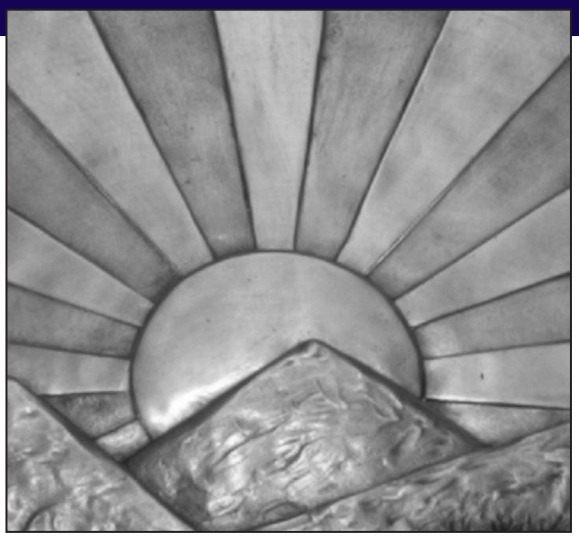
THE MILLER BECKER 2017 SEMINAR



OCTOBER 20, 2017

Ohio State Bar Association
Columbus, Ohio

5.25/6.25 CLE hours

The 2017 Miller Becker Seminar is Sponsored by:

Ohio Board of Professional Conduct

David L. Dingwell, *Chair*

Richard A. Dove, *Director*

The University of Akron School of Law
Joseph G. Miller & William C. Becker
Center for Professional Responsibility

John P. Sahl, Faculty Director

Ohio State Bar Association
EST 1880

Ohio State Bar Association

ACKNOWLEDGMENT

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.

THE MILLER BECKER 2017 SEMINAR

AGENDA

MILLER-BECKER SEMINAR AGENDA
Friday, October 20, 2017
Ohio State Bar Association Headquarters, Columbus

8:55 – 9:00 a.m.	**Welcome** ➢ David L. Dingwell, Board Chair
9:00 – 10:30 a.m.	**Proactive Management-Based Regulation** ➢ James J. Grogan (Illinois) ➢ Joseph M. Caligiuri, Moderator
10:30 – 10:45 a.m.	**Break**
10:45 – 11:30 a.m.	**Board Update, Case Trends, and Current Developments** ➢ D. Allan Asbury ➢ Heidi Wagner Dorn ➢ Richard A. Dove
11:30 a.m.–12:15 p.m.	**Lunch**
12:15 – 1:45 p.m.	**Best Practices in Investigating Allegations of Lawyer Misconduct** ➢ Joseph M. Caligiuri, Moderator ➢ Hon. D. Chris Cook ➢ James D. Caruso ➢ Donald R. Holtz ➢ Alvin E. Mathews, Jr.
1:45 – 2:00 p.m.	**Break**
2:00 – 2:45 p.m.	**Interim Remedial and Impairment Suspensions** ➢ Richard A. Dove, Moderator ➢ Lori J. Brown ➢ Scott J. Drexel ➢ Scott R. Mote
2:45 – 3:30 p.m.	**Monitoring and Probation** ➢ Jack P. Sahl, Moderator ➢ Scott J. Drexel ➢ Michael E. Murman ➢ Heather M. Zirke
3:30 – 4:30 p.m.	**Disciplinary Process Overview (Optional)** ➢ Scott J. Drexel ➢ Richard A. Dove
4:30 p.m.	**Conclusion**

THE MILLER BECKER 2017 SEMINAR

PROACTIVE MANAGEMENT BASED REGULATION

James J. Grogan

Joseph M. Caligiuri, *Moderator*

ILLINOIS STATE BAR ASSOCIATION™

Illinois Bar Journal

June 2016 • Volume 104 • Number 6 • Page 22 The Magazine of Illinois Lawyers

Ethics

Preventive Regulation

By Ed Finkel

The Illinois ARDC is taking a hard look at "proactive management-based regulation," an approach that would encourage - and perhaps someday require - lawyers to put systems in place that help prevent ethical missteps before they happen.

Like most state agencies of its ilk, the Illinois Attorney Registration and Disciplinary Commission (ARDC) traditionally has taken a reactive approach. Someone brings a complaint against an attorney and if it's found to be warranted, punishment is meted out-ranging from reprimand to disbarment.

Given the legal profession's challenging times in the 2010s, and based on successful models in jurisdictions including New South Wales, Australia, the Illinois ARDC is among the state-level attorney disciplinary agencies that are considering retooling their regulatory approach to make it more proactive.

They see opportunities to assist attorneys and firms in better managing themselves to head off potentially actionable disciplinary issues-ranging from maintaining client confidentiality to managing case files to safeguarding client trust money-before they metastasize. The New South Wales experience underscores the promise, with complaints against attorneys reduced by about two-thirds since the system's implementation in the 1990s.

Dubbed Proactive Management-Based Regulation (PMBR) in a widely circulated 2013 *Hofstra Law Review* article written by University of Arizona law professor Theodore Schneyer, the proponents of this approach say it gives attorney-regulators the leeway and wherewithal to design self-assessment tools to prompt attorneys to evaluate their practices and improve them as needed.

"You have the lawyer sit down with checklists: Have you thought about this? Have you thought about that?" says Jim Grogan, deputy administrator and chief counsel at ARDC, who spoke on the subject April 6 at "The Future is Now: Legal Services 2.016" conference organized by the Illinois Supreme Court Commission on Professionalism and co-sponsored by the Commission, the ISBA, and others. "ARDC's goal is to create an interactive, online self-assessment to allow lawyers to assess and improve their law practices and report suggestions in this regard."

Grogan sees PMBR as having particular relevance to sole practitioners and small firms, who lack the institutional capacity to track potential trouble spots. He notes that of 129 attorneys sanctioned by ARDC in 2015, 61 percent were sole practitioners.

Most complaints involved poor attorney-client relations, concerns about fees, and failure to communicate about key elements in a matter.

ARDC's research has found that of the state's 68,000 practicing attorneys, nearly 20 percent are sole practitioners and another 19 percent are in firms with between two and 10 attorneys, Grogan says. Of the 13,500 sole practitioners, 41 percent said they did not have malpractice insurance and 77 percent said they lacked a succession plan, both of which raised bright red flags for ARDC.

"I'm not trying to sell you malpractice insurance, but if you have a policy, someone is looking at what you're doing [and determining] that you have a protocol, that you're not a risk to clients," he says. "That [figure] means that 41 percent of people don't go through a process of analyzing how their systems fit, analyzing whether they're operating their practice in a way that's a good risk for insurance companies."

As for succession plans, Grogan says, "Dozens and dozens of lawyers ask, 'What's a succession plan?' Do you have a buddy? If you get sick or your significant other gets sick and you have to take care of them, who's going to take over and help you out during that period?" Even worse, he adds, "If you're a partner at Jenner & Block and you're hit crossing the street, they'll take over your files. But if you're…a small practice dealing with adoption law, what happens if you die or you're disabled?"

The ultimate goal of PMBR is to build better professionals, says Grogan, who attended a session at the National Organization of Bar Counsel meeting in February that covered the topic and reflected widespread interest around the country.

The ARDC "believes that your law license is there because of a lot of hard work and sacrifice. You don't want to set people up to fail," he says. "I think regulators realize the old model is insufficient to meet the needs of the profession. We're reactive, and that's good in many ways-if someone steals money, you need to deal with that vigorously-but otherwise, we wait until someone files a complaint. Lawyers have fewer and fewer opportunities for mentoring."

Insurers raise questions

The Attorneys Liability Assurance Society agrees that PMBR could be helpful for solos and small firms in Illinois but doubts ARDC would end up providing much help for ALAS' 216 mostly larger policyholders, says Robert Denby, senior vice president, loss prevention.

"They will probably help the small firms that don't really have an infrastructure in place," he says. "No one is getting into ALAS as a member unless they have in place the basic ground strokes that these regulatory schemes are addressing. From my perspective, it's probably an additional layer of bureaucracy that's not going to help the firms I deal with."

For example, most larger firms have detailed systems in place to capture conflicts of interest such as databases that show the corporate affiliates of the firm's clients or matters that attorneys may have handled as law clerks, Denby says. "To have a generic statement that you should have a system in place to capture conflicts of interest, that's not going to hurt my firms, but it's not going to do anything for them."

ALAS is also concerned that if state regulatory commissions start implementing differing versions of PMBR, firms with multiple offices could face a bewildering maze trying to keep it all straight, Denby says. "You're going to have a situation at some point

where one state will say you must do 'X' in order to comply with this touchstone regulatory purpose, and another state is going to say you must do 'Y.' And it may not be completely inconsistent, but it's going to cause problems."

If such regulatory purposes are not requirements, Denby is less concerned. "If it's just an admonition-do these things-OK, that's not necessarily going to add a lot of administrative burden," he says. "Although someone still needs to be thinking about, here's 10 items in New York, 23 items in South Carolina, let's come up with a memo to show [the firm's activities]. It's not the end of the world, but it's a hoop to leap through."

Companies like ALAS require firms to walk them through what systems they have in place, not necessarily expecting all of them to be identical but to gain an assurance that the firm's system is working to protect it against potential liability, Denby says. "That's part of the game," he adds. "We have underwriting standards, and we're not going to bring you into our little club unless you've got these things. But it's clear that a lot of small firms and midsized firms are hit or miss."

Jeff Strand, chief financial officer of the ISBA Mutual Insurance Company, says talking about PMBR is "like preaching to the choir." ISBA Mutual, which serves the smaller firm market, "has always encouraged lawyers to avoid both malpractice and ethical problems by implementing good practice management and effective communication with their clients," Strand says. "The adage 'an ounce of prevention is worth a pound of cure' is certainly true in lawyers malpractice insurance."

Lawyer concerns

Apart from insurers, lawyers have concerns as well. For example, would their responses to PMBR questions about management practices come back to haunt them if there's a disciplinary complaint?

Theodore Schneyer, the Arizona law professor whose law review article helped spark interest in PMBR in the U.S., says it's likely that Illinois and other states attempting to implement such a system-Colorado is probably farthest down the road at this point-will experience resistance, at least at first.

"There are some pretty conservative people…when it comes to lawyer regulation," he says. "They cling to tradition and are very suspicious about new thinking that would involve significant reforms of the regulatory system."

Illinois is not the only place where solos and small firms are disproportionately subject to disciplinary complaints, and some claim that bigger firms are "given a pass" due to a biased system, Schneyer says.

