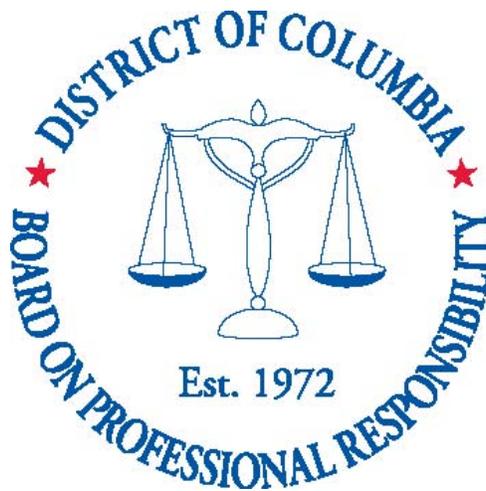


**DISTRICT OF COLUMBIA  
BOARD ON PROFESSIONAL RESPONSIBILITY**

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**Annual Report**

**August 1, 2018 – July 31, 2019**

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**DISTRICT OF COLUMBIA  
BOARD ON PROFESSIONAL RESPONSIBILITY**

**ANNUAL REPORT**

**August 1, 2018 – July 31, 2019**

**Introduction**

The Board on Professional Responsibility is the adjudicative arm of the District of Columbia Court of Appeals, responsible for the administration of the attorney disciplinary system and the adjudication of cases of attorney misconduct against members of the District of Columbia Bar and others who fall within the Court's disciplinary jurisdiction. The attorney disciplinary system enforces the D.C. Rules of Professional Conduct, which were adopted by the Court to protect the public from unethical attorneys and to preserve the integrity of the legal profession.

Disciplinary cases are adversarial proceedings, prosecuted by the Office of Disciplinary Counsel, and heard by Hearing Committees, which consist of two active D.C. Bar members and a member of the public who is not a lawyer. Hearings are held in Courtroom II of the Historic Courthouse of the District of Columbia Court of Appeals, at 430 E Street, N.W., Washington, D.C. 20001. All hearings are open to the public. The [hearing schedule](#) may be found on the Board's website [www.dcattorneydiscipline.org](http://www.dcattorneydiscipline.org).

Hearing Committees issue reports and recommendations, which include findings of fact, conclusions of law, and a recommendation as to sanction, and which are reviewed by the Board on Professional Responsibility in most instances. The Board consists of seven active members of the D.C. Bar and two members of the public who are not attorneys. The Board hears oral argument in Courtroom II. The [oral argument schedule](#), and a [link](#) to listen to a live audio stream of oral argument, are available on the Board's website.

Board members are appointed by the D.C. Court of Appeals. Hearing Committee members are appointed by the Board. All Board and Hearing Committee members serve without compensation.

The Office of Disciplinary Counsel is charged with the investigation and prosecution of disciplinary complaints. It is located in Building A of the Superior Court, at 515 5<sup>th</sup> Street, N.W., Suite 117, Washington, D.C. 20001.

The Board's Office of the Executive Attorney supports the Board in its administrative functions and supports the Board and the Hearing Committees in their adjudicatory functions. It is located in Suite 138 of the Historic Courthouse.

The Staff Directories of the [Office of Disciplinary Counsel](#) and the [Office of the Executive Attorney](#) may be found on the Board's website.

This report summarizes the activities of the Board, the Hearing Committees, and the Office of Disciplinary Counsel during the period August 1, 2018 – July 31, 2019, which comprised the 2018-19 Board term.<sup>1</sup>

### **Board Review**

The Board reviews Hearing Committee reports and recommendations in contested disciplinary cases, as well as motions for temporary and disability suspension, and motions to dismiss petitions for reinstatement filed by the Office of Disciplinary Counsel. The Board also considers negotiated discipline, criminal conviction, reciprocal discipline, and reinstatement cases referred by the Court of Appeals. In contested cases, the Board hears oral argument, issues disciplinary orders, and files reports and recommendations with the Court. The Chair of the Board is responsible for ruling on substantive and procedural motions, including motions to compel a response to a disciplinary complaint, for protective order, for deferral of disciplinary proceedings, as well as motions to recommend that the Court impose a temporary suspension, a disability suspension, or disbarment on consent, among others.

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<sup>1</sup> Annual reports issued prior to the 2017-18 report were prepared on a calendar year basis. Beginning with the 2017-18 report, the Board's annual reports discuss disciplinary system activity within a single Board term (August 1-July 31).

## **Board Members (2018-19)**

***Robert C. Bernius, Esquire***, Board Chair, is retired from Nixon Peabody LLP, where he was General Counsel and a litigation partner, handling trial and appellate matters throughout the country. Before joining the firm, Mr. Bernius served as an assistant district attorney in Brooklyn, New York. He is a graduate of Yale Law School.

***Matthew G. Kaiser, Esquire***, Board Vice Chair, is one of the founding partners of KaiserDillon PLLC, representing clients in a range of litigation matters. Prior to founding the firm, he practiced law at Williams & Connolly, Zuckerman Spaeder, and the Office of the Federal Public Defender for the District of Maryland. Mr. Kaiser clerked for the Honorable Catherine Blake of the U.S. District Court for the District of Maryland. He is a graduate of Georgetown University Law Center, *magna cum laude*.

***Billie LaVerne Smith***, is retired from the D.C. Superior Court, where she was a Personnel Psychologist and the Talent Acquisition Branch Manager in the Human Resources Division. Ms. Smith majored in Psychology at Howard University and obtained her Master of Arts Degree in Human Resources Management from George Washington University.

***Mary Lou Soller, Esquire***, is a member of Miller & Chevalier, focusing on complex criminal and civil issues and investigations. Ms. Soller has prior experience as a Trial Attorney and Director of Training for the District of Columbia Public

Defender Services. She also served as the Senior Investigative Counsel of the Special Committee on Investigations of the U.S. Senate. She is a graduate of Stanford Law School.

**David Bernstein**, is retired from the U.S. Coast Guard after 35 years of reserve and active duty status, including serving as the Coast Guard CIO. During his time with the Coast Guard, Mr. Bernstein participated in and presided over several courts martial under the Uniform Code of Military Justice. He is a graduate of the Naval War College Command & Staff school and the National Defense University. Subsequent to his Coast Guard retirement, he was employed for over 14 years as a Managing Information Systems Architect at the Electronic Data Systems (EDS) Corporation.

