Legal Ethics

by Patrick Emery Longan†

I. INTRODUCTION

This survey covers the period from June 1, 2016 to May 31, 2017.1 The Article discusses attorney discipline, ineffective assistance of counsel, legal malpractice and breach of fiduciary duty, disqualification, judicial ethics, several miscellaneous cases involving legal ethics, opinions of the Formal Advisory Opinion Board, and amendments to the Georgia Rules of Professional Conduct.

II. LAWYER DISCIPLINE2

A. Disbarments3

1. Trust Account Violation

The Georgia Supreme Court disbarred one attorney during the survey period for mishandling funds in his trust account.4 The lawyer collected over $113,000 from a buyer at a real estate closing but did not disburse the funds to the seller until the seller filed a lawsuit to collect the funds.

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1. For an analysis of legal ethics during the prior survey period, see Patrick Emery Longan, Legal Ethics, Annual Survey of Georgia Law, 68 MERCER L. REV. 167 (2016).


3. Lawyers in Georgia can voluntarily surrender their licenses or submit a petition for voluntary discipline. GA. RULES OF PROF’L CONDUCT R. 4-110(f) (2016). The acceptance of a voluntary surrender of a license or the granting of a petition for voluntary discipline of disbarment are tantamount to disbarment by the court and are treated as such in this Article. Id.

In the meantime, the lawyer either misused the funds or commingled them with his own. To satisfy the seller’s claim, the lawyer had to deposit personal funds into the trust account.\(^5\)

### 2. Client Abandonment and/or Lack of Communication

The supreme court disbarred four lawyers during the survey period primarily for client abandonment and failure to communicate.

Kurt A. Raulin defaulted in the disciplinary process with respect to two matters and therefore admitted that he had “failed to abide by [his clients’] decisions regarding the scope and objectives of the representation,”\(^6\) failed to act diligently, and failed to communicate adequately.\(^7\) He was representing one of those clients while he was under suspension for an earlier disciplinary violation.\(^8\)

Richard R. Buckley, Jr. was disbarred in connection with five disciplinary matters to which he did not file any notices of rejection.\(^9\) In one matter, Buckley failed to respond to orders of the court. In the other four, he undertook to represent clients, accepted retainers, abandoned the clients, and did not refund the fees.\(^10\)

The court disbarred Ted H. Reed, a lawyer with an extensive record of prior discipline.\(^11\) The special master found that Reed violated his duties of diligence and of communication regarding the representation of a divorce client, who:

\[\text{[T]ested that he experienced considerable difficulty in communicating with Reed and that Reed failed to undertake the steps necessary to ensure the correction of the final order in the divorce proceedings, which order failed to protect the client’s pension, such that the client was eventually required to obtain other counsel, and incur the expenses attendant to doing so, in order to have the matter resolved in his favor.}\(^12\)

The court disbarred Morris P. Fair, Jr. for his conduct in two matters and based on his disciplinary history.\(^13\) In one of the matters, Fair continued to represent the client while he was suspended, failed to

\(^5\) Id. at 666, 791 S.E.2d at 1.
\(^6\) In re Raulin, 299 Ga. 283, 283, 787 S.E.2d 691, 692 (2016).
\(^7\) Id.
\(^8\) Id.
\(^10\) Id. at 48–49, 799 S.E.2d at 159–60.
\(^12\) Id. at 643–44, 797 S.E.2d at 451–52.
\(^13\) In re Fair, Jr., 300 Ga. 655, 657, 797 S.E.2d 490, 491 (2017).
respond to discovery or to motions, failed to consult or communicate with his client, and failed to return the client’s property after he withdrew. The trial court struck the complaint that Fair filed for his client, barred him from defending against the opposing party’s counterclaim, and awarded over $28,000 in attorney fees to the opposing party. In the other matter, Fair undertook to represent a client in a criminal case but did not communicate adequately with the client, ceased representing the client without filing a motion to withdraw, and falsely represented to the Bar that he had filed such a motion.\textsuperscript{14}

3. Criminal Activity

The supreme court disbarred eight lawyers during the survey period for criminal activities. George D. Houser lost his license after he was convicted of one felony count of conspiracy to commit healthcare fraud, eight felony counts of payroll tax fraud, and two counts of failure to file income taxes.\textsuperscript{15} The supreme court disbarred another attorney when the court of appeals affirmed his conviction for child molestation.\textsuperscript{16} The court disbarred Everett H. Mechem because he was convicted in federal court of “[twenty-eight] counts of wire fraud, two counts of Supplemental Security Income fraud, two counts of making a false statement, and one count of theft of public money.”\textsuperscript{17}

Several lawyers who committed crimes voluntarily surrendered their licenses. Holly De Rosa Hogue did so after she was convicted of a felony, distribution of oxycodone and methamphetamine.\textsuperscript{18} Lyle Vincent Anderson voluntarily surrendered his license after he was convicted of forgery for falsifying a fee agreement,\textsuperscript{19} while Trent Carl Gaines surrendered his license after he pled guilty to federal felony charges of bid-rigging and conspiracy to commit mail fraud.\textsuperscript{20} Samuel Elias Skelton voluntarily surrendered his license after he pled guilty to felony counts of theft by taking.\textsuperscript{21}

One lawyer was disbarred as a result of a misdemeanor.\textsuperscript{22} Joanna Temple was convicted in New York of a misdemeanor after advising

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\item \textsuperscript{14} \textit{Id.} at 655–56, 797 S.E.2d at 490–91.
\item \textsuperscript{15} \textit{In re} Houser, 299 Ga. 284, 284–86, 787 S.E.2d 689, 690–91 (2016).
\item \textsuperscript{16} \textit{In re} Madison, 300 Ga. 637, 637, 639, 797 S.E.2d 476, 477–78 (2017).
\item \textsuperscript{17} \textit{In re} Mechem, 301 Ga. 232, 232–33, 800 S.E.2d 277, 277 (2017).
\item \textsuperscript{18} \textit{In re} Hogue, 299 Ga. 664, 664–65, 791 S.E.2d 2, 2 (2016).
\item \textsuperscript{19} \textit{In re} Anderson, 299 Ga. 748, 748–49, 791 S.E.2d 769, 769 (2016).
\item \textsuperscript{20} \textit{In re} Gaines, 300 Ga. 483, 483, 796 S.E.2d 251, 251 (2017).
\item \textsuperscript{21} \textit{In re} Skelton, 300 Ga. 866, 866, 800 S.E.2d 514, 514 (2017).
\item \textsuperscript{22} \textit{In re} Temple, 300 Ga. 484, 484–85, 796 S.E.2d 250, 250–51 (2017).
\end{itemize}
\end{footnotesize}
clients about how to intentionally violate New York’s usury law.23 Her assistance of the clients in the commission of crimes violated Rule 1.2(d)24 of the Georgia Rules of Professional Conduct.25 Her conviction of the crime was also misconduct under Rule 8.4(a)(3),26 which provides that it is a violation of the Georgia Rules of Professional Conduct for a lawyer to “be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law.”27

4. Miscellaneous Disbarments

The supreme court disbarred five lawyers for reasons that do not fit neatly into the usual categories. The court disbarred Keith Brian Harkleroad because he continued to practice after being suspended for failure to complete mandatory continuing legal education and for failure to pay Bar dues.28 Harkleroad’s suspension was discovered during his defense of a client on murder charges:

The client’s trial began on October 25, 2015, with Harkleroad representing the client. Following that day's proceedings, the prosecution learned that Harkleroad was not then a member in good standing and advised the court of its discovery outside the presence of the jury. According to the Notice of Discipline, Harkleroad told the court that he had recently sent a check to pay his Bar dues and that he acquired six hours of continuing legal education credit. The court allowed Harkleroad to leave the courtroom to check on his membership status. When Harkleroad returned, he told the court that he had spoken with a representative of the Bar and had been told that he needed eight hours of continuing legal education credit. The court declared a mistrial in the client’s murder case and filed a grievance against Harkleroad. At that time, Harkleroad needed 18 hours of continuing legal education credit and no check for payment of Bar dues from Harkleroad was ever received by the Bar. Moreover, Harkleroad did not cooperate with the Office of General Counsel’s investigation of this grievance and did not submit a response to the Notice of Investigation.29

23. Id. at 484, 796 S.E.2d at 250.
24. GA. RULES OF PROF'L CONDUCT R. 1.2(d).
25. Temple, 300 Ga. at 484, 796 S.E.2d at 250.
27. Id.
29. Id. at 762, 798 S.E.2d at 235.
The court disbarred Harkleroad for violating Rule 5.5(a)\textsuperscript{30} (unauthorized practice of law), Rule 8.4(a)(4)\textsuperscript{31} (professional conduct involving dishonesty, fraud, deceit, or misrepresentation), and Rule 9.3\textsuperscript{32} (failure to respond to disciplinary authorities).\textsuperscript{33}

The court disbarred Ted. B. Herbert, who did not contest the allegations against him.\textsuperscript{34} Those allegations were that Herbert represented two clients in a matter and advised them to destroy physical and electronic evidence. During the pendency of the case, Herbert did not act with diligence and did not communicate adequately with the clients. The trial court eventually struck the answer and defenses of Herbert's clients as a sanction for the spoliation of evidence, including the evidence that the lawyer advised the clients to destroy. Herbert had three prior disciplinary offenses, and the special master found no mitigating circumstances.\textsuperscript{35}

The court also accepted the voluntary surrender of the license of Chalmer E. Detling, II.\textsuperscript{36} Detling settled a client's personal injury case without the client's authority. Detling advised the court that his daughter's serious medical issues left him unable to devote sufficient attention to the client's matter. The State Bar of Georgia noted for the court that Detling was under an emergency suspension and that a special master had recommended in three other matters (pending before the review panel) that he be disbarred.\textsuperscript{37}

The court also disbarred Christopher G. Nicholson.\textsuperscript{38} While representing a client, Nicholson intentionally signed a false affidavit and caused harm to an insurance company. The company sued Nicholson and obtained a judgment, which he refused to pay. Nicholson defaulted in response to the grievance. During proceedings regarding aggravation and mitigation, he engaged in disrespectful and disruptive conduct.\textsuperscript{39} The supreme court described some of that conduct in a footnote to its opinion:

> Among other things, Nicholson referred to his disciplinary proceeding as "a Star Chamber proceeding," claimed to "know [that the] fix is in," referred to the special master as the "High Executioner," and accused

\textsuperscript{30} GA. RULES OF PROF'L CONDUCT R. 5.5(a).
\textsuperscript{31} GA. RULES OF PROF'L CONDUCT R. 8.4(a)(4).
\textsuperscript{32} GA. RULES OF PROF'L CONDUCT R. 9.3.
\textsuperscript{33} Harkleroad, 300 Ga. at 763, 798 S.E.2d at 235.
\textsuperscript{34} In re Herbert, 299 Ga. 749, 749–51, 791 S.E.2d 769, 770–71 (2016).
\textsuperscript{35} Id. at 750–51, 791 S.E.2d at 770–71.
\textsuperscript{36} In re Detling, 300 Ga. 73, 73, 793 S.E.2d 41, 42 (2016).
\textsuperscript{37} Id. at 73, 793 S.E.2d at 41–42.
\textsuperscript{38} In re Nicholson, 299 Ga. 737, 742, 791 S.E.2d 776, 779 (2016).
\textsuperscript{39} Id. at 738–39, 791 S.E.2d at 777–78.
the special master of “making up the law and rules as you go to preclude me from having a fair and impartial hearing.” Nicholson asked the special master if she had “any more homemade rules for me,” adding that “[t]his hearing should be a blast.” Nicholson variously questioned the qualifications and impartiality of the special master, alleging that the special master and State Bar counsel were “joined at [t]he hip,” accusing the special master of ruling against him without reading his filings, and writing to the special master: “U r hopeless.” In a few e-mails, Nicholson revealed his failure to appreciate the seriousness of the proceeding and the gravity of the violations with which he was charged, referring to the proceeding as “nonsense,” stating that “[t]he whole proceeding is about nothing,” and sarcastically suggesting that the hearing be held at the Varsity restaurant in Athens. He accused the special master and State Bar counsel of lacking “professional courtesy [and] common decency.” He questioned why the State Bar was working with a “rogue judge” in his home circuit, and he claimed that the special master had improper ex parte communications with another judge in his home circuit. He disrespectfully referred to the special master as “Ms. Hyphenated,” and he claimed that the special master wanted only “to show me who has [t]he biggest member in the group.” In one e-mail, he inquired whether the special master had ever been married, noting that he wanted to know the name of her husband so as to “get him [t]he Congressional Medal of Honor and/or sainthood,” and adding that “[y]ou are one mean-spirited and arbitrary woman. You are one of many that are that way.”

The court disbarred Nicholson in light of his misconduct, his disciplinary history, the absence of remorse, his failure to provide restitution, “and his repeated and contemptuous efforts to obstruct the disciplinary process.”

The supreme court accepted the voluntary surrender of the license of Timothy Eugene Moses. Moses violated the policies of his firm by directly billing and accepting payments from clients of the firm. Moses admitted that this was misconduct under Rule 8.4(a)(4), which prohibits “professional conduct involving dishonesty, fraud, deceit or misrepresentation.” Moses had already been disbarred for this conduct in South Carolina.

40. Id. at 738 n.3, 791 S.E.2d at 777 n.3 (alterations in original).
41. Id. at 741, 791 S.E.2d at 779.
43. Id. at 664, 791 S.E.2d at 3.
45. Moses, 299 Ga. at 664, 791 S.E.2d at 3.
B. Suspensions

1. Less Than Six Months

The supreme court suspended three lawyers for a period of time less than six months.

