

Agenda

Utah Supreme Court Oversight Committee for the Office of Professional Conduct

November 14, 2019
4:00 to 5:30 p.m.

Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room
Administrative Office of the Courts, Suite N31

Action: Welcome, introductions, and approval of June minutes	Tab 1	Judge Diana Hagen, Chair
Discussion & Action: OPC Annual Report overview and update from the OPC	Tab 2	Billy Walker
Discussion: Judge Hagen will update the committee on reports to the Supreme Court regarding: (1) the budget, (2) the Ethics Hotline, and (3) adoption of rule 14-515.		Judge Diana Hagen
Discussion: Scope of authority for the oversight committee (perhaps modeled on Guardian Ad Litem Oversight Committee, rule found at Tab 4)	Tab 3	Judge Diana Hagen
Discussion: Committee responsibilities (CJA Rule 11-501(2)(B)): Developing performance metrics and formal policies, and conducting a needs assessment	Tab 4	Judge Diana Hagen
Scheduling for Future Meetings		Judge Diana Hagen

Committee webpage: <https://www.utcourts.gov/utc/opc/>

Tab 1

**Utah Supreme Court Oversight Committee for the
Office of Professional Conduct
Meeting**

Minutes

June 19, 2019

**Judicial Council Room
Matheson Courthouse
450 S. State St.
Salt Lake City, Utah 84111
4:00 p.m. - 5:30 p.m.**

Attendees:

Judge Diana Hagen, Chair
John Baldwin
Art Berger
Margaret Plane
Roger Smith
Billy Walker
Magistrate Judge Brooke Wells

Staff:

Cathy Dupont
Nancy Sylvester

Guests:

Jeff Hunt, Ethics and Discipline Committee
Herm Olsen, President elect, Utah State Bar
Dickson Burton, President Utah State Bar

1. Welcome and Approval of Minutes: (Judge Diana Hagen)

Judge Diana Hagen, Chair, welcomed the members and called the meeting to order.

Motion: Art Berger moved to approve the April 23, 2019 committee minutes. Margaret Plane seconded the motion and it passed unanimously.

2. Discussion of OPC Ethics Hotline (Dixon Burton and Herm Olsen)

Herm Olsen and Dickson Burton discussed the Bar's concern with the loss of the Ethics Hotline that had been offered by OPC. They discussed the termination of the hotline without having an alternative in place for the numerous bar members who use the service. Billy Walker explained that the hotline required a ½ FTE from his office and it created conflicts with the role of the OPC as the investigator because calls to the hot line are not meant to provide safe harbors. Dickson Burton believes that Rule 14-504 requires OPC to provide ethics guidance to member attorneys and suggested other methods to deal with the potential conflict with the investigative role of OPC. It was suggested that Rule 14-504 could be amended to protect communications with the hotline from being discoverable. The committee discussed the ethics hotline and the concerns of both the OPC and the state bar.

Motion: Judge Hagen moved that the ethics hotline should reside with the State Bar and not with OPC because of the inherent conflict with the investigative/prosecutorial function of OPC. Magistrate Judge Wells seconded the motion and it passed unanimously.

3. Consideration of Comments to Proposed Amendments to Rule 14-515: (Jeff Hunt)

Rule 14-515 was amended by the ABA/OPC Committee and approved by the Supreme Court for publication. The ABA/OPC Committee completed its work and after the comment period ended, the rule came to this committee for consideration of the comments. Jeff Hunt, who served on the ABA/OPC subcommittee that worked on the amendments, explained to the committee that the amendments to the confidentiality provisions of the rule are necessary to address constitutional first amendment issues with the current rule. The committee considered the comments to the rule.

Motion: Judge Hagen made a motion that was seconded by Magistrate Judge Wells to recommend to the Supreme Court that Rule 14-515 be approved. The motion passed unanimously.

4. OPC Budget Overview: (John Baldwin)

The committee considered the revised budget for the Office of Professional Conduct, which included the line items requested by the committee. Jeff Hunt also reported that the Ethics and Discipline Committee had enough funding for training. Billy Walker mentioned that there is a national conference for Bar Council that might be beneficial for the adjudicators. They will consider whether OPC can send the chairs of the Ethics and Discipline Committees.

Motion: Margaret Plane made a motion to approve the OPC Budget and report to the Supreme Court that the OPC Oversight Committee approved the budget under the provisions of Rule 11-501. The motion passed unanimously.

5. Meeting Schedule

The next meeting will be held on August 28, 2019 and September 9, 2019 at 4 p.m. The next agenda should include amendments to appeal standards in Rule 14-515.

6. Adjournment

The meeting was adjourned.

Tab 2

OFFICE OF PROFESSIONAL CONDUCT

ANNUAL REPORT August 2019



INTRODUCTION

This report on the Office of Professional Conduct (“OPC”) will focus on six areas: (I) staff composition; (II) attorney misconduct case process and procedure; (III) statistics for July 1, 2018 to June 30, 2019 (“year 2018-2019”); (IV) progress and goals on cases; (V) the Consumer Assistance Program (“CAP”);^A and (VI) goals for July 1, 2019 to June 30, 2020 (“year 2019-2020”).

In 2017, at the direction of the Utah Supreme Court, the American Bar Association (“ABA”) conducted a review of the entire disciplinary system. Based upon the ABA’s report, the Utah Supreme Court formed an ad hoc committee to evaluate the report and make recommendations regarding what changes should be implemented. After review of the recommendations, the Utah Supreme Court took the first step, effective March 4, 2019, and promulgated Rule 11-501 as part of Article 5 of the Utah Supreme Court Rules of Professional Practice. This rule authorizes the formation of an OPC Oversight Committee that reports to the Utah Supreme Court. The rule makes clear that the OPC is no longer part of the administrative oversight of the Utah State Bar.

The OPC Oversight Committee is required to have five voting members, including at least one judge, one member of the public, and one past chair or vice-chair of the Ethics and Discipline Committee. At least one of the members must have an accounting background. The Executive Director of the Bar is an ex-officio, non-voting member of the OPC Oversight Committee. The current voting members of the OPC Oversight Committee are:

- Judge Diana Hagen – Chair, Utah Court of Appeals
- Art Berger – Attorney

^A CAP is a program at the Utah Bar separate from the OPC and manned by a part-time attorney to handle minor disputes between consumers (i.e., clients) and attorneys.

- Margaret Plane – Attorney
- Roger Smith – Accountant
- Magistrate Judge Brooke Wells – United States District Court for the District of Utah

During the coming year more changes will be made, from procedural rule changes to the creation of a separate website for the OPC to implement the recommendations of the ABA review as further approved by the Utah Supreme Court. The OPC Oversight Committee will oversee the process of implementing these changes.

In addition to the regulation of attorneys for professional misconduct, effective November 1, 2018, in Chapter 15 of the Utah Supreme Court Rules of Professional Practice the Utah Supreme Court promulgated rules governing Licensed Paralegal Practitioners (“LPPs”). The OPC will also have regulatory authority over LPPs.

Since none of the procedural rules were amended regarding attorneys during year 2018-2019 and no LPPs were admitted to Utah Bar membership during year 2018-2019, this report will reflect statistics under the current procedural rules in effect and will not reflect any statistics on LPPs. The OPC anticipates that future reports will reflect procedural changes resulting from the ABA review and any professional misconduct of LPPs.

I. STAFF COMPOSITION

The staff for year 2018-2019 consisted of 12 full-time employees. These 12 full-time employees include Chief Disciplinary Counsel, a Deputy Chief Disciplinary Counsel, four Assistant Disciplinary Counsel, four Paralegals, one Investigator, and one Intake Secretary.^B

^B Rule 11-501 changed the OPC attorney staff titles as follows: Senior Counsel changed to Chief Disciplinary Counsel; Deputy Senior Counsel changed to Deputy Chief Disciplinary Counsel, and Assistant Counsel changed to Assistant Disciplinary Counsel.

II. ATTORNEY MISCONDUCT CASE PROCESS AND PROCEDURE

A) Rules

The Rules of Lawyer Discipline and Disability (“RLDD”) are in Chapter 14, Article 5, of the Utah Supreme Court Rules of Professional Practice. The RLDD are the authority for the attorney discipline process and procedure. Rule 14-504 of the RLDD is the overall authority for the OPC and Chief Disciplinary Counsel as head of the OPC.

B) Ethics and Discipline Committee

Pursuant to Rule 14-503 of the RLDD, 29 volunteer attorneys and eight volunteer non-attorneys are appointed by the Utah Supreme Court to serve on an administrative body called the Ethics and Discipline Committee (“Committee”). The Committee’s function is to consider attorney discipline cases that are appropriately referred to it under the RLDD.

The Utah Supreme Court appoints a Committee Chair and four Committee Vice-Chairs from the 29 attorneys. The Committee Chair is responsible for the oversight of the Committee and the Committee Vice-Chairs assist the Committee Chair in this task. The remaining 24 attorneys and eight non-attorneys do their main work in subcommittees called Screening Panels. The Utah Supreme Court appoints a Chair and a Vice-Chair to each Screening Panel. The year 2018-2019 composition of the Committee was as follows:

Christine Greenwood (Magleby Cataxinis & Greenwood), Chair, Ethics and Discipline Committee

Catherine L. Brabson (Salt Lake City Attorney’s Office), Vice-Chair, Ethics and Discipline Committee

Jeffrey J. Hunt (Parr, Brown, Gee & Loveless), Vice-Chair, Ethics and Discipline Committee

Michael R. McCarthy II (Barrick Gold of North America, Inc.), Vice-Chair, Ethics and Discipline Committee

Katherine E. Venti (Parsons Behle & Latimer), Vice-Chair, Ethics and Discipline Committee

Brady Whitehead, Clerk, Ethics and Discipline Committee

Panel A

Andrea Martinez Griffin (Salt Lake Legal Defender Association), Chair

Richard G. Hamp (Salt Lake County District Attorney), Vice-Chair

Duane H. Gillman (Durham Jones & Pinegar)

J. Gregory Hardman (Snow Jensen & Reece)

Kimberly A. Neville (Dorsey & Whitney LLP)

Roger D. Sandack (Attorney at Law)

Sarah Sandberg, Public Member

Diane Walker, Public Member

Panel B

Jonathan G. Pappasideris (Salt Lake City Corporation), Chair

Rebecca S. Parr (Utah Department of Human Resource Management), Vice-Chair

Langdon T. Owen, Jr. (Cohne Kinghorn, PC)

Leonor E. Perretta (Perretta Law Office)

Cassie J. Medura (Jennings & Medura, LLC)

Lara A. Swensen (Hatch James & Dodge)

Joel Campbell, Public Member

Charles Haussler, Public Member

Panel C

Nanci S. Bockelie (Bockelie Law Office, LC), Chair

Amy Hayes Kennedy (Dart, Adamson & Donovan), Vice-Chair

Randall L. Jeffs (Jeffs & Jeffs, PC)

Jennifer F. Parrish (Magleby Cataxinos & Greenwood)

Mitchell A. Stephens (Hatch James & Dodge)

Kasey L. Wright (Wright Law Firm, P.C.)

