

**2004-2005  
ANNUAL REPORT**

**OF THE  
DISCIPLINARY COMMISSION  
OF THE  
SUPREME COURT OF INDIANA**

**PUBLISHED BY THE**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	HISTORY AND STRUCTURE OF THE DISCIPLINARY COMMISSION .....	1
III.	THE DISCIPLINARY PROCESS.....	2
	A. The Grievance Process .....	2
	B. Preliminary Investigation .....	3
	C. Further Investigation .....	3
	D. Authorizing Charges of Misconduct .....	4
	E. Filing Formal Disciplinary Charges .....	4
	F. The Evidentiary Hearing .....	4
	G. Supreme Court Review .....	4
	H. Final Orders of Discipline .....	4
	I. Resolution By Agreement .....	6
	J. Temporary Suspension .....	6
	K. The License Reinstatement Process .....	7
	L. Lawyer Disability Proceedings .....	7
IV.	COMMISSION ACTIVITY IN 2004-2005.....	8
	A. Grievances and Investigations.....	8
	B. Nonpayment of Costs .....	9
	C. Non-Cooperation By Lawyers.....	9
	D. Trust Account Overdraft Reporting .....	11
	E. Litigation .....	12
	1. Overview .....	12
	2. Verified Complaints for Disciplinary Action.....	12
	3. Final Dispositions.....	12
V.	SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES .....	15
VI.	AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE .....	16
VII.	OTHER DISCIPLINARY COMMISSION ACTIVITIES.....	17
VIII.	FINANCIAL REPORT OF THE DISCIPLINARY COMMISSION .....	17
IX.	APPENDICES:	
	APPENDIX A Biographies of Commission Members	
	APPENDIX B Number of Grievances Filed	
	APPENDIX C Grievance Rates	
	APPENDIX D Grievances by Case Type and Misconduct Alleged	
	APPENDIX E Grievances by Case Type	
	APPENDIX F Grievances by Misconduct Alleged	
	APPENDIX G Disciplinary Sanctions Ordered	
	APPENDIX H Other Disciplinary Commission Activities	
	APPENDIX I Statement of Revenues and Expenses	

## **I. INTRODUCTION**

This is the annual report of the activities of the Disciplinary Commission of the Supreme Court of Indiana for the period beginning July 1, 2004 and ending June 30, 2005. The Disciplinary Commission is the agency of the Supreme Court of the State of Indiana charged with responsibility for investigation and prosecution of charges of lawyer misconduct. The Indiana Rules of Professional Conduct set forth the substantive law to which lawyers are held accountable by the Indiana lawyer discipline system. The procedures governing the Indiana lawyer discipline system are set forth in Indiana Supreme Court Admission and Discipline Rule 23. The broad purposes of the Disciplinary Commission are to "protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct." Admission and Discipline Rule 23, section 1.

The Disciplinary Commission is not a tax-supported agency. It is funded through an annual fee that each lawyer admitted to practice law in the State of Indiana must pay in order to keep his or her license in good standing. The current annual registration fee for lawyers in active status is \$105.00, \$90.00 of which goes to fund the Disciplinary Commission, approximately \$12.00 of which is transferred to the Judges and Lawyers Assistance Commission to fund its operation. The remaining \$15.00 goes to fund the Indiana Supreme Court Commission for Continuing Legal Education. The annual registration fee for lawyers in inactive status is \$45.00. The annual registration fee is due on or before October 1st of each year. Failure to pay the required fee within the established time subjects the delinquent lawyer to suspension of his or her license to practice law until such time as the fee and any delinquency penalties are paid. On May 3, 2005 (amended May 6, 2005), the Supreme Court issued an order suspending 78 lawyers on active and inactive status for failure to pay their annual attorney registration fees, to be effective on June 2, 2005.

## **II. HISTORY AND STRUCTURE OF THE DISCIPLINARY COMMISSION**

The Indiana Supreme Court has original and exclusive jurisdiction over the discipline of lawyers admitted to practice law in the State of Indiana. Ind.Const. art. 7, § 4. On June 23, 1971, the Indiana Supreme Court created the Disciplinary Commission to function in an investigatory and prosecutorial capacity in lawyer discipline matters.

The Disciplinary Commission is governed by a board of commissioners, each of whom is appointed by the Supreme Court to serve a term of five years. The Disciplinary Commission consists of seven lawyers and two lay appointees.

The Commission meets monthly in Indianapolis, generally on the second Friday of each month. In addition to acting as the governing board of the agency, the Disciplinary Commission considers staff reports on claims of misconduct against lawyers and must make a determination that there is reasonable cause to believe that a lawyer is guilty of misconduct which would warrant disciplinary action before formal disciplinary charges can be filed against a lawyer.

The officers and members of the Disciplinary Commission during the reporting year were:

<u>Name</u>	<u>Hometown</u>	<u>First Appointed</u>	<u>Current Term Expires</u>
Diane L. Bender, Chair	Evansville	July 1, 1999	June 30, 2009
Robert L. Lewis, Vice-Chair	Gary	July 1, 1999	June 30, 2009
J. Mark Robinson, Secretary	Charlestown	April 11, 2001	June 30, 2006
Janet L. Biddle	Remington	July 24, 1996	June 30, 2005
Sally Franklin Zweig	Indianapolis	September 2, 2001	June 30, 2006
Anthony M. Zappia	South Bend	September 9, 2001	June 30, 2006
Fred Austerman	Liberty	July 1, 2003	June 30, 2008
Corinne R. Finnerty	North Vernon	July 1, 2003	June 30, 2008
R. Anthony Prather	Indianapolis	July 1, 2004	June 30, 2009

Biographies of Commission members who served during this reporting year are included in **Appendix A**.

The Disciplinary Commission's work is administered and supervised by its Executive Secretary, who is appointed by the Commission with the approval of the Supreme Court. The Executive Secretary of the Commission is Donald R. Lundberg.

The staff of the Disciplinary Commission during this year included:

- Greg N. Anderson, Staff Attorney
- Allison S. Avery, Staff Attorney
- David B. Hughes, Trial Counsel (part-time)
- Laura B. Iosue, Staff Attorney
- Charles M. Kidd, Staff Attorney
- Carol Kirk, Staff Attorney/Investigator
- Dennis K. McKinney, Staff Attorney
- Seth T. Pruden, Staff Attorney
- Fredrick L. Rice, Staff Attorney
- Robert C. Shook, Staff Attorney
- Robert D. Holland, Investigator
- Sharon F. Scholl, Office Manager
- Judy E. Whittaker, Secretary
- Ronda Johnson, Secretary

In addition, the Disciplinary Commission employs law students as part-time clerks to assist in the work of the Commission. Law clerks who were employed during this reporting period included Calvin Chambers, Anne Ricchiuto, Lisa Gethers, Joshua Casselman and H. Max Kelln.

The offices of the Disciplinary Commission are located at National City Center, 115 West Washington Street, Suite 1165, South Tower, Indianapolis, Indiana 46204.

### **III. THE DISCIPLINARY PROCESS**

#### **A. The Grievance Process**

The purpose of the Disciplinary Commission is to inquire into claims of attorney misconduct, protect lawyers against unwarranted claims of misconduct, and prosecute cases seeking attorney discipline when merited. Action by the Disciplinary Commission is not a mechanism for the resolution of private disputes between clients and attorneys, but rather is independent of private remedies that may be available through civil litigation.

An investigation into lawyer misconduct is initiated through the filing of a grievance with the Disciplinary Commission. Any member of the bench, the bar or the public may file a grievance by submitting to the Disciplinary Commission a written statement on a form prescribed by the Disciplinary Commission. There are no formal standing requirements for the filing of a grievance. Any individual having knowledge about the facts relating to the complaint may submit a grievance. A form for submission of grievances approved by the Disciplinary Commission is readily available from the Commission's office, from bar associations throughout the state, and on the Internet.

The Disciplinary Commission may also initiate an inquiry into alleged lawyer misconduct in the absence of a grievance from a third party. Acting upon information that is brought to its attention from any credible source, the Disciplinary Commission may authorize the Executive Secretary to prepare a grievance to be signed and issued by the Executive Secretary in the name of the Commission.

### **B. Preliminary Investigation**

The Commission staff reviews each newly filed grievance to initially determine whether the allegations contained therein raise a substantial question of misconduct. If a grievance does not present a substantial question of misconduct, it may be dismissed by the Executive Secretary with the approval of the Commission, and written notice of dismissal is mailed to the grievant and the lawyer.

A grievance that is not dismissed on its face is sent to the lawyer involved, and a demand is made for the lawyer to submit a mandatory written response within twenty days of receipt. Additional time for response is allotted in appropriate circumstances. Other investigation as appropriate is conducted in order to develop the facts related to a grievance. The Executive Secretary may call upon the assistance of bar associations in the state to aid in the preliminary investigation of grievances. The bar associations that maintain Grievance Committees of volunteer lawyers to assist the Disciplinary Commission with preliminary investigations are: the Allen County Bar Association, the Evansville Bar Association, the Indianapolis Bar Association, the Lake County Bar Association, and the St. Joseph County Bar Association. Upon petition by the Commission, the Supreme Court may suspend the law license of a lawyer who fails to respond in writing to a grievance that has been opened for investigation.

Upon completion of the preliminary investigation and consideration of the grievance and the lawyer's response, the Executive Secretary, with the approval of the Commission, may dismiss the grievance upon a determination that there is not reasonable cause to believe that the lawyer is guilty of misconduct. The grievant and the lawyer are notified in writing of the dismissal.

### **C. Further Investigation**

Those grievances that the Executive Secretary determines present reasonable cause are docketed for further investigation and, ultimately, for full consideration by the Disciplinary Commission. Both the grievant and the lawyer are notified of this step in the process. Upon completion of the investigation, the results of the investigation are summarized in written form by Commission staff, and the matter is presented to the Disciplinary Commission for its consideration at one of its monthly meetings.

#### **D. Authorizing Charges of Misconduct**

After a grievance has been investigated, the Executive Secretary reports on it to the Disciplinary Commission, together with his recommendation about the disposition of the matter. The Commission makes a determination whether or not there is reasonable cause to believe the lawyer is guilty of misconduct that would warrant disciplinary action. If the Commission finds that there is not reasonable cause, the matter is dismissed with written notice to the grievant and the lawyer. If the Commission finds that reasonable cause exists, it directs the Executive Secretary to prepare and file with the Clerk of the Supreme Court a verified complaint charging the lawyer with misconduct.

#### **E. Filing Formal Disciplinary Charges**

Upon a finding by the Disciplinary Commission that there is reasonable cause to believe the lawyer is guilty of misconduct that would warrant disciplinary action, the Executive Secretary files a verified complaint with the Clerk of the Supreme Court setting forth the facts related to the alleged misconduct and identifying those provisions of the Rules of Professional Conduct that are alleged to have been violated by the lawyer's conduct. The respondent must file an answer to the verified complaint, or else the allegations set forth in the complaint will be taken as true.

