

OLR PROCEDURE REVIEW COMMITTEE  
April 11, 2017 Meeting Minutes

Attending: Gerald Ptacek, Chair; Marsha Mansfield, Reporter; Christopher Sobic; Mark Baker; Joseph Ranney;; Mark Baker; Catherine La Fleur; David Meany; Jacquelynn Rothstein; Peggy Hurley.  
Present by phone: Michael Apfeld, Rick Esenberg, Paul Schwarzenbart; Carrie Schneider; Amy Jahnke  
Also present: Keith Sellen; John O'Connell; Tim Pierce, Katja Kunzke

1. Welcome by Gerry Ptacek

Subcommittee minutes do not have to be circulated. Subcommittees can send minutes to Marsha but all that is required is for the Subcommittee to report back at the general meetings and to make recommendations to the OLR Procedure Committee.

2. Approval of March minutes. Approved as amended to correct wording in paragraph 1 on p. 2.

3. Subcommittee Reports:

OLR CHARGING PROCESS: Christopher Sobic reported: Subcommittee had brainstorming session regarding OLR charging process and identified key issues to examine.

1. OLR charging discretion based upon current rules.
2. Plea bargaining (or "negotiated disposition")
3. PRC and diversion programs

Moving forward, the subcommittee will examine these areas in more depth.

Question about OLR charging process – what is Keith Sellen's plan with respect to new rule? (Sellen absent for this portion of the discussion)

Sobic believes that Sellen feels that OLR has more discretion, particularly in the investigative stage. Seems that OLR is pleased with new rule and how it is working.

Apfeld: Discussed one potential change. Changes in charges can be reviewed by a referee. Discussed proposal for referee to review negotiated disposition before a charge is filed.

Schwarzenbart: Recently there was an OLR argument where they discussed omitting referee when there is a disposition reached after the case was filed. (Ruppelt case) In Ruppelt, referee rejected stipulated disposition (sanction) reached by the OLR and respondent.

REFEREES: Jacquelynn Rothstein reported: Dave Runke and Julie Rich (Supreme Court Commissioners) were present. They indicated that there is no formal process for becoming a referee. There is a list that exists and referees are chosen through clerk's office. Chief Justice signs order. List is old and some people have not been assigned as referees for a long time. No set rotation.

Last year: There were 51 cases where 19 referees were assigned. (Does not include consent appointments) Of those 19 referees. 5 referees were assigned 27 of those cases. Referees are paid a per diem (about \$62/hour). Discussion whether regional pool of referees has ever been considered. Thinks the petition was voted down (by the Court) because pool was too small. Discussed possible changes, including term limits and re-application procedure; training; qualifications required, such as litigation experience or judicial/administrative law judge experience. Although rules set forth the contents of the reports, sometime the facts are disparate from the decision.

Helpful to know distinctions between cases: Example, OLR can recommend a consent agreement before charges are filed. Referee imposes the reprimand (under SCR 22.09). These referees are also assigned in the same manner as those that preside over contested matters.

Also discussed whether timelines should be implemented.

CONFIDENTIALITY Jay Ranney reported: Sellen made a detailed (and helpful) presentation about the complaint process; investigatory procedures and exercise of discretion. Most of OLR's work is confidential until a complaint is filed or case otherwise moves into public arena. There are 3 states that have fully open proceedings. Fact is that public doesn't care about the details of the disciplinary process involving respondents as much as lawyers may think. Will be further examining process in those states that have completely open procedures.

Ptacek: Wanted to consider procedure to notify grievants. Should there be an opt-out procedure? How are grievants kept notified.

Sellen responded: Several ways. First, website has a lot of information. Website contains general information about how system is organized, how to complete a grievance, etc. Once OLR receives a grievance, they send form letter acknowledging receipt. OLR has a brochure that explains process to grievant. Investigator will contact grievant to make sure investigator understands the concerns and whether further information is needed. After investigation is complete, letter sent to grievant when case is closed. Letter explains reason why case is closed or whether a diversion has occurred. If formal investigation, gets copy of formal notice to investigation and respondent's response.

Some grievants don't really want or need to be informed and they let OLR know. Some grievants withdraw their grievance. OLR often allows this unless concludes that there is a public concern.

CHANGES IN OLR PROCESS Marsha Mansfield reported. gave an overview of committee discussions. Committee had two meetings. They discussed general concerns about the process. Goal is to make a detailed review of each rule and consider whether any changes are necessary.

LaFleur asked to elaborate on her comment regarding the divergent quality of the investigative reports and the problem that poorly written reports presents. Under Ch.22, the SPIC is outside the OLR process so there is no rotation of investigators like there is in the OLR process.

Sellen follows up with special investigators and has asked Court to help move things along. Also, the special investigator probably could use more training.

4. Subcommittee work: can occur at our monthly meetings or subcommittees can meet in between monthly meetings. Subcommittees can decide when and where to meet.

5. Meeting location: May schedule a meeting at Marquette in Milwaukee

6. Scheduling: Ranney asks, whether we should set deadlines for our subcommittee work? Ptacek: Subcommittees will report to Committee as a whole that will decide on changes. May generate a report or a rules petition. Discussion of deadline for first set of issues. Perhaps the first round of topics should be concluded between 90-180 days.

Meeting adjourned at 2:24 p.m.

NEXT MEETING DATE: May 9, 1:30 p.m. at the State Bar