The South Carolina Lawyer Discipline Process
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I. Commission on Lawyer Conduct and Office of Disciplinary Counsel

Commission on Lawyer Conduct. In South Carolina, lawyer discipline is administered by the Supreme Court through its Commission on Lawyer Conduct and Office of Disciplinary Counsel, rather than the South Carolina Bar. The disciplinary system is funded, in part, by an annual assessment of paid by members of the South Carolina Bar. The Commission on Lawyer Conduct (CLC) is made up of thirty-four lawyer members and sixteen "public" members appointed by the Court.[1] The members of CLC are volunteers from a wide range of backgrounds. Anyone who has never been admitted to the practice of law or held judicial office may apply for appointment as a public member. All CLC members rotate between investigative panels and hearing panels in accordance with the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR. CLC is administered by a chair and vice chair, both of whom are volunteers and both of whom are lawyers. The CLC professional staff includes Commission Counsel, who advises the panels on precedent and procedure.[2] The Commission Counsel is also responsible for supervision of the day-to-day administrative functions of CLC. CLC employs an administrative support staff, a court reporter, and the Receiver.

Office of Disciplinary Counsel. The Disciplinary Counsel, a full-time employee of the Supreme Court, is the administrator of the Office of Disciplinary Counsel (ODC) and the Court's chief prosecutor.[3] Under the supervision of the Disciplinary Counsel, ODC investigates and prosecutes allegations of misconduct[4] pursuant to the requirements of RLDE. Currently, there are nine attorneys (including the Disciplinary Counsel), two investigators, and three support staff at ODC who handle lawyer discipline. ODC is assisted in field investigations by about sixty Attorneys to Assist Disciplinary Counsel (ATAs) who are attorneys in private practice appointed by the Court. ATAs are unpaid volunteers, but are permitted to use discipline case assignments as "credit" for court appointments. All CLC members and ATAs are provided with CLE hours through the Annual Conference on Discipline in South Carolina, which is sponsored by CLC, CJC, and ODC.

II. Jurisdiction

CLC and ODC have jurisdiction over lawyers who are, or have previously been, licensed in South Carolina, as well as out-of-state lawyers who advertise here, practice *pro hac vice* here, or otherwise engage in the practice of law here.[5] CLC and ODC do not have jurisdiction over nonlawyers who engage in the unauthorized practice of law. Allegations of UPL by nonlawyers are referred to local law enforcement, the Office of the Attorney General, and the UPL

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[1] See Rule 3, RLDE, Rule 413, SCACR.
[2] See Rule 6, RLDE, Rule 413, SCACR.
[3] See Rule 5, RLDE, Rule 413, SCACR.
[4] ODC also investigates and prosecutes allegations of judicial misconduct. The Court has established the Commission on Judicial Conduct (CJC) for the administration of judicial discipline. The Rules for Judicial Discipline, found at Rule 502, SCACR, are essentially the same as RLDE. One ODC attorney is assigned to handle judicial complaints.
[5] See Rule 2(q), RLDE, Rule 413, SCACR. See also, Rule 8.5(a), RPC, Rule 407, SCACR; Rule 404(e), SCACR; and, Rule 418(c), SCACR.

Committee of the South Carolina Bar.

Neither CLC nor ODC provide ethics advice or advisory opinions to Bar members. A lawyer who needs ethical guidance on prospective conduct should take advantage of the resources provided by the South Carolina Bar, including calling the Ethics Hotline, searching the database of Ethics Advisory Opinions on the Bar website, and/or submitting a request to the Ethics Advisory Committee.

III. Screening and Investigation

CLC receives all disciplinary complaints and refers them to ODC for investigation and, when necessary, prosecution. An ODC staff attorney screens all incoming complaints and assigns them for investigation if necessary. If the complaint does not allege conduct that, if true, would violate the South Carolina Rules of Professional Conduct (RPC)[6] or other rules that govern the practice of law, ODC dismisses it without notice to the lawyer.[7] If, on the other hand, the complaint does allege a violation of RPC or if further inquiry by ODC indicates that the lawyer might have engaged in misconduct, an investigative file will be opened and the lawyer will receive a notice of investigation. The notice of investigation includes a copy of the complaint and a request for a written response from the lawyer.

