

**MONTANA  
OFFICE OF  
DISCIPLINARY  
COUNSEL**

**Annual Report  
2021**

Chief Disciplinary Counsel:  
Pamela D. Bucy

Deputy Disciplinary Counsel:  
David A. Scrimm

Office of Disciplinary Counsel  
for the State of Montana

P. O. Box 1099  
Helena, Montana 59624-1099  
(406) 442-1648  
Fax: (406) 442-2685

Investigator:  
Sheena M. Broadwater

Paralegal:  
Shelby Streib

Paralegal:  
Sandy Jacke

## **ODC'S 2021 ANNUAL REPORT**

### THE DISCIPLINARY SYSTEM

The Montana Supreme Court has exclusive jurisdiction over the admission of members to the bar and the conduct of its members pursuant to the Montana Constitution, Article VII, Section 2(3). The Office of Disciplinary Counsel (ODC) is part of a comprehensive lawyer regulation system established by the Montana Supreme Court. Effective July 1, 2002, the system consists of ODC and the Commission on Practice (COP). The COP and ODC are under the direct supervision of the Montana Supreme Court.

ODC performs central intake functions and processes, investigates and prosecutes grievances against lawyers that are within the disciplinary jurisdiction of the Court. The COP hears and makes a determination on the merits of grievances and, in appropriate cases, makes recommendations to the Court for discipline or other disposition.

The COP meets four times per year for three-day sessions and may also schedule special sessions throughout the year to adjudicate disciplinary matters. The disciplinary system is set forth in detail in the Rules for Lawyer Disciplinary Enforcement (2021), which can be found at [www.montanaodc.org](http://www.montanaodc.org).

#### **COMMISSION ON PRACTICE**

The COP consists of nine lawyers and five non-lawyers, who are appointed by the Supreme Court to serve a four-year term.

##### **CHAIRMAN:**

Ward E. "Mick" Taleff, Esq.

##### **VICE CHAIRMAN:**

Kelly J.C. Gallinger, Esq.

##### **EXECUTIVE SECRETARY:**

Lois Menzies

##### **MEMBERS:**

Brad L. Belke, Esq.  
Michael G. Black, Esq.  
Patricia DeVries  
Jean E. Faure, Esq.  
Patt Leikam  
Lori Maloney  
W. Carl Mendenhall, Esq.  
Lois Menzies  
Dan O'Brien, Esq.  
Rich Ochsner  
Randy S. Ogle, Esq.  
Heather M. Perry, Esq.  
Robert J. Savage, Esq.  
Wm. Nels Swandal, Esq.

##### **OFFICE ADMINISTRATOR:**

Shelly J. Smith

In general, the steps for processing a grievance are as follows;

STEP ONE:

**OFFICE OF DISCIPLINARY COUNSEL**

ODC receives grievance and information regarding a lawyers' alleged misconduct. Before opening the grievance as a "merit" file, ODC conducts a preliminary review.

During its preliminary review, ODC determines whether:

1. More information is needed from the grievant or some other source.
2. A grievance should not be further processed or summarily dismissed on its face.
3. The grievance should be opened as a "merit" file.

If ODC elects not to open the grievance as merit, a "meritless" file is then created. If ODC has requested more information from the grievant on the meritless file, and the additional information is not furnished, ODC closes the file.

If a merit file is opened during the intake process, ODC may send the grievance to the lawyer against whom the grievance is made requesting their response; send the lawyer's response to the grievant and request their reply to the lawyer's response; and conduct an investigation.

Upon completion of this process, ODC may:

1. Dismiss the matter if Disciplinary Counsel determines disciplinary action is not warranted;
2. Dismiss the matter with a letter of caution or take other corrective action;
3. Request leave from the Review Panel of the COP to pursue private discipline<sup>1</sup>; or
4. Request leave from a Review Panel of the COP to file a formal complaint.

If a merit file is dismissed by ODC, the grievant has the opportunity to request review of the dismissal by a COP Review Panel.

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<sup>1</sup> In 2020, the Montana Rules of Disciplinary Enforcement were revised, amended, and adopted, to include private discipline as a form of sanction.

## STEP TWO:

### ***COMMISSION ON PRACTICE REVIEW PANEL***

Upon request by Disciplinary Counsel to file a formal complaint or private discipline against a lawyer, a Review Panel will either: 1) approve the request; 2) refer the matter back to Disciplinary Counsel for further investigation; or 3) reject the request where disciplinary action does not appear to be appropriate.

## STEP THREE:

### ***COMMISSION ON PRACTICE ADJUDICATORY PANEL***

Upon the filing of a formal complaint, the matter is assigned to a COP Adjudicatory Panel. If necessary, the Adjudicatory Panel conducts an evidentiary hearing and submits its findings of facts, conclusions of law and recommendation to the Montana Supreme Court.

An Adjudicatory Panel may also conduct a hearing to consider whether a conditional admission should be approved. A conditional admission may be submitted by a lawyer after the filing of a formal grievance. A conditional admission admits certain allegations in exchange for a stated form of discipline.

