



**WSSFC 2022**

**Quality of Life/Ethics Track –  
Session 3**

# **Insights From the Office of Lawyer Regulation**

*Timothy J. Samuelson*

## About the Presenter...

**Timothy C. Samuelson** is the Director of the Office of Lawyer Regulation. The Wisconsin Supreme Court appointed Samuelson to serve as OLR Director in August 2021. He was formerly the Civil Chief Assistant United States Attorney in the Western District of Wisconsin, an Assistant Attorney General with the Wisconsin Department of Justice, and a Dane County Circuit Court Judge. At the U.S. attorney's office, Samuelson led the civil division and represented the United States government in civil litigation. During his tenure with the state DOJ, Samuelson served as Director of the Medicaid Fraud Control and Elder abuse Unit and Deputy Director of the Special Litigation and Appeals Unit. He also handled criminal appeals. Before joining DOJ, Samuelson worked in private practice as a civil litigator in Chicago, handling a range of complex civil cases in federal and state courts across the country. Samuelson served as a Dane County Circuit Court judge from 2017 to 2018. Samuelson graduated from Valparaiso University (B.A., 1995) and Indiana University McKinney School of Law (J.D., 1998). He lives in Middleton with his wife and daughter.

# **The Office of Lawyer Regulation Framework, Structure & Procedures**



Prepared and Presented by:  
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Office of Lawyer Regulation

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# **The Office of Lawyer Regulation Process**

## **I. Legal Framework of the Lawyer Regulation System**

### **A. The Wisconsin Constitution**

“The supreme court shall have superintending and administrative authority over all courts.” Wis. Const. Art. VII, Sec. 3.

“The power to discipline and disbar attorneys at law is an inherent power of courts.” *In re Stolen*, 193 Wis. 602, 610 (1927). In *Stolen*, a judge borrowed money from bootleggers who were likely to appear before him in court; the judge was disbarred. Years later, the Court relied on *Stolen* to find jurisdiction over allegations against Joseph McCarthy, who as a judge, ran for U.S. Senate without resigning his judgeship. Although the Court found jurisdiction, it determined that the allegations did not constitute professional misconduct. *See State v. Mc Carthy*, 255 Wis 234 (1949).

### **B. Supreme Court Rules**

“The lawyer regulation system is established to carry out the supreme court’s constitutional responsibility to supervise the practice of law and protect the public from misconduct by persons practicing law in Wisconsin.” Supreme Court Rules, Chapter 21, Preamble.

The rules relating to the lawyer regulation system are in three chapters of Supreme Court Rules: Chapter 20 (Rules of Professional Conduct for Attorneys), Chapter 21 (Lawyer Regulation System), and Chapter 22 (Procedures for the Lawyer Regulation System).

## **II. Structure of the Lawyer Regulation System (Ch. 21)**

### **A. The Supreme Court**

The Supreme Court supervises the lawyer regulation system, determines attorney misconduct and medical incapacity, and imposes discipline or directs other appropriate action in proceedings filed with the Court.

### **B. Office of Lawyer Regulation**

The Office of Lawyer Regulation (OLR) consists of the Director, investigative and support staff, litigation counsel, and retained counsel. OLR has the following duties:

- Receive and respond to inquiries and grievances relating to attorneys;
- Investigate allegations of attorney misconduct or medical incapacity;
- Divert matters into alternative to discipline programs;
- Prosecute misconduct or medical incapacity proceedings; and
- Investigate license reinstatement petitions.

### **C. Preliminary Review Committee**

The Preliminary Review Committee (PRC) consists of 14 members—nine lawyers and five public members—each of whom is appointed by the Supreme Court. The PRC is comprised of two seven-member panels, each having at least four lawyers and two public members. The PRC has the following duties:

- Review the results of OLR investigations and determine whether there is “cause to proceed”<sup>1</sup> in the matter;

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<sup>1</sup> Cause to proceed means “a reasonable belief based on a review of an investigative report that an attorney has engaged in misconduct that warrants discipline or has a medical incapacity that may be proved by clear, satisfactory and convincing evidence.” SCR 22.001(2).

