

FEB - 2 2023

SCBD # 7401

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, 2022 THROUGH DECEMBER 31, 2022

INDEX

<u>INTRODUCTION</u>	2
<u>THE PROFESSIONAL RESPONSIBILITY COMMISSION</u>	2
<u>RESPONSIBILITIES</u>	2
<u>OBA MEMBERSHIP STATISTICS</u>	3
<u>VOLUME OF GRIEVANCES</u>	4
<u>DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION</u>	5
1. Formal Charges	5
2. Private Reprimands	6
3. Letters of Admonition	7
4. Dismissals	7
5. Diversion Program	8
<u>SURVEY OF GRIEVANCES</u>	9
<u>DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT</u>	13
1. Disbarment	13
2. Resignations Pending Disciplinary Proceedings Approved by Court	13
3. Disciplinary Suspensions	13
4. Confidential Suspensions	14
5. Dismissals	14
<u>REINSTATEMENTS</u>	15

<u>UNAUTHORIZED PRACTICE OF LAW</u>	15
1. Requests for Investigation	15
2. Practice Areas	15
3. Referral Sources.....	16
4. Respondents.....	17
5. Enforcement	17
<u>CLIENTS' SECURITY FUND</u>	18
<u>CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA</u>	19
<u>ATTORNEY SUPPORT SERVICES</u>	21
1. Out-of-State Attorney Registration.....	21
2. Certificates of Good Standing.....	22
<u>ETHICS AND EDUCATION</u>	23

SCBD # 7401

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, 2022 THROUGH DECEMBER 31, 2022

INTRODUCTION:

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2021, ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2022 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 lawyer members are nominated by the President of the Oklahoma Bar 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. Members serve for a term of three years with a maximum of two terms. Terms expire on December 31st at the conclusion of the three-year term.

Lawyer members serving on the Commission all or part of 2022 were Chairperson Sidney K. Swinson, Tulsa; Vice-Chairperson Heather Burrage, Durant; Karen A. Henson, Shawnee; Matthew Beese, Muskogee; Jimmy D. Oliver, Stillwater; and Alissa Preble Hutter, Norman. 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.

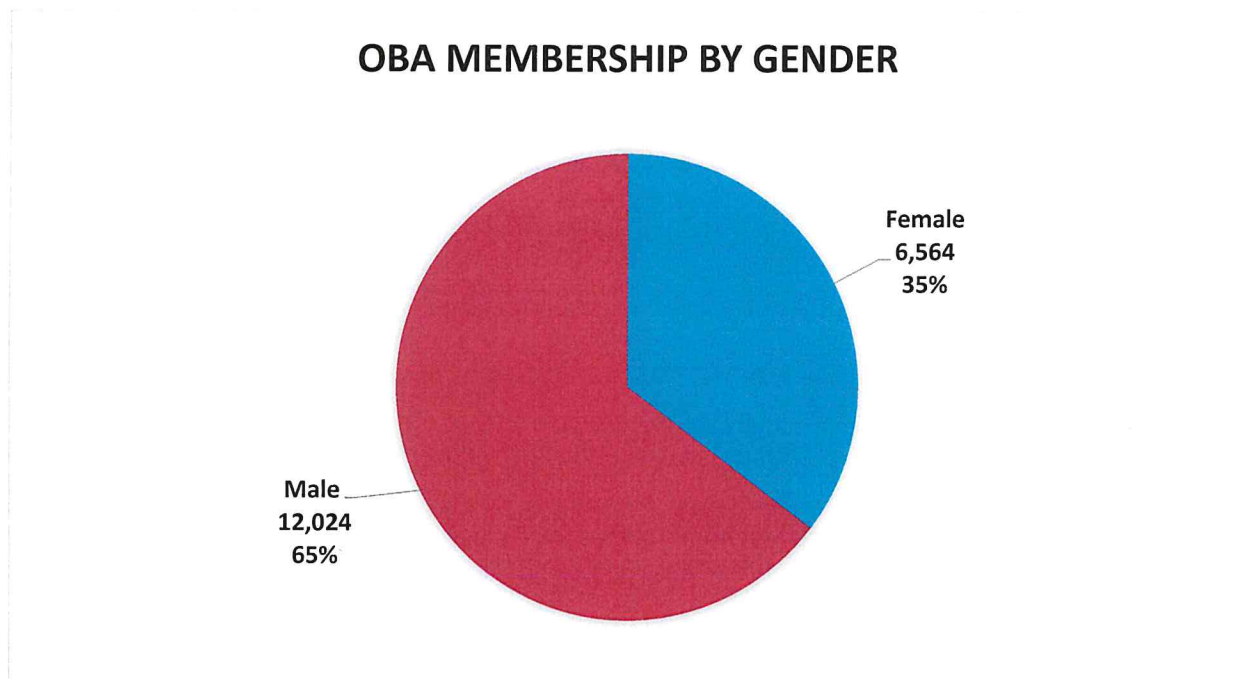
RESPONSIBILITIES:

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 a lawyer. The Office of the General Counsel prosecutes all proceedings under the Rules Governing Disciplinary Proceedings, supervises the investigative process, and represents the Oklahoma Bar Association in all reinstatement proceedings.

OBA MEMBERSHIP STATISTICS:

The membership of the Oklahoma Bar Association as of December 31, 2022 was 18,588 lawyers. The total number of members included 12,024 males and 6,564 females.



