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SCBD #7209

JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA



ANNUAL REPORT
OF THE
PROFESSIONAL RESPONSIBILITY COMMISSION
AS COMPILED BY THE
OFFICE OF THE GENERAL COUNSEL
OF THE
OKLAHOMA BAR ASSOCIATION

JANUARY 1, 2021 THROUGH DECEMBER 31, 2021

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INTRODUCTION:

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011, ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2021 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION:

The Professional Responsibility Commission is composed of seven persons - five lawyer and two non-lawyer members. The attorney members are nominated for rotating three-year terms by the President of the Association subject to the approval of the Board of Governors. The two non-lawyer members are appointed by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, respectively. Terms expire on December 31st at the conclusion of the three-year term.

Attorney members serving on the Commission during 2021 were Chairperson Sidney K. Swinson, Tulsa; Vice-Chairperson Heather Burrage, Durant; Karen A. Henson, Shawnee; Jimmy D. Oliver, Stillwater, and Matthew Beese, Muskogee. The Non-Lawyer members were John Thompson, Oklahoma City and James W. Chappel, Norman. Commission members serve without compensation but are reimbursed for actual travel expenses.

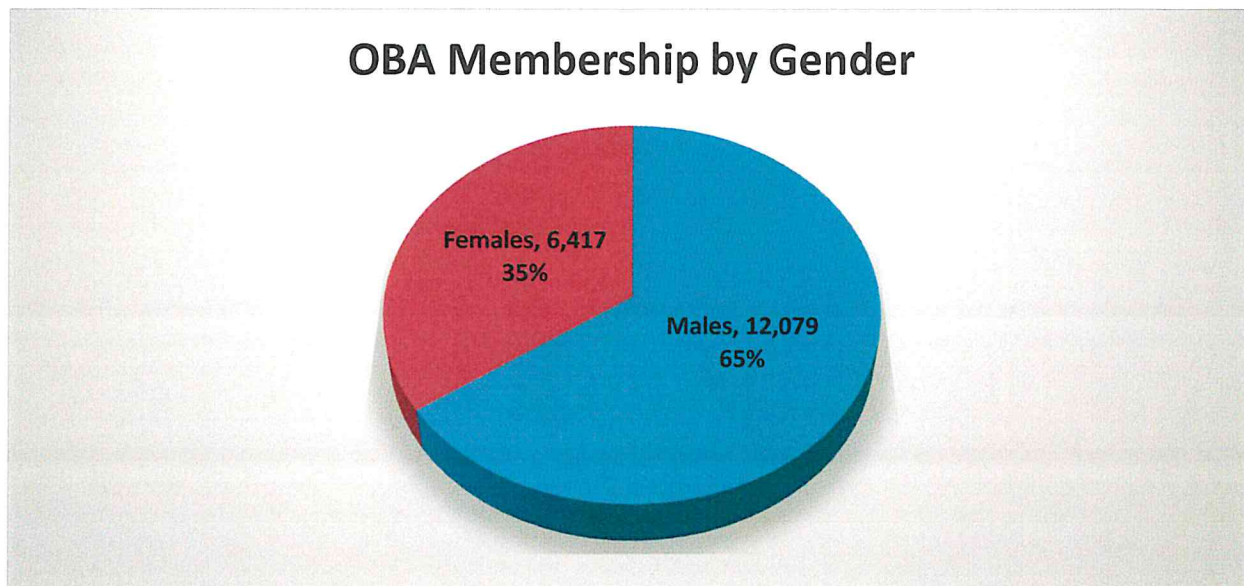
RESPONSIBILITIES:

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any lawyer called to its attention, or upon its own motion, and takes such action as deemed appropriate to effectuate the

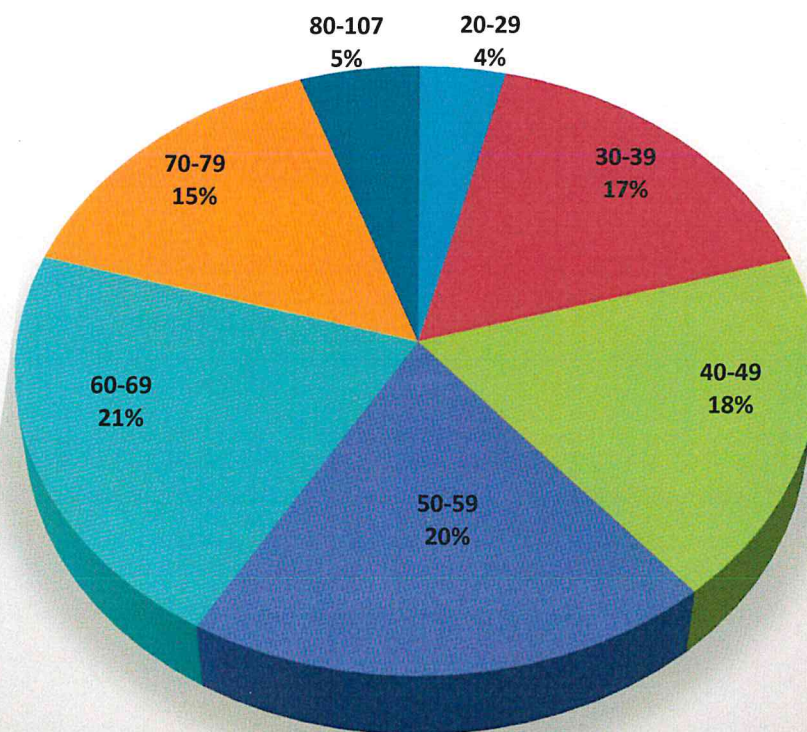
purposes of the Rules Governing Disciplinary Proceedings. Under the supervision of the Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel by grievance or otherwise, and reports to the Commission the results of investigations made by or at the direction of the General Counsel. The Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged misconduct or personal incapacity of an attorney. The attorneys in the Office of the General Counsel prosecute all proceedings under the Rules Governing Disciplinary Proceedings, supervise the investigative process, and represent the Oklahoma Bar Association at all reinstatement proceedings.

OBA MEMBERSHIP STATISTICS:

Total membership of the Oklahoma Bar Association as of December 31, 2021 was 18,496 attorneys. The total number of members includes 12,079 males and 6,417 females.



