ANNUAL REPORT
OF THE
ATTORNEY REGULATION
ADVISORY COMMITTEE
TO THE
ARIZONA SUPREME COURT

APRIL 30, 2013

ARIZONA SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE (ARC)

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As of April 3, 2013

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ATTORNEY REGULATION ADVISORY COMMITTEE
ANNUAL REPORT
April 30, 2013

The Attorney Regulation Advisory Committee (ARC) was established by the Supreme Court of Arizona to periodically review the entire attorney admission and discipline system for the Court and make recommendations for any further needed changes. A stated purpose of the Committee is to review the rules governing attorney examination, admissions, reinstatement, and the disability and disciplinary process and make recommendations regarding these rules "to reinforce lawyer competency and professionalism and strengthen the Supreme Court's oversight of the regulation and practice of law in this state". The Court directed the Committee to submit an annual report each year by April 30. That report "shall contain case statistics on the processing of attorney admission and discipline cases and recommendations on specific issues addressed by the Committee. (Administrative Order 2011-44)

Admissions

We intentionally emphasize the remarkable efforts of the ARC Admissions Subcommittee because of the scope of its review and the vision of improved efficiency in the admissions process.

1. ARC Admissions Subcommittee Process Review

Led by its Chair, John Tuchi and James Drake, Jr., the Admissions Subcommittee of ARC has undertaken a remarkably comprehensive review of all aspects of the attorney admissions process, including the Supreme Court rules governing examinations, character and fitness review, and the structure and function of the Supreme Court committees carrying out these functions. With a focus on the detail the subcommittee's review program, described below, is designed to identify improvements to the system that will maximize its effectiveness and efficiency while ensuring fairness and the appearance of fairness to all applicants for admission to the practice of law in Arizona.

With goals of inclusiveness, public input and transparency the admissions subcommittee, as part of its review, is holding a series of monthly "forums" throughout 2013 on discrete parts of the admissions process. During each forum the subcommittee invites subject-matter experts and persons with particular experience in the discrete area under study that month to share their knowledge and observations with the committee. Public input has been and will continue to be welcomed, either in person during the public comment portion of every forum, or in writing as submitted to the Supreme Court ARC website's Admissions Subcommittee webpage.

The following topics have been or will be the subject of the monthly forums:

Forum 1: Jan. 30, 2013: The structure currently employed by the Supreme Court Character and Fitness Committee to carry out the review of and decision on applicant files, its advantages and disadvantages; a review and discussion of alternative structures.

Forum 2: Feb. 20, 2013: Criteria for demonstrating requisite character and fitness, and whether the criteria require additions, deletions and/or clarification.

Forum 3: Mar. 13, 2013: Character-report questions and third-party references/sources for adequacy and effectiveness.

Forum 4: April 17, 2013: Information-gathering and initial review process by Supreme Court staff and assigned Character and Fitness Committee members. Is it timely, efficient and professional?

Forum 5: May 22, 2013: Hearing procedures and decisional rules employed by the Character and Fitness Committee in dispositioning applicant files and alternative procedures.

Forum 6: June 19, 2013: Rules affording confidentiality during the application process to applicants and third-party information providers. Is the balance correct? Review current process of Character and Fitness Committee referrals for evaluations for effectiveness and fairness, including due process and notice concerns.

Forum 7: July 15, 2013: Earlier intersection of character and fitness function with law schools and the creation of a regular information-sharing process that would educate incoming law students to the character and fitness process and its requirements, including time requirements, at the beginning of their law school study.

Forum 8: Aug. 7, 2013: Conditional admission features within Rule 36, ARIZ.R.S.CT., and alternatives to admission with conditions; Rule 38 special categories of admission; and current pro hac vice admission.

Forum 9: Sept. 18, 2013: A general review of the examinations rules and suggestions for modification.

Forum 10: Oct. 16, 2013: A general review of the examinations rules and suggestions for modification, if necessary.

