

INTRODUCTION

This report on the Office of Professional Conduct ("OPC") will focus on six areas: (I) staff composition; (II) attorney misconduct case process and procedure; (III) statistics for fiscal year 2011-2012; (IV) progress and goals on cases; (V) the Consumer Assistance Program ("CAP");^A and (VI) goals for fiscal year 2012-2013.

I. STAFF COMPOSITION

The staff currently consists of ten (10) full-time employees and one part-time file clerk. These ten (10) full-time employees include Senior Counsel, a Deputy Senior Counsel, four Assistant Counsels, two Paralegals, one Legal Secretary/Assistant to Counsel, and one Intake Clerk.

II. ATTORNEY MISCONDUCT CASE PROCESS AND PROCEDURE

A) Rules

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

B) Ethics and Discipline Committee

Pursuant to Rule 14-503 of the RLDD, twenty-seven (27) volunteer attorneys and eight (8) volunteer non-attorneys are appointed by the Utah Supreme Court to serve on an administrative body called the Ethics and Discipline Committee ("Committee"). The Committee's function is to consider attorney discipline cases that are appropriately referred to it under the RLDD.

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

The Utah Supreme Court appoints a Committee Chair and two Committee Vice-Chairs from the 27 attorneys.^B 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 twenty-four (24) attorneys and eight (8) non-attorneys do their main work in subcommittees called Screening Panels. The Utah Supreme Court appoints a Chair and the Committee appoints a Vice-Chair to each Screening Panel. The current composition of the Committee is as follows:

Terrie T. McIntosh, (Attorney at Law) Chair, Ethics and Discipline Committee

Laura S. Scott, (Parsons, Behle & Latimer) Vice Chair, Ethics and Discipline Committee

Catherine L. Brabson, (Parsons Kinghorn Harris) Vice Chair, Ethics and Discipline Committee

Panel A

Jill M. Pohlman, Stoel Rives LLP - Chair

Ellen Maycock, Kruse Landa, Maycock & Ricks – Vice Chair

Trystan B. Smith, Trystan Smith & Associates

Rex Olsen, Assistant Attorney General

Corbin Gordon, Attorney at Law

Heidi E.C. Leithead, Parr, Brown, Gee & Loveless

Marianne H. Moffitt, Public Member

Bruce Landesman, Public Member

Panel B

Kristine Larsen, Ray Quinney & Nebeker P.C. - Chair

Brian Katz, O C Tanner Company Legal Department - Vice-Chair

Michael McCarthy, Parsons Behle & Latimer

Kim Cordova, Brass & Cordova

Gary N. Anderson, Hillyard, Anderson & Olsen

Matthew Muir, Miller Guymon

Dan Sorensen, Public Member

Suzanne Potts, Public Member

Panel C

Margaret Plane, Salt Lake City Attorney's Office - Chair

Jeff Hunt, Parr Waddoups Brown Gee & Loveless - Vice-Chair

^B Amendment effective June 30, 2012.

Eric A. Mittelstadt, Deputy Director, Utah Legal Services
Bryan J. Pattison, Durham Jones & Pinegar
Phyllis Vetter, Office of General Counsel, University of Utah
Rosemary J. Beless, Fabian & Clendenin
Shawn McMillen, Public Member
Alexis Cairo, Public Member

Panel D

Vernon L. Hopkinson, Cohne, Rappaport & Segal, P.C. - Chair
Colin Winchester, Judicial Conduct Commission - Vice-Chair
Victoria Cramer, Cramer & Cramer LLC
Laura K. Thompson, Utah Attorney General's Office
Mark James, Hatch James & Dodge
Howard C. Nielson, Jr., Cooper & Kirk
Shari D. Faulkner, Public Member
Fred Fairclough, Public Member

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

The OPC has the duty to be the secretary of the Committee and handle the Committee's administrative affairs. These OPC duties include scheduling the hearings of the Committee and sending notices to the participants of these hearings.

