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for the State of Montana

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## **ODC'S 2017 ANNUAL REPORT**

### THE DISCIPLINARY SYSTEM

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). COP and ODC are under the direct supervision of the Montana Supreme Court.

ODC performs central intake functions and processes, investigates and prosecutes complaints against lawyers that are within the disciplinary jurisdiction of the Court. COP hears and makes a determination of the merits of complaints and, in appropriate cases, makes recommendations to the Court for discipline or other disposition. The disciplinary system is set forth in detail in the Rules for Lawyer Disciplinary Enforcement (2011), which can be found at [www.montanaodc.org](http://www.montanaodc.org).

In general, the steps for processing a complaint are as follows.

#### STEP ONE:

#### **OFFICE OF DISCIPLINARY COUNSEL**

ODC receives information and complaints regarding lawyers' alleged misconduct.

#### **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:**

Tracy A. Axelberg, Esq.

#### **EXECUTIVE SECRETARY:**

Patricia DeVries

#### **MEMBERS:**

Brad L. Belke, Esq.  
Jean E. Faure, Esq.  
Kelly Gallinger, Esq.  
Gene Huntington  
Lori Maloney  
Daniel N. McLean, Esq.  
Lois Menzies  
Dan O'Brien, Esq.  
Rich Ochsner  
Heather M. Perry, Esq.  
Robert J. Savage, Esq.

#### **OFFICE**

#### **ADMINISTRATOR:**

Shelly Smith

#### **ADMINISTRATIVE SECRETARY:**

Georgia Lovelady

Before “docketing” a complaint and assigning it a file number, ODC conducts a preliminary review of the complaint.

During its preliminary review, ODC determines whether:

1. More information is needed from the complainant or some other source before deciding whether to docket the complaint.
2. A complaint should not be further processed or summarily dismissed on its face.
3. The case should be docketed.

If, for some reason, ODC elects not to docket the complaint, it creates what it terms a “pencil file.” If ODC dismisses a complaint before it is docketed and the complainant requests review of ODC’s dismissal by a COP Review Panel, ODC docketed the file and assigns it an ODC file number (e.g., ODC File No. 14-100).

If ODC creates a pencil file because it has requested more information from the complainant, ODC closes the file if the complainant does not furnish the requested information.

For the remainder of this report, “pencil files” shall be referred to as “non-docketed files.”

If a complaint is “docketed” during the intake process (not including those that were docketed as a result of the complainant’s request for review of ODC’s dismissal in a non-docketed file), ODC may: 1) send the complaint to the lawyer against whom the complaint is made for a response; 2) send the lawyer's response to the complainant and request his or her reply to the lawyer's response; and, 3) conduct an investigation. Upon completion of this process, ODC may:

1. Dismiss the complaint if Disciplinary Counsel determines that disciplinary action is not warranted;
2. Dismiss the complaint with a letter of caution or take other corrective action, or
3. Request leave from a Review Panel of the COP to file a formal complaint.

If a docketed complaint is dismissed by ODC, the complainant has the opportunity to request review of the dismissal by a COP Review Panel.

STEP TWO:

***COMMISSION ON PRACTICE REVIEW PANEL***

Upon request by Disciplinary Counsel to file a formal complaint 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, conclusions of law and recommendation to the Montana Supreme Court.

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

After the filing of a formal complaint, 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 complainant may request that the Court review the COP's disposition of a matter.

A flow chart generally demonstrating the disciplinary process is attached as Appendix A.

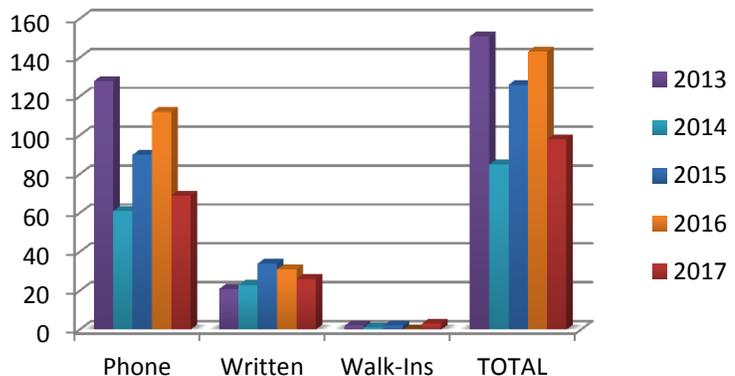
## PUBLIC INQUIRIES & COMPLAINTS FILED

### 5-Year Annual Comparison of Inquiries

From January 1, 2017 through December 31, 2017, a total of 98 complaint packets were sent or given to the public as a result of phone, written and walk-in inquiries.

