



AMC 2025

WALA Session 3

**The Role of the OLR, and
Ethical Obligations and Risk
Management for Law Firms**

Presented By:

Timothy C. Samuelson, Office of Lawyer Regulation, Madison

About the Presenter...

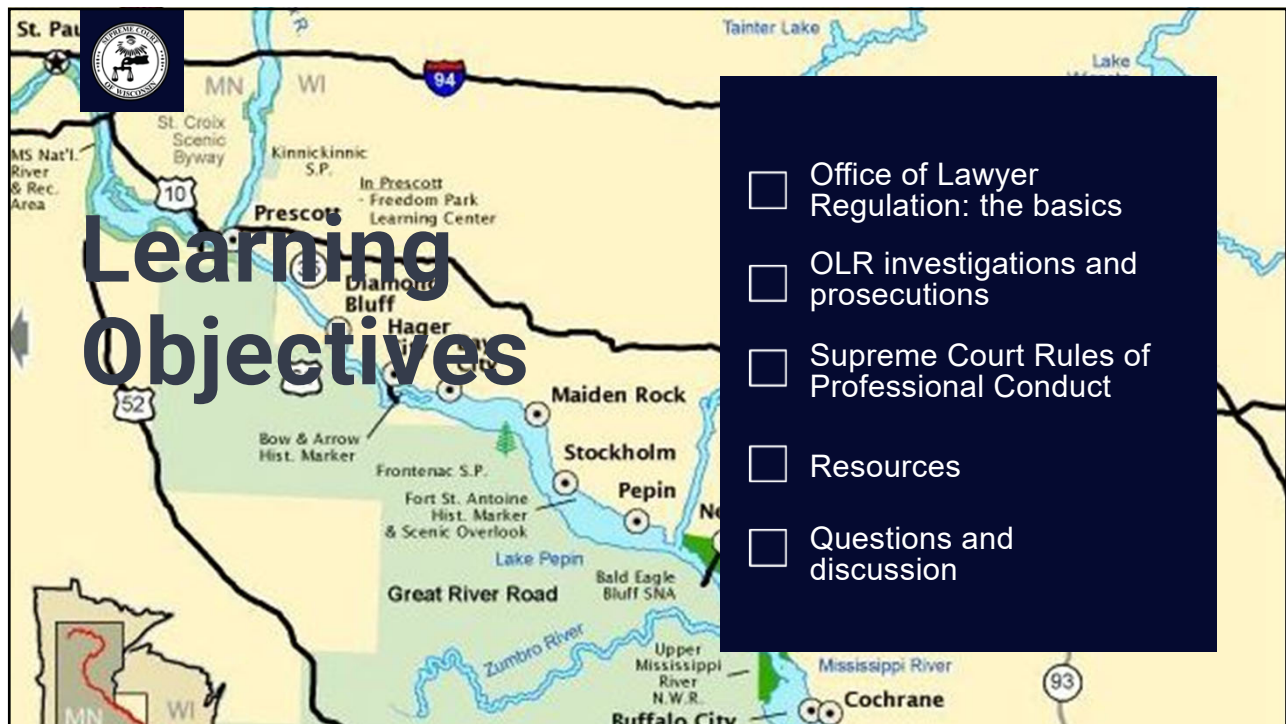
Timothy C. Samuelson is the Director of the Office of Lawyer Regulation. The Wisconsin Supreme Court appointed Samuelson to serve as OLR Director in August 2021. He was formerly the Civil Chief Assistant United States Attorney in the Western District of Wisconsin, an Assistant Attorney General with the Wisconsin Department of Justice, and a Dane County Circuit Court Judge. Samuelson worked in private practice in Chicago for 14 years before moving to Wisconsin in 2012. He graduated from Valparaiso University (B.A., 1995) and Indiana University School of Law (J.D., 1998).



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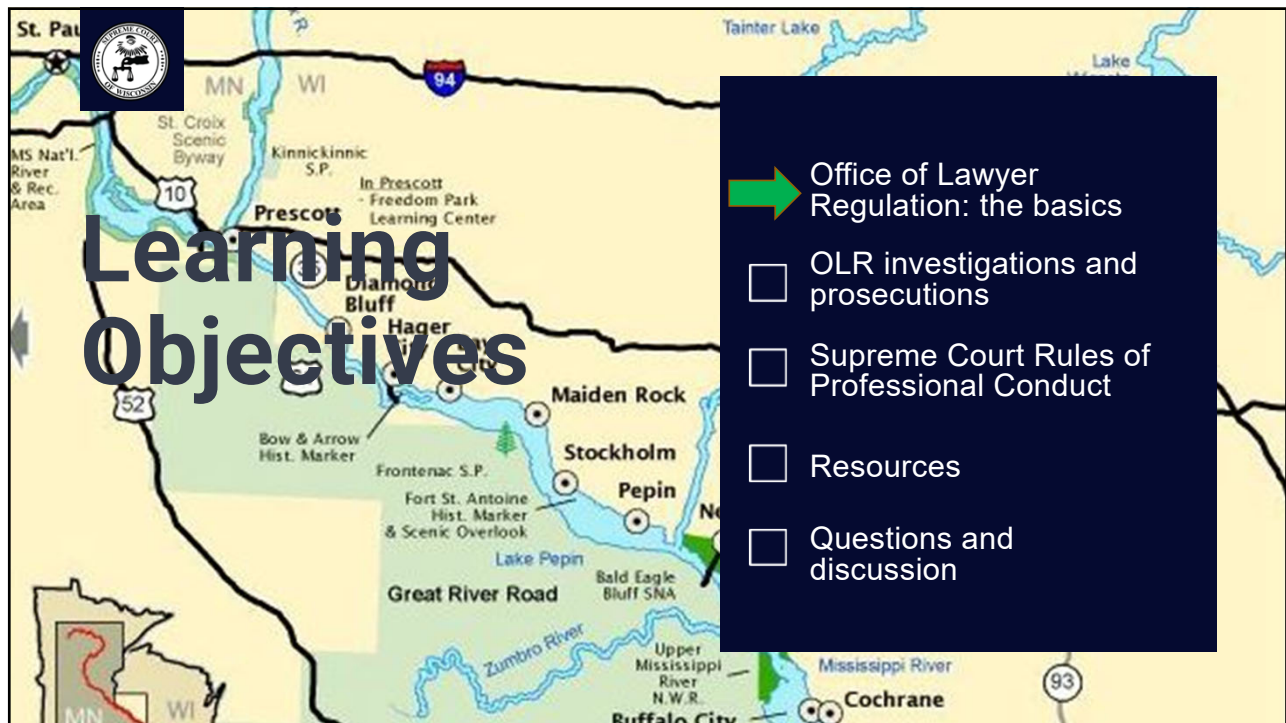
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Learning Objectives

- ☐ Office of Lawyer Regulation: the basics
- ☐ OLR investigations and prosecutions
- ☐ Supreme Court Rules of Professional Conduct
- ☐ Resources
- ☐ Questions and discussion

