I. Welcome (Bagley) 3

II. Approval of Minutes from 4/26/23 meeting (Bagley) 4-16

III. Action and Discussion Items (Frederick/Mittelman)
   A. Bar Rule 4-221.1(e) *(consider amending the rule to allow the OGC to reveal confidential information to all agencies and jurisdictions responsible for lawyer discipline)*
      i. Proposed Rule 4-221.1 (e) 17
   
   B. Rule 1.8 (j) *(consider amending the rule to address consensual sexual lawyer-client relationships—update)*
      i. Proposed Rule 1.8 (j) 18-19
   
   C. Use of the term “counsel” *(The Committee asked Bar staff to identify every time the word “counsel” is used in the rules, so that it could decide whether to substitute the word “lawyer” instead. More than 20 rules refer to “counsel.” One alternative is to define it so that it is synonymous with “lawyer” when used as a noun.)*
      i. Proposed changes to the rules 20-29
D. Rule 4-204.3 *(consider amending the rule to convert interim suspension to permanent suspension when there is no response)*

i. Rule 4-204.3  
ii. Rule 4-219  
iii. Indiana Rule 23 Section 10.1

IV. Adjourn
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 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).
**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(i)**

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 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.
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;

[10.1] The Unlicensed Practice of Law Department;

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

[12] The Unlicensed Practice of Law Department.

…
RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

…

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

…

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 beginning a sexual relationship with a
current client regardless of whether the relationship is consensual and regardless of the absence
of prejudice to the client. A lawyer who engages in sexual relations with a client should promptly
withdraw from the representation in accordance with Rule 1.16.

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

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

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

Rule 1.9 comment 4

DRPC 6/9/23 meeting
Proposed changes to rules re: use of the term “counsel”
[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change lawyers counsel.

Rule 1.13 comment 14

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

Rule 1.14 comment 10

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

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

... 

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

Rule 1.17(c)(3) and comment 5

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

... 

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

Rule 3.3 comment 7

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

Rule 3.7 comment 3

DRPC 6/9/23 meeting
Proposed changes to rules re: use of the term “counsel”
Paragraph (a) (1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a) (2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with a new lawyer to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Rule 3.8(b), and comments 7 and 8

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

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

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

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

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

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

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

[6] In the event the person with whom the lawyer communicates is not known to be
represented by counsel in the matter, the lawyer's communications are subject to Rule
4.3. (no change)
[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 represented 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. (no change)

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

 Rule 4.3 (b) and comment 2

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

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

Rule 6.1 comment 3

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

Rule 6.2 comments 2 and 3

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

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

Rule 6.5 comment 2

[2] A lawyer who provides free short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the

DRPC 6/9/23 meeting
Proposed changes to rules re: use of the term “counsel”
circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of a lawyer counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

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

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

…

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

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

3. At all stages of the proceeding, both the respondent and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints, and certificates for and in behalf of the State Bar of Georgia and the State Disciplinary Board.

**Rule 4-214(b) (no changes)**

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

**Rule 4-219 (b)(1)**

DRPC 6/9/23 meeting
Proposed changes to rules re: use of the term “counsel”
(1) After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within 30 days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within 45 days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court of Georgia, upon its own motion or upon motion of the Office of the General Counsel, and after 10 days’ notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interests. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

Rule 4-221(b) (no changes)

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

Rule 4-221.3

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

Rule 4-224 (d) (no changes)

(d) Retention of Records. Upon application to the State Disciplinary Board by the Office of the General Counsel, for good cause shown, with notice to the respondent and an opportunity to be heard, records

DRPC 6/9/23 meeting

Proposed changes to rules re: use of the term “counsel”
which would otherwise be expunged under this Rule may be retained for such additional period of time not exceeding three years as the Board deems appropriate. Counsel may seek a further extension of the period for which retention of the records is authorized whenever a previous application has been granted for the maximum period permitted hereunder.
Rule 4-204.3. Answer to Notice of Investigation Required

a. The respondent shall deliver to the State Disciplinary Board member assigned to investigate the matter a written response under oath to the Notice of Investigation within 30 days of service.

b. The written response must address specifically all of the issues set forth in the Notice of Investigation.

c. The State Disciplinary Board member assigned to investigate the matter may, in the State Disciplinary Board member’s discretion, grant extensions of time for the respondent’s answer. Any request for extension of time must be made in writing, and the grant of an extension of time must also be in writing. Extensions of time shall not exceed 30 days and should not be routinely granted.

d. In cases where the maximum sanction is disbarment or suspension and the respondent fails to properly respond within the time required by these Rules, the Office of the General Counsel may seek authorization from the Chair or Vice-Chair of the State Disciplinary Board to file a motion for interim suspension of the respondent.

1. When an investigating member of the State Disciplinary Board notifies the Office of the General Counsel that the respondent has failed to respond and that the respondent should be suspended, the Office of the General Counsel shall, with the approval of the Chair or Vice-Chair of the State Disciplinary Board, file a Motion for Interim Suspension of the respondent. The Supreme Court of Georgia shall enter an appropriate order.

