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Report to the Wisconsin Office of Lawyer Regulation: Analysis of Grievances Filed in Criminal and Family Matters from 2013-2016

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**REPORT TO THE WISCONSIN OFFICE OF LAWYER REGULATION:
ANALYSIS OF GRIEVANCES FILED IN CRIMINAL AND FAMILY MATTERS FROM
2013-2016**

Prepared by Leslie C. Levin and Susan Saab Fortney

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Wisconsin Report

Introduction

In recent years, over 30% of lawyer grievances in Wisconsin involve criminal or traffic matters and almost 20% relate to family and juvenile matters.¹ During this same period, approximately 13-14% of Wisconsin lawyers self-identified as practicing some criminal law, while 10% reported practicing some family law. The relatively high percentage of grievances in these areas is also seen in some other states.² The Wisconsin Office of Lawyer Regulation (“OLR”) sought to learn more about the lawyers who received grievances for their work on these matters for the purpose of targeting educational programs or taking other measures to prevent grievances and harm resulting from lawyer misconduct.

Methods

This study looks exclusively at lawyers who received grievances for issues arising from family law or criminal law matters during the period from 2013-2016. Individuals hired and supervised by Wisconsin OLR coded and anonymized data related to the grievances. For each grievance reviewed from 2013-2016, demographic information including the lawyer’s age, date of graduation, date of admission, gender, and office location were coded. In addition, information about the nature of the grievance and its disposition was coded. In most cases, the nature of the allegation was coded using categories routinely assigned by the OLR, but for a few types of allegations, different codes were used to obtain a more fine-grained analysis. The Public Policy Research Institute at Texas A&M University assisted with data analysis and descriptive statistics reports. The analysis was largely based on preexisting data that had been collected by the Wisconsin OLR. The researchers did not collect new data.

Findings

A. General Demographics and Grievance Experience

There were approximately 20,500 active lawyers in Wisconsin from 2013-2016. The annual totals and gender break down appear below.

¹ For example, in 2015-2016, 38.1% of all disciplinary grievances were filed in criminal law matters while 19.76% were filed in family law matters. *See* Regulation of the Legal Profession in Wisconsin, Fiscal Year 2015-2016, at 46.

² In Illinois in 2016, the highest number of grievances docketed was in the area of criminal law (1,292) and the next highest was in the area of family law (649). Annual Report of 2016, Attorney Registration & Disciplinary Commission 21 (2017), <https://www.iardc.org/AnnualReport2016.pdf>. Likewise, in Michigan, the largest percentage of grievances arose in the area of criminal law, followed by domestic relations. State of Michigan Attorney Discipline Board & Attorney Grievance Commission, 2016 Annual Report 3 (2017). Similarly, in Washington, the largest percentage of grievances was in the criminal law area, followed by the family law area. Washington Discipline System, 2018 Annual Report, at 8 (2019).

Table 1
Number of Active and Emeritus Lawyers by Gender

Year	Total Lawyers ³	Active Female	Percentage	Active Male	Percentage
2013	20,585	6636	32.2	13,940	67.7
2014	20,703	6722	32.4	13,975	67.5
2015	20,827	6838	32.8	13,982	67.1
2016	20,804	6898	33.2	13,896	66.8

There were 4,898 grievances in criminal law and family law matters from 2013-2016. These grievances involved 2,123 discrete lawyers. The annual number of grievances arising out of such matters appears in Table 2 below.

Table 2
Number of Grievances by Year
in Family and Criminal Law Matters

Year	Number of grievances
2013	1297
2014	1373
2015	1169
2016	1059

There was no obvious explanation for why the number of grievances rose in 2014 and declined in subsequent years.

A breakdown of the grievances by type of matter revealed that an increase occurred in 2014 in criminal law matters and then declined for both family and criminal matters in the two years that followed. From 2013 to 2016 there was a larger drop in grievances in family law matters (27%) than in criminal law matters (12%). No readily apparent explanation accounts for the 2014 spike in criminal matters or the larger decrease in family law matters.

³ The number of “Total Lawyers” includes lawyers who did not indicate a gender or noted their gender as “both.” The number for whom no gender was indicated or “both” was noted was nine lawyers in 2013, six in 2014, seven in 2015 and ten in 2016.

Table 3
Number of Grievances by Area of Practice

	Family	Criminal
Year	Number of grievances	Number of grievances
2013	516	781
2014	472	901
2015	401	768
2016	373	685
Total ⁴	1,762	3,135

Overall, of the grievances reviewed during 2013-2016, 64% involved criminal law matters and 36% involved family law matters.

Substantially more grievances were filed against men than women, although this would be expected given the demographics of the legal profession in Wisconsin.

Table 4
Number of Grievances by Gender of the Attorney

Female	Percentage of Total	Male	Percentage of Total
1548	31.6	3349	68.4

During this time period, approximately two-thirds of all Wisconsin lawyers were male while one-third was female. The Wisconsin OLR and State Bar of Wisconsin do not have records reflecting the total number or gender of Wisconsin lawyers who practice in the areas of criminal or family law. Judging from paid membership in the Family Law section of the Wisconsin State Bar, however, it appears that a disproportionate number of women practice family law.⁵

Among the lawyers who received grievances in criminal or family law matters during 2013-2016, their median age was in their mid-forties.⁶

⁴ The total adds up to 4897, because one observation was missing.

⁵ In every year except 2013, the number of females exceeded the number of male members of the Family Law section. Conversely, the percentage of women in the Criminal Law section was slightly lower than would be expected given the percentage of women practicing in Wisconsin, but the difference was not nearly as pronounced.

⁶ Where lawyers received more than one grievance during 2012-2016, we used the age at which they received their first grievance during that period.

Table 5
Median Age of Respondent

All Lawyers	Female	Male	Family	Criminal
Age	Age	Age	Age	Age
47	44	48	48	46

It appears that 444 (9.1%) of the grievances during 2013-2016 were brought against lawyers within their first five years after law school graduation.⁷ There were 163 grievances filed against lawyers who were seventy years or older.⁸

Most lawyers who received grievances from 2013-2016 had not been previously sanctioned. Nevertheless, (19.8%) of the grievances filed from 2013-2016 were filed against lawyers who had previously received discipline.⁹ This represents 284 discrete lawyers, or about 13.4% of the lawyers who received grievances during this period.¹⁰

Approximately 7.5% of the grievances examined during the study period were against lawyers who had previously been disciplined three or more times.

Table 6
Number of Prior Discipline Sanctions Against Lawyers Who Received Grievances in 2013-2016

Number of prior discipline sanctions	Number of grievances	Percentage
0	3928	80.20
1	395	8.06
2	207	4.23
3	142	2.90
4	39	0.80
5	35	0.71
6 +	152	3.10

Women who received grievances during 2013-2016 were less likely than men to have received prior discipline.

⁷ The data only revealed the graduation year, so the figure above reflects any grievances received during the five years after the graduation year supplied.

⁸ This was calculated by birth month because we did not have dates of birth.

⁹ In some cases, the lawyers may have received a sanction during 2013-2016 and then received a subsequent grievance during that period.

¹⁰ The OLR only maintains discipline records since 1978, so it is possible that the discipline numbers are somewhat higher. In some cases, the discipline was imposed based on grievances filed from 2013-2016, and then a subsequent grievance was filed.

Table 7
Number of Prior Discipline Sanctions Against Lawyers Who Received Grievances
(by Gender)

	Gender of Attorney			
	Female		Male	
Number of prior discipline sanctions	Number of grievances	Percentage	Number of grievances	Percentage
0	1354	87.47	2574	76.84
1	96	6.20	299	8.93
2	44	2.84	163	4.87
3	20	1.29	122	3.64
4	11	0.71	28	0.84
5	11	0.71	24	0.72
6 +	12	0.52	140	4.18

Using an ordinary least squares regression, the difference between females and males in their number of sanctions was statistically significant, even when controlling for years of practice ($p < 0.01$).

