

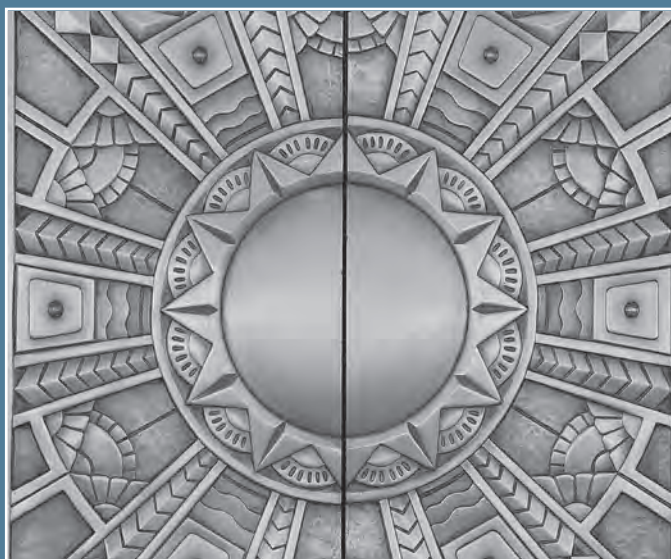


THE SUPREME COURT *of* OHIO

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

Task Force

on the Ohio Disciplinary System



SEPTEMBER 2019

THE SUPREME COURT *of* OHIO
REPORT AND RECOMMENDATIONS OF THE
Task Force on the Ohio Disciplinary System
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TABLE OF CONTENTS

TASK FORCE MEMBERSHIP	i
TABLE OF CONTENTS	iii
CHAIR LETTER	v
THE TASK FORCE’S CHARGE	1
WORK OF THE TASK FORCE	2
EXISTING DISCIPLINARY SYSTEM	4
A. Overview	4
B. Attorney and Judge Discipline System	4
C. Discipline System for Supreme Court Justices	7
FINDINGS AND RECOMMENDATIONS	9
A. Improving Ohio’s Disciplinary System and Enhancing Public Confidence	9
B. Expediting Disciplinary Proceedings and Reducing Disposition Times at All Stages of the Disciplinary Process	20
C. Raising the Level of Public Awareness of the Disciplinary System and Making It More Accessible, Responsive, and Helpful to Members of the Public, Particularly Those Affected by Professional Misconduct	26
CONCLUSION	29

APPENDICES

APPENDIX A: Proposed Amendments31

APPENDIX B: Survey Results59

APPENDIX C: Ohio Disciplinary Process Flow Chart.....93

APPENDIX D: Justice Grievance Investigation Process Flow Chart.....97

APPENDIX E: Roster of Certified Grievance Committees101

APPENDIX F: Certified Grievance Committees Map.....111

APPENDIX G: Roster of Attendees at January 2019 Task Force Meeting115

CHAIR LETTER

Dear Chief Justice O'Connor:

Enclosed please find the final report and recommendations of the Supreme Court Task Force on the Ohio Disciplinary System. A year ago, you charged us with the responsibility of reviewing and recommending improvements to Ohio's current disciplinary system for judicial officers and attorneys. We believe our report and recommendations fulfill that charge.

I would like to express my gratitude to the members of the Task Force and its workgroups for their hard work and dedication. Their diverse views and ideas, coupled with their willingness to have constructive discussions aimed at reaching consensus, have resulted in a wide range of recommendations that we believe will improve the disciplinary system.

I also want to take this opportunity to thank and acknowledge three members of the Supreme Court staff. Statistics Analysts Brian Farrington and Nikole Hotchkiss and Deputy Chief Legal Counsel John S. VanNorman provided outstanding help in fulfilling our charge and developing and finalizing this report. This report would not have been possible without their hard work and expertise. We also are indebted to Janet Green Marbley, administrator of the Lawyers' Fund for Client Protection, for the valuable information and insights she provided regarding her organization's work.

On behalf of the members of the Task Force, thank you for the opportunity to serve and to offer our findings and recommendations on these important issues.

Should there be any questions raised by this report, or any need for explanation or elaboration, I remain at the Court's disposal.

Sincerely yours,

Paul M. De Marco
Task Force Chair



THE TASK FORCE’S CHARGE

In July 2018, Chief Justice Maureen O’Connor of the Supreme Court of Ohio established the Task Force on the Ohio Disciplinary System and charged it with reviewing and recommending improvements to Ohio’s current disciplinary system for judicial officers and attorneys. She gave the Task Force these specific directions:

- (1) Examine how to strengthen the disciplinary system in order to provide for more timely resolution of complaints and allegations against judicial officers and attorneys;
- (2) Determine whether the disciplinary system should be bifurcated into separate systems for attorneys and judicial officers and, if so, offer any recommendations necessary to implement this change;
- (3) Offer any other recommendations the task force deems appropriate to further public trust and confidence in the bar and judiciary.

WORK OF THE TASK FORCE

Over the past year, the Task Force has taken many steps to fulfill its charge. After an initial review to ensure all members shared a common understanding of the rules, structure, and process for addressing disciplinary matters in Ohio, the Task Force established three workgroups:

- **Structural Improvements and Time.** This workgroup examined whether the disciplinary system should be bifurcated into separate systems for attorneys and judicial officers; considered other approaches, short of full bifurcation, to expedite and improve the judicial discipline process; reviewed the relationship between the Office of Disciplinary Counsel (ODC) and the 32 certified grievance committees (CGCs) established by local bar associations insofar as each performs its coequal role in investigating and prosecuting grievances; reassessed the role of the CGCs' bar counsel in this bimodal disciplinary process; scrutinized the amount of time taken at all three levels of the disciplinary process (*i.e.*, investigation/prosecution by ODC and the CGCs, adjudication/recommendation by the Board of Professional Conduct (BPC), and review by the Supreme Court); and reviewed all current processes for investigating and adjudicating disciplinary matters in search of ways to streamline and improve them.
- **Justice Disciplinary System.** This workgroup reviewed the existing disciplinary system for Supreme Court justices to determine whether it should be revised and, if so, how.
- **Public Confidence.** This workgroup examined ways to enhance public confidence in the disciplinary system for judges and attorneys overall, while ensuring due process rights for those accused of misconduct, and reviewed the process by which the system addresses mental health and substance abuse issues for judges.

In addition to meetings of these workgroups, the full Task Force met on seven occasions. On each of these occasions, the Task Force received and reviewed workgroup and staff reports, digesting large volumes of data regarding ODC, CGCs, BPC, and Supreme Court caseloads and disposition times.

The bulk of the Task Force's meeting on January 25, 2019 was devoted to hearing from bar counsel for the CGCs regarding their and their committees' role in the disciplinary process, ways to improve its functioning particularly vis-à-vis the statewide role played by ODC, and steps to expand, bolster, and standardize the role of bar counsel across the 32 CGCs.

The Task Force also conducted a survey of disciplinary system stakeholders — including frequent counsel for lawyers and judges accused of misconduct as well as current and former BPC members — to elicit their experiences, attitudes, perceptions, and recommendations regarding ODC's and the CGCs' handling of disciplinary matters involving lawyers and judges. The survey

was similar to one conducted by a previous Supreme Court task force in 2010 and was intended to measure any changes in perceptions of the system in the past eight years.

The Task Force now submits its final report and recommendations. The Task Force hopes that this report will serve as an educational document for those unfamiliar with Ohio's disciplinary process for judges and attorneys and that the information and the recommendations outlined in this report will provide a framework for improving this system.

EXISTING DISCIPLINARY SYSTEM

A. OVERVIEW

Ohio maintains a three-tiered disciplinary system: grievances are investigated and prosecuted by state or local agencies at the first level, adjudicated by a board through a formal complaint process at the second level, and reviewed by the Supreme Court at the third level. Ohio's three-tiered disciplinary system is unique among the states in three significant respects that bear on the work of the Task Force.

First, Ohio maintains a bimodal process for investigating and prosecuting alleged attorney misconduct, with coequal jurisdiction split between a centralized statewide authority (ODC) and certified local committees — the 32 CGCs (Gov.Bar R. V, Sec. 5). For a roster of each CGC, see **Appendix E**.

Second, Ohio splits the authority for investigating and prosecuting alleged judicial misconduct between two centralized statewide authorities, ODC and the CGC of the Ohio State Bar Association (OSBA) (Gov.Bar R. V, Secs. 4(A) and 5(A)).

Third, Ohio uses one 28-commissioner Board of Professional Conduct (BPC) composed of volunteer lawyers, judges, and laypersons to hear formal disciplinary complaints against both lawyers and judges (Gov.Bar R. V, Secs. 1(A) and 2).

B. ATTORNEY AND JUDGE DISCIPLINE SYSTEM

1. Investigations of Professional Misconduct Allegations

As noted, allegations of professional misconduct against an Ohio lawyer are investigated by either ODC or one of the 32 CGCs established by local bar associations. Allegations of professional misconduct against an Ohio judicial officer are investigated either by ODC or OSBA's CGC. See **Appendix C** for the disciplinary process flow chart.

Investigations typically are undertaken when a grievance is filed, although ODC or a CGC may initiate an investigation *sua sponte*, *i.e.*, without a grievance based on other knowledge of possible misconduct (Gov.Bar R. V, Sec. 9(C)(1) and Gov.Jud.R. II, Sec. 2(A)).

Both ODC and OSBA's CGC have statewide jurisdiction. The other CGCs have jurisdiction only within a limited geographic region — typically a single county or, in two instances, multiple counties — served by whatever bar association or associations established the CGC (Gov.Bar R. V, Secs. 4(A) and 5(A)). For a map of the CGCs' jurisdictions, see **Appendix F**.

If the confidential investigation yields substantial, credible evidence of professional misconduct by the lawyer or judge, a formal complaint may be filed with BPC. The complaint sets forth the misconduct in which the lawyer or judge allegedly engaged and identifies specific provisions of the Ohio Rules of Professional Conduct or the Ohio Code of Judicial Conduct allegedly violated. The complaint is accompanied by investigatory materials that may include reports, depositions, witness statements, documents, and a response from the lawyer or judge to the misconduct allegations. (Gov.Bar R. V, Sec. 10.)

The complaint is filed by ODC or a CGC as the “relator.” The lawyer or judge who allegedly engaged in professional misconduct is referred to as the “respondent.”

2. Procedures before BPC

Each formal complaint filed with BPC is reviewed by a three-member probable cause panel, unless the respondent waives an independent probable cause review. The panel reviews the complaint, accompanying investigatory materials, and any opposition to the complaint filed by the respondent. The panel then makes an independent determination of whether probable cause exists to believe the lawyer or judge engaged in the professional misconduct alleged in the complaint. The probable cause panel may certify the complaint in its entirety, certify a portion of the complaint and dismiss a portion, or dismiss the complaint in its entirety. (Gov.Bar R. V, Sec. 11.)

Upon board certification, the formal complaint becomes public and is served on the respondent, who must file an answer to the allegations. Once an answer is received, the BPC director assigns the case to a hearing panel. The hearing panel consists of three BPC commissioners, selected at random by the director, one of whom is designated as chair. The hearing panel may not include a commissioner who served on the probable cause panel that certified the complaint or a commissioner who resides in the appellate district from which the complaint arose. (Gov.Bar R. V, Sec. 12(C).)

The panel is responsible for conducting an evidentiary hearing on the allegations contained in the formal complaint.¹ The hearing is conducted in a trial format with the panel chair presiding. The relator bears the burden of establishing each specific charge of professional misconduct by clear and convincing evidence. This standard of proof is greater than the preponderance-of-the-evidence standard used in most civil proceedings, but less than the beyond-a-reasonable-doubt standard necessary to prove criminal conduct. The relator may establish violations by providing the testimony of witnesses and documentary evidence. The respondent may present testimony and other evidence to counter that presented by the relator. The panel may also require the respondent to answer questions posed by the panel even if the respondent is not called as a witness by either party. The parties may enter into stipulations to some or all of the factual and legal matters presented by the case. (Gov.Bar R. V, Sec. 12(F).)

¹ The consent-to-discipline process, available solely within 60 days of the panel’s appointment (unless this deadline is extended for good cause), obviates the need for a panel hearing if the panel and BPC approve the parties’ agreement. (Gov.Bar R. V, Sec. 16).

The Supreme Court has established aggravating and mitigating factors that the BPC panel considers in recommending the appropriate sanction to be imposed for any professional misconduct the panel finds. A significant portion of a panel hearing may be devoted to the relator's presentation of evidence to establish aggravating factors and the respondent's presentation of mitigation evidence. (Gov.Bar R. V, Sec. 13.)

The panel often asks the relator and the respondent to present arguments on the appropriate sanction to be imposed, should there be a finding of misconduct. Arguments advocating a particular sanction usually are accompanied by citations to Supreme Court decisions involving the same or similar misconduct and the same or similar aggravating and mitigating factors.

Upon conclusion of the hearing, the panel deliberates in private. The panel chair prepares a written report of the findings of fact, conclusions of law, and a recommended sanction. The report is circulated to the other panel members, and an approved version is placed on the agenda for the next BPC meeting. The full BPC may accept, reject, or modify the panel's report and recommendation. If the report is rejected, BPC may vote to dismiss the case or return it to the panel to take additional evidence. (Gov.Bar R. V, Sec. 12(F) through (J).)

If BPC approves or modifies the hearing panel's report, the director prepares a certified report and files it and a record of BPC's proceedings with the Supreme Court. The report is filed within one or two business days after the BPC meeting. The report becomes public upon filing with the Clerk of the Supreme Court, and a copy is available on the Supreme Court's online docket. (Gov.Bar R. V, Sec. 12(K).)

3. Review by the Supreme Court

Once BPC submits its report to the Supreme Court in a given disciplinary case, the Court issues an order to show cause. If one or both of the parties files an objection to BPC's report, the Court conducts an oral argument prior to issuing its decision. If no objection is filed, the Court issues its decision without any oral argument. In reviewing BPC's report, the Court can affirm, reject, and modify any BPC finding of a disciplinary violation or any sanction recommended by BPC. The lone exception is consent-to-discipline (CTD) cases, in which both BPC's and the Court's authority is limited to approving or disapproving the discipline agreed upon by the accused attorney or judge and the relator, without any adjustment. In CTD cases, the agreed-upon sanction can range from a public reprimand to a stayed or unstayed term suspension. No show-cause order is issued when BPC files a report recommending acceptance of a CTD agreement. (Gov.Bar R. V, Sec. 16 and 17.)

C. DISCIPLINE SYSTEM FOR SUPREME COURT JUSTICES

To reduce the potential for conflicts of interest, the Ohio Rules for the Government of the Judiciary establish a unique procedure for grievances against a justice of the Supreme Court. In general, this procedure tracks the steps for investigating and adjudicating allegations of misconduct against other judges. However, the process is overseen by the Chief Judge of the Courts of Appeals and operates independently of ODC and BPC, both of which are Supreme Court-established entities. See **Appendix D** for the justice grievance investigation process flow chart.

Step 1. Filing of Grievance and Determination of Ethical Violation

Any grievance alleging misconduct by the Chief Justice or a justice of the Supreme Court, or alleging that the Chief Justice or a justice of the Supreme Court is unable to discharge the duties of judicial office by virtue of a mental or physical disability, is filed with ODC for an initial review. If ODC determines the grievance alleges an ethical violation, it is forwarded to the Chief Judge of the Court of Appeals. (Gov.Jud.R. II, Sec. 2(B).)

Step 2. Three-Judge Review Panel Determination of Good Cause

Upon receipt of the grievance, the Chief Judge must select by lot a three-member review panel of appellate judges. This panel reviews the grievance and any response from the justice named in it and determines whether good cause exists for further investigation of the grievance. The panel reports its determination in writing directly to the Chief Judge. The judges on this panel are selected from a pool that is created each year. Each January, the administrative judge of each appellate district must designate one appellate judge from the district, other than the presiding judge, to be eligible for service on a three-judge panel. (Gov.Jud.R. II, Sec. 4(A).)

Step 3. Special Disciplinary Counsel Investigation

If the three-judge review panel determines that good cause exists for further investigation, the Chief Judge must appoint a special disciplinary counsel. The special disciplinary counsel may be an attorney admitted in Ohio or one licensed and in good standing in any other state and admitted *pro hac vice* in Ohio by the Chief Judge. The special disciplinary counsel may not be an employee or appointee of the Supreme Court or have any interest in a case pending before it while serving as the special disciplinary counsel.

The special disciplinary counsel conducts further investigation of the allegations contained in the grievance and any other misconduct discovered during the course of the investigation. (Gov.Jud.R. II, Sec. 4(B)(1)(a) and (3)(a).)

Step 4. Hearing by a Different Three-Judge Panel

Upon completion of the investigation, the special disciplinary counsel either must report to the Chief Judge that the grievance should be dismissed or prepare and file a formal complaint with the Chief Judge alleging that substantial, credible evidence exists to believe that the justice named

in the grievance engaged in misconduct (Gov.Jud.R. II, Sec. 4(B)(2)(a)). The Chief Judge then appoints a hearing panel of three full-time trial court judges selected by lot and forwards the complaint to the BPC director, who sends a copy of the formal complaint to the respondent. Similar to the three-judge review panel, the judges on the three-judge hearing panel are selected from a pool that is created each year. Each January, the administrative judge of each appellate district must designate two full-time trial judges from within the appellate district to be eligible for service on a three-judge hearing panel. (Gov.Jud.R. II, Sec. 4(C)(1) and (5).)

With reasonable notice to the parties, the three-judge hearing panel holds a hearing on the complaint. If a majority of the hearing panel determines, by clear and convincing evidence, that the respondent is guilty of misconduct and a disciplinary sanction is merited, or that the respondent has a mental or physical disability that makes the respondent unable to discharge the duties of office, the hearing panel files a certified report of the proceedings, its findings of fact, conclusions of law and recommended sanction with the BPC director, who sends a copy of the report and recommendations to the Chief Judge and the Clerk of the Supreme Court. (Gov.Jud.R. II, Sec. 4(C)(2) through (4).)

Step 5. 13-Judge Adjudicatory Panel’s Confirmation of Three-Judge Hearing Panel’s Recommendation

Upon receipt of the hearing panel’s report and recommendations, the Chief Judge appoints a 13-judge adjudicatory panel to review the three-judge hearing panel’s report and recommendations. The 13-judge adjudicatory panel consists of the Chief Judge and the presiding judge of each appellate district. The adjudicatory panel issues to the justice accused of misconduct an order to show cause why the report and recommendation of the hearing panel should not be confirmed and a disciplinary order entered. Within 20 days after issuance of the show-cause order, the respondent or the relator may file objections to the report or recommendations. If objections are filed, the 13-judge adjudicatory panel must promptly schedule oral argument on the objections. After the hearing on the objections, or if no objections are filed, the adjudicatory panel must issue an order as it finds proper. (Gov.Jud.R. II, Sec. 4(D).)

FINDINGS AND RECOMMENDATIONS

A. IMPROVING OHIO'S DISCIPLINARY SYSTEM AND ENHANCING PUBLIC CONFIDENCE

1. Expanding the Responsibilities of Local Bar Counsel in CGC Investigations and Prosecutions

Findings: The Task Force reviewed the relationship between ODC and the 32 CGCs, insofar as each performs its coequal role in investigating and prosecuting grievances, and reassessed the role of the CGCs' bar counsel in this bimodal disciplinary process. The Task Force submits the time has come to expand the role that bar counsel play in this process by requiring bar counsel to personally lead CGC prosecutions of disciplinary matters and train CGC members to fulfill their investigative and prosecutorial responsibilities.

According to information provided to the Task Force, the annual cost of maintaining the CGC side of this bimodal process is about \$1.9 million, a cost paid for using attorney registration fees from the approximately 45,000 registered Ohio lawyers. By comparison, the annual operating budget of ODC is about \$3.2 million. Proportionate to these budget figures, the 32 CGCs handle about 35 percent of all grievances opened for investigation, while ODC handles the remaining 65 percent. It is reasonable to expect the CGCs to handle their share of investigative and prosecutorial responsibilities competently and on a par with ODC. The evidence gathered by the Task Force, some of it anecdotal and some survey-based, suggests this is not perceived to be the case across all CGCs. If the results of surveys of disciplinary process stakeholders conducted by a prior task force a decade ago and by this Task Force now are any indication, performance in investigating and prosecuting disciplinary cases is perceived to be uneven among the 32 CGCs and to lag behind that of ODC, leading to different case outcomes depending on whether ODC or a CGC, or which CGC, prosecutes the case (see **Appendix B** for the survey results). To the extent Ohio maintains this bimodal process in the future, it is essential that the quality of investigations and case presentations and the results of prosecutions be consistent, regardless of whether ODC or a CGC, or which CGC, brings a particular disciplinary case. The Task Force concludes this can best be assured by expanding, bolstering, and standardizing the role of bar counsel in disciplinary investigations and prosecutions.

To be clear, the Task Force does not recommend jettisoning or dramatically altering the system of dividing investigative and prosecutorial responsibilities between ODC and the CGCs. Rather, the Task Force finds that there needs to be a period of further study of the CGCs' place in this bimodal process, combined with the recommended enhancement of the role that the CGCs' bar counsel play in it.

All 32 CGCs perform their disciplinary responsibilities through a combination of bar counsel and volunteer committee members. Each CGC must have a minimum of 15 members and the committee membership must include non-attorneys. The volunteer committee members participate in investigations and the lawyer members play a role in the prosecution of cases presented to BPC for adjudication. The role of volunteer attorneys varies significantly across the 32 CGCs. In some instances, the volunteer attorneys are lead counsel in prosecutions and, in at least two instances, often are the committee's only representatives in attendance at BPC hearings. In other instances, the volunteer attorneys may conduct grievance investigations, but perform a secondary role or no role at all in the actual prosecution.

Each CGC must have a bar counsel whose duties are set forth in Gov.Bar R. V, including: assisting in the intake and investigation of grievances, supervising the investigation of grievances and the prosecution of formal complaints, assisting in prosecuting formal complaints, advising the CGC on matters of professional conduct and disciplinary procedures, and participating in educational activities related to professional conduct and disciplinary procedures. (Gov.Bar R. V, Sec. 5(D)(1)(d).)

Bar counsel may be a full-time staff member of the bar association that sponsors the committee (as is the case with the six largest CGCs), a private law firm attorney whose bar counsel responsibilities are part of the attorney's practice, or a volunteer lawyer. Much like the volunteer attorney members of the CGC, the participation of bar counsel in formal disciplinary proceedings varies significantly. In some instances, bar counsel serves as lead counsel or actively co-counsels with volunteer attorneys in most or all of a CGC's prosecutions. In other instances, bar counsel serves in what might best be described as a litigation support role and has little, if any, participation in disciplinary hearings beyond attendance. Bar counsel for some CGCs do not regularly attend disciplinary hearings in cases prosecuted by their committees.

Currently, Gov.Bar R. V, Sec. (5)(D)(1)(e) requires ODC to provide biannual training for volunteer lawyers and bar counsel who are designated as trial counsel of record in a case prosecuted before BPC. Although the training has received strong reviews and has been well attended, there is concern that the program has not produced the desired results. The training program offers in-depth and hands-on training for attendees. However, the vast majority of disciplinary investigations and prosecutions conducted by CGCs are undertaken by 10 to 12 CGCs. Thus, many of the volunteer lawyers who attend the training do not have a regular opportunity to exercise the skills and practice tips offered in the training sessions.

The Task Force finds that bar counsels' involvement in the disciplinary activities of their committees must be expanded, bolstered, and standardized across all 32 CGCs. The focus of ODC's training should be shifted from CGC members to bar counsel, who then will be required to train their respective CGC members to fulfill their investigative and prosecutorial responsibilities. Bar counsel also should be required to personally lead CGC prosecutions of disciplinary matters.

Recommendations: The Task Force recommends that Gov.Bar R. V, Sec. 6 be amended to require bar counsel for each CGC to: (1) be designated as lead counsel of record in every disciplinary case filed with BPC by their CGC; (2) participate personally and substantially as lead counsel in all prehearing activities, including phone conferences with the panel chair, discovery depositions, meetings with respondents or respondents’ counsel, drafting stipulations, etc.; (3) be present at counsel table for each hearing before the BPC panel; (4) participate personally and substantially in litigating the case before BPC; (5) attend at least six hours of annual training offered by ODC and participate in regular meetings convened by ODC aimed at achieving uniform best practices statewide; and (6) train their committee members on matters of professional conduct and disciplinary procedure (see lines 17 through 41 of **Appendix A**). The Task Force also recommends that Gov.Bar R. V, Sec. 6 be amended to provide that the failure of bar counsel to abide by the provisions set forth in this rule may result in the delay or denial of the CGC’s quarterly and annual reimbursement, decertification of bar counsel, or decertification of bar counsel’s CGC (see lines 43 through 45 and 51 through 54 of **Appendix A**). The Task Force further recommends that, once this enhancement of bar counsel’s role is implemented, the Court should survey disciplinary system stakeholders regularly to gauge their impressions of progress toward the twin goals of improving the CGCs’ performance in investigating and prosecuting disciplinary cases and of putting them on a par with ODC’s. Finally, the Task Force recognizes that these goals will be difficult to achieve to the extent many CGCs continue to bring few disciplinary complaints. To address this, the Task Force recommends that ODC provide opportunities for bar counsel in CGCs bringing fewer complaints to sit “second chair” in ODC disciplinary hearings, to the extent practicable.

2. Bifurcation of Lawyer and Judge Discipline Procedures

Findings: The Chief Justice specifically directed the Task Force to consider whether bifurcation of the current disciplinary system into separate systems for attorneys and judges is warranted. The Task Force concludes it is not.

