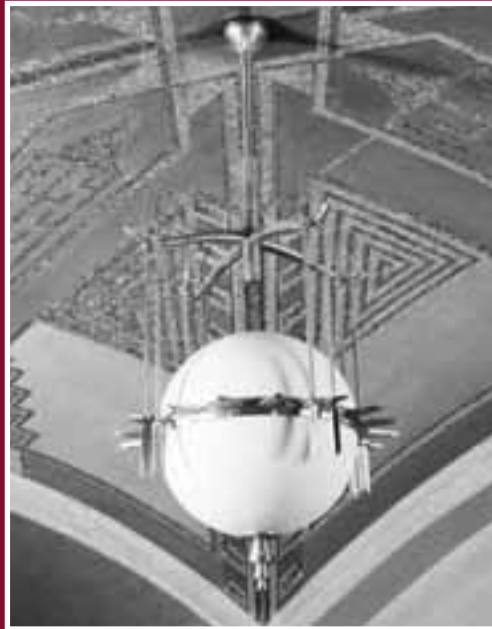




# THE SUPREME COURT *of* OHIO

REPORT *and* RECOMMENDATIONS *of*  
THE SUPREME COURT *of* OHIO

## Task Force *to Review the Ohio* Disciplinary System



DECEMBER 2009

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REPORT & RECOMMENDATIONS OF THE  
Task Force to Review the Ohio Disciplinary System

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**REPORT AND RECOMMENDATIONS FROM THE  
SUPREME COURT TASK FORCE TO REVIEW THE OHIO DISCIPLINARY SYSTEM**

**Introduction**

In March 2009, Chief Justice Thomas J. Moyer appointed an eighteen-member task force to conduct a review of the Ohio disciplinary system. The Task Force membership included judges and lawyers with extensive and diverse practice experience, and a majority of members had significant experience in the disciplinary system through service on the Board of Commissioners on Grievances and Discipline, service on local certified grievance committees, or representation of respondents in disciplinary matters. Chief Justice Moyer appointed Columbus attorney, Samuel H. Porter, to chair the Task Force. The appointment of the Task Force followed a five-year process to review and rewrite the ethical codes governing the conduct of Ohio lawyers and judges. The appointment of the Task Force to Review the Ohio Disciplinary System represented the first Court-initiated effort in more than twenty years to undertake a comprehensive review of Ohio's disciplinary structure and adjudicatory process.

At the initial Task Force meeting on March 19, 2009, Chief Justice Moyer defined the responsibility of the Task Force as follows:

The Task Force is to review the structure of the current disciplinary system and determine whether it provides the most effective and efficient means of investigating grievances and prosecuting complaints, and to specifically address the issues of timeliness, process and cost related to the current decentralized certified grievance committee system and whether changes are necessary.

Chief Justice Moyer asked the Task Force to deliver a report to the Supreme Court by the end of 2009.

**Work of the Task Force**

The Task Force devoted a substantial portion of its first meeting to an examination of the existing structure of the Ohio disciplinary system. The system overview was provided by a panel of four Task Force members and detailed the responsibilities of Disciplinary Counsel, certified grievance committees, and the Board of Commissioners on Grievances and Discipline as well as the process by which allegations of misconduct are filed, investigated, prosecuted, and adjudicated. The Task Force also discussed the research and information it would require to review the existing disciplinary system and the means by which the Task Force could solicit input from persons who have extensive experience in prosecuting, defending, and adjudicating allegations of misconduct. The Task Force chair established two subcommittees for the purposes of conducting a more in-depth examination of the system and developing

specific recommendations for consideration by the Task Force. James Johnson was named to chair the Structure Subcommittee, and Ann Marie Tracey was designated to chair the Process Subcommittee.

As it proceeded with its review of the disciplinary system, the Task Force was guided by several key principles. Foremost was adhering to the tenet that the disciplinary system must protect the public by addressing lawyer misconduct promptly and appropriately. The Task Force also sought to ensure that a restructured system would continue to adhere to high standards of fairness and objectivity expected of a self-regulated profession. Changes to the current disciplinary system should provide for greater accountability and more consistent results at each stage of the process. Finally, the Task Force recognized the contributions of local lawyers and laypersons to the disciplinary system and sought to retain a degree of local involvement, consistent with the aforementioned principles.

The Task Force met in Columbus on seven occasions, including two meetings in December 2009. The Structure and Process Subcommittees and smaller work groups tasked with specific projects held approximately twenty additional meetings and telephone conferences. Task Force members were provided with a broad range of information relevant to the work of the Task Force, including information on the disciplinary structure used in other jurisdictions, statistics on the workload of Disciplinary Counsel and the certified grievance committees from 2005-2008, the moneys expended by the Supreme Court to fund the operation of Disciplinary Counsel and the certified grievance committees, and statistics on the time devoted to investigation of grievances and adjudication of formal complaints.

The Task Force also undertook efforts to solicit input from individuals who have a broad range of experience in the disciplinary system. The Process Subcommittee met in Columbus on May 20, 2009 and invited each of the 33 certified grievance committees to send the committee chair or bar counsel to the meeting. Twenty-one certified grievance committees were represented at the May 20 meeting, and 23 certified grievance committees responded to an eleven-question survey that was distributed prior to the meeting. The certified grievance committee representatives shared with the subcommittee their experiences and practices with regard to the initial intake and review of grievances, the investigation of misconduct allegations, and the adjudicatory processes before the Board and Supreme Court.

The dialogue at the May 20 meeting significantly influenced the Task Force consideration of process-related issues in two primary respects. First, the survey results and comments from certified grievance committee representatives made it apparent that there are significant variances in the means by which certified grievance committees execute their intake and investigation responsibilities. These variances are largely attributable to the existence of 33 individual certified grievance committees and the fact that the committees operate with little oversight and in the absence of uniform procedures or guidelines governing the execution of their responsibilities. Second, the

conversations with certified grievance committee representatives established the existence of tangible benefits derived from having local, volunteer lawyers involved in the review and prosecution of misconduct allegations. These benefits include the ability to intervene with a lawyer at an early stage to prevent poor office management skills or substance abuse issues from later giving rise to professional misconduct, application of experience in maintaining a law practice to the evaluation of alleged disciplinary violations, and a greater awareness of professional conduct standards among a broad, cross-section of the bar.

A second outreach effort was targeted at current and former members of the Board of Commissioners on Grievances and Discipline and counsel who regularly represent lawyers in disciplinary proceedings. A work group of six Task Force members, chaired by Judge Mary Jane Trapp, collaborated with a research consultant to develop a 25-question survey that afforded the respondents the opportunity to provide feedback on the work of Disciplinary Counsel and certified grievance committees and their views on disciplinary structure and process. In late July 2009, the survey was distributed to 21 respondents' counsel and 44 individuals who currently serve on the Board of Commissioners on Grievances and Discipline or whose Board service concluded within the last six years. The survey had an outstanding response rate of 80 percent. The survey respondents were a very experienced group with more than 80 percent having been engaged in the practice of law for more than 20 years, and more than two-thirds having participated in more than fifteen disciplinary investigations, prosecutions, or adjudications in the past five years. The survey responses, including comments to individual questions, were shared with the Task Force at its September meeting and, as seen below, were invaluable to shaping the final recommendations from the Task Force.

The Task Force discussed whether to attempt to obtain input from others involved in the disciplinary process, such as grievants and lawyers accused of misconduct. Efforts to obtain input from these parties would be hindered by confidentiality provisions of Gov. Bar R. V that would prevent disciplinary authorities from identifying most grievants and lawyers named in grievances. The Task Force concluded that input from these sources would likely be of limited value since the perspective of grievants and accused lawyers would, in the majority of cases, be based on a single experience with the disciplinary system. These parties and others will have an opportunity to provide their input when the Supreme Court publishes the Task Force recommendations for public comment.

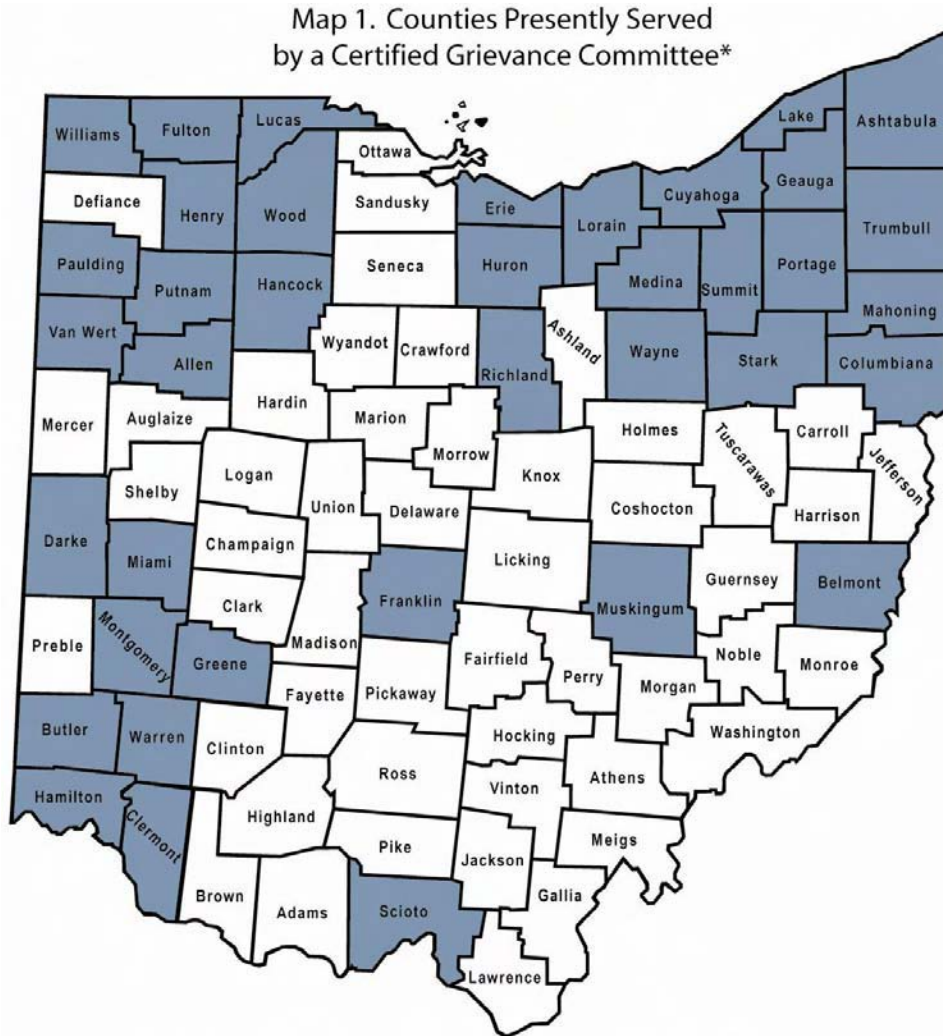
## **Disciplinary System Structure**

### *Background*

The existing structure of the Ohio disciplinary system is unique in many respects, the most notable of which is the degree of local and volunteer involvement at each stage of the process. Rule V of the Supreme Court Rules for the Government of the Bar of Ohio authorizes any bar association, whose membership is open without regard to field



of practice, to establish a grievance committee and be certified by the Board to investigate and prosecute professional misconduct allegations. Presently, 33 grievance committees, representing 39 of Ohio's 88 counties, are certified by the Board and have jurisdiction over nearly 92 percent of the lawyers who are actively practicing in Ohio. See Map 1.



\*Joint certified grievance committees exist in Erie-Huron counties and Northwest Ohio (Fulton, Henry, Paulding, Putnam, Van Wert, and Williams counties).

The activity of these 33 committees varies significantly, based primarily on the lawyer population over which each committee has jurisdiction. Certified grievance committees that operate in large urban areas may receive as many as 300 disciplinary grievances each year and may be involved in the prosecution of a dozen cases at any one time. By contrast, grievance committees that are established by bar associations in smaller counties may receive only a handful of grievances in a given year and may rarely have occasion to file and prosecute a formal complaint.

Appendix A of this report outlines the activity of each certified grievance committee in reviewing grievances and filing formal complaints from 2005 through 2008. These statistics demonstrate that the 24 smallest committees, in terms of lawyer population, reviewed and investigated less than fifteen percent of all grievances filed with the certified grievance committees during that period and less than seven percent of all grievances filed statewide. With regard to prosecutions before the Board, ten of these 24 committees filed a total of 27 formal complaints during the same four-year period, and the remaining fourteen committees did not initiate a single prosecution in that time-frame. These 27 complaints represent approximately ten percent of the formal prosecutions initiated by certified grievance committees statewide and less than seven percent of all complaints filed with the Board.

