

SCBD # 7624

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA



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STATE OF OKLAHOMA

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CLERK

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

JANUARY 1, 2023 THROUGH DECEMBER 31, 2023

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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 2023 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 2023 were Chairperson Karen A. Henson, Shawnee; Vice-Chairperson Matthew Beese, Broken Arrow; Alissa Preble Hutter, Norman; Heather Burrage, Durant; and Jennifer M. Castillo, Oklahoma City. 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.

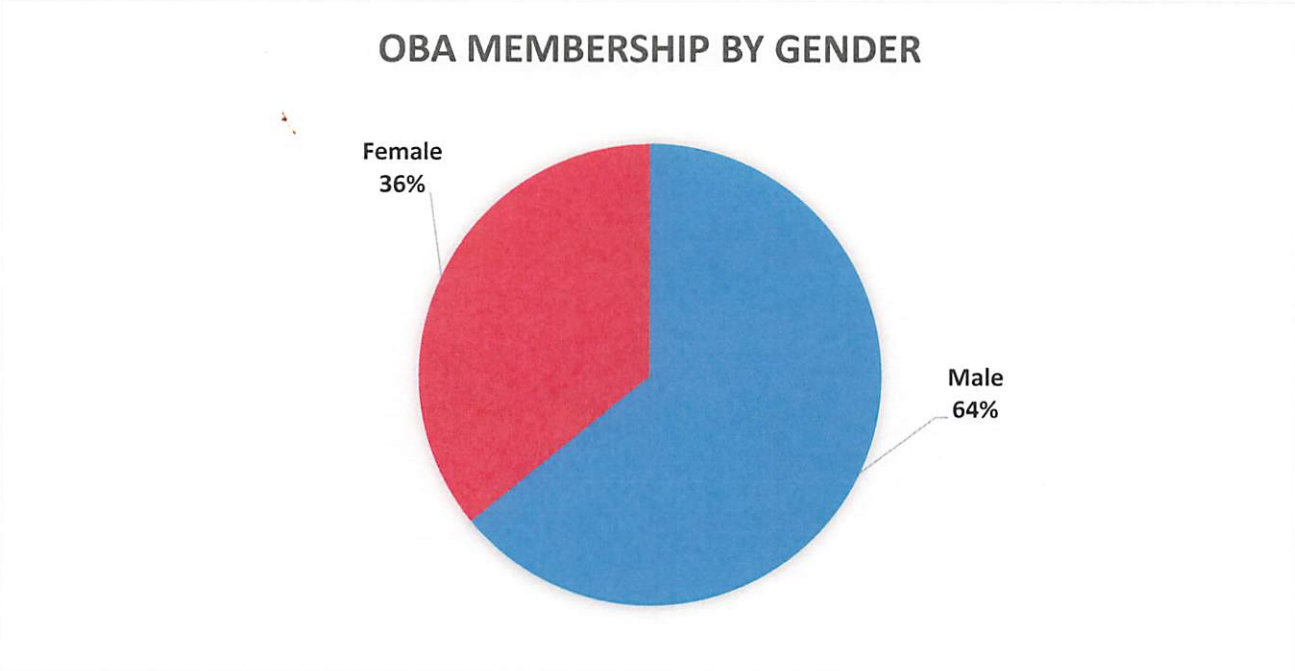
RESPONSIBILITIES:

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, 2023 was 18,734 lawyers. The total number of members included 12,001 males and 6,733 females.



VOLUME OF GRIEVANCES:

During 2023, the Office of the General Counsel received 215 formal grievances involving 158 lawyers and 909 informal grievances involving 714 lawyers. In total, 1,124 grievances were received against 872 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 165 items of general correspondence, which is mail not considered to be a grievance against a lawyer.

On January 1, 2023, 189 formal grievances were carried over from the previous year. The carryover accounted for a total caseload of 404 formal investigations pending throughout 2023. Of those grievances, 215 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 189 formal grievances remained pending as of December 31, 2023.

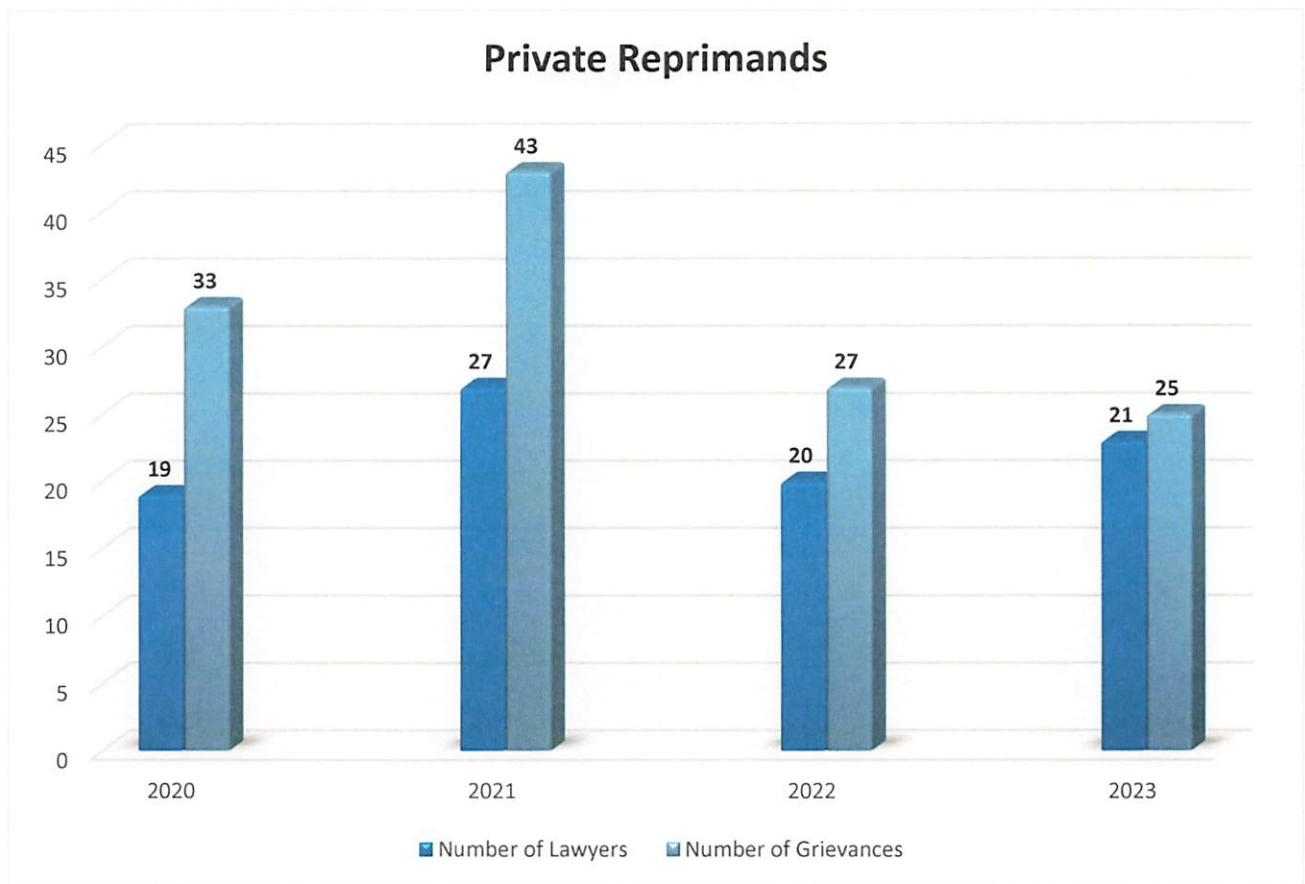
The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received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