Over one dissent, the court accepted a petition for voluntary discipline and suspended Jon Gary Branan for one month, with the added discipline of a Review Panel reprimand. Branan represented a client in a personal injury action and guaranteed a $10,000 bank loan for the client, with an agreement that the loan would be repaid from the proceeds of the personal injury case. After the case settled many years later but before the proceeds were disbursed, Branan sued the client for the amount of the loan and interest. In that suit, Branan falsely alleged that the source of the debt was a personal loan he made to the client. Georgia Rule of Professional Conduct 3.3 was violated by Branan’s misrepresentation to the court. Branan offered in mitigation that he was remorseful and was experiencing personal and professional challenges at the relevant time.

The supreme court accepted a petition for voluntary discipline and imposed a three-month suspension on Daniel J. Saxton. Saxton represented one client who sought to renegotiate the terms of a mortgage, and one who wanted to prevent a foreclosure. In both representations, all of the clients’ communications were with non-lawyer employees of Saxton. When the first client discharged Saxton, the lawyer sought a release of any claims the client might have against the lawyer; however, Saxton did not advise the client in writing, as required by Georgia Rule of Professional Conduct 1.8(h), that it would be appropriate for the client to have independent representation in connection with the release. In the second case, a non-lawyer employee gave legal advice to the client to file a meritless bankruptcy petition. In aggravation, the court noted Saxton’s substantial experience in the practice of law and two

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46. This Article discusses only those suspensions that constitute final discipline and does not discuss interim suspensions.
48. Id. at 779–80, 792 S.E.2d at 218–19.
49. GA RULES OF PROF'L CONDUCT R. 3.3.
50. Branan, 300 Ga. at 780, 798 S.E.2d at 219.
51. Id. at 779, 798 S.E.2d at 219.
53. Id. at 742–43, 791 S.E.2d at 773–74.
54. GA RULES OF PROF'L CONDUCT R. 1.8(h).
55. Saxton, 299 Ga. at 742, 791 S.E.2d at 773–74.
56. Id. at 743, 791 S.E.2d at 774.
prior instances of discipline.\textsuperscript{57} The mitigating factors were “a timely good faith effort to make restitution; a full and free disclosure and a cooperative attitude toward these proceedings; and a reputation in the community for integrity and good moral character.”\textsuperscript{58}

Over the objection of the State Bar of Georgia, the supreme court accepted a petition for voluntary discipline from Richard J. Storrs and imposed a three-month suspension.\textsuperscript{59} Storrs held approximately $15,000 of a client’s money in his trust account to settle a claim against the client by a subcontractor. While Storrs waited to hear from the subcontractor, he withdrew just over $11,000 of that money for his personal use. When the subcontractor contacted Storrs to resolve the dispute, Storrs deposited personal funds into the trust account to replace what he had taken.\textsuperscript{60} The supreme court noted in mitigation that Storrs was suffering from emotional and mental distress at the time, that he had sought counseling, that he had cooperated fully, that he had used personal funds to make sure that no one was harmed, that he had a long record of community and pro bono service, and that he had had only one disciplinary matter, an admonition that was more than twenty years before.\textsuperscript{61}

2. Six-Month Suspensions

The supreme court imposed six-month suspensions on three lawyers during the survey period.

The supreme court gave a six-month suspension to Michael Robert Johnson, who undertook the representation of a client, accepted a retainer, and assigned the case to a disbarred lawyer who was working for Johnson as a paralegal.\textsuperscript{62} The disbarred lawyer had direct contact with the client, while Johnson did not personally communicate with the client. Johnson and the paralegal abandoned the matter, and Johnson did not refund the unearned fee when the client fired him. Johnson had been disciplined twice before, with a formal letter of admonition in 2012 and an Investigative Panel reprimand in 2016.\textsuperscript{63}

The Georgia Supreme Court accepted the petition of Jeffrey L. Sakas for voluntary discipline in the form of a six-month suspension.\textsuperscript{64} Sakas

\begin{footnotes}
\footnotetext{57}{Id.}
\footnotetext{58}{Id.}
\footnotetext{59}{In re Storrs, 300 Ga. 68, 69, 792 S.E.2d 664, 665 (2016).}
\footnotetext{60}{Id. at 68, 792 S.E.2d at 664–65.}
\footnotetext{61}{Id. at 68–69, 792 S.E.2d at 665.}
\footnotetext{62}{In re Johnson, 301 Ga. 231, 231–32, 800 S.E.2d 277, 278–79 (2017).}
\footnotetext{63}{Id. at 231–32, 800 S.E.2d at 278.}
\footnotetext{64}{In re Sakas, 301 Ga. 49, 51, 799 S.E.2d 157, 158 (2017).}
\end{footnotes}
had undertaken but abandoned a legal malpractice claim for a client and also initially failed to comply with an agreement to refund money to the client after a fee arbitration. Sakas later paid the client the agreed-upon amount.\textsuperscript{65} In mitigation of his admitted violation of his duty of diligence under Georgia Rule of Professional Conduct 1.3,\textsuperscript{66} Sakas noted “the illness and death of his father; the subsequent health problems, relocation, and ultimate death of his mother; his own health problems, which required hospitalization and surgery; and the transfer of his law practice to a new location.”\textsuperscript{67} In aggravation, the court noted that Sakas had substantial experience in the practice of law and had been disciplined several times.\textsuperscript{68} The special master cited “ABA Standard 4.42(a), which provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes that client injury or potential injury.”\textsuperscript{69} The court agreed and approved the six-month suspension as voluntary discipline.\textsuperscript{70}

The supreme court suspended L. Nicole Brantley for 180 days.\textsuperscript{71} The court found Brantley had failed in her duties of diligence and communication in several matters.\textsuperscript{72} She also had not responded appropriately to a grievance and to an inquiry from the Office of General Counsel, and in one case she had not returned an unearned fee. In one matter, Brantley did not have a written contingency fee agreement and did not promptly return a signed release to an insurance company. Brantley also practiced law while under suspension for nonpayment of bar dues and had been disciplined five times previously.\textsuperscript{73} Nevertheless, the supreme court determined that the 180-day suspension was appropriate in light of mitigation evidence regarding Brantley’s divorce and her related depression, her need to support her family, her difficult upbringing, and automobile accidents that caused significant injuries.\textsuperscript{74} Brantley also presented evidence regarding her involvement in her church, her unconditional acceptance of responsibility for her actions, the remedial steps she took to address her professional problems, and her

\begin{itemize}
\item[65.] \textit{Id.} at 49–50, 799 S.E.2d at 157.
\item[66.] GA. RULES OF PROFL. CONDUCT R. 1.3.
\item[67.] \textit{Sakas}, 301 Ga. at 50, 799 S.E.2d at 157.
\item[68.] \textit{Id.} at 50, 799 S.E.2d at 158.
\item[69.] \textit{Id.} at 50–51, 799 S.E.2d at 158.
\item[70.] \textit{Id.} at 51, 799 S.E.2d at 158.
\item[71.] \textit{In re Brantley}, 299 Ga. 732, 735, 791 S.E.2d 783, 786 (2016).
\item[72.] \textit{Id.} at 733, 791 S.E.2d at 784.
\item[73.] \textit{Id.}
\item[74.] \textit{Id.} at 734–35, 791 S.E.2d at 785.
\end{itemize}
efforts to assist people in her community for below-market compensation.\textsuperscript{75}

3. Suspensions of One Year or More

The supreme court suspended five lawyers for definite terms of one year or more.

The court suspended Shanina Nashae Lank for one year after she defaulted in three grievances and then filed a petition for voluntary discipline.\textsuperscript{76} In two matters, Lank undertook to assist clients in civil suits and instructed the clients not to attend hearings. Judgments were entered against both clients, and Lank ceased communicating with them. In one of the matters, Lank told the client she would move to set aside the judgment before ceasing communication, but never did so. The third matter involved a deficiency of $47.33 in Lank’s trust account.\textsuperscript{77} In accepting the petition for voluntary discipline in the form of a one-year suspension, the court noted that Lank offered in mitigation she had been suffering from “serious medical issues including anxiety disorder, panic attacks, dysthymic disorder, heart palpitations, depression, diabetic complications, muscle spasms, and gastroenteritis.”\textsuperscript{78} Lank also informed the court she did not respond to the notices of investigation because she was not in the office and did not receive them.\textsuperscript{79} The supreme court accepted the petition and suspended Lank for one year, with reinstatement contingent upon client restitution and submission of “a detailed, written evaluation by a board-certified and licensed mental health professional concluding that she is fit to return to the practice of law.”\textsuperscript{80}

The supreme court accepted a petition for voluntary discipline and imposed a two-year suspension on William D. Hentz.\textsuperscript{81} Hentz had received notices of discipline concerning five matters in which the lawyer acted without diligence, failed to communicate with the client, or both.\textsuperscript{82} The attorney sought a suspension of at least twelve months and listed the following mitigating factors:

In mitigation of discipline, Hentz states that he suffered significant personal and emotional problems, including his son’s suicide, marital

\begin{itemize}
  \item \textsuperscript{75} Id. at 734, 791 S.E.2d at 785.
  \item \textsuperscript{76} In re Lank, 300 Ga. 479, 480, 483, 796 S.E.2d 252, 253, 255 (2017).
  \item \textsuperscript{77} Id. at 479–80, 796 S.E.2d at 252–53.
  \item \textsuperscript{78} Id. at 481, 796 S.E.2d at 253.
  \item \textsuperscript{79} Id. at 480–81, 796 S.E.2d at 254.
  \item \textsuperscript{80} Id. at 482, 796 S.E.2d at 254.
  \item \textsuperscript{81} In re Hentz, 300 Ga. 413, 415, 794 S.E.2d 649, 651 (2016).
  \item \textsuperscript{82} Id. at 413–14, 794 S.E.2d at 649–50.
\end{itemize}
problems affecting his marriage of thirty-five years, his wife’s
diagnosis with a rare cardiac disease, his youngest son’s drug addiction
and incarceration, his daughter’s drug addiction and the termination
of her parental rights, his inability to keep up with his Continuing
Legal Education requirements, the foreclosure of the building he
owned containing his law office, and the death of his canine
companion.\textsuperscript{83}

The court also noted several aggravating factors, including prior
discipline, “a pattern of misconduct, multiple offenses, and substantial experience in the practice of law.”\textsuperscript{84}

The supreme court accepted a petition for voluntary discipline and imposed an eighteen-month suspension on Bonnie Monique Youn.\textsuperscript{85} Youn had pled guilty to a federal misdemeanor “for having counseled, commanded, and induced a client, who was not a Georgia resident, to possess a Georgia driver’s license” in connection with the client’s attempt to secure permanent resident status in the United States.\textsuperscript{86} The attorney admitted a violation of Georgia Rule of Professional Conduct 8.4(a)(3), which defines misconduct to include conviction for a “misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer’s fitness to practice law.”\textsuperscript{87}

The supreme court accepted a petition for voluntary discipline in the form of a suspension to run concurrently with a thirty-month suspension that Ricardo L. Polk was already serving.\textsuperscript{88} A client fired Polk, and Polk agreed to return the fee the client had paid. Polk did not do so, nor did he satisfy an arbitration award regarding the fee. Polk did not file a sworn response to the Notice of Investigation, and he had five prior instances of discipline.\textsuperscript{89} The court ordered that reinstatement would be contingent upon the lawyer satisfying the arbitration award and upon repayment to a former client who was involved in an earlier grievance.\textsuperscript{90}

The supreme court suspended Alvis Melvin Moore for one year.\textsuperscript{91} Moore failed to serve the district attorney with pleadings that Moore filed for his client and then falsely represented in certificates of service that

\begin{footnotesize}
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\item \textsuperscript{83} Id. at 414–15, 794 S.E.2d at 649–51.
\item \textsuperscript{84} Id. at 415, 794 S.E.2d at 651.
\item \textsuperscript{85} In re Youn, 300 Ga. 134, 135, 793 S.E.2d 379, 381 (2016).
\item \textsuperscript{86} Id. at 134, 793 S.E.2d at 379.
\item \textsuperscript{87} Id. at 134 n.1, 793 S.E.2d at 379–80 n.1 (quoting GA. RULES OF PROF’L CONDUCT R. 8.4(a)(3)).
\item \textsuperscript{88} In re Polk, 299 Ga. 746, 748, 791 S.E.2d 771, 772 (2016).
\item \textsuperscript{89} Id. at 747, 791 S.E.2d at 771–72.
\item \textsuperscript{90} Id. at 748, 791 S.E.2d at 772.
\item \textsuperscript{91} In re Moore, 300 Ga. 407, 409, 792 S.E.2d 324, 326 (2016).
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the district attorney had been served. Moore also falsely represented to the trial court that he had communicated with the district attorney’s office about the availability of a confidential informant. Moore refused to express remorse or acknowledge the wrongfulness of his conduct.92 The special master recommended an indefinite suspension, and the review panel recommended a six-month suspension, but the supreme court suspended Moore for one year.93

4. Indefinite Suspension
The supreme court issued an indefinite suspension for Michella A. Hickerson, who was licensed in both North Carolina and in Georgia.94 Hickerson was suspended in North Carolina for five years, with the proviso that she could apply in one year to lift the suspension.95 Hickerson admitted that she had testified falsely in a deposition during a divorce action involving third parties and had filed pleadings with false statements in a civil action in which she, personally, was a defendant. None of the conduct arose from Hickerson’s practice of law.96 The supreme court imposed reciprocal discipline and suspended Hickerson indefinitely, until she could demonstrate that the North Carolina suspension had been lifted.97

