

THE MILLER BECKER SEMINAR 2020



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THE UNIVERSITY OF AKRON SCHOOL OF LAW
JOSEPH G. MILLER & WILLIAM C. BECKER
CENTER FOR PROFESSIONAL RESPONSIBILITY

John P. Sahl, Faculty Director

ACKNOWLEDGMENTS

The University of Akron gratefully acknowledges attorney Joseph G. Miller, who established The Joseph G. Miller Center for Professional Responsibility at The University of Akron School of Law in 1993. The Center is a nonprofit national center devoted to serving the legal profession and the judiciary. Joseph Miller's generous support has allowed the Institute to achieve the goals Joseph envisioned when forming the Institute.

Joseph Miller and William Becker were distinguished lawyers, public servants, and community leaders. Both were highly respected in the legal community. Mr. Miller was a litigator specializing in Family Law and Land Use Development Law, and Mr. Becker was General Counsel and Vice President of BFGoodrich Chemical Group and Professor/Associate Dean/Chair of various committees at Akron Law. Their close friendship and shared interest in the growing fields of Professional Responsibility and Ethics led to Mr. Miller asking Mr. Becker to serve as Founding Director of the Institute.

Mr. Miller practiced law in the Akron community for 44 years. He chaired the Akron Bar Association's Committee on Unauthorized Practice of Law, as well as the Ethics and Professional Responsibility Committee. He was active on the Ohio State Bar Association Ethics Committee, and chaired its Opinions and Regional subcommittees. He passed away in 2005.

Mr. Becker had a long career as corporate counsel with BFGoodrich Chemical Group, culminating in his service as general counsel and vice president. He then joined The University of Akron School of Law as a Professor and later served as Associate Dean. He was active for many years on the Ohio State Bar Association's Ethics Committee, serving as vice chair. He also served as bar counsel to the Akron Bar Association. Even before the founding of the Institute, he was a respected and sought after speaker on lawyer ethics subjects. Mr. Becker passed away in 2003.

Upon Mr. Becker's death, Joseph G. Miller sought to recognize the valuable contributions of Mr. Becker and directed that the Center be renamed to include the name of his longtime friend and colleague, leading to its current designation as the Joseph G. Miller and William C. Becker Center for Professional Responsibility. Thanks to their legacy, we have learned much from them and continue to benefit from their many contributions.

**SEMINAR
AGENDA**

MILLER-BECKER SEMINAR AGENDA
Friday, October 23, 2020
Via Go to Webinar Remote Teleconferencing Software

8:55 – 9:00 a.m.	Welcome <ul style="list-style-type: none">➤ Board of Professional Conduct
9:00 – 10:15 a.m.	Is it Cognitive Impairment? Identifying Signs & Symptoms Among Ohio’s Aging Lawyers <ul style="list-style-type: none">➤ Dr. Douglas Scharre, MD
10:15 – 10:30 a.m.	Break
10:30 – 11:45 a.m.	Encountering Lawyers with Diminished Capacity <ul style="list-style-type: none">➤ Alvin E. Mathews, Jr.➤ Dr. Douglas Scharre, MD➤ Megan Snyder➤ Heather M. Zirke (moderator)
11:30 a.m.–12:15 p.m.	Break
12:15 – 2:00 p.m.	Stipulations: The Good, the Bad, & the Ugly <ul style="list-style-type: none">➤ Joseph M. Caligiuri➤ George D. Jonson➤ Lia J. Meehan➤ Peggy J. Schmitz➤ David Comstock (moderator)
2:00 – 2:15 p.m.	Break
2:15 – 3:30 p.m.	Case Law and Rule Update <ul style="list-style-type: none">➤ Hon. D. Chris Cook➤ Richard A. Dove➤ Kristi R. McAnaul➤ Audrey Varwig➤ D. Allan Asbury (moderator)
3:30 – 4:30 p.m.	Disciplinary Process Overview (Optional) <ul style="list-style-type: none">➤ Joseph M. Caligiuri➤ Richard A. Dove
4:30 p.m.	Conclusion

CLE Credit—5.5 for the main program; 6.5 for those attending the optional process overview.

**IS IT COGNITIVE
IMPAIRMENT?**

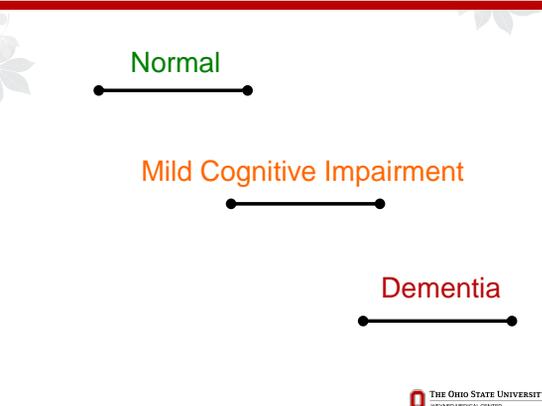


Improving People's Lives Through Innovations in Personalized Health Care

Identifying Cognitive Impairment and Diminished Capacity

Douglas W. Scharre, MD
10/23/2020

THE OHIO STATE UNIVERSITY
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Normal

Mild Cognitive Impairment

Dementia

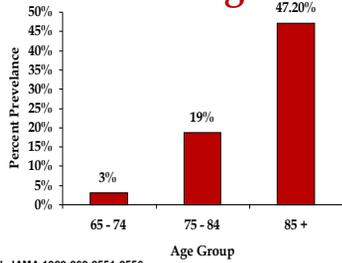
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Dementia Definition

- Syndrome of acquired persistent intellectual impairment
- Persistent deficits in at least three of the following:
 - memory
 - language
 - visuospatial
 - personality or emotional state
 - cognition
- Resulting in impairment in Activities of Daily Living (ADL)
- Mild Cognitive Impairment (MCI): As above except mostly intact ADLs

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Prevalence of Dementia Increases with Age



Evans, et al. JAMA 1989;262:2551-2556



When to see the Doctor?

- Go to Primary Care Physician (PCP) as soon as cognitive changes noticed
- Cognitive screening: start at age 65 (Medicare Annual Wellness Visit)
- Seek specialist if PCP ignores complaints, rapid changes, young age of onset, or behavioral issues
- Start treatments as soon as symptoms begin, delay = faster brain damage; cognitive and functional loss



Memory

- **Normal** – Occasionally misplace items or briefly forget an event; memory helped with clues
- **MCI or early dementia** – misplace items frequently; completely forget an event; repeating questions; memory not helped with clues



Language

- **Normal** – Trouble recalling names of famous people, book titles, movie titles; occasionally hunting for a word
- **MCI or early dementia** – Frequently hunting for words; can't recall exact name of objects; poor word list generation



Visuospatial Skills

- **Normal** – Occasionally get turned around only in unfamiliar locations; rarely have to hunt for car in parking lots
- **MCI and early dementia** – May get lost in familiar places; gets turned around coming out of a restroom; difficulty in copying a cube or drawing a clock



Personality/Emotional State

- **Normal** – No change in personality; occasional short-lived anxiety or depression
- **MCI and early dementia** – disengaged, apathetic, irritable, or longer lasting anxiety or depression

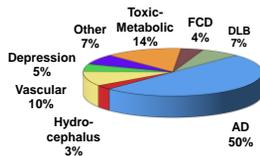


Other Cognitive Symptoms

- **Normal** – Pretty close with date or day; arithmetic correct with pen and paper; planning and organization skills intact; good insight and judgment
- **MCI and early dementia** – Disorientation with date or day; trouble calculating with pen and paper, difficulty planning for an event or trip; impaired insight and judgment



Prevalence of Dementia Syndromes



AD = Alzheimer's disease; DLB = Dementia with Lewy bodies; FCD = Focal cortical degeneration



Risk Factors

- Age
- Family history
- Down's syndrome
- Apolipoprotein E ε4
- Female gender
- Head trauma
- Hypertension
- Cardiovascular disease
- Cerebrovascular disease
- Hyperlipidemia

Andersen K et al. *Neurology*. 1999;53:1992-1997



Steps in Differential Diagnosis

- History
- Physical Exam
- Mental Status Exam
- Behavioral and Psychiatric symptoms
- Laboratory Evaluations
- Neuroimaging



History

- Onset
- Clinical course
- Past medical history
- Psychiatric illness
- Medications
- Alcohol
- Sleep Apnea
- Family history



Physical Examination

- Systemic illness
- Endocrine dysfunction
- Neurologic focal findings
- Movement disorders
- Gait apraxia and incontinence (classic for normal pressure hydrocephalus)



Mental Status Exam

- Attention
- Language
- Memory
- Visuospatial skills
- Abstraction and calculations
- Judgment and executive fxn
- Personality and emotional state



Cortical vs Subcortical

Speech

- **Cortical:** Normal, Stereotypy
- **Subcortical:** Hypophonic, dysarthric

Language

- **Cortical:** Anomia, aphasia
- **Subcortical:** Normal



Cortical vs Subcortical

Memory

- **Cortical:** Amnesia
- **Subcortical:** Retrieval deficit (forgetful)

Cognition

- **Cortical:** Acalculia, poor judgment, impaired abstraction
- **Subcortical:** Slow processing speed, dilapidated



Cortical vs Subcortical

Executive

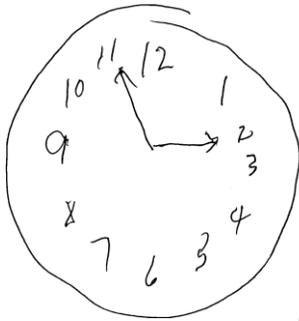
- **Cortical:** Impaired sequencing, apraxia, poor judgment & insight, ↓ verbal fluency
- **Subcortical:** Similar only if frontal-subcortical nuclei circuits involved

Visuospatial

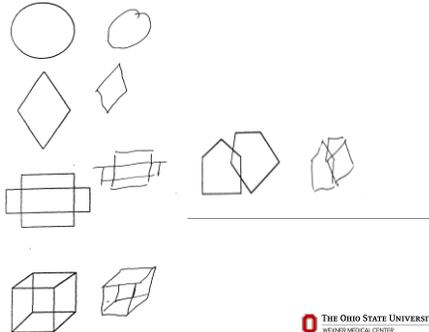
- **Cortical:** Abnormal orientation and constructions
- **Subcortical:** Abnormal constructions



Clock Draw Test



Construction Tests



The Problems

- Individuals with cognitive impairment are **identified too late**
- Need to **“start the conversation”** regarding cognitive changes much earlier with the primary care physicians
- Need practical tools to assess cognition
- Need better **treatments** for Alzheimer’s disease and other dementia conditions



Importance of Early Diagnosis of MCI and Dementia

- Plaques possibly start 20 years before clinical symptoms of AD
- 16 million projected to have AD by 2050
- Current AD meds work better if started earlier
- Disease modifying agents are coming
- Preventing or delaying AD could save billions of dollars and lead to improved quality of life for patients and families



Barriers to Early Diagnosis of MCI and Dementia

- Patients with MCI and early dementia have impaired insight
- First present to the doctor an average of 3.5 years after cognitive symptoms start
- Physicians may not notice subtle cognitive deficits in routine office visits
- Little reimbursement for cognitive screens
- Often too much time or personnel resources required to administer testing

