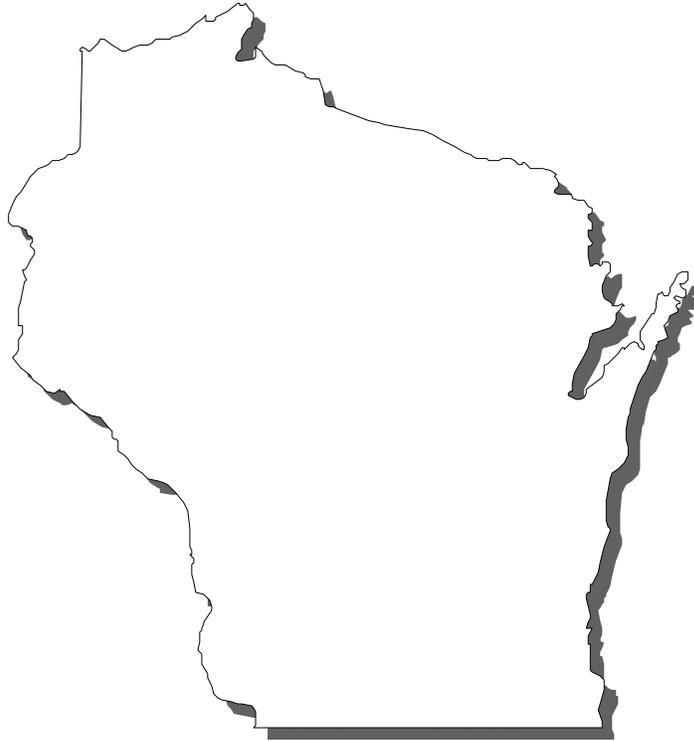


Basic Primer on the OLR Grievance Process



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Introduction

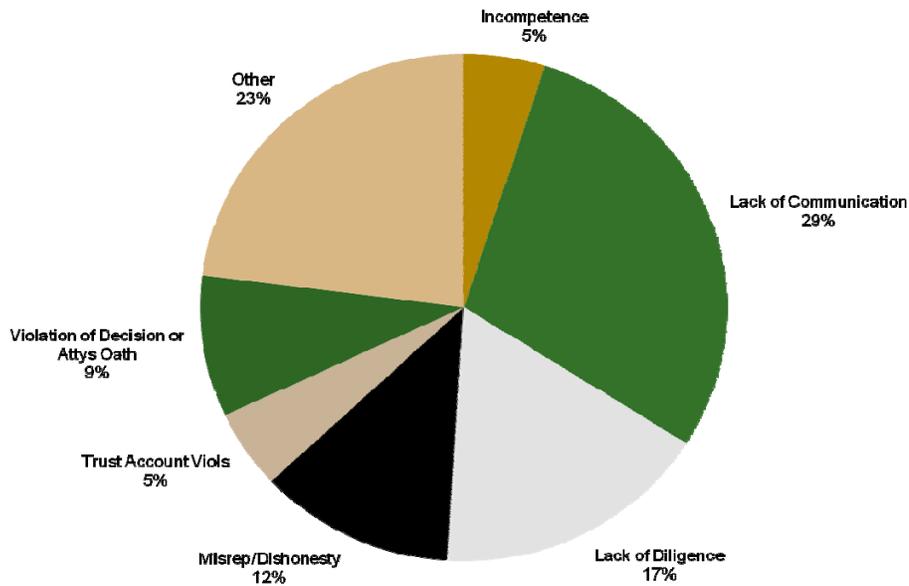
This paper is intended to be a *basic* and *brief* introduction to the Grievance Process followed by the [Office of Lawyer Regulation](#) (hereafter “OLR”) once a grievance has been filed. A significant amount of information can be found at the Wisconsin court’s website on OLR and the process followed - <http://www.wicourts.gov/about/organization/offices/olr.htm>

Types of Violations in which Discipline Imposed

Every fiscal year, the OLR and the Board of Administrative Oversight file an Annual Report with the Wisconsin Supreme Court on the status of the regulation system. See [SCR 21.03](#) & [SCR 21.10](#). This report sets forth a variety of information, including the areas of practice where discipline is imposed and the areas where grievances are most commonly made. The [Annual Report for FY 2009-10](#) is found here: <http://www.wicourts.gov/about/organization/offices/docs/olr0910fiscal.pdf>

According to the report, misconduct giving rise to discipline breaks down as follows (See Appendix 10 of Annual Report):

VIOLATIONS FOR WHICH MISCONDUCT WAS FOUND IN PUBLIC DISCIPLINE DECISIONS 2009-10



Reports from prior years can also be found online, most of which show similar patterns of violations.

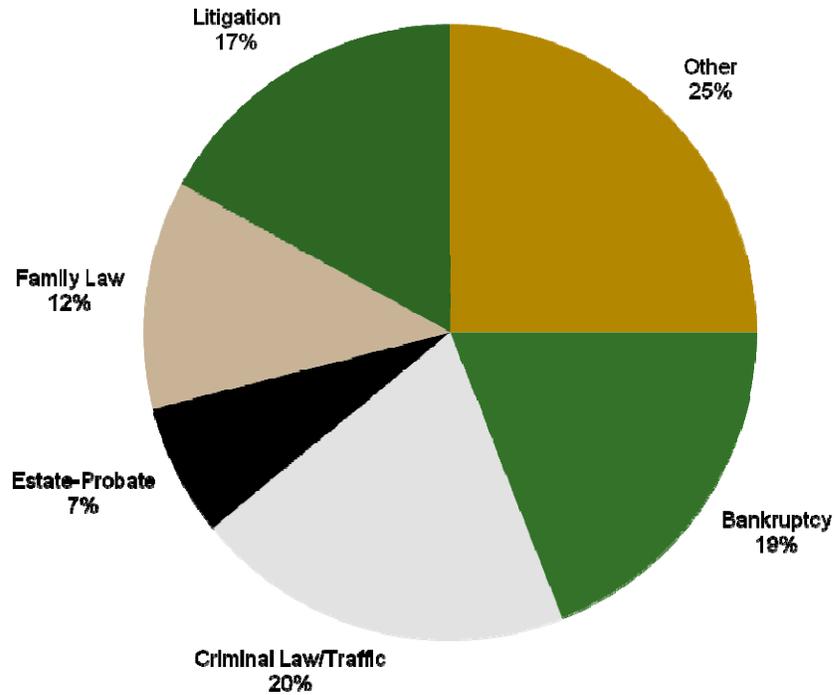
Grievances & Discipline by Areas of Practice

Appendix 8B of the report also sets forth the areas of practice from which claims are **made**, as opposed to where discipline is actually imposed.

