

# **RULES OF THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW**

## **I. Structure**

### **Rule**

1. Board on the Unauthorized Practice of Law.
2. Abstention of Board members.
3. Meetings, quorum, and operations.

## **II. Procedure**

4. Intake of complaints.
5. Investigations.
6. Formal proceedings.
7. Service of petition and other papers; filing.
8. Subpoenas and discovery.
9. Hearings.
10. Witnesses and evidence.
11. Burden of proof.
12. Related litigation.
13. Rulings, orders, and reports.
14. Voluntary compliance.
15. Notice to complainant.
16. Costs.

## **III. Enforcement Proceedings**

17. Rulings of the Board.
18. Objections.
19. Enforcement proceedings.

#### **IV. Miscellaneous Provisions**

20. Immunity.
  21. Confidentiality.
  22. Nature of proceedings.
  23. Time.
  24. Limitations on actions.
  25. Complaints against non-lawyer members or associate members.
  26. Permanent file of opinions.
  27. Disciplinary Counsel.
  28. Effective date.
- Index follows Rules.

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#### ORDER OF ADOPTION

This 21st day of May, 1991, it appearing to the Court that the Board on the Unauthorized Practice of Law has need for interim rules;

NOW, THEREFORE, IT IS ORDERED that:

(2) The attached Interim Rules of the Board on the Unauthorized Practice of Law shall be, and hereby are, adopted effective this date.

ANDREW G.T. MOORE, II  
J.

**Scope.** — Pursuant to the Delaware Supreme Court's inherent and exclusive authority and jurisdiction over matters dealing with the profession and practice of law in the State of Delaware, the Court has created the Board on the Unauthorized Practice of Law pursuant to Supreme Court Rule 86 in order to

consider such matters and to recommend appropriate action to the Court. Pursuant to Supreme Court Rule 64, the Court has also created the Office of Disciplinary Counsel, which is the intake agency for all matters relating to the unauthorized practice of law, and which evaluates, investigates, and prosecutes such cases. The following Rules delineate the structure and procedures for a comprehensive regulatory system intended to protect the public from occurrences of the unauthorized practice of law in the State of Delaware.

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## I. STRUCTURE

### **Rule 1. Board on the Unauthorized Practice of Law.**

(a) *Powers and duties.* In addition to the powers set forth in Supreme Court Rule 86, the Board shall have the power to institute actions in its name in any court of competent jurisdiction, and to take such other and further action, as the Board deems prudent and necessary to fulfill its duties and responsibilities.

(b) *Advisory opinions.* The Board shall not render advisory opinions on the unauthorized practice of law.

(c) *Chair and officers.* The Chair and officers of the Board shall be as designated by the Supreme Court. The Chair shall have the authority to take all necessary or appropriate actions to carry out the duties of the Chair as specified in these Rules. If the Chair is absent or disqualified, the Vice-Chair shall serve temporarily as necessary with the same authority as the Chair. Whenever a committee or hearing panel of the Board has been appointed with respect to a particular matter, every reference in these Rules to “the Board” shall refer to such committee or hearing panel.

(d) *Associate members.* The Board may by resolution delegate to associate members of the Board appointed by the Supreme Court such duties and functions as the Board may prescribe, provided, however, that associate members shall not have the power to vote on any determination or decision of the Board. (Amended, effective Dec. 9, 1993; May 1, 1997.)

### **Rule 2. Abstention of Board members.**

Members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain and shall for the purposes of

such proceeding only, be considered “disqualified.”

### **Rule 3. Meetings, quorum, and operations.**

(a) *Meetings.* The Board shall meet upon call of its Chair, or in the absence or disqualification of the Chair any two members of the Board, or upon call of the Supreme Court, at such place and time as may be specified in the call.

(b) *Quorum for hearings and meetings.* Hearings before the Board in formal proceedings under these Rules shall be held before hearing panels consisting of at least three members of the Board, as appointed pursuant to rule 3(d). Hearing panels consisting of more than three members of the Board may be appointed if the Chair considers a larger panel appropriate. With respect to meetings of the Board other than hearings in formal proceedings, a majority of the members of the Board not disqualified, but no fewer than three, shall constitute a quorum.

(c) *Ad hoc members.* If, in any given proceeding, the number of the Board members not disqualified is less than a quorum, the Supreme Court may appoint, for that proceeding only, the number of *ad hoc* members (which may include associate members) necessary to establish a quorum. Each *ad hoc* member shall have the powers and fulfill the duties of a member of the Board for the purposes of that proceeding only.