The lawyer is required to provide a written response within fifteen days of the date of the notice of investigation.[8] Ordinarily, extensions will be granted upon request from the lawyer, but the length and number of extensions are limited by Rule. Once the response from the lawyer is received, it is reviewed by one of the attorneys on the ODC staff. If the response sufficiently demonstrates that the lawyer did not engage in misconduct, ODC will dismiss the complaint with notice to the complainant, copied to the lawyer.

If there is some indication that the lawyer has engaged in misconduct or if there are unanswered questions, ODC will either conduct further investigation or refer the matter to an ATA for interviews and document review. ODC can also issue subpoenas to the lawyer, the complainant, or third parties to produce documents or to give statements under oath in furtherance of the investigation.[9] The lawyer's appearance for an interview on the record and under oath may also be required by ODC.[10] The lawyer has the right to request such an appearance if ODC does not require one. Failure to timely respond to the notice of investigation, failure to comply with a subpoena, or failure to appear after notice constitute misconduct and expose the lawyer to interim suspension, discipline, and possibly contempt of the Supreme Court.[11]

IV. Disposition

Upon completion of the investigation, ODC will dismiss the matter, issue a letter of caution, or present the matter to an investigative panel with a recommendation of how to

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[6] It is important to note that, while the South Carolina Rules of Professional Conduct are based on the ABA Model Rules, they contain significant differences. South Carolina lawyers must rely on this state's version of the rules, the most recent version of which can be found on the Supreme Court's website at www.sccourts.org.

[7] See Rule 19(a), RLDE, Rule 413, SCACR.

[8] See Rule 19(b), RLDE, Rule 413, SCACR.

[9] See Rule 15(b), RLDE, Rule 413, SCACR.

[10] See Rule 19(c)(3), RLDE, Rule 413, SCACR.

[11] See Rule 7(a)(3) and 17(c), RLDE, Rule 413, SCACR. See also, Rule 8.1(b), RPC, Rule 407, SCACR.

proceed.[12] Investigation panels are made up of two public members, four attorney members, and either the CLC chair or vice chair.[13] One of the eight CLC panels meets every other month, for a total of six meetings each year. Upon review of the results of the investigation, the investigative panel may dismiss the complaint, refer it to a more appropriate agency, issue a letter of caution, notify the lawyer of its intent to impose an admonition, authorize ODC to file formal charges against the lawyer, or accept an agreement for discipline by consent. All proceedings up to this point are confidential.[14]

If the panel determines that an admonition is appropriate, it will issue a notice to the lawyer that it intends to impose an admonition in thirty days.[15] If the lawyer does not object within that time period, the admonition is imposed and the matter is concluded. If, on the other hand, the lawyer files an objection to the imposition of the admonition, the panel is deemed to have authorized formal charges. At that point, formal charges will be filed and public proceedings will ensue.

V. Limited Right of Review

Generally, neither the complainant nor the responding lawyer may appeal or otherwise seek the review of a decision by ODC, CLC, or the Supreme Court in a disciplinary matter. However, if the disciplinary counsel dismisses a complaint after taking jurisdiction, the complainant may ask an investigative panel of CLC to review that dismissal.[16] Such review is not available if ODC dismisses a matter for lack of jurisdiction or if CLC or the Court dismisses the complaint. In cases in which a right of review is available, the complainant must seek that review in writing within thirty days of notice of ODC's intent to dismiss the complaint. The responding lawyer has the opportunity to submit a response or additional information in opposition to the complainant's request that the matter not be dismissed. The matter is then referred to the next investigative panel, which can affirm the decision to dismiss the complaint or remand it back to ODC for further investigation or prosecution.

VI. Discipline by Consent & Deferred Discipline Agreements

The investigative panel also reviews and approves agreements for discipline by consent proposed by ODC and signed by lawyers under investigation.[17] At any stage in the investigation process, ODC and the lawyer may enter into an agreement for discipline by consent. Generally, the lawyer will admit to certain facts, acknowledge that the conduct violated specified provisions of RPC, and consent to a sanction or range of sanctions. If the agreement is limited to confidential resolutions (letter of caution or admonition), the investigative panel can accept the agreement and dispose of the matter. If the agreement includes consent to a possible public sanction (reprimand, suspension, or disbarment), then the investigative panel determines whether

