

BYLAWS  
OF THE CERTIFIED GRIEVANCE COMMITTEE  
OF THE AKRON BAR ASSOCIATION

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ARTICLE 1

Definitions

Unless the context otherwise clearly indicates, words used in these Bylaws should be defined as follows:

- 1.01 “Assigned Attorney” shall mean a member of the Investigative Subcommittee assigned to conduct the initial investigation of a grievance and make a report back to the Investigative Subcommittee.
- 1.02 “Association” shall mean the Akron Bar Association.
- 1.03 “Attorney” shall mean an attorney against whom a grievance or inquiry is presented and any attorney who may reasonably be expected to become a respondent.
- 1.04 “Board of Commissioners” shall mean the Board of Commissioners on Grievances and Disciplines as established by Rule V for the government of the Bar or any successor Board having jurisdiction to hear complaints against attorneys on their merits.
- 1.05 “Bylaws” shall mean these Bylaws, as amended or regulations generally governing the affairs of the Committee.
- 1.06 “Committee” shall mean the Grievance Committee of the Association.
- 1.07 “Complainant” shall mean any person presenting a grievance or inquiry.
- 1.08 “Disciplinary Rule” shall mean any rule of that title as set forth in the Code of Professional Responsibilities adopted by the Supreme Court of Ohio as it may be amended from time to time, or any mandatory minimum standard of conduct applicable to lawyers by whatever title adopted by such court.
- 1.09 “Grievance” shall mean a written allegation of mental illness or misconduct by an attorney violative of the Disciplinary Rules addressed to the Committee or the Association requesting the commencement of grievance procedures or an investigation as to the conduct of an attorney. A grievance shall be investigated by the Committee and shall constitute a complaint for computation of time under Rule V(4)10 and shall be assigned a docket number.

- 1.10 “Inquiry” shall mean the initial oral or written statement directed to the Association or the Committee which apparently complains about the conduct of an attorney, whether or not on its face constituting an allegation of mental illness or misconduct by the attorney.
- 1.11 “Investigative Subcommittee” shall mean one or more committees appointed by the President to conduct an initial screening of grievances to determine if probable cause exists for an in-depth investigation by the Committee.
- 1.12 “Investigator” shall mean a member of the Grievance Committee assigned to investigate a grievance or review an appeal of a dismissal of a grievance.
- 1.13 “Panel” shall mean a panel of members of the Committee empowered to investigate a grievance, recommend dismissal or prosecution of a grievance as a formal complaint, and to prosecute disciplinary committee proceedings and formal complaints on behalf of the Association before the Board of Commissioners and the Supreme Court of Ohio.
- 1.14 “Party in Interest” shall mean any person presenting a grievance or inquiry or otherwise affected by the alleged misconduct of a Respondent, and any person who may reasonably be expected to become a complainant as a result of a grievance or formal complaint.
- 1.15 “President”, “Board of Trustees”, and “Executive Director”, shall mean the persons holding such offices from time to time in the Association.
- 1.16 “Rule V” shall mean Rule V of the Supreme Court Rules for the Government of the Bar of Ohio as it shall be amended from time to time, or such successor rule as may be provided for in the procedures for the discipline of attorneys.
- 1.17 “Bar Counsel” shall mean the attorney fulfilling the duties of the position created by vote of the Board of Trustees on December 23, 1997, whose duties are set forth in Article 3 hereinbelow, and who shall not be a member of the Committee or an Investigative Subcommittee.
- 1.18 “Disciplinary Counsel” shall mean the official appointed by the Board of Commissioners and approved by the Supreme Court as set forth in Gov. Bar R. V, sec. 3(B).

## ARTICLE 2

### Organization

#### 2.01 Membership.

(a) The Committee shall consist of at least thirty-two (32), and no more than fifty-five (55) regular members, including at least three non-attorney members or ten percent, whichever is greater, and the Chair and Vice Chair. Members terms shall be for one (1) year commencing July 1st, and ending June 30th of the following year. No appointment to the Committee shall be for continuous terms in excess of four (4) years except all individuals who are members of the Committee when these Bylaws were

adopted and complete their current terms and may be appointed for up to two (2) additional one (1) year terms.

(b) The President shall appoint the person who serves as Chair, the person who serves as Vice Chair and all other members of the Committee. Each term will be for one (1) year provided the Chair and Vice Chair do not serve for a total of more than five (5) continuous terms as a member of the Committee after the adoption of these Bylaws.