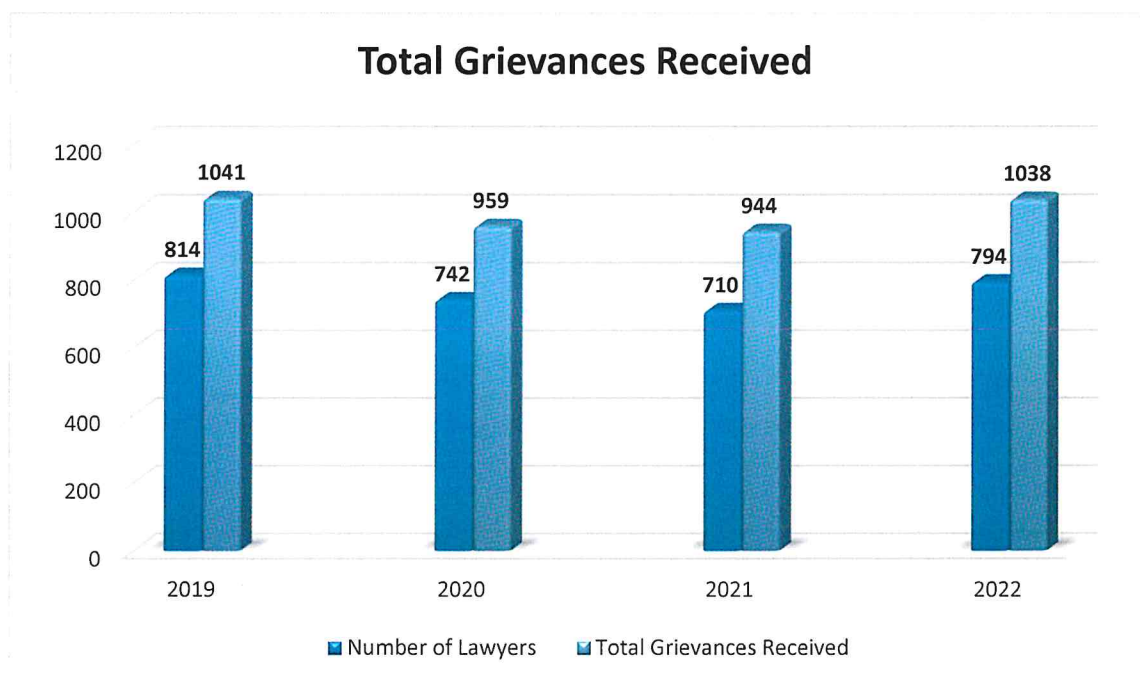
VOLUME OF GRIEVANCES:

During 2022, the Office of the General Counsel received 198 formal grievances involving 151 lawyers and 840 informal grievances involving 643 lawyers. In total, 1,038 grievances were received against 794 lawyers. The total number of grievances and lawyers receiving same differs because some lawyers received multiple grievances. In addition, the Office of the General Counsel processed 133 items of general correspondence, which is mail not considered to be a grievance against a lawyer.¹

On January 1, 2022, 160 formal grievances were carried over from the previous year. The carryover accounted for a total caseload of 358 formal investigations pending throughout 2022. Of those grievances, 192 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 166 formal grievances remained pending as of December 31, 2022.

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.

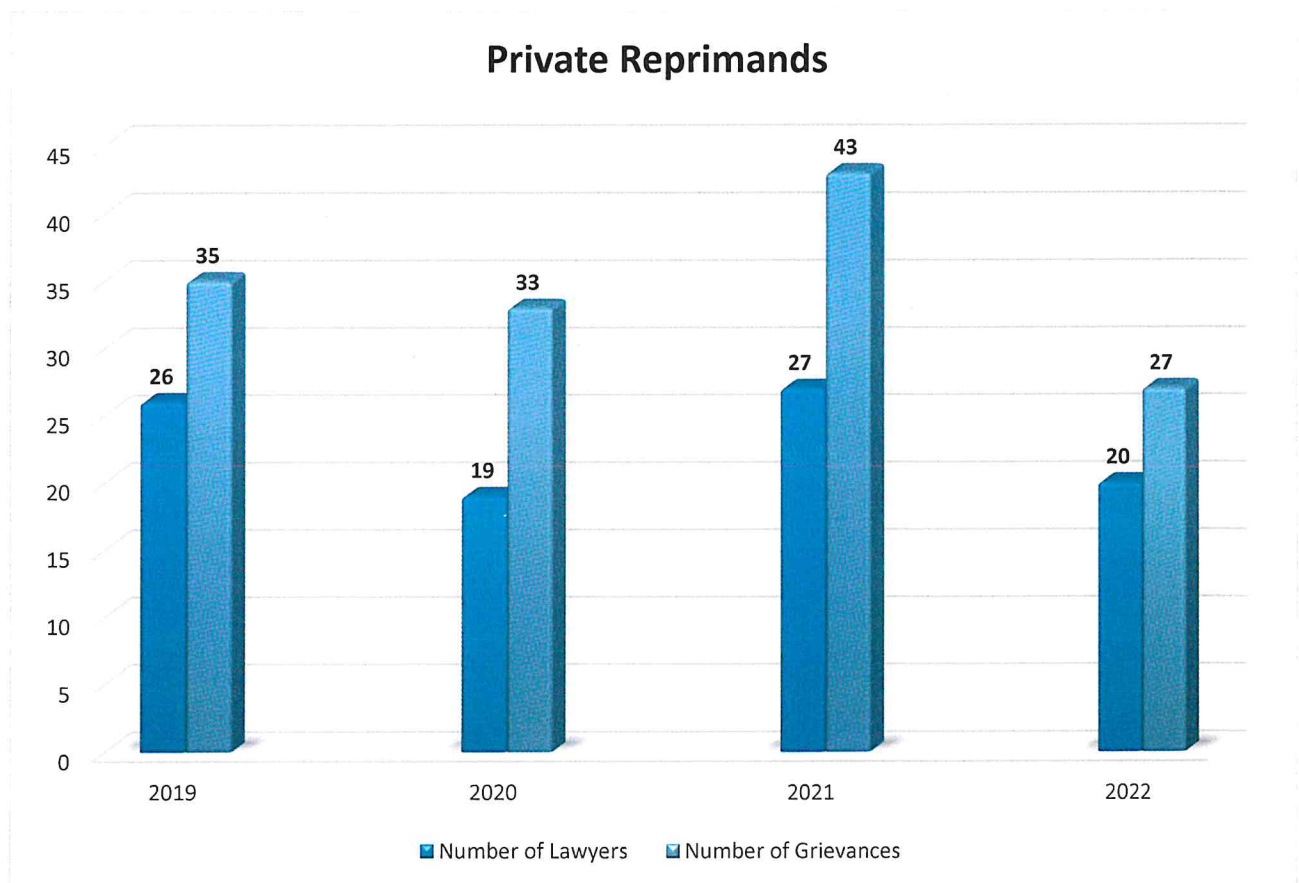
The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received 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.