After ODC's website was developed, ODC began referring people directly to the website where they could review and download ODC's information and forms. ODC does not keep a log of those inquiries. The result of the referrals is a decrease in phone inquiries and packets mailed.

	<u>Phone</u>	<u>Written</u>	<u>Walk-Ins</u>	<u>TOTAL</u>
<b>2013</b>	128	21	2	151
<b>2014</b>	61	23	1	85
<b>2015</b>	90	34	2	126
<b>2016</b>	112	31	0	143
<b>2017</b>	69	26	3	98



## NEW COMPLAINTS

In 2017, ODC received 266 new informal complaints, 115 of which were screened prior to docketing, referred to as a “non-docketed complaint” or “pencil file” as described above. Of those 115 non-docketed complaints, 10 were later opened and became docketed complaints either because ODC's dismissal was appealed or the complainant provided the requested additional information. Ultimately, of the 266 new informal complaints filed, 161 were opened and docketed.

## ATTORNEYS LICENSED IN MONTANA

The total number of attorneys licensed to practice law in Montana as of December 31, 2017 is 4,968; with 3,509 located in Montana. Of those, 3,157 are in-state and on active status. The remaining 1,459 are either out-of-state or lawyers whose licenses are on inactive status. Based upon the number of in-state, active attorneys, informal disciplinary complaints averaged about one (1) for every twelve (12) attorneys over the twelve-month period; however, some attorneys were subject to multiple complaints.

## CASES IN INVENTORY

In 2017, including pending cases carried over from previous years, ODC had 475 cases in inventory. The total open, docketed complaints was 323 (162 carried over and 161 new), and the total non-docketed complaints was 152 (37 carried over and 115 new) throughout the year.

The following is a five-year comparison of ODC's cases in inventory, both non-docketed and docketed.

	2013	2014	2015	2016	2017
<b>TOTAL NEW COMPLAINTS</b>	320	258	274	294	266
<b>NON-DOCKETED COMPLAINTS</b>					
Non-docketed Complaints Carried over from previous years	27	16	21	25	37
Complaints Screened (Not Docketed)	<u>98</u>	<u>88</u>	<u>104</u>	<u>99</u>	<u>115</u>
<b>TOTAL NON-DOCKETED COMPLAINTS IN INVENTORY</b>	<b>125</b>	<b>104</b>	<b>125</b>	<b>124</b>	<b>152</b>
<b>DOCKETED COMPLAINTS</b>					
Docketed Complaints Carried over from previous years	107	145	63	117	162
Complaints Docketed	<u>252</u>	<u>190</u>	<u>189</u>	<u>215</u>	<u>161</u>
<b>TOTAL DOCKETED COMPLAINTS IN INVENTORY</b>	<b>547</b>	<b>359</b>	<b>335</b>	<b>252</b>	<b>323</b>

Of the 323 open cases in inventory in 2017, ODC completed intake and investigations and made 42 reports and recommendations (including supplemental reviews or appeals) to the COP over the course of the four COP meetings held during the year (average of 10 reports per meeting).

In comparison, ODC completed 75 reports in four meetings in 2016 (average of 19 reports per meeting), 57 reports in four meetings in 2015 (average of 14 reports per meeting), 77 reports in four meetings in 2014 (average of 19 reports per meeting), 124 reports in four meetings in 2013 (average of 31 reports per meeting).<sup>1</sup>

At the end of 2017, there were 15 open formal cases and no cases where formal complaints were to be filed pursuant to COP's recommendation. Of the open formal cases, one (1) was awaiting determination by COP, and none were awaiting determination by the Montana Supreme Court. Three (3) cases were awaiting a formal hearing, and eleven (11) cases were in the litigation stage. One Petition for Reciprocal Discipline was pending before the Supreme Court,

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<sup>1</sup> The reason for the reduction in the number of reports ODC submits to a COP Review Panel for review is a result of the amendments to the Rules for Lawyer Disciplinary Enforcement effective January 1, 2011, which give ODC discretion to dismiss informal complaints. Recent trend has shown that less complaints dismissed by ODC are being appealed to the COP for review.

and two Petitions for Reinstatement were awaiting hearing before the COP. At the end of 2017, ODC was monitoring 22 attorneys for compliance with disciplinary orders.