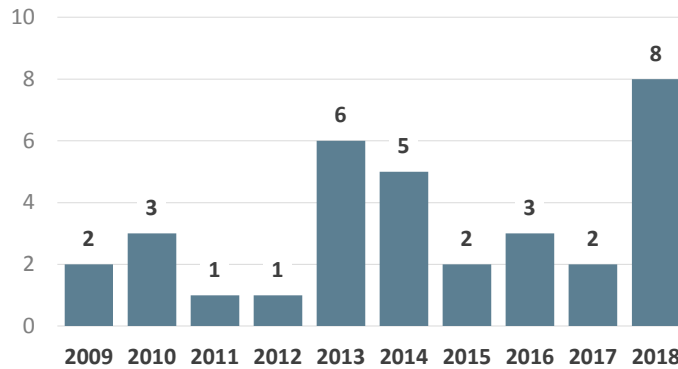
Usually only a handful of BPC’s dispositions in a given year — roughly 5 percent of its total dispositions — are in cases involving judicial officers.² In the past five years, the most “judge cases” BPC disposed of in a single year was eight in 2018, representing 13 percent of all BPC dispositions that year. Normally, BPC handles far fewer “judge cases” in a given year — only two dispositions in 2017, three in 2016, two in 2015, five in 2014, and 33 over the past decade³ (an average of about three per year), but none so far in 2019.

² The Task Force treated as a “judge case” any case in which a judge or magistrate is alleged to have violated the Ohio Code of Judicial Conduct, regardless of the respondent’s status at the time the formal complaint is filed or the case goes to a hearing.

³ The Supreme Court disposes of comparably few “judge cases” in a normal year. The Court disposed of one in 2009, five in 2010, two in 2011, seven in 2012, two in 2013, three in 2014, one in 2015, one in 2016, one in 2017, and two in 2018 — a total of 25 in the past decade, or about two to three cases per year.

Judge Discipline Case Dispositions

Board of Professional Conduct, 2009 to 2018



Due to the relatively small number of “judge cases” BPC handles in a typical year, it is difficult to arrive at “average” disposition times for such cases, but BPC disposition times for “judge cases” do not appear appreciably different from its normal disposition times for all cases — that is, about eight to nine months from probable cause certification to BPC report.

There is no doubt that the public has a substantial, special interest in expediting “judge cases.” It does not benefit the public to leave an unwarranted charge looming over an innocent judge or to let a judge who has committed serious misconduct remain on the bench. To create an entirely separate system for investigating and adjudicating “judge cases,” however, seems unnecessary given the relatively small number of such cases in the disciplinary system at any given time. A board comparable to BPC that is exclusively dedicated to adjudicating “judge cases” would have only a handful of cases to hear each year — roughly three, given the data over the past decade — and would be unlikely to improve upon BPC’s current disposition times, *i.e.*, about seven to eight months from probable cause certification to final report for “judge cases.” Moreover, the Task Force fears that the relatively small caseload of a board solely dedicated to adjudicating “judge cases” would make it difficult for members of that board to develop experience and expertise in handling such cases, which could lead to results that dash rather than meet heightened public expectations. In fact, in 1983, the Supreme Court created a separate board to hear “judge cases”; however, within five years, the court eliminated that board and transferred the authority to adjudicate “judge cases” to the Board of Commissioners on Grievances and Discipline, now known as BPC.

As it stands now, Ohio’s unitary system for investigating and adjudicating grievances against attorneys and judges produces timely, effective results by using the same experienced group of individuals to investigate and review all allegations of misconduct, whether directed at attorneys or judges. In short, the Task Force finds merit in maintaining this unique unitary system.

The Task Force nonetheless concludes there is room to expedite investigations of judges accused of misconduct, which as noted normally vary in duration from six months to a year depending on whether the investigation culminates in a formal complaint against the judge or a dismissal.

Recommendation: The Rules for the Government of the Bar establish ODC and charge it with, among other duties, investigating and prosecuting allegations of misconduct by judicial officers and allegations of mental illness, alcohol and other drug abuse, or disorder affecting such officers (Gov.Bar R. V, Sec. 4(A)). To assist in fulfilling these duties, ODC has the discretion to appoint staff, including attorneys and investigators, and to allocate responsibilities among them (Gov.Bar R. V, Sec. 4(C)). To expedite investigations of judicial officers accused of misconduct, the Task Force recommends formalizing — and making a permanent requirement — a step already in the works as a pilot project at ODC: requiring ODC to devote appropriate dedicated personnel to prioritizing the investigation and prosecution of “judge cases.” Although this would require additional resources (*i.e.*, staff), over time, these ODC personnel would develop expertise and efficiencies in handling investigations and prosecutions of these cases. The Task Force finds that implementing this requirement could not help but shorten investigations of judges by an indeterminate but nonetheless meaningful amount of time, all to the substantial benefit of the general public.

3. Addressing Other Issues Related to the Disciplinary Process for Judges

Findings: Sanctions available for judicial officers who commit misconduct currently are the same as for lawyers who do — public reprimand, probation, suspension, and disbarment (Gov.Bar R. V, Sec. 12(I) and (K)). Judicial officers hold a unique position of public trust in our legal system. As long as they hold this position, judges should be and are held to a higher standard. The Task Force finds it inconsistent with this higher standard to allow judges who commit serious, egregious misconduct to retain their seats on the bench. The Task Force also concludes that lawyers who commit misconduct while holding positions of public trust — *i.e.*, judges and other elected officials — should face disciplinary prosecution without being able to resort to the consent-to-discipline process.

Recommendations: The Task Force concludes the time has come to expand the range of sanctions for judges to include removal from office for any judge found to have committed serious, egregious misconduct while holding judicial office (see lines 171 through 193 of **Appendix A**). This would entail amending Revised Code 2701.11 and 2701.12, both of which warrant amendment in any event due to some outdated references (*e.g.*, to “the board of commissioners on grievances and discipline” and to “a crime involving moral turpitude”). The Task Force recommends the statutes be amended to authorize the Supreme Court, upon the recommendation of BPC, to remove a judicial officer for specified misconduct, as with the other sanctions the Court can impose on judicial officers under Gov.Bar R. V (see lines 189 and 190 and 910 through 987 of **Appendix A**). The Task Force further recommends that sitting judicial officers and other elected officials be disqualified from entering into CTD agreements for misconduct committed while in office (see lines 291 through 293 of **Appendix A**).

4. Improving the Disciplinary Process for Supreme Court Justices

Findings: At its initial meeting, the Chief Justice directed the Task Force to examine the process for investigating and prosecuting grievances against sitting Supreme Court justices. This process, as noted previously, functions independently of the normal disciplinary process for judges and lawyers, under the auspices of the Court of Appeals Judges Association (CAJA). The Task Force finds substantial room to improve and streamline this process and to enhance public confidence in it. Among the issues identified are CAJA’s lack of familiarity and experience with disciplinary procedures, the lack of uniformity in procedures employed by one Chief Judge of the Court of Appeals versus another, and uneven levels of experience, qualifications, expertise, and performance between and among special counsel assigned to investigate and prosecute these disciplinary matters.

Recommendations: The Task Force offers the following package of recommendations to address these shortcomings, while preserving the independence of the investigation, prosecution, and adjudication of grievances against sitting Supreme Court justices.

Guidance for Participants in the Justice Disciplinary Process. The Chief Judge of the Court of Appeals has various important responsibilities in the Supreme Court justice disciplinary process. There currently are no educational materials to guide the Chief Judge in fulfilling these responsibilities. Nor are there any materials to guide the judges serving on the various panels in this process or the attorney appointed as special disciplinary counsel. To correct these deficiencies, the Task Force recommends that ODC and BPC collaborate to create detailed educational materials, guidance, and templates for the Chief Judge, for the judges who serve on the various panels, for the former BPC members appointed to serve on the proposed probable cause panel (see below), and for any attorney appointed to serve as special disciplinary counsel (see lines 741 through 745 of **Appendix A**). The Task Force further recommends that these materials emphasize the need for, and offer specific guidance to facilitate, timeliness in this process. In addition, the Task Force recommends that the Chief Judge be allowed to contact the BPC director for procedural guidance, separate and apart from the substance of any particular grievance against a justice (see lines 735 through 739 of **Appendix A**).

Expanding Pool of Judges Eligible for Good Cause Panel. Any grievance alleging misconduct by the Chief Justice or a justice of the Supreme Court, or alleging that the Chief Justice or a justice of the Supreme Court is unable to discharge the duties of judicial office by virtue of a mental or physical disability, is filed initially with ODC for review. If ODC determines that the grievance alleges an ethical violation, it is forwarded to the Chief Judge of the Court of Appeals. Upon receipt of the grievance, the Chief Judge must select by lot a three-member review panel of appellate judges, which determines whether good cause exists for further investigation of the grievance. (Gov.Jud.R. II, Secs. 2(B) and 4(A)(1) and (2).) Under the current rules, the Chief Judge appoints members of the three-judge review panel from a pool of appellate judges created each year. Specifically, each January, the administrative judge of each appellate district must designate one appellate judge from the district, other than the presiding judge, to be eligible for service on a three-judge panel. (Gov.Jud.R. II, Sec. 4(A)(3).) Due to the possible need for multiple “good

cause” panels to be appointed at the same time, the Task Force recommends that the pool of available judges include the most senior judge and one other judge in each appellate district, for a total of two, as long as neither individual is the Chief Judge of the Court of Appeals or the presiding judge of that district (see lines 578 and 579 of **Appendix A**).

Deadline for Good Cause Determination. The three-judge review panel appointed by the Chief Judge must review a grievance filed against a justice and any response received from the justice, in order to determine if good cause exists for further investigation of the grievance (Gov.Jud.R. II, Sec. 4(A)(2)). There currently is no established deadline for this review panel to make its assigned determination. The Task Force recommends establishing a 30-day deadline for the three-judge review panel to make its determination or a 14-day deadline if no response is received. The Task Force believes this will provide the panel with ample time to review the grievance and the response of the justice. The rule should allow for an extension of this deadline upon a showing of good cause, which would avoid unnecessary delays. (See lines 569 through 572 of **Appendix A**).

Notice to Justice Named in Grievance. If after reviewing the grievance filed against a justice and any response received from the justice, the three-judge review panel determines that good cause does not exist for further investigation of the grievance, the panel must report its determination to the Chief Judge, who then must notify the grievant of the panel’s determination and the dismissal of the grievance (Gov.Jud.R. II, Sec. 4(A)(2)). In order that the justice is aware of the status of the complaint against him or her, the Task Force recommends requiring the Chief Judge also to notify the named justice (see line 574 of **Appendix A**).

Mandatory Selection of Special Disciplinary Counsel from ODC List. As noted previously, if the three-judge review panel determines there is good cause, the Chief Judge must appoint a special disciplinary counsel to conduct a further investigation of the grievance. The special disciplinary counsel must be an attorney admitted to practice law in Ohio, or an attorney licensed and in good standing in any other state and admitted *pro hac vice* by the Chief Judge. The special disciplinary counsel must not be an employee or appointee of the Supreme Court or have any interest in a case pending before the Supreme Court while serving as the special disciplinary counsel. The rules currently provide that the special disciplinary counsel *may* be appointed from the list maintained and annually updated by ODC (Gov.Jud.R. II, Secs. 4(B)(1)(a) and (3)(a)). To ensure that the special disciplinary counsel possesses the background and experience needed to investigate and prosecute a disciplinary matter of this magnitude, the Task Force recommends *requiring* the Chief Judge to appoint a special disciplinary counsel from ODC’s list (see line 590 of **Appendix A**).

Questionnaire for Prospective Special Disciplinary Counsel. As discussed prior, an attorney must meet certain qualifications to be eligible for appointment as special disciplinary counsel. However, the Task Force concludes there needs to be further screening of attorneys under consideration as special disciplinary counsel. The Task Force recommends including in the educational materials provided to the Chief Judge a questionnaire that the Chief Judge can use to screen candidates for appointment on issues, such as conflicts of interest, qualifications, etc.

Special Disciplinary Counsel Compensation. The current rules address the compensation of special disciplinary counsel. However, they simply state special disciplinary counsel must be paid expenses and “reasonable compensation” upon approval of the Chief Judge, from the Attorney Services Fund. (Gov.Jud.R. II, Sec. 4(B)(3)(b).) To avoid any compensation-related issues or confusion, especially after the work of the special disciplinary counsel has concluded, the Task Force recommends that the special disciplinary counsel be compensated at a set rate established by the Chief Judge at the beginning of each year. The Task Force further recommends that the payment and terms of that compensation, including provisions for interim payments, be determined by the Chief Judge prior to the appointment and discussed in the educational materials supplied to the Chief Judge (see lines 629 and 630 of **Appendix A**).

Simultaneous Disciplinary Matters Against the Same Justice. A grievance against a justice generally remains private and confidential unless and until a formal complaint is filed (Gov.Jud.R. II, Sec. 4(B)(2)(c)). The Task Force notes, however, the possibility of different grievances against the same Supreme Court justice at the same time, each requiring the appointment of a special disciplinary counsel. To account for this possibility, the Task Force recommends that the Chief Judge be authorized to ask the previous Chief Judge if there is any pending disciplinary matter against the same justice. If there is, the Chief Judge has the prerogative to appoint the same special counsel, or a different special counsel, to handle the later matter (see lines 593 through 596 of **Appendix A**). If different special counsels are handling disciplinary matters against the same Supreme Court justice simultaneously, the counsels currently could not communicate with one another about their investigations due to the confidentiality of a grievance during the investigation process. For such situations, the Task Force recommends authorizing the Chief Judge to inform both special disciplinary counsel of the existence of the simultaneous disciplinary matters against the same justice and allowing them to communicate with one another during their tenures as special disciplinary counsels (see lines 616 through 618 of **Appendix A**).

Probable Cause Determination Prior to Appointment of Hearing Panel. Upon completing the investigation, the special disciplinary counsel must determine whether the grievance should be dismissed or a formal complaint filed. If a formal complaint is filed, the Chief Judge appoints a hearing panel. (Gov.Jud.R. II, Sec. 4(B)(2)(a) and (C)(1)(a).) The Task Force recommends that a probable cause review and determination precede the appointment of a hearing panel, as is the case with disciplinary complaints against lawyers and other lower court judges. Upon the special disciplinary counsel filing the formal complaint, the complaint and investigatory materials should be submitted to a panel to determine the existence of probable cause. This probable cause panel would consist of three former BPC members appointed by the Chief Judge, excluding members appointed by the justice in question. The Chief Judge would appoint the probable cause panel from a list of eligible former BPC members supplied by the BPC director. The Task Force recommends requiring the probable cause panel to make its determination within 30 days of its appointment. (See lines 645 through 660 of **Appendix A**.)

Limiting Contact between the Grievant and the Chief Judge. Once a grievant files a grievance against a Supreme Court justice, there are limited instances in which the grievant is contacted about the status of the complaint. For example, if the three-judge review panel determines that good cause does not exist for further investigation of the grievance, the Chief Judge must notify the grievant. Grievants might otherwise attempt to contact the Chief Judge during the investigation and adjudication processes. Because the Chief Judge would serve on the 13-member adjudicatory panel should it come to that, the Task Force concludes attempts by grievants to contact the Chief Judge could raise questions and should be discouraged. Therefore, the Task Force recommends that grievants be furnished with explanatory materials to assist them in understanding the process and its likely duration and with the name of an individual other than the Chief Judge whom they can contact with questions that arise during the investigation and adjudication processes.

Records Retention. Any Supreme Court justice disciplinary process generates a record, which can include confidential files and documents. There currently is no provision in the rules addressing the retention of confidential files and records of proceedings dismissed without the filing of a formal complaint. To address this, the Task Force recommends amending Gov.Jud.R. II to provide that the Chief Judge shall transmit these records — including confidential files maintained and records generated by the three-judge panel — to BPC for retention. The rule also should set forth a suitable retention period for these files and records. (See lines 814 through 825 proposed of **Appendix A.**) Further guidance and instructions on records retention in this process should be included in the educational materials that ODC and BPC develop for the Chief Judge and the other participants in this process.

5. Other Proposals to Enhance the Efficacy and Fairness of the Ohio Disciplinary System

a. Addressing Fitness Concerns that Arise During a Disciplinary Investigation or Prosecution

Finding: In some disciplinary cases, the investigation process reveals that the respondent may be unfit to practice law or serve on the bench. Short of seeking an extraordinary interim remedial suspension for mental health reasons, there currently is no mechanism by which ODC or a CGC can address fitness concerns arising in the course of a disciplinary investigation.

Recommendation: The Task Force recommends allowing ODC or a CGC to file a petition with BPC seeking to compel the respondent to submit to a medical, psychological, or psychiatric examination when, during the course of a disciplinary investigation, there exists substantial, credible evidence that the respondent is unfit to practice law or serve in a judicial capacity. Under the Task Force’s proposal, due process is of paramount importance. To that end, ODC or a CGC first would be required to request, in writing, that the respondent submit to an independent medical, psychological, or psychiatric examination.

If the respondent refuses or fails to respond within 14 days, then ODC or the CGC could file a petition with the BPC, which must contain at least three affidavits from individuals with actual personal knowledge of the impairment describing the factual basis for the affiants' belief that the respondent's alleged mental illness, alcohol or drug abuse, or other disorder, substantially impairs the lawyer's or judge's ability to practice law or serve in a judicial capacity. At least one of the affidavits must be from a judicial officer or a lawyer licensed to practice law in Ohio. The petition also must include any response from the respondent to the written request for the examination. Upon receipt of the petition, the BPC chair, or vice-chair, shall order the respondent to file a response, if any, within seven days. Upon consideration of the petition and the response, if any, or after a hearing, the BPC chair, or vice chair, shall, upon a finding of substantial, credible evidence, issue an order compelling the respondent to submit to a medical, psychological, or psychiatric examination at ODC's or the CGC's expense, by a medical professional designated by the BPC chair or vice chair. A respondent's failure to comply with the BPC's order will be considered prima facie evidence of a violation of Gov.Bar R. V, Sec. 9(G), and may be used to initiate the filing of a formal disciplinary complaint. In the event the respondent complies with the BPC's order, the BPC chair, or vice chair, shall provide the results of the examination to the relator and the respondent. (See lines 74 through 112 of **Appendix A**.)

b. Making Early Referrals to Respondents for Help and Community Support

Findings: Before ODC or a CGC completes an investigation and files a complaint with BPC, it must provide notice and an opportunity to respond to the judge or attorney who is the subject of the investigation (Gov.Bar R. V, Sec. 10(A)). In addition, BPC must notify the respondent when a complaint is certified for probable cause in its entirety or in part (Gov.Bar R. V, Sec. 11(C)). Each of these occasions represents a propitious opportunity for the respondent to obtain help and community support with any underlying condition(s) (*e.g.*, depression, addiction, etc.) that might be contributing to the respondent's behavior and, thus, harming clients. The earlier respondents obtain such help and support, the better for respondents *and* for the general public.

Recommendations: The Task Force recommends that when notification of a grievance or of the certification of a formal complaint must be sent to a respondent, that the notification should include information concerning the services of the Ohio Lawyers Assistance Program (OLAP). OLAP offers Ohio lawyers, judges, and law students help with alcoholism, drug addiction, and mental health problems. The Task Force also recommends that when a respondent is notified that a complaint has been certified for probable cause in a case investigated by ODC, notice of the complaint also should be provided to the local CGC embracing the respondent's home county, if such a committee exists. The Task Force believes these added notifications could help to secure assistance and support for troubled respondents, particularly those who may be on the verge of a default. (See lines 135 through 137 of **Appendix A**.)

c. Notice to the Parties of a Proposed Increase in the BPC-Recommended Sanction in a “No Objection” Case

Finding: The Supreme Court reviews and issues decisions on all BPC reports, regardless of whether any party filed objections (Gov.Bar R. V, Sec. 17(D)). When, in a “no objection” case, the Court considers increasing the sanction recommended by BPC, the parties currently are not given advance notice of the incipient increase or an opportunity to weigh in on it. The Task Force believes there should be such an opportunity before the Court issues its decision.

Recommendations: To address this, the Task Force recommends amending the rules to provide that, if neither party files an objection to the BPC report and the Court nonetheless is considering increasing the sanction recommended in the report, excluding any conditions or an increase that would merely result in a fully stayed suspension, the Court, before issuing its decision, must issue a second show-cause order giving the parties 20 days to file objections to the increased sanction (see lines 338 through 343 of **Appendix A**).

d. Supplementation of CTD Agreements

Finding: A proposed CTD agreement must be filed with BPC for review and approval by the hearing panel. If the hearing panel recommends accepting the CTD agreement and concurs in the agreed sanction, the matter is scheduled for consideration by the full BPC. (Gov.Bar R. V, Sec. 16(B).) At times, supplementing a CTD agreement would facilitate the hearing panel’s and the full BPC’s consideration of it.

Recommendation: The Task Force recommends allowing the hearing panel chair to order the parties to supplement their CTD agreement with additional information or exhibits to further BPC’s consideration of it (see lines 297 through 299 of **Appendix A**).

e. Restitution as Part of a Sanction

Finding: It is not unusual for BPC panels and the full BPC to recommend, and for the Supreme Court to order, restitution in conjunction with the sanctions that may be imposed for misconduct under Gov.Bar R. V, Secs. 12(A) and 17(D). The Task Force notes, however, that Secs. 12(A) and 17(D) do not specify restitution as a sanction that may be imposed in conjunction with any other sanctions that may be imposed for misconduct.

Recommendations: The Task Force recommends adding restitution to clarify that it may be imposed in conjunction with any of the other sanctions that may be imposed for misconduct (see lines 187 and 350 of **Appendix A**).

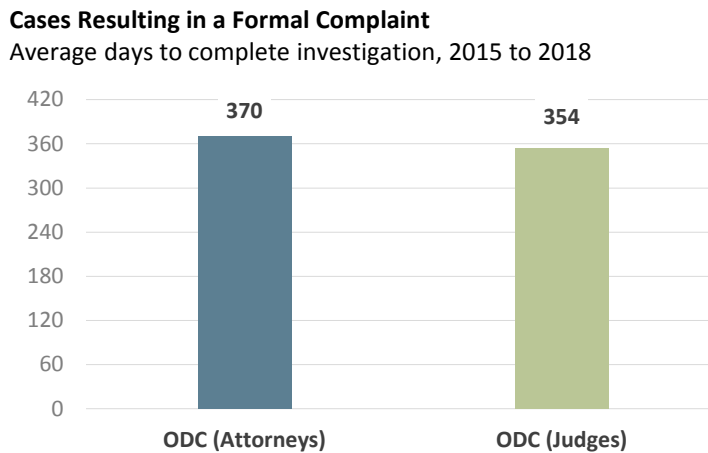
B. EXPEDITING DISCIPLINARY PROCEEDINGS AND REDUCING DISPOSITION TIMES AT ALL STAGES OF THE DISCIPLINARY PROCESS

Much of the Task Force’s work focused on evaluating and examining ways to improve disposition times at all three levels of the disciplinary process for lawyers and judges — the relator’s investigation, BPC’s adjudication, and the Supreme Court’s review.

1. Review and Investigation of Grievances

Based upon information provided to the Task Force, on average, 3,500 to 4,000 grievances against Ohio lawyers or judges are filed every year. About half are dismissed on intake, while the remainder are opened for investigation. Approximately 65 percent of all grievances opened for investigation are handled by ODC and the rest by one of the CGCs. At any given time, ODC has about 900 open investigations of attorneys — approximately 10 times the number of investigations it is conducting of judges at any given time. Among the CGCs, only OSBA’s grievance committee investigates alleged judicial misconduct.

The Task Force studied ODC’s and the CGCs’ relative disposition times in cases opened for investigation.⁴ Investigation times vary depending on whether the result is a formal complaint or a dismissal. In cases where ODC eventually files a formal complaint against a lawyer, the time ODC normally takes to investigate such a grievance is about a year, slightly more than when the complaint is against a judge.

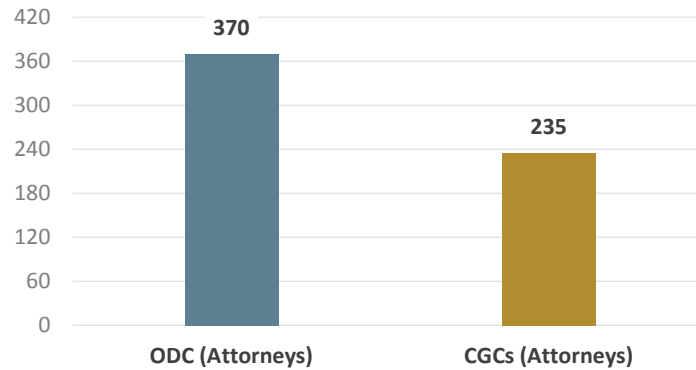


⁴ Rather than study all 32 CGCs, given that many of them file few, if any, complaints, the Task Force gathered disposition time information from the 10 largest CGCs because they handle the greatest percentage of investigations and file all but a handful of the formal complaints with BPC. The data collected from these 10 CGCs, plus OSBA’s CGC, are reflected in the charts in this section and elsewhere in this report.