#### **F. The Evidentiary Hearing**

Upon the filing of a verified complaint, the Supreme Court appoints a hearing officer who will preside over the case and who will submit recommended findings to the Supreme Court. The hearing officer must be an attorney admitted to practice law in the State of Indiana and is frequently a sitting or retired judge. Typically, the hearing officer is from a county close to the county in which the respondent lawyer practices law. The hearing officer's responsibilities include supervising the pre-hearing development of the case including discovery, conducting an evidentiary hearing, and reporting the results of the hearing to the Supreme Court by way of written findings of fact, conclusions of law and recommendations. A hearing may be held at any location determined to be appropriate by the hearing officer.

#### **G. Supreme Court Review**

After the hearing officer has issued a report to the Supreme Court, either or both of the parties may petition the Court for a review of any or all of the hearing officer's findings, conclusions and recommendations. In every case, even in the absence of a petition for review by one of the parties, the Court independently reviews the matter and issues its final order in the case.

#### **H. Final Orders of Discipline**

The conclusion of a lawyer discipline proceeding is an order from the Supreme Court setting out the facts of the case, determining the violations (if any) of the Rules of Professional Conduct that are supported by the facts, and assessing a sanction in each case where it finds misconduct. The sanction ordered by the Court is related to the seriousness of the violation and the presence or absence of mitigating or aggravating circumstances. The available disciplinary sanctions include:

- **Private Administrative Admonition.** A private administrative admonition is a disciplinary sanction that is issued by the Disciplinary Commission as an administrative resolution of cases involving minor misconduct. A private administrative admonition is issued as a sanction only when the Disciplinary Commission and the respondent lawyer agree to that disposition of a case. Unlike other disciplinary sanctions, the Supreme Court does not directly issue the admonition. However, the Court receives advance notice of the parties' intent to resolve a case by way of a private administrative admonition and may act within a period of 30 days to set aside such a proposed agreement. There is a public record made in the Office of the Clerk of the Supreme Court of every case resolved by a private administrative admonition, although the facts of the matter are not included in the public record.
- **Private Reprimand.** A private reprimand consists of a private letter of reprimand from the Supreme Court to the offending lawyer. The case does not result in a publicly disseminated opinion describing the facts of the case. The Court's brief order resolving the case by way of a private reprimand is a public record that is available through the office of the Clerk of the Supreme Court. In rare cases where a private reprimand is assessed, the Court may issue a *per curiam* opinion for publication styled *In the Matter of Anonymous*. While the published opinion does not identify the offending lawyer by name, the opinion sets out the facts of the case and the violations of the Rules of Professional Conduct involved for the edification of the bench, the bar and the public.
- **Public Reprimand.** A public reprimand is issued in the form of a publicly disseminated opinion or order by the Supreme Court setting forth the facts of the case and identifying the applicable Rule violations. A public reprimand does not result in any direct limitation upon the offending lawyer's license to practice law.
- **Short Term Suspension.** The Court may assess a short-term suspension of a lawyer's license to practice law as the sanction in a case. When the term of suspension is six months or less, the lawyer's reinstatement to the practice of law is generally automatic upon the completion of the term of suspension. The Court may, and does from time to time, require that a lawyer who is suspended for a period of six months or less be reinstated to practice only after petitioning for reinstatement and proving fitness to practice law. The procedures associated with reinstatement upon petition are described later in this report. Even in cases of suspension with automatic reinstatement, for proper cause, the Disciplinary Commission may enter objections to the automatic reinstatement of the lawyer's license to practice law.
- **Long Term Suspension.** The Court may assess a longer term of suspension, which is a suspension for a period of time greater than six months. Every lawyer who is suspended for more than six months must petition the Court for reinstatement and prove fitness to re-enter the practice of law before a long-term suspension will be terminated.



- **Disbarment.** In the most serious cases of misconduct, the Court will issue a sanction of disbarment. Disbarment revokes a lawyer's license to practice law permanently, and it is not subject to being reinstated at any time in the future.

The lawyer discipline process in Indiana is not a substitute for private and other public remedies that may be available, including criminal sanctions in appropriate cases and civil liability for damages caused by lawyer negligence or other misconduct. Accordingly, the sanctions that are issued in lawyer discipline cases do not generally provide for the resolution of disputed claims of liability for money damages between the grievant and the offending lawyer. However, a suspended lawyer's willingness to make restitution may be considered by the Court to be a substantial factor in determining whether or not the lawyer will be reinstated to the practice of law at the conclusion of a term of suspension.

From time to time, the Court includes in a sanction order additional provisions that address aspects of the lawyer's misconduct in the particular case. Examples of these conditions include participation in substance abuse or mental health recovery programs, specific continuing legal education requirements, and periodic audits of trust accounts.

### **I. Resolution By Agreement**

In cases of minor misconduct, if the Disciplinary Commission and the respondent lawyer agree before the filing of a formal complaint charging misconduct, a case may be disposed of by way of the issuance of a private administrative admonition. Unlike other disciplinary sanctions, this is an administrative sanction that is issued by the Disciplinary Commission rather than by the Supreme Court, although the Supreme Court does receive notice of a proposed administrative admonition and may act to set it aside.

In some cases that have resulted in the filing of a formal complaint charging misconduct, the respondent lawyer and the Disciplinary Commission are able to reach an agreement concerning the facts of a case, the applicable rule violations and an appropriate sanction for the misconduct in question. In these instances, the parties submit their agreement to the Supreme Court for its consideration. Any such agreement must include an affidavit from the lawyer accepting full responsibility for the agreed misconduct. The Court is free to accept the agreement of the parties and issue a final order of discipline in conformity with the agreement, or reject the agreement if the Court does not concur with the proposed sanction.

A lawyer charged with misconduct may also tender his or her written resignation from the practice of law. A resignation is not effective unless the lawyer fully admits his or her misconduct and the Court accepts the resignation as tendered. A lawyer who has resigned with misconduct allegations pending may not seek reinstatement of his or her license until a period of at least five years has elapsed and only after successfully petitioning the Court.

### **J. Temporary Suspension**

While a disciplinary complaint is pending against a lawyer, the Disciplinary Commission may seek the temporary suspension of the lawyer's license to practice law pending the outcome of the proceeding. Temporary suspensions are generally reserved for cases of serious misconduct or on-going risk to clients or the integrity of client funds. The hearing officer is responsible for taking evidence on a petition for temporary suspension and making

a recommendation to the Supreme Court. The Court then issues an order granting or denying the petition for temporary suspension.

In addition to the temporary suspension procedure described above, whenever a lawyer licensed to practice law in Indiana is found guilty of a crime punishable as a felony, the Executive Secretary must report the finding of guilt to the Supreme Court and request an immediate temporary suspension from the practice of law. The Court may order the temporary suspension without a hearing, but the affected lawyer has the opportunity to submit to the Court reasons why the temporary suspension should be vacated. A temporary suspension granted under these circumstances is effective until such time as there is a resolution of related disciplinary charges or further order of the Court. Trial judges are required to send a certified copy of the order adjudicating criminal guilt of any lawyer to the Executive Secretary of the Commission within ten days of the date of the order.

Finally, the Executive Secretary is required to report to the Supreme Court any time he receives notice that a lawyer has been found to be delinquent in the payment of child support as a result of an intentional violation of a support order. After being given an opportunity to respond, the Supreme Court may suspend the lawyer's license to practice law until the lawyer is no longer in intentional violation of the support order.

#### **K. The License Reinstatement Process**

When any lawyer resigns or is suspended without provision for automatic reinstatement, the lawyer may not be reinstated into the practice of law until he or she successfully petitions the Supreme Court. The petitioning lawyer must successfully complete the Multi-State Professional Responsibility Examination, a standardized examination on legal ethics, prove by clear and convincing evidence that the causes of the underlying misconduct have been successfully addressed, and demonstrate that he or she is otherwise fit to re-enter the practice of law.

Lawyer reinstatement proceedings are heard in the first instance by a member of the Disciplinary Commission appointed as hearing officer by the Court, who after hearing evidence, makes a recommendation to the full Disciplinary Commission. The Disciplinary Commission, acting upon the recommendation of the hearing officer, makes its recommendation to the Supreme Court. The Court reviews the recommendation of the Disciplinary Commission and ultimately issues its order granting or denying the petition for reinstatement.

#### **L. Lawyer Disability Proceedings**

Any member of the public, the bar, the Disciplinary Commission, or the Executive Secretary may file with the Commission a petition alleging that a lawyer is disabled by reason of physical or mental illness or chemical dependency. The Executive Secretary is charged with investigating allegations of disability and, if justified under the circumstances, prosecuting a disability proceeding before the Disciplinary Commission or a hearing officer appointed by the Court. The Court ultimately reviews the recommendation of the Commission and may suspend the lawyer from the practice of law until such time as the disability has been remediated.

## IV. COMMISSION ACTIVITY IN 2004-2005

### A. Grievances and Investigations

An investigation into allegations of lawyer misconduct is commenced by the filing of a grievance with the Disciplinary Commission. During the reporting period, the Commission directly provided **4,390** grievance forms to members of the public. Additionally, forms are made available for distribution through local bar associations, service organizations, governmental offices and on the Commission's web site:

[www.in.gov/judiciary/agencies/dis.html](http://www.in.gov/judiciary/agencies/dis.html).

During the reporting period, **1,625** grievances were filed with the Disciplinary Commission. Of this number, **62** grievances were initiated by the Disciplinary Commission. The total number of grievances filed was equal to the number filed the previous year. **Appendix B** presents in graphical form the number of grievances filed for each of the past ten years.

There were **15,508** Indiana lawyers in active, good-standing status and **2,145** lawyers in inactive, good-standing as of June 30, 2005. In addition, **1,157** lawyers regularly admitted to practice in other jurisdictions were granted temporary admission to practice law by trial court orders in specific cases during the year, pursuant to the provisions of Indiana Admission and Discipline Rule 3. The total grievances filed represent **10.5 grievances for every 100** regular actively practicing lawyers or one grievance for every **9.54** lawyers in regular active practice. **Appendix C** presents in graphical form the grievance rate for each of the past ten years.

Distribution of grievances is not even. Far fewer than 1,625 separate lawyers received grievances during the reporting period, because many lawyers were the recipients of multiple grievances. It is important to note that the mere filing of a grievance is not, in and of itself, an indication of misconduct on the part of a lawyer.

During the reporting period, **957** of the grievances received were dismissed without further investigation upon a determination that, on their face, they presented no substantial question of misconduct.

Upon receipt, each grievance that is not initially dismissed is classified according to the type of legal matter out of which the grievance arose and the type of misconduct alleged by the grievant. The table in **Appendix D** sets forth the classification by legal matter and by misconduct alleged of all grievances that were pending on June 30, 2005, or that were dismissed during the reporting year after investigation. Many grievances arise out of more than one type of legal matter or present claims of more than one type of alleged misconduct.

Accordingly, the total numbers presented in Appendix D represent a smaller number of actual grievances.