After the filing of a formal grievance, an Adjudicatory Panel, subject to the right to request review by the Court, may impose an admonition. An admonition may be delivered privately upon certain limited circumstances.

## STEP FOUR:

### ***THE MONTANA SUPREME COURT***

Except for admonitions (and in some cases probation and imposition of costs), the Montana Supreme Court issues all final orders of discipline. Before the Court makes a final determination, a lawyer may file objections to an Adjudicatory Panel's findings of fact, conclusions of law and recommendation (except when a Respondent submits a Rule 26 Conditional Admission). Also, a grievant may request that the Court review the COP's disposition of a matter.

## NEW GRIEVANCES

In 2021, ODC received 219 new informal grievances, which are confidential. Of those, 113 were screened, and referred to as meritless files, as described above. Of those 113 meritless files, 2 were later opened as merit files because the grievant provided the requested additional information. Ultimately, of the 219 new informal grievances filed, 106 were opened as merit files.

## ATTORNEYS LICENSED IN MONTANA

The total number of attorneys licensed to practice law in Montana as of December 31, 2021, is 5,107. Of those, 3,548 are in-state and on active status. The remaining 1,559 are either out-of-state or lawyers whose licenses are on inactive status. Based upon the number of in-state, active attorneys, informal disciplinary grievances averaged about one (1) for every 33 attorneys over the twelve-month period; however, some attorneys were subject to multiple grievances.

## FILES IN INVENTORY

In 2021, including pending files carried over from previous years, ODC had 328 files in inventory. Files in inventory represent the combination of merit and meritless grievances.

The total of merit grievances was 204, which included 98 files carried over from 2020 and 106 new. The total of meritless grievances opened were 124, which included 11 carried over from 2020 and 113 new.

The following is a five-year comparison of ODC's files in inventory.

|   | 2017       | 2018       | 2019       | 2020       | 2021       |
|---|------------|------------|------------|------------|------------|
| <b>TOTAL NEW GRIEVANCES</b>                           | 266        | 286        | 293        | 204        | 219        |
| <b>MERITLESS GRIEVANCES</b>                           |            |            |            |            |            |
| Meritless Grievances Carried Over from Previous Years | 37         | 32         | 40         | 10         | 11         |
| Grievances Screened (Meritless)                       | <u>99</u>  | <u>115</u> | <u>145</u> | <u>110</u> | <u>113</u> |
| <b>TOTAL MERITLESS GRIEVANCES IN INVENTORY</b>        | <b>124</b> | <b>152</b> | <b>185</b> | <b>120</b> | <b>124</b> |
| <b>MERIT GRIEVANCES</b>                               |            |            |            |            |            |
| Merit Grievances Carried Over from Previous Years     | 117        | 162        | 214        | 123        | 98         |
| Merit Grievances                                      | <u>215</u> | <u>161</u> | <u>148</u> | <u>94</u>  | <u>106</u> |
| <b>TOTAL MERIT GRIEVANCES IN INVENTORY</b>            | <b>252</b> | <b>323</b> | <b>362</b> | <b>217</b> | <b>204</b> |

Of the 204 merit files in inventory in 2021, ODC completed intake and investigations and made 27 reports and recommendations (including supplemental reviews or appeals) to the COP over the course of four COP meetings held during the year (average of 7 reports per meeting).

At the end of 2021, there were two (2) open formal cases in the litigation stage and ODC was monitoring ten (10) attorneys for compliance with disciplinary orders.

## DISPOSITIONS OF INFORMAL GRIEVANCES

As previously explained in this report, meritless grievances are grievances that were not immediately “opened” for various reasons. Meritless grievances become merit grievances when there is sufficient information implicating a potential violation of the Rules. Where meritless grievances were closed with no further action, ODC requested additional information and the grievant did not respond.

| <u>MERITLESS GRIEVANCES</u>          | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> | <u>2021</u> |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|
| Closed with No Further Action        | 49          | 49          | 82          | 51          | 70          |
| Dismissals by ODC                    | 35          | 58          | 62          | 36          | 42          |
| ODC Dismissals Appealed to COP       | 6           | 6           | 10          | 8           | 7           |
| ODC Dismissals Closed                | 29          | 52          | 52          | 32          | 47          |
| Total Carried over to following year | 37          | 31          | 16          | 10          | 6           |

| <u>MERIT GRIEVANCES</u>                                     | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> | <u>2021</u> |
|---|-------------|-------------|-------------|-------------|-------------|
| Dismissed by ODC  | 161         | 109         | 222         | 89          | 52          |
| ODC Dismissals Appealed to COP                              | 44          | 31          | 33          | 16          | 4           |
| ODC Dismissals Closed                                       | 116         | 78          | 189         | 94          | 57          |
| Total Dismissals by COP, including appeals                  | 34          | 34          | 33          | 17          | 4           |
| ODC Dismissals Carried over to following year               | 16          | 4           | 4           | 6           | 10          |
| Grievances Deferred   | 3           | 2           | 2           | 15          | 12          |
| Public Sanctions or Disability Inactive Status <sup>2</sup> | 23          | 13          | 13          | 21          | 7           |
| Petitions for Reinstatement - DENIED                        | 0           | 0           | 0           | 0           | 0           |
| Petitions for Reinstatement - GRANTED                       | 0           | 1           | 1           | 0           | 0           |
| Total Merit Grievances Carried Over to 2021 (85)            | 0           | 0           | 5           | 8           | 98          |