The data show that the ODC’s investigation times average several months longer than the CGCs’ in cases culminating in formal complaints against attorneys.⁵

Cases Resulting in a Formal Complaint

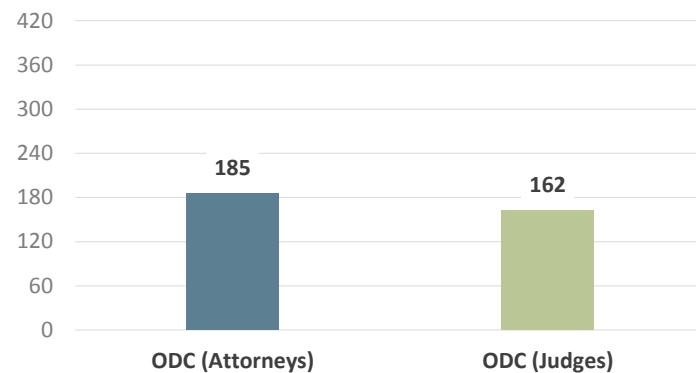
Average days to complete investigation, 2015 to 2018



In cases where ODC investigates then dismisses a grievance against a lawyer without filing a formal complaint, ODC normally takes about six months to investigate such a grievance, slightly less time when the dismissed grievance is against a judge.

Cases Resulting in Dismissal of the Grievance

Average days to complete investigation, 2015 to 2018

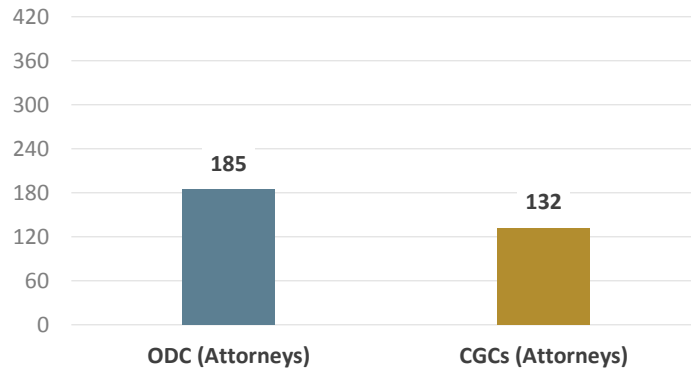


The data show that the CGCs’ investigation times average slightly more than one month less than ODC’s in attorney cases culminating in dismissals without formal complaints.

⁵ Pursuant to the Task Force’s request, the time-to-disposition data collected from the CGCs consisted of annual entry cohort data. That is, for each year, the time it took the CGCs to dispose of each grievance filed that year was reported, regardless of whether the grievance was disposed that year or in a subsequent year. The data provided by ODC consisted of annual exit cohort data. That is, for each year, the time it took ODC to dispose of each grievance disposed that year was reported, regardless of whether the grievance was filed that year or in a prior year. In order to provide an appropriate comparison between the two data sets, the CGC data have been reframed as exit cohort data. To accomplish this, the Task Force truncated data from the CGCs for 2015, so as to include only cases with 2015 filing dates.

Cases Resulting in Dismissal of the Grievance

Average days to complete investigation, 2015 to 2018

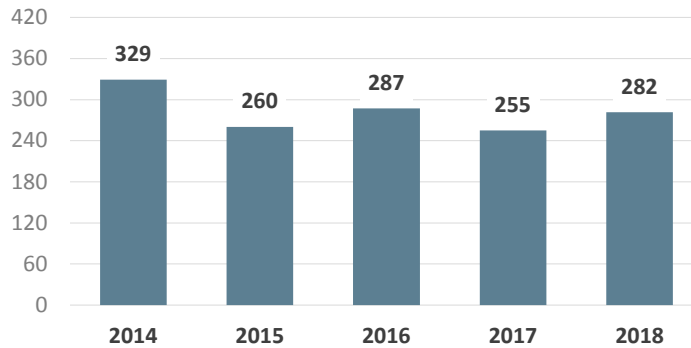


2. Adjudication and Review

About half of all complaints that eventually go before BPC are filed by ODC, the rest by one of the CGCs. About 70 formal complaints pass probable cause and are filed with BPC in a normal year, and BPC usually disposes of about 50 to 60 disciplinary cases each year. It normally takes BPC between eight and nine months to dispose of a disciplinary case — that is, from probable cause certification to the final report.

Time to Disposition by Board of Professional Conduct

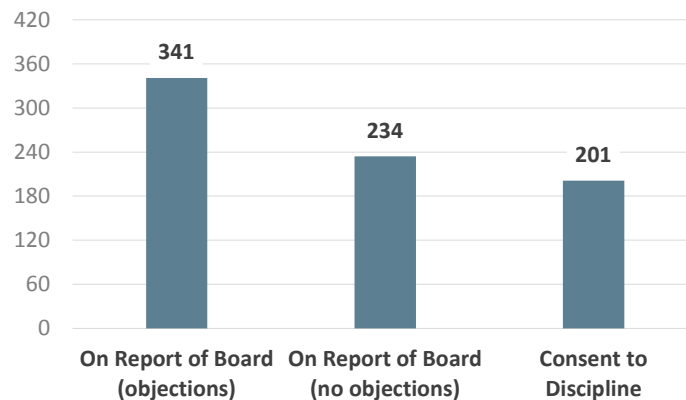
Average days from certification to board disposition, excluding stayed cases, 2014 to 2018



The Supreme Court imposes the sanction recommended by BPC more than 80 percent of the time. When the Court modifies the sanction recommended by BPC, the scant statistics available suggest, it appears almost as likely the justices will decrease the sanction as increase it. An exception, as noted above, is CTD cases, in which the Court’s authority is limited to approving or disapproving the agreed-upon discipline without any adjustment.

The Court considers approximately 10 CTD cases, 30 “no objection” cases, and a dozen “objection” cases in a normal year. Its decisional output in disciplinary cases has varied over the past several years: 68 decisions in 2016, 41 in 2017, and 56 in 2018. The Court’s normal disposition times (*i.e.*, from filing by BPC to issuance of a disciplinary order) vary by case category as well: about seven months in CTD cases, eight months in “no objection” cases, and a year in “objection” cases.

Time to Disposition by Supreme Court
Average days from filing to disposition, 2015 to 2018



Findings: In searching for ways to improve disposition times at all three levels of the disciplinary process for lawyers and judges, the Task Force was guided by this realization: unnecessarily delaying discipline for lawyers and judges who committed misconduct does not protect or reassure the public, nor does unnecessarily delaying absolution for lawyers and judges wrongly accused of misconduct. Under either scenario, the public’s interest is furthered by expediting the disciplinary process and making it more efficient, as long as it is accomplished while according those accused and those allegedly aggrieved meaningful opportunities to be heard. Moreover, some respondents have admitted their misconduct, made salutary changes to their practices, and wish to conclude the disciplinary proceedings in a reasonable period of time. The Task Force does not find that any particular stage of the disciplinary process (investigation, adjudication, or Supreme Court review) takes inordinately long and must undergo drastic changes. Rather, the Task Force found avoidable delays at all three levels of the process that could and should be eliminated. In other words, no stage is as streamlined and efficient as it could and should be and, as a result, the entire process often takes longer than necessary.

Recommendations: To eliminate avoidable delays in the disciplinary process for attorneys and judges and to introduce efficiencies into the process, the Task Force presents the following package of recommendations. If the whole package of these time-saving recommendations were implemented, the Task Force submits that the normal duration of the disciplinary process in a given case could be reduced by an indeterminate, but nonetheless meaningful amount of time, which should benefit the public and enhance its confidence in the disciplinary process.

Deadline for Completion of Investigation. The Task Force recommends requiring that disciplinary investigations be concluded within 270 days, or approximately nine months, provided that the BPC director could extend this deadline to no more than one year for good cause as long as the respondent is notified of the extension request (see line 120 of **Appendix A**).

Service of Discipline-Related Notices via Electronic Service Addresses. There are various points in the disciplinary process at which notice to the respondent must be delivered via certified mail. These include service of probable cause waivers, complaints, show-cause orders, appeals, hearing panel or BPC reports, petitions for revocation of probation, reinstatement of stayed suspensions, cease and desist orders, and disciplinary orders. (Gov.Bar R. V, Secs. 11(B), (C)(1) and (2); 12(D); 17(A); 21(F) and (I); and 22(B); Gov.Jud.R. II, Secs. 4(C)(1)(b) and (4) and (D)(2); 5(E); and 6(B)(3), (C)(3), and (D)(1) and (3); and Gov.Jud.R. III, Secs. 2(A)(2) and (B)(2) and 3.) These requirements often cause significant delays in the disciplinary process due to difficulties encountered in serving the respondent via certified mail. The Task Force recommends that service at each of these points be expanded to allow for service upon the respondent's "electronic service address," in addition to certified mail service. Effectuating this change would entail requiring all Ohio attorneys to submit an official "electronic service address" through which service of the discipline-related notices listed above could be accomplished. Official "electronic service addresses" currently are mandatory for all Texas attorneys. *See* Texas State Bar Rules, Art. III, Sec. 3; Supreme Court of Texas, Misc. Case No. 16-9095, Order of June 14, 2016, p. 5. (See lines 150, 156, 162, 198, 321, 362, 373, 383, 421, 422, 467, 470 through 475, 486, 487, 698, 726, 727, 755, 756, 777, 785, 793, 795, 801, 842, 843, 904, and 905 of **Appendix A**).

Shortening the Deadline for Responding to a Default Notice. If a respondent has not filed an answer to a formal complaint on or before the answer date, BPC must provide the relator and the respondent written notice of BPC's intent to certify the respondent's default with the Supreme Court. The respondent then has 30 days to file an answer, after which the certification of default is filed. (Gov.Bar R. V, Sec. 14(A).) In order to expedite the process while still giving the respondent due notice of his or her potential default and the need to respond, the Task Force recommends that the time period by which the respondent must file an answer to avoid the default certification be reduced from 30 to 14 days (see lines 265 and 266 of **Appendix A**).

Shortening the Deadline for the BPC Panel Chair's Pre-Hearing Conference. Within 40 days after appointment of a BPC hearing panel, the panel's chair must conduct a pre-hearing conference with the parties and counsel to, among other objectives, simplify the issues, establish a discovery timetable, and discuss matters that may expedite the resolution of the case (BPC Proc.Reg. 8(A)). To reduce delays, the Task Force recommends reducing this time limit from 40 to 30 days after appointment of the hearing panel (see line 530 of **Appendix A**).

Shortening the Period for Objecting to a BPC Report by Mutual Consent. Upon receipt of a BPC report in a disciplinary case, the Supreme Court issues an order requiring the parties to show cause why the BPC report should not be confirmed and a disciplinary order entered thereon. Within 20 days of issuance of this show-cause order, the respondent and the relator may file objections to BPC's findings or recommended sanction. (Gov.Bar R. V, Sec. 17(A) and (B).)

To reduce delays, the Task Force recommends allowing the parties to jointly waive their respective rights to file objections any time before the 20-day period expires (see lines 330 through 332 of **Appendix A**).

Shortening the Period for Moving for Leave to Answer Following Default. If upon the respondent's failure to answer a formal complaint the Supreme Court has entered a default, the Court then issues an order requiring the respondent to show why an interim default suspension should not be entered. If the Court orders the interim default suspension, the respondent has 180 days within which to file a motion for leave to answer the complaint. (Gov.Bar R. V, Sec. 14(C).) To reduce delays, the Task Force recommends reducing the time within which the respondent must file the motion for leave to answer from 180 to 90 days. The Task Force recommends that this change be implemented prospectively (see line 274 of **Appendix A**).

Disciplinary Orders in Lieu of Full Opinions in CTD Cases. The relator and the respondent in a disciplinary case may enter into a written CTD agreement in which the respondent admits to alleged misconduct and the relator and the respondent agree upon a sanction to be imposed, which can range from a public reprimand to a stayed or unstayed term suspension. The CTD agreement then is filed with BPC for review, first by the assigned hearing panel and then by the full BPC. If BPC accepts the CTD agreement, the agreement forms the basis of a certified report submitted to the Supreme Court for its review. (Gov.Bar R. V, Sec. 16.) Statistics suggest that the Court's average disposition time in CTD cases is slightly less than its average disposition time in "objection" cases, *i.e.*, eight months versus a year. To expedite the Court's review of CTD cases, the Task Force recommends that when the Court accepts a BPC report based on a CTD agreement, the Court should issue only a disciplinary order attaching the BPC report in lieu of issuing a full opinion.

Disciplinary Orders in Lieu of Full Opinions in Certain "No Objection" Cases. The Supreme Court's practice of rendering a full opinion in every disciplinary case sets Ohio apart from other jurisdictions and reinforces the Court's commitment to our state's unitary disciplinary system for lawyers and judges. This practice guarantees explication of every violation the Court finds and every sanction it imposes in every disciplinary case. Over time, these explications have combined to form a body of established and refined precedents that both guide Ohio's bar and bench and inform the state's self-policing disciplinary system. The value of the resulting compendium of case law cannot be overstated.

Still, there is no gainsaying the time this thoroughgoing practice requires the Court to invest and the impact this has on the overall pace of the disciplinary process. As noted previously, statistics show that even when neither the relator nor the respondent in a given case objects to BPC's recommendation, the Court's average time to disposition still is only slightly less than its average disposition time in "objection" cases, *i.e.*, nine months versus a year. As also noted above, most of the Court's disciplinary decisions fall in this category of "no objection" cases — adding up to about 30 cases, on average, in a normal year, as compared with about 12 "objection" cases and 10 CTD cases. Thus, the Court's disposition time in "no objection" cases matters a great deal insofar as reducing it would have a significant impact on the overall length of the disciplinary

process. As already mentioned, it doubtless serves the public interest to minimize whenever possible the total time it takes to discipline lawyers and judges who commit misconduct and to absolve lawyers and judges who are wrongly accused. The question is how to achieve such a time reduction responsibly in the 30 or so “no objection” disciplinary cases that the Court decides in a normal year. Issuing a disciplinary order in lieu of a full opinion, as the Task Force recommends for CTD cases (noted previously), certainly would lead to an even greater time reduction if applied to all “no objection” cases as well. The Task Force believes one way to reduce disposition times responsibly in “no objection” cases would be for the Court to issue a disciplinary order attaching BPC’s report, in lieu of a full opinion, in any “no objection” case in which (1) the Court accepts the recommended result in full, (2) the sanction imposed is a public reprimand, a fully stayed term suspension, or a term suspension with all but six months stayed, and (3) the Court assures itself and can expressly certify in the order that “No unique or unusual factual or legal issue is presented, and established precedent governs.”⁶

Special Oral Argument Docket for Disciplinary Cases. One factor that contributes to extending the Supreme Court’s review of disciplinary proceedings against attorneys and judges is the difficulty of fitting such cases into the Court’s existing oral argument docket. To minimize delays, the Task Force recommends that the Court create a special accelerated oral argument docket solely for disciplinary cases.

C. RAISING THE LEVEL OF PUBLIC AWARENESS OF THE DISCIPLINARY SYSTEM AND MAKING IT MORE ACCESSIBLE, RESPONSIVE, AND HELPFUL TO MEMBERS OF THE PUBLIC, PARTICULARLY THOSE AFFECTED BY PROFESSIONAL MISCONDUCT

The Chief Justice charged the Task Force to offer any other recommendations deemed appropriate “to further public trust and confidence in the bar and judiciary.”

Findings: A number of the prior recommendations — including those designed to eliminate avoidable delays in investigating, prosecuting, and adjudicating disciplinary matters, to expedite the investigation of “judge cases,” to improve the performance of CGCs, and to improve and streamline the process for investigating, prosecuting, and adjudicating grievances against sitting Supreme Court justices — also would have the salutary effect of enhancing public confidence in the fairness and timeliness of Ohio’s disciplinary system.

Public confidence also should be bolstered by making the disciplinary process more accessible, responsive, and helpful to members of the general public, particularly those affected by professional misconduct. Rather than propose a diffuse public information campaign, which may or may not hit its mark, the Task Force recommends several steps designed to better reach and assist members of the public who already are investigating or intersecting with the disciplinary process, especially potential grievants. The Task Force finds that those affected by professional misconduct, for example, often are unaware of the Lawyers’ Fund for Client Protection (LFCP)

⁶ The Task Force recognizes that the possibility exists for the filing of more “objection” cases in order to challenge collateral determinations that are not necessarily essential to the ultimate disposition of the case, but could affect future disciplinary cases.

and that this lack of awareness, combined with restrictions on the use of this fund, may unnecessarily inhibit grievants' resort to it.

Recommendations: The Task Force recommends that several steps be taken to inform potential grievants about the LFCP and to enable and encourage their resort to it. The Supreme Court established the LFCP to ameliorate losses of money, property, or other items of value sustained by clients and others due to Ohio attorneys' defalcation (Gov.Bar R. VIII, Sec. 1). To encourage those who have sustained such losses to resort to this fund, the Task Force concludes it is necessary to raise the cap and extend the filing deadline for claims. Currently, the maximum amount of reimbursement that the Board of the LFCP may award to a client who has suffered a loss is \$75,000 (Gov.Bar R. VIII, Sec. 5). Over the past five years, the LFCP has paid out nine awards that would have been higher, but for the \$75,000 cap. This cap was increased from \$25,000 to \$50,000 in 1997 and to \$75,000 in 2003, and has not increased since then. The Task Force recommends raising the reimbursement cap to \$100,000 and applying the increase to all pending and future claims (see line 519 of **Appendix A**). Based on the current, publicly reported balance in the LFCP's trust fund account and claims pending before the LFCP, the Task Force does not believe that adopting this recommendation would require the allocation of additional funds to the LFCP.

Moreover, at present, a claimant must submit his or her claim for reimbursement for a loss to the Board of the LFCP within one year of the loss or discovery of the event causing it (Gov.Bar R. VIII, Sec. 3(C)). It is anomalous that Ohio gives victims of lawyer misconduct such a short time to file reimbursement claims while imposing no time limit on filing grievances against lawyers. There is, it should be noted, a tolling provision that applies when a claimant takes "any affirmative action" against the attorney within the one-year period. This tolling provision typically is applied during the pendency of disciplinary proceedings and any litigation between the attorney and client.

Lack of knowledge of the existence and purpose of the LFCP causes many prospective claimants to miss the one-year deadline, even if tolling applies to extend it somewhat. Since 2015, the LFCP has administratively dismissed 35 claims because of the one-year time limit, and tolling was not enough to salvage those claims.

Ohio is one of only six jurisdictions with a one-year time limit. The majority of states permit claims to be filed within three years of the discovery of the loss. The American Bar Association's Model Rules provide for a five-year time limit. Six jurisdictions have time limits of five years or more. Eight jurisdictions have no time limits at all, although — unlike Ohio — they require exhaustion of all other remedies prior to filing a claim for reimbursement.

The Task Force recommends extending the LFCP claim deadline from one to five years (see lines 507 and 509 of **Appendix A**). Of the 35 claims the LFCP has administratively dismissed since 2015, 31 could have been processed had the proposed five-year deadline been in effect. Based on the number of claims dismissed by the LFCP for failure to meet the current one-year time limit and the probability that many more unknown claimants simply have not bothered to file claims after learning that the one-year time limit had passed, the Task Force concludes that

extending the time limit for submitting a claim from one to five years will increase access to the LFCP for many prospective claimants. Based, again, on the current, publicly reported balance in the LFCP's trust fund account and claims pending before the LFCP, the Task Force does not believe there would be much, if any, financial impact on the LFCP as a result of increasing the time limit from one to five years. The LFCP has indicated that the financial impact of processing additional claims due to this increase will be minimal. The Task Force submits that this increase would make Ohio's rule consistent with the national model and would ameliorate the anomaly mentioned above.

The Board of the LFCP has been apprised of the two changes recommended above and supports them.

The Task Force further recommends that, henceforth, information about the LFCP, including the increased cap and the extended claim deadline once they are implemented, should be prominently featured in all public education efforts related to the disciplinary process. The Task Force generally believes public education efforts related to the disciplinary process also should be intensified.

Finally, through their service on this Task Force, its members have come to appreciate and recognize that many grievants whose grievances do not result in formal complaints nonetheless want — and they deserve — to know that they were heard. As such, where those charged with investigating a grievance — whether ODC, a CGC, or the Chief Judge of the Court of Appeals in the case of a justice grievance — determine not to file a formal complaint based on a particular grievance, best practice is to provide the grievant with a cogent explanation for the result to the extent possible. This could be conveyed in a letter, a telephone call, or a meeting, depending on the circumstances. More than anything else, this would help to reassure those grievants that they were heard. If grievants leave the disciplinary process feeling that, no matter the result, someone in authority in the process took the time to listen to them and provide them with an explanation for the result, it could not help but further the public's trust and confidence in the disciplinary system.

CONCLUSION

The Chief Justice charged this Task Force with making recommendations to strengthen Ohio's disciplinary system for lawyers and judges and further public trust and confidence in it. The Task Force undertook this charge knowing that Ohio's disciplinary system for lawyers and judges already was highly regarded throughout the country for its timeliness, fairness, and faithfulness to the goal of protecting the public. Recognizing there still was room for improvement in all three areas, the Task Force spent a year collecting data and listening to stakeholders to identify problems in the system that could be fixed and then fashioning solutions to fix them. This report contains all of the findings and recommendations on which the Task Force was able to reach consensus, the reasons for making them, and the reasons for not making others. The Task Force believes the changes recommended in this report, if adopted in their entirety, will operate together in complementary fashion to reduce the length of disciplinary proceedings and enhance their fairness and efficacy, thereby strengthening public trust and confidence in the disciplinary system for Ohio lawyers, judges, and Supreme Court justices.



APPENDIX A

PROPOSED AMENDMENTS



1 **SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO**

2
3 **RULE V. DISCIPLINARY PROCEDURE**

4
5 **Section 6. Bar Counsel.**

6
7 **[Existing language unaffected by the amendments is omitted to conserve space]**

8
9 **(B) Decertification.** Disciplinary counsel may decertify bar counsel for failing to
10 competently and diligently perform the duties set forth in Gov. Bar R. V, ~~failing to comply with~~
11 ~~the education requirements set forth in Section 5 of this rule,~~ or for other good cause shown. Before
12 decertifying bar counsel, disciplinary counsel shall provide to bar counsel and the chair of the
13 certified grievance committee that employs or retains bar counsel written notice proposing the
14 decertification of bar counsel and shall afford bar counsel a reasonable opportunity to respond to
15 the proposed decertification.

16
17 **(C) Duties of Bar Counsel.** Bar counsel shall devote the time necessary to performing
18 the duties set forth in this rule, including but not limited to the following:

19
20 (1) Supervising the intake and investigation of grievances;

21
22 (2) Serving as the point of contact between respondents and respondents' counsel;

23
24 (3) Advising and training certified grievance committee members on matters of
25 professional conduct and disciplinary procedures;

26
27 (4) Participating in education activities related to professional conduct and disciplinary
28 procedures, including the completion each calendar year of at least six hours of training offered by
29 disciplinary counsel in the areas of legal ethics, judicial ethics, and the execution of responsibilities
30 for the review and investigation of grievances and prosecution of formal complaints;

31
32 (5) Serving as designated lead counsel of record in each formal complaint filed with
33 the Board by the bar counsel's certified grievance committee. For purposes of this rule, designation
34 as lead counsel requires bar counsel to participate personally and substantially in the post-
35 complaint adjudication process including, but not limited to, participating in prehearing telephone
36 conferences; attending discovery depositions; drafting pleadings, stipulations, consent to
37 discipline agreements, and pre- and post-hearing briefs; and attending and litigating the case before
38 the hearing panel. Bar counsel may delegate some aspects of hearing preparation or presentation
39 to assistant bar counsel or volunteer certified grievance committee members, provided that the any
40 attorney to whom responsibilities are delegated is identified as counsel in the case and bar counsel
41 directly supervises the attorney to whom responsibilities are delegated.

43 (D) Noncompliance. Failure of bar counsel to comply with the requirements of this
44 section shall be grounds for decertifying the bar counsel's appointing grievance committee
45 pursuant to Section 5 of this rule.

46
47 **Section 7. Funding; Reimbursements to Certified Grievance Committees.**

48
49 [Existing language unaffected by the amendments is omitted to conserve space]

50
51 (F) Deferral or Denial of Reimbursements. The director may defer or deny an
52 indirect reimbursement requested by a certified grievance committee based on the committee's
53 failure to satisfy the standards in Section 5(D) and (E) of this rule or bar counsel's noncompliance
54 with the requirements of Section 6(C) of this rule.

55
56 [Existing language unaffected by the amendments is omitted to conserve space]

57
58 **Section 9. Filing and Investigation of Grievances.**

59
60 [Existing language unaffected by the amendments is omitted to conserve space]

61
62 **(C) Power and Duty to Investigate; Dismissal without Investigation.**

63
64 (1) The Office of Disciplinary Counsel or a certified grievance committee shall review
65 and may investigate a grievance that alleges facts that, if substantiated, would constitute
66 misconduct by a judicial officer or attorney or that alleges facts that, if substantiated, would
67 indicate that a judicial officer or attorney is mentally ill, is suffering from alcohol and other drug
68 abuse, or is suffering from a disorder. The Office of Disciplinary Counsel and a certified grievance
69 committee shall review and may investigate any matter filed with it or that comes to its attention
70 and may file a complaint pursuant to this rule in cases where it finds probable cause to believe that
71 misconduct has occurred or that a condition of mental illness, alcohol and other drug abuse, or
72 disorder exists.

