



## SUPREME COURT OF GEORGIA

Atlanta January 12, 2018

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

The Court having considered the 2017-3 Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 1.0 (Terminology); Rule 9.4 (Jurisdiction and Reciprocal Discipline); Rule 4-103 (Multiple Violations); Rule 4-104 (Mental Incapacity and Substance Abuse); Rule 4-105 (Deceased, Incapacitated, Imprisoned and Disappearing Attorneys); Rule 4-106 (Conviction of a Crime; Suspension and Disbarment); Rule 4-107 (Reserved); Rule 4-108 (Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension); Rule 4-109 (Refusal or Failure to Appear for Reprimand; Suspension); Rule 4-110 (Definitions); Rule 4-111 (Audit for Cause); Chapter 2, Rule 4-201 (State Disciplinary Board); Rule 4-201.1 (State Disciplinary Review Board); Rule 4-202 (Receipt of Grievances; Initial Review by Bar Counsel); Rule 4-203 (Powers and Duties); Rule 4-203.1 (Uniform Service Rule); Rule 4-204 (Preliminary Investigation by Investigative Panel – Generally); Rule 4-204.1 (Notice of Investigation); Rule 4-204.2 (Service of the Notice of Investigation); Rule 4-204.3 (Answer to Notice of Investigation Required); Rule 4-204.4 (Finding of Probable Cause; Referral to Special Master); Rule 4-204.5 (Letters of Instruction); Rule 4-205 (Confidential Discipline; In General); Rule 4-206 (Confidential Discipline; Contents); Rule 4-207 (Letters of Formal Admonition and Investigative Panel Reprimands; Notification and Right of Rejection); Rule 4-208 (Confidential Discipline; Effect in Event of Subsequent Discipline); Rule 4-208.1 (Notice of Discipline); Rule 4-208.2 (Notice of Discipline; Contents; Service); Rule 4-208.3 (Rejection of Notice of Discipline); Rule 4-208.4 (Formal Complaint Following Notice of Rejection of Discipline); Rule 4-209 (Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master); Rule 4-209.1 (Coordinating Special Master); Rule 4-209.2 (Special Masters); Rule 4-209.3 (Powers and Duties of the Coordinating Special Master); Rule 4-210 (Powers and Duties of Special Masters); Rule 4-211

(Formal Complaint; Service); Rule 4-211.1 (Dismissal after Formal Complaint); Rule 4-212 (Answer of Respondent; Discovery); Rule 4-213 (Evidentiary Hearing); Rule 4-214 (Reserved); Rule 4-215 (Reserved); Rule 4-216 (Reserved); Rule 4-217 (Report of the Special Master to the Review Panel); Rule 4-218 (Findings by the Review Panel); Rule 4-219 (Judgments and Protective Orders); Rule 4-220 (Notice of Punishment or Acquittal; Administration of Reprimands); Rule 4-221 (Procedures); Rule 4-221.1 (Confidentiality of Investigations and Proceedings); Rule 4-221.2 (Burden of Proof; Evidence); Rule 4-221.3 (Pleadings and Communications Privileged); Rule 4-222 (Limitation); Rule 4-224 (Expungement of Records); Rule 4-226 (Immunity); Rule 4-227 (Petitions for Voluntary Discipline); and Rule 4-228 (Receiverships); be amended to read as set forth below;

It is further ordered that these amendments shall be effective as of July 1, 2018 and shall apply to disciplinary proceedings commenced on or after that date, except amended Rules 4-201 (b) and 4-201.1 (b), which concern the composition of the State Disciplinary Board and the State Disciplinary Review Board;

It is further ordered that amended Rule 4-201 (b) shall be effective as of July 1, 2020 and that the provisions of the Appendix attached hereto shall govern the composition of the State Disciplinary Board from July 1, 2018 through June 30, 2020;

It is further ordered that amended Rule 4-201.1 (b) shall be effective as of July 1, 2018, provided that persons appointed to the Review Panel prior to that date for terms expiring after July 1, 2018 shall serve on the State Disciplinary Review Board until the expiration of their terms, at which time their seats shall be filled as provided in amended Rule 4-201.1 (b);

It is further ordered that the former rules shall continue to apply to disciplinary proceedings commenced before July 1, 2018, provided that, after July 1, 2018, the State Disciplinary Board shall perform the functions and exercise the powers of the Investigative Panel under the former rules, and the State Disciplinary Review Board shall perform the functions and exercise the powers of the Review Panel under the former rules;

It is further ordered that any scrivener's errors in the amended rules may be corrected, and any changes in other provisions of Part IV of the State Bar Rules

necessary to conform those provisions to these amended rules may be made, by the State Bar of Georgia without motion and approval of the Court, provided that any such corrections or conforming changes are not substantive, and provided that the State Bar give the Court written notice of such corrections or changes, such notice to be filed with the Court no less than 30 days before the correction or change is made and to include an explanation of why the correction or change is not substantive. Substantive changes may be made only by motion and approval of the Court.

**PART IV  
GEORGIA RULES OF PROFESSIONAL CONDUCT**

**CHAPTER 1  
GEORGIA RULES OF PROFESSIONAL CONDUCT AND  
ENFORCEMENT THEREOF**

**Rule 4-102. Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct**

(a) The Rules of Professional Conduct to be observed by the members of the State Bar of Georgia and those authorized to practice law in Georgia are set forth herein and any violation thereof, any assistance or inducement directed toward another for the purpose of producing a violation thereof, or any violation thereof through the acts of another, shall subject the offender to disciplinary action as hereinafter provided.

(b) The levels of discipline are set forth below. The power to administer a more severe level of discipline shall include the power to administer the lesser:

(1) Disbarment: A form of public discipline that removes removes the respondent from the practice of law in Georgia. This level of discipline would be appropriate in cases of serious misconduct. This level of discipline includes publication as provided by Rule 4-219 (a).

(2) Suspension: A form of public discipline that removes the respondent from the practice of law in Georgia for a definite period of time or until satisfaction of certain conditions imposed as a part of the suspension. This level of discipline would be appropriate in cases that merit

more than a Public Reprimand but less than disbarment. This level of discipline includes publication as provided by Rule 4-219 (a).

(3) **Public Reprimand:** A form of public discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A Public Reprimand shall be administered by a judge of a Superior Court in open court. This level of discipline would be appropriate in cases that merit more than a State Disciplinary Board Reprimand but less than suspension. This level of discipline includes publication as provided by Rule 4-219 (a).

(4) **State Disciplinary Review Board Reprimand:** A form of public discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A State Disciplinary Review Board Reprimand shall be administered by the State Disciplinary Review Board at a meeting of the State Disciplinary Review Board. This level of discipline would be appropriate in cases that merit more than a Confidential Reprimand but less than a Public Reprimand. This level of discipline includes publication on the official State Bar of Georgia website as provided by Rule 4-219 (a).

(5) **Confidential Reprimand:** A form of confidential discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A Confidential Reprimand shall be administered by the State Disciplinary Board at a meeting of the Board. This level of discipline would be appropriate in cases that merit more than a Formal Letter of Admonition but less than a State Disciplinary Board Reprimand.

(6) **Formal Letter of Admonition:** A form of confidential discipline that declares the respondent's conduct to have been improper but does not limit the right to practice. A Formal Letter of Admonition shall be administered by letter as provided in Rules 4-205 through 4-208. This level of discipline would be appropriate in cases that merit the lowest form of discipline.

(c)

(1) The Supreme Court of Georgia may impose any of the levels of discipline set forth above following formal proceedings against a respondent; however, any case where discipline is imposed by the Court is a matter of public record despite the fact that the level of discipline would have been confidential if imposed by the State Disciplinary Board.

(2) As provided in Part IV, Chapter 2 of the State Bar Rules, the State Disciplinary Board may impose any of the levels of discipline set forth above provided that a respondent shall have the right to reject the imposition of discipline by the Board pursuant to the provisions of Rule 4-208.3;

(d) The Table of Contents, Preamble, Scope, Terminology and Definitions and Georgia Rules of Professional Conduct are as follows:

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## **RULE 1.0. TERMINOLOGY AND DEFINITIONS**

(a) “Belief” or “believes” denotes that the person involved actually thought the fact in question to be true. A person’s belief may be inferred from the circumstances.

(b) “Confidential Proceedings” denotes any proceeding under these Rules which occurs prior to a filing in the Supreme Court of Georgia.

(c) “Confirmed in writing” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (1) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(e) “Conviction” or “convicted” denotes any of the following accepted by a court, whether or not a sentence has been imposed:

(1) a guilty plea;

(2) a plea of nolo contendere;

(3) a verdict of guilty;

(4) a verdict of guilty but mentally ill; or

(5) a plea entered under the Georgia First Offender Act, OCGA § 42-8-60 et seq., or a substantially similar statute in Georgia or another jurisdiction.

(f) “Domestic Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia.

(g) “Firm” or “law firm” denotes a lawyer or lawyers in a private firm, law partnership, professional corporation, sole proprietorship or other association authorized to practice law pursuant to Rule 1-203 (d); or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(h) “Foreign Lawyer” denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia.

(i) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to

deceive; not merely negligent misrepresentation or failure to apprise another of relevant information.

(j) “Grievance/Memorandum of Grievance” denotes an allegation of unethical conduct filed against a lawyer.

