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ODC'S 2019 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). 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 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 (2018), which can be found at www.montanaodc.org.

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

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:

Patricia DeVries

MEMBERS:

Brad L. Belke, Esq.

Michael G. Black, Esq.

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 Smith

ADMINISTRATIVE ASSISTANT:

Georgia Lovelady

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.

During its preliminary review, ODC determines whether:

1. More information is needed from the grievant 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 ODC elects not to docket the complaint, a "pencil file" is then created. If ODC dismisses a complaint before it is docketed and the grievant 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 grievant, and the additional information is not furnished, ODC closes the file.

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 grievant's request for review of ODC's dismissal of 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 grievant 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 grievant 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 should be approved. A conditional admission may be submitted by a lawyer after the filing of a formal complaint. A conditional admission 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 grievant 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.

NEW COMPLAINTS

In 2019, ODC received 293 new informal complaints, 145 of which were screened prior to docketing, referred to as a “non-docketed complaint” or “pencil file” as described above. Of those 145 non-docketed complaints, 19 were later opened and became docketed complaints either because ODC’s dismissal was appealed or the grievant provided the requested additional information. Ultimately, of the 293 new informal complaints filed, 148 were opened and docketed.

ATTORNEYS LICENSED IN MONTANA

The total number of attorneys licensed to practice law in Montana as of December 31, 2019, is 4,035. Of those, 3,167 are in-state and on active status. The remaining 868 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 twenty-one (21) attorneys over the twelve-month period; however, some attorneys were subject to multiple complaints.

CASES IN INVENTORY

In 2019, including pending cases carried over from previous years, ODC had 547 cases in inventory. Cases in inventory represent the combination of docketed and non-docketed complaints. The total open, docketed complaints was 362 (214 carried over and 148 new), and the total non-docketed complaints was 185 (40 carried over and 145 new) throughout the year.

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

	2015	2016	2017	2018	2019
TOTAL NEW COMPLAINTS	274	294	266	286	293
NON-DOCKETED COMPLAINTS					
Non-docketed Complaints Carried over from previous years	21	25	37	32	40
Complaints Screened (Not Docketed)	<u>88</u>	<u>104</u>	<u>99</u>	<u>115</u>	<u>145</u>
TOTAL NON-DOCKETED COMPLAINTS IN INVENTORY	104	125	124	152	185
DOCKETED COMPLAINTS					
Docketed Complaints Carried over from previous years	145	63	117	162	214
Complaints Docketed	<u>190</u>	<u>189</u>	<u>215</u>	<u>161</u>	<u>148</u>
TOTAL DOCKETED COMPLAINTS IN INVENTORY	359	335	252	323	362

Of the 362 open docketed cases in inventory in 2019, ODC completed intake and investigations and made 46 reports and recommendations (including supplemental reviews or appeals) to the COP over the course of three COP meetings held during the year (average of 15 reports per meeting).

In comparison, ODC completed 63 reports in four meetings in 2018 (average of 15 reports per meeting), 42 reports in four meetings in 2017 (average of 10 reports per meeting), 75 reports in four meetings in 2016 (average of 19 reports per meeting), and 57 reports in four meetings in 2015 (average of 14 reports per meeting).

At the end of 2019, there were 8 open formal cases and two cases where formal complaints were to be filed pursuant to COP’s recommendation. Of the open formal cases, two (2) are awaiting determination by COP, and none were awaiting determination by the Montana Supreme Court. Three (3) cases were awaiting a formal hearing, and three (3) cases were in the litigation stage. At the end of 2019, ODC was monitoring 17 attorneys for compliance with disciplinary orders.

