Board of Bar Overseers Policies and Practices

Updated as of February 27, 2024

As with any organization of long-standing, policies and practices have evolved over the years which often are not formalized, and are therefore not readily accessible to all who should be aware of them. This memo, approved by the board in October, 2011, and updated most recently in 2024, serves to collect and formalize BBO's policies and practices. The board's intent is to provide current and incoming board members (as part of the latter's orientation package) and hearing panel members and special hearing officers (as part of their orientation packages) a description of existing policies and practices for guidance purposes, and to provide knowledge of these policies and practices to members of the bar and the public.

It is understood that later boards may choose to modify or amend the board's policies and practices, but until and unless modified, the board's purpose in approving this memo is to ensure that the policies and practices described will be followed in all BBO matters to which they are relevant.

The subject matters dealt with are as follows:

1. Public and media Access to BBO proceedings

BBO proceedings are open to the public, and, subject to SJC Rule 4:01, § 20, the BBO will permit and make appropriate arrangements for public access to its proceedings. Public access will include making arrangements for members of the public, including media, to view public documents and to attend oral arguments and hearings conducted by the board and its hearing committees. The media normally will be permitted to set up audio-visual equipment at such hearings. The board chair, the chair of the hearing committee or board panel may limit the number of pieces of such equipment, may require that the equipment be set up in advance of the hearing, and may make such other rulings regarding media access as are necessary to avoid disruption and to preserve the dignity of the hearing.

Board members and hearing officers are asked not to comment to the media on any aspect of disciplinary matters, regardless of whether such matters are pending, on appeal, or have finally been decided. All inquiries from the media to a board member should be referred to the board's chair or to general counsel.

When the board's rules were amended in 1993 to allow the public to attend disciplinary hearings, a committee was appointed to come up with a policy on media access to board proceedings. Based on the committee's report, the board formally voted to adopt the above policy.

2. Publication of decisions

The board publishes its decisions as well as the court's disciplinary decisions on the board's website (https://www.massbbo.org) in the Massachusetts Attorney Discipline Reports (which the BBO publishes), in Massachusetts Lawyers Weekly, on the Board of Bar Overseers database at the Social Law Library, and via press releases sent to newspapers where the disciplined lawyer lives and works.

A court opinion or memorandum, if it exists, is what is published. If not, then a board memorandum, if there is one, is published. If there is neither a court opinion nor a board memo, a staff-written summary of the disciplinary action is published. Bar counsel prepares summaries for matters that were disposed of by agreement, default, or affidavit of resignation. General counsel's staff prepares summaries for matters on which there was no appeal from the report of a hearing committee, hearing panel, or special hearing officer. The summaries are ministerial functions performed by the staff and not negotiated with respondents or their counsel.

3. Internet Search engine reports of discipline

The board will not interfere with, nor seek to change, the content of any search engine's reporting of discipline of lawyers.

Lawyers who have been suspended and later reinstated have complained that the first information that appears when they are Googled is a reference to their suspension – a reference that makes getting a job difficult. Although there may be a technical fix that would prevent search engines such as Google from crawling over the BBO's website, the board's view is that it is more important that members of the public should have easy

access to disciplinary information than to address the problem raised.

4. Communication with bar counsel by reviewing board members

Board members who review bar counsel's requests to prosecute, dismiss or otherwise dispose of grievances are encouraged, in the course of their duty review process, to communicate directly with the Office of Bar Counsel when they have questions about OBC's recommendation on whether to close, prosecute, or otherwise dispose of a case.

Approval or rejection of the recommendation is an ex parte process. Reviewing board members are recused from participating in later consideration of appeals of the outcome of the matters in which they reviewed bar counsel's recommendations.

5. Role of general counsel's staff in reviewing bar counsel's recommendation to a reviewing board member for formal prosecution

OGC will review bar counsel's charging memo, the proposed petition for discipline, and the underlying investigatory file to see that the facts uncovered by the investigation support the charges, and that, if proven, public discipline would be warranted. OGC will note for the reviewing board member any factual matters the latter may wish to examine more closely. To assist in this process, the charging memorandum should describe any information obtained during the investigation that supports or detracts from bar counsel's determination that the respondent has committed the charged violations of the Rules of Professional Conduct (preferably with corresponding tabs in the file).