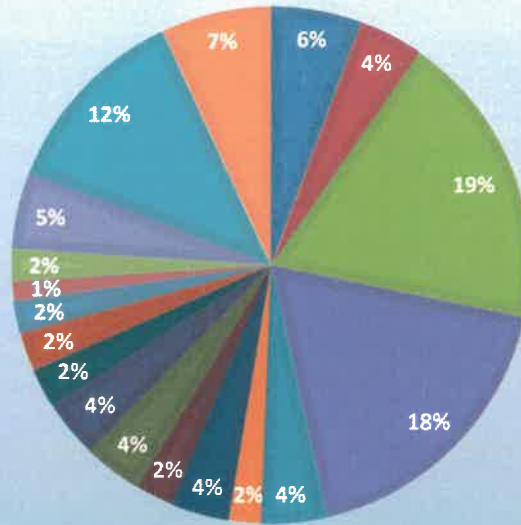
## TYPES OF ALLEGATIONS

The following are the types of allegations implicated in merit files. The Rules of Professional Conduct not listed either were not implicated in any grievance or made up less than one percent of the total rules implicated. Each of the rules making up less than one percent of the total are represented in the “Other” field, along with the allegations not specific enough to categorize under any particular rule.

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<sup>2</sup> The total number of public sanctions listed here differs from the total number of public sanctions listed under the Formal Discipline section of this report. The figure listed above represents the number of merit files resulting in public sanctions. Some merit files involving the same attorney were consolidated into one formal complaint, resulting in one sanction order. The total number of public sanctions listed under the Formal Discipline section represents the total public sanctions ordered. Some sanction orders include more than one sanction.

## Montana Rules of Professional Conduct Implicated by Informal Grievances



- 1.1 Competence (6%)
- 1.2 Scope of Representation (4%)
- 1.3 Diligence (19%)
- 1.4 Communication (18%)
- 1.5 Fees (4%)
- 1.6 Confidentiality of Information (2%)
- 1.16 Declining/Termin. Representation (4%)
- 3.1 Meritorious Claims and Contentions(2%)
- 3.2 Expediting Litigation (4%)
- 3.3 Candor Toward Tribunal (4%)
- 3.4 Fairness to Opposing Party (2%)
- 4.1 Truthfulness in Statements to Others (2%)
- 4.3 Dealing with Unrepresented Persons (2%)
- 8.1 Bar Admission/Disciplinary Matters (1%)
- 8.2 Judicial and Legal Officials (2%)
- 8.3 Reporting Prof. Misconduct (5%)
- 8.4 Misconduct (12%)
- Other (7%)

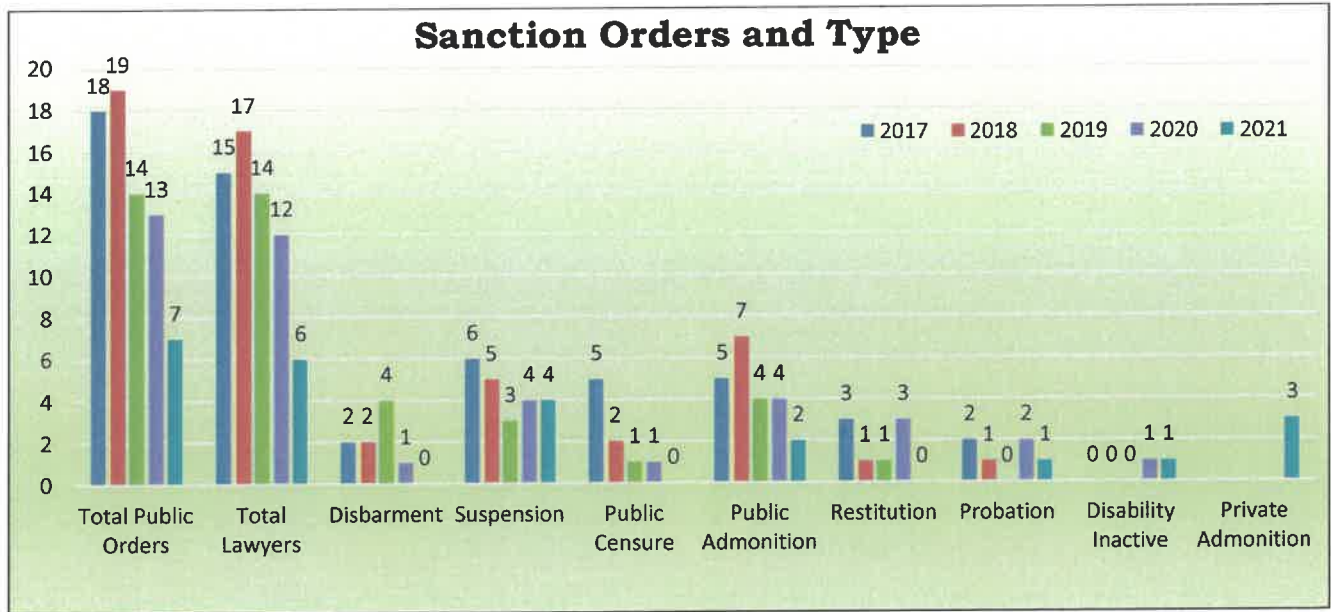
## CASE PROSECUTIONS

Disciplinary Counsel appeared at seven (7) hearings over the course of the four (4) COP meetings held during the year, further described below with a five-year comparison. The hearings involved nine (9) merit files and seven (7) attorneys.

