

**IN THE SUPREME COURT  
STATE OF GEORGIA**

**IN RE: STATE BAR OF GEORGIA  
Rules and Regulations for its  
Organization and Government**

**MOTION TO AMEND 2020-3**

**MOTION TO AMEND THE RULES AND REGULATIONS OF THE  
STATE BAR OF GEORGIA**

SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Counsel for the State Bar of Georgia

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STATE BAR OF GEORGIA**

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended<sup>1</sup> as follows:

**I.**

**Proposed Amendments to Bar Rule 1-202. Classes of Members**

It is proposed that the following rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

**Rule 1-202. ~~Classes of Members~~hip Status**

Membership in the State Bar of Georgia shall consist of six~~five~~  
~~classes~~categories: active, inactive, foreign law consultant, emeritus, members

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<sup>1</sup> See the order of this Court providing for such amendments dated December 6, 1963 (219 Ga. 873), and amended by subsequent Orders, and published online in the State Bar of Georgia Handbook (<https://www.gabar.org/barrules/>).

unable to practice law due to a disability, and retired status members disabled and inactive. The bylaws shall make provision for the registration of each active member and the location of his or her principal office for the practice of law, the registration of each foreign law consultant and the location of his or her principal office, and the registration of emeritus and inactive members and their mailing addresses. Only aActive Status members and eEmeritus Status members may vote on any State Bar of Georgia matter or election or nominate an active member for office. Emeritus Status members can vote only in person or electronically.

(a) Inactive Status Members. Any member of the State Bar of Georgia may contact the Membership Department and elect to be transferred to Inactive Status membership provided that the member:

- (1) is not engaged in the practice of law;
- (2) does not hold themselves out as a practicing lawyer or attorney;
- (3) does not occupy any public or private position in which the member may be called upon to give legal advice or counsel;
- (4) does not examine the law or to pass upon the legal effect of any act, document, or law for the benefit of another person, company or corporation;
- (5) is active duty in any branch of the United States military.

~~All lawyers who are neither engaged in the practice of law nor holding themselves out as practicing attorneys nor occupying any public or private position in which they may be called upon to give legal advice or counsel, to examine the law or to pass upon the legal effect of any act, document, or law may be inactive members at their election. Members who are in military service may be inactive if they so elect.~~

(b) Active Status Members. Active Status members shall be all other lawyers including judges but excluding foreign law consultants. Only ~~a~~Active Status members of the State Bar of Georgia in good standing may hold office in the State Bar of Georgia.

(c) Foreign Law Consultants Status. Foreign Law Consultants shall be those persons, who are licensed under the Rules Governing Admission to the Practice of Law as adopted by the Supreme Court of Georgia.

(d) Emeritus Status Members. Any member in good standing of the State Bar of Georgia who will attain the age of 70 years in a Bar year and who shall have been admitted to the practice of law for at least 25 years, five years of which must be as a member in good standing of the State Bar of Georgia, may request ~~e~~Emeritus ~~s~~Status from the State Bar of Georgia upon petition to and approval by the ~~m~~Membership ~~d~~Department. When approved, the member shall ~~hold~~be transferred to ~~e~~Emeritus ~~s~~Status. An ~~e~~Emeritus Status

member of the State Bar of Georgia shall not be required to pay ~~dues~~license fees or ~~annual~~other fees, and may not hold office in the State Bar of Georgia. An ~~e~~Emeritus Status member of the State Bar of Georgia shall not be privileged to practice law except that an ~~e~~Emeritus Status member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar of Georgia or a non-profit corporation that delivers legal services to the poor. An ~~e~~Emeritus Status member may be reinstated to active or inactive membership upon application to the ~~m~~Membership ~~d~~Department and payment of non-prorated ~~dues~~license fees for the year in which the ~~e~~Emeritus Status members returns to Aactive Status or inactive Status ~~membership~~service.

(e) ~~Disabled~~ Members Unable to Practice Law Due to a Disability.

