

Supreme Court

In re: Unauthorized Practice of Law :
Committee :
(Approval of Amended Rules) :

ORDER

Upon careful consideration thereof, the attached amended rules of the Unauthorized Practice of Law Committee are hereby approved by the Rhode Island Supreme Court. These rules shall take effect on October 1, 2013.

Entered as an Order of this Court this 25th day of *September 2013*.

_____/s/_____
Suttell, C.J.

_____/s/_____
Goldberg, J.

_____/s/_____
Flaherty, J.

_____/s/_____
Robinson, J.

_____/s/_____
Indeglia, J.

Governing Rules of the Unauthorized Practice of Law Committee

Rule 1. Composition - Appointment -Terms.

- (a) Pursuant to G.L. 1956 (2002 Reenactment) § 11-27-19 the Unauthorized Practice of Law Committee (“Committee”) shall be appointed by the Supreme Court. Its members shall be thirteen (13) in number including the Clerk of the Supreme Court or his or her designee, eleven (11) attorney members of the Rhode Island Bar, and one (1) member of the public.
- (b) The term of the Clerk of the Supreme Court shall be coterminous with his or her term of office. The other members of the Committee shall serve for terms of three (3) years and shall be eligible for re-appointment for a second three (3) year term. Upon the expiration of their terms, Committee members shall serve until a successor is appointed by the Court. The terms of Committee members serving at the time of adoption of these Rules and any amendment(s) hereto shall remain in accordance with previous order of this Court.
- (c) The Court shall designate one (1) member of the Committee to serve as chairperson who shall direct the performance of such administrative duties as may be required to the discharge the duties of the Committee.
- (d) The Clerk of the Supreme Court or his or her designee shall serve as the Committee’s clerk.

Rule 2. Jurisdiction. The Unauthorized Practice of Law Committee is authorized to investigate complaints alleging that a person(s) has violated the provisions of Chapter 11-27 of the Rhode Island General Laws and/or has otherwise engaged in the unauthorized practice of law.

Rule 3. Meetings.

- (a) The Committee shall meet at such times and places as are necessary to discharge the duties made incumbent upon it by upon it by these rules, but no less than once a year.
- (b) The Committee members shall serve without compensation.

Rule 4. Powers and duties of the Committee. The Committee shall have the following duties and powers subject to the approval of the Supreme Court:

- (a) to adopt, amend, and rescind any rules and regulations that it deems necessary to carry out the provisions of this section, a copy of which rules and regulations shall be filed with the secretary of state and available for public inspection;
- (b) to investigate all reports of activities which may constitute unauthorized practice of law and to hold hearings to determine whether the charges are substantiated or unsubstantiated;
- (c) to appoint legal counsel and any assistants that the committee deems necessary to act for the committee in investigating complaints brought before it;
- (d) to make contracts and arrangements for the performance of administrative and similar services required or appropriate in the performance of the committee's duties;
- (e) to issue subpoenas and administer oaths in connection with any investigations, hearings, or other proceedings held under the authority of this chapter;
- (f) to take or cause depositions to be taken as needed in any investigation, hearing, or proceeding; and
- (g) to summon and examine witnesses during any investigation, hearing, or proceeding conducted by the committee.

Rule 5. Immunity.

- (a) Communications made to the Committee in good faith, relating to allegations of the unauthorized practice of law and testimony given in proceedings before the Committee shall be privileged, ~~and~~ insofar as no lawsuit predicated thereon may be instituted against any complainant or witness.
- (b) Members of the Committee, its agents, and employees shall be immune from suit for any conduct undertaken in good faith in the course of their official duties for the Committee.

Rule 6. Subpoena powers.

- (a) At any stage in the proceedings, the members of the Committee severally are authorized and empowered to administer oaths; and the Committee is hereby authorized and empowered to summon and examine witnesses and to compel the production and examination of documents including, but not limited to, papers, books, accounts, documents, records, certificates, and other documentation that may be necessary or proper for the determination and decision of the Committee in the discharge of its duties.
- (b) The Committee may summon witnesses and require the production of documents, on its own or on behalf of the accused (“Respondent”).
- (c) The Committee shall have the power to request the Presiding Justice of the Superior Court to enforce its subpoenas and to punish all intentional disregard of court orders as contempt.

Rule 7. Expenses.

- (a) The administration of the Committee shall be funded by the Supreme Court. ~~from annual fees collected by this Court and credited to the Unauthorized Practice of Law Committee Administration Fund.~~
- (b) Any expenses or costs incurred by the Committee, its agents or employees in discharging their duties shall be paid by Committee clerk on order of this Court.

Rule 8. Procedures.