Total OBA Members By Age



VOLUME OF GRIEVANCES:

During 2021, the Office of the General Counsel received 192 formal grievances involving 125 attorneys and 752 informal grievances involving 585 attorneys. In total, 944 grievances were received against 710 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office processed 157 items of general correspondence, which is mail not considered to be a grievance against an attorney.¹

¹ The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to a formal grievance after investigation.

On January 1, 2021, 217 formal grievances were carried over from the previous year. During 2021, 192 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 409 formal investigations pending throughout 2021. Of those grievances, 253 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 156 investigations were pending on December 31, 2021.

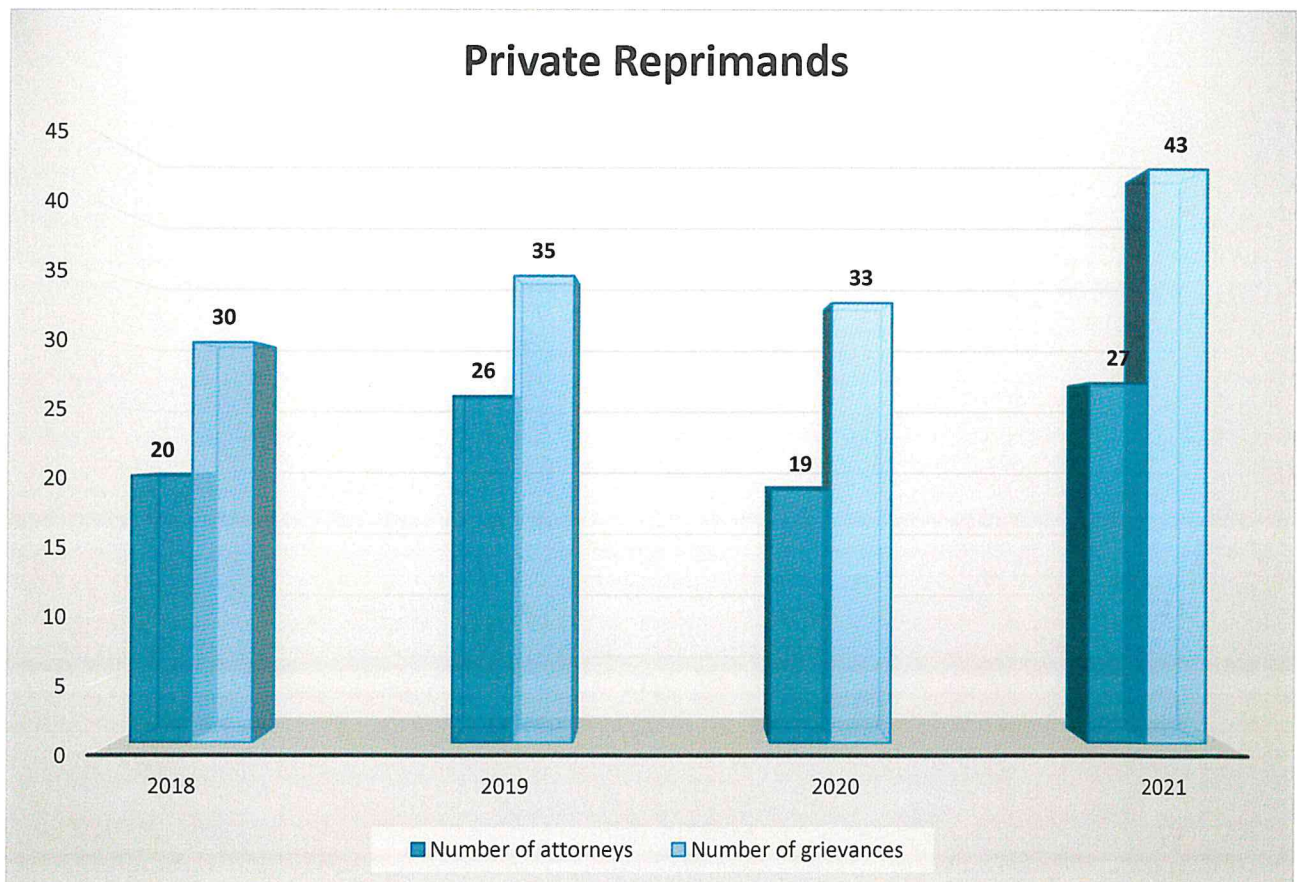
The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Commission.



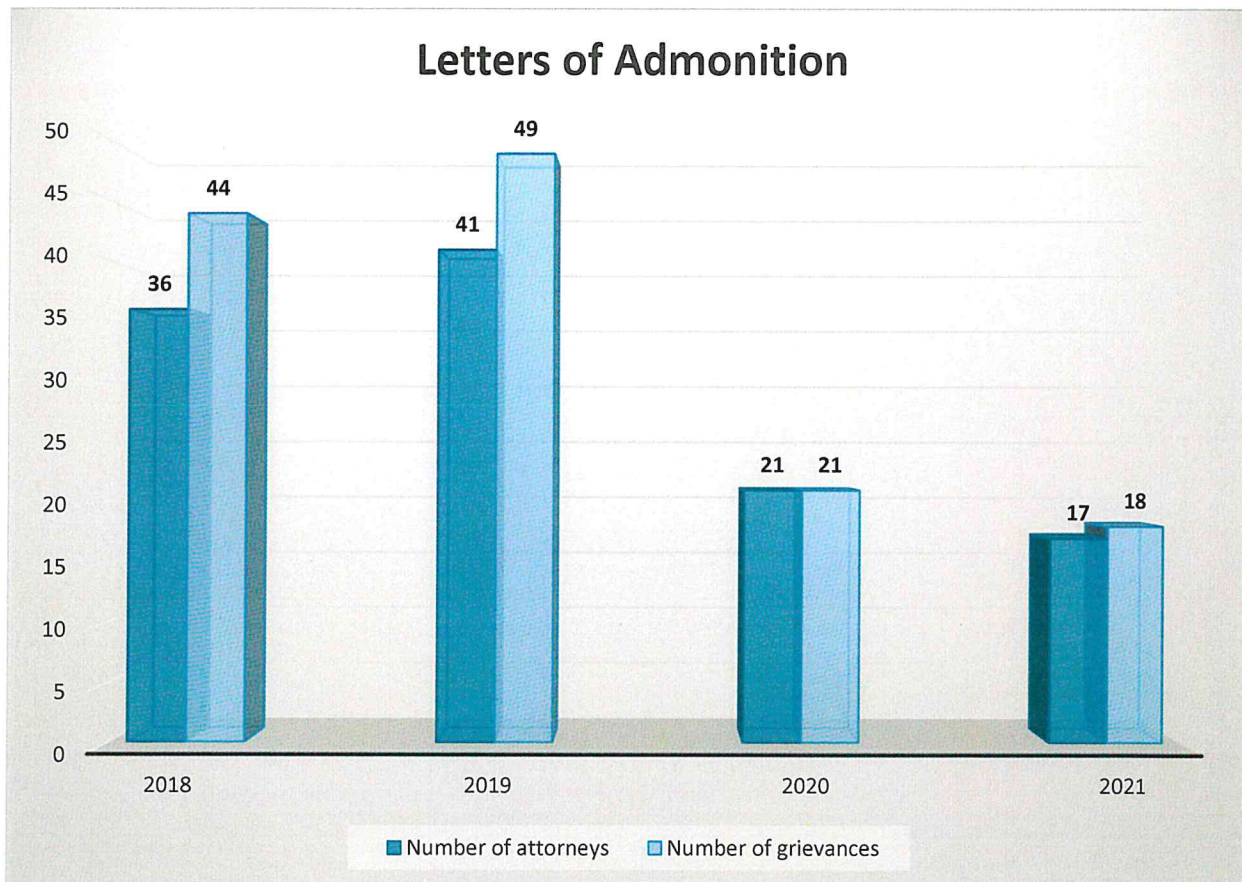
ACTIONS OF THE PROFESSIONAL RESPONSIBILITY COMMISSION:

1. **Formal Charges.** During 2021, the Professional Responsibility Commission voted the filing of formal disciplinary charges against sixteen (16) lawyers involving 53 grievances. In addition, the Commission also oversaw the investigation of 15 Rule 7, RGDP matters filed with the Chief Justice of the Oklahoma Supreme Court.

2. **Private Reprimands.** Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of the attorney, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2021, the Commission issued private reprimands to 27 attorneys involving 43 grievances.



3. **Letters of Admonition.** During 2021, the Professional Responsibility Commission issued letters of admonition to 17 attorneys involving 18 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule which the Commission believed warranted a warning rather than discipline.



4. **Dismissals.** The Professional Responsibility Commission dismissed four grievances that had been received but not concluded prior to the resignation of the attorney pending disciplinary proceedings, a continuing lengthy suspension' or disbarment of the respondent attorney. Furthermore, the Commission dismissed one grievance upon successful completion of a diversion program by the attorney. The remainder were dismissed where the investigation did not substantiate the allegations by clear and convincing evidence.

5. **Diversion Program.** The Professional Responsibility Commission may also refer respondent attorneys to the Discipline Diversion Program where remedial measures are taken to ensure that any deficiency in the representation of a client does not occur in the future. During 2021, the Commission referred 24 attorneys to be admitted into the Diversion Program for conduct involving 29 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating attorney and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program Direction involved in programming. Program options include Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills, and Professionalism in the Practice of Law class. In 2021, instructional courses were taught by OBA General Counsel Gina Hendryx, OBA First Assistant General Counsel Loraine Farabow, OBA Assistant General Counsel Katherine Ogden, OBA Ethics Counsel Richard D. Stevens, OBA Management Assistance Program Director Jim Calloway, and OBA Practice Management Advisor Julie Bays.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is now able to monitor when attorneys encounter difficulty with management of their IOLTA accounts. Upon recommendation of the Office of the General Counsel, the Commission may place those individuals in a tailored program designed to instruct on basic trust accounting procedures. This course is also available to the OBA general membership as a continuing legal education course.

2021 Attorney Participation in Diversion Program Curriculum

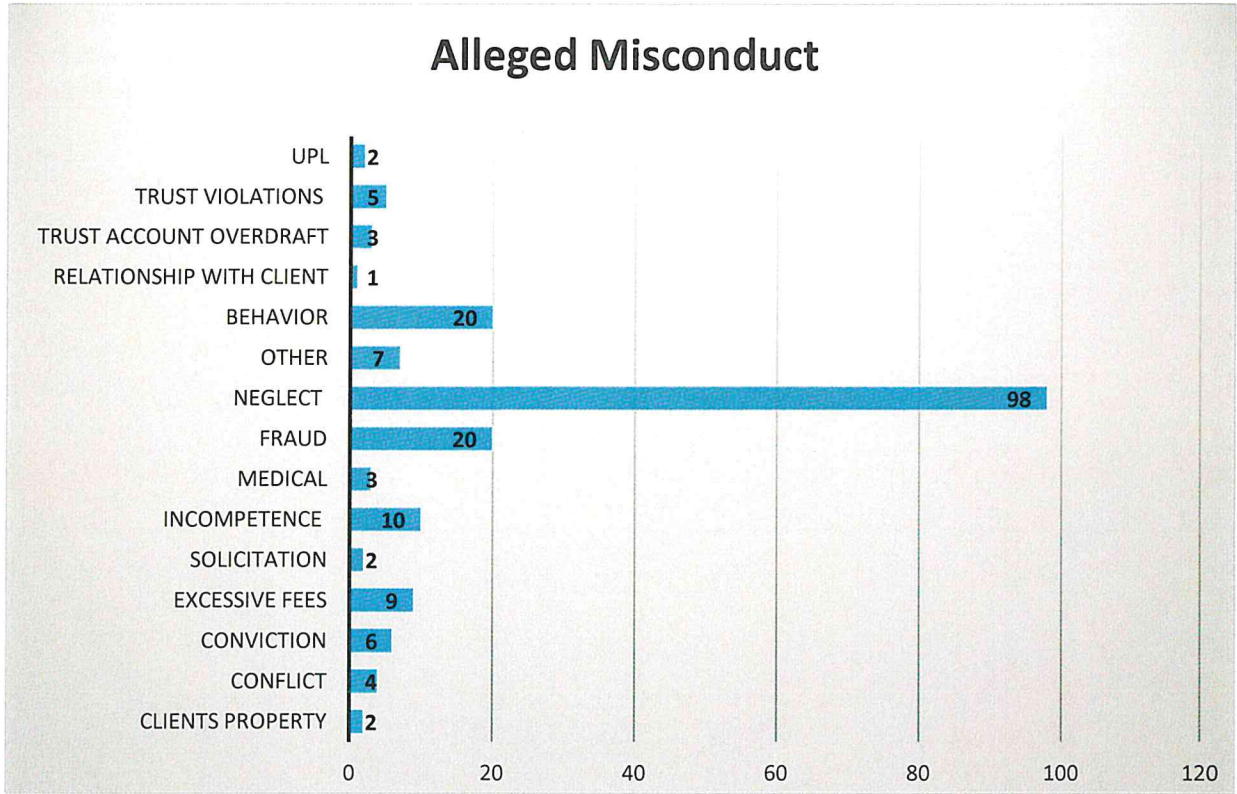
Law Office Management Training:	10 Attorneys
Communication and Client Relationship Skills:	9 Attorneys
Professionalism in the Practice of Law:	2 Attorneys
Professional Responsibility / Ethics School:	11 Attorneys
Client Trust Account School:	4 Attorneys
Law Office Consultations:	11 Attorneys