[12] See Rule 19(b), RLDE, Rule 413, SCACR.
[13] See Rule 4(b) and (f), RLDE, Rule 413, SCACR.
[14] Generally, "confidential proceedings" means that ODC and CLC are not permitted to reveal information related to the disciplinary matter except to the extent necessary to conduct the investigation or unless certain circumstances present themselves. *See*, Rule 12, RLDE. The responding lawyer and the complainant, however, are not bound by confidentiality and may discuss or otherwise publicize a pending grievance, even prior to public disposition.
[15] See Rule 19(d)(5), RLDE, Rule 413, SCACR.
[16] See Rule 18(b), RLDE, Rule 413, SCACR.
[17] See Rule 21, RLDE, Rule 413, SCACR.

or not to recommend acceptance of the agreement to the Supreme Court and recommends a particular sanction. In that case, the agreement is then filed with the Supreme Court for its final determination.

In situations where the misconduct is a result of a mental or physical impairment, a lack of adequate management practices, or some other remediable circumstance, ODC might propose a deferred discipline agreement (DDA) to the lawyer.[18] In the DDA, the lawyer admits to certain facts, acknowledges that the conduct violated specific provisions of RPC, and agrees to a course of remedial measures to ensure that the problems will not recur. Those terms might include treatment for mental health or medical issues, extra CLE to cure knowledge and competence deficiencies, trust account monitoring, completion of the Legal Ethics and Practice Program, or a law office management consultation. If the lawyer does not complete the DDA requirements, the matter will be reopened and disciplinary action will proceed. Failure to comply with the terms of a DDA is a separate basis for sanction.[19]

VII. Formal Charges

If the misconduct is too serious to warrant a letter of caution or an admonition and the lawyer will not consent to discipline or deferred discipline, the investigative panel will authorize ODC to file formal charges.[20] Once formal charges are filed, the matter is assigned to a hearing panel made up of six members of CLC: two public members and four attorney members.[21] The quorum of three panel members may consist of any combination of attorneys and public members.[22]

The responding lawyer has thirty days to file an answer to the formal charges. A hearing is scheduled after a short discovery period. Discovery is limited to exchange of documents and names of individuals with information about the matter, notice of exculpatory evidence (if any), and witness and exhibit lists. There are no interrogatories, requests for production, or requests to admit. Depositions are allowed only in limited circumstances and must be agreed to by both parties or approved by the hearing panel chair. The matter becomes public record thirty days after the filing of the answer, or if no answer is filed, thirty days from the date the answer was due. From that point forward, all CLC records and proceedings are open to the public.

Failure to answer will result in a default order that the allegations against the lawyer are deemed admitted.[23] Failure to appear at the hearing, even if an answer was filed, deems the lawyer to have conceded the merits of any motion or recommendation presented by ODC. A lawyer who fails to appear at the hearing may also be placed on interim suspension by the Court.[24]

Three or more of the hearing panel members preside over an evidentiary hearing held in Columbia. Proceedings are informal, but the Rules of Evidence and the Rules of Civil Procedure apply generally. Following the receipt of documents and testimony, a transcript is prepared and the hearing panel issues a report, which includes findings of fact, findings of misconduct, and recommended sanction, if any. Usually, the parties submit proposed panel reports for

[18] See Rule 2(g), RLDE, Rule 413, SCACR.
[19] See Rule 7(a)(8), RLDE, Rule 413, SCACR.
[20] See Rule 22, RLDE, Rule 413, SCACR.
[21] See Rule 4(g), RLDE, Rule 413, SCACR.
[22] See Rule 26(b), RLDE, Rule 413, SCACR.
[23] See Rule 24, RLDE, Rule 413, SCACR.
[24] See Rule 24(b), RLDE, Rule 413, SCACR.

consideration. Once the hearing panel issues its report, that report and the complete record of the hearing are submitted to the Supreme Court. The parties may take exception to the findings of fact, conclusions, and/or recommendations of the hearing panel.[25] In that case, the parties submit briefs to support their arguments. The Court issues its final decision following oral arguments.

VIII. Interim Suspension & Appointment the Receiver

In addition to failing to appear at a formal hearing, there are three circumstances in which a lawyer can be placed on a temporary or "interim" suspension prior to final disposition of a disciplinary matter.[26] The first is when a lawyer is charged with or convicted of a serious crime. The Court has the option of interim suspension when the lawyer is indicted or charged, but is required to impose interim suspension upon conviction. The second is when the Court receives sufficient evidence that a lawyer poses a substantial threat of serious harm to the public or to the administration of justice. Finally, the Court may impose an interim suspension if the lawyer fails to respond to a notice of investigation, a subpoena, a notice to appear, or other inquiries or directives of ODC, CLC, or the Court. Interim suspensions ordinarily remain in effect until the disposition of the pending disciplinary action. Sometimes the ultimate sanction is made retroactive to the date of the interim suspension, sometimes it is not.

