

Oregon  State Bar

2020 **Disciplinary
Counsel's Office**
Annual Report

March 2021

Courtney C. Dippel
Disciplinary Counsel

Page left blank

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATE PROFESSIONAL RESPONSIBILITY BOARD (SPRB)	1
III.	SYSTEM OVERVIEW.....	2
	A. Complaints Received	2
	Program Evaluation No. 1	3
	B. SPRB	4
	C. Formal Proceedings	5
	D. Dispositions Short of Trial	6
	E. Appellate Review.....	6
	F. Contested Admissions/Contested Reinstatements.....	7
IV.	DISPOSITIONS.....	7
	Program Evaluation No. 2.....	8
	Program Evaluation No. 3.....	9
V.	SUMMARY OF CASELOAD	11
	Program Evaluation No. 7.....	11
VI.	STAFFING/FUNDING	11
	Disciplinary Counsel	11
VII.	OTHER DEVELOPMENTS	12
	A. Ethics School (Program Evaluation No. 4).....	12
	B. Trust Account Overdraft Notification Program.....	12
	Program Evaluation No. 5.....	13
	C. <i>Pro Hac Vice</i> Admission and Arbitration Registration	13
	D. Continuing Legal Education Programs	14
	E. Changes in DCO Rules and Procedures (Program Evaluation No. 6).....	14
	F. Technology Improvements (Program Evaluation No. 7).....	14
VIII.	CONCLUSION.....	14
	APPENDICES	15
	APPENDIX A - 2020.....	16
	APPENDIX B - 2019	17
	APPENDIX C	18
	APPENDIX D.....	21

I. INTRODUCTION

This is the Annual Report and Program Evaluation of the Oregon State Bar Disciplinary Counsel's Office for 2020. The report and evaluation provides an overview of Oregon's lawyer discipline system, an analysis of the caseload within the system, along with the dispositions in 2020, and a discussion of significant developments over the last year.

Disciplinary Counsel's Office performs many of the Bar's regulatory functions. Its primary goal is to administer an objective, efficient, consistent, and cost-effective system for the regulation of lawyers in order to serve the public interest, and promote public and member confidence in our regulatory system.

II. STATE PROFESSIONAL RESPONSIBILITY BOARD (SPRB)

Disciplinary Counsel's Office's principal responsibility is to serve as counsel to the State Professional Responsibility Board (SPRB), the body to which the investigative and prosecutorial functions within the discipline system are delegated by statute. The SPRB seeks to enforce the disciplinary rules in the Rules of Professional Conduct (the RPCs), while operating within the procedural framework of the Bar Rules of Procedure (the BRs). The SPRB is a ten-member board of unpaid volunteers, consisting of one lawyer each from Board of Governors (BOG) Regions 1 through 4, 6, and 7, two lawyers from Region 5, and two public members.

The SPRB met seven times in 2020 and considered approximately 96 case-specific agenda items during the year. This does not include any policy matters also considered by the board.

The Bar was fortunate to have the following individuals on the SPRB in 2020:

- Amanda Walkup (Eugene) – Chairperson
- Harry Auerbach (Portland)
- Joel Benton (Medford)
- David Carlson (Salem)
- Todd Grover (Bend)
- Kelly Lemarr (Hillsboro)
- Mary Moffitt (Portland) – Public Member
- Zena Polly (Lake Oswego) – Public Member
- Joshua Ross (Portland)
- Michael Wu (Clackamas)

The terms of Kelly Lemarr and Amanda Walkup expired at the end of 2020. Additionally, Michael Wu took a new position with the Oregon District Attorneys Association and left the board in October. The new appointments for 2021 are Erin Fennerty (Eugene), Thanh Tran (Clackamas), and Lauren Walchli (Hillsboro). Todd Grover is the SPRB Chairperson for 2021.

III. SYSTEM OVERVIEW

A. Complaints Received

The Bar's Client Assistance Office (CAO) handles the intake of all oral and written inquiries and complaints about lawyer conduct. Only when the CAO finds that there is sufficient evidence to support a reasonable belief that misconduct may have occurred is a matter referred to Disciplinary Counsel's Office for investigation. See BR 2.5.

The table below reflects the number of files opened by Disciplinary Counsel in recent years, including the 256 files opened in 2020.

Files Opened by Disciplinary Counsel					
Month	2016	2017	2018	2019	2020
January	30	17	34	13	24
February	38	49	25	20	25
March	30	20	33	24	11
April	26	22	32	44	12
May	30	51	39	36	22
June	39	20	37	20	16
July	42	31	42	25	18
August	28	27	14	25	16
September	25	15	19	41	16
October	39	37	36	39	27
November	27	40	24	31	32
December	28	28	14	9	37
TOTAL	382	357	349	327	256

Of the 256 files opened in 2020, 188 were referrals from the Client Assistance Office and 47 were trust account overdraft notices from financial institutions that came directly to Disciplinary Counsel's Office. Disciplinary Counsel opened another 21 matters on its own initiative. As the numbers show, referrals from CAO were down significantly from historical data in March, April, and May, likely due to the onset of the COVID-19 pandemic.

For 2020, statistical information regarding complainant type and complaint subject matter is found in Appendix A to this report. Similar information for 2019 is found in Appendix B for comparison purposes.