(d) *Hearing panels and committees.* Following the commencement of formal proceedings before the Board pursuant to Rule 6(b), the Chair shall appoint a hearing panel consisting of members of the Board, and shall designate one such member as the chair of the hearing panel. The Chair shall not serve as a member of a hearing panel unless no other member of the Board is available. At least one member of each hearing panel shall be a non-attorney member of the Board. Prior to the appointment of a hearing panel in a formal proceeding, the Chair shall consider and determine all procedural, evidentiary, and administrative issues relating to the proceeding; after such appointment but prior to a hearing, the chair of the hearing panel shall consider and determine all such issues, except as otherwise stated in these Rules. Upon the commencement of a hearing in a formal proceeding, the making of any subsequent ruling, disposition, order, or final report by the hearing panel shall require a majority vote of its panelists. The Chair may appoint committees or panels of the Board other than for hearing purposes with such composition and powers as the Chair shall designate.

(e) *Telephonic meetings.* Except in respect of a hearing in any formal proceeding, the Board, or any of the members thereof, may participate in any meeting of the Board, or a committee or panel thereof, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(f) *Compensation and expenses.* Members and associate members shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties. The expenses of the Board shall be paid by the Board in accordance with a policy adopted by the Board. Unless otherwise instructed by the Board, Disciplinary Counsel is authorized to expend such funds as may be necessary for Disciplinary Counsel to carry out the duties and obligations imposed by Supreme Court Rule 86, these Rules and the Board.

(g) *Administration of system.* To maintain the efficient operation of the regulatory system contained in these Rules, the Board Administrator shall assist the Chair in establishing policies and procedures for the processing and disposition of all unauthorized practice matters, including without limitation the assignment of hearing panels, the scheduling of hearings, and the filing, docketing, and maintenance of pleadings and other papers constituting the official record in individual unauthorized practice cases. The Board Administrator shall be an *ex officio* member of the Board with respect to any of its administrative functions, and the Chair or the Board may delegate to the Board Administrator such administrative duties as each may decide appropriate. The Board Administrator shall also have such administrative powers and duties as are authorized by the Court.

The Supreme Court may designate a person on its staff to serve as Board Administrator.

(h) *Reports.* On or before January 31st, the Chair shall file a report with the Supreme Court advising the Court of the following:

- (1) The number of petitions filed with the Board during the previous year.
- (2) The number of Board hearings conducted by panels during the previous year.
- (3) The number of Board recommendations filed with the Court during the

previous year.

(4) The number of matters resolved through the Rule 14 Affidavit of Voluntary Compliance procedure during the previous year.

(5) The number and status of matters pending before the Board as of the date of the Chair's report. (Amended, effective Oct. 21, 1992; Dec. 9, 1993; May 1, 1997; Oct. 22, 1999, effective Oct. 15, 1999; Mar. 9, 2000; June 21, 2002, effective July 1, 2002.)

## **II. PROCEDURE**

### **Rule 4. Intake of complaints.**

(a) *Complaints.* All information, whether received by complaint or otherwise, regarding a possible occurrence of the unauthorized practice of law in the State of Delaware shall initially be processed by the Office of Disciplinary Counsel, which shall act as the intake agency for the receipt of all such information. Complaints should be in writing. Upon receipt of any such information, Disciplinary Counsel shall open an appropriate file and assign the matter a docket number. Neither unwillingness nor neglect of the complainant to press a complaint once made, nor settlement, nor compromise between the complainant and any respondent, nor restitution by the respondent shall, in itself, justify abatement of the processing of any complaint.

(b) *Evaluation and summary dismissal.* Upon the receipt and docketing of a complaint or other information regarding a possible occurrence of the unauthorized practice of law in the State of Delaware, Disciplinary Counsel shall conduct an evaluation of the matter. If the complaint or information on its face does not indicate an occurrence of the unauthorized practice of law in the State of Delaware, Disciplinary Counsel shall summarily dismiss the matter without prejudice and close the file with written notice to the complainant.

