

Oregon State Bar

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2022 **Fifth Annual  
Disciplinary  
Board Report**

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Adjudicator



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## **I. INTRODUCTION**

This is the fifth Annual Report of the Disciplinary Board, covering the year 2022. 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) to allow for remote hearings if the parties agreed thereto, or if the Adjudicator deemed a remote hearing appropriate in light of national, state, or local health directives or advisories.

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

In 2022, the OSB Disciplinary Counsel's Office (DCO) filed 25 formal complaints with the Disciplinary Board Clerk pursuant to BR 4.1. Of the 2022 complaints filed, 12 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; two formal complaints were filed involving lawyers from Region 3; one formal complaint was filed involving a lawyer from Region 2, and no formal complaints were filed involving lawyers from Region 1.

The Adjudicator and Disciplinary Board Clerk worked remotely throughout 2022.

The Adjudicator entered default orders in five cases. Trial panel opinions were issued in each of these cases.

DCO filed three BR 3.5 petitions in 2022 seeking reciprocal discipline. Each of these was granted with orders explaining the decisions.

The Adjudicator signed 11 orders of administrative suspension.

The Adjudicator received and approved 13 stipulations for discipline in cases initiated by a formal complaint. The Adjudicator also approved 14 stipulations in cases where the stipulation was the first filing in the case. The Court approved two stipulations for discipline and rejected one which has been remanded for trial.

2022 was an anomalous year when it came to cases going to trial. The Adjudicator presided over only two trials in disciplinary proceedings in 2022.

Each trial was conducted remotely. The Adjudicator also presided over a contested reinstatement proceeding that began in 2022 and then stayed at the request of the applicant. It is scheduled to resume in 2023.

The Adjudicator issued eight trial panel opinions in 2022. Three were the result of trials, one of which was a five-day trial near the end of 2021. The other five opinions were issued in the default cases identified above.

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 2022 was 277 days.

#### **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.

## **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 2022 the Adjudicator completed the process of drafting Rules of Professional Conduct for Licensed Paralegals and Bar Rules of Procedure governing enforcement of these disciplinary rules. Also in 2022, the Adjudicator began drafting amendments to the Bar Rules of Procedure in general to improve functioning of the system, expecting to complete the project and present the amendments to the Court for approval in 2023. The Adjudicator also now prepares the case summaries that appear in Oregon Rules of Professional Conduct Annotated.

## **VII. CONCLUSION**

The fifth 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.

