THE SUPREME COURT *of* OHIO

GUIDE

TO THE BOARD OF PROFESSIONAL CONDUCT

This guide provides general information about the Board of Professional Conduct and procedures applicable to the consideration of cases in which a lawyer, judge, or judicial candidate is charged with professional or campaign misconduct.

Questions regarding specific cases or procedures may be directed to the Director of the Board at 614.387.9370 or the Supreme Court Director of Public Information at 614.387.9250.

About the Board

The Board of Professional Conduct is a 28-member body established by rule of the Supreme Court of Ohio. Commissioners are appointed by the court to three-year terms.

Board Duties

- Adjudicate allegations of professional misconduct on the part of lawyers, judges, and judicial candidates and report the findings and recommendations to the Supreme Court

- Certify and recertify local grievance committees, receive financial disclosure statements from judges, magistrates, and judicial candidates

- Engage in activities to promote and enhance understanding of and compliance with the standards of professional conduct applicable to Ohio attorneys and judges.

Commissioners. Each commissioner spends an average of 20 to 30 days per year preparing for and attending hearings and board meetings, preparing and reviewing written reports, and performing other board-related duties. Commissioners who are not judges are entitled to a per diem of $125 while attending hearings and board meetings. All commissioners are reimbursed for reasonable travel expenses incurred while attending hearings and meetings.

The board meets in even-numbered months at the Thomas J. Moyer Ohio Judicial Center. By Supreme Court rule, the meetings are not open to the public.

28
COMISSIONERS

17 Lawyers

7 Active/Retired Judges

4 Non-Attorney Public Members

Investigations of Professional Misconduct Allegations

Allegations of professional misconduct against an Ohio lawyer or judge are investigated by either the Office of Disciplinary Counsel or one of 33 certified grievance committees established by local bar associations. (A flowchart of the complete disciplinary process is available **here**).

Investigations are typically undertaken when a **grievance** is filed, although Disciplinary Counsel or a grievance committee may initiate an investigation without a grievance based on other knowledge of possible misconduct. *(See page 7 for an explanation of the confidential nature of investigations).*

The Office of Disciplinary Counsel and the Ohio State Bar Association's (OSBA) certified grievance committee each have statewide jurisdiction. The other grievance committees have jurisdiction only within the geographic region, typically a county, served by the bar association that established the committee.

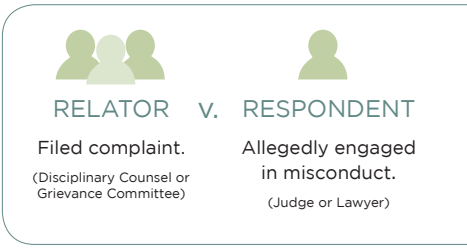
A local certified grievance committee does not have authority to investigate allegations of misconduct by a local judge. Only disciplinary counsel or the OSBA's certified grievance committee may investigate and prosecute allegations of judicial misconduct.

	Regional Jurisdiction	Statewide Jurisdiction	Investigate/Prosecute Judicial Misconduct
Disciplinary Counsel	✓	✓	✓
OSBA Grievance Committee	✓	✓	✓
Certified Grievance Committees	✓	×	×

If after conducting its investigation, the Office of Disciplinary Counsel or certified grievance committee determines there is substantial, credible evidence to believe a lawyer or judge engaged in professional misconduct, it is responsible for preparing and filing a formal complaint with the board. 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 by the lawyer or judge. 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.

The complaint is filed by the Office of Disciplinary Counsel or a certified grievance committee as the **relator**. The lawyer or judge who allegedly engaged in professional misconduct is referred to as the **respondent**.



Procedures Before the Board

Probable Cause. Each formal complaint filed with the board is reviewed by a three-member **probable cause panel**. The panel reviews the complaint and investigatory materials, and must make an independent determination of whether probable cause exists to believe the lawyer or judge engaged in professional misconduct.

The probable cause panel may:

- Certify the complaint in its entirety
- Certify a portion of the complaint and dismiss a portion
- Dismiss the complaint in its entirety.

A list of newly certified cases is announced each month by the Supreme Court's Office of Public Information and posted on the board's Web page.

Proceedings on the Certified Complaint. Upon board certification, the formal complaint is **served** on the respondent, who will submit an answer to the allegations. Once an answer is received, the board director assigns the case to a **hearing panel**. The hearing panel consists of three commissioners, selected at random by the board 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.

The panel is responsible for conducting an **evidentiary hearing** on the allegations contained in the formal complaint. 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 misconduct. The relator may establish violations by providing the testimony of witnesses and documentary evidence, or the parties may enter into stipulations whereby they agree to some or all of the factual and legal matters presented by the case. The respondent may present testimony and other evidence to counter that presented by the relator.

The Supreme Court has established aggravating and mitigating factors that the board considers in recommending the appropriate sanction to be imposed for professional misconduct. A significant portion of a board hearing may be devoted to the relator's presentation of evidence to establish aggravating factors and the respondent's presentation of mitigation evidence. *(See table on page 5 for common aggravating and mitigating factors).*

The parties often are asked to present arguments regarding the appropriate sanction to be imposed for the respondent's misconduct. Arguments in favor of a particular sanction are usually accompanied by citations to cases 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 bimonthly meeting. The board may accept, reject, or modify the panel's report and recommendation. If the report is rejected, the board may vote to dismiss the case or return the case to the panel to take additional evidence.