(c) *Criteria for evaluation.* In evaluating any information involving the possible unauthorized practice of law in the State of Delaware, Disciplinary Counsel shall initially determine whether the person which is the subject of such information is otherwise authorized to practice law in the State of Delaware. If not, Disciplinary Counsel shall then determine whether such person has possibly engaged in any of the following types of conduct: (i) giving legal advice on matters relating to Delaware law, (ii) drafting legal

documents or pleadings for a person or entity (other than one's self) reflecting upon Delaware law, for use in a Delaware legal tribunal or governmental agency, unless the drafting of such documents or pleadings has been supervised by a person authorized to practice law in the State of Delaware, (iii) appearing as legal counsel for, or otherwise representing, a person or entity (other than one's self) in a Delaware legal tribunal or governmental agency, (iv) holding one's self out as being authorized to practice law in the State of Delaware, (v) engaging in an activity which has traditionally been performed exclusively by persons authorized to practice law, and (vi) engaging in any other act which may indicate an occurrence of the unauthorized practice of law in the State of Delaware as established by case law, statute, ruling, or other authority. The foregoing description of types of conduct are to be used as general guidelines for evaluation by Disciplinary Counsel, and not as definitions of the unauthorized practice of law. (Amended, effective Dec. 9, 1993; May 1, 1997; June 21, 2002, effective July 1, 2002.)

### COMMENT

For purposes of Rule 4(b), a “complaint or information on its face does not indicate an occurrence of the unauthorized practice of law” when either:

- (1) The factual allegations, even if true, do not constitute the unauthorized practice of law, or
- (2) The factual allegations in the complaint or information rise to the level of the irrational or wholly incredible.

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### NOTES TO DECISIONS

#### **Administrative hearings.**

The Delaware Supreme Court's jurisdiction to issue writs to inferior courts of the State did not, in the absence of any changes to rules of that court or to the Rules of the Board on Unauthorized Practice of Law, extend to permit it to prohibit the Office of Disciplinary Counsel, on a one-time basis, from proceeding against petitioner who sought representation by a non-lawyer at an educational administrative hearing, based on petitioner's claimed inability to

find an attorney in that specialty. *In re Machette*, 852 A.2d 908 (Del. 2004).

### **Rule 5. Investigations.**

(a) *Investigation by Disciplinary Counsel.* If the evaluation of a matter by Disciplinary Counsel does not result in summary dismissal under Rule 4(b), Disciplinary Counsel shall proceed to initiate an investigation of the matter, with written notice to the Chair and the complainant.

(b) *Subpoenas.* Following the designation of a matter as an investigation under Rule 5(a), Disciplinary Counsel may administer oaths and affirmations and may compel by subpoena the attendance of witnesses and the production of relevant books, papers, and documents. Subpoenas shall be issued under the signature of Disciplinary Counsel and served by any means deemed appropriate.

(c) *Dismissal after investigation.* Following an investigation, Disciplinary Counsel may dismiss the matter without prejudice and close the file with written notice to the complainant. When an investigation has revealed that there is insufficient evidence of conduct involving an occurrence of the unauthorized practice of law in the State of Delaware to prosecute the matter further, the matter shall be dismissed. (Amended, effective Dec. 9, 1993; May 1, 1997; June 21, 2002, effective July 1, 2002.)

### **Rule 6. Formal proceedings.**

(a) *Approval of petition by lawyer member.* Following an investigation, if Disciplinary Counsel determines that there is sufficient evidence of conduct involving an occurrence of the unauthorized practice of law in the State of Delaware to warrant further prosecution, Disciplinary Counsel shall draft a petition seeking appropriate relief directed to the Board. The petition shall be sufficiently clear and specific to inform the respondent of the alleged unauthorized practice of law, and shall contain a notice that the respondent's failure to file a response with the Board in a timely manner will result in the allegations and charges contained therein being deemed as conclusively established. Disciplinary Counsel shall submit the draft petition to a lawyer member of the Board for review, and no petition may be filed by Disciplinary Counsel without prior approval of the assigned lawyer member of the Board. The Chair shall establish a list of lawyer members of the Board, other than the Chair, to be assigned by the Chair, on a rotating basis, to review draft petitions

for approval. The lawyer member of the Board who is assigned to review a petition for filing shall not thereafter participate on a panel that decides the matter on the merits.

(b) *Commencement of formal proceedings.* Following approval of a petition by the assigned lawyer member of the Board, Disciplinary Counsel shall sign and file the petition with the Board, and shall serve the petition upon the respondent pursuant to these Rules. The respondent shall file an answer with the Board within 20 days of service of the petition, with service of same upon Disciplinary Counsel. In the event the respondent fails to answer in a timely manner, all factual allegations contained therein shall be deemed as conclusively established. (Amended, effective Dec. 9, 1993; May 1, 1997; June 21, 2002, effective July 1, 2002; effective Mar. 2, 2006.)

#### **Rule 7. Service of petition and other papers; filing.**

(a) *Service.* Service of the petition upon the respondent shall be made either in the manner provided for service of a civil complaint under the Rules of Civil Procedure for the Superior Court or be made by any person authorized by the Board to make such service.

