

# Lawyer Discipline System Annual Report

Washington State Bar Association



2014

*The Washington State Bar Association may . . .*

*Administer an effective system of discipline of its members, including receiving and investigating complaints of lawyer misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system.*

**GR 12.1(b)(6).**

**Washington State Bar Association**  
**1325 Fourth Ave., Ste. 600 / Seattle, WA 98101-2539 / (206) 727-8207**

***Disciplinary Program Administrator, Thea Jennings, Editor***

---

## Table of Contents

|  |    |
|--|----|
| Executive Summary.....   | 1  |
| The Lawyer Discipline System.....  | 3  |
| Structure of the Lawyer Discipline System .....                                      | 3  |
| The Office of Disciplinary Counsel .....   | 3  |
| Review Committees of the Disciplinary Board.....                                     | 4  |
| Hearing Officer Panel .....  | 4  |
| Disciplinary Board .....   | 4  |
| Supreme Court.....   | 5  |
| Disability Proceedings .....   | 5  |
| Grievance and ODC Statistics.....  | 6  |
| Disciplinary Grievances, Mediated Matters and Consumer Affairs Contacts in 2014..... | 6  |
| Nature of Grievances .....   | 7  |
| Practice Area of Grievances .....  | 8  |
| Source of Grievances Filed.....  | 9  |
| Diversion .....  | 9  |
| Auditor Activities.....  | 10 |
| Hearings and Appeals .....   | 11 |
| Review Committee Matters .....   | 11 |
| Hearing Officer Activities .....   | 11 |
| Appellate and Higher Court Proceedings.....  | 11 |
| Final Disciplinary and Disability Statistics .....                                   | 12 |
| Disciplinary Actions.....  | 12 |
| Other Conditions of Discipline .....   | 13 |
| Lawyer Disability Matters .....  | 14 |
| Lawyers' Fund for Client Protection .....  | 14 |
| Funding the Discipline System .....  | 15 |
| Lawyers Disciplined.....   | 16 |

## EXECUTIVE SUMMARY

The Washington State Bar Association is pleased to present the 2014 Lawyer Discipline System Annual Report.<sup>1</sup> This report is published to increase publicly available information about the operations of lawyer discipline in Washington.

The Washington Supreme Court has exclusive responsibility to administer the lawyer discipline system, many aspects of which are delegated by court rule to the Washington State Bar Association (the WSBA, the Bar, the Association). Consistent with the Supreme Court's mandate in General Rule 12, 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 discipline functions are discharged primarily through the WSBA's Office of Disciplinary Counsel (ODC), the Disciplinary Board, and hearing officers. The duties and responsibilities of administering the discipline system are numerous and complex, and many departments of the Bar are involved. Key components include:

- Reviewing and investigating allegations of lawyer misconduct and disability;
- Prosecuting violations of the Rules of Professional Conduct;
- Seeking and approving the transfer of impaired lawyers to disability inactive status;
- Diverting less serious matters to the Diversion Program;
- Informing the public about lawyers, the legal system, and ways to address difficulties involving lawyers;
- Mediating client-lawyer communication issues and file disputes;
- Administering the Lawyers' Fund for Client Protection;
- Educating members of the Bar about the discipline system and their ethics responsibilities; and
- Participating in the development and improvement of the law of ethics and lawyer discipline.

This report summarizes the Washington State Bar Association's efforts in these areas and highlights accomplishments from the 2014 calendar year.

On January 1, 2014, extensive amendments to the Rules for Enforcement of Lawyer Conduct (ELC), the disciplinary procedural rules, went into effect, many of which were technical or incremental in nature. Others involved implementation of entirely new procedures that have significantly changed important aspects of the discipline process. One such innovation created a procedure for conducting settlement conferences, which greatly increased the number of cases resolved prior to hearing. Another innovation authorizes the Disciplinary Board to determine whether to review hearing officer suspension or disbarment recommendations that have not been appealed, rather than requiring the Disciplinary Board to review all such recommendations. To see all ELC amendments that became effective in 2014, visit [wsba.org](http://wsba.org).

In April 2014, the ODC adopted an electronic document management system. This project streamlined ODC's management of nearly all documents and records and contributed to the discipline system's evolution towards a paperless work environment.

---

<sup>1</sup> For purposes of this report, references to "the lawyer discipline system" encompass both the lawyer discipline and disability systems.

In December 2014, after a public comment period, the Supreme Court adopted new comment [18] to Rule 1.2 of the Rules of Professional Conduct (RPC). The comment clarifies a lawyer's role when advising or assisting a client regarding new laws in Washington relating to the legalization and commodification of marijuana.

A new licensed legal professional, the limited license legal technician (LLLT), will soon enter the legal marketplace in Washington. In anticipation of LLLTs, in November 2014, the WSBA Board of Governors approved suggested rule change amendments to the RPC to align the lawyer RPC with the new Limited License Legal Technician Rules of Professional Conduct (LLLT RPC) and to provide guidance to lawyers about their duties and responsibilities with respect to LLLTs and their clients. The suggested amendments to the RPC were submitted to the Supreme Court for consideration in December 2014. To learn more about these proposed rule changes, visit [wsba.org](http://wsba.org).

