The image shows the exterior of a red brick building. A prominent feature is a large, arched window with dark framing. Above the window is a balcony with a dark railing. The sky is blue with scattered white clouds. A black rectangular box is overlaid on the left side of the image, containing white text.

OFFICE OF DISCIPLINARY COUNSEL
for the State of Montana

2022 ANNUAL REPORT

OFFICE OF DISCIPLINARY COUNSEL FOR THE STATE OF MONTANA

2022 ANNUAL REPORT

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THE LAWYER DISCIPLINARY SYSTEM

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.

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)** 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; Lori Maloney; Troy McGee; Lois Menzies; and Rich Ochsner

GRIEVANCE PROCEDURE

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 discipline¹; 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:

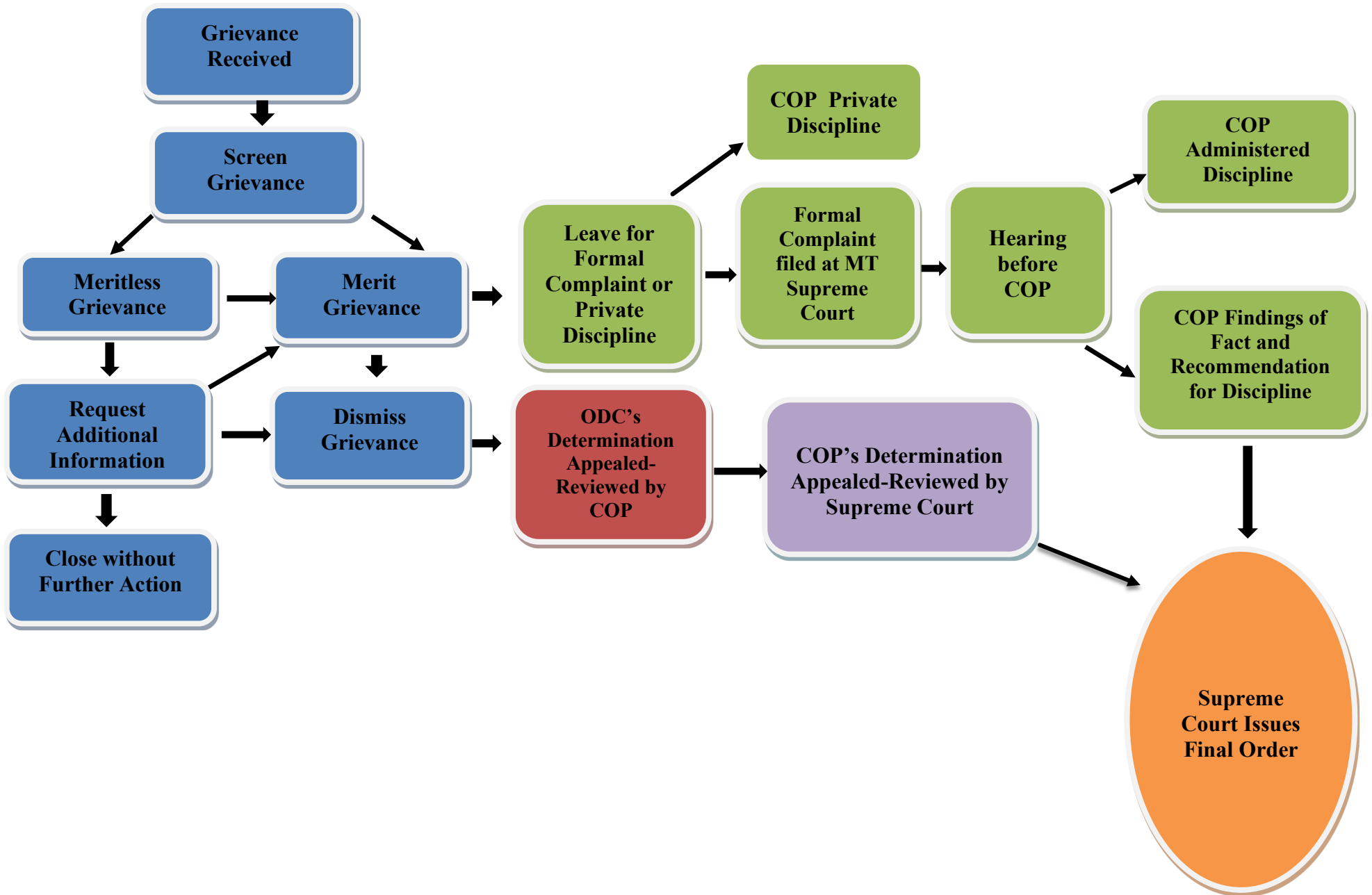
1. Conducting an evidentiary hearing and submitting its findings of fact, conclusions of law, and recommendation to the Montana Supreme Court;
2. Conducting a hearing to consider whether a conditional admission should be approved (a conditional admission admits certain misconduct in exchange for a stated 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.

