TOPIC

Ethics

Outline prepared by Justice Scott Crichton copied with his permission and consent.

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LAWYER'S OATH

I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed or delay any person's cause for lucre or malice.

So help me God.

JUDGE'S OATH

I, _____, DO SOLEMNLY SWEAR THAT I WILL SUPPORT THE CONSTITUTION AND LAWS OF THE UNITED STATES AND THE CONSTITUTION AND LAWS OF THIS STATE AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE AND PERFORM ALL THE DUTIES INCUMBENT ON ME AS JUDGE:

LOUISIANA SUPREME COURT MISSION STATEMENT

Louisiana Supreme Court Mission: To preserve the integrity of the judiciary, to build and maintain public trust, to provide effective and efficient administration of justice in the Supreme Court, to ensure proper administration and performance of all courts under Supreme Court authority, and to ensure the highest professional conduct, integrity, and competence of the bench and bar.

Part I: RECENT AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT, SUPREME COURT RULES AND NOTEWORTHY LEGISLATIVE ACTIVITIES

1. **Amendment of Louisiana Supreme Court Rule IX:** Effective June 1, 2024, the Court amended LASC Rule IX, Section 1, to explicitly provide for the filing of an opposition to an application for rehearing. Under the revised rule, such oppositions must be filed within seven (7) days of the date of the acknowledgement letter issued by the Court regarding the filing of the rehearing application, and no extensions of the deadline will be granted.

2. **Amendment of Louisiana Supreme Court Rule X:** Effective April 1, 2024, the Court amended LASC Rule X, Section 6 to extend the deadline for filing an opposition to a writ application from fifteen (15) days to thirty (30) days, but with the conditions that extensions of time will only be granted for truly exceptional circumstances where the party can demonstrate through clear and convincing evidence that the inability to file the opposition timely was due to circumstances beyond the party's control.

3. **Amendment of Louisiana Supreme Court Rule XXXVI:** By Order dated September 14, 2023, with an effective date of October 1, 2023, the Court amended LASC Rule XXXVI to align the rule with the recusal requirements of Louisiana Code of Civil Procedure article 153 and article 672 and to clarify that the procedure also applies to justices of the Louisiana Supreme Court and judges of limited jurisdiction courts. The rule now requires justices, judges of courts of appeal, and judges of district, family, juvenile, parish, city, traffic, and municipal courts, when a justice or judge recuses himself/herself, to contemporaneously file into the record of the proceeding an order of recusal and written reasons for recusal and provide copies of the same to the judicial administrator of the Louisiana Supreme Court.

4. **Clarification Regarding Emeritus Status:** By Order dated September 22, 2023, the Court amended LASC Rule XVIII, Section 3(B) to clarify that lawyers on emeritus status who engage in the pro bono practice of law through a program established, sponsored, or recognized by the LSBA's Access to Justice Program must do so "without compensation." It was previously somewhat ambiguous as to whether an emeritus attorney's provision of legal services through such programs at a substantially reduced fee could be permissible under the rule.

5. **Amendment to Rule 1.10 of the Rules of Professional Conduct (Imputation of Conflicts of Interest):** Following recommended amendments from the LSBA House of Delegates, the Supreme Court amended Rule of Professional Conduct 1.10, which addresses the imputation of conflicts of interests, effective May 10, 2023. The rule generally provides that while lawyers are associated in a firm, "none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9."

   The new rule contains a new subsection (g), which does not impute to the entire firm a conflict of a ***non-lawyer***, such as a paralegal or secretary, or a lawyer whose conflict arose because of events that occurred before the person became a lawyer, but instead requires that the individual be screened from any personal participation in the matter. The new rule also contains new subsections (c) and (d), which do not impute to the entire firm a conflict of a lateral hire personally disqualified from representing a person with interests adverse to a client of the lateral's former firm, if the lateral hire is screened from personal participation in the matter (and other requirements are met). The new subsections are intended to balance the interests of the client of the former firm with the interests in mobility of attorneys and clients to their counsel of choice. Subsection (c) sets forth the measures that must be taken to protect the confidentiality interests of the lateral's former client. Subsection (d) makes clear that this procedure to avoid imputed disqualification of the firm is not available if the lateral's previous representation involved an adjudicative proceeding directly adverse to the interest of the firm's current client and was pending at the time the lawyer changed firms.

6. Amendment of Rule XXX (Transition Into Practice): By Order dated June 26, 2023, the Court amended Louisiana Supreme Court Rule XXX to allow participation in the Louisiana State Bar Association's Transition Into Practice Program to satisfy the CLE requirements for the first two full calendar years following an attorney's admission to the Bar. The Court took action to encourage newly admitted attorneys to take full advantage of the program's offerings.

Part II: RECENT LAWYER DISCIPLINE CASES

Opinions are available on the day they are released on the Louisiana Supreme Court website.

RULE 1: CLIENT-LAWYER RELATIONSHIP
1.1, Competence

1.3, Diligence
1.4, Communication
1.5, Fees
1.7 and 1.8, Conflict of Interest: Current Clients
1.15, Safekeeping Property
1.16, Obligations Following Termination of Representation

***In re: Sonnier*, 24-0520 (La. XXXXX), -- So. 3d --:** This matter involves ten separate counts, including intentionally dishonest conduct. When respondent left his clients and legal practice, he took unearned fees and insurance payments due to his clients, then failed to disburse those payments. He failed to maintain communication and act diligently toward his clients, causing a delay in the legal matters of his clients and potentially caused the loss of their rights or defenses. The hearing committee recommended respondent be suspended from the practice of law for one year and one day, with no credit for the time served under interim suspension. On the other hand, the disciplinary board recommended responded be disbarred, retroactive to the date of his interim suspension. The board made certain factual findings important to the proceedings in the LASC, including: (i) declining to find a violation of Rule 8.1(c) in one of the counts, finding it was not clear whether respondent personally received notice of the complaints against him; and (ii) finding no misconduct in one count relating to an unpaid court reporter bill. The ODC objected to the board's findings of fact and conclusions of law, but not to the proposed sanction of disbarment. (Rule 1.3, 1.4, 1.5(f), 1.16(d), 8.4(a), 8.4(c), 8.4(d))

- Action: The Court imposed a suspension of disbarment. The Court disagreed with one of the disciplinary board's factual findings, noting that Rule 8.1(c) does not include a "knowing" component and can be found to have been negligently violated. The Court agreed with the disciplinary board's finding that there was no misconduct related to the failure to pay the court reporter.

***In re: Gay*, 24-0620 (La. XXXXXX), --- So. 3d ---:** Respondent represented a client in three separate legal matters. In a personal injury matter, she provided the client with extensive financial assistance, but failed to document the terms and conditions under which that assistance as made. In a criminal case, she improperly paid a bail bondsman to secure a bond on the client's behalf. Finally, in a family law matter, respondent advised the client that she had filed a petition for divorce, but this was untrue. After the ODC filed a complaint against her, respondent filed an untimely response. Thereafter, she failed to provide additional information to the ODC and it was required to subpoena her for a sworn statement. (Rule 1.8(e), 8.1(c), 8.4(a), 8.4(c))

- **Action: The Court imposed a suspension of six months, with all but 60 days deferred.**

- Crichton, J., concurred in part and dissented in part. He dissented as to the sanction, which he found "unduly lenient," and would not defer any portion of the suspension. He stated: "I dissent because I find the sanction imposed unduly lenient and would not defer any of respondent's suspension."

***In re: Hjortsberg*, 24-0149 (La. 6/28/24), 388 So. 3d 382:** This matter involves two counts. Count I related to respondent's self-report that he would plead guilty to a federal misdemeanor related to a tax violation. Count II relates to respondent's representation of a client in a first degree murder trial. During the trial, the client left the courthouse and did not return. Respondent moved for a continuance and a mistrial, but the trial court denied the motions. Respondent then advised the court that he would not participate in the trial and would simply sit at the counsel table, taking no role in the defense. The hearing committee found ODC did not carry its burden of proof as to Count II. The disciplinary board did find a violation but due to the unique circumstances it did not recommend any suspension above that imposed for Count I. (Rules 1.3, 8.4(a), 8.4(d))

- **Action: The Court imposed a suspension of six months, with all but 30 days deferred.** The Court did find a violation on Count II, but imposed no additional period of suspension for this violation, noting the "unique circumstances of this case."

- **Crichton, J., additionally concurs:** Because of the *res nova* nature of the issue, he agreed there should be no additional suspension imposed. However, he wrote separately to discuss his view that the issues posted in Count II "present a policy matter for this Court. In this case, as the majority explains in detail, respondent moved for a continuance when his retained client—who was charged with attempted first degree murder of a police officer, among other charges—fled the courthouse during jury selection. This rare situation occurred without warning and presents to the Court as a *res nova* issue in the professional responsibility context. Though respondent's initial confusion over the situation was understandable, a lawyer in this situation cannot opt to be the proverbial potted plant. The effect of respondent's decision was that, by absconding the courthouse during trial, his client was permitted a retrial due to respondent's choice to sit entirely mute—a result the justice system cannot condone."

- **Crain, J., dissents in part:** He would not find a Rule 1.3 violation, noting that respondent "had no one to assist because the defendant absconded. Through this act, the respondent's ethical obligation to the defendant also disappeared. Further, a defendant must be competent to assist in his defense, or it is a violation of his rights to proceed. La. Code Crim. Proc. art. 641. Here, there was no competent defendant to assist counsel. Under these facts, counsel was not obligated to do anything."

***In re: Plaisance*, 23-1460 (La. 2/6/24), 378 So. 3d 721:** Respondent agreed to represent two people in an automobile accident—one of whom was a minor child. However, the driver may have had fault in the accident, and therefore he could not represent them both. Nevertheless, respondent granted the driver and his insurance company a full release of claims on behalf of the child in exchange for the policy limits. After various procedural issues and after filing a lawsuit, respondent was advised of the conflict by two firms he attempted to enroll as co-counsel. Later, he asked the law firm representing the child not to disburse funds until his fee claim was resolved. (Rules 1.4, 1.7(a), 3.3, 8.4(d))

- **Action: The Court imposed a suspension of two years and one day, with one year**

deferred. Comparing respondent's conduct to other cases, the Court found it "more egregious" and noted he "never adequately explained the conflict of interest to the clients and inappropriately obtained a waiver of an unwaivable conflict. He also attempted to obtain a fee he was barred from receiving because of the conflict and filed frivolous pleadings, all of which delayed the parties' receipt of their settlement funds for months." Further, his "delay[] tactics spilled over into the disciplinary proceedings."

- **Hughes and Genovese, J.J., dissented**, and would impose a lesser sanction.

***In re: Florence*, 2023-B-0592 (La. 12/8/23), 379 So. 3d 1233:** The charges consisted of "numerous failures to address fee disputes and [respondent's] submission of false statements and false evidence to the ODC." Notably, though the hearing committee and disciplinary board both determined there was not clear and convincing evidence of a rule violation related to an affidavit signature, the Supreme Court found the behavior to violate Rule 8.4(c). (Rules 1.3, 1.5(f)(5), 8.1(a), 8.4(c), 8.4(d))

- **Action: Court imposed a suspension of one year and one day.** The Court noted that respondent's conduct caused both actual and potential harm.

***In re: Fields*, 23-0343 (La. 11/17/23), 374 So. 3d 95:** The matter involves multiple counts, including failure supervise his non-lawyer staff, resulting in the conversion of approximately $4.2 million belonging to third parties; intentionally continuing to convert third-party funds totaling approximately $1.8 million in order to pay older third-party debts; failing to maintain a trust account for several years; lying on trust account disclosure statements that he did not handle client funds; allowing non-lawyers to sign trust account checks; charging clients for inappropriate office expenses; settling a client's personal injury claim without the client's knowledge or consent; and lying to the ODC during its investigation. The hearing committee recommended disbarment and the disciplinary board recommended permanent disbarment. (Rules 1.1(c), 1.2, 1.8(e)(3), 1.8(k), 1.15(a), 1.15(d), 1.15(f), 1.15(g), 5.3, 8.1(b), 8.1(c), 8.4(a), 8.4(d))

- **Action: Court imposed a three year suspension.** Despite the presence of numerous aggravating factors, the Court downwardly deviated from the baseline sanction. The Court noted the mitigating factors present, "in particular the significant restitution respondent has already made and continues to make."

- **Weimer, C.J., concurred in part and dissented in part.** He dissented from the discipline imposed, "believing that disbarment is not only appropriate but required based on respondent's prolonged and egregious course of misconduct." He also noted that the conduct extended over a ten year period, and that "efforts at restitution only occurred after respondent was called out for his misconduct."

- Crichton, J., **concurred in part and dissented in part.** He found that regular disbarment was appropriate, as "respondent has engaged in egregious rule violations that, in my view, demonstrate a deliberate disregard for our noble profession and a lack

of moral fitness to practice law. In addition to the specific and intentional conversion of millions of dollars belonging to third parties, respondent has engaged in flagrant dishonesty in the face of these violations."

***In re: Merritt*, 2023-B-00134 (La. 05/31/23), 361 So. 3d 451:** Respondent was hired to represent a client related to a property acquisition. The respondent failed to complete the legal services despite receiving over $11,000 from the client, did not communicate with the clients further, and never tendered the funds to the property seller.

- **Action: The Court imposed disbarment.** Notably, the ODC alleged a violation of Rule 1.5(f)(5) (failure to refund unearned fees), but the Court found no violation of this rule because nothing in the record suggested any portion of the funds paid by the clients represented a legal fee. With respect to the decision to impose regular and not permanent disbarment, the Court explained: "While we acknowledge that respondent has engaged in serious misconduct, we find the imposition of permanent disbarment to be overly harsh and, therefore, unwarranted."

- **Crichton, J. (joined by McCallum, J.), concurred in part and dissented in part:** He agreed with the rule violations, but would have imposed permanent disbarment, explaining: "Respondent's serious misconduct includes the conversion of over $11,000 in client funds, of which there has been no restitution or effort at restitution, despite the former clients being forced to hire another attorney to file a civil suit to recover the funds. These serious charges and the resulting proceedings have been met with total apathy and indifference by respondent, including a failure to answer the charges, failure to present anything in his own mitigation with the Hearing Committee, failure to object to the Hearing Committee's report, failure to file a brief in accordance with the order from this Court directing him to do so, and a total absence of any expression of remorse or regret. . . . [T]he record reflects that respondent has contempt for the proceedings necessary to maintain his law license and lacks the ethical and moral fitness to practice law."

- **Weimer, C.J., dissented in part:** He agreed with Justice Crichton, noting: "Although permanent disbarment is a severe sanction, it is unfortunately justified in this matter because the respondent filed no response, demonstrated no regret or remorse, and made no restitution."

***In re: Moffett*, 21-1058 (La. 10/19/21), 326 So. 3d 248:** Respondent is the subject of 49 counts of formal charges, which allege a pattern of misconduct by respondent of accepting legal fees from clients and then abandoning the representation without further communication and after doing little, if any, work in the matters. Respondent failed to return his clients' files upon request and failed to refund unearned fees and advanced costs totaling approximately $130,000. He also engaged in the practice of law while suspended and failed to cooperate with the ODC. Felony theft charges are pending against respondent arising out of two client matters in which he accepted fees but failed to perform any work. (Rules 1.3, 1.4, 1.5(f)(5), 1.16(d), 5.5, 8.1(c), 8.4(a), 8.4(c).)

- Action: Court imposed disbarment. "Respondent knowingly, if not intentionally, violated duties owed to his clients, the public, the legal system, and the legal profession. His misconduct caused significant actual harm, in particular to his clients, whose legal matters were not completed and who did not receive reimbursement of the fees they paid."

- **Crichton, J., additionally concurred,** writing: "A lawyer, who by virtue of his fiduciary relationship with clients, so blatantly violates the Rules of Professional Conduct and commits the tort of conversion or the crime of felony theft, as did the respondent here, shall be subject to proceedings in the lawyer disciplinary system and this Court, as well as in potential civil and criminal proceedings, with the hope that a full measure of justice be achieved." He also noted that there is "substantial rehabilitative work to be done, including massive reimbursement and resolution of pending legal matters arising out of respondent's misconduct, which will likely take more than five years."

***In re: Schoenberger*, 21-0191 (La. 6/30/21), 320 So. 3d 1125:** After ODC received a notice of an overdraft in respondent's client trust account, an auditor discovered discrepancies in respondent's trust account, revealing a shortage of funds. Nearly $60,000 in client proceeds, third-party liabilities, and IOLTA interest were identified as collected but not paid. The analysis also revealed that in four client matters, respondent backdated certain checks. (Rules 1.15(a), 8.4(c).)

- **Action: The Court suspended respondent for one year and one day,** with all but 60 days deferred, and two years of supervised probation with conditions.

- **Crichton, J., concurred in part and dissented in part.** He agreed with the violations, but disagreed with the sanction, which he found "too harsh under the particular facts and circumstances of this case." He noted the presence of "numerous mitigating factors," including full and free disclosure and cooperative attitude during disciplinary proceedings. He also explained that La. Rule 1.15(d) differs from the ABA Model Rule, and stated that the Bar and Court should "examine" the language of the rule to determine whether the Louisiana rule results in "unintended consequences for lawyers, clients, and third parties."

***In re: Whalen*, 20-B-0869 (La. 9/29/20), 301 So. 3d 1170:** Respondent received approximately $280,000 on behalf of a client in connection with her mother's succession. He never provided an accounting for these funds despite numerous requests, and simply declared them to be his attorney's fees without any further explanation. He also caused a significant delay in the resolution of the succession matter, failed to communicate with his client, and failed to place an advance deposit into his client trust account. (Rules 1.3, 1.4, 1.5.)

- **Action: Court imposed disbarment.** Respondent's misconduct caused actual harm to his client and continues to cause such harm, as he has yet to render a full accounting to his client or justify the fee charged. Additionally, he "clearly acted in bad faith" and knew his "accounting" was "not supported by any documentation whatsoever."

Moreover, the "magnitude and duration of the deprivation have been extensive," and respondent has now acknowledged he no longer has the funds in his possession.

Crichton, J. (joined by Crain, J.) dissent, and would impose permanent disbarment. He stated: "To date, respondent has failed to provide a truthful accounting of the apparent conversion of a staggering $280,475.00 in client funds. Additionally, he has displayed indifference toward defending himself against these very serious charges . . ." The dissent also notes the victims should be advised "of the specific purpose of attorney disciplinary proceedings—*i.e.*, to protect the public, maintain high standards of conduct, preserve the integrity of the profession, and deter future misconduct—and that such proceeding is distinct from a civil tort action for conversion or a prosecution action for theft."

RULE 2: COUNSELOR
2.1, Advisor

***In re: Pierson*, 22-B-1439 (La. 5/5/23), 362 So. 3d 371:** The underlying facts here are complex and involve three separate instances of respondent entering into business transactions with clients. (1) Respondent persuaded his client to provide a $500,000 loan to an LLC of which he was part owner, without fully disclosing the terms of the transaction and without advising her to seek the advice of independent counsel. Respondent benefited from the loan and was partly responsible for the LLC's default, to his client's detriment. The client is owed $790,255. (2) Respondent obtained a personal loan from a client in the amount of $5,000. He failed to pay interest, took years to repay the loan, did not reduce it to writing, and did not inform the client to seek the advice of independent counsel before agreeing to the loan. (3) Respondent obtained a personal loan from a client for over $27,000. The loan was reduced to writing and the client obtained a lien on the vehicle to secure the loan, but at the time of the loan, respondent represented the client and never advised him to seek the advice of independent counsel before providing the loan. (Rules 1.8(a), 2.1, 8.4(a), 8.4(c))

- **Action: The Court imposed disbarment** and ordered restitution. The Court particularly noted the "numerous aggravating factors" and no mitigating factors.

