Behind the Scenes at ODC: How to Avoid Grievances and What to Do When You Can't

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There's No Such Thing as a Bar Complaint in SC

- SC Bar:
  - Sets policy and recomme
  - Provides continuing leg
  - Ethics, law office mana ice
  - Provides social and net
  - Administers LHL, LFCP, R
  - Promotes Law-Related Edu
  - Publishes practice books, pamp magazine

The SC Bar does not regulate or discipline lawyers!

Commission on Lawyer Conduct

- Established by Rules for Lawyer Disciplinary Enforcement (RLDE, Rule 413, SCACR):
  - 34 lawyer members
  - 16 public members
  - Appointed by the Supreme Court
  - Divided into 8 panels of 6 members each
  - Serve on investigative panels and hearing panels
  - Led by a chair & vice chair
  - Administered by Commission Counsel

Office of Disciplinary Counsel

- Investigates and prosecutes allegations of misconduct by lawyers and judges
- Files actions for incapacity & contempt
- Managed by the Disciplinary Counsel
- Fulltime Supreme Court employees:
  - attorneys on staff, plus contract attorneys
  - investigators & admins
- Assisted by Attorneys to Assist

Disciplinary Jurisdiction

- Lawyers who are licensed in SC
- Lawyers formerly licensed in SC
- Out-of-state lawyers who:
  - advertise in SC
  - are admitted *pro hac vice*
  - Provide/offer to provide legal services in SC
- Applicants accused of cheating on Bar exam

Initial Screening

- All complaints are screened by ODC attorneys
- Before opening investigation, ODC can:
  - contact complainant for more information
  - request a preliminary response from lawyer before opening and investigation
  - Conduct limited review of public records

Initial Screening

- A complaint is dismissed without investigation if:
  - it does not allege misconduct
  - it is facially frivolous
  - it is based solely on published news reports or social media posts
  - complainant appears to have no personal knowledge of the information submitted

Initial Screening

- If the complaint alleges misconduct, appears credible, and is from someone with personal knowledge, ODC will forward it to Lawyer with a Notice of Investigation and a demand for a written response

ODC Investigation

- Lawyer has 15 days to respond
- ODC and CLC can grant up to 30 days extension, each
- Lawyer can request dismissal without a response if 5 years have passed and there is no allegation of fraud, conversion, conviction of a serious crime, or concealment
- Lawyer's response is reviewed by ODC attorney
- ODC will dismiss if response confirms no misconduct

ODC Investigation

- If there is evidence of misconduct:
- ODC will conduct investigation or refer to ATA
- ODC & Lawyer have subpoena power
- ODC or Lawyer can request appearance on the record

- Failure to respond, appear, or comply with subpoena is misconduct – regardless of merit of complaint!

ODC Investigation

WARNING:

The Rules of Civil Procedure do NOT apply to ODC investigations – including subpoenas and interviews under oath.

Disposition After Investigation

- Complainant can request dismissal review
- Results of investigation reviewed by Investigative Panel
- Panel may conclude the matter with:
  - Dismissal
  - Letter of caution
  - Notice of intent to issue admonition
  - Acceptance of Agreement for Discipline
- Or panel can authorize Formal Charges

Discipline by Consent

- ODC & Lawyer may settle at any stage
- Must be approved by Investigative Panel
- May include a range of sanctions
- If range includes public sanction:
  - Panel approves and makes recommendation
  - Supreme Court makes final determination
- Most cases of misconduct resolved by Agreement

Deferred Discipline

- Only appropriate in cases of minor misconduct
- Conduct resulted from remediable ci
  - Poor office management
  - Medical issues
  - Manageable psychological issues
- Remediable action might include:
  - Drug/alcohol testing
  - Compliance with medical treatment
  - Therapy, counseling, etc.
  - Lawyers Helping Lawyers
  - Law office m itation
  - Extra continuing legal education
  - Mentoring program
  - Trust account monitoring

Failure to comply is sanctionable misconduct!

Delayed Discipline

New Rule!

Time Limitation for Filing a Complaint

- A complaint must be filed with ODC within five years of the time the complainant discovered or reasonably should have discovered the alleged misconduct.
- The five-year time limitation shall not apply to allegations involving fraud, conversion, conviction of a serious crime, or concealment or attempted concealment of the conduct.
- ODC may dismiss a complaint based on the time limitation if raised by the lawyer and none of exceptions apply.

Delayed Discipline

Lawyer's Right to Preliminary Review

(As of January 2, 2027)

New Rule!

- If ODC has not taken action within 450 days of the complaint, the lawyer may request an IP preliminary review of the status of the investigation.
- ODC shall submit a report to the Commission or provide copies of filings and a summary and recommendation, along with an explanation of the reason(s) for the delay.
- The investigative panel may issue a scheduling order or take other action it deems appropriate.

