

BOARD OF PROFESSIONAL CONDUCT OF THE SUPREME COURT OF OHIO

PREHEARING INSTRUCTIONS

For the purpose of facilitating disciplinary hearings and related proceedings that are conducted pursuant to Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, the director of the Board of Professional Conduct has issued the following prehearing instructions. The Board asks that counsel for each party carefully review these instructions once a panel is appointed and follow the instructions unless otherwise directed by the panel chair or Board staff.

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.

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 Board's procedural regulations. Additional information regarding judicial discipline proceedings, including expedited judicial campaign misconduct cases, may be found in Rule II of the Supreme Court Rules for the Government of the Judiciary of Ohio.
- Time guidelines that guide the hearing panels and the Board in processing each disciplinary case are found in the Board's procedural regulations.

Hearing Panel

- Each case is assigned to a three-member hearing panel of the Board once an answer is filed. The director will designate a judge or lawyer member of the panel to chair the panel, and the panel chair is responsible for conducting all prehearing conferences, ruling on motions, and presiding 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 hearing and rule on procedural and evidentiary issues that may arise at the hearing, although the chair may consult with other panel members or the Board's legal staff before ruling.

- 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 40 days after the panel is appointed. The panel chair may conduct additional prehearing conferences *sua sponte* or at the request of either party. 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. A party may direct a request for a prehearing conference to the panel chair, with notice to the opposing party, or through a motion filed with the Board. A request for a prehearing conference should set forth the reason for which the phone conference is being requested.
- A party should not request a continuance, extension, or other action by the panel chair via email or other informal communication. Such requests should be made in the form of a motion, filed with the Board. With leave of the panel chair, a party may make an oral motion during a telephone conference at which opposing counsel is present.
- Parties must adhere to deadlines established by order of the panel chair regarding the completion of discovery and the filing of witness lists, stipulations, joint exhibits, and other prehearing deadlines.

Filing and Service of Pleadings and other Documents

- Once a certified complaint is filed with the Board, an answer and 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 and the manner in which service has been made.
- Parties may 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 the original and only one copy of the pleading with the Board.
- To expedite matters, certain documents may be submitted to the Board electronically via BOCfilings@sc.ohio.gov. However, electronic submission does not relieve the filing party of the duty to file pleadings, motions, stipulations, or briefs with the Board and to do so in accordance with any applicable time deadlines. Where applicable, pleadings that are submitted electronically must be supplemented promptly by filing the original and required number of copies

with the Board. Questions regarding electronic submissions may be directed to the Board's deputy clerk.

Subpoenas

- The issuance of subpoenas is governed by the Board's procedural regulations and the Civil Rules. A party may request a subpoena by providing a praecipe and instructions to the director of the Board. The praecipe may be delivered by hand, via mail, or via email at BOCfilings@sc.ohio.gov.
- Parties are responsible for serving subpoenas upon witnesses and entities that are being directed to produce documents.

Stipulations and Exhibits

- Parties are encouraged to enter into stipulations of fact and law. Stipulations can 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 stipulations 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 stipulated facts and exhibits or evidence presented at the hearing.
- The parties are responsible for ensuring their exhibits are properly identified and entered into evidence at the hearing. The panel chair's prehearing order may address the numbering and lettering of exhibits and establish a deadline for the submission of exhibits and exhibit lists. Joint exhibit lists and notebooks are 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, witnesses, and the court reporter.

Panel Hearing

- The Board acts as an adjunct of the Supreme Court in conducting disciplinary hearings. Counsel are expected to conduct themselves and the proceeding with the customary standards of professionalism, 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 _____."

- Although not applicable to Board hearings, parties may wish to consult the “Guide for Counsel Presenting Oral Arguments Before the Supreme Court” for useful information about the conduct expected of attorneys appearing before the Supreme Court. This publication is available on the Supreme Court web site.
- Gov. Bar R. V 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 all or a portion of the hearing, the hearing may proceed before the remaining panel members. The absent panel member will review the hearing transcript, participate in the panel’s deliberations, and participate in the preparation and review of the panel report.
- Gov. Bar R. V directs the Board to receive evidence, preserve the record, and make findings and recommendations concerning complaints of misconduct. The parties can expect that the panel members will question the respondent and other witnesses. 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 are expected to offer 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 license 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 Gov. Bar R. V, Section 13 that affect the imposition of sanctions.
- In lieu of oral closing arguments, the panel chair may order the parties to submit written closing arguments and sanction recommendations.

Audio/Visual and Other Equipment Needs

- If a party anticipates using audio/visual equipment or other equipment at a hearing, notice should be provided to the Board staff as early as possible and no later than one week prior to the scheduled hearing. For hearings at the Moyer Judicial Center, it may be possible for parties to use equipment available through the Supreme Court’s Office of Information Technology. For hearings held outside the Moyer Judicial Center, the Board staff may be able to facilitate audio/visual arrangements with the host site. Regardless of the hearing

location, the parties are responsible for confirming the set-up prior to the start of the hearing, ensuring that all devices are operational, and operating the equipment during the hearing.

- Internet access is available at the Moyer Judicial Center through a public Wi-Fi connection. Sign-in information is available in each hearing room. The Board cannot guarantee the security of the connection or the functionality of the connection on a particular day or location within the building.

After the Hearing

- After a hearing is concluded, the panel will deliberate and reach a tentative conclusion regarding disposition of the case. The panel chair is responsible for preparing a written report that contains the panel's findings of fact, conclusions of law, and recommended disposition of the case. The panel chair will circulate a draft report to the other panel members for review, modification, and approval.
- The Board's regulations include a time guideline for presenting a report to the Board of 40 days following the filing of the hearing transcript or the submission of the case on stipulations in lieu of a hearing. This guideline is not jurisdictional and the actual time a report is filed may depend on a variety of factors including the length and complexity of the case, the date of the next regularly scheduled Board meeting, and the panel chair's caseload and other professional and personal responsibilities. The Board staff cannot answer questions about when a panel report will be presented to the full Board.
- The panel report is confidential until the full Board considers it at a regularly scheduled Board meeting. Once the Board considers a panel report and votes on the disposition of a case, a final report and recommendation of the Board and the record of proceedings before the Board is filed with the Supreme Court. The Board sends a notice of the filing and copy of its report to the parties and counsel of record. Proceedings before the Supreme Court are governed by Gov. Bar R. V, Section 17 and the Supreme Court Rules of Practice. Board reports filed with the Supreme Court are available via the Court's on-line case docket.
- Either the hearing panel or the Board may dismiss a case due to the failure to establish alleged rule violations by clear and convincing evidence. The dismissal of a case is documented by an order from the panel or Board. There is no appeal from a dismissal of a case by the hearing panel or full Board.