



OFFICE OF DISCIPLINARY COUNSEL  
for the State of Montana

2023 ANNUAL REPORT

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## **THE LAWYER DISCIPLINARY SYSTEM**

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**The Montana Supreme Court** has exclusive jurisdiction over the admission of members to the Montana State Bar and the conduct of its members pursuant to the Montana Constitution, Article VII, Section 2(3). On July 1, 2002, the Montana Supreme Court established a comprehensive lawyer discipline and disability system, consisting of the Office of Disciplinary Counsel and the Commission on Practice. Both entities are under the direct supervision of the Court and are governed and set forth by the Montana Rules for Lawyer Disciplinary Enforcement (“MRLDE”). These Rules can be found at [www.montanaodc.org](http://www.montanaodc.org).

**The Office of Disciplinary Counsel (“ODC”)** acts as central intake for the lawyer regulatory system and is responsible for the intake, investigation, and prosecution of ethical grievances against Montana lawyers. The office consists of **four (4)** full-time employees and **one (1)** temporary part-time employee.

**The Commission on Practice (“COP”)** is a volunteer panel of **nine (9)** lawyers and **five (5)** non-lawyers, appointed by the Court to serve a **four (4)** year term. Members are divided into Review and Adjudicatory Panels, which hear and make determinations on the merits of grievances and, in appropriate cases, impose discipline or make recommendations to the Court for discipline or other disposition. The COP meets quarterly but may also schedule special sessions throughout the year. The COP consists of the following members:

**COP CHAIRMAN:** Lawyer Ward E. "Mick" Taleff

**COP VICE-CHAIR:** Lawyer Kelly J.C. Gallinger

**EXECUTIVE SECRETARY:** Lois Menzies

**OFFICE ADMINISTRATOR:** Shelly J. Smith

**LAWYER MEMBERS:** Brad L. Belke; Jean E. Faure; Andres Haladay; W. Carl Mendenhall; Dan O’Brien; Randy S. Ogle; and Sheryl Wambsgans

**NON-LAWYER MEMBERS:** Patt Leikam; Elinor Nault; Troy McGee; Lois Menzies; and Rich Ochsner

## **GRIEVANCE PROCEDURE**

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ODC refers to informal complaints against Montana lawyers as grievances. Anyone may file a written grievance with ODC, either in-person or by mail. In general, the steps for processing a grievance are as follows:

### **STEP ONE: OFFICE OF DISCIPLINARY COUNSEL**

ODC receives a grievance and information regarding a lawyer’s alleged misconduct and conducts a preliminary review. During its preliminary review, ODC determines whether the grievance should be classified as **meritless** or **merit**. To make this determination, ODC considers whether more information is needed; the file can be summarily dismissed; or whether the file should be investigated further.

If more information is needed, or can be summarily dismissed, ODC creates a **meritless** file. When ODC requests additional information and it is not provided, ODC closes the matter without further action. However, if after a party submits additional information which provides the basis for an investigation, those matters may be transitioned to a **merit** file.

Where ODC opens a **merit** file, the grievance is provided to the subject lawyer; the lawyer’s response is requested; the response may be provided to the grievant for their review and reply; and additional investigation is conducted. Upon completion of this process, ODC may:

1. Dismiss the matter if disciplinary action is not warranted;
2. Dismiss the matter with a letter of caution to the lawyer, 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.

Where a merit file is dismissed, the grievant is provided an opportunity to request review of the dismissal by a COP Review Panel.

## **STEP TWO: COMMISSION ON PRACTICE REVIEW PANEL**

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

Any action taken by ODC or COP prior to the filing of a formal complaint **is not public discipline**, pursuant to Rule 20 MRLDE.

## **STEP THREE: COMMISSION ON PRACTICE ADJUDICATORY PANEL**

Upon the filing of a formal complaint by ODC, the matter is assigned to an Adjudicatory Panel of the COP. The Adjudicatory Panel's authority includes:

1. Conducting an evidentiary hearing and submitting its findings of fact, conclusions of law, and recommendation to the Montana Supreme Court;
2. Conducting a hearing to consider whether a conditional admission should be approved (a conditional admission admits certain misconduct in exchange for a stated form of discipline);
3. And after hearings, they may in some cases impose discipline, to include public admonitions, as well as probation, restitution, and costs.