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

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

- (1) Screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer;
- (2) Investigate all information coming to the attention of the Office which, if true, would be grounds for discipline or transfer to disability status and investigate all facts pertaining to petitions for reinstatement or readmission;

(3) For each matter not covered in Rule 14-510 [of the RLDD] brought to the attention of the OPC:

- (A) dismiss;
- (B) decline to prosecute;
- (C) refer non-frivolous and substantial informal complaints to the Committee for hearing; or
- (D) petition for transfer to disability status;

(4) Prosecute before the screening panels, the district courts and the Supreme Court all disciplinary cases and proceedings for transfer to or from disability status.

Information comes to the OPC's attention in the form of notarized/verified and non-notarized complaints. Notarized/verified complaints are official informal complaints ("informal complaints") within the meaning of Rule 14-510(a)(2) and, therefore, are processed pursuant to Rule 14-504 and Rule 14-510 of the RLDD. By contrast, non-notarized complaints are not official informal complaints, and are usually submitted to the OPC in the form of a Request for Assistance. They are processed pursuant to Rule 14-504 of the RLDD. For purposes of this report, all non-notarized complaints will hereinafter be referred to as Requests for Assistance. The OPC reviews Requests for Assistance in coordination with CAP.

Additionally, pursuant to Rule 14-504(b)(2) and Rule 14-510(a)(1) of the RLDD, the OPC can start an attorney misconduct investigation or complaint on its own initiative, based upon information that comes to its attention. In these cases, the OPC usually sends the attorney a notice of the OPC complaint with the notarized signature of Senior Counsel. Under Rule 14-510(a)(2), the OPC complaint is not required to be verified and attested to.

1) Central Intake System

The OPC's Central Intake System is staffed by two attorneys who are assigned to review all initial information received (Requests for Assistance and informal

complaints) to determine whether the matter should be appropriately closed by a declination to prosecute or a dismissal, or whether the matter should be processed further for referral to a Screening Panel. These decisions are made jointly by the intake attorneys and the other staff attorneys at weekly case status meetings.^c

As part of this system, at the weekly attorney staff meetings the OPC reviews all written Requests for Assistance that it receives that are made to CAP. The OPC determines whether the Request for Assistance is appropriate to be handled through CAP (i.e., minor attorney concerns that most likely do not rise to the level of Rule of Professional Conduct violations), or whether the Request for Assistance should be resubmitted as an informal complaint and addressed by the OPC (i.e., serious attorney concerns or matters involving attorneys who are already under investigation by the OPC on the basis of other informal complaints alleging similar concerns). Within those parameters, when appropriate, Requests for Assistance are sent to CAP and there is OPC case closure. The OPC may also close the case by a determination of declination to prosecute. In appropriate cases, the OPC notifies the Complainant to resubmit their Request for Assistance with notarization and verification.

2) Investigations

All reviews of all informal complaints and the decisions associated with these reviews are also made jointly by the OPC attorneys at weekly staff meetings. The informal complaint is reviewed for jurisdiction, merit and timeliness. Looking at the “four corners” of the informal complaint, if the OPC determines it does not have jurisdiction, if

^c As part of the Board of Bar Commissioners' Review mentioned in the 2009-2010 Annual Report, the Commission recommended that the OPC utilize assistance from experienced attorneys as consultants at these weekly meetings. Thus, as of August 2010, the 6 member OPC consultant group has rotated in attendance. During the past fiscal year, the consultant group consisted of: Francis J. Carney (Attorney At Law); Clark W. Sessions (Clyde Snow & Sessions); Patricia W. Christensen (Parr, Brown, Gee & Loveless); Honorable Pamela T. Greenwood; and Lawrence E. Stevens (Parsons, Behle & Latimer).

the informal complaint fails to state a claim, if the informal complaint is beyond the statute of limitations, or if the case lacks merit in that the alleged conduct, even if true is not an ethical violation, the case is dismissed. In these types of dismissal cases, there is no need to contact the attorney for information. For administrative purposes, the OPC refers to these dismissals as "Summary Dismissals." Both the Complainant and the attorney receive a dismissal letter, and a copy of the informal complaint is sent to the attorney.