"But it's probably because larger firms have resources and see the need to have internal controls in place," he says. "Although [smaller firms] might not welcome [PMBR], they ought to because it involves a relationship with regulators that's considerably more collaborative than adversarial. They might get significant help from regulators, who wouldn't view discipline as by far the chief method of regulation."

Schneyer's article argues that PMBR could improve legal services by increasing attorney compliance with legal and ethical obligations, reducing the number of complaints and the costs associated with them, and increasing the public's regard for the profession.

"Whether our state supreme courts, working in tandem with the bar, should build a [New South Wales]-style PMBR program into their regulatory framework depends, of course, on what the program could add at what cost and whether it would complement, rather than weaken, the disciplinary process," he wrote.

The move toward PMBR has stemmed from dissatisfaction with perceived regulatory ineffectiveness of disciplinary systems in states that are not well funded, fall behind in investigations, and pursue a fairly narrow range of complaints, Schneyer says. That can lead to unwelcome meddling from other branches of government, he says.

"It seems to me like self-regulatory systems that exist in the states should be motivated to try to improve what they're doing by way of regulation in hopes of warding off interventions by executive branch agencies or state legislatures," Schneyer says. Nonetheless, he predicts, "It'll be controversial, at least for some time."

Not new in New South Wales

Any widespread controversy is long since past in the state of New South Wales, Australia, which implemented a system akin to PMBR in the 1990s that's since been imitated around the country, says Steve Mark, former commissioner of legal services who now heads up a consulting firm called Creative Consequences.

"The reality is that it's not all that difficult" to implement, he says. "It's difficult for people to get their head around. But the regulatory regime is not all that difficult to put in place. It takes time, it takes will, and it takes the ability to see a different way of regulation."

As commissioner, Mark says he worked to bring positive outcomes to consumers and reduce the number of complaints filed, rather than bringing about more prosecutions. "Consumers benefit much more by not having to lodge a complaint in the first place because they're getting an ethical service," he says. "We made sure it would work by creating what Ted Schneyer termed 'ethical infrastructure.' We created a mechanism by which we assisted law firms to be better managed, in a way that delivered better services to consumers, reduced stress, and improved profits."

Malpractice insurance is mandatory in Australia, and insurers have been "incredibly involved" in first designing and since then fine-tuning PMBR, Mark says. "Most sensible insurers have, for many years, been trying to focus on reducing their claims," he says. "We try to get them to work with the regulators: They have educational programs, we have educational programs, we should be totally in sync to assist firms so they don't get complaints."

While the legal services commission still punishes individual attorneys when it's necessary, regulators spend more of their time working with law firms and the larger legal system to create a positive ethical culture and help entities look at appropriate management systems and practice reviews, Mark says.

"The big resistance to this is simple resistance to change. In the legal profession that is large," he says. "It's not because lawyers are stupid. It's because they're people who are part of the justice system, and you don't change laws too radically, too quickly.… The profession is conservative generally."

On the docket in Nova Scotia

A second group, the Nova Scotia Barristers' Society (NSBS), expects to begin implementing PMBR through a pilot project starting in July that would run through April 2017 with a limited sampling of 50 attorneys. The NSBS has approved overall regulatory objectives as well as a 10-item short list of management goals and aspirations for lawyers and firms to use for self-assessment. And the society is providing online resources as well as consultations with lawyers and firms.

"It's about [firms and lawyers] sitting back and reflecting on how you and your legal entity does in that area, and then along with that, [the system] providing resources in those areas," says Jill Perry, NSBS president. "It's thinking about how you meet these overall objectives, contributing to access to justice, communicating with clients in a timely way-big, important ideas that nobody can argue with."

"We believe very, very strongly in the concept of ethical infrastructure and the impact that a lawyer's environment, and role models, and policies within the firm have on a lawyer's conduct and decision making," says Victoria Rees, director of professional responsibility for the NSBS. "It seems logical to us that if we want to change…decision making, we need to create some standard."

The NSBS envisions an allowance for different firm contexts within that standard, Rees emphasizes. "What a sole practitioner needs to do and what a large, multijurisdictional law firm needs to do are quite different," she says. But overall, "We want to spend more time being the fence at the top of the hill than the ambulance at the bottom of the hill."

Particularly for larger multijurisdictional firms, making this system work will mean working hand-in-hand with other provinces, and to date, Nova Scotia has been in discussions with five others that are exploring PMBS. The society has also been engaged in "intensive discussions" with a sampling of different types of firms and geographies to build buy-in, she adds.

This has included solos and small firms, Rees says. "We did not want to increase the burden for solos and small firm lawyers because that would have the exact opposite impact of what we were aiming for" in terms of access to justice, she says.

That will be especially important next spring, when the NSBS hopes to expand the system beyond the pilot project to make it profession-wide, which would necessitate legislation if, in fact, it is to become a requirement.

PMBR in Colorado

Although Illinois has begun talking seriously about implementing a PMBR system, Colorado is further down the path. The state Office of Attorney Regulation Counsel subcommittee established to address the issue has identified 10 common principles to encourage, based heavily on the principles in place in New South Wales and Nova Scotia.

For Colorado, these are: 1) developing competent practices, 2) communicating in an effective, timely, and civil manner, 3) ensuring confidentiality, 4) avoiding conflicts of interest, 5) maintaining appropriate file and records management systems, 6) ensuring effective management of the legal entity and staff, 7) charging appropriate fees and disbursements, 8) having appropriate systems in place to safeguard client trust money and property, 9) working to improve the administration of justice and access to legal services, and 10) creating a culture of wellness.

The subcommittee has broken into 10 working groups to address these issues, and the office overall has developed a self-audit checklist for small practices, worked proactively to raise awareness of common tools to prevent ethical missteps, and begun offering educational programs on professionalism, ethics, and trust account issues. The self-audit checklist is on the Colorado Supreme Court website under Lawyers/Practice Resources/Practice Management - see **http://bit.ly/1UVJjU0**.

James Coyle, attorney regulation counsel, reports a high level of enthusiasm in the Mile High State about moving forward with PMBR. "Our goal is to keep it voluntary but also to incentivize it," he says. For example, the self-assessment could bring continuing legal education credit or even a certification program "so they can hold themselves out like a Better Business Bureau member," he says.

The Office of Attorney Regulation will be working with insurance carriers like ALAS to get their input and collaboration and ask what they would be interested in seeing-and whether rate reductions could be in the offing for those who participate, Coyle says. "Then you can go to sole practitioners and firms to say, 'There are lots of different reasons to do this,'" he says. "I'm concerned that if we make it mandatory, people will go through the steps but not really use it."

Coyle hopes the self-assessment form could be completed by later in the summer, and he envisions working with local business schools around marketing the tools included to create an interest among lawyers and firms. "Language is so important, and the terms we use are so important," he says. "It's not enough to say, 'I'm from the government, and I'm here to help.' We've got to get them to want to become involved. That's the unknown."

Next steps in Illinois

The effort in Illinois is a bit more early-stage at the moment, but Grogan expects ARDC to make recommendations to the state supreme court some time this fall. "You're going to see, at the very least, the commission recommend some sort of self-assessment tool," he says. "The whole thing is intended to get people to self-assess, 'How do I make this better? How can I get help? Who can I talk to? What should I read?'"

This spring ARDC has been in the process of gathering input on model self-assessment forms, Grogan says. "The supreme court has to look at this and say, 'We think this is a good idea,'" he says. "We want input from the organized bar. There has to be buy-in from the profession."

Ultimately, however, "It seems to make a lot of sense to not throw people out on the streets and allow them to fail," Grogan concludes. "Being proactive is a good way to avoid malpractice, and if a lawyer makes a great effort to insulate themselves from malpractice liability, they're going to insulate themselves from regulatory concerns as well."

Ed Finkel *is an Evanston-based freelance writer.*
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Member Comments

Will everyone be winners or are losers needed to pay the price for this ? "I cannot give you the formula for success, but I can give you the one for failure which is try to please everyone all the time" Herbert Swope. Today's defensive medicine provides some clues. Another effect of such micro-regulation is how the cost of it is already putting the regulated out of business driving their clients into the hands of the unregulated. The practitioner becomes the equivalent of a bank employee managed by a swarm of state and federal compliance and regulatory bureaucrats depriving the public of effective advocacy. james n. mulvaney, a.r.d.c. # 01988921

— James N. Mulvaney on June 3, 2016

1. I will be 87 years old this month of March, 2017. I graduated De Paul Law School and passed the bar exam in 1953. I worked and paid for all college and law school bills while attending school. I have never had a valid claim against me personally. There was a bogus claim filed by a lady because she objected to my law suit and settlement (approved by her attorney). I made her pay back about $45,000 of over $90,000 that she wrongfully obtained from my client, a senior elderly lady, for services performed. The ARDC advised that it would not process her claim.
2. I worked hard to get my active license, and I would like to keep it. I am semi-retired, but I donate some pro bono services, I advise some old clients, I advise some relatives and friends, and I prepare wills, trusts, POAs and POAHs. And I may make a court appearance on a minor matter like a traffic ticket. If I were handling divorces, I would quickly buy insurance. I have the knowledge, and I have the experience to know when to refer cases that need more experienced handling. I have been complying with the MCLE requirements to keep an active license.
3. The new and proposed rules put me in the same class as someone shortly out of law school with a lot of bills (because he or she didn't work his or her way thru and pay the bills like many of us did). The rules put me in the same class as someone who is trying to start a law practice without experience (rather than work for peanuts in a law firm to get experience like I did). Working in a law office should teach one to refer cases for which the firm has no experience.
4. The new and proposed rules are adding to the time and cost of practicing law, which cost is to be passed on to the clients. Added costs passed on to clients are fueling the complaint that legal services cost too much. Added costs to clients are also causing people to look for more ways to avoid lawyers and to accept more help from non-lawyers.
5. There should be publication of how many ARDC cases fit the facts that prompted the new rules. A new rule will not stop a bad apple from getting in the barrel.
6. Please pass on my suggestion that there should be an exception to the new and proposed rules for experienced lawyers to be excused from compliance when an application can show that he or she (1) has a reasonable amount of law practice experience, (2) has had no valid claims against him or her, and (3) has no large amount of unpaid bills. A home mortgage on a starter home should be an exception that is not included in unpaid bills. Income of a spouse is another factor to be considered to see if there is stress from unpaid bills.
Thank you for considering my comments and suggestion.