DISPOSITIONS OF NON-DOCKETED AND DOCKETED COMPLAINTS

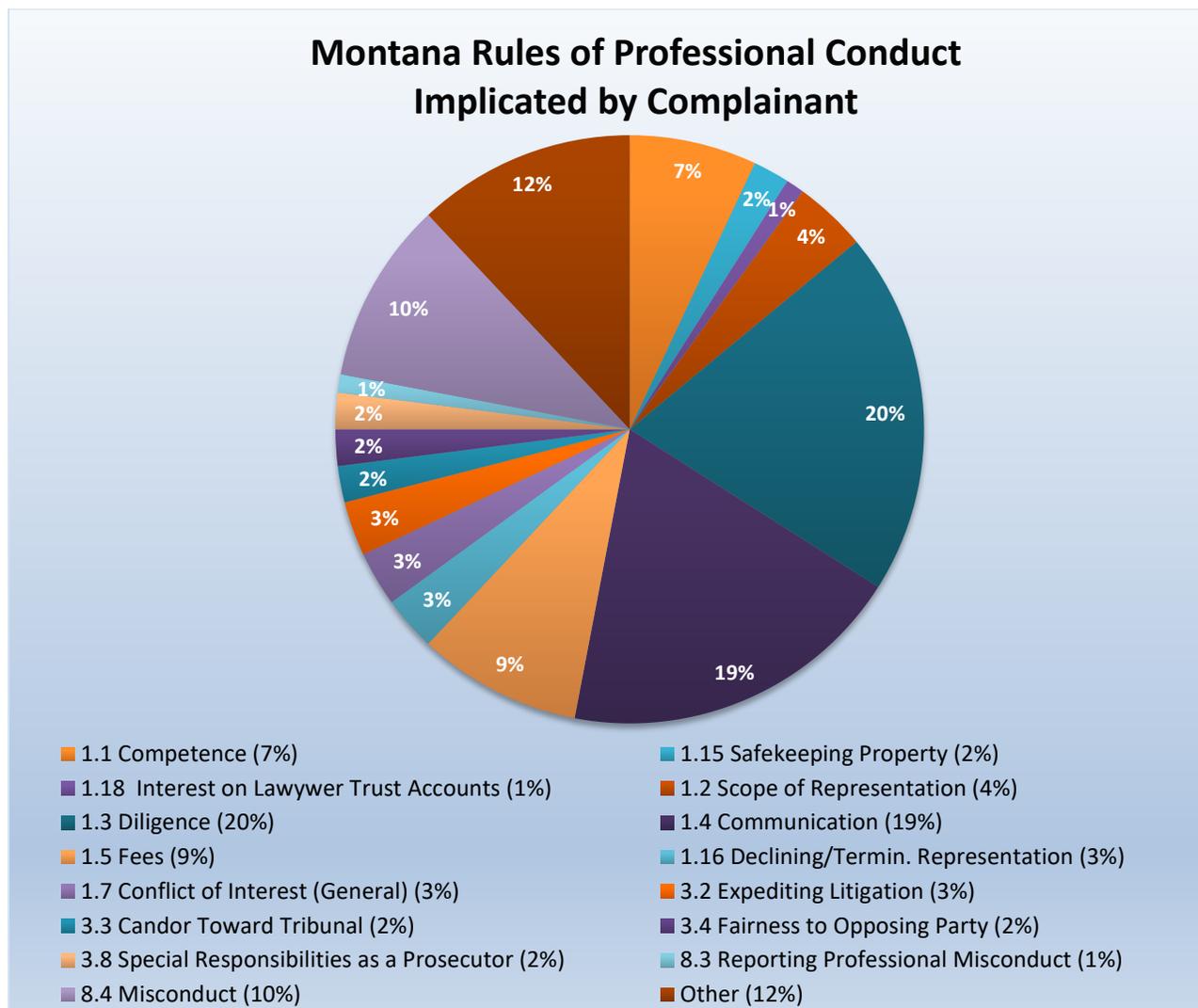
<u>NON-DOCKETED COMPLAINTS</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Closed with No Further Action	72	50	49	49	82
Dismissals by ODC	23	32	35	58	62
ODC Dismissals Appealed to COP	9	5	6	6	10
ODC Dismissals Closed	14	27	29	52	52
Total Carried over to following year	25	19	37	31	16
<u>DOCKETED COMPLAINTS</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Dismissed by ODC	191	158	161	109	222
ODC Dismissals Appealed to COP	38	39	44	31	33
ODC Dismissals Closed	141	110	116	78	189
Total Dismissals by COP, including appeals	43	45	34	34	33
ODC Dismissals Carried over to following year	9	7	16	4	4
Complaints Deferred	3	0	3	2	2
Public Sanctions or Disability Inactive Status ¹	19	13	23	13	13
Petitions for Reinstatement - DENIED	0	0	0	0	0
Petitions for Reinstatement - GRANTED	0	0	0	1	1
Total Docketed Complaints Carried Over to 2020 (134)	0	0	1	34	99

¹ 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.

