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The Hidden Rules of Practice

The Supreme Court Rules for the Government of the Bar

Most of us are aware of and familiar with the Ohio Rules of Professional Conduct. There exists, however, a lesser known, but no less significant set of rules that judges and attorneys must also follow known as the Supreme Court Rules for the Government of the Bar. Similar to a violation of the Rules of Professional Conduct, failure to comply with the Gov. Bar Rules can result in sanctions — including license suspension or disbarment. This article discusses a few of the Gov. Bar Rules and provides a summary of the disciplinary process.

Partnership by Estoppel

The Gov. Bar Rules and the Rules of Professional Conduct permit the creation of a legally binding partnership where no formal partnership was actually intended. A “partnership by estoppel” arises when independent attorneys appear to be officially associated due to an unintentional misrepresentation to a client or to the public. Such misrepresentations include, but are not limited to, sharing a letterhead or a policy of liability insurance, allowing access to client files, sharing a fee without following the mandates of Rule of Professional Conduct 1.5, or making otherwise misleading statements regarding an attorney’s services.

Partnership by estoppel exposes an attorney to a partnership’s liability without gaining a partnership’s benefits. Care must be taken to avoid this unintentional consequence or, if a partnership is desirable, the attorneys should officially affiliate.

Professional Liability Coverage

The professional liability coverage rules illustrate the need to be familiar with both the Rules of Professional Conduct *and* the Gov. Bar Rules. Rule of Professional Conduct 1.4(c) requires lawyers that carry less than \$100,000 of coverage per occurrence and \$300,000 in the aggregate to provide notice of that fact to the client at the time of engagement. A “hard copy” of that notice, which must be signed by the client, needs to be kept on file for five years after the attorney-client relationship terminates. Without further research into the little known Gov. Bar Rules, an attorney may believe that he or she is not required to possess insurance as long as these steps are taken. Not explicitly stated is that Rule of Professional Conduct 1.4(c) does not apply to law firms.

Gov. Bar R. III Section 4 requires that law firms maintain “adequate professional liability insurance.” This means a firm must maintain a policy of \$50,000 of coverage multiplied by the number of lawyers in the firm for each claim, and \$100,000 of coverage multiplied by the number of attorneys for all claims. Failure to carry this level of insurance is a violation of Gov. Bar R. III.

Also, there is a cap to the amount of professional liability insurance a law firm must carry. No firm shall be required to carry insurance of more than five million dollars per claim or more than ten million in coverage for all claims during the policy year.

Disciplinary Procedure¹

Gov. Bar Rule V outlines the disciplinary

process. The process incorporates multiple reviews before the grievance becomes public and several further reviews before the complained of conduct can be sanctioned.

A grievance can be made about an attorney either to Disciplinary Counsel of the Supreme Court of Ohio or to a certified grievance committee of a local bar association. Grievances against judges can be made to Disciplinary Counsel or the Ohio State Bar Association. The body drafts a formal Complaint only if their investigation finds substantial credible evidence of misconduct. The Complaint then proceeds to the Probable Cause Panel of the Board of Commissioners on Grievances and Discipline (Board).

The Probable Cause Panel then reviews the Complaint. *The Complaint becomes public and proceeds to the full Board only if probable cause is found.* Otherwise, the Complaint is dismissed without ever becoming public.

An Answer must be filed if the Complaint is not dismissed by the Probable Cause Panel.

Failing to answer will result in a default motion while answering grants the right to a hearing in front of a three-member Panel of the Board. After the hearing, the Panel can either vote unanimously to dismiss the Complaint or recommend a sanction to the full Board. The Board, upon review and approval of the recommended sanction, forwards the recommendation to the Supreme Court of Ohio. The Supreme Court then hears oral arguments on the matter and renders its decision regarding a sanction.

The foregoing is to provide a basic understanding of the Gov. Bar Rule's disciplinary process. A full reading of Gov. Bar R. V is recommended if you are ever the target of a grievance.

Unauthorized Practice of Law

While many Bar members are aware of who may perform legal services, few are aware it is the Gov. Bar Rules that establish those guidelines. Admission to practice, legal interns, corporate

status, temporary certification, and pro hac vice status, among others, are all outlined and guided by the Gov. Bar Rules.

Furthermore, and similar to Gov. Bar R. V regarding grievances, Gov. Bar R. VII outlines the process for complaints concerning the unauthorized practice of law (UPL). Gov. Bar R. VII grants jurisdiction for most complaints regarding UPL to a controlling body known as the Board on the Unauthorized Practice of Law. Except for complaints against persons for rendering legal services while suspended, inactive, or retired, all proceedings arising out of complaints of UPL shall be brought, conducted, and disposed of in accordance with this Rule.

The Gov. Bar Rules are as relevant to the everyday practice of law as the Rules of Professional Conduct. A full reading of both sets of rules is recommended so you are fully informed of your duties in your daily practice. 

¹ A flow-chart of the Disciplinary Process is available on the Supreme Court of Ohio's website at http://www.sconet.state.oh.us/Boards/BOC/Flowchart_legal.pdf.