— Donald J. Hennessy on March 2, 2017

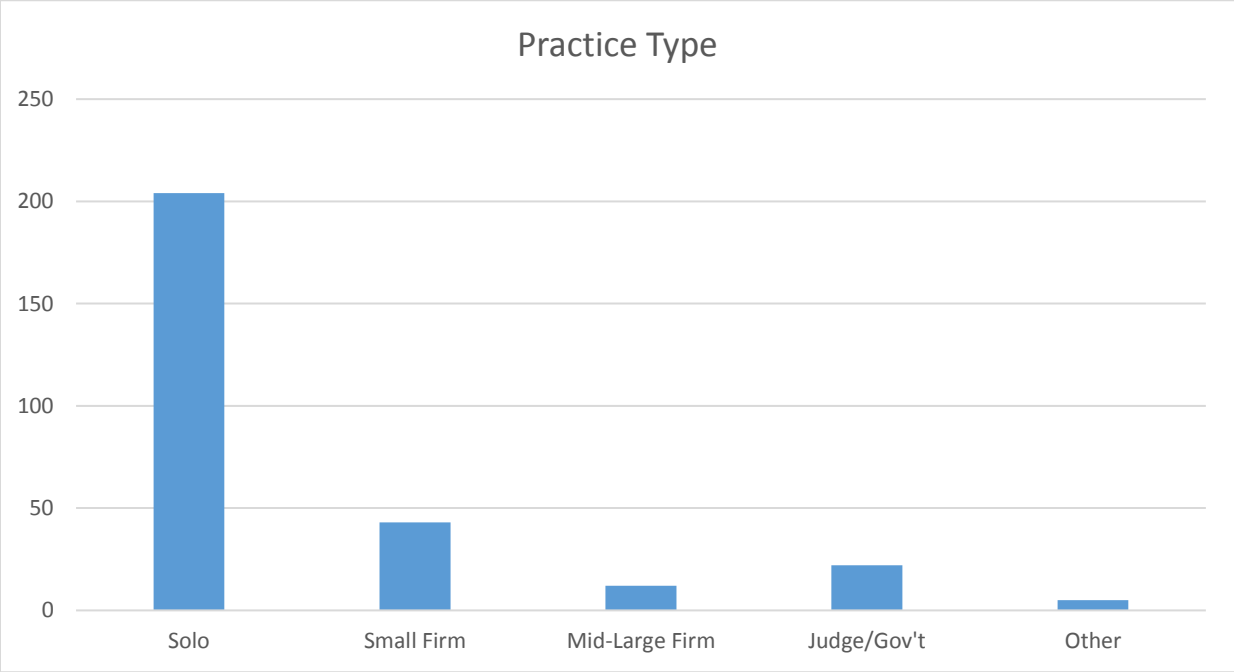
Login to post comments

THE MILLER BECKER 2017 SEMINAR

BOARD UPDATE, CASE TRENDS, AND CURRENT DEVELOPMENTS

D. Allan Asbury
Heidi Wagner Dorn
Richard A. Dove

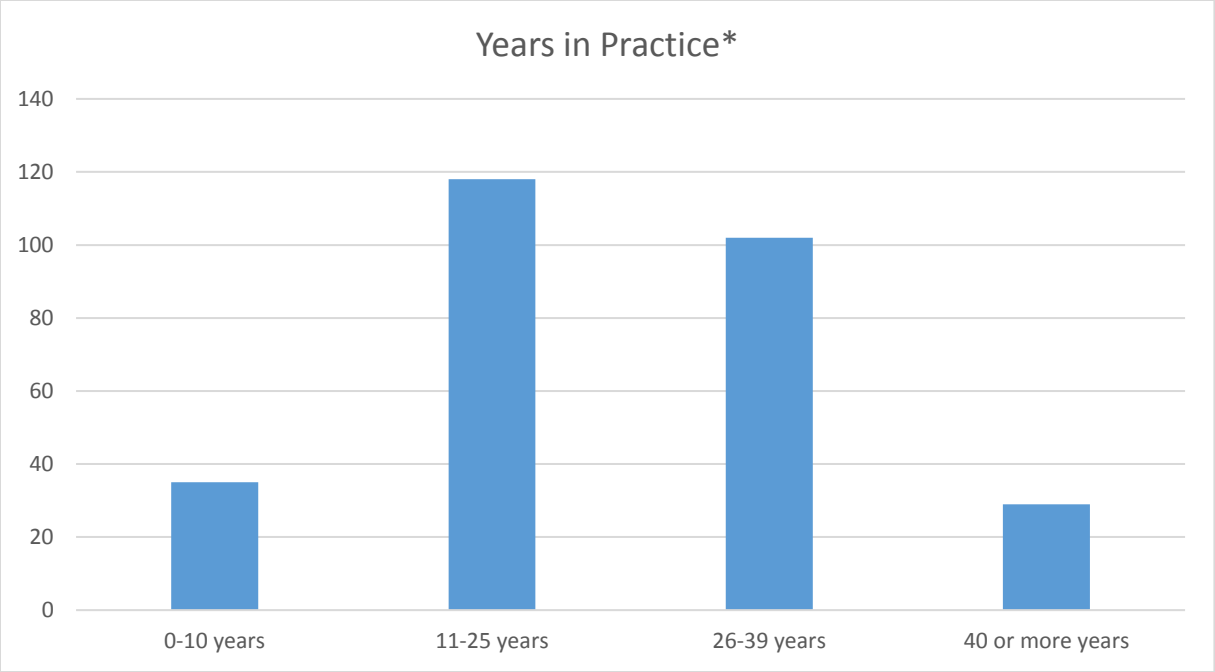
DISCIPLINE DEMOGRAPHICS
(2012-2016)[1]



Percentages:

Solo—71%
Small firm (2-10 lawyers)—15%
Mid-to large firm—4%
Judicial/Governmental—8%
Other—2%

[1] The demographic statistics are taken from 2012-2016 cases in which the Supreme Court imposed discipline upon a report and recommendation of the Board of Professional Conduct. Excluded are (1) cases dismissed upon motion of the relator, by the Board or Court based on a finding of no misconduct, the respondent's resignation with discipline pending, or the death of the respondent, and (2) cases in which the Court imposed an interim or indefinite suspension as a result of the respondent's default.

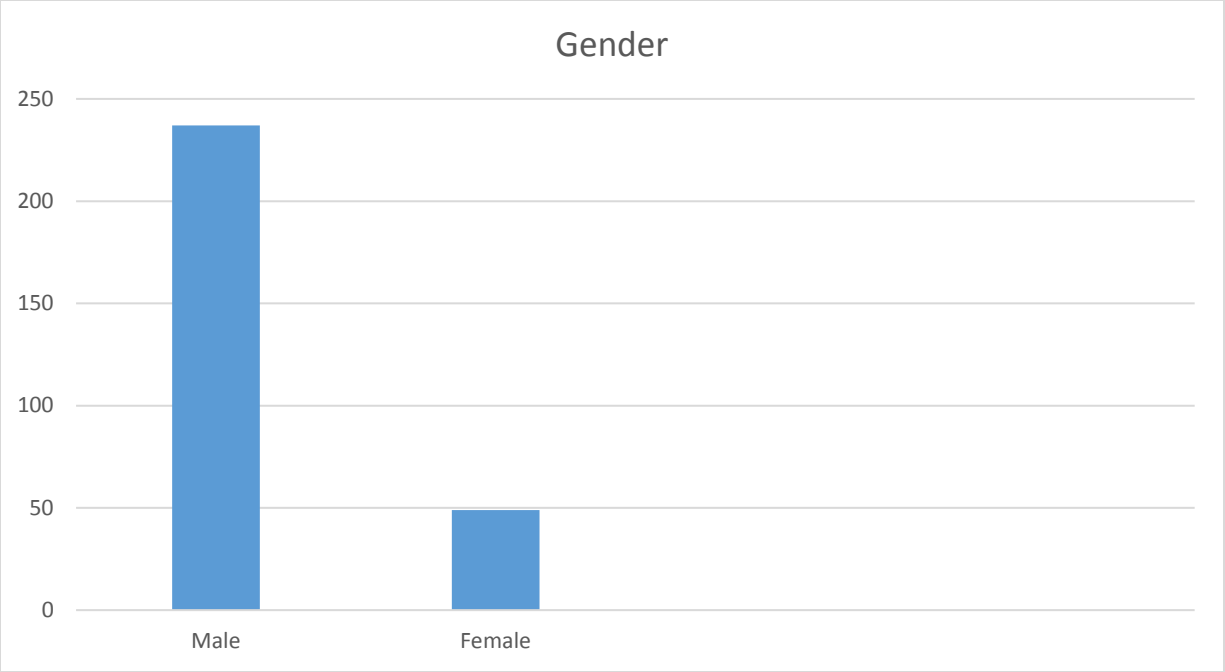


Mean—24.47 years
Median—24 years

Percentages:

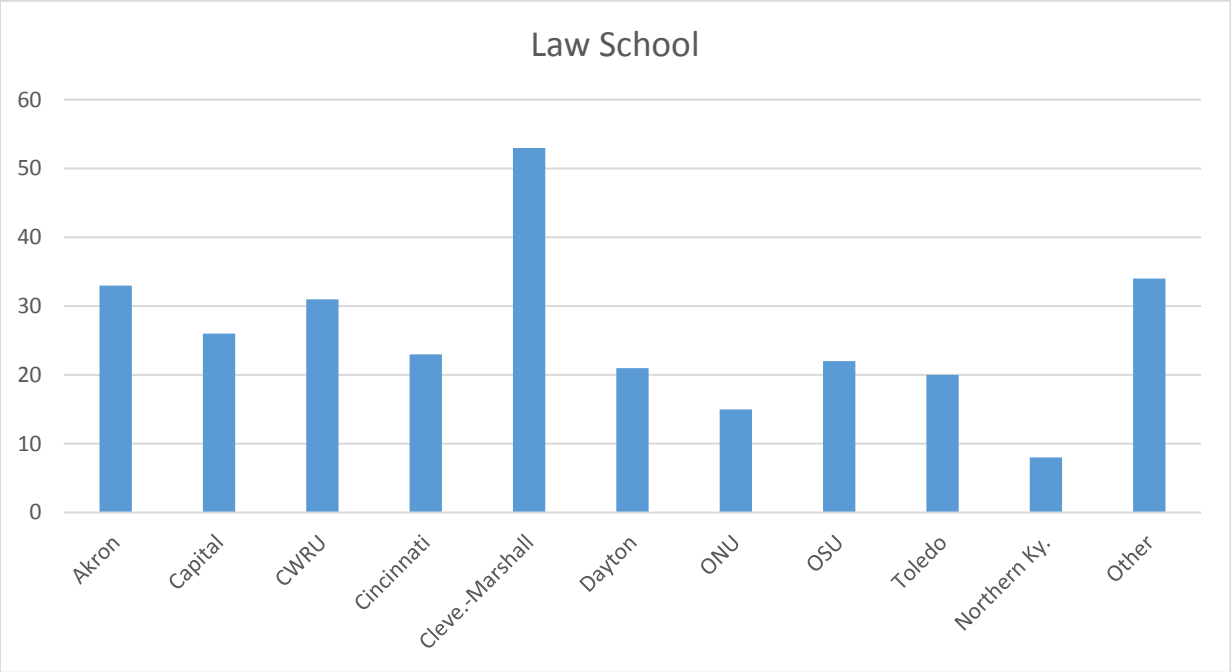
0-10 years—12%
11-25 years—42%
26-39 years—36%
40 or more years—10%

*Years in practice is based on date of Ohio admission and date of the Supreme Court disciplinary order.