## DISPOSITIONS OF NON-DOCKETED AND DOCKETED COMPLAINTS

<b><u>NON-DOCKETED COMPLAINTS</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>
Closed with No Further Action	38	40	72	50	49
Dismissals by ODC	33	26	23	32	35
ODC Dismissals Appealed to COP	6	3	9	5	6
ODC Dismissals Closed	27	23	14	27	29
Total Later Docketed	30	17	19	22	10
Total Carried over to following year	16	21	25	19	37

<b><u>DOCKETED COMPLAINTS</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>
Dismissed by ODC	217	180	191	158	161
ODC Dismissals Appealed to COP	51	40	38	39	44
ODC Dismissals Closed	205	172	141	110	116
Total Dismissals by COP, including appeals	102	70	43	45	34
ODC Dismissals Carried over to following year	12	14	9	7	16
Complaints Deferred	14	18	3	0	3
Public Sanctions or Disability Inactive Status <sup>2</sup>	22	23	19	13	23
Petitions for Reinstatement - DENIED	0	1	0	0	0
Petitions for Reinstatement - GRANTED	3	0	0	0	0
Total Docketed Complaints Carried Over to 2018 (162)	0	2	7	35	118

As previously explained in this report, non-docketed complaints are complaints that have not been immediately docketed or “opened” for various reasons. Non-docketed complaints become docketed complaints when ODC determines they should be opened or if the complainant requests review of ODC’s dismissal.

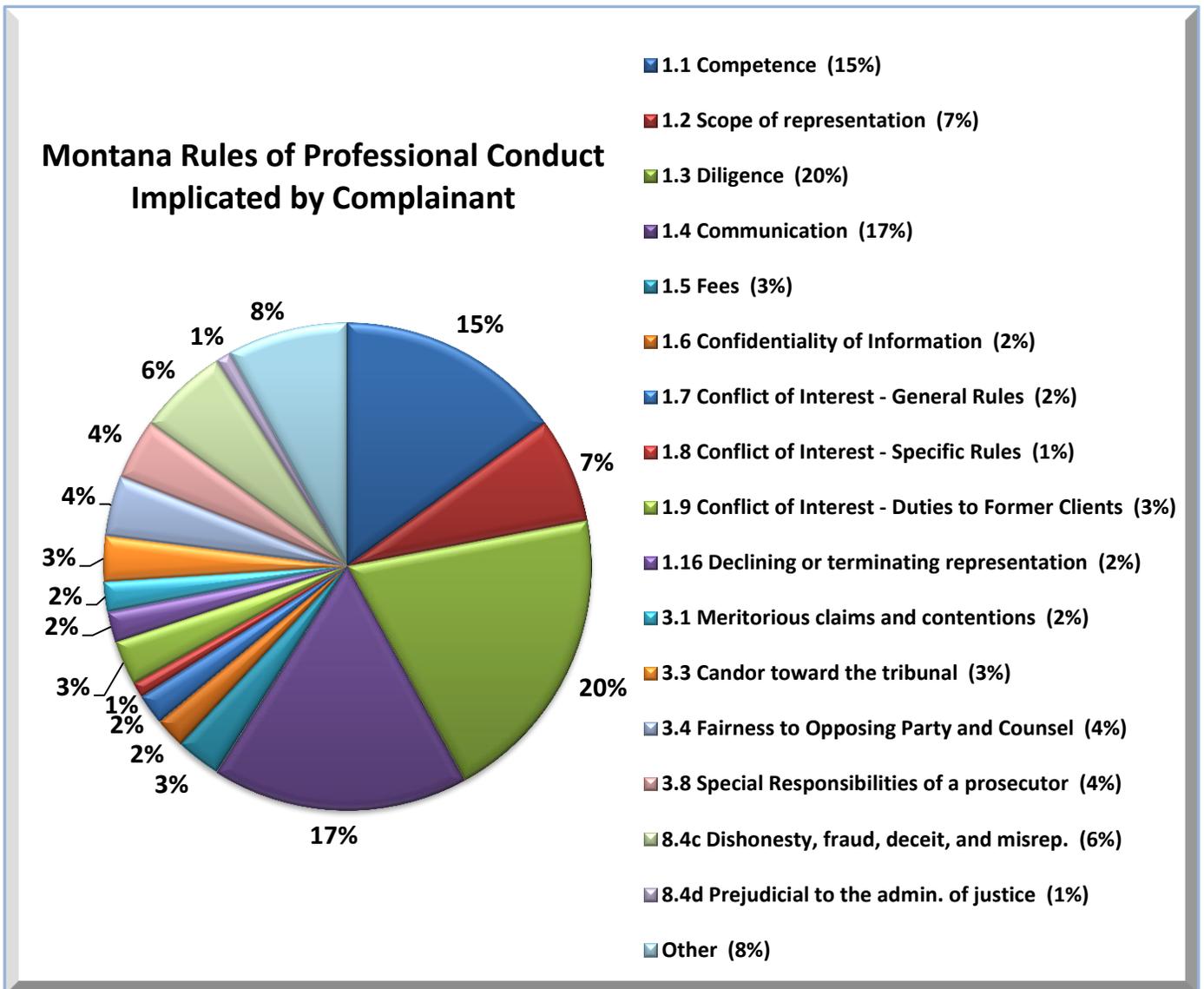
In the non-docketed complaints resulting in closure with no further action, the complainant did not respond to ODC’s request for more information.