Despite the availability to the reviewing board member of the file and discussion with the assistant bar counsel involved, there are limits to the time available to a reviewing board member in deciding whether to approve or disapprove a recommendation, and it is important that the reviewing board member receive not only bar counsel's support for the recommendation, but also the information developed in the course of the investigation that might lead to a different conclusion, that is, information that detracts from bar counsel's determination that the respondent has committed the violations sought to be charged. Given the importance to the process of the facts and the basis for the factual allegations underlying bar counsel's recommendations, the assistance of bar counsel and OGC in this way should result in sounder decisions. An OGC staff member involved in this process is not thereby recused from further participation in the matter, as the OGC staff member is assisting the reviewing board member in the performance of his or her duty and has no decision-making authority.

6. Disclosing identity of reviewing board member

The identity of the board member who reviewed requests to prosecute, dismiss, or otherwise dispose of grievances during the duty review process is kept confidential by the board.

The rationale is to prevent complainants or respondents who are unhappy with the decision to contact the individual board member. For similar reasons, board members' home or office addresses and phone numbers

are not disclosed to members of the public who ask for them.

7. Redaction of personal identifying data

The board follows the SJC's interim guidelines for the protection of personal identifying data.

The parties are to redact personal identifiers (social security number, taxpayer ID, credit card or financial account number, driver's license number or passport number to the last four digits, birth date to year only) in all pleadings and exhibits. On occasion, the board staff will do this. If there are too many personal identifiers or if the identifiers must be disclosed for some reason, the board will consider issuing a protective order impounding the material in question.

8. Hearing officer recruitment and training

Every year general counsel's staff looks at the list of hearing officers whose terms are about to expire, who might be eligible for a second term, and who need to be replaced, whether lawyer or lay. A list of vacancies and possible renewals is forwarded to the chair of the Hearing Officer Committee, which endeavors to recruit via notices in Lawyers Weekly, letters to bar associations and various civic groups, and by personal solicitation. Staff provides the committee with the disciplinary history, if any, of the applicants, and the committee then vets the applicants.

Lay applicants are asked to fill out a questionnaire adopted by the committee some years ago, and staff interviews them before they are appointed. The committee chair then presents a list of recommended hearing officers to the full board, which formally makes the appointments. Once the appointments have been made, one or two training sessions are set up at which bar counsel and general counsel or staff take them through the investigatory and hearing process and distribute the hearing committee training manual.

9. Appointment of hearing committees and special hearing officers

The process by which the board assigns persons to serve on hearing committees or reinstatement panels, or as a special hearing officer, is described in detail below.

After receiving the answer to a petition for discipline and the parties' estimates of the number of days of hearing, general counsel's staff assigns the matter to a hearing committee. The staff sends an email to all three potential hearing committee members to see if they are available and assigns one – an attorney member – to serve as chair. The staff includes proposed dates or weeks to schedule the hearing and prehearing, then requests a response as to availability. If someone declines, the staff emails another until the slot is filled and firms up the dates with the three members, working around everyone's schedules.

If the hearing is projected to be very long or very short, or if one of the parties specifically requests it, the staff might ask general counsel whether the matter ought to be assigned to a special hearing officer, in which case general counsel contacts the board's chair to discuss whether and to whom such an assignment should be made.

If the matter is a reinstatement hearing or a disciplinary hearing based on a criminal conviction, the matter is assigned to a hearing panel which consists of board members; in making the assignment, the staff proceeds in the same way as with the assignment of a hearing committee. Substantial efforts are made to assign one public board member to each reinstatement or conviction panel.

10. Settlement of pending disciplinary proceedings

The board prohibits panel members from encouraging bar counsel and the respondent to settle matters assigned to hearing.