- (a) *Investigation and resolution of complaints.* The Committee shall establish rules of procedure for the investigation and resolution of complaints including a process by which the Committee and the Respondent may informally resolve complaints. Any rules so adopted, amended or rescinded shall be submitted to this Court for approval, and will become operative only upon entry of an Order by this Court.
- (b) *Review by the Supreme Court.* Within thirty (30) days, if practical, after its conclusion of an investigation, the Committee shall make a written report of its findings of fact and its recommendations, and the report, together with the entire record, shall be immediately transmitted to the Chief Justice. The Committee may recommend that this Court approve any of the following resolutions:
 - (1) an agreement between the Committee and the Respondent to dispose of the complaint which may include, but is not limited to, an order for restitution and/or community service;
 - (2) dismissal of a complaint as unfounded or frivolous or for lack of probable cause pursuant to Rules 7(a) and (b) of the Rules of Procedure of the Unauthorized Practice of Law Committee;
 - (3) the Committee’s filing of civil proceedings in the Superior Court to enjoin the conduct;
 - (4) referring the matter to the Department of Attorney General for civil or criminal proceedings; or

(5) any other disposition which is in the public's best interest.

Rule 9. Finality of Committee action. Recommendations by the Committee which are approved by this Court shall be final barring any further action thereon by the Committee or the Attorney General that is inconsistent therewith. G.L. 1956 (1997 Reenactment) § 8-1-2.

Rule 10. Annual report. The Committee shall annually in July report to this Court in writing on all matters presented for its consideration and its expenditures during the year which ended on the previous December 31.

Rule 11. Time periods. Any time limitations imposed upon the Committee by these rules or the rules of procedure of the Committee may be extended by the chairperson. Failure of the Committee to follow the time limitations contained therein shall not be grounds for dismissal of a complaint.

Rule 12. Record keeping. The Committee shall file complete records of all closed investigations with the Supreme Court Clerk's Office.

Rules of Procedure of the Unauthorized Practice of Law Committee

1. **Scope of rules** –

- (a) These rules govern proceedings before the Unauthorized Practice of Law Committee (“Committee”) established pursuant to G.L. 1956 (2002 Reenactment) § 11-27-19 to investigate allegations of the unauthorized practice of law.
- (b) The “unauthorized practice of law” shall include conduct proscribed by Chapter 11-27 of the Rhode Island General Laws, Article IV, Rule 1(d) of the Rhode Island Supreme Court Rules on the Periodic Registration of Attorneys, and Article V, Rule 5.5 of the Rhode Island Rules of Professional Conduct.

2. **Quorum** – Five (5) members shall constitute a quorum of the Committee and, except as otherwise provided in these rules, determinations shall be made by a majority vote of those present.

3. **Commencement of proceedings** –

- (a) Proceedings under these rules shall be commenced by the filing with the Committee of a complaint by any person (“Complainant”) or by the Committee on its own initiative. Complaints shall be submitted to the attention of the Unauthorized Practice of Law Committee Chairperson, c/o Rhode Island Supreme Court Clerk’s Office, 250 Benefit Street, Providence, Rhode Island 02903, or via email at UPLC@courts.ri.gov.
- (b) *Contents.* A complaint shall contain a statement of facts, circumstances or other matters upon which the Complainant relies for his or her allegations that a person or entity (“Respondent”) has engaged in conduct that constitutes the unauthorized practice of law. A complaint need not conform to the ordinary rules of pleading. A complaint shall not be considered by the Committee unless it is signed by the Complainant, or if submitted in electronic format, contains sufficient identification of the complaining party.

4. **Notice** – Except as otherwise provided, whenever these rules direct that the Respondent be given written notice or provided with papers, it shall be sufficient if the notice or papers are delivered to the Respondent personally or are sent to the Respondent by regular mail at his or her last known address. If the Respondent has retained counsel to represent him or her before the Committee, all notices or other papers required to be served upon the Respondent may be served upon counsel by regular mail.

5. **Filing and docketing** – ~~A complaint shall be filed with the Committee by sending it to the chairperson by certified mail, return receipt requested.~~ The chairperson shall keep a docket in which he or she shall keep a record of the filing of complaints and their final dispositions and separate files for each complaint containing all papers filed in connection with the investigation. The Committee need not provide the Respondent with a copy of the complaint unless and until it is referred for an investigational hearing pursuant to Rule 7(c)(ii).

6. **Standard of proof** – Charges brought before or by the Committee shall be established by a preponderance of the evidence.

7. **Procedures** –

- (a) *Dismissal of unfounded or frivolous complaints.* The Committee may dismiss any complaint it finds on its face to be incomplete, nonconforming, unfounded or frivolous and no further action shall be taken thereon.
- (b) *Preliminary investigation – screening of complaints.*
 - i. All complaints that the Committee finds are not unfounded or frivolous, shall be referred by the chairperson for screening by a screening panel composed of no fewer than two (2) nor more than five (5) members of the Committee.

