

## AGENDA

### Utah Supreme Court Oversight Committee for the Office of Professional Conduct

Location: Webex

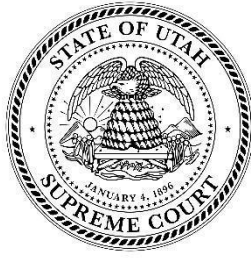
Date: April 25, 2022

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

<b>Action:</b> Welcome and approval of the January 24, 2022 minutes. <b>Tab 1:</b> Draft meeting minutes for January 24, 2022.	Judge Diana Hagen
<b>Discussion and Action:</b> Proposed Rule 11-506: Relationship to the Utah State Bar <b>Tab 2:</b> Memorandum and proposed Rule 11-506	Nancy Slyvester, Elizabeth Wright, Billy Walker
<b>Discussion:</b> Update on Presumptive Sanction Rules 11-581–11-586 <b>Tab 3:</b> Redline of Rules 11-581–11-586, February 16, 2022 draft <b>Tab 4:</b> Redline of Rules 11-581–11-586, March 17, 2022 draft	Judge Diana Hagen
<b>Discussion:</b> Review OPC Annual Report <b>Tab 5:</b> OPC Annual Report	Judge Diana Hagen, Billy Walker
<b>Discussion &amp; Action:</b> Review and approve OPC proposed budget <b>Tab 6:</b> OPC proposed budget	Judge Diana Hagen, Billy Walker
<b>Other business</b> – Schedule next meeting	All

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

Tab 1



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

### **Draft Meeting Minutes**

January 24, 2022

Via Webex

4:00–5:30 p.m.

*Judge Diana Hagen, presiding*

#### **Attendees:**

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

#### **Guests:**

Billy Walker, Office of Professional Conduct  
Christine Greenwood, Ethics and Discipline Committee  
Nancy Sylvester, General Counsel, Utah State Bar

#### **Staff:**

Marina Kelaidis, Recording Secretary

#### **Excused:**

Nick Stiles, Staff, Appellate Court Administrator

### **1. Welcome and approval of the October 13, 2021 minutes: (Judge Diana Hagen)**

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

*Art Berger moved to approve the October 13, 2021 minutes. Roger Smith seconded the motion, and it passed unanimously.*

2. **Discussion—Discuss proposed caretaker rules:** (Nancy Sylvester)

Nancy Sylvester gave a brief overview of the development process and goals of the proposed caretaker rules. The Committee discussed alternative methods for encouraging Bar members to participate in succession planning annually without creating a rule. Judge Hagen suggested providing a link to the Bar's succession planning resources when a member is relicensing and including a check box for the member to click confirming they have reviewed the materials. Ms. Sylvester agreed with the Committee's suggestions and will pursue other methods of encouragement, particularly for small firm and solo practitioners.

3. **Action—Introductions of each Committee member and general practice area:** (Judge Diana Hagen)

Each Committee member introduced themselves and described their general practice area.

4. **Discussion—Update on Screening Committee rule changes:** (Christine Greenwood)

Christine Greenwood reported the proposed rule changes received no comments during the comment period and the rules are now in effect. The screening committee is now able to increase the number of screening panel members and Ms. Greenwood has already filled those vacancies.

5. **Discussion—Update on Presumptive Sanction Rules:** (Judge Diana Hagen)

Rule 11-582:  
Factors to be considered in imposing sanctions:

No further recommendations.

*Art Berger moved to approve the proposed changes to Rule 11-582. Roger Smith seconded the motion, and it passed unanimously.*

Rule 11-583:  
Presumptive sanctions for violating duties owed to clients:

Judge Hagen recommended amending paragraphs (d)(2) and (e)(2) by separating the latter part of the sentence into a separate sentence and adding "The appropriate sanction will depend."

*Art Berger moved to approve the proposed changes to Rule 11-583(d)(2) and (e)(2). Judge Wells seconded the motion, and it passed unanimously.*

Rule 11-584:

Presumptive sanctions for violating duties owed to the public:

Judge Hagen recommended reinstating paragraph (b) and adding a reference to Rule 3.8.

*Judge Wells moved to approve the proposed changes to Rule 11-584(b). Art Berger seconded the motion, and it passed unanimously.*

Rule 11-585:

Presumptive sanctions for violating duties owed to the legal system:

Judge Hagen recommended amending paragraph (a)(2) by replacing “learns that others have submitted false statements or documents or improperly withholding material information” and replacing it with “learns that false statements or documents have been submitted or material information improperly withheld.”

*Margaret Plane moved to approve the proposed changes to Rule 11-585(a)(2). Roger Smith seconded the motion, and it passed unanimously.*

Rule 11-586:

Sanctions for violating duties owed as a member of the legal profession:

No further recommendations.

*Art Berger moved to approve the proposed changes to Rule 11-586. Roger Smith seconded the motion, and it passed unanimously.*

**6. Discussion—Private Probation under Rule 11-581:** (Billy Walker)

Mr. Walker gave a brief overview of Rule 11-581(g) which allows for public and private probation. As a result of this rule, attorneys have requested for private discipline rather than an admonition at the district court level. However, there are potential conflicts with private probation, such as conflicts with the Bar’s policy for good standing and protecting the public. Judge Hagen suggested for the order of probation to be public, but the terms of the probation may be designated as public or private, similar to Rule 11-561(c). Judge Hagen will draft a proposed rule change to circulate to the Committee via email for a vote.

**7. Action—Conduct needs assessment and development of 3–5-year funding plan (Rule 11-503(b)(2)(C)):** (Judge Diana Hagen)

This matter was postponed and will be conducted at a future meeting.

8. **Action—Committee member term end dates (Rule 11-503(a)(2)):** (Judge Diana Hagen)

Judge Hagen reminded the Committee members of their term beginning and end dates (March 4, 2019 – March 4, 2023) and proposed for the members to consider serving a second term if desired.

9. **Other business—Schedule next meeting:**

The meeting adjourned at 5:30 p.m. The next meeting is scheduled for Wednesday, March 23, 2022.

Tab 2

# Utah State Bar®

## M E M O R A N D U M

**TO:** Oversight Committee for the Office of Professional Conduct

**FROM:** Nancy Sylvester, General Counsel

**RE:** Defining the relationship between the Utah State Bar and the Office of Professional Conduct

**DATE:** April 12, 2022

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As you know, in 2017, the ABA released its report and recommendations to separate the Office of Professional Conduct from the Utah State Bar. Implementation of that separation began shortly thereafter with the creation of the Supreme Court's Oversight Committee for the Office of Professional Conduct. The goal of this initiative was to ensure that the OPC's prosecutorial discretion and functions would be safeguarded from outside influences, including from those of the Bar.

Over the past nine and a half months as the Bar's General Counsel, I have seen equal commitment to that goal from both the OPC and the Bar. As a Bar employee, 1) I do not have access to OPC files, phone calls, or mail; and 2) I do not know when the OPC is investigating an attorney. The only time I will become aware of an investigation is when that information becomes public, an attorney volunteers that information to me, or I receive information about a threat to staff safety. This also goes for the Ethics and Discipline Committee. I am never privy to that Committee's functions unless I have a need for information relevant to my job, such as in the case of a security response.



While the OPC's prosecutorial functions are totally separate from those of the Bar, we nonetheless do share some administrative resources. Those include information technology, finance, and general counsel support. The services I provide to the OPC are very limited. For example, if the OPC is taking an adverse employment action, I will be involved to ensure that state and federal laws are followed. If the OPC is subpoenaed, I will respond to the subpoena on the entity's behalf. And if the OPC is named in a malpractice lawsuit, I will either defend the OPC or work to secure outside counsel, depending on the complexity of the matter. I am never involved in the attorney discipline process.

Recently, some questions arose as to the boundaries of the OPC's relationship with the Bar, including regarding my relationship as General Counsel. Although we have attempted to resolve these questions informally, Billy Walker, Elizabeth Wright, and I have concluded that rule clarification would be appropriate. In my opinion, a rule clarifying our relationship would benefit more than just the OPC and the Bar. It would also benefit the courts, our licensees, and the public by building more trust in and understanding of each of our roles.

In that vein, Billy, Elizabeth, and I present the attached new Rule 11-506 for the Oversight Committee's review and feedback. We look forward to discussing this with the committee at its earliest convenience.

1   **Rule 11-506. Relationship to the Utah State Bar.**

2   (a) **Separate for all prosecutorial purposes.** The Office of Professional Conduct is  
3   separate from the Utah State Bar for all purposes relevant to lawyer discipline and  
4   disability proceedings.

5   (b) **Limited administrative overlap.** To the extent necessary to ensure the efficient and  
6   prudent expenditure of licensing fees, the Office of Professional Conduct and the Utah  
7   State Bar may share some administrative expenses and functions, including information  
8   technology, finance, and general counsel support. General counsel support is limited to  
9   the following:

10       (1) informal advice and counsel regarding non-prosecutorial functions;

11       (2) rule drafting;

12       (3) responding to requests for disciplinary information;

13       (4) legal representation in matters covered by malpractice insurance; and

14       (5) coordinating the hiring of outside counsel in appropriate malpractice insurance  
15       coverage cases.

16   (c) **Public and licensee assistance.** The Utah State Bar's Consumer Assistance Program,  
17   Disciplinary Process Information Office, and Ethics Hotline, which aid the public and  
18   Utah State Bar licensees, operate independently of the Office of Professional Conduct.

Tab 3

**Rule 11-582. Factors to be considered in imposing sanctions.**

(a) The Committee and the court must consider the following factors in imposing sanctions after a finding of Lawyer misconduct:

(1) the presumptive sanction as contained in these rules or, if there is no presumptive sanction, the appropriate sanction based on:

(A) the duty violated;

(B) the Lawyer's mental state;

(C) the potential or actual injury caused by the Lawyer's misconduct; and

(2) the existence of aggravating or mitigating factors.

**(b) Multiple charges of misconduct.**

(1) Where a Respondent is found to have committed multiple charges of misconduct, the ultimate sanction imposed must at least be consistent with the sanction for the most serious instance of misconduct among the violations, and may be greater than the sanction for the most serious misconduct.

(2) Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors.

**Rule 11-583. Presumptive sanctions for violating duties owed to clients.**

(a) **Failing to preserve the client's property.** The following sanctions are generally appropriate when a Lawyer fails to preserve client property in violation of Rule 1.15:

- (1) Delicensure is generally appropriate when a Lawyer knowingly converts client property, with the intent to benefit the Lawyer or another, and causes serious injury or potentially serious injury to a client.
- (2) Suspension is generally appropriate when a Lawyer knows or should know that the Lawyer is dealing improperly with client property and causes injury or potential injury to a client.
- (3) Reprimand is generally appropriate when a Lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- (4) Admonition is generally appropriate when a Lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

(b) **Failing to preserve the client's confidences.** The following sanctions are generally appropriate when a Lawyer improperly reveals information related to representing a client in violation of Rule 1.6:

- (1) Delicensure is generally appropriate when a Lawyer, with the intent to benefit the Lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and the disclosure causes serious injury or potentially serious injury to a client.
- (2) Suspension is generally appropriate when a Lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and the disclosure causes injury or potential injury to a client.
- (3) Reprimand is generally appropriate when a Lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and the disclosure causes injury or potential injury to a client.
- (4) Admonition is generally appropriate when a Lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted

to be disclosed and the disclosure causes little or no actual or potential injury to a client.

(c) **Failing to avoid conflicts of interest.** The following sanctions are generally appropriate in cases involving conflicts of interest in violation of Rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 3.7, 5.4(c), or 6.3:

(1) Delicensure is generally appropriate when a Lawyer, without the informed consent of client(s):

(A) engages in representation of a client knowing that the Lawyer's interests are adverse to the client's with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to the client;

(B) simultaneously represents clients that the Lawyer knows have adverse interests with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client; or

(C) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client.

