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for the State of Montana

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ODC'S 2020 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 grievances against lawyers that are within the disciplinary jurisdiction of the Court. COP hears and makes a determination of 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 (2020), which can be found at www.montanaodc.org.

In general, the steps for processing a grievance 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.
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

ADMINISTRATIVE ASSISTANT:

Carrie Leu

STEP ONE:

OFFICE OF DISCIPLINARY COUNSEL

ODC receives information and grievance regarding lawyers' alleged misconduct. Before "docketing" a grievance and assigning it a file number, ODC conducts a preliminary review of the grievance.

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 grievance.
2. A grievance should not be further processed or summarily dismissed on its face.
3. The case should be docketed.

If ODC elects not to docket the grievance, a "non-docketed file" or "meritless file" is then created. If ODC creates a non-docketed file because it has requested more information from the grievant, and the additional information is not furnished, ODC closes the file.

If a grievance is "docketed" during the intake process ODC may: 1) send the grievance to the lawyer against whom the grievance 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 grievance if Disciplinary Counsel determines that disciplinary action is not warranted;
2. Dismiss the grievance 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 grievance 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 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.

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

NEW GRIEVANCES

In 2020, ODC received 204 new informal grievances, 110 of which were screened prior to docketing, referred to as a "non-docketed grievance" or "meritless grievance" as described above. Of those 110 non-docketed grievances, 7 were later opened and became docketed grievances because the grievant provided the requested additional information. Ultimately, of the 204 new informal grievances filed, 101 were opened and docketed.

ATTORNEYS LICENSED IN MONTANA

The total number of attorneys licensed to practice law in Montana as of December 31, 2020, is 5,058. Of those, 3,183 are in-state and on active status. The remaining 1,875 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 32 attorneys over the twelve-month period; however, some attorneys were subject to multiple grievances.

CASES IN INVENTORY

In 2020, including pending cases carried over from previous years, ODC had 337 cases in inventory. Cases in inventory represent the combination of docketed and non-docketed grievances. The total open, docketed grievances was 217 (123 carried over and 94 new), and the total non-docketed grievances was 120 (10 carried over and 110 new) throughout the year.

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

	2016	2017	2018	2019	2020
TOTAL NEW GRIEVANCES	294	266	286	293	204
NON-DOCKETED GRIEVANCES					
Non-docketed Grievances Carried over from previous years	25	37	32	40	10
Grievances Screened (Not Docketed)	<u>104</u>	<u>99</u>	<u>115</u>	<u>145</u>	<u>110</u>
TOTAL NON-DOCKETED GRIEVANCES IN INVENTORY	125	124	152	185	120
DOCKETED GRIEVANCES					
Docketed Grievances Carried over from previous years	63	117	162	214	123
Grievances Docketed	<u>189</u>	<u>215</u>	<u>161</u>	<u>148</u>	<u>94</u>
TOTAL DOCKETED GRIEVANCES IN INVENTORY	335	252	323	362	217

Of the 217 open docketed cases in inventory in 2020, ODC completed intake and investigations and made 54 reports and recommendations (including supplemental reviews or appeals) to the COP over the course of four COP meetings held during the year (average of 13 reports per meeting).

In comparison, ODC completed 46 reports in three meetings in 2019 (average of 15 reports per meeting), 63 reports in four meetings in 2018 (average of 10 reports per meeting), 42 reports in four meetings in 2017 (average of 10 reports per meeting), and 75 reports in four meetings in 2016 (average of 19 reports per meeting).

At the end of 2020, there was one (1) open formal case that was in the litigation stage and ODC was monitoring ten (10) attorneys for compliance with disciplinary orders.