Ranked in order of complaint frequency, the legal matters most often giving rise to grievances involve *Criminal, Domestic Relations, Tort, Bankruptcy, Administrative Law and Probate*. To understand the significance of this data, it is important to keep in mind that criminal cases make up, by far, the largest single category of cases filed in our trial courts. With the exception of civil plenary filings, domestic relations cases account for the next highest category of cases filed. Thus, in part, the high rates of grievances filed that pertain to criminal and domestic relations matters merely reflect the high number of cases of those

types handled by lawyers in Indiana. The predominant types of legal matters out of which grievances arose during the reporting period are presented graphically in **Appendix E**.

Ranked in order of complaint frequency, the alleged misconduct types most often giving rise to grievances are *Poor Communications or Non-Diligence, Not Acting With Competence, Improper Withdrawal, Conflicts of Interest, Exercising Improper Influence and Excessive Fees*, with complaints about poor communications or non-diligence being more than twice as frequent as the next category of alleged misconduct. The predominant types of misconduct alleged in grievances during the reporting period are presented graphically in **Appendix F**.

The following is the status of all grievances that were pending before the Disciplinary Commission on June 30, 2005, or that had been dismissed during the reporting period:

	<u>DISMISSED</u>	<u>OPEN</u>
Grievances filed before July 1, 2004	249	485
Grievances filed on or after July 1, 2004	1,335	290
Total carried over from preceding year:		818
Total carried over to next year:		775

### **B. Nonpayment of Costs**

On January 11, 2005, the Supreme Court entered an order granting a petition filed by the Disciplinary Commission pursuant to Admission and Discipline Rule 23(21)(j) and suspending the following eight lawyers for failure to pay costs assessed against them in connection with lawyer discipline matters. The date of reinstatement of lawyers who paid outstanding costs by June 30, 2005 is indicated.

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Date Reinstated</u>
Cobb, Arthur T.	Indianapolis	May 14, 1969	N/A
Corbin, Timothy L.	Indianapolis	October 31, 1994	January 21, 2005
Eckert, Stephen P.	Indianapolis	October 9, 1981	January 24, 2005
Gaydos, John J.	Elkhart	September 25, 1963	N/A
Goudy, Diane	Indianapolis	June 14, 1993	January 11, 2005
Hagedorn, Donna	Evansville	May 17, 1967	N/A
Singleton, Edwin Dean	Owensville	October 10, 1986	January 20, 2005
Wheeler, Kimberly Ann	Indianapolis	October 16, 1987	N/A

### **C. Non-Cooperation By Lawyers**

Effective January 1, 2001, the Supreme Court amended Admission and Discipline Rule 23(10) to provide for the suspension of a lawyer's law license upon a showing that the lawyer has failed to cooperate with the disciplinary process. The purpose of this rule was to promote lawyer cooperation to aid in the effective and efficient functioning of the disciplinary system. The Commission brings allegations of non-cooperation before the Court by filing petitions to show cause. During the reporting year, the Disciplinary Commission filed **23** petitions to suspend the law licenses of **20** lawyers with the Supreme Court for failing to cooperate with investigations. The following are the dispositions of the non-cooperation matters that the Commission filed with the Court during the reporting year:

**Show cause petitions .....23**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Allen, Larry J., Jr.	Michigan City	October 22, 1993
Baker, Amy B.	Indianapolis	November 8, 1999
Ebersol, James Michael	South Bend	June 10, 1988
Eckert, Stephen P.	Indianapolis	October 9, 1981
Freeman, John H., IV	Indianapolis	July 13, 1993
Gaudio-Graves, Ginamarie	Merrillville	June 7, 1991
Goudy, Diane M.	Indianapolis	June 14, 1993
Hill, Danny Ray	Indianapolis	October 10, 1973
Hill, Danny Ray	Indianapolis	October 10, 1973
Hill, Danny Ray	Indianapolis	October 10, 1973
Hill, Danny Ray	Indianapolis	October 10, 1973
Jarrett, Jerry T.	Gary	May 26, 1981
Lieber, Ronald S.	Indianapolis	December 4, 1957
Lunn, Mark A.	Indianapolis	August 28, 1993
Montgomery, Thomas L.	Evansville	January 19, 1990
Moss, John O., III	Indianapolis	June 4, 1999
Rathburn, Charles J., Jr.	Fort Wayne	June 7, 1991
Richardson, Scott I.	Indianapolis	August 13, 1992
Shirley, Thomas L.	Indianapolis	October 10, 1986
Singleton, Edwin Dean	Owensville	October 10, 1986
Smith, Michael J.	Wabash	October 8, 1993
Westerfield, Divina K.	Sarasota, FL	January 7, 1984
Wheeler, Kimberly Ann	Indianapolis	October 16, 1987

Dismissed as moot after cooperation without show cause order .....2

Lieber, Ronald S.  
Richardson, Scott I.

Pending on June 30, 2005 without show cause order .....1

Danny Ray Hill

**Show cause orders with no suspension .....17**

Dismissed after show cause order due to compliance .....11

Deets, Charles R., III (carried over from 2003-04)  
Eckert, Stephen P. (carried over from 2003-04)  
Eckert, Stephen P.  
Freeman, John H., IV  
Hill, Danny Ray  
Montgomery, Thomas L.  
Moss, John O., III  
Rathburn, Charles J., Jr.  
Shirley, Thomas L.  
Singleton, Edwin Dean

Smith, Michael J.	
Dismissed as moot due to final order of discipline.....	2
Goudy, Diane M.	
Davidson, C. Bruce, Jr. (carried over from previous year)	
Show cause orders pending without further court action.....	4
Allen, Larry J.	
Baker, Amy	
Gaudio-Graves, Ginamarie	
Hill, Danny Ray	

**Suspensions for non-cooperation.....6**

Reinstatements due to cooperation after suspension .....	0
Suspensions still effective as of July 1, 2005 .....	6
Ebersol, James Michael	
Hill, Danny Ray	
Jarrett, Jerry T.	
Lunn, Mark A.	
Westerfield, Divina (converted to indefinite suspension)	
Wheeler, Kimberly Ann	

**D. Trust Account Overdraft Reporting**

Pursuant to Admis.Disc.R. 23, section 29, all Indiana lawyers must maintain their client trust accounts in financial institutions that have agreed to report any trust account overdrafts to the Disciplinary Commission. Upon receipt of a trust account overdraft report, the Disciplinary Commission sends an inquiry letter to the lawyer directing that the lawyer supply a documented, written explanation for the overdraft. After review of the circumstances surrounding the overdraft, the investigation is either closed or referred to the Disciplinary Commission for consideration of filing a disciplinary grievance.

The results of inquiries into overdraft reports received during the reporting year are:

Carried Over From Prior Year.....	8
Overdraft Reports Received .....	66
Inquiries Closed .....	67
Reasons for Closing:	
Bank Error.....	8
Deposit of Trust Funds to Wrong Trust Account .....	3
Disbursement From Trust Before Deposited Funds Collected .....	10
Referral for Disciplinary Investigation .....	11
Disbursement From Trust Before Trust Funds Deposited .....	18
Overdraft Due to Bank Charges Assessed Against Account .....	1
Inadvertent Deposit of Trust Funds to Non-Trust Account .....	7
Overdraft Due to Refused Deposit for Bad Endorsement.....	1
Law Office Math or Record-Keeping Error .....	7
Death, Disbarment or Resignation of Lawyer .....	1
Inadvertent Disbursement of Operating Obligation From Trust.....	0
Non-Trust Account Inadvertently Misidentified as Trust Account .....	0
Inquiries Carried Over Into Following Year .....	7

**E. Litigation**

**1. Overview**

In 2004-2005, the Commission filed **41** Verified Complaints for Disciplinary Action with the Supreme Court. These Verified Complaints, together with amendments to pending Verified Complaints, represented findings of reasonable cause by the Commission in **69** separate counts of misconduct during the reporting year.

Including dismissals, in 2004-2005, the Supreme Court issued **60** final dispositive orders, compared to **54** in the previous year, representing the completion of **94** separate discipline files. Including private administrative admonitions, **76** lawyers were sanctioned in final orders of discipline in the reporting year, compared to **68** in the previous year. **Appendix G** provides a comparison of disciplinary sanctions entered for each of the past ten years.

**2. Verified Complaints for Disciplinary Action**

**a. Status of Verified Complaints Filed During the Reporting Period**

The following reports the status of all verified complaints filed during the reporting period:

Verified Complaints Filed During Reporting Period.....	41
Number Disposed Of By End Of Year .....	11
Number Pending At End Of Year .....	30

In addition, the Disciplinary Commission authorized the filing of **9** verified complaints during the reporting period that had not yet been filed by June 30, 2005.

The Commission also filed **1** Notice of Foreign Discipline and Request for Reciprocal Discipline with the Supreme Court pursuant to Admission and Discipline Rule 23, §28(b).

During the reporting year, the Disciplinary Commission filed **1** Motion for Suspension Pending Prosecution pursuant to Admission and Discipline Rule 23, §11.1(b) and filed Notices of Conviction and Requests for Suspension pursuant to Admission and Discipline Rule 23, §11.1(a) in **2** cases.

**b. Status of All Pending Verified Complaints**

The following reports the status of all formal disciplinary proceedings pending as of June 30, 2005:

Appointment of Hearing Officer Pending.....	3
Cases Pending Before Hearing Officers .....	43
Cases Pending On Review Before the Supreme Court.....	<u>6</u>
Total Verified Complaints Pending on June 30, 2005 .....	52

During the course of the reporting year, **8** cases were tried on the merits to hearing officers at final hearings, and **25** cases were submitted to the Supreme Court for resolution by way of Conditional Agreements for Discipline.

**3. Final Dispositions**

During the reporting period, the Disciplinary Commission imposed administrative sanctions and the Supreme Court imposed disciplinary sanctions, made reinstatement determinations, or took other actions as follows:

**Private Administrative Admonitions .....16**

**Private Reprimands .....4**

**Public Reprimands.....17**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Areaux, Daniel G.	Elkhart	May 29, 1981
Bash, Richard M.	Anderson	May 30, 2000
Breclaw, John D.	Griffith	May 17, 1967
Cupp, James O.	Michigan City	May 29, 1981
Junk, Timothy	Indianapolis	June 3, 1985
Kiefer, Mark E.	Fort Wayne	October 10, 1986
Klaper, Martin J.	Indianapolis	September 11, 1971
Lehman, Robert E.	Indianapolis	May 31, 1977
Lunn, Lawrence M.	Indianapolis	May 5, 1976
Philpot, Dorene Jackson	Indianapolis	June 9, 2000
Reed, James R.	Morocco	June 9, 1989
Rich, Jay D.	Tipton	January 18, 1991
Salwowski, Brian D.	Indianapolis	June 1, 1984
Schaefer, Joseph S.	Indianapolis	June 6, 1997
Schwebel, Paul R.M.	Indianapolis	June 3, 1983
Statfield, Cary N.	Indianapolis	May 31, 1979
Tyler, James G.	Tell City	October 13, 1976

**Suspensions With Automatic Reinstatement.....6**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Suspension</u>
Blumenthal, Jeanne B.	Chesterton	December 22, 1983	30 days
Crenshaw, Zena D.	Gary	October 12, 1984	30 days
Dodd, Timothy R.	Evansville	September 21, 1966	30 days
Howe, Arvil R.	South Bend	May 30, 1980	6 months
Leslie, Thomas N.	Indianapolis	September 26, 1972	60 days
Whitney, Larry G.	Indianapolis	September 26, 1972	6 months

**Suspensions With Reinstatement on Conditions.....6**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Suspension</u>
Bunner, David A.	Evansville	April 23, 1979	180 days <sup>1</sup>
Cassady, Derek M.	Indianapolis	October 31, 1994	30 days <sup>2</sup>
Fairchild, Raymond	Indianapolis	September 22, 1971	1 year <sup>3</sup>
Reichert, Melanie K.	Carmel	June 5, 1998	60 days <sup>4</sup>

<sup>1</sup> 180 days of suspension stayed conditioned compliance with terms of probation for 24 months.