AGGRAVATING FACTORS (RELATOR)	MITIGATING FACTORS (RESPONDENT)
Prior disciplinary offenses	Absence of prior disciplinary record
Dishonest or selfish motive	Absence of selfish or dishonest motive
Pattern of misconduct and multiple offenses	Existence of a recognized and properly diagnosed disorder* that contributed to the misconduct.
Lack of cooperation with disciplinary authorities	Cooperative attitude
Vulnerability of and resulting harm to clients or other victims	Good character or reputation
Failure to make restitution	Timely restitution to clients

* Disorders that most often are present in disciplinary cases include depression, anxiety, dependency on alcohol or other drugs, or gambling.

If the board approves or modifies the hearing panel's report, the director is directed to prepare a certified report and file that report and a record of the board's proceedings with the Supreme Court. The report is usually filed within the week after the board meeting. It becomes public upon filing with the clerk of the Supreme Court, and a copy is available on the Supreme Court online docket or from the court's Office of Public Information.

Sanctions for Misconduct

The board may recommend and the Supreme Court may impose the following sanctions for professional misconduct:

- Public reprimand
- Suspension from the practice of law for a period of six months to two years, subject to a stay in whole or in part and any conditions of probation
- An indefinite suspension that precludes the respondent for applying for reinstatement for a minimum of two years
- Permanent disbarment, forever precluding the respondent from returning to the practice of law in Ohio.

In addition to these sanctions, the board may recommend and the court may order the respondent to pay the costs of the disciplinary proceeding and to make restitution to clients or reimburse the **Lawyers' Fund for Client Protection**. The Lawyers' Fund for Client Protection is established by the Supreme Court to reimburse clients for financial losses caused by a dishonest lawyer, and the fund is supported entirely by registration fees paid by each Ohio lawyer.

Proceedings Before the Ohio Supreme Court

Upon receipt of the board's report and recommendation, the Supreme Court issues an order to the parties, directing them to show cause why the report and recommendation should not be adopted. A party has 20 days to file a response to the show-cause order, including its specific objections to the board's recommendation. The opposing party has 15 days to respond to the objections. If objections are filed, the Supreme Court schedules the matter for oral argument, typically within four months after the board's report is filed with the court. If no objections are filed, the court takes the case under advisement.

In all cases, the Supreme Court issues a written opinion and order that includes any sanction imposed on the respondent for professional misconduct and, when applicable, conditions for probation or reinstatement.

Confidentiality of Disciplinary Proceedings

By rule of the Supreme Court, disciplinary proceedings at the investigation stage are private, unless the subject of the investigation waives privacy. Neither the Office of Disciplinary Counsel, a certified grievance committee, nor the board may confirm or deny the existence of a grievance or comment on the substance or progress of an investigation.

Once the board finds probable cause and certifies a formal complaint for hearing, the formal complaint and all subsequent proceedings are public. However, deliberations by the board and its hearing panels are confidential, and the board's reports and recommendations are not public until filed with the Supreme Court.

Judicial Campaign Complaints

The Supreme Court established specific procedures for the expedited consideration of allegations of misconduct by a judicial candidate, include a sitting judge, in the course of a campaign for judicial office. These allegations are filed directly with the board director and referred to a probable cause panel consisting of three current or former commissioners. The probable cause panel must make its determination within five days of appointment. If the panel finds probable cause to believe a candidate for judicial office engaged in campaign misconduct, a formal complaint is prepared and served on the parties. At that point, the matter becomes public.

Within three days of the probable cause determination, the board chair appoints a hearing panel consisting of three current or former commissioners, including one nonattorney public member, none of whom may reside in the appellate district from which the complaint arose. The hearing panel must conduct a hearing within five days of appointment unless good cause exists for continuing the hearing. Within five days after conclusion of the hearing, the panel is required to issue a written report of its findings and recommendations. If the panel finds a violation of judicial campaign standards, the panel may recommend any of the disciplinary sanctions set forth on *page 6*, imposition of a cease-and-desist order, a fine, an assessment of costs, and an assessment of the reasonable and necessary attorney fees incurred by the complainant in prosecuting the complaint.

Because of the expedited nature of the proceedings, a judicial campaign misconduct matter is not considered by the full board. Rather, the hearing panel's report and recommendation is filed with the Supreme Court. Within five days, the court appoints a commission of five trial and appellate judges to review the report and any objections to the hearing panel's findings. If the five-judge commission concurs in the panel's finding of a judicial campaign violation, the commission will order the imposition of sanctions against the respondent-judicial candidate. The respondent may appeal the sanction to the Supreme Court.

Media Coverage of Hearings

All hearings conducted by the board are open to the public. Requests to broadcast, record, or photograph hearings must be made in advance of the hearing through the Supreme Court Office of Public Information or the board offices.

The panel chair or another board representative may request or require the pooling of coverage and may direct the placement of microphones, video cameras, and still cameras.

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