



# Ohio Board of Professional Conduct

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**TO: Disciplinary Counsel, Bar Counsel, Certified Grievance Committees, and Respondents' Counsel**

**FROM: Rick Dove**

**DATE: December 2020**

**RE: Bimonthly Update**

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## December Board Meeting

The Board of Professional Conduct held its final meeting of 2020 on December 11. The Board approved [13 case reports](#) that were filed with the Supreme Court on December 14. The Board also voted to dismiss one case and affirmed the determination of a probable cause panel to dismiss one complaint for want of probable cause.

The Board has 47 pending cases, including three reinstatement petitions and eight cases stayed due to pending criminal proceedings or resignation applications. Eleven cases are awaiting panel reports, the oldest of which was submitted to the panel for decision on November 30.

## Advisory Opinion

The Board approved [Adv. Op. 2020-12](#) regarding the use of service marks by law firms. The Board issued 12 advisory opinions in 2020.

## Board Hearings

The Board concluded its 2020 hearing schedule earlier this month and has 18 cases scheduled for hearing in the first quarter of 2021. Due to the COVID-related shutdown in late March, the Board quickly pivoted to a remote hearing platform and conducted 29 remote hearings (35 hearing days) from late April through mid-December. I am reasonably certain that Ohio was the first jurisdiction to conduct a remote evidentiary hearing in a disciplinary case and we have conducted more remote disciplinary hearings than any other state.

The limited access directive for the Moyer Judicial Center remains in effect through March 2021. The Board will continue to schedule and conduct remote hearings through at least the first quarter of next year and will resume in-person hearings when it is safe to do so. In November, the Board to Zoom and will use that platform for all remote hearings going forward.

### **2021 Probable Cause Schedule**

The [2021 probable cause schedule](#) is posted on the Board's website. Compliance with the published deadlines for the submission of new complaints greatly facilitates the review of materials by the Board's probable cause panels and avoids delays in the review and certification of new complaints.

COVID has delayed the development of an online portal through which relators can submit probable cause materials. I am committed to having this available to relators in the first half of 2021.

### **Miller-Becker Seminar**

The online platform for this year's Miller-Becker Seminar allowed a record number of individuals to attend on October 23. More than 270 individuals attended all or part of the seminar. The staff is working on finalizing videos from the seminar, and we expect to have these posted online before the end of this year.

Mark your calendars for the 2021 seminar, which will be held on October 22.

### **Amendments to Gov. Bar R. V**

Certified grievance committees are reminded of the new standard regarding bar counsel participation in post-complaint adjudications that apply to cases filed on or after January 1, 2021. The new standard was included in the amendments to Gov. Bar R. V adopted by the Supreme Court in September of this year and referenced in prior updates and at the Miller-Becker Seminar.

The new standard for bar counsel participation in Board proceedings is contained in Gov. Bar R. V, Section 6(C)(5), which reads as follows:

Serving as designated lead counsel of record in each formal complaint filed with the Board after January 1, 2021, by the bar counsel's certified grievance committee. For purposes of this rule, designation as lead counsel requires bar counsel to *participate personally and substantially in the post-complaint adjudication process* including, but not limited to, participating in prehearing telephone conferences; attending discovery depositions; drafting pleadings, stipulations, consent to discipline agreements, and pre-and post-hearing briefs; and attending and *litigating the case before the hearing panel*. Bar counsel may delegate some aspects of discovery, pleading preparation, or hearing presentation to assistant bar counsel or

volunteer certified grievance committee members, provided all of the following requirements are met:

- (a) The attorney to whom responsibilities are delegated is identified as counsel in the case;
- (b) Bar counsel directly supervises the attorney to whom responsibilities are delegated;
- (c) Bar counsel remains *primarily responsible for litigating the case* to the hearing panel.

Emphasis added.

Although the majority of grievance committees and bar counsel already satisfy this standard, the Board's hearing panels will begin assessing compliance with these requirements as 2021 cases proceed to hearing. Gov. Bar V sets forth consequences for noncompliance, including the denial or deferral of indirect expense reimbursements and grievance committee decertification. Please let me know if you have questions regarding application of or compliance with these standards.

### **Quarterly Statistical Reports**

The Board will be issuing revised forms for the reporting of quarterly grievance statistics in 2021. The revisions will include changes to reflect the new 270-day time for completion of investigations. The new forms will be posted on the Board's website in early 2021. Grievance committees should use the existing forms to report grievance activity for the fourth quarter of 2020.

### **Happy Holidays**

This year has presented any number of personal and professional challenges, including some unique challenges for persons involved in the disciplinary process. Investigations and discovery have been more difficult to conduct and complete and client representations have been challenging. The move to a remote hearing platform has presented novel issues for parties in preparing and presenting cases to the Board. From my perspective, individuals involved in the disciplinary process have adapted to the fast-changing environment and continued to meet their obligations to the profession and the public.

On behalf of the Board, I thank each of you for your patience as we navigated the choppy waters of 2020 and your continued contributions to Ohio's disciplinary system. I look forward to the resumption of in-person hearings, meetings, and seminars and to direct interaction with colleagues. In the meantime, I wish each of you a safe, happy, and healthy holiday season and a return to some semblance of normalcy in 2021.