73
74 (2)(a) If during the course of the investigation there exists substantial, credible evidence
75 the judicial officer or attorney may be unfit to serve in a judicial capacity or practice law due to a
76 physical or mental impairment, the Office of Disciplinary Counsel or the certified grievance
77 committee, as applicable, may file a petition with the Board under seal, requesting the Board to
78 issue an order compelling the judicial officer or attorney to submit to an independent medical,
79 psychological, or psychiatric examination if all of the following apply:

80
81 (i) The Office of Disciplinary Counsel or the certified grievance committee, as
82 applicable, has requested in writing that the judicial officer or attorney voluntarily submit to an
83 independent medical, psychological, or psychiatric examination;

84
85 (ii) The judicial officer or attorney has either refused the request or has not responded
86 to the request within fourteen days;

87
88 (iii) The Office of Disciplinary Counsel or the certified grievance committee, as
89 applicable, notifies the judicial officer or attorney of its intent to file the petition and provides the
90 respondent fourteen days to submit a written response;

91
92 (b) The petition filed with the Board shall include any response of the judicial officer
93 or attorney submitted and at least one affidavit from an attorney licensed to practice law in Ohio
94 describing the factual basis for the affiant's belief that the alleged mental illness, alcohol or drug
95 abuse, or other disorder has substantially impaired the ability of the judicial officer or attorney to
96 serve in a judicial capacity or practice law.

97
98 (c) Upon receipt of a petition pursuant, the Board chair or vice-chair, shall, upon a
99 finding of substantial, credible evidence, issue an order compelling the judicial officer or attorney
100 to submit to a medical, psychological, or psychiatric examination, which shall be conducted by
101 one or more physicians, psychologists, or other medical professionals designated by the Board
102 chair. The Board chair shall serve the order on the judicial officer or attorney and provide a copy
103 to the Office of Disciplinary Counsel or the certified grievance committee, as applicable.

104
105 (d) Upon receipt of the results of the medical, psychological, or psychiatric
106 examination, the Board shall provide the results to the judicial officer or attorney and the Office
107 of Disciplinary Counsel or the certified grievance committee, as applicable. The Office of
108 Disciplinary Counsel or the certified grievance committee, as applicable, shall be responsible for
109 the costs associated with the examination.

110
111 (e) The failure of the judicial officer or attorney to abide by the Board's order shall be
112 prima facie evidence of a violation of Gov.Bar R. V, Section 9(G).

113
114 (3) A grievance may be dismissed without investigation if the grievance and any
115 supporting material do not contain an allegation of misconduct, mental illness, alcohol and other
116 drug abuse, or disorder on the part of a judicial officer or attorney. A certified grievance committee
117 shall not dismiss a grievance without investigation unless bar counsel has reviewed the grievance.

118
119 **(D) Time for Investigation.** The investigation of grievances by Office of Disciplinary
120 Counsel or a certified grievance committee shall be concluded within ~~sixty~~ two hundred seventy
121 days from the date of the receipt of the grievance. A decision as to the disposition of the grievance
122 shall be made within thirty days after conclusion of the investigation.

123
124 **Section 10. Requirements for Filing a Complaint.**

125
126 **(A) Notice of Intent to File.**

127
128 (1) No investigation conducted by the Office of Disciplinary Counsel or a certified
129 grievance committee shall be completed, and no complaint shall be filed with the Board, without
130 first giving the judicial officer or attorney who is the subject of the grievance or investigation

131 notice of each allegation and the opportunity to respond to each allegation. The Office of
132 Disciplinary Counsel or a certified grievance committee shall provide the judicial officer or
133 attorney with a minimum of fourteen days to respond to the allegations.
134

135 (2) When providing the judicial officer or attorney who is the subject of a complaint
136 notice of intent to file, the Office of Disciplinary Counsel or certified grievance committee shall
137 include with the notice information concerning the Ohio Lawyers Assistance Program.
138

139 [Existing language unaffected by the amendments is omitted to conserve space]
140

141 **Section 11. Probable Cause Determinations; Certification and Service of**
142 **Complaints.**
143

144 [Existing language unaffected by the amendments is omitted to conserve space]
145

146 **(B) Waiver of Probable Cause.** If the respondent has expressly waived, in writing, his
147 or her right to an independent determination of probable cause by the Board, the director shall
148 immediately certify the complaint to the Board and send a copy of the complaint to the Office of
149 Disciplinary Counsel or the appropriate certified grievance committee and by certified mail or
150 electronic service address to the respondent.
151

152 **(C) Service, and Publication of Certified Complaint; Notice of Dismissal.** The
153 director shall take the following action based on the order of the probable cause panel:
154

155 (1) If the panel certifies the complaint in its entirety, the director shall serve the
156 complaint on the respondent via certified mail or electronic service address and send a copy to the
157 relator and the local certified grievance committee.
158

159 (2) If the panel certifies the complaint in part, the director shall instruct the relator to
160 prepare and submit a new complaint that conforms to the order of the probable cause panel. Upon
161 receipt of the new complaint, the director shall serve the complaint on the respondent via certified
162 mail or electronic service address and send a copy to the relator and the local certified grievance
163 committee.
164

165 [Existing language unaffected by the amendments is omitted to conserve space]
166

167 **Section 12. Proceedings Before the Board on Certified Complaints.**
168

169 **(A) Manner of Discipline.**
170

171 (1) Any ~~judicial officer~~ elected or ~~attorney~~ appointed judge found guilty of misconduct
172 shall be disciplined as follows:
173

174 ~~(4)~~(a) Disbarment from the practice of law;

175
176 ~~(2)~~(b) Suspension from the practice of law for an indefinite period subject to reinstatement
177 as provided in Section 25 of this rule;

178
179 ~~(3)~~(c) Suspension from the practice of law for a period of six months to two years subject
180 to a stay in whole or in part;

181
182 ~~(4)~~(d) Probation for a period of time upon conditions as the Supreme Court determines,
183 but only in conjunction with a suspension ordered pursuant to division (A)~~(3)~~(1)(c) of this section;

184
185 ~~(5)~~(e) Public reprimand;

186
187 (f) Restitution;

188
189 (g) Removal from office in conjunction with or independent of any manner of
190 discipline under divisions (A)(1)(a) through (f) of this section.

191
192 (2) Any attorney found guilty of misconduct shall be disciplined in the same manner
193 as provided in divisions (A)(1)(a) through (f) of this section.

194
195 **[Existing language unaffected by the amendments is omitted to conserve space]**

196
197 (D) **Notice to Respondent upon Filing of the Complaint.** The director of the Board
198 shall send a copy of the complaint by certified mail or electronic service address to the respondent
199 with a notice requiring the respondent to file, within twenty days after the mailing of the notice,
200 six copies of his or her answer and serve copies of the answer on counsel of record named in the
201 complaint. Extensions of time for the filing of the answer may be granted by the director for good
202 cause shown.

203
204 **[Existing language unaffected by the amendments is omitted to conserve space]**

205
206 (I) **Public Reprimand, Probation, Suspension, ~~or~~ Disbarment, and Removal;**
207 **Duty of Hearing Panel.** If the hearing panel determines, by clear and convincing evidence, that
208 respondent is guilty of misconduct and that a ~~public reprimand, suspension for a period of six~~
209 ~~months to two years, probation, suspension for an indefinite period, or disbarment~~ sanction
210 pursuant to divisions (A)(1) and (2) of this section is merited, the hearing panel shall submit a
211 report of its findings of fact, conclusions of law, and recommended sanction to the director. If
212 applicable, the panel shall include in its report any conditions of probation, a stayed suspension,
213 or reinstatement to the practice of law. Such conditions may include a requirement that the
214 respondent or petitioner take and receive a passing score on the Multistate Professional
215 Responsibility Examination.

216
217 **[Existing language unaffected by the amendments is omitted to conserve space]**

218

219 **Section 13. Aggravating and Mitigating Factors.**

220
221 **[Existing language unaffected by the amendments is omitted to conserve space]**

222
223 **(C) Mitigation.** The following shall not control the discretion of the Board, but may be
224 considered in favor of recommending a less severe sanction:

- 225
226 (1) The absence of a prior disciplinary record;
- 227
228 (2) The absence of a dishonest or selfish motive;
- 229
230 (3) A timely, good faith effort to make restitution or to rectify consequences of
231 misconduct;
- 232
233 (4) Full and free disclosure to the Board or cooperative attitude toward proceedings;
- 234
235 (5) Character or reputation;
- 236
237 (6) Imposition of other penalties or sanctions;
- 238
239 (7) Existence of a disorder when there has been all of the following:
- 240
241 (a) A diagnosis of a disorder by a qualified health care professional or qualified
242 chemical dependency professional;
- 243
244 (b) A determination that the disorder contributed to cause the misconduct;
- 245
246 (c) In the case of mental disorder, a sustained period of successful treatment or in the
247 case of substance use disorder or nonsubstance-related disorder, a certification of successful
248 completion of an approved treatment program;
- 249
250 (d) A prognosis from a qualified health care professional or qualified chemical
251 dependency professional that the attorney will be able to return to competent, ethical professional
252 practice under specified conditions.
- 253
254 (8) Other interim rehabilitation;
- 255
256 (9) In the case of an elected or appointed judge, a timely and voluntary resignation
257 from judicial office, but no later than commencement of the disciplinary hearing.

258
259 **Section 14. Default; Interim Default Suspension.**

260
261 **(A) Certification of Default.** If the respondent has not filed an answer to a complaint
262 on or before the answer date set forth in the notice to the respondent of the filing of the complaint

263 or any extension of the answer date, the director of the Board shall provide the relator and
264 respondent, in writing, a notice of intent to certify respondent's default to the Supreme Court. The
265 certification of default shall be filed ~~thirty~~ fourteen days after the notice of intent to certify unless
266 the respondent files an answer prior to expiration of the ~~thirty~~ fourteen-day period. The
267 certification shall include a copy of the formal complaint pending before the Board and either a
268 certificate indicating that the complaint has been served on the respondent or a certificate
269 indicating that the complaint has been served on the clerk of the Supreme Court pursuant to Section
270 27 of this rule.

271
272 **[Existing language unaffected by the amendments is omitted to conserve space]**
273

274 **(C) Motion for Leave to Answer.** Within ~~one hundred eighty~~ ninety days of the date
275 of the entry of an interim default judgment suspension, the respondent may file a motion with the
276 Supreme Court for leave to file an answer to the complaint pending before the Board. The motion
277 shall include a copy of the respondent's answer as an attachment. The motion may include a
278 request from the respondent to terminate the interim default suspension for good cause shown.
279 Upon receipt of the motion and any response from the relator, the Court may grant the motion and
280 remand the matter to the Board for further proceedings under Section 12 of this rule. The order
281 remanding the matter to the Board shall indicate that the interim default judgment suspension
282 either remains in place while proceedings are pending before the Board or is terminated for good
283 cause shown.

284
285 **[Existing language unaffected by the amendments is omitted to conserve space]**
286

287 **Section 16. Consent to Discipline.**
288

289 **[Existing language unaffected by the amendments is omitted to conserve space]**
290

291 **(B) Exceptions.** The relator and respondent shall not enter into a consent-to-discipline
292 agreement if the respondent is a sitting judge or magistrate or is a public official who engaged in
293 misconduct while serving in an elected public office.
294

295 **(C) Filing and Consideration of the Agreement.** The agreement shall be filed with
296 the director of the Board and submitted to the hearing panel ~~or a master. Relator~~ The relator and
297 respondent may file a brief in support of the agreement. The panel chair may order the relator and
298 respondent to supplement the agreement with additional information or exhibits to facilitate the
299 hearing panel's consideration of the agreement. If the hearing panel, by majority vote, or master
300 recommends acceptance of the agreement and concurs in the agreed sanction, the matter shall be
301 scheduled for consideration by the Board. If the agreement is not accepted by the hearing panel or
302 master, the matter shall be set for hearing.
303

304 **(~~C~~)(D) Board Consideration of the Agreement.** If the agreement is submitted to the
305 Board, the Board, by majority vote, may accept or reject the agreement. If the Board accepts the
306 agreement, the agreement shall form the basis for the certified report submitted to the Supreme

307 Court. If the Board rejects the agreement, the matter shall be returned to the hearing panel and set
308 for a hearing.

309
310 ~~(D)~~**(E) Rejected Agreement Not Admissible.** If the agreement is not accepted by the
311 hearing panel, the Board, or the Supreme Court, the agreement shall not be admissible or otherwise
312 used in subsequent disciplinary proceedings.

313
314 **Section 17. Supreme Court Review of Certified Report; Orders; Costs;**
315 **Publication.**

316
317 **(A) Show Cause Order.** Upon receipt of a final report of the Board, the Supreme Court
318 shall issue the respondent an order to show cause why the report of the Board shall not be
319 confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by
320 the clerk of the Supreme Court on the respondent and all counsel of record personally or by
321 certified mail or electronic service address. The clerk shall not issue a show cause order upon
322 receipt of a report recommending the acceptance of a consent to discipline agreement.

323
324 **(B) Response to Show Cause Order.** Within twenty days after the issuance of an order
325 to show cause, the respondent or relator may file objections to the findings or recommendations
326 of the Board and to the entry of a disciplinary order or to the confirmation of the report on which
327 the order to show cause was issued. The objections shall be accompanied by a brief in support of
328 the objections and proof of service of copies of the objections and the brief on the director of the
329 Board and all counsel of record. Objections and briefs shall be filed in the number and form
330 required by the Rules of Practice of the Supreme Court of Ohio. If neither party intends to file
331 objections, both the relator and respondent may file a joint waiver of the right to file objections
332 before expiration of the corresponding twenty-day time period.

333
334 **(C) Answer Briefs.** Answer briefs and proof of service shall be filed within fifteen days
335 after briefs in support of objections have been filed. All briefs shall be filed in the number and
336 form required by the Rules of Practice of the Supreme Court of Ohio.

337
338 **(D) Second Show Cause Order.** If neither party files an objection to the final report of
339 the Board and the Court is considering increasing the sanction recommended in the report,
340 excluding any conditions or an increase that would result in a fully stayed suspension, before
341 issuing its decision, the Court shall issue a second show cause order giving the parties twenty days
342 from the date of the order to file objections. Answer briefs shall be filed in the manner as provided
343 in division (C) of this rule.

344
345 **(E) Supreme Court Proceedings.** After consideration of a matter submitted to it, the
346 Supreme Court shall enter an order as it finds proper. If the Court rejects a consent to discipline
347 agreement submitted pursuant to Section 16 of this rule, the Court shall remand the matter to the
348 Board for further proceedings. Unless otherwise ordered by the Court, any disciplinary order or
349 order accepting resignation shall be effective on the date that the order is announced. The order

350 may provide for reimbursement of costs and expenses certified by the Board and order restitution.
351 An order imposing a suspension for an indefinite period or for a period of six months to two years
352 may allow full or partial credit for any period of suspension imposed under Section 18 of this rule.
353

354 [Existing language unaffected by the amendments is omitted to conserve space]
355

356 **Section 21. Probation Procedures.**
357

358 [Existing language unaffected by the amendments is omitted to conserve space]
359

360 (F) **Duty of the Board upon Filing of Petition.** Upon receipt of a petition for
361 revocation of probation, the director of the Board shall send a copy of the petition by certified mail
362 or electronic service address to the respondent with a notice requiring the respondent to file, within
363 ten days after the mailing of the notice, six copies of the respondent's answer and serve copies on
364 counsel of record. Extensions of time for the filing of the answer may be granted by the director
365 of the Board for good cause shown.
366

367 [Existing language unaffected by the amendments is omitted to conserve space]
368

369 (I) **Reinstatement of Stayed Suspension.** On the filing of the final certified report by
370 the panel, the Supreme Court may issue to the respondent an order reinstating any period of
371 suspension previously stayed by the Supreme Court, pending the entry of a final order by the
372 Supreme Court. Notice of an order reinstating any period of suspension previously stayed shall be
373 served personally or by certified mail or electronic service address by the clerk of the Supreme
374 Court on the respondent and all counsel of record.
375

376 [Existing language unaffected by the amendments is omitted to conserve space]
377

378 **Section 22. Duties of a Disbarred or Suspended Attorney.**
379

380 [Existing language unaffected by the amendments is omitted to conserve space]
381

382 (B) **Disqualified Attorney Address.** All notices required by a disciplinary order of the
383 Supreme Court shall be sent by certified mail or electronic service address and contain a return
384 address where communications may be directed to the disqualified attorney.
385

386 (C) **Affidavit.** Within the time limit prescribed by the Supreme Court, the disqualified
387 attorney shall file with the clerk of the Supreme Court and the Office of Disciplinary Counsel an
388 affidavit showing compliance with the order entered pursuant to this rule and proof of service of
389 notices required by the order. The affidavit also shall set forth the address where the affiant may
390 receive communications and the disqualified attorney shall inform the clerk and the Office of
391 Disciplinary Counsel of any subsequent change in address.
392

393 **(D) Proof of Compliance.** A disqualified attorney shall maintain a record of the various
394 steps taken pursuant to the order entered by the Supreme Court so that, in any subsequent
395 proceeding, proof of compliance with the order will be available for receipt in evidence.

396
397 **Section 35. Definitions.**

398
399 As used in this rule:

400
401 **(A)** “Alcohol and other drug abuse” has the same meaning as in R.C. 5119.90
402 [Involuntary Treatment].

403
404 **(B)** “Approved treatment program” means a chemical dependency treatment program
405 approved by a state agency, Ohio Lawyers Assistance Program, or other appropriate authority.

406
407 **(C)** “Complaint” means a formal written allegation of misconduct, mental illness,
408 mental disorder, substance use disorder, or nonsubstance-related disorder of a person designated
409 as the respondent.

410
411 **(D)** “Confidential” acknowledges the oath of office of Sections 1, 4, and 5 of this rule,
412 the necessity of confidentiality of all proceedings, documents, and deliberations of a certified
413 grievance committee, the Office of Disciplinary Counsel, and the Board and its hearing panels.

414
415 **(E)** “Disorder” means a mental disorder, substance use disorder, or nonsubstance-
416 related disorder.

417
418 **(F)** “Disqualified attorney” means a former attorney who has been disbarred or who
419 has resigned with discipline pending.

420
421 **(G)** “Electronic service address” means the email address designated by an attorney for
422 service of documents pursuant to Gov. Bar R. VI, Section 4(B)(2).

423
424 **(H)** “Judicial officer” means any person who is subject to the Code of Judicial Conduct
425 as set forth in the Application section of that code.

426
427 ~~(H)~~**(I)** “Mental disorder,” “substance use disorder,” and “nonsubstance-related disorder”
428 have the same meanings as in the most recent edition of the American Psychiatric Association’s
429 Diagnostic and Statistical Manual of Mental Disorders.

430
431 ~~(I)~~**(J)** “Mental illness” has the same meaning as in R.C. 5122.01(A) [Mental Illness
432 Adjudication].

433
434 ~~(J)~~**(K)** “Misconduct” means any violation by a judicial officer or an attorney of any
435 provision of the oath of office taken upon admission to the practice of law in this state or any
436 violation of the Ohio Rules of Professional Conduct or the Code of Judicial Conduct, disobedience

437 of these rules or of the terms of an order imposing probation or a suspension from the practice of
438 law, or the commission of an illegal act or conviction of a crime that reflects adversely on the
439 lawyers' honesty or trustworthiness.

440
441 ~~(K)~~(L) "Probable cause" means there is substantial, credible evidence that misconduct has
442 been committed.

443
444 ~~(L)~~(M) "Qualified health care professional" means an individual who is licensed, certified,
445 or otherwise authorized or permitted by law to provide diagnoses and treatment of disorders and
446 who is acting within the scope of his or her practice;

447
448 ~~(M)~~(N) "Qualified chemical dependency professional" means an individual who is
449 licensed, certified, or otherwise authorized or permitted by law to provide diagnoses and treatment
450 of substance use disorders and is acting within the scope of his or her practice.

451
452
453

454 **RULE VI. REGISTRATION OF ATTORNEYS**

455

456 [Existing language unaffected by the amendments is omitted to conserve space]

457

458 **Section 4. Obligations of Attorney.**

459

460 [Existing language unaffected by the amendments is omitted to conserve space]

461

462 **(B) Contact information**

463

464 (1) Each attorney admitted to the practice of law in Ohio or registered for corporate
465 status shall provide the Office of Attorney Services with the attorney's current residence
466 address, office address, office telephone number, and office or residence e-mail address,
467 and electronic service address and shall notify the office of any change in the information
468 recorded on the certificate of registration pursuant to Section 2 or 3 of this rule.

469

470 (2) If an attorney fails to provide the Office of Attorney Services an electronic service
471 address, the attorney's office or residence e-mail address shall be deemed to be the
472 attorney's electronic service address.

473

474 (3) Service of any notice to an attorney by electronic service address pursuant to these
475 rules or the Rules for the Government of the Judiciary of Ohio shall be deemed complete.

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477 [Existing language unaffected by the amendments is omitted to conserve space]

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Section 15. Public Access to Records.

(A) General

Except for residence addresses, residence telephone numbers, e-mail addresses, electronic service addresses, and social security numbers, information maintained by the Office of Attorney Services, provided by the office to another office of the Supreme Court, or provided by the office to the Ohio Legal Assistance Foundation pursuant Section 4(D)(2) of this rule shall be available for public access pursuant to Sup. R. 44 through 47.

[Existing language unaffected by the amendments is omitted to conserve space]

RULE VIII. LAWYERS’ FUND FOR CLIENT PROTECTION OF THE SUPREME COURT OF OHIO.

[Existing language unaffected by the amendments is omitted to conserve space]

Section 3. Eligible Claims.

[Existing language unaffected by the amendments is omitted to conserve space]

(C) On or after the effective date of this rule, the attorney been disbarred, suspended, or publicly reprimanded, has resigned, or has been convicted of embezzlement or misappropriation of money or other property and the claim is presented within ~~one year~~ five years of the occurrence or discovery of the applicable event. The taking of any affirmative action by the claimant against the attorney within the ~~one year~~ five-year period shall toll the time for filing a claim under this rule until the termination of that proceeding. In the event disciplinary or criminal proceedings, or both, cannot be prosecuted because the attorney cannot be located or is deceased, the Board may consider a timely application if the claimant has complied with the other conditions of this rule.

[Existing language unaffected by the amendments is omitted to conserve space]

Section 5. Maximum Recovery.

The Board shall determine the maximum amount of reimbursement to be awarded to a claimant. No award shall exceed ~~seventy-five~~ one hundred thousand dollars.

520 **APPENDIX II**

521
522 **PROCEDURAL REGULATIONS OF THE BOARD OF PROFESSIONAL CONDUCT**
523 **OF THE SUPREME COURT OF OHIO**
524 **Effective January 1, 2019**
525

526 **[Existing language unaffected by the amendments is omitted to conserve space]**
527

528 **Reg. 8. Time Guidelines for Pending Cases.**
529

530 **(A) Pre-hearing Conference.** Within ~~forty~~ thirty days of the appointment of a hearing
531 panel, the panel chair shall conduct a pre-hearing conference with the parties and counsel of record.
532 At the discretion of the panel chair, a pre-hearing conference may be held by telephone, and may
533 be continued from day-to-day. The pre-hearing conference shall be conducted to accomplish the
534 following objectives:

- 535
- 536 (1) Simplification of the issues;
 - 537
 - 538 (2) Determine the necessity for any amendment to the pleadings;
 - 539
 - 540 (3) Establish a discovery timetable;
 - 541
 - 542 (4) Identify anticipated witnesses and the exchange of reports of anticipated expert
543 witnesses;
 - 544
 - 545 (5) Identify and arrange for the exchange of copies of anticipated exhibits;
 - 546
 - 547 (6) Discuss the possibility of a consent to discipline agreement, obtaining stipulations
548 of fact, and obtaining stipulations regarding the admissibility of exhibits;
 - 549 (7) Establish a final hearing date;
 - 550
 - 551 (8) Discuss any other matters that may expedite the resolution of the case.
 - 552

553 **[Existing language unaffected by the amendments is omitted to conserve space]**

554 **SUPREME COURT RULES FOR THE**
555 **GOVERNMENT OF THE JUDICIARY OF OHIO**

556
557 **RULE II. Disciplinary Procedure.**
558

559 **[Existing language unaffected by the amendments is omitted to conserve space]**
560

561 **Section 4. Grievances Against Supreme Court Justices.**
562

563 (A) *Initial review.*
564

565 **[Existing language unaffected by the amendments is omitted to conserve space]**
566

567 (2) Upon receipt of the response, or if no response is received, the review panel shall
568 review the grievance and any response to determine whether good cause exists for further
569 investigation of the grievance. The Within thirty days of the receipt of the response or expiration
570 of the fourteen-day response time if no response is received, the review panel shall report its
571 determination in writing to the Chief Judge. Upon request of the review panel and for good cause
572 shown, the Chief Judge may extend the time for reporting its determination. If the review panel
573 determines that good cause does not exist for further investigation, the Chief Judge shall notify the
574 justice named in the grievance and the grievant of the determination and of the dismissal of the
575 grievance.
576

577 (3) In January each year, the administrative judge of each appellate district shall
578 designate the appellate judge senior in service and one additional appellate judge from the district,
579 ~~other than~~ neither of whom shall be the presiding judge of that district or the Chief Judge, to be
580 eligible for service on a review panel pursuant to division (A)(1) of this section. The administrative
581 judge shall advise the Chief Judge, in writing, of the designation. Appointments shall be for a
582 calendar year, and a judge may be reappointed to subsequent terms on the review panels.
583

584 (B) *Appointment of special disciplinary counsel; time limits.*
585

586 (1)(a) If the review panel determines that good cause exists for further investigation, the
587 Chief Judge shall appoint a special disciplinary counsel to conduct further investigation of the
588 allegations contained in the grievance and any other misconduct discovered during the course of
589 investigating the grievance. The special disciplinary counsel shall possess the qualifications set
590 forth in division (B)(3)(a) of this section and ~~may~~ shall be appointed from the list maintained by
591 the Office of Disciplinary Counsel pursuant to division (B)(3)(c) of this section.
592

593 (ii) When appointing a special disciplinary counsel, the Chief Judge may communicate
594 with the prior Chief Judge to determine whether special disciplinary counsel has been appointed
595 to investigate another grievance against the same justice. If special disciplinary counsel has been
596 appointed, the Chief Judge may appoint the same special counsel to investigate the new grievance.