(k) “He,” “him” or “his” denotes generic pronouns including both male and female.

(l) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(m) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(n) “Lawyer” denotes a person authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia including persons admitted to practice in this State pro hac vice.

(o) “Nonlawyer” denotes a person not authorized to practice law by either the:

(1) Supreme Court of Georgia or its Rules (including pro hac vice admission), or

(2) duly constituted and authorized governmental body of any other State or Territory of the United States, or the District of Columbia, or

(3) duly constituted and authorized governmental body of any foreign nation.

(p) “Notice of Discipline” denotes a Notice by the State Disciplinary Board that the respondent will be subject to a disciplinary sanction for violation of one or more Georgia Rules of Professional Conduct unless the respondent affirmatively rejects the notice.

(q) “Partner” denotes a member of a partnership, a shareholder in a law firm organized pursuant to Rule 1-203 (d), or a member of an association authorized to practice law.

(r) “Petition for Voluntary Surrender of License” denotes a Petition for Voluntary Discipline in which the respondent voluntarily surrenders his license to practice law in this State. A voluntary surrender of license is tantamount to disbarment.

(s) “Probable Cause” denotes a finding by the State Disciplinary Board that there is sufficient evidence to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of the Bar Rules.

(t) “Public Proceedings” denotes any proceeding under these Rules that has been filed with the Supreme Court of Georgia.

(u) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(v) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(w) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(x) “Respondent” denotes a person whose conduct is the subject of any disciplinary investigation or proceeding.

(y) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(z) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(aa) “Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

(bb) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and e-mail. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

#### **RULE 9.4. JURISDICTION AND RECIPROCAL DISCIPLINE**

(a) Jurisdiction. Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or removal from practice on any of the grounds provided in Rule 4-104 of the State Bar of Georgia, or with respect to acts subsequent thereto that amount to the practice of law or constitute a violation of the Georgia Rules of Professional Conduct or any Rules or Code subsequently adopted by the Supreme Court of Georgia in lieu thereof, and any Domestic or Foreign Lawyer specially admitted by a court of this jurisdiction for a particular proceeding and any Domestic or Foreign Lawyer who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the State Bar of Georgia.

(b) Reciprocal Discipline. Upon being suspended or disbarred in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of the General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been suspended or disbarred in another jurisdiction, the Office of the General Counsel shall obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Boards. Nothing in this Rule shall prevent a lawyer suspended or disbarred in another jurisdiction from filing a Petition for Voluntary Discipline under Rule 4-227.

(1) Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Georgia has been disbarred or suspended in another jurisdiction, the Clerk of the State Disciplinary Boards shall assign the matter a State Disciplinary Board docket number.

(2) The Clerk of the State Disciplinary Boards shall issue a notice to the respondent that shall show the date of the disbarment or suspension in the other jurisdiction and shall include a copy of the order therefor. The notice shall direct the respondent to show cause to the State Disciplinary Review Board within 30 days from service of the notice why the imposition of substantially similar discipline in this jurisdiction would be unwarranted. The notice shall be served upon the respondent pursuant to Rule 4-203.1, and any response thereto shall be served upon the Office of the General Counsel.

(3) If neither party objects within 30 days, the State Disciplinary Review Board shall recommend imposition of substantially similar discipline and shall file that recommendation with the Supreme Court of Georgia within 60 days after the time for the filing of objections expires. The Office of the General Counsel or the respondent may object to imposition of substantially similar discipline by demonstrating that:

(i) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) The discipline imposed would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(iv) The reason for the original disciplinary status no longer exists; or

(v)

(A) The conduct did not occur within the State of Georgia; and

(B) The discipline imposed by the foreign jurisdiction exceeds the level of discipline allowed under these Rules; or

(vi) The discipline would if imposed in identical form be unduly severe or would require action not contemplated by these Rules.

If the State Disciplinary Review Board finds that it clearly appears upon the face of the record from which the discipline is predicated that any of those elements exist, the State Disciplinary Review Board shall make such other recommendation to the Supreme Court of Georgia as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

(4) The State Disciplinary Review Board may consider exceptions from either the Office of the General Counsel or the respondent on the grounds enumerated at paragraph (b) (3) of this Rule and may in its discretion grant oral argument. Exceptions and briefs shall be filed with the State Disciplinary Review Board within 30 days of service of the Notice of Reciprocal Discipline. The responding party shall have 30 days after service of the exceptions within which to respond. The State Disciplinary Review Board shall file its report and recommendation within 60 days of receiving the response to exceptions.

(5) In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct, or has been removed from practice on any of the grounds provided in Rule 4-104 of the State Bar of Georgia, shall establish conclusively the misconduct or the removal from practice for purposes of a disciplinary proceeding in this State.

(6) Discipline imposed by another jurisdiction but of a lesser nature than disbarment or suspension may be considered in aggravation of discipline in any other disciplinary proceeding.

(7) For good cause, the Chair of the State Disciplinary Review Board in a reciprocal discipline proceeding may make an interim recommendation to the Supreme Court of Georgia that the respondent be immediately suspended pending final disposition.

(8) For purposes of this Rule, the word “jurisdiction” means any State, Territory, country, or federal court.

### **Comment**

[1] If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure that so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

[2] Reserved.

[3] The imposition of discipline in one jurisdiction does not mean that Georgia and every other jurisdiction in which the lawyer is admitted must necessarily impose discipline. The State Disciplinary Review Board has jurisdiction to recommend reciprocal discipline on the basis of public discipline imposed by a jurisdiction in which the respondent is licensed.

[4] A judicial determination of misconduct by the respondent in another jurisdiction is conclusive, and not subject to re-litigation in the forum jurisdiction. The State Disciplinary Review Board should recommend substantially similar discipline unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in paragraph (b) (3) exists. This Rule applies whether or not the respondent is admitted to practice in the foreign jurisdiction. See also Rule 8.5, Comment [1].

[5] For purposes of this Rule, the suspension or placement of a lawyer on inactive status in another jurisdiction because of want of sound mind, senility, habitual intoxication or drug addiction, to the extent of impairment of competency as a

lawyer shall be considered a disciplinary suspension under the Rules of the State Bar of Georgia.

#### **Rule 4-103. Multiple Violations**

A finding of a third or subsequent disciplinary infraction under these Rules shall, in and of itself, constitute discretionary grounds for suspension or disbarment. A Special Master and the State Disciplinary Review Board may exercise this discretionary power when the question is appropriately before them. Any discipline imposed by another jurisdiction as contemplated by Rule 9.4 may be considered a disciplinary infraction for the purpose of this Rule.

#### **Rule 4-104. Mental Incapacity and Substance Abuse**

(a) Mental illness, cognitive impairment, alcohol abuse, or substance abuse, to the extent of impairing competency as a lawyer, shall constitute grounds for removing a lawyer from the practice of law.

(b) Upon a determination by the State Disciplinary Board that a lawyer may be impaired or incapacitated to practice law as a result of one of the conditions described in paragraph (a) above, the Board may, in its sole discretion, make a confidential referral of the matter to an appropriate medical or mental health professional for the purposes of evaluation and possible referral to treatment and/or peer support groups. The Board may, in its discretion, defer disciplinary findings and proceedings based upon the impairment or incapacity of a lawyer to afford the lawyer an opportunity to be evaluated and, if necessary, to begin recovery. In such situations the medical or mental health professional shall report to the State Disciplinary Board and the Office of the General Counsel concerning the lawyer's progress toward recovery. A lawyer's refusal to cooperate with the medical or mental health professional or to participate in the evaluation or recommended treatment may be grounds for further proceedings under these Rules, including emergency suspension proceedings pursuant to Rule 4-108.

#### **Rule 4-105. Reserved**

#### **Rule 4-106. Conviction of a Crime; Suspension and Disbarment**

(a) Upon receipt of information or evidence that a conviction for any felony or misdemeanor involving moral turpitude has been entered against a lawyer, the Clerk of the State Disciplinary Boards shall immediately assign the matter a State Disciplinary Board docket number. The Office of the General Counsel shall petition the Supreme Court of Georgia for the appointment of a Special Master to conduct a show cause hearing.

(b) The petition shall show the date of the conviction and the court in which the conviction was entered, and shall be served upon the respondent pursuant to Rule 4-203.1.

(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(d) The Coordinating Special Master shall appoint a Special Master, pursuant to Rule 4-209 (b).

(e) The show cause hearing should be held within 15 days after service of the Petition for Appointment of Special Master upon the respondent or appointment of a Special Master, whichever is later. Within 30 days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia which may order such discipline as deemed appropriate.

(f) If the Supreme Court of Georgia orders the respondent suspended pending any appeal, upon the termination of the appeal (or expiration of time for appeal if no appeal is filed) the State Bar of Georgia may petition the Special Master to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended respondent should:

- (1) be disbarred under Rule 8.4; or
- (2) be reinstated; or
- (3) remain suspended pending retrial as a protection to the public;

or

(4) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these Rules.

Reports of the Special Master shall be filed with the Supreme Court of Georgia, which may order such discipline as deemed appropriate.