Barker WW et al. Alzheimer Dis Assoc Disord 2005;19:1-7



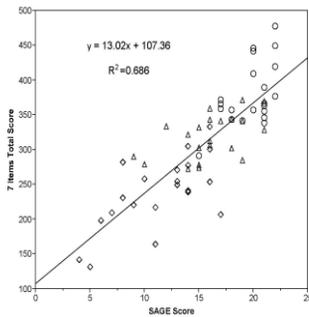
Self-Administered Gerocognitive Exam (SAGE)

sagetest.osu.edu

- ❖ Brief ≈ 10-15 minutes, pen and paper
- ❖ Unique: Self-Administered
- ❖ Not requiring personnel time or equipment & easily incorporated in any setting: clinic, home, community, rural, minorities and underserved
- ❖ 20 seconds to score
- ❖ Four distinct, equivalent forms
- ❖ Can rapidly screen large numbers of individuals
- ❖ Designed to detect cognitive impairment including MCI and early dementia



SAGE: Validity Against Neuropsychologic Tests



R=0.84

Scharre et al.
Alzheimer Dis Assoc
Disord 2010;24:64-71
at sagetest.osu.edu



SAGE Scores

- 17-22: Very likely to be normal: no further evaluation
- 15-16: Likely to have MCI: staged screening evaluation recommended
- 0-14: Likely to have a dementia condition: staged screening evaluation recommended



Dementia Related Behaviors

- Poor insight, apathy
- 70% - delusions of theft, harm, unwelcome visitors
- 60% - irritability, suspiciousness, agitation, aggression
- 45% - restlessness or wandering
- 40% - sleep disturbance
- 40% - dysphoria



Laboratory Evaluation

Recommended for all dementias

- CBC
- Electrolytes, calcium, glucose, BUN, creatinine, LFT
- B12, folate
- TSH, T4
- FTA



Optional Evaluations

Consider for rapidly evolving dementias

- Sed rate, inflammatory markers
- HIV, Lyme
- CXR, EKG
- Urinalysis
- Assays for heavy metals, toxins
- LP
- EEG

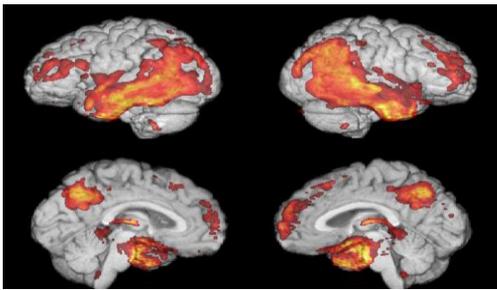


Neuroimaging

- **CT or MRI** - neoplasms, abscesses, infarctions, white matter diseases, hydrocephalus, and subdural hematomas
- **SPECT or PET** - degenerative dementias



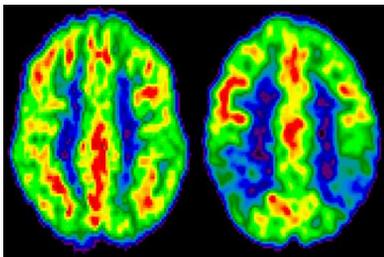
Gray Matter Reductions in AD Using Voxel Based Morphometry



Alexander GE et al., ADNI MRI Core Team, 2007



Typical AD PET Scan



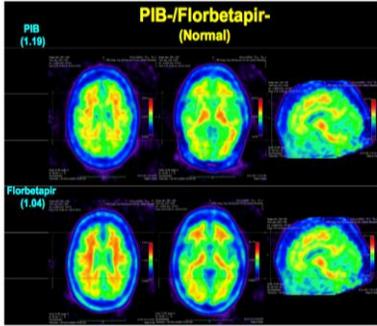
Normal Brain

AD Brain

Provided courtesy of M. Mega, MD, PhD, Department of Neurology, UCLA School of Medicine.



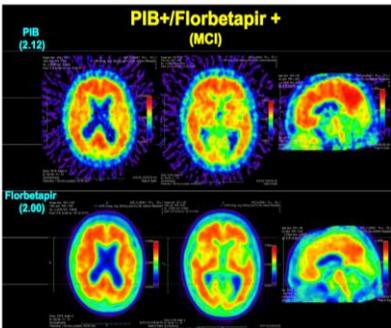
Amyloid PET Imaging



Jagust W. et al. ADNI-GO PET Core Team, 2011

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Amyloid PET Imaging

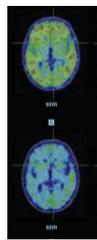
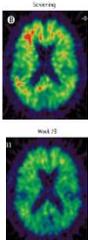


Jagust W. et al. ADNI-GO PET Core Team, 2011

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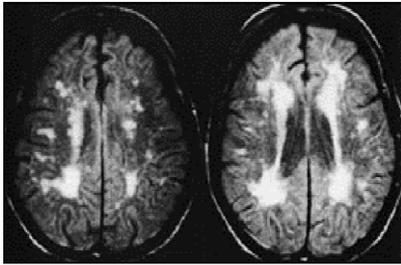
Amyloid PET to show target engagement

- Bapineuzumab
- Gantenerumab



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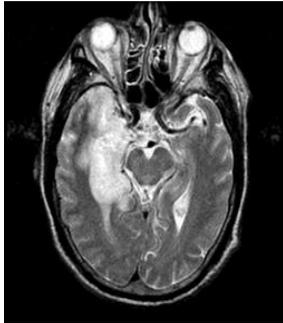
Subcortical Vascular Dementia



Sachdev et al., Medical Journal of Australia 1999; 170: 81-85



Herpes Simplex Encephalitis



Dementia Type Differential Diagnosis

- Dementia syndromes fit specific patterns
- **History:** Onset (acute, subacute, insidious), Course (stepwise, progressive, static)
- **Exam:** Normal, apraxia only, movement / tone / gait abnormalities
- **Mental status:** Cortical, subcortical, mixed
- Laboratory and imaging also help to differentiate these conditions
- Never accept a diagnosis of dementia – ask the doctor to tell you the type of dementia



Competence versus Capacity

- Competence: referring to global inability to make personal decisions; determined by a judge
- Capacity: task specific; determined by physicians
- You can have the capacity to make some decisions but not others
- Could have capacity to choose a Power of Attorney but not the capacity to understand a complex financial arrangement (complex will or trust documents)
- Could have the capacity to make decisions on what shoes to purchase but not the capacity to drive to the store



Decision Making Capacity

- Sliding scale: the more important or irreversible the consequences of a decision, the higher the standard a person with cognitive impairment should be held
- Dynamic: as mental status fluctuates or changes, so does the decision making capacity; need to re-evaluate decision making capacity each time a decision is being made



Assessing Capacity for Procedures or Studies



Assessing Capacity

- First determine capacity for what...
- Provide the individual with sufficient information to understand their situation, the intervention (risks and benefits), alternative interventions (risks and benefits; including no intervention), and the recommendations
- Environmental and psychosocial stressors, depressive symptoms, delirium should be addressed and reduced/optimized prior to capacity assessment
- More than one sitting may be needed to provide the fairest evaluation



Assessing Capacity

- Individual must be able to rephrase the information in their own words
- If misunderstood, rephrase the information to them as many times as needed to maximize their understanding; Individual must be able to understand the relevant information
- Individual must be able to communicate a choice and exhibit reasonable stability of that choice
- Individual must appreciate the implications of their situation and apply it to themselves



Assessing Capacity

- Individual must be able to manipulate the information rationally and reach conclusions that are logically consistent with the premises
- Instruments available to measure decision making capacity: MacArthur Competence Assessment Tool for Treatment (MacCAT-T)
- Expert opinion using specific legal standards
- Refusing to participate in capacity assessment does not mean they lack capacity



Surrogate Decision Making

- Often a proxy decision maker is appointed without legal proceedings if lack of capacity is determined
- Could be a designated health care power of attorney (previously decided)
- In absence of this, state law dictates a hierarchy or people to serve as a surrogate
- Courts can appoint a guardian



Procedures to Evaluate Older Physicians for Recredentialing



Procedure at Yale

- Neurologic and ophthalmologic evaluation for all physicians 70 or older
- Cognitive screening battery (50-90 minutes; testing executive, memory, visuospatial, and language domains) with performance based on task specific privileges
- Results reported to committee with normative standards including against peers
- Concerns reviewed with section chief/Chair
- Determination made by committee
- Passed: Re-screened every 1-2 years depending
- Failed: Sent for comprehensive evaluation



Procedure at Yale

- Restrictions to practice determined: proctored settings, reduced practice, limited procedures
- Results of 121: 57% 2 years reappointment, 24.1% 1 year reappointment, 5% comprehensive assessment, 2.5% resigned
- 13% found to have impaired cognition and restrictions to practice (half over 80 years)



Procedure at OSU

- Individuals referred to Practitioner Health Committee if reported to have cognitive or behavioral issues
- After meeting with individual and section chief/Chair, decision made to gather further information, send for comprehensive evaluation, or return to normal duties
- If further evaluation performed, committee meets again to determine return to duty, evaluate again in so long a time, restrictions to practice, or termination from medical staff



Summary Other Practices

- Vary tremendously
- Very challenging
- Peer review only in some places
- Only for cause review in some places
- Suggest to have multi-step process
- Multiple sources of performance information
- Include cognitive and functional tests appropriate to their duties
- Clinical observations for 2-5 days, chart reviews, knowledge review, clinical skills review
- Decisions made by those in the same practice





OSU Memory Disorders Research Center

OSU Memory Disorders Research Center
Fitting the Pieces Together

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**ENCOUNTERING
LAWYERS WITH
DIMINISHED CAPACITY**

Best Practices in Assessing Aging Physicians for Professional Competency

Jeffrey L. Saver, MD

The unprecedented number and proportion of aging physicians in the workforce in both the United States and the world is a unique challenge of the current medical era. Fully 43% of all US physicians are aged 55 years or older, including 61% of



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Related article page 179

psychiatrists, 52% of radiologists, 46% of general surgeons, and 44% of internists.¹ Moreover, approximately 15% of practicing US physicians are older than 65 years, tripling from 23 000 in 1980 to 73 000 in 2012-2016.² Every year, 20 000 more US physicians turn 65 years of age, and, even though half retire by age 65, many continue practicing for years and decades more. Indeed, US policy makers are counting on these older physicians to do so to help mitigate the nation's growing physician shortage. Currently, an estimated 50 million to 70 million US office visits and 11 million to 20 million hospitalizations each year are overseen by physicians older than 65 years.^{3,4}

Although physicians may be more resilient than other individuals against the physical and cognitive infirmities of age, all nonetheless eventually succumb to diseases of body and brain. Aging clinicians can bring unique intellectual advantages to practice. "Crystallized intelligence," the ability to rapidly draw on extensive educationally and experientially acquired knowledge and skills, increases through 40 to 70 years of age.⁵ But "fluid intelligence," including processing speed and solving novel problems, peaks between age 20 and 40 years and declines thereafter. In addition, apart from normal cognitive aging, Alzheimer disease, brain vascular disease, and other pathologic conditions compromise increasing numbers of individuals as they age, while often simultaneously blunting their awareness of their cognitive limitations.

