

# **Attorney Discipline System Intake and Investigation Procedures From Around the Globe: Comparative Analysis and Best Practices**

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## **I. Introduction**

The goal of this program is to provide an overview of the intake and investigative procedures utilized by the varied states and countries represented at this Fifth Annual International Conference of Legal Regulators (ICLR). For obvious reasons, the written materials which follow are not completely comprehensive but will endeavor to offer a glimpse into intake and investigation systems utilized by small to large jurisdictions in the United States, procedures used in Canada, the United Kingdom, and the Netherlands.<sup>1</sup>

The Panel discussion taking place on the first day of the Conference on this subject is intended to solicit input from, and generate discussion amongst, all represented countries and jurisdictions at the ICLR. The hope of the Panel is that these written materials, together with the discussion which will follow at the Conference, will provide valuable tools and information for attendees to take back to their home countries.

## **II. Overview of Attached Materials**

Although there are many different methods by which jurisdictions and countries screen complaints filed against solicitors, lawyers, and firms with their respective legal regulatory agencies, the common thread that runs through each system is its purpose – the protection of the public.<sup>2</sup> It is from this point of origin that each complaint is evaluated and a decision then made as to the proper course each matter should then follow. The jurisdictions represented here also have varying principles or rules that must be proven to have been violated in order for action to be taken against the lawyer. Obviously, these differ across states, and from country to country, but again there is one overriding and consistent principle that, if transgressed, will generally move a complaint out of each intake system and into investigation – violating a duty which places a member of the public, or their money, in jeopardy.

There are numerous attachments to this outline. First, the Solicitors Regulatory Agency (SRA) in the United Kingdom provided several documents – an overview of their regulatory system together with a flow chart that contains detailed information concerning whether and how

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<sup>1</sup> A broad call was sent out for materials and information and the materials presented here are the result of that request.

<sup>2</sup> There are numerous different terms employed to refer to the practitioners and entities which each agency represented at the ICLR regulates. For ease of reference and consistency, all will be referred to as “attorneys” or “lawyers.”

the SRA will move a case through their process (SRAOverview and SRAFlowChart), a discussion of their procedures intended to guide the general public through the complaint process (SRAProcedures), an outline of the principles which govern attorney conduct, again aimed at the general public, to help provide a better understanding of what the SRA will and will not regulate (SRAHandbook), and an outline discussing how the SRA handles information provided and the relevance of risk assessments assigned to incoming complaints (SRSRiskAssessment).

The State Bar of California Office of Chief Trial Counsel has provided a flow chart which graphically demonstrates how complaints move through their system and offers an overview of their disciplinary system as a whole including a discussion of the Intake process (CaliforniaFlowChart). Also included are links to complaint forms which consumers can directly access for on-line complaint filing. These materials also provide information concerning the Complaint Hotline offered to consumers who are unsure of the nature of their complaints which can help guide them through their options. The California Bar is one of the largest in the United States, regulating approximately 187,000 active attorneys.

The Colorado Supreme Court Attorney Regulation Counsel's office provided an overview of their Central Intake process which discusses in detail how that process works and what options are available to Intake staff, including diversion (ColoradoCentralIntakeOverview). Also from Colorado is a breakdown of intake statistics showing the number of complaints filed as compared against those which result in dismissal or other action (ColoradoCentralIntakeLandscape). Colorado is a jurisdiction with about 25,000 actively licensed attorneys and so these statistics are quite telling. Finally, Matt Samuelson, Chief Deputy in Colorado's ARC, prepared a very helpful step by step powerpoint presentation of their intake and investigative processes which is detailed and broadly applicable (ColoradoCentralIntakePowerPoint).

South Carolina's Office of Disciplinary Counsel provided an Intake Screening FlowChart that tracks the progress of a complaint through their system and includes a detailed discussion of each step and the standards of review employed. South Carolina, with an active attorney membership of approximately 12,000, also provided an overview of their disciplinary process as a whole which includes a valuable discussion of their intake and investigation procedures and protocols (SouthCarolinaDisciplinaryProcess).

The Law Society of Manitoba has provided a thorough overview and detailed discussion of their disciplinary process including how complaints are initiated, by whom, and the action that can be taken by their regulatory agency (ManitobaOverview), as well as a manual that outlines the disciplinary process, how it operates, by whom it is staffed, and discusses the role of the Complaints Resolution Department (ManitobaOrientationManual). Also attached are detailed guidelines required to be followed in the event that an interim suspension of an attorney's license is deemed warranted during the pendency of a disciplinary investigation (ManitobaSuspensionRestrictionGuideline).

For purposes of comparison, the Wyoming Office of Bar Counsel has a very informal intake and investigative process which is carried out by one person - Bar Counsel. Mark W. Gifford currently serves in that role and he has one non-lawyer assistant on his staff. With this level of staffing, he single-handedly regulates approximately 2,800 active attorneys. Wyoming's system requires written complaints and a complaint form is available on the Wyoming State Bar website. Investigations may be launched without a formal written complaint but only after authority is obtained to do so from a supervisory group, the Review and Oversight Committee (ROC). The ROC provides such authorization only upon a showing of "sufficiently credible or verifiable information to warrant an investigation." Bar Counsel is charged with reviewing all complaints and determining whether a prima facie showing has been made to justify investigation.

Finally, from Virginia we have an overview of the disciplinary process in that state, including discussions of the intake system (VirginiaDisciplinaryOverview) and the manner in which investigations proceed and why. This powerpoint presentation also contains interesting breakdowns of the areas of the law in which Virginia sees most of its complaints, statistics on the areas in which most investigations are conducted, staffing requirements for the Intake Department in this jurisdiction of approximately 31,500 active members, and from which quarters most complaints emanate.

In the run-up to the organization of this year's ICLR, the Program Committee also spent considerable time discussing all of the conference programming topics including intake and investigative systems utilized in their respective countries. Niels Hupkes from the Netherlands provided an informative description of the system employed in that country. Mr. Hupkes advised as follows:

"In the Netherlands, we use some form of risk analysis (or triage) at our intake and investigations level.

All formal complaints are handled according to the standard procedures which are basically laid down into law. Every formal complaint has to be investigated by the local Bar president (or his staff) and after that the complainant always has the possibility to file his complaint with the disciplinary council. At the investigations level a certain amount of risk analyses is used to determine what approach is best. We use a form of mediation to resolve minor complaints; the local Bar president (or his staff) sits down with the lawyer and the complainant and tries to satisfy the client's concerns. If an agreement is reached the complaint will be withdrawn. Serious complaints or complaints that cannot be resolved are sent to the disciplinary council.

Besides the formal complaints the local Bar president also gets informal complaints and other signals of potential misconduct of a lawyer. The local Bar president has great latitude to determine which approach is best and uses a form of risk analysis. Minor

misconduct are often resolved with a ‘good talk’ or some form of educational requirements, sometimes we even introduce a coach to help the lawyer get his business back on track. Serious alleged misconduct lead to full investigations.

In our proactive supervision we are starting to use risk analyses to determine which risks will get high priority next year.

### **III. Conclusion**

Our Panel of experienced Intake Counsel and Staff looks forward to an interactive discussion and comparison of attorney discipline system intake and investigation procedures from around the globe. These and other materials will be referenced during the program. The Panel will also compare and contrast the differing procedures followed by their home jurisdictions from the receipt of a complaint to the decision to prosecute and beyond where more investigation is warranted for trial. This program will be an exploration of best practices across international jurisdictions, and is intended to be as interactive as possible.

Please feel free to jump into the discussion!