

WASHINGTON DISCIPLINE SYSTEM

2019 Annual Report



WASHINGTON STATE
BAR ASSOCIATION

WASHINGTON DISCIPLINE SYSTEM

2019 Annual Report

The Washington State Bar Association
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EXECUTIVE SUMMARY

The Washington State Bar Association (WSBA, Bar) is pleased to present the 2019 Discipline System Annual Report.¹ This report is published to share publicly available information about the operations of Washington’s lawyer and limited license practitioner discipline system.

The Washington Supreme Court has exclusive governmental responsibility over the discipline system, many aspects of which are delegated by court rule to be administered by the WSBA. Consistent with the Supreme Court’s mandate in **General Rule (GR) 12.2**, the WSBA administers an effective system of discipline to fulfill its obligations to protect the public and ensure the integrity of the profession. The WSBA’s lawyer discipline functions are discharged primarily by the WSBA’s Office of Disciplinary Counsel (ODC), the WSBA’s Office of General Counsel (OGC), the Disciplinary Board, and Washington Supreme Court-appointed hearing officers. The WSBA discipline functions for limited licenses to practice law are discharged by ODC and the WSBA’s Regulatory Services Department (RSD), each license’s respective Supreme Court regulatory board, OGC, and Washington Supreme Court-appointed hearing officers. Key components include:

- Reviewing and investigating allegations of ethical misconduct and incapacity;
- Prosecuting violations of the applicable ethical rules;
- Seeking and approving the transfer of practitioners to disability inactive status;
- Addressing less serious matters with diversion;
- Informing the public about licensed legal professionals, the legal system, and means to address difficulties involving lawyers and other licensed legal professionals;
- Informally resolving non-communication issues and file disputes (disputes regarding a client’s request for his or her client file);
- Administering a random examination program to assess trust account compliance and to educate practitioners on the proper handling of client funds held in trust;
- Administering the Client Protection Fund;
- Educating practitioners about the discipline system and their ethical responsibilities; and
- Participating in the development and improvement of the law of ethics and discipline.

This report summarizes the WSBA’s efforts in these areas and highlights accomplishments from the 2019 calendar year.

In 2019, ODC lawyers and auditors appeared as speakers in 25 programs around the state, at national conferences, and in webinars and webcasts, educating lawyers, law students, and legal professionals on topics of legal ethics, trust account recordkeeping and compliance, and the discipline system.

The WSBA Professional Responsibility Program—which is distinct from and independent of the discipline system—also provides ethics education and outreach to practitioners. In fiscal year 2019, Professional Responsibility Program staff provided ethics advice to 2,340 callers and educated members at 61 programs around the state, including live, webinar, and webcast events.

¹ For purposes of this report, references to “the discipline system” encompass both the discipline and disability systems.

THE DISCIPLINE SYSTEM

The Washington discipline system for lawyers is composed of a number of entities that operate as part of the judicial branch of government under the authority of the Washington Supreme Court. The lawyer discipline system is administered by the WSBA, which operates the investigative and prosecutorial functions separately from the adjudicative functions. ODC oversees the prosecutorial functions.

OGC provides administrative and legal support to the hearing officers and the Disciplinary Board, which carry out the adjudicative and decision-making functions. OGC further manages the records for disciplinary proceedings. See *Other Licensed Legal Professionals and the Discipline System* later in this Report for details about the discipline system for limited license legal professionals.

STRUCTURE OF THE LAWYER DISCIPLINE SYSTEM

WSBA Office of Disciplinary Counsel (ODC)

- Answers public inquiries and informally resolves disputes
- Receives, reviews, and may investigate grievances
- Recommends disciplinary action or dismissal
- Diverts grievances involving less serious misconduct
- Recommends disability proceedings
- Presents cases to discipline-system adjudicators

Hearing Officers

- Conduct evidentiary hearings and other proceedings
- Conduct settlement conferences
- Approve stipulations to admonition and reprimand

Disciplinary Board

- Reviews recommendations for proceedings and disputed dismissals
- Serves as intermediate appellate body
- Reviews hearing records and stipulations

Washington Supreme Court

- Exclusive governmental responsibility for the system
- Conducts final appellate review
- Orders sanctions, interim suspensions, and reciprocal discipline

THE OFFICE OF DISCIPLINARY COUNSEL

ODC is responsible for reviewing, investigating, and prosecuting grievances about the ethical conduct of Washington lawyers and allegations of incapacity to practice law.