DISPOSITIONS OF NON-DOCKETED AND DOCKETED GRIEVANCES

<u>NON-DOCKETED GRIEVANCES</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Closed with No Further Action	50	49	49	82	51
Dismissals by ODC	32	35	58	62	36
ODC Dismissals Appealed to COP	5	6	6	10	8
ODC Dismissals Closed	27	29	52	52	32
Total Carried over to following year	19	37	31	16	10
<u>DOCKETED GRIEVANCES</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Dismissed by ODC	158	161	109	222	89
ODC Dismissals Appealed to COP	39	44	31	33	16
ODC Dismissals Closed	110	116	78	189	94
Total Dismissals by COP, including appeals	45	34	34	33	17
ODC Dismissals Carried over to following year	7	16	4	4	6
Grievances Deferred	0	3	2	2	15
Public Sanctions or Disability Inactive Status ¹	13	23	13	13	21
Petitions for Reinstatement - DENIED	0	0	0	0	0
Petitions for Reinstatement - GRANTED	0	0	1	1	0
Total Docketed Grievances Carried Over to 2020 (55)	0	1	34	99	123

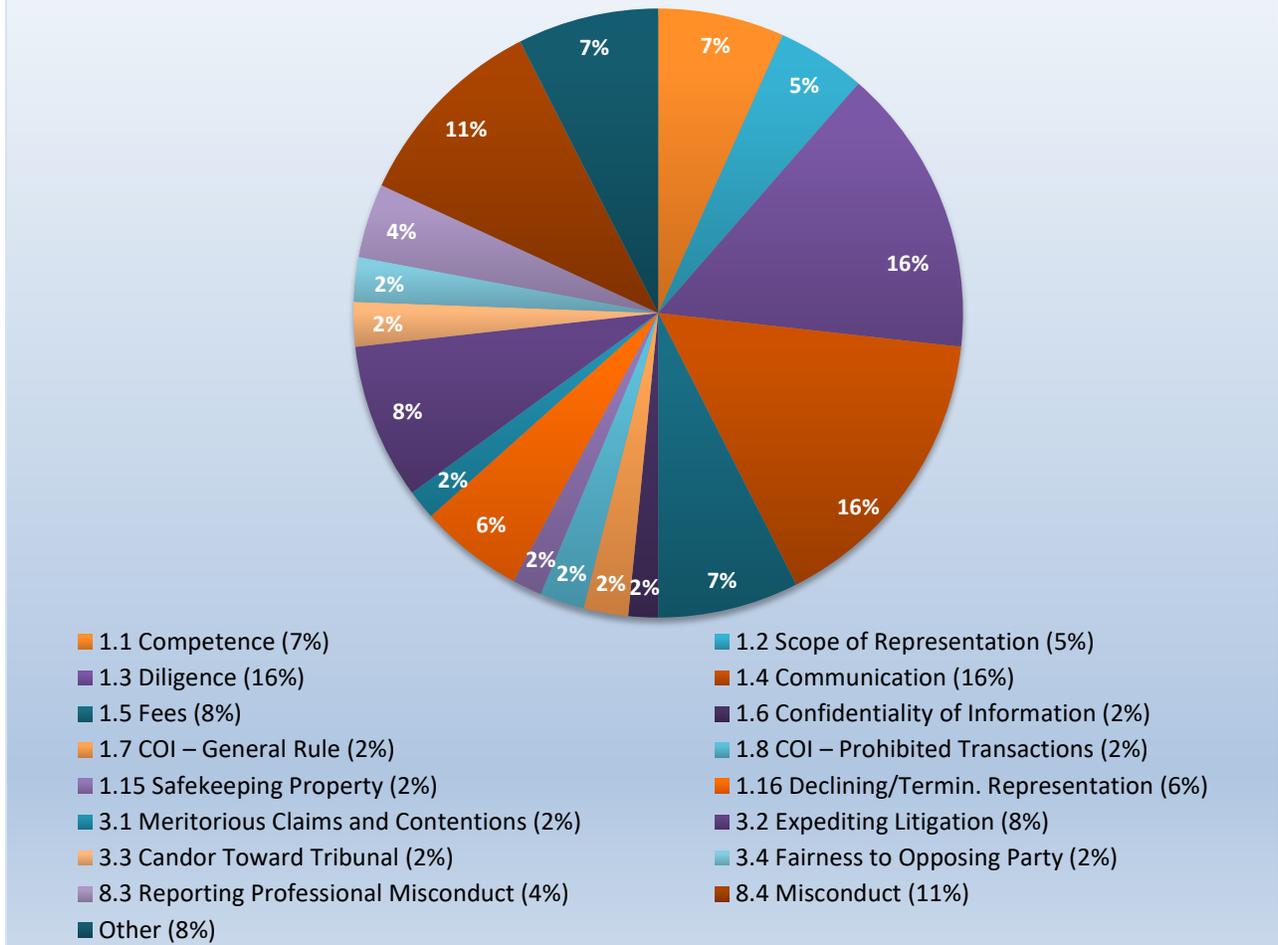
As previously explained in this report, non-docketed grievances are grievances that have not been immediately docketed or “opened” for various reasons. Non-docketed grievances become docketed grievances when ODC determines they should be opened. In the non-docketed grievances resulting in closure with 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 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.