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

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

The OPC sends the Complainant a copy of the attorney's response to the NOIC and, in most cases, continues its investigation by obtaining a reply from the Complainant to the attorney's response. Further, where necessary and 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. At any point during the investigation, the OPC is willing to conduct settlement discussions with the attorney. Upon completion of the investigation as outlined above, the OPC determines whether the informal complaint sets forth facts which by their very nature should be brought before a Screening Panel or if good cause otherwise exists to bring the matter before a Screening Panel. These are "non-frivolous" and "substantial" informal complaints within the meaning of RLDD 14-504(b)(3) and are required to be presented to Screening Panels consistent with RLDD 14-510(a)(4).

If upon completion of this investigation the OPC determines that the case is not substantial or is frivolous (i.e., the factual allegations made by the Complainant that can be proven do not constitute a violation of the Rules of Professional Conduct or the evidence is insufficient to establish probable cause that the attorney violated the Rules of Professional Conduct), the OPC dismisses the informal complaint consistent with RLDD 14-510(a)(6). For administrative purposes, the OPC refers to these dismissals as "Standard Dismissals." Additionally, as part of its dismissal authority, consistent with the language in Rule 14-510(a)(6) of the RLDD, the OPC can determine that an informal complaint is barred by the statute of limitations, or is more adequately addressed in another forum, or the OPC can decline to prosecute an informal complaint.

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

- The OPC may decline to prosecute cases where there is a question as to the nexus between the allegations and the attorney's practice.
- The OPC may decline to prosecute cases where the attorney has already been disciplined for similar misconduct committed during the same period. In these cases, it is unlikely the misconduct will result in discipline greater than what has already been imposed.
- The OPC may decline to prosecute cases where the attorney has taken immediate action to remedy the alleged misconduct.

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

3) Diversions

Diversion is an alternative to discipline that is entered into by agreement in attorney discipline cases. Pursuant to Rule 14-533 of the RLDD, the Utah Supreme Court created a Diversion Committee; if the attorney consents to a Diversion Agreement that is subsequently approved by the Diversion Committee, either a Screening Panel or

the OPC may dismiss cases involving minor violations of the Rules of Professional Conduct. The specific types of cases that are not appropriate for diversion are: when the attorney is accused of misappropriating client funds; the attorney's behavior will, or is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the attorney has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the attorney has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of irreparable harm to the public; the misconduct is a felony; a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

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

The Diversion Committee has to review and approve every diversion contract. Possible program areas of diversion are as follows: Fee Arbitration; Mediation; Law Office Management Assistance; Psychological And Behavioral Counseling; Monitoring; Restitution; Continuing Legal Education Programs, including Ethics School; and, any other program or corrective course of action agreed to by the responding attorney necessary to address an attorney's conduct.

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

that Complainant may comment, however a decision to divert is not appealable by a Complainant.

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

4) Informal Appeals

Pursuant to Rule 14-510(a)(6) of the RLDD, a Complainant can appeal within fifteen days to the Committee Chair the OPC's dismissal, including declinations to prosecute, of any informal complaint. When the OPC dismisses an informal complaint after investigation or declines to prosecute an informal complaint, it gives notice to the Complainant of the language in Rule 14-510(a)(6) of the RLDD and allows the Complainant the opportunity to appeal the decision. If the Complainant files an appeal, the Committee Chair conducts a de novo review of the OPC file and either affirms the dismissal or directs the OPC to prepare the informal complaint for a Screening Panel hearing.

5) Screening Panel

If after investigation, the OPC determines that the allegations of the informal complaint are non-frivolous and substantial, or if the Chair or Vice-Chair of the Committee remands a case after an appeal, the OPC refers the informal complaint to a

Screening Panel. The NOIC described in section 2 above is the official notice that is required for the OPC to bring the case before a Screening Panel.

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

- Dismissal for lack of merit;
- Dismissal with a letter of caution;
- Dismissal by referral to Diversion Committee;
- Dismissal by referral to Professionalism Counseling Board;^D
- Recommendation that the attorney be (privately) admonished or publicly reprimanded;
 - If the Screening Panel recommends an admonition or public reprimand, the attorney can file an exception to the recommendation with the Committee Chair.
 - The OPC can file an exception to any of the determinations or recommendations with the Committee Chair.^E
 - Following the Screening Panel Hearing, or upon completion of the Exceptions Hearing, if an Exception has been filed, the Committee Chair issues a formal determination and can either sustain, dismiss, or modify the Screening Panel's determination or recommendation of discipline.
 - After final written determination of the Committee Chair, where an exception had been filed, the OPC or an attorney can appeal by filing a request for review with the Supreme Court for reversal or modification.^F The OPC refers to these as "Administrative Appeals."
- A finding of probable cause that a Formal Complaint be filed with the District Court.
 - A determination that a Formal Complaint should be filed is not appealable.

