

New Hampshire Supreme Court

Attorney Discipline System



2022 Annual Report

I. OVERVIEW

In 2022, the Attorney Discipline Office (ADO) consisted of five attorneys, one paralegal, three legal assistants, and one part-time bookkeeper. Additionally, 33 attorney volunteers and 15 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. 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) for Client Trust Accounts that banking institutions send to attorneys or firms, 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 220 grievances, ODNs and referrals in 2022.

General Counsel conduct an initial review of the grievances to determine if they should be docketed. After reviewing the 220 matters received in 2022, and the grievances remaining from 2021, 18 grievances were docketed as complaints requiring further investigation. One of the docketed complaints was later non-docketed by General Counsel. General Counsel non-docketed 193 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.

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, close the matter without prejudice, 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. General Counsel dismissed two docketed matters and closed three docketed matters without prejudice following the Supreme Court allowing the respondent to resign while under investigation in another matter.

The CSC is comprised of five attorneys and four lay members appointed by the Supreme Court. The CSC met eight times in 2022. Attorney Julian B. Jefferson served as CSC Chair in 2022 and Janet L. Ackerman 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 193 grievances non-docketed in 2022, and 5 grievances non-docketed in late 2021, the CSC reviewed 38 requests for reconsideration. All but one of the requests for reconsideration on non-docketed matters were denied, with the CSC offering diversion in one reconsidered matter. That matter was 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 2022, the CSC referred eight 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.

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 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 2022, DC issued three Notices of Charges involving three attorneys. One attorney had two matters that were consolidated in 2022 which resulted in one Notice of Charges issued against him for a total of two 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. In one case Disciplinary Counsel negotiated a signed stipulation as to facts, rule violations, and sanction *prior to* the issuance of a NOC, and the case was considered directly by the PCC instead of proceeding to a hearing. There were two attorneys that requested they be allowed to resign while under investigation. One case was forwarded to the PCC and the other one was filed directly with the Supreme Court. Disciplinary Counsel filed motions to close without prejudice in two cases involving respondents who were disbarred or allowed to resign in other matters.

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

The Hearings Committee Chair, Attorney Barbara Keshen, appoints Hearing Panels from members of the Committee. 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.

In 2022, the Hearings Committee Chair assigned 3 Hearing Panels. Four pre-hearing conferences were held, 5 days of hearings on the merits were held and 4 days of sanction hearings. The Hearing Panels issued six hearing panel reports with recommendations for two disbarments, one 6-month suspension, one dismissal, one recommendation to deny a request for reinstatement and one recommendation to close four matters without prejudice since the respondent had been disbarred on the basis of criminal convictions.

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 eight times in 2022. The PCC Chair is Attorney Stephanie C. Hausman; the Vice-Chairs are Attorney Caroline K. Leonard and lay member Kathleen M. Ames. By Court Rule, the New Hampshire Bar Association Vice President serves on the PCC during his or her term as Vice President. Attorney Jonathan M. Eck completed his term on the PCC on July 31, 2022. Bar Vice President Attorney Kathleen M. Mahan started her term on the PCC on November 10, 2022.

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 2022 the PCC issued protective orders in six matters. In addition, the PCC denied one motion to dismiss a matter 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. In 2022, the PCC heard oral argument in three cases.

In 2022, the PCC dismissed one case at the request of DC, closed six cases without prejudice, issued one Public Censure for reciprocal discipline and issued one six-month suspension. When the PCC determines that a sanction greater than a six-month suspension is warranted, it submits its recommendation to the Supreme Court. During 2022, the Committee submitted one recommendation for a one-year suspension and two recommendations for disbarment.

The PCC also denied a request for reconsideration of a PCC order, stayed reinstatement proceedings upon the request of the parties, extended post-reinstatement conditions in one matter, and remanded one matter to the Hearings Committee for a sanction hearing. The PCC closed three cases following compliance with a discipline order and dismissed two matters following compliance with diversion.

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. There was one case in which DC was required to monitor the respondent.