Every complaint Disciplinary Counsel's Office received in 2020, was acknowledged in writing by staff and analyzed and investigated to varying degrees depending on the nature of the allegations. As warranted, staff corresponded with the complainant and the responding attorney, and obtained relevant information from other sources, to develop a "record" upon which a decision on merit could be made.

If, after investigation, staff determined that probable cause did not exist to believe that misconduct had occurred, the matter was dismissed by Disciplinary Counsel. BR 2.6(b). Complainants have the right under the Rules of Procedure to contest or appeal a dismissal by Disciplinary Counsel staff. In those cases, the matters are submitted to the SPRB for review. The SPRB considered 37 such appeals in 2020.

When Disciplinary Counsel determined from an investigation that there may have been probable cause of misconduct by a lawyer, the matter was referred to the SPRB for review and action. Each matter was presented to the board by means of a grievance summary (factual review, ethics analysis, and recommendation) prepared by staff. Each file also was made available to the SPRB. In 2020, the SPRB reviewed 53 of these probable cause investigations. The following section describes that process of review in more detail

Program Evaluation No. 1: Identify attorneys whose conduct may pose a substantial risk of immediate and irreparable harm to the public and investigate and prosecute those attorneys, where warranted, on an expedited basis for purposes of public protection.

As indicated above, in any given year, Disciplinary Counsel's Office receives several hundred new matters for investigation. With such a caseload, the department is responsible for prioritizing its work to best protect the public. Beginning in January 2020, at the outset of an investigation, Disciplinary Counsel's Office identifies any lawyers who may pose a substantial risk of imminent harm by their continued practice of law, either due to evidence of affirmative misconduct (e.g. theft, conversion of client funds, practice abandonment), or because the lawyer has been adjudged to be incapacitated or appears to be suffering from some type of impairment that is precluding him/her/them from practicing law safely and competently.

In the first situation, Disciplinary Counsel moves for an immediate suspension of the lawyer's license pending adjudication of the formal disciplinary charges. Such proceedings are heard by the Adjudicator on an accelerated schedule. In the second situation, Disciplinary Counsel petitions the Oregon Supreme Court for an order transferring the attorney to inactive membership status if there has been an adjudication of incapacity, or may petition the court to determine whether the lawyer is disabled from continuing to practice law due to a personality disorder, mental infirmity or illness, diminished capacity, or addition to drugs, narcotics, or intoxicants.

In 2020, Disciplinary Counsel filed one petition for a lawyer's immediate suspension based on the theft of client funds. The lawyer ended up stipulating to that suspension and ultimately submitting a Form B resignation.

Disciplinary Counsel also filed two petitions with the Oregon Supreme Court to determine whether a lawyer was disabled from continuing to practice law. The court referred one petition to the Disciplinary Board Adjudicator

for proceedings and dismissed the second petition as moot upon the court's acceptance of the lawyer's Form B resignation.

Additionally, the department also prioritizes any other cases in which a lawyer may present a significant risk by his/her/their continued practice due to the seriousness of the allegations (e.g. felony criminal conduct, false statements to a tribunal or under oath), or based on the number of referrals from CAO. While an immediate suspension may not be warranted, staff quickly acts to expedite the investigation with the intent to refer the matter to the SPRB within three to six months from receipt. Disciplinary Counsel's Office did not receive any such referrals that warranted expedited investigation beyond the three petitions referenced above.

B. SPRB

The SPRB acts as a grand jury in the disciplinary process, determining in each matter referred to it by Disciplinary Counsel whether probable cause of an ethics violation exists. Options available to the SPRB include dismissal if there is no probable cause of misconduct; referral of a matter back to Disciplinary Counsel for additional investigation; issuing a letter of admonition if a violation has occurred but is not of a serious nature; or authorizing a formal disciplinary proceeding in which allegations of professional misconduct are litigated. A lawyer who is offered a letter of admonition may reject the letter, in which case the Rules of Procedure require the matter to proceed to a formal disciplinary proceeding. Rejections are rare.

Beginning in 2018, as an alternative to seeking authority from the SPRB to offer an attorney an admonition or to file a formal complaint, Disciplinary Counsel's Office had the option of offering an attorney to divert a grievance on the condition that the attorney enter into a diversion agreement through which the attorney agrees to participate in a remedial program. There are criteria for eligibility set forth in BR 2.10(b) related to the type of misconduct, the perceived causes of the misconduct, and the likelihood that a remedial program will prevent a recurrence. Prior to 2018, the SPRB approved all requests for lawyers to enter into diversion agreements. In 2020, three lawyers entered into such agreements with the Bar.

A lawyer who is notified that a formal disciplinary proceeding will be instituted against him, her, or they, may request that the SPRB reconsider that decision. Such a request must be supported by new evidence not previously available that would have clearly affected the board's decision, or legal authority not previously known to the SPRB which establishes that the decision to prosecute is incorrect.

