

AGENDA

Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Webex

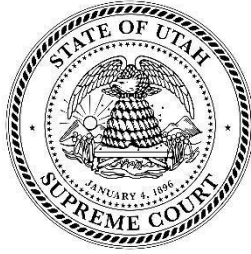
Date: May 24, 2021

Time: 4:00 p.m. to 5:30 p.m.

| | |
|---|------------------------------------|
| Action: Welcome and approval of the April 19, 2021 minutes. Tab 1: Draft meeting minutes for April 19, 2021. | Judge Diana Hagen |
| Discussion & Action: Review and approve OPC proposed budget Tab 2: OPC proposed budget | Judge Diana Hagen, Billy Walker |
| Discussion: Review OPC Annual Report and discuss Proposed OPC Performance Metrics Tab 3: OPC Annual Report Tab 4: Proposed OPC Performance Metrics | Judge Diana Hagen, Billy Walker |
| Other business – Schedule next meeting | |

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

Tab 1



Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Draft Meeting Minutes

April 19, 2021

Via Webex

4:00–5:30 p.m.

Judge Diana Hagen, presiding

Attendees:

Judge Diana Hagen, Chair
Magistrate Judge Brooke Wells
Roger Smith
Art Berger
Margaret Plane
John Baldwin, Ex-officio member

Guests:

Billy Walker, Office of Professional Conduct
Christine Greenwood, Ethics and Discipline Committee

Excused:

Nick Stiles, Staff Appellate Court Administrator
John Baldwin, Ex-officio member

Staff:

Marina Kelaidis, Recording Secretary

1. Welcome and approval of the March 30, 2021 minutes: (Judge Diana Hagen)

Judge Diana Hagen welcomed everyone to the meeting and asked for approval of the minutes.

Margaret Plane moved to approve the March 30, 2021 minutes. Roger Smith seconded the motion, and it passed unanimously.

2. Discussion & Action—Review of Sanction Rules 11-582 through 11-586: (Judge Diana Hagen)

Rule 11-584:

Sanctions for violating duties owed to the public:

No further recommendations.

Judge Hagen moved to approve the proposed changes to Rule 11-584 title, (a), (a)(1)(B), (a)(3) and (b). Judge Wells seconded the motion, and it passed unanimously.

Rule 11-585:

Sanctions for violating duties owed to the legal system:

Judge Hagen recommended amending the title of this rule by adding “Presumptive.” Judge Hagen also recommended amending paragraph (b) by replacing “fails to expedite” with “unreasonably delays” as well as replacing “brings a meritorious claim” with “brings a frivolous action.”

Judge Hagen recommended amending paragraph (b)(1) by replacing “violates a court order or rule” with “abuses the legal process.” Judge Hagen also recommended amending paragraph (b)(2) by replacing “knows that the Lawyer is violating a court order or rule,” with “knowingly abuses the legal process.” Judge Hagen also recommended amending paragraph (b)(3) by replacing “fails to comply with a court order or rule” with “abuses the legal process.” Judge Hagen further recommended amending paragraph (b)(4) by replacing “engages in an isolated instance of negligence in complying with a court order or rule,” with “negligently abuses the legal process in an isolated instance.”

Judge Hagen moved to approve the proposed changes to Rule 11-585 title, (b) and (b)(1)–(b)(4). Judge Wells seconded the motion, and it passed unanimously.

Rule 11-586:

Sanctions for violating duties owed as a professional:

Judge Hagen recommended amending the title of this rule by replacing “as a professional” with “to the legal profession.”

The remaining paragraphs of this rule will be further discussed by the Committee via email.

3. Adjournment:

The next meeting will be held on Monday, May 24, 2021 from 4:00-5:30 p.m.

The meeting adjourned at 5:40 p.m.

Tab 2

Utah State Bar
Draft FY2022 Budget
Based on Actual Results through 3/31/21
06 - Office of Prof Conduct

| | Actual FY 2019 7/1/2018 6/30/2019 | Actual FY 2020 7/1/2019 6/30/2020 | Projected FY 2021 4/1/2021 6/30/2021 | Draft Budget FY 2022 7/1/2021 6/30/2022 | \$ Change 2021 Projected vs 2022 Budget | % Change 2021 Projected vs 2022 Budget |
|--|--|--|---|---|---|--|
| Revenue | | | | | | |
| 4095 · Miscellaneous Income | 6,269 | 4,100 | 2,603 | 4,000 | 1,397 | 54% |
| 4200 · Seminar Profit/Loss | 27,065 | 9,546 | 46,893 | 46,893 | - | 0% |
| Total Revenue | 33,333 | 13,646 | 49,496 | 50,893 | 1,397 | 3% |
| Expenses | | | | | | |
| Program Services | | | | | | |
| 5002 · Meeting facility-internal only | - | 95 | 95 | 95 | - | 0% |
| 5015 · Investigations | 118 | 425 | 560 | 560 | - | 0% |
| 5040 · Witness & Hearing Expense | 2,011 | 2,038 | 148 | 1,006 | 858 | 579% |
| 5041 · Process Serving | 1,211 | 1,049 | 681 | 605 | (75) | -11% |
| 5046 · Court Reporting | - | - | 33 | 33 | - | 0% |
| 5064 · MCLE Fees Paid | - | - | - | - | - | #DIV/0! |
| 5075 · Food & Bev-external costs only | 659 | 331 | - | 330 | 330 | #DIV/0! |
| 5079 · Soft Drinks | 86 | 336 | 184 | 184 | - | 0% |
| 5085 · Misc. Program Expense | - | - | - | - | - | #DIV/0! |
| 5702 · Travel - Lodging | 7,257 | 6,528 | 319 | 3,819 | 3,500 | 1097% |
| 5703 · Travel - Transportation/Parking | 3,338 | 4,646 | 5 | 1,505 | 1,500 | 33333% |
| 5704 · Travel - Mileage Reimbursement | 2,936 | 332 | - | 1,500 | 1,500 | #DIV/0! |
| 5705 · Travel - Per Diems | 1,723 | 1,835 | - | 850 | 850 | #DIV/0! |
| 5805 · ABA Annual Meeting | 5,350 | 1,573 | - | 300 | 300 | #DIV/0! |
| 5810 · ABA Mid Year Meeting | 2,364 | 5,060 | - | 3,500 | 3,500 | #DIV/0! |
| Total Program Services Expenses | 27,053 | 24,596 | 2,023 | 14,285 | 12,262 | 606% |
| Salaries & Benefits | | | | | | |
| 5510 · Salaries/Wages | 945,401 | 976,762 | 986,343 | 1,018,399 | 32,056 | 3% |
| 5605 · Payroll Taxes | 70,258 | 74,673 | 74,602 | 77,026 | 2,425 | 3% |
| 5610 · Health Insurance | 79,613 | 84,969 | 90,908 | 95,453 | 4,545 | 5% |
| 5620 · Health Ins/Medical Reimb | 1,195 | 2,152 | 4,398 | 4,398 | - | 0% |
| 5630 · Dental Insurance | 6,177 | 6,171 | 6,173 | 6,482 | 309 | 5% |
| 5640 · Life & LTD Insurance | 5,768 | 5,805 | 5,995 | 6,295 | 300 | 5% |
| 5650 · Retirement Plan Contributions | 86,153 | 95,528 | 87,905 | 90,762 | 2,857 | 3% |
| 5655 · Retirement Plan Fees & Costs | 6,775 | 7,060 | 6,216 | 6,838 | 622 | 10% |
| 5660 · Training/Development | 5,480 | 8,845 | 2,301 | 2,439 | 138 | 6% |
| Total Salaries/Benefit Expenses | 1,206,819 | 1,261,964 | 1,264,842 | 1,308,094 | 43,251 | 3% |
| General & Administrative | | | | | | |
| 7025 · Office Supplies | 6,738 | 5,659 | 3,964 | 3,964 | - | 0% |
| 7035 · Postage/Mailing, net | 4,994 | 4,044 | 4,245 | 4,245 | - | 0% |
| 7040 · Copy/Printing Expense | 17,855 | 14,767 | 12,395 | 12,395 | - | 0% |
| 7045 · Internet Service | 104 | 466 | - | - | - | #DIV/0! |
| 7050 · Computer Maintenance | 3,711 | 5,153 | 2,966 | 2,966 | - | 0% |
| 7055 · Computer Supplies & Small Equip | 2,482 | 2,208 | 1,701 | 1,701 | - | 0% |
| 7089 · Membership Database Fees | 11,133 | 11,793 | 4,127 | 15,127 | 11,000 | 267% |
| 7100 · Telephone | 14,441 | 15,164 | 16,843 | 16,843 | - | 0% |
| 7105 · Advertising | - | 225 | 75 | 75 | - | 0% |
| 7106 · Public Notification | 1,149 | 465 | 754 | 754 | - | 0% |
| 7110 · Publications/Subscriptions | 12,079 | 13,037 | 15,492 | 15,492 | - | 0% |
| 7120 · Membership/Dues | 4,745 | 4,460 | 4,020 | 4,020 | - | 0% |
| 7150 · E&O/Off & Dir Insurance | 14,327 | 14,478 | 14,700 | 14,700 | - | 0% |
| 7175 · O/S Consultants | 3,366 | 31,173 | 25,640 | 26,922 | 1,282 | 5% |
| 7176 · Bar Litigation | - | 7,000 | - | - | - | #DIV/0! |
| 7178 · Offsite Storage/Backup | 11,616 | 3,889 | - | - | - | #DIV/0! |