Area of Practice	Percentage of Total Area of Practice
Administrative and Government Law	1.83%
Bankruptcy-Receivership	3.61%
Collections, Garnishments	2.58%
Contracts, Commercial, Consumer Law	1.69%
Corporate-Banking	0.49%
Criminal Law	32.00%
Environmental	0.04%
Estate-Probate, Guardianship & Wills	7.8%
Family Law & Juvenile	20.23%
Immigration & Naturalization	0.98%
Insurance	0.18%
Labor, Unemployment Compensation	0.89%
Landlord-Tenant	0.67%
Litigation	6.51%
Patent/Trademark	0.09%
Real Property	4.5%
Taxation	0.13%
Torts/Civil Rights	6.11%
Workers Compensation, Soc. Security	2.58%
Not Available/Other	7.09%

Appendix 11 sets forth a chart showing the areas of practice where discipline was **imposed**.

AREAS OF PRACTICE IN WHICH MISCONDUCT WAS FOUND IN PUBLIC DISCIPLINE DECISIONS
2009 – 2010



It is worth noting, for example, that criminal/traffic matters make up 32% of the grievances *made*, but only 20% of the cases where public discipline was actually *imposed*. On the other hand, bankruptcy matters made up only 3.61% of the grievances but constituted 19% of the cases where public discipline was imposed.

Who Makes the Grievances?

Appendix 8C sets forth where the grievances come from.

SOURCE OF GRIEVANCE	PERCENTAGE OF TOTAL SOURCE OF GRIEVANCE
Adverse Party	16.48%
Attorney	3.25%
Client	56.61%
Guardian ad Litem	2.81%
Judge	0.4%
OLR Staff	4.5%
Other Party	15.68%
No Source Listed	0.27%

The vast majority of grievances are filed by your client. A significant percentage, often over 50% in many years, come in family and criminal areas. Interestingly, these are areas of the law where clients may have very little regular contact with the legal system and have unrealistic expectations regarding how matters should or will be handled. In FY2010, 29% of the grievances where discipline was imposed involved a “lack of communication.”

It is important to note that you have a duty to report yourself if you are convicted of any crime. The rules require that within five (5) days of being convicted that you advise OLR in writing of the conviction. [SCR 21.15\(5\)](#).

How Long To Resolve Claims?

In FY2010 there were 23,837 licensed attorneys in Wisconsin. Of those, 0.2% were disciplined that year. This percent has been relatively consistent for more than 30 years.

According to the [FY2010 Annual Report](#), about 77% of all grievances were closed within 90 days. (See Appendix 5). The “average time” for processing a matter to disposition in FY2010 is now 115 days. This time has consistently dropped, from 185 days as was the case in 2002. (See Appendix 5). OLR’s goal is to complete the process in less than one (1) year. In FY2010, OLR received 2,307 grievances and disposed of 2,224, leaving 981 pending.

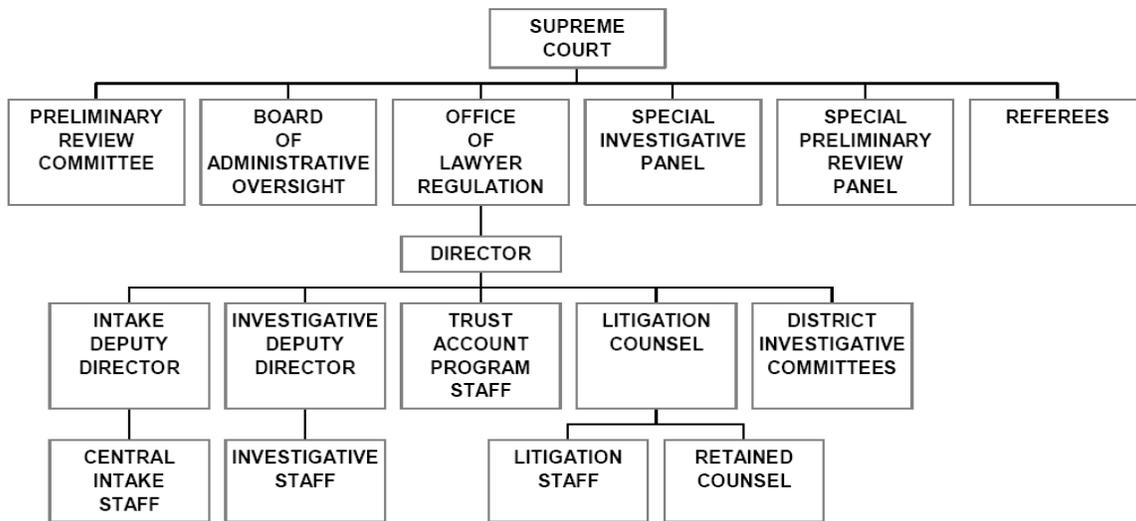
Absent “cause,” which is not defined in the rules, neither pending civil or criminal litigation is permitted as a basis to delay an OLR investigation or proceedings. [SCR 22.41](#).

