

# OFFICE OF PROFESSIONAL CONDUCT

## ANNUAL REPORT February 2022



## **INTRODUCTION**

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

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

The OPC Oversight Committee is required to have five voting members, including at least one judge, one member of the public, and one past chair or vice-chair of the Ethics and Discipline Committee. At least one of the members must have an accounting background. The Executive Director of the Bar is an ex-officio, non-voting member of the OPC Oversight Committee. The current voting members of the OPC Oversight Committee are:

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

The OPC now has a separate website independent of the Bar at [opcutah.org](http://opcutah.org). The website is designed to provide the ease of obtaining information in the following specific areas: the purpose of the OPC, annual report archives, OPC directory, rules, filing a

Complaint, case status update, Lawyer public discipline, disciplinary history requests, OPC speaker requests, and OPC contacts.

In addition to the regulation of attorneys for professional misconduct, effective November 1, 2018, in Chapter 15 of the Utah Supreme Court Rules of Professional Practice, the Utah Supreme Court has promulgated Rules Governing Licensed Paralegal Practitioners (“LPPs”). The OPC also has regulatory authority over LPPs. LPPs are included in the definition of “Lawyer” for regulation so references in this report will be to “Lawyer” rather than “Attorney” to reflect the change of regulation of LPPs as of November 18, 2018. Currently there are 18 LPPs who are licensed to practice in Utah. The OPC did not have any cases regarding LPPs in this reporting period.

## **I. STAFF COMPOSITION**

The staff for year 2021 consisted of 12 full-time employees. These 12 full-time employees include Chief Disciplinary Counsel, a Deputy Chief Disciplinary Counsel, four Assistant Disciplinary Counsel, four Paralegals, one Investigator, and one Intake Secretary.

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

### **A) Rules**

The Utah Supreme Court rules are set forth in its Rules of Professional Practice related to the Discipline, Disability and Sanctions Rules (“RDDS”) and are in Chapter 11, Article 5 regarding Lawyers and Chapter 15 regarding LPPs specifically. Rules 11-520 and 11-521 of the RDDS are the overall authority for the OPC and Chief Disciplinary Counsel as head of the OPC.

**B) Ethics and Discipline Committee**

Pursuant to Rule 11-510 of the RDDS, 21 volunteer Lawyers and four volunteer non-Lawyers are appointed by the Utah Supreme Court to serve on an administrative body called the Ethics and Discipline Committee (“Committee”). The Committee’s function is to consider Lawyer discipline cases that are appropriately referred to it under the RDDS.

The Utah Supreme Court appoints a Committee Chair and four Committee Vice-Chairs from the 21 Lawyers. The Committee Chair is responsible for the oversight of the Committee and the Committee Vice-Chairs assist the Committee Chair in this task. The remaining 16 Lawyers and four non-Lawyers do their main work in subcommittees called Screening Panels. The Utah Supreme Court appoints a Chair and a Vice-Chair to each Screening Panel. The year 2021 composition of the Committee was as follows:

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

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

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

Bryan J. Pattison (Durham Jones & Pinegar PC), Vice-Chair, Ethics and Discipline Committee

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

Brady Whitehead, Clerk, Ethics and Discipline Committee

Panel A

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

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

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

Panel B

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

Panel C

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

Panel D

Mark E. Hindley (Stoel Rives, LLP), Chair  
David W. Tufts (Dentons Durham Jones Pinegar PC)  
Darcy Goddard (Salt Lake County District Attorney's Office)  
Robert R. Harrison (Stilling & Harrison PLLC)  
Charles Haussler, Public Member

The majority of Screening Panel work is done by conducting hearings. The Screening Panel hearings must be presided over by either the Screening Panel Chair or the Screening Panel Vice-Chair. All Panel hearings must have five members present unless all parties agree to fewer than five, but not fewer than three.

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

Specifically addressing the processing of cases, the pertinent provisions of Rule 11-521(a) of the RDDS state that OPC has the power and duty to:

- (1) Screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a Lawyer or to the incapacity of a Lawyer;

(2) Investigate all information coming to the attention of the OPC which, if true, would be grounds for discipline or transfer to disability status and investigate all facts pertaining to petitions for reinstatement or relicensure;

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

(4) Prosecute before the Screening Panels, the District Courts and the Supreme Court all disciplinary cases and proceedings for transfer to or from disability status.

Pursuant to Rule 11-530 of the RDDS, a person can start a Complaint by delivering it to the OPC in hard copy or electronic form, or through the OPC's website at [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

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

1) **Summary Review**

**Process**

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

The OPC at the end of this Summary Review will summarily dismiss the case if this criteria is not met. There is no need to contact the Lawyer for information. Both the Complainant and the Lawyer receive a dismissal letter and a copy of the Complaint is sent to the Lawyer. Summary Review dismissals are not reviewed at weekly case meetings described below, however, Complainants have a right to appeal Summary Review dismissals as detailed below.

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

## 2) **Investigations**

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

### **Preliminary Investigation**

For Complaints that are not dismissed through the Summary Review process, the OPC conducts a preliminary investigation. The preliminary investigation is to ascertain whether the Complaint is sufficiently clear as to the allegations. If it is not, the OPC will seek additional facts from the Complainant. Thereafter, the OPC will usually proceed to obtain an informal response from the Lawyer.

### **Settlement**

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

### **Notice**

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



the Complaint as preliminarily determined by the OPC. The Lawyer has 21 days after service of the Notice to file with the OPC a written and signed answer setting forth in full an explanation of the facts surrounding the Complaint, together with all defenses and responses to the claims of possible misconduct.

