

**UTAH STATE BAR  
OFFICE OF PROFESSIONAL CONDUCT**

**ANNUAL REPORT  
August 2016**

## **INTRODUCTION**

This report on the Office of Professional Conduct (“OPC”) will focus on seven areas: (I) staff composition; (II) attorney misconduct case process and procedure; (III) statistics for July 1, 2015 to June 30, 2016 (“year 2015-2016”); (IV) progress and goals on cases; (V) the Consumer Assistance Program (“CAP”);<sup>A</sup> (VI) other item of consideration; and (VII) goals for July 1, 2016 to June 30, 2017 (“year 2016-2017”).

### **I. STAFF COMPOSITION**

The staff for year 2015-2016 consisted of 10 full-time employees and one part-time paralegal. These 10 full-time employees include Senior Counsel, a Deputy Senior Counsel, four Assistant Counsel, three Paralegals, and one Intake Secretary.

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

#### **A) Rules**

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

#### **B) Ethics and Discipline Committee**

Pursuant to Rule 14-503 of the RLDD, 28<sup>B</sup> volunteer attorneys and eight volunteer non-attorneys are appointed by the Utah Supreme Court to serve on an administrative body called the Ethics and Discipline Committee (“Committee”). The

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<sup>A</sup> 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.

<sup>B</sup> By amendment effective January 21, 2016, the Supreme Court increased the number of Committee members from 35 to 36, adding a Committee Vice-Chair. Also effective January 27, 2016, the Supreme Court appointed a Clerk to the Committee to handle its administrative affairs [see Section VI of this report, “Other Item of Consideration”].

Committee's function is to consider attorney discipline cases that are appropriately referred to it under the RLDD.

The Utah Supreme Court appoints a Committee Chair and three Committee Vice-Chairs from the 28 attorneys. The Committee Chair is responsible for the oversight of the Committee and the Committee Vice-Chairs assist the Committee Chair in this task. The remaining 24 attorneys and eight non-attorneys do their main work in subcommittees called Screening Panels. The Utah Supreme Court appoints a Chair and a Vice-Chair to each Screening Panel. The year 2015-2016 composition of the Committee was as follows:

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

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

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

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

Brady Whitehead, Clerk, Ethics and Discipline Committee

Panel A

Ellen M. Maycock (Kruse Landa Maycock & Ricks, LLC), Chair

Mark F. James (Hatch, James & Dodge, PC), Vice-Chair

Duane H. Gillman (Durham Jones & Pinegar)

Andrea Martinez Griffin (Salt Lake County District Attorney)

Richard G. Hamp (Salt Lake County District Attorney)

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

Bruce Landesman, Public Member

Stephen E. Parks, Public Member

Panel B

Michael R. McCarthy II (Parsons Behle & Latimer), Chair

Gary N. Anderson (Hillyard, Anderson & Olsen), Vice-Chair

Kim Cordova (Edward K. Brass, PC)

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

Jonathan Pappasideris (Salt Lake City Corporation)

Rebecca S. Parr (Utah Attorney General's Office)  
Suzanne Potts, Public Member  
Dan Sorensen, Public Member

Panel C

Bryan J. Pattison (Durham Jones & Pinegar, PC), Chair  
Corbin B. Gordon (Gordon Law Group, PC), Vice-Chair  
Nanci S. Bockelie (Bockelie Law Office, LC)  
Randall L. Jeffs (Jeffs & Jeffs, PC)  
Amy Hayes Kennedy (Dart, Adamson & Donovan)  
Eric A. Mittelstadt (Utah Legal Services)  
Linda Blake, Public Member  
Alexis Cairo, Public Member

Panel D

Colin R. Winchester (Judicial Conduct Commission), Chair  
P. Matthew Muir (Miller Toone, PC), Vice-Chair  
Betsy Haws (Salt Lake City Attorney's Office)  
Romaine C. Marshall (Holland & Hart, LLP)  
Bryant J. McConkie (Ray Quinney & Nebeker)  
Elizabeth S. Whitney (Attorney at Law)  
Fred Fairclough, Jr., Public Member  
Nancy Haanstad, 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.

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

Additionally, pursuant to Rule 14-504(b)(2) and Rule 14-510(a)(1) of the RLDD, the OPC can start an attorney misconduct investigation or complaint on its own initiative, based upon information that comes to its attention. The most common circumstance where this happens is when the OPC reviews information that has been disseminated through the media or is part of a published court case. The OPC categorizes these cases as Media/Court. 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**

**Process**

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

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

## 2) **Investigations**

### **Initial Review**

All reviews of all informal complaints and the decisions associated with these reviews are also made jointly by the OPC attorneys at weekly staff meetings. The informal complaint is reviewed for jurisdiction, merit and timeliness. Looking at the “four corners” of the informal complaint, if the OPC determines it does not have jurisdiction, if the informal complaint fails to state a claim, 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. Both the Complainant and the attorney receive a dismissal letter, and a copy of the informal complaint is sent to the attorney.

### **Preliminary Investigation**

Assuming that the OPC does not dismiss an informal complaint based on jurisdiction, 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. Thereafter, the OPC will usually proceed to obtain an informal response from the Respondent.

### **Settlement**

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

### **Notice of Informal Complaint**

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

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



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

If upon completion of this investigation the OPC determines that the case is not substantial or is frivolous (i.e., the factual allegations made by the Complainant that can be proven do not constitute a violation of the Rules of Professional Conduct or the evidence is insufficient to establish probable cause that the attorney violated the Rules of Professional Conduct), the OPC dismisses the informal complaint consistent with RLDD 14-510(a)(7). Additionally, as part of its dismissal authority, consistent with the language in Rule 14-510(a)(7) of the RLDD, the OPC can determine that an informal complaint is barred by the statute of limitations, 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 in an attorney discipline matter for similar misconduct committed during the same period. In these cases, it is unlikely the misconduct will result in discipline greater than what has already been imposed in an attorney discipline matter.