- Review, upon request by a Grievant, decisions by the Director to dismiss a grievance after investigation; and
- Confer with the Board of Administrative Oversight and suggest improvements in the operation of the Committee and its panels.

#### **D. Board of Administrative Oversight**

The Board of Administrative Oversight (BAO) consists of 12 members—eight lawyers, and four public members—each of whom is appointed by the Supreme Court. The BAO has the following duties:

- Monitor the fairness, productivity, effectiveness, and efficiency of the lawyer regulation system;
- Monitor the implementation of new procedures;
- Assess public and Bar perceptions of the integrity of the lawyer regulation system;
- Report its findings to the Supreme Court;
- Review the operation of the lawyer regulation system with the Court in an annual report;
- Propose substantive and procedural rules;
- Inform and educate the public and Bar about the lawyer regulation system; and
- Propose an annual budget.

#### **E. Special Investigators**

The Supreme Court appoints Special Investigators who are not participating in the lawyer regulation system to investigate, as necessary, participants in the

lawyer regulation system. Upon receipt of grievances of misconduct regarding attorney participants in the lawyer regulation system, the OLR Director refers the allegations to a Special Investigator. In the referred matter, the Special Investigator performs the functions that the OLR Director would normally perform, which may include evaluating, investigating, dismissing, diverting, or prosecuting the matter.

#### **F. Special Preliminary Review Panel**

The Special Preliminary Review Panel (SPRP) consists of seven members—four lawyers and three public members—each of whom is appointed by the Supreme Court. The PRC has the following duties:

- Review a Special Investigator’s decision to close a matter without investigation or dismiss a matter after investigation; and
- Review a Special Investigator’s investigative report to determine whether there is cause to proceed.

#### **H. Referees**

Referees are attorneys or reserve judges appointed by the Supreme Court to perform the following duties:

- Conduct hearings in proceedings alleging misconduct or medical incapacity;
- Conduct hearings on petitions for license reinstatement; and
- Review consensual public or private reprimands submitted by the Director.

## **I. District Committees**

District Committees exist in each of the 16 State Bar Districts and consist of lawyers and public members appointed by the Supreme Court. District Committees may perform the following duties under the supervision of the Director:

- Educate the bar and the public about the legal profession and ethical practice of law;
- Refer to the Director possible misconduct or medical incapacity matters;
- Assist in the investigation of possible misconduct or medical incapacity;
- Recommend to the Director the appropriate disposition of matters it investigated;
- Monitor an attorney's participation in an alternatives to discipline program or an attorney's compliance with conditions on practice; and
- Assist in resolving minor disputes between an attorney and a client.

## **III. Lawyer Regulation System Procedures (Ch. 22)**

### **A. Preliminary Evaluation (Intake)**

OLR's Intake department performs "preliminary evaluation" of all inquiries or grievances. SCR 22.02(2). This is, in essence, OLR's determination of whether an individual grievance presents sufficient information to support an allegation of attorney misconduct warranting discipline, or medical incapacity, that may be proved by clear, satisfactory and convincing evidence.



Intake “receive[s] and evaluate[s] all inquiries and grievances concerning attorney conduct.” SCR 22.02(1). Most individuals may submit their grievances by mail, email, or telephone; incarcerated persons must make grievances in writing.

Intake evaluation varies based upon the allegation and information presented in an individual grievance. OLR’s Intake Investigators typically contact the individual grievant to clarify allegations and request supporting information. Then, depending on the information presented by the grievant, the Intake Investigator may follow-up with the respondent lawyer to obtain a response and any supporting information

## **B. Dispositions of Grievances after Preliminary Evaluation**

At the conclusion of preliminary evaluation, Intake may close the matter, *see* SCR 22.02(c), refer it for “formal” investigation, *see* SCR 22.02(d), offer a consent private or public reprimand, *see* SCR 22.02(6(d)), or divert the matter to an alternatives to discipline program, *see* SCR 22.02(6)(b). Supreme Court Rules also authorize Intake to forward the matter to another agency or attempt to reconcile the matter between the grievant and the attorney, but these actions are taken with less frequency. *See* SCR 22.02(2)(a)&(b).

