

THE DISCIPLINE SYSTEM OVERVIEW¹

The Washington Supreme Court has exclusive responsibility to administer the discipline system, many aspects of which are delegated by court rule to the WSBA. The Washington discipline system for lawyers is composed of a number of entities that operate as part of the judicial branch of government under the authority of the Washington Supreme Court. These include the Office of Disciplinary Counsel (ODC), hearing officers, and the Disciplinary Board. Each entity has a different role in the administration of the discipline system. The lawyer discipline system is operated by the WSBA, which has separated the investigative and prosecutorial functions from the adjudicative functions. ODC oversees the prosecutorial functions while the Bar's Office of General Counsel provides administrative and legal support to the hearing officers and the Disciplinary Board, which carry out the adjudicative and decision-making functions. WSBA discipline functions for limited licenses are discharged by ODC and the WSBA's Regulatory Services Department, each license's respective Supreme Court regulatory board, and hearing officers. See *Limited Licenses and the Discipline System* for details about the discipline system for limited license legal professionals.

STRUCTURE OF THE LAWYER DISCIPLINE SYSTEM



¹ *The Discipline System Overview* is largely excerpted from the *Annual Discipline System Report* available at www.wsba.org.

THE OFFICE OF DISCIPLINARY COUNSEL

ODC is responsible for reviewing, investigating and prosecuting grievances concerning the ethical conduct of Washington lawyers and matters related to a lawyer's alleged incapacity to practice law.

ODC is composed of one intake unit, three investigation/prosecution units, one unit of investigators, and a team of auditors. The intake unit receives initial inquiries and written grievances, and conducts the first review of grievances, dismissing some and recommending further investigation of others by ODC investigation/prosecution staff. Matters that cannot be informally resolved are investigated and, when warranted, prosecuted by disciplinary counsel with the assistance of professional investigators and a support staff of paralegals and administrative assistants. After investigation, disciplinary counsel determine whether grievances should be dismissed or reported to a review committee of the Disciplinary Board. Disciplinary counsel may resolve less serious matters with the diversion program.

Disciplinary counsel prosecute matters ordered to hearing. If a hearing-level decision is appealed, disciplinary counsel briefs and argues the appeal to the Disciplinary Board and, in some cases, the Supreme Court.

REVIEW COMMITTEES OF THE DISCIPLINARY BOARD

Composed of three members of the Disciplinary Board, review committees serve an oversight function in the lawyer discipline system, first to consider grievant appeals of disciplinary counsel dismissals, and second to consider disciplinary counsel recommendations for admonitions or public hearings of lawyer discipline matters. Among other actions, a review committee may dismiss a matter, order further investigation, issue an admonition, or order a hearing. Review committees also have authority to order a hearing regarding a respondent lawyer's capacity to practice law.

HEARING OFFICERS

Voluntary hearing officers preside over hearings for disciplinary and disability cases. They receive evidence and issue findings and a recommendation as to the discipline to be imposed, if any. Hearing officers also oversee settlement conferences in many discipline cases. In disability proceedings, hearing officers make recommendations regarding whether a respondent lawyer should be transferred to disability inactive status. They are also authorized to resolve cases by approving stipulations to reprimand, admonition, or dismissal. A Chief Hearing Officer supervises the hearing officers, assigns cases, provides training, and monitors hearing officer performance. The Bar's Office of General Counsel provides staff and administrative support to hearing officers.

DISCIPLINARY BOARD

In addition to its review committee functions, the Disciplinary Board, composed of volunteer lawyers and community representatives, considers appeals of hearing officer decisions. The Disciplinary Board reviews the record when a respondent lawyer or disciplinary counsel has filed an appeal of the hearing officer's recommendation in a disciplinary matter. The Board also reviews appeals of lawyer disability cases and may review suspension and disbarment recommendations. If requested, the Board hears oral argument on the cases much like an appellate court, and then issues its decision. The Disciplinary Board also reviews stipulations submitted by the parties, which, if approved, will resolve the proceeding without a hearing. The Bar's Office of General Counsel provides administrative and legal support to the Disciplinary Board in the performance of its adjudicative functions.