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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 docketed cases resulting in public sanctions. Some docketed 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.

## TYPES OF ALLEGATIONS

The following are the types of allegations implicated in docketed cases. The Rules of Professional Conduct not listed either were not implicated in any complaint 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.



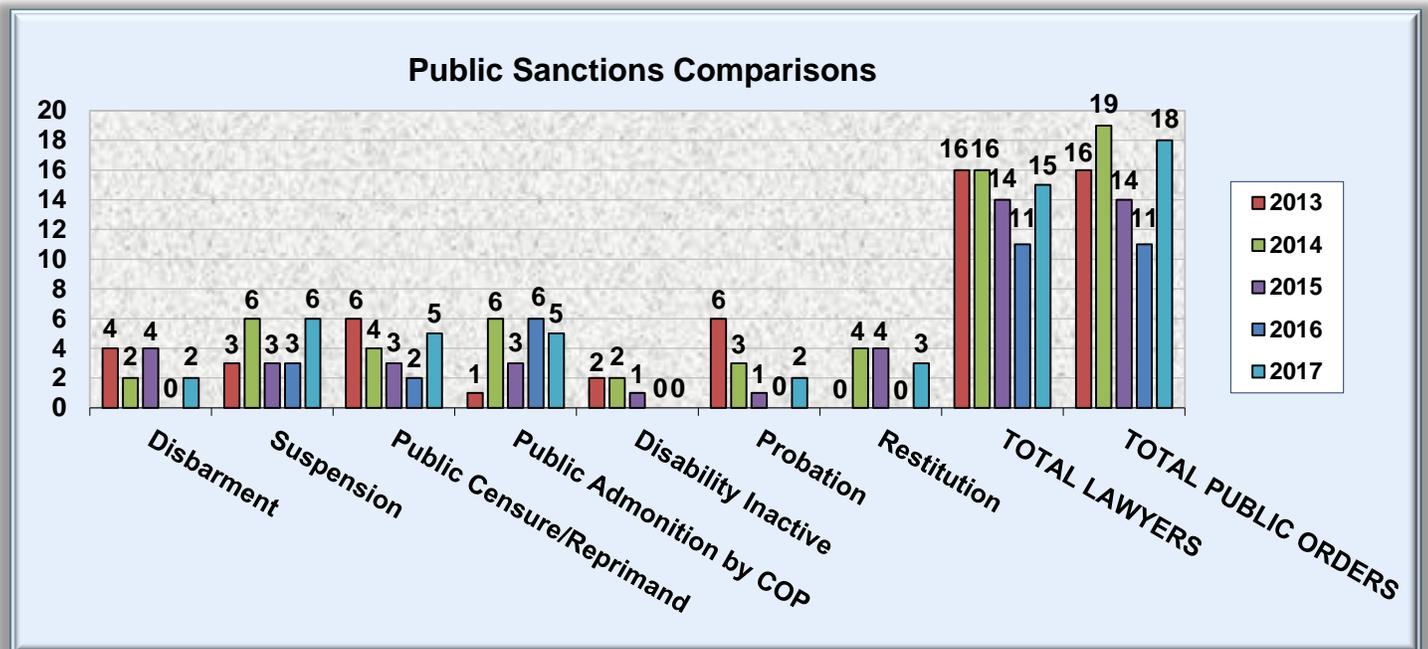
## CASE PROSECUTIONS

Disciplinary Counsel appeared at 20 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 22 docketed cases and 17 attorneys.

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Formal Hearings	14	7	6	8	11
Rule 23 Dispositional Hearings	1	0	0	0	1
Rule 26 Hearings	7	5	6	5	4
Show Cause Hearings	7	6	2	1	4
Reinstatement Hearings	1	1	0	0	0
Reciprocal Discipline Hearings	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
<b>TOTAL</b>	<b>30</b>	<b>19</b>	<b>15</b>	<b>14</b>	<b>20</b>

## FORMAL DISCIPLINE OR PLACEMENT ON DISABILITY INACTIVE STATUS

In 2017, the Montana Supreme Court and COP imposed 23 formal disciplinary sanctions and disability inactive rulings (permanent public records) based off 18 orders for 15 Montana lawyers.<sup>3</sup> The following is a five-year comparison of public sanctions and disability inactive rulings.