First, Intake may close a grievance “if it does not present sufficient information of cause to proceed.”<sup>2</sup> More than 90% of grievances are closed following preliminary evaluation. When a grievance is closed at intake, the Intake Investigator notifies the grievant that they may “request review” by the OLR

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<sup>2</sup> “ ‘Cause to proceed’ means a reasonable belief based on a review of an investigative report that an attorney has engaged in misconduct that warrants discipline or has a medical incapacity that may be proved by clear, satisfactory and convincing evidence.” SCR 22.001(2).

Director within 30 days of closure. *See* SCR 22.02(4). The Director may grant the request for review and refer the matter for additional evaluation. Or, if the Director affirms closure, he shall provide “a brief written statement of reasons for affirmation.” *Id.* This is a final decision and “there shall be no review of the director's decision.” *Id.*

Second, Intake may recommend OLR “formally” investigate the matter; this is a more detailed, in-depth investigation of allegations of attorney misconduct or medical incapacity. *See* SCR 22.03.

Third, Intake may offer a respondent lawyer a consensual private or public reprimand. *See* SCR 22.02(6(d)) & 22.09. OLR and a respondent lawyer may enter into an agreement “to the imposition of a private or public reprimand” that “shall contain a summary of the factual nature of the misconduct and an enumeration of the rules of professional conduct for attorneys that were violated.” SCR 22.09(1). Procedurally, OLR requests the appointment of a Supreme Court-appointed Referee to evaluate the parties’ agreement and a proposed reprimand. SCR 22.09(2). A Referee is authorized to approve a proposed consensual reprimand. SCR 22.09(3) & (4). This is a deviation from other discipline where the full panel Supreme Court—and not a court-appointed Referee—imposes discipline.

Fourth, Intake may diver the matter by offering a respondent lawyer to participate in an alternatives to discipline program. *See* SCR 22.02(6)(b) & 22.10. Alternatives to diversion may include fee arbitration, continuing legal education, monitoring of an attorney’s practice or other programs. SCR 22.10(2). Participation in diversion programming is limited to circumstances where, among other things, there is “little likelihood” of public harm, participation would “benefit

the attorney and accomplish the goals of the program,” and the OLR Director “can adequately supervise the conditions of the program.” SCR 22.10(3).

Attorneys are generally ineligible to participate in diversion programming where the discipline likely to be imposed is more severe than a private reprimand and the alleged misconduct:

- involves misappropriation of client funds or property; a “serious crime” or “family violence;” dishonesty, fraud, deceit, or misrepresentation; or sexual relations prohibited under SCR 20:1.8.
- results in “actual injury,” such as loss of money, legal rights, or property rights unless restitution is a condition of diversion; or
- the matter is of the same nature as misconduct for which the attorney has been disciplined within the preceding five years, is part of a pattern of similar misconduct, or has resulted in previous participation in diversion programming.

### **C. “Formal” Investigation**

OLR’s Formal Investigation department performs detailed, in-depth investigation of allegations of attorney misconduct or medical incapacity. *See* SCR 22.03. When OLR commences formal investigation, it notifies the respondent lawyer of the investigation and the lawyer, in turn, has an obligation to “fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days.” SCR 22.03(2). If a respondent lawyer does not comply with his or her obligations to fully and fairly disclose facts and circumstances, OLR may “automatically suspend[]” the lawyer’s law unless the lawyer shows cause to the Supreme Court. SCR 22.03(4)(a). And, the respondent lawyer’s “willful failure to

provide relevant information, to answer questions fully, or to furnish documents” is misconduct; misrepresentations are also misconduct. SCR 22.03(6).

OLR has subpoena power and may compel the production of documents and records in formal investigations. SCR 22.03(7).

At the conclusion of a formal investigation, OLR prepares a report to the Director which must include all relevant exculpatory and inculpatory information obtained. SCR 22.03(3). The grievant attorney is entitled to the report and has an opportunity to respond. SCR 22.03(5).

#### **D. Dispositions of Grievances after Formal Investigation**

At the conclusion of formal investigation, OLR may dismiss the matter for lack of sufficient evidence of cause to proceed or present the matter to the Preliminary Review Committee (PRC) for a determination that there is cause to proceed in the matter. *See* SCR 22.05.