C. Public Reprimands
The supreme court ordered three public reprimands during the survey period.
Following violations of Georgia Rules of Professional Conduct 1.2 and 1.4,99 Thomas E. Stewart received a public reprimand.100 Stewart negligently failed to consult and communicate with his immigration clients about developments in the law during the Obama administration that had the potential of enabling the clients to stay legally in the United States. The special master rejected allegations that the lawyer had abandoned the matters in violation of Rule 1.3.101 The special master also

92. Id. at 408, 792 S.E.2d at 325.
93. Id. at 408–09, 792 S.E.2d at 325–26.
95. Id.
96. Id. at 857–58, 792 S.E.2d at 321.
97. Id. at 858, 792 S.E.2d at 321.
98. GA. RULES OF PROF’L CONDUCT R. 1.2.
100. In re Stewart, 301 Ga. 227, 230, 800 S.E.2d 279, 281 (2017). The Author served as the special master in this case.
101. Id. at 228, 800 S.E.2d at 280.
rejected the claims that the lawyer had violated Georgia Rules of Professional Conduct 5.3\textsuperscript{102} (training and supervision of non-lawyer assistants) or Rule 5.5(a) (assisting in the unauthorized practice of law) in connection with the activities of the lawyer’s non-lawyer translator and paralegal.\textsuperscript{103} The special master noted in aggravation the lawyer had substantial experience and that the clients were vulnerable, but the special master also noted in mitigation the lawyer lacked a selfish or dishonest motive, was remorseful, and had engaged in interim rehabilitation.\textsuperscript{104} The supreme court found no error in these determinations and found that a public reprimand was the appropriate discipline under the ABA Standards for Imposing Lawyer Sanctions.\textsuperscript{105}

The supreme court accepted David J. Farnham’s petition for voluntary discipline in the form of a public reprimand for admitted violations of his duty of diligence (Rule 1.3), his duties in connection with withdrawal from one case (Rule 1.16(d)),\textsuperscript{106} and his duty to supervise a non-lawyer employee (Rule 5.3).\textsuperscript{107} With respect to the alleged 5.3 violation, the grievance claimed Farnham had a non-lawyer employee who “routinely held himself out as a lawyer” and “that Farnham paid that non-lawyer to bring in potential personal injury clients who had not otherwise contacted the firm.”\textsuperscript{108} The grievance also alleged that Farnham “divided legal fees with that non-lawyer” and “failed to properly supervise the non-lawyer.”\textsuperscript{109} Farnham’s petition for voluntary discipline admitted that he violated Rule 5.3 only “by not maintaining adequate direction and control over the non-lawyer’s activities.”\textsuperscript{110} Farnham responded to the Notice of Investigation, but the Bar mistakenly reported that he had not done so, and the lawyer was wrongfully suspended as a result. The lack of diligence arose from a divorce action in which Farnham misplaced the final order that would have settled the case and did not show up at a later status conference, with the result that the court dismissed the action. Farnham filed a renewed action and missed two status conferences in that case, after which the client fired him.\textsuperscript{111}
In another matter, Farnham filed a personal injury case in the state court system but purported to hand it off to another lawyer in his office when the defendant removed the case to federal court. Because he failed to withdraw and file a motion to substitute counsel, his client failed to respond to discovery. The client eventually lost on summary judgment.\(^{112}\) The special master and the State Bar of Georgia agreed that a public reprimand would be the appropriate discipline, and the supreme court agreed "under the particular facts of this case, including the fact that the Bar appears to admit that Farnham was suspended erroneously for more than a month in relation to these matters."\(^{113}\)

The supreme court imposed a public reprimand on Michael Anthony Eddings, whose wife had stolen $2.3 million from the lawyer’s trust account while she was serving as his firm’s office manager.\(^{114}\) The Review Panel had recommended disbarment.\(^{115}\) The court declined to discipline the lawyer under Georgia Rule of Professional Conduct 5.3, which governs the lawyer’s obligations with respect to non-lawyer personnel such as the wife.\(^{116}\) Rule 5.3(a) requires lawyers to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the [lawyer]” and Rule 5.3(b) states that “a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.”\(^{117}\) The court found that Eddings was the victim of an elaborate fraud and that there was insufficient evidence that either his procedures or his supervision were unreasonable.\(^{118}\) The court did find, however, violations of Rule 1.15(I)(c),\(^{119}\) which provides that “a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive,” and Rule 1.15(II)(b),\(^{120}\) which provides “[r]ecords on [an attorney’s] trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client

\(^{112}\) Id. at 646, 797 S.E.2d at 85–86.

\(^{113}\) Id. at 647, 797 S.E.2d at 86.

\(^{114}\) In re Eddings, 300 Ga. 419, 419, 425, 795 S.E.2d 183, 183–84, 188 (2016).

\(^{115}\) Id. at 419, 795 S.E.2d at 183–84.

\(^{116}\) Id. at 421–22, 795 S.E.2d at 185.

\(^{117}\) Id. at 422, 795 S.E.2d at 185 (quoting GA. RULES OF PROF’L CONDUCT R. 5.3(a)–(b)).

\(^{118}\) Id. at 422–23, 795 S.E.2d at 186.

\(^{119}\) GA. RULES OF PROF’L CONDUCT R. 1.15(I)(c).

\(^{120}\) Id.

\(^{121}\) GA. RULES OF PROF’L CONDUCT R. 1.15(II)(b).
or third person.”\textsuperscript{122} The lawyer’s lack of knowledge of his wife’s actions was not a defense to these violations.\textsuperscript{123} The court concluded that a public reprimand was appropriate in light of numerous mitigating factors, including the lack of a disciplinary record, the absence of any selfish or dishonest motive, his efforts to rectify the consequences of what happened, his cooperative attitude during the proceedings, the lawyer’s good character and community service, and his remorse.\textsuperscript{124}

\textbf{D. Review Panel Reprimands}

The supreme court approved Review Panel reprimands for five lawyers during the survey period.

The court accepted John Andrew Leslie’s petition for voluntary discipline in the form of a Review Panel reprimand.\textsuperscript{125} In two cases, Leslie represented plaintiffs but, after an initial period of effort, he allowed the cases to linger so long that they were dismissed with prejudice.\textsuperscript{126} Leslie’s inaction violated Rule 1.3 (diligence), Rule 1.4 (communication),\textsuperscript{127} and Rule 3.2 (expediting litigation).\textsuperscript{128} Leslie offered in mitigation that he was suffering from depression (for which he had begun to receive treatment) and that his practice was understaffed (a deficiency he had since remedied). Leslie cooperated in dealings with his insurance company to obtain compensation for his clients.\textsuperscript{129} The court agreed that a Review Panel reprimand would be the appropriate discipline.\textsuperscript{130}

Gary Lanier Coulter petitioned successfully for voluntary discipline in the form of a Review Panel reprimand.\textsuperscript{131} Coulter admitted to charging an unreasonable fee of $187,000 in a complex probate matter. When the client retained new counsel and disputed the fee, Coulter agreed to refund $30,000 but was financially unable to do so on the timetable to which the parties agreed. Coulter had no disciplinary history in a thirty-four-year legal career and stated that, although he had charged an unreasonable fee, he had not intended to do so. Coulter also noted that he had been unable to repay the client because of his declining law

\textsuperscript{122} Id.
\textsuperscript{123} Eddings, 300 Ga. at 423, 795 S.E.2d at 186.
\textsuperscript{124} Id. at 423–24, 795 S.E.2d at 186–87.
\textsuperscript{125} In re Leslie, 300 Ga. 774, 776, 798 S.E.2d 221, 223 (2017).
\textsuperscript{126} Id. at 775, 798 S.E.2d at 222.
\textsuperscript{127} Ga. Rules of Prof’l Conduct R. 1.4.
\textsuperscript{128} Ga. Rules of Prof’l Conduct R. 3.2; Leslie, 300 Ga. at 775, 798 S.E.2d at 223.
\textsuperscript{129} Leslie, 300 Ga. at 775–76, 798 S.E.2d at 222–23.
\textsuperscript{130} Id. at 776, 798 S.E.2d at 223.
\textsuperscript{131} In re Coulter, 300 Ga. 654, 655, 797 S.E.2d 492, 493 (2017).
practice but he fully intended to honor the obligation. The court agreed with the State Bar of Georgia that a reprimand would be the appropriate discipline and chose a Review Panel reprimand rather than a public reprimand.

The supreme court accepted a petition for voluntary discipline and imposed a Review Panel reprimand on David Edmund Ralston. Ralston represented clients in a personal injury case and loaned the clients $22,000 for living expenses, pending the resolution of the case. Ralston professed not to know that Georgia Rules of Professional Conduct 1.8(e) was violated with such assistance. The attorney agreed not to seek reimbursement of the loan. The court noted that no clients had been harmed and Ralston had not received any financial benefit.

The supreme court accepted a voluntary petition for discipline from Nicole Jones and imposed a Review Panel reprimand. Jones admitted that, in one case, she failed to file a civil case promptly, as requested by the client, and that her office sent the client misleading form letters about the status of the matter. In another case, Jones failed to timely respond to a grievance about an appeal she had filed and that was ultimately dismissed. Jones had no prior disciplinary history.

The supreme court accepted a petition for voluntary discipline in the form of a Review Panel reprimand from Tiffini Colette Bell. Bell admitted that, in representing a client in a child custody case, she did not truthfully communicate with the client about discovery and the appointment of a guardian ad litem, she did not timely respond to discovery, she did not seek the appointment of a guardian ad litem, and she did not adequately prepare for certain hearings. Bell had received a confidential reprimand from the Investigative Panel in 2015. In mitigation, Bell showed remorse and cooperation and noted that she did not act from a selfish motive.

132. Id. at 654, 797 S.E.2d at 492.
133. Id. at 655, 797 S.E.2d at 493.
135. GA. RULES OF PROF'L CONDUCT R. 1.8(e).
137. Id. at 418, 794 S.E.2d at 648.
139. Id. at 736–37, 791 S.E.2d at 775.
140. In re Bell, 299 Ga. 143, 144, 787 S.E.2d 166, 166 (2016).
141. Id. at 143–44, 787 S.E.2d at 166.
E. Petitions for Voluntary Discipline Rejected

The supreme court rejected eleven petitions for voluntary discipline during the survey period.

The court rejected the petition of Clarence R. Johnson, Jr. for voluntary discipline in the form of a Review Panel reprimand or a public reprimand. Johnson admitted he had deposited personal funds in his trust account to protect them from his creditors. He also admitted he did not maintain adequate records of the funds in his trust account and that he had deposited client settlement funds in his operating account, which put those funds at risk from the lawyer’s creditors. The supreme court concluded that a Review Panel reprimand or a public reprimand would be insufficient on these facts, particularly because Johnson acted intentionally over a period of time, harmed his creditors by concealing his assets, and could have harmed his clients by making their funds subject to his creditors.

The supreme court rejected the petition for voluntary discipline in the form of a ninety-day suspension of S. Quinn Johnson, who was the subject of six disciplinary matters. Several involved client abandonment, failure to communicate, and failure to refund prepaid fees. Johnson also filed a notice of appearance in magistrate court while he was under interim suspension and, in another case, had mishandled the settlement of a personal injury case. The court rejected the petition because of aggravating factors, including three prior suspensions and a letter of admonition, the abandonment of clients in multiple matters, the retention of fees paid regarding those matters, and the failure to make restitution to clients.

The supreme court rejected a special master’s recommendation that it accept John Benneth Iwu’s petition for voluntary discipline in the form of a public reprimand. Iwu had been suspended for nonpayment of dues but nevertheless filed an answer and counterclaim in magistrate court on behalf of a client, in violation of a Rule 5.5(a) prohibition on the unauthorized practice of law. In response to the formal complaint, Iwu:

[F]alsely stated that he was unaware of his suspension because someone else in his building signed off on his notice of suspension.

143. Id. at 744–45, 791 S.E.2d at 780.
144. Id. at 746, 791 S.E.2d at 781.
146. Id. at 264–65, 800 S.E.2d at 571–72.
147. Id. at 266, 800 S.E.2d at 573.
letter from the State Bar but never gave it to him, and claimed he believed he was eligible to practice law even though he had not paid his dues . . . .

The court rejected the petition because Iwu’s actions “[were] at least in part intentional,” and he had engaged in a “pattern of deception evidenced by his false statements in an attempt to avoid culpability.” The court also noted that Iwu failed to admit in his petition violating his duty under Rule 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) or Rule 8.4(a)(4) (engaging in professional conduct involving dishonesty, fraud, deceit, or misrepresentation).