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.

Montana Rules of Professional Conduct Implicated by Complainant



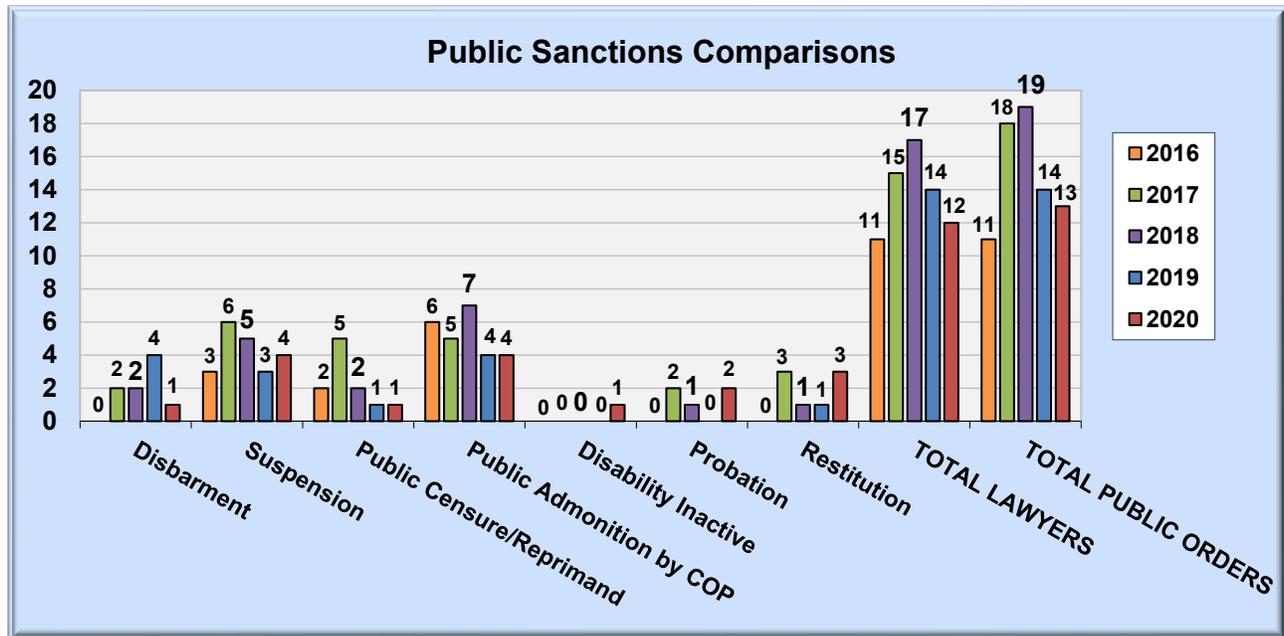
CASE PROSECUTIONS

Disciplinary Counsel appeared at eleven (11) 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 seventeen (17) docketed cases and eleven (11) attorneys.

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Formal Hearings	8	11	8	9	2
Rule 23 Dispositional Hearings	0	1	0	1	0
Rule 26 Hearings	5	4	10	8	8
Show Cause Hearings	1	4	1	1	2
Reinstatement Hearings	0	0	2	1	0
Reciprocal Discipline Hearings	<u>0</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 2020, 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.² The following is a five-year comparison of public sanctions and disability inactive rulings.



MONTANA ATTORNEYS SANCTIONED

The following Montana attorneys were publicly sanctioned in 2020, 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 19-0625	LEATZOW, M. Penny	Public Written Admonition, Probation, 2 years	1/14/20
PR 19-0445, PR 19-0626	HARRIS, Linda	Public Censure; Probation, 3 years; Restitution	1/29/20
PR 19-0634	ROSE-MILLER, Tara	Disbarment; Restitution	1/31/20
PR 19-0017	MORIN, Tina	Disbarred	3/31/20

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.