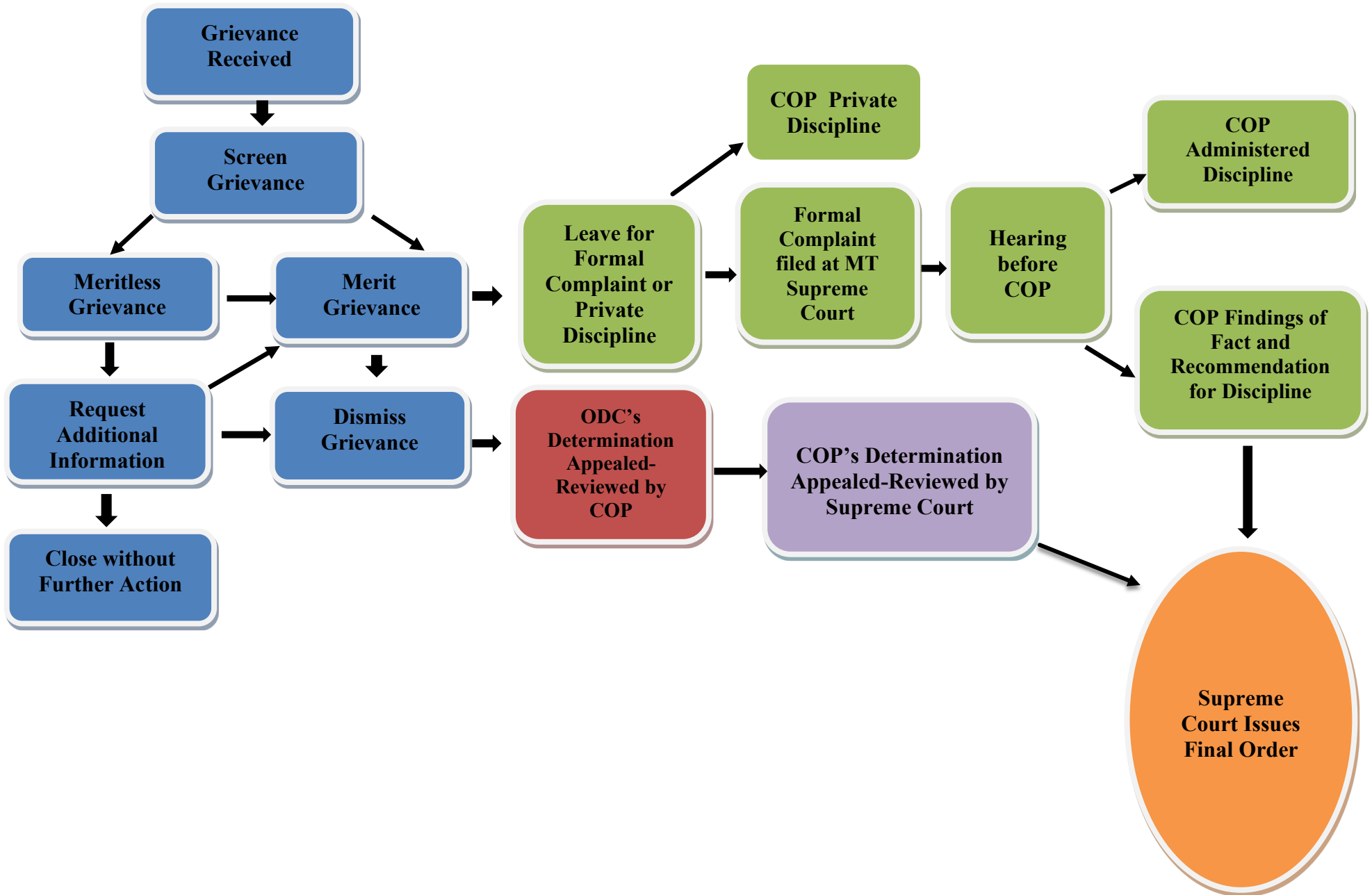
## **STEP FOUR: THE MONTANA SUPREME COURT**

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 party may file objections to an Adjudicatory Panel's findings of fact, conclusions of law and recommendation.

The following flow chart displays a general overview of the ODC grievance and prosecution process. It is meant to be a general overview, rather than a depiction of every scenario possible.

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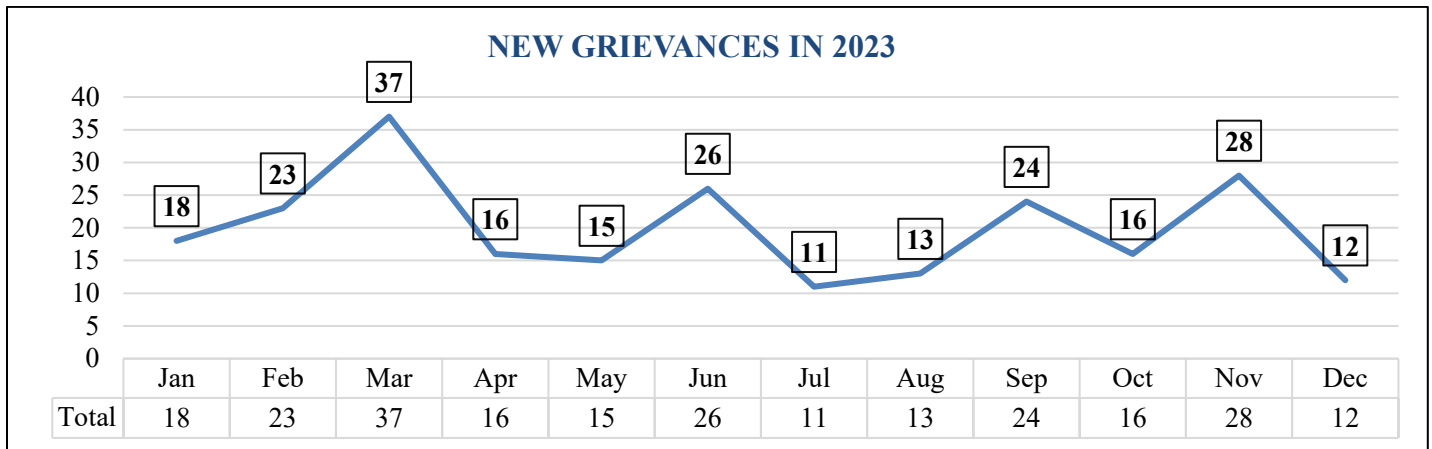
<sup>1</sup> In 2020, the MRLDE were revised, amended, and adopted, to include private admonition as a form of sanction, which became effective January 1, 2021.



## NUMBER AND NATURE OF GRIEVANCES

### NEW GRIEVANCES

In 2023, ODC received **239** new meritless and merit grievances. Of those, **126** were referred to as **meritless** files and **113** were opened as **merit** files. **Twelve (12)** meritless files were later opened as merit files after the grievant provided the requested additional information.