All papers subsequent to the petition which are filed with the Board shall be served upon each party to the proceeding. Service upon a party represented by an attorney shall be made by serving the attorney unless service upon the party personally is ordered by the Board. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the Board Administrator.

Delivery of a copy within this Rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(b) *Filing requirement and manner of filing.* A petition to the Board and all other pleadings relating to a matter before the Board shall be filed with and maintained by the Board pursuant to the administrative procedures established

by the Chair and the Board Administrator. The filing of any such paper with the Board shall be made by delivering one original and three copies of such document to the Board Administrator. All such documents shall thereupon be date-stamped by the Board Administrator as “filed” with the Board. The original copy of all such filings shall be retained by the Board Administrator as the official record of the Board in the matter. (Amended, effective Dec. 9, 1993; May 1, 1997; Oct. 22, 1999, effective Oct. 15, 1999; June 21, 2002, effective July 1, 2002; effective Mar. 2, 2006.)

### **Rule 8. Subpoenas and discovery.**

(a) *Oaths and affirmations.* Any member of the Board who is authorized by law to do so may administer oaths and affirmations in matters before the Board.

(b) *Subpoenas.* (1) For the hearing, Disciplinary Counsel may compel by subpoena the attendance of such witnesses (including the respondent) and the production of such books, papers and documents as are relevant to the issues that are the subject matter of the hearing.

(2) After formal proceedings are instituted and at the written request of the respondent, the Secretary of the Board, or the designee of the Chair in the Secretary’s absence, shall compel by subpoena the attendance of such witnesses and the production of such books, papers and documents at the hearing as are relevant to the issues that are the subject matter of the hearing.

(c) *Challenges to subpoenas.* Any attack on the validity of a subpoena so issued shall be heard and determined by the Board, or by a court in the jurisdiction wherein enforcement of the subpoena is being sought.

(d) *Enforcement of subpoenas.* The Supreme Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(e) *Depositions.* With the approval of the Board, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness, absence from the State or other compelling reason. A complete record of the testimony so taken shall be made and preserved.

(f) *Witness fees.* Subpoena and witness fees and mileage shall be the same as those provided for proceedings in the Delaware Superior Court.

(g) *Discovery disputes.* Disputes concerning the scope and other aspects of discovery shall be determined by the Board. All discovery orders by the Board are interlocutory and may not be appealed. (Amended, effective Dec. 9, 1993; May 1, 1997.)

## **Rule 9. Hearings.**

(a) *Notice of hearing.* If a panel determines there are material issues of fact raised by the pleadings or if any party requests the opportunity to be heard, the Board Administrator shall serve notice of a hearing upon Disciplinary Counsel and the respondent, stating the date and place of the hearing at least 20 days in advance thereof. The notice of hearing shall advise the respondent that the respondent is entitled to be represented by a lawyer, to cross-examine witnesses and to present evidence in the respondent's own behalf. Briefs, argument or other submissions may be permitted in the discretion of the Board.

(b) *Pre-hearing conference.* Upon the application of any party or on its own motion the Board may order a conference to be held for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference shall be held before the chair of the hearing panel assigned to the matter, or before the chair's designee.

(c) *Stenographic record.* A stenographic record shall be made of the hearing. The record of the hearing shall be made available to the respondent at the respondent's expense upon the respondent's request.

(d) *Findings.* Following a hearing, the Board shall express its findings of fact, conclusions of law, and recommended disposition in a final report which is sufficiently specific for the purposes of review by the Supreme Court. A copy of the report shall be served upon the parties.

(e) *Supreme Court review.* The Board's final report shall be filed with the Supreme Court together with the record of its proceedings, including transcripts, briefs, and other pleadings, within 90 days of the date upon which the matter was finally submitted to the Board. The Board shall promptly serve notice of such filing to the parties. Within 20 days of the receipt of such notice, any party may file objections to the Board's report with the Supreme Court. Such objections may not exceed five (5) pages in length. If objections are filed, the Court may then treat the matter pursuant to its rules governing civil appeals, designating the appropriate party as the appellant, and scheduling the matter for

briefing and argument. If no objections are timely filed, the report of the Board shall be approved by order of the Court as the final disposition of the matter unless the Court orders otherwise within 30 days of the last date for filing objections. The final disposition of a matter by the Court shall be enforceable in the Court through contempt proceedings. (Amended, effective Dec. 9, 1993; May 1, 1997; Oct. 22, 1999, effective Oct. 15, 1999; June 21, 2002, effective July 1, 2002.)

