



## Agenda

### Utah Supreme Court's Oversight Committee For the Office of Professional Conduct

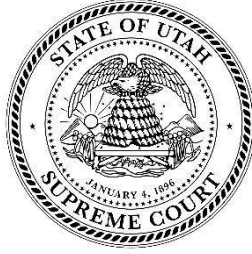
*Arthur B. Berger, Chair*

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Judicial Council Room – Room N. 301 450 S. State St. Salt Lake City, Utah 84111 <a href="https://utcourts.webex.com/utcourts/j.php?MTID=mfdb4491ad85311f5521b499ecfc1bd3f">https://utcourts.webex.com/utcourts/j.php?MTID=mfdb4491ad85311f5521b499ecfc1bd3f</a>
Date:	June 3, 2024
Time:	4:30 to 6:00 p.m.

<b>Action:</b> Welcome and approval of November 15, 2023 Minutes and February 6, 2024 Minutes	Tab 1	Art Berger, Chair
<b>Action:</b> OPC's Proposed Budget	Tab 2	Christine Greenwood, Nathan Severin
<b>Action:</b> OPC's Annual Report for 2023	Tab 3	Christine Greenwood
<b>Discussion:</b> Old/new business		Art Berger

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

Tab 1



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

### [Draft] Meeting Minutes

November 15, 2023

Meeting held through Webex and in person

Matheson Courthouse

Judicial Council Room

450 S. State St.

Salt Lake City, UT 84111

4:00–5:30 p.m.

*Arthur B. Berger, presiding*

#### **Attendees:**

Arthur Berger, Chair

Judge Laura Scott

Roger Smith

Magistrate Judge Brooke Wells

Margaret Plane

Elizabeth Wright, Ex-officio member

#### **Guests:**

Billy Walker, Office of Professional Conduct

Christine Greenwood, Ethics and Discipline Committee

Metra Barton, Office of Professional Conduct

Sharadee Fleming, Office of Professional Conduct

Todd Wahlquist

#### **Staff:**

Nick Stiles, Appellate Court Administrator

Amber Griffith, Recording Secretary

### **1. Welcome and approval of the June 20, 2023 minutes:** (Arthur Berger)

Arthur Berger welcomed everyone to the meeting and asked for approval of the minutes.

*Judge Wells moved to approve the minutes from June 20, 2023. Judge Scott seconded that motion, and the minutes were unanimously approved.*

## **2. Action—Time to Disposition of Formal Complaints:** (Arthur Berger)

Arthur Berger presented the data spreadsheet to the Committee and provided a brief analysis of the data. Mr. Berger noted that of the cases reported on the spreadsheet 38% of them were disposed of within 6 months, 18% took more than a year to disposition, and the rest of the cases are in the middle. Mr. Berger expressed the belief that most cases are disposed of in a relatively reasonable timeframe, then opened the floor for additional feedback from Committee members.

- Judge Wells asked Billy Walker if there was a general explanation for the cases that have been pending for more than a year. Mr. Walker explained that without researching the cases he would not be able to provide an explanation. Mr. Walker did note that the OPC rarely files motions, and many of the delays are due to motions being filed by the other party.

## **3. Action—Proposed Modifications Concerning Discipline by Consent:**

(Christine Greenwood, Billy Walker, Arthur Berger)

Christine Greenwood presented the proposed amendments to UCJA Rule 11-565 and 11-539 concerning discipline by consent. Ms. Greenwood explained that removing discipline by consent from the trial court level was a suggestion made by Mr. Walker, and after looking into the matter further Ms. Greenwood agreed that the procedure was unnecessary at that level. Ms. Greenwood noted that it appears that Rule 11-539 (discipline by consent) was intended to be more like Rule 68, which is not used very often at the State Court level in Utah. Ms. Greenwood also noted that after an action has been filed the respondent and OPC can negotiate at any time to resolve the case.

Mr. Walker provided additional information to the proposed amendment, explaining that OPC used to complete stipulations all the time, independent of discipline by consent. They began using discipline by consent for these stipulations, but it was only because of convenience not because of necessity. Mr. Walker also noted that no party has ever prevailed when filing a discipline by consent at the trial court level. Mr. Walker believes these do not prevail because typically there are disputed facts, and the district court judge does not want to intervene in the proceeding when those facts are being disputed. Mr. Walker also advised the Committee that they completed research on 51 jurisdictions and only Georgia had a mechanism similar to Utah's discipline by consent. Other jurisdictions have discipline by consent, but they interpret consent as consent on both sides, so the result is more of a stipulation.

- Following these explanations Ms. Greenwood noted an edit that needed to be made on line 28, the reference to paragraph (f) should be (d). Mr. Berger also noted a small edit to line 15.
- Mr. Berger asked if guest, Todd Wahlquist, had any thoughts on the proposed amendments. Mr. Wahlquist thanked the Committee for their review of this procedure and while not completely agreeing with everything that has been said, believes that this draft addresses his primary concern with time limits.
- Judge Scott questioned if once the case goes formal is there something that informs the respondent that they can still use Rule 68. Ms. Greenwood responded that there isn't currently anything in the proposal notifying the respondent of this

information. Mr. Walker added that they have had cases that have settled on the eve of the trial or even in the middle of the trial, when this occurs, they use Rule 68 and bring the case before the judge to notify them that they have reached a settlement. Mr. Walker also noted that their cases proceed under the Rules of Civil Procedure like any other civil case and is concerned that adding additional processes or procedures may make the cases seem more unique than a regular civil case.

*Following these discussions Judge Wells moved to approve the proposed amendments to Rules 11-539 and 11-565. Roger Smith seconded that motion and it unanimously passed.*

**4. Discussion and Action—Proposed Modifications Concerning Appeals from OPC Dismissals:** (Christine Greenwood, Billy Walker, Arthur Berger)

Ms. Greenwood introduced the proposal and emphasized that the number of appeals from dismissals continue to increase each year, these appeals are filed by a complainant in response to OPC dismissing a case. In addition, there is a large backlog of these cases and they receive numerous calls for updates. Ms. Greenwood expressed the belief that the increase is due to a change in the ABA Review completed in 2017. Prior to this review OPC did not view received material as a complaint unless it was notarized and if these were subsequently dismissed there was no right to an appeal. After the ABA Review everything that is received is deemed a complaint, which provides the complainant with the right to an appeal if the complaint is dismissed.

- Billy Walker disagreed advising the Committee that prior to the ABA Review they did not dismiss complaints because they were not notarized, they were referred to CAP and many came back to the OPC notarized or on an official complaint form. Mr. Walker then provided the number of complaints received and the number of appeals resulting from dismissals, noting that since 2017 the number of complaints has increased, but the percentage of appeals from these complaints has not.
- Mr. Walker disagreed with eliminating a complainant's right to an appeal. Of the proposals presented Mr. Walker believes the solution that makes the most sense is to modify the standard of review to an arbitrary and capricious standard.
- Margaret Plane agreed that we should not eliminate the right to appeal, and agreed changing the standard of review may be the best approach.
- Ms. Greenwood confirmed that changing the standard of review was the approach that Mr. Walker and Ms. Greenwood agreed on, but asked if we could also require the complainant to carry the burden of proof and be responsible to show that the dismissal was arbitrary and capricious. Mr. Walker agreed that the weight needs to be higher on the complainant in the appeal.