The rules provide for the various parts of OLR to act within specified time periods, that is reports need to be prepared and submitted within what are often short time lines. That said, the rules also provide that all timelines are generally “directory” and not “jurisdictional.” [SCR 22.37](#).

Structure of the Lawyer Regulations System

A brief summary of the regulatory system for lawyers can be found at: <http://www.wicourts.gov/services/public/lawyerreg/system.htm> The primary entities in the system are: the Wisconsin Supreme Court and OLR with its various component parts.

ORGANIZATIONAL CHART OF THE LAWYER REGULATION SYSTEM



The main entities at OLR for purposes of a typical grievance are: the [Director](#), [District Committees](#), [Preliminary Review Committees](#) and [Referees](#). A brief explanation of each entity’s role can be found at: <http://www.wicourts.gov/services/public/lawyerreg/system.htm> The court’s website provides:

Lawyer regulation system

The Wisconsin Supreme Court has authority over all attorneys licensed to practice law in the State of Wisconsin. The Supreme Court has established rules governing attorney conduct and has made the Office of Lawyer Regulation responsible for investigating attorneys who may have violated those rules. If the Office of Lawyer Regulation finds clear and convincing evidence that an

attorney has violated one of the court's rules, the office has the authority to seek sanctions against the attorney.

Lawyers and non-lawyers interested in serving on the bodies described below should send a letter and resume to: Clerk of the Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, or fax to (608) 267-0640 or e-mail to clerk@wicourts.gov. Positions are filled on a continual basis and resumes will be kept on file for consideration for future opportunities.

A synopsis of the lawyer regulation system follows:

Supreme Court

The Supreme Court determines attorney misconduct and medical incapacity and imposes discipline or directs other action in attorney misconduct and medical incapacity proceedings filed with the court.

Office of Lawyer Regulation

The office is responsible for screening, investigating, and prosecuting cases. The director, appointed by and serving at the pleasure of the Court, investigates attorney misconduct and medical incapacity allegations and presents results to the Preliminary Review Committee. The Office of Lawyer Regulation consists of the director, intake and investigative staff, staff counsel and retained counsel. For more on the Office of Lawyer Regulation visit the [court office section](#).

District Investigative Committees

Sixteen [District Investigative Committees](#), composed of lawyers and members of the public and appointed by the Supreme Court, are an integral part of the Office of Lawyer Regulation's investigative program. ([Map of committee locations](#) ) The use of the committees ensures local input into the grievance process and provides both complainants and respondents with a convenient, economical means of peer review.

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Preliminary Review Committee

A 14-person committee made up of nine lawyers and five non-lawyers appointed by the Supreme Court meets in panels of seven approximately four to six times per year to review investigations and determine whether there is cause for the director to file a complaint with the Supreme Court. The committee also reviews dismissal cases upon the request of the grievant to determine whether further investigation should occur.

Board of Administrative Oversight

A 12-person board composed of eight lawyers and four non-lawyers appointed by the Supreme Court meets four times per year. It monitors the fairness, effectiveness and efficiency of the system and proposes substantive and procedural rules related to the system for consideration by the Court.

Special Investigative Panel

A panel of 12 lawyers appointed by the Supreme Court who are

currently not participating in the lawyer regulation system investigates allegations of possible misconduct made against a current participant in the lawyer regulation system, i.e., a member of a district committee, a lawyer member of the preliminary review committee, a lawyer member of the board of administrative oversight, or a referee. The director will refer the matter to a special investigator when it is received. The special investigator evaluates, investigates, and prosecutes matters as guided and regulated by [SCR 22.25](#) .

Special Preliminary Review Panel

A panel of seven members, consisting of four lawyers and three non-lawyers, appointed by the Supreme Court who are not currently participating in the lawyer regulation system reviews investigative reports received from the Special Investigative Panel and determines whether there is cause to proceed based on the information gathered by the special investigators. The panel also reviews dismissed matters upon request of a grievant to determine whether further investigation should occur.

Referee

A court-appointed attorney or reserve judge hears the discipline cases and makes disciplinary recommendations to the Supreme Court, approves the issuance of certain private and public reprimands, and conducts hearings on petitions for reinstatement of a license to practice law.

The Short Explanation of the Grievance Process

It is very easy to file a grievance. Today, grievances can even be made over the phone, and OLR makes a form available online that can be filled out and mailed in. Grievances, at present, cannot be made directly online. A copy of the “fill in the blank” [grievance form](#) can be found at: <http://www.wicourts.gov/formdisplay/LR-004.pdf?formNumber=LR-004&formType=Form&formatId=2&language=en>

The supreme court’s website also contains a brief explanation of the process at: <http://www.wicourts.gov/services/public/lawyerreg/process.htm> This section provides, in part:

Lawyer regulation process

The Wisconsin Supreme Court created the lawyer regulation system to carry out the court's constitutional responsibility to supervise the practice of law and protect the public from misconduct by persons practicing law in Wisconsin. The court has adopted standards of professional conduct for attorneys and confers the privilege to practice law on an attorney on the condition that he comply with those standards. A failure to comply with the court's standards may constitute misconduct or may be evidence of a medical problem.

Initially, OLR staff screens all inquiries and grievances concerning attorney conduct. If the allegations made are not within OLR's jurisdiction, staff will close the file. If the grievant disagrees with the staff's decision, the grievant may make a written request for the director's review of the closure. The director's decision is final. After preliminary evaluation, staff may also forward the matter to another agency; attempt to reconcile the matter between the grievant and attorney if it is a minor dispute; or refer the matter to the director for diversion or investigation.

If the grievance sets forth sufficient information to support an allegation of a violation of Chapter 20 of the Supreme Court Rules, OLR staff will initiate a formal investigation. OLR staff will send a letter to the respondent enclosing the grievance and requesting a response within 20 days. In most instances, staff will forward the attorney's response to the grievant for comments.

