

The Adjudication of Lawyer Discipline Matters in Louisiana

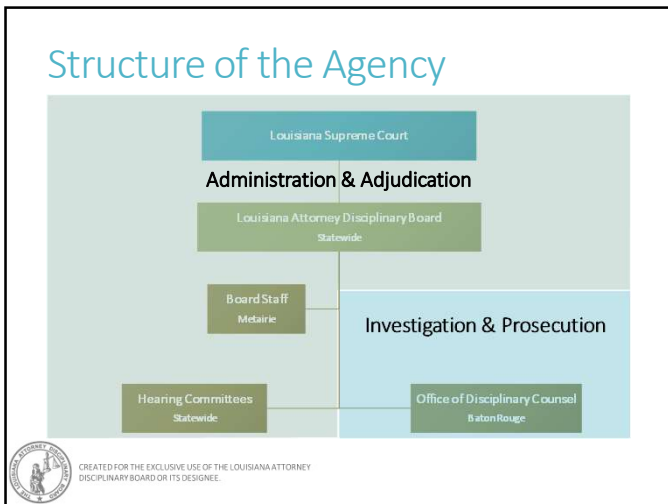
Louisiana Supreme Court Rule XIX

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Overview of the System

A System of Volunteers

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Louisiana Supreme Court

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 regulatory matters

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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 – *Chair, Lawyer Member, Public Member*
 Appellate review & other adjudicative tasks

Administrative Committee

5 members
 Financial, human resources, etc.



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Hearing Committees – “Trial Court”

Composition & Terms

2 lawyers, 1 public member
Chair, Lawyer Member, Public Member
 Appointed by the Board (Admin Committee)
 3-year terms, no more than 2 consecutive terms

Initial triers of fact

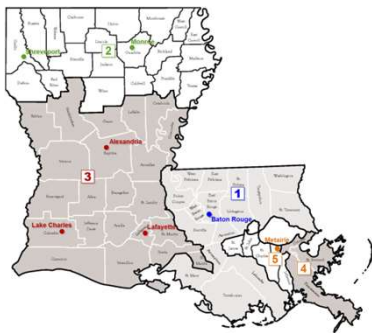
Conduct hearings

Review & rule on other filings by ODC



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Hearing Committee Locations



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Board Staff – “Clerk of Court”

Composition

Interim Board Administrator – Jennifer Stolier
 Board Counsel (2), Hearing Committee Counsel (1)
 Docket Clerks
 IT

Functions

Clerk of Court
 Legal counsel & training for HC & Board members
 CLEs, special projects, etc.



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Office of Disciplinary Counsel – “District Attorney”

Composition

Chief Disciplinary Counsel – Anderson O. Dotson III
Deputy Counsel (8)

Receives & screens complaints
Conducts investigations
Prosecutes



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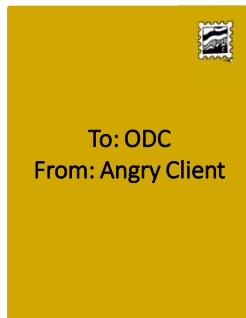
The Discipline Process

From Complaint to Final Adjudication



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How does it all start?



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What is a Complaint?

Any information coming to the attention of ODC

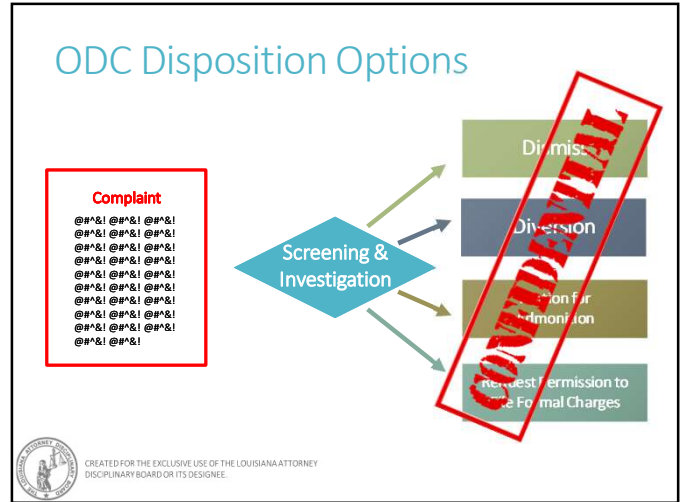
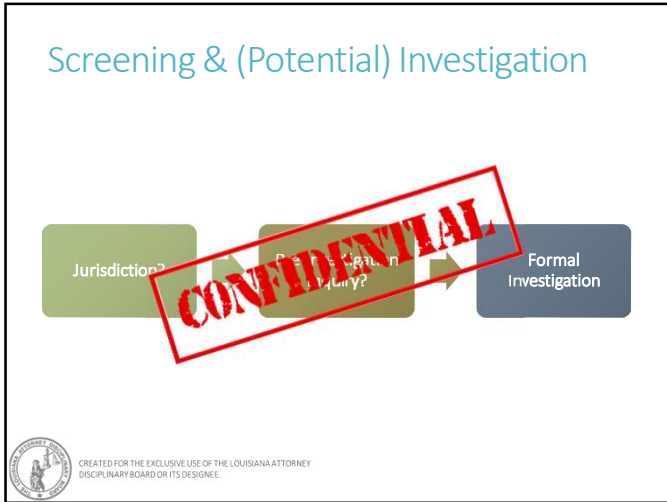
Does **not** have to originate with a client

- Friends/relatives of clients
- Attorneys/judges
- Creditors
- Information in the media

Approximately 2,200 complaints filed per year
Average of complaints filed in 2021, 2022, and 2023



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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 a Hearing Committee
- Abuse of discretion standard
- HC approves or disapproves of the dismissal
- No direct communication btw. HC & parties

Complainant may appeal HC decision to Board and Court

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Diversion

No "adjudicative" involvement

Similar to criminal diversion...

