



Ohio Board of Professional Conduct

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

FROM: Rick Dove

DATE: August 2021

RE: Bimonthly Update

June Board Meeting

The Board of Professional Conduct met on August 6. The Board approved [five case reports](#) (four disciplinary and one reinstatement) that were filed with the Supreme Court. The next meeting is October 1.

The Board has 23 pending cases, three of which have been heard or are the subject of a pending consent agreement. Just 18 new cases have been opened in 2021 (plus two reinstatement petitions), compared to more than 40 cases at the same point last year. To date, the Board has disposed of 52 cases, a number that includes dismissals due to default or resignation with discipline pending.

Advisory Opinions

The Board approved two advisory opinions on August 6. [Adv. Op. 2021-6](#) addresses the disqualification of a judge who is receiving fees or retirement benefits from his former law firm. [Adv. Op. 2021-7](#) advises that a law firm may not require an associate to enter into an employment agreement that requires the associate, upon leaving the firm, to pay the firm a percentage of fees earned by the associate from clients who have elected to remain clients of the associate. Both opinions replace opinions issued under the former Code of Judicial Conduct or Code of Professional Responsibility.

Probable Cause Deadlines

The next two deadlines for the submission of probable cause materials are August 27 and September 17. Please submit your materials in accordance with these deadlines.

Update on Moyer Judicial Center and Resumption of In-Person Hearings

The Moyer Judicial Center reopened for public meetings, including disciplinary hearings, in mid-July. The Board conducted its first in-person hearing in Columbus since March 2020 on August 5 and conducted its first in-person Board meeting in 18 months on August 6.

The rise in COVID cases may impact hearing arrangements in the short term. The Supreme Court reinstated a mask mandate for the Moyer Judicial Center in late July, and I would not be surprised if the Court imposes new or additional protocols if the COVID numbers continue to trend upward.

Presently, hearings set for the Moyer Judicial Center will proceed as scheduled. If there is a change in the hearing format (*i.e.*, a shift to video teleconference), parties will be advised via an order from or a telephone conference with the panel chair. These changes may occur on short notice because we receive no advance notice of changes in COVID protocols from the Supreme Court. Please do not contact staff regarding the status of a hearing—if there is a change in venue or format, you will know about it very shortly after we do. We appreciate your understanding as we continue to adjust to the ever-changing situation.

Hearing Scheduling Guidelines

The Board has adopted guidelines regarding the scheduling of panel hearings and the use of video teleconference technology. These guidelines are intended to provide consistency in the approach panel chairs take to scheduling hearings while recognizing the utility of video teleconference technology in limited circumstances. The guidelines further reflect the Board's responsibility to take evidence in each case so that the panel and Board may make an informed decision regarding the case and provide the Supreme Court with a complete record that facilitates its independent review of the case, with or without objections from the parties.

The key provisions of the guidelines are as follows:

- As was the case pre-COVID, panel hearings will be scheduled in-person, with the panel chair exercising discretion as to the location of the hearing. Even if the parties promise a consent agreement or a brief hearing, we will schedule an in-person hearing to ensure the availability of a hearing location should the parties efforts fall short of initial expectations.
- The panel chair may consider moving the hearing to a video teleconference format, after the parties have completed discovery and filed stipulations and after the panel has had the opportunity to review the stipulations. The panel chair may order a change to a video teleconference format upon joint motion of

the parties or *sua sponte*, but only after consulting with the other panel members.

- The use of video teleconference technology to conduct a hearing will be limited to circumstances in which there is agreement as to material facts and there are no fact witnesses, other than the respondent, expected to testify. The use of video teleconference technology is discouraged if there (1) are disputed issues of fact or law, (2) is the potential for conflicting witness testimony, or (3) is the potential for the panel to be required to assess witness credibility, including that of the respondent.
- Panel chairs continue to have discretion to permit the use of video teleconference technology to present individual witness testimony, such as where the witness is incarcerated, located out-of-state, or unable to travel due to health-related reasons. There is a strong preference for in-person appearance by any witness whose testimony (1) relates to material facts at issue or in dispute, including matters of mitigation or aggravation, or (2) is subject to credibility assessment by the panel. In requesting permission to present remote witness testimony, parties and counsel should be cognizant of these considerations as well as the existing technical limitations on presenting remote testimony at the Moyer Judicial Center and other venues at which hearings are hosted. As noted in the June report, the Board director and Disciplinary Counsel are working with Supreme Court staff to upgrade hearing-related technology in the Moyer Judicial Center hearing rooms.
- As noted in the [prehearing instructions](#), parties are responsible for requesting equipment necessary to present remote testimony and operating the equipment during the hearing.

Questions regarding scheduling should be raised during the initial prehearing telephone conference or directed to staff.