- The OPC may decline to prosecute cases where the attorney has taken immediate action to remedy the alleged misconduct and that remedy has likely negated a violation of the Rules of Professional Conduct.
- The OPC may decline to prosecute a case by a referral to the Professionalism Counseling Board.<sup>c</sup>

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

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

irreparable harm to the public; the misconduct is a felony or a misdemeanor that reflects adversely on the respondent's honesty, trustworthiness, or fitness as a lawyer; or, the attorney has engaged in a pattern of similar misconduct.

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

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

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

Upon entering into the diversion contract, the complaint against the attorney is stayed pending completion of diversion. If diversion is successful, the complaint is dismissed and all information regarding the terms of the diversion is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach of the diversion contract is cause for terminating the agreement and subjects the lawyer to appropriate discipline as if

diversion had never been an option. As noted below, a Screening Panel may also refer a complaint to the Diversion Committee.

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

Pursuant to Rule 14-510(a)(7) of the RLDD, a Complainant can appeal within 15 days to the Committee Chair the OPC's dismissal, including declinations to prosecute, of any informal complaint. When the OPC dismisses an informal complaint after investigation or declines to prosecute an informal complaint, it gives notice to the Complainant of the language in Rule 14-510(a)(7) of the RLDD and allows the Complainant the opportunity to appeal the decision. If the Complainant files an appeal, the Committee Chair 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 information obtained during the Screening Panel hearing. After this review, the Screening Panel may make any of the following determinations or recommendations:

- Dismissal for lack of merit;
- Dismissal with a letter of caution;

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

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

the OPC may elect to hold the cases for presentation at any Sanctions Hearing resulting from the Formal Complaint (“Hold for Sanctions”), pursuant to Rule 14-515 (a)(3) of the RLDD.

**6) Formal Complaints**

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

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

**7) Formal Appeals**

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

**8) Monitored Cases**

Monitored cases include probation cases, disability cases and trusteeship cases. Where appropriate, probation cases require someone to docket reminder dates, and follow-up to ensure that the attorney meets the probation requirements. Disability cases

generally require someone to investigate the extent of the disability, to process the case through District Court, and to monitor the continuing status of the attorney. Trusteeship cases generally require that someone inventory the attorney's files, notify the attorney's clients of the trusteeship, and assist with distribution of client files to the clients. Additionally, trusteeship cases require someone to inventory unclaimed files, prepare a notice for publication of potential destruction of the files, prepare a request to the District Court to approve destruction of unclaimed files, and ultimately to destroy the files.

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

**9) Interim Suspension and Disability**

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

**10) Abeyances**

Attorney discipline cases may be continued, stayed and held in abeyance when there is related pending litigation (i.e., criminal or civil) and the alleged misconduct is

substantially similar to the issues of the pending litigation. The request for abeyance can be made by either the OPC or the respondent attorney. The request is made to the Committee Chair pursuant to Rule 14-510(g)(3) if the discipline case is pending prior to the filing of a formal case (“Informal Abeyance”) and the request is made to the judge pursuant to Rule 14-517(d) if the discipline case is pending in the District Court as part of a formal case (“Formal Abeyance”).

**11) Special Prosecutor Cases**

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

**12) Final Dispositions**

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

**III. STATISTICS – Year 2015-2016**

**A) Case Activity**

**Active cases as of July 1, 2015 ..... 561<sup>D</sup>**

**1) Cases opened**

Informal Complaint .....	122
Media/Court Information .....	9
Notice of Insufficient Funds .....	54
Reciprocal Discipline .....	3

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<sup>D</sup> Based upon the progress that we have made in the second year of our database, we have been able to more accurately record our cases and as a result the cases reported in the previous annual report of 7/1/15 has been adjusted from 571 to 561.



Reinstatement .....	3
Request for Assistance .....	678
Special Prosecutor .....	2
Trusteeship.....	2
Total .....	873
<b>Total cases processed during period .....</b>	<b>1,434</b>

**2) Informal Complaints Closed Without Discipline**

By Dismissal.....	138
By Dismissal with Caution .....	13
By Dismissal with Diversion.....	1
By Dismissal with Professional Counseling .....	2
By Declination to Prosecute .....	6
By Dismissal – Duplicate Complaint .....	2
<b>Total.....</b>	<b>162</b>

**3) Requests for Assistance Closed Without Discipline**

By Dismissal.....	59
By Dismissal with Caution .....	5
By Dismissal with Diversion.....	2
By Dismissal with Professional Counseling .....	5
By Declination to Prosecute .....	179
By Declination to Prosecute with Caution.....	18
By Sent to CAP.....	313
By Dismissal – Duplicate Complaint .....	2
<b>Total.....</b>	<b>583</b>

**4) Media/Court Information Closed Without Discipline**

By Declination to Prosecute .....	4
By Dismissal.....	1
By Dismissal – Duplicate Complaint .....	1
<b>Total.....</b>	<b>6</b>