<sup>2</sup> 30 days of suspension stayed conditioned on compliance with terms of probation for one year.

<sup>3</sup> Extension of existing two-year term of probation for an additional two years, with continuation of stayed six months suspension after six months previously executed.

<sup>4</sup> 30 days of suspension stayed conditioned on compliance with terms of probation for one year.



Small, Mark Eugene	Indianapolis	June 9, 1989	6 months <sup>5</sup>
Kilburn, James R.	Austin	October 9, 1981	30 days <sup>6</sup>

<sup>5</sup> 6 months of suspension stayed conditioned on compliance with terms of probation for two years.

<sup>6</sup> 30 days of suspension stayed conditioned on compliance with terms of probation for two years.

**Suspensions Without Automatic Reinstatement.....11**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Suspension</u>
Boesch, Terry R.	Valparaiso	June 19, 1992	180 days
Dawalt, Philip R., Jr.	Marion	May 30, 1980	18 months
Gotkin, Jonathan S.	Indianapolis	October 10, 1986	6 months
Goudy, Diane M.	Indianapolis	June 14, 1993	6 months
Green, Spurgeon, III	Georgia	December 17, 1991	Indefinite <sup>7</sup>
Kinney, Martin H.	Merrillville	December 14, 1955	Indefinite
Ryan, Patrick	Bristol	October 12, 1984	9 months
Shirley, Thomas L.	Indianapolis	October 10, 1986	30 days
Turner, Michael F.	Scottsburg	October 23, 1994	6 months
Walker, William H., Jr.	Hammond	September 22, 1971	Indefinite
Westerfield, Divina K.	Sarasota, FL	January 7, 1984	Indefinite

<sup>7</sup> Not eligible to seek reinstatement until reinstated in the state of Illinois.

**Accepted Resignations.....12**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Bell, Mark E.	Indianapolis	November 19, 1969
Hess, Michael P.	Roanoke	May 31, 1979
Jackson, Benjamin S.	Indianapolis	June 15, 1990
Kinney, Martin H.	Merrillville	December 14, 1955
Manous, Peter James	Merrillville	October 20, 1989
Moore, Lucinda Sherell	Gary	December 12, 2000
Perkins, Karon	Beech Grove	January 20, 1984
Poore, Regina M.	Indianapolis	June 15, 1990
Sheffler, Julia Johnson	Sullivan	October 7, 2003
Streit, James David	Fort Wayne	October 10, 1980
Teel, Melinda Gail	Anderson	June 7, 2002
Willis, Robin E.	Carmel	October 15, 1990

**Disbarments.....1**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Davidson, Clifton B., Jr.	Indianapolis	January 16, 2001

**Dismissals.....3**

Reconsideration of Probable Cause.....	2
Death of Respondent .....	1

**Reinstatement Proceedings**

Number of Petitions Filed.....	4
--------------------------------	---

Hearings .....	4
Disposed of by Final Order .....	6
Denied .....	1
Chavez, Samuel S., Nashville	
Dismissed .....	1
Weir, Richard A., Muncie	
Reinstated .....	2
Headlee, William P., Indianapolis	
Moore, Ronald J., Richmond	
Conditional Reinstatement .....	2
Starkes, Dale J., Winamac	
Geller, Steven B., Indianapolis	

**Interim Suspensions.....3**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Gofourth, Dewayne H.	English	November 8, 1999
Jarrett, Jerry	Gary	May 26, 1981
Teel, Melinda Gail	Anderson	June 7, 2002

**Findings of Contempt .....1**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Cartmel, Thomas O.	Carmel	May 20, 1964

**V. SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES**

	2004-05	2003-04	2002-03	2001-02	2000-01
Matters Completed	1,692	1,765	1,641	1,704	1,657
Complaints Filed	41	54	37	62	56
Final Hearings	8	10	15	21	23
Final Orders	60	54	88	82	83
Reinstatement Petitions Filed	4	4	3	4	4
Reinstatement Hearings	4	3	2	3	3
Reinstatements Ordered	4	0	4	0	1
Reinstatements Deny/Dismiss	2	2	0	3	2
Income	\$1,785,247	\$1,731,521	\$1,650,231	\$1,389,875	\$1,252,528
Expenses	\$1,629,153	\$1,638,797	\$1,621,569	\$1,454,041	\$1,360,653

## VI. AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE

### A. Indiana Rules of Professional Conduct

**Ethics 2000 Amendments:** On September 30, 2004, the Indiana Supreme Court issued an order making numerous amendments to the Indiana Rules of Professional Conduct, effective January 1, 2005. The amendments can be reviewed in their entirety on the Internet at: <http://www.in.gov/judiciary/orders/rule-amendments/2004/0904-prof-conduct.pdf>. The rule amendments were based, for the most part, on changes made to the American Bar Association Model Rules of Professional Conduct via a project known as Ethics 2000. After a review of the amended ABA rules by the Indiana State Bar Association, the Supreme Court acted. A detailed description of the rule amendments by the Disciplinary Commission's Executive Secretary appeared in a four-article series in *Res Gestae*, the journal of the Indiana State Bar Association, that ran from November of 2004 through March of 2005.

**Rule of Professional Conduct 1.15(f) through (i):** On February 9, 2005, effective July 1, 2005, the Supreme Court amended the provisions in Rule of Professional Conduct 1.15 pertaining to the Interest on Lawyer Trust Accounts (IOLTA) program. In substance, the amendments eliminate the option for lawyers to decline participation in the IOLTA program. The transformation of Indiana's IOLTA program from an opt-out to a mandatory program was implemented through the elimination of language in Rule 1.15(g)(2). However, there is a new exemption category for lawyers whose participation in the IOLTA program "would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographic distance between the lawyer's principal office and the closest depository institution which is participating in the IOLTA program, or on other compelling and necessitous factors." New language in Rule 1.15(f)(1) also clarifies that a trust account for a single client's benefit should be established when the interest earned would exceed the costs of administering a separate account. Old Rule 1.15(f)(7), which directed the Indiana State Bar Foundation to refund IOLTA interest when a lawyer's client objected to the lawyer's decision to place funds in an IOLTA account, has been replaced with a new interest refund provision in Rule 1.15(f)(8) that authorizes the Bar Foundation to refund interest paid to the Bar Foundation in error.

### B. Admission and Discipline Rules

**Admission and Discipline Rule 23, section 21(c) and (g):** On February 9, 2005, effective July 1, 2005, the Supreme Court amended the rules governing annual registration of lawyers to eliminate the option to not participate in the Interest on Lawyer Trust Accounts (IOLTA) program consistent with the parallel amendments to Rule of Professional Conduct 1.15. Thus, a general IOLTA opt-out choice will no longer be available on the annual registration statement.

**Admission and Discipline Rule 23, section 29 and Overdraft Reporting Rules:** On June 20, 2005, effective July 1, 2005, the Supreme Court amended the rules governing bank reporting of overdrafts on lawyer trust accounts to place upon banks and other depository institutions an obligation to report overdrafts on all IOLTA accounts without regard to whether the lawyer-depositor has given the bank formal notice the account is subject to overdraft reporting. Depository institutions are required to report overdrafts on non-IOLTA trust accounts only if the lawyer-depositor has notified the bank that the account is subject to

overdraft reporting.

**Admission and Discipline Rule 23, section 21(k):** On September 30, 2004, effective January 1, 2005, the Supreme Court added a provision to section 21 of Admission and Discipline Rule 23, authorizing lawyers in good standing, who are not the subject of any disciplinary investigation or formal charge of misconduct, to permanently relinquish an Indiana law license by submitting a petition and affidavit requesting withdrawal from the bar. After such a relinquishment, return to the bar is only available through the procedures governing admission to the bar in the first instance. On July 1, 2005, effective January 1, 2006, the Supreme Court amended the rule to clarify that to be in good standing, a lawyer must be current in all registration fees and other license-related financial obligations, and to streamline the procedure for lawyers to relinquish their Indiana law licenses by processing revocation affidavits through the Executive Secretary of the Disciplinary Commission.

**Admission and Discipline Rule 23, section 4(b)(9):** On September 30, 2004, effective January 1, 2005, the Supreme Court amended the rule governing the reinstatement of lawyers suspended for misconduct by permitting petitioners for reinstatement to take the Multistate Professional Responsibility Examination within six (6) months before or after the date the petition for reinstatement is filed.

**Admission and Discipline Rule 22:** On September 30, 2004, effective January 1, 2005, the Supreme Court amended the Oath of Attorneys to include an undertaking to not reject the cause of “those who cannot afford adequate legal assistance.”

## **VII. OTHER DISCIPLINARY COMMISSION ACTIVITIES**

Members of the Disciplinary Commission and its staff spent many hours during the reporting year engaged in education efforts related to the lawyer discipline process and professional responsibility. Some of those activities are highlighted in **Appendix H**.

## **VIII. FINANCIAL REPORT OF THE DISCIPLINARY COMMISSION**

A report setting forth the financial condition of the Disciplinary Commission Fund is attached as **Appendix I**.

## **IX. APPENDICES**

## BIOGRAPHIES OF DISCIPLINARY COMMISSION MEMBERS

**Fred Austerman** is from Union County, Indiana. He is one of two non-lawyer members of the Disciplinary Commission. He is the President and CEO of Optical Disc Solutions, Inc. in Richmond, a company that provides DVD and compact disc replicating services and project management for a wide variety of media developers. Mr. Austerman attended Indiana University East and graduated from Indiana University/Purdue University in Indianapolis in 1983 receiving an undergraduate degree in business, specializing in accounting. He is married and has twin sons. He is serving his first five-year term on the Commission, ending on June 30, 2008.