Percentages:

Male—83%
Female—17%


Law School
60
50
40
30
20
10
0
Akron
Capital
CWRU
Cincinnati
Cleve.-Marshall
Dayton
ONU
OSU
Toledo
Northern Ky.
Other

Disciplinary Case Statistics
2014-2016

Supreme Court Decisions
(excluding defaults and reinstatements)

2014	2015	2016
53	51	68

Sanction Imposed
(excluding defaults)

	2014	2015	2016
Public reprimand	7	19	10
Term suspension	32	25	44
Indefinite suspension	10	4	8
Disbarment	3	2	5
Dismissal	1	1	1

Court Action on Board-Recommended Sanction

	2014	2015	2016
Imposed recommended sanction	44 (83%)	42 (82%)	55 (82%)
Modified recommended sanction	9 (17%)	9 (18%)	13 (18%)
· Increased	2	4	7
· Decreased	7	5	6

Consent to Discipline Cases
(cases in which the Board recommended acceptance)

	2014	2015	2016
Accept with public reprimand	4	8	2
Accept with term suspension	2	3	10
Rejected and remanded	0	1	1

Default Judgment Cases

	2014	2015	2016
Total defaults certified to SCO	30	30	20
Interim suspension imposed	22	19	11
Indefinite suspension imposed	14	23	12

Disciplinary Case Statistics
2014-2016

Respondent with Prior Discipline

(including discipline for misconduct and suspensions for non-compliance with CLE or attorney registration requirements.)

2014	2015	2016
13 (25%)	13 (25%)	17 (25%)

License Reinstatements

	2014	2015	2016
Upon application	11	6	18
Upon petition:			
· Granted	5	4	1
· Denied	3	1	0
· Withdrawn	0	1	0

Judicial Misconduct Cases

(includes all cases involving violations of the Code of Judicial Conduct when the respondent was a judicial officer or candidate at the time the misconduct occurred.)

	2014	2015	2016
Total	6	3	4
Rule V cases	5	3	4
Judicial campaign misconduct (expedited)	1	0	0
Dismissals	0	0	0

Miscellaneous Disciplinary Dispositions

	2014	2015	2016
Resignations with discipline pending accepted	18	20	19
Resignations with discipline pending denied	0	0	0
Interim remedial suspension imposed	3	3	4
Child support default suspension imposed	1	1	0
Interim felony suspension imposed	13	14	12
Impairment suspension imposed	0	0	0
Reciprocal discipline imposed	6	1	7

Ohio Board of Professional Conduct

Disciplinary Case Statistics
2014-2016

Top 5 Disciplinary Offenses of 2016

(based on total number of grievances opened for investigation and primary misconduct alleged)

	2016	3-Yr Avg.
1. Neglect/failure to protect client's interest	32%	29.00%
2. Excessive fee	14%	11.67%
3. Failure to maintain funds in trust	10%	11.67%
4. Personal misconduct	7%	9.33%
5. Judicial misconduct	5%	5.67%

	2014	2015	2016
Active Registered Attorneys	44,985	44,157	45,080
Awards to Victims of Lawyers by Lawyers' Fund for Client Protection	$782,741	$767,081	$782,290

	2014	2015	2016
Total Grievances	**4133**	**4124**	**3906**
Certified Grievance Committees (CGC)	1416 (34%)	1214 (30%)	1347 (34%)
Total Dismissals†	**1864**	**1830**	**1741**
Dismissed after initial review by ODC	1171 (28%)	1248 (30%)	1151 (29%)
Dismissed after initial review by CGC	693 (17%)	582 (15%)	590 (15%)
Total Investigations†	**2269**	**2294**	**2165**
Opened for Investigation by ODC	1546 (37%)	1662 (40%)	1408 (36%)
Opened for Investigation by CGC	723 (18%)	632 (15%)	757 (20%)
Complaints filed with the Board	**104**	**77**	**72**

†Percentages based on total grievances

THE MILLER BECKER 2017 SEMINAR

OHIO BOARD OF PROFESSIONAL CONDUCT

OPINION 2016-9
Issued December 9, 2016

Out-of-State Lawyer Practicing Exclusively Before Federal Courts or Agencies

Syllabus of Opinion:

An out-of-state lawyer who is admitted and in good standing in another United States jurisdiction, and also is admitted or authorized by law to appear before a federal court or agency in Ohio, may maintain an office or other systematic and continuous presence in Ohio. An out-of-state lawyer who is engaged in a federal practice and maintains a physical office in Ohio, may not provide legal services based on Ohio law to clients.

The letterhead of a lawyer not licensed to practice law in Ohio, engaged in a federal practice, and who maintains an office or other systematic and continuous presence, may include the designation "Attorney at Law," but must identify the federal courts or agencies to which the lawyer is admitted or permitted to appear and include an appropriate disclaimer regarding his or her jurisdictional limitations.

OHIO BOARD OF PROFESSIONAL CONDUCT

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OPINION 2016-9
Issued December 9, 2016
Withdraws Opinion 91-06

Out-of-State Lawyer Practicing Exclusively Before Federal Courts or Agencies

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The letterhead of a lawyer not licensed to practice law in Ohio, engaged in a federal practice, and who maintains an office or other systematic and continuous presence, may include the designation "Attorney at Law," but must identify the federal courts or agencies to which the lawyer is admitted or permitted to appear and include an appropriate disclaimer regarding his or her jurisdictional limitations.

APPLICABLE RULES: Prof.Cond.R. 1.2, 5.5, 7.1, and 7.5.

QUESTIONS PRESENTED: [1]

(1) Whether an out-of-state lawyer, not admitted to practice in Ohio, is engaged in the unauthorized practice of law in Ohio if the lawyer advises

[1] The questions presented in this advisory opinion are the same or substantially similar to the questions presented in Adv.Op. 91-06.

clients on federal claims and appears in federal courts or before federal agencies in Ohio.

(2) Whether an out-of-state lawyer, who maintains an office in Ohio as authorized by federal law, is engaged in the practice of law in Ohio if the lawyer uses the designation "Attorney at Law" on his or her letterhead.

OPINION:

Question One

An out-of-state lawyer may not practice in violation of Ohio's regulation of the practice of law. Prof.Cond.R. 5.5(a). An out-of-state lawyer, not admitted to Ohio, is unable to establish an office or other systematic or continuous presence in Ohio for the practice of law unless authorized by law or the Rules of Professional Conduct. More importantly, an out-of-state lawyer may not hold out to the public that he or she is admitted to practice law in Ohio. Prof.Cond.R. 5.5(b).

Under the Supremacy Clause of the U.S. Constitution (Art. VI), a state may not deny to those failing to meet its own qualifications, the right to perform functions authorized by federal law. *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379, 385 (1963). Consequently, under Prof.Cond.R. 5.5(d)(2), an out-of-state lawyer is permitted to provide legal services in Ohio that the lawyer is authorized to provide under federal law. More specifically, a lawyer engaged in federal practice, who is admitted to practice in another United States jurisdiction and is in good standing, may establish an office or other systematic and continuous presence in Ohio.[2] Legal services authorized under federal law include those services arising out of admission before the federal courts in Ohio. Admission to practice before a federal district or bankruptcy court derives from membership in a state bar. *See e.g.*, Local Rule 83.3(b), Federal District Court, Ohio S.D.; *see also, Disciplinary Counsel v. Harris*, 137 Ohio St.3d 1, 2013-Ohio-4026 (out-of-state

[2] In Adv.Op. 91-06, the question before the Board involved an out-of-state lawyer seeking to establish an office in Ohio to practice federal law, but who was no longer admitted in any jurisdiction due to a resignation from practice not related to discipline. Analyzed under this opinion, the lawyer would not be permitted to practice in Ohio under Prof.Cond.R. 5.5(d) because the lawyer is not admitted and in good standing in any United States jurisdiction.

lawyer with an office in Ohio was a member of the District of Columbia bar and was admitted to practice before the United States Bankruptcy Court for the Northern District of Ohio.)

In addition to federal courts, several federal agencies expressly authorize by regulation a lawyer admitted to practice in any jurisdiction to practice and appear before them. For example, a lawyer may appear before and represent others before the United States Citizenship and Immigration Services ("USCIS") that has jurisdiction over the immigration and naturalization of aliens. 8 CFR §§ 1.2, 292.1(a)(1). There is no requirement under USCIS regulations that the lawyer be a member of the bar of the state in which the lawyer practices immigration law.

When establishing an office in Ohio under Prof.Cond.R. 5.5(d), an out-of-state lawyer is prohibited from providing legal services to clients arising out of or reasonably related to Ohio law. Providing legal services or advice to clients requiring the application of Ohio law constitutes the unauthorized practice of law. Prof.Cond.R. 5.5(a). *Harris*, at ¶8, 18. The unauthorized practice of law in Ohio "includes representation before a court, as well as the preparation of pleadings and other legal documents, the management of legal actions for clients, all advice related to law and all actions taken on behalf of clients connected with the law." *Cleveland Bar Ass'n v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, ¶22. Accordingly, an out-of-state lawyer is required to limit his or her legal practice under Prof.Cond.R. 1.2 to the areas of law governed by federal law.

In conclusion, an out-of-state lawyer admitted in good standing in another United State jurisdiction may maintain an office or other systematic and continuous presence in Ohio if the lawyer is providing services authorized by federal law. Services authorized by federal law include the legal services necessary to represent clients before federal courts or federal agencies. A lawyer engaged in these services under Prof.Cond.R. 5.5(d)(2) is not engaged in the unauthorized practice of law, but must refrain from providing services based on Ohio law.

