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## Office of Disciplinary Counsel for the State of Montana

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# ODC'S 2015 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.

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

### **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:**

Stephen R. Brown, Jr., Esq.

#### **EXECUTIVE SECRETARY:**

Tracy A. Axelberg, Esq.

#### **MEMBERS:**

Brad L. Belke, Esq.  
Patricia DeVries  
Jean E. Faure, Esq.  
Donald L. Harris, Esq.  
James A. Hubble, Esq.  
Gene Huntington  
James F. Jacobsen  
Daniel N. McLean, Esq.  
Lois Menzies  
Rich Ochsner  
Robert J. Savage, Esq.

#### **OFFICE**

#### **ADMINISTRATOR:**

Shelly Smith

#### **ADMINISTRATIVE SECRETARY:**

Georgia Lovelady

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.

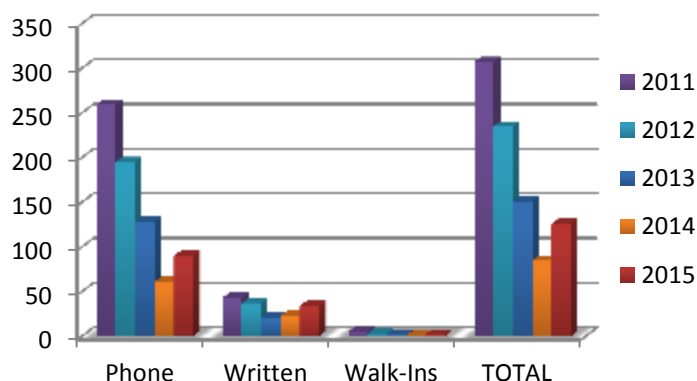
## PUBLIC INQUIRIES & COMPLAINTS FILED

### 5-Year Annual Comparison of Inquiries

From January 1, 2015 through December 31, 2015, a total of 134 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.

	<i>Phone</i>	<i>Written</i>	<i>Walk-Ins</i>	<i>TOTAL</i>
<b>2011</b>	259	43	5	307
<b>2012</b>	195	37	3	235
<b>2013</b>	128	21	2	151
<b>2014</b>	61	23	1	85
<b>2015</b>	90	34	2	126



In 2015, ODC received 274 new informal complaints, 104 of which were screened prior to docketing, referred to as a “non-docketed complaint” or “pencil file” as described above. Of those 104 non-docketed complaints, 19 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 274 new informal complaints filed, 189 were opened and docketed.

## ATTORNEYS LICENSED IN MONTANA

The total number of attorneys licensed to practice law in Montana as of December 31, 2015 is 3,877; 3,130 in-state attorneys and 747 out-of-state attorneys whose licenses are on active status. Based upon the number of in-state attorneys, informal disciplinary complaints averaged about one (1) for every nine (9) attorneys over the twelve-month period; however, some attorneys were subject to multiple complaints.

## CASES IN INVENTORY

In 2015, including pending cases carried over from previous years, ODC had 252 total open, docketed complaints (63 carried over and 189 new) and 125 non-docketed complaints (21 carried over and 104 new) throughout the year. The following is a

five-year comparison of the number of ODC's cases in inventory, both non-docketed and docketed.

	2011	2012	2013	2014	2015
<b>TOTAL NEW COMPLAINTS</b>	307	413	320	258	274
<b>NON-DOCKETED COMPLAINTS</b>					
Non-docketed Complaints Carried over from previous years	44	49	27	16	21
Complaints Screened (Not Docketed)	<u>132</u>	<u>139</u>	<u>98</u>	<u>88</u>	<u>104</u>
<b>TOTAL NON-DOCKETED COMPLAINTS IN INVENTORY</b>	<b>176</b>	<b>188</b>	<b>125</b>	<b>104</b>	<b>125</b>
<b>DOCKETED COMPLAINTS</b>					
Docketed Complaints Carried over from previous years	246	240	107	145	63
Complaints Docketed	<u>281</u>	<u>307</u>	<u>252</u>	<u>190</u>	<u>189</u>
<b>TOTAL DOCKETED COMPLAINTS IN INVENTORY</b>	<b>527</b>	<b>547</b>	<b>359</b>	<b>335</b>	<b>252</b>

Of the 252 open cases in inventory in 2015, ODC completed intake and investigations and made 57 reports and recommendations (including supplemental reviews or appeals) to the COP over the course of the three COP meetings held during the year (average of 19 reports per meeting).

In comparison, ODC completed 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), 160 reports in four meetings in 2012 (average of 40 reports per meeting), and 222 reports in four meetings in 2011 (average of 56 reports per meeting).<sup>1</sup>

At the end of 2015, there were 7 open formal cases and no cases where formal complaints were to be filed pursuant to COP's recommendation. Of the open formal cases, none were awaiting determination by COP, nor were any cases awaiting determination by the Montana Supreme Court. Two cases were awaiting a formal hearing (one of which was a continuation of a formal hearing from the previous COP meeting), and one case where a conditional admission was filed was awaiting a Rule 26 hearing. Four cases were in the litigation stage. Two informal cases, involving one attorney, were awaiting a show cause hearing. At the end of 2015, ODC was monitoring 5 attorneys for compliance with disciplinary orders.