**5) Special Prosecutor Closed Without Discipline**

By Declination to Prosecute .....	1
<b>Total.....</b>	<b>1</b>

**6) Notice of Insufficient Funds Closed Without Discipline**

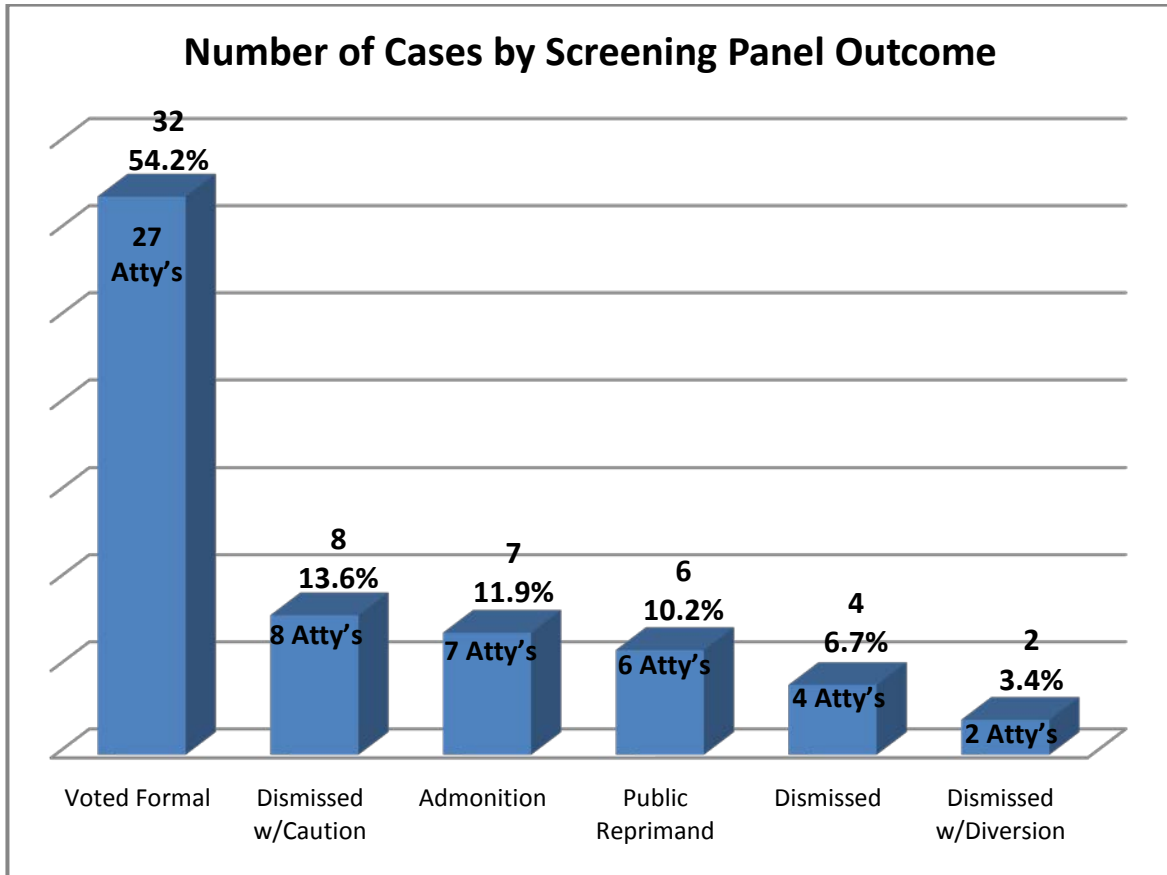
By Dismissal.....	1
By Dismissal with Caution .....	1
By Declination to Prosecute .....	19
By Declination to Prosecute with Caution.....	34
By Dismissal – Duplicate Complaint .....	1
<b>Total.....</b>	<b>56</b>

<b>7) <u>Orders Entered</u></b>		<b># of attys</b>
Admonition.....	8	(8)
Public Reprimand.....	10	(10)
Suspension.....	5	(5)
Disbarment.....	7	(7)
Order Terminating Trusteeship.....	14	(14)
Dismissal <sup>E</sup> .....	1	(1)
Reinstatement Denied.....	2	(2)
Disability.....	1	(1)
Trustee Appointed (not OPC).....	1	(1)
Resignation with Discipline Pending.....	3	(3)
Contempt.....	1	(1)
Stayed Suspension and Probation.....	1	(1)
<b>Total.....</b>	<b>54</b>	<b>(54)</b>
<b>8) <u>Informal Cases Combined with Formal Filings</u></b>		
Informal Complaints.....	5	
Requests for Assistance.....	9	
Notice of Insufficient Funds.....	1	
<b>Total.....</b>	<b>15</b>	
<b>Total case closures during period.....</b>		<b>877</b>
<b>Active cases as of July 1, 2016.....</b>		<b>557</b>
(Open cases minus closures for year 2015-2016)		
<b>9) <u>During the Year 2015-2016, the OPC had case activity as follows</u></b>		
Diversions.....	8	
Informal Abeyances.....	5	
Informal Appeals.....	48	
Informal Appeals Granted.....	3	
Informal Appeals Denied.....	32	
Screening Panel Exception by Respondent.....	1	
Formal Cases Filed in Court.....	27	
Combined with Formal Filings.....	25	
Formal Appeals.....	3	
Reciprocals.....	1	
<b>10) <u>Stipulations</u></b>		<b># of attys</b>
Stipulation to Public Reprimand.....	2	(2)
Stipulation to Suspension.....	3	(2)
Stipulation to Resignation with Discipline Pending.....	3	(2)
Stipulation to Probation.....	1	(1)
<b>Total.....</b>	<b>9</b>	<b>(7)</b>

<sup>E</sup> The one Dismissal was a case which was closed because the attorney was subsequently convicted of a felony which resulted in his Disbarment as part of another case.