The policy is described in a board memo which is part of the hearing committee manual.

11. Role of general counsel's staff in hearings

A member of general counsel's staff is assigned to sit in with and assist the hearing committee or panel with advice, case citations, and drafting.

The purpose of this policy is to provide guidance to hearing officers and OGC staff members regarding their respective roles in the adjudicatory process. Hearing officers are independent decision-makers who alone have responsibility for ruling on motions, admitting evidence, finding facts, drawing conclusions of law, and recommending an appropriate sanction in the matter to which they are assigned. As legal counsel to the board, OGC staff members offer legal advice to hearing officers regarding the board's procedural rules, the elements of the offences charged, and legal precedent relevant to disposition. OGC will also assist in drafting, if requested. All fact-finding, including credibility determinations, conclusions of law, and recommendations as to disposition are to be made solely by the hearing officers. In pursuit of their duties, OGC staff will endeavor to preserve the integrity of the record, and they may suggest lines of inquiry for questioning by hearing officers. Because they are not hearing officers, OGC staff may not question witnesses.

12. Relevance and admissibility of expert testimony

In any disciplinary hearing in which the hearing committee determines that the attorney's compliance with the degree of learning and skill required to be possessed by attorneys practicing in a particular area or areas of the law is relevant to the decision of the committee, expert testimony concerning the standard of care applicable to the attorney's conduct may, in the discretion of the committee, be admitted into evidence, subject to the caveat that an expert's opinion to the effect either (1) that there has or has not been a violation of law or (2) that there has or has not been an ethical violation, is not admissible and must be rejected. As in the case of other evidence, the committee is not required to credit such expert testimony if it is admitted or because it is uncontradicted, Matter of Minkel, 13 Mass. Att'y Disc. R. 548 (1997), and, if credited, may determine what weight is to be given to it. Whether the proposed expert witness qualifies as an expert on the subject matter involved is a preliminary question of fact to be determined by the hearing committee.

Expert testimony may well be required in order to prove allegations that a fee charged or collected was clearly excessive, because the governing rule, Mass. R. Prof. C. 1.5, itself provides that the challenged fee is to be

tested against what other lawyers would charge for similar services. See Matter of Fordham, 423 Mass. 481, 12 Mass. Att'y Disc. R. 161 (1996). In other circumstances, the committee, in the exercise of its discretion, may determine that expert testimony concerning the applicable standard of care would be relevant and helpful to the committee in its consideration of the matter or in its deliberations, e.g., in order to prove or rebut an allegation that the conduct alleged constituted neglect, incompetence or fairly to keep the client adequately informed, where a key issue may be whether or not the attorney met the degree of learning and skill possessed by attorneys practicing in this area of the law. This is not intended to be an exhaustive list of such circumstances. The governing principle is that stated in G.L. c. 30A, § 11(2), that evidence may be "admitted and given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.".

13. Order of presentation of appellate matters in agenda materials

The order of presentation of materials related to appeals from hearing committee or reinstatement panel decisions and recommendations is as follows: summary memorandum from general counsel's staff; the committee or panel decision and recommendation; the appeals of bar counsel and/or respondent or petitioner, and material related to the appeals; and other underlying materials pertinent to an understanding of the matter.

14. Informing hearing committee members of outcomes

Hearing committee members (other than current board members) are advised by general counsel's staff concerning the outcome of further proceedings in, and the ultimate outcome of, a disciplinary matter to which they were assigned.

Included within this practice are those matters assigned to a hearing committee which received pre- hearing material and information but where, for one or another reason, usually a proposed agreed disposition, the matter did not proceed to a hearing or to the stage of a decision and recommendation.

15. Handling complaints against board members and staff

When such grievances are filed by respondents or complainants during the pendency of an investigation or formal proceeding involving those respondents or complainants, the board chair usually defers investigation of the grievance until after the completion of the underlying investigation or formal proceeding.

This policy prevents the filing of a grievance against the prosecutor or adjudicator, as the case may be, from interfering with the orderly disposition of an existing matter. Section 2.4 of the BBO's rules provides that grievances filed against members of the board or its staff or against bar counsel or her staff are to be investigated by the board, not bar counsel.