Data regarding physician age and patient outcomes in clinical practice are both reassuring and alarming. In a systematic review of the relationship between health care quality and years in practice, 15 (24%) of 62 studies (that included more than 33 000 physicians) reported comparable or better performance of older compared with younger physicians, but 32 studies (52%) found that late-career clinicians had reduced clinical knowledge, less adherence to treatment guidelines, and lower scores on process quality measures for diagnosis, screening, and prevention.⁶ In a recent analysis of 736 537 hospitalizations of Medicare beneficiaries managed by 18 854 hospitalist physicians (median physician age, 41 years), there was no association between physician age and 30-day patient mortality with care provided by older (≥ 60 years) physicians with high-volume practices (≥ 201 admissions per year; one-third of aging practitioners), but higher patient mortality was ob-

served with care provided by older physicians with low-volume practices.⁷

Because of this increase in the aging physician population, along with concerns regarding potential decrements in physician capabilities, development of testing methods and regulatory frameworks to assess late-career practitioners for fitness to practice is an important policy priority confronting medical organizations at all levels: individual practices, hospital medical staffs, integrated health systems, medical societies, state medical boards, and national policy makers. Recent years have seen substantial progress but also controversy and setbacks. For instance, MicroCog, a 1-hour computerized test that assesses 5 cognitive domains of attention/mental control, memory, reasoning/calculation, spatial processing, and reaction time, was developed in 1993 by the Risk Management Foundation of Harvard Medical School and has been adopted by several health systems.⁸ But skeptics have criticized its absence of actual medical content and relevance to actual physician practice, leading at least 1 state legislature (Utah) to ban and then temper its use. Stanford University withdrew cognitive screening as a component of its late-career practitioner policy in response to faculty protest, but intensified mandatory peer review.⁹

In this issue of *JAMA*, Cooney and Balczak report a performance improvement project at Yale New Haven Hospital that is an important and helpful contribution to this ongoing national and international conversation.¹⁰ The Medical Executive Committee established a policy requiring neuropsychological and ophthalmological examination of all applicants for reappointment to the medical staff aged 70 years or older. The authors have declined to describe the neuropsychological screening tests used, a limitation of the report, precluding detailed appraisal of appropriateness and comparison with other testing batteries and raising concern that test selection was insufficiently attentive to the need to choose assessments that remain valid even when known by name by the clinicians who were tested (as any generalizable testing approach requires wide communication of test components). However, broad description of the testing suggests that the 50- to 90-minute battery included tests likely similar to MicroCog and other standard neuropsychological evaluations, evaluating domains of attention/concentration, psychomotor speed, language, visuospatial function, memory, and executive function.

A key study finding is that among the 141 tested clinicians, 18 (12.7%) were deemed to have sufficiently severe cognitive difficulties to preclude full recertification (every 2 years) and either retired ($n = 6$) or were limited to practicing in a proctored setting ($n = 12$). This delineation of the frequency of substantial cognitive impairments among

consecutive older physicians in good standing who were applying for recertification is an important, novel contribution. Prior studies have found that among 294 physicians referred to medical boards for concerns regarding deficient practice, cognitive impairments were present in 24% to 26%.¹¹ However, few studies have characterized the frequency of substantial cognitive impairments among consecutive older physicians and other practitioners in good standing applying for recertification. Although the 12.7% rate of compromising cognitive impairment in the Yale New Haven Hospital cohort was higher than the best estimate of underperforming clinicians among physicians of all ages (6%-12%),¹² it seems likely that the degree of performance deficit would have been more severe among these older physicians.

The Yale New Haven Hospital recertification policy had several additional desirable features. Neuropsychological tests were scored against not just age-adjusted norms but also norms of younger age groups (important for functional as opposed to diagnostic assessment). Suboptimal performance on initial screening was not automatically disqualifying but rather triggered additional evaluation steps, potentially including comprehensive neuropsychological testing and final review by a committee including a geriatrician physician, current and immediate past chief medical officers, and the clinician's section or department chair. However, potential limitations included test name confidentiality precluding assessment of whether studies existed showing correlation of impaired performance on the selected neuropsychological tests with dyscompetent medical practice; lack of full transparency (clinicians, their advisors, and their potential caregivers were not allowed to view the neuropsychological testing report); and lack of involvement in decision-making by independent individuals from outside the institution.

Additional potential best practices in assessing late-career practitioners can be found among diverse, thoughtful programs, policies, and reports that have been developed, such as from the American Medical Association Council on Medical Education, the California Public Protection & Physician Health partnership, the American College of Surgeons, and the University of California, San Diego (UCSD) PACE Aging Physician Assessment Program,¹³⁻¹⁷ including

- Neuropsychological batteries should include tests that are empirically, not just theoretically, linked to impaired physician practice.¹¹
- Neuropsychological test sets should include specialty-specific modules, eg, vision/visuospatial cognition for radiology, dermatology, and pathology; fine motor skill/motor

planning for surgery and endovascular work; emotional intelligence/social cognition for psychiatry; and touch/sensory cognition for practices in which physical examination is important.

- When neuropsychological tests give intermediate results or physicians contest findings, a more extensive assessment should be undertaken, including detailed evaluation of actual medical knowledge and clinical performance. The UCSD PACE is a good exemplar, involving 2 to 5 days of clinical observation, medical record evaluation, oral or written medical knowledge examinations, clinical skills simulation, and multisource feedback from physician colleagues, nurses, other staff members, and patients. Final decisions should be reached by a panel including senior clinicians, clinicians with expertise in the practitioner's specialty, and individuals independent of the institution.
- Because reversible causes of late-life cognitive impairment and dementia, although uncommon, exist, programs should include monitored pathways to recertification if recovery is documented.
- Employers and medical societies should provide early, supportive planning programs for retirement, career transition, and encore careers, including consideration of financial needs and centrality of occupational identity, as well as creation of teaching, mentoring/coaching, and administrative opportunities in modified clinical or nonclinical roles.¹⁶
- Physicians should recognize their professional duty to continually assess their own and their colleagues' physical and mental health, to willingly engage in well-designed assessment programs,¹⁴ and to potentially prepare occupational living wills.¹⁸

The topic of aging and continued work has elicited extreme views from historic leaders of US medicine, sometimes surprisingly counter to the general tenor of their writings. More than 160 years ago, Oliver Wendell Holmes, Sr in "The One-Hoss Shay" advanced a utopian vision of fit service until a brief final paroxysm of debilitation; nearly 50 years later, William Osler in "The Fixed Period" contemplated a dystopian vision of unfitness for intellectual work of all aged individuals. Now, facing an unparalleled wave of aging practitioners not anticipated by these forebears, it is imperative that medicine forge a thoughtful path forward—patients deserve nothing less. Nuanced, supportive, evidence-based programs can help ensure that patients are protected from late-career physicians who become affected by cognitive decline and also that they may continue to benefit from physicians with successful cognitive aging and their unique breadth of experience and wisdom.

ARTICLE INFORMATION

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Conflict of Interest Disclosures: None reported.

REFERENCES

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2. Association of American Medical Colleges. *The Complexities of Physician Supply and Demand*:

Projections From 2017 to 2032. Washington, DC: Association of American Medical Colleges; 2019.

3. Centers for Disease Control and Prevention. *Summary Health Statistics: National Health Interview Survey, 2017*. Atlanta, GA: Centers for Disease Control and Prevention; 2018.
4. Centers for Disease Control and Prevention. FastStats: ambulatory care use and physician office visits. <https://www.cdc.gov/nchs/fastats/physician-visits>.

How Well Are You Thinking?

Please complete this form in ink **without** the assistance of others.

Name _____ Date of Birth ____/____/____

How far did you get in school? _____ I am a Man _____ Woman _____

I am Asian _____ Black _____ Hispanic _____ White _____ Other _____

Have you had any problems with memory or thinking? Yes _____ Only Occasionally _____ No _____

Have you had any blood relatives that have had problems with memory or thinking? Yes _____ No _____

Do you have balance problems? Yes _____ No _____

If yes, do you know the cause? Yes (specify reason) _____ No _____

Have you ever had a major stroke? Yes _____ No _____ A minor or mini-stroke? Yes _____ No _____

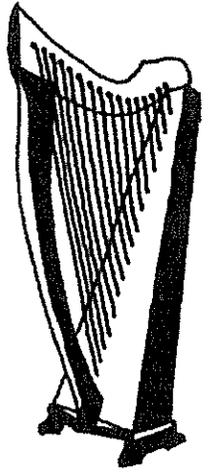
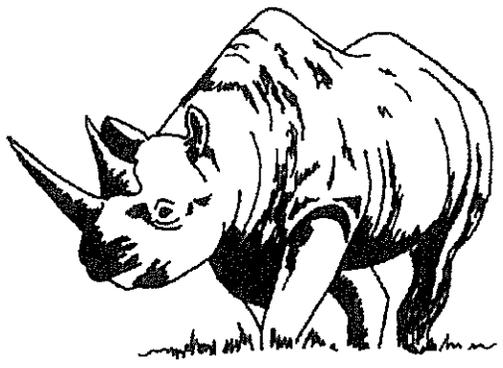
Do you currently feel sad or depressed? Yes _____ Only Occasionally _____ No _____

Have you had any change in your personality? Yes (specify changes) _____ No _____

Do you have more difficulties doing everyday activities due to thinking problems? Yes _____ No _____

1. What is today's date? (from memory – no cheating!) Month _____ Date _____ Year _____

2. Name the following pictures (don't worry about spelling):



Answer these questions:

3. How are a rose and a tulip similar? Write down how they are alike. They both are... what?

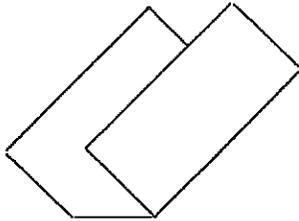
4. How many quarters are in \$6.75 cents? _____

5. You are buying \$3.05 of groceries. How much change would you receive back from a \$5 bill?

6. **Memory Test (memorize these instructions). Do later only after completing this entire test:**

At the bottom of the very last page: Write "I have finished" on the blank line provided

7. **Copy this picture:**



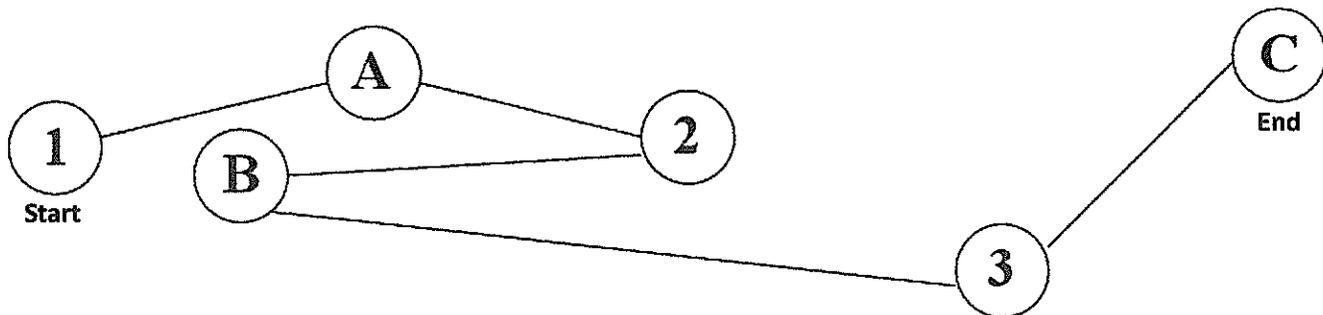
8. **Drawing test**

- Draw a large face of a clock and place in the numbers
- Position the hands for 10 minutes before 11 o'clock
- On your clock, label "L" for the long hand and "S" for the short hand