**Lucy Pittman, Esquire**, is an Assistant Attorney General in the Office of the Solicitor General, Office of the Attorney General for the District of Columbia, representing the District of Columbia in civil and administrative appeals. She has worked at the Office of the Attorney General (OAG) since 2003, serving in a variety of positions, and is the intern and fellowship coordinator for the OAG's Office of the Solicitor General. She is a 2002 graduate of American University, Washington College of Law.

**Elissa J. Preheim, Esquire**, is a litigation partner at Arnold & Porter, focusing on SEC and Public Company Accounting Oversight Board (PCAOB) enforcement actions and complex commercial and environmental litigation. Prior to joining

Arnold & Porter, Ms. Preheim clerked for the Honorable Bruce W. Selya of the U.S. Court of Appeals for the First Circuit. She is a graduate of Indiana University Maurer School of Law, *summa cum laude*.

***Bernadette Sargeant, Esquire***, is a partner at Stinson Leonard Street, where she counsels and represents clients in a range of employment law issues. Prior to joining Stinson Leonard Street, Ms. Sargeant represented private industry clients in her own practice and served as an Assistant United States Attorney. She is a graduate of the University of Michigan School of Law.

***Sundeep Hora, Esquire***, is a partner at Alderman, Devorsetz & Hora PLLC, where he represents individuals and businesses in contract disputes, employment litigation, and personal and business torts (*i.e.*, defamation, fraud, economic interference). Mr. Hora clerked for the Honorable Marvin J. Garbis of the United States District Court for the District of Maryland. He is a graduate of American University, Washington College of Law.

On June 6, 2019, the Court appointed Sara K. Blumenthal, Margaret Cassidy, Esquire, and Robert L. Walker, Esquire, to the Board to fill the vacancies created by the departures of Ms. Smith, Ms. Soller, and Mr. Bernius at the end of the 2018-19 Board term, and appointed Mr. Kaiser as the Board's Chair, and Ms. Pittman as the Board's Vice Chair.

The Board thanks Ms. Smith, Ms. Soller and Mr. Bernius for their years of dedicated volunteer service to the disciplinary system.

## Disciplinary System Update

On December 13, 2018, the Board promulgated a Board Policy on Hearing Scheduling, which establishes a “standard case track” that anticipates that post-hearing briefing will be completed no later than 180 days after Disciplinary Counsel files proof of service of the Specification of Charges in a contested case, or Disciplinary Counsel files its Answer in a reinstatement case. The full policy may be found [here](#).

On October 18, 2018, the Board approved amendments to Board Rules 6.4, 7.8, 7.13, 7.17, 17.10, and 19.8 (effective November 6, 2018). The Board had previously published proposed amendments to the Board Rules, with a brief statement of the reasons therefore, and requested comments concerning the proposed amendments. The Board received comments, which were considered prior to final approval of the Board Rules.

### Board Activity in the 2018-19 Board term

During the period August 1, 2018 through July 31, 2019, 31 new cases, involving 50 individual disciplinary complaints, were filed with the Board.<sup>2</sup> These cases included 14 Hearing Committee reports (consisting of 28 complaints), 4 criminal cases referred from the Court of Appeals, and 13 additional cases (consisting of 18 complaints) which included motions to accept consent to

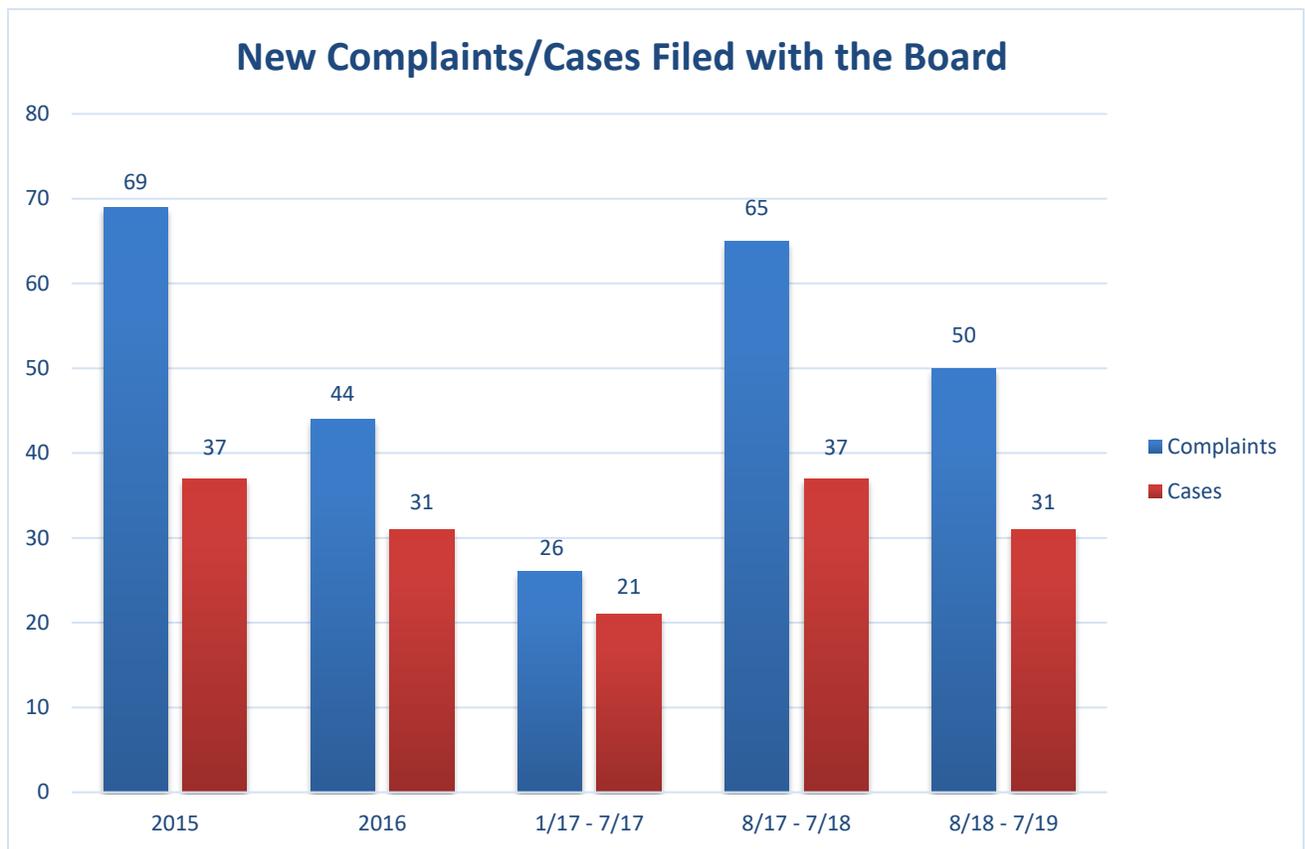
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<sup>2</sup> Multiple disciplinary complaints may be consolidated in a single case brought by Disciplinary Counsel.

