional regulation, among them regulation of the legal profession. FATF has recommended changes designed to eliminate illicit activities, including recommendations to require lawyers in FATF member countries to report clients' suspicious activities to law enforcement authorities. The FATF Gatekeeper Initiative, which has resulted in increased regulation of lawyers in many foreign jurisdictions, expressly found that the regulation of the legal profession in the U.S. is inadequate. Since these activities involve the cross-border movement of money and other assets, the State Bar of Georgia's International Trade in Legal Services Committee (ITILS) convened a task force to examine the issue and propose changes to the Georgia Rules of Professional Conduct to address the issue.
Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

To the extent that agreements to arbitrate disputes over fees or expenses are enforceable, a lawyer may enter into such an agreement with a client or prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the attorney’s disclosures regarding arbitration must be set out in a separate paragraph, written in a font size at least as large as the rest of the contract, and separately initialed by the client and the lawyer.
(c)

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

(i) the outcome of the matter; and,

(ii) if there is a recovery showing:

(A) the remittance to the client;

(B) the method of its determination;

(C) the amount of the attorney fee; and
if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the lawyer's firm or law office, the amount of fee received by each and the manner in which the division is determined.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
(2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The maximum penalty for a violation of this rule is a public reprimand.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

[1A] A fee can also be unreasonable if it is illegal. Examples of illegal fees are those taken without required court approval, those that exceed the amount allowed by court order or statute, or those where acceptance of the fee would be unlawful, e.g., accepting controlled substances or sexual favors as payment.
Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer’s customary fee schedule is sufficient if the basis or rate of the fee is set forth.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.
Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (j). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made, the terms of which might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.
Paragraph (b) requires informed consent to an agreement to arbitrate disputes over fees and expenses. See Rule 1.0(l). In obtaining such informed consent, the lawyer should reveal to the client or prospective client the following: (1) in an arbitration, the client or prospective client waives the right to a jury trial because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would be available in civil litigation; (4) how the costs of arbitration compare to the costs of litigation in a public court, including the requirement that the arbitrator or arbitrators be compensated; and (5) who will bear the costs of arbitration. The lawyer should also inform the client or prospective client regarding the existence and operation of the State Bar of Georgia’s Fee Arbitration Program, regardless of whether the attorney seeks an agreement to submit any future fee disputes to that program. The lawyer should also inform the client or prospective client that an agreement to arbitrate a dispute over fees and expenses is not a waiver of the right to make a disciplinary complaint regarding the lawyer.

Prohibited Contingent Fees

Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a
divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns. See Formal Advisory Opinions 36 and 47.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well. Joint responsibility for the representation entails financial and ethical responsibility for the representation.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the State Bar of Georgia, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an
executor or administrator, a class or a person entitled to a reasonable fee as part
of the measure of damages. The lawyer entitled to such a fee and a lawyer
representing another party concerned with the fee should comply with the
prescribed procedure.

Discussion

The proposed modification, commencing at line 421 and concluding at line
428, does not opine on the legal issue of whether agreements to arbitrate fee
disputes or disputes over payment of expenses are enforceable. If such
agreements are allowed, however, the new rule mandates that a lawyer must
obtain written informed consent from the client in advance. Furthermore, the
proposed change necessitates that fee contracts disclose the existence of an
arbitration agreement.

Additionally, at lines 527 through 543, a new Comment [5A] is appended
to provide context to the proposed rule change. This comment outlines the
minimum information lawyers must impart to clients regarding fee arbitration
agreements and the State Bar of Georgia Fee Arbitration Program. It underscores
that assenting to arbitration does not relinquish a client's right to file a disciplinary
complaint against the lawyer. The primary objective of this proposed change is
to ensure that clients are well-informed and safeguarded when they enter into
arbitration agreements in fee contracts or agreements.
IV.  

**Rule 1.8. Conflict of Interest: Prohibited Transactions.**

(a) A lawyer shall neither enter into a business transaction with a client if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, nor shall the lawyer knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

2. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

3. the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
(b) A lawyer shall not use information gained in the professional relationship with a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, grandparent, child, grandchild, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client.
(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims for or against the clients, nor in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyers disclosure shall include the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented.
lawyer\textsuperscript{2} in making the agreement, or settle a claim for such liability with
an unrepresented client or former client without first advising that person
in writing that independent representation is appropriate in connection
therewith. To the extent that agreements to arbitrate disputes over a
lawyer’s liability for malpractice are enforceable, a lawyer may enter into
such an agreement with a client or a prospective client if the client or
prospective client gives informed consent in a writing signed by the
client or prospective client. The agreement to arbitrate and the attorney’s
disclosures regarding arbitration must be set out in a separate paragraph,
written in a font size at least as large as the rest of the contract, and
separately initialed by the client and the lawyer.

(i) A lawyer related to another lawyer as parent, grandparent,
child, grandchild, sibling or spouse shall not represent a client in a
representation directly adverse to a person whom the lawyer has actual
knowledge is represented by the other lawyer unless his or her client
gives informed consent regarding the relationship. The disqualification

\textsuperscript{2} The original text approved by the Board of Governors used the wording “by counsel.” The Office of the
General Counsel received a comment suggesting that the wording be changed to “by a lawyer.” The
Disciplinary Rules and Procedures Committee agreed and voted unanimously to the change proposed in the
comment. Subsequently, the Executive Committee approved the change unanimously at its February 10, 2023
meeting. The Executive Committee can approve such changes when the Board is not in session. (See Rule 1-701, Bylaws Art. IV, Section 2). In this case, the change is minor, and there was not sufficient time to submit this minor change to the Board without holding up the current rules change process.
stated in this paragraph is personal and is not imputed to members of firms with whom the lawyers are associated.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fees or expenses as long as the exercise of the lien is not prejudicial to the client with respect to the subject of the representation; and

(2) contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5.

The maximum penalty for a violation of Rule 1.8 (b) is disbarment. The maximum penalty for a violation of Rule 1.8 (a) and 1.8 (c)-(j) is a public reprimand.

Comment

Transactions Between Client and Lawyer

[1A] As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. The client should be fully informed of the true nature of the lawyer's interest or lack of interest in all aspects of the transaction. In such transactions a review by independent counsel on behalf of
the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's informed consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

Use of Information to the Disadvantage of the Client

[1B] It is a general rule that an attorney will not be permitted to make use of knowledge, or information, acquired by the attorney through the professional relationship with the client, or in the conduct of the client's business, to the disadvantage of the client. Paragraph (b) follows this general rule and provides that the client may waive this prohibition. However, if the waiver is conditional, the duty is on the attorney to comply with the condition.
Gifts from Clients

[2] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the objective advice that another lawyer can provide. Paragraph (c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

Literary Rights

[3] An agreement by which a lawyer acquires literary or media rights concerning the subject of the representation creates a conflict between the interest of the client and the personal interest of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraph (j) of this rule.

Financial Assistance to Clients

[4] Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits
permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above.

Payment for a Lawyer's Services from One Other Than The Client

[5] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitee (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4 (c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).
Settlement of Aggregated Claims

[6] Paragraph (g) requires informed consent. This requirement is not met by a blanket consent prior to settlement that the majority decision will rule.

Agreements to Limit Liability

[7] A lawyer may not condition an agreement to withdraw or the return of a client's documents on the client's release of claims. However, this paragraph is not intended to apply to customary qualifications and limitations in opinions and memoranda.

[8] A lawyer should not seek prospectively, by contract or other means, to limit the lawyer's individual liability to a client for the lawyer's malpractice. A lawyer who handles the affairs of a client properly has no need to attempt to limit liability for the lawyer's professional activities and one who does not handle the affairs of clients properly should not be permitted to do so. A lawyer may, however, practice law as a partner, member, or shareholder of a limited liability partnership, professional association, limited liability company, or professional corporation.

Family Relationships Between Lawyers

Arbitration

[8A] Paragraph (h) requires informed consent to an agreement to arbitrate malpractice claims. See Rule 1.0(l). In obtaining such informed consent, the
lawyer should reveal to the client or prospective client the following: (1) in an arbitration the client or prospective client waives the right to a jury because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would be available in civil litigation; (4) how the costs of arbitration compare to the costs of litigation in a public court, including the requirement that the arbitrator or arbitrators be compensated; and (5) who will bear the costs of arbitration. The lawyer should also inform the client or prospective client that an agreement to arbitrate a dispute over fees and expenses is not a waiver of the right to make a disciplinary complaint regarding the lawyer.