ODC has one intake unit, three investigation/prosecution units, one unit of investigators, one unit of paralegals, and one unit of auditors. The intake unit receives inquiries and written grievances and conducts the first review of grievances against lawyers. Some grievances are dismissed at the intake stage, while others are referred for further investigation by ODC investigation/prosecution staff, which includes disciplinary counsel, investigators, paralegals, and administrative assistants. After investigation,

disciplinary counsel determine whether grievances should be dismissed or reported to a review committee of the Disciplinary Board. Some less serious matters are diverted from discipline. Rule 6.2 of the Rules for Enforcement of Lawyer Conduct (ELC) sets forth criteria for determining what conduct may qualify as “less serious misconduct.”

Disciplinary counsel prosecute matters ordered to hearing by a review committee of the Disciplinary Board. If a hearing-level decision is appealed, disciplinary counsel briefs and argues the appeal to the Disciplinary Board and, in some cases, the Supreme Court.

REVIEW COMMITTEES OF THE DISCIPLINARY BOARD

Administered by OGC

Four review committees, each composed of two lawyer members and one community representative member of the Disciplinary Board, serve an oversight function in the lawyer discipline system, first to consider grievant appeals of disciplinary counsel dismissals, and second to consider disciplinary counsel recommendations for admonitions or public disciplinary hearings. Among other

actions, a review committee may dismiss a matter, order further investigation, issue an admonition, or order a hearing. Review committees also have authority to order a hearing regarding a lawyer’s alleged incapacity to practice law. The WSBA’s OGC provides staff for legal and administrative support to the four review committees.

HEARING OFFICERS

Administered by OGC

Volunteer hearing officers preside over hearings for disciplinary and disability cases. They receive evidence and issue findings, conclusions, and a recommendation on the discipline to be imposed, if any. Hearing officers also conduct settlement conferences in many discipline cases. In disability proceedings, hearing officers make recommendations regarding whether a respondent lawyer should be transferred to disability inactive status. They

are also authorized to resolve cases by approving stipulations to reprimand, admonition, or dismissal. A Chief Hearing Officer supervises the hearing officers, assigns cases, assists with training, and monitors hearing officer performance. The WSBA’s OGC provides staff for legal and administrative support to hearing officers.

DISCIPLINARY BOARD

Administered by OGC

In addition to its review committee functions, the Disciplinary Board, composed of volunteer lawyers and community representatives, considers appeals of hearing officer decisions. The Disciplinary Board reviews the record when a respondent lawyer or disciplinary counsel has filed an appeal of the hearing officer’s recommendation in a disciplinary matter. The Board also reviews appeals of lawyer disability cases and may review suspension and disbarment recommendations.

If requested, the Board hears oral argument on the cases much like an appellate court, and then issues its decision. The Board also reviews stipulations submitted by the parties, which, if approved, will resolve the proceeding without a hearing. The WSBA’s OGC provides staff for legal and administrative support to the Disciplinary Board in the performance of its adjudicative functions.

WASHINGTON SUPREME COURT

The Washington Supreme Court has inherent and plenary authority to regulate the practice of law, including the power to dispose of individual cases of lawyer discipline. All proceeding resolutions are sent to the Court, except for dismissals. The Court reviews the Disciplinary Board's suspension and disbarment recommendations, which are appealable as a matter of right. The Court also considers petitions for discretionary review of other dispositions. Disciplinary and disability cases appealed to the Supreme Court, like other Supreme Court appeals, proceed with briefing and oral argument, followed by a written opinion by the Court.

The Supreme Court may order reciprocal discipline of lawyers who have been disciplined in other jurisdictions, and order interim suspension of a lawyer if the Disciplinary Board recommended disbarment or if the lawyer was convicted of a crime, poses a risk of serious harm to the public, fails to cooperate with a disciplinary investigation, or asserts incapacity to defend himself or herself in a disciplinary proceeding.