Linda Blake, Public Member

Jonathan Bone, Public Member

Panel D

Elizabeth S. Whitney (Attorney at Law), Chair

Betsy Haws (Backcountry.com), Vice-Chair

Bryant J. McConkie (Ray Quinney & Nebeker)

Mark E. Hindley (Stoel Rives, LLP)

Monica D. Greene (Utah Juvenile Defender Attorneys)

David W. Tufts (Durham Jones & Pinegar)

Tim Foley, Public Member

Dr. Richard Price, Public Member

The majority of Screening Panel work is done by conducting hearings. The Screening Panel hearings must be presided over by either the Screening Panel Chair or the Screening Panel Vice-Chair, and must have a quorum consisting of two attorneys and one non-attorney.

C) How the OPC Addresses Information That Comes to Its Attention

Specifically addressing the processing of cases, the pertinent provisions of Rule 14-504(b) of the RLDD state that OPC has the power and duty to:

- (1) Screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer;
- (2) Investigate all information coming to the attention of the Office which, if true, would be grounds for discipline or transfer to disability status and investigate all facts pertaining to petitions for reinstatement or readmission;
- (3) For each matter not covered in Rule 14-510 [of the RLDD] brought to the attention of the OPC:
 - (A) dismiss;
 - (B) decline to prosecute;
 - (C) refer non-frivolous and substantial informal complaints to the Committee for hearing; or
 - (D) petition for transfer to disability status;
- (4) Prosecute before the screening panels, the district courts and the Supreme Court all disciplinary cases and proceedings for transfer to or from disability status.

Information comes to the OPC's attention in the form of notarized/verified and non-notarized complaints. Notarized/verified complaints are official informal complaints ("informal complaints") within the meaning of Rule 14-510(a)(2) and, therefore, are processed pursuant to Rule 14-504 and Rule 14-510 of the RLDD. By contrast, non-notarized complaints are not official informal complaints, and are usually submitted to the OPC in the form of a Request for Assistance. The Request for Assistance form is able to

be submitted online. Requests for Assistance are processed pursuant to Rule 14-504 of the RLDD. For purposes of this report, all non-notarized complaints will hereinafter be referred to as Requests for Assistance. The OPC reviews Requests for Assistance in coordination with CAP.

Additionally, pursuant to Rule 14-504(b)(2) and Rule 14-510(a)(1) of the RLDD, the OPC can start an attorney misconduct investigation or complaint on its own initiative, based upon information that comes to its attention. The most common circumstance where this happens is when the OPC reviews information that has been disseminated through the media or is part of a published court case. The OPC categorizes these cases as Media/Court. Other circumstances where the OPC becomes the Complainant is where information is submitted by a judge where the judge does not want to be the Complainant, or where the Complainant stops cooperating and there is enough information to proceed. In all of the cases where the OPC is the Complainant, the OPC sends the attorney a notice of the OPC complaint with the notarized signature of the head of the OPC. Under Rule 14-510(a)(2), the OPC complaint is not required to be verified and attested to.

1) Central Intake System

Process

The OPC's Central Intake System is staffed by three attorneys who are assigned to review all initial information received (Requests for Assistance and informal complaints) to determine whether the matter should be appropriately closed by a declination to prosecute or a dismissal, or whether the matter should be processed further for referral to a Screening Panel. These decisions are made jointly by the intake attorneys and the other staff attorneys at weekly case status meetings. Therefore, notwithstanding individual case assignments, all the attorneys in the office are actually involved in the

investigation and prosecution decisions of all the cases received by the OPC.

As part of this system, at the weekly attorney staff meetings the OPC reviews all written Requests for Assistance that it receives, or that are made directly to CAP. Prior to opening a case, the OPC has a CAP review process where it determines whether the Request for Assistance is appropriate to be handled through CAP (i.e., minor attorney concerns that most likely do not rise to the level of Rule of Professional Conduct violations or matters that should be addressed in another forum). Within those parameters, Requests for Assistance are sent to CAP and there is no need for the OPC to review the case further. In appropriate cases (matters that likely rise to the level of Rule of Professional Conduct violations or matters involving attorneys who are already under investigation by the OPC), the OPC notifies the Complainant to resubmit their Request for Assistance with notarization and verification or the OPC notarizes the Request for Assistance to open an OPC informal complaint.

2) Investigations

Initial Review

All reviews of all informal complaints and the decisions associated with these reviews are also made jointly by the OPC attorneys at weekly staff meetings. The informal complaint is reviewed for jurisdiction and merit. Looking at the “four corners” of the informal complaint, if the OPC determines it does not have jurisdiction, if the informal complaint fails to state a claim, or if the case lacks merit in that the alleged conduct, even if true is not an ethical violation, the case is dismissed. In these types of dismissal cases, there is no need to contact the attorney for information. Both the Complainant and the attorney receive a dismissal letter, and a copy of the informal complaint is sent to the attorney.

Preliminary Investigation

Assuming that the OPC does not dismiss an informal complaint based on jurisdiction or merit, the OPC conducts a preliminary investigation. The preliminary investigation is to ascertain whether the informal complaint is sufficiently clear as to the allegations. If it is not, the OPC will seek additional facts from the Complainant. Thereafter, the OPC will usually proceed to obtain an informal response from the Respondent.

Settlement

At any point during the investigation, the OPC is willing to conduct settlement discussions with the attorney; however, once the OPC files a Formal Complaint as explained below, the OPC will not conduct settlement discussions until an Answer is made to that Formal Complaint.

Notice of Informal Complaint

After the preliminary investigation and the request for informal responses, if the OPC determines that a formal response is needed from the attorney to reach an appropriate resolution of the informal complaint in accordance with the RLDD, including the possibility of a Screening Panel hearing, the OPC will serve on the attorney a Notice of Informal Complaint (“NOIC”). The NOIC will contain a true copy of the signed informal complaint and any additional information that the OPC has received from the Complainant. The NOIC will also identify with particularity the possible violations of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by the OPC. The attorney has 20 days after service of the NOIC to file with the OPC a written and signed answer setting forth in full an explanation of the facts

surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct.

The OPC sends the Complainant a copy of the attorney's response to the NOIC and, in most cases, continues its investigation by obtaining a reply from the Complainant to the attorney's response. Further, where appropriate to ascertain the facts necessary to assess the charges, the OPC will seek additional responses and/or contact witnesses. The OPC always examines all documents submitted by all participants. Upon completion of the investigation as outlined above, the OPC determines whether the informal complaint sets forth facts which by their very nature should be brought before a Screening Panel or if good cause otherwise exists to bring the matter before a Screening Panel. These are "non-frivolous" and "substantial" informal complaints within the meaning of RLDD 14-504(b)(3) and are required to be presented to Screening Panels consistent with RLDD 14-510(a)(5).

Dismissal/Declination to Prosecute

If upon completion of this investigation the OPC determines that the case is not substantial or is frivolous (i.e., the factual allegations made by the Complainant that can be proven do not constitute a violation of the Rules of Professional Conduct or the evidence is insufficient to establish probable cause that the attorney violated the Rules of Professional Conduct), the OPC dismisses the informal complaint consistent with RLDD 14-510(a)(7). Additionally, as part of its dismissal authority, consistent with the language in Rule 14-510(a)(7) of the RLDD, the OPC can determine that an informal complaint is barred by the statute of limitations based on discovery of the acts allegedly constituting a violation of the Rules of Professional Conduct, or is more adequately addressed in another forum, or the OPC can decline to prosecute an informal complaint.

The OPC does not arbitrarily decide to decline to prosecute a case. Occasionally, due to the nature of a case (i.e., the remedy sought by a Complainant; ongoing proceedings and the possible disruption of those proceedings that a disciplinary case could have; the OPC resources needed to process a case compared to the OPC resources needed if the matters are first addressed elsewhere), it is in everyone's best interests to resolve the disciplinary matter by declining to prosecute the case. Generally, the OPC standards for declining to prosecute cases are as follows:

- The OPC may decline to prosecute cases where there is a question as to the nexus between the allegations and the attorney's practice.
- The OPC may decline to prosecute cases where the attorney has already been disciplined in an attorney discipline matter for similar misconduct committed during the same period. In these cases, it is unlikely the misconduct will result in discipline greater than what has already been imposed in an attorney discipline matter.
- The OPC may decline to prosecute cases where the attorney has taken immediate action to remedy the alleged misconduct and that remedy has likely negated a violation of the Rules of Professional Conduct.
- The OPC may decline to prosecute a case by a referral to the Professionalism Counseling Board.^c

It should be noted that if the OPC declines to prosecute a case and a court subsequently makes findings that could be the basis for a finding of misconduct under the Rules of Professional Conduct, the OPC may re-open the case and address the findings.

^c The Professionalism Counseling Board is a Utah Supreme Court Committee charged with addressing violations of the Standards of Professionalism and Civility set forth in Chapter 14, Article 3 of the Utah Supreme Court Rules of Professional Practice.

