The Adjudication of Lawyer Discipline Matters in Louisiana

Louisiana Supreme Court Rule XIX

Created for the exclusive use of the Louisiana Attorney Disciplinary Board or its designee.
A System of Volunteers

Overview of the System
**Authority:** Exclusive right to regulate lawyers in LA

**Jurisdiction:**
- Any lawyer admitted in LA
- Pro Hac Vice
- Any lawyer rendering or offering to render legal services in LA

**Ultimate decision-maker in** *most* lawyer discipline matters
Louisiana Attorney Disciplinary Board

* **Composition & Terms**
  * 10 lawyers, 4 public members (i.e. non-lawyers)
  * Appointed by LA Supreme Court
  * 3-year terms; no more than 2 terms

* **Adjudicative Committee**
  * 9 members
    * 3 panels – Chairperson, Lawyer Member, Public Member
  * Appellate review & other adjudicative tasks

* **Administrative Committee**
  * 5 members
  * Financial, human resources, etc.
Hearing Committees – “Trial Court”

- **Composition & Terms**
  - 2 lawyers, 1 public member
  - Chairperson, Lawyer Member, Public Member
  - Appointed by the Board (Admin Committee)
  - 3-year terms, no more than 2 consecutive terms
- Initial triers of fact
- Conduct hearings
- Review & approve other filings by ODC
Hearing Committee Locations

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Board Staff – “Clerk of Court”

- **Composition**
  - Administrator – Donna L. Roberts
  - General Counsel & 3 Staff Attorneys
  - Docket Clerks & Paralegals
  - IT

- **Functions**
  - Clerk of Court
  - Legal counsel & training for HC & Board members
  - CLEs, special projects, etc.
Office of Disciplinary Counsel – “District Attorney”

- **Composition**
  - Chief Disciplinary Counsel – Chuck Plattsmier
  - Deputy Counsel (9)
- Receives & screens complaints
- Conducts investigations
- Prosecutes
From Complaint to Final Adjudication

The Discipline Process

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How does it all start?

To: ODC
From: Angry Client
What is a Complaint?

* Any information coming to the attention of ODC
* Does not have to originate with a client
  * Friends/relatives of clients
  * Attorneys/judges
  * Creditors
  * Information in the media
* Approximately 3,100 complaints filed per year
Screening & (Potential) Investigation

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ODC Disposition Options

Complaint
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Screening & Investigation

Dismiss

Diversion

Motion for Admonition

Request Permission to File Formal Charges

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Dismissal of a Complaint

- ODC has the discretion to dismiss complaints...
- However, Complainant may appeal...
  - ODC’s entire file reviewed by HC
  - Abuse of discretion
  - HC approves or disapproves (i.e. remand)
  - No direct communication btw. HC & parties
- Complainant may appeal to Board and Court
Diversion

- No “adjudicative” involvement

- Similar to criminal diversion...
  - Reserved for minor misconduct with little or no injury
  - Diversion monitored by LSBA Practice Assistance Counsel
  - Lawyer executes a contract
    - Practice Assistance Counsel, ODC, Lawyer
  - If successfully completed, the complaint is dismissed

- May be considered as “prior misconduct” if there are future Rule violations

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**Motion for Admonition**

* Admonition - order telling the lawyer what he/she did wrong
* Reserved for cases of minor misconduct w/ little or no injury
* Lawyer must consent
* Can be imposed only *prior* to filing of formal charges
Request for Permission to File Formal Charges – “Grand Jury”

- Probable Cause

- Reviewed by HC Chair (or Lawyer Member)

- HC Chair approves or disapproves

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Interim Suspension – “The TRO”

- “Substantial threat of serious harm to the public”
- ODC files petition w/ LASC
  - LASC *may* order a hearing before HC

- ODC *shall* file petition when lawyer convicted of “serious crime”
- “Serious Crime” -
  - “a felony or any other crime, the necessary element of which as determined by the statute defining such crime, reflects upon the attorney’s fitness to practice law.”
  - Louisiana Supreme Court Rule XIX, §19(B)
Initiation of a Public Disciplinary Proceeding

Confidential

Request for Permission to File Formal Charges

APPROVED

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Formal Charges

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Public

HC assigned; Hearing set

Served

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Formal Charges

* Formal allegations of prof. misconduct (i.e. RPC violations)

