

2016 Discipline System Annual Report



WASHINGTON STATE
BAR ASSOCIATION



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EXECUTIVE SUMMARY

The Washington State Bar Association (WSBA, Bar) is pleased to present the 2016 Discipline System Annual Report.¹ This report is published to increase publicly available information about the operations of Washington's discipline system for those licensed to practice law in Washington.

The Washington Supreme Court has exclusive responsibility to administer the discipline system, many aspects of which are delegated by court rule to the WSBA. Consistent with the Supreme Court's mandate in [General Rule 12.1](#), the WSBA administers an effective system of discipline to fulfill its obligations to protect the public and ensure the integrity of the profession. The WSBA's lawyer discipline functions are discharged primarily by the WSBA's Office of Disciplinary Counsel (ODC), the WSBA's Office of General Counsel (OGC), conflicts and disability counsel, the Disciplinary Board, and hearing officers. WSBA discipline functions for limited licenses to practice law are discharged by ODC and the WSBA's Regulatory Services Department, each license's respective Supreme Court regulatory board, OGC, and hearing officers. The duties and responsibilities of administering the discipline system are numerous and complex, and involve many departments of the Bar. Key components include:

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

This report summarizes the WSBA's efforts in these areas and highlights accomplishments from the 2016 calendar year.

In 2016, amendments to the RPC went into effect relating to technology and globalization in the practice of law. These included amendments regarding competence when using technology, factors to consider when safeguarding electronic confidential information, and multijurisdictional practice. The Supreme Court approved the amendments with an effective date of September 1, 2016.

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

WSBA staff has been active in educating members about these changes.

In 2016, ODC lawyers and auditors appeared as speakers in 38 programs around the state, at national conferences, and in webinars and webcasts, educating approximately 1,660 lawyers, law students, and legal professionals on topics of legal ethics, trust account recordkeeping and compliance, and the discipline system.

The WSBA Professional Responsibility Program provides ethics education and outreach to practitioners. In 2016, Professional Responsibility Program staff provided ethics advice to 2,754 callers and educated members at 43 programs around the state, including live, webinar, and webcast events. The WSBA Professional Responsibility Program and its staff are distinct from and independent of the discipline system.

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. In 2016, topics taken up by the Round Table included potential adoption of the American Bar Association Model Rule on Payee Notification and the concept of coordinating the regulatory and disciplinary systems for all Washington license types to increase efficiency.

THE DISCIPLINE SYSTEM

The Washington discipline system for lawyers is composed of a number of entities that operate as part of the judicial branch of government under the authority of the Washington Supreme Court. The lawyer discipline system is operated by the WSBA, which has separated the investigative and prosecutorial functions from the adjudicative functions. ODC oversees the prosecutorial functions while the Bar's Office of General Counsel (OGC) provides administrative and legal support to the hearing officers and the Disciplinary Board, which carry out the adjudicative and decision-making functions, and manages the public records for disciplinary proceedings. See *Other Licensed Legal Professionals and the Discipline System* later in this Report for details about the discipline system for limited license legal professionals.

STRUCTURE OF THE LAWYER DISCIPLINE SYSTEM



THE OFFICE OF DISCIPLINARY COUNSEL

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

ODC is composed of one intake unit, three investigation/prosecution units, one unit of investigators, and a team of auditors. The intake unit receives initial inquiries and written grievances, and conducts the first review of grievances against lawyers, 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 disciplinary counsel with the assistance of professional investigators and 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. Some less serious matters are resolved in the diversion program.

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

REVIEW COMMITTEES OF THE DISCIPLINARY BOARD

Administered by OGC

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

HEARING OFFICERS

Administered by OGC

Volunteer hearing officers preside over hearings for disciplinary and disability cases. They receive evidence and issue findings, conclusions and a recommendation as to the discipline to be imposed, if any. Hearing officers also oversee settlement conferences in many discipline cases. In disability proceedings, hearing officers make recommendations regarding whether a respondent lawyer should be transferred to disability inactive status. They are also authorized to resolve cases by approving stipulations to reprimand, admonition, or dismissal. A Chief Hearing Officer supervises the hearing officers, assigns cases, assists with providing training, and monitors hearing officer performance. The WSBA's OGC provides staff and legal and administrative support to hearing officers.

