



# State Bar of Georgia

Office of the General Counsel  
State Bar of Georgia

## Revisions to the Georgia Rules of Professional Conduct Approved by the Supreme Court of Georgia November 3, 2011

### EXECUTIVE SUMMARY

(Including changes to the procedural rules)

The Supreme Court of Georgia adopted the Georgia Rules of Professional Conduct (“GRPC”) effective January 1, 2001, after years of work by the State Bar of Georgia Disciplinary Rules & Procedures Committee (“the Committee”) and almost a year of debate by the Bar at large. The new rules were based upon the American Bar Association Model Rules of Professional Conduct (“MRPC”). Shortly after Georgia adopted the new rules, the ABA made comprehensive changes to the MRPC based upon the work of its Ethics 2000 Commission. In 2004 the Disciplinary Rules & Procedures Committee began a review of the Ethics 2000 Amendments for proposed adoption in Georgia.

The Committee proposed that 28 of the 61 Georgia Rules of Professional Conduct be amended, as well as eight procedural rules for disciplinary matters and one Uniform Superior Court Rule. The Supreme Court approved the changes by Order of November 3, 2011 and the rules went into effect immediately.

In most cases the amendments are non-substantive clarifications of the existing rule or additions to the comments. The changes clarify a lawyer’s duties to clients and provide additional guidance. What follows is a brief summary of the changes to each rule, and a mention of the three ABA MRPC rules that the Committee decided NOT to adopt:

**Rule 1.0, Terminology.** Although the GRPC included a section on Terminology, it appeared in the Preamble and was difficult to cite. The revisions make the Terminology section a completely new rule, Rule 1.0. It keeps all of the definitions that currently appear in the GRPC and adds definitions for “confirmed in writing,” “informed consent,” “screened,” and “writing/written.” It also revises the definitions of “firm,” “partner,” and “fraud/fraudulent” to refer to existing law and Bar Rules. Completely new comments help to further define the terms.

**Rule 1.1, Competence.** No change.

**Rule 1.2, Scope of Representation.** The rule has a new title, “Scope of Representation and Allocation of Authority Between Client and Lawyer” to better reflect the content of the rule.

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Rule 1.2(e) (regarding the need to consult with a client who expects assistance prohibited by the Rules) is stricken, but the concept is carried to Rule 1.4(a)(5)—communication, where it belongs.

**Rule 1.3, Diligence.** There are no changes to the rule itself, and one very minor change to Comment 2.

**Rule 1.4, Communication.** The amendment substitutes the ABA MRPC version of Rule 1.4 for the old Georgia version. Rule 1.4(b) includes existing GRPC language, but 1.4(a) is completely new. This is not a substantive change; it further explains the lawyer’s obligation to consult with a client and to keep the client informed.

**Rule 1.5, Fees.** The revisions to Rule 1.5(a) actually revive language from the old Georgia Standards. The prohibition on unreasonable *fees* is expanded to also include a ban on unreasonable *expenses*.

**Rule 1.6, Confidentiality of Information.** The new rule changes the concept of “consent after consultation,” which appears in several of the rules, to the concept of “informed consent.” Informed consent is a defined term (see Rule 1.0) that stresses the lawyer’s obligation to communicate alternatives to a client before the client makes a decision. New Comment 4A clarifies that a prospective client who consults with, but does not hire, a lawyer is also entitled to confidentiality.

**Rule 1.7, Conflict of Interest: General Rule.** The most significant change requires a lawyer to obtain informed consent, confirmed in writing, before representing clients with potentially conflicting interests. The old rule required the lawyer to provide written information to the client about the risks of a potential conflict. A new Comment 2 helps a lawyer identify which conflicts are material enough to prohibit multiple representation.

**Rule 1.8, Conflict of Interest: Prohibited Transactions.** The former GRPC required a lawyer to provide certain information in writing to a client before entering a business transaction with the client. The new rule requires additional information to be included in the writing, and requires that the client provide his signature indicating informed consent to the terms of the transaction.

**Rule 1.9, Conflict of Interest: Former Client.** Minor changes to the rule incorporate the concept of informed consent. Substantial additions to the comments help a lawyer decide when representation of a new client is prohibited because of a conflict with the interests of a former client.

**Rule 1.10, Imputed Disqualification: General Rule.** No change.

**Rule 1.11, Successive Government and Private Employment.** The change substitutes the concept of informed consent for the old concept of consent after consultation. It requires a

lawyer to confirm in writing the consent of a former client that is a governmental entity to a conflict in representation. There are no changes to the comments.

**Rule 1.12, Former Judge or Arbitrator.** The change substitutes “informed consent confirmed in writing” for “consent after consultation,” so that a lawyer who is a former judge must have informed consent, confirmed in writing, from all parties in order to represent a client in a matter that the lawyer participated in as a judge. There are no changes to the comments.

**Rule 1.13, Organization as Client.** The Ethics 2000 changes were made in response to Sarbanes Oxley and other laws designed to prevent corporate malfeasance. The new Georgia rule expands the ability of a lawyer to report illegal conduct by an organization when necessary to prevent substantial injury to the organization. Revisions to the comments help a lawyer decide when the obligation to report illegal conduct is triggered. Comment 9 provides new guidance for lawyers who represent governmental organizations.