The OPC sends the Complainant a copy of the Lawyer's response to the Notice and, in most cases, continues its investigation by obtaining a reply from the Complainant to the Lawyer's response. Further, where appropriate to ascertain the facts necessary to assess the charges, the OPC will seek additional responses and/or contact witnesses. The OPC always examines all documents submitted by all participants. Upon completion of the investigation as outlined above, the OPC determines whether the Complaint sets forth facts which by their very nature should be brought before a Screening Panel or if good cause otherwise exists to bring the matter before a Screening Panel. These are "non-frivolous" and "substantial" Complaints within the meaning of RDDS 11-521(a)(3) and are required to be presented to Screening Panels consistent with RDDS 11-530(e).

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

If upon completion of this investigation the OPC determines that the Complaint is not substantial or is frivolous (i.e., the factual allegations made by the Complainant that can be proven do not constitute a violation of the Rules of Professional Conduct or the evidence is insufficient to establish probable cause that the Lawyer violated the Rules of Professional Conduct), the OPC dismisses the Complaint consistent with RDDS 11-530(g)(1). Additionally, as part of its dismissal authority, consistent with the language in Rule 11-530(g)(1) of the RDDS, the OPC can determine that a Complaint is barred by the statute of limitations based on discovery of the acts allegedly constituting a violation of

the Rules of Professional Conduct, or is more adequately addressed in another forum, or the OPC can decline to prosecute a Complaint.

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

- The OPC may decline to prosecute Complaints where there is a question as to the nexus between the allegations and the Lawyer's practice.
- The OPC may decline to prosecute Complaints where the Lawyer has already been disciplined in a Lawyer discipline matter for similar misconduct committed during the same period. In these Complaints, it is unlikely the misconduct will result in discipline greater than what has already been imposed in a Lawyer discipline matter.
- The OPC may decline to prosecute Complaints where the Lawyer has taken immediate action to remedy the alleged misconduct and that remedy has likely negated a violation of the Rules of Professional Conduct.
- The OPC may decline to prosecute a Complaint by a referral to the Professionalism Counseling Board.<sup>B</sup>

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

### 3) **Diversions**

Diversion is an alternative to discipline that is entered into by agreement in Lawyer discipline cases. Pursuant to Rule 11-550 to 11-555 of the RDDDS, Diversions are authorized as a resolution of a Lawyer discipline matter if the Lawyer consents to a Diversion Agreement the OPC may dismiss Complaints involving minor violations of the Rules of Professional Conduct. The specific types of Complaints that are not appropriate for diversion are: when the Lawyer is accused of misappropriating client funds; the Lawyer's behavior will, or is likely to, result in substantial prejudice to a client or other person absent adequate provisions for restitution; the Lawyer has previously been sanctioned in the immediately preceding three years; the current misconduct is of the same type for which the Lawyer has previously been sanctioned; the misconduct involved dishonesty, deceit, fraud, or misrepresentation; the misconduct constitutes a substantial threat of irreparable harm to the public; the misconduct is a felony or a misdemeanor that reflects adversely on the Lawyer's honesty, trustworthiness, or fitness as a Lawyer; or, the Lawyer has engaged in a pattern of similar misconduct.

To be eligible for diversion, the presumptive sanction must not be more severe than a public reprimand. Further, all involved must make an assessment of whether participation in diversion is likely to improve the Lawyer's future behavior, whether aggravating or mitigating factors exist, and whether diversion already has been attempted. The OPC by policy is enhancing its use of diversions by implementing a Lawyer wellness/wellbeing component to all of the Complaints it feels are appropriate to be resolved by diversion.

Possible program areas of diversion are as follows: Fee Arbitration; Mediation; Law Office Management Assistance; Psychological and Behavioral Counseling; Monitoring;

Restitution; Continuing Legal Education Programs, including Ethics School; and, any other program or corrective course of action agreed to by the responding Lawyer necessary to address an Lawyer's conduct.

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

Upon entering into the diversion contract, the Complaint against the Lawyer is stayed pending completion of diversion. If diversion is successful, the Complaint is dismissed and all information regarding the terms of the diversion is kept confidential. Further, successful completion of diversion is a bar to disciplinary prosecution based on the same allegations. However, a material breach (as determined by the OPC) of the diversion contract is cause for terminating the agreement and subjects the Lawyer to appropriate discipline as if diversion had never been an option.

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

Pursuant to Rule 11-530(g)(2) of the RDDDS, 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 RDDDS and allows the Complainant the opportunity to appeal the decision. If the Complainant files an appeal, the Committee Chair or a Vice-Chair conducts a de novo review of the OPC file and either affirms the dismissal or remands the matter and the OPC will prepare the Complaint for a Screening Panel hearing.

## 5) **Screening Panel**

If after investigation, the OPC determines that the allegations of the Complaint are non-frivolous and substantial, or if the Chair or Vice-Chair of the Committee remands a case after an informal appeal, the OPC refers the Complaint to a Screening Panel. The Notice described in section 2 above is the official notice that is required for the OPC to bring the case before a Screening Panel.

A Screening Panel reviews all the facts developed by the Complaint, the Lawyer's answer, the OPC's investigation and the information obtained during the Screening Panel hearing. After this review, the Screening Panel may make any of the following determinations or recommendations:

- Dismissal for lack of merit;
  - Dismissal with a letter of caution;
  - Dismissal by referral to Professionalism Counseling Board;
  - Recommendation that the Lawyer be (privately) admonished or publicly reprimanded;
- If the Screening Panel recommends an admonition or public reprimand, the Lawyer can file an exception to the recommendation with the Committee Chair.
  - Additionally, if the Screening Panel recommends a public reprimand, a Lawyer may elect a trial de novo with the District Court by notifying the Committee Chair who will authorize the OPC to file an Action consistent with section 6 below.
  - The OPC can file an exception to any of the determinations or recommendations with the Committee Chair.
  - Following the Screening Panel Hearing, or upon completion of the Exception Hearing if an exception has been filed, the Committee Chair issues a formal determination and can either sustain, dismiss, or modify the Screening Panel's determination or recommendation of discipline.
  - After final written determination of the Committee Chair, where an exception has been filed, the OPC or a Lawyer can appeal by filing a request for review

with the Supreme Court for reversal or modification. The OPC refers to these as Administrative Appeals.