PRC is part of the Lawyer Regulation System. *See* § II.C., *supra*. As a general rule, before OLR may file a complaint to initiate a disciplinary proceeding with the Supreme Court, it must present a matter to PRC to request a determination that cause to proceed exists. *See* SCR 22.07 & 22.08. Procedurally, where OLR seeks a cause determination, it provides PRC with its investigative reports, including all relevant exculpatory and inculpatory information, and grievants’ and respondent lawyers’ responses. *See* SCR 22.06. OLR appears before the panel and summarize the investigative reports and the agency’s position. *See* SCR 22.06(3).

If PRC determines OLR has established cause to proceed, OLR may offer a consent private or public reprimand, divert the matter to an alternatives to

discipline program, or file a disciplinary complaint with the Supreme Court. *See* SCR 22.08(2).

The Supreme Court Rules and OLRs procedures for offering consent private or public reprimands and diversions to alternatives to discipline programs are similar to those discussed above. *See* § III.B., *supra*.

To initiate a proceeding alleging misconduct, OLR files a complaint with the Supreme Court, *see* SCR 22.11, and serves it upon the respondent lawyer, *see* SCR 22.13, who shall file an answer within 20 days of service, *see* SCR 22.14. Additional discussion of disciplinary complaint litigation follows below. *See* § IV, *infra*.

When a matter is dismissed after formal investigation, OLR notifies the grievant of the dismissal and “a brief written statement of reasons” for the dismissal decision. SCR 22.05(2). The grievant may “request review” by PRC within 30 days of closure. SCR 22.05(2). PRC may affirm dismissal or refer the matter to OLR for further investigation. SCR 22.05(3). If PRC affirms dismissal, this is a final decision and “there shall be no review of the panel’s decision.” *Id.*

### **E. Litigation**

When OLR files a disciplinary complaint, the Supreme Court appoints a Referee to preside over the proceeding with “the powers of a judge trying a civil action.” SCR 22.16(1). Referees are typically reserve judges or experienced practitioners. After being appointed, a Referee holds a scheduling conference within 20 days after the respondent lawyer files an answer. *See* SCR 22.15. The litigation proceeds similar to a civil litigation; OLR and respondent typically engage in written discovery and deposition practice, and pre-hearing motion

practice. The hearing proceeds in the county of the respondent lawyer's principal office. *See* SCR 22.16(2).

The disciplinary proceeding is public, *see* SCR 22.16(3), and "all papers filed in it are public, except where expressly provided otherwise in this chapter, by court order, or by law," *see* SCR 22.40. The proceeding and documents are public even where OLR is seeking a private reprimand.

Within 30 days of the hearing or the filing of transcripts of post-hearing briefs, the Referee prepares a report "setting forth findings of fact, conclusions of law regarding the respondent's misconduct, if any, and a recommendation for dismissal of the proceeding or the imposition of specific discipline." SCR 22.16(6). Within 20 days after the filing of the referee's report, OLR or the respondent lawyer may file an appeal with the Supreme Court. *See* SCR 22.17(1). If no appeal is filed, the Supreme Court reviews the Referee's report and may adopt, reject, modify, or remand. *See* SCR 22.17(2).

When OLR files a disciplinary complaint, the Supreme Court—and not OLR or a Referee—imposes any discipline. The Supreme Court may assess against the respondent lawyer all or a portion of the costs of a disciplinary proceeding, including the expenses of the Referee and OLR's litigation counsel. *See* SCR 22.24.

If the Supreme Court suspends a respondent lawyer for six months or more, he or she must file a petition for reinstatement with the Court. SCR 22.29.