DISCIPLINARY BOARD

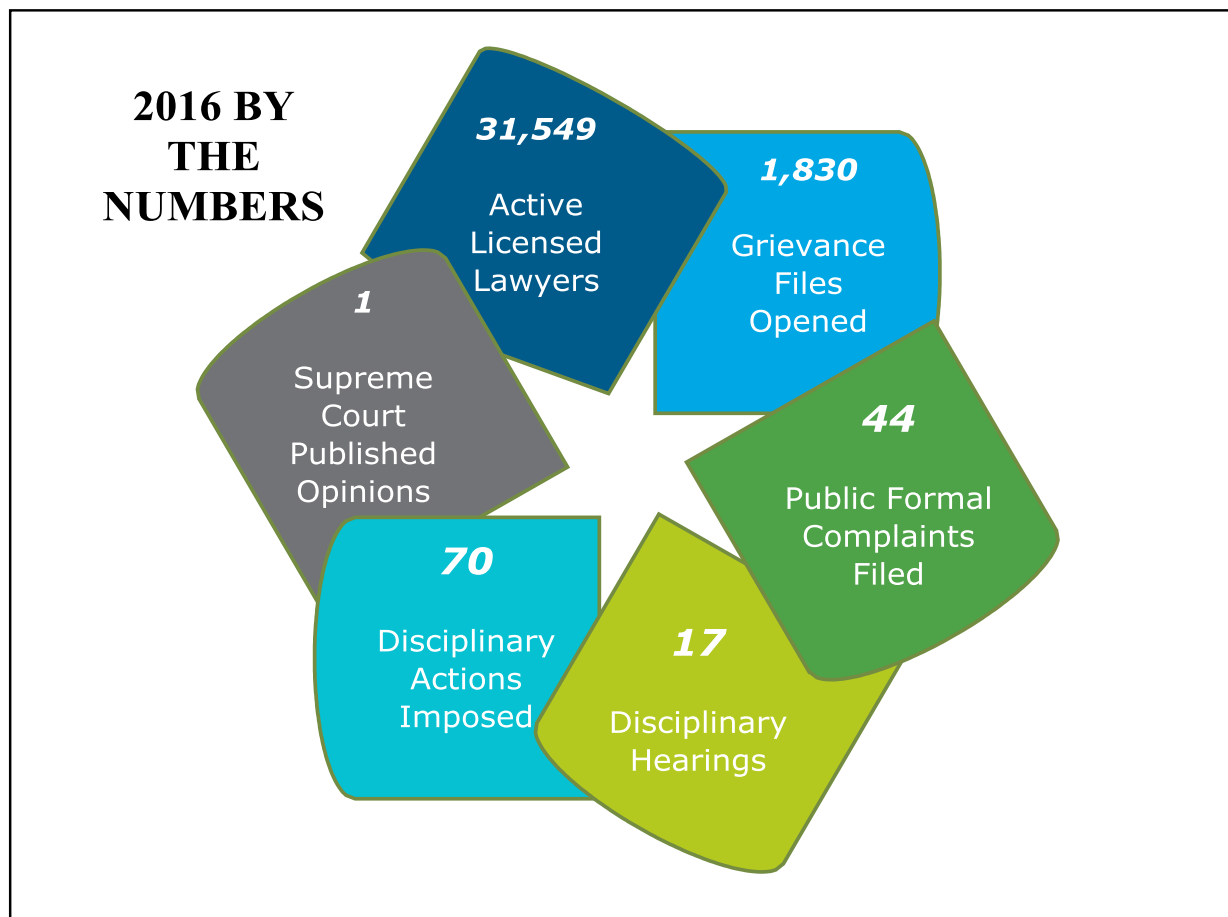
Administered by OGC

In addition to its review committee functions, the Disciplinary Board, composed of volunteer lawyers and community representatives, considers appeals of hearing officer decisions. The Disciplinary Board

reviews the record when a respondent lawyer or disciplinary counsel has filed an appeal of the hearing officer's recommendation in a disciplinary matter. The Board also reviews appeals of lawyer disability cases and may review suspension and disbarment recommendations. If requested, the Board hears oral argument on the cases much like an appellate court, and then issues its decision. The Board also reviews stipulations submitted by the parties, which, if approved, will resolve the proceeding without a hearing. The WSBA's OGC provides administrative and legal support to the Disciplinary Board in the performance of its adjudicative functions.

SUPREME COURT

The Washington Supreme Court has inherent power to dispose of individual cases of lawyer discipline. The Court reviews the Disciplinary Board's suspension and disbarment recommendations, which are appealable as a matter of right. The Court also considers petitions for discretionary review of other dispositions. Disciplinary and disability cases appealed to the Supreme Court proceed in a fashion similar to other Supreme Court appeals, with briefing and oral argument, followed by a written opinion by the Court. The Supreme Court may order reciprocal discipline of lawyers who have been disciplined in other jurisdictions, and order interim suspension of a lawyer if the Disciplinary Board has recommended disbarment or if the lawyer has been convicted of a crime, poses a risk of serious harm to the public, fails to cooperate with a disciplinary investigation, or asserts incapacity to defend himself or herself in a disciplinary proceeding.



