

State Bar of Georgia  
Board of Governors

2010 Report of the  
Office of the General Counsel

June 17-20 | Amelia Island Plantation | Amelia Island, Fla.





**OFFICE OF THE GENERAL COUNSEL**  
**STATE BAR OF GEORGIA**  
**ANNUAL REPORT FOR OPERATIONAL YEAR 2009 – 2010**

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# STATE BAR OF GEORGIA

## OFFICE OF THE GENERAL COUNSEL

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June 1, 2010

To: Members of the Board of Governors  
Bar Volunteers  
Friends

I am pleased to present the 2009-2010 Report of the Office of the General Counsel. Enclosed are reports from the Investigative and Review Panels of the State Disciplinary Board, the Clients' Security Fund, the Formal Advisory Opinion Board, the Trust Account Overdraft Notification Program, and the Program which reviews applications by out of state lawyers for admission *pro hac vice* to Georgia courts. Following the reports is a compilation of Supreme Court Orders issued in disciplinary cases between May 1, 2009 and April 30, 2010.

The enclosed reports document an impressive array of cases handled and services rendered to the Bar and to the public; however, they represent only a fraction of the work done by you and other dedicated Bar volunteers along with the staff of the Office of the General Counsel each year. The Office is indebted to each of you, and to every Georgia lawyer who volunteers his or her time in service to the legal profession.

### *Staff*

In September 2009 William P. ("Bill") Smith, III, left his position as General Counsel after 25 years in the role. Paula Frederick was appointed as the new General Counsel of the

State Bar of Georgia, and Bill continues to work in the office as Ethics Counsel. Bill now staffs the Disciplinary Rules & Procedures Committee and the General Counsel Overview Committee, supervises junior staff, and handles special projects for the office. Jenny Mittelman was promoted to Deputy General Counsel; she serves as managing attorney for the office in addition to handling her disciplinary caseload. Senior Assistant General Counsel Jonathan Hewett supervises the grievance counsel and prosecutes disciplinary cases. Assistant General Counsel Kellyn McGee, Rebecca Hall and Christina Petrig continue to serve as ethics and disciplinary counsel to the Bar. Grievance Counsel Carmen Rojas Rafter conducts the preliminary investigation of the grievances that the office receives each year.

Robert McCormack, Deputy General Counsel for the Bar Counsel unit, is responsible for drafting changes to the Bar Rules and for staffing the Clients' Security Fund. Paralegal Betty Derrickson conducts the initial review of Clients' Security Fund files and coordinates the work of the Fund. Deloise Matthews provides secretarial and administrative assistance, particularly with attorney disciplinary status requests, Fee Arbitration, and Clients' Security Fund matters. John Shiptenko is Assistant General Counsel for all Bar Counsel matters. He acts as staff liaison to the Formal Advisory Opinion Board and the Fellows Foundation, and handles insurance, contractual and employment matters for the Bar.

As for our nonlawyer staff, Connie Henry, Clerk of the State Disciplinary Board, continues to coordinate the activity of the disciplinary boards. Regina Putnam-Kelly serves as Trust Account Overdraft Notification Coordinator. Investigators Dan O'Sullivan and Lamar Jackson, paralegals Carolyn Williams, Kristin Poland, and Kathya Jackson, legal secretaries Deborah Grant, Cathe Payne, Bobbie Kendall, and Receptionist Jessica Oglesby round out the OGC staff.

### ***Lawyer Helpline***

The Office of the General Counsel operates a Lawyer Helpline for members of the State Bar of Georgia to discuss ethics questions on an informal basis with an Assistant General Counsel. This year the Helpline averaged 25 calls each weekday.

### ***Continuing Legal Education***

The Office of the General Counsel continues to accept requests to speak at CLE seminars. This year OGC lawyers participated in more than 60 presentations on a variety of ethics topics.

### ***Committees***

OGC staff continues to work with the Disciplinary Rules and Procedures Committee, the Organization of the State Bar Committee, the General Counsel Overview Committee, the Advisory Committee on Legislation, and the Membership Services Committee.

### ***Thanks***

The staff and I remain committed to serving each member of the State Bar of Georgia with efficiency and professionalism. Please call upon us whenever we can be of help to you.

Sincerely,



Paula J. Frederick  
General Counsel

**ANNUAL REPORT OF THE INVESTIGATIVE PANEL**  
**STATE DISCIPLINARY BOARD**  
**FOR OPERATIONAL YEAR 2009-2010**

By: Joseph W. Dent, Chair

As Chair of the Investigative Panel, I would like to thank each Panel member for their long hours of very hard work in grappling with the serious issues which we have faced this year. The Panel must investigate and review an ever-increasing number of cases and does so more efficiently than ever.

The 2009-2010 Investigative Panel consisted of two lawyers from each judicial district of the state, six public members, and two at-large members. The president-elect of the State Bar and the president-elect of the Younger Lawyers Division served as ex-officio members. The Panel continued its practice of holding its monthly meetings throughout the state; this year we met in Tifton, Stone Mountain, Eatonton, Helen, Hartwell, Pine Mountain, Atlanta, Savannah, Albany, Augusta, Young Harris, and at Amelia Island, Florida, in conjunction with the 2009 Annual Meeting of the Bar.

The Bar received more requests for grievance forms this year (3,228) than last (3,094). The number of grievance forms returned to the Office of the General Counsel also increased. Last year's figure was 2,100; this year 2,130 forms were returned for screening and further consideration.

After review by an Assistant General Counsel, 1,662 grievances were dismissed for their failure to state facts sufficient to invoke the jurisdiction of the State Bar. A total of 394 grievances contained allegations which, if true, would amount to violations of one or more of the Georgia Rules of Professional Conduct found at Bar Rule 4-102. This represents an

increase from 350 such grievances in 2009. Each of those grievances was referred to one of the district Panel members for further investigation.

Investigative Panel members who investigated grievances handled an average of 16 cases each during the Bar year. The Panel also set a goal of having each case reported within 180 days. Each case required extensive investigation and time away from the Panel member's law practice, all without compensation. At the end of the investigation the Panel member made a report and recommendation to the full Panel. One hundred and twenty-nine grievances were dismissed, 53 of those with a letter of instruction to inform the lawyer about the Bar Rules. One hundred and sixty-six cases met the "probable cause" test and were returned to the Office of the General Counsel for prosecution. This represents an increase from 162 such cases last year. One hundred and ninety-one cases are still under consideration by the Panel, an increase from 136 such cases last year.