In 2020, the SPRB made probable cause decisions on 53 matters investigated by Disciplinary Counsel staff. Action taken by the SPRB in recent years and in 2020 is summarized in the following table:

Actions taken by the SPRB					
Year	Pros.	Admon. Offered	Admon. Accepted	Dismissed	Diversion
2016	114	26	26	20	12
2017	75	16	16	26	9
2018	133	35	35	34	N/A
2019	58	34	34	16	N/A
2020	29	17	17	7	N/A

Twenty-nine (29) cases were authorized for prosecution, not necessarily the number of lawyers being prosecuted. One lawyer may be the subject of numerous complaints that are consolidated into one disciplinary proceeding.

C. Formal Proceedings

(1) Prosecution Function

After the SPRB authorizes formal proceedings in a given matter, attorneys in Disciplinary Counsel's Office draft and serve a formal complaint, and engage in appropriate discovery prior to trial.

Discovery methods in disciplinary proceedings are similar to those in civil litigation. Requests for admission, requests for production, and depositions are common. Disputes over discovery are resolved by the Disciplinary Board Adjudicator, Mr. Mark Turner.

Pre-hearing conferences to narrow the issues and to explore settlement are available at the request of either party. Upon request, the Adjudicator appoints a member of the Disciplinary Board to serve as the presiding member and conduct the conference.

(2) Adjudicative Function

The Adjudicator and two other members of the Disciplinary Board, appointed by the Supreme Court, sit in panels of three (two lawyers, one non-lawyer). The regional chairperson appoints the two other members to serve with the Adjudicator. The Adjudicator rules on all pretrial matters and is responsible for bringing each case to hearing within a specific time frame established by the rules.

After hearing, the panel is required to render its decision within 28 days (subject to time extensions), make findings of fact, conclusions of law, and arrive at a disposition. Panels rely on the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law in determining appropriate sanctions when misconduct has been found.

Seven disciplinary cases were tried in 2020. Some were single-day hearings; others were multi-day hearings; still others went by default and did not require a full evidentiary hearing at all.

D. Dispositions Short of Trial

Many of the disciplinary proceedings authorized by the SPRB are resolved short of trial with resignations or stipulations. Form B resignation (resignation “under fire”) does not require an admission of ethics violations by a respondent but, because charges are either under investigation or are pending, is treated like a disbarment such that the lawyer is not eligible for reinstatement in the future under the current rules. Six lawyers submitted Form B resignations in 2020 that the court accepted,¹ thereby eliminating the need for further prosecution in those cases. While a resignation ends an investigation or formal proceeding, it is often obtained only after a substantial amount of investigation, discovery, and trial preparation.

A significant number of cases are resolved by stipulations for discipline in which there is no dispute over material facts and both the Bar and the respondent lawyer agree on the violations committed and appropriate sanction. Stipulations must be approved by the SPRB or its chairperson on behalf of the Bar. Once that approval is obtained, judicial approval is required from the Disciplinary Board Adjudicator in cases where sanctions do not exceed a 6-month suspension, or from the Supreme Court for cases involving greater sanctions. Judicial approval is not always given, in which case the parties must negotiate further or proceed to trial.

In 2020, all proposed stipulations were approved.

E. Appellate Review

The Supreme Court does not automatically review discipline cases in Oregon. Trial panel decisions, even those imposing disbarment, are final unless either the Bar or the respondent lawyer seeks Supreme Court review. Appellate review by the court is mandatory if requested by a party.

When there is an appeal, lawyers in Disciplinary Counsel’s Office prepare the record for submission to the court, draft and file the Bar’s briefs and present oral argument before the court. The SPRB decides for the Bar whether to seek Supreme Court review.

In 2020, the Supreme Court rendered three (3) discipline opinions in contested cases.

Regarding the disciplinary system overall, 35 disciplinary proceedings were concluded in 2020: two by a Supreme Court decision;² six by a final trial panel decision; 20 by stipulation; and seven by Form B resignation.

¹ One other lawyer tendered a Form B resignation late in 2019 that the court accepted in 2020.

² The court issued a third opinion in a disciplinary proceeding, but remanded the matter to the trial panel and therefore, it was not a final decision.

F. Contested Admissions/Contested Reinstatements

Disciplinary Counsel's Office also represents the Board of Bar Examiners (BBX) in briefing and arguing before the Supreme Court those cases in which the BBX has made an adverse admissions recommendation regarding an applicant. The actual investigation and hearing in these cases are handled by the BBX under a procedure different from that applicable to lawyer discipline cases. In 2020, the court issued one opinion in a contested admissions matter.

For reinstatements, for the majority of 2020, Disciplinary Counsel's Office was responsible for processing and investigating all applications until approximately November 23, 2020.³ Recommendations are made to the Bar's Chief Executive Officer. Many reinstatements are approved without any further level of review.

For reinstatement applicants who have had significant, prior disciplinary problems or have been away from active membership status for more than five years, Disciplinary Counsel initially makes a recommendation to the Bar's Chief Executive Officer regarding reinstatement. If the Chief Executive Officer cannot favorably recommend the applicant for reinstatement, the Chief Executive Officer refers the application to the Board of Governors. After review, the Board of Governors makes a recommendation to the Supreme Court. In cases when the board recommends against reinstatement of an applicant, the Supreme Court may refer the matter to the Disciplinary Board for a character and fitness hearing before a three member panel much like a lawyer discipline matter. Disciplinary Counsel's Office has the same responsibilities for prosecuting these contested cases as with disciplinary matters and handles the appeal of these cases before the Supreme Court. In 2020, the court denied one disciplinary reinstatement application.