LAWYER GRIEVANCE AND ODC STATISTICS

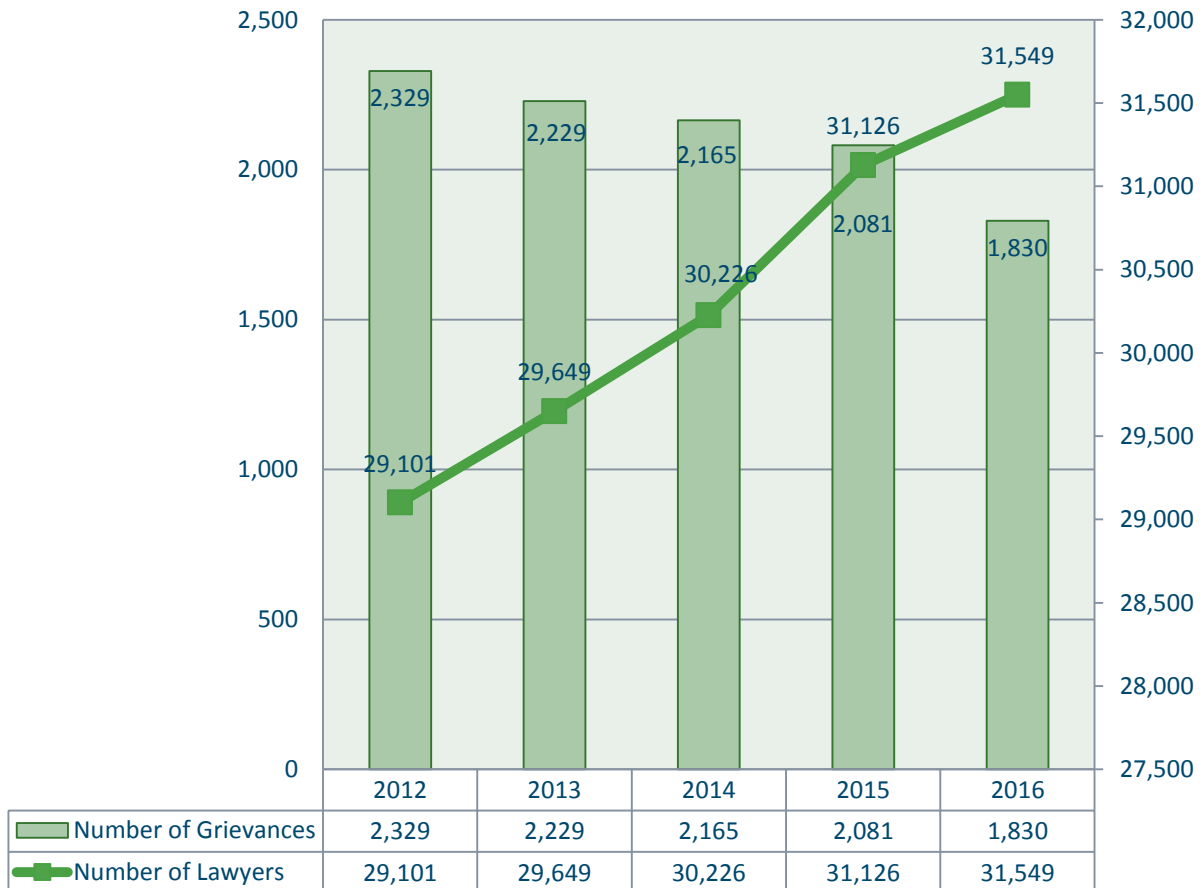
DISCIPLINARY GRIEVANCE STATISTICS

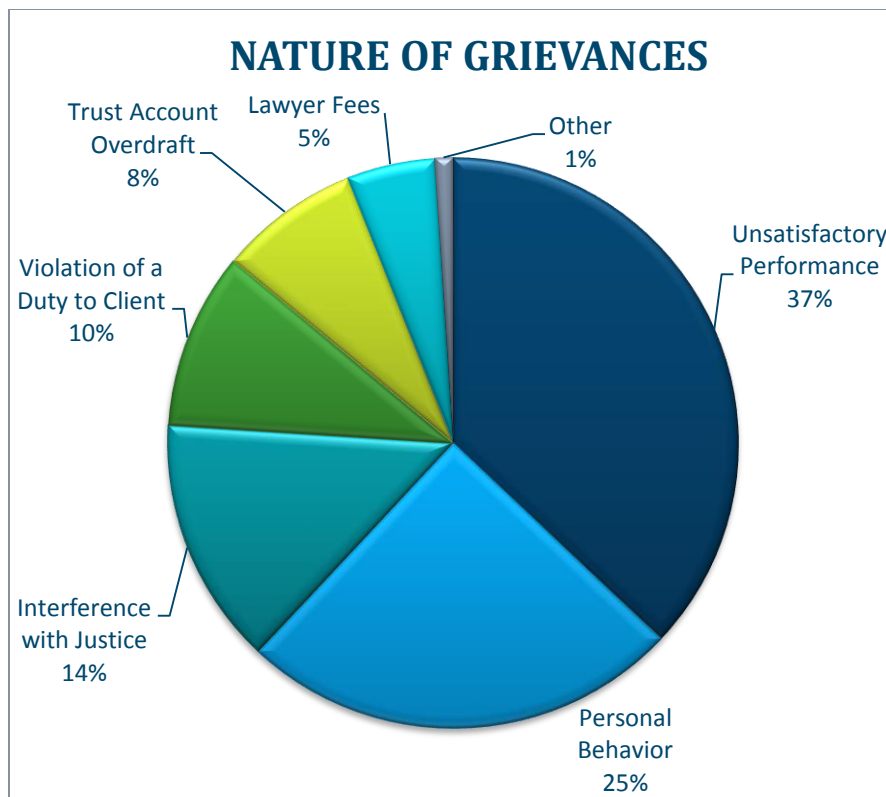
The following statistics relate to the intake, investigation, and prosecution by ODC of grievances against lawyers in the 2016 calendar year.

DISCIPLINARY GRIEVANCES, MEDIATED MATTERS, AND PUBLIC INQUIRIES

	2014	2015	2016
Disciplinary Grievances Received	2,165	2,081	1,830
Disciplinary Grievances Resolved	2,233	2,180	1,902
Non-Communication Matters Mediated	140	102	100
File Disputes Mediated	72	59	57
Public Inquiries, Phone Calls, Emails, & Interviews	6,342	6,485	5,466

GRIEVANCES RECEIVED IN RELATION TO NUMBER OF LICENSED LAWYERS



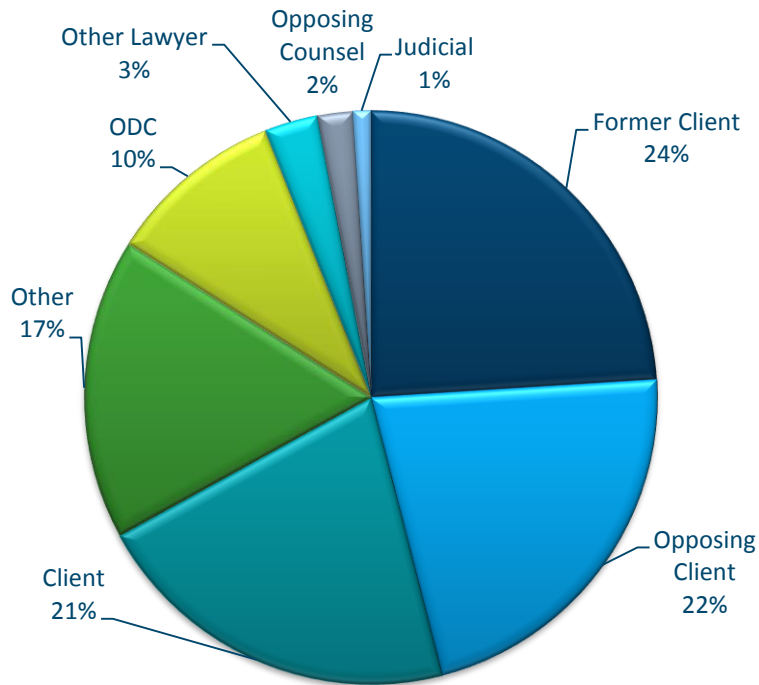


Personal behavior may include criminal law violations and behavior prejudicial to the administration of justice. Interference with justice may include improper contacts with represented parties or judicial officers and misrepresentations to the court.



“Unknown” captures those grievances where there was too little information to determine a practice area; “Other” reflects those practice areas that arise too infrequently to capture individually.

WHO FILED GRIEVANCES



Discipline files are opened in the name of the Office of Disciplinary Counsel (ODC) when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance (e.g. news articles, notices of criminal conviction, trust account overdrafts, etc.) or through confidential sources. "Other" may include grievances filed by family members, neighbors, or other individuals.

