



SUPREME COURT OF GEORGIA

Atlanta March 21, 2014

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

The Court having considered the 2012-2 First Amended Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia, it is ordered that Rule 7.2 (Advertising) and Rule 4-219 (Judgments and Protective Orders) be amended and that new Rule 4-228 (Receiverships) be approved, effective March 21, 2014, to read as follows:

PART IV GEORGIA RULES OF PROFESSIONAL CONDUCT

CHAPTER 1 GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

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PART SEVEN INFORMATION ABOUT LEGAL SERVICES

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RULE 7.2 ADVERTISING

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through:
- (1) public media, such as a telephone directory, legal directory, newspaper or other periodical;
 - (2) outdoor advertising;
 - (3) radio or television;
 - (4) written, electronic or recorded communication.
- (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (c) *Prominent disclosures.* Any advertisement for legal services directed to potential clients in Georgia, or intended to solicit employment for delivery of any legal services in Georgia, must include prominent disclosures, clearly legible and capable of being read by the average person, if written, and clearly intelligible by an average person, if spoken aloud, of the following:
- (1) *Disclosure of identity and physical location of attorney.* Any advertisement shall include the name, physical location and telephone number of each lawyer or law firm who paid for the advertisement and who takes full personal responsibility for the advertisement. In disclosing the physical location, the responsible lawyer shall state the full address of the location of the principal bona fide office of each lawyer who is prominently identified pursuant to this paragraph. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm from which the lawyer or law firm

furnishes legal services on a regular and continuing basis. In the absence of a bona fide physical office, the lawyer shall prominently disclose the full address listed with the State Bar of Georgia or other Bar to which the lawyer is admitted. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's bona fide office, or the registered bar address, when a referral is made.

(2) *Disclosure of referral practice.* If the lawyer or law firm will refer the majority of callers to other attorneys, that fact must be disclosed and the lawyer or law firm must comply with the provisions of Rule 7.3(c) regarding referral services.

(3) *Disclosure of spokespersons and portrayals.* Any advertisement that includes a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, portrayal of a client by a non-client, or any paid testimonial or endorsement, shall include prominent disclosure of the use of a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, or of a client by a non-client.

(4) *Disclosures regarding fees.* A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service.

(5) *Appearance of legal notices or pleadings.* Any advertisement that includes any representation that resembles a legal pleading, notice, contract or other legal document shall include prominent disclosure that the document is an advertisement rather than a legal document.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

[4] Neither this Rule nor Rule 7.3: Direct Contact with Prospective Clients prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule.

CHAPTER 2 DISCIPLINARY PROCEEDINGS

RULE 4-219. Judgments and Protective Orders

(a) After either the Review Panel's report or the Special Master's report is filed with the Supreme Court of Georgia, the respondent and the State Bar may file with the Court any written exceptions, supported by written argument, each may have to the report subject to the provisions of Rule 4-217(c). All such exceptions shall be filed with the Court within twenty days of the date that the report is filed with the Court and a copy served upon the opposing party. The responding party shall have an additional twenty days to file its response with the Court. The court may grant oral argument on any exception filed with it upon application for such argument by a party to the disciplinary proceedings. The Court will promptly consider the report of the Review Panel or the Special Master, any exceptions, and any responses filed by any party to such exceptions, and enter judgment upon the formal complaint. A copy of the Court's judgment shall be transmitted to the State Bar and the respondent by the Court.

(b) In cases in which the Supreme Court of Georgia orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar website, notice of the discipline, including the respondent's full name and business address, the nature of the discipline imposed and the effective dates.

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

(2) After a final judgment of disbarment or suspension under Part IV of these Rules, including a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar

status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

- (i) have any contact with the clients of the office either in person, by telephone, or in writing; or
- (ii) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

RULE 4-228. Receiverships

(a) Definitions

Absent Attorney — a member of the State Bar of Georgia (or a foreign or domestic lawyer authorized to practice law in Georgia) who shall have disappeared, died, become disbarred, disciplined or incarcerated, or become so impaired as to be unable to properly represent his or her clients or as to pose a substantial threat of harm to his or her clients or the public as to justify appointment of a Receiver hereunder by the Supreme Court of Georgia.