This disparity in the workload among the certified grievance committees is not surprising when one considers the range of lawyer populations in the counties where certified grievance committees have been established. The members of the larger and more active certified grievance committees, who are regularly involved in the review and prosecution of disciplinary matters, are afforded a greater opportunity to develop a breadth and depth of expertise in investigatory techniques and an enhanced understanding of the application of disciplinary rules and procedures. This expertise and understanding yields better decision-making on intake, more thorough investigations, more consistent charging decisions, and higher quality formal complaints and prosecutions.

The survey of Board members and respondents' counsel demonstrates that the volunteer members of the larger certified grievance committees routinely perform at a high level in executing their disciplinary responsibilities in relation to medium- and small-sized committees. The Task Force neither believes nor wishes to imply that these lower ratings are a reflection of the talent or commitment of the volunteers who serve on these committees. Rather, the ratings are a reflection of the comparatively few opportunities these volunteers have to garner and make use of the experience that is a vital element in producing high quality and consistent results.

### *Funding*

The Ohio disciplinary system is funded entirely from the \$350 biennial registration fee paid by the 42,000 actively practicing members of the Ohio bar. The Supreme Court fully funds the operation of the Office of Disciplinary Counsel and reimburses the certified grievance committees for virtually all costs associated with the performance of their disciplinary responsibilities. A total of \$4.1 million was spent in the most recent fiscal year, ending June 30, 2009, to support the activities of the Office of Disciplinary Counsel and the 33 certified grievance committees.

In calendar year 2008, the most recent calendar year for which complete reimbursement information is available, the Supreme Court reimbursed local certified grievance committees for \$1.64 million in indirect expenses, and nearly \$6.4 million has

been spent on indirect expense reimbursements in the last four years. Appendix A details the total reimbursements for each bar association from calendar years 2005 through 2008. These reimbursement figures do not include costs incurred by a certified grievance committee that are directly attributable to a specific disciplinary case, such as transcript preparation fees and copying expenses, and that are reimbursed on a case-by-case basis from the operating budget of the Board of Commissioners on Grievances and Discipline.

Although well-funded, Ohio's disciplinary system is comparatively inexpensive. In 2008, the Supreme Court spent \$114 per active lawyer to support discipline-related functions, including operation of the Board of Commissioners on Grievances and Discipline and the Office of Disciplinary Counsel and cost reimbursements to certified grievance committees. This level of spending is 31<sup>st</sup> among the 46 jurisdictions that reported budgetary information in the 2008 Survey on Lawyer Discipline Systems compiled by the American Bar Association's Standing Committee on Professional Discipline.

### **Task Force Findings Related to the System Structure**

The structure of the Ohio disciplinary system is unique in both the extent of local participation and the authority granted to local, volunteer grievance committees. A few states involve local volunteer attorneys in the disciplinary process, although this involvement is often organized on a district or regional basis and limited to a particular stage of the process such as screening or investigating misconduct allegations or co-counseling with a central disciplinary authority in the prosecution of formal charges. The centralized structure that exists in the majority of jurisdictions stands in contrast with the Ohio rules that authorize any general membership bar association to form a grievance committee, provided the committee adheres to the minimum standards related to the formation and operation of the committee, and vests each certified grievance committee with authority and responsibility equal to that of the Office of Disciplinary Counsel.

The Task Force believes the current structure of the Ohio disciplinary system produces inconsistent results with regard to decisions to investigate misconduct allegations, the thoroughness of investigations, the adequacy of charging documents, and the quality of case presentations to the Board. The discussions with certified grievance committee representatives indicated that committees take a number of different approaches to evaluating a grievance to determine whether an investigation was necessary. In some cases, this is the responsibility of a single committee member, and in others the decision is made by multiple committee members. Bar counsel may or may not be involved in the screening process, depending on the procedures used by a particular committee. Similar variances exist in the investigatory procedures used by the certified grievance committees. Some committees assign grievances to an individual or two-person team for investigation, while others have a committee specifically responsible for conducting investigations. Some of the certified grievance committee representatives

in attendance at the May 20 Process Subcommittee meeting acknowledged that certain committee members were better than others at conducting investigations, no doubt a product of the breadth and depth of individual members' experiences, both on the committees and in their day-to-day practices.

Similar inconsistencies exist in the filing of formal disciplinary charges and the prosecution before the Board. Board members and staff cited instances of incomplete charging documents and investigatory reports filed by certified grievance committees. One former board member characterized the qualitative difference between individual committees and between the committees and Disciplinary Counsel as arising, not in the decision of whether to file charges, but rather in what misconduct is charged and how well the allegations are framed in the complaint. In their survey responses, current and former Board members cited varying degrees of familiarity by the certified grievance committees with the use of procedural tools, such as stipulations and consent to discipline, and the overall quality of committee-initiated prosecutions. These disparities were noted not only among committees categorized as small, medium, and large, but some Board members noted differences among specific large committees.

The existence of inconsistencies in charging misconduct is cited as the primary reason that Gov. Bar R. V requires two determinations of probable cause before a disciplinary prosecution may proceed. Before filing a formal complaint with the Board, Disciplinary Counsel or a certified grievance committee must determine the existence of probable cause to support each allegation of misconduct. See Gov. Bar R. V, Section 4(I). Once a complaint is filed, the Board is required by Gov. Bar R. V, Section 6(D) to make an independent probable cause determination before the complaint is assigned to a hearing panel. The requirement of a second probable cause finding is said to exist to provide some uniformity in the nature of cases brought before the Board, yet the process also can result in some cases not being assigned to a hearing panel for two months after a complaint is filed with the Board.

The inconsistencies cited to the Task Force with respect to intake decisions, investigations, charging decisions, and prosecutions are largely a by-product of a system that has fostered the establishment of 33 certified grievance committees in counties ranging in size from Cuyahoga, with 8,900 lawyers, to Darke, with 43 lawyers. Grievance committees in smaller jurisdictions simply do not have the opportunity to see a sufficient number or variety of grievances that allow the volunteers and bar counsel to develop and maintain the same degree of expertise in disciplinary matters as the counterparts who serve on larger committees. Moreover, small committees are often ill-equipped to address a complex grievance and unaware of or unwilling to use investigatory and other resources available through the Office of Disciplinary Counsel.

Given the existence of 33 committees and the involvement of hundreds of volunteers statewide, it is not practical to believe that enhanced oversight and more training opportunities will enhance the quality of grievance committee work and lead to greater consistency in the application of standards contained in or promulgated pursuant

to the authority of Gov. Bar R. V. Instead, the Task Force believes that more extensive and fundamental changes to Ohio's disciplinary structure are required.

Although a centralized and professional disciplinary system would undoubtedly eliminate many of the inconsistencies that exist in the current structure, the Task Force believes it would be both unwise and unnecessary to entirely abandon Ohio's long history of involving local bar volunteers in the disciplinary process. The Task Force endeavored to craft a more centralized structure that would be more accountable and produce more consistent results, while maintaining an appropriate degree of local bar involvement. In so doing, the Task Force kept in mind the Supreme Court's frequent reminder that the disciplinary system exists primarily for the purpose of protecting the public from the misconduct of members of the bar. Thus, the Task Force concluded that any benefits derived from the involvement of local volunteers should be of secondary consideration.

### **Recommendations for Restructuring Ohio's Disciplinary System**

In light of the factors cited above, the Task Force examined a number of options, ranging from retaining and strengthening the existing Ohio structure to moving toward a fully centralized system with no local involvement in the investigation and prosecution of attorney misconduct. The Task Force also considered proposals such as limiting the authority of local committees to accepting and investigating grievances and centralizing intake functions and initial investigation decisions in the Office of Disciplinary Counsel. The result of the Task Force study and deliberation is a new structure that falls between the extremes of the existing structure and a fully centralized system. The recommendations detailed in this report and reflected by the proposed amendments contained in Appendix B assume that the Court will consider and adopt the necessary amendments to Gov. Bar R. V in the first six to nine months of calendar year 2010, so as to allow an orderly transition to a new structure as of January 1, 2011.

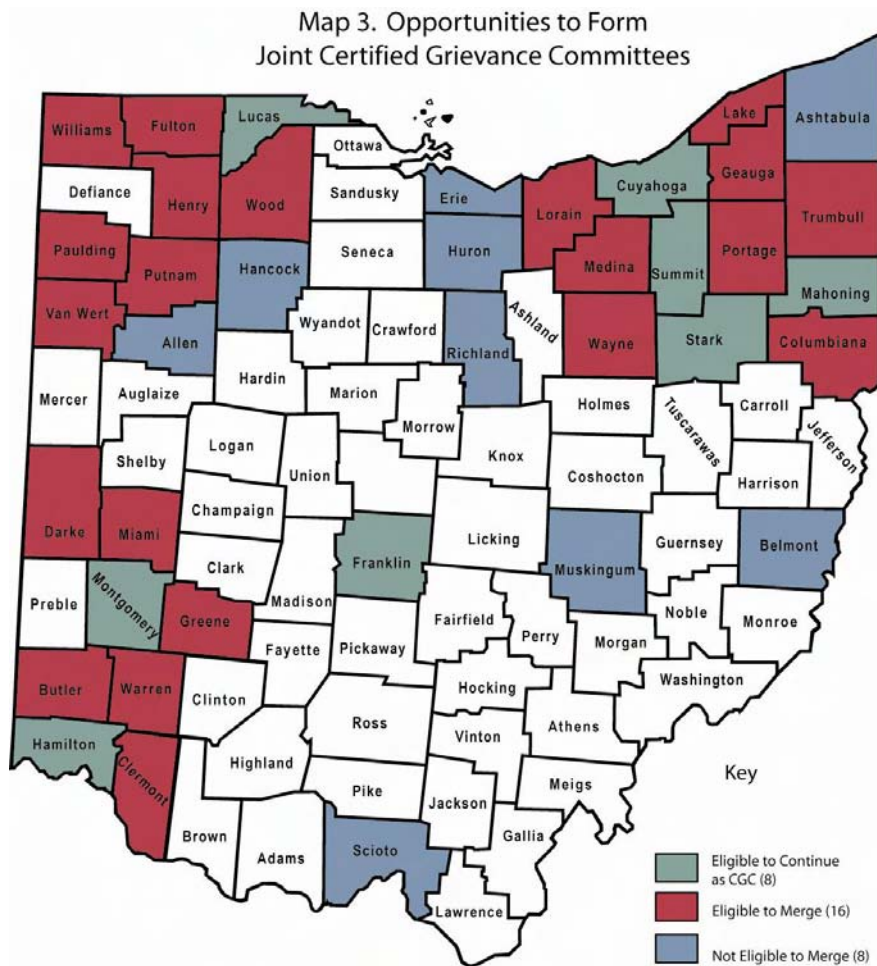
#### *Authority to Establish a Certified Grievance Committee*

In lieu of the broad authority that now exists to establish a grievance committee, the Task Force recommends that the Supreme Court authorize nine bar associations to establish a grievance committee, subject to each committee's adherence to more extensive operational standards. The nine bar associations that would be authorized to establish and operate a certified grievance committee are the Ohio State Bar Association and the following local bar associations: Akron, Cincinnati, Cleveland Metropolitan, Columbus, Dayton, Mahoning County, Stark County, and Toledo. The eight local certified grievance committees would have jurisdiction over nearly 78 percent of the lawyers actively practicing law in Ohio. Grievance committees that are currently in existence but not established by one of these bar associations would be decertified as of January 1, 2011. See Map 2.





determined that these principles were best served by a recommendation that would afford a decertified committee the opportunity to continue its participation in the disciplinary process by affiliating with one of the eight remaining local grievance committees that operates in a contiguous county. This recommendation provides 16 of the 24 decertified committees with an opportunity to remain involved in the disciplinary process as part of a joint certified grievance committee. See Map 3. The formation of a joint certified grievance committee would be subject to agreement between or among the sponsoring bar associations and the review and approval of the Board. To provide some continuity and certainty with respect to the operation of certified grievance committees, the Task Force recommends that the option to form a joint certified grievance committee be made available for one year, through December 31, 2011.



The recommendation to allow formation of joint certified grievance committees would ensure the existence of no more than nine certified grievance committees, although some may have responsibility for a geographical area that is presently served by two or more committees. By limiting both the number of joint committees and time during which the joint committees may be formed, Disciplinary Counsel will be able to ensure that it is adequately staffed to handle the increased number of grievances that will

be filed with it under the restructured system, as well as comply with the additional oversight and education responsibilities recommended in this report.

