

New Hampshire Supreme Court

Attorney Discipline System



2023 Annual Report

I. OVERVIEW

In 2023, Attorney Discipline Office (ADO) staff consisted of five attorneys, one paralegal, three legal assistants, and one part-time office administrator. Additionally, 33 attorney volunteers and 14 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, Mark P. Cornell (MPC) continued to serve as the Deputy General Counsel and Andrea Q. Labonte (AQL) continued to serve 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. Pursuant to the Rules, 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 malpractice lawsuits that are filed against attorneys. Grievances may also be filed online through the ADO website. In total, the ADO received 209 grievances, ODNs and referrals in 2023.

In every case, General Counsel conduct an initial review of the grievances to determine if they should be docketed. After reviewing the 209 matters received in 2023, and the grievances remaining from 2022, 28 grievances were docketed as complaints requiring further investigation. General Counsel non-docketed 181 of the remaining grievances received and pending. In addition, two matters were dismissed by General Counsel and two grievances were withdrawn by grievants. Four matters were closed without prejudice. Non-docketed grievances do not appear on attorneys' discipline records and are not indexed. After two years, the files in non-docketed matters are destroyed.

After a case is docketed, grievances are called complaints. All docketed cases are indexed and, once they reach certain procedural milestones, the files in such cases are available for public review 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 by agreement with the respondent, 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 2023. Attorney Julian B. Jefferson continued to serve as CSC Chair in 2023 and Kelly G. Lewis continued to serve 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 181 grievances non-docketed in 2023, and 7 grievances non-docketed in late 2022, the CSC reviewed 52 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.)

In addition, there were two requests for reconsideration filed in docketed matters. In the first matter the respondent requested reconsideration of the offer of a diversion. The CSC granted her request for reconsideration and instead forwarded the matter to Disciplinary Counsel. In the second matter, the complainant requested reconsideration of the CSC decision to dismiss a matter. The request for reconsideration was denied.

The CSC also considers the reports of General Counsel's investigation of docketed complaints. In 2023, the CSC referred 20 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. Two docketed matters were dismissed by the CSC and diversion was proposed by the CSC in five matters. One matter which was diverted remains pending, with the remaining cases being dismissed following completion of the terms of the 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 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 that immediate action must be taken to protect the public, she may file a petition for interim suspension with the Supreme Court. In 2023, DC filed four petitions for summary suspension, one petition for suspension due to medical incapacity and requested an interim suspension due to a criminal indictment in another matter. All six attorneys were suspended by the court.

If after her investigation DC determines 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 three cases that had been referred by the CSC, after DC determined there was either not clear and convincing evidence of a Rule violation or the primary witness refused to cooperate with DC. In one case, DC proposed a diversion agreement which was approved by the PCC.

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 2023, DC issued four Notices of Charges. One attorney had three matters that were consolidated in 2023 which resulted in one Notice of Charges issued against him for 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. In four cases, Disciplinary Counsel negotiated a signed stipulation as to facts, rule violations, and sanction *prior to* the issuance of a NOC, and the matters were considered directly by the PCC instead of proceeding to a hearing. In one matter, the respondent signed a stipulation to disbarment which was forwarded to the PCC for its approval. There were two attorneys whose requests to resign while under investigation were granted by the PCC and are now pending before the Supreme Court. Disciplinary Counsel filed a motion to close without prejudice in one case involving a respondent who was allowed to resign in a separate matter.

At the hearings level, DC participated in five pre-hearing conferences and three hearings on sanction involving five separate matters. In one matter, the hearing panel found a rule violation after the respondent defaulted and did not participate in the merits hearing. In another matter the respondent defaulted, but later appeared and participated in the sanctions hearing.

The Hearings Committee Chair, Attorney Brooksley C. Belanger, 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.

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 11 times in 2023. 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 Kathleen M. Mahan completed her term on the PCC on July 31, 2023. Bar Vice President Attorney Derek D. Lick started his term on August 1, 2023.

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 2023 the PCC considered nine requests for protective orders in ten matters. Two of those requests were denied; the remainder were granted. 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 2023, the PCC heard oral argument in one reciprocal discipline case.

In 2023, the PCC dismissed three cases involving two respondents at the request of DC and closed one case without prejudice. In one matter it approved a diversion agreement. The PCC also issued one reprimand, one public censure and one 3-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 2023, the Committee submitted three recommendations for a one-year suspension, one recommendation for a 2-year suspension and two recommendations for disbarment. The PCC also forwarded recommendations to the Supreme Court regarding resignation requests in five matters.

The PCC also denied three requests for reconsideration of a PCC order. The PCC closed three cases following the respondents' compliance with a discipline order. Other decisions included appointing independent counsel for two grievances in which all the attorneys at the ADO had a conflict of interest, remanding another matter to General Counsel denying a motion to intervene, approving a request for alternative service, forwarding a request for reinstatement to the hearings committee, requesting additional information in a request for reinstatement, recommending to the Supreme Court that an attorney be reinstated and approving a request for lump sum payment.