RULE 3: Advocate

3.1, Meritorious Claims and Contentions
3.2, Expediting Litigation
3.3, Candor to the Tribunal
3.4, Fairness to Opposing Party and Counsel
3.5, Impartiality and Decorum of the Tribunal
3.6, Trial Publicity
3.8, Special Responsibilities of a Prosecutor

***In re: Klein*, 23-0066 (La. 5/18/23), 362 So. 3d 392:** Respondent has a disciplinary history attorney (1975, 1987 (suspended for three months), 1988, 1989, 1993, 2018), and the instant charges relate to filing duplicative and unnecessary pleadings in state and federal court (and removing a case to federal court twice) in order to delay and disrupt proceedings in a case. Before a hearing on his matter even occurred in the district court, respondent to filed two writ applications in the LASC seeking "protection" from possible Orders of Contempt (which were then forwarded to ODC, who, in turn, opened an investigation). Respondent also sought to recuse the district judge from a matter, accusing him of being partial towards the opposing law firm (Kean Miller) and stating that his integrity had been compromised. During its investigation of this matter, ODC discovered that respondent threatened the managing partner of Kean Miller and stating he would file a legal malpractice claim and demanding a settlement of $3 million. Respondent also asserted in pleadings that Kean Miller was complicit in aiding and abetting criminal activity on the part of its client and began sending harassing and threatening messages to other non-attorney employees of the firm as well. After being charged with the violations, respondent answered the formal charges and denied misconduct. However, he did not appear at the hearing, which proceeded in his absence. (Rules 3.1, 3.3()(1), 3.4(c), 3.5(a), 3.5(b). 3.5(d), 4.4(a), 8.2(a), 8.4(a), 8.4(c), 8.4(d).)

- **Action: The Court imposed a suspension of one year and one day.** The Court noted, in part: "Respondent's actions in the instant case clearly crossed the boundary between zealous advocacy and professional misconduct. . . . He filed multiple pleadings into the record without leave of court, in clear violation of the trial court's order. He improperly entered into ex parte communications with the trial court's law clerk, which the committee found represented an 'inappropriate and disruptive attempt to influence the court.' Finally, he has repeatedly made unfounded accusations of improper conduct against opposing counsel and the trial court.

  Significantly, respondent's harassing conduct did not abate after the filing of formal charges but has continued during the course of these disciplinary proceedings. Respondent's filings in this disciplinary matter are replete with unsubstantiated attacks on the integrity of the ODC, the trial judge, and opposing counsel. . . . Such unsupported attacks clearly exceed the bounds of mere advocacy.

  Respondent has also burdened this court during these disciplinary proceedings by filing multiple motions and pleadings, the vast majority of which have no bearing on the issues presented in his disciplinary case. . . . Taken as a whole, respondent's actions, both in the context of the underlying litigation and the disciplinary proceedings, display a disturbing lack of respect for the judicial system and his obligations as a professional.

  As aptly stated by Justice Crichton, "[i]t is unfortunate that respondent does not seem to understand that being a zealous advocate does not equate to such repugnant disrespect for the system we are charged to honor and serve." *In re: McCool*, 15-0284 (La. 6/30/15), 172 So. 3d 1058, 1090 (Crichton, J. concurring). It is beyond question that the formal charges have been proven by clear and convincing evidence."

- **Crichton, J., dissented as to the sanction** only, which he found "unduly lenient." He

stated: "Respondent has not only continued to deny any responsibility for his misconduct, he has engaged in a pattern of filing repetitive and unnecessary documents in this Court since the Office of Disciplinary Counsel filed its formal charges against him. . . . These meritless documents have served no other purpose than to harass and detract from the important work of this Court. In my view, respondent's prior misconduct throughout his career, coupled with the present violations, demonstrate that his abusive disregard for the most basic rules of decorum outweighs any alleged 'advocacy' he may claim. He has caused needless delay and disruption and has shown zero remorse for his actions. Accordingly, I would impose a lengthier suspension than that set forth by the majority."

***In re: Perricone*, 18-B-1233 (La. 12/5/18), 263 So. 3d 309:** Respondent, an Assistant United States Attorney, posted over 2600 comments on nola.com, including 100-200 comments on cases he and/or his colleagues were prosecuting. The ODC alleged the comments constituted extrajudicial statements about the guilt or innocence of defendants and/or others under investigation or prosecution that had a substantial likelihood of materially prejudicing proceedings and heightening public condemnation of the accused. Respondent admitted the factual allegations, and offered testimony from a psychologist that he suffered from PTSD and his postings were the result of his PTSD. He testified that he thought his online activities would help him deal with the stress of his work as an AUSA. (Rules 1.7(a)(2), 3.6, 3.8(f), 8.4(d), 8.4(a))

- **Action: The Court imposed disbarment.** The Court found respondent knew his postings were forbidden, and caused serious, actual harm in two cases, and "profound" harm to the reputation of the USAO. The Court noted that "any mental disability from which respondent suffered did not prevent him from knowing his actions were wrong," and found "no support for the conclusion that respondent has proven his mental condition caused the misconduct." The Court stated: "[C]onsidering respondent's position of public trust as a prosecutor, his knowing and intentional decision to post these comments despite his acknowledgment that it was improper to do so, and the serious harm respondent's conduct has caused both to individual litigants and to the legal profession as a whole, we must conclude he has failed to comply with the high ethical standards we require of lawyers who are granted the privilege to practice law in this state. The only appropriate sanction under these facts is disbarment."

- **Crichton, J., additionally concurred,** noting the case "highlights the difference between disbarment and permanent disbarment in attorney disciplinary proceedings." Had respondent agreed to interim suspension and received disbarment upon conclusion of disciplinary proceedings, he would be entitled to file a petition for reinstatement sooner. "In other words, the sanction of disbarment imposed at this point in respondent's profession, at the age of 67, is arguably akin to permanent disbarment and essentially a legal profession death sentence. Whether respondent would ever be readmitted – even conditionally readmitted – is a question for another day, but the sanction of disbarment now precludes any consideration of it for five years from the date of this opinion."

RULE 4: TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1, Truthfulness in Statements to Others
Rule 4.2, Communication with Persons Represented by Counsel
Rule 4.4, Respect for Rights of Third Persons

***In re: Band*, 23-0284 (La. 11/17/23), 374 So. 3d 118:** Respondent represented a client in a civil matter. During the litigation, respondent contacted the opposing party, who was represented by counsel, multiple times. These communications were through social media, email, and by telephone, and were made without the authorization of the opposing party's counsel. Some of the communications were "peculiar," as in one message, respondent requested that the opposing party "wear something low cut." Respondent later testified that he made these communications because he was "confused" and thought the opposing party was "in between counsel" during the communications. He also stated that the "low cut" comment was "supposed to be a joke." Notably, the hearing committee recommended that respondent submit to an examination by a mental health professional. As the Court later explained: "The committee noted that throughout the hearing, respondent did not appear to understand or appreciate the charges against him or the nature of the proceedings." The board agreed, noting that respondent represented to the board that he had undergone neuropsychological testing for "memory problems," and that the results were normal for someone his age, he failed to submit a copy of the testing report to the board to support these assertions. (Rules 4.2(a), 8.1(a))

- **Action: Court imposed a suspension of six months, with all but 30 days deferred.** The Court also required that, before reinstatement from suspension, respondent consult a neuropsychologist "or other mental health professional designated by JLAP to determine his competency to continue to practice law."

- **Hughes, J., dissented,** finding the discipline imposed "overly onerous."

- **Genovese, J., and Crain, J., dissented,** finding the discipline imposed too lenient.

***In re: Band*, 23-0284 (La. 5/7/24), 384 So. 3d 344:** Upon respondent's petition, the Court granted conditional reinstatement to the practice of law, which requires that (i) respondent remain under the supervision of an ODC practice monitor; (ii) respondent cooperate with the ODC and undertake any additional evaluations required; and (iii) the ODC to file a report upon the expiration of the conditional reinstatement period recommending the conditional reinstatement be allowed to terminate or be extended.

RULE 5: LAW FIRMS AND ASSOCIATIONS

Rule 5.1, Responsibilities of Partners, Managers, and Supervisory Lawyers
Rule 5.3, Responsibilities Regarding Nonlawyer Assistance
Rule 5.5(a), Engaging in the Unauthorized Practice of Law
Rule 5.5(b), Assisting a person in the unauthorized practice of law

***In re: Walsh*, 24-0026 (La. 3/5/24), 379 So. 3d 1251:** Respondent had a significant disciplinary history, dating back to 2018. He had not yet sought reinstatement from his 2018 suspension when he engaged in the unauthorized practice of law, failed to advise his client of his suspension, and fraudulently filed pleadings under his father's name and bar roll number to conceal his unauthorized practice of law. He was disbarred for this in 2021; he was later adjudged guilty of additional rule violations for first offense DWI. In the instant case, respondent informed an investigator for the East Baton Rouge Parish Coroner's Office that he was an attorney representing a client attempting to obtain reports related to her daughter's death. The investigator determined respondent was disbarred and filed a disciplinary complaint. The client later confirmed she had hired respondent and paid him $500. (Rules 1.16(a)(1), 5.5(a), 8.1(b), 8.1(c), 8.4(b), 8.4(c))

- **Action: Court permanently disbarred respondent.** The Court found this case met the standards for permanent disbarment in Supreme Court Rule XIX. Respondent's disregard of the already-existing disbarment order "demonstrates a convincing lack of ethical and moral fitness to practice law. Respondent has demonstrated multiple times that, given the chance, he will continue to engage in the unauthorized practice of law in defiance of our orders." Further, "given respondent's defiance of previous court orders and his complete lack of cooperation in this proceeding, there is no reasonable expectation of significant rehabilitation in his character in the future."

- **Crain, J.**, concurred: "I doubt that permanent disbarment will stop someone who was unfazed by his disbarment. The unauthorized practice of law is a crime. La. R.S. 37:213."

***In re: Magee*, 23-0364 (La. 1/19/24), 377 So. 3d 661:** Respondent was suspended from the practice of law for two years, and agreed with the ODC that his last day of practice would be February 13, 2019. Respondent began to close his law practice, but at the time he was negotiating for a client in a suit brought by State Farm to recover insurance premiums. The last day that respondent could practice law, State Farm rejected his offer and made a counter-offer. Five days later, his legal assistant sent an email with respondent's signature asking to "split the difference." The hearing committee recommended a public reprimand and ethics school. The disciplinary board recommended a suspension of one year. (Rules 5.5(a), 5.5(e)(3)(v), 8.4(a))

- **Action: Court imposed suspension of a public reprimand.** Though the record established misconduct, the Court found a significant mitigating effect in the "ODC's considerable delay in instituting disciplinary charges in this matter." Though some delay is inherent in the disciplinary process, it may be considered as a mitigating factor when it "results in prejudice to the respondent."

RULE 7: INFORMATION ABOUT LEGAL SERVICES
7.2, Communications Concerning a Lawyer's Services
7.7, Evaluation of Advertisements
7.10, Firm Names

***In re: Hall*, 23-0935 (La. 12/5/23), 373 So. 3d 692:** This case relates to two separate charges. In the first, respondent engaged with a web development company for an advertising campaign with his law firm. He authorized his law firm staff to send a letter engaging the media firm under his signature. Later, respondent refused to pay for additional services and terminated the relationship. After the law firm was sued for this failure to pay, respondent made false statements in legal proceedings, stating that he and his law firm were "completely unaware of the existence of" the web development company. During ODC's investigation, respondent testified that contrary to his representation in the legal filing, he was aware of the existence of the company.

In the second count, respondent violated advertising rules by not submitting an advertisement for LSBA review, failing to disclose his office location and omitting required disclaimers in the advertisement. (Rules 3.3(a)(1), 3.3(a)(3), 7.2(a)(2), 7.2(c)(1)(l), 7.7(c), 8.4(c), 8.4(d))

- **Action: The Court imposed a suspension of four months, fully deferred.** Though there were several aggravating factors (prior disciplinary record, dishonest or selfish motive, multiple offenses, and substantial experience in the practice of law), the Court also recognized certain mitigating factors, including good faith effort to rectify the consequences of the misconduct, good character and reputation, and remorse.

***In re: Eugene P. Redmann*, 21-0955 (La. 10/5/21), 325 So. 3d 366; *In re: John W. Redmann*, 21-1060 (La. 10/5/21), 325 So. 3d 364**: In these cases, both respondents advertised on billboards without presenting the advertisements to the LSBA prior to or concurrently with dissemination of the advertisements. The content of the ads was not false, misleading, or deceptive, but it failed to include one or more bona fide office locations of the lawyer to perform the advertised services in accordance with Rule 7.2(a)(2). (Rules 7.2, 7.7.) Both cases involved petitions for consent discipline; in both cases, the parties agree that respondents acted negligently, causing no actual harm but creating the potential for harm.

- **The Court imposed a public reprimand on both respondents**, noting that each previously received private discipline for failure to comply with the advertising rules (private admonishments in 2013).

- **McCallum, J., concurred in both cases,** and noted that no actual harm was caused

and the infractions are minor, but reflect the Court's "continuing efforts to address widespread abuses in lawyer advertising."

RULE 8: MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4(b), Misconduct (Criminal Act)

In re: Neal, 23-0344 (La. 11/17/23) 374 So. 3d 125: Respondent was arrested for battery of his son's employer. After the employer notified respondent that his son was late for work and asked for his phone number, respondent replied with an abusive and racially improper text message. He then showed up at the restaurant in a rage, grabbed the victim's ankles, and pulled him the length of and off the preparation counter, causing the victim to fall on his back and head to the concrete floor. From there, respondent dragged the victim into the kitchen and knelt on his upper chest and neck. Respondent then grabbed the victim's head, which he repeatedly pounded into the floor, and was heard to say, "I will kill you." The attack ended when a female employee, in an effort to pull the victim free from respondent, reached out and grabbed the victim as he lay on the kitchen floor. Other employees who witnessed the attack called 911 and summoned police. Respondent disengaged and left the premises. During the disciplinary investigation, the ODC obtained text messages sent by respondent to the victim on the day after the event. In the messages, respondent asked the victim to provide false information to police and suggest to police that the attack was all a big misunderstanding. (Rules 8.4(a), 8.4(b))

- **Action: Court imposed a suspension of ne year and one day, with six months deferred and two years probation.**
- **Weimer, C.J., concurred in part and dissented in part.** He found the respondent's "lack of candor" related to the text message sent to the victim to merit a lengthier period of actual suspension.
- **Crain, J., dissented,** finding the suspension imposed too lenient.

In re: Soileau, 22-1764 (La. 3/7/23), 356 So. 3d 1012: Respondent's disciplinary history dates back to 1985 as an attorney. He was disciplined and suspended for six months without pay in 1987, while serving as a judge. In 1997 he pleaded guilty to federal crimes and was suspended from the practice of law for two years. In 2013, he was admonished for further violations of the Rules of Professional Conduct. This case consists of two counts. In the first, respondent was booked with third offense DWI after a traffic accident. In the second,

respondent was arrested on charges of letting premises for prostitution, obstruction of justice, and prostitution. He was apparently financing illegal activities of a known crystal methamphetamine dealer, encouraging her to "get rid of whatever you have" when he knew police were nearby, thereby counseling a client engaged in criminal conduct. Respondent failed to answer the charges or otherwise cooperate in the investigation. (Rules 1.2(d), 8.4(a), 8.4(b), 8.4(c))

- **Action: The Court imposed permanent disbarment,** stating in part: "Respondent's misconduct was undoubtedly egregious. By interfering with a police investigation and counseling a client to destroy evidence, respondent has demonstrated a convincing lack of ethical and moral fitness to practice law. Furthermore, respondent's long prior disciplinary history, both as an attorney and a judge, demonstrates that there is no reasonable expectation of significant rehabilitation in his character in the future."

- **Hughes, J., dissents, and would impose regular disbarment.**

***In re: deBlieux*, 19-B-1515 (La. 1/29/20), 340 So. 3d 587:** Respondent, who was separated from his wife, kicked in the door of her home and entered without permission. He encountered her with a male guest, pushed her, and engaged in a physical altercation with the guest. He returned to the home several times and threw a cinderblock through the window of her vehicle, while two of his children cried in the back of his vehicle. Respondent stipulated that his conduct constituted one felony offense of unauthorized entry of an inhabited dwelling, as well as three misdemeanor offenses: domestic abuse battery, simple battery, and simple criminal damage to property. Respondent argued he was entitled to the mitigating factor of mental disability due to anxiety, depression, and irregular use of Lexapro. (Rules 8.4(a), 8.4(b))

- **Action: Court imposed one year suspension.** The Court noted mitigating factors of absence of a prior record, personal or emotional problems, good faith effort to make restitution or to rectify consequences of the misconduct, a cooperative attitude toward the disciplinary proceedings, and remorse. The Court found no clear and convincing evidence of mental disorder.

- **Johnson, C.J. (joined by Crain, J.),** dissented, finding the one year suspension too lenient, and would have imposed a two year suspension. She found that respondent's action resulted in serious harm, and the "potential for more serious harm was great." Further, she found it "even more troubling that these events took place at approximately 2:00 a.m. with respondent's minor children present."

- **Crichton, J., concurred in part and dissented in part,** finding the sanction "unduly lenient" in light of the "intentional and violent behavior." He would have imposed a

suspension of one year and one day, specifically pointing to inconsistencies in the record that he found indicated "respondent may not have been completely forthright" regarding his dismissal from employment at the East Baton Rouge District Attorney.

***In re: Steger*, 18-B-1979 (La. 5/8/19), 283 So. 3d 463:** Respondent had a history of criminal events, including two charges related to alcohol use during Mardi Gras (one involving interfering with police and public nudity), two charges related to operating a vehicle while intoxicated, and one charge of simple battery stemming from a domestic incident. None of these incidents were reported to ODC. In 2013, respondent drank two bottles of wine and consumed Ambien, then got in his car and drove it into a tree. After being transported to an emergency room, he bit the nurse treating him, leading to a charge of battery. He was arrested and released. The next day, he consumed more wine and Ambien, blacked out, then commenced driving and was arrested for driving erratically. In 2017, he executed a recovery agreement with JLAP after a 90 day treatment program. (Rules 8.4(a), 8.4(b))

- **Action: Court imposed a suspension of 18 months, with all but six months deferred.** The Court stated: "Respondent knowingly violated duties owed to the public and the legal profession. The amount of injury was significant. Respondent caused actual harm to himself, the legal profession, and to the nurse upon whom he committed an assault. He also caused potential harm to those he endangered by driving while intoxicated."

- **Weimer, J., concurred in part and dissented in part.** He agreed that discipline was merited, but believed a sanction of one year and one day was appropriate given "the respondent's remarkable recovery and the outstanding recommendations of the character witnesses and those involved in his recovery."

***In re: Gaubert*, 18-1980 (La. 2/11/19), 263 So. 3d 408:** Respondent was intoxicated in a taxicab in which she was a passenger and had a sexual encounter with the driver. The cab driver later reported having been sexually assaulted by respondent. She was charged with simple battery, and later found guilty. One year later, she reported to the NOPD that she was a victim of extortion and video voyeurism perpetrated by the cabdriver, and he was arrested on those charges, spending 30 hours in jail. She was later charged with one count of false swearing for the purposes of denying a constitutional right. She was later found guilty of criminal mischief, a misdemeanor, based on her false report of extortion. During proceedings in the ODC, respondent filed nothing for the committee's consideration. (Rules 8.4(b))

- **Action: Court imposed a suspension of one year and one day.** The Court found, that, "[b]y her convictions, respondent violated duties owed to the legal profession, causing substantial actual injury to the public and to [the driver], who spent about thirty hours in jail as a result of respondent's false accusations of video voyeurism and extortion. These crimes, by definition, involve intentional acts."