Utah State Bar
Draft FY2022 Budget
Based on Actual Results through 3/31/21
06 - Office of Prof Conduct

| | Actual FY 2019 | Actual FY 2020 | Projected FY 2021 | Draft Budget FY 2022 | \$ Change 2021 Projected vs 2022 Budget | % Change 2021 Projected vs 2022 Budget |
|---|-----------------------|-----------------------|-----------------------|----------------------------|---|--|
| | 7/1/2018 6/30/2019 | 7/1/2019 6/30/2020 | 4/1/2021 6/30/2021 | 7/1/2021 6/30/2022 | | |
| 7195 · Other Gen & Adm Expense | 446 | 354 | 870 | 870 | - | 0% |
| Total General & Administrative Expenses | 109,184 | 134,334 | 107,792 | 120,074 | 12,282 | 11% |
| Building Overhead | | | | | | |
| 6015 · Janitorial Expense | 5,608 | 4,776 | 2,765 | 2,848 | 83 | 3% |
| 6020 · Heat | 3,871 | 3,372 | 3,747 | 3,860 | 112 | 3% |
| 6025 · Electricity | 8,570 | 7,751 | 7,295 | 7,514 | 219 | 3% |
| 6030 · Water/Sewer | 1,409 | 1,457 | 1,177 | 1,213 | 35 | 3% |
| 6035 · Outside Maintenance | 2,484 | 3,102 | 2,613 | 2,691 | 78 | 3% |
| 6040 · Building Repairs | 4,361 | 3,201 | 3,409 | 3,511 | 102 | 3% |
| 6045 · Bldg Mtncn Contracts | 6,700 | 7,347 | 6,477 | 6,671 | 194 | 3% |
| 6050 · Bldg Mtncn Supplies | 986 | - | - | - | - | #DIV/0! |
| 6065 · Bldg Insurance/Fees | 3,247 | 3,434 | 3,673 | 3,783 | 110 | 3% |
| 6070 · Building & Improvements Depre | 10,196 | 10,137 | 11,945 | 11,945 | - | 0% |
| 6075 · Furniture & Fixtures Depre | 2,558 | 1,653 | 822 | 822 | - | 0% |
| 7065 · Computers, Equip & Sftwre Depr | 32,765 | 26,023 | 20,235 | 20,235 | - | 0% |
| Total Building Overhead Expenses | 82,755 | 72,254 | 64,159 | 65,094 | 935 | 1% |
| Total Expenses | 1,425,811 | 1,493,149 | 1,438,818 | 1,507,547 | 68,730 | 5% |
| Net Profit (Loss) | \$ (1,392,478) | \$ (1,479,502) | \$ (1,389,321) | \$ (1,456,654) | \$ (67,333) | 5% |

NOTES TO OPC BUDGET:

- 1 Aside from regular required services, the following computer or IT maintenance contracts have been included in the FY 21/22 budget above for accounts 7050 · Computer Maintenance, 7089 · Membership Database, 7100 · Telephone and 7175 · O/S Consultants

| Account | Amount | Vendor | Purpose |
|-----------------------------|---------------|--------------|---|
| 7175 · O/S Consultant | \$881/month | Braintrace | Threat traffic monitoring |
| 7050 · Computer Maintenance | \$250/month | Euclid | Annual maintenance |
| 7175 · O/S Consultant | \$1,250/month | ClearLink | Computer virus protection, routine computer updates and server, workstation & network maintenance |
| 7100 · Telephone | \$88/quarter | ClearLink | Vulnerability scans |
| 7100 · Telephone | \$2,500/year | ClearLink | Firewall maintenance |
| 7100 · Telephone | \$540/month | ClearLink | Office 365 Windows subscription |
| 7100 · Telephone | \$530/month | Mitel | Phone extensions, phones and voicemail |
| 7100 · Telephone | \$90/month | Google Fiber | Internet provider |
| 7089 · Membership Database | \$8,000/year | Unknown | JustWare/case management replacement |

NOTE: The annual total cost of the items listed above is approximately \$53,400, which have been included in the FY 21/22 budget for accounts listed above.

- 2 In addition to the contractual amounts with ClearLink listed above, ancillary IT support provided by Euclid is charged at \$175/hour. It is anticipated and budgeted that OPC will incur approximately 10 hours during FY 21/22.
- 3 No major software upgrades are expected for the FY 21/22 for OPC.
- 4 No major computer/hardware purchases are expected for FY21/22 for OPC.
- 5 Each year, the Bar anticipates an operational reserve of \$200,000. Of that reserve, \$25,000 has been allocated to OPC.
- 6 Any disciplinary-related expenses billed to General Counsel remain as a General Counsel expense and are not charged to OPC; this includes salaries for Bar staff and the Ethics and Discipline Committee Chair.

Tab 3

OFFICE OF PROFESSIONAL CONDUCT

ANNUAL REPORT February 2021



INTRODUCTION

This report on the Office of Professional Conduct (“OPC”) will focus on the following areas: (I) staff composition; (II) law misconduct case process and procedure; (III) statistics for July 1, 2019 to June 30, 2020 (“year 2019-2020”); (IV) progress and goals on cases; (V) the Consumer Assistance Program;^A (VI) statistics for January 1, 2020 to December 31, 2020 (“year 2020”);^B and (VII) goals for January 1, 2021 to December 31, 2021 (“year 2021”).

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

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

^B The annual reporting years are explained later in this report.

OPC Oversight Committee. The current voting members of the OPC Oversight Committee are:

- Judge Diana Hagen – Chair, Utah Court of Appeals
- Art Berger – Attorney
- Margaret Plane – Attorney
- Roger Smith – Accountant
- Retired Magistrate Judge Brooke Wells – United States District Court for the District of Utah

The OPC now has a separate website independent of the Bar at opcutah.org. The website is designed to provide the ease of obtaining information in the following specific areas: the purpose of the OPC, annual report archives, OPC directory, rules, filing a complaint, case status update, lawyer public discipline, disciplinary history requests, OPC speaker requests, and OPC contacts.

As reported in the last Annual Report, 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”). Therefore, the OPC also has regulatory authority over LPPs. The OPC did not have any cases regarding LPPs in this reporting period.

The Utah Supreme Court did amend the procedural rules as a result of the ABA review and recommendations. These procedural rule amendments went into effect December 15, 2020. These amendments were significant and affected many areas. As the report proceeds it will be pointed out where the changes have affected the lawyer discipline process. It is to be also noted that the amendments make clear that LPPs are included in the definition of “lawyer” for regulation. So reference in the report will be to

“lawyer” rather than to “attorney” to reflect the change of regulation for LPPs as of November 18, 2018.

A major change is the change to OPC’s annual reporting period. The previous reporting period was from July 1 to June 30 of any given 12-month period to align with the Utah State Bar’s fiscal years. The reporting year has been changed to January 1 to December 31 and this will also be the reporting period for the Chair of the Ethics and Discipline Committee. OPC’s last report was for the period ending June 30, 2019. Due to the change, this report will be for the previous 12-month period from July 1, 2019 to June 30, 2020 and for the new reporting period from January 1, 2020 to December 31, 2020.

I. STAFF COMPOSITION

The staff for year 2019-2020 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. The staff for year 2020 has remained the same as described above.

II. LAWYER MISCONDUCT CASE PROCESS AND PROCEDURE

A) Rules

Prior to December 15, 2020

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 lawyer 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.

Effective December 15, 2020.

Pertaining to year 2020 the Utah Supreme Court amendments to these rules are set forth in its Rules of Professional Practice related to the Discipline, Disability and

Sanctions Rules (“RDDS”) and are in Chapter 11, Article 5 regarding lawyers and Chapter 15 regarding specifically LPPs. Rules 11-520 and 11-521 of the RDDS are the overall authority for the OPC and Chief Disciplinary Counsel as head of the OPC.

B) Ethics and Discipline Committee

Prior to December 15, 2020

Pursuant to Rule 14-503 of the RLDD, 29 volunteer lawyers and eight volunteer non-lawyers 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 lawyer 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 lawyers. 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 lawyers and eight non-lawyers 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 2019-2020 composition of the Committee was as follows:

Christine Greenwood (Magleby Cataxinos & Greenwood), 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

Mark F. James (Hatch, James & Dodge, P.C.), Vice-Chair, Ethics and Discipline Committee

Brady Whitehead, Clerk, Ethics and Discipline Committee

Panel A

Andrea Martinez Griffin (Salt Lake Legal Defender Association), Chair
J. Gregory Hardman (Snow Jensen & Reece), Vice-Chair
Bryant J. McConkie (McConkie, Hales & Gunn)
Kimberly A. Neville (Dorsey & Whitney LLP)
Derek Williams (Attorney at Law)
Roger D. Sandack (Attorney at Law)
Sarah Sandberg, Public Member
Diane Walker, Public Member

Panel B

Rebecca S. Parr (Utah Department of Human Resource Management), Chair
Langdon T. Owen, Jr. (Cohne Kinghorn, PC), Vice-Chair
Leonor E. Perretta (Perretta Law Office)
Cassie J. Medura (Jennings & Medura, LLC)
Lara A. Swensen (Hatch James & Dodge)
J. Thomas Beckett (Parsons Behle & Latimer)
Joel Campbell, Public Member
Charles Haussler, Public Member

Panel C

Amy Hayes Kennedy (Dart, Adamson & Donovan), Chair
Kasey L. Wright (Wright Law Firm, P.C.), Vice-Chair
Jennifer F. Parrish (Magleby Cataxinos & Greenwood)
Randall L. Jeffs (Jeffs & Jeffs, PC)
Debra M. Nelson (Salt Lake Legal Defender Association)
Mitchell A. Stephens (Hatch James & Dodge)
Kari Stuart Jones, Public Member
Jonathan Bone, Public Member

Panel D

Betsy Haws (Backcountry.com), Chair
Mark E. Hindley (Stoel Rives, LLP), Vice-Chair
Darcy Goddard (Salt Lake County, District Attorney's Office)
David W. Tufts (Durham Jones & Pinegar)
Monica Diaz (Utah Juvenile Defender Attorneys)
Robert R. Harrison (Stilling & Harrison PLLC)
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 lawyers and one non-lawyer.

Effective December 15, 2020

Pursuant to Rule 11-510 of the RDDS, 21 volunteer lawyers and four volunteer non-lawyer members are to be appointed by the Utah Supreme Court for the purpose of the work of the Committee. All panel hearings must have five members present unless all parties agree to fewer than five, but not fewer than three. The description of the Screening Panel sub-committee work as outlined above is the same.

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

Prior to December 15, 2020

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 a lawyer 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 lawyer 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.

Effective December 15, 2020

The provisions regarding OPC's power and duties are essentially the same under Rule 11-521(a) of the RDDs. There is an exception pertaining to "readmission" which is now designated as "relicensure" and "informal complaints" are simply now referred to as "complaints." The elimination of the "informal" designation on complaints and the elimination of matters coming to the OPC as "requests for assistance" that could be

reviewed in coordination with CAP is a significant change to the processing of cases. In this respect, Rule 11-530(b) of the RDDS removed the notarization and verification requirements for complaints and now only requires an unsworn declaration as to the accuracy of the information. Thus, if the OPC receives information that does not have that requirement, the OPC notifies the Complainant that this is needed. The OPC also provides a form that can be used through its website.

Furthermore, pursuant to Rule 11-521(a) and Rule 11-530 of the RDDS, the OPC can initiate complaints in the same manner as under the previous rules. An OPC initiated complaint filing is complete when OPC delivers the complaint to the lawyer in hard copy or electronic form. The OPC initiated complaint does not have to have an unsworn declaration.

1) Central Intake System

Process

Prior to December 15, 2020

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.

Effective December 15, 2020

Since all cases are now complaints with the declaration, OPC has set up a system with three of its attorneys to review cases that were previously part of its CAP review process. Where appropriate, consistent with the criteria outlined above, in lieu of sending a case to CAP, the OPC will summarily dismiss the case (“Summary Review”). If the case does not meet the criteria where it would have previously been sent to CAP or it needs any further investigation, the case is kept and proceeds like other investigative cases where responses are needed.

