

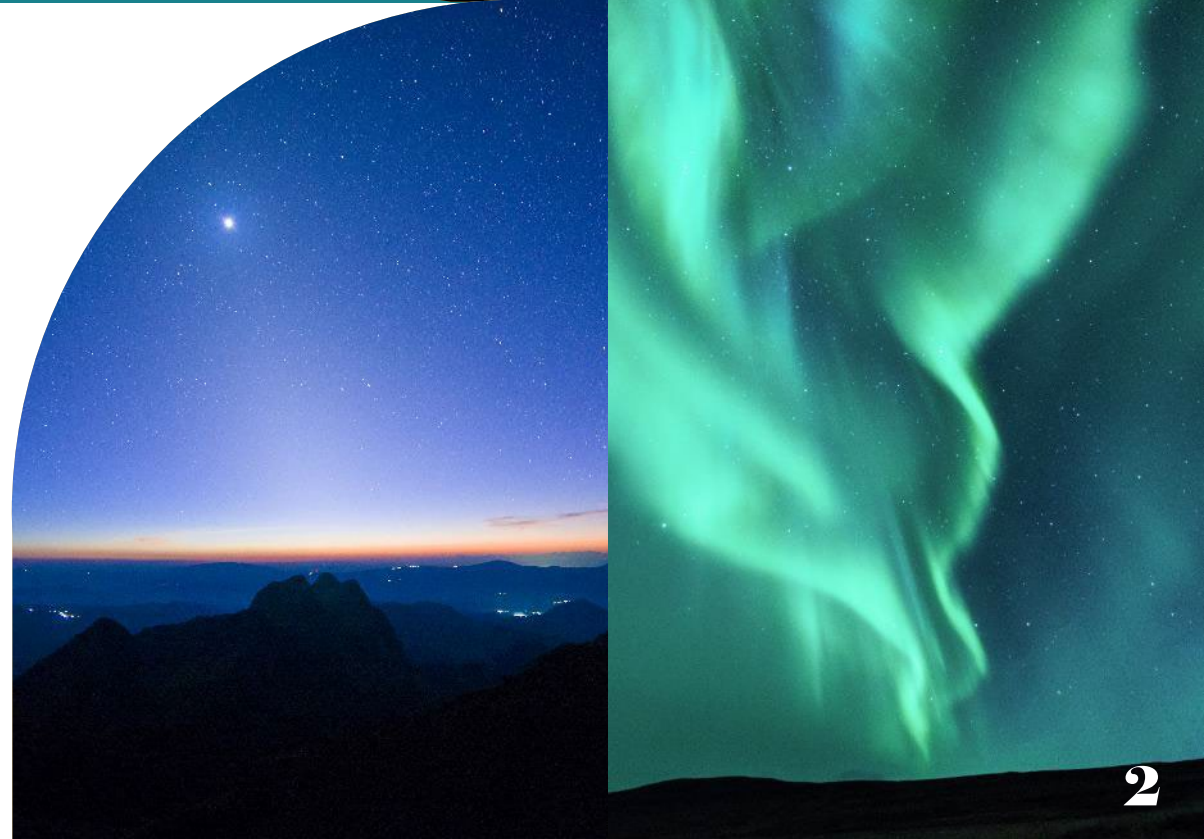


Demystifying the Disciplinary Commission

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Agenda

1. Legal Authority for Attorney Regulation
2. Makeup of Disciplinary Commission
3. Investigative Process
4. Litigation Process
5. Ethical Issues from 2024



Legal Authority for Attorney Regulation



The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or disbarment of those admitted; the unauthorized practice of law; discipline, removal and retirement of justices and judges;

Indiana Constitution, Art. 7, §4

Agencies Tasked with Attorney Regulation

OFFICE OF ADMISSIONS AND CONTINUING LEGAL EDUCATION (ACE)

Admission & Discipline Rules

- Admission to the Bar
- Annual Fees
- Legal Interns
- Certified Mediator Registry
- Continuing Legal Education

OFFICE OF JUDICIAL AND ATTORNEY REGULATION (OJAR)

Admission & Discipline Rules 23-25

- Attorney & Judicial Discipline
- Unauthorized Practice of Law
- Reinstatements
- Disciplinary History Requests (for bar admission in other states)
- Advisory Opinions

What is OJAR????