^D Amendment effective June 30, 2012.

^E Amendment effective June 30, 2012.

^F Amendment effective June 30, 2012.

If the Screening Panel determines that the informal complaint should be filed as a Formal Complaint, Rule 14-511 of the RLDD requires the OPC to prepare the Formal Complaint for the signature of the Chair of the Committee. Often the attorney has more than one informal complaint pending against him/her. If there is more than one informal complaint involved, an informal complaint may be temporarily held in a Screening Panel voted-formal-not-yet-filed category until the other informal complaints pass through the Screening Panel process and can be combined into a single Formal Complaint.

6) Formal Complaints

A Formal Complaint must be filed in the county where the alleged misconduct occurred, or in the county where the attorney resides or practices law or last practiced law. Once a Formal Complaint is filed with the District Court, if no settlement can be reached, the case is prepared for a bench trial. The bench trial is bifurcated, the first portion of which involves the adjudication of misconduct (i.e., 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 | ➤ Probation |
| ➤ CLE or Ethics School | ➤ Suspension |
| ➤ Public Reprimand | ➤ Disbarment |
| ➤ Restitution | |

7) Formal Appeals

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

the discretion to consider appeals of all attorney discipline cases.

8) Monitored Cases

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

When the OPC has to undertake a trusteeship, it takes a significant amount of resources and time. It is preferable to the OPC that an attorney or firm outside of the OPC be appointed to manage trusteeships. However, since in most trusteeship cases there is little or no money for the recoupment of costs and fees, there are not always attorneys or firms that are willing and able to oversee a trusteeship. The OPC is currently conducting a review of its policies with regard to trusteeship files and surveying other jurisdictions to try and determine what is reasonable with regard to file distribution and retention.

9) Interim Suspension and Disability

Pursuant to Rules 14-518, 14-519, and 14-523 of the RLDD, if an attorney poses a substantial threat of irreparable harm to the public and has either committed a

violation of the Rules of Professional Conduct or has been convicted of a crime which reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney, or is under a disability as defined in the RLDD, the OPC may file a petition for interim suspension or disability. This is an immediate filing in the District Court, and need not go through the Screening Panel process outlined above.

10) Abeyances

Attorney discipline cases may be continued, stayed and held in abeyance when there is related pending litigation (i.e., criminal or civil) and the alleged misconduct is substantial similar to the issues of the pending litigation. The request for abeyance can be made by either the OPC or the respondent attorney. The request is made to the Committee Chair pursuant to Rule 14-510(b)(9) if the discipline case is pending prior to the filing of a formal case ("Informal Abeyance") and the request is made to the judge pursuant to Rule 14-517(d) if the discipline case is pending in the District Court as part of a formal case ("Formal Abeyance").

11) Final Dispositions

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

III. STATISTICS – Fiscal Year 2011-2012 (July 1, 2011 to June 30, 2012)

A) Case Activity

Active cases reported as of 7/1/11485^G

1) Cases opened

Informal Complaints	309
Requests for Assistance	595
Reinstatements	5
Trusteeship	5
Disability	2
Total	916

Total cases processed during period:1401

2) Informal Complaints Closed

By Declination to Prosecute (declination)	36
By Summary Dismissal (summary)	152
By Dismissal After Investigation (standard)	70
By Dismissal After Screening Panel	20
Total	278

3) Requests for Assistance Closed

By Sending to CAP	36
By Return for Notarization	166
By Declination to Prosecute	450
Total	652

4) Cases Closed With Orders of:

	<u># of attys</u>
Admonition	19 (18)
Resignation With Discipline Pending	2 (2)
Suspension	11 (7)
Public Reprimand	22 (16)
Disbarment	14 (5)
Reinstatement	4 (4)
Miscellaneous	2 (2)
(Representing 1 order of dismissal; and 1 order denying reinstatement)	
Probation	1 (1)
Trusteeships	3 (3)
Disability	4 (4)

^G The OPC does an audit at the end of every fiscal year. Based upon the audit performed by the OPC at the end of this fiscal year (2011-2012), the number of cases active as of July 1, 2011 is 485, not 493 as reported in last year's annual report.