Forty four of the Respondents named in grievances where there was a finding of probable cause received confidential discipline in the form of Formal Letters of Admonition or Investigative Panel Reprimands. In the more serious cases the Panel issued a Notice of Discipline or made a referral to the Supreme Court of Georgia for a hearing before a special master.

The Investigative Panel authorized the following during 2009-2010:

<u>Form of Discipline</u>	<u>Cases</u>
Investigative Panel Reprimands	18
Letters of Formal Admonition	30
Cases Dismissed with Letters of Instruction	53
Interim Suspensions	29

Public discipline imposed by the Supreme Court is described in the Annual Report of the Review Panel of the State Disciplinary Board.

I would like to recognize those members of the Investigative Panel who have unselfishly devoted so much of their personal and professional time to this necessary task.

They are:

Christopher L. Ray, Savannah, District 1

J. Maria Waters, Savannah, District 1

Joseph W. Dent, Albany, District 2

Laverne Lewis Gaskins, Valdosta, District 2

William D. NeSmith, Americus, District 3

William C. Rumer, Columbus, District 3

R. Javoyne Hicks White, Decatur, District 4

Anne Workman, Decatur, District 4

Hubert J. Bell, Jr., Atlanta, District 5

Tywanda L. Harris Lord, Atlanta, District 5

H. Emily George, Forest Park, District 6

Andrew J. Whalen, Griffin, District 6

Christopher A. Townley, Rossville, District 7

W. Wright Gammon, Cedartown, District 7

Donald W. Huskins, Eatonton, District 8 (term expiring)

Reginal L. Bellury, Milledgeville, District 8 (term expiring)

Christine Ann Koehler, Lawrenceville, District 9 (term expiring)

Lyle Kilvington Porter, Lawrenceville, District 9 (term expiring)

Larry L. Smith, Augusta, District 10	(term expiring)
Dennis C. Sanders, Thomson, District 10	(term expiring)
Kenneth G. Menendez, Atlanta, At Large	(term expiring)
John G. Haubenreich, Atlanta, At Large	(term expiring)

We have two ex-officio members, the president-elect of the State Bar of Georgia, S. Lester Tate, Cartersville (term expiring), and the president-elect of the Younger Lawyers Division, Michael G. Geoffroy, Covington (term expiring).

Finally, I want to recognize and thank the six non-lawyer members appointed by the Supreme Court:

Carol Jackson, Cleveland	(term expiring)
Eunice L. Mixon, Tifton	(term expiring)
Elizabeth King, Atlanta	
Michael A. Fuller, Macon	
Lynn R. Smith, Newnan	
Mark A. Douglas, Atlanta	

**ANNUAL REPORT OF THE REVIEW PANEL**  
**STATE DISCIPLINARY BOARD**  
**FOR OPERATIONAL YEAR 2009-2010**

By: Anthony B. Askew, Chair

The role of the Review Panel of the State Disciplinary Board changed effective June 13, 1997. Before that time, the Review Panel was charged with the responsibility of reviewing the complete record in all disciplinary cases that had been heard by a Special Master. As a result of the changes in 1997, the Panel now hears only those cases in which the Respondent lawyer or the Bar asks for review. This means that the Panel reviews fewer cases, but they are by definition the most contentious cases in the process.

The Panel has authority to make findings of fact and conclusions of law based on the record. In all cases in which disciplinary violations have been found, the Panel makes a recommendation of disciplinary action to the Supreme Court. The Court may follow the Panel's recommendation, but may also render an opinion that modifies our recommendation in some way.

In addition, the Review Panel reviews all matters of reciprocal discipline. The Georgia Supreme Court amended the Bar Rules on June 9, 2004, so that the Review Panel now receives every case in which a Georgia lawyer has been disciplined in another jurisdiction. The Panel is charged with recommending the appropriate disciplinary result in Georgia.

At the present time, the Review Panel is a fifteen-member Panel composed of three lawyers from each of the three federal judicial districts in Georgia, appointed by the Supreme Court of Georgia, and by the President of the State Bar. Two ex-officio members also serve on the Panel in their capacity as officers of the State Bar. Four of the Panel members are non-lawyers who were appointed by the Supreme Court. Counsel for the Review Panel is Bridget B. Bagley of Atlanta.

The following is a brief summary of public disciplinary action taken by the Supreme Court of Georgia during the period from May 1, 2009, to April 30, 2010:

<u>Form of Discipline</u>	<u>Cases</u>	<u>Lawyers</u>
Disbarments/Voluntary Surrenders	37	24
Suspensions	45	35
Public Reprimands	1	1
Review Panel Reprimands	13	7

The foregoing summary does not begin to reflect the voluminous records and important issues that were carefully considered by the Panel over the past year. In addition to attending lengthy meetings, each Panel member must review material for each case prior to the meeting in order to make a fair and well-reasoned decision. This represents a major commitment of time and energy on the part of each Panel member, all of whom acted with the highest degree of professionalism and competency during their terms.

At this time, I would like to recognize the members of the Panel who have unselfishly devoted so much of their time to the implementation of the disciplinary system of the State Bar of Georgia.

**Non-lawyer Members**

Thomas C. Rounds, Sandy Springs

Clarence Pennie, Kennesaw (term expiring)

Marlene E. Melvin, Monroe

P. Alice Rogers, Atlanta

**Lawyer Members**

**Northern District:**

Lisa Rosenblum Strauss, Atlanta

Anthony B. Askew, Atlanta

C. Bradford Marsh, Atlanta (term expiring)

**Middle District:**

Gregory L. Fullerton, Albany

Oliver Wendell Horne, Macon

Ralph F. Simpson, Tifton (term expiring)

**Southern District:**

Jeffrey S. Ward, Brunswick

Thomas R. Burnside, III, Augusta

Judd Thomas Drake, Metter (term expiring)

**Ex-Officio Members**

Jeffrey O. Bramlett, Atlanta (term expiring)

Joshua C. Bell, Whigham (term expiring)

**ANNUAL REPORT OF THE  
FORMAL ADVISORY OPINION BOARD  
FOR OPERATIONAL YEAR 2009-2010**

By: Edward Krugman, Chair

The Formal Advisory Opinion Board considers requests for formal advisory opinions and drafts opinions that interpret the Georgia Rules of Professional Conduct. The Board consists of active members of the State Bar of Georgia who are appointed by the President of the Bar, with the approval of the Board of Governors. The Formal Advisory Opinion Board for the 2009-2010 Bar year was composed of the following lawyers:

**Members at Large**

**Term**

Edward B. Krugman, Chair, Atlanta	2009 - 2011
James B. Ellington, Vice-chair, Augusta	2009 - 2011
James W. Friedewald, Marietta	2008 - 2010
Rebecca M. Lamberth, Atlanta	2008 - 2010
Nancy E. Rafuse, Atlanta	2008 - 2010

**Georgia Trial Lawyers Association**

Jack J. Helms, Jr., Homerville	2009 - 2011
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**Georgia Defense Lawyers Association**

Theodore Freeman, Atlanta	2009 - 2011
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**Georgia Association of Criminal Defense Lawyers**

Christopher A. Townley, Rossville	2008 - 2010
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**Georgia District Attorney's Association**

Patrick H. Head, Marietta	2008 - 2010
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**Young Lawyers Division**

Brannon J. Arnold, Atlanta 2009 - 2011

**Emory University**

Professor James B. Hughes, Jr., Atlanta 2008 - 2010

**University of Georgia**

Professor C. Ronald Ellington, Athens 2009 - 2011

**Mercer University**

Professor Patrick E. Longan, Macon 2009 - 2011

**Georgia State University**

Professor Roy M. Sobelson, Atlanta 2008 - 2010

**John Marshall Law School**

Professor Jeffrey Alan Van Detta, Atlanta 2009 - 2011

**Investigative Panel**

John G. Haubenreich, Atlanta 2009 - 2010

**Review Panel**

Lisa Rosenblum Strauss, Atlanta 2009 - 2010

Factors that the Formal Advisory Opinion Board considers in determining whether a request is accepted for the drafting of a formal advisory opinion include whether a genuine ethical issue is presented in the request, whether the issue raised in the request is of general interest to the members of the Bar, and whether there are existing opinions that adequately address the issue raised in the request.

During the 2009-2010 Bar year, the Board received four (4) new requests for formal advisory opinions. The issues addressed in the requests and the current status of each request are as follows:

- Is there a conflict of interest by the Attorney General of Georgia and attorneys in the Office of the Attorney General representing defendant state actors, when there is credible evidence of criminal violations of state laws that isolates the defendant state actors from being prosecuted by the Attorney General?

The Formal Advisory Opinion Board declined this request for the drafting of a formal advisory opinion, concluding that the question presented did not address prospective conduct.

- Formal Advisory Opinion Request No. 09-R2 – Regarding Rule 1.11, Successive Government and Private Employment, as it relates to an attorney who serves as a school board member.

The requestor withdrew the request prior to the Board's review and consideration of the request.

- Formal Advisory Opinion Request No. 09-R3 – May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child's objections?

The Formal Advisory Opinion Board accepted this request for the drafting of a formal advisory opinion, and approved a proposed opinion for 1<sup>st</sup> publication pursuant to Rule 4-403(c). The proposed opinion appears in the June 2010 issue of the Georgia

Bar Journal. Bar members have until July 15, 2010, to file comments with the Board regarding the proposed opinion.

- Formal Advisory Opinion No. 09-R4 – Does an attorney violate Rules 3.4 (a) and (b) and/or other rules of the Georgia Rules of Professional Conduct by reason of obstructionist conduct during a deposition? (*The Question Presented is as stated by the requestor.*)

The Board declined this request for the drafting of a formal advisory opinion, concluding that the request does not involve an ethics issue, but rather one that is addressed by the Rules of Court and statute.

Three (3) requests for formal advisory opinions were received and accepted in previous bar years, but remain pending. The issues addressed in the requests and the current status of each request are as follows:

- Formal Advisory Opinion Request No. 05-R6 - Is a lawyer obligated to notify a client's creditors or third persons when the lawyer receives the proceeds of a client's settlement or judgment? If the lawyer is obligated to notify a third person, is the lawyer then obligated to pay that third person, even over the client's objections?

The issues raised in this request are governed by Rule 1.15(I). The Board approved a proposed opinion, which appeared in the June 2007 issue of the Georgia Bar Journal for 1<sup>st</sup> publication. Comments were received in response to the publication. However, because a proposed amendment to 1.15(I) is pending with the State Disciplinary Rules and Procedures Committee, the Board tabled any further action regarding the request.

- Formal Advisory Opinion Request No. 07-R1 - May different public defenders employed by the same agency represent co-defendants when a single public defender would have an impermissible conflict of interest in doing so?

The Formal Advisory Opinion Board has approved an opinion for 2<sup>nd</sup> publication and filing with the Supreme Court. The opinion, hereinafter known as Formal Advisory Opinion No. 10-1, appears in the June 2010 issue of the Georgia Bar Journal, and will be filed with the Supreme Court on or about June 15, 2010. Pursuant to Bar Rule 4-403(d), the requestor or the State Bar of Georgia may petition the Supreme Court for discretionary review of the opinion within 20 days of the opinion being filed with the Court. Unless the Court grants review, the opinion shall be binding only on the State Bar of Georgia and the requestor.

- Formal Advisory Opinion No. 08-R5 - Ethical Considerations Bearing on Decision of Lawyer to Enter into Flat Fixed Fee Contract to Provide Legal Services.

The Formal Advisory Opinion Board approved a proposed opinion for 1<sup>st</sup> publication. The proposed opinion appeared in the April 2010 issue of the Georgia Bar Journal. Bar members had until May 15, 2010 to file comments regarding the proposed opinion with the Board. Two (2) comments have been received. The Board is in the process of determining whether to approve the proposed opinion for 2<sup>nd</sup> publication and filing with the Supreme Court.

Following the adoption of the Georgia Rules of Professional Conduct in 2001, the Formal Advisory Opinion Board reviewed all existing formal advisory opinions to determine to what extent, if any, the newly adopted rules impacted the opinions. The outcome for two

(2) of the forty-two (42) opinions reviewed remain pending. The issues addressed in the opinions and the current status of each opinion is as follows:

- Formal Advisory Opinion No. 05-1 - Ethical propriety of a lawyer interviewing the officers and employees of an organization when that organization is the opposing party in litigation without consent of organization.

This opinion, a redrafted version of Formal Advisory Opinion No. 87-6, was filed with the Supreme Court of Georgia on August 29, 2008, pursuant to Bar Rule 4-403(d). The opinion addresses issues governed by Bar Rule 4.2. Because a proposed amendment to Rule 4.2 is pending with the State Disciplinary Rules and Procedures Committee, the Supreme Court of Georgia was asked to suspend further consideration of the opinion until a final determination is made regarding the amendment to Rule 4.2.

