

# New Hampshire Supreme Court

## Attorney Discipline System



2021 Annual Report

## **I. OVERVIEW**

In 2021, 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. The ADO continues to receive grievances through the website. In total, the ADO received 174 grievances, ODNs and referrals in 2021.

General Counsel conduct an initial review of the grievances to determine if they should be docketed. After reviewing the 174 matters received in 2021, and the grievances remaining from 2020, 21 grievances were docketed as complaints requiring further investigation. One other case was docketed as a complaint 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 2021. Hon. Peter H. Fauver served as CSC Chair in 2021 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 147 grievances non-docketed in 2021, and five grievances non-docketed in late 2020, the CSC reviewed 46 requests for reconsideration. Four requests for reconsideration on non-docketed matters were granted. One reconsidered matter was docketed for further investigation, while the CSC offered diversion in the other three matters. Those matters were dismissed at the completion of the diversion. When the CSC denies a request for reconsideration of GC's non-docket decision, the matter is closed. See *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 2021, the CSC referred 12 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 four docketed cases with a finding of no professional misconduct, with one of the dismissals occurring after completion of a diversion.

#### 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

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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 had temporarily suspended destruction of these files. The ADO resumed the destruction of files in September 2021.

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 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 one motion to dismiss a case that had been referred by the CSC, where DC determined there was not 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 2021, DC issued two Notices of Charges involving two attorneys. One attorney had three matters that were consolidated in 2021 which resulted in two Notices of Charges issued against him for a total of three 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 involving two matters and requested that a hearing panel be appointed to decide the sanction. In three 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 she be allowed to resign while under investigation, which was forwarded to the PCC. Disciplinary Counsel requested Diversion in two cases.

At the hearings level, DC participated in seven pre-hearing conferences and nine days of hearings on the merits involving three separate matters. DC also participated in one hearing on sanction after a hearing panel found a rule violation after the respondent defaulted and did not participate in the merits hearing.

The Hearings Committee Chair, Attorney Philip H. Utter, appoints Hearing Panels from members of the Committee, which is comprised of three attorney members and two 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 five times in 2021. 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 Sandra L. Cabrera completed her term on the PCC on July 31, 2021. Bar Vice President Attorney Jonathan M. Eck started his term on the PCC on August 1, 2021.

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 2021 the PCC issued protective orders in four matters and denied one request for a protective order. In addition, the PCC denied one motion to terminate proceedings and annulled one matter. 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 dismissed one case at the request of DC, closed one case without prejudice, approved two diversion agreements, issued six Public Censures (three were reciprocal discipline) and issued one stayed six-month suspension in 2021. When the PCC determines that a sanction greater than a six-month suspension is warranted, it submits its recommendation to the Supreme Court. During 2021, the Committee submitted two recommendations for disbarment on two lawyers, 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, 2022, there were 21 grievances and 28 docketed complaints pending at the ADO. One grievance in which the grievant filed a request for reconsideration was pending with the CSC at the end of the year.

Of the docketed complaints, two were in the investigation stage with General Counsel, eleven cases were pending with Disciplinary Counsel, five cases were pending with the Hearings Committee, three cases involving two lawyers were pending with the Supreme Court and seven 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>2021</b>	<b>Percentage in 2021</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>
Family Law	3	14.3%	18.2%	37%
Civil Suit/Litigation	1	4.8%	18.2%	27%
Criminal	3	14.3%	9.1%	7%
Trust Account Issues	0	0%	0%	7%
Patent/Trademark Law	0	0%	13.6%	7%
Overdraft Notification	0	0%	0%	3%
Probate/Estate Planning	3	14.3%	13.6%	3%
Real Estate/Loan Modification	2	9.5%	4.5%	3%
Bankruptcy	0	0%	0%	3%
Other	3	14.3%	9.1%	3%
Employment/Workers Compensation	1	4.8%	0%	0%
Personal Injury	2	9.5%	0%	0%
Collection/Consumer Protection	1	4.8%	0%	0%
Unauthorized Practice of Law	0	0%	4.5%	0%
Criminal Charge against Attorney	1	4.8%	0%	0%
Landlord/Tenant	1	4.8%	9.1%	0%
<b>Total</b>	<b>21</b>			

**Figure B** shows the distribution of the sources of the matters docketed in 2021. Referrals from clients remained the most common source of complaints in 2021.