**Diane L. (Wolf) Bender** is a sole practitioner in Evansville, Indiana. She received a B.B.A. degree, with highest honors, from the University of Notre Dame in 1977. She received her law degree, cum laude, from the Notre Dame Law School in 1980. Ms. Bender was admitted to practice law in the State of Indiana in 1980 and is also admitted to practice in the United States District Court for the Southern District of Indiana and the Supreme Court of the United States. She is a member of the Evansville Bar, Indiana State Bar, and American Bar Associations. She served as president of the Evansville Bar Association in 1992 and was recipient of the Evansville Bar Association's James Bethel Gresham Freedom Award in 1991. She served as Chair of the Probate, Trust and Real Property Section of the Indiana State Bar Association in 1996. Ms. Bender is a current member of the Indiana Probate Study Commission, a Fellow of the Indiana Bar Foundation, and a Fellow of the American College of Trust and Estate Counsel. She was initially appointed to a five-year term on the Disciplinary Commission effective July 1, 1999 and has been reappointed to a second term expiring on June 30, 2009. She has previously served as Secretary and Vice-Chair of the Commission and was elected Chair of the Commission on July 9, 2004.

**Janet L. Biddle** is involved in the family businesses of Biddle Farms, Biddle Seed, Inc. and Biddle Insurance Service, Inc. Ms. Biddle earned an associates degree in 1966 from Ball State University. She was employed by Eli Lilly and Company until 1973 when she joined her family business. She has been involved in numerous philanthropic organizations. She is actively involved in Covenant Presbyterian Church of Lafayette and many other community activities. In 1996, she earned her Property and Casualty Insurance License. She is married to D. William Biddle and has two sons, Bryce and Stephen. Ms. Biddle was appointed as one of the first two lay members of the Disciplinary Commission on July 24, 1996, for a four-year term and was reappointed for a five-year term expiring on June 30, 2005. Having previously served as Secretary and Vice-Chair of the Commission, she became Chair on July 11, 2003.

**Corinne R. Finnerty**, a Jennings County native, practices law in the partnership of McConnell & Finnerty in North Vernon. She received her undergraduate degree from Indiana University in Bloomington. In 1981, she graduated magna cum laude from Indiana University School of Law in Bloomington, where she was selected for membership in the Order of the Coif. She was admitted to practice law in Indiana that same year. She is also admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Seventh Circuit, and the United States District Courts for the Northern and Southern Districts of Indiana. Her bar association memberships include the Jennings County Bar Association, of which she is a past president, the Indiana State Bar Association, and the American Bar Association. Other professional memberships include the Indiana Bar Foundation, of which she is a Master Fellow, the Indiana Trial Lawyers Association, and the Association of Trial Lawyers of America. Ms. Finnerty has previously been employed as Chief Deputy Prosecuting Attorney for Jennings County and is the city attorney for North Vernon. In 1993,

she was selected as one of forty-three outstanding women in the law at the annual meeting of the Indiana State Bar Association. Effective July 1, 2003, she was appointed by the Indiana Supreme Court to serve a five-year term on the Indiana Supreme Court Disciplinary Commission.

**Robert L. Lewis** is a member of the three-person law firm of Robert L. Lewis & Associates, in Gary, Indiana. Two other attorneys in the office are of counsel. He attended Indiana University in Bloomington where he received his B.A. in 1970 and his law degree in 1973. He also obtained a Masters in Public Administration from Western Kentucky University in 1980. He is a retired JAG Corps Lieutenant Colonel in the U.S. Army Reserves with prior active duty service in Viet Nam as a U.S. Marine. He is admitted to practice before the U.S. Supreme Court, the U.S. Seventh Circuit Court of Appeals, the Northern and Southern U.S. District Courts of Indiana, and the U.S. Court of Military Appeals. He is also a member of the Indiana and Kentucky Bars. He served as a part-time public defender in the Lake Superior Court, Criminal Division, for nine years before becoming a Magistrate in the same Superior Court system. He served there for four years and is currently a civil referee in the Gary City Court. He is a life member of the NAACP, Phi Alpha Delta Legal Fraternity, Omega Psi Phi Fraternity, Indiana University Alumni Association and the U.S. Reserve Officer's Association. Mr. Lewis is also a member of the American Bar Association, National Bar Association, Indiana State Bar Association, Lake County Bar Association, the James Kimbrough Bar Association, and the American and Indiana Trial Lawyers Associations. He was commissioned a Kentucky Colonel by former Kentucky Governor Julian Carroll. He was initially appointed to a five-year term on the Disciplinary Commission effective July 1, 1999 and has been reappointed to a second term expiring June 30, 2009. Having previously served as Secretary of the Commission, he was elected Vice-Chair of the Commission on July 9, 2004.

**R. Anthony Prather** is a partner in the Indianapolis office of Barnes & Thornburg. He represents management interests exclusively in both labor and employment law and litigation matters in state courts and federal courts, including charges of employment discrimination. He handles matters that include alternative dispute resolution, discovery, bench and jury trials, and appeals. He also advises employers on various employment laws. Prior to joining Barnes & Thornburg, Mr. Prather was in-house counsel for Ameritech Corporation, Firestone Building Products Company, Firestone Industrial Products Company, and Firestone Polymers. Additionally, Mr. Prather served as the media relations spokesperson for Bridgestone/Firestone, Inc., in all federal class action and personal injury litigation against Bridgestone/Firestone, Inc. consolidated before Judge Sarah Evans Barker, and Ford Motor Company in the United States District Court for the Southern District of Indiana. Mr. Prather received his B.A. from Indiana University in 1980 and his J.D. from Indiana University School of Law-Bloomington in 1983. He is admitted to practice before the U.S. District Courts for the Northern and Southern Districts of Indiana and the U.S. Court of Appeals for the Seventh Circuit. He is a member of the American Corporate Counsel Association, the Indiana State Bar Association, and the National Bar Association. He was appointed to a five-year term on the Disciplinary Commission effective July 1, 2004.

**J. Mark Robinson** is the managing attorney of the New Albany office of Indiana Legal Services, Inc. He received his B.S. in Civil Engineering from Purdue University in 1969, his law degree from the University of Louisville School of Law in 1973, and a Master of Divinity from the Louisville Presbyterian Theological Seminary in 1974. He was admitted to practice in the Commonwealth of Kentucky in 1974, the State of Indiana in 1975, and the United States District Courts for the Southern District of Indiana and the Western District of Kentucky. Mr. Robinson has served as in-house counsel to Chemetron Corporation, a staff attorney for the U.S. Army Corps of Engineers, and has spent the past 26 years with Indiana Legal Services. His professional memberships include the Clark

## APPENDIX A

and Floyd County Bar Associations; the Indiana State, Kentucky, and American Bar Associations; and the Sherman Minton American Inn of Court. He is the past president of the Clark County Bar Association, past president of the Clark County Board of Public Defenders, has served Clark County in the Indiana State Bar Association House of Delegates for the past eight years, and currently serves on the Indiana State Bar Association Board of Governors. He is also a Master Fellow of the Indiana Bar Foundation. In his civic life, he serves as Vice-Chair of the Board of Directors of the River Ridge Development Authority, and is a trustee of the Southern Indiana Economic Development Council. As a Presbyterian minister, Mr. Robinson has served small rural parishes in southeastern Indiana throughout the past 30 years. He served for six years on the Indiana Pro Bono Commission, and was appointed to a five-year term as a member of the Disciplinary Commission expiring on June 30, 2006. He was elected Secretary of the Commission on July 9, 2004.

**Anthony M. Zappia** is the senior member of the 4-person law firm of Zappia Zappia & Stipp, located in South Bend, Indiana. He attended the University of Notre Dame where he received his B.A. in 1972, cum laude, in the School of Economics, and earned his law degree in 1976 from Valparaiso University. He is admitted to practice before the Supreme Court of Indiana and the United States District Court for the Northern District of Indiana. Mr. Zappia was a Deputy Prosecuting Attorney in St. Joseph County from 1976 to 1986. He was also the attorney for the Mishawaka City Council from 1981 to 1986. He has served St. Joseph County as its County Attorney from 1986 until the present. He has been a member of the St. Joseph County Judicial Nominating Committee on two separate occasions, and presently serves on the St. Joseph County Public Defender's Advisory Committee, and is a member of the Indiana Supreme Court Committee on Character and Fitness. Mr. Zappia was President-Elect in 1989-1990 and President in 1990-1991 of the St. Joseph County Bar Association. He is a member of the Indiana State and American Bar Associations, Indiana Trial Lawyers Association, and Association of Trial Lawyers of America. Mr. Zappia's principal areas of practice are personal injury, criminal defense, domestic relations and civil litigation. He was appointed to the Disciplinary Commission to a five-year term that expires on June 30, 2006.