When OLR staff has received the initial responses, the director will determine whether: (a) an uncontested violation exists; (b) the grievance should be dismissed for lack of merit; (c) further staff investigation is needed; or (d) the matter should be assigned to a district investigative committee for further investigation, pursuant to [SCR 22.04\(1\)](#) .

If the grievance is further investigated by staff or a district committee, the respondent and the grievant will be kept advised about the investigation. The committee chairperson can assign the matter to one of the committee's investigators. Pursuant to [SCR 22.04\(2\)](#) , the respondent may request a substitution of a district committee investigator within 14 days of receiving notice of the assignment of the investigator. The respondent shall be granted one such substitution as a matter of right, and any other requests for substitution shall be granted by the committee chairperson for good cause shown.

If the committee decides to take sworn testimony regarding a grievance at an investigative meeting, the respondent and the grievant will receive timely notice of the meeting. Committee members elicit pertinent information from witnesses at such a meeting. In any matter referred to committee, the committee will prepare a report summarizing the facts and potential disciplinary violations. That report will be sent to the respondent and grievant for comment.

After the investigation is completed by staff and/or a committee, the director may dismiss the matter for lack of sufficient evidence of cause to proceed, divert the matter to an alternatives to discipline program, obtain respondent's consent to a private or public reprimand, or present the matter to the Preliminary Review Committee for a determination of whether there is cause to proceed. In those cases in which the director dismisses, the grievant has 30 days after receiving written notice of the dismissal to make a written request for review of the decision by the Preliminary Review Committee. The decision of the Preliminary Review Committee is final.

If after the investigation is completed, the director does not dismiss the grievance or divert the matter, OLR staff will prepare an investigative report and provide a copy to the grievant and to the respondent for comment. (In cases in which a district committee investigates a matter, its report will serve as the investigative report.) The grievant and the respondent may submit a written response to the report no later than 10 days following receipt of the report.

The director may then obtain the attorney's consent to a reprimand or submit the results of the investigation to the Preliminary Review Committee. The Preliminary Review Committee determines whether the evidence presented supports a reasonable belief that an attorney has engaged in misconduct or has a medical incapacity that may be proved by clear, satisfactory and convincing evidence. The Supreme Court will select a referee to review the matter, and the referee's decision is final.

If the Preliminary Review Committee determines that the director has established cause to proceed, the director may file a complaint with the Supreme Court alleging misconduct. OLR, rather than the grievant, is the complainant in such a matter. If the director files a complaint, an answer is required within 20 days of service of the complaint. Upon proof of service, the Supreme Court appoints a referee to hear the matter pursuant to [SCR 22.13\(3\)](#) . The referee holds a scheduling conference to define the issues and to determine the extent of discovery. The referee then presides at a public hearing which is conducted as a trial of a civil action to the court. OLR must prove misconduct or medical incapacity by clear, satisfactory and convincing evidence.

Within 30 days after the conclusion of the hearing, the referee will submit his or her report to the Supreme Court, including findings of fact, conclusions of law, and a recommendation of dismissal or discipline. OLR or a respondent may file an appeal of the referee's report within 20 days after the report is filed. If no appeal is timely filed, the Supreme Court reviews the referee's report and determines appropriate discipline in cases of misconduct and appropriate action in cases of medical incapacity. The court may, on its own motion, order the parties to file briefs.

Either the respondent or OLR may file a motion for reconsideration of the Supreme Court's decision within 20 days of the filing of the decision by the court. The filing of a motion for reconsideration does not stay enforcement of the judgment. The Supreme Court's final dispositions of disciplinary and medical incapacity proceedings are published in the *Wisconsin Reports* and in *The Wisconsin Lawyer*.

Initial Investigation

After a grievance is filed with OLR the director then evaluates the allegation and decides whether to close the matter, if more investigation is needed (either by the staff or a District Committee), begin a diversion, refer the matter to another agency or refer the matter to a local fee arbitration entity. In minor disputes, OLR staff may attempt to reconcile the parties. [SCR 21.03](#) & [SCR 22.02-.03](#). In the event the staff closes the matter, notice is sent to the grievant and he may request a review which is then assigned to a Preliminary Review Committee (hereafter “PRC”). [SCR 22.03\(6\)](#).

If it is determined that a formal investigation is appropriate, the director then notifies the respondent of the grievance, unless the director determines “the investigation of the matter requires otherwise.” [SCR 22.03\(2\)](#). Once notified by mail and a request for information made, the respondent has 20 days to “fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct.” [SCR 22.03\(2\)](#).

The director, as do the district committees, has the power to issue subpoenas to require people to come to proceedings and for the production of documents. [SCR 22.42](#).

Period of Limitations

In order for a grievance to be pursued, OLR must have received the grievance within 10 years of the conduct. [SCR 21.18](#).

Duty to Cooperate with the Investigation

The attorney has a duty to cooperate with any investigation. [SCR 22.03\(6\)](#). See [In re the Disciplinary Proceedings Against Lister, 300 Wis. 2d 326, 731 N.W.2d 254 \(2007\)](#). This duty includes the obligation to provide relevant information, answer questions and furnish documents. The failure to do so or misrepresentation in doing so constitutes misconduct regardless of the merits of the underlying matter.

The duty to cooperate does not affect the attorney’s right against self incrimination, but that right exists only as to matters that may subject the respondent to criminal liability. [SCR 22.03\(7\)](#).

Diversion

At any time the director may offer an alternative to discipline. The alternatives can include mediation, fee arbitration, evaluation for medical or substance abuse needs, law office management, continuing legal education, trust account training and others. [SCR 22.10\(2\)](#).

Eligibility in a diversion program is limited. A person is only eligible if “the discipline likely to be imposed is no more severe than a private reprimand.” [SCR 22.10\(3\)\(a\)](#). An attorney is not eligible if: involves misappropriation of funds/property, involves a “serious crime,” involves domestic violence, prior public discipline in last five (5) years, matter is same nature that attorney was disciplined previously in last five (5) years, sex with a client, involves “deceit, dishonesty or fraud,” or a pattern of similar conduct. [SCR 22.10\(3\)](#). A “serious crime” is defined as a felony or lesser crime that “reflects adversely on the attorney’s fitness to be licensed to practice law.” [SCR 22.20\(2\)](#).