3) **Diversions**

Diversion is an alternative to discipline that is entered into by agreement in attorney discipline cases. Pursuant to Rule 14-533 of the RLDD, the Utah Supreme Court created a Diversion Committee; if the attorney consents to a Diversion Agreement that is subsequently approved by the Diversion Committee, either a Screening Panel or the OPC may dismiss cases involving minor violations of the Rules of Professional Conduct. The specific types of cases that are not appropriate for diversion are: when the attorney is accused of misappropriating client funds; the attorney's behavior will, or is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the attorney has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the attorney has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of irreparable harm to the public; the misconduct is a felony or a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

To be eligible for diversion, the presumptive sanction must not be more severe than a public reprimand. Further, all involved must make an assessment of whether or not participation in diversion is likely to improve the attorney's future behavior, whether aggravating or mitigating factors exist, and whether diversion already has been attempted.

The Diversion Committee has to review and approve every diversion contract. Possible program areas of diversion are as follows: Fee Arbitration; Mediation; Law Office Management Assistance; Psychological and Behavioral Counseling; Monitoring;

Restitution; Continuing Legal Education Programs, including Ethics School; and, any other program or corrective course of action agreed to by the responding attorney necessary to address an attorney's conduct.

The OPC notifies an attorney of the diversion option when a case is received. A Complainant is notified of any proposed decision to refer an attorney to diversion and that Complainant may comment, however a decision to divert is not appealable by a Complainant.

Upon entering into the diversion contract, the complaint against the attorney is stayed pending completion of diversion. If diversion is successful, the complaint is dismissed and all information regarding the terms of the diversion is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach of the diversion contract is cause for terminating the agreement and subjects the lawyer to appropriate discipline as if diversion had never been an option. As noted below, a Screening Panel may also refer a complaint to the Diversion Committee.

4) Informal Appeals

Pursuant to Rule 14-510(a)(7) of the RLDD, a Complainant can appeal within 15 days to the Committee Chair the OPC's dismissal, including declinations to prosecute, of any informal complaint. When the OPC dismisses an informal complaint after investigation or declines to prosecute an informal complaint, it gives notice to the Complainant of the language in Rule 14-510(a)(7) of the RLDD and allows the Complainant the opportunity to appeal the decision. If the Complainant files an appeal, the Committee Chair or a Vice-Chair conducts a de novo review of the OPC file and either affirms the dismissal or remands the matter and the OPC will prepare the informal

complaint for a Screening Panel hearing.

5) Screening Panel

If after investigation, the OPC determines that the allegations of the informal complaint are non-frivolous and substantial, or if the Chair or Vice-Chair of the Committee remands a case after an appeal, the OPC refers the informal complaint to a Screening Panel. The NOIC described in section 2 above is the official notice that is required for the OPC to bring the case before a Screening Panel.

A Screening Panel reviews all the facts developed by the informal complaint, the Respondent's answer, the OPC's investigation and the information obtained during the Screening Panel hearing. After this review, the Screening Panel may make any of the following determinations or recommendations:

- Dismissal for lack of merit;
 - Dismissal with a letter of caution;
 - Dismissal by referral to Diversion Committee;
 - Dismissal by referral to Professionalism Counseling Board;
 - Recommendation that the attorney be (privately) admonished or publicly reprimanded;
- If the Screening Panel recommends an admonition or public reprimand, the attorney can file an exception to the recommendation with the Committee Chair.
 - The OPC can file an exception to any of the determinations or recommendations with the Committee Chair.
 - Following the Screening Panel Hearing, or upon completion of the Exceptions Hearing, if an Exception has been filed, the Committee Chair issues a formal determination and can either sustain, dismiss, or modify the Screening Panel's determination or recommendation of discipline.

- After final written determination of the Committee Chair, where an exception has been filed, the OPC or an attorney can appeal by filing a request for review with the Supreme Court for reversal or modification. The OPC refers to these as “Administrative Appeals.”
- A finding of probable cause that a Formal Complaint be filed with the District Court.
 - A determination that a Formal Complaint should be filed is not appealable.

If the Screening Panel determines that the informal complaint should be filed as a Formal Complaint, Rule 14-511 of the RLDD requires the OPC to prepare the Formal Complaint for the signature of the Chair of the Committee. Often the attorney has more than one informal complaint pending against him/her. If there is more than one informal complaint involved, an informal complaint may also pass through the Screening Panel process and can be combined into a single Formal Complaint (“Combined with Formal”). Once a Formal Complaint is filed, if an attorney has other informal complaints or a Request for Assistance filed against him/her, in lieu of the Screening Panel process the OPC may elect to hold the cases for presentation at any Sanctions Hearing resulting from the Formal Complaint (“Hold for Sanctions”), pursuant to Rule 14-515 (a)(3) of the RLDD.

6) Formal Complaints

A Formal Complaint must be filed in the county where the alleged misconduct occurred, or in the county where the attorney resides or practices law or last practiced law. Once a Formal Complaint is filed with the District Court, if no settlement can be reached, the case is prepared for a bench trial. The bench trial is bifurcated, the first portion of which involves the adjudication of misconduct (i.e., Rule of Professional Conduct violations). If the judge does not dismiss the case and finds misconduct, the second stage of the trial is a sanctions hearing. At the end of the sanctions hearing, the judge can order sanctions and remedies that may include, but are not limited to, the

following dispositions:

- Admonition
- CLE or Ethics School
- Public Reprimand
- Restitution
- Probation
- Suspension
- Disbarment

7) Formal Appeals

All appeals from District Court orders are directed to the Utah Supreme Court. Only the Respondent attorney or the OPC can appeal from the District Court order. The Utah Supreme Court under its constitutional authority to regulate the practice of law has the discretion to consider appeals of all attorney discipline cases.

8) Monitored Cases

Monitored cases include probation cases, disability cases and trusteeship cases. Where appropriate, probation cases require someone to docket reminder dates, and follow-up to ensure that the attorney meets the probation requirements. Disability cases generally require someone to investigate the extent of the disability, to process the case through District Court, and to monitor the continuing status of the attorney. Trusteeship cases generally require that someone inventory the attorney's files, notify the attorney's clients of the trusteeship, and assist with distribution of client files to the clients. Additionally, trusteeship cases require someone to inventory unclaimed files, prepare a notice for publication of potential destruction of the files, prepare a request to the District Court to approve destruction of unclaimed files, and ultimately to destroy the files.

When the OPC has to undertake a trusteeship, it takes a significant amount of resources and time. It is preferable to the OPC that an attorney or firm outside of the OPC be appointed to manage trusteeships. However, since in most trusteeship cases there is little or no money for the recoupment of costs and fees, there are not always

attorneys or firms that are willing and able to oversee a trusteeship.

9) Interim Suspension and Disability

Pursuant to Rules 14-518, 14-519, and 14-523 of the RLDD, if an attorney poses a substantial threat of irreparable harm to the public and has either committed a violation of the Rules of Professional Conduct or has been convicted of a crime which reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney, or is under a disability as defined in the RLDD, the OPC may file a petition for interim suspension or disability. This is an immediate filing in the District Court, and need not go through the Screening Panel process outlined above.

10) Abeyances

Attorney discipline cases may be continued, stayed and held in abeyance when there is related pending litigation (i.e., criminal or civil) and the alleged misconduct is substantially similar to the issues of the pending litigation. The request for abeyance can be made by either the OPC or the respondent attorney. The request is made to the Committee Chair pursuant to Rule 14-510(g)(3) if the discipline case is pending prior to the filing of a formal case ("Informal Abeyance") and the request is made to the judge pursuant to Rule 14-517(d) if the discipline case is pending in the District Court as part of a formal case ("Formal Abeyance").

11) Special Prosecutor Cases

Special Prosecutor Cases are cases filed against either OPC staff, Bar staff, Bar Commissioners or Committee members. Pursuant to Rule 14-517(f) of the RLDD, these cases have to be prosecuted outside of the OPC.

12) Final Dispositions

Until a case reaches a "final" disposition, the OPC considers it an active case.

Final dispositions are cases where the result has been determined to be dismissal, declination to prosecute, dismissal with caution, admonition, public reprimand, disbarment, time-specified suspension, trusteeship where the OPC is not the trustee, probation, resignation pending discipline, and cases in which no appeal is pending.

III. STATISTICS – Year 2018-2019

A) Case Activity

Active cases as of July 1, 2018664

1) Cases opened

Informal Complaint	91
Media/Court Information	3
Notice of Insufficient Funds	42
Reciprocal Discipline	4
Reinstatement	7
Request for Assistance.....	758
Special Prosecutor	3
Total	908
Total cases processed during period	1,572

2) Informal Complaints Closed Without Discipline

By Dismissal	74
By Dismissal with Caution	5
By Declination to Prosecute	14
By Declination to Prosecute (Hold for Reinstatement).....	2
Total	95

3) Requests for Assistance Closed Without Discipline

By Dismissal	39
By Dismissal with Caution	11
By Dismissal - Duplicate	1
By Declination to Prosecute	279
By Declination to Prosecute with Caution	39
By Sent to CAP.....	314
By Declination to Prosecute (Hold for Reinstatement).....	17
Total	700

4) Media/Court Information Closed Without Discipline

By Dismissal	1
By Declination to Prosecute	4
By Declination to Prosecute (Hold for Reinstatement).....	2
Total	7

5)	<u>Special Prosecutor Closed Without Discipline</u>	
	By Dismissal.....	2
	Total.....	2
6)	<u>Reciprocal Discipline Closed Without Discipline</u>	
	By Declination to Prosecute	1
	Total.....	1
7)	<u>Reinstatement</u>	
	By Dismissal.....	1
	Total.....	1
8)	<u>Notice of Insufficient Funds Closed Without Discipline</u>	
	By Dismissal.....	1
	By Declination to Prosecute	4
	By Declination to Prosecute with Caution.....	25
	Total.....	30
9)	<u>Orders Entered</u>	<u># of attys</u>
	Admonition.....	5 (5)
	Public Reprimand	4 (4)
	Public Reprimand and Probation.....	3 (3)
	Suspension.....	8 (8)
	Disbarment	5 (5)
	Dismissal	1 (1)
	Probation	4 (4)
	Probation Terminated.....	4 (4)
	Reinstatement	1 (1)
	Reinstatement Denied.....	2 (2)
	Trusteeship Terminated.....	2 (2)
	Resignation with Discipline Pending.....	5 (5)
	Total.....	44 (44)
10)	<u>Informal Cases Combined with Formal Filings</u>	
	Informal Complaints.....	19
	Requests for Assistance.....	31
	Media/Court Information	1
	Reciprocal Discipline	1
	Total.....	52
	Total case closures during period.....	932
	Active cases as of July 1, 2019	640
	(Open cases minus closures for year 2018-2019)	