[9] Paragraph (i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1.9, and 1.10.

Acquisition of Interest in Litigation

[10] Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in the common law prohibition of champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in
Rule 1.5 and the exception for lawyer's fees and for certain advances of costs of litigation set forth in paragraph (e).

Discussion

The proposed modification, starting at line 641 and concluding at line 654, incorporates language from the proposed amendment to Rule 1.5, which deals with an arbitration clause in a fee contract. This revision necessitates that clients provide written informed consent before agreeing to an arbitration provision in a fee contract or agreement. Furthermore, the proposed modification outlines the duty to disclose the existence of an arbitration agreement in a fee contract.

At lines 756 through 769, a new Comment [8A] is added, which explains what informed consent entails, what attorneys must include in fee agreements, and what information lawyers must reveal to clients to obtain informed consent under Rule 1.5 and Rule 1.8.

The primary objective of this proposed change is to ensure that clients are properly informed and safeguarded when they agree to arbitration in fee contracts or agreements.
Part VII

Rule 7.1 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. By way of illustration, but not limitation, a communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading:

(1) contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(3) compares the lawyer's services with other lawyers' services unless the comparison can be factually substantiated;

(4) fails to include the name of at least one lawyer
responsible for its content; or

(5) contains any information regarding contingent fees, and fails to conspicuously present the following disclaimer:

"Contingent attorneys' fees refers only to those fees charged by attorneys for their legal services. Such fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client."

(6) contains the language "no fee unless you win or collect" or any similar phrase and fails to conspicuously present the following disclaimer:

"No fee unless you win or collect" [or insert the similar language used in the communication] refers only to fees charged by the attorney. Court costs and other additional expenses of legal action usually must be paid by the client. Contingent fees are not permitted in all types of cases.

(b) — A public communication for which a lawyer has given value must be identified as such unless it is apparent from the context that it is
such a communication.

(c) A lawyer retains ultimate responsibility to insure that all communications concerning the lawyer or the lawyer's services comply with the Georgia Rules of Professional Conduct.

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

Comment

[1] This Rule governs the content of all communications about a lawyer's services, including the various types of advertising permitted by Rules 7.3 through 7.5. Whatever means are used to make known a lawyer's services, statements about them should be truthful.

[2] The prohibition in sub-paragraph (a)(2) of this Rule 7.1: Communications Concerning a Lawyer's Services of misleading truthful statements that may create "unjustified expectations" are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's
communication requires that person to take further action when, in fact, no
action if required ordinarily preclude advertisements about results obtained

[3] A communication that truthfully reports a lawyer’s achievements on behalf
of a client, such as the amount of a damage award or the lawyer’s record in
obtaining favorable verdicts, and advertisements containing client
endorsements. Such information may create the clients or former clients may
be misleading if presented so as to lead a reasonable person to form an
unjustified expectation that the same results could be obtained for other clients
in similar results can be obtained for other matters without reference to the
specific factual and legal circumstances of each client’s case. Similarly, an
unsubstantiated clam about a lawyer’s or law firm’s services or fees, or an
unsubstantiated comparison of the lawyer’s or law firm’s services or fees with
those of other lawyers or law firms, any be misleading if presented with such
specificity as would lead a reasonable person to conclude that the comparison
or claim can be substantiated. The inclusion of an appropriate disclaimer or
qualifying language may preclude a finding that a statement is likely to create
unjustified expectations or otherwise mislead the public.

Affirmative Disclosure

[3] In general, the intrusion on the First Amendment right of commercial
speech resulting from rationally-based affirmative disclosure requirements is
minimal, and is therefore a preferable form of regulation to absolute bans or other similar restrictions. For example, there is no significant interest in failing to include the name of at least one accountable attorney in all communications promoting the services of a lawyer or law firm as required by sub-paragraph (a)(4) of Rule 7.1: Communications Concerning a Lawyer's Services. Nor is there any substantial burden imposed as a result of the affirmative disclaimer requirement of sub-paragraph (a)(6) upon a lawyer who wishes to make a claim in the nature of "no fee unless you win." Indeed, the United States Supreme Court has specifically recognized that affirmative disclosure of a client's liability for costs and expenses of litigation may be required to prevent consumer confusion over the technical distinction between the meaning and effect of the use of such terms as "fees" and "costs" in an advertisement. [4] Certain promotional communications of a lawyer may, as a result of content or circumstance, tend to mislead a consumer to mistakenly believe that the communication is something other than a form of promotional communication for which the lawyer has paid. Examples of such a communication might include advertisements for seminars on legal topics directed to the lay public when such seminars are sponsored by the lawyer, or a newsletter or newspaper column which appears to inform or to educate about the law. Paragraph (b) of this Rule 7.1: Communications Concerning a Lawyer's Services would require
affirmative disclosure that a lawyer has given value in order to generate these
types of public communications if such is in fact the case.

Accountability

[5] Paragraph (c) makes explicit an advertising attorney's ultimate
responsibility for all the lawyer's promotional communications and would
suggest that review by the lawyer prior to dissemination is advisable if any
doubts exist concerning conformity of the end product with these Rules.

Although prior review by disciplinary authorities is not required by these Rules,
lawyers are certainly encouraged to contact disciplinary authorities prior to
authorizing a promotional communication if there are any doubts concerning
either an interpretation of these Rules or their application to the communication.

[4] It is professional misconduct for a lawyer to engage in conduct involving
dishonesty, fraud, deceit or misrepresentation. Rule 8.4 (a) (4). See also Rule
8.4 (a) (6) for the prohibition against stating or implying an ability to improperly
influence a government agency or official or to achieve results by means that
violate the Rules of Professional Conduct or other law.

[5] Firm names, letterhead and professional designations are communications
concerning a lawyer’s services. A firm may be designated by the names of all or
some of its current members, by the names of retired or deceased members
where there has been a succession in the firm’s identity or by a trade name if it
is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[6] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[7] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0 (g), because to do so would be false and misleading.

Discussion

The proposed revisions constitute a complete reorganization of the current advertising rules, encompassing Rules 7.1 through 7.5. The modifications to Rule 7.1 begin at line 798. The current rule prohibits false, fraudulent, deceptive or
misleading advertisements and includes several examples in the black-letter rule. The revised version moves the examples of prohibited conduct to the Comments.

The following Comments have also been rewritten to provide an explanation of Rule 7.1 in the comments instead of as part of the rule.

Comment [1] at line 841 removes references to other rules and narrows the scope of this rule to communications about a lawyer's services. Comment [2] at line 845 indicates that a misleading truthful statement is prohibited by Rule 7.1 and defines what constitutes a misleading truthful statement.

Previous Comments [3], [4], and [5] have been deleted and replaced with new Comments. (See lines 857-924.) Comment [3] at line 857 discusses the use of prior accomplishments by a lawyer and the inference that such results can be replicated for other clients, which may be misleading. The comment further explains the prohibition of using unsubstantiated statements or comparing the lawyer or law firm's services or fees. The comment includes language regarding the use of a disclosure statement to prevent unjustified expectations that may be misleading to the public.

Comment [4] at line 906 explains that acts involving dishonesty, fraud, deceit, or misrepresentation are prohibited by Rule 8.4, which extends to lawyer advertising. Comment [5] at line 911 provides guidance on firm names, letterheads, and professional designations, all of which are communication forms
covered by this rule. The comment explains the use of trade names, any indication
of a firm being associated with or linked to a government, the use of deceased
lawyers’ names who were not former members of a firm, and other potentially
misleading communications.

Comment [6] at line 925 discusses the use of a firm or trade name in more
than one jurisdiction. Comment [7] at line 927 advises against lawyers implying
or holding themselves out as practicing together in one firm when the lawyers are
not a firm as defined in Rule 1.0 (g), as this would be false and misleading.

Rule 7.2. Advertising
Communications Concerning a Lawyer’s Services:
Specific Rules.

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer
may advertise communicate information regarding the lawyer’s services
through and media:

(1) public media, such as a telephone directory, legal
directory, newspaper or other periodical;
(2) outdoor advertising;
(3) radio or television;
(4) written, electronic or recorded communication.

