

**PROPOSED AMENDMENTS TO THE REGULATIONS GOVERNING PROCEDURE
ON COMPLAINTS AND HEARINGS BEFORE THE
BOARD ON THE UNAUTHORIZED PRACTICE OF LAW**

Comments Requested: Pursuant to Gov. Bar R. VII, Sec. 2(G) of the Rules for the Government of the Bar of Ohio, the Board on the Unauthorized Practice of Law will accept public comments until January 30, 2023, on the following proposed amendments to the Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law.

Comments on the proposed amendments should be submitted in writing to: Bradley Martinez, Attorney Services Division Assistant Director, Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, or Bradley.Martinez@sc.ohio.gov not later than January 30, 2023. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendments:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO

**APPENDIX VIII: REGULATIONS GOVERNING PROCEDURE ON COMPLAINTS
AND HEARINGS BEFORE THE
BOARD ON THE UNAUTHORIZED PRACTICE OF LAW**

UPL Reg. 100 Title, Authority, and Application.

(A) **Title.** These regulations shall be known as the Regulations Governing Procedure on Complaints and Hearings Before the Board on the Unauthorized Practice of Law and shall be cited as “UPL Reg. ____.”

(B) **Authority.** The following regulations are adopted by the Board on the Unauthorized Practice of Law pursuant to Gov. Bar R. VII(14), Sec. 2(G) of the Rules for the Government of the Bar of Ohio, with the prior approval of the Supreme Court of Ohio.

(C) **Application.** Pursuant to Gov.-Bar R. VII(14), Sec. 12(C), the Board applies the Ohio Rules of Civil Procedure and Rules of Evidence whenever practicable, unless a provision of Gov. Bar R. VII, these regulations, or Board procedure provide otherwise. Local rules of court are not applicable to matters before the Board.

UPL Reg. 200 Case Management; Practice and Procedure.

201 Case Schedule.

(A) **Standard case schedule deadlines.** After assignment of the Hearing Panel, the ~~Secretary~~ secretary of the Board, in consultation with the ~~Panel Chair~~ panel chair, shall issue a case-scheduling order to all parties or their counsel as set forth in this regulation. The case schedule shall be served ~~upon~~ on the parties no more than seven days after the time to plead or otherwise defend the complaint has elapsed. The case schedule ~~shall at a minimum establish~~ establishes normal deadlines for certain case events, but may be adjusted by at the discretion of the ~~Panel Chair~~ panel chair ~~or for good cause shown~~:

Assignment of Hearing Panel	0
Hearing Date	266 days after assignment
Initial Telephone Status Conference	30 <u>40</u> days after assignment
Initial Disclosure of Witnesses	80 days after assignment, or upon <u>on</u> request of either party
Hearing Date	120 days after assignment
Discovery Cut-off	60 days before hearing
Documentary-Evidence Cutoff	30 days before hearing
Hearing-Witness Subpoena Cutoff	21 days before hearing
Pre-Hearing Prehearing	40 <u>14</u> days before hearing
Statement/Briefs	

32 (B) **Optional case-schedule deadlines.** At the discretion of the ~~Panel Chair~~ panel chair,
33 the following events may also be established ~~added~~ to the case schedule:

- 34 Dispositive-Motion Deadline
- 35 Motions on Preliminary or Procedural Issues Deadline
- 36 Decisions on Motions
- 37 Stipulations of Facts and/or Law
- 38 Supplemental Disclosure of Witnesses
- 39 Final ~~Pre-Hearing~~ Prehearing Conference

40
41
42 (C) ~~Any complaint filed by an Unauthorized Practice of Law Committee or the~~
43 ~~Disciplinary Counsel shall state whether the relator is aware that an underlying complainant or~~
44 ~~individual is seeking a private remedy pursuant to R.C. 4705.07. Upon receipt of the complaint,~~
45 ~~the Secretary shall designate the case accordingly and inform the Panel Chair, who will have the~~
46 ~~discretion to accelerate the case management schedule and hearing date. **Time limits not**~~
47 ~~**jurisdictional.** Time limits set forth in this regulation are not jurisdictional. Failure by the Board~~
48 ~~to meet the time guidelines set forth in this regulation shall not be grounds for dismissal of a~~
49 ~~complaint.~~

50
51 (D) **Private-remedy disclosure.** On receipt of notice from a relator that an underlying
52 complainant or individual is seeking a private remedy pursuant to R.C. 4705.07(C)(2), the secretary
53 shall designate the case accordingly and inform the panel chair, who may accelerate the case-
54 management schedule and hearing date.

55 56 **202 Pleadings and Motions; Dispositive Motions.**

57
58 (A) ~~Upon the filing of a motion and unless ordered otherwise by the Panel Chair, any~~
59 ~~memorandum in opposition shall be filed within twenty one days after the filing of the motion. The~~
60 ~~response shall be served upon the Secretary and all adverse parties or their counsel. **Motions.**~~
61 ~~Within the time permitted for an answer to the complaint, the respondent may file any motion~~
62 ~~appropriate under Civ.R. 12, supported by a brief and affidavits, if necessary. A brief and affidavits,~~
63 ~~if appropriate, in opposition to such motion may be filed within fourteen days after service of such~~
64 ~~motion, unless a shorter or longer period is ordered by the chair of the Board or the panel chair.~~
65 ~~Unless directed otherwise by the ~~Panel Chair~~ panel chair, any reply to the ~~memorandum~~ brief in~~
66 ~~opposition shall be filed within ten days of the filing of the ~~memorandum~~ brief in opposition. Three~~
67 ~~days shall be added to the prescribed time periods when the motion or responsive ~~memorandum~~ are~~
68 ~~brief is served by mail. No oral hearing will be granted, and rulings of the Board will be made by~~
69 ~~the chair or vice-chair of the Board or any commissioner designated by the secretary of the Board.~~
70 ~~All motions shall be made in accordance with Gov. Bar R. VII and this regulation.~~

71
72 (B) **Extensions of time.** For good cause shown, the Board chair or, after appointment
73 of a panel, the panel chair may grant extensions of time for the filing of any pleading, motion, brief
74 or affidavit, either before or after the time permitted for filing. No extension of time need be
75 requested or granted to file a consent-decree agreement before adjudication by the Board as set
76 forth in Gov. Bar R. VII, Sec. 12(C).