- ii. The screening panel shall review the allegations in the complaint and determine whether they provide probable cause to believe that the Respondent ~~is guilty of~~ has engaged in the unauthorized practice of law.
 - iii. The screening panel may conduct a preliminary investigation, research or conduct such other activities which will assist it (and/or the Committee) in making a probable cause determination.
 - iv. If by a unanimous vote the screening panel finds probable cause, it shall refer the matter to the Committee for an investigational hearing, informal resolution or such other disposition which the Committee deems appropriate.
 - v. In the event the screening panel cannot reach a unanimous decision on the issue of probable cause, the complaint shall be referred for screening to the full Committee whose decision to refer the matter for hearing, informal resolution or other disposition need only be by a majority vote.
- (c) Proceedings Subsequent to a Finding of Probable Cause
- i. Informal Resolution. After a probable cause determination is made by either the screening panel or the full Committee, the Committee may vote to attempt to resolve the matter informally with the Respondent. The Committee may conduct informal conferences with the Respondent to discuss the possibility of an informal resolution of the complaint. After an investigational hearing date has been set, the Committee shall not informally dispose of a complaint without the permission of the Supreme Court. No informal resolution of a complaint is final until approved by the Supreme Court.
 - ii. Investigational hearing. If the screening panel or Committee finds that probable cause exists to support the allegations and the Committee has decided to refer the matter for an investigational hearing, it shall set a time and place for holding an investigational hearing.
 - (a) Notice to the Respondent. Within thirty (30) days prior to the investigational hearing, the Committee shall provide the Respondent with a copy of the complaint and a written notice advising him or her of the time when and place where a hearing on the complaint will be held. The notice shall advise the Respondent that he or she shall have twenty (20) days after the notice has been served to respond to the allegations contained in the complaint and that allegations contained therein that are not denied shall be deemed admitted.
 - (b) Contents of Answer. In the answer the Respondent shall admit or deny specifically, and in reasonable detail, each material allegation and state clearly and concisely the facts and matters of law relied upon.
 - (c) Format of pleadings and documents. Pleadings or other documents filed with the Committee shall be typewritten on letter size paper, shall bind multiple pages by staples or otherwise, and shall include a caption and docket number of the proceeding. The Respondent shall file thirteen (13) copies of all pleadings, documents or other correspondence, including all exhibits, if any.
 - (d) Execution. All pleadings or other documents filed shall be signed by the Respondent or by his or her counsel and such signature constitutes a certificate that she or he has read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so; that the contents are true as stated, except as to matter and things, if any, stated

on information and belief, and that as to those matters and things, she or he believes them to be true.

- (e) *Discovery.* After the Committee schedules an investigational hearing, the Committee and the Respondent shall be entitled to conduct discovery in the same manner as litigants in civil case in the Superior Court, and the Superior Court Rules of Civil Procedure shall govern all such discovery.
- (f) *Continuances.* The investigational hearing shall be as expeditious as possible. The chairperson may grant the Respondent no more than two (2) continuances.
- (g) *Depositions.* The Committee on its own motion and upon notice to the Respondent, or upon application of the Respondent, may order depositions on oral examination or on written interrogatories to be taken for the purpose of perpetuating testimony. Such depositions may be received in evidence at the hearing if it appears that the witness is unavailable due to death, sickness or infirmity, or location outside of the state and is unwilling to attend, unless it appears that the absence of the witness was procured by the proponent of the deposition.
- (h) *Enforcement.* Upon application by the Committee, the Superior Court shall have jurisdiction to enforce orders and motions of the Committee.
- (i) *Protective Orders.* Consistent with the Superior Court Rules of Civil Procedure a party or person from whom discovery is sought may apply to the Superior Court for a protective order.
- (j) *Identity and statements of witnesses.* Within ten (10) days after receiving a written request from the Respondent, the Committee shall furnish the Respondent with the names and addresses of all witnesses whose testimony it expects to be offered at the hearing in support of the allegations in the complaint together with copies of all written statements and transcript of testimony of such witnesses that are in possession of the Committee and are relevant to the allegations.
- (k) *Hearing.*
 1. A hearing shall not be conducted with fewer than ~~eight (8)~~ five (5) members of the Committee in attendance.
 2. The chairperson or the chairperson's designee shall preside.
 3. Members of the screening panel may participate with the full Committee in the investigational hearing, ~~and the chairperson shall designate a member of the screening panel to~~
 4. Counsel for the Committee, or if Counsel is unable, such other suitable person designated by the Chairperson, shall present the case in support of the charges contained in the complaint and/or notice.
 5. The Respondent shall attend the hearing without the necessity of a subpoena being served upon him or her, he or she shall take the witness stand and shall testify in the same manner as if under subpoena.
 6. The hearing may proceed whether or not the Respondent has filed an answer or appears.
 7. The hearing shall be stenographically recorded and oral testimony shall be taken on oath or affirmation, administered by the chairperson or the chairperson's designee.
- (l) *Procedural rights of Respondent at hearing.* The Respondent shall have the right to be represented by counsel and shall be given an opportunity to introduce evidence, to