- **Crichton, J., additionally concurred,** noting that he considers it "troublesome when

attorney respondents fail to participate meaningfully in the proceedings against them."

***In re: DeJean*, 18-1333 (La. 1/30/19), 264 So. 3d 424:** Respondent had a history of prior discipline. In this case, he was in a physical altercation with the district attorney as the parties were leaving the judge's chambers after a conference. He was charged with simple battery and sentenced to serve six months in the parish prison, suspended, with 18 months of supervised probation, including a psychological evaluation. Respondent maintained that the district attorney initiated the altercation and he acted in self-defense.

- **Action: Court imposed a suspension of one year and one day,** finding respondent's criminal conduct intentional. He violated duties owed to the public, the legal system, and the legal profession, causing actual harm to the profession and potential harm. The Court held: "Considering respondent's disciplinary history, we find it appropriate to fashion a sanction which is both responsive to respondent's current misconduct and which will protect the public in the future by requiring him to demonstrate fitness prior to being reinstated to the practice of law." (Rules 8.4(b), 8.4(d).)

***In re: Mecca*, 16-1116 (La. 1/20/17), 214 So. 3d 827:** Respondent was found to have been accepting marijuana as payment in exchange for providing legal services.

- **Action: Court imposed a one year actual suspension from the practice of law, with no portion deferred.** The Court rejected the board's recommendation of a more lenient suspension, stating: "[c]onsidering that respondent bartered his legal services for illegal drugs, directly implicating the practice of law and causing harm to the legal profession, we will not defer any portion of the suspension." (Rule 8.4(b).)
- **Knoll, J., dissented,** finding the sentence unduly harsh and noting that respondent is "contrite" and "has been an outstanding participant in the [JLAP]."
- **Weimer, J. concurred in part and dissented in part,** stating he would impose a two year suspension, with all but six months deferred. He stated: "Indeed, we cannot and should not overlook the abuse of the respondent's license to practice law, an abuse which was inherent when he bartered his legal services for an illegal drug. Such action essentially victimizes each attorney who practices law in a legitimate and ethical manner; such action also inappropriately burdens our system of justice."
- **Guidry, J., concurred in part and dissented in part,** agreeing respondent committed ethical misconduct, but would impose a greater discipline.

Rule 8.4(b) – Special Section on DWIs

In ***In re: Baer*, 09-B-1795 (La. 11/20/09), 21 So. 3d 941**, this Court noted in a case involving multiple DWI charges: "Respondent caused tangible harm in the form of property damage; however, the committee felt the more serious harm results when members of the legal profession engage in criminal acts, which give rise to a ***lack of confidence by members of the public in those who are officers of the court***." (Emphasis added.) The Court further explained:

> We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.

***See also In re: Wilson*, 2020-1488 (La. 5/13/21), 320 So. 3d 1064:** Respondent was arrested on charges of DWI, driving left of center, and having an expired registration certificate. She enrolled in a pre-trial diversion program to resolve the criminal charges. She self-reported to the ODC and was referred to JLAP. Upon being recommended for long-term inpatient treatment, respondent declined to do so on the basis that she contended it would cause her financial difficulty and she does not have a substance abuse issue. (8.4(b).)

- **Action: Court imposed a suspension of one year and one day,** with all but 90 days deferred, subject to the condition that before being reinstated, respondent shall produce evidence that she is in compliance with all treatment recommendations of JLAP and has entered into an appropriate monitoring contract.

- **Weimer, C.J., concurred,** noting that while *Baer* forms a "useful starting point for analysis of the appropriate discipline in cases arising from substance abuse issues, we do not and should not apply it in a purely mechanical fashion. Rather, each case must be evaluated to determine the unique facts and circumstances bearing on the attorney's condition. An important component of this analysis is the willingness or unwillingness of the attorney to submit to appropriate evaluation by the professionals at JLAP and to avail himself or herself of suitable treatment as recommended by these professionals. While the primary aim of the court is not to punish attorneys for their substance abuse problems, the overarching duty of this court to protect the public may justify imposition of different types of sanctions depending on the attorney's level of cooperation in addressing any substance abuse issues."

DWI – One Offense

- *In re: Bensabat*, 23-0620 (La. 12/8/23), -- So. 3d --: Respondent was arrested on charges of DWI and pleaded guilty to first offense DWI. He self-reported to the ODC. The majority imposed a suspension of three years, deferred in its entirety.

  Chief Justice Weimer and Justice Crichton dissented. Justice Weimer wrote that "the discipline imposed by the opinion problematic and ineffective," noting that it departed from the standard set forth in *In re: Baer*. He explained: "Since 2009, this court has continued to adhere to the *Baer* standards, imposing an actual period of suspension in cases in which attorneys with substance use disorders are not participating in JLAP or otherwise able to prove their substance abuse problems have been resolved. . . . Although respondent only had one conviction for DWI, the record indicates he has a significant unresolved substance abuse issue. . . . In his testimony before the committee, respondent explained that he has been drinking alcohol on a regular basis since the age of fifteen. He acknowledged that alcohol played a part in the failure of his marriage. Nevertheless, he admitted that he continues to consume alcohol 'just about every day.' . . . The majority opinion's complete deferral of the suspension is unjustified in this case, where respondent has not fully cooperated with JLAP, and has otherwise refused to obtain treatment and delayed this matter by being evaluated and re-evaluated, while appearing at the re-evaluation under the influence. The sanction imposed does nothing to help respondent, does nothing to protect respondent's clients, and fails to adequately protect the public. There is no question respondent's untreated alcoholism impairs his practice, regardless of respondent's naive belief otherwise."

  On rehearing, Justice Crichton noted he would grant the application and order that respondent be suspended for one year and one day in adherence with *Baer*.

- ***In re: Fontenot*, 23-0759 (La. 9/19/23), 370 So. 3d 450:** Court imposed suspension for one year and one day for one DWI arrest and noted respondent failed to answer the formal charges. The Court stated: "Respondent committed a single DWI offense. However, due to his lack of cooperation with the disciplinary investigation, we do not know whether he suffers from a substance abuse problem. An actual suspension is therefore warranted."

- ***In re: Crawford*, 20-0691 (La. 7/2/20), 297 So. 3d 732:** Court imposed suspension for one year and one day for one DWI arrest and no compliance with JLAP recommendation.

- ***In re: Niswanger*, 20-0186 (La. 3/9/20), 290 So. 3d 1128:** Court imposed suspension of one year and one day, fully deferred, subject to a period of probation coinciding with a two-year JLAP agreement, for one DWI arrest.

- ***In re: Janney*, 20-0242 (La. 3/16/20), 294 So. 3d 1024:** Court imposed suspension of one year

and one day, fully deferred, subject to a period of probation coinciding with a five-year JLAP agreement, for one DWI arrest.

DWI – Two or More Offenses

- *In re: Groome*, 20-0737 (La. 9/29/20), 301 So. 3d 1166: Court imposed suspension of one year and one day, fully deferred, subject to conditions relating to recommendations made by JLAP, for two DWI arrests.

- ***In re: Radziewicz*, 20-0641 (La. 8/5/20), 300 So. 3d 840:** Court imposed suspension for one year and one day, fully deferred, subject to a period of probation coinciding with a two-year JLAP agreement, for two DWI arrests.

- ***In re: Bopp*, 20-0070 (La. 2/26/20), 290 So. 3d 172:** Court imposed suspension of one year and one day, with all but ninety days deferred, followed by a period of probation coinciding with a five-year JLAP agreement, for two DWI arrests.

- ***In re: Chadwick*, 18-0691 (La. 6/15/18), 245 So. 3d 1041:** Court imposed suspension of one year and one day, with all but six months deferred, followed by two years of unsupervised probation, for two DWI arrests; No JLAP agreement required.

RULE 8: MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4(c), Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation

Rule 8.4(d), Conduct Prejudicial to the Administration of Justice

***In re: Andrus*, 21-1508 (La. 1/19/22), 348 So. 3d 706:** Respondent was retained to represent a client related to an insurance claim for property damage. He accepted insurance checks for his client and distributed funds to pay for home repairs, but the balance of the client trust account was regularly below the amount he was purportedly holding on the client's behalf. He failed to respond to the client's request for the return of his files. In response to the disciplinary complaint, respondent asserted his truck was burglarized, and his laptop containing his response to the ODC complaint was stolen. He provided to ODC a copy of a handwritten statement to the police in support of this claim, but the police department was unable to verify receiving the complaint and further noted irregularities in it, including the absence of a complaint number. Finally, when ODC attempted to serve its subpoena upon him, respondent pretended to be his twin brother. (Rules 1.5, 1.15, 8.1(a), 8.1(b), 8.1(c), 8.4(d))

- **Action: Court imposed disbarment.** The Court noted the "numerous instances of deceptive

behavior." The Court further stated: "From the incredible tale of a vehicle burglary offered as justification for failing to timely respond to the disciplinary complaint, to his attempt to evade service of a subpoena by claiming to be his identical twin brother, and finally to submitting fabricated receipts and invoices to the ODC, respondent has violated the most fundamental duty of an officer of the court. The utter absence of candor respondent has demonstrated in these proceedings calls his good moral character into serious question and warrants disbarment."

- **Crichton, J.,** additionally concurred, noting respondent's "astonishing level of deception and conversion of client funds." He wrote separately to "again highlight the potential availability of other legal remedies outside the disciplinary process," which is distinct from a civil tort action for conversion or a prosecution action for theft.

***In re: Nalls*, 20-B-1126 (La. 3/24/21), 347 So. 3d 675:** Respondent had a lengthy disciplinary history and has not been authorized to practice law in Louisiana since January 2009. In this matter, which involves two charges, respondent represented two clients, but never advised either client that he was disbarred and unable to practice law. (Rules 5.5(a), 8.4(a), 8.4(c).)

- **Action: Court imposed disbarment,** and extended the minimum period for readmission for an additional five years. The Court noted that respondent held himself out to be a lawyer after his disbarment and engaged in the unauthorized practice of law. "This conduct, combined with that involved in his prior disciplinary matters, indicates that respondent lacks the moral fitness to practice law and is a threat to his clients, the legal profession, and the public."

- **Weimer, C.J., dissented on the sanction,** and would impose permanent disbarment.

- **Crichton, J. (joined by McCallum, J.), dissented,** and would impose permanent disbarment. He noted respondent's "outrageous actions," specifically filing a motion to recuse the entire Louisiana Supreme Court and accusing seven justices of "inexplicable bias" that was "racially motivated." He explained: "Without a scintilla of evidence, this respondent has pursued a series of false allegations in both his written submissions and in his oral argument to this Court." These implicated additional rules of professional misconduct, including 3.1, Meritorious Claims and Contentions; 3.3, Candor Toward the Tribunal; 3.5, Impartiality and Decorum; and 8.1, Bar Admission and Disciplinary Matters. He also pointed to the Code of Professionalism, noting it provides that lawyers should "be mindful of our responsibility to the judicial system, the public, our colleagues and the rule of law" and should aspire to the highest ideals of our profession.

***In re: Napoli*, 2017-0503 (La. 5/19/17), 219 So. 3d 1063:** This application concerned an ADA who sent unprompted and inappropriate text messages to a trial judge, complaining about her and requesting she stop speaking negatively about the ADA to his colleagues. Allegedly, the judge referred to the DA and ADA as "Satan" and "Lucifer." Even though the trial judge ordered the ADA to stop texting her, the ADA continued to do so. The writ application was denied.

- **Crichton, J., concurred in the denial,** but observed that this "silly drama undermines serious business—the efficient administration of criminal justice." He also wrote that "[t]his reality-show behavior has no place in our criminal justice system, which should be less burdened by unprofessional actors and more supported by lawyers who uphold their oath to serve the people of Louisiana."

***State v. Dixon*, 17-KK-0556 (La. 5/19/17), 220 So. 3d 697:** The Court denied the writ in this criminal case. During the trial, defense counsel used a wig during his closing argument to demonstrate the impossibility of the victim being dragged by her hair, and the trial judge found defense counsel in contempt of court. In her written reasons, the trial judge observed that "[n]o attempt was made to use the wig demonstratively, other than to look ridiculous" and that defense counsel was "clearly mimicking, mocking and belittling the alleged victim."

- **Crichton, J., concurred in the denial,** remarking: "While zealous and passionate advocacy is commendable, especially in closing argument of a criminal jury case, it must be within the bounds of appropriate decorum established by law and the Rules of Professional Conduct. Because the trial judge observed this behavior, in my view, she was in the best position to determine whether defense counsel crossed that line, *see generally* La. C.Cr.P. art. 21(A), and engaged in contemptuous behavior."

PROFESSIONALISM GUIDELINES

***Randazzo v. Imbraguglio*, 2021-CC-1562 (La. 12/21/21), 329 So. 3d 282 (writ not considered on timeliness grounds).**

- Crichton, J., additionally concurred in the disposition, but wrote separately "to note that the applicant's blatant violation of this Court's rule prohibiting discourteous language in a writ application is troublesome." La. Sup. Ct. Rule 7, sec. 7 provides that language in briefs or documents filed with the Court "must be courteous, and free from insulting criticism of any person, individually or officially, or of any class or association of persons, or of any court of justice, or other institution." Justice Crichton noted the oath all lawyers take, and found that "applicant sets forth overly harsh criticism of the lower courts, describing the 'corrupt' trial court's ruling as a 'massacre of justice' and the court of appeal's 'feebl[y] written' decision as 'feckless,' 'perverse,' and 'aberrant.' In my view, even in the spirit of zealous advocacy, the use of this language violates our oath as lawyers, our Professionalism Guidelines, and La. Sup. Ct. Rule VII, § 7."

RECENT JUDICIAL DISCIPLINE

***In re: Judge Vercell Fiffie*, 2024-O-0976 (La. XXXX) --- So. 3d ---:** The allegations against Judge Fiffie involved myriad violations, including: (1) engaging in a practice of asking or requiring law enforcement to seek consent before issuing a search warrant, which is not required by law and gives an appearance of bias against law 5 enforcement or in favor of criminal suspects; (2) failing to take timely action on pending warrant requests; (3) failing to comply with a fellow judge's request not to recall her bench warrants without first consulting her; (4) violating an appellate court order, which necessitated a second writ application and an order threatening contempt; (5) requesting that his name not be included in the Sheriff's database as the issuing judge on bond orders; and (6) displaying indifference and being uncooperative with other judges and the Sheriff's office after they made attempts to address his conduct or practices.

The Judiciary Commission recommended he be suspended for six months without pay, with three months deferred. The Commission also recommended two-years of probation during which Judge Fiffie must obtain additional judicial education. **(Canons 1, 2, 2A, 2B, 3A(1), 3A(4), 3A(7), 3B(1), and La. Const. art. V, § 25)**

- Crichton, J., additionally concurred noting that the judge's "flagrant conduct in this case ran the gamut of canon violations that demonstrated persistent conduct prejudicial to the administration of justice." He explained that "most troubling" was Judge Fiffie's conduct before the Commission, including that he "did not appear to appreciate the gravity of the allegations against him" and was unable "to recognize the role of a judge within the judicial system or meaningfully acknowledge his errors."

- **McCallum, J., concurred,** stating: "I join the majority int his result only because I was unable to gain a majority to impose a heavier sanction."

- **Weimer, C.J., concurred in part and dissented in part.** He wrote that as to the discipline imposed, he would have agreed with the Commission's recommendation of a lesser sanction than the majority imposed. He stated: "There was no evidence Judge Fiffie wished to harm anyone or that he exploited his position as a judge for personal gain. Based on the record, I would accept the discipline recommended by the Commission, whose members viewed and heard Judge Fiffie's testimony live and in person."

- **Griffin, J., dissented,** stating: "Considering his inexperience as a judge, I would impose a less severe sanction than the majority imposes."

PART III – CURRENT EVENTS OF INTEREST

1. **Artificial Intelligence**. The emergence of artificial intelligence technology in all fields is also impacting the practice of law, as its predictive use may encompass, among other things, legal research, brief writing, document review, contract drafting, due diligence, and virtual assistance. The use of AI raises ethical and professionalism issues, including: (i) ensuring any work product generated by AI is legally and factually accurate, competent, and free of inherent biases; (ii) the need to protect confidential information; and (iii) concerns regarding unauthorized practice of law.

   In January of this year, the Justices of the Louisiana Supreme Court directed staff to send letters to the bench and the Bar regarding AI in the legal profession. The letters noted that, although many applications of AI technology in the legal profession are new, the rules governing the bench and the Bar are not new, have been in place for decades, and are robust and broad enough to cover the landscape of issues presented by AI in its current forms. Regardless of the use of AI, attorneys practicing in Louisiana have always been ultimately responsible for their work-product and the pleadings they file in court, maintaining competence in technology, and protecting confidential client information and have a duty to avoid making misrepresentations of fact or law. *See, e.g.*, Rules of Professional Conduct 1.1, 1.3, 1.4, 1.6, 1.15, 3.1, 3.3, and 5.3; Louisiana Code of Civil Procedure articles 371 and 863. Likewise, judges have always been ultimately responsible for their opinions and decisions, for maintaining professional competence in judicial administration (which includes maintaining competence in technology), and for protecting confidential information. *See, e.g.*, Canons 1, 2A, 2B, 3A(1), 3A(4), 3A(7), and 3B(1) of the Code of Judicial Conduct. These obligations remain unchanged or unaffected by the availability of AI.

   Many applications of AI technology in the legal profession are in their nascent stages but are rapidly developing, and the applications and software currently being used (and the attendant ethical and professional issues) may look very different with the passage of even a short amount of time. To address this rapidly changing landscape, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) have created a rapid response team (RRT) of chief justices and state court administrators to examine some of the immediate issues related to the use of AI and generative AI in courts. This team will collect and analyze court orders, rules, best practices, and other actions of the state court community related to attorneys and self-represented litigants' use of AI tools to construct legal pleadings. The team will develop model rules for state courts to consider with respect to disclosure, transparency, accuracy, authenticity, and certification of AI use in court pleadings and proceedings.

   The Louisiana Supreme Court Justices and staff will continue to monitor the development of AI technology and its impact on the legal profession to determine what future action or rule changes may be necessary or appropriate. In particular, the Court's Technology Commission and Rules Committee are well-positioned to keep the Justices abreast of new developments and the potential need for any future Court action.

2. *Boudreaux v. La. State Bar Association, et al.*, 22-30564 (5th Cir. Nov. 13, 2023).

Louisiana lawyer Randy Boudreaux made a First Amendment challenge related to the LSBA's mandatory bar dues. On November 13, 2023, a unanimous three judge panel of the Fifth Circuit Court of Appeals ruled that the LSBA violated the plaintiff's constitutional free speech and freedom of association rights of LSBA members by making various website and social media posts that were not relevant ("germane") to the regulation of lawyers or improvement of legal services in the state. The court held: "Although lawyers do not have a categorial First Amendment right to disassociate from their state bar, compulsory bar membership is unconstitutional if a bar's speech is not germane to regulating lawyers or improving the quality of legal services in the state."

Importantly, the court rejected the plaintiff's claim that forced membership in the LSBA violates his First Amendment rights ***even if*** the LSBA engages only in germane speech. It further found the majority of speech that the plaintiff objected to to be germane (including legislative efforts related to appointment of pro bono volunteers and other "laws governing lawyers"), but nonetheless identified some examples of non-germane speech, which violated plaintiff's First Amendment rights:

- "Wellness Wednesday" tweets related to the health and wellbeing of lawyers, which touted the benefits of walnuts and urged lawyers to get sunlight and exercise.
- Tweets promoting community engagement opportunities for lawyers, specifically notifying lawyers of the 69th Annual Red Mass.
- Advertisements for generic "charity drives."
- Sharing a link to a news article regarding student loan debt.
- Including a rainbow flag icon and a link to a History.com article about gay rights during the month of June ("Pride Month").