<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.

## MONTANA ATTORNEYS SANCTIONED

The following Montana attorneys were publicly sanctioned in 2017, as detailed below. Public censures are given by the Supreme Court directly and admonitions are given by the COP.

<b>CASE NO.</b>	<b>ATTORNEY</b>	<b>DISPOSITION</b>	<b>ORDERED</b>
PR 16-0279	OAAS, Torger	Public Admonition by COP; Restitution	3/7/2017
PR 16-0237	BEGLEY, Patrick	Public Censure; Probation, 2 years; Restitution	3/21/2017
PR 17-0034	LeCLAIRE, Edward	Suspension, 120 days, all but 30 suspended	3/21/2017
PR 16-0233 PR 16-0435	TENNANT, David G.	Public Censure; Restitution; Other terms and conditions	3/21/2017
PR 16-0265	MORRIS, Jack	Public Censure	3/21/2017
PR 16-0319	PICOTTE, Carter	Indefinite Suspension, not less than 7 months	4/26/2017
PR 16-0319	PICOTTE, Carter	Indefinite Suspension, not less than 7 months	4/26/2017
PR 17-0150	SMALL, Andrew M.	Public Reprimand	5/9/2017
PR 16-0238	JOHNSON, Roy W. Jr.	Disbarred	5/16/2017
PR 16-0437	SCHNEIDER, Lorraine A.	Public Admonition by COP	5/23/2017
PR 16-0026	WARZECHA, Timothy J.	Public Censure	5/30/2017
PR 16-0301	FOUST, Lucas J.	Indefinite Suspension, not less than 7 months	6/6/2017
PR 17-0260	SCRENAR, James J.	Public Admonition by COP	8/7/2017
PR 17-0269	BRAUKMANN, Michele	Public Admonition by COP; Probation	8/7/2017
PR 17-0233	TOOLE, Howard	Public Admonition by COP	10/30/2017
PR 16-0245	MYERS, Robert C.	Indefinite Suspension, not less than 7 months	12/28/2017
PR 16-0411	MYERS, Robert C.	Indefinite Suspension, not less than 3 years	12/28/2017
PR 17-0026	MYERS, Robert C.	Disbarred	12/28/2017

The specifics of some 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.

## 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 four-year lookback of costs ordered by the Supreme Court and costs collected by ODC.

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>TOTALS</b>
<b>Orders Including Costs</b>	14	9	9	11	
<b>Amount Ordered</b>	\$25,361	\$14,857	\$14,683	\$44,102	<b>\$99,003</b>
<b>Amount Collected</b>	\$7,360	\$8,694	\$6,147	\$16,169	<b>\$38,370</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 2017, ODC was monitoring a total of 22 lawyers. Ten (10) of those lawyers are on active status. Of those, four are on probation. Twelve (12) additional lawyers are on inactive status, or are suspended or disbarred.

