

Rule 7 Procedure for Unlawful Practice Committee matters

7.01 Origin of cases

A case before the Unlawful Practice Committee may originate upon a request for investigation from the Unlawful Practice Committee, upon a request from a grievance committee, upon the request of the Board, the president, the president-elect or vice president, upon the request of any court of record or judge thereof, or upon the complaint of any member of the State Bar or any other person.

7.02 Form of complaint

Each request or complaint shall be in writing, and be filed with the Executive Director, and shall state facts sufficient to justify the exercise of the jurisdiction of the Committee and shall be accompanied by all pertinent documents.

7.03 Filing complaints

(a) All complaints regarding the unauthorized practice of law shall be filed with the Executive Director. Any complaints received by any Committee member, State Bar member, or by any other person shall be transmitted forthwith to the Executive Director.

(b) Upon receipt of any such complaint or request alleged to be within the jurisdiction of the Committee, the Executive Director shall promptly acknowledge its receipt, give it a case number, and enter it in the State Bar records.

(c) Once assigned a case number, all requests for investigation and complaints shall thereafter be denominated as complaints.

(d) All complaints and investigations related thereto shall remain confidential until such time as the Committee dismisses the complaint for failure to state a cognizable claim pursuant to Rule 7.04(b) or issues a written finding pursuant to Rule 7.04(e) as to whether the respondent engaged in the unauthorized practice of law.

7.04 Investigation; consideration by committee

(a) Complaints shall be initially reviewed and screened by the Committee or referred to a designated subcommittee comprised of at least three Committee members for such review and screening.

(b) Upon the initial screening, the Committee or subcommittee shall make a determination as to whether the complaint states a cognizable claim regarding an alleged unauthorized practice of law. It may dismiss the matter and provide written notice of such dismissal to the complainant. It may determine that the alleged conduct of the respondent merits further investigation or proceedings, and in such event, the respondent shall be notified that an investigation is being undertaken. With the notice, the respondent shall also be served personally or by certified mail with the complaint and provided a copy of the rules governing the investigation and disposition thereof.

(c) With the service of the complaint, the Committee shall direct that a written answer to the complaint be filed with the Committee within 30 days following the receipt of the complaint, or such shorter or longer period designated by the Committee; and the Committee may request the respondent to appear before the Committee for an informal conference during which the respondent may be offered an opportunity to enter into a written consent agreement to refrain from conduct constituting the unauthorized practice of law.

(d) At any time in the process, the Committee may refer the matter to a designated subcommittee of at least three members for further investigation and proceedings. The designated subcommittee shall make a written report to the Committee of any investigation and informal conference.

(e) Upon completion of its investigation, the Committee shall issue its written finding as to whether the respondent's conduct constitutes the unauthorized practice of law. After a finding by the Committee that the conduct of the respondent constitutes the unauthorized practice of law, unless the respondent enters into a written consent agreement to refrain from such further conduct, review proceedings shall be instituted as hereinafter provided under these rules.

7.05 Administrative review proceedings

(a) *Request for hearing.* Upon the written request of the respondent, a formal hearing is authorized under this Rule after a finding by the Committee that the respondent has been involved in the unauthorized practice of law, or that activities the respondent seeks to undertake will involve the unauthorized practice of law. Written requests for a formal hearing must be received by the Executive Director of the State Bar within 30 days from the receipt of the adverse decision by the respondent.

(b) *Hearing officer.* The Executive Director shall appoint a hearing officer, who shall be a disinterested, practicing attorney in the State of West Virginia, to conduct a formal hearing. The Executive Director shall, by a written notice mailed to the respondent by certified mail at his or her address as stated in the hearing request, specify the date, time and place of the hearing, and the name of the hearing officer. Proceedings before a hearing officer shall be held in Charleston, West Virginia. In the discretion of the hearing officer, the proceedings may be held in the county where the respondent resides or where acts constituting unauthorized practice of law are alleged to have occurred.

(c) *Time for hearing.* Unless otherwise agreed by the Committee and respondent, the time of the hearing shall not be less than 20 days nor more than 40 days from the date of the receipt of the respondent's written request for a formal hearing. The hearing officer may extend or shorten the time period for good cause shown.

(d) *Hearing process.* The respondent may be represented by counsel and shall have the burden to present evidence in support of his or her position that the activities in question do not constitute the unauthorized practice of law. The Committee may designate a lawyer to represent it and to present evidence before the hearing officer in support of the Committee's findings. Unless waived by the parties with the approval of the hearing officer,

the West Virginia Rules of Evidence shall be applicable when not inconsistent with these rules. Subpoena authority for witnesses and documents is provided under Bylaw 8.07. Subject to any limitations in Bylaw 8.07, the hearing officer shall have the procedural powers generally reposed in a court of record under West Virginia law. At all hearings before a hearing officer, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken by a competent court reporter.

(e) *Reconsideration by Committee.* Upon completion of the proceedings before the hearing officer, the hearing officer shall make a written report of findings and a recommendation based upon the definition of the practice of law, any other applicable court rules or statutes, and upon the evidence submitted. Such written report, together with a copy of the transcript of the hearing and any exhibits, shall be forwarded as soon as practicable to the Committee. The Committee, within 45 days from the receipt of the written report and the record, shall review the report and advise the respondent in writing as to whether the Committee finds that the respondent's conduct constitutes the unlawful practice of law, and state its reasons therein.

7.06 Review by Supreme Court of Appeals

(a) If the Committee makes a decision adverse to the respondent after review of the hearing officer's written report, and no written consent agreement is reached with the respondent to refrain from the conduct at issue within 30 days following the decision, the Committee shall file its decision, along with the record of proceedings, with the Clerk of the Supreme Court of Appeals within 10 days thereafter.

(b) If the respondent does not request a formal hearing under this Rule following a written finding by the Committee under Rule 7.04(e) that the respondent's activities constitute the unauthorized practice of law, and no consent agreement to refrain from such conduct is reached within 30 days of such finding, the Committee shall file its finding and accompanying record with the Clerk of the Supreme Court of Appeals within 10 days thereafter.

(c) Promptly after the report and record is filed with the Supreme Court of Appeals, the Clerk shall mail a briefing schedule to all parties. After review of the proceedings before the hearing officer, and upon consideration of any exceptions and briefs, the Supreme Court of Appeals may adopt the hearing officer's report or modify or reject it in whole or in part, and shall determine whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court concludes that the respondent has engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

(d) At any stage of an investigation or proceedings before the Committee, if the respondent enters into a written consent agreement to refrain from conduct alleged or found

to constitute the unauthorized practice of law, the Committee shall file the consent agreement with the Clerk of the Supreme Court of Appeals, along with the record before the Committee. Upon review, the Supreme Court may ratify or reject the agreement, in whole or in part, and may remand the matter to the Committee for further action.

(e) Nothing in these rules shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

7.07 Payment of expenses

Duly authorized expenses incurred in connection with the investigation of unlawful practice activities, and any proceedings arising therefrom, shall be paid or reimbursed by the Executive Director upon vouchers reviewed and approved by the chairperson of the Committee.

[CLERK'S COMMENTS: To the extent still valid and pertinent, language for this rule was drawn from Chapter III of the former State Bar Rules and Regulations. Several provisions in this Chapter III have either been superseded by the Rules of Lawyer Disciplinary Procedure or have become outdated and fallen into disuse. Additionally, these revised rules substantially re-design the procedures to be used by the UPL Committee in accordance with modern practice and applicable case law.

Finally, since the UPL committee process for investigation and proceedings must meet specific requirements, as just noted, it was no longer appropriate to keep the process for grievance committees under the same set of rules.]