Any member of the State Bar of Georgia who is temporarily or permanently disabled may submit to~~may petition~~ the Executive Committee of the State Bar of Georgia a written request to be transferred to ~~for~~ ~~d~~Disabled sStatus. Members who elect this status must submit adequate medical and/or psychological documentation of their disability with the written request. Adequate documentation includes:  
~~provided the member meets one of the following criteria:~~

- (1) ~~documentation from the member has been determined to be permanently disabled by the Social Security Administration; or~~ of approval of disability Administration;
- (2) ~~documentation from an insurance company of receipt of benefits based upon disability the member is in the process of applying to the Social Security Administration for permanent disability status; or~~ based upon disability
- (3) ~~documentation from a medical doctor that the member ishas been determined to be permanently disabled.~~ documentation from a medical doctor that the member ishas been

~~Any request by a member to be transferred to Disabled Status must comply with all of the provisions contained in Section 1, Article 10 of the Bylaws of the State Bar of Georgia. or disabled for a period in excess of one year by an insurance company and is receiving payments pursuant to a disability insurance policy; or~~

~~(4) the member has a signed statement from a medical doctor that the member is permanently disabled, or disabled for a period in excess of one year, and unable to practice law.~~

~~Upon the Executive Committee's grant of the member's petition for disability status, the disabled member shall be treated as an inactive member of the State Bar of Georgia and shall not be privileged to practice law. A member holding disabled status shall not be required to pay dues or annual fees. A disabled~~

~~member shall continue in such status until the member requests reinstatement by written application to the membership department of the State Bar of Georgia.~~

(f) Retired Status Member.

(1) Any member of the State Bar of Georgia who is not engaged in the active practice of law in any state, district, or territory of the United States may transfer to Retired Status by submitting a request in writing to the Executive Director and General Counsel of the State Bar of Georgia. Upon approval by the Executive Director and General Counsel, the Membership Department shall transfer the member to Retired Status. A member in Retired Status shall not be entitled to practice law in this state and may not practice law in any other jurisdiction. Further, such members shall not be eligible to vote or hold office in the State Bar of Georgia. Any member transferred to Retired Status shall be relieved of their membership fees and CLE obligations.

(2) A request for Retired Status must be unqualified, is irrevocable and permanent. A member in Retired Status will appear in the State Bar of Georgia member directory as “Retired.”

(3) A member of the State Bar of Georgia with a pending disciplinary matter may transfer to Retired Status with the consent of

the Office of the General Counsel. Grievances received after a member has transferred to Retired Status may be investigated and prosecuted through the disciplinary process at the option of the Office of the General Counsel.

(4) Members suspended from the practice of law because of failure to meet CLE requirements or failure to pay Bar membership fees are not eligible for Retired Status.

If the proposed amendments to the rule are approved, the amended rule will read as follows:

**Rule 1-202. Membership Status**

Membership in the State Bar of Georgia shall consist of six categories: active, inactive, foreign law consultant, emeritus, members unable to practice law due to a disability, and retired status members. The bylaws shall make provision for the registration of each active member and the location of his or her principal office for the practice of law, the registration of each foreign law consultant and the location of his or her principal office, and the registration of emeritus and inactive members and their mailing addresses. Only Active Status members and Emeritus Status members may vote on any State Bar of Georgia matter or election or nominate an active member for office. Emeritus Status members can vote only in person or electronically.

(a) Inactive Status Members. Any member of the State Bar of Georgia may contact the Membership Department and elect to be transferred to Inactive Status membership provided that the member:

- (1) is not engaged in the practice of law;
- (2) does not hold themselves out as a practicing lawyer or attorney;
- (3) does not occupy any public or private position in which the member may be called upon to give legal advice or counsel;
- (4) does not examine the law or to pass upon the legal effect of any act, document, or law for the benefit of another person, company or corporation;
- (5) is active duty in any branch of the United States military.

(b) Active Status Members. Active Status members shall be all other lawyers including judges but excluding foreign law consultants. Only Active Status members of the State Bar of Georgia in good standing may hold office in the State Bar of Georgia.

(c) Foreign Law Consultant Status. Foreign Law Consultants shall be those persons, who are licensed under the Rules Governing Admission to the Practice of Law as adopted by the Supreme Court of Georgia.