The Task Force discussed other alternatives relative to the formation of joint grievance committees, including a proposal that would allow any two contiguous counties to form a joint committee, provided a minimum of 600 lawyers practice in the region in which the joint committee would serve. A broader joint committee option such as this would allow a joint committee to be established by two grievance committees that traditionally have had significantly less experience with disciplinary matters. Moreover, these committees would have limited future opportunities to develop a level of experience comparable to that of more active certified grievance committees. After considering the factors discussed in this section, with a focus on the principle of public protection, the Task Force does not recommend a broader joint grievance committee option.

## **Oversight of Local Professionals and Volunteers**

### *Background*

Gov. Bar R. V presently contains few provisions that regulate bar counsel and certified grievance committees. Bar counsel must be certified by the Office of Disciplinary Counsel, but there are no formally adopted certification standards, no procedures for periodically assessing the work of bar counsel, and no recertification requirements or decertification procedures. Bar counsel may be a volunteer or be compensated for his or her services, and, depending on the workload of the certified grievance committee, bar counsel may devote anywhere from a few hours per month on disciplinary matters or be a fulltime bar association employee. In order to be certified by the Board, local grievance committees must satisfy standards set forth in Gov. Bar R. V that relate largely to the membership and basic operation of the committees. Although the Board monitors compliance with these standards, there is no formal or regular recertification process. Gov. Bar R. V sets forth a process for decertifying a grievance committee, but the process has not been invoked in recent memory.

The Task Force discussed the inclusion in Gov. Bar R. V of more detailed and rigorous standards for bar counsel and certified grievance committees. For example, the Task Force debated whether bar counsel should be more directly accountable to Disciplinary Counsel, such as by being required to report directly to that office in addition to or in lieu of reporting to a certified grievance committee. The Task Force determined proposals such as this to be an unnecessary infringement on the independence of bar counsel and certified grievance committees. However, the Task Force does recommend the adoption of new requirements that are intended to enhance the quality of work performed locally and bring more uniformity to the process of reviewing and prosecuting charges of professional misconduct.



*Certification and Recertification Standards*

The Task Force recommends that bar counsel and grievance committees be subject to specific initial certification requirements and that grievance committees undergo a review and recertification every two years. With regard to bar counsel, Gov. Bar R. V would contain minimum qualifications for initial certification of bar counsel. The minimum certification requirements proposed for inclusion in Gov. Bar R. V are identical to those developed and used by Disciplinary Counsel in recent years and focus on the applicant's legal and trial experience, familiarity with disciplinary rules and procedures, and reputation for adherence to ethical standards, professionalism, and integrity. Disciplinary Counsel would be required to develop additional certification criteria, subject to Board approval, and make the criteria available to certified grievance committees and bar counsel. In addition, Disciplinary Counsel would be given authority to decertify a bar counsel for good cause shown, including the failure to satisfy the basic standards of competence and diligence.

In addition to these standards, the Task Force recommends provisions that would require bar counsel to devote the time necessary to performing his or her responsibilities under Gov. Bar R. V and provide that bar counsel must be compensated for his or her services. These provisions are intended to establish a higher standard for the professional commitment of bar counsel and reflect what would undoubtedly be an end result of having nine active certified grievance committees.

Similarly, the Task Force proposes more definite standards governing the operation of certified grievance committees and a process to biennially assess compliance with these standards. The proposed standards include:

- *Term limits for grievance committee members.* To facilitate the engagement of more attorneys in the disciplinary process, the Task Force recommends that certified grievance committee members be limited to serving ten consecutive years on a committee. Although prior and current grievance committee service would count toward the ten-year limitation, the requirement would not apply for five years, or January 1, 2016, to ensure that committees do not immediately lose their most experienced members. To promote compliance with the term limit requirements, each bar association that maintains a certified grievance committee would be required, by January 1, 2012, to establish terms for its members and be required to include a roster of certified grievance committee members in its annual report to the Board.
- *Meeting requirements.* A certified grievance committee is now required to meet every third month. The grievance committees that would remain in existence under a restructured system all meet more frequently, and the Task Force recommends increasing to six the number of committee meetings each year.

- *Grievance committee presence.* The Task Force recommends retaining the requirement that each certified grievance committee must maintain a fulltime, permanent office, with the additional requirement that the office be staffed by a fulltime employee of the sponsoring bar association. For those bar associations that elect to form a joint certified grievance committee under the conditions described above, the joint committee would be required to designate a single office within the geographic region served by the committee, and the sponsoring bar associations could jointly employ the committee staff. In addition, each grievance committee would be required to establish and maintain an Internet site that includes information about the work of the committee and contact information.
- *Record-keeping.* Gov. Bar R. V now requires a certified grievance committee to retain permanent files and records of its proceedings. The Task Force believes this requirement can be burdensome on a committee that receives hundreds of grievances each year and can allow a committee to give undue consideration to a previously dismissed matter when evaluating a new claim of misconduct. Moreover, although grievance committees must permanently retain files and records, Disciplinary Counsel retains permanent files only for those matters in which a formal complaint is filed with the Board. To lessen the record-keeping burden on local bar associations, the Task Force recommends a standard that requires permanent record retention only with regard to the committee's proceedings, such as minutes, and in matters where a formal complaint is filed with the Board. A two-year record-keeping requirement would apply to files of matters that are dismissed without investigation, and a five-year requirement would apply to those matters dismissed following an investigation. Certified grievance committees would be authorized to retain records in either paper or electronic format.

### *Education and Training*

Gov. Bar R. V now provides that certified grievance committees must encourage their members to attend continuing education programs on the subjects of legal and judicial ethics. The current rules contain no specific education requirements for bar counsel, although, as an attorney, bar counsel must obtain a minimum of 24 hours of continuing legal education credit every two years pursuant to Gov. Bar R. X.

The professionalism and competence of persons involved in the disciplinary process can be enhanced through regular attendance at continuing education programs designed specifically for volunteer committee members. These programs would include training on the Ohio Rules of Professional Conduct and Ohio Code of Judicial Conduct, investigatory practices, procedural and evidentiary rules applicable to disciplinary hearings, and substance abuse and mental health issues. Programs also should exist for newly appointed committee members, as existing new member orientation activities range from comprehensive to nonexistent.

The Task Force is cognizant of the fact that all certified grievance committee members are volunteers and that the vast majority of the members are practicing lawyers, who have a professional obligation to maintain competence in their specific fields of practice. Moreover, the time commitment of a volunteer certified grievance committee member can be significant, depending on the size and workload of the committee. For these reasons, the Task Force does not believe it is advisable at this time to specify a minimum number of hours of education that a committee member must obtain in a given year or the content of such education. However, Gov. Bar R. V should be revised to require attendance at a minimum of one continuing education program or activity each year directly related to the member's service on a certified grievance committee.

The Task Force further recommends the following provisions to promote compliance with the mandatory training requirement and ensure that the training offered furthers the goal of enhancing the professionalism and competence of certified grievance committee members:

- *Responsibility for training*—the Office of Disciplinary Counsel would have the primary responsibility for developing a training curriculum and offering training opportunities to certified grievance committee members. The curriculum would be developed by a statewide training committee, consisting of representatives of Disciplinary Counsel, the Board, certified grievance committees, and any other entities deemed necessary by these participants. Training programs offered by Disciplinary Counsel would ensure the availability of training to all certified grievance committee members. However, these programs would not be considered as the exclusive means of satisfying the training requirements, and members could attend other in-state and out-of-state continuing education activities related to legal ethics and the disciplinary process. Training would be offered by traditional means, such as seminars, but also using technology available from the Supreme Court, such as webinars and video teleconferences. With fewer certified grievance committees, training opportunities could be offered locally and tailored to the needs of individual committees.
- *New member orientation*—the training curriculum would include an annual training opportunity developed specifically for newly appointed committee members. Each newly appointed committee member should have the opportunity to attend a new member orientation program, whether offered by Disciplinary Counsel or developed locally.
- *Compliance report*—each certified grievance committee would be required to monitor and report on the training activities of its individual members in the preceding year. The committee chair and bar counsel would sign off on the compliance report.

- *Consequences for noncompliance*—any certified grievance committee member who does not participate in at least one legal ethics training activity in a given year would be placed on probation status and would be required to attend at least two legal ethics activities in the following year. A member who does not participate in a legal ethics training activity for two consecutive years would be disqualified from serving on the committee.

Disciplinary Counsel also would develop and provide training opportunities for bar counsel. The training curriculum would be developed in consultation with bar counsel. As part of the process of recertifying bar counsel, Disciplinary Counsel would monitor bar counsel participation in training programs and activities and could make recommendations to individual bar counsel regarding specific training opportunities.

### **Costs of Restructuring**

As noted previously, the Task Force considered a variety of restructuring models and evaluated the cost of each model. The Task Force found that, regardless of the degree to which the disciplinary system is restructured to reduce the number of certified grievance committees and vest greater responsibility with Disciplinary Counsel, there would be no reduction in the overall costs of the system. This is attributable to the fact that work now performed by hundreds of volunteer grievance committee members would be undertaken by paid professional staff. The resulting cost increases would be comparatively small in relation to the total amount of money now spent to fund the disciplinary process and would not vary significantly, regardless of the restructuring model eventually selected.

The Task Force analyzed the expense of restructuring the disciplinary system in the manner outlined above and also considered the costs associated with the development and implementation of a mandatory training curriculum for bar counsel and certified grievance committee members. The Task Force projects that it would be necessary to add two attorneys, one administrative assistant, and a parttime investigator to the Office of Disciplinary Counsel to address these new responsibilities. Personnel costs, plus additional office space, equipment, supplies, and travel would increase the budget of Disciplinary Counsel by \$375,000 in calendar year 2011 and \$340,700 in each subsequent year.

These increased expenses would be off-set by the eventual elimination of reimbursements provided to the 24 decertified grievance committees. From 2005 to 2008, reimbursements to these committees ranged from \$81,800 to \$116,300, or an average of \$93,600 per year. Because these committees would continue to have responsibility for concluding any matters pending at the time of their decertification, the savings that result from reduced reimbursements would not be fully realized until 2012 at the earliest. Once Disciplinary Counsel is fully staffed and the reimbursement savings are fully realized, the net annual increase in expenditures from the Attorney Services Fund is estimated to be \$247,100. This figure represents a six percent increase in the moneys

now allocated to fund the operation of Disciplinary Counsel and reimburse the 33 certified grievance committees for indirect disciplinary expenses and would move Ohio from 31<sup>st</sup> to 29<sup>th</sup> in the ranking of per lawyer disciplinary system expenditures. The Task Force is mindful of the fiscal situation facing all Ohioans and does not lightly recommend the expenditure of additional moneys from the Attorney Services Fund. However, the Task Force believes the relatively modest increase in expenditures will enhance the overall effectiveness of the disciplinary system and further its independence and integrity.

## **Disciplinary Processes**

No review of the disciplinary system structure can be complete without considering the means by which disciplinary allegations are reviewed, investigated, and adjudicated. A system that is well-designed, adequately funded, and staffed by highly trained and competent professionals and volunteers will struggle to attain the goals of fairness, timeliness, effectiveness, and efficiency if the procedures for reviewing and adjudicating cases are flawed. In that regard, the Task Force devoted a significant portion of its work to reviewing processes now in place, either by express rule or long-standing practice, and determining what procedural changes should be implemented in order to facilitate the efficient operation of the restructured disciplinary system.

### *Intake, Investigation, and Charging Procedures*

The Task Force found a significant variance in the procedures used by certified grievance committees in initially evaluating grievances, conducting investigations, and making charging decisions. For example, Gov. Bar R. V requires Disciplinary Counsel or a certified grievance committee to review any matter filed with it or that comes to its attention. Of the 23 committees that responded to questions submitted to them prior to the May 20 Process Subcommittee meeting, eight committees indicated that they do not review matters unless they are in the form of a written grievance. These committees do not routinely follow-up on potential misconduct that is identified in a police or newspaper report. The degree to which bar counsel is involved in charging decisions and prosecutions also varies by committee, with many committees appearing to use bar counsel in an advisory capacity. Finally, a few committees will conduct an informal hearing with a lawyer who is the subject of a grievance before making a decision to file a formal complaint with the Board, while others simply notify the attorney of the pending charges.