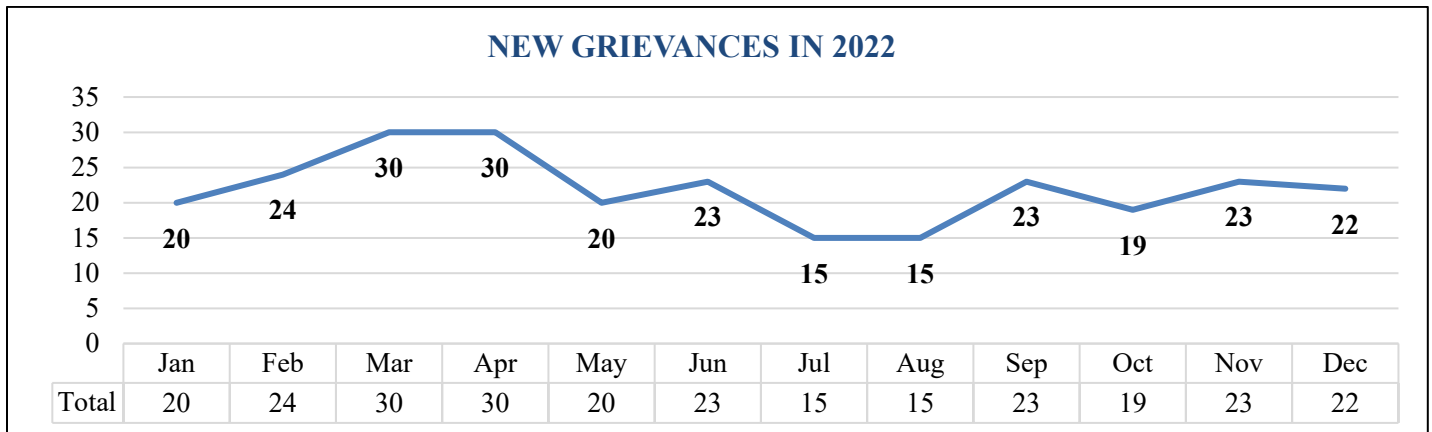
¹ In 2020, the MRLDE were revised, amended, and adopted, to include private admonition as a form of sanction, which became effective January 1, 2021.



NUMBER AND NATURE OF GRIEVANCES

NEW GRIEVANCES

In 2022, ODC received **264** new meritless and merit grievances. Of those, **157** were referred to as **meritless** files and **107** were opened as **merit** files. **Four (4)** meritless files were later opened as merit files after the grievant provided the requested additional information.



GRIEVANCES PER LICENSED LAWYERS

As of December 21, 2022, the total number of lawyers licensed to practice law in Montana was **5,169**. Of those, **4,158** are on active status. Based upon the number of active lawyers, informal grievances averaged about **one (1)** for every **16** lawyers over the twelve-month period; however, some lawyers were subject to multiple grievances.

FILES IN INVENTORY

In 2022, ODC had **379** informal files in inventory. This includes new and pending meritless and merit files carried over from previous years into 2022. The following is a three-year comparison of ODC's informal files in inventory.

MERITLESS	2020	2021	2022
Meritless Files Carried Over from Previous Years	10	11	16
New Meritless Files	<u>110</u>	<u>113</u>	<u>157</u>
TOTAL MERITLESS FILES IN INVENTORY	120	124	173
MERIT			
Merit Files Carried Over from Previous Years	123	98	99
New Merit Files	<u>94</u>	<u>106</u>	<u>107</u>
TOTAL MERIT FILES IN INVENTORY	217	204	206
TOTAL INFORMAL FILES IN INVENTORY	337	328	379

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 2022, the Montana Supreme Court transferred **one (1)** lawyer to disability/inactive status.

In 2022, there were **two (2)** 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 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	2020	2021	2022
Closed – No Further Action	51	70	100
Closed – No Jurisdiction	5	9	18
Dismissed by ODC	36	42	37
ODC Dismissal Appealed to COP	8	10	6
ODC Dismissal Appealed to Court	0	3	4