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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 greater discretion to dismiss informal complaints. Recent trend has shown that less complaints dismissed by ODC are being appealed to the COP for review.

## DISPOSITIONS OF NON-DOCKETED AND DOCKETED COMPLAINTS

<b><u>NON-DOCKETED COMPLAINTS</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>
Closed with No Further Action	54	80	38	40	72
Dismissals by ODC	47	96	33	26	23
ODC Dismissals Appealed to COP	22	19	6	3	9
ODC Dismissals Closed	25	77	27	23	14
Total Closed w/o COP Involvement	79	157	65	63	86
Total Later Docketed, including appeals	42	33	30	17	19
Total Carried over to following year	49	27	16	21	25

<b><u>DOCKETED COMPLAINTS</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>
Dismissed by ODC / Complaints Withdrawn	89	267	201	166	170
Dismissed by ODC with Letter of Caution	18	34	16	14	18
ODC Dismissals of Docketed Complaints Appealed to COP	28	75	51	40	38
ODC Dismissals Closed	72	225	205	172	141
ODC Dismissals Carried over to following year	7	1	12	14	9
Closed Without Action - Attorney Deceased	0	0	0	0	3
Dismissals by COP with Letter of Caution	26	5	2	1	3
Dismissals by COP, including appeals	153	86	100	69	40
Total Dismissals by COP	179	91	102	70	43
Complaints Deferred	12	9	14	18	3
Private Sanctions	9	8	1	0	0
Public Sanctions or Disability Inactive Status <sup>2</sup>	20	24	22	23	19
Petitions for Reinstatement - DENIED	0	0	0	1	0
Petitions for Reinstatement - GRANTED	0	0	3 <sup>3</sup>	0	0
Total Docketed Complaints Carried Over to 2016 (117)	1	0	0	11	105

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.

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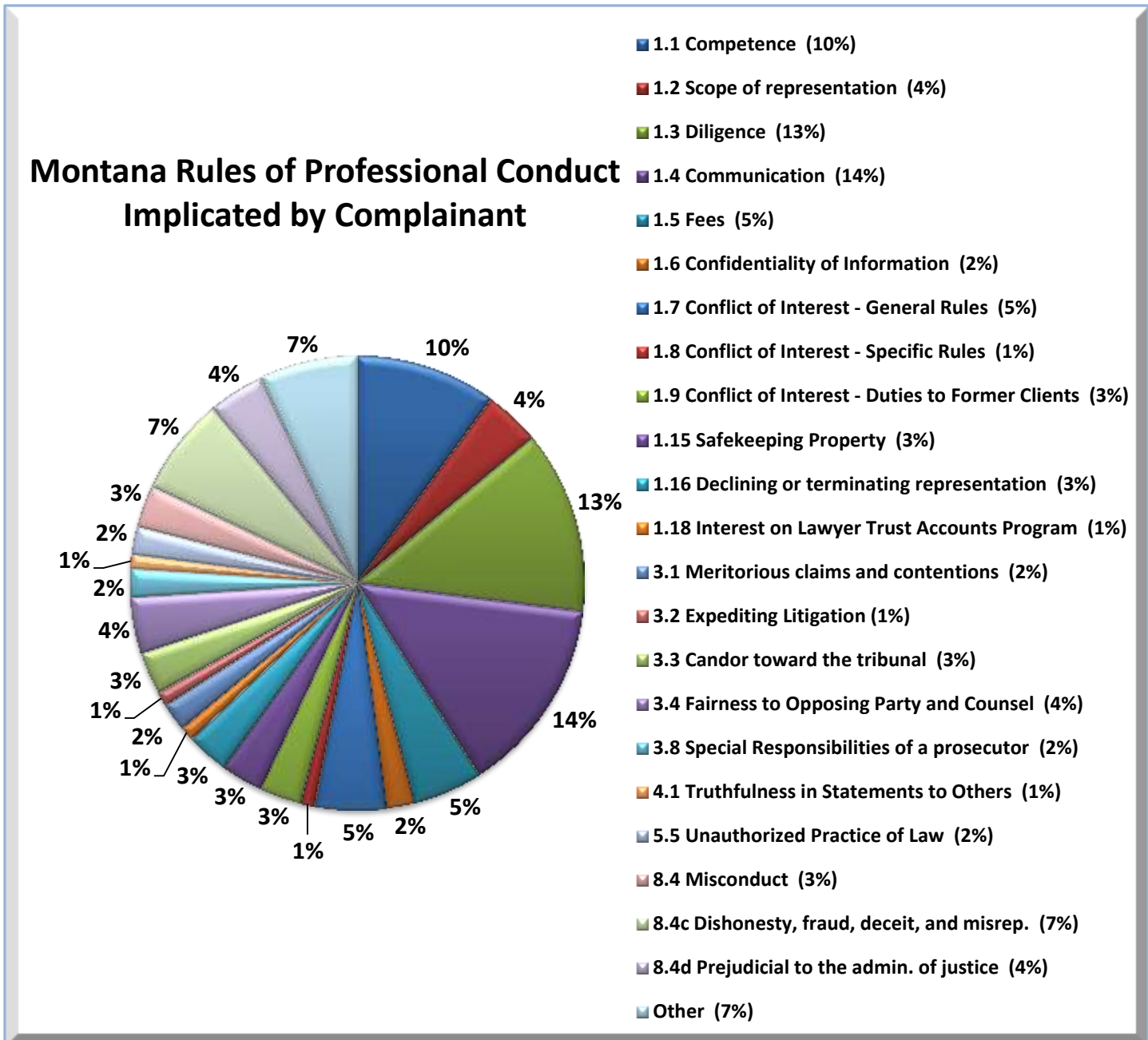
<sup>2</sup> The total number of public sanctions listed here differs from the total number of public sanctions listed under the Formal Discipline section of this report. The figure listed above represents the number of informal, docketed cases resulting in public sanctions, not the actual number of public sanctions ordered by the Supreme Court. The total number of public sanctions listed under the Formal Discipline section represents the actual number of public sanctions.

