Professionalism, Ethics, & Substance Abuse Seminar

Ethics

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Ten Things a Litigator Can Do to Avoid A Grievance

You will learn the common mistakes litigators make that cause a client to file a grievance and the simple steps to take to avoid these mistakes. Learn how to avoid the pitfalls of fee agreements, advancing costs, conflicts of interest, trust accounts and more. You will also learn what to do if a grievance is filed and how to defend a grievance.

I. Don't Let Attorney Fees Get You in Hot Water

A. Put Fee Agreements in Writing

Many grievances are filed because clients are unhappy about how much their lawyer cost them. Client expectations are best managed by a written fee agreement. While Professional Conduct Rule 1.5 (b) does not require that the agreement be in writing, it says putting fee agreements in writing is preferable. It is best to communicate in writing the nature and scope of the representation and the fee, including expenses.

On the other hand, a contingent fee **must** be in writing. There special rules for contingent fee agreements, such agreements must include the method for calculating the fee, the percentages the lawyer gets in the event of a settlement, trial or appeal, how expenses are deducted and whether expenses are deducted before or after the fee is calculated. The lawyer must prepare a closing statement and have the client sign it. Rule 1.5(c). Remember, contingent fees are prohibited in criminal and domestic relations cases. Rule 1.5 (d).

B. Do Not Collect an Excessive Fee

Professional Conduct Rule 1.5 prohibits illegal or "clearly excessive" fees. "A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:"

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
(8) whether the fee is fixed or contingent.

If you have charged an excessive fee, do not collect it or refund it before the client files a grievance. If a client complains about the fee, review the rules, read some excessive fee cases, and get a second opinion before you refuse to refund any money.

C. Sharing Fees

You can share fees. The division of fees must be in proportion to the service to be performed by each lawyer or each lawyer must assume joint responsibility for the representation. Prof. Cond. R. 1.5 (e). Joint responsibility means financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. Rule 1.5 Comment 7. The co-counsel agreement must be in writing signed by all attorneys and the client, explaining how the fees are to be divided. Each lawyer must sign the closing statement. The total fee must be reasonable. Fee disputes between lawyers must go through mediation or arbitration at the local bar association.

D. Unearned Fees

Return unearned fees. If you do not earn the full retainer, you must return it. Rule 1.16 (e). An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. Rule 1.5 Comment 5.

Nonrefundable and earned upon receipt fees are prohibited. Rule 1.5(d) (3). The Rule states a lawyer may not charge "a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule."

E. Practice Tips

Keep track of your hours on all cases. Someday you may need to prove: 1) your fee was reasonable based on time involved; 2) the retainer was in fact earned; 3) a quantum merit claim; 4) your share of work to a co-counsel.

Deposit retainers into the client trust account. See, *Toledo Bar Assn. v. Johnson* (2009), 121 Ohio St. 3d 226 (6 month suspension (stayed) for doing little work for a $9,000 retainer; doing no work for a $5,500 retainer and failing to deposit retainer in trust account). Your draws

on the client trust account help establish that the retainer was earned since you draw the money as you earn it.

II. Avoid Conflicts of Interest

A. How to Spot a Conflict

Not all conflicts are obvious. A conflict arises when the representation of a client will be directly adverse to another current client or there is a *substantial* risk that the lawyer's ability to represent the client will be "materially limited" by the lawyer's responsibilities to another client, former client, or a third person, or by the lawyer's own personal interests. Rule 1.7(a). Examples of representation being "materially limited:"

1. "A 'material limitation' conflict exists when a lawyer represents co-plaintiffs or co-defendants in litigation and there is a substantial discrepancy in the clients' testimony, incompatible positions in relation to another party, potential cross-claims, or substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal matter is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of division (b) are met." Rule 1.7 Comment 15.