PR 19-0444	BEGLEY, Patrick	Indef. Suspension, not less than 7 months, effective 4/2/20	3/3/20
PR 19-0023	BEGLEY, Patrick	Indef. Suspension, not less than 7 months, effective 5/7/20	4/07/20
PR 20-0265	NIXON, Casey	Indef. Suspension, not less than 1 year, effective 9/3/20	8/04/20
PR 20-0271	JACOBS, Bruce	Public Written Admonition	11/10/20
PR 20-0038	MARSHALL, Suzanne	Public Admonition	11/10/20
PR 20-0039	SANDEFUR, Patrick	Public Admonition	11/18/20
PR 20-0262	WEBBER, Jennifer	Indef. Suspension, not less than 7 months, effective 12/18/2020	11/18/20

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.

	2016	2017	2018	2019	2020	TOTALS
Orders Including Costs	9	11	15	11	6	52
Amount Ordered	\$14,683	\$44,102	\$38,837	\$23,329	\$8,692	\$129,643
Amount Collected	\$6,147	\$16,169	\$5,197	\$6,087	\$1,183	\$34,783

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 2020, ODC was monitoring a total of ten (10) lawyers. Seven (7) of those lawyers are on active status, four (4) are on probation, and three (3) additional lawyers are on inactive status or are suspended or disbarred.

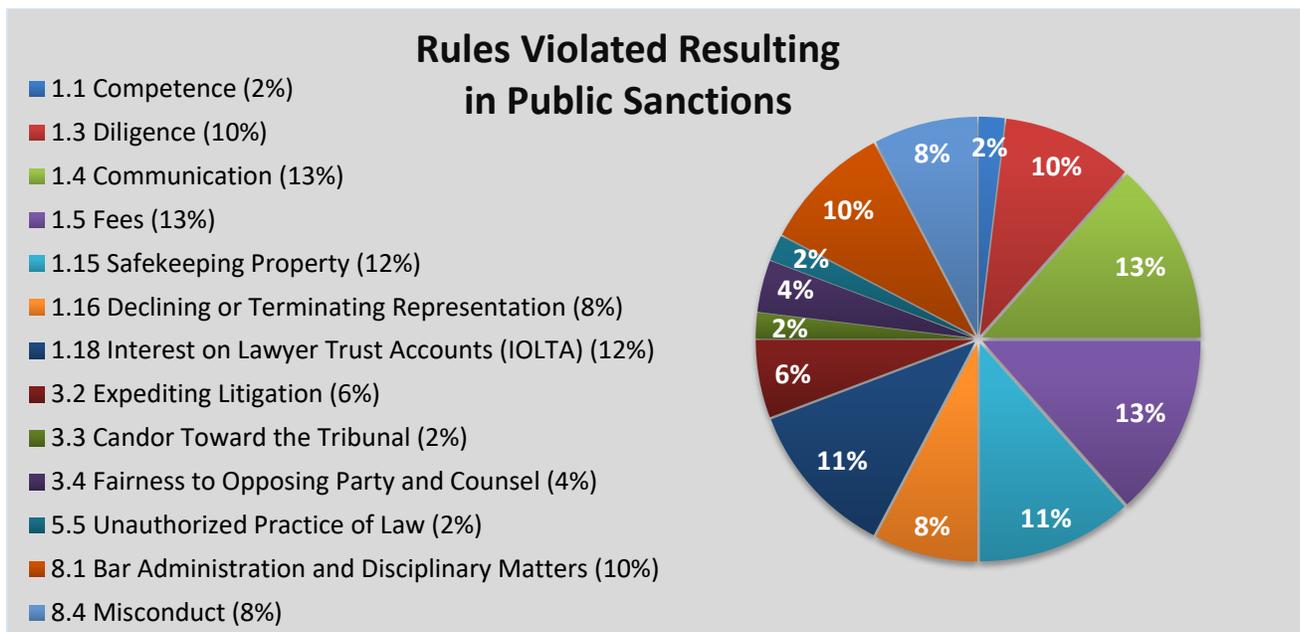
DISCIPLINE BY SUPREME COURT AND COP

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

	Disbarment	Suspension	Public Censure	Public Admonition by COP
2016	0	3	2	6
2017	2	6	5	5
2018	2	5	2	7
2019	4	3	1	4
2020	2	4	1	4

RULE VIOLATIONS RESULTING IN PUBLIC SANCTIONS

In 2020, 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.