|                                | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> | <u>2021</u> |
|--------------------------------|-------------|-------------|-------------|-------------|-------------|
| Formal Hearings                | 11          | 8           | 9           | 2           | 3           |
| Rule 23 Dispositional Hearings | 1           | 0           | 1           | 0           | 0           |
| Rule 26 Hearings               | 4           | 10          | 8           | 8           | 1           |
| Show Cause Hearings            | 4           | 1           | 1           | 2           | 3           |
| Reinstatement Hearings         | 0           | 2           | 1           | 0           | 0           |
| Reciprocal Discipline Hearings | <u>0</u>    | <u>0</u>    | <u>0</u>    | <u>0</u>    | <u>0</u>    |
| <b>TOTAL</b>                   | <b>18</b>   | <b>21</b>   | <b>20</b>   | <b>12</b>   | <b>7</b>    |

## FORMAL DISCIPLINE OR PLACEMENT ON DISABILITY INACTIVE STATUS

In 2021, the Montana Supreme Court and COP imposed eleven (11) formal disciplinary sanctions and disability inactive rulings (permanent public records) based off eleven (11) orders for ten (10) Montana lawyers.<sup>3</sup> The following is a five-year comparison of public sanctions and disability inactive rulings.



## SANCTIONED MONTANA ATTORNEYS

The following Montana attorneys were publicly sanctioned in 2021, as detailed below. Public censures are given by the Supreme Court and admonitions are given by the COP. The specifics of these matters may be found in the public records held at the Clerk of the Montana Supreme Court. The information may also be found in the Annotations to the Montana Rules of Professional Conduct, which may be purchased from the State Bar of Montana.

| <b>CASE NO.</b> | <b>ATTORNEY</b>  | <b>DISPOSITION</b>                            | <b>ORDERED</b> |
|-----------------|------------------|---|----------------|
| PR 20-0592      | LOWY, Matthew    | Public Admonition; Probation (3 Years); Costs | 4/27/21        |
| PR 21-0354      | MCCORMACK, James | Suspension (Indefinite)                       | 8/17/21        |
| PR 21-0187      | HANSON, Maribeth | Suspension (30 Days)                          | 11/9/21        |
| PR 21-0100      | GARDNER, James   | Suspension (30 Days); Costs                   | 12/21/21       |

<sup>3</sup> Some lawyers received multiple sanctions for their misconduct in a disciplinary matter. In addition, some lawyers were disciplined more than once during the calendar year in separate disciplinary matters.



## COSTS AWARDED AND COLLECTED

As a condition of lawyer sanctions and disciplinary orders, the Supreme Court often requires an attorney to pay the costs associated with their disciplinary proceeding. ODC monitors each lawyer for compliance with their disciplinary order and collects costs accordingly. The foregoing is a five-year lookback of costs ordered by the Supreme Court and costs collected by ODC.

|                           | <b>2017</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>TOTALS</b>       |
|---------------------------|-------------|-------------|-------------|-------------|-------------|---------------------|
| <b>No. Of Cost Orders</b> | 11          | 15          | 11          | 6           | 2           | <b>52</b>           |
| <b>Amount Ordered</b>     | \$44,102    | \$38,837    | \$23,329    | \$8,692     | \$3,211.33  | <b>\$118,171.33</b> |
| <b>Amount Collected</b>   | \$16,169    | \$5,197     | \$6,087     | \$1,183     | \$355.95    | <b>\$28,991.95</b>  |

## ATTORNEY COMPLIANCE AND MONITORING

As noted above, ODC monitors disciplined lawyers for their compliance with disciplinary orders. Additional requirements are determined on a case-by-case basis, given the nature of violation and any aggravating or mitigating factors.

At the close of 2021, ODC was monitoring a total of nine (9) lawyers. Six (6) of those lawyers are on active status, five (5) are on probation, and three (3) additional lawyers are on inactive status or are suspended or disbarred.

