

State Bar of Georgia

2012 Report of the

Office of the General Counsel

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OFFICE OF THE GENERAL COUNSEL
STATE BAR OF GEORGIA
ANNUAL REPORT FOR OPERATIONAL YEAR 2011-2012

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ANNUAL REPORT OF THE OFFICE OF THE GENERAL COUNSEL
FOR BAR YEAR 2011-2012

By: Paula J. Frederick, General Counsel

I am pleased to present the 2011-2012 Report of the Office of the General Counsel. Enclosed herein are reports from the Investigative and Review Panels of the State Disciplinary Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the *Pro Hac Vice* program, and the Trust Account Overdraft Notification Program. Following the reports is a compilation of Supreme Court Orders issued in disciplinary cases between May 1, 2011 and April 30, 2012.

The enclosed reports document an impressive array of cases handled and services rendered to the Bar and to the public; however, they represent only a fraction of the work done by you and other dedicated Bar volunteers along with the staff of the Office of the General Counsel each year. The Office is indebted to each of you, and to every Georgia lawyer who volunteers his or her time in service to the legal profession.

Staff

The staff of the Office of the General Counsel continues to be its greatest asset. Former General Counsel Bill Smith continues to work with the office as Ethics Counsel, handling a variety of special projects and some disciplinary cases. Robert E. McCormack, Deputy General Counsel for the Bar Counsel unit, is responsible for drafting changes to the Bar Rules and for staffing the Clients' Security Fund. Paralegal Betty Derrickson conducts the initial review of Clients' Security Fund files and coordinates the work of the Fund. John Shiptenko is Assistant General Counsel for all Bar Counsel matters. He acts as staff liaison

to the Formal Advisory Opinion Board and handles insurance, contractual and employment matters for the Bar. Deloise Mathews provides secretarial support to the Bar Counsel unit.

Deputy General Counsel Jenny Mittelman continues to serve in the managing attorney role for the OGC. She handles a disciplinary caseload in addition to supervising the lawyers who handle disciplinary cases. Senior Assistant General Counsel Jonathan Hewett supervises the grievance counsel in addition to prosecuting disciplinary cases. Assistant General Counsel Becky Hall and Tina Petrig continue to serve as ethics and disciplinary counsel to the Bar assisted by investigators Lamar Jackson and Dean Veenstra. Assistant General Counsel Kellyn McGee will leave the OGC at the end of the Bar Year to accept a job as a professor at the new Savannah Law School. We have hired William "Bill" Cobb, a small firm practitioner with almost 40 years in practice, to replace her.

With assistance from paralegal Kristin Poland, Grievance Counsel Carmen Rojas Rafter conducts the preliminary investigation of the grievances which the office receives each year. Connie Henry, Clerk of the State Disciplinary Board, continues to coordinate the activity of the disciplinary boards. Regina Putman-Kelley serves as Trust Account Overdraft Notification Coordinator. Paralegals Carolyn Williams and Kathy Jackson, legal secretaries Deborah Grant, Cathe Payne, Bobbie Kendall, and Receptionist Jessica Oglesby round out the OGC staff.

Lawyer Helpline

The Office of the General Counsel operates a Lawyer Helpline for members of the State Bar of Georgia to discuss ethics questions on an informal basis with an Assistant General Counsel. This year the Helpline averaged 20 calls each weekday.

Continuing Legal Education

As always, the Office of the General Counsel provides staff counsel to speak at CLE seminars and to local bar groups upon request. This year OGC lawyers participated in more than 60 CLE presentations.

Committees

The office staffed several bar-wide committees this year, including a new committee formed to examine issues related to closing a law practice. OGC staff continues to work with the Disciplinary Rules and Procedures Committee, the Advisory Committee on Legislation, the Fair Market Practices Committee, and a new committee on International Trade in Legal Services.

Thanks

The staff and I remain committed to serving each member of the State Bar of Georgia with efficiency and professionalism. Please call upon us whenever we can be of help to you.

ANNUAL REPORT OF THE INVESTIGATIVE PANEL
STATE DISCIPLINARY BOARD
FOR OPERATIONAL YEAR 2011-2012

By: Christopher L. Ray, Chair

As Chair of the Investigative Panel, I would like to thank each Panel member for their long hours of very hard work in grappling with the serious issues which we have faced this year. The Panel must investigate and review an ever-increasing number of cases and does so more efficiently than ever.

The 2011-2012 Investigative Panel consisted of two lawyers from each judicial district of the state, six public members, and two at-large members. The president-elect of the State Bar and the president-elect of the Younger Lawyers Division served as ex-officio members. The Panel continued its practice of holding its monthly meetings throughout the state; this year we met in Tifton, Buford, Valdosta, Helen, Jekyll Island, Augusta, Pine Mountain, Atlanta, Albany, and Greensboro, Georgia.

The Bar received fewer requests for grievance forms this year (3,584) than last (3,659). The number of grievance forms returned to the Office of the General Counsel increased. Last year's figure was 2,059; this year 2,105 forms were returned for screening and further consideration.

After review by an Assistant General Counsel, 1,733 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 268 grievances contained allegations which, if true, would amount to violations of one or more of the Georgia Rules of Professional Conduct found at Bar Rule 4-102. This represents a decrease from 284 such grievances in 2011. Each of those grievances was referred to one of the district Panel members for further investigation.

Investigative Panel members who investigated grievances each handled numerous cases during the Bar year. The Panel also set a goal of having each case reported within 180 days. Each case required extensive investigation and time away from the Panel member’s law practice, all without compensation. At the end of the investigation the Panel member made a report and recommendation to the full Panel. One hundred and ten grievances were dismissed, 45 of those with a letter of instruction to inform the lawyer about the Bar Rules. Two hundred and thirty two cases met the “probable cause” test and were returned to the Office of the General Counsel for prosecution. This represents an increase from 198 such cases last year. One hundred and twenty one cases are still under consideration by the Panel, a decrease from 180 such cases last year.

Eighty six of the Respondents named in grievances where there was a finding of probable cause received confidential discipline in the form of Formal Letters of Admonition or Investigative Panel Reprimands. In the more serious cases the Panel issued a Notice of Discipline or made a referral to the Supreme Court of Georgia for a hearing before a special master.

