

Oregon State Bar

2023 **Sixth Annual
Disciplinary
Board Report**

April 2024

Mark A. Turner
Adjudicator

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I. INTRODUCTION

This is the sixth Annual Report of the Disciplinary Board, covering the year 2023. 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. The Disciplinary Board resumed in-person hearings in 2023.

II. CHANGES TO BAR RULES OF PROCEDURE

The Court amended the Oregon State Bar Rules of Procedure (BRs) in a number of respects in 2023, effective January 1, 2024. Most of these changes were at the request of the Adjudicator to improve the procedural operation of the disciplinary system in light of experience over the last six years. Changes were also suggested by the Client Assistance Office, n/k/a the Intake Office, and Disciplinary Counsel's Office (DCO). The changes included making some time limits for filing of documents more uniform, specifying a procedure for the handling of challenges for cause against trial panel members (including the Adjudicator), and codifying in the rules the long-standing view of this Court that trial panels should not include probation as an element of a sanction but should, instead, leave probation to discipline by consent situations where the terms are negotiated and agreed to by DCO and a respondent.

III. DISCIPLINARY BOARD CLERK OVERVIEW AND STATISTICS OF FILINGS

In 2023, DCO filed 24 formal complaints with the Disciplinary Board Clerk pursuant to BR 4.1. Of the formal complaints filed, two involved lawyers from Region 1, three involved lawyers from Region 2, four involved lawyers from Region 3, three involved lawyers from Region 4, six involved lawyers from Region 5; four involved lawyers from Region 6, and two involved lawyers from Region 7.

In 2023, the Adjudicator presided over two trials that were held remotely, one trial held in-person in Jackson County, one multi-day hearing held in-person in Jefferson County on a BR 3.1 petition seeking the interim suspension of the respondent, and one remote multi-day hearing on a contested reinstatement proceeding which had begun in 2022 and resumed in May of 2023. Each of these proceedings resulted in written opinions.

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

The Adjudicator decided two BR 3.5 petitions seeking reciprocal discipline. Each of these were granted with written orders and opinions.

The Adjudicator signed 19 orders for administrative suspension under BR 7.1 for failure to cooperate with or respond to disciplinary authorities.

The Adjudicator received and approved nine stipulations for discipline in cases initiated by a formal complaint. The Adjudicator also approved five stipulations

in cases where the stipulation was the first filing in the case. The Court approved two stipulations for discipline and rejected one. That case was remanded for trial at which the respondent was found culpable on the charges and suspended for two years. The respondent has appealed that decision to this Court.

This Court issued one opinion in a disciplinary matter in 2023, affirming the trial panel disposition of the case.

The average length of time between the filing of a formal complaint and the hearing date in 2023 was 598 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 the following additional attorney members and public members (who are not attorneys or Licensed Paralegals) in the specified regions:

Region 1: 15 attorney members and 3 public members;

Region 2: 6 attorney members and 2 public members;

Region 3: 6 attorney members and 2 public members;

Region 4: 16 attorney members and 4 public members;

Region 5: 29 attorney members and 8 public members;

Region 6: 17 attorney members and 4 public members; and

Region 7: 6 attorney members and 2 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 either practices, lives, or where the alleged misconduct occurred. The regional chairperson selects the lawyer member and the public member who serve with the Adjudicator on each trial panel.

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 2023 the Adjudicator completed the process of drafting the amendments to the Bar Rules of Procedure discussed above. The Adjudicator also prepares the case summaries that appear in Oregon Rules of Professional Conduct Annotated.

VII. CONCLUSION

The sixth 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.