Question Two

An out-of-state lawyer seeking to practice in Ohio exclusively before federal courts or agencies and who maintains an office should also take precautions to not state or imply that the lawyer is admitted in Ohio. Prof.Cond.R. 5.5(b)(2). Prof.Cond.R. 7.1 prohibits misleading communications about a lawyer or his or her services. In addition, a law firm with offices in more than one jurisdiction is required to indicate the jurisdictional limitations of the lawyer or lawyers not licensed to practice in Ohio. Prof.Cond.R. 7.5. Consequently, the lawyer's letterhead, business cards, website and advertising materials, fee agreement, and even office signage containing the designation "Attorney at Law" should affirmatively state that the lawyer is not admitted in Ohio. Otherwise, communications from or about the lawyer could convey a misleading impression that the lawyer is generally admitted to practice in Ohio and can provide legal services requiring application of Ohio law. *See* Alaska Ethics Op. 2010-1 (out-of-state lawyer must clearly advise clients that he or she is not an Alaskan lawyer); Philadelphia Bar Ass'n, Ethics Op. 2005-14 ("Rules 7.1 and 7.5b require that the inquirer note on all her letterhead, office signage, business cards and on/in any other publicity or advertising vehicles, that she is admitted only in the state to which she is licensed, and that her practice in Pennsylvania is strictly limited to Immigration and Naturalization.")

Based on the forgoing, the letterhead of lawyer not admitted to practice law in Ohio, who maintains an office or other systematic and continuous presence in Ohio and appears in federal court or before federal agencies, may include the designation "Attorney at Law," but the letterhead should identify the federal courts to which the attorney is admitted or agencies permitted to appear before, with an appropriate disclaimer regarding the lack of admission to the Ohio bar, in order to comply with Prof.Cond.R. 5.5, 7.1, and 7.5.

CONCLUSION: An out-of-state lawyer may establish an office or systematic and continuous presence in Ohio if the lawyer's practice is authorized by federal law. An out-of-state lawyer engaged in a federal practice in Ohio who maintains an office in Ohio should identify the courts to which the lawyer is admitted or the agencies to which the lawyer is permitted to appear. The lawyer should also take affirmative steps to communicate the fact the lawyer is not admitted to practice law in Ohio through the lawyer's letterhead, business cards, website, fee agreement, and office signage that contains the designation "Attorney At Law." An out-of-state lawyer who maintains an office in Ohio limited to a federal practice may not provide legal services based on Ohio law to clients.

OPINION 2017-1
Issued February 10, 2017
Withdraws Opinion 98-9

Advertisement of Contingent Fee Arrangements

SYLLABUS: A lawyer who advertises litigation services on a contingent fee basis may not use statements such as "There is no charge unless we win your case" or "No fee without recovery," if the lawyer intends to recover advanced litigation costs and expenses from the client, regardless of the outcome of the litigation. If a lawyer intends to recover advanced costs and expenses of litigation from the client, a disclaimer is required in the advertisement that explains the client's obligations for repayment.

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QUESTION PRESENTED: [1] Whether it is proper for a lawyer who advertises to use statements such as "No fee without recovery" or "You pay no fee unless you win" or "There's no charge unless we win your case" or "You pay us only when we win."

APPLICABLE RULES: Prof.Cond.R. 1.5, 1.8, and 7.1

OPINION: Because of the potential to mislead prospective clients, any obligation of a client to repay litigation costs and expenses must be revealed by a lawyer when advertising the availability of legal services on a contingent fee basis. In contingent fee cases, it is common for the lawyer to advance litigation costs and expenses, which may include filing fees, medical reports, expert testimony, and depositions, with the expectation that any recovery will be sufficient to cover the costs. Prof.Cond.R. 1.8

[1] The question presented in this advisory opinion is the same or substantially similar to the question presented in Adv.Op. 98-9.

permits a lawyer to "advance the court costs and expenses of litigation, the repayment of which may be contingent upon the outcome of the matter." A lawyer is not required to recover the costs and expenses from the client. However, in some instances, a lawyer may require the client to directly repay the costs advanced by the lawyer if the case is unsuccessful or the recovery is too small to recoup the costs of litigation advanced by the lawyer. *See*, Prof.Cond.R. 1.5(c)(1).

Prof.Cond.R. 7.1 prohibits the use of false and misleading communications about the lawyer's services. A statement is considered false or misleading under the rule if it omits a fact necessary to make the statement as a whole not materially misleading. Prof.Cond.R. 7.1 may be implicated when a lawyer advertising services on a contingent fee basis uses statements such as "No fee without recovery," "There's no charge unless we win your case," or "You pay no fee unless we win" without the inclusion of additional information regarding repayment, if any, of costs and expenses. Statements such as these that omit reference to the client's responsibility for expenses and costs are inherently false or misleading since the statement implies that the client will not be required to pay litigation costs, regardless of the outcome of the litigation. Furthermore, consumers of legal services may be misled by these statements because, without more information, the statements do not adequately differentiate between legal fees and litigation costs. After viewing a lawyer's advertisement, a client may be unaware, until given the written contingent fee agreement to sign, or settlement funds are disbursed at the end of the case, that the lawyer's initial advertisement was either false or misleading. If the lawyer intends to recover the costs and expenses from the client, the inclusion of a statement in advertising such as "contingent fee clients are responsible for the costs and expenses of litigation" is required to prevent a false or misleading communication.

The obligation of a lawyer to not use false or misleading communications in the context of advertising services on a contingent fee basis was first addressed in *Office of Disciplinary Counsel v. Zauderer* (1984), 10 Ohio St.3d 44.[2] In *Zauderer*, the respondent advertised that there would be no fee without a recovery, but did not inform his clients

[2] Under former DR 2-101(E)(1)(c), a lawyer advertising services on a contingent fee basis was required to, *inter alia*, disclose "the contingent fee litigant could be liable for payment of court costs, expenses of investigation, expenses of medical examinations, and costs incurred in obtaining and presenting evidence." A similar specific requirement was not adopted under the Rules of Professional Conduct.

that they were still responsible for paying litigation costs. The Supreme Court found the respondent violated former DR 2-101(A) prohibiting false, fraudulent, misleading, and deceptive communications and received a public reprimand. On appeal to the Supreme Court of the United States, the sanction was upheld. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). In affirming *Zauderer* in part, the U.S. Supreme Court underscored the importance in protecting the public from misleading advertising and reasoned that "[t]he advertisement makes no mention of the distinction between 'legal fees' and 'costs,' and to a layman not aware of the meaning of these terms of art, the advertisement would suggest that employing appellant would be a no-lose proposition in that his representation in a losing cause would come entirely free of charge." *Id.* at 652. While *Zauderer* applied the former Code of Professional Responsibility to lawyer advertising misconduct, a lawyer's obligation to not use false or misleading statements about his or her services remains unchanged under the Rules of Professional Conduct.

CONCLUSION: A lawyer may not advertise legal services on a contingent fee basis using statements such as "No fee without recovery," "There's no charge unless we win your case," or "You pay us only when we win" if the lawyer intends to recover advanced litigation costs and expenses from the client, regardless of the outcome of the litigation. Such an advertisement is inconsistent with the Prof.Cond.R. 7.1 prohibition against false or misleading communications unless a disclaimer is included that explains the obligations of the client to repay costs and expenses. A lawyer seeking to avoid the inclusion of an explanatory statement regarding the payment of litigation costs also has the option to not advertise his or her services on a contingent fee basis.

OPINION 2017-05
Issued June 9, 2017

Virtual Law Office

SYLLABUS: An Ohio lawyer may provide legal services via a virtual law office through the use of available technology. When establishing and operating a virtual law office, a lawyer must maintain the requisite competence regarding the technology he or she employs and use reasonable efforts to prevent the inadvertent disclosure of information related to the representation of the client. A lawyer operating a virtual law office must maintain adequate communication with his or her client, regardless of the type of technology used.

The "office address" of a lawyer required in a lawyer's written and electronic communications must include the address of the lawyer's home or physical office, the address of shared office space, or a registered post office box.

A lawyer operating a virtual law office may utilize shared, nonexclusive office space with lawyers or nonlawyers, within certain guidelines.

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OPINION 2017-5
Issued June 9, 2017

Virtual Law Office

SYLLABUS: An Ohio lawyer may provide legal services via a virtual law office through the use of available technology. When establishing and operating a virtual law office, a lawyer must maintain the requisite competence regarding the technology he or she employs and use reasonable efforts to prevent the inadvertent disclosure of information related to the representation of the client. A lawyer operating a virtual law office must maintain adequate communication with his or her client, regardless of the type of technology used.

The "office address" of a lawyer required in a lawyer's written and electronic communications must include the address of the lawyer's home or physical office, the address of shared office space, or a registered post office box.

A lawyer operating a virtual law office may utilize shared, nonexclusive office space with lawyers or nonlawyers, within certain guidelines.

QUESTIONS PRESENTED: 1) Is it proper for a lawyer to provide legal services exclusively, or almost exclusively, via a "virtual law office?" 2) Is it proper for a lawyer operating primarily as a "virtual law office" to lease a shared, nonexclusive office space for purpose of occasional face-to-face meetings with clients, or receiving mail?

APPLICABLE RULES: Prof.Cond.R. 1.1, 1.4, 1.6, 5.3, 7.1, and 7.2.

OPINION: A virtual law office "VLO" typically involves a lawyer communicating with clients almost exclusively through secure Internet portals, emails, or other electronic messaging.[1] *See also* Adv. Op. 1999-9. A VLO permits lawyers to work remotely, offers clients and lawyers the ability to discuss matters electronically without meeting in person, affords clients the opportunity to review their client file online, and reduces or eliminates the overhead typically associated with traditional offices. A VLO is uniquely situated to provide limited scope representation or "unbundled legal services" through electronic means, including "document drafting assistance, document review, representation in dispute resolution, legal advice, case evaluation, negotiation counseling, and litigation coaching." N.C. Ethics Op. 2005-10. *See also* Prof.Cond.R. 1.2(c).

The Rules of Professional Conduct apply equally to lawyers who operate in a traditional office setting or a VLO. However, a lawyer's establishment of a VLO requires close scrutiny of the rules regarding competence, communication with clients, confidentiality, and the supervision of nonlawyers vendors, Prof.Cond.R. 1.1, 1.4, 1.6, and 5.3. This opinion is limited to addressing the obligations of an Ohio lawyer who establishes and operates a VLO.