2. "Simultaneous representation, in unrelated matters, of clients whose business or personal interests are only generally adverse, such as competing enterprises, does not present a material limitation conflict. Furthermore, a lawyer may ordinarily take inconsistent legal positions at different times on behalf of different clients. However, a material limitation conflict of interest exists, for example, if there is a substantial risk that a lawyer's action on behalf of one client in one case will materially limit the lawyer's effectiveness in concurrently representing another client in a different case. For example, there is a material limitation conflict if a decision for which the lawyer must advocate on behalf of one client in one case will create a precedent likely to seriously weaken the position taken on behalf of another client in another case. Comment 17.

3. If a lawyer for a corporation or other organization serves as a member of its board of directors, the dual roles may present a "material limitation" conflict. See Comment 19 for direction.

4. If you apply for a job at a firm of opposing counsel in a case you are creating a conflict of interest for your client. Comment 20.

5. If you refer clients to an enterprise in which you have an undisclosed financial interest you are creating a conflict. Comment 20.

6. You should not represent a client in a matter where your spouse or family member is representing the opposing client without written consent. Comment 21.

7. You may not have sex with your client, unless you were having sex before s/he became your client. Comment 22.

Factors relevant in determining whether there is a material limitation of which the clients must be advised and for which consent must be obtained include: (1) where the cases are pending; (2) whether the issue is substantive or procedural; (3) the temporal relationship between the matters; (4) the significance of the issue to the immediate and long-term interests of the clients involved; and (5) the clients' reasonable expectations in retaining the lawyer. Comment 17.

B. Can't I Just Have My Clients Waive the Conflict?

It is a common misconception that all conflicts of interest can be avoided if the clients waive them in writing. Not all conflicts can be waived. Rule 1.7 (b) and (c).

1. If you cannot provide competent and diligent representation to each affected client the conflict cannot be waived. Rule 1.7 (b)(1).

2. If the representation is prohibited by law the conflict cannot be waived. Rule 1.7(c)(1). For example, the Supreme Court of Ohio has ruled that regardless of client consent, a lawyer may not represent both husband and wife in the preparation of a separation agreement. *See, Columbus Bar Assn v. Grelle* (1968), 14 Ohio St.2d 208. Similarly, federal criminal statutes prohibit certain representations by a former government lawyer, despite the informed consent of the former client. Comment 36.

3. The conflict is not waivable if the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding. Rule 1.7(c) (2). A lawyer may not represent both a claimant and the party against whom the claim is asserted whether in proceedings before a tribunal or in negotiations or mediation of a claim pending before a tribunal. Comment 36.

4. Some conflicts are non-consentable because a lawyer cannot represent both clients competently and diligently or both clients cannot give informed consent. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic, regardless of their consent. Comment 38.

5. One client does not authorize you to make the necessary disclosure to the other client in order to obtain the second client's informed consent. Comment 30.

6. The consent is not informed.

7. A client revokes consent. Comment 31.

C. How to Avoid a Conflict

1. You must have a conflicts check system in place. Ignorance of a conflict is no excuse. Comment 3.

2. Trust your instincts, check rules, case law, and get a second opinion.
3. Obtain clients' informed consent. When representation of multiple clients in a single matter is undertaken, the information must include the advantages and risks of the common representation, including possible effects on loyalty, confidentiality, and the attorney-client privilege. Comment 29.

4. You must talk with the client: (1) to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives; and (2) to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Put this in writing so you avoid disputes or ambiguities that might later arise. Comment 31.

5. Things may change during your representation so you must re-assess conflicts as the facts develop. Comment 6.

6. If you represented a class of plaintiffs in a case, you do not have to seek waiver from unnamed class members in a future case where a conflict arises. Comment 12.

7. Do not keep secrets from co-parties without their consent. If you represent co-plaintiffs you owe each a duty of equal loyalty. Comment 27.