Forum 11: Nov. 13, 2013: Reserved for additional issues or continuation of issues.

Forum 12: Dec. 13, 2013: Process for determining which states qualify for reciprocity and what criteria are used to make this determination.

In January 2014, at the conclusion of the forum series, the Admissions Subcommittee will meet to analyze and discuss the information and observations it received during the forums and begin to develop recommendations. The subcommittee contemplates that its meetings to formulate a roughly structured body of recommendations, and then draft, debate and revise those recommendations will require from six to nine months; it plans to have a comprehensive set of recommendations to the ARC by September 2014 and to the Court by the end of 2014.

2. Admission Statistics Update

	Informals 2010	Informals 2011	Informals 2012	Formals 2010	Formals 2011	Formals 2012
Admit w/ No Conditions	31	22	24	1	1	3
Admit w/ Conditions	9	12	8	3	0	2
Deny Admission	1	0	2	1	2	2
Refer to Formal	6	5	8	n/a	n/a	n/a
Applicant Withdrew or was Granted Continuance	4	10	16	1	4	9
Total Hearings	51	49	42	6	7	7

Committee Concerns forming Basis of Conditional Admission (Formal Hearings Only)	2010	2011	2012
Financial	2	2	1
Substance Abuse	5	5	0
Emotional Stability	0	1	1
Ethics/Professionalism	2	1	0
Multiple Issues	3	3	1

3. ARC action on rule-change petitions related to admissions issues

As part of its advisory role on admissions issues, ARC in 2012 reviewed and made recommendations on four admissions-related rule-change petitions.

a. Early Bar Examination (Petition R-12-0002)

This petition sought to allow law students to take the bar examination during their third year of law school.

ARC's Admissions Subcommittee originally recommended against the petition. At its April 19, 2012, meeting, ARC, by a vote of 7-1, agreed with that recommendation and filed a letter dated May 8, 2012, opposing the proposal because, among reasons, taking and passing the examination early did not guarantee early admission.

After the Court sought additional input on 10 specific questions, the petitioners agreed to modify their original proposal, including making it a three-year pilot project.

The Admissions Subcommittee again recommended opposing the revised proposal.

ARC invited the petitioners to its November 1, 2012, meeting. Judy Stinson of ASU and Sally Rider of UA both attended and addressed the committee. At that meeting, ARC voted 4-3 to support the proposal as a pilot program and filed a comment on November 9, 2012.

On December 10, 2012, the Court adopted the rule change, on a temporary basis until 2015. Admissions staff met with representatives of each state law school and discussed issues of application, form and timelines. The application is available online. Two applicants will test under this provision in July, 2013, and 70-90 are expected to test under this provision in February, 2014. ARC will report to the Court after February, 2014 test administration to provide an update on test administration to date.

b. Admission on Motion (Petition R-12-0005)

This petition sought to expand Arizona's admission-on-motion rules to allow those eligible for admission on motion to include not only lawyers who took and passed a bar examination in reciprocal states, but also those who actively practiced in the reciprocal states, regardless where they took the bar examination.

ARC's Admissions Subcommittee recommended that ARC ask for the petition to be continued and reviewed as part of ARC's planned broader review of attorney admission during 2013. At its April 19, 2012, meeting, ARC agreed with the recommendation by a 7-0 vote, and filed a letter dated May 8, 2012, explaining its reasons for opposing the petition.

The Admissions Subcommittee considered the matter again after the petitioners filed their reply, and recommended ARC oppose the request and ask that the matter be reviewed as part of ARC's planned broader review of attorney admissions.

ARC invited the petitioners to attend its November 1, 2012, meeting. Sara Agne of Snell & Wilmer attended and addressed the committee. At that same meeting, ARC agreed with the Admission Subcommittee's recommendation by a vote of 7-0, opposing adoption of the rule change.