*Following this discussion Art Berger asked if Ms. Greenwood would draft a proposal for consideration at the next meeting. Judge Scott suggested having the complaining party specify what their basis is for the appeal and stated that there may be helpful language in Rule 108 of the Rules of Civil Procedure.*

**5. Action—Proposed General Rule Revisions:** (Christine Greenwood)

The Committee reviewed each proposal submitted by Ms. Greenwood allowing for comments or edits to be made. The Committee made small edits to the proposals for Rules 11-502, 11-510, 11-511, 11-530

- Mr. Walker disagreed with a proposed amendment to UCJA Rule 11-530, paragraph (g)(2)(C), which would allow the Committee chair or vice chair to refer a matter to the Professionalism and Civility Counseling Board in lieu of affirming or reversing the dismissal. Mr. Walker explained that when the OPC refers a matter to the Board they do so because they believe there is not evidence that the Rules of Professional Conduct was violated, but there may be evidence that the standards of professional and civility were violated. Ms. Greenwood thanked Mr. Walker for that explanation and that proposed amendment was removed.

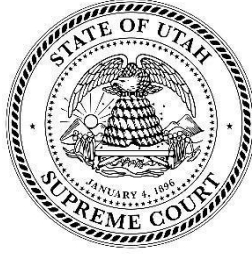
Due to time constraints the Committee tabled the proposed amendments to UCJA Rules 11-531, 11-532, 11-534, 11-550, 11-552, 11-554, 11-560, 11-561, 11-563, 11-580, and 11-581 until the next meeting.

**6. Discussion—Old/new Business:** (Arthur Berger)

Mr. Berger asked the Committee for their thoughts on what the Committee should do when public input is received, should we notify the individual that their input will be discussed at the next committee meeting? If the individual does not attend, should we reach back out to the individual to inform them what was discussed?

- Judge Wells stated that providing the individual with notice should be sufficient. Judge Scott agreed and noted that our minutes should reflect what was discussed and this is posted to the Court's website.
- Nick Stiles noted that UCJA Rule 11-503 states that unless the appropriate action taken on a complaint is part of a formal proceeding, any action taken is confidential.

The meeting was then adjourned.



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

### [Draft] Meeting Minutes

February 6, 2024

Meeting held through Webex

12:00 – 1:00 p.m.

*Arthur B. Berger, presiding*

#### **Attendees:**

Arthur Berger, Chair  
Judge Laura Scott  
Roger Smith  
Magistrate Judge Brooke Wells  
Margaret Plane  
Elizabeth Wright, Ex-officio member

#### **Staff:**

Nick Stiles, Appellate Court Administrator  
Amber Griffith, Recording Secretary

#### **1. Welcome:** (Arthur Berger)

Arthur Berger welcomed everyone to the meeting. In accordance with UCJA Rule 11-503(a)(2) each committee member provided a brief introduction and disclosed the general nature of their legal or other practice.

#### **2. Discussion concerning process for recommendation of new Chief Disciplinary Counsel:** (Arthur Berger)

Mr. Berger informed the Committee that the job posting for the Chief Disciplinary Counsel was sent out to all lawyers and the Court will be accepting applications through February 29<sup>th</sup>. Additionally, it is this Committee's duty to provide the Supreme Court with a recommendation for a new Chief Disciplinary Counsel.

While attending a Supreme Court Conference, Mr. Berger asked the Court for any guidance on a process for reviewing the applications and submitting the recommendation. The Court advised that the Committee could follow a similar process that was used by the Innovation Office when they were in the process of hiring a program director. The Court also suggested that Justice Hagen be part of the selection process.

Mr. Berger suggested that the current committee members and a few outside participants could review the applications and provide the Committee with their input. Afterwards, the Committee could hold a vote for who to recommend to the Supreme Court.

- Judge Scott thought it would be helpful to have a subcommittee. The subcommittee could include public members who have served on screening panels, a couple of the attorneys that practice in the attorney discipline area, and this committee. Mr. Berger agreed and added that the Court thought it may be helpful to include former an Ethics and Discipline Committee Chair. Margaret Plane also agreed with Judge Scott on who should be included to review the applicants but does not believe it needs to be a subcommittee or two step process.
- Elizabeth Wright volunteered to get a list of current and former Ethics and Discipline public members who could be included to review the applications.
- Mr. Berger asked if the non-committee participants should have a vote on who to recommend for the Chief Disciplinary Counsel. Ms. Wright stated that for the Innovation Office everyone that participated in reviewing the applications voted. Nick Stiles added that if the participants will be reviewing the applications and sitting in on the interviews, they deserve to have a vote. Ms. Plane was in favor of allowing the outside participants to vote.
- Judge Scott noted that it would be helpful if the Supreme Court let the Committee know how many people the Committee should be recommending. Mr. Stiles informed the Committee that when the Court is appointing members to a committee, they ask for multiple nominations.
- Mr. Berger noted that this committee's meetings are presumed to be open to the public and questioned when we could go into executive session. Ms. Plane replied that per the open and public meetings act you can close a meeting for a discussion of the character or professional competency of an individual. Based on that, Ms. Plane believes the interviews could be held in a closed session. Mr. Stiles agreed and stated that other committees do not review personnel information or have conversations about personnel in a public meeting.

*The Committee discussed possible attorneys, public members, and former Ethics and Discipline Committee Chairs and Vice Chairs who could participate in the hiring committee in addition to the members of the Committee, Justice Hagen, and Mr. Stiles. Mr. Berger volunteered to reach out to a few of the individuals discussed to see if they would be willing to participate.*

**3. Discussion concerning process for recommendation of interim or acting Chief Disciplinary Counsel:** (Arthur Berger)

Mr. Berger suggested that the Committee recommend to the Supreme Court an interim Chief Disciplinary Counsel.

*The Committee voted on the interim Chief Disciplinary Counsel and will provide the recommendation to the Supreme Court.*



