Disciplinary Rules & Procedures Committee

AGENDA
April 26, 2023
Atlanta, GA

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I. Welcome (Bagley) 3

II. Approval of Minutes from 3/24/23 meeting (Bagley) 4-14

III. Action and Discussion Items (Frederick/Mittelman)
A. Bar Rule 4-201 (consider amendment to add two members-at-large to the SDB)
   i. Proposed draft of Rule 4-201 15-16

B. Bar Rule 4-221.1(e)(11) (consider amendment to allow the OGC to reveal confidential information to all agencies and jurisdictions responsible for lawyer discipline)
   i. Proposed Rule 4-221.1(e)(11) 17

C. Bar Rule 4-203.1-Uniform Service Rule subcommittee
   i. Default Memo 18-22
   ii. Current Bar Rule 4-203.1 23-24
   iii. Proposed Rule 4-203.1—Subcommittee proposal 25-28
   iv. Proposed Rule 4-203.1—OGC proposal 29-32
   v. EC approved proposed amendment to Rule 1-207
D. Rule 1.8(e)—(the EC considered the rule at its meeting on April 20, 2023, and proposed additional language which it would like for the Committee to consider before the rule goes to the BOG)
   i. EC proposed draft

IV. Informational Items (Frederick)
   A. Rule 4-214 as amended by the EC on April 20, 2023.
      i. EC proposed draft

   B. Rule 1.8 (j) (consider amending the rule to address consensual sexual lawyer-client relationships—update)
      i. Previously proposed rule

   C. Next meeting is June 9, 2023 in conjunction with Annual BOG Meeting in Savannah, GA

V. Adjourn
2022-2023

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 2023

Members
    Hon. J. Antonio DelCampo 2023
    Erin H. Gerstenzang 2023
    Mazie Lynn Guertin 2023
    John G. Haubenreich 2023
    Patrick H. Head 2023
    R. Javoyne Hicks 2023
    William Dixon James 2023
    Seth David Kirschenbaum 2023
    Catherine Koura 2024
    Edward B. Krugman 2023
    David Neal Lefkowitz 2023
    Patrick E. Longan 2023
    David O’Neal 2023
    Jabu Mariette Sengova 2023
    H. Craig Stafford 2023
    William Hickerson Thomas, Jr. 2023
    Julayaun Maria Waters 2025
    Peter Werdesheim 2024
    Patrick John Wheale 2024
    Hon. Paige Reese Whitaker 2023

Executive Committee Liaison
    David S. Lipscomb 2023

Staff Liaison
    Paula J. Frederick 2023
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)

**Staff:** Paula J. Frederick, Jenny K. Mittelman, William D. NeSmith, III, and Kathya S. Jackson.

**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 about any constitutional challenges to similar rules.

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.
(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 shall be 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;
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, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems it appropriate to 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.
Rule 4-203.1. Uniform Service Rule

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.
Rule 4-201. State Disciplinary Board

(a) The powers to investigate and discipline lawyers for violations of the Georgia Rules of Professional Conduct are hereby vested in the State Disciplinary Board.

(b) The State Disciplinary Board shall consist of the President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia; six-seven members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, and one member-at-large, appointed by the Supreme Court of Georgia; six-seven members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, and one member-at-large, appointed by the President of the State Bar of Georgia with the approval of the Board of Governors; two nonlawyer members appointed by the Supreme Court of Georgia; and two nonlawyer members appointed by the President of the State Bar of Georgia with the approval of the Board of Governors. The Court and the President of the State Bar of Georgia are encouraged to make appointments that will ensure the geographic, gender, racial, and generational diversity of the State Disciplinary Board. No State Disciplinary Board member may serve for more than two consecutive terms, including a term underway at the time this Rule goes into effect.

(1) The President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia shall serve only during the term of their office, shall serve as members ex officio, and shall not increase the quorum requirement.
(2) All other members shall be appointed for three-year terms, except as provided in paragraph (b) (3) below. When the term of appointment of a member expires, the seat shall be filled by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia with the approval of the Board of Governors, whichever appointed the member whose term has expired.

(3) Whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(4) The State Disciplinary Board shall remove a member for failure to attend meetings of the State Disciplinary Board or for other good cause, and the seat of a member so removed shall be filled as provided in paragraph (b) (3) above.

(5) At the first meeting following an Annual Meeting of the State Bar of Georgia the State Disciplinary Board shall elect a Chair and Vice-Chair.