Some outcomes determined by the PCC or the Court involve monitoring the respondent attorney 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 were three cases in which DC was required to monitor the respondent.

III. THE STATISTICS

As of January 1, 2023, there were 29 grievances and 27 docketed complaints 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.

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

FIGURE A

Underlying Legal Matters	2023	Percentage in 2023	Percentage in 2022	Percentage in 2021
Family Law	7	25.0%	11.7%	14.3%
Civil Suit/Litigation	2	7.1%	35.3%	4.8%
Business Law/Contracts	3	10.7%	0%	0%
Criminal	4	14.3%	5.9%	14.3%
Trust Account Issues	1	3.6%	0%	0%
Overdraft Notification/Financial	0	0%	11.8%	0%
Probate/Estate Planning	6	21.4%	5.9%	14.3%
Real Estate/Loan Modification	0	0%	0%	9.5%
Municipal Zoning/Land use	1	3.6%	0%	0%
Bankruptcy	1	3.6%	0%	0%
Other	0	0%	17.6%	14.3%
Employment/Workers Compensation	2	7.1%	0%	4.8%
Personal Injury	0	0%	5.9%	9.5%
Collection/Consumer Protection	0	0%	0%	4.8%
Criminal Charge against Attorney	1	3.6%	0%	4.8%
Landlord/Tenant	0	0%	5.9%	4.8%
Total	28			

Figure B shows the distribution of the sources of the matters docketed in 2023. Clients were the most common source of complaints docketed in 2023.

FIGURE B

Docketed Complaint Filed By	2023	Percentage in 2023	Percentage in 2022	Percentage in 2021
Client	12	42.8%	29.4%	28.6%
Employee	1	3.6%	0%	0%
Opposing Party	4	14.3%	17.6%	28.6%
Court Referral	4	14.3%	35.3%	14.3%
Attorney Referral	4	14.3%	5.9%	14.3%
Self-report	1	3.6%	0%	4.8%
ADO Generated	2	7.14%	5.9%	4.8%
Bank Referral/ODN	0	0%	5.9%	0%
Other	0	0%	0%	4.8%
Total	28			

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

	2023	Percentage in 2023	Percentage in 2022	Percentage in 2021
1 – 5 years in practice	1	4.2%	7.7%	0%
6 – 10 years in practice	3	12.5%	7.7%	5.6%
11 – 15 years in practice	3	12.5%	7.7%	16.7%
16 – 20 years in practice	2	8.3%	7.7%	11.1%
21 – 25 years in practice	4	16.7%	15.4%	11.1%
26 – 30 years in practice	2	8.3%	0%	5.6%
31 – 35 years in practice	3	12.5%	23.1%	38.9%
36+ years in practice	6	25%	30.7%	11.1%
Total Attorneys	24			

*Four attorneys had 2 cases docketed against them, but they are counted once.

The CSC considered 92 matters in 2023 with the outcomes shown in **Figure D**.

FIGURE D

	2023	2022	2021
Requests to Reconsider Matters Not Docketed (denied)	52	37	42
Matters Docketed upon Reconsideration of Non-docket	0	0	1
Diversion Proposed following Request to Reconsider	1	1	0
Forwarded to DC following Request to Reconsider Diversion	1	0	0
Requests to Reconsider CSC Dismissals (denied)	1	0	1
Deny Request for Extension of Time	3	0	0
Deny Request for Recusal	1	0	0
Matters Referred to Disciplinary Counsel	20	8	12
Dismissals with no Professional Misconduct	2	0	3
Diversion Proposed	6	0	4
Diversion Completed, Case Closed	5	1	3
Total	92	47	66

Figure E is a listing of the Rules of Professional Conduct violations found in 2023. All matters necessarily also include a violation of Rule 8.4(a).

FIGURE E

	2023	2022	2021
Rule 1: Client-Lawyer Relationship			
1.1 Competence	2	1	5
1.2 Scope of Representation	2	0	3
1.3 Diligence	4	2	4
1.4 Communication	5	1	4
1.5 Fees	0	0	0
1.7 Conflict	0	0	0
1.8 Other Conflict	1	0	0
1.15 Safekeeping Property	2	1	0
1.16 Terminate Relationship with Client	1	0	3
Rule 3: Advocate			
3.1 Meritorious Claims and Contentions	1	0	1
3.2 Expediting Litigation	0	0	0
3.3 Candor to Court	1	1	0
3.4 Fairness to Opposing Party	1	0	1
3.5 Impartiality and Decorum of the Tribunal	0	0	0
Rule 4: Transactions with Persons other than Clients			
4.1 Truthfulness in Statements to Others	1	0	0
4.2 Communication with Person Represented by Counsel	0	0	1

	2023	2022	2021
4.4 Respect for Rights of Third Person	0	1	0
Rule 5: Law Firms and Associations			
5.3 Responsibilities Regarding Non-lawyer Assistants	0	0	0
5.5(a) Unauthorized Practice	0	0	0
Rule 8: Integrity of the Profession			
8.1(a) False Statement of Material Fact	0	0	4
8.1(b) Failure to Correct a Misapprehension or Respond to a Lawful Demand of Information	4	0	0
8.1(c) Failure to Attend Disciplinary Hearing	0	0	0
8.4(b) Criminal Act	0	1	0
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	1	1	0
Supreme Court Rule 50	1	1	0
Total Violations	27	10	25

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 unless otherwise noted.