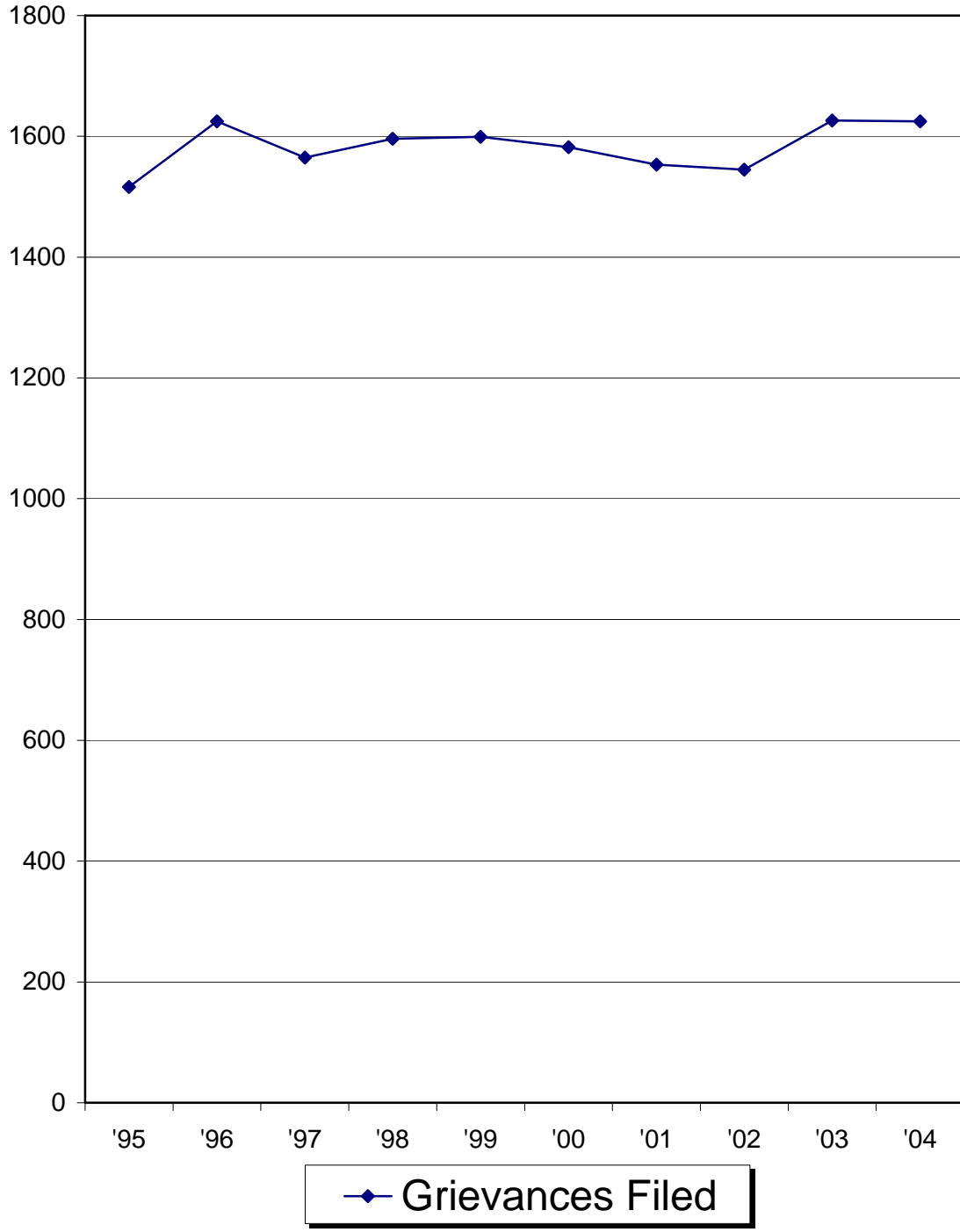
**Sally Franklin Zweig** is a partner of the law firm of Katz & Korin P.C. in Indianapolis. She obtained her undergraduate degree from Washington University in St. Louis in 1971 and received her law degree from Indiana University School of Law at Indianapolis in 1986 and was admitted to practice that same year. Prior to her current affiliation she was a partner at Johnson Smith LLP where she chaired the Health Care Practice Group. She is admitted to practice in all Indiana state courts and both Indiana federal court districts, as well as the Seventh Circuit Court of Appeals and the Supreme Court of the United States. Ms. Zweig is a past President of the Board of Directors of the Indiana University-Indianapolis Law School Alumni Association and a past President of the Indianapolis Chapter of the American Inns of Court. She has been recognized as a Distinguished Fellow of the Indianapolis Bar Foundation and is a lecturer for the Bar Review presented by the Indianapolis Bar Association. She is also a Fellow of the Aspen Institute [1997] and the Oxford Center for Social Justice [1998]. Her civic service includes mayoral appointments to the Executive Board of the Greater Indianapolis Progress Committee and co-chair of the Race Relations Leadership Counsel of Indianapolis. She also presently serves on the boards of directors of the Indianapolis Art Center and At Your School Services. She was appointed to a five-year term as a member of the Disciplinary Commission expiring on June 30, 2006.