77 **(C) Dispositive motions.** Any motion, including but not limited to a motion for
78 summary judgment, a motion for judgment on the pleadings, ~~and~~ or a motion to dismiss, that seeks
79 to determine the merits of any claim or defense as to any or all parties shall be considered a
80 dispositive motion. A voluntary dismissal under Civ. R. 41 is not a dispositive motion for purposes
81 of this regulation. All dispositive motions shall be filed no later than the date specified in the case
82 schedule. Pursuant to Civ. R. 56(A), leave is granted in all cases to file summary-judgment motions
83 between the time of service of the complaint and the dispositive-motion date, unless the ~~Panel Chair~~
84 ~~dietates panel chair orders~~ otherwise by setting a different date. If a dispositive-motion date was
85 not established in the initial case schedule, leave of the ~~Panel~~ panel chair must be obtained pursuant
86 to Civ. R. 56(A). Parties shall file their summary-judgment motion at the earliest practical date
87 during the pendency of the case.

88
89 ~~(C) The Panel Chair may order the simultaneous filing of motions and memoranda in~~
90 ~~opposition without provision for a reply.~~

91
92 **(D) Withdrawal of counsel.** Counsel seeking to withdraw from a pending case in which
93 a hearing has been scheduled shall file a motion to withdraw. In the case of counsel for the
94 respondent, the motion shall include a certification that a copy of the motion to withdraw has been
95 provided to the respondent and that withdrawing counsel has complied or will comply with the
96 applicable requirements of Prof. Cond. R. 1.16. The panel chair may conduct a hearing or phone
97 conference before ruling on the motion.

98
99 **203 ~~Pre-hearing Procedure~~ Filings; Required Number of Copies; Exhibits; Manner of**
100 **Service.**

101
102 **(A) General.** All pleadings, motions, briefs, stipulations, consent-decree agreements,
103 certificates of nonregistration, and other documents shall be filed with the Board and contain a
104 certificate of service. The certificate of service shall include a statement that service has been made
105 on the opposing party, the manner of service, whether the document has been served on the panel,
106 and, if so, the manner of service. Service by certified mail is hereby waived by the Board and may
107 be waived by the parties or their counsel.

108
109 **(B) Filing.** Complaints shall be filed with the Board as required by Gov. Bar R. VII. All
110 other documents shall be filed with the Board in the form of the original document, plus one copy.

111
112 **(C) Copies.** A party who files or presents exhibits for use at a hearing shall provide or
113 have available sufficient copies for use at the hearing by the opposing party, witnesses, and each
114 member of the hearing panel.

115
116 **(D) Service.** Whenever provision is made for the service of any notice, order, report, or
117 other paper or copy on any complainant, relator, respondent, petitioner, or other party in connection
118 with any proceeding under these regulations, service may be made on counsel of record for such
119 complainant, relator, respondent, petitioner, or other party, either personally or by certified mail.

120
121 **(E) Completion of Service.** If service of any document by certified mail is refused or
122 unclaimed, the secretary may make service by ordinary mail evidenced by a certificate of mailing.

123 Service shall be considered complete when the fact of mailing is entered in the record, provided
124 that the ordinary-mail envelope is not returned by the postal authorities with an endorsement
125 showing failure of delivery.

126
127 **(F) Service by Other Means.** The panel chair may order the service of documents on
128 the panel by electronic or other alternative means. Any order of the panel chair shall not relieve a
129 party from filing documents with the Board as contained in this regulation.

130
131 **(G) Electronic Filing.** Documents and pleadings may be filed electronically with the
132 Board in accordance with S.Ct.Prac.R. 3.02(A)(3), provided the responsibilities of the Clerk of the
133 Supreme Court under that rule shall be performed by the secretary for documents filed with the
134 Board.

135
136 **203.1 Pre-hearing Statements, Motions, and Briefs**

137
138 ~~(A) In all cases pending hearing, all parties shall prepare and serve upon the Secretary,~~
139 ~~with a copy to all opposing counsel, a final pre-hearing statement forty days prior to the assigned~~
140 ~~hearing date. The final pre-hearing statement shall at a minimum contain:~~

141
142 ~~(1) A brief statement of the facts and identification of claims and defenses;~~

143
144 ~~(2) The factual and legal issues which the cause presents;~~

145
146 ~~(3) For relator, its position on whether the facts and circumstances of the case warrant~~
147 ~~imposition of a civil penalty and if the relator seeks the imposition of a civil penalty, the relator~~
148 ~~shall specify the amount of the civil penalty it is requesting and identify the unique facts and~~
149 ~~circumstances that it believes warrant imposition of the civil penalty requested; and,~~

150
151 ~~(4) For respondent, an indication of whether there is opposition to any request for~~
152 ~~imposition of a civil penalty and the existence of evidence in mitigation;.~~

153
154 ~~(5) The estimated days required for hearing.~~

155
156 ~~(B) Parties shall separately prepare and serve upon the Secretary, with a copy to all~~
157 ~~opposing counsel, forty days prior to the assigned hearing date:~~

158
159 ~~(1) Stipulations of fact or law, if any;~~

160
161 ~~(2) A listing of all witnesses with a brief summary of expected testimony; a copy of all~~
162 ~~available opinions of all persons who may be called as expert witnesses;~~

163
164 ~~(3) A listing of all exhibits expected to be offered into evidence, except exhibits to be~~
165 ~~used only for impeachment, illustration, or rebuttal.~~

166
167 ~~(C) Forty days prior to the hearing date, all other motions (other than dispositive~~
168 ~~motions), pleadings, filings or hearing briefs intended to be offered at the hearing shall be served~~

169 upon the Secretary and opposing parties. A response to any motion, brief or other filing shall be
170 served according to UPL Reg. 202(A). The required pre-hearing statement may be included as part
171 of any hearing brief.