2019 BY THE NUMBERS



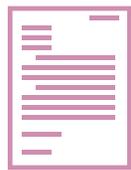
32,573

Actively Licensed Lawyers



1,681

Grievance Files Opened



46

Public Formal Complaints Filed



6

Disciplinary Hearings



56

Disciplinary Actions Imposed

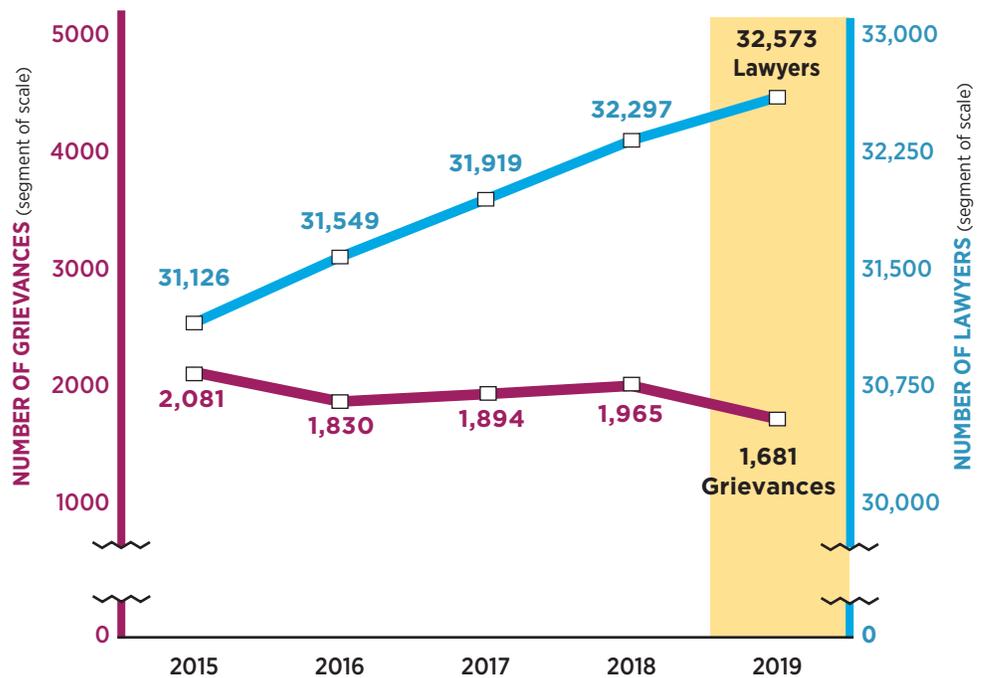
LAWYER GRIEVANCE AND ODC STATISTICS

DISCIPLINARY GRIEVANCE STATISTICS

The following statistics relate to the intake, investigation, and prosecution by ODC of grievances against lawyers in the 2019 calendar year.

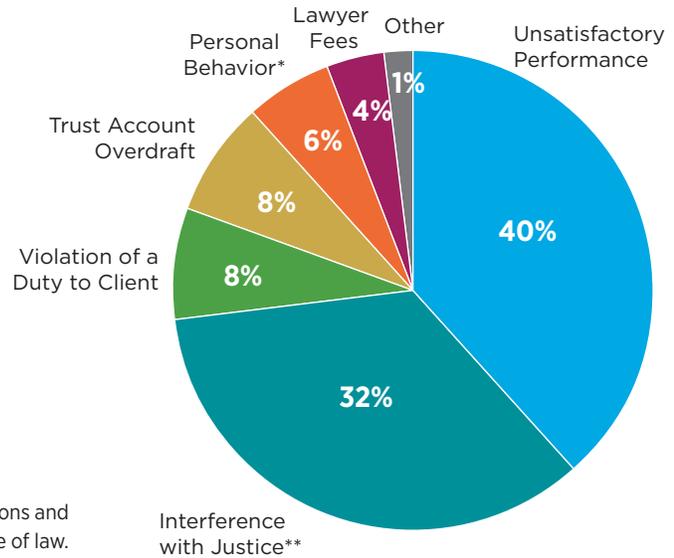
Disciplinary Grievances, Informally Resolved Matters, and Public Inquiries	2017	2018	2019
Disciplinary Grievances Received	1,894	1,965	1,681
Disciplinary Grievances Resolved ²	1,967	2,011	1,737
Non-Communication Matters Informally Resolved	154	142	156
File Disputes Informally Resolved	65	61	68
Public Inquiries, Phone Calls, Emails, & Interviews	5,044	4,451	3,986

2015 - 2019 Grievances Received in Relation to Number of Licensed Lawyers



² "Grievances resolved" include all grievances that closed during the calendar year, including, but not limited to, grievances that were dismissed in intake or after investigation and those for which disciplinary action was imposed.