(b) A copy or recording of an advertisement or communication
shall be kept for two years after its last dissemination along with a record
of when and where it was used.

(c) — Prominent disclosures. Any advertisement for legal services directed to potential clients in Georgia, or intended to solicit employment for delivery of any legal services in Georgia, must include prominent disclosures, clearly legible and capable of being read by the average person, if written, and clearly intelligible by an average person, if spoken aloud, of the following:

(1) Disclosure of identity and physical location of attorney. Any advertisement shall include the name, physical location and telephone number of each lawyer or law firm who paid for the advertisement and who takes full personal responsibility for the advertisement. In disclosing the physical location, the responsible lawyer shall state the full address of the location of the principal bona fide office of each lawyer who is prominently identified pursuant to this paragraph. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm from which the lawyer or law firm furnishes legal services on a regular and continuing basis. In the absence
of a bona fide physical office, the lawyer shall prominently disclose the full address listed with the State Bar of Georgia or other Bar to which the lawyer is admitted. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's bona fide office, or the registered bar address, when a referral is made.

(2) Disclosure of referral practice. If the lawyer or law firm will refer the majority of callers to other attorneys, that fact must be disclosed and the lawyer or law firm must comply with the provisions of Rule 7.3(c) regarding referral services.

(3) Disclosure of spokespersons and portrayals. Any advertisement that includes a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, portrayal of a client by a non-client, or any paid testimonial or endorsement, shall include prominent disclosure of the use of a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, or of a client by a non-client.

(4) Disclosures regarding fees. A lawyer or law firm
advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service.

(5) Appearance of legal notices or pleadings. Any advertisement that includes any representation that resembles a legal pleading, notice, contract or other legal document shall include prominent disclosure that the document is an advertisement rather than a legal document.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1]—To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is
particularly acute in the case of persons of moderate means who have not made
extensive use of legal services. The interest in expanding public information
about legal services ought to prevail over considerations of tradition.
Nevertheless, advertising by lawyers entails the risk of practices that are
misleading or overreaching.

(b) A lawyer shall not compensate, give or promise anything of
value to a person for recommending the lawyer’s services except that a
lawyer may:

(1) pay the reasonable costs of advertisements or
communications permitted by this Rule;

(2) pay the usual and reasonable fees or dues charged by a
lawyer referral service, if the service does not engage in
conduct that would violate the Rules if engaged in by a
lawyer;

(3) pay the usual and reasonable fees or dues charged by a
bar-operated non-profit referral service, including a fee
which is calculated as a percentage of the legal fees
earned by the lawyer to whom the service has referred a
matter, provided such bar-operated non-profit lawyer
referral service meets the following criteria:
the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies who can provide the assistance the clients need. Such organization shall file annually with the Office of the General Counsel a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the
client would have paid had no service been involved; and

iv. a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than $100,000 per occurrence and $300,000 in the aggregate.

(4) pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer’s services, the lawyer’s partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(5) pay for a law practice in accordance with Rule 1.17;

(6) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive; and
(ii) the client is informed of the existence and nature of the agreement; and

(7) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.

(c) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a particular field of law by experience, specialized training or education, or is certified by a recognized and bona fide professional entity, may communicate such specialty or certification so long as the statement is not false or misleading.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

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

Comment

[1] This Rule permits public dissemination of information concerning a lawyer’s name or law firm’s name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on
which the lawyer’s fees are determined, including prices for specific services
and payment and credit arrangements; a lawyer’s foreign language ability;
names of references and, with their consent, names of clients regularly
represented; and other information that might invite the attention of those
seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of
speculation and subjective judgment. Some jurisdictions have had extensive
prohibitions against television advertising, against advertising going beyond
specified facts about a lawyer, or against "undignified" advertising. Television is
now one of the most powerful media for getting information to the public,
particularly persons of low and moderate income; prohibiting television
advertising, therefore, would impede the flow of information about legal
services to many sectors of the public. Limiting the information that may be
advertised has a similar effect and assumes that the bar can accurately forecast
the kind of information that the public would regard as relevant.

[4] Neither this Rule nor Rule 7.3: Direct Contact with Prospective Clients
prohibits communications authorized by law, such as notice to members of a
class in class action litigation.

Record of Advertising
Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule.

Paying Others to Recommend a Lawyer

Except as permitted under paragraphs (b) (1)-(b) (7), lawyers are not permitted to pay others for recommending the lawyer’s services. A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible “recommendations.”

Paragraph (b) (1) allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons and website designers.

Paragraph (b) (7) permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer’s services or referring a
prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

[5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5 (e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator’s communications are consistent with Rule 7.1 (communications concerning a lawyer’s services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral.

See Comment [2] (definition of “recommendation”). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4 (a) (1) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal service plan is a prepaid or group legal service plan or a
similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer’s professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4 (c). Except as provided in Rule 1.5 (e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to
the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.
**Required Contact Information**

[11] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

**Discussion**

The proposed rule change, which starts at line 962, seeks to modify Rule 7.2 by renaming it and removing unnecessary language while defining a lawyer's duties when communicating about their services. The changes involve consolidating previous descriptors into the broad category of "any media" and removing references to outdated advertising rules.

The proposal also includes adding new subsections to the rule. At line 1039, a new subsection (b) prohibits lawyers from promising or giving anything of value to others for recommending their services or firm.

Subsections (1) through (3) provide exceptions to the rule, including the use of non-profit referral services that calculate fees based on the amount of recovery or legal fees earned by the lawyer using the service. The subsections further explain the guidance for lawyers who choose to use such referral services, including the need for maintaining professional liability insurance. These referral
services are required to operate in the public interest and file an annual report
with the Office of the General Counsel.

Subsection (b) (4), at line 1081, sets out the requirements for the payment
of fees to qualified legal services plans and legal insurance plans, as well as any
communication restrictions by those providers or plans. Subsection (b) (5), at line
1087, provides guidance on communications when selling a law practice.

Subsection (b) (6), starting at line 1088, offers guidance on referring clients to
another lawyer or non-lawyer professional pursuant to an agreement. Subsection
(b) (7), at line 1096, explains nominal gifts by a lawyer to a client that are not
intended as compensation for a referral.

Subsection (c), starting at line 1100, describes what a lawyer may say in a
communication about areas of expertise and certifications they have earned.

Subsection (d), starting at line 1106, requires at least one lawyer in a firm
to be responsible for the content of any lawyer communication under this rule,
including the contact information of the responsible lawyer. Violations of this
rule may result in disbarment, as stated at line 1109.

The following Comments have also been rewritten. The comments provide
additional guidance and clarification regarding the proposed changes to Rule 7.2.
Comment [1] at line 1111 updates the previous comment to include various other
forms of communication and makes minor housekeeping and grammatical
changes. Previous Comments [3], [4], and [5] are replaced by new Comments, which can be found at lines 1143-1170.

Comment [2] at line 1136 discusses the restrictions and exceptions surrounding payment by others to recommend a lawyer.

Comment [3], at line 1143, provides examples of when a lawyer is permitted to pay for advertising and communications under Rule 7.2, including allowable costs and restrictions on certain types of advertising.

Comment [4], at line 1151, explains the meaning of "nominal gifts" that are not compensation for a lawyer referral and discusses prohibited gifts.

Comment [5], at line 1158, provides guidance on paying others for generating leads and the restrictions on such communications by a lead generator.

Comment [6], at line 1171, provides guidance on the use of a prepaid legal plan or referral service and defines each.

Comment [7], at line 1176, explains the ethical responsibilities that a lawyer has when participating in a prepaid legal plan or referral service, and the lawyer's duties to ensure that the outside source is operating within the Georgia Rules of Professional Conduct.

Comment [8], at line 1185, describes reciprocal agreements with other lawyers and non-lawyer professionals and the importance of maintaining a
lawyer's independent judgment. Restrictions of reciprocal agreements are defined, including compensation and duration.

Comment [9], at line 1201, offers guidance on how to communicate a lawyer's specialty or indicates that they do not provide legal services in certain areas of the law, referring to Rule 7.1 as a guide for avoiding false and misleading communications.

Comment [10], at line 1208, discusses patent, trademark, and admiralty designations.

Finally, Comment [11], at line 1214, establishes the requirement for a lawyer or law firm to include contact information for the lawyer responsible for the content of any advertising communication under this rule.