172
173 ~~(D) All documentary evidence to be offered at hearing shall be served upon the~~
174 ~~Secretary, adverse parties or their counsel at least thirty days before hearing pursuant to Gov. Bar~~
175 ~~R. VII(14).~~

176
177 ~~(E) There is reserved to each party, upon application to the Panel and for good cause~~
178 ~~shown, the right at the hearing to:~~

179
180 ~~(1) offer additional exhibits, file additional pleadings;~~

181
182 ~~(2) supplement the list of witnesses to be called; and,~~

183
184 ~~(3) call such rebuttal witnesses as may be necessary, without prior notice to opposing~~
185 ~~parties.~~

186 187 **204 Certificate of Registration Voluntary Dismissal.**

188
189 ~~After filing a complaint alleging the unauthorized practice of law, relator shall produce a~~
190 ~~Certificate from the Supreme Court of Ohio, Office of Attorney Registration, indicating whether~~
191 ~~any responsive party to the complaint is not admitted to practice law in the State of Ohio, and serve~~
192 ~~a copy upon all respondents, counsel of record, and the Secretary of the Board, and the original~~
193 ~~shall be offered as an exhibit at hearing and filed with the Board by the relator at the conclusion of~~
194 ~~hearing.~~

195
196 ~~Following the filing of the complaint, the relator may not voluntarily dismiss the complaint~~
197 ~~without leave of the panel chair. A motion to voluntarily dismiss shall include a memorandum~~
198 ~~setting forth the basis for the dismissal and, if required by the panel chair, supporting affidavits,~~
199 ~~depositions, or documents. The panel chair may conduct a hearing on the motion to dismiss and~~
200 ~~may require the testimony of witnesses and production of documents.~~

201 202 **205 Final Pre-hearing Conferences Prehearing Procedure.**

203
204 ~~(A) **Prehearing conference.** No later than sixty days before hearing, a party may file a~~
205 ~~request for a pre-hearing conference with the Panel. The request may be granted by the Panel Chair.~~
206 ~~The Panel Chair may also establish a pre-hearing conference date consistent with the initial case~~
207 ~~scheduling order. Within forty days of the appointment of a hearing panel, the panel chair shall~~
208 ~~conduct a prehearing conference with the parties and counsel of record. At the discretion of the~~
209 ~~panel chair, the panel chair may hold a prehearing conference by telephone and may continue the~~
210 ~~hearing from day-to-day. A The prehearing conference with the parties shall at a minimum attempt~~
211 ~~to accomplish the following objectives:~~

212
213 ~~(1) Simplification of the issues;~~
214

- 215 (2) ~~Necessity of~~ Determine the necessity for any amendment to the pleadings;
216
217 (3) ~~Resolution of outstanding~~ Establish a discovery issues timetable;
218
219 (4) ~~Identification of~~ Identify anticipated witnesses and the need to exchange reports of
220 anticipated expert witnesses;
221
222 (5) ~~The possibility of obtaining:~~
223
224 (i) ~~stipulations of fact or law;~~
225
226 (ii) ~~stipulations of the admissibility of exhibits;~~ Identify and arrange for the
227 exchange of copies of anticipated exhibits.
228
229 (6) Discuss the possibility of a consent-decree agreement, obtaining stipulations of fact,
230 and obtaining stipulations regarding the admissibility of exhibits;
231
232 (7) Such other matters as may expedite the hearing;
233
234 ~~(7)~~(8) Confirmation of the final hearing date and venue.
235

236 (B) ~~At the discretion of the Panel Chair, a pre-hearing conference may be held by~~
237 ~~telephone, and may be continued from day to day. Counsel and parties should be prepared to~~
238 ~~discuss the matters contained in this regulation~~ **Order.** ~~At the conclusion of the pre-hearing~~
239 ~~prehearing conference, the Panel Chair~~ panel chair ~~may enter an order setting forth the action taken~~
240 ~~and the agreements reached, which order shall govern the subsequent course of proceedings. The~~
241 ~~order of the panel chair shall be subject to modification sua sponte or for good cause.~~
242

243 (C) **Hearing date.** The panel chair shall establish a hearing date in consultation with
244 the parties and other panel members. The hearing date shall be no more than one-hundred-twenty
245 days following the appointment of the panel, unless adjusted by the panel chair under UPL Reg.
246 201(A).
247

248 (D) **Subpoenas and orders for testimony; depositions.**
249

250 (1) The Board shall issue a subpoena on application of an authorized investigator
251 pursuant to the investigation of allegations of the unauthorized practice of law on behalf of a
252 certified unauthorized-practice-of-law committee, the Office of Disciplinary Counsel, the Attorney
253 General, a respondent, or an authorized representative of the relator by submitting a praecipe to the
254 Board. A notice of a subpoena issued to a person other than the subject of an investigation into
255 allegations of the unauthorized practice of law need not be provided to the subject of that
256 investigation unless probable cause has been found. On the finding of probable cause, any subpoena
257 issued during the investigation of the alleged misconduct shall become public and available for
258 disclosure on request. A motion to quash a subpoena issued under this section shall be filed with
259 the Board. If the motion to quash is filed before the appointment of a hearing panel, the motion

260 shall be ruled on by the chair or vice-chair of the Board. If a hearing panel has been appointed, the
261 motion to quash shall be ruled on by the panel chair.

262
263 (2) A foreign unauthorized-practice-of-law authority, pursuant to the law of that
264 jurisdiction and where the issuance of the subpoena has been duly approved, if such approval is
265 required by the law of that jurisdiction, may request that a subpoena issue for use in an
266 unauthorized-practice-of-law proceeding. The secretary shall issue such a subpoena on request as
267 provided in this regulation.

268
269 (3) A subpoena issued pursuant to this regulation may compel the attendance of
270 witnesses and production of documents in the county where the witness resides, is employed, or as
271 otherwise agreed by the witness. Service, enforcement, and challenges to such subpoenas shall be
272 as provided in Gov. Bar R. VII and this regulation.

273
274 (4) In furtherance of unauthorized-practice-of-law proceedings in this state, a relator
275 or respondent may apply for the issuance of subpoenas in another jurisdiction pursuant to the rules
276 of that jurisdiction.

277
278 (5) To compel the testimony of a witness at the hearing, requests to issue subpoenas
279 pursuant to Gov. Bar R. VII, Sec. 2(D) shall be made in writing and filed with the secretary no later
280 than twenty-one days before the date on which a complaint has been scheduled for hearing.

281
282 (6) Requests for orders for deposition testimony pursuant to Gov. Bar R. VII, Sec. 2(E)
283 or issuing subpoenas for that purpose pursuant to Gov. Bar R. VII, Sec. 2(D) shall be made in
284 writing and filed with the secretary no later than thirty days before the date on which the hearing
285 has been scheduled.

286
287 (7) Depositions taken in unauthorized-practice-of-law proceedings shall be filed with
288 the Board as prescribed in Civ.R. 32.

289
290 **(E) Stipulations and witnesses.** The parties shall prepare and serve on the secretary,
291 with a copy to opposing counsel, fourteen days before the assigned hearing date, the following:

292
293 (1) Stipulations of fact or law, if any. However, stipulations may be filed at any time
294 after the fourteen-day deadline with leave of the panel chair. In addition, the following apply to
295 stipulations of fact or law filed with the Board:

296
297 (i) If relator and respondent stipulate to facts and so request, the panel chair may cancel
298 a scheduled hearing and deem the matter submitted in writing;

299
300 (ii) Notwithstanding the agreement of relator and respondent on stipulations of fact or
301 law, neither the hearing panel nor the Board shall be bound by any joint recommendation of the
302 parties. The panel shall retain discretion to make a recommendation to the Board, and the Board
303 shall retain discretion to make a final recommendation to the Supreme Court on a finding of the
304 unauthorized practice of law and the appropriate penalty.

305

306 (2) A listing of all witnesses to be called by the parties at the hearing, with a brief
307 summary of expected testimony;

308
309 (3) A listing of all exhibits expected to be offered into evidence, excepting exhibits
310 expected to be used only for impeachment, illustration, or rebuttal.

311
312 (F) **Motions.** At least thirty days before the hearing date, all other motions, other than
313 dispositive motions; pleadings; filings; or hearing briefs intended to be offered at the hearing shall
314 be served on the secretary and opposing parties. A response to any motion, brief, or other filing
315 shall be served according to UPL Reg. 202(A).

316
317 (G) **Documentary evidence.** All documentary evidence to be offered at the scheduled
318 hearing shall be served on the secretary and adverse parties or their counsel at least thirty days
319 before the hearing, pursuant to Gov. Bar R. VII, Sec. 12(C).

320
321 (H) **Additional exhibits and witnesses at hearing.** At the hearing, each party, with the
322 approval of the panel chair and for good cause shown, may:

323
324 (1) Offer additional exhibits and file additional pleadings;

325
326 (2) Supplement the list of witnesses to be called;

327
328 (3) Call such rebuttal witnesses as may be necessary, without prior notice to opposing
329 parties.

330
331 **206 Electronic Filing (Reserved)**

332
333 **207 Continuances.**

334
335 (A) **General.** The panel chair may grant a continuance of a hearing date is a matter
336 within the discretion of the Panel for good cause shown. No party shall be granted a continuance
337 of a hearing date without a written motion from the party or counsel stating the reason for the
338 continuance. The motion shall be filed with the Secretary secretary no later than ten days before
339 the date set for hearing but may also be filed at any later time with leave of the panel chair. If the
340 motion is not granted denied by the Panel Chair panel chair, the cause hearing shall proceed as
341 originally scheduled.

342
343 (B) **Unavailability of witness.** When a continuance is requested due to the
344 unavailability of a witness at the time scheduled for hearing, the Panel panel chair may consider the
345 feasibility of permitting testimony pursuant to Civ.R. 32.

346
347 **208 Subpoenas and Orders for Testimony**

348
349 (A) To compel the testimony of a witness at the hearing, requests for the issuance of
350 subpoenas pursuant to Gov. Bar R. VII(12) shall be made in writing and filed with the Secretary no
351 later than ten days before the date on which a complaint has been set for hearing.

352
353 (B) To compel the testimony of a witness whose testimony will be offered at the hearing
354 via deposition pursuant to Civ. R. 32, requests for orders for testimony pursuant to Gov. Bar
355 R.VII(13) or the issuance of subpoenas pursuant to Gov. Bar R. VII(12) shall be made in writing
356 and filed with the Secretary no later than thirty days before the date on which a complaint has been
357 set for hearing.

358
359 **209 Post-hearing 207 Posthearing Procedure of the Panel and Board.**

360
361 (A) **Panel report.** A Panel Report shall be submitted to the ~~Secretary~~ secretary within
362 sixty days of the filing of the transcript for consideration at the next regularly scheduled meeting of
363 the Board. The ~~Secretary~~ secretary, at the request of the ~~Panel Chair~~ panel chair, may extend the
364 date for the filing of the Panel Report with the Board.

