

# New Hampshire Supreme Court

## Attorney Discipline System



2020 Annual Report

## **I. OVERVIEW**

In 2020, the Attorney Discipline Office (ADO) consisted of five attorneys, one paralegal, three legal assistants, and one part-time bookkeeper. Additionally, 36 attorney volunteers and 20 lay-member volunteers participated in the three committees that process attorney discipline complaints: Complaint Screening Committee (CSC), Hearings Committee (HC) and Professional Conduct Committee (PCC).

Brian R. Moushegian (BRM) continued to serve as General Counsel with Mark P. Cornell (MPC) serving as the Deputy General Counsel and Andrea Q. Labonte (AQL) serving as the Assistant General Counsel. They are referred to collectively as General Counsel or GC in this report. Sara S. Greene (SSG) and Elizabeth M. Murphy (EMM) continued to serve as Disciplinary Counsel and Assistant Disciplinary Counsel, respectively. They are referred to collectively in this report as Disciplinary Counsel or DC.

## **II. ATTORNEY DISCIPLINE OFFICE OPERATIONS**

### **A. Informal Proceedings**

The rules and procedures that govern the attorney discipline system are set forth in Supreme Court Rules 37 and 37A. Grievances must be filed under oath and must certify that a copy has been sent to the attorney against whom the grievance was filed. Upon request, the ADO sends potential grievants the forms that fulfill those requirements. There is no form for the grievance itself. Some grievants obtain the forms from the ADO website, [www.nhattyreg.org](http://www.nhattyreg.org). Referrals are received from attorneys who are complying with their obligation under Rule of Professional Conduct (Rule) 8.3, and from judges, marital masters and court clerks who bring attorney behavior to the ADO's attention. In addition, the ADO receives a copy of each Overdraft Notice (ODN) that banking institutions send to attorneys or firms holding Client Trust Accounts, and a copy of lawsuits that are filed against attorneys. On March 13, 2020 the Governor declared a State of Emergency and closed all State Offices to the public. The New Hampshire Supreme Court subsequently issued a series of emergency orders closing the ADO to the public. In these orders, the court allowed grievances to be filed online through the ADO website. In total, the ADO received 169 grievances, ODNs and referrals in 2020.

General Counsel conduct an initial review of the grievances to determine if they should be docketed. After reviewing the 169 matters received in 2020, and the grievances remaining from 2019, 18 grievances were docketed as complaints requiring further investigation. Three other cases were docketed as complaints later, after the CSC granted requests for reconsideration. General Counsel non-docketed 147 of the remaining grievances received and pending. Non-docketed grievances do not appear on attorneys' discipline records and are not

indexed. After two years, they are destroyed.<sup>1</sup>

After a case is docketed, grievances are called complaints. All docketed cases are indexed and, once they reach certain procedural milestones, are available to the public at the ADO. The respondent (attorney) is required to answer the complaint after docketing. General Counsel gathers sufficient information pertinent to the conduct in question in order to dismiss the matter, forward the matter to DC for further action, or report to the Complaint Screening Committee. By rule, the work product and reports, as well as the deliberations of the CSC, are not public.

The CSC is comprised of five attorneys and four lay members appointed by the Supreme Court. The CSC met 11 times in 2020. Hon. Peter H. Fauver served as CSC Chair in 2020 and Peter J. Kiriakoutsos, CPA, served as Vice-Chair.

The CSC is tasked with considering and acting on requests for reconsideration of General Counsel's decisions not to docket grievances. Out of the 148 grievances non-docketed in 2020, and four grievances non-docketed in late 2019, the CSC reviewed 40 requests for reconsideration. Three requests for reconsideration were granted and were subsequently docketed for further investigation. When the CSC denies a request for reconsideration of GC's non-docket decision, the matter is closed. Pursuant to the New Hampshire Supreme Court's opinion in *Petition of Sanjeev Lath, et. al.*, 169 NH 616 (2017), grievants do not have standing to appeal the CSC's decision to uphold a non-docket decision.

The CSC also considers the reports of General Counsel's investigation of docketed complaints. In 2020, the CSC referred 13 docketed cases to Disciplinary Counsel for further action, finding that there was a reasonable likelihood that a hearing panel could find clear and convincing evidence of a violation of the Rules of Professional Conduct. The CSC dismissed five docketed cases with a finding of no professional misconduct, with two of those dismissals occurring after completion of a diversion. There were eight cases in which a request for reconsideration was pending at the end of the year and one other case that was pending at the CSC at the end of the year.