(2) Suspension is generally appropriate when a Lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

(3) Reprimand is generally appropriate when a Lawyer is negligent in determining whether the representation of a client may be materially affected by the Lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the Lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

(d) **Lack of diligence.** The following sanctions are generally appropriate when a Lawyer fails to act with reasonable diligence and promptness in representing a client in violation of Rules 1.2(a), 1.2(b), 1.2(c), 1.2(e), 1.3, or 1.4:

(1) Delicensure is generally appropriate when

a Lawyer abandons the practice of law and thereby causes serious or potentially serious injury to a client;

(2) Delicensure or suspension is generally appropriate when a Lawyer engages in a substantial pattern of neglect or knowingly fails to perform significant services for a client and thereby causes injury to a client. The appropriate sanction will depend on the nature and significance of the services and the seriousness of the injury to the client.

(3) Reprimand is generally appropriate when a Lawyer is negligent and does not act with reasonable diligence in representing a client, and thereby causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

(e) **Lack of competence.** The following sanctions are generally appropriate when a Lawyer fails to provide competent representation to a client in violation of Rule 1.1:

(1) Delicensure or suspension is generally appropriate when a Lawyer's course of conduct demonstrates that the Lawyer:

(A) does not understand fundamental legal doctrines or procedures, and the Lawyer's conduct causes injury or potential injury to a client; or

(B) substantially engages in areas of practice central to the representation of a client in which the Lawyer knows the Lawyer is not competent and thereby causes injury or potential injury to a client. The appropriate sanction will depend on the scope and significance of the incompetent representation and the seriousness of the injury to the client.

(3) Reprimand is generally appropriate when a Lawyer:

(A) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(B) is negligent in determining whether the Lawyer is competent to handle a legal matter and causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in determining whether the Lawyer is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

(f) **Lack of candor.** The following sanctions are generally appropriate in cases where a Lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of Rules 1.5 or 8.4(c):

(1) Delicensure is generally appropriate when a Lawyer knowingly deceives a client with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client.

(2) Suspension is generally appropriate when a Lawyer knowingly deceives a client, and causes injury or potential injury to the client.

(3) Reprimand is generally appropriate when a Lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.



**Rule 11-584. Presumptive sanctions for violating duties owed to the public.**

(a) **Failing to maintain personal integrity.** The following sanctions are generally appropriate when a Lawyer commits a criminal act that reflects adversely on the Lawyer's honesty, trustworthiness, or fitness as a Lawyer in other respects in violation of Rules 8.1, 8.4(b), or 8.4(c):

(1) Delicensure is generally appropriate when a Lawyer intentionally or knowingly engages in criminal conduct that would be a felony under applicable law and the conduct:

(A) involves dishonesty, fraud, deceit, or misrepresentation, including but not limited to theft, fraud, extortion, bribery, obstruction of justice, and false statements; or

(B) poses a serious danger to the safety of others, including but not limited to assault, homicide, kidnapping, sexual offenses, and distribution of controlled substances.

(2) Suspension is generally appropriate when a Lawyer intentionally or knowingly engages in non-felony criminal conduct that seriously adversely reflects on the Lawyer's honesty, trustworthiness, or fitness as a Lawyer in other respects.

(3) Either reprimand or admonition is appropriate when a Lawyer engages in any other non-felony criminal conduct that adversely reflects on the Lawyer's fitness to practice law, depending on the potential or actual injury to the public trust.

(b) **Failing to ~~maintain the public trust~~ adhere to the special duties of a prosecutor.**

The following sanctions are generally appropriate in cases involving ~~public officials who engage in conduct that constitutes the practice of law and is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official in violation of~~ Lawyers who violate Rule 3.8:

(1) Delicensure is generally appropriate when a Lawyer ~~in an official or governmental position knowingly misuses the position~~ violates the special duties of a prosecutor with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

(2) Suspension or reprimand is generally appropriate when a Lawyer ~~in an official or governmental position~~ knowingly or negligently fails to follow proper ~~procedures or rules~~ violates the special duties of a prosecutor. The appropriate sanction will depend on the Lawyer's mental state and the seriousness of the ~~\_, and causes~~ injury or potential injury to a party or to the integrity of the legal process.

(3) ~~Reprimand is generally appropriate when a Lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.~~

~~(4)~~ Admonition is generally appropriate when a Lawyer ~~in an official or governmental position engages~~ violates the special duties of a prosecutor in an isolated instance of negligence ~~in not following proper procedures or rules~~, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

**Rule 11-585. Presumptive sanctions for violating duties owed to the legal system.**

(a) **False statements, fraud, and misrepresentation.** The following sanctions are generally appropriate when a Lawyer's conduct is prejudicial to the administration of justice or involves dishonesty, fraud, deceit, or misrepresentation to a court in violation of Rules 1.2(d), 3.3, or 4.1:

(1) Delicensure is generally appropriate when a Lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

(2) Suspension is generally appropriate when a Lawyer learns that false statements or documents have been submitted or material information improperly withheld, and takes no remedial action, and thereby causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(3) Reprimand is generally appropriate when a Lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

(b) **Abuse of the legal process.** The following sanctions are generally appropriate when a Lawyer ~~fails to expedite litigation, bring a meritorious claim, or obey any obligation under the rules of a tribunal in violation of~~ violates Rules 3.1, 3.2, 3.4, 3.6, 3.9, 4.4, 8.4(e), or 8.4(f):

(1) Delicensure is generally appropriate when a Lawyer engages in a pattern or practice of knowingly abusing the legal process with the intent to obtain a benefit for the Lawyer or another and causes serious or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

(2) Suspension or reprimand is generally appropriate when a Lawyer knowingly or negligently abuses the legal process and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. The appropriate sanction will depend on the Lawyer's mental state and the seriousness of the injury or potential injury to a client or a party, or the degree of interference or potential interference with a legal proceeding.

~~(3) Reprimand is generally appropriate when a Lawyer negligently abuses the legal process and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.~~

~~(4)~~ Admonition is generally appropriate when a Lawyer negligently abuses the legal process in an isolated instance and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

(c) **Improper communications with individuals in the legal system.** The following sanctions are generally appropriate when a Lawyer attempts to influence a judge, juror, prospective juror, or other official by means prohibited by law in violation of Rule 3.5, 4.2, or 4.3:

(1) Delicensure is generally appropriate when a Lawyer:

(A) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding;

(B) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or

(C) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

(2) Suspension is generally appropriate when a Lawyer engages in communication with an individual in the legal system when the Lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

(3) Reprimand is generally appropriate when a Lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no: (A) actual or potential injury to a party, or (B) actual or potential interference with the outcome of the legal proceeding.

**Rule 11-586. Sanctions for violating duties owed as a member of the legal profession.**

In cases including but not limited to false or misleading communication about the Lawyer or the Lawyer's services, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, failure to respond to a lawful request for information from a disciplinary authority, or failure to report professional misconduct in violation of Rules 1.5, 1.14, 1.16, 2.1, 2.3, 5.1, 5.2, 5.3, 5.4(a), 5.4(b), 5.4(d), 5.5, 5.6, 6.2, 7.1, 8.1, and 8.3, the appropriate sanction will vary based on the Lawyer's mental state and the potential or actual injury to a client, the public, or the legal system.

# Tab 4

**Rule 11-581. Sanctions.**

(a) **Scope.** A disciplinary sanction is imposed on a Lawyer upon the Committee's or the court's finding that the Lawyer has engaged in professional misconduct.

(b) **Delicensure.** Delicensure terminates the individual's status as a Lawyer. A Lawyer who has been delicensed may be relicensed.

(c) **Suspension.** Suspension removes a Lawyer from the practice of law for a specified minimum time, generally six months or more. In no event should the time before application for reinstatement be more than three years.

(d) **Interim suspension or interim discipline.** Interim suspension temporarily suspends a Lawyer from the practice of law. Interim suspension or interim discipline may be imposed as set forth in Rules 11-563 and 11-564.

(e) **Reprimand.** Reprimand is public discipline that declares the Lawyer's conduct improper, but does not limit the Lawyer's right to practice law.

(f) **Admonition.** Admonition is nonpublic discipline that declares the conduct of the Lawyer improper, but does not limit the Lawyer's right to practice law.

(g) **Probation.** Probation allows a Lawyer to practice law under specified conditions.

~~Probation~~ The Lawyer's probationary status is public, but the terms of probation may be public or nonpublic.; Probation may be imposed alone or in conjunction with other sanctions, and imposed as a condition of reinstatement or relicensure.

(1) **Requirements.** To be eligible for probation, a Respondent must demonstrate that:

(A) the Respondent can perform legal services and the continued practice of law will not cause the courts or the profession to fall into disrepute;

(B) the Respondent is unlikely to harm the public during probation;

(C) the necessary conditions of probation can be adequately supervised;  
and

(D) the Respondent has not committed acts warranting delicensure.



(2) **Conditions.** Probation may include the following conditions:

- (A) no further violations of the Rules of Professional Conduct or Licensed Paralegal Practitioner Rules of Professional Conduct;
- (B) restitution;
- (C) assessment of costs;
- (D) limitation on practice;
- (E) requirement that the Lawyer pass the Multistate Professional Responsibility Exam;
- (F) requirement that the Lawyer take continuing legal education courses;
- (G) mental health counseling and treatment;
- (H) abstinence from drugs and alcohol;
- (I) medical evaluation and treatment;
- (J) periodic reports to the court and the OPC; and
- (K) monitoring of all or part of Respondent's work by a supervising attorney.

(3) **Costs.** The Respondent is responsible for all costs of evaluation, treatment, and supervision. Failing to pay these costs before probation terminates is a violation of probation.

(4) **Terminating probation.** A Respondent may terminate probation by filing with the district court and serving on the OPC an unsworn declaration stating that the Respondent has fully complied with the requirements of the probation order. The OPC may file an objection and thereafter the court will conduct a hearing.

(5) **Violations.** If during the period of probation, the OPC receives information that any probation term has been violated, the OPC may file a motion specifying the alleged violation and seeking to have the probation terminated. Upon filing such motion, the Respondent must have the opportunity to respond and a

hearing will be held, at which time the court will determine whether to revoke probation.

(h) **Diversion.** Diversion is an alternative to a sanction if completed. Diversion allows a Lawyer to practice law under specified conditions. Diversion may be public or non-public.

(1) Rule 11-550 governs diversion matters before the matter is submitted to a screening panel.

(2) For an Action, the following criteria will determine the appropriateness of a diversion:

(A) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor adversely reflecting on the Lawyer's fitness to practice law or any felony;

(B) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence or lack of training, education or other similar circumstance; and

(C) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(3) In addition to the above-required criteria of (A), (B) and (C), other considerations may include whether the misconduct is a one-time act or based on a physical or mental condition beyond the Respondent's control and whether there is sufficient evidence connecting the condition to the misconduct.

(4) Diversion determinations must include compliance conditions to address the misconduct and the time for completion.

(5) If the Lawyer completes the diversion conditions, the Action will be dismissed with prejudice.

(6) If the Lawyer does not complete the diversion conditions within the required time, the Lawyer will be subject to a suspension of six months and a day.

(i) **Resignation with discipline pending.** Resignation with discipline pending is a form of public discipline that allows a Respondent to resign from the practice of law while either a Complaint or Action is pending against the Respondent. Resignation with discipline pending may be imposed as set forth in Rule 11-566.

(j) **Other sanctions and remedies.** Other sanctions and remedies that a court may impose include:

- (1) restitution;
- (2) assessment of costs;
- (3) limitation upon practice;
- (4) appointment of a receiver;
- (5) a requirement that the Lawyer take the Bar Examination or professional responsibility examination; and
- (6) a requirement that the Lawyer attend continuing education courses.

(k) **Reciprocal discipline.** Reciprocal discipline is imposing a disciplinary sanction on a Lawyer who has been disciplined in another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction.

**Rule 11-582. Factors to be considered in imposing sanctions.**

(a) The Committee and the court must consider the following factors ~~should be considered~~ in imposing ~~a~~ sanctions after a finding of Lawyer misconduct:

(1) the presumptive sanction as contained in these rules or, if there is no presumptive sanction, the appropriate sanction based on:

- (Aa) the duty violated;
- (Bb) the Lawyer's mental state;
- (Cc) the potential or actual injury caused by the Lawyer's misconduct; and

(~~2d~~) the existence of aggravating or mitigating factors.