2. When the State Disciplinary Board member and the Chair or Vice-Chair of the State Disciplinary Board determine that a respondent who has been suspended for failure to respond has filed an appropriate response and should be reinstated, the Office of the General Counsel shall file a Motion to Lift Interim Suspension. The Supreme Court of Georgia shall enter an appropriate order. The determination that an adequate response has been filed is within the discretion of the investigating State Disciplinary Board member and the Chair of the State Disciplinary Board.
Rule 4-219. Publication and Protective Orders

a. In cases in which a lawyer is publicly reprimanded, suspended, disbarred, or voluntarily surrenders his license, the Office of the General Counsel shall publish notice of the discipline in a local newspaper or newspapers. The Office of the General Counsel shall publish notice of all public discipline on the official State Bar of Georgia website, including the respondent’s full name and business address, the nature of the discipline imposed and the effective dates.

b.

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

2. After a final judgment of disbarment or suspension under Part IV of these Rules the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not represent himself
as a lawyer or person with similar status and shall not provide any legal advice to clients of the law office.
Indiana Rules for Admission to the Bar and the Discipline of Attorneys

Rule 23--Section 10.1. Noncooperation with Disciplinary Investigation

(a) Duty to cooperate. It shall be the duty of every attorney to cooperate with an investigation by the Disciplinary Commission, accept service, and comply with the provisions of this Rule.

(b) Failure to cooperate. The failure to: (1) respond to a grievance under this Rule; (2) comply with any written demand from the Executive Director under this Rule; (3) accept certified mail from the Disciplinary Commission that is sent to the attorney's official address of record with the Executive Director of the Indiana Office of Admissions and Continuing Education and that requires a written response under this Rule; (4) comply with a subpoena issued pursuant to this Rule; or (5) unexcused failure to appear at any hearing on the matter under investigation shall be deemed failure to cooperate with an investigation by the Disciplinary Commission.

(c) Suspension for noncooperation. A respondent who fails to cooperate with an investigation by the Disciplinary Commission may be subject to suspension from the practice of law.

1. Show cause order. Upon the filing by the Disciplinary Commission of a “Verified Petition for Noncooperation Suspension,” the Supreme Court may issue an order directing the respondent to respond within ten (10) days of service of the order and to show cause why the respondent should not be immediately suspended for failure to cooperate with the disciplinary process. Service upon the respondent shall be made pursuant to Section 12(c). To comply with the show cause order, the respondent shall, within ten days of service: (1) file a response to the show cause order with the Supreme Court Clerk; and (2) cure the respondent’s failure to cooperate with the investigation (unless the alleged failure is contested in good faith in the response filed with the Supreme Court Clerk).

2. Entry of noncooperation suspension order. Upon a determination that the respondent has failed to cooperate with an investigation by the Disciplinary Commission, the Supreme Court may enter an order of noncooperation suspension. Upon this suspension from the practice of law, the respondent shall comply with the requirements of Section 26.

3. Certification of cooperation. If the respondent complies with the demand from the Disciplinary Commission or Executive Director, the Executive Director shall certify to the Supreme Court that the respondent has cooperated with the investigation. Upon the filing of the certification, the Supreme Court may enter an order dismissing the proceeding as moot. If a noncooperation suspension has taken place...
effect, the order shall also direct the Executive Director of the Indiana Office of Admissions and
Continuing Education to adjust the respondent’s status on the Roll of Attorneys to reflect that the
respondent is no longer suspended, provided that no other suspension is in effect. Any outstanding
order to pay costs shall remain in effect, and the Disciplinary Commission may, if appropriate, seek costs.

(4) *Conversion to indefinite suspension.* On motion by the Disciplinary Commission and order of the
Supreme Court, a noncooperation suspension that lasts for more than ninety (90) days may be converted
into indefinite suspension, after which the respondent may seek reinstatement only pursuant to Section
18(b) of this Rule.

(5) *Repeated failures to cooperate.* If the respondent has been the subject of two or more prior petitions
for noncooperation suspension within the preceding 12 months, the Disciplinary Commission may
include in its Petition for Noncooperation Suspension a request that the Supreme Court issue an order of
indefinite suspension. (This request shall not delay the entry of a noncooperation suspension order
under (c)(2) above.) Upon such a request, the Supreme Court may issue an order directing the
respondent to respond in writing within ten (10) days of service of the order and show cause why the
respondent should not be immediately suspended for an indefinite period for repeatedly failing to
cooperate with the disciplinary process. Unless the respondent shows good cause for a different
disposition, the Supreme Court may enter an order of indefinite suspension, whether or not a
noncooperation suspension is then in effect, and the respondent may seek reinstatement only pursuant
to Section 18(b) of this Rule.

(d) *Costs.* Upon the disposition of any Petition for Noncooperation Suspension due to dismissal because
the respondent cooperated, or due to suspension, disbarment, or resignation in any proceeding, the
Disciplinary Commission may seek an order reimbursing the Disciplinary Commission in the amount of
$500 plus out-of-pocket expenses for its time and effort in seeking the suspension, in addition to all
other costs and expenses provided for by Section 21 of this Rule. An attorney who fails to pay this
assessment by the due date of the annual registration fee required by Admission and Discipline Rule 2(b)
shall be subject to an order of suspension pursuant to Section 21.