- A finding of probable cause that an Action be filed with the District Court.
  - A determination that an Action be filed is not appealable.

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

## **6) Actions**

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

- Admonition
- CLE or Ethics School
- Public Reprimand
- Restitution
- Probation
- Suspension
- Delicensure
- Diversion

## 7) **Formal Appeals**

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

## 8) **Monitored Cases**

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

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

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

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

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

**10) Abeyances**

Lawyer discipline Complaints may be continued, stayed and held in abeyance when there is related pending litigation (i.e., criminal or civil) and the alleged misconduct is substantially similar to the issues of the pending litigation. The request for abeyance can be made by either the OPC or the Lawyer. The request has to be filed with the Committee Clerk pursuant to Rule 11-533(c) of the RDDS if the discipline Complaint is pending prior to the filing of an Action ("Informal Abeyance"). These Informal Abeyances must be made before any Screening Panel hearing is held. The request is made to the judge pursuant to Rule 11-542(d) of the RDDS if the discipline case is pending in the



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

**11) Special Prosecutor Complaints**

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

**12) Final Dispositions**

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

**III. STATISTICS – Year 2021**

**A) Case Activity**

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

**1) Cases opened**

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

**2) Complaints Closed Without Discipline**

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

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

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

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

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

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

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

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

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

(Open cases minus closures for year 2021)

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

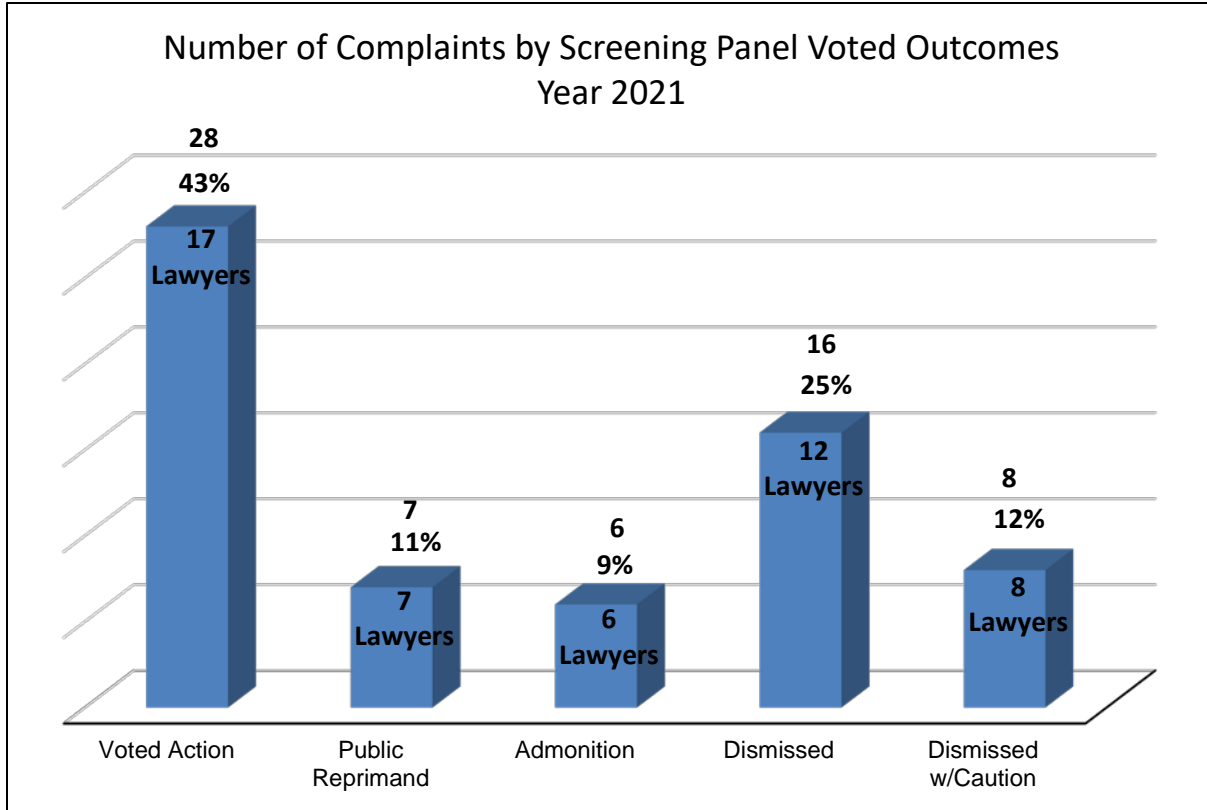
Diversions.....	5
Informal Abeyances.....	8
Informal Appeals.....	63
Informal Appeals Granted.....	3
Informal Appeals Denied .....	42
Screening Panel Exception by OPC .....	3
Actions Filed in Court .....	23
Complaints Combined with Actions .....	14
Disabilities .....	2
Formal Appeals .....	1

**10) Stipulations**

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

**11) Screening Panel Outcomes**

For the year 2021, the OPC referred 65 matters, involving 45 Lawyers, to the Ethics and Discipline Committee for a Screening Panel hearing. The outcomes of those hearings were:



**12) Notice of Insufficient Funds**

As part of the OPC case activity, Rule 1.15(a) of the Rules of Professional Conduct requires that Lawyers maintain their trust accounts in financial institutions that agree to report to the OPC “in the event any instrument in properly payable form is presented against a Lawyer trust account containing insufficient funds (NSF), irrespective of whether the instrument is honored.” Pursuant to this rule the OPC opened 31 new NSF cases, and dismissed 34 NSF cases in year 2021. The usual reasons for dismissals of NSF cases are accounting errors, bank errors, depositing errors, or drawing on the account before a deposit clears.