The Investigative Panel imposed confidential discipline during 2011-2012 as follows:

<u>Form of Discipline</u>	<u>Cases</u>
Investigative Panel Reprimands	40
Letters of Formal Admonition	46
Cases Dismissed with Letters of Instruction	45
Interim Suspensions	21

Public discipline imposed by the Supreme Court is described in the Annual Report of the Review Panel of the State Disciplinary Board.

I would like to recognize those members of the Investigative Panel who have unselfishly devoted so much of their personal and professional time to this necessary task.

They are:

Christopher L. Ray, Savannah, District 1 (term expiring)

J. Maria Waters, Savannah, District 1 (term expiring)

Joseph W. Dent, Albany, District 2 (term expiring)

Laverne Lewis Gaskins, Valdosta, District 2 (term expiring)

William D. NeSmith, Americus, District 3 (term expiring)

Donna S. Hix, Columbus, District 3 (term expiring)

R. Javoyne Hicks White, Stone Mountain, District 4 (term expiring)

Anne Workman, Decatur, District 4
(appointment pending to fill unexpired term)

Hubert J. Bell, Jr., Atlanta, District 5

Thomas G. Sampson, II, Atlanta, District 5

Delia T. Crouch, Newnan, District 6

Andrew J. Whalen, Griffin, District 6

Christopher A. Townley, Rossville, District 7

Dale Pearson Beardsley, Atlanta, District 7

Donald W. Huskins, Eatonton, District 8

John D. Newberry, Gray, District 8

Christine A. Koehler, Lawrenceville, District 9 (term expiring)

Lyle Kilvington Porter, Lawrenceville, District 9

Larry L. Smith, Augusta, District 10

Anna Green Bolden, Winder, District 10

Preyesh K. Maniklal, Atlanta, At Large

John G. Haubenreich, Atlanta, At Large

We have two ex-officio members, the president-elect of the State Bar of Georgia, Robin Frazer Clark, Atlanta (term expiring), and the president-elect of the Younger Lawyers Division, Jonathan B. Pannell, Savannah (term expiring).

Finally, I want to recognize and thank the six non-lawyer members appointed by the Supreme Court:

Eunice L. Mixon, Tifton

Elizabeth King, Atlanta

Michael A. Fuller, Macon (term expiring)

Mark A. Douglas, Atlanta (term expiring)

Carol Fullerton, Albany

Shelton J. Goode, Conyers

ANNUAL REPORT OF THE REVIEW PANEL
STATE DISCIPLINARY BOARD
FOR OPERATIONAL YEAR 2011-2012

By: Anthony B. Askew, Chair

The role of the Review Panel of the State Disciplinary Board changed effective June 13, 1997. Before that time, the Review Panel was charged with the responsibility of reviewing the complete record in all disciplinary cases that had been heard by a Special Master. As a result of the changes in 1997, the Panel now hears only those cases in which the Respondent lawyer or the Bar asks for review. This means that the Panel reviews fewer cases, but they are by definition the most contentious cases in the process.

The Panel has authority to make findings of fact and conclusions of law based on the record. In all cases in which disciplinary violations have been found, the Panel makes a recommendation of disciplinary action to the Supreme Court. The Court may follow the Panel's recommendation, but may also render an opinion that modifies our recommendation in some way.

In addition, the Review Panel reviews all matters of reciprocal discipline. The Georgia Supreme Court amended the Bar Rules on June 9, 2004, so that the Review Panel now receives every case in which a Georgia lawyer has been disciplined in another jurisdiction. The Panel is charged with recommending the appropriate disciplinary result in Georgia.

At the present time, the Review Panel is a fifteen-member Panel composed of three lawyers from each of the three federal judicial districts in Georgia, appointed by the Supreme Court of Georgia, and by the President of the State Bar. Two ex-officio members also serve on the Panel in their capacity as officers of the State Bar. Four of the Panel members are non-lawyers who were appointed by the Supreme Court. Counsel for the Review Panel is Bridget B. Bagley of Atlanta.

The following is a brief summary of public disciplinary action taken by the Supreme Court of Georgia during the period from May 1, 2011, to April 30, 2012:

<u>Form of Discipline</u>	<u>Cases</u>	<u>Lawyers</u>
Disbarments/Voluntary Surrenders	39	29
Suspensions	43	36
Public Reprimands	1	1
Review Panel Reprimands	8	8

The foregoing summary does not begin to reflect the voluminous records and important issues that were carefully considered by the Panel over the past year. In addition to attending lengthy meetings, each Panel member must review material for each case prior to the meeting in order to make a fair and well-reasoned decision. This represents a major commitment of time and energy on the part of each Panel member, all of whom acted with the highest degree of professionalism and competency during their terms.

At this time, I would like to recognize the members of the Panel who have unselfishly devoted so much of their time to the implementation of the disciplinary system of the State Bar of Georgia.

Non-lawyer Members

Thomas C. Rounds, Sandy Springs

Clarence Pennie, Kennesaw

P. Alice Rogers, Atlanta (term expiring)

Appointment Pending

Lawyer Members

Northern District:

J. Robert Persons, Atlanta

Anthony B. Askew, Atlanta (term expiring)

C. Bradford Marsh, Atlanta

Middle District:

Jeffery O'Neal Monroe, Macon

Oliver Wendell Horne, Macon (term expiring)

Ralph F. Simpson, Tifton

Southern District:

V. Sharon Edenfield, Statesboro

Thomas R. Burnside, III, Augusta (term expiring)

Sarah Brown Akins, Savannah

Ex-Officio Members

S. Lester Tate, III, Cartersville (term expiring)

Michael G. Geoffroy, Covington (term expiring)

**ANNUAL REPORT OF THE
FORMAL ADVISORY OPINION BOARD
FOR OPERATIONAL YEAR 2011-2012**

By: James B. Ellington, Chair

The Formal Advisory Opinion Board considers requests for formal advisory opinions and drafts opinions that interpret the Georgia Rules of Professional Conduct. The Board consists of active members of the State Bar of Georgia who are appointed by the President of the Bar, with the approval of the Board of Governors. The Formal Advisory Opinion Board for the 2011-2012 Bar year is comprised of the following lawyers:

Members at Large

Term

James B. Ellington, Chair, Augusta	2011 - 2013
Edward B. Krugman, Atlanta	2011 - 2013
James W. Friedewald, Marietta	2010 - 2012
Honorable Edward E. Carriere, Jr., Decatur	2010 - 2012
William Thomas Clark, Atlanta	2010 - 2012

Georgia Trial Lawyers Association

Jack J. Helms, Jr., Vice-Chair, Homerville	2011 - 2013
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Georgia Defense Lawyers Association

Theodore Freeman, Atlanta	2011 - 2013
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Georgia Association of Criminal Defense Lawyers

Christopher A. Townley, Rossville	2010 - 2012
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Georgia District Attorney's Association

Kenneth W. Mauldin 2011 – 2012

Young Lawyers Division

Christopher R. Abrego, Atlanta 2011 - 2013

Emory University

Professor James B. Hughes, Jr., Atlanta 2010 - 2012

University of Georgia

Professor Lonnie T. Brown, Jr., Athens 2011 - 2013

Mercer University

Professor Patrick E. Longan, Macon 2011 - 2013

Georgia State University

Professor Roy M. Sobelson, Atlanta 2010 - 2012

John Marshall Law School

Professor Jeffrey Alan Van Detta, Atlanta 2011 - 2013

Investigative Panel

John G. Haubenreich, Atlanta 2011 - 2012

Review Panel

Ralph F. Simpson, Tifton 2011 - 2012

Factors that the Formal Advisory Opinion Board considers in determining whether a request is accepted for the drafting of a formal advisory opinion include whether a genuine ethical issue is presented in the request, whether the issue raised in the request is of general interest to the members of the Bar, and whether there are existing opinions that adequately address the issue raised in the request.

During the 2011-2012 Bar year, the Board received five (5) new requests for formal advisory opinions. The issues addressed in the requests and the status of each, are as follow:

- Formal Advisory Opinion Request No. 11-R1 - (1) May a plaintiff's attorney be required to execute a Release requiring that attorney to ensure medical expenses and liens involving the plaintiff are paid from the settlement proceeds, when the representation has been made during settlement negotiations that an agreement with the medical lien holder has been reached for repayment from the proceeds? (2) May an attorney representing a plaintiff in a personal injury litigation be required to indemnify and hold harmless any party being released as a result of the settlement negotiations from any medical expenses and/or liens which that attorney has represented will be satisfied and/or settled from applicable settlement proceeds, or which the law requires to be satisfied from settlement?

The Formal Advisory Opinion Board declined this request for the drafting of a formal advisory opinion.

- Formal Advisory Opinion Request No. 12-R1 - Regarding the application of FAO No. 10-2 in specific termination of parental rights scenarios, and the applicability of FAO No. 10-2 in other cases, particularly deprivation cases.

The Formal Advisory Opinion Board has this request under consideration to determine whether to accept or decline the request for the drafting of a formal advisory opinion.

- Formal Advisory Opinion Request No. 12-R2 - Regarding the procedures followed by the Office of the General Counsel for the State Bar of Georgia and the State Disciplinary Board in handling formal complaints.

The Formal Advisory Opinion Board declined to accept this request for the drafting of a formal advisory opinion.

- Formal Advisory Opinion Request No. 12-R3 - Since the preamble to the Georgia Rules of Professional Conduct in paragraph [3] requires lawyers in all professional functions to be prompt and diligent, what is the penalty for a prosecuting attorney that will not return telephone calls to a defense attorney trying to discuss the client's upcoming court appearance? Does this not violate Rule 1.1 Competence, and Rule 1.3 Diligence for which the maximum penalty is disbarment?

The Formal Advisory Opinion Board has this request under consideration to determine whether to accept or decline the request for the drafting of a formal advisory opinion.

- Formal Advisory Opinion Request No. 12-R4 - Do the Georgia Rules of Professional Conduct permit a prosecutor to enter into an agreement with a criminal defendant to dismiss criminal charges in exchange for the defendant's release of any civil claims arising out of the defendant's arrest, prosecution, and/or conviction?

The Formal Advisory Opinion Board has this request under consideration to determine whether to accept or decline the request for the drafting of a formal advisory opinion.

Two (2) requests for formal advisory opinions were received and accepted in a previous Bar year, but remain pending with the Formal Advisory Opinion Board. The issues raised in the requests and the status of each are as follow:

- Formal Advisory Opinion Request No. 05-R6 - Is a lawyer obligated to notify a client's creditors or third persons when the lawyer receives the proceeds of a client's settlement or judgment? If the lawyer is obligated to notify a third person, is the lawyer then obligated to pay that third person, even over the client's objections?

The issues raised in this request are governed by Rule 1.15(I). The Board approved a proposed opinion, which appeared in the June 2007 issue of the Georgia Bar Journal for 1st publication. Comments were received in response to the publication. However, because a proposed amendment to Rule 1.15(I) was pending with the State Disciplinary Rules and Procedures Committee, the Board tabled any further action regarding the request. On November 3, 2011, the Supreme Court of Georgia issued an order approving the proposed amendment to Rule 1.15(I). In light of the amendment, the Board determined that the amended rule adequately addresses the issues raised in this request; therefore, an opinion is not needed. Accordingly, the Board voted to reverse its previous decision to accept the request for the drafting of a formal advisory opinion.

- Formal Advisory Opinion Request No. 10-R2 - Does a Georgia lawyer who participates in a piecemeal element of a Georgia residential real estate transaction where neither he nor other Georgia lawyers will supervise the other aspects of the closing process violate the Georgia Rules of Professional Conduct.

The Formal Advisory Opinion Board accepted this request for the drafting of a formal advisory opinion. The Board is in the process of drafting a proposed opinion.

In a previous Bar year, the Formal Advisory Opinion Board received a formal advisory opinion request, which was designated as Formal Advisory Opinion Request No. 10-R3, and declined the request for a drafting of a formal advisory opinion. The Board received a request to reconsider its decision to decline the opinion. The Board addressed the request for reconsideration. The issue raised in the request and the status of the request is as follow:

- Formal Advisory Opinion Request No. 10-R3 - What are the ethical obligations of a lawyer under Rules 3.3, 3.4, and 8.4(a)(4) associated with offers to plead guilty in exchange for a dismissal at an administrative law hearing?