2) Investigations

Initial Review

Prior to December 15, 2020

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 lawyer for information. Both the Complainant and the lawyer receive a dismissal letter, and a copy of the informal complaint is sent to the lawyer.

Effective December 15, 2020

The difference in this process is that the three formerly CAP review attorneys will conduct a Summary Review of these complaints and, looking at the “four corners,” summarily dismiss these cases based upon the criteria above. There is no need for reviewing these cases at weekly staff meetings.

Preliminary Investigation

Prior to December 15, 2020

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.

Effective December 15, 2020

This process does not change.

Settlement

Prior to December 15, 2020

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

Effective December 15, 2020

This policy does not change regarding cases that subsequently became a “Formal Complaint.” However, by rule these cases are now designated an “Action” not a “Formal Complaint.”

Notice of Informal Complaint

Prior to December 15, 2020

After the preliminary investigation and the request for informal responses, if the OPC determines that a formal response is needed from the lawyer 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 lawyer 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 lawyer 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 lawyer's response to the NOIC and, in most cases, continues its investigation by obtaining a reply from the Complainant to the lawyer'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).

Effective December 15, 2020

The above outlined description is essentially the same. The only differences are that "NOIC" is now designated as a "Notice" and the lawyer has 21 days in which to submit a response. The Rule cites are 11-521(a)(3) and 11-530(e) of the RLDDs.

Dismissal/Declination to Prosecute

Prior to December 15, 2020

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 lawyer 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 lawyer's practice.
- The OPC may decline to prosecute cases where the lawyer has already been disciplined in a lawyer 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 a lawyer discipline matter.
- The OPC may decline to prosecute cases where the lawyer 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

^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.

Effective December 15, 2020

The above-described process for dismissal/declination to prosecute remains the same. The pertinent rule citation is 11-530(g)(1).

3) Diversions

Prior to December 15, 2020

Diversion is an alternative to discipline that is entered into by agreement in lawyer discipline cases. Pursuant to Rule 14-533 of the RLDD, the Utah Supreme Court created a Diversion Committee; if the lawyer 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 lawyer is accused of misappropriating client funds; the lawyer's behavior will, or is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the lawyer has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the lawyer 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 lawyer 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 lawyer'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 lawyer necessary to address an lawyer's conduct.

The OPC notifies a lawyer of the diversion option when a case is received. A Complainant is notified of any proposed decision to refer a lawyer 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 lawyer 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.

Effective December 15, 2020

The details of the diversion program did not change with the notable exception of the following: (1) the Diversion Committee has been eliminated with now the approval of the diversion contract needed only by the OPC and the Respondent Lawyer, and (2) the

Screening Panels no longer have authority to recommend diversions. The OPC by policy plans to enhance its use of diversions by implementing a lawyer wellness/well-being component. The diversion rules are 11-550 to 11-555 of the RDDS.

4) Informal Appeals

Prior to December 15, 2020

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.

Effective December 15, 2020

The above description of the informal appeal process is essentially the same. The modification is that a Complainant has 21 days to file an appeal. The rule provision is 11-530(g)(2) of the RDDS.

5) Screening Panel

Prior to December 15, 2020

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 lawyer be (privately) admonished or publicly reprimanded;
 - If the Screening Panel recommends an admonition or public reprimand, the lawyer 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 a lawyer 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 lawyer 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 a lawyer 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.

Effective December 15, 2020

The above described Screening Panel process has been modified as follows: (1) as previously stated the “NOIC” is now a “Notice;” (2) Screening Panels no longer have the authority to dismiss by referral to the Diversion Committee; (3) for Screening Panel recommendations of public reprimand, a Respondent Lawyer may file an exception in accordance with Rule 11-532 of the RDDS or elect a trial de novo with the district court by notifying the Committee Chair, who will authorize the Action in accordance with Rule 11-536 of the RDDS; and (4) the Committee Chair no longer is required to sign the Action that OPC is authorized by the Screening Panel to file pursuant to Rule 11-536 of the RDDS.

6) Formal Complaints

Prior to December 15, 2020

A Formal Complaint must be filed in the county where the alleged misconduct occurred, or in the county where the lawyer 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

Effective December 15, 2020

The above-described process for “Formal Complaint” is essentially the same except, as stated above, cases are called an “Action,” “disbarments” are now designated as “delicensures,” and diversions have specifically been added to the District Court’s disposition list. Diversions still have to follow the requirements of Rules 11-550 to 11-555 of the RDDDS.

7) Formal Appeals

Prior to December 15, 2020

All appeals from District Court orders are directed to the Utah Supreme Court. Only the Respondent Lawyer 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 lawyer discipline cases.

Effective December 15, 2020

There have been no changes to this process.

8) Monitored Cases

Prior to December 15, 2020

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 lawyer 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 lawyer. Trusteeship cases generally require that someone inventory the lawyer's files, notify the lawyer'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 a lawyer 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 lawyers or firms that are willing and able to oversee a trusteeship.

Effective December 15, 2020

There have been no changes to this process.

9) Interim Suspension and Disability

Prior to December 15, 2020

Pursuant to Rules 14-518, 14-519, and 14-523 of the RLDD, if a lawyer 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 lawyer's honesty, trustworthiness, or fitness as a lawyer, 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.

Effective December 15, 2020

The rule pertaining to substantial threat of irreparable harm to the public (formerly Rule 14-518 of the RLDD, now Rule 11-563 of the RDDS) has been expanded to not only include an interim suspension from the practice of law but other remedies, such as limiting the Respondent Lawyer's practice area or placing the Respondent Lawyer on supervision pending disposition of the disciplinary proceeding. Thus Rule 11-563 has been renamed "Interim Discipline" rather than "Interim Suspension." The rules pertaining to the conviction of a crime which reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer (formerly Rule 14-519 of the RLDD, now Rule 14-564 of the RDDS) has been modified to include findings of guilt, pleas of guilty and pleas of no contest for consideration of whether the Respondent Lawyer should be placed on interim suspension. The rule regarding disability (formerly Rule 14-523 of the RLDD, now Rule 11-568 of the RDDS) is essentially the same.

10) Abeyances

Prior to December 15, 2020

Lawyer 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 Lawyer. 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").

Effective December 15, 2020

The process for abeyance requests to be made to the Committee Chair has been modified to state that those requests for abeyances have to be filed with the Committee Clerk and must be made before a Screening Panel hearing is held. The rule is 11-533(c) of the RDDS. If an abeyance request is to be made once an Action is filed, it is to be made in accordance with Rule 11-542(d) of the RDDS.

11) Special Prosecutor Cases

Prior to December 15, 2020

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.

Effective December 15, 2020

This process has not changed and the rule is 11-542(f) of the RDDS.

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 (delicensure), resignation with discipline pending, time-specified suspension, trusteeship where the OPC is not the trustee, probation and cases in which no appeal is pending.

