Article 20 Unlawful Practice of Law

Section 20.1 Definitions

For the purpose of these Rules of Procedure this Article, the following definitions apply:
(A) "Administrator" means the Bar employee assigned to provide administrative support to the Committee and Bar Counsel.
(B) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.

"Unlawful practice of law" means: (1) the practice of law, as defined by the Oregon Supreme Court, in Oregon by a person who is not an active member of the Oregon State Bar and is not otherwise authorized by statute to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon, do so. It is unlawful for a person who is not an active member of the Bar to engage in the practice of law within the State of Oregon, whether or not for compensation or in connection with any other activity, unless specifically authorized by law or rule. The practice of law includes, but is not limited to, any of the following: Holding oneself out, in any manner, as an attorney or lawyer authorized to practice law in the State of Oregon; appearing, personally or otherwise, on behalf of another in any judicial or administrative proceeding or providing advice or service to another on any matter involving the application of legal principles to rights, duties, obligations or liabilities.

"Documents" includes, but is not limited to, contracts, deeds, mortgages, satisfaction, leases, options, certificates of assumed business name, articles of incorporation and other corporate documents, bulk-sales affidavits, wills, trusts, notes and pleadings and other papers incident to legal actions and special proceedings.

"Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.

"Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of acts or conduct that concern or are related to acts or conduct that may represent the unlawful practice of law.

"Accused" means the person or persons who are the subject of a complaint to the Committee.

"Complaint" means the matter, thing or occurrence that represents a file opened by the Committee to open a file for the investigation of the accused's person or any person or activity associated with one or more accused persons under the allegations alleged unlawful practice of law, contained in a file or any activity related thereto.

Section 20.2 Unlawful Practice of Law Committee

The Board may appoint as many members as it deems necessary to carry out the Committee’s functions. At least two members of the Committee must be members of...
the general public and no more than one-quarter of Committee members may be lawyers engaged in the private practice of law.

Section 20.32 Investigative Authority

Pursuant to ORS 9.164, the Committee shall investigate complaints of the unlawful practice of law. The Committee may decline to investigate allegations of unlawful practice of law when: the allegations of unlawful practice of law are not made to the Committee in writing; the administrator determines the allegations do not involve the unlawful practice of law, or; the allegations consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services. The following conduct by persons who are not members of the Bar is subject to investigation by the Committee, pursuant to ORS 9.164:

(A) Use of stationery or other written material describing the person as a lawyer.
(B) Appearance on behalf of another in court or administrative proceedings without statutory authority.
(C) Correspondence on behalf of another when the correspondence is a jurisdictional prerequisite for legal action or customarily precedes legal action, such as demand letters.
(D) Negotiation on behalf of another for the settlement of pending or possible legal actions.
(E) Drafting or selecting documents for another or giving advice to another in regard thereto when informed or trained discretion must be exercised in selecting or drafting a document to meet the needs of another.
(F) Any exercise of an intelligent choice or informed discretion in advising another of his or her legal rights or duties.
(G) Representing to the public that the person is authorized to practice law.
(H) Use of printed or electronic materials, advertisements or other solicitations describing services that can reasonably be construed as legal services.
(I) Any other action for another that requires legal skill or judgment.

Section 20.3 Practices Not Subject to Investigation

The Committee may decline to investigate allegations of unlawful practice of law in the following instances: When the allegations of unlawful practice of law are not made to the Committee in writing or when the allegations of unlawful practice of law consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

Section 20.4 Practices Subject To Prosecution

The Committee may request the Board to authorize a suit, pursuant to ORS 9.166, to enjoin unlawful practice of law when after investigation by the Committee, it appears that: There is at least one person, identified by the Committee, who has been injured by a person unlawfully practicing law, who has received legal services from a person who is
not a member of the Bar or who has personal knowledge of facts constituting the unlawful practice of law or the unlawful practice of law is an ongoing activity; or an accused in any other respect has violated ORS 9.160. The Committee may, at its discretion, for good cause, decline to request authorization from the Board to enjoin the unlawful practice of law pursuant to ORS 9.166 in favor of other resolutions provided in these rules.