When a lawyer is placed on interim suspension is prohibited from continuing to work in the law office other than to refund fees and return property and files to clients and to give notice of the suspension to clients, co-counsel, adverse parties (or their counsel) and the courts. In certain circumstances in which the Court has determined that more is needed to protect the interests of the lawyer's clients, the Receiver will be appointed.[27] The Receiver is an employee of the Commission on Lawyer Conduct who is empowered by Court order to assume control over the lawyer's mail and bank accounts; take possession of files, funds, computers, and other property; and, to take whatever other actions are necessary to ensure that the clients are protected in spite of the lawyer's suspension from the practice of law. The Receiver's responsibility is not to assume representation of the clients, but rather to address matters of immediate concern; return files, funds, and property to clients; and, if possible, disburse funds from the lawyer's trust account. The Court will not appoint the Receiver if the suspended lawyer was practicing in a law firm with partners. In that case, the lawyer's law partner or partners are responsible for protecting the interests of the clients, including the continuation of the representation at the client's election.

IX. Public Discipline

Sanctions. There are a number of public sanctions available to the Court at the conclusion of a disciplinary action. They include a reprimand, a definite suspension, and disbarment. A definite suspension can be imposed for any time period not to exceed three years.[28] The Court can also impose a fine; repayment of the costs of the disciplinary investigation and prosecution; restitution; restrictions on the lawyer's readmission or continued practice; and, any other sanction or requirement it deems appropriate. Of course, even after formal charges and a public

[25] See Rule 27(a), RLDE, Rule 413, SCACR.
[26] See Rule 17, RLDE, Rule 413, SCACR.
[27] See Rule 31, RLDE, Rule 413, SCACR.
[28] See Rule 7(b), RLDE, Rule 413, SCACR.

hearing, the Court may determine that the lawyer did not engage in misconduct and dismiss the matter. Alternatively, if the Court decides that the lawyer engaged in misconduct, but it was minor with little or no harm, it could conclude the matter with a letter of caution or admonition. Regardless of how the Court concludes the formal charges, the proceedings remain public and the disposition will be part of the public record.[29]

Other Restrictions. A lawyer who is the subject of an administrative suspension, a disciplinary suspension of nine months or more, a disbarment, an incapacity order, or permanent resignation order may not work, directly or indirectly, for another lawyer or law firm in any capacity.[30] This restriction includes acting as a mediator or arbitrator. The suspended lawyer is subject to further discipline and/or contempt of the Supreme Court for violation of this restriction. A Bar member who hires the suspended or disbarred lawyer is also likely to face disciplinary action. Lawyers under disciplinary suspensions of less than nine months are permitted to work in law offices in very limited capacities, such as clerical work, legal research, drafting, title searches, maintenance, tech support, and marketing. Such lawyers may not have direct contact with clients or other law firms, solicit future clients, handle funds for the firm or clients, hold out as a lawyer, or work for the firm where the misconduct occurred. Any work done in this capacity must be directly supervised by a Bar member in good standing and a written plan must be submitted to CLC.

Reinstatement & Readmission. If a definite suspension is for less than nine months, the lawyer will be reinstated upon acceptance of an appropriate affidavit to the Court and payment of a $200.00 fee.[31] The affidavit must state that the lawyer is current with CLE, has complied with any conditions of the suspension order, has completed LEAPP Ethics School, and has no current disciplinary investigations pending.

For definite suspensions of nine months or more and disbarments, the lawyer's petition for reinstatement or readmission will be referred to the Supreme Court's Committee on Character and Fitness for hearing and recommendation.[32] The filing fee is $1,500.00. When disbarment is imposed, the lawyer is not eligible for reinstatement for five years. A lawyer who is disbarred must retake and pass the Bar Exam. Reinstatement and readmission proceedings of the Committee on Character and Fitness are public. Notice is published in advance of those proceedings in the event a member of the Bar, the judiciary, or the public would like to submit comments (against or in support of the lawyer's petition) for the Committee's consideration.