The development of standard intake, investigation, and charging procedures would result in more consistent decisions throughout the state, without infringing on the discretion vested in individual certified grievance committees. The Task Force recommends that Disciplinary Counsel be required to develop and recommend to the Board for adoption, model procedures for use by the certified grievance committees. The model procedures would be developed in cooperation with the certified grievance

committees, and procedures adopted by individual committees would be required to comport with the model procedures.

*Bar Counsel*

The Task Force believes certified grievance committees should make better use of bar counsel. In many committees, it appears bar counsel serves primarily as a legal advisor to the committee and has little direct participation in the review of individual grievances and prosecution of complaints before the Board and Court. Although each committee should retain the ability to use its bar counsel as it deems appropriate, the increased involvement of bar counsel, as a lawyer certified as having expertise in professional ethics and related procedures, would bring greater consistency to the decision-making process. Two decisions in which bar counsel involvement should be required are the determinations to dismiss a grievance without an investigation and to initiate a prosecution. Bar counsel should be required to review each grievance filed with a certified grievance committee and sign off on the committee's decision to dismiss a matter without undertaking an investigation. Formal complaints filed with the Board should bear the signature of bar counsel as a means of ensuring that each complaint satisfies the standards set forth in Gov. Bar R. V.

*Probable Cause*

As noted previously, Gov. Bar R. V requires both the charging authority and the Board to determine the existence of probable cause before formal allegations of misconduct are heard by the Board. The stated purposes of the Board's probable cause determination are to provide some degree of consistency in the application of the probable cause standard and allow for the early dismissal of misconduct allegations that are not supported by the complaint and supporting investigatory materials. Some have contended that the Board's probable cause process is redundant and creates unnecessary delay in the resolution of cases. The alleged redundancy arises from the fact that probable cause panels apply the same legal standard—substantial, credible evidence—that Disciplinary Counsel and certified grievance committees must apply when making charging decisions. The alleged delay stems from the fact that probable cause panels meet only six times each year, in conjunction with regular Board meetings. As a result, a formal complaint that is filed immediately before or after a scheduled Board meeting will not be considered by a panel for approximately two months. Because of the perceived redundancy and delay, some have suggested that the probable cause panels be abolished and that each formal complaint be assigned immediately to a hearing panel. A respondent could challenge the existence of probable cause, as determined by the relator, by filing a motion with the hearing panel seeking to have the entire complaint or specific charges dismissed.

If the Court adopts the recommendations set forth in this report, the result will be fewer certified grievance committees, whose members are better trained and operate under more standardized procedures. It would follow that the charging authorities

would make better and more uniform probable cause determinations, a result that would obviate the stated purpose of the Board's probable cause panels. The anticipated improvements from a revised system structure may not be realized immediately. Thus, the Task Force recommends retaining the existing probable cause procedures for a maximum of three years. During that time, the Board should be required to evaluate the probable cause procedure and ascertain the impact of the recommendations adopted by the Court. At the end of that period, and no later than December 31, 2013, the Board should be required to report to the Court regarding the continued need for the Board to make an independent probable cause determination in each disciplinary matter.

In the meantime, the Task Force believes there are steps that can be taken by the Board to expedite the probable cause determinations. The Board should institute a practice of scheduling more frequent meetings of the probable cause panels. Complaints and investigatory materials can be provided to panel members by mail or electronically, and the panels can meet in person or via telephone conference. These minor changes in the Board's process will allow for more prompt determinations of probable cause and avoid delays at the outset of some disciplinary proceedings.

#### *Timeliness of Process*

Nearly three-fourths of Board members and 60 percent of respondents' counsel who responded to the Task Force survey indicated that the Ohio disciplinary process devotes an appropriate length of time to adequately review a case to resolution. Certified grievance committee representatives expressed a similar degree of satisfaction with the timeliness of the process. The professionals and volunteers in the process are mindful of the impact that misconduct allegations have on all involved, including the grievant, the accused lawyer's clients, the accused lawyer, and members of the public. All strive to find the appropriate balance in each case between factors such as a thorough review and investigation and the accused lawyer's right to due process, remaining cognizant of their responsibility to protect the public from lawyer misconduct.

The Task Force did not find any cause to believe that there are inherent delays in the disciplinary process, either overall or by specific stages in the process. Perceptions of delay tend to arise in three categories of cases that often are high-profile cases given the seriousness of the misconduct or the status of the respondent. *Judicial misconduct cases* often consist of allegations of behavior and temperament and require interviews with and testimony from multiple witnesses, including experts. These cases also tend to be contested at each stage of the process because the respondent-judge is facing penalties that jeopardize both his or her law license and ability to remain in public office. Disciplinary cases involving *criminal misconduct* often are stayed to avoid any interference with the underlying criminal proceedings and to facilitate the subsequent disciplinary prosecution. *Complex cases*, such as those that involve extensive misuse of a trust account, can require extensive forensic investigation and lengthy evidentiary presentations. Cases in each of these categories often are not candidates for the use of procedural tools, such as stipulations or consent to discipline, that can expedite consideration. Moreover,

complex and contested cases frequently produce lengthy records that must be reviewed by the Board, before a final report can be prepared, approved, and filed, and again by the Supreme Court, before discipline can be imposed.

Although there does not appear to be any systemic delay in the process used in Ohio to review and adjudicate professional misconduct allegations, Disciplinary Counsel, certified grievance committees, the Board, and the Supreme Court should examine its existing practices to determine whether changes would yield more timely results. Such an examination should be undertaken immediately and again, two or three years after the adoption and implementation of the recommendations contained in this report. Certified grievance committees could make better use of investigatory and other resources available through Disciplinary Counsel to speed investigations and make more timely prosecutorial decisions. In addition to the changes in the probable cause process noted above, the Board should consider whether greater assistance could be provided to volunteer hearing panel chairs in conducting research and drafting panel reports. The Court follows a practice of promptly scheduling oral arguments in disciplinary matters, ensuring that contested cases are timely presented to the Court. Yet, it may wish to consider whether a full-Court review is required of each disciplinary case and determine whether adequate staff resources are devoted to the post-argument review of the Board's report and preparation of the Court's opinion.

## **Conclusion**

Ohio has a strong disciplinary system that is administered by competent professionals and supported by hundreds of dedicated volunteers. The system is exemplified by fairness and impartiality in prosecutions and adjudications, yet there are notable inconsistencies in how misconduct allegations are reviewed and investigated locally, whether formal charges are filed, and how those charges are prosecuted before the Board. These inconsistencies primarily arise from rules that have authorized the creation of 33 certified grievance committees and allowed those committees to operate under a few minimal standards and with little oversight by the Supreme Court or its affiliate offices. The vast majority of these committees are afforded relatively few opportunities to regularly review grievances and participate in prosecutions and, therefore, do not have occasion to develop the same level of expertise that exists in the Office of Disciplinary Counsel and larger certified grievance committees. As stated by one former Board member, "with experience, comes better judgment."

Although a fully centralized disciplinary system, modeled after the systems adopted in other states, would yield greater consistency at each stage of the process, there is demonstrable value in maintaining the involvement of local volunteer lawyers and laypersons in the review and adjudication of professional misconduct allegations. The recommendation to reduce the number of certified committees from 33 to nine maintains a high degree of local involvement by vesting disciplinary authority in committees that have jurisdiction over nearly 80 percent of the practicing lawyers in Ohio. The remaining committees also would engage in a level of activity that fosters the



development of expertise in professional conduct law and procedures. However, a reduction in the number of certified grievance committees will not, without more, yield optimum results. The local committees must operate under more definite standards, and adhere to uniform procedures, and undergo more regular oversight with respect to the performance of their duties. The volunteer committee members must supplement their skills and knowledge by regularly attending training programs specifically designed for persons involved in the disciplinary process. Finally, each entity vested with disciplinary authority and responsibility, from the local committees through the Supreme Court, should examine its own practices and implement changes to ensure prompt and just results.

By adopting the recommendations set forth in this report, the Supreme Court will ensure that Ohio continues to have a disciplinary system that serves the overarching objective of protecting the public, while maintaining the timeliness, fairness, and objectivity expected of a self-regulated profession. The members of this Task Force are prepared to assist the Court in its consideration and implementation of this report.



ACTIVITY BY OFFICE OF DISCIPLINARY COUNSEL  
AND  
CERTIFIED GRIEVANCE COMMITTEES  
(2005 - 2008)

	Year	Dismissed on Intake	Dismissed Following Investigation	Formal Complaint Filed	Indirect Cost Reimbursements
Akron	2005	134	84	6	\$181,879.08
	2006	87	65	4	\$200,015.26
	2007	92	81	6	\$203,468.30
	2008	83	85	2	\$202,696.72
Allen	2005	10	13	0	\$5,641.37
	2006	4	12	0	\$5,328.83
	2007	10	5	0	\$0.00
	2008	8	7	1	\$3,589.59
Ashtabula	2005	0	1	0	\$5,199.96
	2006	2	2	0	\$10,399.92
	2007	5	3	0	\$11,336.78
	2008	10	2	0	\$11,836.83
Belmont	2005	1	9	0	\$86.91
	2006	0	1	0	\$81.73
	2007	0	1	0	\$0.00
	2008	0	0	0	\$0.00
Butler	2005	1	14	0	\$12,750.58
	2006	1	20	1	\$12,785.04
	2007	1	25	1	\$14,061.42
	2008	7	25	1	\$24,755.02
Cincinnati	2005	247	34	11	\$262,534.67
	2006	212	55	8	\$246,554.52
	2007	283	42	10	\$242,035.39
	2008	197	43	8	\$252,151.25
Clermont	2005	0	9	0	\$4,987.05
	2006	0	11	0	\$5,236.76
	2007	0	20	0	\$4,605.56
	2008	0	16	0	\$0.00
Cleveland	2005	1418 <sup>1</sup>	74	10	\$232,469.69
	2006	142	139	14	\$261,377.30
	2007	117	109	4	\$269,309.54
	2008	149	119	1	\$6,930.44
Cleveland Metro <sup>2</sup>	2008	0	0	11	\$358,806.72
Columbiana	2005	1	7	0	\$0.00
	2006	4	8	0	\$0.00
	2007	3	9	0	\$0.00
	2008	0	8	0	\$0.00

ACTIVITY BY OFFICE OF DISCIPLINARY COUNSEL  
AND  
CERTIFIED GRIEVANCE COMMITTEES  
(2005 - 2008)

	Year	Dismissed on Intake	Dismissed Following Investigation	Formal Complaint Filed	Indirect Cost Reimbursements
Columbus	2005	219	238	4	\$208,898.75
	2006	247	228	7	\$216,791.92
	2007	222	184	8	\$240,322.16
	2008	136	133	9	\$246,414.44
Cuyahoga County	2005	174	92	12	\$130,310.65
	2006	184	108	13	\$168,020.97
	2007	118	62	14	\$148,499.98
	2008	133	20	2	\$14,371.13
Darke	2005	0	5	0	\$0.00
	2006	0	0	0	\$0.00
	2007	3	1	0	\$0.00
	2008	2	0	0	\$0.00
Dayton	2005	38	107	4	\$121,332.58
	2006	27	95	1	\$133,473.77
	2007	31	92	2	\$139,951.93
	2008	32	104	3	\$153,173.49
Erie/Huron	2005	3	8	1	\$5,684.81
	2006	0	11	0	\$5,983.76
	2007	1	9	0	\$2,980.64
	2008	1	11	1	\$3,864.67
Findlay/Hancock	2005	15	0	0	\$6,379.40
	2006	19	0	0	\$4,248.39
	2007	44	3	0	\$4,569.84
	2008	16	0	0	\$3,707.56
Geauga	2005	0	5	1	\$0.00
	2006	12	4	0	\$0.00
	2007	6	5	1	\$0.00
	2008	1	5	0	\$0.00
Greene	2005	3	12	0	\$0.00
	2006	2	6	0	\$0.00
	2007	3	3	0	\$0.00
	2008	0	0	0	\$0.00
Lake	2005	0	32	3	\$11,359.80
	2006	0	32	0	\$9,265.56
	2007	0	43	0	\$9,596.17
	2008	0	28	4	\$11,877.23
Lorain	2005	13	32	0	\$20,015.54
	2006	19	32	0	\$28,823.18
	2007	19	26	1	\$27,772.33
	2008	11	33	0	\$29,397.31

ACTIVITY BY OFFICE OF DISCIPLINARY COUNSEL  
AND  
CERTIFIED GRIEVANCE COMMITTEES  
(2005 - 2008)