**Rule 7.3 Direct Contact With Prospective Solicitation of Clients**

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the contact is with
a:

(1) lawyer;

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (b), if:

(a) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, lawyer's partner, associate or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(1) the target of the solicitation has it has been made known to the lawyer that a person does not desire not to receive communications from be solicited by the lawyer;

or

(2) the communication-solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation or
undue influence; or

(3) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; or

(4) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

(b) Written communications to a prospective client, other than a close friend, relative, former client or one whom the lawyer reasonably believes is a former client, for the purpose of obtaining professional employment shall be plainly marked "Advertisement" on the face of the envelope and on the top of each page of the written communication in type size no smaller than the largest type size used in the body of the letter.

(c) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment
by a client, or as a reward for having made a recommendation resulting in
the lawyer's employment by a client; except that the lawyer may pay for
public communications permitted by Rule 7.1 and except as follows:

(1) A lawyer may pay the usual and reasonable fees or
dues charged by a lawyer referral service, if the service:

(i) does not engage in conduct that would violate
the Rules if engaged in by a lawyer;

(ii) provides an explanation to the prospective
client regarding how the lawyers are selected by the
service to participate in the service; and

(iii) discloses to the prospective client how many
lawyers are participating in the service and that those
lawyers have paid the service a fee to participate in
the service.

(2) A lawyer may pay the usual and reasonable fees or
dues charged by a bar-operated non-profit lawyer referral
service, including a fee which is calculated as a
percentage of the legal fees earned by the lawyer to
whom the service has referred a matter, provided such
A bar-operated non-profit lawyer referral service meets the following criteria:

(i) the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies who can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

(ii) the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;
(iii)—the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and

(iv)—a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than $100,000 per occurrence and $300,000 in the aggregate.

(3) A lawyer may pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer's services, the lawyer's partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(4) A lawyer may pay for a law practice in accordance with Rule 1.17.
A lawyer shall not solicit professional employment as a private practitioner for the lawyer, a partner or associate through direct personal contact or through live telephone contact, with a nonlawyer who has not sought advice regarding employment of a lawyer.

A lawyer shall not accept employment when the lawyer knows or reasonably should know that the person who seeks to employ the lawyer does so as a result of conduct by any person or organization that would violate these Rules if engage in by a lawyer.

This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person to person contact to enroll members or sell subscription for the plan from personal who are not known to need legal services in a particular matter covered by the plan.

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

Comment

Direct Personal Contact

There is a potential for abuse inherent in Paragraph (b) prohibits a lawyer
from soliciting professional employment by live person-to-person contact when
significant motive for the lawyer’s doing so is he lawyer’s or the law firm’s
pecuniary gain. A lawyer’s communication is not a solicitation if it is directed
to the general public, such as through a billboard, an Internet banner
advertisement, a website or television commercial, or if it in response to a
request for information or is automatically generated in response to electronic
searches.

telephone and other real-time visual or auditory person-to-person
communications where the person is subject to a direct personal contact by a
lawyer of prospective clients-encounter without time for reflection. Such person-
to-person contact does not include chat rooms, text messages or other written
communications that recipients may easily disregard. A potential or overreaching
exists when a lawyer, seeking pecuniary gain, solicits a person known to be in
need of legal services. It-This form of contact subjects the laya person to the
private importuning of a-the trained advocate, in a direct interpersonal
encounter. A prospective client often feels The person, who may already feel
overwhelmed by the situation-circumstances giving rise to the need for legal
services, and may have an impaired capacity for reason, may find it difficult to
fully evaluate all available alternatives with reasoned judgment and protective
appropriate self-interest. Furthermore, in the lawyer's presence and insistence upon an immediate response. The situation is faced fraught with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect possibility of undue influence.

[23] The situation is therefore fraught with the possibility of undue influence, intimidation and overreaching. The potential for abuse overreaching inherent in solicitation of prospective clients through personal live person-to-person contact justifies its prohibition, particularly since the direct written contact permitted under paragraph (b) of this Rule offers an alternative means of communicating conveying necessary information to those who may be in need of legal services. Also included in the prohibited types of personal contact are direct, personal contact through an intermediary and live contact by telephone.

Direct Written Solicitation

[3]—Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of
informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

[4]—Certain narrowly-drawn restrictions on this type of communication are justified by a substantial state interest in facilitating the public’s intelligent selection of counsel, including the restrictions of paragraphs (a) (3) and (a) (4) which proscribe direct mailings to persons such as an injured and hospitalized accident victim or the bereaved family of a deceased.

[5]—In order to make it clear that the communication is commercial in nature, paragraph (b) requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the traditional exception for contact with close friends, relatives and former clients is recognized and permits elimination of the disclaimer in direct written contact with these persons particular.

communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm a person’s judgment.

[64] This Rule does not prohibit communications. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny.
Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representation and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations.

Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.
[6] A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence within the meaning of Rule 7.3 (c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are
functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] Communications authorized by law, such as or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations must not be directed to a person known to need legal services in a particular matter, but must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (c).

Paying Others to Recommend a Lawyer
A lawyer is allowed to pay for communications permitted by these Rules, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization may pay to advertise legal services provided under its auspices.

Discussion

Starting at line 1282, Rule 7.3 is renamed and revised to provide better specificity. The original subsections (a), (b), (c), (d), and (e) are deleted and replaced with new subsections.

Subsection (a), beginning at line 1283, defines "solicitation" and "solicit" in the context of communications under this rule.

Subsection (b), at line 1288, prohibits live person-to-person contact for pecuniary gain, and sub-subsections (1)-(3) list exceptions to this rule.

Subsection (c), beginning at line 1298, prohibits solicitation of professional employment under certain conditions, such as if the person or entity has expressed their wish not to be contacted, or if the solicitation involves fraud, coercion, or other prohibited means.

Subsection (d), at line 1396, states that this rule does not prohibit communications ordered by a court or tribunal.
Subsection (e), at line 1398, provides an exception for lawyers participating in prepaid legal or group service plans.

The following Comments have also been rewritten or deleted. As the comments are rewritten or deleted, renumbering was necessary.

The heading "Direct Personal Conduct" is removed at line 1406.

Comment [1], at line 1407, provides an example of prohibited live person-to-person contact for soliciting a client and exceptions to the rule.

Comment [2], at line 1415, defines "live person-to-person contact" with examples and exceptions. The comment emphasizes the potential for high-pressure tactics and overreaching with vulnerable clients.

Comment [3], at line 1433, suggests alternative means for lawyers to convey necessary information without overwhelming a person's judgment.

Comment [4], at line 1466 describes how live person-to-person contact may not be subject to third-party scrutiny, potentially leading to inaccurate or misleading representations.

Comment [5], at line 1471, addresses a lawyer contacting a close personal friend, family member, or someone with whom the lawyer has a professional
relationship. The comment clarifies that subsection (b) is not intended to prohibit lawyers from engaging in constitutionally protected activities.

Comment [6], at line 1487, discusses solicitation that includes false or misleading information under this rule based on coercion, duress, fraud, overreaching, intimidation, or undue influence. The comment provides examples, including elderly persons and non-native English speakers.

Comment [7], at line 1495, provides that the rule does not prohibit lawyers from contacting certain representatives of organizations or groups interested in establishing a group or prepaid legal plan for members.

Comment [8], at line 1508, gives an exception to this rule for communications that are court-ordered, such as class action litigation.

Comment [9], at line 1510, permits lawyers to participate with an organization that uses personal contact to enroll members for its group or prepaid legal service plan, provided that no lawyer who would provide legal services through the plan undertakes personal contact. The communication must not target a person known to need legal services in a particular matter but must inform potential plan members generally of another means of affordable legal services.

**RULE 7.4. Reserved communication of fields of practice.**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a
particular field of law by experience, specialized training or education, or
is certified by a recognized and bona fide professional entity, may
communicate such specialty or certification so long as the statement is
not false or misleading.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

a. This Rule permits a lawyer to indicate areas of practice in
communications about the lawyer’s services. If a lawyer practices only in
certain fields, or will not accept matters except in such fields, the lawyer
is permitted to so indicate.