IV. DISPOSITIONS

Attached as Appendix C is a list of disciplinary dispositions from 2020. The following table summarizes dispositions in recent years:

SANCTION TYPE	2016	2017	2018	2019	2020
Disbarment	5	3	4	4	3
Form B Resignation	12	8	7	4	7
Suspension	13	22	16	22	13
Suspension stayed/probation	12	4	18	14	2
Reprimand	14	11	16	24	9
Involuntary inactive Transfer	2	2	2	1	0
TOTAL Lawyer Sanctions	58	51	63	68	34

Table continued...

³ As of that date, all non-disciplinary reinstatements were transferred to the Bar's Regulatory Counsel for investigation and recommendation.

SANCTION TYPE <i>(cont'd)</i>	2016	2017	2018	2019	2020
Dismissals after Adjudication	0	1	1	2	1
Dismissed as moot	0	0	0	0	0
Diversion	11	11	13	5	3
Admonitions	27	21	37	34	17

In conjunction with a stayed suspension or as a condition of admission or reinstatement, it is common for a period of probation to be imposed upon a lawyer. Disciplinary Counsel's Office was monitoring 32 lawyers on probation at the end of 2020, along with seven (7) lawyers in diversion. Most probations and diversions require some periodic reporting by the lawyer as well as active monitoring by a probation supervisor, typically another lawyer in the probationer's community.

The types of conduct for which a disciplinary sanction was imposed in 2020, or a Form B resignation was submitted, varied widely. The following table identifies the misconduct most often implicated in those proceedings that were concluded by decision, stipulation, order, or resignation in 2020:

Type of misconduct	% of cases in which type of misconduct was present
Inadequate client communication	44%
Trust account violation	35%
Neglect of legal matter	32%
Failure to return property or funds	29%
Dishonesty or misrepresentation	26%
Conduct prejudicial to justice	21%
Criminal conduct	18%
Failure to respond to OSB	18%
Excessive or illegal fees	12%
Incompetence	12%
Conflicts of Interest	12%
Fairness to opposing parties/counsel	12%
Unauthorized practice	9%
Other	6%

Program Evaluation No. 2: Conduct thorough investigations and recommend appropriate disciplinary charges and sanctions.

As a regulatory department, one of Disciplinary Counsel's Office's fundamental responsibilities is to complete thorough investigations that result in appropriate dispositions. Dispositions include dismissing matters that lack sufficient evidence

for the Bar to sustain its burden of proof, or recommending charges and appropriate settlements, including letters of admonition, public reprimands, or suspensions of varying lengths. Dispositions also include decisions from trial panels or the Oregon Supreme Court.

With regards to dismissals by DCO, a complainant may appeal a dismissal to the SPRB. In 2020, there were 37 appeals of dismissals. The SPRB upheld the dismissals in all but one matter, and referred the matter for further investigation.

The SPRB also offers letters of admonition, which a respondent can accept or decline. In 2020, there were 17 letters of admonition offered, all of which were accepted by the respondent lawyers.

The majority of disciplinary proceedings result in stipulations in which the Bar and the respondent agree on the sanction. If the sanction calls for a suspension of six months or less, the Adjudicator reviews and approves the sanction. If the suspension is for a greater term, the Supreme Court reviews and approves the stipulation. In 2020, there were 20 stipulations that were entered into between the parties, all of which were approved.

In 2020, Disciplinary Counsel's Office tried six formal disciplinary proceedings to trial panels. In each case, Disciplinary Counsel's Office prevailed as to the majority of the violations alleged and obtained its requested sanction.

In the two final disciplinary decisions handed down by the court, Disciplinary Counsel's Office prevailed in one case on the violations alleged and requested sanction, and lost the other case in which the court dismissed the alleged violations. In the one contested admissions opinion from the court, the court conditionally admitted the lawyer to the practice of law.

Disciplinary Counsel's Office does not evaluate these outcomes based solely on successful dispositions. In any period of time, the department expects that respondents will prevail in some cases, before trial panels or before the court. However, in a multi-year span, if DCO prevails in the majority of its cases, that affirms that its investigations, recommendations, and prosecutions are sound.

Program Evaluation No. 3: Meet or exceed timeline and disposition targets for investigation and prosecution of disciplinary proceedings.

The target measures are a means of assessing the pace at which matters proceed from receipt to disposition, whether by dismissal, stipulation, or trial. The "initial action" typically means sending a letter requesting information of a respondent, but might also be seeking additional information from the complainant or obtaining information from a third party as a first step. The "probable cause" decision is determining that the matter should be dismissed or be presented to the SPRB. Additional time is built in for the amount of time that it takes to prepare the memorandum to the SPRB regarding probable cause recommendations. The length of time between taking a matter to the SPRB with a recommendation and filing the formal complaint typically allows time for negotiation before the filing of the formal complaint. Within 30 days

of receipt of a respondent's answer, staff requests the appointment of a trial panel. From there, the disciplinary board clerk is in charge of scheduling all hearings with input regarding availability from the trial panel members and the parties.