Section 20.5 Practices Not Subject to Prosecution
The Committee may, at its discretion, decline to request authorization to enjoin unlawful practice of law pursuant to ORS 9.166 when, after investigation by the committee, it appears that: The unlawful practice of law is not an ongoing activity; the investigator has been unable to obtain sufficient evidence to substantiate the allegation of unlawful practice of law or the investigator has been unable to obtain sufficient evidence to support a suit for injunction pursuant to ORS 9.166. The investigator may, after authorization by vote of a majority of the Committee, conclude an investigation by negotiating an agreement with an accused wherein the accused agrees to discontinue the unlawful practice of law. The agreement will be subject to and not become effective until approval by the Board.

Section 20.46 Other Investigators
The Committee may recommend that the Administrator may hire a person who is not a member of the Committee to perform further investigation when the Committee determines it is necessary in order to complete the investigation, on consideration of the following factors: The number of persons who have been injured by a person unlawfully practicing law or who have received legal services from a person who is not a member of the Bar; the probable nature and extent of damages to the persons receiving legal services from a person who is not a member of the Bar; the need for additional facts and witnesses to substantiate the allegation of unlawful practice of law for the purpose of a suit for injunction pursuant to ORS 9.166; and the recommendation of the investigator and the Committee’s inability to compel discovery whenever it appears that members of the Committee are unable to conduct an appropriate investigation.

Section 20.57 Processing Unlawful Practice of Law Complaints
Subsection 20.7500 Investigation
On receiving a complaint of unlawful practice of law meeting the requirements of Section 20.2 of the Bar’s Bylaws, the committee chairperson the administrator will assign the complaint a case number and assign it to a committee member for investigation. The committee member will review the documentation accompanying the complaint and will contact the complainant, affected parties and witnesses. The committee member may only employ any methods in his or her investigation that do not comply with the Rules of Professional Conduct. Within 60 days after receiving a complaint of unlawful practice of law, Upon completion of the investigation, the
investigator will submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition. The chairperson of the Committee may grant extensions of time to submit a report of investigation as the chairperson deems reasonable.

Subsection 20.2501 Dispositions

Upon receipt and review of the investigator’s report, the Committee may either continue the matter for further investigation and revisions to the report or make one of the following dispositions:

Actions to be taken at the discretion of the Committee:

(a) **Closure, Dismissal without prejudice.**
   This disposition is appropriate when the Committee has insufficient evidence to prove that the accused did not commit or engage in the unlawful practice of law.
   The Committee may reopen a closed matter if it receives additional information or evidence of the unlawful practice of law by the accused.

(b) **Notice Informational Letter.**
   This disposition is appropriate when the Committee has insufficient evidence facts exist to prove establish that the accused has committed or engaged in the unlawful practice of law, but the Committee believes that the accused would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter will notify the accused that the investigation is concluded, and state that the accused may wish to seek legal advice about whether any specific practice constitutes the unlawful practice of law. The letter will notify the accused of the provisions of ORS 9.160.

(c) **Cautionary Letter.**
   This disposition is appropriate when the Committee asserts that the accused is engaged in activities involving the unlawful practice of law, but either (1) the practice is neither ongoing nor likely to recur, or (2) the Committee determines that the matter is inappropriate for prosecution.

(d) **Resolution by agreement.**
   This disposition is appropriate when the Committee asserts that the accused committed the unlawful practice of law, but is willing to enter into an agreement to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board of Governors.

(e) **Referral to Board of Governors for prosecution, initiation of proceedings under ORS 9.166.**
   This disposition is appropriate when a) the Committee has clear and convincing evidence to prove establish asserts that the accused committed or engaged in the unlawful practice of law, b) the practice is ongoing or likely to recur, and c) a member of the public has been harmed or is likely to be harmed as a result of the accused’s unlawful practice of law.
(2) Filing suit for contempt relief is appropriate when a) a court has entered an injunction against the accused b) the Committee has clear and convincing evidence to prove that the accused continues to engage in the unlawful practice of law and c) a member of the public has been harmed or is likely to be harmed as a result of the accused’s unlawful practice of law.

(3) The Committee may decline to request authorization from the Board to initiate proceedings allowed under ORS 9.166 in favor of other resolutions provided in these rules, the accused is unwilling to enter an agreement to discontinue the unlawful practice of law; or, for any other reason, the Committee concludes that prosecution under ORS 9.166 is warranted.

(fd) Appointment of Outside Investigator or Referral to or Cooperation with Other Agency or Bar Department
This disposition is appropriate when the Committee determines that another agency or department is better positioned to investigate or address the complaint, including but not limited to when:

(1) The allegations involve activity prohibited by law, ordinance or statute within the jurisdiction of another a federal, state or local agency;
(2) The accused is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;
(3) An agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation;
(4) The agency has or is likely to have information regarding the complaint, the accused or parties acting with the accused, or;
(5) The complaint concerns conduct by a lawyer or bar applicant, or implicates the rules of professional conduct, is unable to obtain sufficient information to make an informed recommendation or when the Committee otherwise elects to refer the matter to another investigator or agency.

