

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

**UPL Reg. 100                      Title, Authority and Application**

(A)        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)        The following regulations are adopted by the Board on the Unauthorized Practice of Law pursuant to Gov.Bar R. VII(16) of the Rules for the Government of the Bar of Ohio, with the prior approval of the Supreme Court of Ohio.

(C)        Pursuant to Gov.Bar R. VII(14), 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)        After assignment of the Hearing Panel, the Secretary of the Board in consultation with the 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 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 deadlines for certain case events and may be adjusted by the Panel Chair or for good cause shown:

Assignment of Hearing Panel	0
Hearing Date	266 days after assignment
Initial Telephone Status Conference	30 days after assignment
Initial Disclosure of Witnesses	80 days after assignment, or upon request of either party
Discovery Cut-off	60 days before hearing
Pre-Hearing Statement/Briefs	40 days before hearing

(B) At the discretion of the Panel Chair, the following events may also be established:

- Dispositive Motion Deadline
- Motions on Preliminary or Procedural Issues Deadline
- Decisions on Motions
- Stipulations of Facts and/or Law
- Supplemental Disclosure of Witnesses
- Final Pre-Hearing Conference

(C) Any complaint filed by an Unauthorized Practice of Law Committee or the Disciplinary Counsel shall state whether the relator is aware that an underlying complainant or individual is seeking a private remedy pursuant to R.C. 4705.07. Upon receipt of the complaint, the Secretary shall designate the case accordingly and inform the Panel Chair, who will have the discretion to accelerate the case management schedule and hearing date.

## **202 Motions; Dispositive Motions**

(A) Upon the filing of a motion and unless ordered otherwise by the Panel Chair, any memorandum in opposition shall be filed within twenty-one days after the filing of the motion. The response shall be served upon the Secretary and all adverse parties or their counsel. Unless directed otherwise by the Panel Chair, any reply to the memorandum in opposition shall be filed within ten days of the filing of the memorandum in opposition. Three days shall be added to the prescribed time periods when the motion or responsive memoranda are served by mail.

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

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

## **203 Pre-hearing Procedure**

### **203.1 Pre-hearing Statements, Motions, and Briefs**

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

- (1) A brief statement of the facts and identification of claims and defenses;
- (2) The factual and legal issues which the cause presents;
- (3) For relator, its position on whether the facts and circumstances of the case warrant imposition of a civil penalty and if the relator seeks the imposition of a civil penalty, the relator shall specify the amount of the civil penalty it is requesting and identify the unique facts and circumstances that it believes warrant imposition of the civil penalty requested; and,
- (4) For respondent, an indication of whether there is opposition to any request for imposition of a civil penalty and the existence of evidence in mitigation;
- (5) The estimated days required for hearing.

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

- (1) Stipulations of fact or law, if any;
- (2) A listing of all witnesses with a brief summary of expected testimony; a copy of all available opinions of all persons who may be called as expert witnesses;
- (3) A listing of all exhibits expected to be offered into evidence, except exhibits to be used only for impeachment, illustration, or rebuttal.

(C) Forty days prior to the hearing date, all other motions (other than dispositive motions), pleadings, filings or hearing briefs intended to be offered at the hearing shall be served upon the Secretary and opposing parties. A response to any motion, brief or other filing shall be served according to UPL Reg. 202(A). The required pre-hearing statement may be included as part of any hearing brief.

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

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

- (1) offer additional exhibits, file additional pleadings;
- (2) supplement the list of witnesses to be called; and,
- (3) call such rebuttal witnesses as may be necessary, without prior notice to opposing parties.

#### **204 Certificate of Registration**

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

#### **205 Final Pre-hearing Conferences**

(A) No later than sixty days before hearing, a party may file a request for a pre-hearing conference with the Panel. The request may be granted by the Panel Chair. The Panel Chair may also establish a pre-hearing conference date consistent with the initial case scheduling order. A pre-hearing conference with the parties shall at a minimum attempt to accomplish the following objectives:

- (1) Simplification of the issues;
- (2) Necessity of amendment to the pleadings;
- (3) Resolution of outstanding discovery issues;
- (4) Identification of anticipated witnesses;
- (5) The possibility of obtaining:
  - (i) stipulations of fact or law;
  - (ii) stipulations of the admissibility of exhibits;
- (6) Such other matters as may expedite the hearing;
- (7) Confirmation of the final hearing date and venue.