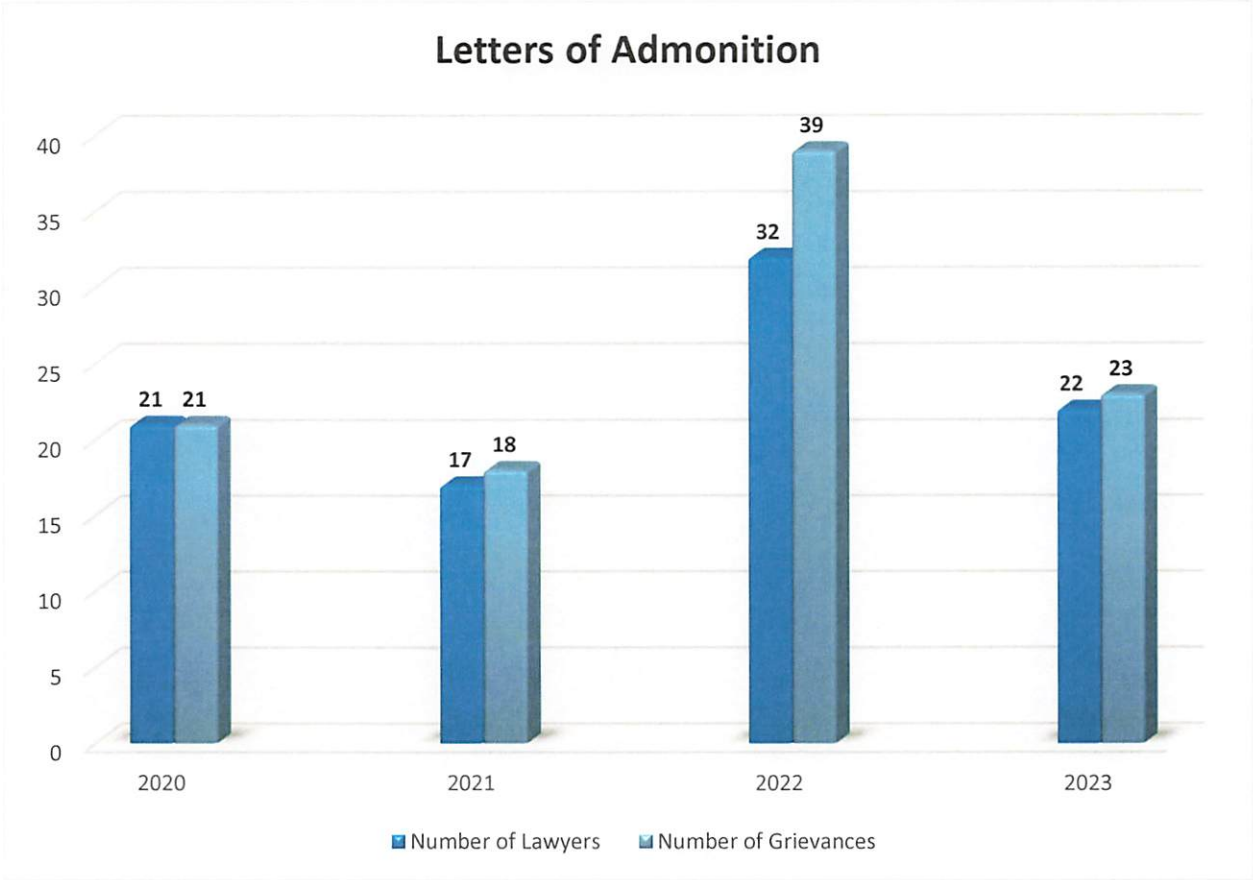
DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION:

1. **Formal Charges.** During 2023, the Professional Responsibility Commission voted the filing of formal disciplinary charges against 15 lawyers involving 40 formal grievances. In addition, the Commission also oversaw the investigation of 16 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 2023, the Commission administered private reprimands to 21 lawyers involving 25 formal grievances.



3. **Letters of Admonition.** During 2023, the Professional Responsibility Commission voted to issue letters of admonition to 22 lawyers involving 23 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 13 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, death 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. **Diversión 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 2023, the Commission referred 21 lawyers to the Discipline Diversion Program for conduct involving 29 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 2023, instructional courses were taught by OBA General Counsel Gina Hendryx, 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.