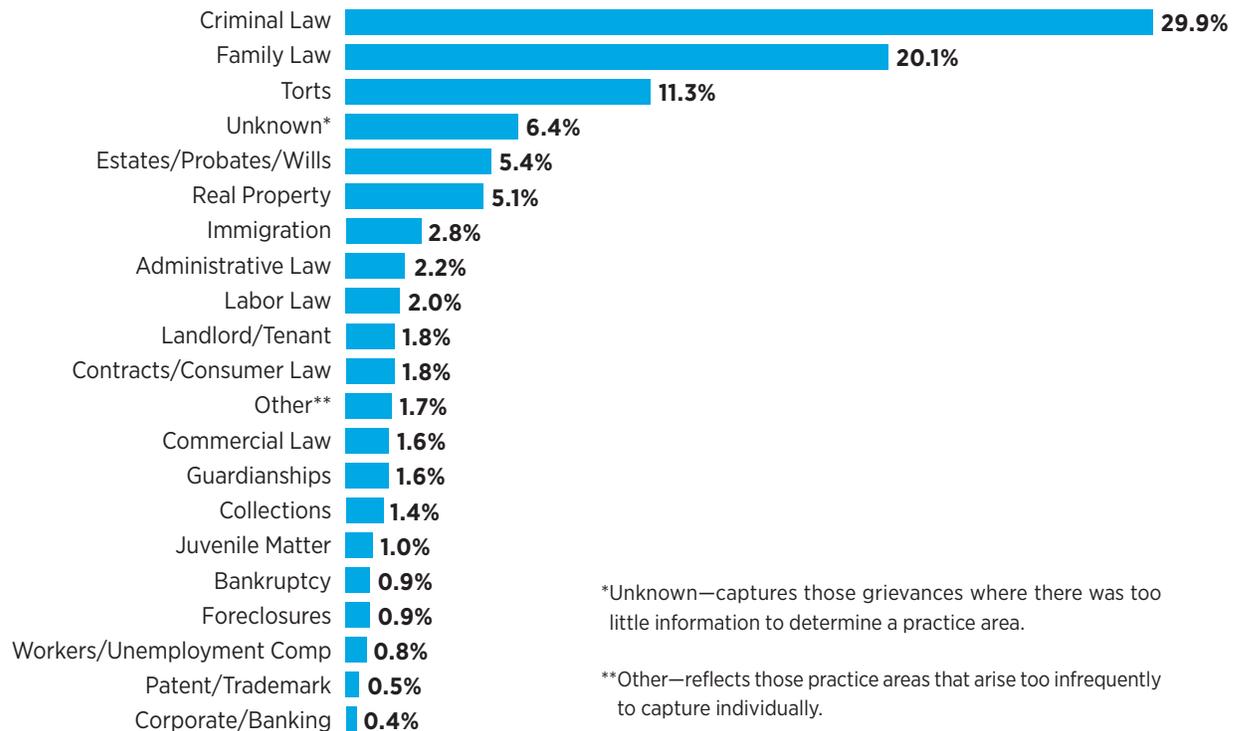
2019 Nature of Grievances



*Personal behavior—may include criminal law violations and other conduct not necessarily related to the practice of law.

**Interference with Justice—may include improper contacts with represented parties or judicial officers and misrepresentations to the court.

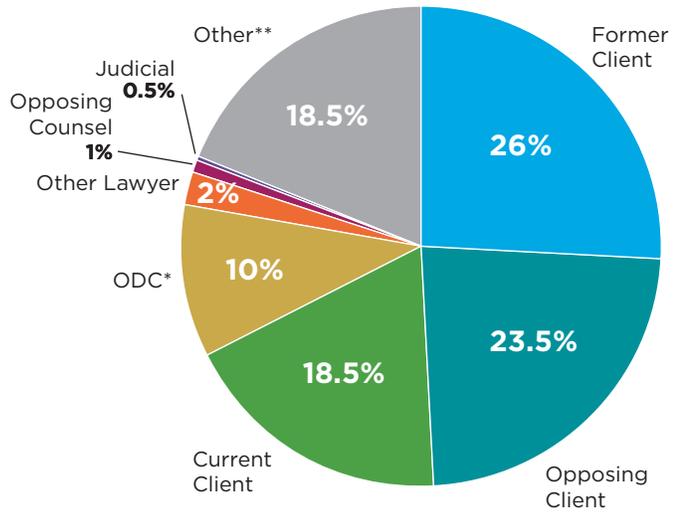
2019 Practice Area of Grievances



*Unknown—captures those grievances where there was too little information to determine a practice area.

**Other—reflects those practice areas that arise too infrequently to capture individually.

2019 Sources of Grievances Filed



*ODC—includes files opened in the name of ODC when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance (e.g. news articles, notices of criminal conviction, trust account overdrafts, etc.) or through confidential sources.

**Other—may include grievances filed by family members, neighbors, non-client members of the public, or other individuals.

DIVERSION

For less serious misconduct, ODC may divert a grievance from discipline if the lawyer agrees to a diversion contract. A successfully completed diversion results in dismissal of the grievance. If the lawyer fails to complete the diversion contract, the grievance is reinstated and may result in public disciplinary action.³

Diversions	2017	2018	2019
New Diversions	11	26	22
Completed Diversions	17	11	26
Failed to Complete Contract	2	1	3

AUDITOR ACTIVITIES

Washington lawyers who maintain client trust accounts must hold those accounts with financial institutions that report any overdraft of funds to the WSBA. Auditors in ODC assist in the investigation and resolution of grievances opened because of overdraft notices.

Auditors also assist in the investigation of grievance files involving trust account issues and conduct random examinations of lawyer trust accounts to ensure compliance with the ethics rules.