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, 2 were in the investigation stage with General Counsel, 11 cases were pending with Disciplinary Counsel, 5 cases were pending with the Hearings Committee, 3 cases involving 2 lawyers were pending with the Supreme Court and 7 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

Underlying Legal Matters	2022	Percentage in 2022	Percentage in 2021	Percentage in 2020
Family Law	2	11.7%	14.3%	18.2%
Civil Suit/Litigation	6	35.3%	4.8%	18.2%
Criminal	1	5.9%	14.3%	9.1%
Trust Account Issues	0	0%	0%	0%
Patent/Trademark Law	0	0%	0%	13.6%
Overdraft Notification/Financial	2	11.8%	0%	0%
Probate/Estate Planning	1	5.9%	14.3%	13.6%
Real Estate/Loan Modification	0	0%	9.5%	4.5%
Bankruptcy	0	0%	0%	0%
Other	3	17.6%	14.3%	9.1%
Employment/Workers Compensation	0	0%	4.8%	0%
Personal Injury	1	5.9%	9.5%	0%
Collection/Consumer Protection	0	0%	4.8%	0%
Unauthorized Practice of Law	0	0%	0%	4.5%
Criminal Charge against Attorney	0	0%	4.8%	0%
Landlord/Tenant	1	5.9%	4.8%	9.1%
Total	17	100%		

Figure B shows the distribution of the sources of the matters docketed in 2022. Court referrals were the most common source of complaints docketed in 2022.

FIGURE B

Docketed Complaint Filed By	2022	Percentage in 2022	Percentage in 2021	Percentage in 2020
Client	5	29.4%	28.6%	33.3%
Opposing Party	3	17.6%	28.6%	23.8%
Court Referral	6	35.3%	14.3%	19.0%
Attorney Referral	1	5.9%	14.3%	14.3%
Self-report	0	0%	4.8%	4.8%
ADO Generated	1	5.9%	4.8%	0%
Bank Referral/ODN	1	5.9%	0%	0%
Other	0	0%	4.8%	4.8%
Total	17	100%		

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

	2022	Percentage in 2022	Percentage in 2021	Percentage in 2020
1 – 5 years in practice	1	7.7%	0%	11.8%
6 – 10 years in practice	1*	7.7%	5.6%	5.9%
11 – 15 years in practice	1	7.7%	16.7%	17.6%
16 – 20 years in practice	1	7.7%	11.1%	23.5%
21 – 25 years in practice	2**	15.4%	11.1%	5.9%
26 – 30 years in practice	0	0%	5.6%	0%
31 – 35 years in practice	3	23.1%	38.9%	23.5%
36+ years in practice	4**	30.7%	11.1%	11.8%
Total Attorneys	13	100%		

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

** Two other attorneys had 2 cases docketed against each of them, but are counted once.

The CSC considered 47 matters in 2022 with the outcomes shown in **Figure D**.

FIGURE D

	2022	2021	2020
Requests to Reconsider Matters Not Docketed (denied)	37	42	40
Matters Docketed upon Reconsideration of Non-docket	0	1	3
Diversion Proposed following Request to Reconsider	1	0	0
Requests to Reconsider CSC Dismissals (denied)	0	1	1
Matters Referred to Disciplinary Counsel	8	12	13
Dismissals with no Professional Misconduct	0	3	5
Diversion Proposed	0	4	3
Diversion Completed, Case Closed	1	3	3
Total	47	66	68

Figure E is a listing of the Rules of Professional Conduct violations found in 2022. All matters necessarily also include a violation of Rule 8.4(a).

FIGURE E

	2022	2021	2020
Rule 1: Client-Lawyer Relationship			
1.1 Competence	1	5	8
1.2 Scope of Representation	0	3	1
1.3 Diligence	2	4	8
1.4 Communication	1	4	7
1.5 Fees	0	0	1
1.7 Conflict	0	0	0
1.8 Other Conflict	0	0	1
1.15 Safekeeping Property	1	0	6
1.16 Terminate Relationship with Client	0	3	4
Rule 3: Advocate			
3.1 Meritorious Claims and Contentions	0	1	0
3.2 Expediting Litigation	0	0	0
3.3 Candor to Court	1	0	6
3.4 Fairness to Opposing Party	0	1	6
3.5 Impartiality and Decorum of the Tribunal	0	0	1
Rule 4: Transactions with Persons other than Clients			
4.1 Truthfulness in Statements to Others	0	0	0
4.2 Communication with Person Represented by Counsel	0	1	0
4.4 Respect for Rights of Third Person	1	0	0
Rule 5: Law Firms and Associations			
5.3 Responsibilities Regarding Non-lawyer Assistants	0	0	1
5.5(a) Unauthorized Practice	0	0	1
Rule 8: Integrity of the Profession			
8.1(a) False Statement of Material Fact	0	4	0
8.1(b) Failure to Correct a Misapprehension	0	0	1
8.1(c) Failure to Attend Disciplinary Hearing	0	0	9
8.4(b) Criminal Act	1	0	0
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	1	0	1
Supreme Court Rule 50	1	0	3
Total Violations	10	25	65

Note: These figures do not include charges that could have been found if respondent had not resigned while under investigation

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.