Table 8
Number of Prior Discipline Sanctions Against Lawyers Who Received Grievances
(by Family/Criminal)

Number of prior discipline sanctions	Family		Criminal	
	Number of grievances	Percentage	Number of grievances	Percentage
0	1,444	81.8	2,484	79.2
1	176	9.9	219	6.9
2	47	2.6	160	5.1
3	38	2.1	103	3.2
4	16	0.9	23	0.7
5	5	0.2	30	0.9
6 +	36	2.0	116	3.7

Table 9
Number of Prior Discipline Sanctions Against Lawyers Who Received Grievances in
Family Matters (by Gender)

	Gender of Attorney (Family Matter)			
	Female		Male	
Number of prior discipline sanctions	Number of grievances	Percentage	Number of grievances	Percentage
0	686	91.59	758	74.83
1	39	5.21	137	13.52

2	5	0.67	42	4.15
3	4	0.53	34	3.36
4	7	0.93	9	0.89
5	0	0	5	0.49
6 +	8	1.06	28	2.76

Table 10
Number of Prior Discipline Sanctions Against Lawyers Who Received Grievances in Criminal Law Matters (by Gender)

	Gender of Criminal Attorney			
	Female		Male	
Number of prior discipline sanctions	Number of grievances	Percentage	Number of grievances	Percentage
0	668	83.60	1816	77.74
1	57	7.13	162	6.93
2	39	4.88	121	5.18
3	16	2.00	87	3.72
4	4	0.50	19	0.81
5	11	1.38	19	0.81
6 +	4	0.50	112	4.80

Among the lawyers who had five or more prior sanctions, the primary reason for the current grievance was lack of diligence (27%) followed by lack of communication (14%).

A simple regression analysis shows both gender (male) and age (age at grievance) are statistically significant at 1%. Thus, males are more likely to have prior sanctions and, as would be expected, older lawyers tend to have more prior grievances. The statistical significance of gender remains even after controlling for age.

In addition, 1546 of the grievances were filed against lawyers who had previously been subject to diversion. It appears that 975 grievances were brought against lawyers who had previously received disciplinary sanctions.¹¹ Some of these grievances (543) were brought against lawyers who had previously received grievances resulting in both diversion and discipline sanctions.

The data reflect that 1978 (40.38%) of the grievances during the study period involved lawyers who had previously had some substantial interaction with the discipline system in the form of grievances leading to diversion or a discipline sanction.

¹¹ In some cases, a grievance giving rise to diversion or a discipline sanction was filed during 2013-2016 and another grievance was subsequently filed during this period. In some of those cases, it is possible that the diversion agreement was not concluded, or the sanction was not imposed, before a later grievance was filed.

B. Source of Grievances

As would be expected, the largest percentage of the grievances came from clients while the second largest source of grievances was adverse parties. “Attorney” refers to another lawyer including the lawyer on the opposing side. “Other” persons listed below include family members of a client.

**Table 11
Persons Who Filed Grievances Against Lawyers**

Relationship	Number	Percentage
Adverse Party	977	19.96
Attorney	83	1.69
Client	2744	56.06
Judge	8	0.16
OLR Staff	66	1.35
Other	1017	20.78
Total	4895	100

**Table 12
Persons Who Filed Grievances Against Lawyers
by Type of Matter (Family/Criminal)**

Relationship	Family		Criminal	
	Number	Percentage	Number	Percentage
Adverse Party	446	25.31	531	16.93
Attorney	47	2.67	36	1.15
Client	708	40.18	2,036	64.94
Judge	4	0.23	3	0.1
OLR Staff	15	0.85	51	1.62
Other	542	30.76	478	15.25
Total	1762	100	3135	99.9

For criminal matters, “adverse party” refers only to a defendant who files the grievance against a prosecutor.

Given the nature of family law matters, it is not surprising that a much higher percentage of grievances in family law matters came from adverse parties.

**Table 13
Source of Grievances in Criminal Law Matters
Based on Whether Client Incarcerated**

Relationship	Incarcerated		Not Incarcerated	
	Number	Percentage	Number	Percentage
Adverse Party	291	15.74	240	18.66

Attorney	0	0	36	2.80
Client	1468	79.39	568	44.17
Judge	0	0	3	0.23
OLR Staff	0	0	51	3.97
Other	90	4.87	388	30.17
Total	1849	100	1286	100

Incarcerated grievants in criminal cases were much more likely to file grievances against their lawyers than non-incarcerated clients in criminal cases.

For grievances involving incarcerated criminal clients, 4.81% of the grievances were filed by “Other” persons. The percentage of “Other” persons filing grievances increased to 30.90% when the client was not incarcerated. There is no obvious explanation for this difference.

C. Nature of Grievance Allegations

The allegations contained in the grievances were mostly analyzed using the categories employed by the OLR at the time the grievances were filed. In some cases, the allegations were broken out to look more closely at certain discrete types of misconduct. These new categories were coded by the OLR.¹²

When the first four reasons stated for filing grievances were combined, the most frequent allegations against all lawyers in this study were Lack of Diligence (19.79%), followed by Lack of Communication (15.02%), Improper Advocacy-Other (10%) and Misrepresentation/Dishonesty (9.77%). “Improper Advocacy-Other” includes a variety of behavior during litigation such as Rule 3.4 allegations related to frivolous discovery requests or failures to respond to discovery requests; alluding at trial to unsupported, irrelevant, or other inappropriate matters; and requesting a person to refrain from giving relevant information. The category may include allegations under SCR Rule 20:3.5 and under Rule 20:3.8 related to special responsibilities of a prosecutor. Allegations under SCR Rule 20:4.4 would also fall into this category. Finally, allegations relating to advocacy that do not fit into the other subcategories would fall here, most notably, allegations that prosecutors or guardians ad litem improperly exercised discretion entrusted to them. Another 2.30% of the allegations related to “Improper Advocacy.”

Table 14
Nature of All Allegations Against All Lawyers

All Allegations	All Lawyers	
	Number	%
Incompetence	304	3.20
Scope of Representation	646	6.79

¹² Improper Advocacy was coded to only include misconduct such as destruction, concealment, or falsification of evidence, disobeying a tribunal, and issues concerning trial publicity while Improper Advocacy-Other included other misconduct. The other new categories were Advising/Assisting Client Crime or Fraud, Excessive or Unreasonable Fee, Personal Interest Conflict, Sex with Client, Conflict of Interest-Other, Improper Advertising, Violation of Solicitation Rules,” and Violation of Oath-Other.

Advising/Assisting Client Crime or Fraud	9	0.09
Scope of Representation-Other	33	0.35
Lack of Diligence	1,883	19.79
Lack of Communication	1,429	15.02
Fees	238	2.50
Excessive or Unreasonable Fee	455	4.78
Revealing Confidences	128	1.35
Conflict of Interest	142	1.49
Personal Interest Conflict	117	1.23
Sex with Client	12	0.13
Conflict of Interest-Other	75	0.79
Trust Account Violations	228	2.40
Improper Termination	263	2.76
Frivolous Actions/Harassment	59	0.62
Improper Advocacy	219	2.30
Trial Publicity	1	0.01
Disobeying a Tribunal	33	0.35
Improper Advocacy-Other	951	10.00
Improper Communications	206	2.17
Supervisor/Subordinate Responsibilities	92	0.97
Unauthorized Practice	31	0.33
Improper Advertising	13	0.14
Violation of Solicitation Rules	3	0.03
Misrepresentation/Dishonesty	929	9.77
Criminal Conduct by Lawyer	50	0.53
Statutory Violation	132	1.39
Other	35	0.37
IFOR	120	1.26
Reciprocal Discipline	1	0.01
Medical Incapacity	13	0.14
Failure to Refund Unearned Fees	277	2.91
Violation of Oath	198	2.08
Violation of Oath-Other	44	0.46
Neglect	5	0.05
False Statement to Tribunal	137	1.44
Not Available	1	0.01

As can be seen below, when the grievances were analyzed by gender, Lack of Diligence remained the most frequent allegation against males (20.19%) and females (18.89%), but some variations emerged. Most notably, the second most common allegation against males was Lack of Communication (16.2%), while it was Improper Advocacy-Other for females (13.4%).