Disciplinary
Commission

Judicial Qualifications
Commission

Judicial Nominating
Commission

Adm & Disc R. 23

Rule for Attorney Discipline Process

Rules of Professional Conduct

**Attorney conduct rules that must be
adhered to.**

**Disciplinary Commission
investigates & prosecutes alleged
violations**



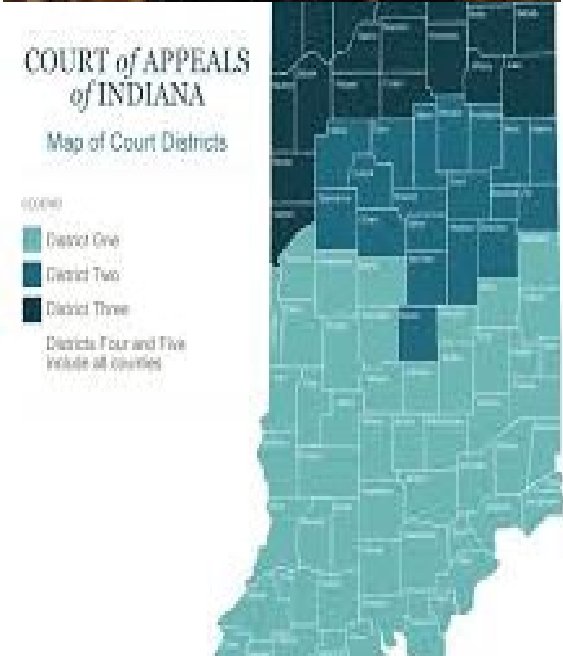
PURPOSE OF THE COMMISSION

“[T]o protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.” Admis. Disc. R. 23, § 1

Makeup of the Disciplinary Commission



Adm. Disc. R. 23, §6



- Appointments by Supreme Court
- 7 Lawyer Members, 2 Nonlawyer Members from Community
- Serve 5-year terms with possible reappointment for second term
- “A reasonable effort must be made to provide diversity in membership, including, but not limited to, race, gender, practice area, and geographical representation of the State.”

What is not considered in appointments?