	Year	Dismissed on Intake	Dismissed Following Investigation	Formal Complaint Filed	Indirect Cost Reimbursements
Mahoning	2005	79	89	2	\$71,796.41
	2006	51	81	4	\$45,107.39
	2007	31	85	2	\$51,914.77
	2008	29	72	2	\$48,294.08
Medina	2005	10	22	1	\$0.00
	2006	10	20	2	\$0.00
	2007	0	28	0	\$0.00
	2008	2	17	1	\$0.00
Miami	2005	2	4	0	\$0.00
	2006	0	6	0	\$0.00
	2007	1	2	0	\$0.00
	2008	0	7	0	\$0.00
Muskingum	2005	2	8	0	\$0.00
	2006	0	1	0	\$0.00
	2007	2	2	0	\$0.00
	2008	0	5	0	\$227.24
Northwest <sup>3</sup>	2005	0	7	0	\$0.00
	2006	0	9	2	\$0.00
	2007	0	10	0	\$2,975.00
	2008	0	5	0	\$0.00
Portage	2005	5	9	0	\$0.00
	2006	3	6	0	\$0.00
	2007	6	5	0	\$0.00
	2008	5	9	0	\$0.00
Portsmouth	2005	2	0	0	\$0.00
	2006	0	2	0	\$0.00
	2007	0	3	0	\$0.00
	2008	0	1	0	\$0.00
Richland	2005	45	13	0	\$0.00
	2006	20	4	0	\$0.00
	2007	50	0	0	\$0.00
	2008	58	6	0	\$0.00
Stark	2005	69	30	0	\$31,445.89
	2006	31	25	0	\$32,503.88
	2007	64	26	4	\$39,087.34
	2008	38	20	1	\$32,553.37
Toledo	2005	119	74	7	\$137,396.01
	2006	148	90	0	\$133,380.93
	2007	114	65	7	\$136,513.35
	2008	107	79	6	\$146,111.97

ACTIVITY BY OFFICE OF DISCIPLINARY COUNSEL  
AND  
CERTIFIED GRIEVANCE COMMITTEES  
(2005 - 2008)

	Year	Dismissed on Intake	Dismissed Following Investigation	Formal Complaint Filed	Indirect Cost Reimbursements
Trumbull	2005	19	44	0	\$5,496.24
	2006	6	48	0	\$4,131.08
	2007	12	34	3	\$0.00
	2008	8	28	0	\$18,898.70
Warren	2005	2	8	1	\$4,250.00
	2006	0	8	0	\$8,812.50
	2007	1	4	1	\$5,281.25
	2008	1	7	0	\$8,125.00
Wayne	2005	6	2	0	\$0.00
	2006	4	1	0	\$0.00
	2007	5	2	0	\$0.00
	2008	2	5	0	\$0.00
Wood	2005	2	7	0	\$0.00
	2006	1	1	0	\$0.00
	2007	0	4	0	\$0.00
	2008	2	5	0	\$0.00
OSBA	2005	22	89	0	\$60,726.62
	2006	29	109	2	\$57,874.26
	2007	18	70	4	\$59,268.66
	2008	16	88	2	\$65,802.08
Total CGC Per Year	2005	2661	1160	63	\$1,520,222.01
	2006	1265	1240	58	\$1,588,196.95
	2007	1262	1043	68	\$1,611,550.41
	2008	<u>1054</u>	<u>991</u>	<u>55</u>	<u>\$1,643,584.64</u>
TOTAL (CGC)		6242	4434	244	\$6,363,554.01
Disciplinary Counsel	2005	1626	1082	39	\$1,946,203.00 <sup>4</sup>
	2006	1630	1316	39	\$2,042,808.00 <sup>4</sup>
	2007	1805	1253	35	\$2,126,118.00 <sup>4</sup>
	2008	1683	1253	37	\$2,287,741.00 <sup>4</sup>
Total All Per Year	2005	4287	2242	102	\$3,466,425.01
	2006	2895	2556	97	\$3,631,004.95
	2007	3067	2296	103	\$3,737,668.41
	2008	<u>2737</u>	<u>2244</u>	<u>92</u>	<u>\$3,931,325.64</u>
TOTAL ALL		12986	9338	394	\$14,766,424.01

<sup>1</sup>Through 2005, the Cleveland Bar Association reported all telephone contacts regarding a lawyer as a grievance.

Beginning in 2006, Cleveland instituted a practice of reporting grievances consistent with other certified grievance committees.

<sup>2</sup>The Cleveland and Cuyahoga County Bar Association merged in 2008 to form the Cleveland Metropolitan Bar Association.

<sup>3</sup>The Northwest Certified Grievance Committee includes Fulton, Henry, Paulding, Putnam, Van Wert, and Williams Counties.

<sup>4</sup>Expenditures for Office of Disciplinary Counsel are reported on a July - June fiscal year basis.

## RULE V. DISCIPLINARY PROCEDURE

\* \* \*

1           **Section 3. Secretary; Disciplinary Counsel; Certified Grievance Committees;**  
2 **Administration.**

3  
4           **(A) Secretary.** There shall be a Secretary of the Board, which shall be a full-time  
5 position. The Secretary shall be an attorney admitted to the practice of law in Ohio, shall be  
6 appointed by a majority of the Board, and shall serve at the pleasure of the Board.

7  
8           **(1) Responsibilities.** The Secretary shall have the overall scheduling, administrative,  
9 and fiscal responsibility of the Board. The Secretary shall schedule all hearings for the Board  
10 and panels of the Board; keep a docket of each complaint and of all proceedings on each  
11 complaint, which shall be retained permanently as a part of the records of the Board; execute  
12 journal entries for extensions of time where appropriate; maintain the records for the receipt and  
13 expenditure of money; prepare financial reports and budgets as required by the Supreme Court  
14 Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of  
15 the Judiciary of Ohio, and when requested by the Board; assist the Board in preparing opinion  
16 letters pursuant to Section 2(C) of this rule; take all necessary steps to see that office facilities,  
17 furnishings, stationery, equipment, and office supplies are available as needed; and any other  
18 action consistent with the Secretary's position as chief administrative and fiscal officer and not  
19 otherwise inconsistent with the Supreme Court Rules for the Government of the Bar of Ohio and  
20 the Supreme Court Rules for the Government of the Judiciary of Ohio.

21  
22           **(2) Personnel.** The Secretary shall employ personnel as are reasonably necessary to  
23 discharge the responsibilities set forth in this rule and shall establish the salaries of personnel,  
24 subject to approval by the Board. The Secretary and staff shall not be employed by any court.

25  
26           **(3) Annual Reports.** The Secretary shall file annually with the Supreme Court a  
27 report of the activities and expenses of the Board.

28  
29           **(B)(1) Disciplinary Counsel.** With the approval of the Supreme Court, the Board, by  
30 majority vote, shall appoint a Disciplinary Counsel who shall ~~investigate~~ perform all of the  
31 following duties:

32  
33           **(a) Investigate** allegations of misconduct by judges or attorneys and allegations of  
34 mental illness affecting judges or attorneys, ~~initiate~~;

35  
36           **(b) Initiate** complaints as a result of investigations under the provisions of this rule,  
37 ~~and certify~~;

38  
39           **(c) Certify** bar counsel designated by certified grievance committees pursuant to  
40 division (G) of this section;

41           (d) In cooperation with the certified grievance committees, develop and recommend  
42 to the Board, for promulgation pursuant to division (D)(7) of this section, model procedures for  
43 the processing of grievances by certified grievance committees;  
44

45           (e) In cooperation with the Board, representatives of the certified grievance  
46 committees, and others, develop and offer a continuing education curriculum for bar counsel and  
47 certified grievance committee members, including an orientation program for newly appointed  
48 certified grievance committee members.  
49

50           ~~(1)~~**(2) Appointment; Removal.** The Disciplinary Counsel shall be appointed for a term  
51 of four years and shall be removed only for just cause. Removal for just cause shall be instituted  
52 by the filing, with the Chief Justice, of a written petition by the chair, acting by authority of a  
53 two-thirds vote of the Board. Upon receipt of the petition, the Chief Justice shall cause it to be  
54 served on the Disciplinary Counsel for response. Thereafter, the Chief Justice shall schedule a  
55 hearing before the Supreme Court, which shall determine whether there is just cause for the  
56 removal of the Disciplinary Counsel. The Disciplinary Counsel shall be removed upon the  
57 affirmative vote of five or more members of the Supreme Court.  
58

59           ~~(2)~~**(3) Assistants; Staff.** Assistant Disciplinary Counsel and staff in the Office of  
60 Disciplinary Counsel shall serve at the pleasure of the Disciplinary Counsel. The Disciplinary  
61 Counsel may appoint assistants as necessary who shall be attorneys admitted to the practice of  
62 law in Ohio and who shall not engage in the private practice of law while serving in that  
63 capacity. The Disciplinary Counsel shall appoint staff as required to satisfactorily fulfill the  
64 duties of the Office of Disciplinary Counsel. The Disciplinary Counsel shall retain one or more  
65 ~~parttime~~ investigators who may be assigned by the Disciplinary Counsel to assist certified  
66 grievance committees in the investigation of grievances.  
67

68           ~~(3)~~**(4) Compensation; Supplies; Annual Report.** The compensation of the  
69 Disciplinary Counsel shall be fixed by the Supreme Court. The compensation of personnel  
70 employed by the Disciplinary Counsel, including any Assistant Disciplinary Counsel, shall be  
71 fixed by the Disciplinary Counsel with the approval of the Supreme Court. The Supreme Court  
72 shall provide office facilities, furnishings, stationery, equipment, and office supplies for the  
73 Disciplinary Counsel. The Disciplinary Counsel shall file annually with the Supreme Court and  
74 the Board a report of the activities and expenses of the office.  
75

76           ~~(4)~~**(5) Quarterly Report.** By the fifteenth day of January, April, July, and October of  
77 each year, the Disciplinary Counsel shall file with the Supreme Court and the Board a report of  
78 the number of grievances made to the Disciplinary Counsel during the preceding quarter. The  
79 report shall specify the types of grievances filed, including commingling of funds, conviction of  
80 crime, failure to file income tax returns, failure to protect the interests of a client, soliciting,  
81 embezzlement, conversion, failure to account, excessive fees, mental illness, and any other type  
82 of grievance not set forth in this rule. The report shall ~~indicate~~ state the number of grievances  
83 filed, the number pending in each category, and the number terminated by action of the  
84 Disciplinary Counsel during the reporting period.



85            **(C)(1) Certified Grievance Committees.** ~~A certified grievance committee shall be an~~  
86 ~~organized committee of the Ohio State Bar Association or of one or more local bar associations~~  
87 ~~in Ohio that permits the membership of any attorney practicing within the geographic area served~~  
88 ~~by that association without reference to the attorney's area of practice, special interest, or other~~  
89 ~~criteria. Except in Cuyahoga county, there shall be only one certified grievance committee in~~  
90 ~~each county. Two or more bar associations may establish a joint certified grievance committee.~~  
91 ~~Membership on a joint certified grievance committee shall be in proportion to the number of~~  
92 ~~attorneys employed in the geographic area served by each bar association establishing the joint~~  
93 ~~Committee~~ On and after January 1, 2011, the following bar associations may establish and  
94 maintain a grievance committee, subject to the certification and recertification requirements of  
95 this rule:

- 96
- 97            (a)    Akron Bar Association;
  - 98
  - 99            (b)    Cincinnati Bar Association;
  - 100
  - 101           (c)    Cleveland Metropolitan Bar Association;
  - 102
  - 103           (d)    Columbus Bar Association;
  - 104
  - 105           (e)    Dayton Bar Association;
  - 106
  - 107           (f)    Mahoning County Bar Association;
  - 108
  - 109           (g)    Stark County Bar Association;
  - 110
  - 111           (h)    Toledo Bar Association;
  - 112
  - 113           (i)    Ohio State Bar Association.
  - 114

115           (2)    Upon designation by a bar association or bar associations and satisfaction of the  
116 standards set forth in division ~~(C)(1)~~(D) of this section, the Board shall certify a grievance  
117 ~~committee shall be certified by the Board~~ to investigate allegations of misconduct by judges or  
118 attorneys and mental illness affecting judges or attorneys and initiate complaints as a result of  
119 investigations under the provisions of these rules. A certified grievance committee shall not  
120 have the authority to investigate allegations of misconduct against an attorney who is a member  
121 of any certified grievance committee in the county and shall refer those allegations to the  
122 Secretary of the Board. A certified grievance committee, other than the certified grievance  
123 committee of the Ohio State Bar Association, shall not have the authority to investigate  
124 allegations of misconduct against a judge who holds office in the geographic area served by the  
125 committee and shall refer those allegations to the Disciplinary Counsel.