The court held that the germaneness standard requires **inherent connection to the practice of law** and not mere connection to a personal matter that might impact a person who is practicing law. Advice is not germane just because—as the LSBA asserted—it improves "wellness" and therefore the practice of law indirectly. "Although walnuts, exercise, and Vitamin D may be beneficial, they fall outside the LSBA's purview, at least when they are the basis of generic advice to attorneys about health and fitness."

Finally, the court found the LSBA's notice and opt-out procedures to be sufficient and remanded the case to the trial court for determination of a proper remedy. The court also rendered a preliminary injunction as to plaintiff (and plaintiff alone), relieving plaintiff of the obligation to join or pay dues to the LSBA pending completion of the remedies phase.

On remand, and in accordance with the Fifth Circuit's opinion, the district court entered judgment declaring that (1) the publication by the LSBA of purely informational articles on public policy, social, wellness, and technology issues that are not reasonably related to the regulation of the legal profession and the provision of legal services are non-germane activities; (2) the promotion of community-engagement opportunities that do not involve the LSBA's character as a legal organization or reasonably relate to legal practice are non-germane activities; and (3) defendants violated plaintiff's First Amendment rights by

compelling him to be a member of the LSBA while the Bar was engaged in non-germane activities. The district court further permanently enjoined the LSBA from "speaking on topics or engaging in activities that are not reasonably related to the regulation of the legal profession or to the provision of legal services." Judgment was rendered in favor of defendants on all other claims and requests for relief in plaintiff's complaint.

1. **United States Supreme Court Code of Conduct Development:** The SCOTUS Code of Conduct, which was promulgated by the justices in November 2023, states:

> The absence of a Code, however, has led in recent years to the misunderstanding that the Justices of this Court, unlike all other jurists in this country, regard themselves as unrestricted by any ethics rules. To dispel this misunderstanding, we are issuing this Code, which largely represents a codification of principles that we have long regarded as governing our conduct.

The SCOTUS Code of Conduct contains five canons, all of which are ***permissive***. The SCOTUS Code of Conduct has 49 subpoints and is eight single-spaced pages. I counted the following (and yes, I counted!):

should = 22 times
should not = 26 times
may = 19 times
shall = ZERO

The Louisiana Code of Judicial Conduct, on the other hand, contains 7 canons. Five contain the word "shall" and two contains the word "may." Canon Seven expressly provides that a judge "shall refrain from inappropriate political and campaign activity," which includes that the judge "shall maintain the dignity appropriate to judicial office."

Recent SCOTUS headlines:

- Justice Thomas Failed to Report Real Estate Deal with Texas Billionaire
- Ginni Thomas Pressed Trump's Chief of Staff to Overturn 2020 Vote, Texts Show
- At Justice Alito's House, a "Stop the Steal" Symbol on Display
- Display at Alito's Home Renews Questions of Supreme Court's Impartiality
- Justices Thomas and Alito Ignored Calls for Recusal in Jan. 6 Case

1. Rudy Giuliani Disbarred in New York

In the Matter of Rudolph W. Giuliani, A Suspended Attorney, No. 2024-1332 (N.Y. App. Div. 1st Dep't 7/2/24): The court found the following New York Rules of Professional Conduct were violated are:

- Rule 3.3: "(a) A lawyer shall not knowingly . . .(1) make a false statement of fact or law to a tribunal." → Louisiana Rule 3.3(a)(1) is the same

- Rule 4.1: "In the course of representing a client, a lawyer shall not knowingly (a) make a false statement of fact or law to a third person." → Louisiana Rule 4.1(a) requires "material false statement of fact or law"

- Rule 8.4: "A lawyer or law firm shall not . . . (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, . . . or (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer." → Louisiana Rule 8.4(c) is the same; Louisiana Rule 8.4(b) incorporates "fitness" concept of New York rule

In accepting the 2021 recommendation of disbarment, the Court noted, in part: "[N]o prior disciplinary cases involving intentionally made false statements are remotely comparable to this case." The Court explained:

> Respondent told numerous lies in the numerous forums all designed to create distrust of the elective system in our country in the minds of citizens and to destroy their confidence in the legitimacy of our government. . . . The seriousness of respondent's misconduct cannot be overstated. Respondent flagrantly misused his prominent position as the personal attorney for former President Trump and his campaign, through which respondent repeatedly and intentionally made false statements, some of which were perjurious, to the federal court, state lawmakers, the public, the AGC, and this Court concerning the 2020 Presidential election, in which he baselessly attacked and undermined the integrity of this country's electoral process. In so doing, respondent not only deliberately violated some of the most fundamental tenets of the legal profession, but he also actively contributed to the national strife that has followed the 2020 Presidential election, for which he is entirely unrepentant. The aggravation cited by the Referee, which includes respondent's disruptive and disrespectful behavior during the hearing, significantly outweighs the mitigation and only adds to the case for his disbarment.

PRAYER TO ST. THOMAS MORE

St. Thomas More, scholar of the The Law, chancellor of charity, jurist of justice, counsellor of the powerful, advocate of the weak, merry martyr, and saint, may the Lord of all law and of all lawyers, help me this day to be a little more like you.

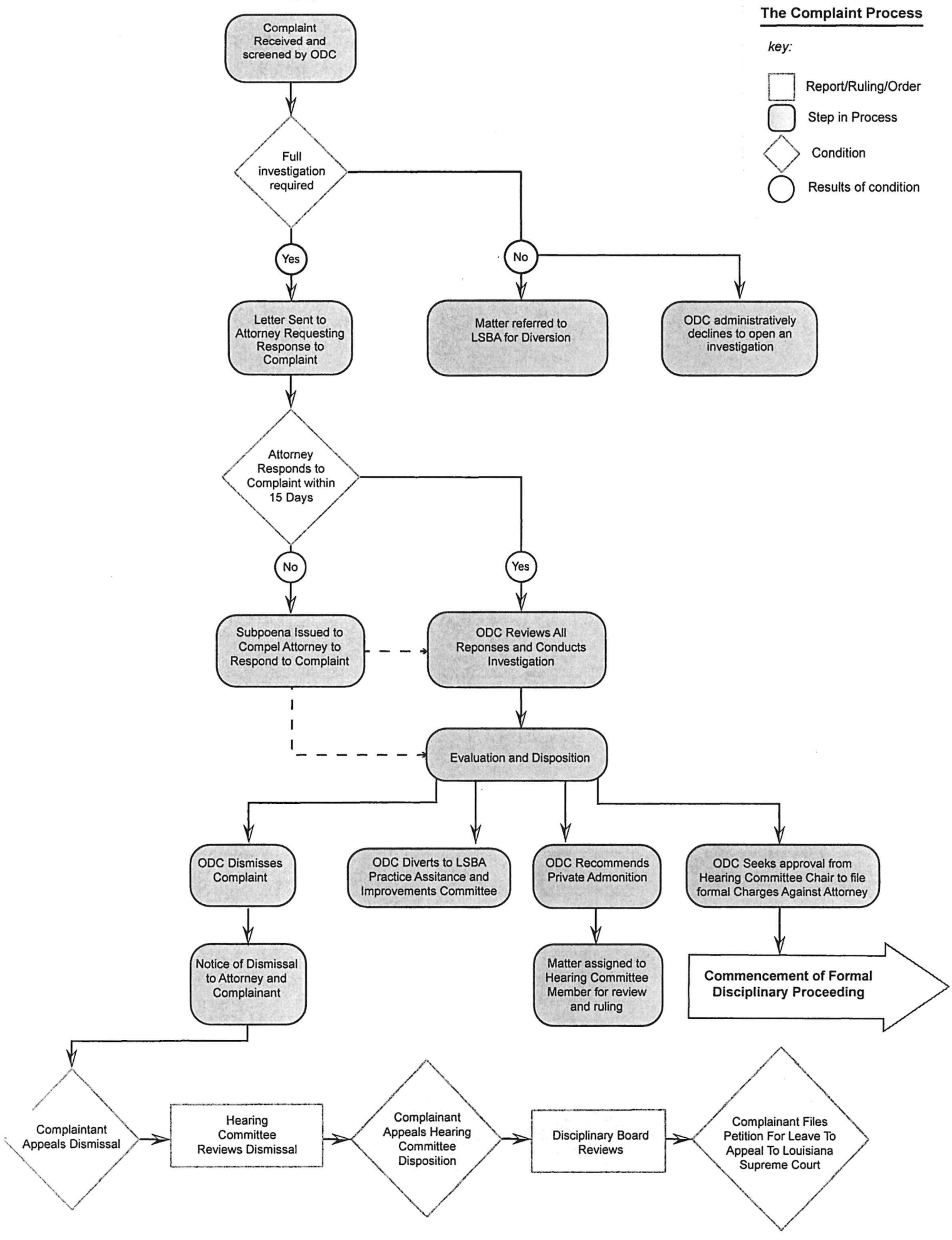
For the greater glory of God and the pursuit of justice, help me to be accurate in analysis, strict in study, correct in conclusion, candid with clients, honest with adversaries, able in argument and steadfast in faith.

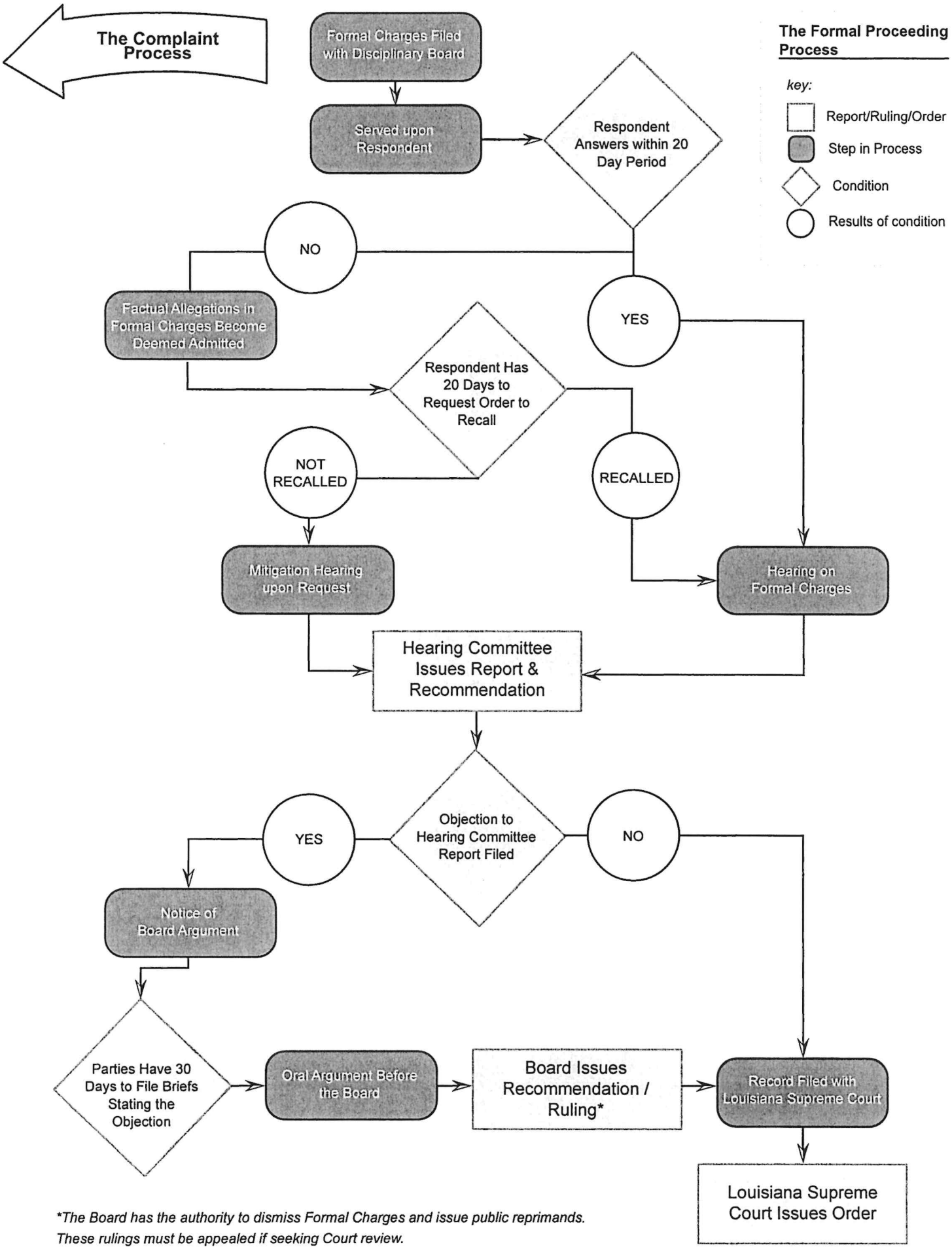
Sit with me at my desk and listen with me to my client, read with me in my library, and stand beside me in court, so that today I shall not lose my soul in order to win a point.

Help me to live in such a way that my spouse and my children may find in me what they have a right to seek – humor and humility, cheerfulness and charity, wisdom and wit, counsel and consolation.

Brother lawyer, who proved our profession can be both honorable and compatible with sanctity, pray for me, now engaged in the struggle to understand and live the Law of God.

Lord Chancellor, stand with me when I plead my cause before the infinite Lord of Justice, who will preside at my final trial.
Amen.

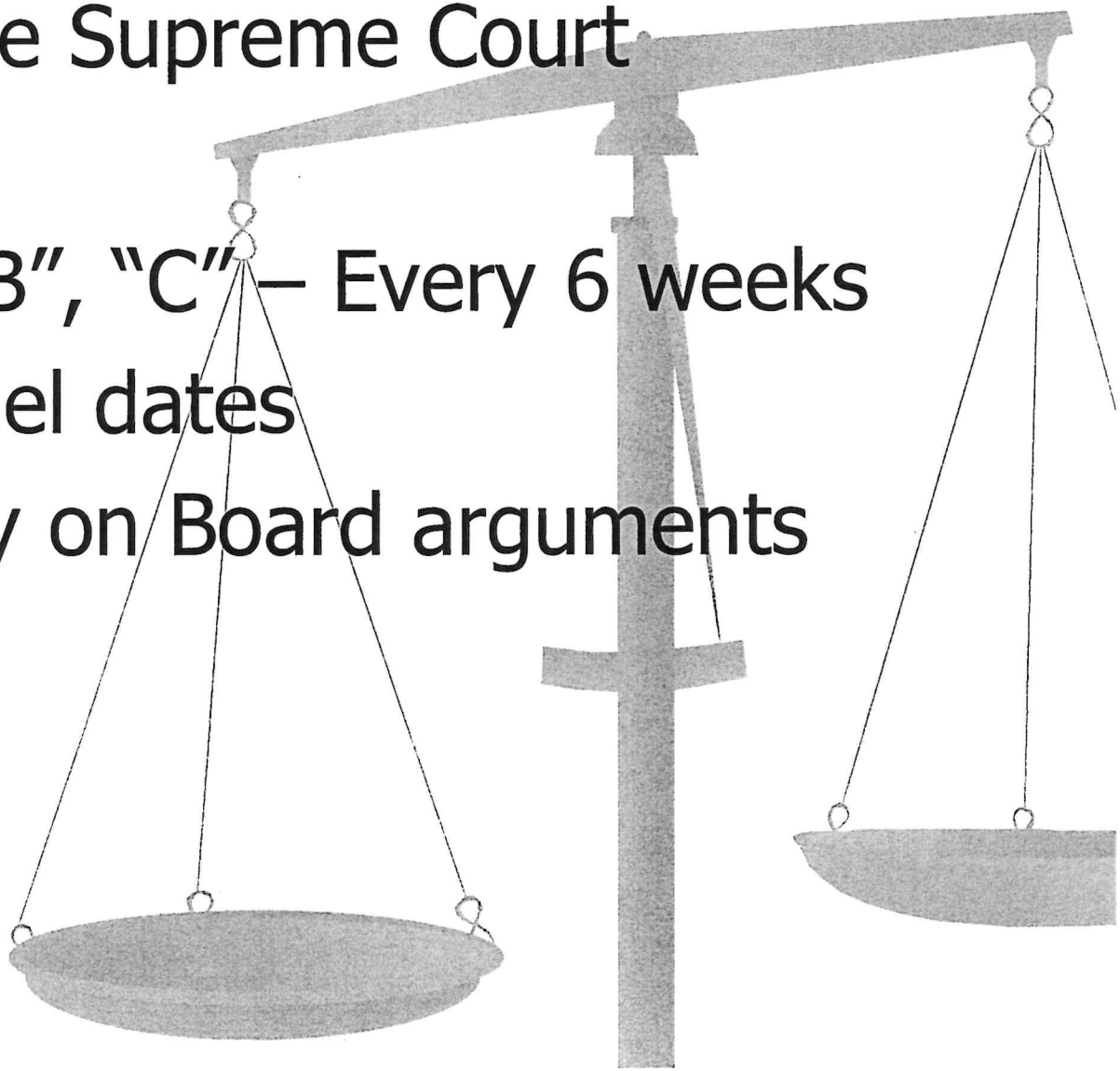

The Complaint Process
key:
Report/Ruling/Order
Step in Process
Condition
Results of condition
Complaint Received and screened by ODC
Full investigation required
Yes
No
Letter Sent to Attorney Requesting Response to Complaint
Matter referred to LSBA for Diversion
ODC administratively declines to open an investigation
Attorney Responds to Complaint within 15 Days
No
Yes
Subpoena Issued to Compel Attorney to Respond to Complaint
ODC Reviews All Reponses and Conducts Investigation
Evaluation and Disposition
ODC Dismisses Complaint
ODC Diverts to LSBA Practice Assitance and Improvements Committee
ODC Recommends Private Admonition
ODC Seeks approval from Hearing Committee Chair to file formal Charges Against Attorney
Notice of Dismissal to Attorney and Complainant
Matter assigned to Hearing Committee Member for review and ruling
Commencement of Formal Disciplinary Proceeding
Complaintant Appeals Dismissal
Hearing Committee Reviews Dismissal
Complainant Appeals Hearing Committee Disposition
Disciplinary Board Reviews
Complainant Files Petition For Leave To Appeal To Louisiana Supreme Court



**The Board has the authority to dismiss Formal Charges and issue public reprimands. These rulings must be appealed if seeking Court review.*

