

Oregon State Bar

2021

**Fourth Annual
Disciplinary
Board Report**

March 2022

Mark A. Turner
Adjudicator

I. INTRODUCTION

This is the fourth Annual Report of the Disciplinary Board, covering the year 2021. 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 Court amended the Oregon State Bar Rules of Procedure (BRs) in September 2021. The Court made permanent emergency amendments that allow for electronic filing procedures and service by email, allow declarations to replace affidavits, allow the Adjudicator to order remote participation in disciplinary proceedings to comply with local, state, or national public health orders or recommendations, and allow for remote hearings at any time if the parties so agree and the Adjudicator so orders.

III. DISCIPLINARY BOARD CLERK OVERVIEW AND STATISTICS OF FILINGS

In 2021, the OSB Disciplinary Counsel's Office (DCO) filed 28 formal complaints with the Disciplinary Board Clerk pursuant to BR 4.1. This was 13 more than in 2020. Of the 2021 complaints filed, 16 formal complaints were filed involving lawyers in Region 5; five formal complaints were filed involving lawyers in Region 4; three formal complaints were filed involving lawyers from Region 7; one formal complaint was filed involving a lawyer from Region 6; one formal complaint was filed involving a lawyer from Region 3; one formal complaint was filed involving a lawyer from Region 2, and one formal complaint was filed involving a lawyer from Region 1.

The Adjudicator and Disciplinary Board Clerk worked remotely throughout 2021.

The Adjudicator entered default orders in four cases. Three were pursuant to BR 5.8 for failure to appear and defend (after a formal complaint was filed); the other arose from the Adjudicator entering an order striking respondent's answer as a discovery sanction for failure to comply with discovery obligations. Trial panel opinions were issued in three of these cases.

DCO filed three BR 3.5 petitions in 2021 seeking reciprocal discipline. Each of these was granted with orders explaining the decisions. There was also a BR 3.5 petition filed in December 2020 where the respondent stipulated to discipline and an order was entered in 2021.

There were 17 petitions for suspension for failure to respond to disciplinary counsel/subpoenas pursuant to BR 7.1. The Adjudicator signed 17 orders of administrative suspension.

The Adjudicator received and approved 18 stipulations for discipline. Of these, nine cases had been set for trial. The Court approved one stipulation for discipline. DCO dismissed two formal complaints before trial.

The Adjudicator presided over seven trials in disciplinary proceedings in 2021. Each trial was conducted remotely. The longest trial took five days. A trial panel hearing was also held in a case involving revocation of a respondent's probation.

The Adjudicator issued ten trial panel opinions in 2021. Six were the result of trials. Three opinions were issued in the default cases identified above. The tenth opinion was issued in the probation revocation proceeding.

Remote trials are held using the Zoom Pro service. The trials have run efficiently, with no denial of due process to the parties caused by the use of video conference. No party has made an objection to the conduct of a remote hearing during the hearing or

after its conclusion. The Adjudicator has issued a standard order regarding Zoom protocols in all cases which provides, among other things, that:

“If the Adjudicator conducting a remote proceeding determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-person proceeding. However, it shall be the responsibility of a party or counsel for a party to promptly inform the Adjudicator if there has been a disruption at their end of the communication that substantially interferes with his or her ability to see or hear what is occurring during the video conference. An objection to the quality of an audio conference or a video conference should be made at the time the connection is substantially impaired but must be made to the Adjudicator on the record before the remote hearing has concluded. Any objection to the quality of the audio conference or video conference made thereafter will be deemed untimely.”

No party has made an objection of this type to date.

The average length of time between the filing of a formal complaint and the hearing date in 2021 was 431 days.

In 2021, the Supreme Court issued four opinions in cases involving attorney discipline: *In re Long*, 368 Or 452, 491 P3d 783 (2021); *In re Graeff*, 368 Or 18, 485 P3d 258 (2021); *In re Conry*, 368 Or 349, 591 P3d 42 (2021); and *In re Ard*, 369 Or 180, --- P3d --- (2021). The Court also approved one stipulation 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 2021 there were 18 trial panels appointed. There was one peremptory challenge filed out of the 29 volunteer panel member appointments. The Adjudicator was not challenged for cause in any case.

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. ADDITIONAL MATTERS

In 2021 the Adjudicator began the process of drafting Rules of Professional Conduct for Licensed Paralegals in the event such a license is eventually issued by the State of Oregon. The Adjudicator is also drafting amendments to the Bar Rules of Procedure to accommodate enforcement of the disciplinary rules for Licensed Paralegals and is assisting Regulatory Counsel in charge of Admissions in drafting Rules for Admission for Licensed Paralegals. These projects will continue into 2022, ultimately to be presented to the Court.