DISPOSITIONS AND STATISTICS OF MERIT FILES

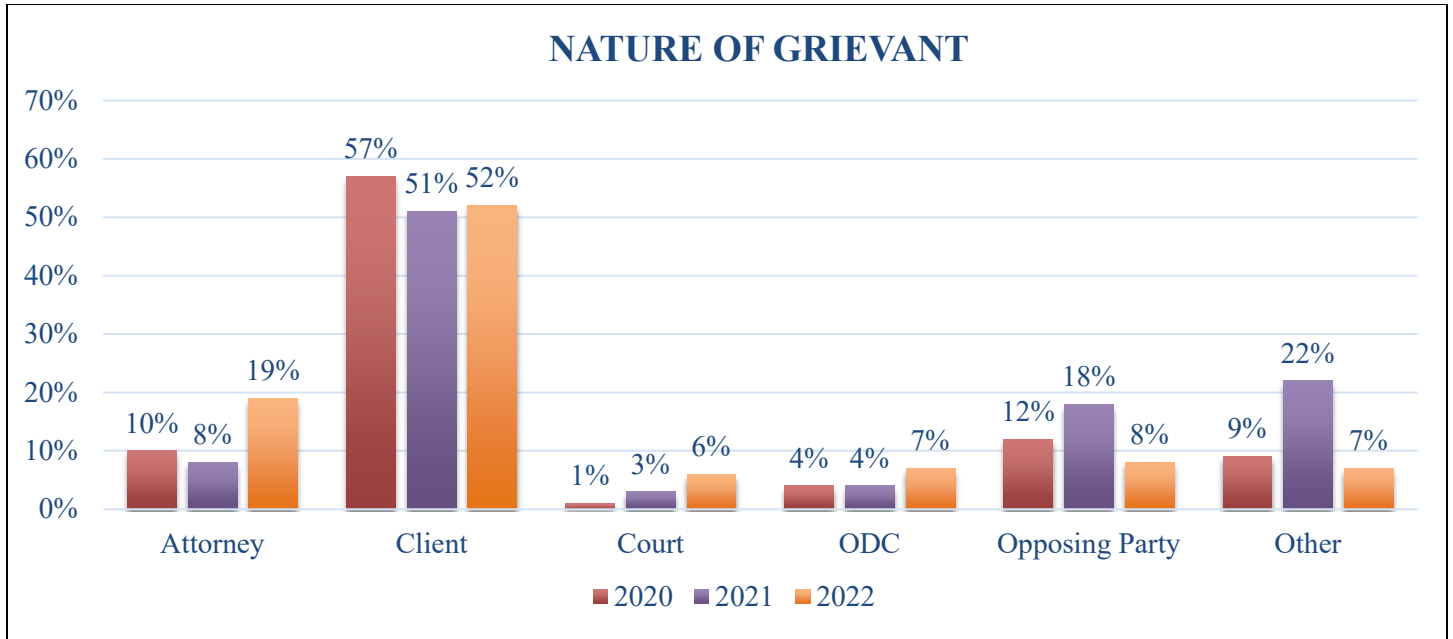
MERIT FILES	2020	2021	2022
Dismissed by ODC	89	52	74
ODC Dismissal Appealed to COP	16	5	10
ODC Dismissal Appealed to Court	3	4	2
Grievances Deferred	15	12	2

ODC dismissed **111** informal files in 2022, compared to **94** informal files in 2021 and **125** in 2020.

Of the **379** total informal files in inventory in 2022, ODC made **34** reports and recommendations to the COP over the course of **four (4)** COP meetings held during the year, an average of **eight (8)** reports per meeting. ODC's reports consisted of requests for review, private discipline, or leave to file a formal complaint.

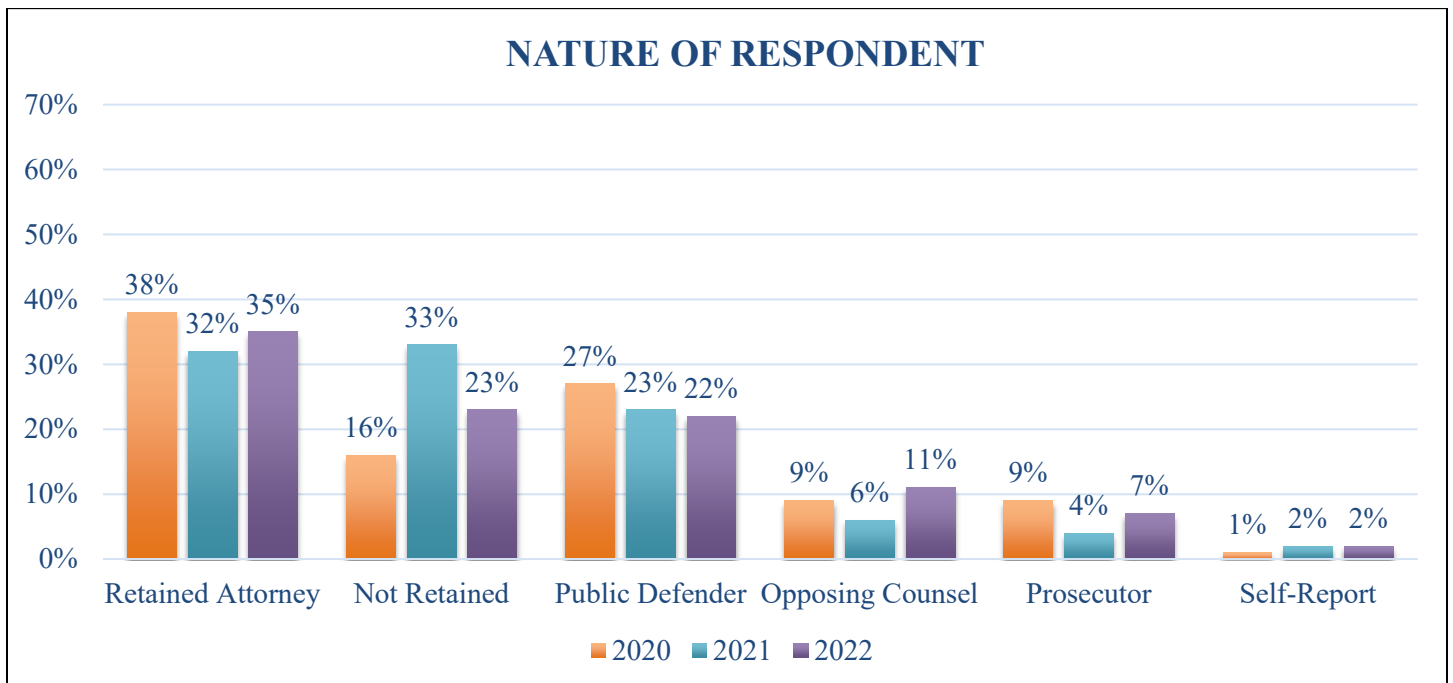
In addition to general file tracking, ODC classifies the type of grievances, as well as the nature of the subject or respondent lawyer's practice. These classifications include whether the lawyers were retained by the complaining party, and the location and type of law the attorney practices. The following graphics depict the classifications and quantifications of the 206 new **merit** grievances ODC received in 2022, with a comparison to the previous **two (2)** years.

NATURE OF GRIEVANT

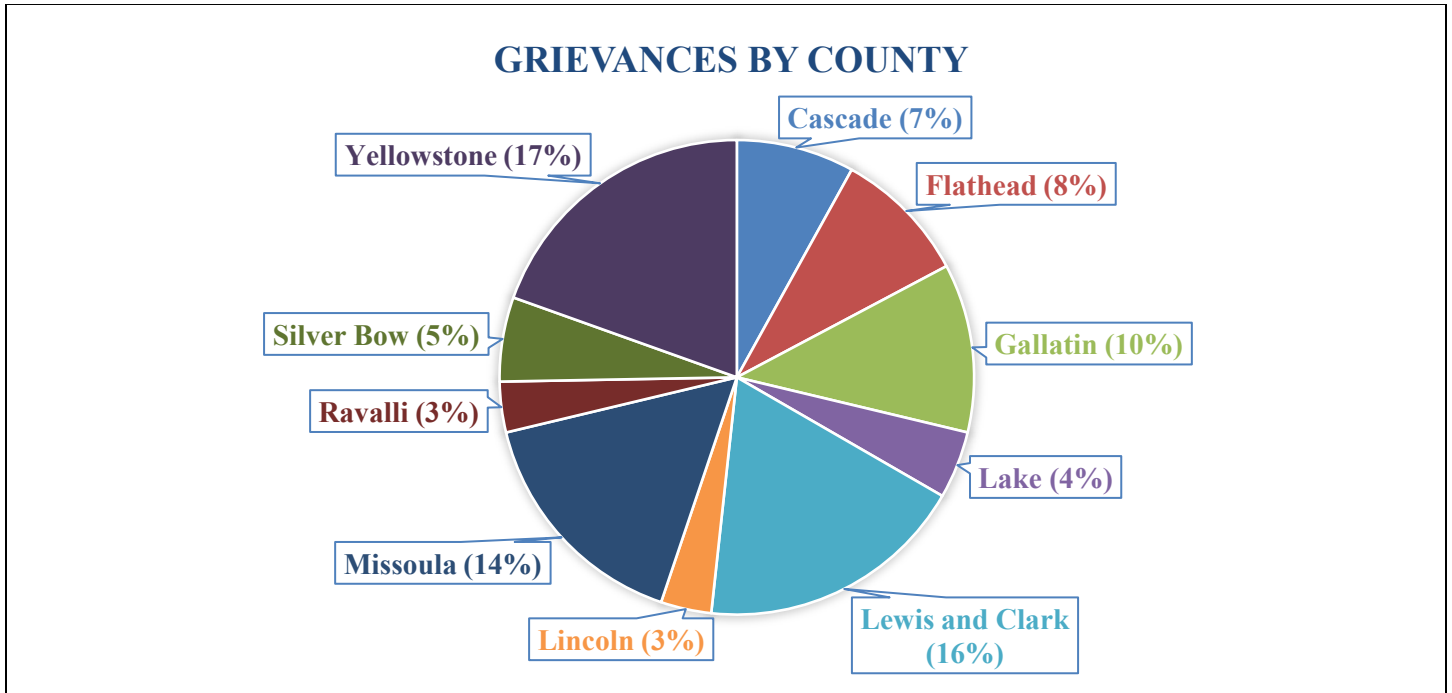


“ODC” includes merit files opened by ODC when ethical misconduct comes to ODC’s attention by means other than the submission of a written grievance (court orders, news articles, notices of criminal conviction, trust account overdraft notices, etc.), or upon a lawyer’s self-reported misconduct.