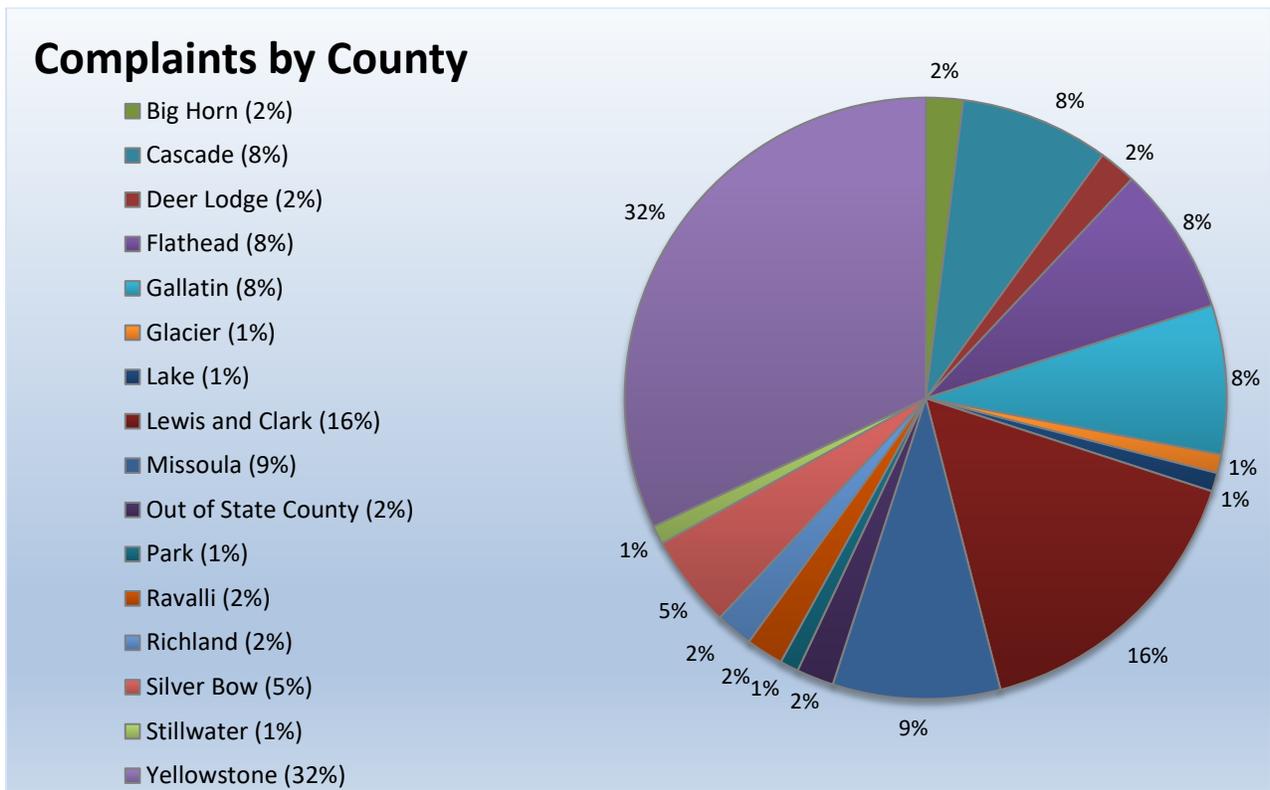
PRACTICE AREAS

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

Areas of Law	2016	2017	2018	2019	2020
Criminal Law	47%	47%	36%	38%	38%
Dependent/Neglect	2%	0%	1%	3%	5%
Family Law	14%	20%	25%	18%	22%
Civil Litigation	15%	11%	10%	20%	19%
Personal Injury—not litigated	0%	3%	7%	3%	1%
Probate	4%	4%	1%	3%	1%
Bankruptcy	0%	1%	2%	2%	3%
Real Estate	2%	2%	3%	1%	0%
Business	1%	4%	5%	5%	3%
Estate Planning	2%	4%	4%	4%	3%
Tax Law	1%	0%	1%	1%	0%
Other	8%	2%	5%	2%	2%