### 11) Screening Panel Outcomes

For the year 2015-2016, the OPC referred 59 matters, involving 54 attorneys, to the Ethics and Discipline Committee for a Screening Panel hearing. The outcomes of those hearings were:



### 12) Notice of Insufficient Funds

As part of the OPC case activity, Rule 1.15(a) of the Rules of Professional Conduct requires that 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 54 new NSF cases, and dismissed 57 NSF cases in year 2015-2016. The usual reasons for dismissals of NSF cases are accounting errors, bank errors,

depositing errors, or drawing on the account before a deposit clears.

**13) Summary**

Of the 1,434 cases the OPC processed in year 2015-2016, 823 or 57.39% were resolved by dismissals, declinations to prosecute, referral to CAP or combined with formal. Of the 1,434 cases, approximately 2.37% of the cases resulted in 34 Orders of Discipline. 26.47% of the Orders of Discipline were by stipulation. Finally, approximately 4.1% of the OPC's processed cases for the year were heard by Screening Panels.

**14) Beginning Year July 1, 2016 – June 30, 2017**

The OPC begins year 2016-2017 with 557 active cases against 426 attorneys.

The breakdown of the various stages of the 557 cases is as follows:

Abeyance .....	11
At CAP.....	129
Combined with Formal.....	22
Diversion .....	6
Formal .....	23
Formal Appeal .....	7
Hold for Sanctions .....	1
Informal Appeal .....	15
Informal Complaint .....	148
Media/Court Information .....	6
Notice of Insufficient Funds .....	16
Reciprocal.....	1
Reinstatement .....	2
Request for Assistance.....	155
Rule 14-519.....	6
Special Prosecutor .....	6
Trusteeship (OPC).....	3

**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 year 2015-2016, the OPC received 607 requests for informal ethics opinions.

Additionally, the OPC attorneys make Continuing Legal Education (“CLE”) ethics presentations. During year 2015-2016, the OPC’s CLE presentations totaled 34.5 hours. Two of the CLE presentations were at the Ethics School conducted by the OPC. The OPC titles the Ethics School “What You Didn’t Learn in Law School.” Some attorneys are required to be there as a condition of a disciplinary case, but the OPC usually opens it to the entire Bar. At the school, the OPC covers a number of topics, including the lawyer discipline process, law office management, malpractice, conflicts of interests, lawyer trust fund accounting and hot topics of ethical issues. The OPC also usually tries to have at least one judge as a guest speaker to talk about civility and professionalism. The Ethics School was held in September and March of the year 2015-2016 for six CLE hours each time. In September 2015, Ethics School was attended by 62 attorneys; and in March 2016, Ethics School was attended by 111 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**

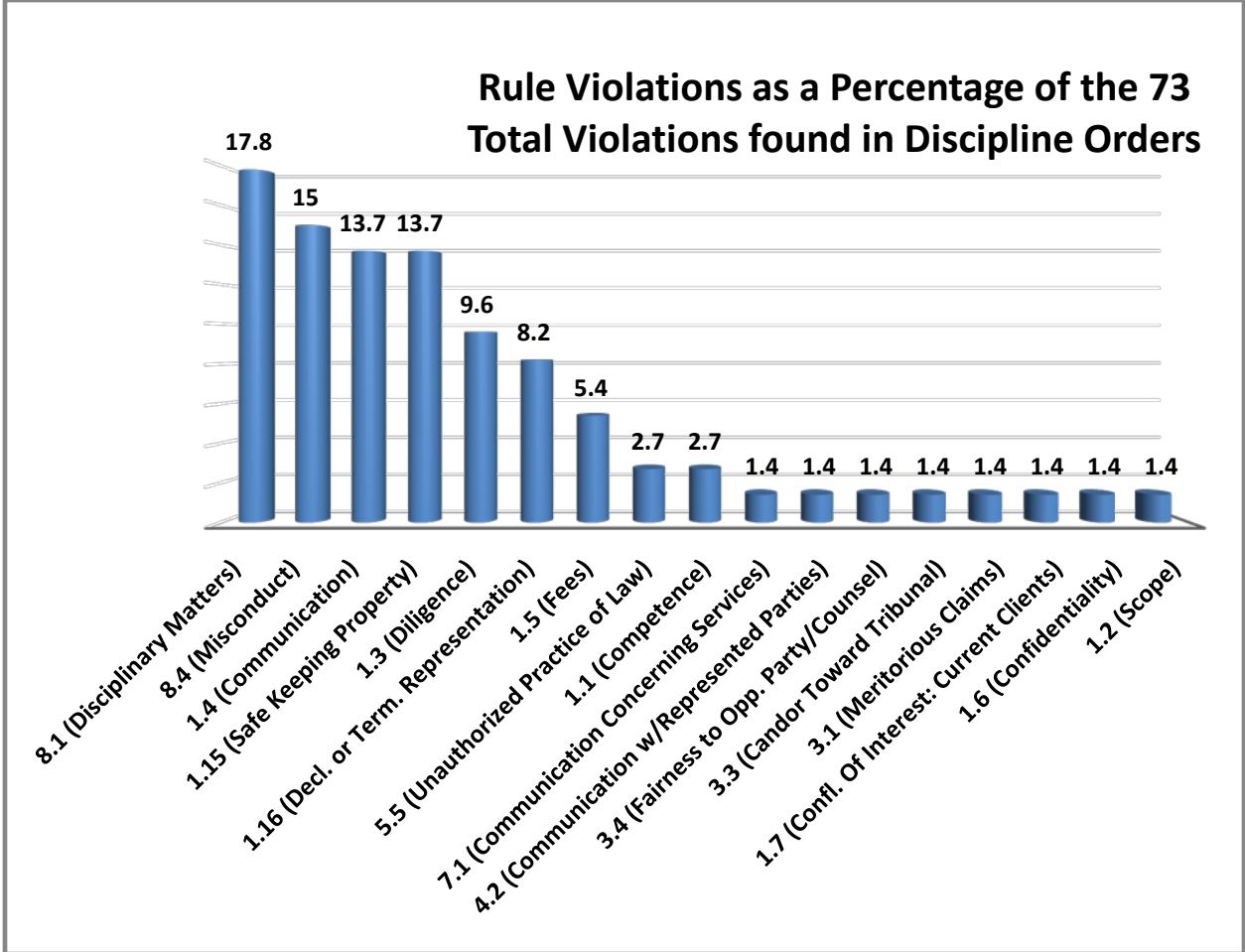
The OPC participates in committees with respect to attorney conduct. Senior