8. If in doubt stick with your first client and refer the second to someone else. Comment 3.

9. Once common representation fails you must withdraw from representing both clients. Comment 25.

10. If you withdraw you must get court approval and continue to keep the confidences of both clients.

11. Attorney client privilege does not exist during common representation. "With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation does later occur between the clients, the privilege will not protect communications made on the subject of the joint

representation, while it is in effect, and the clients should be so advised." Comment 26.

III. You May Advance Costs But Nothing More

Yes, you may advance costs court costs and expenses of litigation but you may not otherwise provide financial assistance to a client in connection with pending or contemplated litigation. You may pay court costs and expense of litigation for indigent clients without requiring them to ever pay you back. For all other clients you may advance court costs and litigation expenses and make the repayment contingent on the outcome of the matter. Rule 1.8(e). You may not subsidize lawsuits or make or guaranteed loans to clients, such as for living expenses. Rule 1.8 Comment 10.

IV. Pay Attention to Your Trust Account

Failure to properly maintain your trust account can result in a *sua sponte* grievance. For example, if you bounce a check in your trust account you will get a letter of inquiry from the Office of Disciplinary Counsel.

1. You must keep records of the source of all funds received by a client. Rule 1.15 (a) (2).

2. You must reconcile the account monthly. Rule 1.15 (a) (5).

3. You may not keep any of your money in the trust account. You may keep only enough of your money in the account to avoid bank fees or to pay bank fees. Rule 1.15(b).

4. You must deposit all retainers in the trust account and then draw your fee as you earn it or as expenses are incurred. Rule 1.15(c).

5. Once you deposit money you must notify client and third parties with a lawful interest of the funds, such as those with a statutory lien (Medicaid, Medicare), a final judgment, or those with who you or client agreed in writing to guarantee payment. Rule 1.15(d).

6. You must promptly pay clients and third parties. Rule 1.15(d).

7. If you and your client dispute the amount you each are paid you may not take your fee until the dispute is resolved. Rule 1.15(e). You must resolved dispute promptly and not hold client's money hostage. Suggest arbitration. Also, distribute to client or third parties any amount not in dispute. Comment 3.

8. A lawyer may have a duty under applicable law to protect third-person interests of which the lawyer has actual knowledge against wrongful interference by the client. Comment 4. "When the lawyer has actual knowledge of a dispute between the client

and a third person who has a lawful interest in the funds or property in the lawyer's possession, the lawyer's ethical duty is to notify both the client and the third person, hold the disputed funds in accordance with division (a) of this rule until the dispute is resolved, and consider whether it is necessary to file an action to have a court resolve the dispute. The lawyer should not unilaterally assume to resolve the dispute between the client and the third person. When the lawyer knows a third person's claimed interest is not a lawful one, a lawyer's ethical duty is to notify the client of the interest claimed and promptly deliver the funds or property to the client." Comment 4.

9. You, not your client, must pay trust account expenses, which may not be deducted from the account: (1) check printing charges; (2) not-sufficient-funds charges; (3) stop payment fees; (4) teller and ATM fees; (5) electronic fund transfer fees (*i.e.*, wire transfer fees); (6) brokerage and credit card charges; and (7) other business-related expenses. Rule 1.15 Comment 2. You may deduct from the account proceeds bank charges and monthly maintenance charges. *Id*.

10. If you have to hold your client's money for a long time, consider moving the money out of the IOLTA account and into an interest bearing account. See Rule 1.15 Comment 3A for details.

V. Be an Advocate, But Not a Zealous One

The new Professional Conduct Rules no longer require that you be a zealous advocate for your client. (See former Code of Prof. Resp. DR 7-101). It was determined that "zeal" was an excuse for unprofessional behavior. Rule 1.3 Comparison to former Code. The new Rules require diligence (Rule 1.3). The new Rules also make it clear you do not violate any Rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process Rule 1.2.