# The Office of Lawyer Regulation

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Grievance statistics

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OLR processes

What to do if a grievance if filed against you

Grievance statistics

Grievance statistics

20,190 full-dues equivalent lawyers in Wisconsin

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Sources of grievances

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51% from clients

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#### Sources of grievances

- 51% from clients

- 20% from adverse party

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#### Sources of grievances

- 51% from clients

- 20% from adverse party

- 3.5% from another attorney

### Grievance statistics

20,190 full-dues equivalent lawyers in Wisconsin

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#### Sources of grievances

- 51% from clients

- 20% from adverse party

- 3.5% from another attorney

- .6% from a judge

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#### Sources of grievances

Areas of practice

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Sources of grievances

Areas of practice

44.5% criminal law

### Grievance statistics

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Sources of grievances

Areas of practice

44.5% criminal law

18.5% family law

### Grievance statistics

20,190 full-dues equivalent lawyers in Wisconsin

OLR receives ~1500 grievances annually

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### Sources of grievances

#### Areas of practice

44.5% criminal law

18.5% family law

6.4% general litigation

### Grievance statistics

20,190 full-dues equivalent lawyers in Wisconsin

OLR receives ~1500 grievances annually

90% are closed upon preliminary evaluation

### Sources of grievances

#### Areas of practice

44.5% criminal law

18.5% family law

6.4% general litigation

4.9 % estate-probate, guardianship, wills



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Sources of grievances

Areas of practice

Types of grievances

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Sources of grievances

Areas of practice

Types of grievances

16% lack of diligence (SCR 20:1.3)

## Grievance statistics

20,190 full-dues equivalent lawyers in Wisconsin

OLR receives ~1500 grievances annually

90% are closed upon preliminary evaluation

Sources of grievances

Areas of practice

Types of grievances

- 16% lack of diligence (SCR 20:1.3)

- 15% lack of communication (SCR 20:1.4)

## Grievance statistics

20,190 full-dues equivalent lawyers in Wisconsin

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Areas of practice

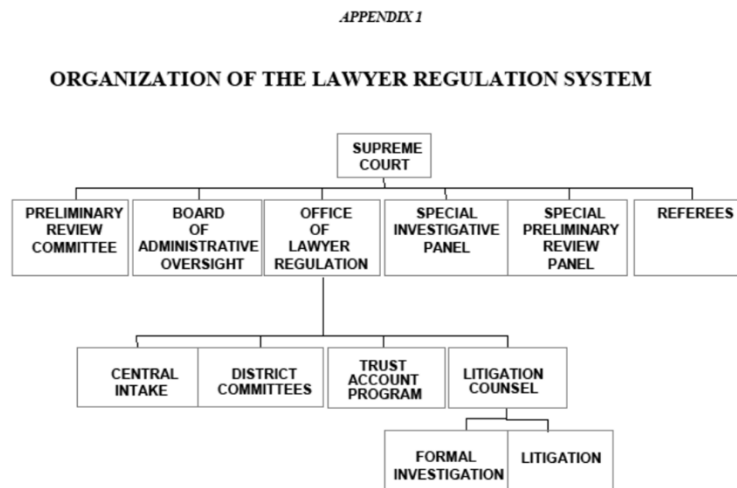
Types of grievances

- 16% lack of diligence (SCR 20:1.3)

- 15% lack of communication (SCR 20:1.4)

- 12% misrepresentation (SCR 20:8.4)

## Lawyer regulation system structure



Lawyer regulation system structure

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Board of Administrative Oversight, SCR 22.10

Lawyer regulation system structure

Board of Administrative Oversight, SCR 22.10

Preliminary Review Committee, SCR 21.07

Lawyer regulation system structure

Board of Administrative Oversight, SCR 22.10

Preliminary Review Committee, SCR 21.07

Special Investigators, SCR 22.25

Lawyer regulation system structure

Board of Administrative Oversight, SCR 22.10

Preliminary Review Committee, SCR 21.07

Special Investigators, SCR 22.25

Special Preliminary Review Panel, SCR 22.25

OLR processes

OLR processes

Intake SCR 22.02

OLR processes

Intake SCR 22.02

OLR receives grievances

OLR processes

Intake SCR 22.02

OLR receives grievances

Telephone

OLR processes

Intake SCR 22.02

OLR receives grievances

Telephone

U.S. Mail



OLR processes

Intake SCR 22.02

OLR receives grievances

Telephone

U.S. Mail

Email

OLR processes

Intake SCR 22.02

OLR receives grievances

Telephone

U.S. Mail

Email

Fax

OLR processes

Intake SCR 22.02

OLR receives grievances

Telephone

U.S. Mail

Email

Fax

SCR 22.01: incarcerated persons may not  
make telephonic grievances

OLR processes

Intake SCR 22.02

OLR receives grievances

Preliminary evaluation

OLR processes

Intake SCR 22.02

OLR receives grievances

Preliminary evaluation

Disposition recommendation

OLR processes

Intake SCR 22.02

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90%+ closed at intake

OLR processes

Intake SCR 22.02

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Consent reprimand, SCR 22.09