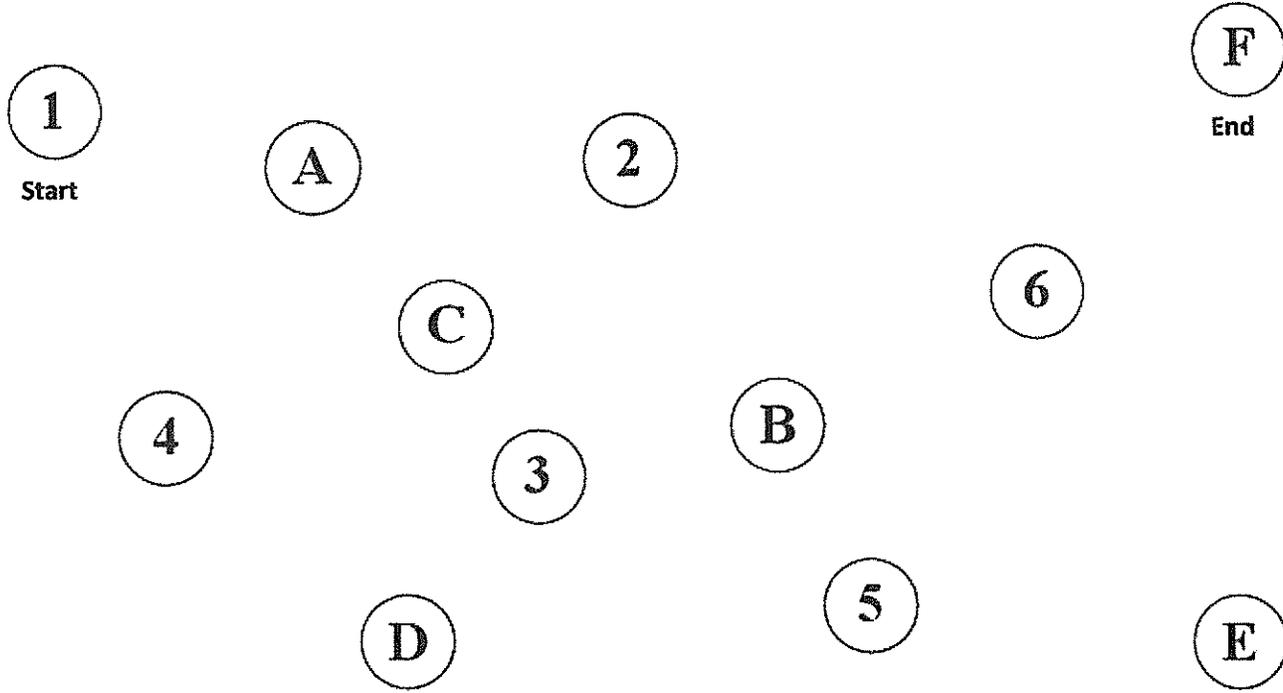
9. Write down the names of 12 different countries located anywhere in the world (don't worry about spelling):

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Review this example (this first one is done for you) then go to question 10 below: Draw a line from one circle to another starting at 1 and alternating numbers and letters (1 to A to 2 to B to 3 to C).

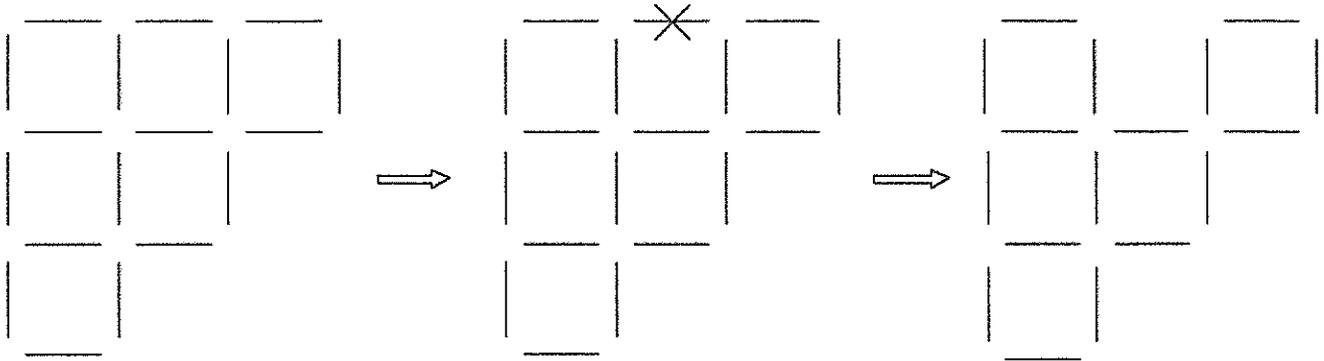


10. Do the following: Draw a line from one circle to another starting at 1 and alternating numbers and letters in order before ending at F (1 to A to 2 to B and so on).



Review this example (this first one is done for you) then answer question 11 below:

- Beginning with 6 squares
- Cross out 1 line (marked with an X)
- Leaving 5 squares
- Each line must be part of a complete square (no extra lines).



6 squares

(Example)

Cross out 1 line

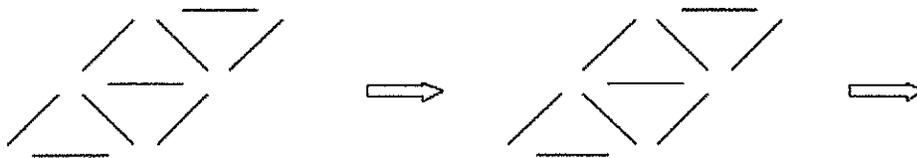
(Example)

5 squares (answer)

(Example)

11. Solve the following problem:

- Beginning with 4 triangles
- Cross out 2 lines (mark with an X)
- Leaving 3 triangles
- Each line must be part of a complete triangle (no extra lines).



4 triangles

Cross out 2 lines

Mark with an X

Draw answer here

3 triangles

12. Are you done? _____

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Retirement or Resignation From the Practice of Law

Rule VI, Section 11 of the Supreme Court Rules for the Government of the Bar of Ohio governs retirement and resignation from the practice of law. The retirement or resignation from practice of law is final and irrevocable once accepted by the Supreme Court of Ohio. An attorney should seek to retire or resign from the practice of law only if the attorney wishes to surrender permanently the ability to practice law in this state. An attorney who wishes to stop practicing law in this state, with the option to resume his or her Ohio practice at a later date, should consider registering for inactive status pursuant to **Gov. Bar R. VI**, Section 5.

Application to Retire or Resign from the Practice of Law

To retire or resign from the practice of law, an attorney must file an **application** with the Supreme Court **Office of Attorney Services**. The application consists of two parts: an affidavit that conforms with the Gov. Bar R. VI, Section 11; and a written waiver that authorizes Disciplinary Counsel to disclose to the Supreme Court otherwise confidential information about any disciplinary grievances pending against the attorney.

Review of Application

After a completed application for retirement or resignation is filed, the Office of Attorney Services will forward the application to the **Office of Disciplinary Counsel**. Disciplinary Counsel will conduct an inquiry to determine if any disciplinary proceedings are pending against the attorney. After completing this inquiry, Disciplinary Counsel will file a confidential report under seal with the Office of Attorney Services. The report will provide information regarding pending disciplinary proceedings, if any, and recommend whether the application to retire or resign should be accepted, denied, or delayed. If Disciplinary Counsel recommends that the application be accepted, the report will indicate whether the attorney should be designated as "permanently retired" or "resigned, with disciplinary action pending." If Disciplinary Counsel recommends that the resignation be denied or delayed, the report will provide reasons for the recommendation.

Action on the Application

Upon receipt of the report from Disciplinary Counsel that recommends either retirement or resignation, the Office of Attorney Services will file the application and confidential report from Disciplinary Counsel with the Clerk of the Supreme Court. The Supreme Court will review the application and confidential report of Disciplinary Counsel before entering an appropriate order.

If the Supreme Court accepts an application as a resignation from the practice of law, the Court will order that the attorney's registration record be marked as "resigned, with disciplinary action pending." The designation "resigned, with disciplinary action pending" alerts the public that, but for the resignation, the attorney could have been subject to disciplinary sanctions. The Court also may order the attorney to be designated as "retired," and if discipline pending, make a designation, deny the application altogether, or defer consideration of the application to a later date.

Inactive Registration Status - An Alternative to Retirement or Resignation

As noted above, the retirement or resignation from the practice of law is final and irrevocable once accepted by the Supreme Court. An attorney may wish to stop practicing law without surrendering his or her law license, thus preserving the ability to resume the practice of law at a later date. In this circumstance, an attorney may wish to consider changing his or her registration status to "inactive," under **Gov. Bar R. VI**, Section 5. Unlike retirement or resignation, registering for inactive status is revocable. An

attorney may qualify for inactive registration status if the attorney is no longer practicing law in Ohio and satisfies the criteria of Gov. Bar R. VI, Section 5. An attorney may register for inactive status by filing an updated certificate of registration. The attorney may later resume the practice of law by filing a new certificate of registration for active registration status and paying the applicable registration fee. An attorney who changes his or her registration from inactive to active also will have specific continuing legal education requirements pursuant to **Gov. Bar R. X**.

Attorneys Who Registered for Retired Status Prior to Sept. 1, 2007

Attorneys who registered for "retired" registration status prior to Sept. 1, 2007 under former Gov. Bar R. VI, Sec. 4 may change their registration status to either active or inactive. However, they will not be permitted to return to retired registration status but instead, will be required to follow the procedures set forth in Gov. Bar R. VI, Sec. 11, to retire from the practice of law. Additional action does not need to be taken by attorneys who were registered as retired prior to Sept. 1, 2007 and desire for their registration status to remain unchanged.

Changes in registration status may be made by filing a certificate of registration with the Office of Attorney Services.

Questions regarding registration statuses or the process of retiring or resigning from practice of law may be directed to the Office of Attorney Services by telephone at 614.387.9320 or by e-mail addressed to **attyreg@sc.ohio.gov**.

 PDF files may be viewed, printed, and searched using the free **Acrobat®** Reader. Acrobat Reader is a trademark of Adobe Systems Incorporated.

ENCOUNTERING LAWYERS WITH DIMINISHED CAPACITY

Alvin E. Mathews, Jr., Ulmer & Berne
 Dr. Douglas Scharre, MD, OSU Center for Cognitive and Memory Disorders
 Megan Snyder, Ohio Lawyers Assistance Program
 Heather Zirke, Cleveland Metropolitan Bar Association (moderator)

**Polling
Question
1**

For how many minutes were you asleep during Dr. Scharre's presentation?

A. Five minutes

B. Fifteen minutes

C. What presentation?

D. I missed my nap because I can't figure out how to get Zoom to work properly.

HYPOTHETICAL – PART I

A lawyer in solo practice, Ms. Brown, who is well-known and well-respected in her small community is beginning to have problems with her cases. In the past six months, court staff and clients have observed the following:

- Ms. Brown has missed multiple pretrial hearings, including several Zoom hearings.
- When she does appear in court, Ms. Brown gets easily confused and sometimes forgets which matter she is appearing on.
- When her clients complain that she is unprepared for court, she becomes angry and argumentative which is out of character for her.
- When court staff ask about her health, Ms. Brown says she is just stressed about her busy practice.

**Polling
Question
#2**

If you are bar counsel and you receive a call from court staff about Ms. Brown's behavior, what do you do?

- A. Do nothing. Wait until someone files a grievance.
- B. Call Ms. Brown and ask if she is OK.
- C. Open a file and make a formal inquiry.

HYPOTHETICAL – PART 2

After the bar association sends a letter to Ms. Brown asking for her response, bar counsel receives an angry phone call from Ms. Brown's son who is also her paralegal. The son accuses the bar association of trying to put his mother out of business and says he is calling a lawyer. Ms. Brown's son sends an email to Alvin Mathews with a copy of the letter from the bar association and says he wants help making the bar association go away.

**Polling
Question
#3**

If you are Alvin Mathews, what do you do?

- A. Turn the case down because dealing with the son is going to be too much trouble.
- B. Meet with the son via Zoom and submit a response to the bar association.
- C. Schedule a meeting with Ms. Brown.