Question One

Because of the nature of a VLO, a lawyer who chooses to maintain a virtual office must competently manage and maintain the technology used to run the practice and "keep abreast of . . . the benefits and risks associated with relevant technology." Prof.Cond.R. 1.1, cmt. [8]. Consequently, a VLO lawyer should possess a general knowledge of the security safeguards for the technology used in the lawyer's practice, or in the alternate hire or associate with persons who properly can advise and inform the lawyer. Fl. Bar Op. 10-2 (2010). At the outset of representation, a lawyer should discuss the office technology he or she employs with the client and determine if the client requires the implementation of additional technological safeguards. ABA Formal Op. 477 (2017); Prof.Cond.R. 1.4(a)(2). The use of technology and any additional client-specific safeguards can be addressed in the client fee agreement.

[1] Kimbro, *Practicing Law Without an Office Address: How the Bona Fide Office Requirement Affects Virtual Law Practice*. 36 Dayton Law Rev 1. (2010).

Client communication

A VLO lawyer's professional obligation to maintain adequate communication with the client is not diminished because of the use of technology. Reliance on electronic communication by a VLO lawyer can have obvious limitations when compared to traditional voice or face-to-face communication with a client. For example, a lawyer relying exclusively on technology to meet and communicate with a client must take extra precautions to verify the identity of a client, especially at the outset of the representation. Pa. Ethics. Op. 2010-200. Consequently, a VLO lawyer must take steps to ensure that all electronic communications are adequately understood by the client to a degree that the client is able to make informed decisions regarding the representation. Prof.Cond.R. 1.4(a)(1). Additional steps that should be taken by a VLO lawyer may include a standing offer to meet in person at the client's reasonable request or to communicate by telephone. If the lawyer is unsure whether the client comprehends a particular communication, the lawyer is obligated to change the mode of communication to ensure the client is adequately informed under the rules. Prof.Cond.R. 1.4.

A lawyer operating a VLO must ensure the client is kept reasonably informed about the status of a matter. Prof.Cond.R. 1.4(a)(3). Given the nature of a VLO, the available means of technology to keep the client informed are nearly endless, but a lawyer should carefully consider the best mode of communication, *e.g*, texting, emailing, online chat, or voice that will work best for each individual client. Based on the individual client's access to or familiarity with technology, some clients may require more traditional modes of communication. VLO lawyers are advised to consult with the client about the preferred method of communication at the beginning of the representation and address the issue in the fee agreement.

"Reasonable efforts"

When a lawyer utilizes cloud computing, email, or other technology that relies on a third-party for the storage or transmission of data, the lawyer must take "reasonable efforts" to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information related to the representation of the client. Prof.Cond.R. 1.6(c). "Reasonable efforts" can be determined through the analysis of several nonexclusive

factors including 1) the sensitivity of the information, 2) the likelihood of disclosure if additional safeguards are not employed, 3) the cost of employing additional safeguards, 4) the difficulty of implementing the safeguards, and 5) the extent to which the safeguards adversely affect the lawyer's ability to represent clients. Prof.Cond.R. 1.6(c), cmt. [18].

Third-party technology vendors

In addition, when purchasing internet, email communication and cloud-based services, a lawyer must undertake reasonable efforts to ensure that the services are provided "in a manner compatible with the lawyer's professional obligations." Prof.Cond.R. 5.3(a). This requires the lawyer to diligently investigate the measures undertaken by the vendor to ensure its operations are compatible with the lawyer's professional obligations. *See* Prof.Cond.R. 5.3, cmt. [3]. Specifically, the lawyer should:

- Determine that the vendor understands and agrees to maintain and secure stored data consistent with the lawyer's duty of confidentiality;
- Ensure that client files and data will be maintained and regularly backed up;
- Require that the vendor give the lawyer notice of subpoenas for client data, nonauthorized access to the stored data, or other breach of security, and a reliable means of retrieving the data if the agreement is terminated or the vendor goes out of business.

Wa. Adv. Op. 2215 (2012)

Question Two

The most obvious feature of a VLO is the lack of a physical office where the lawyer works, meets with clients, and stores client files. A VLO practice is often combined with a shared office arrangement, where a lawyer reserves access to a shared office suite or conference room. The space can be used to receive mail, meet clients, conduct depositions, or provide other legal services on an infrequent basis. The space may be staffed by an employee of the building owner who provides basic office support services (mail handling, reception, etc.) to all users of the space. The office suite and conference

rooms are available to all other "tenants." The use of a shared office arrangement as part of a VLO is permissible under the Rules of Professional Conduct when the following guidelines are observed.

"Office address" requirement [2]

Prof.Cond.R. 7.2(c) requires that "[a]ny communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content." The Board interprets the term "office address" in Prof.Cond.R. 7.2(c) to include situations other than when a lawyer works from a physical office.[3] Several jurisdictions analyzing the permissibility of VLOs under Model Rule 7.2(c) have concluded that the rule does not require a lawyer to provide an address that matches a physical office location. N.C. Ethics Op. 2012-6, Wa. Adv. Op. 20161 (2016). Based on the foregoing, the Board advises that in order for a VLO lawyer to satisfy the office address requirement in Prof.Cond.R. 7.2(c), a VLO lawyer must provide an office address in all communications that corresponds to the lawyer's home or physical office, the address of shared office space, or a registered post office box.

A lawyer operating a VLO also must be careful to avoid making a false, misleading, or nonverifiable communication about the lawyer's practice, including the office address and nature of the practice. Prof.Cond.R. 7.1. In addition to providing an office address, the lawyer should be transparent about the nature of the VLO in all communications, including office letterhead. Conveying or implying that the lawyer regularly works from a physical office, when it is not the case, implicates the prohibitions contained in Prof.Cond.R. 7.1. A VLO lawyer providing an office address in compliance with Prof.Cond.R. 7.2(c) complies with Prof.Cond.R. 7.1 by stating that the lawyer is able to meet in person with clients "by appointment only" or that the lawyer operates a virtual office and can arrange to meet with clients through the use of available technology, or in person at the client's request.

[2] This opinion does not interpret or address the "office address" requirement contained in Gov.Bar R. VI, Sec. 4(B). Given the likely proliferation of virtual law offices in the future, a clarifying amendment to the Rules for the Government of the Bar concerning the "office address" of VLO lawyers may be warranted.

[3] Many jurisdictions have a "bona fide office requirement" that requires an admitted lawyer to maintain a traditional office. The Board does not interpret Prof.Cond.R. 7.2(c) as a bona fide office requirement. *See* Kimbro, supra at 9.

Client confidentiality in shared offices

Lawyers entering into a shared, nonexclusive office arrangement with lawyers or nonlawyers must ensure that client confidentiality is maintained at all times and that all information related to the representation is protected from inadvertent disclosure to third parties. Prof.Cond.R. 1.6(c). This may require consultation with the leasing agent or owner to take the steps necessary to inform other tenants and staff of the facility of the nature of your business and the lawyer's professional responsibilities. *See* Adv. Op. 1990-9 (office sharing with non-lawyer business). The use of a shared office environment inevitably will require the VLO lawyer to consider the use of a private Wi-Fi network, virtual private networks, firewalls, and other technology to protect client information and communications.

CONCLUSION: The Rules of Professional Conduct permit a lawyer to operate a VLO. Given the inherent nature of a VLO, a lawyer must ensure that he or she understands the technology being employed and stays abreast of developments concerning the underlying security of the technology. The use of technology raises unique issues about client confidentiality and requires a lawyer to undertake reasonable efforts to avoid the inadvertent disclosure of client information. The hiring of vendors to assist in the provision of technology requires the lawyer to ensure that the vendor's services are provided in a manner consistent with the lawyer's professional obligations.

Although a physical office is not required for a lawyer to comply with the "office address" mandate in Prof.Cond.R. 7.2(c), an office address provided in a lawyer communication can reflect a lawyer's home or physical office, the address of shared office space, or a registered post office box. A VLO lawyer must avoid the implication or misrepresentation that the lawyer works from a physical office when it is not the case. Additionally, the use of a shared office arrangement with lawyers or nonlawyers is permissible so long as the lawyer ensures that client confidentiality and communications are adequately safeguarded.

THE MILLER BECKER 2017 SEMINAR

BEST PRACTICES IN INVESTIGATING ALLEGATIONS OF MISCONDUCT

Hon. D. Chris Cook
James D. Caruso
Donald R. Holtz
Alvin E. Mathews, Jr.

Joseph M. Caligiuri, *Moderator*

BEST PRACTICES FOR LAWYER CONDUCT INVESTIGATIONS

Rules to Remember

I. Confidentiality

- Prior to a determination of probable cause by the Board, all proceedings, documents, and deliberations relating to review, investigation, and consideration of grievances shall be confidential except as follows:
    - Where the respondent expressly and voluntarily waives confidentiality of the proceedings. A waiver of confidentiality does not entitle the respondent or any other person access to documents or deliberations expressly designated as confidential under this section. Gov.Bar R(V)(8)(1).

- Relators must notify the appropriate law enforcement agency, prosecutorial authority, or regulatory agency if a person involved in the investigation may have violated federal or state criminal statutes. Gov.Bar R.(V)(8)(A)(1)(c).

- The Office of Disciplinary Counsel and a certified grievance committee may share information with each other or with the disciplinary authority of another state or federal jurisdiction regarding the review, investigation, and consideration of a grievance. Gov.Bar R. V(8)(A)(2).

- All investigatory materials prepared in connection with an investigation conducted pursuant to Section 9 or submitted with a complaint under Section 10 shall be confidential prior to certification of a formal complaint. If a complaint is dismissed pursuant to Section 11, the materials shall remain confidential. Gov.BarR. V(8)(A)(3).

- Relator's summary of investigation is confidential work-product under Gov.Bar R. V(8)(B)(3).

- Respondents may request, in writing, that relator not provide a copy of his or her response to the grievance. Gov.Bar. R. V(8)(E).

II. Serious and Complex Investigations

- The Chair of a Certified Grievance Committee may request the assistance of the Office of Disciplinary Counsel if the matter under investigation is serious and complex. Gov.Bar R.V(9)(B).

III. Time Limits for Investigations—Gov.Bar. R V(9)(D)(1) & (2)

- 60 days from the date of the grievance to conduct the investigation
- Extensions up to 150 days submitted to the director of the board

- Extensions beyond 150 days up to one year submitted to the director of the board; must state reason
- Time may be extended if all parties voluntarily enter into ADR for fee disputes

IV. Retaining Outside Experts—Gov.Bar R. V(9)(E)

- Certified Grievance Committees may submit a written request to the director of the board for permission to retain an outside expert, such as an accountant, independent investigator, auditor, etc.

