



Litigation ADVISORY ■

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In Georgia, Former Employees Get Full Disclosure

by [Andy Tuck](#) and [Katie Gamsey](#)

In Georgia, an attorney may interview a former employee of an organization that is represented by counsel to obtain non-privileged information that could be used in litigation against the organization. However, in doing so, the attorney must follow the requirements of [Formal Advisory Opinion No. 94-3](#). The opinion requires a lawyer to fully disclose the identity of his or her client and to obtain the former employee's consent before initiating the interview. The opinion also notes that the former employee is entitled to know the reason for the contact, the purpose of the interview, and any other information required to ensure that the interview is not misleading.

The State Bar of Georgia's Formal Advisory Opinion Board has now published [Proposed Formal Advisory Opinion No. 20-1](#), which imposes more explicit requirements on lawyers who want to interview former employees of adverse organizations. Like Formal Advisory Opinion No. 94-3, the proposed opinion still requires a lawyer to disclose the identity of his or her client to the former employee. However, the proposed opinion also explicitly requires the lawyer to disclose the nature of the client's relationship to the organization, the reason for the communication, and the essence of the information sought. While these issues were previously discussed in Formal Advisory Opinion No. 94-3, the proposed opinion clearly makes them required disclosures before interviewing a former employee. Like Formal Advisory Opinion No. 94-3, the proposed opinion also requires the lawyer to obtain the former employee's consent to being interviewed, but the proposed opinion specifically requires that the lawyer make all the necessary disclosures before asking for the former employee's consent.

In addition, the proposed opinion prohibits a lawyer from using methods of obtaining information that would violate the legal rights of the former employee or the represented organization. While Formal Advisory Opinion No. 94-3 notes that a lawyer may obtain non-privileged information from a former employee, the proposed opinion is more detailed and explicit about the prohibition on obtaining privileged information. Moreover, unlike Formal Advisory Opinion No. 94-3, which is silent on this issue, the proposed opinion clearly prohibits a lawyer from communicating with the former employee if the lawyer knows or determines that the former employee is individually represented by counsel in the matter. Finally, both opinions require a lawyer to make full disclosures to a former employee even if the adverse organization is not represented by counsel.

Georgia State Bar members may file comments to the proposed opinion by December 16, 2020. After the Formal Advisory Opinion Board considers those comments, it will decide whether to issue the opinion.

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