The Formal Advisory Opinion Board declined the request for reconsideration.

Two (2) formal advisory opinions were issued during the 2011-2012 Bar year. The issues addressed in each of the opinions are as follow:

- Formal Advisory Opinion No. 10-2 - May an attorney who has been appointed to serve both as legal counsel and as guardian *ad litem* for a child in a termination of parental rights case advocate termination over the child's objections?

The Supreme Court of Georgia issued this opinion, formerly known as Proposed Formal Advisory Opinion No. 09-R3, on January 9, 2012. Pursuant to Bar Rule 4-403(e), the opinion is binding on all members of the State Bar of Georgia and is accorded the same precedential authority given to the regularly published judicial opinions of the Court.

- Formal Advisory Opinion No. 11-1 - Ethical Considerations Bearing on Decision of Lawyer to Enter into Flat Fixed Fee Contract to Provide Legal Services.

This opinion, formerly known as Proposed Formal Advisory Opinion No. 08-R5, appeared in the June 2011 issue of the Georgia Bar Journal for 2nd publication, and was filed with the Supreme Court on June 23, 2011. No request for discretionary review was filed with the Court and the Court has not decided to review the opinion on its own motion. Pursuant to Bar Rule 4-403(d), this opinion is an opinion of the Formal Advisory Opinion Board, binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

One Formal Advisory Opinion remains pending with the Supreme Court of Georgia.

- Formal Advisory Opinion No. 10-1 - May different lawyers employed in the circuit public defender office in the same judicial circuit represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so?

This opinion was filed with the Supreme Court of Georgia on June 15, 2010. The requestor filed a petition for discretionary review with the Supreme Court on July 5, 2010, which the Court granted on January 18, 2011. The requestor petitioned the Court for oral argument, which was held on January 10, 2012. This opinion remains pending with the Supreme Court of Georgia. *(NOTE: Prior to the Court hearing oral argument for this matter, the State Bar of Georgia proposed an amendment to Georgia Rule of Professional Conduct 1.10, the rule implicated in this opinion. A*

motion to amend Rule 1.10 was filed with the Supreme Court after the hearing, on February 21, 2012. The motion to amend also remains pending with the Supreme Court.)

Following the adoption of the Georgia Rules of Professional Conduct in 2001, the Formal Advisory Opinion Board reviewed all existing formal advisory opinions to determine to what extent, if any, the newly adopted rules impacted the opinions. The outcome for two of the 42 opinions reviewed remains pending. The issues addressed in the opinions and the status of each are as follows:

- Formal Advisory Opinion No. 05-1 - Ethical propriety of a lawyer interviewing the officers and employees of an organization when that organization is the opposing party in litigation without consent of organization.

This opinion, a redrafted version of Formal Advisory Opinion No. 87-6, was filed with the Supreme Court on August 29, 2008, pursuant to Bar Rule 4-403(d). The opinion addresses issues governed by Rule 4.2. Because a proposed amendment to Rule 4.2 was pending, the Supreme Court was asked to suspend further consideration of the opinion until a final determination was made regarding the amendment to Rule 4.2. On November 13, 2012, the Supreme Court of Georgia issued an order approving the amendment to Rule 4.2. The Board subsequently reviewed Formal Advisory Opinions Nos. 87-6 and 05-1 in light of the amendment to Rule 4.2. The Board determined that since Rule 4.2 no longer contains the “managerial responsibility” language found in Comment 4A, for which FAO No. 05-1 was drafted to address, FAO No. 05-1 is no longer necessary, and that steps should be taken to

withdraw the opinion. The Board also determined that the amendment to Rule 4.2 does not substantially impact FAO No. 87-6, so that redrafting the opinion is not necessary; however a headnote should be added to the opinion that 1) explains and preserves the institutional history of the opinion; 2) addresses the 3rd category of individuals to which attorneys cannot speak (that was added to the Rule but is not listed in the opinion); and 3) addresses the reference to proposed RPC 4.2 found in Footnote 1 of the opinion. Upon the Board's request, the Office of the General Counsel is in the process of petitioning the Court to withdraw FAO No. 05-1 and drafting the headnote language for the Board's review.

- Formal Advisory Opinion No. 86-1 - Lawyer Serving Simultaneously as State Legislator and Part-time Solicitor.

At its March 25, 2010 meeting, the Formal Advisory Opinion Board was asked to review this opinion to determine whether it is impacted by the application of O.C.G.A. § 16-10-9a(1). During its review, the Board noted errors within the opinion and the headnote language that was added to the opinion following adoption of the Georgia Rules of Professional Conduct. The Board also determined that O.C.G.A. §16-10-9a(1) and advisory opinions issued by the Georgia Attorney General's Office answer the question presented in the opinion, thus providing adequate guidance to Georgia attorneys. Accordingly, the Board decided that FAO No. 86-1 should be withdrawn. On July 14, 2010, the State Bar of Georgia filed a petition for withdrawal of Formal Advisory Opinion No. 86-1 with the Supreme Court. The petition remains pending with the Supreme Court.

Formal Advisory Opinions can be found in the 2011-2012 State Bar of Georgia Directory & Handbook and on the State Bar of Georgia's website at www.gabar.org.

I would like to thank the members of the Board for their dedication and service. These members have volunteered their time and knowledge in order to ensure that lawyers are provided with an accurate interpretation of the ethics rules. In addition, it is essential that I express my sincere gratitude and appreciation to General Counsel Paula Frederick, Ethics Counsel Bill Smith, Assistant General Counsel John Shiptenko, and Betty Derrickson of the Office of the General Counsel of the State Bar of Georgia. Their unfailing efforts and assistance have been invaluable to the Board.