Jointly convened by the WSBA Board of Governors and the Washington Supreme Court, the Disciplinary Advisory Round Table serves as a forum for discussing disciplinary issues and prepares annual reports for the Supreme Court and the WSBA Board of Governors. The Round Table's 2014 Annual Report highlights its discussions on the issue of appointed counsel in disability proceedings, the unauthorized practice of law by disbarred lawyers, and the issue of voluntary permanent retirement status. The report is available at [wsba.org](http://wsba.org).

## THE LAWYER 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 jurisdiction of the Washington Supreme Court. These include ODC, the Hearing Officer Panel, and the Disciplinary Board. Each entity has a different role in the administration of the discipline system. Although the lawyer discipline system is operated by the Bar, the Bar has separated the investigative and prosecutorial functions from the adjudicative functions; ODC oversees the prosecutorial functions while the Bar's Office of General Counsel provides support to the Hearing Officer Panel and the Disciplinary Board, which oversee the adjudicative and decision-making functions.

### STRUCTURE OF THE LAWYER DISCIPLINE SYSTEM



### THE OFFICE OF DISCIPLINARY COUNSEL

ODC is responsible for reviewing, investigating and prosecuting grievances about the ethical conduct of Washington lawyers and matters related to a lawyer's alleged incapacity to practice law.

ODC is comprised of one intake unit, three investigation/prosecution units, one unit of investigators, and a team of auditors. The intake unit receives all phone inquiries and written grievances, and

conducts the first review of grievances, dismissing some and recommending further investigation of others by ODC investigation/prosecution staff. Matters that cannot be informally resolved are investigated and, when warranted, prosecuted by teams of professional investigators and disciplinary counsel, with a support staff of paralegals and administrative assistants. After investigation, disciplinary counsel determine whether grievances should be dismissed or reported to a review committee of the Disciplinary Board. Review committees can issue advisory letters, issue admonitions, or order matters to public hearing for consideration of more serious disciplinary action. Disciplinary counsel may divert less serious matters from discipline to a diversion program.

Disciplinary counsel prosecute matters ordered to hearing. 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**

Composed of three members of the Disciplinary Board, review committees 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 hearings of lawyer discipline matters. Among other things, a review committee may dismiss the matter, order further investigation, issue an admonition, or order a hearing. Review committees may further order a hearing regarding a respondent lawyer's capacity to practice law.

### **HEARING OFFICER PANEL**

Hearings for disciplinary and disability cases are presided over by volunteer hearing officers on the Hearing Officer Panel, who receive evidence and issue findings and a recommendation as to the discipline to be imposed, if any. Hearing officers are also assigned to 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 also are authorized to resolve cases by approving stipulations to disciplinary action not involving suspension or disbarment. They are supervised by a Chief Hearing Officer who assigns cases to the hearing officers, provides training for the hearing officers, and monitors their performance. The Bar's Office of General Counsel provides staff and administrative support to the hearing officers.

### **DISCIPLINARY BOARD**

In addition to its review committee functions, the Disciplinary Board, composed of lawyer and community volunteers, considers appeals from hearing officer decisions. The Disciplinary Board reviews the record when a respondent lawyer or disciplinary counsel has filed an appeal from the hearing officer's recommendation in a disciplinary matter. The Board also reviews appeals from lawyer disability cases and may review suspension and disbarment recommendations that are not appealed. The Board may also amend, modify, or reverse findings of fact. If requested, the Board hears oral argument on the cases, much like an appellate court, and then issues its decision. In addition to hearing appeals, the Disciplinary Board reviews stipulations submitted by the parties, which, if approved, will resolve the proceeding without a hearing. The Bar's Office of General Counsel provides support to the Disciplinary Board in the performance of its adjudicative functions.

## **SUPREME COURT**

The Washington Supreme Court, which has inherent power to dispose of individual cases of lawyer discipline, 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 proceed in a fashion similar to other Supreme Court appeals, with briefing by the parties and then oral argument, followed by a written opinion by the Court. The Supreme Court may further order reciprocal discipline of lawyers who have been disciplined in other jurisdictions, and order interim suspension of lawyers who are convicted of crimes, pose a risk of serious harm to the public, are recommended by the Disciplinary Board for disbarment, fail to cooperate with a disciplinary investigation, or assert incapacity to defend themselves in a disciplinary proceeding.