disbarment, motions to dismiss petitions for reinstatement, requests to appoint counsel upon an attorney’s death pursuant to D.C. Bar R. XI, § 15, and motions to petition the Court for disability suspensions.

Table 1 shows the number of new cases (and the related number of complaints) filed with the Board from 2015 through the 2018-19 Board term.

TABLE 1



During 2018-19 Board term, the Board disposed of 33 cases (covering 50 complaints), including 22 reports and recommendations (covering 37 complaints) filed with the Court of Appeals. The recommendations addressed 12 contested petitions instituting formal disciplinary proceedings (covering 22 complaints), 6

motions to accept consent to disbarment (covering 11 complaints), 3 matters arising out of a criminal conviction, and 1 reciprocal matter referred to the Board by the Court. Additionally, the Board dismissed 3 contested cases, dismissed 4 petitions for reinstatement, and referred 1 criminal matter to a hearing committee. The Board also recommended that the Court appoint lawyers to protect the interest of clients whose lawyers had died, pursuant to D.C. Bar R. XI, § 15, in 2 cases, and petitioned the Court for a disability suspension based on Respondent’s representation that she suffered from a disability in 1 case. The Chair of the Board issued 96 orders. Board members approved Disciplinary Counsel’s recommendations for diversion in 10 docketed complaints.

Table 2 shows the total number of cases (and the related number of complaints) resolved by the Board from 2015 through the 2018-19 Board term.

TABLE 2

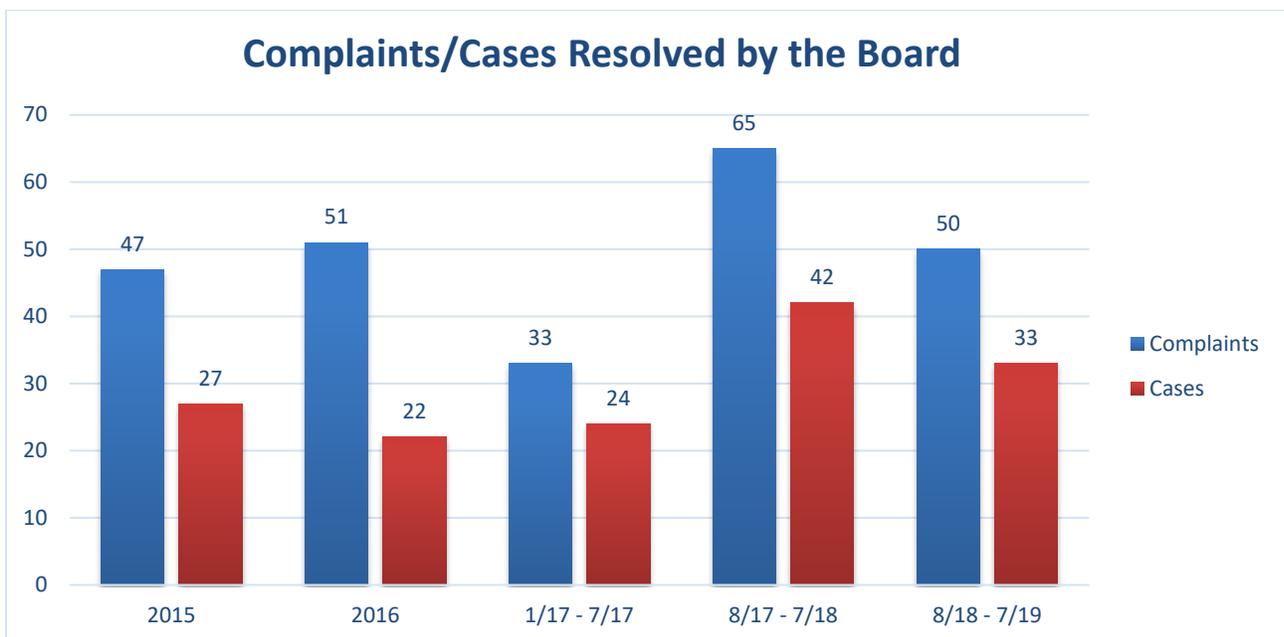


Table 3 shows the number of orders issued by the Chair of the Board from 2015 through the 2018-19 Board term.