(c) Upon request, State Disciplinary Board members shall be reimbursed for their reasonable travel expenses in attending meetings of the State Disciplinary Board. The Internal Rules of the State Disciplinary Board provide further explanation of the travel and reimbursement policies.

(d) State Disciplinary Board members may request reimbursement for postage, copying, and other expenses necessary for their work investigating cases.
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 To agencies or jurisdictions responsible for disciplinary or regulatory investigations and proceedings regarding lawyers or judges; and
12. The Unlicensed Practice of Law Department.
To: Disciplinary Rules and Procedures Committee

From: Jenny Mittelman

Date: March 20, 2023

Re: The disciplinary process leading up to default

This is a summary of all that happens before a lawyer is held in default.

1. When the grievance comes into the office, we send it to the lawyer and ask if she would like to respond. We use the official membership address.

2. If we don’t hear from the lawyer we send a wake-up letter reminding her about the grievance and we give her additional time to respond. Though we may eventually skip the screening process or the wake-up letter if the lawyer has ignored us on multiple occasions, we only do so when we know it’s futile.

3. Once we complete the screening process, we create a Notice of Investigation (NOI) that lists the potential rule violations and notifies the respondent that we’re sending the grievance to the State Disciplinary Board. We’re required to serve the NOI pursuant to Uniform Service Rule 4-203.1. First, we mail the NOI to the lawyer at her official membership address with an acknowledgement of service form, and ask her to acknowledge service. If she doesn’t acknowledge service the clerk usually calls the respondent
before arranging for personal service (either sheriff service or investigator service.) If the sheriff or investigator is unable to find the respondent and serve her at her official address, we publish once a week for two weeks in the legal newspaper in respondent’s county. We’re required to mail a copy of the service documents (again) to the respondent’s official address when we publish.

4. If the lawyer doesn’t respond within 30 days of service and at least one of the rules listed in the NOI has a maximum sanction of disbarment, the Board or Board Chair can direct us to file a motion for interim suspension. Most of the Board members try calling or emailing the respondent before recommending this step. Generally they wait much longer than 30 days. We file the motion for interim suspension using the Court’s e-filing system. The Court’s e-filing system notifies the respondent by email when we file the motion. We also serve the respondent with a copy of the motion by mail. If the Court issues an order suspending the lawyer, the e-filing system notifies the respondent (if she is an e-filer) and the Court mails a copy of the order to the respondent at her official address by regular mail and by certified mail. If the lawyer files a sworn response to the NOI the Board directs us to move to lift the interim suspension. We serve the respondent with a copy of the
motion to lift the interim suspension by mail when we file it. Also, the Court’s e-filing system notifies the respondent when we file the motion to lift if the respondent is an e-filer. When the Court issues the order lifting the suspension, the e-filing system notifies the respondent if she is an e-filer. If not, the Court mails a copy of the order to the respondent at her official address.

5. When the State Disciplinary Board directs the Office of the General Counsel to file a Formal Complaint, we file the Formal Complaint and the Petition for Appointment of Special Master using the Court’s e-filing system. That means Respondent receives a notice by email when we file. We also mail a copy of the pleadings to the respondent. When the Court enters an order appointing the special master the respondent receives notice by email if she’s an e-filer, or by regular mail if she isn’t. We then start the service process that’s required in Uniform Service Rule 4-203.1 and go through all the steps listed in #3 above. If we complete service and the respondent doesn’t file an answer within 30 days, we file a motion for default using the State Disciplinary Board (SDB) e-filing system. We mail a copy of that motion to the respondent at her official address, and she also receives e-mailed notice through the SDB e-filing system. If she doesn’t respond we
will communicate with the special master and the respondent, by mail and/or email, requesting an order finding respondent in default. If the special master enters the default, he will e-file the order using the SDB e-filing system, and will mail a copy of the order to the parties. Following the entry of the default the special master will communicate with the parties to schedule a hearing on aggravation, mitigation and appropriate discipline.

The special master then files a report and recommendation using the SDB e-filing system, and mails a copy of the report to the parties. The clerk waits 30 days from the filing of the report, then files the record with the Court using the Court’s e-filing system. The Clerk mails and emails a notice to the parties and the special master when she files the records with the Court. The parties also receive an e-filing notice when the Clerk e-files the record.

6. If the State Disciplinary Board directs the Office of the General Counsel to file a Notice of Discipline (rather than a Formal Complaint) we file it using the Court’s e-filing system and the respondent receives notice by email.

