Disciplinary Rules and Procedures Committee  
Meeting of April 26, 2023  
Atlanta, Georgia  

MINUTES  

Chair Michael Bagley called the meeting to order at 12:37 p.m.  

Attendance:  
Committee members: Michael Bagley, Erin H. Gerstenzang, Mazie Lynn Guertin (zoom), John G. Haubenreich (zoom), Patrick H. Head, R. Javoyne Hicks (zoom), Catherine Koura, Edward B. Krugman (zoom), David N. Lefkowitz (zoom), Patrick E. Longan (zoom), William Thomas, Jr., and Judge Paige Whitaker.  
Executive Committee Liaison: David S. Lipscomb  
Guests: Supreme Court Justices Bethel and Warren.  

Approval of Minutes:  
The Committee approved the March 24, 2023 Minutes as revised.  

Action Items:  

**Rule 4-201**  
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 4-221.1**  
The Committee discussed the proposed changes and made some suggestions. A draft of the proposed rule with the suggested changes will be provided at the next meeting.  

**Rule 4-203.1**  
By unanimous vote, the Committee voted to adopt the proposed changes provided by the Office of the General Counsel. A copy of the Rule as amended appears at the end of these minutes.  

**Rule 1.8(e)**  
By unanimous vote, the Committee voted to adopt the Executive Committee’s proposed changes to the DRPC’s previously approved draft. A copy of the Rule as amended by EC will be provided to the BOG for approval. A copy of the Rule as amended appears at the end of these minutes (EC changes are bold and double underlined).  

DRPC 4/26/23 Minutes
**Rule 4-214(e)**

By unanimous vote, the Committee voted to adopt the Executive Committee’s proposed changes to the DRPC’s previously approved draft. A copy of the Rule as amended by the EC will be provided to the BOG for approval. A copy of the Rule as amended appears at the end of these minutes (EC changes are bold and double underlined).

**Rule 1.8(j)**

Bar Counsel will provide the Committee with information about the constitutionality of the proposed changes. A draft of the proposed rule with the suggested changes from a previous meeting will be provided at the next meeting.

The meeting adjourned at 1:35 p.m.
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 4-203.1. 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:
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.
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 1.8 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 ... 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.
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.