(d) Emeritus Status Members. Any member in good standing of the State Bar of Georgia who will attain the age of 70 years in a Bar year and who

shall have been admitted to the practice of law for at least 25 years, five years of which must be as a member in good standing of the State Bar of Georgia, may request Emeritus Status from the State Bar of Georgia upon petition to and approval by the Membership Department. When approved, the member shall be transferred to Emeritus Status. An Emeritus Status member of the State Bar of Georgia shall not be required to pay license fees or other fees, and may not hold office in the State Bar of Georgia. An Emeritus Status member of the State Bar of Georgia shall not be privileged to practice law except that an Emeritus Status member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar of Georgia or a non-profit corporation that delivers legal services to the poor. An Emeritus Status member may be reinstated to active or inactive membership upon application to the Membership Department and payment of non-prorated license fees for the year in which the Emeritus Status member returns to Active Status or Inactive Status membership.

(e) **Members Unable to Practice Law Due to a Disability.** Any member of the State Bar of Georgia who is temporarily or permanently disabled may submit to the Executive Committee of the State Bar of Georgia a written request to be transferred to Disabled Status. Members who elect this status

must submit adequate medical and/or psychological documentation of their disability with the written request. Adequate documentation includes:

- (1) documentation from Social Security of approval of disability;
- (2) documentation from an insurance company of receipt of benefits based upon disability;
- (3) documentation from a medical doctor that the member is disabled.

Any request by a member to be transferred to Disabled Status must comply with all of the provisions contained in Section 1, Article 10 of the Bylaws of the State Bar of Georgia.

(f) Retired Status Member.

- (1) Any member of the State Bar of Georgia who is not engaged in the active practice of law in any state, district, or territory of the United States may transfer to Retired Status by submitting a request in writing to the Executive Director and General Counsel of the State Bar of Georgia. Upon approval by the Executive Director and General Counsel, the Membership Department shall transfer the member to Retired Status. A member in Retired Status shall not be entitled to practice law in this state and may not practice law in any other jurisdiction. Further, such members shall not be eligible to vote or hold

office in the State Bar of Georgia. Any member transferred to Retired Status shall be relieved of their membership fees and CLE obligations.

(2) A request for Retired Status must be unqualified, is irrevocable and permanent. A member in Retired Status will appear in the State Bar of Georgia member directory as “Retired.”

(3) A member of the State Bar of Georgia with a pending disciplinary matter may transfer to Retired Status with the consent of the Office of the General Counsel. Grievances received after a member has transferred to Retired Status may be investigated and prosecuted through the disciplinary process at the option of the Office of the General Counsel.

(4) Members suspended from the practice of law because of failure to meet CLE requirements or failure to pay Bar membership fees are not eligible for Retired Status.

## **II.**

### **Proposed Amendments to Georgia Rule of Professional Conduct 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer**

It is proposed that the following rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A Except as provided in paragraph (e), a lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may

counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

~~(e)~~ A lawyer may counsel or assist a client regarding conduct expressly permitted by Georgia or other applicable law, even if such conduct would be criminal under other law, provided that the lawyer counsels the client about the legal consequences of the client's proposed course of conduct.

The maximum penalty for a violation of this rule is disbarment.

#### Comment

##### Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the

special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

#### Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

#### Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and the client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Georgia Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

#### Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. A lawyer's knowledge may be inferred from the circumstances. See Rule 1.0 (m). Knowledge of the fact in question may be shown by actual knowledge or deliberate ignorance. This prohibition,

however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Georgia Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (5).

If the proposed amendments to the rule are approved, the amended rule will read as follows:

**Rule 1.2 .Scope of Representation and Allocation of Authority Between Client and Lawyer**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client

as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope and objectives of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) Except as provided in paragraph (e), a lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by Georgia or other applicable law, even if such conduct

would be criminal under other law, provided that the lawyer counsels the client about the legal consequences of the client's proposed course of conduct. The maximum penalty for a violation of this rule is disbarment.

#### Comment

##### Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third

persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

#### Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this rule affords the lawyer and the client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client

may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Georgia Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

#### Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. A lawyer's knowledge may be inferred from the circumstances. See Rule 1.0 (m). Knowledge of the fact in question may be shown by actual knowledge or deliberate ignorance. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of

questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that

determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Georgia Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (5).

### **III.**

#### **Proposed Amendments to Bar Rule 4-202. Receipt of Grievances; Initial Review by Bar Counsel**

It is proposed that the following rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

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

(a) Grievances shall be filed in writing with the Office of the General Counsel of the State Bar of Georgia. In lieu of a Memorandum of Grievance the Office of the General Counsel may begin an investigation upon receipt of an Intake Form from the Consumer-Client Assistance Program. All grievances must include the name of the complainant and must be signed by the complainant.