(B) At the discretion of the Panel Chair, a pre-hearing conference may be held by telephone, and may be continued from day to day. Counsel and parties should be prepared to discuss the matters contained in this regulation. At the conclusion of the pre-hearing conference, the Panel Chair may enter an order setting forth the action taken and the agreements reached, which order shall govern the subsequent course of proceedings.

**206 Electronic Filing (Reserved)**

**207 Continuances**

(A) The continuance of a hearing date is a matter within the discretion of the Panel for good cause shown. No party shall be granted a continuance of a hearing date without a written motion from the party or counsel stating the reason for the continuance. The motion shall be filed with the Secretary no later than ten days before the date set for hearing. If the motion is not granted by the Panel Chair, the cause shall proceed as originally scheduled.

(B) When a continuance is requested due to the unavailability of a witness at the time scheduled for hearing, the Panel may consider the feasibility of permitting testimony pursuant to Civ.R. 32.

**208 Subpoenas and Orders for Testimony**

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

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

**209 Post-hearing Procedure of the Panel and Board**

(A) A Panel Report shall be submitted to the Secretary within sixty days of the filing of the transcript for consideration at the next regularly scheduled meeting of the Board. The Secretary, at the request of the Panel Chair, may extend the date for the filing of the Panel Report with the Board.

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

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

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

**300.1    Procedure for Issuance**

(A) Pursuant to Gov.Bar R. VII(2)(C) of the Supreme Court Rules for the Government of the Bar of Ohio, the Board on the Unauthorized Practice of Law may issue informal, non-binding Advisory Opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio regarding the unauthorized practice of law and issues implicated by R.C. 4705.01, 4705.07 and 4705.99. Requests for an Advisory Opinion may be submitted to the Board by Disciplinary Counsel or an Unauthorized Practice of Law Committee of a Local or State Bar Association.

(B) The Chair of the Board shall appoint three or more members of the Board to serve on an Advisory Opinion Subcommittee. The Advisory Opinion Subcommittee is a regular standing subcommittee of the Board. The subcommittee shall meet prior to each regularly scheduled Board meeting. The Chair will appoint one subcommittee member to serve as Chair of the Advisory Opinion Subcommittee. Each subcommittee member shall serve for a period of one year from the date of appointment and shall be eligible for re-appointment by the Chair.

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

(D) The procedure for review of a request for Advisory Opinion shall be as follows:

(1) The Advisory Opinion Subcommittee shall review all requests for Advisory Opinion submitted by Disciplinary Counsel or an Unauthorized Practice of Law Committee of a Local or State Bar Association.

(2) The Advisory Opinion Subcommittee shall, within its discretion, accept or decline a request for an Advisory Opinion.

(3) In making such determination, the subcommittee shall be governed by Gov.Bar R. VII(2)(C) and respond only to prospective or hypothetical questions of public or great general interest regarding the application of Gov.Bar R. VII and the unauthorized practice of law. The subcommittee shall decline requests that concern a question that is pending before the Court, decided by the Court, or a question of interest only to the person initiating the request. If the subcommittee determines that adequate authority already exists to answer the inquiry posed, the requester will be advised of the applicable authority and no Opinion will be issued.

(4) If any member of the subcommittee requests the declination of the Advisory Opinion be considered by the full Board, such request will be presented to the full Board for consideration at the next business meeting. If the subcommittee unanimously declines a request for Advisory Opinion, such determination shall be final.

(E) The requester of an Advisory Opinion will be notified of the Board's determination to accept or decline a request.

(F) If a request for Advisory Opinion is accepted for consideration, the subcommittee will complete the process of researching, drafting and review as expeditiously as possible, preferably within two to six months after selection of the request. The subcommittee shall be empowered to request and accept the voluntary services of a person licensed to practice law in this state when the subcommittee deems it advisable to receive written or oral advice or assistance in research and analysis regarding the question presented by the requester.

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

(H) Each draft Opinion approved by majority vote of the subcommittee will be sent to the full Board on the Unauthorized Practice of Law for review approximately two weeks prior to the next Board meeting. Upon review, Board members may direct comments, suggestions, or objections to the Chair of the subcommittee.