The supreme court rejected a petition for voluntary discipline from Samuel Williams, Jr., who had been convicted in Alabama of the felony of selling unregistered securities. Williams had been sentenced to three to five years of probation in 2012 and promptly self-reported the conviction to the State Bar of Georgia. The disciplinary proceeding began four years later, in 2016, and Williams sought a suspension that would last as long as his probation. His probation was scheduled to end in April 2017. Williams offered the following in mitigation:

In mitigation, Williams explains that he was under considerable mental and emotional stress because of the near-concurrent bankruptcy of his law firm and diagnosis of his wife with metastatic breast cancer in the fall of 2009; that he has no prior disciplinary history or criminal record; that he served honorably in the military for 20 years; that he self-reported his conviction to the disciplinary authorities and has been cooperative; that his failure to register the securities was negligent and unintentional; that his failure to reject or secure the $380,000 was negligent and without a selfish motive; that he is sincerely remorseful; that he has attempted to improve his own understanding of the law and to help others avoid the mistakes he made; and that he has complied with all of the terms of his probation. Williams also asserts that the nearly four-year delay between his self-reporting of the violation and the petition for appointment of a special master should be considered in mitigation. Additionally, the Alabama prosecutor sent a letter to the Bar saying that Williams was inexperienced, distressed because of his wife’s illness, and extremely

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149. Id. at 52–53, 799 S.E.2d at 155–56.
150. Id. at 54, 799 S.E.2d at 156.
151. GA. RULES OF PROF’L CONDUCT R. 8.1(a).
152. Iwu, 301 Ga. at 54, 799 S.E.2d at 156.
154. Id. at 781–83, 798 S.E.2d at 216–17.
remorseful, and that the trial judge concluded that Williams’s involvement in the criminal scheme was minimal.\textsuperscript{155} The court noted that acceptance of the petition would mean Williams would be suspended for only one month for criminal conduct directly related to his law practice and from which he personally profited.\textsuperscript{156} The court noted the “deplorable delay” between Williams’s self-report of the conviction and the start of the disciplinary proceedings but saw no evidence that Williams had voluntarily ceased practicing law during that time.\textsuperscript{157} There was no evidence, therefore, that the suspension for the duration of his probation would, in effect, be any more than a one-month suspension.\textsuperscript{158} The supreme court rejected a petition for voluntary discipline for Emmanuel Lucas West, who had agreed to represent a citizen of Guatemala in seeking asylum in the United States.\textsuperscript{159} West did not read the application to his client in Spanish, and West signed the client’s name on the application and supporting documents.\textsuperscript{160} One of those signatures was made under penalty of perjury, with the attestation that the client had signed the document in the presence of West. The explanation given by West was that “he signed the client’s name knowing that an applicant generally is allowed to amend or supplement his or her application freely up until the time of the hearing, and maintains that he fully intended to supplement with the client’s real signature at a later date.”\textsuperscript{161} West admitted this conduct violated Rule 1.2\textsuperscript{162} and Rule 1.4 because the lawyer failed to consult with his client about the means that the lawyer would use to achieve the client’s objective. West would not, however, admit to violating Rule 8.4(a)(4) (conduct involving dishonesty, deceit, fraud, or misrepresentation) because, he claimed, he did not have the requisite “mental culpability.”\textsuperscript{163} According to the court, the Bar stated “summarily that West’s admissions do not provide a compelling reason to believe his misconduct rose to the level of violation of” Rule 8.4(a)(4) without explaining why, and also asserted “that whether he violated

\begin{footnotes}
\footnotetext{155}{Id. at 782, 798 S.E.2d at 216.}
\footnotetext{156}{Id. at 783, 798 S.E.2d at 217.}
\footnotetext{157}{Id. at 784, 798 S.E.2d at 217.}
\footnotetext{158}{Id. at 783, 798 S.E.2d at 217.}
\footnotetext{160}{West, 300 Ga. at 777, 798 S.E.2d at 220.}
\footnotetext{161}{Id.}
\footnotetext{162}{GA. RULES OF PROF’L CONDUCT R. 1.2(a).}
\footnotetext{163}{West, 300 Ga. at 777–78, 798 S.E.2d at 220.}
\end{footnotes}
Rule 8.4(a)(4) [was] immaterial to the recommended sanction.” The court noted the seriousness of an alleged violation of 8.4(a)(4) and rejected the petition because the Bar had not adequately addressed the allegation that West had violated that rule.

The supreme court rejected a petition for voluntary discipline in the form of a reprimand from Christopher John Palazzola. Palazzola promised his associates that he would set up an IRA plan for them and match their contributions, but he placed their withheld contributions in a firm account and did not create a plan or match the contributions. Palazzola admitted these actions violated Rule 8.4(a)(4) (conduct involving dishonesty, deceit, fraud, or misrepresentation). Palazzola also engaged in false advertising when he claimed that lawyers in his firm had more than 100 years of combined experience (in fact, the correct number was eighteen) and that his firm had offices in Miami and Los Angeles (it did not). Palazzola admitted to violating Rules 7.1 and 8.4(a)(4) with these false advertisements that were likely to create an unjustified expectation about the results the firm could achieve. Palazzola also violated the rules of conduct in how he and his staff handled the departure of his associates. Palazzola violated Rule 5.3 by not adequately supervising staff members, who failed to give a client the associate’s new contact information and who failed to forward to the associate attorney official correspondence concerning a client from the United States Citizenship and Immigration Services. Palazzola violated Rule 1.16 by failing to forward a client’s file to the former associate as requested by the client. The State Bar of Georgia and the special master recommended a reprimand (without specifying whether that would be a public reprimand or a Review Panel reprimand), but the supreme court rejected the petition, concluding “that a reprimand is inadequate under these circumstances, particularly given the number of Rules violations.”

The supreme court rejected a petition for voluntary discipline in the form of a one-year suspension from Shannon Briley-Holmes. With respect to the representation of numerous clients, Briley-Holmes

164. Id. at 778, 798 S.E.2d at 221.
165. Id.
167. Id. at 785–86, 798 S.E.2d at 212–13.
168. GA. RULES OF PROF'L CONDUCT R. 7.1.
169. Palazzola, 300 Ga. at 786, 798 S.E.2d at 213.
170. Id. at 786–87, 798 S.E.2d at 213–14.
171. Id. at 787–89, 798 S.E.2d at 214–15.
admitted to violating her duty of diligence under Georgia Rule of Professional Conduct 1.3 four times, her duty of communication under Rule 1.4 once, and Rule 1.16(d)'s requirement that she refund unearned fees three times.\textsuperscript{173} The court rejected the petition, despite the Bar's recommendation that it be accepted.\textsuperscript{174}

The supreme court rejected the petition from John Michael Spain for voluntary discipline in the form of a public reprimand for having pled \textit{nolo contendere} to one misdemeanor count of stalking and one misdemeanor count of harassing communications.\textsuperscript{175} The details were:

He states that the charges to which he pled \textit{nolo contendere} were based on numerous emails that he sent over an approximately two-day period to opposing counsel in a divorce case, in which he is the defendant, and that he was acting pro se at the time, although he has since retained counsel. Spain further admits that the emails included inappropriate threatening language, intimidation and personal attacks directed to opposing counsel, including inappropriate remarks about counsel and members of her family, and ad hominem statements about his wife. He admits that by virtue of his convictions, he has violated Rule 8.4(a)(3) of the Georgia Rules of Professional Conduct.\textsuperscript{176}

The court rejected the petition and noted that, for violations of Rule 8.4(a)(3), the court had indicated that suspension or disbarment are the appropriate sanctions, depending upon the circumstances of the case.\textsuperscript{177}

The supreme court rejected a petition for voluntary discipline from Cameron Shahab.\textsuperscript{178} Shahab sought a review panel reprimand or a public reprimand as sanction for his failures to pursue immigration matters for two clients, to notify one client of a hearing (as a result of which the client was ordered deported), to provide information to the clients, and to pay two fee arbitration judgments.\textsuperscript{179} Shahab claimed to have made partial payments on the awards, but the court found that to be a misrepresentation and on that basis rejected the petition.\textsuperscript{180}

\begin{itemize}
\item \textsuperscript{173} \textit{Id.} at 648–51, 797 S.E.2d at 123–25.
\item \textsuperscript{174} \textit{Id.} at 653, 797 S.E.2d at 126–27.
\item \textsuperscript{175} \textit{In re} Spain, 300 Ga. 641, 641, 643, 797 S.E.2d 452, 453–54 (2017).
\item \textsuperscript{176} \textit{Id.} at 641–42, 797 S.E.2d at 453. Under Rule 8.4, it is misconduct “to be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer’s fitness to practice law.” \textit{GA. RULES OF PROF’L CONDUCT} R. 8.4(a)(3).
\item \textsuperscript{177} \textit{Spain}, 300 Ga. at 642–43, 797 S.E.2d at 453–54.
\item \textsuperscript{178} \textit{In re} Shahab, 300 Ga. 411, 412, 794 S.E.2d 651, 652 (2016).
\item \textsuperscript{179} \textit{Id.}
\item \textsuperscript{180} \textit{Id.}
\end{itemize}
The supreme court rejected a petition for voluntary discipline in the form of a Review Panel reprimand from Nolen Arthur Hamer.\textsuperscript{181} Hamer admitted that he violated his duties of diligence and communication in his representation of three clients. He also admitted particularly that he delegated most client communications to his non-lawyer assistant and that he had not maintained a trust account and had deposited client payments directly into his operating account. The State Bar of Georgia agreed that a Review Panel reprimand would be appropriate discipline.\textsuperscript{182} The supreme court disagreed and noted that “there is no evidence that Hamer has refunded unearned fees, no explanation for his failure to have an Interest on Lawyer Trust Account, and no indication that he has sought input and assistance from the State Bar’s Law Management Program regarding the day-to-day management of his practice.”\textsuperscript{183}

The supreme court rejected a petition for voluntary discipline in which Trent Carl Gaines sought a three-year suspension.\textsuperscript{184} Gaines pled guilty in federal court to the felonies of engaging in conspiracy to commit mail fraud and conspiracy to engage in rigging bids for the sale of real estate at public foreclosure auctions. The crimes were committed for the lawyer’s personal benefit and not during the lawyer’s representation of clients. The underlying conduct occurred between 2006 and 2011.\textsuperscript{185}

\textit{F. Miscellaneous Disciplinary Cases}

The supreme court decided three miscellaneous disciplinary cases during the survey period.

David R. Sicay-Perrow held licenses in Tennessee and Georgia and had been disbarred in Tennessee with a conditional right to reinstatement.\textsuperscript{186} The Review Panel recommended that he be suspended for three years in Georgia as reciprocal discipline, based upon its conclusion that such a suspension would be the discipline that most closely resembled what the Tennessee Supreme Court had ordered.\textsuperscript{187} The supreme court rejected that recommendation and remanded the case to the Review Panel after

\textsuperscript{181} In re Hamer, 300 Ga. 70, 72, 792 S.E.2d 707, 708–09 (2016).
\textsuperscript{182} Id. at 70–72, 792 S.E.2d at 707–08.
\textsuperscript{183} Id. at 72, 792 S.E.2d at 708–09.
\textsuperscript{184} In re Gaines, 299 Ga. 662, 663, 791 S.E.2d 3, 4 (2016).
\textsuperscript{185} Id. at 663–64, 791 S.E.2d at 662. Later in the survey year, Gaines voluntarily surrendered his license. Gaines, 300 Ga. at 483, 796 S.E.2d at 251; see discussion supra Section II.A.3.
\textsuperscript{186} In re Sicay-Perrow, 300 Ga. 136, 136, 793 S.E.2d 377, 377 (2016).
\textsuperscript{187} Id.
noting the closer similarities between the Tennessee discipline and an order of disbarment in Georgia.\textsuperscript{188}

In an unusual case, the supreme court decided not to impose any discipline on an inexperienced prosecutor who failed to disclose exculpatory evidence to the defense before a trial involving sex crimes against a child.\textsuperscript{189} The victim initially told authorities in a recorded statement that the defendant had committed oral and anal sodomy with the child. A week before trial, the victim told the lawyer about the oral sodomy but told the lawyer that the defendant had never “touched [his] butt.”\textsuperscript{190} The lawyer did not reveal this statement to the defense before trial,\textsuperscript{191} despite the requirement in Georgia Rule of Professional Conduct 3.8(d)\textsuperscript{192} that a prosecutor in a criminal case shall “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or that mitigates the offense.”\textsuperscript{193}

At trial, the prosecutor presented the victim’s recorded statement that described both oral and anal sodomy. The prosecutor then elicited testimony from the victim that the defendant had only engaged in oral sodomy. In closing, the prosecutor acknowledged the inconsistency and conceded that the defendant should be acquitted of anal sodomy, and the jury convicted the defendant only of oral sodomy. Defense counsel sought a new trial when the child’s statement the week before trial came to light. The state consented to a new trial.\textsuperscript{194}

The supreme court conflated the obligations of the prosecutor under Rule 3.8(d) and the prosecutor’s related but slightly different obligations under \textit{Brady v. Maryland},\textsuperscript{195} and subsequent cases that expanded \textit{Brady}. The last sentences of the supreme court’s opinion states that “we cannot say on the record now before us that the State Bar has shown a clear-cut \textit{Brady} violation. We conclude that no discipline is warranted under Rule 3.8(d).”\textsuperscript{196} In footnote 11, the court acknowledges that the constitutional doctrine in \textit{Brady} and its progeny may not be coextensive with the reach of Rule 3.8.\textsuperscript{197}

\begin{footnotes}
\item[188] \textit{Id.} at 138, 793 S.E.2d at 378–79.
\item[189] \textit{In re Lee}, 301 Ga. 74, 74–75, 75 n.3, 799 S.E.2d 766, 767 n.3 (2017).
\item[190] \textit{Id.} at 75, 799 S.E.2d at 767–68.
\item[191] \textit{Id.}
\item[192] GA. RULES OF PROF'L CONDUCT R. 3.8(d).
\item[193] \textit{Id.}
\item[194] \textit{Lee}, 301 Ga. at 75–76, 799 S.E.2d at 768.
\item[195] 373 U.S. 83 (1963).
\item[196] \textit{Lee}, 301 Ga. at 78–79, 799 S.E.2d at 770.
\item[197] \textit{Id.} at 79 n.11, 799 S.E.2d at 770 n.11.
\end{footnotes}
The child’s statement was information known to the prosecutor that tended to negate the defendant’s guilt. The victim’s testimony was surely key evidence against the defendant, and the victim gave two varying accounts of what happened and what did not happen. The only issue is whether the prosecutor made timely disclosure to the defense by eliciting the testimony at trial that the victim no longer claimed that the defendant engaged in anal sodomy. Using cases that dealt with the Brady doctrine rather than Rule 3.8(d), the supreme court held that disclosure at trial was soon enough. The court noted in footnote 11 that “the State Bar in this case advances no reasoned argument that ‘timely disclosure’ under Rule 3.8(d) requires disclosure sooner than Brady.”

