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John G. Haubenreich, Chair
State Bar Committee on Disciplinary Rules and Procedures
Seacrest, Karesh, Tate & Bicknese, LLP
56 Perimeter Center East, Suite 450
Atlanta, GA 30346
jgh@sktblaw.com

Re: Disciplinary Rules Harmful to Georgia Citizens

Dear Mr. Haubenreich:

Attached is a letter I am sending to the Chair of the Disciplinary Board Investigative Panel presenting information regarding the conduct of an assistant district attorney in Fulton County, Demone Lee, that may justify not only the initiation of a grievance by the Investigative Panel on its own motion but also the suspension of Lee pending disciplinary proceedings. Despite the seriousness of the findings set forth in the Consent Order for New Trial, the power of the State Disciplinary Board and ultimately the Supreme Court to address this case may be severely limited by a feature of the Georgia Rules of Professional Conduct that is long overdue for repeal: the specification of a maximum penalty for each rule.

Eliminate “reprimand only” limits to discipline

More than 15 Rules limit the maximum penalty to a public reprimand. As a result, in Georgia a lawyer has the right to continue to practice law without restriction even if the lawyer, for example:

- files a suit merely to maliciously injure another (GRPC 3.1(a))
- represents a client using means that have no substantial purpose other than to embarrass, delay or burden a third person (GRPC 4.4)
- represents a client using methods of obtaining evidence that violate the legal rights of a third person

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- acquires an ownership interest adverse to a client on unfair terms (GRPC 1.8(a))
- prepares a will giving himself or a family member a substantial interest (GRPC 1.8(c))
- in representing a corporation, fails to take action to protect the corporation from substantial injury caused by illegal actions of corporate officers or employees (GRPC 1.13(b))
- withdraws from representation without taking steps to protect the client's interests (GRPC 1.16(d))
- fails to inform clients about decisions to which they have a right to exercise informed consent or fails to explain matters to clients so they can make informed decisions (GRPC 1.4)
- charges unreasonable fees (GRPC 1.5)

In addition to the above examples, only a public reprimand can be imposed for violation of any of the special responsibilities of a prosecutor set out in GRPC 3.8, including such misconduct as prosecuting a charge the prosecutor knows is not supported by probable cause and failing to disclose exculpatory evidence. Therefore, even if the Investigative Panel does initiate disciplinary proceedings against Demone Lee, the Supreme Court would be powerless to suspend or disbar him for such misconduct. (However, as indicated in the attached letter, the findings in the Order for New Trial may also indicate violations of GRPC 3.3 which can be punished by suspension or disbarment.)

It is hard to believe that our Supreme Court, or indeed our State Bar, would consciously take the position in 2013 that the types of misconduct listed above are so trivial that no sanction more serious than a reprimand could ever be imposed. I have initiated research that so far indicates no other state lists a maximum penalty for each rule as does Georgia, and therefore Georgia is likely to be the only state in America where lawyers can engage in such misconduct at no risk to their continuing license to practice. I therefore ask your committee to move swiftly to recommend to the Supreme Court the removal of the maximum penalty provision attached to each rule.

At the same time, I ask your committee to propose changing the following additional disciplinary rules that harm clients and citizens in general.

Stop keeping unethical conduct secret

Currently a significant number of Georgia lawyers found to have engaged in unethical conduct are permitted to keep their misconduct secret through Georgia's system of confidential discipline. Georgia should join the increasing number of states that have abolished all forms of confidential discipline, including our neighbors Alabama and Florida.

End protection of lawyers who conceal their misconduct

Disciplinary Rule 4-222 prohibits the initiation of disciplinary proceedings more than four years after the commission of the misconduct. Even if the lawyer has intentionally concealed the misconduct, the four year limitation period can only be extended up to an additional two years. My preliminary research indicates that many if not most states do not have any kind of limitations period for imposing discipline and even those states that have limitation periods have exceptions for concealment or the most serious misconduct. I believe that complete research on all 50 states will reveal that Georgia is the only state where a lawyer who has successfully concealed serious unethical conduct for 6 years and one day is rewarded with totally immunity from discipline and is able to practice without restriction.

Require lawyers to report serious misconduct

Finally, Georgia should establish a true duty to report misconduct where a lawyer knows that the misconduct has taken place and it raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer by changing "should" to "shall" in GRPC 8.3 and repealing the final sentence stating, "There is no disciplinary penalty for a violation of this Rule."

If you confirm that at least some of my proposed changes will be on the agenda of an upcoming meeting of your committee and indicate the meeting date, I will endeavor to provide your committee with more complete data comparing Georgia with the other 49 states in regards to the rules mentioned above.

Sincerely yours,



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