

Disciplinary Rules and Procedures Committee
Meeting of January 10, 2020
Atlanta, Georgia

MINUTES

Chair John Haubenreich called the meeting to order at 12:30 p.m.

Attendance:

Committee members: John G. Haubenreich, David Lipscomb, H. Michael Bagley, Hon. J. Antonio DelCampo, Erin Gerstenzang, Patrick H. Head, R. Javoyné Hicks, William Keogh, III, Seth Kirschenbaum, Edward B. Krugman (phone), David N. Lefkowitz (phone), Patrick E. Longan (phone), Jonathan Pannell (phone), R. Gary Spencer, and Hon. Paige Reese Whitaker.

Staff: Paula J. Frederick, Jenny K. Mittelman, Andreea Morrison, and Kathya S. Jackson.

Approval of Minutes:

The Committee approved the Minutes from the September 19, 2019 meeting.

Informational Item:

ABA changes to advertising rules

The Committee decided to table the issue until its next meeting. Paula Frederick will provide an annotated version where the Georgia rules fit into the ABA rules and comments.

Action Items:

Rule 7.5

The Committee decided to table the issue and address it along with the other advertising rules at its next meeting. The Office of the General Counsel will contact Greg Beck and inform him that the Committee is considering his issue.

Use of term “grievance”

The Committee made the following amendments to distinguish between a grievance form and an investigation.

Rule 1.0 (o)

- The Committee voted to add a definition of Memorandum of Grievance. It will read: “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203(2).”
- The Committee voted to remove “Memorandum of Grievance” from (j).

Rule 9.3

- The Committee voted to replace “grievance filed under” with “matter pursuant to.”

Rule 4-202

- The Committee voted to amend section (a) so it now reads: “The Office of the General Counsel may begin an investigation upon receipt of a Memorandum of Grievance, an Intake Form from the Client Assistance Program, or credible information from any source. If the investigation is based upon receipt of credible information the Office of the General Counsel must first notify the respondent lawyer and provide a written description of the information that serves as the basis for the investigation.”
- The Committee voted to amend section (b) so it now reads: “The Office of the General Counsel may also deliver the information from any source to the State Disciplinary Board for initiation of a grievance under Rule 4-203 (2).”
- The Committee voted to amend section (c) so it now reads: “The Office of the General Counsel shall be empowered to collect evidence and information concerning any matter under investigation. The screening process may include forwarding information received to the respondent so that the respondent may respond.”
- The Committee voted to replace “grievance(s)” with “matter(s)” in the first sentence of sections (e) and (f).
- The Committee voted to remove the last sentence of section (e).
- The Committee previously voted to change “Consumer Assistance Program” to “Client Assistance Program.” in section (f) at its September 19, 2019 meeting. The changes are currently pending for approval.

Rule 4-203

- The Committee voted to replace “any grievance” with “the information” in the second sentence of section (1).
- The Committee voted to amend section (2) so it now reads: “to initiate grievances on its own motion, to require additional information from a complainant, where appropriate, and to dismiss and reject matters that seem unjustified, frivolous, or patently unfounded.”
- The Committee voted to replace “grievance” with “matter” in section (3).
- The Committee voted to amend section (5) so it now reads: “to conduct Probable Cause investigations, to collect evidence and information concerning matters under investigation, and to certify matters to the Supreme Court of Georgia for hearings by Special Masters as hereinafter provided;”

Rule 4-204

- The Committee voted to amend “grievance” to “matter” in the first sentence of section (a).
- The Committee previously voted to change “Consumer Assistance Program” to “Client Assistance Program.” in section (a)(5) at its September 19, 2019 meeting. The changes are currently pending for approval.

Rule 4-204.1

- The Committee voted to add “or written description pursuant to Rule 4-202(a)” to sections (a)(1) and (a)(2).
- The Committee voted to amend “grievance” to “matter” in section (a)(4).

Rule 4-204.3

- The Committee voted to amend “grievance” to “matter” in sections (a) and (c).

Rule 4-208.2

- The Committee voted to add “or written description pursuant to Rule 4-202(a)” to section (a)(6).

Rule 4-208.4

- The Committee voted to amend “grievance” to “matter” in section (c).