16. Time Standards

Since the major overhaul of the board's rules and procedures following the ABA's evaluation, the board has

been seeking to adhere to Court-approved time standards for the processing and disposition of grievances and formal proceedings.

17. Disciplinary resignations (defined as resignations submitted under S.J.C. Rule 4:01, § 15, while the attorney is (a) the subject of formal proceedings, or (b) the subject of a complaint that has not yet resulted in the initiation of formal proceedings)

The Board will usually accept such a resignation as a matter of course, as long as the attorney has made sufficient factual admissions to warrant acceptance of the resignation. As part of the resignation request, Bar Counsel will provide a statement as to whether the facts admitted would typically result in disbarment, or a lesser sanction. The Board will recommend that the Court accept the resignation and disbar the resigning attorney if the matters admitted, or the matters the resigning attorney admits could be proved by a preponderance of the evidence, would warrant disbarment. The Board will recommend that the Court accept the resignation as a disciplinary sanction if the matters admitted, or the matters the resigning attorney admits could be proved by a preponderance of the evidence, would warrant public discipline up to and including an indefinite suspension. In either event, resignation and reinstatement after resignation will be handled by the Board in accordance with S.J.C. Rule 4:01, §§ 15, 17 and 18.

18. Clearance letters (Certificates of Good Standing)

Before the Court issues a certificate of good standing, the board determines that the lawyer is in good standing (i.e., not suspended and license not otherwise restricted) and that bar counsel is not expecting or intending to seek the lawyer's suspension or disbarment in the next thirty days.

This is an SJC practice, not the board's. The board will not disclose the pendency of complaints or proceedings concerning a lawyer otherwise in good standing unless something is about to occur such that the Court would not have wanted to issue the certificate.

19. Diversion Program

In appropriate circumstances (described in bar counsel's "Diversion Program Policy Statement"), bar counsel may recommend, and the reviewing board member may approve, that a respondent be offered diversion to educational, remedial and rehabilitative programs rather than be subject to formal disciplinary proceedings.

This policy recognizes, and formally adopts as a board policy, the Diversion Program bar counsel has implemented. Because the board has discretion to accept or reject diversion as the ground for closing a grievance, it is appropriate that it be a board policy, rather than only an excellent bar counsel initiative.

20. Registration of in-house counsel

So long as a registrant proposing to practice as in- house counsel within the Commonwealth is in good standing in one United States jurisdiction and can demonstrate that his or her inability to obtain a certificate of good standing in any other jurisdiction is not the result of attorney misconduct or pending disciplinary

proceedings alleging attorney misconduct, the board will not object to such registration to practice as in-house counsel within the Commonwealth.

21. Fee waivers and payment plans

The board will not grant fee waivers or permit installment payments as to the annual registration fee.

The board has formally voted not to grant fee waivers or to permit payment on an installment plan for lawyers who can't afford to pay the annual registration fee. The board advised the Court of its intention in this regard and was informed that the Court found it acceptable.

22. Executive session at monthly board meetings

The agenda for each monthly meeting of the board will include an executive session for board members only. It is the responsibility of the board chair to call such executive session, whether on his or her own motion or on the request of any member of the board.

23. Participation by public members

Board members and hearing officers who are not lawyers have full authority to act in all matters to the same extent as lawyer board members and hearing officers. Public members are entitled to participate as fully as lawyers and, where necessary, to vote freely on all matters entrusted to the hearing committees and panels to which they have been assigned, whether those matters involve findings of fact, conclusions of law, evidentiary rulings, or proposed dispositions. The only exception is that public members are not asked to draft hearing committee and hearing panel reports or to serve as the chair of a hearing committee or panel. However, public members participate fully in all proceedings and rulings, including the drafting of reports to the same extent as attorney members.