## NOTES TO DECISIONS

### **Unauthorized practice found.**

Court approved a report and recommendations by the Board on the Unauthorized Practice of Law pursuant to Bd. Unauthorized Prac. L. R. 9(d), finding that a nonattorney was engaged in the unauthorized practice of law where that attorney: (1) represented an individual against a university; (2) requested documents therein; and (3) represented the nonattorney's own company in a judicial action. *In re Alston*, 991 A.2d 17 (Del. 2010), cert. denied, — U.S. —, 131 S. Ct. 462, 178 L. Ed. 2d 288 (2010).

### **Rule 10. Witnesses and evidence.**

All witnesses shall be sworn or shall give proper affirmation in all proceedings hereunder. The Delaware Uniform Rules of Evidence shall be followed as far as practicable, provided that evidence may be admitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Where the respondent is or has been a party to a proceeding, whether criminal, civil, administrative or otherwise, the relevant portions of the transcript of the proceedings, exhibits, findings of fact, conclusions of law, opinions, decisions and judgments, shall be admitted in evidence and shall be accorded such weight as the Board shall deem appropriate; provided, however, that proof of a conviction of the respondent for any crime shall be conclusive evidence of the commission of that crime. (Amended, effective Dec. 9, 1993.)

### **Rule 11. Burden of proof.**

The burden of proving action constituting the unauthorized practice of law shall be upon Disciplinary Counsel and shall be by clear and convincing evidence.

## **Rule 12. Related litigation.**

Whenever in the course of an investigation or formal proceeding the Board ascertains that there is in process civil litigation to which the person under investigation or the respondent is a party, or a criminal action in which such person or respondent is, or becomes, a defendant, either of which involves the subject matter of the investigation or formal proceeding, the Board may upon application or on its own motion direct that the investigation or formal proceeding be stayed for a period not to exceed 90 days, and upon such terms as the Board may deem desirable because of the pending litigation. Upon application or on the Board's own motion, any stay so granted which has expired or is about to expire may be renewed from time to time for periods not to exceed 90 days. The Board may, upon application or on its own motion, at any time, revoke or modify such stay. In determining whether and upon what terms a stay should be granted, denied, revoked or extended the Board shall consider all relevant factors, including the following: (1) the need for disposing of the matter at the earliest practicable time, (2) the extent to which the issues in the pending litigation are the same or substantially the same as those before it, (3) the extent to which the matter under investigation or subject to the formal proceedings would probably be delayed by awaiting the disposition of the pending civil litigation or criminal action, (4) the extent to which the matter under investigation or subject to the formal proceedings would probably be expedited by awaiting the plea or judgment in the criminal action, (5) the extent to which the matter under investigation or subject to the formal proceedings would be aided, as to the determination of a material issue, by awaiting evidence to be adduced in the pending litigation, (6) the extent to which evidence may be unavailable to the investigation or formal proceeding because of any delay occasioned by withholding further action, (7) the extent to which witnesses or documents may be unavailable to the investigation or formal proceedings because of concurrent discovery or trial proceedings in the pending litigation, and (8) the extent to which the person under investigation or the respondent or any party to the pending litigation may be prejudiced in the pending litigation by withholding or failing to withhold further action. The acquittal of the person under investigation or the respondent on criminal charges or a verdict or judgment in favor of the person under investigation or the respondent in civil litigation involving substantially similar material allegations shall not, in and of itself, abate the investigation or formal proceedings even though predicated upon the same material allegations.

### **Rule 13. Rulings, orders, and reports.**

The Board shall have power to make such rulings, dispositions, orders, recommendations, and reports as may be permitted under Supreme Court Rule 86 and these Rules. Any such action which is reduced to writing shall be signed by an appropriate member of the Board. (Amended, effective Dec. 9, 1993; May 1, 1997.)

### **Rule 14. Voluntary compliance.**

At any time after a matter is initially docketed by the Office of Disciplinary Counsel, the respondent may voluntarily offer an assurance that the respondent shall not engage in the unauthorized practice of law in the State of Delaware. Any such voluntary assurance must be in writing and duly sworn, and must be approved in writing by the Disciplinary Counsel and either (a) the Chair, if no panel of the Board has yet been assigned to the matter, or (b) the Board, if a panel thereof has been assigned to the matter. Upon such approval, the voluntary assurance shall be filed by Disciplinary Counsel in the Supreme Court with a petition for the Court's approval briefly describing the facts of the matter and a form of order. The Supreme Court's entry of an order approving the voluntary assurance shall be enforceable in the Court through contempt proceedings. (Amended, effective Dec. 9, 1993; May 1, 1997.)