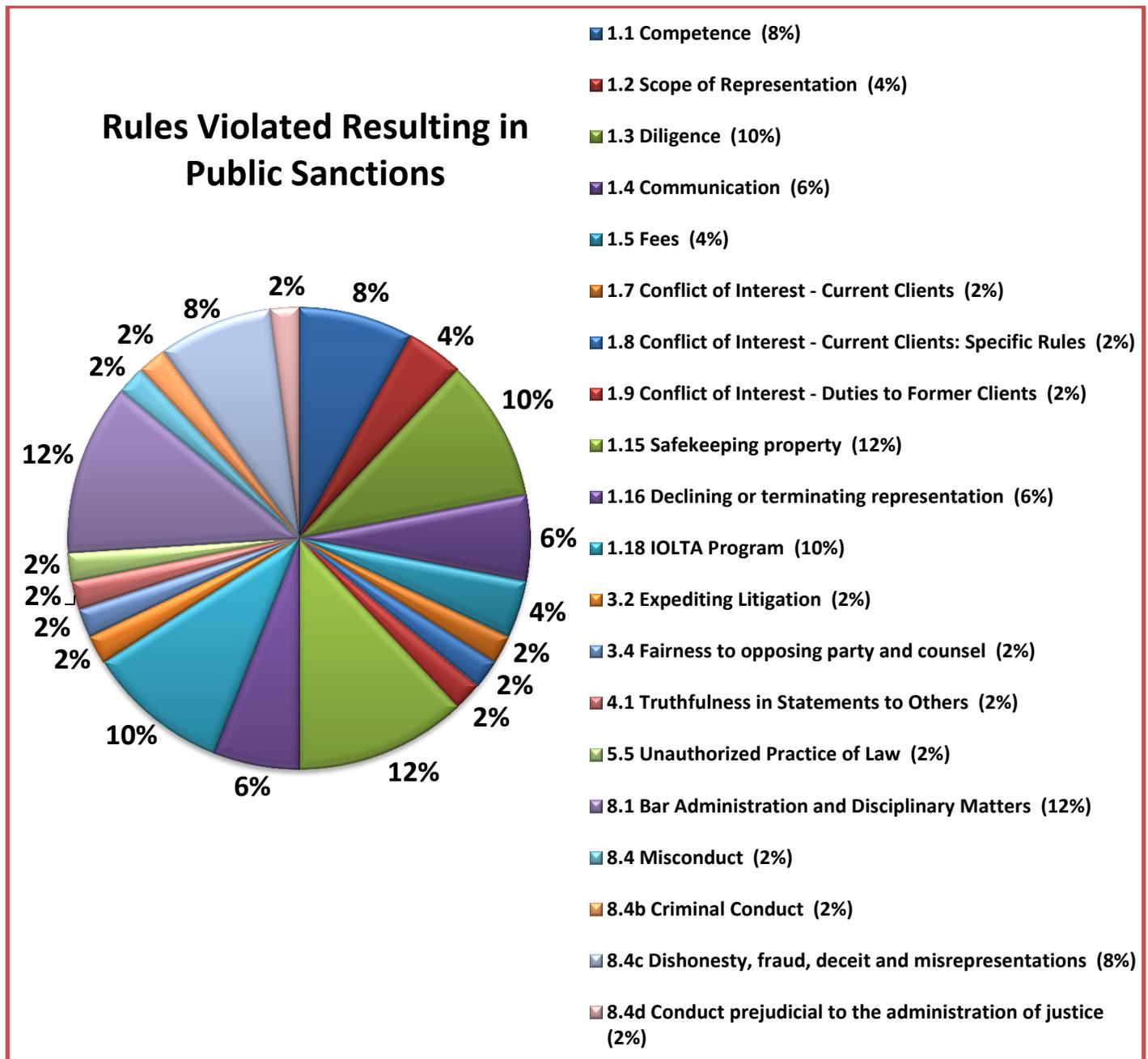
### DISCIPLINE BY SUPREME COURT AND COP

The following table shows a five-year breakdown of discipline. One public reprimand by the COP was ordered and is not included in the data below.

	<b>Disbarment</b>	<b>Suspension</b>	<b>Public Censure</b>	<b>Public Admonition by COP</b>
<b>2013</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>1</b>
<b>2014</b>	<b>2</b>	<b>6</b>	<b>4</b>	<b>6</b>
<b>2015</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>2016</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>6</b>
<b>2017</b>	<b>2</b>	<b>6</b>	<b>5</b>	<b>5</b>

## RULE VIOLATIONS RESULTING IN PUBLIC SANCTIONS

In 2017, the Rules of Professional Conduct that were 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.