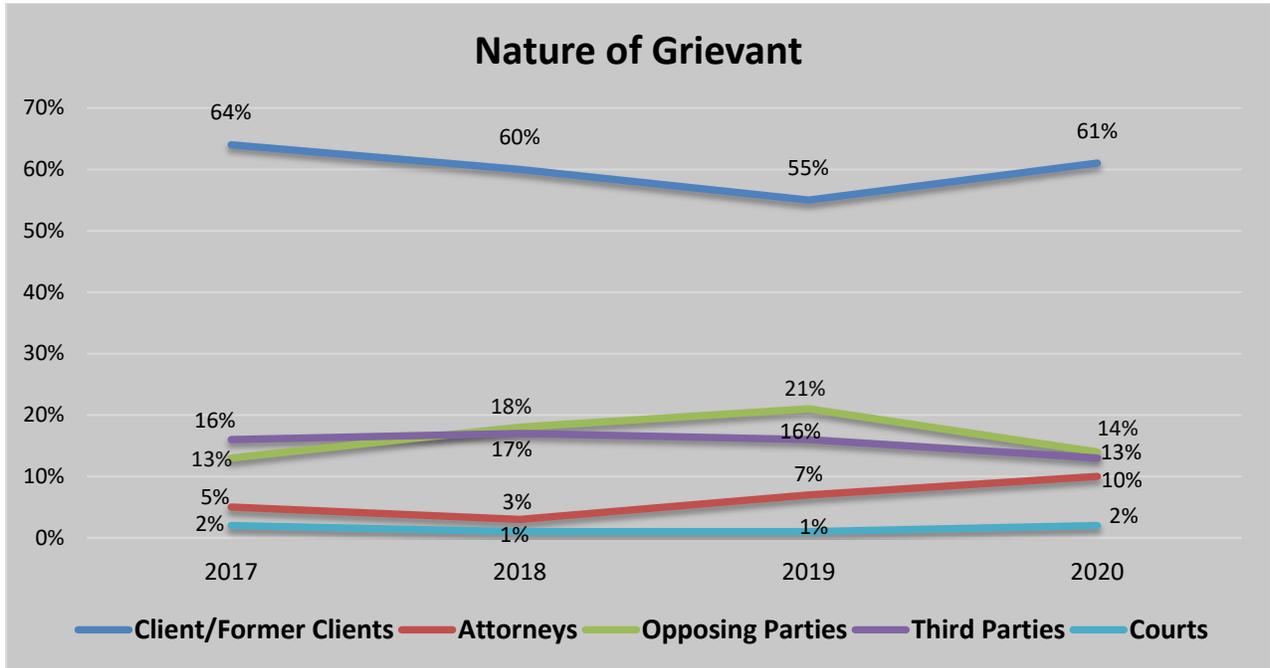
GRIEVANCES BY COUNTY

The following graph shows the 2020 docketed grievances separated by various Montana counties.