We’re required to serve the Notice of Discipline pursuant to the Uniform Service Rule as described in #3. Once we’ve served the Notice of Discipline we file a pleading called “Proof of Service” with the Court. The respondent receives notice of that filing through the Court’s e-filing system and we
serve the pleading by mail. The respondent has 30 days from the time of service to file a rejection of the Notice of Discipline. If she doesn’t reject the Notice of Discipline the Court can impose any level of discipline it deems appropriate for the conduct admitted.
Rule 4-203.1. Uniform Service Rule

a. Lawyers shall inform the Membership Department of the State Bar of Georgia, in writing, of their current name, official address and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official 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.

b. In all matters requiring personal service under Part IV of the Bar Rules, service may be perfected in the following manner:

1. Acknowledgment of Service: An acknowledgment of service from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

2. Written Response from Respondent: A written response from the respondent or respondent’s counsel shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

3. In the absence of an acknowledgment of service or a written response from the respondent or respondent’s counsel, and subject to the provisions of subparagraph (b)(4) below, the respondent shall be served in the following manner:

i. Personal Service: Service may be accomplished by the Sheriff or any other person authorized to serve a summons under the provisions of the Georgia Civil Practice Act, as approved by the Chair of the State Disciplinary Board or the Chair’s designee. Receipt of a Return of Service Non Est Inventus shall constitute conclusive proof that service cannot be perfected by personal service.

ii. Service by Publication: If personal service cannot be perfected, or when the respondent has only provided a post office box or commercial equivalent address to the Membership Department and the respondent has not

Current Bar Rule 4-203.1
acknowledged service within 10 days of a mailing to respondent’s post office box or commercial equivalent address, service may be accomplished by publication once a week for two weeks in the legal organ of the county of respondent’s address, as shown on the records of the Membership Department of the State Bar of Georgia, and, contemporaneously with the publication, mailing a copy of the service documents by first class mail to respondent’s address as shown on the records of the Membership Department of the State Bar of Georgia.

4. When it appears from an affidavit made by the Office of the General Counsel that the respondent has departed from the State, or cannot, after due diligence, be found within the State, or seeks to avoid the service, the Chair of the State Disciplinary Board, or the Chair’s designee, may authorize service by publication without the necessity of first attempting personal service. The affidavit made by the Office of the General Counsel must demonstrate recent unsuccessful attempts at personal service upon the respondent regarding other or related disciplinary matters and that such personal service was attempted at respondent’s address as shown on the records of the Membership Department of the State Bar of Georgia.

c. Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a respondent represented by a lawyer, the service shall be made upon the respondent’s lawyer. Service upon the respondent’s lawyer or upon an unrepresented respondent shall be made by hand-delivery or by delivering a copy or mailing a copy to the respondent’s lawyer or to the respondent’s official address on file with the Membership Department, unless the respondent’s lawyer specifies a different address for the lawyer in a filed pleading. As used in this Rule, the term “delivering a copy” means handing it to the respondent’s lawyer or to the respondent, or leaving it at the lawyer’s or respondent’s office with a person of suitable age or, if the office is closed or the person to be served has no office, leaving it at the person’s dwelling house or usual place of abode with some person of suitable age and discretion. Service by mail is complete upon mailing and includes transmission by U.S. Mail, or by a third-party commercial carrier for delivery within three business days, shown by the official postmark or by the commercial carrier’s transmittal form. Proof of service may be made by certificate of a lawyer or of his employee, written admission, affidavit, or other satisfactory proof. Failure to make proof of service shall not affect the validity of service.
Rule 4-203.1. Uniform Service Rule *(Subcommittee proposal)*

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.

b. In all matters requiring personal service under Part IV of the Bar Rules, service may be perfected in the following manner:

1. Acknowledgment of Service: An acknowledgment of service from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

2. Written Response from Respondent: A written response from the respondent or respondent’s counsel shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

3. In the absence of an acknowledgment of service or a written response from the respondent or respondent’s counsel, and subject to the provisions of subparagraph (b) (4) below, the respondent shall be served in the following manner:
Proposed Rule 4-203.1—Subcommittee proposal

DRPC approved the changes in purple at its last meeting.

i. Personal Service: Service may be accomplished by the Sheriff or any other person authorized to serve a summons under the provisions of the Georgia Civil Practice Act, as approved by the Chair of the State Disciplinary Board or the Chair’s designee.