A lawyer may truthfully communicate the fact that the lawyer is a
specialist or is certified in a particular field of law by experience or as a
result of having been certified as a "specialist" by successfully
completing a particular program of legal specialization. An example of a
proper use of the term would be "Certified as a Civil Trial Specialist by
XYZ Institute"—provided such was in fact the case, such statement would
not be false or misleading and provided further that the Civil Trial
Specialist program of XYZ Institute is a recognized and bona fide
professional entity.
Discussion

Under the proposed changes to advertising rules, Rules 7.1-7.3 would incorporate the content of the current Bar Rules 7.4 and 7.5. Therefore, the proposed changes would eliminate Rules 7.4 and 7.5.

**Rule 7.5. Reserved Firm Names And Letterheads**

(a) A lawyer shall not use a firm name, trade name, letterhead, or other professional designation that is false or misleading.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

The maximum penalty for a violation of this rule is a public reprimand.

Comment

[1] Firm names and letterheads are subject to the general requirement of all
advertising that the communication must not be false, fraudulent, deceptive, or misleading. Therefore, lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

Firm names consisting entirely of the names of deceased or retired partners are permitted and have proven a useful means of identification.

Discussion

Under the proposed changes to advertising rules, Rules 7.1-7.3 would incorporate the content of the current Bar Rules 7.4 and 7.5. Therefore, the proposed changes would eliminate Rules 7.4 and 7.5.

If the proposed amendments to the rules are approved, the amended rules will read as they appear under Attachment "A."

SO MOVED, this 2nd day of May, 2023.

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ATTACHMENT A

Proposed Amendments to Georgia Rules of Professional Conduct
1.0, 1.2, 1.5, 1.8, and Part VII

I.

Rule 1.0. Terminology and Definitions.

(a) “Belief” or “believes” denotes that the person involved actually thought the fact in question to be true. A person’s belief may be inferred from the circumstances.

(b) “Confidential Proceedings” denotes any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) “Confirmed in writing” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (l) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.
“Conviction” or “convicted” denotes any of the following accepted by a court, whether or not a sentence has been imposed:

1. A guilty plea;
2. A plea of nolo contendere;
3. A verdict of guilty;
4. A verdict of guilty but mentally ill; or
5. A plea entered under the Georgia First Offender Act, OCGA § 42-8-60 et seq., or a substantially similar statute in Georgia or another jurisdiction.

“Domestic Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any state or territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.

“Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Bar Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

“Foreign Lawyer” denotes a person authorized to practice law
by the duly constituted and authorized governmental body of any foreign
nation but not authorized by the Supreme Court of Georgia or its rules to
practice law in the state of Georgia.

(i) “Fraud” or “fraudulent” denotes conduct that is fraudulent
under the substantive or procedural law of the applicable jurisdiction and
has a purpose to deceive; not merely negligent misrepresentation or
failure to apprise another of relevant information.

(j) “Grievance” denotes an allegation of unethical conduct filed
against a lawyer.

(k) “He,” “Him” or “His” denotes generic pronouns including
both male and female.

(l) “Informed consent” denotes the agreement by a person to a
proposed course of conduct after the lawyer has communicated adequate
information and explanation about the material risks of and reasonably
available alternatives to the proposed course of conduct.

(m) “Knowingly,” “known,” or “knows” denotes actual
knowledge of the fact in question. A person's knowledge may be inferred
from the circumstances.

(n) “Lawyer” denotes a person authorized by the Supreme Court
of Georgia or its rules to practice law in the state of Georgia including
persons admitted to practice in this state pro hac vice.

(o) “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203 (2).

(p) “Nonlawyer” denotes a person not authorized to practice law by either the:

(1) Supreme Court of Georgia or its rules (including pro hac vice admission), or

(2) duly constituted and authorized governmental body of any other state or territory of the United States, or the District of Columbia, or

(3) duly constituted and authorized governmental body of any foreign nation.

(q) “Notice of Discipline” denotes a notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

(r) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Bar Rule 1-203 (d), or a member of
an association authorized to practice law.

(s) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this state. A voluntary surrender of license is tantamount to disbarment.

(t) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the rules.

(u) "Prospective Client" denotes a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.

(v) “Public Proceedings” denotes any proceeding under these rules that has been filed with the Supreme Court of Georgia.

(w) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(x) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(y) “Reasonably should know” when used in reference to a
lawyer denotes that a lawyer of reasonable prudence and competence
would ascertain the matter in question.

(z) “Respondent” denotes a person whose conduct is the subject
of any disciplinary investigation or proceeding.

(aa) “Screened” denotes the isolation of a lawyer from any
participation in a matter through the timely imposition of procedures
within a firm that are reasonably adequate under the circumstances to
protect information that the isolated lawyer is obligated to protect under
these rules or other law.

(bb) “Substantial” when used in reference to degree or extent
denotes a material matter of clear and weighty importance.

(cc) “Tribunal” denotes a court, an arbitrator in an arbitration
proceeding or a legislative body, administrative agency or other body
acting in an adjudicative capacity. A legislative body, administrative
agency or other body acts in an adjudicative capacity when a neutral
official, after the presentation of evidence or legal argument by a party or
parties, will render a legal judgment directly affecting a party's interests
in a particular matter.

(dd) “Willful blindness” denotes awareness of a high probability
that a fact exists and deliberate action to avoid learning of the fact.
“Writing” or “written” denotes a tangible or electronic record of a communication or representation, including but not limited to handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

[1] Bar Rule 4-110 includes additional definitions for terminology used in the procedural section of these rules.

Confirmed in Writing

[1A] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (e) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be
regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Georgia Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and
legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

[5] When used in these rules, the terms "fraud" or "fraudulent" refers to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Georgia Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2 (c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that
includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the
conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7 (b) and 1.9 (a). For a definition of "writing" and "confirmed in writing," see paragraphs (s) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8 (a) (3) and (g). For a definition of "signed," see paragraph (s).

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11 and 1.12.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to
undertake such procedures as a written undertaking by the screened lawyer to 
avoid any communication with other firm personnel and any contact with any 
firm files or other materials relating to the matter, written notice and 
instructions to all other firm personnel forbidding any communication with the 
screened lawyer relating to the matter, denial of access by the screened lawyer 
to firm files or other materials relating to the matter and periodic reminders of 
the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon 
as practical after a lawyer or law firm knows or reasonably should know that 
there is a need for screening.

Writing

[11] The purpose of this definition is to permit a lawyer to use developing 
technologies that maintain an objective record of a communication that does not 
rely upon the memory of the lawyer or any other person. See OCGA § 10-12-

II.

RULE 1.2. Scope Of Representation and Allocation of Authority Between 
Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a 
client's decisions concerning the scope and objectives of representation 
and, as required by Rule 1.4, shall consult with the client as to the means
by which they are to be pursued. A lawyer may take such action on
behalf of the client as is impliedly authorized to carry out the
representation. A lawyer shall abide by a client's decision whether to
settle a matter. In a criminal case, the lawyer shall abide by the client's
decision, after consultation with the lawyer, as to a plea to be entered,
whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including
representation by appointment, does not constitute an endorsement of the
client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope and objectives of the
representation if the limitation is reasonable under the circumstances and
the client gives informed consent.

(d) A lawyer shall not either knowingly or with willful
blindness counsel a client to engage in criminal or fraudulent conduct,
nor knowingly or with willful blindness assist a client in such conduct.

However, a lawyer may discuss the legal consequences of any proposed
course of conduct with a client and may counsel or assist a client to make
a good faith effort to determine the validity, scope, meaning, or
application of the law.

The maximum penalty for a violation of this rule is disbarment.
Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this rule does not prescribe
how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.
[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might State Bar Handbook 58/298 otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and the client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty
to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.


Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be
concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Georgia Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer
must consult with the client regarding the limitations on the lawyer's conduct.

See Rule 1.4 (a) (5).

III.

RULE 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be
communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

To the extent that agreements to arbitrate disputes over fees or expenses are enforceable, a lawyer may enter into such an agreement with a client or prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the attorney’s disclosures regarding arbitration must be set out in a separate paragraph, written in a font size at least as large as the rest of the contract, and separately initialed by the client and the lawyer.

(c)

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:
(i) the outcome of the matter; and,

(ii) if there is a recovery showing:

(A) the remittance to the client;

(B) the method of its determination;

(C) the amount of the attorney fee; and

(D) if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the lawyer's firm or law office, the amount of fee received by each and the manner in which the division is determined.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and
(3) the total fee is reasonable.