365
366 (B) **Final report.** The Final Report of the Board shall be filed with the Court by the
367 ~~Secretary~~ secretary no later than thirty days after the conclusion of the Board's review, approval,
368 and adoption of ~~whole~~ all or part of the ~~Panel's report~~ Panel Report. After consideration by the
369 Board, the Board may grant the Chair ~~may be granted the authority by the Board~~ to prepare and file
370 the Final Report.

371
372 (C) **Time guidelines.** Failure by the Board to meet the time guidelines set forth in these
373 regulations shall not be grounds for dismissal of the complaint.

374
375 **UPL Reg. 300 Regulation for the Issuance of Advisory Opinions.**

376
377 **300.1 Procedure for Issuance.**

378
379 (A) **Authority.** Pursuant to Gov. Bar R. VII(2)(C), Sec. 2(F) of the Supreme Court
380 Rules for the Government of the Bar of Ohio, the Board on the ~~Unauthorized Practice of Law~~ may
381 issue ~~informal, non-binding Advisory Opinions~~ nonbinding advisory opinions in response to
382 prospective or hypothetical questions regarding the application of ~~the Supreme Court Rules for the~~
383 Government of the Bar of Ohio regarding the unauthorized practice of law Gov. Bar R. VII and
384 issues implicated by R.C. 4705.01, 4705.07, and 4705.99. ~~Requests for an Advisory Opinion may~~
385 ~~be submitted to the Board by Disciplinary Counsel or an Unauthorized Practice of Law Committee~~
386 ~~of a Local or State Bar Association.~~

387
388 (B) **Advisory opinion committee.** Each year, ~~the Chair of the Board~~ chair shall appoint
389 three or more members of the Board to serve on an ~~Advisory Opinion Subcommittee.~~ The Advisory
390 Opinion Subcommittee is a regular Committee, which will be a standing subcommittee of the
391 Board. ~~The subcommittee shall meet prior to each regularly scheduled Board meeting.~~ The Chair
392 will Board chair shall also appoint one subcommittee committee member to serve as Chair chair of
393 the ~~Advisory Opinion Subcommittee~~ committee. Each subcommittee committee member shall
394 serve for a period of one year from the date of appointment and shall be eligible for ~~re-appointment~~
395 reappointment by the Chair Board chair. The committee shall meet at the call of the committee
396 chair and may meet in person, by telephone conference, or electronically.

398 (C) ~~Requests for an Advisory Opinion shall be submitted in writing to the secretary of~~
399 ~~the Board on the Unauthorized Practice of Law. The request for Advisory Opinion shall be in~~
400 ~~writing and state in detail to the extent practicable the operative facts upon which the request for~~
401 ~~Opinion is based, with information and detail sufficient to enable adequate consideration and~~
402 ~~determination of eligibility under these regulations. The request shall contain the name and address~~
403 ~~of the requester. A summary of the rules, opinions, statutes, case law and any other authority which~~
404 ~~the inquirer has already consulted concerning the questions raised should also be included in the~~
405 ~~request. A letter acknowledging the receipt of the request will be sent to the requester.~~ **Standards**
406 **for issuing advisory opinions.**

407
408 (1) The Board may issue an advisory opinion on the request of any regularly organized
409 bar association in this state, Disciplinary Counsel, or the Attorney General.

410
411 (2) The question presented shall be prospective or hypothetical in nature and shall not
412 involve questions pending before a court.

413
414 (3) The question presented shall be one of broad interest or importance.

415
416 (D) **Procedure for requesting an advisory opinion.** The procedure for submitting a
417 request for an advisory opinion shall be as follows:

418
419 (1) A Request for an advisory opinion shall be submitted in writing to the secretary and
420 shall state in detail to the extent practicable the operative facts on which the request for the opinion
421 is based, with information and detail sufficient to enable adequate consideration and determination
422 of eligibility under this regulation.

423
424 (2) The request shall contain the name and address of the requester and a summary of
425 the rules, opinions, statutes, case law and any other authority that the requester has already
426 consulted concerning the questions raised in the request.

427
428 (3) The secretary will send to the requester a letter acknowledging the receipt of the
429 request.

430
431 (E) **Review of advisory opinion requests.** The procedure for review of a request for
432 Advisory Opinion an advisory opinion shall be as follows:

433
434 (1) The Advisory Opinion Subcommittee Committee shall review all properly
435 submitted requests for Advisory Opinion submitted by Disciplinary Counsel or an Unauthorized
436 Practice of Law Committee of a Local or State Bar Association. an advisory opinion;

437
438 (2) The Advisory Opinion Subcommittee committee shall, within its have the discretion;
439 to accept or decline a request for an Advisory Opinion. advisory opinion;

440
441 (3) In exercising its discretion, the subcommittee committee shall be governed by Gov.
442 Bar R. VII(2)(C), Sec. 2(F) and respond only to prospective or hypothetical questions of public or
443 great general interest regarding the application of Gov. Bar R. VII and the unauthorized practice of

444 law. ~~The subcommittee shall decline requests that concern a question that is pending before the~~
445 ~~Court, decided by the Court, or a question of interest only to the person initiating the request. If the~~
446 ~~subcommittee determines that adequate authority already exists to answer t the inquiry posed, the~~
447 ~~requester will be advised of the applicable authority and no Opinion will be issued. this regulation;~~
448

449 (4) If any member of the ~~subcommittee~~ committee requests ~~that~~ the declination of the
450 ~~Advisory Opinion~~ a properly submitted request for an advisory opinion be considered by the ~~full~~
451 Board, such request will be presented to the ~~full~~ Board for consideration at the Board's next business
452 meeting. If the ~~subcommittee~~ committee unanimously declines a request for ~~Advisory Opinion~~ an
453 advisory opinion, ~~such that~~ determination shall be final;
454

