

# Overview of the Disciplinary Process: From Complaint Through Louisiana Supreme Court Opinion

*The following is a general description of the attorney discipline process from the inception of a complaint through the imposition of the sanction by the Louisiana Supreme Court. Most complaints do not result in a sanction. Many complaints result in the imposition of admonitions or reprimands which are imposed by the Louisiana Attorney Disciplinary Board rather than the Court. This overview, however, pertains to those complaints which travel completely through the system and result in a suspension or disbarment, which can only be imposed by the Court.*

## The Disciplinary System

The Louisiana Supreme Court has the exclusive right to regulate lawyers who practice in this state under the authority of Article V, Section 5(A) and (B), of the Louisiana Constitution of 1974 and the inherent power of the Court. The rules for lawyer discipline are set forth in Louisiana Supreme Court Rule XIX (effective April 1, 1990), wherein the Court created the statewide agency called the Louisiana Attorney Disciplinary Board. That agency consists of the Board, Hearing Committees, Disciplinary Counsel and staff. *Rule XIX, § 2A*. While the agency is a unitary one, the prosecutorial and adjudicative functions are separated within the agency:

- The investigative and prosecutorial functions are directed by a lawyer employed by the Board and performed by employees of the agency; the Office of Disciplinary Counsel; and
- The adjudicative functions are conducted by the Disciplinary Board, consisting of ten practicing lawyers and four public members appointed by the Louisiana Supreme Court. *Rule XIX, § 2A, B*.

Further, the Disciplinary Board is divided into an adjudicative committee of nine members and an administrative committee of five members. The adjudicative committee consists of three panels with two lawyer members and a public member on each board panel. *Rule XIX, § 2G*. While the Disciplinary Board serves an appellate function in the system, hearing committees serve as the triers of fact.

There are over fifty hearing committees around the state. Each hearing committee consists of two lawyer members and one public member. One of the lawyer members is appointed as chair of the committee. Hearing committee members serve for three years and may not serve more than two consecutive terms. *Rule XIX, § 3A-B*. The hearing committees have assigned powers and duties. Primarily, the committees conduct hearings into formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status. Following the hearings, the committees submit to the Board written findings of fact, conclusions of law and recommendations for proposed discipline. Hearing committees also review dismissals of complaints by the Office of Disciplinary Counsel upon a request for review by the complainant. The chair of the hearing committee has additional duties, such as conducting pre-hearing conferences, ruling on pre-hearing motions and reviewing admonitions proposed by disciplinary counsel and accepted by a respondent. *Rule XIX, § 3E(1)-(4)*.

## The Disciplinary Process

A complaint is any information which comes to the attention of the Office of Disciplinary Counsel concerning a lawyer subject to the jurisdiction of the agency (*i.e.*, lawyers admitted to practice in the state, lawyers specially admitted by a court for a particular proceeding, lawyers not admitted but who render or offer to render any legal services in the state, and former judges who have resumed the status of lawyer). Every complaint is screened by the Office of Disciplinary Counsel to determine whether the information relates to lawyer misconduct or incapacity. If the information alleges facts which, if true, would constitute misconduct or incapacity, the complaint is investigated unless, in the discretion of Disciplinary Counsel, the matter qualifies for referral to the Louisiana State Bar Association's Practice Assistance and Improvement Program (Attorney-Client Assistance Program). *Rule XIX, § H(a)*. Otherwise, the complaint is dismissed.

If an investigation is conducted, deputy disciplinary counsel forwards the complaint to the respondent, informs him or her that the Office of Disciplinary Counsel has received a complaint, and requests a response. Deputy Disciplinary Counsel then conducts an investigation and evaluates the matter. After completing the investigation, Deputy Disciplinary Counsel may:

- suggest that respondent agree to an admonition - a private, confidential sanction issued by the Board (although complainant is informed that respondent has been admonished);
- request approval by a Hearing Committee to file formal charges (this approval essentially constitutes a determination of probable cause by the committee);
- petition for respondent's transfer to disability inactive status which, if ordered by the Court, would result in a stay of the proceedings until the disability is resolved;
- close the case (complainants have 30 days to appeal closures); or
- in some instances of minor misconduct, the subject attorney may be referred into the Louisiana State Bar Association's Diversion Program, an educational monitoring program coordinated by the LSBA's Practice Assistance Counsel. The primary element of the diversion program is an Ethics School.

Assuming that formal charges are approved, disciplinary counsel will serve or attempt to serve the charges on respondent at his primary registration statement address. Respondent has 20 days after service in which to respond (unless a continuance is requested and granted) with his answer to the formal charges. If respondent answers, a hearing on the merits is set. If there is no answer within the prescribed period, the factual allegations contained within the formal charges are "deemed admitted" and deemed proven by clear and convincing evidence. The only issue at that juncture is for the committee to determine the appropriate sanction based on the charges as "deemed admitted."

The hearing committee order deeming the charges admitted shall be served on respondent. He or she then has 20 days from the mailing of the order to request that the "deemed admitted" order be recalled upon a showing of good cause. Additionally, even when the formal charges are deemed admitted and the order is not recalled, respondent may submit mitigating evidence and/or request a hearing in mitigation.

Whether there is a hearing on the merits or merely a determination of sanction based on charges "deemed admitted," the Hearing Committee will render an opinion recommending a certain sanction. The Hearing Committee opinion is served on the respondent and Disciplinary Counsel. Either may object to the recommended sanction, findings of fact and/or conclusions of law. The hearing committee report is then reviewed by one of three panels of the adjudicative board and oral argument is conducted before the board panel. An opinion from the entire nine-member adjudicative committee of the Board is rendered recommending certain findings and any sanction(s) to the Louisiana Supreme Court. The Board opinion is filed with the Court and served on both parties. Again, either side may object and, if the Court receives objections, the case usually will be docketed for oral argument.

In any event, the Court renders the final decision imposing the sanction, usually in the form of a *per curiam* opinion. Sanctions from the Court may include a public reprimand<sup>1</sup>, suspension or disbarment. The Court also could order the entire matter be dismissed, finding that no sanction is appropriate. Probation may follow a suspension or reprimand, or may be imposed in lieu of discipline in rare circumstances. After the Court has rendered its opinion, either side may file a motion for rehearing, but these are rarely granted.

<sup>1</sup> Although the Board may order a reprimand without the case going up to the Court, if the Board has recommended a suspension or disbarment which requires filing the recommendation with the Court, the Court can always lessen the sanction to a reprimand. Respondents and the Office of Disciplinary Counsel also can object to the Board's imposition of a reprimand and seek review by the Louisiana Supreme Court.