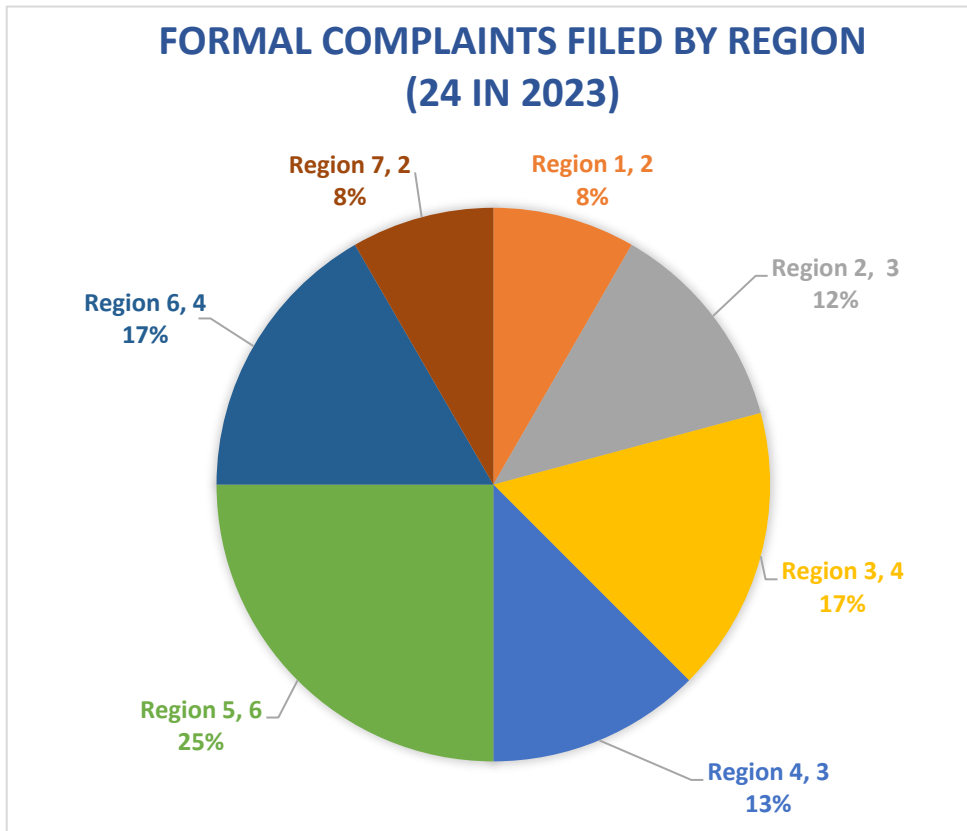
Respectfully
submitted,

/s/ Mark A. Turner

Mark A. Turner
Adjudicator

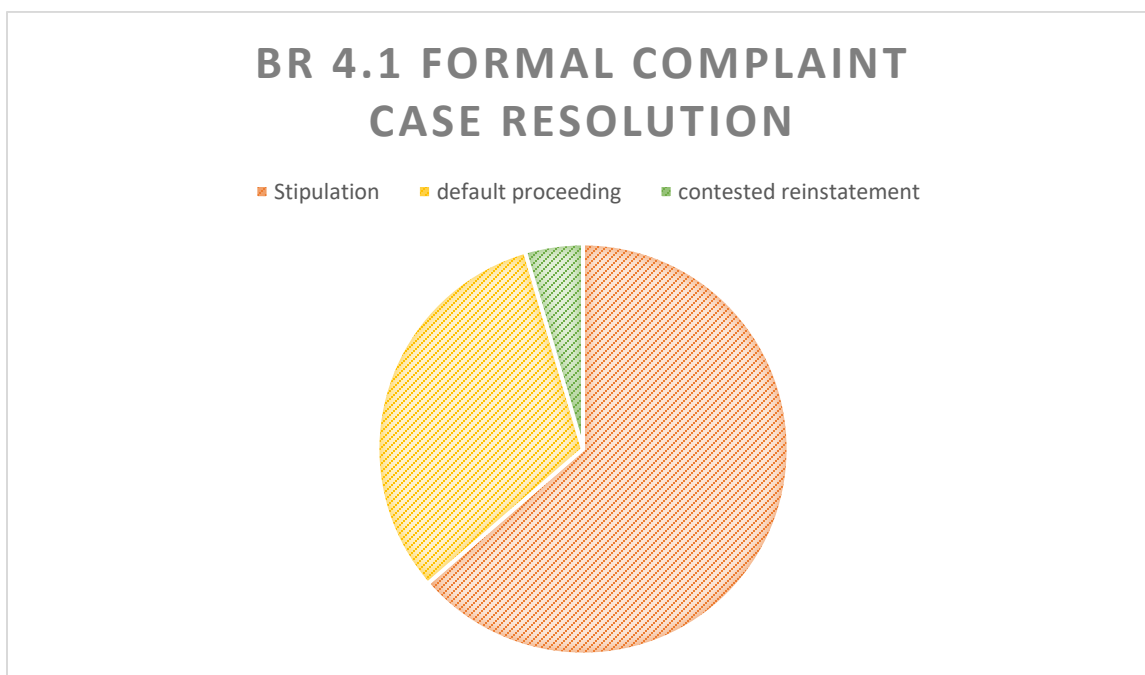
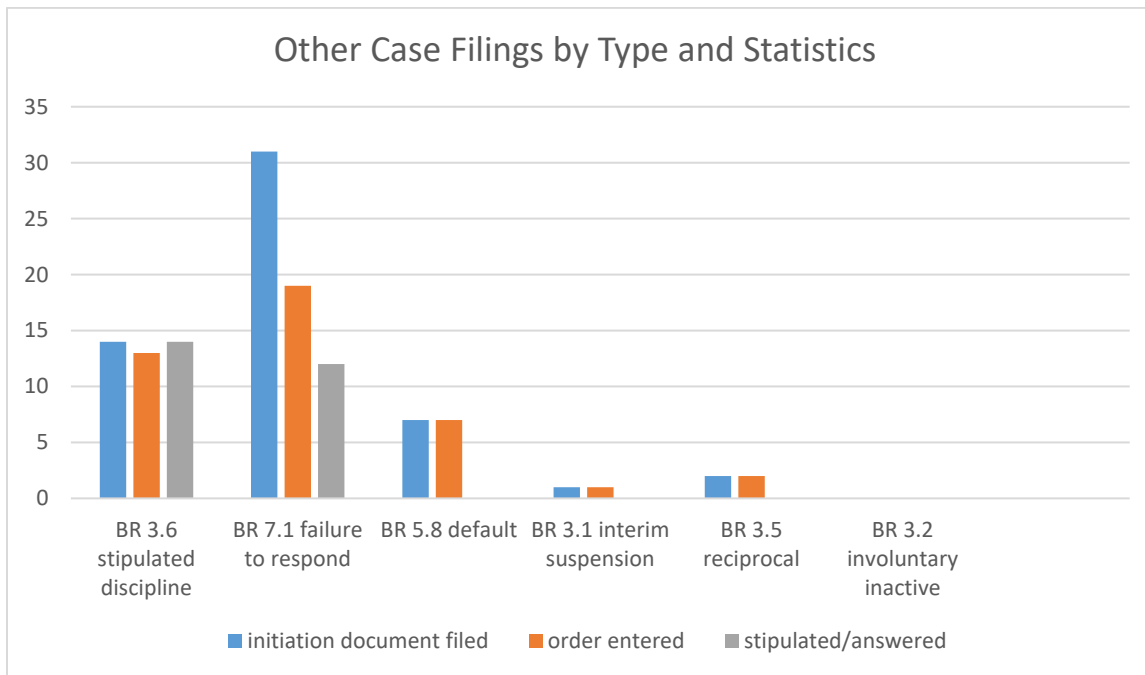
OVERVIEW AND STATISTICS

DISCIPLINARY BOARD FILINGS



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