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

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.



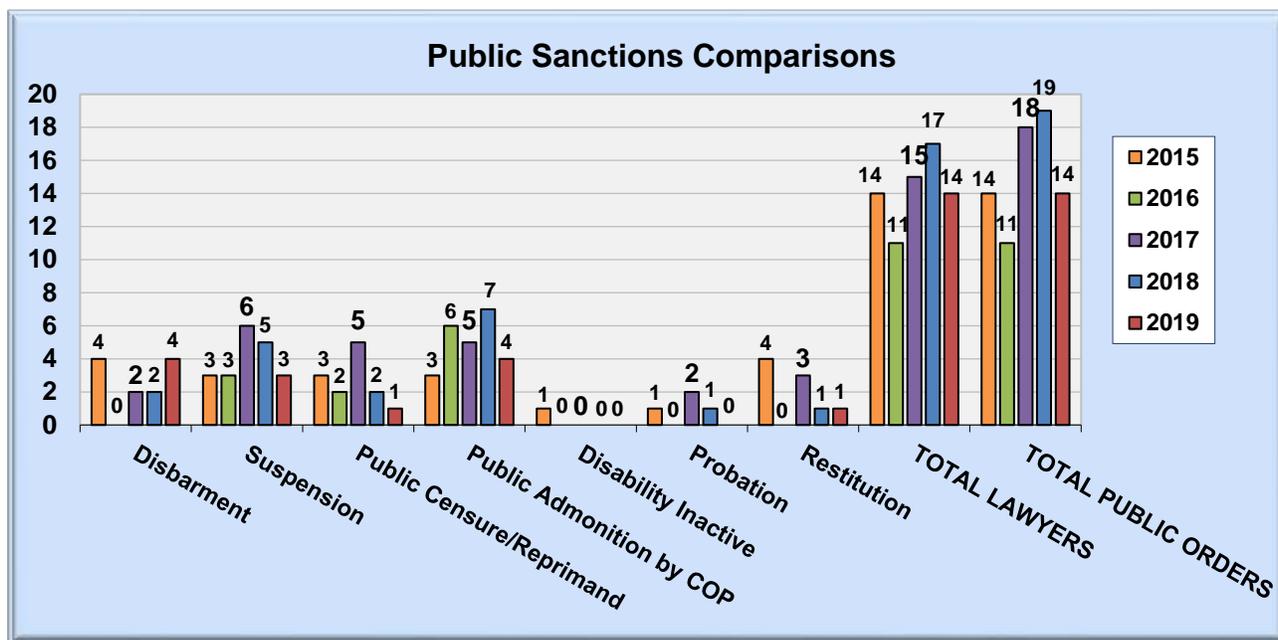
CASE PROSECUTIONS

Disciplinary Counsel appeared at 20 hearings over the course of the three (3) COP meetings held during the year, further described below with a five-year comparison. The hearings involved 20 docketed cases and 18 attorneys.

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Formal Hearings	6	8	11	8	9
Rule 23 Dispositional Hearings	0	0	1	0	1
Rule 26 Hearings	6	5	4	10	8
Show Cause Hearings	2	1	4	1	1
Reinstatement Hearings	0	0	0	2	1
Reciprocal Discipline Hearings	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	15	14	20	21	20

FORMAL DISCIPLINE OR PLACEMENT ON DISABILITY INACTIVE STATUS

In 2019, the Montana Supreme Court and COP imposed 14 formal disciplinary sanctions and disability inactive rulings (permanent public records) based off 12 orders for 14 Montana lawyers.² The following is a five-year comparison of public sanctions and disability inactive rulings.



² 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 2019, as detailed below. Public censures are given by the Supreme Court directly and admonitions are given by the COP.