Table 15
Nature of All Allegations against Lawyers by Type of Matter and Gender

Allegation (all)	Family		Criminal		Male		Female	
	#	%	#	%	#	%	#	%
Incompetence	100	2.85	204	3.40	211	3.19	93	3.21
Scope of Representation	116	3.31	529	8.81	488	7.37	158	5.46
Advising/Assisting Client Crime or Fraud	4	0.11	5	0.08	6	0.09	3	0.10
Scope of Representation- Other	19	0.54	14	0.23	28	0.42	5	0.17
Lack of Diligence	562	16.02	1,321	22.01	1,336	20.19	547	18.89
Lack of Communication	402	11.46	1,027	17.11	1,074	16.23	355	12.26
Fees	33	0.94	205	3.42	192	2.90	46	1.59
Excessive or Unreasonable Fee	317	9.03	138	2.30	299	4.52	156	5.39
Revealing Confidences	55	1.57	73	1.22	93	1.41	35	1.21
Conflict of Interest	80	2.28	62	1.03	113	1.71	29	1.00
Personal Interest Conflict	60	1.71	57	0.95	56	0.85	61	2.11
Sex with Client	9	0.26	3	0.05	7	0.11	5	0.17
Conflict of Interest-Other	46	1.31	29	0.48	55	0.83	20	0.69
Trust Account Violations	101	2.88	127	2.12	175	2.64	53	1.83
Improper Termination	101	2.88	162	2.70	163	2.46	78	2.69
Frivolous Actions/Harassment	25	0.71	34	0.57	38	0.57	21	0.73
Improper Advocacy	19	0.54	200	3.33	132	1.99	87	3.01
Trial Publicity			1	0.02	1	0.02		
Disobeying a Tribunal	28	0.80	5	0.08	20	0.30	13	0.45
Improper Advocacy-Other	520	14.82	431	7.18	563	8.51	388	13.40
Improper Communications	135	3.85	71	1.18	119	1.80	87	3.01
Supervisor/Subordinate Responsibilities	32	0.91	60	1.00	60	0.91	32	1.11
Unauthorized Practice	11	0.31	20	0.33	21	0.32	10	0.35
Improper Advertising	5	0.14	8	0.13	11	0.17	2	0.07
Violation of Solicitation Rules	2	0.06	1	0.02	2	0.03	1	0.03
Misrepresentation/Dishonesty	358	10.20	570	9.50	606	9.16	323	11.16
Criminal Conduct by Lawyer	13	0.37	37	0.62	35	0.53	15	0.52
Statutory Violation	75	2.14	57	0.95	85	1.28	47	1.62
Other	11	0.31	24	0.40	24	0.36	11	0.38
IFOR	10	0.28	110	1.83	100	1.51	20	0.69
Reciprocal Discipline			1	0.02	1	0.02		
Medical Incapacity	5	0.14	8	0.13	12	0.18	1	0.03
Failure to Refund Unearned Fees	60	1.17	217	3.62	211	3.19	66	2.28
Violation of Oath	100	2.85	98	1.63	137	2.07	61	2.11
Violation of Oath-Other	10	0.28	34	0.57	31	0.47	13	0.45

Neglect	4	0.11	1	0.02	3	0.05	2	0.07
False Statement to Tribunal	80	2.28	57	0.95	86	1.30	51	1.76
Not Available	1	0.03	1	0.02	1	0.02		

The most frequent allegation in grievances against lawyers handling family matters was Lack of Diligence (16.02%). The second most frequent was “Improper Advocacy-Other” (14.82%). Lack of Communication (11.46%) and Misrepresentation/Dishonesty (10.2%) were the next most frequently asserted allegations. Excessive or Unreasonable Fees were also alleged in 9.03% of the grievances in family matters, with another 1.17% related to Failure to Return Unearned Fees, and .94% related to general Fee allegations.

In the criminal matters, the largest percentage of allegations related to Lack of Diligence (22.01%), followed by Lack of Communication (17.11%). Improper Advocacy accounted for 10.51% of all allegations involving criminal matters and Misrepresentation/Dishonesty represented 9.5% of the all allegations in criminal matters. In addition, 8.81% of the allegations related to the Scope of Representation. Only 2.30% of allegations in criminal matters involved Excessive or Unreasonable fees, with another 3.62% related to Failure to Return Unearned Fees and 3.42% involving other fee-related concerns.

The OLR codes the allegations in each grievance as the primary, second, third, and fourth reasons for the grievance. When looking at the primary allegation in all grievances (below), the most frequent was Lack of Diligence (19.66%), followed by Improper Advocacy-Other (14.78%), Lack of Communication (11.97%), and Misrepresentation/Dishonesty (8.28%).

Table 16
Nature of Primary Allegation

	All Lawyers	
	Number	Percentage
Incompetence	158	3.23
Scope of Representation	389	7.94
Advising/Assisting Client Crime or Fraud	5	0.10
Scope of Representation-Other	20	0.41
Lack of Diligence	963	19.66
Lack of Communication	586	11.97
Fees	82	1.67
Excessive or Unreasonable Fee	168	3.43
Revealing Confidences	58	1.18
Conflict of Interest	95	1.94
Personal Interest Conflict	67	1.37
Sex with Client	7	0.14
Conflict of Interest-Other	32	0.65
Trust Account Violations	64	1.30
Improper Termination	112	2.28
Frivolous Actions/Harassment	35	0.71

Improper Advocacy	148	3.02
Disobeying a Tribunal	15	0.31
Improper Advocacy-Other	724	14.78
Improper Communications	127	2.59
Supervisor/Subordinate Responsibilities	59	1.20
Unauthorized Practice	24	0.49
Improper Advertising	9	0.18
Violation of Solicitation Rules	1	0.02
Misrepresentation/Dishonesty	406	8.28
Criminal Conduct by Lawyer	21	0.43
Statutory Violation	70	1.43
Other	23	0.47
IFOR	105	2.14
Reciprocal Discipline	1	0.02
Medical Incapacity	5	0.10
Failure to Refund Unearned Fees	137	2.80
Violation of Oath	91	1.86
Violation of Oath-Other	20	0.41
Neglect	4	0.08
False Statement to Tribunal	66	1.35
Not Available	1	0.02

Table 17
Nature of Primary Allegations by Family/Criminal Matter and Gender

	Family		Criminal		Female		Male	
	#	%	#	%	#	%	#	%
Incompetence	54	3.06	104	3.32	45	2.91	113	3.37
Scope of Representation	59	3.35	329	10.49	99	6.40	290	8.66
Advising/Assisting Client Crime or Fraud	2	0.11	3	0.10	2	0.13	3	0.09
Scope of Representation- Other	9	0.51	11	0.35	2	0.13	18	0.54
Lack of Diligence	283	16.06	680	21.69	285	18.41	678	20.24
Lack of Communication	129	7.32	457	14.58	147	9.50	439	13.11
Fees	14	0.80	68	2.17	11	0.71	71	2.12
Excessive or Unreasonable Fee	101	5.73	67	2.14	59	3.81	109	3.25
Revealing Confidences	35	1.99	23	0.73	18	1.16	40	1.19
Conflict of Interest	62	3.52	33	1.05	20	1.29	75	2.24
Personal Interest Conflict	35	1.99	32	1.02	36	2.33	31	0.93
Sex with Client	6	0.34	1	0.03	3	0.19	4	0.12
Conflict of Interest-Other	21	1.19	11	0.35	8	0.52	24	0.72
Trust Account Violations	33	1.87	31	0.99	18	1.16	46	1.37

Improper Termination	33	1.87	79	2.52	27	1.74	85	2.54
Frivolous Actions/Harassment	15	0.85	20	0.64	13	0.84	22	0.66
Improper Advocacy	8	0.45	140	4.47	63	4.07	85	2.54
Disobeying a Tribunal	11	0.62	4	0.13	7	0.45	8	0.24
Improper Advocacy-Other	387	21.96	337	10.75	295	19.06	429	12.81
Improper Communications	88	4.99	39	1.24	60	3.88	67	2.00
Supervisor/Subordinate Responsibilities	15	0.85	44	1.40	23	1.49	36	1.07
Unauthorized Practice	7	0.40	17	0.54	5	0.32	19	0.57
Improper Advertising	4	0.23	5	0.16			9	0.27
Violation of Solicitation Rules			1	0.03			1	0.03
Misrepresentation/Dishonesty	167	9.48	239	7.62	151	9.76	255	7.62
Criminal Conduct by Lawyer	5	0.28	16	0.51	7	0.45	14	0.42
Other	9	0.51	14	0.45	8	0.52	15	0.45
IFOR	7	0.40	98	3.13	17	1.10	88	2.63
Reciprocal Discipline			1	0.03			1	0.03
Medical Incapacity	2	0.11	3	0.10			5	0.15
Failure to Refund Unearned Fees	21	1.19	116	3.70	30	1.94	107	3.19
Violation of Oath	52	2.95	39	1.24	30	1.94	61	1.82
Violation of Oath-Other	5	0.28	15	0.48	5	0.32	15	0.45
Neglect	3	0.17	1	0.03	2	0.13	2	0.06
Statutory Violation	36	2.04	34	1.08	23	1.49	47	1.40
False Statement to Tribunal	43	2.44	23	0.73	29	1.87	37	1.10
Not Available	1	0.06					1	0.03

As indicated on the table above, the largest percentage of the primary allegations against males (20.24%) involved Lack of Diligence. Lack of Diligence allegations also represented the largest percentage (21.69%) of the primary allegations in the criminal law area. By contrast, the largest percentage of primary allegations in the family law area (21.96%) related to Improper Advocacy-Other. The Improper Advocacy-Other allegations also represented the largest percentage of the primary allegations against female attorneys (19.06%).