**(b) Multiple charges of misconduct.**

(1) Where a Respondent is found to have committed multiple charges of misconduct, the ultimate sanction imposed must at least be consistent with the sanction for the most serious instance of misconduct among the violations, and may be greater than the sanction for the most serious misconduct.

(2) Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors.

**Rule 11-583. Presumptive sanctions for violating duties owed to clients.**

**(a) Failing to preserve the client's property.** The following sanctions are generally appropriate when a Lawyer fails to preserve client property in violation of Rule 1.15:

(1) Delicensure is generally appropriate when a Lawyer knowingly converts client property, with the intent to benefit the Lawyer or another, and causes serious injury or potentially serious injury to a client.

(2) Suspension is generally appropriate when a Lawyer knows or should know that the Lawyer is dealing improperly with client property and causes injury or potential injury to a client.

(3) Reprimand is generally appropriate when a Lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

**(b) Failing to preserve the client's confidences.** The following sanctions are generally appropriate when a Lawyer improperly reveals information related to representing a client in violation of Rule 1.6:

(1) Delicensure is generally appropriate when a Lawyer, with the intent to benefit the Lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and the disclosure causes serious injury or potentially serious injury to a client.

(2) Suspension is generally appropriate when a Lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and the disclosure causes injury or potential injury to a client.

(3) Reprimand is generally appropriate when a Lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and the disclosure causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted

to be disclosed and the disclosure causes little or no actual or potential injury to a client.

**(c) Failing to avoid conflicts of interest.** The following sanctions are generally appropriate in cases involving conflicts of interest in violation of Rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 3.7, 5.4(c), or 6.3:

(1) Delicensure is generally appropriate when a Lawyer, without the informed consent of client(s):

(A) engages in representation of a client knowing that the Lawyer's interests are adverse to the client's with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to the client;

(B) simultaneously represents clients that the Lawyer knows have adverse interests with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client;

(C) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client.

(2) Suspension is generally appropriate when a Lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

(3) Reprimand is generally appropriate when a Lawyer is negligent in determining whether the representation of a client may be materially affected by the Lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the Lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

(d) **Lack of diligence.** The following sanctions are generally appropriate when a Lawyer fails to act with reasonable diligence and promptness in representing a client in violation of Rules 1.2(a), 1.2(b), 1.2(c), 1.2(e), 1.3, or 1.4:

(1) Delicensure is generally appropriate when a Lawyer abandons the practice of law and thereby causes serious or potentially serious injury to a client;

(2) Delicensure or suspension is generally appropriate when a Lawyer engages in a substantial pattern of neglect or knowingly fails to perform significant services for a client and thereby causes injury to a client. The appropriate sanction will depend on the nature and significance of the services and the seriousness of the injury to the client.

(3) Reprimand is generally appropriate when a Lawyer is negligent and does not act with reasonable diligence in representing a client, and thereby causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

(e) **Lack of competence.** The following sanctions are generally appropriate when a Lawyer fails to provide competent representation to a client in violation of Rule 1.1:

(1) Delicensure or suspension is generally appropriate when a Lawyer's course of conduct demonstrates that the Lawyer:

(A) does not understand fundamental legal doctrines or procedures, and the Lawyer's conduct causes injury or potential injury to a client; or

(B) substantially engages in areas of practice central to the representation of a client in which the Lawyer knows the Lawyer is not competent and thereby causes injury or potential injury to a client. The appropriate sanction will depend on the scope and significance of the incompetent representation and the seriousness of the injury to the client.

(3) Reprimand is generally appropriate when a Lawyer:

(A) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(B) is negligent in determining whether the Lawyer is competent to handle a legal matter and causes injury or potential injury to a client.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in determining whether the Lawyer is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

(f) **Lack of candor.** The following sanctions are generally appropriate in cases where a Lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of Rules 1.5 or 8.4(c):

(1) Delicensure is generally appropriate when a Lawyer knowingly deceives a client with the intent to benefit the Lawyer or another, and causes serious or potentially serious injury to a client.

(2) Suspension is generally appropriate when a Lawyer knowingly deceives a client, and causes injury or potential injury to the client.

(3) Reprimand is generally appropriate when a Lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.



**Rule 11-584. Presumptive sanctions for violating duties owed to the public.**

**(a) Failing to maintain personal integrity.** The following sanctions are generally appropriate when a Lawyer commits a criminal act that reflects adversely on the Lawyer's honesty, trustworthiness, or fitness as a Lawyer in other respects in violation of Rules 8.1, 8.4(b), or 8.4(c):

(1) Delicensure is generally appropriate when a Lawyer intentionally or knowingly engages in criminal conduct that would be a felony under applicable law and the conduct:

(A) involves dishonesty, fraud, deceit, or misrepresentation, including but not limited to theft, fraud, extortion, bribery, obstruction of justice, and false statements; or

(B) poses a serious danger to the safety of others, including but not limited to assault, homicide, kidnapping, sexual offenses, and distribution of controlled substances.

(2) Suspension is generally appropriate when a Lawyer intentionally or knowingly engages in non-felony criminal conduct that seriously adversely reflects on the Lawyer's honesty, trustworthiness, or fitness as a Lawyer in other respects.

(3) Either reprimand or admonition is appropriate when a Lawyer engages in any other non-felony criminal conduct that adversely reflects on the Lawyer's fitness to practice law, depending on the potential or actual injury to the public trust.

**(b) Failing to adhere to the special duties of a prosecutor.** The following sanctions are generally appropriate in cases involving Lawyers who violate Rule 3.8:

(1) Delicensure is generally appropriate when a Lawyer violates the special duties of a prosecutor with the intent to obtain a significant benefit or advantage for the Lawyer or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

(2) Suspension or reprimand is generally appropriate when a Lawyer knowingly or negligently violates the special duties of a prosecutor. The appropriate sanction will depend on the Lawyer's mental state and the seriousness of the injury or potential injury to a party or to the integrity of the legal process.

(3) Admonition is generally appropriate when a Lawyer violates the special duties of a prosecutor in an isolated instance of negligence, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

**Rule 11-585. Presumptive sanctions for violating duties owed to the legal system.**

**(a) False statements, fraud, and misrepresentation.** The following sanctions are generally appropriate when a Lawyer's conduct is prejudicial to the administration of justice or involves dishonesty, fraud, deceit, or misrepresentation to a court in violation of Rules 1.2(d), 3.3, or 4.1:

(1) Delicensure is generally appropriate when a Lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

(2) Suspension is generally appropriate when a Lawyer learns that false statements or documents have been submitted or material information improperly withheld, and takes no remedial action, and thereby causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(3) Reprimand is generally appropriate when a Lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

**(b) Abuse of the legal process.** The following sanctions are generally appropriate when a Lawyer violates Rules 3.1, 3.2, 3.4, 3.6, 3.9, 4.4, 8.4(e), or 8.4(f):

(1) Delicensure is generally appropriate when a Lawyer engages in a pattern or practice of knowingly abusing the legal process with the intent to obtain a benefit for the Lawyer or another and causes serious or potentially serious injury to a

party, or causes serious or potentially serious interference with a legal proceeding.

(2) Suspension or reprimand is generally appropriate when a Lawyer knowingly or negligently abuses the legal process and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. The appropriate sanction will depend on the Lawyer's mental state and the seriousness of the injury or potential injury to a client or a party, or the degree of interference or potential interference with a legal proceeding.

(3) Admonition is generally appropriate when a Lawyer negligently abuses the legal process in an isolated instance and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

(c) **Improper communications with individuals in the legal system.** The following sanctions are generally appropriate when a Lawyer attempts to influence a judge, juror, prospective juror, or other official by means prohibited by law in violation of Rule 3.5, 4.2, or 4.3:

(1) Delicensure is generally appropriate when a Lawyer:

(A) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding;

(B) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or

(C) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

(2) Suspension is generally appropriate when a Lawyer engages in communication with an individual in the legal system when the Lawyer knows that such communication is improper, and causes injury or potential injury to a

party or causes interference or potential interference with the outcome of the legal proceeding.

(3) Reprimand is generally appropriate when a Lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

(4) Admonition is generally appropriate when a Lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no: (A) actual or potential injury to a party, or (B) actual or potential interference with the outcome of the legal proceeding.

**Rule 11-586. Sanctions for violating duties owed as a member of the legal profession.**

In cases including but not limited to false or misleading communication about the Lawyer or the Lawyer's services, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, failure to respond to a lawful request for information from a disciplinary authority, or failure to report professional misconduct in violation of Rules 1.5, 1.14, 1.16, 2.1, 2.3, 5.1, 5.2, 5.3, 5.4(a), 5.4(b), 5.4(d), 5.5, 5.6, 6.2, 7.1, 8.1, and 8.3, the appropriate sanction will vary based on the Lawyer's mental state and the potential or actual injury to a client, the public, or the legal system.

# Tab 5

# **OFFICE OF PROFESSIONAL CONDUCT**

## **ANNUAL REPORT February 2022**





## **INTRODUCTION**

This report on the Office of Professional Conduct (“OPC”) will focus on the following areas: (I) staff composition; (II) Lawyer misconduct case process and procedure; (III) statistics for January 1, 2021 to December 31, 2021 (“year 2021”); (IV) progress and goals on cases; (V) performance metrics; and (VI) goals for January 1, 2022 to December 31, 2022 (“year 2022”).

Rule 11-501, as part of Article 5 of the Utah Supreme Court Rules of Professional Practice, authorizes the OPC Oversight Committee that reports to the Utah Supreme Court. This rule makes clear that the OPC is under the administrative oversight of that Committee.

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
- Margaret Plane – Attorney
- Roger Smith – Accountant
- 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](http://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.

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 has promulgated Rules Governing Licensed Paralegal Practitioners (“LPPs”). The OPC also has regulatory authority over LPPs. LPPs are included in the definition of “Lawyer” for regulation so references in this report will be to “Lawyer” rather than “Attorney” to reflect the change of regulation of LPPs as of November 18, 2018. Currently there are 18 LPPs who are licensed to practice in Utah. The OPC did not have any cases regarding LPPs in this reporting period.

## **I. STAFF COMPOSITION**

The staff for year 2021 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.

## **II. LAWYER MISCONDUCT CASE PROCESS AND PROCEDURE**

### **A) Rules**

The Utah Supreme Court 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 LPPs specifically. 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**

Pursuant to Rule 11-510 of the RDDS, 21 volunteer Lawyers and four 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 RDDS.

The Utah Supreme Court appoints a Committee Chair and four Committee Vice-Chairs from the 21 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 16 Lawyers and four 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 2021 composition of the Committee was as follows:

Christine Greenwood (Magleby Cataxinos & Greenwood), Chair, Ethics and Discipline Committee<sup>A</sup>

Mark F. James (James Dodge Russell & Stephens PC), Vice-Chair, Ethics and Discipline Committee

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

Bryan J. Pattison (Durham Jones & Pinegar PC), 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 (Law Office of Andrea Martinez, PLLC), Chair  
J. Gregory Hardman (Snow Jensen & Reece), Vice-Chair  
Bryant J. McConkie (McConkie, Hales & Gunn)

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<sup>A</sup> Effective April 26, 2021, the Committee Chair became a paid full-time position.

Kimberly A. Neville (Dorsey & Whitney LLP)  
Derek Williams (Campbell Williams Ference & Hall)  
Sarah Sandberg, Public Member

Panel B

Langdon T. Owen, Jr. (Cohne Kinghorn, PC), Chair  
Cassie J. Medura (Jennings & Medura, LLC), Vice-Chair  
Lara A. Swensen (James Dodge Russell & Stephens PC)  
J. Thomas Beckett (Parsons Behle & Latimer)  
Joel Campbell, Public Member

Panel C

Amy Hayes Kennedy (Dart, Adamson & Donovan), Chair  
Kasey L. Wright (Wright Law Firm, PC), Vice-Chair  
Jennifer F. Parrish (Magleby Cataxinos & Greenwood)  
Debra M. Nelson (Utah Indigent Defense Services)  
Mitchell A. Stephens (James Dodge Russell & Stephens PC)  
Kari Stuart Jones, Public Member  
Jonathan Bone, Public Member

Panel D

Mark E. Hindley (Stoel Rives, LLP), Chair  
David W. Tufts (Dentons Durham Jones Pinegar PC)  
Darcy Goddard (Salt Lake County District Attorney's Office)  
Robert R. Harrison (Stilling & Harrison PLLC)  
Charles Haussler, 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. All Panel hearings must have five members present unless all parties agree to fewer than five, but not fewer than three.