SURVEY OF GRIEVANCES:

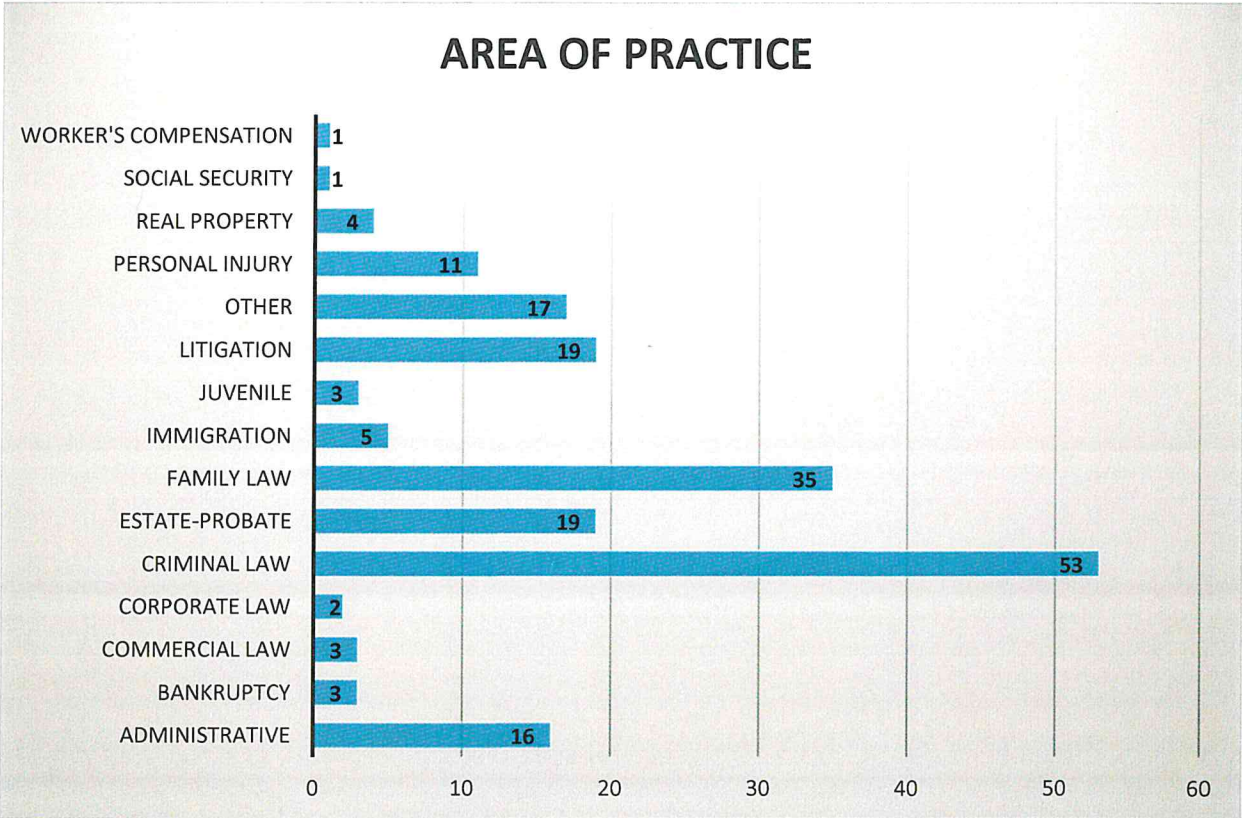
In order to better inform the Oklahoma Supreme Court, the bar, and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Formal and informal grievances were received against 944 attorneys. Therefore, fewer than six percent of the attorneys licensed to practice law in Oklahoma received a grievance in 2021.