## **NOTES TO DECISIONS**

### **Sanctions.**

State Supreme Court accepted the findings of fact of the Board on the Unauthorized Practice of Law (Board) and recommendations regarding sanctions for the nonlawyer's contemptuous conduct in violating a cease and desist order after the nonlawyer gave voluntary assurances that the nonlawyer would discontinue the unauthorized practice of law, which largely consisted of drafting estate-related documents for clients; the Board had the authority and jurisdiction to investigate such matters and sanctioning the nonlawyer under such circumstances was necessary to protect the public from the unauthorized practice of law. [In re Estep, 933 A.2d 763 \(Del. 2007\)](#).

### **Rule 15. Notice to complainant.**

Disciplinary Counsel shall promptly notify the complainant, if any, as to the final disposition of each complaint after the matter is concluded.

### **Rule 16. Costs.**

Unless otherwise ordered by the Supreme Court or the Board, costs of all proceedings, including the costs of investigation, service of process, witness fees and court reporting services, shall be assessed against the respondent in any case where the Court makes a final determination that the respondent has engaged in the unauthorized practice of law. (Amended, effective May 1, 1997.)

## **III. ENFORCEMENT PROCEEDINGS**

### **Rule 17. Rulings of the Board.**

Except for the findings and other dispositions contained in the Board's final report pursuant to rule 9(d), all rulings of the Board shall be considered interlocutory and shall not be subject to interlocutory review by the Supreme Court. (Amended, effective May 1, 1997.)

### **Rule 18. Objections.**

Objections to the findings of the Board following a hearing may be filed with the Supreme Court in the manner described in Rule 9(e). The pendency of the Supreme Court's review of the Board's findings pursuant to Rule 9(e) shall operate as a stay of such findings until final disposition by the Court. (Amended, effective May 1, 1997.)

### **Rule 19. Enforcement proceedings.**

Whenever it shall come to the attention of the Disciplinary Counsel that a respondent is or may be in violation of an order of the Court, Disciplinary Counsel shall initiate an investigation of the matter. If after investigation Disciplinary Counsel determines that the respondent is not in violation, Disciplinary Counsel shall dismiss the matter without prejudice subject to the approval of the Chair, and close the file with written notice to the appropriate parties. If after investigation Disciplinary Counsel concludes that the matter should not be dismissed, Disciplinary Counsel shall draft a petition to the Court for a rule to show cause why the respondent should not be found in contempt. Disciplinary Counsel shall submit the draft petition to the Chair for review, and no such petition may be filed by Disciplinary Counsel without the prior approval of the Chair.

Following approval of such petition by the Chair, Disciplinary Counsel shall file the petition with the Court, and shall serve the petition upon the respondent in the same manner as a petition which is initially filed with the Board. The respondent shall file an answer with the Court within 20 days of service of the petition, with service of same upon Disciplinary Counsel. In the event that the respondent fails to answer the petition in a timely manner, or otherwise does not dispute the petition, all allegations and charges contained therein shall be deemed as conclusively established, and the Court may thereupon enter an appropriate order of enforcement. If the respondent answers the petition in a timely manner and disputes the allegations and charges contained therein, the Court may thereupon treat the matter as it would any contempt proceeding. The Court may direct that the Board conduct an evidentiary hearing with respect to the petition and submit a report with its findings and recommendations to the Court on the issue of contempt. (Amended, effective Mar. 26, 1992; May 1, 1997.)

## NOTES TO DECISIONS

### **Construction with other provisions.**

While an attorney's violation of a cease and desist order would have supported a finding of contempt under Bd. Unauthorized Prac. L. R. 19, the Delaware Office of Disciplinary Counsel did not abuse its discretion in proceeding under the attorney disciplinary rules as the same conduct also constituted knowing disobedience of a court order in violation of Law. R. Prof. Conduct 3.4(c). [In re Tonwe, 929 A.2d 774 \(Del. 2007\)](#).

## IV. MISCELLANEOUS PROVISIONS

### **Rule 20. Immunity.**

(a) *From civil suit.* Communications to any member of the Board or Disciplinary Counsel relating to the alleged unauthorized practice of law and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit may be instituted against any complainant or witness based on such communications or testimony. All persons performing official duties under these Rules, including but not limited to members of the Board and associate members of the Board, the agents, employees or other persons working on behalf of the Board, Disciplinary Counsel and staff, and the Board

Administrator, shall be immune from civil suit for any conduct in the course of their official duties.