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

Specifically addressing the processing of cases, the pertinent provisions of Rule 11-521(a) of the RDDS 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 OPC which, if true, would be grounds for discipline or transfer to disability status and investigate all facts pertaining to petitions for reinstatement or relicensure;

(3) Choose to dismiss, decline to prosecute, refer non-frivolous and substantial Complaints to the Committee for hearing, or petition the District Court 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.

Pursuant to Rule 11-530 of the RDDS, a person can start a Complaint by delivering it to the OPC in hard copy or electronic form, or through the OPC's website at [opc.utah.org](http://opc.utah.org). The Complaint must be signed by the Complainant, include his/her address and contain an unsworn declaration as to the accuracy of the information contained in the Complaint. If the OPC receives information that does not have the unsworn declaration requirement, the OPC notifies the Complainant that this is needed. The substance of the Complaint does not have to be in any particular form, however, the OPC does provide a form that can be used through its website.

Additionally, pursuant to Rule 11-521(a) and Rule 11-530 of the RDDS, the OPC can start Lawyer misconduct investigations and Complaints on its own initiative based on 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. An OPC initiated Complaint filing is complete when OPC delivers the Complaint to the

Laywer in hard copy or electronic form. The OPC initiated Complaint does not have to have an unsworn declaration.

## **1) Summary Review**

### **Process**

The OPC's Summary Review is staffed by three attorneys who are assigned to review all Complaints received to determine whether the matter should be appropriately closed by a declination to prosecute or a dismissal, or whether the matter should be processed for further investigation. The criteria used is looking at the "four corners" of the Complaint: whether OPC has jurisdiction, whether the Complaint states a claim, whether the Complaint lacks merit in that the alleged conduct even if true is not an ethical violation, or whether the matter should be addressed in another forum. This criteria, including the other forum review, looks at the totality of the allegations presented by the Complaint and determines the likelihood that evidence can be produced to find by a preponderance that there has been a violation of the Rules of Professional Conduct for sanctions.

The OPC at the end of this Summary Review will summarily dismiss the case if this criteria is not met. 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 Complaint is sent to the Lawyer. Summary Review dismissals are not reviewed at weekly case meetings described below, however, Complainants have a right to appeal Summary Review dismissals as detailed below.

Based upon the Summary Review criteria, if the Complaint cannot be dismissed without, at minimum a response from the Lawyer or other documentation, the Complaint moves to OPC's further investigation stage. The case is kept and proceeds like other investigative cases where responses are needed as described below.

## **2) Investigations**

Complaints not resolved by Summary Review and the further decisions made on these cases are made jointly by the OPC attorneys at weekly staff meetings. Therefore, notwithstanding individual case assignments, all the attorneys in the office are actually involved in the investigation and prosecution decisions of most of the cases received by the OPC.

### **Preliminary Investigation**

For Complaints that are not dismissed through the Summary Review process, the OPC conducts a preliminary investigation. The preliminary investigation is to ascertain whether the 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 Lawyer.

### **Settlement**

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

### **Notice**

After the preliminary investigation and the request for informal responses, if the OPC determines that an official response is needed from the Lawyer to reach an appropriate resolution of the Complaint in accordance with the RDDS, including the possibility of a Screening Panel hearing, the OPC will serve on the Lawyer a "Notice." The Notice will contain a true copy of the signed Complaint. The Notice will also identify with particularity the possible violations of the Rules of Professional Conduct raised by

the Complaint as preliminarily determined by the OPC. The Lawyer has 21 days after service of the Notice to file with the OPC a written and signed answer setting forth in full an explanation of the facts surrounding the 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 Notice 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 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" Complaints within the meaning of RDDS 11-521(a)(3) and are required to be presented to Screening Panels consistent with RDDS 11-530(e).

#### **Dismissal/Declination to Prosecute**

If upon completion of this investigation the OPC determines that the Complaint 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 Complaint consistent with RDDS 11-530(g)(1). Additionally, as part of its dismissal authority, consistent with the language in Rule 11-530(g)(1) of the RDDS, the OPC can determine that a 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 a Complaint.

The OPC does not arbitrarily decide to decline to prosecute a Complaint. Occasionally, due to the nature of a Complaint (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 Complaint 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 Complaint. Generally, the OPC standards for declining to prosecute Complaints are as follows:

- The OPC may decline to prosecute Complaints where there is a question as to the nexus between the allegations and the Lawyer's practice.
- The OPC may decline to prosecute Complaints where the Lawyer has already been disciplined in a Lawyer discipline matter for similar misconduct committed during the same period. In these Complaints, 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 Complaints 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 Complaint by a referral to the Professionalism Counseling Board.<sup>B</sup>

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<sup>B</sup> 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 Lawyer discipline cases. Pursuant to Rule 11-550 to 11-555 of the RDDS, Diversions are authorized as a resolution of a Lawyer discipline matter if the Lawyer consents to a Diversion Agreement the OPC may dismiss Complaints involving minor violations of the Rules of Professional Conduct. The specific types of Complaints 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 Lawyer'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 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 OPC by policy is enhancing its use of diversions by implementing a Lawyer wellness/wellbeing component to all of the Complaints it feels are appropriate to be resolved by diversion.

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 Complaint 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 (as determined by the OPC) 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.

#### **4) Informal Appeals**

Pursuant to Rule 11-530(g)(2) of the RDDS, a Complainant can appeal within 21 days to the Committee Chair the OPC's dismissals and declinations to prosecute, of any Complaint, including those Complaints resolved by Summary Review. When the OPC dismisses a Complaint after investigation or declines to prosecute a Complaint, it gives notice to the Complainant of the language in Rule 11-530(g)(2) of the RDDS 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 Complaint for a Screening Panel hearing.

## 5) **Screening Panel**

If after investigation, the OPC determines that the allegations of the Complaint are non-frivolous and substantial, or if the Chair or Vice-Chair of the Committee remands a case after an informal appeal, the OPC refers the Complaint to a Screening Panel. The Notice 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 Complaint, the Lawyer'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 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.
  - Additionally, if the Screening Panel recommends a public reprimand, a Lawyer may elect a trial de novo with the District Court by notifying the Committee Chair who will authorize the OPC to file an Action consistent with section 6 below.
  - 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 Exception 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 an Action be filed with the District Court.
- A determination that an Action be filed is not appealable.

If the Screening Panel determines that the Complaint should be filed as an Action, Rule 11-536 of the RDDS requires the OPC, in accordance with the Rules of Civil Procedure, to file the Action in the District Court and give notice of the Screening Panel recommendation and a copy of the pleadings to the Committee Chair. Often the Lawyer has more than one Complaint pending against him/her. If there is more than one Complaint involved, a Complaint may also pass through the Screening Panel process and can be combined into a single Action (“Combined with Action”). Once an Action is filed, if a Lawyer has other Complaints, in lieu of the Screening Panel process the OPC may elect to hold the cases for presentation at any sanctions hearing resulting from the Action (“Hold for Sanctions”), pursuant to Rule 11-561(a)(3) of the RDDS.

## **6) Actions**

An Action 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 an Action 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., Rules 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
- Delicensure
- Diversion

## **7) Formal Appeals**

All appeals from District Court orders are directed to the Utah Supreme Court. Only the 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 responsibility to consider appeals of all Lawyer 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 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.

**9) Interim Discipline/Suspension and Disability**

Pursuant to Rule 11-563 of the RDDS as determined by the OPC, if a Lawyer poses a threat of serious harm to the public and has committed a violation of the Rules of Professional Conduct, the OPC will file a petition for interim discipline. The remedies available could be an interim suspension from the practice of law or an order limiting the Lawyer's practice area or placing the Lawyer on supervision pending disposition of the disciplinary proceeding.

Additionally, pursuant to Rule 11-564 of the RDDS as determined by the OPC, if a Lawyer has been found guilty of or has entered a plea of guilty or no contest for a felony or misdemeanor that reflects adversely on the Lawyer's honesty, trustworthiness or fitness as a Lawyer, the OPC will file a petition for interim suspension. And finally, pursuant to Rule 11-568 of the RDDS as determined by the OPC, if the Lawyer is under a disability as defined in the RDDS, the OPC may file a petition for disability. All of these petitions described under Rules 11-563, 11-564 and 11-568, are immediate filings in the District Court and need not go through the Screening Panel process outlined above.

**10) Abeyances**

Lawyer discipline Complaints 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 Lawyer. The request has to be filed with the Committee Clerk pursuant to Rule 11-533(c) of the RDDS if the discipline Complaint is pending prior to the filing of an Action ("Informal Abeyance"). These Informal Abeyances must be made before any Screening Panel hearing is held. The request is made to the judge pursuant to Rule 11-542(d) of the RDDS if the discipline case is pending in the

District Court as part of an Action (“Formal Abeyance”).

#### **11) Special Prosecutor Complaints**

Special Prosecutor Complaints are Complaints filed against either OPC staff, Bar staff, Bar Commissioners or Committee members. Pursuant to Rule 11-542(f) of the RDDS, these Complaints have to be prosecuted outside of the OPC.

#### **12) Final Dispositions**

Until a Complaint reaches a “final” disposition, the OPC considers it an active Complaint. Final dispositions are Complaints where the result has been determined to be dismissal, declination to prosecute, dismissal with caution, admonition, public reprimand, delicensure, resignation with discipline pending, time-specified suspension, trusteeship where the OPC is not the trustee, probation and Complaints in which no appeal is pending.

### **III. STATISTICS – Year 2021**

#### **A) Case Activity**

**Active cases as of January 1, 2021.....451**

##### **1) Cases opened**

Complaint .....	681
Media/Court Information .....	4
Notice of Insufficient Funds .....	31
Relicensure.....	1
Reciprocal Discipline .....	2
Reinstatement .....	3
Rule 11-564.....	1
Special Prosecutor .....	5
Trusteeship.....	2
Total .....	730
<b>Total cases processed during period .....</b>	<b>1,181</b>

##### **2) Complaints Closed Without Discipline**

By Dismissal.....	312
By Dismissal with Caution .....	9
By Declination to Prosecute .....	78



	By Dismissal – Duplicate .....	4
	By Declination to Prosecute (Hold for Reinstatement).....	7
	<b>Total .....</b>	<b>410</b>
<b>3)</b>	<b><u>Requests for Assistance Closed Without Discipline<sup>C</sup></u></b>	
	By Dismissal .....	25
	By Dismissal with Caution .....	7
	By Dismissal - Duplicate .....	5
	By Declination to Prosecute .....	80
	By Declination to Prosecute with Caution .....	18
	By Sent to CAP <sup>D</sup> .....	69
	By Declination to Prosecute (Hold for Reinstatement).....	7
	<b>Total .....</b>	<b>211</b>
<b>4)</b>	<b><u>Media/Court Information Closed Without Discipline</u></b>	
	By Dismissal .....	1
	By Declination to Prosecute .....	2
	By Declination to Prosecute (Hold for Reinstatement).....	1
	<b>Total .....</b>	<b>4</b>
<b>5)</b>	<b><u>Special Prosecutor Closed Without Discipline</u></b>	
	By Dismissal .....	10
	<b>Total .....</b>	<b>10</b>
<b>6)</b>	<b><u>Notice of Insufficient Funds Closed Without Discipline</u></b>	
	By Dismissal .....	2
	By Dismissal with Caution .....	1
	By Declination to Prosecute .....	12
	By Declination to Prosecute with Caution .....	19
	<b>Total .....</b>	<b>34</b>
<b>7)</b>	<b><u>Orders Entered</u></b>	<b><u># of Lawyers</u></b>
	Admonition.....	6 (6)
	Public Reprimand .....	9 (9)
	Suspension.....	5 (5)
	Delicensure.....	5 (5)
	Disability .....	3 (3)
	Contempt Denied.....	1 (1)
	Reinstatement .....	1 (1)

<sup>C</sup> As reported in the previous annual report, prior to December 15, 2020, the OPC would address Complaints and Requests for Assistance, which were not official Complaints. These Requests for Assistance were still being processed after January 1, 2021, the beginning of the reporting period for this annual report and subsequently closed during the period.