- Formal Advisory Opinion No. 86-1 – Lawyer Serving Simultaneously as State Legislator and Part-time Solicitor.

At its March 25, 2010 meeting, the Formal Advisory Opinion Board was asked to review this opinion to determine whether it is impacted by the application of O.C.G.A. § 16-10-9a(1). During its review, the Board noted errors within the opinion and the headnote language that was added to the opinion following adoption of the Georgia Rules of Professional Conduct. The Board also determined that O.C.G.A. §16-10-9a(1), and advisory opinions issued by the Georgia Attorney General’s Office answer the question presented in the opinion, thus providing adequate guidance to Georgia attorneys. Accordingly the Board decided that FAO No. 86-1 should be

withdrawn. The Board is in the process of petitioning the Supreme Court to withdraw FAO No. 86-1. A notice of the withdrawal will be published in the Georgia Bar Journal.

One (1) proposed opinion issued by the Formal Advisory Opinion Board was withdrawn prior to it being filed with the Supreme Court.

- Formal Advisory Opinion No. 06-R1 - Is it permissible for an attorney to compensate a lay public relations or marketing organization to promote the services of an attorney through the advertising means listed in Rule 7.2 of the Georgia Rules of Professional Conduct?

On April 3, 2009, the Formal Advisory Opinion Board made a determination that Proposed Formal Advisory Opinion No. 06-R1 should be issued and filed with the Supreme Court. The proposed opinion appeared in the June 2009 issue of the Georgia Bar Journal for 2<sup>nd</sup> publication. Following the 2<sup>nd</sup> publication of the proposed opinion, but prior to it being filed with the Supreme Court, the Board voted to withdraw the opinion and not file it with the Court. A notice was published in the December 2009 issue of the Georgia Bar Journal informing Bar members that the opinion has been withdrawn and will not be filed with the Supreme Court.

Formal Advisory Opinions can be found in the 2009-2010 State Bar of Georgia Directory & Handbook and on the State Bar of Georgia's website at [www.gabar.org](http://www.gabar.org).

I would like to thank the members of the Board for their dedication and service. These members have volunteered their time and knowledge in order to ensure that lawyers are provided with an accurate interpretation of the ethics rules. In particular, I want to note those members whose terms of service on the Board end with this Bar year:

Rebecca M. Lamberth, Member-at-Large

Nancy E. Rafuse, Member-at-Large

Christopher A. Townley, Georgia Association of Criminal Defense Lawyers

Patrick H. Head, Georgia District Attorney's Association

In addition, it is essential that I express my sincere gratitude and appreciation to General Counsel Paula Frederick, Ethics Counsel Bill Smith, Assistant General Counsel John Shiptenko and Betty Derrickson of the Office of the General Counsel of the State Bar of Georgia. Their unfailing efforts and assistance have been invaluable to the Board.

**ANNUAL REPORT OF THE OVERDRAFT NOTIFICATION  
PROGRAM FOR OPERATIONAL YEAR 2009-2010**

By: Regina M. Putman-Kelley, Overdraft Notification Coordinator

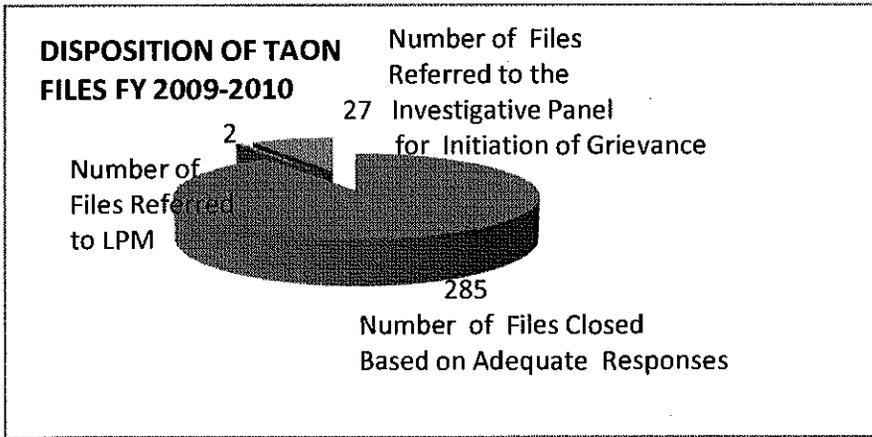
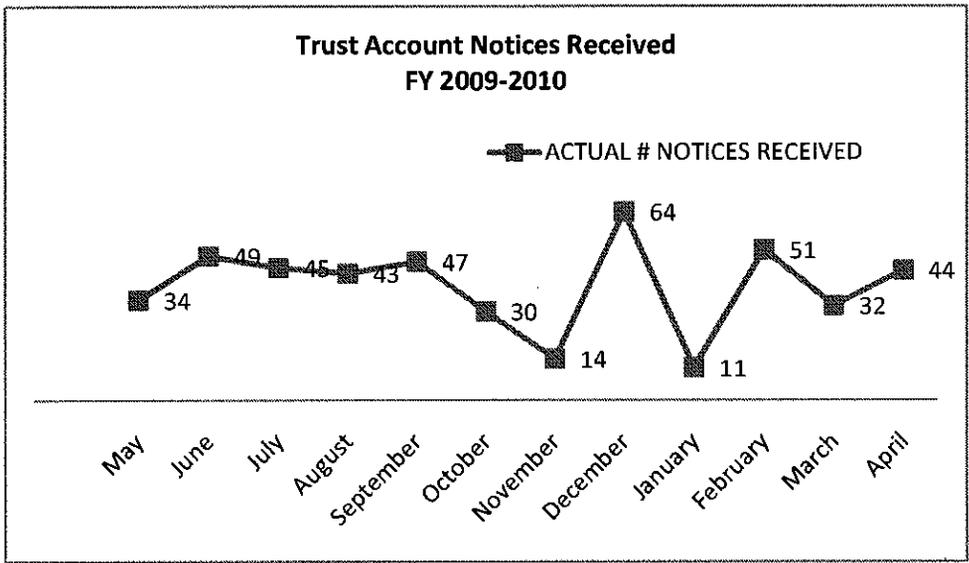
The Trust Account Overdraft Notification Program received 464 notices from financial institutions approved as depositories for attorney trust accounts. Of the total number of overdraft notices received, 13 notices were received by the TAON Program on the accounts of three disbarred lawyers. 285 files were dismissed following the initial inquiry, 2 files were referred to Law Practice Management, and 27 files were forwarded to the Investigative Panel of the State Disciplinary Board for possible disciplinary action. (Several attorney files contained more than one overdraft notice. Some files opened during the latter part of FY 2009 – 2010 remain open, pending disposition.)

**FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES  
FOR ATTORNEY TRUST ACCOUNTS**

Recent bank failures and mergers have affected the number of financial institutions currently approved as depositories for attorney trust accounts. Accordingly, lawyers should review the *List of Approved Financial Institutions*, which can be found on the State Bar of Georgia's web site, [www.gabar.org](http://www.gabar.org).

### Trust Account Overdraft Report FY 2009-2010

Month	ACTUAL # NOTICES RECEIVED	FILES CLOSED/ ADEQUATE RESPONSE	FILES CLOSED/ LPM	GRIEVANCES INITIATED	TOTAL CLOSED
May	34	18	0	1	19
June	49	36	0	1	37
July	45	12	0	0	12
August	43	12	0	1	13
September	47	20	0	1	21
October	30	25	0	2	27
November	14	20	0	1	21
December	64	11	1	2	14
January	11	18	1	0	19
February	51	20	1	2	23
March	32	22	0	1	23
April	44	31	0	0	31
<b>TOTALS</b>	<b>444</b>	<b>285</b>	<b>1</b>	<b>21</b>	<b>314</b>
<b>PERCENTAGES</b>		<b>64%</b>	<b>0.23%</b>	<b>4.73%</b>	



**ANNUAL REPORT OF THE**  
**PRO HAC VICE PROGRAM**  
FOR OPERATIONAL YEAR 2009-2010

By: Kathy S. Jackson, *Pro Hac Vice* Paralegal

By order of November 10, 2005, the Supreme Court of Georgia amended Rule 4.4 of the Uniform Rules for the Superior Courts to require out-of-state lawyers applying for *pro hac vice* admission in Georgia to serve a copy of their application for admission *pro hac vice* on the Office of the General Counsel, State Bar of Georgia. The applicant must pay a \$200 fee to the Bar, unless the applicant seeks pro bono waiver of fee from the court.

Subject to certain exceptions, the Uniform Rules for the Superior Courts are applicable in the State Courts of Georgia. Attorneys seeking to appear *pro hac vice* in State Courts must comply with Rule 4.4.

In 2007 the State Board of Workers' Compensation adopted State Board of Workers' Compensation Rule 102 (A)(2). Rule 102 (A)(2), renumbered to Rule 103 (A)(3), requires attorneys seeking to appear *pro hac vice* before the Board to comply with Rule 4.4.

The Office of the General Counsel may object to the application or request that the court impose conditions to its being granted. Among other reasons, the Bar may object to an application if the lawyer has a history of discipline in his or her home jurisdiction, or if the lawyer has appeared in Georgia courts so frequently that he or she

should become a member of the bar in this state. Lawyers admitted *pro hac vice* agree to submit to the authority of the State Bar of Georgia and the Georgia courts.

By order of April 9, 2009, the Supreme Court of Georgia amended Rule 4.4 to require applicants to disclose all formal, written disciplinary proceedings and court orders regarding contempt and sanctions. Before the amendment, the Rule only required disclosure of discipline received in the past five years.

During the period of May 1, 2009 through April 30, 2010, the Office of the General Counsel reviewed 763 *pro hac vice* applications. Seven applicants sought exemption from the application fee due to pro bono representation. The Office of the General Counsel has filed fourteen Objections with Georgia courts regarding the eligibility of the applicant.

**AMENDMENTS TO THE RULES, REGULATIONS  
AND POLICIES OF THE STATE BAR OF GEORGIA**

There are no changes to the Bar Rules since the last annual meeting. However, there is a motion pending before the Supreme Court of Georgia with three proposed rules amendments, as follows:

**I.**

**Proposed Amendments to Part I, Creation and Organization,  
Of the Rules of the State Bar of Georgia**

It is proposed that Rule 1-202(e) of Part I of the Rules of the State Bar of Georgia regarding Disabled Members be amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

**Rule 1-202. Classes of Members.**

.....

(e) **Disabled Members.** Any member of the State Bar of Georgia who is found to be permanently disabled by the Social Security Administration *or is in the process of applying to the Social Security Administration for such status* may retire from the State Bar of Georgia upon petition to and approval by the ~~Board of Governors~~ *Executive Committee*. Such a disabled member shall hold disabled status and shall annually confirm in writing *to the Membership Department* this disabled status. A disabled member of the State Bar of Georgia holding disabled status under this paragraph shall not be privileged to practice law nor be required to pay dues or annual fees. A disabled member may be reinstated to active membership upon application to the State Bar of Georgia.

If the proposed amendments to the Rule are adopted, the new Rule 1-202(e) would read as follows:

**Rule 1-202. Classes of Members.**

.....

(e) **Disabled Members.** Any member of the State Bar of Georgia who is found to be permanently disabled by the Social Security Administration or is in the process of applying to the Social Security Administration for such status may retire from the State Bar of Georgia upon petition to and approval by the Executive Committee. Such a disabled member shall hold disabled status and shall annually confirm in writing to the Membership Department this disabled status. A disabled member of the State Bar of Georgia holding disabled status under this paragraph shall not be privileged to practice law nor be required to pay dues or annual fees. A disabled member may be reinstated to active membership upon application to the State Bar of Georgia.

**II.**

**Proposed Amendments to Part I, Creation and Organization,  
Of the Rules of the State Bar of Georgia**

It is proposed that Rule 1-208 (b)(3) of Part I of the Rules of the State Bar of Georgia regarding Resignation from Membership be amended by the addition of a subsection (i) to section (b)(3) as follows:

**Rule 1-208. Resignation from Membership.**

.....

(b) Readmission within five years after resignation: for a period of five years after the effective date of a voluntary resignation, the member of the State Bar who has resigned

while in good standing may apply for readmission to the State Bar upon completion of the following terms and conditions:

(1) payment in full of the current dues for the year in which readmission is sought;

(2) payment of a readmission fee to the State Bar equal to the amount the member seeking readmission would have paid if he had instead elected inactive status; and,

(3) submission to the membership section of the State Bar of a determination of fitness from the Board to Determine Fitness of Bar Applicants.