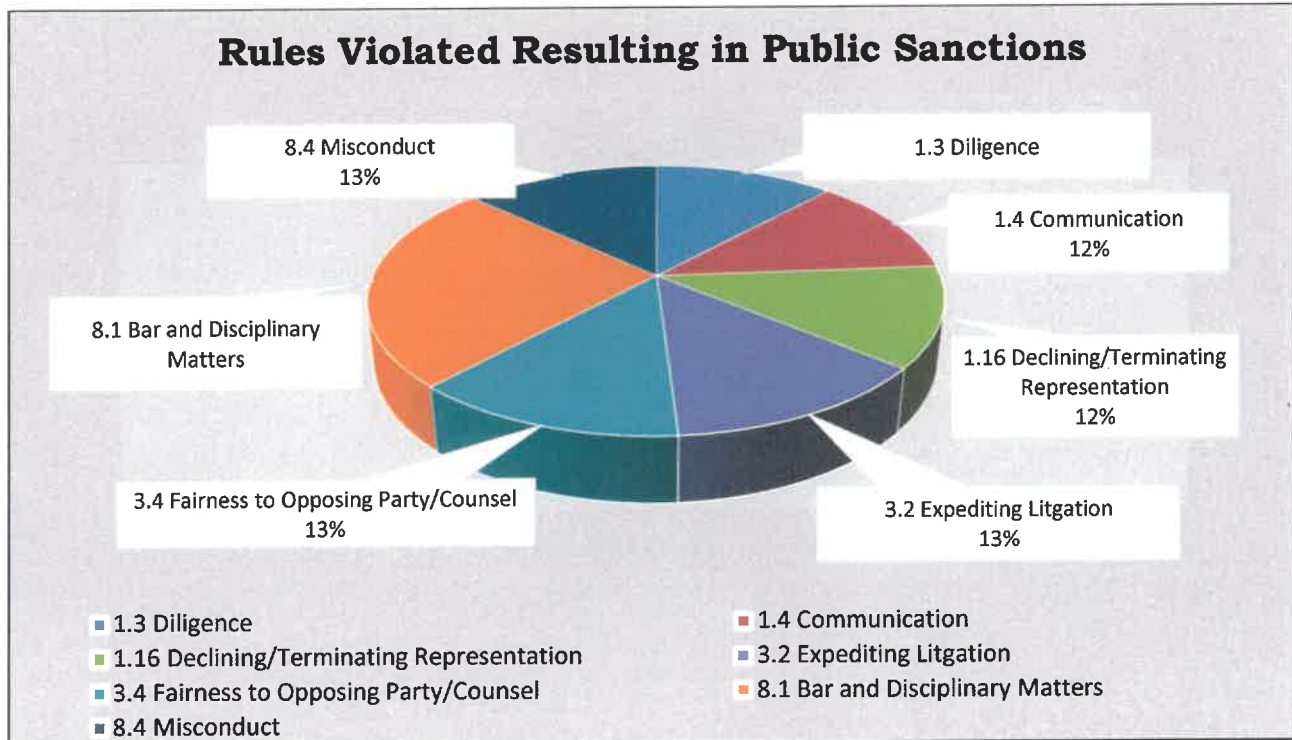
## DISCIPLINE BY SUPREME COURT AND COP

The following table shows a five-year breakdown of discipline.

|             | <b>Disbarment</b> | <b>Suspension</b> | <b>Public Censure</b> | <b>Public Admonition</b> | <b>Private Admonition</b> |
|-------------|-------------------|-------------------|-----------------------|--------------------------|---------------------------|
| <b>2017</b> | 2                 | 6                 | 5                     | 5                        |                           |
| <b>2018</b> | 2                 | 5                 | 2                     | 7                        |                           |
| <b>2019</b> | 4                 | 3                 | 1                     | 4                        |                           |
| <b>2020</b> | 2                 | 4                 | 1                     | 4                        |                           |
| <b>2021</b> | 0                 | 4                 | 0                     | 2                        | 3                         |

## RULE VIOLATIONS RESULTING IN PUBLIC SANCTIONS

In 2021, the Rules of Professional Conduct determined to have been violated resulting in the public sanctions are as follows. The percentage represents a comparison of which rules were violated most frequently.