# Tab 2

**Utah State Bar**  
**FY25 FINAL Budget - Summary by Account**

**Based on Actual Results through 03/31/2024**  
**06 - Office of Prof Conduct**

	Actual FY 2022 7/1/2021 6/30/2022	Actual FY 2023 7/1/2022 6/30/2023	Projected FY 2024 7/1/2024 6/30/2024	FINAL Budget FY 2025 7/1/2024 6/30/2025	\$ Change 2024 Projected vs 2025 Budget	% Change 2024 Projected vs 2025 Budget
<b>Revenue</b>						
4095 · Miscellaneous Income	5,001	1,400	4,969	4,969	-	0.00%
4200 · Seminar Profit/Loss	39,828	29,999	32,192	32,192	-	0.00%
<b>Total Revenue</b>	<b>44,829</b>	<b>31,399</b>	<b>37,160</b>	<b>37,160</b>	<b>-</b>	<b>0.00%</b>
<b>Expenses</b>						
<b>Program Services</b>						
5002 · Meeting facility-internal only	1,095	920	485	485	-	0.00%
5015 · Investigations	675	-	-	-	-	0.00%
5025 · Temp Labor/Proctors	90	-	-	-	-	0.00%
5040 · Witness & Hearing Expense	710	402	1,504	1,504	-	0.00%
5041 · Process Serving	706	645	1,049	1,049	-	0.00%
5046 · Court Reporting	15	30	-	-	-	0.00%
5076 · Food & beverage - internal only	136	543	831	873	42	5.00%
5079 · Soft Drinks	295	332	522	522	-	0.00%
5085 · Misc. Program Expense	-	105	190	-	(190)	-100.00%
5702 · Travel - Lodging	760	2,963	3,094	4,000	906	29.28%
5703 · Travel - Transportation/Parking	832	2,888	2,610	4,000	1,390	53.27%
5704 · Travel - Mileage Reimbursement	-	1,706	465	488	23	5.00%
5705 · Travel - Per Diems	-	1,016	477	800	323	67.71%
5805 · ABA Annual Meeting	-	798	-	1,700	1,700	0.00%
<b>Total Program Services Expenses</b>	<b>5,314</b>	<b>12,347</b>	<b>11,226</b>	<b>15,420</b>	<b>4,194</b>	<b>37.36%</b>
<b>Salaries &amp; Benefits</b>						
5510 · Salaries/Wages	994,032	1,059,078	1,108,863	1,182,279	73,416	6.62%
5605 · Payroll Taxes	78,576	80,760	88,292	94,582	6,291	7.12%
5610 · Health Insurance	92,875	93,923	97,579	91,899	(5,680)	-5.82%
5620 · Health Ins/Medical Reimb	3,344	3,208	4,290	4,000	(290)	-6.76%
5630 · Dental Insurance	6,200	5,774	5,713	5,302	(411)	-7.19%
5640 · Life & LTD Insurance	6,268	6,480	6,582	6,981	400	6.08%
5650 · Retirement Plan Contributions	90,334	92,908	102,733	98,009	(4,724)	-4.60%
5655 · Retirement Plan Fees & Costs	3,770	4,123	3,869	4,024	155	4.00%
5660 · Training/Development	975	175	1,640	2,000	360	21.95%
<b>Total Salaries/Benefit Expenses</b>	<b>1,276,374</b>	<b>1,346,427</b>	<b>1,419,560</b>	<b>1,489,075</b>	<b>69,515</b>	<b>4.90%</b>
<b>General &amp; Administrative</b>						
7025 · Office Supplies	4,608	5,521	5,449	5,449	-	0.00%
7035 · Postage/Mailing, net	6,190	6,287	5,717	6,117	400	7.00%
7040 · Copy/Printing Expense	15,020	12,857	12,417	12,417	-	0.00%
7045 · Internet Service	833	590	-	-	-	0.00%
7050 · Computer Maintenance	21,966	51,695	46,410	46,410	-	0.00%
7055 · Computer Supplies & Small Equip	1,376	1,406	375	375	-	0.00%
7089 · Membership Database Fees	8,000	8,000	20,392	21,000	608	2.98%
7095 · Fax Equip & Supplies	-	-	-	-	-	0.00%
7100 · Telephone	15,877	18,984	15,428	8,660	(6,769)	-43.87%
7105 · Advertising	279	196	197	250	53	26.90%
7106 · Public Notification	-	-	-	-	-	0.00%
7107 · Production Costs	-	568	-	-	-	0.00%
7110 · Publications/Subscriptions	11,235	11,712	8,820	9,335	515	5.84%
7120 · Membership/Dues	5,575	5,620	5,224	5,500	276	5.28%
7140 · Credit Card Merchant Fees	-	21	75	77	2	2.00%
7150 · E&O/Off & Dir Insurance	15,882	18,616	19,413	19,801	388	2.00%
7175 · O/S Consultants	15,076	801	-	-	-	0.00%
7176 · Bar Litigation	-	7,782	2,616	2,668	52	2.00%
7195 · Other Gen & Adm Expense	1,201	1,200	695	709	14	2.00%
<b>Total General &amp; Administrative Expenses</b>	<b>123,120</b>	<b>151,856</b>	<b>143,228</b>	<b>138,767</b>	<b>69,249</b>	<b>48.35%</b>
<b>In Kind Expenses</b>						
<b>Building Overhead</b>						

**Utah State Bar  
FY25 FINAL Budget - Summary by Account**

**Based on Actual Results through 03/31/2024  
06 - Office of Prof Conduct**

	Actual FY 2022	Actual FY 2023	Projected FY 2024	FINAL Budget FY 2025	\$ Change 2024 Projected vs 2025 Budget	% Change 2024 Projected vs 2025 Budget
	7/1/2021 6/30/2022	7/1/2022 6/30/2023	7/1/2024 6/30/2024	7/1/2024 6/30/2025		
6015 · Janitorial Expense	6,021	7,010	6,965	6,130	(835)	-11.99%
6020 · Heat	4,896	6,830	7,388	6,503	(886)	-11.99%
6025 · Electricity	8,960	10,145	10,997	9,678	(1,319)	-11.99%
6030 · Water/Sewer	1,178	1,808	2,568	2,261	(307)	-11.94%
6035 · Outside Maintenance	4,510	7,189	6,545	5,676	(868)	-13.27%
6040 · Building Repairs	3,683	3,353	3,034	2,751	(283)	-9.32%
6045 · Bldg Mtncn Contracts	5,864	6,519	6,383	5,613	(769)	-12.05%
6065 · Bldg Insurance/Fees	3,954	5,255	5,183	4,663	(520)	-10.03%
6070 · Building & Improvements Depre	17,821	19,759	21,139	19,571	(1,568)	-7.42%
6075 · Furniture & Fixtures Depre	654	2,016	3,629	4,029	401	11.04%
7065 · Computers, Equip & Sftwre Depr	12,126	9,074	10,274	6,839	(3,435)	-33.43%
Total Building Overhead Expenses	69,667	78,956	84,105	73,716	(10,388)	-12.35%
Total Expenses	1,474,475	1,589,587	1,658,118	1,716,979	58,861	3.55%
Other Income/Expense						
<b>Net Profit (Loss)</b>	<b>\$ (1,429,646)</b>	<b>\$ (1,558,188)</b>	<b>\$ (1,620,958)</b>	<b>\$ (1,679,818)</b>	<b>\$ (58,861)</b>	<b>3.63%</b>

# Tab 3

# OFFICE OF PROFESSIONAL CONDUCT

## ANNUAL REPORT February 2024



## **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, 2023 to December 31, 2023 (“year 2023”); (IV) progress and goals on cases; (V) performance metrics; and (VI) goals for January 1, 2024 to December 31, 2024 (“year 2024”).

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:

- Art Berger – Chair, Attorney
- Margaret Plane – Attorney
- Judge Laura Scott – Third District Court
- Roger Smith – Accountant
- Magistrate Judge Brooke Wells – United States District Court for the District of Utah

The OPC 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, 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<sup>A</sup>. Currently there are 30 LPPs who are licensed to practice in Utah (with 3 on inactive status). The OPC has one case regarding LPPs in this reporting period.

## **I. STAFF COMPOSITION**

The staff for year 2023 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”). 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.