Lack of Communication accounted for the second largest percentage of primary allegations against males (13.11%) and allegations in the criminal law area (14.58%). For the family law-related grievances, the second largest percentage of primary grievances (16.06%) involved Lack of Diligence. Lack of Diligence also accounted for the second largest percentage of primary allegations against female attorneys (18.41%) and in family matters (16.06%).

Table 18
Nature of Primary and Secondary Allegations by Family/Criminal Matter and Gender

Allegations (top two)	Family		Criminal		Male		Female	
	#	%	#	%	#	%	#	%
Incompetence	79	2.82	163	3.28	174	3.24	68	2.84
Scope of Representation	84	3.00	434	8.74	389	7.24	130	5.42
Advising/Assisting Client Crime or Fraud	2	0.07	5	0.10	5	0.09	2	0.08
Scope of Representation- Other	16	0.57	14	0.28	26	0.48	4	0.17
Lack of Diligence	486	17.36	1,178	23.72	1,173	21.84	491	20.48
Lack of Communication	293	10.46	888	17.88	895	16.66	286	11.93
Fees	23	0.82	127	2.56	122	2.28	28	1.17
Excessive or Unreasonable Fee	206	7.36	104	2.09	202	3.76	108	4.51
Revealing Confidences	49	1.75	41	0.83	63	1.17	27	1.13
Conflict of Interest	73	2.61	42	0.85	91	1.69	24	1.00
Personal Interest Conflict	50	1.79	48	0.97	44	0.82	54	2.25
Sex with Client	7	0.25	3	0.06	5	0.09	5	0.21
Conflict of Interest-Other	40	1.43	20	0.40	41	0.76	19	0.79
Trust Account Violations	55	1.97	59	1.19	84	1.57	30	1.25
Improper Termination	56	2.00	113	2.27	121	2.25	48	2.01
Frivolous Actions/Harassment	21	0.75	28	0.56	32	0.60	17	0.71
Improper Advocacy	13	0.46	187	3.77	121	2.25	79	3.30
Trial Publicity								
Disobeying a Tribunal	24	0.86	5	0.10	17	0.32	12	0.50
Improper Advocacy-Other	488	17.43	402	8.10	526	9.79	364	15.19
Improper Communications	121	4.32	66	1.33	107	1.99	80	3.34
Supervisor/Subordinate Responsibilities	27	0.96	54	1.09	53	0.99	28	1.17
Unauthorized Practice	9	0.33	18	0.36	21	0.39	6	0.25
Improper Advertising	5	0.18	5	0.10	9	0.17	1	0.04
Violation of Solicitation Rules			1	0.02	1	0.02		
Misrepresentation/Dishonesty	282	10.08	439	8.84	464	8.64	258	10.77
Criminal Conduct by Lawyer	11	0.39	30	0.60	29	0.54	12	0.50
Statutory Violation	62	2.21	49	0.99	71	1.32	40	1.67
Other	10	0.36	18	0.36	18	0.34	10	0.42
IFOR	9	0.32	109	2.19	99	1.84	19	0.79
Reciprocal Discipline			1	0.02	1	0.02		
Medical Incapacity	3	0.11	4	0.08	6	0.11	1	0.04
Failure to Refund Unearned Fees	42	1.50	161	3.24	158	2.94	45	1.88
Violation of Oath	77	2.75	73	1.47	102	1.90	48	2.00
Violation of Oath-Other	8	0.29	29	0.58	27	0.50	10	0.42

Neglect	3	0.11	1	0.02	2	0.04	2	0.08
False Statement to Tribunal	65	2.32	47	0.95	71	1.32	41	1.71
Not Available	1	0.04			1	0.02		

D. Dispositions (Generally)

The dispositions of grievances from 2013-2016 are shown below.

**Table 19
Total Dispositions of Grievances**

Disposition	Frequency	Percentage
Inquiry falling outside of rules	169	3.46
De Minimus Closure	13	.027
De Minimus Dismissal	6	0.12
Dismissal	185	3.79
Dismissal with Advisory	19	0.39
Dispute Resolution	125	2.56
Diversion	239	4.90
Fee Resolution	67	1.37
Insufficient Evidence	3,302	67.62
No Contact	254	5.20
Private Reprimand	31	0.63
Public Reprimand	23	0.47
Referred Pending Reinstatement	59	1.21
Referred to Another Agency	43	0.88
Revocation	33	0.68
Suspension	35	0.72
Withdrawn	280	5.73
Total	4,883	99.76

“Withdrawn” grievances indicates that the grievant decided to withdraw the grievance on his or her own, without dispute resolution efforts by OLR.

Table 20
Primary and Secondary Allegations that Grievants “Withdraw”

Primary Allegation	Frequency	Percentage
Conflict of Interest	15	5.36
Failure to Refund Unearned Fee	4	1.43
False Statement to Tribunal	4	1.43
Fees	19	6.79
Frivolous Actions/Harassment	1	0.36
IFOR	5	1.79
Improper Advocacy	70	25.00
Improper Communications	11	3.93
Improper Termination	5	1.79
Incompetence	4	1.43
Lack of Communication	31	11.07
Lack of Diligence	60	21.43
Misrepresentation/Dishonesty	17	6.07
Other	1	0.36
Revealing Confidences	6	2.14
Scope of Representation	12	4.29
Statutory Violation	5	1.79
Supervisor/Subordinate Responsibilities	2	0.71
Trust Account Violations	2	0.71
Unauthorized Practice	2	0.71
Violation of Oath	4	1.43
Total	280	100

Secondary Allegation	Frequency	Percentage
Conflict of Interest	3	2.68
Criminal Conduct by Lawyer	2	1.79
Failure to Refund Unearned Fee	1	0.89
Fees	13	11.61
Frivolous Actions/Harassment	3	2.68
IFOR	1	0.89
Improper Advocacy	7	6.25
Improper Communications	2	1.79
Lack of Communication	34	30.36
Lack of Diligence	28	25.00
Misrepresentation/Dishonesty	10	8.93

Revealing Confidences	1	0.89
Scope of Representation	3	2.68
Supervisor/Subordinate Responsibilities	1	0.89
Trust Account Violations	1	0.89
Violation of Oath	2	1.79
Total	112	100

**Table 21
Combined Primary and Secondary Allegations that Grievant “Withdrew”**

	Frequency	Percentage
Conflict of Interest	18	4.59
Criminal Conduct by Lawyer	2	.51
Failure to Refund Unearned Fees	5	1.28
False Statement to Tribunal	4	1.02
Fees	32	8.16
Frivolous Actions/Harassment	4	1.02
IFOR	6	1.53
Improper Advocacy	77	19.64
Improper Communications	13	3.32
Improper Termination	5	1.28
Incompetence	4	1.02
Lack of Communication	65	16.58
Lack of Diligence	88	22.45
Misrepresentation/Dishonesty	27	6.89
Other	1	.26
Revealing Confidences	7	1.79
Scope of Representation	15	3.83
Statutory Violation	5	1.28
Supervisor/Subordinate Responsibilities	3	.77
Trust Account Violations	3	.77
Unauthorized Practice	2	.51
Violation of Oath	6	1.53
Total	392	100.03

The data suggest that the filing of grievances may prompt lawyers to remedy issues arising from Lack of Diligence and Communication and disagreements about fees, leading to the withdrawal of grievances by complainants. Some disagreements that are categorized as “Improper Advocacy” apparently were also resolved after a grievance was filed.

E. Diversion

During 2013-2016, there were 239 grievances that resulted in diversion. In some cases, multiple grievances can result in a single instance of diversion. Of the 239 grievances that resulted in diversion, sixty-five were brought against females and 174 were brought against males.

Of the 239 grievances that resulted in diversion, eight-six involved family matters and 153 related to criminal matters. According to the narrative descriptions provided by the OLR, more than 25% of those grievances were due to a failure to provide a written fee agreement, a properly worded fee agreement, or fee arbitration information. More than 12.5% of those grievances arose out of violation of the rules governing trust accounts.

In some cases, more than one requirement was imposed in connection with Diversion. The Diversion terms are shown below.

Table 22
Diversion Conditions Imposed in Connection with Grievances Received 2013-2016

Diversion Condition	Number	Percentage
Affidavit of Compliance	5	1.9
CLE	120	46.3
Ethics School ¹³	11	4.2
Fee Arbitration	91	35.1
Law Office Management Program	2	0.7
Monitoring	1	0.3
Other	7	2.70
Restitution	1	.3
Trust Account Management Program	20	7.7
Trust Account Monitoring	1	0.3

The most common condition imposed in connection with diversion was CLE and the second most common was fee arbitration.¹⁴ “Of the 239 grievances handled through diversion, participation in a law practice management program was only imposed twice.