The respondent is required to pay the costs associated with the diversion. [SCR 22.10\(5\)](#).

While the diversion is ongoing the underlying matter is held in abeyance. Once the diversion is completed the grievance is dismissed or the filed closed. [SCR 22.10\(6\)](#). If the diversion agreement is breached, the matter proceeds as normal. Depending on where in the process the matter was at time diversion agreement entered into either a referee or the PRC will hold a hearing to determine if the breach occurred and if it was material. [SCR 22.10\(7\)](#). The “preponderance of the evidence” standard is used to determine if a breach has taken place.

District Committee Investigations

The Director may refer the matter to a [District Committee](#) (hereafter “DC”) for investigation. [SCR 22.04](#). The DC has the power to issue subpoenas to compel the presence of people and documents. [SCR 22.04\(1\)](#). See also [SCR 22.42](#). Once the DC has the matter the Chair will appoint a member to act as the investigator. The name of the investigator will be sent to the respondent, who may request a substitution of that person. [SCR 22.04\(2\)](#). The DC is to investigate the matter and prepare a report to the director within 90 days. [SCR 22.04\(3\)](#). The reports are also sent to the grievant and respondent who may submit comments on them. The report of the DC will set forth the facts found, rules violated, if any, a recommendation for sanctions or a recommendation to dismiss.

Disposition of Investigation and Preliminary Review Committee Actions

Once the investigation is completed, the director may dismiss the matter, divert, obtain consent of respondent for consent public or private reprimand, or present the matter to the [Preliminary Review Committee](#) for a determination of cause to proceed. [SCR 22.05\(1\)](#). If the matter is dismissed the grievant is notified and may seek review with the PRC. The decision to affirm a dismissal by the PRC is final.

Meetings of the PRC are private and confidential. [SCR 22.07](#). The PRC determines cause to proceed by vote, a majority vote is sufficient to proceed. Notification of the decision of the PRC is made to the director.

If the PRC determines no cause to proceed, the director may dismiss the matter or send it out for further investigation. If the PRC determines that there is cause to believe misconduct has occurred the director is then directed to initiate proceeding and files a petition with the supreme court.

Formal Proceedings

If the PRC has found “cause to proceed” a formal petition is filed in the supreme court. At this point, OLR becomes the grievant. [SCR 22.11](#). The director has the power to retain counsel to file, serve and prosecute the matter. Once a formal petition has been filed, the clerk appoints a referee to oversee the matter after the respondent has been served. Within 20 days of service the respondent shall file an answer with the supreme court or may plead “no contest” to the allegations of misconduct. [SCR 22.14](#).

The referee has the powers of a judge and the matter then proceeds as a civil matter, with the rules of civil procedure and evidence to be followed. [SCR 22.16\(1\)](#). The hearings shall be held in the county of the respondent’s principle office. All hearings and papers filed are open to the public. [SCR 22.16\(3\)](#).

OLR has the burden at the hearing to prove by “clear satisfactory and convincing” evidence that misconduct has occurred. [SCR 22.16\(5\)](#). See also [SCR 22.38](#) – [39](#). Within 30 days of the hearing’s completion, the referee shall file a report setting forth the findings of fact, conclusions of law regarding misconduct, if any, and a recommendation for either dismissal or sanctions including a specific discipline. [SCR 22.16\(6\)](#). Either party may appeal from the

referee's decision to the supreme court. [SCR 22.17](#). The appeal proceeds as a civil appeal and is given preference on the docket. [SCR 22.17\(3\)](#).

If no appeal from the findings of the referee is made the supreme court then reviews the report and adopts, rejects or modifies the findings or refers the matter back for additional fact finding. [SCR 22.17\(2\)](#). The court then, if appropriate, imposes discipline. On its own motion, the court may order the filing of briefs.

Pending litigation

The pendency of malpractice or criminal proceedings against an attorney will not ordinarily be cause for the deferral of a matter pending in OLR, "except for cause." [SCR 22.41](#) "Except for cause" is not defined in the rules, so one should expect that OLR will not delay a matter to allow a criminal or malpractice action to proceed first.

Consent Reprimands

If the director and respondent agree to a private or public reprimand, the agreement must be in writing and contain a summary of the facts as well as the rules violated. [SCR 22.09\(1\)](#). If a reprimand is to be done, the director notifies the clerk of the supreme court who then appoints a referee for approval. The grievant is also notified of the proposal and may submit comments to the referee. [SCR 22.09\(2\)](#). If the referee approves the agreement the referee shall issue the reprimand in writing, if it not approved, the matter is sent back to the director to proceed as appropriate. [SCR 22.09\(3\)-\(4\)](#). If the respondent does not consent, the matter proceeds as normal.

Petitions for Consensual License Revocations

An attorney under investigation for misconduct may file with the supreme court a petition for consensual license revocation. The petition shall state that the petitioner "cannot successfully defend against the allegations of misconduct." [SCR 22.19\(2\)](#). If a complaint has not been filed, the director will file a summary of the misconduct and indicate if it opposes the petition. The supreme court shall then grant or deny the petition.

Summary License Suspensions for Criminal Conduct

Upon receiving “satisfactory proof” that an attorney “has been found guilty or convicted of a serious crime” the supreme court may summarily suspend an attorney’s law license. [SCR 22.20 \(1\)](#). The pendency of an appeal does not matter. A “serious crime” is defined as a felony or lesser crime that “reflects adversely on the attorney’s fitness to be licensed to practice law.” [SCR 22.20\(2\)](#).