2023 Lawyer Participation in Diversion Program Curriculum

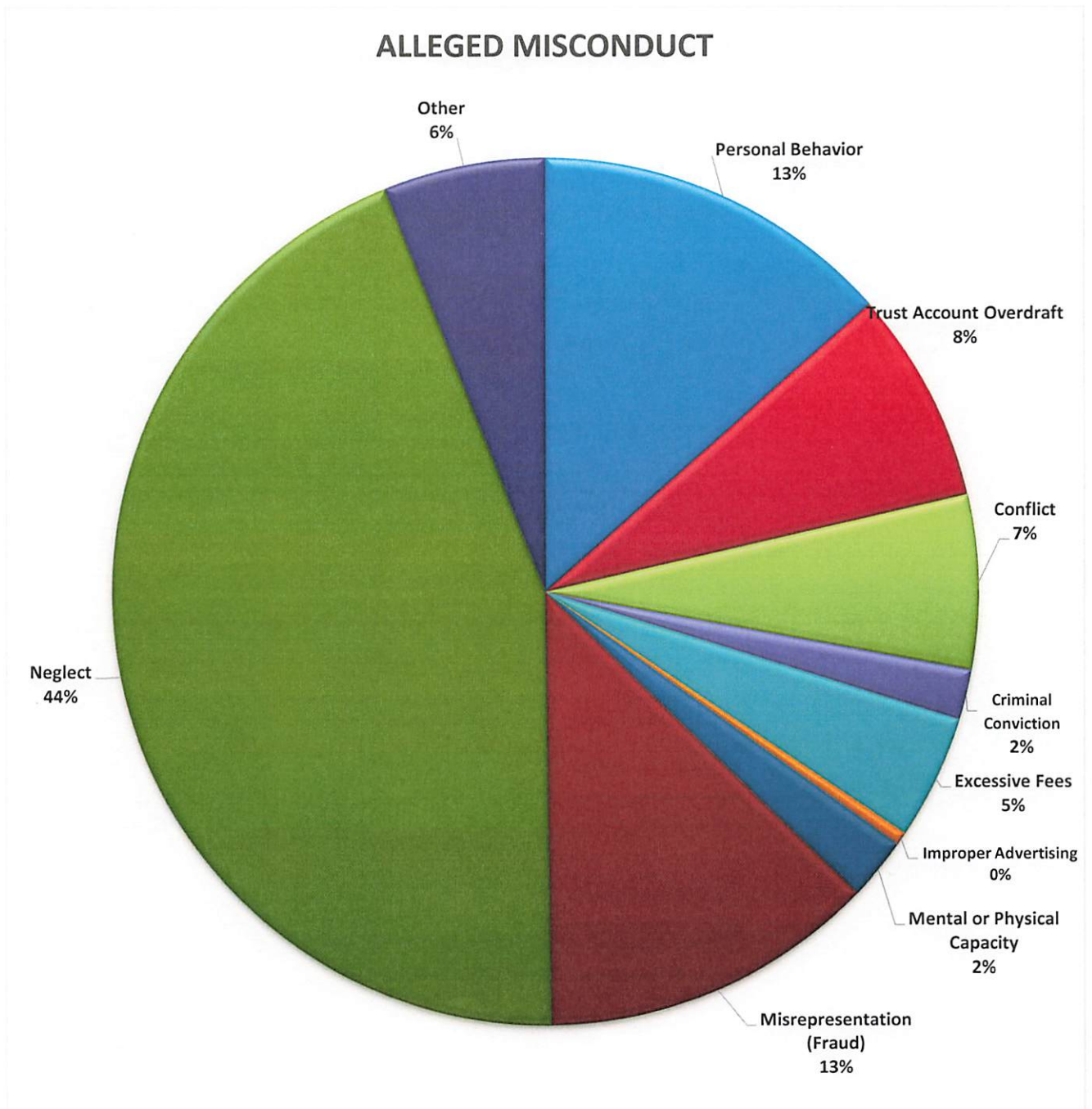
Communication and Client Relationship Skills	9 Lawyers
Professionalism in the Practice of Law	5 Lawyers
Professional Responsibility / Ethics School	7 Lawyers
Client Trust Account School	9 Lawyers
Law Office Consultations	2 Lawyers
Law Office Management	8 Lawyers

SURVEY OF GRIEVANCES:

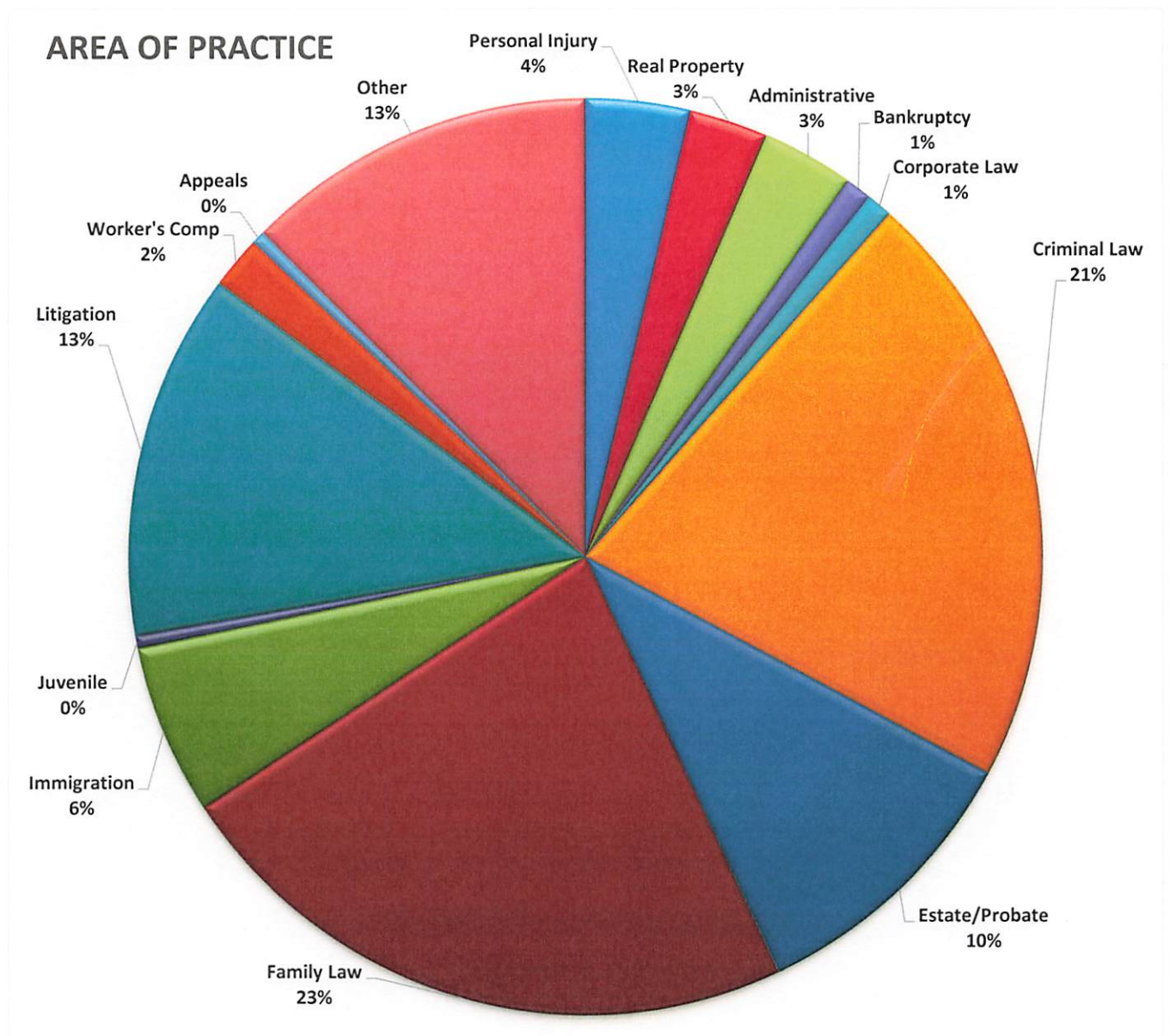
To better inform the Oklahoma Supreme Court, the bar, and the public of the nature of the grievances received, the number of lawyers receiving grievances, and the practice areas of misconduct involved, the following information is presented.

Formal and informal grievances were received against 872 lawyers. Therefore, fewer than five percent of the lawyers licensed to practice law in Oklahoma received a grievance in 2023.

A breakdown of the types of misconduct alleged in the 215 formal grievances opened by the Office of the General Counsel in 2023 is as follows:

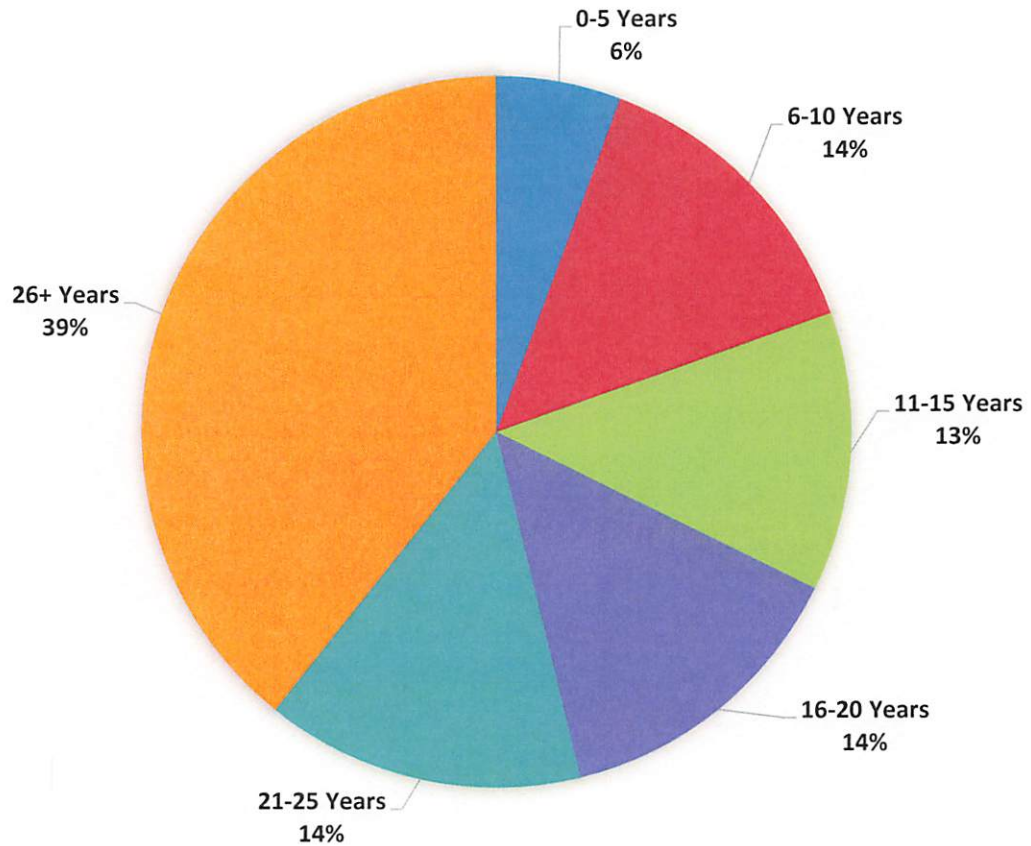


Of the 215 formal grievances, the area of practice is as follows:



The number of years in practice of the 158 lawyers receiving formal grievances is as follows:

FORMAL GRIEVANCES BY YEARS OF PRACTICE



The largest number of grievances received were against lawyers who have been in practice for 26 years or more. The age of lawyers with allegations of rule violations filed before the Oklahoma Supreme Court in 2023 is depicted below.