**Rule 1.14, Client Under a Disability.** The new rule substitutes the term “diminished capacity” for “disability.” The change to Rule 1.14(b) clarifies that a lawyer who wants to take protective action for a client who cannot act in his own interest may do so only when the client is at risk of physical, financial or other harm. The rule suggests the types of action the lawyer might take, and clarifies that the lawyer must protect confidences and secrets of the client to the extent possible. Extensive new comments provide guidance to help determine the extent of a client’s incapacity, among other things.

**Rule 1.15(I), Safekeeping Property – General.** The old rule required a lawyer to notify third persons when the lawyer received funds or property in which the third person had an interest, and to promptly deliver those funds to the third person. The revision clarifies that this obligation only arises when the interest is based upon a lien, a final judgment or a written agreement with the client.

**Rule 1.15(II), Safekeeping Property – Trust Account and IOLTA.** No changes.

**Rule 1.15(III), Record Keeping; Trust Account Overdraft Notification; Examination of Records.** A very minor revision requires the name of a lawyer or law firm to be printed on IOLTA checks and deposit slips. “IOLTA account” is added to the list of acceptable designations for such accounts.

**Rule 1.16, Declining or Terminating Representation.** No change.

**Rule 1.17, Sale of Law Practice.** No change.

**Rule 2.1, Advisor.** No change.

**Rule 2.2, Intermediary.** The rule has been deleted in its entirety. The ABA deleted the rule because the issues are covered in Rule 1.7 as potential conflicts of interest.

**Rule 2.3, Evaluation for Use by Third Persons.** The only change substitutes the term “informed consent” for “consent after consultation.”

**Rule 2.4, Lawyer Serving as Third-Party Neutral.** There is no Rule 2.4 in the GRPC. This is a completely new rule that provides guidance for lawyers utilizing alternative dispute resolution mechanisms.

**Rule 3.1, Meritorious Claims and Contentions.** No change.

**Rule 3.2, Expediting Litigation.** No change.

**Rule 3.3, Candor Toward the Tribunal.** There are no changes to the rule. The ABA comments have been substituted for the old Georgia comments. The revised comments clarify that the rule applies to depositions and other proceedings under the authority of a tribunal, and better define a lawyer’s obligation to take remedial measures after offering false evidence.

**Rule 3.4, Fairness to Opposing Party and Counsel.** There is no substantive change; the rule is reorganized.

**Rule 3.5, Impartiality and Decorum of the Tribunal.** No change.

**Rule 3.6, Trial Publicity.** No change.

**Rule 3.7 Lawyer as Witness.** No change.

**Rule 3.8, Special Responsibilities of a Prosecutor.** No change.

**Rule 3.9, Advocate in Nonadjudicative Proceedings.** No change.

**Rule 4.1, Truthfulness in Statements to Others.** No change.

**Rule 4.2, Communication with Person Represented by Counsel.** Minor revision clarifying that a lawyer may speak with a person who is represented by counsel when law or a court order authorizes the communication.

**Rule 4.3, Dealing with Unrepresented Person.** The old rule prohibited contact with a potentially adverse party for 30 days after an accident or disaster. The amendment deletes that requirement.

**Rule 4.4, Respect for Rights of Third Persons.** New language in the comment explains that lawyers should not make unwarranted intrusions into privileged relationships.

**Rule 5.1, Responsibilities of a Partner or Supervisory Lawyer.** The change broadens the rule to cover not only partners, but lawyers with comparable managerial authority. A new comment

2 requires these lawyers to establish internal policies to help ensure that the lawyers under their supervision comply with the Rules of Professional Conduct.

**Rule 5.2, Responsibilities of a Subordinate Lawyer.** No change.

**Rule 5.3, Responsibilities Regarding Nonlawyer Assistants.** The change tracks the changes to Rule 5.1.

**Rule 5.4 , Professional Independence of a Lawyer.** No change.

**Rule 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law.** No change.

**Rule 5.6, Restrictions on Right to Practice.** No change.

**Rule 5.7, Responsibilities Regarding Law-Related Services.** No change.

**Rule 6.1, Voluntary Pro Bono Publico Service.** No change.

**Rule 6.2, Accepting Appointments.** No change.

**Rule 6.3, Membership in Legal Services Organization.** No change.

**Rule 6.4, Law Reform Activities Affecting Client Interests.** No change.

**Rule 7.1, Communications Concerning a Lawyer's Services.** No change.

**Rule 7.2, Advertising.** No change.

**Rule 7.3, Direct Contact with Prospective Clients.** No change.

**Rule 7.4, Communication of Fields of Practice.** No change.

**Rule 7.5, Firm Names and Letterheads.** No change.

**Rule 8.1, Bar Admission and Disciplinary Matters.** No change.

**Rule 8.2, Judicial and Legal Officials.** No change.

**Rule 8.3, Reporting Professional Misconduct.** No change.

**Rule 8.4, Misconduct.** A new section 8.4(a)(3a) makes it a violation of the GRPC to commit a criminal act that reflects adversely on the lawyer's fitness, whether or not the lawyer is prosecuted or convicted, if the lawyer admits *in judicio* the commission of the act. Its purpose is to enable disciplinary prosecution of a lawyer who avoids criminal prosecution by testifying against others, but who has admittedly committed crimes that would otherwise be prosecuted.