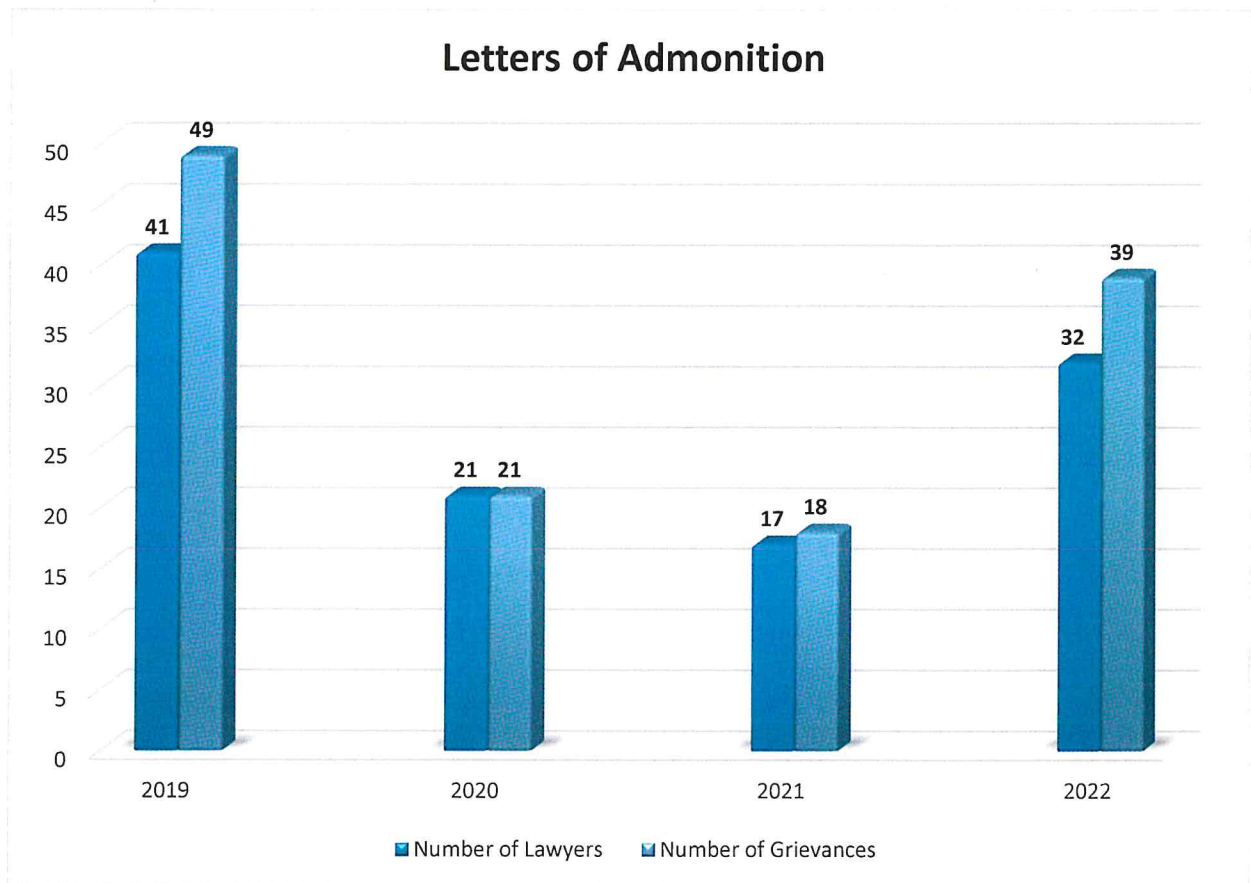
DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION:

1. **Formal Charges.** During 2022, the Professional Responsibility Commission voted the filing of formal disciplinary charges against eight lawyers involving 30 formal grievances. In addition, the Commission also oversaw the investigation of 12 Rule 7, RGDP formal disciplinary charges 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 lawyer, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2022, the Commission voted to administer private reprimands to 20 lawyers involving 27 formal grievances.



3. **Letters of Admonition.** During 2022, the Professional Responsibility Commission voted to issue letters of admonition to 32 lawyers involving 39 formal grievances cautioning that the conduct of the lawyer was dangerously close to a violation of a disciplinary rule.



4. **Dismissals.** The Professional Responsibility Commission dismissed 12 grievances that had been received but not concluded due to the resignation of the lawyer pending disciplinary proceedings, a continuing lengthy suspension of the respondent lawyer, or disbarment of the respondent lawyer. The remainder were dismissed where the investigation could not substantiate the allegations by clear and convincing evidence.

5. **Diversion Program.** The Professional Responsibility Commission may also refer respondent lawyers 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 2022, the Commission referred 32 lawyers to the Discipline Diversion Program for conduct involving 40 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating lawyer and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program staff 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. In 2022, instructional courses were taught by OBA General Counsel Gina Hendryx, OBA Assistant General Counsels Katherine Ogden and Tracy Pierce Nester, 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 able to monitor when lawyers 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.