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[Existing language unaffected by the amendments is omitted to conserve space]

(2)(a) Upon completion of the investigation, special disciplinary counsel shall ~~either file a report to with the Chief Judge or prepare and file.~~ If the report recommends that the grievance should be dismissed, the Chief Judge shall notify the grievant and the justice named in the grievance of such determination in writing. If the report concludes that probable cause exists to believe that the justice named in the grievance engaged in misconduct, the report shall include a formal complaint with the Chief Judge, in the name of special disciplinary counsel as relator, alleging that substantial, credible evidence exists to believe that the justice named in the grievance engaged in misconduct. The complaint shall be submitted with investigatory materials sufficient to demonstrate the existence of substantial, credible evidence to support the allegations of the complaint. The materials shall include any response filed by or on behalf of the respondent and may include other reports, summaries, depositions, statements, exhibits, or any other relevant material.

[Existing language unaffected by the amendments is omitted to conserve space]

(c) Unless the justice against whom the grievance has been filed agrees otherwise, the matter shall remain private unless and until a formal complaint is filed. Nothing shall prohibit a special disciplinary counsel from communicating with another special disciplinary counsel who has been appointed to investigate a grievance against the same justice.

(3)(a) The special disciplinary counsel shall be an attorney admitted to the practice of law in Ohio, or an attorney licensed and in good standing in any other state and admitted *pro hac vice* by the Chief Judge. The special disciplinary counsel shall not be an employee or appointee of the Supreme Court or have any interest in a case pending before the Supreme Court while serving as the special disciplinary counsel. The special disciplinary counsel shall have the power to issue subpoenas and cause testimony to be taken under oath.

(b) The special disciplinary counsel shall be paid expenses and reasonable compensation, upon approval of the Chief Judge, from the Attorney Services Fund. The rate and method of compensation, including the payment of compensation while the investigation is ongoing, shall be established by the Chief Judge in the appointment letter or order. The Chief Judge may authorize the special disciplinary counsel to employ support staff as necessary to assist in the investigation and any subsequent proceedings and may authorize payment of fees, compensation, and expenses from the Fund.

(c) The Office of Disciplinary Counsel shall maintain and provide to the Chief Judge in January each year a list of attorneys who satisfy the qualifications for appointment as special disciplinary counsel and who are otherwise available to accept such appointment. The Office of Disciplinary Counsel may supplement the list with additional special disciplinary counsel, as necessary.

641 (C) ~~Appointment of hearing panel; proceedings~~ Proceedings on the formal complaint;
642 probable cause review; appointment of hearing panel.

643
644 (1) Upon receipt of a formal complaint filed by the special disciplinary counsel, the
645 Chief Judge shall appoint a probable cause panel. The probable cause panel shall consist of three
646 former commissioners of the Board of Professional Conduct, none of whom was appointed or
647 reappointed to the Board by the justice named in the complaint. Upon review solely of the
648 complaint and the investigatory materials submitted pursuant to division (B)(2)(a) of this section,
649 the probable cause panel shall make an independent determination whether probable cause exists
650 for the filing of the complaint. Within thirty days of the appointment of the probable cause panel,
651 the panel shall issue an order to the Chief Judge certifying the complaint, in whole or in part, or
652 dismissing the complaint and investigation in its entirety.

653
654 (2) If the order dismisses the complaint and investigation in its entirety, the Chief Judge
655 shall notify the grievant, justice, and special disciplinary counsel. If the order certifies the
656 complaint in part, the Chief Judge shall provide a copy of the order to the special disciplinary
657 counsel with instructions to prepare and file a new complaint that conforms to the determination
658 of the probable cause panel. If the order certifies the complaint in its entirety, or upon receipt of a
659 new complaint prepared as a result of a partial certification of the probable cause panel, the Chief
660 Judge shall do both of the following:

661
662 (a) Appoint a hearing panel of three fulltime trial court judges selected, by lot, from
663 the list of judges developed and maintained pursuant to division (C)(~~5~~)(6) of this section. The
664 judges chosen shall be from separate appellate districts and shall not be from the district in which
665 the respondent resides. The Chief Judge shall designate one of the judges to serve as the chair of
666 the hearing panel.

667
668 (b) Immediately forward the formal complaint to the director of the Board of
669 Professional Conduct, who shall send a copy of the formal complaint by certified mail or
670 electronic service address to the respondent. The complaint shall be accompanied by a notice
671 requiring the respondent to file, within twenty days after the mailing of the complaint, six copies
672 of the respondent's answer and serve copies of the answer on special disciplinary counsel and the
673 Chief Judge. For good cause shown, the Chief Judge may grant an extension of time to file the
674 answer.

675
676 ~~(2)~~(3) With reasonable notice to the parties, the hearing panel shall hold a hearing on the
677 complaint. The hearing panel chair may grant requests for continuances for good cause shown. All
678 hearings shall be recorded by a court reporter and a transcript included in the record of the
679 proceedings.

680
681 ~~(3)~~(4) If at the end of the evidence presented by the relator, a unanimous hearing panel
682 finds that the evidence is insufficient to support a charge or count of misconduct or a finding of
683 disability, the panel may order the complaint or count be dismissed. If at the end of all evidence, a
684 majority of the hearing panel finds that the evidence is insufficient to support a charge or count of

685 misconduct, the panel may order the complaint or count be dismissed. The hearing panel chair
686 shall give written notice of the action taken to the director who shall notify the Chief Judge, relator,
687 and respondent. There shall be no appeal from an order dismissing the complaint or count of
688 misconduct.

689
690 (4)(5) If a majority of the hearing panel determines, by clear and convincing evidence,
691 that the respondent is guilty of misconduct and a disciplinary sanction is merited or that the
692 respondent has a mental or physical disability that makes the respondent unable to discharge the
693 duties of office, the hearing panel shall file a certified report of the proceedings, its findings of
694 fact, conclusions of law and recommended sanction with the director. The report shall include the
695 transcript of testimony taken and an itemized statement of the actual and necessary expenses
696 incurred in connection with the proceedings. The director shall send a copy of the hearing panel's
697 report and recommendations to the Chief Judge and serve a copy of the report and
698 recommendations, by certified mail or electronic service address, on the relator and respondent.
699 At the conclusion of all proceedings before the hearing panel, the director shall file the record of
700 such proceedings with the Clerk of the Supreme Court as provided in division (E)(1) of this section.
701

702 (5)(6) In January each year, the administrative judge of each appellate district shall
703 designate two fulltime trial judges from within the appellate district to be eligible to serve on a
704 hearing panel appointed pursuant to division (C)(4)(2)(a) of this section. In selecting the trial
705 judges who shall be eligible for appointment to hearing panels, the administrative judge shall
706 consider legal and judicial experience, gender, race, ethnicity, and other relevant factors. Before
707 designating a judge as eligible for selection to serve on a hearing panel, the administrative judge
708 shall contact the judge to determine the judge's availability for potential service. The
709 administrative judge shall advise the Chief Judge, in writing, of the designations.
710

711 (D) *Appointment of adjudicatory panel; proceedings before the panel.*
712

713 (1) Upon receipt of the hearing panel's report and recommendations, the Chief Judge
714 shall convene an adjudicatory panel of thirteen appellate judges to review the report and
715 recommendations. The adjudicatory panel shall consist of the Chief Judge, who shall serve as
716 chair of the panel, and the presiding judge of each appellate district. If ~~a~~ the presiding judge of an
717 appellate district is unavailable to serve on the adjudicatory panel, the appellate judge of the
718 district who is senior in service on the court of appeals shall ~~replace~~ serve on the presiding judge
719 adjudicatory panel. If both the presiding judge of an appellate district and the appellate judge of
720 the district who is senior in service on the court of appeals is unavailable to serve on the
721 adjudicatory panel, the presiding judge of the district shall designate another appellate judge of
722 the district to serve on the adjudicatory panel.
723

724 (2) The adjudicatory panel shall issue the respondent an order to show cause why the
725 report and recommendation of the hearing panel shall not be confirmed and a disciplinary order
726 entered. The Clerk shall serve notice of the show cause order by certified mail or electronic
727 service address on relator and respondent.
728

729 [Existing language unaffected by the amendments is omitted to conserve space]

730
731 (E) *Miscellaneous provisions.*

732
733 [Existing language unaffected by the amendments is omitted to conserve space]

734
735 (7)(a) The Chief Judge, any former commissioner of the Board of Professional Conduct,
736 or any judge appointed to serve on a panel pursuant to Section 4 of this rule may contact the
737 director of the Board of Professional Conduct for procedural guidance relative to responsibilities
738 set forth in this rule. Special disciplinary counsel may contact disciplinary counsel for procedural
739 guidance relative to responsibilities set forth in this rule.

740
741 (b) To assist in the execution of these responsibilities, the director and disciplinary
742 counsel shall prepare and make available education materials that provide general procedural
743 guidance to the individuals identified in division (E)(7)(a) of this section. The education materials
744 may include written guidance, sample correspondence, orders, and entries, and information
745 regarding the retention of records pursuant to Section 8 of this rule.

746
747 **Section 5. Campaign Conduct; Enforcement and Sanctions.**

748
749 [Existing language unaffected by the amendments is omitted to conserve space]

750
751 (E) *Appeal of sanction.*

752
753 The respondent may appeal a sanction issued by the commission to the Supreme Court.
754 Notice of appeal shall be given by the respondent to the secretary of the commission and the
755 Supreme Court within twenty days after the respondent's receipt by certified mail or electronic
756 service address of the commission's order. After receipt of the notice of appeal, the Court may
757 issue a briefing order and other appropriate orders.

758
759 **Section 6. Campaign Conduct; Enforcement and Sanctions; Justices and**
760 **Candidates for the Supreme Court.**

761
762 (B) *Appointment of hearing panel; proceedings on the formal complaint.*

763
764 [Existing language unaffected by the amendments is omitted to conserve space]

765
766 (3) Within five days of the conclusion of the hearing, the hearing panel shall prepare
767 and issue a report of its findings and recommendations. If the panel finds, by clear and convincing
768 evidence, that the respondent violated Canon 4 of the Code of Judicial Conduct and that a sanction
769 for such violation is warranted, the hearing panel's report and the record of the proceedings shall
770 be certified to the director, together with a recommendation as to whether the complaint should
771 be considered on an expedited basis and whether the five-judge commission appointed pursuant
772 to division (C) of this section should issue a cease and desist order pursuant to division (C)(2) of

773 this section. If the hearing panel determines, by clear and convincing evidence, that a violation
774 of Canon 4 has occurred, the hearing panel shall determine whether the respondent previously
775 has been found to have violated Canon 4 and include the determination in its report. The director
776 shall provide a copy of the hearing panel's report to the Chief Judge and send a copy of the
777 hearing panel's report to the relator and respondent by certified mail or electronic service address.

778
779 (C) *Appointment of five-judge commission; proceedings before the commission.*

780
781 **[Existing language unaffected by the amendments is omitted to conserve space]**

782
783 (3) The commission's determination and any cease and desist order shall be sent to
784 the director who shall provide a copy to the Chief Judge and serve a copy on the respondent and
785 relator by certified mail or electronic service address. At the conclusion of all proceedings before
786 the hearing panel, the director shall file the record of such proceedings with the Clerk of the
787 Supreme Court as provided in division (F)(1) of this section.

788
789 (D) *Appeal of sanction.*

790
791 (1) The respondent may appeal a sanction issued by the commission. The notice of
792 appeal shall be filed by the respondent with the Clerk of the Supreme Court within twenty days
793 after the receipt by certified mail or electronic service address of the commission's order. The
794 Clerk shall provide a copy of the notice of appeal to the Chief Judge and send a copy to the
795 relator by certified mail or electronic service address.

796
797 **[Existing language unaffected by the amendments is omitted to conserve space]**

798
799 (3) The adjudicatory panel may establish a briefing schedule and make other
800 appropriate orders. All orders of the adjudicatory panel shall be issued upon instructions from
801 the panel by the Clerk who shall send the orders by certified mail or electronic service address.

802
803 (E) *Failure to prosecute.*

804
805 If, after probable cause has been found, the relator attempts to withdraw the grievance or
806 otherwise fails to prosecute the formal complaint, the Chief Judge shall appoint a special
807 disciplinary counsel who possesses the qualifications set forth in Section 4(B)(3) of this rule.
808 Upon appointment, the special disciplinary counsel shall act as relator in the pending matter.

809
810 (F) *Miscellaneous provisions.*

811
812 **[Existing language unaffected by the amendments is omitted to conserve space]**

813
814 (5) The Chief Judge shall transmit to the Board of Professional Conduct all confidential
815 files and records of the proceedings that were dismissed without the filing of a formal complaint.
816 The transmission shall occur after the conclusion of all proceedings pursuant to Section 6 of this

817 rule for which the Chief Judge was responsible during the Chief Judge’s term. The Board shall
818 maintain the files and records in paper or electronic format and in accordance with the following
819 schedule:

820
821 (a) Files related to any matter dismissed without a probable cause determination shall
822 be retained for two years;

823
824 (b) Files related to any matter that proceeded to a probable cause determination but was
825 dismissed without the filing of a formal complaint shall be retained for ten years;

826
827 **[Existing language unaffected by the amendments is omitted to conserve space]**

828
829 **Section 8. Definitions.**

830
831 As used in this rule:

832
833 (A) “Complaint,” “probable cause,” and “misconduct” have the same meanings as in
834 Gov. Bar R. V;

835
836 (B) “Costs” means expenses incurred by the Board of Professional Conduct, the
837 Supreme Court, and any panel or commission of judges in conducting proceedings under this rule;

838
839 (C) “Disciplinary sanction” means any of the sanctions set forth in Gov. Bar R. V,
840 Section 12, removal, or suspension from office;

841
842 (D) “Electronic service address” means the email address designated by an attorney for
843 service of documents pursuant to Gov. Bar R. VI, Section 4(B)(2).

844
845 (E) “Good cause,” for purposes of Sections 4(A) and (B)(1) of this rule, means that,
846 based on a review of a grievance and any response received, there exists an articulable legal and
847 factual basis to warrant further investigation of the allegations contained in the grievance;

848
849 ~~(E)~~(F) “Judicial candidate” has the same meaning as in Rule 4.6 of the Code of Judicial
850 Conduct.

851
852
853
854 **RULE III. Disability Retirement, Removal, or Suspension of Judges.**

855
856 **[Existing language unaffected by the amendments is omitted to conserve space]**

857
858 **Section 2. Action on the Complaint.**

859

860 (A)(1) Upon receipt of a written and sworn complaint, the chair of the Board shall convene
861 the Board and present the complaint. The director of the Board shall send a copy of the complaint
862 to the judge against whom the complaint is made. The Board shall then review the investigation
863 made by the Office of Disciplinary Counsel or a certified grievance committee. If, after review of
864 the investigation, two-thirds of the members of the Board determine that there is substantial
865 credible evidence in support of the complaint, the director of the Board shall certify to the Supreme
866 Court the result of the investigation.

867
868 (2) The report of the Board shall be sent by certified mail or electronic service address
869 to the judge against whom the complaint is made at the same time it is sent to the Supreme Court.
870

871 (B)(1) If the report finds there is substantial credible evidence in support of the complaint,
872 the Supreme Court shall appoint within a reasonable time after its receipt a commission of five
873 judges, as provided in section 2701.11 of the Revised Code.
874

875 The chair of the commission appointed to determine the question of retirement, removal,
876 or suspension of a judge shall be designated by the Supreme Court. After receipt of the notice of
877 appointment and the receipt of the complaint, the chair promptly shall fix a day, time, and place
878 for the hearing.
879

880 (2) If the commission determines by majority vote that grounds for retirement,
881 removal, or suspension without pay have been established by clear and convincing evidence as
882 alleged in the complaint or as provided in section 2701.12 of the Revised Code, the commission
883 shall make the necessary and proper order. Notice of any order shall be sent by certified mail or
884 electronic service address with return receipt to the judge against whom the finding has been made
885 and to the Supreme Court.
886

887 **[Existing language unaffected by the amendments is omitted to conserve space]**
888

889 **Section 3. Appeal.**
890

891 Any judge retired, removed, or suspended by the commission may appeal the action to the
892 Supreme Court on the record made before the commission. Notice of the appeal shall be given by
893 the judge to the commission and the Supreme Court within twenty days after the judge's receipt
894 by certified mail or electronic service address of the findings made by the commission. After a
895 notice of appeal is given, the time for filing a transcript of testimony, briefs, and the conduct of a
896 hearing shall be as provided in Gov. Bar R. V.
897

898 **[Existing language unaffected by the amendments is omitted to conserve space]**
899

900 **Section 8. Definition.**
901

902 As used in this rule;:
903

904 (A) “Electronic service address” means the email address designated by an attorney for
905 service of documents pursuant to Gov. Bar R. VI, Section 4(B)(2).

906
907 (B) “pay Pay” means all salary payable and benefits available to the Justice or judge as
908 a result of his or her service in judicial office.

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THE OHIO REVISED CODE

Sec. 2701.11. Subject to rules implementing this section and section 2701.12 of the Revised Code that shall be promulgated by the supreme court, any judge, upon a written and sworn complaint ~~setting forth the cause or causes and after reasonable notice thereof and an opportunity to be heard investigated and adjudicated in accordance with the procedures in Rule V of the Supreme Court Rules for the Government of the Bar or Rule III of the Supreme Court Rules for the Government of the Judiciary~~, any judge may be retired for disability, removed for cause, or suspended, without pay, unless the suspension is fully stayed, or reprimanded, for cause ~~by a commission composed of five judges of this state, all of whom shall be appointed by the supreme court from among judges of the courts of record located within the territorial jurisdiction in each of any five of the appellate districts, not including that within which the respondent judge resides.~~

~~Such a commission shall be appointed by the supreme court upon receipt of a report of its board of commissioners on grievances and discipline that such board has received a written and sworn complaint alleging that cause exists for retirement, removal, or suspension of a judge under section 2701.12 of the Revised Code, and that upon investigation and a finding by at least two-thirds of the members of such board that there is substantial credible evidence in support of such complaint. Any judge so retired, removed, or suspended may appeal, on the record made before the commission, from the commission's action to the supreme court. The commission, the court, or a judge of~~

940 ~~the court may stay execution of an order pending disposition of~~
941 ~~an appeal. The court may affirm, reverse, or modify the order of~~
942 ~~the commission.~~

943
944 ~~Members of the commission shall be reimbursed from the~~
945 ~~state treasury for their actual and necessary expenses in~~
946 ~~connection with their service on the commission.~~

947
948 ~~The administrative director of the supreme court shall be~~
949 ~~the secretary of each commission appointed to consider~~
950 ~~retirement, removal, or suspension of a judge. The secretary~~
951 ~~supreme court shall certify each order of a commission which~~
952 ~~that commands the retirement, removal, or suspension, unless~~
953 ~~fully stayed, of a judge to the governor, the chief justice of~~
954 ~~the supreme court, and the officer required by law to draw~~
955 ~~warrants for payment of the salary of such judge.~~

956
957 ~~Upon the request of any such commission, the attorney~~
958 ~~general shall assist in the performance of its duties.~~

959
960 **Sec. 2701.12.** (A) Cause for removal or suspension of a
961 judge from office without pay under section 2701.11 of the
962 Revised Code exists when ~~he~~ the judge has done any of the
963 following, since first elected or appointed to judicial office:

964
965 (1) Engaged in any ~~misconduct involving moral turpitude, or~~
966 a violation of ~~such of the canons of judicial ethics~~ Ohio Code
967 of Judicial Conduct or the Supreme Court Rules of Professional
968 Conduct adopted by the supreme court ~~as~~ that would result in a
969 substantial loss of public respect for the office;

970

971 (2) Been convicted of ~~a crime involving moral turpitude~~ an
972 illegal act that adversely reflects on the honesty or
973 trustworthiness of the judge; ~~or~~

974

975 (3) Been disbarred or suspended for an indefinite period
976 from the practice of law for misconduct occurring before or
977 after such election or appointment.

978

979 (B) Grounds for retirement of a judge from office for
980 disability exist when ~~he~~ the judge has a permanent physical or
981 mental disability which prevents the proper discharge of the
982 duties of ~~his~~ the office.

983

984 (C) Grounds for suspension without pay of a judge from
985 office for disability exist when ~~he~~ the judge has a physical or
986 mental disability which will prevent the proper discharge of the
987 duties of ~~his~~ the office for an indefinite time.



APPENDIX B

SURVEY RESULTS

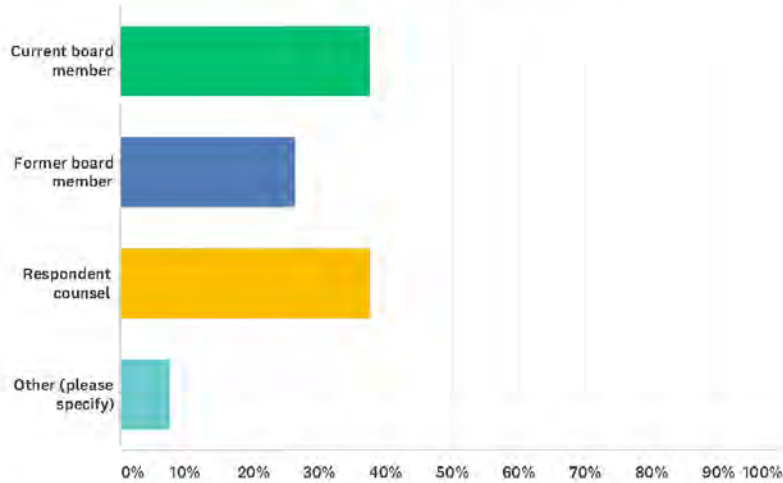


Ohio Disciplinary System Survey 2019

SurveyMonkey

**Q1 What is your current role within the Ohio lawyer discipline system?
Please check all that apply.**

Answered: 53 Skipped: 0



ANSWER CHOICES	RESPONSES	
Current board member	37.74%	20
Former board member	26.42%	14
Respondent counsel	37.74%	20
Other (please specify)	7.55%	4
Total Respondents: 53		

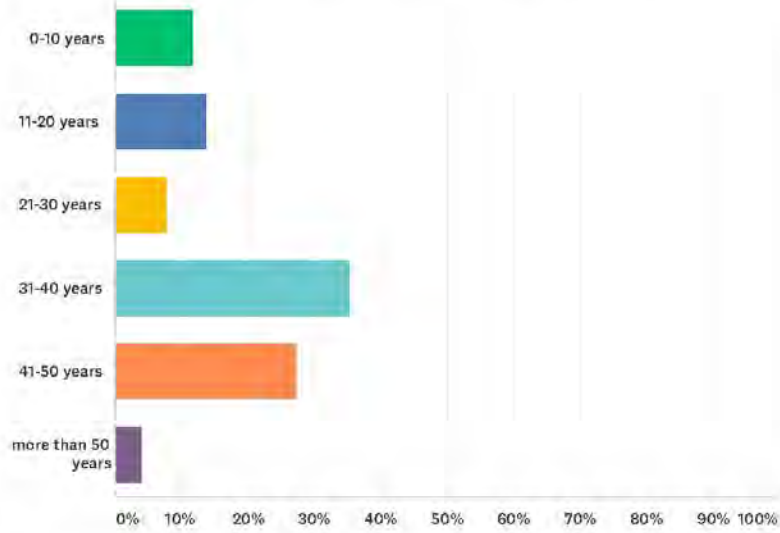
#	OTHER (PLEASE SPECIFY)	DATE
1	Former Assistant Disciplinary Counsel	1/15/2019 2:13 PM
2	member of prior task force	1/14/2019 10:43 AM
3	Former CGC (Toledo) Member	1/7/2019 9:27 AM
4	Former Bar Counsel	1/5/2019 10:40 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q2 How many years have you been a member of the bar?

Answered: 51 Skipped: 2



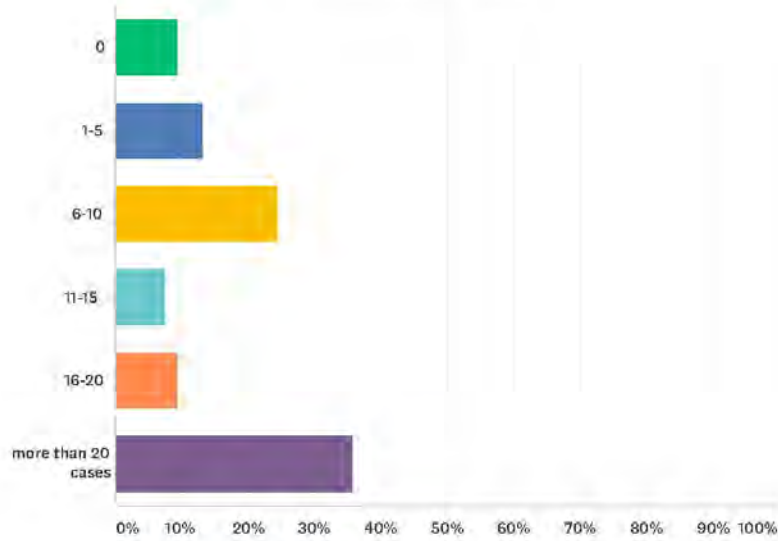
ANSWER CHOICES	RESPONSES	
0-10 years	11.76%	6
11-20 years	13.73%	7
21-30 years	7.84%	4
31-40 years	35.29%	18
41-50 years	27.45%	14
more than 50 years	3.92%	2
TOTAL		51

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q3 How many disciplinary cases have you participated in over the past five years?