**ANNUAL REPORT OF THE OVERDRAFT NOTIFICATION
PROGRAM FOR FISCAL YEAR 2011-2012**

By: Regina Putman-Kelley, Trust Account Overdraft Notification Coordinator

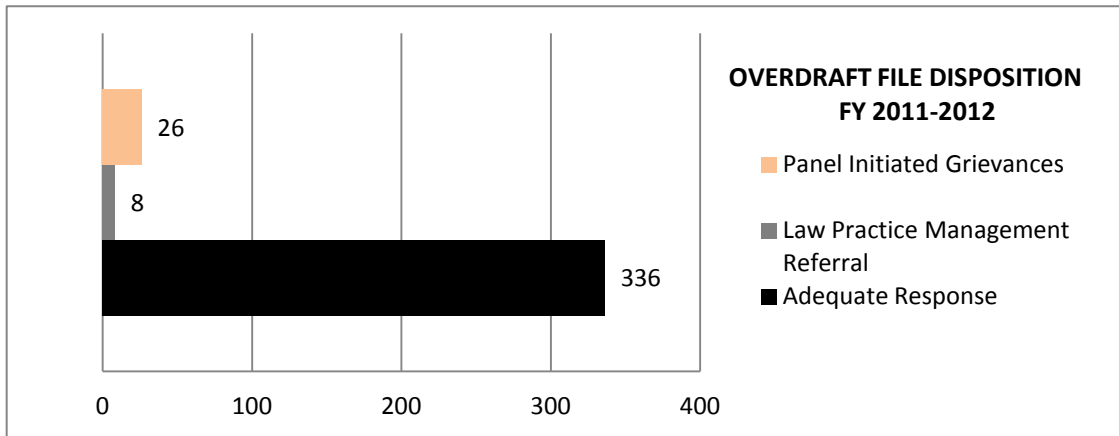
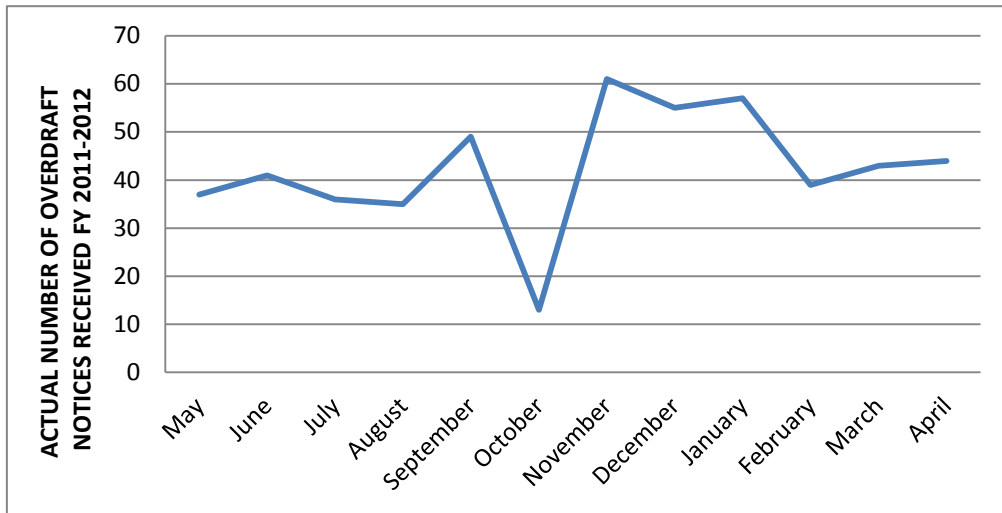
The Overdraft Notification Program received 510 notices from financial institutions approved as depositories for attorney trust accounts. Of the total number of notices received from financial institutions, one overdraft was reported to the State Bar on the trust account of a deceased Bar member, and nine notices were reported to the State Bar on the trust accounts of two disbarred lawyers. 336 files were dismissed following the initial inquiry, 8 files were referred to Law Practice Management, and 26 files were forwarded to the Investigative Panel of the State Disciplinary Board for possible disciplinary action. (Several attorney files contained more than one overdraft notice regarding the same attorney trust account. Some files opened during the latter part of FY 2011 – 2012 remain open, pending final review and dismissal.)

**FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES
FOR ATTORNEY TRUST ACCOUNTS**

Recent bank failures and mergers have greatly affected the number of financial institutions currently approved as depositories for attorney trust accounts. Accordingly, lawyers should refer to the *List of Approved Financial Institutions*, which can be found on the State Bar of Georgia's web site, www.gabar.org.

**ATTORNEY TRUST ACCOUNT OVERDRAFT REPORT
FISCAL YEAR 2011-2012**

Month	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPMP	GRIEVANCES INITIATED	TOTAL CLOSED
2011/2012					
May	37	14	1	5	20
June	41	37	0	0	37
July	36	30	2	2	34
August	35	21	1	1	23
September	49	34	1	4	39
October	13	29	0	0	29
November	61	13	0	3	16
December	55	22	1	2	25
January	57	31	1	1	33
February	39	29	0	1	30
March	43	43	1	3	47
April	44	33	0	4	37
TOTALS:	510	336	8	26	370
PERCENTAGES:		91%	0.63%	8.59%	



ANNUAL REPORT OF THE
PRO HAC VICE PROGRAM
FOR OPERATIONAL YEAR 2011-2012

By: Kathy S. Jackson, *Pro Hac Vice* Paralegal

By order of November 10, 2005, the Supreme Court of Georgia amended Rule 4.4 of the Uniform Superior Court Rules to require out-of-state lawyers applying for *pro hac vice* admission in Georgia to serve a copy of their application for admission *pro hac vice* on the Office of the General Counsel, State Bar of Georgia. The applicant must pay a \$200 fee to the Bar, unless the applicant seeks pro bono waiver of fee from the court.

Subject to certain exceptions, the Uniform Superior Court Rules are applicable in the State Courts of Georgia. Attorneys seeking to appear *pro hac vice* in State Courts must comply with Rule 4.4.

In 2007 the State Board of Workers' Compensation adopted State Board of Workers' Compensation Rule 102 (A)(2). In July 2011, Rule 102 (A)(2) was renumbered to Rule 102 (A)(3) which requires attorneys seeking to appear *pro hac vice* before the Board to comply with Rule 4.4.

The Office of the General Counsel may object to the application or request that the court impose conditions to its being granted. Among other reasons, the Bar may object to an application if the lawyer has a history of discipline in his or her home jurisdiction, or if the lawyer has appeared in Georgia courts so frequently that he or she should become a member of the bar in this state. Lawyers admitted *pro hac vice* agree to submit to the authority of the State Bar of Georgia and the Georgia courts.