CASE NO.	ATTORNEY	DISPOSITION	ORDERED
PR 17-0476	Best, George B.	Resigned, resigned status must be maintained until 2024	3/26/19
PR 19-0024	Bryan, Matthew A.	Disbarred, effective 7/18/2019	6/18/19
PR 18-0264	Christopherson, Ian	Suspension, effective 7/3/13; may not appear in any MT court <i>pro hac vice</i> , or otherwise	3/5/19
PR 17-0665	Cushman, Jon E.	Disbarred, effective 9/20/19	8/20/19
PR 16-0714	Deola, Linda	Suspension, 3 months, effective 12/20/19; Public Censure	11/20/19
PR 18-0516	Freedman, David S.	Disbarred, effective 7/19/19	6/19/19
PR 16-0715	Layne, Richard M.	Public Admonition	8/30/19
PR 19-0034	Lords, Ronald	Disbarred, effective 7/18/19; restitution	6/18/19
PR 18-0139	Miller, Brian J.	Public Admonition	12/10/19
PR 18-0605	Marshall, Douglas	Public Admonition	12/9/19
PR 17-0448	Morin, Tina L.	Suspension, not less than 7 months, effective 3/27/19	2/27/19
PR 18-0513	Zemyan, Mary	Public Admonition	5/3/19

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

	2015	2016	2017	2018	2019	TOTALS
Orders Including Costs	9	9	11	15	11	52
Amount Ordered	\$14,857	\$14,683	\$44,102	\$38,837	\$23,329	\$134,420
Amount Collected	\$8,694	\$6,147	\$16,169	\$5,197	\$6,087	\$42,294

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 2019, ODC was monitoring a total of 16 lawyers. Nine (9) of those lawyers are on active status, seven (7) are on probation, and eight (8) additional lawyers are on inactive status or are suspended or disbarred.

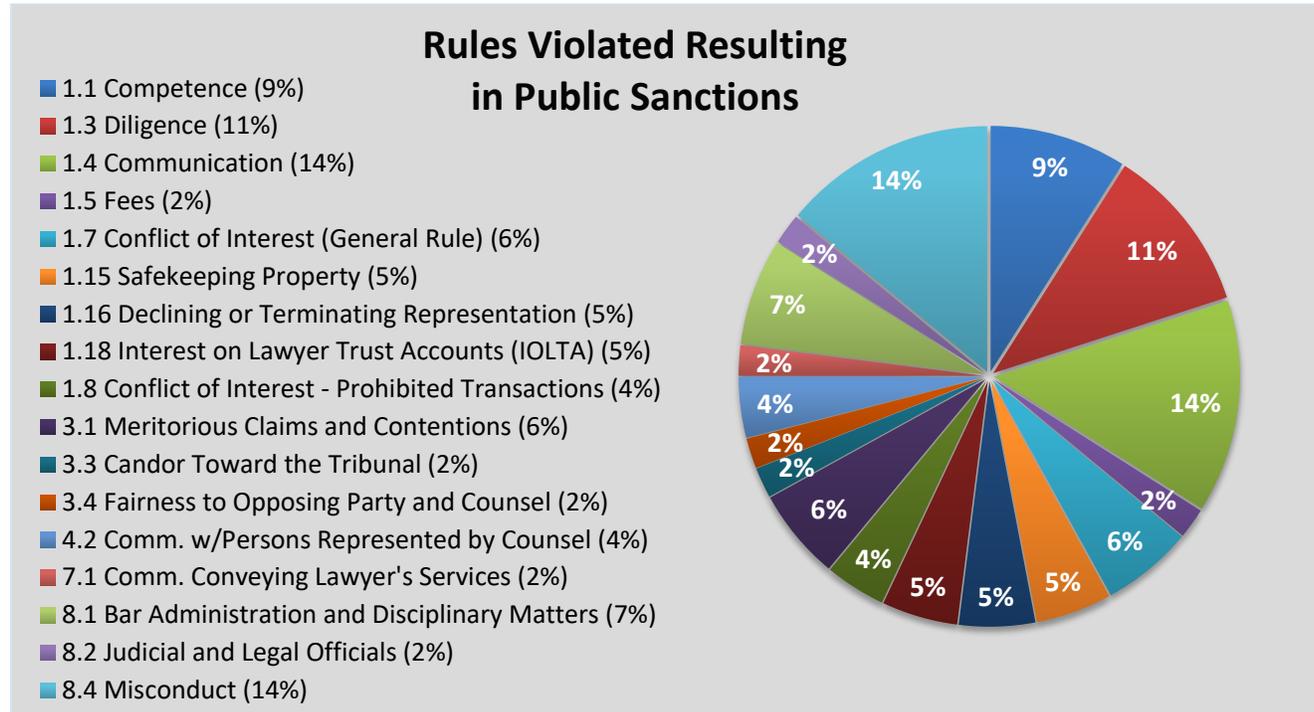
DISCIPLINE BY SUPREME COURT AND COP

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

	Disbarment	Suspension	Public Censure	Public Admonition by COP
2015	4	3	3	3
2016	0	3	2	6
2017	2	6	5	5
2018	2	5	2	7
2019	4	3	1	4

RULE VIOLATIONS RESULTING IN PUBLIC SANCTIONS

In 2019, 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.