The maximum penalty for a violation of this rule is a public reprimand.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

[1A] A fee can also be unreasonable if it is illegal. Examples of illegal fees are those taken without required court approval, those that exceed the amount allowed by court order or statute, or those where acceptance of the fee would be unlawful, e.g., accepting controlled substances or sexual favors as payment.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised
estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (j). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made, the terms of which might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's
ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[5A] Paragraph (b) requires informed consent to an agreement to arbitrate disputes over fees and expenses. See Rule 1.0(l). In obtaining such informed consent, the lawyer should reveal to the client or prospective client the following: (1) in an arbitration, the client or prospective client waives the right to a jury trial because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would be available in civil litigation; (4) how the costs of arbitration compare to the costs of litigation in a public court, including the requirement that the arbitrator or arbitrators be compensated; and (5) who will bear the costs of arbitration. The lawyer should also inform the client or prospective client regarding the existence and operation of the State Bar of Georgia’s Fee Arbitration Program, regardless of whether the attorney seeks an agreement to submit any future fee disputes to that program. The lawyer should also inform the client or prospective client that an agreement to arbitrate a dispute over fees and expenses is not a waiver of the right to make a disciplinary complaint regarding the lawyer.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do
not implicate the same policy concerns. See Formal Advisory Opinions 36 and 47.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well. Joint responsibility for the representation entails financial and ethical responsibility for the representation.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the State Bar of Georgia, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

IV.

RULE 1.8. Conflict of Interest: Prohibited Transactions.

(a) A lawyer shall neither enter into a business transaction with a client if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, nor shall
the lawyer knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information gained in the professional relationship with a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, grandparent, child, grandchild,
sibling, or spouse any substantial gift from a client, including a
testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer
shall not make or negotiate an agreement giving the lawyer literary or
media rights to a portrayal or account based in substantial part on
information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in
connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of
litigation, the repayment of which may be contingent on
the outcome of the matter;

(2) a lawyer representing a client unable to pay court
costs and expenses of litigation may pay those costs and
expenses on behalf of the client.

(f) A lawyer shall not accept compensation for representing a
client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's
independence of professional judgment or with the client-
lawyer relationship; and
(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims for or against the clients, nor in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented by a lawyer in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith. To the extent that agreements to arbitrate disputes over a lawyer’s liability for malpractice are enforceable, a lawyer may enter into such an agreement with a client or a prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the attorney’s disclosures regarding
arbitration must be set out in a separate paragraph, written in a font size at least as large as the rest of the contract, and separately initialed by the client and the lawyer.

(i) A lawyer related to another lawyer as parent, grandparent, child, grandchild, sibling or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer has actual knowledge is represented by the other lawyer unless his or her client gives informed consent regarding the relationship. The disqualification stated in this paragraph is personal and is not imputed to members of firms with whom the lawyers are associated.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fees or expenses as long as the exercise of the lien is not prejudicial to the client with respect to the subject of the representation; and

(2) contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5.
The maximum penalty for a violation of Rule 1.8 (b) is disbarment. The maximum penalty for a violation of Rule 1.8 (a) and 1.8 (c)-(j) is a public reprimand.

Comment

Transactions Between Client and Lawyer

[1A] As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. The client should be fully informed of the true nature of the lawyer's interest or lack of interest in all aspects of the transaction. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's informed consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.
Use of Information to the Disadvantage of the Client

[1B] It is a general rule that an attorney will not be permitted to make use of knowledge, or information, acquired by the attorney through the professional relationship with the client, or in the conduct of the client's business, to the disadvantage of the client. Paragraph (b) follows this general rule and provides that the client may waive this prohibition. However, if the waiver is conditional, the duty is on the attorney to comply with the condition.

Gifts from Clients

[2] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the objective advice that another lawyer can provide. Paragraph (c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

Literary Rights

[3] An agreement by which a lawyer acquires literary or media rights concerning the subject of the representation creates a conflict between the interest of the client and the personal interest of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an
account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraph (j) of this rule.

Financial Assistance to Clients

[4] Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above.

Payment for a Lawyer's Services from One Other Than The Client

[5] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitee (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on
the representation and in learning how the representation is progressing,
lawyers are prohibited from accepting or continuing such representations unless
the lawyer determines that there will be no interference with the lawyer's
independent professional judgment and there is informed consent from the
client. See also Rule 5.4 (c) (prohibiting interference with a lawyer's
professional judgment by one who recommends, employs or pays the lawyer to
render legal services for another).

Settlement of Aggregated Claims

[6] Paragraph (g) requires informed consent. This requirement is not met by a
blanket consent prior to settlement that the majority decision will rule.

Agreements to Limit Liability

[7] A lawyer may not condition an agreement to withdraw or the return of a
client's documents on the client's release of claims. However, this paragraph is
not intended to apply to customary qualifications and limitations in opinions
and memoranda.

[8] A lawyer should not seek prospectively, by contract or other means, to limit
the lawyer's individual liability to a client for the lawyer's malpractice. A
lawyer who handles the affairs of a client properly has no need to attempt to
limit liability for the lawyer's professional activities and one who does not
handle the affairs of clients properly should not be permitted to do so. A lawyer
may, however, practice law as a partner, member, or shareholder of a limited
liability partnership, professional association, limited liability company, or
professional corporation.

Family Relationships Between Lawyers

Arbitration

[8A] Paragraph (h) requires informed consent to an agreement to arbitrate
malpractice claims. See Rule 1.0(l). In obtaining such informed consent, the
lawyer should reveal to the client or prospective client the following: (1) in an
arbitration the client or prospective client waives the right to a jury because the
dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2)
generally, there is no right to an appeal from an arbitration decision; (3)
arbitration may not permit the broad discovery that would be available in civil
litigation; (4) how the costs of arbitration compare to the costs of litigation in a
public court, including the requirement that the arbitrator or arbitrators be
compensated; and (5) who will bear the costs of arbitration. The lawyer should
also inform the client or prospective client that an agreement to arbitrate a
dispute over fees and expenses is not a waiver of the right to make a
disciplinary complaint regarding the lawyer.

[9] Paragraph (i) applies to related lawyers who are in different firms. Related
lawyers in the same firm are governed by Rules 1.7, 1.9, and 1.10.
Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in the common law prohibition of champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for lawyer's fees and for certain advances of costs of litigation set forth in paragraph (e).

V.

RULE 7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

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

Comment

[2] This Rule governs all communications about a lawyer's services, including advertising. Whatever means are used to make known a lawyer's services, statements about them must be truthful.
Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer’s communication requires that person to take further action when, in fact, no action if required.

A communication that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case. Similarly, an unsubstantiated claim about a lawyer’s or law firm’s services or fees, or an unsubstantiated comparison of the lawyer’s or law firm’s services or fees with those of other lawyers or law firms, any be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or
qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4 (a) (4). See also Rule 8.4 (a) (6) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] Firm names, letterhead and professional designations are communications concerning a lawyer’s services. A firm may be designated by the names of all or some of its current members, by the names of retired or deceased members where there has been a succession in the firm’s identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading
A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

Lawyers may not imply or hold themselves out as practicing together in one firm when they not a firm, as defined in Rule 1.0 (g), because to do so would be false and misleading.

**RULE 7.2. Communications Concerning a Lawyer’s Services: Specific Rules**

(a) A lawyer may communicate information regarding the lawyer’s services through and media.

(b) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer’s services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual and reasonable fees or dues charged by a lawyer referral service, if the service does not engage in conduct that would violate the Rules if engaged in by a lawyer;

(3) pay the usual and reasonable fees or dues charged by a
bar-operated non-profit referral service, including a fee which is calculated as a percentage of the legal fees earned by the lawyer to whom the service has referred a matter, provided such bar-operated non-profit lawyer referral service meets the following criteria:

i. the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies who can provide the assistance the clients need. Such organization shall file annually with the Office of the General Counsel a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

ii. the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who
meet reasonable objectively determinable experience
requirements established by the bar association;

iii. the combined fees charged by a lawyer and the
lawyer referral service to a client referred by such
service shall not exceed the total charges which the
client would have paid had no service been involved;

and

iv. a lawyer who is a member of the qualified
lawyer referral service must maintain in force a policy
of errors and omissions insurance in an amount no
less than $100,000 per occurrence and $300,000 in the
aggregate.