Rule 4-222

- The Committee voted to add “or written description pursuant to Rule 4-202(a)” after Memorandum of Grievance in the first sentence in section (a).
- The Committee previously voted to change “Consumer Assistance Program” to “Client Assistance Program.” in section (a) at its September 19, 2019 meeting. The changes are currently pending for approval.
- The Committee voted to amend section (b) so it now reads: “Referral of a matter to the State Disciplinary Board shall occur within 12 months of receipt of the Memorandum of Grievance by the Office of the General Counsel or notification to the Respondent of the written description pursuant to Rule 4-202(a).”

Rule 4-223

- The Committee voted to replace “grievance” with “matter being investigated” in section (b).

Rule 4-224

- The Committee voted to amend “grievance” to “matter” in sections (a), (a)(1), (a)(2), (c), and (f).
- The Committee voted to remove “filed” in section (f).
- The Committee previously voted to change “Consumer Assistance Program” to “Client Assistance Program.” in section (f) at its September 19, 2019 meeting. The changes are currently pending for approval.

Client Security Fund Rule 10-106

- The Committee voted to remove “of a grievance filed with the State Disciplinary Board of the State Bar of Georgia” from section (c).

Rule 8.4

The Committee voted to replace section (b)(1) with a reference to Rule 1.0 (e) to address the inconsistency of the term conviction in Rules 1.0 (e) and Rule 8.4 (b). Seth Kirschenbaum opposed.

The next meeting will be in March 2020.

Revisions as approved:

RULE 1.0 TERMINOLOGY AND DEFINITIONS.

- (a) “Belief” or “believes” denotes that the person involved actually thought the fact in question to be true. A person’s belief may be inferred from the circumstances.
- (b) “Confidential Proceedings” denotes any proceeding under these rules which occurs prior to a filing in the Supreme Court of Georgia.
- (c) “Confirmed in writing” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (l) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (d) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.
- (e) “Conviction” or “convicted” denotes any of the following accepted by a court, whether or not a sentence has been imposed:
 - 1. a guilty plea;
 - 2. a plea of nolo contendere;
 - 3. a verdict of guilty;
 - 4. a verdict of guilty but mentally ill; or
 - 5. A plea entered under the Georgia First Offender Act, OCGA § 42-8-60 et seq., or a substantially similar statute in Georgia or another jurisdiction.
- (f) “Domestic Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any state or territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.
- (g) “Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Bar Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

- (h) “Foreign Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.
- (i) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.
- (j) “Grievance” denotes an allegation of unethical conduct filed against a lawyer.
- (k) “He,” “Him” or “His” denotes generic pronouns including both male and female.
- (l) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (m) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.
- (n) “Lawyer” denotes a person authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia including persons admitted to practice in this state pro hac vice.
- (o) “Memorandum of Grievance” denotes an allegation of unethical conduct against a lawyer filed in writing with the Office of the General Counsel and containing the name and signature of the complainant or initiated pursuant to Rule 4-203 (2).
- (p) “Nonlawyer” denotes a person not authorized to practice law by either the:
 - 1. Supreme Court of Georgia or its rules (including pro hac vice admission), or
 - 2. duly constituted and authorized governmental body of any other state or territory of the United States, or the District of Columbia, or
 - 3. duly constituted and authorized governmental body of any foreign nation.
- (q) “Notice of Discipline” denotes a notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.
- (r) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Bar Rule 1-203 (d), or a member of an association authorized to practice law.
- (s) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this state. A voluntary surrender of license is tantamount to disbarment.

- (t) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the rules.
- (u) "Prospective Client" denotes a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.
- (v) “Public Proceedings” denotes any proceeding under these rules that has been filed with the Supreme Court of Georgia.
- (w) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (x) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (y) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (z) “Respondent” denotes a person whose conduct is the subject of any disciplinary investigation or proceeding.
- (aa) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.
- (bb) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (cc) “Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.
- (dd) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including but not limited to handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A “signed” writing

includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

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

Confirmed in Writing

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

Firm

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

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

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

Fraud

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

Informed Consent

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

represented by other counsel in giving the consent should be assumed to have given informed consent.

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

Screened

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

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

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

Writing

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

RULE 9.3 COOPERATION WITH DISCIPLINARY AUTHORITY

During the investigation of a matter pursuant to these Rules, the lawyer complained against shall respond to disciplinary authorities in accordance with State Bar Rules.

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

Comment

[1] Much of the work in the disciplinary process is performed by volunteer lawyers and lay persons. In order to make good use of their valuable time, it is imperative that the lawyer complained against cooperate with the investigation. In particular, the lawyer must file a sworn response with the member of the Investigative Panel charged with the responsibility of investigating the complaint.

