

Oregon State Bar

2018 **First Annual
Disciplinary
Board Report**

August 2019

Mark A. Turner
Adjudicator

I. INTRODUCTION

This is the Annual Report of the Disciplinary Board for 2018. It is the first such report since the appointment of the Adjudicator in January of 2018. The report provides an overview and statistics of filings with the Disciplinary Board Clerk and Disciplinary Board appointments, and gives an overview of the process, including an analysis of the dispositions overseen by the Adjudicator, with discussion of any significant developments over the last year.

II. CHANGES TO BAR RULES OF PROCEDURE & ADJUDICATOR ROLE

The Supreme Court entered an implementation order that authorized the appointment of the Adjudicator and approved revisions to the Bar Rules of Procedure effective January 1, 2018. The Adjudicator was appointed by the Court and began fulfilling that role January 9, 2018. One of the Adjudicator's roles is to coordinate and supervise the activities of the Disciplinary Board. In connection with the rule changes, the Adjudicator also serves as trial panel chair for each trial panel adjudicating a formal proceeding, a contested reinstatement proceeding, or a proceeding brought pursuant to BR 3.5 (reciprocal discipline). The Adjudicator presides in every proceeding filed pursuant to BR 3.1 (interlocutory suspension during pendency of disciplinary proceedings) and BR 3.4 (interlocutory suspension for conviction of attorneys).

The Adjudicator appoints an attorney member of the Disciplinary Board to conduct prehearing conferences at the request of a party as provided in BR 4.6.

The Adjudicator rules on all motions for default filed pursuant to BR 5.8.

The Adjudicator rules on most questions of procedure and discovery and convenes the trial panel hearing, oversees the orderly conduct of the hearing, and timely files the written opinion of the trial panel with the Disciplinary Board Clerk. In all

trial panels in which the Adjudicator is a member of the majority, the Adjudicator authors the trial panel opinion.

Additionally, the Adjudicator reviews stipulations for discipline with sanctions not exceeding a six-month suspension, serves as trial panel chair on probation revocation hearings and rules on all petitions for suspension pursuant to BR 7.1 (suspension for failure to respond to disciplinary counsel or subpoenas).

III. DISCIPLINARY BOARD CLERK OVERVIEW AND STATISTICS OF FILINGS

One of the rule changes provides for allowance of electronic signatures and submission similar to almost all courts. (BR 1.13) While the Disciplinary Board Clerk's Office does not require a login to file documents, beginning in 2018 prosecution files were converted from paper to electronically stored files. Many respondents or their counsel along with Disciplinary Counsel's Office began filing pleadings electronically with the Disciplinary Board Clerk, which has proven to be very effective.

In 2018 there were fifty-four formal complaints filed with the Disciplinary Board Clerk pursuant to BR 4.1. Of those, 21 formal complaints were filed from Region 5; 14 formal complaints were filed in Region 4; five formal complaints were filed from Region 6; four formal complaints were filed from Region 1; five formal complaints were filed in Region 3; three formal complaints were filed from Region 7, and two formal complaints were filed from Region 2.

There were five cases in which default orders were entered by the Adjudicator pursuant to BR 5.8 for failure to appear and defend (after a formal complaint was filed).

The rule changes direct that the Adjudicator preside over BR 3.1 cases instead of the Court or an appointed Special Master. There were two BR 3.1 petitions for interlocutory suspension during pendency of disciplinary proceedings filed with the

Disciplinary Board Clerk in 2018. Both were resolved by stipulated interlocutory suspensions without the need for an evidentiary hearing.

BR 3.5 reciprocal discipline petitions are also filed with the Disciplinary Board Clerk and overseen by the Adjudicator instead of the Court pursuant to the rule changes. There were two BR 3.5 petitions filed in 2018 which did not result in the appointment of a trial panel. In one case, the respondent failed to answer the petition and the other case was agreed to where orders imposing reciprocal discipline were entered. There was one BR 3.5 petition that resulted in a hearing before a trial panel, which took place in January of 2019.