Auditor Activities	2017	2018	2019
New Overdraft Files	96	106	95
Overdraft Files Closed	98	105	90
Investigation File Assignments	30	16	22
Random Examinations	80	80	60
Re-examinations	1	2	0

³ Total completed diversions include diversions entered into in the prior reporting year but completed in the reporting year.

LAWYER HEARINGS AND APPEALS

REVIEW COMMITTEES

In 2019, the review committees of the Disciplinary Board met 16 times to consider 449 matters, including review of dismissals; admonition, advisory letter, and hearing recommendations; and other requests, e.g. deferrals of investigation, orders for costs, and other non-routine matters.

Review Committee Decisions	2017	2018	2019
Dismissals	527	466	357
Orders to Hearing	100	51	52
Other (Deferrals, Costs, etc.)	31	17	22
More Investigation	35	19	13
Advisory Letters	5	4	2
Admonitions	1	1	3

HEARING OFFICERS

In fiscal year 2019,⁴ 36 volunteer lawyers appointed by the Washington Supreme Court served as hearing officers. In calendar year 2019, 46 disciplinary and 12 disability proceeding files were opened.

Hearing Officer Work	2017	2018	2019
Hearings Held	17	11	6
Stipulations Approved	12	10	11
Settlement Conferences Held	13	7	17

⁴ The WSBA's fiscal year is October 1 through September 30.

DISCIPLINARY BOARD

The Disciplinary Board considered 25 disciplinary and disability matters (excluding denials of sua sponte review) and ordered the transfer of five lawyers to disability inactive status.

Disciplinary Board Matters	2017	2018	2019
Cases Reviewed by Appeal	5	2	1
Stipulations Considered	28	27	23
Oral Arguments	5	1	1

WASHINGTON SUPREME COURT

The Supreme Court heard one oral argument on an interim suspension petition. It also reciprocally disciplined 13 lawyers and suspended 13 lawyers on an interim basis.

Supreme Court Decisions	2017	2018	2019
Interim Suspensions	19	18	13
Reciprocal Discipline Ordered	16	18	13
Oral Arguments	4	6	1
Published Opinions	2	4	0

FINAL OUTCOMES IN LAWYER DISCIPLINE CASES

DISCIPLINARY ACTIONS

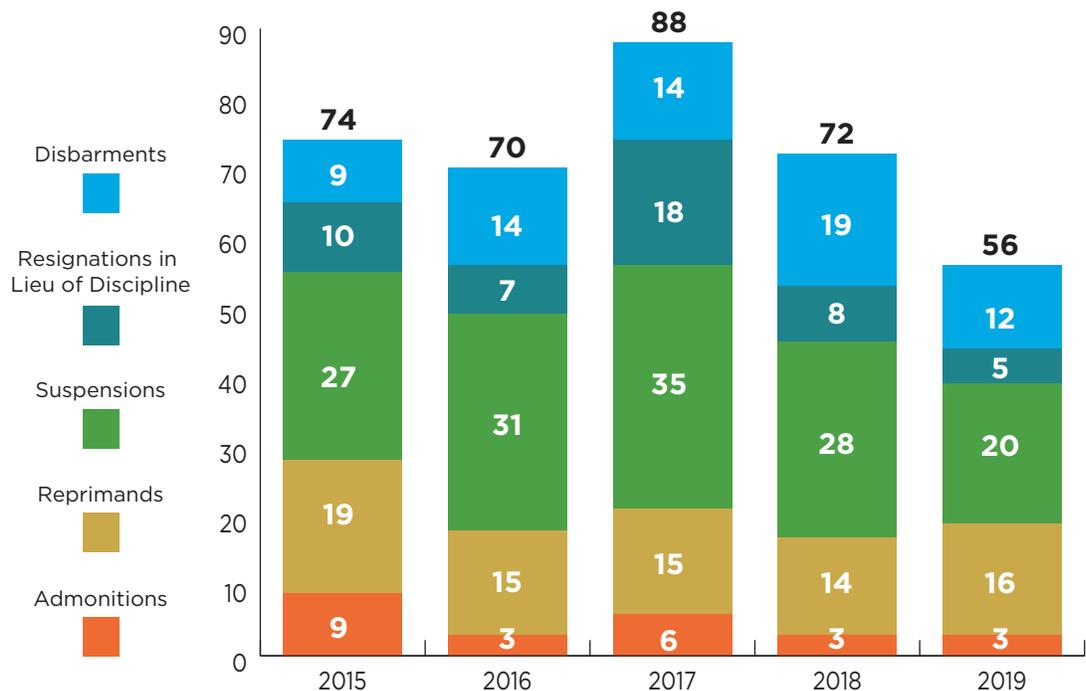
Disciplinary “actions,” which include both disciplinary sanctions and admonitions, result in a permanent public disciplinary record. In order of increasing severity, disciplinary actions are admonitions, reprimands, suspensions, and disbarments. A suspension from the practice of law may be for any period of time not to exceed three years, and may include conditions to be fulfilled by the lawyer before reinstatement. A disbarment revokes the lawyer’s license to practice law. Disbarred lawyers are precluded from seeking readmission to the Bar for five years after disbarment. Only the Washington Supreme Court may order suspension, disbarment, or reinstatement.