FIGURE B

<b>Docketed Complaint Filed By</b>	<b>2021</b>	<b>Percentage In 2021</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>
Client	6	28.6%	33.3%	23%
Opposing Party	6	28.6%	23.8%	20%
Court Referral	3	14.3%	19.0%	20%
Attorney Referral	3	14.3%	14.3%	13%
Self-report	1	4.8%	4.8%	10%
ADO Generated	1	4.8%	0%	7%
Bank Referral/ODN	0	0%	0%	4.8%
Other	1	4.8%	4.8%	3.5%
<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

	<b>2021</b>	<b>Percentage in 2021</b>	<b>Percentage in 2020</b>	<b>Percentage in 2019</b>
1 – 5 years in practice	0	0%	11.8%	14%
6 – 10 years in practice	1	5.6%	5.9%	5%
11 – 15 years in practice	3	16.7%	17.6%	14%
16 – 20 years in practice	2	11.1%	23.5%	5%
21 – 25 years in practice	2	11.1%	5.9%	19%
26 – 30 years in practice	1	5.6%	0%	5%
31 – 35 years in practice	7	38.9%	23.5%	19%
36+ years in practice	2	11.1%	11.8%	19%
<b>Total Attorneys</b>	<b>18</b>			

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

\*\* Another attorney had 3 cases docketed against them, but is only counted once.

The CSC considered 63 matters in 2021 with the outcomes shown in **Figure D**.

FIGURE D

	<b>2021</b>	<b>2020</b>	<b>2019</b>
Requests to Reconsider Matters Not Docketed (denied)	42	40	34
Matters Docketed upon Reconsideration of Non-docket	1	3	2
Requests to Reconsider CSC Dismissals (denied)	1	1	1
Matters Referred to Disciplinary Counsel	12	13	18
Dismissals with no Professional Misconduct	3	5	5
Diversion Proposed	4	3	1
Diversion Completed, Case Closed	3	3	4
<b>Total</b>	<b>66</b>	<b>68</b>	<b>65</b>

**Figure E** is a listing of the Rules of Professional Conduct violations found in 2021. 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

	2021	2020	2019
<b>Rule 1: Client-Lawyer Relationship</b>			
1.1 Competence	5	8	5
1.2 Scope of Representation	3	1	1
1.3 Diligence	4	8	3
1.4 Communication	4	7	3
1.5 Fees	0	1	2
1.6 Confidentiality	0	0	1
1.7 Conflict	0	0	1
1.8 Other Conflict	0	1	1
1.9 Conflict – Former Client	0	0	0
1.14 Client with Diminished Capacity	0	0	0
1.15 Safekeeping Property	0	6	9
1.16 Terminate Relationship with Client	3	4	0
1.19 Disclosure of Information to the Client	0	0	0
<b>Rule 3: Advocate</b>			
3.1 Meritorious Claims and Contentions	1	0	2
3.2 Expediting Litigation	0	0	0
3.3 Candor to Court	0	6	3
3.4 Fairness to Opposing Party	1	6	2
3.5 Impartiality and Decorum of the Tribunal	0	1	1
<b>Rule 4: Transactions with Persons other than Clients</b>			
4.1 Truthfulness in Statements to Others	0	0	1
4.2 Communication with Person Represented by Counsel	1	0	0
<b>Rule 5: Law Firms and Associations</b>			
5.3 Responsibilities Regarding Non-lawyer Assistants	0	1	1
5.4 Professional Independence of a Lawyer	0	0	0
5.5(a) Unauthorized Practice	0	1	2
<b>Rule 8: Integrity of the Profession</b>			
8.1(a) False Statement of Material Fact	4	0	0
8.1(b) Failure to Correct a Misapprehension	0	1	1
8.1(c) Failure to Attend Disciplinary Hearing	0	9	0
8.4(b) Criminal Act	0	0	1
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	0	1	4
8.4(d) Influence of Government Official	0	0	0
Supreme Court Rule 50	0	3	6
<b>Total Violations</b>	<b>25</b>	<b>65</b>	<b>50</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. Requests for reciprocal discipline are now handled directly by the Supreme Court.