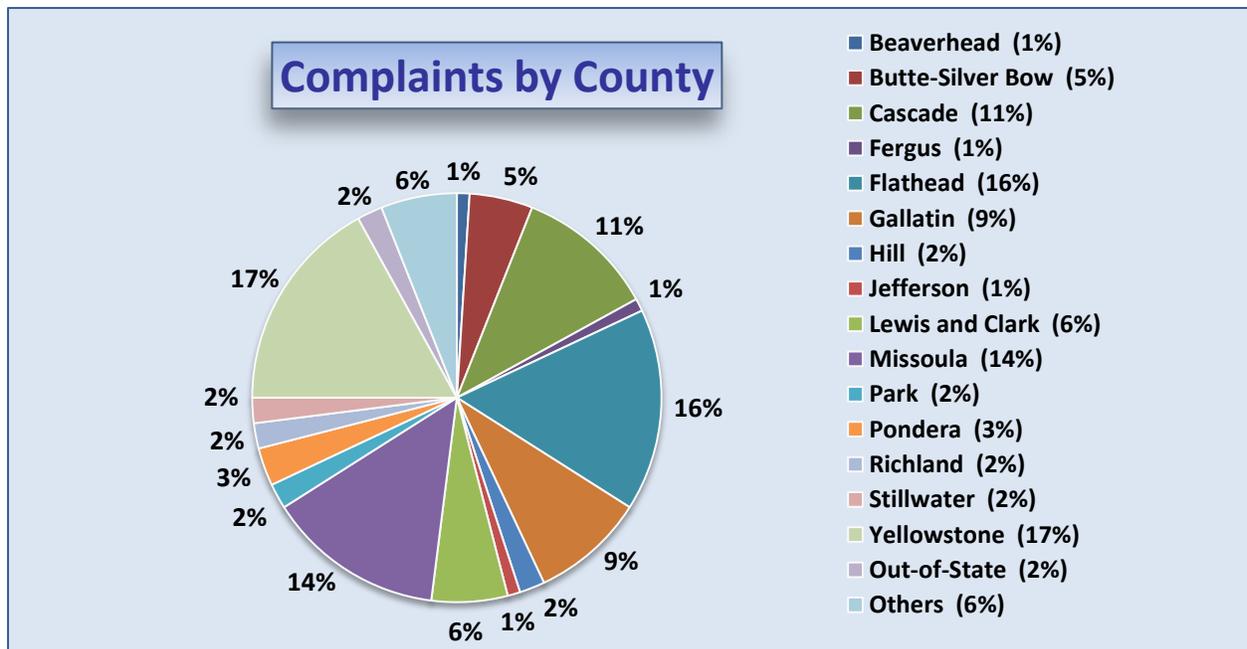
## PRACTICE AREAS

The following is a five-year comparison of the various areas of practice in which docketed cases involved.

Areas of Law	2013	2014	2015	2016	2017
<b>Criminal Law</b>	50%	41%	36%	47%	47%
<b>Dependent/Neglect</b>	1%	0%	1%	2%	0%
<b>Family Law</b>	15%	16%	16%	14%	20%
<b>Civil Litigation</b>	9%	10%	19%	15%	11%
<b>Personal Injury-not litigated</b>	4%	5%	2%	0%	3%
<b>Work Comp</b>	0%	1%	0%	1%	1%
<b>Landlord/Tenant</b>	2%	2%	2%	2%	1%
<b>Probate</b>	7%	3%	4%	4%	4%
<b>Bankruptcy</b>	1%	2%	3%	0%	1%
<b>Real Estate</b>	2%	6%	2%	2%	2%
<b>Business</b>	1%	2%	2%	1%	4%
<b>Administrative Law</b>	1%	0%	2%	1%	0%
<b>Estate Planning</b>	1%	4%	1%	2%	4%
<b>Immigration Law</b>	1%	0%	1%	1%	0%
<b>Other</b>	5%	8%	9%	8%	2%