On December 10, 2012, the Court modified existing rule to provide an alternative of either admission by bar exam in a reciprocal jurisdiction and active practice for five of the seven years prior to application in any jurisdiction OR admission by bar exam in any jurisdiction and active practice for five of seven years prior to application in reciprocal jurisdictions. The new rule will become effective July 1, 2013 and was provided to all reciprocal jurisdictions in January, 2013 for review. To date, no reciprocal jurisdiction has expressed concern or withdrawn reciprocal relationship based on this rule change.

Some potential applicants have challenged inconsistent language in the new provision. The underlying rule, 34(f) provides that applicants must meet all existing rule requirements, which includes provision (C), " (Applicants)…have been primarily engaged in the active practice of law in one or more states…for five of the seven years immediately preceding the date upon which the application is filed." The new provision provides "…have been admitted by bar examination to practice law in one or more states…and have been admitted to and engaged in the active practice of law for at least five years in another jurisdiction …allowing for admission of licensed Arizona lawyers on a basis equivalent to this rule…." Applicants who have practiced law more than seven years preceding application are arguing they should be allowed to claim remote practice from 15-25 years prior, based on provision (ii). Staff have rebuffed these arguments, citing provision 34(f)C.

c. Admission Oversight (Petition R-12-0011)

This petition was filed by the chairs of the Committees on Character and Fitness and Examinations – both members of ARC as well as co-chairs of the Admissions Subcommittee --

to conform the admission-related rules to other recent amendments and make additional changes to strengthen the Court's oversight of attorney admissions.

After review, the Admissions Subcommittee recommended that ARC support the petition. ARC voted 10-0 to support the petition, except for the proposal regarding Rule 33(a), Ariz. R. Sup. Ct. (defining the composition, appointment and service of the committee members), on which the committee had no comment.

On December 10, 2012, the Court adopted this rule change.

d. Military Spouse Licensing (Petition R-12-0020)

This petition originally would have allowed military spouses to become admitted on motion in this state, no matter the length of time in practice or bar-examination jurisdiction.

ARC's Admissions Subcommittee recommended that ARC and the Committees on Character and Fitness and Examinations file a joint letter opposing the petition. At its April 19, 2012, meeting, ARC, by a vote of 10-0, approved the subcommittee's recommendation. ARC and the two committees filed a joint letter dated May 1, 2012, opposing the petition.

In an August 30, 2012, order, the Court asked for further comment on a revised rule-change proposal. That proposal was based on a comment filed by the State Bar of Arizona that included a proposed rule with more restrictions and did not propose to grant full admission-on-motion status.

After reviewing the Court's revised rule-change proposal, the Admissions Subcommittee recommended support, with the suggestion that the temporarily-admitted military spouse also be required to give notice to clients of any change in location.

ARC invited the petitioner, Mary Reding, to its November 1, 2012, meeting. Ms. Reding attended and addressed the committee. At that meeting, ARC adopted the Admissions Subcommittee's recommendation by a vote of 8-0 and filed a comment on November 19, 2012, asking that the Court incorporate a 60-day notice in any adopted rule. ARC also proposed rule language to accomplish this change.

On December 10, 2012, the Court adopted the rule change. An application has been created and is available in paper format. To date, no applications have been received and no inquiries have been made regarding application.

Lawyer Regulation

ARC's 2012 Annual Report focused on the Intake process, investigative process, the Attorney Discipline Probable Cause Committee and the Presiding Disciplinary Judge. Data provided demonstrated the overall significant improvement in the efficiencies across key areas of the regulatory process. This report will consider those same areas to analyze the current progress of the new regulatory process.

1. Intake Process

The Intake process is designed to achieve two specific goals; resolve the greatest number of charges at the earliest stage of the process and expeditiously move the most serious charges of misconduct into investigation.