(b) The Office of the General Counsel may investigate conduct upon

receipt of credible information from any source after notifying the respondent lawyer and providing a written description of the information that serves as the basis for the investigation. The Office of the General Counsel may deliver the information it obtains 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 grievance. The screening process may include forwarding a copy of the grievance to the respondent in order that the respondent may respond to the grievance.

(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 grievance, the Office of the General Counsel shall be empowered to dismiss those grievances that do not present sufficient merit to proceed. Rejection of such grievances by the Office of the General Counsel shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the respondent.

(f) Those grievances 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 Bar 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 ~~Consumer-Client~~ Assistance Program so that it may direct the complaining party to appropriate resources.

If the proposed amendments to the rule are approved, the amended rule will read as follows:

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

(a) Grievances shall be filed in writing with the Office of the General Counsel of the State Bar of Georgia. In lieu of a Memorandum of Grievance the Office of the General Counsel may begin an investigation upon receipt of an Intake Form from the Client Assistance Program. All grievances must include the name of the complainant and must be signed by the complainant.

(b) The Office of the General Counsel may investigate conduct upon receipt of credible information from any source after notifying the respondent lawyer and providing a written description of the information that serves as the basis for the investigation. The Office of the General Counsel may deliver the information it obtains 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 grievance. The screening process may include forwarding a copy of the grievance to the respondent in order that the respondent may respond to the grievance.

(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 grievance, the Office of the General Counsel shall be empowered to dismiss those grievances that do not present sufficient merit to proceed. Rejection of such grievances by the Office of the General Counsel shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the respondent.

(f) Those grievances 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 Bar 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.

## IV.

### **Proposed Amendments to Bar Rule 4-204. Investigation and Disposition by State Disciplinary Board – Generally**

It is proposed that the following rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

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

(a) Each grievance 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 Bar 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 ~~Consumer-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.

If the proposed amendments to the rule are approved, the amended rule will read as follows:

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

(a) Each grievance 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 Bar 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.

## V.

### **Proposed Amendments to Bar Rule 4-221.1. Confidentiality of Investigations and Proceedings**

It is proposed that the following rule be approved by inserting the underlined sections as follows:

#### **Rule 4-221.1 Confidentiality of Investigations and Proceedings**

...

(e) The Office of the General Counsel may reveal confidential information to the following person if it appears that the information may assist them in the discharge of their duties:

...

(9) The ~~Consumer~~Client Assistance Program;

...

If the proposed amendment to the rule is approved, the amended rule will read as follows:

**Rule 4-221.1 Confidentiality of Investigations and Proceedings**

(a) The State Bar of Georgia shall maintain as confidential all disciplinary investigations and proceedings pending at the screening or investigative stage, unless otherwise provided by these rules.

(b) After a proceeding under these rules is filed with the Supreme Court of Georgia, all evidentiary and motions hearings shall be open to the public and all documents and pleadings filed of record shall be public documents, unless the Special Master or the Supreme Court of Georgia orders otherwise.

(c) Nothing in these rules shall prohibit the complainant, respondent, or a third party from disclosing information regarding a disciplinary proceeding, unless otherwise ordered by the Supreme Court of Georgia or a Special Master in proceedings under these rules.

(d) The Office of the General Counsel of the State Bar of Georgia or the State Disciplinary Board may reveal or authorize disclosure of information that would otherwise be confidential under this rule under the following circumstances:

- (1) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board, the State Disciplinary Review Board, or any person who is otherwise connected with the disciplinary proceeding in any way, the State Disciplinary Board or its Chair or his designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.
- (2) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.
- (3) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.
- (4) A complainant and/or lawyer representing the complainant shall be notified of the status or disposition of the complaint.
- (5) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

(e) The Office of the General Counsel may reveal confidential information to the following persons if it appears that the information may assist them in the discharge of their duties:

- (1) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;
- (2) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;
- (3) The Judicial Nominating Commission or the comparable body in other jurisdictions;
- (4) The Lawyer Assistance Program or the comparable body in other jurisdictions;
- (5) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;
- (6) The Judicial Qualifications Commission or the comparable body in other jurisdictions;
- (7) The Executive Committee with the specific approval of the following representatives of the State Disciplinary Board: the Chair, the Vice-Chair, and a third representative designated by the Chair;
- (8) The Formal Advisory Opinion Board;
- (9) The Client Assistance Program;

(10) The General Counsel Overview Committee;

(11) An office or committee charged with discipline appointed by the United States Circuit or District Court or the highest court of any state, District of Columbia, commonwealth or possession of the United States; and

(12) The Unlicensed Practice of Law Department.