Total	82	(62)
Total case closures during period:	1012	

Active cases as of 7/1/12 389
 (Open cases minus closures for fiscal year 2011-2012)

5) During the Fiscal Year 2011-2012, the OPC had open case activity as follows:

Diversions.....	2
Informal Abeyances.....	25
Informal Appeals.....	49
(1 remand by Committee Chair and it was heard by Screening Panel; this resulted in a dismissal)	
Exceptions to Screening Panel Recommendation.....	8
(Representing 8 underlying informal complaints. Of these 8 Exceptions, three recommendations were upheld (two public reprimands, 1 admonition); and five recommendations are waiting to be heard.	
Reinstatements	3
(Representing 3 underlying informal complaints)	
Trusteeships.....	5
(Representing 5 underlying informal complaints)	
Disability	4
(Representing 5 underlying informal complaints)	
Formal cases filed with the District Court	16
(Representing 25 underlying informal complaints)	
Formal Appeals	2
(Representing 2 underlying informal complaints. Of the 2 underlying complaints, 1 is an Administrative Appeal)	

Screening Panel outcomes were as follows: (# of attys)

Cases voted formal.....	19	(14)
Cases voted public reprimand	20	(15)
Cases voted admonition	19	(16)
Cases dismissed	9	(8)

Cases dismissed with a caution	11	(11)
Total Screening Panel Case Outcomes	78	(64)

7) Stipulations

Resignation with Discipline Pending.....	2	(2)
Suspensions.....	5	(5)
Admonitions.....	1	(1)
Public Reprimands	4	(4)
Probations	1	(1)
Disability	3	(3)
Total Stipulations	16^H	(16)

8) Notice of Insufficient Funds

As part of the OPC case activity, Rule 1.15(a) of the Rules of Professional Conduct requires that attorneys maintain their trust accounts in financial institutions that agree to report to the OPC "in the event any instrument in properly payable form is presented against an attorney trust account containing insufficient funds (NSF), irrespective of whether or not the instrument is honored." Pursuant to this rule the OPC opened 72 NSF cases, and dismissed 65 NSF cases in fiscal year 2011-2012. The usual reasons for dismissals of NSF cases are accounting errors, bank errors, depositing errors, or drawing on the account before a deposit clears.

9) Summary

Of the 1401 cases the OPC processed in fiscal year 2011-2012, 930 or 66.38% were resolved by dismissals, declinations to prosecute, referral to CAP or return for notarization. Of the 1401 cases, 69 or approximately 4.9% of the cases resulted in Orders of Discipline. Approximately 18.8% of the Orders of Discipline were by stipulation. Finally, approximately 5.56% of the OPC's processed cases for the year were heard by Screening Panels.

^H All stipulations were post-Screening Panel at the District Court level except for one Admonition.

10) Beginning Fiscal Year 2012-2013

The OPC begins Fiscal Year 2012-2013 with 395¹ active cases against 248 attorneys. The breakdown of the various stages of the 395 cases is as follows:

Requests for Assistance.....	103
Informal Complaints.....	88
Informal Abeyances.....	36
NOIC Opened.....	71
Diversions.....	7
Screening Panel Voted Formal (not yet filed)	13
Screening Panel Voted Public Reprimand..... (not yet accepted by Committee Chair)	3
Screening Panel Voted Admonition..... (not yet accepted by Committee Chair)	4

(underlying informal
complaints)

Formal Filed	45
Formal Filed Abeyance.....	2
Reinstatements	2
Trusteeships.....	16
Formal Appeal	5
(Of the 5 Formal Appeals, 1 is an Administrative Appeal)	

¹ Based upon an audit at the end of fiscal year 2011-2012, the number of active cases as of July 1, 2012 is 395, not 389.