## **DISABILITY PROCEEDINGS**

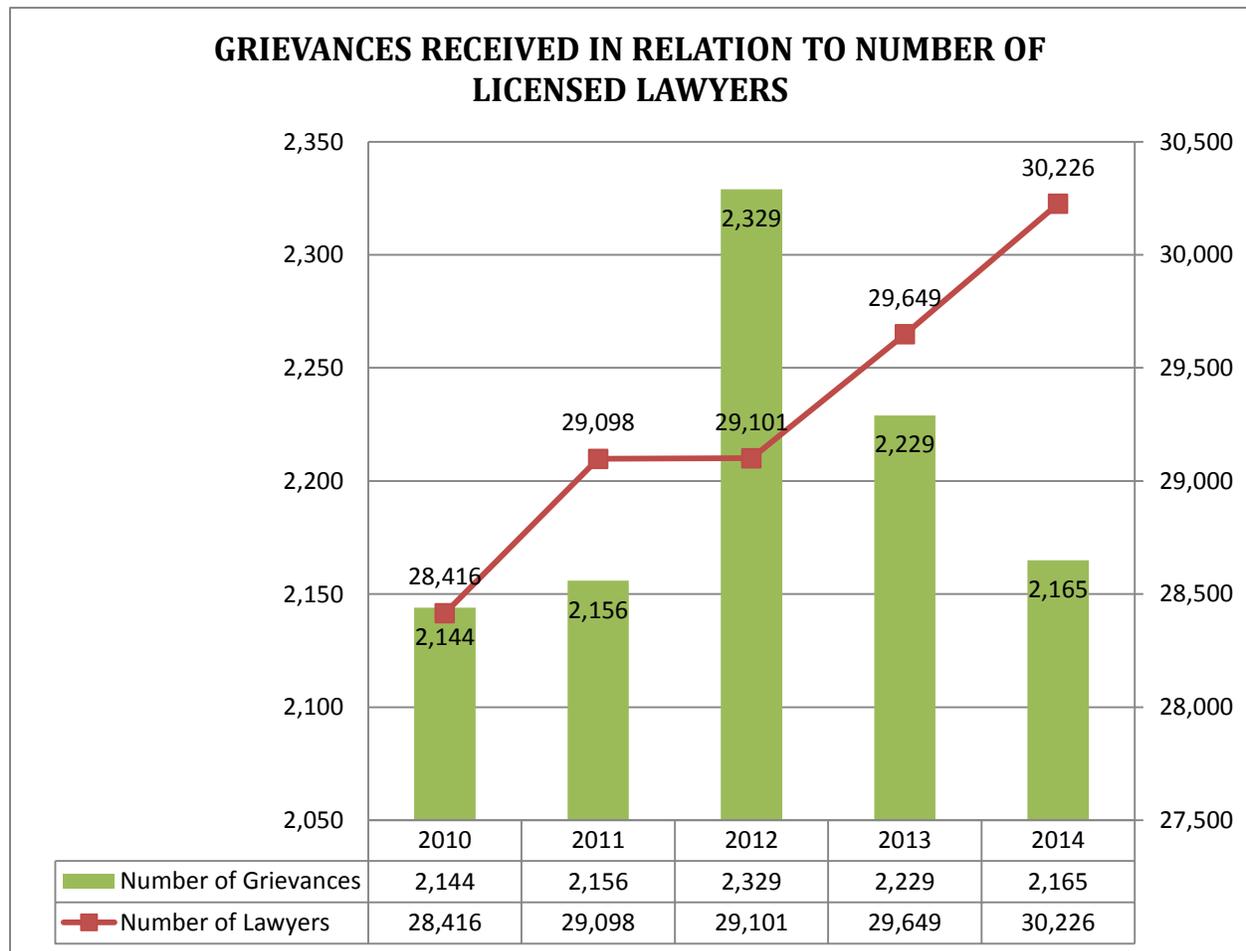
Special procedures apply when there is cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law because of mental or physical incapacity. Such matters are handled within the discipline system under a distinct set of procedural rules. In some cases, counsel must be appointed for the respondent lawyer at the WSBA's expense. In disability cases, a determination that the respondent lawyer does not have the capacity to practice law results in a transfer to disability inactive status.

## GRIEVANCE AND ODC STATISTICS

The following statistics relate to the intake, investigation, and prosecution of grievances by ODC in the 2014 calendar year.