(c) Acceptance of an appointment as a member of the Committee shall constitute an agreement by the person accepting for the benefit of the Committee and of parties of interest, to adhere to the standards of responsibility and confidentiality set forth in these Bylaws, in Rule V, and in the Code of Professional Responsibility.

#### 2.02 Chair and Vice Chair.

(a) The Chair shall preside at the meetings of the Committee, assign Investigators and members of the Panels, implement decisions of the Committee and carry out such other duties as are required by that office.

(b) The Vice Chair shall, in the Chair's absence, perform the duties of the Chair; and shall carry out such other duties as may be assigned by the Chair.

#### 2.03 Committee Members.

The Committee members, except non-attorney members, shall consist of lawyers who have at some time actively engaged in the practice of law in the State of Ohio for at least five (5) years and who are not judges or permanent full or part time referees or magistrates in the State of Ohio. No attorney member may become a member of the Committee who has not served at least one (1) year on an Investigative Subcommittee (unless a member of the Committee when these Bylaws were adopted) and attended an orientation seminar, or in the alternative, viewed a video tape of an orientation seminar.

#### 2.04 Investigative Subcommittee Members.

(a) The Investigative Subcommittee members shall consist of lawyers who have at some time actively engaged in the practice of law in the State of Ohio for at least three (3) years and who are

not judges or permanent full or part time referees or magistrates in the State of Ohio. No one may serve as a member who has not attended an orientation seminar, or in the alternative, viewed a video tape of an orientation seminar. Each Investigative Subcommittee appointed by the President shall consist of at least twenty-two (22) regular members including a Chair and Vice Chair. Appointments to Investigative Subcommittee other than that as Chair or Vice Chair shall be for terms of one (1) year, however, no appointment to the Investigative Subcommittee shall be for continuous terms in excess of four (4) years.

(b) The President shall appoint a member of the Committee to serve as Chair and a member of the Committee to serve as Vice Chair of each Investigative Subcommittee for a term of one (1) year, provided that Chair and Vice Chair do not serve as members of the Investigative Subcommittee for continuous terms in excess of five (5) consecutive years. The President shall appoint the members of the Investigative Subcommittee.

2.05 Conflict of Interest.

A member of the Committee or any person serving on an Investigative Subcommittee shall disqualify himself, or the Chair may disqualify him from consideration of any matter where his impartiality might reasonably be questioned. Any person who has been disqualified shall leave the room during discussions and voting on the matter for which he has been disqualified.

2.06 Removal of Members.

The chair may remove a member of the Committee, or the Investigative Subcommittee for unexcused poor attendance at the proceedings of the Committee, or Investigative Subcommittee (which may presumed to include absence for more than one-third of the meetings of the Committee in a period of six months), failure to complete investigations entrusted to him in a timely manner, failure to return files and records to the Association, or breach of other duties imposed by these Bylaws, physical or mental disability or other good cause shown.

2.07 Quorum.

The presence at a duly-scheduled meeting of at least twenty (20) members of the Committee shall constitute a quorum for all purposes.

2.08 Persons in Attendance.

All meetings of the Committee or Investigative Subcommittee shall be closed and no person other than the members, the Executive Director,, and one or more recording secretaries shall be permitted to attend meetings of the Committee or the Investigative Subcommittee, except upon written request of the Chair of the Committee or Investigative Subcommittee. Any person appearing before the Committee or Investigative Subcommittee or a Panel may be represented by an attorney.

2.09 Ex Officio Members.

The President may from time to time appoint ex officio members to the Committee or an Investigative Subcommittee including in those instances where a member's term has expired and the

member has been assigned as the Assigned Attorney, Investigator, or member of a Panel responsible for a pending inquiry or grievance. Ex officio members shall be governed by, and serve in compliance with, these bylaws.

### ARTICLE 3

#### Procedure - Investigation of Grievance

##### 3.01 Receipt of Inquiry.

(a) All inquiries shall be initially reviewed by Bar Counsel to determine if they constitute a grievance. Bar Counsel shall recommend to the Chair, one of the following:

(1) Dismissal upon intake of those inquiries which do not state a violation on their face, in which case Bar Counsel shall draft an appropriate response for the Chair's signature.