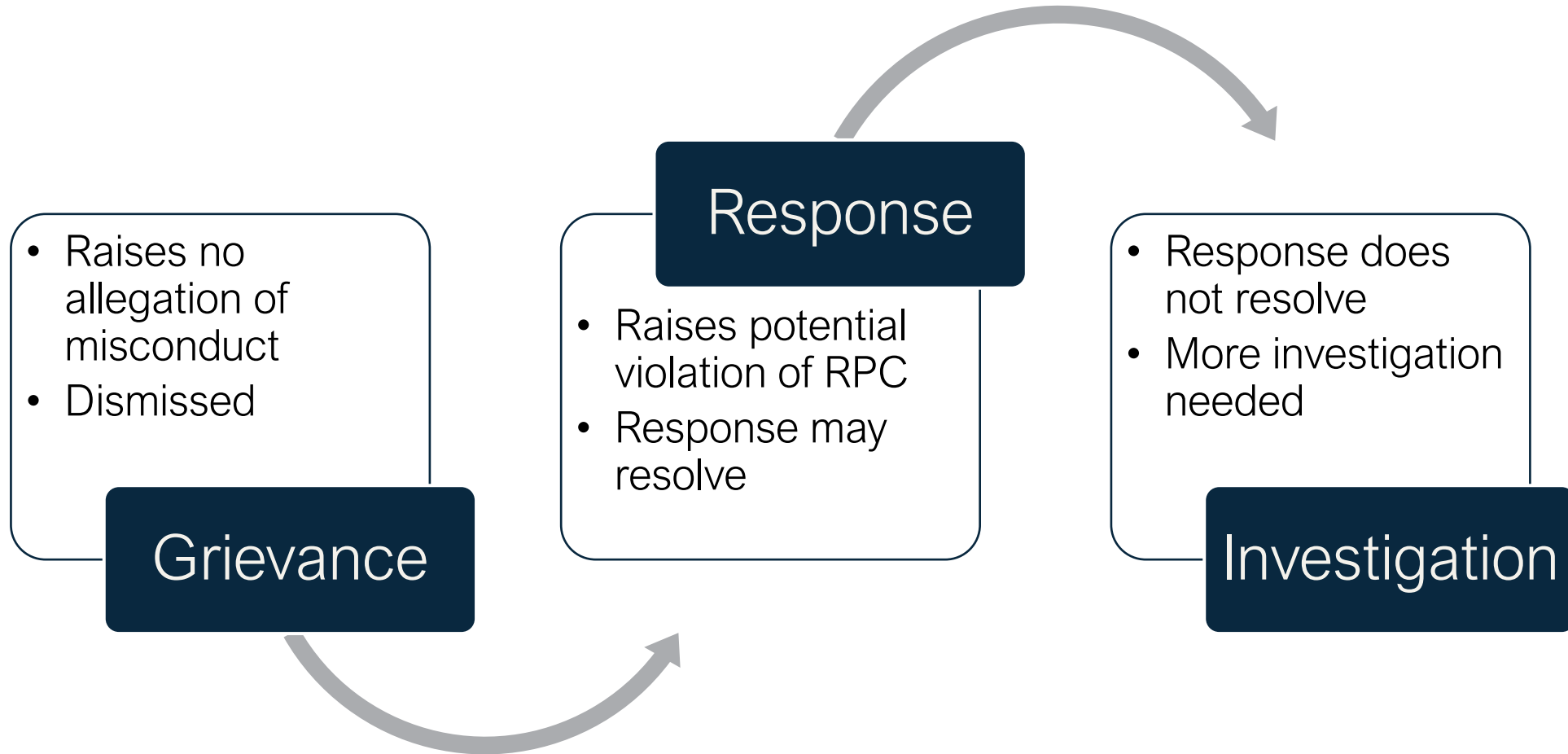


Political Party Affiliation

Investigative Process



DISCIPLINARY PROCESS



Protected from Public Access

Commission proceedings and papers before Charges filed

Communications between members & staff

Deliberations

Conditional Agreements & Resignation Affidavits

But who does Adm. Disc. R. 23, §22 apply to...

- Commission members and Commission's staff
- It does not apply to respondent-lawyers or to grievants

BUT WHY??????

- Remember Section 22 is a *public access* rule, not a confidentiality rule
- There are exceptions to access restrictions of Section 22. See Ind. Access to Court Records, Rule 9