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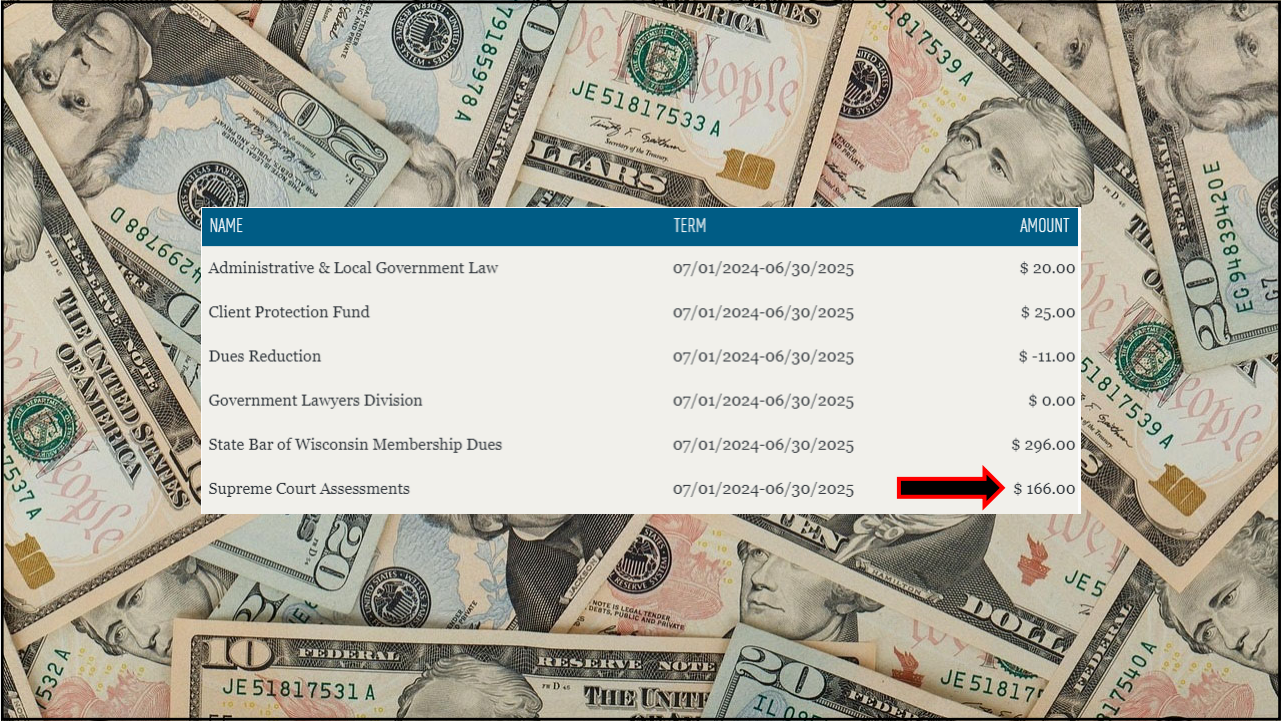
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NAME	TERM	AMOUNT
Administrative & Local Government Law	07/01/2024-06/30/2025	\$ 20.00
Client Protection Fund	07/01/2024-06/30/2025	\$ 25.00
Dues Reduction	07/01/2024-06/30/2025	\$ -11.00
Government Lawyers Division	07/01/2024-06/30/2025	\$ 0.00
State Bar of Wisconsin Membership Dues	07/01/2024-06/30/2025	\$ 296.00
Supreme Court Assessments	07/01/2024-06/30/2025	\$ 166.00

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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.

SCR ch. 21 (preamble)



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State of Wisconsin
Department of Safety and Professional Services



Office of Lawyer Regulation



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Why are lawyers special?

“The Supreme Court shall have superintending and administrative authority over all courts.”

Wisconsin Constitution, Art. VII, sec. 3(1)

“The legal profession is unique ... because of the close relationship between the profession and the processes of government and law enforcement.”

SCR ch. 20, cmt. 10

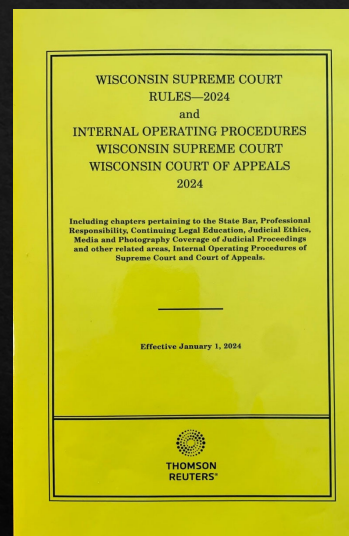
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Wisconsin Supreme Court Rules

Ch. 20: Rules of professional conduct

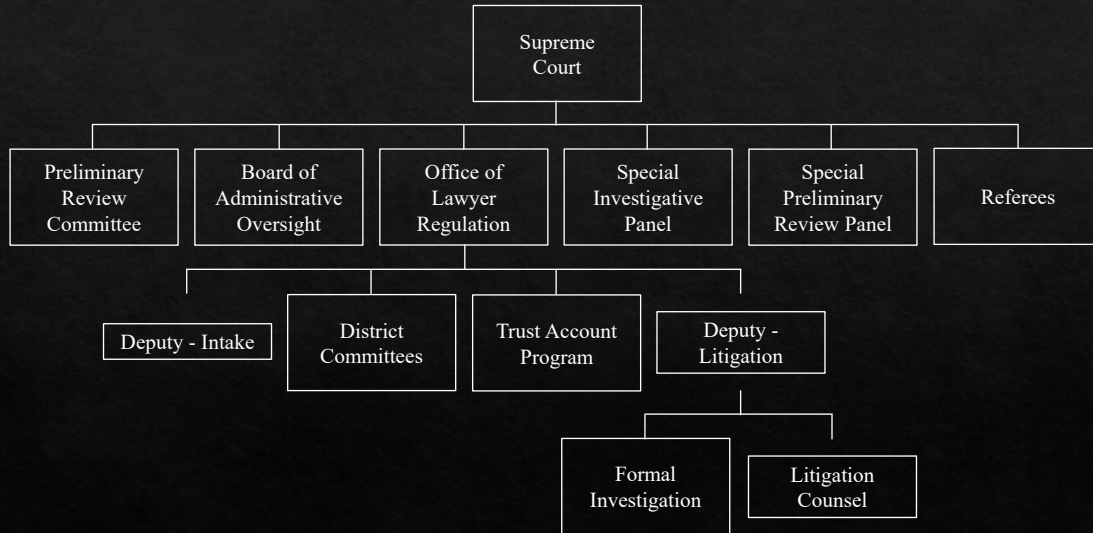
Ch. 21: Lawyer regulatory system

Ch. 22: Procedures for the lawyer regulatory system



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Lawyer Regulation System Structure



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**Disbarred South Carolina lawyer
Alex Murdaugh makes first
appearance in court since his
murder trial**

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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.

SCR ch. 21 (preamble)

But ... how?

- Education
- Treatment
- Warning
- Punishment

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Education

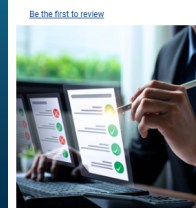


Ethics Hotline

To informally and confidentially discuss an ethics question, contact the State Bar's ethics hotline at (608) 229-2017 or (800) 254-9154, Monday through Friday, 9 a.m. to 5 p.m.