[2] Nothing in this Rule prohibits a lawyer from responding by making a Fifth Amendment objection, if appropriate. However, disciplinary proceedings are civil in nature and the use of a Fifth Amendment objection will give rise to a presumption against the lawyer.

Rule 4-202 Receipt of Grievances; Initial Review by Bar Counsel

- (a) The Office of the General Counsel may begin an investigation upon receipt of a Memorandum of Grievance, an Intake Form from the Client Assistance Program, or credible information from any source. If the investigation is based upon receipt of credible information the Office of the General Counsel must first notify the respondent lawyer and provide a written description of the information that serves as the basis for the investigation.

- (b) The Office of the General Counsel may also deliver the information from any source to the State Disciplinary Board for initiation of a grievance under Rule 4-203 (2).
- (c) The Office of the General Counsel shall be empowered to collect evidence and information concerning any matter under investigation. The screening process may include forwarding information received to the respondent so that the respondent may respond.
- (d) The Office of the General Counsel may request the Chair of the State Disciplinary Board to issue a subpoena as provided by OCGA § 24-13-23 requiring a respondent or a third party to produce documents relevant to the matter under investigation. Subpoenas shall be enforced in the manner provided at Rule 4-221 (c).
- (e) Upon completion of its screening of a matter, the Office of the General Counsel shall be empowered to dismiss those matters that do not present sufficient merit to proceed.
- (f) Those matters that appear to allege a violation of Part IV, Chapter 1 of the Georgia Rules of Professional Conduct may be forwarded to the State Disciplinary Board pursuant to Rule 4-204. In lieu of forwarding a matter to the State Disciplinary Board, the Office of the General Counsel may refer a matter to the Client Assistance Program so that it may direct the complaining party to appropriate resources.

Rule 4-203 Powers and Duties

In accordance with these Rules, the State Disciplinary Board shall have the following powers and duties:

(1) to receive and evaluate any and all written grievances against lawyers and to frame such charges and grievances as shall conform to the requirements of these Rules. A copy of the information serving as the basis for investigation or proceedings before the State Disciplinary Board shall be furnished to the respondent by the procedures set forth in Rule 4-203.1;

(2) to initiate grievances on its own motion, to require additional information from a complainant, where appropriate, and to dismiss and reject matters that seem unjustified, frivolous, or patently unfounded;

(3) to issue letters of instruction when dismissing a matter;

(4) to delegate the duties of the State Disciplinary Board enumerated in paragraphs (1), (2), (8), (9), (10), and (11) hereof to the Chair of the State Disciplinary Board or such other members as

the State Disciplinary Board or its Chair may designate subject to review and approval by the full State Disciplinary Board;

(5) to conduct Probable Cause investigations, to collect evidence and information concerning matters under investigation, and to certify matters to the Supreme Court of Georgia for hearings by Special Masters as hereinafter provided;

(6) to prescribe its own Rules of conduct and procedure;

(7) to receive, investigate, and collect evidence and information, and review and accept or reject Petitions for Voluntary Discipline pursuant to Rule 4-227 (b) (1);

(8) to sign and enforce, as hereinafter described, subpoenas for the appearance of persons and the production of documents, things and records at investigations both during the screening process and the State Disciplinary Board's investigation;

(9) to issue a subpoena as provided in this Rule whenever a subpoena is sought in this State pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, where the issuance of the subpoena has been duly approved under the law of the other jurisdiction. Upon petition for good cause the State Disciplinary Board may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service of the subpoena shall be as provided in the Georgia Civil Practice Act. Enforcement or challenges to the subpoena shall be as provided at Rule 4-221 (c);

(10) to extend the time within which a formal complaint may be filed;

(11) to issue Formal Letters of Admonition and Confidential Reprimands as hereinafter provided;

(12) to issue a Notice of Discipline providing that unless the respondent affirmatively rejects the notice, the respondent shall be sanctioned as ordered by the Supreme Court of Georgia;

(13) to refer a lawyer who appears to be impaired for an evaluation by an appropriate medical or mental health professional; and

(14) to use the staff of the Office of the General Counsel in performing its duties.