B) Miscellaneous

1) Ethics Hotline and CLE

Rule 14-504(b)(13) of the RLDD requires that the OPC provide informal guidance to promote ethical conduct by Bar members. In compliance with this rule, the OPC has an Ethics Hotline where the OPC attorneys give Bar members informal guidance by telephone. During fiscal year 2011-2012, the OPC rendered 718 informal ethics opinions by telephone.

Additionally, the OPC attorneys make Continuing Legal Education ("CLE") ethics presentations. During fiscal year 2011-2012, the OPC's CLE presentations totaled 47 hours. Two of the CLE presentations were at the Ethics School conducted by the OPC. The OPC titles the Ethics School "What You Didn't Learn in Law School." Some attorneys are required to be there as a condition of a disciplinary case, but the OPC usually opens it to the entire Bar. At the school, the OPC covers a number of topics, including the lawyer discipline process, engaging and terminating the attorney-client relationship, conflicts of interests, lawyer trust fund accounting and hot topics of ethical issues. The OPC also usually tries to have at least one judge as a guest speaker to talk about civility and professionalism. The Ethics School was held in July and January of the 2011-2012 fiscal year for 6 CLE hours each time. In July 2011, Ethics School was attended by 56 attorneys; and in January 2012, Ethics School was attended by 70 attorneys.

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

arises, the OPC anticipates continuing to publish articles on ethics topics.

2) Committees

The OPC participates in committees with respect to attorney conduct. Senior 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 non-voting member on the Utah State Bar's Ethics Advisory Opinion Committee. And, Senior Counsel of the OPC is a voting member of the Utah Supreme Court's Advisory Committee on Professionalism.

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, for informal complaints reviewed in fiscal year 2011-2012, in approximate percentages, the cases resulted in violations of the following rules:

<u>Percentage^J</u>	<u>Rule</u>
56.40%	1.15 (Safekeeping Property)
54.50%	1.4 (Communication)
30.90%	1.3 (Diligence)
27.30%	1.5 (Fees)
27.30%	8.1b (Bar Admission and Disciplinary Matters)
25.50%	1.1 (Competence)
23.60%	1.16 (Declining or Terminating Representation)
16.40%	5.3 Responsibilities Regarding Nonlawyer Assistants)
16.40%	8.4c (Misconduct – Deceit, Fraud, Misrepresentation)
14.50%	8.4b (Misconduct – Criminal Act)
12.70%	8.4d (Misconduct Prejudicial to the Administration of Justice)
10.90%	1.7 (Conflict of Interest: Current Clients)
9.09%	1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer)

^J The percentages of actual rule violations exceed 100% because each order of discipline generally includes multiple Rule of Professional Conduct violations.

5.45%	5.5	(Unauthorized Practice of Law; Multijurisdictional Practice of Law)
3.64%	3.3	(Candor Toward the Tribunal)
3.64%	3.5	(Impartiality and Decorum of the Tribunal)
1.81%	3.1	(Meritorious Claims and Contentions)
1.81%	3.2	(Expediting Litigation)
1.81%	4.4	(Respect for Rights of Third Persons)
1.81%	7.1	(Communications Concerning a Lawyer's Service)
1.81%	7.3	(Direct Contact with Prospective Clients)
1.81%	1.14	(Client with Diminished Capacity)
1.81%	1.6	(Confidentiality of Information)
1.81%	1.8	(Conflict of Interest: Current Clients: Specific Rules)
1.81%	7.2	(Advertising)
1.81%	8.4e	(Misconduct - Improperly Influence a Governmental Agency or Official)

The OPC's impression is that violations of Rule 1.1 (Competence) commonly derive from attorneys missing court appearances; that violations of Rule 1.5 (Fees) commonly arise from attorneys collecting fees without performing meaningful work; that violations of Rule 1.15 (Safekeeping Property) often arise from attorneys failing to promptly provide an accounting of how fees were used; that violations of Rule 1.16 (Declining or Terminating Representation) commonly result from attorneys withholding the client file upon termination of the representation; and violations of Rule 8.1(b) (Bar Admission and Disciplinary Matters) usually are based upon attorneys failing to respond to the OPC's lawful requests for information in the course of disciplinary investigations. Accordingly, the OPC's CLE presentations often focus on helping practitioners avoid these particular problems. In the past year, the OPC has noted a significant increase in the number of complaints related to home loan modifications and foreclosure defense. These complaints typically involve attorneys not performing work for which they were paid.