Interim Suspension

- Lawyer may be suspended pending investigation:
  - Charged with or convicted of serious crime
  - Threat of serious harm to public / administration of justice
  - Failure to cooperate in disciplinary investigation
- Interim suspension is on petition of ODC
- May be issued without response
- Lawyer may file for reconsideration
- Ultimate sanction may or may not be retroactive

Resignation in Lieu of Discipline

- Lawyer must initiate with motion
- Permanent
- Must resign in all states
- Cannot owe LFCP or CLC costs
- May withdraw on notice of allegations
- All filings are public record

Formal Charges

- Lawyer has 30 days to answer
- 60 days to exchange documents, exculpatory evidence & witness lists
- All proceedings become public 30 days after answer is filed
- Failure to answer results in charges deemed admitted

Hearings

- Hearing Panel consists of 3-5 CLC members
- Hearing is held in Columbia
- On the record - witnesses & evidence
- Lawyer can be represented by counsel
- Proceedings are governed by Rule 413
- Rules of Evidence & Civil Procedure apply
- ODC’s burden of proof is clear & convincing

Final Determination

- Hearing Panel issues report and recommendation to Supreme Court
- ODC & Lawyer may file briefs arguing exceptions
- Supreme Court reviews entire record
- Supreme Court usually holds oral arguments
- Lawyer might be permitted to address justices
- Public Opinion is issued by the Court

Dispositions by Supreme Court

- Dismissal
- Letter of Caution
- Admonition
- Public Reprimand
- Definite Suspension (up to 3 years)
- Disbarment
- Payment of costs
- Payment of restitution
- Conditions/limitations on practice
- Debarment (out-of-state lawyer)

...or anything else they want to do.

Requirements & Restrictions

- Suspended or disbarred Lawyer must:
  - Notify clients, opposing counsel, courts
  - Withdraw from cases
  - Refund fees & return property
  - Surrender license to practice
  - Cooperate with Receiver, if appointed

Requirements & Restrictions

- Lawyer suspended <9 months:
  - May work in limited capacity under supervision
  - Must register with CLC
- Lawyer disbarred or suspended >9 months may not:
  - Practice law in any capacity
  - Work directly or indirectly for a lawyer or law firm
  - Act as mediator or arbitrator

Receiver Appointed to Protect Clients' Interests

- Receiver may be appointed if necessary
- Takes custody of files & accounts
- Contacts clients & delivers files
- Publishes notice in the paper
- Handles any emergency matters
- Other duties as ordered
- Time and expenses are charged to Lawyer

Reinstatement After Suspension

- Suspension of less than 9 months:
  - Reinstatement automatic upon filing affidavit & $200 fee
- Suspension of 9 months to 3 years:
  - $1500.00 application fee
  - Lawyer must prove fitness to Committee on Character & Fitness
  - Notice to public for comments
  - Report & recommend to Supreme Court
  - Must wait 2 years to reapply if rejected
- Disbarment:
  - All of the above plus the Bar Exam

Duty to Self-Report

- Circumstances where Lawyer is required to self-report to disciplinary authorities:
  - Arrested for, or charged with, a serious crime
  - Disciplined or transferred to incapacity status in another jurisdiction

Duty to Self-Report: Serious Crime

- Rule 8.3, RPC, report in writing to ODC within 15 days of being arrested or charged.
- Serious Crime -
  - any felony.
  - any lesser crime that "reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."
  - "any crime that involves interference with the administration of justice, false swearing, fraud, misrepresentation, deceit, bribery, extortion, misappropriation, theft, willful failure to file income tax return, or an attempt, conspiracy or solicitation of another to commit a serious crime."

Duty to Self-Report: Discipline in Another Jurisdiction

- Court may impose reciprocal discipline
- Findings of other jurisdiction are conclusive evidence of professional misconduct
- Lawyer has opportunity to show that imposition of identical discipline is unwarranted:
  - lack of due process in the other jurisdiction
  - lack of proof of misconduct in other proceeding
  - grave injustice
  - substantially different precedent in SC

Duty to Report Others

- Rule 8.3, RPC, requires you to report a judge or lawyer if you have knowledge of a violation that "raises a substantial question as to honesty, trustworthiness, or fitness in other respects."
- Knowing failure to report may subject you to discipline.

Duty to Report Others

- Duty to report is limited by your obligation to protect confidential client information pursuant to Rule 1.6, RPC.
- Must protect client's interests.
- Limitations period is 5 years, except for fraud, conversion, serious crime, or concealment.

Duty to Report Others

- Inform “the appropriate authority”
- A copy of complaint will be sent to the lawyer or judge.
- As complainant, you are not bound by confidentiality.

Duty to Report Others

- Complainants have civil immunity.
- Communications with ODC are privileged.
- Threatening to file is misconduct.
- Consult with supervisor or private counsel.

Fight Hard, but Play Fair



Keep Up With Your Work



Communicate



Keep Good Records



Hire the Right People



Find a Good Balance



Take Advantage of Bar Resources



Be Nice



Responding to Grievances

- Stay calm.
- Tell your supervisor.
- Get extension(s).
- Respond on time.
- Provide specifics.
- Focus on your own conduct.
- Include documents.
- Admit your mistakes.
- Fix what you can.
- Consult with counsel.

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