<sup>3</sup> One of the reinstatement petitions was granted subject to conditions, which were required to be met prior to reinstatement.

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

## TYPES OF ALLEGATIONS

The following are the types of allegations implicated by complainants in the complaints resulting 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 15 hearings over the course of the three (3) COP meetings held during the year, which are further described below with a five-year comparison. The hearings involved 16 docketed cases and 15 attorneys.

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Formal Hearings	7	12	14 <sup>4</sup>	7	6
Rule 23 Dispositional Hearings	0	0	1	0	0
Rule 26 Hearings	2	8	7	5	6
Show Cause Hearings	4	4	7	6	2
Reinstatement Hearings	0	2	1	1	0
Reciprocal Discipline Hearings	0	0	0	0	1
<b>TOTAL</b>	<b>13</b>	<b>26</b>	<b>30</b>	<b>18</b>	<b>15</b>

## FORMAL DISCIPLINE OR PLACEMENT ON DISABILITY INACTIVE STATUS

In 2015, the Montana Supreme Court and COP imposed 19 formal disciplinary sanctions and disability inactive rulings (permanent public records) based off 14 orders for 14 Montana lawyers.<sup>5</sup>

The public sanctions and disability inactive rulings included the following.

<b>CASE NO.</b>	<b>ATTORNEY</b>	<b>DISPOSITION</b>	<b>ORDERED</b>
PR 14-0475	CHESTER, Edward G.	Public Admonition by COP	1/15/15
PR 14-0746	STINSON, Laurence W. (Reciprocal Discipline)	Public Censure	1/21/15
PR 14-0723	VAUGHN, Charles (Reciprocal Discipline)	Suspension, 91 days	1/27/15
PR 14-0468	KOHN, Brian	Suspension, 60 days	3/10/15
PR 13-0706 PR 14-0250	ENCINAS, Eduardo L.	Public Admonition by COP; Restitution	3/17/15
PR 14-0737	McLEAN, David M.	Disbarred; Restitution	3/17/15
PR 15-0142	AVERY, David C.	Disability Inactive Status	4/14/2015
PR 14-0682	CONNORS, Joseph Jr.	Public Censure; Probation, 2 years; Restitution	5/5/15
PR 15-0031	SUTTON, Jeffrey	45-day Suspension (effective 8/8/15)	5/5/15

<sup>4</sup> Two of the formal hearings, at which ODC appeared, were continuations from previous COP meetings.