There were twenty-two petitions for suspension for failure to respond to disciplinary counsel/subpoenas, which resulted in twenty BR 7.1 orders of suspension. Two of these petitions were withdrawn because responses were received.

The Adjudicator received and approved thirty stipulations for discipline. Of these, eight cases had been set for trial. There were also four formal complaints filed where Disciplinary Counsel's Office dismissed the case.

In 2018 there were three hearings held before a trial panel. Additionally, two trial panels issued written opinions in matters where a default order had been entered.

The average length of time between the filing of a formal complaint and the hearing date in 2018 was 348 days.

In 2018, the Supreme Court issued six discipline opinions in contested cases. The Court also approved five stipulations for discipline, suspended one lawyer on an interim basis while disciplinary proceedings were pending, and transferred one lawyer to involuntary inactive status.

IV. DISCIPLINARY BOARD OVERVIEW AND DEVELOPMENTS

The Court appoints members of the Disciplinary Board and the rule changes replace the formal role of state chairperson with the Adjudicator. The Disciplinary Board consists of the Adjudicator, seven regional chairpersons, and six additional attorney members for each Board region located within the state of Oregon, except for Region 1, which has nine additional attorney members, Region 5, which has 23 additional attorney members, and Region 6, which has 11 additional attorney members. The regional chairpersons are attorneys. Each regional roster also contains two members who are not attorneys (“public members”), except for Region 1, which contains three public members, Region 5, which contains eight public members, and Region 6, which contains four public members.

With the exception of the Adjudicator, the Disciplinary Board members are all volunteers.

Disciplinary Board members other than the Adjudicator serve terms of three years and may be reappointed by the Court. Regional chairpersons serve in that capacity for terms of one year, subject to reappointment by the Court.

Trial panels consist of the Adjudicator, one additional lawyer and one public member, both of whom are from the region where the respondent lawyer practices. The regional chairperson selects the second lawyer member and the public member who serve with the Adjudicator.

The parties have ten days in which to file challenges to the panel members. Any member may be challenged for cause. The parties each have one peremptory challenge, which may be used against either panel member other than the Adjudicator. The Adjudicator rules on the timeliness of challenges and on any challenges to other panel members. Challenges for cause to the Adjudicator are ruled on by the regional chairperson.

In 2018 there were 46 trial panels appointed. Six peremptory challenges were made out of the 92 volunteer panel member appointments. The Adjudicator was challenged for cause by respondents in three cases. In one case, the motion to disqualify the Adjudicator questioned his impartiality as it relates to his relationship with the Oregon State Bar. In another case, the motion to disqualify the Adjudicator was based on the Adjudicator's previous rulings on motions not in favor of respondent. In the third case, the motion was based on the complainant being an employee of the Bar, and thus a co-worker in same office as the Adjudicator, claiming an unfair and impartial process. Each challenge was denied by the appropriate regional chairperson on the merits.

The average number of days requested by the parties regarding the length of a hearing was two.

V. EVALUATION OF SYSTEM CHANGES THUS FAR

The Disciplinary System Review Committee report from 2015 recommended the creation of the Adjudicator position. "In making this recommendation, the Committee considered several factors: the current system takes far too long; volunteer panel members have to juggle preparation, attendance at the hearing, and drafting the opinion with their professional obligations to clients; volunteer panel members do not all have experience adjudicating disputes and often have to "reinvent the wheel" on issues a professional adjudicator would know how to handle; and the participation of a professional adjudicator will help address the widely-held perception that the current system yields inconsistent results and a spotty quality of opinions." Report of the Discipline System Review Committee, November 19, 2015, at p. 15

The introduction of the Adjudicator role into the disciplinary process has successfully addressed these concerns. While we do not have significant meaningful

data yet to compare the new system with the old, we have a significant number of experiential and anecdotal comparisons to consider.