There is a section on advocacy that covers brining only meritorious claims (Rule 3.1), exercising candor toward the court (Rule 3.3) and fairness to opposing party and counsel (Rule 3.4). The latter rule prohibits a lawyer from intentionally or habitually making frivolous motions or discovery requests or failing to make reasonably diligent effort to comply with proper discovery requests. Rule 3.4 (d). Lawyers are prohibited in trial to "allude to any matter that the lawyer does not *reasonably believe* is relevant or that will not be supported by admissible evidence or by a good-faith belief that such evidence may exist, assert personal *knowledge* of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant." Rule 3.4 (e).

VI. Treat Your Client With Respect

Manage your client's expectations, be fair and honest with your client, return client calls, respond to requests for information promptly, do what you promise to do and return unearned fees. If you succeed in these suggestions the chances of facing a grievance are minimized.

See, Disciplinary Counsel v. Davis, Slip Opinion No. 2011-Ohio-6016 (Attorney indefinitely suspended for keeping unearned advanced fees and not returning clients' files upon request. Davis's conduct violated Prof. Cond. R. 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client), 1.16(d) (as part of the termination of representation, requiring a lawyer to deliver to the client all papers and property to which the client is entitled), and 1.16(e) (requiring a lawyer who withdraws from employment to refund promptly any part of a fee paid in advance that has not been earned)); *Disciplinary Counsel v. Nittskoff*, Slip Opinion No. 2011-Ohio-5758 (Attorney indefinitely suspended for, in part, failing to return client files upon request after being sued for malpractice for not filing tax return for an estate that was eventually assessed $450,000 in interest and penalties); Cleveland Metro. Bar. Assn. v. Brown, Slip Opinion No. 2011-Ohio-5198 (Attorney indefinitely suspended for accepting fee advances that were unearned, failing to perform promised services, failing to respond to client's requests for status of their case, failing to refund unearned fees after repeated requests to do so).

VII. Recommended Don'ts

A. Do Not take on a case you are not competent to handle. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation *reasonably* necessary for the representation." Rule 1.1.

B. Do Not neglect a case. "A lawyer shall act with *reasonable* diligence and promptness in representing a client." Rule 1.3.

C. Do Not ignore your client no matter how often they call you. Rule 1.4.

D. Do Not lie to your client, the court, opposing counsel, or others. Rule 8.4l Rule 4.1.

E. Do Not pay your expert a contingent fee or pay an occurrence witness any fee. Rule 3.4 Comment 3.

F. Do Not ignore a fellow lawyer's misconduct, you must report it. Rule 8.3.

G. Do Not keep representing a client once you have been fired. Rule 1.16 (a) (3).

H. Do Not divulge confidences of a prospective client. Rule 1.18.

I. Do Not ask for or accept a referral fee. Rule 1.5.

J. Do not engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability. Rule 8.4.

VIII. Recommended Do's

A. Do pay attention to your gut. Hesitate before acting. Do research such as looking up the Professional Conduct Rules, the comments to the Rules, and researching cases involving the rule.

B. Do ask for a second opinion. Call your local bar association and speak to the Bar Counsel. The Cincinnati Bar Association has an Ethics Hotline staffed by the PR committee. When you call for a second opinion phrase your question as a hypothetical. Why? Because if you reveal an ethical lapse to another attorney, who is not representing you, she must report it. Rule 8.3.

C. Do ask for help on a case. If you are in over your head on a matter hire co-counsel, find a mentor, or refer the case to someone else.

D. Do ask for help if you have a personal problem. Many grievances are the result of an attorney abusing alcohol, illegal or legal drugs, or are suffering from depression or other mental illness. Ask for help before a grievance is filed. The Ohio Lawyer Assistance Program (OLAP) is free and there to help you. Call 1-800-348-4343 or visit http://www.ohiolap.org/Index.htm. They can manage your cases so mistakes are not made while you seek professional help. If you are suffering from depression, you are not alone. For help, advice, and stories about what others have gone through, visit www.lawyerswithdepression.com.

E. Do admit your mistakes and solve them. It is better to promptly tell your client the truth about your mistake. He will trust you more than if you bury it and wish it will go away. People make mistakes. Mistakes can be fixed.