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<sup>A</sup> Rule 11-502(k) defines Lawyer to include those licensed to practice law in any jurisdiction in the United States, foreign legal consultants and LPPs. Since status as a Lawyer is based on licensing, the sanction of Disbarment is referred to as Delicensure and a readmission from Disbarment/Delicensure is referred to as Relicensure.

**B) Ethics and Discipline Committee**

Pursuant to Rule 11-510 of the RDDS, a minimum of 21 and a maximum of 25 Lawyers and a minimum of 4 to a maximum of 8 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 paid full-time Committee Chair; the remaining Committee members are appointed as volunteers. Of the Lawyer members, three to four are designated as Committee Vice-Chairs. 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 Lawyers and non-Lawyers do their main work in subcommittees called Screening Panels. A Chair and a Vice-Chair is appointed to each Screening Panel. The year 2023 composition of the Committee was as follows:

Christine T. Greenwood, Chair, Ethics and Discipline Committee

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

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

Bryan J. Pattison (Blanchard Pattison LLC), Vice-Chair, Ethics and Discipline Committee

Corbin B. Gordon (Gordon Law Group), Vice Chair, Ethics and Discipline Committee

Connor Hess, Clerk, Ethics and Discipline Committee



Panel A

J. Gregory Hardman (Snow Jensen & Reece), Chair  
Kimberly A. Neville (Franklin Covey), Vice-Chair  
Matthew J. Hansen (Davis County Attorney's Office)  
Beth E. Kennedy (Zimmerman Booher)  
Derek Williams (Campbell Williams Ference & Hall)  
Jonathan Bone, Public Member  
Sarah Sandberg, Public Member

Panel B

Lara Swensen (James Dodge Russell & Stephens PC), Chair  
Cassie J. Medura (Jennings & Medura, LLC), Vice-Chair  
Michael C. Barnhill (Michael Best & Friedrich, LLP)  
J. Thomas Beckett (Parsons Behle & Latimer)  
Lynda L. Viti (Utah Attorney General's Office)  
Joel Campbell, Public Member  
Daphne Williams, Public Member

Panel C

Kasey L. Wright (Wright Law Firm, PC), Chair  
Jennifer Fraser Parrish (Magleby Cataxinos & Greenwood PC), Vice-Chair  
Debra M. Nelson (Utah Indigent Defense Services)  
Scott R. Sabey (Fabian VanCott)  
Mitchell A. Stephens (James Dodge Russell & Stephens PC)  
William D. Johnson, Public Member  
Kari Stuart Jones, Public Member

Panel D

David W. Tufts, (Dentons Durham Jones Pinegar PC), Chair  
Darcy Goddard (Strong & Hanni), Vice-Chair  
Ruth J. Hackford-Peer (US Attorney's Office)  
Robert R. Harrison (Stilling & Harrison PLLC)  
Zakia A. Richardson (Pluralsight, LLC)  
Charles Haussler, Public Member  
Jane Olsen, 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.

**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 [opcutah.org](http://opcutah.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 Lawyer 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 dismissal (which includes a declination to prosecute) or whether the matter should be processed for further investigation.<sup>B</sup> 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.

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<sup>B</sup> Not all cases go through Summary Review (i.e, complaints from judges, self-report complaints, reports from financial institutions, etc.)

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. 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 has enhanced 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 or Law Practice Management/Trust Accounting School; and, any other program or corrective course of action agreed to by the responding Lawyer necessary to address a 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 which authorizes 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 RDDDS 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 RDDDS.

**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 RDDDS if the discipline Complaint is pending prior to the filing of an Action. These 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 RDDDS if the discipline case is pending in the District Court as part of an Action.

**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 RDDDS, 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 2023**

A) **Case Activity**

Active cases as of January 1, 2023.....405  
(against 322 Lawyers)

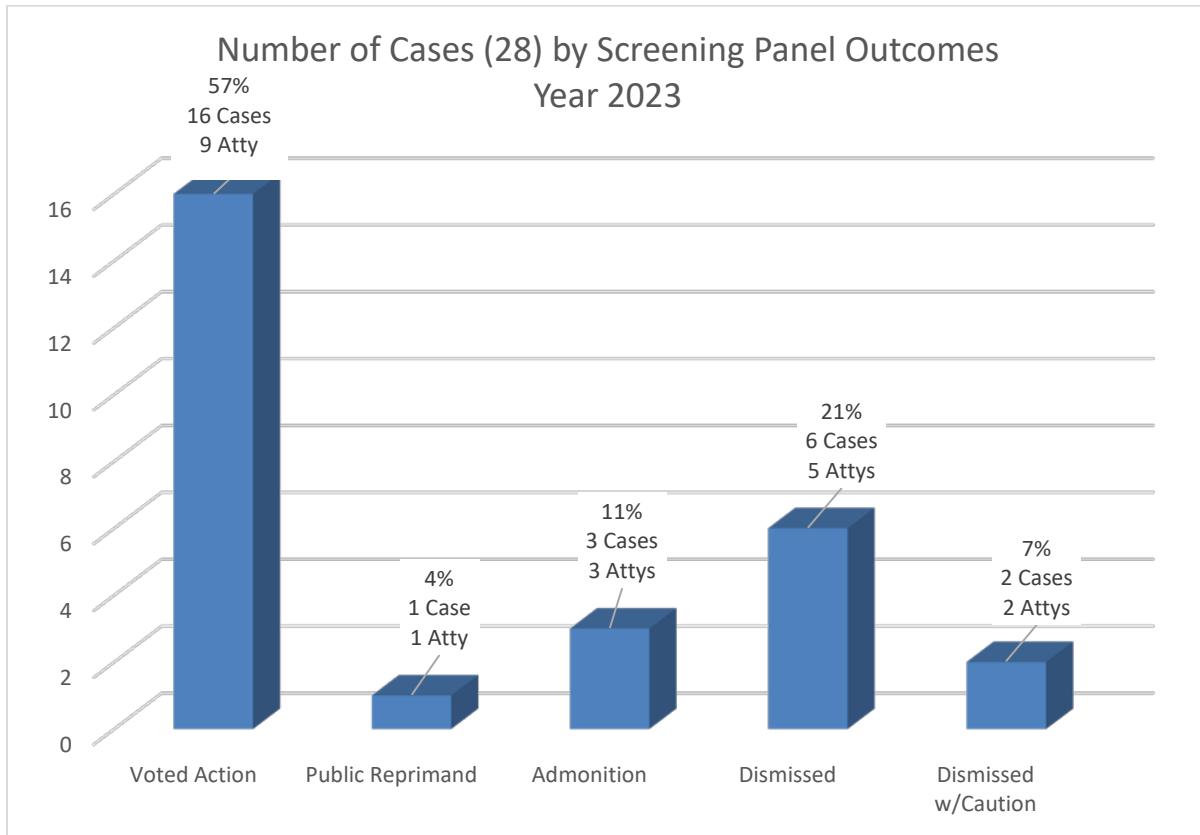
1)	<b><u>Cases opened</u></b>	<b><u># of Lawyers</u></b>
	Complaint .....	631 (506)
	Contempt.....	1 (1)
	Media/Court Information .....	5 (5)
	Notice of Insufficient Funds .....	31 (30)
	Reciprocal Discipline .....	3 (3)
	Reinstatement .....	8 (8)
	Special Prosecutor .....	3 (2)
	Trusteeship.....	2 (2)
	<b>Cases opened during period .....</b>	<b>684 (507)</b>
	<b>Total cases processed during period</b>	<b>1,089</b>
2)	<b><u>Complaints Closed Without Discipline</u></b>	
	By Dismissal .....	540
	By Dismissal with Caution .....	38
	By Declination to Prosecute .....	18
	By Declination to Prosecute w/Caution.....	2
	By Dismissal – Duplicate .....	6
	By Declination to Prosecute (Hold for Reinstatement).....	2
	<b>Total.....</b>	<b>606</b>
3)	<b><u>Media/Court Information Closed Without Discipline</u></b>	
	By Dismissal.....	1
	<b>Total.....</b>	<b>1</b>
4)	<b><u>Reinstatement</u></b>	
	Petition Withdrawn.....	1
	<b>Total.....</b>	<b>1</b>
5)	<b><u>Special Prosecutor Closed Without Discipline</u></b>	
	By Dismissal.....	1
	<b>Total.....</b>	<b>1</b>
6)	<b><u>Notice of Insufficient Funds Closed Without Discipline</u></b>	
	By Declination to Prosecute .....	7
	By Declination to Prosecute with Caution.....	19
	By Declination to Prosecute (Hold for Reinstatement).....	1
	<b>Total.....</b>	<b>27</b>