In another case, the supreme court granted a certificate of fitness for readmission for an attorney who had been disbarred in 1999 because, during his representation of a minor child in a personal injury case, the lawyer:

[S]ettled the case without the permission of the child’s guardian, failed to deposit the settlement funds in his trust account, misrepresented material facts to the insurer and the court, and ultimately attempted to deliver the settlement funds to the child’s guardian, but tendered a check that was returned for insufficient funds.

The lawyer demonstrated rehabilitation by expressing deep remorse, taking responsibility for his misconduct, and by presenting evidence of his substantial contributions to the community, including “over 20 letters of support from religious leaders, business leaders, elected officials, and attorneys, attesting to his character and substantial civic involvement in the Savannah community, including his appointment to Savannah’s Metropolitan Planning Board.”

III. INEFFECTIVE ASSISTANCE OF COUNSEL

A. Cases in Which Claims of Ineffective Assistance Prevailed

1. Georgia Supreme Court

The supreme court reversed convictions in two cases based upon ineffective assistance of counsel and, in another case, affirmed the finding of ineffective assistance of counsel by a trial court that granted a habeas corpus petition.

198. Id. at 77–78, 799 S.E.2d at 769.
199. Id. at 79 n.11, 799 S.E.2d at 770 n.11.
201. Id. at 658, 797 S.E.2d at 489.
In *Kennebrew v. State*, the supreme court unanimously reversed a conviction for malice murder and other related crimes because of ineffective assistance of counsel. The state introduced evidence it had taken from a backpack that the police seized only after the defendant had been handcuffed and removed from the room. The police searched the backpack and found the evidence without a warrant six days after the arrest. Defense counsel was deficient for failing to file a motion to suppress the evidence, given that these circumstances did not support a warrantless search incident to a lawful custodial arrest. The supreme court also found trial counsel to be deficient for not objecting to the prosecutor’s “specific, extended argument” that the jury should infer guilt from the defendant’s pre-arrest silence. The court concluded that the evidence against the defendant, other than the evidence illegally seized, was not overwhelming and, therefore, the defendant was able to show sufficient harm from his trial counsel’s unreasonable performance to warrant reversal of the conviction.

In *Fisher v. State*, the supreme court reversed another murder conviction based upon ineffective assistance of counsel. The defendant was convicted largely on the testimony of a witness (Lewis) who claimed to have been present for the murder but who alleged that he had no involvement. The defense attorney interviewed a witness (Clark) who was prepared to testify that Lewis was a drug dealer who, a few days before the murder, had been looking for the victim to collect on a debt and had been “brandishing” a gun that was similar to the murder weapon. Defense counsel did not subpoena Clark or notify him when the trial was to occur, and as a result, Clark was not present at trial to testify. Defense counsel compounded the problem by agreeing to a jury instruction that the testimony of a single witness (such as Lewis) is sufficient to establish a fact without including the proviso that, if the witness is an accomplice, the fact must be corroborated. Clark’s testimony would have supported an argument that Lewis was at least an

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203. *Id.* at 874, 792 S.E.2d at 704.
204. *Id.* at 868–69, 792 S.E.2d at 700.
205. *Id.* at 871, 792 S.E.2d at 701–02.
206. *Id.* at 873, 792 S.E.2d at 703.
207. *Id.* at 874, 792 S.E.2d at 703–04.
209. *Id.* at 489, 788 S.E.2d at 765–66.
210. *Id.* at 480–82, 788 S.E.2d at 760–61.
211. *Id.* at 478, 788 S.E.2d at 758–59.
accomplice to the murder.\textsuperscript{212} The court determined there were no strategic reasons for defense counsel to have assumed that Clark would show up, or for the failure to seek an instruction about accomplice testimony.\textsuperscript{213} In light of the centrality of the testimony of Lewis to the prosecution’s case, the court held there was sufficient prejudice to the defendant from his counsel’s deficiencies to reverse the defendant’s convictions.\textsuperscript{214}

In \textit{Taylor v. Metoyer},\textsuperscript{215} the supreme court affirmed the finding of a habeas court that a criminal defendant had received ineffective assistance of counsel.\textsuperscript{216} The defendant was convicted of numerous counts of armed robbery and related offenses, primarily based upon the testimony of co-defendants who pled guilty and testified in exchange for an agreement with the prosecution about their sentences.\textsuperscript{217} The habeas court held, and the supreme court agreed, that the defendant’s appellate counsel was ineffective because she did not raise the claim that trial counsel was ineffective when he failed to cross-examine the co-defendants about motive or bias, or challenge their mischaracterization of their deal with the prosecution as not involving any “special deal” or “special treatment.”\textsuperscript{218} The court noted that the case against the defendant was “underwhelming.”\textsuperscript{219} The court also found that appellate counsel was ineffective when she raised a frivolous issue on appeal, and when she presented other issues on appeal without sufficient authorities, argument, or support in the record.\textsuperscript{220}

\section*{2. Georgia Court of Appeals}

The court of appeals found ineffective assistance of counsel in four cases during the survey period.

In \textit{Morris v. State},\textsuperscript{221} the court of appeals reversed a trial court’s denial of a defendant’s motion for out-of-time appeal.\textsuperscript{222} The court of appeals held that the defendant received ineffective assistance of counsel when

\begin{itemize}
\item \textsuperscript{212} \textit{Id.} at 484, 788 S.E.2d at 762.
\item \textsuperscript{213} \textit{Id.} at 484–85, 788 S.E.2d at 762–63.
\item \textsuperscript{214} \textit{Id.} at 486–89, 788 S.E.2d at 763–66.
\item \textsuperscript{215} 299 Ga. 345, 788 S.E.2d 376 (2016).
\item \textsuperscript{216} \textit{Id.} at 350, 788 S.E.2d at 380.
\item \textsuperscript{217} \textit{Id.} at 345–46, 788 S.E.2d at 377.
\item \textsuperscript{218} \textit{Id.} at 349, 788 S.E.2d at 380.
\item \textsuperscript{219} \textit{Id.}
\item \textsuperscript{220} \textit{Id.} at 349, 788 S.E.2d at 379–80.
\item \textsuperscript{221} 338 Ga. App. 599, 791 S.E.2d 177 (2016).
\item \textsuperscript{222} \textit{Id.} at 602, 791 S.E.2d at 179.
\end{itemize}
the lawyer did not explain the defendant’s appellate rights, including the deadline for an appeal.\textsuperscript{223}

In \textit{Ingram v. State},\textsuperscript{224} the court of appeals reversed a trial court’s denial of a motion to withdraw a guilty plea because of ineffective assistance of counsel.\textsuperscript{225} Trial counsel erroneously advised the client that the client would be subject to sentencing as a recidivist. To avoid that possibility, the defendant accepted a plea offer.\textsuperscript{226} The State conceded that the defendant had received ineffective assistance of counsel and had been prejudiced.\textsuperscript{227}

In \textit{McLaughlin v. State},\textsuperscript{228} the court of appeals reversed the trial court’s denial of a motion for new trial based upon ineffective assistance of counsel.\textsuperscript{229} The defendant was convicted of aggravated assault in the stabbing of her boyfriend.\textsuperscript{230} The defense was justification, and the court held a hearing on that defense.\textsuperscript{231} During the hearing, defense counsel became aware of the long history of physical and emotional abuse that the defendant had endured from her boyfriend, and defense counsel correctly concluded that it would be possible to buttress the defense of justification with expert testimony about “battered person’s syndrome.”\textsuperscript{232} Defense counsel incorrectly believed, however, that it would have been fruitless to seek a continuance of the trial to seek expert testimony, because, in effect, the trial had already begun with the hearing on the motion to dismiss.\textsuperscript{233} The court of appeals concluded that the failure to seek a continuance was deficient performance and also concluded that, if the lawyer had sought one, there was a reasonable probability that the result of the trial would have been different.\textsuperscript{234}

In \textit{Taylor v. State},\textsuperscript{235} the court of appeals found that defense counsel rendered ineffective assistance with respect to misdemeanor charges of driving without a valid license and operating a vehicle without a current registration (the defendant was also convicted of vehicular homicide).\textsuperscript{236}

\textsuperscript{223} \textit{Id.} at 599, 791 S.E.2d at 177.
\textsuperscript{224} 338 Ga. App. 552, 790 S.E.2d 641 (2016).
\textsuperscript{225} \textit{Id.} at 555, 790 S.E.2d at 644.
\textsuperscript{226} \textit{Id.} at 552–53, 790 S.E.2d at 642–43.
\textsuperscript{227} \textit{Id.} at 553, 790 S.E.2d at 643.
\textsuperscript{228} 338 Ga. App. 1, 789 S.E.2d 247 (2016).
\textsuperscript{229} \textit{Id.} at 15, 789 S.E.2d at 258.
\textsuperscript{230} \textit{Id.} at 1, 789 S.E.2d at 249.
\textsuperscript{231} \textit{Id.} at 4, 789 S.E.2d at 251.
\textsuperscript{232} \textit{Id.} at 12, 789 S.E.2d at 255.
\textsuperscript{233} \textit{Id.} at 12, 789 S.E.2d at 256.
\textsuperscript{234} \textit{Id.} at 13–15, 789 S.E.2d at 256–57.
\textsuperscript{236} \textit{Id.} at 496–98, 788 S.E.2d at 107–08.
The only evidence offered in support of the charges about the defendant’s license and registration was inadmissible hearsay from an Atlanta police officer, and defense counsel did not object to this testimony. 237 The court of appeals found that defense counsel rendered ineffective assistance as to these counts because “we cannot identify any reason why a reasonable attorney would have decided not to object to the hearsay testimony that provided the only evidentiary basis for a conviction of the traffic offenses.” 238

B. Cases in Which Findings of Ineffective Assistance were Reversed

The supreme court reversed three findings of ineffective assistance, and the court of appeals reversed one during the survey period.

In Bryson v. Jackson, 239 a criminal defendant was convicted while being represented by a lawyer. After the conviction, a second lawyer was appointed to represent the defendant on appeal. Appellate counsel chose to file an immediate appeal rather than a motion for new trial and thereby waived any chance to claim that trial counsel had rendered ineffective assistance. The habeas court found that appellate counsel thereby rendered ineffective assistance. 240 The supreme court reversed the habeas court, determining there was no reasonable probability that the ultimate result would have been different if appellate counsel had preserved the right to claim ineffectiveness of trial counsel. 241 The court discussed each way in which trial counsel was allegedly ineffective and concluded that, “[b]ecause trial counsel did not render ineffective assistance in any of the ways claimed by Jackson, Jackson cannot show that he suffered actual prejudice resulting from his appellate counsel’s failure to preserve the issue of trial counsel’s performance on direct appeal.” 242

In Hooks v. Walley, 243 the supreme court reversed another finding of ineffective assistance. 244 A criminal defendant claimed that his first trial counsel failed to communicate a plea offer. After the defendant was convicted, new counsel handled the appeal and raised certain issues but not the claim of ineffectiveness of trial counsel based upon the failure to communicate the plea offer. The habeas court granted the writ on the

237. Id.
238. Id. at 497, 788 S.E.2d at 108.
240. Id. at 752, 791 S.E.2d at 45–46.
241. Id. at 753, 791 S.E.2d at 46.
242. Id. at 755, 791 S.E.2d at 47.
244. Id. at 594, 791 S.E.2d at 92.
basis of ineffective assistance of appellate counsel for having not raised this issue on appeal.\textsuperscript{245} The supreme court reversed, holding that there was no evidence before the habeas court to overcome the presumption that appellate counsel’s decision not to raise the ineffectiveness of trial counsel was a strategic choice rather than an unreasonable decision that “only an incompetent attorney would adopt.”\textsuperscript{246}

\textit{Shepard v. Williams}\textsuperscript{247} was the third case in which the supreme court reversed a grant of habeas relief.\textsuperscript{248} The court reversed the grant of habeas relief to a defendant who pled guilty to murder.\textsuperscript{249} Among the grounds for the relief were that the Fulton County Public Defender’s Office had failed to provide “consistent representation” (there was no evidence of how many public defenders had been assigned to the case at various times) and that the public defender who represented the defendant in connection with the plea had been appointed only two months before trial.\textsuperscript{250} The court reversed the first finding because the warden had not been given sufficient notice of the claim of “inconsistent representation” and rejected the second because “[w]e decline to hold as a matter of law that the appointment of substitute counsel two months before a scheduled trial renders an otherwise valid guilty plea involuntary, especially where there is no evidence that the arguably belated appointment prejudiced the defendant.”\textsuperscript{251}