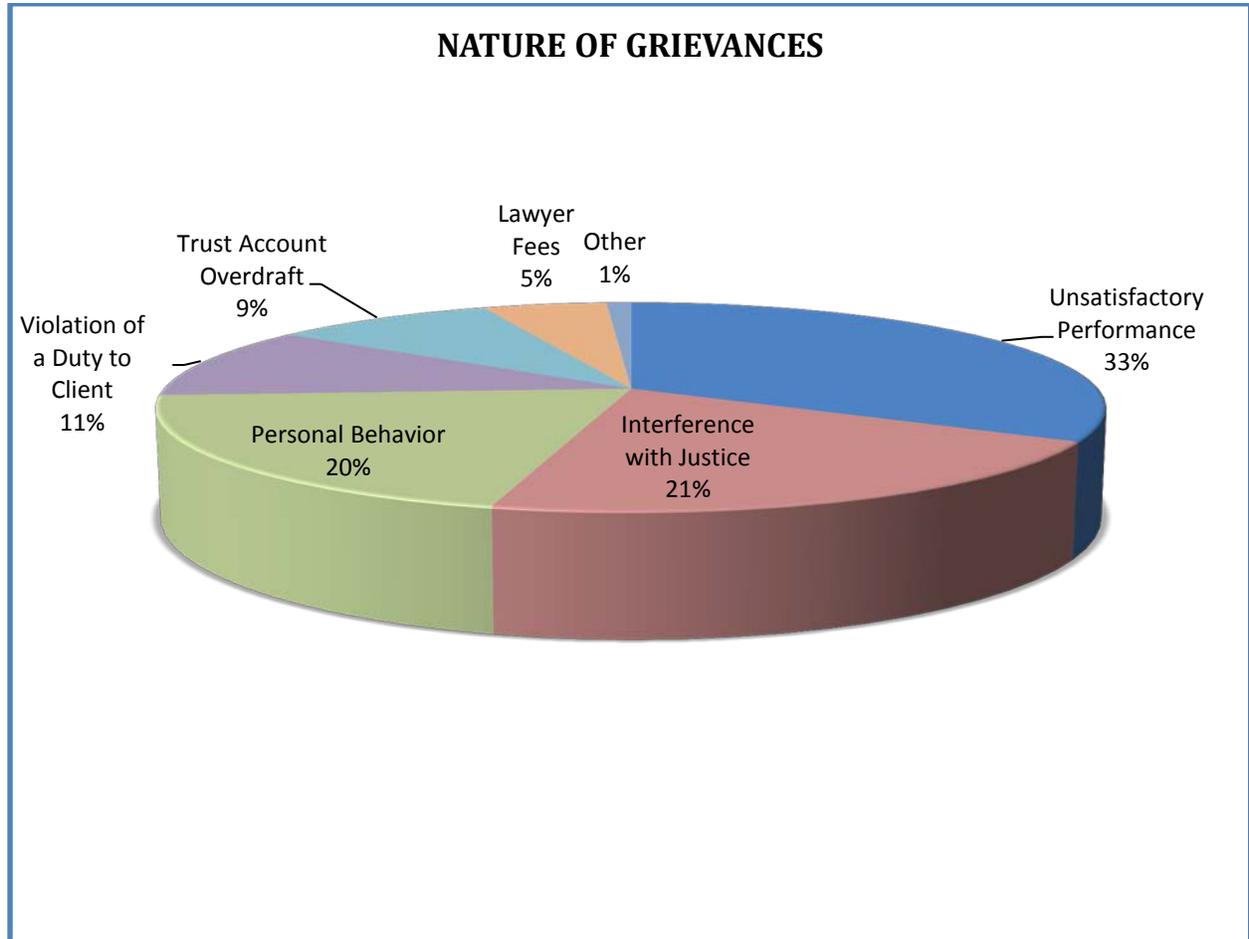
### DISCIPLINARY GRIEVANCES, MEDIATED MATTERS AND CONSUMER AFFAIRS CONTACTS IN 2014

|   |              |
|---|--------------|
| <b>New Disciplinary Grievances (written) Received During Year</b> | <b>2,165</b> |
| <b>Disciplinary Grievances (written) Resolved During Year</b>     | <b>2,233</b> |
| <b>Non-Communication Matters Mediated</b>                         | <b>140</b>   |
| <b>File Disputes Mediated</b>                                     | <b>72</b>    |
| <b>Consumer Affairs Phone Calls, Emails and Interviews</b>        | <b>6,342</b> |