Answered: 53 Skipped: 0



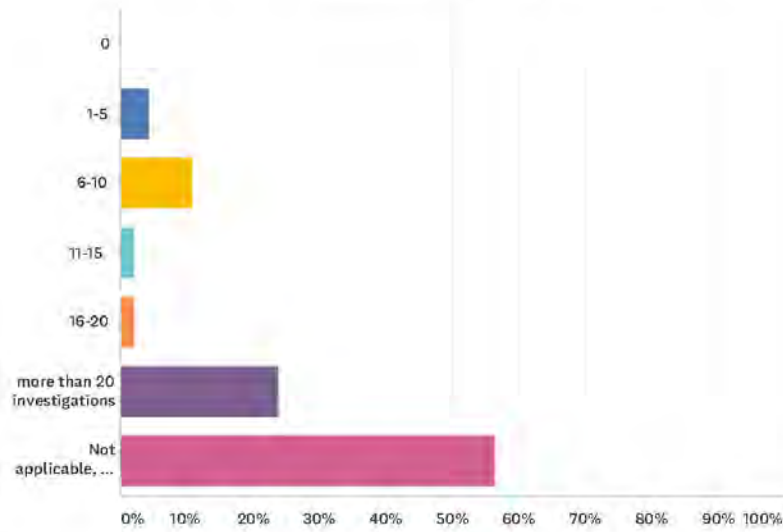
ANSWER CHOICES	RESPONSES	
0	9.43%	5
1-5	13.21%	7
6-10	24.53%	13
11-15	7.55%	4
16-20	9.43%	5
more than 20 cases	35.85%	19
TOTAL		53

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q4 If you are respondent counsel, how many grievance investigations have you participated in over the past five years?

Answered: 46 Skipped: 7



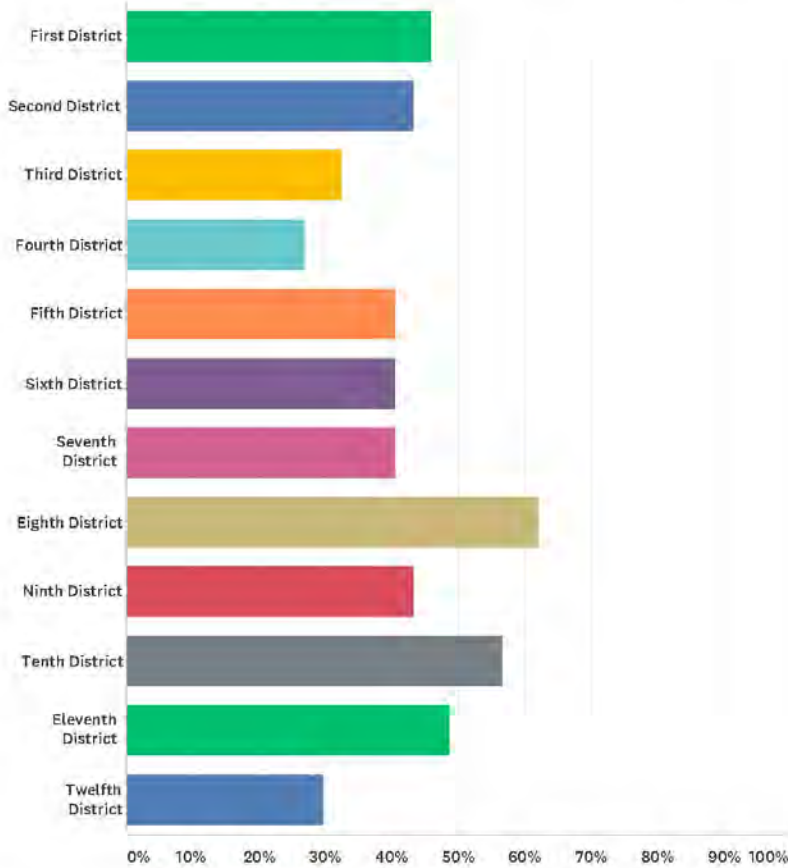
ANSWER CHOICES	RESPONSES	
0	0.00%	0
1-5	4.35%	2
6-10	10.87%	5
11-15	2.17%	1
16-20	2.17%	1
more than 20 investigations	23.91%	11
Not applicable, I am not respondent counsel.	56.52%	26
TOTAL		46

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q5 In what Ohio appellate districts do you have experience in the disciplinary process? Please check all that apply.

Answered: 37 Skipped: 16



ANSWER CHOICES	RESPONSES	
First District	45.95%	17
Second District	43.24%	16
Third District	32.43%	12
Fourth District	27.03%	10
Fifth District	40.54%	15
Sixth District	40.54%	15
Seventh District	40.54%	15

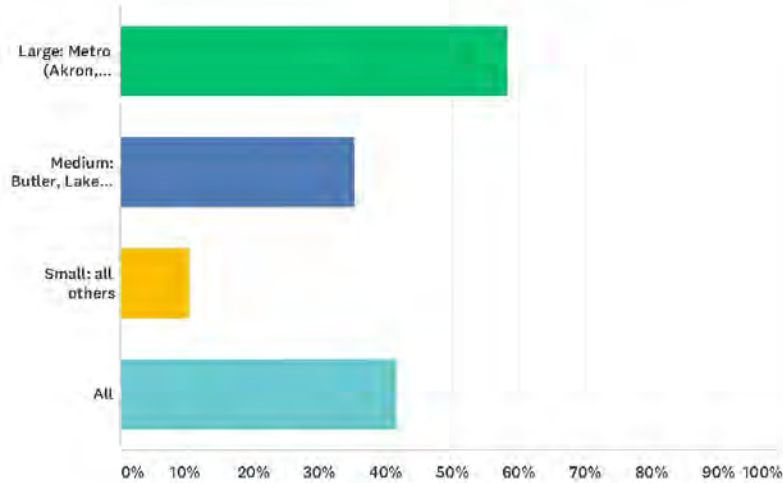
Ohio Disciplinary System Survey 2019		SurveyMonkey
Eighth District	62.16%	23
Ninth District	43.24%	16
Tenth District	56.76%	21
Eleventh District	48.65%	18
Twelfth District	29.73%	11
Total Respondents: 37		

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q6 With what size Certified Grievance Committees have you had experience? Please check all that apply.

Answered: 48 Skipped: 5



ANSWER CHOICES	RESPONSES
Large: Metro (Akron, Cincinnati, Cleveland, Cuyahoga County, Columbus, Dayton, Toledo) and OSBA	58.33% 28
Medium: Butler, Lake, Lorain, Mahoning, Stark, Medina and Trumbull Counties	35.42% 17
Small: all others	10.42% 5
All	41.67% 20
Total Respondents: 48	

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q7 In your opinion, how important do you think it is that the Office of Disciplinary Counsel possess the following characteristics?

Answered: 53 Skipped: 0

	HIGHLY IMPORTANT	IMPORTANT	UNIMPORTANT	HIGHLY UNIMPORTANT	DON'T KNOW/NA	TOTAL	WEIGHTED AVERAGE
Knowledge of the Rules of Professional Conduct	94.34% 50	3.77% 2	0.00% 0	1.89% 1	0.00% 0	53	1.09
Adequate communication throughout process	71.70% 38	26.42% 14	0.00% 0	1.89% 1	0.00% 0	53	1.32
Knowledge of procedures under Rule V of the Rules for the Government of the Bar of Ohio	84.91% 45	13.21% 7	0.00% 0	1.89% 1	0.00% 0	53	1.19
Understanding of case law of professional conduct	73.58% 39	24.53% 13	0.00% 0	1.89% 1	0.00% 0	53	1.30
Knowledge/understanding of the practice of law	80.77% 42	17.31% 9	0.00% 0	1.92% 1	0.00% 0	52	1.23
Attention to a prompt, yet thorough resolution	73.58% 39	24.53% 13	1.89% 1	0.00% 0	0.00% 0	53	1.28
Impartiality	84.62% 44	13.46% 7	1.92% 1	0.00% 0	0.00% 0	52	1.17
Fairness to respondent	83.02% 44	13.21% 7	1.89% 1	1.89% 1	0.00% 0	53	1.23
Fairness to grievant	75.47% 40	20.75% 11	1.89% 1	1.89% 1	0.00% 0	53	1.30
Protection of the public	92.45% 49	5.66% 3	1.89% 1	0.00% 0	0.00% 0	53	1.09

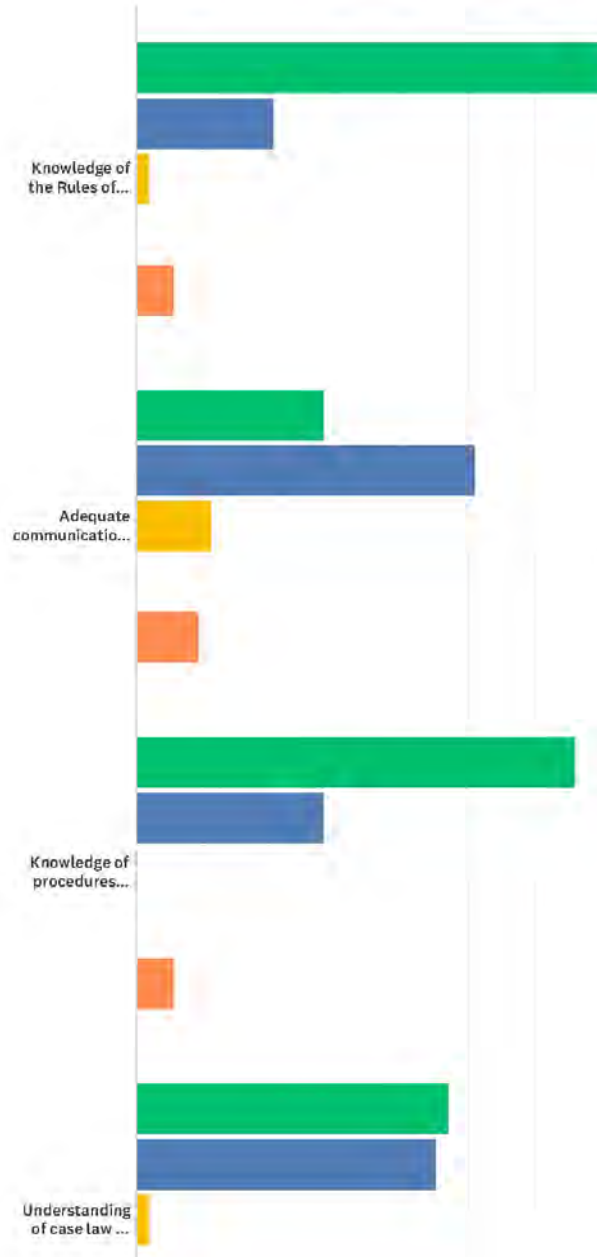
#	COMMENT (OPTIONAL)	DATE
1	You don't need to be "fair" to one party or the other, just depends where the evidence goes.	1/14/2019 4:11 PM
2	I was a non-lawyer former Board Member. Served two terms. From a family of trial lawyers.	1/14/2019 9:27 AM
3	Unusual question -- I would hope all in the process agree	1/14/2019 9:03 AM
4	poor question.	1/8/2019 9:39 AM
5	Case law precedent changes with the composition of the court, societal attitudes, and the mood of the Justices on any given day. For every presumption there are numerous exceptions and it's almost impossible to predict what the Court will do on any given matter once it leaves the Board	1/4/2019 2:39 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

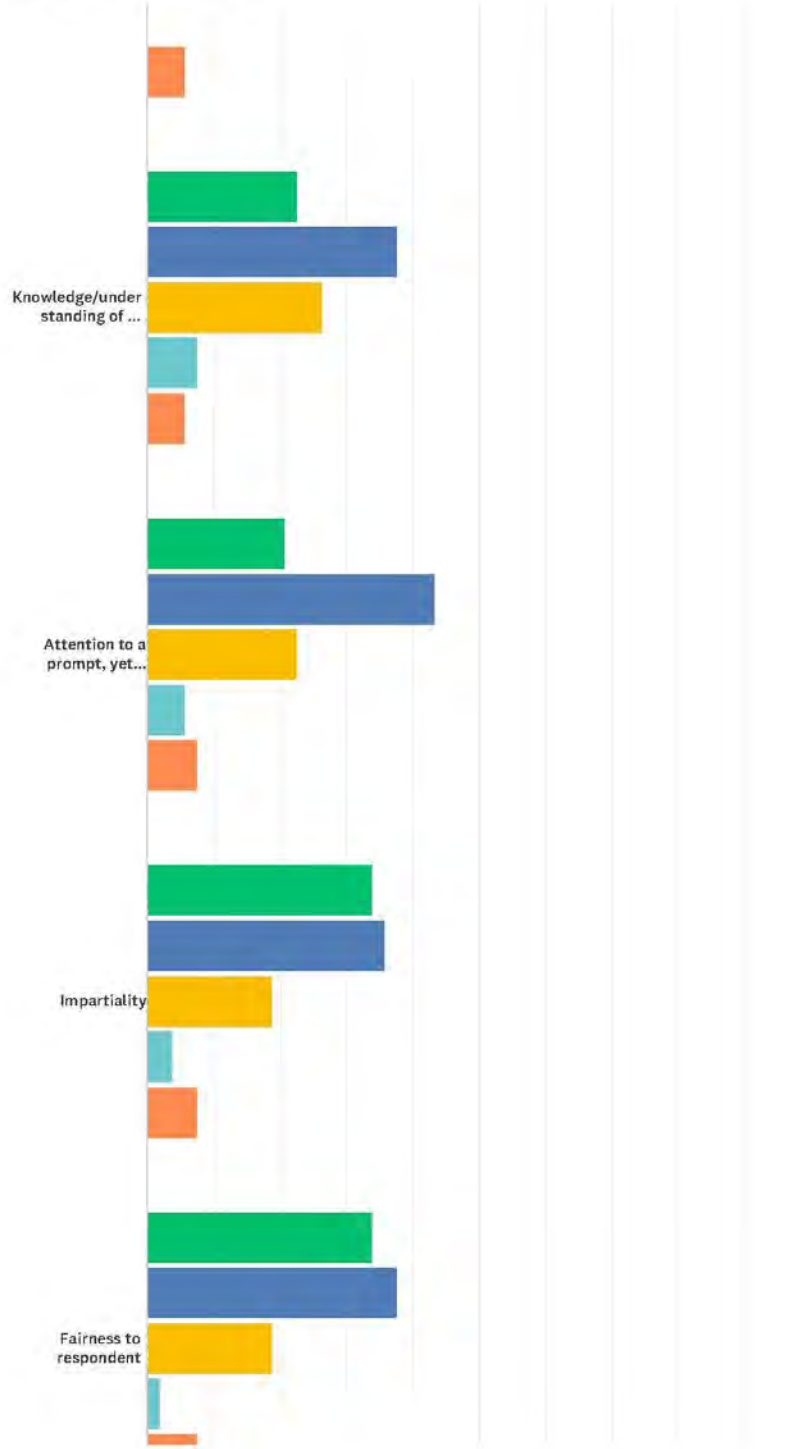
Q8 How would you rate the following characteristics of the current Office of Disciplinary Counsel?

Answered: 53 Skipped: 0



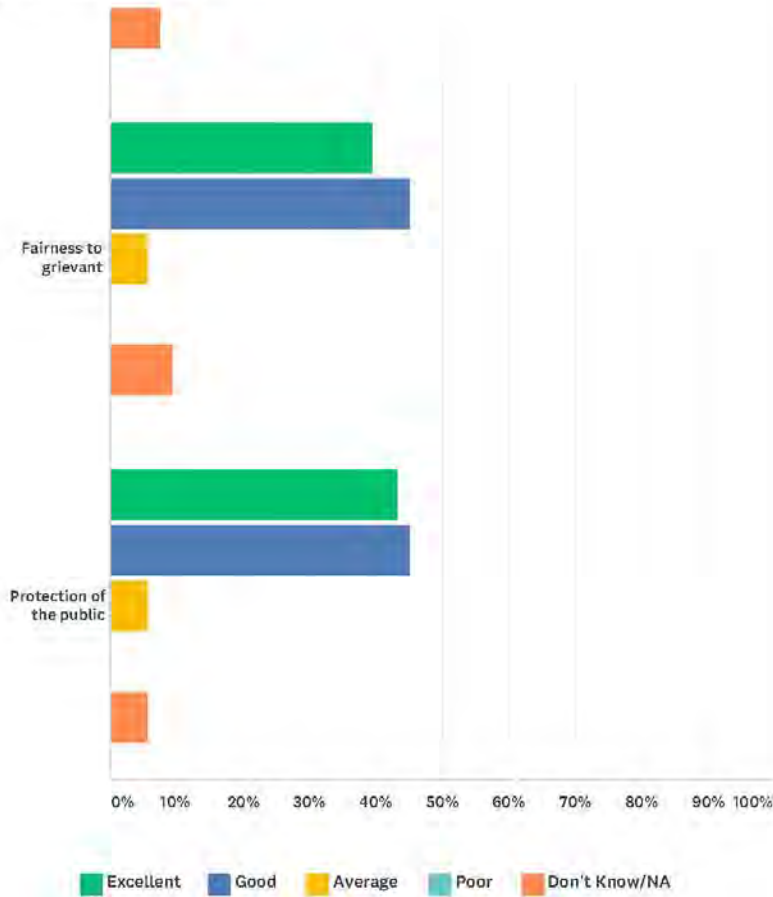
Ohio Disciplinary System Survey 2019

SurveyMonkey



Ohio Disciplinary System Survey 2019

SurveyMonkey



	EXCELLENT	GOOD	AVERAGE	POOR	DON'T KNOW/NA	TOTAL
Knowledge of the Rules of Professional Conduct	71.70% 38	20.75% 11	1.89% 1	0.00% 0	5.66% 3	53
Adequate communication throughout process	28.30% 15	50.94% 27	11.32% 6	0.00% 0	9.43% 5	53
Knowledge of procedures under Rule V of the Rules for the Government of the Bar of Ohio	66.04% 35	28.30% 15	0.00% 0	0.00% 0	5.66% 3	53
Understanding of case law of professional conduct	47.17% 25	45.28% 24	1.89% 1	0.00% 0	5.66% 3	53
Knowledge/understanding of the practice of law	22.64% 12	37.74% 20	26.42% 14	7.55% 4	5.66% 3	53
Attention to a prompt, yet thorough resolution	20.75% 11	43.40% 23	22.64% 12	5.66% 3	7.55% 4	53
Impartiality	33.96% 18	35.85% 19	18.87% 10	3.77% 2	7.55% 4	53
Fairness to respondent	33.96% 18	37.74% 20	18.87% 10	1.89% 1	7.55% 4	53

Ohio Disciplinary System Survey 2019

SurveyMonkey

Fairness to grievant	39.62%	45.28%	5.66%	0.00%	9.43%	
	21	24	3	0	5	53
Protection of the public	43.40%	45.28%	5.66%	0.00%	5.66%	
	23	24	3	0	3	53

#	COMMENT (OPTIONAL)	DATE
1	Most if not all of ODC's attorneys lack private sector experience. ODC needs to hire more assistants with private sector experience given that the majority of grievances are against private attorneys. At the very least, ODC should seek advice from trusted private attorneys to offer insight on private practices.	1/15/2019 2:13 PM
2	It seems as though no one with the current Disciplinary Counsel has any private practice/practical experience.	1/14/2019 4:11 PM
3	No experience with current ODC	1/14/2019 11:16 AM
4	My last term on the Board ended in 2012. Sorry I cannot be helpful regarding the current ODC.	1/14/2019 9:27 AM
5	I would not rate all the assistants the same on all these categories. I would rate some as excellent in all categories and others I would rate as only average in some categories.	1/14/2019 9:03 AM
6	The ODC does a good job	1/10/2019 6:48 PM
7	This is an overall rating of the office. I would rate some trial counsel at ODC higher in some categories and others lower. For example, most display fairness to the respondent. Others seem to "have it out" for the respondent.	1/10/2019 12:11 PM
8	knowledge based only on observation at panel hearings. Little knowledge of pre-hearing conduct.	1/8/2019 9:39 AM
9	"Impartiality" is important for the panel but not so much for the Disciplinary Counsel, as its office has the advocate's job of presenting a case. You should drop "Impartiality" and rely on the subsequent two "Fairness" questions as to Disciplinary Counsel.	1/6/2019 9:19 AM
10	Some members of the staff are better than others. It would be helpful if more of them had actually been in private practice.	1/4/2019 2:39 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q9 In your opinion, how important do you think it is that the Certified Grievance Committees possess the following characteristics?

Answered: 53 Skipped: 0

	HIGHLY IMPORTANT	IMPORTANT	UNIMPORTANT	HIGHLY UNIMPORTANT	DON'T KNOW/NA	TOTAL
Knowledge of the Rules of Professional Conduct	92.45% 49	7.55% 4	0.00% 0	0.00% 0	0.00% 0	53
Adequate communication throughout process	67.92% 36	32.08% 17	0.00% 0	0.00% 0	0.00% 0	53
Knowledge of procedures under Rule V of the Rules for the Government of the Bar of Ohio	84.91% 45	15.09% 8	0.00% 0	0.00% 0	0.00% 0	53
Understanding of case law of professional conduct	73.58% 39	26.42% 14	0.00% 0	0.00% 0	0.00% 0	53
Knowledge/understanding of the practice of law	79.25% 42	20.75% 11	0.00% 0	0.00% 0	0.00% 0	53
Attention to a prompt, yet thorough resolution	64.15% 34	33.96% 18	1.89% 1	0.00% 0	0.00% 0	53
Impartiality	82.69% 43	17.31% 9	0.00% 0	0.00% 0	0.00% 0	52
Fairness to respondent	84.91% 45	13.21% 7	1.89% 1	0.00% 0	0.00% 0	53
Fairness to grievant	79.25% 42	18.87% 10	1.89% 1	0.00% 0	0.00% 0	53
Protection of the public	88.68% 47	11.32% 6	0.00% 0	0.00% 0	0.00% 0	53

#	COMMENT (OPTIONAL)	DATE
1	Individual members should not be expected to have all of the knowledge and skill so long as bar counsel possesses the requisite qualities and acts as an independent force ensuring quality and consistency.	1/15/2019 2:51 PM
2	I was a layperson former Board member. Worked as a Certified Legal Assistant for several plaintiff's law firms. Many family members are currently practicing trial lawyers.	1/14/2019 9:27 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q10 How would you rate the following characteristics of the current Certified Grievance Committees?

Answered: 52 Skipped: 1

	EXCELLENT	GOOD	AVERAGE	POOR	DON'T KNOW/NA	TOTAL
Knowledge of the Rules of Professional Conduct	13.46% 7	48.08% 25	25.00% 13	3.85% 2	9.62% 5	52
Adequate communication throughout process	13.46% 7	26.92% 14	42.31% 22	3.85% 2	13.46% 7	52
Knowledge of procedures under Rule V of the Rules for the Government of the Bar of Ohio	11.54% 6	38.46% 20	26.92% 14	11.54% 6	11.54% 6	52
Understanding of case law of professional conduct	7.69% 4	36.54% 19	36.54% 19	9.62% 5	9.62% 5	52
Knowledge/understanding of the practice of law	34.62% 18	34.62% 18	19.23% 10	1.92% 1	9.62% 5	52
Attention to a prompt, yet thorough resolution	7.69% 4	25.00% 13	48.08% 25	5.77% 3	13.46% 7	52
Impartiality	11.54% 6	48.08% 25	25.00% 13	3.85% 2	11.54% 6	52
Fairness to respondent	19.23% 10	38.46% 20	26.92% 14	3.85% 2	11.54% 6	52
Fairness to grievant	26.92% 14	42.31% 22	17.31% 9	1.92% 1	11.54% 6	52
Protection of the public	25.00% 13	42.31% 22	21.15% 11	1.92% 1	9.62% 5	52

#	COMMENT (OPTIONAL)	DATE
1	Cincinnati and Cleveland bar are generally good and consistent. Columbus, Dayton, Akron, Toledo, some others are very hit or miss.	1/14/2019 4:11 PM
2	No dealings .	1/14/2019 12:51 PM
3	This is too broad in scope and I have not seen all grievance committees in action.	1/14/2019 12:40 PM
4	No experience with current CGCs	1/14/2019 11:16 AM
5	It of course varies with the individual CGC.	1/14/2019 10:43 AM
6	My last term ended in 2012.	1/14/2019 9:27 AM
7	My responses would be very different if asked about individual committees. The larger the jurisdiction the better the committee in virtually all categories.	1/14/2019 9:03 AM
8	Some CGC are very good. Some are not so good. IMO: The Cincinnati Bar Assn. is the worst - not trustworthy.	1/10/2019 6:48 PM
9	Again, an overall view. When cases are prosecuted by bar counsel, the performance is higher. Volunteer lawyers generally do not have the depth of experience in this area to have a firm grasp of RPC or disciplinary case procedures. This can be developed only through repetition, development of knowledge and experience, and frequent application of the same.	1/10/2019 12:11 PM
10	varies among certified grievance committees	1/10/2019 10:16 AM
11	Hard to answer accurately. Some districts are very good. Other Districts are at best average.	1/8/2019 9:39 AM
12	It is not possible to answer this as the characteristics of the various Grievance Committees varies.	1/7/2019 11:30 AM

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13	Quality varies with the capability of Bar Counsel and the members of the committee. Some committees are quite good; some are poor.	1/4/2019 2:39 PM
14	This is too big of a range of participants under 1 question to be meaningful.	1/4/2019 1:03 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q11 How would you rate the skill level of Certified Grievance Committee VOLUNTEER COUNSEL in the disciplinary process?