*i.) provided the former member seeking readmission has applied to the Board to Determine Fitness of Bar Applicants before the expiration of the five year period after his or her resignation, the former member shall be readmitted upon submitting a determination of fitness even if the five year period has expired. This provision shall be applicable to all former members who applied to the Board to Determine Fitness on or after January 1, 2008.*

### **III.**

#### **Proposed Amendments to Part I, Creation and Organization, Of the Rules of the State Bar of Georgia**

It is proposed that Rule 1-506 of Part I of the Rules of the State Bar of Georgia regarding the Clients' Security Fund Assessment be amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

### **Rule 1-506. Clients' Security Fund Assessment**

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$100.00. This \$100.00 fee may be paid in minimum annual installments of ~~\$20.00~~ \$25.00 for a period of ~~five (5)~~ four (4) years. Each new member of the State Bar will also be assessed a similar amount upon admission to the State Bar. This fee shall be used only to fund the Clients' Security Fund and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502.

(b) For a member who joins the State Bar after taking the Georgia Bar Examination, the Clients' Security Fund assessment shall be due and payable in ~~\$20.00~~ \$25.00 installments on July 1 of each year until the balance of \$100.00 is paid. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

(c) For a member who is admitted as a Foreign Law Consultant or who joins without taking the Georgia Bar Examination, and who has not previously paid the Clients' Security Fund Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

If the proposed amendments to the Rule are adopted, the new Rule 1-506 would read as follows:

### **Rule 1-506. Clients' Security Fund Assessment**

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$100.00. This \$100.00 fee may be paid in minimum annual installments of \$25.00 for a period of four (4) years. Each new member of the State Bar will also be assessed a similar amount upon admission to the State Bar. This fee shall be used only to fund the Clients' Security Fund and shall

be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502.

(b) For a member who joins the State Bar after taking the Georgia Bar Examination, the Clients' Security Fund assessment shall be due and payable in \$25.00 installments on July 1 of each year until the balance of \$100.00 is paid. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

(c) For a member who is admitted as a Foreign Law Consultant or who joins without taking the Georgia Bar Examination, and who has not previously paid the Clients' Security Fund Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

**ANNUAL REPORT OF THE**  
**CLIENTS' SECURITY FUND**  
**FOR OPERATIONAL YEAR 2009-2010**

By: B. J. Pak, Chair

The Clients' Security Fund is a public service of the legal profession in Georgia. The purpose of the Clients' Security Fund is to repay clients who have lost money due to a lawyer's dishonest conduct. Every lawyer admitted to practice in Georgia, including those admitted as a foreign law consultant or those who join the Bar without taking the Georgia Bar Examination, contributes to this Fund.

On behalf of the Trustees of the Clients' Security Fund, it is a pleasure to present the 2009-2010 Clients' Security Fund Annual Report to the Board of Governors of the State Bar of Georgia. The Trustees of the Fund are proud of the efforts put forth to maintain the integrity of the legal profession.

**Creation of the Fund**

The Board of Governors of the State Bar of Georgia created the Clients' Security Fund by a Resolution on March 29, 1968. The Fund was formed "for the purpose of promoting public confidence in the administration of justice, and maintaining the integrity and protecting the good name of the legal profession by reimbursing, to the extent deemed proper and feasible by the Trustees of the Fund, losses caused by the dishonest conduct of members of the State Bar of Georgia." In 1991, the Supreme Court of Georgia adopted the Rules of the Clients' Security Fund (Part X) making it an official part of the Rules of the State Bar of Georgia. That same year, pursuant to the Rules, the Board of Governors assessed each of the members of the State Bar the sum of \$100.00, to be paid over a five-year period, to fully fund and stabilize the Fund.

## **Administration of the Fund**

The Clients' Security Fund Board of Trustees performs all acts necessary and proper to fulfill the purposes of and effectively administer the Fund. The Rules, issued by order of the Supreme Court of Georgia, establish a Board of Trustees consisting of six (6) lawyers and one (1) non-lawyer member who are appointed to staggered terms by the President of the State Bar of Georgia. The Trustees serve five-year terms, and receive no compensation or reimbursement for their service. The Trustees select the Chair and Vice-chair to serve as officers for the Fund. The Fund receives part-time assistance from one attorney, one paralegal and one legal secretary from the Office of the General Counsel. In addition to your Chair, the following lawyers served as Trustees for the 2009-2010 operational year:

Charles Lee Davis, Marietta, Georgia

Denny C. Galis, Athens, Georgia

Dana F. Braun, Savannah, Georgia

Byung Jin Pak, Chair, Atlanta, Georgia

Elena Kaplan, Atlanta, Georgia

Vera Sharon Edenfield, Statesboro, Georgia

John A. Isakson, Vice-Chair (non-lawyer), Atlanta, Georgia

The Trustees strive to meet at least quarterly during the year. If circumstances warrant, special meetings may be called to ensure that claims are processed in a timely fashion. These Trustees have served tirelessly and their dedication to this program is greatly appreciated.

## **Funding**

Members of the State Bar of Georgia provide the funding for the Clients' Security Fund. These funds are held in the name of the Fund and the Trustees of the Fund maintain exclusive

control of disbursements from the Fund.

During the years following the inception of the Fund in 1968, the number of claims filed with the Fund began to increase dramatically. The reason for the increase included, but was not limited to, an increased lawyer population and increased disciplinary efforts by the Office of the General Counsel. In response to the certainty that the Fund would very shortly be depleted, in 1989 and 1990 the Trustees and the Executive Committee of the State Bar of Georgia began to study various funding mechanisms. The Trustees also studied measures designed to prevent losses from occurring such as random audit of attorney trust accounts and overdraft notification rules. While these measures would help identify problems, the Trustees recognized that even these measures would not completely prevent theft from occurring. The most immediate solution was adequate funding.

For two years, the Trustees studied a number of different funding options, and ultimately proposed an assessment of \$100.00 per lawyer to be paid over a period of five years. New members of the Bar would also be assessed the same amount, again payable over five years. The Board of Governors of the State Bar of Georgia approved this proposal at its June 15, 1991 meeting, and the Supreme Court of Georgia approved the motion to amend the Bar Rules to provide for the assessment on April 2, 1992.