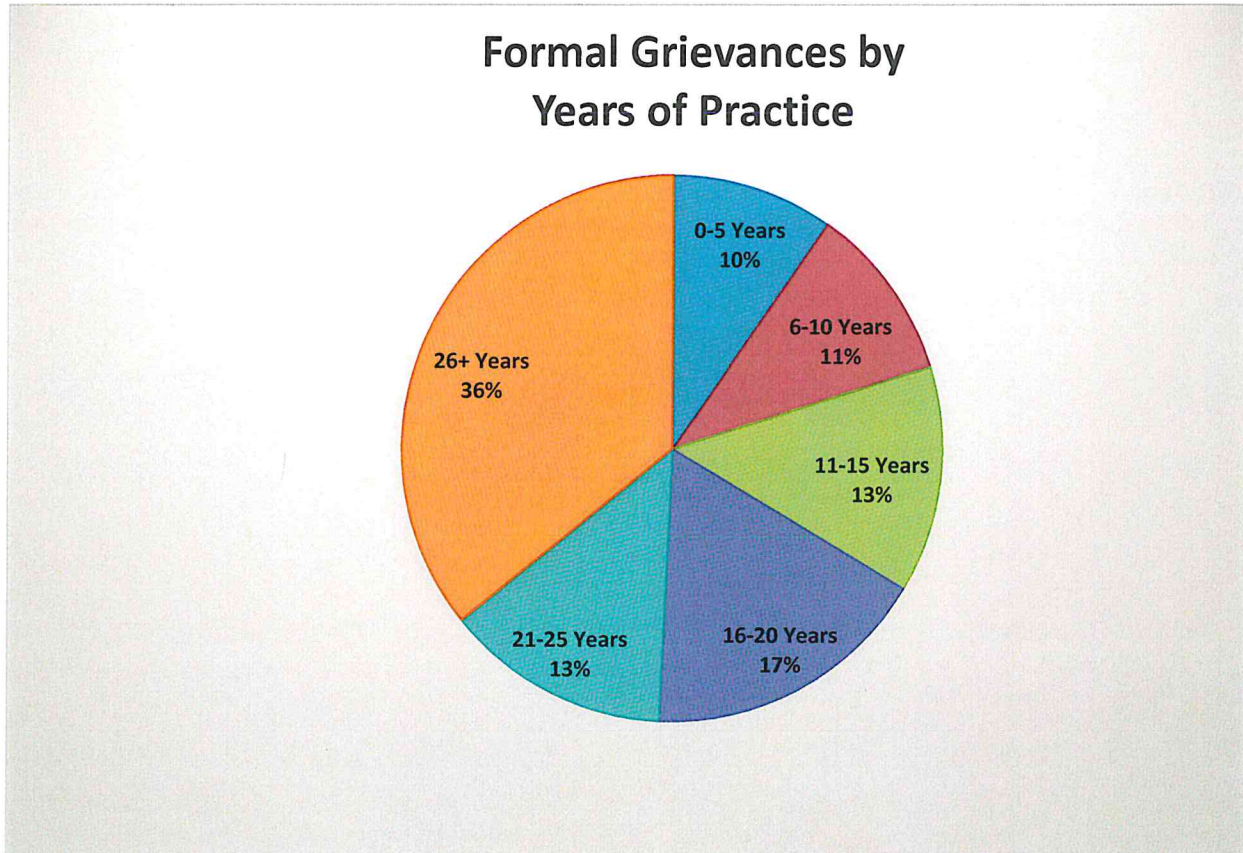
A breakdown of the type of attorney misconduct alleged in the 192 formal grievances opened by the Office of the General Counsel in 2021 is as follows:



Of the 192 formal grievances, the area of practice is as follows:



The number of years in practice of the 125 attorneys receiving formal grievances is as follows:



The largest number of grievances received were against attorneys who have been in practice for 26 years or more. The age of attorneys with disciplinary cases filed before the Oklahoma Supreme Court in 2021 is depicted below.

<i>Type of Complaint Filed</i>	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
<i>Number of Attorneys Involved</i>	10	15	3	3
<i>Age of Attorney</i>				
21-29 years old	0	0	0	0
30-49 years old	4	11	3	0
50-74 years old	6	3	0	3
75 or more years old	0	1	0	0

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2021, discipline was imposed by the Oklahoma Supreme Court in 21 disciplinary cases. The sanctions are as follow:

1. Disbarment.

<u>Respondent</u>	<u>Order Date</u>
Charles Burton	02/23/2021
Amber Ann Sweet	11/15/2021

2. Resignations Pending Disciplinary Proceedings Approved by Court. (Tantamount to Disbarment)

<u>Respondent</u>	<u>Order Date</u>
Eugene Robinson	03/02/2021
Joseph Howard	09/14/2021
William Eakin	11/08/2021
James Montgomery	11/08/2021

3. Disciplinary Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
Brandon Nichols	2 years	05/25/2021
Jason Fields	1 year	06/08/2021
Amber Sweet	Interim	09/13/2021
Thomas Mortensen	Interim	09/27/2021
Robert Faulk	2 years	09/28/2021
William Eakin	Interim	10/25/2021
Tynan Grayson	2 years +1 day	11/16/2021
Michael McBride	1 year	11/23/2021
Heather Panick	2 year	12/13/2021

4. Confidential Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
CONFIDENTIAL	Indefinite (R10 RGDP)	06/07/2021
CONFIDENTIAL	Indefinite (R10 RGDP)	10/18/2021

5. Public Censure.

<u>Respondent</u>	<u>Order Date</u>
Tara Jack	01/19/2021
Robert Newark	03/26/2021
Kendra Coleman	11/23/2021

6. Dismissals.

<u>Respondent</u>	<u>Order Date</u>
William Smith	05/17/2021
Grayson Barnes	06/28/2021
Nicholas Porter	09/13/2021
Kassie McCoy	10/01/2021

There were 16 discipline cases filed with the Oklahoma Supreme Court as of January 1, 2021. During 2021, 30 new formal complaints were filed for a total of 46 cases before the Oklahoma Supreme Court during 2021. On December 31, 2021, 22 cases remained open before the Oklahoma Supreme Court.

<i>Type of Discipline Imposed</i>	Disbarment	RPDP	Disciplinary Suspension	Confidential Suspension	Public Censure	Dismissals
<i>Number of Attorneys Involved</i>	2	4	9	2	3	4
<i>Age of Attorney</i>						
21-29 years old	0	0	0	0	0	0
30-49 years old	1	0	6	2	3	3
50-74 years old	1	4	3	0	0	1
75 or more years old	0	0	0	0	0	0

REINSTATEMENTS:

There were four Petitions for Reinstatement pending before the Professional Responsibility Tribunal and one Petition for Reinstatement pending with the Oklahoma Supreme Court as of January 1, 2021. There were six new Petitions for Reinstatement filed in 2021. In 2021, the Oklahoma Supreme Court granted four reinstatements and dismissed two reinstatements. On December 31, 2021, there were two Petitions for Reinstatement pending before the Professional Responsibility Tribunal and three Petitions for Reinstatement pending decision with the Oklahoma Supreme Court.

UNAUTHORIZED PRACTICE OF LAW:

Rule 5.1(b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers, suspended lawyers and disbarred lawyers. Rule 5.5, ORPC, regulates the unauthorized practice of law by lawyers and prohibits lawyers from assisting others in doing so.