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 voting member of the Ad Hoc Ethics and Discipline Committee on Rules which addresses proposed rule changes to the RLDD and Standards for Imposing Lawyer Sanctions. OPC counsel sits as a non-voting member on the Utah State Bar's Ethics Advisory Opinion Committee.

**3) Rule Violations and Source of Information**

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

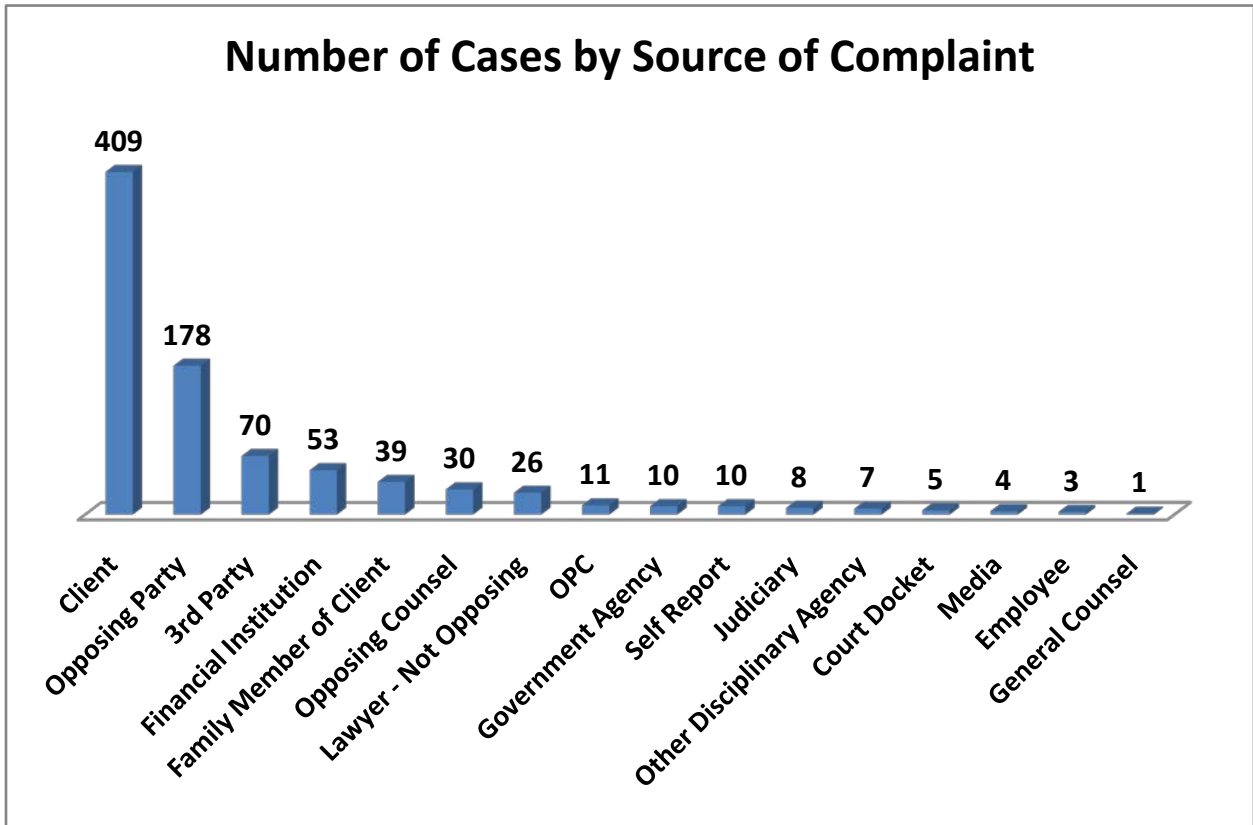
(a) For example, using data from the 34 orders of discipline entered in the year 2015-2016, which resulted in a finding of 73 total rule violations, we can see the frequency with which various rules were violated:



The OPC's impression is that violations of Rule 1.1 (Competence) commonly derive from attorneys missing court appearances; that violations of Rule 1.5 (Fees) commonly arise from attorneys collecting fees without performing meaningful work; that violations of Rule 1.15 (Safekeeping Property) often arise from attorneys failing to keep their personal money separate from clients' money or failing to promptly provide an accounting of how fees were used; that violations of Rule 1.16 (Declining or Terminating Representation) commonly result from attorneys withholding the client file upon termination of the representation; violations of Rule 8.1(b) (Bar Admission and Disciplinary Matters) usually are based upon attorneys failing to respond to the OPC's lawful requests

for information in the course of disciplinary investigations with the most common failure as a violation of this Rule, the failure to timely respond to the NOIC; and violations of Rule 8.4 (Misconduct) commonly arise from criminal conduct, deceitful or fraudulent conduct or conduct prejudicial to the administration of justice. Accordingly, the OPC's CLE presentations often focus on helping practitioners avoid these particular problems.