In \textit{State v. Banks},\textsuperscript{252} the court of appeals reversed a finding of ineffective assistance.\textsuperscript{253} A defendant was convicted of aggravated child molestation and child molestation. The trial court granted a motion for new trial based upon ineffective assistance of counsel.\textsuperscript{254} Lead defense counsel had not been sworn in to the Georgia Bar at the time of trial:

The attorney designated as lead counsel began working in the Brunswick Judicial Circuit Public Defender’s Office in September 2013. At that time, she was sworn in under the Graduate Practice Act, which permitted her to practice “through the end of the month where I got my [b]ar results.” See Supreme Court of Georgia Rules 97, 100.

\begin{itemize}
\item \textsuperscript{245} Id. at 589–90, 791 S.E.2d at 89–90.
\item \textsuperscript{246} Id. at 592, 791 S.E.2d at 91 (quoting Arrington v. Collins, 290 Ga. 603, 604, 724 S.E.2d 372, 374 (2012)).
\item \textsuperscript{247} 229 Ga. 437, 788 S.E.2d 428 (2016).
\item \textsuperscript{248} Id. at 443, 788 S.E.2d at 433.
\item \textsuperscript{249} Id. at 437, 788 S.E.2d at 429.
\item \textsuperscript{250} Id. at 430, 788 S.E.2d at 438.
\item \textsuperscript{251} Id. at 442, 788 S.E.2d at 432–33.
\item \textsuperscript{252} 337 Ga. App. 749, 789 S.E.2d 620 (2016).
\item \textsuperscript{253} Id. at 749, 789 S.E.2d at 620.
\item \textsuperscript{254} Id.
\end{itemize}
She was designated lead counsel on October 11, 2013, and she learned that she passed the bar examination on October 25, 2013, the Friday before Banks’ trial began on the following Monday. She was later sworn in as a member of the State Bar on November 7, 2013.255

The trial court’s basis for granting the motion for new trial was that lead counsel “was not properly mentored throughout the proceedings by an experienced attorney and did not possess the knowledge necessary to properly represent [Banks] in a capital case.”256 The court of appeals reversed.257 The court summarized the various activities that lead counsel engaged in and noted that there was no evidence in the record to point to any specific error that lead counsel made.258 The court also emphasized that lead counsel was assisted by other, more experienced members of the public defender’s office.259 Finally, the court held that the “more concerning issue” was that the defendant could not “invite error only to challenge the alleged error after an unfavorable result at trial.”260 The court noted that the trial court knew of lead counsel’s status and that lead counsel did not express any objection to the trial court concerning her inexperience.261

C. Miscellaneous Ineffective Assistance Cases

Three additional cases from the court of appeals concerning ineffective assistance warrant discussion.

In Gilmer v. State,262 the court of appeals, in a 6-3 decision, rejected claims of ineffective assistance of counsel.263 The defendant was convicted of child molestation and aggravated child molestation. Two witnesses, an expert and a family friend, gave improper testimony that bolstered the credibility of the victim. The defendant’s lawyer did not object in either instance.264 The dissent noted that the defense attorney testified there was no strategic reason not to object.265 The majority opinion, however, rejected the notion it was bound by the lawyer’s testimony and held that the court of appeals could objectively find a

255. Id. at 755, 789 S.E.2d at 624.
256. Id. at 751, 789 S.E.2d at 621.
257. Id. at 758, 789 S.E.2d at 626.
258. Id. at 756, 789 S.E.2d at 624.
259. Id. at 757, 789 S.E.2d at 625.
260. Id.
261. Id. at 757–58, 789 S.E.2d at 625.
263. Id. at 593, 794 S.E.2d at 655.
264. Id. at 594–98, 794 S.E.2d at 656–58.
265. Id. at 603–04, 794 S.E.2d at 661–62 (6-3 decision) (McFadden, J., dissenting).
reasonable basis for a strategy even when the defense lawyer states subjectively that there was none.\textsuperscript{266} The majority opinion then articulated a strategy that would explain the failure to object to the expert witness: The defense lawyer was attempting "to co-opt Whitmore as his own expert witness to challenge the way that the forensic interviews were conducted."\textsuperscript{267} The majority opinion also concluded that the failure to object to the bolstering testimony of the family friend was a strategic choice to which it should defer.\textsuperscript{268}

The dissent concluded that counsel had rendered ineffective assistance by not objecting to the bolstering testimony and that the failure to object caused the correctness of the outcome to be in doubt.\textsuperscript{269} With respect to the reasonableness of the failure to object, Judge McFadden wrote:

A strategic choice is necessarily part of a strategy. It is a choice to forgo one potential advantage in favor of another. Although a decision not to object may be a part of a reasonable trial strategy, the record does not show that trial counsel made any such decision in this case. To the contrary, trial counsel’s testimony shows that he made no decision at all concerning the improper bolstering. Trial counsel admitted to having no strategic reason for not objecting to the expert witness’s testimony, and while he explained his efforts to mitigate the family friend’s testimony, trial counsel did not indicate that he had done so as an intentional strategic alternative to an objection; rather, he simply did not think to object. The record does not reflect, nor did the trial court find, that trial counsel made a strategic decision not to object to the family friend’s bolstering testimony but instead to subject it to cross-examination.\textsuperscript{270}

The dissent also concluded that the defendant had shown prejudice.\textsuperscript{271} Nevertheless, the majority ruled the defendant’s claims of ineffective assistance of counsel were rejected, and the convictions were affirmed.\textsuperscript{272}

In \textit{McNorrill v. State},\textsuperscript{273} the court of appeals rejected a claim of ineffective assistance of counsel based upon defense counsel’s alleged conflict of interest.\textsuperscript{274} Two defendants were tried and convicted together of hijacking a motor vehicle, possession of marijuana with the intent to

\begin{itemize}
  \item \textsuperscript{266} \textit{Id.} at 596, 794 S.E.2d at 657 (majority opinion).
  \item \textsuperscript{267} \textit{Id.} at 596–97, 794 S.E.2d at 657.
  \item \textsuperscript{268} \textit{Id.} at 598, 794 S.E.2d at 658.
  \item \textsuperscript{269} \textit{Id.} at 603, 794 S.E.2d at 661 (6-3 decision) (McFadden, J., dissenting).
  \item \textsuperscript{270} \textit{Id.} at 604, 794 S.E.2d at 662 (citations omitted).
  \item \textsuperscript{271} \textit{Id.} at 606–07, 794 S.E.2d at 663.
  \item \textsuperscript{272} \textit{Id.} at 593, 794 S.E.2d at 655 (majority opinion).
  \item \textsuperscript{273} 338 Ga. App. 466, 789 S.E.2d 823 (2016).
  \item \textsuperscript{274} \textit{Id.} at 466, 789 S.E.2d at 823.
\end{itemize}
distribute, and possession of a firearm during commission of a crime.\textsuperscript{275} The defendants were represented by lawyers in the same circuit public defender’s office.\textsuperscript{276} The Georgia Supreme Court has held that a conflict of one public defender is automatically imputed to all lawyers in the same public defender’s office.\textsuperscript{277} The court of appeals nevertheless concluded that McNorrill’s lawyer did not have an actual conflict of interest that adversely affected her performance\textsuperscript{278}, despite these facts:

McNorrill nevertheless argues that an actual conflict of interest arose at one point before trial when the prosecutor offered him a plea conditioned on McNorrill testifying against his co-defendant, thereby causing McNorrill and his co-defendant to have interests that were antagonistic to one another. However, McNorrill’s trial counsel testified at the new trial hearing that she fully informed McNorrill of the plea offer, that she told him that it was his decision whether to accept the offer, and that “it [had been] of no account to [her]” whether McNorrill chose to testify against his co-defendant. Trial counsel also testified that McNorrill was very “deferential” to his co-defendant and looked to his co-defendant “for cues . . . in making decisions about what he wanted to do.” The trial transcript reflects that when the plea offer was later brought up in open court, McNorrill rejected the offer, stating, “I would take the offer, but I don’t want to testify.” In light of this combined record evidence, the trial court was entitled to find that any potential conflict arising from the plea offer did not adversely affect the manner in which trial counsel handled the offer or conveyed it to McNorrill, and that McNorrill made his own independent decision not to accept the offer because he did not want to testify at trial.\textsuperscript{279}

This result is questionable. The public defender who represented McNorrill had an imputed conflict of interest because the co-defendants were represented by other public defenders from the same office.\textsuperscript{280} That conflict may well have adversely affected the performance of McNorrill’s counsel precisely because the lawyer left the decision of the plea bargain up to McNorrill and expressed indifference whether McNorrill accepted it. It is certainly at least plausible that a lawyer whose representation was untainted by the conflict would have encouraged McNorrill to

\textsuperscript{275} Id. at 469, 789 S.E.2d at 827.
\textsuperscript{276} Id. at 472, 789 S.E.2d at 829.
\textsuperscript{278} McNorrill, 338 Ga. App. at 472, 789 S.E.2d at 829.
\textsuperscript{279} Id. at 474, 789 S.E.2d at 830 (alterations in original).
\textsuperscript{280} See id. at 472, 789 S.E.2d at 829.
overcome his deference to his co-defendants and make a good deal for himself to the detriment of the co-defendant.

Finally, in *Wiggins v. State*, the court of appeals rejected a claim of ineffective assistance of counsel. Defense counsel listed a certain person as a witness, and the prosecutor promised the jury in his opening statement that the jury would hear from this witness. The prosecutor did not subpoena the witness. Defense counsel decided not to call the witness and told the witness not to come to court. The witness went home to Texas. When the witness he had promised to produce for the jury was suddenly unavailable, the prosecutor wrongfully threatened to prosecute the defense counsel for obstruction of justice. The trial court made a comment to the effect that this was “a serious accusation,” implicating a criminal charge.

At the hearing on the motion for new trial, Defense Counsel explained that when the prosecutor said that he was investigating her during the trial, “everything went off the rails.” She stated that she spent that afternoon during the trial on her phone texting to seek advice about her own situation and further asserted that she was unable to prepare for the next day of trial because she was listening to the jailhouse tapes and addressing the issue of whether charges would be filed against her.

The court of appeals searched the record and concluded there was no instance in which defense counsel’s performance had been deficient. Therefore, the court held that under *Strickland v. Washington*, the defendant could not show ineffective assistance of counsel. The court of appeals also considered the argument that defense counsel had a conflict of interest in representing her client vigorously against a prosecutor who was threatening to prosecute her. The standard to apply to such an argument is whether the lawyer had an actual conflict of interest that adversely affected the lawyer’s representation. The court of appeals rejected the argument.

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282. *Id.* at 287, 787 S.E.2d 370.
283. *Id.* at 288, 787 S.E.2d 370 (McFadden, J., concurring).
284. *Id.* at 284, 787 S.E.2d 367 (majority opinion).
285. *Id.* at 284, 787 S.E.2d 368.
286. *Id.* at 284–85, 787 S.E.2d at 367–69.
289. *Id.* at 285–86, 787 S.E.2d at 369.
IV. LEGAL MALPRACTICE AND BREACH OF FIDUCIARY DUTY

The court of appeals decided three noteworthy cases during the survey period related to legal malpractice and breach of fiduciary duty.

In *Engelman v. Kessler*, the court of appeals affirmed a trial court’s grant of summary judgment on legal malpractice claims and remanded for further consideration of claims of breaches of fiduciary duty. The lawyers represented the wife in a divorce case, and the wife alleged that the lawyers committed malpractice by not adequately explaining a prenuptial agreement and by not conducting sufficient investigation into her husband’s finances before advising her to seriously consider a settlement offer from her husband. The court of appeals examined the record and determined that the lawyers had “analyzed the terms of Engelman’s prenuptial agreement and advised her as to the strengths and weaknesses regarding the enforceability of the agreement.” The court barred the wife’s claim related to this advice on the basis of judgmental immunity. The court also held that the wife could not show that any alleged malpractice was the cause of any damage because of her own actions in disregard of her lawyers’ advice:

Engelman voluntarily signed the divorce agreement, which she negotiated and begged her attorneys to get ready for her to sign. As detailed above, Engelman insisted on going forward with presenting a counteroffer to her former husband’s attorney in spite of the advice from the attorneys to slow down and try to mediate. Kessler felt that this decision to not follow his advice was so significant that he urged Tobin to put in writing for Engelman the risks of sending the counteroffer. Throughout the negotiations regarding the proposed settlement agreement, Engelman continued to communicate to the attorneys that it was urgent the settlement agreement get finalized because she needed the money she would receive from the divorce in order to buy a house. Tobin even tried to get Engelman to move back her closing date on the house because it was in her best interest to slow down.

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293. *Id.* at 239, 797 S.E.2d at 161.
294. *Id.* at 242, 797 S.E.2d at 164.
295. *Id.* at 244, 797 S.E.2d at 164.
296. *Id.* at 245, 797 S.E.2d at 165.
297. *Id.*
The court noted that the settlement agreement recited that the wife was signing the agreement “without conducting the usual discovery and without disclosure of the income and assets of the other.”

The fiduciary duty claim arose from the contract that the wife initially signed with the law firm. The contract provided for a $25,000 retainer, earned upon receipt, for the firm’s availability to assist with the matter. The agreement also stated hourly rates for the lawyers but noted that the rates were subject to being increased. The parties presented expert evidence regarding whether this agreement conformed to the Georgia Rules of Professional Conduct and advisory opinions regarding the professional responsibilities of Georgia lawyers. The trial court denied summary judgment. The court of appeals remanded with the instruction that the trial court should not consider expert opinions with respect to whether the agreement violated public policy, an issue that the court described as “a question of law for the court.”