V. Dismissal Without Investigation—Gov.Bar R. V(9)(C)

- Bar Counsel for a CGC must review the grievance and any supporting material before a CGC can dismiss it without an investigation.

VI. Duty to Cooperate—Gov.Bar. R V(9)(G)

- If the board, ODC, or a CGC requests the assistance of a judge or lawyer, he or she must cooperate, and if necessary, provide testimony during a disciplinary hearing. See also Prof.Cond.R. 8.1(b).

VII. Subpoena—Gov.Bar. R. V(2)(C)

- Relator and respondent may apply to the board for the issuance of a subpoena for testimony to be taken under oath before ODC, a CGC, hearing panel, or the board. Failure to comply with a subpoena is considered contempt of the Supreme Court.

INTERIM REMEDIAL AND IMPAIRMENT SUSPENSIONS

Lori J. Brown
Scott J. Drexel
Scott R. Mote

Richard A. Dove, *Moderator*

INTERIM REMEDIAL SUSPENSIONS
Gov. Bar R. V, Section 19

Standard—substantial, credible evidence that judge or attorney:

- has violated the Ohio Code of Judicial Conduct or Ohio Rules of Professional Conduct, **and**
- poses a substantial threat of serious harm to the public.

Motion must include:

- Proposed findings of fact and conclusion of law;
- Other information in support of requested order, including relevant evidence;
- Certificate detailing attempts to provide advance notice to the respondent of relator's intent to file the motion [Gov. Bar R. V, Section 19(A)(1)(a)]; and
- Certificate of service.

If ordered, interim remedial suspension remains in place, pending final disposition of disciplinary proceedings, unless dissolved or modified by Supreme Court. Grounds for requesting dissolution of order include (1) respondent no longer poses a substantial threat of serious harm to the public; or (2) 180 days has elapsed since the order was entered and relator has not filed a formal complaint with the Board of Professional Conduct.

INTERIM REMEDIAL SUSPENSIONS
(1999 to present)

- Number Requested—42
- Number Granted—41

Resolution of underlying disciplinary matter:

- Disbarment—11
- Indefinite Suspension—6
- Resignation with Discipline Pending—13
- Respondent died before case adjudicated—2
- Mental illness suspension—2
- Suspension terminated with no discipline imposed—1
- Pending—6

Notes:

- In the only case in with the interim suspension was denied, the respondent was later indefinitely suspended.
- In two cases in which the respondents were indefinitely suspended as a result of the conduct giving rise to the interim suspension, they were disbarred in subsequent disciplinary proceedings.
- In the only case in which the interim suspension was terminated with no imposition of discipline, the underlying case was dismissed upon the respondent's agreement to resign from judicial office.

In last 10 years (23 total motions):

- 15 were filed before a formal complaint was certified to the Board
- 15 were based on allegations of misconduct (most common: misappropriation or extensive pattern of neglect)
- 5 were based on the alleged existence of a disorder
- 3 were based on both allegations of misconduct and the existence of a disorder

IMPAIRMENT SUSPENSION
Gov. Bar R. V, Section 15

Standards

A. The Supreme Court may impose an **immediate** impairment suspension under the following circumstances:

- Allegation of mental illness, as defined in R.C. 5122.01(A), that substantially impairs the respondent's ability to practice law **and** supported by a court entry adjudicating mental illness;

- Allegation of the existence of alcohol or other drug abuse that substantially impairs the respondent's ability to practice law **and** supported by a court entry ordering treatment for alcohol or other drug abuse pursuant to R.C. 5119.93.

Allegation is set forth in a complaint, filed with the Board of Professional Conduct, and certified to the Supreme Court after an answer has been filed or time for answer has elapsed.

B. Board may recommend and Court may impose an impairment suspension **upon examination and finding** under the following circumstances:

- Mental illness, alcohol or other drug abuse, or a disorder that substantially impairs the respondent's ability to practice law is placed in issue in a pending disciplinary proceeding; and

- The respondent is ordered by the Board to submit to a medical, psychological, or psychiatric examination and the examination provides evidence to establish the existence of mental illness, alcohol or other drug abuse, or a disorder that substantially impairs the respondent's ability to practice law.

If Supreme Court orders an impairment suspension upon examination and finding, any underlying disciplinary proceeding is stayed until respondent seeks to have impairment suspension terminated.

MENTAL ILLNESS/IMPAIRMENT SUSPENSIONS[1]
(1996 to present)

- Number recommended: 15
- Number granted: 14
- Suspension terminated: 4
- Subsequently reinstated: 0

In cases where a mental illness/impairment suspension is recommended and imposed, adjudication of any underlying misconduct is deferred until such time as the respondent seeks to have the suspension terminated. In the four cases in which the respondent was successful in having his/her mental illness suspension terminated, each respondent was sanctioned for his/her underlying misconduct or required to apply or petition for reinstatement. The sanctions imposed after the mental illness suspension was terminated included:

- Indefinite suspension, with credit for time served—1
- One-year, unstayed suspension—1
- Fully stayed suspension with conditions—2

No impairment suspension has been sought, recommended, or imposed since the 2015 amendments to Gov. Bar R. V.

[1] In 2015, the provisions of Gov. Bar R. V were amended to expand the former mental illness suspension provisions to include mental illness, alcohol or other drug abuse, or other disorder, as defined in Gov. Bar R. V, Section 35(E).

MONITORING AND PROBATION

Scott J. Drexel
Michael E. Murman
Heather M. Zirke

Jack P. Sahl, *Moderator*

MONITORING & PROBATION: WHAT'S THE DIFF?

JACK SAHL, MODERATOR

Scott Drexel, Disciplinary Counsel
Michael E. Murman, Murman & Associates
Heather Zirke, Cleveland Metropolitan Bar Assn.

- Basics of Monitoring & Probation
- Role of Relator
- Role of the Monitor
- Pros & Cons
- Disciplinary Counsel's Plan to Train Monitors

Monitoring & Probation: Survey Says???
When survey is active, respond at **PollEv.com/cmba**

CB

Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at PollEv.com/app
0 surveys underway

One is Not Like the Other

Probation

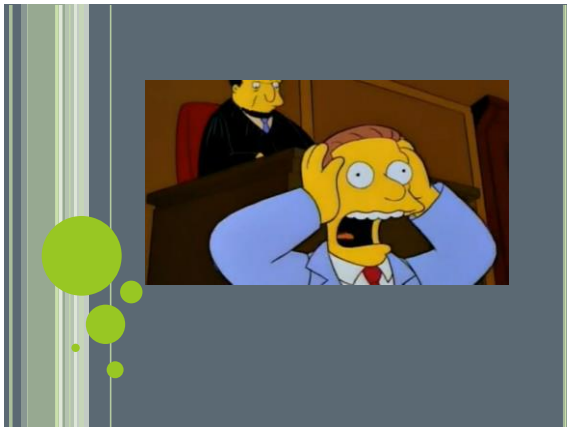
Monitoring

For Probation, Relator SHALL:

1. Supervise the term and conditions of probation
2. Maintain the probation file
3. Appoint one or more monitoring attorneys
4. Receive reports from the monitor
5. Investigate probation violations
6. If probation involves recovery from a disorder, appoint someone to oversee recovery

Monitor Qualifications

- Lawyer admitted to practice in Ohio
- In good standing
- Not a member of the grievance committee or counsel for relator



Other Considerations

- No conflicts
- Objective
- Understands the area of law practiced by the lawyer on probation
- Willing to devote the time necessary to be an effective monitor


GOAL


Like


CASE
STUDY

Conditions of Probation:

- Cooperate with a monitor
- Cooperate with OLAP
- Attend weekly meetings for sex addicts
- 12 hours of CLE in office practice management
- Commit no further misconduct

Monitor Duties

- Have monthly meetings with the lawyer
- Submit quarterly reports to the relator on progress
- Report any violations/concerns

Other Considerations

- Look at standard fee agreement
- Malpractice insurance
- Maintaining trust account records
- Good client communications
- Calendaring systems

Allen County Bar Association *v.* Williams.

[Cite as *Allen Cty. Bar Assn. v. Williams*, 95 Ohio St.3d 160, 2002-Ohio-2006.]

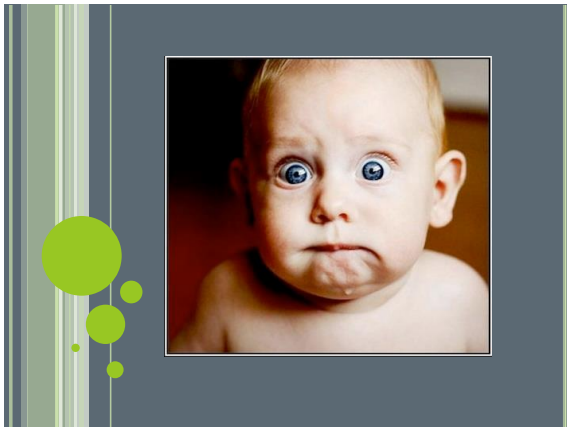
Attorneys at law —Monitoring attorney may not interfere with attorney-client privilege between respondent and his clients by reviewing privileged materials without the client's specific waiver of the privilege — Monitoring attorney's oversight limited to unprivileged matters.

(No. 2000-2251 — Submitted January 9, 2002 — Decided May 8, 2002.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 99-71.

On Motion for Clarification.

What about the IOLTA?



Prof. Cond. Rule 1.6

THE MILLER BECKER

2017 SEMINAR

DISCIPLINARY PROCESS OVERVIEW (Optional)

Richard A. Dove
Scott J. Drexel

OVERVIEW OF THE OHIO DISCIPLINARY PROCESS

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GOV. BAR RULE V

- Allegations of violations of the Code of Professional Responsibility, Rules of Professional Conduct, and the Code of Judicial Conduct
- All formal complaints heard by the Board of Professional Conduct
- Complaints brought by ODC or Certified Grievance Committees (CGC)

GRIEVANCES AND FORMAL COMPLAINTS

STATISTICS

- 4,200 grievances per year
- 2,600-2,700 through ODC
- 60% dismissed on intake
- 40% opened for investigation
- 70-80 result in formal complaints

GRIEVANCE PROCESS

- Letter of Inquiry (LOI)
- Investigation
- 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
- Lawyers and judges must cooperate

INVESTIGATION

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

INVESTIGATION

- Time limitations
  - Extensions beyond 150 days for "good cause"
  - Beyond 1 year = unreasonable delay
- To Dismiss or Not to Dismiss?
  - Internal probable cause determination
  - If no probable cause, closing letter to grievant

FORMAL COMPLAINT

- Notice to attorney or judge
- Attorney or judge may respond to proposed complaint
- Submit complaint, response, and a summary of investigation to Board

PROBABLE CAUSE

- 3-member panel appointed by Board
- Panels meet monthly
- Confidentiality preserved
- Standard—substantial, credible evidence
- If no probable cause found—dismissed and complaint remains confidential
- Partial dismissals and appeals
- If probable cause found—certified and public

POST-COMPLAINT PROCEEDINGS

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

CERTIFIED COMPLAINT

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

HEARING

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

HEARING (CONT.)