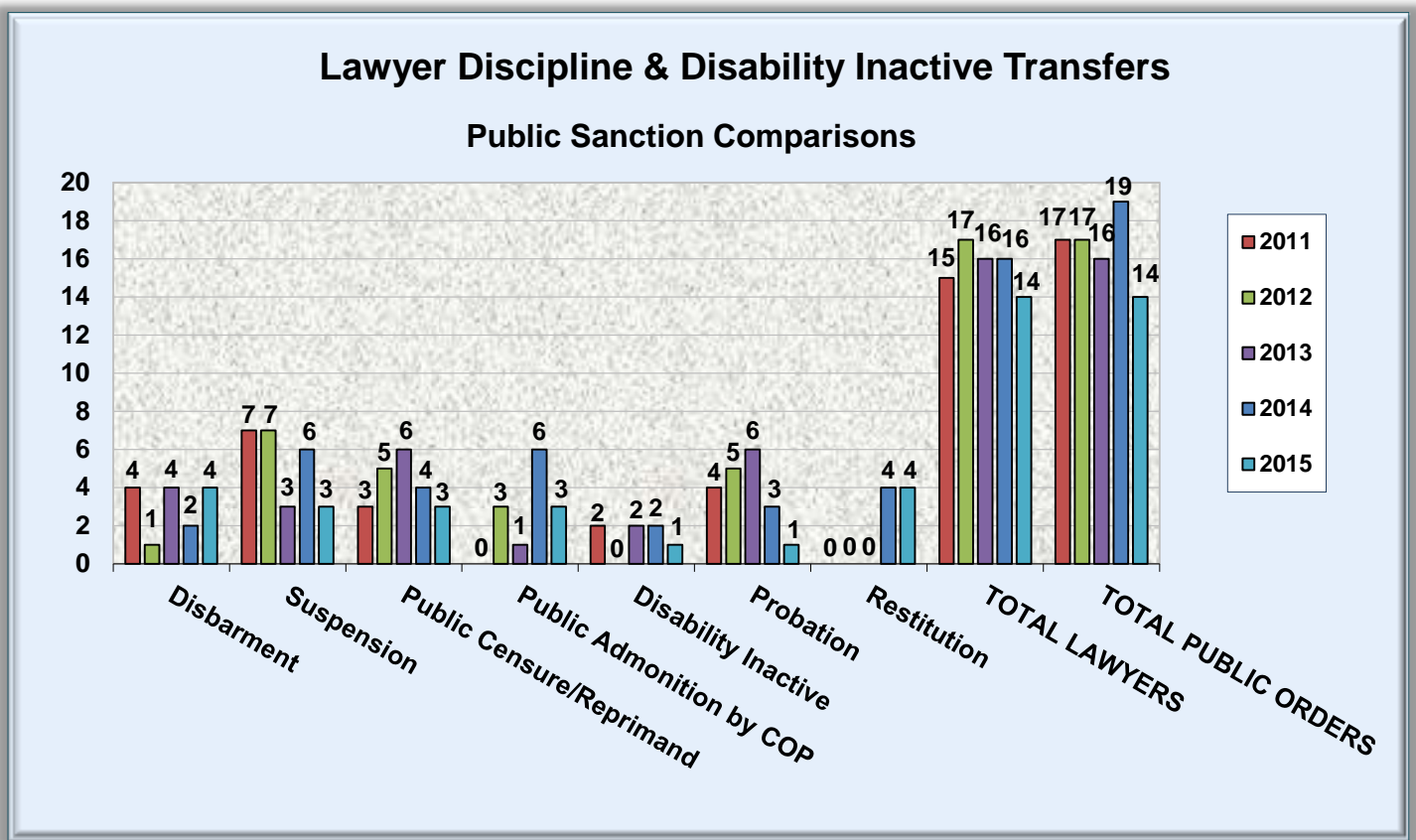
<sup>5</sup> Some lawyers received multiple sanctions for their misconduct in a disciplinary matter. In addition, some lawyers were disciplined more than once during the calendar year in separate disciplinary matters.



PR 15-0073	JONES, Russell K. (Reciprocal Discipline)	Disbarred	6/16/15
PR 14-0471	LAEDEKE, Randy	Disbarred; Restitution	6/30/15
PR 15-0247	ANDERSON, Kendra	Public Admonition by COP	10/26/15
PR 15-0032	UHL (nka Lyday), Myshell	Public Censure	11/4/15
PR 14-0698	RHODES, Elmer S.	Disbarred	12/8/15

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.

The following is a five-year comparison of public sanctions and disability inactive rulings.



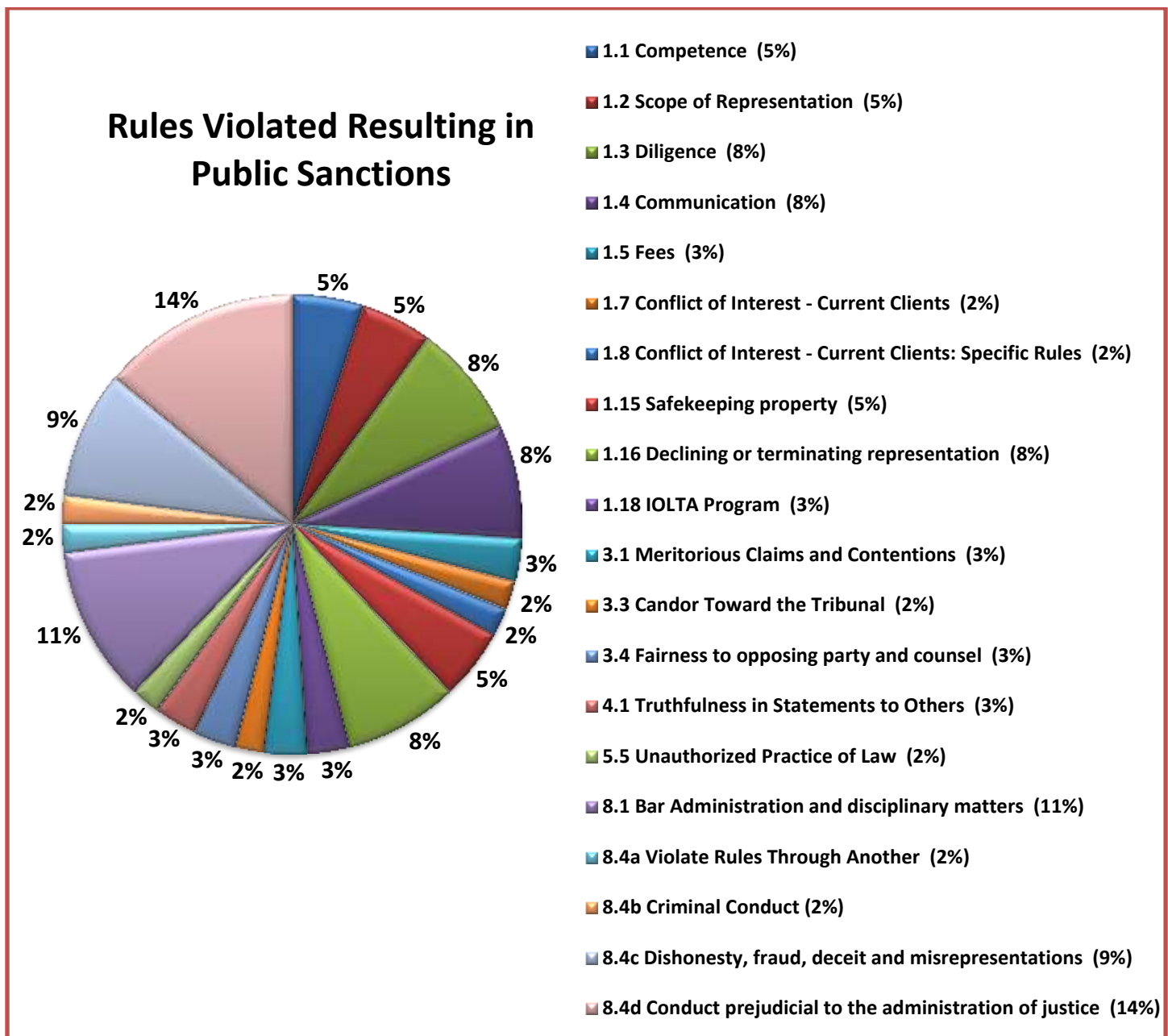
An admonition by COP given publically is a form of discipline established by the revised Rules for Lawyer Disciplinary Enforcement adopted by the Montana Supreme Court and made effective January 1, 2011.

