

WISCONSIN

Lawyer Support and Monitoring Program

Submitted by:

The State Bar of Wisconsin
The Office of Lawyer Regulation

September 2013

INTRODUCTION

The Wisconsin Supreme Court, by order of May 14, 2010, created procedures for lawyer support and monitoring and procedures for referrals from the Office of Lawyer Regulation (OLR) [Order No. 08-28, 2010 WI 36]. The Court also ordered the State Bar and OLR to provide a written report advising the court of the impact of the adoption of SCR 10.05(4)(m) three years after the July 1, 2010 effective date. The State Bar and OLR submit this joint report in response to that order.

Since the effective date of SCR 10.05(4)(m), 36 lawyers have entered the lawyer support and monitoring program [program] by referrals from OLR, the Board of Bar Examiners (BBE), and law firms, and on an individual voluntary basis. While the time since the program's inception is too short to evaluate its effectiveness fully, the results to date are very encouraging.

Part I of this report provides information from the State Bar. Part II provides information from OLR. Part III provides recommendations.

PART I

Information from the State Bar

2010-2013 Demographics- WisLAP Monitoring Program:

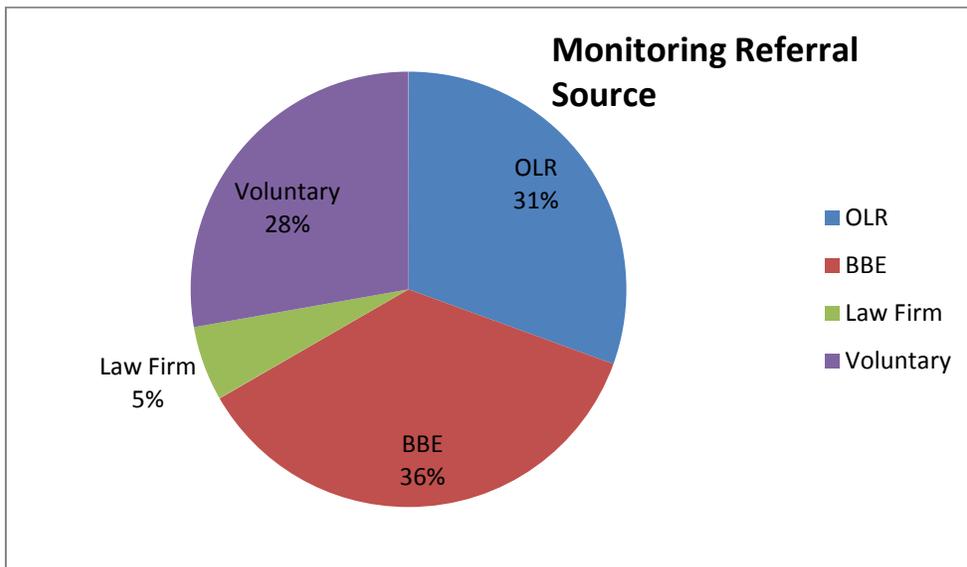
WisLAP has worked with OLR and BBE to facilitate referrals into the monitoring program, monitor participants and report compliance and non-compliance.

WisLAP developed the policies and procedures for the monitoring program and is responsible for its administration. Since August 2010, 49 volunteer attorneys have been formally trained to be monitors for program participants.

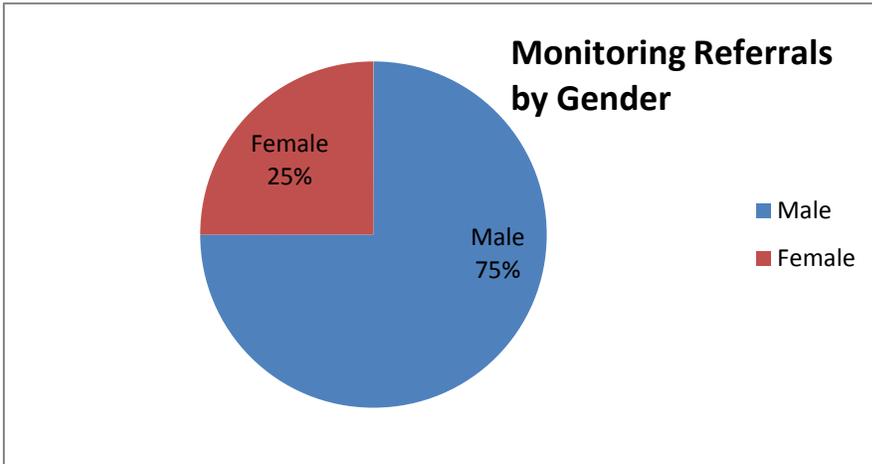
Goals for the monitoring program include protecting the interest of clients from harm caused by an impaired lawyer, protecting the integrity of the legal profession from harm caused by an impaired lawyer, assisting impaired lawyers in their efforts with rehabilitation and documenting that rehabilitation for the OLR, the BBE and the lawyer.

