

OHIO BOARD OF PROFESSIONAL CONDUCT

PREHEARING INSTRUCTIONS

For the purpose of facilitating disciplinary proceedings conducted pursuant to Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, the Board of Professional Conduct has prepared the following prehearing instructions. The Board asks that counsel for each party review and comply with the instructions contained, unless otherwise directed by the panel chair or Board staff. These instructions have been provided to each party to this proceeding.

The prehearing instructions provide a general overview of proceedings before the Board. Parties are encouraged to consult applicable rules and regulations governing procedure before the Board for more detail. Specific questions may be directed to the panel chair during prehearing telephone conferences or to the Director of the Board.

General Information

- Rule V of the Supreme Court Rules for the Government of the Bar of Ohio governs hearings before the Board. Counsel should be familiar with Gov. Bar R. V and the provisions of Gov. Bar R. IV governing professional conduct. Counsel also should review the Rules and Regulations Governing Procedure on Complaints Before the Board (Board Proc. Reg.). For additional information on the disciplinary process, see Becker, Guttenberg, and Snyder, *Ohio Law of Professional Conduct* (2007-2008 ed.), Chapter 4.
- Time guidelines that guide the hearing panels and the Board in processing each disciplinary case are found in Board Proc. Reg. 8.

Filing and Service of Pleadings

- Once a certified complaint is filed with the Board, all subsequent pleadings must be filed with the Board. Except as noted below, pleadings must include an original and four copies. The name, address, phone number, email address, and attorney registration number of each attorney must be included on all pleadings. Each filing must contain a certificate indicating service on the opposing party and whether the panel has been served directly or by means of filing with the Board.
- Parties are encouraged to serve the panel members directly with pleadings either by mail or email. Providing the panel with service copies does not relieve

counsel of their obligation to file pleadings or other documents with the Board. However, where a party has served a pleading directly on the panel, a party is required to file only the original and one copy of the pleading with the Board.

- To expedite matters, a pleading may be submitted to the Board electronically. Inquiries regarding electronic transmission should be directed to the Deputy Clerk of the Board. However, electronic submission does not relieve the filing party of the duty to file pleadings with the Board. Electronically transmitted pleadings must be supplemented promptly by filing the original and required number of copies with the Board.

Hearing Panel

- Once an answer is filed in a case, the Director assigns three members of the Board to serve as the hearing panel in the case. A hearing panel may not include a Board member who resides in the appellate district from which the complaint arose or who served on the panel that reviewed the complaint for probable cause. A hearing panel consists of at least two judge or attorney members and may include one nonlawyer, public member.
- The hearing panel is chaired by a judge or lawyer member of the panel. The panel chair conducts all prehearing conferences and presides over the hearing. The panel chair may issue prehearing orders, including the establishment of deadlines for the completion of discovery, exchange of witness lists, and submission of stipulations. The panel chair also will set a hearing date in consultation with the parties and the other panel members. The panel chair has full responsibility to conduct the panel hearing and rules on procedural and evidentiary issues that may arise at the hearing.
- Communication between the parties and panel chair is essential to the timely and efficient resolution of cases. The panel chair will conduct a telephone conference with the parties within 60 days after the panel is appointed. The panel chair may conduct additional prehearing conferences upon the timely request of either party or the panel. A party should consider requesting a prehearing conference to address issues that may affect compliance with a deadline established by rule or order of the panel chair or a scheduled hearing date.

Subpoenas

- The issuance of subpoenas is governed by BCGD Proc. Reg. 6 and the Civil Rules. A party may request a subpoena by providing a praecipe and instructions to the Director of the Board.

Stipulations and Exhibits

- Whenever possible, the parties should enter into stipulations of fact and law. Stipulations help expedite the hearing and allow the parties and hearing panel to focus on contested matters. Counsel should confer as necessary to reach agreement on stipulations and submit agreed stipulations in advance of the hearing and in accordance with any deadline contained in the prehearing order issued by the panel chair.
- Parties should bear in mind that stipulation of rule violations must be supported by clear and convincing evidence of each alleged rule violation. The hearing panel is not bound to accept stipulated rule violations that are not supported by the evidence presented at the hearing.
- The parties are responsible for ensuring their exhibits are properly identified and entered into evidence. The panel chair's prehearing order often addresses the numbering and lettering of exhibits and establishes a deadline for the submission of exhibits and exhibit lists. Joint exhibit lists and notebooks are preferred and strongly encouraged whenever possible. Exhibit notebooks, whether prepared by the parties individually or jointly, should be provided in sufficient copies for the panel, opposing counsel, and the court reporter.

Panel Hearing

- The Board acts pursuant to authority granted in the Supreme Court Rules for the Government of the Bar of Ohio. Counsel are expected to conduct themselves and the proceeding with the usual standards of professionalism and courtroom etiquette and decorum. Counsel should stand when addressing the panel, questioning witnesses, and making or arguing objections. Panel members may be addressed as "Your Honor" or "Commissioner _____."
- Gov. Bar R. V, Section 27(A) provides that the Ohio Rules of Evidence and Rules of Civil Procedure shall be observed when practicable in the conduct of all hearings. Technical objections to the form of questions should be avoided if possible. The hearing panel chair will rule on any objections. The parties are responsible for requesting a separation of witnesses and for policing their own witnesses.

- If one member of the panel is unavailable to attend the hearing, the remaining two members constitute a quorum under Gov. Bar R. V, Section 12(C) and may conduct the hearing. The absent member will review the hearing transcript and participate in the panel's deliberations and preparation of the panel's report.
- Gov. Bar R. V directs the Board to receive evidence, preserve the record, and make findings and recommendations concerning complaints of misconduct. You may anticipate that the panel members may question witnesses or may require either relator or respondent to produce witnesses or documents for their consideration. If the panel members ask questions of a witness, the parties are given the opportunity to follow-up with additional questions.
- Near the conclusion of the hearing, the parties will be asked for their respective recommendations of the appropriate disciplinary sanction in the event the Board makes a finding of misconduct. If appropriate in light of the recommended sanction and facts of the case, the recommendation may include any conditions for a stayed suspension, probation, or reinstatement to the practice if an actual suspension is recommended. Counsel should be prepared to make recommendations, supported by relevant case law, and should be familiar with the aggravating and mitigating factors listed in Gov. Bar R. V, Section 13 that affect the imposition of sanctions.
- Following the hearing, the transcript will be filed with the Board. Any party may order a copy of the transcript from the court reporter at the party's expense. Arrangements for obtaining copies of a portion of the transcript, at the party's expense, may be made with the court reporter at the conclusion of the hearing.