(b) Appointment of a Receiver

(1) Upon a final determination by the Supreme Court of Georgia, on a petition filed by the State Bar of Georgia, that an attorney has become an Absent Attorney, and that no partner, associate or other appropriate representative is available to notify his or her clients of this fact, the Supreme Court of Georgia may order that a member or members of the State Bar of Georgia be appointed as Receiver to take charge of the Absent Attorney's files and records. Such Receiver shall review the files, notify the Absent Attorney's clients and take such steps as seem indicated to protect the interests of the clients and the public. A motion for reconsideration may be taken from the issuance or denial of such protective order by the respondent, his or her partners, associates or legal representatives or by the State Bar of Georgia.

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

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

(c) Applicability of Attorney-Client Rules

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

(2) Attorney-Client Relationship; Privilege — The Receiver relationship standing alone does not create an attorney-client relationship between the Receiver and the clients of the Absent Attorney. However, the attorney-client privilege shall apply to communications by or between the Receiver and the clients of the Absent Attorney to the same extent as it would have applied to communications by or to the Absent Attorney.

(d) Trust Account

(1) If after appointment the Receiver should determine that the Absent Attorney maintained one or more trust accounts and that there are no provisions extant that would allow the clients, or other appropriate

entities, to receive from the accounts the funds to which they are entitled, the Receiver may petition the Supreme Court of Georgia or its designee for an order extending the scope of the Receivership to include the management of the said trust account or accounts. In the event the scope of the Receivership is extended to include the management of the trust account or accounts, the Receiver shall file quarterly with the Supreme Court of Georgia or its designee a report showing the activity in and status of said accounts.

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

(3) In determining ownership of funds in the trust accounts, including by subrogation or indemnification, the Receiver should act as a reasonably prudent lawyer maintaining a client trust account. The Receiver may (1) rely on a certification of ownership issued by an auditor employed by the Receiver; or (2) interplead any funds of questionable ownership into the appropriate Superior Court; or (3) proceed under the terms of the Disposition of Unclaimed Property Act (O.C.G.A. §44-12-190 et seq.). If the Absent Attorney's trust account does not contain sufficient funds to meet known client balances, the Receiver may disburse funds on a pro rata basis.

(e) Payment of Expenses of Receiver

(1) The Receiver shall be entitled to reimbursement for actual and reasonable costs incurred by the Receiver for expenses, including, but not limited to, (i) the actual and reasonable costs associated with the employment of accountants, auditors and bookkeepers as necessary to determine the source and ownership of funds held in the Absent Attorney's trust account, and (ii) reasonable costs of secretarial, postage, bond premiums, and moving and storage expenses associated with carrying out the Receiver's duties. Application for allowance of costs and expenses shall be made by affidavit to the Supreme Court of Georgia, or its designee, who may determine the amount of the reimbursement. The application shall be accompanied by an accounting in a form and substance acceptable to the Supreme Court of Georgia or its designee. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be paid to the Receiver by the State Bar of Georgia. The State Bar of Georgia may seek from a court of competent jurisdiction a judgment against the Absent Attorney or his or her estate in an amount equal to the amount paid by the State Bar of Georgia to the Receiver. The amount of reimbursement as determined by the Supreme Court of Georgia or its designee shall be considered as prima facie evidence of the fairness of the amount, and the burden of proof shall shift to the Absent Attorney or his or her estate to prove otherwise.

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

(f) Receiver-Client Relationship

With full disclosure and the informed consent, as defined in Bar Rule 1.0 (h), of any client of the Absent Attorney, the Receiver may, but need not, accept employment to complete any legal matter. Any written consent by the client shall include an acknowledgment that the client is not obligated to use the Receiver.

(g) Unclaimed Files

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

(2) If the Receiver determines that an unclaimed file contains a Last Will and Testament, the Receiver may, but shall not be required to do so, file said Last Will and Testament in the office of the Probate Court in such county as to the Receiver may seem appropriate.

(h) Professional Liability Insurance

Only attorneys who maintain errors and omissions insurance that includes coverage for conduct as a Receiver may be appointed to the position of Receiver.

(i) Requirement of Bond

The Supreme Court of Georgia or its designee may require the Receiver to post bond conditioned upon the faithful performance of his or her duties.

(j) Immunity

(1) The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and the appointed Receiver to be within the Court's judicial and regulatory functions, and being regulatory and judicial in nature the State Bar of Georgia and Receiver are entitled to judicial immunity.

(2) The immunity recognized in paragraph (1) above shall not apply if the Receiver is employed by a client of the Absent Attorney to continue the representation.

(k) Service

Service under this Rule may be perfected under Bar Rule 4-203.1.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

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

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

 Clerk