(f) Any information used by the Office of the General Counsel in a proceeding under Rule 4-108 or in a proceeding to obtain a receiver to administer the files of a lawyer, shall not be confidential under this rule.

(g) The Office of the General Counsel may reveal confidential information when required by law or court order.

(h) The authority or discretion to reveal confidential information under this rule shall not constitute a waiver of any evidentiary, statutory or other privilege which may be asserted by the State Bar of Georgia or the State Disciplinary Board under Bar rules or applicable law.

(i) Nothing in this rule shall prohibit the Office of the General Counsel or the State Disciplinary Board from interviewing potential witnesses or placing the Notice of Investigation out for service by the sheriff or other authorized person.

(j) Members of the Office of the General Counsel and State Disciplinary Board may respond to specific inquiries concerning matters that have been made public by the complainant, respondent, or third parties but are otherwise confidential under these rules by acknowledging the existence and status of the proceeding.

(k) The State Bar of Georgia shall not disclose information concerning discipline imposed on a lawyer under prior Supreme Court of Georgia rules that was confidential when imposed, unless authorized to do so by said prior rules.

## VI.

### **Proposed Amendments to Bar Rule 4-222. Limitation**

It is proposed that the following rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **Rule 4-222. Limitation**

(a) No proceeding under Part IV, Chapter 2, shall be brought unless a Memorandum of Grievance or a ~~Consumer-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 by the Office of the General Counsel shall occur within 12 months of the receipt of the Memorandum of Grievance at the State Bar of Georgia headquarters or institution of an investigation.

If the proposed amendment to the rule is approved, the amended rule would read as follows:

**Rule 4-222. Limitation**

(a) No proceeding under Part IV, Chapter 2, shall be brought unless a Memorandum of Grievance 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 by the Office of the General Counsel shall occur within 12 months of the receipt of the Memorandum of Grievance at the State Bar of Georgia headquarters or

institution of an investigation.

## VII.

### **Proposed Amendments to Bar Rule 10-104. Board of Trustees**

It is proposed that the following rule be amended by deleting the struck-through sections and inserting the underlined sections as follows:

#### **Rule 10-104. Board of Trustees.**

(a) The Board of Trustees shall consist of six lawyers and one non-lawyer appointed by the President of the State Bar of Georgia. The initial appointments to the Board shall be for such terms as to result in the staggered expiration of the terms of all members of the Board. Thereafter, the appointments shall be for a term of ~~five~~three years.

(b) Vacancies shall be filled by appointment of the President of the State Bar of Georgia for any unexpired term.

(c) The Board members shall select a chairperson, who is a member of good standing of the State Bar of Georgia and such other officers as the Board members deem appropriate.

(d) A quorum for the transaction of business at any meeting of the Board shall consist of three current members in attendance.

(e) The Board may adopt a regulation to terminate Trustees who fail to regularly attend meetings and may adopt additional regulations for the

administration of the Fund which are not otherwise inconsistent with these rules.

If the proposed amendment to the rule is approved, the amended rule would read as follows:

**Rule 10-104. Board of Trustees.**

(a) The Board of Trustees shall consist of six lawyers and one non-lawyer appointed by the President of the State Bar of Georgia. The initial appointments to the Board shall be for such terms as to result in the staggered expiration of the terms of all members of the Board. Thereafter, the appointments shall be for a term of three years.

(b) Vacancies shall be filled by appointment of the President of the State Bar of Georgia for any unexpired term.

(c) The Board members shall select a chairperson, who is a member of good standing of the State Bar of Georgia and such other officers as the Board members deem appropriate.

(d) A quorum for the transaction of business at any meeting of the Board shall consist of three current members in attendance.

(e) The Board may adopt a regulation to terminate Trustees who fail to regularly attend meetings and may adopt additional regulations for the administration of the Fund which are not otherwise inconsistent with these

rules.

SO MOVED, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Counsel for the State Bar of Georgia

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William D. NeSmith, III  
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Deputy General Counsel

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