An admonition may be imposed by COP privately when the attorney's right to privacy outweighs the public's right to know.

The COP's decision to impose an admonition or to close a hearing may be, at the request of a party or member of the public, subject to review by the Montana Supreme Court.

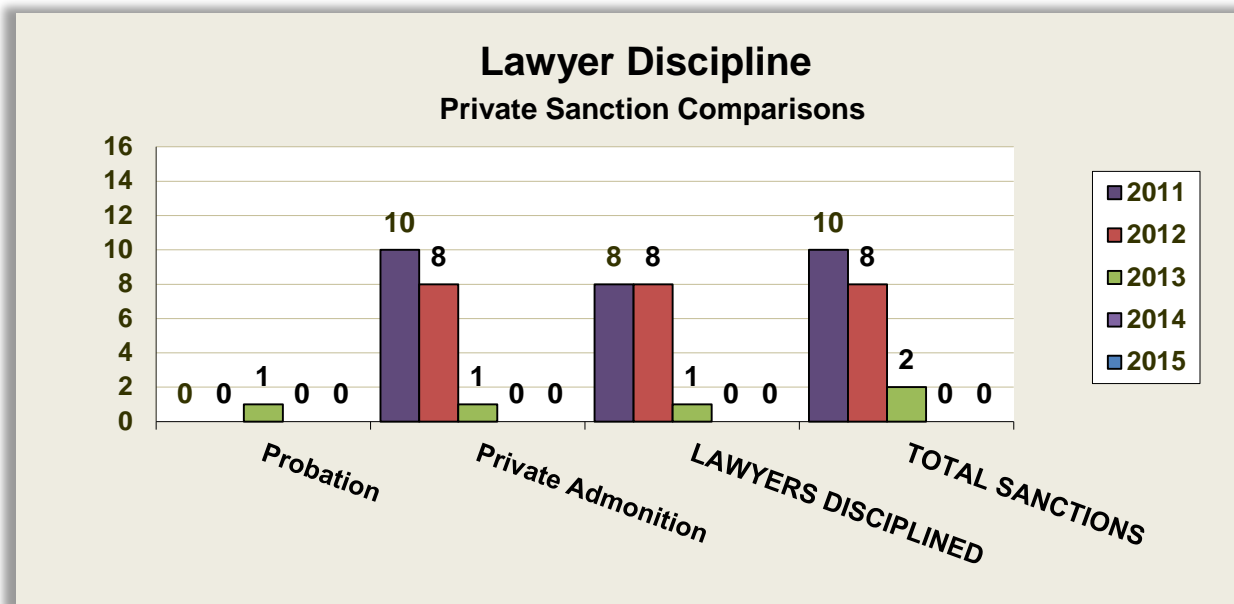
## RULE VIOLATIONS RESULTING IN PUBLIC SANCTIONS

In 2015, 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.