The Wisconsin Law Firm Self-Assessment 2023

Product ID: CA3545M
Presented By: State Bar of Wisconsin PINNACLE



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Treatment

- Initial evaluation
- Referrals
- Peer assistance
- Consultation
- Education
- Outreach

WisLAP

Wisconsin Lawyers Assistance Program

wisbar.org/WisLAP
(800) 543-2625

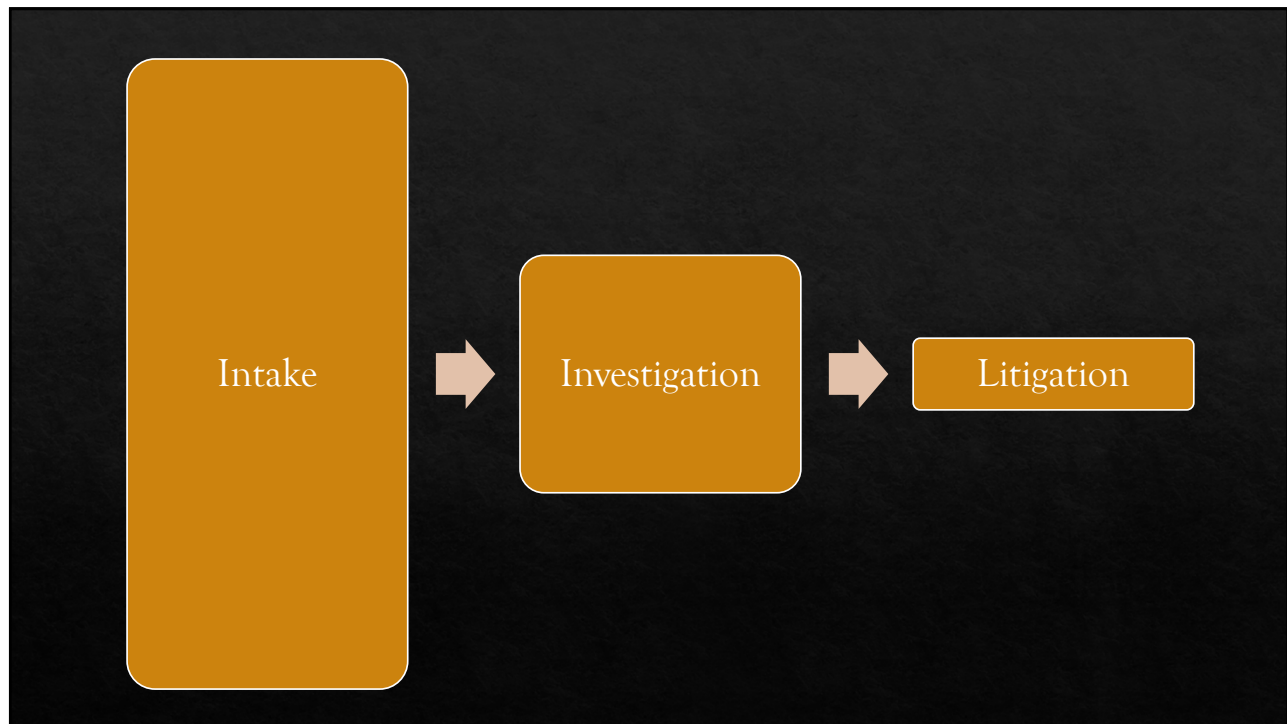
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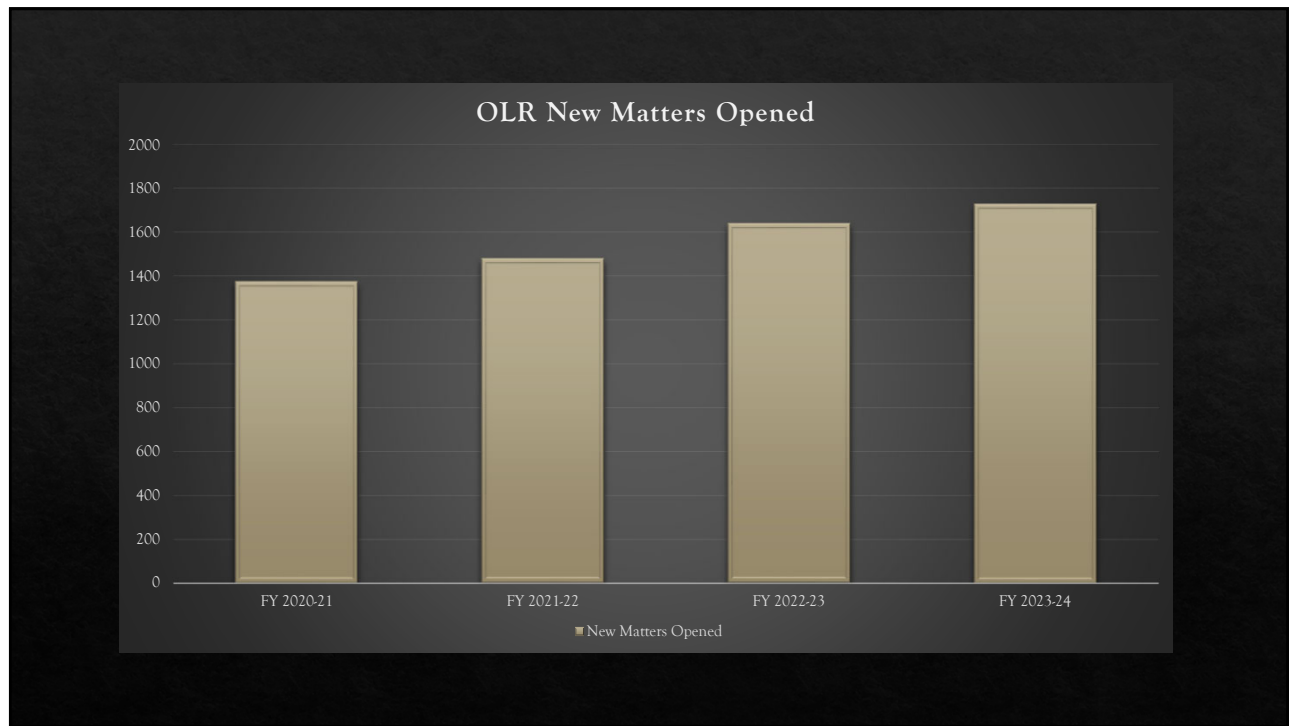
Intake: Grievances

- Unproven allegation that a lawyer violated the Rules of Professional Conduct
- Anybody can file a grievance