F. Do carry malpractice insurance $100,000 per occurrence and $300,000 in the aggregate. Rule 1.4. If you do not, you MUST have your client sign an acknowledgment that you do not carry insurance. A sample letter can be found in Rule 1.4.

G. Do keep confidences. But you may reveal attorney-client privilege if you try to prevent reasonably certain death or substantial bodily harm or the commission of a crime. Rule 1.6.

H. Do keep your client's property safe. While the rule is most concerned with money and trust accounts, all property should be kept safe. Securities should be placed in a safe deposit box. Rule 1.15 When representation is terminated you must deliver to your client all papers and property to which she is entitled. Rule 1.16.

I. Do withdraw from a case when it is mandatory. For example, you have a medical or physical condition that materially impairs your ability to represent a

client, you are fired, or your representation would result in a violation of the professional conduct rules, you must withdraw. Rule 1.16(a) (1).

J. Do give candid advice. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social, and political factors, that may be relevant to the client's situation. Rule 2.1.

IX. How to Respond to the Dreaded Grievance Letter

When you receive a confidential envelope from the Office of Disciplinary Counsel or your local bar association's Grievance Committee open it, read it, comply with the deadlines. Do not panic. Retrieve your client's file (at your expense) and preserve documents, emails, and any evidence that may be relevant to the grievance. File a written response to the grievance promptly. You may ask for an extension. Draft written response promptly or ask for additional time.

If you made a mistake, remedy it if you can and the grievance may go away. Do you owe the client money? Pay it. Did the client file the grievance just to get a copy of her file? Return it.

By all means cooperate and tell the truth. Failure to cooperate or lying during the grievance investigation will only result in additional charges. *Disciplinary Counsel v. Davis*, Slip Opinion No. 2011-Ohio-6016. In indefinitely suspending attorney, **t**he court noted among other aggravating factors that Davis has been disciplined on two prior occasions, engaged in a pattern of misconduct involving multiple clients and offenses, harmed vulnerable victims, exhibited a dishonest or selfish motive, refused to acknowledge the wrongful nature of her conduct, and failed to cooperate in the disciplinary process. She violated Prof. Cond. R. 8.1(b) (requiring a lawyer to respond to a demand for information from a disciplinary authority), 8.4(d) (prohibiting conduct that is prejudicial to the administration of justice), and Gov.Bar.R. V (4) (G) (requiring an attorney to cooperate in a disciplinary investigation). See also, *Disciplinary Counsel v. Nittskoff*, Slip Opinion No. 2011-Ohio-5758 (attorney charged with failure to cooperate in disciplinary process).

The investigation may progress after your initial response. Documents may be subpoenaed from you, your IOLTA bank, or third parties. You and your staff may be interviewed. If so, all sides should tape the interview.

Once the investigation is complete the Disciplinary Counsel or Grievance Committee must decide whether to prosecute. If the grievance is dismissed, it is never made public. If the Disciplinary Counsel or Grievance Committee finds probable cause then a complaint is drafted and sent to the probable cause panel of the Board of Commissioners on Grievances & Discipline. The Board consists of 28 members, 17 attorneys, 7 judges, and 4 non-attorneys. They meet every other month and determine if there is probable cause. If no probable cause is found the case is dismissed and nothing is made public. If probable cause is found, the complaint is made public and filed with the Board. The attorney is served and files an answer to the complaint. The case is then referred to a panel of three members of the Board and a hearing is heard. The

panel makes a recommendation to the full board as to whether violations occurred and as to the appropriate sanction. The full board votes and if it agrees it makes a recommendation to the Supreme Court, the attorney nay file objections, briefs are filed, oral argument is heard and the Court then renders a decision.