Rule 4-204 Investigation and Disposition by State Disciplinary Board-Generally

(a) Each matter that presents sufficient merit to proceed may be referred with a Notice of Investigation to the State Disciplinary Board for investigation and disposition in accordance with its Rules. The Clerk of the State Disciplinary Boards shall assign a lawyer member of the State Disciplinary Board to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist the State Disciplinary Board member with the investigation. If the investigation of the State Disciplinary Board establishes Probable Cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these Rules, it shall:

1. issue a Formal Letter of Admonition;
2. issue a Confidential Reprimand;
3. issue a Notice of Discipline;
4. refer the case to the Supreme Court of Georgia for hearing before a Special Master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided; or
5. refer a respondent for evaluation by an appropriate medical or mental health professional pursuant to Rule 4-104 upon the State Disciplinary Board's determination that there is cause to believe the lawyer is impaired.

All other cases may be either dismissed by the State Disciplinary Board or referred to the Client Assistance Program so that it may direct the complaining party to appropriate resources.

(b) The primary investigation shall be conducted by the member of the State Disciplinary Board responsible for the investigation, assisted by the staff of the Office of the General Counsel, upon request of the State Disciplinary Board member. The Board of Governors of the State Bar of Georgia shall fund the Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

Rule 4-204.1 Notice of Investigation

- a. A Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a reasonable opportunity to respond to the charges in writing. The Notice shall contain:
 1. a statement that the grievance or written description pursuant to Rule 4-202(a) is being transmitted to the State Disciplinary Board;
 2. a copy of the grievance or written description pursuant to Rule 4-202(a);
 3. a list of the Rules that appear to have been violated;
 4. the name and address of the State Disciplinary Board member assigned to investigate the matter and a list of the State Disciplinary Board members; and
 5. a statement of the respondent's right to challenge the competency, qualifications or objectivity of any State Disciplinary Board member.
- b. The form for the Notice of Investigation shall be approved by the State Disciplinary Board.
- c. The Office of the General Counsel shall cause the Notice of Investigation to be served upon the respondent pursuant to Rule 4-203.1.

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 4-208.2 Notice of Discipline; Contents; Service

- a. The Notice of Discipline shall include:
 1. the Rules that the State Disciplinary Board found the respondent violated;
 2. the allegations of facts that, if un rebutted, support the finding that such Rules have been violated;
 3. the level of public discipline recommended to be imposed;
 4. the reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the State Disciplinary Board to be relevant to such recommendation;
 5. the entire provisions of Rule 4-208.3 relating to rejection of a Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing the same in the notice;
 6. a copy of the Memorandum of Grievance or written description pursuant to Rule 4-202(a); and
 7. a statement of any prior discipline imposed upon the respondent, including confidential discipline under Rules 4-205 to 4-208.
- b. The Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the respondent pursuant to Rule 4-203.1.

- c. The Office of the General Counsel shall file documents evidencing service with the Clerk of the Supreme Court of Georgia.
- d. The level of disciplinary sanction in any Notice of Discipline rejected by the respondent or the Office of the General Counsel shall not be binding on the Special Master, the State Disciplinary Board or the Supreme Court of Georgia in subsequent proceedings in the same matter.

Rule 4-208.4 Formal Complaint Following Notice of Rejection of Discipline

- (a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within 30 days following the filing of a Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by the State Disciplinary Board.
- (b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chair of the State Disciplinary Board or his designee.
- (c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the State Disciplinary Board may reconsider the matter and take appropriate action.

Rule 4-222 Limitation

- a. No proceeding under Part IV, Chapter 2, shall be brought unless a Memorandum of Grievance or written description pursuant to Rule 4-202(a) or a Client Assistance Program referral form has been received at the State Bar of Georgia headquarters or instituted pursuant to these Rules within four years after the commission of the act; provided, however, this limitation shall be tolled during any period of time, not to exceed two years, that the offender or the offense is unknown, the offender's whereabouts are unknown, or the offender's name is removed from the roll of those authorized to practice law in this State.
- b. Referral of a matter to the State Disciplinary Board shall occur within 12 months of receipt of the Memorandum of Grievance by the Office of the General Counsel or notification to the Respondent of the written description pursuant to Rule 4-202(a).

Rule 4-223. Advisory Opinions

- (a) Any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person. Formal Advisory Opinions which have been approved or modified by the Supreme Court pursuant to Rule 4-403 shall also be binding in subsequent disciplinary proceedings which do not involve the person who requested the opinion.
- (b) It shall be considered as mitigation to any matter being investigated under these rules that the respondent has acted in accordance with and in reasonable reliance upon a written Informal Advisory Opinion requested by the respondent pursuant to Rule 4-401 or a Formal Advisory Opinion issued pursuant to Rule 4-403, but not reviewed by the Supreme Court of Georgia.