Cooperation of a District Attorney

The rules provide that upon request, the district attorney “shall assist and provide relevant information to the director in an investigation of possible attorney misconduct.” [SCR 22.43](#).

Assessment of Costs

The general policy is to assess all costs, including the costs to prosecute the matter. [SCR 22.24](#). The imposition of costs is discretionary.

Recommending Dispositions

The district committee and referee may make recommendations regarding the appropriate sanction to be imposed. In doing so the district committee, as well as a referee, have several resources available to it for guidance as to the proper sanction to recommend.

These resources include:

- [Professional Discipline of Wisconsin Attorneys: A Compendium](#) The Compendium is available online and is an organized collection of professional discipline which includes all court cases from 1983, all BAPR/OLR public reprimands from 1989 and all private reprimands from 1990. Materials are indexed by rule, area of practice and topic.
- [ABA Model Sanction Standards](#) Like, the Compendium, the ABA Standards are available online. The ABA Standards include sanctions standards as well as a procedure for considering the duty violated as well as aggravating and mitigating factors. These standards are not binding, but courts have looked to them for guidance to decide what sanction to impose. The ABA Standards, also known as the “Standards for Imposing Lawyer Sanctions,” have been cited with approval by the supreme court. See [In re](#)

[Disciplinary Proceedings Against Compton](#), 2010 WI 112, ¶11, 329 Wis. 2d 318, 322, 787 N.W. 831.

The referee and district committee may recommend the following dispositions:

- “Dismissal.”
- “Dismissal with Advice.” Appropriate where there is no violation or insufficient evidence on one, but may alert the attorney to conduct that could become misconduct.
- “Diversion.” May be given regardless of whether there is a finding of misconduct. This may include: education, treatment for a medical condition, or other programs.
- “Private Reprimand.” Requires a finding of misconduct that caused no harm or minimal harm and the need to correct the attorney’s conduct does not require public notice.
- “Public Reprimand.” Is imposed where there is little or no harm, but public notice is required to protect the public or the integrity of the court system.
- “Suspension.” Requires a finding of misconduct that is relatively serious. Suspensions range from 60 days to three (3) years. Misconduct that results in a suspension is that which has caused substantial harm, where the attorney has a history of misconduct or serious criminal activity.
- “Revocation.” Revocations are most often the result of illegal and dishonest actions. This is the highest level of sanction.
- “Conditions on Continued Practice.” This requires a finding of misconduct. Typically conditions may include: trust account monitoring, alcohol or drug rehabilitation or treatment for a medical condition.
- “Monetary Payment.” If misconduct has been found payments for restitution may be ordered.

Activities Following Suspension or Revocation

On or before the effective date of the loss of license, the attorney shall notify clients by certified mail of the suspension/revocation, advise them to seek new counsel, and notify the courts in which there are pending matters. [SCR 22.26\(1\(a\)-\(c\)\)](#).

Within the first 15 days of the effective date the attorney shall make arrangements to close the practice. [SCR 22.26\(1\)\(d\)](#). Within 25 days, the attorney must notify the director of full compliance with the rules and orders, provide a list of all jurisdictions before which he is admitted to practice, a list of all clients in pending matters. [SCR 22.26\(e\)](#). The attorney must also maintain records to document compliance.

The attorney may not engage in any work “customarily done by law students, law clerks, or other paralegal personnel.” [SCR 22.26\(2\)](#). The attorney may engage in law related work for a commercial employer, itself not engaged in the practice of law. [SCR 22.26\(2\)](#). Proof on compliance with this rule is a condition precedent to reinstatement.

License Reinstatement

The procedure for reinstatement varies depending on the reason and length of the loss of license. In cases involving requests to reinstate a law license, the burden of proof is on the proponent. [SCR 22.39](#).

Suspensions for Dues and CLE Issues

Nonpayment of dues for less than three (3) years: pay the dues plus \$20 and reinstated. [SCR 22.28\(1\)\(a\)](#).

Suspensions for failure to comply with CLE requirements for less than three (3) years: file a petition and pay \$100. [SCR 22.28\(1\)\(b\)](#) and [SCR 31.11\(1\)](#).

If more than three (3) years: pay separate \$200 fees to BBE and OLR as well as file a petition for reinstatement with the supreme court. [SCR 22.28\(1\)](#) and [SCR 10.03\(6m\)\(b\)](#). Within 90 days of filing of a petition the BBE shall file a determination with the supreme court as to compliance. The director is also required to investigate the eligibility of the petitioner and file a response in the supreme court either supporting or opposing the reinstatement.

Suspensions and Revocations for Misconduct

Suspensions for less than six (6) months for misconduct: file an affidavit with director of full compliance and director files notice with supreme court of full compliance. [SCR 22.28\(2\)](#)

If suspended or revoked for six (6) months or more, then the procedure of [SCR 22.29-33](#) applies. The first step to reinstatement in misconduct cases where ones license has been suspended or revoked for six (6) months or more involves the filing of a petition. [SCR 22.29](#). Petitions for reinstatement of suspensions may be filed within three (3) months prior to the

expiration of the suspension. [SCR 22.29\(1\)](#). Petitions for reinstatement of revocations may not be filed until after the effective date of the revocation. [SCR 22.29\(2\)](#).

Petitions are to include a variety of assertions by the attorney and include:

- a) the desire to practice law,
- b) that he or she has not practiced law during the revocation,
- c) that there has been full compliance with the order of suspension/revocation,
- d) the petitioner has maintained competence and learning in the law by attendance at identified educational activities,
- e) the petitioner's conduct has been "exemplary and above reproach,"
- f) the petitioner has a proper understanding and attitude toward the standards that are imposed on attorneys and will act in conformity with those standards,
- g) the petitioner can "safely be recommended to the legal profession"
- h) the petitioner has fully complied with the requirements of [SCR 22.26](#) (i.e. notices regarding closing of law practice),
- i) (left blank)
- j) the petitioner's proposed use of the law license if reinstated, and
- k) a "full description of the petitioner's business activities" during the period of revocation or suspension.