The below chart compares information for 2020 and 2019:

Step	Target	2019 Average	2020 Average
Initial Action	14 days from receipt	11 days	13 days
Probable cause decision	4 months (120 days) from receipt	139 days	192
Recommendation to SPRB	9 months from receipt	7.5 months	9.8 months
SPRB review of staff dismissals	90% upheld	100%	97%
File formal complaint	60 days from SPRB authorization	57 days	107 days
Request trial panel	120 days from formal complaint	71 days	89 days
Resolve 70% without trial		96%	86%
Initial Trial Setting	Within 6 months of assignment to a trial panel	261	181
Prevail in 90% of formal cases		97%	88%

During 2020, the average time to take initial action was at the target time. As to some of the other targets that were not met, 2020 was a year of challenge for the department. In addition to dealing with the COVID-19 pandemic and transitioning to working fully remotely as of March 17, 2020, there was turnover within Disciplinary Counsel's Office. After several people within DCO were promoted within the Bar and the department, several attorneys returned to private practice, leaving the department with no trial lawyers for a period of time. At times throughout 2020, the department was understaffed by 4 full-time staff lawyer positions, or 50% of it attorney staff.

The goals pertaining to the percentage of cases settled that settled were exceeded, and the target for the initial trial setting were met. The Bar prevailed in seven out of eight formal proceedings. Of the 86% of cases that were resolved without trial, that number includes 20 stipulations, 7 Form B resignations, and 3 trial panel opinions that were issued in cases in which the respondent did not appear and therefore, was held in default.

V. SUMMARY OF CASELOAD

A summary of the pending caseload in Disciplinary Counsel's Office at the end of 2020 follows:

New complaints pending	210
Pending formal proceedings	22*
Probation/diversion matters	39
Contested admission/contested reinstatement matters	0
TOTAL	297

*Reflects no. of lawyers; no. of complaints is greater.

Program Evaluation No. 7: Process regulatory work in timely manner

In addition to disciplinary matters, Disciplinary Counsel's Office processed and investigated 247 reinstatement applications in 2020; processed approximately 882 membership status changes (inactive, retired, and active pro bono transfers and voluntary resignations); and issued 1,260 certificates of good standing.

VI. STAFFING/FUNDING

Last year was one of transition and challenge for the department. After the retirement of Dawn Evans in 2019, a new disciplinary counsel was appointed on January 2, 2020, and two staff attorneys left the department to return to private practice. As referenced above, throughout parts of 2020, Disciplinary Counsel's Office was understaffed by 4 full-time attorney positions, or 50% of its attorney staff. Due to the COVID-19 pandemic, those positions were not fully filled until January 4, 2021.

In 2020, Disciplinary Counsel's Office employed 14 staff members, along with occasional temporary help. In addition to Disciplinary Counsel, there were six staff lawyer positions. Support staff included one investigator, one office administrator/manager, one full-time regulatory services coordinator through late November, one part-time regulatory services coordinator through late November, three legal assistants, and one paralegal. The staff members for 2020 include:

Disciplinary Counsel

Courtney C. Dippel

Assistants Disciplinary Counsel

Angela W. Bennett
Eric J. Collins
Susan R. Cournoyer
Sam Leineweber
Stacy Owen
Rebecca M. Salwin

Support Staff

Lynn Bey
Carrie Daugherty
Emily Dougherty
Karen Duncan
R. Lynn Haynes
Sergio Hernandez
Brandi Norris
Emily Schwartz

Disciplinary Counsel's Office is funded out of the Bar's general fund. Revenue is limited (roughly \$107,000 for 2020) and comes from cost bill collections, reinstatement fees, fees for certificates of good standing, arbitration registrations, and *pro hac vice* admissions.

Expenses for 2020 were \$1,842,000 with an additional \$412,800 assessed as a support services (overhead) charge. Of the actual program expenses, 96.3% consisted of salaries and benefits. An additional 2.5% of the expense budget went to out-of-pocket expenses for court reporters, witness fees, investigative expenses and related items. Approximately 1.2% of the expense budget was spent on general and administrative expenses such as copying charges, postage, telephone and staff travel expense.

VII. OTHER DEVELOPMENTS

A. Ethics School (Program Evaluation No. 4)

Lawyers who have been reprimanded or suspended are required to attend a one day course of study presented by the Bar on topics of legal ethics, professional responsibility, and law office management. In non-pandemic years, Disciplinary Counsel's Office traditionally offers two such programs. However, due to COVID-19, only one such program was offered in 2020 in November. Presenters included staff from the Client Assistance Office and the Professional Liability Fund. Written program materials and live presentation aids are continually reviewed and refined. Feedback from attendees is overwhelmingly favorable.

B. Trust Account Overdraft Notification Program

The Oregon State Bar has a Trust Account Overdraft Notification Program, pursuant to ORS 9.132 and RPC 1.15 2. Under the program, lawyers are required to maintain their trust accounts in financial institutions that have agreed to notify the Bar of any overdraft on such accounts.