<sup>D</sup> The Consumer Assistance Program (CAP) is a program at the Utah State Bar separate from the OPC and staffed by a part-time attorney to handle minor disputes between consumers (i.e., clients) and Lawyers. As reported in the previous annual report, prior to December 15, 2020, the OPC could address Requests for Assistance by sending them to CAP. These sent to CAP cases were still open as of January 1, 2021, the beginning of this annual reporting period, and subsequently closed during the period.

Reinstatement Denied .....	1	(1)
Resignation with Discipline Pending .....	6	(6)
Trustee Appointed .....	1	(1)
<b>Total .....</b>	<b>38</b>	<b>(38)</b>

**8) Cases Combined with Actions and Part of Global Settlements**

Complaints.....	3
Requests for Assistance .....	14
Media/Court Information .....	1
Notice of Insufficient Funds .....	1
<b>Total .....</b>	<b>19</b>

**Total case closures during period .....726**

**Active cases as of January 1, 2022.....455**

(Open cases minus closures for year 2021)

**9) During the Year 2021, the OPC had case activity as follows**

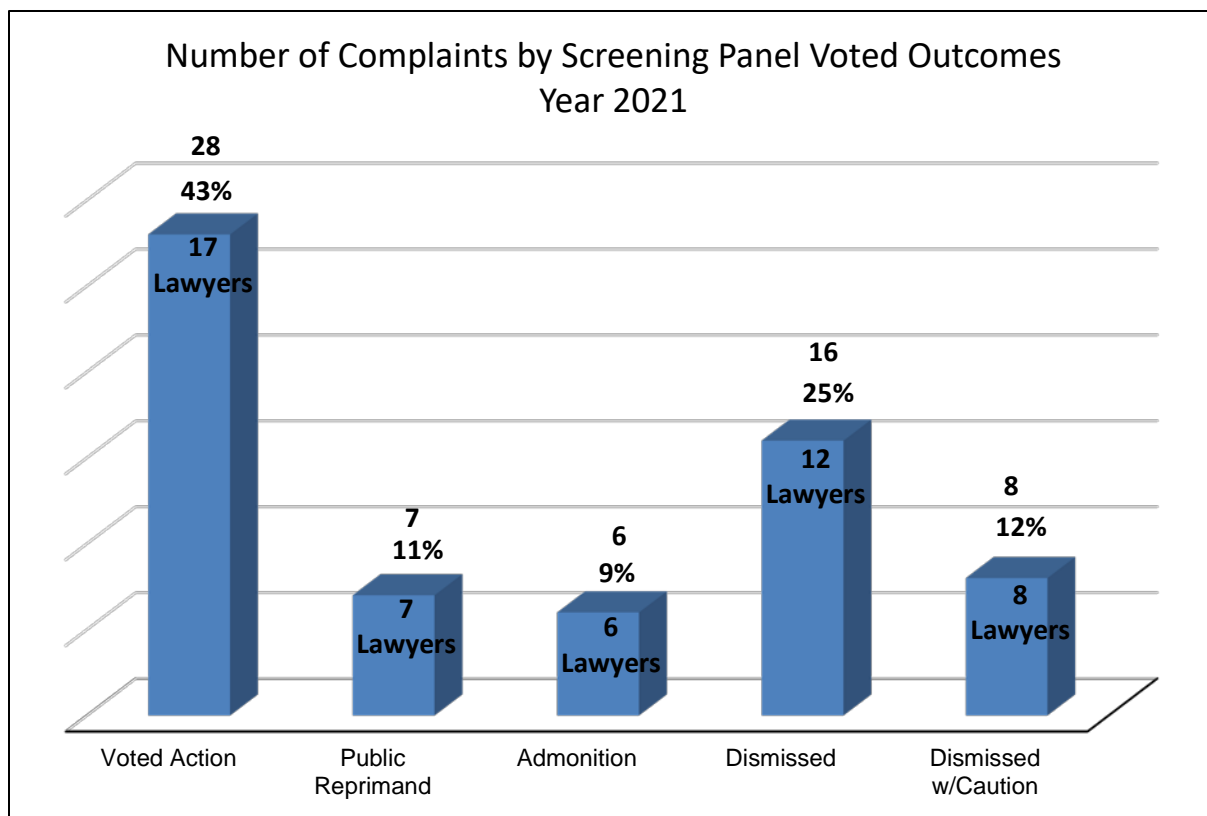
Diversions.....	5
Informal Abeyances.....	8
Informal Appeals.....	63
Informal Appeals Granted.....	3
Informal Appeals Denied .....	42
Screening Panel Exception by OPC .....	3
Actions Filed in Court .....	23
Complaints Combined with Actions .....	14
Disabilities .....	2
Formal Appeals .....	1

**10) Stipulations # of Lawyers**

Stipulation to Public Reprimand.....	2	(2)
Stipulation to Suspension .....	4	(4)
Stipulation to Delicensure .....	1	(1)
Stipulation to Resignation with Discipline Pending .....	6	(6)
Stipulation to Disability .....	2	(2)
<b>Total .....</b>	<b>15</b>	<b>(15)</b>

**11) Screening Panel Outcomes**

For the year 2021, the OPC referred 65 matters, involving 45 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 the instrument is honored.” Pursuant to this rule the OPC opened 31 new NSF cases, and dismissed 34 NSF cases in year 2021. 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 1,181 cases the OPC processed in year 2021, 688 or approximately 58% were resolved by dismissals, declinations to prosecute, referral to CAP or combined with Action. Of the 1,181 cases, approximately 2.6% of the cases resulted in 31 Orders of Discipline. 41.9% of the Orders of Discipline were by stipulation. Finally, approximately 5.5% of the OPC's processed cases for the year were heard by Screening Panels.

#### **B) Miscellaneous**

##### **1) CLE**

Rule 11-521(a)(11) of the RDDS 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 2021, the OPC's CLE presentations totaled 24.5 hours.

Two of the CLE presentations are usually at the Ethics School conducted by the OPC. The OPC titles the Ethics School the Adam C. Bevis Memorial Ethics School<sup>E</sup> (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 virtually in March and September of year 2021 for six CLE hours each. In March 2021, Ethics School was

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<sup>E</sup> Adam C. Bevis is a former Deputy Chief Disciplinary Counsel who tragically passed away during our reporting year. Adam had devoted many years of excellent work to the OPC and the legal community.

attended by 241 Lawyers; and in September 2021, Ethics School was attended by 152 Lawyers.

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 2021. 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 210 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.

The rule requiring the OPC to give ethical guidance makes 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 Lawyers subject to private discipline.

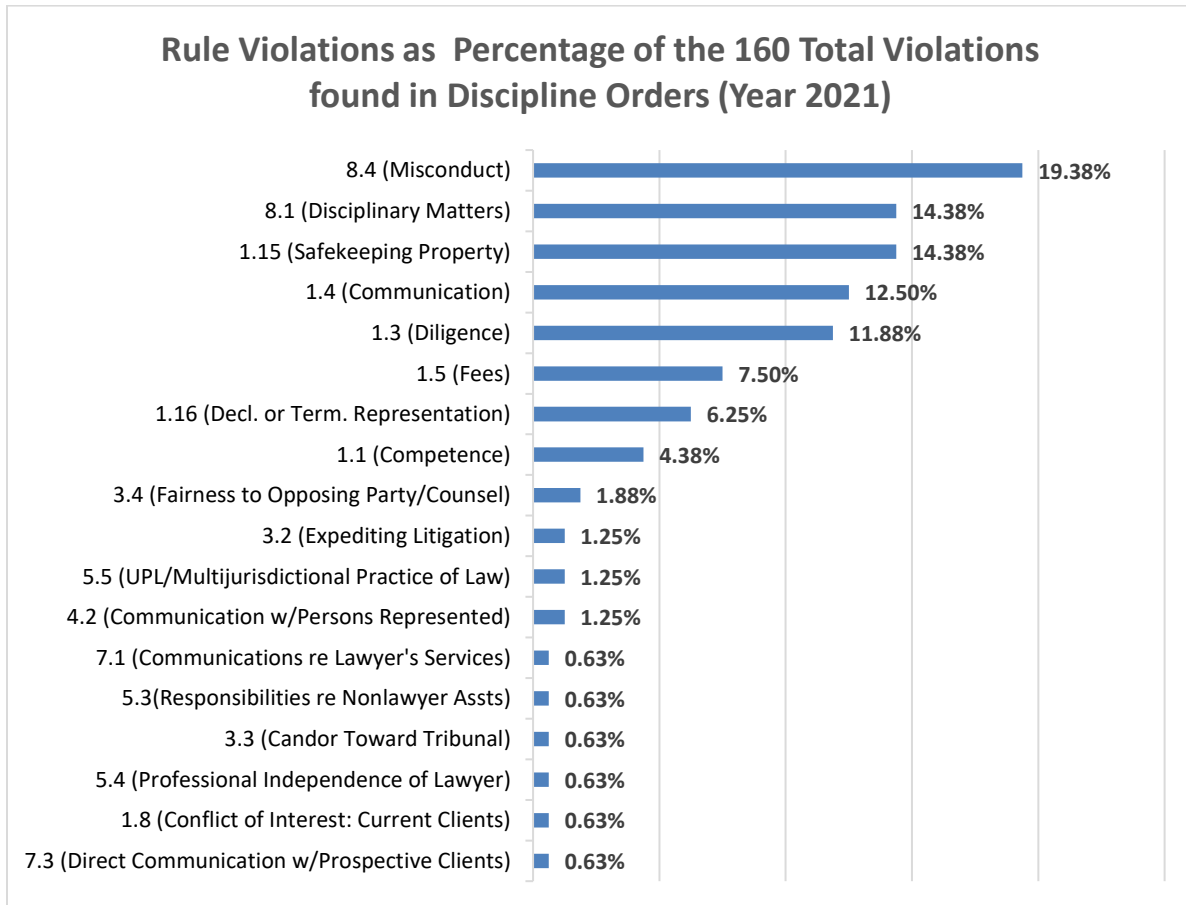
## **2) Committees**

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 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.

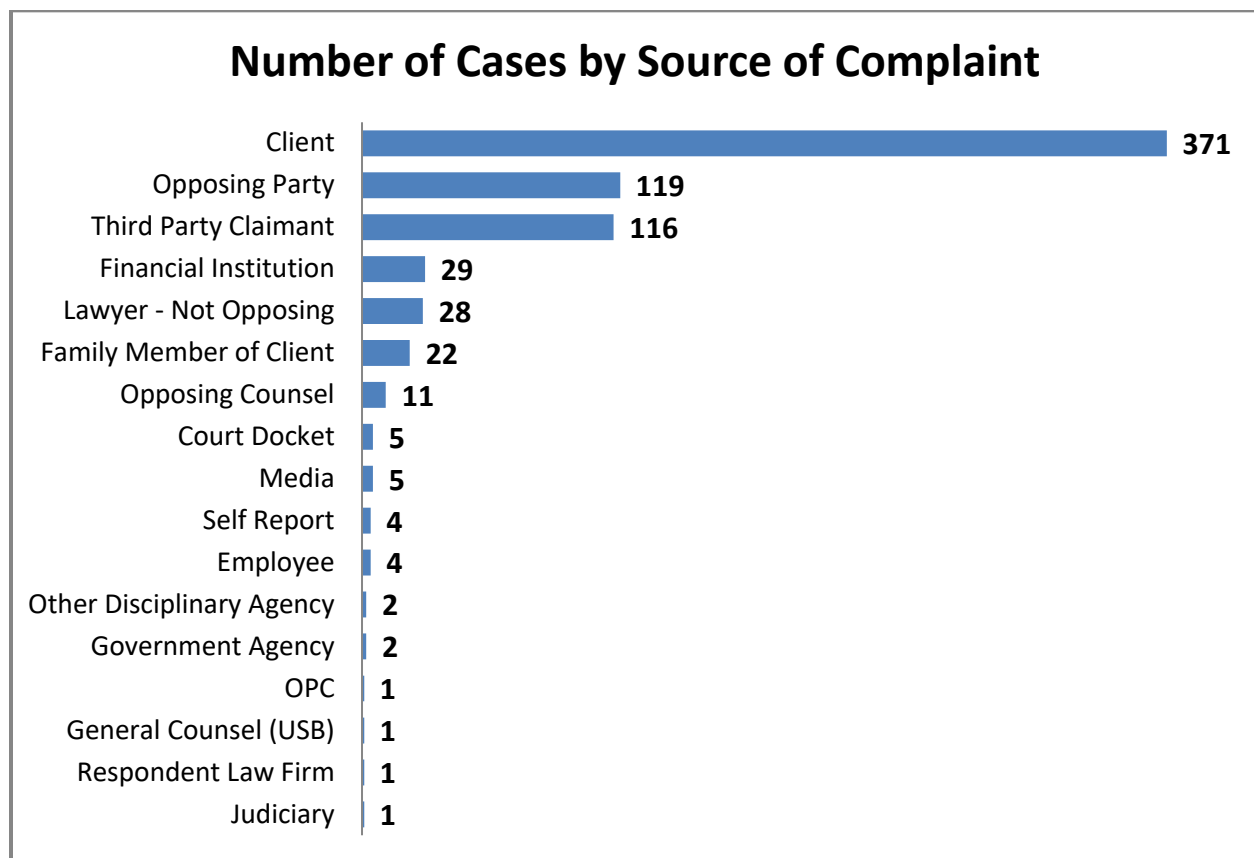
(a) For example, using data from the 31 orders of discipline entered in the year 2021, which resulted in a finding of 160 total rule violations, we can see the frequency with which various rules were violated:



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 being 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 2021, information regarding possible Lawyer misconduct was received from the following sources:



#### **IV. PROGRESS AND GOALS ON CASES**

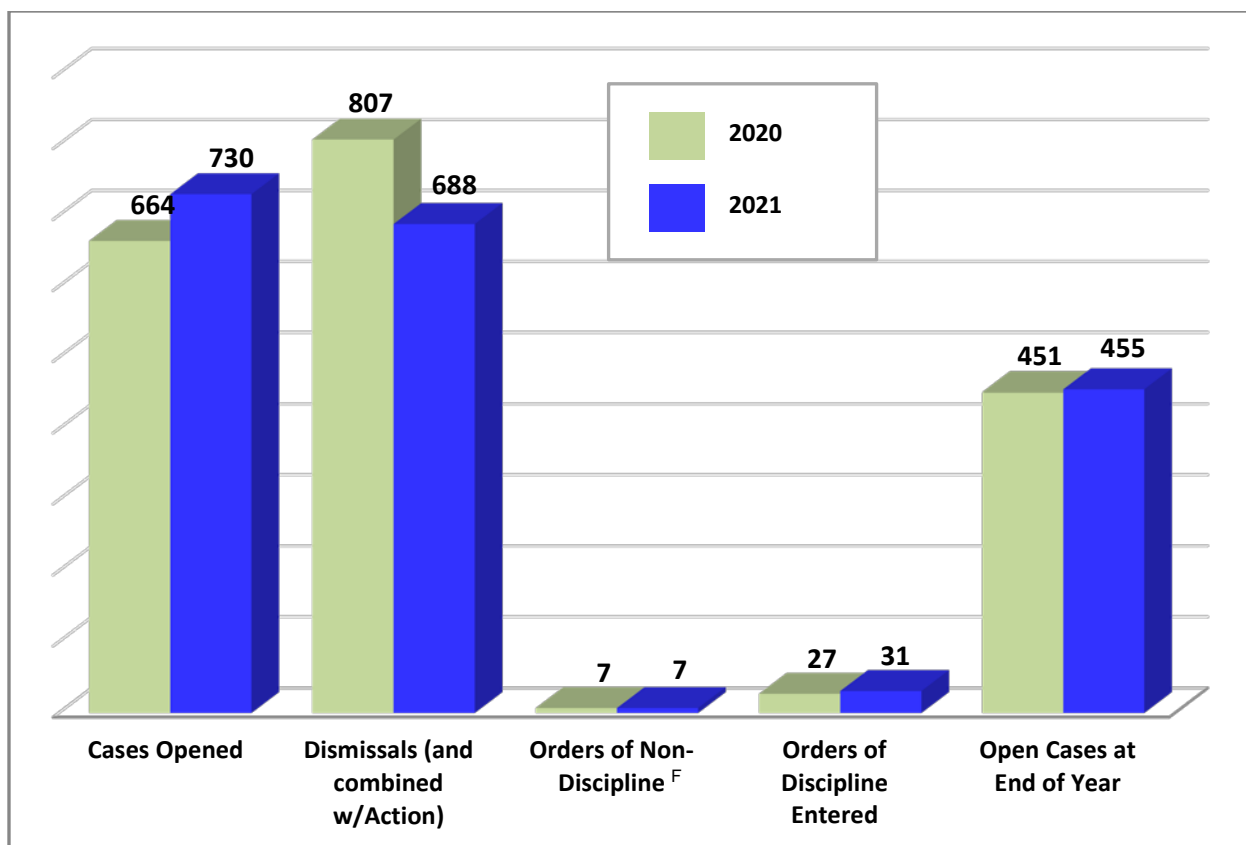
The OPC, like every other state bar disciplinary authority, has and will continue to

have unfinished work. Furthermore, the OPC, like every other Lawyer 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 Complaints 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 Complaints 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 Complaints 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 Action; or Complaints held in abeyance pending related litigation).

As progress points of comparison of year 2020 with year 2021:





As can be seen from the chart:

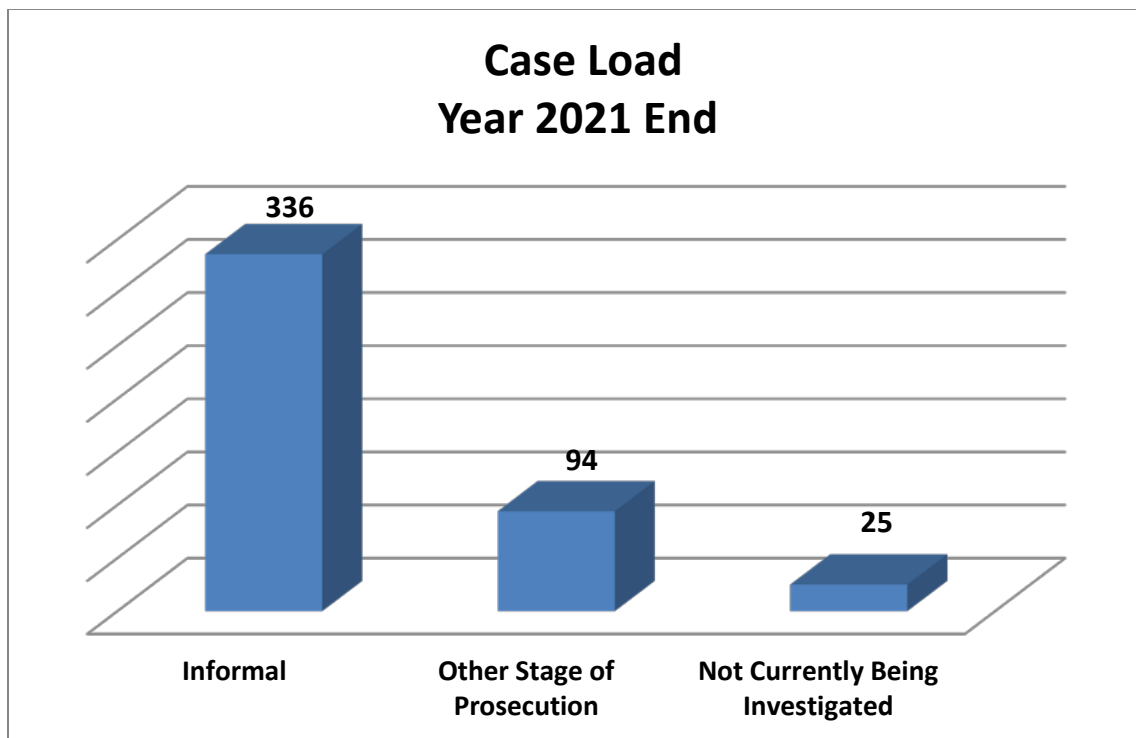
- (1) Cases opened this year increased by approximately 9.9%;
- (2) Dismissals (and combined with formal) this year decreased by approximately 14.7%;
- (3) Orders of non-discipline entered this year stayed the same;
- (4) Orders of discipline entered this year increased by approximately 14.8%;
- and
- (5) Active case numbers at the end of this year increased by less than 1%.

The OPC has a baseline goal to not have an increase of its active case number each year by closing at least as many cases in a year as the office receives in that year.

<sup>F</sup> 3 Disabilities, 1 Reinstatement, 1 Reinstatement Denied, 1 Trustee Appointed, and 1 Order of Non-Contempt.

This year, in essence the OPC did accomplish this goal because it opened 730 cases and closed 726<sup>G</sup> cases so its active case number basically stayed the same.

Of the OPC's case load as of year 2021 end (455), 336 were at the informal stage<sup>H</sup>, 94 were at other stages of investigation/prosecution<sup>I</sup>, and 25 were not currently being investigated by the OPC<sup>J</sup>.



Of the 336 cases at the informal stage, 110 or approximately 33% have been in the informal stage for over 180 days. Further breaking down the 110 cases that have been at the informal stage for over 180 days; approximately 73% of those cases have been at that stage for less than a year; and approximately 21% of those cases have been at that stage for between one and two years. So only approximately 6% (or

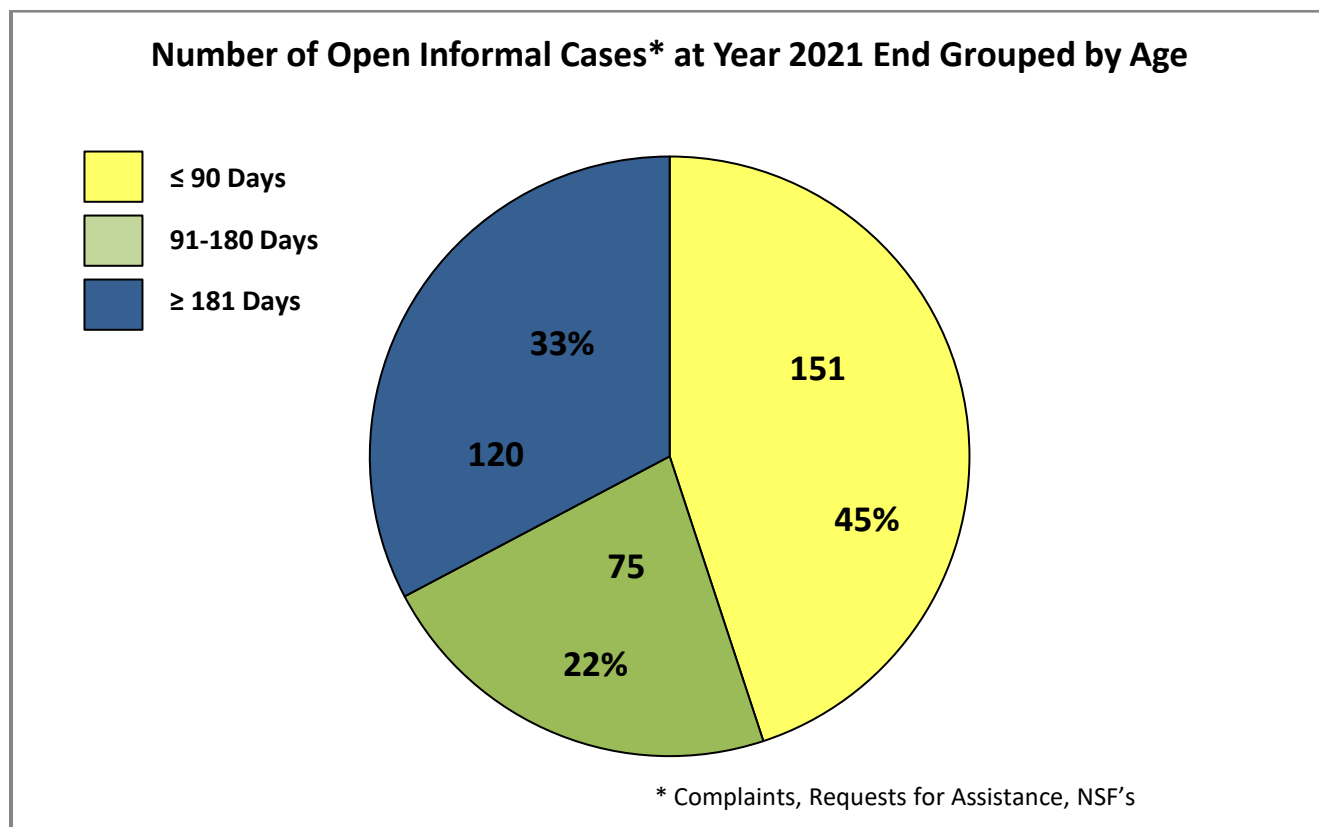
<sup>G</sup> The total of Dismissals (and Combined w/Action) and all Orders (discipline and non-discipline).