<i>Type of Violation Alleged</i>	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
<i>Number of Lawyers Involved</i>	17	17	3	10
<i>Age of Lawyer</i>				
21-29 years old	0	0	0	0
30-49 years old	8	11	1	3
50-59 years old	2	1	1	5
60-74 years old	7	5	1	2
75 or more years old	0	0	0	0

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2023, discipline was imposed by the Oklahoma Supreme Court in 41 disciplinary cases. The sanctions are as follows:

1. Disbarment.

<u>Respondent</u>	<u>Order Date</u>
Kenneth Carl Wright	01/18/2023
Kimberly N. Clark	03/28/2023
Thomas A. Mortensen	04/04/2023
Mark Kendall Bailey	04/04/2023
Lance T. Lance	10/10/2023

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

<u>Respondent</u>	<u>Order Date</u>
Kenneth Shane Walker	01/30/2023
Arya Affeldt Adibi	02/21/2023
Michael Dwaine Lunday	04/03/2023
William Shawn Jefferson	04/03/2023
John Everett Paris	04/10/2023
William Andrew Stack	06/19/2023
Jason David Smith	07/26/2023
Chadwick R. Richardson	10/02/2023
Timothy Robert Henderson	11/06/2023
Jackie Dale Elsey	12/04/2023

3. Disciplinary Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
Jeffery Price Krigel	Interim	01/17/2023
Kevin D. Etherington	Interim	02/06/2023
Debra Campbell	Interim	02/06/2023
Melissa Ann Lipe	Interim	03/06/2023
Phillip John Shyers	Nine Months	03/07/2023

Kassie Nicole McCoy	Interim	03/20/2023
Raphael Thomas Glapion	Two years, one day	03/28/2023
David Michael Littlefield	One year	05/02/2023
Margaret Jean Lowery	30 Days	05/09/2023
Jason Matthew Fields	One year, one day	05/09/2023
Richard C. Odom	Three Years	05/23/2023
Kenyatta Ray Bethea	Interim	06/05/2023
Courtney Rae Jordan	Interim	06/19/2023
Kassie Nicole McCoy	Two Years	06/20/2023
James Harry Lockard	Interim	08/01/2023
Ryan Steven Wiehl	Two years, one day	09/12/2023
James Darrell Reedy	Two years, one day	10/17/2023
James Harry Lockard	Six Months	11/14/2023
Joseph Dewayne Kalka	Interim	11/20/2023
Guy Wade Jackson	Interim	11/20/2023

4. Confidential Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
CONFIDENTIAL	Indefinite (R10 RGDP)	10/16/2023

5. Dismissals.

<u>Respondent</u>	<u>Order Date</u>
Mark Lyons	04/03/2023
Ryan Childress	06/14/2023
Jackie Dale Elsey	06/20/2023
Cooper Hahn	09/11/2023
Bailey Ann Daugherty	09/11/2023
CONFIDENTIAL	11/13/2023

There were 11 discipline cases filed and pending as of January 1, 2023. During 2023, 36 new formal complaints were filed for a total of 47 cases before the Oklahoma

Supreme Court during 2023. On December 31, 2023, 20 discipline cases remained open and active 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	10	20	1	6
<i>Age of Lawyer</i>					
21-29 years old	0	0	0	0	0
30-49 years old	0	2	10	0	3
50-74 years old	5	8	10	1	3
75 or more years old	0	0	0	0	0

REINSTATEMENTS:

On January 1, 2023, there were three Petitions for Reinstatement pending before the Professional Responsibility Tribunal and two Petitions for Reinstatement pending before the Oklahoma Supreme Court. There were six new Petitions for Reinstatement filed in 2023. In 2023, the Oklahoma Supreme Court granted five reinstatements and two were dismissed by the Petitioner. On December 31, 2023, there were four Petitions for Reinstatement pending before the Professional Responsibility Tribunal.

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.

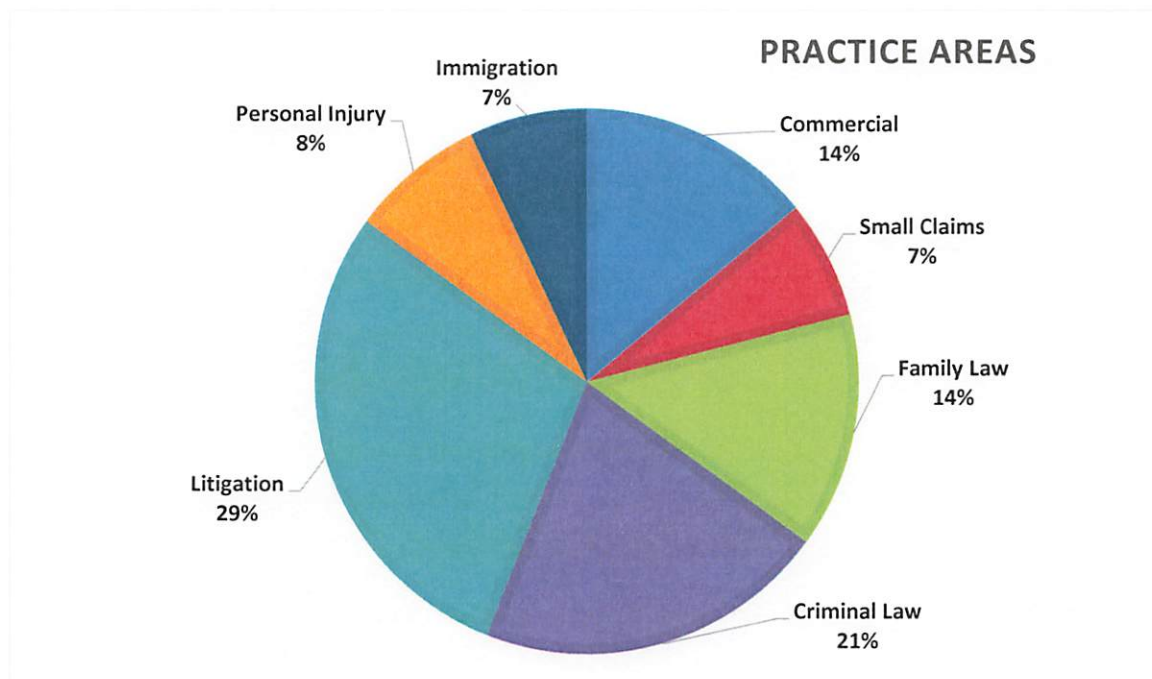
1. Requests for Investigation.