¹³ Ethics School, which was run by the OLR, was discontinued during the study period. In subsequent years, some lawyers received conditions requiring them to complete Ethics CLE.

¹⁴ CLE may include Ethics CLE, practice area CLE, or wellness CLE approved for credit by the Wisconsin Supreme Court. “Other” conditions may include, *inter alia*, completing an action needed to assist a client, foregoing collection of a fee, attending a specialized course (*e.g.*, for anger management).

Table 23
Prior Diversions Received at any Time by
Lawyers Who Received Grievances
 (removed those with 0 prior diversions)

Number of Prior Diversions	Number of Grievances	Percentage
1	920	59.50
2	377	24.38
3	179	11.57
4	60	3.89
5	8	0.52
6	2	0.13
Total	1546	99.99

For the lawyers who received grievances during 2013-2016, the following indicates the number of grievances they faced which had previously been handled through a referral to diversion, broken down by the gender of the respondent.

Table 24
Number of Prior Diversions Received by Gender

Number of prior diversions	Gender			
	Grievances Against Females		Grievances Against Males	
	Number	Percentage	Number	Percentage
1	237	63.54	683	58.23
2	88	23.59	290	24.72
3	35	9.38	143	12.19
4	9	2.41	51	4.35
5	4	1.07	4	0.34
6	0	0	2	0.17
Total	373	99.99	1173	100.00

Table 25
Number of Prior Diversions by Family/Criminal

Number of prior diversions	Family		Criminal	
	Number of Grievances	Percentage	Number of Grievances	Percentage
1	348	59.79	572	59.34
2	133	22.85	245	25.41
3	69	11.86	109	11.31
4	27	4.64	33	3.42

5	4	0.69	4	0.41
6	1	0.17	1	0.1
Total	582	100.00	964	99.99

According to information obtained from the OLR, there were 443 lawyers who received grievances during 2013-2016 who had previously received one or more diversions before 2013. The breakdown was as follows:

Table 26
Number of Lawyers who Received Grievances During 2013-2016 and Had Previously Received Diversions (Pre-2013)

Number of Prior Diversions	Number of Lawyers
1	325
2	83
3	23
4	10
5	2

F. Discipline Imposed

When there were findings of misconduct, discipline was imposed based on one or more grievances. Thirty-one grievances resulted in private reprimands, twenty-three grievances resulted in public reprimands, thirty-five grievances resulted in suspensions, and thirty-three grievances resulted in revocations. This means that a total of 122 grievances (2.49%) out of all grievances during 2013-2016 resulted in disciplinary sanctions

The number of lawyers who received sanctions during this period was: private reprimands (26), public reprimand (19), suspensions (17), and revocations (7). The following table breaks down those sanctions by number of lawyers and gender:¹⁵

Table 27
Discipline Sanctions (2013-2016) (by Gender)

Disposition	Total Sanctions	Female	Percentage of Total	Male	Percentage of Total
Private Reprimand	26	5	19.2	21	80.8
Public Reprimand	19	4	21.1	15	78.9
Suspension	17	3	17.64	14	82.35
Revocation	7	2	28.57	5	71.42

¹⁵ In some cases, multiple grievances may have led to a single sanction against a lawyer, which is why there were 122 grievances leading to sanctions but a lower number of lawyers who were sanctioned.

In addition, fifty-nine grievances were “referred pending reinstatement,” meaning those grievances were brought against attorneys who were already suspended or whose license to practice had been revoked.

G. Nature of Violations and Sanctions Imposed

The OLR provided codes indicating the rule violations giving rise to sanctions. In many cases, more than one rule violation was found for each sanction imposed. In addition, more than one grievance may result in a single sanction.

From 2013-2016, thirty-one of the grievances resulted in twenty-six private reprimands. As indicated in Table 28, 21.21% of the violations found in grievances that resulted in private reprimands involved Trust Account violations. This represents the largest percentage of violations associated with private reprimands. Some of the misconduct may have been considered technical violations not meriting a more severe sanction. The fact that Trust Account violations were found in fourteen instances means that these violations were found in fourteen out of thirty-one private reprimands (45.2%).

The second most common violation giving rise to private reprimands involved Failure to Return Unearned Fees (12.12%). Adding together all fee-related categories, misconduct relating to fees accounted for 28.79% of the violations found in matters where private reprimands were imposed.

**Table 28
All Violations Found in Connection with Grievances Resulting in Private Reprimands**

Violation	Private Reprimand	
	Number	Percentage
Incompetence	3	4.55
Lack of Diligence	6	9.09
Lack of Communication	7	10.61
Fees	7	10.61
Excessive or Unreasonable Fee	4	6.06
Revealing Confidences	1	1.52
Conflict of Interest	1	1.52
Personal Interest Conflict	1	1.52
Trust Account Violations	14	21.21
Disobeying a Tribunal	5	7.58
Improper Advocacy-Other	2	3.03
Improper Communications	1	1.52
Supervisor/Subordinate Responsibilities	1	1.52
Unauthorized Practice	1	1.52
Misrepresentation/Dishonesty	3	4.55
Failure to Refund Unearned Fees	8	12.12
Non-Cooperation	1	1.52

The analysis of grievances leading to public reprimands revealed that the most common violations giving rise to that sanction were Lack of Diligence and Lack of Communication, with 17.74% for each category. Failure to Return Unearned Fees and general Fee complaints each accounted for 11.29% of all violations where public reprimands were issued.

Table 29
All Violations Found in Connection with Grievances Resulting in Public Reprimands

Violation	Public Reprimand	
	Number	Percentage
Incompetence	5	8.06
Scope of Representation	1	1.61
Lack of Diligence	11	17.74
Lack of Communication	11	17.74
Fees	7	11.29
Trust Account Violations	6	9.68
Improper Termination	1	1.61
Disobeying a Tribunal	1	1.61
Improper Advocacy-Other	1	1.61
Supervisor/Subordinate Responsibilities	2	3.23
Misrepresentation/Dishonesty	1	1.61
Criminal Conduct by Lawyer	1	1.61
Statutory Violation	1	1.61
Failure to Refund Unearned Fees	7	11.29
Non-Cooperation	6	9.68

For grievances leading to suspensions, approximately 15% of the violations found related to the handling of trust accounts. These likely were matters where decisionmakers determined that the lawyer’s conduct reflected serious problems relating to lawyers’ discharge of their duties to safeguard funds and property entrusted to them. About 15.4% of the violations were due to Failure to Return Unearned Fees, Excessive or Unreasonable Fees, or other Fee issues. In matters where lawyers were suspended 13.19% of the violations related to respondents failing to comply with rules requiring cooperation with disciplinary authorities.¹⁶

Table 30
All Violations Found in Connection with Grievances Resulting in Suspension

Violation	Suspension	
	Number	Percentage

¹⁶ Wisconsin Supreme Court Rule 20:8.1 prohibits a lawyer from knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority, unless disclosure of information is otherwise protected by the confidentiality rule, Wisconsin SCR 20:1.6.

Incompetence	2	2.20
Lack of Diligence	7	7.69
Lack of Communication	11	12.09
Fees	3	3.30
Excessive or Unreasonable Fee	2	2.20
Conflict of Interest	1	1.10
Trust Account Violations	14	15.38
Improper Termination	4	4.40
Frivolous Actions/Harassment	1	1.10
Disobeying a Tribunal	2	2.20
Improper Communications	1	1.10
Misrepresentation/Dishonesty	8	8.79
Criminal Conduct by Lawyer	1	1.10
Statutory Violation	8	8.79
Medical Incapacity	2	2.20
Failure to Refund Unearned Fees	9	9.89
Violation of Oath	1	1.10
False Statement to Tribunal	2	2.20
Non-Cooperation	12	13.19

When lawyers' licenses were revoked based on grievances received during the study period, 21.28% of the violations found involved Lack of Diligence and another 21.28% involved Lack of Communication. In 13.83% of the violations found in revocations, the respondents failed to refund unearned fees. Other fee-related violations accounted for 12.77% of the violations found in grievances resulting in revocations. Misrepresentation/Dishonesty only accounted for 6.38% of the violations.