Lawyers may also resign in lieu of discipline if they do not wish to defend against allegations of misconduct. A lawyer who resigns in lieu of discipline may not seek reinstatement to the practice of law in Washington.

Review committees of the Disciplinary Board also have authority to issue an advisory letter when it is determined that a lawyer should be cautioned. Advisory letters are neither a sanction nor a disciplinary action and are not public information. For less serious misconduct, a lawyer may be diverted from discipline.

In 2019, 56 lawyers were disciplined. The following chart reports the number of disciplinary actions imposed over the last five calendar years.

2015 – 2019 Disciplinary Actions

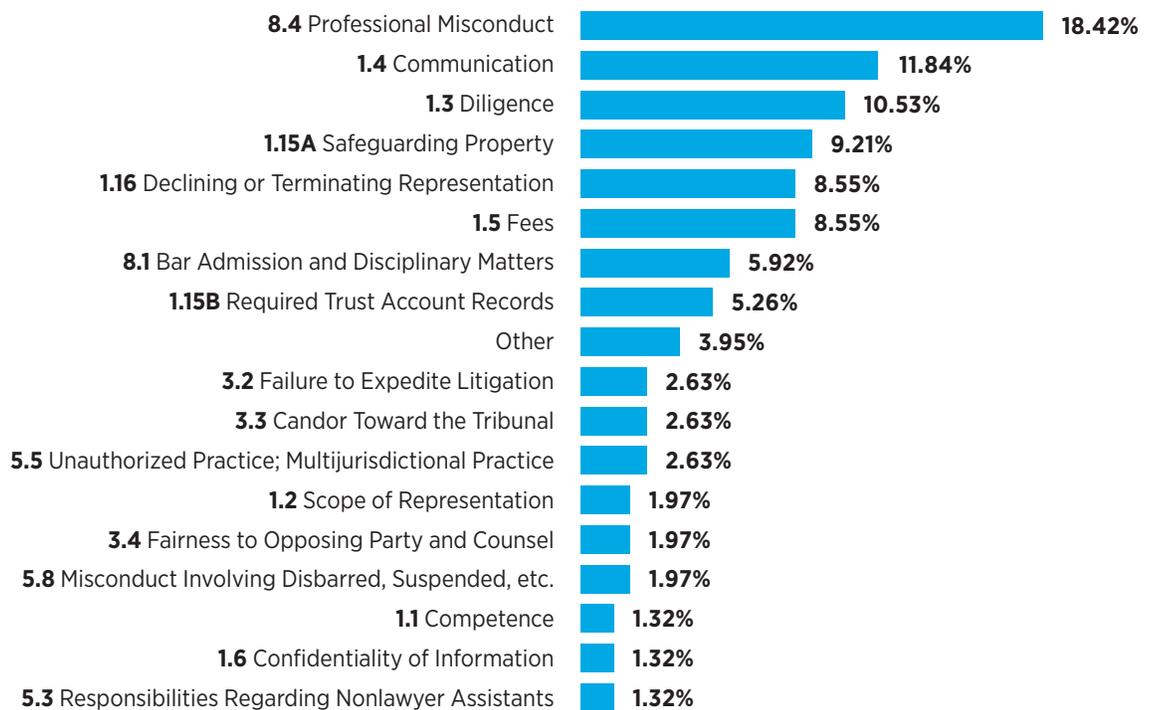


ETHICS RULES VIOLATIONS

In 2019, the most common rule violations in disciplinary proceedings related to professional misconduct (RPC 8.4),⁵ safeguarding client property and trust accounting (RPC 1.15A, 1.15B), communication (RPC 1.4), diligence (RPC 1.3), terminating the representation (RPC 1.16), and fees (RPC 1.5).

The following chart details the RPC violations found in 2019 by percentage.^{6,7} To review these and other RPC, visit the Washington Supreme Court's website at www.courts.wa.gov.

2019 Ethics Rules Violations



⁵ RPC 8.4 violations may include, among other misconduct, criminal conduct, dishonesty, and conduct prejudicial to the administration of justice.

⁶ The Ethics Rules Violations graph does not reflect multiple repeat rule violations in the same proceeding. Additionally, the chart does not reflect reciprocal discipline matters, as the applicable ethics rules vary among jurisdictions.

