

Article 8 Unlawful Practice Committee

Bylaw 8.01 Jurisdiction

The Unlawful Practice Committee shall have jurisdiction over all matters and questions which may be considered as constituting the unlawful practice of law under the definition of the practice of law adopted by the Supreme Court of Appeals of West Virginia by rule effective May 1, 1947, and any amendments or changes thereto, and in accordance with other applicable principles of law governing and defining the practice of law in this and other jurisdictions.

Bylaw 8.02 Powers

(a) The Unlawful Practice Committee shall investigate on its own initiative or upon request of any court or judge, or the written complaint of any person, any matter involving the alleged unlawful practice of law. The Committee is empowered to dismiss any complaint. The Unlawful Practice Committee is authorized to present to the Supreme Court of Appeals for approval an agreement to desist from unlawful practices, or when the facts warrant, institute appropriate proceedings in the name of the West Virginia State Bar, or in the name of the Unlawful Practice Committee, for the purpose of securing appropriate relief.

(b) The Committee may act as a whole, or through any subcommittee thereof, consisting of at least three members.

(c) In addition to the provisions of these Bylaws, the procedures regarding matters before the Committee are governed by State Bar Administrative Rule 7.

Bylaw 8.03 Members; terms; vacancies; removals

The Unlawful Practice Committee shall consist of nine members, with eight members being selected by the Board from the active members of the State Bar and the ninth member being a current or senior status circuit court judge selected by the Board. The Board shall endeavor to select members who have a diversity of practice areas and geographic locations. In each year, members shall be selected, each for three-year terms, to fill vacancies occurring in that year by reason of the expiration of the terms of office of members previously selected. Vacancies occurring for other reasons shall be filled by the Board for the unexpired terms. If a member of the Committee is determined by the Board to have become incapacitated from performing their duties as a member or is absent from any two consecutive meetings of the Committee without cause deemed adequate by the Board, they may be removed by the Board. The term of office of each member shall commence at the conclusion of the final quarterly meeting of the Board in the fiscal year of the appointment. Vacancy appointments for unexpired terms shall commence immediately.

Bylaw 8.04 Officers; subcommittees

A chairperson and vice chairperson shall be designated annually by the Board from the members of the Unlawful Practice Committee. The Committee may designate other officers and subcommittees, from its own members, with such of its powers and responsibilities as it may deem proper.

Bylaw 8.05 Meetings; quorum

(a) The Unlawful Practice Committee shall meet at any place in the State of West Virginia upon call of its chairperson or vice chairperson, or upon call of the President of the State Bar. Upon written request of five governors, the President or Executive Director shall call a meeting of the Committee. Attendance at and participation in any such Committee meeting by means of conference telephone or similar electronic other remote communications equipment by which all persons participating in the meeting can hear and speak to each other is expressly permitted if such equipment is available for the meeting site. Any Committee member wishing to attend a scheduled meeting remotely shall provide notice to the chairperson at least 5 days in advance of the meeting.

(b) Three members of the Committee shall constitute a quorum.

Bylaw 8.06 Reports to Executive Director

The Committee shall report to the Executive Director in writing upon initiating any investigation or other action and shall thereafter report to the Executive Director from time to time the status thereof, and upon final disposition of any matter shall forward to the Executive Director a final report with the complete file.

Bylaw 8.07 Subpoena and contempt power

(a) The Committee shall have power to issue subpoenas through the Clerk of the Supreme Court of Appeals. The Clerk shall prepare and have available for issuance at the request of any party to the proceeding, subpoenas returnable before the Committee or its appointed hearing officer for attendance of witnesses or for the production of documentary evidence. Subpoenas, and other process of the Committee, may be served in the same manner provided for service of subpoenas in the circuit courts of this State or may be served by certified mail. The Committee shall have jurisdiction co-extensive with the circuit courts of this State to compel the attendance of witnesses and the production of documents; and the failure of any person without adequate excuse to obey a subpoena or other process of the Committee shall constitute contempt of the Committee, which may invoke the aid of any circuit court to impose sanctions for such contempt. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this State.

(b) The Committee or its appointed hearing officer may punish breaches of order and unprofessional conduct committed in its presence on the part of counsel, or any other person, by censure or exclusion from any hearing or may invoke the aid of any circuit court in

keeping order. Such court, in case of the refusal of any person to maintain order before the Committee or hearing officer, shall issue an order requiring such person to maintain order. Any failure to obey such order of the court may be punished by such court as contempt thereof. The Committee or hearing officer may designate a person or persons to act as bailiff or bailiffs to be in attendance at any hearing.

Bylaw 8.08 Immunity

Persons performing official duties under the provisions of these Bylaws and Administrative Rule 7, including, but not limited to, the Committee, the Executive Director of the State Bar and their staff, counsel appointed to assist in the prosecution of alleged unauthorized practice of law, and hearing officers shall be immune from suit for all conduct in the course of their official duties.

[CLERK'S COMMENTS: The updated and revised Unauthorized Practice of Law ("UPL") procedures articulated in Article 8 of the Bylaws and Administrative Rule 7 are intended to modernize the process by which the public is protected through enforcement of the definition of the practice of law promulgated by the W. Va. Supreme Court. Article 8 of the Bylaws set out the broad authority, while Administrative Rule 7 contains many of the specific procedures. The revised process requires the Court to conduct an actual review of the substance of a decision by the UPL Committee, including the power to veto or modify decisions of the UPL Committee.]