_Estate of Nixon v. Barber_ involved two parents who retained an attorney to represent their son regarding criminal charges. The son died in a car accident. The parents sued the lawyer for malpractice in the criminal case on behalf of themselves and on behalf of the son’s estate. The trial court dismissed the complaint for failure to state a claim upon which relief could be granted. The court of appeals affirmed. As for the parents, the court concluded that the parents lacked standing to sue for legal malpractice because they were not in an attorney-client relationship with the lawyer. There was no express contract for the lawyer to represent the parents, and it was clear to the court from the pleadings there was no basis for an implied attorney-client relationship either: “Kathy and Bruce [the parents] could not have reasonably believed that Barber represented them when all communications and representations were made in the course of (and regarded) Barber’s representation of their son in defense against his criminal charges.”

With respect to the claim by the estate, the lawyer claimed that he could not be held liable for malpractice unless the estate could prove that

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298. _Id._ at 246, 797 S.E.2d at 165.
299. _Id._ at 246–47, 797 S.E.2d at 166.
300. _Id._ at 240, 797 S.E.2d at 162.
301. _Id._ at 246–47, 797 S.E.2d at 166.
304. _Id._ at 103, 796 S.E.2d at 490–91.
305. _Id._
306. _Id._ at 105–99, 796 S.E.2d at 492–95.
307. _Id._ at 109, 796 S.E.2d at 494.
his client was factually innocent of the criminal charges alleged. The trial court apparently dismissed the estate’s claim on that basis.\textsuperscript{308} The court of appeals found no need to address the question, however, because it deemed that the enumeration of error on this basis had been abandoned.\textsuperscript{309} The court did, however, include a lengthy footnote regarding the various views that courts have taken with respect to this question of causation in legal malpractice cases involving criminal defense and noted that, had the enumeration not been abandoned, it would have produced an issue of first impression in Georgia.\textsuperscript{310}

\textit{OTS, Inc. v. Weinstock & Scavo, P.C.}\textsuperscript{311} was a legal malpractice action in which the law firm counterclaimed to collect on a promissory note signed by one its former clients.\textsuperscript{312} One issue of particular note was one part of the trial court’s ruling on the law firm’s motion to dismiss. The plaintiffs claimed in part that the law firm breached the standard of care by not compelling arbitration in the underlying case.\textsuperscript{313} The court of appeals affirmed the granting of the motion to dismiss because the claim was too speculative.\textsuperscript{314} The plaintiff failed “to cite relevant authority to counter the trial court’s finding that there was no set of circumstances under which it could prove that it incurred additional fees or the judgment against it based on a failure by the defendants to attempt to compel arbitration.”\textsuperscript{315}

V. DISQUALIFICATION

The court of appeals decided four cases involving attorney disqualification during the survey period.

In \textit{Kamara v. Henson},\textsuperscript{316} the plaintiff sued two defendants, a podiatrist and his practice, for malpractice. The lawyer for the defendants had represented the plaintiff’s expert many years ago in an unrelated case. The plaintiff sought disqualification of defense counsel on this basis. The trial court denied the motion.\textsuperscript{317} The plaintiff expressed concern that defense counsel could use information that the lawyer gained in

\begin{footnotes}
\item[308] Id. at 110, 796 S.E.2d at 495.
\item[309] Id.
\item[310] Id. at 110 n.24, 796 S.E.2d at 495 n.24.
\item[312] Id. at 511, 793 S.E.2d at 673–74.
\item[313] Id. at 516–17, 793 S.E.2d at 677.
\item[314] Id. at 517, 793 S.E.2d at 677.
\item[315] Id.
\item[317] Id. at 111, 796 S.E.2d at 498.
\end{footnotes}
representing the expert to cross-examine the expert. The lawyer would be prohibited from using the expert’s confidential information to the detriment of the expert under Georgia Rule of Professional Conduct 1.9(c)(1), but there was no evidence of counsel’s ability or inclination to do so. Given the lack of any relationship between the two matters and the absence of any evidence of impropriety, the court of appeals affirmed the trial court’s denial of the motion to disqualify.

In Befekadu v. Addis International Money Transfer, LLC, the court of appeals affirmed a trial court’s order that disqualified an attorney as counsel. The lawyer, Oldham, previously represented the LLC and drafted the articles of incorporation, obtained an employee identification number, and served as registered agent. A dispute arose between the entity and Befekadu (a part-owner of the entity), and the lawyer attempted to represent Befekadu at trial against the lawyer’s former client. The trial judge disqualified the lawyer. In an earlier appeal, the court of appeals remanded for a hearing to determine whether the lawyer’s prior representation of Addis was substantially related to the dispute with Befekadu. The trial court was directed to determine whether the two matters were “materially and logically connected.” On remand, the trial court found that there were such connections, and the court of appeals affirmed in this opinion. Judge McFadden dissented. He argued that the opinion gave insufficient weight to Befekadu’s right to counsel of his choice and also that the trial court did not make the specific kind of finding that would justify disqualification. What Judge McFadden found missing in the trial court’s findings was “any specific fact or . . . any special knowledge that [Oldham] might have gleaned from [his prior representation of the LLC] which would have been material to the present suit, or in any manner, have gained advantage for the [defendant Befekadu] or worked a disadvantage to [the LLC]."

318. Id. at 114, 796 S.E.2d at 500.
319. GA. RULES OF PROF'L CONDUCT R. 1.9(c)(1).
321. Id. at 116, 796 S.E.2d at 501.
323. Id. at 807, 795 S.E.2d at 77.
324. Id. at 807–10, 795 S.E.2d at 77–78.
325. Id.
326. Id. at 809–10, 795 S.E.2d at 78–79.
327. Id. at 810–13, 795 S.E.2d at 79–81 (McFadden, J., dissenting).
328. Id. at 811–13, 795 S.E.2d at 80–81.
329. Id. at 812, 795 S.E.2d at 80 (alterations in original) (quoting Cardinal Robotics v. Moody, 287 Ga. 18, 22, 694 S.E.2d 346, 349-50 (2010)).
In State v. Mantooth,\textsuperscript{330} the Solicitor General of Cobb County recused himself and his office in connection with the prosecution of a DUI defendant because of the defendant’s relationship to a member of the solicitor general’s staff. In accordance with statute, the attorney general appointed a solicitor general pro tempore to prosecute the case. The defendant challenged the recusal, and the trial court vacated the attorney general’s appointment of the solicitor-general pro tempore.\textsuperscript{331} The court of appeals held that the defendant did not have standing to challenge the prosecutor’s decision to recuse and that the trial court did not have the authority to vacate the attorney general’s appointment of a substitute.\textsuperscript{332}

In Cohen v. Rogers,\textsuperscript{333} the court of appeals affirmed a trial court’s order that disqualified two attorneys (Butters and Cohen) for a defendant (Brindle).\textsuperscript{334} The plaintiff (Rogers) claimed that Brindle secretly made a video recording of a sexual encounter between them. Rogers filed a second related lawsuit, in which Butters and Cohen were defendants. There were allegations that Butters and Cohen were involved in the planning and the execution of Brindle’s recording, which was illegal under Georgia law.\textsuperscript{335} Those allegations meant that the lawyers might be witnesses, and it also raised the prospect of a conflict of interest between the lawyers and their client.\textsuperscript{336} The court of appeals declined to decide whether the lawyers were disqualified because they were witnesses, but the court determined no abuse of discretion in the trial court’s decision to disqualify the lawyers because of a conflict of interest.\textsuperscript{337} The trial court noted, “it is difficult for this Court to see how Mr. Cohen and Mr. Butters do not have competing interests with their client, Ms. Brindle,’ and found a ‘substantial probability that these competing interests would most likely hinder their independent professional judgment on pursuing courses of action in Ms. Brindle’s case.”\textsuperscript{338} Without elaboration of the precise nature of the conflict, the court of appeals concluded, “[c]onsidering the circumstances surrounding this litigation, we find that

\textsuperscript{330} 337 Ga. App. 698, 788 S.E.2d 584 (2016).
\textsuperscript{331} Id. at 699, 788 S.E.2d at 585.
\textsuperscript{332} Id. at 699–703, 788 S.E.2d at 585–88.
\textsuperscript{334} Id. at 156, 789 S.E.2d at 352.
\textsuperscript{335} Id. at 158–59, 789 S.E.2d at 354–55; see also O.C.G.A. § 16-11-62 (2017).
\textsuperscript{336} Cohen, 338 Ga. App. at 160–61, 789 S.E.2d at 357.
\textsuperscript{337} Id. at 169, 789 S.E.2d at 362.
\textsuperscript{338} Id. at 169–70, 789 S.E.2d at 363.
the trial court did not abuse its discretion in disqualifying Butters and Cohen from representing Brindle.”

VI. JUDICIAL ETHICS

The supreme court decided two matters related to judicial ethics during the survey period, while the court of appeals decided one.

Both of the matters before the supreme court involved judicial review of formal advisory opinions of the Judicial Qualifications Commission (JQC). In the first, the court directed the JQC to reconsider its opinion, which dealt with the constitutional guarantee of public access to judicial proceedings. The court first held that it had the authority to review advisory opinions of the JQC. The court then held that the JQC’s opinion was not just a question of interpretation of the Code of Judicial Conduct in light of well-established binding authority. Instead, the court held the JQC opinion had purported to decide questions of law, which are outside the purview of the JQC.

The second JQC opinion the supreme court reviewed during the survey period concerned an amicus brief filed by the Council of State Court Judges in a case that challenged the use of private companies to provide probation supervision services in misdemeanor cases. The JQC issued Formal Advisory Opinion 241, which concluded that “the ‘filing [of] Amicus Curiae Briefs by judges, councils of judges or any other organization of judges in cases pending in any trial or appellate court would be improper and prohibited by the Georgia Code of Judicial Conduct.’” The supreme court directed the JQC to reconsider its opinion. The court held that the JQC has authority over individual judges but no authority to regulate the conduct of institutions such as the Council of State Court Judges. The court held further that, with narrow exceptions, an individual judge may not file an amicus brief in a pending case because to do so would run afoul of the prohibitions in the Code of Judicial Conduct on a judge practicing law and on a judge making

339. Id. at 171, 789 S.E.2d at 363.
341. Id. at 292, 794 S.E.2d at 634.
342. Id. at 299–302, 794 S.E.2d at 639–41.
343. Id.
345. Id. at 55, 799 S.E.2d at 783.
346. Id. at 55–56, 799 S.E.2d at 783.
347. Id. at 57, 799 S.E.2d at 784.
public comments that might reasonably be expected to affect the outcome of a pending proceeding.\textsuperscript{348} The court noted two exceptions to this general rule, when the judge is a litigant in a personal capacity and when a “judge is disqualified from ever deciding a legal issue because such a decision would directly and personally affect him or her.”\textsuperscript{349}

*Evans v. Williams*\textsuperscript{350} was the one court of appeals case during the survey period that involved judicial ethics. In response to a motion to recuse, a trial judge referred the motion for disposition to another judge, who denied the motion in an order that did not contain findings of fact and conclusions of law. The original trial judge later granted summary judgment.\textsuperscript{351} The court of appeals vacated the summary judgment and remanded the case for compliance with Uniform Superior Court Rule 25.6,\textsuperscript{352} which requires written findings of fact and conclusions of law.\textsuperscript{353} The court of appeals noted that, if the motion to recuse is properly denied on remand, then the trial court could reissue its ruling on summary judgment.\textsuperscript{354} If the motion to recuse was granted after all, then the proceedings with the original trial judge that occurred after the motion to recuse would be invalid.\textsuperscript{355}

**VII. MISCELLANEOUS CASES**

The supreme court decided three miscellaneous cases related to legal ethics during the survey period, while the court of appeals decided two.

In *Washington v. Hopson*,\textsuperscript{356} the supreme court reversed an order in which a habeas court had set aside a defendant’s rape conviction because of the misconduct of the prosecutor (Joshi).\textsuperscript{357} The defendant was convicted based upon the testimony of the victim and a friend of the victim. More than a year after the conviction, Joshi was in private practice and offered to help the defendant’s family overturn the conviction because he “knew” the victim and her friend had lied at trial.\textsuperscript{358} The habeas court reached the following conclusions:

\textsuperscript{348} Id. at 57–59, 799 S.E.2d at 784–85.

\textsuperscript{349} Id. at 59, 799 S.E.2d at 785.


\textsuperscript{351} Id. at 226, 799 S.E.2d at 362.

\textsuperscript{352} UNIF. SUP. CT. R. 25.6 (2017).


\textsuperscript{354} Id. at 228, 799 S.E.2d at 364.

\textsuperscript{355} Id.

\textsuperscript{356} 299 Ga. 358, 788 S.E.2d 362 (2016).

\textsuperscript{357} Id. at 358, 788 S.E.2d at 364.

\textsuperscript{358} Id. at 358–60, 788 S.E.2d at 364–65.
The habeas court ruled that Joshi violated constitutional mandates by “knowingly present[ing] testimony that he believed to be false” at Hopson’s trial and by “d[o]ing nothing to stop the trial, even when he called a witness whom he knew to be lying.” The court based these legal conclusions on its factual findings that Joshi “prosecuted Mr. Hopson in spite of his knowledge that Mr. Hopson was innocent and in spite of his knowledge that the alleged victim was lying.” “suborned the victim’s testimony in spite of his knowledge that such testimony was false,” and “withheld exculpatory information involving his knowledge [of] the falsity of the alleged victim’s testimony.” (Emphasis added.) In this way, the habeas court asserted, Joshi “let a man he knew to be innocent be convicted of rape.”