## APPENDIX A



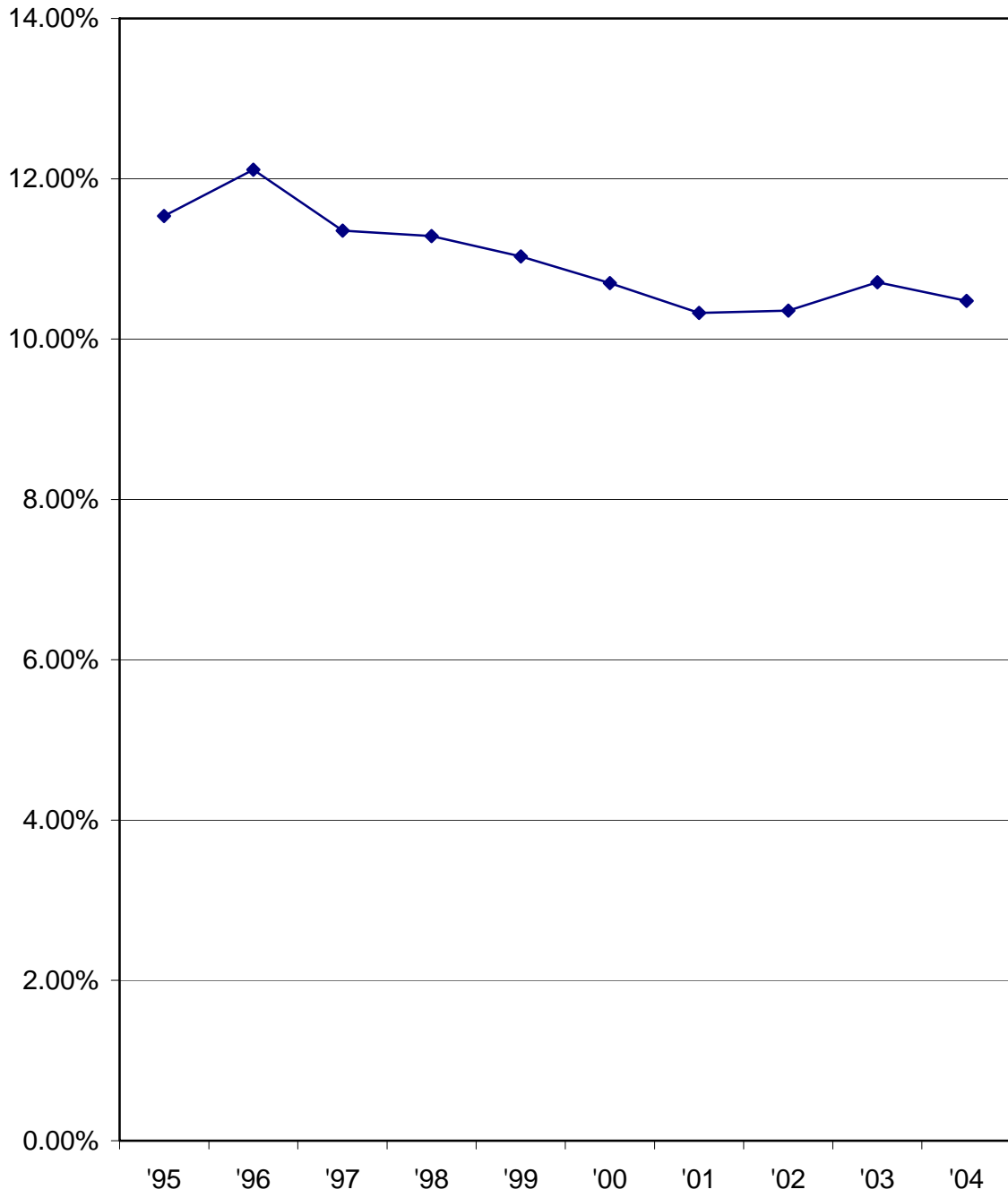
# TRENDS IN LAWYER DISCIPLINE

**NUMBER OF GRIEVANCES FILED 1995-2004**



# TRENDS IN LAWYER DISCIPLINE

## GRIEVANCE RATES 1995-2004



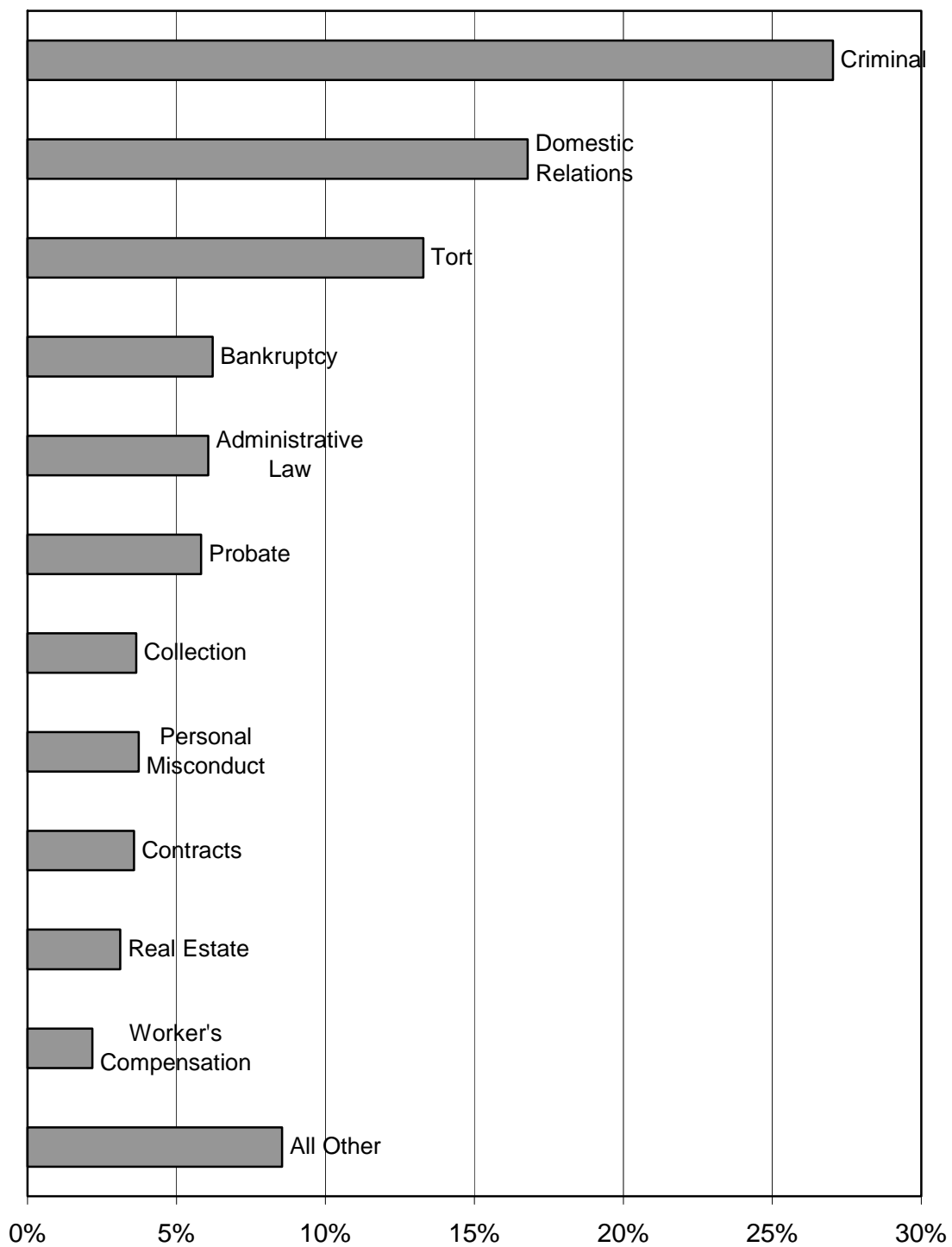
◆ Grievances as % of Active Lawyers

<b>GRIEVANCES BY CASE TYPE AND MISCONDUCT ALLEGED (2004-2005)</b>
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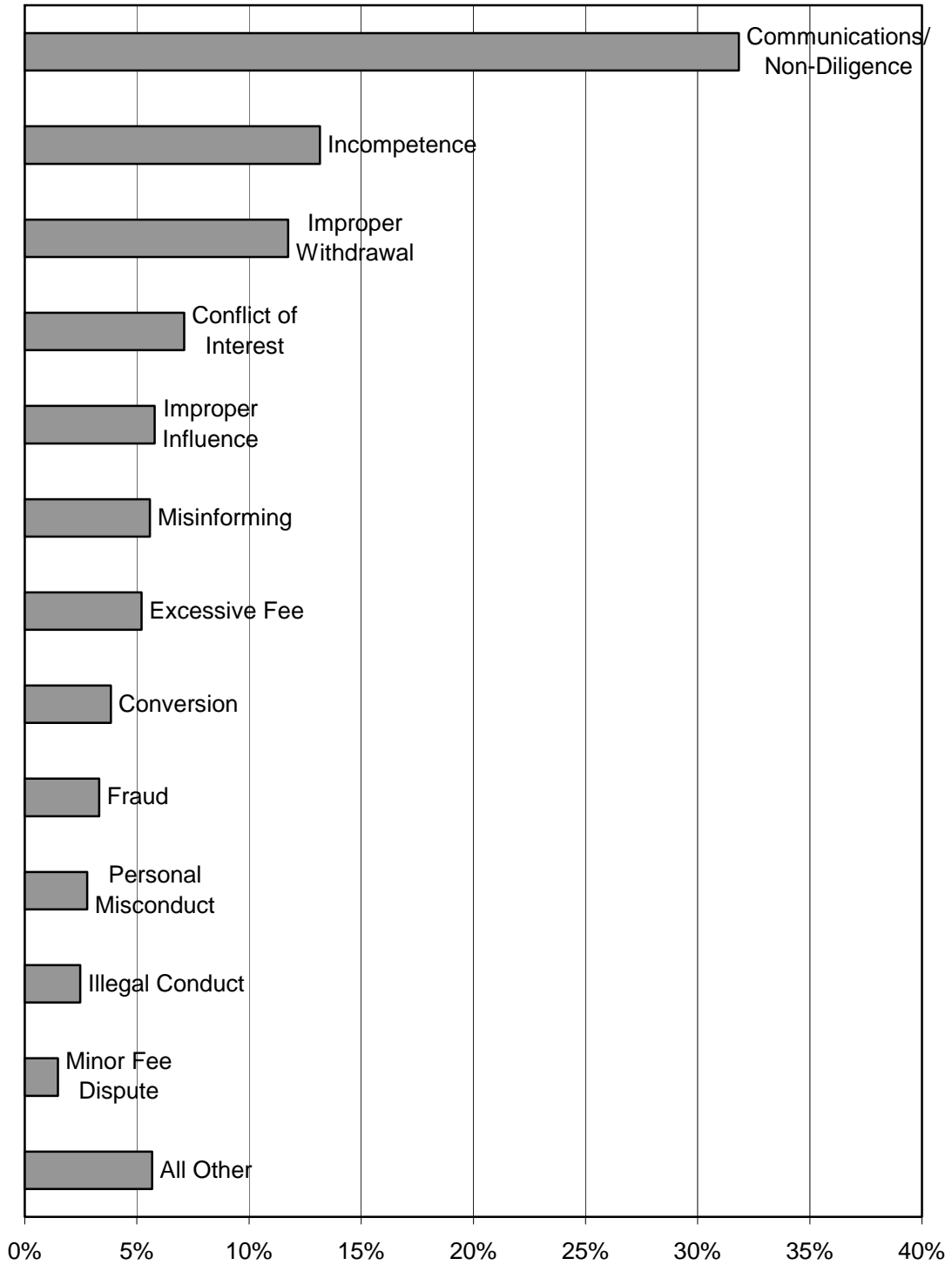
<b>Type of Legal Matter</b>	<b>Number</b>	<b>% of Total</b>
Administrative Law	78	6.1%
Adoption	6	0.5%
Bankruptcy	80	6.2%
Collection	47	3.7%
Condemnation	0	0.0%
Contracts	46	3.6%
Corporate	13	1.0%
Criminal	348	27.0%
Domestic Relations	216	16.8%
Guardianship	17	1.3%
Other Judicial Action	9	0.7%
Patent, Copyright	5	0.4%
Personal Misconduct	48	3.7%
Real Estate	40	3.1%
Tort	171	13.3%
Probate	75	5.8%
Worker's Compensation	28	2.2%
Zoning	0	0.0%
Other	60	4.7%
<b>TOTAL</b>	<b>1287</b>	<b>100.0%</b>

<b>Alleged Misconduct</b>	<b>Number</b>	<b>% of Total</b>
Action in Bad Faith	16	0.8%
Advertising	26	1.4%
Bypassing Other Attorney	9	0.5%
Communications/ Non-Diligence	605	31.8%
Conflict of Interest	135	7.1%
Conversion	73	3.8%
Disclosure of Confidences	22	1.2%
Excessive Fee	99	5.2%
Fraud	63	3.3%
Illegal Conduct	47	2.5%
Improper Influence	110	5.8%
Improper Withdrawal	223	11.7%
Incompetence	250	13.2%
Minor Disagreement	0	0.0%
Minor Fee Dispute	28	1.5%
Misinforming	106	5.6%
Overreaching	31	1.6%
Personal Misconduct	53	2.8%
Solicitation	4	0.2%
<b>TOTAL</b>	<b>1900</b>	<b>100.0%</b>

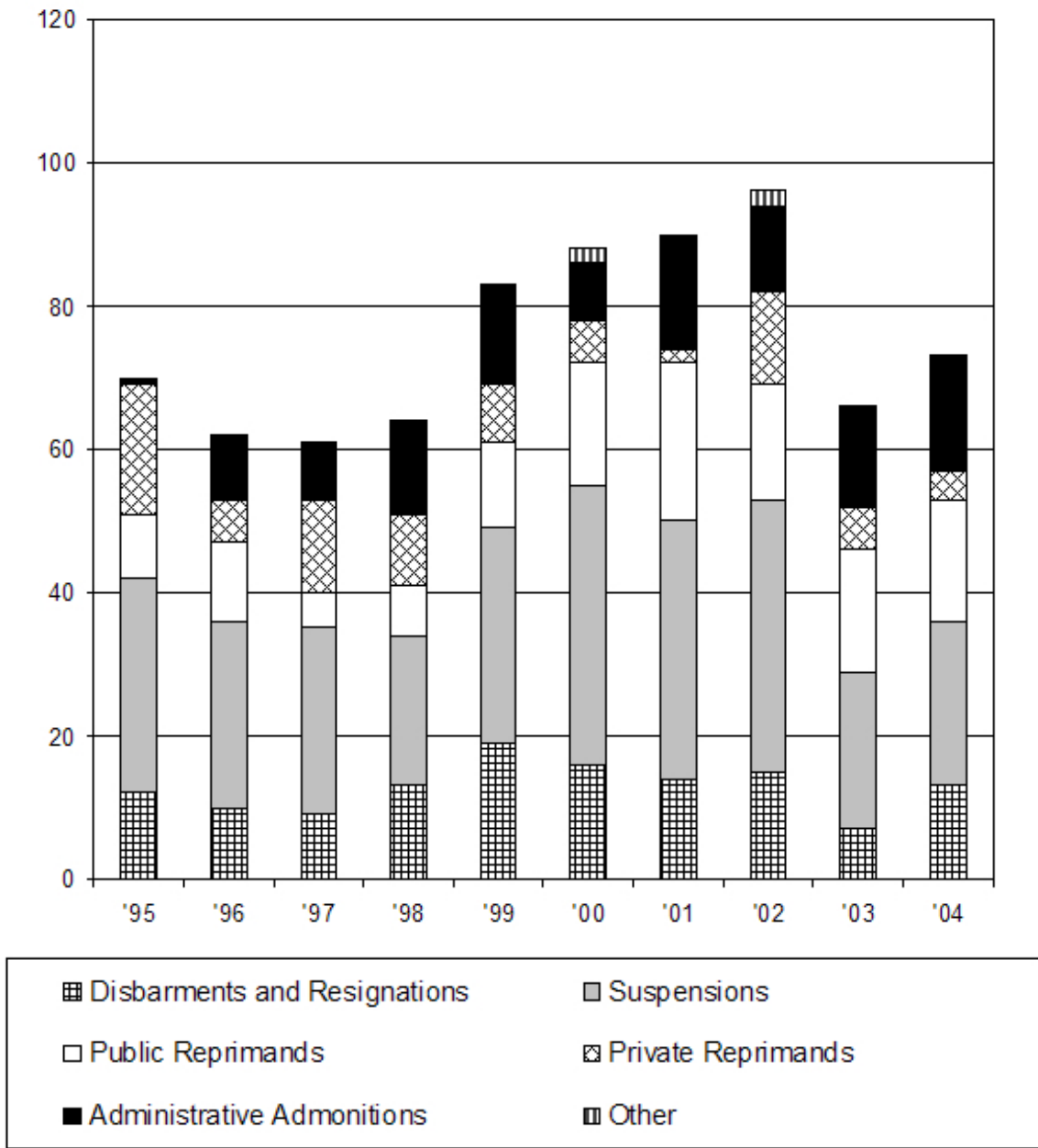
## GRIEVANCES BY CASE TYPE 2004-2005



## GRIEVANCES BY MISCONDUCT ALLEGED 2004-2005



## SANCTIONS ORDERED 1995-2004



**PUBLIC AND BAR IMPROVEMENT AND EDUCATION ACTIVITIES  
2004-2005**

Author	“Survey of the Law of Professional Responsibility,” 37 INDIANA LAW REVIEW 1291 (2005)	Kidd
Author	“The Amended Indiana Rules of Professional Conduct: An Introduction,” 48 RES GESTAE No. 4 at 18 (November 2004)	Lundberg
Author	“The Amended Indiana Rules of Professional Conduct: Conflicts of Interest,” 48 RES GESTAE No. 5 at 16 (December 2004)	Lundberg
Author	“The Amended Indiana Rules of Professional Conduct: The Client-Lawyer Relationship – The Rest of the Story,” 48 RES GESTAE No. 6 at 16 (January/February 2005)	Lundberg
Author	“The Amended Indiana Rules of Professional Conduct: Duties to Tribunals and Non-Clients,” 48 RES GESTAE No. 7 at 16 (March 2005)	Lundberg
JUL 21, 2004	Presenter: “My TPR Client Didn’t Show Up. Now What?” Professional Responsibility and the TPR Public Defender, Marion County Public Defenders Office, Indianapolis	Iosue
JUL 23, 2004	Presenter: "Update of Ethics Cases," Indiana Civil Rights Commission, Indianapolis	Kidd
JUL 29, 2004	Presenter: "Common Ethical Issues In The Wills And Estate Arena," Estate Planning Council of Central Illiana, Terre Haute	Rice
AUG 5, 2004	Panelist: “Focus on Assistant Bar Counsel: Fees and Feasibility,” National Organization of Bar Counsel, Atlanta, GA	Lundberg
AUG 17, 2004	Presenter: "Ethics in Mediation," State Government Mediation Course, Program on Law and State Government, Indiana University School of Law, Indianapolis	Kidd
SEP 8, 2004	Presenter: "Judicial Criticism Cases & Analysis," Madison County Bar Association, Anderson	Kidd
SEP 9, 2004	Presenter: "Lawyer Advertising & the First Amendment," Indiana University-Purdue University at Indianapolis, Indianapolis	Kidd
SEP 16, 2004	Co-Presenter: "Indiana's Disciplinary System," Indiana University School of Law, Indianapolis	Kidd
SEP 21, 2004	Co-Presenter: “Legal Ethics,” Indiana Law Update, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
SEP 21, 2004	Co-Presenter: "Indiana's Disciplinary System," Indiana University School of Law, Post-Graduate Seminar, Indianapolis	Kidd
SEP 27, 2004	Presenter: "Annual Case Update," Indianapolis Bar Association, Indianapolis	Kidd
SEP 28, 2004	Guest Lecturer: “The Lawyer Discipline System,” Civil Practice Clinic, Indiana University School of Law at Indianapolis, Prof. Wolf	Lundberg