24. Reporting Matters for Criminal Prosecution

When it comes to the attention of the Board's Reviewing Member that the provable allegations in the file presented to him or her reflect that an attorney has misappropriated client funds to his or her own use, that the funds have not been restored and appropriate arrangements have not been made for their restoration, the Reviewing Member may recommend to Bar Counsel that the matter be referred to the relevant District Attorney and/or to the Attorney General. If such a matter should come before the Board on appeal, and the Board determines that the matter should be so referred, and has not been, it will direct General Counsel to take the necessary steps to do so.

25. Board Policy for Appellate Briefs

Appellate practice before the BBO is not substantially different from appellate practice generally. Your brief should be clear and to the point, and your oral argument focused and persuasive. You are expected to know the record and the relevant authorities, particularly those you cite.

Briefs on appeal: while BBO Rules §§ 3.51(a) – 3.51(c) address certain aspects of briefs, additional recommendations should be followed:

- The Board policy is that briefs are limited to thirty (30) pages, double-spaced, minimum twelve- point font, with one-inch (1") margins all around. A longer brief may only be filed with leave of the Board Chair or the Chair's designee. As a general rule, focus on your three or four strongest arguments.
- Briefs should not be stapled or bound, as they will be scanned; a binder clip is sufficient. You only need to submit one hard copy. Briefs may be filed electronically, along with one hard copy, with General Counsel's office. You must also serve a copy on opposing counsel.
- Briefs should contain specific citations to the record, including hearing transcript page references and specific pages of exhibits, using the Bates numbers when applicable. If there is no record support for an argument, identify it accordingly. If you are arguing for a good faith modification or change in the existing law or usual disciplinary sanction, be clear that this is your position.
- Be conversant with the burden of proof, standard for review on appeal and any relevant rules, including S.J.C. Rule 4:01, § 8(5)(a).
- The decision to appeal from a credibility determination by a hearing committee, panel, or special hearing officer, should begin with recognizing that "[t]he hearing committee is 'the sole judge of the credibility of testimony presented at the hearing,'" Matter of Balliro, 453 Mass. 75, 83-84, 25 Mass. Att'y Disc. R. 31, 45 (2009), Matter of Hachey, 11 Mass. Att'y Disc. R. 102, 103 (1995), and that "credibility determinations will not be rejected unless it can be said with certainty that the finding was wholly inconsistent with another implicit finding." Matter of Haese, 468 Mass. 1002, 1007, 30 Mass. Att'y Disc. R. 197, 205 (2014), quoting Matter of Murray, 455 Mass. 872, 880 (2010) (internal quotations omitted), citing Matter of Barrett, 447 Mass. 453, 460 (2006) and Matter of Hachey, 11 Mass. Att'y Disc. R. 102, 103 (1995). To the same effect, see Matter of Curry, 450 Mass. 503, 519 (2008), Matter of Cammarano, 29 Mass. Att'y Disc. R. 82, 103-104 (2013) (Duffly, J.); Matter of Balser, 32 Mass. Att'y Disc. R. 15, BD-2015-064 (Apr. 15, 2016) (Duffly, J.), slip op. at 11).
- Do not spend time in your brief dwelling on what is not appealed from; include such material only if necessary to provide a context.

26. Board policies on motions

(a) The following motions shall be reserved for action by the Board Chair or a Board member designated by the Board Chair:

(i) Motions filed before the appointment of a Hearing Committee, Hearing Panel, or Special Hearing Officer and which must be decided prior to the appointment of a Hearing Committee, Hearing Panel, or Special Hearing Officer;

(ii) Motions for Issue Preclusion, unless in the discretion of the Board Chair after the appointment of a Hearing Committee, Hearing Panel, or Special Hearing Officer, the motion may be referred to the Chair of a Hearing Committee or Hearing Panel or a Special Hearing Officer for decision;

(iii) Motions to dismiss all or part of a Petition for Discipline under subsection (d) of this Rule;

(iv) Motions to stay or defer proceedings, including motions under Supreme Judicial Court Rule 4:01,

Section 11 and B.B.O. Rules, Section 2.13; and a motion pursuant to B.B.O. Rules, Section 3.16(3);

(v) Motions for impoundment or to file material under seal and motions for protective order pursuant to BBO Rules Section 3.22;

(vi) Any other motion, which, in the discretion of the Board Chair or General Counsel of the Board of Bar Overseers should be decided by the Board Chair.