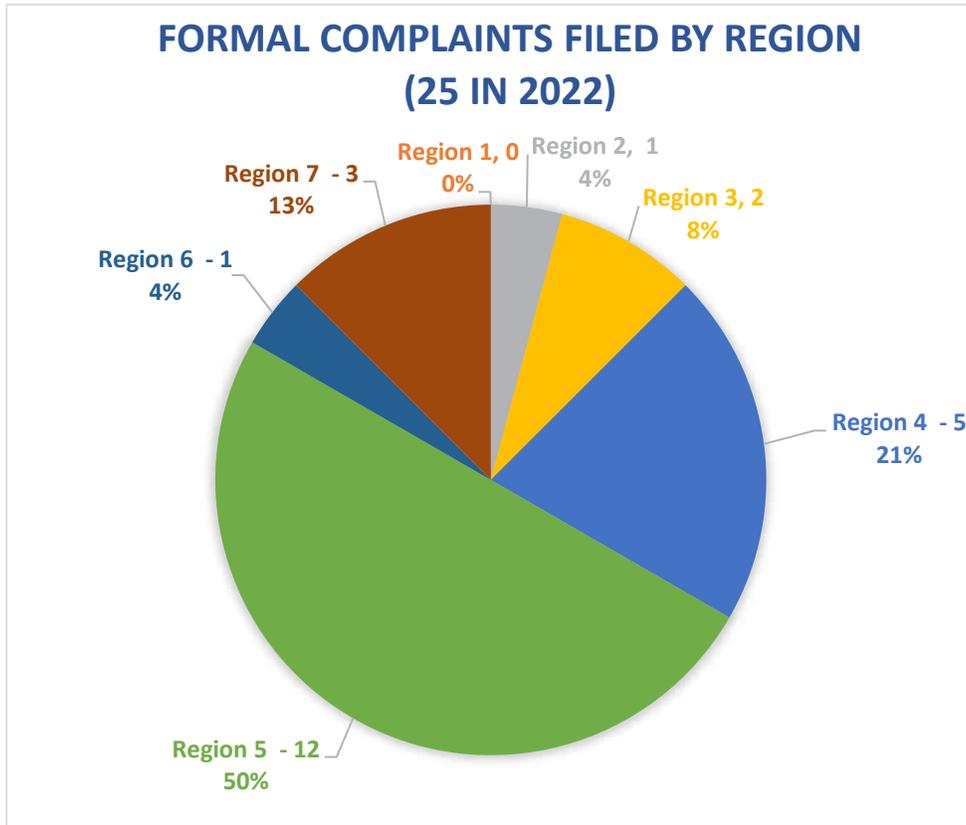
Respectfully submitted,

/s/ Mark A. Turner

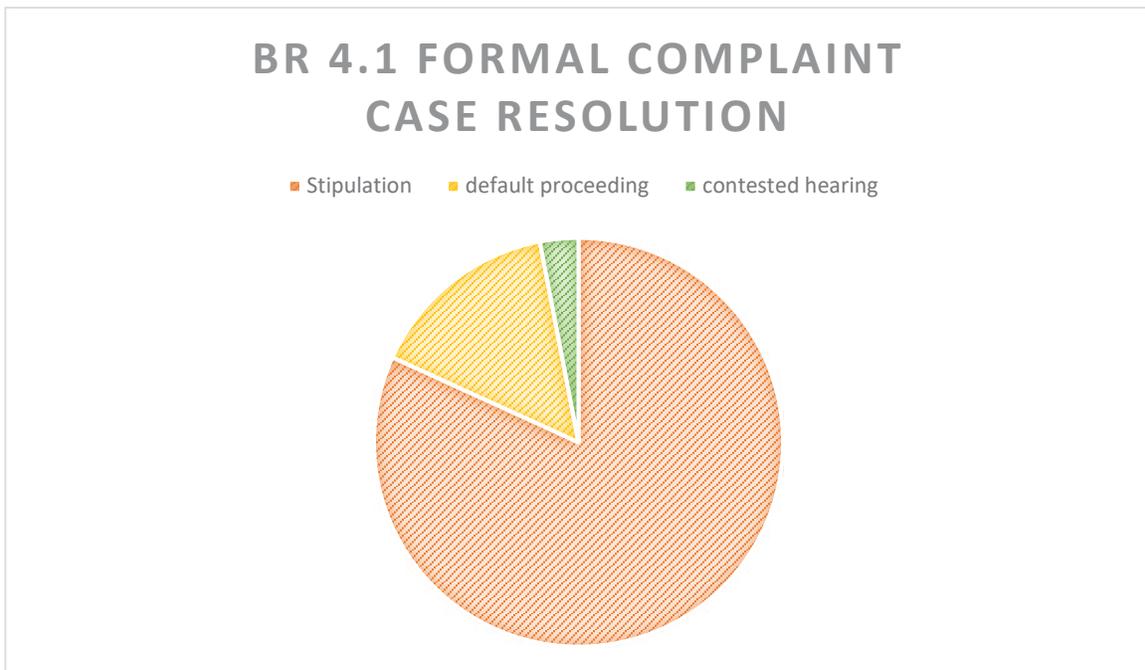
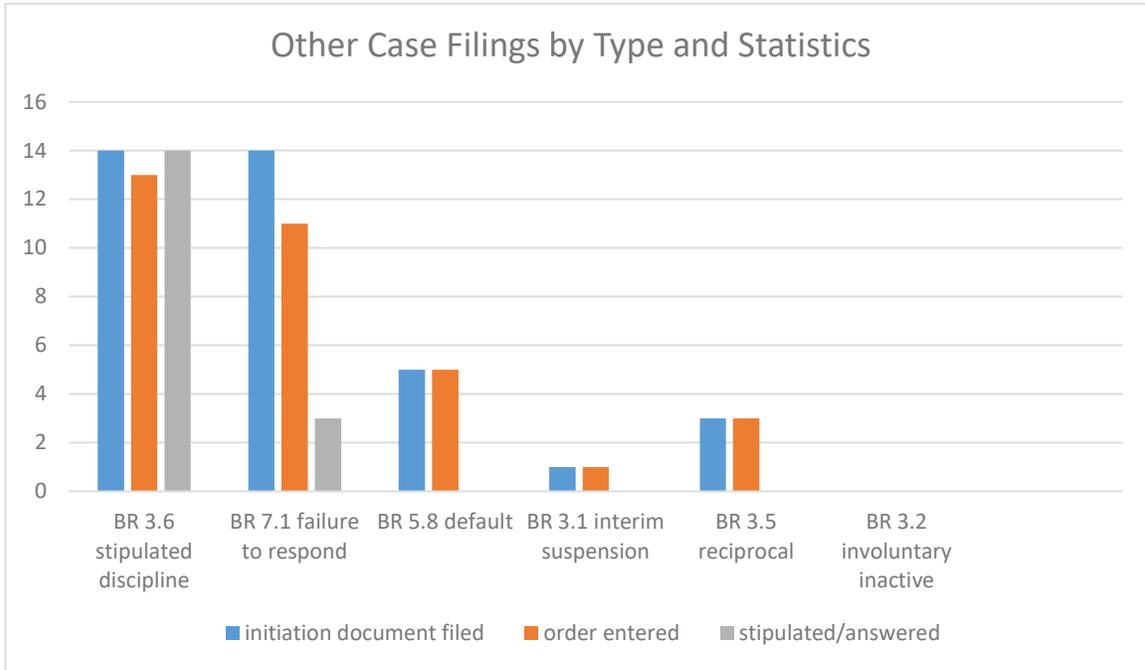
Mark A. Turner  
Adjudicator

# Overview And Statistics

## Disciplinary Board Filings



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