[SCR 22.29\(4\)](#)

In addition to filing a petition, the attorney must also show that restitution has been made and all claims settled, including reimbursement to the Wisconsin Lawyer's Fund for client protection and if not, a complete explanation of the failure or inability to do so. [SCR 22.29\(4m\)](#). Typically, the petition must also include a deposit in an amount set by the supreme court to cover the cost of the proceedings in the matter. This payment may be waived by the supreme court. [SCR 22.29\(5\)](#).

Once a petition has been filed, the clerk of the supreme court selects a referee to conduct a hearing on the petition. [SCR 22.30\(1\)](#). The director is then assigned to investigate the eligibility of the petitioner to practice and prepares and files a report supporting or opposing the petition. [SCR 22.30\(2\)](#). The BBE is instructed to determine if the petitioner is in compliance with dues and CLEs and to file a report. [SCR 22.30\(2m\)](#). At least 30 days prior to the hearing for

reinstatement set by the referee, the director is to publish notice of the hearing in a newspaper of general circulation in the county in which the petitioner maintained an office and in the official publication of the Wisconsin Bar Association (*Wisconsin Lawyer* magazine). [SCR 22.30\(4\)](#).

Reinstatement hearings are open to the public and the petitioner has the burden to prove by evidence that is “clear satisfactory and convincing” that he or she has the moral character to practice law, that his or her resumption of the practice of law shall not be detrimental to the administration of justice or subversive of the public interest, that all representations in the petition are substantiated and that he or she has complied with the order of revocation. [SCR 22.31\(1\)-\(2\)](#). The petitioner and director (or designee) shall appear at the hearing and the petitioner is entitled to be represented by counsel. The referee holds the hearing according to the rules of civil procedure, however the rules of evidence do not apply. [SCR 22.31\(5\)](#). A verbatim transcript is also taken of the hearing.

Within 30 days of the conclusion of the hearing and filing of the transcript, the referee files with the supreme court a report setting forth his or her findings and recommendation on the petition. [SCR 22.32\(1\)](#). The petitioner and director both have the opportunity to file a response within 10 days of the referee’s report. [SCR 22.32\(2\)](#).

The supreme court reviews the referee’s report and may order reinstatement, with or without conditions, deny reinstatement or order further briefing. [SCR 22.33\(2\)](#). If reinstatement is denied, the petitioner may file a new petition in nine (9) months. [SCR 22.33\(4\)](#).

Medical Incapacity Proceedings

The director is also charged with investigating medical incapacity issues. [SCR 22.34](#). Medical Incapacity proceedings and investigations generally mirror what is done in disciplinary matters. [SCR 22.34\(9\)](#). When a claim of a medical incapacity arises, the attorney is required to cooperate with OLR and to provide any requested medical releases as well. [SCR 22.34\(3\)](#). Just as with disciplinary matters, OLR investigations regarding medical issues are confidential. [SCR 22.34\(4\)](#).

In cases in which an attorney has been found to have a medical incapacity determined by a court, such as a [Chapter 51](#) proceeding, that determining court is required to notify the supreme court and the director of OLR of its findings and provide a copy of the court’s orders. [SCR 22.35](#).

The director is responsible for conducting an investigation and preparing an investigative report. The report is then sent to the attorney who is given an opportunity to respond to the report. [SCR 22.34\(5\)](#). Upon completion of the investigation, the director will either dismiss the matter for lack of cause, or forward the report to the PRC for review. If the PRC determines that there is cause to proceed, the director shall file a petition with the supreme court seeking a suspension of the attorneys license to practice law or for the imposition of conditions to practice. [SCR 22.34\(8\)](#).

Once a petition is filed, the procedures set forth in [SCR 22.11](#) to [SCR 22.24](#) are applicable and set forth how the matter will proceed (see above). The referee has the power to order medical evaluations be conducted and reports prepared by medical or psychological experts. [SCR 22.34\(13\)](#). In addition, the referee has the power to appoint counsel for the attorney. [SCR 22.34\(13\)](#). The burden of proof is on OLR to prove a medical incapacity by evidence that is “clear, satisfactory and convincing.” [SCR 22.34\(9\)](#). Reviews and appeals of the referee are conducted under [SCR 22.341](#).

An attorney who is the subject of an investigation or a petition may request an indefinite suspension of his or her law license. [SCR 22.34\(11\)\(a\)](#). If a request is made, the request shall include a statement that the attorney “cannot successfully defend against the allegations of a medical incapacity.” [SCR22.34\(11\)\(a\)](#) If a petition has not been filed, the director is required to file a response with the supreme court setting forth opposition or support of the petition as well as information regarding the pending matter; if a petition has been filed, both the director and the referee files responses with the supreme court. [SCR 22.34\(11\)\(a\)](#). After the request for license suspension is filed the supreme court will either accept the request or refer the matter back to the referee for further proceedings. [SCR 22.34\(11\)\(b\)](#).

As a general rule all filings and proceedings in medical incapacity matters are confidential, unless the supreme court issues an order revoking, suspending or limiting the attorney’s license. [SCR 22.34\(12\)](#).

The attorney may file a petition for reinstatement or removal of conditions at any time. The petition constitutes the waiver of any health care privilege and must contain the names of all health care providers that the attorney has treated with subsequent to the suspension or imposition of conditions and shall also furnish the director with written consent to obtain any medical records. [SCR 22.36\(3\)](#). The director then conducts an investigation and may order, at the

expense of the petitioner, an independent medical examination of the petitioner. [SCR 22.36\(4\)](#). A hearing is then held before a referee where the petitioner has the burden to prove by “clear, convincing and satisfactory” evidence that the medical incapacity has been removed and that he or she is fit to resume the practice of law. [SCR 22.36\(6\)](#). The referee then files a report with the supreme court which acts upon it.