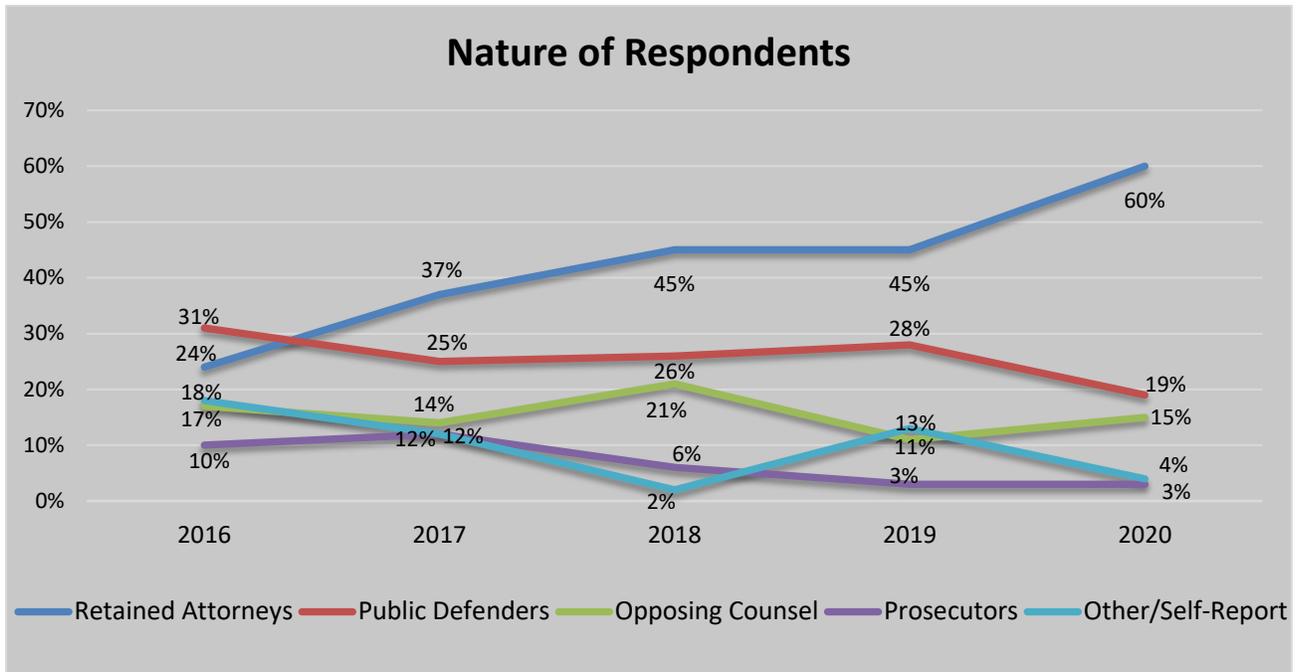
NATURE OF GRIEVANT

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



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 docketed case.



OTHER MATTERS

Intake Diversion Program

In 2019, ODC piloted its Intake Diversion Program (“IDP”). This program was developed as an avenue 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. IDP is informal, confidential, and is a form of corrective action, rather than formal discipline.

Candidates in this program are lawyers who have informal matters before ODC, where they 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 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.

In the last year, IDP had a total of three active participants. One out of Cascade County and two from Yellowstone County; their minor infractions included, Rules 1.3, Diligence, 1.4, Communication, 1.16 Termination of Representation, and 8.4 Misconduct.

One participant was discharged from IDP after successfully completing individual requirements and avoiding further ethical grievances or violations. The remaining lawyers will continue their participation in IDP through the year 2021 but have been successful in meeting with their required mentors and importantly, have not committed further ethical infractions.

Though still in its pilot phase, ODC is pleased with IDP’s success thus far and anticipates continued success for its future lawyer candidates.

Mentorship

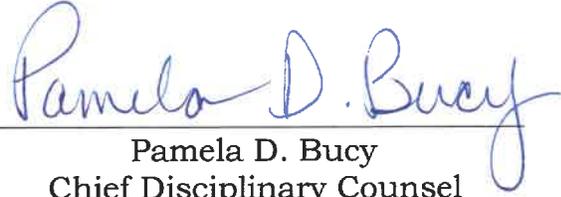
As a result of IDP and the post disciplinary process, ODC sought to establish a group of qualified legal mentors. ODC mentors have been, and continue to be, established in various regions throughout the state. ODC has created guidelines for its mentors which include various training and education topics, 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 individual goals and any training or education requirements.

Given the mentors are volunteer, and their considerable time and efforts, ODC wanted to find a way to compensate and show appreciation for the same. ODC successfully petitioned the CLE Commission to allow its mentors up to five (5) ethics CLE credits for their work and participation; either for IDP or the post

disciplinary process. The credits pale in comparison to their significant time spent and knowledge shared, but it is at least some recognition and a show of appreciation for volunteering their time, knowledge, and expertise, to their mentees.