X. How to Defend Yourself In A Grievance Hearing

Once the Complaint is served, the grievance case proceeds like most civil litigation. An Answer is filed, a conference is set with the chair of your grievance panel to set a schedule, discovery is conducted, and a hearing before the three member panel is held in public. You should decide whether to represent yourself or hire an attorney. You may consult an attorney for legal advice. When doing so, you are permitted to reveal information protected by attorney client privilege. Rule 1.6 (b) (4).

If you are *pro se*, make sure you understand the process. Attached is a flowchart the Ohio Supreme Court publishes on explaining the grievance process. For other resources You should also visit the Board of Commissioners on Grievances & Discipline website http://www.sconet.state.oh.us/Boards/BOC. Read the **Rules of Professional Conduct** like a prosecutor. Remember to read the old **Code of Professional Responsibility** if the behavior occurred before February 1, 2007. Read the **Ohio Rules of Court Governing Procedure on Complaints and Hearings** (Appendix II to the Supreme Court Rules for the Government of the Bar) which explains the complaint process, timelines, and subpoena practice. Read the **Supreme Court Rules for the Government of the Bar of Ohio, Rule V** which explains the disciplinary process including pleadings, discovery, evidence, hearings and objections. Review the Advisory Opinions to see if there is one on point that helps or hurts your position.

Cooperate in the discovery and litigation. Consider a *mea culpa* defense. It could minimize the sanctions. Sanctions range from reprimand, suspension, indefinite suspension, stayed suspensions, and disbarment. In addition an interim suspension can be ordered before the hearing. Probation can be and usually is a condition of reinstatement.

Avoid aggravating factors and submit mitigating factors. Gov. Bar Rule V Section 10 Guidelines for Imposing Lawyer Sanctions lists the mitigating and aggravating factors to Board "shall consider:"

(1) Aggravation. The following shall not control the Board's discretion, but may be considered in favor of recommending a more severe sanction:

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses;
(e) lack of cooperation in the disciplinary process;
(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(g) refusal to acknowledge wrongful nature of conduct;
(h) vulnerability of and resulting harm to victims of the misconduct;
(i) failure to make restitution.

(2) Mitigation. The following shall not control the Board's discretion, but may be considered in favor of recommending a less severe sanction:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) timely good faith effort to make restitution or to rectify consequences of misconduct;

(d) full and free disclosure to disciplinary Board or cooperative attitude toward proceedings;

(e) character or reputation;

(f) imposition of other penalties or sanctions;

(g) chemical dependency or mental disability when there has been all of the following:

(i) A diagnosis of a chemical dependency or mental disability by a qualified health care professional or alcohol/substance abuse counselor;

(ii) A determination that the chemical dependency or mental disability contributed to cause the misconduct;

(iii) In the event of chemical dependency, a certification of successful completion of an approved treatment program or in the event of mental disability, a sustained period of successful treatment;

(iv) A prognosis from a qualified health care professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice under specified conditions.

(h) other interim rehabilitation.

Consider stipulating to the facts or consenting to discipline. If you are faced with a hearing you and your attorney should consider all your options, including stipulation to some or all of the facts and charges. The advantage to stipulating to all the charges is the hearing is all about mitigation and aggravation and not about proving the bad conduct. You can even consent to the discipline. Gov. Bar Rule V Section 11 explains the process but it sets a short window in which to consent: 60 days after the hearing panel is appointed. The Board may accept or reject the consent. If they reject it, a hearing will be scheduled.

DISCIPLINARY PROCESS

Grievances can be made about a judge or attorney to the Disciplinary Counsel or a certified grievance committee of a local bar association. If either of those bodies finds that the grievance has probable cause, a formal complaint is drafted. It then moves to a probable cause panel of the Board of Commissioners on Grievances & Discipline, which determines if there is probable cause. If the panel determines that there is probable cause, the formal complaint becomes public and is filed with the Board of Commissioners on Grievances & Discipline. Hearings are then conducted by the board and if it finds a violation, a recommendation is made to the Supreme Court of Ohio. The Supreme Court of Ohio makes the final decision as to findings of misconduct and issues an appropriate sanction.