### GRIEVANCES PER LICENSED LAWYERS

As of December 13, 2023, the total number of lawyers licensed to practice law in Montana was **5,252**. Of those, **4,239** are on active status. Based upon the number of active lawyers, informal grievances averaged about **one (1)** for every **18** lawyers over the twelve-month period; however, some lawyers were subject to multiple grievances.

### FILES IN INVENTORY

In 2023, ODC had **367** informal files in inventory. This includes new and pending meritless and merit files carried over from previous years into 2023. The following is a three-year comparison of ODC's informal files in inventory.

<b>MERITLESS</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Meritless Files Carried Over from Previous Years	11	16	18
New Meritless Files	<u>113</u>	<u>157</u>	<u>126</u>
<b>TOTAL MERITLESS FILES IN INVENTORY</b>	<b>124</b>	<b>173</b>	<b>144</b>
<b>MERIT</b>			
Merit Files Carried Over from Previous Years	98	99	110
New Merit Files	<u>106</u>	<u>107</u>	<u>113</u>
<b>TOTAL MERIT FILES IN INVENTORY</b>	<b>204</b>	<b>206</b>	<b>223</b>
<b>TOTAL INFORMAL FILES IN INVENTORY</b>	<b>328</b>	<b>379</b>	<b>367</b>

## LAWYER DISABILITY MATTERS

The Montana Supreme Court may transfer a lawyer to disability/inactive status for several reasons, which are detailed in Rule 28 MRLDE. Transfer to disability/inactive status, unless otherwise specified by order, shall be for an indefinite period. Pending disciplinary proceedings are deferred during the period a lawyer is on disability/inactive status. Such proceedings shall be heard and disposed of as provided in the MRLDE upon reinstatement of the lawyer to active status. In 2023, the Montana Supreme Court transferred **zero (0)** lawyers to disability/inactive status, compared to **one (1)** in 2022.

In 2023, there were **three (3)** attorneys who were disabled, incapacitated, or missing. Under Rule 33 MRLDE, ODC petitioned for **two (2)** trustees to assist in closing the attorneys' practice and/or returning client property.

## DISPOSITIONS OF MERITLESS FILES

The following is a three-year comparison of dispositions of new and carried over files where ODC determined the lawyer did not violate the MRPC.

MERITLESS FILES	2021	2022	2023
Closed – No Further Action	70	100	61
Closed – No Jurisdiction	9	18	11
Dismissed by ODC	42	37	48
ODC Dismissal Appealed to COP	10	6	5
ODC Dismissal Appealed to Court	3	4	6

## DISPOSITIONS AND STATISTICS OF MERIT FILES

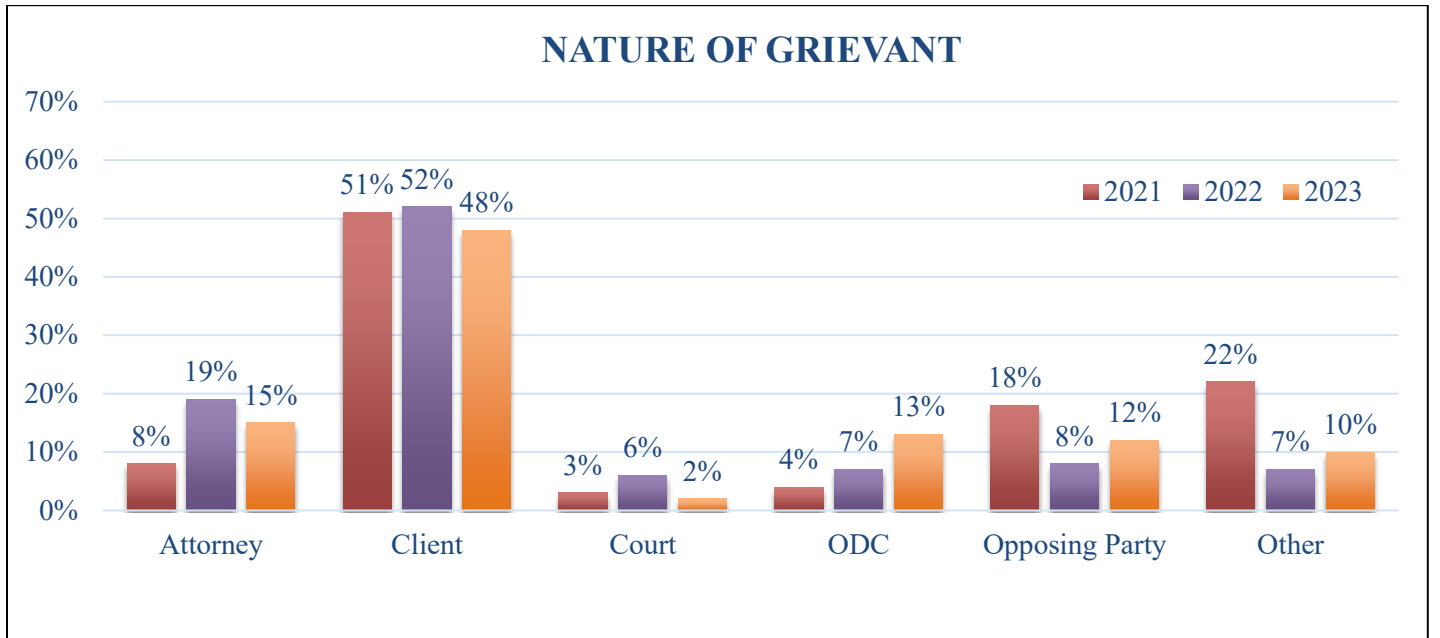
MERIT FILES	2021	2022	2023
Dismissed by ODC	52	74	92
ODC Dismissal Appealed to COP	5	10	14
ODC Dismissal Appealed to Court	4	2	2
Grievances Deferred	12	2	1

ODC dismissed **140** informal files in 2023, compared to **111** informal files in 2022 and **94** in 2021.

