



Ohio Board of Professional Conduct

AMENDMENTS TO GOV. BAR R. V

Effective November 1, 2020

In July 2018, the Chief Justice appointed the Task Force on the Ohio Disciplinary System. The Task Force issued its report and recommendations in September 2019, including several proposed amendments to the Rules for the Government of the Bar and the Judiciary of Ohio. The Task Force recommendations were considered by the Supreme Court in January 2020, and the proposed rule amendments were published for comment. On September 9 2020, the Court adopted revised proposed rule amendments with an effective date of November 1, 2020.

This document is a summary of the amendments to Gov. Bar R. V relative to the disciplinary process. Interested parties should consult the [final version of the amendments](#) for the exact language of adopted by the Supreme Court.

Bar Counsel Certification and Duties—Gov. Bar R. V, Sections 4-7

The amendments impose new and additional requirements regarding the selection and responsibilities of bar counsel.

Selection

- Bar counsel and, if applicable, assistant bar counsel, are subject to certification, prior to appointment, by Disciplinary Counsel. Disciplinary Counsel is responsible for promulgating certification criteria and a form used by certified grievance committees who nominate bar counsel.
- Upon receipt of a nomination and application materials, Disciplinary Counsel will make a certification decision and notify the certified grievance committee, the nominated individual, and the Board. Disciplinary Counsel may elect to interview the nominated bar counsel or assistant bar counsel prior to acting on a nomination and application.

Duties

The amendments set forth a number of administrative and case-related responsibilities that must be performed by bar counsel. Some of these are new, while others are

extensions or modifications of existing responsibilities. Bar counsel has all of the following specific duties:

- Supervising the intake and investigation of grievances;
- Serving as the point of contact between the certified grievance committee and respondents and respondents' counsel, provided bar counsel may delegate this task to staff or volunteer members of the certified grievance committee.
- Advising and training certified grievance committee members on matters of professional conduct and disciplinary procedures.
- Participating in education activities related to professional conduct and disciplinary procedures, including the completion each calendar year of at least six hours of training offered by Disciplinary Counsel in the areas of legal ethics, judicial ethics, and the execution of responsibilities for the review and investigation of grievances and prosecution of formal complaints.
- Serving as lead counsel of record in each formal complaint filed with the Board after January 1, 2021 by the bar counsel's certified grievance committee. Bar counsel is specifically required to participate personally and substantially in the post-complaint adjudication process, and the amendments identify several specific tasks that must be undertaken by bar counsel.
- Bar counsel is permitted to delegate some aspects of discovery, pleading preparation, or hearing presentation to assistant bar counsel or volunteer certified grievance committee members who are counsel of record in the case. Even if some responsibilities are delegated, the bar counsel must directly supervise the attorney to whom responsibilities are delegated and must maintain primary responsibility for litigating the case before the Board

Training of certified grievance committee members

- The amendments eliminate specific education requirements for volunteer certified grievance committee members and the obligation to report compliance with those requirements in the committee's annual report.

Now, only bar counsel is required to complete a specific number of hours of training (see above). However, bar counsel is responsible for advising and training committee members with regard to their disciplinary related responsibilities.

Decertification and Denial of Reimbursements

- The amendments retain the authority of Disciplinary Counsel to decertify bar counsel, and now also assistant bar counsel, for failing to competently and diligently perform his or her duties.
- The failure of bar counsel to comply with the requirements of the position can also be a basis for the Board's decertification a grievance committee and the denial or deferral of reimbursements requested by a grievance committee.

Time Guidelines for Grievance Investigations – Gov. Bar R. V, Section 9

- Eliminated from Gov. Bar R. V are the tiered time guidelines applicable to the investigation of grievances (*i.e.*, 60- and 150-days) and the requirement that relators seek good-cause extensions for investigations pending beyond 150 days. Gov. Bar R. V now requires relators to complete investigations within 270 days of the receipt of the grievance. Disciplinary authorities may request extensions of time beyond 270 days and up to one year for good cause. The rule sets forth examples of what constitutes good cause for seeking and obtaining extension requests.
- If a disciplinary authority requests a good-cause extension, it must provide notice of the request to the respondent or respondent's counsel.
- The requirement that all investigations be completed within one year remains in place.

Notice of Intent to File-Gov. Bar R. V, Section 10

- A disciplinary authority is required to provide a respondent, or his or her counsel, with written notice of intent to file a formal complaint and 14 days to respond to the notice. The written notice of intend must include (1) a

copy of the proposed complaint setting forth each allegation of professional misconduct and (2) information about the Lawyers Assistance Program.

Default Certification and Suspensions— Gov. Bar R. V, Section 14

- A respondent who has failed to timely answer a formal complaint will now have 14 days (formerly 30 days) to respond to the Board’s notice of intent to certify default.
- The amendments effectively reduce to 90 days the duration of interim default suspensions imposed by the Supreme Court. If the Supreme Court imposes an interim default suspension, the respondent will now have 90 days (formerly 180 days) from the date of the interim default suspension to file a motion for leave to answer. Similarly, the relator will have 90 days (formerly 180 days) from the date of the interim default suspension to file a motion to initiate default disbarment proceedings or a notice of restitution.

Consent to Discipline Agreements— Gov. Bar R. V, Section 16

There are three amendments affecting the submission and consideration of consent-to-discipline agreements:

- There is a single deadline—90 days following the appointment of a hearing panel—for submission of a consent-to-discipline agreement. Eliminated from the rule is the former 60-day deadline and language that permitted a 30-day extension of the 60-day deadline.
- Panel chairs now have express authority to order the parties to supplement a previously filed consent-to-discipline agreement. Supplements are permitted to provide “additional information or exhibits to facilitate the hearing panel’s consideration of the agreement.”
- Consent-to-discipline agreements are prohibited in cases where the respondent is a “judicial officer or is a public official who engaged in misconduct while serving in an elected public office.”

Mitigating Factors— Gov. Bar R. V, Section 13(C)

- Added to the list of mitigating factors is a judge’s voluntary resignation from judicial office prior to the commencement of the judge’s disciplinary hearing before the Board.

Electronic Service of Complaints, Hearing Notices, and Orders— Gov. Bar R. V, Sections 11, 12, 17, and 35

- The Board is authorized to serve all complaints and hearing notices on the respondent via electronic service address or certified mail.
- “Electronic service address” is defined as “the email address designated by an attorney for service of documents” pursuant to Gov. Bar R. VI (Attorney Registration). The Board has been using email service, with the consent of respondents, since March 2020, and will fully shift to electronic email service by January 1, 2021.

“No-Objection” Brief in Response to Show-Cause Order— Section 17

- The Court adopted a previously unpublished amendment that permits the parties, jointly or individually, to file a no-objection brief in response to a show-cause order. A no-objection brief is limited to ten pages and must not:
 - Make any argument opposed to any fact, finding, analysis, argument or recommendation contained in the Board report; or
 - Make any argument in support of a recommendation not made in the Board report.
- If a no objection brief violates any of these provisions, the Court will strike the brief and assess the filing party or parties a fine of \$500.
- No brief is permitted in response to a party’s no-objection brief.
- The amended rule also permits parties to file a joint waiver of objections that will result in the case being immediately submitted to the Supreme Court for review.