DIVERSION

For less serious misconduct, ODC may divert a grievance from discipline if the lawyer agrees to a diversion contract. A successfully completed diversion results in dismissal of the grievance. If the lawyer fails to complete the diversion contract, the grievance is reinstated and may result in public disciplinary action.²

DIVERSION IN 2016

15 New Diversions	21 Completed Diversions	1 Failed to Complete Contract
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AUDITOR ACTIVITIES

Washington lawyers who maintain client trust accounts must hold those accounts with financial institutions that report any overdraft of funds to the WSBA. Auditors in ODC assist in the investigation and resolution of grievances opened because of overdraft notices. Auditors also assist in the investigation of grievance files involving trust account issues and conduct random examinations of lawyer trust accounts to ensure compliance with the ethics rules.

AUDITOR ACTIVITIES IN 2016

93 New Overdraft Files	114 Overdraft Files Closed	31 Investigation File Assignments	80 Random Examinations	4 Re-examinations
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² Total completed diversions include diversions entered into in 2015 but completed in 2016.

LAWYER HEARINGS AND APPEALS

REVIEW COMMITTEES

In 2016, the review committees of the Disciplinary Board met 24 times to consider approximately 530 matters, including review of dismissals; admonition, advisory letter, and hearing recommendations; and other requests, e.g. deferrals, orders for costs, and other non-routine matters.

	2015	2016
Dismissals	469	367
Orders to Hearing	83	90
Other (Deferrals, Costs, etc.)	34	30
More Investigation	22	30
Advisory Letters	16	12
Admonitions	3	3

HEARING OFFICERS

In fiscal year 2016, 44 volunteer lawyers served as hearing officers. In calendar year 2016, 70 disciplinary and 4 disability hearing files were opened. Hearing officers participated in the following:

	2015	2016
Hearings Held	18	17
Stipulations Approved	15	13
Settlement Conferences Held	16	13

DISCIPLINARY BOARD

The Disciplinary Board considered approximately 31 disciplinary and disability matters (excluding denials of sua sponte review) and ordered the transfer of eight lawyers to disability inactive status.

	2015	2016
Cases Reviewed by Appeal	2	4
Stipulations Considered	34	26
Oral Arguments	2	4

SUPREME COURT

The Supreme Court heard oral argument and issued a published opinion on an appeal of a Disciplinary Board decision. It further ordered reciprocal discipline and suspended lawyers on an interim basis.

	2015	2016
Interim Suspensions	9	13
Reciprocal Discipline Ordered	14	16
Oral Arguments	2	1
Published Opinions	2	1