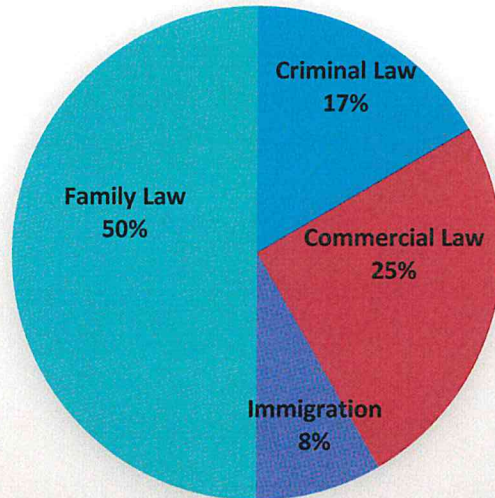
1. Requests for Investigation.

In 2021, the Office of the General Counsel received 12 complaints for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

2. Practice Areas.

Allegations of the unauthorized practice of law encompass various areas of law. In previous years, most unauthorized practice of law complaints involved non-lawyers or paralegals handling divorce matters, and that trend continues in 2021, with one-half of the UPL complaints involving family law matters.

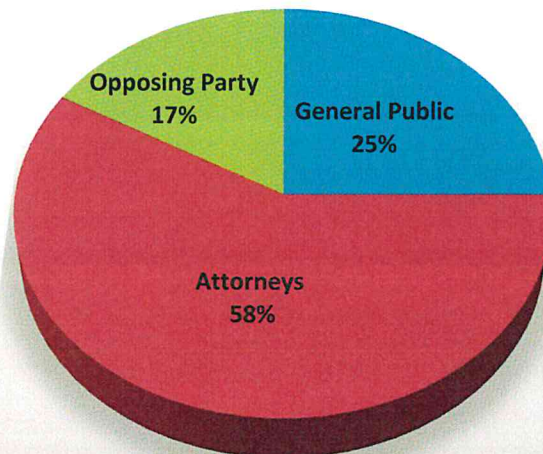
Practice Areas



3. Referral Sources.

Requests for investigations of the unauthorized practice of law stem from multiple sources. In 2021, the Office of the General Counsel received the most complaints from attorneys.

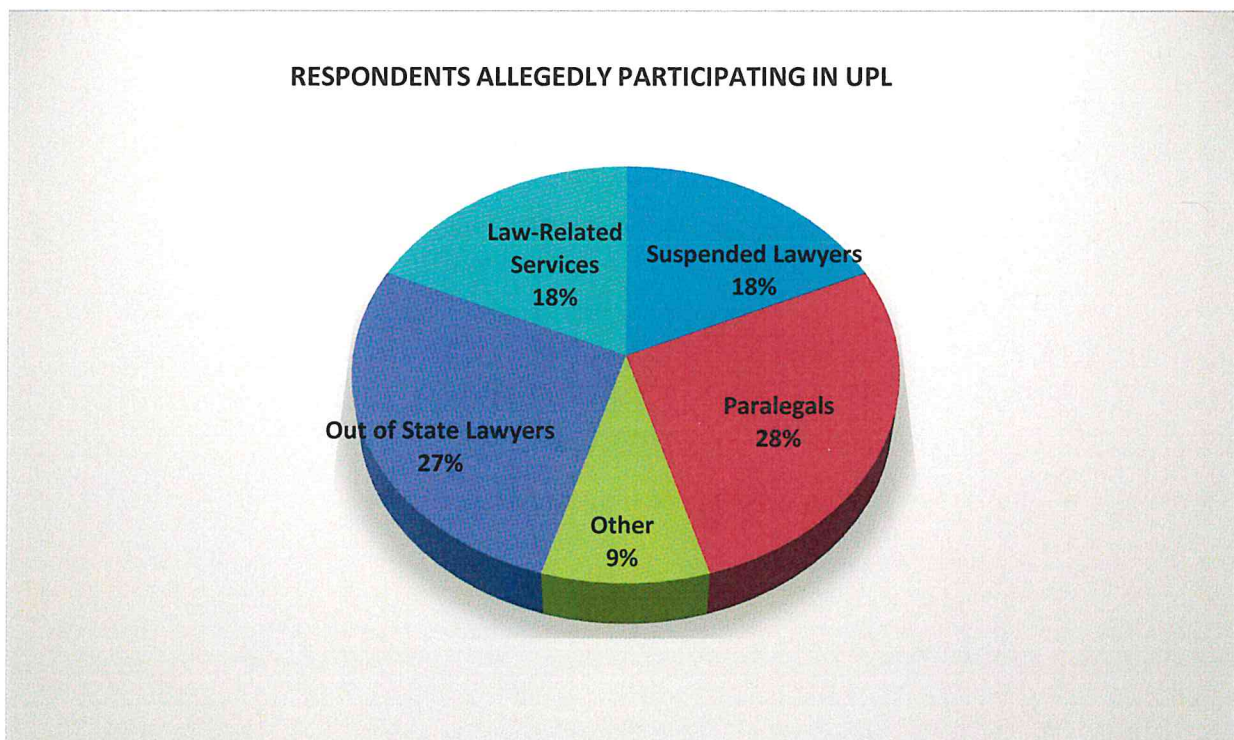
Referral Sources



4. Respondents.

For 2021, most requests for investigation into allegations of the unauthorized practice of law related to paralegals.

For purposes of this summary, the category “paralegal” refers to an individual who advertises as a paralegal and performs various legal tasks for their customers, including legal document preparation.