11) During the Year 2018-2019, the OPC had case activity as follows

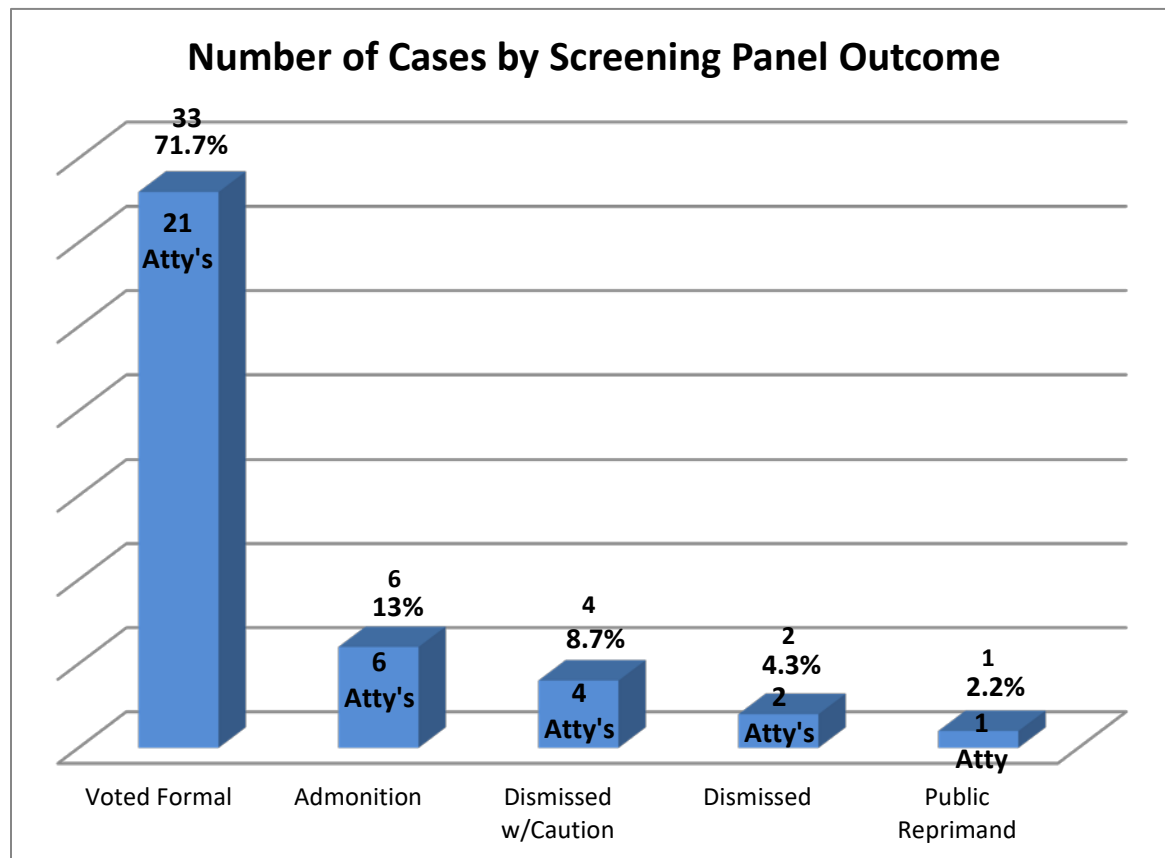
Diversions.....	15
Informal Abeyances.....	6
Informal Appeals.....	47
Informal Appeals Granted.....	1
Informal Appeals Denied.....	34
Screening Panel Exception by OPC.....	1
Formal Cases Filed in Court.....	26
Combined with Formal Filings.....	33

12) Stipulations

		<u># of attys</u>
Stipulation to Admonition.....	1	(1)
Stipulation to Public Reprimand.....	4	(4)
Stipulation to Suspension.....	6	(6)
Stipulation to Disbarment.....	1	(1)
Stipulation to Resignation with Discipline Pending.....	4	(4)
Stipulation to Probation.....	4	(4)
Stipulation to Dismissal.....	2	(2)
Total.....	22	(22)

13) Screening Panel Outcomes

For the year 2018-2019, the OPC referred 46 matters, involving 32 attorneys, to the Ethics and Discipline Committee for a Screening Panel hearing. The outcomes of those hearings were:



14) Notice of Insufficient Funds

As part of the OPC case activity, Rule 1.15(a) of the Rules of Professional Conduct requires that attorneys maintain their trust accounts in financial institutions that agree to report to the OPC “in the event any instrument in properly payable form is presented against an attorney trust account containing insufficient funds (NSF), irrespective of whether or not the instrument is honored.” Pursuant to this rule the OPC opened 42 new NSF cases, and dismissed 30 NSF cases in year 2018-2019. The usual reasons for dismissals of NSF cases are accounting errors, bank errors, depositing errors, or drawing on the account before a deposit clears.

15) Summary

Of the 1,572 cases the OPC processed in year 2018-2019, 888 or 56.49% were resolved by dismissals, declinations to prosecute, referral to CAP or combined with formal. Of the 1,572 cases, approximately 2.79% of the cases resulted in 44 Orders of Discipline. 50% of the Orders of Discipline were by stipulation. Finally, approximately 2.92% of the OPC’s processed cases for the year were heard by Screening Panels.

16) Beginning Year July 1, 2019 – June 30, 2020

The OPC begins year 2019-2020 with 640 active cases against 452 attorneys.

The breakdown of the various stages of the 640 cases is as follows:

Abeyance	14
At CAP	127
Combined with Formal.....	25
Diversion	9
Exception.....	7
Formal	22
Formal Appeal	3
Informal Appeal	17

Informal Complaint	135
Notice of Insufficient Funds	22
Reciprocal.....	2
Reinstatement	1
Request for Assistance.....	244
Rule 14-519.....	3
Special Prosecutor	9

B) Miscellaneous

1) Ethics Hotline and CLE

Rule 14-504(b)(13) of the RLDD requires that the OPC provide informal guidance to promote ethical conduct by Bar members. In the past, the OPC had an Ethics Hotline where the OPC attorneys gave Bar members informal guidance by telephone. However, the rule does not specifically require the OPC to provide informal guidance by this method and in the past this practice has interfered with the OPC’s prosecutorial responsibilities. During year 2018-2019, the OPC received 391 requests for informal ethics opinions. The OPC ceased its Ethics Hotline in April of this year.

Additionally, the OPC attorneys make Continuing Legal Education (“CLE”) ethics presentations. During year 2018-2019, the OPC’s CLE presentations totaled 35.33 hours.

Two of the CLE presentations were at the Ethics School conducted by the OPC. The OPC titles the Ethics School “What You Didn’t Learn in Law School.” Some attorneys are required to be there as a condition of a disciplinary case, but the OPC usually opens it to the entire Bar. At the school, the OPC covers a number of topics, including the lawyer discipline process, law office management, malpractice, conflicts of interests, lawyer trust fund accounting and hot topics of ethical issues. The OPC also usually tries to have at least one judge as a guest speaker to talk about civility and professionalism. The Ethics

School was held in September and March of the year 2018-2019 for six CLE hours each time. In September 2018, Ethics School was attended by 77 attorneys; and in March 2019, Ethics School was attended by 125 attorneys.

Included in OPC CLE presentations this fiscal year, the OPC also held a four-hour Law Practice Management and Trust Account Seminar. This seminar was held in January 2019. In addition to law practice management as the overall focus, the seminar specifically covered how to handle fees and trust accounting. It was attended by 63 attorneys. The OPC plans to continue to hold this seminar every year.

Finally, with respect to ethical guidance, in the past the OPC has provided written guidance to attorneys through publication of Utah Bar Journal articles on common ethics topics, and in brochures available to Bar members and the public. As the need arises, the OPC anticipates continuing to publish articles on ethics topics.