For the last two years, complainants have been encouraged to talk with an Intake lawyer before submitting a written charge. This change not only personalized the process, but also allowed for a better and timelier evaluation of the complainant's concerns. Many charges received by Lawyer Regulation represent low-level misconduct that can be appropriately resolved by means of providing instruction to the lawyer and/or

directing the lawyer to resources that will resolve issues involving practice management concerns or personal matters that detract from the lawyer's ability to adequately discharge duties. The system design provides for immediate outreach to complainants and lawyers providing opportunities for lawyers to resolve issues and complainants to receive an expedient resolution of their charges. In all cases where the bar decides not to proceed to investigation, the rules require a thorough explanation to complainants regarding the decision.

In addition, triaging charges as they are received by Intake also allows the most serious allegations to be moved into investigation where significant attention can be devoted to those cases.

In recent years, the State Bar has received approximately 4,000 inquiries/charges annually. The use of numeric counts is of some value. However, we recognize that reviewing a numeric count does not provide a full statistical analysis. It does offer a comparative snapshot. It also aids in the evaluation, over time, of trends. In 2011 there were 4,052 inquiries/charges. Notably for that year though, three lawyers accounted for 266 of those charges, which is somewhat aberrational. There were 3,307 charges received in 2012. Even with the aberrational charges against the three lawyers referenced, the number of charges in 2012 is significantly fewer than prior years.

There is likely not one definitive reason for such a decrease in the number of charges received. One possible contributing factor could be a result of the fact that the State Bar removed the "charge form" from the website to encourage greater telephone participation with Intake. The form has been restored to the website to see if it results in an increase in the number of charges consistent with years past. Another possible contributing factor might be an increased awareness in ethics and professionalism by lawyers. It is likely that awareness has been enhanced due to the creation of the new system itself, the increased efforts to educate lawyers about how to avoid bar charges and the fact that a trial of a high profile matter was heard under the new system in 2011 in an open and transparent way.

Of these 2012 charges, 75% were resolved at Intake. When compared to the 67% of charges resolved at Intake in 2011, this represents a significant increase in the charges concluded at Intake with no further action required. The time required to resolve these charges did not change significantly. In 2012 the average time to resolve a charge through Intake was 27 days, compared to an average of 28 days in 2011. The charges that are not resolved in Intake are moved on to investigation. The process of determining what charges are referred for investigation usually includes securing a written statement from the complainant and oftentimes includes gathering some additional information. On average it took 29 days to review and make a referral of a charge for a full investigation. This timeframe is consistent with last year.

It was anticipated that the new process would, over time, result in fewer charges being referred for a full investigation. In 2011, there were 999 charges referred for a full investigation. In 2012, there were 695 charges referred for a full screening investigation. More time will be required to properly draw any relevant conclusions from the comparative reduction in charges referred.

2. Investigation of Charges

The Court previously directed that all disciplinary matters be resolved within twenty-two months; eleven months from receipt of the charge through the filing of a formal complaint and eleven months from formal complaint to final judgment and order. Historically, the annual average of compliance for these goals was in the range of 96-98% within that stated timeframe.[1] Those prior compliance numbers continue to offer insight for the implemented changes in the disciplinary system. The current investigative process is

[1] This timeframe is no longer the relevant standard but provides context going forward for the appropriate measure.

generally more comprehensive and the benefits of consistent and direct contact with relevant individuals is evident.
In 2011, the average time from the date of the referral of a charge to investigation, through the investigative process, was 117 days, a significant decrease from the previous timeframes. In 2012 that time period was 118 days. Again there is little variation between the two years and demonstrates a consistent significant improvement when compared to the prior system.

3. Attorney Discipline Probable Cause Committee

The Court established the Attorney Discipline Probable Cause Committee ("Committee") to function in place of the probable cause panelist.[2] This Committee occupies the gatekeeper position in the discipline system and benefits from the participation of public members and their insight. The Committee has three public members and six attorney members and meets monthly to review the bar's recommendations on charges.