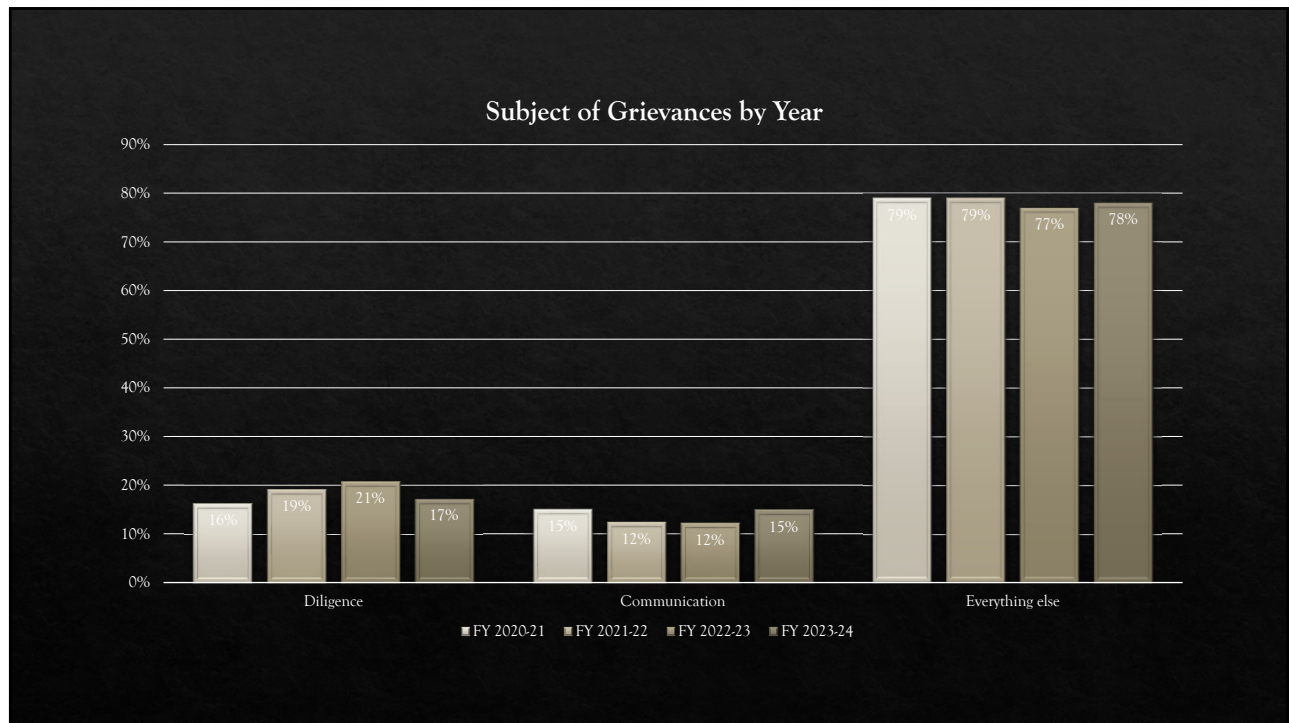
SCR 22.01

A meme featuring a man in a red sweater pointing aggressively. The text overlaid on the image reads: "I'VE GOT A LOT OF PROBLEMS WITH YOU PEOPLE! AND NOW YOU'RE GONNA HEAR ABOUT IT!!"

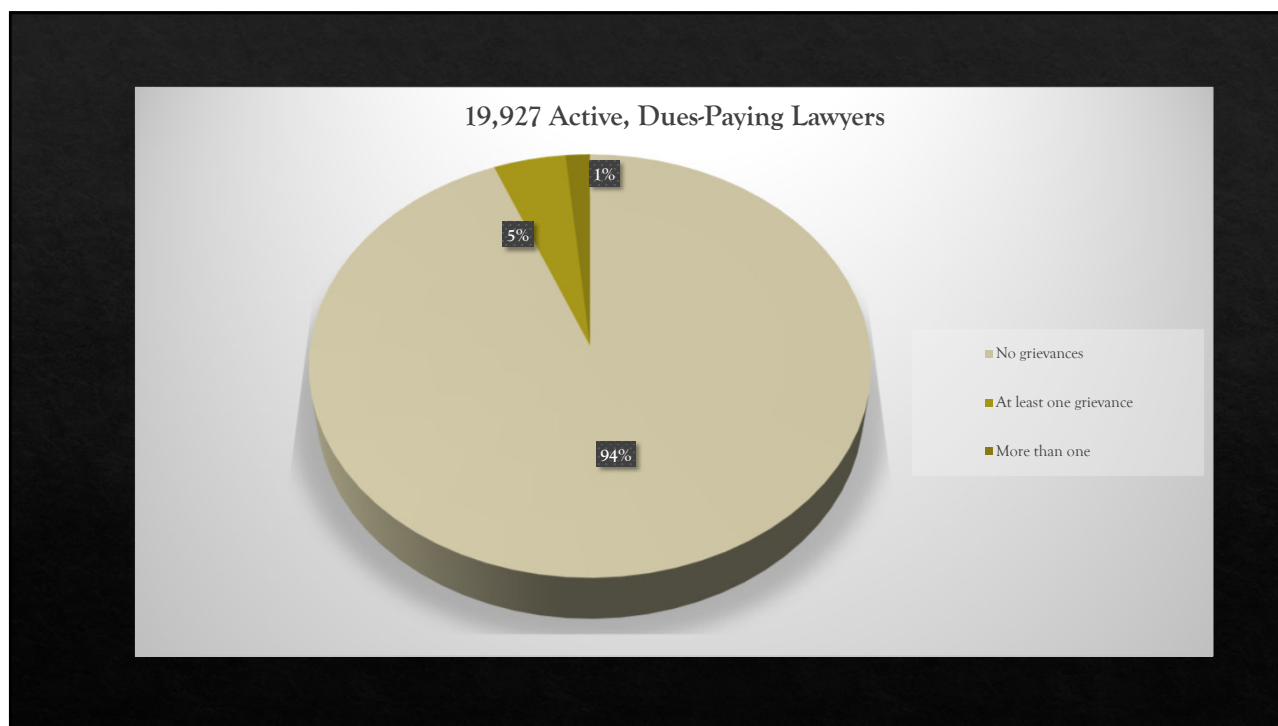
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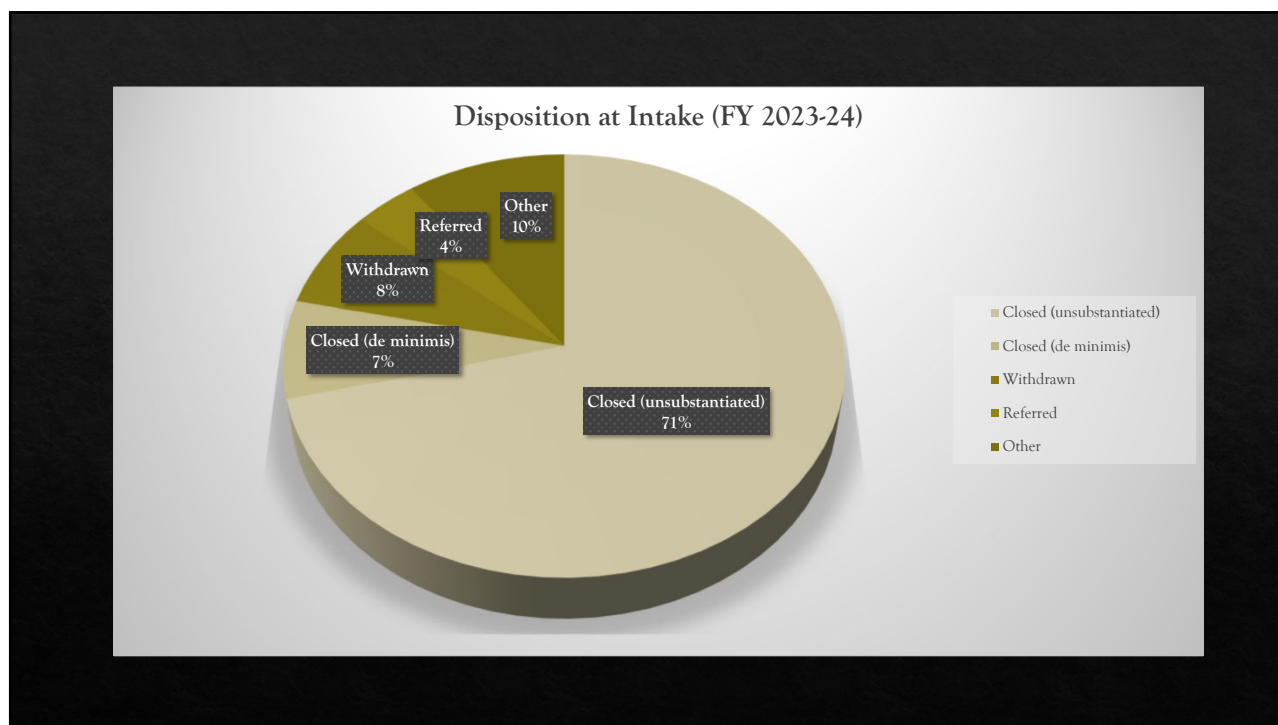
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Disposition: Sanctions at Intake