FINAL OUTCOMES IN LAWYER DISCIPLINE CASES

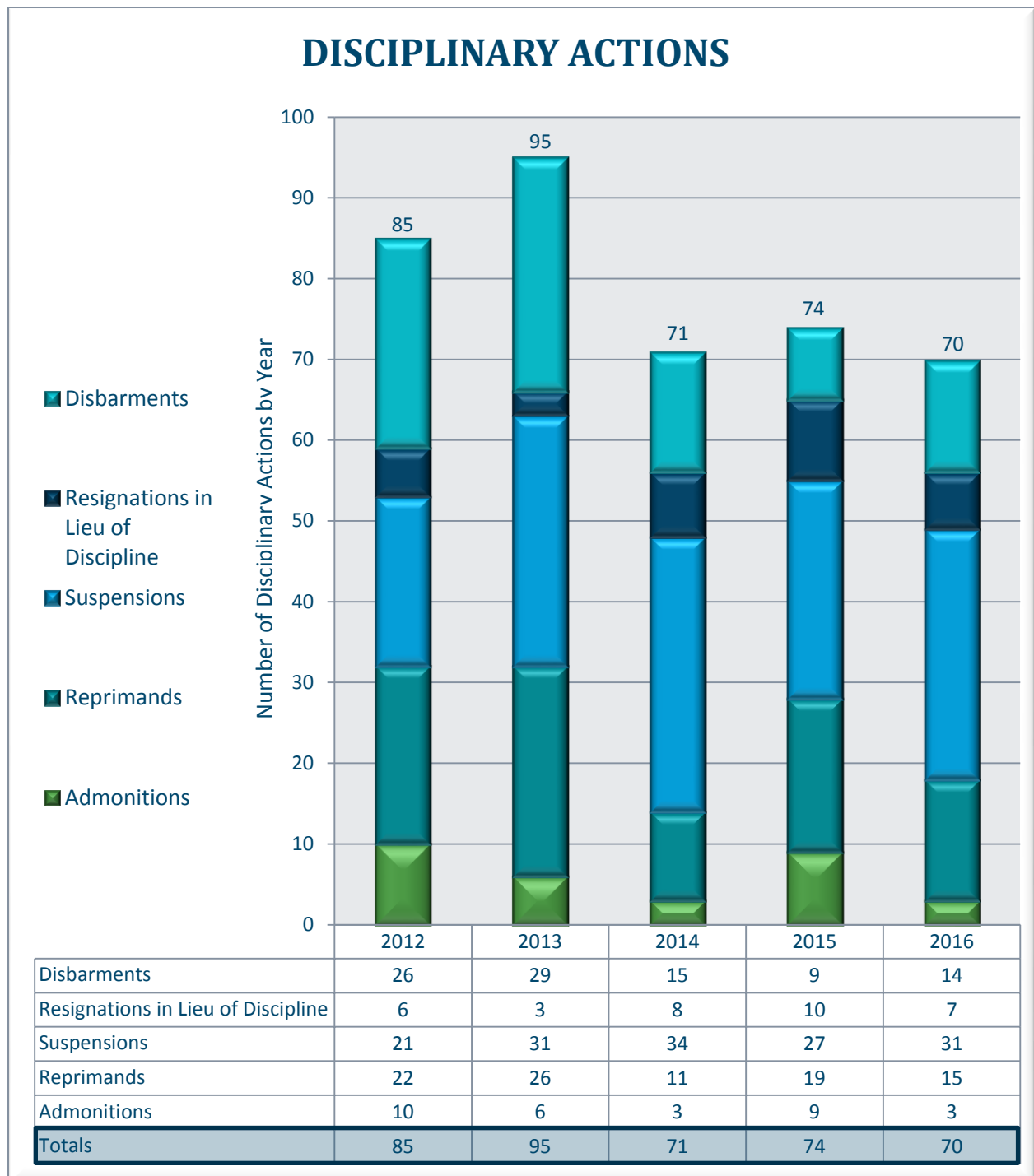
DISCIPLINARY ACTIONS

Disciplinary “actions” include both disciplinary sanctions and admonitions, and result in a permanent public disciplinary record. In order of increasing severity, disciplinary sanctions are 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 before reinstatement. A disbarment revokes the lawyer’s license to practice law. Disbarred lawyers are precluded from seeking readmission to the Bar for five years after disbarment. Only the Supreme Court may order suspension, disbarment, or reinstatement.

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

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

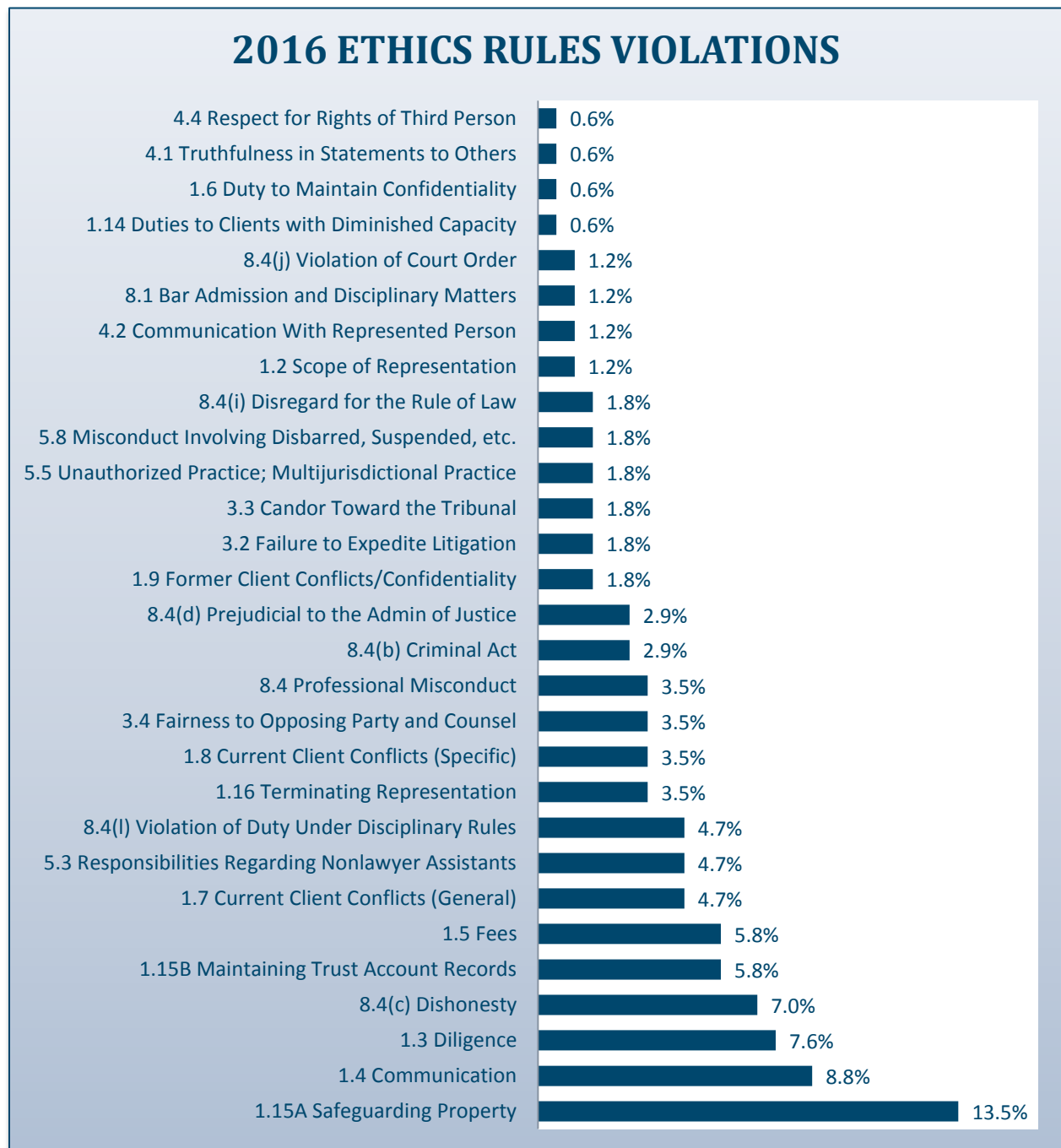
In 2016, 70 lawyers were disciplined. The following chart reports the number of disciplinary actions imposed over the last five calendar years.