FIGURE F

	2022	2021	2020
Closed Without Prejudice	3*	1	0
Dismissal	1	1	3
Denied Motion to Reconsider	3	0	0
Denied Request for Electronic Copy of File	1	0	0
Denied Request for Disability Accommodations	1	0	0
Remand Case to Hearing Panel for Sanction Hearing	1	0	0
Approved Diversion by Agreement	0	2	0
Rejected Diversion by Agreement	0	0	1
Approved Stipulation to Facts, Rules and Reprimand	0	0	2
Approved Stipulation to Facts, Rules and Public Censure	0	3	0
Approved Stipulation to Facts, Rules and 6 Mo. Suspension Stayed	0	1	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension	0	0	1
Approved Stipulation to Facts, Rules and 1 Yr. Suspension Stayed	1	0	1
Approved Stipulation to Facts, Rules and Disbarment	0	1	0
Sanction issued after a Hearing:			
Reprimand	0	0	1
6 Mo. Suspension	1	0	0
Recommend 1 yr. Suspension	0	0	1
Recommend Disbarment	2	1	3
Reciprocal Discipline Issued	1	3	2
Recommendation to Approve Request to Resign Under Discipline	0	0	0
Recommendation to Deny Request to Resign Under Discipline	1	1	1
Grant Motion for Protective Order	6	4	3
Deny Motion for Protective Order	0	1	2
Deny Motion to Terminate Proceedings	2	2	1
Deny Request for Reconsideration	2	0	2
Extension of Post Reinstatement Conditions	1	0	0
Dismissal\Closed Following Diversion or Monitoring	6	3	2
Annulment Denied	0	0	1
Annulment Granted	1	1	2
Request for reinstatement forwarded to Hearings Committee	0	1	0
Recommendation to approve reinstatement with conditions	0	1	0
Grant Motion to Stay Reinstatement Proceedings	1	0	0
Total	35	24	27

* One attorney had 4 consolidated matters closed without prejudice.

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 generally conducts inventories in-house. In 2022, the ADO was appointed to conduct inventories in four matters. In addition, the ADO continued to inventory the client files in matters in which it was appointed in 2021. 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. There was one case in which outside counsel was appointed. General Counsel completed inventories in four matters that had been assigned in 2021 and the cases were closed by the Supreme Court in 2022.

Staff attorneys served as faculty in a variety of educational programs in 2022. These programs included presentations to the Nashua Bar Association (MPC), the New Hampshire Bar Association Annual Ethics Program (EMM), June Practical Skills Program (BRM/MPC), the Federal Court (BRM), the New Lawyers Committee (MPC), the Gender Equality Committee (AL), the Federal Practice Institute (SSG), the Daniel Webster-Batchelder American Inn of Court (MPC/AQL), the Charles C. Doe American Inn of Court (MPC/AQL), and the December Practical Skills Program (BRM/EMM/MPC). In addition, ADO staff attorneys served as guest lecturers at the UNH Law School Professional Responsibility classes in the spring semester.

ADO attorneys are also active on New Hampshire Bar Association and Court committees. 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 2022, the ADO received two notifications that an attorney had been convicted of a serious crime. Both of these attorneys were disbarred.

General Counsel also filed three requests for reciprocal discipline stemming from discipline in other jurisdictions. The Supreme Court remanded two of the matters to the PCC to issue public censures and the third matter is still pending.

Disciplinary counsel notified the Supreme Court in one matter of a conviction of a serious crime but the court remanded the matter back to Disciplinary Counsel. The Court also granted two requests for interim suspension filed by Disciplinary Counsel. Contested hearings were held by a judicial referee in those matters; both suspensions were upheld. One request had

been filed in 2021. Two attorneys requested to resign while under investigation. Those requests were granted by the Supreme Court.

After reviewing matters filed by the PCC, the Supreme Court disbarred one lawyer and suspended one attorney for one year. The Court also referred one request for reinstatement to the PCC for a recommendation.

VI. CONCLUSION

As of December 31, 2022, there were 29 grievances and 27 docketed matters pending at the ADO. Of the docketed matters, 5 were in the investigation stage with General Counsel and 3 were pending with the CSC. Six requests for reconsideration of matters not docketed by GC were pending with the CSC at the end of the year.

There were 11 docketed matters involving 10 lawyers pending with Disciplinary Counsel, 2 docketed matters were pending with the Hearings Committee, 3 docketed matters were pending with the Supreme Court and 3 docketed matters were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.