(b) The General Counsel of the Board of Bar Overseers may rule on assented-to motions, unopposed motions, and joint motions.

(c) All motions shall be filed at least ten days before the hearing, except by leave granted by the Board Chair, the Special Hearing Officer or the Chair of the Hearing Committee or the Hearing Panel.

(d) A party wishing to respond to a motion must file a response within seven days after service of the motion. The time for filing a response shall not be shortened or extended except for good cause shown.

(e) No motion or response grounded on facts shall be considered unless the facts are verified by affidavit, are established by the pleadings or the record, or are agreed to by the parties in writing.

(f) All motions shall be determined on the papers, without hearing or oral argument, except as may be permitted in the discretion of the person authorized by this rule to decide the motion.

(g) If a motion for impoundment or to file matters under seal, or for a protective order is filed during a hearing, the subject material may be provisionally admitted under seal pending a ruling by the Board Chair or the Board Chair's designee.

(h) Memoranda in support of motions shall be limited to twenty pages, double spaced with one- inch margins on all sides. Headings and footnotes may be single-spaced. The font shall be no smaller than 12-point type face.

(i) Except as to the allowance of a Respondent's motion to dismiss under Subsection (d) and matters falling within Sections 3.16(3) and 3.22 of these Rules, rulings on motions shall control the subsequent course of the proceeding and shall not be appealed or reviewed prior to the issuance of the hearing report. The Respondent's filing of a motion to dismiss shall not automatically stay a scheduled hearing.

(j) Bar Counsel may appeal from a dismissal of a petition in whole or in part by filing a brief on appeal within seven days after service of the decision. The Respondent may file a response within seven days after service of such appeal. The appeal shall be decided by the Board at its next meeting after the response period has expired. Partial dismissal does not automatically stay proceedings on other charges in the petition for discipline.

(k) A motion by Bar Counsel to dismiss or discontinue an entire petition for discipline, or any charge or set of charges contained therein, shall be determined in accordance with Sections 2.8(b)(l) and 3.16 of these Rules. The dismissal or discontinuance, at the request of Bar Counsel, of a petition, or any charge or set of charges contained therein, shall act as a dismissal with prejudice.

27. Return to In-Person Hearings

For purpose of this board policy, "in-person hearing" means a disciplinary or reinstatement hearing where at least two of the three hearing committee members or panelists (or in a case with a special hearing officer, the hearing officer), the court reporter, bar counsel, and the respondent or petitioner (and their counsel if they are represented) are physically present throughout the hearing in the same room at the board's offices

or another location designated for the hearing.

As of January 1, 2024, the board's presumption is that hearings in disciplinary and reinstatement cases will be held in person at the offices of the board or at another location agreed upon by the parties, board staff, and the hearing committee or hearing panel. If a party would like the hearing to be held remotely (via Microsoft Teams), they should so indicate at the time they file a Petition for Discipline, Petition for Reinstatement, or Answer or as soon as practicable thereafter (but no later than seven days before the Prehearing Conference). Motions for remote hearing will be allowed for good cause. A party who opposes a request for a remote hearing should so indicate in a letter to the General Counsel of the board within 5 business days of a request. Prehearing conferences will be held remotely unless the chair of the committee or panel orders that the prehearing conference be held in-person.

If a hearing is not in person, all aspects of the hearing will take place remotely. In other words, a party may not request that specific parts of a remote hearing be held in person.