455 (5) If the committee determines that adequate authority already exists that answers the
456 inquiry posed, or if an advisory opinion is not issued for any other reason, the committee or Board
457 may direct the secretary to provide guidance in a staff letter. The staff letter may be based on
458 previous opinions of the Board, the views of the committee or the Board, or other relevant
459 information. All staff letters will contain language indicating that the staff letter is nonbinding and
460 is not an advisory opinion of the Board.
461

462 ~~(E)~~**(F) Notification.** The Advisory Opinion Committee or Board shall notify the requester
463 of a properly submitted request for an Advisory Opinion will be notified advisory opinion of the
464 committee or Board's determination decision to accept or decline a the request.
465

466 ~~(F)~~**(G) Preparation of opinion.** If a request for Advisory Opinion an advisory opinion is
467 accepted for consideration, the subcommittee will Advisory Opinion Committee shall complete the
468 process of researching, drafting, and ~~review~~ reviewing as expeditiously as possible, preferably
469 within two to six months after ~~selection of a decision~~ deciding to grant the request. The
470 ~~subcommittee~~ committee shall be empowered to request and accept the voluntary services of a
471 person licensed to practice law in this state when the ~~subcommittee~~ committee deems it advisable
472 to receive written or oral advice or assistance in research and analysis regarding the question
473 presented by the requester.
474

475 ~~(G)~~ **Conflict of Interest.** ~~Subcommittee members shall not participate in any matter in~~
476 ~~which they have either a material pecuniary interest that would be affected by a proposed Advisory~~
477 ~~Opinion or subcommittee recommendation or any other conflict of interest or an appearance of a~~
478 ~~conflict of interest that should prevent them from participating. However, no action of the~~
479 ~~subcommittee will be invalid where full disclosure has been made to the Chair of the Board and the~~
480 ~~Chair has not decided that the member's participation was improper.~~
481

482 **(H) Review of draft opinion.** Each draft Opinion advisory opinion approved by
483 majority vote of the subcommittee will Advisory Opinion Committee shall be sent to the ~~full~~ Board
484 ~~on the Unauthorized Practice of Law~~ for review approximately two weeks ~~prior to~~ before the next
485 Board meeting at which it will be presented. On review, Board members may direct comments,
486 suggestions, or objections to the ~~Chair~~ chair of the ~~subcommittee~~ committee.
487

488 **(I)** If objections are received, the Adoption of draft opinion. The draft Opinion opinion
489 will also be placed on the agenda for discussion at the Board meeting. If no objections are received,

490 ~~the draft Opinion will be adopted by a majority vote of the Board at the Board meeting. Minor or~~
491 ~~non-substantive changes are not considered as objections to a draft Opinion. The Board may vote~~
492 ~~to adopt or modify the draft opinion or to return the draft opinion to the Advisory Opinion~~
493 ~~Committee for further review.~~

494
495 (J) **Issuance of opinion.** A copy of the ~~Adopted Advisory Opinion will adopted~~
496 ~~advisory opinion~~ shall be issued to the requester. ~~Copies of the issued Opinions will be and~~
497 ~~submitted for publication in the ABA/BNA Lawyers Manual on Professional Conduct, the Ohio~~
498 ~~State Bar Association Report, and other publications or electronic communications as the Board~~
499 ~~deems appropriate. Copies of issued Opinions will advisory opinions shall be forwarded to the Law~~
500 ~~Library of the Supreme Court of Ohio, County Law Libraries all county law libraries, the Office of~~
501 ~~Disciplinary Counsel, the Attorney General, and Local and State Bar Associations with~~
502 ~~Unauthorized Practice of Law Committees local and state bar associations with certified~~
503 ~~unauthorized practice of law committees.~~

504
505 (K) **Name of requester.** Issued ~~Opinions advisory opinions~~ shall not bear the name of
506 the requester and shall not include the request letter. However, the requester's name and the request
507 letter are not confidential and ~~will shall~~ be made available to the ~~Bar, Judiciary, or the public on~~
508 request.

509 510 **300.2 Procedure for Maintenance of Advisory Opinions.**

511
512 (A) **Copies.** A copy of each ~~Advisory Opinion will advisory opinion shall~~ be kept in the
513 Board's offices.

514
515 (B) **Former opinions.** An ~~Advisory Opinion advisory opinion~~ that becomes withdrawn,
516 modified, or not current will be marked with an appropriate designation to indicate the status of the
517 opinion.

518
519 (C) **Withdrawn designation.** The designation "Withdrawn" ~~will shall~~ be used when an
520 ~~Opinion advisory opinion~~ has been withdrawn by the majority vote ~~of~~ the Board. The designation
521 indicates ~~that an Opinion the opinion~~ no longer represents the advice of the Board.

522
523 (D) **Modified designation.** The designation "Modified" will be used when an ~~Opinion~~
524 ~~advisory opinion~~ has been modified by a majority vote of the Board. The designation indicates ~~that~~
525 ~~an Opinion the opinion~~ has been modified by a subsequent ~~Opinion opinion~~.

526
527 (E) **Not current designation.** The designation "Not Current" ~~will shall~~ be used at the
528 discretion of the Board to indicate that an ~~Opinion advisory opinion~~ is not current in its entirety.
529 The designation ~~that an Opinion opinion~~ is no longer current in its entirety may be used ~~to indicate~~
530 ~~for~~ a variety of reasons, such as subsequent amendments to rules or statutes, or developments in
531 case law.

532
533 (F) **Other designations.** Other designations, as needed, may be used by majority vote
534 of the Board.

