

Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, 2011-2012 State Bar of Georgia Directory and Handbook, p. H-6 (hereinafter referred to as "Handbook").

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, Handbook, p. H-6.

This Statement and the following verbatim text are intended to comply with the notice requirements of Rule 5-101, Handbook, p. H-6.

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT
STATE OF GEORGIA

IN RE: STATE BAR OF GEORGIA
Rules and Regulations for its
Organization and Government

MOTION TO AMEND 2012-2

MOTION TO AMEND THE RULES AND
REGULATIONS OF THE
STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors at its annual meeting on June 2, 2012, and upon the recommendation of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, and published at 2011-2012 State Bar of Georgia Directory and Handbook, pp. 1-H, et seq., The State Bar respectfully moves that a new Rule 4-228 regarding receiverships be added to the Rules of the State Bar of Georgia and that Rule 7.2 and Rule 7.3 of the Georgia Rules of Professional Conduct be amended in the following respects:

I.

Proposed New Rule 4-228 Regarding Receiverships
To Be Inserted in Part IV, Chapter 2 of the Rules
of the State Bar of Georgia

Rule 4-228 Receiverships

(a) Definitions

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

(b) Appointment of Receiver

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

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

(3) The receiver shall be entitled to release to each client the papers, money or other property to which

the client is entitled. Before releasing the property, the Receiver may require a receipt from the client for the property.

(c) Applicability of Attorney-Client Rules

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

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

(d) Trust Account

(1) If after appointment the Receiver should determine that the Absent Attorney maintained one or more trust accounts and that there are no provisions extant which would allow the clients, or other appropriate entities, to receive from the accounts the funds to which they are entitled, the Receiver may petition the Supreme Court or its designee for an order extending the scope of the Receivership to include the management of the said trust account or accounts. In the event the scope of the Receivership is extended to include the management of the trust account or accounts the Receiver shall file quarterly with the Supreme Court or its designee a report showing the activity in and status of said accounts.

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

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

(e) Payment of Expenses of Receiver

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

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

(f) Receiver-Client Relationship

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

(g) Unclaimed Files

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

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

(h) Professional Liability Insurance

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

(i) Requirement of Bond

(1) The Supreme Court or its designee may require the receiver to post bond conditioned upon the faithful performance of his or her duties.

(j) Immunity

(1) Any person serving as a Receiver under these rules shall be immune from suit for any conduct undertaken in good faith in the course of his or her official duties.

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

(k) Service

(1) Service under this rule may be perfected under Bar Rule 4-203.1.

II.

Proposed Amendments to Part IV, Chapter 1,
Georgia Rules of Professional Conduct, Rule 7.2

It is proposed that Rule 7.2 of the Georgia Rules of Professional Conduct regarding advertising be amended by inserting the sections underlined as follows:

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through:

- (1) public media, such as a telephone directory, legal directory, newspaper or other periodical;
- (2) outdoor advertising;
- (3) radio or television;
- (4) written, electronic or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) Prominent disclosures. Any advertisement for legal services directed to potential clients in Georgia, or intended to solicit employment for delivery of any legal services in Georgia, must include prominent disclosure, clearly legible and capable of being read by the average person, if written, and clearly intelligible by an average person, if spoken aloud, of the following:

(1) Disclosure of identity and physical location of attorney. Any advertisement shall include the name, physical location and telephone number of each lawyer or law firm who paid for the advertisement and who takes full personal responsibility for the advertisement. In disclosing the physical location the responsible lawyer shall state the full address of the location of the principal bona fide office of each lawyer who is prominently identified pursuant to this paragraph. For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm from which the lawyer or law firm furnishes legal services on a regular and continuing basis. In the absence of a bona fide physical office, the lawyer shall prominently disclose the full address listed with the State Bar of Georgia or other Bar to which the lawyer is admitted. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's bona fide office, or the registered bar address, when a referral is made.

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

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