(2) Solicitation of additional information from the Complainant, in which case Bar Counsel shall draft an appropriate request to the Complainant for the Chair's signature.

(3) Further investigation, in which case Bar Counsel may suggest pertinent Disciplinary Rules and avenues of investigation, including forwarding the grievance to Disciplinary Counsel.

(b) Unless it is determined by the Chair that the inquiry does not allege a violation of the Disciplinary Rules, there shall be an investigation in accordance with these Bylaws. If the inquiry does not allege a violation of the Disciplinary Rules, it shall not be treated as a grievance, and it shall not be docketed by the Association. The party in interest shall be notified that the inquiry has been received and of the determination that it does not state grounds for an investigation of misconduct or mental illness of an attorney.

(c) In order to minimize expense to both Complainant and Respondent, and in order to provide for the expeditious and timely resolution of matters in issue, it shall be the policy of the Committee to process all inquiries, unless the Chair, after consultation with Bar Counsel, determines that a conflict of interest would prejudice the Complainant, the Respondent, or the Association, and that, therefore, the matter should be referred to Disciplinary Counsel.

##### 3.02 Investigative Subcommittee

(a) If an inquiry constitutes a grievance, unless forwarded to Disciplinary Counsel, it shall be referred to an Assigned Attorney for an investigation. The Respondent shall be notified of the grievance and sent a copy thereof at his or her last known address.

(b) The Assigned Attorney shall investigate all grievances referred on behalf of the Chair or Vice Chair of the Investigative Subcommittee of which he or she is a member, who shall be the assigned Investigator. The Assigned Attorney's findings and recommendations shall be presented to the Investigative Subcommittee which shall screen all grievances to determine if there is probable cause of misconduct or mental illness justifying an investigation by the Committee. A majority vote of an Investigative Subcommittee shall be required on all recommendations by the assigned attorney. In the event of a tie vote, the Chair

shall cast a vote breaking the tie. The recommendation of the Investigative Subcommittee shall be the recommendation of the Chair or Vice Chair of the Investigative Subcommittee as the assigned Investigator. Recommendations for further investigation by the Committee shall be given to the Executive Director. The Executive Director shall request the Chair of the Committee to appoint a Panel to further investigate the grievance. All recommendations for dismissal shall be made by the Chair or Vice Chair of the Investigative Subcommittee at the next regularly scheduled meeting of the Committee.

### 3.03 Practice and Procedure Relevant to All Investigations.

(a) All matters concerning grievances are confidential. Do not disclose any information concerning the grievance to anyone not directly involved in the investigation. Do not give copies of any documents obtained in the course of the investigation to anyone without the prior consent of the Chair of the Committee.

(b) Do not offer legal advice to the complainant.

(c) Do not offer an opinion as to the merits of the grievance or any prediction as to the outcome. All parties will be notified by the Committee of the action taken by it.

(d) An investigation is not limited to matters specifically raised in the grievance. If additional allegations of misconduct or mental illness not contained within the grievance are raised, the attorney against whom the allegation has been raised will be notified of the additional allegations, by the Assigned Attorney or the Panel, as the case may be, and given an opportunity to respond.

(e) Do not send copies of the completed investigation forms to the complainant or the attorney. Do not retain any files after your investigation has been completed. Turn them into the Bar Staff.

(f) Unless specifically requested in writing by the Attorney, a copy of the Attorney's response to the grievance shall be furnished to the Complainant, without waiving any other right to privacy or confidentiality provided by Gov. Bar R. V, sec. 11. The Attorney shall be notified of this, and provided a form to elect non-disclosure, along with the initial notification of the grievance.

(g) If the attorney or the complainant is uncooperative, e.g., fails to return calls or keep appointments, complete the investigation form as best as you can, noting the lack of cooperation.

(h) All correspondence, including reports, should be mailed in envelopes clearly marked PERSONAL AND CONFIDENTIAL.

### 3.04 Guidelines for Investigating a Complaint at the Investigative Subcommittee Level.

(a) Follow up with attorney to make sure that the attorney submits a timely response.

(b) Make contact with the complainant and go over the principal allegations of the complaint. Usually, a telephone call will suffice. This contact serves a dual function: it lets the complainant know that the complaint is being investigated and also makes sure that the assigned attorney understands the nature and substance of the allegations. All attempts to contact the complainant shall be documented in the file.