(g) For purposes of this Rule, a certified copy of a conviction in any jurisdiction shall be prima facie evidence of a violation of Rule 8.4 of Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

#### **Rule 4-107. Reserved**

#### **Rule 4-108. Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension**

(a) Upon receipt of sufficient evidence demonstrating that a lawyer's conduct poses a substantial and immediate threat of harm to his clients or the public and at the direction of the Chair or Vice-Chair of the State Disciplinary Board, the Office of the General Counsel shall petition the Supreme Court of Georgia for the suspension of the lawyer pending disciplinary proceedings predicated upon the conduct causing such petition.

(b) The petition for emergency suspension shall state the evidence justifying the emergency suspension.

(c) The petition for emergency suspension shall be served upon the respondent pursuant to Rule 4-203.1.

(d) Upon receipt of the petition for emergency suspension, the Clerk of the Supreme Court of Georgia shall file the matter in the records of the Court, shall assign the matter a Supreme Court docket number, and shall notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(e) The Coordinating Special Master shall appoint a Special Master pursuant to Rule 4-209 (b) to conduct a hearing where the State Bar of

Georgia shall show cause why the respondent should be suspended pending disciplinary proceedings.

(f) Within 15 days after service of the petition for emergency suspension upon the respondent or appointment of a Special Master, whichever is later, the Special Master shall hold a hearing on the petition for emergency suspension.

(g) Within 20 days of the hearing, the Special Master shall file his or her recommendation with the Supreme Court of Georgia. The Court may suspend the respondent pending final disposition of disciplinary proceedings predicated upon the conduct causing the emergency suspension, or order such other action as it deems appropriate.

#### **Rule 4-109. Refusal or Failure to Appear for Reprimand; Suspension**

If a respondent fails to appear for imposition of a Confidential Reprimand without just cause, the State Disciplinary Board shall reconsider the matter to determine whether the case should proceed with a public filing pursuant to Rule 4-208 et seq. If a respondent fails to appear before the State Disciplinary Board or the Superior Court for imposition of a State Disciplinary Board Reprimand or a Public Reprimand, the Office of the General Counsel may file in the Supreme Court of Georgia a motion for suspension of the respondent. A copy of the motion shall be served on the respondent as provided in Rule 4-203.1. The Supreme Court of Georgia may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

#### **Rule 4-110. Reserved**

#### **Rule 4-111. Audit for Cause**

Upon receipt of sufficient evidence that a lawyer who practices law in this State poses a threat of harm to his clients or the public, the State Disciplinary Board may conduct an Audit for Cause of the lawyer's trust and escrow accounts with the written approval of the Chair of the State Disciplinary Board and the President-elect of the State Bar of Georgia. Before approval can be granted, the lawyer shall be given notice that approval is being sought and be given an opportunity to appear and be heard. The sufficiency of the notice and opportunity to be heard shall be left to the sole discretion of the persons giving the approval.

The State Disciplinary Board must inform the person being audited that the audit is an Audit for Cause.

## **CHAPTER 2 DISCIPLINARY PROCEEDINGS**

### **Rule 4-201. State Disciplinary Board**

(a) The powers to investigate and discipline lawyers for violations of the Georgia Rules of Professional Conduct are hereby vested in the State Disciplinary Board.

(b) The State Disciplinary Board shall consist of the President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia; six members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, appointed by the Supreme Court of Georgia; six members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, appointed by the President of the State Bar of Georgia with the approval of the Board of Governors; two nonlawyer members appointed by the Supreme Court of Georgia; and two nonlawyer members appointed by the President of the State Bar of Georgia with the approval of the Board of Governors. The Court and the President of the State Bar of Georgia are encouraged to make appointments that will ensure the geographic, gender, racial, and generational diversity of the State Disciplinary Board. No State Disciplinary Board member may serve for more than two consecutive terms, including a term underway at the time this Rule goes into effect.

(1) The President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia shall serve only during the term of their office, shall serve as members ex officio, and shall not increase the quorum requirement.

(2) All other members shall be appointed for three-year terms, except as provided in paragraph (b) (3) below. When the term of appointment of a member expires, the seat shall be filled by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia with the approval of the Board of Governors, whichever appointed the member whose term has expired.

(3) Whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(4) The State Disciplinary Board shall remove a member for failure to attend meetings of the State Disciplinary Board or for other good cause, and the seat of a member so removed shall be filled as provided in paragraph (b) (3) above.

(5) At the first meeting following an Annual Meeting of the State Bar of Georgia the State Disciplinary Board shall elect a Chair and Vice-Chair.

(c) Upon request, State Disciplinary Board members shall be reimbursed for their reasonable travel expenses in attending meetings of the State Disciplinary Board. The Internal Rules of the State Disciplinary Board provide further explanation of the travel and reimbursement policies.

(d) State Disciplinary Board members may request reimbursement for postage, copying, and other expenses necessary for their work investigating cases.

#### **Rule 4-201.1. State Disciplinary Review Board**

(a) The power to review for error final reports and recommendations of Special Masters in public proceedings arising under the Georgia Rules of Professional Conduct is hereby vested in the State Disciplinary Review Board.

(b) The State Disciplinary Review Board shall consist of the Immediate Past President of the State Bar of Georgia; the Immediate Past President of the Young Lawyers Division of the State Bar of Georgia or a member of the Young Lawyers Division designated by its Immediate Past President; seven members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia and one at large appointed as described below; and two nonlawyer members appointed as described below. The Supreme Court of Georgia and the President of the State Bar of Georgia are encouraged to make appointments that

will ensure the geographic, gender, racial, and generational diversity of the State Disciplinary Review Board. No State Disciplinary Review Board member may serve for more than two consecutive terms, including a term underway at the time this Rule goes into effect.

(1) The Immediate Past President of the State Bar of Georgia and the Immediate Past President of the Young Lawyers Division of the State Bar of Georgia (or member of the Young Lawyers Division designated by its Immediate Past President) shall serve only during the term of their office, shall serve as members *ex officio*, and shall not increase the quorum requirement.

(2) All other members shall be appointed for three-year terms, except as provided in paragraph (b) (3) below. When the term of appointment of a member expires in an even-numbered year, the seat shall be filled by the appointment of the Supreme Court of Georgia for a term of three years; and when the term of appointment of a member expires in an odd-numbered year, the seat shall be filled by the appointment of the President of the State Bar of Georgia with the approval of the Board of Governors.

(3) Whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(4) The State Disciplinary Review Board shall remove a member for failure to attend meetings of the State Disciplinary Review Board or for other good cause, and the seat of a member so removed shall be filled as provided in paragraph (b) (3) above.

(5) At the first meeting following an Annual Meeting of the State Bar of Georgia the State Disciplinary Review Board shall elect a Chair and Vice-Chair.

(c) Upon request, State Disciplinary Review Board members shall be reimbursed for their reasonable travel expenses in attending meetings of the State

Disciplinary Review Board. The Internal Rules of the State Disciplinary Review Board provide further explanation of the travel and reimbursement policies.

(d) State Disciplinary Review Board members may request reimbursement for postage, copying, and other expenses necessary for their work reviewing cases.

#### **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 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 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 Assistance Program so that it may direct the complaining party to appropriate resources.

### **Rule 4-203. Powers and Duties of the State Disciplinary Board**

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

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

(2) to initiate grievances on its own motion, to require additional information from a complainant, where appropriate, and to dismiss and reject such grievances as they may seem unjustified, frivolous, or patently unfounded. However, the rejection of a grievance by the State Disciplinary Board shall not deprive the complaining party of any right of action he might otherwise have at law or in equity against the respondent;

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

(4) to delegate the duties of the State Disciplinary Board enumerated in paragraphs (1), (2), (8), (9), (10), and (11) hereof to the Chair of the State Disciplinary Board or such other members as the State Disciplinary Board or its Chair may designate subject to review and approval by the full State Disciplinary Board;

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

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

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

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

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

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

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

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

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

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

#### **Rule 4-203.1. Uniform Service Rule**

(a) Lawyers shall inform the Membership Department of the State Bar of Georgia, in writing, of their current name, official address and telephone number. The Supreme Court of Georgia and the State Bar of Georgia may rely on the official address on file with the Membership Department in all efforts to contact, communicate with, and perfect service upon a lawyer. The choice of a lawyer to provide only a post office box or commercial equivalent address to the Membership Department of the State Bar of Georgia shall constitute an election to waive personal service. Notification of a change of address given to any department of the State Bar of Georgia other than the Membership Department shall not satisfy the requirement herein.

(b) In all matters requiring personal service under Part IV of the Bar Rules, service may be perfected in the following manner:

(1) Acknowledgment of Service: An acknowledgment of service from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(2) Written Response from Respondent: A written response from the respondent or respondent's counsel shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(3) In the absence of an acknowledgment of service or a written response from the respondent or respondent's counsel, and subject to the provisions of subparagraph (b) (4) below, the respondent shall be served in the following manner:

(i) Personal Service: Service may be accomplished by the Sheriff or any other person authorized to serve a summons under the provisions of the Georgia Civil Practice Act, as approved by the Chair of the State Disciplinary Board or the Chair's designee. Receipt of a Return of Service Non Est Inventus shall constitute conclusive proof that service cannot be perfected by personal service.