Resolutions After Investigation

- Dismissal
- Private Caution
- Vote to file Charges

Standard for Filing Discipline Charges

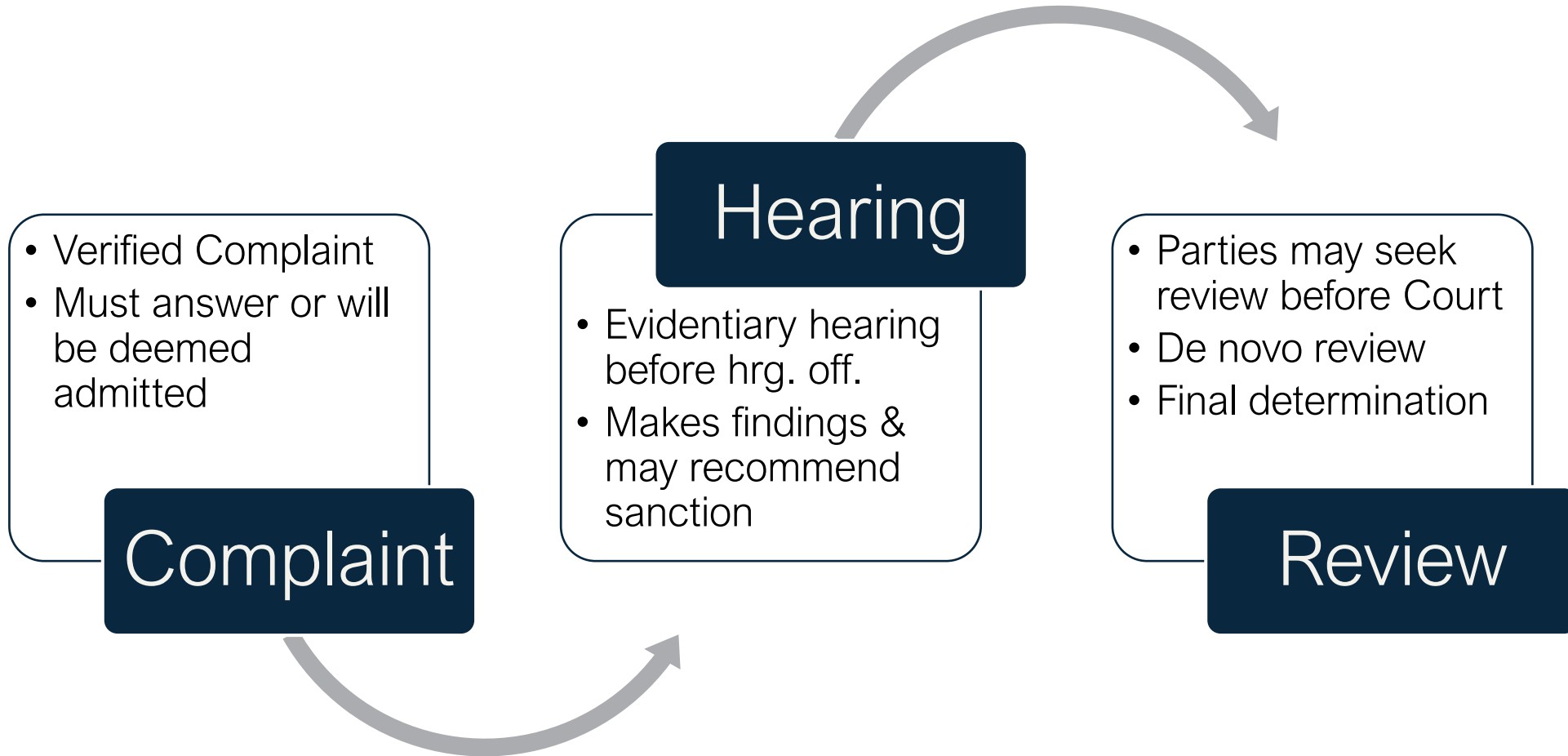
“[R]easonable cause to believe the respondent has committed misconduct which would warrant disciplinary action...”

Adm. Disc. R. 23, § 11(c)

Litigation Process



DISCIPLINARY PROCESS - CHARGING





Failure to Answer

- If a lawyer fails to submit an Answer after being properly served, the Commission may file a Judgment on the Complaint
- All allegations in the Disciplinary Complaint will be taken as true.