ETHICS RULES VIOLATIONS

In 2016, the most common rule violations in disciplinary proceedings related to safeguarding client property and trust accounting (RPC 1.15A, 1.15B), communication (RPC 1.4), diligence (RPC 1.3),

dishonesty (RPC 8.4(c)), fees (RPC 1.5), and conflicts of interest (RPC 1.7, 1.8, 1.9). The following chart details the RPC violations found in 2016 by percentage.³ To review these and other RPC, visit the Supreme Court’s website at www.courts.wa.gov.



³ The 2016 Ethics Rules Violations graph does not reflect multiple repeat rule violations in the same proceeding. Additionally, the chart does not reflect reciprocal discipline matters, as the applicable ethics rules vary among jurisdictions.

LAWYERS DISCIPLINED

2016 Supreme Court Disciplinary Opinions*

[In re Disciplinary Proceeding Against Osborne](#)

DISBARMENTS (14)

Berry, Hugh W. - #23509
Block, Anne K. - #37640
Einhorn, Eric Carl - #18890
Gore, Jason M. - #38264
Herman, David Merrill - #20650
Jacob, Jany K. - #30722
Nguyen, Brian Huy Xuan - #35947
Osborne, Donald Peter - #7386
Pattullo, John Graham - #5939
Pirtle, James D. - #37422
Schwedler, Carl J. - #41349
Waage, Scott A. - #36565
Whitaker, Ryan D. - #21688
Whitney, Sarah - #35479

RESIGNATIONS IN LIEU OF DISCIPLINE (7)

Cervantes, Cecilia K. - #18750
Gainer, Michael John - #20219
Hall, Alan F. - #1505
Hammer, Brian K. - #7642
Kayne, Richard B. - #8239
Mortimer, Charles Philip - #30759
Torkild, Peter A. - #28204

SUSPENSIONS (31)

Bains, Raj - #22459
Baklund, Steven J. - #29920
Bawn, Christopher William - #13417
Christopher, Margaret Diamond - #24884
Clough, Robert A. - #27447
Edmondson, Paul D. - #3634
Elkins, Craig Richard - #14608
Erm II, Rene - #25299
Feldman, Jason M. - #41238
Hammer, Brian K. - #7642
Jacob, Michael Lucien - #11622
Killion, Karen L. - #43310
Larsson, Mark Magnus - #42882
McAuliff, David J. - #40687

Milkie, Alexander J. - #40525
Montgomery, Chris Alan - #12377
Moody, Rodney R. - #17416
Neal, Christopher Lee - #33339
Nyberg, Sean Elliot - #43797
O'Conner, Matthew - #27061
Pattullo, John Graham - #5939
Prohaska, Frank J. - #27589
Rosenthal, Sabina F. - #36219
Sheffield, Dann Douglas - #6815
Sheridan, Siovan Ann - #34558
Sipan, Richard Charles - #22351
Smale, Carolyn Renee - #31125
Sumner, Theodore F. - #36441
Taroski, Ryan Scott - #38412
Willmore, Catherine Susan - #33459
Wooten, Andre Stratman - #6677