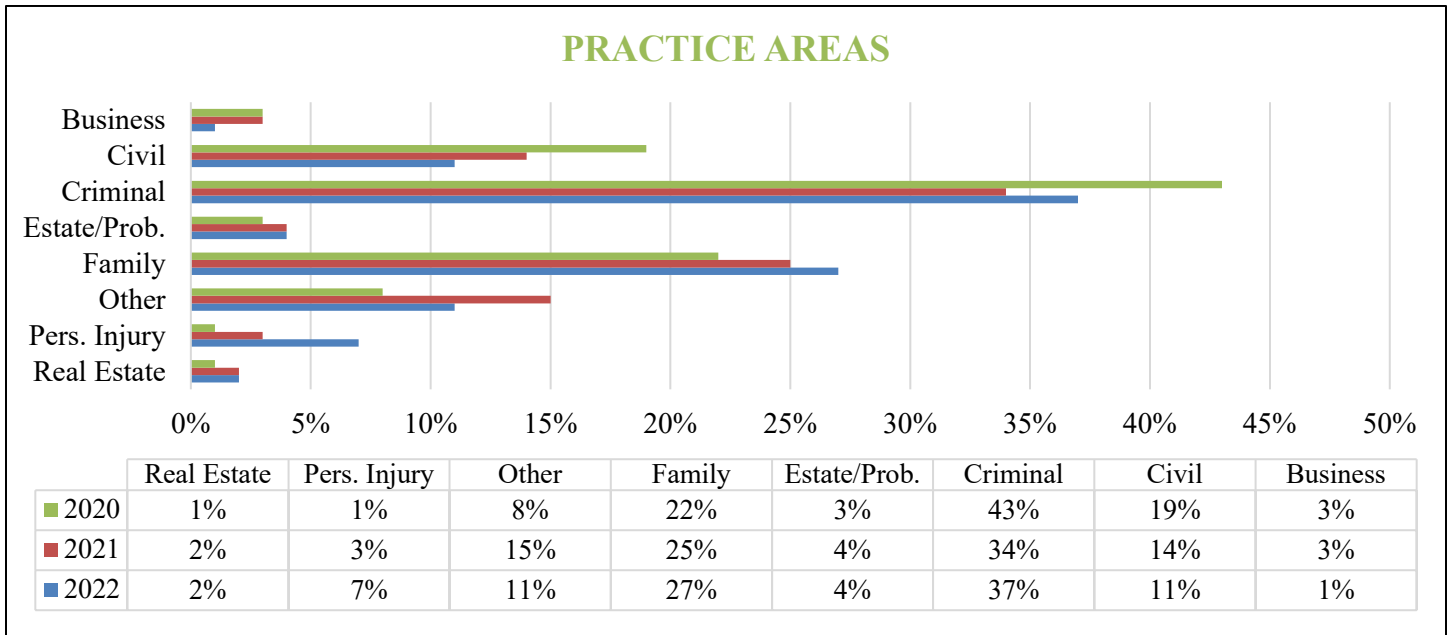
NATURE OF RESPONDENT



GRIEVANCES BY COUNTY

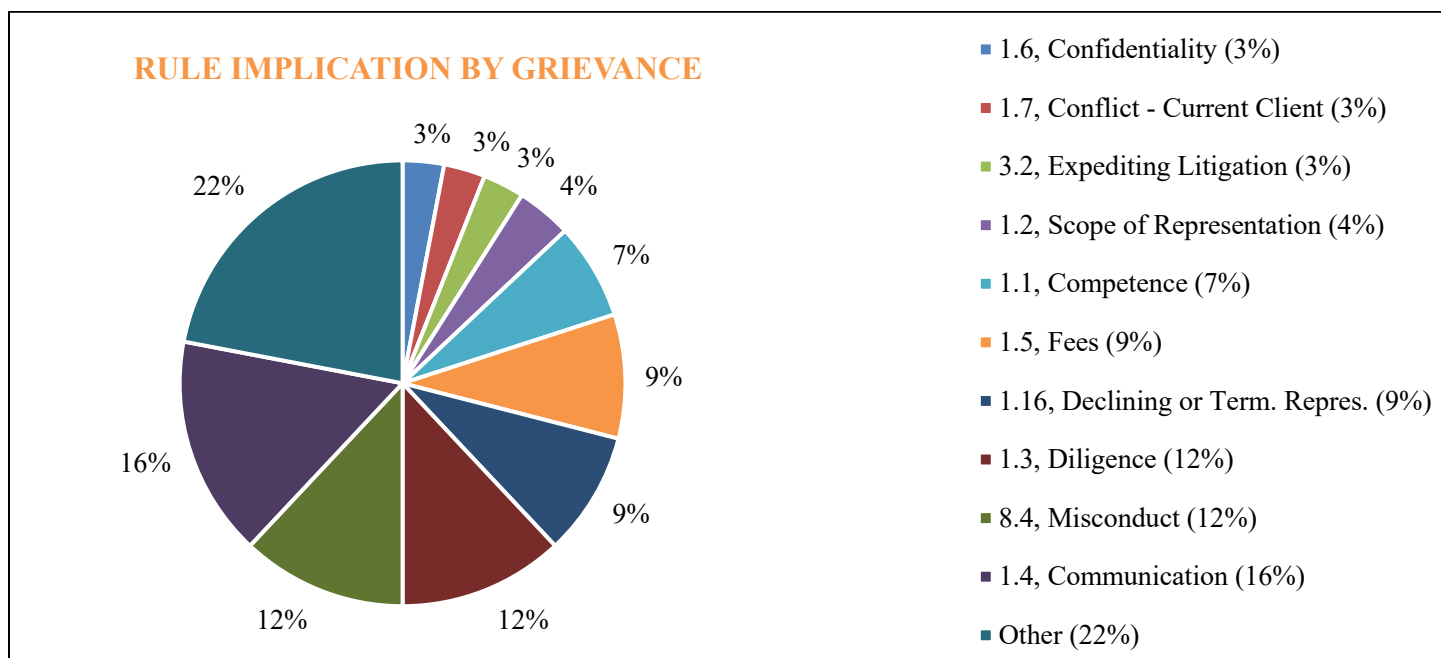


PRACTICE AREAS



RULE IMPLICATION BY GRIEVANCE

The following are the MRPC alleged to have been violated in ODC's 2022 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 2022, ODC filed **seven (7)** formal complaints against **seven (7)** Montana lawyers concerning **11** merit files. At the end of 2022, there were **four (4)** open formal cases in the litigation stage and ODC was monitoring **ten (10)** lawyers for compliance with disciplinary orders.