The supreme court agreed that the conviction would have to be overturned if these were the facts, but the court held the factual findings about Joshi’s state of mind—that he knew the testimony was false—to be clearly erroneous. The court also held that the issue was barred by collateral estoppel, because the trial court had found to the contrary and the habeas court had no new evidence. The supreme court also rejected the conclusion of the habeas court that the conviction had to be set aside because of the possibility that during the prosecution Joshi could have been exercising the powers of his office for personal gain with one eye on the prospect that he could help the defendant overturn the conviction that he himself obtained. The supreme court determined this prospect to be too speculative, particularly given the long time lag between the prosecution and Joshi’s offer to help overturn it.

Prosecutors may not present evidence they know is false or fail to disclose materially exculpatory evidence to the defense, but they need not share their subjective concerns about the strengths or weaknesses of the State’s case and witnesses. Especially in close and serious cases, the prosecutor may allow the jury to decide if an alleged crime victim—here, an alleged rape victim—is telling the truth and thus is entitled to the justice she seeks, rather than making that determination unilaterally and preemptively. See Rule 3.3 (a)(4), comment [8] (“The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer’s reasonable belief that evidence is false does not preclude its presentation to the trier of fact.”). Accordingly, even if Joshi really doubted the truthfulness of the victim’s testimony at the time of Hopson’s trial—rather than only in retrospect or only when asserting that belief served his attempt to extract money from Hopson’s family—that would not amount to a constitutional violation. Based on the same information available to Joshi, the jury believed the victim’s testimony that she was raped by Hopson, and that is
In another case, the supreme court affirmed a finding that a lawyer was in contempt for continuing to file pleadings in a murder case in which the trial court had prohibited such filings and had removed the lawyer as counsel for the defendant.\textsuperscript{364} The court rejected counsel’s argument that the underlying order was erroneous because the lawyer waived the argument and because, in any event, it was still contempt to disobey an erroneous order that the trial court had jurisdiction to enter.\textsuperscript{365} The court also rejected the lawyer’s claims that the evidence was insufficient to show that her actions were willful, that she had not been advised at the contempt hearing of her right to remain silent, and that she received ineffective assistance of counsel.\textsuperscript{366}

In \textit{McHugh Fuller Law Group v. PruittHealth, Inc., F/k/a Pruitt Corp.},\textsuperscript{367} a law firm ran printed advertisements seeking to represent clients who had been injured in the nursing homes of PruittHealth. The advertisements contained trade names, service marks, and logos of PruittHealth, in addition to the logo of the law firm.\textsuperscript{368} The trial court enjoined the advertising under Georgia’s anti-dilution statute, which among other things protects the owner of a trademark from having the trademark “tarnished” by another.\textsuperscript{369} The supreme court reversed the injunction because the use of the marks did not “tarnish” the marks in a way that violated the anti-dilution statute:

The ad did not attempt to link PruittHealth’s marks directly to McHugh Fuller’s own goods or services. McHugh Fuller was advertising what it sells—legal services, which are neither unwholesome nor degrading—under its own trade name, service mark, and logo, each of which appears in the challenged ad. No one reading the ad reproduced above would think that McHugh Fuller was doing anything other than identifying a health care facility that the law firm was willing to sue over its treatment of patients. In short, the ad very clearly was an ad for a law firm and nothing more.\textsuperscript{370}

\textsuperscript{364} In \textit{re Brinson, 299 Ga. 859, 859, 791 S.E.2d 804, 805 (2016).}
\textsuperscript{365} \textit{Id.}
\textsuperscript{366} \textit{Id.} at 859–60, 791 S.E.2d at 805–06.
\textsuperscript{367} 300 Ga. 140, 794 S.E.2d 150 (2016).
\textsuperscript{368} \textit{Id.} at 140–41, 794 S.E.2d at 151–52.
\textsuperscript{369} \textit{Id.} at 144–47, 794 S.E.2d at 153–56.
\textsuperscript{370} \textit{Id.} at 147, 794 S.E.2d at 156.
The court also noted the potential constitutional problem with restricting the law firm’s advertising (assuming the advertisements were truthful).371

*Tolson Firm, LLC v. Sistrunk*372 arose from the departure of an associate from a law firm. The associate took several cases from the firm to her new practice.373 The court of appeals dealt with a number of issues, but of particular interest is its discussion of the fiduciary duties that a departing lawyer owes to a law firm.374 The court concluded that there were genuine issues of material fact about when the lawyer left the firm and whether the lawyer improperly solicited clients of the firm before departing.375 The court offered this specific guidance: A departing lawyer may (absent any agreement to a more permissive rule) solicit firm clients on whose matters the lawyer is actively and substantially working but only after telling the firm of the lawyer’s intent to do so.376 After leaving, a lawyer is free to solicit the former firm’s clients to the same extent that any other lawyer could do so.377

In *Cohen v. Rogers*,378 the court of appeals affirmed a trial court award of over $198,000 in sanctions against an attorney under section 9-15-14(b)379 of the Official Code of Georgia Annotated (O.C.G.A.).380 The majority opinion applied an abuse of discretion standard and held that there was sufficient evidence to support the trial court’s finding that sanctionable conduct occurred in connection with the filing of a second, duplicative lawsuit in Fulton County concerning the same facts that

371. *Id.* at 148–49, 794 S.E.2d at 156–57.
373. *Id.* at 25, 789 S.E.2d at 267.
374. *Id.* at 26–30, 789 S.E.2d at 268–70.
375. *Id.* at 29, 789 S.E.2d at 270.
376. *Id.* at 27–28, 789 S.E.2d at 296.
377. *Id.* The court also noted that its decision was consistent with State Bar Formal Advisory Opinion 97-3, which states in relevant part:

The departing attorney may also owe certain duties to the firm which may require that the departing attorney should advise the firm of the attorney’s intention to leave the firm and the attorney’s intention to notify clients of his or her impending departure, prior to informing the clients of the situation. Specifically, the departing attorney should not engage in professional conduct which involves “dishonesty, fraud, deceit, or willful misrepresentation” with respect to the attorney’s dealings with the firm as set forth in Standard 4.

underlay a pending case in Cobb County. The court further held that there was sufficient evidence to support the amount of the award. Judges Barnes and McFadden dissented.

VIII. FORMAL ADVISORY OPINIONS

The State Bar of Georgia Formal Advisory Opinion Board took significant action with respect to three opinions in the survey year. Formal Advisory Opinion Request 15-R1 asked whether a solo practitioner’s use of the words “firm” or “group” violates the Georgia Rules of Professional Conduct. The Board’s response, as embodied in Formal Advisory Opinion No. 16-3, was: "A sole practitioner may not use a firm name that includes ‘group’ or ‘& Associates’ because both terms would incorrectly imply that the sole practitioner practices with other lawyers. However, a sole practitioner may use a firm name that includes ‘firm.’" The opinion was published twice in the Georgia Bar Journal and was filed with the supreme court in November 2016. No one requested the court to review the opinion, and the court did not review the opinion on its own motion. The opinion, therefore, binds the requestor and the State Bar of Georgia but is only persuasive authority otherwise.

Formal Advisory Opinion No. 16-1 (a redrafted version of FAO No. 03-2) concerns whether the duty of confidentiality under Georgia Rule of Professional Conduct 1.6 applies between two jointly represented clients. The Board’s summary answer was:

The obligation of confidentiality described in Rule 1.6, Confidentiality of Information, applies as between two jointly represented clients. An attorney must honor one client’s request that information be kept

381. Id. at 146–54, 798 S.E.2d at 703–07.
382. Id. at 154, 798 S.E.2d at 707.
383. Id. (Barnes, J. & McFadden, J., dissenting).
384. The Formal Advisory Opinion Board also declined several requests for opinions during the survey year. For details, see the 2017 REPORT OF THE OFFICE OF THE GENERAL COUNSEL, supra note 2, at 10–12.
386. Id.
388. See id.
390. Id.
391. Id.
392. Id. at 13.
confidential from the other jointly represented client. Honoring the client’s request will, in almost all circumstances, require the attorney to withdraw from the joint representation.393

The opinion appeared twice in the Georgia Bar Journal and was filed with the supreme court in July 2016.394 No timely request was filed for the court to review the opinion, and the court declined to review the opinion on its own motion.395 The opinion, therefore, binds only the requestor and the State Bar of Georgia and is persuasive authority otherwise.396

Finally, Formal Advisory Opinion No. 16-2 (a redrafted version of FAO No. 10-2) deals with whether an attorney who has been appointed to serve as both legal counsel and guardian ad litem for a child in a parental rights case may advocate for termination of parental rights over the child’s objections.397 The summary answer of the Board was: “When it becomes clear that there is an irreconcilable conflict between the child’s wishes and the attorney’s considered opinion of the child’s best interests, the attorney must withdraw from his or her role as the child’s guardian ad litem.”398 The opinion was published twice in the Georgia Bar Journal and reached the supreme court in November 2016.399 The State Bar of Georgia filed a petition for discretionary review, and the matter is still pending in the supreme court.400

IX. AMENDMENTS TO THE GEORGIA RULES OF PROFESSIONAL CONDUCT

The Georgia Supreme Court approved three significant amendments to the Georgia Rules of Professional Conduct during the survey period.

Rule 1.7401 was amended to deal with the problem of part-time prosecutors.402 Many rural counties use part-time prosecutors to avoid the expense of a full-time prosecutor.403 Under the prior version of Rule 1.7, the part-time prosecutor arguably had a conflict of interest that

395. Id.
396. Id.
397. Id.
400. Id.
401. GA. RULES OF PROF’L CONDUCT R. 1.7.
would prevent the prosecutor from representing criminal defendants, even in another part of the state. For example, if you assume that the prosecutor’s client is the State of Georgia, then the prosecutor is in an attorney-client relationship with the State, and the lawyer could not represent a defendant being prosecuted by the State, without consent, because the lawyer would be representing a client (the defendant) against a current client (the State). Rural counties likely would have a hard time recruiting part-time prosecutors if that job disqualified the lawyer (and all associated lawyers) from criminal defense cases. Rule 1.7(d) was added to Rule 1.7:

(d) Though otherwise subject to the provisions of this Rule, a part-time prosecutor who engages in the private practice of law may represent a private client adverse to the state or other political subdivision that the lawyer represents as a part-time prosecutor, except with regard to matters for which the part-time prosecutor had or has prosecutorial authority or responsibility.

Comment 4 was amended to eliminate the “automatic” conflict that kept a part-time prosecutor from representing criminal defense clients:

[4] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client’s informed consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. Paragraph (d) states an exception to that general rule. A part-time prosecutor does not automatically have a conflict of interest in representing a private client who is adverse to the state or other political subdivision (such as a city or county) that the lawyer represents as a part-time prosecutor, although it is possible that in a particular case, the part-time prosecutor could have a conflict of interest under paragraph (a).

404. GA. RULES OF PROF'L CONDUCT R. 1.7, comment 4 (commenting “a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated.”).
405. Id.
406. Thompson, 254 Ga. at 396, 330 S.E.2d at 351.
408. Id. at 6.
Together, these changes are intended to solve the practical problem that rural counties need to be able to recruit and retain high quality part-time prosecutors.

Rule 4.4(b)\textsuperscript{409} was added to bring some clarity to the responsibilities of a lawyer who receives a document inadvertently: “(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer’s client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.”\textsuperscript{410} Comment 2 to Rule 4.4 was added to provide some relevant definitions and to make it clear that the rule is not intended to answer three other questions: whether other law might require the return of the document, whether the inadvertent production waives privilege, and whether the lawyer has additional duties if the lawyer knows or reasonably should know that the document came from someone who obtained it inappropriately.\textsuperscript{411}

Finally, Georgia historically has severely restricted what a disbarred or suspended lawyer may do in the service of a duly licensed attorney. Rule 5.3 was amended to loosen those restrictions somewhat while at the same time protecting the public from the disbarred or suspended lawyer.\textsuperscript{412} Rule 5.3(d) now provides:

(d) a lawyer shall not allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer to:

(1) represent himself or herself as a lawyer or person with similar status; or

(2) provide any legal advice to the clients of the lawyer either in person, by telephone or in writing.\textsuperscript{413}

As Comment 3 to the rule explains, this rule is intended to guard against the unauthorized practice of law by a disbarred or suspended lawyer.\textsuperscript{414}

\textsuperscript{409} GA. RULES OF PROF'L CONDUCT R. 4.4.
\textsuperscript{410} Order, supra note 407, at 11.
\textsuperscript{411} Id. at 11–12.
\textsuperscript{412} Order, supra note 407, at 14.
\textsuperscript{413} Id. at 13.
\textsuperscript{414} Id. at 14.
X. Conclusion

This Article surveys recent developments in Georgia legal ethics from June 1, 2016 through May 31, 2017. For updates on developments after that date, you may visit the web site of the Mercer Center for Legal Ethics and Professionalism.415

415. As a service to the Georgia bench and bar, the Mercer Center for Legal Ethics and Professionalism provides monthly updates and other resources on recent developments in Georgia legal ethics. Visit Recent Developments in Georgia Legal Ethics, Mercer Center for Legal Ethics, http://law.mercer.edu/academics/centers/clep/updates-legal-ethics/.