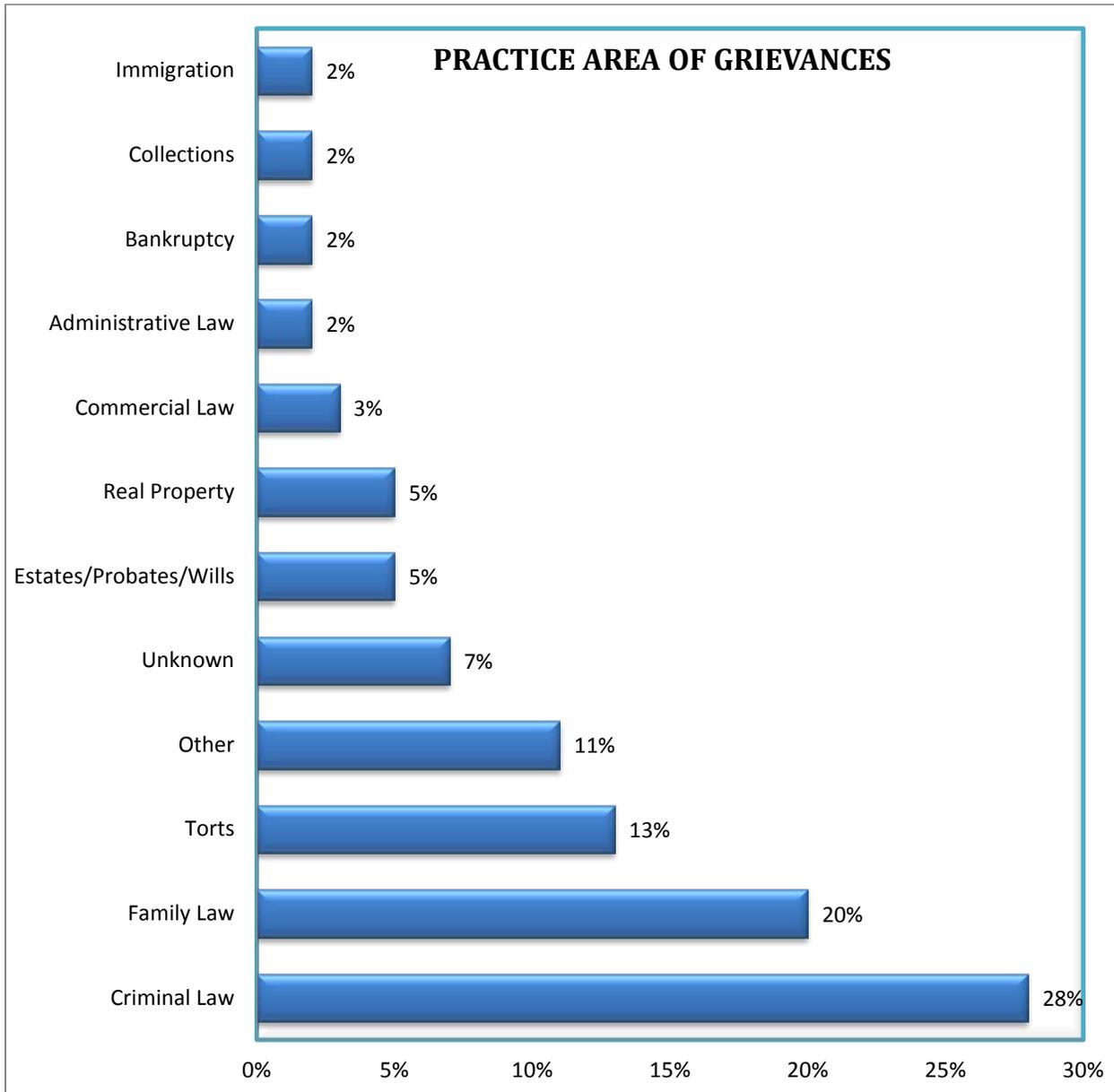
## NATURE OF GRIEVANCES

In 2014, the most common grievance allegations against Washington lawyers related to unsatisfactory performance, personal behavior concerns, and interference with the administration of justice.



## PRACTICE AREA OF GRIEVANCES

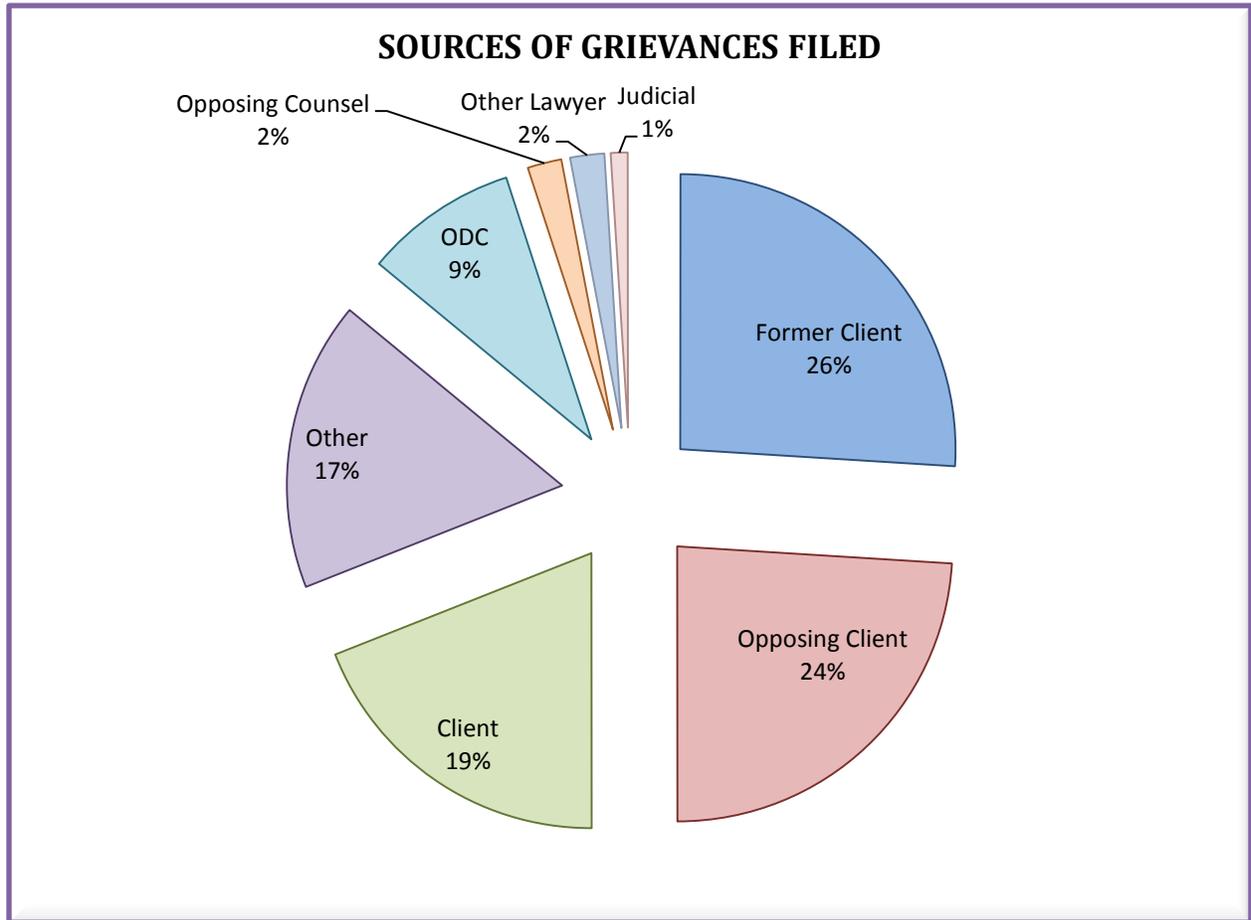
Most grievances arise from criminal law, family law, and tort matters.<sup>2</sup>



<sup>2</sup> In the *Practice Area of Grievances* graph, “Unknown” captures those grievances where too little information was provided to discern a practice area; “Other” reflects those practice areas that arise too infrequently to capture individually.