**TABLE 3**

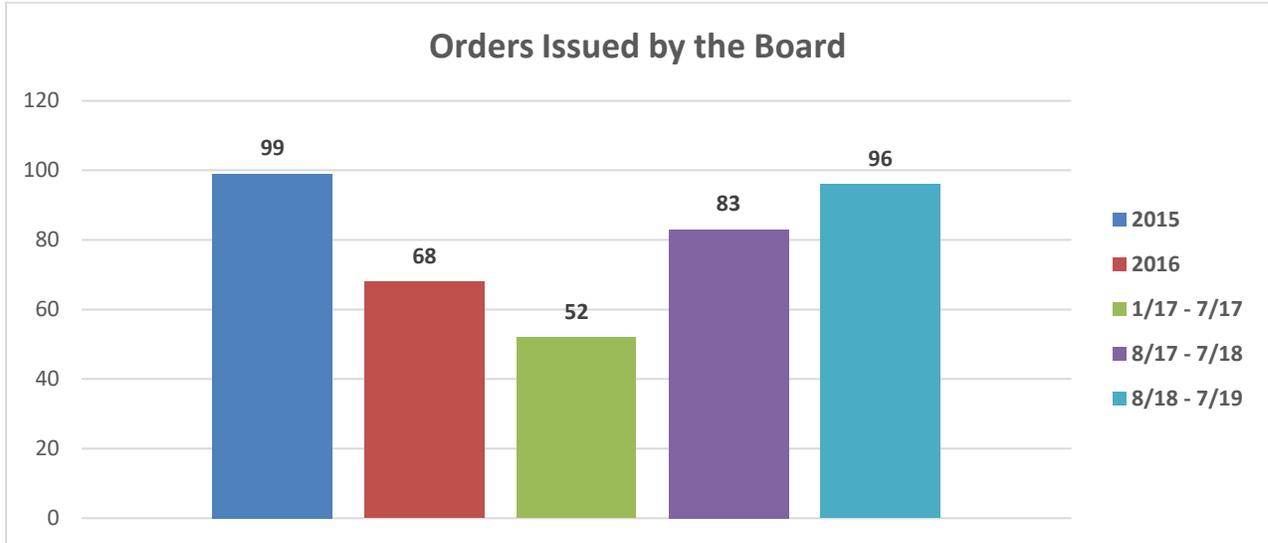
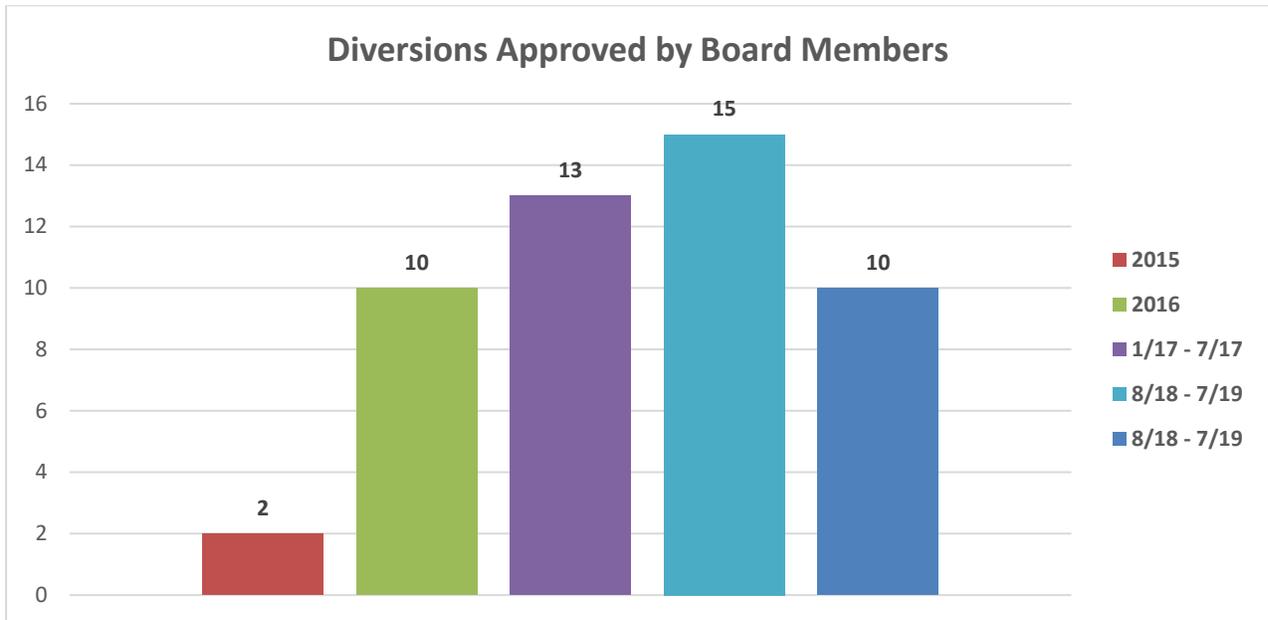


Table 4 shows the number of diversion agreements approved by Board members from 2015 through the 2018-19 Board term.

**TABLE 4**



As of July 31, 2019, there were 9 pending matters before the Board: 8 cases awaiting oral argument and 1 case awaiting report.

### The Hearing Committees

The Board maintains a large roster of active D.C. Bar members and non-attorney members of the public, who serve on the Board's 12 standing Hearing Committees, on Ad Hoc Hearing Committees, or as alternate Hearing Committee members. The Board has continued its efforts to maintain a broad range of professional experience and diversity on the Hearing Committees. Active members of the D.C. Bar and members of the public who are interested in serving on a Hearing Committee are encouraged to contact the Office of the Executive Attorney.

Hearing Committees conduct full evidentiary hearings on Disciplinary Counsel's petitions instituting formal disciplinary proceedings and in contested reinstatement cases. Following the close of the evidentiary hearing in a contested discipline case, the Hearing Committee prepares a report with written findings of fact, conclusions of law, and a recommended sanction, which is filed with the Board. Reports in contested reinstatement cases are filed directly with the Court. Hearing Committees also conduct limited hearings on petitions for negotiated discipline. Before the limited hearing, the Hearing Committee may review Disciplinary Counsel's investigative file *in camera* and meet with Disciplinary Counsel *ex parte* to discuss the basis for Disciplinary Counsel's recommendation for negotiated discipline. The Hearing Committee files a report directly with the Court if it

recommends the approval of negotiated discipline. Where it does not, it issues an order rejecting the petition for negotiated discipline.

The current roster of Hearing Committee members is available on the Board's [website](#).