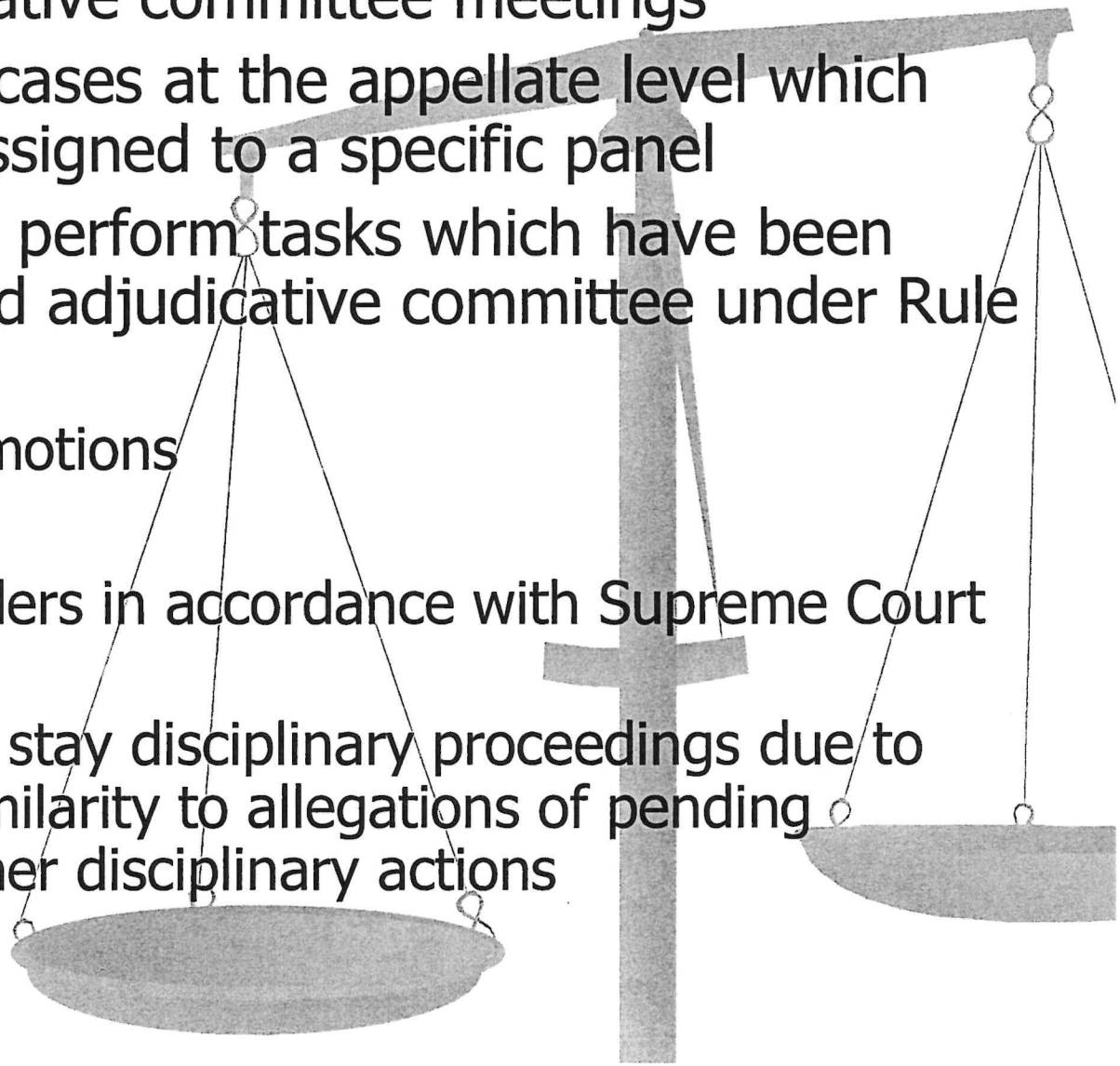
The Adjudicative Committee

- Appointed by the Supreme Court
- 9 Members
- 3 Panels: "A", "B", "C" – Every 6 weeks
- Schedule of panel dates
- Expect a full day on Board arguments



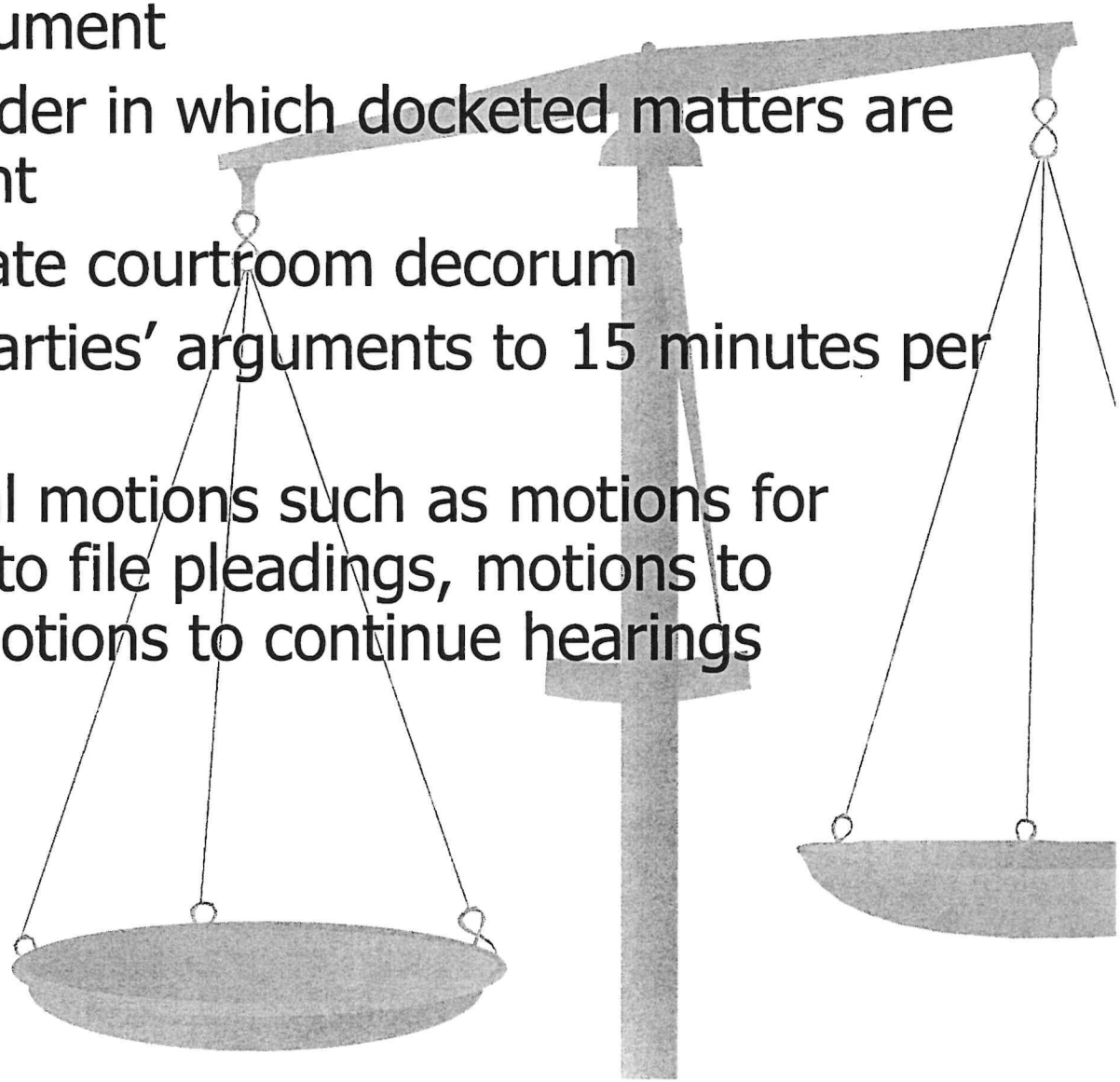
Role of the Board Adjudicative Committee Chairperson

- Preside over adjudicative committee meetings
- Rule on motions for cases at the appellate level which have not yet been assigned to a specific panel
- Rule on motions and perform tasks which have been reserved to the board adjudicative committee under Rule XIX:
  - Rule on discovery motions
  - Issue admonitions
  - Issue probation orders in accordance with Supreme Court rules
  - Rule on motions to stay disciplinary proceedings due to their substantial similarity to allegations of pending criminal, civil or other disciplinary actions

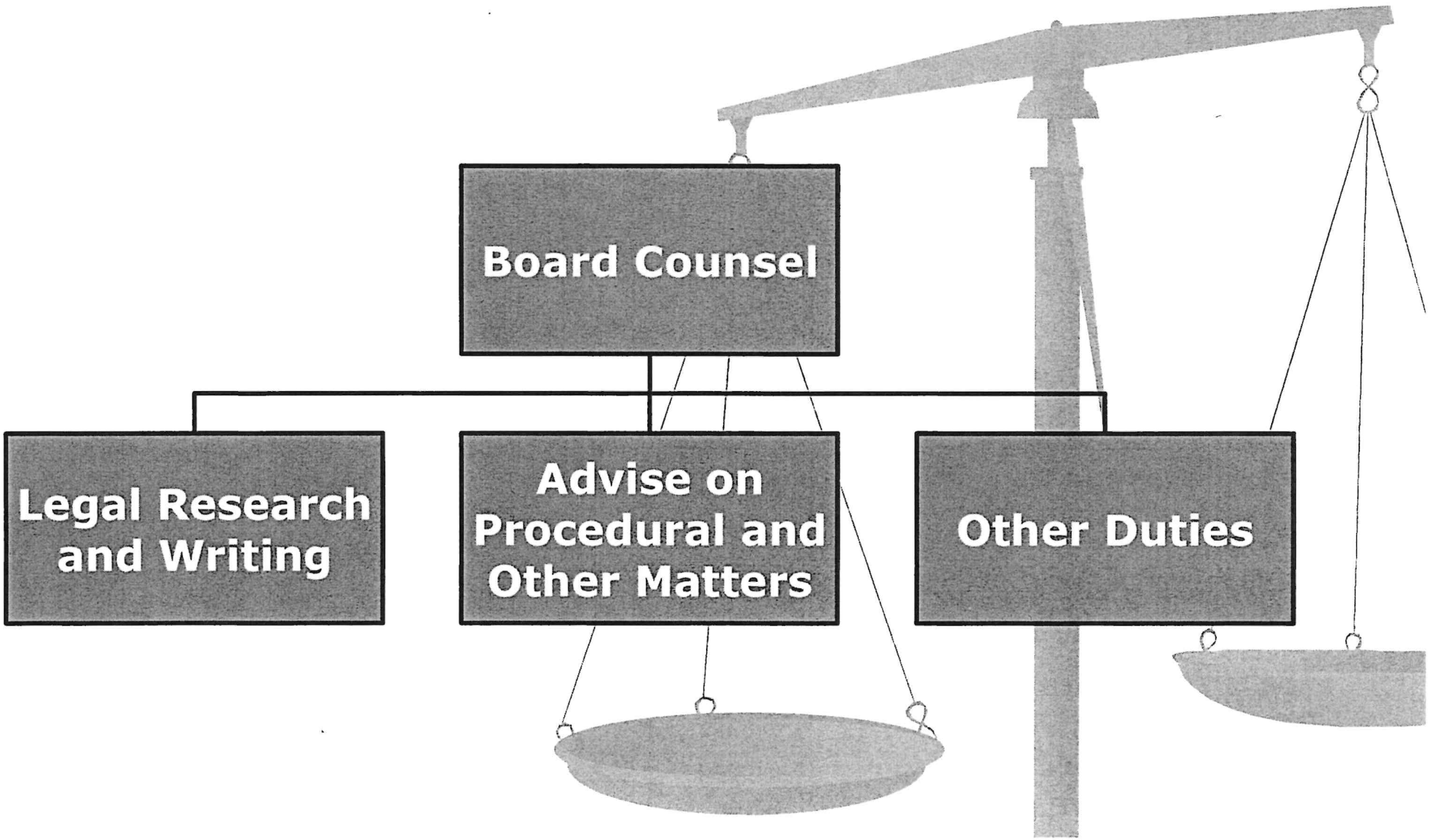


Role of the Board Panel Chairperson

- Preside over oral argument
  - Determines the order in which docketed matters are called for argument
  - Maintain appropriate courtroom decorum
  - In general, limit parties' arguments to 15 minutes per each party
  - Rule on procedural motions such as motions for extension of time to file pleadings, motions to consolidate and motions to continue hearings

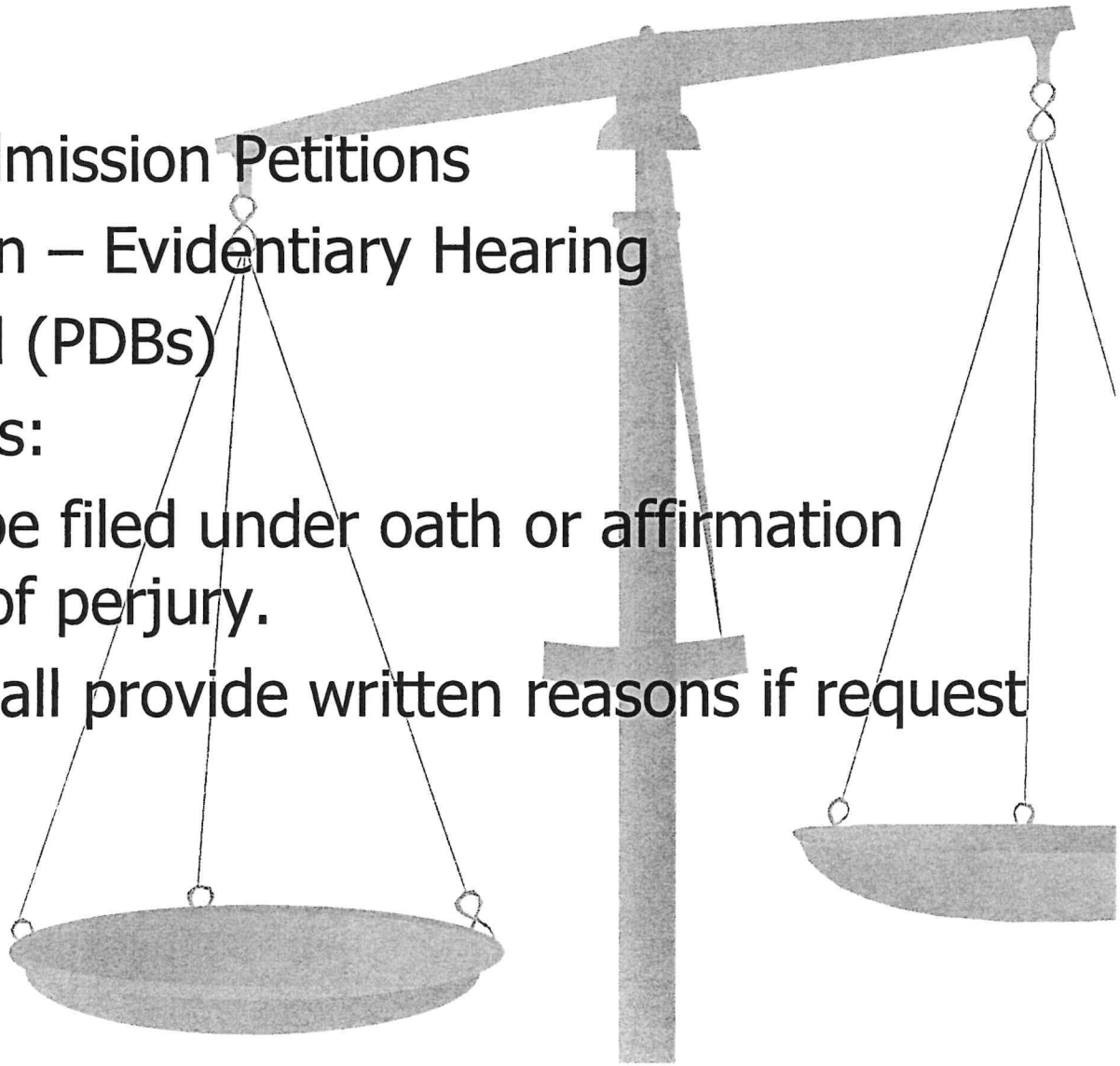


Role of the Board Counsel



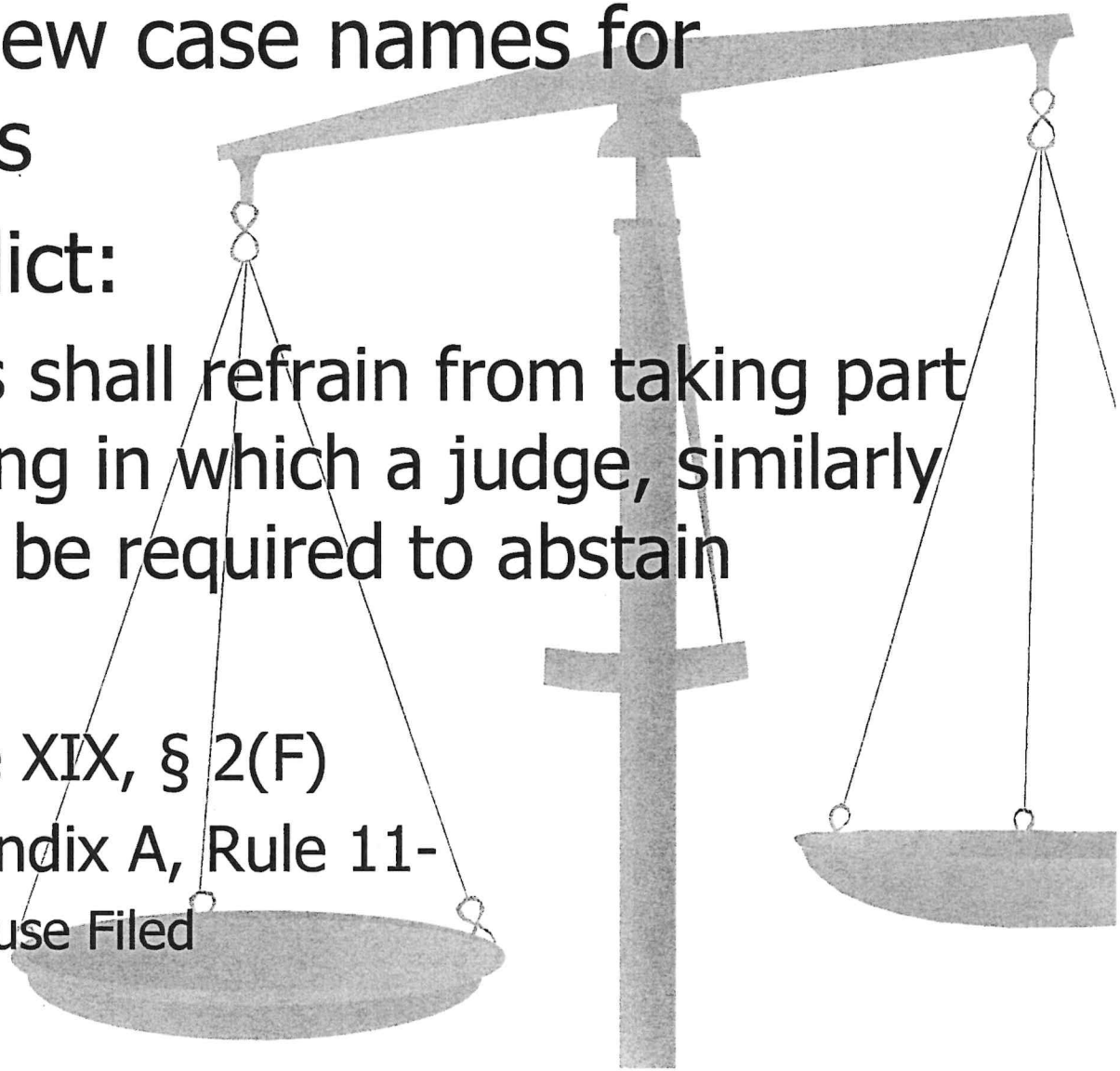
Role of Adjudicator

- Formal Charges
  - Deemed Admitted
  - Contested
- Reinstatement/Readmission Petitions
- Probation Revocation – Evidentiary Hearing
- Appeals of Dismissal (PDBs)
- Hardship Exemptions:
  a.) Request shall be filed under oath or affirmation under penalty of perjury.
  b.) Board Panel shall provide written reasons if request is denied.