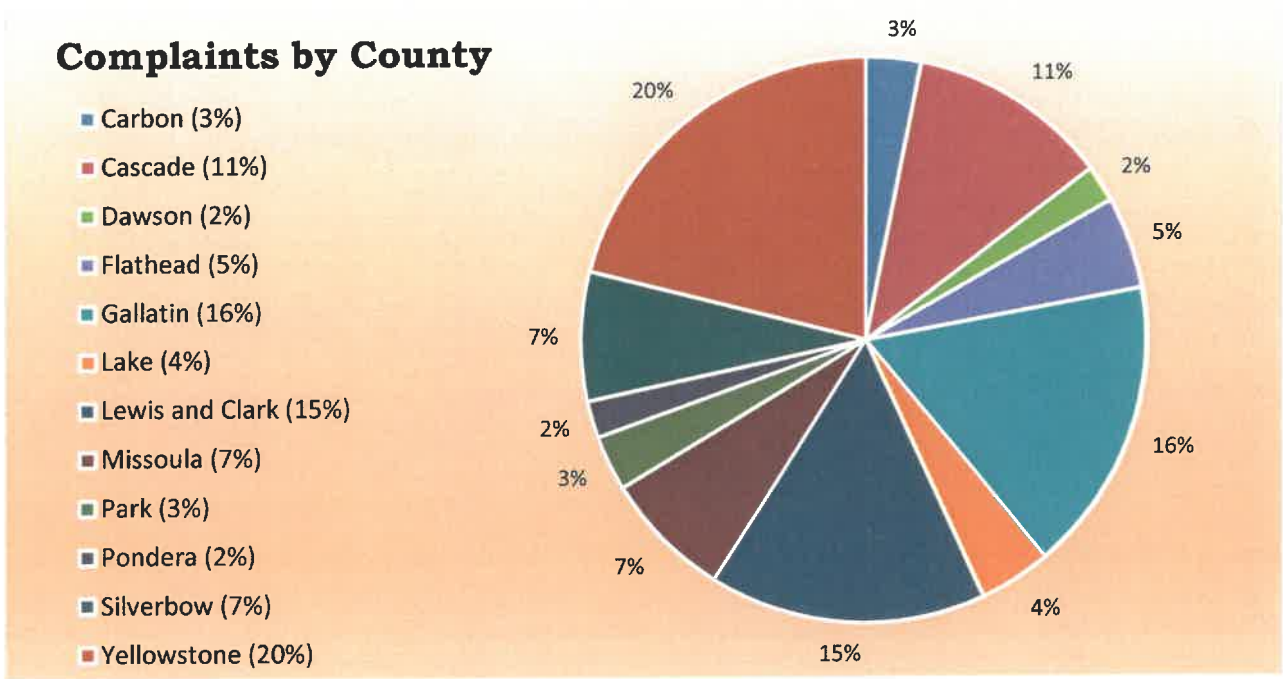
## PRACTICE AREAS

The following is a five-year comparison of the various areas of practice in which merit files are involved.

| Areas of Law                         | 2017 | 2018 | 2019 | 2020 | 2021 |
|--------------------------------------|------|------|------|------|------|
| <b>Criminal Law</b>                  | 47%  | 36%  | 38%  | 38%  | 32%  |
| <b>Dependent/Neglect</b>             | 0%   | 1%   | 3%   | 5%   | 2%   |
| <b>Family Law</b>                    | 20%  | 25%  | 18%  | 22%  | 25%  |
| <b>Civil Litigation</b>              | 11%  | 10%  | 20%  | 19%  | 14%  |
| <b>Personal Injury—not litigated</b> | 3%   | 7%   | 3%   | 1%   | 3%   |
| <b>Probate</b>                       | 4%   | 1%   | 3%   | 1%   | 4%   |
| <b>Bankruptcy</b>                    | 1%   | 2%   | 2%   | 3%   | 1%   |
| <b>Real Estate</b>                   | 2%   | 3%   | 1%   | 0%   | 2%   |
| <b>Business</b>                      | 4%   | 5%   | 5%   | 3%   | 3%   |
| <b>Estate Planning</b>               | 4%   | 4%   | 4%   | 3%   | 0%   |
| <b>Tax Law</b>                       | 0%   | 1%   | 1%   | 0%   | 1%   |