In 2023, the Office of the General Counsel received 14 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.

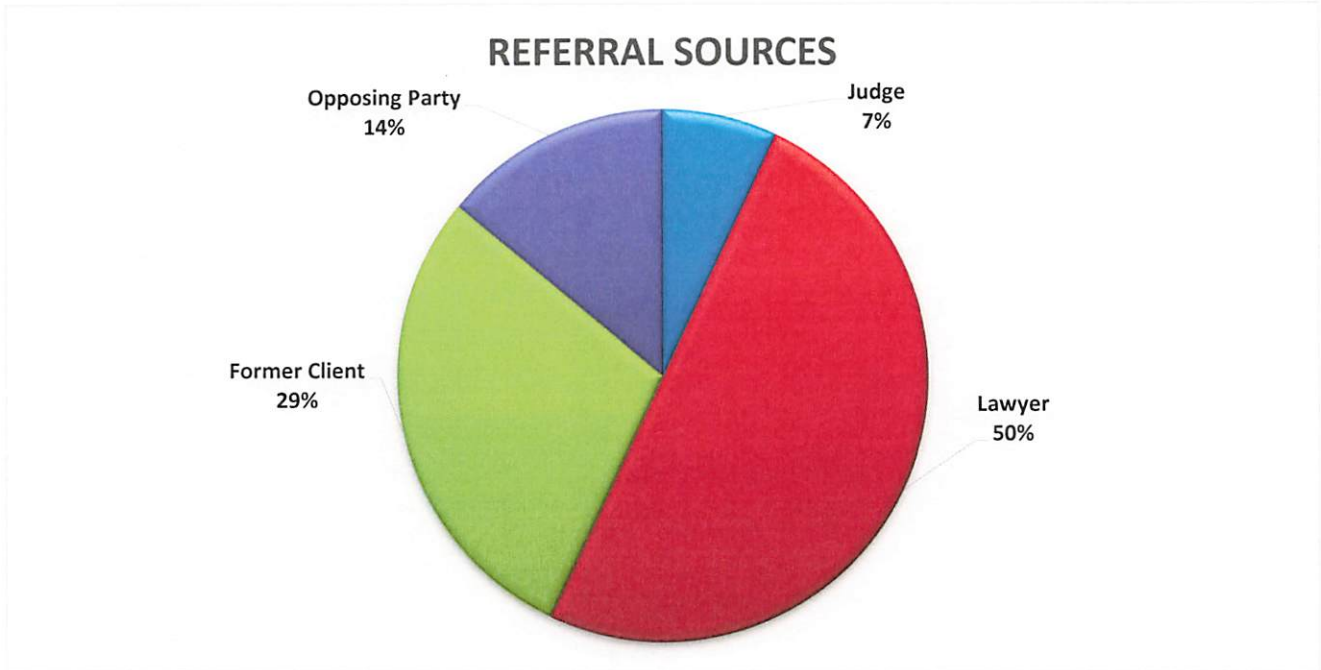
2. Practice Areas.

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 law matters, but that changed in 2023, with 29% of the UPL complaints involved litigation matters.



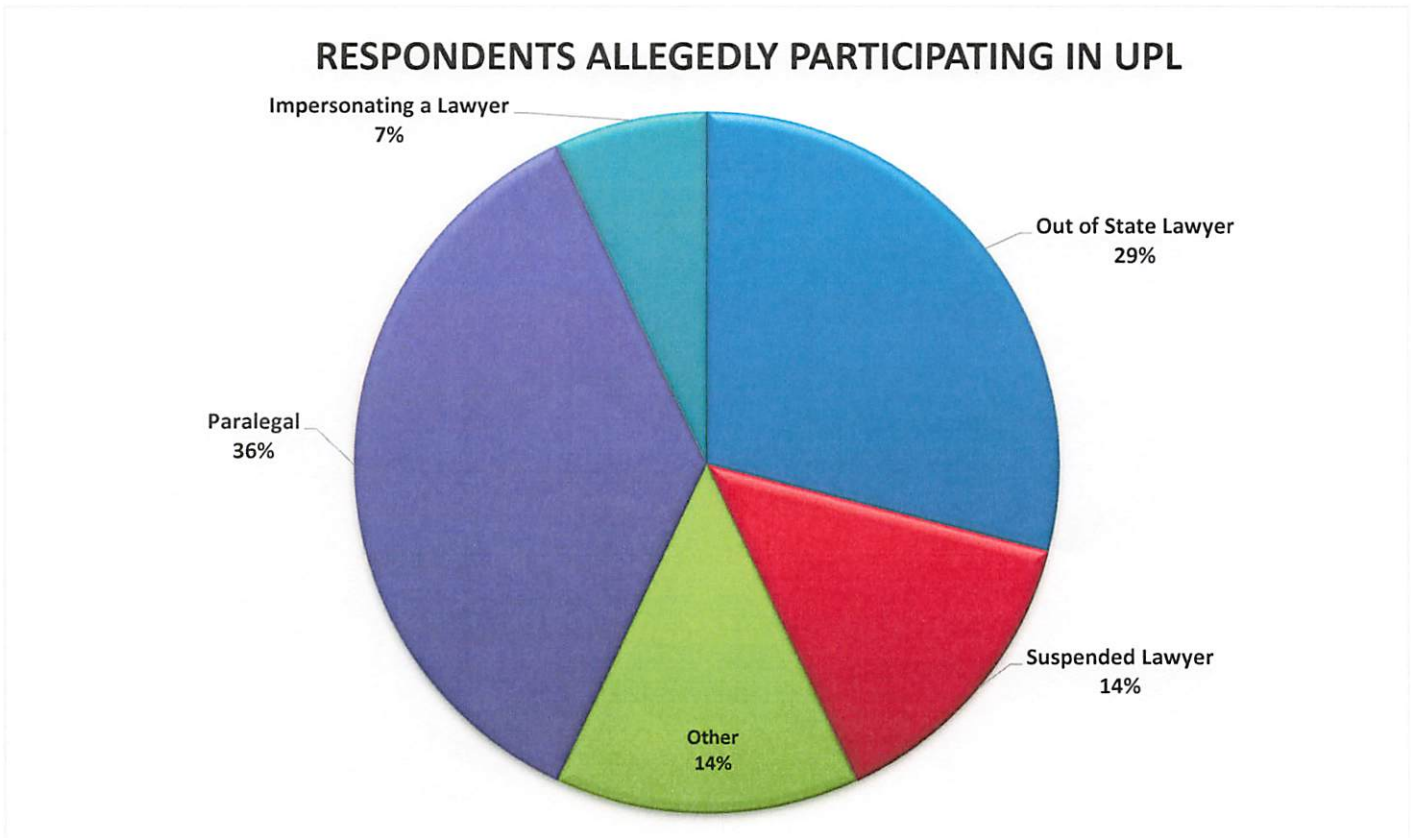
3. Referral Sources.