#### B. Formal Proceedings

When a matter is referred to Disciplinary Counsel (DC), it is carefully reviewed to determine what best serves the goals of the discipline process, namely protecting the public and preserving the integrity of the legal profession. As part of the assessment, DC generally meets with respondents, their counsel, witnesses (including the complainants), and New Hampshire Lawyers Assistance Program (NH LAP) representatives if issues of mental health or substance abuse are present. DC also gathers documentation from courts, banks, and third parties, as well

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<sup>1</sup> As a result of the ADO offices being closed to the public and a pending request from a member of the public to review these files, the ADO has temporarily suspended destruction of these files.

as from the respondent.

If DC determines after her investigation that there is not a likelihood of clear and convincing evidence of a Rule violation, she files a Motion to Dismiss with the PCC. DC filed two motions to dismiss cases that had been referred by the CSC, but that DC determined did not have clear and convincing evidence of a Rule violation.

When DC concludes there is sufficient evidence to prosecute a matter, she prepares a Notice of Charges (NOC) and requests the appointment of a Hearing Panel by the Hearings Committee Chair. When a NOC is issued, the file becomes public. In 2020, DC issued eight Notices of Charges involving six attorneys. One attorney had three Notices of Charges issued against him for a total of eight docketed matters.

In lieu of a contested hearing, Respondents and Disciplinary Counsel may stipulate to all or part of the facts, rule violations, and sanction. Disciplinary Counsel negotiated one stipulation to facts and rules and requested that a hearing panel be appointed to decide the sanction. In five cases, the respondents signed stipulations as to facts, rule violations, and sanction *prior to* the issuance of a NOC, and the cases were considered directly by the PCC instead of proceeding to a hearing. There was one attorney that requested he be allowed to resign while under investigation, which was forwarded to the PCC. Disciplinary Counsel requested Diversion in one case, but it was denied. Subsequently, a Notice of Charges was issued.

At the hearings level, DC participated in nine pre-hearing conferences, and one hearing on a Stipulation as to Facts, Rule Violations, and Sanction. DC also participated in three hearings on sanction after a hearing panel found a rule violation after the respondents defaulted and did not participate in the merits hearing.

The Hearings Committee Chair, Attorney Philip H. Utter, appoints a Hearing Panel from members of the Committee, which is comprised of 22 attorney members and 12 lay members. Although a Hearing Panel quorum consists of two attorneys and one non-attorney, the Chair generally appoints three attorneys and two non-attorneys to each panel. After hearing evidence in a contested hearing or reviewing stipulations that are filed after a NOC is issued, the Hearing Panel submits a written report to the PCC, making findings of fact by clear and convincing evidence; issuing rulings of law, *i.e.*, which Rules were violated; and making recommendations as to sanction. These reports are public.

The final outcome of a case is the responsibility of the PCC, subject to approval by the Supreme Court (Court) as described below. The PCC, which is comprised of eight attorney members and four lay members, met seven times in 2020. The PCC Chair is Attorney David M. Rothstein; the Vice-Chairs are Attorney Heather E. Krans and lay member Elaine Holden. By Court Rule, the New Hampshire Bar Association Vice President serves on the PCC during his or her term as Vice President. Attorney Richard C. Guerriero, Jr. completed his term on the PCC on July 31, 2020. Bar Vice President Attorney Sandra L. Cabrera started her term on the PCC on

August 1, 2020.

The PCC has the power and authority to accept diversion agreements, approve stipulations, issue protective orders, dismiss matters, and issue reprimands, public censures or suspensions not exceeding six months. In 2020 the PCC issued protective orders in three matters and denied two requests for a protective order. In addition, the PCC denied a motion to terminate proceedings, granted two requests for annulment of records, denied one request for an annulment, dismissed one case after denying approval of a diversion agreement, and denied two requests for reconsideration. The PCC considers Hearing Panel Reports, as well as the entire record, in disciplinary matters. In some cases, it hears oral arguments as to whether the Hearing Panel's recommendations should be affirmed and determines whether there is clear and convincing evidence of violations of the Rules of Professional Conduct. The PCC heard oral argument in one case in 2020.

The PCC dismissed three cases at the request of DC and issued three reprimands in 2020. When the PCC determines that a sanction greater than a six-month suspension is warranted, it submits its recommendation to the Supreme Court. During 2020, the Committee submitted three recommendations for disbarment on three lawyers, two recommendations for a one-year suspension, one recommendation for a one-year stayed suspension and one recommendation to deny a resignation request.