Monitoring Referral Source:

WisLAP receives referrals for monitoring from OLR, BBE, law firms and from lawyers who voluntarily come into monitoring. The program received 36 referrals between 2010 and 2013.

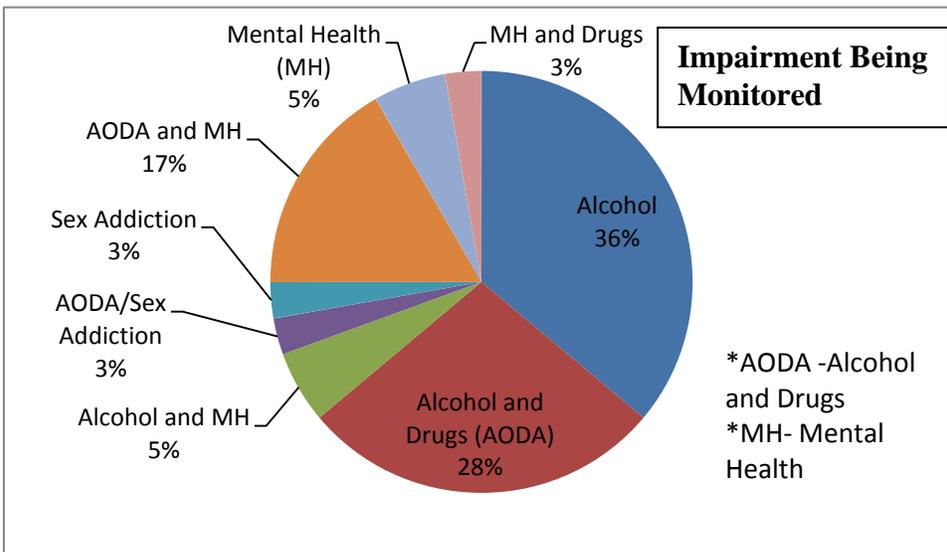


Monitoring Referrals by Gender:



Impairment Being Monitored:

The Monitoring Program works to identify any and all impairments that may impact fitness to practice. Conditions are put in place both by the referring agency and by the program to ensure participants are addressing their impairment. Besides the referring agency the program works with treatment providers, Department of Corrections, alcohol and drug treatment courts and multiple other organizations and resources.

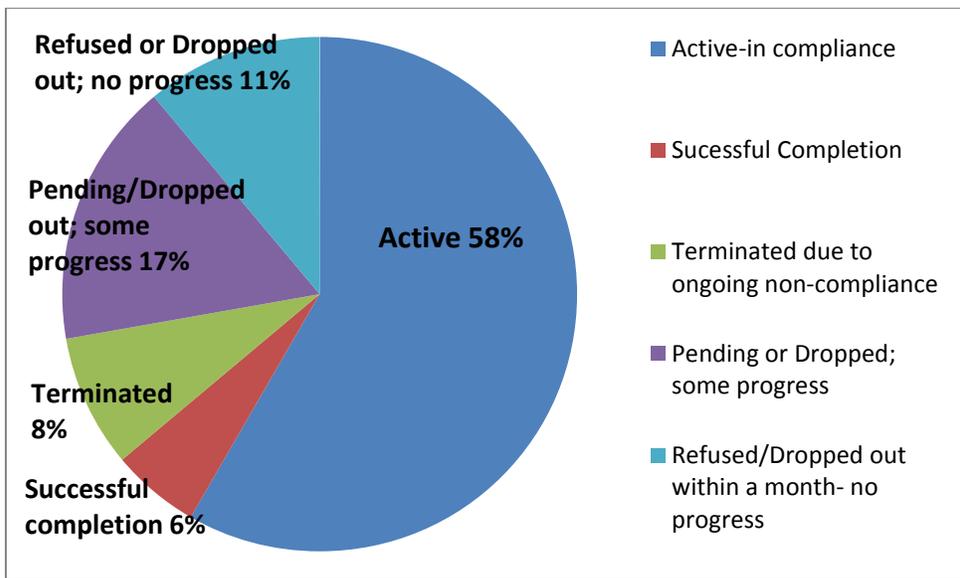


Participation and Compliance rates:

All participants are required to sign a monitoring contract prior to beginning the monitoring program. Monitoring contracts are modeled after the standards within the industry for monitoring lawyers and other impaired professionals. Contracts contain the conditions deemed necessary for the particular participant to engage in, in order to address the identified impairment, promote rehabilitation and comply with requirements set by the referring agency or the Court. Participants are required to report non-compliance with any conditions of their contract within 24 hours of occurrence.