Answered: 52 Skipped: 1

	EXCELLENT	GOOD	AVERAGE	POOR	DON'T KNOW/NA	TOTAL
Thoroughness of investigation	3.85% 2	40.38% 21	30.77% 16	7.69% 4	17.31% 9	52
Adequacy and thoroughness of complaint and investigatory report	5.77% 3	34.62% 18	32.69% 17	7.69% 4	19.23% 10	52
Presentation of evidence and arguments	3.85% 2	28.85% 15	34.62% 18	15.38% 8	17.31% 9	52
Use of stipulations	5.77% 3	28.85% 15	40.38% 21	9.62% 5	15.38% 8	52
Ability to present a succinct and focused case	3.85% 2	23.08% 12	40.38% 21	17.31% 9	15.38% 8	52
Understanding and experience level of the practice of law	11.54% 6	40.38% 21	26.92% 14	5.77% 3	15.38% 8	52
Thoroughness and clarity of recommendations	5.77% 3	30.77% 16	40.38% 21	7.69% 4	15.38% 8	52

#	COMMENT (OPTIONAL)	DATE
1	Volunteers generally have a better idea of the practical aspects of practicing law. But often they seem to get caught up in the holier than thou game and it often appears that who gets charged with a formal complaint depends more on who is liked or disliked in the local community as opposed to just on the merits.	1/14/2019 4:11 PM
2	Some volunteer counsel are better than others.	1/14/2019 12:59 PM
3	No dealings	1/14/2019 12:51 PM
4	Same comment as #10. However, with respect to those volunteer counsel that have appeared before me I found them to be less prepared than the disciplinary counsel.	1/14/2019 12:40 PM
5	See #10	1/14/2019 11:16 AM
6	It of course varies with the individual CGC and the individual volunteer investigator and assigned counsel.	1/14/2019 10:43 AM
7	No experience with the above, but Volunteer Counsel sounds like a good idea which was implemented after my term expired in 2012.	1/14/2019 9:27 AM
8	Again, larger jurisdiction committees are better. Smaller tend to make unfortunate mistakes. Less experience in handling disciplinary investigations and prosecutions just means they are less sophisticated in these matters. Not a reflection on them as lawyers -- we are all less capable in areas we don't have much experience in.	1/14/2019 9:03 AM
9	Some volunteer counsel are excellent. Some are pretty poor. The Cincinnati Bar volunteer counsel cannot - in my opinion - be trusted. That Bar Assn. needs a major change in its culture.	1/10/2019 6:48 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

10	Some have been very good; but my colleagues and I have observed an overall impression that investigations and cases by volunteer counsel are less predictable and more likely to encounter problems than when matters proceed through ODC. Some volunteer investigators have proceeded as though they wouldn't do justice to their investigation without searching every conceivable detail, or conducting a live interview of the respondent, to the point where investigations remained open far longer than necessary--and at greater expense and anxiety to the respondent. We have also defended investigations where the volunteer counsel's lack of familiarity with the area of practice or subject matter of the grievance needlessly prolonged the investigation. We have also had situations where volunteer counsel could have exercised better care to maintain the confidentiality of an investigation. Finally, we have had experiences where volunteer counsel adopted more of a punitive or prosecutorial posture than someone within ODC would adopt--less inclined to enter stipulations, less geared toward protection of the public than punishment to the respondent, etc. This isn't to say we haven't had good experiences with volunteer counsel; we've had both good and less good experiences, but our overall experience is that we will have a more informed, professional, and predictable experience when a matter proceeds through ODC.	1/10/2019 4:30 PM
11	As a general rule, volunteer counsel perform at the lowest level of those involved in the process (except for unrepresented respondents). This is not through the lack of effort or trial skills, but rather through the lack of repeated experience in investigating, preparing, and trying disciplinary cases. They simply do not have the same opportunity to gain familiarity with the rules, procedures, opposing counsel, and panel members as to attorneys at Disciplinary Counsel or bar counsel who try cases on behalf of their committee.	1/10/2019 12:11 PM
12	varies among committees	1/10/2019 10:16 AM
13	I have no knowledge of who is and is not volunteer counsel for certified grievance committees	1/10/2019 10:12 AM
14	There is a great variation in ability and attention to detail among voluntary counsel. Most are good.	1/8/2019 9:39 AM
15	I have no idea how to answer this. It is primarily the Bar Counsel that do the work before the Commission	1/7/2019 11:30 AM
16	This covers too big a swathe of participants to be lumped under 1 question.	1/4/2019 1:03 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q12 How would you rate the skill level of LOCAL BAR COUNSEL in the disciplinary process?

Answered: 52 Skipped: 1

	EXCELLENT	GOOD	AVERAGE	POOR	DON'T KNOW/NA	TOTAL
Thoroughness of investigation	15.38% 8	51.92% 27	15.38% 8	3.85% 2	13.46% 7	52
Adequacy and thoroughness of complaint and investigatory report	15.38% 8	46.15% 24	17.31% 9	5.77% 3	15.38% 8	52
Presentation of evidence and arguments	15.38% 8	40.38% 21	21.15% 11	7.69% 4	15.38% 8	52
Use of stipulations	13.46% 7	42.31% 22	23.08% 12	5.77% 3	15.38% 8	52
Ability to present a succinct and focused case	17.31% 9	36.54% 19	21.15% 11	9.62% 5	15.38% 8	52
Understanding and experience level of the practice of law	21.15% 11	34.62% 18	25.00% 13	5.77% 3	13.46% 7	52
Thoroughness and clarity of recommendations	15.38% 8	36.54% 19	25.00% 13	7.69% 4	15.38% 8	52

#	COMMENT (OPTIONAL)	DATE
1	Again, Cincinnati and Cleveland are good, the others around the state a very hit or miss consistency wise.	1/14/2019 4:11 PM
2	No dealings	1/14/2019 12:51 PM
3	Same comment as #11.	1/14/2019 12:40 PM
4	See #100	1/14/2019 11:16 AM
5	Above is based upon my experience from 2006 through 2012.	1/14/2019 9:27 AM
6	The bar counsel at the larger metropolitan committees are quite good. Most do not try the cases though.	1/14/2019 9:03 AM
7	Again, some are excellent and some are not very good. One, The Cincinnati Bar Counsel is not trustworthy. In my opinion, they fix cases for those they like and put the screws to those who don't have much in the way of resources.	1/10/2019 6:48 PM
8	Our dealings have predominantly been with the volunteer counsel during cases, more than the local bar counsel. During investigations, our contact with the bar counsel has been more frequent, and these experiences are typically good--closer to our experience with ODC (with a handful of exceptions).	1/10/2019 4:30 PM
9	An average among all bar counsel. For those bar counsel who try cases, I would generally rate them higher. For those who essentially serve as paralegals for their committees and committee members, I would generally rate them much lower.	1/10/2019 12:11 PM
10	Again there is a great variation in skill and attention to detail.	1/8/2019 9:39 AM
11	They vary. The majority are excellent	1/7/2019 11:30 AM
12	See comments regarding committees, in general. Some Bar Counsel are excellent. Some are terrible.	1/4/2019 2:39 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q13 Ohio has 32 certified grievance committees throughout the state. Do you agree or disagree with the following statements about the current structure of certified grievance committees in Ohio?

Answered: 52 Skipped: 1

	STRONGLY AGREE	AGREE	DISAGREE	STRONGLY DISAGREE	DON'T KNOW/NA	TOTAL
The current geographic system is effective.	10.00% 5	50.00% 25	18.00% 9	4.00% 2	18.00% 9	50
Having the current number of grievance committees increases the chances of fairness and impartiality across the state.	9.62% 5	28.85% 15	19.23% 10	11.54% 6	30.77% 16	52
Having the current number of grievance committees decreases the chances of fairness and impartiality across the state.	7.69% 4	13.46% 7	44.23% 23	5.77% 3	28.85% 15	52
It is important to have large, medium and small grievance committees throughout the state to represent the many environments where Ohio lawyers practice law.	13.46% 7	44.23% 23	26.92% 14	3.85% 2	11.54% 6	52
Regionalization of grievance committees would decrease the efficiency and effectiveness of the process.	5.77% 3	23.08% 12	32.69% 17	15.38% 8	23.08% 12	52
Regionalization of grievance committees would increase the efficiency and effectiveness of the process.	3.92% 2	39.22% 20	31.37% 16	3.92% 2	21.57% 11	51
Eliminating the grievance committees and centralizing the disciplinary process would make the process worse.	17.31% 9	40.38% 21	19.23% 10	13.46% 7	9.62% 5	52
Eliminating the grievance committees and centralizing the disciplinary process would make the process better.	11.54% 6	23.08% 12	34.62% 18	19.23% 10	11.54% 6	52

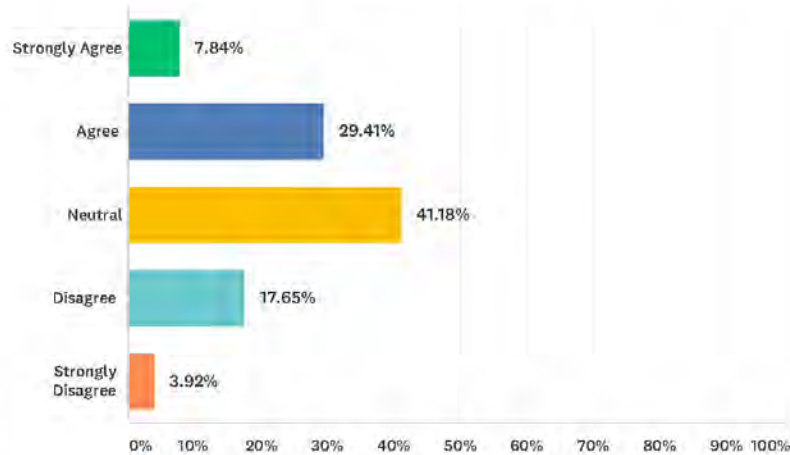
#	COMMENT (OPTIONAL)	DATE
1	A centralized system would increase consistency and the quality of investigations and prosecutions	1/15/2019 2:13 PM
2	Right now it's a crap shoot. Scott Drexel draws a hard line and will prosecute just about anything regardless of whether an attorney is a threat to the public or not. It seems many local CGCs follow this lead and have taken a harder line over stupid/petty allegations over the years, but they often don't have knowledge or experience to know when they don't have a case. So now more are taking a shotgun approach of throwing multiple allegations at respondents and making the Board and respondent's counsel do more of their jobs for them to sort out what lacks merit, instead of them proving their allegations by C&C evidence.	1/14/2019 4:11 PM
3	Candidly, although I have been on the Board for two years I do not feel that I have sufficient information that allows me to fairly, and competently, respond to these very broad questions.	1/14/2019 12:40 PM
4	There are more disadvantages than advantages to having 32 local committees. Some committees haven't brought a disciplinary complaint in years. How can they be expected to be on the same level as the Office of Disciplinary Counsel.	1/14/2019 9:03 AM
5	Who polices the grievance committees?	1/10/2019 6:48 PM
6	eliminate ineffective committees	1/10/2019 10:16 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q14 Please indicate whether you agree or disagree with the following statement: "The process of evaluating purported misconduct is fair and impartial in Certified Grievance Committees, despite size or geography."

Answered: 51 Skipped: 2



ANSWER CHOICES	RESPONSES	
Strongly Agree	7.84%	4
Agree	29.41%	15
Neutral	41.18%	21
Disagree	17.65%	9
Strongly Disagree	3.92%	2
TOTAL		51

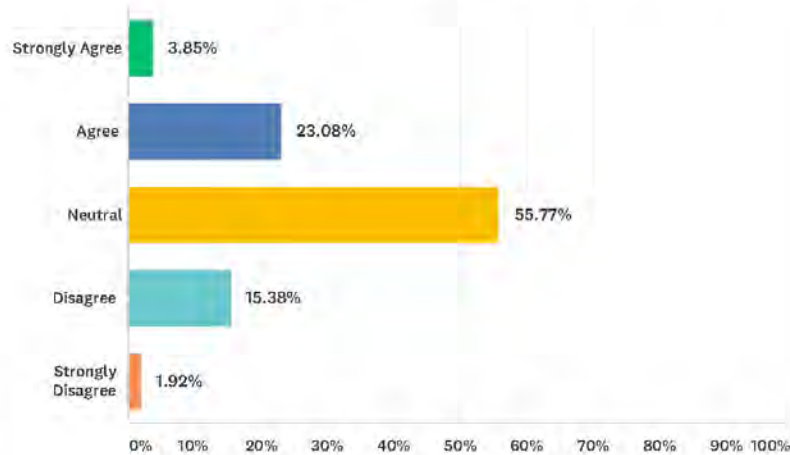
#	COMMENT (OPTIONAL)	DATE
1	My experience is limited to the Dayton Bar Association grievance committee and disciplinary Counsel's office	1/21/2019 3:46 PM
2	See my comments to the above several questions.	1/14/2019 12:40 PM
3	While I have sometimes wondered at motivations, I question the ability of the committees to be fair and impartial primarily based on their level of experience in the system and the pre-conceived notions they bring to the work of serving on their committee.	1/14/2019 9:03 AM
4	Again, some do an excellent job and some are pretty poor. Depending on the membership of the committees, a committee can go from good to bad or bad to good fairly quickly. When Bruce Campbell was the Columbus Bar Association Counsel he was usually unprofessional and nasty, but fairly harmless. Lori Brown now has that job and she is very good at it. In my opinion, as a result of Ms. Brown the entire Columbus Bar Association Committee is now much better than it was. Some CGC members do outstanding work. Others, not so much. The lack of uniformity of performance is a concern.	1/10/2019 6:48 PM
5	Depends on the GC	1/5/2019 10:40 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q15 Please indicate whether you agree or disagree with the following statement: "The internal operations of Certified Grievance Committees are fair and impartial, despite size or geography."

Answered: 52 Skipped: 1



ANSWER CHOICES	RESPONSES	
Strongly Agree	3.85%	2
Agree	23.08%	12
Neutral	55.77%	29
Disagree	15.38%	8
Strongly Disagree	1.92%	1
TOTAL		52

#	COMMENT (OPTIONAL)	DATE
1	My experience is limited to the Dayton Bar Association grievance committee and disciplinary Counsel's office	1/21/2019 3:46 PM
2	Depends on which CGC. Some do a good job, others are just old boy clubs.	1/14/2019 4:11 PM
3	See comment to #15.	1/14/2019 12:40 PM
4	I have never served on a committee so I can't really evaluate the difference between "The process of evaluating purported misconduct..." (#14) and the "The internal operations..." (#15).	1/14/2019 9:03 AM
5	Sometimes yes. Sometimes no. The Cincinnati Bar Association is - in my opinion - not trustworthy. Again, there is a lack of uniformity of performance among the CGCs.	1/10/2019 6:48 PM
6	some are better than others.	1/8/2019 9:39 AM
7	Depends on GC	1/5/2019 10:40 AM
8	I do not agree, but the internal operations of ODC seem no better.	1/4/2019 2:19 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q16 Large Certified Grievance Committees include committees in Akron, Cincinnati, Cleveland, Cuyahoga County, Columbus, Dayton, Toledo and the OSBA. Please rate your satisfaction with the Large Certified Grievance Committees.

Answered: 51 Skipped: 2

	HIGH	MEDIUM	LOW	DON'T KNOW/NA	TOTAL	WEIGHTED AVERAGE
Fairness	35.29% 18	47.06% 24	3.92% 2	13.73% 7	51	1.64
Efficiency	25.49% 13	52.94% 27	5.88% 3	15.69% 8	51	1.77
Effectiveness	25.49% 13	54.90% 28	5.88% 3	13.73% 7	51	1.77
Impartiality	37.25% 19	41.18% 21	5.88% 3	15.69% 8	51	1.63
Preparedness	25.49% 13	54.90% 28	5.88% 3	13.73% 7	51	1.77
Professionalism	45.10% 23	39.22% 20	1.96% 1	13.73% 7	51	1.50
Experience level	25.49% 13	50.98% 26	7.84% 4	15.69% 8	51	1.79
Knowledge of the disciplinary process	23.53% 12	56.86% 29	5.88% 3	13.73% 7	51	1.80
Knowledge and understanding of the challenges presented in the day to day practice of law (e.g. time constraints, difficult clients, etc.)	43.14% 22	31.37% 16	11.76% 6	13.73% 7	51	1.64

#	COMMENT (OPTIONAL)	DATE
1	I can only speak to Dayton	1/21/2019 3:46 PM
2	Columbus is currently needing better leadership. Their CGC policy is ready fire aim, and they generally don't have a clue what they're doing and/or don't give the process the attention it deserves. The rest of the larger CGCs are generally okay to very good.	1/14/2019 4:11 PM
3	No dealings ..	1/14/2019 12:51 PM
4	See all comments.	1/14/2019 12:40 PM
5	Above is based upon my experience from 2006 through 2012.	1/14/2019 9:27 AM
6	There are some qualitative differences between the three C's (Cleveland, Columbus and Cincinnati) and the other listed committees. Cuyahoga County has not had a committee for several years.	1/14/2019 9:03 AM
7	Again, some are excellent. Some are pretty poor. The Cincinnati Bar is - in my opinion - terrible. Mean. Biased. Not to be trusted.	1/10/2019 6:48 PM
8	Having full time staff makes a difference in the preparedness	1/10/2019 10:12 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q17 Medium Certified Grievance Committees are located in Butler, Lake, Lorain, Mahoning, Stark, Medina and Trumbull Counties. Please rate your satisfaction with the Medium Certified Grievance Committees.

Answered: 51 Skipped: 2

	HIGH	MEDIUM	LOW	DON'T KNOW/NA	TOTAL	WEIGHTED AVERAGE
Fairness	21.57% 11	37.25% 19	3.92% 2	37.25% 19	51	1.72
Efficiency	11.76% 6	39.22% 20	9.80% 5	39.22% 20	51	1.97
Effectiveness	11.76% 6	41.18% 21	7.84% 4	39.22% 20	51	1.94
Impartiality	13.73% 7	39.22% 20	5.88% 3	41.18% 21	51	1.87
Preparedness	11.76% 6	41.18% 21	7.84% 4	39.22% 20	51	1.94
Professionalism	29.41% 15	31.37% 16	1.96% 1	37.25% 19	51	1.56
Experience level	19.61% 10	33.33% 17	9.80% 5	37.25% 19	51	1.84
Knowledge of the disciplinary process	13.73% 7	39.22% 20	9.80% 5	37.25% 19	51	1.94
Knowledge and understanding of the challenges presented in the day to day practice of law (e.g. time constraints, difficult clients, etc.)	26.00% 13	32.00% 16	6.00% 3	36.00% 18	50	1.69

#	COMMENT (OPTIONAL)	DATE
1	I haven't dealt frequently enough with the mid sized and small C.G.Cs in recent years to have an opinion about them as organizations as a whole.	1/14/2019 4:11 PM
2	No dealings	1/14/2019 12:51 PM
3	See all comments.	1/14/2019 12:40 PM
4	Again, some do excellent work and some are pretty poor. A committee that was good the last 5 years may not be so good this year. It depends in part in who is on the committee.	1/10/2019 6:48 PM
5	There are exceptions to the high rating within those different committees in the area of preparedness.	1/8/2019 9:39 AM
6	Mahoning is the committee I have seen most, and they are very high quality	1/4/2019 1:03 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q18 Please rate your level of satisfaction with the Small Certified Grievance Committees.

Answered: 51 Skipped: 2

	HIGH	MEDIUM	LOW	DON'T KNOW/NA	TOTAL	WEIGHTED AVERAGE
Fairness	11.76% 6	19.61% 10	11.76% 6	56.86% 29	51	2.00
Efficiency	3.92% 2	27.45% 14	13.73% 7	54.90% 28	51	2.22
Effectiveness	5.88% 3	25.49% 13	13.73% 7	54.90% 28	51	2.17
Impartiality	11.76% 6	19.61% 10	11.76% 6	56.86% 29	51	2.00
Preparedness	11.76% 6	19.61% 10	13.73% 7	54.90% 28	51	2.04
Professionalism	13.73% 7	23.53% 12	7.84% 4	54.90% 28	51	1.87
Experience level	5.88% 3	15.69% 8	23.53% 12	54.90% 28	51	2.39
Knowledge of the disciplinary process	3.92% 2	17.65% 9	21.57% 11	56.86% 29	51	2.41
Knowledge and understanding of the challenges presented in the day to day practice of law (e.g. time constraints, difficult clients, etc.)	17.65% 9	21.57% 11	5.88% 3	54.90% 28	51	1.74

#	COMMENT (OPTIONAL)	DATE
1	No dealings	1/14/2019 12:51 PM
2	See all comments.	1/14/2019 12:40 PM
3	Some are great. Some are pretty poor.It can depend on exactly who on the committee is handling "your" case. If it is a really good litigator, they are probably going to do a really good job. If it is a cowboy or cowgirl, who thinks every 50 cent case is the moral equivalent of the JFK assassination, look out! Also, the lawyers who don't really know what they are doing become scared and they tend to compensate by being - and this is a technical medical term - a pain the tush.Good lawyers are almost always a pleasure to work with - even when they are beating your brains in with the facts and the law.	1/10/2019 6:48 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q19 Please rate your overall satisfaction with each part of the disciplinary process.

Answered: 53 Skipped: 0

	HIGH	MEDIUM	LOW	DON'T KNOW/NA	TOTAL
Reporting grievances	30.19% 16	49.06% 26	5.66% 3	15.09% 8	53
Certified Grievance Committee investigations	22.64% 12	62.26% 33	7.55% 4	7.55% 4	53
Office of Disciplinary Counsel investigations	62.26% 33	32.08% 17	0.00% 0	5.66% 3	53
Certified Grievance Committee presentations	13.21% 7	69.81% 37	9.43% 5	7.55% 4	53
Office of Disciplinary Counsel presentations	58.49% 31	33.96% 18	3.77% 2	3.77% 2	53
Determining probable cause	40.38% 21	44.23% 23	5.77% 3	9.62% 5	52
Hearings before the Board	58.49% 31	32.08% 17	5.66% 3	3.77% 2	53
Presentations before the Court	37.74% 20	28.30% 15	0.00% 0	33.96% 18	53
Outcome reporting	49.02% 25	27.45% 14	0.00% 0	23.53% 12	51

#	EXPLAIN:	DATE
1	The investigations by the Dayton grievance committee involve a broad cross-section of practitioners and any significant grievance will come before the entire committee for consideration and questioning.. Disciplinary Counsel investigations tend to be by the book with somewhat less pragmatic experience of the practice engaged in the process.	1/21/2019 3:46 PM
2	CGCs are not properly handling their matters.	1/14/2019 2:03 PM
3	Above is based upon my service on the Board from 2006 through 2012.	1/14/2019 9:27 AM
4	My responses really vary between disciplinary counsel, large jurisdiction committees and the remaining committees.	1/14/2019 9:03 AM
5	Sorry to keep repeating myself, saying the same thing over and over, being redundant and repetitive. (Sorry.) But the ODC usually does a nice job with just about everything. Some CGC are excellent, some are pretty poor. This years pretty poor CGC might be next year's excellent committee, and this year's excellent CGC might be a sub-par committee in a few years - depending on who is on the committee.	1/10/2019 6:48 PM
6	varies among committees	1/10/2019 10:16 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q20 Please offer any additional comments about your responses in the previous question (optional).

Answered: 7 Skipped: 46

#	RESPONSES	DATE
1	The evaluation you are asking for is difficult. My experience as a board member exposed me to small, medium and large grievance committees who might do a good job on one case and then do less than a good job on the next because different individuals would be involved.	1/14/2019 7:16 PM
2	We need centralized office. Though politically difficult, it is the only to ensure fairness.	1/14/2019 2:03 PM
3	The smaller the committee the less likely they will have the requisite experience to handle investigations and prosecutions. Training is helpful, but without the ongoing experience, the training is of limited value.	1/14/2019 9:03 AM
4	We should consider additional kinds of sanctions and methods of rehabilitation for those who have violated the rules. I have several thoughts on these topics and would be happy to share them orally or in writing.	1/10/2019 6:48 PM
5	ODC does a better job investigating and presenting a case. The hearing panels are, overall, very good. The Court always is prepared for argument. The full opinions that come out are usually of good quality and hit the important facts and cases	1/8/2019 6:01 PM
6	I have a very hard time with these questions. That is because, as a Board member, I see only a portion of the process.	1/7/2019 11:30 AM
7	Respondent's counsel should not be treated as if he/she was on trial. Respect the advocate's role.	1/7/2019 11:23 AM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q21 What recommendations do you have regarding the disciplinary process? Choose up to three responses.