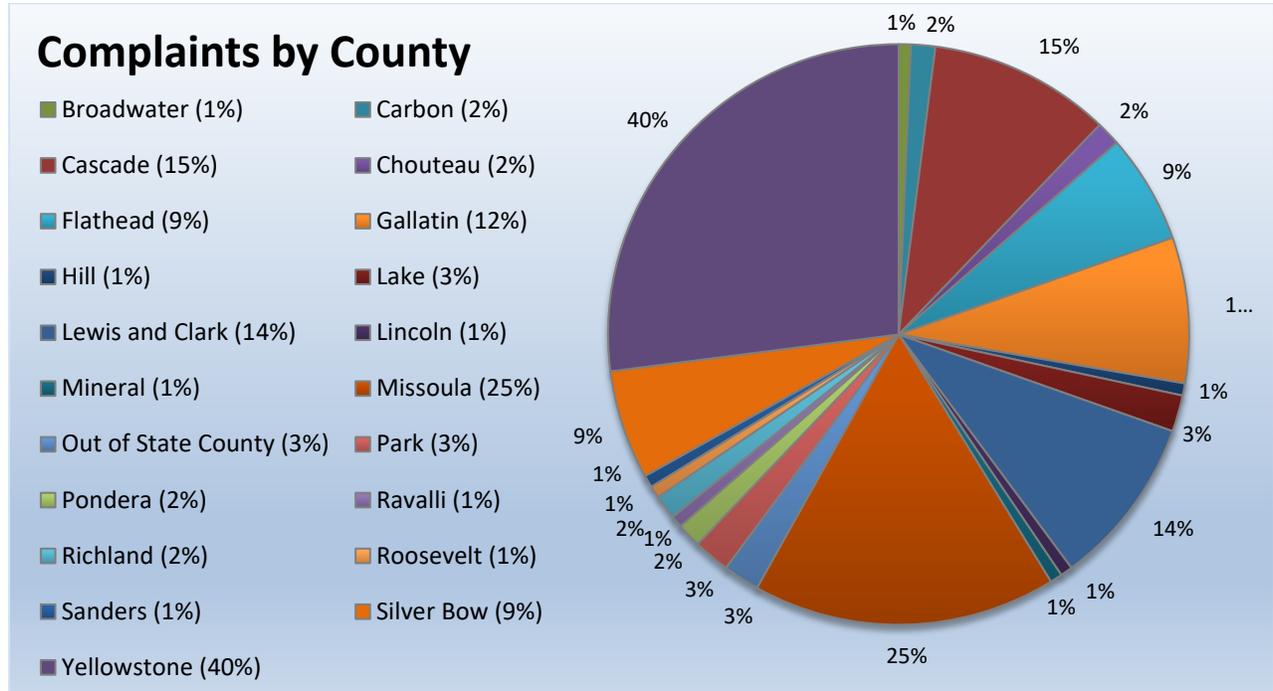
PRACTICE AREAS

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

Areas of Law	2015	2016	2017	2018	2019
Criminal Law	36%	47%	47%	36%	38%
Dependent/Neglect	1%	2%	0%	1%	3%
Family Law	16%	14%	20%	25%	18%
Civil Litigation	19%	15%	11%	10%	20%
Personal Injury—not litigated	2%	0%	3%	7%	3%
Probate	4%	4%	4%	1%	3%
Bankruptcy	3%	0%	1%	2%	2%
Real Estate	2%	2%	2%	3%	1%
Business	2%	1%	4%	5%	5%
Estate Planning	1%	2%	4%	4%	4%
Tax Law	1%	1%	0%	1%	1%
Other	9%	8%	2%	5%	2%