First, all trial panel opinions have been issued on a timely basis. In the past the Disciplinary Board Clerk was regularly required to contact trial panel chairs to remind them of missed deadlines and encourage completion of opinions. This improvement is appreciated by both the Bar and respondents.

Litigants have expressed approval of the fact that there is a greater level of procedural certainty. In the past, trial panels conducted hearings in different ways, sometimes even under panel chairs with no litigation experience. The trial hearings today follow the traditional trial model, but with enough flexibility to ensure that respondents are able to present their defense in a procedurally fair setting that is not artificially constrained by procedural strictures.

Litigants have expressed approval of consistency in evidentiary rulings, again a matter that varied from panel chair to panel chair. Evidentiary rulings are made consistent with the Bar Rules, but again with a view to ensuring that respondents experience the process as procedurally fair.

Litigants have also commented favorably on the speed with which stipulations are approved and pretrial motions are decided.

The Supreme Court has yet to issue any decisions on the few pending cases before it decided under the new system, so we are unable to assess the Court's view of the substantive and procedural decisions that have been made.

We do know, however, that the new system has been very favorably received by Disciplinary Board Members. Many have expressed their pleasure at being relieved of the burden of preparing panel opinions and of having to make rulings during the course of a trial. One additional benefit from this change may be that we enlarge

the pool of attorneys who are willing and able to volunteer their time for the disciplinary process.

VI. CONCLUSION

In sum, the first year of implementing the 2018 Bar Rule of Procedure changes, including the appointment of the Adjudicator, was successful. The Bar, Adjudicator and Disciplinary Board members look forward to seeking opportunities for system improvement in years to come.