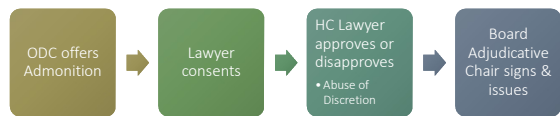
- Reserved for minor misconduct with little or no injury
- Diversion monitored by LSBA Practice Assistance Counsel
- Lawyer executes a contract
- Practice Assistance Counsel, ODC, Lawyer*
- If successfully completed, the complaint is dismissed

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



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Request for Permission to File Formal Charges – “Grand Jury”

Probable Cause

Reviewed by HC Lawyer

HC Lawyer 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” - Louisiana Supreme Court Rule XIX, §19(B)

Confidential if filed before formal charges.

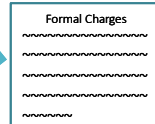


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Initiation of a Public Disciplinary Proceeding

Confidential

Public



Served

HC assigned;
Hearing set



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Formal Charges

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

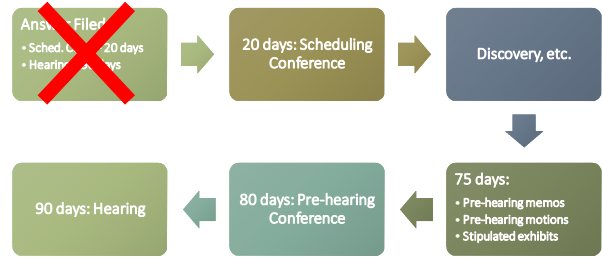
Burden – ODC

Standard – Clear & Convincing Evidence



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Formal Charge Proceeding



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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



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The Formal Charge Hearing & Report

Hearing similar to typical trial - ODC v. Lawyer

The complainant is **NOT** a party

HC members **can** question witnesses

HC charged with creating a clear record

LASC wants a “full” record

HC report:

Factual findings

Credibility determinations

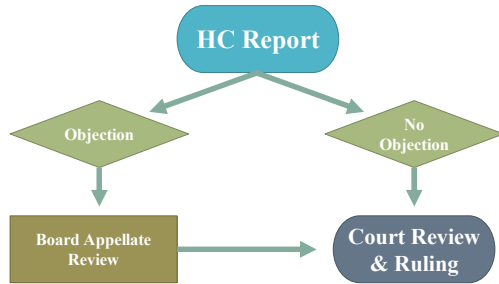
Rule violations

Sanction recommendation (if rules are violated)



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After the Report...



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Public Sanctions

Public Reprimand

Suspension (up to 3 years)
 Deferral
 Probation

Disbarment (can apply for readmission after 5 years)

Permanent Disbarment – Rule XIX, Sec. 10(A)(1) & Appendix D
 (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and
 (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future.



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Louisiana Rules of Evidence & Procedure

Discipline Matters are *Sui Generis*



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Rules of Evidence are Relaxed

LACE “shall guide, but not restrict the development of a full evidentiary record.”

Louisiana Supreme Court Rule XIX, §18(B)

Prior testimony admissible if opportunity to cross-examine

Louisiana Supreme Court Rule XIX, §18(B)

Proffers are allowed



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Criminal Convictions

Typically, matter does not proceed until conviction is final

Evidence of Conviction = Conclusive evidence of guilt

Sole issue – whether crime warrants discipline

Lawyer may offer mitigating evidence not inconsistent with essential elements of the crime

Louisiana Supreme Court Rule XIX, §19(E)



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LACCP applies, except...

No dispositive motions

Does not apply to discovery except depositions & subpoena

Interrogatories, requests for production and requests for admissions NOT allowed

Louisiana Supreme Court Rule XIX, §§ 15(C) & 18(B)



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Other Proceedings Under Rule XIX...



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Other Proceedings...

Reinstatement/Readmission

Disability

Probation Revocation

Conditional Admission Revocation



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Reinstatement/Readmission

Suspended or disbarred lawyer petitioning to return to practice

Petition filed with the Board

Must satisfy 11 criteria

Burden – Lawyer

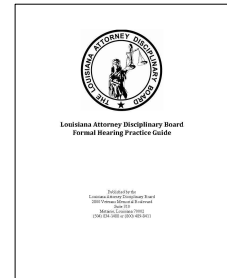
Standard – Clear & Convincing Evidence



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Practice Guide

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Volunteering as HC Member

Lawyers:

- LA law license must be in good standing
- Licensed at least 5 years
- Cannot represent individuals before the LADB
- No more than 2 members from the same firm

Cannot hold elected or appointed public office

Pass background check

Board Administrative Committee Appoints



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Some Mistakes to Avoid...

- Failure to respond to a complaint/ODC
 - Always respond!
 - The cover-up is worse than the crime!
- Mishandling trust account
 - Reconcile monthly!
 - Get help if needed!
- Failure to develop LPM skills
 - Find a mentor(s)!
 - Get involved with LSBA, local bar!
 - Invest the time in developing systems & processes!
- Improper notarizations
 - All must sign in your presence!



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