

Oregon State Bar

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**2019** **Second Annual  
Disciplinary  
Board Report**

September 2020

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Adjudicator

## **I. INTRODUCTION**

This is the second Annual Report of the Disciplinary Board for 2019. The report provides an overview and statistics of filings with the Disciplinary Board Clerk and Disciplinary Board appointments. The report also provides an overview of the adjudicatory 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**

The Supreme Court adopted a number of amendments to the Bar Rules of Procedure in May and October of 2019, to improve administration of the adjudicatory system. BR 2.4(a) was amended to increase the number of Disciplinary Board members in certain regions, based on increased population.

The Court adopted some rule changes to clarify or broaden the authority of the Adjudicator. BR 2.2(b)(2) was amended to provide for enforcement of subpoenas issued by Disciplinary Counsel prior to the filing of a formal complaint, to clarify the Adjudicator's authority. BR 2.4(e)(9) now provides a catch-all to ensure that the Adjudicator is able to rule on all issues that arise before the filing of a formal complaint. In addition, BR 2.4(e)(13) allows the court to delegate duties under BR 3.2 [Petitions for Involuntary Transfer to Inactive] to the Adjudicator.

After the first year of the Adjudicator's appointment, the Bar recognized that there were not sufficient provisions to temporarily assign the Adjudicator's duties to other Disciplinary Members in instances of illness, incapacity or death. To address that concern, the Court amended BR 2.4(f)(4) to provide that at the request of General Counsel for the Bar due to the unavailability of the Adjudicator, a Regional Chair may perform the duties of the Adjudicator in the interim.

Other minor procedural changes were also made to the rules. BR 4.4(b)(1) now provides that an answer to an amended complaint is due within 14 days of service. The Court adopted additional changes to Rules 8.1, 8.2, 8.8, and 8.12 affecting the reinstatement process.

### **III. DISCIPLINARY BOARD CLERK OVERVIEW AND STATISTICS OF FILINGS**

In 2019, the OSB Disciplinary Counsel's Office (DCO) filed 40 formal complaints with the Disciplinary Board Clerk pursuant to BR 4.1; this was 14 fewer than in 2018. Of the 2019 complaints filed, ten formal complaints were filed involving lawyers in Region 5; ten formal complaints were filed involving lawyers in Region 4; seven formal complaints were filed involving lawyers from Region 7; five formal complaints were filed involving lawyers Region 6; three formal complaints were filed involving lawyers from Region 1; three formal complaints were filed involving lawyers from Region 7, and two formal complaints were filed involving lawyers from Region 2.

The Adjudicator entered default orders in four cases pursuant to BR 5.8 for failure to appear and defend (after a formal complaint was filed). In one case, the Adjudicator entered a default order as a discovery sanction for failure to comply with an order granting a motion to compel.

In 2019, DCO filed three BR 3.1 petitions for interlocutory suspension during pendency of disciplinary proceedings with the Disciplinary Board Clerk. The Disciplinary Board resolved one of these matters by consolidating the hearing with the trial on the merits.

DCO filed two BR 3.5 petitions in 2019 seeking reciprocal discipline. The Adjudicator dismissed one, finding that the stipulated discipline from the State of Arizona did not establish the requisite mental state required by the Oregon Rules of Professional

Conduct. A stipulation resolved the other BR 3.5 petition. There was one BR 3.5 hearing before a trial panel in January of 2019, involving a petition filed in 2018. The trial panel disbarred respondent based upon imposition of the equivalent sanction in New Zealand.

DCO filed one BR 6.2(d) proceeding to revoke a respondent's probation. A trial panel dismissed the petition on the grounds that the term of probation had expired by the time the case was argued and the case was moot.

There were 16 petitions for suspension for failure to respond to disciplinary counsel/subpoenas pursuant to BR 7.1. The Adjudicator signed nine orders of administrative suspension. Seven of the petitions were withdrawn because respondents complied with their obligations.