### **13) Summary**

Of the 1,181 cases the OPC processed in year 2021, 688 or approximately 58% were resolved by dismissals, declinations to prosecute, referral to CAP or combined with Action. Of the 1,181 cases, approximately 2.6% of the cases resulted in 31 Orders of Discipline. 41.9% of the Orders of Discipline were by stipulation. Finally, approximately 5.5% of the OPC's processed cases for the year were heard by Screening Panels.

#### **B) Miscellaneous**

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

Rule 11-521(a)(11) of the RDDS requires that the OPC provide informal guidance to promote ethical conduct by Bar members. The OPC attorneys make Continuing Legal Education ("CLE") ethics presentations. During year 2021, the OPC's CLE presentations totaled 24.5 hours.

Two of the CLE presentations are usually at the Ethics School conducted by the OPC. The OPC titles the Ethics School the Adam C. Bevis Memorial Ethics School<sup>E</sup> (What You Didn't Learn in Law School). Some Lawyers are required to be there as a condition of a disciplinary case, but the OPC usually opens it to the entire Bar. At the school, the OPC covers a number of topics, including the Lawyer discipline process, law office management, malpractice, conflicts of interests, Lawyer trust fund accounting and hot topics of ethical issues. The OPC also usually tries to have at least one judge as a guest speaker to talk about civility and professionalism or a qualified Lawyer to make a Lawyer wellness presentation. The Ethics School was held virtually in March and September of year 2021 for six CLE hours each. In March 2021, Ethics School was

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

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

Included in OPC CLE presentations this fiscal year, the OPC also held a four-hour Law Practice Management and Trust Account Seminar. This seminar was held in January 2021. In addition to law practice management as the overall focus, the seminar specifically covered how to handle fees and trust accounting. It was attended by 210 Lawyers. The OPC plans to continue to hold this seminar every year.

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

The rule requiring the OPC to give ethical guidance makes clear that the OPC provides informal guidance to Lawyers through seminars, the formulation of diversion programs, the monitoring of probations and the dissemination of disciplinary results through the Utah Bar Journal while maintaining the confidentiality of Lawyers subject to private discipline.

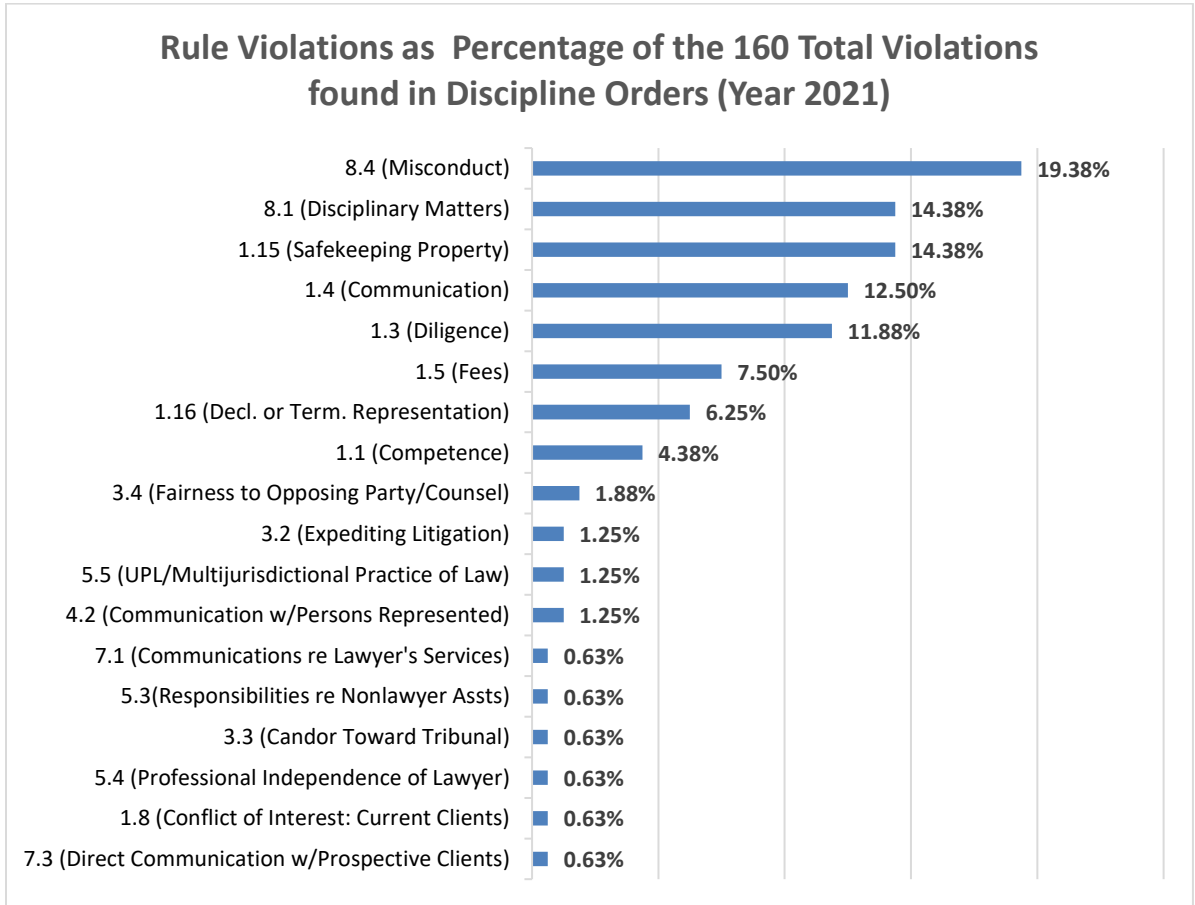
## **2) Committees**

The OPC participates in committees with respect to Lawyer conduct. Chief Disciplinary Counsel of the OPC sits as a voting member of the Utah Supreme Court's Advisory Committee on the Rules of Professional Practice. OPC counsel sits as a voting member on the Utah State Bar's Ethics Advisory Opinion Committee.