This funding mechanism was a significant development in the life of the Fund. The assessment appeared for the first time on the 1992-93 dues notice. In the first year, the assessment generated \$508,688.26 in revenue for the Fund. Fund revenue is supplemented by interest income, restitution payments from disbarred lawyers, and miscellaneous contributions.

Even with relatively substantial sources of income, there continued to be concerns about the stability of the Fund. It was determined that a secure source of funding is essential to the

integrity of the Fund. This has been accomplished by the Supreme Court. On June 13, 1997, the Supreme Court of Georgia approved an amendment to the Bar Rules that provides for future assessments triggered whenever the fund balance falls below a minimum of \$1,000,000.00. A cap of \$350,000.00 was also placed upon the aggregate amount that could be paid to claimants in any one year.

The Trustees also adopted certain administrative rules to help stabilize and manage the Fund. These rules provided that the maximum amount the Trustees will pay on any individual claim is \$25,000.00. Also, the aggregate amount the Trustees will pay to all claimants victimized by a single lawyer is limited to 10% of the Fund balance as it existed on the date the first claim against the lawyer was paid. Both of these rules may be overridden by a unanimous vote of the Trustees in cases of undue hardship or extreme unfairness.

More recent efforts to maintain the stability of the fund include an amendment to the Bar Rules, which was adopted by the Supreme Court on November 8, 2003. As the result of changes in the admissions rules that allow attorneys in reciprocal states to be admitted to the State Bar of Georgia upon motion, the amended bar rules provide that all members who are admitted to the State Bar of Georgia as a Foreign Law Consultant or who join without taking the Georgia Bar Examination are required to pay the full assessment of \$100.00 prior to or upon registration with the State Bar.

The efforts of the State Bar of Georgia and the Trustees of the Fund have proved successful over the years. The Fund's balance has grown from a low of \$361,823.00 in 1992 to \$2,688,866.00 as of May 30, 2010. The average fund balance has stabilized at approximately \$2,500,000.00.

## **Loss Prevention Efforts**

An important role of the Trustees of the Fund is to promote and endorse rules and educational programs that are designed to prevent losses from occurring. In 1992 and 1993 respectively, the Trustees actively urged the adoption of two significant programs designed to prevent lawyer theft of clients' funds.

### **Overdraft Notification**

In November 1992, the Board of Trustees joined the Investigative Panel of the State Disciplinary Board in urging the Board of Governors to approve amendments to Disciplinary Standard 65, creating a trust account overdraft notification program. The program was approved by the Supreme Court of Georgia on August 22, 1995, and became effective January 1, 1996. Standard 65 was subsequently replaced with Rule 1.15(III) with the Supreme Court's adoption of the Georgia Rules of Professional Conduct on January 1, 2001. The primary purpose of the overdraft notification rules is to prevent misappropriation of clients' funds by providing a mechanism for early detection of improprieties in the handling of attorney trust accounts. See, 2009-2010 State Bar of Georgia Directory & Handbook, Rule 1.15(III), p. H-38.

### **Payee Notification**

During the 1993 legislative session, with the urging of the Trustees of the Fund, the Board of Governors endorsed legislation specifically designed to prevent lawyer theft of personal injury settlement funds. As a result of these efforts, the "payee notification rule" was approved in the form of an amendment to the Insurance Code. This statute requires insurers to send notice to the payee of an insurance settlement at the time the check is mailed to the payee's attorney. This places the client on notice that the attorney has received settlement funds. The adoption of this procedure has substantially reduced claims involving theft of insurance funds.

## **Claims Process**

Before the Clients' Security Fund will pay a claim, the Trustees must determine that the loss was caused by the dishonest conduct of the lawyer who has been disbarred, indefinitely suspended, or has voluntarily surrendered his or her license, and arose out of the client-lawyer relationship. The Rules define "dishonest conduct" as acts "committed by a lawyer in the nature of theft or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value." Typically, claims filed by corporations or partnerships, government entities, and certain members of the attorney's family are denied. Losses covered by insurance, or that result from malpractice or financial investments are also not considered reimbursable by the Fund. Claimants are responsible for providing sufficient documentation to support their claims.

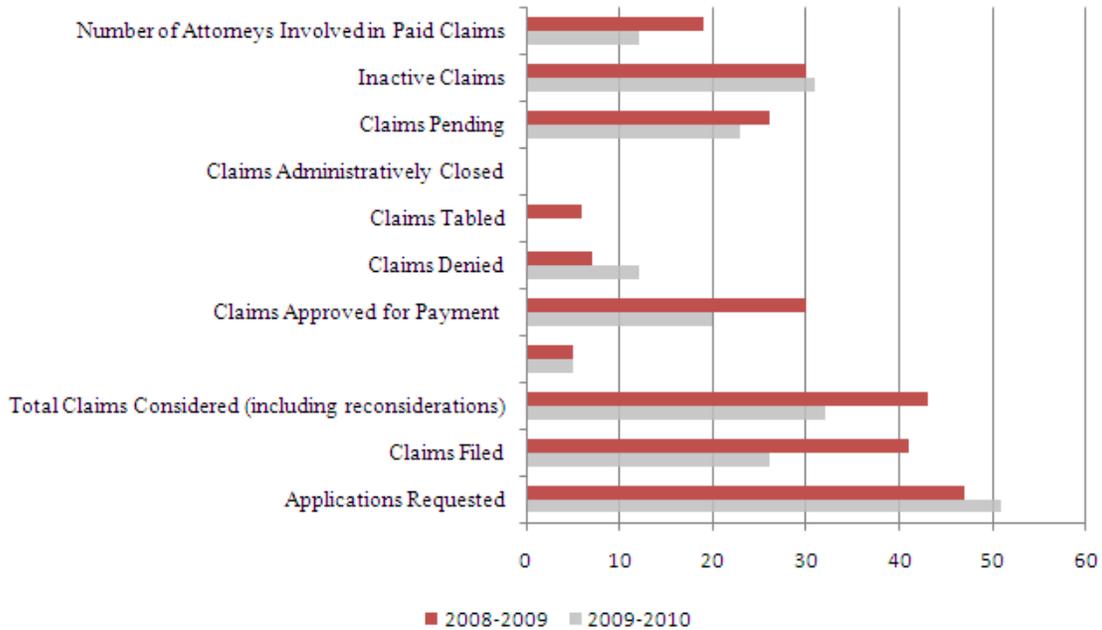
Following is the statistical report the Fund for the 2009-2010 operational year.