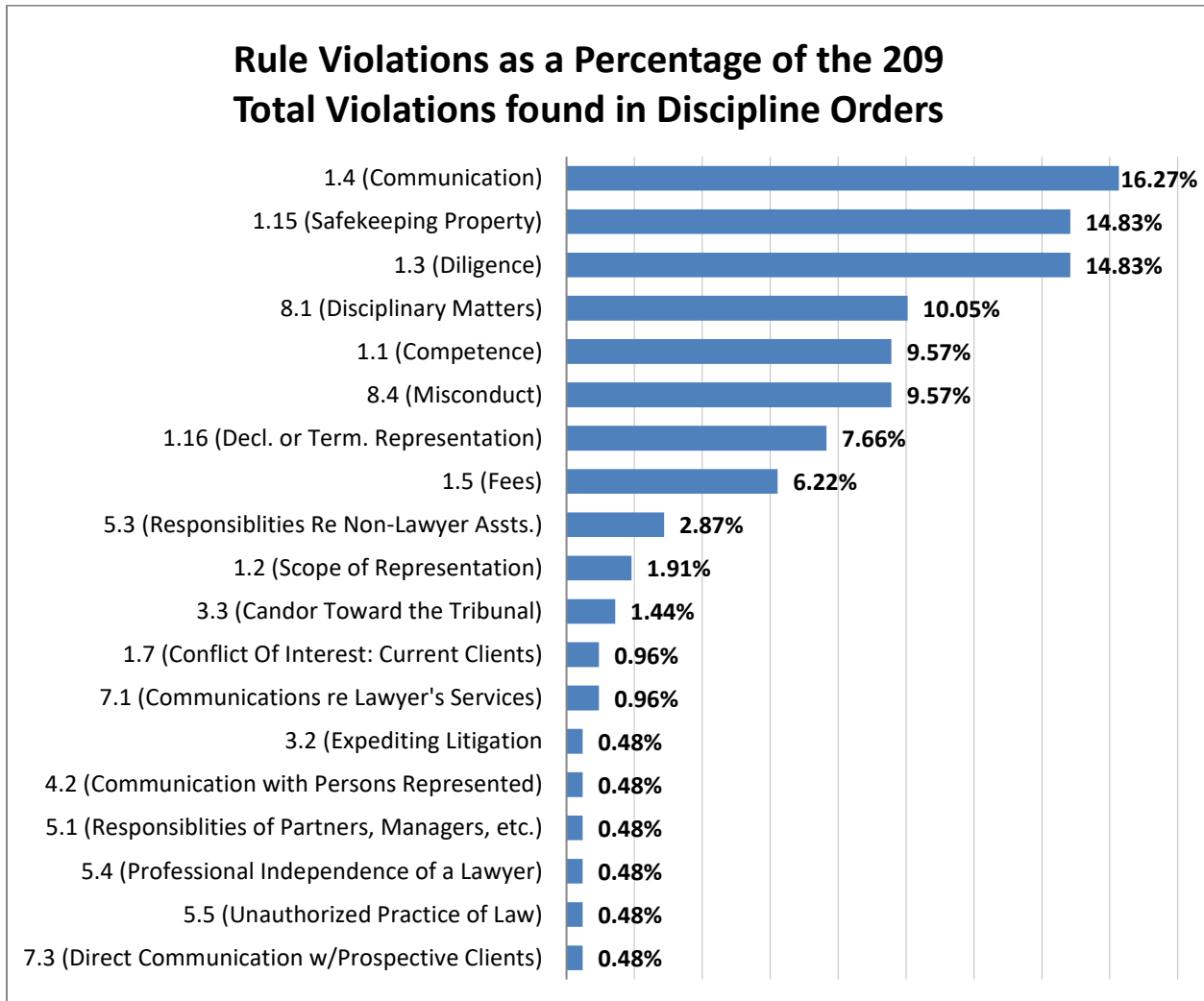
2) Committees

The OPC participates in committees with respect to attorney conduct. Chief Disciplinary Counsel of the OPC sits as a voting member of the Utah Supreme Court's Advisory Committee on the Rules of Professional Practice. OPC counsel sits as a voting member of the Ad Hoc Ethics and Discipline Committee on Rules which addresses proposed rule changes to the RLDD and Standards for Imposing Lawyer Sanctions. OPC counsel sits as a non-voting member on the Utah State Bar's Ethics Advisory Opinion Committee.

3) Rule Violations and Source of Information

The OPC has collected and categorized other data regarding its cases. Specifically, the data collected provide statistics on the rule violations.

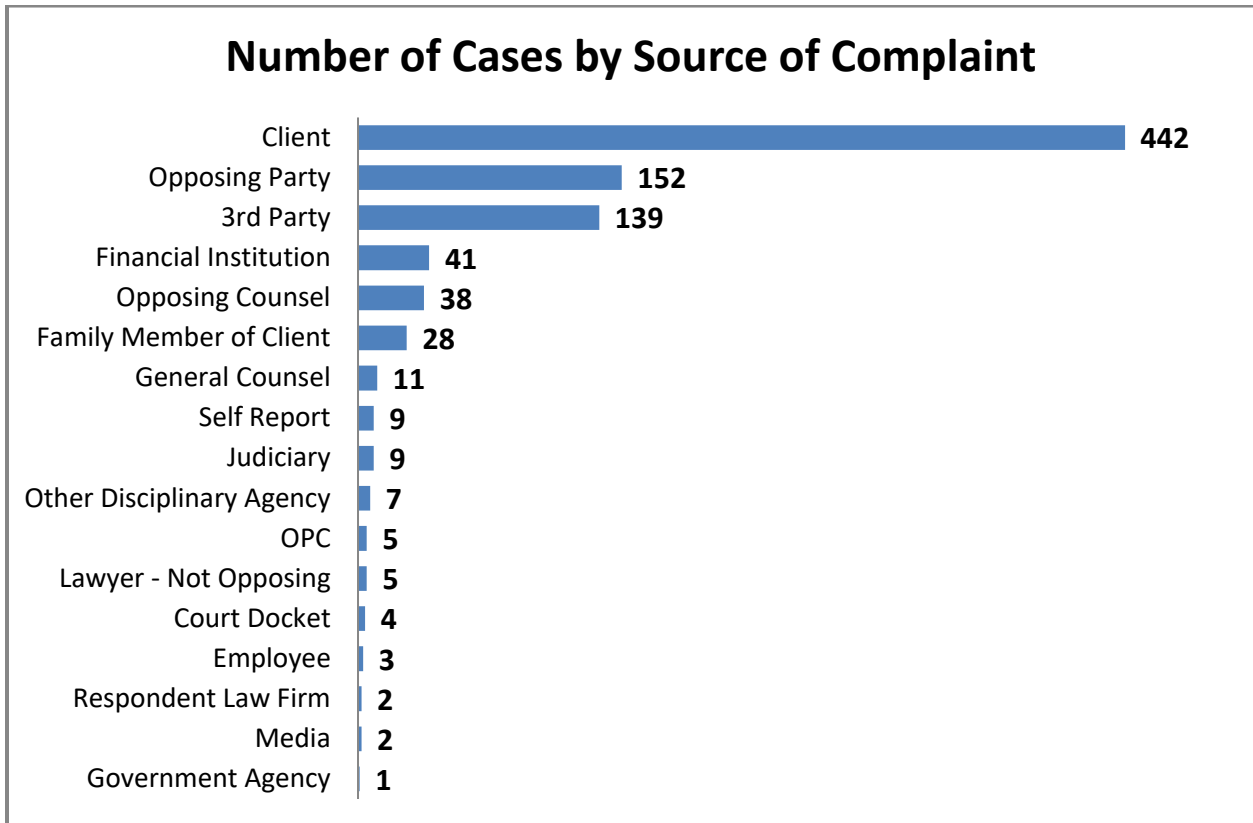
(a) For example, using data from the 44 orders of discipline entered in the year 2018-2019, which resulted in a finding of 209 total rule violations, we can see the frequency with which various rules were violated:



The OPC's impression is that violations of Rule 1.1 (Competence) commonly derive from attorneys missing court appearances; that violations of Rule 1.5 (Fees) commonly arise from attorneys collecting fees without performing meaningful work; that violations of Rule 1.15 (Safekeeping Property) often arise from attorneys failing to keep their earned money separate from clients' money or failing to promptly provide an accounting of how fees were used; that violations of Rule 1.16 (Declining or Terminating Representation) commonly result from

attorneys withholding the client file upon termination of the representation; violations of Rule 8.1(b) (Bar Admission and Disciplinary Matters) usually are based upon attorneys failing to respond to the OPC's lawful requests for information in the course of disciplinary investigations with the most common failure as a violation of this Rule, the failure to timely respond to the NOIC; and violations of Rule 8.4 (Misconduct) commonly arise from criminal conduct, deceitful or fraudulent conduct or conduct prejudicial to the administration of justice. Accordingly, the OPC's CLE presentations often focus on helping practitioners avoid these particular problems.

(b) In year 2018-2019, information regarding possible attorney misconduct was received from the following sources:

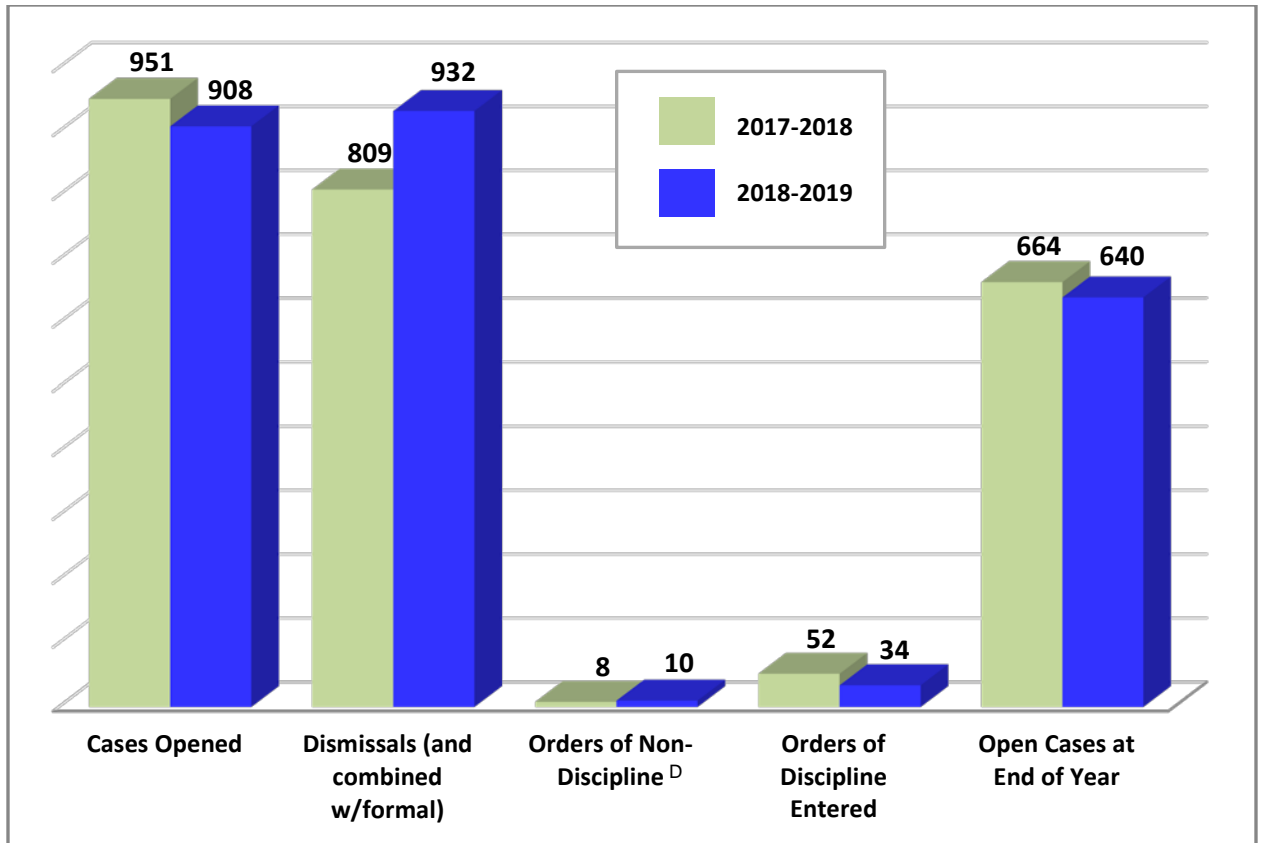


IV. PROGRESS AND GOALS ON CASES

The OPC, like every other state bar disciplinary authority, has and will continue to have unfinished work. Furthermore, the OPC, like every other state bar disciplinary authority, has and will continue to have a percentage of its unfinished work accumulate at the informal stage. The reason for this is the nature of the work. In this regard, the OPC processes disciplinary cases against attorneys who are often determined to use every means at their disposal to protect their license to practice law. This sometimes makes investigating and processing cases analogous to a criminal proceeding. In these cases, it tends to lengthen the processing at both the informal and post-informal stages. Notwithstanding the nature of the work, it should be noted that the OPC's overriding mission is to perform its responsibility in a professional and civil manner.