Table 31
All Violations Found in Connection with Grievances Resulting in Revocations

Violation	Revocation	
	Number	Percentage
Incompetence	1	1.06
Scope of Representation	3	3.19
Lack of Diligence	20	21.28
Lack of Communication	20	21.28
Fees	4	4.26
Excessive or Unreasonable Fee	8	8.51
Trust Account Violations	6	6.38
Improper Termination	2	2.13
Improper Advertising	1	1.06
Misrepresentation/Dishonesty	6	6.38
Statutory Violation	3	3.19

Failure to Refund Unearned Fees	13	13.83
False Statement to Tribunal	1	1.06
Non-Cooperation	6	6.38

Both Lack of Diligence and Lack of Communication violations were found in twenty instances, meaning that these violations occurred in 60.6% of all (33) revocations.

H. Representation of Respondents by Counsel

Table 32
Representation of Lawyer by Counsel

Represented	Number	Percentage
No	4834	98.69
Yes	64	1.31

Lawyers were represented by counsel in only a very small number of grievances. Of the sixty-four grievances on which lawyers were represented by counsel, seven of those grievances resulted in diversion (six lawyers), five resulted in public or private reprimands (four lawyers), six resulted in suspensions or revocation (two lawyers), and one was referred pending reinstatement to practice. In addition, one of the grievances resulted in a dismissal with an advisory and two resulted in de minimus closure.¹⁷

I. Location

Table 33
Geographical Distribution of Grievances by County

County	Number of Grievances	Percent of all Grievances
Milwaukee	1,423	29.1%
Dane	486	9.9%
Waukesha	285	5.8%
Racine	216	4.4%
Brown	206	4.2%
Outagamie	177	3.6%
Winnebago	159	3.2%
Kenosha	153	3.1%
Marathon	122	2.4%

¹⁷ A dismissal with an advisory means that the OLR had concerns about the grievant's practice, but that there was no provable rule violation. In that case, the OLR will provide the lawyer with advice. A de minimus closure means the OLR exercised its discretion, according to its standards, not to pursue a minor, potentially provable rules violation.

Rock	108	2.2%
Eau Claire	102	2.1%
Sheboygan	76	1.5%

Out of state lawyers, including lawyers who were admitted in Wisconsin with offices outside Wisconsin and lawyers who were not admitted in the state, received sixty-three grievances (1.3%).

The rate of grievances in the largest cities appears below.

**Table 34
Geographic Distribution of Grievances by City**

City	City Population	Number of Grievances	Percent of All Grievances	Number of Lawyers ¹⁸	Per Capita per 100,000
Milwaukee	599,086	1242	25.36%	3952	.052
Madison	248,856	434	8.86%	2553	.068
Green Bay	104,796	189	3.86%	373	.48
Kenosha	99,623	127	2.59%	160	.80
Racine	77,740	178	3.63%	241	.95
Appleton	73,832	145	2.96%	320	.61
Waukesha	72,173	103	2.1%	418	.34
Eau Claire	67,945	96	1.96%	237	.60
Oshkosh	66,649	87	1.78%	159	.82
Janesville	63,957	76	1.55%	137	.87

Racine had the highest per capita rate of grievances and a slightly higher percentage all grievances than would be expected in light of its population.

Approximately 30% of all grievances were against lawyers who worked in counties with no cities with populations larger than 50,000. Only 700 of the grievances (14.29 %) were brought against lawyers with offices in rural towns with a population of less than 10,000.

Small towns and the number of grievances against lawyers in those towns appear below.

**Table 35
Geographic Distribution of Grievances by Town**

Town	Town Population	Number of Lawyers	Number of Grievances	Per Capita per 100,000
Elkhorn	9930	56	32	5.75

¹⁸ Lawyer population is based on a 2019 information provided by the State Bar of Wisconsin.

Holmen	9693	8	5	6.45
Sparta	9621	34	20	6.11
Reedsburg	9480	15	10	7.03
Merrill	9264	29	22	8.19
Shawano	9052	28	15	5.92
Sturgeon Bay	8917	44	25	6.37
New Richmond	8761	32	3	1.07
Plymouth	8477	16	2	1.47
Delavan	8373	17	8	5.62

Merrill and Reedsburg had the highest per capita rate of grievances. In Merrill, which has twenty-nine lawyers, grievances were filed against eight different lawyers in family or criminal matters. In Reedsburg, seven of the town's fifteen lawyers received grievances in family or criminal matters. No sanctions were imposed on grievances brought against Merrill and Reedsburg lawyers. Two Merrill lawyers entered into diversion agreements.

Of the 700 grievances brought against lawyers working in the smallest towns, forty-four resulted in diversion, five resulted in private reprimands, and four resulted in public reprimands. There were no more serious sanctions imposed on these lawyers.

Discussion

The data are consistent in certain respects with prior studies of lawyer discipline and data reported by regulators from other jurisdictions. Notably, with the exception of a spike in grievances filed in criminal matters in 2014, there were decreases in the number of grievances filed from 2013-2016 in both criminal and family matters (Table 3).¹⁹ Following the study period, the number of grievances in the family law area slightly increased in 2017, and then continued to decrease in 2018 and 2019. Nevertheless, the number of criminal law-related grievances for each year from 2017-2019 increased.

The overall decline in grievances in Wisconsin cannot be explained by a change in the number of lawyers, which has slowly increased during the past decade.²⁰ It is possible that some decrease in the number of grievances is due to continuing legal education and risk management initiatives designed to help lawyers improve their client service and practices, but we are not aware of any such new initiatives in Wisconsin during the relevant period. A few regulators have speculated that decreases in the number of grievances may also reflect the fact that consumers increasingly are turning to on-line legal service providers and using lawyers less frequently. This explanation would probably not account for the reduction in grievances involving contested family matters and criminal law representation during the study period.

Gender and Age Differences

More complaints were made against men (68.4%) than women, but the percentage was not disproportionate to the percentage of men admitted to practice in Wisconsin during this time period (67.3%). Without knowing the actual percentage of men and women who practiced in the areas of family and criminal law, it is not possible to determine whether there are significant gender differences in the incidence of grievances in those practice areas. It is noteworthy, however, that the women who received grievances during 2013-2016 were less likely to have received a prior discipline sanction than men (Table 7), and that the gender difference was statistically significant.

The finding that the median age of respondents was in the mid-40s (Table 5) was also consistent with prior studies indicating that middle-aged lawyers are the most likely to receive grievances.²¹

¹⁹ In recent years, other jurisdictions have also experienced declines in the total number of grievances. For example, in Michigan the overall number of requests for investigation followed a somewhat similar trajectory as Wisconsin, with the number of requests dropping sharply in 2015 and 2016. State of Michigan Attorney Discipline Board and Attorney Grievance Commission, 2016 Annual Report 3 (2017). Illinois experienced a decline in both the number of disciplinary charges and number of investigations for each year from 2014 to 2018. Annual Report of 2019, Attorney Registration & Disciplinary Commission 21 (2020), <https://www.iardc.org/AnnualReport2019.pdf>.

²⁰ See Regulation of the Legal Profession in Wisconsin, Report of the Lawyer Regulation System 2018-2019, at 42.

²¹ See, e.g., RICHARD L. ABEL, *LAWYERS IN THE DOCK: LEARNING FROM NEW YORK DISCIPLINARY PROCEEDINGS* 496 (2008); David J. Beck, *Legal Malpractice in Texas*, 50 BAYLOR L. REV. 547, 549 (1998); Patricia W. Hatamyar & Kevin M. Simmons, *Are Women More Ethical Lawyers? An Empirical Study*, 31 FLA. ST. U. L. REV. 785, 832-34 (2004).

The median age of male lawyers with active Wisconsin licenses during this period was fifty-two years and the median age of women lawyers was forty-two years in 2013, and forty-three years from 2014-2016. The differences in the median ages of men and women is explained by the fact that women did not enter the legal profession in significant numbers before the 1970s. Without knowing the median ages of lawyers who practice family law and criminal law, it is difficult to draw additional conclusions from these data. It is possible that the median age of all active male lawyers is higher than the median age of those who receive grievances because some older lawyers maintain their “active” licenses even when they are no longer actually practicing. This seems unlikely, however, to fully account for the difference.

It was noteworthy that more than 9% of the grievances were filed against lawyers within five years after the year in which they graduated from law school. More than 43% were female, which is not surprising given that women and men are graduating from law school at approximately equal rates. Only 29 grievances against this cohort contained allegations relating to competence. The most common primary allegation against these lawyers was Lack of Diligence (22.75%), followed by Improper Advocacy-Other (14.4%), Lack of Communication (13.29%), and Failure to Abide by Client’s Decisions (10.36%). These recent graduates might benefit from being encouraged to participate in the mentoring provided through the Ready for Practice Mentoring Program sponsored by the State Bar of Wisconsin. Another possibility is to require that recent graduates complete bridge-the-gap programs focused on practice management and client service.