(b) In year 2015-2016, information regarding possible attorney misconduct was received from the following sources:



**IV. PROGRESS AND GOALS ON CASES**

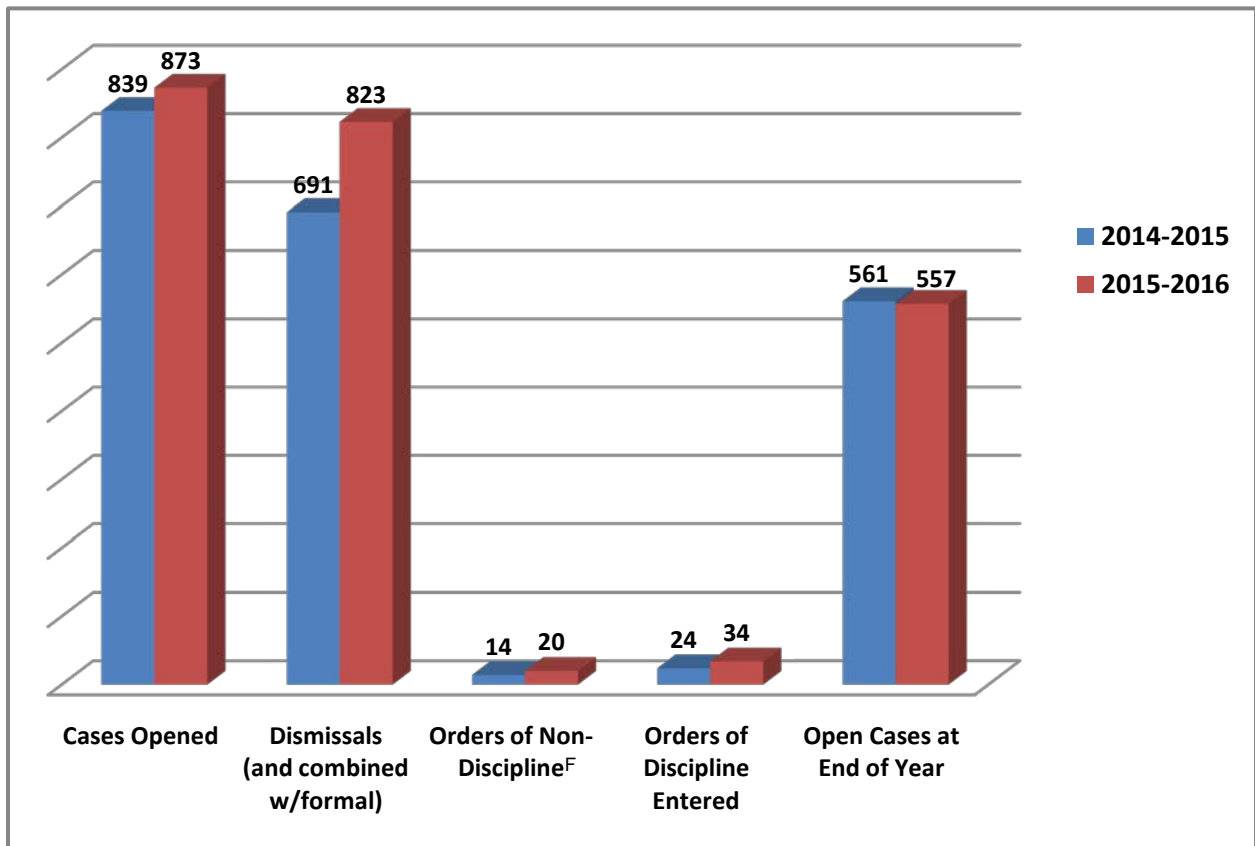
The OPC, like every other state bar disciplinary authority, has and will continue to have unfinished work. Furthermore, the OPC, like every other state bar disciplinary