#### Hearing Committee Activity During the 2018-19 Board Term

During the period of August 1, 2018 – July 31, 2019, Hearing Committee Contact Members reviewed Disciplinary Counsel's recommended disposition of 278 docketed complaints. Contact Members approved Disciplinary Counsel's recommendations to dismiss 218 docketed complaints, to defer 6 complaints, to issue informal admonitions in 11 complaints, and to file formal disciplinary charges in 27 complaints. Sixteen docketed complaints were referred back to Disciplinary Counsel for further consideration.<sup>3</sup>

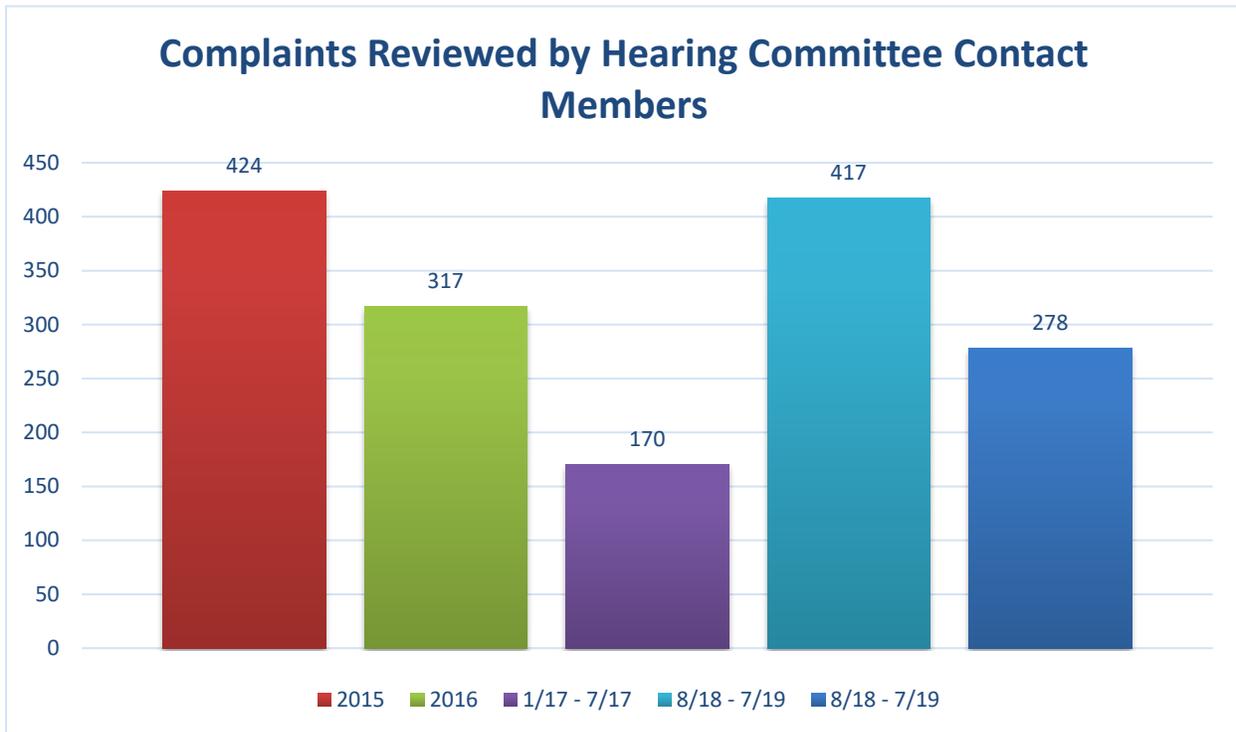
Table 5 shows the number of docketed complaints reviewed by Contact Members from 2015 through the 2018-19 Board term.<sup>4</sup>

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<sup>3</sup> This number includes diversion recommendations reviewed by Board Contact Members and referred back to Disciplinary Counsel.

<sup>4</sup> This number includes complaints referred back to Disciplinary Counsel for further consideration.

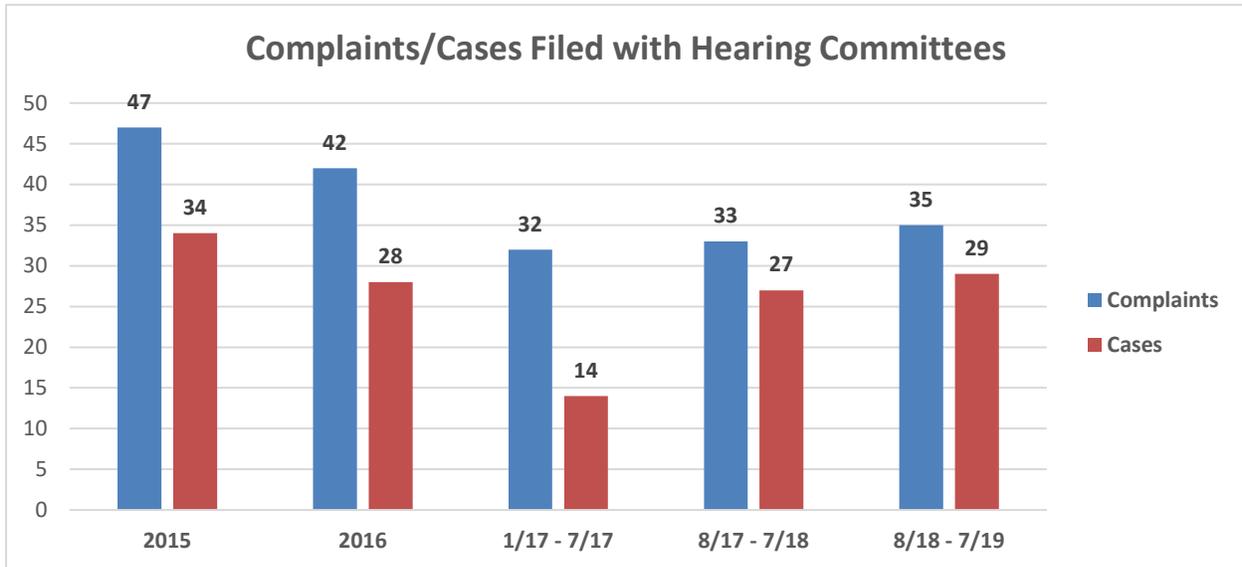
TABLE 5



Twenty-nine new cases were filed with the Hearing Committees during the 2018-19 Board term: 15 petitions instituting formal disciplinary proceedings (covering 20 complaints), 12 petitions for negotiated discipline (covering 13 complaints), 1 contested petition for reinstatement, and 1 petition to quash a subpoena.

Table 6 shows the total number of cases (and the related number of complaints) filed with the Hearing Committees from 2015 through the 2018-19 Board term.