HYPOTHETICAL – PART 3

During the meeting with Ms. Brown and her son, the following happens:

- Ms. Brown’s son appears for the meeting with his mother but without a face mask and refuses to wear one despite requests by Alvin’s receptionist. The son also insists his mother does not need a face mask.
- Ms. Brown’s son refuses to fill out required COVID paperwork for in-person meetings – regarding his and his mother’s symptoms and disclosure of recent out of state travel.
- The son initially refuses but ultimately agrees to have his and his mother’s temperature checked by the receptionist.

HYPOTHETICAL – PART 3 (continued)

- During the meeting, Ms. Brown says she is somewhat forgetful but denies it is having a negative impact on her practice.
- Alvin learns Ms. Brown is 78 years old.
- Ms. Brown says her practice is the sole source of income for herself and her husband and their son who is the paralegal for the office.
- Alvin learns she has 50 active cases.
- Ms. Brown says her knowledge and use of technology is limited. She has an email address but does not check it. She has some understanding of how Zoom works but she has never used it.
- The son says other grievances were filed against Ms. Brown but he was able to resolve them by refunding fees to the clients.
- Before the meeting is over, Ms. Brown forgets why she is meeting with Alvin.

Polling Question #4

What should Alvin do?

- A. Take Ms. Brown at her word that she is simply becoming forgetful.
- B. Tell her to wrap up her practice and retire.
- C. Contact OLAP for information about how to get a medical assessment for Ms. Brown.

HYPOTHETICAL – PART 4

After talking with Megan at OLAP, Ms. Brown is persuaded that she should undergo a cognitive assessment. Dr. Scharre meets with Ms. Brown for the assessment.

**Polling
Question
#5**

What should Dr. Scharre do???

Sorry. No one gets to play doctor today.

HYPOTHETICAL – PART 5

Alvin receives the report from Dr. Scharre that concludes Ms. Brown is experiencing the symptoms of Alzheimer's and that she should wind down her practice as soon as possible.

How should this investigation be resolved?

**STIPULATIONS:
THE GOOD,
THE BAD, AND
THE UGLY**

STIPULATIONS CHECKLIST

Miller-Becker Seminar

October 23, 2020

- ✓ Have you read the prehearing order to determine the deadline to submit stipulations?
- ✓ If you cannot meet the deadline, have you filed a motion requesting additional time to submit the stipulations?
- ✓ Have you read the Board's [prehearing instructions](#)?
- ✓ Before entering into stipulations, have you explained to your client the purpose of the stipulations, and the importance of them?
- ✓ Have you emphasized that the stipulations must be accurate and that your client should not give testimony that differs from the stipulations?
- ✓ Have you included exhibits to support the stipulated facts and rule violations?
- ✓ Have you ensured that all rule violations pled in the complaint are accounted for in the stipulations?
- ✓ Are you aware that you must obtain permission from the panel to dismiss a rule violation via stipulation?
- ✓ Does your stipulation regarding exhibits address authenticity and admissibility?
- ✓ Have you ensured that a character witness who submits a letter in lieu of live testimony has indicated in the letter that he or she is aware of the underlying allegations?

- ✓ If the character letters contain extraneous information, have you redacted those portions?
- ✓ If a character letter is from a judicial officer, is there an accompanying subpoena?
- ✓ Have you obtained the respondent's signature on the stipulations?
- ✓ Have you explained the hearing process to your client or witness?
- ✓ Have you prepared your client to quickly identify and acknowledge the stipulations?
- ✓ Have you prepared your witnesses to testify and explained how the stipulations will be used?
- ✓ Have you advised your client that the panel, board, and court are not bound by a stipulated rule violation or recommended sanction?
- ✓ If there is a joint recommended sanction, have you provided the panel with caselaw to support the recommendation?

**CASE LAW
AND
RULE UPDATE**

Miller Becker
Case Law and Rule Update

Judge Chris Cook (Commissioner) Audrey Varwig (Assistant Disciplinary Counsel), Kristi McAnaul (Board Counsel), Richard A. Dove (Director), D. Allan Asbury (Board Senior Counsel)

Case Law Update

I. Unique Fact Pattern Cases

[Bailey & Bailey](#) (2020)

Sanction: One-year, six months stayed; Public reprimand

Respondent Ronald Bailey was retained to represent a client charged with two counts of sexual imposition and two counts of rape of a child under the age of 13. Four days before trial Bailey filed a motion for continuance because an expert was unavailable to testify. The motion was granted to October 4, 2020. Three days later, Bailey moved for another continuance, explaining that he was traveling the weekend before the trial. The motion was denied. After a series of motions for reconsideration and a continuance, Bailey decided that he would refuse to participate in the trial on the grounds that the court's refusal to appoint an expert and continue the case prevented his client from receiving a fair trial. At trial he announced at sidebar that, "[I] cannot and will not be able nor willing to proceed today." Later at a bench conference, he reiterated his reasons for a continuance, was told the court had already ruled on the motion, and was told to "step back" from the bench but refused. The judge cautioned Bailey that he would be sanctioned for direct contempt if his behavior continued. He later refused to participate, his client was sentenced to 60 months of imprisonment, and the court found Bailey in contempt and imposed \$250 fine and 30 days in jail. Respondent Kenneth Bailey made false statements on Facebook concerning the integrity of the judge and posted several comments under his original post. The local newspaper published most of the Facebook post in an article. Kenneth Bailey later removed the post and emailed the judge in an effort to apologize.

[Begovic](#) (2019)

Sanction: One-year suspension, six months stayed

Respondent was hired shortly after passing the bar exam by suspended lawyer Rodger Moore as a contractor for Moore Business Advisory Group. Respondent's office included signage of "Law Offices of Andrew Green and Rodger Moore" and not the advisory group. Respondent later filed a membership application with the Cincinnati Bar Association and indicated that he worked for "The Moore Law Firm." Despite knowing that Moore was under suspension, Respondent failed to register the relationship with the Office of Disciplinary Counsel. Respondent identified himself on 35 court filings and multiple e-mails to opposing counsel as working for "The Moore Law Firm" or the "Law Offices of Rodger Moore." The majority of Respondent's legal work consisted of collection work for PHI Air Medical, LLC. Moore directly participated in litigating at least some of the PHI Air cases including participating in telephone conferences with opposing counsel and a case-management conference with a court, in which Respondent referred to Moore as his supervisor. Respondent failed to directly interact with PHI Air and did not seek the client's informed consent when required or keep the client reasonably informed. Moore also participated and represented a client during a damages hearing that Respondent was serving as lead counsel. Respondent received a set salary through payments the clients made directly to Moore, but never discussed legal fees with the clients or with Moore. Only Moore handled the fee relationships with clients.

[Hoague](#) (2020)

Sanction: Two-year suspension, no credit for time served

Respondent was retained by the parents of a defendant in a criminal case. At the time, the defendant was represented by a public defender. Respondent orally agreed to undertake the representation for a flat fee of \$10,000. The defendant's parents paid Respondent a \$4,000 retainer at the end of February and in mid-April, Respondent filed a notice of special, limited appearance of cocounsel stating that he would assist the public defender with motions practice and trial preparation. The prosecutor expressed concern that public funds were being used to provide legal representation to the defendant when he also had private counsel. The public defender later filed a motion to appoint Respondent as cocounsel, but Respondent reiterated at hearing that the defendant's family was "trying to make arrangements" to privately retain him. However, the court granted the motion and Respondent never disclosed

that he had been privately retained nor rejected the appointment. At the conclusion of representation Respondent filed with the court a motion for extraordinary fees and requested approval of a \$6,160 fee. He also filed a motion, entry, and certification for appointed-counsel fees in which he certified that he had received no other compensation in connection with the case. He did not disclose that he already had received \$8,000 directly from his client's parents. The court granted the motion and awarded fees of \$5,000. Respondent later received and cashed two more \$500 checks from his client's parents.

[Wilson](#) (2020)

Sanction: Indefinite suspension

In count one Respondent represented a defendant in a felony domestic violence case and offered to make arrangements for the victim who served as his secretary, to leave town. Respondent told his client that he would coordinate her disappearance for a price. He later met with the client and during a recorded conversation requested \$2,000 to make the arrangements. After the meeting, the police arrested Respondent. He plead guilty to telecommunications fraud and was sentenced to one year of community control. In a second count, Respondent was retained to clear a lien on real property. He did not deposit a retainer in his IOLTA, never explained the basis for his fees, and did not attend a mediation conference. In a third count, Respondent was retained to seek custody of children for a couple. While he filed a complaint on the husband's behalf, he did not respond to inquiries about the status. Another custody case was dismissed because it was filed in the wrong county. In a third custody case, a settlement was reached, but Respondent never memorialized the agreement in a court ordered entry. In a representation involving a divorce, Respondent deposited a check representing the 2015 joint marital income-tax refund in his IOLTA. Pursuant to the divorce decree, the refund was to be distributed between the former spouses, but Respondent did not do so before he closed his law practice. He later misappropriated the funds. In a final count, Respondent was hired to represent a husband in a divorce. Both parties agreed to the appointment of a GAL and a deposit was to be filed with the clerk of court. The client paid Respondent the remainder of his fee, and the deposit for the GAL. The funds were not placed in Respondent's IOLTA. He falsely stated to the court that the deposit had already been paid.

[Bishop](#) (2019)

Sanction: Two-year suspension, one year stayed.

Respondent agreed to represent a couple with regard to their estate-planning needs. In October 2013, the clients designated their church as the contingent beneficiary of an annuity contract. But on December 21, 2013 they signed a change-of-beneficiary form that designated Respondent's wife and his sons' Boy Scout troop as contingent beneficiaries of the annuity. The form identified Respondent's wife by her maiden name, though she had not used it for nearly 20 years. The next day, the clients executed wills with Respondent and his wife serving as witnesses. In October 2015, a financial services group sent the clients a letter advising them that they had not designated a primary beneficiary for the annuity. A friend who helped care for the clients saw the letter and attached a copy to a grievance filed with Relator. In response to a letter of inquiry, Respondent did not acknowledge that he was involved in changing the beneficiary designation and stated that neither his wife nor the Boy Scout troop could be named as a beneficiary. When the Relator's committee showed Respondent a copy of the change-of-beneficiary form, he expressed his surprise that his wife's maiden name, address, birthdate, and complete Social Security number and the Boy Scout troop number had been handwritten on the form. He testified that he had no explanation of how that had happened and did not recognize the handwriting as his own. At hearing he testified that he had virtually no recollection of the events surrounding the completion of the form – even though he recalled the events surrounding the contemporaneous execution of the clients' wills.

[Dougherty & Cicero](#) (2019)

Sanction: Two-year suspension, one year stayed; Disbarment

Respondent Dougherty was retained by a client to represent her in two civil matters. He deposited her payment in his personal account and in one case negotiated a settlement without client consent. The same client met with Respondents Dougherty and Cicero – who was under a prior disciplinary suspension, concerning her cases. Cicero was introduced to the client as Dougherty's partner. Dougherty never provided the client with an itemized fee statement. In another matter, Respondents met with prospective clients at the "Chris Cicero Law Building" in which Cicero did most of the talking and gave his analysis and opinion. Neither Respondent notified the clients about Cicero's suspension. In a third count, a former client was arrested for OVI and met Cicero in his office who indicated the charges would be "thrown out" and

quoted a legal fee of \$1,800. On a second arrest for OVI, Cicero answered her call and advised her to refuse a blood test before handing the call to Dougherty. In another count, a client met with the Respondents to discuss his pending criminal cases. Cicero quoted a flat fee for the representation and did not notify the client of his suspension. The fee was not designated as “nonrefundable”, and Dougherty placed the funds in his operating account. In a later motion to withdraw as counsel, Dougherty stated that he was firing his client and divulged confidential information. In a final count, Cicero assisted Dougherty in preparing a defense in a murder case and communicated with Dougherty via text during the trial.

