

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY



ADMINISTRATIVE ORDER 2022-1

PLEASE TAKE NOTICE THAT the Board is considering amendments to the Board's Rules. The proposed amendments (shown in redline), and a brief statement of the reasons therefor, are attached hereto.

Interested parties may submit written comments concerning the proposed amendments. Comments must be submitted electronically, to DCBoard@dcbpr.org, by November 28, 2022. All comments submitted pursuant to this notice will be available to the public.

It is so ORDERED.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Lucy Pittman, Chair

A. Docketing and Notification Rules (Rules 2.3-2.8 and 6.1)

Rule 2.53 (Complaints Against Members of the Board, Hearing Committees, or Disciplinary Counsel)

Complaints received by the Office of Disciplinary Counsel against a member of the Board involving activities other than those performed within the scope of the duties of the Board member shall be submitted directly to the Court. Complaints against Hearing Committee members or against Disciplinary Counsel involving activities other than those performed within the scope of their duties shall be submitted directly to the Board.

Rule 2.34 (Preliminary Screening of Complaints)

~~All complaints shall be examined by~~ After receiving a complaint, Disciplinary Counsel ~~who, after such shall conduct a~~ preliminary ~~inquiry as appears appropriate,~~ shall screening to determine whether to docket the complaint ~~is to be docketed~~. Except as provided in ~~Chapter~~Rule 5.1, Disciplinary Counsel shall docket a complaint ~~shall be docketed~~ if it determines that the complaint: (1) is not unfounded on its face; (2) contains allegations which, if true, would constitute a violation of the Attorney's Oath of Office or the ~~R~~Rules of ~~p~~Professional ~~e~~Conduct that would merit discipline; and (3) is within the jurisdiction of the Board.

~~2.4 (Decision Not to Docket and Notice to Complainant)~~

If Disciplinary Counsel ~~determines, pursuant to Section 6(a)(2) of Rule XI, that a matter is not to be docketed,~~ Disciplinary Counsel shall notify the complainant, giving a brief statement of reasons therefor receives additional complaints against an attorney involving materially identical factual allegations of misconduct as those in a complaint previously received and screened against the same attorney, Disciplinary Counsel may rely on its docketing determination regarding the previously received complaint. Disciplinary Counsel's decision ~~in this respect as to whether a complaint is to be docketed~~ is not subject to review.

Rule 2.5 (Deferral of Docketing Determinations Regarding Declared Candidates in Upcoming Elections)

If a complaint raises allegations of misconduct against a declared candidate for public office in an election to be held in any jurisdiction within 90 days of the filing of the complaint, Disciplinary Counsel shall defer its docketing determination under Rule 2.4 until after the election in question has concluded.

Disciplinary Counsel shall promptly notify the complainant of the deferral.

Rule 2.6 (~~Docketing of Complaint and~~ Notification of Docketing Determination to Complainant)

~~Complaints that are docketed shall be assigned a docket number with the last two digits showing the calendar year in which the complaint is docketed. Complainants shall be promptly advised by Disciplinary Counsel of the docketing of the complaint.~~

After making its docketing determination, Disciplinary Counsel shall provide complainant with a notification that includes: the criteria for docketing set forth in Rule 2.4; its conclusion as to whether the allegation(s) in the complaint satisfy those docketing criteria and, if applicable: (1) a statement that the complaint is under investigation; (2) a statement that the subject matter of the complaint against the attorney involves materially identical factual allegations of misconduct as those in a complaint previously received and screened against the same attorney; (3) a statement that the determination to investigate a matter is not a determination that any violation has occurred; and (4) an explanation of the procedures involved in any future disciplinary proceedings, including the right of respondent to a fair hearing on the allegation(s) of misconduct, should Disciplinary Counsel decide to bring formal charges. In instances where Disciplinary Counsel has determined not to docket a complaint against an attorney, and the complaint is not related to the subject matter of an existing investigation against the same attorney, in its notification to the complainant Disciplinary Counsel may provide further explanation as to why a complaint does not meet the criteria set forth in Rule 2.4.

Rule 2.7 (Notification to Respondent)

Disciplinary Counsel shall promptly notify respondent in writing when a formal investigation into respondent's conduct has been docketed. This ~~notice~~ notification shall include a copy of the complaint or other documents upon which the investigation is based and a request for a written response from respondent.

Rule 2.8 (Respondent's Response)

Respondent's response shall set forth respondent's position with respect to the allegations contained in the complaint and shall be submitted to Disciplinary Counsel within ten days from the date of the mailing of the ~~notice~~ notification described in Rule 2.7.

Rule 6.1 (Notification of Dismissal)

If a proceeding is disposed of by dismissal, Disciplinary Counsel shall promptly notify the complainant in writing and send a copy of the notification to respondent. If Disciplinary Counsel is the only complainant, respondent shall be notified in like fashion. The notification shall contain a brief statement of ~~the~~ reasons underlying the dismissal.

Reason for proposed Rule changes: Over the past year, the Board has received letters from many members of the Bar who had been given the impression that Disciplinary Counsel was not investigating public figures by virtue of their status, thus harming the reputation of the legal profession. Those individuals had filed complaints against public figures only to be told that the complaints would not be docketed for investigation based on their lack of personal knowledge of the underlying events.

The Board understands that Disciplinary Counsel does investigate allegations of misconduct without regard for the identity or status of the respondent and that its policy of disclosing less information to complainants without personal knowledge of the underlying events is only intended to comply with the requirement that all investigations be confidential (*see* D.C. Bar R. XI, § 17(a)).