In 2020, the Bar received notice of 47 trust account overdrafts. For each overdraft, Disciplinary Counsel staff requested a written explanation and supporting documentation from the lawyer, and made follow-up inquiries as necessary. Many overdrafts were the result of bank or isolated lawyer error and, once confirmed as such, were dismissed by staff. If circumstances causing an overdraft suggested an ethics violation, the matter was referred to the SPRB. A minor violation leading to an overdraft typically results in a letter of admonition issued to the lawyer. More serious or on-going violations result in formal disciplinary action. A summary of the disposition of trust account overdrafts received in 2020 follows:

2020 Trust Account Overdrafts	
Dismissed by staff	37
Dismissed by SPRB	1
Closed by admonition letter	0
Closed by diversion	1
Formal charges authorized	0
Closed by Form B resignation	0
Pending (as of 12/31/20120)	8
Total Received	47

Program Evaluation No. 5: Conduct Trust Account School

In 2018, Disciplinary Counsel's Office started holding a twice-annual Trust Account School as a result of respondents being in discipline as a result of poor trust account management. In 2020, one session of Trust Account School was presented through the combined efforts of disciplinary staff members and lawyers, the Client Assistance Office, and a PLF Practice Management Attorney. The largest proportion of attendees is mandated to attend as a condition of being in probation or diversion. Feedback from attendees has been extremely positive, with multiple participants stating they wished the program was mandatory for all new lawyers.

C. *Pro Hac Vice* Admission and Arbitration Registration

Uniform Trial Court Rule 3.170 provides that all applications by out-of-state lawyers for admission in a single case in Oregon (*pro hac vice* admission) must first be filed with the Oregon State Bar, along with a fee of \$500. Disciplinary Counsel's Office was responsible until late November 2020 for reviewing each application and supporting documents (good standing certificate, evidence of professional liability coverage, etc.) for compliance with the UTCR. The filing fees collected, after a nominal administrative fee is deducted, are used to help fund legal service programs in Oregon.

In 2020, the Bar received and processed 498 *pro hac vice* applications, collecting \$248,800 for legal services.

In addition, RPC 5.5(e) requires out of state lawyers who intend to participate in an Oregon arbitration to pay a fee and file a certificate with the Bar similar to that required for *pro hac vice* admission. Disciplinary Counsel's Office administered this process, as well until late November. In 2020, the Bar received and processed 64 of these applications and collected \$12,800 in fees.

D. Continuing Legal Education Programs

Throughout 2020, Disciplinary Counsel staff participated in numerous CLE programs dealing with ethics and professional responsibility issues. Staff spoke to local law firms, local bar associations, Oregon State Bar section meetings, specialty bar organizations and general CLE audiences.

E. Changes in DCO Rules and Procedures (Program Evaluation No. 6)

In 2020, the Supreme Court approved amendments to some of the Bar Rules of Procedure governing reinstatements, designation of contact information for members, and to reflect a shift in regulatory work from Disciplinary Counsel to Regulatory Counsel.

F. Technology Improvements (Program Evaluation No. 7)

By late 2019, DCO had decided to transition to a new document management system known as NetDocuments, which was implemented in the department in February 2020. With the onset of the pandemic and the use of the new NetDocs system, the department was able to provide all of its case files for the SPRB electronically since all meetings after March were conducted remotely. Before, all case files were sent to SPRB members in advance of meetings. This has helped save money for postage and staff time.

During 2020, Disciplinary Counsel's Office staff continued to participate in the refinement and testing of components of the new association management software. The department continues to enhance, through currently available technology and software, the extent to which documentation is stored and transmitted electronically, in order to reduce paper and postage costs and render records more readily accessible through means other than a paper file, working with IDT to make incremental refinements in the disciplinary database.

VIII. CONCLUSION

In 2020, the Oregon State Bar remained committed to maintaining a system of lawyer regulation that fairly but effectively enforces the disciplinary rules governing Oregon lawyers. Many dedicated individuals, both volunteers and staff, contributed significantly toward that goal throughout the year.

Respectfully submitted,

Courtney C. Dippel
Disciplinary Counsel

APPENDICES

APPENDIX A - 2020

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Respondent (self-reported)	14	5.47%
Client	98	38.28%
Judge	9	3.52%
Opposing Counsel	13	5.08%
Opposing Party	25	9.77%
Third Party	39	15.23%
Unknown	2	0.78%
OSB	56	21.87%
TOTAL	255	100.0%
COMPLAINT SUBJECT MATTER		100.0%
Adoption	0	0%
Advertisement	2	0.78%
Arbitration	2	0.78%
Bankruptcy	3	1.17%
Business	10	3.91%
Civil dispute (general)	20	7.81%
Conservatorship	0	0%
Criminal	39	15.24%
Domestic Relations	29	11.33%
Estate Planning	2	0.78%
Guardianship	3	1.17%
Immigration	4	1.56%
Juvenile	8	3.13%
Labor Law	9	3.52%
Litigation (general)	14	5.47%
Land Use	2	0.78%
Other	39	15.24%
Paternity	0	0%
Personal injury	7	2.73%
Probate	2	0.78%
Real Estate	3	1.17%
Social Security	3	1.17%
Tenant/landlord	3	1.17%
Tax	0	0%
Trust Account Overdraft	48	18.75%
Workers Comp.	3	1.17%
Unknown	1	0.39%
TOTAL	327	100.0%