II. Personal Misconduct

[Blauvelt](#) (2020)

Sanction: Two-year stayed suspension

In March 2018, police stopped Respondent’s vehicle for a headlight violation and observed Respondent was naked. No charges were filed. In October 2018, the State Highway Patrol received a report that a motorist was masturbating while driving. The office suspected Respondent was intoxicated and arrested him. Respondent was charged with public indecency and operating a vehicle while under the influence of alcohol or drugs. He received a 30-day jail term for the public indecency charge, was ordered to pay a fine, and serve a one-year term of nonreporting probation. He pleaded guilty to an amended charge of reckless operation of a vehicle, was sentenced to a suspended three-day jail term, ordered to pay a fine, and complete a driver-intervention program. Respondent admitted at hearing that there had been other occasions on which he drove his vehicle while naked but was not detected by authorities.

[Connors](#) (2020)

Sanction: Indefinite suspension

In March 2017, law-enforcement recovered more than 1000 images of child pornography and erotica involving prepubescent females from electronic devices belonging to Respondent. He was later indicted with five fifth-degree felony counts of use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323. The Franklin County Court of Common Pleas accepted Respondent’s guilty plea to one count. He was sentenced to two years of community control and ordered to register as a Tier I sex offender for 15 years. Respondent denied at hearing that the images portrayed children in

sexual acts. He also claimed that he did not knowingly download something he thought was illegal. The Board found that he had continued to download the images even though he knew that doing so was illegal.

[Schwarz](#) (2020)

Sanction: Indefinite suspension

Respondent was convicted of importuning in violation of R.C. 2907.07, a fifth-degree felony. The conviction was based on Respondent's attempted unlawful sexual conduct with a minor. Respondent solicited an undercover law-enforcement officer who was posing as a 15-year-old male. During his disciplinary hearing, Respondent admitted that he had exchanged sexually charged text messages with the law-enforcement officer and also had arranged to meet the person at a restaurant. Respondent was designated a Tier 1 sex offender and sentenced to three years of community control with one year under supervised probation. He was also ordered to undergo a mental-health and sexual-offender evaluation.

[Mitchell](#) (2019)

Sanction: One-year, stayed suspension

Respondent was involved in a two-car crash in Fredericksburg, Virginia on April 29, 2017. He failed to yield the right-of-way and collided with another car. The driver and passenger in the other vehicle were transported to the hospital. Respondent's car was significantly damaged causing his airbags to deploy and he left the scene of the accident. Respondent was apprehended a short time later and cooperated with the investigation. He admitted that he had consumed six beers that evening. A BAC test showed that his blood-alcohol content was 0.12. Respondent was charged in Virginia with leaving the scene of an accident involving injury or death, a fifth-degree felony, and driving while intoxicated, a first-degree misdemeanor. He was sentenced to three years in prison for the felony and 60 days in jail for the misdemeanor but the court suspended both terms and placed him on supervised probation for five years. He was ordered to complete the Virginia Alcohol Safety Action Program, pay a fine and court costs, comply with all terms of his probation, and remain on good behavior.

[Scott](#) (2019)

Sanction: One-year, stayed suspension

Respondent stole multiple items from a Walmart store by duplicating UPC labels for low-cost items and affixing them to more expensive items that he purchased through self-checkout. He paid a total of \$27.35 for items that had an actual value of \$367.21. After he was approached by a store asset-protection associate he was tasered by a police officer outside of the store. After a search it was discovered that he had 100 additional UPC labels. Respondent was charged with misdemeanor counts of theft by deception, possession of criminal tools, and obstructing official business. He pleaded guilty to a third-degree misdemeanor count of criminal mischief. He received a suspended ten-day jail sentence and was ordered to pay a fine of \$185.00.

III. Judicial and Public Official Misconduct

[Goulding](#) (2020)

Sanction: Six-month, stayed suspension

Friends of Respondent contacted him after a daughter's boyfriend was indicted on three second-degree felony counts of illegal use of a minor in a nudity-oriented performance and he was held without bail. Respondent then contacted the Lucas County Pretrial Services Department and confirmed with an officer that the defendant remained in custody. He asked the officer if a public-safety assessment had been performed. After learning that the case had been assigned to another judge on the common pleas court, he ordered the recognizance bond with a no-contact order allowing for the defendant's immediate release. In the interim, the daughter of Respondent's friends had been speaking with the defendant on her cell phone and gave the phone to Respondent who informed the defendant that he had arranged his release. Respondent later sent the defendant's lawyer a text message informing him that he had released the defendant. On a second call, Respondent asked the defendant a series of questions including whether a prior aggravated-menacing conviction had involved the same victim and about the facts underlying the charges pending against him. Respondent left a voicemail for the presiding judge informing him that he had set the bond in the case. However, he did not inform the defendant's lawyer that he had engaged in ex parte communications with the defendant or that he may have learned information that was material to the case. While preparing discovery, the prosecutor listened to the defendant's jail calls and recognized Respondent's

voice. He informed his supervisor and notified Respondent that he would be listed as a state's witness in the case.

[Porzio](#) (2020)

Sanction: Six-month, stayed suspension

Respondent presided over a hearing on a petition and counterpetition for a civil stalking protection order. Both petitioners appeared pro se and testified on their own behalf. At the close of evidence, Respondent requested that the parties exit the courthouse separately and that petitioner Fish leave first. After Fish left the courtroom, Respondent engaged in a 23-minute conversation with petitioner Gerino and his witnesses and repeatedly criticized Fish's credibility. She stated that he was "such a liar," "made himself look like a fool," was "clueless," and acted "like he's 10 years old." She also discussed the evidence and indicated how she intended to decide the matter because neither party had proved its case. Respondent also made offhand and unnecessary comments about the parties' religion and ethnic backgrounds. She used inappropriate slang and profanity regarding Fish's testimony. A few months later, Respondent issued her decision granting petitioner Gerino a five-year civil protection order and denied Fish's counterpetition, despite the fact that she had previously told Gerino that neither party had proved their case.

[Rauzen & Wagner](#) (2020)

Sanction: Six-month, stayed suspension; Public reprimand

Respondent Rauzan was convicted of four misdemeanors for attempted unauthorized use of property in violation of R.C. 2913.04(D) for searching OHLEG for purposes unrelated to his duties as police chief. He resigned as a police chief and surrendered his OPTA certificate. In 2018, Relator received a notice that Rauzan's IOLTA was overdrawn. Relator discovered that Rauzan had been commingling personal funds with client funds and was using his trust account as an operating account. Rauzan and Wagner were later retained by a couple in a potential personal-injury matter and were paid a \$5,000 retainer that Wagner immediately placed in her IOLTA. During the next two weeks she transferred amounts to her operating account and Rauzan's trust account before sufficient legal work had been completed and the fees were earned.

[Gonzalez](#) (2020)

Sanction: Public reprimand

Respondent was a newly appointed judge in Lucas County Common Pleas Court when he was stopped in Findlay by an Ohio State Highway Patrol sergeant for a marked-lanes violation and failing to signal when exiting the highway. The sergeant asked him to step out of the vehicle and sit in the front seat of the cruiser. While in the cruiser, Respondent stated that he was going to tell the sergeant who he was, "... I hate to make this political, and I don't want to go there, but I just got appointed judge in Lucas County by Governor DeWine in March." He continued to impress upon the sergeant that he was not asking for favors, but that the incident would "kill [him]." Another trooper responded and noticed a strong odor of alcohol emanating from Respondent, bloodshot and glassy eyes, droopy eyelids, and that Respondent was slurring his words. Respondent emphasized again that he was a judge in Lucas County and stated "I'm not trying to play that up, but." Respondent was arrested after a field sobriety test. Respondent mentioned a third time that he was a judge, asked that his parents be permitted to pick him up from the scene, and asked if there was "anything [he] can do?" Respondent refused to provide a chemical sample and was placed under an administrative license suspension pursuant to R.C. 4511.191. Respondent pleaded guilty to one count of OVI in violation of R.C. 4511.19(A)(1)(a) and was sentenced to 30 days in jail with 23 days suspended, ordered to complete a driver's-intervention program for five days of jail-time credit as well as a victim-impact-panel program for two days of jail-time credit. He was also ordered to pay a fine of \$450 plus costs, and his operator's license was suspended for 365 days, with limited driving privileges. At Respondent's hearing he admitted that he was trying to persuade the troopers not to cite him for OVI. He self-reported his conduct to Relator. A substance-abuse assessment revealed that Respondent did not have a drinking problem.

[Doherty](#) (2020)

Sanction: Public reprimand

Respondent drove her vehicle off of a highway and into a ditch. The responding police officer observed vomit inside the car and a strong odor of alcohol coming from Respondent's person. In response to questions, Respondent stated that she had been drinking alcohol, gave her name, and stated several times without prompting that she was a common pleas judge. After being placed in the police vehicle she stated "I am so intoxicated."

Respondent later partially performed one of three field sobriety tests and refused a breathalyzer test. She also asked the officers to take her home and when they did not comply demanded that they call her friend, a local deputy sheriff. She was arrested and charged with a first-degree-misdemeanor count of OVI. At the first court appearance she entered a guilty plea and apologized to the court and public for her misconduct and made a statement to the news media acknowledging her poor judgment and apologized for harming the judiciary. The court sentenced Respondent to 180 days in jail, with 177 days suspended, suspended her driver's license for one year, ordered her to pay a fine of \$1,074 with \$700 suspended on the conditions that she have no other drug or alcohol related convictions and complete a driver-intervention program.

[Hawkins](#) (2020)

Sanction: Public reprimand

Respondent was reported by a motorist as a suspected intoxicated driver. A police officer responded to the call and stopped Respondent. When approached by the officer, Respondent stated that, "[she] was trying to figure out how to get home" and explained that she had gotten lost. The officer detected the smell of alcohol coming from the vehicle and asked if she had consumed any alcoholic beverages, to which Respondent replied, "No." Although she was not asked for her occupation or identification, Respondent stated that she was a judge. She stated that she had been at a restaurant in downtown, but could not recall the name of the establishment. The officer observed an injury on Respondent's head, which she denied having, scratches and cuts on her hands, that she said was not the result of domestic violence, and vomit on her coat and the floor of the car. Respondent later handed a police sergeant her cell phone and said that her bailiff was on the phone. Respondent failed the field sobriety tests and was arrested for OVI. After being read her Miranda rights, Respondent refused to sign the acknowledgment form, refused to provide a breath sample, and later refused to submit to a blood draw after a warrant had been signed. Four hospital security officers held her down until her blood could be drawn. She was eventually charged with OVI under two statutory provisions and a marked lane violation. She pleaded guilty to a first-degree misdemeanor count of OVI, was sentenced to 90 days in jail with 87 days suspended with the opportunity to complete a 72-driver intervention program in lieu of three days in jail, fined \$375, had her license suspended for one year, and ordered to serve one year of probation.