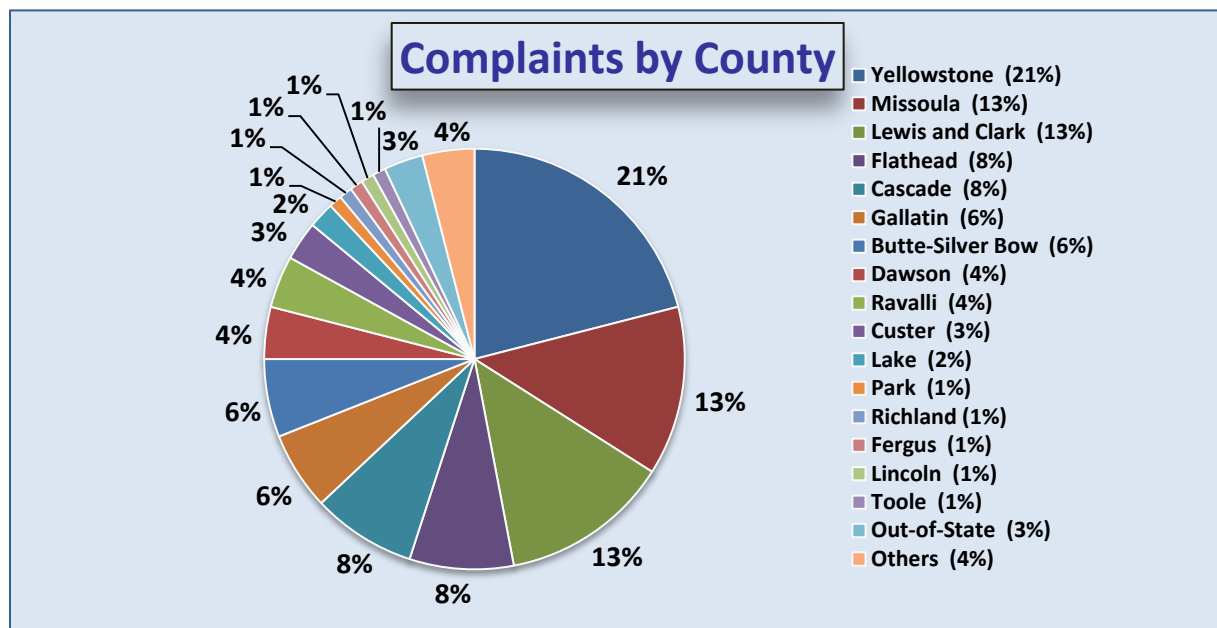
## PRIVATE DISCIPLINE

In 2015, COP did not impose any private disciplinary sanctions. The following is a five-year comparison of private sanctions.<sup>6</sup>



## COMPLAINTS BY COUNTY

Complaints that resulted in docketed cases in 2015 were filed against lawyers from the various counties as follows.



<sup>6</sup> The decrease in private disciplinary sanctions is a result of the revisions made to the Rules for Lawyer Disciplinary Enforcement effective January 1, 2011, which now permits a private admonition in limited circumstances. See Rule 13, RLDE (2011).