Prior to each monthly meeting, the bar provides respondent with a written report of investigation that includes the bar's recommendations on the case. Respondent or respondent's attorney may provide a written submission to the committee in response. Complainants are also provided with the recommendation and informed of the opportunity to respond. At each meeting, the bar presents its cases orally, and Committee members may ask questions, request additional facts, challenge the bar's recommendations or offer their own recommendations. They thoroughly discuss and debate each individual case. Upon motion, the Committee votes on the disposition of each case. In 2012, the Committee modified the State Bar's recommendation on 19 cases. In seven of those cases the Committee increased the recommended sanction or disposition and in twelve of those cases the Committee decreased the State Bar's recommended sanction or disposition. The Committee meetings are confidential and not open to respondents, complainants or the public.

After such deliberation, the Committee may direct bar counsel to conduct further investigation, dismiss the allegations, or enter an order of one or more of the following: diversion, admonition, probation, restitution, assessment of costs and expenses, or authorize formal proceedings.

The Committee in 2012 reviewed 490 charges, not including dismissal appeals. The Committee issued 166 probable cause orders authorizing the filing of a formal complaint. In the prior year the Committee reviewed 312 charges and issued 138 probable cause orders. The Committee also issued 39 orders of admonition (25 of these orders included the imposition of probation), 18 orders of restitution and 81 orders of diversion (there were an additional 33 diversion agreements filed in Intake for a total of 114 diversions). In 2011, there were 26 orders of admonition, 6 orders of restitution and 82 orders of diversion. In 2012, while there were numerically more charges presented to the Committee, there were statistically far fewer charges authorized for formal discipline proceedings per charge when compared to 2011.

4. The Office of the Presiding Disciplinary Judge

Previously only the Court could issue orders of censure (reprimand), suspension or disbarment. That process was handled through the use of multiple hearing officers who made report recommendations to the Disciplinary Commission. The Commission would make recommendations to the Court regarding any

[2] The panelist was a sitting Board of Governor's member. The panelist reviewed the Bar's recommendations on cases and could dismiss charges, enter probable cause orders, impose informal sanctions and orders of diversion. The Committee has the same authority.

sanction. Comparisons of data with the prior system are not perfect. When making comparisons, of the prior system we utilize 2010 for convenience and calculate time through final order of the Court, regardless of whether a petition for review was filed or not. The prior process itself created time delays such that a radical reduction in processing time was impossible. This is one of the primary reasons the Court established the office of the Presiding Disciplinary Judge ("PDJ").

The PDJ adjudicates all formal cases. Contested and default cases are heard by hearing panels, composed of the PDJ, an attorney member and a public member. The use of hearing panels has provided a second opportunity for public insight and participation in the lawyer regulation system which advances a system that is designed and administered to protect the public. In the following statistics, when the term "final order" is used, it refers to the final order of the PDJ or a Hearing Panel.

The PDJ, including in conjunction with a Hearing Panel, has the authority to issue a final order imposing any sanction, including disbarment. The use of the PDJ continues to significantly streamline the processing of formal proceedings. Formal matters include both the formal complaints and direct consent agreements.[3] In 2012, 72 formal matters were filed, 31 of those were direct consent agreements.[4] In 2011 there were 68 formal matters filed, 23 of which were direct consent agreements. The increase in the number of formal filings between 2010 and 2011 was 55%. There was an additional increase of 6% in 2012.

A significant goal of restructuring the lawyer regulation system was to achieve greater efficiency in the adjudication of formal cases. In the first year of the new system the time from filing of the formal complaint to final order using all contested, consent and default cases, was 143 days which was a 50% decrease in adjudication time from 2010. In 2012, the average time from the filing of a formal complaint to the issuance of a final order in all case types was 66 days. Between 2011 and 2012 time was reduced by 54%. The institution of the PDJ and the attendant process changes has resulted in a significant reduction in the time for the formal adjudication of cases.