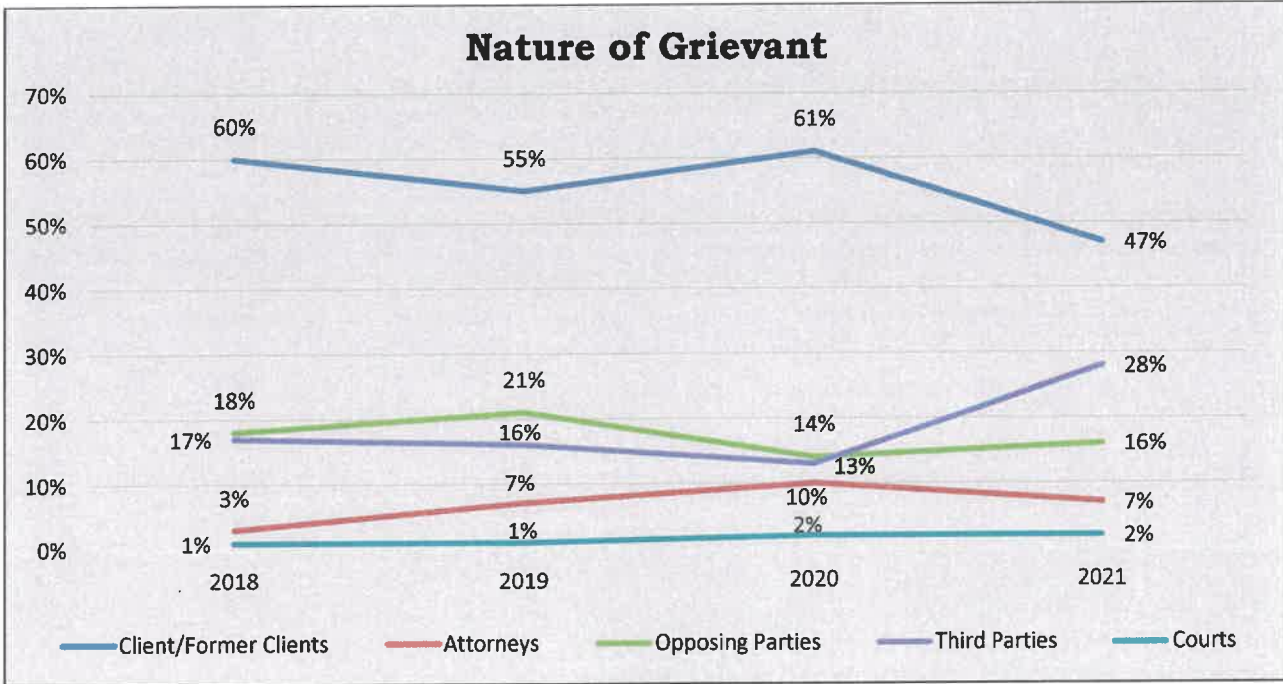
# GRIEVANCES BY COUNTY

The following graph shows the 2021 merit files separated by various Montana counties.



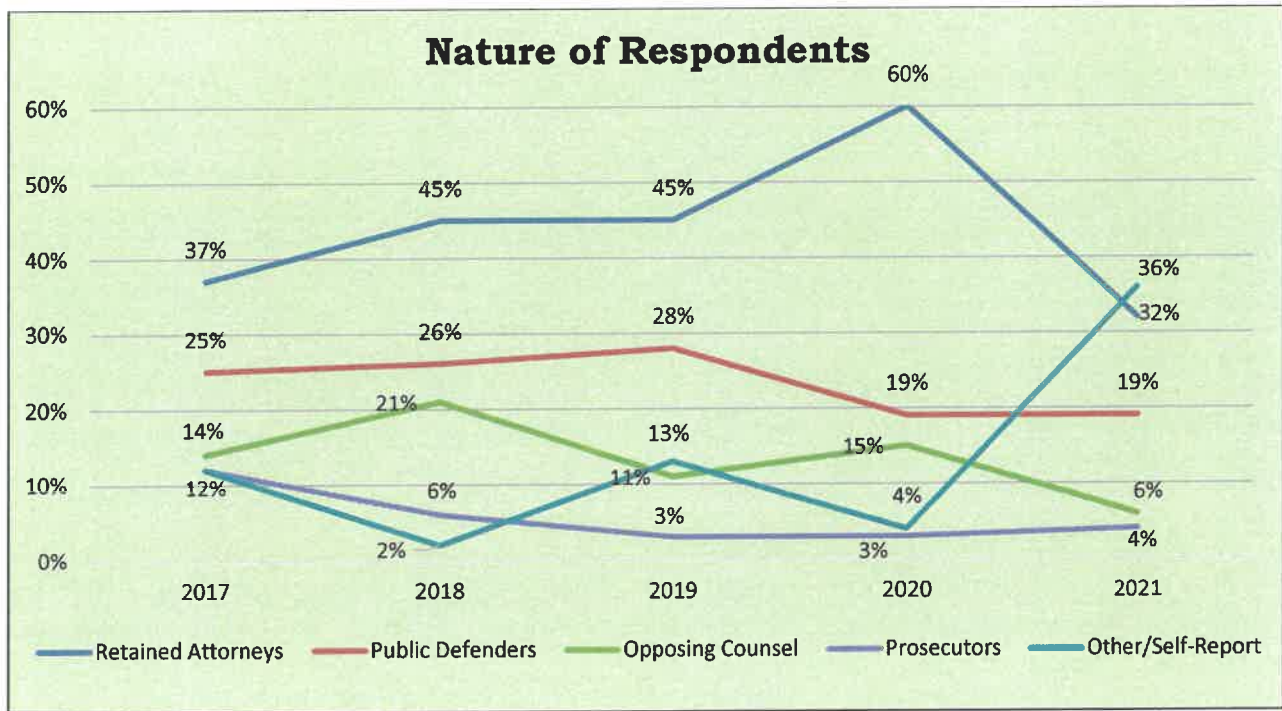
# NATURE OF GRIEVANT

The following is a five-year comparison of the various types of grievant whose grievances resulted in merit files.



## NATURE OF RESPONDENTS

The following is a five-year comparison of the various types of attorneys who had a grievance filed against them resulting in a merit file.



## OTHER MATTERS

### *Intake Diversion Program/Corrective Action*

ODC's Intake Diversion Program ("IDP"), was developed as an informal, confidential, form of corrective action. The program sought to both correct and guide lawyers, as well as contribute information which would "fill gaps" in training related to various practicalities within the practice of law.

Lawyers in this program are those who have committed a minor infraction of the MRPC, and have experienced a combination of two or more of the following: 1) have been a member of the bar for the less than 5 years, and are otherwise, newer to the practice of law; 2) previously had insufficient training or guidance in office or case administration (sole practitioner); 3) has sought assistance from the State Bar, Lawyer's Assistance Program, or other support group; and 4) has or is currently, experiencing reoccurring mental health episodes and/or, was/is substance reliant.

IDP has two participants in their final year of diversion. The lawyers have continued ongoing training with their mentors and importantly, have not had other ethical infractions. Those participants, and their mentors, are based out of Yellowstone County and were placed in IDP due to violations of, Rules 1.3, Diligence, 1.4, Communication, 1.16 Termination of Representation, and 8.4 Misconduct.