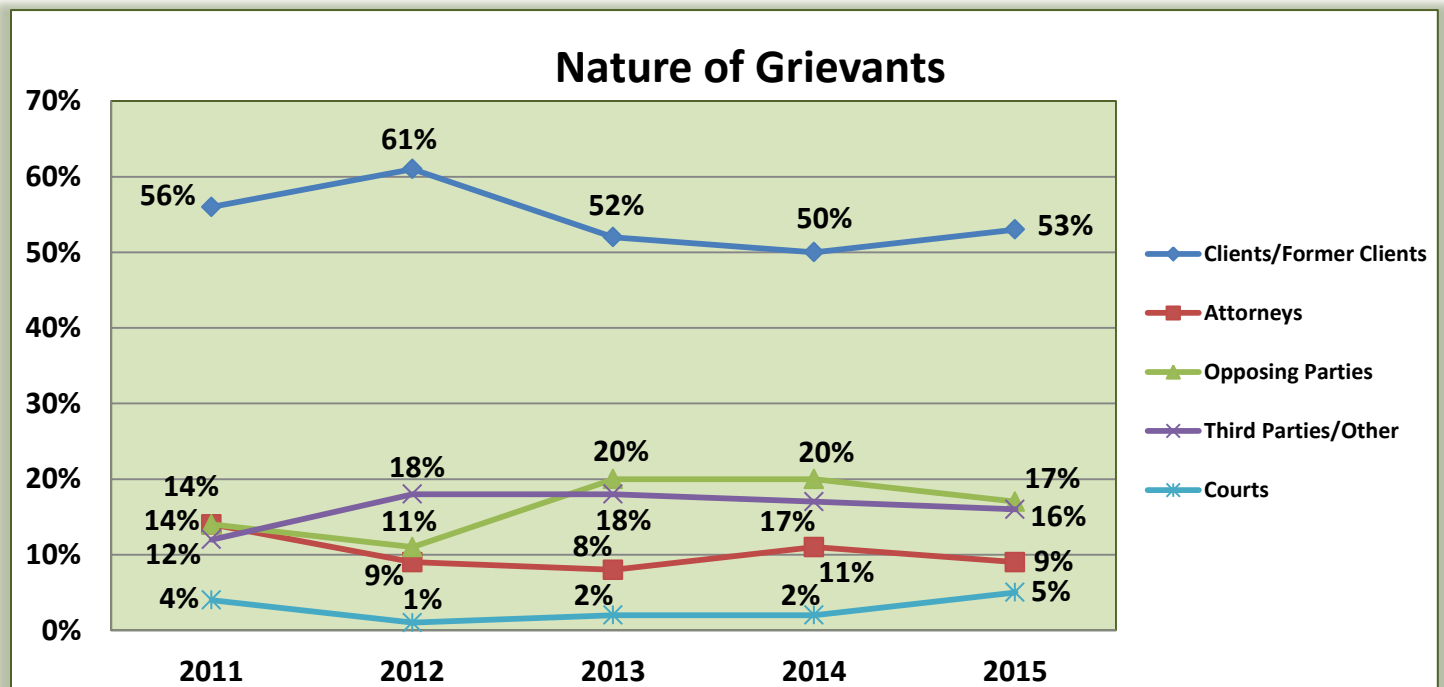
## PRACTICE AREAS

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

Areas of Law	2011	2012	2013	2014	2015
<b>Criminal Law</b>	36%	49%	50%	41%	36%
<b>Dependent/Neglect</b>	0%	1%	1%	0%	1%
<b>Family Law</b>	21%	14%	15%	16%	16%
<b>Civil Litigation</b>	18%	15%	9%	10%	19%
<b>Personal Injury-not litigated</b>	2%	2%	4%	5%	2%
<b>Work Comp</b>	0%	1%	0%	1%	0%
<b>Landlord/Tenant</b>	1%	1%	2%	2%	2%
<b>Probate</b>	5%	1%	7%	3%	4%
<b>Bankruptcy</b>	3%	2%	1%	2%	3%
<b>Real Estate</b>	3%	6%	2%	6%	2%
<b>Business</b>	2%	1%	1%	2%	2%
<b>Tax</b>	0%	1%	0%	0%	0%
<b>Administrative Law</b>	0%	0%	1%	0%	2%
<b>Estate Planning</b>	0%	0%	1%	4%	1%
<b>Immigration Law</b>	0%	0%	1%	0%	1%
<b>Other</b>	9%	7%	5%	8%	9%

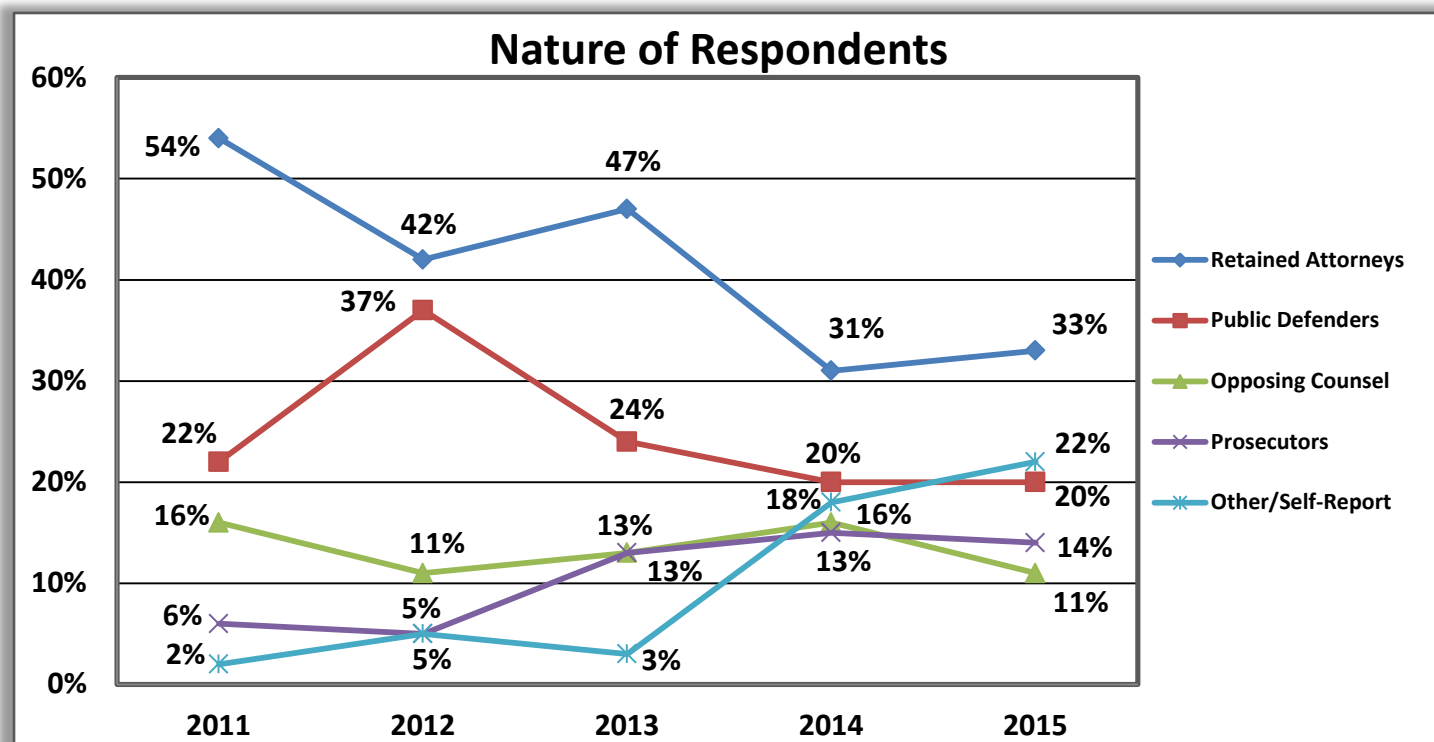
## NATURE OF GRIEVANTS

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



## 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

By Order dated October 13th, 2015, in Cause No. AF 06-0628, the Court amended the RLDE, effective January 1, 2016. Some of the more significant changes are:

- Clarification of the Court's disciplinary jurisdiction.
- Creation of a statute of limitation for filing a formal complaint.
- Elimination of the right of a grievant to request that a review panel reconsider its decision.
- Giving ODC the option to file objections to the COP's findings of fact, conclusions of law and recommendation.
- Permitting ODC, in certain circumstances, to obtain an investigative subpoena before a formal complaint is filed.