⁷ "Other" reflects those RPC that individually amounted to less than .98% of the RPC found in 2019, including RPC 1.18 (duties to prospective clients), RPC 1.7 (current client conflicts), RPC 3.1 (meritorious claims and contentions), RPC 3.5 (impartiality and decorum of the tribunal), RPC 4.1 (truthfulness in statements to others), and RPC 7.1 (communications concerning a lawyer's services).

LAWYERS DISCIPLINED

Disbarments (12)

Allen-Grant, Kendra Nicole – #44080
 Anderson, Julie Ann – #15214
 Border, Teresa Lynn – #19222
 Enriquez, Credo – #28921
 Graeff, Erik J. – #48235
 Henslee, Donald G. – #31428
 Laws, Richard A. – #36654
 Marsh, Samuel Campbell – #43756
 Maryatt, Chris – #40619
 McAuliff, David J. – #40687
 Pitner, Noel James – #36158
 Randall, Gary Evan – #15020

Resignations in Lieu of Discipline (5)

McLaughlin, Michael John – #13367
 Meyers, Robert Grant – #15199
 Rainey, Roy – #9512
 Rood, Karla Elizabeth – #42091
 Wenger, Marlene K. – #35478

Suspensions (20)

Bolliger, John Cameron – #26378
 Boothe, Thomas Stephenson – #21759
 Bounlutay, Souphavady – #30552
 Bruen, Charles James III – #31752
 Caruso, Robert E. – #29338
 Castillo, Emilia Rigor – #14950
 Cleveland, Dana – #40285
 Flindt, Kyle – #37322
 Gazori, James K. – #19900
 Highberg, Erik Eugene – #30589
 Jolley, Dallas William Jr – #22957
 Lowell, David Duane – #22563
 Marsh, Samuel Campbell – #43756
 McAllister, Thomas W. – #35832
 Milkie, Alexander J. – #40525
 Obert, Mark Gene – #27299
 Schlesinger, Andrew M. – #41333
 Smith, Mark E. – #30924
 Sweet, Diane – #35881
 Wade, Theresa M. – #30083

Reprimands (16)

Abel, Gregory Mark – #29268
 Codd, W. Tracy – #16745
 De Alicante, Tony Francis – #18406
 Doyle, Thomas K. – #27897
 Edgar, William John – #46301
 Gates, David B. – #28952
 Guza, Catherine Laura Lee – #49221
 Harvey, Alan Edward – #25785
 Kaufman, Robert Charles – #12543
 Kirby, Cornell – #36829
 Knauerhase, Karen – #38612
 Lucas, Spencer – #54427
 Nguyen, Lan Thi – #36129
 Sherman, Paul F. II – #36091
 Terrillion, Dean – #32869
 Weber, Matthew B. – #31308

Admonitions (3)

Lowell, David Duane – #22563
 Moody, Rodney R. – #17416
 Peale, Walter O. III – #788

OTHER COMPONENTS OF THE DISCIPLINE SYSTEM

PROBATION AND OTHER CONDITIONS OF DISCIPLINE

Sanctioned or admonished lawyers may be placed on probation for a fixed time period. Conditions of probation may include alcohol and drug treatment, medical care, psychiatric care, office practice or management counseling, and periodic audits. Other conditions of discipline may include paying restitution to victims and paying the costs of the disciplinary proceeding. A suspension order may also impose conditions that must be complied with prior to reinstatement.

Files Opened for Other Conditions Imposed	2017	2018	2019
Probation	36	28	19
Restitution	21	19	16
Costs	68	48	43

LAWYER DISABILITY MATTERS

Special procedures apply when there is reasonable cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding or incapable of practicing law due to a mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the lawyer must have counsel appointed at the WSBA's expense. In disability cases, a determination that the lawyer does not have the capacity to practice law results in a transfer to disability inactive status. It is also possible for a lawyer to stipulate to a transfer to disability inactive status, and a transfer is required following judicial determination of a lawyer's incapacity, such as involuntary commitment. Although disciplinary procedural rules under the ELC govern disability proceedings, the proceedings are not disciplinary in nature.

Transfers to Disability Inactive	2017	2018	2019
Total	3	8	5

CLIENT PROTECTION FUND

Administered by OGC

The Client Protection Fund Board was established to promote public confidence in the administration of justice and the integrity of the legal profession. Its purpose is to relieve or mitigate a financial loss sustained by a client resulting from a WSBA member's dishonesty or failure to account for money or property entrusted to the WSBA member. The dishonesty or failure to account must have been in connection with the member's practice of law or role as a fiduciary in a matter related to the member's practice of law. The Fund is financed by a \$30 annual WSBA lawyer-member assessment imposed by order of the Washington Supreme Court. In 2019, the Fund gave over \$419,000 in gifts.