III. STATISTICS – Year 2019-2020

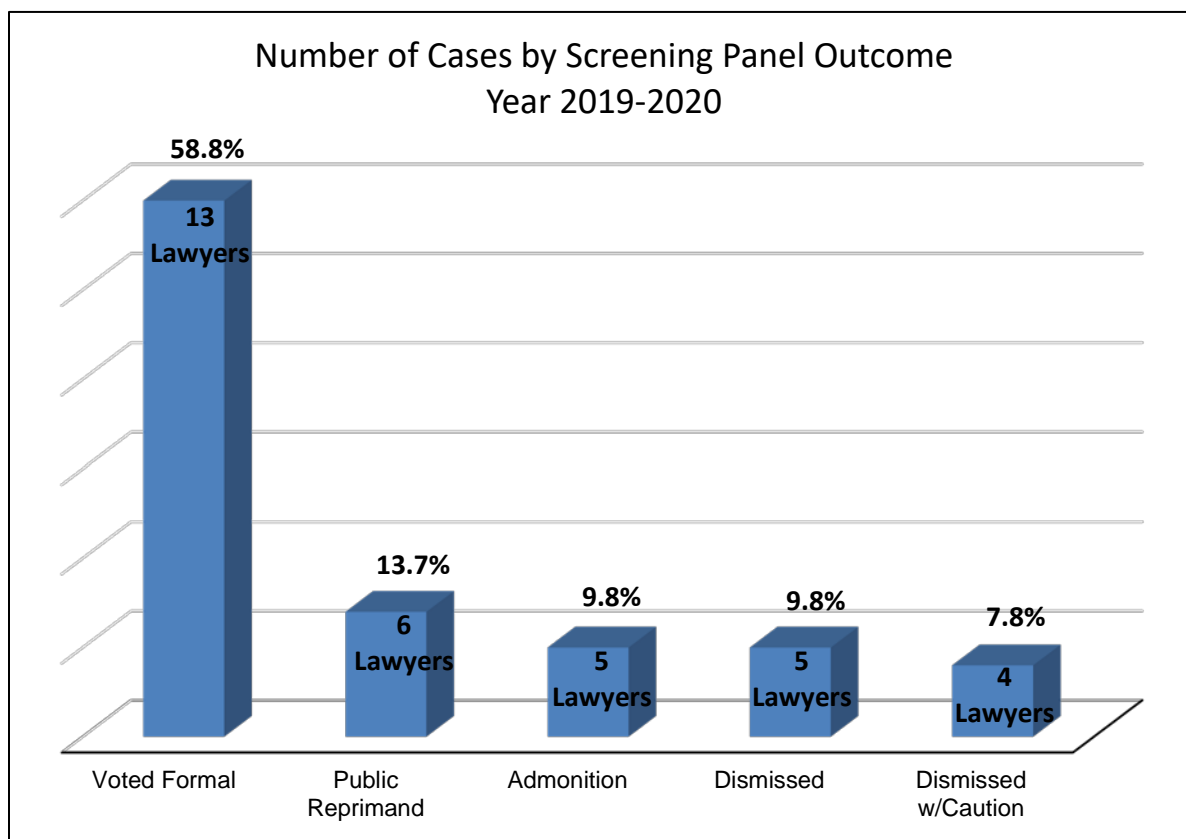
A) Case Activity

Active cases as of July 1, 2019 640

| | | |
|-----------|--|--------------|
| 1) | <u>Cases opened</u> | |
| | Informal Complaint | 82 |
| | Media/Court Information | 3 |
| | Notice of Insufficient Funds | 39 |
| | Reciprocal Discipline | 6 |
| | Reinstatement | 5 |
| | Request for Assistance..... | 597 |
| | Special Prosecutor | 11 |
| | Trusteeship..... | 1 |
| | Total | 744 |
| | Total cases processed during period | 1,384 |
| 2) | <u>Informal Complaints Closed Without Discipline</u> | |
| | By Dismissal..... | 64 |
| | By Dismissal with Caution | 4 |
| | By Declination to Prosecute | 16 |
| | By Dismissal – Duplicate | 1 |
| | By Declination to Prosecute (Hold for Reinstatement)..... | 1 |
| | Total..... | 86 |
| 3) | <u>Requests for Assistance Closed Without Discipline</u> | |
| | By Dismissal..... | 45 |
| | By Dismissal with Caution | 12 |
| | By Dismissal w/Professional Counseling..... | 2 |
| | By Dismissal - Duplicate | 5 |
| | By Declination to Prosecute | 241 |
| | By Declination to Prosecute with Caution..... | 45 |
| | By Sent to CAP..... | 325 |
| | By Declination to Prosecute (Hold for Reinstatement)..... | 17 |
| | Total..... | 692 |
| 4) | <u>Media/Court Information Closed Without Discipline</u> | |
| | By Dismissal..... | 1 |
| | By Declination to Prosecute | 2 |
| | Total..... | 3 |
| 5) | <u>Special Prosecutor Closed Without Discipline</u> | |
| | By Dismissal | 4 |
| | Total..... | 4 |
| 6) | <u>Notice of Insufficient Funds Closed Without Discipline</u> | |
| | By Dismissal..... | 1 |
| | By Declination to Prosecute | 10 |
| | By Declination to Prosecute with Caution..... | 29 |
| | By Declination to Prosecute (Hold for Reinstatement)..... | 1 |
| | Total..... | 41 |

| | | |
|--|------------|---------------------|
| 7) <u>Orders Entered</u> | | # of lawyers |
| Admonition..... | 9 | (9) |
| Public Reprimand | 7 | (6) |
| Suspension..... | 6 | (6) |
| Disbarment | 2 | (2) |
| Dismissal | 2 | (2) |
| Disability | 2 | (2) |
| Probation Terminated | 2 | (2) |
| Reinstatement | 2 | (2) |
| Resignation with Discipline Pending | 2 | (2) |
| Total | 34 | (33) |
| 8) <u>Cases Combined with Formal Filings and Part of Global Settlements</u> | | |
| Requests for Assistance | 8 | |
| NSF | 1 | |
| Total | 9 | |
| Total case closures during period | 869 | |
| Active cases as of July 1, 2020 | 515 | |
| (Open cases minus closures for year 2019-2020) | | |
| 9) <u>During the Year 2019-2020, the OPC had case activity as follows</u> | | |
| Diversions..... | 10 | |
| Informal Abeyances | 6 | |
| Informal Appeals..... | 31 | |
| Informal Appeals Granted | 1 | |
| Informal Appeals Denied | 23 | |
| Screening Panel Exception by OPC | 5 | |
| Formal Cases Filed in Court | 23 | |
| Cases Combined with Formal Filings | 15 | |
| 10) <u>Stipulations</u> | | # of lawyers |
| Stipulation to Admonition | 1 | (1) |
| Stipulation to Suspension | 3 | (3) |
| Stipulation to Resignation with Discipline Pending | 2 | (2) |
| Stipulation to Dismissal | 1 | (1) |
| Stipulation to Disability | 1 | (1) |
| Total | 8 | (8) |
| 11) <u>Screening Panel Outcomes</u> | | |

For the year 2019-2020, the OPC referred 51 matters, involving 33 lawyers, to the Ethics and Discipline Committee for a Screening Panel hearing. The outcomes of those hearings were:



12) Notice of Insufficient Funds

As part of the OPC case activity, Rule 1.15(a) of the Rules of Professional Conduct requires that lawyers 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 a lawyer trust account containing insufficient funds (NSF), irrespective of whether or not the instrument is honored.” Pursuant to this rule the OPC opened 39 new NSF cases, and dismissed 40 NSF cases in year 2019-2020. The usual reasons for dismissals of NSF cases are accounting errors, bank errors, depositing errors, or drawing on the account before a deposit clears.

13) Summary

Of the 1,384 cases the OPC processed in year 2019-2020, 834 or 60.26% were resolved by dismissals, declinations to prosecute, referral to CAP or combined with formal. Of the 1,384 cases, approximately 1.87% of the cases resulted in 26 Orders of Discipline. 23% of the Orders of Discipline were by stipulation. Finally, approximately 3.68% of the OPC's processed cases for the year were heard by Screening Panels.

B) Miscellaneous

1) CLE

Prior to December 15, 2020

Rule 14-504(b)(13) of the RLDD requires that the OPC provide informal guidance to promote ethical conduct by Bar members. The OPC attorneys make Continuing Legal Education ("CLE") ethics presentations. During year 2019-2020, the OPC's CLE presentations totaled 19.75 hours.

Two of the CLE presentations are usually at the Ethics School conducted by the OPC. The OPC titles the Ethics School "What You Didn't Learn in Law School." Some lawyers 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 or a qualified lawyer to make a lawyer wellness presentation. The Ethics School was held in September of year 2019-2020 for six CLE hours. In September 2019, Ethics School was attended by 77 lawyers; and in March 2020, Ethics School was cancelled due to the Covid 19 crisis.

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 2020. 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 40 lawyers. 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 lawyers 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.

Effective December 15, 2020

The rule requiring the OPC to give ethical guidance was modified pursuant to Rule 11-521(a)(11) of the RDDS to make clear that the OPC provides informal guidance to lawyers through seminars, the formulation of diversion programs, the monitoring of probations and the dissemination of disciplinary results through the Utah Bar Journal while maintaining the confidentiality of Respondent Lawyers subject to private discipline.

2) Committees

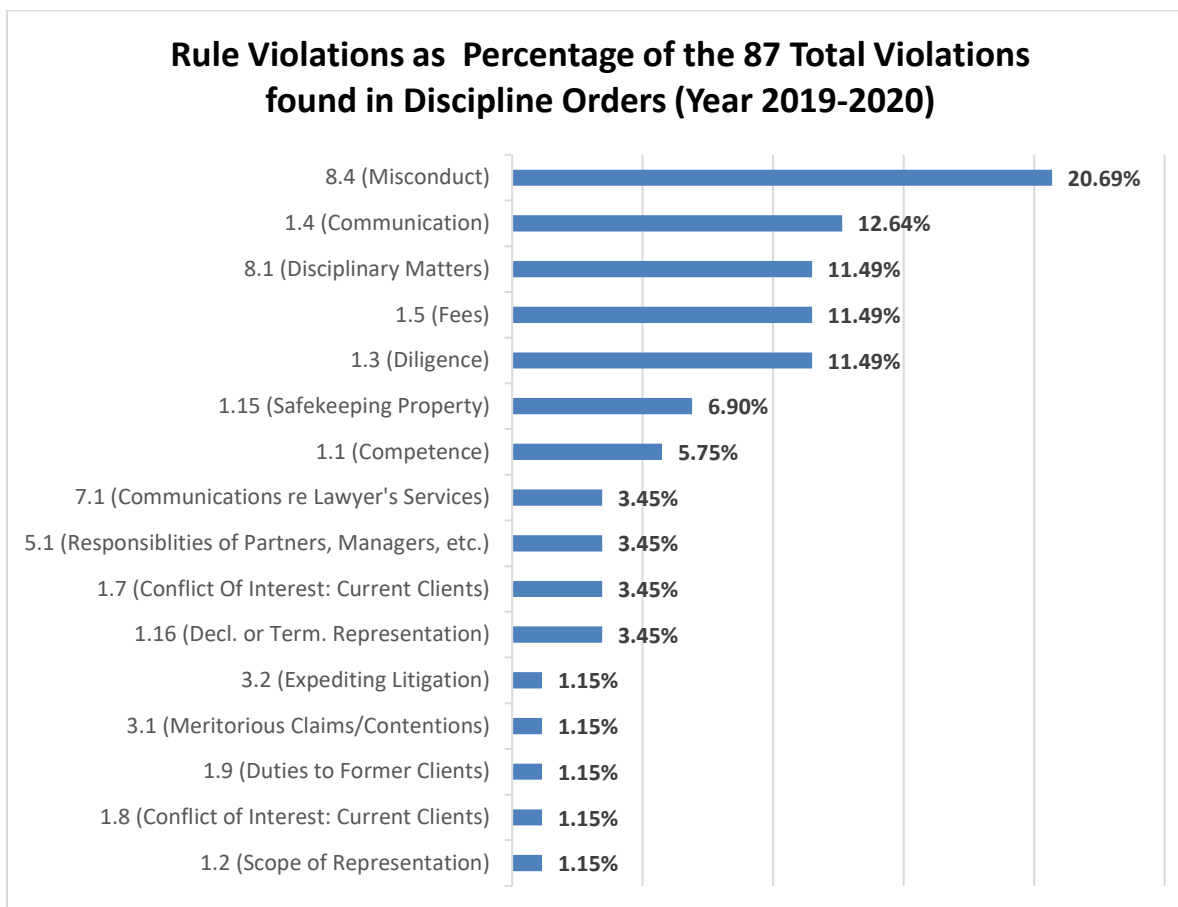
The OPC participates in committees with respect to lawyer conduct. Chief Disciplinary Counsel of the OPC sits as a voting member of the Utah Supreme Court's Advisory Committee on the Rules of Professional Practice. OPC counsel sits as a voting member of the Ad Hoc Ethics and Discipline Committee on Rules which addresses proposed rule changes to the RDDS. OPC counsel sits as a 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.