Of the **367** total informal files in inventory in 2023, ODC made **43** reports and recommendations to the COP over the course of **four (4)** COP meetings held during the year, an average of **eleven (11)** reports per meeting. ODC's reports consisted of requests for review, private discipline, or leave to file a formal complaint.

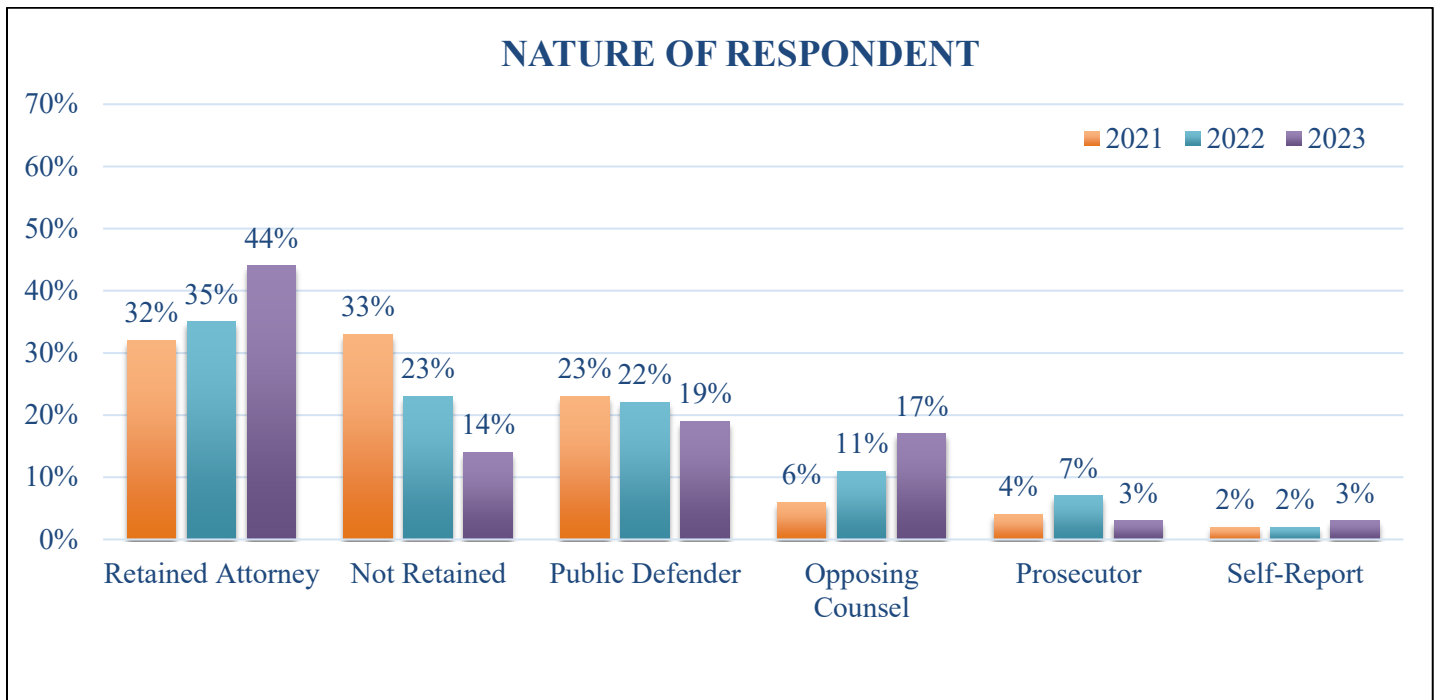
In addition to general file tracking, ODC classifies the type of grievances, as well as the nature of the subject or respondent lawyer's practice. These classifications include whether the lawyers were retained by the complaining party, and the location and type of law the attorney practices. The following graphics depict the classifications and quantifications of the **113** new **merit** grievances ODC received in 2023, with a comparison to the previous **two (2)** years.