126

127           (3)    A certified grievance committee may adopt and utilize written procedures for  
128 handling allegations of client dissatisfaction that do not constitute disciplinary violations, to  
129 include mediation, office practice monitoring, and other alternative dispute resolution ~~(ADR)~~  
130 methods. Only ADR alternative dispute resolution procedures developed by the Board shall be

131 used by certified grievance committees. The procedures shall provide that mediators and ADR  
132 facilitators shall not be members of or subject to the jurisdiction of the certified grievance  
133 committee.

134  
135 (4) A grievance committee that was certified prior to January 1, 2011, that is not  
136 established by one of the bar associations listed in division (C)(1) of this section, and that is not  
137 part of a joint certified grievance committee established pursuant to division (C)(5) of this  
138 section shall not review or investigate any grievances filed with it on or after [the first day of the  
139 month that is at least sixty days after the date this amendment is adopted by the Supreme Court].  
140 Any grievance filed with the grievance committee on or after that date shall be forwarded to the  
141 Board for reassignment to Disciplinary Counsel or a certified grievance committee. A grievance  
142 committee may operate on a temporary basis for the purpose of completing the review,  
143 investigation, and prosecution of any matter filed with or referred to the committee prior to [the  
144 first day of the month that is at least sixty days after the date this amendment is adopted by the  
145 Supreme Court]; provided that, if a grievance committee has not completed the investigation of a  
146 matter by [the first day of the month that is at least one hundred and eighty days after the last  
147 date the grievance committee may accept grievances], the grievance committee shall refer the  
148 grievance and any investigatory materials to the Board for reassignment to Disciplinary Counsel  
149 or a certified grievance committee. Within fifteen days after [the adoption of this amendment by  
150 the Supreme Court], the Board shall send a written notice to the chair and bar counsel of each  
151 affected grievance committee, advising the chair and bar counsel of the last date on which new  
152 grievances may be accepted and the date by which all pending investigations shall be completed.  
153

154 (5)(a) Two or more bar associations may file a petition with the Board seeking approval  
155 to establish a joint certified grievance committee, provided both of the following apply:

156  
157 (i) Each bar association named in the petition shall have been operating a  
158 certified grievance committee, either independently or jointly, as of January 1, 2010;

159  
160 (ii) At least one of the bar associations named in the petition shall be a bar  
161 association listed in division (C)(1)(a) to (h) of this section, and all other bar associations  
162 named in the petition shall operate in a county contiguous to the county served by that bar  
163 association.

164  
165 (b) On or before March 1, 2011, the bar associations seeking to establish a joint  
166 certified grievance committee shall send a written notice to the Board indicating their intent to  
167 establish a joint certified grievance committee. On or before December 31, 2011, the bar  
168 associations seeking to create a joint certified grievance committee shall file a petition with the  
169 Board seeking approval to establish a joint grievance committee. The petition shall include all of  
170 the following:

171  
172 (i) The names of the bar associations forming the joint grievance committee;

173  
174 (ii) The names of the chair and other members of the joint grievance  
175 committee, provided the membership of the joint grievance committee shall be in  
176 proportion to the number of attorneys employed in the geographic area served by each

177 bar association establishing the joint committee and shall otherwise comply with the  
178 requirements of division (D)(1)(a) of this section;

179  
180 (iii) The name of bar counsel who will be employed or retained by the joint  
181 grievance committee;

182  
183 (iv) A copy of the written agreement that establishes and governs the operation  
184 of the joint grievance committee;

185  
186 (v) Any other information the Board considers necessary to evaluate the  
187 petition.

188  
189 (c) Upon receipt of a completed petition, the Board promptly shall determine whether  
190 the proposed joint grievance committee satisfies the requirements to establish a joint grievance  
191 committee and the standards set forth in division (D) of this section. Upon determination that the  
192 joint grievance committee satisfies these requirements and standards and upon certification of  
193 bar counsel as required by division (G) of this section, the Board shall certify the grievance  
194 committee as eligible to accept and investigate grievances and file and prosecute formal  
195 complaints.

196  
197 (d) The Board shall not accept, consider, or approve any petition to form a joint  
198 certified grievance committee that is filed on or after January 1, 2012, unless the petition is filed  
199 by or on behalf of two or more certified grievance committees that were authorized to operate on  
200 a continuing basis on or after January 1, 2011.

201  
202 **(D)(1) Minimum Standards for Certified Grievance Committees.** To obtain and  
203 retain certification, each grievance committee shall satisfy all of the following ~~minimum~~  
204 standards:

205  
206 (a) Membership and term limits. Consist of no fewer than fifteen persons, including  
207 a chair who shall not serve as chair for more than two consecutive years. ~~On or after January 1,~~  
208 ~~2000, both of the following shall apply:~~ (i) A majority of the members of the certified grievance  
209 committee shall consist of attorneys admitted to the practice of law in Ohio; ~~(ii) At~~ and at least  
210 three members or ten percent of the certified grievance committee, whichever is greater, shall  
211 consist of persons who are not admitted to the practice of law in Ohio or any other state.

212  
213 (i) On or before January 1, 2012, each bar association responsible for  
214 appointing members to its certified grievance committee shall adopt procedures that  
215 provide for the appointment of certified grievance committee members to specific terms  
216 of office, with the length of such terms to be determined by the appointing authority and  
217 subject to the ten-year limitation on consecutive service set forth in division (D)(1)(a)(ii)  
218 of this section. The expiration dates of the initial terms of office shall be established to  
219 ensure that the terms of members expire in different years.

220  
221 (ii) Beginning January 1, 2016, no member of a certified grievance committee  
222 shall serve or have served on the committee for more than ten consecutive years. A

223 member's tenure on a certified grievance committee prior to January 1, 2016 shall be  
224 considered for purposes of determining the member's consecutive service on the certified  
225 grievance committee. A member who served on the committee for ten consecutive years  
226 may be reappointed to the committee if two or more years have elapsed since the  
227 conclusion of the member's prior service.

228  
229 (b) Meetings. Meet at least ~~once every third month~~ six times each calendar year.

230  
231 (c) Office. Maintain a full-time, permanent office that is open during regular business  
232 hours, has a listed telephone number, and is staffed by a minimum of one full-time employee of  
233 the bar association to process grievances received by the certified grievance committee and assist  
234 with other work of the certified grievance committee. A joint certified grievance committee  
235 shall designate a single office within the geographical region served by the joint committee, and  
236 the full-time employee designated to assist the committee may be employed jointly by the bar  
237 associations that have established the joint committee.

238  
239 (d) Bar counsel. Designate bar counsel, who shall be certified by the Disciplinary  
240 Counsel pursuant to division (G) of this section, to supervise the receipt, and investigation, and  
241 prosecution of grievances, the prosecution of formal complaints, and perform such other duties  
242 required by this rule. Bar counsel may be a volunteer or shall be paid for his or her services  
243 related to disciplinary activities by or through the certified grievance committee. Bar counsel  
244 shall devote the time necessary to performing the duties set forth in this rule, including but not  
245 limited to assisting in the intake and investigation of grievances, prosecution of formal  
246 complaints, advising the certified grievance committee on matters of professional conduct and  
247 disciplinary procedures, and participating in educational activities related to professional conduct  
248 and disciplinary procedures.

249  
250 (e) Files and records. Maintain ~~permanent~~ files and records of proceedings, ~~and be~~  
251 in paper or electronic format and in accordance with the following schedule:

252  
253 (i) Records of the proceedings of the certified grievance committee and files  
254 related to any matter in which the committee filed a formal complaint shall be retained  
255 permanently;

256  
257 (ii) Files related to any matter in which the committee initiated an  
258 investigation shall be retained for five years;

259  
260 (iii) Files related to any matter that the committee dismissed without  
261 investigation shall be retained for two years.

262  
263 (f) Funding. Be sufficiently funded by the sponsoring bar association or associations  
264 to perform the duties imposed by these rules.

265  
266 (f)(g) Written procedures. Establish and file with the Board written procedures ~~filed~~  
267 with the Board for the processing of grievances that ~~conform to standard regulations~~ are  
268 consistent with model procedures promulgated by the Board. The written procedures shall

269 provide a method for notifying potential grievants that they have the option to file a grievance  
270 with the Disciplinary Counsel rather than with the certified grievance committee.

271  
272 ~~(g)~~(h) *Quarterly reports.* File quarterly reports similar to those required of the  
273 Disciplinary Counsel under Section 3(B)~~(4)~~(5) of this rule. Each certified grievance committee  
274 shall include in the report the results of cases referred to Board-approved ~~ADR~~ alternative  
275 dispute resolution methods along with recommendations for further action, including  
276 discontinuance or amendment of ~~ADR~~ alternative dispute resolution procedures.

277  
278 ~~(2) Chair.~~ ~~The president of each bar association having a certified grievance~~  
279 ~~committee shall report annually and in writing the name of the chair of the certified grievance~~  
280 ~~committee to the Board and the Disciplinary Counsel.~~ ~~(3)~~ **Continuing education.** Each A  
281 certified grievance committee shall encourage its members require each committee member, in  
282 the member's first full calendar year of service and each calendar year thereafter, to attend a  
283 minimum of one continuing education programs and activities program or activity on subjects  
284 related to legal and or judicial ethics, or both. If a member of a certified grievance committee  
285 fails to attend a continuing education program or activity in a calendar year related to the  
286 member's certified grievance committee responsibilities, the member shall be placed on  
287 probationary status for the following calendar year. A member placed on probationary status  
288 shall attend a minimum of two continuing education programs or activities related to the  
289 member's certified grievance committee responsibilities in the ensuing calendar year in order to  
290 be removed from probationary status. A member who fails to attend the continuing education  
291 programs or activities that are required for the member to be removed from probationary status  
292 shall be disqualified from serving on a certified grievance committee, and the bar association  
293 responsible for appointing the member shall remove that member from the committee.

294  
295 ~~(4)~~(3) **Annual publication.** At least once a year in a local newspaper with the largest  
296 general circulation in its jurisdiction, the certified grievance committee shall publish an  
297 announcement containing the address and telephone number of its office, Internet address, and a  
298 brief description of its functions. The announcement shall be published in the legal notice  
299 section in a style and size commensurate with legal advertisements. The certified grievance  
300 committee also shall maintain an Internet site that includes the information required in the annual  
301 publication.

302  
303 **(E)(1) Annual Report and Biennial Recertification.** On or before the first day of  
304 March, each certified grievance committee shall file with the Board a report of its activity in the  
305 preceding calendar year. The annual report shall be submitted on behalf of the certified  
306 grievance committee by the committee chair and bar counsel, and shall include all of the  
307 following:

308  
309 (a) A current roster of all members of the certified grievance committee that  
310 identifies the committee chair, the nonattorney members of the committee, the tenure of each  
311 member's service on the committee, and the expiration date of each committee member's term;

313           **(b)**    Information indicating each committee member’s compliance with the continuing  
314 education requirements set forth in division (D)(2) of this section and documentation of the  
315 probationary status or removal of members who fail to comply with the requirements.  
316

317           **(c)**    Other information considered necessary by the Board to ascertain the certified  
318 grievance committee’s compliance with the standards set forth in division (D) of this section.  
319

320           **(2)**    Based on the content of the annual reports for the two preceding years and other  
321 relevant information that may be available to the Board, the Board, on or before May 1, 2013 and  
322 every two years thereafter, shall do one of the following:  
323

324           **(a)**    Recertify the grievance committee;  
325

326           **(b)**    Notify the certified grievance committee of its noncompliance with specific  
327 minimum standards applicable to the operation of a certified grievance committee, the steps the  
328 certified grievance committee is required to take to remedy noncompliance, and the time in  
329 which the certified grievance committee must remedy noncompliance;  
330

331           **(c)**    Initiate decertification proceedings pursuant to division (F) of this section.  
332

333           **~~(5)~~(F) Decertification.** The Board may decertify a certified grievance committee, at the  
334 request of one or more of its sponsoring local bar associations or *sua sponte*, if the committee  
335 fails to maintain the ~~minimum~~ standards set forth in division (D)~~(4)~~ of this section and  
336 regulations adopted by the Board, or substantially fails to conform to these rules. A certified  
337 grievance committee may be decertified only by majority vote of the Board. Prior to  
338 decertifying a certified grievance committee, the Board shall hold a hearing before three  
339 commissioners, chosen by lot, who do not reside in the same appellate district where the certified  
340 grievance committee is located. If the panel of commissioners recommends decertification, it  
341 shall issue findings setting forth all of the following:  
342

343           **(a)**    The reasons for decertification;  
344

345           **(b)**    All of the certified grievance committee’s pending matters;  
346

347           **(c)**    Any special circumstances by reason of which the committee should not be  
348 required to discharge its remaining responsibilities in any or all pending matters.  
349

350           In the absence of special circumstances, the Board shall not decertify a certified  
351 grievance committee before the committee has discharged to the Board’s satisfaction the  
352 committee’s remaining responsibilities in its then-pending matters.  
353

354           **~~(D)~~(G)(1) Certification of Bar Counsel.** Disciplinary Counsel shall be responsible  
355 for certifying. With the prior approval of the Board, Disciplinary Counsel shall promulgate and  
356 make available to the certified grievance committees and bar counsel the criteria that will be  
357 used in certifying. The criteria for certification shall include, but not be limited to, all of the  
358 following:

- 359  
360       (a)     Legal experience, including substantive areas of practice and trial experience;  
361  
362       (b)     Any experience as a member of a certified grievance committee;  
363  
364       (c)     Experience in reviewing and investigating grievances and prosecuting formal  
365 complaints, including but not limited to the approximate number of grievances reviewed and  
366 investigated, the number of cases presented to hearing panels of the Board, and the number of  
367 disciplinary hearings before the Supreme Court;

368  
369       (d)     References from at least three persons in the legal community who attest to the  
370 applicant's high ethical standards, professionalism, and integrity.