536 (G) **Index.** The Advisory ~~Opinion index will~~ Index shall include a list identifying the
537 ~~Opinions opinions~~ as “Withdrawn,” “Modified,” or “Not Current,” and other designations as
538 decided by the Board.

539
540 **UPL Reg. 400 Guidelines for the Imposition of Civil Penalties.**

541
542 (A) **General.** Each case of unauthorized practice of law involves unique facts and
543 circumstances.

544
545 (B) **Relator.** At the hearing and at the end of its case-in-chief, relator shall set forth its
546 position on the imposition of a civil penalty. Relator shall specify the amount of the civil penalty
547 it is requesting and identify the factors, circumstances, and aggravating factors, if any, that warrant
548 imposition of the requested civil penalty.

549
550 (C) **Respondent.** At the hearing, ~~if~~ respondent shall chooses to contest any request for
551 imposition of a civil penalty, ~~Evidence~~ evidence that is offered by respondent in mitigation shall
552 be introduced as part of the respondent’s case-in-chief.

553
554 (D) **Imposition of penalty.** In determining whether to recommend the imposition of a
555 civil penalty, the Board shall consider all relevant facts and circumstances, as well as precedent
556 established by the Supreme Court of Ohio and the Board.

557
558 (E) **Factors considered.** In each case where the Board finds by a preponderance of the
559 evidence that respondent has engaged in the unauthorized practice of law, the Board shall discuss
560 in its final report to the Supreme Court any of the factors set forth in Gov. Bar R. VII(8), Sec. 14(B):

561
562 ~~"(B) Civil Penalties. The Board may recommend and the~~
563 ~~Court may impose civil penalties in an amount up to ten thousand~~
564 ~~dollars per offense. Any penalty shall be based on the following~~
565 ~~factors:~~

566 (1) ~~The degree of cooperation provided by the respondent~~
567 ~~in the investigation;~~

568
569 (2) ~~The number of occasions that unauthorized practice~~
570 ~~of law was committed;~~

571
572 (3) ~~The flagrancy of the violation;~~

573
574 (4) ~~Harm to third parties arising from the offense;~~

575
576 (5) ~~Any other relevant factors."~~

577
578 (F) **Other relevant factors.** As part of its analysis of “other relevant factors” pursuant
579 to Gov. Bar R. VII(8), Sec. 14(B)(5), the Board may consider all of the following:

580

581 (1) Whether relator has sought imposition of a civil penalty and, if so, the amount
582 sought;

583
584 (2) Whether the imposition of civil penalties would further the purposes of Gov. Bar
585 R.VII;

586
587 (3) The following factors ~~may be considered~~ in favor of recommending a more severe
588 penalty:

589 (a) Whether respondent has previously engaged in the unauthorized practice of law;

590
591 (b) Whether respondent has previously been ordered to cease engaging in the
592 unauthorized practice of law;

593
594 (c) Whether the respondent had been informed before engaging in the unauthorized
595 practice of law that the conduct at issue may constitute an act of the unauthorized practice of law;

596
597 (d) Whether respondent has benefited from the unauthorized practice of law and, if so,
598 the extent of any such benefit;

599
600 (e) Whether respondent's unauthorized practice of law included an appearance before a
601 court or other tribunal;

602
603 (f) Whether respondent's unauthorized practice of law included the preparation of a
604 legal instrument for filing with a court or other governmental entity; ~~and~~

605
606 (g) Whether the respondent has held ~~himself or herself~~ the respondent's self out as being
607 admitted to practice law in the State of Ohio, or whether respondent has allowed others to
608 mistakenly believe that he or she was admitted to practice law in the State of Ohio.

609
610 (4) The following factors ~~may be considered~~ in favor of recommending no penalty or a
611 less severe penalty:

612
613 (a) Whether respondent has ceased engaging in the conduct under review;

614
615 (b) Whether respondent has admitted or stipulated to the conduct under review;

616
617 (c) Whether respondent has admitted or stipulated that the conduct under review
618 constitutes the unauthorized practice of law;

619
620 (d) Whether respondent has agreed or stipulated to the imposition of an injunction
621 against future unauthorized practice of law;

622
623 (e) Whether respondent's conduct resulted from a motive other than dishonesty or
624 personal benefit;

625
626

627 (f) Whether respondent has engaged in a timely good-faith effort to make restitution or
628 to rectify the consequences of the unauthorized practice of law; ~~and~~

629
630 (g) Whether respondent has had other penalties imposed for the conduct at issue.
631

632 **UPL Reg. 500 Biennial Review and Recertification of Certified Unauthorized Practice of**
633 **Law Committees.**
634

635 (A) **Biennial review.** In each even-numbered year, the Board shall conduct a review of
636 compliance by each certified unauthorized-practice-of-law committee with the requirements of
637 Gov. Bar R. VII and this regulation. The Board chair may designate the responsibility for
638 conducting the biennial review to a standing or ad hoc committee of the Board. Any committee
639 designated by the Board chair shall present its recommendations to the Board at a regular or special
640 meeting of the Board, and the Board may accept, reject, or modify the recommendations of the
641 committee.