(I) If objections are received, the draft Opinion will be placed on the agenda for discussion at the Board meeting. If no objections are received, the draft

Opinion will be adopted by a majority vote of the Board at the Board meeting. Minor or non-substantive changes are not considered as objections to a draft Opinion.

(J) A copy of the Adopted Advisory Opinion will be issued to the requester. Copies of the issued Opinions will be submitted for publication in the *ABA/BNA Lawyers Manual on Professional Conduct*, the *Ohio State Bar Association Report*, and other publications or electronic communications as the Board deems appropriate. Copies of issued Opinions will be forwarded to the Law Library of the Supreme Court of Ohio, County Law Libraries, Office of Disciplinary Counsel, Local and State Bar Associations with Unauthorized Practice of Law Committees.

(K) Issued Opinions shall not bear the name of the requester and shall not include the request letter. However, the requester's name and the request letter are not confidential and will be made available to the Bar, Judiciary, or the public upon request.

### **300.2 Procedure for Maintenance**

(A) A copy of each Advisory Opinion will be kept in the Board's offices.

(B) An Advisory Opinion that becomes withdrawn, modified, or not current will be marked with an appropriate designation to indicate the status of the opinion.

(C) The designation "Withdrawn" will be used when an Opinion has been withdrawn by the majority vote the Board. The designation indicates that an Opinion no longer represents the advice of the Board.

(D) The designation "Modified" will be used when an Opinion has been modified by a majority vote of the Board. The designation indicates that an Opinion has been modified by a subsequent Opinion.

(E) The designation "Not Current" will be used at the discretion of the Board to indicate that an Opinion is not current in its entirety. The designation that an Opinion is no longer current in its entirety may be used to indicate a variety of reasons such as subsequent amendments to rules or statutes, or developments in case law.

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

(G) The Advisory Opinion index will include a list identifying the Opinions as "Withdrawn," "Modified," or "Not Current," and other designations as decided by the Board.

**UPL Reg. 400**

**Guidelines for the Imposition of Civil Penalties**

(A) Each case of unauthorized practice of law involves unique facts and circumstances.

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

(C) At the hearing respondent shall contest any request for imposition of a civil penalty. Evidence that is offered by respondent in mitigation shall be introduced as part of the respondent's case-in-chief .

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

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

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

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

(2) The number of occasions that unauthorized practice of law was committed;

(3) The flagrancy of the violation;

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

(5) Any other relevant factors."

(F) As part of its analysis of "other relevant factors" pursuant to Gov.Bar R.VII(8)(B)(5), the Board may consider:

- (1) Whether relator has sought imposition of a civil penalty and, if so, the amount sought.
- (2) Whether the imposition of civil penalties would further the purposes of Gov.Bar R. VII.
- (3) Aggravation. The following factors may be considered in favor of recommending a more severe penalty:
  - (a) Whether respondent has previously engaged in the unauthorized practice of law;
  - (b) Whether respondent has previously been ordered to cease engaging in the unauthorized practice of law;
  - (c) Whether the respondent had been informed prior to engaging in the unauthorized practice of law that the conduct at issue may constitute an act of the unauthorized practice of law;
  - (d) Whether respondent has benefited from the unauthorized practice of law and, if so, the extent of any such benefit;
  - (e) Whether respondent's unauthorized practice of law included an appearance before a court or other tribunal;
  - (f) Whether respondent's unauthorized practice of law included the preparation of a legal instrument for filing with a court or other governmental entity; and
  - (g) Whether the respondent has held himself or herself out as being admitted to practice law in the State of Ohio, or whether respondent has allowed others to mistakenly believe that he or she was admitted to practice law in the State of Ohio.
- (4) Mitigation. The following factors may be considered in favor of recommending no penalty or a less severe penalty:
  - (a) Whether respondent has ceased engaging in the conduct under review;
  - (b) Whether respondent has admitted or stipulated to the conduct under review;
  - (c) Whether respondent has admitted or stipulated that the conduct under review constitutes the unauthorized practice of law;
  - (d) Whether respondent has agreed or stipulated to the imposition of an injunction against future unauthorized practice of law;
  - (e) Whether respondent's conduct resulted from a motive other than dishonesty or personal benefit;
  - (f) Whether respondent has engaged in a timely good faith effort to make restitution or to rectify the consequences of the unauthorized practice of law; and

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

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

**UPL Reg. 1000 Effective Date**

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