The OPC case progress goal is to have a system in place that keeps cases moving so the unfinished work at the informal stage is in percentage numbers as small as possible. This goal must be accomplished while simultaneously, and as expeditiously as possible, moving to resolution the larger percentage of cases that are at the post-informal stage (i.e., cases before Screening Panels or the District Court; cases on appeal; cases holding for resolution of a companion formal case; or cases held in abeyance pending related litigation).

As progress points of comparison of this year with last year:



As can be seen from the chart:

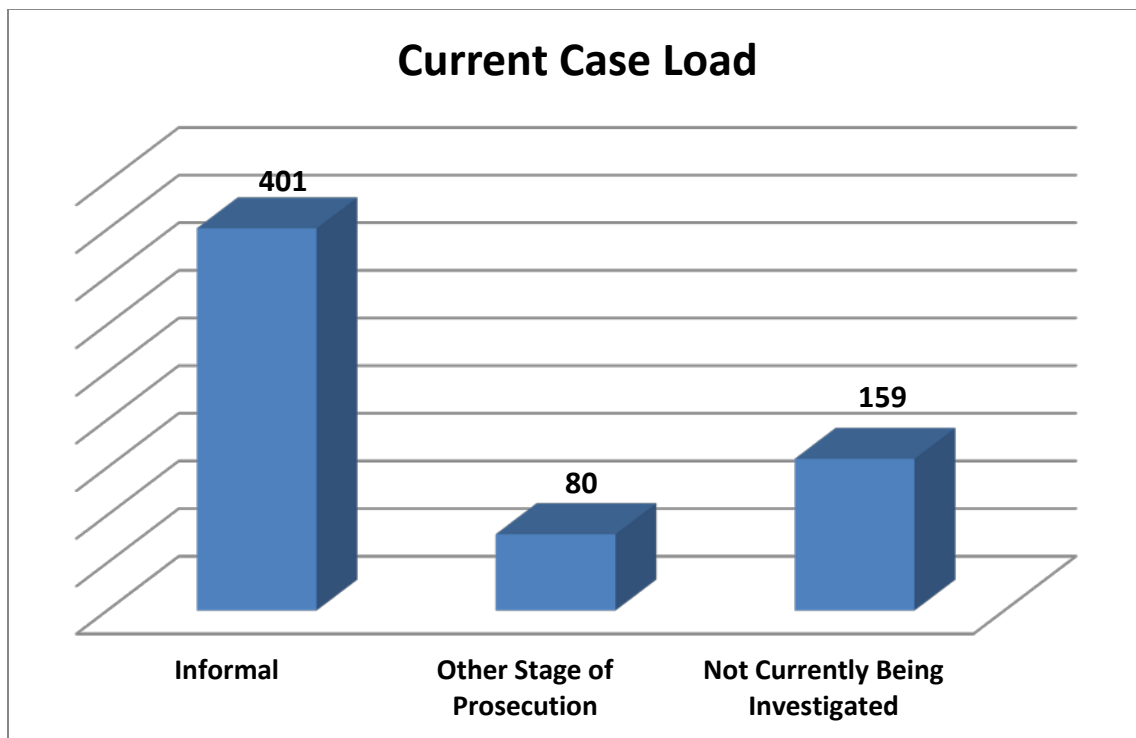
- (1) Cases opened this year decreased by approximately 4.5%;
- (2) Dismissals (and combined with formal) this year increased by just over 15%;
- (3) Orders of non-discipline entered this year increased by 25%;
- (4) Orders of discipline entered this year decreased by just over 34%; and
- (5) Active case numbers at the end of this year decreased by approximately 3.6%.

The OPC has a goal to reduce its active case number each year by closing more cases in a year than the office receives in that year. This year, the OPC accomplished

^D Orders of Non-Discipline include Dismissal, Reinstatement, Reinstatement Denied, Probation Terminated, and Trusteeship Terminated.

this goal because it opened 908 cases and closed 932^E cases and its active case number decreased by approximately 3.6%.

Of the OPC's current case load (640), 401 are at the informal stage^F, 80 are at other stages of investigation/prosecution^G, and 159 are not currently being investigated by the OPC^H.



Of the 401 cases at the informal stage, 141 or approximately 35% have been in the informal stage for over 180 days. Further breaking down the 141 cases that have been at the informal stage for over 180 days; approximately 62% of those cases have been at that stage for less than a year; and approximately 30% of those cases have been at that stage for between one and two years. So only approximately 8% of those

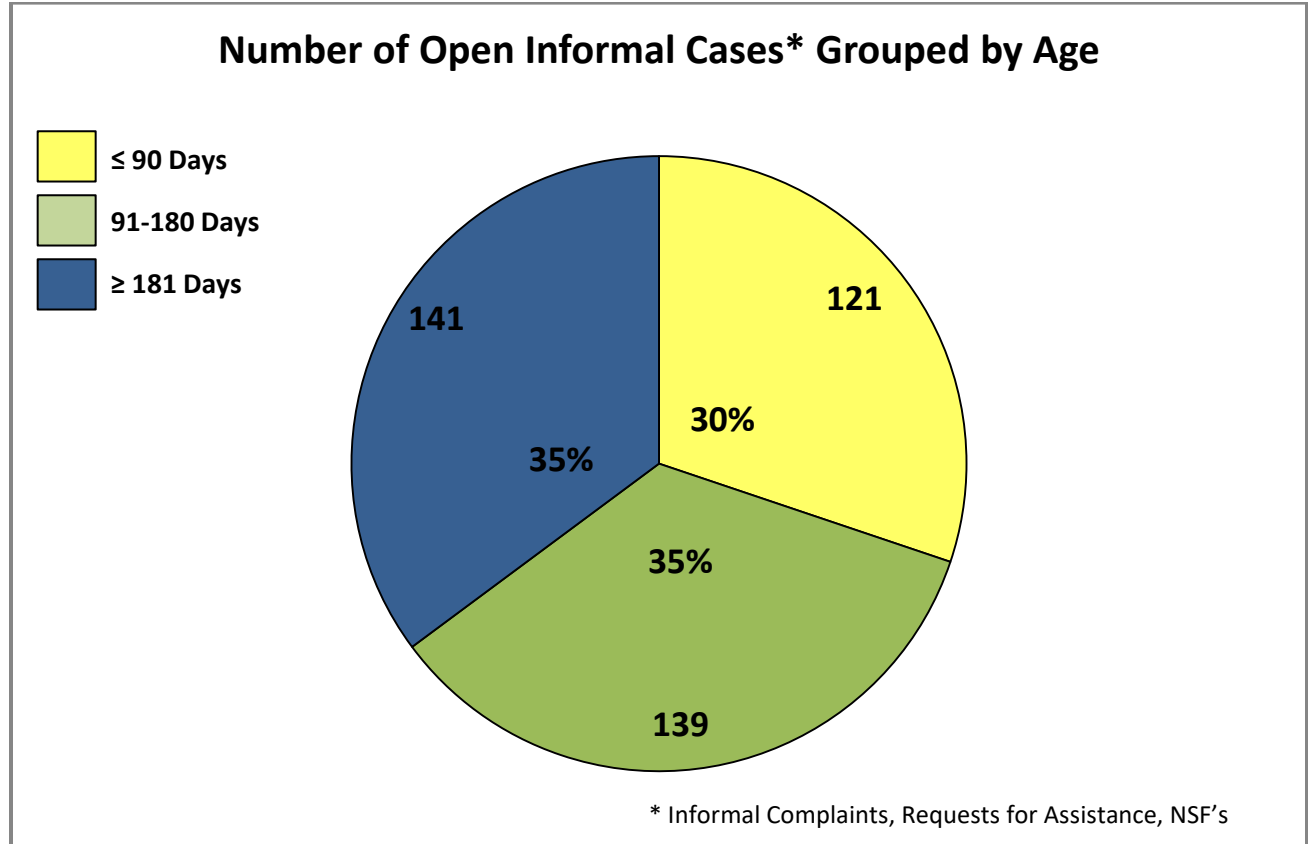
^E The total of Dismissals (and Combined w/Formal) and all Orders (discipline and non-discipline).

^F Informal Complaints, Requests for Assistance, NSFs.

^G Combined with Formal, Exceptions, Formal, Formal Appeal, Informal Appeal, Media/Court Information, Reciprocal, Reinstatement, Rule 14-519.

^H Abeyance, At CAP, Diversion, Special Prosecutor.

cases have been at that stage for over two years.



It should also be noted that the OPC filed a significant number of new formal cases. In this respect, in addition to opening 11 new cases in the areas of reinstatement/reciprocal¹, the OPC filed 13 new formal cases with the District Court (the 13 formal cases include an additional 23 underlying informal complaints).

The OPC does not simply concentrate its efforts on older cases: it attempts to provide expedited and efficient work on all cases, new and old. This work method is intended to keep cases progressing.

The Central Intake System greatly aids case processing goals. Central Intake enables the OPC to address all information coming to its attention (both notarized and

¹ Seven Reinstatements and four Reciprocal cases.