- Elimination of the requirement that the Court be notified when a grievance is made against a lawyer member of the COP.
- Allowing ODC, as opposed to the COP, to request the Court to place a lawyer on interim suspension.
- Including reciprocal disability/inactive status in Rule 27.
- Requiring a lawyer, who is placed on disability/inactive status on the grounds that the lawyer asserts an inability to assist in his or her defense, to prove the assertion before reinstatement to active status.

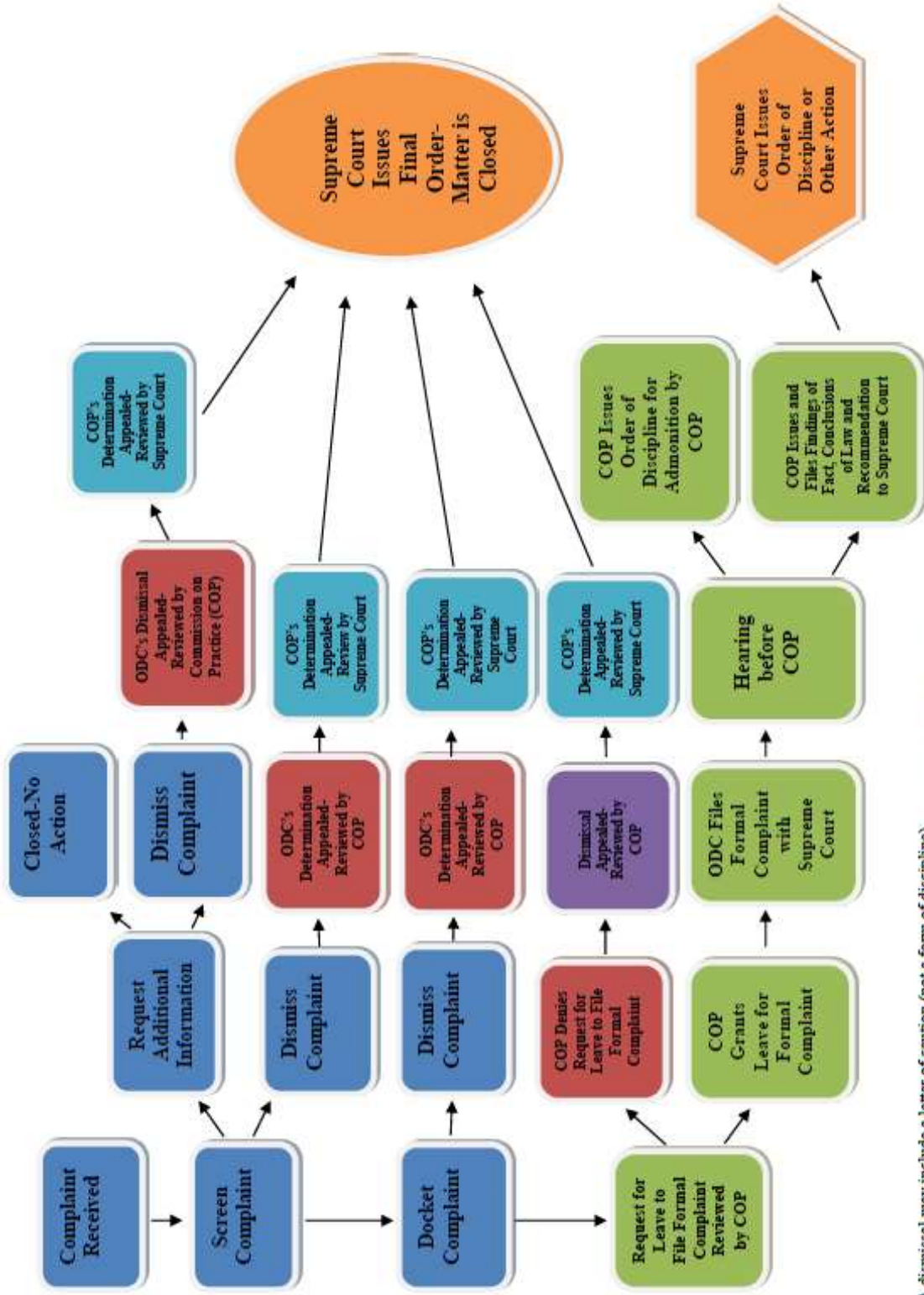
RESPECTFULLY SUBMITTED this 25th day of April, 2016.

OFFICE OF DISCIPLINARY COUNSEL

By: \_\_\_\_\_/s/\_\_\_\_\_  
Shaun R. Thompson  
Chief Disciplinary Counsel

# Appendix A

# ODC Complaint Process



\* A dismissal may include a letter of caution (not a form of discipline).  
 \* Where required by Supreme Court Order, ODC monitors conditions/requirements until completed.  
 \* Blue-Actions by ODC; Green-Formal Complaint Process; Red- Action by COP's Review Panel; Purple-2<sup>nd</sup> Review by COP Review Panel; Light Blue-Action by Supreme Court; Orange-Final Actions taken by Supreme Court