REPRIMANDS (15)

Connick, Peter Thomas - #12560
Cross, Geoffrey Colburn - #3089
Gibbs, Kevin L. - #23990
Hunter, George Theodore - #14388
Konteh, Kabbie - #41154
Lee, D Angus - #36473
Mattson, Matthew - #37165
Megaro, Patrick Michael - #50050
Mehling, Cristina B. - #38862
Mirghanbari, Shawna M. - #25059
Moberg, Harold J. - #13924
Nagaich, Rajiv - #32991
Nguyen, Thao Hoang - #41882
Roesch, Brian Douglas - #12404
Smith, Lynn Earl - #20060

ADMONITIONS (3)

Irwin, Christal Olivia - #43924
Jorgensen, Kenneth L. - #2751
Simon, Mary - #17737

*For more information on these and other disciplinary matters, please visit wsba.org or our webpage on [the Discipline System](#).

OTHER COMPONENTS OF THE DISCIPLINE SYSTEM

OTHER CONDITIONS OF DISCIPLINE

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

FILES OPENED IN 2016 FOR OTHER CONDITIONS IMPOSED

27 Probation	9 Restitution	50 Costs
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LAWYER DISABILITY MATTERS

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

	2014	2015	2016
TRANSFERS TO DISABILITY INACTIVE	8	9	8

LAWYERS' FUND FOR CLIENT PROTECTION

Administered by OGC

The Lawyers' Fund for Client Protection Board was established to promote public confidence in the administration of justice and the integrity of the legal profession. Its purpose is to relieve or mitigate a financial loss sustained by a client resulting from a WSBA member's dishonesty or failure to account for money or property entrusted to the WSBA member. The dishonesty or failure to account must have been in connection with the member's practice of law or role as a fiduciary in a matter related to the member's practice of law. The Fund is financed by a \$30 annual WSBA member assessment by order of the Washington Supreme Court. In 2016, the Fund gave over \$253,000 in gifts.

LAWYERS' FUND FOR CLIENT PROTECTION⁴

	2014	2015	2016
Number of Requests Granted	44	59	44
Of These, Number of Lawyers Involved	14	20	16
Total Gifts	\$337,160	\$495,218	\$253,228

FUNDING THE DISCIPLINE SYSTEM

Lawyers' license fees fully fund the discipline system – there is no public funding.

DISCIPLINE SYSTEM REVENUE AND EXPENSES⁵

	2014	2015	2016
REVENUE			
Recovery of Discipline Costs	\$146,716	\$134,049	\$138,768
Discipline History Summaries	\$13,721	\$13,728	\$13,878
Misc ⁶	\$3,481	\$5,242	\$2,454
Total Revenue	\$163,918	\$153,019	\$155,100
EXPENSES			
Investigation/Prosecution	\$5,005,071	\$5,370,275	\$5,485,110
Disciplinary Board Expenses	\$226,885	\$228,391	\$329,353
Hearing Officer Expenses	\$37,719	\$38,477	\$32,590
Total Expenses	\$5,269,675	\$5,637,143	\$5,847,053
NET TOTAL EXPENSES	\$5,105,757	\$5,484,124	\$5,691,953

⁴ The [Lawyers' Fund for Client Protection](#) reports on the WSBA fiscal year, which is October 1 to September 30.

⁵ Discipline system expenses are based on the WSBA fiscal year.

⁶ Miscellaneous revenue includes audit and Ethics School revenue.

OTHER LICENSED LEGAL PROFESSIONALS AND THE DISCIPLINE SYSTEM

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

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

The key differences between the lawyer discipline system and the limited license discipline systems are as follows: (1) each regulatory board acts as the intermediate appellate body, akin to the Disciplinary Board, to review hearing records and stipulations; (2) a discipline committee of each regulatory board serves the function of review committee; and (3) WSBA staff and the chair of each discipline committee conduct initial review of grievances and make intake decisions.

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

To learn more about licensed legal professionals, visit www.wsba.org or [Limited Licenses](#).

LPO DISCIPLINARY STATISTICS

	2015	2016
Number of Active Licensees	768	766
Disciplinary Grievances Received	3	3
Disciplinary Grievances Resolved	2	3
Disciplinary Actions Imposed	1	0

LLLT DISCIPLINARY STATISTICS

	2015	2016
Number of Active Licensees	9	19
Disciplinary Grievances Received	0	0
Disciplinary Grievances Resolved	0	0
Disciplinary Actions Imposed	0	0