

State Bar of Georgia  
Rules of Professional Conduct

Source: <http://www.gabar.org/barrules/georgia-rules-of-professional-conduct.cfm>

See bolded verbiage below for specific Professional Rules that are being violated.

PUNISHABLE BY DISBARMENT

**RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF  
AUTHORITY BETWEEN CLIENT AND LAWYER.**

**d. A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.**

**Comments [by Georgia Bar Association]**

Criminal, Fraudulent and Prohibited Transactions

[9] **Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud.** This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. **The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter.** See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

## RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- a. make a false statement of material fact or law to a third person; or
- b. fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

The maximum penalty for a violation of this Rule is disbarment.

### Comments [by Georgia Bar Association]

#### Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. **A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act.**

#### Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Comments which fall under the general category of "puffing" do not violate this rule. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

#### Fraud by Client

**[3] Paragraph (b) recognizes that substantive law may require a lawyer to disclose certain information to avoid being deemed to have assisted the client's crime or fraud.** The requirement of disclosure created by this paragraph is, however, subject to the obligations created by Rule 1.6: Confidentiality of Information.

## RULE 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS AND SUPERVISORY LAWYERS

- a. **A law firm partner as defined in Rule 1.0 (l), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures**

**giving reasonable assurance that all lawyers in the firm conform to the Georgia Rules of Professional Conduct.**

- b. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Georgia Rules of Professional Conduct.**
- c. A lawyer shall be responsible for another lawyer's violation of the Georgia Rules of Professional Conduct if:**
  - 1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**
  - 2. the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

The maximum penalty for a violation of this Rule is disbarment.

## **RULE 8.4 MISCONDUCT**

- a. It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:**
  - 1. violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
  - 4. engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;**
  - 6.**
    - ii. state an ability to achieve results by means that violate the Rules of Professional Conduct or other law;**
    - iii. achieve results by means that violate the Rules of Professional Conduct or other law;**

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific Rule violated.

The maximum penalty for a violation of Rule 8.4(a)(2) through Rule 8.4(c) is disbarment.

### **Comments [by Georgia Bar Association]**

[1] The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prevents a lawyer from attempting to violate the Georgia Rules of Professional Conduct **or from knowingly aiding or abetting**, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a nonlawyer, who is not subject to the rules, to act where the lawyer cannot.

[3] Many kinds of **illegal conduct reflect adversely on fitness to practice law**, such as **offenses involving fraud** and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms

of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally **answerable to the entire criminal law**, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, **dishonesty**, breach of trust, or **serious interference with the administration of justice** are in that category. **A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.**

[6] Persons holding public office assume responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of **abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation** or other organization.

## PUNISHABLE BY PUBLIC REPRIMAND

### **RULE 1.16 DECLINING OR TERMINATING REPRESENTATION**

- a. Except as stated in paragraph (c), **a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:**
  - 1. **the representation will result in violation of the Georgia Rules of Professional Conduct or other law;**
- b. except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
  - 1. **the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**
  - 2. **the client has used the lawyer's services to perpetrate a crime or fraud;**

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

#### **Comment [by Georgia Bar Association]**

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

#### **Mandatory Withdrawal**

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Georgia Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.