In order for a lawyer to be reinstated or readmitted, the lawyer must show to the satisfaction of the Committee and the Court that the lawyer is of the requisite character to resume the practice of law.[33] This includes proof of compliance with all of the terms of the disciplinary order; avoidance of unauthorized practice of law during the period of suspension; continuing legal education; rehabilitation of any mental or physical infirmity; and, repayment to the Receiver and the Lawyers' Fund for Client Protection. Regardless of the length of the suspension, if the suspension or disbarment resulted from a criminal conviction, the lawyer will not be reinstated or readmitted prior to successful completion of all of the terms of the criminal sentence, including probation, parole, restitution, and community service.[34]

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[29] See Rule 12(b), RLDE, Rule 413, SCACR.
[30] See Rule 34, RLDE, Rule 413, SCACR.
[31] See Rule 32, RLDE, Rule 413, SCACR.
[32] See Rule 33, RLDE, Rule 413, SCACR.
[33] See Rule 33(f), RLDE, Rule 413, SCACR.
[34] See Rules 32 and 33(f)(10), RLDE, Rule 413, SCACR.

X. The Duty to Report

The Duty to Self-Report. The Office of Disciplinary Counsel is frequently asked about a lawyer's duty to self-report or to report misconduct on the part of judges or other lawyers. There are only two circumstances in which a lawyer is required to self-report to disciplinary authorities: when arrested for, or charged with, a serious crime and when disciplined in another jurisdiction. Rule 8.3, RPC, requires a lawyer to report in writing to the Commission on Lawyer Conduct within fifteen days of being arrested or charged with a serious crime. The definition of "serious crime"[35] includes any felony. A lesser crime is also reportable if it "reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." A lawyer's duty to self-report also includes "any crime a necessary element of which . . . involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, willful failure to file income tax returns, or an attempt, conspiracy or solicitation of another to commit a serious crime."

A lawyer is also required to promptly inform disciplinary counsel upon being disciplined or transferred to incapacity inactive status in another jurisdiction.[36] In most cases, the Court will impose reciprocal discipline, treating the findings of the other jurisdiction as conclusive evidence of professional misconduct. However, Rule 29, RLDE, does provide that, once the Court is advised of action against a lawyer in another jurisdiction, the lawyer will have the opportunity to set out a claim that the imposition of the identical discipline in South Carolina would be unwarranted. Such a claim is limited to arguments of lack of due process in the other jurisdiction, lack of proof of misconduct in the other jurisdiction, grave injustice, or substantially different precedent in South Carolina.

The Duty to Report Others. In addition to the obligation to self-report in certain circumstances, lawyers are often required to report the misconduct of others. A reporting obligation is integral to a functioning system of self-regulation. Rule 8.3, RPC, requires you to report a judge or another lawyer if you know that person has committed a violation of the ethical rules that "raises a substantial question as to … honesty, trustworthiness, or fitness … in other respects." A lawyer who knowingly fails to report serious misconduct is subject to discipline for violating Rule 8.3.

Client confidentiality and other client interests must be considered before making a decision to report or not. The duty to report serious misconduct is limited by the lawyer's obligation to protect confidential client information pursuant to Rule 1.6, RPC. If disclosure of information related to your representation of a client is a necessary part of your disciplinary complaint, you are not required to (and, in fact, are not permitted to) file the complaint without your client's consent. However, the Comments to both the reporting rule (Rule 8.3) and the confidentiality rule (Rule 1.6) state that the lawyer is obliged to seek the client's consent to limited disclosure for the purpose of filing the grievance and to encourage the client to agree, so long as disclosure would not substantially prejudice the client. Keep in mind that there is no statute of limitations on grievances. Practical considerations, such as distracting the client or the responding lawyer from a pending legal matter, might also justify

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[35] *See*, Rule 1.0(n), RPC, Rule 407, SCACR.

[36] It is important to note that "jurisdiction" is not limited to another state bar. The Court has imposed reciprocal discipline against lawyers suspended by the United States Bankruptcy Court, for example. *See*, Matter of Edwards, 380 S.C. 84, 668 S.E.2d 791 (2008) and Matter of Hood, 367 S.C. 29, 625 S.E.2d 210 (2006)

holding off on filing a grievance until that matter is resolved. While such considerations permit a delay in reporting, they do not absolve the lawyer from the obligation to report as much as he can as soon as he can.