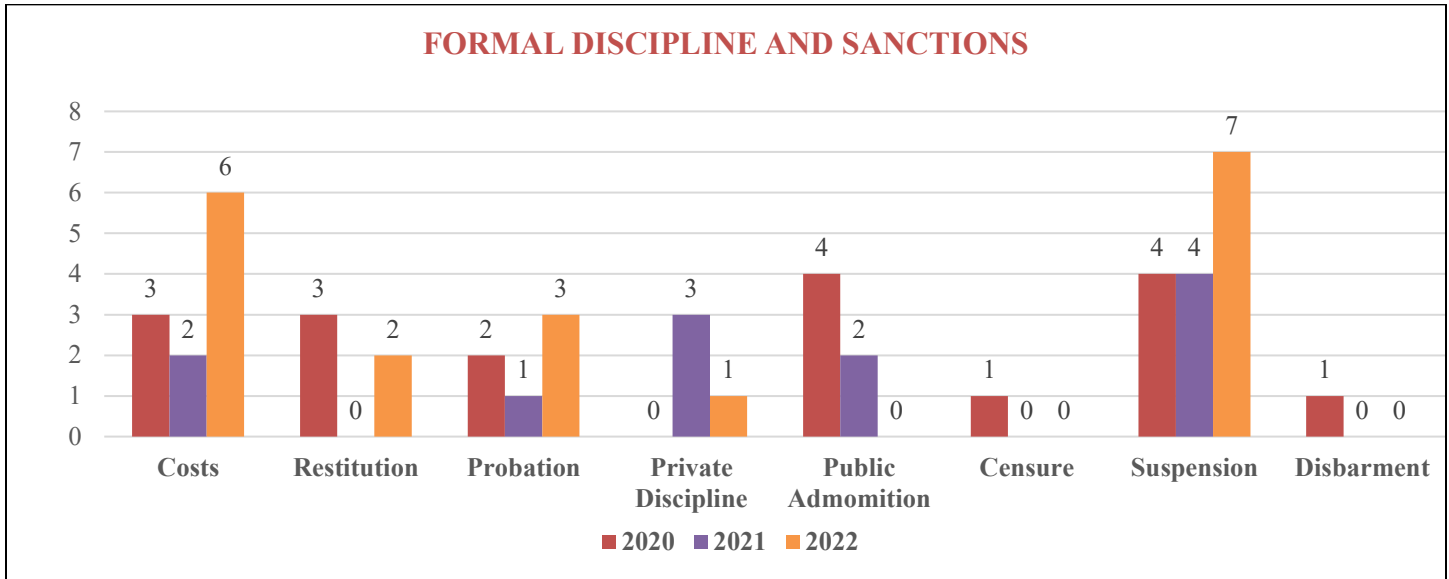
ODC appeared at **eight (8)** hearings over the course of **four (4)** COP meetings. The hearings involved **seven (7)** merit files and **seven (7)** Montana lawyers.

	2020	2021	2022
Formal/Contested	2	3	3
Rule 23 Dispositional/Criminal Conviction	0	0	0
Rule 26 Conditional Admission	8	1	4
Rule 24 Show Cause	2	3	0
Reinstatement	0	0	0
Reciprocal Discipline	0	0	0
Private Admonitions	0	3	1
TOTAL HEARINGS	12	7	7