- De minimis closure (closure with advice)
- Diversion
- Consensual private reprimand
- Consensual public reprimand



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Diversion (SCR 22.10)



- Educational programming
- Conditions on practice
 - WisLAP consultation
 - Monitoring
 - Evaluation
 - Random testing

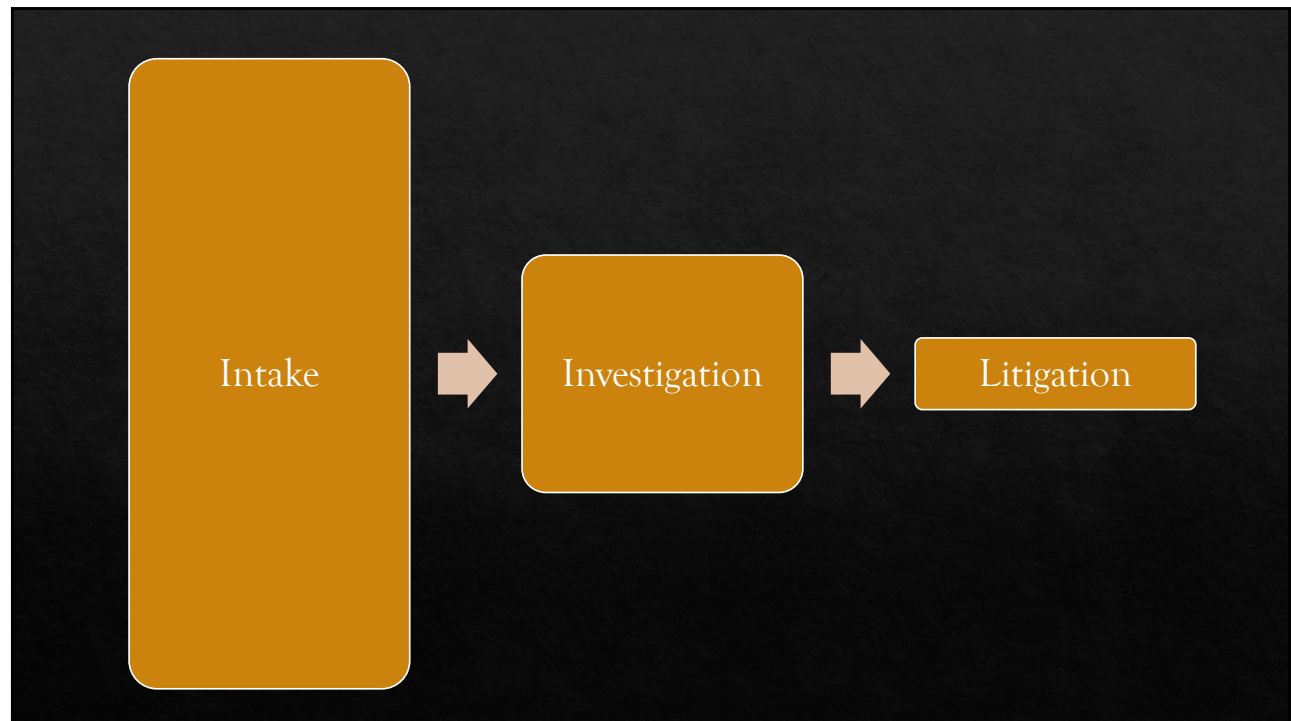
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Diversion (SCR 22.10)



- Level of private reprimand or less
- No public discipline in the last 5 years
- Not previously diverted for similar conduct
- No sexual relations prohibited under SCR 20:1.8
- No misappropriation, dishonesty, fraud, deceit, family violence, or serious crime
- No injury to monetary rights, legal rights, or valuable property rights unless restitution is a condition
- Misconduct is not part of a pattern of similar misconduct

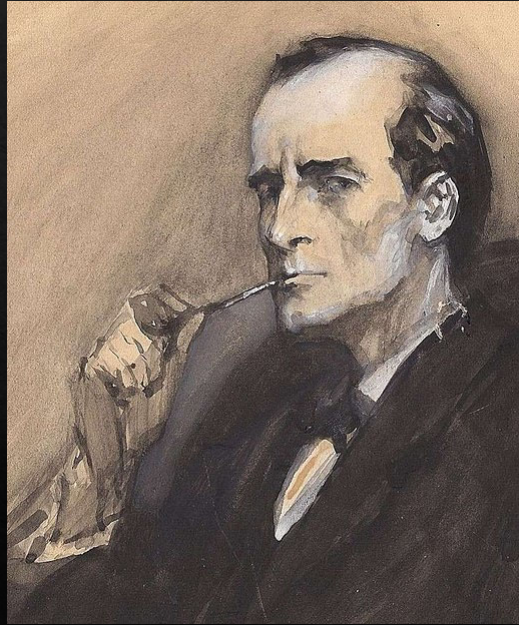
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How do you get to Investigation?

- Fail to cooperate at Intake
- Reject or breach a diversion agreement
- Reject an offered consensual reprimand
- Have alleged misconduct that's serious enough to potentially result in suspension or revocation



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A legal document titled "SUBPOENA". It has handwritten names: "Walter Thompson" and "Ray Knight" as Plaintiffs, and "Kerry Tobey" as Defendants. There is a section for "CONSTABLE'S COSTS" with lines for Service, Copy, Mileage, and Return, each followed by a dollar sign and a line for the amount. At the bottom, there are lines for the Constable and Deputy Constable. A circular seal is visible on the right side of the document.