Before Board Argument

- First Step: Review case names for possible conflicts
- Recuse for conflict:
  - Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain
    - La.Sup.Ct. Rule XIX, § 2(F)
    - Rule XIX, Appendix A, Rule 11-
      - Motion to Recuse Filed



Before Board Argument

La.C.C.P. Art. 151. Grounds

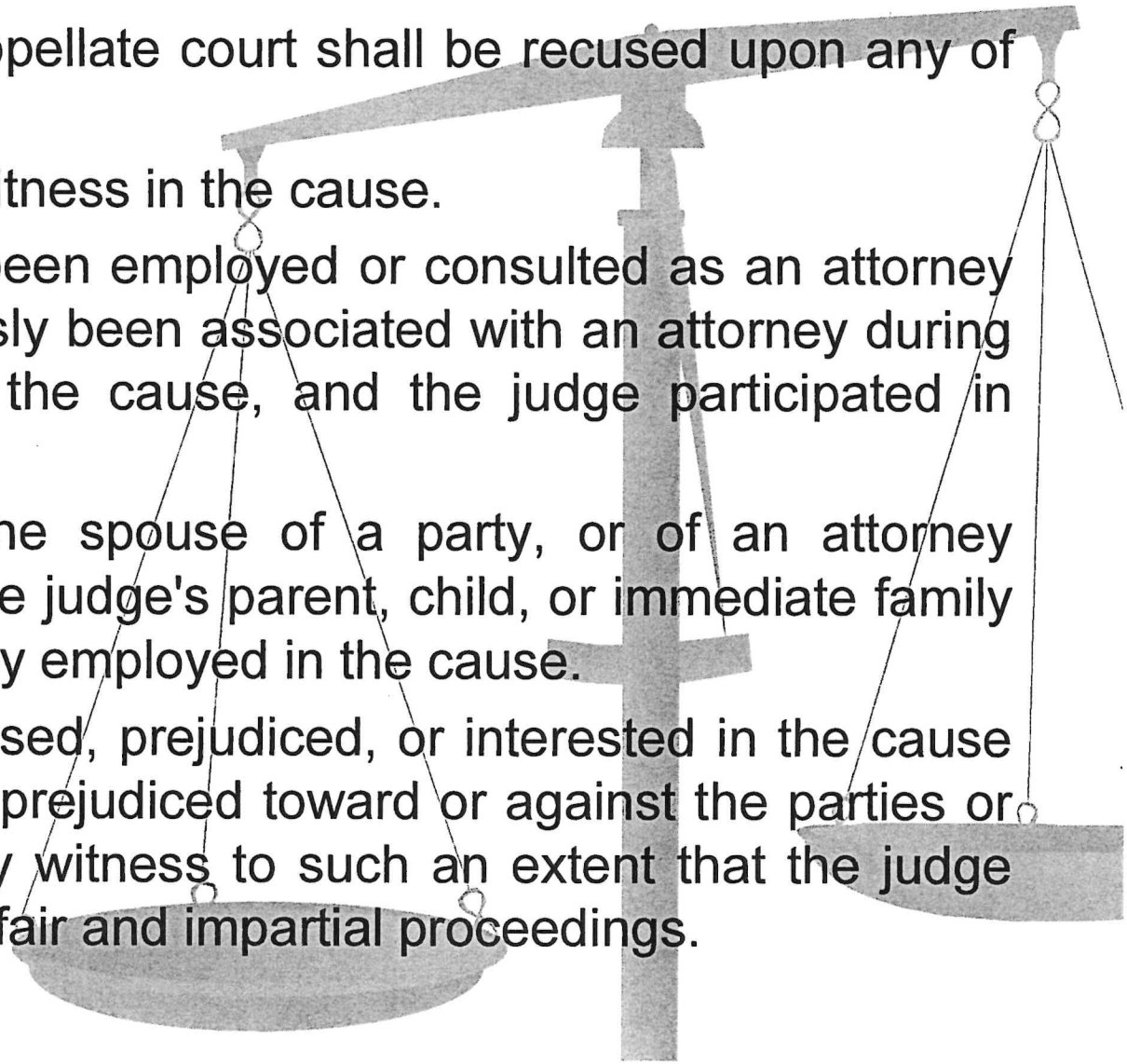
A. A judge of any trial or appellate court shall be recused upon any of the following grounds:

(1) The judge is a witness in the cause.

(2) The judge has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause.

(3) The judge is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause.

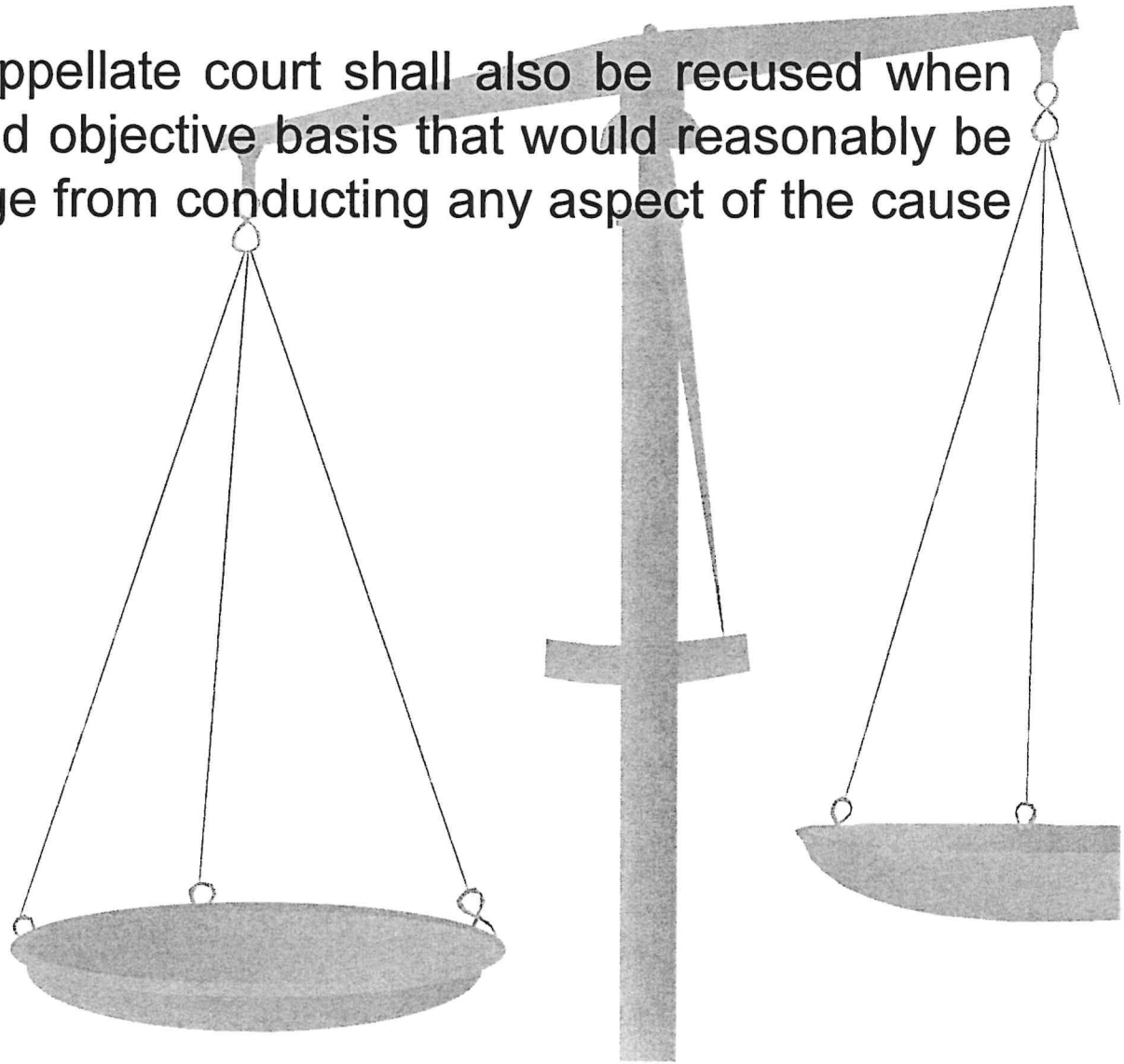
(4) The judge is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that the judge would be unable to conduct fair and impartial proceedings.



La.C.C.P. Art. 151. Grounds

B. A judge of any trial or appellate court shall also be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in fair and impartial manner.

...



Before Board Argument

LA.C.C.P. 152 Disclosures

A. A judge of any trial or appellate court shall disclose, to the best of his information and belief, the existence of any of the following to all attorneys and unrepresented parties in the cause:

(1) The judge has been associated with an attorney during the latter's employment in the cause.

(2) At the time of the hearing of any contested issue in the cause, the judge has continued to employ, to represent him personally, the attorney actually handling the cause or a member of that attorney's firm.

(3) The judge performed a judicial act in the cause in another court.

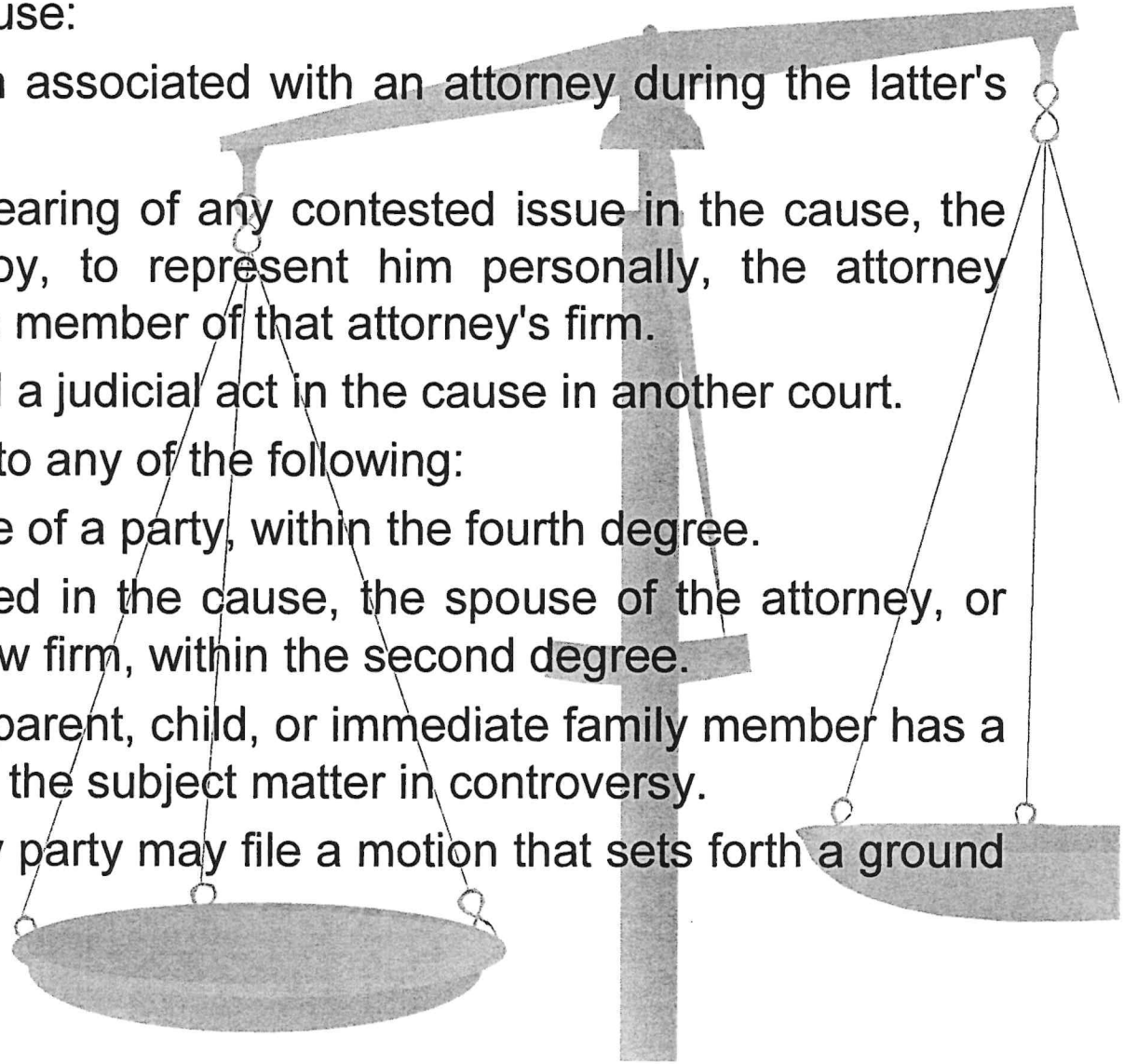
(4) The judge is related to any of the following:

(a) A party or the spouse of a party, within the fourth degree.

(b) An attorney employed in the cause, the spouse of the attorney, or any member of the attorney's law firm, within the second degree.

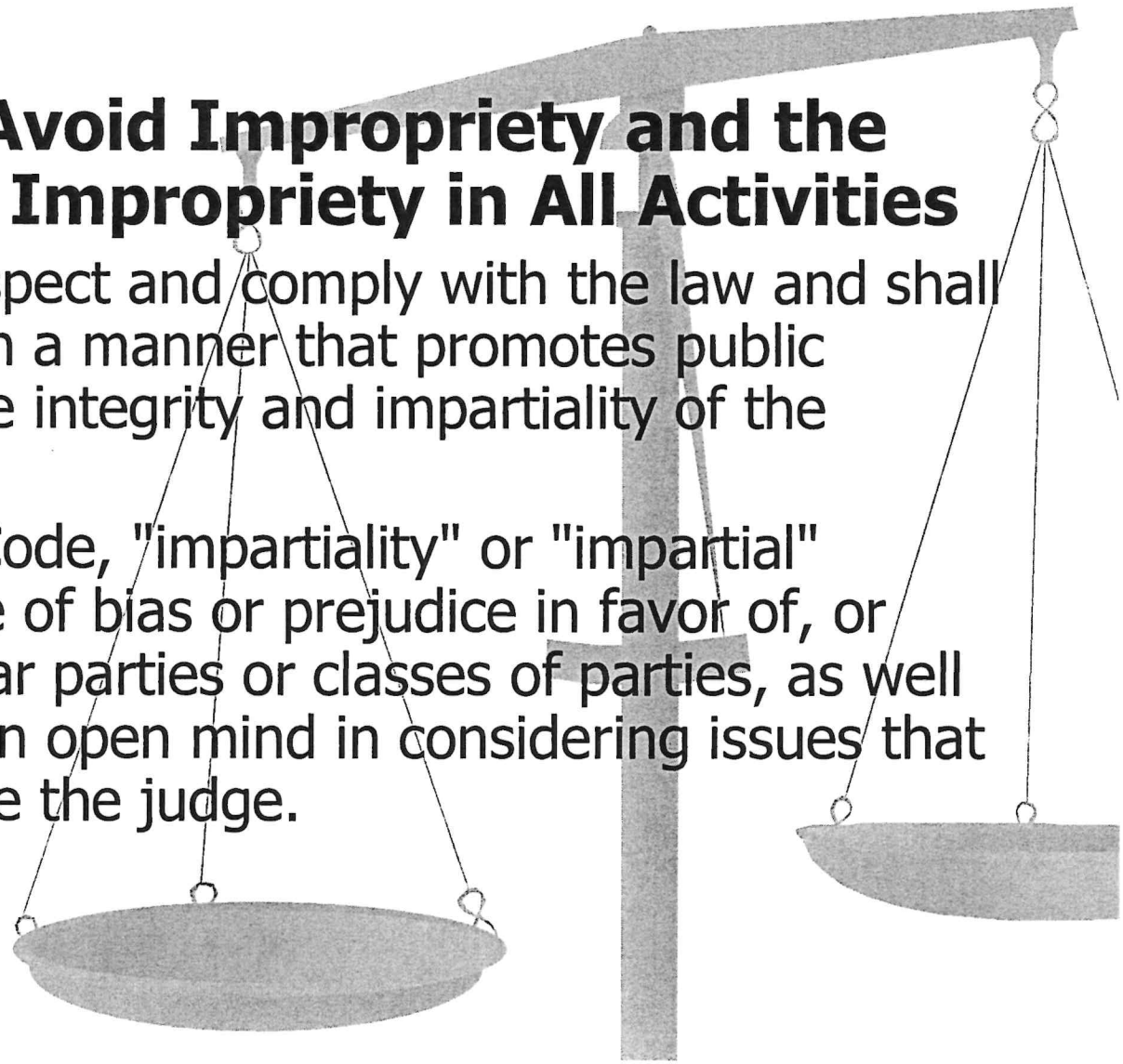
(5) The judge's spouse, parent, child, or immediate family member has a substantial economic interest in the subject matter in controversy.

B. Upon disclosure, any party may file a motion that sets forth a ground for recusal under Article 151.



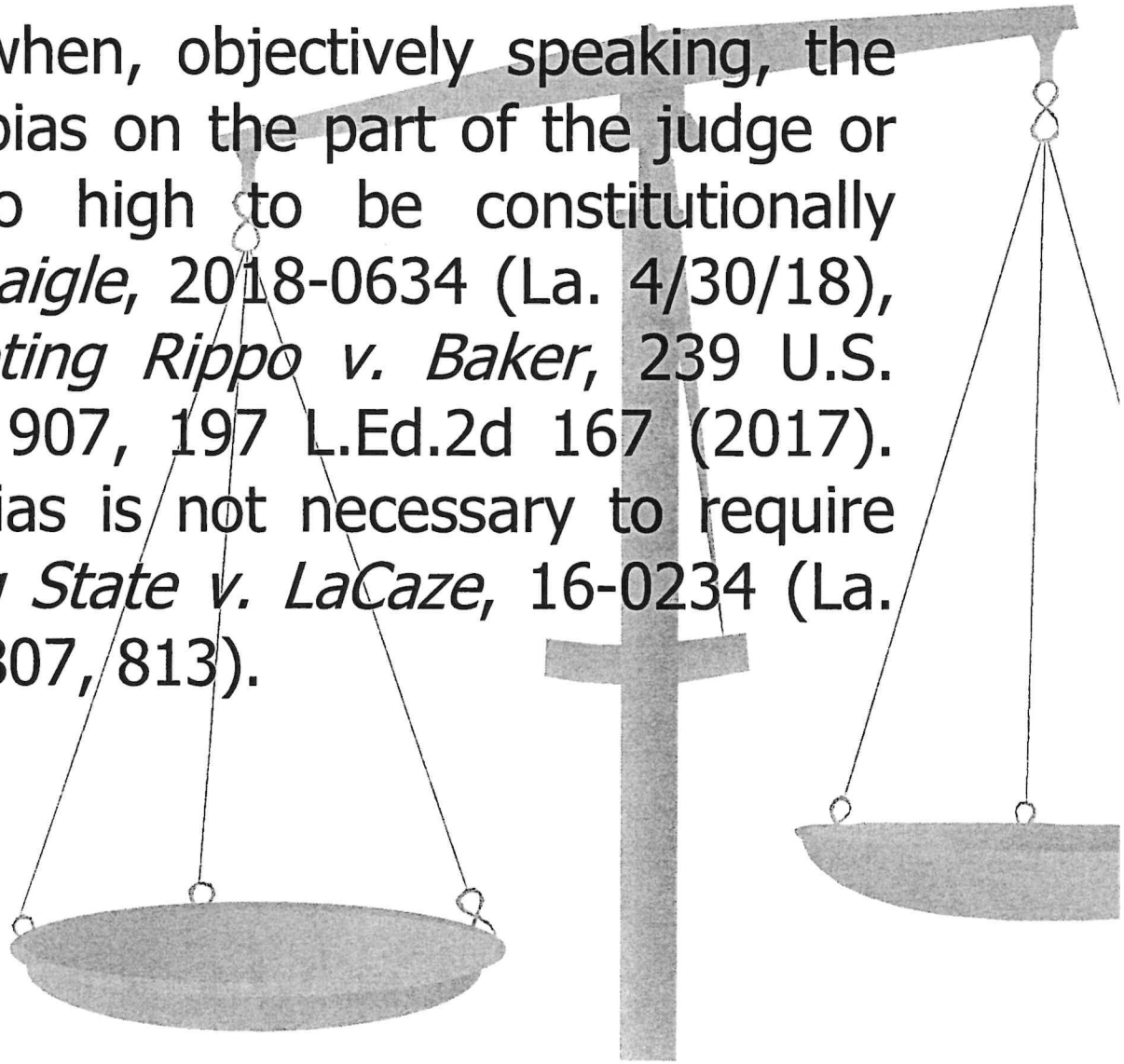
Before Board Argument

- Code of Judicial Conduct:
  - **CANON 2**
  - **A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities**
    - A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
    - As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.