Upon motion so requesting and good cause shown, witnesses at an in-person hearing may testify remotely at the discretion of the chair of the hearing committee/panel. Their testimony will be subject to orders and rulings regarding remote testimony as set forth in the prehearing order or otherwise ordered by the chair of the hearing committee, hearing panel, or special hearing officer. A party opposing a request by a party or witness to testify remotely must file an objection to that effect with the chair of the hearing committee/panel within seven days of the filing of the request. The chair of the hearing committee/panel shall issue appropriate orders regarding witness testimony, including when the parties must identify which witnesses at an in-person hearing, if any, will testify remotely. The party calling a remote witness will be responsible for making sure the witness has the technology and the capacity to participate in the hearing.

Participants in an in-person hearing shall adhere to the board's COVID-19 (Coronavirus) Protocols, which can be found on the board's website, and any other health-related protocols issued by the board, including those related to the wearing of a mask. This means, among other things, that no person may attend a proceeding in person if they have received a positive COVID-19 test within five days of the proceeding, are awaiting a COVID-19 test result after experiencing symptoms of COVID-19, have been directed to isolate or quarantine and the period of isolation has not lapsed, or are experiencing symptoms of COVID-19.

Any witness or party who requires a face mask shall testify remotely.

Any party appearing remotely shall have no grounds to object to another party or witness appearing in person.

Members of the public may attend in-person hearings. However, the chair of the hearing committee may issue appropriate orders to control the number of people in the hearing room. Any member of the public who intends to attend the hearing in person must comply with the board's COVID-19 Protocols referenced above for hearing participants.

28. Commissioner Program

Pursuant to S.J.C. Rule 4:01, Section 14, the Supreme Judicial Court may appoint a Commissioner, "whenever a lawyer is placed on disability inactive status, disappears or dies, and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist." The responsibilities of a Commissioner generally include protection of the interests of the lawyer's clients. Whether to seek appointment of a Commissioner pursuant to Section 14 rests solely within the discretion of the board or the Office of Bar Counsel.

In appropriate circumstances, the board's Office of General Counsel will file for appointment as the Commissioner. In such situations, a member of the staff will be the appointed commissioner. Due to potential conflicts of interest, the board will not seek appointment of one of its staff as Commissioner when there is an actual or potential disciplinary matter involving the lawyer. In cases where the board does not seek appointment as Commissioner, the Office of Bar Counsel will request that the Supreme Judicial Court appoint an outside attorney ("the outside Commissioner") to serve that function, subject to appropriate monitoring.

Some matters that begin with an outside Commissioner may have their potential or actual conflicts resolve prior to the completion of the work under Rule 4:01, Section 14. There also are times when the Commissioner's work is substantially complete, and the remaining work can be handled capably and more cost-effectively by staff from either the board or the Office of Bar Counsel without any potential or actual conflicts. In such cases, the board or the Office of Bar Counsel may elect to terminate the services of the outside Commissioner and pursue the remainder of the work in-house by filing a motion with the court.

The responsibilities are the same whether the Commissioner is in-house or outside the board. They shall be defined in scope by the court's order of appointment and S.J.C. Rule 4:01, Section 14. Among other things, the Commissioner may take custody of the lawyer's files, computers, records, and trust accounts, including IOLTA accounts; prepare an inventory of all clients and matters prepared and contact clients; and attend to looming deadlines and refer clients with active matters to successor counsel. In addition, the commissioner may review bank accounts, including IOLTA accounts, and obtain signing authority (by means of the appointment order) to disburse and receive funds. Once all clients have been processed, the Commissioner will file a final report with the court.

The outside commissioner shall be reimbursed for their reasonable expenses and may be awarded fair compensation. Payment of these expenses and fees is subject to approval by the Supreme Judicial Court pursuant to Section 14. The lawyer for whom the commissioner is appointed is responsible for paying the commissioner's approved expenses and fees unless otherwise ordered by the court. In the event that payment by the lawyer is not available or otherwise forthcoming, the board will pay the approved expenses and fees, reserving all rights to pursue reimbursement from the lawyer in the future.

All work of an outside Commissioner is subject to review by either the board or the Office of Bar Counsel (depending on the nature of the appointment). Termination of an outside Commissioner likewise rests solely within the discretion of either the board or the Office of Bar Counsel.