2022 Lawyer Participation in Diversion Program Curriculum

Communication and Client Relationship Skills	13 Lawyers
Professionalism in the Practice of Law	12 Lawyers
Professional Responsibility / Ethics School	12 Lawyers
Client Trust Account School	5 Lawyers
Law Office Consultations	5 Lawyers

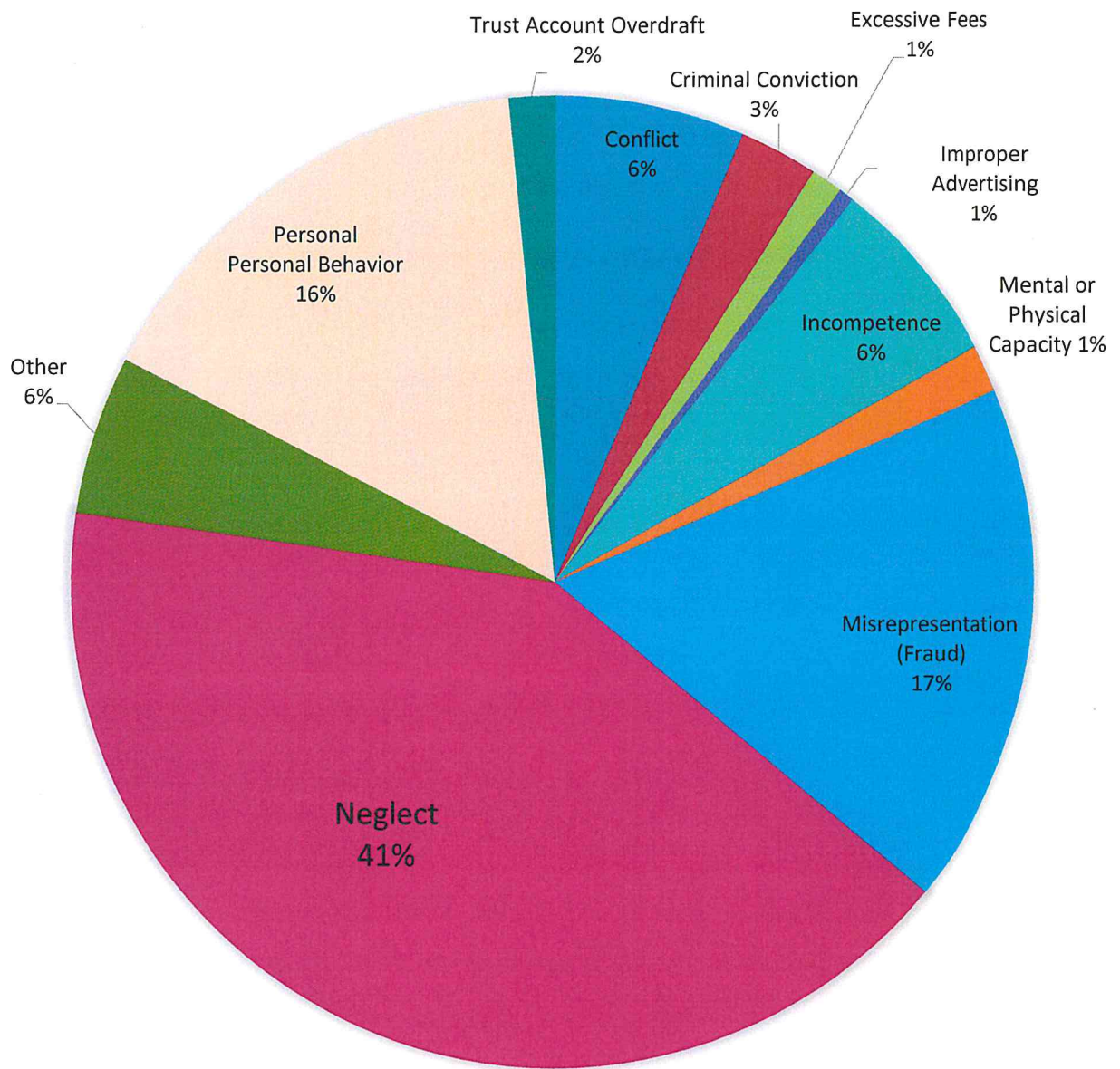
SURVEY OF GRIEVANCES:

To better inform the Oklahoma Supreme Court, the bar, and the public of the nature of the grievances received, the number of lawyers receiving grievances, and the practice areas of misconduct involved, the following information is presented.

Formal and informal grievances were received against 794 lawyers. Therefore, fewer than five percent of the lawyers licensed to practice law in Oklahoma received a grievance in 2022.