FORMAL DISCIPLINE AND SANCTIONS

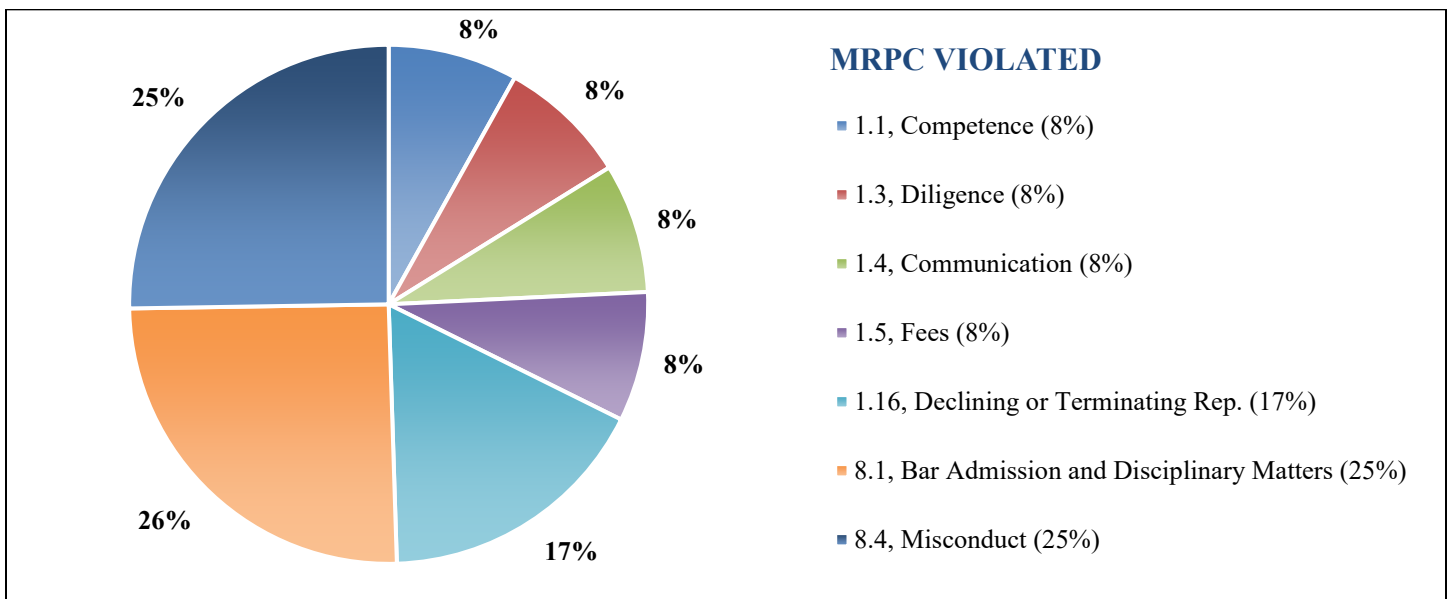
Formal discipline and sanctions result in a permanent public disciplinary record. **Discipline** includes one or more of the following: disbarment; indefinite or interim suspension; public censure; public admonition; and probation. The following **sanctions** may be imposed in addition to a form of discipline: restitution; disgorgement of fees and costs; reimbursement to the Lawyers’ Fund for Client Protection; and assessment of the cost of disciplinary proceedings.

In 2022, the Montana Supreme Court and COP imposed **19** forms of discipline and sanctions based upon **eight (8)** discipline orders for **eight (8)** lawyers.



RULES VIOLATED RESULTING IN DISCIPLINE AND SANCTIONS

The following depicts the MRPC encompassed in the public discipline and sanction orders.



PUBLICLY DISCIPLINED LAWYERS

The following are the Montana lawyers who were publicly disciplined and sanctioned in 2022. The specifics of these matters may be found in the public records held at the Clerk of the Montana Supreme Court and available through their online docket.

MT SUPREME COURT CAUSE NO.	LAWYER	DISPOSITION	DATE ORDERED
PR 21-0353	STUBBS, Todd	Indefinite Suspension, 7 months; Costs	Jan. 25, 2022
PR 21-0359	READER, Margaret	Indefinite Suspension, 7 months; Costs	Jan. 25, 2022
PR 21-0081	DOUD, Meghan M.	Interim Suspension	July 20, 2022
PR 21-0354	McCORMACK, James T.	Indefinite Suspension, 1 year; Costs	Aug. 2, 2022
PR 22-0416	PLATT, Anthony D.	Indefinite Suspension, 1 year; Probation, 3 years; Costs	Nov. 09, 2022
PR 22-0418	LAWELLIN, Courtney	Suspension, 30 Days; Restitution; Probation, 2 Years; Costs	Nov. 29, 2022
PR 22-0419	CONNORS, Joseph C.	Suspension, 30 Days; Restitution; Probation, 2 Years; Costs	Dec. 20, 2022

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.)*

	2020	2021	2022
Number of Costs Order	6	2	7
Amount Ordered	\$8,692	\$3,211.33	\$729.57
Amount Collected	\$1,183	\$355.95	\$145.80

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 2022, ODC was monitoring a total of **15** lawyers. **Eight (8)** 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.

OTHER DISCIPLINARY MATTERS

BAR TRAINING AND CONTINUED LEGAL EDUCATION

Chief Disciplinary Counsel engaged in continued education outreach, appearing as a speaker at approximately **12** 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.

MRPC ANNOTATIONS

Though the majority of disciplinary orders are public, they are rarely published. Consequently, researching disciplinary and ethical matters can be difficult. In 2022, ODC completed and published the **MRPC Annotations 2005 through 2022**. Though the annotations highlight decisions made in the early 2000's through 2022, it also includes decisions dating back to the late 1990's. The annotations are an effort to compile disciplinary decisions, organized by each MRPC. The annotations are fully searchable and available on ODC's website and will continue to be updated on a yearly basis.

INTAKE DIVERSION PROGRAM

ODC's Intake Diversion Program ("IDP"), was developed as an informal, confidential, form of corrective action. The program sought 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 in this program 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.