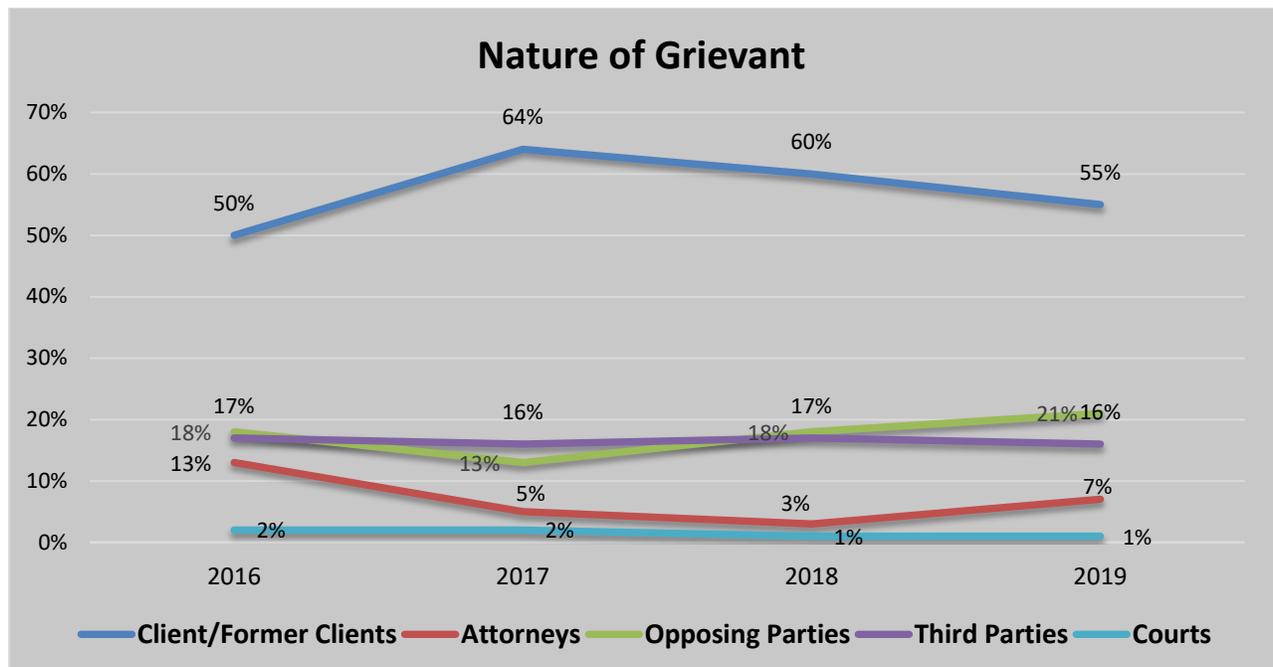
COMPLAINTS BY COUNTY

The following graph shows the 2019 docketed complaints separated by various Montana counties.