Investigation

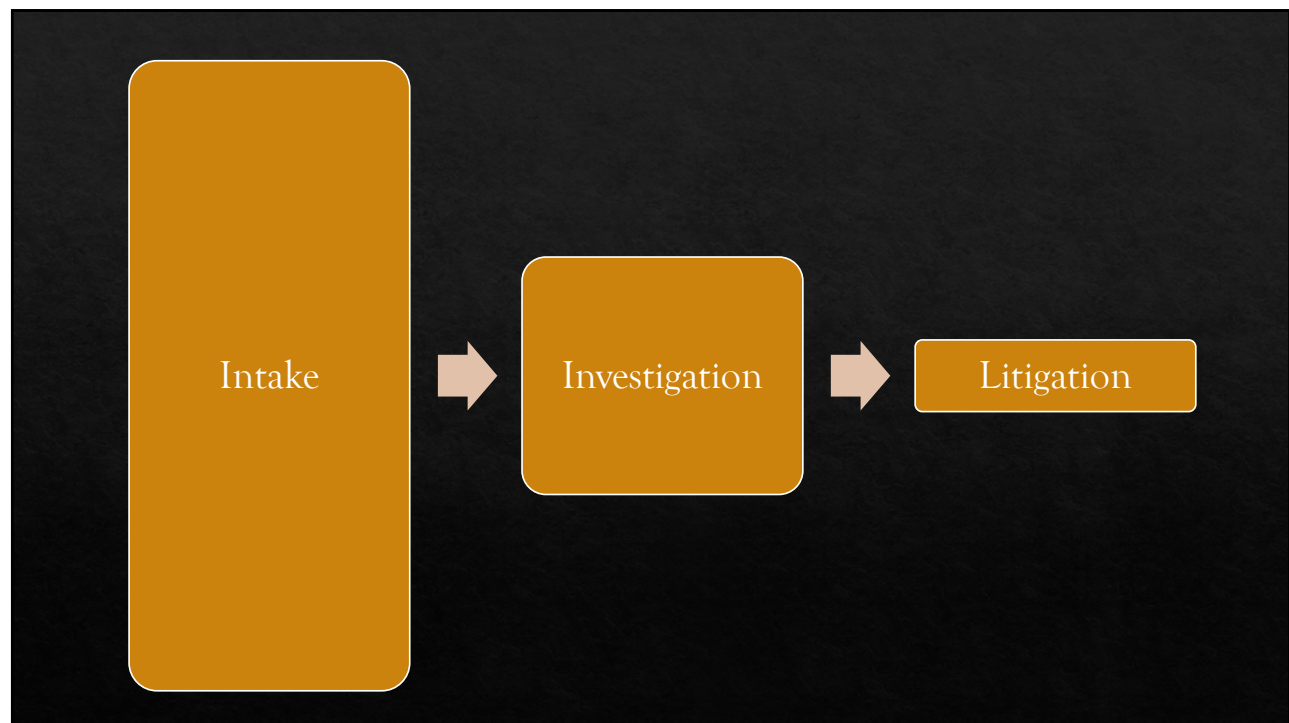
- Power to subpoena documents
- Power to take statements under oath
- Duty to cooperate
- Further, more in-depth investigation of grievance matters

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Disposition: Investigation (SCR 22.05)

- Closure
- De minimis closure (i.e., closure with advice)
- Diversion
- Consensual private reprimand
- Consensual public reprimand
- Presentation to the Preliminary Review Committee (PRC) to obtain cause to proceed (SCR 22.06)

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Medical Incapacity: Definition

'Medical incapacity' means a physical, mental, emotional, social or behavioral condition that is recognized by experts in medicine or psychology as a principal factor which substantially prevents a person from performing the duties of an attorney to acceptable professional standards.

SCR 22.001(8)

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Medical Incapacity: Definition

'Medical incapacity' means a physical, mental, emotional, social or behavioral condition that is recognized by experts in medicine or psychology as a principal factor which substantially prevents a person from performing the duties of an attorney to acceptable professional standards.

SCR 22.001(8)

- Be competent, prompt, and diligent.
- Maintain communication with client.
- Reason logically, recall complex factual information, and accurately analyze legal problems.
- Use a high degree of organization and clarity in communicating.
- Use good judgment on behalf of clients and in conducting professional business.
- Act diligently and reliably in fulfilling obligations.
- Comply with deadlines and time constraints.
- Any other attribute which may impact professional ability as a Wisconsin lawyer

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Medical Incapacity: Definition

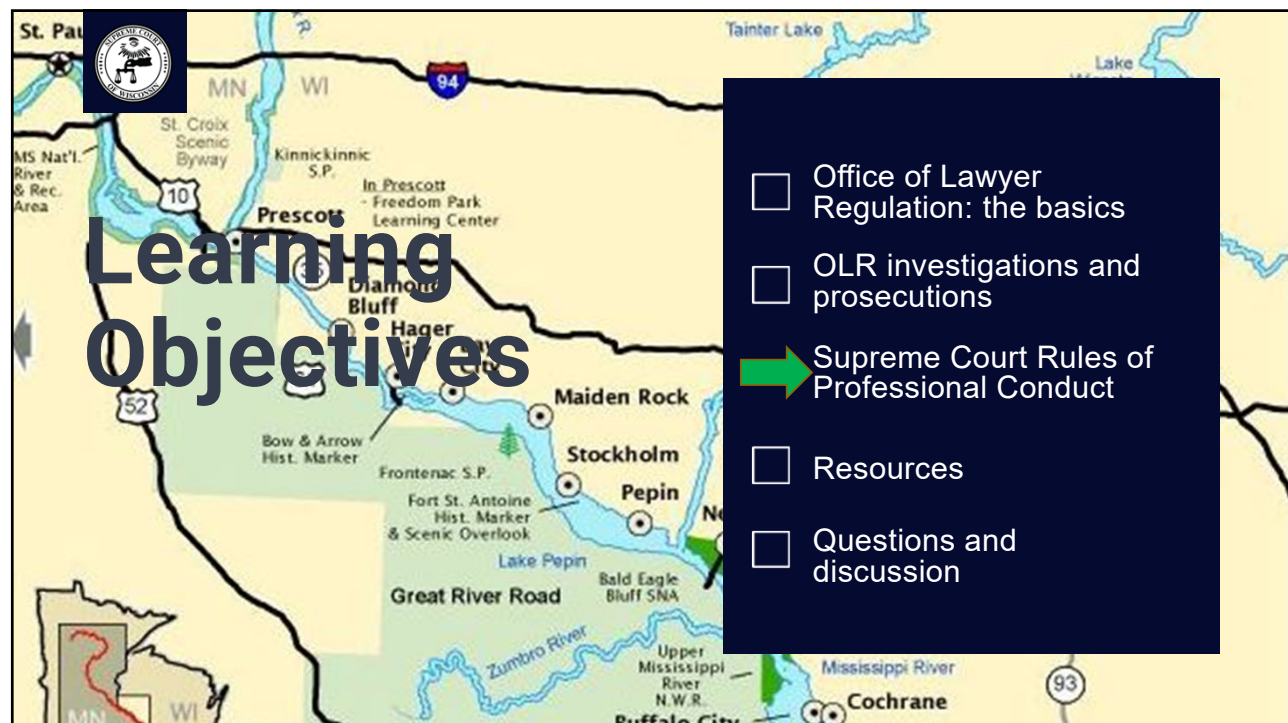
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SCR 22.001(8)

Expansive definition that likely includes:

- Mental health
- Substance abuse/addiction
- Medical conditions

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The image shows a map of the St. Paul area, including locations like Prescott, Hager, Maiden Rock, Stockholm, Pepin, and Cochrane. A dark blue box is overlaid on the right side of the map, containing a list of learning objectives. A green arrow points to the third objective, 'Supreme Court Rules of Professional Conduct'. The text 'Learning Objectives' is written in large, bold, white letters across the middle of the map.

Learning Objectives

- ☐ Office of Lawyer Regulation: the basics
- ☐ OLR investigations and prosecutions
- ☒ Supreme Court Rules of Professional Conduct
- ☐ Resources
- ☐ Questions and discussion

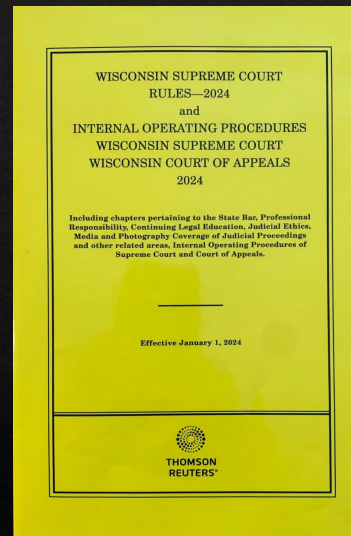
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Wisconsin Supreme Court Rules

Ch. 20: Rules of professional conduct

Ch. 21: Lawyer regulatory system

Ch. 22: Procedures for the lawyer regulatory system



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Top Reasons for Malpractice Suits*

- Failure to meet deadlines .
- Inadequate communication.
- Errors in legal strategy.
- Conflicts of interest.
- Breach of fiduciary duty.