371  
372       (2)     Disciplinary Counsel may decertify bar counsel for failing to competently and  
373 diligently perform the duties set forth in Gov. Bar R. V or for other good cause shown. Before  
374 decertifying bar counsel, Disciplinary Counsel shall provide to bar counsel and the chair of the  
375 certified grievance committee that employs or retains bar counsel written notice proposing the  
376 decertification of bar counsel and shall afford bar counsel a reasonable opportunity to respond to  
377 the proposed decertification.

378  
379       (3)     A bar counsel who is certified by Disciplinary Counsel as of December 31, 2010  
380 shall not be subject to the initial certification requirements of division (G)(1) of this section but  
381 may be decertified pursuant to division (G)(2) of this section.

382  
383       **(H) Funding and Budgets.** Funds for the operation of the Board and the Disciplinary  
384 Counsel and development and distribution of materials describing the disciplinary process shall  
385 be provided from the Attorney Services Fund.

386  
387       **(1) Budget.** At the request of the Administrative Director of the Supreme Court, the  
388 Board and the Disciplinary Counsel shall prepare and submit a proposed annual budget for  
389 approval by the Supreme Court.

390  
391       **(2) Reimbursement for Expenses.** Certified grievance committees may be  
392 reimbursed from the Attorney Services Fund for expenses incurred by the committees in  
393 performing the obligations imposed on them by these rules. Reimbursement is not permitted for  
394 costs associated with compliance with the standards contained in division ~~(C)(1)(D)~~ of this  
395 section, except for the costs listed in division ~~(D)~~(H)(2)(b) of this section.

396  
397       **(a) Reimbursement of Direct Expenses.** A certified grievance committee may be  
398 reimbursed for direct expenses incurred in performing the obligations imposed by this rule.  
399 Reimbursement shall be limited to costs for depositions, transcripts, copies of documents,  
400 necessary travel expenses for witnesses and volunteer attorneys, witness fees, costs of subpoenas  
401 and the service of subpoenas, and compensation of investigators and expert witnesses authorized  
402 in advance by the Board. There shall be no reimbursement for the costs of the time of other bar  
403 association personnel or attorneys in discharging these obligations. Reimbursement shall be

404 made upon submission to the Secretary of the Board of proof of expenditures. Upon approval by  
405 the Board, reimbursement shall be made from the Attorney Services Fund.

406  
407 **(b) Annual Reimbursement of Indirect Expenses.** Certified grievance committees  
408 may apply to the Board prior to the first day of February each year for partial reimbursement of  
409 other expenses necessarily and reasonably incurred during the preceding calendar year in  
410 performing their obligations under these rules. The Board shall establish criteria for determining  
411 whether expenses under divisions ~~(D)~~(H)(2)(b) and (c) of this section are necessary and  
412 reasonable. The Board shall deny reimbursement for any expense for which a certified grievance  
413 committee seeks reimbursement on or after the first day of May of the year immediately  
414 following the calendar year in which the expense was incurred. Expenses eligible for  
415 reimbursement are those specifically relating to professional responsibility enforcement and  
416 include all of the following:

417  
418 (i) The personnel costs for the portion of an employee's work that is dedicated to this  
419 area;

420  
421 (ii) The costs of bar counsel who is retained pursuant to written agreement with or  
422 employed by the certified grievance committee;

423  
424 (iii) Postal and delivery charges;

425  
426 (iv) Long distance telephone charges;

427  
428 (v) Local telephone charges and other appropriate line charges including, but not  
429 limited to, per call charges;

430  
431 (vi) The cost of dedicated telephone lines;

432  
433 (vii) Subscriptions to professional journals, law books, and other legal research  
434 services and materials related to professional responsibility;

435  
436 (viii) Organizational dues and educational expenses relating to professional  
437 responsibility enforcement;

438  
439 (ix) All costs of defending grievance and disciplinary-related law suits and that  
440 portion of professional liability insurance premiums directly attributable to the operation of the  
441 committees in performing their obligations under this rule;

442  
443 (x) The percentage of rent, insurance premiums not reimbursed pursuant to division  
444 ~~(D)~~(H)(2)(b)(ix) of this section, supplies and equipment, accounting costs, occupancy, utilities,  
445 office expenses, repair and maintenance, and other overhead expenses directly attributable to the  
446 operation of the committees in performing their obligations under this rule, as determined by the  
447 Board and provided that no certified grievance committee shall be reimbursed in excess of thirty  
448 thousand dollars per calendar year for such expenses. Reimbursement shall not be made for the  
449 costs of the time of other bar association personnel, volunteer attorneys, depreciation, or



450 amortization. No expense reimbursed under division ~~(D)~~(H)(2)(a) of this section is eligible for  
 451 reimbursement under division ~~(D)~~(H)(2)(b) of this section.

452  
 453 (c) **Quarterly Reimbursement of Certain Indirect Expenses.** In addition to  
 454 applying annually for reimbursement pursuant to division ~~(D)~~(H)(2)(b) of this section, a certified  
 455 grievance committee may apply quarterly to the Board for reimbursement of the expenses set  
 456 forth in divisions ~~(D)~~(H)(2)(b)(i) and (ii) of this section that were necessarily and reasonably  
 457 incurred during the preceding calendar quarter. Quarterly reimbursement shall be submitted in  
 458 accordance with the following schedule:

Reimbursement for the months of:	Due by:
January, February, and March	May 1
April, May, and June	August 1
July, August, and September	November 1
October, November, and December	February 1 (with annual reimbursement request)

460  
 461 Any expense that is eligible for quarterly reimbursement, but that is not submitted on a quarterly  
 462 reimbursement application, shall be submitted no later than the appropriate annual  
 463 reimbursement application pursuant to division ~~(D)~~(H)(2)(b) of this section and shall be denied  
 464 by the Board if not timely submitted. The application for quarterly reimbursement shall include  
 465 an affidavit with documentation demonstrating that the certified grievance committee incurred  
 466 the expenses set forth in divisions ~~(D)~~(H)(2)(b)(i) and (ii) of this section.

467  
 468 (3) **Audit.** Expenses incurred by certified grievance committees and reimbursed  
 469 under division ~~(D)~~(H)(2) of this section may be audited at the discretion of the Board or the  
 470 Supreme Court and paid out of the Attorney Services Fund.

471  
 472 (4) **Availability of Funds.** Reimbursement under division ~~(D)~~(H)(2) of this section  
 473 is subject to the availability of moneys in the Attorney Services Fund.

474  
 475 ~~(E)~~ (I) **Public Records.** Except as provided in Section 11(E) of this rule and by state and  
 476 federal law, documents and records of the Board, the Secretary, and the Disciplinary Counsel,  
 477 including budgets, reports, and records of income and expenditures, shall be made available for  
 478 inspection to any member of the general public at reasonable times during regular business  
 479 hours. Upon request, a person responsible for the records shall make copies available at cost,  
 480 within a reasonable period of time. The records shall be maintained in a manner that they can be  
 481 made available for inspection.

482  
 483  
 484  
 485

486           **Section 4. Investigation and Filing of Complaints.**  
487

488           **(A) Referral by Board.** The Board may refer to a certified grievance committee or  
489 the Disciplinary Counsel any matter filed with it for investigation as provided in this section.  
490

491           **(B) Referral by Certified Grievance Committee.** If a certified grievance committee  
492 determines in the course of a disciplinary investigation that the matters of alleged misconduct  
493 under investigation are sufficiently serious and complex as to require the assistance of the  
494 Disciplinary Counsel, the chair of the certified grievance committee may direct a written request  
495 for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all matters  
496 contained in the request and report the results of the investigation to the committee that requested  
497 it.  
498

499           **(C) Power and Duty to Investigate; Dismissal without Investigation.**  
500

501           **(1)** The investigation of grievances involving alleged misconduct by justices, judges,  
502 and attorneys and grievances with regard to mental illness shall be conducted by the Disciplinary  
503 Counsel or a certified grievance committee. The Disciplinary Counsel and a certified grievance  
504 committee shall review and may investigate any matter filed with it or that comes to its attention  
505 and may file a complaint pursuant to this rule in cases where it finds probable cause to believe  
506 that misconduct has occurred or that a condition of mental illness exists.  
507

508           **(2)** A grievance may be dismissed without investigation if the grievance and any  
509 supporting material do not contain an allegation of misconduct or mental illness on the part of a  
510 justice, judge, or attorney. A certified grievance committee shall not dismiss a grievance without  
511 investigation unless bar counsel has reviewed the grievance.  
512

513           **(D) Time for Investigation.** The investigation of grievances by Disciplinary Counsel  
514 or a certified grievance committee shall be concluded within sixty days from the date of the  
515 receipt of the grievance. A decision as to the disposition of the grievance shall be made within  
516 thirty days after conclusion of the investigation.  
517

518           **(1) Extensions of Time.** Extensions of time for completion of the investigation may  
519 be granted by the Secretary of the Board upon written request and for good cause shown.  
520 Investigations for which an extension is granted shall be completed within one hundred fifty days  
521 from the date of receipt of the grievance. Time may be extended when all parties voluntarily  
522 enter into an alternative dispute resolution method for resolving fee disputes sponsored by the  
523 Ohio State Bar Association or a local bar association.  
524

525           **(2) Extension Limits.** The chair or Secretary of the Board may extend time limits  
526 beyond one hundred fifty days from the date of filing in the event of pending litigation, appeals,  
527 unusually complex investigations, including the investigation of multiple grievances, time delays  
528 in obtaining evidence or testimony of witnesses, or for other good cause shown. If an  
529 investigation is not completed within one hundred fifty days from the date of filing the grievance  
530 or a good cause extension of that time, the Secretary may refer the matter either to a  
531 geographically appropriate certified grievance committee or the Disciplinary Counsel. The

532 investigation shall be completed within sixty days after referral. No investigation shall be  
533 extended beyond one year from the date of the filing of the grievance.

534  
535 **(3) Time Limits not Jurisdictional.** Time limits set forth in this rule are not  
536 jurisdictional. No grievance filed shall be dismissed unless it appears that there has been an  
537 unreasonable delay and that the rights of the respondent to have a fair hearing have been  
538 violated. Investigations that extend beyond one year from the date of filing are prima facie  
539 evidence of unreasonable delay.

540  
541 **(E) Retaining Outside Experts.** A particular investigation may benefit from the  
542 services of an independent investigator, auditor, examiner, assessor, or other expert. A certified  
543 grievance committee may retain the services of an expert in accordance with the Board  
544 regulations.