SUPREME COURT

The Washington Supreme Court, which has inherent power to dispose of individual cases of lawyer discipline, reviews the Disciplinary Board's suspension and disbarment recommendations, which are

appealable as a matter of right. The Court also considers petitions for discretionary review of other dispositions. Disciplinary and disability cases appealed to the Supreme Court proceed in a fashion similar to other Supreme Court appeals, with briefing and oral argument, followed by a written opinion by the Court. The Supreme Court may order reciprocal discipline of lawyers who have been disciplined in other jurisdictions, and order interim suspension of a lawyer if the Disciplinary Board has recommended disbarment or if the lawyer has been convicted of a crime, poses a risk of serious harm to the public, fails to cooperate with a disciplinary investigation, or asserts incapacity to defend himself or herself in a disciplinary proceeding.

DISABILITY PROCEEDINGS

Special procedures apply when there is cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law due to a mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the respondent lawyer must have counsel appointed at the WSBA's expense. In disability cases, a determination that the respondent lawyer does not have the capacity to practice law results in a transfer to disability inactive status.

DISCIPLINARY ACTIONS

Disciplinary "actions" include both disciplinary sanctions and admonitions, and result in a permanent public disciplinary record. In order of increasing severity, disciplinary actions are reprimands, suspensions, and disbarments. In Washington, admonitions are also a form of public discipline and became a permanent record if issued after January 1, 2014. A suspension from the practice of law may be for any period of time not to exceed three years, and may include conditions to be fulfilled by the lawyer. A disbarment revokes the lawyer's license to practice law. Disbarred lawyers are precluded from seeking readmission to the Bar for five years after disbarment. Only the Supreme Court may order suspension, disbarment, or reinstatement.

Lawyers may also resign in lieu of discipline if they do not wish to defend against allegations of misconduct. A lawyer who resigns in lieu of discipline may not seek reinstatement to the practice of law in Washington.

Review committees of the Disciplinary Board also have authority to issue an advisory letter if a lawyer should be cautioned. Advisory letters are neither a sanction nor a disciplinary action and are not public information. For less serious misconduct, a lawyer may be diverted from discipline.

FUNDING THE DISCIPLINE SYSTEM

The Bar funds the discipline system primarily through annual licensing fees. Revenues consist largely of recovery of discipline costs and expenses and service fees for providing discipline history summaries. In addition, the Bar operates a Lawyer's Fund for Client Protection, funded by annual assessments on each lawyer, which makes gifts to client applicants who have been damaged by their lawyers' dishonesty or failure to properly account for money or property entrusted to them.

LIMITED LICENSES AND THE DISCIPLINE SYSTEM

The Washington Supreme Court regulates two licenses authorizing the limited practice of law: limited practice officers (LPOs) and limited license legal technicians (legal technicians). An LPO may select, prepare, and complete forms for use in a loan, extension of credit, sale, or other transfer of real or personal property. A legal technician is licensed to assist clients, short of representing them in court, in certain limited legal matters approved by the Washington Supreme Court. Currently, family law is the only approved practice area, though additional practice areas are being evaluated.

A Washington Supreme Court-mandated regulatory board oversees each limited license: the Limited Practice Board for LPOs and the Limited License Legal Technician Board for legal technicians. Each licensee is subject to license-specific admission and practice rules, rules of professional conduct, and disciplinary procedural rules. The WSBA administers a discipline system for each of these licenses.

The key differences between the lawyer discipline system and the limited license discipline systems are as follows: (1) each regulatory board acts as the intermediate appellate body, akin to the Disciplinary Board, to review hearing records and stipulations; (2) a discipline committee of each regulatory board serves the function of review committee; and (3) the chair of each discipline committee conducts initial review of grievances and makes intake decisions.

For both licenses, possible disciplinary actions include revocation, voluntary cancellation in lieu of revocation, suspension, reprimand, and admonition.