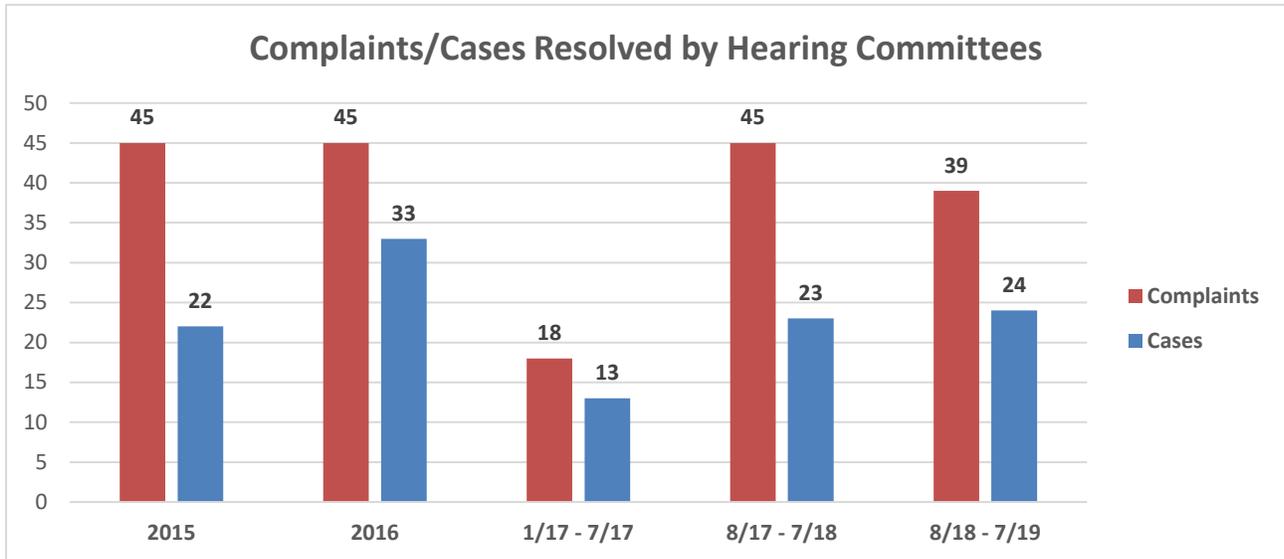
TABLE 6



During the 2018-19 Board term, the Hearing Committees conducted 36 pre-hearing conferences, held 65 days of hearings, issued 14 reports (covering 28 complaints) in contested cases, issued 8 reports recommending approval of petitions for negotiated discipline (covering 9 complaints), and issued 2 reports recommending denial of petitions for reinstatement.

Table 7 shows the total number of cases (and the related number of complaints) resolved by the Hearing Committees from 2015 through the 2018-19 Board term.

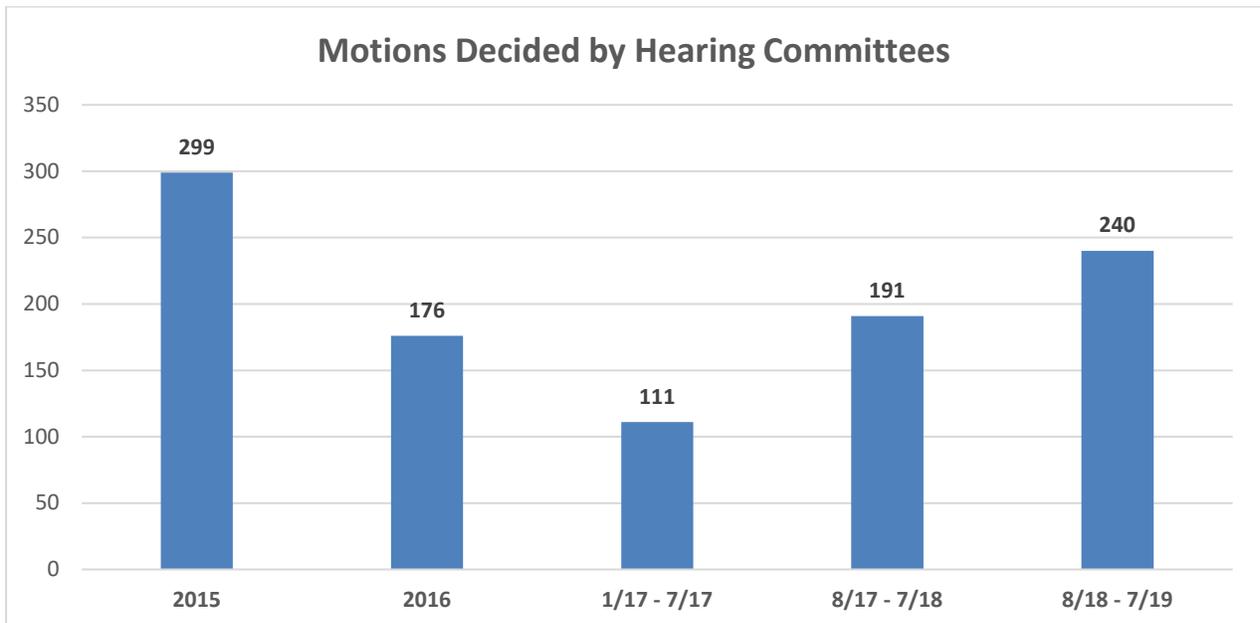
TABLE 7



Hearing Committees also decide evidentiary and procedural motions. During the 2018-19 Board term, Hearing Committees issued 240 orders.

Table 8 shows the number of orders issued from 2015 through the 2018-19 Board term.

TABLE 8



## Negotiated Discipline

Tables 9 and 10 show the number of petitions for negotiated discipline (and related number of complaints) filed and resolved by the Hearing Committees from 2015 through the 2018-19 Board term.