(ii) Service by Publication: If personal service cannot be perfected, or when the respondent has only provided a post office box or commercial equivalent address to the Membership Department and the respondent has not acknowledged service within 10 days of a

mailing to respondent's post office box or commercial equivalent address, service may be accomplished by publication once a week for two weeks in the legal organ of the county of respondent's address, as shown on the records of the Membership Department of the State Bar of Georgia, and, contemporaneously with the publication, mailing a copy of the service documents by first class mail to respondent's address as shown on the records of the Membership Department of the State Bar of Georgia.

(4) When it appears from an affidavit made by the Office of the General Counsel that the respondent has departed from the State, or cannot, after due diligence, be found within the State, or seeks to avoid the service, the Chair of the State Disciplinary Board, or the Chair's designee, may authorize service by publication without the necessity of first attempting personal service. The affidavit made by the Office of the General Counsel must demonstrate recent unsuccessful attempts at personal service upon the respondent regarding other or related disciplinary matters and that such personal service was attempted at respondent's address as shown on the records of the Membership Department of the State Bar of Georgia.

(c) Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a respondent represented by a lawyer, the service shall be made upon the respondent's lawyer. Service upon the respondent's lawyer or upon an unrepresented respondent shall be made by hand-delivery or by delivering a copy or mailing a copy to the respondent's lawyer or to the respondent's official address on file with the Membership Department, unless the respondent's lawyer specifies a different address for the lawyer in a filed pleading. As used in this Rule, the term "delivering a copy" means handing it to the respondent's lawyer or to the respondent, or leaving it at the lawyer's or respondent's office with a person of suitable age or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion. Service by mail is complete upon mailing and includes transmission by U.S. Mail, or by a third-party commercial carrier for delivery within three business days, shown by the official postmark or by the commercial carrier's transmittal form. Proof of service may be made by certificate of a lawyer or of his employee, written admission, affidavit, or other satisfactory proof. Failure to make proof of service shall not affect the validity of service.

**Rule 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 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 Assistance Program so that it may direct the complaining party to appropriate resources.

(b) The primary investigation shall be conducted by the member of the State Disciplinary Board responsible for the investigation, assisted by the staff of the Office of the General Counsel, upon request of the State Disciplinary Board member. The Board of Governors of the State Bar of Georgia shall fund the

Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

**Rule 4-204.1. Notice of Investigation**

(a) A Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a reasonable opportunity to respond to the charges in writing. The Notice shall contain:

(1) a statement that the grievance is being transmitted to the State Disciplinary Board;

(2) a copy of the grievance;

(3) a list of the Rules that appear to have been violated;

(4) the name and address of the State Disciplinary Board member assigned to investigate the grievance and a list of the State Disciplinary Board members; and

(5) a statement of the respondent's right to challenge the competency, qualifications or objectivity of any State Disciplinary Board member.

(b) The form for the Notice of Investigation shall be approved by the State Disciplinary Board.

(c) The Office of the General Counsel shall cause the Notice of Investigation to be served upon the respondent pursuant to Rule 4-203.1.

**Rule 4-204.2. Reserved**

**Rule 4-204.3. Answer to Notice of Investigation Required**

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

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

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

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

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

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

#### **Rule 4-204.4. Finding of Probable Cause; Referral to Special Master**

In the event the State Disciplinary Board finds Probable Cause of the respondent's violation of one or more of the provisions of Part IV, Chapter 1 of these Rules, it may refer the matter to the Supreme Court of Georgia by directing

the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

(a) A formal complaint, as herein provided, along with a petition for the appointment of a Special Master and a notice of its finding of Probable Cause, within 30 days of the finding of Probable Cause unless the State Disciplinary Board or its Chair grants an extension of time for the filing; or

(b) A Notice of Discipline pursuant to Rules 4-208.1, 4-208.2 and 4-208.3.

#### **Rule 4-204.5. Letters of Instruction**

(a) In addition to dismissing a complaint, the State Disciplinary Board may issue a letter of instruction to the respondent upon the following conditions:

(1) the case has been thoroughly investigated, the respondent has been notified of and has had an opportunity to answer the charges brought against him, and the case has been reported to a quorum of the State Disciplinary Board assembled at a regularly scheduled meeting; and

(2) the State Disciplinary Board, as evidenced through the majority vote of its members present and voting, is of the opinion that the respondent either:

(i) has not engaged in conduct that is in violation of the provisions of Part IV, Chapter 1 of these Rules; or

(ii) has engaged in conduct that although technically in violation of such Rules is not reprehensible, and has resulted in no harm or injury to any third person, and is not in violation of the spirit of such Rules; or

(iii) has engaged in conduct in violation of any recognized voluntary creed of professionalism.

(b) A letter of instruction shall not constitute a finding of any disciplinary infraction.

#### **Rule 4-205. Confidential Discipline; In General**

The State Disciplinary Board may issue a Formal Letter of Admonition or a Confidential Reprimand in any disciplinary case upon the following conditions:

(a) the case has been thoroughly investigated, the respondent has been notified of and has had an opportunity to answer the charges brought against him, and the case has been reported to a quorum of the State Disciplinary Board assembled at a regularly scheduled meeting;

(b) the State Disciplinary Board, as evidenced through the majority vote of its members present and voting, is of the opinion that the respondent has engaged in conduct that is in violation of the provisions of Part IV, Chapter 1 of these Rules; and

(c) the State Disciplinary Board, as evidenced through the majority vote of its members present and voting, is of the opinion that the conduct referred to in paragraph (b) hereof was engaged in:

(1) inadvertently; or

(2) purposefully, but in ignorance of the applicable disciplinary rule or rules; or

(3) under such circumstances that it is the opinion of the State Disciplinary Board that the protection of the public and rehabilitation of the respondent would be best achieved by the issuance of a Formal Letter of Admonition or a Confidential Reprimand rather than by any other form of discipline.

#### **Rule 4-206. Confidential Discipline; Contents**

(a) Formal Letters of Admonition and Confidential Reprimands shall contain a statement of the specific conduct of the respondent that violates Part IV, Chapter 1 of these Rules, shall state the name of the complainant, if any, and shall state the reasons for issuance of such confidential discipline.

(b) A Formal Letter of Admonition shall also contain the following information:

(1) the right of the respondent to reject the Formal Letter of Admonition under Rule 4-207;

(2) the procedure for rejecting the Formal Letter of Admonition under Rule 4-207; and

(3) the effect of an accepted Formal Letter of Admonition in the event of a third or subsequent imposition of discipline.

(c) A Confidential Reprimand shall also contain information concerning the effect of the acceptance of such reprimand in the event of a third or subsequent imposition of discipline.

**Rule 4-207. Formal Letters of Admonition and Confidential Reprimands; Notification and Right of Rejection**

In any case where the State Disciplinary Board votes to impose discipline in the form of a Formal Letter of Admonition or a Confidential Reprimand, such vote shall constitute the State Disciplinary Board's finding of Probable Cause. The respondent shall have the right to reject, in writing, the imposition of such discipline.

(a) Notification to respondent shall be as follows:

(1) in the case of a Formal Letter of Admonition, the letter of admonition;

(2) in the case of a Confidential Reprimand, the letter notifying the respondent to appear for the administration of the reprimand;

sent to the respondent at his or her address as reflected in the membership records of the State Bar of Georgia, via certified mail, return receipt requested.

(b) Rejection by respondent shall be as follows:

(1) in writing, within 30 days of notification; and

(2) sent to the State Disciplinary Board via any of the methods authorized under Rule 4-203.1 (c) and directed to the Clerk of the State Disciplinary Boards at the current headquarters address of the State Bar of Georgia.

(c) If the respondent rejects the imposition of a Formal Letter of Admonition or Confidential Reprimand, the Office of the General Counsel may file a formal complaint with the Clerk of the Supreme Court of Georgia unless the State Disciplinary Board reconsiders its decision.

(d) Confidential Reprimands shall be administered before the State Disciplinary Board by the Chair or his designee.

#### **Rule 4-208. Confidential Discipline; Effect in Event of Subsequent Discipline**

In the event of a subsequent disciplinary proceeding, the confidentiality of the imposition of confidential discipline shall be waived and the Office of the General Counsel may use such information as aggravation of discipline.

#### **Rule 4-208.1. Notice of Discipline**

(a) In any case where the State Disciplinary Board finds Probable Cause, the State Disciplinary Board may issue a Notice of Discipline requesting that the Supreme Court of Georgia impose any level of public discipline authorized by these Rules.

(b) Unless the Notice of Discipline is rejected by the respondent as provided in Rule 4-208.3, (1) the respondent shall be in default; (2) the respondent shall have no right to any evidentiary hearing; and (3) the respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court of Georgia. The Supreme Court of Georgia is not bound by the State Disciplinary Board's recommendation and may impose any level of discipline it deems appropriate.

## **Rule 4-208.2. Notice of Discipline; Contents; Service**

(a) The Notice of Discipline shall include:

(1) the Rules that the State Disciplinary Board found the respondent violated;

(2) the allegations of facts that, if un rebutted, support the finding that such Rules have been violated;

(3) the level of public discipline recommended to be imposed;

(4) the reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the State Disciplinary Board to be relevant to such recommendation;

(5) the entire provisions of Rule 4-208.3 relating to rejection of a Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing the same in the notice;

(6) a copy of the Memorandum of Grievance; and

(7) a statement of any prior discipline imposed upon the respondent, including confidential discipline under Rules 4-205 to 4-208.

