



## SUPREME COURT OF GEORGIA

Atlanta March 9, 2012

The Honorable Supreme Court met pursuant to adjournment.  
The following order was passed:

The Court having considered the motion to amend the Rules and Regulations of the State Bar of Georgia, it is ordered that the State Bar's motion to renumber Part Eight, Rule 8.4 (a)(4)-(a)(8) (Misconduct) is hereby approved, effective March 9, 2012, to read as follows:

### **PART EIGHT MAINTAINING THE INTEGRITY OF THE PROFESSION**

#### **RULE 8.4. MISCONDUCT**

- (a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:
- (1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
  - (2) be convicted of a felony;
  - (3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
  - (4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
  - (5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten (10) days after the time appointed in the order or judgment;
  - (6)
    - (i) state an ability to influence improperly a government agency or official by means that violate the Rules of Professional Conduct or other law;
    - (ii) state an ability to achieve results by means that violate the Rules of Professional Conduct or other law;
    - (iii) achieve results by means that violate the Rules of Professional Conduct or other law;
  - (7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
  - (8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in *judicio* the commission of such act.
- (b)
- (1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:
    - (i) a guilty plea;
    - (ii) a plea of *nolo contendere*;
    - (iii) a verdict of guilty; or
    - (iv) a verdict of guilty but mentally ill.
  - (2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of *nolo contendere*, a verdict of guilty, or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.
- (c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in

paragraphs (a)(1), (a)(2) and (a)(3) above.

(d) Rule 8.4(a)(1) does not apply to Part Six of the Georgia Rules of Professional Conduct.

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through 8.4(a)(8) is disbarment.

### **Comment**

[1] The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prohibit a lawyer from knowingly attempting to violate the Georgia Rules of Professional Conduct or from knowingly aiding or abetting, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a nonlawyer, who is not subject to the rules, to act where the lawyer cannot. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

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

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

[4] Reserved.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

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

### **SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 Clerk