



SUPREME COURT OF GEORGIA
Case No. S24U0569

December 20, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN RE: MOTION TO AMEND 2023-2.

The Court having considered the 2023-2 Motion to Amend the Rules and Regulations of the State Bar of Georgia, it is ordered that the following Rules be amended, effective January 23, 2025: Part IV – Georgia Rules of Professional Conduct, Chapter 1, Rule 4-102 (Disciplinary Action; Levels of Discipline; Georgia Rules of Professional Conduct), Rule 4.2 (Communication with Person Represented by Counsel); Chapter 2, Rule 4-201 (State Disciplinary Board), Rule 4-214 (Report of the Special Master), and Rule 4-221.1 (Confidentiality of Investigations and Proceedings); and Chapter 4, Rule 4-402 (The Formal Advisory Opinion Board).

The amended rules will read as follows:

**PART IV
GEORGIA RULES OF PROFESSIONAL CONDUCT**

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

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

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Rule 4.2. Communication with Person Represented by Counsel

(a) A lawyer who is representing a client or proceeding pro se in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

(b) Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.

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

Comment

[1] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government entity and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government

entity to speak with government officials about the matter.

[2] Communications authorized by law also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings, when there is applicable judicial precedent that either has found the activity permissible under this Rule or has found this Rule inapplicable. However, the Rule imposes ethical restrictions that go beyond those imposed by constitutional provisions.

[3] This Rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the matter to which the communication relates.

[4A] In the case of an organization, this Rule prohibits communications with an agent or employee of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter, or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4 (f). Communication with a former employee of a represented organization is discussed in Formal Advisory Opinion 20-1.

[4B] In administering this Rule it should be anticipated that in many instances, prior to the beginning of the interview, the interviewing lawyer will not possess sufficient information to determine whether the relationship of the interviewee to the entity is sufficiently close to place the person in the "represented" category. In those situations the good faith of the lawyer in undertaking the

interview should be considered. Evidence of good faith includes an immediate and candid statement of the interest of the person on whose behalf the interview is being taken, a full explanation of why that person's position is adverse to the interests of the entity with which the interviewee is associated, the exploration of the relationship issue at the outset of the interview and the cessation of the interview immediately upon determination that the interview is improper.

[5] The prohibition on communications with a represented person only applies, however, in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. *See 1.0.* Such an inference may arise in circumstances where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of counsel by ignoring the obvious.

[6] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

[6A] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] The anti-contact rule serves important public interests which preserve the proper functioning of the judicial system and the administration of justice by a) protecting against misuse of the imbalance of legal skill between a lawyer and layperson; b) safe-

guarding the client-lawyer relationship from interference by adverse counsel; c) ensuring that all valid claims and defenses are raised in response to inquiry from adverse counsel; d) reducing the likelihood that clients will disclose privileged or other information that might harm their interests; and e) maintaining the lawyers ability to monitor the case and effectively represent the client.

[8] Parties to a matter generally may communicate directly with each other because this Rule is not intended to affect communications between parties to an action entered into independent of and not at the request or direction of counsel. However, a lawyer proceeding pro se in a matter may not communicate about that matter with a person that the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order. A lawyer who is represented by counsel and also representing themselves is proceeding pro se within the meaning of this rule.

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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; seven members of the State Bar of Georgia, two from each of the three federal judicial districts of Georgia, and one member-at-large, appointed by the Supreme Court of Georgia; seven members of the

State Bar of Georgia, two from each of the three federal judicial districts of Georgia, and one member-at-large, 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.

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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 Bar 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 Bar 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.

(e) The 30-day deadline to file exceptions or respond to exceptions may be extended by up to 15 days by written agreement of the parties, or by written permission of the Coordinating Special Master.

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Rule 4-221.1. Confidentiality of Investigations and Proceedings

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

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

(c) Nothing in these Rules shall prohibit the complainant, respondent, or a third party from disclosing information regarding a

disciplinary proceeding, unless otherwise ordered by the Supreme Court of Georgia or a Special Master in proceedings under these Rules.