* Per WILMIC

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Top Reasons for Malpractice Suits*

- Failure to meet deadlines . SCR 20:1.3 (diligence)
- Inadequate communication. SCR 20:1.4 (communication)
- Errors in legal strategy. SCR 20:1.1 (competence)
- Conflicts of interest. SCR 20:1.7 (conflicts of interest current clients)
- Breach of fiduciary duty. SCR 20:1.8 (conflict of interest: prohibited transactions)

* Per WILMIC

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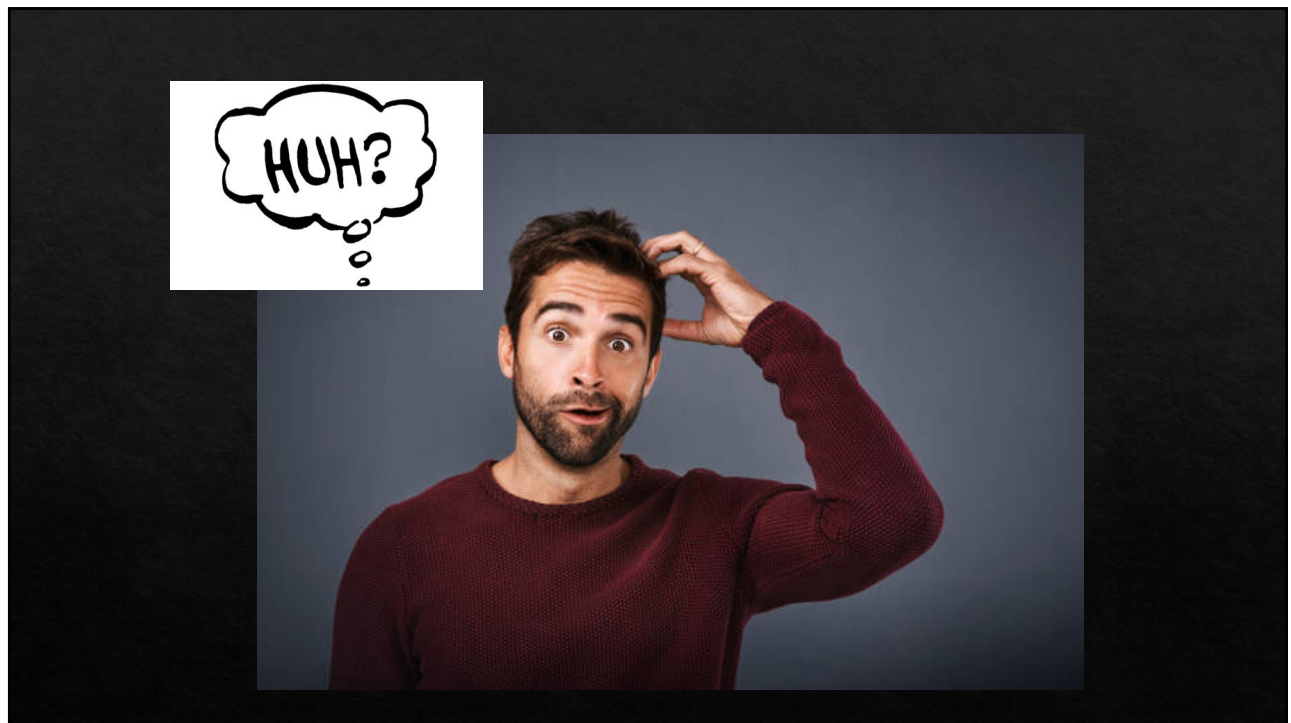
* Per WILMIC

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SCR 20:1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

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SCR 20:1.3 Diligence

Comment 3: “Perhaps no professional shortcoming is more widely resented than **procrastination**. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.”

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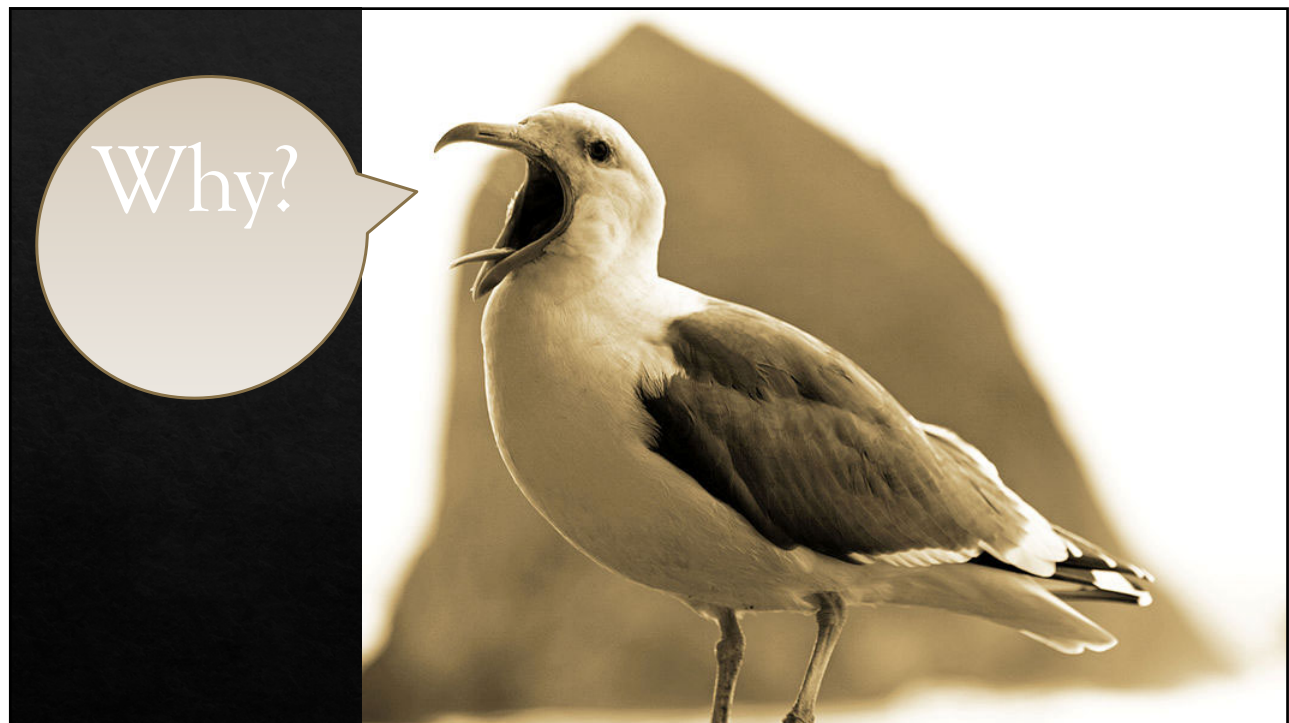
SCR 20:1.4 Communication

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) **keep the client reasonably informed** about the status of the matter;
- (4) promptly comply with reasonable requests by the client for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

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Because...

- Understand client's objectives (which may change)
- Recommend course of action
- Explain probable results
- Allocate decision-making authority

Restatement (Third) of the Law Governing Lawyers, § 20

- **Avoid client grievances**

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What your malpractice insurer wants you to know about communication



- Communicate in your billing
- Memorialize advice and use IAY letters.
- “Maybe you should tell us.”