Requests for investigations of the unauthorized practice of law come from multiple sources. In 2023, the Office of the General Counsel received one-half of UPL complaints from lawyers.



4. Respondents.

In 2023, 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.

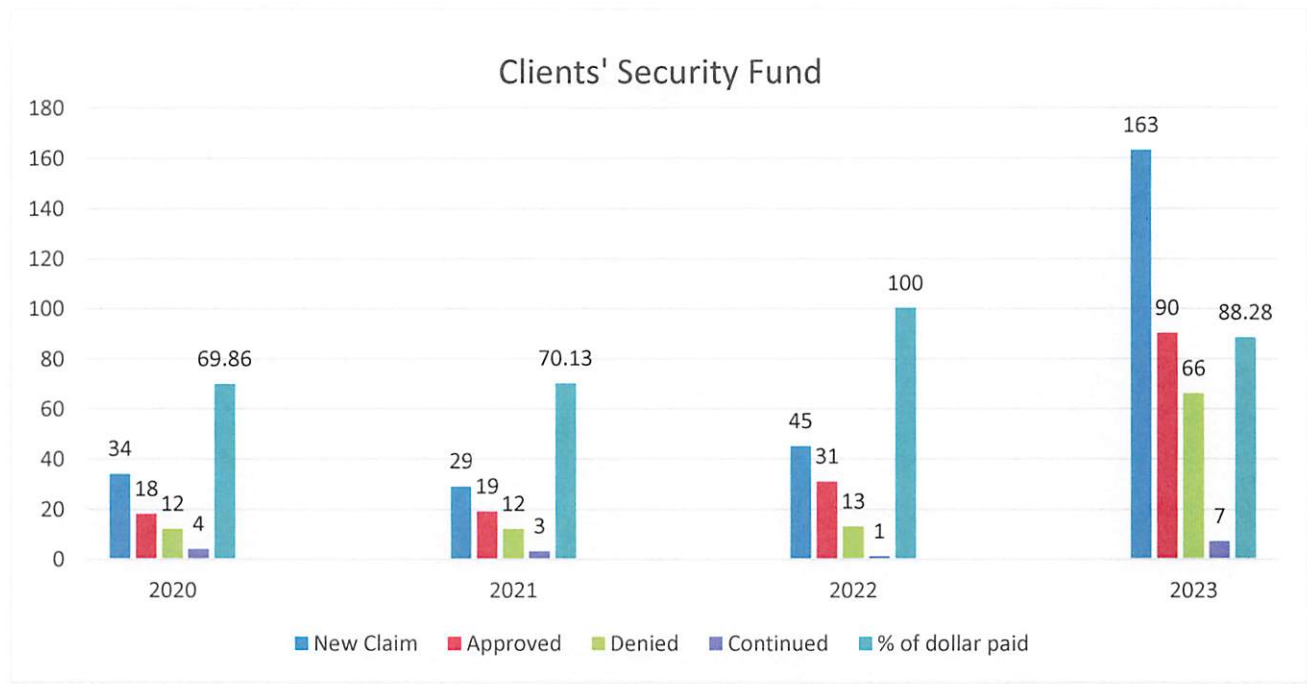
In 2023, the Office of the General Counsel took formal action in three matters. Formal action included issuing cease and desist letters, initiating formal investigations through the lawyer discipline process, referring a case to an appropriate state and/or federal enforcement agency, or filing the appropriate district court action. Six 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 2023, 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 establishes 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 equal to the amount available for disbursement. The Office of the General Counsel reviews, investigates, and presents the claims to the committee. In 2023, the Office of the General Counsel presented 163 claims to the Committee. The Committee approved 90 claims, denied 66 claims, and continued seven claims into the following year for further investigation. In 2023, the Clients' Security Fund paid a total of \$210,784.10 on 90 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 2023. Several cases carried forward into 2024. The following is a summary of all civil actions against or involving the Oklahoma Bar Association in 2023:

1. *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.