[Spinazze](#) (2020)

Sanction: Six-month suspension

Respondent met with a deputy sheriff and defense lawyer to review body-camera footage of a defendant's OVI arrest. The defense lawyer indicated his client would plead guilty to a reduced charge of having physical control of a vehicle while under the influence, a first-degree misdemeanor, however the deputy sheriff objected. Respondent later recommended reducing the OVI charge, but the municipal court judge requested that he appear in court and explain the basis for the recommendation. At his appearance he misled the court regarding the city's case against the defendant. Respondent stated that there was a question as to the observation made by the police of the defendant driving and that the city had some evidentiary concerns whether it could put the defendant in the car. Respondent also falsely stated that the arresting officers, including the deputy sheriff, had consented to the plea agreement. Based on Respondent's representations, the court accepted the defendant's plea. The city's chief prosecutor later reviewed Respondent's case file and his handwritten note that he agreed to the plea agreement because the court was going to dismiss the case. Respondent later admitted the notation was false. Upon further investigation the chief prosecutor listened to the court's audio recording and expressed concern that Respondent had misled the court. Respondent falsely claimed that he had made a mistake at hearing by relying on defense counsel's account of the incident and agreed to recommend reduction without first reviewing the file. The deputy sheriff later told the chief prosecutor that he had objected to the reduction. Respondent was placed on administrative leave, submitted a written apology to the municipal court judge and apologized in person to the deputy sheriff. Respondent reported his misconduct to Relator and was later terminated by the city.

Hot Topics

- IV. **Failure to Cooperate, Trending Upward?**
- V. **Uncharged Violations Found by the Board, A New Standard in [Reinheimer?](#)**
- VI. **Prof.Cond.R. 1.8(j) Sanctions: Four Years After Presumptive Sanction Declined in [Paris](#).**
- VII. **Aggravating / Mitigating Factors: Enforcement of Required Factors in Finding a Mitigating Factor Under GBR V(13)(C)(7)?**

VIII. Improper Termination of Representation/Withdrawal: Ghosting Clients.

IX. New Amendments to Gov. Bar R. V



Ohio Board of Professional Conduct

AMENDMENTS TO GOV. BAR R. V

Effective November 1, 2020

In July 2018, the Chief Justice appointed the Task Force on the Ohio Disciplinary System. The Task Force issued its report and recommendations in September 2019, including several proposed amendments to the Rules for the Government of the Bar and the Judiciary of Ohio. The Task Force recommendations were considered by the Supreme Court in January 2020, and the proposed rule amendments were published for comment. On September 9 2020, the Court adopted revised proposed rule amendments with an effective date of November 1, 2020.

This document is a summary of the amendments to Gov. Bar R. V relative to the disciplinary process. Interested parties should consult the [final version of the amendments](#) for the exact language of adopted by the Supreme Court.

Bar Counsel Certification and Duties—Gov. Bar R. V, Sections 4-7

The amendments impose new and additional requirements regarding the selection and responsibilities of bar counsel.

Selection

- Bar counsel and, if applicable, assistant bar counsel, are subject to certification, prior to appointment, by Disciplinary Counsel. Disciplinary Counsel is responsible for promulgating certification criteria and a form used by certified grievance committees who nominate bar counsel.
- Upon receipt of a nomination and application materials, Disciplinary Counsel will make a certification decision and notify the certified grievance committee, the nominated individual, and the Board. Disciplinary Counsel may elect to interview the nominated bar counsel or assistant bar counsel prior to acting on a nomination and application.

Duties

The amendments set forth a number of administrative and case-related responsibilities that must be performed by bar counsel. Some of these are new, while others are

extensions or modifications of existing responsibilities. Bar counsel has all of the following specific duties:

- Supervising the intake and investigation of grievances;
- Serving as the point of contact between the certified grievance committee and respondents and respondents' counsel, provided bar counsel may delegate this task to staff or volunteer members of the certified grievance committee.
- Advising and training certified grievance committee members on matters of professional conduct and disciplinary procedures.
- Participating in education activities related to professional conduct and disciplinary procedures, including the completion each calendar year of at least six hours of training offered by Disciplinary Counsel in the areas of legal ethics, judicial ethics, and the execution of responsibilities for the review and investigation of grievances and prosecution of formal complaints.
- Serving as lead counsel of record in each formal complaint filed with the Board after January 1, 2021 by the bar counsel's certified grievance committee. Bar counsel is specifically required to participate personally and substantially in the post-complaint adjudication process, and the amendments identify several specific tasks that must be undertaken by bar counsel.
- Bar counsel is permitted to delegate some aspects of discovery, pleading preparation, or hearing presentation to assistant bar counsel or volunteer certified grievance committee members who are counsel of record in the case. Even if some responsibilities are delegated, the bar counsel must directly supervise the attorney to whom responsibilities are delegated and must maintain primary responsibility for litigating the case before the Board

Training of certified grievance committee members

- The amendments eliminate specific education requirements for volunteer certified grievance committee members and the obligation to report compliance with those requirements in the committee's annual report.

Now, only bar counsel is required to complete a specific number of hours of training (see above). However, bar counsel is responsible for advising and training committee members with regard to their disciplinary related responsibilities.

Decertification and Denial of Reimbursements

- The amendments retain the authority of Disciplinary Counsel to decertify bar counsel, and now also assistant bar counsel, for failing to competently and diligently perform his or her duties.
- The failure of bar counsel to comply with the requirements of the position can also be a basis for the Board's decertification a grievance committee and the denial or deferral of reimbursements requested by a grievance committee.

Time Guidelines for Grievance Investigations – Gov. Bar R. V, Section 9

- Eliminated from Gov. Bar R. V are the tiered time guidelines applicable to the investigation of grievances (*i.e.*, 60- and 150-days) and the requirement that relators seek good-cause extensions for investigations pending beyond 150 days. Gov. Bar R. V now requires relators to complete investigations within 270 days of the receipt of the grievance. Disciplinary authorities may request extensions of time beyond 270 days and up to one year for good cause. The rule sets forth examples of what constitutes good cause for seeking and obtaining extension requests.
- If a disciplinary authority requests a good-cause extension, it must provide notice of the request to the respondent or respondent's counsel.
- The requirement that all investigations be completed within one year remains in place.

Notice of Intent to File-Gov. Bar R. V, Section 10

- A disciplinary authority is required to provide a respondent, or his or her counsel, with written notice of intent to file a formal complaint and 14 days to respond to the notice. The written notice of intend must include (1) a

copy of the proposed complaint setting forth each allegation of professional misconduct and (2) information about the Lawyers Assistance Program.

Default Certification and Suspensions— Gov. Bar R. V, Section 14

- A respondent who has failed to timely answer a formal complaint will now have 14 days (formerly 30 days) to respond to the Board’s notice of intent to certify default.
- The amendments effectively reduce to 90 days the duration of interim default suspensions imposed by the Supreme Court. If the Supreme Court imposes an interim default suspension, the respondent will now have 90 days (formerly 180 days) from the date of the interim default suspension to file a motion for leave to answer. Similarly, the relator will have 90 days (formerly 180 days) from the date of the interim default suspension to file a motion to initiate default disbarment proceedings or a notice of restitution.

Consent to Discipline Agreements— Gov. Bar R. V, Section 16

There are three amendments affecting the submission and consideration of consent-to-discipline agreements:

- There is a single deadline—90 days following the appointment of a hearing panel—for submission of a consent-to-discipline agreement. Eliminated from the rule is the former 60-day deadline and language that permitted a 30-day extension of the 60-day deadline.
- Panel chairs now have express authority to order the parties to supplement a previously filed consent-to-discipline agreement. Supplements are permitted to provide “additional information or exhibits to facilitate the hearing panel’s consideration of the agreement.”
- Consent-to-discipline agreements are prohibited in cases where the respondent is a “judicial officer or is a public official who engaged in misconduct while serving in an elected public office.”

Mitigating Factors— Gov. Bar R. V, Section 13(C)

- Added to the list of mitigating factors is a judge’s voluntary resignation from judicial office prior to the commencement of the judge’s disciplinary hearing before the Board.

Electronic Service of Complaints, Hearing Notices, and Orders— Gov. Bar R. V, Sections 11, 12, 17, and 35

- The Board is authorized to serve all complaints and hearing notices on the respondent via electronic service address or certified mail.
- “Electronic service address” is defined as “the email address designated by an attorney for service of documents” pursuant to Gov. Bar R. VI (Attorney Registration). The Board has been using email service, with the consent of respondents, since March 2020, and will fully shift to electronic email service by January 1, 2021.

“No-Objection” Brief in Response to Show-Cause Order— Section 17

- The Court adopted a previously unpublished amendment that permits the parties, jointly or individually, to file a no-objection brief in response to a show-cause order. A no-objection brief is limited to ten pages and must not:
 - Make any argument opposed to any fact, finding, analysis, argument or recommendation contained in the Board report; or
 - Make any argument in support of a recommendation not made in the Board report.
- If a no objection brief violates any of these provisions, the Court will strike the brief and assess the filing party or parties a fine of \$500.
- No brief is permitted in response to a party’s no-objection brief.
- The amended rule also permits parties to file a joint waiver of objections that will result in the case being immediately submitted to the Supreme Court for review.

**DISCIPLINARY
PROCESS
OVERVIEW**
(Optional)

Joseph M. Caligiuri
Richard A. Dove

DISCIPLINARY PROCESS OVERVIEW

Richard A. Dove
Director
Board of Professional Conduct

Joseph M. Caligiuri
Disciplinary Counsel



GOV. BAR R. V

Three-tiered process:

- **Investigation**—grievance investigated by by Office of Disciplinary Counsel (ODC) or certified grievance committees (CGCs)
- **Adjudication**—formal complaint heard before Board of Professional Conduct (BPC)
- **Review and imposition of discipline**—Supreme Court



STATISTICS

- Approx. 3,800 grievances filed in 2019; 2,550 with ODC, 1,240 with CGCs
- 29% dismissed on intake (DOI); 71% opened for investigation
- 63 formal complaints filed with the Board



GRIEVANCE PROCESS

- Letter of Inquiry (LOI)
- Investigation—response to LOI, subpoenas, witness interviews, depositions
- Letter of Dismissal or Notice of Intent



LETTER OF INQUIRY

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



INVESTIGATION

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



FORMAL COMPLAINT

- Notice of intent
- Response from attorney/judge
- File with Board:
 - Complaint
 - Response, if any
 - Summary of investigation
 - Exhibits
- Waiver of probable cause



PROBABLE CAUSE

- Two, three-member panels, with alternates
- One panel meets each month
- Review materials submitted by relator
- Standard—substantial, credible evidence
- Options—certify, dismiss, certify in part/dismiss in part
- Appeal from dismissal



CERTIFICATION OF COMPLAINT

- If probable cause is found:
 - Complaint is certified to Board and served on Respondent
 - Respondent has 20 days to answer
 - Default proceedings, if no answer
- Complaint is public once certified—on-line docket



BOARD PROCEEDINGS

- Answer filed—case assigned to 3-commissioner panel
- Prehearing telephone conference with parties
- Time guidelines for Board proceedings:
 - 40 days—initial prehearing conference
 - 150 days—hearing scheduled
 - 40 days—after submission of case to panel, report prepared for submission to full Board



BOARD PROCEEDINGS

- Amended complaint—motion for leave to amend (absent Respondent’s consent); no separate probable cause determination
- Stipulations—strongly encouraged, especially as to facts
- Joint exhibits—strongly encouraged
- Consent to discipline



DEFAULT PROCEEDINGS

- No answer to formal complaint:
 - Certify respondent’s default to Supreme Court
 - Court issues show cause order
 - No reply, interim default suspension imposed
 - Relator or respondent can seek remand to Board
 - If no remand, second show cause order issued three months after interim default suspension is imposed
 - No reply, indefinite suspension
 - Relator or respondent can seek remand



HEARING PROCEDURES

- Formal hearing
- Rules of Evidence and Civil Rules apply
- Relator—BOP by clear and convincing evidence
- Primary issues:
 - Facts
 - Rule violations
 - Aggravating and mitigating factors
 - Sanction



PANEL AND BOARD

- Panel questions Respondent
- Panel findings/dismissals
- Panel prepares written report to full Board
- Full Board deliberates and votes
- Approve/modify findings of fact, conclusions of law, aggravating/mitigating factors, and recommended sanction



SUPREME COURT OF OHIO

- Board report and record filed with Supreme Court
- Court issues show cause order (except consent to discipline); parties have 20 days to object
- No objections—Court considers on report and record
- Objections—oral argument (except reinstatement)
- Supreme Court is NOT bound by Board recommendation, even where no objections



WHAT INFLUENCES SANCTION?