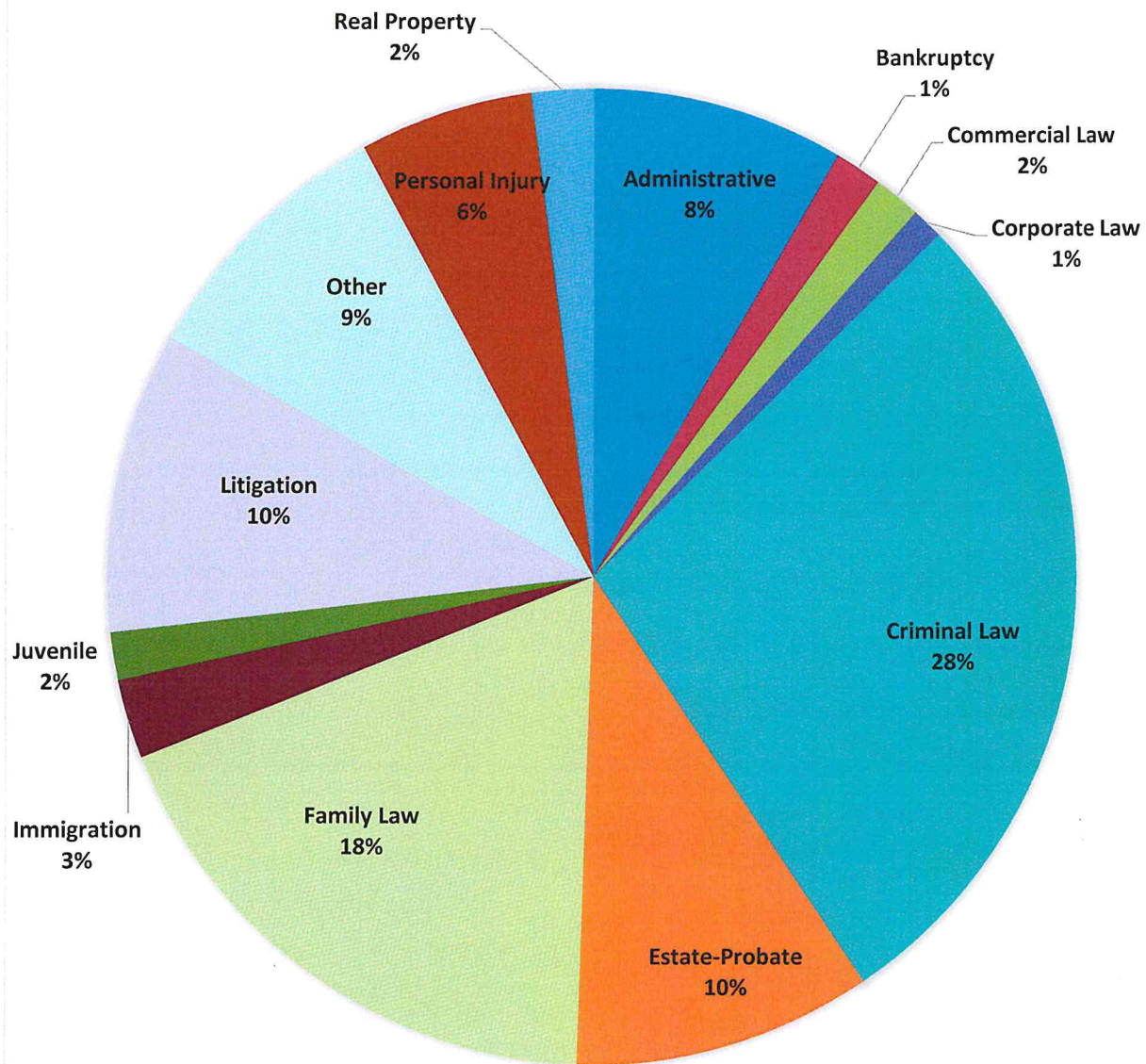
A breakdown of the types of misconduct alleged in the 198 formal grievances opened by the Office of the General Counsel in 2022 is as follows:

ALLEGED MISCONDUCT

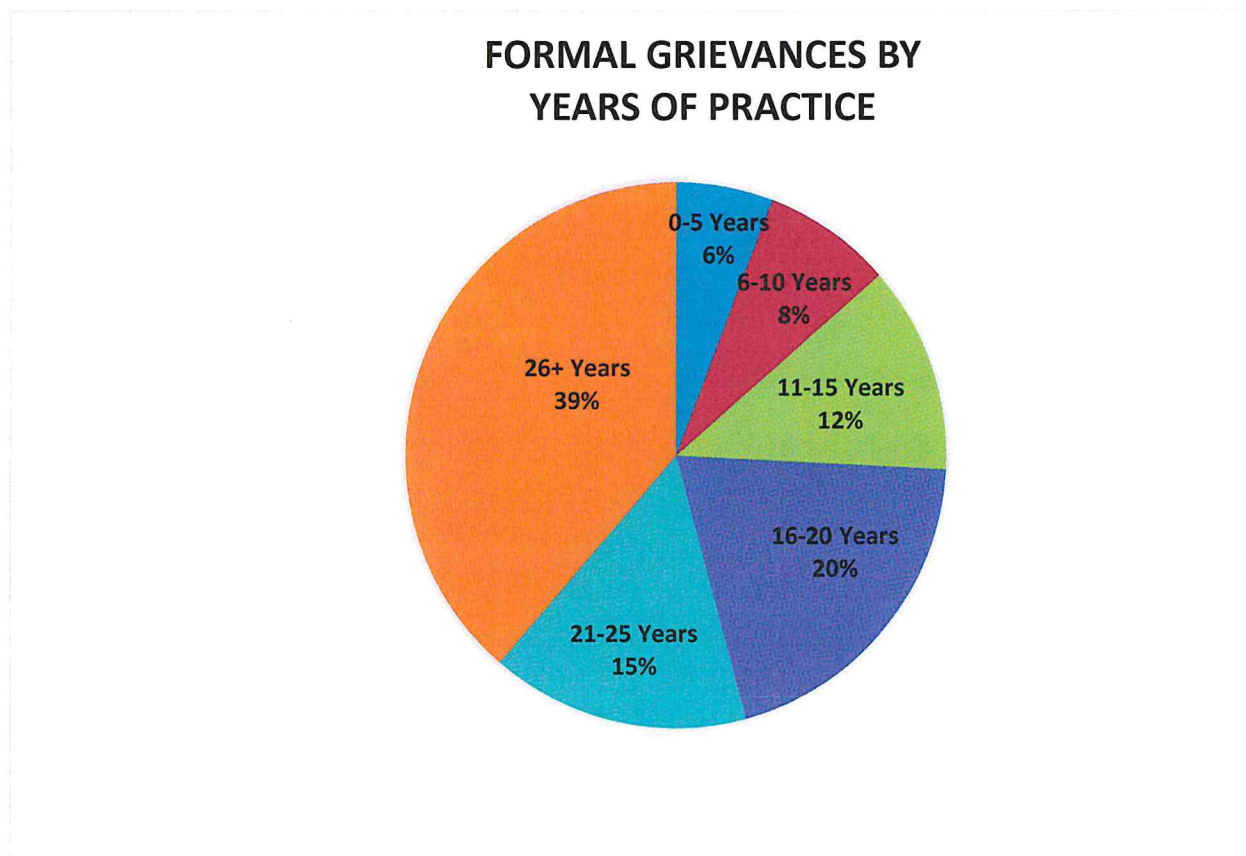


Of the 192 formal grievances, the area of practice is as follows:

AREA OF PRACTICE



The number of years in practice of the 151 lawyers receiving formal grievances is as follows:



The largest number of grievances received were against lawyers who have been in practice for 26 years or more. The age of lawyers with disciplinary cases filed before the Oklahoma Supreme Court in 2022 is depicted below.