Evidentiary Hearing

- Before a Hearing Officer appointed by the Supreme Court
- No motions to dismiss or dilatory motions permitted
- Rules of Procedure are set forth in Adm. Disc. R. 23
 - Rules of Trial Procedure, Criminal Procedure, and Appellate Procedure do not apply
 - Rules of Evidence do apply.
- Burden of proof at hearing is by “**clear and convincing evidence.**”
- Hearing officer issues report to Supreme Court with findings of fact and conclusions of law. May make a recommendation about proposed sanction

Review by the Supreme Court

- After Hearing Officer's Report is submitted to the Court, the Disciplinary Commission, respondent-lawyer, or both may submit Petitions to Review, challenging the Hearing Officer's findings or conclusions.
- Supreme Court conducts a **de novo review** of evidence and hearing officer's determinations
- Supreme Court makes the ultimate determination as to whether Charges are proved and the discipline to be imposed.

Possible Sanctions

No Misconduct

Private Reprimand

Public Reprimand

**Suspension (with or without
automatic reinstatement)**

Disbarment



Overview – Due Process Safeguards

- Initial Review (Grievance Raises Ethical Issue) – Lawyer given opportunity to respond
- Docketing (Reasonable cause) – Lawyer given opportunity to provide additional materials
- Charging (Before Commission – reasonable cause warranting disciplinary action)
- Evidentiary Hearing (Before Hearing Officer – clear & convincing std) – Lawyer can present evidence
- Petition to Review (Before Supreme Court – *de novo* std) – Lawyer can present argument



Statistics

	Complaints	Dismissed	Filed
2020-2021	1062	1034	28
2021-2022	1270	997*	16
2022-2023	1395	1282*	21
2023-2024	1499	1184*	17

Grievances v. Filed Charges



Ethical Issues for 2024





Pretrial Statements

Prof. Cond. R. 3.6 – Trial Publicity

Prof. Cond. R. 4.4 – Respect for
Rights of Third Persons

The Oath (offensive personality)

Rule 3.6 – The Often Misunderstood Rule

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Rule 3.6 – The Often Misunderstood Rule

For Rule 3.6 to apply:

- Lawyer must be participating (or have participated) in investigation or litigation (***generally does not apply to legislators**)
- Statement must be extrajudicial statement (not in court)
- Statement must be to media (or to be distributed to media)
- Lawyer knows (or should know) statement has substantial likelihood of materially prejudicing an adjudicatory proceeding

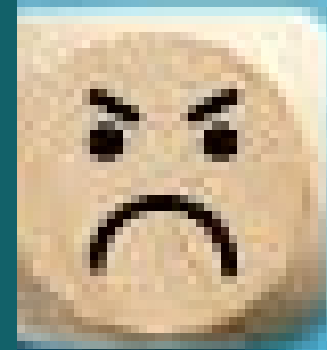
Common Misconceptions to Rule 3.6

- Only applies to prosecutors (and not defense attorneys)
- Only applies to jury trials (and not any matter subject to an adjudicatory proceeding)
- Defense that the statement is in the interest of the defense; rule is a shield against inflammatory public remarks (potential for prejudicing the factfinder)
- Defense that no harm is caused (Indiana rule states that statements should be viewed *at the time the statement was made* rather than whether it causes harm)
- Violates the First Amendment (courts have established that attorney speech can be regulated in this rule as attorney's speech is not a right to a fair trial; *Gentile v. State Bar of Nevada*)

So what is materially prejudicial?

Don't OPINE about the 3 C's

- Opinion on guilt
 - Pleas
 - Inadmissible evidence
 - Nature of physical evidence
 - Examination results
-
- Character of witness, suspect/defendant/target
 - Confession
 - Charged with a crime



Prof. Cond. R. 4.4

- Rule 4.4. Respect for Rights of Third Persons
- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Oath of Attorneys

I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers . . . I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law. . . I will abstain from 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, the oppressed or those who cannot afford adequate legal assistance; so help me God.”



Abandonment of Law Practice

Most significant problem on the rise

But there is help...the ethics hotline

Request Informal Ethics Opinion:

<https://www.in.gov/courts/ojar/attorney-resources/guidance/>

Formal Advisory Opinions:

<https://www.in.gov/courts/ojar/attorney-resources/opinions/>





Thank You

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<https://www.in.gov/courts/ojar/>