Retention of Records and Expungement

Records of all matters are generally retained 10 years in cases in which discipline is imposed. [SCR 22.44](#).

Records in matters that are closed without investigation or dismissed, OLR shall expunge its records three (3) years following the closing of the file. [SCR 22.45\(1\)](#). For “good cause” records that would otherwise be expunged may be retained for an additional three (3) years. [SCR 22.45\(2\)](#). An attorney whose records are expunged is entitled to “prompt written notice of expungement.” [SCR 22.45\(3\)](#). The effect of expungement is that the matter or proceeding shall be considered never to have been commenced and in response to an inquiry concerning the matter, the director “shall state that no record of the matter or proceeding exists.” [SCR 22.45\(4\)](#).

Malpractice Claims

While not directly related to OLR grievances or discipline, malpractice claims often go hand in hand with grievances. According to [WILMIC](#), for 2010, the top areas of practice in Wisconsin in which malpractice claims arise were as follows: Personal Injury 20%, Real Estate 18%, Probate/Trust 15% and Bankruptcy/Collections 14%. “[Managing Risk: Learn From Other’s mistakes](#),” Wisconsin Lawyer, Vol. 84, No. 7, July 2011. These numbers are consistent with the findings of the ABA. The ABA’s publication, “Profile of Legal Malpractice 2000-2003” reports that the top practice areas for malpractice are: Personal Injury (plaintiff) 20%, Real Estate 16%, Personal Injury (defense) 10%, Family Law 10% and Estate/Trust/Probate 9%.

The ABA conducts a survey every few years regarding types of malpractice claims in the United States. The Most recent, “Profile in Legal Malpractice 2004-2007 breaks down the most common claims of types of malpractice. Those findings were summarized in the article, [Are you at Risk? The Biggest Malpractice Claim Risks and How to Avoid Them](#) *Law Practice Magazine*, July/August 2010, Vol 36, No. 4.

<http://www.abanet.org/lpm/magazine/articles/v36/is4/pg29.shtml> The author reports that the following are the most common types of malpractice claims made:

Failure to Know/Apply the Law	11.3%
Planning Errors	08.9%
Inadequate Discovery/Investigation	08.8%
Failure to File Documents	08.6%
Failure to Calendar properly	06.7%
Failure to Know Deadline	06.6%
Procrastination	05.9%
Failure to Obtain Client Consent	05.4%
Conflict of Interest	05.3%
Fraud	05.0%

While these claims are not identical to the primary types of OLR claims made, there is a great deal of similarity between the types of allegations that give rise to OLR complaints and malpractice actions. It is worth noting however that criminal law, which makes up a large percent of OLR grievances makes up a much smaller portion of malpractice claims.

Conclusion

The disciplinary role of OLR and the process employed can be a complicated and disconcerting process for those that are the subject of an investigation. This booklet attempts to provide a basic understanding of the process and to educate attorneys on that process so that they will have a better understanding of what to expect in the unlikely event one becomes the subject of a grievance.

Websites of Interest

☐ OLR:

www.wicourts.gov/olr

☐ Supreme Court Rules:

<http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=scr&jd=top>

☐ Wisconsin Attorneys' Professional Discipline Compendium:

<http://compendium.olr.wicourts.gov/app/search>

☐ Status of Pending Cases:

<http://www.wicourts.gov/services/public/lawyerreg/status.htm>

☐ Ethics Opinions:

http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin_ethics_opinions

☐ ABA Standards for Imposing Sanctions:

http://www.abanet.org/cpr/regulation/standards_sanctions.pdf

If you have any questions regarding this matter, please feel free to contact me at the below address.

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Patrick J. Anderson is an Assistant District Attorney in Kenosha County. He graduated *cum laude* from Marquette University Law School with a *Juris Doctor* in 1991 and has a B.A. in Economics from Marquette University. As a prosecutor he has tried numerous jury trials, including homicide.

Prior to becoming an prosecutor he did primarily insurance defense and appellate work. His work in the court of appeals resulted in numerous published decisions from the court of appeals and including: *Allstate Ins. Co. v. Brunswick*, 2007 WI App 221, 305 Wis. 2d 400, 740 N.W.2d 888, *American National Property and Casualty Co. v. Nersesian*, 2004 WI App 215, 277 Wis. 2d 430, 689 N.W.2d 922, *Baldwin et al. v. Badger Mining Corporation, et al.*, 2003 WI App. 95, 633 N.W.2d 382; *In re the Paternity of Carlin L.S.*, 226 Wis. 2d 79, 593 N.W.2d 486 (Ct. App. 1999) and *Gurney v. Heritage Mutual Insurance Company*, 188 Wis. 2d 68, 523 N.W.2d 193 (Ct. App. 1994).

Mr. Anderson is acted as an editor for selected chapters in Wisconsin Legal Forms, Lawyers Cooperative Publishing, 1994. In addition to being a prosecutor, he is an adjunct instructor at Cardinal Stritch University and has served on a variety of boards and committees, including: The “Bench and Bar Committee” of the State Bar of Wisconsin, President Elect of the Kenosha County Bar Association (2011-present), OLR District 1 Investigative Committee (term expires 2012), Secretary of the Kenosha Bar Assoc. (2010-2011), St. Vincent de Paul Fund Raising Committee (2002-2005), Board of Directors for the Washington County Red Cross (2002-2005), Board of Directors of Legal Action of Wisconsin, Inc. (1997-2003), Board of Directors of the Wisconsin State Jaycees (1997-1999), Board of Directors Rock County Bar Assoc. (1996-1998), Board of Directors Janesville Jaycees (1994-1998). In addition to being admitted is admitted to practice in Wisconsin, he is also admitted to practice in the Eastern and Western Districts of Wisconsin, Northern District of Illinois, Northern District of Texas, the Eastern and Western Districts of Arkansas, the 7th Circuit Court of Appeals and the United States Supreme Court.