Type of Complaint Filed	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
Number of Lawyers Involved	7	12	2	4
Age of Lawyer				
21-29 years old	0	0	0	0
30-49 years old	1	3	1	1
50-59 years old	6	3	1	1
60-74 years old	0	5	0	2
75 or more years old	0	1	0	0

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2022, discipline was imposed by the Oklahoma Supreme Court in 20 disciplinary cases. The discipline imposed was:

1. Disbarment.

<u>Respondent</u>	<u>Order Date</u>
Robert Carlyle Scott	01/11/2022
Haskell Doak Willis	02/08/2022
Sean Downes	06/21/2022
Ronald Kaufman	06/28/2022
Jay Silvernail	06/28/2022

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

<u>Respondent</u>	<u>Order Date</u>
Michelle Roller	01/10/2022
Robin Stead	03/21/2022
Daniel Giraldi	11/23/2022
David Bower	12/20/2022

3. Disciplinary Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
Lance Lance	Interim	1/10/2022
Robin Stead	Interim	01/18/2022
Sanford Kutner	18 Months	02/28/2022
Phillip Shyers	Interim	03/21/2022
David Littlefield	Interim	06/06/2022
Jack Shears	Interim	06/20/2022
David Woodward	75 Days	09/3/2022
Ryan Wiehl	Interim	11/14/2022

4. Confidential Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
CONFIDENTIAL	Indefinite (R10 RGDP)	02/22/2022
CONFIDENTIAL	Indefinite (R10 RGDP)	05/03/2022

5. Dismissals.

<u>Respondent</u>	<u>Order Date</u>
Benjamin Lepak	01/31/2022
Brecken Wagner	02/01/2022
Steve George	04/12/2022
Robert Martin	04/18/2022
Kimberly Mouledoux	05/23/2022
William Eakin	06/27/2022
Jack Shears	07/11/2022

There were 22 discipline cases filed with the Oklahoma Supreme Court as of January 1, 2022. During 2022, 21 new formal complaints were filed for a total of 43 cases before the Oklahoma Supreme Court during 2022. On December 31, 2022, 23 cases remained open before the Oklahoma Supreme Court.

<i>Type of Discipline Imposed</i>	Disbarment	RPDP	Disciplinary Suspension	Confidential Suspension	Dismissals
<i>Number of Lawyers Involved</i>	5	4	8	2	7
<i>Age of Lawyer</i>					
21-29 years old	0	0	0	0	0
30-49 years old	1	1	2	1	4
50-59 years old	3	1	1	1	0
60-74 years old	1	2	3	0	2
75 or more years old	0	0	2	0	1

REINSTATEMENTS:

On January 1, 2022, there were two Petitions for Reinstatement pending before the Professional Responsibility Tribunal and three Petitions for Reinstatement pending before the Oklahoma Supreme Court. There were six new Petitions for Reinstatement filed in 2022. In 2022, the Oklahoma Supreme Court granted four reinstatements and denied one. On December 31, 2022, there were three Petitions for Reinstatement pending before the Professional Responsibility Tribunal and two Petitions for Reinstatement pending before 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.

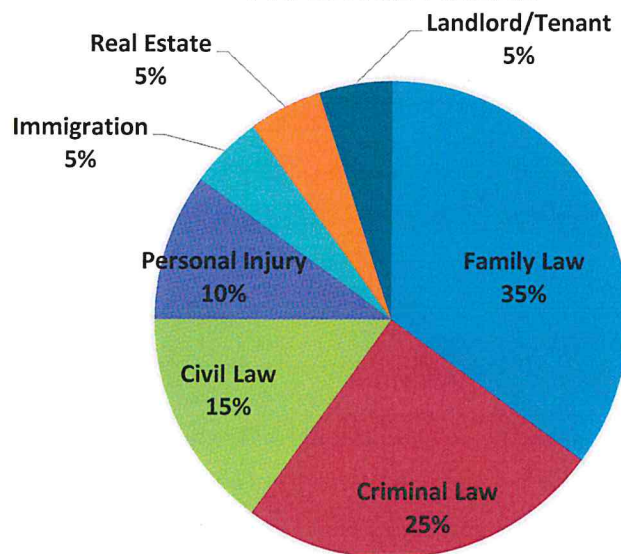
1. Requests for Investigation.

In 2022, the Office of the General Counsel received 21 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 family matters, and that trend continues in 2022, with one-third of the UPL complaints involving family law matters.

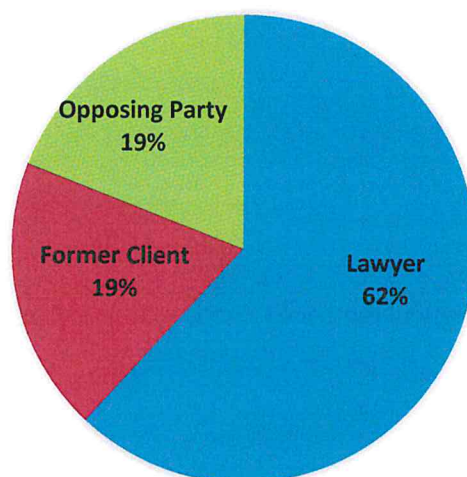
PRACTICE AREAS



3. Referral Sources.

Requests for investigations of the unauthorized practice of law come from multiple sources. In 2022, the Office of the General Counsel received the majority of UPL complaints from lawyers.