(g) Referral to Bar Counsel
When a complaint of unlawful practice of law involves an accused against whom the Board has already authorized prosecution, the Committee may refer the matter directly to bar counsel without obtaining prior authorization from the Board. Bar counsel may ask the Committee to conduct an investigation into the new complaint and has discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Subsection 20.702 Actions of Unlawful Practice of Law Committee
The Committee will consider reports of investigations at its first meeting after submission of a report. On a vote of a majority of members, a quorum being present, the Committee must: Adopt the report as written or modify the report or continue the
matter for further investigation and revisions to the report. The committee chairperson must document in writing the Committee's final findings and disposition of each complaint. The chairperson or his or her delegate, must, in writing, inform the complainant and the accused of dismissals without prejudice. A cautionary letter authorized by the Committee gives notice to the accused that the Committee has evidence that the accused is engaged in activities that the Committee maintains involve the unlawful practice of law. The cautionary letter may provide information on the limits of the law and may demand that the accused cease activities that the Committee asserts constitute the unlawful practice of law. On a vote of a majority of members of the Committee, a quorum being present, a complaint of unlawful practice of law must be referred to the Board for authorization to file an action under ORS 9.166.

Subsection 20.6203 Board of Governors Bar Counsel
Subsection 20.620 Role of Bar Counsel
On authorization by the Board to pursue an action under ORS 9.166, the Bar administrator may obtain counsel to represent the Bar in the action and will report periodically to the Committee and Board on the status of the litigation. To the extent necessary, the Committee and administrator will assist bar counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection 20.6201 Settlement Authority
After authorization by the Board to pursue an action under ORS 9.166, counsel for the administrator Bar may negotiate a settlement of the unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Committee. To the extent necessary, the Committee will assist counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection 20.6202 Referral to Bar Counsel
When a new complaint of unlawful practice of law involves an accused against whom the Board has already authorized suit, the administrator refer the matter directly to bar counsel without obtaining prior authorization from the Committee or the Board. The administrator and Bar counsel may ask the Committee to conduct an investigation into the new complaint and have discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Subsection 20.7204 Prevention and Public Outreach and Education
The unlawful practice of law statutes cannot be adequately enforced by investigation and prosecution alone. Prevention of unlawful practice of law is also a focus of committee activity. Thus, in addition to the disposition options outlined above,
The Committee may engage in public outreach and education to prevent and to educate the public about the potential harm caused by the unlawful practice of law. The Committee may cooperate in its education efforts with federal, state and local agencies tasked with preventing consumer fraud. Also, when the Committee becomes aware of a person or entity engaged in activities likely to involve the unlawful practice of law based on the Committee’s experience, the Committee may send a letter to the person or entity regarding the limits of the law on the provision of legal services.

Subsection 20.701 Informal Advisory Opinions
The Committee may also, in its discretion, write informal advisory opinions on questions relating to what activities may constitute the practice of law. Opinions must be approved by the Board before publication. The published such opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that may be of concern to or investigated by the Committee Oregon Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law. All such opinions must be approved by a majority vote of the Committee and submitted to the Board of Governors for final approval prior to publication.

Subsection 20.705 Records
When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar. Records will be kept in accordance with the Bar’s record retention policy.

Subsection 20.706 Other Agencies
The Committee may refer to, cooperate with or consult other agencies whether federal, state or local having an interest in the subject matter of any complaint before the Committee or having information or resources that would benefit the Committee’s investigation. Referral to, joint prosecution with or requests for information or investigation are appropriate under circumstances that include, but are not limited to the following:
(a) When the allegations concerning a claim of unlawful practice of law would also support or form a part of an activity prohibited by law, ordinance or statute; whether civil or criminal and recognized as a responsibility of the applicable federal, state or local agency.
(b) When the person accused of the unlawful practice of law or a person acting with the accused, is or has been the subject of an investigation, action, injunction or other similar review by a federal, state or local agency and the matter complained of relates directly or indirectly to the matter, person or activity reviewed or investigated.
(c) Whenever an agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation alone or in combination with the Bar.
(d) Whenever the agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused.