

**2008-2009  
ANNUAL REPORT  
OF THE  
DISCIPLINARY COMMISSION  
OF THE  
SUPREME COURT OF INDIANA**

**PUBLISHED BY THE**

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## 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, 2008 and ending June 30, 2009. 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 \$115.00. After paying the costs of collecting annual fees, the Clerk of the Supreme Court distributes the balance of fees to the Disciplinary Commission, the Commission for Continuing Legal Education and the Indiana Judges and Lawyers Assistance Committee to support the work of those Court agencies. In this fiscal year, of each \$115 annual registration fee, after the Clerk's expenses for collecting fees, 66.37% was distributed to the Disciplinary Commission, 18.9% to the Continuing Legal Education Commission and 14.73% to the Judges and Lawyers Assistance Committee.

The annual registration fee for lawyers in inactive status is \$57.50. 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.

Out-of-state lawyers who received court permission to practice law temporarily in the state of Indiana are required to pay a \$115 registration fee for each year they are participating as counsel in an Indiana case.

On May 5, 2009, the Supreme Court issued an order suspending **131** lawyers on active and inactive status, effective June 5, 2009, for failure to pay their annual attorney registration fees.

## 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>
Sally Franklin Zweig, Chair	Indianapolis	September 2, 2001	June 30, 2011
Corinne R. Finnerty, Vice-Chair	North Vernon	July 1, 2003	June 30, 2013
Fred Austerman, Secretary	Richmond	July 1, 2003	June 30, 2013
Diane L. Bender	Evansville	July 1, 1999	June 30, 2009
Maureen Grinsfelder	Fort Wayne	July 1, 2005	June 30, 2010
Robert L. Lewis	Gary	July 1, 1999	June 30, 2009
R. Anthony Prather	Indianapolis	July 1, 2004	June 30, 2009
J. Mark Robinson	New Albany	April 11, 2001	June 30, 2011
Anthony M. Zappia	South Bend	September 9, 2001	June 30, 2011

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  
 Rom Byron, 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 part-time law students to assist in its work. Law clerks employed during this reporting period included Donald E. Thomas, Jr., Caroline Richardson, Sara A. Vorndran, Amber Malcolm and Lauren E. Berger.

The Disciplinary Commission's offices are located at 30 South Meridian Street, Suite 850, 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 Request for Investigation form for submission of grievances 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.

Lawyers must cooperate with the Commission's investigation by answering grievances in writing and responding to other demands for information from the Commission. The Commission may seek an order from the Supreme Court suspending a non-cooperating lawyer's license to practice until such time as he or she cooperates. If after being suspended for non-cooperation, the lawyer does not cooperate for a period of six months, the Court may indefinitely suspend the lawyer's license. An indefinitely suspended lawyer will be reinstated only after successfully completing the reinstatement process described in paragraph K below.

### **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.

In a similar manner, a lawyer charged with misconduct may fully admit the allegations and consent to such discipline as the Court deems appropriate under the circumstances.

#### **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 2008-2009**

### **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, **1,456** grievances were filed with the Disciplinary Commission. Of this number, the Disciplinary Commission initiated **53** grievances. The total number of grievances filed was about one-hundred less than 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 **17,187** Indiana lawyers in active, good-standing status and **2,755** lawyers in inactive, good-standing as of June 30, 2009. In addition, **1,245** 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 **8.47** grievances for every one-hundred actively practicing lawyers. **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 1,456 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, **949** 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, 2009, 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, Personal Misconduct, Bankruptcy and Contract*. To understand the significance of this data, it is important to keep in mind that criminal cases make up 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 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, Improper Withdrawal, Not Acting With Competence, Exercising Improper Influence, Misinforming, Excessive Fees and Conflicts of Interest*, with complaints about poor communications or non-diligence being close to 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, 2009, or that had been dismissed during the reporting period:

	<u>DISMISSED</u>	<u>OPEN</u>
Grievances filed before July 1, 2008	337	441
Grievances filed on or after July 1, 2008	1,173	283
Total carried over from preceding year:		938
Total carried over to next year:		724

This represents a reduction of more than 200 files in the number of grievances carried over into the following year

## **B. Non-Cooperation**

A lawyer's law license may be suspended if the lawyer has failed to cooperate with the disciplinary process. The purpose of this is 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 **19** 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 or that were carried over from the prior year:

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

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Barrett, Timothy D.	Spring Lake, MI	October 20, 2006
Beach, Steven A., Jr.	Anderson	May 20, 2005
Bowlin, Jimmie, D., Jr.	Crawfordsville	October 25, 1991
Corbin, Timothy L.	Indianapolis	October 31, 1994
Crotty, Brien P.	South Bend	November 9, 1998
Denney, Louis W.	Anderson	October 9, 1978
Doyle, Timothy A.	Indianapolis	December 21, 1999
Doyle, Timothy A.	Indianapolis	December 21, 1999
Engebretsen, Kjell P.	Lebanon	January 7, 2005
Engebretsen, Kjell P.	Lebanon	January 7, 2005
Gantz, D. Charles	Greenwood	September 22, 1971
Gifford, Ronald D.	Plymouth	October 13, 1976
Harris, Ronald D.	Jeffersonville	October 9, 1981
Harshey, Kenneth A.	Indianapolis	May 26, 1999
Kauffman, Gregory P.	Elkhart	January 23, 2001
Kias, Michael J.	Greenwood	September 19, 1962
Kilburn, James R.	Austin	October 9, 1981
Moore, Thomas C., II	Indianapolis	October 10, 1986
Moore, Thomas C., II	Indianapolis	October 10, 1986
Rawls, William J.	Indianapolis	October 18, 1985
Zakrzewski, Daniel M.	New Carlisle	June 1, 1984
Zirkle, Frederick Anthony	Crown Point	November 3, 1997
Zirkle, Frederick Anthony	Crown Point	November 3, 1997

**Dismissed as moot after cooperation before show cause order .....1**

Kauffman, Gregory P.

**Petition pending on June 30, 2009, without show cause order .....0**

**Show cause orders with no suspension .....24**

Dismissed after show cause order due to compliance .....15

- Beach, Steven A., Jr.
- Burch, Mark A. (from prior year)
- Burch, Mark A. (from prior year)
- Clark, Andrew E.

Denney, Louis W.  
 Doyle, Timothy A.  
 Doyle, Timothy A.  
 Doyle, Timothy A. (from prior year)  
 Engebretsen, Kjell P.  
 Gantz, D. Charles  
 Gifford, Ronald D.  
 Kilburn, James R.  
 Moore, Thomas C., II  
 Rawls, William J.  
 Zirkle, Frederick Anthony

Dismissed due to disbarment, resignation or suspension.....7

Burch, Mark A. (from prior year)  
 Burch, Mark A. (from prior year)  
 Burkett, Bradley K. (from prior year)  
 Harshey, Kenneth A.  
 Powell, Kimberly O. (from prior year)  
 Powell, Kimberly O. (from prior year)  
 Roberts, Robert E. (from prior year)

Show cause orders pending on June 30, 2009 .....2

Moore, Thomas C., II  
 Zirkle, Frederick Anthony

**Suspensions for non-cooperation.....9**

Non-cooperation Suspensions still in effect on June 30, 2009 .....5

Barrett, Timothy D.  
 Corbin, Timothy L.  
 Crotty, Brien P.  
 Harris, Ronald D.  
 Zakrzewski, Daniel M.

Reinstated due to cooperation after suspension .....4

Bowlin, Jimmie D., Jr.  
 Engebretsen, Kjell P.  
 Kelly, Daniel S. (from prior year petition)  
 Kilburn, James R. (from prior year petition)

**Non-Cooperation Suspensions Converted to Indefinite Suspensions .....8**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Burkett, Bradley K. (from prior year petition)	Portland	January 24, 1984
Harshey, Kenneth J. (from prior year petition)	Indianapolis	May 26, 1999
Johnson, Theodore J. (from prior year petition)	Valparaiso	October 22, 1993

Johnson, Theodore J. (from prior year petition)	Valparaiso	October 22, 1993
Johnson, Theodore J. (from prior year petition)	Valparaiso	October 22, 1993
Kias, Michael J.	Greenwood	September 19, 1962
Molin, Emil J. (from prior year petition)	Tucson, AZ	October 14, 1988
Smith, Michael J.	Wabash	October 8, 1993

**C. 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:

Inquiries Carried Over From Prior Year .....	36
Overdraft Reports Received In Current Year.....	125
Inquiries Closed In Current Year .....	130
<b>Reasons for Closing:</b>	
Bank Error .....	37
Deposit of Trust Funds to Wrong Trust Account.....	2
Disbursement from Trust Before Deposited Funds Collected .....	16
Referral for Disciplinary Investigation .....	12
Disbursement from Trust Before Trust Funds Deposited .....	17
Overdraft Due to Bank Charges Assessed Against Account.....	2
Inadvertent Deposit of Trust Funds to Non-Trust Account .....	9
Overdraft Due to Refused Deposit for Bad Endorsement.....	3
Law Office Math or Record-Keeping Error.....	22
Death, Disbarment or Resignation of Lawyer .....	1
Inadvertent Disbursement of Operating Obligation From Trust.....	6
Non-Trust Account Inadvertently Misidentified as Trust Account .....	2
Fraudulent Office Staff Conduct.....	1
Inquiries Carried Over Into Following Year.....	31

**D. Litigation**

**1. Overview**

In 2008-2009, the Commission filed **62** Verified Complaints for Disciplinary Action with the Supreme Court, fifteen more than in the previous year. These Verified Complaints, together with amendments to pending Verified Complaints, represented findings of reasonable cause by the Commission in **81** separate counts of misconduct during the reporting year.

Including two dismissals and one finding for the respondent, in 2008-2009, the Supreme Court issued **74** final dispositive orders, compared to 53 in the previous year, representing the completion of **110** separate discipline files compared to the completion of 66 discipline files by court order in the previous year. Including six private administrative admonitions, **76** unique

lawyers received final discipline in the reporting year, compared to 61 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 new verified complaints filed during the reporting period:

Verified Complaints Filed During Reporting Period.....	62
Number Disposed Of By End of Year .....	20
Number Pending At End of Year.....	45

In addition, the Disciplinary Commission authorized the filing of **10** verified complaints during the reporting period that had not yet been filed by June 30, 2009.

The Commission also filed **5** Notices of Foreign Discipline and Requests for Reciprocal Discipline with the Supreme Court pursuant to Admission and Discipline Rule 23, §28(b).

During the reporting year, the Disciplinary Commission filed Notices of Felony Guilty Findings and Requests for Suspension pursuant to Admission and Discipline Rule 23, Sec. 11.1(a) in **7** cases.

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

The following reports the status of all formal disciplinary proceedings pending as of June 30, 2009:

Cases Filed; Appointment of Hearing Officer Pending.....	7
Cases Pending Before Hearing Officers .....	30
Cases Pending On Review Before the Supreme Court.....	<u>5</u>
Total Verified Complaints Pending on June 30, 2009.....	42

Of cases decided during the reporting year, **8** were tried on the merits to hearing officers at final hearings, **45** cases were submitted to the Supreme Court for resolution by way of Affidavit for Resignation, Conditional Agreement for Discipline or Consent to Discipline, and **5** cases was submitted by hearing officer findings on an Application for Judgment on the Complaint.

**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:

<b>Dismissals of Verified Complaint .....</b>	<b>2</b>
<b>Findings for Respondent on Merits.....</b>	<b>1</b>
<b>Private Administrative Admonitions .....</b>	<b>6</b>
<b>Private Reprimands .....</b>	<b>4</b>

**Public Reprimands.....24**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Benkie, Scott A.	Indianapolis	October 18, 1985
Brewer, Tia R.	Marion	January 6, 2004
Burns, Leo T., Jr.	Logansport	May 30, 1986
Campiti, Vincent M.	South Bend	November 3, 1997
Collins, David A.	Bloomington	October 16, 1987
Cook, Gary A.	Kokomo	December 11, 1998
Crawford, Douglas A.	Indianapolis	October 10, 1986
Denmure, Douglas R.	Aurora	May 18, 1966
Drake, MacArthur	Gary	May 5, 1976
Edwards, Antonio P.	Martinsville	May 19, 2003
Eslinger, Stephen L.	South Bend	May 30, 1980
Grubbs, Robert A.	Fort Wayne	October 18, 2004
Hagedorn, Michael H.	Tell City	October 9, 1974
Kahre, Gregory A.	Evansville	October 12, 1978
Litz, Steven C.	Monrovia	October 12, 1984
Loomis, J. Michael	Fort Wayne	June 4, 1982
Marshall, Kevin W.	Hobart	June 8, 1987
Miller, Roger L.	Frankfort	May 17, 1967
Price, Jeffrey G.	Peru	October 10, 1973
Rader, Carolyn W.	Indianapolis	May 29, 1981
Smith, C. Jerome	Hammond	December 4, 1957
Toland, Shane A.	Indianapolis	June 18, 2001
Warr, Alistair J.	Indianapolis	June 7, 1991
Wray, Robert J.	Fort Wayne	January 21, 1980

**Suspensions With Automatic Reinstatement.....4**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Suspension</u>
Baylor, Paul E.	Anderson	November 9, 1998	30 days
Blaising, Thomas R.	Battle Creek, MI	May 1, 1974	215 days
Doyle, Ricky D.	Greenwood	June 9, 1991	30 days
Shaw, Douglas L.	Schererville	May 12, 2006	30 days

**Suspensions With Reinstatement on Conditions.....13**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Suspension</u>
Boyd, Elaine P.	Indianapolis	October 10, 1980	90 days <sup>1</sup>
Bryan, Lon D.	Muncie	June 9, 1989	1 year <sup>2</sup>
Butsch, David R.	Connersville	October 4, 1979	6 months <sup>3</sup>
Earls, William W.	Terre Haute	November 4, 1996	180 days <sup>4</sup>

<sup>1</sup> 90-day suspension, all stayed conditioned on compliance with terms of probation for 1 year.<sup>2</sup> 1 year suspension, all stayed conditioned on compliance with terms of probation for 2 years.<sup>3</sup> 6-month suspension, 4 months stayed conditioned on compliance with terms of probation for 36 months.<sup>4</sup> 180-day suspension, all stayed conditioned on compliance with terms of probation for 24 months.

Falls, Margaret S.	Fort Wayne	October 18, 1985	90 days <sup>5</sup>
Followell, Douglas S.	Sullivan	May 1, 1974	180 days <sup>6</sup>
Green, James R.	Greenwood	October 9, 1974	90 days <sup>7</sup>
Holbrook, Neil E.	South Bend	October 7, 1983	6 months <sup>8</sup>
Katic, Peter	Munster	October 11, 1977	180 days <sup>9</sup>
Spielman, Kim H.	Fort Wayne	June 8, 1987	30 days <sup>10</sup>
Stites, Michael G.	Rockville	November 8, 2002	6 months <sup>11</sup>
Tolliver, Jason W.	Indianapolis	November 19, 2001	180 days <sup>12</sup>
Woods, Alexa L.	Indianapolis	November 8, 1999	120 days <sup>13</sup>

<sup>5</sup> 90 day suspension, all stayed conditioned on compliance with terms of probation for 24 months.

<sup>6</sup> 180-day suspension, 150 days stayed conditioned on compliance with terms of probation for 36 months.

<sup>7</sup> 90-day suspension, all stayed conditioned on compliance with terms of probation for 2 years.

<sup>8</sup> 6-month suspension, 2 months stayed conditioned on compliance with terms of probation for 18 months.

<sup>9</sup> 180-day suspension, 120 days stayed conditioned on compliance with terms of probation for 30 months.

<sup>10</sup> 30-day suspension, all stayed, conditioned on compliance with terms of probation for 1 year.

<sup>11</sup> 6-month suspension, 2 months stayed conditioned on compliance with terms of probation for 36 months.

<sup>12</sup> 180-day suspension, all stayed conditioned on compliance with terms of probation for 30 months.

<sup>13</sup> 120-day suspension, all stayed conditioned on compliance with terms of probation for 30 months.

### **Suspensions Without Automatic Reinstatement.....19**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>	<u>Suspension</u>
Beach, Steven A., Jr.	Anderson	May 20, 2005	90 days
Buehner, Constance L. Runner	Louisville, KY	October 15, 1990	Indefinite <sup>1</sup>
Burkett, Bradley K.	Portland	January 24, 1984	Indefinite
Evans, Fara P.	Pittsburgh, PA	October 20, 1989	2 years
Forbush-Moss, Bethanni E.	Louisville, KY	May 30, 2000	Indefinite <sup>2</sup>
Gifford, Ronald Dean	Plymouth	October 13, 1986	9 months
Graham, Craig W.	Jeffersonville	June 12, 1992	90 days
Harshey, Kenneth A.	Indianapolis	May 26, 1999	Indefinite
Jackel, Katherine E.	Ann Arbor, MI	November 3, 1997	2 years
Jarrett, Ray W.	Brazil	May 19, 2003	90 days
Johnson, Theodore J.	Valparaiso	October 22, 1993	Indefinite
Johnson, Theodore J.	Valparaiso	October 22, 1993	Indefinite
Johnson, Theodore J.	Valparaiso	October 22, 1993	Indefinite
Kias, Michael J.	Greenwood	September 19, 1962	Indefinite
Laterzo, Marc C.	Gary	October 22, 1999	180 days
Rosales, Leigia R.	Indianapolis	June 9, 2000	2 years
Molin, Emil J.	Tucson, AZ	October 14, 1988	Indefinite
Patheja, Jaipal	Valparaiso	December 29, 1997	6 months
Smith, Michael J.	Wabash	October 8, 1993	Indefinite

<sup>1</sup> Not eligible to seek reinstatement until readmitted in Kentucky.

<sup>2</sup> Not eligible to seek reinstatement until readmitted in Kentucky.

**Accepted Resignations .....4**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Crabtree, William G., II	Schererville	October 25, 1991
Collesano, Stanley F.	Indianapolis	June 4, 1999
Auger-Marchand, Ruben	Indianapolis	June 9, 2000
Kauffman, Gregory P.	Elkhart	January 23, 2001

**Disbarments .....3**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Powell, Kimberly O.	Indianapolis	May 19, 2003
Lehman, Robert E.	Indianapolis	May 31, 1977
Ucherek, David M.	Chicago, IL	December 29, 1997

**Reinstatement Proceedings**

Disposed of by Final Order .....6

Granted ..... 4

- Cloyd, Casey D., Indianapolis (w/ 2 years probation)
- Scott, Vincent L., Carmel
- Rayle, Merrick Scott, Pacific Grove, CA
- Webb, Scott L., Anderson

Denied ..... 1

- McLin, William C., Indianapolis

Petition Withdrawn..... 1

- Harlowe, Stuart Clay, New Albany

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

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Patterson, Douglas W.	Evansville	June 9, 1989

**Emergency Interim Suspension .....0**

**Temporary Suspensions (Guilty of Felony).....7**

<u>Name</u>	<u>City of Practice</u>	<u>Date of Admission</u>
Auger-Marchand, Ruben	Indianapolis	June 9, 2000
Lehman, Robert E.	Indianapolis	May 31, 1977
Recker, James R., II	Indianapolis	November 3, 1997
Record, Terry J.	Indianapolis	October 20, 2006
Riga, Deborah A.	Schererville	September 28, 1993
Snyder, Ryan W.	Indianapolis	September 26, 2005
Wallingford, Anthony J.	New Albany	October 23, 1995

## V. SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES

	2008-09	2007-08	2006-07	2005-06	2004-05
Matters Completed	1,456	1,541	1,463	1,599	1,692
Complaints Filed	62	47	34	42	41
Final Hearings	8	12	10	15	8
Final Orders	74	53	60	52	60
Reinstatement Petitions Filed	4	5	11	8	4
Reinstatement Hearings	5	6	6	3	4
Reinstatements Ordered	3	9	1	1	4
Reinstatements Deny/Dismiss	2	3	7	2	2
Income	\$1,715,474	\$1,765,488	\$1,984,450	\$1,870,208	\$1,785,247
Expenses	\$1,915,389	\$1,706,111	\$1,814,736	\$1,766,748	\$1,629,153

## VI. AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE

### A. Admission and Discipline Rules

#### Admission and Discipline Rule 3

On September 9, 2008, effective January 1, 2009, the Supreme Court amended Admis. Disc. R. 3, dealing with temporary admission of out-of-state lawyers, i.e., *pro hac vice* admissions. When an out-of-state lawyer is temporarily admitted, admission must be renewed by payment of an annual fee in January of each calendar year that participation in the matter continues. Failure to renew results in automatic exclusion of the foreign lawyer from practice in Indiana, after which reinstatement is upon petition to the Supreme Court. The amendment to Admis. Disc. R. 3(f)(2) implements a late fee for lawyers who are automatically excluded for failure to timely pay the annual renewal fee (currently \$115). The amount of the late fee is \$115.

#### Admission and Discipline Rule 23

On September 9, 2008, effective January 1, 2009, the Supreme Court amended Admis. Disc. R. 23, section 27, to make some clarifications to the section dealing with surrogate attorneys. It amended section 27(b)(2) to indicate that lawyers who practice in “fiduciary entities” (in effect, law firms) are required to designate an attorney surrogate. They were previously “deemed” to have appointed their firms as the attorney surrogates. With this amendment, lawyers who practice in firms must designate their firms as their attorney surrogate designees in the designated place on the annual attorney registration statement.

### B. Rules of Professional Conduct

The Supreme Court made no changes to the professional conduct rules in the reporting year.

## **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 Wayne 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 Disciplinary Commission, ending on June 30, 2008, and served as Secretary of the Commission during this year.

**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 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 was reappointed to a second term expiring on June 30, 2009. She has previously served as Secretary, Vice-Chair and Chair of the Commission.

**Corinne R. Finnerty**, a Jennings County native, practices law in the partnership of McConnell Finnerty Waggoner PC 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 Patron Fellow, the Indiana Trial Lawyers Association, and the American Association for Justice. Ms. Finnerty has previously been employed as Chief Deputy Prosecuting Attorney for Jennings County and 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. Ms. Finnerty served as Vice-Chair of the Disciplinary Commission during this reporting year, having previously served as Secretary.

**Maureen I. Grinsfelder**, a native of Whitley County, retired on January 1, 2009 after fourteen years as Executive Director of the Questa Foundation for Education, Inc., a non-profit foundation that helps finance college for Allen County students. She is a graduate of the University of Michigan, where she was selected for membership in Scroll and Wyvern women's honor societies. For twenty-two years, she was employed by NBD Bank, NA and its predecessor banks

in Fort Wayne, administering trusts, guardianships and estates. She was appointed to the Board of Trustees of the Indiana State Museum and Memorials and has served numerous boards of social service and arts organizations in Fort Wayne. She is a past president of Congregation Achduth Vesholom in Fort Wayne and a past vice-president of the Union for Reform Judaism Northeast Lakes Regional Council. She and her husband, Alan Grinsfelder, have four sons and nine grandchildren. She is serving her first five-year term on the Disciplinary Commission, which will expire on June 30, 2010.

**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 was reappointed to a second term expiring June 30, 2009. He has previously served as Secretary, Vice-Chair and Chair of the Disciplinary Commission.

**R. Anthony Prather** is a partner in the Indianapolis office of Barnes & Thornburg LLP. 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.

## APPENDIX A

**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 twenty-nine years with Indiana Legal Services. His professional memberships include the Clark and Floyd County Bar Associations; the Indiana State, Kentucky, and American Bar Associations. He is the current 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 ten years, and has served on the Indiana State Bar Association Board of Governors (2004-2006). He is also a Master Fellow of the Indiana Bar Foundation and present member of its board of directors. He was appointed a Sagamore of the Wabash in 1999. In his civic life, he serves as President of the Board of Directors of the River Ridge Development Authority, and is past trustee of the Southern Indiana Economic Development Council. As a Presbyterian minister, Mr. Robinson served small rural parishes in southeastern Indiana for thirty-two 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 that expired on June 30, 2006. He was re-appointed to a second term on the Commission beginning July 1, 2006. He has previously served as Secretary, Vice-Chair and Chair of the Disciplinary Commission.

**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 an initial five-year term on the Disciplinary Commission that expired on June 30, 2006, and was reappointed to a second term beginning July 1, 2006. He is a former Chair, Vice-Chair and Secretary of the Disciplinary Commission.

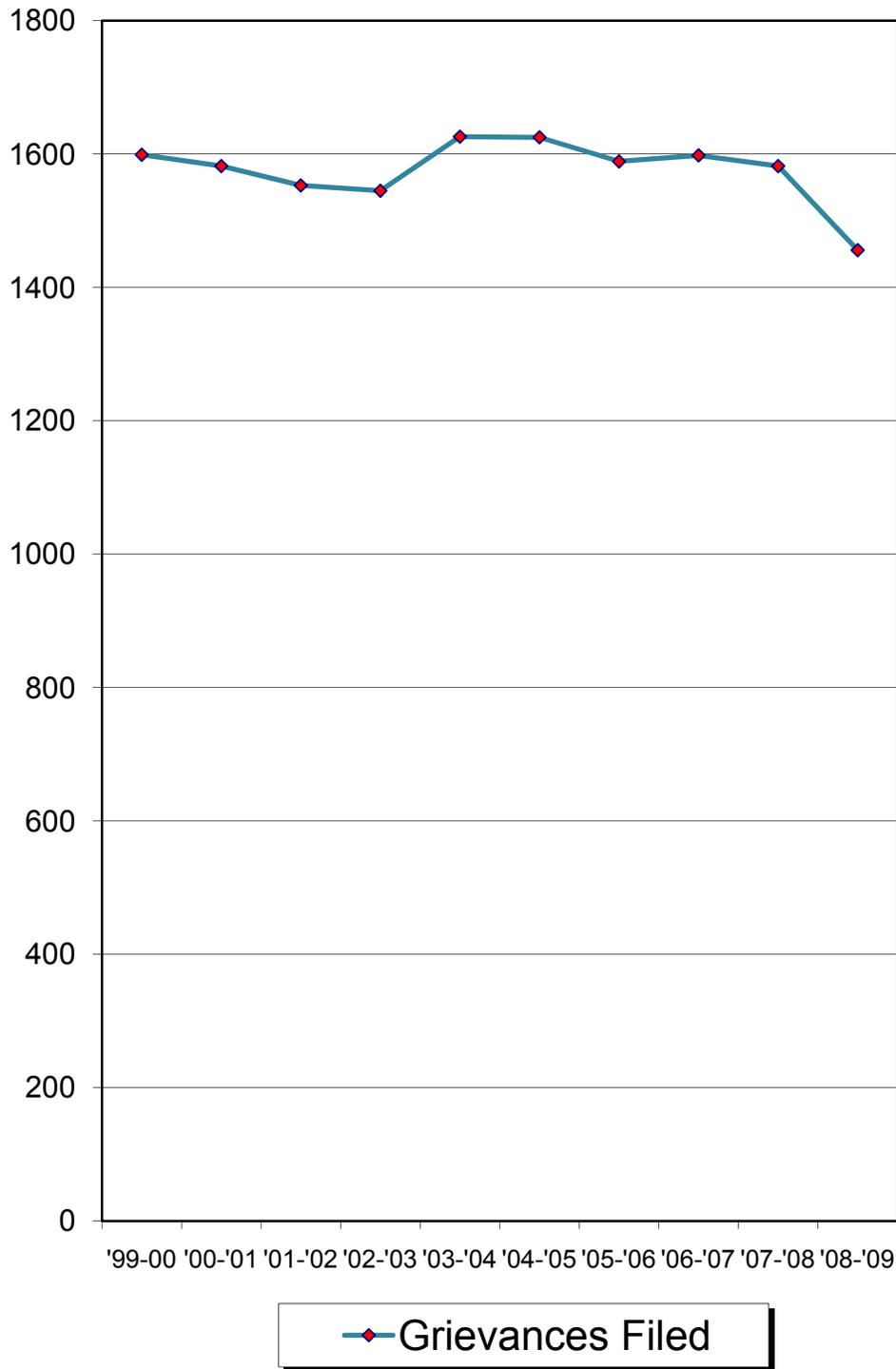
**Sally Franklin Zweig** is a partner of the law firm of Katz & Korin P.C. in Indianapolis. She obtained her undergraduate degree from Washington University in St. Louis in 1971 and received her law degree from Indiana University School of Law at Indianapolis in 1986 and was admitted to practice that 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

## APPENDIX A

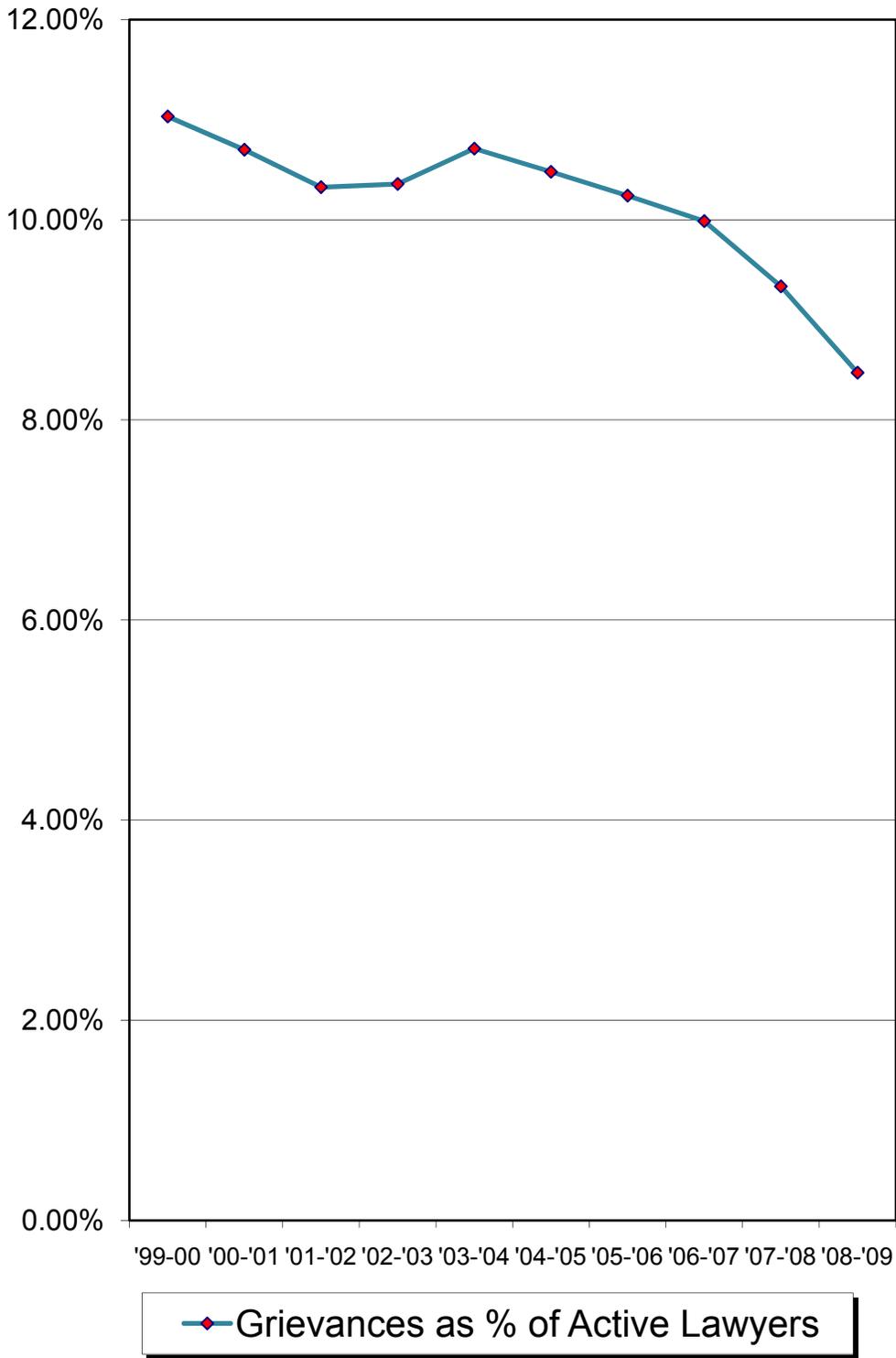
and the Supreme Court of the United States. Ms. Zweig is a past President of the Board of Directors of the Indiana University-Indianapolis Law School Alumni Association and a past President of the Indianapolis Chapter of the American Inns of Court. She has been recognized as a Distinguished Fellow of the Indianapolis Bar Foundation and has served as 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 as past co-chair of the Race Relations Leadership Counsel of Indianapolis. She also presently serves on the boards of directors of the Festival Musical Society and At Your School Services. She was appointed to a first five-year term as a member of the Disciplinary Commission expiring on June 30, 2006, and reappointed to a second term beginning July 1, 2006. A former Secretary and Vice-Chair of the Disciplinary Commission, Ms. Zweig served as Chair of the Commission in this reporting year.

## **APPENDIX A**

## NUMBER OF GRIEVANCES FILED 1999-2009



### GRIEVANCE RATES 1999-2009

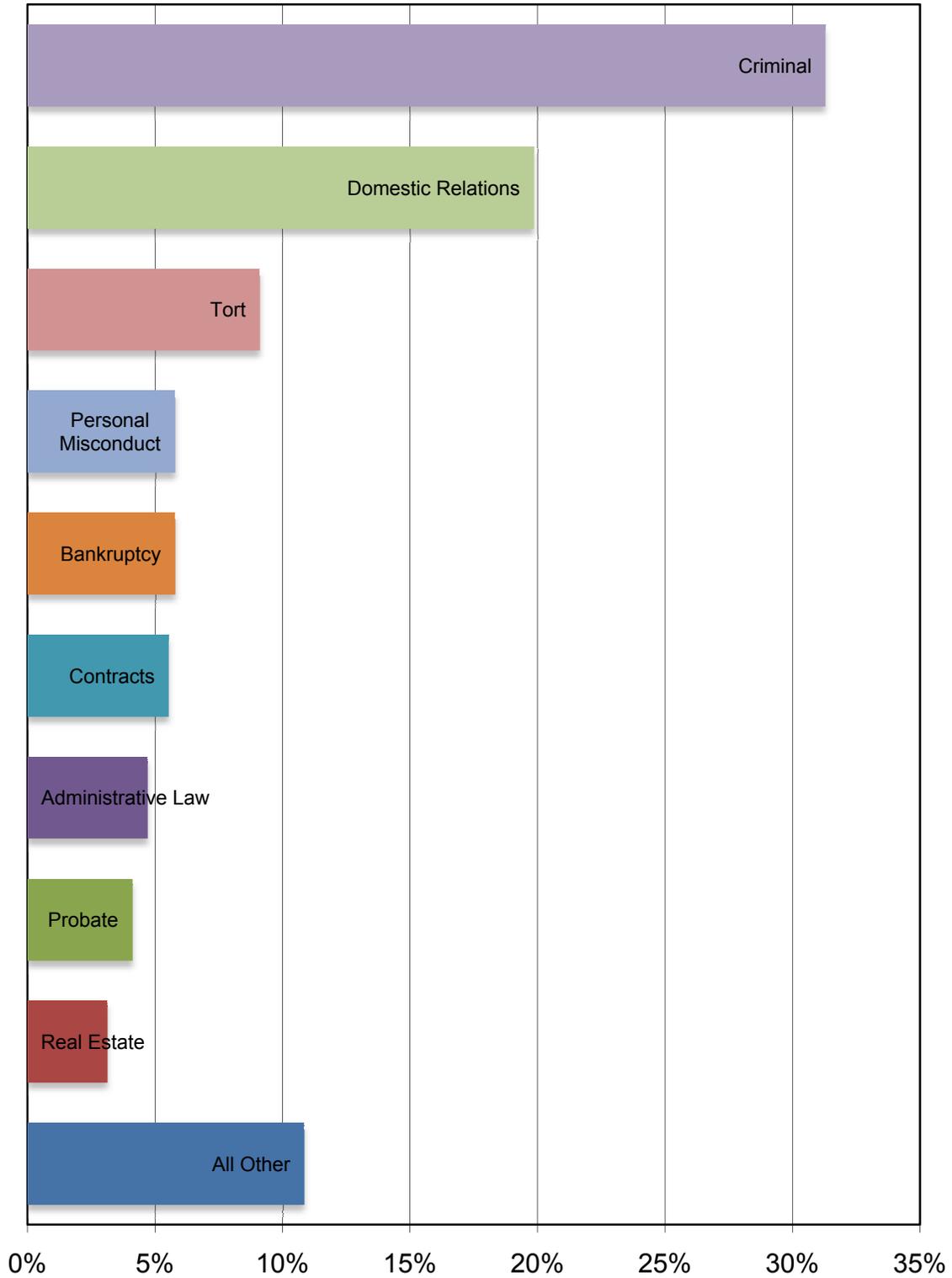


<b>GRIEVANCES BY CASE TYPE AND MISCONDUCT ALLEGED (2008-2009)</b>
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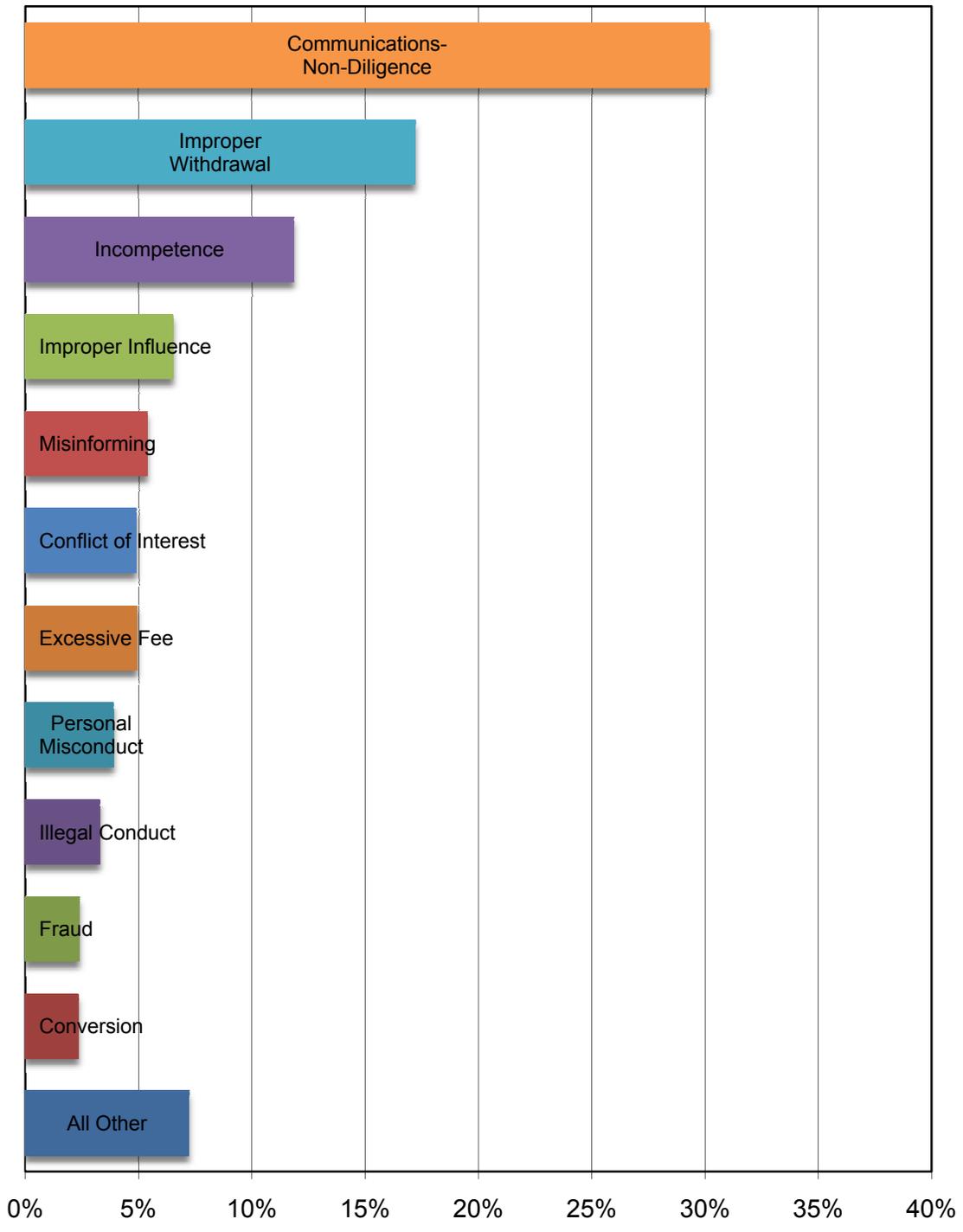
<b>Type of Legal Matter</b>	<b>Number</b>	<b>% of Total</b>
Administrative Law	62	4.7%
Adoption	6	0.5%
Bankruptcy	76	5.8%
Collection	27	2.0%
Condemnation	0	0.0%
Contracts	73	5.5%
Corporate	20	1.5%
Criminal	413	31.3%
Domestic Relations	262	19.8%
Guardianship	10	0.8%
Other Judicial Action	22	1.7%
Patent, Copyright	5	0.4%
Personal Misconduct	76	5.8%
Real Estate	41	3.1%
Tort	120	9.1%
Probate	54	4.1%
Worker's Compensation	12	0.9%
Zoning	2	0.2%
Other	39	3.0%
<b>TOTAL</b>	<b>1320</b>	<b>100.0%</b>

<b>Alleged Misconduct</b>	<b>Number</b>	<b>% of Total</b>
Action in Bad Faith	9	0.4%
Advertising	14	0.7%
Bypassing Other Attorney	16	0.8%
Communications/ Non-Diligence	607	30.2%
Conflict of Interest	98	4.9%
Conversion	47	2.3%
Disclosure of Confidences	16	0.8%
Excessive Fee	99	4.9%
Fraud	48	2.4%
Illegal Conduct	66	3.3%
Improper Influence	131	6.5%
Improper Withdrawal	346	17.2%
Incompetence	238	11.8%
Minor Disagreement	0	0.0%
Minor Fee Dispute	46	2.3%
Misinforming	108	5.4%
Overreaching	39	1.9%
Personal Misconduct	78	3.9%
Solicitation	5	0.2%
<b>TOTAL</b>	<b>2011</b>	<b>100.0%</b>

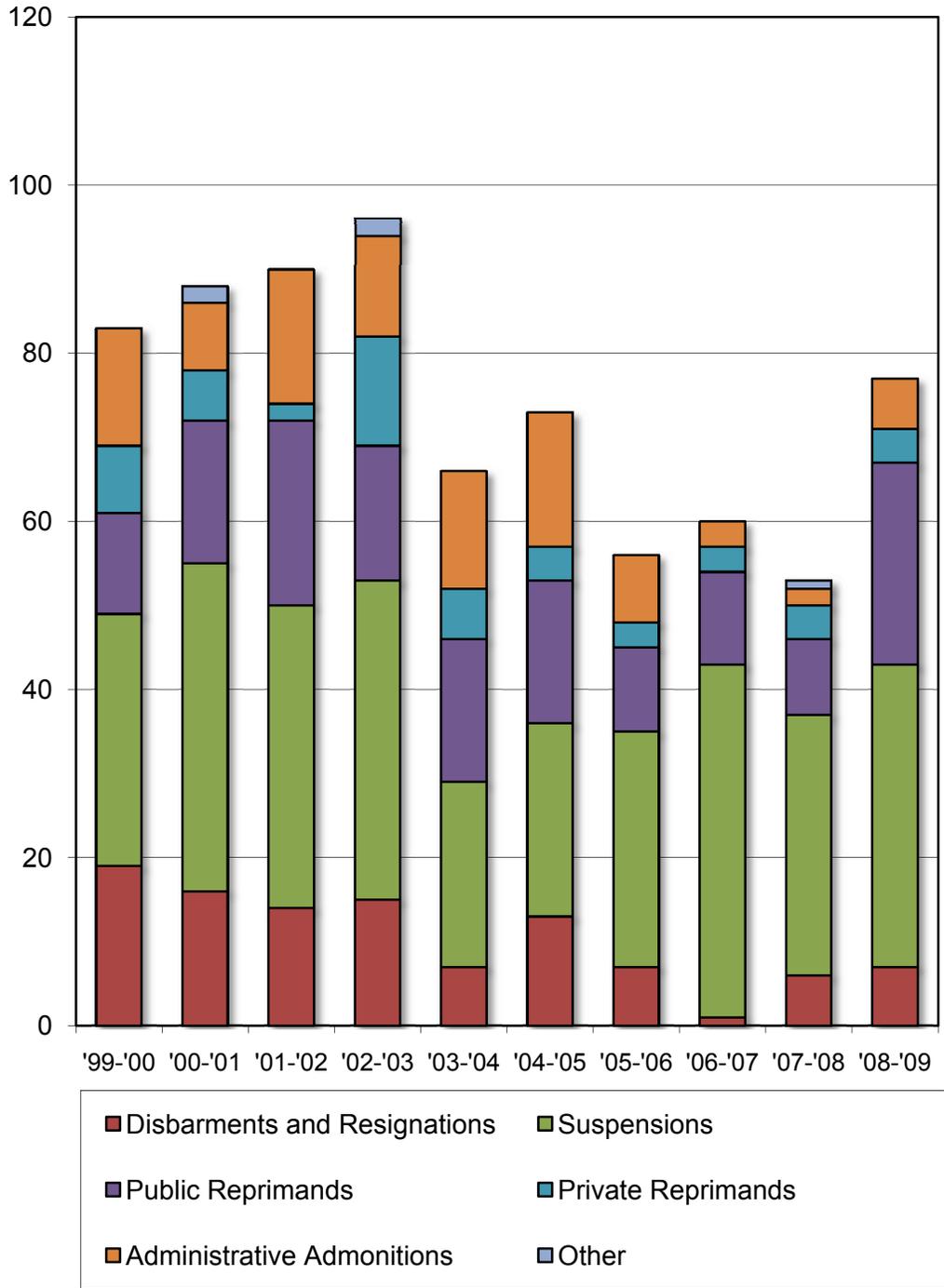
## GRIEVANCES BY CASE TYPE 2008-2009



**GRIEVANCES BY MISCONDUCT ALLEGED 2008-2009**



## SANCTIONS ORDERED 1999-2009



**PUBLIC AND BAR IMPROVEMENT AND EDUCATION ACTIVITIES  
2008-2009**

Author	<i>How Unappealing: Ethics Issues In Appointed Appellate Representation</i> , Vol. 52, No. 1 RES GESTAE 37 (July/August 2008)	Lundberg
Author	<i>Trust Accounts in a Time of Bank Failures</i> , Vol. 52, No. 2 RES GESTAE 33 (September 2008)	Lundberg
Author	<i>Divided Duty: Reporting Misconduct (Part I)</i> , Vol. 52, No. 3 RES GESTAE 29 (October 2008)	Lundberg
Author	<i>Divided Duty: Reporting Misconduct (Part II)</i> , Vol. 52, No. 4 RES GESTAE 36 (November 2008)	Lundberg
Author	<i>Warning! Scam Artists At Work</i> , Vol. 52, No. 5 RES GESTAE 21 (December 2008)	Lundberg
Author	<i>Top Ten 2008 Professional Responsibility Stories</i> , Vol. 52, No. 6 RES GESTAE 23 (January/February 2009)	Lundberg
Author	<i>Dancin' With Them What Brung Ya: Electing Appellate Judges</i> , Vol. 52, No. 7 RES GESTAE 31 (March 2009)	Lundberg
Author	<i>What's In Your Trust Account? When Clients Pay By Credit Card</i> , Vol. 52, No. 8 RES GESTAE 26 (April 2009)	Lundberg
Author	<i>Sex and Intimacy: Emotional Entanglements With Clients</i> , Vol. 52, No. 9 RES GESTAE 33 (May 2009)	Lundberg
Author	<i>Will You Take Fries For That? Bartering for Legal Services</i> , Vol. 52, No. 10 RES GESTAE 32 (June 2009)	Lundberg
Author	<i>2008 Survey of the Law of Professional Responsibility</i> , 42 INDIANA LAW REVIEW (2009)	Kidd
JUL 25, 2008	Presenter: "Ethics in Workers Compensation Cases," Indiana Trial Lawyers Association, Indianapolis	Kidd
JUL 30, 2008	Panelist: State Lawyer Discipline Counsel Panel, Professional Responsibility Officers' Conference, U.S. Department of Justice, National Advocacy Center, Columbia, SC	Lundberg
AUG 6, 2008	Panelist: "Use and Abuse of an Ethics Expert in Disciplinary Proceedings," Annual Meeting, National Organization of Bar Counsel, New York, NY	Lundberg
AUG 14, 2008	Presenter: "Ethics for Neutrals," School of Public and Environmental Affairs, Indianapolis	Kidd
AUG 19, 2008	Presenter: "Ethics for Neutrals," Indiana University School of Law—Indianapolis	Kidd
AUG 20, 2008	Presenter: "Ethical Issues for Paralegals," Indiana Paralegal Association, Indianapolis	Kidd
AUG 21, 2008	Co-Presenter: "Legal Ethics Issues for 2008 and Beyond," Fulton County Bar Association, Rochester	Lundberg

AUG 22, 2008	Presenter: "Update on Ethics Cases," Indiana Trial Lawyers Assoc. Women's Seminar, Indianapolis	Kidd
SEP 9, 2008	Co-Presenter: "Professional Responsibility," Annual Law Update, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
SEP 18, 2008	Presenter: "Avoiding Trouble in the First Place," Marion County Public Defender Agency, Indianapolis, IN	Iosue
SEP 25, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, South Bend	Kidd
SEP 27, 2008	Guest Lecturer, Civil Practice Clinic, Prof. Wolf, Indiana University School of Law, Indianapolis	Lundberg
OCT 2, 2008	Panelist: "Ethics in Problem Solving Courts," Indiana Judicial Center, Indianapolis	Pruden
OCT 3, 2008	Presenter: "Ethical Concerns for Business Lawyers," Annual Mtg., Indiana State Bar Association, Indianapolis	Kidd
OCT 6, 2008	Presenter: "Legal Ethics and the Federal Prosecutor," U.S. Attorney's Office, Northern District of Indiana, South Bend	Lundberg
OCT 6, 2008	Presenter: "Ethics Update," Evansville Bar Association, Evansville	Pruden
OCT 8, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
OCT 10, 2008	Presenter: "Ethics Review for Bankruptcy Trustees," Indianapolis	Pruden
OCT 13, 2008	Presenter: "Ethics for Family Law Practitioners," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
OCT 16, 2008	Co-Presenter: "Legal Malpractice and Grievances: Understanding the Causes of Malpractice," Family Law Institute, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
OCT 17, 2008	Presenter: "Attorney Surrogates," Indiana Public Defender Council, Indianapolis	Rice
OCT 17, 2008	Co-Presenter: "Ethics Issues in Federal Criminal Defense," North Dist. Public Defenders Office, Plymouth	Kidd
OCT 21, 2008	Co-Presenter, "Time Mastery for Lawyers," Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
OCT 28, 2008	Presenter: "Ethics: Listen, Do You Want to Know a Secret?," Advanced Appellate Skills, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
OCT 29, 2008	Presenter: "Ethical Issues for Business Lawyers," Business Law Section, Lake County Bar Association, Merrillville	Lundberg
NOV 3, 2008	Co-Presenter: "Legal Advertising Ethics Webinar," Law & Politics, Indianapolis	Kidd
NOV 5, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Terre Haute	Kidd
NOV 6, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Evansville	Kidd

## APPENDIX H

NOV 12, 2008	Presenter: "Ethical Issues, Ex Parte and Bypass Communications," Annual Real Estate Institute, Indiana Continuing Legal Education Forum	McKinney
NOV 14, 2008	Presenter: "Recent Developments in Conflicts of Interest, Trust Accounting and Attorney Fees," 14 <sup>th</sup> Annual CLE Program, Boone Circuit Court/Boone County Bar Association, Lebanon	Lundberg
NOV 21, 2008	Presenter: "Trust Accounts," Applied Professionalism, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
NOV 21, 2008	Co-Presenter: "Vignettes of Legal Ethics," Applied Professionalism Course, Indiana Continuing Legal Education Forum Indianapolis	Pruden
DEC 1, 2008	Presenter: "Ethical Issues for Government Attorneys," Legal & Ethics Conference, Office of Inspector General and State Ethics Commission, Indianapolis	Lundberg
DEC 2, 2008	Presenter: "Ethics in Family Law Matters," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
DEC 4, 2008	Co-Presenter: "Ethics Year In Review," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
DEC 5, 2008	Co-Presenter: "First Amendment Rights of Lawyers," American Civil Liberties Union of Indiana, Indianapolis	Lundberg
DEC 5, 2008	Presenter: "Unbundling Legal Services," Heartland Pro Bono Services, Franklin, Indiana	Iosue
DEC 9, 2008	Presenter: "Trust Account Management," Applied Professionalism Course, Lake County Bar Association, Merrillville	Pruden
DEC 10, 2008	Presenter: "Conflicts of Interest 101: A Flyover from 30,000 Feet", Marion County Bar Association, Indianapolis	Lundberg
DEC 12, 2008	Presenter: "Disciplinary Process," Marion County Public Defender Agency, Indianapolis, IN	Iosue
JAN 8, 2009	Presenter: "Ethics for Neutrals," Indiana University School of Law—Indianapolis	Kidd
JAN 20, 2009	Presenter, "Ethics in Trial Court Practice," Bar Leadership Series, Indianapolis Bar Association, Indianapolis, IN	Lundberg
FEB 3, 2009	Guest Lecturer: "The Lawyer Discipline System", Course in The Legal Profession, Maurer School of Law at Indiana University, Prof. Frohman, Bloomington	Lundberg
FEB 14, 2009	Panelist: "Strict Liability vs. Scienter: Filling the Mental State Gaps in the Model Rules," National Organization of Bar Counsel and Association of Professional Responsibility Lawyers, Boston, MA	Lundberg
FEB 20, 2009	Co-Presenter: "Ethics Update," Bingham McHale, Indianapolis	Kidd
MAR 6, 2009	Presenter: "Hey! Could We Have a Little Civility In Here?," Women's Bench-Bar Conference, Indiana State Bar Association, Culver	Lundberg

## APPENDIX H

APR 24, 2009	Panelist: "Current Topics in Legal Ethics," Bench-Bar Conference, Allen County Bar Association, Fort Wayne	Lundberg
MAY 27, 2009	Presenter: "Professional Responsibility Review," Allen County Bar Association, Fort Wayne	Kidd
MAY 29, 2009	Panelist: "Discretion in Discipline: How Much Room Do Bar Counsel Have and How Do They Use It?," 35th Annual Conference on Professional Responsibility, Center for Professional Responsibility, American Bar Association, Chicago, IL	Lundberg
JUN 5, 2009	Panelist: "Ethics of Fee Agreements and Billing," Solo and Small Firm Conference, Indiana State Bar Association, Bel Terra Resort	Lundberg
JUN 17, 2009	Presenter: "Lawyer Discipline In Mortgage Foreclosure Mediation," Indiana Supreme Court, Evansville, IN	Iosue
JUN 19, 2009	Panelist: "Attorney Professionalism and Civility—The Role of the Judiciary," Indianapolis Bar Association Bench-Bar Conference, French Lick	Rice

**APPENDIX H**

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION FUND**  
**Statement of Revenues and Expenses (Unaudited)**  
**Fiscal Year Ending June 30, 2009**

BEGINNING DISCIPLINARY FUND BALANCE		\$1,343,171
REVENUES:		
TOTAL REGISTRATION FEES COLLECTED		\$1,677,010
REVENUE FROM OTHER SOURCES:		
Court Costs	\$18,582	
Reinstatement Fees	2,000	
Investment Income	6,330	
Rule 7.3 Filing Fees	10,350	
Other	1,203	
TOTAL REVENUE FROM OTHER SOURCES		\$38,465
TOTAL REVENUE		\$1,715,474
EXPENSES:		
OPERATING EXPENSES:		
Personnel	\$1,613,710	
Investigations/Hearings	38,198	
Postage and Supplies	21,840	
Utilities and Rent	139,095	
Travel	40,636	
Equipment	27,834	
Other Expenses	34,076	
TOTAL OPERATING EXPENSES		\$1,915,389
TOTAL EXPENSES		\$1,915,389
NET INCREASE (DECREASE) IN FUND BALANCE		(\$199,915)
ENDING DISCIPLINARY FUND BALANCE		\$1,143,256