testify and to examine and cross-examine witnesses. The Respondent shall also have the right to the issuance of subpoenas by the Committee for the attendance of witnesses to testify or to compel production of papers, books, accounts, documents, records, certificates or other evidentiary matter. A transcript of the testimony or proceedings at a hearing shall be prepared at the expense of the Committee and a copy thereof shall be furnished at no cost to the Respondent.

- (m) *Evidence.* ~~The Committee shall exclude evidence that would not be admissible in civil cases tried to a court without a jury.~~ The rules of evidence as applied in civil cases tried to a court without a jury shall apply, however, in light of the investigatory nature of the Committee, when necessary to ascertain facts not reasonably susceptible to proof under those rules, evidence which is not admissible under those rules may be submitted, unless precluded by statute, if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. The Committee shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and the chairperson or the chairperson's designee shall rule on objections to the introduction of evidence.
- (n) *Limiting the number of witnesses.* The Committee may limit appropriately the number of witnesses who may be heard upon any issue, to eliminate unduly repetitious or cumulative evidence.
- (o) *Hearing additional evidence.* The Committee may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and the place for holding the hearing and shall state the matters on which additional evidence is to be taken. A copy of the order shall be served upon the Respondent at least twenty (20) days prior to the hearing.
- (p) *Findings and recommendations.* Upon completion of the hearing the Committee shall determine whether the allegations against the Respondent have been sustained. If a majority of the members of the Committee who were present throughout the hearing find that the charges have been sustained by a preponderance of the evidence, the Committee shall report that finding to this Court within thirty (30) days, or as soon as is practicable, of the conclusion of the hearing and recommend that the Court authorize:
1. the Committee to initiate civil proceedings in the Superior Court to enjoin the conduct; or
 2. ~~that the referral of the matter be referred~~ to the Department of Attorney General for civil or criminal proceedings, or
 3. such other disposition as the Committee deems appropriate and which is in the public's best interest.

8. Issuance of subpoenas.

- (a) All subpoenas and subpoenas duces tecum shall be signed by the chairperson or, in the absence or disqualification of the chairperson, by any other member thereof and shall be served as subpoenas are now served in civil cases in the Superior Court.
- (b) In the event that any person refuses to obey a subpoena or answer any question put to that person during the proceedings, the Superior Court shall have jurisdiction upon application by the Committee, to issue an order requiring the person to appear before the Committee and produce the evidence or give the testimony so ordered. In such instances:

- i. the Committee shall apply to the Presiding Justice of the Superior Court or his or her designee, upon proof by affidavit, for an order, directing the person to show cause why he or she should not be adjudged in contempt; and
- ii. upon return of the order, the justice before whom the matter is brought for a hearing shall examine under oath the person and such person shall be given an opportunity to be heard, and if the justice shall determine that the person has refused without reasonable cause or legal excuse to be examined, or to answer a legal and pertinent question, or to produce books, accounts, papers, records, and documents material to the issue which he or she was ordered to bring or produce, he or she may forthwith commit the person to the adult correctional institution, there to remain until he or she submits to do the act which he or she was so required to do, or is discharged according to law.

(c) *Protective Orders.* Consistent with the Superior Court Rules of Civil Procedure a person subpoenaed to testify before the Committee may apply to the Superior Court for a protective order.

9. Closed meetings and confidentiality. Other than the investigational hearings held by the Committee pursuant to Rule 7(c)(ii), the Committee meetings shall be closed to the public. All evidence and other papers filed with the Committee including, but not limited to, correspondence, documents, and pleadings, and all evidence that the Respondent obtains through discovery or otherwise shall remain confidential until it becomes the subject of an investigational hearing held pursuant to Rule 7(c)(ii).

10. Emergency procedures. At any time while the matter is pending before it and if the Committee determines that the conduct complained of creates an imminent risk of harm to the public, the Committee may immediately:

- (a) initiate civil proceedings in the Superior Court to enjoin the conduct; or
- (b) refer the matter to the Department of Attorney General for civil or criminal proceedings.

11. Effective date. These amended rules shall take effect on ~~June 19, 2008~~ October 1, 2013.