(b) The Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the respondent pursuant to Rule 4-203.1.

(c) The Office of the General Counsel shall file documents evidencing service with the Clerk of the Supreme Court of Georgia.

(d) The level of disciplinary sanction in any Notice of Discipline rejected by the respondent or the Office of the General Counsel shall not be binding on the Special Master, the State Disciplinary Board or the Supreme Court of Georgia in subsequent proceedings in the same matter.

### **Rule 4-208.3. Rejection of Notice of Discipline**

(a) In order to reject the Notice of Discipline, the respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within 30 days following service of the Notice of Discipline.

(b) Any Notice of Rejection by the respondent shall be served upon the opposing party. In accordance with Rule 4-204.3 if the respondent has not previously filed a sworn response to the Notice of Investigation the rejection must include a sworn response in order to be considered valid. The respondent must also file a copy of such written response with the Clerk of the Supreme Court of Georgia at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the matter to proceed pursuant to Rule 4-208.4 et seq.

### **Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline**

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within 30 days following the filing of a Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by the State Disciplinary Board.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chair of the State Disciplinary Board or his designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the State Disciplinary Board may reconsider the grievance and take appropriate action.

### **Rule 4-209. Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master**

(a) Upon receipt of a notice of finding of Probable Cause, a petition for appointment of a Special Master and a formal complaint, the Clerk of the Supreme

Court of Georgia shall file the matter in the records of the Court, give the matter a Supreme Court of Georgia docket number, and notify the Coordinating Special Master that appointment of a Special Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the notice of finding of Probable Cause need not be filed.

(b) Within a reasonable time after receipt of a petition for appointment of a Special Master or notification that a Special Master previously appointed has been disqualified, withdrawn, or is otherwise unable to serve, the Coordinating Special Master shall appoint a Special Master to conduct formal disciplinary proceedings in such complaint. The Coordinating Special Master shall select a Special Master from the list approved by the Supreme Court of Georgia.

(c) The Clerk of the Supreme Court shall serve the signed Order Appointing Special Master on the Office of the General Counsel of the State Bar of Georgia. Upon notification of the appointment of a Special Master, the State Bar of Georgia shall immediately serve the respondent with the order of appointment of a Special Master and with its formal complaint as hereinafter provided.

(d) Within 10 days of service of the notice of appointment of a Special Master, the respondent and the State Bar of Georgia may file any and all objections or challenges either of them may have to the competency, qualifications or impartiality of the Special Master with the Coordinating Special Master. The party filing such objections or challenges must also serve a copy of the objections or challenges upon the opposing party and the Special Master, who may respond to such objections or challenges. Within a reasonable time, the Coordinating Special Master shall consider the challenges and the responses of respondent, the State Bar of Georgia, and the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Clerk of the Supreme Court of Georgia and the Special Master of the decision. Exceptions to the Coordinating Special Master's denial of disqualification are subject to review by the Supreme Court of Georgia at the time the record in the matter is filed with the Court pursuant to Rule 4-216 (e). If a Special Master is disqualified, appointment of a successor Special Master shall proceed as provided in this Rule.

**Rule 4-209.1. Appointment of Coordinating Special Master and Special Masters**

(a) The Supreme Court of Georgia shall appoint a lawyer to serve as the Coordinating Special Master for disciplinary cases.

(b) The Supreme Court of Georgia annually shall appoint up to 20 lawyers to serve as Special Masters in disciplinary cases. The Court may reappoint lawyers appointed in prior years, although it generally is preferable for a lawyer to serve as a Special Master for no more than five consecutive years. When a case is assigned to a lawyer appointed as Special Master, such lawyer shall continue to serve as Special Master in that case until final disposition, unless the Coordinating Special Master or the Court directs otherwise, irrespective of whether such lawyer is reappointed to serve as Special Master for another year.

(c) The Coordinating Special Master and Special Masters shall serve at the pleasure of the Supreme Court of Georgia.

(d) No member of the State Disciplinary Board, State Disciplinary Review Board, Special Master Compensation Commission, or Executive Committee of the State Bar of Georgia shall be appointed to serve as Coordinating Special Master or as a Special Master.

(e) A list of the lawyers appointed by the Supreme Court of Georgia as Special Masters shall be published on the website of the State Bar of Georgia and annually in a regular publication of the State Bar of Georgia.

(f) Training for Special Masters is expected, and the Coordinating Special Master shall be responsible for the planning and conduct of training sessions, which the State Bar of Georgia shall make available without cost to Special Masters. At a minimum, a lawyer appointed for the first time as a Special Master should attend a training session within six months of his appointment. The failure of a Special Master to complete the minimum required training session shall not be a basis for a motion to disqualify a Special Master.

(g) A Special Master (including the Coordinating Special Master) shall be disqualified to serve in a disciplinary case when circumstances exist, which, if the Special Master were a judge, would require the recusal of the Special Master

under the Code of Judicial Conduct. In the event that the Coordinating Special Master is disqualified in any case, the Supreme Court of Georgia shall assign the case to a Special Master, and the Court shall designate another Special Master to act as Coordinating Special Master for purposes of that case only.

#### **Rule 4-209.2. Compensation of Coordinating Special Master and Special Masters**

(a) The Coordinating Special Master and the Special Masters shall be paid by the State Bar of Georgia from the general operating fund at rates to be set by the Supreme Court of Georgia, which the Court may adjust from time to time.

(b) To advise the Supreme Court of Georgia with respect to the compensation of the Coordinating Special Master and Special Masters, the Court shall appoint a Special Master Compensation Commission, which shall consist of the current Treasurer of the State Bar of Georgia; the second, third, and fourth immediate past presidents of the State Bar of Georgia, unless any such past president should decline to serve; and such other persons as the Court may designate. The Commission shall make annual recommendations to the Court about the rate to be paid to the Coordinating Special Master and the rate to be paid to the Special Masters, and the Commission shall report such recommendations to the Court no later than January 1 of each year.

#### **Rule 4-209.3. Powers and Duties of the Coordinating Special Master**

The Coordinating Special Master shall have the following powers and duties:

(a) to establish requirements for, conduct, and supervise Special Master training;

(b) to assign cases to Special Masters from the list provided in Rule 4-209 (b);

(c) to exercise all of the powers and duties provided in Rule 4-210 when acting as a Special Master under paragraph (h) below;

(d) to monitor and evaluate the performance of Special Masters and to submit a report to the Supreme Court of Georgia regarding such performance annually;

(e) to remove Special Masters for such cause as may be deemed proper by the Coordinating Special Master;

(f) to fill all vacancies occasioned by incapacity, disqualification, recusal, or removal;

(g) to administer Special Master compensation, as provided in Rule 4-209.2 (b);

(h) to hear pretrial motions when no Special Master is serving;

(i) to perform all other administrative duties necessary for an efficient and effective hearing system;

(j) to allow a late filing of the respondent's answer where there has been no final selection of a Special Master within 30 days of service of the formal complaint upon the respondent;

(k) to receive and pass upon challenges and objections to the appointment of Special Masters; and

(l) to extend the time for a Special Master to file a report, in accordance with Rule 4-214 (a).

#### **Rule 4-210. Powers and Duties of Special Masters**

In accordance with these Rules a duly appointed Special Master shall have the following powers and duties:

(a) to exercise general supervision over assigned disciplinary proceedings, including emergency suspension cases as provided in Rule 4-108, and to perform all duties specifically enumerated in these Rules;

(b) to rule on all questions concerning the sufficiency of the formal complaint;

(c) to encourage negotiations between the State Bar of Georgia and the respondent, whether at a pretrial meeting set by the Special Master or at any other time;

(d) to receive and evaluate any Petition for Voluntary Discipline filed after the filing of a formal complaint;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter subject to Rule 4-214 (a);

(f) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he becomes incapacitated or otherwise unable to perform his duties;

(g) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a respondent growing out of different transactions, whether they involve one or more complainants, and to make recommendations on each complaint as constituting a separate offense;

(h) to sign subpoenas and to exercise the powers described in Rule 4-221 (c);

(i) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;

(j) to make findings of fact and conclusions of law and a recommendation of discipline as hereinafter provided and to submit his findings for consideration by the Supreme Court of Georgia in accordance with Rule 4-214;

(k) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases; and

(l) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the respondent should be suspended pending further disciplinary proceedings.

#### **Rule 4-211. Formal Complaint; Service**

(a) Within 30 days after a finding of Probable Cause, the Office of the General Counsel shall file a formal complaint that specifies with reasonable particularity the acts complained of and the grounds for disciplinary action. A copy of the formal complaint shall be served upon the respondent after appointment of a Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Rule 4-208.4. The formal complaint shall be served pursuant to Rule 4-203.1.

(b) Reserved.

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

#### **Rule 4-211.1. Dismissal after Formal Complaint**

At any time after the State Disciplinary Board finds Probable Cause, the Office of the General Counsel may dismiss the proceeding with the consent of the Chair or Vice-Chair of the State Disciplinary Board or with the consent of any three members of the State Disciplinary Board.