Respectfully submitted,

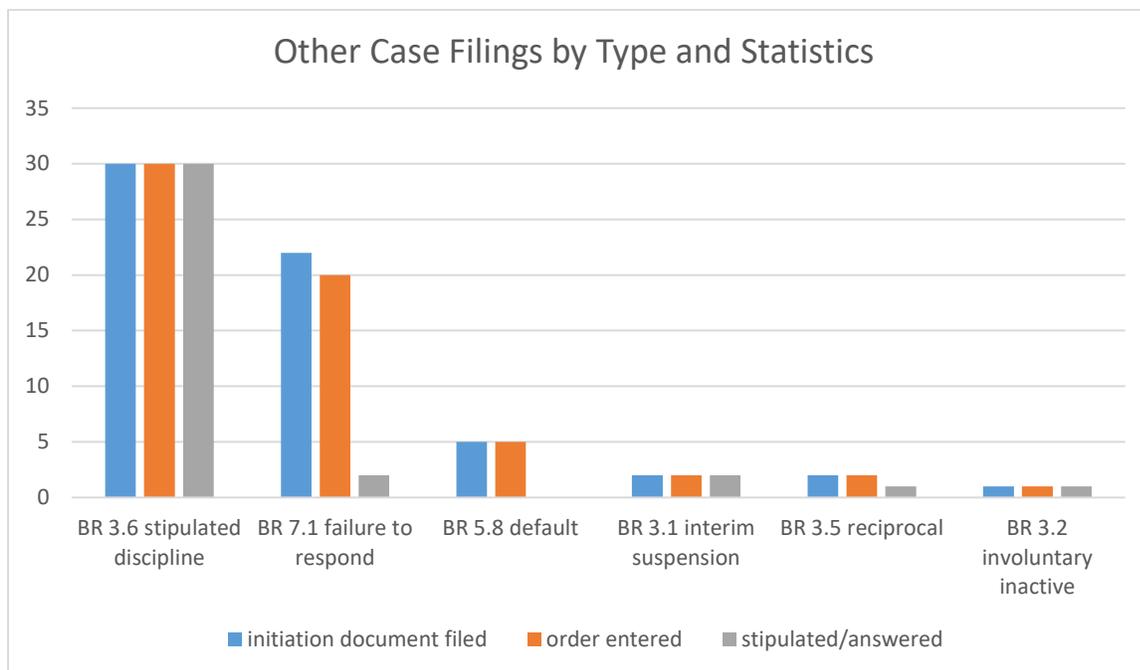
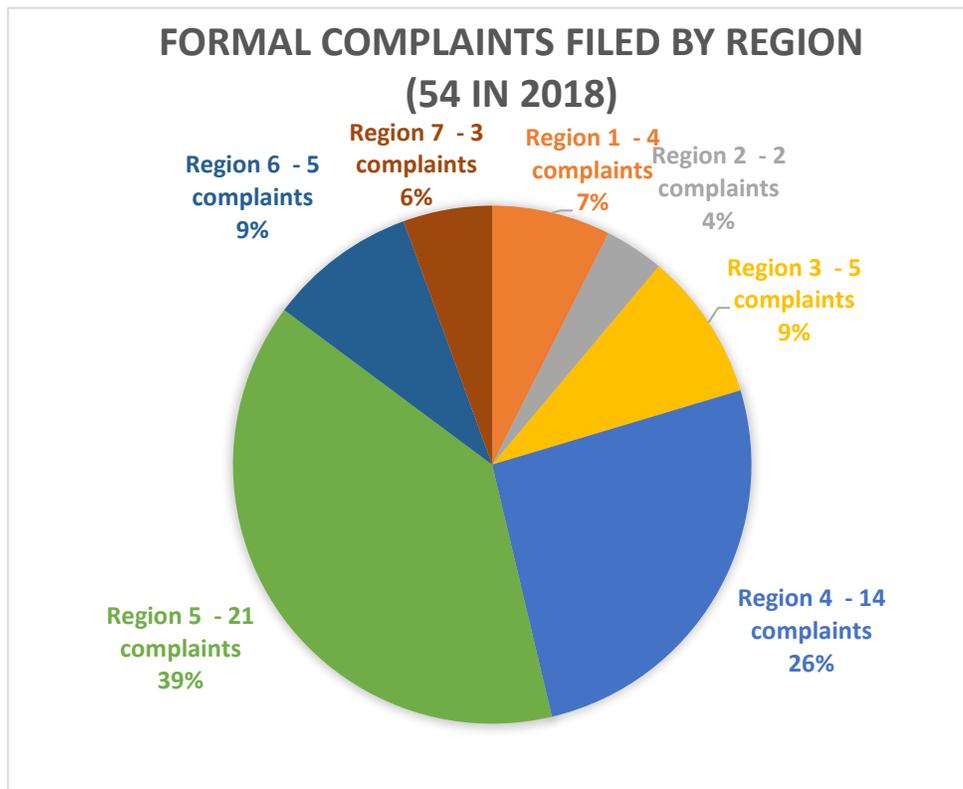
/s/ Mark A. Turner

Mark A. Turner

Adjudicator

OVERVIEW AND STATISTICS

DISCIPLINARY BOARD FILINGS

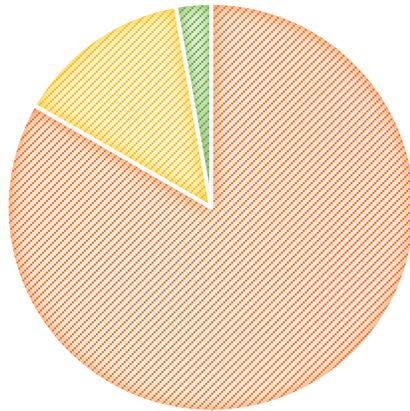


OVERVIEW AND STATISTICS

DISCIPLINARY BOARD FILINGS

BR 4.1 FORMAL COMPLAINT CASE RESOLUTION

■ Stipulation ■ default proceeding ■ contested hearing



2017/2018 Comparison of Length of Time