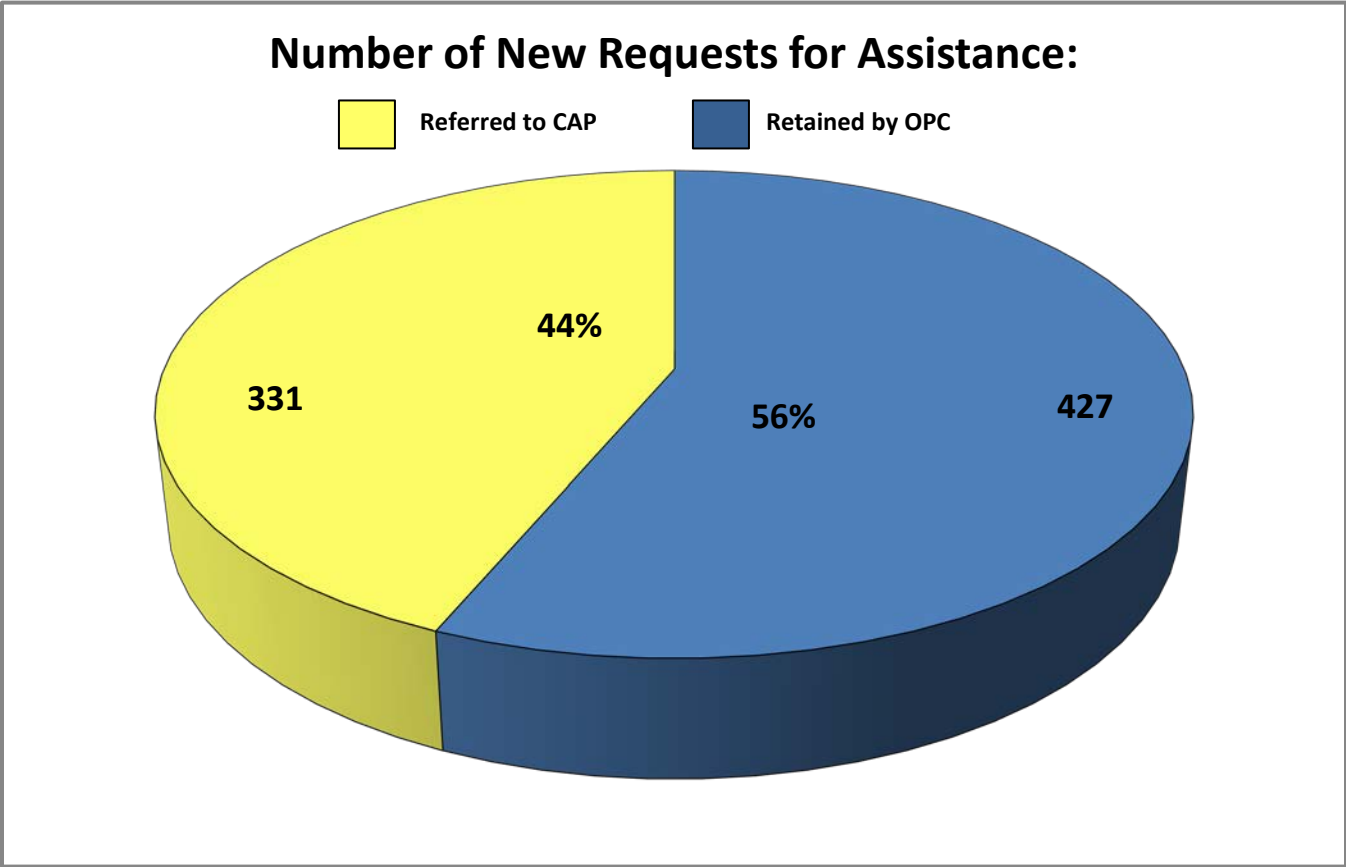
non-notarized) and to quickly and efficiently determine the appropriate track for the information. This leaves more resources to address cases raising more serious ethical allegations, resulting in quicker case processing for all cases.

V. CONSUMER ASSISTANCE PROGRAM

The CAP is not part of the OPC, but the OPC works in coordination with it, and reviews information sent to the Utah State Bar as a non-notarized Request for Assistance. Additionally, for more extensive coordination between the OPC and CAP to ensure that cases do not fall between any gaps of the OPC's and CAP's separate purview, the OPC receives periodic listings of CAP cases from CAP to review and determine if there is overlap between CAP and the OPC on the case or attorney; and to determine if any of the listed cases are cases that are more appropriately handled by the OPC. CAP's listed cases include all cases under review by CAP (i.e., phone calls, emails, Requests for Assistance).

The OPC's review of CAP cases ensures that allegations of serious misconduct are not processed as Requests for Assistance. In year 2018-2019, the OPC reviewed 758 Request for Assistances which can be reviewed as part of its CAP review system, nearly 44% (331) of which the OPC referred to CAP. Only 42 of these matters came back to the OPC.^J

^J 12 of the 42 that came back to the OPC were due to the CAP attorney being unavailable.



Thus, with respect to year 2018-2019, 289 matters were resolved by CAP without the need for further OPC review.^K The OPC uses the resources normally needed for reviewing and resolving the cases that are handled by CAP to process cases where there are serious ethical violations.

VI. GOALS FOR YEAR 2019-2020

The OPC will continue to work toward the goals outlined in this report. Specifically, the OPC has a responsibility to resolve disciplinary complaints in a uniform, expeditious, professional, civil and systematic way to protect the public, clients, and the legal profession from the professional misconduct of attorneys. The overriding goal is to

^K Since CAP is not part of the OPC, the OPC does not have complete statistics on cases resolved by CAP in a year.

continue to develop the OPC case processing system to ensure that the majority of resources are utilized to more quickly prosecute those cases where it is appropriate to file formal complaints with the District Court.

CONCLUSION

The OPC staff is excellent and continues its hard work. The OPC will continue its efforts towards efficiency in the expedition of cases. The OPC looks forward to another productive year.

Handwritten signature of Billy L. Walker in black ink.

Billy L. Walker
Chief Disciplinary Counsel
Office of Professional Conduct

Tab 3

Rule 4-906. Guardian ad litem program.

Intent:

To establish the responsibilities of the Guardian ad Litem Oversight Committee established in Rule 1-205.

To establish the policy and procedures for the management of the guardian ad litem program.

To establish responsibility for management of the program.

To establish the policy and procedures for the selection of guardians ad litem.

To establish the policy and procedures for payment for guardian ad litem services.

To establish the policy and procedures for complaints regarding guardians ad litem and volunteers.

Applicability:

This rule shall apply to the management of the guardian ad litem program.

This rule does not affect the authority of the Utah State Bar to discipline a guardian ad litem.

Statement of the Rule:

(1) Guardian ad Litem Oversight Committee. The Committee shall:

(1)(A) develop and monitor policies of the Office of Guardian ad Litem to:

(1)(A)(i) ensure the independent and professional representation of a child-client and the child's best interest; and

(1)(A)(ii) ensure compliance with federal and state statutes, rules and case law;

(1)(B) recommend rules of administration and procedure to the Judicial Council and Supreme Court;

(1)(C) select the Director of the Office of Guardian ad Litem in consultation with the State Court Administrator;

(1)(D) develop a performance plan for the Director;

(1)(E) monitor the Office's caseload and recommend to the Judicial Council adequate staffing of guardians ad litem and staff;

(1)(F) develop standards and procedures for hearing and deciding complaints and appeals of complaints; and

(1)(G) hear and decide complaints and appeals of complaints as provided in this rule.

(2) Qualifications of the director. The Director shall have the qualifications provided by the Utah Code.

(3) Responsibilities of the director. In addition to responsibilities under the Utah Code, the Director shall have the following responsibilities.

(3)(A) Manage the Office of Guardian ad Litem to ensure that minors who have been appointed a guardian ad litem by the court receive qualified guardian ad litem services.

(3)(B) Develop the budget appropriation request to the legislature for the guardian ad litem program.

(3)(C) Coordinate the appointments of guardians ad litem among different levels of courts.

(3)(D) Monitor the services of the guardians ad litem, staff and volunteers by regularly consulting with users and observers of guardian ad litem services, including judges, court executives and clerks, and by requiring the submission of appropriate written reports from the guardians ad litem.

(3)(E) Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7, and 8 is best managed by full or part time employment or by contract.

(3)(F) Select guardians ad litem and staff for employment as provided in this rule. Select volunteers. Coordinate appointment of conflict counsel.

(3)(G) Supervise, evaluate, and discipline guardians ad litem and staff employed by the courts and volunteers. Supervise and evaluate the quality of service provided by guardians ad litem under contract with the court.

(3)(H) Monitor and report to the Committee guardian ad litem, staff and volunteer compliance with federal and state statutes, rules and case law.

(3)(I) Prepare and submit to the Committee in August an annual report regarding the development, policy, and management of the guardian ad litem program and the training and evaluation of guardians ad litem, staff and volunteers. The Committee may amend the report prior to release to the Legislative Interim Human Services Committee.

(4) Qualification and responsibilities of guardian ad litem. A guardian ad litem shall be admitted to the practice of law in Utah and shall demonstrate experience and interest in the applicable law and procedures. The guardian ad litem shall have the responsibilities established by the Utah Code.

(5) Selection of guardian ad litem for employment.

(5)(A) A guardian ad litem employed by the Administrative Office of the Courts is an at-will employee subject to dismissal by the Director with or without cause.

(5)(B) A guardian ad litem employed by the Administrative Office of the Courts shall be selected by the Director. Prior to the Director making a selection, a panel shall interview applicants and make hiring recommendations to the Director. The interview panel shall consist of the Director (or Director's designee) and two or more of the following persons:

(5)(B)(i) the managing attorney of the local guardian ad litem office;

(5)(B)(ii) the trial court executive of the district court or juvenile court;

(5)(B)(iii) a member of the Committee;

(5)(B)(iv) a member of the Utah State Bar Association selected by the Director; or

(5)(B)(v) a member selected by the Director.

(6) Conflicts of interest and disqualification of guardian ad litem.