(b) Looking at the source for information received in fiscal year 2011-2012, in approximate percentages the sources were as follows:

<u>Percentage</u>	<u>Source</u>
70.60%	Client
9.50%	Financial Institution
5.99%	Opposing Party
3.52%	Opposing Counsel
3.26%	Lawyer Not Opposing Counsel
2.21%	Respondent [self –reports, including cases initiated by respondent attorneys (i.e., reinstatement, trusteeships, and disabilities)]
1.30%	OPC
1.17%	Family Member of Client
1.17%	Judiciary
0.65%	Third Party
0.39%	Law Enforcement/Government Agency
<u>0.26%</u>	Other Outside Disciplinary Source
Total: 100.00%	

IV. PROGRESS AND GOALS ON CASES

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

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

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

- (1) Cases received this fiscal year were down approximately 9.57% (916 vs. 1013);
- (2) Dismissals this fiscal year increased by approximately 10.7% (930 vs. 840);
- (3) Cases closed with orders of discipline this fiscal year increased by approximately 91.6% (69 vs. 36); and
- (4) Active case number at the end of this fiscal year decreased by approximately 18.5% (395 vs. 485).

The OPC has a goal to reduce its active case number each fiscal year by closing more cases in a fiscal year than the office receives in that year. This year, the OPC did accomplish this goal because it received 916 cases and closed 1012 cases and its active case number decreased by 18.5%.

The OPC has also established a goal of attempting to have 20% or less of its cases be in the informal stage for a period of no more than six months. Of its current caseload (395), 325 are at the informal stage. And of the 325 cases, 92 or approximately 28% have been in the informal stage for over six months. It should be

noted that 17 of the 92 cases are either abeyances, informal appeals or special prosecutor cases (special prosecutor cases are cases filed against either OPC staff, Bar Commissioners or Ethics and Discipline Committee lawyer members – which pursuant to Rule 14-517(f) of the RLDD, have to be prosecuted outside of the OPC). Not counting these 17 cases, about 23% of the 325 cases have been at the informal stage for a period of greater than six months. This 23% number is above the OPC's goal and the OPC will strive in the upcoming fiscal year to achieve its percentage goal.

Finally, the OPC has the goal of bringing the majority of all its cases to final resolution in a current fiscal year. In this fiscal year, the OPC brought approximately 72.2% of the cases it processed to a final disposition; this included bringing informal and post-informal stage cases to final dispositions. Based upon this fact, the OPC accomplished this goal. It should also be noted that while accomplishing this goal, the OPC also filed a significant number of new formal cases. In this respect, in addition to handling 10 new cases of reinstatement/trusteeships, the OPC filed 16 new formal cases with the District Court (the 16 formal cases represent 25 underlying informal complaints).

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

The Central Intake System greatly aids case processing goals. Central Intake enables the OPC to address all information coming to its attention (both notarized and non-notarized) and to quickly and efficiently determine the appropriate track for the information. This leaves more resources to address cases raising more serious ethical

allegations, resulting in quicker case processing for all cases.

V. CONSUMER ASSISTANCE PROGRAM

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

The OPC's review of CAP cases ensures that allegations of serious misconduct are not processed as Requests for Assistance. Of the 743 Requests for Assistance the OPC received in fiscal year 2011-2012, 36 were sent to CAP, and two of these came back to the OPC in this fiscal year as informal complaints. Thus, with respect to fiscal year 2011-2012, 34 cases were resolved by CAP.^K The OPC uses the resources normally needed for reviewing and resolving the cases that are handled by CAP to process cases where there are serious ethical violations.

VI. GOALS FOR FISCAL YEAR 2012-2013

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;

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

expeditious; professional; civil and systematic way to protect the public, clients, and the legal profession from the professional misconduct of attorneys. The overriding goal is to continue to develop the OPC case processing system to ensure that the majority of resources are utilized to more quickly prosecute those cases where it is appropriate to file formal complaints with the District Court.

CONCLUSION

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

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