Before Board Argument

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. *State v. Daigle*, 2018-0634 (La. 4/30/18), 241 So.3d 999 (*quoting Rippo v. Baker*, 239 U.S. 807, 137 S.Ct. 905, 907, 197 L.Ed.2d 167 (2017). Evidence of actual bias is not necessary to require recusal. *Id.* (*quoting State v. LaCaze*, 16-0234 (La. 3/13/18), 239 So.3d 807, 813).

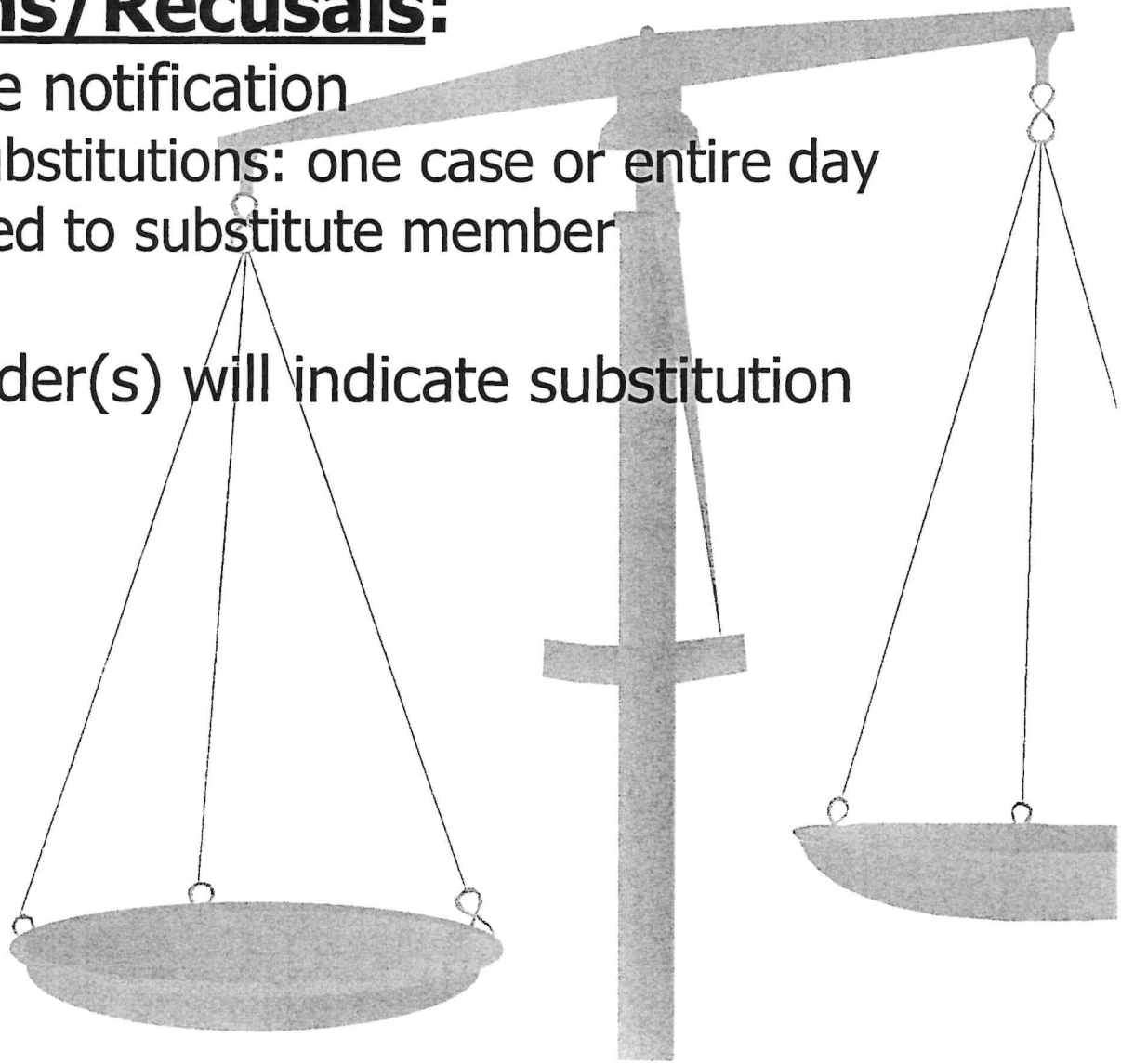


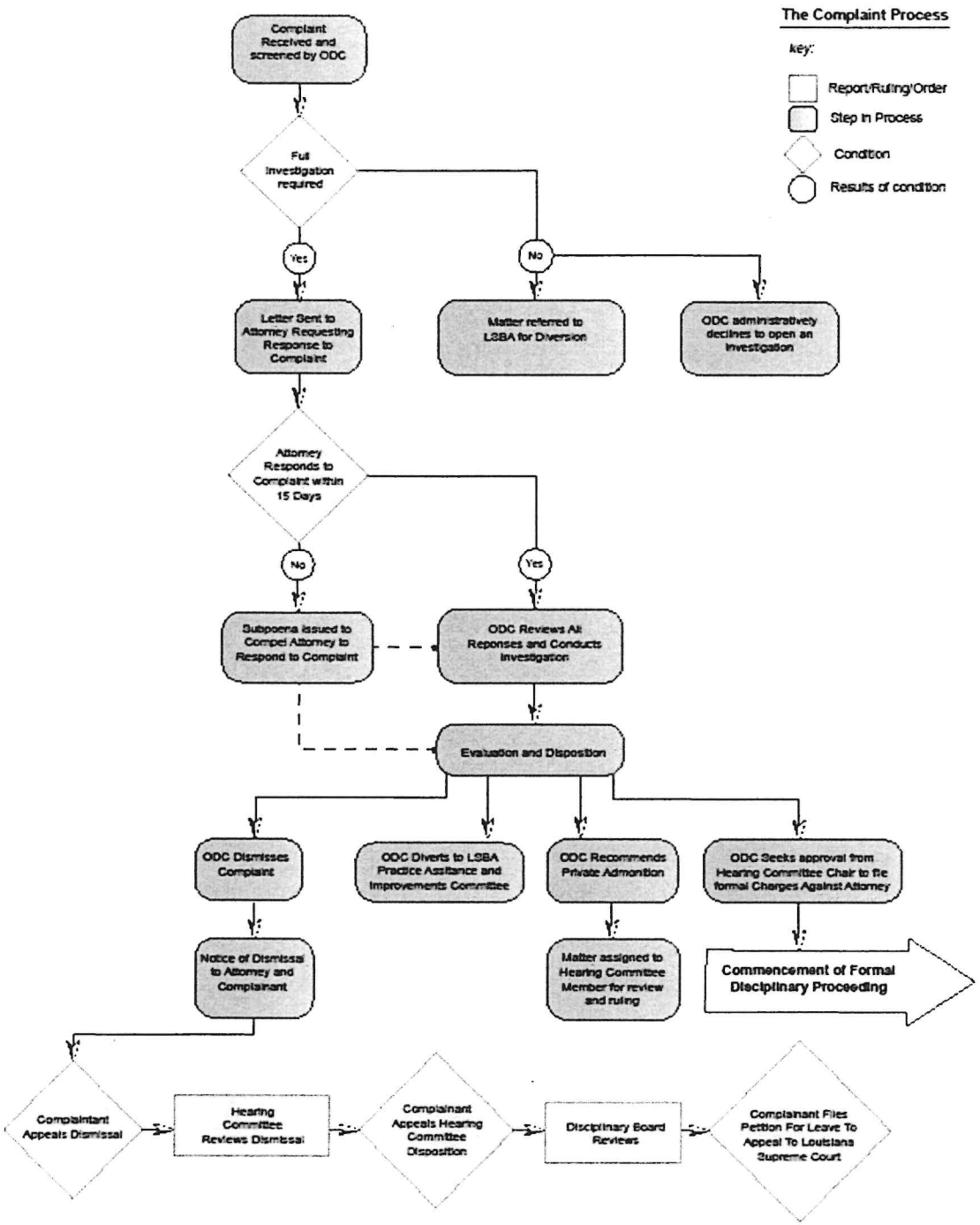
Panel Substitutions/Recusals:

Please give adequate notification

- formal charge substitutions: one case or entire day
- appeals forwarded to substitute member

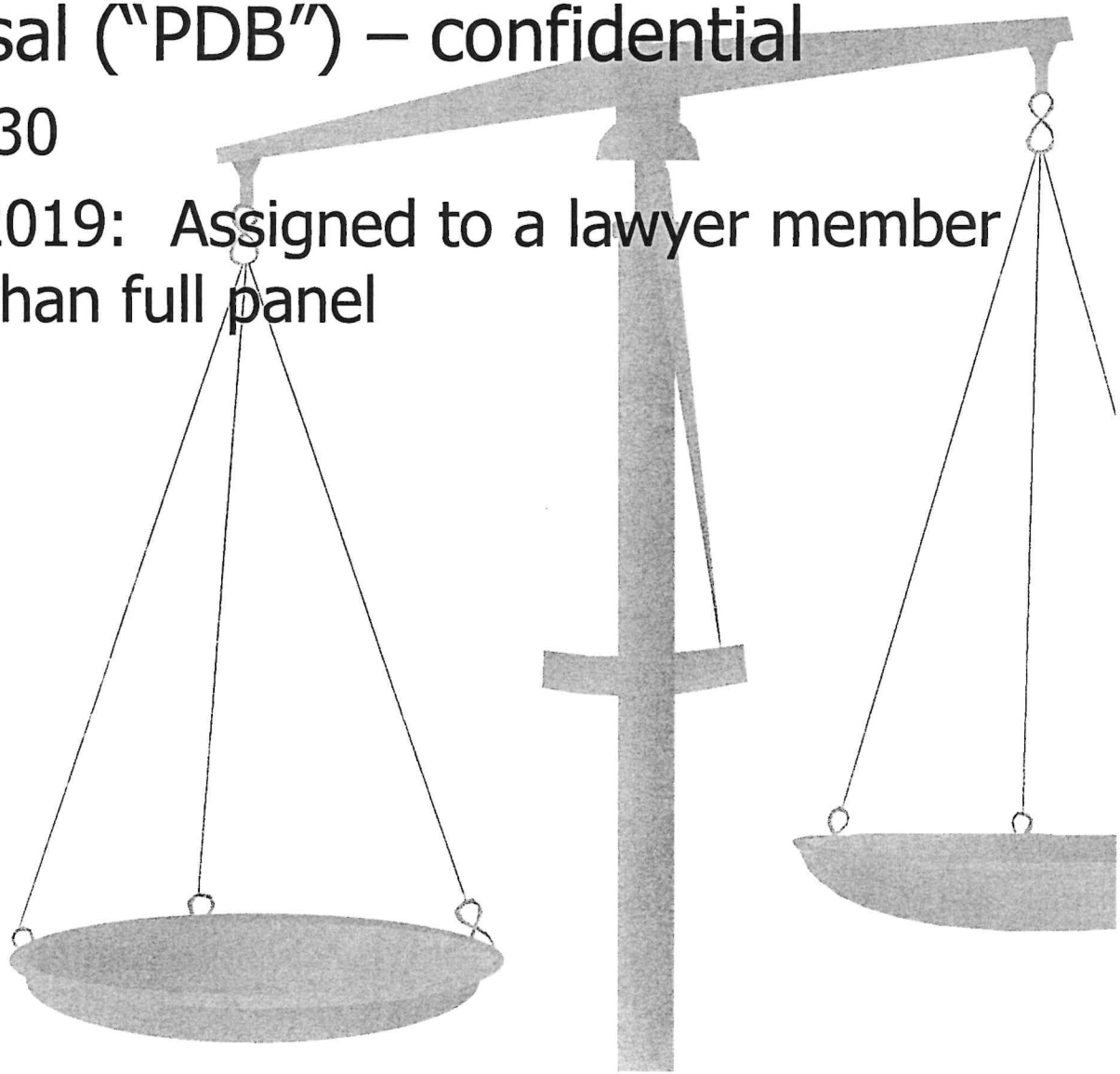
Docket and panel order(s) will indicate substitution made




The Complaint Process
key:
Report/Ruling/Order
Step in Process
Condition
Results of condition
Complaint Received and screened by ODC
Full Investigation required
Yes
No
Letter Sent to Attorney Requesting Response to Complaint
Matter referred to LSBA for Diversion
ODC administratively declines to open an investigation
Attorney Responds to Complaint within 15 Days
No
Yes
Subpoena issued to Compel Attorney to Respond to Complaint
ODC Reviews All Reponses and Conducts Investigation
Evaluation and Disposition
ODC Dismisses Complaint
ODC Diverts to LSBA Practice Assitance and Improvements Committee
ODC Recommends Private Admonition
ODC Seeks approval from Hearing Committee Chair to file formal Charges Against Attorney
Notice of Dismissal to Attorney and Complainant
Matter assigned to Hearing Committee Member for review and ruling
Commencement of Formal Disciplinary Proceeding
Complainant Appeals Dismissal
Hearing Committee Reviews Dismissal
Complainant Appeals Hearing Committee Disposition
Disciplinary Board Reviews
Complainant Files Petition For Leave To Appeal To Louisiana Supreme Court

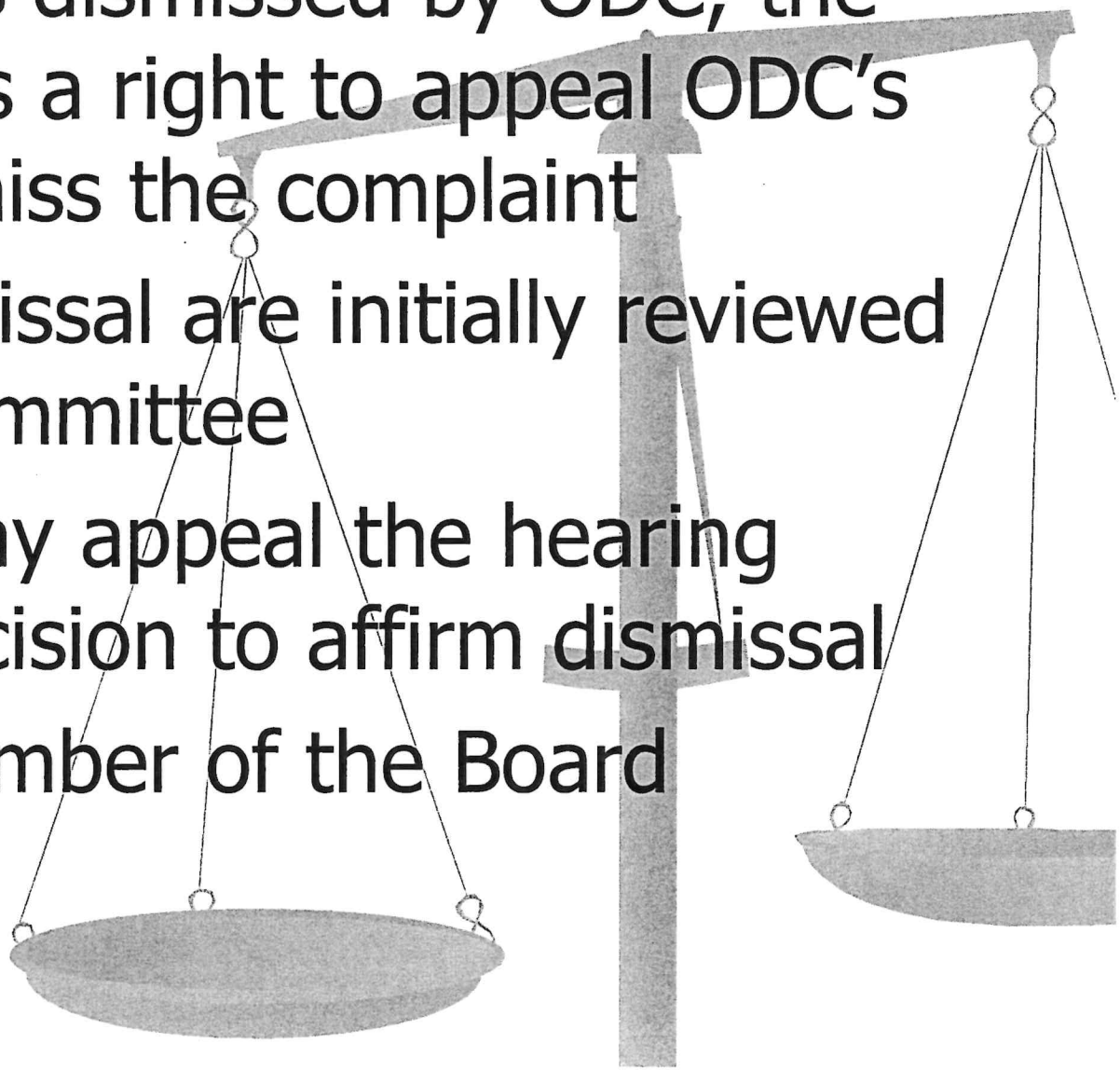
Appeals of Dismissals

- Appeals of Dismissal ("PDB") – confidential
  - Rule XIX, Section 30
  - Effective May 15,2019: Assigned to a lawyer member for review rather than full panel



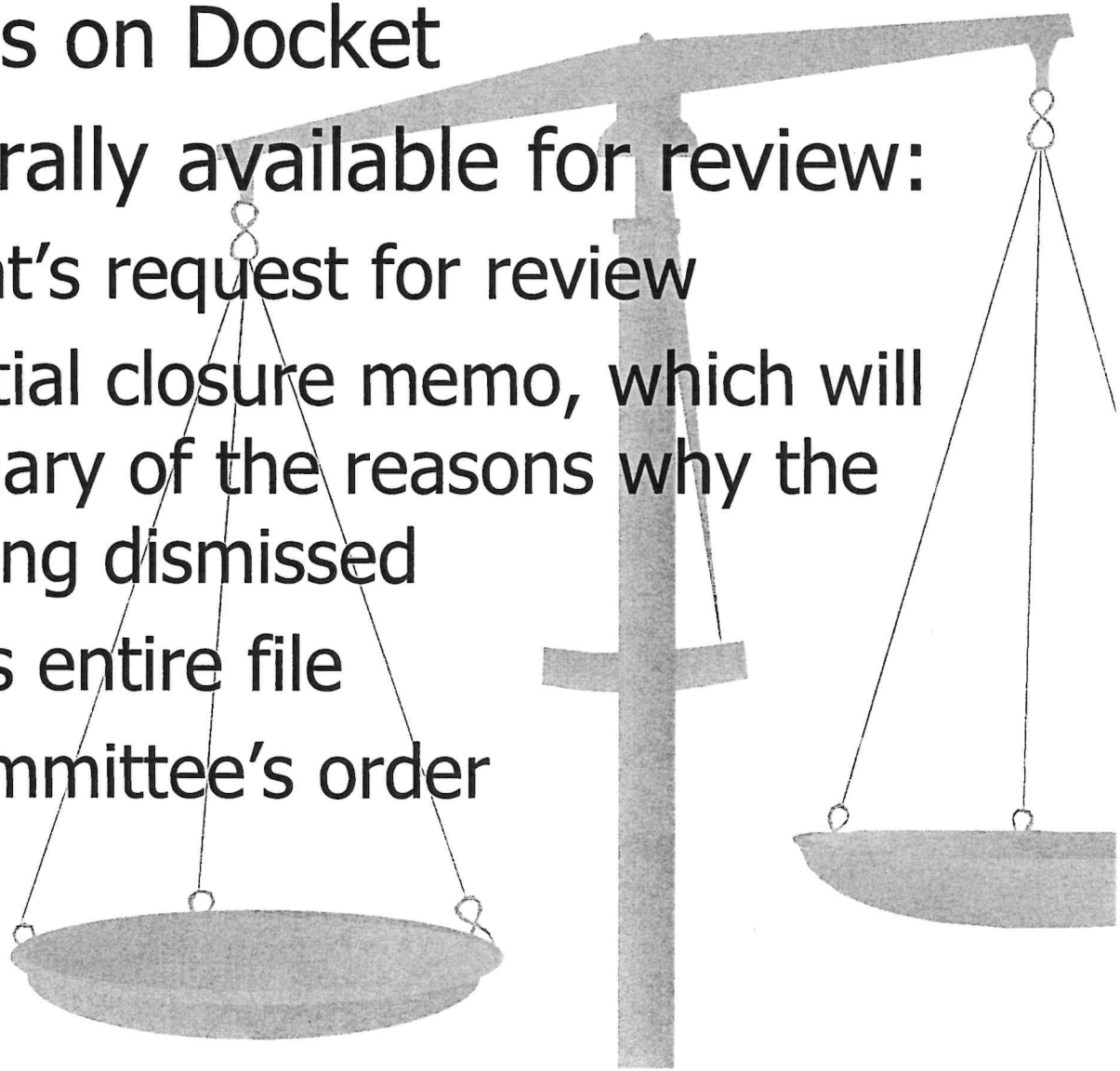
Appeals of Dismissal

- If a complaint is dismissed by ODC, the complainant has a right to appeal ODC's decision to dismiss the complaint
- Appeals of dismissal are initially reviewed by a hearing committee
- Complainant may appeal the hearing committee's decision to affirm dismissal to a Lawyer Member of the Board