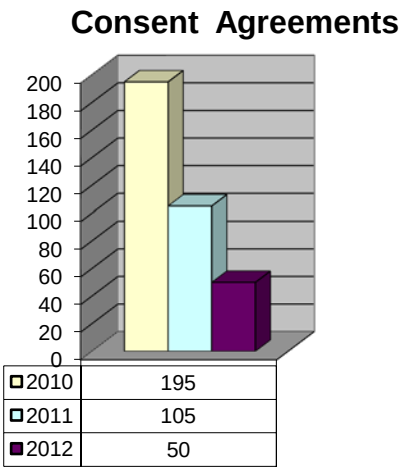
The breakdown of adjudication times on specific case types is as follows: In 2011, the adjudication time of contested cases had decreased by 19%. In 2011, a contested case took an average of 351 days from filing of a formal complaint to final order. The average time in 2012 was 235 days, which is a 33% decrease from 2011. In making comparisons between 2011 and 2012, however, it should be noted that in 2011 some cases concluded through the former disciplinary system and others concluded in the new system, which does not make for equal comparisons.

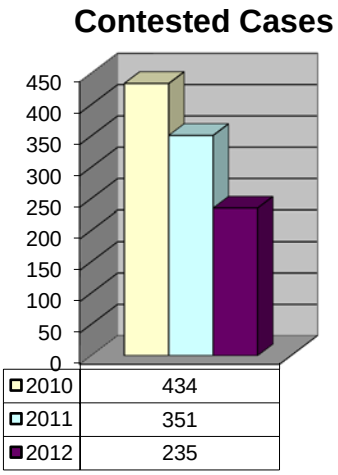
In 2012, the average time from filing of a formal complaint to final order on a consent agreement was 50 days. This represents a 52% decrease over the prior year where the average time was 105 days. And, the average time in a default case was 85 days in 2012, a 27% decrease from 2011. In that year, the average default took 117 days to final order.

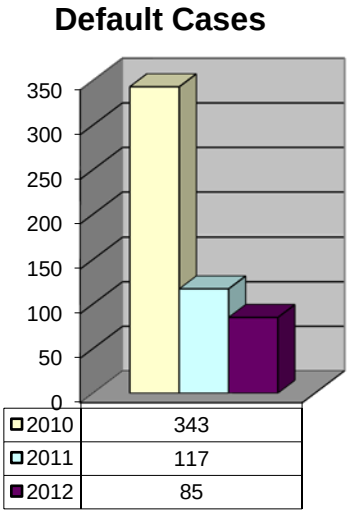
[3] Direct consent agreements are filed in lieu of a formal complaint and contain a stipulated set of facts and stipulated sanction.

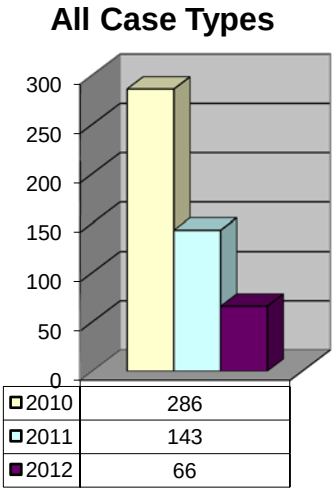
[4] Three formal cases resulted from the Respondent's objection to the Attorney Discipline Probable Cause order. In two of those cases the hearing panel dismissed the complaint and the third was dismissed upon agreement of the parties.

Average number of days from filing of the formal complaint to final disposition based on case type









In 2012, there were 116 filings in the Office of the PDJ assigned a cause number. There were 273 informal filings that were not assigned a cause number. Of the formal cases closed in 2012, 6% were contested, 14% were default and 80% resulted in a consent agreement. In 2012, there were 12 lawyers disbarred, 35 suspended and 19 reprimanded. In 2011, there were 13 lawyers disbarred, 43 suspended and 27 censured. There were six formal cases appealed to the Supreme Court in 2012. Of those cases one received a final order from the Supreme Court in 2012. At the time of this report three of the other appeals received a final Supreme Court Order in 2013. In 2012, there were 19 applications for reinstatement filed. Of these, 4 were withdrawn, 4 were granted, 5 were denied and 6 remain active.

