Chair Michael Bagley called the meeting to order at 3:06 p.m.

**Attendance:**

Committee members: Michael Bagley, R. Gary Spencer, Judge J. Antonio Del Campo, Mazie Lynn Guertin (phone), John G. Haubenreich, Patrick H. Head, R. Javoyne Hicks, Seth D. Kirschenbaum (phone), Edward B. Krugman (phone), David N. Lefkowitz (phone), Patrick E. Longan, William Thomas, Jr. (phone), Peter Werdesheim (phone), and Judge Paige Whitaker.

Executive Committee Liaison: David S. Lipscomb (phone)


Guests: Supreme Court Justices Colvin, LaGrua, Peterson, and Warren.

**Approval of Minutes:**

The Committee approved the Minutes from the January 13, 2023 meeting.

**Action Items:**

**Rule 1.8 (e)**

The Committee discussed the comments received by Bar members. By unanimous vote, the Committee voted to send the previously proposed version of the rule back to the Executive Committee.

**Rule 1.8(j)**

The Committee discussed proposed changes and agreed to adopt the general idea of the proposal. The Committee suggested making changes to the proposed comments to add a reference to Rule 1.16, and explicitly state the lawyer must withdraw from the case once a relationship commences.

Bar Counsel will provide the Committee with information regarding the constitutionality of the proposed rule under the United States and/or Georgia Constitutions.

A draft of the proposed rule with the suggested changes will be provided at the next meeting.

**Rule 4.2**

The Committee voted to adopt version one of proposed Rule 4.2 with the addition of the following language “A lawyer who is represented by counsel and also representing themselves is
proceeding pro se with the meaning of this rule.” to comment 8. R. Gary Spencer and David Lefkowitz opposed. A copy of the Rule as amended appears at the end of these minutes.

**Rule 4.3**

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

**Rule 4-209.1(b)**

The Committee voted to adopt the proposed changes. R. Gary Spencer, John Haubenreich, and R. Javoyne Hicks opposed. A copy of the Rule as amended appears at the end of these minutes.

**Rule 4-402**

By unanimous vote, the Committee voted to adopt the proposed changes. A copy of the Rule as amended appears at the end of these minutes.

**Rule 1.2 (cannabis issue)**

After discussion the Committee agreed to cease further discussion of the proposed amendment.

**Rule 4-203.1**

The Committee voted to adopt the changes to section (a). The Committee would like to further discuss the proposed changes to service by publication and service on attorneys living out of country at the next meeting.

The Committee suggested requiring attorneys to verify their contact information on their dues form. Damon will present this to the Executive Committee.

A copy of the Rule as amended appears at the end of these minutes.

**Rule 4-214**

By unanimous vote, the Committee voted to adopt the proposed changes. A copy of the Rule as amended appears at the end of these minutes.

**Use of term “counsel”**

Bar Counsel will provide the Committee with suggestions for each rule at a future meeting.

The meeting adjourned at 4:48 p.m.
RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

a. A lawyer who is representing a client or proceeding pro se 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
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.
[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.

[6A] 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.

[7] 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 lawyer's ability to monitor the case and effectively represent the client.

[8] Parties to a matter generally 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. However, a lawyer proceeding pro se in a matter may not communicate about that matter with a person that 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. A lawyer who is represented by counsel and also representing themselves is proceeding pro se within the meaning of this rule.
Rule 4-209.1. Coordinating Special Master

(b) The Supreme Court of Georgia annually shall appoint up to 20 lawyers to serve as Special Masters in disciplinary cases. The Court may reappoint lawyers appointed in prior years, although it generally is preferable for a lawyer to serve as a Special Master for no more than five consecutive years. When a case is assigned to a lawyer appointed as Special Master, such lawyer shall continue to serve as Special Master in that case until final disposition, unless the Coordinating Special Master or the Court directs otherwise, irrespective of whether such lawyer is reappointed to serve as Special Master for another year.

(c) The Coordinating Special Master and Special Masters shall serve at the pleasure of the Supreme Court of Georgia.
Rule 4-402. The Formal Advisory Opinion Board

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

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

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

(c) All appointments will maintain staggered terms. All members shall be appointed for terms of two years, subject to the following exceptions:

1. Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;
2. The members appointed from the State Disciplinary Board, State Disciplinary Review Board, and the Executive Committee shall serve for a term of one year;
(d) When a Formal Advisory Opinion Board member's term expires, it does so at the conclusion of the Bar year. The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar of Georgia following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Defense Lawyers Association, the Georgia Association of Criminal Defense Lawyers, the Young Lawyers Division of the State Bar of Georgia and the Georgia District Attorneys Association) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large Members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial members from the American Bar Association Accredited Law Schools shall be appointed to one-year terms; two of the initial law school members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(e) All members shall be eligible for immediate reappointment by the President of the State Bar of Georgia to one additional two-year term. Thereafter the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, may reappoint a member for one or more additional terms.
The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year. The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.
a. Lawyers shall inform the Membership Department of the State Bar of Georgia, in writing, of their current name, official address, email address and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official address and email address on file with the Membership Department in all efforts to contact, communicate with, and perfect service upon a lawyer. The choice of a lawyer to provide only a post office box or commercial equivalent address to the Membership Department of the State Bar of Georgia shall constitute an election to waive personal service. Notification of a change of address given to any department of the State Bar of Georgia other than the Membership Department shall not satisfy the requirement herein.
Rule 4-214. Report of the Special Master

a. Unless the Coordinating Special Master extends the deadline for good cause, the Special Master shall prepare a report within 45 days from receipt of the transcript of the evidentiary hearing. Failure of the Special Master to issue the report within 45 days shall not be grounds for dismissal. The report shall contain the following:

   1. findings of fact on the issues raised by the formal complaint;
   2. conclusions of law on the issues raised by the pleadings of the parties; and
   3. a recommendation of discipline.

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.

c. The Clerk of the State Disciplinary Boards shall file the original record in the case directly with the Supreme Court of Georgia, unless any party files with the Clerk a request for review by the State Disciplinary Review Board and exceptions to the report within 30 days of the date the report is filed as provided in Rule 4-216 et seq. The Clerk shall inform the State Disciplinary Review Board when a request for review and exceptions are filed.

d. In the event any party requests review, the responding party shall file a response to the exceptions within 30 days of the filing. Within 10 days after the receipt of a response or the expiration of the time for responding, the Clerk shall transmit the record in the case to the State Disciplinary Review Board.

e. The 30-day deadline to file exceptions or respond to exceptions may be extended up to 15 days by agreement of the parties, or by permission of the Coordinating Special Master.