**APPENDIX H**

OCT 1, 2004	Co-Presenter: "Law Practice Scenarios," Applied Professionalism Course, Indianapolis Bar Association, Indianapolis	Lundberg
OCT 1, 2004	Co-Presenter: "Ethics Enforcement," Applied Professionalism Course, Indianapolis Bar Association, Indianapolis	Kidd
OCT 4, 2004	Guest Lecturer: "The Lawyer Discipline System," Course on The Legal Profession, Indiana University School of Law at Bloomington, Prof. Orenstein	Lundberg
OCT 8, 2004	Presenter: "Ethical Considerations in Litigation," Top Ten Litigation Tips for Young Lawyers, Indianapolis Bar Association, Indianapolis	Pruden
OCT 14, 2004	Co-Presenter: "Ethics Update," Heartland Pro Bono Counsel, Indianapolis	Kidd
OCT 15, 2004	Presenter: "Ethics Update for the Solo & Small Firm Practitioner," Solo & Small Firm Section Annual Meeting, Indiana State Bar Association, Indianapolis	Lundberg
OCT 19, 2004	Presenter: "Conflicts in the Practice: Tangled Loyalties," Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
OCT 26, 2004	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
OCT 27, 2004	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Muncie	Kidd
NOV 3, 2004	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, South Bend	Kidd
NOV 5, 2004	Presenter: "Conflicts and Other Ethical Traps," Boone County Bar Association, Lebanon	Pruden
NOV 17, 2004	Presenter: "Trust Account Management and IOLTA," Practice Skills Seminar, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
NOV 17, 2004	Co-Presenter: "Ethics Case Update," Practice Skills Seminar, Indiana Continuing Legal Education Forum, Indianapolis	Kidd
NOV 19, 2004	Co-Presenter: "Ethics for Employment Lawyers After <i>Kendall</i> and <i>Keller and Keller</i> ," National Employment Lawyers Association, Indianapolis	Lundberg
DEC 2, 2004	Presenter: "Ten Topical Ethical Topics," District 14 Pro Bono Committee, Indiana Pro Bono Commission, Jeffersonville	Lundberg
DEC 2, 2004	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
DEC 2, 2004	Presenter: "A Quick and Dirty Guide to Indiana's Amendments to the Rules of Professional Conduct," Got Ethics? Seminar, Indiana State Bar Association, Indianapolis	McKinney
DEC 6, 2004	Presenter: "Legal Ethics," Introduction to Pro Bono Law, Indiana State Bar Association, Indianapolis	McKinney

#### APPENDIX H



DEC 7, 2004	Presenter: "Trust Account Management," Applied Professionalism Course, Lake County Bar Association, Crown Point	Pruden
DEC 8, 2004	Presenter: "Ethics 2000 Changes to the Rules of Professional Conduct," Grant, Blackford and Wabash County Bar Associations, Marion	Lundberg
DEC 10, 2004	Presenter: "The World of Evidentiary Ethics," Trial Evidence Seminar, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
DEC 10, 2004	Presenter: "Ethics In Family Law – The Basics," Heartland Pro Bono Council, Indianapolis	Rice
DEC 15, 2004	Presenter: "Amendments to the Rules of Professional Conduct," St. Joseph County Bar Association, South Bend	Pruden
DEC 16, 2004	Presenter: "Ethics Update," Year In Review Seminar, Indiana Continuing Legal Education Forum, Indianapolis	Kidd
DEC 17, 2004	Presenter: "Ethics In Family Law – The Basics," Heartland Pro Bono Council, Indianapolis	Rice
JAN 4, 2005	Presenter: "Ethics in Mediation," State Government Mediation Course, Program on Law and State Government, Indiana University School of Law, Indianapolis	Kidd
JAN 11, 2005	Presenter: "Review of Ethics 2000 Amendments," Marion County Court Employees, Indianapolis	Kidd
JAN 26, 2005	Presenter: "Review of Ethics 2000 Amendments," Indianapolis Bar Association Grievance Committee, Indianapolis	Lundberg
FEB 11, 2005	Moderator: "Ethics 2000 Implementation," Mid-Year Meeting, National Organization of Bar Counsel, Salt Lake City, UT	Lundberg
FEB 11, 2005	Panelist: "To Discover or Not to Discover, That Is The Question: Discovery Issues in Disciplinary Proceedings," Joint Program of the National Organization of Bar Counsel, Association of Professional Responsibility Lawyers and the ABA Center for Professional Responsibility, Salt Lake City, UT	Lundberg
FEB 18, 2005	Guest Lecturer: "The Lawyer Discipline Process," Civil Practice Clinic, Indiana University School of Law at Indianapolis, Prof. Wolf	Lundberg
FEB 18, 2005	Presenter: "Ethics Cases in Family Law," Heartland Pro Bono Council, Indianapolis	Kidd
FEB 28, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
MAR 4, 2005	Co-Presenter: "Ethics Update: The Revised Rules of Professional Conduct," 2005 Women In The Law Bench-Bar Retreat, Indiana State Bar Association, Culver	Lundberg
MAR 8, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, Bloomington	Lundberg

## APPENDIX H

MAR 9, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, Muncie	Pruden
MAR 10, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, Fort Wayne	Kidd
MAR 11, 2005	Presenter: "Law Practice Scenarios," Applied Professionalism Course, Indianapolis Bar Association, Indianapolis	Lundberg
MAR 11, 2005	Presenter: "Trust Account Management," Applied Professionalism Course, Indianapolis Bar Association, Indianapolis	Pruden
MAR 11, 2005	Presenter: "Ethics Enforcement," Applied Professionalism Course, Indianapolis Bar Association, Indianapolis	Kidd
MAR 17, 2005	Presenter: "M.B.A.'s Encounter Legal Ethics and the Lawyer Discipline System," Indiana Wesleyan University, Kentucky Campus M.B.A. Program, Prof. Darlene Ramsey, Louisville, KY	Robinson
MAR 17, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, Merrillville	Rice
MAR 18, 2005	Co-Presenter: "Ethics Update: The Revised Rules of Professional Conduct," Utility Law Section, Indiana State Bar Association, Indianapolis	Lundberg
MAR 18, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, South Bend	McKinney
MAR 22, 2005	Presenter: "Ethics Update: The Revised Rules of Professional Conduct," Hamilton County Bar Association, Noblesville	Lundberg
MAR 23, 2005	Co-Presenter: "Indiana's Disciplinary System," Indiana University School of Law, Indianapolis	Kidd
MAR 24, 2005	Co-Presenter, "New Ethics Rules," Indiana Continuing Legal Education Forum, Evansville	Shook
MAR 30, 2005	Co-Presenter: "New Ethics Rules," Indiana Continuing Legal Education Forum, Terre Haute	Iosue
APR 7, 2005	Presenter: "Lawyer Advertising & the First Amendment," Indiana University-Purdue University, Indianapolis, Indianapolis	Kidd
APR 22, 2005	Presenter: "The Prosecutor and the Lawyer Discipline System," Applied Professionalism Course for Prosecutors, Indiana Prosecuting Attorneys Council, Indianapolis	Lundberg
APR 27, 2005	Presenter: "Who's The Client?" Indiana Continuing Legal Education Forum, Indianapolis	Kidd
APR 28, 2005	Presenter: "Ethical Issues in Probate Administration," Evansville Bar Association, Evansville	Pruden
MAY 2, 2005	Presenter: "Ethics 2000 Amendments," Krieg DeVault, LLP, Indianapolis	Kidd
MAY 19, 2005	Presenter: "Ethics 2000 Amendments," Bartholomew Area Legal Aid, Columbus	Kidd

#### APPENDIX H

MAY 20, 2005	Presenter: "Recent Amendments to the Indiana Rules of Professional Conduct," Ethics Seminar, Lake County Bar Association, Crown Point	Lundberg
JUN 17, 2005	Presenter: "2005 Ethics Update: The Amended Rules," Johnson County Bar Association, Franklin	Shook
JUN 17, 2005	Panelist: "Ethics in Family Law," Bench Bar Conference, Indianapolis Bar Association, Cincinnati	Kidd
JUN 22, 2005	Seminar Chairman and Presenter: "Ethics" and "Procedural Nuts and Bolts," Eminent Domain Seminar, Indiana Continuing Legal Education Forum, Indianapolis	McKinney

**APPENDIX H**

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION FUND**  
**Statement of Revenues and Expenses (Unaudited)**  
**Fiscal Year Ending June 30, 2005**

BEGINNING DISCIPLINARY FUND BALANCE		\$854,534
REVENUES:		
REGISTRATION FEES:		
2004-05 Active Fees	\$1,395,720	
Prior Year Fees	10,715	
Pro Hac Vice Fees	104,130	
2004-05 Inactive Fees	96,525	
Delinquent Fee Penalties	136,705	
TOTAL REGISTRATION FEES COLLECTED		\$1,743,795
REVENUE FROM OTHER SOURCES:		
Court Costs	\$16,073	
Reinstatement Fees	2,000	
Investment Income	19,454	
Rule 7.3 Filing Fees	2,600	
Other	1,325	
TOTAL REVENUE FROM OTHER SOURCES		\$41,452
TOTAL REVENUE		\$1,785,247
EXPENSES:		
OPERATING EXPENSES:		
Personnel	\$1,162,068	
Investigations/Hearings	36,608	
Postage and Supplies	19,228	
Utilities and Rent	136,156	
Travel	39,374	
Equipment	18,347	
Other Expenses	23,284	
TOTAL OPERATING EXPENSES		\$1,435,065
TRANSFER TO JUDGES/LAWYERS ASSISTANCE PROGRAM		\$194,088
TOTAL EXPENSES		\$1,629,153
NET INCREASE (DECREASE) IN FUND BALANCE		\$156,094
ENDING DISCIPLINARY FUND BALANCE		\$1,010,628