(b) *From criminal prosecution.* Upon application by Disciplinary Counsel or the respondent and notice to the Attorney General, the Supreme Court may grant immunity from criminal prosecution to a witness in any proceedings under these rules. (Amended, effective May 1, 1997; Oct. 22, 1999, effective Oct. 15, 1999; June 21, 2002, effective July 1, 2002.)

### **Rule 21. Confidentiality.**

(a) *Complaints, investigations, and hearings.* In connection with a particular matter being considered by the Court, the Board, or Disciplinary Counsel, all information and proceedings are confidential, except that the following shall be considered as public:

(1) the fact that a matter is being evaluated or investigated by Disciplinary Counsel,

(2) the identity of a person being evaluated or investigated by Disciplinary Counsel,

(3) the general subject matter, pendency, and status of a matter being evaluated or investigated by Disciplinary Counsel,

(4) the official record in a matter as filed with the Board pursuant to Rule 7(b),

(5) hearings in particular matters before the Board,

(6) the rulings, orders, dispositions, and reports of the Board in particular matters, and

(7) the record and proceedings in particular matters which are reviewed by the Supreme Court.

(b) *Protective orders.* In order to protect the interests of complainants, witnesses, third parties or respondents, the Board may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order.

(c) *Duty of participants.* All participants in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by any

protective order.

(d) *Cooperation with criminal justice authorities.* Any evidence or information obtained pursuant to these Rules indicating criminal conduct, including documents, transcripts, and work product, or any selected portions thereof, may be disclosed or turned over to the appropriate criminal justice authorities for their independent review and investigation. (Amended, effective May 1, 1997; Nov. 8, 2004.)

### **Rule 22. Nature of proceedings.**

Proceedings concerning the unauthorized practice of law are neither civil nor criminal but are sui generis.

### **Rule 23. Time.**

(a) *Computation of time.* In computing any period of time prescribed or allowed by these Rules, the provisions of Supreme Court Rule 11(a), as amended from time to time, shall control.

(b) *Effect of time limitations.* Except as is otherwise provided in these Rules, time provisions stated in these Rules are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any investigation or proceeding.

### **Rule 24. Limitations on actions.**

An occurrence or course of conduct involving the possible unauthorized practice of law which concluded prior to three years of the receipt of information of such activity by the Office of Disciplinary Counsel may be evaluated or investigated by Disciplinary Counsel for the purposes of verification, but shall not otherwise become the subject of formal proceedings before the Board pursuant to Rule 6(b). (Amended, effective May 1, 1997.)

### **Rule 25. Complaints against non-lawyer members or associate members.**

Complaints against non-lawyer members or non-lawyer associate members of the Board alleging the unauthorized practice of law shall be submitted directly to the Supreme Court.

### **Rule 26. Permanent file of opinions.**

All written opinions issued by the Board shall be public unless otherwise

provided in accordance with Rule 21 and shall be maintained by the Board Administrator in a permanent file of opinions. (Amended, effective May 1, 1997; Oct. 22, 1999, effective Oct. 15, 1999; June 21, 2002, effective July 1, 2002.)

**Rule 27. Disciplinary Counsel.**

As used in these rules, “Disciplinary Counsel” shall mean disciplinary counsel as defined by Supreme Court Rule 64, or as the case may be, the Office of Disciplinary Counsel. (Amended June 6, 1995, eff. July 1, 1995; May 1, 1997.)

**Rule 28. Effective date.**

These rules shall become effective on May 1, 1997, and any investigation or other proceeding relative to the unauthorized practice of law pending on that date shall be processed pursuant to these rules from that point on unless the Supreme Court shall otherwise order to avoid substantial injustice. (Amended, effective May 1, 1997.)

# INDEX TO RULES OF THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

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## A

**ABSTENTION OF MEMBERS**, BdUnauthPracLaw Rule 2.

**AD HOC MEMBERS**, BdUnauthPracLaw Rule 3.

**ADVISORY OPINIONS**, BdUnauthPracLaw Rule 1.

**APPEALS.**

**Orders of board**, BdUnauthPracLaw Rule 18.

**ASSOCIATE MEMBERS**, BdUnauthPracLaw Rule 1.

## B

**BURDEN OF PROOF**, BdUnauthPracLaw Rule 11.

## C

**CHAIR**, BdUnauthPracLaw Rule 1.

**Hearing panels and committees**, BdUnauthPracLaw Rule 3.

**COMMITTEES**, BdUnauthPracLaw Rule 3.

**COMPENSATION**, BdUnauthPracLaw Rule 3.

**COMPLAINTS.**

**Abatement of processing of complaint**, BdUnauthPracLaw Rule 4.

**Filing**, BdUnauthPracLaw Rule 4.

**Investigations**, BdUnauthPracLaw Rule 5.

    Subpoenas, BdUnauthPracLaw Rule 5.