OLR processes

Intake SCR 22.02

OLR receives grievances

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90%+ closed at intake

Consent reprimand, SCR 22.09

Diversion, SCR 22.10

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

More detailed and thorough investigation

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

More detailed and thorough investigation

Subpoena authority

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

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Suspension for non-cooperation, SCR 22.03(4)

OLR processes

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OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

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Intake SCR 22.02

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Consent reprimand, SCR 22.09

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Intake SCR 22.02

“Formal” Investigation, SCR 22.03

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OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

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Subpoena authority

Suspension for non-cooperation, SCR 22.03(4)

Dispositions

Close

Consent reprimand, SCR 22.09

Diversion, SCR 22.10

Present to Preliminary Review Committee, SCR 22.06

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

Litigation, SCR 22.11

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

Litigation, SCR 22.11

Supreme Court appointed referee presides

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

Litigation, SCR 22.11

Supreme Court appointed referee presides

Rules of civil procedure apply

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

Litigation, SCR 22.11

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Rules of civil procedure apply

Clear, satisfactory, and convincing standard

OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

Litigation, SCR 22.11

Supreme Court appointed referee presides

Rules of civil procedure apply

Clear, satisfactory, and convincing standard

Referee makes recommendation to Supreme Court

## OLR processes

Intake SCR 22.02

“Formal” Investigation, SCR 22.03

Litigation, SCR 22.11

Supreme Court appointed referee presides

Rules of civil procedure apply

Clear, satisfactory, and convincing standard

Referee makes recommendation to Supreme Court

Supreme Court makes final determination

What to do if a grievance is filed against you

What to do if a grievance is filed against you  
Cooperate. *See* SCR 21.15(4).

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Do you need to withdraw?

What to do if a grievance is filed against you

Cooperate. *See* SCR 21.15(4).

Do you need to withdraw? No. *See* SCR 20:1.7(b).

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Do you need to withdraw? No. *See* SCR 20:1.7(b).

Can you share confidential client information?

What to do if a grievance is filed against you

Cooperate. *See* SCR 21.15(4).

Do you need to withdraw? No. *See* SCR 20:1.7(b).

Can you share confidential client information? Yes. *See* SCR 20:1.6.

What to do if a grievance is filed against you

Cooperate. *See* SCR 21.15(4).

Do you need to withdraw? No. *See* SCR 20:1.7(b).

Can you share confidential client information? Yes. *See* SCR 20:1.6.

Is the grievance confidential?

What to do if a grievance is filed against you

Cooperate. *See* SCR 21.15(4).

Do you need to withdraw? No. *See* SCR 20:1.7(b).

Can you share confidential client information? Yes. *See* SCR 20:1.6.

Is the grievance confidential? Yes. *See* SCR 22.40.

What to do if a grievance is filed against you

Cooperate. *See* SCR 21.15(4).

Do you need to withdraw? No. *See* SCR 20:1.7(b).

Can you share confidential client information? Yes. *See* SCR 20:1.6.

Is the grievance confidential? Yes. *See* SCR 22.40.

*See* Wisconsin Formal Ethics Opinion EF-20-01,

“Responsibilities of a Lawyer when a Grievance  
is filed against the Lawyer”



What to do if a grievance is filed against you

Cooperate. *See* SCR 21.15(4).

Do you need to withdraw? No. *See* SCR 20:1.7(b).

Can you share confidential client information? Yes. *See* SCR 20:1.6.

Is the grievance confidential? Yes. *See* SCR 22.40.

*See* Wisconsin Formal Ethics Opinion EF-20-01.

State Bar's Ethics Hotline

(608) 229-2017

(800) 254-9154

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Grievance statistics

Lawyer regulation system structure

OLR processes

What to do if a grievance if filed against you

Questions

# The Office of Lawyer Regulation

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