Answered: 53 Skipped: 0

ANSWER CHOICES	RESPONSES
Implement procedures to allow for more prompt resolution of cases.	41.51% 22
Increase skill level of Certified Grievance Committees.	45.28% 24
Retain current role of Certified Grievance Committees and Office of Disciplinary Counsel.	35.85% 19
Change roles of Certified Grievance Committees and Office of Disciplinary Counsel to provide more centralization of the disciplinary process.	16.98% 9
Regionalize Certified Grievance Committees.	16.98% 9
Eliminate the Certified Grievance Committees and centralize the function in the Office of Disciplinary Counsel.	15.09% 8
Enhance communication efforts throughout the process.	16.98% 9
Improve the process before the Board.	9.43% 5
Improve the process before the Court.	11.32% 6
Require volunteer counsel to obtain a special state certification to handle disciplinary cases.	33.96% 18
Require bar counsel for a Certified Grievance Committee to be lead counsel in hearings.	41.51% 22
Require Certified Grievance Committees to transfer case to disciplinary counsel post-investigation and pre-probable cause.	15.09% 8
Other	11.32% 6
Total Respondents: 53	

#	OTHER	DATE
1	Get rid of volunteers serving as lead counsel on cases. No one should be "dabbling" in this area of law.	1/14/2019 4:11 PM
2	Implement procedures to allow for more prompt resolution of investigations.	1/14/2019 12:40 PM
3	I don't believe training alone will improve the handling of investigations and prosecutions by volunteer committee members. They need significant experience with the cases for the training to be meaningful. Transferring investigations to ODC for prosecution may be helpful so long as ODC is not required to accept the committee's determinations. However, this could lead to delays. I don't see any easy answers.	1/14/2019 9:03 AM
4	What generally works pretty well: 1. The ODC; 2. The Board of Professional Conduct; 3. The Supreme Court of Ohio. What does not work very well: 1. Some of the certified grievance committees. Other: We should look at adding some difference sanctions and beefing up rehabilitation for those who have significantly violated the rules.	1/10/2019 6:48 PM
5	My main complaint is that it takes far to long for Disciplinary Counsel or the Local Grievance Committees to investigate the grievances and then file the complaints.	1/7/2019 11:30 AM
6	Where the Court does not wish to accept the recommendation of the Board, it should inform the parties and allow briefing and oral argument	1/4/2019 1:18 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q22 Which statement best reflects your views about the fairness of the disciplinary process?

Answered: 52 Skipped: 1

ANSWER CHOICES	RESPONSES
The process goes too far to protect respondents.	3.85% 2
The disciplinary process, for the most part, is fair and impartial to respondents.	86.54% 45
The process goes too far to punish respondents.	9.62% 5
TOTAL	52

#	COMMENT (OPTIONAL)	DATE
1	For the most part the process generally gets to the right result - meaning if a Respondent hasn't willfully violated any Rules, Panels can figure that out. Unfortunately, it costs Respondent's a lot to prove themselves "innocent" along the way. Having a more centralized system with more experienced people ultimately deciding which cases go to hearing and which attorneys deserve a break would be an improvement. Having some sort of private reprimand and/or diversion program for low level offenses would also be an improvement that could serve as a deterrent/educational experience for relatively minor offenses, and then free up resources for hearings on serious misconduct.	1/14/2019 4:11 PM
2	I say this because of the commitment and efforts of the members of the Board. They invariably clean up the issues created by either relator or respondent's counsel.	1/14/2019 9:03 AM
3	My only real criticism of the ODC: In my opinion (and I have a bias although I have defended and prosecuted cases), is this: it is sometimes too aggressive with regard to sanctions when those sanctions will not likely help with rehabilitation of the offender. Punishment should not be part of the disciplinary system except in very limited cases of intentional or outrageous misconduct. We need to do more to help rehabilitate lawyers who have broken the rules, and turn them into walking, talking positive advertisements of our disciplinary system. We tend to rely in part, on OLAP for this, but OLAP is not really set up for this purpose - again, in my opinion.	1/10/2019 6:48 PM
4	The part that is currently the least fair is that a respondent's fate is always going to be slightly different, based upon which entity investigates and prosecutes a matter. A fairer system would yield identical outcomes, regardless of this factor.	1/10/2019 4:30 PM
5	Relators overcharge respondents in complaints; procedural rules are not followed by relators because they are not jurisdictional, or there is no statute of limitations	1/7/2019 9:27 AM
6	The stated purpose is to protect the public and many cases do that, but some are clearly just to punish the respondents.	1/4/2019 2:19 PM
7	I've had a couple of cases in the last few years with respondents who had made errors, but they were one-time errors made by good practitioners who expressed genuine remorse. It seemed like the sanctions were too draconian. I'm fine with whacking an unrepentant lawyer who doesn't get it. But where the respondents are good people and good lawyers who just make mistakes, the process should be designed to sanction them and deter future misconduct, but without destroying their careers, which can often happen with even minimal time off.	1/4/2019 12:23 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q23 Which statement best reflects your opinion related to the time devoted to cases during the disciplinary process?

Answered: 53 Skipped: 0

ANSWER CHOICES	RESPONSES
Cases are rushed through too quickly, not giving adequate time to resolve cases fairly.	3.77% 2
The process devotes the appropriate length of time to adequately review a case thoroughly to a logical resolution/prosecution.	67.92% 36
The process takes too long, resulting in unnecessary delays.	28.30% 15
TOTAL	53

#	COMMENT (OPTIONAL)	DATE
1	The process of case review, once filed, seems fair and efficient. But the process of investigation and the length of time it takes at the various responsible venues should be evaluated.	1/14/2019 12:40 PM
2	My clients all think the process takes too long. Sometimes I agree but I recognize that a volunteer system is inherently slower. Nonetheless, it is more important to get it right and that seems to be the focus.	1/14/2019 9:03 AM
3	Ohio's system has many good qualities. It has some not so great qualities. We can make the system better by getting rid of the "yahoos" who are some of the members of some of the CGC and by having a somewhat greater range of sanctions and a method of monitored rehabilitation for qualified offenders.	1/10/2019 6:48 PM
4	Investigations sometimes take too long, but this is largely because of the noncooperation of respondents, noncooperation of grievants, and receipt of multiple grievances during the investigation. However, the most significant reason for delay is the fact that relators must gather evidence during the investigation to establish probable cause. The Board adjudications are generally timely. The Supreme Court takes an inordinate and often unnecessary amount of time to decide cases, especially lower level cases (i.e., reprimands and fully stayed suspensions) where there are no objections filed by the parties.	1/10/2019 12:11 PM
5	Supreme court rulings seem to take an excessive amount of time after the case has been heard. This is not meant as a criticism of the courts efforts. The court has many other responsibilities that require their time.	1/8/2019 9:39 AM
6	The delay is not at the board level but at the investigatory level.	1/7/2019 11:30 AM
7	Investigations are too long, but time from filing of formal complaint to resolution is adequate	1/7/2019 9:27 AM
8	Disciplinary Counsel and the Supreme Court have backlogs of cases that are entirely too large. The Board, on the other hand, is pretty prompt in doing what it is required to do, The hearing panel chairs need increased authority to impose sanctions on lawyers who disregard scheduling orders. Probable cause determinations should be eliminated. There already has been an investigation that takes months in many instances and this is not a criminal proceeding. The probable cause determination seldom adds anything but delay.	1/4/2019 2:39 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q24 Based on your experience, how would you rate each entity involved in the disciplinary process?

Answered: 53 Skipped: 0

	EXCELLENT	GOOD	AVERAGE	POOR	DON'T KNOW/NA	TOTAL
Office of Disciplinary Counsel	47.17% 25	45.28% 24	5.66% 3	1.89% 1	0.00% 0	53
Certified Grievance Committees	13.21% 7	47.17% 25	32.08% 17	1.89% 1	5.66% 3	53
Board of Professional Conduct	77.36% 41	20.75% 11	1.89% 1	0.00% 0	0.00% 0	53
Supreme Court	41.51% 22	41.51% 22	13.21% 7	3.77% 2	0.00% 0	53

#	COMMENT (OPTIONAL)	DATE
1	Too many CGCs to rate them all.	1/14/2019 4:11 PM
2	What is unknown to me is the manner in which the office of disciplinary counsel handles complaints, specifically then the process by which those complaints are investigated. The same can be said with respect to the various grievance committees.	1/14/2019 12:40 PM
3	I would give the ODC, Board and Supreme Court a grade of B+/A- but we can all do a better job and we should always strive to do a better job.	1/10/2019 6:48 PM
4	The Supreme Court decisions are wildly inconsistent and provide no certainty in outcome. Distinctions are made on minor points and, more recently, justices are issuing concurring and dissenting opinions on minor points.	1/10/2019 12:11 PM
5	The Supreme Court is too sensitive to politics and public criticism. Their disposition of cases is often arbitrary in light of their own precedent. The Court should either give greater deference to the Board or eliminate the Board altogether and do the work itself.	1/4/2019 2:39 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

Q25 Please provide any additional comments about the Ohio lawyer discipline system.

Answered: 11 Skipped: 42

#	RESPONSES	DATE
1	In cases involving no prior misconduct and minor departures from the rules of professional conduct, punishment should be leavened by counseling. Young lawyers often stumble through ignorance, inexperience and lack of suitable mentors. In many situations they and the public will be better served by guidance than by punishment. Decision-makers with pragmatic experience in the practice have an edge over decision makers who simply have an academic understanding of the rules.	1/21/2019 3:46 PM
2	Without a private reprimand/diversion system of any sort, we waste time and resources pursuing some pretty low level stupid stuff. Without building more discretion into the system, the Supreme Court is basically saying everything has to come before them, but when everything has to come before them, the serious stuff gets lumped in with the dumb stuff and nothing gets the attention it deserves - in serious cases more attention, in less serious cases, considerably less is warranted. Lawyers are human, mistakes happen.	1/14/2019 4:11 PM
3	My exposure to the disciplinary system has been exclusively as a Board member for two years. I must observe that even had I served six years on the Board my ability to respond knowledgeably to many of the questions asked would be inadequate due to a lack of exposure to all the grievance committees referenced. Moreover, lumping all grievance committees into a single question really precludes responding with respect to one or two committees with which one may have had personal experience. With respect to the Board, I am impressed with the members with whom I serve. They embrace the public service responsibilities and expectations attendant to service on the Board. The director and staff of the Board are truly exceptional.	1/14/2019 12:40 PM
4	System doesn't do enough too protect the public and is overly protective of respondents.	1/14/2019 11:16 AM
5	1. We should have a somewhat broader range of available sanctions. 2. We should offer monitored rehabilitation (a probation department for lack of a better term) for qualified offenders. 3. The goal of the system should be to protect the public, clients, potential clients and the legal system, and to provide rehabilitation to qualified offenders with the goal of making them into walking advertisements for our disciplinary system. 4. I have several ideas with regard to the above and would be happy to share them so long as you promise not to attempt to drive or operate heavy machinery while under their influence. Thank you very much for giving me an opportunity to express my opinions. I hope you have found at least some of them to be of value.	1/10/2019 6:48 PM
6	it is not a perfect system. It requires a lot of time and volunteers. However, the fact that so many volunteer to be a part of the process speaks highly of the members of the Ohio Bar. Unless, Ohio wants to go to a full time paid system of lawyers to conduct the process the system in place is very good. It can certainly be improved with enhanced training and education of all participants.	1/8/2019 9:39 AM
7	I am a firm believer in allowing an attorney's local peers to conduct the investigation and make a probable cause determination. At the same time I am cognizant of the optics of having an attorney's "friends" determine probable cause. In my experience, the local attorneys take their responsibility seriously and carry out their duties impartially.	1/7/2019 11:23 AM
8	Improvements in docketing system and electronic filing are great	1/7/2019 9:27 AM
9	There is no accountability for, or oversight over, the administration of sole practitioner IOLTA accounts. The temptation of some of these attorneys to dip into client money to make payroll, support a gambling or drug habit or to simply pay personal expenses has resulted in the discipline of many attorneys over the years. The ODC should be given the personnel and authority to conduct random audits of IOLTA accounts of sole practitioners in order to deter malfeasance and the theft of client funds. Firms that conduct regular internal audits of their IOLTA accounts would not need to be audited by the ODC--only those lawyers over whom no other form of oversight exists.	1/4/2019 3:02 PM

Ohio Disciplinary System Survey 2019

SurveyMonkey

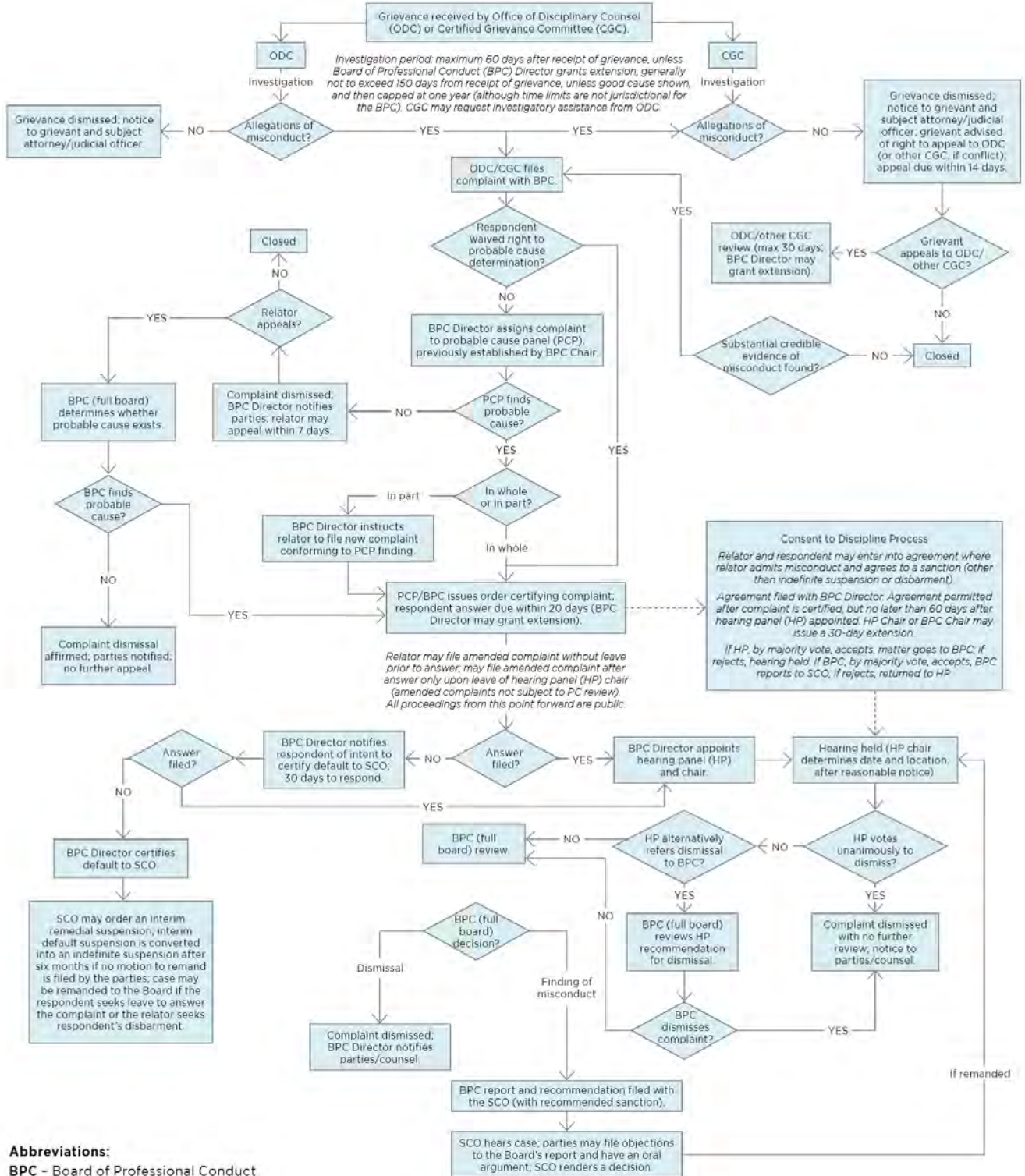
10	The Court has changed a number of recommendations, which is its right, but does a very poor job of explaining why. The same is true of credit for previously imposed suspensions (felony, remedial). Sometimes credit is given and sometimes not, but the explanations for deviations are not well crafted.	1/4/2019 2:19 PM
11	The Court sits on the cases once they reach it.	1/4/2019 1:42 PM

APPENDIX C

OHIO DISCIPLINARY PROCESS FLOW CHART



Task Force on the Ohio Disciplinary System Disciplinary Process - Attorneys and Judges



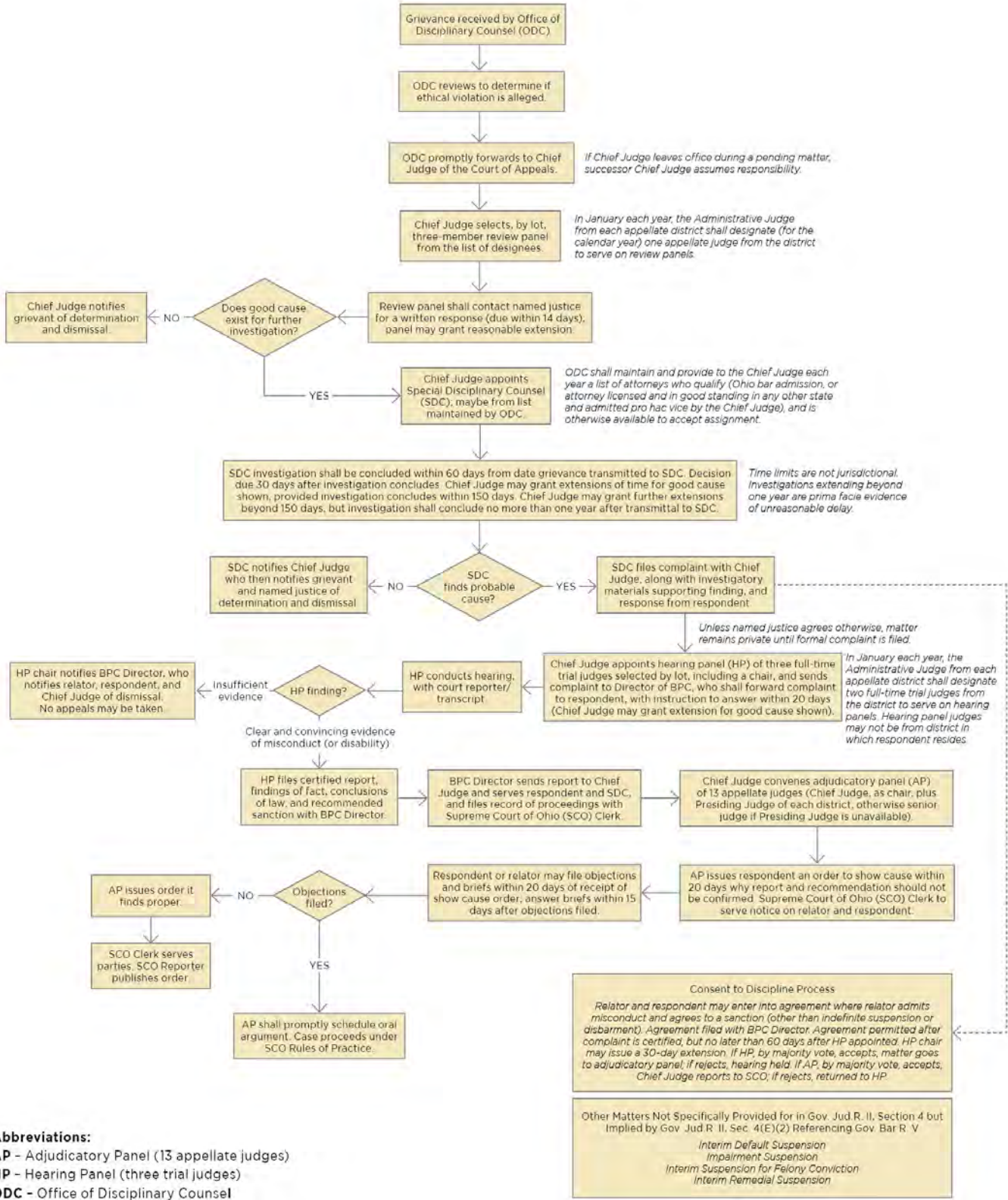


APPENDIX D

JUSTICE GRIEVANCE INVESTIGATION PROCESS FLOW CHART



Task Force on the Ohio Disciplinary System Disciplinary Process - Justices



Abbreviations:

- AP - Adjudicatory Panel (13 appellate judges)
- HP - Hearing Panel (three trial judges)
- ODC - Office of Disciplinary Counsel
- SDC - Special Disciplinary Counsel
- BPC - Board of Professional Conduct
- SCO - Supreme Court of Ohio



APPENDIX E

ROSTER OF CERTIFIED GRIEVANCE COMMITTEES





Ohio Board of Professional Conduct

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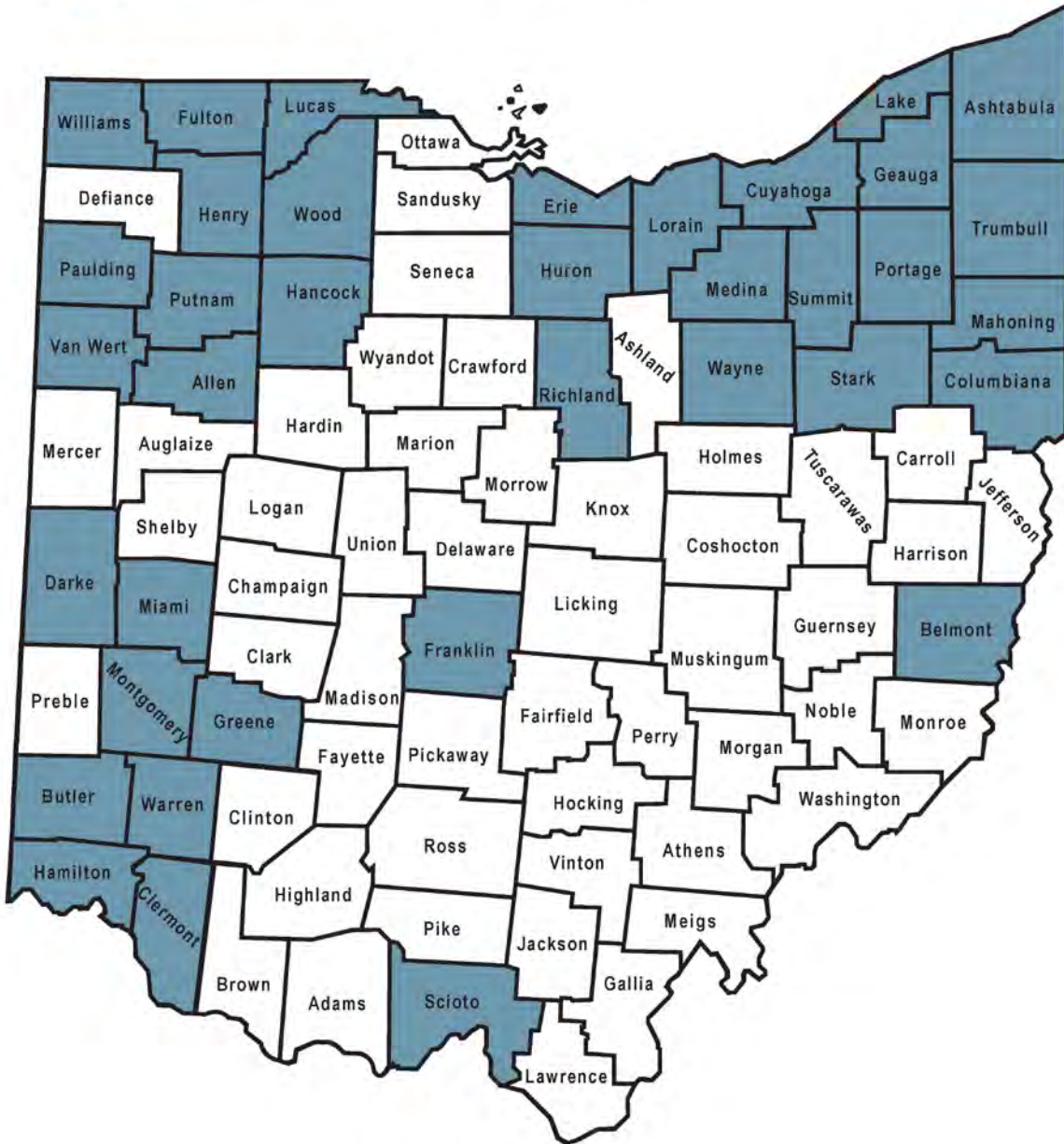
APPENDIX F

CERTIFIED GRIEVANCE COMMITTEES MAP





Ohio Board of Professional Conduct



Updated: July 2017



APPENDIX G

ROSTER OF ATTENDEES AT JANUARY 2019 TASK FORCE MEETING



ROSTER OF ATTENDEES AT JANUARY 2019 TASK FORCE MEETING

Alysha Clous (Columbus Bar Association, Assistant Bar Counsel)

Jonathan Coughlan (respondents' counsel)

Joe Dawson (Toledo Bar Counsel)

Joseph Dunson (Cleveland Bar Association CGC Volunteer)

Nathan Hosek (Drake County Bar Counsel)

Richard Koblentz (Respondents' Counsel)

Patricia Lowery (Medina County CGC)

Kent Markus (Columbus Bar Association, Bar Counsel)

Terry Patterson (Cincinnati Bar Counsel)

Kenneth Peller (Warren County Bar Counsel)

Reverend Keith Rasey (Medina County)

Monica Sansalone (Respondent's Counsel)

Nicolas Smith (Erie-Huron Bar Counsel)

Michael Thompson (Mahoning County Bar Counsel)

Robert E. Zulantz, Jr. (Geauga County Bar Counsel)

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