Rule 4-224 Expungement of Records

- (a) The record of any matter against a respondent under these Rules which does not result in discipline against the respondent shall be expunged by the Office of the General Counsel in accordance with the following:
1. those matters closed by the Office of the General Counsel after screening pursuant to Rule 4-202 (e) shall be expunged after one year;
 2. those matters dismissed by the State Disciplinary Board after a Probable Cause investigation pursuant to Rule 4-204 (a) shall be expunged after two years; and
 3. those complaints dismissed by the Supreme Court of Georgia after formal proceedings shall be expunged after two years.
- (b) Definition. The term “expunge” shall mean that all records or other evidence of the existence of the complaint shall be destroyed.
- (c) Effect of Expungement. After a file has been expunged, any response to an inquiry requiring a reference to the matter shall state that any record of such matter has been expunged and, in addition, shall state that no inference adverse to the respondent is to be drawn on the basis of the incident in question. The respondent may answer any inquiry requiring a reference to an

expunged matter by stating that the matter or formal complaint was dismissed and thereafter expunged.

- (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 that 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.
- (e) A lawyer may respond in the negative when asked if there are any complaints against the lawyer if the matter has been expunged pursuant to this Rule. Before making a negative response to any such inquiry, the lawyer shall confirm that the record was expunged and shall not presume that any matter has been expunged.
- (f) A lawyer may respond in the negative when asked if he has ever been professionally disciplined or determined to have violated any professional disciplinary rules if all matters against the lawyer have either been referred to the Client Assistance Program, dismissed, or dismissed with a letter of instruction.

Clients' Security Fund Rule 10-106 Eligible Claims

- (a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and because of a lawyer-client relationship, or a fiduciary relationship, between the lawyer and the claimant.
- (b) As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value.
- (c) There must be a final disposition resulting in indefinite suspension, disbarment, or voluntary surrender of license.
- (d) The claim shall be filed no later than two years after the date of final disciplinary action by the Supreme Court of Georgia. In the event disciplinary action cannot be prosecuted due to the fact that the attorney is either deceased or cannot be located, the claim shall be filed no later than

five years after the dishonest conduct was first discovered by the applicant; provided, however, the claim shall be filed no later than seven years after the dishonest conduct occurred.

(e) Except as provided by part (f) of this Rule, the following losses shall not be reimbursable:

(1) losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(2) losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) losses incurred by any financial institution, which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) losses incurred by any business entity controlled by the lawyer, or any person or entity described in part (e) (1) hereof;

(5) losses incurred by any governmental entity or agency;

(6) losses incurred by corporations or partnerships, including general or limited.

(f) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim that otherwise would be excluded under these Rules in order to achieve the purpose of the Fund.

(g) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Board, in its discretion, may deny the claim.

(h) The Board shall require the applicant to exhaust his or her civil remedies unless the Board determines that the pursuit of the civil claim is not feasible or practical.

RULE 8.4 MISCONDUCT

- a. It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:
 1. violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

2. be convicted of a felony;
 3. be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
 4. engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
 5. fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;
 6.
 - i. state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;
 - ii. state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
 - iii. achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
 7. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
 8. commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in *judicio*, the commission of such act.
- b.
1. For purposes of this Rule, "Conviction" shall have the meaning set forth in Rule 1.0(e).
 2. The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of *nolo contendere*, a verdict of guilty or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.
- c. This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a) (1), (a) (2) and (a) (3) above.
- d. Rule 8.4 (a) (1) does not apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.

The maximum penalty for a violation of Rule 8.4 (a) (1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4 (a) (2) through (c) is disbarment.

Comment

[1] The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prevents a lawyer from attempting to violate the Georgia Rules of Professional Conduct or from knowingly aiding or abetting, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a nonlawyer, who is not subject to the rules, to act where the lawyer can not.

[2] This Rule, as its predecessor, is drawn in terms of acts involving "moral turpitude" with, however, a recognition that some such offenses concern matters of personal morality and have no specific connection to fitness for the practice of law. Here the concern is limited to those matters which fall under both the rubric of "moral turpitude" and involve underlying conduct relating to the fitness of the lawyer to practice law.

[3] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[4] Reserved.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge

to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[6] Persons holding public office assume responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.