VII. CONCLUSION

The fourth 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

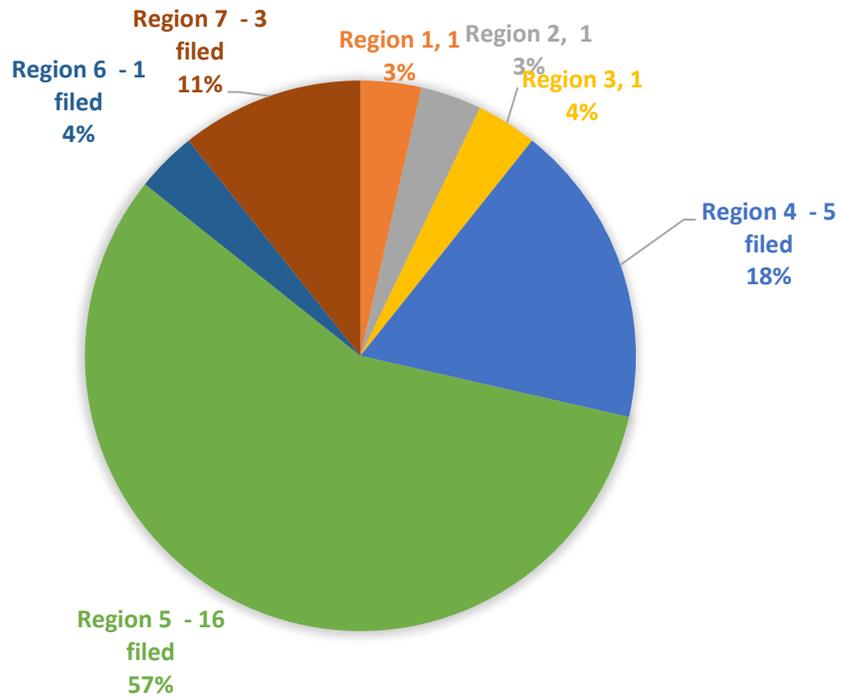
Mark A. Turner

Adjudicator

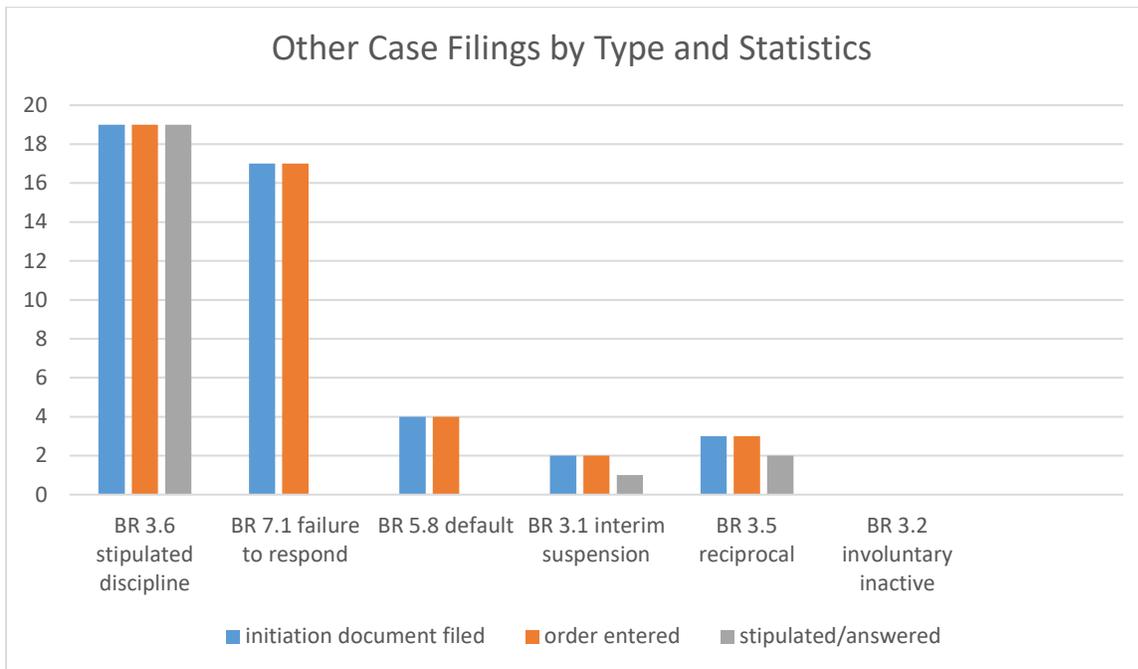
OVERVIEW AND STATISTICS

DISCIPLINARY BOARD FILINGS

FORMAL COMPLAINTS FILED BY REGION (28 IN 2021)

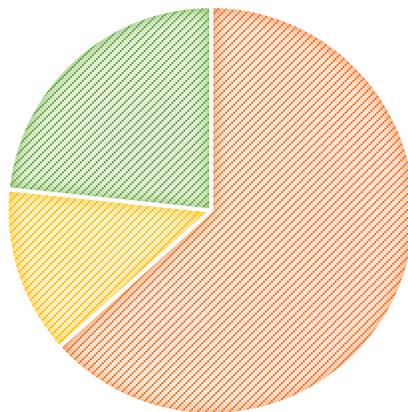


OVERVIEW AND STATISTICS DISCIPLINARY BOARD FILINGS



BR 4.1 FORMAL COMPLAINT CASE RESOLUTION

■ Stipulation ■ default proceeding ■ contested hearing



OVERVIEW AND STATISTICS

DISCIPLINARY BOARD FILINGS