<b>7)</b>	<b><u>Orders Entered (21 Orders for 21 Closed Cases)</u></b>	<b><u># of Lawyers</u></b>
	Public Reprimand .....	2 (2)
	Admonition.....	3 (3)
	Suspension.....	3 (3)
	Delicensure.....	4 (4)
	Probation .....	2 (2)
	Probation (Probation Terminated) .....	3 (3)
	Reinstatement .....	1 (1)
	Reinstatement Denied .....	1 (1)
	Resignation with Discipline Pending.....	1 (1)
	Trusteeship Terminated.....	1 (1)
	<b>Total.....</b>	<b>21 (21)</b>
<b>8)</b>	<b><u>Cases Combined with Actions and Part of Global Settlements</u></b>	
	<b>Total.....</b>	<b>10</b>
	<b>Total case closures during period.....</b>	<b>667</b>
	<b>Active cases as of January 1, 2024.....</b>	<b>422</b>
	(Open cases minus closures for year 2023)	(against 332 Lawyers)
<b>9)</b>	<b><u>Case Activity as Recorded During the Year 2023:</u></b>	
	Diversions.....	5
	Abeyances Requested .....	4
	Abeyances Granted .....	6
	Abeyances Denied .....	1
	Informal Appeals Filed.....	95
	Informal Appeals Granted.....	1
	Informal Appeals Denied .....	73
	Screening Panel Exception by OPC .....	2
	Screening Panel Exception by Respondent .....	2
	Actions in Court <sup>C</sup> .....	22
	Complaints Combined with Actions .....	17
<b>10)</b>	<b><u>Stipulations</u></b>	<b><u># of Lawyers</u></b>
	Public Reprimand .....	1 (1)
	Suspension.....	2 (2)
	Delicensure.....	2 (2)
	Resignation with Discipline Pending.....	4 (4)
	Probation .....	3 (3)
	<b>Total.....</b>	<b>12 (12)</b>

<sup>C</sup> It should be noted that the OPC filed or defended a significant number of new Actions with the District Court. In this respect, the OPC defended eight reinstatements, filed two trusteeships, and filed twelve Actions with the District Court (the twelve Actions include seventeen underlying Complaints).

## 11) Screening Panel Outcomes

For the year 2023, the Ethics and Discipline Committee held a Screening Panel hearing for 28 matters, involving 20 Lawyers. 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 in year 2023. The OPC dismissed 27 NSF cases in year 2023. The usual reasons for dismissals of NSF cases are accounting errors, bank errors, depositing errors, or drawing on the account before a deposit clears.



**14) Summary**

Of the 1,089 cases the OPC processed in year 2023, 646 or approximately 59% were resolved by dismissals, declinations to prosecute or combined with Action. Of the 1,089 cases, approximately 1.4% of the cases resulted in 15 Orders of Discipline. Eighty percent (80%) of the Orders of Discipline were by stipulation. Finally, approximately 4% of the cases that could have been referred to a Screening Panel in year 2023 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 2023, the OPC’s CLE presentations totaled 29 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 (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 hybrid (in person and remote) in March and in person in September of year 2023 for six CLE hours each. In March 2023, Ethics School was attended by 157 Lawyers; and in September 2023, Ethics School was

attended by 62 Lawyers.

Included in OPC CLE presentations this reporting year, the OPC also held a six-hour Law Practice Management and Trust Account Seminar. This seminar was held in January 2023. 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 79 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.