Even if you don't have knowledge of misconduct that rises to the level of mandatory reporting, you may file a disciplinary complaint against a lawyer or a judge for lesser misconduct at your own discretion. It is recommended that you consult with an attorney at ODC, the Commission Counsel, or a knowledgeable attorney in your community if you are faced with the question of whether or not to report. Voluntary reporting by lawyers is fundamental to the integrity of a self-regulating system. On the other hand, the profession, the client(s), and the public could benefit from less drastic measures in some circumstances. Before reporting lesser misconduct, you should consider other options, such as addressing your concerns directly with the offending lawyer or judge, seeking the assistance of an intermediary to resolve the matter, or simply ignoring the offense.

How and Where to Report Misconduct. Once the decision is made to report the misconduct of a lawyer or a judge, you must then determine to whom the report should be made. Rule 8.3, RPC, does not specify that the report must be made to the Commission on Lawyer Conduct or the Commission on Judicial Conduct, but rather says that the reporting lawyer "shall inform the appropriate authority." The Comment states that the appropriate authority is ordinarily ODC, but there might be circumstances under which another agency or entity is more appropriate. For example, if the lawyer or judge is engaging in criminal activity, the reporting lawyer might be obligated to report the matter to law enforcement. Or, if the misconduct is occurring in ongoing litigation and protection of the interests of the client requires it, a report to the presiding judge might be more appropriate. Again, disciplinary counsel, Commission Counsel, or a knowledgeable ethics attorney can assist you in making this determination.

By definition in the Rules, a disciplinary complaint is "information from any source." As the "source" of the grievance, the reporting lawyer will be named as the complainant. A complainant is not a party to the disciplinary action and will not be provided notice or other information regarding the disciplinary proceedings except to the extent necessary for ODC to conduct the investigation or as otherwise required by RLDE/RJDE. A complaining lawyer must keep in mind that a copy of the complaint will be sent to the responding lawyer or judge. Therefore, you should not include superfluous information in your report that you do not want the respondent to see. Under exceptional circumstances, certain information can be withheld from the responding lawyer or judge. If your report involves such circumstances, you should consult with an attorney at ODC or Commission Counsel before submitting your complaint.

Some Bar members elect to make "anonymous" reports. If a complaint alleges misconduct, ODC must conduct an investigation, even if the source of the complaint is unknown. However, anonymous complaints that might otherwise be legitimate are often disregarded by ODC because they lack sufficient information to even begin an investigation. With no named complainant, ODC has no place to go to seek clarification or additional information. Further, if the report is mandatory, filing it anonymously does not necessarily absolve the reporting lawyer from discipline pursuant to Rule 8.3.

Threatening to File a Grievance. Regardless of whether reporting the misconduct is mandatory or discretionary, under no circumstances should a lawyer threaten to file a grievance; suggest that a grievance could be filed if some action isn't taken; or, agree not to

file a grievance in exchange for a settlement or other benefit to the lawyer or the lawyer's client. Not only might failing to file a mandatory report result in discipline, a lawyer who threatens disciplinary action in connection with a pending legal matter could be in violation of Rule 4.5, RPC, regardless of whether or not misconduct actually occurred. That Rule prohibits a lawyer from "threaten[ing] to present … professional disciplinary charges solely to obtain an advantage in a civil matter." The phrase "solely to obtain an advantage in a civil matter" has been very broadly interpreted by the Supreme Court and should not be narrowly construed by the practitioner.[37] The Court has disciplined lawyers for merely including a provision in a settlement agreement that one party will not file a professional disciplinary complaint against the other party.[38] Using the professional discipline as a bargaining chip, event for the benefit of a client, is inappropriate. Under limited circumstances, might be necessary and unavoidable for a lawyer to write to a judge or another lawyer pointing out that certain conduct is in violation of an ethics rule. However, if such correspondence cannot be avoided, it should be very carefully worded so as not to be reasonably interpreted as a veiled threat of disciplinary action. Either file a grievance or don't, but don't talk about filing a grievance.