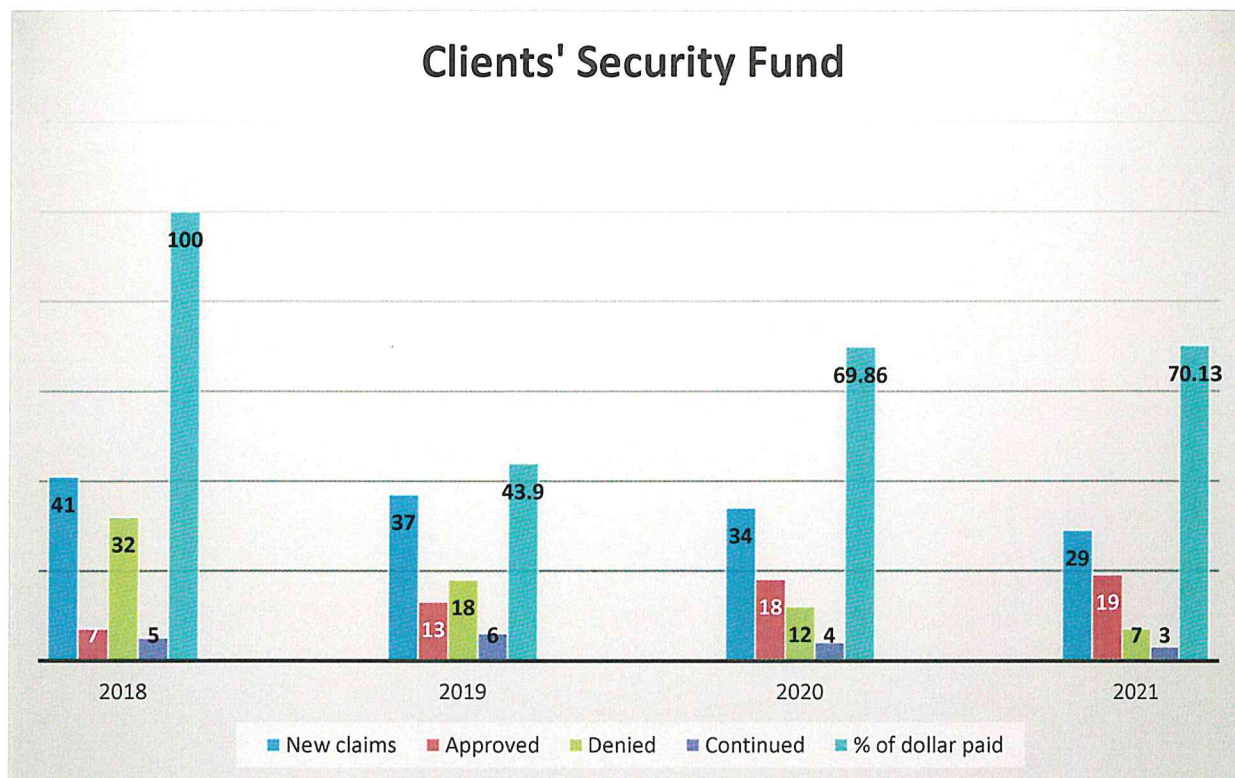
5. Enforcement.

In 2021, of the twelve matters received, the Office of the General Counsel took formal action in two matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, referring a case to an appropriate state and/or federal enforcement agency, or filing the appropriate district court action. Five matters were closed after corrective action was taken. The remainder of the matters remain under investigation.

CLIENTS' SECURITY FUND:

The Clients' Security Fund was established in 1965 by Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee which is comprised of 17 members, 14 lawyer members and 3 non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2021, the Committee was chaired by lawyer member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers. It is also intended to protect the reputation of lawyers in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates \$175,000.00 each year to the Clients' Security Fund for payment of approved claims.

In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a prorata basis until the total amount paid for all claims in that year is \$175,000.00. The Office of the General Counsel reviews, investigates, and presents the claims to the committee. In 2021, the Office of the General Counsel presented 29 claims to the Committee. The Committee approved 19 claims, denied 7 claims, and continued 3 claims into the following year for further investigation. In 2021, the Clients' Security Fund paid a total of \$176,509.38 on 19 approved claims.



CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA:

The Office of the General Counsel represented the Oklahoma Bar Association in several civil (non-discipline) matters during 2021. Three cases carried forward into 2022. The following is a summary of all 2021 civil actions against or involving the Oklahoma Bar Association:

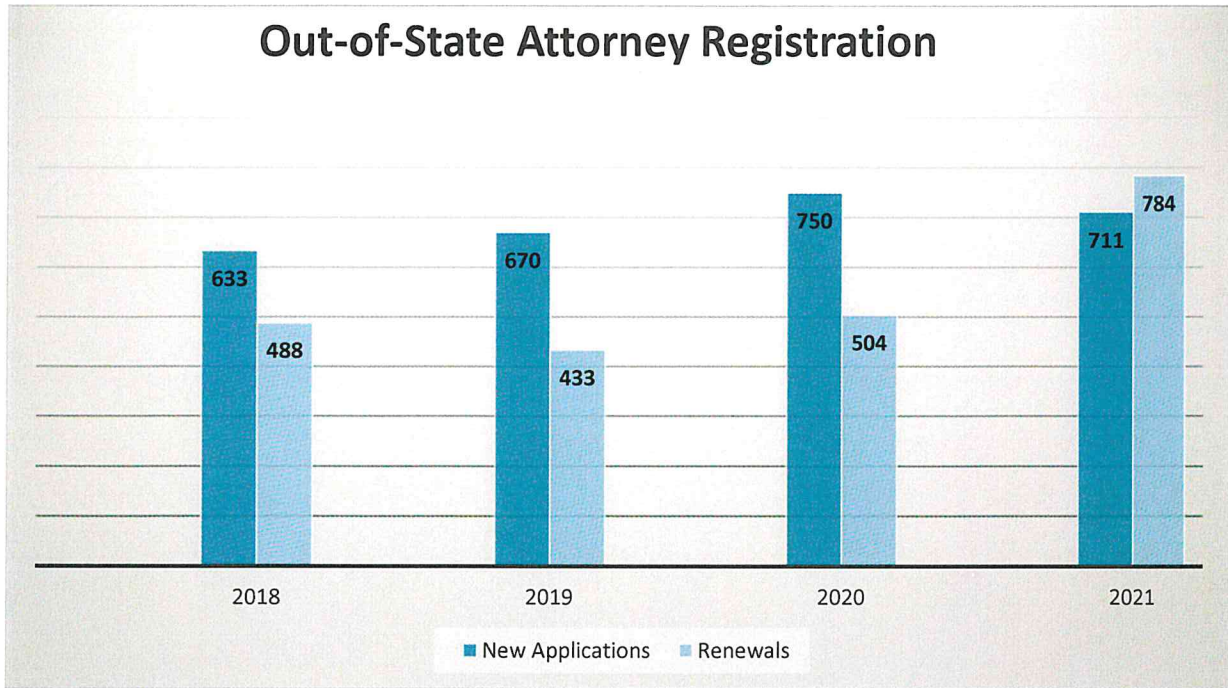
1. *McCormick et al., v. Barr et al.*, United States District Court for the Northern District of Oklahoma, Case No. CIV-20-24-JED-JFJ, filed January 21, 2020. The Plaintiffs assert various claims against twenty-one defendants. Although named as a party, there were no claims asserted against the Oklahoma Bar Association. The Oklahoma Bar Association filed its Motion to Dismiss on February 12, 2020. On December 8, 2021, the court dismissed the matter without prejudice and imposed filing restricts on the plaintiffs.
2. *Bednar v. McGuire, et al.*, Oklahoma County District Court Case No. CJ-2020-5931. Bednar filed a Petition for Damages on December 14, 2020. Bednar named 26 Defendants. The case is ongoing. To date, the Oklahoma Bar Association has not been served.
3. *Alberta Rose Jones v. Eric Bayat, et al.*, Lincoln County District Court No. CJ-2021-21. Jones filed a Petition on March 5, 2021, naming ten defendants and “Does 1-25.” These included the Oklahoma Bar Association and an Assistant General

Counsel. To date, the Oklahoma Bar Association and the Assistant General Counsel have not been served.