## SOURCE OF GRIEVANCES FILED

In 2014, the majority of grievances against Washington lawyers originated from current and former clients and opposing clients. Discipline files are opened in the name of the Office of Disciplinary Counsel when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance.



## 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 a diversion contract, the grievance is reinstated and it may result in public disciplinary action. In 2014, 31 grievances were diverted.

| OF 31 GRIEVANCES REFERRED TO DIVERSION IN 2014 |                                 |   |
|--|---------------------------------|---|
| Completed Diversion<br>12                      | Failed to Complete Program<br>0 | Actively Participating in Program<br>19 |

## AUDITOR ACTIVITIES

Washington lawyers who maintain client trust accounts must hold those accounts with financial institutions that report any overdraft of funds to the Association. Auditors in ODC assist in the investigation and resolution of grievances opened because of overdraft notices. Auditors in ODC also conduct random audits of lawyer trust accounts to ensure compliance with the ethics rules governing such accounts. Due to a decrease in available staff resources, no random audits were conducted in 2014. Auditors also assist in the investigation of grievance files involving trust account issues.

| AUDITOR ACTIVITIES IN 2014                            |   |  |  |
|---|---|--|--|
| Trust Account Overdraft<br>Files Opened<br><i>130</i> | Trust Account Overdraft<br>Files Closed<br><i>138</i> | Investigation Files<br>Requiring Auditor<br>Assignments<br><i>12</i> | Random Audits<br>Conducted<br><i>0</i> |

## **HEARINGS AND APPEALS**

### **REVIEW COMMITTEE MATTERS**

In 2014, the review committees of the Disciplinary Board met 16 times to consider nearly 600 matters, including review of disciplinary counsel dismissals, admonition and hearing recommendations, requests for protective orders, deferrals, and costs assessed against respondent lawyers.

### **HEARING OFFICER ACTIVITIES**

In fiscal year 2014, 53 volunteer lawyers served on the Hearing Officer Panel. In calendar year 2014, 64 disciplinary and six disability hearing files were opened and 16 hearings were held. In at least five matters, respondents defaulted by failing to answer the formal complaint. Twenty-four settlement conferences were held under new ELC settlement-conference procedures, which resulted in the resolution of 12 proceedings by agreement or stipulation to discipline. Other matters are still pending.

### **APPELLATE AND HIGHER COURT PROCEEDINGS**

In 2014, the Disciplinary Board met six times and considered approximately 35 disciplinary and disability matters, heard oral argument in three matters, issued approvals of stipulations and hearing officer disciplinary recommendations, and ordered respondent lawyers transferred to disability inactive status. The Supreme Court heard two oral arguments in appeals of Disciplinary Board decisions. It further ordered reciprocal discipline in seven matters, suspended 11 lawyers on an interim basis, and issued three published opinions.

## FINAL DISCIPLINARY AND DISABILITY STATISTICS

### DISCIPLINARY ACTIONS

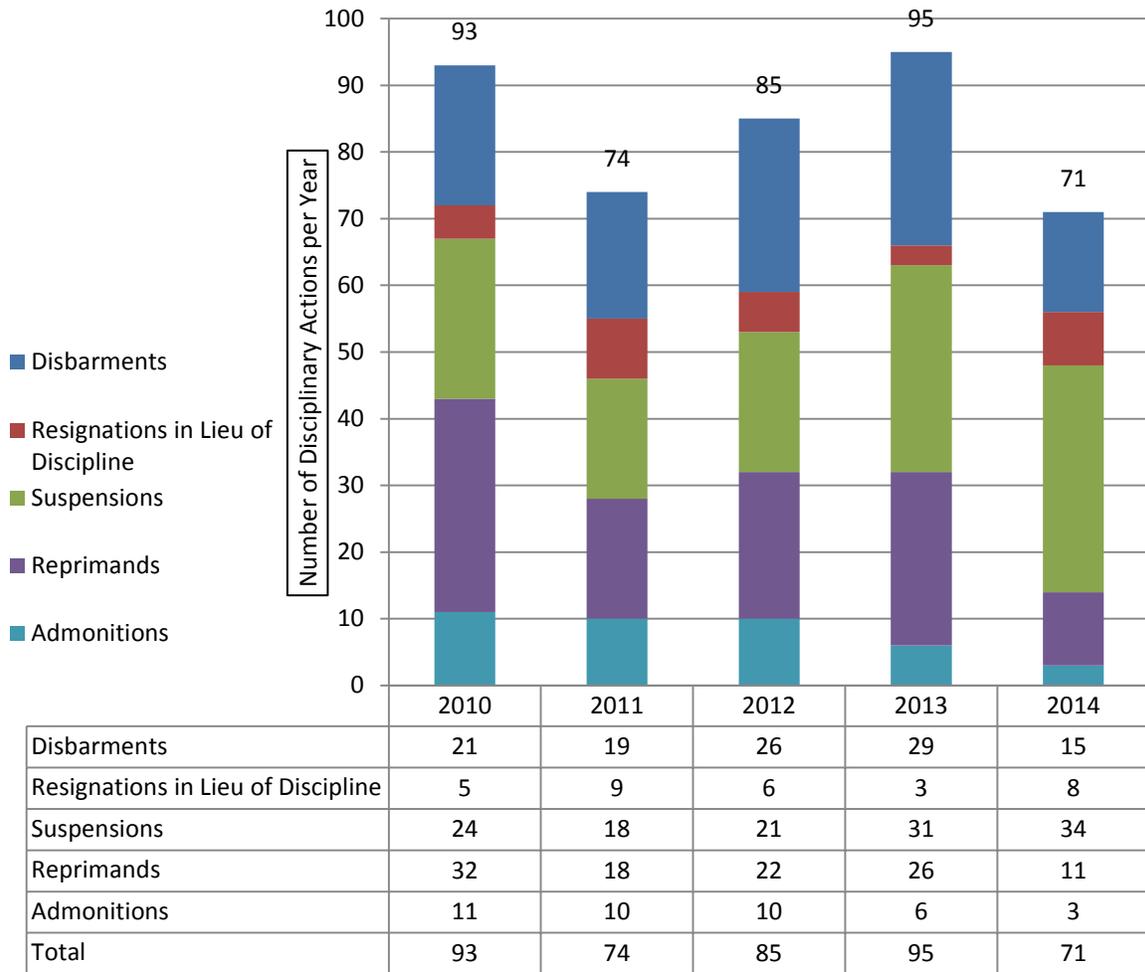
Disciplinary “actions” include both disciplinary “sanctions” and admonitions, and result in a permanent public disciplinary record. Disciplinary sanctions are, in order of increasing severity, reprimands, suspensions, and disbarments. In Washington, admonitions are also a form of public discipline and became a permanent record if issued after January 1, 2014. 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. A disbarment revokes the lawyer’s license to practice law. Disbarred lawyers are precluded from seeking readmission to the Bar sooner than five years after being disbarred. Only the Supreme Court may order a lawyer suspended or disbarred.