**NATURE OF GRIEVANT**



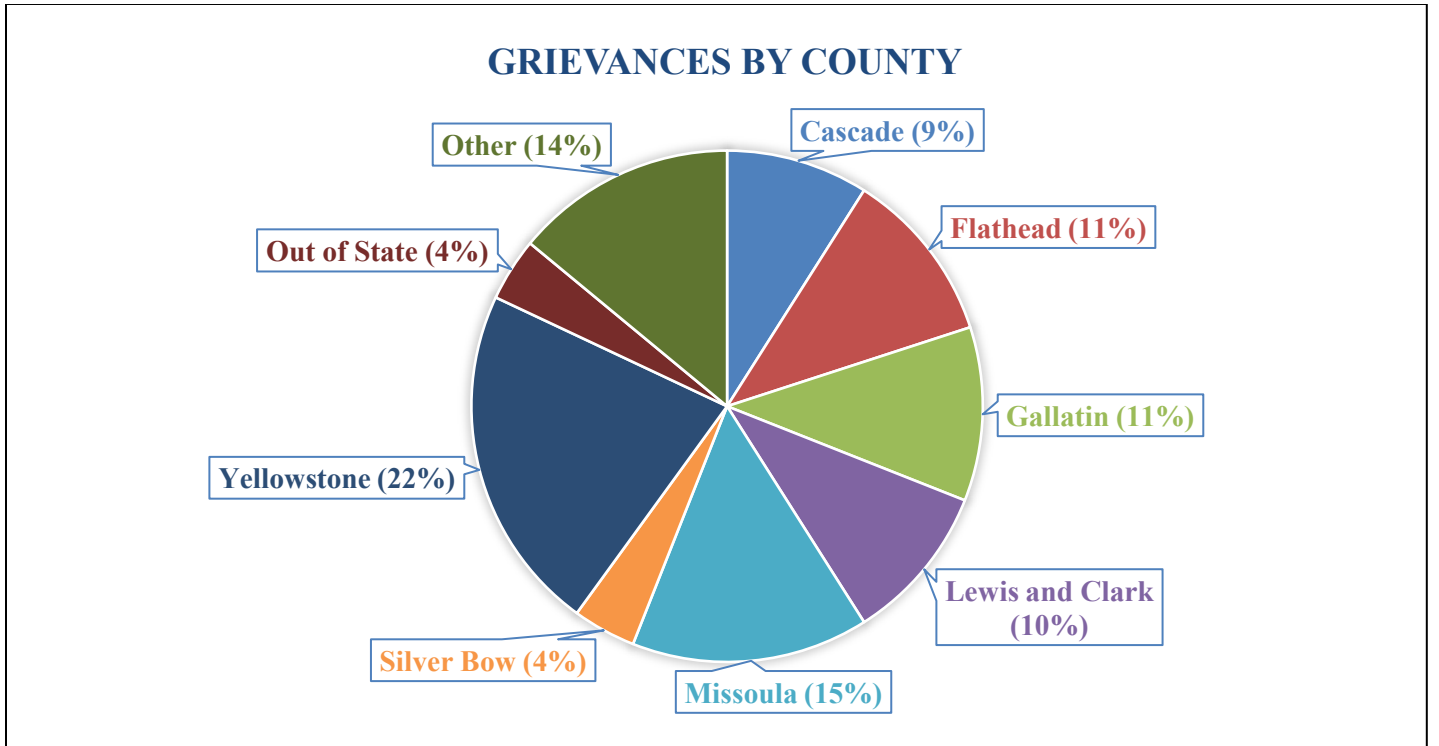
“ODC” includes merit files opened by ODC when ethical misconduct comes to ODC’s attention by means other than the submission of a written grievance (court orders, news articles, notices of criminal conviction, trust account overdraft notices, etc.), or upon a lawyer’s self-reported misconduct.