The Adjudicator received and approved 50 stipulations for discipline. Of these, 29 cases had been set for trial. DCO dismissed eight formal complaints before trial.

The Adjudicator issued ten written opinions in 2019. Four were the result of trials. Six opinions were issued in cases where respondents were found in default.

The average length of time between the filing of a formal complaint and the hearing date in 2019 was 313 days.

In 2019, the Supreme Court issued one opinion in a case involving attorney discipline, *In re Nisley*, 365 Or 793, 453 P3d 529 (2019). The Court also approved two stipulations for discipline.

#### **IV. DISCIPLINARY BOARD OVERVIEW AND DEVELOPMENTS**

The Court appoints members of the Disciplinary Board. The Disciplinary Board consists of the Adjudicator, seven regional chairpersons, and six additional members for each Board region located within the state of Oregon, except for Region 1, which has nine additional members, Region 5, which has 23 additional members, Region 4, which has

10 additional members, and Region 6, which has 11 additional 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 Regions 4 and 6, both of which contain 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. The regional chairperson rules on challenges for cause against the Adjudicator.

In 2019 there were 31 trial panels appointed. There were three peremptory challenges filed out of the 62 volunteer panel member appointments. The Adjudicator was not challenged for cause in 2019.

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

## **V. EVALUATION OF SYSTEM OPERATION**

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.

All trial panel opinions have been issued on a timely basis. This continues to be appreciated by both the Bar and respondents.

Litigants continue to express approval of the fact that there is a greater level of procedural certainty. The trial hearings continue to 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.

The system continues to be viewed favorably by Disciplinary Board Members.

## VI. CONCLUSION

The second year of operation under the Adjudicator model was successful. The Bar, Adjudicator and Disciplinary Board members look forward to seeking opportunities for system improvement in years to come.