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

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

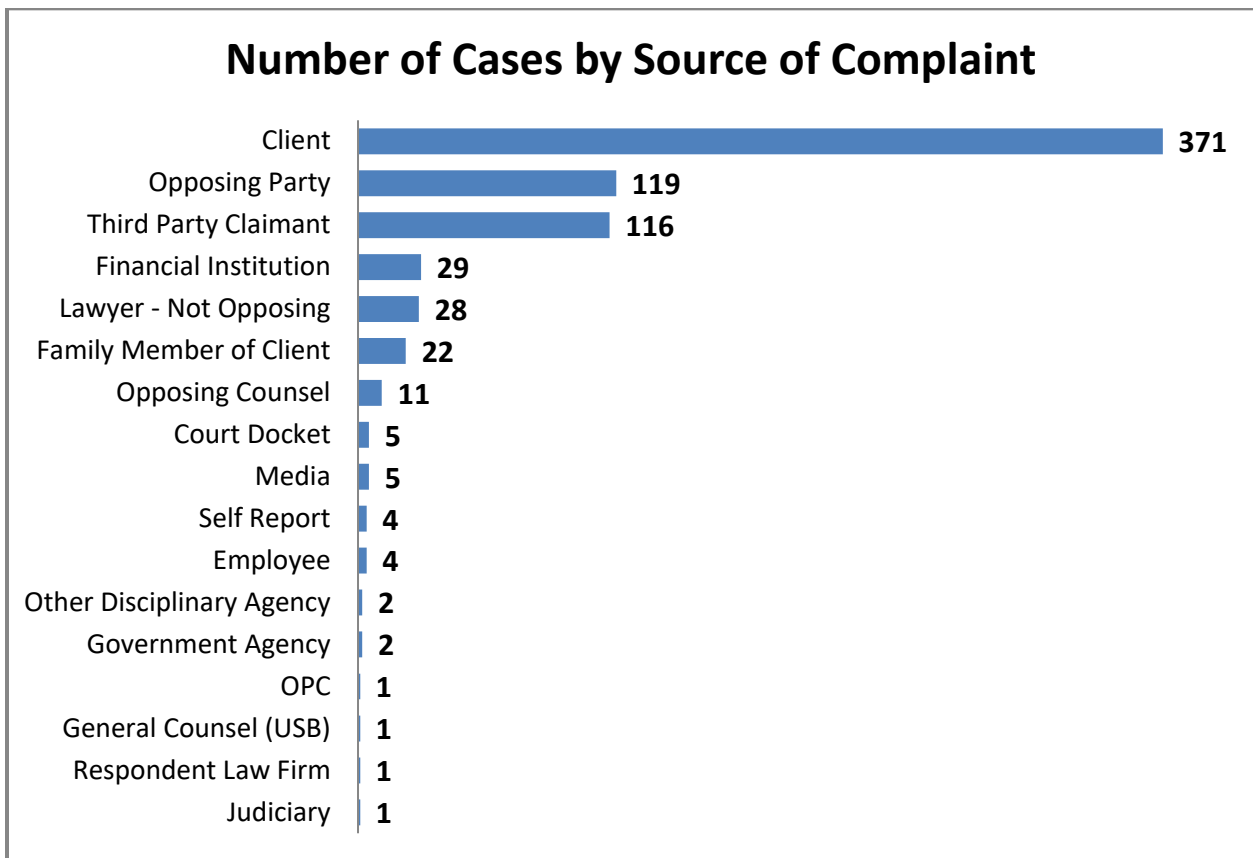
(a) For example, using data from the 31 orders of discipline entered in the year 2021, which resulted in a finding of 160 total rule violations, we can see the frequency with which various rules were violated:



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

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

(b) In year 2021, information regarding possible Lawyer misconduct was received from the following sources:



**IV. PROGRESS AND GOALS ON CASES**

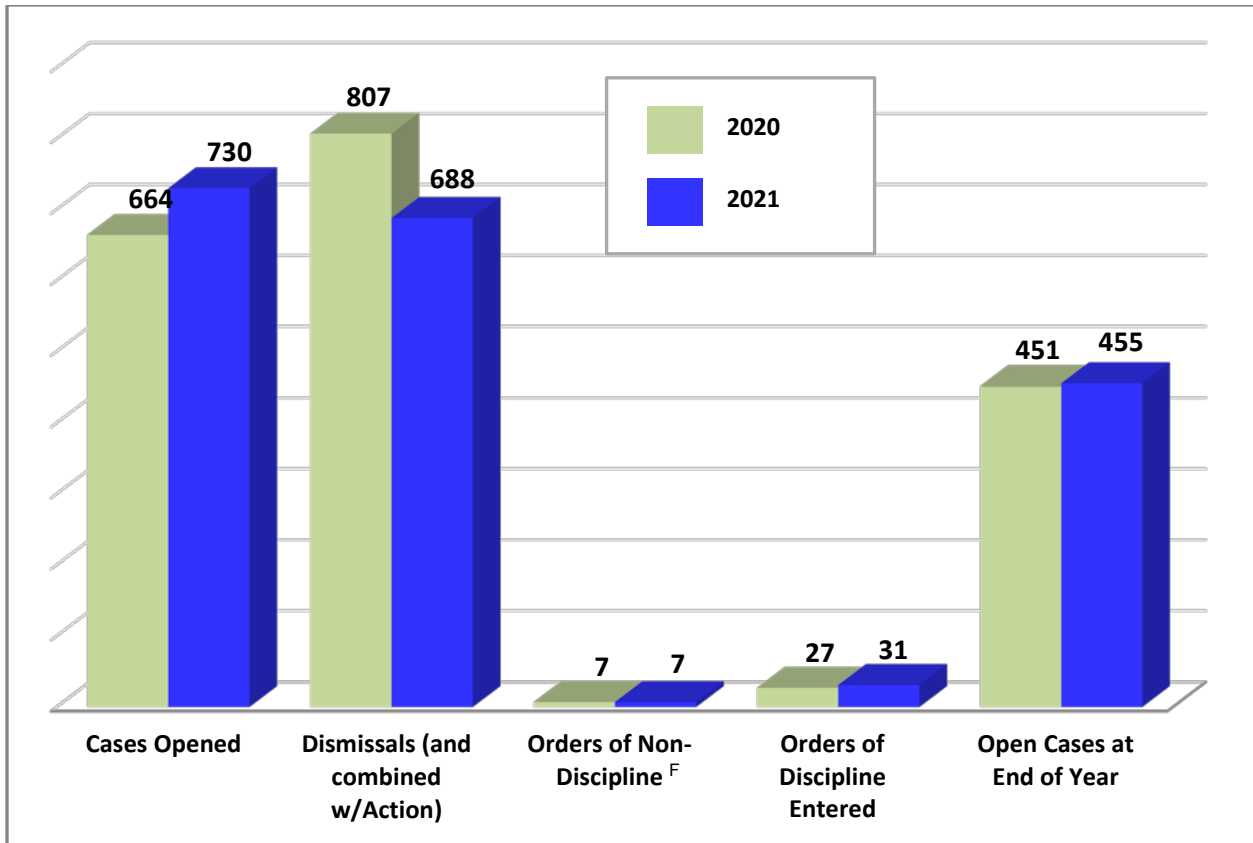
The OPC, like every other state bar disciplinary authority, has and will continue to



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

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

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



As can be seen from the chart:

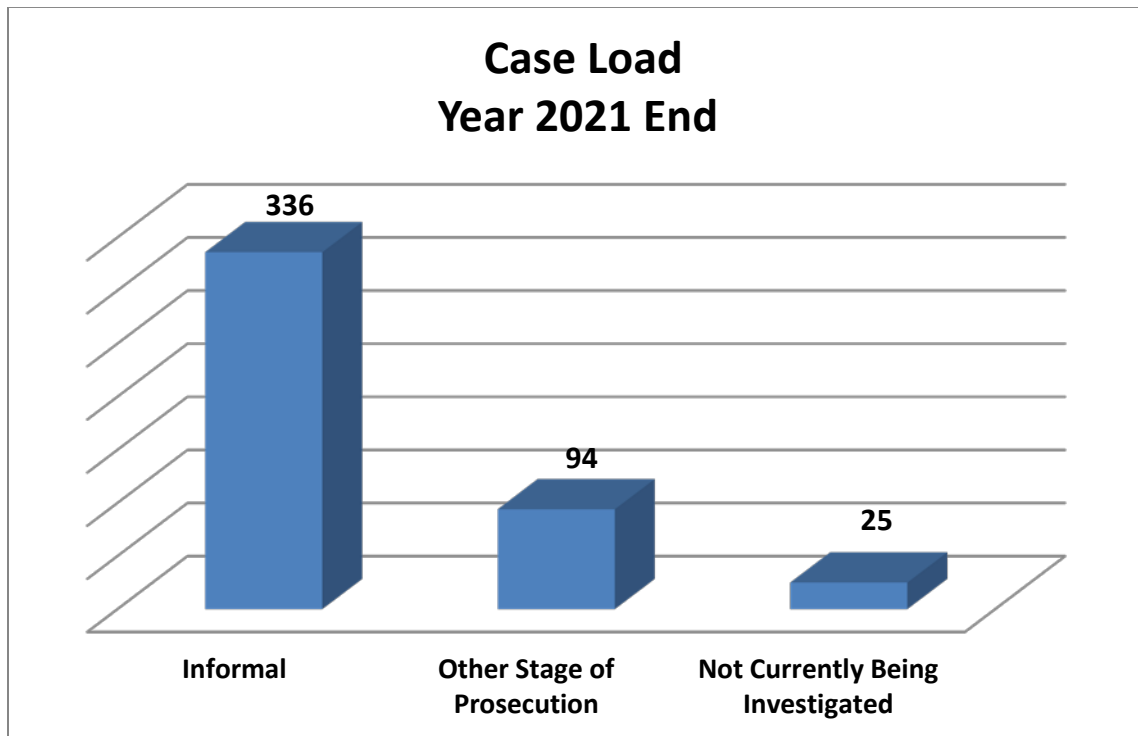
- (1) Cases opened this year increased by approximately 9.9%;
  - (2) Dismissals (and combined with formal) this year decreased by approximately 14.7%;
  - (3) Orders of non-discipline entered this year stayed the same;
  - (4) Orders of discipline entered this year increased by approximately 14.8%;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