TABLE 9

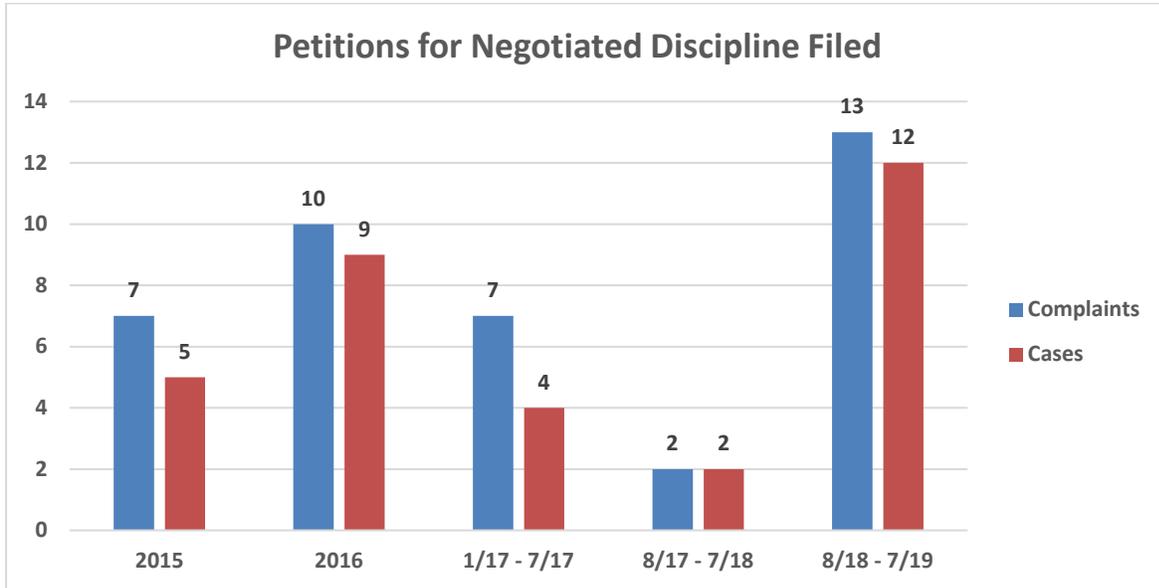
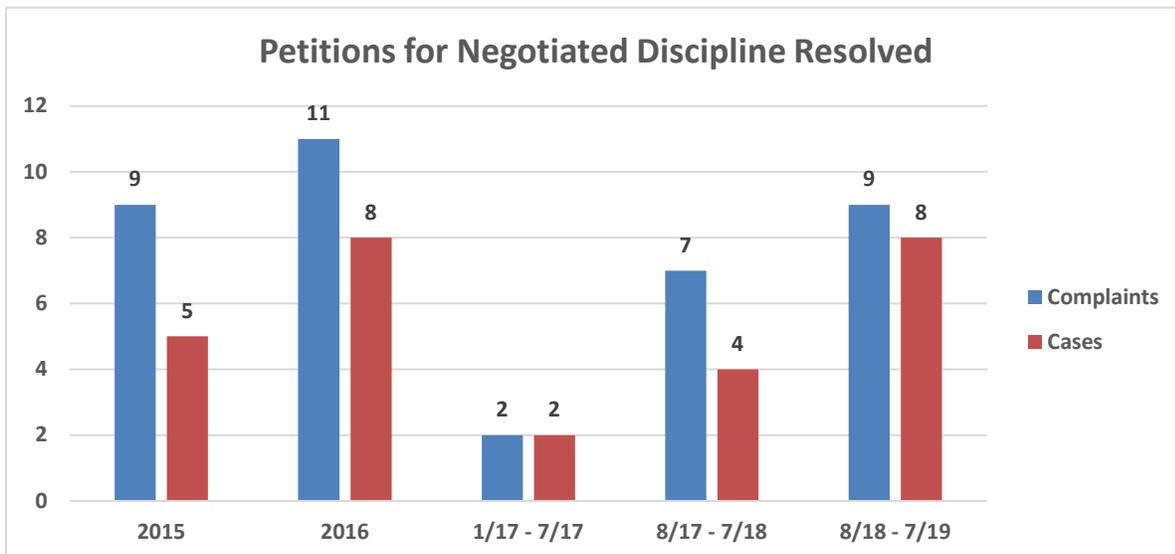


TABLE 10<sup>5</sup>



<sup>5</sup> Does not include petitions that were withdrawn.

At the end of the 2018-19 Board term, 34 contested cases (involving 49 complaints) were pending before Hearing Committees.

### The Office of Disciplinary Counsel

The Office of Disciplinary Counsel investigates all complaints and allegations of ethical misconduct and recommends dispositions ranging from dismissal, diversion, and the issuance of an informal admonition, to a petition for negotiated discipline or the institution of formal charges. The Office of Disciplinary Counsel has a dual function: to protect the public and the courts from unethical conduct by members of the D.C. Bar and to protect members of the D.C. Bar from unfounded complaints.

Where formal charges are filed, the Office of Disciplinary Counsel prosecutes the charges before a Hearing Committee, the Board, and ultimately the D.C. Court of Appeals.