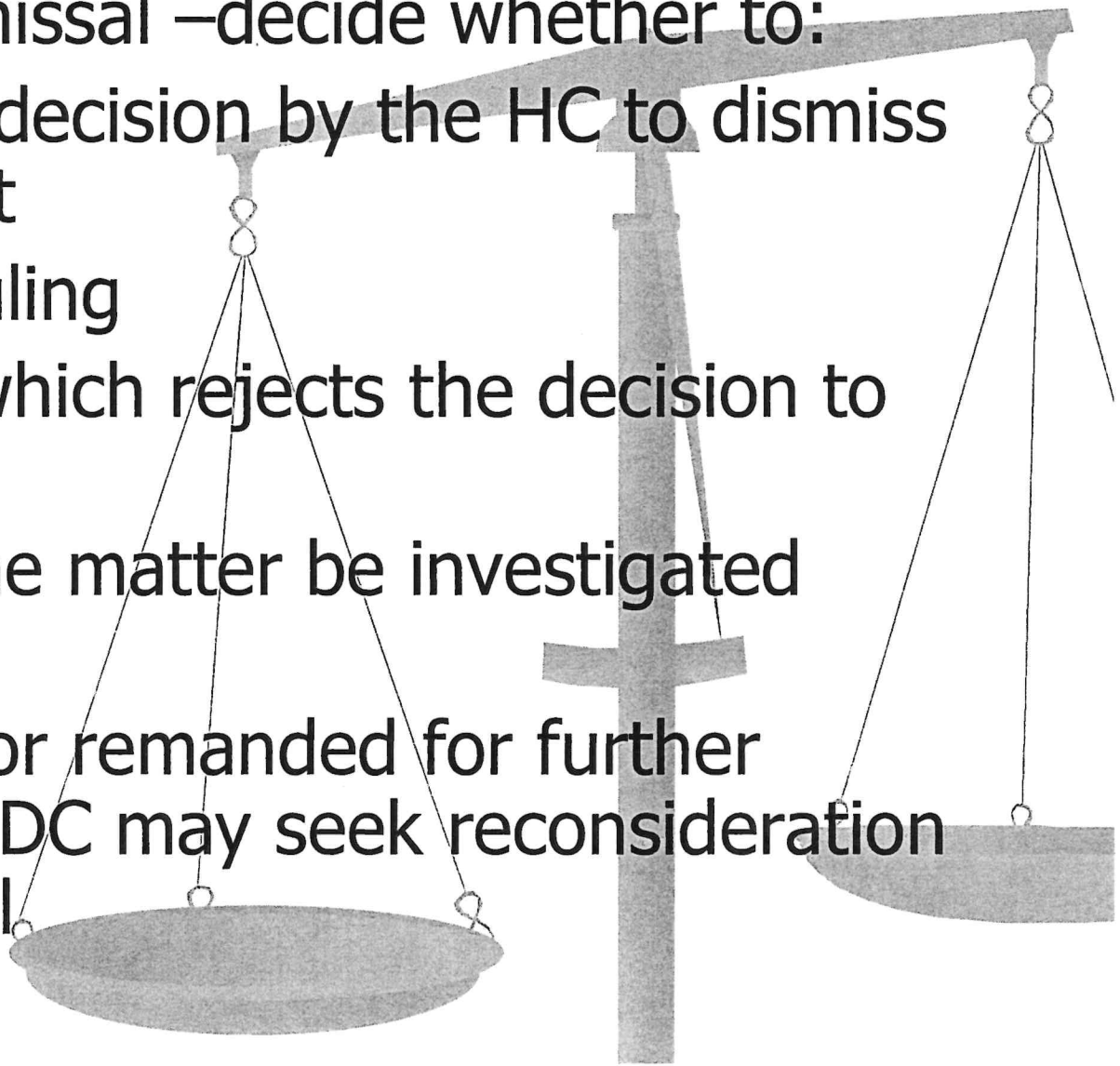
Appeals of Dismissal

- Review materials on Docket
- Pleadings generally available for review:
  - The complainant's request for review
  - ODC's confidential closure memo, which will include a summary of the reasons why the complaint is being dismissed
  - A copy of ODC's entire file
  - The hearing committee's order



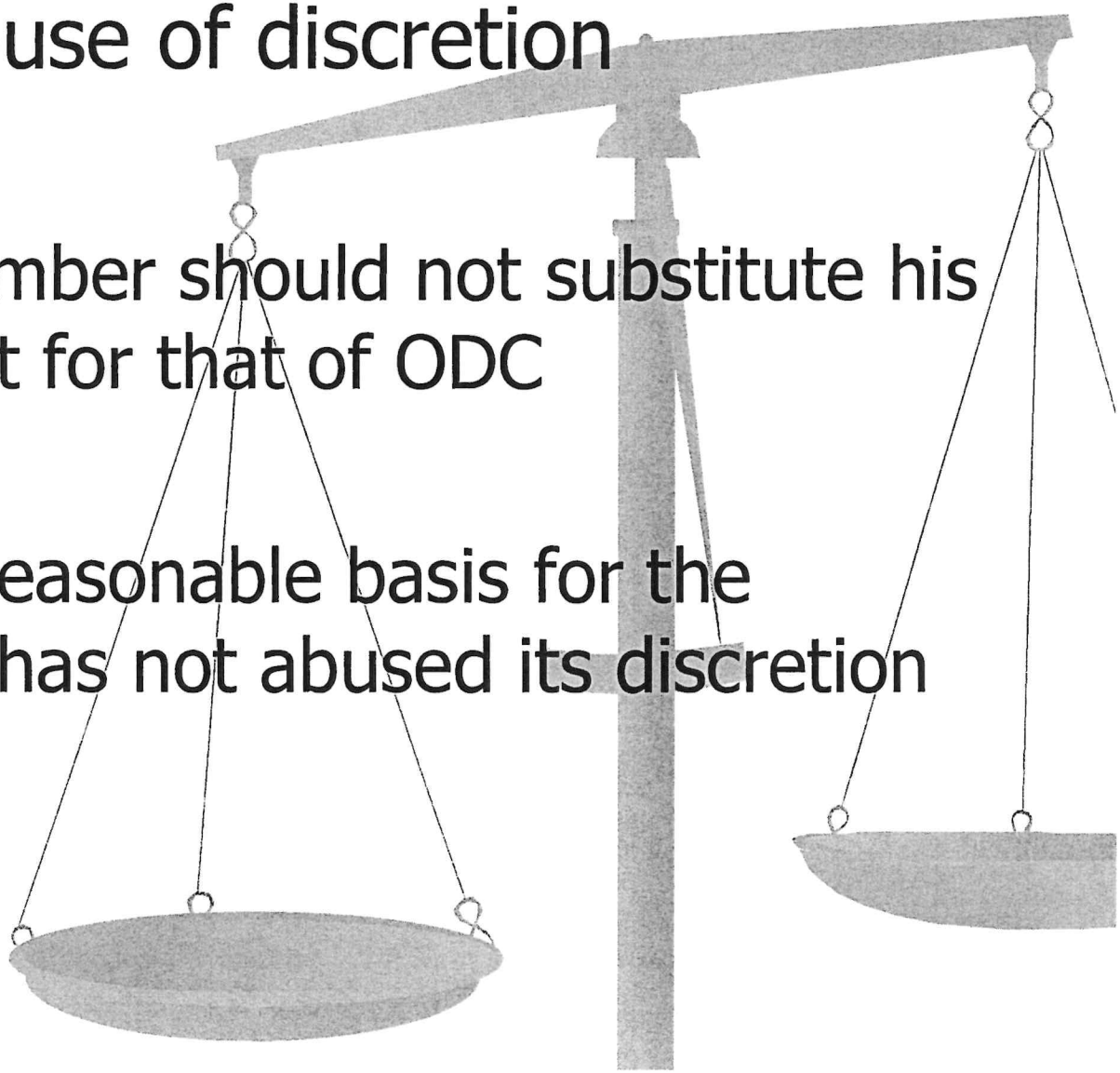
Appeals of Dismissal

- Appeals of Dismissal –decide whether to:
  - Approve the decision by the HC to dismiss the complaint
  - Modify the ruling
  - Disapprove which rejects the decision to dismiss
  - Direct that the matter be investigated further
- If disapproved or remanded for further investigation, ODC may seek reconsideration by the full panel



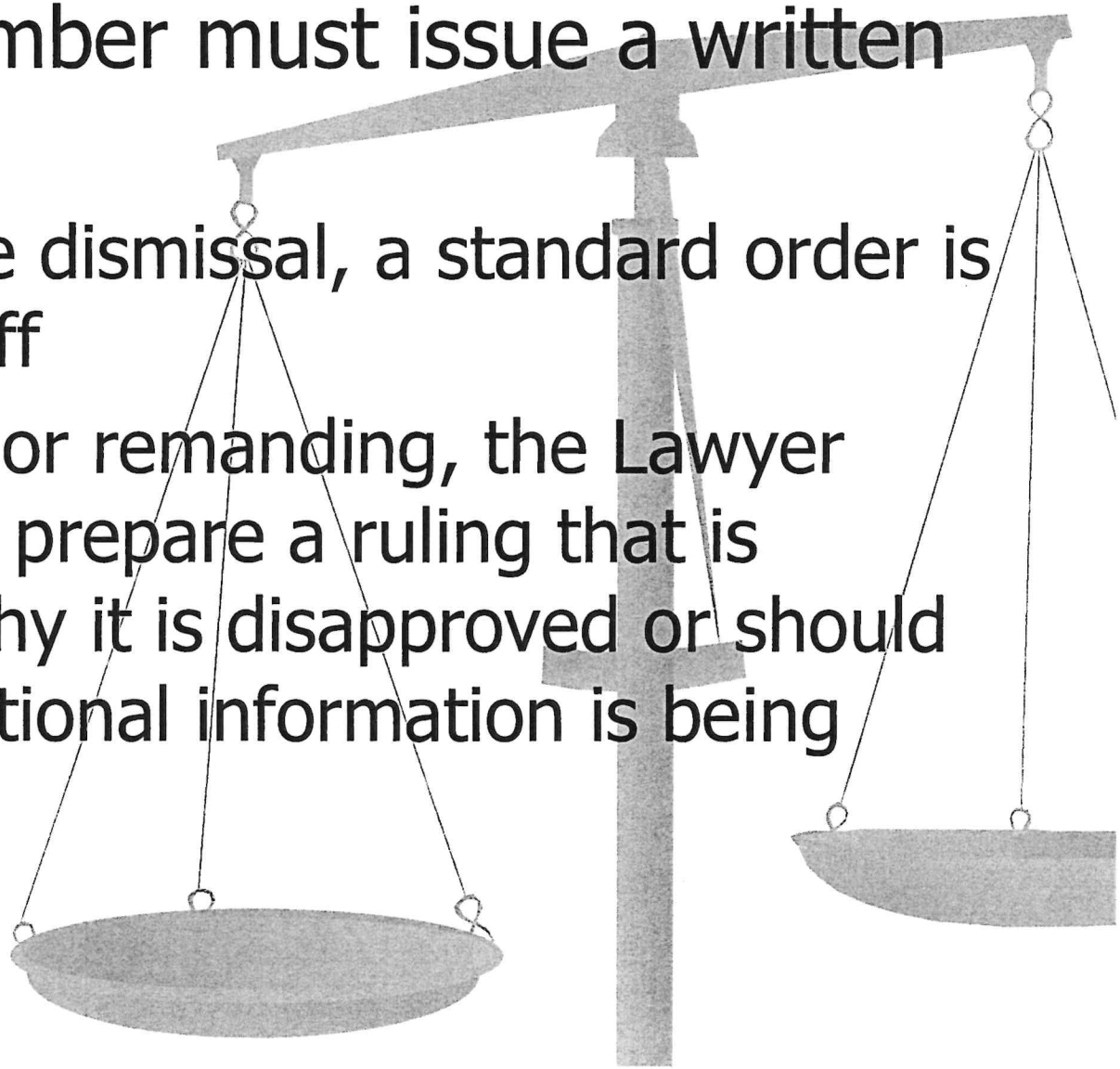
Appeals of Dismissal

- Standard: Abuse of discretion
  - The Lawyer Member should not substitute his or her judgment for that of ODC
  - If there is any reasonable basis for the dismissal, ODC has not abused its discretion

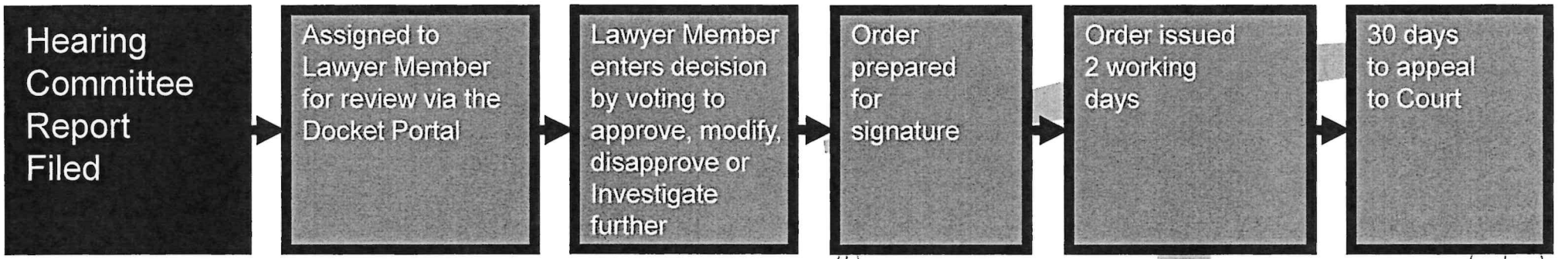


Appeals of Dismissal

- The Lawyer Member must issue a written ruling
  - If approving the dismissal, a standard order is provided by staff
  - If disapproving or remanding, the Lawyer Member should prepare a ruling that is specific as to why it is disapproved or should state what additional information is being sought

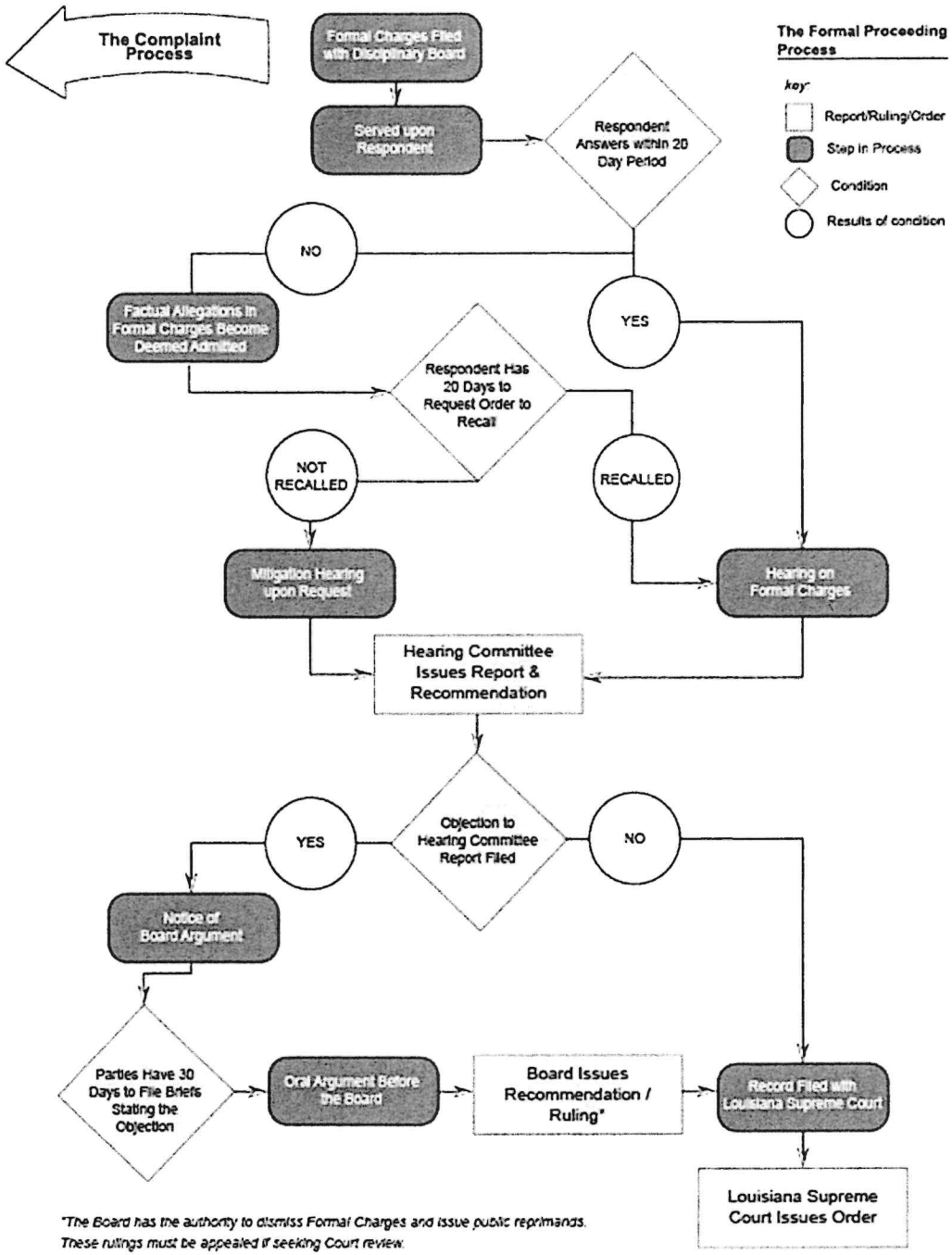


Appeals of Dismissal:



Hearing Committee Report Filed

ODC may request reconsideration by full Panel if lawyer member disapproves disposition or orders that matter be investigated further



*The Board has the authority to dismiss Formal Charges and issue public reprimands. These rulings must be appealed if seeking Court review.