New sections 8.4(a)(6) and (7) incorporate language from the ABA MRPC but contain no substantive changes. The revision to 8.4(b)(1) would allow a disciplinary prosecution to begin when a court accepts the lawyer's guilty plea, nolo plea, a guilty verdict, or a verdict of guilty but mentally ill. The former rule required the lawyer to be sentenced before the Bar could bring a case.

**Rule 8.5, Disciplinary Authority; Choice of Law.** No change.

**Rule 9.1, Reporting Requirements.** The revisions add a 60-day timeframe to the existing obligation to notify the Bar of a criminal conviction or of being admitted to another jurisdiction. A new 9.1(c) requires a lawyer to notify the Bar if he is disciplined in another jurisdiction. "Jurisdiction" is defined to include state, territorial, federal and non-U.S. courts and authorities.

**Rule 9.2 Settlement of Claims.** The title of the rule is changed to "Restrictions on Filing Disciplinary Complaints." The existing rule applies only in the context of settling a matter involving misuse of funds held in a fiduciary capacity. The new rule eliminates that language so that the rule applies any time a lawyer attempts to restrict a person from filing or pursuing a disciplinary complaint.

**Rule 9.3, Cooperation with Disciplinary Authority.** No change.

**Rule 9.4, Jurisdiction and Reciprocal Discipline.** The new rule amends subpart (b) so that reciprocal discipline only applies to suspensions or disbarments, and not lower forms of discipline issued by another jurisdiction. A new 9.4(b)(7) clarifies that reciprocal discipline applies to decisions issued by a state, territory, county or federal court. There are minor changes to the procedural rules for filing reciprocal discipline cases.

**Rule 9.5, Lawyer as Public Official.** No change.

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ABA RULES THE COMMITTEE DID NOT INCLUDE:

**Rule 1.18, Duties to Prospective Client.** This rule prohibits a lawyer from using or revealing information divulged by a prospective client during a consultation that does not result in employment. The Committee included some of the concepts in new Comment 4A to Rule 1.6.

**Rule 6.5, Nonprofit and Court-Annexed Limited Legal Services Programs.** This rule creates a limited exception to the rules on conflicts of interest, so that a lawyer providing limited legal services through a *pro bono* clinic or hotline is excused from conducting a conflicts check. The Committee was concerned about creating an exception to the conflicts rules.

**Rule 7.6, Political Contributions to Obtain Government Legal Engagements or Appointments by Judges.** This rule is known as the “pay to play” rule. It prohibits a lawyer or firm from taking governmental work if the lawyer or firm has made a political contribution for the purpose of obtaining the work. The Committee believed that to the extent this conduct is sanctionable, it is already covered by the conflicts rules.

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## PROCEDURAL RULES

**Rule 1-207, Change of Address.** The Rule requires a lawyer to keep the Bar’s membership department informed of his current name, official address and telephone number. The revision was necessary because the Bar may collect several addresses for each member; the official address is designated for official communication with the Bar and for service of process in disciplinary matters.

**Rule 4-106, Conviction of a Crime; Suspension and Disbarment.** The revision amends the procedure for cases involving criminal convictions, so that a party may request review by the Review Panel.

**Rule 4-201, State Disciplinary Board.** The revision excludes the *ex officio* positions on the Investigative and Review Panels for purposes of determining a quorum.

**Rule 4-203.1, Uniform Service Rule.** Minor revisions to 1) incorporate the concept of an “official address” as described in Rule 1-207, and 2) clarify that commercial mailboxes which are not maintained by the US Postal Service (such as Mail Boxes, Etc.) may be treated the same as P.O. Boxes under the rules.

**Rule 4-208.3, Rejection of Notice of Discipline.** The amendment deletes an obsolete reference to service by certified mail, which is no longer an option under the Rules.

**Rule 4-210, Powers and Duties of Special Masters.** The change clarifies that a special master’s report should include a recommendation as to the appropriate level of discipline in a case (which is already required by rule 4-217). A housekeeping amendment to 4-210(k) recognizes that under some circumstances the special master’s report is filed directly with the Supreme Court without going to the Review Panel.

**Rule 4-213, Evidentiary Hearing.** The revision makes this rule consistent with 4-210, clarifying that a special master is required to make a recommendation of discipline.

**4-217, Report of the Special Master to the Review Panel.** The amendment clarifies the procedure by which either the Bar or a Respondent may request review by the Review Panel.

**4-218, Findings by the Review Panel.** The amendment clarifies the procedure for filing exceptions with the Review Panel.

**4-221, Procedures.** The amendment adds the Unlicensed Practice of Law Department to the list of groups with whom the General Counsel's office may share confidential information under some circumstances.

**Uniform Superior Court Rule 4.4, Admission Pro Hac Vice.** The rule is amended to provide procedures for *pro hac* admission of foreign lawyers.