(4) pay the usual and reasonable fees to a qualified legal
services plan or insurer providing legal services insurance
as authorized by law to promote the use of the lawyer’s
services, the lawyer’s partner or associates services so
long as the communications of the organization are not
false, fraudulent, deceptive or misleading;

(5) pay for a law practice in accordance with Rule 1.17;

(6) refer clients to another lawyer or a nonlawyer
professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive; and

(ii) the client is informed of the existence and nature of the agreement; and

(7) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.

(c) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a particular field of law by experience, specialized training or education, or is certified by a recognized and bona fide professional entity, may communicate such specialty or certification so long as the statement is not false or misleading.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.
The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] This Rule permits public dissemination of information concerning a lawyer's or law firm’s name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer’s fees are determined, including prices for specific services and payment and credit arrangements; a lawyer’s foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b) (1)-(b) (7), lawyers are not permitted to pay others for recommending the lawyer’s services. A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible “recommendations.”

[3] Paragraph (b) (1) allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime,
domain-name registrations, sponsorship fees, Internet-based advertisements, and
group advertising. A lawyer may compensate employees, agents and vendors
who are engaged to provide marketing or client development services, such as
publicists, public-relations personnel, business-development staff, television
and radio station employees or spokespersons and website designers.

[4] Paragraph (b) (7) permits lawyers to give nominal gifts as an expression of
appreciation to a person for recommending the lawyer’s services or referring a
prospective client. The gift may not be more than a token item as might be given
for holidays, or other ordinary social hospitality. A gift is prohibited if offered
or given in consideration of any promise, agreement or understanding that such
a gift would be forthcoming or that referrals would be made or encouraged in
the future.

[5] A lawyer may pay others for generating client leads, such as Internet-based
client leads, as long as the lead generator does not recommend the lawyer, any
payment to the lead generator is consistent with Rules 1.5 (e) (division of fees)
and 5.4 (professional independence of the lawyer), and the lead generator’s
communications are consistent with Rule 7.1 (communications concerning a
lawyer’s services). To comply with Rule 7.1, a lawyer must not pay a lead
generator that states, implies, or creates a reasonable impression that it is
recommending the lawyer, is making the referral without payment from the
lawyer, or has analyzed a person’s legal problems when determining which
lawyer should receive the referral.

See Comment [2] (definition of “recommendation”). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4 (a) (1) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer’s professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer
professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are
subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

Required Contact Information

[11] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

**RULE 7.3. Solicitation of Clients.**

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing
so is the lawyer’s or law firm’s pecuniary gain, unless the contact is with

   a: 

     (1) lawyer;

     (2) person who has a family, close personal, or prior
     business or professional relationship with the lawyer or
     law firm; or

     (3) person who routinely uses for business purposes the
     type of legal services offered by the lawyer.

   (c) A lawyer shall not solicit professional employment even
   when not otherwise prohibited by paragraph (b), if:

     (1) the target of the solicitation has made known to the
     lawyer a desire not to be solicited by the lawyer; or

     (2) the solicitation involves coercion, duress, fraud,
     overreaching, harassment, intimidation or undue
     influence; or

     (3) the written communication concerns an action for
     personal injury or wrongful death or otherwise relates to
     an accident or disaster involving the person to whom the
     communication is addressed or a relative of that person,
unless the accident or disaster occurred more than 30
days prior to the communication; or

(4) the lawyer knows or reasonably should know that the
physical, emotional or mental state of the person is such
that the person could not exercise reasonable judgment in
employing a lawyer.

(d) This Rule does not prohibit communications authorized by
law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may
participate with a prepaid or group legal service plan operated by an
organization not owned or directed by the lawyer that uses live person to
person contact to enroll members or sell subscription for the plan from
personal who are not known to need legal services in a particular matter
covered by the plan.

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

Comment

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment
by live person-to-person contact when significant motive for the lawyer’s doing
so is he lawyer’s or the law firm’s pecuniary gain. A lawyer’s communication
is not a solicitation if it is directed to the general public, such as through a
billboard, an Internet banner advertisement, a website or television commercial, or if it in response to a request for information or is automatically generated in response to electronic searches.

[2] “Live person-to-person contact” means in-person, fact-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential or overreaching exists when a lawyer, seeking percuniary gain, solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self interest in, the face of the lawyer’s presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information.
In particular, communications can be mailed or transmitted by email or other
electronic means that do not violate other laws. These forms of communications
make it possible for the public to be informed about the need for legal services,
and about the qualifications of available lawyers and law firms, without
subjecting the public to live person-to-person persuasion that may overwhelm a
person’s judgment.

[4] The contents of live person-to-person contact can be disputed and may not
be subject to third-party scrutiny. Consequently, they are much more likely to
approach (and occasionally cross) the dividing line between accurate
representation and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching
against a former client, or a person with whom the lawyer has a close personal,
family, business or professional relationship, or in situations in which the lawyer
is motivated by considerations other than the lawyer’s pecuniary gain. Nor is
there a serious potential for overreaching when the person contacted is a lawyer
or is known to routinely use the type of legal services involved for business
purposes. Examples include persons who routinely hire outside counsel to
represent the entity; entrepreneurs who regularly engage business, employment
law or intellectual property lawyers; small business proprietors who routinely
hire lawyers for lease or contract issues; and other people who routinely retain
lawyers for business transactions or formations.

Paragraph (b) is not intended to prohibit a lawyer from participating in
constitutionally protected activities of public or charitable legal-service
organizations or bona fide political, social, civic, fraternal, employee or trade
organizations whose purposes include providing or recommending legal
services to their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the
meaning of Rule 7.1, that involves coercion, duress, fraud, overreaching,
harassment, intimidation or undue influence within the meaning of Rule 7.3
(c)(2), or that involves contact with someone who has made known to the
lawyer a desire not to be solicited by the lawyer within the meaning of Rule
7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may
be especially vulnerable to coercion or duress is ordinarily not appropriate, for
example, the elderly, those whose first language is not English, or the disabled.

[7] This Rule does not prohibit a lawyer from contacting representatives of
organizations or groups that may be interested in establishing a group or prepaid
legal plan for their members, insureds, beneficiaries or other third parties for the
purpose of informing such entities of the availability of and details concerning
the plan or arrangement which the lawyer or lawyer's firm is willing to offer.
This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations
must not be directed to a person known to need legal services in a particular matter, but must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (c).

RULE 7.4. Reserved

RULE 7.5. Reserved
The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN RE: MOTION TO AMEND 2023-1.

The Court having considered the 2023-1 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 1.0 (Terminology and Definitions), Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), Rule 1.5 (Fees), and Rule 1.8 (Conflict of Interest: Prohibited Transactions), be amended, effective October 26, 2023. The decision on Rules 7.1 to 7.5 is hereby postponed pending further review.

The amended rules will read as follows:

PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1
GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct
Rule 1.0. TERMINOLOGY AND DEFINITIONS

(a) “Belief” or “believes” denotes that the person involved actually thought the fact in question to be true. A person’s belief may be inferred from the circumstances.

(b) “Confidential Proceedings” denotes any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) “Confirmed in writing” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (l) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(e) “Conviction” or “convicted” denotes any of the following accepted by a court, whether or not a sentence has been imposed:

(1) a guilty plea;

(2) a plea of nolo contendere;

(3) a verdict of guilty;

(4) a verdict of guilty but mentally ill; or
(5) a plea entered under the Georgia First Offender Act, OCGA § 42-8-60 et seq., or a substantially similar statute in Georgia or another jurisdiction.

(f) “Domestic Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any state or territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its rules to practice law in the State of Georgia.

(g) “Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Bar Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(h) “Foreign Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its rules to practice law in the State of Georgia.

(i) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.

(j) “Grievance” denotes an allegation of unethical conduct filed against a lawyer.

(k) “He,” “him,” or “his” denotes generic pronouns including both male and female.
(l) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(m) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from the circumstances.

(n) “Lawyer” denotes a person authorized by the Supreme Court of Georgia or its rules to practice law in the State of Georgia including persons admitted to practice in this state pro hac vice.

(o) “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203 (2).

(p) “Nonlawyer” denotes a person not authorized to practice law by either the:

(1) Supreme Court of Georgia or its rules (including pro hac vice admission), or

(2) duly constituted and authorized governmental body of any other state or territory of the United States, or the District of Columbia, or

(3) duly constituted and authorized governmental body of any foreign nation.