In its April 9, 2009 order the Supreme Court of Georgia amended Rule 4.4 to require applicants to disclose all formal, written disciplinary proceedings and court orders regarding contempt and sanctions. Prior to the amendment, the Rule only required disclosure of discipline, contempt and sanctions received in the past five years.

In its September 8, 2011 order the Supreme Court of Georgia amended Rule 4.4 to require foreign lawyers applying for *pro hac vice* admission in Georgia to serve a copy of their application for admission *pro hac vice* on the Office of the General Counsel, State Bar of Georgia, comply with all relevant immigration laws and maintain valid immigration status. The Office of the General Counsel has not received any applications for *pro hac vice* admission from foreign lawyers.

During the period of May 1, 2011 through April 30, 2012, the Office of the General Counsel reviewed 707 *pro hac vice* applications. Seventeen applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel has filed seventeen objections with Georgia courts regarding the eligibility of the applicant. The Office of the General Counsel received a total of \$136,800.00 from *pro hac vice* applicants.

OPERATIONAL YEAR 2011-2012

**AMENDMENTS TO THE RULES, REGULATIONS
AND POLICIES & BYLAWS OF THE STATE BAR OF GEORGIA**

By: Robert E. McCormack

Since the last annual meeting the only amendments to the Rules were to the Rules of Professional Conduct. The amendments can be reviewed on the State Bar of Georgia's website at www.gabar.org.

**ANNUAL REPORT OF THE
CLIENTS' SECURITY FUND
FOR OPERATIONAL YEAR 2011-2012**

**By: Robert E. McCormack, Deputy General Counsel
Staff Liaison to the Clients' Security Fund**

The Clients' Security Fund is a public service of the legal profession in Georgia. The purpose of the Clients' Security Fund is to repay clients who have lost money due to a lawyer's dishonest conduct. Every lawyer admitted to practice in Georgia, including those admitted as a foreign law consultant or those who join the Bar without taking the Georgia Bar Examination, contributes to this Fund.

On behalf of the Trustees of the Clients' Security Fund, it is a pleasure to present the 2011-2012 Clients' Security Fund Annual Report to the Board of Governors of the State Bar of Georgia. The Trustees of the Fund are proud of the efforts put forth to maintain the integrity of the legal profession.

Creation of the Fund

The Board of Governors of the State Bar of Georgia created the Clients' Security Fund by Resolution on March 29, 1968. The Fund was formed "for the purpose of promoting public confidence in the administration of justice, and maintaining the integrity and protecting the good name of the legal profession by reimbursing, to the extent deemed proper and feasible by the Trustees of the Fund, losses caused by the dishonest conduct of members of the State Bar of Georgia." In 1991, the Supreme Court of Georgia adopted the Rules of the Clients' Security Fund (Part X) making it an official part of the Rules of the State Bar of Georgia. That same year, pursuant to the Rules, the Board of Governors assessed each of the members of the State Bar the sum of \$100.00, to be paid over a five-year period, to fully fund and stabilize the Fund.

Administration of the Fund

The Clients' Security Fund Board of Trustees performs all acts necessary and proper to fulfill the purposes of and effectively administer the Fund. The Rules, issued by order of the Supreme Court of Georgia, establish a Board of Trustees consisting of six (6) lawyers and one (1) non-lawyer member who are appointed to staggered terms by the President of the State Bar of Georgia. The Trustees serve five-year terms, and receive no compensation or reimbursement for their service. The Trustees select the Chair and Vice-chair to serve as officers for the Fund. The Fund receives part-time assistance from one attorney, one paralegal and one legal secretary from the Office of the General Counsel. In addition to your Chair, the following lawyers served as Trustees for the 2011-2012 Bar-year:

Elena Kaplan, Atlanta, Georgia

Vera Sharon Edenfield, Statesboro, Georgia

Byung Jin Pak, Atlanta, Georgia

Denny C. Galis, Athens, Georgia

Dana F. Braun, Savannah, Georgia

Charles Edward Peeler, Albany, Georgia

Vince Clanton, Atlanta, Georgia (non-lawyer member)

The Trustees strive to meet at least quarterly during the year. If circumstances warrant, special meetings may be called to ensure that claims are processed in a timely fashion. These Trustees have served tirelessly and their dedication to this program is greatly appreciated.

Funding

Members of the State Bar of Georgia provide the primary funding for the Clients' Security Fund. On April 2, 1991, the Supreme Court of Georgia approved the motion to amend the Bar Rules to provide for an assessment of \$100.00 per lawyer to be paid over a period of five

years. On October 6, 2010, the Rules were amended making the assessment payable over four years. Fund revenues are supplemented by interest income, restitution payments from disbarred lawyers, and miscellaneous contributions.

The assessment provides a relatively substantial source of income; however, to ensure a secure source of funding to sustain the integrity of the Fund, the Bar Rules provide for future assessments triggered whenever the fund balance falls below a minimum of \$1,000,000.00. The Bar Rules also limits the aggregate amount that can be paid to claimants in any one year to \$350,000.00.

The Board of Trustees also adopted certain administrative rules to help stabilize and manage the Fund. These rules provide that the maximum amount the Trustees will pay on any individual claim is \$25,000.00. Also, the aggregate amount the Trustees will pay to all claimants victimized by a single lawyer is limited to 10% of the Fund balance as it existed on the date the first claim against the lawyer was paid. Both of these rules may be overridden by a unanimous vote of the Trustees in cases of undue hardship or extreme unfairness.

Other efforts to maintain the stability of the fund include an amendment to the Bar Rules, which was adopted by the Supreme Court on November 8, 2003. As the result of changes in the admissions rules that allow attorneys in reciprocal states to be admitted to the State Bar of Georgia upon motion, the amended bar rules provide that all members who are admitted to the State Bar of Georgia as a Foreign Law Consultant or who join without taking the Georgia Bar Examination are required to pay the full assessment of \$100.00 prior to or upon registration with the State Bar.

