

GOV. BAR RULE V

- Allegations of violations of the Code of Professional Responsibility, Rules of Professional Conduct, and the Code of Judicial Conduct
- All formal complaints heard by the Board of Professional Conduct

BOARD OF PROFESSIONAL CONDUCT

- 28 members
 - 17 lawyers
 - 7 active or voluntarily retired judges
 - 4 lay people

- 3 year terms
 - maximum of 3 terms
 - appointed by Supreme Court

- Exclusive jurisdiction over grievances against lawyers and judges

- Proceedings with regard to mental illness or substance abuse

- Meet at least six times/year

COMPLAINTS BROUGHT BY ODC OR CERTIFIED GRIEVANCE COMMITTEES (CGC)

Disciplinary counsel

- 4 year term, appointed by Board with approval of Court
- Hires assistants and staff – essentially a law office

Certified grievance committees (maximum of 1 per county)

- Certified by the Board
- Can investigate/ prosecute grievance against local lawyer or local misconduct
- Also referrals due to conflict by ODC

OSBA and ODC only can prosecute Judges

GRIEVANCES AND FORMAL COMPLAINTS

STATISTICS

- 4,200 grievances per year
- 2,600-2,700 through ODC
- 60% dismissed on intake
- 40% opened for investigation
- 40-60 result in formal complaints
- Percentages similar for CGC

GRIEVANCE PROCESS

- A. Letter of Inquiry (LOI)
- B. Investigation
- C. Letter of Dismissal or Notice of Intent
- D. Probable Cause Stage
- E. Formal Proceeding

A.) LETTER OF INQUIRY

- Includes copy of grievance
- Written response within 2 weeks (may extend)
- Failure to respond—not a good idea
- Lawyers and judges must cooperate

B.) INVESTIGATION

- Response from attorney/judge
- Response may be provided to grievant
- Investigators
- Subpoena power
- Witness interviews

INVESTIGATION

➤ Time limitations

- Extensions beyond 150 days for “good cause”
- Beyond 1 year = unreasonable delay
- Not jurisdictional

➤ To Dismiss or Not to Dismiss?

- Internal probable cause determination
- If no probable cause, closing letter to grievant

C.) LETTER OF DISMISSAL

- Limited appeal within 14 days
- ODC has 30 days to review for abuse of discretion or error of law

D.) PROBABLE CAUSE STAGE

- Proposed complaint provided to respondent at least 14 days notice
- Respondent may oppose proposed complaint – not a traditional answer
- Complaint, response, and a summary of investigation are submitted to a PC Panel

PROBABLE CAUSE

- 3-member panel appointed by Board (2 panels)
- Confidentiality preserved
- Standard: substantial, credible evidence
- If no probable cause found, dismissed and complaint remains confidential
- Partial dismissals
- If probable cause found-certified and public

CONFIDENTIALITY

Prior to probable cause – confidential unless waived by Respondent

Except:

- Referral OLAP for substance abuse allegations
- Referral to state or federal law enforcement where criminal activity uncovered
- Share information between ODC and Certified Grievance Committees or other disciplinary authorities
- All investigatory materials submitted with the complaint are confidential and remain so if complaint is dismissed
- If Probable Cause – Summary of Investigation remains confidential, all other materials are discoverable

E.) POST-PROBABLE CAUSE PROCEEDINGS

- Certified complaint filed
- Attorney or Judge must file an answer-20 days
- If no answer, Board initiates default proceedings:
 - Notice of Intent to Respondent
 - 30 days to respond
 - If no response, board certifies default to Court
 - Show cause order from Court
 - Interim default suspension; indefinite suspension

CERTIFIED COMPLAINT

- Answer filed—director assigns a 3-member panel
- Prehearing phone conference
- Discovery
- Hearing within 150 days
- Amended complaint, leave required; no separate probable cause determination on amended complaint
- Encouraged to stipulate to facts

HEARING

- Formal hearing
- Rules of evidence apply
- Relator bears burden of proof-clear and convincing evidence
- Four primary issues
 - Facts
 - Rule Violations
 - Aggravating and Mitigating Factors
 - Sanction

HEARING (CONT.)