(q) “Notice of Discipline” denotes a notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of
Professional Conduct unless the respondent affirmatively rejects the notice.

(r) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Bar Rule 1-203(d), or a member of an association authorized to practice law.

(s) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this state. A voluntary surrender of license is tantamount to disbarment.

(t) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the rules.

(u) “Prospective Client” denotes a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.

(v) “Public Proceedings” denotes any proceeding under these rules that has been filed with the Supreme Court of Georgia.

(w) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(x) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
(y) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(z) “Respondent” denotes a person whose conduct is the subject of any disciplinary investigation or proceeding.

(aa) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

(bb) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(cc) “Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party’s interests in a particular matter.

(dd) “Willful blindness” denotes awareness of a high probability that a fact exists and deliberate action to avoid learning of the fact.

(ee) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including but not limited to handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing
and executed or adopted by a person with the intent to sign the writing.

... 

Rule 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

(c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not either knowingly or with willful blindness counsel a client to engage in criminal or fraudulent conduct, nor knowingly or with willful blindness assist a client in such conduct. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.
The maximum penalty for a violation of this rule is disbarment.

... 

Rule 1.5. FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.
(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

To the extent that agreements to arbitrate disputes over fees or expenses are enforceable, a lawyer may enter into such an agreement with a client or prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the attorney’s disclosures regarding arbitration must be set out in a separate paragraph, written in a font size at least as large as the rest of the contract, and separately initialed by the client and the lawyer.

(c)

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

(2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

(i) the outcome of the matter; and,
(ii) if there is a recovery showing:

(A) the remittance to the client;

(B) the method of its determination;

(C) the amount of the attorney fee; and

(D) if the attorney’s fee is divided with another lawyer who is not a partner in or an associate of the lawyer’s firm or law office, the amount of fee received by each and the manner in which the division is determined.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
(2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The maximum penalty for a violation of this rule is a public reprimand.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

[1A] A fee can also be unreasonable if it is illegal. Examples of illegal fees are those taken without required court approval, those that exceed the amount allowed by court order or statute, or those where acceptance of the fee would be unlawful, e.g., accepting controlled substances or sexual favors as payment.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an
understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer’s customary fee schedule is sufficient if the basis or rate of the fee is set forth.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.

Terms of Payment

[4] A lawyer may require advance payment of a fee but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (j). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made, the terms of which might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client’s interest. For example, a lawyer
should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client’s ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[5A] Paragraph (b) requires informed consent to an agreement to arbitrate disputes over fees and expenses. See Rule 1.0 (l). In obtaining such informed consent, the lawyer should reveal to the client or prospective client the following: (1) in an arbitration, the client or prospective client waives the right to a jury trial because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would be available in civil litigation; (4) how the costs of arbitration compare to the costs of litigation in a public court, including the requirement that the arbitrator or arbitrators be compensated; and (5) who will bear the costs of arbitration. The lawyer should also inform the client or prospective client regarding the existence and operation of the State Bar of Georgia’s Fee Arbitration Program, regardless of whether the attorney seeks an agreement to submit any future fee disputes to that program. The lawyer should also inform the client or prospective client that an agreement to arbitrate a dispute over fees and expenses is not a waiver of the right to make a disciplinary complaint regarding the lawyer.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the
securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns. See Formal Advisory Opinions 36 and 47.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well. Joint responsibility for the representation entails financial and ethical responsibility for the representation.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the State Bar of Georgia, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer’s fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.
Rule 1.8. CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

(a) A lawyer shall neither enter into a business transaction with a client if the client expects the lawyer to exercise the lawyer’s professional judgment therein for the protection of the client, nor shall the lawyer knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information gained in the professional relationship with a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, grandparent, child, grandchild, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.
(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or

(2) a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims for or against the clients, nor in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all claims or
pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law, and the client is independently represented by a lawyer in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith. To the extent that agreements to arbitrate disputes over a lawyer’s liability for malpractice are enforceable, a lawyer may enter into such an agreement with a client or a prospective client if the client or prospective client gives informed consent in a writing signed by the client or prospective client. The agreement to arbitrate and the attorney’s disclosures regarding arbitration must be set out in a separate paragraph, written in a font size at least as large as the rest of the contract, and separately initialed by the client and the lawyer.

(i) A lawyer related to another lawyer as parent, grandparent, child, grandchild, sibling or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer has actual knowledge is represented by the other lawyer unless his or her client gives informed consent regarding the relationship. The disqualification stated in this paragraph is personal and is not imputed to members of firms with whom the lawyers are associated.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer’s fees or expenses as long as the exercise of the lien is not
prejudicial to the client with respect to the subject of the representation; and

(2) contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5.

The maximum penalty for a violation of Rule 1.8 (b) is disbarment. The maximum penalty for a violation of Rule 1.8 (a) and 1.8 (c)-(j) is a public reprimand.

Comment

Transactions Between Client and Lawyer

[1A] As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. The client should be fully informed of the true nature of the lawyer’s interest or lack of interest in all aspects of the transaction. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client’s disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client’s informed consent, seek to acquire nearby property where doing so would adversely affect the client’s plan for investment. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities’ services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.
Use of Information to the Disadvantage of the Client

[1B] It is a general rule that an attorney will not be permitted to make use of knowledge, or information, acquired by the attorney through the professional relationship with the client, or in the conduct of the client’s business, to the disadvantage of the client. Paragraph (b) follows this general rule and provides that the client may waive this prohibition. However, if the waiver is conditional, the duty is on the attorney to comply with the condition.

Gifts from Clients

[2] A lawyer may accept a gift from a client if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the objective advice that another lawyer can provide. Paragraph (c) recognizes an exception where the client is a relative of the donor, or the gift is not substantial.

Literary Rights

[3] An agreement by which a lawyer acquires literary or media rights concerning the subject of the representation creates a conflict between the interest of the client and the personal interest of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer’s fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraph (j) of this rule.
Financial Assistance to Clients

[4] Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above.

Payment for a Lawyer’s Services from One Other Than The Client

[5] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer’s independent professional judgment and there is informed consent from the client. See also Rule 5.4 (c) (prohibiting interference with a lawyer’s professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Settlement of Aggregated Claims

[6] Paragraph (g) requires informed consent. This requirement is not met by a blanket consent prior to settlement that the majority decision will rule.
Agreements to Limit Liability

[7] A lawyer may not condition an agreement to withdraw or the return of a client’s documents on the client’s release of claims. However, this paragraph is not intended to apply to customary qualifications and limitations in opinions and memoranda.

[8] A lawyer should not seek prospectively, by contract or other means, to limit the lawyer’s individual liability to a client for the lawyer’s malpractice. A lawyer who handles the affairs of a client properly has no need to attempt to limit liability for the lawyer’s professional activities and one who does not handle the affairs of clients properly should not be permitted to do so. A lawyer may, however, practice law as a partner, member, or shareholder of a limited liability partnership, professional association, limited liability company, or professional corporation.

Arbitration

[8A] Paragraph (h) requires informed consent to an agreement to arbitrate malpractice claims. See Rule 1.0 (l). In obtaining such informed consent, the lawyer should reveal to the client or prospective client the following: (1) in an arbitration, the client or prospective client waives the right to a jury because the dispute will be resolved by an individual arbitrator or a panel of arbitrators; (2) generally, there is no right to an appeal from an arbitration decision; (3) arbitration may not permit the broad discovery that would be available in civil litigation; (4) how the costs of arbitration compare to the costs of litigation in a public court, including the requirement that the arbitrator or arbitrators be compensated; and (5) who will bear the costs of arbitration. The lawyer should also inform the client or prospective client that an agreement to arbitrate malpractice claims over fees and expenses is not a waiver of the right to make a disciplinary complaint regarding the lawyer.
Family Relationships Between Lawyers

Paragraph (i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1.9, and 1.10.

Acquisition of Interest in Litigation

Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in the common law prohibition of champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for lawyer's fees and for certain advances of costs of litigation set forth in paragraph (e).

Acquisition of Interest in Litigation

Paragraph (i) applies to related lawyers who are in different firms. Related lawyers who are in different firms, related lawyers in the same firm are governed by Rules 1.7, 1.9, and 1.10.