Receipt of a Return of Service Non Est Inventus shall constitute conclusive proof that service cannot be perfected by personal service.

ii. Service by Publication: When it appears from an affidavit made by the Office of the General Counsel that the respondent has departed from the State, cannot after due diligence be found at respondent’s address as shown in the records of the Membership Department of the State Bar of Georgia or seeks to avoid service, the Chair of the State Disciplinary Board or the Chair’s designee may authorize service by publication. If authorized, personal service cannot be perfected, or when the respondent has only provided a post office box or commercial equivalent address to the Membership Department and the respondent has not acknowledged service within 10 days of a mailing to respondent’s post office box or commercial equivalent address, service may be accomplished by publication once a week for two weeks in the legal organ of the county of respondent’s address, as shown on the records of the Membership Department of the State Bar of Georgia, and, contemporaneously with the publication, the State Bar of Georgia shall mailing a copy of the service documents by first class mail to respondent’s address as shown on the records of the Membership Department of the State Bar of Georgia and
shall email a copy of the service documents to respondent’s email address as shown in the records of the Membership Department of the State Bar of Georgia.

4. When it appears from an affidavit made by the Office of the General Counsel that the respondent has departed from the State, or cannot, after due diligence, be found within the State, or seeks to avoid the service, the Chair of the State Disciplinary Board, or the Chair’s designee, may authorize service by publication without the necessity of first attempting personal service. The affidavit made by the Office of the General Counsel must demonstrate recent unsuccessful attempts at personal service upon the respondent regarding other or related disciplinary matters and that such personal service was attempted at respondent’s address as shown on the records of the Membership Department of the State Bar of Georgia.

4. When a respondent’s address as shown in the records of the Membership Department is not in the United States, the Office of the General Counsel may serve the respondent by mailing and emailing copies of the service documents to respondent’s official address and email address on file with the Membership Department of the State Bar of Georgia. Service is complete upon mailing and emailing the documents.

c. Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a respondent represented by a lawyer, the service shall be made upon the respondent’s lawyer. Service upon the respondent’s lawyer or upon an unrepresented respondent shall be made by hand-delivery or by delivering a copy or mailing a copy to the respondent’s lawyer or to the respondent’s official
address on file with the Membership Department, unless the respondent’s lawyer specifies a different address for the lawyer in a filed pleading. As used in this Rule, the term “delivering a copy” means handing it to the respondent’s lawyer or to the respondent, or leaving it at the lawyer’s or respondent’s office with a person of suitable age or, if the office is closed or the person to be served has no office, leaving it at the person’s dwelling house or usual place of abode with some person of suitable age and discretion. Service by mail is complete upon mailing and includes transmission by U.S. Mail, or by a third-party commercial carrier for delivery within three business days, shown by the official postmark or by the commercial carrier’s transmittal form. Proof of service may be made by certificate of a lawyer or of his employee, written admission, affidavit, or other satisfactory proof. Failure to make proof of service shall not affect the validity of service.
Rule 4-203.1. Uniform Service Rule (OGC proposal)

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.

b. In all matters requiring personal service under Part IV of the Bar Rules, service may be perfected in the following manner:
   1. Acknowledgment of Service: An acknowledgment of service from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.
   2. Written Response from Respondent: A written response from the respondent or respondent’s counsel shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.
   3. In the absence of an acknowledgment of service or a written response from the respondent or respondent’s counsel, and subject to the provisions of subparagraph (b) (4) below, the respondent shall be served in the following manner:

Proposed Rule 4-203.1—OGC proposal
DRPC approved the changes in purple at its last meeting.
i. Personal Service: Service may be accomplished by the Sheriff or any other person authorized to serve a summons under the provisions of the Georgia Civil Practice Act, as approved by the Chair of the State Disciplinary Board or the Chair’s designee. Receipt of a Return of Service Non Est Inventus shall constitute conclusive proof that service cannot be perfected by personal service.

ii. Service by Publication: If the State Bar of Georgia is unable to personally serve the respondent at respondent’s address, as shown on the records of the Membership Department of the State Bar of Georgia, service cannot be perfected, or when the respondent has only provided a post office box or commercial equivalent address to the Membership Department and the respondent has not acknowledged service within 10 days of a mailing to respondent’s post office box or commercial equivalent address, service may be accomplished by publication once a week for two weeks in the legal organ of the county of respondent’s address, as shown on the records of the Membership Department of the State Bar of Georgia, and, contemporaneously with the publication, the State Bar of Georgia shall mailing a copy of the service documents by first class mail to respondent’s address as shown on the records of the Membership Department of the State Bar of Georgia and shall email a copy of the service documents to respondent’s email address as shown in the records of the Membership Department of the State Bar of Georgia.