Identity of Grievants

Clients filed the majority of the grievance complaints (56.02%) and adverse parties filed almost 20% of the complaints (Table 11). A substantially higher percentage of clients filed grievances against their lawyers in criminal matters (64.9%) than in family matters (40.1%) (Table 12). Only a small percentage of grievances were filed by other attorneys (1.69%) and an even smaller percentage (0.16%) came from judges. Their failure to file more grievances is particularly striking because of the relatively high percentage of grievances that arise out of Improper Advocacy (Table 15). This is consistent with the findings of other researchers that lawyers and judges are reluctant to file discipline grievances.²²

Interestingly, 5.33% of grievances were brought against attorneys serving as guardians ad litem (“guardians”), virtually all in family law matters. Approximately half of the primary allegations asserted against guardians were for Improper Advocacy-Other. A number of grievances alleged

²² E.g. Arthur F. Greenbaum, *Judicial Reporting of Lawyer Misconduct*, 77 UMKC L. REV. 537, 540-41 (2009); Arthur F. Greenbaum, *The Attorney’s Duty to Report Professional Misconduct: A Roadmap for Reform*, 16 GEORGETOWN J. LEGAL ETHICS 259, 265 (2003); Michael S. McGinniss, *Sending the Message: Using Technology to Support Judicial Reporting of Lawyer Misconduct to State Disciplinary Agencies*, 2013 PROF. LAW. 37, 52-54 (2013).

that guardians were biased. A smaller number of the allegations suggested that the grievants did not fully understand the guardian’s duties.²³

Prior Discipline and Diversion

We do not know whether it is unusual—compared to other states—that almost 20% of the grievances were against lawyers who had previously received sanctions (Table 6). Other states have reported “frequent flyers” who repeatedly find themselves in trouble.²⁴ It was striking, however, that about 7.5% of the grievances were against lawyers who had received three or more sanctions. It might be worthwhile to consider a “three strikes” rule that would require consideration of more serious measures for repeat offenders.²⁵ Another approach used in some states is to specify particular sanctions when a lawyer has been disciplined for the same or similar misconduct.²⁶

There were also statistically significant differences in the number of prior discipline sanctions that women and men had received (Table 7). Approximately 23.2% of the grievances brought against male lawyers were against men who had received prior discipline, while 12.5% of the grievances brought against female lawyers were brought against women who had received prior discipline. Gender differences were even more pronounced in the family law area where approximately 8.4% of the grievances against women involved females who had received prior discipline sanctions compared to more than 25% of the grievances against men (Table 9). The men who worked on family law matters may have practiced law longer than the women, but it seems unlikely the large disparity was due entirely to that difference.

It was also noteworthy that approximately 40% of the grievances during the period studied were against lawyers who had either been subject to diversion, a discipline sanction, or both. While family and criminal law are areas that attract a large number of grievances—many of which are unfounded—the 40% figure suggests that a large percentage of lawyers may not be learning the

²³ For example, one grievance alleged that the guardian would not meet with a parent to discuss case updates. Another grievance pointed to the guardian’s failure to take a parent’s concerns into consideration when making recommendations.

²⁴ In Minnesota, the majority of respondent attorneys who come before the disciplinary system on allegations of misconduct serious enough to warrant a sanction had been disciplined at least once previously. Martin Cole, *Disciplinary Recidivism*, BENCH & BAR OF MINN, Aug. 2013, at 10.

²⁵ See, e.g., CONN. PRAC. BOOK § 2-47 (d)(1) (2020) (requiring lawyers who have been disciplined three times in preceding five years to have the next finding of misconduct presented to the superior court); see also CAL. STANDARDS FOR ATTORNEY SANCTIONS FOR PROF’L MISCONDUCT 1.8 (a) (Westlaw 2020) (stating that if a lawyer has a single prior record of discipline, the next sanction must be greater except when the earlier sanction was remote and not sufficiently serious to warrant greater discipline).

²⁶ For example, in Texas disbarment is generally appropriate when the respondent has been “suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.” TEX. RULES OF DISCIPLINARY PROCEDURE R. 15.08 (Westlaw 2020); see also CAL. STANDARDS FOR ATTORNEY SANCTIONS FOR PROF’L MISCONDUCT 1.8 (b) (Westlaw 2020) (stating that disbarment is appropriate under defined circumstances when a lawyer has two or more prior records of discipline, unless the “most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same period of time as the current misconduct”).

intended lessons from their exposure to the discipline system. This concern is reinforced by the fact that a number of lawyers received diversion on multiple occasions, and as discussed above, a number of grievances were filed against lawyers who received three or more sanctions. The number of diversions may also suggest that decision-makers may be relying on diversion in lieu of sanctions. Given the number of lawyers who received diversion on multiple occasions, the OLR might consider revising its rule relating to the eligibility for diversion for repeat offenders.²⁷ It should also consider whether the conditions it is requiring in diversion agreements are serving their intended purpose or whether other conditions might be more appropriate, such as requiring participation in law practice management program.

Grievance Allegations

The reasons for the grievances were also consistent with reports from other states that failure to communicate and neglect of client matters are among the most common reasons for grievances (Table 15). Men were more likely to receive grievances related to Lack of Diligence (20.19%) compared to women (18.89%). Similarly, men were more likely to receive grievances concerning Failure to Communicate (16.23%) than women (12.26%).

Improper Advocacy-Other is the second most common reason for grievances (14.82%) in family matters, even before Failure to Communicate, which was third (Tables 15). This may be because these matters can become quite personal and contentious, prompting complaints by adverse parties. The percentage of allegations arising out of Misrepresentation/Dishonesty were roughly equivalent in family (10.2%) and criminal (9.5%) matters, but there was a greater percentage of allegations about the Scope of the Representation in criminal matters (8.81%) v. family matters (3.31%) The narrative descriptions of the grievances suggest there may be more grievances arising out of the Scope of the Representation in the criminal context because of a failure to consult adequately with the criminal defendant at the commencement of or during the representation.

Fee issues accounted for 11.14% of all grievances in family matters and 9.3% of all grievances in criminal matters (Table 15). Complaints about Excessive or Unreasonable Fees may be a more common basis for grievances in family matters (9.03%) than in criminal matters (2.30%) because some criminal defendants are represented by public defenders. Many other criminal defense lawyers charge on a flat fee basis, making unexpected charges less likely.

For lawyers with more than five prior sanctions, Lack of Diligence or Lack of Communication accounted for 42.25% of the primary allegations. This suggests that these lawyers may be struggling with managing their workloads and communicating with clients. Where lawyers repeatedly receive sanctions for either of these types of misconduct, one approach may be to

²⁷ With respect to repeat offenders, Wisconsin SCR 22.10 states that that unless “good cause” is shown, an attorney may not participate in diversion if (1) the attorney has been publicly disciplined within the preceding five years; (2) the matter is of the same nature as misconduct for which the attorney has been disciplined within the preceding five years; and (3) the misconduct is the same as that for which the attorney previously has participated in an alternative to discipline program.

require a practice-monitor arrangement for negotiated dispositions or as a condition of readmission to practice.

Representation by Respondent Counsel

There are several factors that may explain why so few attorneys retain respondents' counsel (Table 32). An attorney who is the subject of the grievance may not know about the allegations before the matter is closed at intake. In addition, only 15% of grievances are referred to formal investigation.²⁸ Attorneys who learn about grievances may not believe that it is worth devoting time and money to retaining counsel if they know that there is a good likelihood that the matter may be dismissed or withdrawn by the complainant. Even for those matters that advance in the disciplinary process, some lawyers may not believe that they can afford to retain respondent counsel. It is noteworthy, however, that while lawyers were only represented by counsel in sixty-four of the grievances, twenty-two of those grievances resulted in discipline, diversion, dismissal with an advisory, or referral pending reinstatement to practice, suggesting that some lawyers retained counsel when they anticipated potentially significant interaction with discipline authorities.

Disposition of Grievances

The large number of grievances that are dismissed, referred to dispute resolution, abandoned, or withdrawn (Table 19) suggests that clients and other aggrieved persons may resort to filing grievances when they cannot directly address a concern directly with a lawyer. Lawyers and aggrieved persons should be encouraged, in some cases, to attempt to resolve disputes before the concerned person turns to the discipline system. The OLR could add information to its website to guide the public on attempting to address certain types of concerns directly with lawyers.²⁹ A more formal approach would be to create a consumer assistance program.³⁰ The OLR might also reduce the number of grievances it receives that contain allegations the OLR will not handle (e.g., ineffective assistance of counsel) by clearly identifying those types of matters on its website.³¹

²⁸ See Regulation of the Legal Profession in Wisconsin, Fiscal Year 2015-2016, *supra* note 1, at 7.