- Panel often questions respondent
- Panel may dismiss or recommend finding of discipline
- Panel prepares written report to the full Board
- Full board deliberates, votes, and issues findings of fact, conclusions of law, and recommended sanction/dismissal

SANCTIONS

- Public Reprimand
- Term suspensions 6 months to 2 years (subject to stay in whole or part)
- Indefinite suspension (have to apply for reinstatement)
- Disbarment – no readmission
- Resignation with discipline pending – no readmission

WHAT INFLUENCES A SANCTION

Aggravating Factors:

- Prior discipline (includes CLE and registration)
- Dishonest or selfish motive
- Pattern of misconduct
- Multiple offenses
- Lack of cooperation
- False statements/deceptive practices during disciplinary process
- Refusal to acknowledge wrongful nature of conduct
- Vulnerability of victim
- Failure to make restitution

WHAT INFLUENCES A SANCTION

Mitigating Factors:

- No prior discipline
- Absence of dishonest or selfish motive
- Restitution or rectify misconduct
- Full and free disclosure during process
- Character and reputation
- Imposition of other penalties or sanctions
- Existence of a Disorder

WHAT INFLUENCES A SANCTION

- Disorder (defined in Gov. Bar R. V, Section 35)
- Four requirements for disorder to be considered in mitigation:
 - *Diagnosis* – qualified health care professional
 - *Causation* – disorder contributed to misconduct
 - *Treatment* – sustained period of successful treatment (mental disorder) or completion of an approved treatment program (substance use disorder)
 - *Prognosis* – opinion that attorney is able to return to the competent, ethical professional practice of law

SUPREME COURT OF OHIO

- If board recommends discipline or dismissal, the Supreme Court issues order to show cause (except consent to discipline)
- Parties may object to the Board's report and recommendation
- Brief and argument before the Supreme Court
- Supreme Court not bound by Board

DISPOSITION TIMES

- ODC/CGC – investigation up to one year
- Board – average 8-9 months (includes service)
- Supreme Court – approximately 8-10 months; longer if objections and oral argument

IMPAIRMENT SUSPENSION

- The Board shall certify a complaint to Supreme Court if allegation of mental illness that substantially impairs the ability of respondent to practice – supported by adjudication of mental illness
- The Board shall certify a complaint to Supreme Court - allegation of substance abuse that substantially impairs ability of respondent to practice – adjudication pursuant to R.C. 5119.93 (petition in Probate Court)
- Board may order medical, psychological or psychiatric exam – if there is a professional finding of impairment, Supreme Court may suspend

INTERIM FELONY CONVICTION/ DEFAULT UNDER CHILD SUPPORT ORDER

- Conviction of felony or equivalent offence under state or federal law
- Final and enforceable determination pursuant to R.C. 3123 of default
- A certified copy of entry of conviction or determination of default is conclusive evidence
- No disciplinary hearing until all appeals exhausted

INTERIM REMEDIAL SUSPENSION

If substantial, credible evidence of violation of Code of Judicial Conduct or Rules of Professional Conduct and that respondent poses substantial threat of serious harm to public, motion for interim remedial suspension to be filed, notice given to respondent and opportunity to respond

RECIPROCAL DISCIPLINE

- Within 30 days of issuance of a disciplinary order in another jurisdiction, written notice to ODC and clerk of Supreme Court
- A final adjudication in another jurisdiction is conclusive evidence of misconduct for Ohio discipline
- Enhanced sanction for failing to report discipline in another jurisdiction

CONSENT TO DISCIPLINE

- For a sanction less than indefinite suspension
- 60 days after appointment of hearing panel – one 30 day extension
- Admission of misconduct alleged, aggravating and mitigating factors, sanction and case law supporting sanction
- Supported by respondent's affidavit
- Final decision by Supreme Court
- Rejected agreement not admissible

RECENT CASE LAW