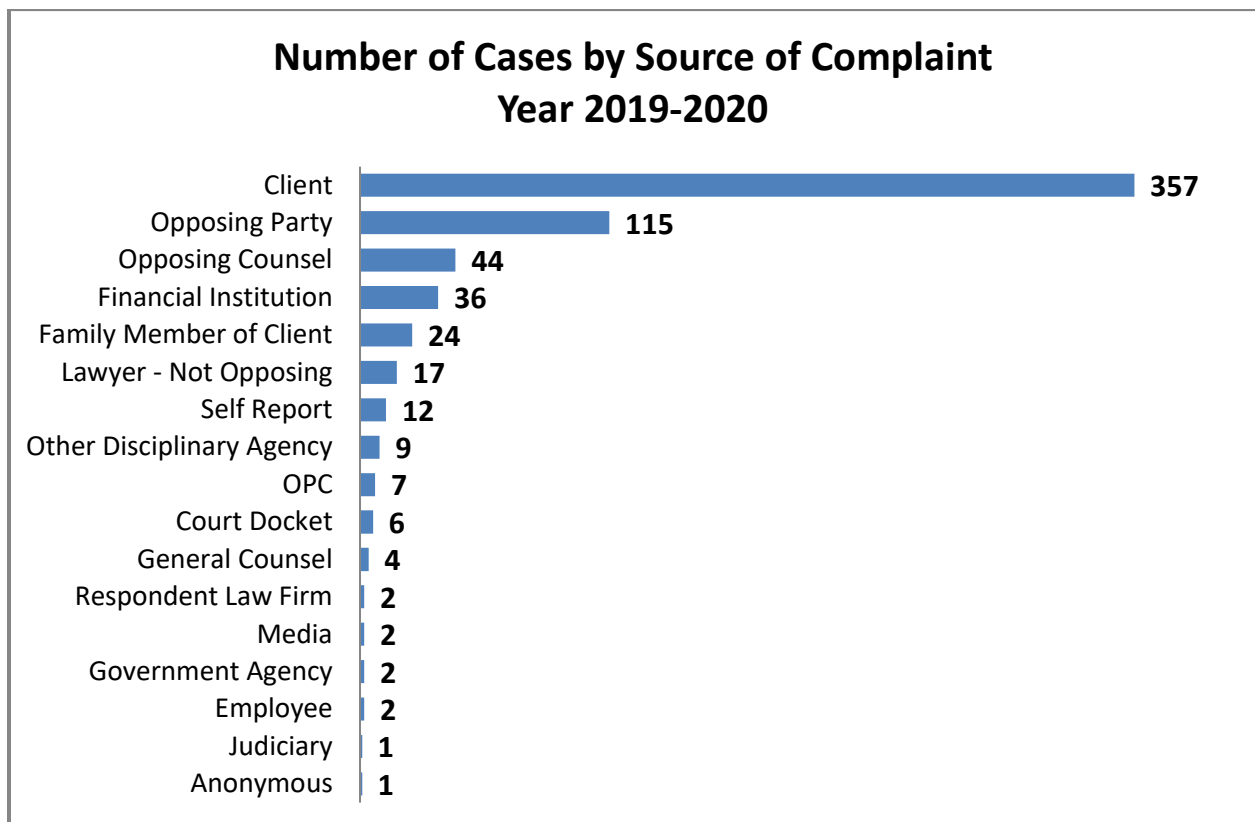
(a) For example, using data from the 26 orders of discipline entered in the year 2019-2020, which resulted in a finding of 87 total rule violations, we can see the frequency with which various rules were violated:



The OPC's impression is that violations of Rule 1.1 (Competence) commonly derive from lawyers missing court appearances; that violations of Rule 1.5 (Fees) commonly arise from lawyers collecting fees without performing meaningful work; that violations of Rule 1.15 (Safekeeping Property) often arise from lawyers 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 lawyers withholding the client file upon termination of the representation; violations of Rule 8.1(b) (Bar Admission and Disciplinary Matters) usually are based upon lawyers 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 Notice; 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 2019-2020, information regarding possible lawyer misconduct was received from the following sources:

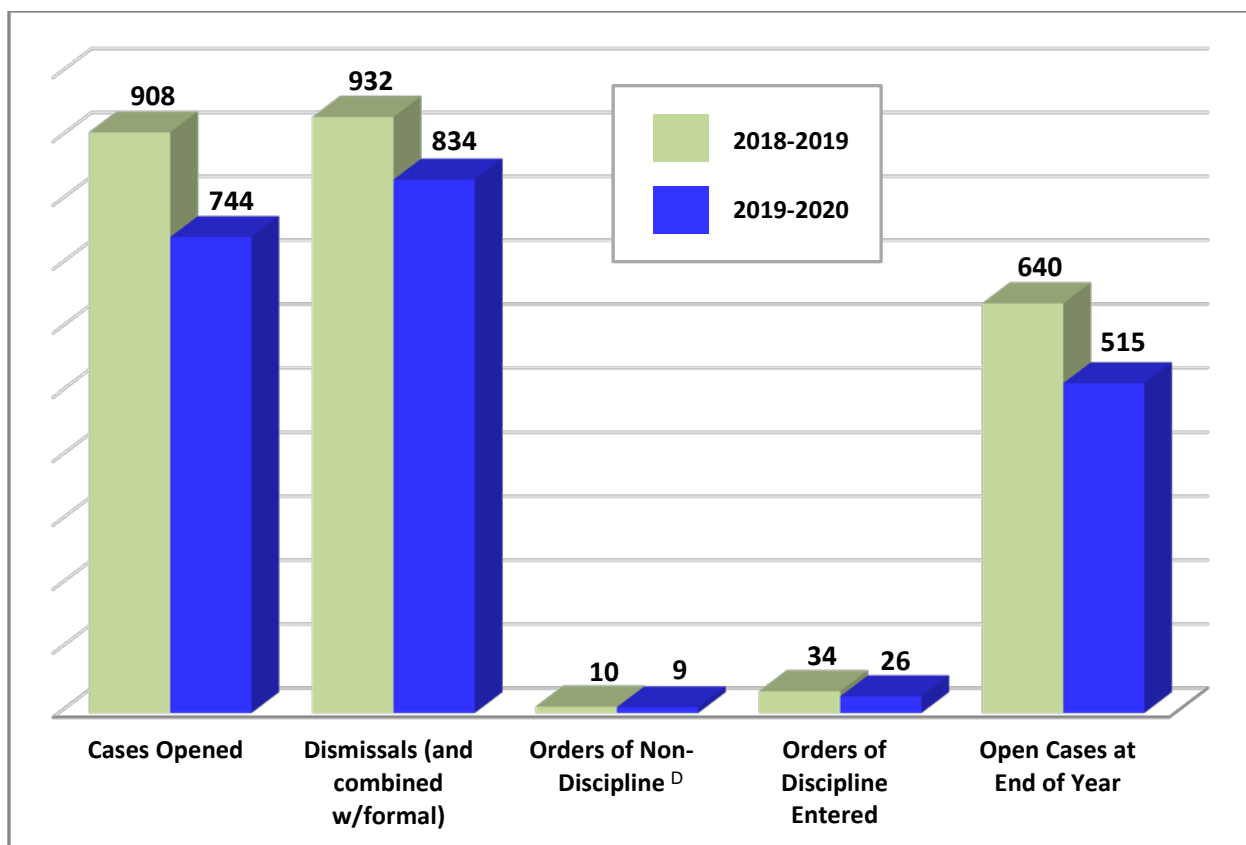


IV. PROGRESS AND GOALS ON CASES

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 lawyers 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 year 2018-2019 with year 2019-2020:



As can be seen from the chart:

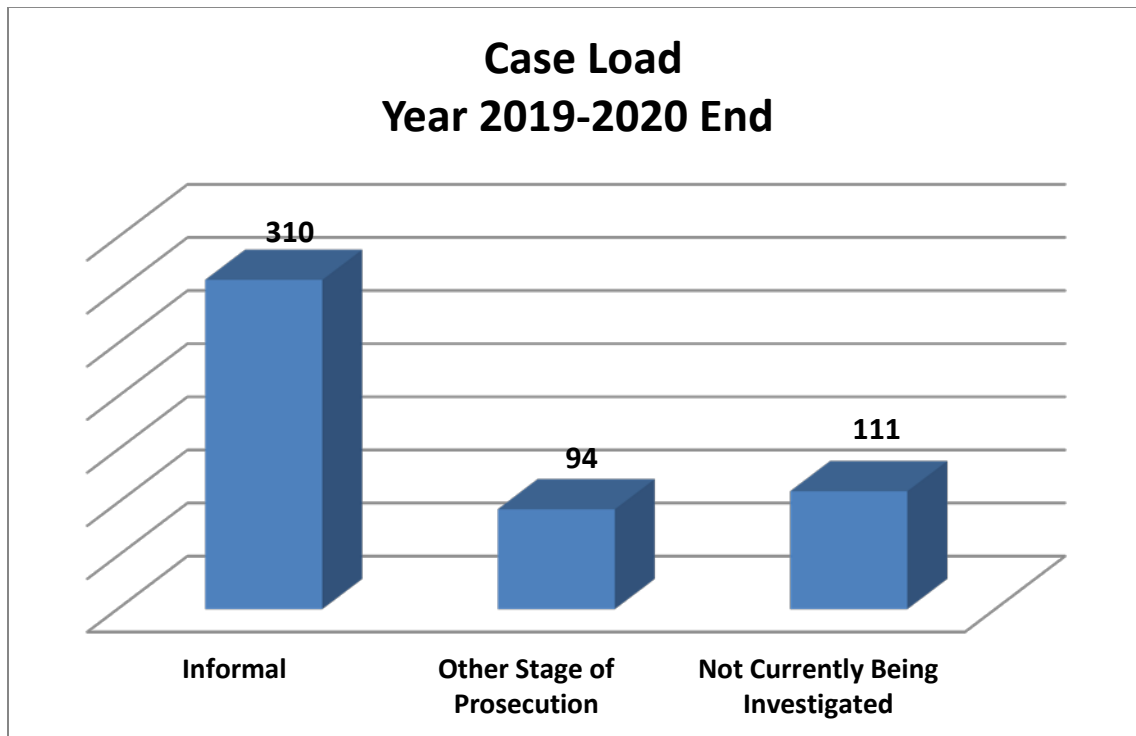
- (1) Cases opened this year decreased by approximately 18%;
- (2) Dismissals (and combined with formal) this year decreased by approximately 10.5%;
- (3) Orders of non-discipline entered this year decreased by 10%;
- (4) Orders of discipline entered this year decreased by approximately 23.5%;
- and
- (5) Active case numbers at the end of this year decreased by approximately 19.5%.

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 3 Dismissals, 2 Disabilities, 2 Probations Terminated and 2 Reinstatements.

this goal because it opened 744 cases and closed 869^E cases and its active case number decreased by approximately 19.5%.

Of the OPC's case load as of year 2019-2020 end (515), 310 were at the informal stage^F, 94 were at other stages of investigation/prosecution^G, and 111 were not currently being investigated by the OPC^H.