#### **Rule 4-212. Answer of Respondent; Discovery**

(a) The respondent shall file and serve his answer to the formal complaint of the State Bar of Georgia pursuant to Rule 4-221 (b) within 30 days after service of the formal complaint. If the respondent fails to answer or to obtain an extension of time for his answer, the facts alleged and violations charged in the formal complaint shall be deemed admitted. In the event the respondent's answer fails to address specifically the issues raised in the formal complaint, the facts

alleged and violations charged in the formal complaint and not specifically addressed in the answer shall be deemed admitted. A respondent may obtain an extension of time not to exceed 15 days to file the answer from the Special Master. Extensions of time for the filing of an answer shall not be routinely granted.

(b) The pendency of objections or challenges to one or more Special Masters shall provide no justification for a respondent's failure to file his answer or for failure of the State Bar of Georgia or the respondent to engage in discovery.

(c) Both parties to the disciplinary proceeding may engage in discovery under the rules of practice and procedure then applicable to civil cases in the State of Georgia.

(d) In lieu of filing an answer to the formal complaint of the State Bar of Georgia, the respondent may submit to the Special Master a Petition for Voluntary Discipline as provided in Rule 4-227 (c). Each such petition shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline. As provided in Rule 4-227 (c) (1), the Special Master shall allow Bar counsel 30 days within which to respond.

#### **Rule 4-213. Evidentiary Hearing**

(a) Within 90 days after the filing of respondent's answer to the formal complaint or the expiration of the time for filing of the answer, whichever is later, the Special Master shall proceed to hear the case. The evidentiary hearing shall be reported and transcribed at the expense of the State Bar of Georgia. When the hearing is complete, the Special Master shall proceed to make findings of fact, conclusions of law and a recommendation of discipline and file a report with the Clerk of the State Disciplinary Boards as hereinafter provided. Alleged errors in the hearing may be reviewed by the Supreme Court of Georgia when the findings and recommendations of discipline are filed with the Court. There shall be no interlocutory appeal of alleged errors in the hearing.

(b) Upon respondent's showing of necessity and financial inability to pay for a copy of the transcript, the Special Master shall order the State Bar of Georgia to purchase a copy of the transcript for respondent.

#### **Rule 4-214. Report of the Special Master**

(a) Unless the Coordinating Special Master extends the deadline for good cause, the Special Master shall prepare a report within 45 days from receipt of the transcript of the evidentiary hearing. Failure of the Special Master to issue the report within 45 days shall not be grounds for dismissal. The report shall contain the following:

- (1) findings of fact on the issues raised by the formal complaint;
- (2) conclusions of law on the issues raised by the pleadings of the parties; and
- (3) a recommendation of discipline.

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

(c) The Clerk of the State Disciplinary Boards shall file the original record in the case directly with the Supreme Court of Georgia, unless any party files with the Clerk a request for review by the State Disciplinary Review Board and exceptions to the report within 30 days of the date the report is filed as provided in Rule 4-216 et seq. The Clerk shall inform the State Disciplinary Review Board when a request for review and exceptions are filed.

(d) In the event any party requests review, the responding party shall file a response to the exceptions within 30 days of the filing. Within 10 days after the receipt of a response or the expiration of the time for responding, the Clerk shall transmit the record in the case to the State Disciplinary Review Board.

#### **Rule 4-215. Powers and Duties of the State Disciplinary Review Board**

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

(a) to review reports of Special Masters, and to recommend to the Supreme Court of Georgia the imposition of punishment and discipline or dismissal of the complaint;

(b) to adopt forms for notices and any other written instruments necessary or desirable under these Rules;

(c) to prescribe its own rules of conduct and procedure;

(d) to receive Notice of Reciprocal Discipline and to recommend to the Supreme Court of Georgia the imposition of punishment and discipline pursuant to Bar Rule 9.4 (b) (3); and

(e) to administer State Disciplinary Review Board reprimands.

#### **Rule 4-216. Proceedings Before the State Disciplinary Review Board**

(a) Upon receipt of the record and exceptions to the report of the Special Master pursuant to Rule 4-214, the State Disciplinary Review Board shall consider the record, review findings of fact and conclusions of law, and determine whether a recommendation of disciplinary action will be made to the Supreme Court of Georgia and the nature of such recommended discipline. The findings of fact made by a Special Master may be reversed if the State Disciplinary Review Board finds them to be clearly erroneous or manifestly in error. Conclusions of law and determinations of appropriate sanctions shall be reviewed de novo.

(b) The respondent shall have the right to challenge the competency, qualifications, or objectivity of any member of the State Disciplinary Review Board considering the case under a procedure as provided for in the Rules of the State Disciplinary Review Board.

(c) There shall be no de novo hearing before the State Disciplinary Review Board.

(d) The State Disciplinary Review Board may consider exceptions to the report of the Special Master and may in its discretion grant oral argument if requested by any party within 15 days of transmission of the record and exceptions to the State Disciplinary Review Board. Exceptions and briefs shall be filed with

the Clerk of the State Disciplinary Boards, in accordance with Rule 4-214. The responding party shall have 30 days after service of the exceptions within which to respond.

(e) Within 90 days after receipt of the record including any exceptions to the report of the Special Master and responses thereto the State Disciplinary Review Board shall file its report with the Clerk of the State Disciplinary Boards. The 90-day deadline may be extended by agreement of the parties or with the consent of the Chair of the State Disciplinary Review Board for good cause shown. A copy of the State Disciplinary Review Board's report shall be served upon the respondent, and the Clerk shall file the record in the case with the Supreme Court of Georgia within 10 days after the report is filed. If no report is filed by the State Disciplinary Review Board within 90 days of receipt by it of the record and no extension is granted, the Clerk shall file the original record in the case with the Clerk of the Supreme Court of Georgia, and the case shall be considered by the Court on the record.

**Rule 4-217. Reserved**

**Rule 4-218. Judgments**

After the Special Master's report and any report of the State Disciplinary Review Board are filed with the Supreme Court of Georgia, the respondent and the State Bar of Georgia may file with the Court any written exceptions, supported by written argument, either may have to the reports. All such exceptions shall be filed with the Court within 30 days of the date that the record is filed with the Court and a copy served upon the opposing party. The responding party shall have an additional 30 days to file a response with the Court. The Court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The Court will promptly consider the report of the Special Master, any report of the State Disciplinary Review Board, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's judgment shall be transmitted to the State Bar of Georgia and the respondent by the Court.

**Rule 4-219. Publication and Protective Orders**

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

(b)

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

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

**Rule 4-220. Notice of Punishment or Acquittal; Administration of Reprimands**

(a) Upon a final judgment of disbarment or suspension, notice of the action taken shall be given by the Office of the General Counsel of the State Bar of Georgia to the clerks of all courts of record in this State and to the Membership Department of the State Bar of Georgia, and the name of the respondent in question shall be stricken from the rolls of said courts and from the rolls of the State Bar of Georgia for the prescribed period.

(b) State Disciplinary Review Board Reprimands shall be prepared by the Office of the General Counsel based upon the record. State Disciplinary Review Board Reprimands shall be issued by the Chair of the State Disciplinary Review Board, or his designee, at a regular meeting of the Board.

(c) Public Reprimands shall be prepared by the Office of the General Counsel based upon the record in the case. They shall be read in open court in the presence of the respondent by the judge of the Superior Court in the county in which the respondent resides or the county in which the disciplinary infraction occurred, with the location to be specified by the Special Master subject to the approval of the Supreme Court of Georgia. Notice of issuance of the reprimand shall be published in advance in the legal organ of the county of the respondent's address as shown on the Membership Records of the State Bar of Georgia, and provided to the complainant in the underlying case.

(d) After a Public Reprimand has been administered, a certificate reciting the fact of the administration of the reprimand and the date of its administration shall be filed with the Supreme Court of Georgia. There shall be attached to such certificate a copy of the reprimand. Both the certificate and the copy of the reprimand shall become a part of the record in the disciplinary proceeding.

(e) In the event of a final judgment in favor of the respondent, the State Bar of Georgia shall, if directed by the respondent, give notice thereof to the clerk of the Superior Court in the county in which the respondent resides.

#### **Rule 4-221. Hearing Procedures**

(a) Oaths. Before entering upon his duties as herein provided, each member of the State Disciplinary Board, each member of the State Disciplinary Review Board, and each Special Master shall swear or affirm to the following oath

by signing a copy and returning it to the Clerk of the Boards or to the Clerk of the Supreme Court of Georgia, as appropriate.

“I do solemnly swear or affirm that I will faithfully and impartially discharge and perform all of the duties incumbent upon me as a member of the State Disciplinary Board of the State Bar of Georgia/member of the State Disciplinary Review Board of the State Bar of Georgia/Special Master according to the best of my ability and understanding and agreeable to the laws and Constitution of this State and the Constitution of the United States.”

The Clerk of the Boards shall maintain the completed Oaths of Board members, and the Clerk of the Supreme Court of Georgia shall file the completed Oaths of Special Masters.

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

(c) Witnesses and Evidence; Contempt.

(1) The respondent and the State Bar of Georgia shall have the right to require the issuance of subpoenas for the attendance of witnesses to testify or to produce books and papers. The Special Master shall have the power to compel the attendance of witnesses and the production of books, papers, and documents relevant to the matter under investigation, by subpoena, and as further provided by law in civil cases under the laws of Georgia.