(c) If necessary, contact the attorney and discuss with the attorney the allegation(s) of the complainant reflected in the complaint itself and any discussion had with the complainant. Investigations are to be of a screening nature to determine if there is probable cause for the Committee to investigate in detail. However, investigations are not to be perfunctory.

(d) The investigation must be completed within 30 days of the receipt of the complaint by the bar office unless an extension has been obtained by the Chair of the Investigative Subcommittee from the Chair of the Committee for good cause shown.

(e) You may recommend that the grievance be dismissed due to lack of probable cause to believe that the attorney has violated a Disciplinary Rule, or that the grievance be investigated by the Committee due to probable cause to believe that the attorney has violated a Disciplinary Rule. Complete the investigation form and bring it to the next Investigative Subcommittee meeting. All reports shall be typed. You must indicate in detail your conclusions with respect to each potential DR violation that you investigated. Whether you recommend prosecution or dismissal, you must state your specific reason why, with respect to each DR. The entire file generated by the investigation shall be given to the Chair of the Investigative Subcommittee.

(f) The Chair of the Investigative Subcommittee will then forward the investigation form, the file, and the transmittal form to the Bar Staff.

### 3.05 Procedure for Investigating a Complaint at the Committee Level.

(a) The Panel appointed by the Chair of the Committee meets to discuss the file. The file will include all the papers generated at the Investigative Subcommittee level.

(b) A complete, factual investigation must be conducted. The investigation will include interviewing the complainant and the attorney. The entire Panel should meet with those individuals. It may be necessary for a member of the Panel to interview some third parties. In rare cases when many witnesses must be interviewed, the Bar office can provide help.

(c) The Panel will decide on its recommendation to the Committee and complete the investigation form. The Panel may recommend that the grievance be dismissed, or that a complaint be filed with the Secretary of the Board of Commissioners charging violation of the Disciplinary Rules. All reports shall be typed.

(d) Bring the completed investigation form and the entire file generated by the investigation to the next Committee meeting. All members of the Panel should attend the Committee meeting.

(e) If the Committee approves the filing of a complaint, the Panel, will prepare the complaint. The Bar office will submit it to the Secretary of the Board of Commissioners after it has been approved by the Chair of the Committee as to form.

### 3.06 Consideration of Complaints by Committee.

(a) Recommendations of Investigative Subcommittee. At each meeting of the Committee, written reports and pertinent minutes of the Investigative Subcommittee or Committees recommending dismissal will be available for review and discussion. A majority vote of the members present and voting, a quorum being present, shall be sufficient to sustain a recommendation to dismiss for lack of probable cause. In the event the recommendation is not sustained, the Chair shall appoint a Panel to further investigate the grievance subject of the recommendation.

(b) Recommendation of Panels. Recommendations of Panels shall be upon motion duly seconded. A majority vote of the members present and voting, a quorum being present, shall be sufficient to sustain a motion. In the event of a tie vote, the Chair shall cast a vote breaking the tie.

(c) Request to Review. Request to review actions of other Certified Grievance Committees or Disciplinary Counsel shall be assigned by the Chair to one or more Investigators. Recommendation of review shall be upon motion duly seconded. A majority vote of the members present and voting, a quorum being present, shall be sufficient to sustain a motion. In the event of a tie vote, the Chair shall cast a vote breaking the tie.

(d) Ethics Opinions. The Committee shall not issue formal ethics opinions.

(e) Formal Complaint. Motions to file formal complaints against attorneys shall be based upon probable cause, which means substantial, credible evidence that misconduct has been committed. The Committee shall also find the evidence is available to it as such that it is probable that misconduct can be established by clear and convincing evidence.

(f) Review of Documents. All summaries of investigations, formal complaints, and files which are forwarded to the Secretary of the Board of Commissioners, a Probable Cause Panel, or Disciplinary Counsel for review shall be first reviewed by the Chair to determine their completeness.

### 3.07 Finding Probable Cause/The Complaint.

(a) Upon determination by the Committee of probable cause to find a disciplinary violation, the Panel shall prepare a complaint setting forth the Disciplinary Rules violated and the allegations showing reason to believe said violation occurred and the Committee shall recommend the sanction against the Respondent attorney. The Complaint must be prepared on the proper original form provided by The Board of Commissioners. Copies of the form are NOT acceptable.