APPENDIX B - 2019

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Respondent (self-reported)	11	3.36%
Client	123	37.62%
Judge	9	2.75%
Opposing Counsel	29	8.87%
Opposing Party	36	11.01%
Third Party	36	11.01%
Unknown	0	0%
OSB	83	25.38%
TOTAL	327	100.0%
COMPLAINT SUBJECT MATTER		
Adoption	0	0.57%
Advertisement	0	0%
Arbitration	0	0%
Bankruptcy	7	2.14%
Business	10	3.06%
Civil dispute (general)	13	3.98%
Conservatorship	4	1.22%
Criminal	55	16.82%
Domestic Relations	64	19.57%
Estate Planning	3	.092%
Guardianship	5	1.53%
Immigration	2	0.61%
Juvenile	0	0%
Labor Law	3	0.92%
Litigation (general)	13	3.97%
Land Use	0	0%
Other	34	10.40%
Paternity	0	0%
Personal injury	16	4.89%
Probate	16	4.89%
Real Estate	2	0.61%
Social Security	5	1.53%
Tenant/landlord	12	3.67%
Tax	1	0.31%
Trust Account Overdraft	57	17.43%
Workers Comp.	3	0.92%
Unknown	2	0.61%
TOTAL	327	100.0%

**OSB DISPOSITION LIST
2020**

Case No.	Case Name/Cite	Disposition	CC/Stip	SCT/ DB	Date of Action	Effective Date	RPCs ORS	Bulletin Summary
1	19-87 Daniel F. KELLINGTON 34 DB Rptr	Reprimand	Stip	DB	1/13/2020	1/13/2020	1.15-1(a), 1.15-1(b), 1.15-1(c)	Feb/Mar 2020
2	18-186 Michael S. STERNER 34 DB Rptr	30-day suspension	Stip	DB	1/24/2020	1/31/2020	1.1, 1.3, 1.4(a), 1.4(b)	May 2020
3	18-195 Todd Stephen HAMMOND 34 DB Rptr	60-day suspension, all stayed, 2-year probation	Stip	DB	1/31/2020	1/31/2020	1.5(a), 1.8(a)	May 2020
4	19-81 Craig WYMETALEK SC S067309	Form B	--	Sct	2/20/2020	2/20/2020	1.3, 1.4(a), 1.4(b), 8.4(a)(2), 8.4(a)(3)	May 2020
5	19-128 Conrad E. YUNKER 34 DB Rptr	60-day suspension	Stip	DB	3/26/2020	6/1/2020	1.3, 1.4(a), 1.4(b)	June 2020
6	19-112 Amber N. WOLF 34 DB Rptr	Reprimand	Stip	DB	3/26/2020	3/26/2020	8.4(a)(3)	June 2020
7	20-02 Frank WALL 34 DB Rptr	60-day suspension, all stayed, 2-year probation	Stip	DB	3/31/2020	4/1/2020	1.3, 1.4(a)	June 2020
8	20-06 Caroline J. PONZINI 34 DB Rptr	Reprimand	Stip	DB	5/4/2020	5/4/2020	1.4(a), 1.15-1(d), 1.16(d)	June 2020
9	19-46 19-53 Franklin G. PATRICK 34 DB Rptr	60-day suspension	Stip	DB	5/20/2020	8/3/2020	1.7(a)(2)	October 2020
10	18-47 James D. HARRIS SC S066593 34 DB Rptr	Dismissed	CC	Sct	5/21/2020	5/21/2020	NG – 5.5(a), 5.5(b)(1), 5.5(b)(2), ORS 9.160(1)	Aug/Sept 2020
11	17-31 Erin C. WALTERS 34 DB Rptr	Disbarment	CC	DB	4/20/2020	5/21/2020	1.3, 1.4(a), 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 8.1(a)(1), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3), ORS 9.527(2)	Aug/Sept 2020
12	19-32 Brent S. TANTILLO 34 DB Rptr	60-day suspension	Stip	DB	5/21/2020	5/31/2020	3.3(a)(1), 5.3(a), 5.3(b), 5.5(a), ORS 9.160(1)	Aug/Sept 2020
13	20-18 Mary J. GRIMES	BR 7.1 suspension	--	DB	5/27/2020	5/27/2020		NA
14	18-110 19-92 20-07 Margaret Parker WASHBURN	BR 3.1 suspension	Stip	DB	6/2/2020	6/2/2020		NA
15	19-99 Maryann MEANEY 34 DB Rptr	Reprimand	Stip	DB	6/2/2020	6/2/2020	1.16(d)	Aug/Sept 2020
16	19-124 Adam FAMULARY 34 DB Rptr	30-day suspension	Stip	DB	6/2/2020	8/1/2020	3.3(a)(1), 8.4(a)(4)	October 2020
17	19-91 J. Mathew DEVORE 34 DB Rptr	Disbarment	CC	DB	5/4/2020	6/4/2020	1.2, 1.4(a), 1.4(b), 1.5(a), 8.1(a)(2), 8.4(a)(2), 8.4(a)(3)	Aug/Sept 2020