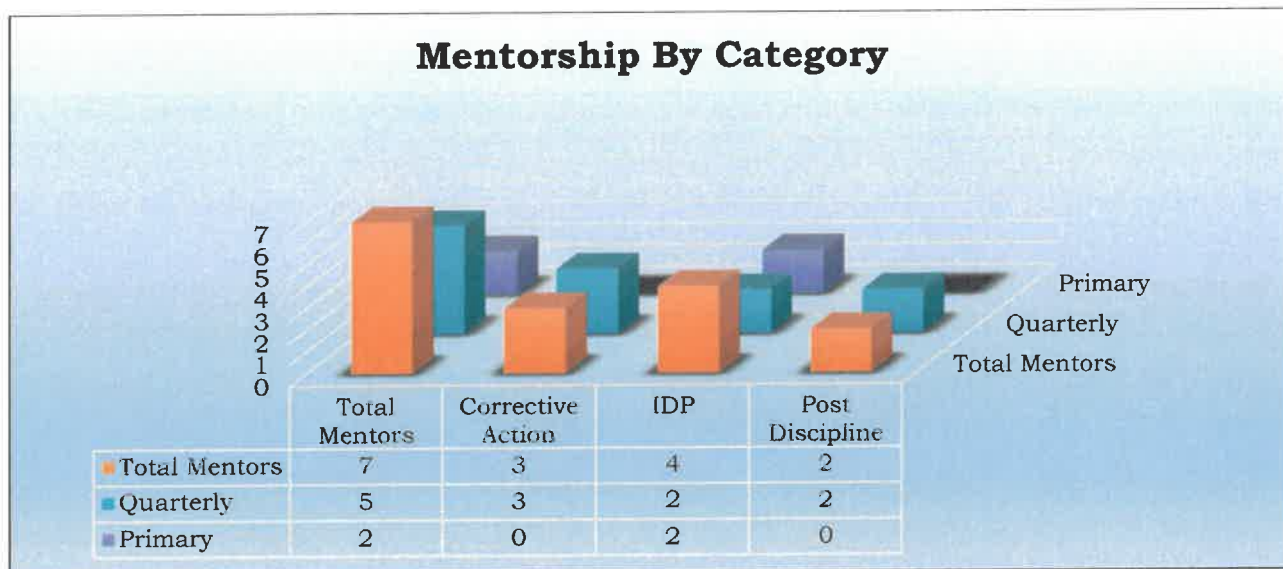
ODC continues to utilize corrective action plans as a last step before formal disciplinary action, or in conjunction with private discipline. Respondent lawyers enter into an agreement with ODC whereby they agree to terms and conditions, understanding that a failure to adhere, is likely to result in formal prosecution. Or, where private discipline has been ordered, as a condition of receiving private sanction. Currently, three (3) lawyers have been placed on corrective action and have been compliant with the terms of their agreements; one (1) lawyer is on corrective action as a result of private discipline.

Both IDP and corrective action have shown the positive effects of mentorship and training of attorneys, and its ability to curtail future violations of the Rules. The precise conditions, training, and thoughtful consideration of circumstances, help to support the lawyer while improving their skill set and confidence, resulting in an improved quality of legal services, while simultaneously protecting the integrity of the profession.

### *Mentorship*

ODC continues to establish mentors in various regions throughout the state. ODC has created guidelines for its mentors which include various training and education topics, as well as required communication, and regular mentor-mentee meetings. The mentors are tasked with performing within those guidelines, while also assisting the mentee lawyers in achieving their specific individual goals and any training or education requirements.

ODC has divided mentors into two categories: primary and quarterly mentors. As a primary mentor, they are tasked with meeting their mentee approximately 90 minutes per month, reporting to ODC compliance with corrective action plans, IDP conditions, or disciplinary Order and any concerns every two months. As a quarterly mentor, they should strive to meet with their mentee 90 minutes per quarter, reporting to ODC compliance, concerns, and any other constructive feedback. Provided below is a breakdown of mentors by category.



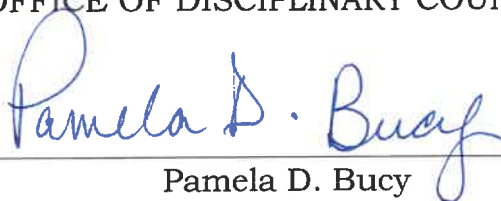
Mentors are voluntary and the amount of time a mentor must dedicate to their mentee lawyer and away from their own practice, can be considerable. As a result, ODC wanted to find a way to provide both incentive, and also reparation for their work.

For their work and participation as mentors, ODC successfully petitioned the CLE Commission to allow its mentors up to five (5) ethics CLE credits. ODC reports to the CLE commission their credits based upon the category of mentor and the number of mentees.

The mentors' time, knowledge, and expertise has shown to be a valuable and integral part of improving the profession.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June 2022.

OFFICE OF DISCIPLINARY COUNSEL



Pamela D. Bucy  
Chief Disciplinary Counsel