### **Annual Statistics for Operational Year 2009-2010** **Financial Summary as of May 30, 2010**

Fund Balance	\$ 2,657,063.00
Assessment Income	\$ 143,646.00
Restitution Income	\$ 16,617.00
Interest Income	\$ 25,669.00
Claims Paid	\$ 166,753.00
Expenses	\$ 66,917.00

## ACTIVITY SUMMARY

	<u>2009-2010</u>	<u>2008-2009</u>
Applications Requested	51	47
Claims Filed	26	41
Total Claims Considered (including reconsiderations)	32	43
Claims Reconsidered	5	5
Claims Approved for Payment	20	30
Claims Denied	12	7
Claims Tabled	0	6
Claims Administratively Closed	0	0
Claims Pending	23	26
Inactive Claims	31	30
Number of Attorneys Involved in Paid Claims	12	19



REVIEW PANEL REPRIMANDS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
1/25/10	Sylvia Ann Martin	5650
2/1/10	Gary Gilbert Guichard	5497 5598 5599
2/1/10	Stanley J. Kakol, Jr. (with conditions)	5481
3/1/10	Ralph James Villani	5697
3/15/10	Craig Steven Mathis	5621
4/19/10	Kindall Grant	5752 5753
4/19/10	Kevin Schumaker	5585 5586 5654 5655

PUBLIC REPRIMANDS

DATE OF ORDER

RESPONDENT

DOCKET

10/5/09

Richard Allen Hunt

5605

SUSPENSIONS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
<u>Indefinite</u>		
10/19/09	Gregory C. Menefee (Until reinstated in Kentucky)	5506
1/25/10	Marcus L. Vickers (Until outcome of appeal)	5717
2/8/10	Benjamin Lanier Bagwell (Two years with conditions)	5726 5727 5728 5729 5730
<u>Definite</u>		
1/28/09	George E. Powell, Jr.	5556
2/1/10	Patrick J. Smith	5517
<u>Interim Suspensions</u>		
5/7/09	William Hansel Kitchens, Jr.	080241
5/12/09	Benjamin Lanier Bagwell	080211
5/18/09	Jeffrey G. Gilley	080201
6/25/09	Michael H. Graham	090063
7/7/09	Coleman C. Eaton	090043
7/9/09	Michael Bernard Wallace	090049
7/13/09	Sabrina Kaye Bozeman	080296
7/27/09	Kathryn Jean Jaconetti	090036
8/6/09	Pat Eugene Belcher, II	090037
9/11/09	Gary Allen Moss	090136

10/6/09	David P. Rachel	090106
10/6/09	Michael H. Graham	090194
10/6/09	Amjad Muhammad Ibrahim	090144
10/6/09	David Michael Fuller	090173
10/20/09	Karen T. White	090032 090073
10/20/09	H. Edward Marks, Jr.	090137
10/20/09	Jeffrey Brooks Kent	090056
10/20/09	Leonard Farkas	090113
10/21/09	Gary Gilbert Guichard	090065
12/22/09	Thomas Edwin Sasser	090155
1/27/10	Kendra Lynn Weathington	090185 090216 090282
1/28/10	Elliot Joseph Vogt	090298
2/1/10	Keesha Marie Brown	090290
2/1/10	Jerry Boykin	090179 090180
2/3/10	Calvin Alvester Edwards, Jr.	090265
3/8/10	Lecora Bowen	090212
3/8/10	Paul T. Robinson	090211
3/9/10	Karen T. White	090287
3/12/10	Tony Eugene Mathis	090266

Interim Suspensions Lifted

5/6/09	Leonanus A. Moore	080179
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5/29/09	William Hansel Kitchens, Jr.	080241
5/29/09	Kevin Schumaker	080170 080171
6/3/09	William M. Peterson	080297
8/21/09	Michael H. Graham	090063
9/17/09	Kathryn Jean Jaconetti	090036
0/17/09	Michael Bernard Wallace	090049
11/10/09	David P. Rachel	090106
11/12/09	Leonard Farkas	090113
11/12/09	Amjad Muhammad Ibrahim	090144
3/4/10 4/1/10	Benjamin Lanier Bagwell Amended Order	080211
3/19/10	Jerry Boykin	090179 090180
3/19/10	Calvin A. Edwards, Jr.	090265

Suspension Reinstatement

6/8/09	Stephen G. Waldrop	5256
9/28/09	Anthony Gus Caraway	4738
4/19/10	John M. B. Lewis, IV	5295

DISBARMENTS/VOLUNTARY SURRENDERS

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
5/18/09	Daniel Richard Hayes	5218
5/18/09	Davis A. Harris	5900
6/8/09	Robert Price Copeland	5637
9/8/09	Leonanous A. Moore	5275 5511 5512 5546 5547 5548
9/28/09	Marsha Gay Boniface	5562
9/28/09	Wade Gunnar Anderson	5081 5084 5085 5141 5181
10/5/09	Christopher M. Kunkel	5698
10/5/09	Joyce A. Wilson	5518
10/5/09	Wendell S. Henry	5166 5167
10/19/09	Marshall Dewey Bain	5701
10/19/09	Sami Omar Malas	5664
10/19/09	Coleman C. Eaton	5591 5592
10/19/09	James M. Kimbrough, III	5360 5463 5550
11/9/09	Charles A. Thomas, Jr.	5719
1/25/10	Steven E. Zagoria	5743

3/1/10	Deborah K. Rice	5763
3/1/10	Frederick Andrew Gardner	5762
2/1/10	Howard Geoffrey Slade	5745
2/1/10	Trent Edward Wright	5760
2/8/10	Sabrina K. Bozeman	5670
3/15/10	Thomas P. Burke	5700
3/29/10	Jeffrey Scott Denny	5764
4/19/10	Marcus Stan Ballew	5449
4/19/10	Jeffrey Brooks Kent	5736

INACTIVE

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
5/20/09	Daniel Richard Hayes	5219 5570
9/15/09	Leonanous A. Moore	5510 5639 5640
10/05/09	Keino Dwan Campbell	5471
11/9/09	Coleman C. Eaton, Jr.	5644 5673
11/9/09	Charles A. Thomas, Jr.	5259 5260 5331 5571 5572

REINSTATEMENTS GRANTED

<u>DATE OF ORDER</u>	<u>RESPONDENT</u>	<u>DOCKET</u>
11/23/09	Lisa Paige Lenn	4817 5047
3/15/10	Ike A. Hudson	5342 5373



State Bar  
of Georgia

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