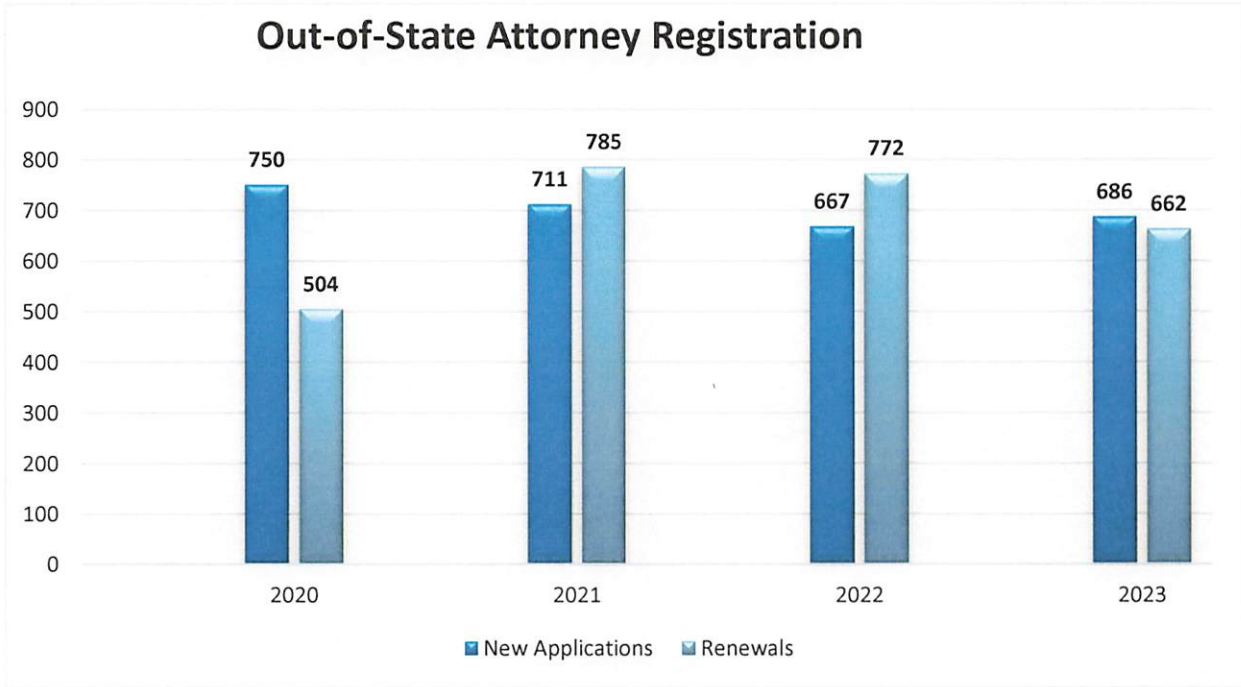
2. *Alberta Rose Jones v. Eric Bayat, et al.*, Lincoln County District Court No. CJ-2022-27. Rose filed a Petition on February 25, 2022 against 11 named defendants and 10 "Doe" defendants. The Petition alleged the Oklahoma Bar Association ignored Open Records Act requests and her dissatisfaction at the 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 set for the disposition docket on May 2, 2024.
3. *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 multiple decisions of the Court. Currently, Tenth Circuit Court of Appeals Case No. 24-7000 is pending.
4. *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. On January 12, 2023, this matter was dismissed for failure to prosecute.
5. *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 appeal was dismissed February 7, 2023 for failure to prosecute.
6. *Rigsby v. Burkhalter, et al.*, United States Court of Appeals for the Tenth Circuit., Case No. 24-7000. On January 4, 2024, Rigsby filed his third appeal of an order in CIV-22-287 regarding the Court's denial of his "motion to show new truths in case" and his "motion to show that it's not withstanding to close case." This matter is pending.
7. *Winningham v. Gina L. Hendryx*, Oklahoma County Case No. CJ-2023-3789. On July 7, 2023, Plaintiff filed an action for declaratory relief. The Oklahoma Bar Association moved to dismiss the matter. After hearing argument, this matter was dismissed on November 2, 2023. Winningham has since filed post-trial motions and the Oklahoma Bar Association has responded. This matter is pending.

8. *Mitchell v. Hill et al*, United States District Court for the Western District of Oklahoma, Case No. CIV-23-686. Plaintiff filed a 42 USC §1983 action against the Oklahoma Bar Association and several other defendants on August 4, 2023. The Oklahoma Bar Association was not served. This matter is pending.
9. *Mitchell v. Oklahoma Bar Association*, Oklahoma Supreme Court MA-121671. Petitioner filed Petition for Mandamus on October 12, 2023. No Application to Assume Original Jurisdiction was filed. The Oklahoma Bar Association was not served, but received notice of this suit from the Court on October 27, 2023. Petitioner's application was denied December 11, 2023.
10. *Denise Hudson v. OCHA Office and Administration*, United States District Court for the Western District of Oklahoma, Case No. 23-703. Hudson filed suit August 11, 2023 against multiple defendants for unknown conduct. The Oklahoma Bar Association was not served. The Court dismissed this matter without prejudice on October 19, 2023.
11. *Blueview Tam Farm, LLC, et al., v. Jones Brown, et al.*, Tulsa County Case No. CJ-2023-3033. Ronald Durbin filed a class action suit on behalf of multiple plaintiffs alleging a variety of causes of actions against the Oklahoma Bar Association and two staff members. The Oklahoma Bar Association defendants have not been served. This matter is pending.

ATTORNEY SUPPORT SERVICES:

Out-of-State Attorney Registration.

In 2023, the Office of the General Counsel processed 686 new applications and 662 renewal applications submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys 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, may request a waiver of the application fee. 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."



Certificates of Good Standing.

In 2023, the Office of the General Counsel prepared 1,331 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.

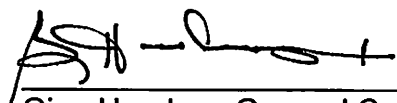


ETHICS AND EDUCATION:

During 2023, lawyers in the General Counsel's office presented more than 60 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, 2024, 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