Some outcomes determined by the PCC or the Court involve monitoring the respondent attorney for a time certain following the resolution of a case. Among their other responsibilities, Disciplinary Counsel and staff track compliance with CLE requirements, office management improvement parameters, mental health therapy, and substance abuse treatment, and alert the PCC to any non-compliance with the terms of the conditions.

### **III. THE STATISTICS**

As of January 1, 2021, there were 26 grievances and 27 docketed complaints pending at the ADO. Eight grievances in which the grievant filed a request for reconsideration were pending with the CSC at the end of the year.

Of the docketed complaints, four were in the investigation stage with General Counsel, one was pending before the CSC, eight cases were pending with Disciplinary Counsel, five cases were pending with the Hearings Committee, two cases involving one lawyer were pending at the PCC, four cases involving two lawyers were pending with the Supreme Court and three docketed cases were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.

**Figure A** illustrates the types of underlying legal matters giving rise to docketed complaints in the past three years.

FIGURE A

<b>Underlying Legal Matters</b>	<b>2020</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>	<b>Percentage in 2018</b>
Family Law	4	18.2%	37%	29.7%
Civil Suit/Litigation	4	18.2%	27%	5.4%
Criminal	2	9.1%	7%	16.2%
Trust Account Issues	0	0%	7%	8.1%
Patent/Trademark Law	3	13.6%	7%	0%
Overdraft Notification	0	0%	3%	5.4%
Probate/Estate Planning	3	13.6%	3%	13.5%
Real Estate/Loan Modification	1	4.5%	3%	2.7%
Bankruptcy	0	0%	3%	0%
Other	2	9.1%	3%	2.7%
Employment/Workers Compensation	0	0%	0%	5.4%
Personal Injury	0	0%	0%	2.7%
Collection/Consumer Protection	0	0%	0%	2.7%
Unauthorized Practice of Law	1	4.5%	0%	2.7%
Criminal Charge against Attorney	0	0%	0%	2.7%
Landlord/Tenant	2	9.1%	0%	0%
<b>Total</b>	<b>22</b>			

Note: There were twenty-one matters docketed in 2020. Of the twenty-one matters, one docketed matter included two types of underlying legal matters (resulting in a total of 22 types of matters in 2020).

**Figure B** shows the distribution of the sources of the matters docketed in 2020. Referrals from clients became the most common source of complaints in 2020.

FIGURE B

<b>Docketed Complaint Filed By</b>	<b>2020</b>	<b>Percentage In 2020</b>	<b>Percentage in 2019</b>	<b>Percentage in 2018</b>
Client	7	33.3%	23%	40.5%
Opposing Party	5	23.8%	20%	10.8%
Court Referral	4	19.0%	20%	18.9%
Attorney Referral	3	14.3%	13%	10.8%
Self-report	1	4.8%	10%	8.1%
ADO Generated	0	0%	7%	0%
Bank Referral/ODN	0	0%	4.8%	5.4%
Other	1	4.8%	3.5%	5.4%
<b>Total</b>	<b>21</b>			

**Figure C** shows the number of years the respondent was admitted to practice in New Hampshire at the time the complaint was docketed.

FIGURE C

	2020	Percentage In 2020	Percentage in 2019	Percentage in 2018
1 – 5 years in practice	2*	11.8%	14%	5.4%
6 – 10 years in practice	1	5.9%	5%	10.8%
11 – 15 years in practice	3	17.6%	14%	16.2%
16 – 20 years in practice	4**	23.5%	5%	8.1%
21 – 25 years in practice	1	5.9%	19%	16.2%
26 – 30 years in practice	0	0%	5%	13.5%
31 – 35 years in practice	4**	23.5%	19%	5.4%
36+ years in practice	2	11.8%	19%	24.3%
<b>Total Attorneys</b>	<b>17</b>			

\*One attorney had 3 cases docketed against him but is only counted once.

\*\* Two attorneys had 2 cases docketed against them but are only counted once.

The CSC considered 68 matters in 2020 with the outcomes shown in **Figure D**.