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

SUPREME COURT OF OHIO

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

WHAT INFLUENCES A SANCTION

Aggravating Factors:

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

WHAT INFLUENCES A SANCTION

Mitigating Factors:

- No prior discipline
- Absence of dishonest or selfish motive
- Full and free disclosure during process
- Character and reputation
- Restitution (timely)

WHAT INFLUENCES A SANCTION

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

DISPOSITION TIMES

- ODC/CGC—investigation up to one year
- Board—average 8-9 months
- Supreme Court—approximately 8-10 months; shorter if consent, longer if objections and oral argument

QUESTIONS?

THE MILLER BECKER

2017 SEMINAR

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 member of the ABA Center for Professional Responsibility and a faculty member of the Ohio Judicial College.

LORI J. BROWN was appointed as Bar Counsel for the Columbus Bar Association in October 2015. For two years prior to assuming the role of Bar Counsel, Ms. Brown practiced law in the area of Professional Ethics as Lori J. Brown LLC. Before that, Brown was an Assistant Disciplinary Counsel for the Supreme Court of Ohio for more than 18 years. In January 1999, she was promoted to First Assistant Disciplinary Counsel and in January 2009, she was named Chief Assistant Disciplinary Counsel. On March 1, 2005, Ms. Brown received the 2004 Professional Excellence Award from the Supreme Court of Ohio. Before joining the Disciplinary Counsel, Ms. Brown was in-house counsel for Safelite Glass Corp. and clerked for Justice Alice Robie Resnick and Judge George M. Glasser. Also admitted in the United States Supreme Court and the Federal District Court for the Southern District of Ohio, Ms. Brown received her Bachelor of Science in Education from Miami University, Master of Education from Bowling Green State University, and Juris Doctor from the University of Toledo College of Law.

JOSEPH M. CALIGIURI is the Chief Assistant Disciplinary Counsel in the Office of Disciplinary Counsel, where he has worked since 2002. 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.

JAMES D. CARUSO is a first-term member of the Board of Professional Conduct. He previously served as a member and chair of the Toledo Bar Association's certified grievance committee, represented respondents in disciplinary matters, and taught professional responsibility at the University of Toledo College of Law. He also has authored publication regarding exceptions to the attorney-client privilege, representation of clients with diminished capacity, and the duty to report misconduct. Mr. Caruso is a graduate of the Ohio State University and University of Toledo College of Law.

HON. D. CHRIS COOK is a common pleas judge in Lorain County and former bar counsel for the Lorain County Bar Association. Before his election to the bench in 2016, he was a member of the firm of Cook & Nicol in Lorain where his practice included civil litigation. He also served as a village prosecutor, magistrate, acting judge, and special prosecutor.

DAVID L. DINGWELL is a partner in the Canton law firm of Tzangas Plakas Mannos Ltd. He presently serves on the Board of Professional Conduct, having originally been appointed in 2012. David has served as the President of the Stark County Bar Association (2012-2013), serves as a member of the Board of Directors of Arts In Stark, and has served on the boards of several area organizations. Prior to his appointment to the Board of Professional Conduct, David served for many years on the Stark County Bar Association's certified grievance committee, and chaired that committee from 2006 through 2008. David's passion is photography, and his current project involves photographing all 88 of Ohio's county courthouses.

SCOTT J. DREXEL is Disciplinary Counsel for the state of Ohio, having been appointed to a four-year term in October 2013 and reappointed for a two-year term commencing in October 2017. Prior to relocating to Ohio, Mr. Drexel spent 31 years with the state bar of California, including four years as Chief Disciplinary Counsel, 17 years as Administrative Officer and Chief Counsel to the state bar court, and 10 years as Chief Assistant General Counsel. He also served two years in the Professional Responsibility Advisory Office of the United States Department of Justice and represented attorneys in disciplinary actions. Mr. Drexel is a graduate of the University of Southern California and the Hastings College of Law and is admitted to practice in Ohio, California, before several federal courts, and before the United States Supreme Court.

HEIDI WAGNER DORN serves as Counsel for the Board of Professional Conduct. At the Board, Ms. Dorn provides ethics advice to lawyers and judges, researches and drafts advisory opinions, and assists in the Board's ethics education efforts throughout Ohio. Prior to joining the Board, Ms. Dorn served as an Assistant Attorney General, representing the State Medical Board of Ohio; she served as a staff attorney and magistrate for Judge W. Duncan Whitney in the Delaware County Court of Common Pleas; and she was in private practice in Michigan for several years. Ms. Dorn received her undergraduate degree in finance, *cum laude,* from the University of Dayton and her law degree from Capital University Law School. She is admitted to practice in Ohio, Michigan, the United States District Court for the Southern District of Ohio, and the Supreme Court of the United States.

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 immediate past president of the National Council of Lawyer Disciplinary Boards. 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.

JAMES J. GROGAN is both the Deputy Administrator and the Chief Counsel (DACC) of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC). For over 37 years, he has investigated and prosecuted hundreds of charges of lawyer misconduct and has argued dozens of disciplinary cases in the Supreme Court of Illinois. He is a Past President of the National Organization of Bar Counsel (NOBC), the bar association of lawyer regulators. For over 30 years, Mr. Grogan has taught legal ethics, first at the DePaul University College of Law and then at the Loyola University of Chicago School of Law, where he is an Adjunct Professor. He has presented hundreds of speeches, lectures and workshops to law firms, bar associations, corporations and judicial and governmental groups and agencies on various professional responsibility and lawyer regulation topics.

DONALD R. HOLTZ is an Investigator with the Office of Disciplinary Counsel, a position he has held since 2009. He previously was employed as the Director of Security for the Longaberger Company from 2000 to 2009. Mr. Holtz retired after 25 years of service as a Staff Lieutenant assigned to the Ohio State Patrol's Office of Investigative Services. He also served for three years as a police officer with the Metropolitan Police Department, Washington, D.C. Mr. Holtz attended Jefferson Technical College, and is a graduate of the FBI National Academy and the Maryland Institute of Criminal Justice. He is a certified polygraph examiner, and completed various specialized law enforcement training throughout his law enforcement career. Mr. Holtz served in various positions to include the Marion Post Commander, commander of the Ohio State Patrol's Scientific Investigation Unit, and commander of the Hostage Negotiation Team. He was an instructor at the Ohio State Patrol's Academy providing instruction to Ohio State Highway Patrol Cadets and officers attending the Basic Police Officer's Training Course. Holtz provided instruction in Investigative Techniques, and Interviews and Interrogations. Holtz holds a permanent Instructors certificate from the Ohio Peace Officers Training Academy. Mr. Holtz managed and conducted major criminal investigations for the Ohio State Patrol.

ALVIN E. MATHEWS, JR. is a partner in the Columbus firm of James E. Arnold & Associates. He practices in the areas of legal ethics and professional responsibility and litigation. Alvin is a former assistant disciplinary counsel (1991-1997), presenting attorney discipline and judicial discipline cases before the Ohio Board of Professional Conduct and the Supreme Court of Ohio. Including his work as relator's counsel and on behalf of lawyer and judicial clients, Alvin has provided counsel and rendered opinions on literally hundreds of legal ethics matters; has litigated over 100 formal lawyer and judicial discipline cases, and has argued many cases before the Court. Alvin received his undergraduate degree from Miami University in Oxford, Ohio, and his J.D. from Ohio Northern University. He is a member of the Ohio State and Columbus Bar Associations.

SCOTT R. MOTE is Executive Director of the Ohio Lawyers Assistance Program, Inc. an Ohio nonprofit incorporated in 1991, and granted IRC 501(c)(3) status in 1992. A recovering alcoholic since January 7, 1985, Scott began volunteering with the Ohio State Bar Association's (OSBA) Lawyers Assistance Committee (LAC) in September 1985. He has been involved with the LAC/OLAP for over 30 years, serving as OLAP's first Associate Director beginning in 1995, and becoming Executive Director in March 1999. Mr. Mote is a cum laude graduate of Wright State University, 1972, has a Master's from the University of Dayton, and a law degree from Capital University Law School. He is admitted to practice in Ohio and Florida, the U.S. District Court for the Northern and Southern Districts of Ohio, and the United States Supreme Court

MICHAEL E. MURMAN is the principal in Murman and Associates in Lakewood. He is currently a Bar Examiner and formerly served as a member of the Board of Commissioners on Grievances and Discipline and the Commission on the Certification of Specialists of the Supreme Court. He has represented the relator and defended respondents in professional discipline cases. He is past Chair of the Legal Ethics and Professional Conduct Committee of the Ohio State Bar Association and recipient of the Ohio State Bar Association's Eugene R. Weir award for ethics and professionalism. A portion of Mr. Murman's practice is devoted to advising lawyers and judges in matters of legal ethics, judicial conduct, professional responsibility, and compliance with Ohio ethics statutes. He frequently provides opinions and testifies as an expert witness on professional responsibility issues.

JOHN P. SAHL is the Inaugural Joseph G. Miller of Professor of Law and the Director of the Miller-Becker Center for Professional Responsibility at the University of Akron School of Law where he regularly teaches professional responsibility, evidence, and sports law. He is currently working with co-authors on a Professional Responsibility textbook slated for publication in 2017.). Professor Sahl clerked for Chief Judge William Holloway Jr. of the U.S. Court of Appeals for the Tenth Circuit and was senior counsel to the Subcommittee on the Constitution, Federalism and Property Rights of the U.S. Senate Judiciary Committee.

HEATHER M. ZIRKE is Bar Counsel for the Cleveland Metropolitan Bar Association serving as an advisor to the association's grievance, ethics, unauthorized practice, fee dispute and admissions committees. Prior to joining the CMBA in 2005, Ms. Zirke was a prosecutor for the City of Cleveland. Ms. Zirke is a graduate of Baldwin-Wallace College and Cleveland-Marshall College of Law.

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