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

Review committees of the Disciplinary Board also have authority to issue advisory letters if a lawyer should be cautioned. An advisory letter is neither a sanction nor a disciplinary action and is not public information. As previously stated, for less serious misconduct, a lawyer may be diverted from discipline.

In 2014, 71 lawyers were disciplined. The following chart reports the number of disciplinary actions imposed over the last five calendar years.

## DISCIPLINARY ACTIONS



### OTHER CONDITIONS OF DISCIPLINE

Lawyers who have been sanctioned or admonished 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; or periodic audits. Other conditions of discipline may include paying restitution to victims and paying the costs of the disciplinary proceeding. A suspension order also imposes conditions that must be complied with prior to reinstatement.

### OTHER CONDITIONS IMPOSED IN 2014

|                        |                          |                    |
|------------------------|--------------------------|--------------------|
| Probation<br><i>19</i> | Restitution<br><i>24</i> | Costs<br><i>51</i> |
|------------------------|--------------------------|--------------------|

## LAWYER DISABILITY MATTERS

An order transferring a lawyer to disability inactive status is issued following a determination that the lawyer lacks the mental or physical capacity to practice law. It is also possible for a lawyer to stipulate to a transfer to disability inactive status, and such a transfer is required following various judicial determinations of a lawyer's incapacity, such as involuntary commitment.

Although disability proceedings are governed by the disciplinary procedural rules, the proceedings are not disciplinary in nature. If disciplinary proceedings are already pending, supplemental proceedings on incapacity can be ordered if a lawyer asserts an inability to defend because of mental or physical incapacity, or if there is reasonable cause to believe there is an inability to defend. If supplemental proceedings on incapacity are ordered, the disciplinary proceedings are stayed.

In 2014, eight lawyers were transferred to disability inactive status.

## DISABILITY MATTERS WITH TRANSFERS TO DISABILITY INACTIVE STATUS

| 2010 | 2011 | 2012 | 2013 | 2014 |
|------|------|------|------|------|
| 5    | 4    | 3    | 4    | 8    |

## LAWYERS' FUND FOR CLIENT PROTECTION

To promote public confidence in the administration of justice and the integrity of the legal profession, the Lawyers' Fund for Client Protection Board was established for the purpose of relieving or mitigating a financial loss sustained by any client. The loss may be due to the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA in connection with the member's practice of law or while acting as a fiduciary in a matter related to the member's practice of law. The Fund is financed by a \$30 annual WSBA member assessment by order of the Washington Supreme Court. In 2014, the Fund made over \$337,000 in gifts.

## LAWYERS' FUND FOR CLIENT PROTECTION<sup>3</sup>

|                                      | 2011        | 2012      | 2013      | 2014      |
|--------------------------------------|-------------|-----------|-----------|-----------|
| Number of Requests Granted           | 72          | 39        | 45        | 44        |
| Of These, Number of Lawyers Involved | 15          | 17        | 18        | 14        |
| Gifts Made                           | \$1,003,458 | \$378,574 | \$423,507 | \$337,160 |

<sup>3</sup> The Lawyers' Fund for Client Protection reports on the fiscal year. See [wsba.org](http://wsba.org).

## FUNDING THE DISCIPLINE SYSTEM

The discipline systems is fully funded by lawyers' license fees – there is no public funding.