545  
546 **(F) Cooperation with Clients' Security Fund.** Upon the receipt of any grievance  
547 presenting facts that may be the basis for an award from the Clients' Security Fund under Gov.  
548 Bar R. VIII, the Disciplinary Counsel or a certified grievance committee shall notify the grievant  
549 of the potential right to an award from the Fund and provide the grievant with the forms  
550 necessary to initiate a claim with the Clients' Security Fund. The Disciplinary Counsel, a  
551 certified grievance committee, and the Board shall provide the Board of Commissioners of the  
552 Clients' Security Fund with findings from investigations, grievances, or any other records it  
553 requests in connection with an investigation under Gov. Bar R. VIII. The transmittal of  
554 confidential information may be delayed pending the termination of the disciplinary  
555 investigation or proceedings.

556  
557 **(G) Duty to Cooperate.** The Board, the Disciplinary Counsel, and president,  
558 secretary, or chair of a certified grievance committee may call upon any justice, judge, or  
559 attorney to assist in an investigation or testify in a hearing before the Board or a panel for which  
560 provision is made in this rule, including mediation and ~~ADR~~ alternative dispute resolution  
561 procedures, as to any matter that he or she would not be bound to claim privilege as an attorney  
562 at law. No justice, judge, or attorney, and no justice or judge, except as provided in Rule 3.3 of  
563 the Code of Judicial Conduct, shall neglect or refuse to assist or testify in an investigation or  
564 hearing.

565  
566 **(H) Referral of Procedural Questions to Board.** In the course of an investigation,  
567 the chair of a certified grievance committee, the president of a bar association, or the  
568 Disciplinary Counsel may direct a written inquiry regarding a procedural question to the chair of  
569 the Board of Commissioners. The written inquiry shall be filed with the Secretary of the Board.  
570 Upon receipt of a written inquiry, the chair of the Board and the Secretary shall consult and  
571 direct a response.

572  
573 **(I) Requirements for Filing a Complaint.**

574  
575 **(1) Definition.** "Complaint" means a formal written allegation of misconduct or  
576 mental illness of a person designated as the respondent.

577

578           **(2) Notice of Intent to File.** No investigation conducted by the Disciplinary Counsel  
579 or a certified grievance committee shall be completed, and no complaint shall be filed with the  
580 Board, without first giving the judge or attorney who is the subject of the grievance or  
581 investigation notice of each allegation and the opportunity to respond to each allegation.

582  
583           **(3) Majority Vote Required.** No complaint shall be filed by a certified grievance  
584 committee unless a majority of a quorum of that committee determines the complaint is  
585 warranted.

586  
587           **(4) Notice of Intent not to File.** If, upon review or investigation of a grievance, a  
588 certified grievance committee or the Disciplinary Counsel determines that the filing of a  
589 complaint with the Board is not warranted, the grievant and the judge or attorney shall be  
590 notified in writing of that determination, with a brief statement of the reasons that a complaint  
591 was not filed with the Board. The written notice provided by a certified grievance committee  
592 shall advise the grievant of the right to have the committee's determination reviewed pursuant to  
593 division (I)(5) of this section and the steps to obtain such review. Upon request, a certified  
594 grievance committee or the Disciplinary Counsel shall provide the judge or attorney with a copy  
595 of the grievance.

596  
597           **(5) Appeal.** A grievant who is dissatisfied with a determination by a certified  
598 grievance committee not to file a complaint may secure a review of the determination by filing a  
599 written request with the Secretary of the Board within fourteen days after the grievant is notified  
600 of the determination. The Secretary shall refer the request for review to the Disciplinary  
601 Counsel. The review shall be considered promptly by the Disciplinary Counsel, a decision made  
602 within thirty days, and the grievant notified. Extensions of time for completion of the review  
603 may be granted by the Secretary for good cause shown. No further review or appeal by a  
604 grievant shall be authorized. If the original determination is not affirmed, any further  
605 proceedings shall be handled by the Disciplinary Counsel.

606  
607           **(6) Attachments to Complaint.** Sufficient investigatory materials to demonstrate  
608 probable cause shall be submitted with the complaint. The materials shall include any response  
609 filed by or on behalf of the respondent pursuant to division (I)(2) of this section and may include  
610 investigation reports, summaries, depositions, statements, the response of the respondent, and  
611 any other relevant material.

612  
613           **(7) Complaint Filed by Certified Grievance Committee.** Six copies of all  
614 complaints shall be filed with the Secretary of the Board. Complaints filed by a certified  
615 grievance committee shall be filed in the name of the committee as relator. The complaint shall  
616 not be accepted for filing unless signed by one or more attorneys admitted to the practice of law  
617 in Ohio, who shall be counsel for the relator, and by bar counsel. The complaint shall be  
618 accompanied by a written certification, signed by the president, secretary, or chair of the certified  
619 grievance committee, that the counsel are authorized to represent the relator in the action and  
620 have accepted the responsibility of prosecuting the complaint to conclusion. The certification  
621 shall constitute the authorization of the counsel to represent the relator in the action as fully and  
622 completely as if designated and appointed by order of the Supreme Court with all the privileges

623 and immunities of an officer of the Supreme Court. The complaint also may be signed by the  
624 grievant.

625  
626 **(8) Complaint Filed by Disciplinary Counsel.** Six copies of all complaints shall be  
627 filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed  
628 in the name of the Disciplinary Counsel as relator.

629  
630 **(9) Service.** Upon the filing of a complaint with the Secretary of the Board, the  
631 relator shall forward a copy of the complaint to the Disciplinary Counsel, the certified grievance  
632 committee of the Ohio State Bar Association, the local bar association, and any certified  
633 grievance committee serving the county or counties in which the respondent resides and  
634 maintains an office and for the county from which the complaint arose.

635  
636 \* \* \*

637  
638 **Section 6. Proceedings of the Board after Filing of the Complaint.**

639  
640 **(A) Definitions.**

641  
642 **(1) Misconduct.** “Misconduct” means any violation by a justice, judge, or an  
643 attorney of any provision of the oath of office taken upon admission to the practice of law in this  
644 state or any violation of the Ohio Rules of Professional Conduct or the Code of Judicial Conduct,  
645 disobedience of these rules or of the terms of an order imposing probation or a suspension from  
646 the practice of law, or the commission or conviction of a crime involving moral turpitude.

647  
648 **(2) Probable Cause.** “Probable cause” means there is substantial, credible evidence  
649 that misconduct, as defined in division (A)(1) of this section, has been committed.

650  
651 **(B) Manner of Discipline.** Any justice, judge, or attorney found guilty of  
652 misconduct shall be disciplined as follows:

653  
654 (1) Disbarment from the practice of law;

655  
656 (2) Suspension from the practice of law for an indefinite period subject to  
657 reinstatement as provided in Section 10 of this rule;

658  
659 (3) Suspension from the practice of law for a period of six months to two years  
660 subject to a stay in whole or in part;

661  
662 (4) Probation for a period of time upon conditions as the Supreme Court determines,  
663 but only in conjunction with a suspension ordered pursuant to division (B)(3) of this section;

664  
665 (5) Public reprimand.

666  
667 **(C) Effect of Discipline; Enhancement.** A person who is disbarred or who  
668 voluntarily has surrendered his or her license to practice shall not be readmitted to the practice of

669 law in Ohio. Prior disciplinary offenses shall be considered as a factor that may justify an  
670 increase in the degree of discipline to be imposed for subsequent misconduct.

671

672 **(D) Probable Cause Determination; Appointment of Hearing Panel.**

673

674 **(1) Probable Cause Determination.** Upon receipt of a complaint, the Secretary  
675 shall direct the complaint and investigatory materials to a probable cause panel for review. Each  
676 panel shall be composed of three members of the Board, chosen by the chair, who shall designate  
677 one attorney or judge member as chair of the panel. Upon review solely of the complaint and  
678 investigation materials, the probable cause panel shall make an independent determination of  
679 whether probable cause exists for the filing of a complaint. The panel shall issue an order  
680 certifying the complaint to the Board or dismissing the complaint and investigation. The  
681 determination of the panel shall be sent by certified mail to the Disciplinary Counsel, to the  
682 appropriate certified grievance committee, and to the respondent.

683

684 **(2) Dismissal for Lack of Probable Cause.** Within seven days of receipt of the  
685 decision of the probable cause panel to dismiss the complaint, the Disciplinary Counsel or  
686 certified grievance committee may appeal the decision to the full Board by filing a written appeal  
687 with the Secretary of the Board. The Board shall review the investigation and make an  
688 independent determination as to whether probable cause exists for the filing of a complaint. The  
689 Board shall issue an order certifying the complaint or dismissing it and send a copy of its  
690 decision to the parties by certified mail. There shall be no appeal from the decision of the Board.

691

692 **(3) Appointment of Hearing Panel.** After the respondent has filed an answer or the  
693 time for filing an answer has elapsed, the Secretary shall appoint a hearing panel consisting of  
694 three members of the Board chosen by lot from members who did not serve on the probable  
695 cause panel. The Secretary shall designate one attorney or judge member of the panel to serve as  
696 chair of the panel. No member of the hearing panel shall be a resident of the appellate district  
697 from which the complaint originated. Not more than one nonattorney shall serve on any hearing  
698 panel. A majority of the panel shall constitute a quorum. The panel chair shall rule on all  
699 motions and interlocutory matters, and no ruling by the panel chair on motions and interlocutory  
700 matters may be appealed prior to entry of the final order.

701

702 **(4) Review of Probable Cause Process.** The Board shall conduct an ongoing  
703 assessment of the impact of the amendments to Gov. Bar R. V, adopted effective January 1,  
704 2011, and other relevant factors on the probable cause determinations made by the Disciplinary  
705 Counsel and certified grievance committees. On or before December 31, 2013, the Board shall  
706 provide a written report to the Supreme Court that includes the Board's assessment of the  
707 probable cause process and any recommendations relative to the retention, modification, or  
708 repeal of the rules governing the Board's probable cause determinations.

709

710 **(E) Notice to Respondent upon Filing of the Complaint.** The Secretary of the  
711 Board shall send a copy of the complaint by certified mail to the respondent with a notice  
712 requiring the respondent to file, within twenty days after the mailing of the notice, six copies of  
713 his or her answer and serve copies of the answer on counsel of record named in the complaint.

714 Extensions of time for the filing of the answer may be granted by the Secretary for good cause  
715 shown.

716

717 **(F) Default.** If the respondent has not filed an answer within twenty days of the  
718 answer date set forth in the notice to respondent of the filing of the complaint or any extension of  
719 the answer date, the relator shall file a motion for default. Prior to filing a motion for default,  
720 relator shall make reasonable efforts to contact the respondent.

721

722 **(1) Motion.** A motion for default shall contain all of the following:

723

724 (a) A statement of the effort made to contact the respondent and the result;

725

726 (b) Sworn or certified documentary prima facie evidence in support of the allegations  
727 made;

728

729 (c) The recommendation of the relator for sanction;

730

731 (d) A statement of any mitigating factors of which the relator is aware;

732

733 (e) A certificate of service of the motion on respondent at the address shown for the  
734 respondent on the records of the Supreme Court and at the last address known to the relator, if  
735 different.

736

737 **(2) Disposition.** The secretary of the Board may refer the motion for default to a  
738 judge or attorney member of the Board or master commissioner who shall rule on the motion. If  
739 a motion is granted, the Board member or master commissioner shall prepare a certified report  
740 for review by the Board pursuant to division (J) of this section. If a motion is denied, a hearing  
741 panel shall proceed with a formal hearing pursuant to division (G) of this section. For good  
742 cause shown, the chair of the Board may set aside a default entry and order a panel hearing at  
743 any time before the report and recommendation of the Board are certified to the Supreme Court.

744

745 **(G) Hearing.** Upon reasonable notice and at a time and location set by the panel chair  
746 pursuant to the hearing procedures and guidelines of the Board, the panel shall hold a formal  
747 hearing on the complaint. Requests for continuances may be granted by the panel chair for good  
748 cause shown. All hearings shall be recorded by a court reporter provided by the Board and a  
749 transcript filed with the Secretary.

750

751 **(H) Authority of Hearing Panel; Dismissal.** If, at the end of the evidence presented  
752 by the relator or of all evidence, a unanimous hearing panel finds that the evidence is insufficient  
753 to support a charge or count of misconduct, the panel may order that the complaint or count be  
754 dismissed. The panel chair shall give written notice of the action taken to the Board, the  
755 respondent, all counsel of record, the Disciplinary Counsel, the certified grievance committee for  
756 and the local bar association of the county or counties in which the respondent resides and  
757 maintains his or her office and the county from which the complaint arose, and the Ohio State  
758 Bar Association.

759







# THE SUPREME COURT *of* OHIO

Administrative Division  
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Columbus, Ohio 43214-3431  
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