**NATURE OF RESPONDENT**

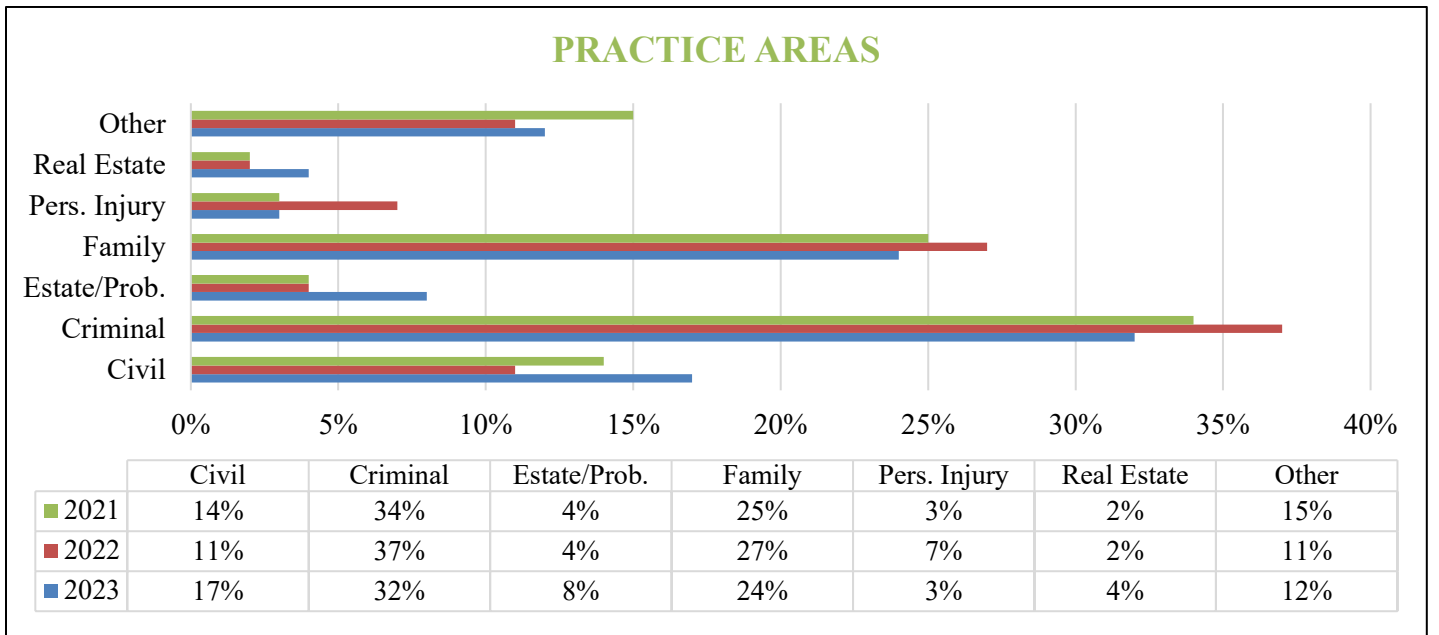




**GRIEVANCES BY COUNTY**

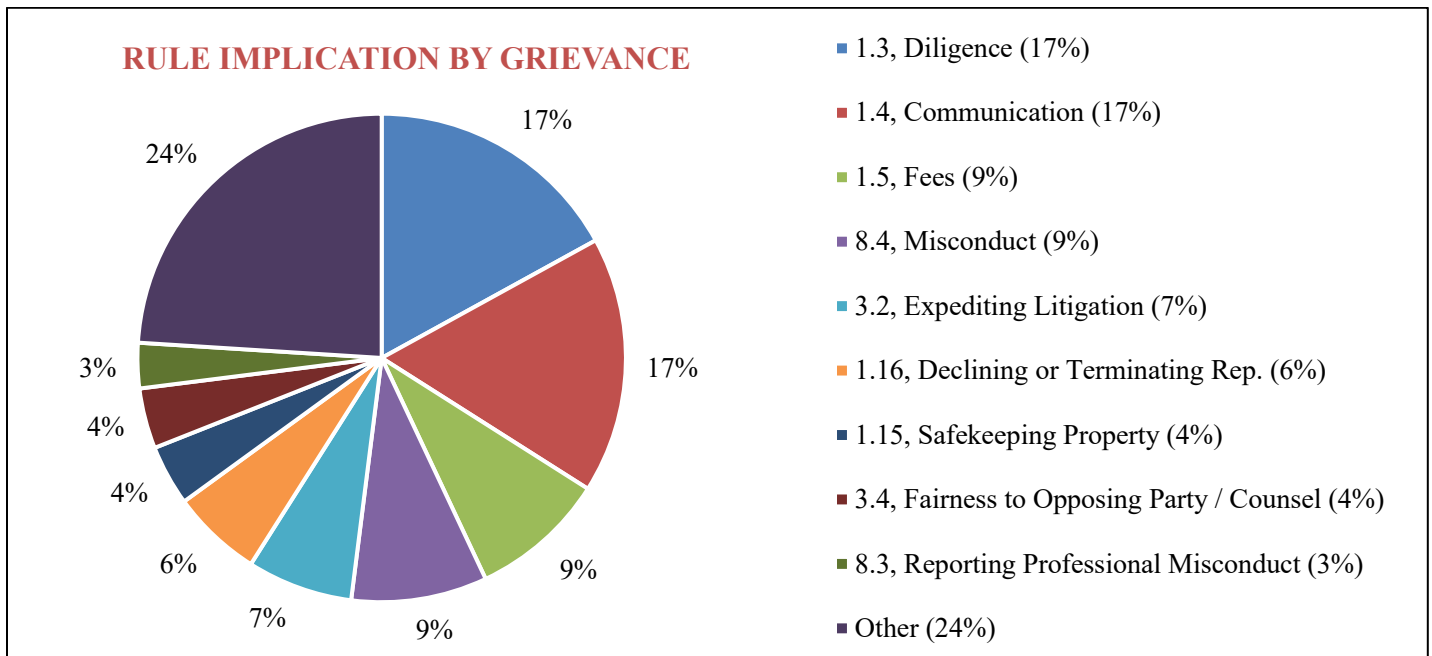


**PRACTICE AREAS**



## RULE IMPLICATION BY GRIEVANCE

The following are the MRPC the grievant alleged the lawyer violated in ODC's 2023 merit files.



“Other” consists of the MRPC not implicated in any grievance, or a Rule which made up less than **two (2)** percent of the total rules alleged.

## FORMAL COMPLAINTS AND LAWYER DISCIPLINE

### CASE PROSECUTIONS

In 2023, ODC filed **three (3)** requests for private discipline with the COP concerning **four (4)** merit files. ODC filed **11** formal complaints against **ten (10)** Montana lawyers concerning **12** merit files. At the end of 2023, there were **four (4)** open formal cases in the litigation stage. Over 2023, ODC lodged a total of **eight (8)** Rule 26 conditional admissions with the COP and made no Rule 24 requests for show cause hearings.

ODC filed **one (1)** Rule 23, Lawyer Convicted of a Criminal Offense, MRLDE, petition and **two (2)** Rule 27, Reciprocal Discipline, MRLDE, petitions before the Montana Supreme Court.

	2021	2022	2023
<b>Private Discipline</b>	3	1	3
<b>Formal Complaints</b>	5	7	11
<b>Rule 23 Petitions, Criminal Conviction</b>	0	0	1
<b>Rule 24 Requests, Show Cause</b>	3	3	0
<b>Rule 26 Agreements, Conditional Admissions</b>	3	6	8
<b>Rule 27 Petitions, Reciprocal Discipline</b>	0	0	2
<b>TOTAL</b>	<b>14</b>	<b>17</b>	<b>25</b>

ODC appeared at **12** hearings over the course of **four (4)** COP meetings in 2023. The hearings involved **19** merit files and **11** Montana lawyers.