642
643 (B) **Standards for review and recertification.**
644

645 (1) The secretary shall prepare a written report for the Board or a committee of the Board
646 that details the compliance by each certified unauthorized-practice-of-law committee with the
647 requirements of Gov. Bar R. VII. The report shall include all of the following:
648

649 (a) Any specific failure by the certified unauthorized-practice-of-law committee to
650 prosecute in a timely manner a matter pending before the Board to which the certified unauthorized-
651 practice-of-law committee is a party or to respond in a timely manner to any order from the Board,
652 provided that the certified unauthorized-practice-of-law committee was notified in writing of such
653 failure and provided an opportunity to rectify the failure;
654

655 (b) The certified unauthorized-practice-of-law committee's compliance with each of the
656 following requirements set forth in Gov. Bar R. VII, Sec. 3(D) and (E):
657

658 (i) Timely filing in each of the two immediately preceding years of a complete annual
659 report of the activity of the certified unauthorized-practice-of-law committee;
660

661 (ii) Reporting of compliance by bar counsel with the education requirements set forth in
662 Gov. Bar R. VII, Sec. 4(C)(4);
663

664 (iii) Compliance with the requirement of Gov. Bar R. VII, Sec. 3(D)(1)(h) to file
665 quarterly case-activity reports with the Board, including any issues regarding the timeliness and
666 accuracy of those reports;
667

668 (c) Compliance with the minimum standards for each certified unauthorized-practice-
669 of-law committee as established by the Supreme Court in Gov. Bar R. VII, Sec. 3(D);
670

671 (d) Any other information considered necessary to enable the Board to ascertain
672 compliance by a certified unauthorized-practice-of-law committee with the standards set forth in
673 Gov. Bar R. VII. Sec. 3.

674
675 (2) In any instance in which the secretary identifies a failure to comply with these
676 standards, the secretary shall detail the efforts made to address noncompliance with the chair or bar
677 counsel for the certified unauthorized-practice-of-law committee.

678
679 **(C) Request for Information.** To facilitate the review-and-recertification process, the
680 secretary may request that a certified unauthorized-practice-of-law committee provide additional
681 information to the Board. The Board may consider the failure of a certified unauthorized-practice-
682 of-law committee to respond to a request for additional information in determining whether to
683 recertify the unauthorized-practice-of-law committee.

684
685 **(D) Recertification.** The Board shall recertify each unauthorized-practice-of-law
686 committee that is in substantial compliance with the requirements of Gov. Bar R. VII and this
687 regulation. Written notice of recertification shall be provided to the certified unauthorized-practice-
688 of-law committee on or before the first day of June in each even-numbered year.

689
690 **(E) Deferral of Recertification.**

691
692 (1) Except as otherwise provided in Gov. Bar R. VII or division (G) of this regulation,
693 the Board may defer the recertification of a certified unauthorized-practice-of-law committee based
694 on the failure of that committee to comply substantially with the requirements of Gov. Bar R. VII
695 or this regulation. The Board shall provide written notice to the certified unauthorized-practice-of-
696 law committee of the deferral of recertification. The written notice shall include all of the
697 following:

698
699 (a) The specific instances of noncompliance cited by the Board, including reference to
700 applicable rules or regulations;

701
702 (b) The steps necessary to remedy each instance of noncompliance, including any
703 deadlines for remedying a particular instance of noncompliance;

704
705 (c) A statement that the Board will defer recertification of the certified unauthorized-
706 practice-of-law committee until each instance of noncompliance cited in the notice is addressed to
707 its satisfaction;

708
709 (d) A statement that the Board may initiate proceedings to decertify the unauthorized-
710 practice-of-law committee if it fails to timely rectify the instances of noncompliance cited in the
711 notice.

712
713 (2) The Board may impose any conditions on the deferral of recertification that it deems
714 necessary, including, but not limited to, denying the request for reimbursement of any indirect
715 expense that is incurred or submitted by the certified unauthorized-practice-of-law committee
716 during the deferral period.

717
718 (3) Notwithstanding the Board's deferral of recertification, a certified unauthorized-
719 practice-of-law committee may continue to exercise authority pursuant to Gov. Bar R. VII and this
720 regulation. The deferral of recertification shall not be cited as a basis for refusing to cooperate with
721 an investigation or as a defense in any unauthorized-practice-of-law proceeding.
722

723 (4) On proof that the certified unauthorized-practice-of-law committee has rectified all
724 issues of noncompliance identified in the notice of deferral, the Board may recertify the committee.
725 The Board may impose any conditions on the recertification that it deems necessary to prevent
726 future instances of noncompliance. Written notice of recertification and any conditions imposed by
727 the Board shall be provided to the certified unauthorized-practice-of-law committee.
728

729 (F) **Decertification.** If a certified unauthorized-practice-of-law committee fails to
730 timely address instances of noncompliance identified in the written notice of deferral of
731 recertification, the Board shall initiate decertification proceedings. Decertification proceedings
732 shall be conducted as provided in Gov. Bar R. VII, Sec. 3(F).
733

734 (G) **Immediate decertification.** If the Board determines that a certified unauthorized-
735 practice-of-law committee has substantially failed to execute its responsibilities pursuant to Gov.
736 Bar R. VII or this regulation and that such failure appears to have substantially compromised the
737 investigation or prosecution of one or more unauthorized-practice-of-law matters, the Board may
738 bypass the deferral-and-notification process and initiate decertification proceedings. Decertification
739 proceedings shall be conducted as provided in Gov. Bar R. VII, Sec. 3(F).
740

741 (H) **Authority.** The failure of the Board to provide timely notice of recertification or
742 decertification shall not deprive a certified unauthorized-practice-of-law committee of the authority
743 to investigate or prosecute unauthorized-practice-of-law matters and may not be cited as a basis for
744 refusing to cooperate with an investigation or as a defense in any unauthorized-practice-of-law
745 proceeding.
746

747 (I) **Notice.** Any notice required by this regulation to a certified unauthorized-practice-
748 of-law committee shall be provided by regular mail to the president of the sponsoring bar
749 association, chair of the certified unauthorized-practice-of-law committee, and bar counsel. A copy
750 of each notice shall be provided to the Office of Disciplinary Counsel.
751

752 **UPL Reg. 500 600-900 (Reserved)**

753
754 **UPL Reg. 1000 Effective Date.**

755
756 (A) These regulations shall be effective June 1, 2006.

757
758 (B) Amendments to the Regulations adopted by the Board on _____ shall
759 take effect on _____.