(6)(A) In cases where a guardian ad litem has a conflict of interest, the guardian ad litem shall declare the conflict and request that the court appoint a conflict guardian ad litem in the matter. Any party who perceives a conflict of interest may file a motion with the court setting forth the nature of the conflict and a request that the guardian ad litem be disqualified from further service in that case. Upon a finding that a conflict of interest exists, the court shall relieve the guardian ad litem from further duties in that case and appoint a conflict guardian ad litem.

(6)(B) The Administrative Office of the Courts may contract with attorneys to provide conflict guardian ad litem services.

(6)(C) If the conflict guardian ad litem is arranged on a case-by-case basis, the Court shall use the order form approved by the Council. The Order shall include a list of the duties of a guardian ad litem. The court shall distribute the Order as follows: original to the case file and one copy each to: the appointed conflict guardian ad litem, the guardian ad litem, all parties of record, the parents, guardians or custodians of the child(ren), the court executive and the Director.

(6)(D) A conflict guardian ad litem's compensation shall not exceed \$50 per hour or \$1000 per case in any twelve month period, whichever is less. Under extraordinary circumstances, the Director may extend the payment limit upon request from the conflict guardian ad litem. The request shall include justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most guardian ad litem assignments. Incidental expenses incurred in the case shall be included within the limit. If a case is appealed, the limit shall be extended by an additional \$400.

(7) Staff and Volunteers.

(7)(A) The Director shall develop a strong volunteer component to the guardian ad litem program and provide support for volunteer solicitation, screening and training. Staff and volunteers shall have the responsibilities established by the Utah Code.

(7)(B) Training for staff and volunteers shall be conducted under the supervision of the attorney guardian ad litem with administrative support provided by the Director. Staff and volunteers shall receive training in the areas of child abuse, child psychology, juvenile and district court procedures and local child welfare agency procedures. Staff and volunteers shall be trained in the guidelines established by the National Court Appointed Special Advocate Association.

(8) Private guardians ad litem.

(8)(A) The Director shall maintain a list of private attorney guardians ad litem qualified for appointment.

(8)(B) To be included on the list of eligible private attorney guardians ad litem, an applicant shall apply for eligible private attorney guardian status to the Utah Office of Guardian ad Litem and:

(8)(B)(i) show membership in good standing in the Utah State Bar;

(8)(B)(ii) provide a BCI criminal history report;

(8)(B)(iii) provide a DCFS Child Abuse Data Base report (and like information from any state in which the applicant has resided as an adult);

(8)(B)(iv) provide a certificate of completion for any initial or additional necessary training requirements established by the Director;

(8)(B)(v) agree to perform in a competent, professional, proficient, ethical, and appropriate manner and to meet any minimum qualifications as determined by the Director; and

(8)(B)(vi) agree to be evaluated at the discretion of the Director for competent, professional, proficient, ethical, appropriate conduct, and/or performance, and minimum qualifications.

(8)(C) Upon the appointment by the court of a private guardian ad litem, the court shall:

(8)(C)(i) use the following language in its order: "The Court appoints a private attorney guardian ad litem to be assigned by the Office of Guardian ad Litem, to represent the best interests of the minor child(ren) in this matter.";

(8)(C)(ii) designate in the order whether the private attorney guardian ad litem shall:

(8)(C)(ii)(a) be paid the set fee, as established by paragraph (8)(F), and an initial retainer;

(8)(C)(ii)(b) not be paid and serve pro bono; or

(8)(C)(ii)(c) be paid at a rate less than the set fee in paragraph (8)(F); and

(8)(C)(iii) send the order to the Director c/o the Private Attorney Guardian ad Litem Program.

(8)(D) Upon receipt of the court's order appointing a private guardian ad litem, the Director shall contact and assign the case to an eligible attorney, if available.

(8)(E) Upon accepting the court's appointment, the assigned attorney shall file a notice of appearance with the court within five business days of acceptance, and shall thereafter represent the best interests of the minor(s) until released by the court.

(8)(F) The hourly fee to be paid by the parties and to be ordered and apportioned by the court against the parties shall be \$150.00 per hour or at a higher rate as determined

reasonable by the court. The retainer amount shall be \$1000 or a different amount determined reasonable by the court. The retainer amount shall be apportioned by the court among the parties and paid by the parties.

(8)(G) Each year, private attorneys guardian ad litem shall complete three hours of continuing legal education credits that are relevant to the role and duties of a private attorney guardian ad litem. To meet this requirement, the Office of Guardian ad Litem shall provide training opportunities that are accredited by the Utah State Bar Board of Mandatory Continuing Legal Education. In order to provide access to all private attorney guardians ad litem, the Office of Guardian ad Litem shall provide multiple trainings at locations throughout the State or online.

A private attorney guardian ad litem who fails to complete the required number of hours shall be notified that unless all requirements are completed and reported within 30 days, the Director may remove the private attorney guardian ad litem from the list of eligible private attorney guardians ad litem.

(9) Complaints and appeals.

(9)(A)(i) Any person may file with the chair of the Committee a complaint regarding the Director, or regarding an administrative policy or procedure, not including complaints regarding a particular guardian ad litem, private guardian ad litem, or volunteer. If deemed necessary, the Committee may enter a recommendation to the Judicial Council, which may include discipline of the Director.

(9)(A)(ii) If a complaint regarding the Director or an administrative policy or procedure is received in the Director's office, the Director shall forward the complaint to the chair of the Committee within a reasonable time, but not more than 14 days after receipt.

(9)(B) Any person may file with the Director a complaint regarding a guardian ad litem employed by the Office of Guardian ad Litem, private attorney guardian ad litem, or volunteer, as defined by UCA 78A-6-902(4)(a). The decision of the Director regarding the complaint is final and not subject to appeal.

(9)(C) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, either may notify the Director that the dispute cannot be resolved. The decision of the Director regarding the dispute is final and not subject to appeal.

(9)(D) The failure of the Director to satisfactorily resolve a complaint against a guardian ad litem, private attorney guardian ad litem or volunteer is not grounds for a complaint against the Director.

(9)(E) The Director may remove with or without a complaint a private attorney guardian ad litem from the list of eligible private guardians ad litem for failure to perform or conduct

themselves in a competent, professional, proficient, ethical and/or appropriate manner or for failure to meet minimum qualifications, including the annual continuing legal education requirement. Within a reasonable time after the removal, and in the event the private attorney guardian ad litem has not yet been released by the court in a pending case, the Director shall provide written notice to such court of the Director's action, and the court may, in its discretion, determine whether the private attorney guardian ad litem should be released from the case.

(9)(F)(i) A complaint shall be in writing, stating the name and contact information of the complainant, the name of the child or children involved, the nature of the complaint and the facts upon which the complaint is based.

(9)(F)(ii) In resolving a complaint, the Director or the Committee shall conduct such investigation as the Director or the Committee determines to be reasonable. The Director or the Committee may meet separately or together with the complainant and the person against whom the complaint is filed.

(9)(F)(iii) The decision of the Director may include discipline of the person against whom the complaint is filed. If the complaint is against a private guardian ad litem, the decision may include removal of the private guardian ad litem from the list of private guardians ad litem and the conditions for reinstatement.

(9)(G) This subsection does not apply to conflict guardians ad litem.

Tab 4

Rule 11-501. Oversight Committee for the Office of Professional Conduct

Intent:

To establish an oversight committee for the Office of Professional Conduct (“OPC”).

To establish a method for appointing committee members, membership terms, a meeting schedule, and committee purposes and responsibilities.

Applicability:

This rule shall apply to the Oversight Committee for the Office of Professional Conduct.

Statement of the Rule:

(1) **Establishment.** The Oversight Committee for the Office of Professional Conduct is established as a committee of the Utah Supreme Court.

(1)(A) Composition.

(1)(A)(i) The Committee shall consist of five voting members, at least one of whom is a judge; one a member of the public; and one a past chair or past vice-chair of the Ethics and Discipline Committee. At least one of the members shall have an accounting background.

(1)(A)(ii) The Executive Director of the Utah State Bar shall be an ex-officio, non-voting member of the Committee.

(1)(B) **Appointment and member roles.** Committee members shall be appointed by the Utah Supreme Court and may serve up to two staggered four-year terms. The Supreme Court shall select a chair from among the Committee’s members. Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of the Committee in any calendar year, and at every meeting at which a new member of the Committee first attends, each Committee member shall briefly disclose the general nature of the member’s legal or other practice.

(1)(C) **Vacancies.** In the event of a vacancy on the Committee, the Supreme Court shall appoint a new Committee member to serve for the remainder of the unexpired term.

(1)(D) **Absences.** In the event that a Committee member fails to attend two consecutive Committee meetings, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that Committee member.

(1)(E) **Administrative support.** The Administrative Office of the Courts shall coordinate administrative support to the Committee.

(2) Oversight committee purpose, responsibilities, and authority.

(2)(A) **Purpose of the Committee.** The purpose of the Committee is to assist the OPC in implementing the reforms to the attorney discipline process adopted by the Utah Supreme Court and to provide oversight for the OPC.

(2)(B) **Committee responsibilities.** The following comprise the Committee’s responsibilities:

(2)(B)(i) Develop and implement realistic performance metrics and conduct annual evaluations of OPC and its Chief Disciplinary Counsel;

(2)(B)(ii) Develop a budget for the OPC and annually submit the budget by May 1 to the Utah Supreme Court and to the Utah State Bar;

(2)(B)(iii) Conduct a needs assessment for the OPC, setting forth a three- to five-year funding plan for the disciplinary process, including technology and staffing needs;

(2)(B)(iv) Annually, in conjunction with OPC Chief Disciplinary Counsel and the Chair of the Ethics and Discipline Committee, report to the Court regarding the operations of the OPC and the general standing of disciplinary matters and procedures; and

(2)(B)(v) Develop formal policies for the OPC, including records retention policies.

(2)(C) **Authority.** The Committee does not have authority to interfere with the prosecutorial independence of the OPC, but is granted access to confidential information as necessary to carry out its duties.

(3) **Meeting schedule.** The Committee shall meet as often as necessary to accomplish its purposes but at least annually.

Effective March 4, 2019 pursuant to Rule 11-105(5)