²⁹ See, e.g. *Resolving Problems with Your Attorney*, STATE BAR OF CAL., [http://www.calbar.ca.gov/Public/Free-Legal-Information/Resolving-Problems/Problem-with-a-Lawyer;Attorney Discipline](http://www.calbar.ca.gov/Public/Free-Legal-Information/Resolving-Problems/Problem-with-a-Lawyer;Attorney-Discipline), FLA. BAR, [https://www.floridabar.org/public/acap/#10ThingsAboutLawyerReg; If You Have a Problem with a Lawyer](https://www.floridabar.org/public/acap/#10ThingsAboutLawyerReg;IfYouHaveaProblemwithaLawyer), OREGON STATE BAR, <https://www.osbar.org/public/legalinfo/1174.htm>.

³⁰ Client assistance programs such as the one in Georgia seek to help consumers solve their problems with their attorneys, rather than forcing the aggrieved person to file a grievance. See, e.g. Client Assistance Program of the Office of General Counsel for the Georgia Bar Association., *available at* <https://www.gabar.org/committeesprogramssections/programs/consumerassistanceprogram/index.cfm>

³¹ For example, disciplinary authorities include information on their websites about the types of matters they will not handle or what they cannot do. See, e.g., Complaints/Discipline – FAQs, COLO. SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL, <https://www.coloradosupremecourt.com/Complaints/FAQ.asp>; *What the Bar Does and Does not Investigate*, NORTH CAROLINA STATE BAR, <https://www.ncbar.gov/lawyer-discipline/what-the-state-bar-does-and-does-not-investigate/>.

As noted, 239 grievances (4.9%) resulted in Diversion. Almost half of those grievances (116) were against lawyers who had previously received diversion, a sanction, or both. Of the thirteen grievances that resulted in de minimus closure, five involved lawyers who had previously received diversion, a sanction, or both.

Discipline Imposed

Only about 2.5% of all grievances resulted in discipline sanctions. Lawyers are often disciplined for conduct related to the day-to-day handling of client fees, trust funds, and client communications, as well their failure to diligently represent clients.

Trust Account Violations represented the largest percentage of violations found when lawyers were privately reprimanded (21.21%) or suspended from practice (15.38%) (Tables 28 and 30). When public reprimands were issued, 9.38% of the violations involved Trust Account Violations (Table 29), and as previously noted, Trust Account violations also accounted for more than 12.5% of grievances resulting in diversion. The large percentage of Trust Account Violations indicates that some lawyers fail to understand some of the basic principles required by professional conduct rules and fiduciary law. To impress on new lawyers the importance of properly handling trust accounts, a module in a mandatory bridge-the-gap program could cover the proper handling of client money and trust accounts.³² Another possibility is to require completion of the OLR Trust Account Management seminar as a condition in more diversion agreements.

A significant percentage of the disciplinary violations found related to the manner in which lawyers communicate with their clients. Lack of Communication violations accounted for 10.61% of the violations when private reprimands were issued, 17.74% of the violations when public reprimands were issued, 12.09% of the violations when lawyers' licenses were suspended, and 21.28% of the violations when lawyers' licenses were revoked. One explanation for the number of Lack of Communication violations is that the failure to communicate fuels client dissatisfaction, increasing the likelihood that clients will file grievances.

As previously noted, fee-related violations represented a large percentage of the violations found when discipline was imposed (Tables 28-31).³³ In newsletters and risk management communications, the OLR may use these results to underscore the fact that it takes fee violations very seriously and that they are a common reason for discipline. More education on the proper use of written fee agreements, retainers, and accountability with respect to fees could help lawyers avoid misconduct. Sample fee agreements that contain the required language can be found on the State Bar of Wisconsin website, but are not easily located from the main landing

³² For example, in New York's Second Department, all persons seeking admission to practice must complete the Orientation to the Profession Program, a three-hour on-line training session that covers a number of topics including the mechanics of managing trust accounts. Supreme Court of the State of New York Appellate Division, Second Judicial Department, Attorney Matters: Orientation to the Profession Program, available at <http://www.nycourts.gov/courts/ad2/orientation.shtml>.

³³ The violations included misconduct related to the general handling of fees, excessive or unreasonable fees, and failure to return unearned fees.

page. The OLR could include links to this information on its website so that these agreements are more easily located. Likewise, the current information about Lawyers' Fees posted on the OLR website could be broken down in ways that are easier to understand and access.

Of the thirty-five grievances resulting in suspensions during the study period, seventeen were grievances in the criminal law area and eighteen were grievances in the family law area. Some interesting patterns emerge when considering practice areas of the lawyers whose licenses were suspended.

In the criminal law area, the seventeen grievances resulted in the license suspensions of twelve lawyers.³⁴ Nine of these lawyers had previously been subject to prior diversion or discipline, or both, since 1978, the year when the OLR began to keep such records.

Only three of the twelve suspended lawyers had no prior diversions or sanctions in Wisconsin. In all three matters, the allegations referred to some type of dishonesty or manipulation on the part of the lawyer.³⁵

It is noteworthy that many of the grievances leading to suspension alleged Lack of Diligence or Lack of Communication, but when the disciplinary authorities imposed suspensions, they did not list these violations as one of the top four reasons for the discipline. This suggests that the lack of diligence and communication may help provoke the filing of grievances. Once grievance is filed, other violations may be identified.

In the family area, eighteen grievances resulted in the suspension of the licenses of seven lawyers. Five of these lawyers have prior diversions or sanctions, or both. In examining the allegations against the two suspended lawyers who did not have prior diversions or sanctions, the narratives point to serious conduct such as engaging in sexual relations with a client.

In the suspensions involving family practice, Trust Account violations were found in nine of the eighteen family law grievances that resulted in suspensions of four lawyers. Other common allegations and violations involved Lack of Communication.

Nineteen grievances resulting in revocations arose in criminal matters and fourteen were in family matters. These grievances resulted in the revocation of seven lawyers' licenses, some of whom handled both family and criminal law matters. In some cases, the lawyers' licenses were revoked for conduct for which they had previously received diversion or a discipline sanction. Only two of those lawyers did not have prior diversions or discipline, or both. One of those two lawyers faced numerous grievances during the study period covering a range of misconduct including failure to prepare for trial and file documents. The allegations against the second lawyer stated that the lawyer failed to provide a quit claim deed suitable for filing and the violations found included misrepresentation/dishonesty and failures associated with transition.

³⁴ Three lawyers received more than one grievance that resulted in their licenses being suspended.

³⁵ One narrative description stated that the lawyer forged documents to be presented in court and misrepresented facts to client. The second stated that the lawyer lied to the client about motions that would be filed and failed to accept calls or visit the client. The third matter involved a Wisconsin lawyer practicing out of state who had transferred inmate funds to circumvent prison policy.

Geographical Differences

The largest percentages of grievances in the study were brought against lawyers in the cities with the largest lawyer populations in the state. In the larger cities the per capita number of family and criminal practice grievances (Table 34) is smaller than the per capita numbers for towns with populations of less than 10,000. (Table 35). One explanation for this difference is that the percentage of lawyers in small towns who handle family and criminal law matters is likely higher than the percentage of lawyers who handle such matters in larger cities, where more lawyers work in large firms, government, or in-house settings.

It was noteworthy that no sanctions more serious than a reprimand were imposed on lawyers who lived in small towns. This may reflect that concerns about reputation and repeat face-to-face contact with lawyers and clients moderate conduct when lawyers live in such towns.

Conclusion

As noted, a number of the study findings are consistent with results from other jurisdictions. In a few areas, however, the data reveal unexpected results, such as the percentage of recent law graduates who face grievances in family and criminal matters, as well as the percentage of grievances based on Improper Advocacy. The number of lawyers who had completed multiple diversion agreements was also unexpected, as was the nature of the conditions imposed on these lawyers. The extent to which some lawyers continue to have repeat interactions with the discipline system suggests that the OLR should consider whether there are more effective ways to deal with repeat offenders.

The study also points to the value of collecting and analyzing grievance and discipline data. For this study, the OLR hired personnel who devoted significant time to recording data from years of grievance matters. Moving forward, the OLR can use the same analytical framework to systematically input grievance and discipline data on an ongoing basis. This will allow the OLR to periodically identify issues to be addressed and to design initiatives to advance public protection.