<sup>H</sup> Complaints, Requests for Assistance, NSF's.

<sup>I</sup> Combined with Action, Contempt, Exceptions, Actions, Action Appeals, Complaint Appeals, Media/Court Information, Reciprocal, Reinstatements, Relicensures, Rule 11-564, Trusteeships.

<sup>J</sup> Abeyances, Diversions, Special Prosecutor.

seven) of the total cases have been at that stage for over two years<sup>K</sup>.



It should also be noted that the OPC filed a significant number of new Actions. In this respect, in addition to opening eight new cases in the areas of reinstatement/relicensure/reciprocal/trusteeship<sup>L</sup>, the OPC filed 15 new Actions with the District Court (the 15 Actions include an additional 14 underlying Complaints).

## **V. PERFORMANCE METRICS**

Consistent with the responsibilities of the OPC Oversight Committee and specifically Rule 11-503(b)(2)(A) of the RDDS, the OPC has developed and implemented realistic performance metrics for tracking individual case processing.

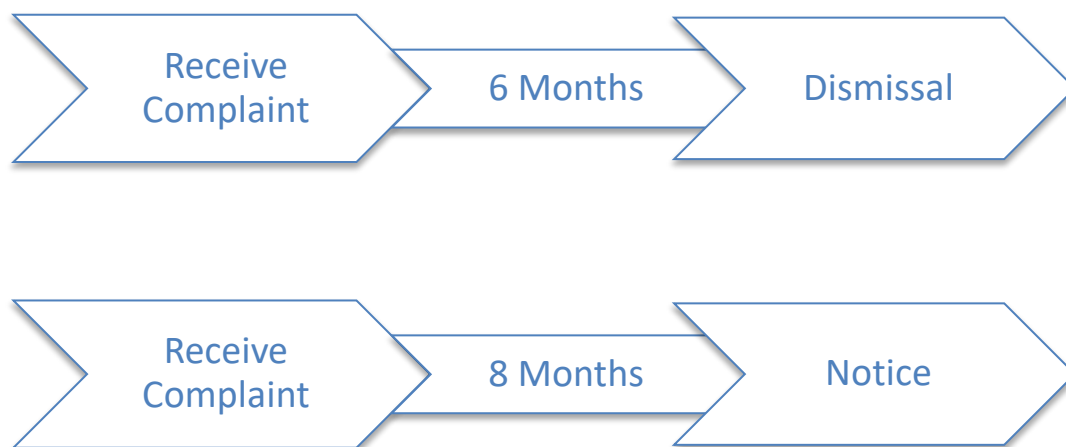
In each matter the OPC receives, the procedural process is guided by the RDDS

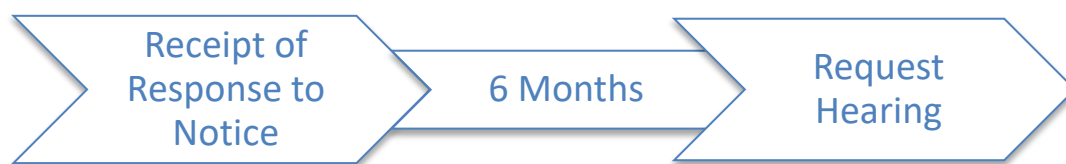
<sup>K</sup> All of the seven cases at this stage involve Lawyers for whom the OPC already has Actions in progress.

<sup>L</sup> Three Reinstatements, one Relicensure, two Reciprocal cases and two Trusteeship cases.

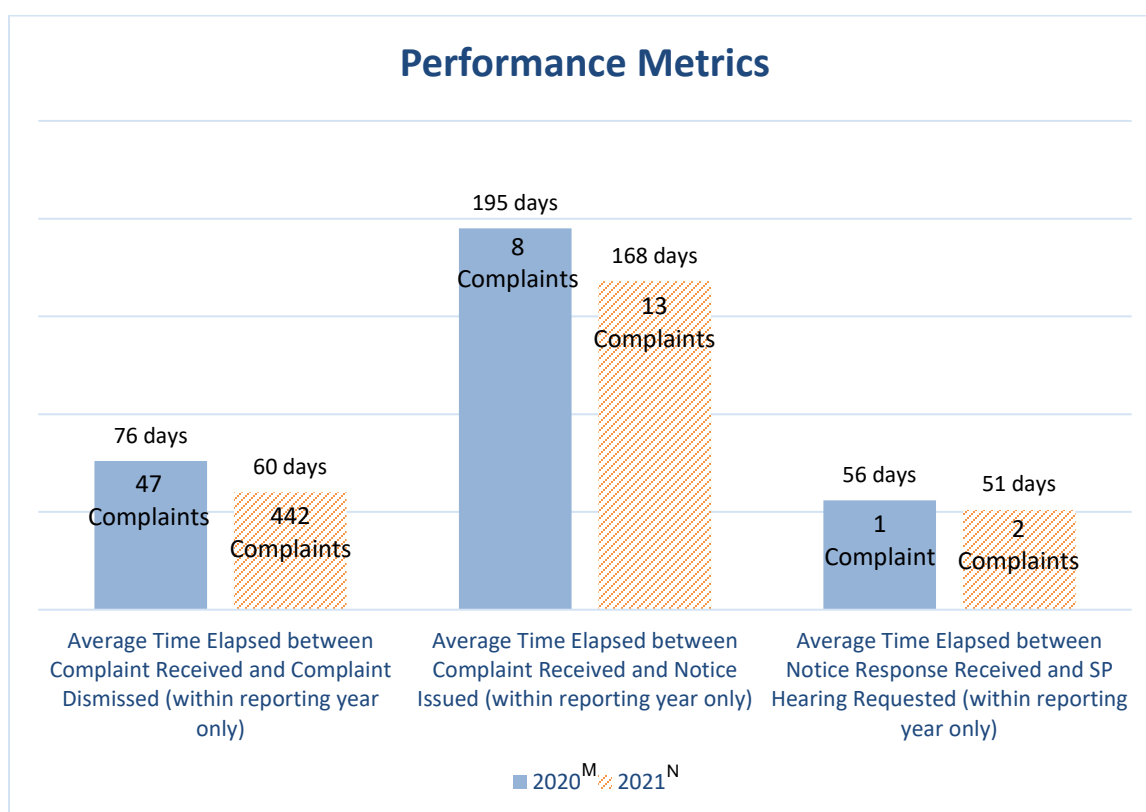
as the OPC determines several factors: Does the initial Complaint have merit or should it be summarily dismissed or declined? Does more investigation need to be conducted? Does the Lawyer need to submit a reply? Should the matter be presented to a Screening Panel?

Each case is different but the OPC has attempted to create proposed metrics which capture reasonable time frames for most Complaints. 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 case and when the case is actually dismissed. However, due to the complexity of the system, this approach led to overly complicated metrics with too many individual 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 Lawyer) are better metrics for generally tracking the OPC's Complaint processing, and are more in line with metrics the ABA Center for Professional Responsibility gathers for caseload statistics. The guidelines are charted below.





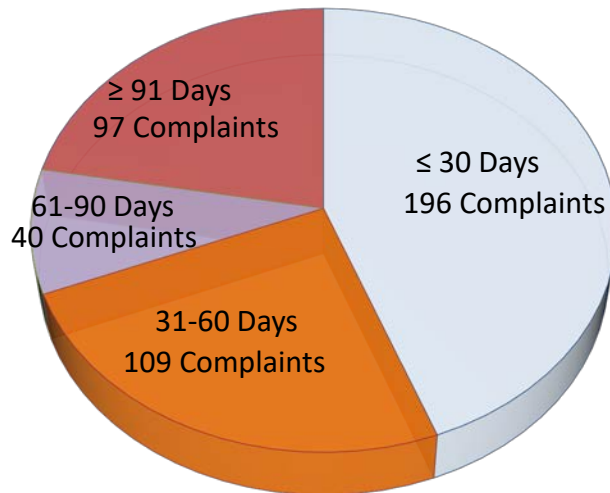
The OPC performance metric statistics for this reporting period are below. Additionally, for comparison purposes the OPC is providing performance metric statistics for the previous annual reporting period.



<sup>M</sup> The 2020 case numbers are much lower because the majority of cases received were not official Complaints but were Requests for Assistance and some of the Requests for Assistance were sent to CAP. As explained above, as of this reporting year the OPC no longer processed Requests for Assistance and sent cases to CAP.

<sup>N</sup> For the remaining Complaints that the OPC received during this reporting year (228) that do not either make it to a dismissal, a Notice, or request for hearing, .44% (1) were received in January; 1.75% (4 each) were received in both February and March; 5.7% (13) were received in April; 4.82% (11) were received in May; 8.77% (20) were received in June; 10.09% (23) were received in July; 5.26% (12) were received in August; 11.4% (26) were received in September; 10.09% (23) were received in October; 12.72% (29) were received in November; and 27.19% (62) were received in December. Thus, approximately 76% of the Complaints in this category were not received until July of this reporting year.

**YEAR 2021**  
**NUMBER OF DAYS ELAPSED BETWEEN**  
**COMPLAINT RECEIPT DATE AND DISMISSAL DATE**



**VI. GOALS FOR YEAR 2022**

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 Summary Review System greatly aids case processing goals. Summary Review enables the OPC to address all information coming to its attention and to quickly and efficiently determine the appropriate track for the Complaints. This leaves more resources to address Complaints raising more serious ethical allegations, resulting in quicker Complaint 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 Complaint processing system to ensure that the majority of resources are utilized to more quickly prosecute those Complaints where it is appropriate to address Actions 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 black ink, reading "Billy L. Walker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Billy L. Walker  
Chief Disciplinary Counsel  
Office of Professional Conduct

# Tab 6



**Utah State Bar**  
**FY23 Draft Budget**  
**Based on Unaudited Actual Results through 3/31/22**  
**06 - Office of Prof Conduct**