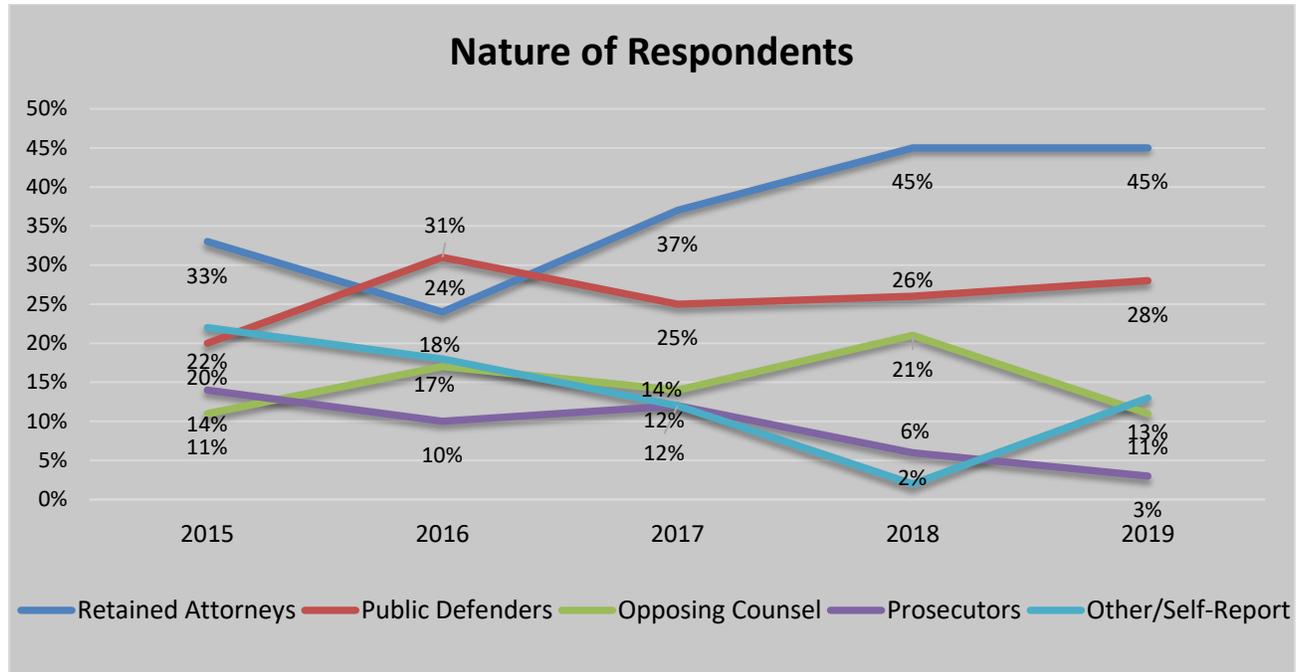
NATURE OF GRIEVANT

The following is a five-year comparison of the various types of grievant 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 resulting in a docketed case.



OTHER MATTERS

Over the last several years, ODC has evaluated its informal and disciplinary cases and found certain commonalities in relation to minor infractions of the MRPC. Most commonly, the lawyer had experienced a combination of two or more of the following: 1) was a member of the bar for the less than 5 years, and otherwise, newer to the practice of law; 2) had insufficient training or guidance in office or case administration (sole practitioner); 3) sought assistance from the State Bar, Lawyer's Assistance Program, or other support group; and 4) experienced reoccurring mental health episodes and/or, was substance reliant.

ODC considered an opportunity to both correct and guide lawyers, as well as contribute information which could potentially "fill gaps" in training related to the practicalities within the practice of law. As a result, ODC reinstated "corrective action" as outlined by Rule 10 of the MRLDE. This corrective action is defined as ODC's "Intake Diversion Program" ("IDP"). IDP is informal, confidential, and is not a form of discipline.

IDP is used in disciplinary matters where a lawyer has no prior disciplinary history, had some or all of the aforementioned commonalities; committed a minor infraction of the MRPC (no harm to grievant or legal profession); corrected or mitigated the conduct; and where, after considering the MRLDE 9B factors, ODC determined additional guidance and support may be more appropriate than formal discipline.

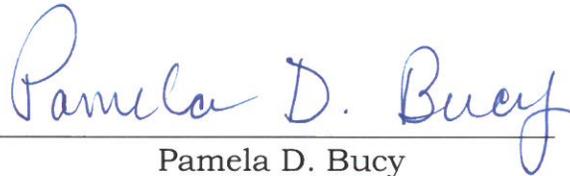
This program, while done informally in previous years, was officially piloted in the fall of 2019, and seeks to not only correct and deter future misconduct, but to hopefully assist in supporting a healthier and happier bar. ODC has collaborated with the State Bar of Montana to align the training and CLE opportunities to directly address the shortfalls which have been subject in disciplinary grievances, while simultaneously partnering with the Lawyer's Assistance Program. ODC hopes these efforts encourage a more consistent avenue of support for Montana lawyers.

Lawyers within the program are tasked with various conditions, to be completed in a quantifiable time, by themselves, or with assistance of a mentor. The completions or deficits and are then reported to ODC by the same, and/or, are audited by ODC. The length and duration of which are determined on a case by case basis. A fundamental aspect of IDP, is the pairing of the subject lawyer with other experienced and trusted lawyers within their community who can support, guide, and offer input in both cases and office administration.

As a new program, ODC hopes to report its findings and successes of IDP in the coming years.

RESPECTFULLY SUBMITTED this 15th day of April 2020.

OFFICE OF DISCIPLINARY COUNSEL



Pamela D. Bucy
Chief Disciplinary Counsel

Appendix A