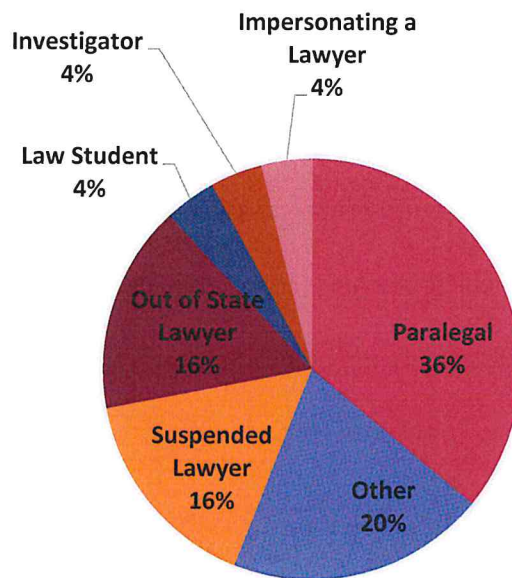
REFERRAL SOURCES



4. Respondents.

In 2022, 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.

RESPONDENTS ALLEGEDLY PARTICIPATING IN UPL



5. Enforcement.

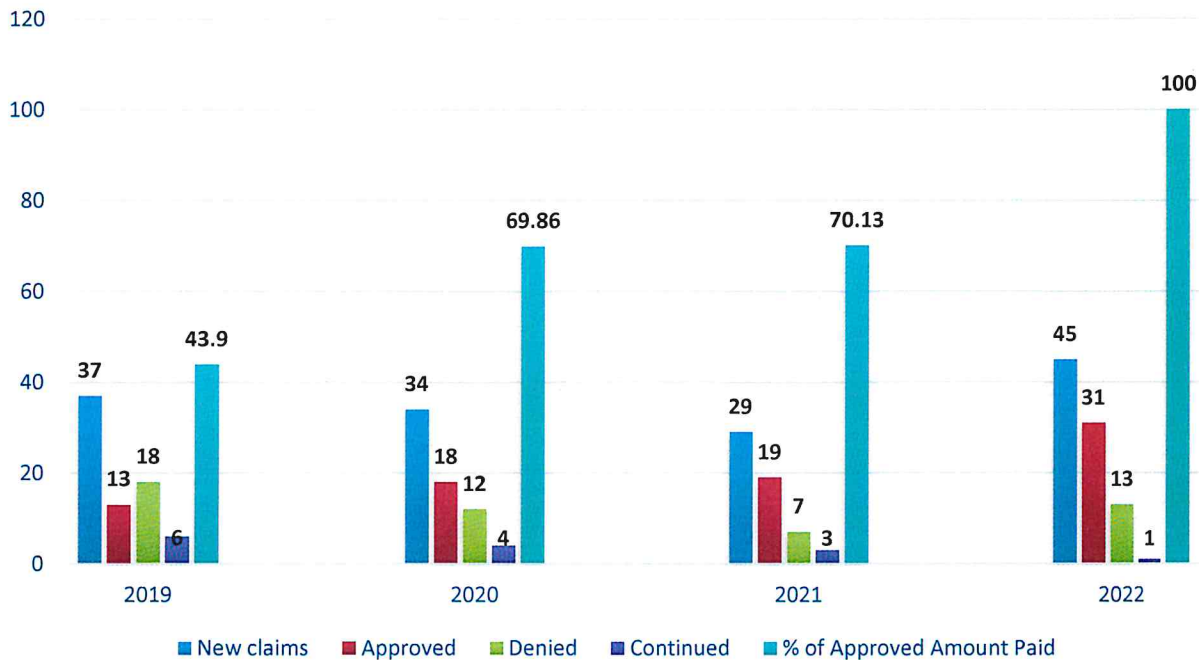
In 2022, the Office of the General Counsel took formal action in seven matters. Formal action included issuing cease and desist letters, initiating formal investigations through the lawyer discipline process, referring a case to an appropriate state and/or federal enforcement agency, or filing the appropriate district court action. Nine matters were closed after corrective action was taken and 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 2022, 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 2022, the Office of the General Counsel presented 45 claims to the Committee. The Committee approved 31 claims, denied 13 claims, and continued one claim into the following year for further investigation. In 2022, the Clients' Security Fund paid a total of \$115,899.58 on 31 approved claims.

Clients' Security Fund



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 2022. The following is a summary of the civil actions against or involving the Oklahoma Bar Association:

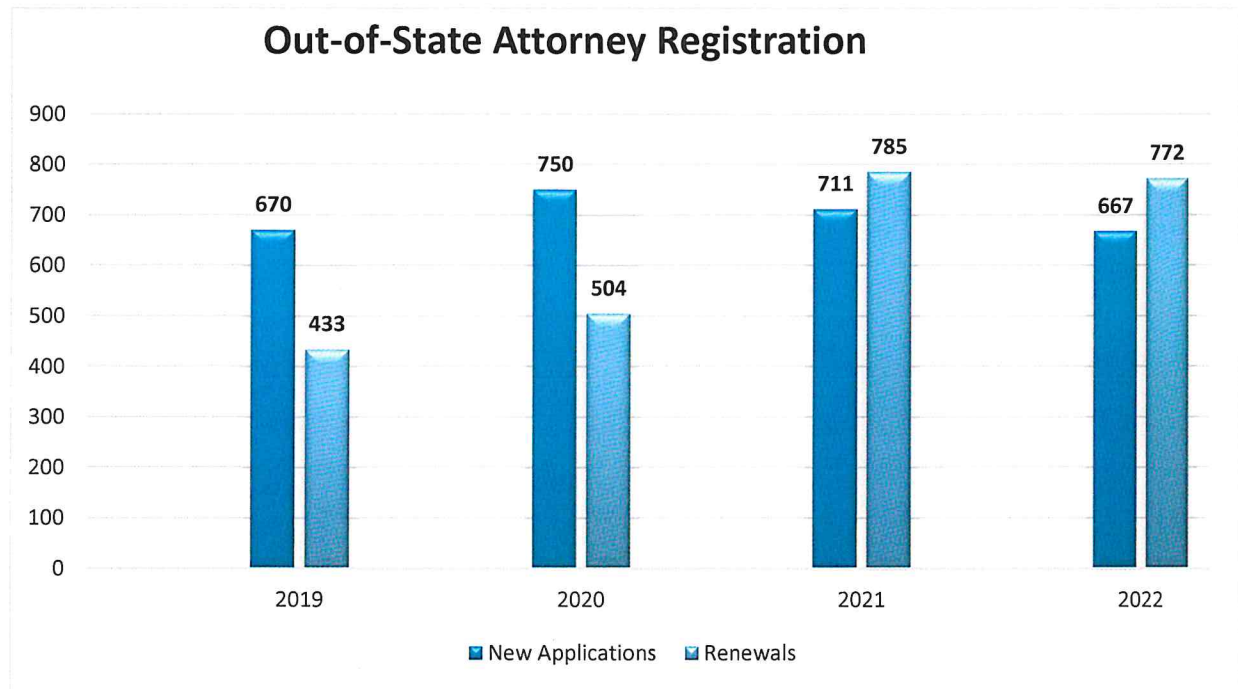
1. *McCormick et al., v. Barr et al.*, United States District Court for the Northern District of Oklahoma, Case No. CIV-20-24-JED-JFJ, filed January 21, 2020. The Plaintiffs assert various claims against twenty-one defendants. There are no claims asserted against the Oklahoma Bar Association. The Oklahoma 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. Plaintiffs filed an objection on January 6, 2022.
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. Bednar alleged his dissatisfaction with the disciplinary process. Several defendants were dismissed on May 10, 2022. 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. Rose filed a Complaint on March 5, 2021. Rose named ten defendants and “Does 1-25,” including the Oklahoma Bar Association and an Assistant General Counsel. Jones alleged that the Oklahoma Bar Association failed to achieve her son’s legal goals. To date, the Oklahoma Bar Association has not been served. This matter was transferred to Kay County District Judge Turner.
4. *Alberta Rose Jones v. Eric Bayat, et al.*, Lincoln County District Court No. CJ-2022-27. Rose filed a Petition on February 25, 2022 against 11 named defendants and 10 “Doe” defendants. The Petition alleged the Oklahoma Bar Association ignored Open Records Act requests and her dissatisfaction at the resolution of bar grievances. The Oklahoma Bar Association filed a motion to dismiss on March 23, 2022. On April 11, 2022, this matter was transferred to Payne County District Judge Corley. This matter is still pending.
5. *Brewer v. Oklahoma Bar Association*, United States Supreme Court Case No. 21-7199. On July 14, 2021, the United States Supreme Court docketed Brewer’s Petition for Writ of Certiorari, appealing the Oklahoma Supreme Court’s denial of Brewer’s Application to Assume Original Jurisdiction and Writ of Prohibition on June 21, 2021, in Oklahoma Supreme Court Case No. 119532. Brewer’s Petition alleged various claims and sought broad relief from various branches of government, including a general request for the Oklahoma Bar Association to stop its oppression of the people of Oklahoma. The Oklahoma Bar Association filed a waiver of right to respond. The matter was distributed for conference and on April 4, 2022, the Supreme Court denied Brewer’s petition.
6. *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. Farley was dissatisfied with the resolution of his bar grievance. 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. On September 26, 2022, this matter was dismissed without prejudice.
7. *Rigsby v. Burkhalter, et al.*, United States District Court for the Eastern District of Oklahoma, Case No. CIV-22-287. Rigsby filed a Complaint against multiple defendants – including the Oklahoma Bar Association – on October 7, 2022. Although the facts are unclear, Rigsby appears to contend that the Oklahoma Bar Association failed to enjoin his public defenders from violating his “rights” and would not appoint counsel for him. The Oklahoma Bar Association has not been served. On November 28, 2022, the court dismissed Rigsby’s action without prejudice for the failure to pay the entire filing and administrative fees as directed by the court. Rigsby appealed.

8. *Rigsby v. Burkhalter, et al.*, United States Court of Appeals for the Tenth Circuit, Case No. 22-7058. On November 7, 2022, Rigsby filed an interlocutory appeal of an order denying Rigsby leave to proceed *in forma pauperis* issued in United States District Court for the Eastern District of Oklahoma Case No. CIV-22-287. On December 6, 2022, the court directed Rigsby to pay the district court's full filing fee by December 27, 2022 or the appeal will be dismissed without further notice.
9. *Rigsby v. Burkhalter, et al.*, United States Court of Appeals for the Tenth Circuit, Case No. 22-7063. On December 14, 2022, Rigsby filed a second appeal of an order denying his motion to "bring issue to the attention of the Court" and Judgment Dismissing the action without prejudice for failure to pay the entire filing and administrative fee, from United States District Court for the Eastern District of Oklahoma Case No. CIV-22-287. This matter is pending.

ATTORNEY SUPPORT SERVICES:

1. **Out-of-State Attorney Registration.** In 2022, the Office of the General Counsel processed 667 new applications and 772 renewal applications submitted by out-of-state lawyers registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State lawyers appearing pro bono to represent criminal indigent defendants, or on behalf of persons who otherwise would qualify for representation under the guidelines of the Legal Services Corporation due to their incomes, may request a waiver of the application fee from the Oklahoma Bar Association. 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 2022, the Office of the General Counsel prepared 1,220 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.

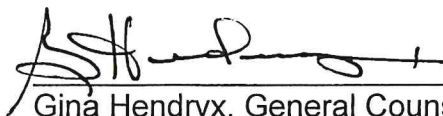


ETHICS AND EDUCATION:

During 2022, lawyers in the General Counsel's office presented more than 40 hours of continuing legal education programs to county bar association meetings, lawyer 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. 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 lawyers, investigators, and support staff of the General Counsel's office also attended continuing education programs in an effort to increase their own skills and knowledge 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 2nd day of February, 2023, 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