	Actual FY 2018	Actual FY 2019	Actual FY 2020	Actual FY 2021	Projected FY 2022	Draft Budget FY 2023	\$ Change 2022 Projected vs 2023 Budget	% Change 2022 Projected vs 2023 Budget
<b>Revenue</b>								
4095 · Miscellaneous Income	5,059	6,269	4,100	2,203	3,269	4,000	731	22%
4200 · Seminar Profit/Loss	16,229	27,065	9,546	61,452	57,613	57,613	-	0%
Total Revenue	21,288	33,333	13,646	63,656	60,882	61,613	731	1%
<b>Expenses</b>								
Program Services								
5002 · Meeting facility-internal only	460	-	95	270	1,270	1,270	-	0%
5015 · Investigations	-	118	425	430	675	700	25	4%
5025 · Temp Labor/Proctors	-	-	350	-	90	90	-	0%
5040 · Witness & Hearing Expense	1,733	2,011	2,038	254	764	764	-	0%
5041 · Process Serving	656	1,211	1,049	282	607	607	-	0%
5046 · Court Reporting	152	-	-	33	15	15	-	0%
5075 · Food & Bev-external costs only	-	659	331	-	-	-	-	#DIV/0!
5076 · Food & beverage - internal only	191	-	-	-	136	136	-	0%
5079 · Soft Drinks	-	86	336	183	239	239	-	0%
5085 · Misc. Program Expense	420	-	-	-	-	-	-	#DIV/0!
5702 · Travel - Lodging	3,911	7,257	6,528	-	-	5,000	5,000	#DIV/0!
5703 · Travel - Transportation/Parking	1,768	3,338	4,646	2	728	2,000	1,272	175%
5704 · Travel - Mileage Reimbursement	1,309	2,936	332	-	-	200	200	#DIV/0!
5705 · Travel - Per Diems	684	1,723	1,835	-	-	1,250	1,250	#DIV/0!
Total Program Services Expenses	24,347	27,053	24,596	1,453	4,524	12,271	7,747	31%
Salaries & Benefits								
5510 · Salaries/Wages	881,043	945,401	976,762	985,214	991,216	1,040,776	49,561	5%
5605 · Payroll Taxes	64,622	70,258	74,673	74,517	77,389	81,258	3,869	5%
5610 · Health Insurance	78,987	79,613	84,969	93,308	91,066	95,619	4,553	5%
5620 · Health Ins/Medical Reimb	941	1,195	2,152	4,798	3,949	3,949	-	0%
5630 · Dental Insurance	5,682	6,177	6,171	6,399	6,275	6,588	314	5%
5640 · Life & LTD Insurance	5,624	5,768	5,805	6,114	6,194	6,503	310	5%
5650 · Retirement Plan Contributions	78,849	86,153	95,528	88,553	92,668	97,302	4,633	5%
5655 · Retirement Plan Fees & Costs	6,558	6,775	7,060	5,702	4,547	4,547	-	0%
5660 · Training/Development	6,385	5,480	8,845	1,776	1,200	1,200	-	0%
66000 · Payroll Expenses	-	-	-	-	-	-	-	#DIV/0!
Total Salaries/Benefit Expenses	1,128,691	1,206,819	1,261,964	1,266,380	1,274,503	1,337,743	63,240	5%
General & Administrative								
7025 · Office Supplies	5,135	6,738	5,659	3,663	3,868	4,500	632	16%
7035 · Postage/Mailing, net	5,630	4,994	4,044	4,399	5,793	5,793	-	0%
7040 · Copy/Printing Expense	14,665	17,855	14,767	11,857	14,331	14,331	-	0%
7045 · Internet Service	-	104	466	-	833	833	-	0%
7050 · Computer Maintenance	2,824	3,711	5,153	2,966	11,967	30,701	18,734	157%
7055 · Computer Supplies & Small Equip	589	2,482	2,208	1,535	1,640	1,722	82	5%
7089 · Membership Database Fees	8,087	11,133	11,793	4,127	8,000	8,000	-	0%
7100 · Telephone	12,937	14,441	15,164	17,345	16,819	16,819	-	0%
7105 · Advertising	360	-	225	-	230	230	-	0%
7106 · Public Notification	608	1,149	465	290	-	-	-	#DIV/0!
7107 · Production Costs	-	-	-	-	-	-	-	#DIV/0!
7110 · Publications/Subscriptions	10,328	12,079	13,037	14,075	10,674	12,000	1,326	12%
7120 · Membership/Dues	4,810	4,745	4,460	4,095	5,580	5,680	100	2%
7140 · Credit Card Merchant Fees	982	-	-	-	-	-	-	#DIV/0!
7150 · E&O/Off & Dir Insurance	14,253	14,327	14,478	14,774	15,605	15,605	-	0%
7175 · O/S Consultants	-	3,366	31,173	25,321	20,652	-	(20,652)	-100%
7176 · Bar Litigation	-	-	7,000	-	-	-	-	#DIV/0!
7178 · Offsite Storage/Backup	4,228	11,616	3,889	-	-	-	-	#DIV/0!
7195 · Other Gen & Adm Expense	-	446	354	768	1,200	1,200	-	0%
Total General & Administrative Expenses	85,437	109,184	134,334	105,217	117,192	117,414	222	0%
Building Overhead								
6015 · Janitorial Expense	6,037	5,608	4,776	3,202	5,270	5,428	158	3%
6020 · Heat	4,275	3,871	3,372	3,997	4,533	4,669	136	3%
6025 · Electricity	8,838	8,570	7,751	7,815	8,478	8,732	254	3%
6030 · Water/Sewer	1,095	1,409	1,457	1,165	1,169	1,204	35	3%
6035 · Outside Maintenance	2,395	2,484	3,102	2,645	3,478	3,582	104	3%
6040 · Building Repairs	1,970	4,361	3,201	3,359	4,287	4,415	129	3%
6045 · Bldg Mtncce Contracts	7,767	6,700	7,347	5,553	5,528	5,693	166	3%
6050 · Bldg Mtncce Supplies	1,019	986	-	-	-	-	-	#DIV/0!
6065 · Bldg Insurance/Fees	3,298	3,247	3,434	3,753	3,904	4,021	117	3%
6070 · Building & Improvements Depre	10,344	10,196	10,137	12,841	16,265	16,265	-	0%
6075 · Furniture & Fixtures Depre	3,121	2,558	1,653	839	827	827	-	0%
7065 · Computers, Equip & Sftwre Depr	35,185	32,765	26,023	17,261	12,229	12,229	-	0%
Total Building Overhead Expenses	85,342	82,755	72,254	62,428	65,965	67,065	1,099	2%
Total Expenses	1,323,817	1,425,811	1,493,149	1,435,479	1,462,184	1,534,494	72,309	5%

**Utah State Bar**  
**FY23 Draft Budget**  
**Based on Unaudited Actual Results through 3/31/22**  
**06 - Office of Prof Conduct**

	Actual FY 2018	Actual FY 2019	Actual FY 2020	Actual FY 2021	Projected FY 2022	Draft Budget FY 2023	\$ Change 2022 Projected vs 2023 Budget	% Change 2022 Projected vs 2023 Budget
<b>Net Profit (Loss)</b>	<b>\$ (1,302,529)</b>	<b>\$ (1,392,478)</b>	<b>\$ (1,479,502)</b>	<b>\$ (1,371,823)</b>	<b>\$ (1,401,303)</b>	<b>\$ (1,472,881)</b>	<b>\$ (71,578)</b>	<b>5%</b>

**NOTES TO OPC BUDGET:**

1 Aside from regular required services, the

Account	Vendor	Purpose
7050 · Computer Maintenance	Clearlink	Adlumin Service - Daily log management and daily external vulnerability scanning
7050 · Computer Maintenance	VLCM	Attivo Networks - Active directory monitoring and application monitoring
7050 · Computer Maintenance	Euclid	Annual maintenanc
7050 · Computer Maintenance	ClearLink	Clearview package - Computer virus protection, quarterly internal vulnerability scans, routine computer updates, server, workstation & network maintenance, and
7100 · Telephone	ClearLink	Office 365 Windows subscription & back up services
7100 · Telephone	Mitel	Phone extensions, phones and voicemail
7100 · Telephone	Google Fiber	Internet provider
7100 · Telephone	Comcast	Backup internet and alarm phone system
7089 · Membership Database	Unknown	JustWare/case management replacement

**NOTE:** The annual total cost of the items listed above is approximately \$55,520, which have been included in the FY 22/23 budget for accounts listed above.

2 In addition to the contratual 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 22/23.

3 No major software upgrades are expect for the FY 22/23 for OPC.

4 No major computer/hardware purchases are expected for FY22/23 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 or Ethics and Discipline Committee expense and are not charged to OPC; this includes salaries for Bar staff and the Ethics and Discipline Committee Chair.

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## OPC GL CODE DESCRIPTIONS

Use this schedule alongside the budget to understand the types of expenses included in the various GL codes.

### Revenue

4095 · Miscellaneous Income  
4200 · Seminar Profit/Loss  
Total Revenue

Diversion Fees paid to the Bar  
Profits generated from OPC-sponsored CLE events

### Expenses

#### Program Services

5002 · Meeting facility-internal only  
5015 · Investigations  
5025 · Temp Labor/Proctors  
5040 · Witness & Hearing Expense  
5041 · Process Serving  
5046 · Court Reporting  
5075 · Food & Bev-external costs only  
5076 · Food & beverage - internal only  
5079 · Soft Drinks  
5085 · Misc. Program Expense  
5702 · Travel - Lodging  
5703 · Travel - Transportation/Parking  
5704 · Travel - Mileage Reimbursement  
5705 · Travel - Per Diems

Total Program Services Expenses

Rental of Meeting Room Facilities in the Law & Justice Center (L&JC)  
Expenses paid to TransUnion and Advanced Reporting Solutions  
Cost to move boxes  
Hearing Videos and Business Entity Searches  
Expenses paid to Udy's Process Service  
Expenses paid to Courts  
Expenses paid for food charges outside of the (L&JC)  
Food and Beverage Provided at Meetings  
Drinks provided to OPC employees

Expenses paid for travel to NOBC, OBI confernece, ABA Fall Leadership Conf.  
Expenses paid for travel to NOBC, OBI confernece, ABA Fall Leadership Conf.  
Expenses paid for travel to NOBC, OBI confernece, ABA Fall Leadership Conf.  
Expenses paid for travel to NOBC, OBI confernece, ABA Fall Leadership Conf.

#### Salaries & Benefits

5510 · Salaries/Wages  
5605 · Payroll Taxes  
5610 · Health Insurance  
5620 · Health Ins/Medical Reimb  
5630 · Dental Insurance  
5640 · Life & LTD Insurance  
5650 · Retirement Plan Contributions  
5655 · Retirement Plan Fees & Costs  
5660 · Training/Development  
66000 · Payroll Expenses

Total Salaries/Benefit Expenses

#### General & Administrative

7025 · Office Supplies  
7035 · Postage/Mailing, net  
7040 · Copy/Printing Expense  
7045 · Internet Service  
7050 · Computer Maintenance  
7055 · Computer Supplies & Small Equip  
7089 · Membership Database Fees  
7100 · Telephone  
7105 · Advertising  
7106 · Public Notification  
7107 · Production Costs  
7110 · Publications/Subscriptions  
7120 · Membership/Dues  
7140 · Credit Card Merchant Fees  
7150 · E&O/Off & Dir Insurance  
7175 · O/S Consultants  
7176 · Bar Litigation

Most office supplies are purchased from BlueFin Office Group  
Most postage is internal use of Bar's mail machine.  
Most Copy/printing is internal use of Bar's copy machines. There are also purchase of envelopes from Peczul  
OPC Domain purchases in FY20  
A proportional amount of IT and IT security contracts based on number of employees.  
Laptop rental, small IT purchases like cables, Trialpad annual app subscription, camera related purchases  
Pine Technology  
A proportional amount phone, phone hardware and voicemail expenses based on number of employees  
Job postings  
Public Notices in newspapers

Lexis-Nexis, Webex, UT Code and court rules  
Attorneys employed by OPC whose dues are paid to the USB. Also dues to NOBC.

A proportional amount of the Bar's Officer and Director liability insurance  
Bar-wide moving IT related contracts out of this account up to 7050  
Outside counsel for Litigation (in FY20 these were for D. Short case)

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**OPC  
GL CODE DESCRIPTIONS**

Use this schedule alongside the budget to understand the types of expenses included in the various GL codes.

7178 · Offsite Storage/Backup  
7195 · Other Gen & Adm Expense  
Total General & Administrative Expenses

Offsite storage ended in FY20  
Video editing for Jeopardy video and Holiday Gifts for staff

Building Overhead  
6015 · Janitorial Expense  
6020 · Heat  
6025 · Electricity  
6030 · Water/Sewer  
6035 · Outside Maintenance  
6040 · Building Repairs  
6045 · Bldg Mtnc Contracts  
6050 · Bldg Mtnc Supplies  
6065 · Bldg Insurance/Fees  
6070 · Building & Improvements Depr  
6075 · Furniture & Fixtures Depr  
7065 · Computers, Equip & Sftwre Depr  
Total Building Overhead Expenses

All overhead is allocated to OPC by either total squarefootage or number of employees