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

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

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



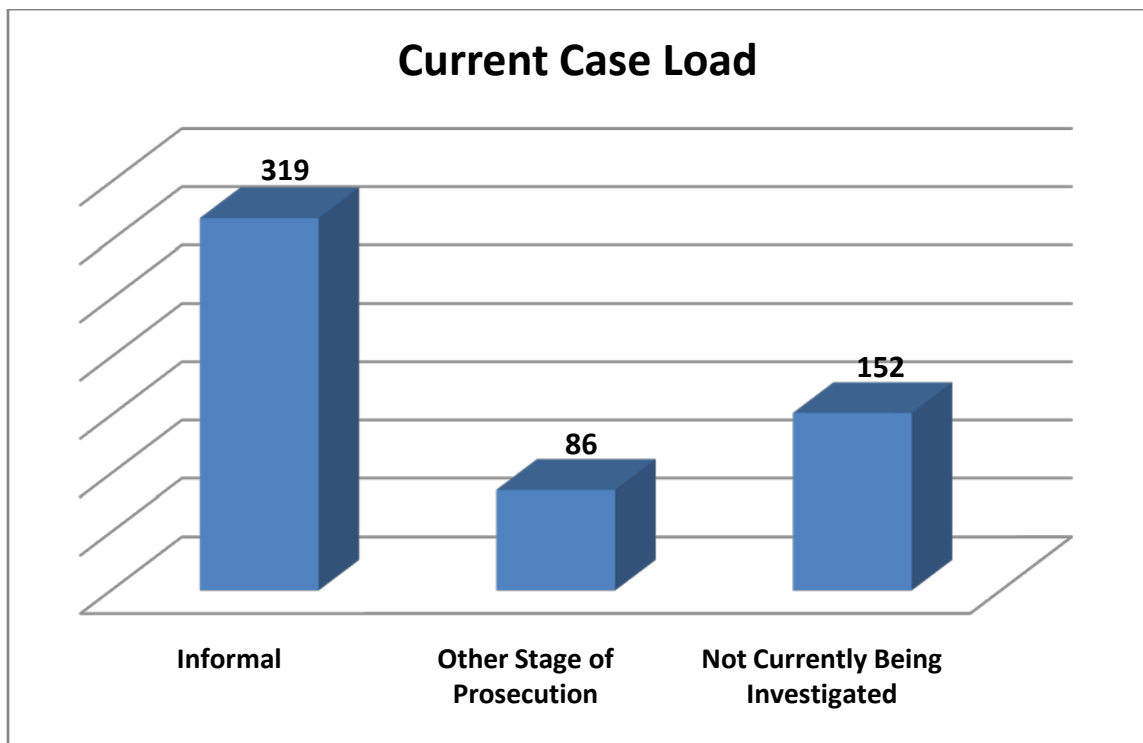
As can be seen from the chart:

- (1) Cases opened this year were up approximately 4.05%;
- (2) Dismissals (and combined with formal) this year increased by approximately 19.1%;
- (3) Orders of Non-Discipline entered this year increased by approximately 42.8%;
- (4) Orders of discipline entered this year increased by approximately 41.66%; and
- (5) Active case numbers at the end of this year decreased by approximately .71%.

<sup>F</sup> Orders of Non-Discipline include Dismissal, Reinstatement Denied, Disability, Trustee Appointed (not OPC), Contempt and Order Terminating Trusteeship.

The OPC has a goal to reduce its active case number each year by closing more cases in a year than the office receives in that year. This year, the OPC did accomplish this goal because it opened 873 cases and closed 877<sup>G</sup> cases and its active case number decreased by .71%.

Of the OPC's current case load (557), 319 are at the informal stage<sup>H</sup>, 86 are at other stages of investigation/prosecution<sup>I</sup>, and 152 are not currently being investigated by the OPC<sup>J</sup>.



The OPC has established a goal of having no more than 20% of its active informal cases in the informal stage for more than 180 days.

Of the 319 cases at the informal stage, 107 or approximately 34% have been in

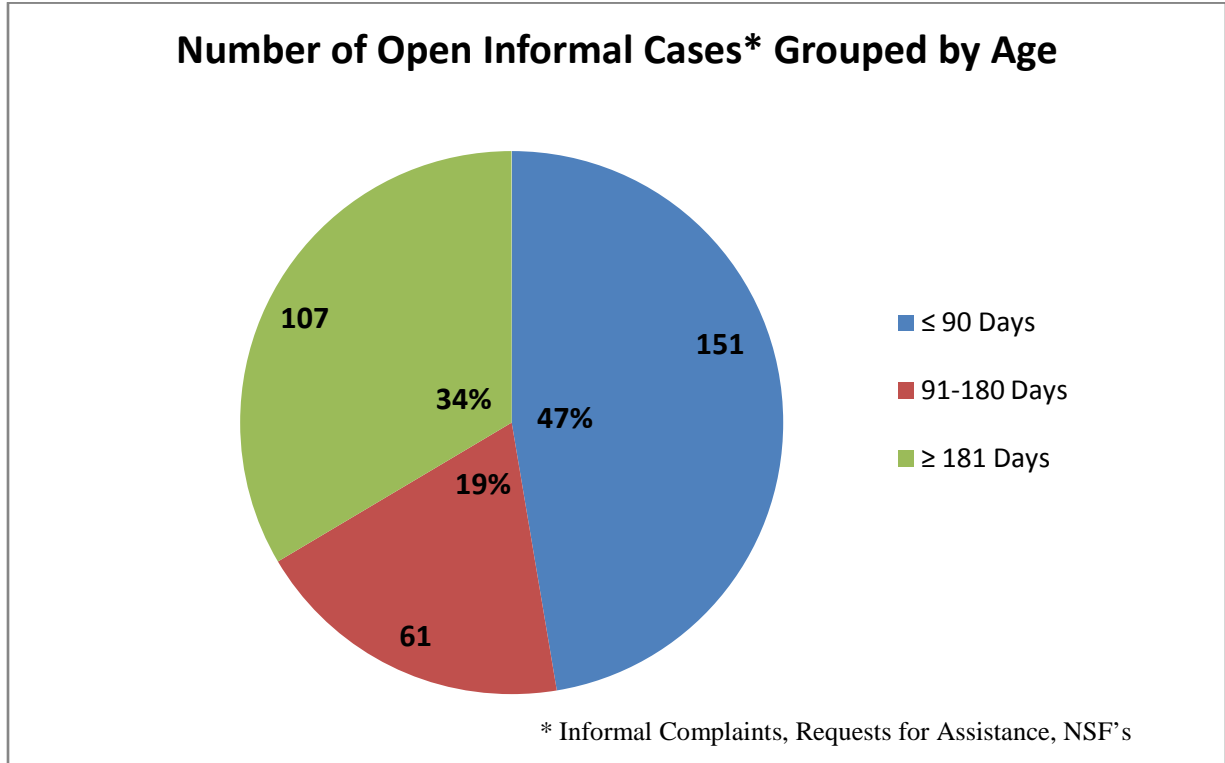
<sup>G</sup> The total of Dismissals (and Combined w/Formal) and all Orders (discipline and non-discipline).