OSB DISPOSITION LIST
2020

Case No.	Case Name/Cite	Disposition	CC/Stip	Sct/ DB	Date of Action	Effective Date	RPCs ORS	Bulletin Summary
18	Matthew L. SOWA 34 DB Rptr	60-day suspension	Stip	DB	6/8/2020	6/10/2020	1.3, 1.4(a), 1.4(b)	Aug/Sept 2020
19	Stefanie BURKE 34 DB Rptr	Reprimand	Stip	DB	6/18/2020	6/18/2020	8.4(a)(4)	October 2020
20	Timothy MPM PIZZO SC S067768 34 DB Rptr	9-month suspension	Stip	Sct	7/2/2020	11/24/2021	1.1, 1.3, 1.4(a), 1.4(b), 8.1(a)(2), 8.4(a)(4)	October 2020
21	Leonard R. BERMAN 34 DB Rptr	Reprimand	Stip	DB	7/6/2020	7/6/2020	7.3(a), 7.3(b), 7.3(c)	October 2020
22	Margaret Parker WASHBURN SC S067813	Form B	--	Sct	7/16/2020	7/16/2020	1.4, 1.15-1(a), 1.15-1(b), 1.15-1(c), 1.15-1(d), 1.16(d), 8.4(a)(2), 8.4(a)(3), 8.4(a)(4)	October 2020
23	Mary J. GRIMES SC S067794	Form B	--	Sct	7/30/2020	7/30/2020	1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(d)	October 2020
24	John A. WALSH 34 DB Rptr	30-day suspension	Stip	DB	8/5/2020	8/7/2020	1.3, 1.4(a), 1.4(b), 1.8(e)	October 2020
25	Donald E. OLIVER	BR 7.1 suspension	--	DB	8/25/2020	8/25/2020		NA
26	Donald E. OLIVER	BR 7.1 suspension	--	DB	8/25/2020	8/25/2020		NA
27	W. Frank ELSASSER SC S067941	Form B	--	Sct	9/17/2020	9/17/2020	1.15-1(a), 1.15-1(b)	November 2020
28	Thomas Daniel O'NEIL 34 DB Rptr	60-day suspension	CC	DB	8/24/2020	Final 9/24/2020 Effective 10/24/2020	3.4(c), 8.1(a)(2), 8.4(a)(4)	November 2020
29	Kimberly S. BROWN 34 DB Rptr	Reprimand	Stip	DB	9/29/2020	9/29/2020	1.15-1(d), 1.16(d)	December 2020
30	Gary B. BERTONI SC S068014	Form B	--	Sct	9/30/2020	9/30/2020	1.1, 1.3, 1.4(a), 1.4(b), 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 1.16(a)(1), 1.16(d), 3.3(a)(1), 8.4(a)(2), 8.4(a)(3), 8.4(a)(4)	November 2020

OSB DISPOSITION LIST
2020

Case No.	Case Name/Cite	Disposition	CC/Stip	Sct/DB	Date of Action	Effective Date	RPCs ORS	Bulletin Summary
31	19-119 20-24 20-25 20-26 William E. CARL 34 DB Rptr	60-day suspension	Stip	DB	10/8/2020	1/2/2021	1.5(c)(3), 1.7(a)(2), 1.15-1(c), 1.16(d)	December 2020
32	20-19 Thomas S. BOOTHE SC S068033	Form B	--	Sct	11/5/2020	11/5/2020	4.4(a), 8.4(d)	January 2021
33	20-35 20-37 20-38 20-51 20-52 Donald E. OLIVER SC S068054	Form B	--	Sct	11/5/2020	11/5/2020	1.1, 1.3, 1.4(a), 1.4(b), 1.16(d), 3.4(c), 3.4(d), 8.1(c)(4)	January 2021
34	19-25 Sara Lynn ALLEN 34 DB Rptr	6-month suspension	CC	DB	10/19/2020	11/19/2020 effective 12/19/2020	8.1(a)(2)	Feb/Mar 2021
35	18-149 Christopher K. SKAGEN SC S066706 34 DB Rptr	Disbarment	CC	Sct	11/19/2020	11/19/2020	1.3, 1.4(a), 1.4(b), 1.5(a), 1.15-1(d), 1.16(d), 5.5(a), 8.1(a)(2), 8.4(a)(4)	x
36	20-53 Robert P. JOHNSON 34 DB Rptr	30-day suspension	Stip	DB	11/19/2020	11/19/2020	5.5(a), ORS 9.160(1)	January 2021
37	20-34 Brooks F. COOPER 34 DB Rptr	Reprimand	Stip	DB	11/19/2020	11/19/2020	1.15-1(b)	Feb/Mar 2021
38	19-83 Rachel Frances O'NEAL 34 DB Rptr	120-day suspension	CC	DB	10/27/2020	12/1/2020 effective 12/31/2020	1.7(a)(2), 3.7(c), 8.4(a)(2), 8.4(a)(3)	Feb/Mar 2021
39	20-48 Kevin Elliott PARKS	BR 7.1 suspension	--	DB	12/11/2020	12/11/2020		NA
40	20-40 Thomas JOHNSON 34 DB Rptr	150-day suspension	Stip	DB	12/31/2020	1/1/2021	1.3, 8.4(a)(3)	Feb/Mar 2021

APPENDIX D