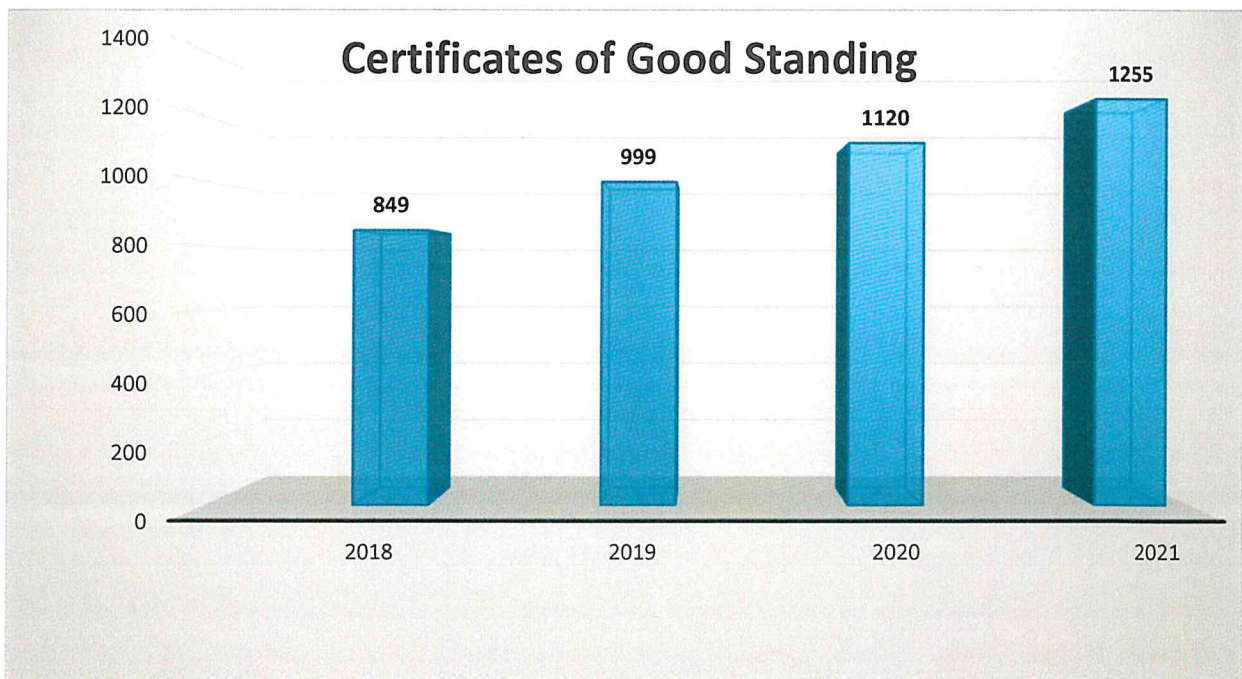
4. *Brewer v. Oklahoma Bar Association*, Oklahoma Supreme Court Case No. 119532. On April 22, 2021, Brewer filed an Application to Assume Original Jurisdiction and Writ of Prohibition alleging various claims and seeking broad relief from various branches of government. Thereafter, Brewer filed multiple motions in this matter. Pursuant to the Court's Order, the Oklahoma Bar Association
5. responded to Brewer's filings. On June 21, 2021, the Supreme Court denied Brewer relief. Brewer has notified the Oklahoma Bar Association multiple times that he is filing a Petition for Certiorari with the United States Supreme Court. Though he has sent many United States Supreme Court filing forms to the office, this case has not appeared on that court's docket.
6. *Stewart v. Vincent, et al.*, United States District Court for the Northern District of Oklahoma, Case No. CIV-21-450. The Oklahoma Bar Association was named in a Complaint filed October 15, 2021, but never served. This case was dismissed without prejudice on December 30, 2021.
7. *Farley v. Williams, et al.*, United States District Court for the Western District of Oklahoma, Case No. CIV-21-65. A Complaint was filed on January 29, 2021, naming Oklahoma Bar Association as a defendant. The Oklahoma Bar Association was not served. Plaintiff has filed multiple documents in this matter. On April 6, 2021, the magistrate recommended that the case be dismissed. Plaintiff objected on April 14, 2021 and again on September 24, 2021. This matter is pending.

ATTORNEY SUPPORT SERVICES:

1. **Out-of-State Attorney Registration.** The Office of the General Counsel processed 711 new applications and 785 renewal applications submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in his/her licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or Tribunal as an exhibit to a "Motion to Admit."



2. **Certificates of Good Standing.** In 2021, the Office of the General Counsel prepared 1,255 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.



ETHICS AND EDUCATION:

During 2021, attorneys in the General Counsel's office presented more than 30 hours of continuing legal education programs to county bar association meetings, attorney practice groups, OBA programs, all three state law schools, and various legal organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. Due to pandemic restrictions, the majority of these programs were presented via video conference. These efforts direct lawyers to a better understanding of their ethical requirements and the disciplinary process, and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. The Office of the General Counsel worked with lawyer groups to assist with presentation of programming via in person presentations and video conferencing platforms.

The attorneys, investigators, and support staff for the General Counsel's office also attended continuing education programs in an effort to increase their own skills and training in attorney discipline. These included trainings by the Oklahoma Bar Association (OBA), National Organization of Bar Counsel (NOBC), and the Organization of Bar Investigators (OBI).

RESPECTFULLY SUBMITTED this 15th day of February, 2022, on behalf of the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.



Gina Hendryx, General Counsel
Oklahoma Bar Association