Participants who show inconsistency in meeting the conditions of their contract are redirected by WisLAP staff and the assigned monitor. Referral agents and treatment providers are also notified when a participant is demonstrating non-compliance. WisLAP staff and the monitor will work with each participant as long as the participant is responsive to redirection and demonstrates the behaviors and attitudes required to come back into compliance.

Compliance has been on a continuum:



PART II

Information from OLR

Since the program began, OLR has referred 10 lawyers to the program. Another 9 lawyers voluntarily entered the program in relation to a pending grievance matter or in anticipation of seeking license reinstatement.

SCR 21.03(9) provides the director authority to refer lawyers to the program for four reasons: the lawyer has agreed to enter a diversion, the lawyer is subject to conditions, the lawyer has pleaded impairment or medical incapacity in response to an investigation or complaint, or the lawyer has exhibited behavior providing a reasonable belief the lawyer may be impaired or incapacitated. In the latter two situations, the lawyer's participation is voluntary and confidential. The program does not report information back to OLR in these two situations except upon request of the lawyer.

Of the 10 lawyers referred by OLR, one was the result of a diversion agreement, seven the result of conditions, and two the result of exhibited behavior.

Of the 10 referrals by OLR, one lawyer has successfully completed the program, four lawyers were terminated for noncompliance, and three lawyers remain in the program. The status of the program participation of the two lawyers referred for exhibiting behavior is not known to OLR.

Lawyers terminated from the program are referred back to OLR. In the case of a diversion, the director may either modify the diversion agreement or terminate the diversion and proceed as otherwise provided by the rules [SCR 22.10(7)(a)]. In the case of conditions, the director may open a new matter or seek enforcement by motion to the Supreme Court.

The responses to a lawyer's termination from the program have been adequate, although some concerns have arisen. Two lawyers were referred to the program by consent as part of consent reprimands that were processed and approved by referees [SCR 22.09], and subsequently terminated from the monitoring program. Because the conditions were included in a consent agreement rather than a court order, there was not an adequate response to termination from the program. In one case, the consent agreement was modified and approved by the original referee. OLR continues to monitor those conditions. The other case is pending. In the future, OLR does not intend to include monitoring conditions in consent agreements, but to file formal complaints and seek court-ordered monitoring conditions.

In one matter, OLR referred a lawyer for monitoring after the court imposed conditions. When the lawyer was terminated from the program, OLR moved for enforcement. The Court assigned the matter to a referee for a hearing, and after receiving the report, reviewed the matter and issued an order for relief. Disciplinary Proceedings Against

LeSieur, 2013 WI 39. In the course of processing this enforcement matter and another enforcement matter, it became clear that a rule should be developed for these situations. The Court directed OLR to prepare and file a rule petition regarding a procedure for filing and resolving motions seeking sanctions for violations of the court's disciplinary orders. Disciplinary Proceedings Against Lister, 2012 WI 102, ¶29. The petition was filed on May 29, 2013, and assigned number 13-05.

Lawyers who participate voluntarily in the program demonstrate good faith that may support a showing of fitness in a reinstatement proceeding or result in mitigation of a disciplinary sanction. Nine lawyers have voluntarily entered monitoring agreements with the program in conjunction with an ongoing OLR investigation or in anticipation of reinstatement. Four lawyers are continuing in the program; five lawyers have withdrawn. Reasons for withdrawal include inability to pay the expenses of monitoring and abandonment of reinstatement efforts.

The program has not been in existence long enough to provide data relating to recidivism. Monitoring contracts may be as long as five years. To date, only one lawyer has completed a contract. On the other hand, there have been few grievances filed against lawyers after entering the program and no findings of professional discipline to date.

PART III

RECOMMENDATIONS

1. The program should continue, fully funded and staffed by the State Bar to meet the demand for referrals. Many lawyers are receiving the support needed to recover and to remain medically fit to perform to professional standards. The public is better served and protected as a result.
2. The Court should act on Petition 13-05 and adopt a procedure for enforcement of Supreme Court Disciplinary Orders.
3. WisLAP and OLR should work together to facilitate earlier referrals in appropriate cases, and to develop other strategies to prevent and remediate situations where a lawyer's impairment may potentially harm the public.