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

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

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

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



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

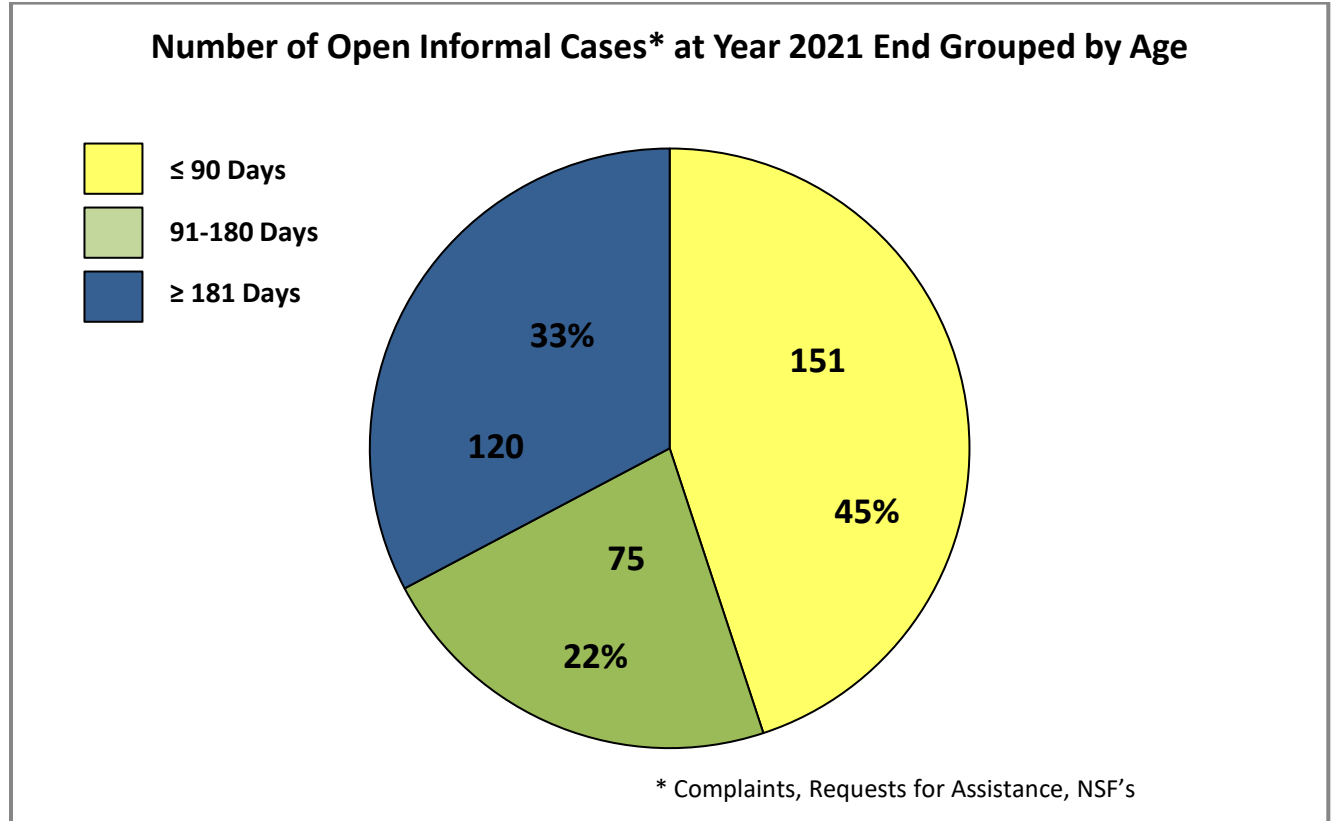
<sup>G</sup> The total of Dismissals (and Combined w/Action) and all Orders (discipline and non-discipline).

<sup>H</sup> Complaints, Requests for Assistance, NSFs.

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

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

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



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

## **V. PERFORMANCE METRICS**

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

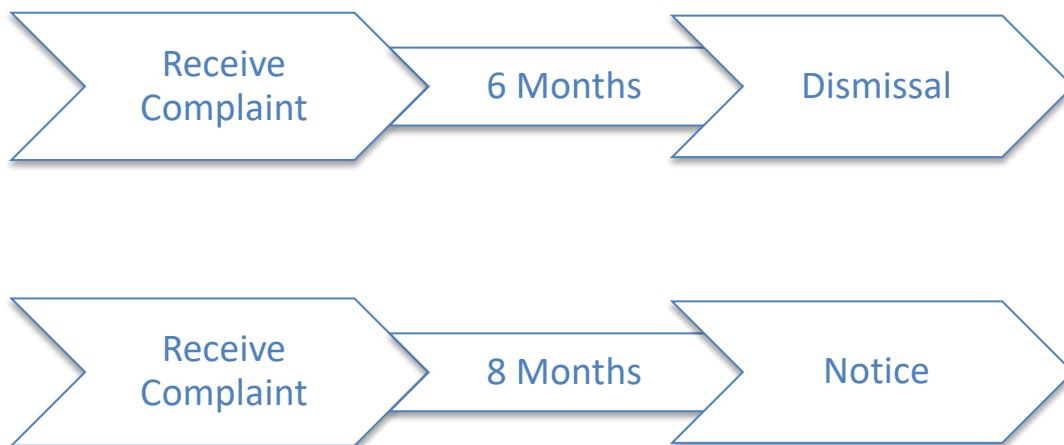
In each matter the OPC receives, the procedural process is guided by the RDDDS

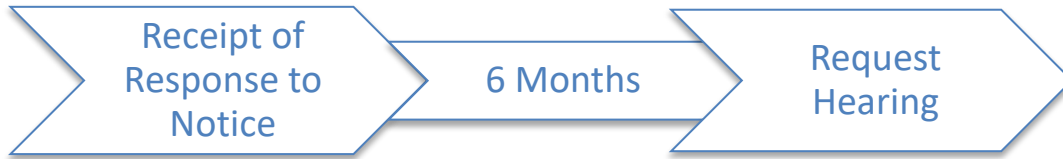
<sup>K</sup> All of the seven cases at this stage involve Lawyers for whom the OPC already has Actions in progress.