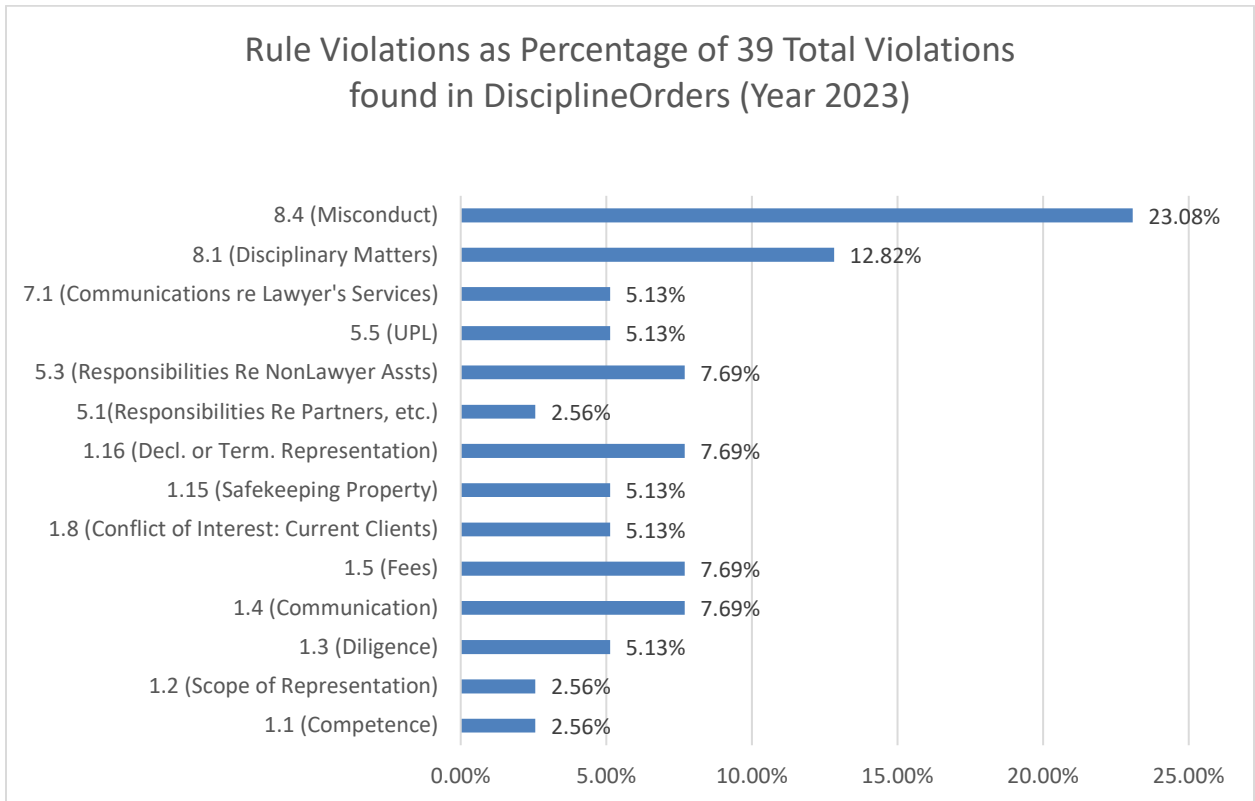
## **2) Committees**

The OPC participates in committees with respect to Lawyer conduct. Chief Disciplinary Counsel of the OPC sits as a non 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 15 orders of discipline entered in the year 2023, which resulted in a finding of 39 total rule violations, we can see the frequency with which various rules were violated:



The OPC's impression is that some of the violations of the rules are derived from the following:

Rule 8.4 (Misconduct) commonly arise from criminal conduct, deceitful or fraudulent conduct or conduct prejudicial to the administration of justice.

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.

Rule 7.1 (Communications Concerning a Lawyers Services) usually arises from making misleading communications about a Lawyer's services.

Rule 5.5 (UPL-Unauthorized Practice of law) usually arises from a lawyer practicing law in a jurisdiction who is not licensed in that jurisdiction.

Rule 5.1 (Responsibilities Re Partners, etc.) usually a Lawyer possessing comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm conforms to the Rules of Professional Conduct.

Rule 1.16 (Declining or Terminating Representation) commonly results from Lawyers withholding the client file upon termination of the representation.

Rule 1.15 (Safekeeping Property) often arises from Lawyers failing to keep their earned money separate from clients' money or failing to promptly provide an accounting of how fees were used.

Rule 1.8 (Conflict of Interest: Current Clients) usually when a Lawyer enters into a business transaction with a client, the terms of which are not fair.

Rule 1.5 (Fees) commonly arise from Lawyers collecting fees without performing meaningful work.

Rule 1.4 (Communication) commonly derives from Lawyers not keeping clients apprised of the work that they are doing and/or responding to reasonable requests for information.

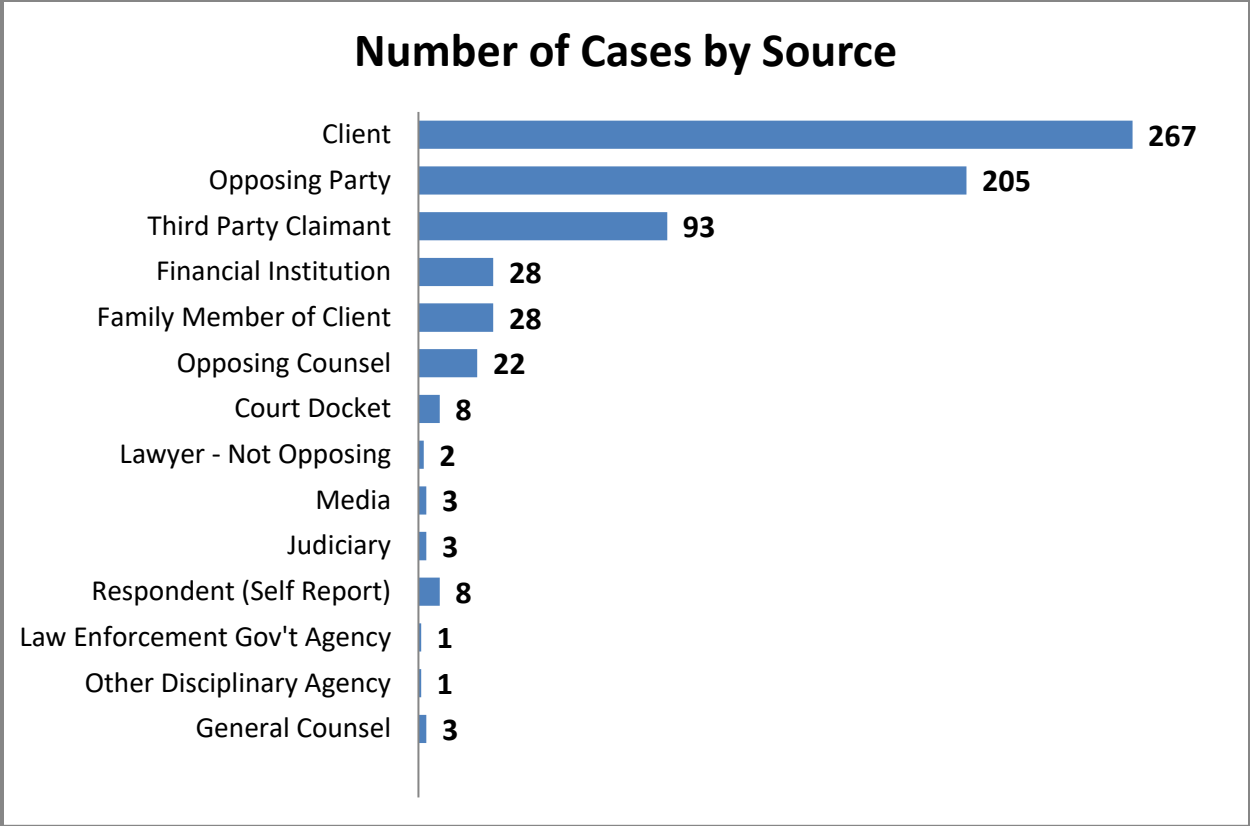
Rule 1.3 (Diligence) commonly derives from Lawyers failing to meet deadlines.

Rule 1.2 (Scope of Representation) usually when the Lawyer does not abide by the client's decision concerning the objectives of representation.

Rule 1.1 (Competence) commonly derives from Lawyers missing court appearances.

Accordingly, the OPC's CLE presentations often focus on helping practitioners avoid these particular problems.