Client Protection Fund ⁸	2017	2018	2019
Number of Requests Granted	47	46	48
Of These, Number of Lawyers Involved	19	18	18
Total Gifts	\$439,273	\$926,434	\$419,488

FUNDING THE LAWYER DISCIPLINE SYSTEM

License fees fund the lawyer discipline system – there is no public funding.⁹

Discipline System Revenue and Expenses ¹⁰	2017	2018	2019
Revenue			
Recovery of Discipline Costs	\$95,491	\$84,661	\$72,284
Discipline History Summaries	\$12,991	\$15,899	\$15,952
Misc ¹¹	\$2,990	\$4,360	\$1,851
Total Revenue	\$111,472	\$104,920	\$90,087
Expenses			
Investigation/Prosecution	\$5,374,154	\$5,607,782	\$5,731,477
Disciplinary Board Expenses	\$221,609	\$241,434	\$215,526
Hearing Officer Expenses	\$34,660	\$34,368	\$33,868
Total Expenses	\$5,630,423	\$5,883,584	\$5,980,871
Net Total Expenses	\$5,518,951	\$5,778,664	\$5,890,784

⁸ The [Client Protection Board](#) reports on the WSBA fiscal year, which is October 1 to September 30.

⁹ Less than two percent of the discipline system budget is funded from alternative revenue sources, including recovery of discipline costs, issuance of discipline history certificates, and recovery of revenue for auditor review of trust account records.

¹⁰ Lawyer discipline system expenses are based on the WSBA fiscal year.

¹¹ Miscellaneous revenue includes audit revenue.

OTHER LICENSED LEGAL PROFESSIONALS AND THE DISCIPLINE SYSTEM

Limited practice officers (LPOs) and limited license legal technicians (LLLTs) are also licensed to practice law by the Washington Supreme Court through regulatory systems administered by the WSBA. LPOs may select, prepare, and complete forms for use in a loan, extension of credit, sale, or other transfer of real or personal property. LLLTs are licensed to assist clients in certain limited legal matters approved by the Washington Supreme Court. Currently, family law is the only approved practice area, although additional practice areas are being evaluated.

A Washington Supreme Court-mandated regulatory board oversees each limited license: the Limited Practice Board for LPOs and the Limited License Legal Technician Board for LLLTs. Each licensee is subject to license-specific rules of professional conduct and disciplinary procedural rules. The WSBA administers a discipline system for these licenses.

The key differences between the lawyer discipline system and the limited license discipline systems are as follows:

- (1) Each regulatory board acts as the intermediate appellate body, akin to the Disciplinary Board, to review hearing records and stipulations;
- (2) A discipline committee of each regulatory board serves the function of a review committee; and
- (3) RSD staff and the chair of each discipline committee conduct initial review of grievances and make intake decisions.

For both licenses, possible disciplinary actions include revocation, voluntary cancellation in lieu of revocation, suspension, reprimand, and admonition.

To learn more about licensed legal professionals, visit www.wsba.org.

STATISTICAL INFORMATION

LPOs

LPO Disciplinary Statistics	2017	2018	2019
Number of Active Licensees	792	814	838
Disciplinary Grievances Received	2	3	1
Disciplinary Grievances Resolved	4	4	2
Matters Diverted	1	0	0
Disciplinary Actions Imposed	1	1	0

LLLTs

LLLT Disciplinary Statistics	2017	2018	2019
Number of Active Licensees	25	35	38
Disciplinary Grievances Received	0	3	0
Disciplinary Grievances Resolved	0	3	0
Disciplinary Actions Imposed	0	0	0

NEW DRAFT DISCIPLINARY PROCEDURAL RULES: RULES FOR DISCIPLINE AND INCAPACITY

WORK ON REVISED DISCIPLINARY PROCEDURAL RULES CONTINUES

In July 2017, the Supreme Court approved in concept a proposed model for a substantially modified discipline system. Core objectives of the initiative were development of extensive improvements to the functionality of all discipline and incapacity procedures, merger of the existing systems for the three separate license types, and the creation of a partly professionalized adjudicative system. Since that time, an internal workgroup of WSBA employees from the Office of Disciplinary Counsel, Office of General Counsel, and Regulatory Services Department

have focused on creating a comprehensive draft of a new set of disciplinary procedural rules. Drafting was completed in January 2020, at which time representatives of a variety of external stakeholders were convened to review the rules and provide substantive feedback and commentary. Once stakeholder review is complete, it is anticipated the rules will be presented to the BOG in spring 2020, followed by eventual submission of a set of suggested rules to the Supreme Court under GR 9.





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