The efforts of the State Bar of Georgia and the Trustees of the Fund have proven successful over the years. The Fund's balance has grown from a low of \$361,823.00 in 1992 to \$2,416,512.00 as of May 30, 2012. The average fund balance has stabilized at approximately

\$2,500,000.00. These funds are held in the name of the Fund and the Trustees of the Fund maintain exclusive control of disbursements from the Fund.

Loss Prevention Efforts

An important role of the Trustees of the Fund is to promote and endorse rules and educational programs that are designed to prevent losses from occurring. In 1992 and 1993 respectively, the Trustees actively urged the adoption of two significant programs designed to prevent lawyer theft of clients' funds.

Overdraft Notification

In November 1992, the Board of Trustees joined the Investigative Panel of the State Disciplinary Board in urging the Board of Governors to approve amendments to Disciplinary Standard 65 to create a trust account overdraft notification program. On August 22, 1995, the Supreme Court of Georgia approved the amendment to Standard 65, which became effective January 1, 1996. The primary purpose of the overdraft notification rule is to prevent misappropriation of clients' funds by providing a mechanism for early detection of improprieties in the handling of attorney trust accounts. Standard 65 was subsequently replaced with Rule 1.15(III) with the Supreme Court's adoption of the Georgia Rules of Professional Conduct on January 2, 2001. See, 2011-2012 State Bar of Georgia Directory & Handbook, Rule 1.15(III), p. H-39.

Payee Notification

During the 1993 legislative session, with the urging of the Board of Trustees, the Board of Governors endorsed legislation specifically designed to prevent lawyer theft of personal injury settlement funds. As a result of these efforts, the "payee notification rule" was approved in the form of an amendment to the Insurance Code. This statute requires insurers to send notice to the payee of an insurance settlement at the time the check is mailed to the payee's attorney. This

places the client on notice that the attorney has received settlement funds. The adoption of this procedure has substantially reduced claims involving theft of insurance funds.

Claims Process

Before the Clients’ Security Fund will pay a claim, the Trustees must determine that the loss was caused by the dishonest conduct of the lawyer who has been disbarred, indefinitely suspended, or has voluntarily surrendered his or her license, and arose out of the client-lawyer relationship. The Rules define “dishonest conduct” as 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.” Typically, claims filed by corporations or partnerships, government entities, and certain members of the attorney’s family are denied. Losses covered by insurance, or that result from malpractice or financial investments are also not considered reimbursable by the Fund. Claimants are responsible for providing sufficient documentation to support their claims.

Following is the statistical report the Fund for the 2011-2012 operational year:

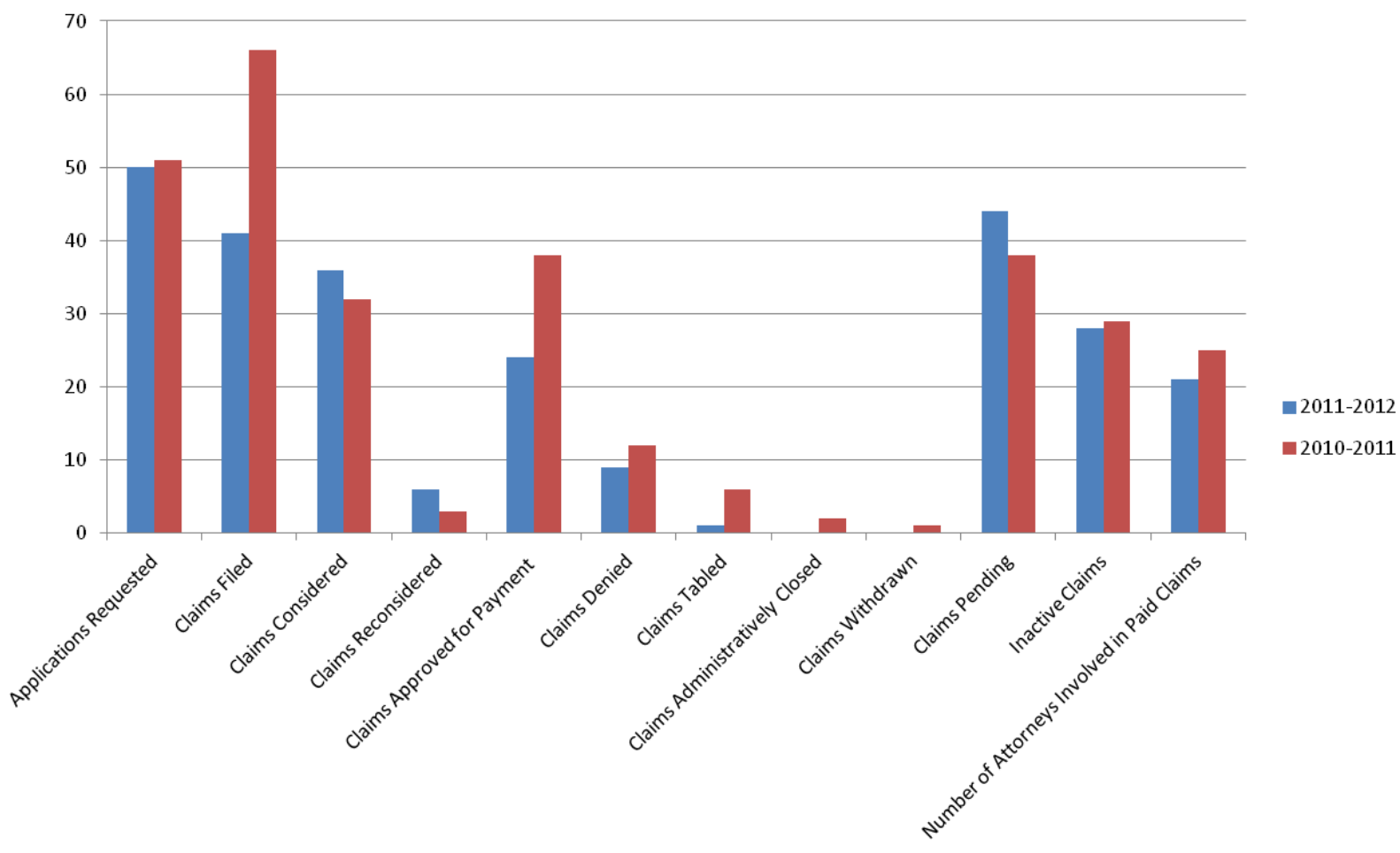
Annual Statistics for Operational Year 2011-2012