(2) The following shall subject a person to rule for contempt of the Special Master or State Disciplinary Board:

(i) disregard, in any manner whatsoever, of a subpoena issued pursuant to Rules 4-203 (9), 4-210 (h) or 4-221 (c) (1);

(ii) refusal to answer any pertinent or proper question of a Special Master; or

(iii) willful or flagrant violation of a lawful directive of a Special Master.

It shall be the duty of the Chair of the State Disciplinary Board or Special Master to report the facts supporting contempt to the Chief Judge of the Superior Court in and for the county in which the investigation, trial or hearing is being held. The Superior Court shall have jurisdiction of the matter and shall follow the procedures for contempt as are applicable in the case of a witness subpoenaed to appear and give evidence on the trial of a civil case before the Superior Court under the laws in Georgia.

(3) Any Special Master shall have power to administer oaths and affirmations and to issue any subpoena herein provided for.

(4) Depositions may be taken by the respondent or the State Bar of Georgia in the same manner and under the same provisions as may be done in civil cases under the laws of Georgia, and such depositions may be used upon the trial or an investigation or hearing in the same manner as such depositions may be used in civil cases under the laws of Georgia.

(5) All witnesses attending any hearing provided for under these Rules shall be entitled to the same fees as now are allowed by law to witnesses attending trials in civil cases in the Superior Courts of this State under subpoena.

(d) Venue of Hearings.

(1) The hearings on all complaints and charges against a resident respondent shall be held in the county of the respondent's main office or the county of residence of the respondent unless he otherwise agrees.

(2) Where the respondent is a nonresident of the State of Georgia and the complaint arose in the State of Georgia, the hearing shall be held in the county where the complaint arose.

(3) When the respondent is a nonresident of the State of Georgia and the offense occurs outside the State, the hearing may be held in the county of the State Bar of Georgia headquarters.

#### **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 Consumer 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.

#### **Rule 4-221.2. Burden of Proof; Evidence**

(a) In all proceedings under this Chapter, the burden of proof shall be on the State Bar of Georgia, except for proceedings under Rule 4-106.

(b) In all proceedings under this Chapter occurring after a finding of Probable Cause as described in Rule 4-204.4, the procedures and rules of evidence applicable in civil cases under the laws of Georgia shall apply, except that the quantum of proof required of the State Bar shall be clear and convincing evidence.

#### **Rule 4-221.3. Pleadings and Communications Privileged**

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

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

(a) No proceeding under Part IV, Chapter 2, shall be brought unless a Memorandum of Grievance or a Consumer 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.

#### **Rule 4-224. Expungement of Records**

(a) The record of any grievance against a respondent under these Rules which does not result in discipline against the respondent shall be expunged by the Office of the General Counsel in accordance with the following:

(1) those grievances closed by the Office of the General Counsel after screening pursuant to Rule 4-202 (e) shall be expunged after one year;

(2) those grievances dismissed by the State Disciplinary Board after a Probable Cause investigation pursuant to Rule 4-204 (a) shall be expunged after two years; and

(3) those complaints dismissed by the Supreme Court of Georgia after formal proceedings shall be expunged after two years.

(b) Definition. The term “expunge” shall mean that all records or other evidence of the existence of the complaint shall be destroyed.

(c) Effect of Expungement. After a file has been expunged, any response to an inquiry requiring a reference to the matter shall state that any record of such matter has been expunged and, in addition, shall state that no inference adverse to the respondent is to be drawn on the basis of the incident in question. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that the grievance or formal complaint was dismissed and thereafter expunged.

(d) Retention of Records. Upon application to the State Disciplinary Board by the Office of the General Counsel, for good cause shown, with notice to the respondent and an opportunity to be heard, records that would otherwise be expunged under this Rule may be retained for such additional period of time not exceeding three years as the Board deems appropriate. Counsel may seek a further

extension of the period for which retention of the records is authorized whenever a previous application has been granted for the maximum period permitted hereunder.

(e) A lawyer may respond in the negative when asked if there are any complaints against the lawyer if the matter has been expunged pursuant to this Rule. Before making a negative response to any such inquiry, the lawyer shall confirm that the record was expunged and shall not presume that any matter has been expunged.

(f) A lawyer may respond in the negative when asked if he has ever been professionally disciplined or determined to have violated any professional disciplinary rules if all grievances filed against the lawyer have either been referred to the Consumer Assistance Program, dismissed, or dismissed with a letter of instruction.

#### **Rule 4-226. Immunity**

The Supreme Court of Georgia recognizes the disciplinary proceedings of the State Bar of Georgia to be judicial and quasi-judicial in nature and within the Court's regulatory function, and in connection with such disciplinary proceedings, members of the State Disciplinary Boards, the Coordinating Special Master, Special Masters, Bar counsel, special prosecutors, investigators, and staff are entitled to those immunities customarily afforded to persons so participating in judicial and quasi-judicial proceedings or engaged in such regulatory activities.

#### **Rule 4-227. Petitions for Voluntary Discipline**

(a) A Petition for Voluntary Discipline shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline.

(b) Prior to the issuance of a formal complaint, a respondent may submit a Petition for Voluntary Discipline seeking any level of discipline authorized under these Rules.

(1) Those petitions seeking confidential discipline shall be served on the Office of the General Counsel and assigned to a member of the State

Disciplinary Board. The State Disciplinary Board shall conduct an investigation and determine whether to accept or reject the petition as outlined at Rule 4-203 (7).

(2) Those petitions seeking public discipline shall be filed directly with the Clerk of the Supreme Court of Georgia. The Office of the General Counsel shall have 30 days within which to file a response. The Court shall issue an appropriate order.

(c) After the issuance of a formal complaint a respondent may submit a Petition for Voluntary Discipline seeking any level of discipline authorized under these Rules.

(1) The petition shall be filed with the Clerk of the State Disciplinary Boards at the headquarters of the State Bar of Georgia and copies served upon the Special Master and all parties to the disciplinary proceeding. The Special Master shall allow Bar counsel 30 days within which to respond. The Office of the General Counsel may assent to the petition or may file a response, stating objections and giving the reasons therefor. The Office of the General Counsel shall serve a copy of its response upon the respondent.

(2) The Special Master shall consider the petition, the State Bar of Georgia's response, and the record as it then exists and may accept or reject the Petition for Voluntary Discipline.

(3) The Special Master may reject a petition for such cause or causes as seem appropriate to the Special Master. Such causes may include but are not limited to a finding that:

(i) the petition fails to contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these Rules sufficient to authorize the imposition of discipline;

(ii) the petition fails to request appropriate discipline;

(iii) the petition fails to contain sufficient information concerning the admissions of fact and the admissions of conduct;

(iv) the record in the proceeding does not contain sufficient information upon which to base a decision to accept or reject.

(4) The Special Master's decision to reject a Petition for Voluntary Discipline does not preclude the filing of a subsequent petition and is not subject to review by the Supreme Court of Georgia. If the Special Master rejects a Petition for Voluntary Discipline, the disciplinary case shall proceed as provided by these Rules.

(5) The Special Master may accept the Petition for Voluntary Discipline by entering a report making findings of fact and conclusions of law and delivering same to the Clerk of the State Disciplinary Boards. The Clerk of the State Disciplinary Boards shall file the report and the complete record in the disciplinary proceeding with the Clerk of the Supreme Court of Georgia. A copy of the Special Master's report shall be served upon the respondent. The Court shall issue an appropriate order.

(6) Pursuant to Rule 4-210 (e), the Special Master may, in his discretion, extend any of the time limits in these Rules in order to adequately consider a Petition for Voluntary Discipline.

#### **Rule 4-228. Receiverships**

(a) Definitions.

Absent Lawyer: A member of the State Bar of Georgia (or a Domestic or Foreign lawyer authorized to practice law in Georgia) who has disappeared, died, been disbarred, disciplined or incarcerated, become so impaired as to be unable to properly represent clients, or who poses such a substantial threat of harm to clients or the public that it is necessary for the Supreme Court of Georgia to appoint a receiver.

(b) Appointment of Receiver.

(1) Upon a final determination by the Supreme Court of Georgia, on a petition filed by the State Bar of Georgia, that a lawyer has become an absent lawyer, and that no partner, associate, or other appropriate

representative is available to notify his clients of this fact, the Supreme Court of Georgia may order that a member or members of the State Bar of Georgia be appointed as receiver to take charge of the absent lawyer's files and records. Such receiver shall review the files, notify the absent lawyer's clients and take such steps as seem indicated to protect the interests of the clients and the public. A motion for reconsideration may be taken from the issuance or denial of such protective order by the respondent, his partners, associates, or legal representatives or by the State Bar of Georgia.

(2) If the receiver should encounter, or anticipate, situations or issues not covered by the order of appointment, including but not limited to, those concerning proper procedure and scope of authority, the receiver may petition the Supreme Court of Georgia for such further order or orders as may be necessary or appropriate to address the situation or issue so encountered or anticipated.

(3) The receiver shall be entitled to release to each client the papers, money, or other property to which the client is entitled. Before releasing the property, the receiver may require a receipt from the client for the property.

(c) Applicability of Lawyer-Client Rules.

(1) Confidentiality. The receiver shall not be permitted to disclose any information contained in the files and records in his care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Supreme Court of Georgia or, upon application, by order of the Supreme Court of Georgia.