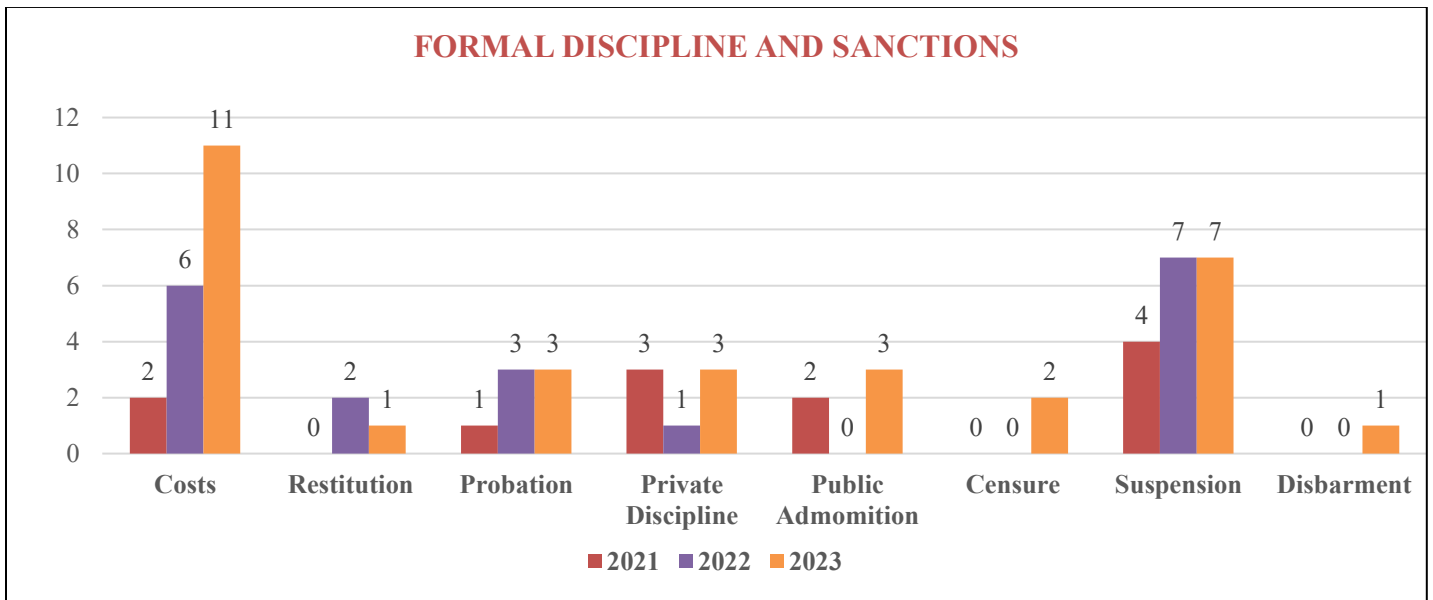
	2021	2022	2023
<b>Private Discipline</b>	3	1	1
<b>Formal/Contested</b>	3	3	2
<b>Rule 23 Dispositional/Criminal Conviction</b>	0	0	0
<b>Rule 24 Show Cause</b>	3	0	0
<b>Rule 26 Conditional Admission</b>	1	4	9
<b>Rule 27 Petitions, Reciprocal Discipline</b>	0	0	0
<b>TOTAL HEARINGS</b>	<b>10</b>	<b>8</b>	<b>12</b>

**FORMAL DISCIPLINE AND SANCTIONS**

Formal discipline and sanctions result in either a permanent **private** disciplinary record or a permanent **public** disciplinary record. **Discipline** includes one or more of the following: disbarment; indefinite or interim suspension; public censure; public admonition; and probation.

The following **sanctions** may be imposed in addition to a form of discipline: restitution; disgorgement of fees and costs; reimbursement to the Lawyers’ Fund for Client Protection; and assessment of the cost of disciplinary proceedings.

In 2023, the Montana Supreme Court and COP imposed **31** forms of discipline and sanctions based upon **17** discipline orders for **15** lawyers.



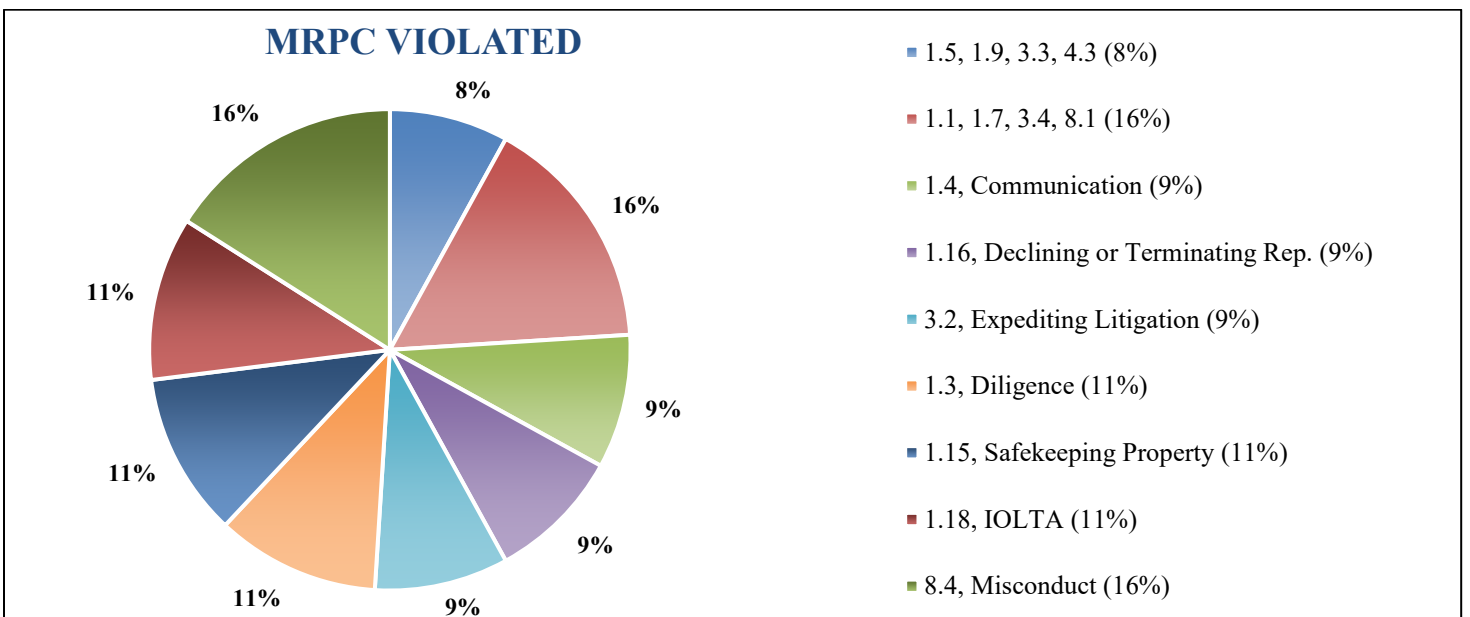
**PUBLICLY DISCIPLINED LAWYERS**

The following are the Montana lawyers who were **publicly** disciplined and sanctioned in 2023. The specifics of these matters may be found in the public records held at the Clerk of the Montana Supreme Court.