### DISCIPLINE SYSTEM REVENUE AND EXPENSES<sup>4</sup>

|                              | 2012               | 2013                   | 2014               |
|------------------------------|--------------------|------------------------|--------------------|
| <b>REVENUE</b>               |                    |                        |                    |
| Recovery of Discipline Costs | \$58,148           | \$86,801               | \$146,716          |
| Discipline History Summaries | \$12,709           | \$13,660               | \$13,721           |
| Misc                         | \$5,449            | \$4,779                | \$3,481            |
| Total Revenue                | <b>\$76,306</b>    | <b>\$105,240</b>       | <b>\$163,918</b>   |
| <b>EXPENSES</b>              |                    |                        |                    |
| Investigation/Prosecution    | \$4,336,438        | \$4,189,733            | \$5,005,071        |
| Trust Account Audits         | \$362,881          | \$294,325 <sup>5</sup> | \$0 <sup>6</sup>   |
| Disciplinary Board Expenses  | \$264,414          | \$407,181              | \$226,885          |
| Hearing Officer Expenses     | \$34,066           | \$37,372               | \$37,719           |
| Total Expenses               | <b>\$4,997,799</b> | <b>\$4,928,611</b>     | <b>\$5,269,675</b> |
| <b>NET TOTAL EXPENSES</b>    | <b>\$4,921,493</b> | <b>\$4,823,371</b>     | <b>\$5,105,757</b> |

<sup>4</sup> Discipline system expenses are reported based on the WSBA fiscal year.

<sup>5</sup> Numbers for 2013 trust account audit expenses were adjusted from the 2013 Annual Report to correct an apparent typographical error.

<sup>6</sup> In 2014, the audit budget was merged with the general discipline (investigation/prosecution) budget.

## LAWYERS DISCIPLINED

2014 Supreme Court Disciplinary Opinions\*

[In re Disciplinary Proceeding Against Jackson,](#)

[In re Disciplinary Proceeding Against Hall, In Re Disciplinary Proceeding Against Jones](#)

### **DISBARMENTS (15)**

---

Atwater, George J. III - #17824  
Baker, John Joseph - #22951  
Cortes, Meyrick-Aylmer - #35362  
Engle, David Scott - #21935  
Gomes, Ronald Anthony - #31074  
Guenther, Adam Corey - #40928  
Hunt, Heidi L. - #33499  
Jackson, Robert Brian - #18945  
Jones, Eric A. - #31048  
Jones, Russell Kenneth - #10887  
Magan, Laurie L. - #34086  
Mosley, Kirk T 'Chip' - #29683  
Nansen, Peter Dirk - #9142  
So, Jae H. - #29915  
Vargas, Eric Rene' - #20364

### **RESIGNATIONS IN LIEU OF DISBARMENT (8)**

---

Burke, Gerald Gerome - #17773  
Campbell, Scott Daniel - #21811  
Grant, Danford Duncan - #26042  
Haley, Jeffrey Thornton - #9526  
Hanbey, William Michael - #7829  
Penfield, Robert Joseph - #25081  
Whyte, Larry Lee - #35282  
Young, Lacey Adell - #35189

### **SUSPENSIONS (34)**

---

Beissel, Kelly Marie - #29239  
Benson, Jeremy D. - #34163  
Burns, Richard Duane - #5561  
Cable, Christopher L. - #32155  
Chin, Tamara Marie - #23062  
Crear, Ralph Eric - #33692  
Davis, Selina Astra - #37738  
Ferris, Paul Taylor - #20483  
Goicoechea, David A. - #15539  
Hackett, Walter Marland JR - #1055  
Hall, Alan F. - #1505  
Hayes, Robert L. - #21239

Hiller, Dawn Marie - #32782 (2)  
Jackson, Joseph Robert - #12929  
Jacob, Jany K. - #30722  
Kays, Jason M. - #20438  
Kim, Alice Eunah - #36896  
Kime, Karl Wesley - #41668  
Koler, Jane Ryan - #13541  
Landry, Larry James - #16792  
McCann, Liam Aneurin - #30865  
Mckenzie, Darren Lance - #25755  
Osemene, Justin C. - #28082  
Rae, Ronnie M. - #34606  
Rehm, Charles William - #10708  
Russell, Dale L. - #7941  
Salisbury, John Powers - #18793  
Sandoval, Raymond G. - #33792  
Sharp, Roger Jay - #12211  
Snyder, Erika Carroll Haynes - #40276  
Strader, Timothy Richards - #35184  
Swanson, Richard W. - #4777  
Turner, Harold M. - #33341

### **REPRIMANDS (11)**

---

Aaron, Phillip - #6464  
Davis, Breyon Jahmai - #43148  
Dickson, Thomas L. - #11802  
Donion, Paul Michael - #25053  
Grad, Harvey S. - #6506  
Greene, Timothy Michael - #17499  
Guevara, Lori J. - #28732  
Jorgenson, Neil Trygve - #17008  
Simmons, William Guyton - #19071  
Talbot, Charles Williamson - #7448  
Taroski, Ryan Scott - #38412

### **ADMONITIONS (3)**

---

Gibson, John - #19407  
McBride, James Dewitt II - #1603  
Robison, Gerald Francis - #23118

\*For more information on these and other disciplinary matters, please visit [wsba.org](http://wsba.org).