FIGURE D

	2020	2019	2018
Requests to Reconsider Matters Not Docketed (denied)	40	34	20
Matters Docketed upon Reconsideration of Non-docket	3	2	1
Requests to Reconsider CSC Dismissals (denied)	1	1	3
Matters Referred to Disciplinary Counsel	13	18	24
Dismissals with no Professional Misconduct	5	5	12
Diversion Proposed	3	1	0
Diversion Completed, Case Closed	3	4	2
<b>Total</b>	<b>68</b>	<b>65</b>	<b>62</b>

**Figure E** is a listing of the Rules of Professional Conduct violations found in 2020. Some matters resulted in multiple Rule violations and two lawyers had discipline imposed in three and six different complaints respectively. These complaints were consolidated. All matters necessarily also include a violation of Rule 8.4(a).

FIGURE E

	2020	2019	2018
<b>Rule 1: Client-Lawyer Relationship</b>			
1.1 Competence	8	5	6
1.2 Scope of Representation	1	1	1
1.3 Diligence	8	3	6
1.4 Communication	7	3	8
1.5 Fees	1	2	2
1.6 Confidentiality	0	1	1
1.7 Conflict	0	1	4
1.8 Other Conflict	1	1	0
1.9 Conflict – Former Client	0	0	1
1.14 Client with Diminished Capacity	0	0	0
1.15 Safekeeping Property	6	9	7
1.16 Terminate Relationship with Client	4	0	0
1.19 Disclosure of Information to the Client	0	0	0
<b>Rule 3: Advocate</b>			
3.1 Meritorious Claims and Contentions	0	2	1
3.2 Expediting Litigation	0	0	0
3.3 Candor to Court	6	3	5
3.4 Fairness to Opposing Party	6	2	1
3.5 Impartiality and Decorum of the Tribunal	1	1	0
<b>Rule 4: Transactions with Persons other than Clients</b>			
4.1 Truthfulness in Statements to Others	0	1	2
4.4 Respect for Rights of Third Persons	0	0	0
<b>Rule 5: Law Firms and Associations</b>			
5.3 Responsibilities Regarding Non-lawyer Assistants	1	1	0
5.4 Professional Independence of a Lawyer	0	0	0
5.5(a) Unauthorized Practice	1	2	0
<b>Rule 8: Integrity of the Profession</b>			
8.1(a) False Statement of Material Fact	0	0	1
8.1(b) Failure to Correct a Misapprehension	1	1	0
8.1(c) Failure to Attend Disciplinary Hearing	9	0	0
8.4(b) Criminal Act	0	1	1
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	1	4	6
8.4(d) Influence of Government Official	0	0	0
Supreme Court Rule 50	3	6	3
<b>Total Violations</b>	<b>65</b>	<b>50</b>	<b>56</b>



The PCC made the determinations and findings shown in **Figure F**. The PCC considers the Rule(s) violated, and balances mitigating and aggravating factors, when deciding the outcome of a case. If an attorney had findings in multiple docketed matters, he/she is only counted once. Effective July 1, 2018, the PCC no longer acts on requests for reciprocal discipline. Those matters are now handled directly by the Supreme Court.

FIGURE F

	2020	2019	2018
Closed Without Prejudice	0	2	3
Dismissal	3	2	6
Remand Case to Hearing Panel for Sanction Hearing	0	0	1
Reject Stipulation and Remand Case to Disciplinary Counsel	0	2	2
Approved Diversion by Agreement	0	1	4
Rejected Diversion by Agreement	1	1	0
Approved Stipulation to Facts, Rules and Reprimand	2	6	5
Approved Stipulation to Facts, Rules and Public Censure	0	0	2
Approved Stipulation to Facts, Rules and Public Censure Stayed	0	1	0
Approved Stipulation to Facts, Rules and 6 Mo. Suspension	0	0	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension	1	0	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension Stayed	1	0	0
Approved Stipulation to Facts, Rules and 2 Yr. Suspension	0	1	0
Approved Stipulation to Facts, Rules and 2 Yr. Suspension Stayed	0	1	0
Approved Stipulation to Facts, Rules and 3 Yr. Suspension	0	0	0
Approved Stipulation to Facts, Rules and Disbarment	0	1	3
Sanction issued after Motion to Impose Stayed Sanction:			
Reprimand	0	1	0
3 Mo. Suspension Stayed	0	1	0
6 Mo. Suspension	0	0	0
Recommend Disbarment	0	0	0
Sanction issued after a Hearing:			
Reprimand	1	2	1
Public Censure	0	1	1
6 Mo. Suspension	0	0	0
Recommend 1 yr. Suspension	1	0	0
Recommend 2 yr. Suspension	0	1	1
Recommend 3 yr. Suspension	0	1	0
Recommend Disbarment	3	0	1
Recommendation to Approve Request to Resign Under Discipline	0	1	0
Recommendation to Deny Request to Resign Under Discipline	1	0	1
Grant Motion for Protective Order	3	2	1
Deny Motion for Protective Order	2	1	0
Deny Motion to Terminate Proceedings	1	0	0
Grant Motion for Alternate Service	0	1	0
Deny Request for Reconsideration	2	1	1
Extension of Stayed Sanction	0	0	0
Dismissal\Closed Following Diversion or Monitoring	2	5	10