In 2022, ODC had **two (2)** participants in their final year of diversion. The participants and their mentors are based out of Yellowstone County and were placed in IDP due to violations of Rules 1.3, Diligence; 1.4, Communication; 1.16, Termination of Representation; and 8.4, Misconduct. **One (1)** lawyer was required to return fees as part of the diversion agreement, which were paid immediately. The lawyers have continued to work with their mentors and receive continuous feedback and training. Importantly, neither lawyer had other ethical infractions during their period of diversion. ODC anticipates both lawyers will be successfully discharged from IDP, and their underlying grievances dismissed in 2023.

ODC continued to monitor its previously discharged IDP candidate, who, as of 2022, more than **one (1)** full year from discharge, had not received additional ethical grievances, nor committed other ethical infractions.

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.

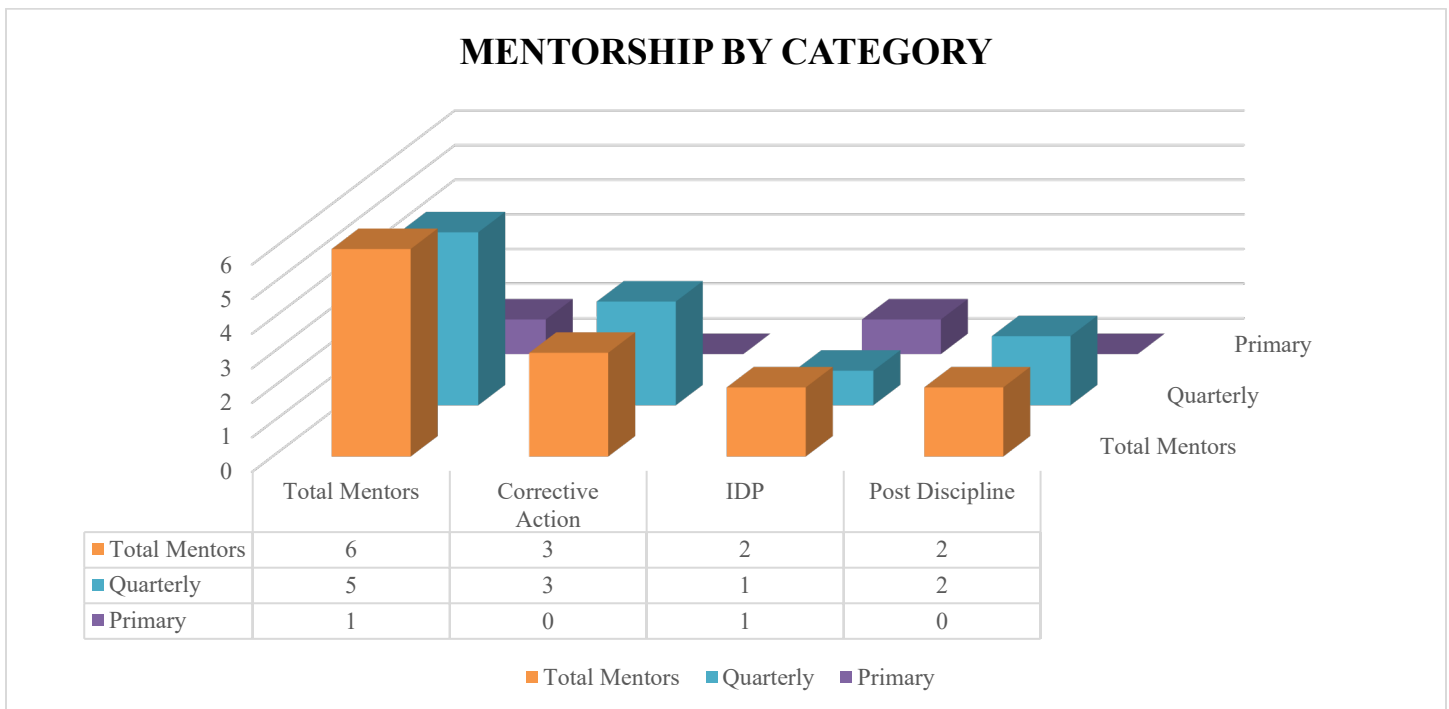
Or, where private discipline has been ordered, as a condition of receiving private sanction. At the end of 2022, **three (3)** lawyers neared the end of their corrective action period. All **three (3)** lawyers are eligible for discharge in 2023. **One (1)** lawyer was placed on corrective action as a condition of private discipline.

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 compliance with corrective action plans, IDP conditions, or disciplinary Order and any concerns every two 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. Below is a breakdown of mentors by category. *(Some mentors participated in more than one category.)*

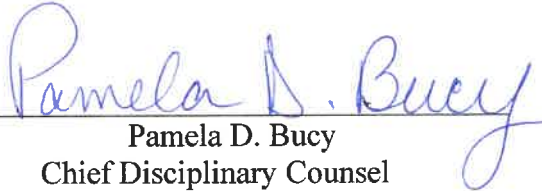


Mentors are voluntary and the amount of time a mentor must dedicate to their mentee lawyer and away from their own practice can be considerable. As a result, ODC wanted to both incentivize and provide some level of reparation for their work.

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 15th day of June 2023.

OFFICE OF DISCIPLINARY COUNSEL



Pamela D. Bucy
Chief Disciplinary Counsel