

SUPREME COURT OF OHIO
BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW

PROCEDURAL OPINION 2001 – 01

The UPL committees of both the Columbus Bar Association and the Cincinnati Bar Association have filed requests for advisory opinions with the Board of Commissioners on the Unauthorized Practice of Law ("Board of Commissioners" or "Board"). Both local UPL committees are asking questions relating to the confidentiality of their records, of a list of local committee members in Columbus and Cincinnati, and of investigatory and deliberative files in Cincinnati. The Cincinnati UPL committee is also asking whether the Cincinnati Bar Association's Board of Trustees may review a formal complaint by the UPL committee before it is filed. The requests were made under Gov. Bar R. VII, § 2(D), and the Board of Commissioners is proceeding accordingly.

The specific requests are:

Columbus:

1. Does Gov. Bar R. VII, § 18 requires disclosure of a list of members of an unauthorized practice of law committee of a local bar association?

Cincinnati:

2. Under Gov. Bar R. VII, § 18, are the investigatory files and deliberations of the Disciplinary Counsel or the certified unauthorized practice of law committee of a local bar association open to the public?
3. Once an unauthorized practice of law committee, established pursuant to the requirements of Gov. Bar R. VII, § 4, determines that a formal written complaint alleging the unauthorized practice of law should be filed, is it permissible under Gov. Bar R. VII, § 5 for a board of trustees of a bar association to review such determination prior to submission to the Board of Commissioners?

Underlying the requests from both Columbus and Cincinnati are requests from those subject to UPL investigations separately petitioning the local bar associations for information related to both committee members' names and addresses, or investigative and deliberative files. While neither request involves a case currently pending before the Board of Commissioners or (to the Board of Commissioners' knowledge) before any Court, the Board is aware of Cincinnati-based litigation efforts regarding discovery disputes related to Question 2. In both requests, the local UPL committees asked the Board of Commissioners for an advisory opinion addressing their obligation to release informational and investigatory material.¹ The Cincinnati UPL committee also asks whether a local Board of Trustees can review and approve a formal complaint before the UPL committee files it with the Board of Commissioners.

A. Confidentiality Issues

Turning to Questions 1 and 2, although Gov. Bar R. VII(18) states that all "records, documents, proceedings, and hearings relating to investigations and complaints pursuant to this rule shall be public", the Board concludes that lists of committee members referred to in Question 1 is not information encompassed by Gov. Bar R. VII § 18. That rule only requires that records "relating to" investigations and complaints be considered public. The roster of an authorized practice of law committee does not relate to an individual investigation or complaint, but is a document that merely defines the membership of the committee. Regarding investigatory information developed by a local UPL committee, or corresponding information developed by a

¹ The Columbus request also seeks a determination from the Board of Commissioners as to whether the information is considered "public information" pursuant to ORC Chapter 149. The Board of Commissioners declines to address the public record question in general. There are several bases upon which one could conclude that the information in question does not constitute a public record. But this Board is generally not equipped to address general questions arising under State law that do not relate directly to a case pending before the Board of Commissioners, and we decline to do so in this case. Accordingly, this opinion only addresses the scope of Gov. Bar R. VII, and we make no determination as to the larger public record question.

potential respondent, in the absence of a case pending before the Board related to such requests, and the recognized potential for litigation over these matters, consistent with prior Board policy, the Board declines to issue an opinion with respect to Question 2.²

B. Local Board of Trustees Reviewing Formal Complaints

In Question 3, the Cincinnati UPL committee is also seeking guidance on whether it is permissible for the local Board of Trustees of the sponsoring bar association to review and approve any formal complaint the UPL committee intends to file. Although the local bar association rules may contain a directive for prior review of complaints prior to filing with the Board of Commissioners, Gov. Bar R. VII is the controlling standard when local and State rules conflict, the Supreme Court having exclusive authority over all matters relating to UPL.

The Cincinnati Bar Association's Local Rule 4 states that "the [Board of Trustees] shall consider [the formal complaint] and, if the Board after due consideration, concludes the complaint should be filed, the Board shall authorize the [UPL Committee] and its chairman to file and prosecute the complaint in accordance with Rule VII." Conversely, Gov. Bar R. VII(4) allows the local UPL committee to file formal complaints directly with the Board of Commissioners. The Cincinnati local rule is in conflict with Gov. Bar R. VII and could operate to restrict the independence of the local UPL committee to act pursuant to Gov. Bar R. VII.

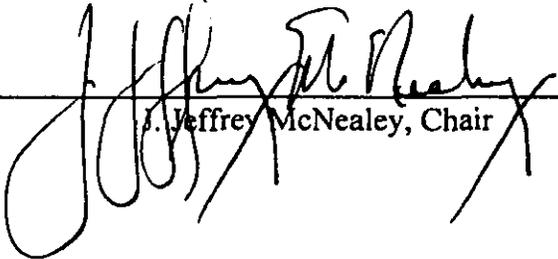
² The Board is fully cognizant of the directive in Gov. Bar R. VII § 17 that all rules are to be liberally construed, taking into account a balancing of the various factors set forth therein. Keeping in mind, however, the necessarily confidential nature of information developed in anticipation of litigation, and the competing interests of confidentiality for the positions of both relator and respondent, let alone their identities, prior to the filing of a complaint with the Board, the Board is not in a position to generically resolve the balancing criteria

Conclusions

Gov. Bar R. VII § 18 does not encompass lists of local UPL committee members. Consistent with prior Board policy, the Board declines to issue an advisory opinion on matters which are anticipated to be soon the subject of litigation. Gov. Bar R. VII controls in the event local UPL rules conflict with rules clearly applicable to local UPL committees, which have sole authority under the rules to file complaints with the Board.

Issued: December 31, 2001

By Order of the Board of Commissioners


J. Jeffrey McNealey, Chair