Proposed Rule 4-203.1—OGC proposal
DRPC approved the changes in purple at its last meeting.
4. When it appears from an affidavit made by the Office of the General Counsel that the respondent has departed from the State, or cannot, after due diligence, be found within the State, or seeks to avoid the service, the Chair of the State Disciplinary Board, or the Chair’s designee, may authorize service by publication without the necessity of first attempting personal service. The affidavit made by the Office of the General Counsel must demonstrate recent unsuccessful attempts at personal service upon the respondent regarding other or related disciplinary matters and that such personal service was attempted at respondent’s address as shown on the records of the Membership Department of the State Bar of Georgia.

4.5. When a respondent’s address is not in the United States, as shown in the records of the Membership Department of the State Bar of Georgia, the State Bar of Georgia may serve the respondent by mailing and emailing copies of the service documents to respondent’s address and email address on file with the Membership Department of the State Bar of Georgia. Service is complete upon mailing and emailing the documents.

c. Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a respondent represented by a lawyer, the service shall be made upon the respondent’s lawyer. Service upon the respondent’s lawyer or upon an unrepresented respondent shall be made by hand-delivery or by delivering a copy or mailing a copy to the respondent’s lawyer or to the respondent’s official address on file with the Membership Department, unless the respondent’s lawyer specifies a different address for the lawyer in a filed pleading. As
used in this Rule, the term “delivering a copy” means handing it to the respondent’s lawyer or to the respondent, or leaving it at the lawyer’s or respondent’s office with a person of suitable age or, if the office is closed or the person to be served has no office, leaving it at the person’s dwelling house or usual place of abode with some person of suitable age and discretion. Service by mail is complete upon mailing and includes transmission by U.S. Mail, or by a third-party commercial carrier for delivery within three business days, shown by the official postmark or by the commercial carrier’s transmittal form. Proof of service may be made by certificate of a lawyer or of his employee, written admission, affidavit, or other satisfactory proof. Failure to make proof of service shall not affect the validity of service.
Rule 1-207. Official Address and Change of Address

All members of the State Bar of Georgia shall keep maintain with the membership department of the State Bar of Georgia informed of their current name, an official address. A member’s official address must contain the member’s current name, mailing address, email address, and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official address given for purposes of notice by the membership department Court and failure of the Bar. Failure on the part of a member to notify the membership department may have of any changes to their official address may result in adverse consequences to a member.

The choice of a member to use only a post office box address on the State Bar of Georgia membership records shall constitute an election to waive personal service in any proceedings between the bar and the member. Notification given to any department of the State Bar of Georgia other than the membership department shall not satisfy this requirement.
PROPOSED CHANGE-REDLINE

Rule 1-207. Official Address and Change of Address

All members of the State Bar of Georgia shall maintain with the membership department of the State Bar of Georgia an official address. A member’s official address must contain the member’s current name, mailing address, email address, and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official address for purposes of notice by the Court and the Bar.

Failure on the part of a member to notify the membership department of any changes to their official address may result in adverse consequences for a member.

The choice of a member to use only a post office box address on the State Bar of Georgia membership records shall constitute an election to waive personal service in any proceedings between the bar and the member. Notification given to any department of the State Bar of Georgia other than the membership department shall not satisfy this requirement.
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; 

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; 

or

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

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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.

EC changes are bold and double underlined.
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.

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.

. . .
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 by up to 15 days by written agreement of the parties, or by written permission of the Coordinating Special Master.
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

The changes in green are currently pending with the Court.
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 have sexual relations with a client unless a consensual sexual
relationship existed between them when the client-lawyer relationship commenced.

k. 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

The changes in green are currently pending with the Court.
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.

The changes in green are currently pending with the Court.
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

The changes in green are currently pending with the Court.
[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 a dispute over fees and expenses is not a waiver of the right to make a disciplinary complaint regarding the lawyer.

Family Relationships Between Lawyers

[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.

The changes in green are currently pending with the Court.
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).

Client-Lawyer Sexual Relationships

[11] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship may be unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[12] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the

The changes in green are currently pending with the Court.
lawyer should consider whether the lawyer’s ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[13] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization’s legal matters.