Of the 310 cases at the informal stage, 155 or 50% have been in the informal stage for over 180 days. Further breaking down the 155 cases that have been at the informal stage for over 180 days; approximately 61% of those cases have been at that stage for less than a year; and approximately 35% of those cases have been at that stage for between one and two years. So only approximately 4% (or seven) of the total

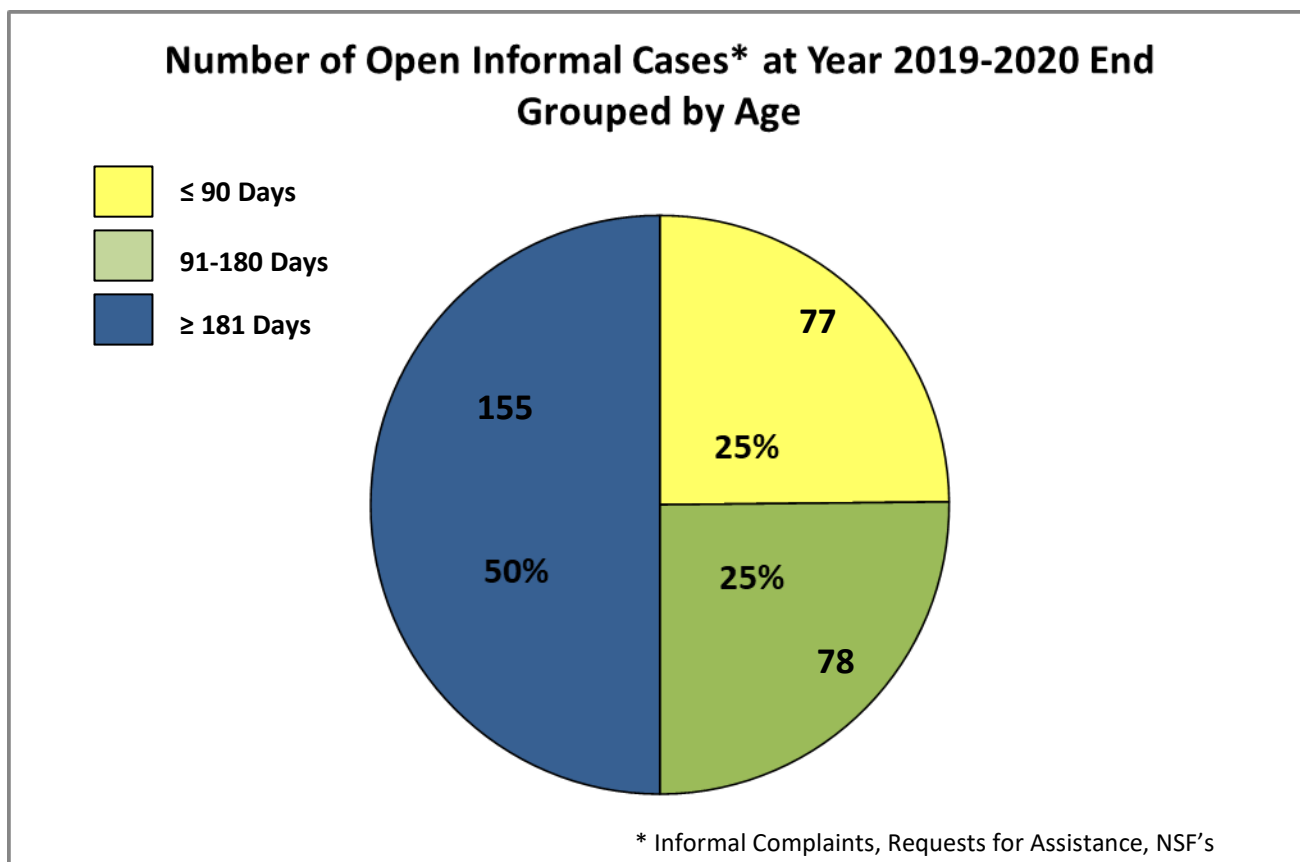
^E The total of Dismissals (and Combined w/Formal) and all Orders (discipline and non-discipline).

^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, Trusteeships.

^H Abeyance, At CAP, in CAP Review, Diversion, Special Prosecutor, Hold for Sanctions.

cases have been at that stage for over two years^l.



It should also be noted that the OPC filed a significant number of new formal cases. In this respect, in addition to opening 10 new cases in the areas of reinstatement/reciprocal^j, the OPC filed 13 new formal cases with the District Court (the 13 formal cases include an additional 14 underlying informal complaints).

V. CONSUMER ASSISTANCE PROGRAM

Prior to December 15, 2020

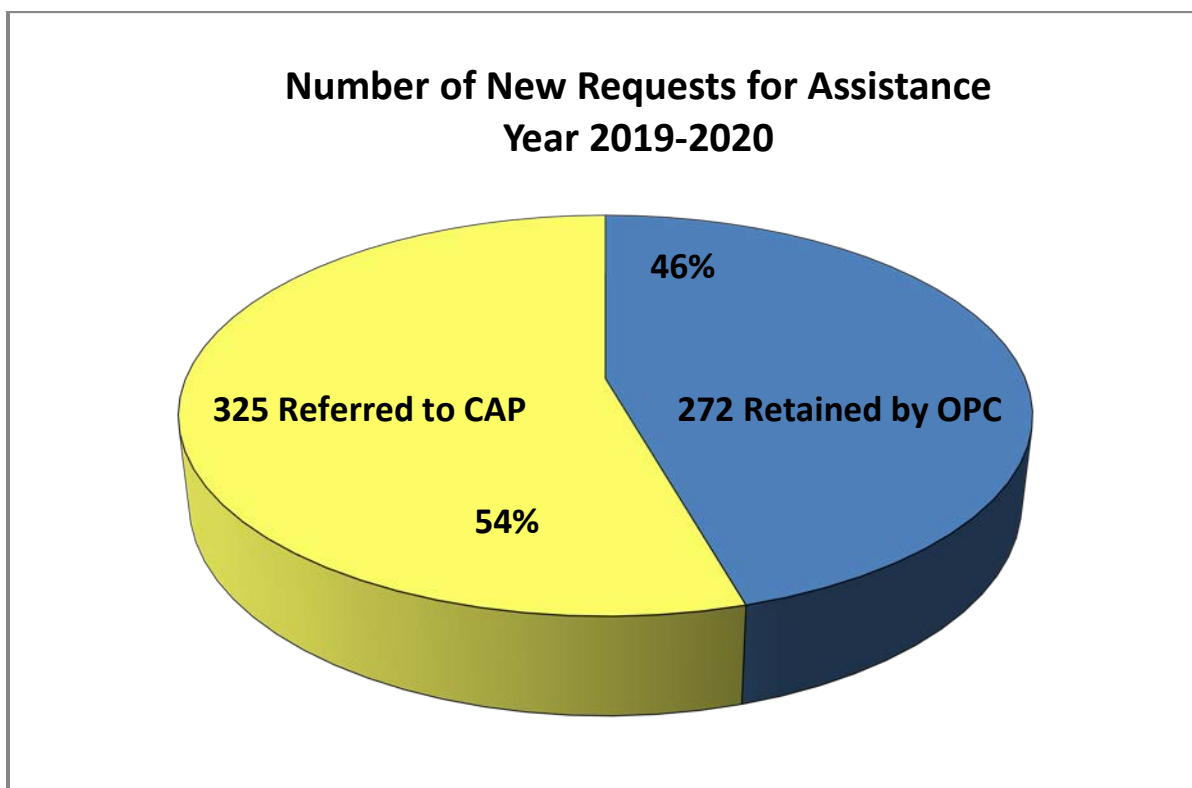
The CAP is not part of the OPC, but the OPC works in coordination with it, and reviews information sent to the Utah State Bar as a non-notarized Request for Assistance.

^l Four of the seven cases at this stage involve lawyers for whom the OPC already has formal matters in progress.

^j Five Reinstatements and five Reciprocal cases.

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 lawyer; 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 2019-2020, the OPC reviewed 597 Request for Assistances which can be reviewed as part of its CAP review system, approximately 54% (325) of which the OPC referred to CAP. Only 25 of these matters came back to the OPC.



Thus, with respect to year 2019-2020, 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.

Effective December 15, 2020

As detailed in section II(C)(2), the OPC will no longer work in coordination with CAP for case referrals. This process has been replaced by OPC's Summary Review.

VI. YEAR 2020

A) Statistics – Year 2020

Active cases as of January 1, 2020.....628

1) Cases opened

| | |
|--|--------------|
| Informal Complaint | 68 |
| Media/Court Information | 3 |
| Notice of Insufficient Funds | 34 |
| Reciprocal Discipline | 4 |
| Reinstatement | 4 |
| Request for Assistance..... | 546 |
| Special Prosecutor | 4 |
| Trusteeship..... | 1 |
| Total | 664 |
| Total cases processed during period | 1,292 |

2) Informal Complaints Closed Without Discipline

| | |
|---|-----------|
| By Dismissal..... | 57 |
| By Dismissal with Caution | 3 |
| By Declination to Prosecute | 25 |
| By Declination to Prosecute (Hold for Reinstatement)..... | 1 |
| Total | 86 |

3) Requests for Assistance Closed Without Discipline

| | |
|---|-----|
| By Dismissal..... | 30 |
| By Dismissal with Caution | 7 |
| By Dismissal with Professional Counseling | 1 |
| By Dismissal – Duplicate | 6 |
| By Declination to Prosecute | 243 |
| By Declination to Prosecute with Caution..... | 56 |

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

| | | |
|--|---|----------------------------|
| | By Sent to CAP..... | 302 |
| | By Declination to Prosecute (Hold for Reinstatement)..... | 16 |
| | Total | 661 |
| 4) | <u>Media/Court Information Closed Without Discipline</u> | |
| | By Declination to Prosecute | 2 |
| | Total | 2 |
| 5) | <u>Special Prosecutor Closed Without Discipline</u> | |
| | By Dismissal..... | 4 |
| | Total | 4 |
| 6) | <u>Trusteeships Closed</u> | |
| | By Dismissal..... | 1 |
| | Total | 1 |
| 7) | <u>Notice of Insufficient Funds Closed Without Discipline</u> | |
| | By Declination to Prosecute | 8 |
| | By Declination to Prosecute with Caution..... | 31 |
| | By Declination to Prosecute (Hold for Reinstatement)..... | 2 |
| | Total | 41 |
| 8) | <u>Orders Entered</u> | <u># of lawyers</u> |
| | Admonition..... | 8 (8) |
| | Public Reprimand | 6 (5) |
| | Suspension..... | 8 (8) |
| | Disbarment | 3 (3) |
| | Dismissal | 1 (1) |
| | Probation | 1 (1) |
| | Probation Terminated | 1 (1) |
| | Reinstatement | 3 (3) |
| | Disability | 2 (2) |
| | Resignation w/Discipline Pending..... | 1 (1) |
| | Total | 34 (33) |
| 9) | <u>Cases Combined with Formal Filings and Part of Global Settlements</u> | |
| | Informal Complaints..... | 3 |
| | Requests for Assistance..... | 9 |
| | Total | 12 |
| Total case closures during period | | 841 |
| Active cases as of January 1, 2021..... | | 451 |
| (Open cases minus closures for year 2020) | | |