- Aggravating factors:
 - Prior discipline (what is or is not?)
 - Dishonest or selfish motive
 - Pattern of misconduct
 - Noncooperation
 - Failure to make restitution
 - Failure to acknowledge wrongdoing



WHAT INFLUENCES SANCTION?

- Mitigating factors:
 - No prior discipline
 - Absence of a dishonest or selfish motive
 - Full and free disclosure
 - Acknowledge wrongdoing
 - Character and reputation
 - Restitution



WHAT INFLUENCES SANCTION?

- Disorder—defined in Section 35
- Four requirements for a disorder to be considered in mitigation:
 - *Diagnosis*—qualified health care professional
 - *Prognosis*—opinion that attorney can engage in competent and ethical professional practice of law
 - *Treatment/counseling*—sustained period of successful treatment (mental disorder) or completion of approved treatment program (substance use disorder)
 - *Causation*—disorder caused or contributed to misconduct



DISPOSITION TIMES

- ODC/CGCs—up to one year to investigate
- Board—8-9 months from filing to disposition
- Supreme Court—8-10 months



QUESTIONS



**PRESENTERS'
BIOS**

PRESENTERS' BIOGRAPHICAL INFORMATION

D. ALLAN ASBURY joined the Ohio Board of Professional Conduct in 2014 as senior counsel. Before joining the Board, Mr. Asbury served as Administrative Counsel for the Supreme Court and Secretary of the Board on the Unauthorized Practice of Law. His primary duties for the Board include researching and drafting advisory opinions, providing ethics advice to Ohio lawyers, judges and judicial candidates, and assisting in the Board's ethics outreach and education efforts. Mr. Asbury received his undergraduate and law degrees from Capital University. He is admitted to practice in Ohio, United States District Court for the Southern District of Ohio, and the U.S. Supreme Court. He is a faculty member of the Ohio Judicial College and recently completed the certified court management program with the National Center for State Courts.

JOSEPH M. CALIGIURI is the chief assistant disciplinary counsel in the Office of Disciplinary Counsel, where he has worked since 2002. In September 2019, he was appointed as Ohio's seventh fulltime disciplinary counsel and will serve a four-year term beginning in late October 2019. He is responsible for investigating and prosecuting lawyers and judges accused of ethical misconduct. Mr. Caligiuri is a frequent lecturer for the Ohio Judicial College, Ohio State Bar Association, and the Association of Judicial Disciplinary Counsel. Mr. Caligiuri is also an adjunct professor of law at the Ohio State University, where he teaches Professional Responsibility. Mr. Caligiuri is a former criminal prosecutor in Buffalo, NY, and is a graduate of SUNY Buffalo, New England Law, and the Clemson University MBA Program.

RICHARD A. DOVE is the Director of the Board of Professional Conduct, and serves as the Board's chief legal and administrative officer. Prior to his appointment as in 2011, Mr. Dove served for more than 22 years on the staff of the Supreme Court of Ohio, the last four of which as Assistant Administrative Director. He is past president of the National Council of Lawyer Disciplinary Boards and in 2019 was recognized as Distinguished Alumnus of the Year by Capital University Law School. Rick is a graduate of Wittenberg University and Capital University Law School and is admitted to practice in Ohio, before the United States District Court for the Southern District of Ohio, and before the Supreme Court of the United States.

GEORGE D. JONSON spends the majority of his professional time defending lawyers in legal malpractice cases, defending lawyers and state court judges in disciplinary proceedings, and giving ethics advice to Ohio lawyers and judges. The rest of his professional time is spent litigating a wide range of civil matters. In his free time, he hunts, hikes, gardens, runs a chainsaw, and enjoys an adult beverage in the evenings while sketching designs for totem poles he never gets around to building.

ALVIN E. MATHEWS JR. is a partner with the Columbus law firm of Ulmer & Berne. His practice areas include ethics and professional responsibility and business litigation. Mr. Mathews has provided representation on hundreds of legal ethics advisory opinions, lawyer discipline case investigations, and more than 25 oral arguments in the Supreme Court of Ohio. Mr. Mathews has been honored by Ohio Super Lawyers 2011-2019, Best

Lawyers in America 2016-2019, and received an AV Preeminent rating by Martindale Hubble. He has led more than 200 classes and seminars on legal ethics. Mr. Mathews received his BA from Miami University and his JD from Ohio Northern University Claude W. Pettit College of Law.

KRISTI R. MCANAUL joined the Ohio Board of Professional Conduct in 2018 as counsel. Her primary duties for the Board include researching and drafting advisory opinions, providing ethics advice to Ohio lawyers, and assisting in the Board's ethics outreach and education efforts. Prior to joining the Board, Ms. McAnaul served as a Staff Attorney at the Ohio Department of Education in the Office of Professional Conduct. She also worked in private practice for over nine years with a primary focus on juvenile and domestic law. Ms. McAnaul graduated magna cum laude from Capital University Law School and was a member and Research Editor of the Capital University Law Review. She received her undergraduate degree from Oakland University in Rochester, Michigan.

LIA J. MEEHAN is an Assistant Disciplinary Counsel with the Office of Disciplinary Counsel for the Supreme Court of Ohio. She has been with the office since June 2016 and investigates and prosecutes judges and lawyers accused of ethical misconduct. Before joining the Office of Disciplinary Counsel, Lia served as an Assistant Prosecuting Attorney for the Licking County Prosecutor's Office and was the head of the Juvenile Division for four years. In that role, Lia prosecuted juveniles charged with upper-level felonies and also handled Children Services cases involving serious abuse and neglect. Lia graduated from Ohio Northern University with a B.S. in Biology, and also earned her J.D. from ONU. She lives in Granville with her family and their two golden retrievers.

DON SCHEETZ is a senior assistant disciplinary counsel with the Office of Disciplinary Counsel for the Supreme Court of Ohio and has been with the office since January 2013. He is responsible for investigating and prosecuting judges and lawyers accused of ethical misconduct. Don helps train certified grievance committee members in the investigation and prosecution of grievances so that they can be certified to appear as trial counsel of record before the Board of Professional Conduct. Don is also an adjunct law professor, teaching Professional Responsibility at the Moritz College of Law at the Ohio State University, his alma mater. Prior to joining the Office of Disciplinary Counsel, Don served as an assistant prosecuting attorney for the Franklin County Prosecutor's Office, focusing on juvenile gang prosecutions.

PEGGY J. SCHMITZ is a member of the Board of Professional Conduct and serves on the Board's Probable Cause Committee. Before joining the Board, she was a member and chair of the Wayne County certified grievance committee. A practitioner for 42 years, Ms. Schmitz served as Executive Director of the former Wooster-Wayne Legal Aid Society, Assistant Wayne County Prosecuting Attorney, and, for the past 33 years, as a member, and currently of counsel, with the Wooster law firm of Critchfield, Critchfield & Johnston, Ltd., where her practice focused on labor and employment and higher education law. She is a graduate of Bowling Green State University and the University of Akron School of Law, and is admitted to practice in Ohio, the United States District Court for the Northern District of Ohio, the Sixth Circuit Court of Appeals, and before the United States Supreme Court.

MEGAN R. SNYDER, MSW, LISW, B.A. Psychology, State University of New York at Albany, 1995; Master of Social Work, New York University, 2000. Professional Experience: Medical Social Worker at Beth Abraham Health Services, specialized in psychosocial assessments and discharge planning, Bronx, New York; Social Worker and Regional Social Work Mentor at VistaCare Hospice, developed and conducted company-wide trainings surrounding issues of death and dying, Columbus, Ohio; Development Associate at the Columbus Jewish Federation, assisted with the annual campaign, Columbus, Ohio. Nationwide Children's Hospital, Emergency Room Social Worker, The Ohio State University Wexner Medical Center, Psychiatric Emergency Services, Social Worker. Currently, Megan is the Clinical Director at the Ohio Lawyers Assistance Program, Inc, and maintains a small private practice in Grandview Ohio.

JUDGE JOHN R. WISE began the practice of law in 1979 in Stark County. His areas of practice included civil litigation, from both plaintiff and defense side, along with work in the fields of probate and real estate. Judge Wise was elected to the Canton Municipal Court in 1990, where he served until 1993, when he was elected Stark County Common Pleas Court Judge. In 1996 Judge Wise was elected to the Fifth District Court of Appeals, where he currently serves. Judge Wise has also served by assignment with the Ohio Supreme Court. In 2015, Judge Wise served as Chief Judge of the Ohio Courts of Appeals Judges Association. He also is serving his third term on Ohio's Board of Professional Conduct, currently serving as Chairman. Judge Wise, during the course of his judicial career, has served on several computer and technology committees for the Ohio Judicial Conference, taught classes for The Ohio Judicial College, and served several terms as an original member of the Ohio Supreme Court Commission on Technologies and the Courts.

AUDREY E. VARWIG is an Assistant Disciplinary Counsel with the Office of Disciplinary Counsel of the Supreme Court of Ohio. During her undergraduate years at Bowling Green State University, she worked as a deputy clerk for Judge Robert C. Pollex (retired) in the Wood County Common Pleas Court, Juvenile and Probate Divisions. She attended law school at The Ohio State University, where she was invited to be a member of the moot court team. She also served as an intern for Judge James R. Ray (retired) in the Lucas County Court of Common Pleas, Juvenile Division. After graduating from OSU, Audrey worked in private practice for over 10 years litigating civil cases in state and federal courts, including the United States Court of Appeals for the Sixth Circuit. She was honored as a Super Lawyers Rising Star in 2013 and 2014. Since joining the Office of Disciplinary Counsel in 2014, Audrey has prosecuted disciplinary complaints against attorneys and judges before the Board of Professional Conduct and the Supreme Court of Ohio. She educates attorneys during CLE seminars, trains certified grievance committee members, and serves on ODC's Paperless Committee. She is a Delegate to the Ohio State Bar Association Council of Delegates, a graduate of the OSBA Leadership Academy, and a Lifetime Fellow of the Ohio State Bar Foundation.

HEATHER M. ZIRKE is general counsel for the Cleveland Metropolitan Bar Association. During her 15 years with the CMBA, Heather has worked closely with the public and CMBA members to uphold the high standards of lawyer ethics and to help protect the public from the dishonest acts of a few lawyers. Heather is counsel to the

CMBA's Certified Grievance, Unauthorized Practice of Law, Ethics & Professionalism and Bar Admissions Committees. She also works with members of the CMBA's Lawyer-Client Fee Dispute Resolution Committee which assists clients in resolving fee disputes with their lawyers, and the Division of Fees Mediation and Arbitration Committee which is a service to lawyers who need help dividing a shared fee. Heather speaks regularly on the topics of ethics and professionalism and Ohio's disciplinary system. She also presented at the American Bar Association's 2017 Unauthorized Practice of Law School in Chicago. Prior to joining the CMBA in 2005, Ms. Zirke spent 3 years as an Assistant Prosecutor for the City of Cleveland where she worked closely with law enforcement and victims of crime. Heather has a B.A. in English and religion from Baldwin-Wallace University and a J.D. from the Cleveland-Marshall College of Law.

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