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Communicate with your client about...

Communicating

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* Per WILMIC

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SCR 20:1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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* Per WILMIC

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SCR 20:1.7 Conflicts of Interest

As a general rule, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.

A concurrent conflict of interest exists if the representation of one client will be **directly adverse** to another client or there is a significant **risk of materially limiting the representation** of one or more clients.

However, a lawyer may represent a client, subject to certain limitations, if each affected client gives informed consent, confirmed in a writing signed by the client.

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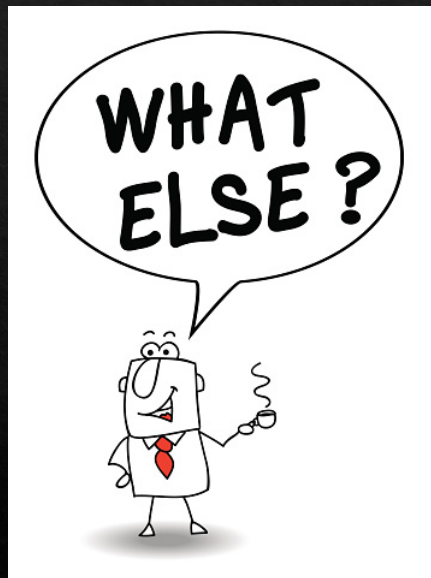
* Per WILMIC

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SCR 20:1.8 Conflict of Interest: Prohibited Transactions

A lawyer generally should not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless certain circumstances exist.

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SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts



wicourts.gov/services/attorney/trust.htm

Trust Account Program

All documents are in Adobe PDF  format unless otherwise stated.

The OLR Trust Account Program has two primary goals: 1) to oversee compliance with the Wisconsin Supreme Court's overdraft reporting requirements; and 2) to educate lawyers with respect to safeguarding funds and maintaining proper records. For further information, please see OLR's [Annual Report](#).

Financial institutions: For further information on lawyer trust accounts and fiduciary accounts, including overdraft reporting, IOLTA requirements, electronic transactions and prohibited transactions, see [information for financial institutions](#).

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Trust Account Issues

- ◆ Private Reprimand, OLR Reprimand No.: 2024-OLR-08
- ◆ Rule: SCR 20:1.15(b)(1) Safekeeping property; trust accounts and fiduciary accounts
- ◆ A lawyer was to disburse more than \$270,000 to his clients from their trust account pursuant to a settlement agreement. A third-party fraudster sent the lawyer an email message from an email address that was similar but not identical to the clients' email address. The message included wire transfer instructions to an out-of-state bank where the clients did not have accounts.
- ◆ The lawyer did not contact the clients to confirm the wire transfer instructions and did not contact the bank to confirm the account belonged to the clients. Instead, the lawyer sent the funds by wire transfer to the out-of-state bank pursuant to the fraudster's wire transfer instructions. The clients never received the funds. After the fraud was discovered, the lawyer reimbursed the clients with proceeds from the law firm's malpractice insurance carrier.
- ◆ By initiating a wire transfer of client funds pursuant to fraudulent wiring instructions without taking reasonable steps to safeguard client funds, including the failure to verify the wiring instructions with the client or client's bank and the failure to recognize numerous red flags that should have raised suspicions about the fraud, the lawyer violated SCR 20:1.15(b)(1).
- ◆ A Supreme Court-appointed referee approved the parties' reprimand agreement, including their stipulation of facts and proposed violations, and issued a private consensual reprimand pursuant to SCR 22.09(3).
- ◆ The parties considered aggravating and mitigating factors pursuant to the ABA Standards for Imposing Lawyer Sanctions in support of their joint request that the Referee impose a private reprimand. In mitigation, the lawyer promptly reimbursed the clients for the missing funds plus interest.
- ◆ Prior Disciplinary history: The lawyer had been practicing for more than 15 years and had no prior discipline.

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NOVEMBER 06, 2024

Dilemma: Will I Be Disciplined If I Fall for a Wire Transfer Scam?

There are a lot of scams out there to induce the lawyer to deposit a payment and quickly send funds out by wire transfer from a trust account. Will a lawyer who falls for one face disciplinary action?

TIMOTHY J. PIERCE

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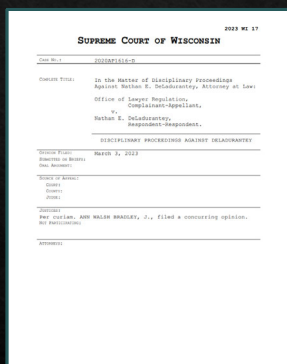
SCR 40.15 Attorney's Oath



“ ... I will abstain from all offensive personality ...”

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Offensive Personality



“The requirement to abstain from all offensive personality ... applies not only to the **direct practice of law**, but also to the **business of law**, and to the **lawyer’s conduct beyond the practice or business of law.**”

OLR v. DeLadurantey, 2023 WI 17

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How do you know what’s offensive?



- Threatening to kill someone?
- Swearing at opposing counsel’s client?
- Physical altercation?
- Distributing picture captioned “accused serial rapist”?
- Making offensive sexual comments to a court reporter?
- Pervasive verbal abuse of administrative staff?

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Offensive Personality to Staff

SUPREME COURT OF WISCONSIN	
2023 WI 73	
CASE NO.	20220851-0
COURT TITLE	In the Matter of Disciplinary Proceedings Against Steven D. Johnson, Attorney at Law Office of Lawyer Regulation, Complaints-Respondent, v. Steven D. Johnson, Respondent-Appellant.
DISCIPLINARY PROCEEDINGS AGAINST JOHNSON	
DATE FILED	November 3, 2023
ENTERED IN BOOKS	
FILED	
CLERK OF COURT	
DATE:	
TIME:	
PLACE:	
JUDGE	
PER curiam.	
Attorneys	

“The referee found that ... Attorney Johnson repeatedly used the words ‘bitches,’ ‘stupid bitches,’ ‘whores,’ ‘idiots,’ ‘retard,’ and ‘retarded’ when addressing staff. The referee further found that Attorney Johnson yelled at staff, sometimes for an extended period of time, and occasionally hit the counter or wall when upset. The referee further found that Attorney Johnson yelled at three of his staff members, ‘I hope you and all your fucking children die,’ causing one staff member to quit immediately because she had a young child suffering from cancer.”

OLR v. Johnson, 2023 WI 73, ¶ 7

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SCR 40.15 Attorney's Oath

¶39 As for Attorney Johnson's argument that the recommended six-month suspension is excessive, we disagree. Attorney Johnson's first category of misconduct—his pervasive verbal abuse of his staff members, compelling many of them to quit—alone justifies a not-inconsequential suspension. In

OLR v. Johnson, 2023 WI 73

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HOW SHOULD I SAY SOMETHING?

1. Email OLR.Intake@WiCourts.gov
2. Call (608) 267-7274
3. Fax ...?

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Help for the Lawyer



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Community Resources



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The map shows the St. Paul area, including locations like Prescott, Diamond Bluff, Hager, Maiden Rock, Stockholm, Pepin, and Cochrane. It also shows the Mississippi River, Zumbro River, and various landmarks like Fort St. Antoine and Lake Pepin. A list of learning objectives is overlaid on the map.

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For any questions or concerns

Contact Us

Timothy C. Samuelson
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Timothy.Samuelson@WiCourts.gov

WISCONSIN OFFICE OF LAWYER REGULATION

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