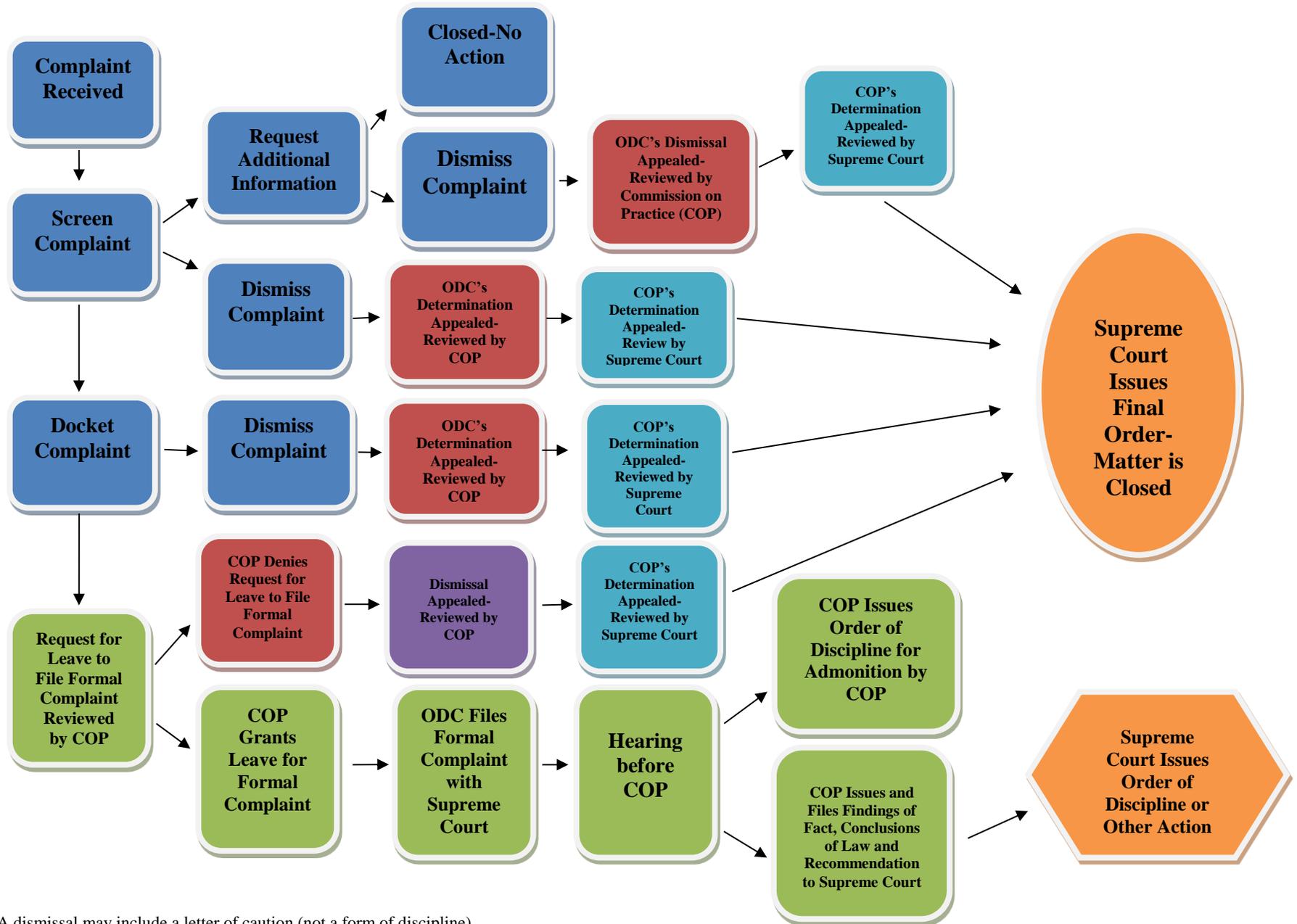
RESPECTFULLY SUBMITTED this 4th day of March 2020.

OFFICE OF DISCIPLINARY COUNSEL


Pamela D. Bucy
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-2nd Review by COP Review Panel; Light Blue-Action by Supreme Court; Orange-Final Actions taken by Supreme Court