FIGURE F

	2021	2020	2019
Closed Without Prejudice	1	0	2
Dismissal	1	3	2
Remand Case to Hearing Panel for Sanction Hearing	0	0	0
Reject Stipulation and Remand Case to Disciplinary Counsel	0	0	2
Approved Diversion by Agreement	2	0	1
Rejected Diversion by Agreement	0	1	1
Approved Stipulation to Facts, Rules and Reprimand	0	2	6
Approved Stipulation to Facts, Rules and Public Censure	3	0	0
Approved Stipulation to Facts, Rules and Public Censure Stayed	0	0	1
Approved Stipulation to Facts, Rules and 6 Mo. Suspension Stayed	1	0	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension	0	1	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension Stayed	0	1	0
Approved Stipulation to Facts, Rules and 2 Yr. Suspension	0	0	1
Approved Stipulation to Facts, Rules and 2 Yr. Suspension Stayed	0	0	1
Approved Stipulation to Facts, Rules and 3 Yr. Suspension	0	0	0
Approved Stipulation to Facts, Rules and Disbarment	1	0	1
Sanction issued after Motion to Impose Stayed Sanction:			
Reprimand	0	0	1
3 Mo. Suspension Stayed	0	0	1
6 Mo. Suspension	0	0	0
Recommend Disbarment	0	0	0
Sanction issued after a Hearing:			
Reprimand	0	1	2
Public Censure	0	0	1
6 Mo. Suspension	0	0	0
Recommend 1 yr. Suspension	0	1	0
Recommend 2 yr. Suspension	0	0	1
Recommend 3 yr. Suspension	0	0	1
Recommend Disbarment	1	3	0
Recommendation to Approve Request to Resign Under Discipline	0	0	1
Recommendation to Deny Request to Resign Under Discipline	1	1	0
Grant Motion for Protective Order	4	3	2
Deny Motion for Protective Order	1	2	1
Deny Motion to Terminate Proceedings	2	1	0
Grant Motion for Alternate Service	0	0	1
Deny Request for Reconsideration	0	2	1
Extension of Stayed Sanction	0	0	0

	2021	2020	2019
Dismissal\Closed Following Diversion or Monitoring	3	2	5
Annulment Denied	0	1	1
Annulment Granted	1	2	0
Request for reinstatement forwarded to Hearings Committee	1	0	0
Recommendation to approve reinstatement with conditions	1	0	1
<b>Total</b>	<b>24</b>	<b>27</b>	<b>38</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 has begun to conduct inventories in-house. In 2021, the ADO was appointed to conduct inventories in six matters. In addition, the ADO continued to inventory the client files in matters in which it was appointed in 2020. In appropriate cases, the ADO may seek to have an outside attorney appointed by the Supreme Court to conduct the inventory. If the Supreme Court appoints an outside attorney, the ADO provides guidance to the appointed attorney on how to conduct the inventory.

Staff attorneys served as faculty in a variety of educational programs in 2021. These programs included New Hampshire Bar Association CLEs: Best Practices for Closing a Law Practice; 15th Annual Ethics CLE; and How NHLAP Works. In addition, ADO staff attorneys served as guest lecturers at the UNH Law School Professional Responsibility classes in the spring and fall semesters. Finally, the ADO also presented a CLE on Common Issues with IOLTA Accounts to the Inns of Court and an ethics CLE for state workers.

The ADO has completed the first of a series of videos of continuing legal education programs, entitled "IOLTA/Trust Account Compliance: The Big Picture." A link to this free one-hour CLE program is on the ADO's website. Future videos will address trust accounting and compliance with Rule of Professional Conduct 1.15 and Supreme Court Rule 50.

ADO attorneys are also active in the New Hampshire Bar Association. General Counsel Brian Moushegian serves on the Committee on 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.

#### **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 2021, the ADO received one notification that an attorney had been convicted of a serious crime. Four interim suspensions were requested in 2021.

General Counsel also filed four requests for reciprocal discipline stemming from discipline in other jurisdictions. The Supreme Court remanded three of the matters to the PCC to issue public censures and issued a two-year suspension in the fourth. The Court also closed two matters following compliance with orders.

After reviewing matters filed by the PCC, the Supreme Court disbarred three lawyers and suspended four lawyers on an interim basis. The Court granted two requests for reinstatement.

## **VI. CONCLUSION**

As of December 31, 2021, there were 21 grievances and 28 docketed matters pending at the ADO. Of the docketed matters, two were in the investigation stage with General Counsel. One request for reconsideration of a matter not docketed by GC were pending with the CSC at the end of the year.

There were eleven docketed matters involving 10 lawyers pending with Disciplinary Counsel, Five docketed matters were pending with the Hearings Committee, no docketed matters were pending at the PCC, three docketed matters involving two lawyers were pending with the Supreme Court and seven docketed matters were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.