**Non-lawyer members or associate members,** BdUnauthPracLaw Rule 25.

**Recommendations,** BdUnauthPracLaw Rule 5.

Review, BdUnauthPracLaw Rule 6.

**Summary dismissal,** BdUnauthPracLaw Rule 4.

**CONFIDENTIALITY OF INFORMATION,** BdUnauthPracLaw Rule 21.

**COSTS OF PROCEEDINGS,** BdUnauthPracLaw Rule 16.

**CRIMINAL JUSTICE AUTHORITIES.**

**Cooperation with,** BdUnauthPracLaw Rule 21.

## **D**

**DISCIPLINARY COUNSEL.**

**Defined,** BdUnauthPracLaw Rule 27.

**Investigation and recommendations,** BdUnauthPracLaw Rule 5.

**Review of recommendation,** BdUnauthPracLaw Rule 6.

**DISCOVERY,** BdUnauthPracLaw Rule 8.

**DISMISSAL,** BdUnauthPracLaw Rule 5.

**DISQUALIFICATION OF MEMBERS,** BdUnauthPracLaw Rule 2.

**DUTIES,** BdUnauthPracLaw Rule 1.

## **E**

**EFFECTIVE DATE OF RULES,** BdUnauthPracLaw Rule 28.

**ENFORCEMENT PROCEEDINGS,** BdUnauthPracLaw Rule 19.

**EVIDENCE,** BdUnauthPracLaw Rule 10.

**EXPENSES OF MEMBERS,** BdUnauthPracLaw Rule 3.

## **F**

**FORMAL PROCEEDINGS.**

**Commencement**, BdUnauthPracLaw Rule 6.

## **H**

### **HEARINGS.**

**Costs**, BdUnauthPracLaw Rule 16.

**Findings**, BdUnauthPracLaw Rule 9.

**Notice**, BdUnauthPracLaw Rule 9.

**Pre-hearing conference**, BdUnauthPracLaw Rule 9.

**Records**, BdUnauthPracLaw Rule 9.

## **I**

**IMMUNITY OF MEMBERS**, BdUnauthPracLaw Rule 20.

**INVESTIGATIVE SUBPOENA**, BdUnauthPracLaw Rule 5.

## **L**

**LIMITATION OF ACTIONS**, BdUnauthPracLaw Rule 24.

## **M**

**MEETINGS**, BdUnauthPracLaw Rule 3.

**Telephonic meetings**, BdUnauthPracLaw Rule 3.

## **N**

**NATURE OF PROCEEDINGS**, BdUnauthPracLaw Rule 22.

### **NOTICE.**

**Complainant**, BdUnauthPracLaw Rule 15.

## **O**

**OFFICERS**, BdUnauthPracLaw Rule 1.

**OPINIONS.**

**Advisory opinions**, BdUnauthPracLaw Rule 1.

**Permanent file**, BdUnauthPracLaw Rule 26.

**ORDERS.**

**Appeals**, BdUnauthPracLaw Rule 18.

**Collateral attack**, BdUnauthPracLaw Rule 17.

**Enforcement proceedings**, BdUnauthPracLaw Rule 19.

**Final orders**, BdUnauthPracLaw Rule 17.

**Issuance**, BdUnauthPracLaw Rule 13.

**P**

**PANELS**, BdUnauthPracLaw Rule 3.

**PETITIONS.**

**Service**, BdUnauthPracLaw Rule 7.

**POWERS AND DUTIES**, BdUnauthPracLaw Rule 1.

**Q**

**QUORUM**, BdUnauthPracLaw Rule 3.

**R**

**RELATED LITIGATION**, BdUnauthPracLaw Rule 12.

**REPORTS**, BdUnauthPracLaw Rule 3.

**S**

**SERVICE OF PROCESS**, BdUnauthPracLaw Rule 7.

**SUBPOENAS**, BdUnauthPracLaw Rule 8.

**Investigative subpoenas**, BdUnauthPracLaw Rule 5.

**T**

**TIME**, BdUnauthPracLaw Rule 23.

**TRAVEL REIMBURSEMENTS**, BdUnauthPracLaw Rule 3.

**V**

**VOLUNTARY COMPLIANCE**, BdUnauthPracLaw Rule 14.

**W**

**WITNESSES**, BdUnauthPracLaw Rule 10.

**Fees**, BdUnauthPracLaw Rule 8.