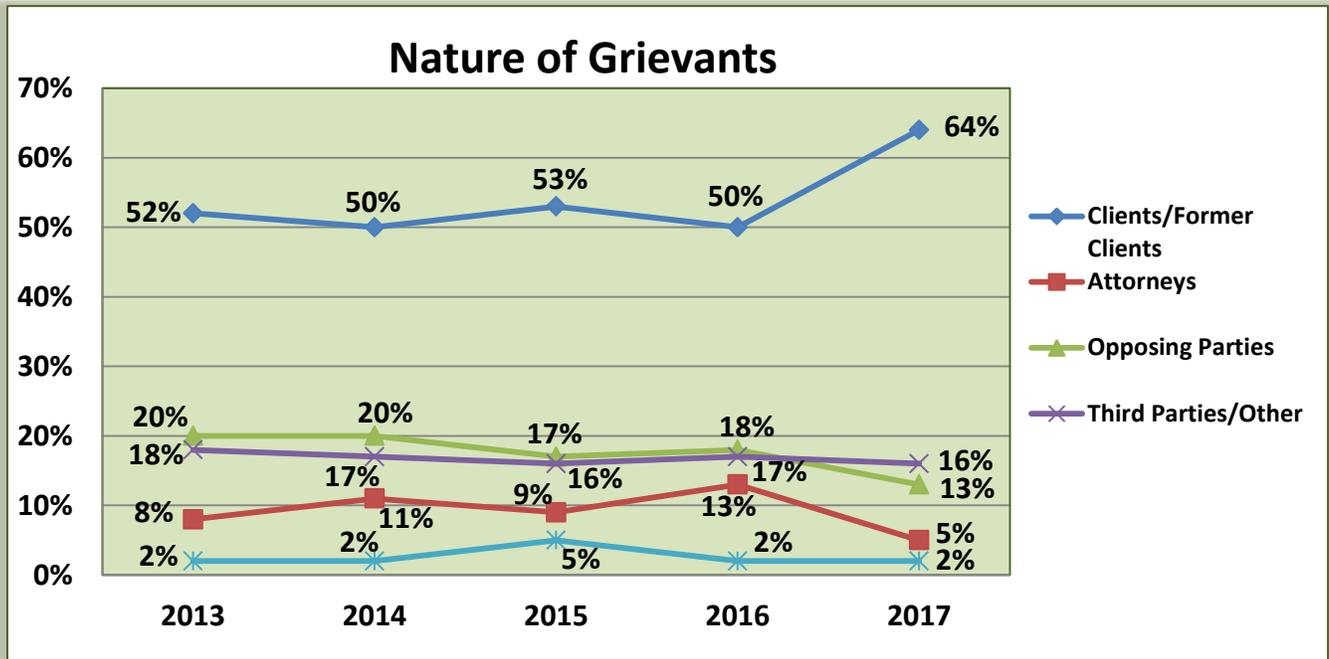
## COMPLAINTS BY COUNTY

Complaints that resulted in docketed cases in 2017 were filed against lawyers from the various counties as follows.



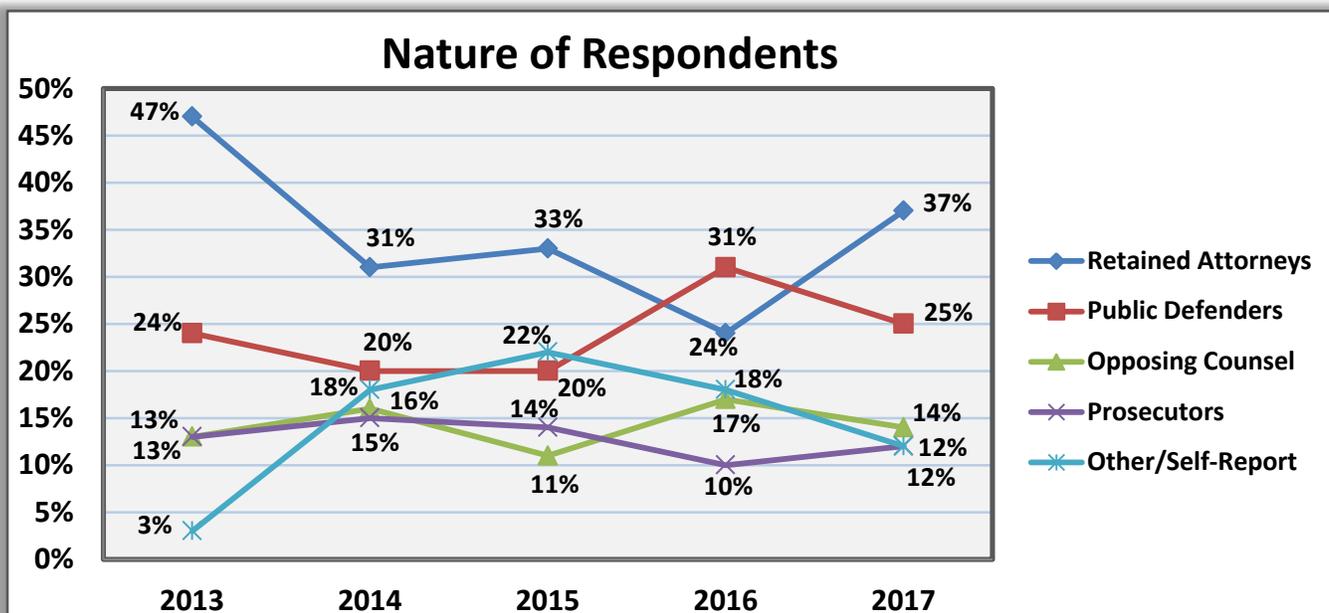
## NATURE OF GRIEVANTS

The following is a five-year comparison of the various types of complainants whose complaints resulted in docketed cases.



## NATURE OF RESPONDENTS

The following is a five-year comparison of the various types of attorneys who had a complaint filed against them, which resulted in a docketed case.



## OTHER MATTERS

The undersigned assumed the position of Chief Disciplinary Counsel beginning July 1, 2017, after Shaun R. Thompson's resignation in June 30, 2017.

Since ODC opened its doors on July 1, 2002, there have been two Disciplinary Counsel (not counting Deputy Disciplinary Counsel). The first, Timothy B. Strauch, served for about three years. The second, Shaun R. Thompson served for almost twelve years.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of March, 2018.

OFFICE OF DISCIPLINARY COUNSEL



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Michael W. Cotter  
Chief Disciplinary Counsel

# Appendix A