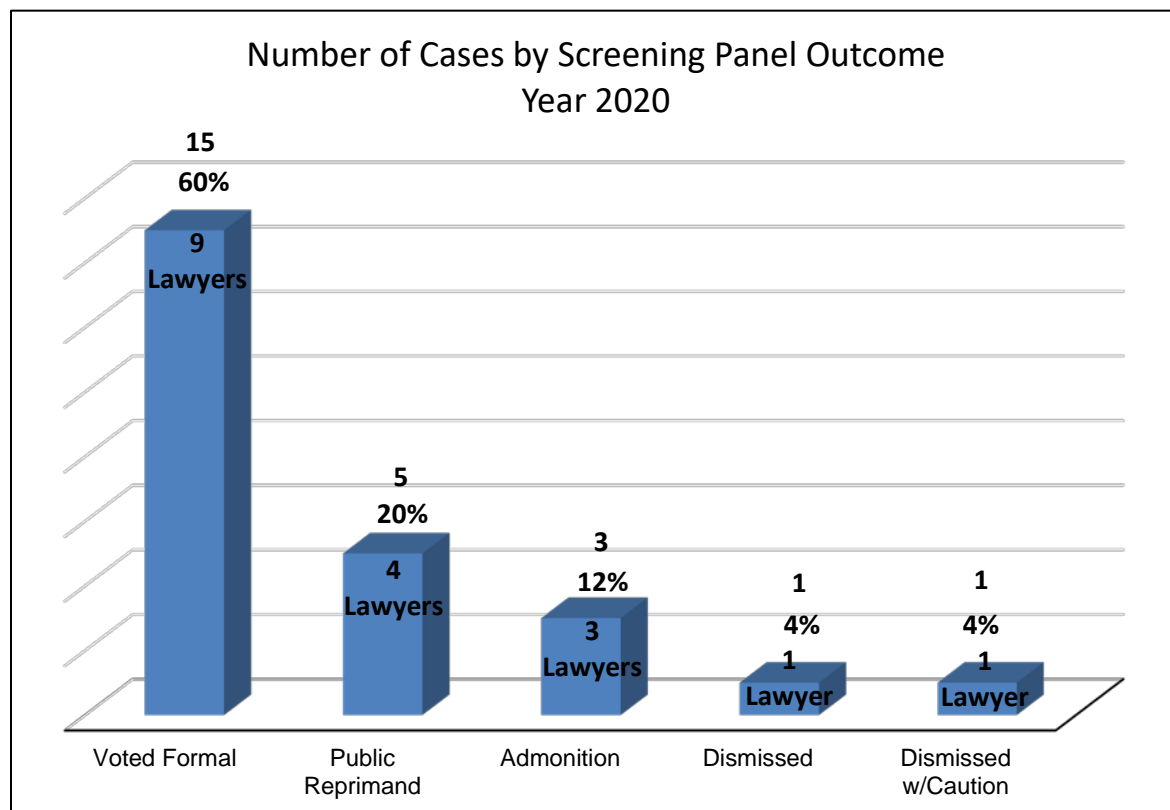
10) During Year 2020, the OPC had case activity as follows

| | |
|--|----|
| Diversions..... | 6 |
| Informal Abeyances..... | 6 |
| Informal Appeals..... | 17 |
| Informal Appeals Denied | 31 |
| Screening Panel Exceptions by OPC | 2 |
| Formal Cases Filed in Court..... | 17 |
| Cases Combined with Formal Filings | 5 |
| Disability | 1 |

| | | |
|---------------------------------|-----------|----------------------------|
| 11) <u>Stipulations</u> | | <u># of lawyers</u> |
| Stipulation to Admonition..... | 2 | (2) |
| Stipulation to Suspension | 5 | (5) |
| Stipulation to Disability | 2 | (2) |
| Stipulation to Probation | 1 | (1) |
| Total..... | 10 | (10) |

12) Screening Panel Outcomes

For year 2020, the OPC referred 25 matters, involving 16 lawyers, to the Ethics and Discipline Committee for a Screening Panel hearing. The outcomes of those hearings were:

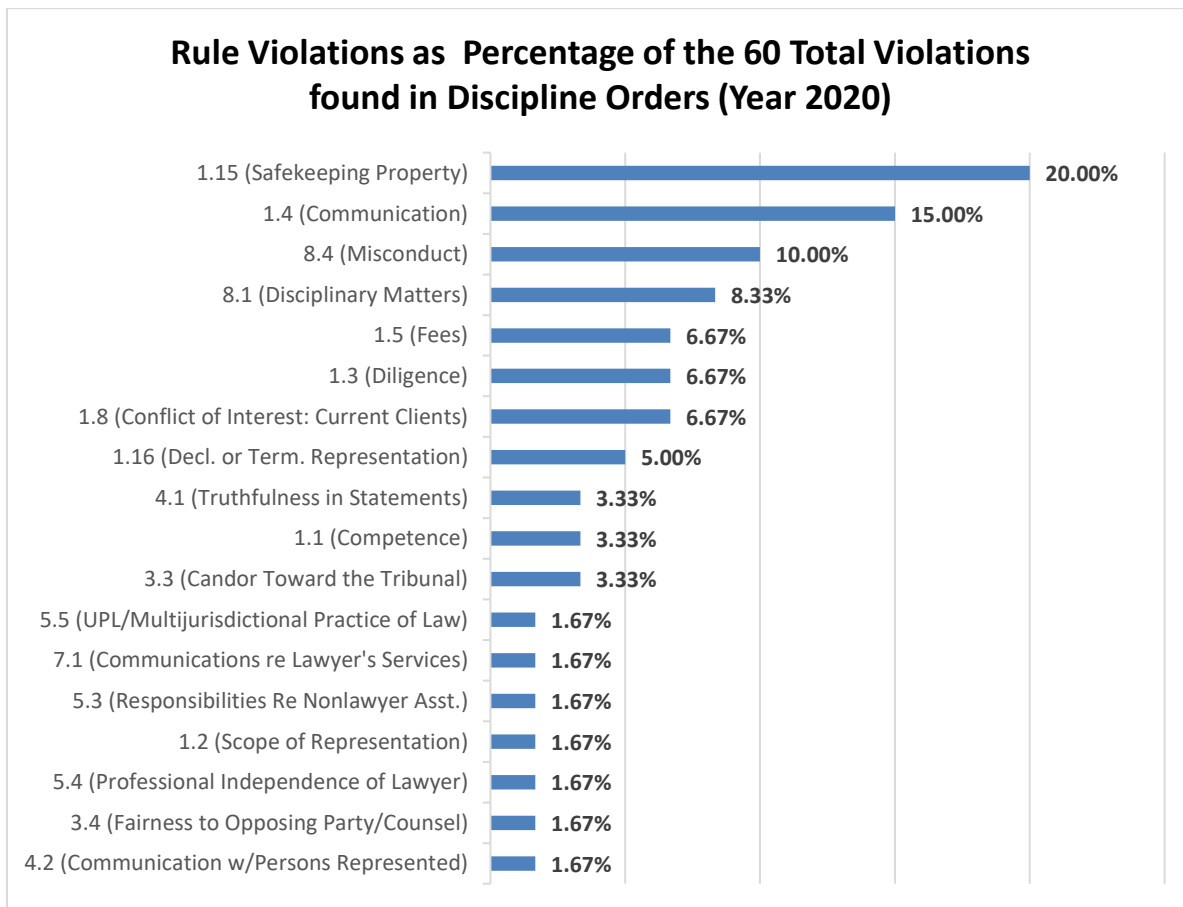


There were no Screening Panel hearings after June 2020 because the Committee decided to delay scheduling hearings until the rule changes were made resulting in the RDDS.

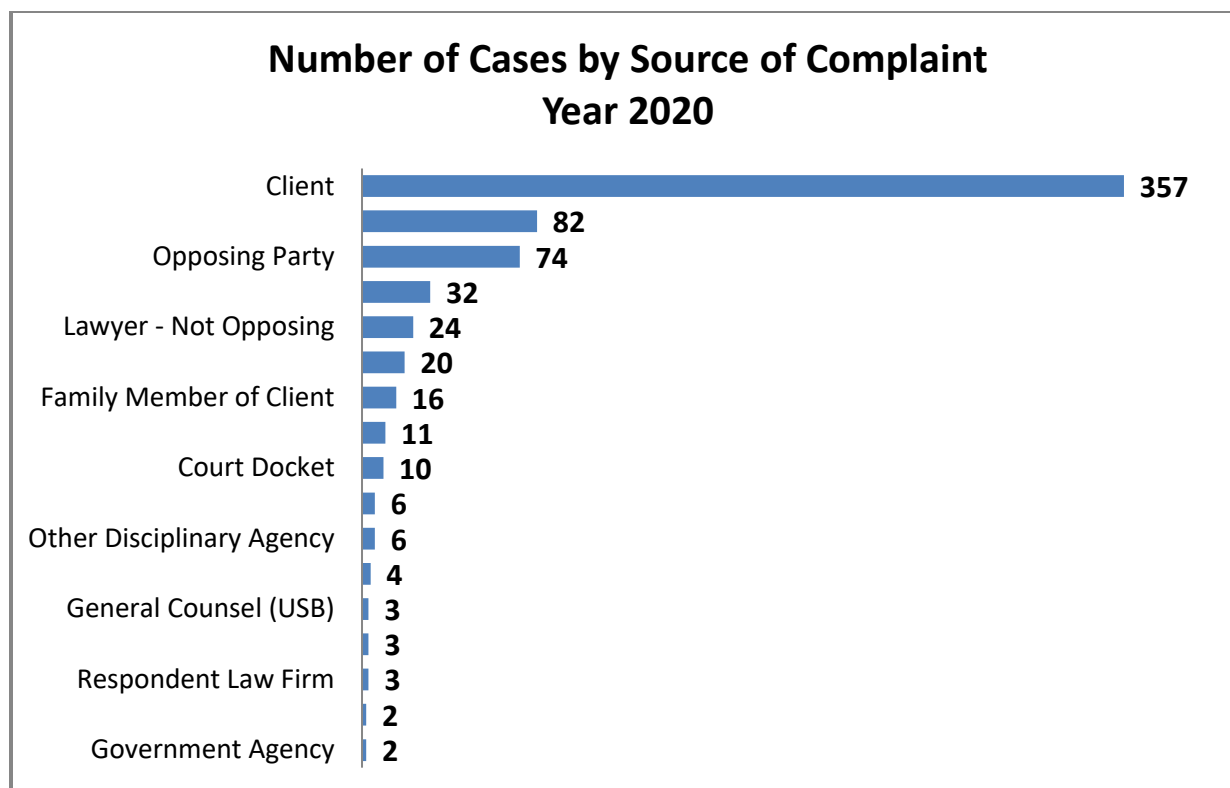
13) Rule Violations and Source of Information

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 27 orders of discipline entered in year 2020, which resulted in a finding of 116 total rule violations, we can see the frequency with which various rules were violated:



- (b) In year 2020, information regarding possible lawyer misconduct was received from the following sources:



14) Miscellaneous

All of the miscellaneous information reported above for year 2019-2020 (with respect to subparts 1 and 2) remained the same except the OPC made CLE presentations totaling 10 hours between July 1, 2020 and December 31, 2020 including a virtual Ethics School in September 2020 attended by 121 lawyers.