(b) In year 2023, information regarding possible Lawyer misconduct was received from the following sources:

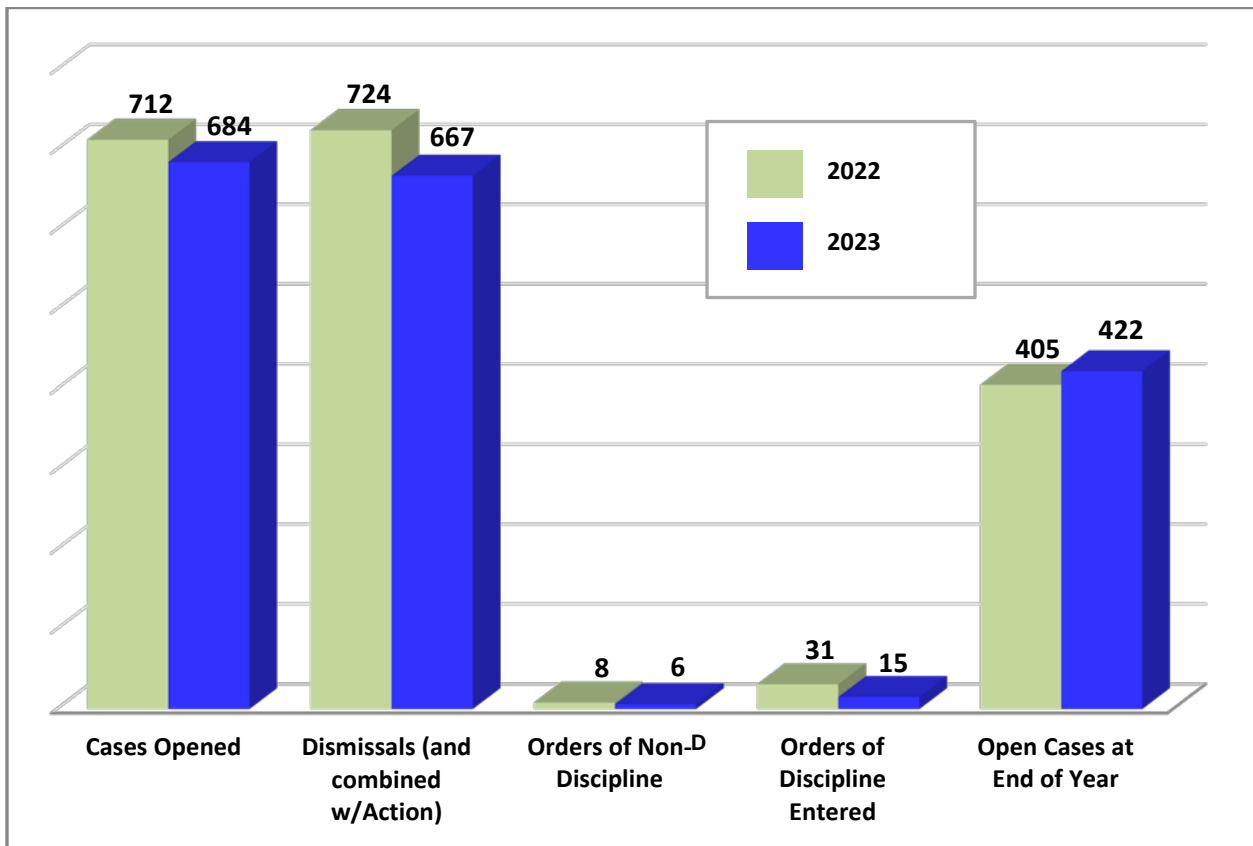


**IV. PROGRESS AND GOALS ON CASES**

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 2022 with year 2023:



<sup>D</sup> 1 Reinstatements, 1 Reinstatements Denied, and 1 Trusteeship Terminated, 2 Trusteeships, 1 Reinstatement Withdrawn.

As can be seen from the chart:

- (1) Cases opened this year decreased by approximately 4%;
- (2) Dismissals (and combined with Action) this year decreased by approximately 8%;
- (3) Orders of non-discipline entered this year decreased by two (from eight in 2022 to six in 2023);
- (4) Orders of discipline entered decreased by 52%; and
- (5) Active case numbers at the end of this year increased by approximately 4%.

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. This year, the OPC did not accomplish this goal, by a small amount of cases, because it opened 684 cases and closed 667<sup>E</sup> cases. We think this goal was not reached due to a number of personnel changes during the year.

## **V. PERFORMANCE METRICS**

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

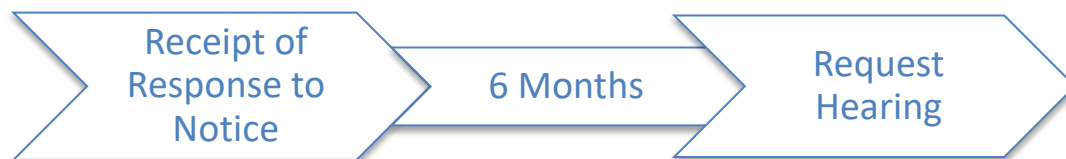
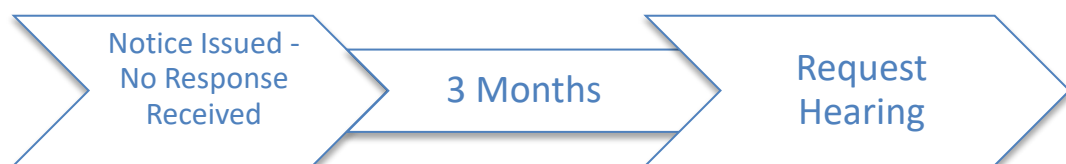
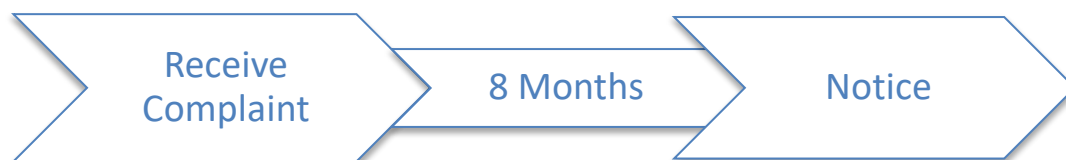
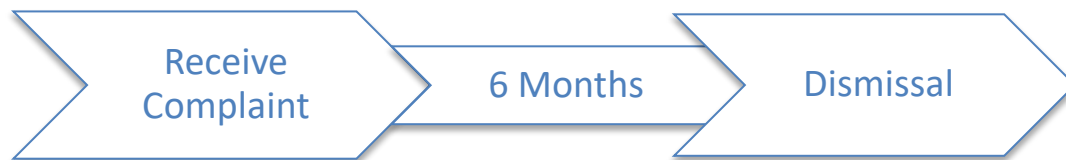
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<sup>E</sup> The total of Dismissals (and Combined w/Action) and all Orders (discipline and non-discipline).