	2020	2019	2018
Annulment Denied	1	1	0
Annulment Granted	2	0	0
Request for reinstatement forwarded to Hearings Committee	0	0	1
Recommendation to approve reinstatement with conditions	0	1	0
<b>Total</b>	<b>27</b>	<b>38</b>	<b>46</b>

#### **IV. OTHER**

When a solo practitioner is disbarred, suspended, incapacitated or dies, the ADO will recommend to the Supreme Court the appointment of an attorney to inventory the solo practitioner’s files and IOLTA accounts. The ADO then locates and provides to the Supreme Court the names of attorneys who have agreed to be considered for appointment. If the Supreme Court appoints an attorney, the ADO provides guidance to the appointed attorney on how to conduct the inventory. The ADO has begun to conduct inventories in-house. In 2020, the ADO was appointed to conduct inventories in two matters. In addition, the ADO continued to inventory the client files in a matter in which it was appointed in 2019.

Staff attorneys served as faculty in a variety of educational programs in 2020. These programs included New Hampshire Bar Association CLEs: Best Practices for Closing a Law Practice (MPC); 14th Annual Ethics CLE (EMM); and How NHLAP Works (BRM). In addition, ADO staff attorneys served as guest lecturers at the UNH Law School Professional Responsibility classes in the spring (MPC) and fall (SSG & MPC) semesters. Finally, the ADO also presented a CLE on Common Issues with IOLTA Accounts to the Inns of Court (MPC) and an ethics CLE for state workers (SSG & MPC).

ADO attorneys are also active in the New Hampshire Bar Association. General Counsel Brian Moushegian serves on the Committee for the Cooperation with the Courts. Currently, Disciplinary Counsel Sara Greene sits on the Rules Advisory Committee as the ADO designee. Deputy General Counsel Mark Cornell is on the Committee on Lawyer Referral Services and Assistant General Counsel Andrea Labonte is a member of the governing board for the New Hampshire Pro Bono Referral Program.

#### **V. ATTORNEY DISCIPLINE MATTERS AT THE SUPREME COURT**

Pursuant to Supreme Court Rule 37(9), General Counsel must notify the Court when lawyers have been indicted or convicted of serious crimes and may file petitions for interim suspension or disbarment as appropriate in those cases. In 2020, the ADO did not receive any notifications that an attorney had been convicted of a serious crime. No interim suspensions were requested in 2020.

General Counsel also filed two requests for reciprocal discipline stemming from

discipline in other jurisdictions. The Supreme Court issued public censures in both matters.

After reviewing matters filed by the PCC, the Supreme Court disbarred one lawyer, suspended two lawyers for one year each, issued a stayed one-year suspension in another matter, suspended one lawyer for two years, and suspended one lawyer for three years (with part of the term of suspension stayed). The Court denied one request to resign while a disciplinary case was pending. The Court also issued reciprocal discipline in three cases and reinstated one attorney that had previously been suspended in a reciprocal case. Finally, the Court dismissed an appeal of the Professional Conduct Committee's denial of a request for a protective order.

Two matters involving PCC recommendations and one Petition for Original Jurisdiction were pending with the Court at year's end.

## **VI. CONCLUSION**

As of December 31, 2020, there were 26 grievances and 27 docketed matters pending at the ADO. Of the docketed matters, four were in the investigation stage with General Counsel and one docketed matter awaiting a decision by the CSC. Eight requests for reconsideration of matters not docketed by GC were pending with the CSC at the end of the year.

There were eight docketed matters involving seven lawyers pending with Disciplinary Counsel, five docketed matters were pending with the Hearings Committee, two docketed matters involving one lawyer were pending at the PCC, four docketed matters involving two lawyers were pending with the Supreme Court and three docketed matters were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.