* Burden – ODC

* Standard – Clear & Convincing Evidence
Formal Charge Proceeding

- **Answer**
  - Sched. Conf. - 20 days
  - Hearing - 90 days

- **20 days: Scheduling Conference**

- **Discovery, etc.**

- **90 days: Hearing**

- **80 days (10 days prior): Pre-hearing Conference**

- **75 days (15 days prior):**
  - Pre-hearing memos
  - Pre-hearing motions
  - Stipulated exhibits

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“Deemed Admitted” Rule

- Answer must be filed within 20 days of service

- If not, factual allegations can become “deemed admitted”
  - ODC will file “deemed admitted” motion
  - HC Chair will rule
  - 20 days to file motion to recall
    - Must demonstrate “miscarriage of justice”
    - LASC has been very liberal with recalls

- No hearing held unless mitigation hearing demanded
The Hearing & Report

- Hearing similar to typical criminal trial - ODC v. Lawyer
  - The complainant is **NOT** a party
- HC members **can and will** question witnesses
  - HC charged with creating a clear record
  - LASC wants a “full” record
- HC report:
  - Factual findings
  - Credibility determinations
  - Rule violations
  - Sanction recommendation (if rules are violated)
After the Hearing...

HC Report filed with Board

Oral argument before Board Panel
- Facts – manifest error
- Rules – de novo

LASC review and ruling
- Same level of review as Board

Board Recommendation filed with LASC

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Public Sanctions

- Public Reprimand
- Suspension (up to 3 years)
- Disbarment (can apply for readmission after 5 years)
- Permanent Disbarment

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Other Proceedings...

- Disability
- Reinstatement/Readmission
- Probation Revocation
- Conditional Admission Revocation
2015 - Complaints & Formal Charges

Complaints Filed: 2948
Formal Charges filed: 62
## 2012 - Sanctions

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Volunteering as HC Member

- **Lawyers:**
  - LA law license must be in good standing
  - Licensed at least 5 years

- Cannot hold elected or appointed public office

- Cannot sit on bar association grievance committees

- Pass background check

Created for the exclusive use of the Louisiana Attorney Disciplinary Board or its designee.
The Mission and Services of the Judges and Lawyers Assistance Program, Inc. (“JLAP”)

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In the legal profession:

- 20% Alcoholism and Addiction Rate
- 30% Depression Rate
- Lawyers Have Highest Rate of Depression (Johns Hopkins study of 104 professions)
- Over half of attorney discipline cases have an addiction component
In Louisiana there are approximately 22,000 members of the Bar (lawyers and judges).

- 20% = 4,400 suffering from alcoholism and addiction.
- 30% = 6,600 suffering from depression.
- If all alcohol and addiction cases deemed depression cases, there remains 2,200 lawyers and judges who suffer depression as a primary mental health issue.
JLAP’s Primary Mission

CONFIDENTIAL HELP

• JLAP is first and foremost an absolutely confidential method of providing life-saving help to an impaired lawyer, judge, law student, or family member.

PROTECTING THE PUBLIC

• Early intervention and help through JLAP reduces the damage that impaired legal professionals visit upon the profession and the public.
THE ULTIMATE AIM OF JLAP

CONFIDENTIAL HELP WITHOUT ODC INVOLVEMENT!

• JLAP encourages impaired individuals to REACH OUT to JLAP early with no pending unethical conduct issues and no past, present, or future threat of ODC investigation

• JLAP continues to make every effort to improve the ratio of confidential self-help versus ODC referrals each year
What IS JLAP?

- JLAP is a 501(c)(3) non-profit corporation
- Formed on February 18, 2002 (as LAP, now JLAP)
- LSBA is the sole owner of JLAP
- Louisiana JLAP is based upon the principle of . . .

“Lawyers Helping Lawyers”
La. R.S 37:221

“It is hereby declared to be the public policy of the state of Louisiana to promote and encourage the use of counseling by peers and the intervention process in order to initiate successful treatment of mental health issues among members of the legal profession.”

“No person shall be required to disclose, by way of testimony or otherwise, privileged information or to produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged information:

(a) in connection with any civil or criminal case or proceeding

(b) by way of any discovery procedure

(Only the person involved can waive confidentiality!)
“Lawyer assistance programs in several other states that have proven successful in combatting alcohol and drug abuse have employed full-time professional program directors.”

“Assistance usually consists of personal and individual assistance by attorneys recovering from the same type of impairment as the impaired lawyer.”