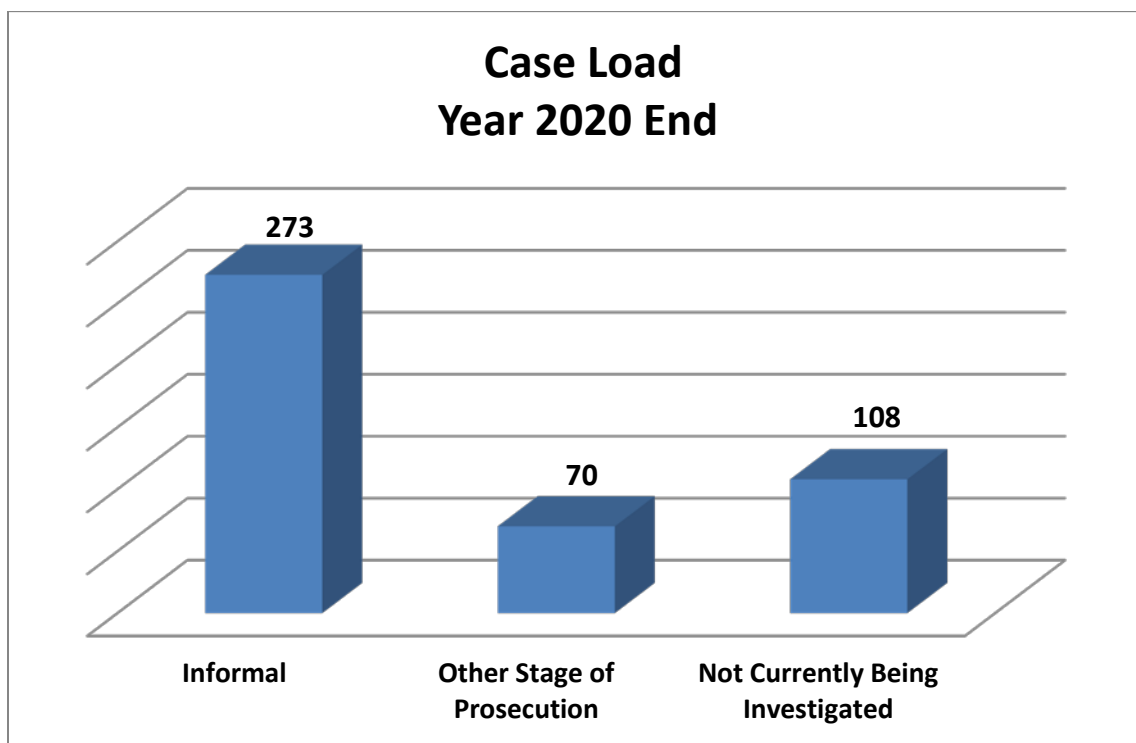
15) Beginning Year 2021

The OPC begins year 2021 with 451 active cases against 311 lawyers. The breakdown of the various stages of the 451 cases is as follows:

| | |
|---------------------------|----|
| Abeyance | 13 |
| At CAP..... | 69 |
| Summary Review | 5 |
| Combined with Formal..... | 29 |
| Diversion | 3 |
| Exception..... | 4 |
| Formal | 21 |
| Formal Appeal | 3 |
| Informal Appeal | 7 |

| | |
|---|-----|
| Informal Complaint | 120 |
| Media/Court..... | 1 |
| Notice of Insufficient Funds | 13 |
| Reciprocal..... | 4 |
| Request for Assistance ^L | 140 |
| Rule 14-519..... | 1 |
| Special Prosecutor | 18 |

Of the OPC's case load as of year 2020 end (451), 273 were at the informal stage^M, 70 were at other stages of investigation/prosecution^N, and 108 were not currently being investigated by the OPC^O.



Of the 273 cases at the informal stage, 121 or approximately 44% have been in the informal stage for over 180 days. Further breaking down the 121 cases that have been at the informal stage for over 180 days; approximately 38% of those cases have been at

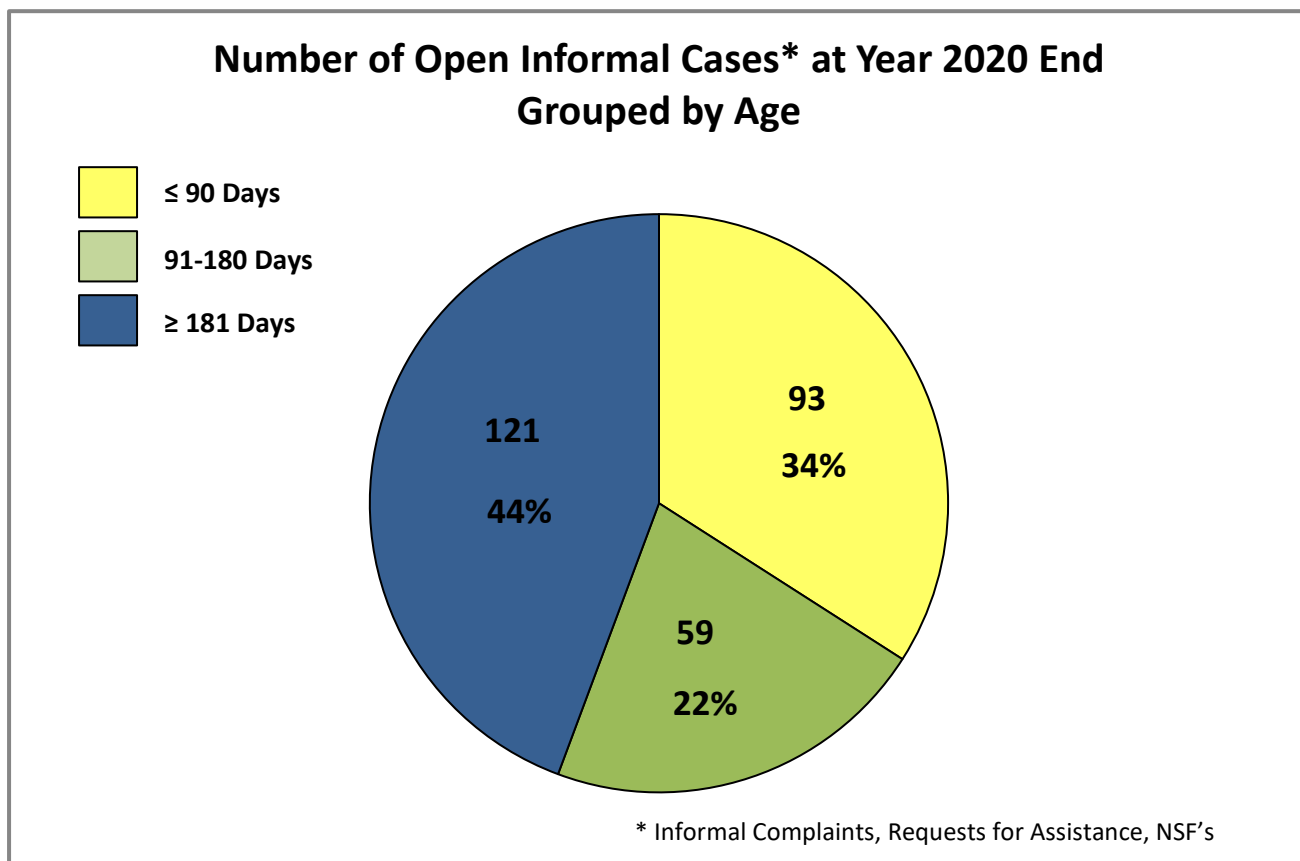
^L For Requests for Assistance cases received as of December 15, 2020, they will be handled as complaints as previously stated in this report.

^M Informal Complaints, Requests for Assistance, NSF's.

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

^O Abeyance, At CAP, in CAP Review, Diversion, Special Prosecutor.

that stage for less than a year; and approximately 53% of those cases have been at that stage for between one and two years. So only approximately 9% (or 11) of the total cases have been at that stage for over two years.^P



It should also be noted that the OPC filed a significant number of new formal cases. In this respect, in addition to opening seven new cases in the areas of reinstatement/reciprocal^Q, the OPC filed 10 new formal cases with the District Court (the 10 formal cases include an additional four underlying informal complaints).

VI. GOALS FOR YEAR 2021

The OPC does not simply concentrate its efforts on older cases: it attempts to

^P Eight of the eleven cases at this stage involve lawyers for whom the OPC already has formal matters in progress.

^Q Four Reinstatements and three Reciprocal cases.

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 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.

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 lawyers. The overriding goal is to 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 an Action 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.

A handwritten signature in cursive script that reads "Billy L. Walker". The signature is written in dark ink and is positioned above a horizontal line.

Billy L. Walker
Chief Disciplinary Counsel
Office of Professional Conduct

Tab 4

Proposed OPC Performance Metrics

As the Committee is aware, proposed Rule 11-501(b)(2) tasks the Oversight Committee with developing and implementing realistic performance metrics for the OPC. With that in mind we have prepared the following recommended tracking metrics for OPC cases. Some explanation is helpful when considering the proposed metrics.

Under the current version of the Rules of Lawyer Discipline and Disability, cases generally come to the OPC in two ways: they arrive as non-notarized requests for assistance (“RFA”), or they initiate as notarized and verified informal complaints. If the proposed changes to the RLDD are adopted that process will be simplified and one complaint type will be used, but these metrics track cases as they are currently processed. In either case, investigations proceed according to the RLDD as the OPC determines several factors: Does the initial complaint have any merit or should it be summarily dismissed or declined? Does more investigation need to be conducted? Does the respondent need to submit a reply? Should the matter be presented to a screening panel?

Each case is different, but the OPC has attempted to create proposed metrics which capture reasonable time frames for most cases. Initially, the OPC attempted to create performance metrics based upon time periods which were solely in the OPC’s control. For example, the time between when the OPC makes a determination to dismiss a complaint and when the case is actually dismissed. Due to the complexity of the system, this approach led to overly complicated metrics with too many segments. Ultimately, the OPC determined that time periods which also capture events outside the OPC’s control (for example, the weeks it may take to locate a witness or obtain a reply from a respondent) are better metrics for generally tracking the OPC’s case processing, and are more in line with metrics the ABA’s Center for Professional Responsibility gathers for case load statistics.