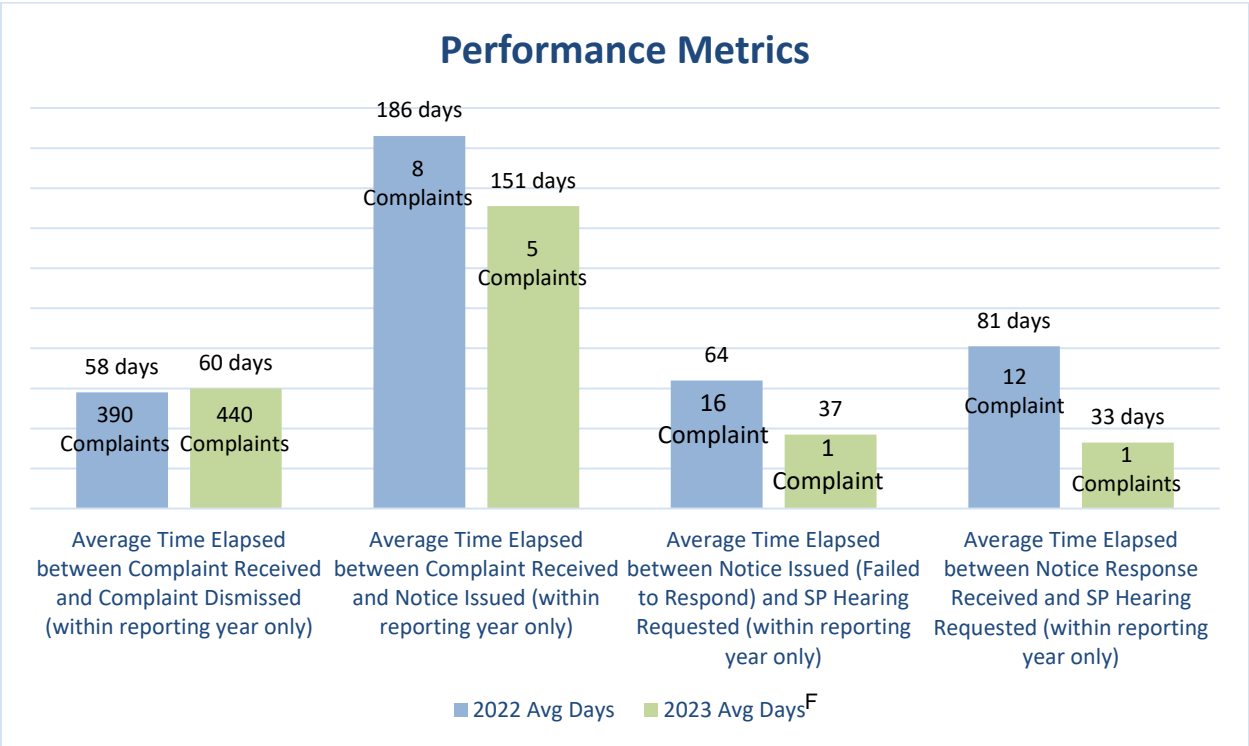
In each matter the OPC receives, the procedural process is guided by the RDDS as the OPC determines several factors: Does the initial Complaint have merit or should it be summarily dismissed or declined? Does more investigation need to be conducted? Does the Lawyer need to submit a reply? Should the 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, get information from a complainant 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.





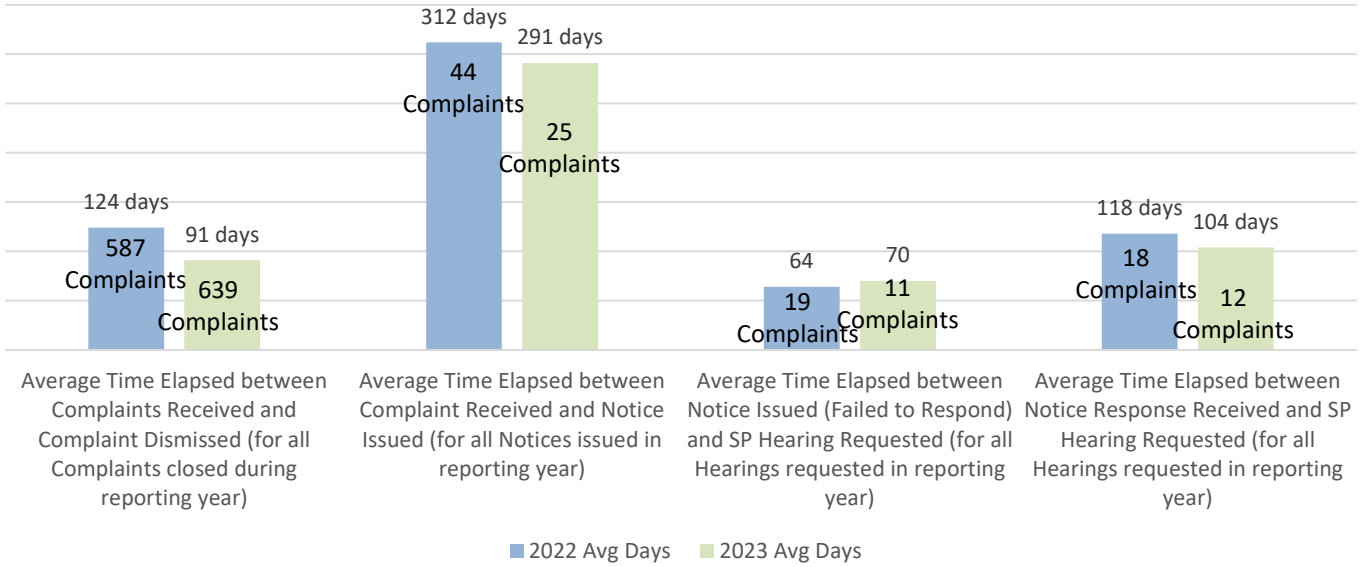
The OPC performance metric statistics for this reporting period are below. Additionally, for comparison purposes the OPC is providing performance metric statistics for the previous annual reporting period.



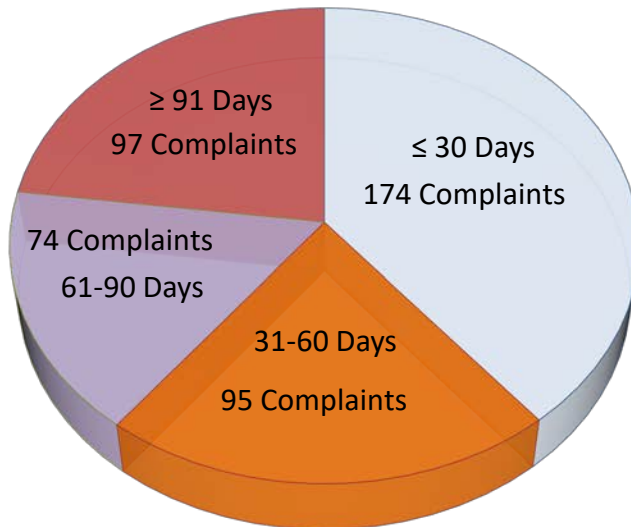
Please note the above chart focuses on the reporting year metrics, which means we are talking about Complaints received on or after January 1 and number of days to reach the respective stage before December 31. The chart below focuses on the number of days to reach the respective stage each year based on when the Complaint was received even though the Complaint may have been received outside the reporting year.

<sup>F</sup> For the remaining Complaints that the OPC received during this reporting year (186) that do not either make it to a dismissal, a Notice, or request for hearing, in January 2% of the complaints were received; February 2% were received; March 5% were received; April 4% were received; May 3% were received; June 6% were received; July 5% were received; August 10% were received; September 8% were received; October 21% were received; November 15% were received; and December 19% were received. Thus, approximately 78% of the Complaints in this category were not received until July of this reporting year.

### Performance Metrics



### YEAR 2023 (440 CASES) NUMBER OF DAYS ELAPSED BETWEEN COMPLAINT RECEIPT DATE AND DISMISSAL DATE



## **VI. GOALS FOR YEAR 2023**

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. Evidence of this is that of the Complaints OPC received in 2023, that went through Summary Review, 208 were summarily dismissed and 370 went on to further investigation. 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 cursive script that reads "Billy L. Walker". The signature is written in black ink and is positioned above a horizontal line.

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Billy L. Walker  
Chief Disciplinary Counsel  
Office of Professional Conduct