FIGURE F

	2023	2022	2021
Closed Without Prejudice	1	3	1
Dismissal	3*	1	1
Denied Motion to Reconsider	3	3	0
Denied Request for Electronic Copy of File	0	1	0
Approved request for lump sum payment	1	0	0
Clarified Order on Request for Disability Accommodations	0	1	0
Appointed Independent Counsel for Grievance	2	0	0
Approved Request for Alternative Service	1	0	0
Remand Case to Hearing Panel for Sanction Hearing	0	1	0
Remand matter to General Counsel	1	0	0
Approved Diversion by Agreement	1	0	2
Rejected Diversion by Agreement	0	0	0
Approved Stipulation to Facts, Rules and Reprimand	1	0	0
Approved Stipulation to Facts, Rules and Public Censure	0	0	3
Approved Stipulation to Facts, Rules and 6 Mo. Suspension Stayed	0	0	1
Approved Stipulation to Facts, Rules and 1 Yr. Suspension	1	0	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension Stayed	1	1	0
Approved Stipulation to Facts, Rules and 1 Yr. Suspension, Partially Stayed	1	1	0
Approved Stipulation to Facts, Rules and Disbarment	1	0	1

	2023	2022	2021
Sanction issued after a Hearing:			
6 Mo. Suspension	0	1	0
Recommend 1 yr. Suspension	0	0	0
Recommend 2 yr. Suspension	1	0	0
Recommend Disbarment	0	2	1
Reciprocal Discipline Issued	5	1	3
Recommendation to Approve Request to Resign Under Discipline	3	0	0
Recommendation to Deny Request to Resign Under Discipline	0	1	1
Grant Motion for Protective Order	7	6	4
Deny Motion for Protective Order	2	0	1
Deny Motion to Terminate Proceedings	0	2	2
Deny Request for Reconsideration	3	2	0
Extension of Post Reinstatement Conditions	0	1	0
Dismissal\Closed Following Diversion or Monitoring	3	6	3
Annulment Denied	0	0	0
Annulment Granted	0	1	1
Request for reinstatement forwarded to Hearings Committee	1	0	1
Requested more information re: reinstatement request	1	0	0
Recommendation to approve reinstatement with conditions	0	0	1
Recommendation to approve reinstatement	1	0	0
Grant Motion to Stay Reinstatement Proceedings	0	1	0
Total	45	35	24

* One attorney had two matters dismissed.

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 2023, the ADO was appointed to conduct inventories in three matters. In addition, the ADO continued to inventory the client files in matters in which it was appointed in 2021 and 2022. 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. General Counsel completed inventories in five matters that had been assigned between 2021 and 2023 and those cases were closed by the Supreme Court in 2023.

Staff attorneys served as faculty in a variety of educational programs in 2023. These included continuing legal education programs on Elder Law, Domestic Violence, Annual Ethics CLE, Federal Practice, and the Practical Skills Program in June and December. In addition, ADO staff attorneys served as guest lecturers at the UNH Law School Professional Responsibility classes. The ADO also conducted a training for non-attorney staff at the New Hampshire Bar Association Lawyer Referral Program.

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. 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.

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 for recommendations. Two of the matters are still pending. The remaining two received a 3-month suspension, and the other was allowed to resign while under investigation. Another reciprocal case filed in 2022 resulted in approval of a resignation while under investigation.

Disciplinary counsel notified the Supreme Court in one matter of an indictment of an attorney. The Court suspended the respondent on an interim basis.

The Court also granted four requests for summary suspension and one request for an interim suspension due to medical incapacity filed by Disciplinary Counsel. Three attorneys requested to resign while under investigation. One request was granted by the Supreme Court along with a request that was submitted in 2022.

After reviewing matters filed by the PCC, the Supreme Court disbarred two lawyers, suspended one attorney for 3 months, suspended 2 attorneys for one year and granted resignation requests in two matters. The Court also referred two requests for reinstatement to the PCC for a recommendation.

VI. CONCLUSION

As of December 31, 2023, there were 19 grievances and 38 docketed matters pending at the ADO. Of the docketed matters, 5 were in the investigation stage with General Counsel and 2 were pending with the CSC. Four requests for reconsideration of matters not docketed by GC were pending with the CSC at the end of the year.

There were 14 docketed matters involving 12 lawyers pending with Disciplinary Counsel, 3 docketed matters were pending with the Hearings Committee, 2 docketed matters were pending with the PCC, 7 docketed matters were pending with the Supreme Court and 5 docketed matters were being monitored by the ADO for compliance with conditions in previous orders issued or as part of a diversion.