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

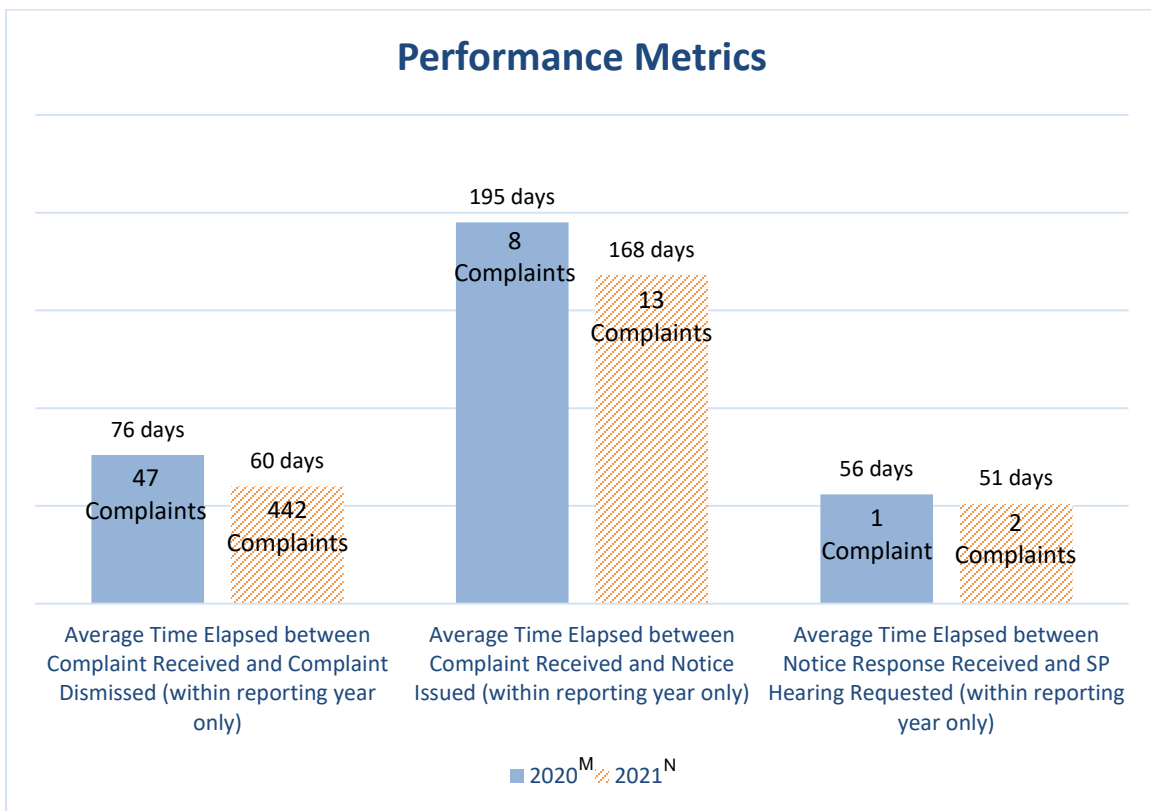
as the OPC determines several factors: Does the initial Complaint have merit or should it be summarily dismissed or declined? Does more investigation need to be conducted? Does the Lawyer need to submit a reply? Should the matter be presented to a Screening Panel?

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





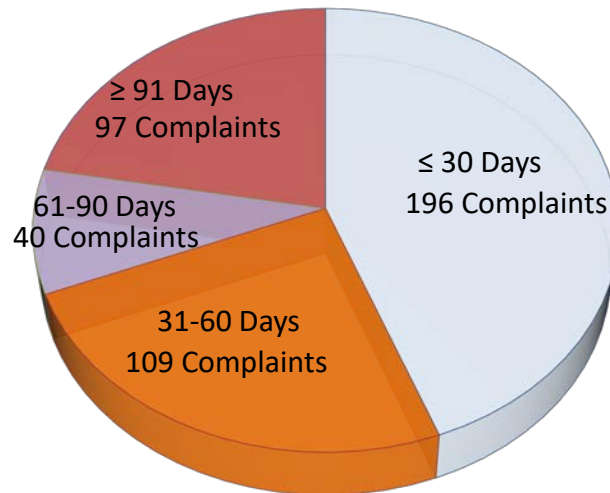
The OPC performance metric statistics for this reporting period are below. Additionally, for comparison purposes the OPC is providing performance metric statistics for the previous annual reporting period.



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

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

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



**VI. GOALS FOR YEAR 2022**

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

The Summary Review System greatly aids case processing goals. Summary Review enables the OPC to address all information coming to its attention and to quickly and efficiently determine the appropriate track for the Complaints. This leaves more resources to address Complaints raising more serious ethical allegations, resulting in quicker Complaint processing for all cases.

The OPC will continue to work toward the goals outlined in this report. Specifically, the OPC has a responsibility to resolve disciplinary Complaints in a uniform, expeditious, professional, civil and systematic way to protect the public, clients, and the legal

profession from the professional misconduct of Lawyers. The overriding goal is to continue to develop the OPC Complaint processing system to ensure that the majority of resources are utilized to more quickly prosecute those Complaints where it is appropriate to address Actions with the District Court.

### **CONCLUSION**

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



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Billy L. Walker  
Chief Disciplinary Counsel  
Office of Professional Conduct