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

<sup>I</sup> Combined with Formal, Contempt, Exceptions, Formal, Formal Appeal, Hold for Sanctions, Informal Appeal, Media/Court Information, Reciprocal, Reinstatement, Rule 14-519, Trusteeship (OPC).

<sup>J</sup> Abeyance, At CAP, Diversion, Special Prosecutor.

the informal stage for over 180 days.



This means the OPC did not meet its goal with regard to processing times of informal cases. The OPC will strive in the upcoming year to achieve its goal. It should also be noted that the OPC filed a significant number of new formal cases. In this respect, in addition to opening nine new cases in the areas of reinstatement/trusteeship/reciprocal<sup>K</sup>, the OPC filed 18 new formal cases with the District Court (the 18 formal cases include an additional 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

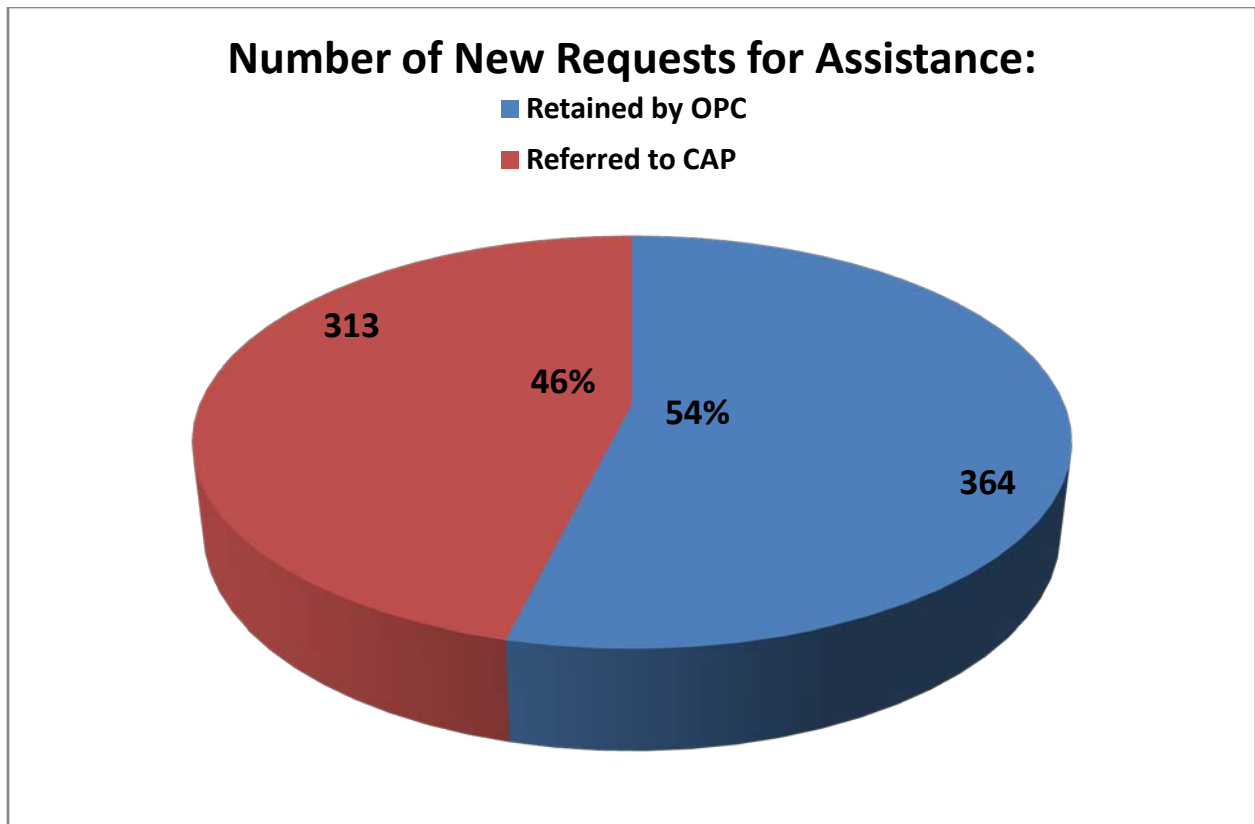
<sup>K</sup> Three Reinstatements, two Trusteeships and four Reciprocal cases.

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, 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. In year 2015-2016, the OPC reviewed 678 Request for Assistances which can be reviewed as part of its CAP review system, almost one-half (313) of which the OPC referred to CAP. Only 36 of these matters came back to the OPC.



Thus, with respect to year 2015-2016, 277 matters were resolved by CAP without the need for further OPC review.<sup>L</sup> 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. OTHER ITEM OF CONSIDERATION**

Effective in January of 2016, the Utah Supreme Court amended 14-503(g) of the RLDD to allow for a Clerk to the Committee. This Clerk is now the secretary to the Committee replacing the OPC in this role. In this respect, the Clerk now handles the Committee’s administrative affairs which include, among other responsibilities, the scheduling of the hearings of the Committee, the recording of the record of these hearings and the sending of the notices to the participants of the hearings. This change

<sup>L</sup> Since CAP is not part of the OPC, the OPC does not have complete statistics on cases resolved by CAP in a year.

allows the OPC to better separate and carry out its prosecutorial responsibility in connection with the Committee.

**VII. GOALS FOR YEAR 2016-2017**

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