(b) The proposed complaint and investigative file shall be reviewed by the Committee Chair for approval or revision. Once approved, the judge or attorney who is the subject of the grievance or investigation shall be given certified mail notice of each allegation, and fourteen (14) days from posting to respond. This requirement may be satisfied by providing the judge or attorney with a copy of the proposed complaint. At the end of the fourteen (14) day period, the complaint and summary of the Committee investigation shall be transmitted by the Bar office to the Secretary of the Board of Commissioners for review. All recommendations to the Board are to be the recommendations to the Committee.

(c) A copy of the complaint shall be sent by certified mail to the attorney when the original is mailed to the Secretary of the Board and he/she will be advised that he/she may respond directly to the Secretary of the Board of Commissioners.

(d) Note: Complaints based upon a felony or equivalent offense. Consult Rule V of the Supreme Court Rules for The Government of the Bar of Ohio.

(e) Complaints sent to the Secretary of the Board of Commissioners shall be signed by one or more member(s) of the Bar of Ohio in good standing, who shall be counsel for the Relator and shall be supported by a certificate in writing, signed by the Chair of the Committee indicating counsel is duly authorized to represent Relator. (Relator is the Bar Association. Respondent is the attorney or judge against whom the complaint is lodged.) Six copies of the complaint shall be sent. The Relator's counsel are the attorneys who investigated the complaint at the Committee level and constitute the Panel. The representation continues for all aspects of the case., including prosecution, reviews, appeals and other hearings.

(f) Subsequent to the filing of the complaint, counsel proceeds as in any other litigation and must prove the allegations by clear and convincing evidence.

## ARTICLE 4

### Miscellaneous Provisions

#### 4.01 Oath.

Each member of an Investigative Subcommittee shall take the following oath administered by the Chair and each member of the Committee shall take the following oath administered by the President.

“I do solemnly swear or affirm I will responsibly serve as a member of the (Grievance Committee of the Akron Bar Association) or (Investigative Subcommittee of the Akron Bar Association). I will uphold the Code of Professional Responsibility, the Rules for the Government of the Bar of Ohio, and the Bylaws of the Grievance Committee. I will promptly and fairly investigate and report on all matters brought before me and I will maintain and preserve inviolate the confidences entrusted to me as a member of this Committee of which I may gain knowledge by reason of my membership in this Committee.”

#### 4.02 Retention of Records.

The Association shall retain all files and all investigative materials for a period of three (3) years from the date of disposition of the complaint by the Committee, after which time they will be shredded. Written reports shall be kept six (6) years from the date of disposition of the complaint by the Committee. After such time, the written reports shall be shredded. After six (6) years from the date of disposition of any complaint without any additional or new complaints being filed against an attorney, his record shall show no complaints and the Association and Executive Director shall respond to all inquiries relative to said attorney that he has no record of any complaint having been filed against him.

#### 4.03 Evaluations.

The Chairs of the Investigative Subcommittee shall evaluate annually each member of their committees and recommend to the Chair of the Committee whether the member should be retained on the Investigative Subcommittee, qualifies for membership on the Committee, or should not be re-appointed. In making the recommendations, consideration should be given to, attendance, promptness in making investigations, and analysis and thoroughness of the report. All evaluations should be confidential and destroyed after use. The Chair of the Committee shall evaluate annually each member of the Committee and recommend whether the member should be retained on the Committee.

#### 4.04 Authorization to Incur Expenses.

Except upon authorization of the Board of Trustees, neither the Chair nor any member of the Committee or Investigative Subcommittee shall have the authority to obligate the Committee or the

Association to pay any fees or costs incident to investigations or other actions by the Committee or any of its Panels. The Chair may at his discretion or in direction by a majority of a quorum of the Committee, make such arrangements as may be appropriate with Disciplinary Counsel or the Secretary of the Board of Commissioners for authorization for expenditures for expenses as may be authorized by the applicable rules for the government of the Bar.

4.05 Additional Duties of Bar Counsel.

In addition to those duties set forth in Article 3 hereinabove, Bar Counsel may, when appropriate, make recommendations to the Chair regarding procedures, policies, forms, and other relevant issues.

4.06 Amendment of Bylaws.

These Bylaws may be amended by a vote of the majority of the Committee, upon approval of the Board of Trustees, in accordance with the Bylaws of the Association.

4.07 Procedures not specifically set forth in the Bylaws shall be governed by Robert's Rules of Order.