(2) Lawyer-Client Relationship; Privilege. The receiver relationship standing alone does not create a lawyer-client relationship between the receiver and the clients of the absent lawyer. However, the lawyer-client privilege shall apply to communications by or between the receiver and the clients of the absent lawyer to the same extent as it would have applied to communications by or to the absent lawyer.

(d) Trust Account.

(1) If after appointment the receiver should determine that the absent lawyer maintained one or more trust accounts and that there are no provisions extant that would allow the clients, or other appropriate entities, to receive from the accounts the funds to which they are entitled, the receiver may petition the Supreme Court of Georgia or its designee for an order extending the scope of the receivership to include the management of the said trust account or accounts. In the event the scope of the receivership is extended to include the management of the trust account or accounts, the receiver shall file quarterly with the Supreme Court of Georgia or its designee a report showing the activity in and status of said accounts.

(2) Service on a bank or financial institution of a copy of the order extending the scope of the receivership to include management of the trust account or accounts shall operate as a modification of any agreement of deposit among such bank or financial institution, the absent lawyer and any other party to the account so as to make the receiver a necessary signatory on any trust account maintained by the absent lawyer with such bank or financial institution. The Supreme Court of Georgia or its designee, on application by the receiver, may order that the receiver shall be sole signatory on any such account to the extent necessary for the purposes of these Rules and may direct the disposition and distribution of client and other funds.

(3) In determining ownership of funds in the trust accounts, including by subrogation or indemnification, the receiver should act as a reasonably prudent lawyer maintaining a client trust account. The receiver may (i) rely on a certification of ownership issued by an auditor employed by the receiver; or (ii) interplead any funds of questionable ownership into the appropriate Superior Court; or (iii) proceed under the terms of the Disposition of Unclaimed Property Act (OCGA § 44-12-190 et seq.). If the absent lawyer's trust account does not contain sufficient funds to meet known client balances, the receiver may disburse funds on a pro rata basis.

(e) Payment of Expenses of Receiver.

(1) The receiver shall be entitled to reimbursement for actual and reasonable costs incurred by the receiver for expenses, including, but not limited to, (i) the actual and reasonable costs associated with the

employment of accountants, auditors, and bookkeepers as necessary to determine the source and ownership of funds held in the absent lawyer's trust account, and (ii) reasonable costs of secretarial, postage, bond premiums, and moving and storage expenses associated with carrying out the receiver's duties. Application for allowance of costs and expenses shall be made by affidavit to the Supreme Court of Georgia, or its designee, who may determine the amount of the reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the Supreme Court of Georgia or its designee. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be paid to the receiver by the State Bar of Georgia. The State Bar of Georgia may seek from a court of competent jurisdiction a judgment against the absent lawyer or his or her estate in an amount equal to the amount paid by the State Bar of Georgia to the receiver. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be considered as prima facie evidence of the fairness of the amount, and the burden of proof shall shift to the absent lawyer or his estate to prove otherwise.

(2) The provision of paragraph (e) (1) above shall apply to all receivers serving on the effective date of this Rule and thereafter.

(f) Receiver-Client Relationship. With full disclosure and the informed consent, as defined in Rule 1.0 (l), of any client of the absent lawyer, the receiver may, but need not, accept employment to complete any legal matter. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the receiver.

(g) Unclaimed Files.

(1) If upon completion of the receivership there are files belonging to the clients of the absent lawyer that have not been claimed, the receiver shall deliver them to the State Bar of Georgia. The State Bar of Georgia shall store the files for six years, after which time the State Bar of Georgia may exercise its discretion in maintaining or destroying the files.

(2) If the receiver determines that an unclaimed file contains a Last Will and Testament, the receiver may, but shall not be required to do so, file

said Last Will and Testament in the office of the Probate Court in such county as to the receiver may seem appropriate.

(h) Professional Liability Insurance. Only lawyers who maintain errors and omissions insurance, or other appropriate insurance, may be appointed to the position of receiver.

(i) Requirement of Bond. The Supreme Court of Georgia or its designee may require the receiver to post bond conditioned upon the faithful performance of his duties.

(j) Immunity.

(1) The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and the appointed receiver to be within the Court's regulatory function, and being regulatory in nature, the State Bar of Georgia and the receiver are entitled to that immunity customarily afforded to court-appointed receivers.

(2) The immunity granted in paragraph (j) (1) above shall not apply if the receiver is employed by a client of the absent lawyer to continue the representation.

(k) Service. Service under this Rule may be perfected under Rule 4-203.1.

**APPENDIX**  
**COMPOSITION OF THE STATE DISCIPLINARY BOARD**  
**INTERIM PROVISIONS**

Under current Rules, the Investigative Panel includes two ex officio members, twenty-two members of the State Bar of Georgia (two from each of the ten state judicial districts and two at large), and six nonlawyers. Under amended Rule 4-201 (b), the State Disciplinary Board will consist of two ex officio members, twelve members of the State Bar of Georgia (four from each of the three federal judicial districts), and four nonlawyers. The provisions of this Appendix are to provide for an orderly transition of the Investigative Panel to the State Disciplinary Board and to permit persons previously appointed to the Investigative Panel to serve on the State Disciplinary Board until the expiration of their terms of appointment.

(a) The Investigative Panel shall continue as presently constituted through June 30, 2018.

(b) Beginning on July 1, 2018, and continuing through June 30, 2019, the State Disciplinary Board shall consist of:

(1) The President-elect of the State Bar of Georgia;

(2) The President-elect of the Young Lawyers Division of the State Bar of Georgia;

(3) Eight members of the State Bar of Georgia, appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2019, two from the 8<sup>th</sup> Judicial District, two from the 9<sup>th</sup> Judicial District, two from the 10<sup>th</sup> Judicial District, and two at large;

(4) Seven members of the State Bar of Georgia, appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020, one from the 4<sup>th</sup> Judicial District, two from the 5<sup>th</sup> Judicial District, two from the 6<sup>th</sup> Judicial District, and two from the 7<sup>th</sup> Judicial District;

(5) Two nonlawyers appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2019;

(6) Two nonlawyers appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020;

(7) Two members of the State Bar of Georgia from the Northern District of Georgia, to be appointed for a term of three years by the Supreme Court of

Georgia; and

(8) Two members of the State Bar of Georgia from the Southern District of Georgia, to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors.

(c) Beginning on July 1, 2019, and continuing through June 30, 2020, the State Disciplinary Board shall consist of:

(1) The President-elect of the State Bar of Georgia;

(2) The President-elect of the Young Lawyers Division of the State Bar of Georgia;

(3) Seven members of the State Bar of Georgia, appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020, one from the 4<sup>th</sup> Judicial District, two from the 5<sup>th</sup> Judicial District, two from the 6<sup>th</sup> Judicial District, and two from the 7<sup>th</sup> Judicial District;

(4) Two nonlawyers appointed to the Investigative Panel prior to July 1, 2018 for terms expiring on June 30, 2020;

(5) Four members of the State Bar of Georgia, previously appointed under provisions (b) (7) and (b) (8) of this Appendix;

(6) Two members of the State Bar of Georgia from the Middle District of Georgia, to be appointed for a term of three years by the Supreme Court of Georgia;

(7) Two members of the State Bar of Georgia from the Northern District of Georgia, to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors;

(8) One nonlawyer to be appointed for a term of three years by the Supreme Court of Georgia; and

(9) One nonlawyer to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors.

(d) Amended Rule 4-201 (b) shall become effective on July 1, 2020, at which time the State Disciplinary Board shall consist of:

(1) The President-elect of the State Bar of Georgia;

(2) The President-elect of the Young Lawyers Division of the State Bar of Georgia;

(3) Eight members of the State Bar of Georgia, previously appointed under provisions (b) (7), (b) (8), (c) (6), and (c) (7) of this Appendix;

(4) Two nonlawyers, previously appointed under provisions (c) (8) and (c) (9) of this Appendix;

(5) Two members of the State Bar of Georgia from the Southern District of Georgia, to be appointed for a term of three years by the Supreme Court of

Georgia;

(6) Two members of the State Bar of Georgia from the Middle District of Georgia, to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors;

(7) One nonlawyer to be appointed for a term of three years by the Supreme Court of Georgia; and

(8) One nonlawyer to be appointed for a term of three years by the President of the State Bar of Georgia with the approval of the Board of Governors.

(e) Beginning on July 1, 2018, and continuing through June 30, 2020, the President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia shall serve only during their term of office, shall serve as members ex officio, and shall not increase the quorum requirement.

(f) Beginning on July 1, 2018, and continuing through June 30, 2020, whenever the seat of an appointed member becomes vacant prior to the expiration of the term of appointment, the seat shall be filled for the unexpired term by the appointment of the Supreme Court of Georgia or the President of the State Bar of Georgia, whichever appointed the member whose seat has become vacant.

(g) Beginning on July 1, 2018, and continuing through June 30, 2020, the State Disciplinary Board shall remove a member for failure to attend meetings of the State Disciplinary Board or for other good cause, and the seat of a member so removed shall be filled as provided in provision (f) of this Appendix.

(h) Beginning on July 1, 2018, and continuing through June 30, 2020, at the first meeting of the State Disciplinary Board following the Annual Meeting of the State Bar of Georgia, the State Disciplinary Board shall elect a Chair and Vice-Chair.

**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.