Issues being considered for report by the Attorney Regulation Committee in 2013

The Committee will continue to review various aspects of various aspects of change that are part of our culture. The Committee intends to continue its review of:

- The Admissions process as highlighted earlier.
- Review and analysis of rule changes to admission, including follow up on 3rd year student admission
- The Statistical growth of the bar and its potential impact on attorney regulation.
- Discussing the underlying cause of unethical conduct and reviewing the effectiveness of the current programs available to address such issues.
- Formally reviewing the entire rule process.

Calendar Year 2012 Attorney Discipline Probable Cause Committee Statistics	JAN '12	FEB '12	MAR '12	APR '12	MAY '12	JUNE '12	JULY '12	AUG '12	SEPT '12	OCT '12	NOV '12	DEC '12	YTD
CASES CONSIDERED													
Cases Considered at Monthly Meeting[1]	28	15	21	24	21	16	19	19	10	10	24	18	225
Dismissal Appeals[3]	9	2	2	4	5	3	1	6	0	0	4	6	42
Application to Retain files	0	21	19	8	0	0	23	0	26	0	0	8	105
TOTAL CASES	37	38	42	36	26	19	43	25	36	10	28	32	**372**
DISCIPLINE ORDERED													
Order of Dismissal	0	0	0	3	1	0	0	1	0	0	0	0	**5**
Order of Diversion	14	5	8	5	8	7	5	4	5	5	9	6	**81**
Order of Admonition	5	1	2	4	6	3	2	4	2	1	5	1	**36**
Order of Probable Cause/Formal Complaint	9	8	7	7	6	4	8	6	1	3	8	9	**76**
Probation	3	1	2	3	3	2	2	2	2	0	4	1	**25**
TAEEP	8	1	2	4	5	3	1	2	4	2	2	0	**34**
TAP	0	3	1	1	0	0	0	0	0	0	0	0	**5**
LOMAP	7	0	5	4	3	6	4	4	4	2	7	5	**51**
MAP	2	0	0	2	1	2	0	1	0	0	0	0	**8**
LOMAP Consultation	0	1	0	0	0	0	1	0	1	0	0	0	**3**
LOMAP Practice Monitor	0	1	1	0	0	0	0	0	0	0	0	0	**2**
CLE	6	1	2	0	3	2	4	3	3	2	7	3	**36**
Peer Review	0	0	0	0	0	0	0	0	0	1	1	0	**2**
FEE Arbitration	1	1	2	1	1	1	1	0	1	0	1	2	**12**
Order of Restitution	1	1	3	4	1	0	2	1	1	1	0	3	**18**
Costs	5	1	3	7	6	3	2	5	1	1	5	1	**40**
Matter Deferred to Subsequent Meeting	0	1	1	0	0	1	0	2	0	0	1	0	**6**
Order for Further Investigation	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Application to Retain files	0	21	19	8	0	0	23	0	26	0	0	8	**105**
Dismissal Appeal Denied (Affirm State Bar Counsel Dismissal)	9	2	2	4	5	3	1	6	0	0	4	6	**42**
Dismissal Appeal Granted	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Other[2]	0	0	1	2	0	1	4	1	1	0	1	0	**11**
TOTAL DISCIPLINE	70	49	61	59	49	38	60	42	52	18	55	45	**598**

[1] "Cases" does not include dismissal appeals or applications to retain file. "Cases" are per respondent and may involve multiple charges.

[2] Charges vs Bar Counsel, Order of Probation, Closed no action taken

[3] "Dismissal Appeals" are those matters where the complainant appeals the dismissal of the charges by State Bar Counsel. The committee either affirms the dimissal or grants the appeal.