But that practice had the unintended consequence of creating the appearance of inequity. The Board received comments expressing the view that public figures appeared to receive different treatment because notification of docketing determinations was not provided to complainants. The Board believes that these amendments will avoid this perception and will provide greater transparency necessary to preserve public confidence in the discipline system. Thus, under the proposed amendments, *all* complainants would be notified as to whether their complaints meet the criteria for docketing (*see* current Board Rule 2.3), while Disciplinary Counsel would not be required to provide any further information to complainants who would not further assist in its investigations.

B. Board Rule 7.17 (Presentation of Documentary Evidence)

Should either party wish to present documentary evidence at a hearing, such evidence shall conform to Rule 19.8 and be ~~filed with the Office of the Executive Attorney and~~ served upon the opposing party at least ten days in advance of the hearing date, unless otherwise ordered by the Chair of the Hearing Committee. ~~Five total copies of documentary evidence shall be filed with the Office of the Executive Attorney, unless the Chair of the Hearing Committee directs otherwise. If a party wishes to have an exhibit admitted into evidence, the exhibit must be addressed and offered for admission during the hearing. Prior to the conclusion of the hearing, the parties shall meet and confer regarding the disposition of any exhibits to confirm which exhibits offered into evidence have been admitted by the Hearing Committee and shall raise any disagreements with the Hearing Committee so that any dispute regarding the disposition of any proffered exhibit can be resolved before the hearing concludes. No later than seven days after the conclusion of the hearing, the parties shall file with the Office of the Executive Attorney (1) signed exhibit list forms (available on the Board's website) indicating which of their proposed exhibits have been admitted, excluded, and not moved into evidence, (2) complete sets of exhibits that were admitted during the hearing, and (3) any exhibits that were moved into evidence but excluded from the record. Exhibits filed with the Office of the Executive Attorney must comply with the formatting requirements of Rule 19.8(e).~~ Non-parties may not present documentary evidence.

Reason for proposed Rule change: In recent years, hearing committees have ordered parties to confer and file new exhibit lists after each hearing showing the disposition of each exhibit that had been offered into evidence. This requirement has succeeded in avoiding confusion as to which exhibits may be cited by the parties and hearing committees. The Board believes that requiring parties to wait until hearings have concluded to file exhibits will build on that success, while also avoiding the filing of exhibits that are ultimately irrelevant to the disposition of the case.

C. Board Rule 11.2 (Actions by Hearing Committee)

At the outset of a hearing, the Chair shall administer the oath or affirmation to the reporter ~~and rule on any challenges to any member of the Hearing Committee made in accordance with Rule 7.22. Should challenges result in the departure of the Chair, the remaining attorney member shall act as Chair. If a quorum no longer exists, the hearing shall be recessed until a quorum is present.~~

The Chair shall administer the oath or affirmation, as the case may be, to the witnesses called by Disciplinary Counsel and respondent. Following a witness' testimony, the Chair may permit the witnesses to remain present at the hearing. If the witness is a possible rebuttal witness, then the witness shall be excused from the hearing room during the subsequent testimony. The Chair and the other Hearing Committee members may question the participants for the purpose of clarifying matters raised at the hearing.

After consultation with the other members of the Hearing Committee, the Chair shall rule on all evidentiary and procedural objections in accordance with Rule 7.16. Formal exceptions are unnecessary.

Reason for proposed Rule change: The current language of this Rule is inconsistent with Rule 7.22, which provides that the Board Chair will rule on motions to disqualify Hearing Committee members.

D. Board Rule 11.9 (Transcript Corrections)

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing, except as provided herein. ~~Transcript corrections agreed to by all parties may be incorporated into the record by the Hearing Committee. A party seeking a correction to the transcript must first confer with the other party to try to reach an agreement and then file a motion with the Hearing Committee highlighting the language in question, noting any areas of disagreement, and proposing corrections.~~ The Hearing Committee Chair shall resolve all disputes concerning the correctness of the transcript and instruct the court reporter to make any necessary changes.

Reason for proposed Rule change: This amendment is intended to clarify the procedure for requesting transcript corrections, particularly the role of the Hearing Committee Chair.

E. Board Rule 17.4(e) (Challenges to Hearing Committee Members)

The identity of the Hearing Committee members assigned to review the petition for negotiated discipline shall be included in the notice of the hearing provided to respondent and Disciplinary Counsel. Challenges to members of the Hearing Committee must be made in the same manner as a challenge to a Hearing Committee member under Rule 7.22. The necessary affidavit challenging a Hearing Committee member must be submitted to the Office of the Executive Attorney at least seven days prior to the date set for the hearing or the challenge shall be deemed waived. The Board Chair will promptly rule on any challenge to a Hearing Committee member. Quorums for limited hearings will be determined as provided for in Rule 7.12.

Reason for proposed Rule change: Similar to the proposed amendment to Rule 11.2, this change is intended to clarify that the Board Chair, rather than a Hearing Committee Chair, will rule on motions to disqualify Hearing Committee members pursuant to Rule 7.22.

F. Board Rule 19.8(e) (Documentary Evidence)

All ~~copies of~~ documentary evidence filed with the Office of the Executive Attorney pursuant to Rule 7.17 shall be submitted ~~on paper cut or folded to letter size, 8 to 8-1/2 inches wide by 11 inches long. Reproduced copies shall be legible. All original documents and copies shall be filed with an index and the copies shall be tabbed.~~ electronically in PDF format and include bookmarks for each exhibit number. Parties shall provide hard copies of exhibits to the Office of the Executive Attorney upon request.

Reason for proposed Rule change: The Office of the Executive Attorney has been accepting pleadings by email since the beginning of the COVID-19 pandemic. This change has reduced the administrative burden on the parties and the Office of the Executive Attorney, while volunteers increasingly prefer to view the case records electronically. Therefore, the Board believes that electronic filing should be the default method of filing exhibits, but that hard copies should be made available as needed or upon request by a volunteer.