Public Disclosure of Pending Grievances. Generally, pending disciplinary matters are not public record during the investigation and negotiation stages of the process. Rule 12, RLDE, prohibits ODC, CLC, CJC, and the Supreme Court from disclosing information related to a pending disciplinary matter prior to the filing of formal charges, except to the extent necessary to conduct the investigation or to protect the public.[39] On the other hand, the complainant and the responding lawyer or judge are not restricted by confidentiality, and may generally share information related to the grievance with whomever they choose.[40] If a lawyer (complainant or respondent) decides to "go public" with a grievance, however, careful consideration must be given to legal implications and other professional obligations. For example, while complainants have an absolute privilege that protects them from civil prosecution, that immunity extends only to communications with ODC and CLC/CJC and testimony in the disciplinary proceedings.[41] If a complainant chooses to make the allegations public, he is not immune from civil claims or criminal charges arising from such disclosure. Another important consideration is whether or not public statements about a pending disciplinary matter (by the complainant or by the respondent) would violate the restrictions on prejudicial, extrajudicial statements set forth in Rule 3.6, RPC or would constitute conduct

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[37] *See e.g.*, Matter of Yarborough, 348 S.C. 243, 599 S.E.2d 836 (2002) (finding that a lawyer "violated the spirit of Rule 4.5" when he threatened to file a $50 million dollar lawsuit against a witness in an obstruction of justice prosecution against the lawyer.)

[38] *See e.g.*, Matter of Griffin, 393 S.C. 142, 711 S.E.2d 890 (2011) (discipline for conduct in connection with settlement negotiations where the opposing party was a lawyer - the respondent's offer included an agreement that his client would not report unprofessional conduct, stating specifically that it would be "the best course of action to remedy the situation without having to notify the South Carolina Bar.")

[39] Rule 12, RLDE/RJDE, provides that the chair of the Commission may permit disclosure of otherwise confidential information related to a grievance under circumstances including: reporting criminal conduct to law enforcement, disclosure to an individual in order to protect that individual, notifying a government agency to protect the public, disclosure to prevent misappropriation or to facilitate restitution or recovery; notification to disciplinary authorities in other jurisdictions.

[40] Historically, complainants and respondents were prohibited from disclosing the existence of a grievance that was resolved confidentially. Although many lawyers and judges still operate under the impression that grievances may not be disclosed, the "gag rule" was eliminated with the adoption of RLDE and RJDE in 1997.

[41] *See*, Rule 13, RLDE/RJDE.

prejudicial to the administration of justice in violation of Rule 8.4(e), RPC.

XI. How Long the Process Might Take & How to Resolve Complaints

Some disciplinary cases are resolved in a matter of weeks or months, others take many years. The time frame depends largely on the lawyer's cooperation, the complexity of the matter, the number of grievances pending against the lawyer, the ODC caseload, and the availability of CLC members assigned to the hearing panel. Obviously, if the lawyer consents to discipline or deferred discipline, the process is resolved more quickly than when a hearing is required.

The lawyer can move a disciplinary case forward by responding on time and providing a complete, well-documented explanation about what happened. The investigative stages of the process are not intended to be adversarial. At that point, it is the job of ODC and CLC to gather the facts necessary to make a determination about whether or not to proceed. The more resistant the lawyer is to this effort, the longer the process takes. On the other hand, the lawyer should carefully consider his response. Responding out of anger, offense, or hurt feelings instead of providing a clear, objective explanation requires further inquiry by ODC. The lawyer should call ODC and request an extension in all cases. This allows time to review the file and the relevant rules, to prepare a complete and accurate response, and to have it reviewed by someone who can give objective input.

With or without an extension, it is imperative that the lawyer respond to all inquiries on time and tell the whole truth. Even when there is no merit to the underlying complaint, the lawyer who fails to respond in accordance with RLDE or provides a false or misleading response is subject to discipline.

Whether or not a lawyer should hire counsel to assist in responding to a disciplinary complaint depends on the circumstances. Routine complaints do not require the assistance of an attorney in the preliminary stages of the investigation. However, it is often helpful to get the input of an objective, independent attorney (paid or not) to ensure that the lawyer's personal feelings about have been accused of unethical conduct does not interfere with providing an effective response. Certainly, if it is a very serious matter or the lawyer is accused of criminal conduct, hiring counsel is recommended. It is important to weigh the costs of hiring an attorney[42] against the benefit of having assistance. The majority of grievances are dismissed after review of the lawyer's initial response. In most cases, that can be done without the help of counsel. If a matter proceeds to formal charges, a lawyer should certainly have representation. Should a lawyer decide to retain counsel, it should be someone familiar with both the RPC and the disciplinary process.

[42] Some malpractice insurance policies provide for limited coverage for representation in disciplinary cases. It is recommended that you check the terms of your policy before making a decision about retaining counsel.