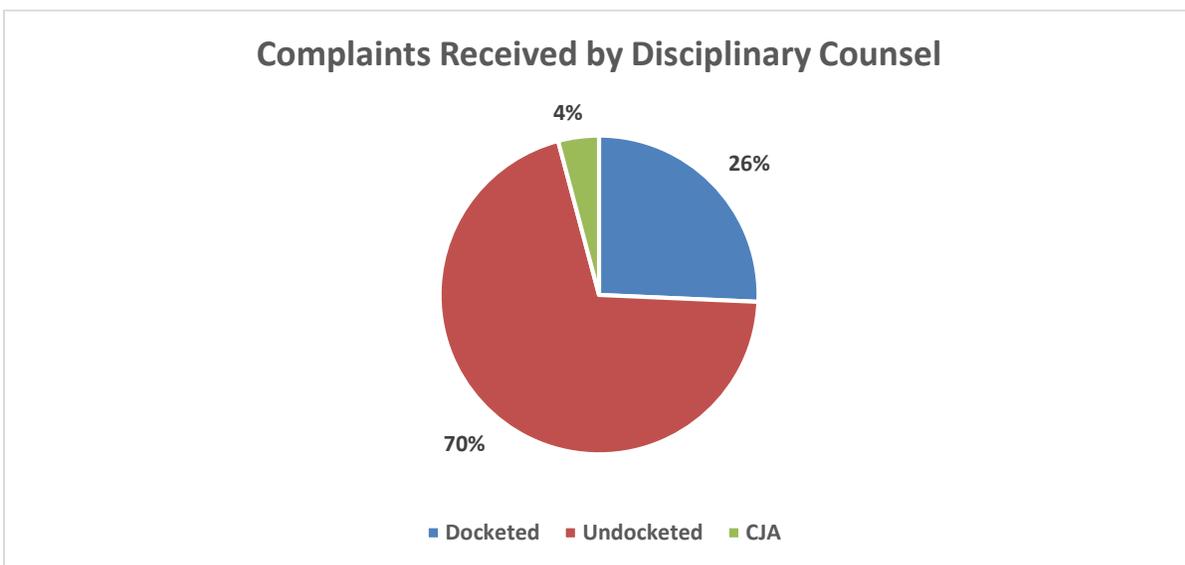
During the period August 1, 2018 through July 31, 2019, 1,234 complaints were filed with the Office of Disciplinary Counsel. When a disciplinary complaint is filed, Disciplinary Counsel conducts a preliminary review or inquiry. Where the complaint does not provide a basis to open a formal investigation or where Disciplinary Counsel does not have jurisdiction, the complaint is treated statistically as an undocketed matter. Of the 1,234 complaints filed in the 2018-19 Board term, the Office of Disciplinary Counsel opened 317 docketed complaints for formal

investigation. A docketed complaint is sent to the respondent attorney for a response, and the response is sent to the complainant for comment. Disciplinary Counsel also opened 866 undocketed complaints, where it concluded there was no basis for a formal investigation. When Disciplinary Counsel does not formally investigate a complaint, a letter is sent to the complainant explaining Disciplinary Counsel’s decision.

Disciplinary Counsel also received 51 complaints from criminal defendants, or “CJA Complaints.” Disciplinary Counsel conducts a preliminary inquiry into CJA Complaints, and any complaints that are not docketed for investigation are handled in the same way as undocketed matters.

Table 11 shows the breakdown of complaints received by Disciplinary Counsel in the 2018-19 Board term.

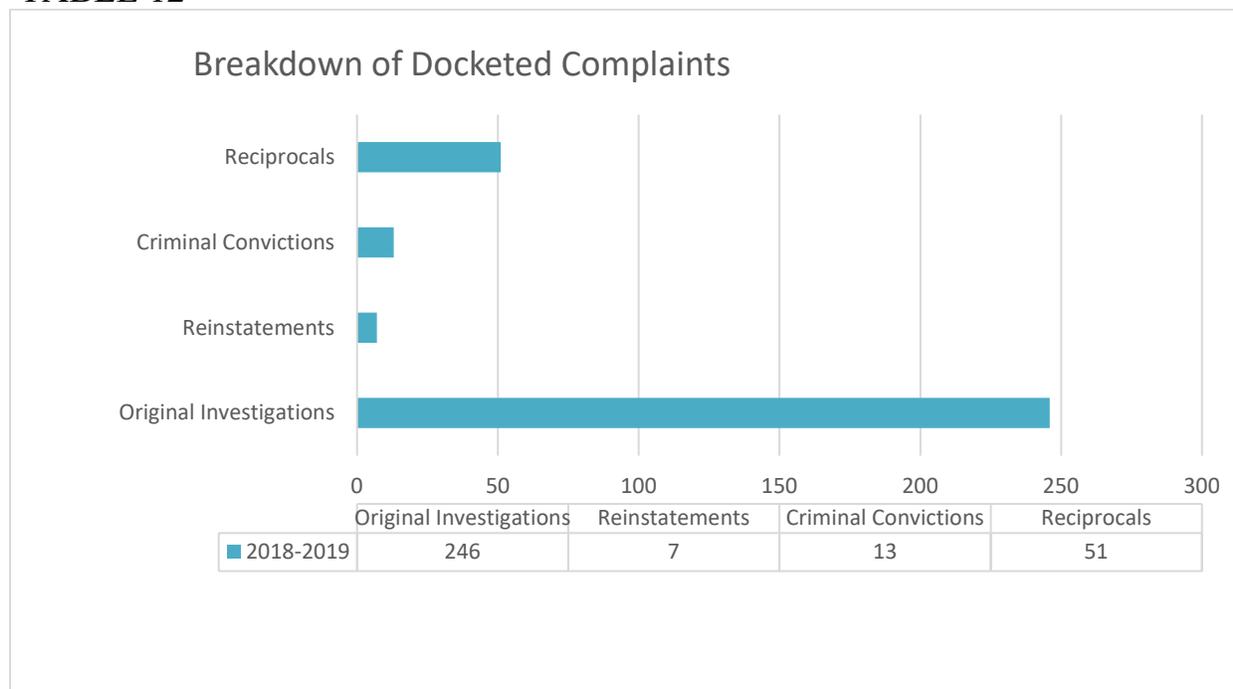
TABLE 11



Docketed complaints consist of original investigations, reciprocal discipline cases, cases involving criminal convictions, and petitions for reinstatement filed by lawyer who were disbarred or suspended with the requirement to demonstrate fitness to practice prior to reinstatement.

Table 12 shows the breakdown of docketed complaints during the 2018-19 Board term.

TABLE 12



### Fiscal Matters

The attorney disciplinary system is funded by Bar dues. Maintaining an effective and efficient disciplinary system at a reasonable cost to Bar members is a primary goal of the Board. Funding for the Board and the Office of Disciplinary

Counsel was 25.01% of license fees in the Bar's approved dues funded budget in [Fiscal Year 2018-19](#), and is 25.15% in [Fiscal Year 2019-20](#).

### Conclusion

The Board appreciates the cooperation and support of the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District of Columbia Bar, and the staffs of the Office of the Executive Attorney and the Office of Disciplinary Counsel. The Board particularly wishes to acknowledge all those who serve as members of the Hearing Committees, as practice and financial monitors, and as Special Bar Counsel, and especially those former Hearing Committee and Board members who, having already given generously of their time, continue to support the work of the Board. The dedicated service of all of these individuals makes possible the effective functioning of our disciplinary system.

January 2020