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

(1) In the event of a charge of wrongful conduct against any member of the State Disciplinary Board, the State Disciplinary Review Board, or any person who is otherwise connected with the disciplinary proceeding in any way, the State Disciplinary Board or its Chair or his designee, may authorize the use of information concerning disciplinary investigations or proceedings to aid in the defense against such charge.

(2) In the event the Office of the General Counsel receives information that suggests criminal activity, such information may be revealed to the appropriate criminal prosecutor.

(3) In the event of subsequent disciplinary proceedings against a lawyer, the Office of the General Counsel may, in aggravation of discipline in the pending disciplinary case, reveal the imposition of confidential discipline under Rules 4-205 to 4-208 and facts underlying the imposition of discipline.

(4) A complainant and/or lawyer representing the complainant shall be notified of the status or disposition of the complaint.

(5) When public statements that are false or misleading are made about any otherwise confidential disciplinary case, the Office of the General Counsel may disclose all information necessary to correct such false or misleading statements.

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

(1) The Committee on the Arbitration of Attorney Fee Disputes or the comparable body in other jurisdictions;

(2) The Trustees of the Clients' Security Fund or the comparable body in other jurisdictions;

(3) The Judicial Nominating Commission or the comparable body in other jurisdictions;

(4) The Lawyer Assistance Program or the comparable body in other jurisdictions;

(5) The Board to Determine Fitness of Bar Applicants or the comparable body in other jurisdictions;

(6) The Judicial Qualifications Commission or the comparable body in other jurisdictions;

(7) The Executive Committee with the specific approval of the following representatives of the State Disciplinary Board: the Chair, the Vice-Chair, and a third representative designated by the Chair;

(8) The Formal Advisory Opinion Board;

(9) The Client Assistance Program;

(10) The General Counsel Overview Committee;

(11) The Unlicensed Practice of Law Department of the State Bar of Georgia;

(12) State, federal, territorial, and non-United States courts and

related agencies engaged in a lawful investigation or proceeding related to the discipline or regulation of a lawyer or judge;

(13) Or otherwise with specific approval of the following representatives of the State Disciplinary Board: the Chair, the Vice-Chair, and a third representative designated by the Chair.

(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.

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CHAPTER 4 ADVISORY OPINIONS

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Rule 4-402. The Formal Advisory Opinion Board

(a) The Formal Advisory Opinion Board will consist only of active members of the State Bar of Georgia who are initially appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board are selected as follows:

- (1) Five members of the State Bar of Georgia at-large;
- (2) One member of the Georgia Trial Lawyers Association;
- (3) One member of the Georgia Defense Lawyers Association;
- (4) One member of the Georgia Association of Criminal Defense Lawyers;
- (5) One member of the Young Lawyers Division of the State Bar of Georgia;
- (6) One member of the Georgia District Attorneys Association;
- (7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;
- (8) One member of the State Disciplinary Board;

(9) One member of the State Disciplinary Review Board; and

(10) One member of the Executive Committee of the State Bar of Georgia.

(c) All appointments will maintain staggered terms. All members are appointed for terms of two years, subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability will serve only for the unexpired term of the member replaced unless reappointed.

(2) The members appointed from the State Disciplinary Board, State Disciplinary Review Board, and the Executive Committee will serve for a term of one year.

(d) When a Formal Advisory Opinion Board member's term expires, it does so at the conclusion of the Bar year.

(e) All members are eligible for immediate reappointment by the President of the State Bar of Georgia to one additional term. Thereafter, the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, may reappoint a member for one or more additional terms.

(f) The Formal Advisory Opinion Board will annually elect a chairperson and other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(g) The Formal Advisory Opinion Board has the authority to prescribe its own rules of conduct and procedure.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

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

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

 , Clerk