Financial Summary for 10 months ending April 30, 2012
(most recent information available at the time this report was generated)

Fund Balance	\$2,416,512.00
Assessment Income	\$ 150,927.00
Restitution Income	\$ 45,813.00
Interest Income	\$ 11,024.00
Claims Paid	\$ 85,275.00
Expenses	\$ 60,833.00

ACTIVITY SUMMARY

	<u>2011-2012</u>	<u>2010-2011</u>
Applications Requested	50	51
Claims Filed	41	66
Claims Considered	36	32
Claims Reconsidered	6	3
Claims Approved for Payment	24	38
Claims Denied	9	12
Claims Tabled	1	6
Claims Administratively Closed	0	2
Claims Withdrawn	0	1
Claims Pending	44	38
Inactive Claims	28	29
Number of Attorneys Involved in Paid Claims	21	25



REVIEW PANEL REPRIMANDS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
5/31/11	Chalmer E. Detling, II	5857
6/27/11	Scott Richard King	6028
7/11/11	Kelly Lynn Turner	5633
10/3/11	Thomas F. Jones	5564
11/7/11	Benjamin C. Free	5829
11/7/11	Christopher David Elrod	5964
1/9/12	John Stephne Olczak	5976
2/6/12	Valerie Brown-Williams	5982

PUBLIC REPRIMANDS

DATE OF ORDER

RESPONDENT

DOCKET

3/5/12

James Bunkey Swain

6042

SUSPENSIONS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
<u>Indefinite</u>		
5/16/11	David Alan Friedman	5920
5/31/11	Nakata S. Smith Fitch (1 year w/conditions)	5447
6/13/11	Judy Lynn Junco	5464
10/3/11	Joseph A. Carragher, Jr. (1 year w/conditions)	5563
10/3/11	Adrienne Regina McFall (18 months w/conditions)	5883
10/3/11	Tara Susann Wofford (3 years w/conditions)	5861 6014 6015
10/3/11	Tony C. Jones (18 months w/conditions)	5799
10/17/11	Michael B. Seshul, Jr. (until 3/31/13 w/conditions)	5648
11/7/11	John R. Thompson	5940
1/9/12	Paul Lawrence Erickson (5 years w/conditions)	6052
3/5/12	Creighton W. Sossomon (1 year w/conditions)	6103
3/19/12	William M. Peterson (3 years w/conditions)	5461 5474
4/24/12	Brenden E. Miller (12 months w/condition)	6005

Definite

5/16/11	Patrick Anthony Powell (3 months)	5851
6/13/11	Fred T. Hanzelik (30 days)	5884
6/27/11	Brett Jones Thompson (3 months)	5850
10/3/11	Nikki Giovanni Bonner (6 months)	5758
10/3/11	Lagrant Anthony (18 months)	6000
4/24/12	Marcea O'Brien-Carriman (18 months)	5600

Interim Suspensions

5/9/11	E. Herman Warnock	100297
5/9/11	Vicky Jeanine Templeton	100226 100251
6/1/11	A. Lee Hayes	110008 110056
7/26/11	Robert E. Bach	110090
9/15/11	Michael Rory Proctor	110077
10/5/11	Cassandre M. Galette	110159
10/21/11	Lorraine Ruth Silvo	100345
11/16/11	Scott Michael Herrmann	110089
11/16/11	Matthew Alexander Bryan	110137
11/17/11	Steven Hyman Hurwitz	110124
12/2/11	Uzoamaka Angela Akpele	110243

1/3/12	Kenneth H. Schatten	110230
1/4/12	Patrick Jeffery Stubbs	110257
1/24/12	James F. Steckbauer	110195
1/26/12	Peggy Ruth Goodnight	110237
1/27/12	William M. Peterson	110126
3/23/12	Lorraine Ruth Silvo	110183
4/16/12	Wendel Lawrence Bowie	110288
4/16/12	Robert W. Cullen	110310

Interim Suspensions Lifted

5/17/11	Matthew Marvin Wathen	100296
7/12/11	James Sheridan Grimes	060333
7/12/11	James Sheridan Grimes	060334
8/17/11	Vicky Jeanine Templeton	100226 100251
11/1/11	Chima Earnest Okene	100219
11/21/11	Lorraine Ruth Silvo	100345
11/21/11	Matthew Alexander Bryan	110137
2/23/12	Uzoamaka Angela Akpele	110243

DISBARMENTS/VOLUNTARY SURRENDERS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
5/31/11	Elliot Joseph Vogt	5975
5/31/11	Samuel J. Brantley	5369
6/13/11	Anthony O'Dell Lakes	5859
6/27/11	Edward Herman Warnock	5725
9/12/11	Stephen Vincent Fitzgerald, Jr.	6054
9/12/11	Geoffrey Allan Evans	5891 5892 5893
10/3/11	Edward C. Henderson, Jr.	5943
10/17/11	Keesha Marie Brown	5779 5780 5899 5938 6024 6025 6026
11/7/11	David Michael Fuller	6057
11/7/11	Karen P. Cleaver-Bascombe	5942
11/7/11	Douglas Liddell Kirkland	6020
11/7/11	Paul T. Robinson	5913
11/30/11	Thomas C. Sinowski	4384
11/30/11	Steven F. Freedman	4385
11/30/11	Antonio L. Toliver	6126
11/30/11	Suzanne Marie Himes	5988
1/9/12	James B. Johnson, Jr.	6050

1/9/12	Kota Chalfant Suttle	6106
1/9/12	Joseph A. Maccione	5222
1/9/12	Parmesh N. Dixit	6053
1/9/12	James Michael Green	6149
1/23/12	Miles Lamar Gammage	6017 6069
1/23/12	Matthew Marvin Wathen	6064
1/23/12	Lagrang Anthony	6068
2/27/12	Joan Palmer Davis	5820 5821
2/27/12	Searcy Donald McClure, III	6202
3/5/12	Paul Owen Farr	6203
3/19/12	Gary Mixon Wisenbaker	6150