Respectfully submitted,

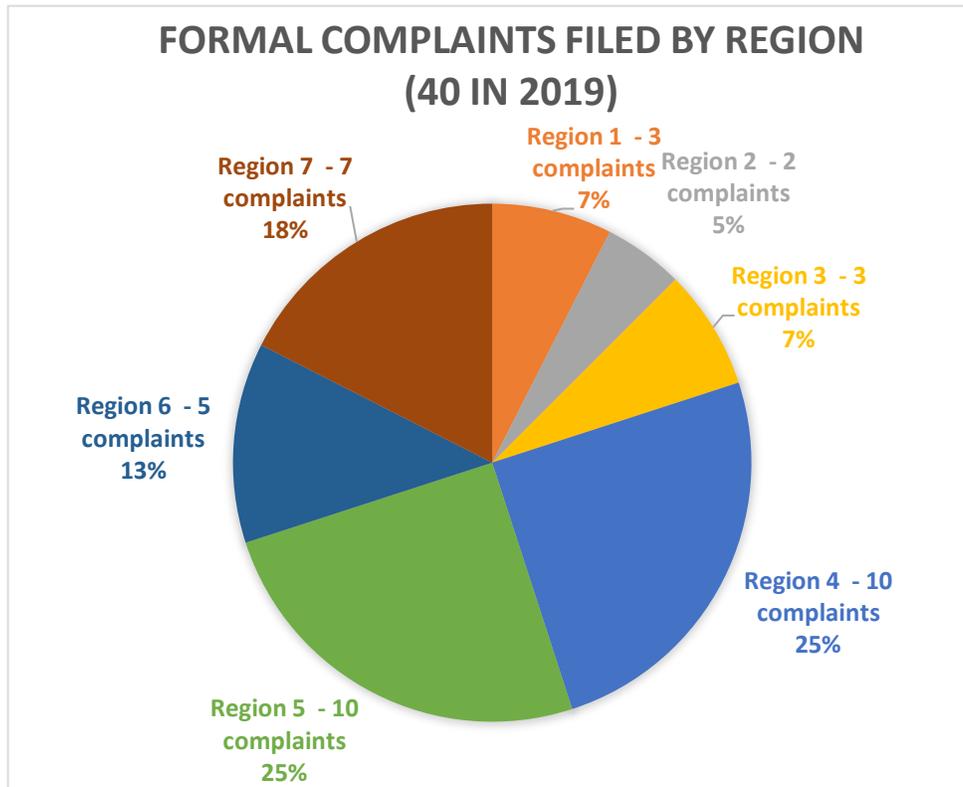
/s/ Mark A. Turner

Mark A. Turner

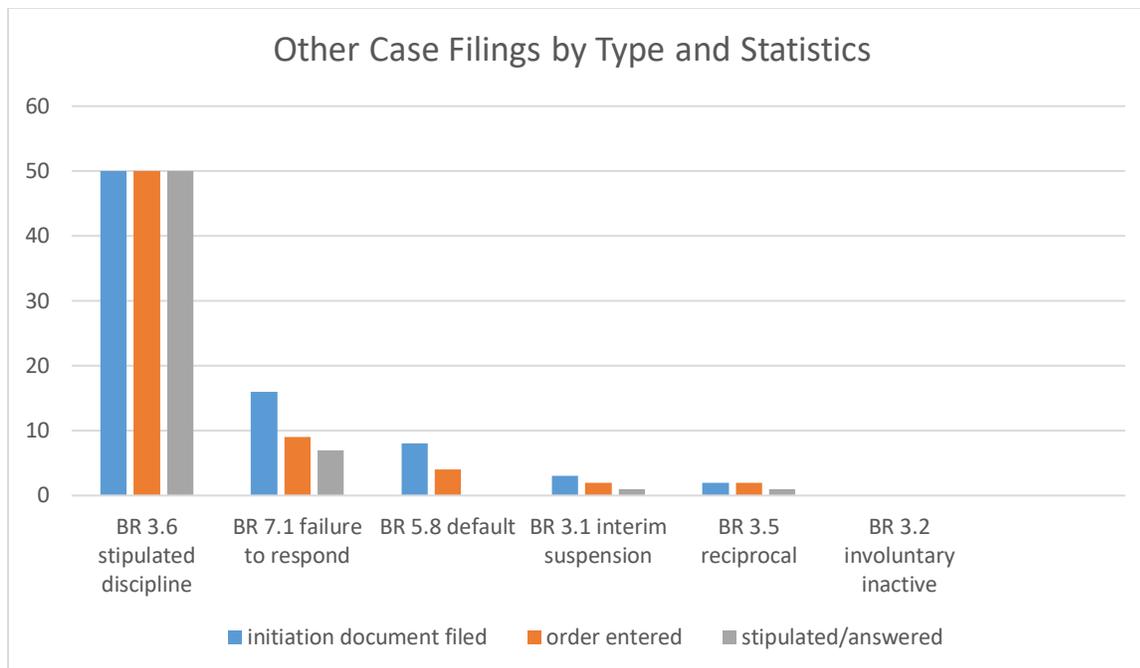
Adjudicator

# OVERVIEW AND STATISTICS

## DISCIPLINARY BOARD FILINGS



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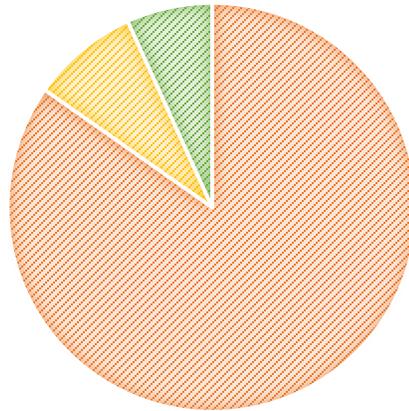


# OVERVIEW AND STATISTICS

## DISCIPLINARY BOARD FILINGS

### BR 4.1 FORMAL COMPLAINT CASE RESOLUTION

Stipulation    default proceeding    contested hearing



### 2017/2018/2019 Comparison of Length of Time