MT SUPREME COURT CAUSE NO.	LAWYER	DISPOSITION	DATE ORDERED
PR 22-0328	Maribeth Hanson	Indefinite Suspension, not less than Seven (7) months; Restitution; and Costs	01/24/2023
PR 22-0421	Linda Harris	Indefinite Suspension, Five (5) Years; and Costs	02/21/2023
PR 22-0420	Penelope Oteri	Public Censure; Probation, One (1) Year; and Costs	02/21/2023
PR 23-0081	Gregory Worcester	Interim Suspension (May 5 – August 14, 2023)	04/21/2023
PR 23-0069	Matthew Braukmann	Public Oral Admonition and Costs	05/18/2023
PR 22-0684	Matthew Lowy	Indefinite Suspension, not less than One (1) Year; Costs; and Reinstatement Probation, Five (5) Years	05/30/2023
PR 23-0071	Joseph Howard	Thirty (30) Day Suspension and Costs	06/01/2023
PR 23-0081	Gregory Worcester	Indefinite Suspension, not less than One (1) Year; Costs; and Reinstatement Probation, Five (5) Years	08/08/2023
PR 23-0070	Gregory Johnson	Public Censure and Costs	08/16/2023
PR 23-0536	Maribeth Hanson	Disbarred and Costs	11/21/2023
PR 23-0535	Robert Fleming	Written Public Admonition and Costs	11/21/2023
PR 23-0276	Suzanne E. Geer	Public Admonition and Costs	11/29/2023
PR 23-0694	Garry D. Seaman	Interim Suspension (Rule 23B, MRLDE)	12/19/2023

**RULES VIOLATED RESULTING IN DISCIPLINE AND SANCTIONS**

The following depicts the MRPC encompassed in matters resulting in private and public discipline.



## COSTS AWARDED AND COLLECTED

In nearly every discipline and sanction order, the respondent lawyers were required to pay the costs of their disciplinary proceedings. ODC monitors each lawyer's compliance with their disciplinary orders, including whether they have paid costs. The following depicts the number of discipline and sanction orders requiring the repayment of costs, versus what is collected. *(Some costs paid in 2022, were from the previous years' orders.)*

	2021	2022	2023
<b>Number of Costs Order</b>	2	7	11
<b>Amount Ordered</b>	\$3,211.33	\$729.57	\$3,181.31
<b>Amount Collected</b>	\$355.95	\$145.80	\$1,280.66

## LAWYER 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 2023, ODC was monitoring a total of **11** lawyers. **Six (6)** of those lawyers are on active status, **five (5)** are on probation, and **five (5)** additional lawyers are on inactive status or are suspended or disbarred.

## OTHER DISCIPLINARY MATTERS

### BAR TRAINING AND CONTINUED LEGAL EDUCATION

Chief Disciplinary Counsel engaged in continued education outreach, appearing as a speaker at approximately **ten (10)** conferences and programs around the State. These events catered to lawyers, law students, court members, and members of the public, which discussed the lawyer regulatory systems, fee agreements, trust account practices and emerging disciplinary trends and its relation to lawyer wellness.

### DIVERSION AND CORRECTIVE ACTION

ODC's diversion program was developed as an informal, confidential, form of corrective action. Diversion seeks 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 eligible for diversion are those who have committed a minor infraction of the MRPC, and have experienced a combination of **two (2)** or more of the following: 1) have been a member of the bar for the less than **five (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.

As of the end of 2022, ODC was able to discharge its remaining **two (2)** participants after they had successfully completed their obligations under their diversion agreements. In 2023, ODC continued to track all of its previous participants and whether they received additional grievances. Though **two (2)** participants each had **two (2)**

grievances filed against them, the grievances were without merit. Importantly, the grievances were not related to the same Rules which garnered their participation initially, suggesting the effectiveness of their areas of mentorship while on diversion.

## CORRECTIVE ACTION

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.

In 2023, **two (2)** participants completed the conditions of their Corrective Action Agreements, and their underlying matters were subsequently dismissed. ODC also executed **three (3)** new Corrective Action Agreements with respondent lawyers, **one (1)** of which was appointed a quarterly mentor.

Both IDP and corrective action have shown the positive effects of mentorship and training of lawyers, 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

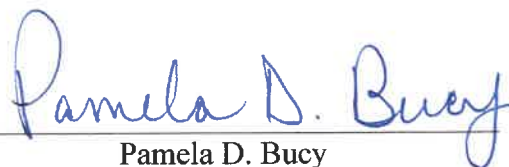
ODC continues to establish mentors in various regions throughout the state. ODC has created guidelines for its mentors which include various training and education topics, as well as required communication, and regular mentor-mentee meetings. The mentors are tasked with performing within those guidelines, 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 the subject attorney's compliance with corrective action plans, diversion conditions, or disciplinary Order, and any concerns every three (3) 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.

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 both incentivize and provide some level of reparation for their work. As ODC mentors, they are permitted 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.

DATED this 15<sup>th</sup> day of May 2024.

OFFICE OF DISCIPLINARY COUNSEL



Pamela D. Bucy  
Chief Disciplinary Counsel