“Considering the unique nature of this disease [alcoholism], we also think that the supervising person or agency should be assisted by another attorney who is himself a recovering alcoholic.”
JLAP’s Sources of Communication

- Persons seeking confidential help;
- Family member or peer seeking help for someone else;
- Bar Applicants seeking LAP information;
- Bar Applicants via “COBA” & Lawyers via the “ODC”;
- Treatment centers, doctors, and mental health professionals;
- Persons conducting business in their LAP Monitoring program;
- Drug screening program MRO doctors and managers;
- COBA and ODC Monitoring compliance reports and inquires
- LADB and ODC scheduling of disciplinary hearings, etc.
JLAP LIVES TOUCHED

- 900 Persons Assisted Over the Past 5 Years.
- 75% of All Persons Assisted are Confidential.
- Success Stories Not Generally Known.
- Over 100 Lawyers in Monitoring Relationships.
- Better than 90% Success Rate in Monitoring.
  - Unheard of in treatment and self-help field.
The truth is that no one in the legal profession is immune to developing mental health issues over time.

The pressures of practicing law can result in unhealthy coping skills and/or the development of impairment.

At least 50% of Disciplinary Complaints involve some type of mental health issue as the root cause of the conduct.

Lawyer misconduct and headlines about damage to clients impacts the image of the whole profession.
Is there any duty in general under Rule 8.3 of the Rules of Professional Conduct to address mental impairment in the profession?
a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.
ABA Rule 8.3(c); Lawyers Assistance Programs
Suspension of Duty to Report 8.3 Violations

“This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

• Confidentiality statutes that govern State LAPs work in unison with Rule 8.3(c) to promote early intervention and encourage impaired legal professionals to seek help from their State LAPs.
ABA Standing Committee on Ethics
(Formal Opinion 03-431 on Reporting and Impairment)

• “Because lawyers are not mental health care professionals, they cannot be expected to discern when another lawyer suffers from mental impairment . . .”

• “Nonetheless, a lawyer may not shut his eyes to conduct reflecting generally recognized symptoms of impairment.”
ABA Standing Committee on Ethics
(Formal Opinion 03-431 on Reporting and Impairment)

ABA Standing Committee: a **pattern** of conduct comprised of Rule 1.1 (Competence) and 1.3 (Diligence) shortcomings may be a “Red Flag” that the lawyer is not meeting his or her obligations:

- Missing deadlines;

- Failing to timely file pleadings or complete transactions;

- Failure to complete agreed upon tasks; and,

- Failing to raise issues and advance client’s interests as would be expected by competent counsel.
ABA Standing Committee on Ethics
(Formal Opinion 03-431 on Reporting and Impairment)

Rule 1.1 (Competence) and 1.3 (Diligence); impairment “Red Flag” and duty to report from a **SINGLE ACT**:

- Visibly intoxicated or impaired in court or in a deposition, etc.

- ABA Ethics Committee: “An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover.”

- ABA suggests consulting mental health experts or your local State LAP . . . **CALL JLAP FOR REFERRAL TO AN EXPERT!**
The ABA: “Knowing that another lawyer is drinking heavily or is evidencing impairment in social settings is not itself enough to trigger a duty to report under Rule 8.3”

JLAP: “Where there is smoke there’s fire.”

- A lawyer who is routinely, heavily impaired by alcohol in social settings is likely at risk and will likely exhibit patterns of conduct that include difficulty in meeting obligations and deadlines.

- Even a moderate pattern of decline in diligence may be the “Tip of the Iceberg” of a High Functioning Alcoholic’s illness.
In Impairment Cases The Profession Often Sees Only The

“Tip of the Iceberg”
Failing to Communicate with Clients

Failing to Complete Transactions

Repeatedly Missing Court Deadlines
JLAP Promotes Early Intervention

• JLAP provides education on how to better identify subtle peer behaviors that may indicate a mental health impairment.

• JLAP informs the profession about JLAP’s CONFIDENTIAL facilitation of intervention, evaluation, assessment, and treatment for legal professionals.

• JLAP promotes seeking help long before Rule 8.3 is engaged.

• Early Intervention: the impaired person, the family, the firm, the peers; the clients, the profession, and the public ALL WIN.
Healthy Lawyers at Their Best!
If you THINK a colleague is at risk . . .

Don’t wait for Discipline.
MAKE THE CONFIDENTIAL CALL!

JUDGES and LAWYERS ASSISTANCE PROGRAM (JLAP)!

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www.louisianajlap.com