

**2010-2011
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.....	3
	A. The Grievance Process	3
	B. Preliminary Investigation	3
	C. Further Investigation	4
	D. Authorizing Charges of Misconduct	4
	E. Filing Formal Disciplinary Charges	4
	F. The Evidentiary Hearing	4
	G. Supreme Court Review	5
	H. Final Orders of Discipline	5
	I. Resolution by Agreement.....	6
	J. Temporary Suspension	7
	K. The License Reinstatement Process	8
	L. Lawyer Disability Proceedings	8
IV.	COMMISSION ACTIVITY IN 2010-2011.....	8
	A. Grievances and Investigations.....	9
	B. Non-Cooperation	9
	C. Trust Account Overdraft Reporting	12
	D. Litigation	12
	1. Overview	12
	2. Verified Complaints for Disciplinary Action.....	13
	3. Final Dispositions.....	13
V.	SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES	17
VI.	AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE	17
VII.	OTHER DISCIPLINARY COMMISSION ACTIVITIES	18
VIII.	FINANCIAL REPORT OF THE DISCIPLINARY COMMISSION	18
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 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, 2010 and ending June 30, 2011. 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 Program 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, 68.6% was distributed to the Disciplinary Commission, 14.37% to the Continuing Legal Education Commission and 17.03% to the Judges and Lawyers Assistance Committee.

The annual registration fee for inactive status lawyers this fiscal year was \$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 26, 2011, the Supreme Court issued an order suspending **144** lawyers on active and inactive status, effective June 20, 2011, 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>
Fred Austerman, Chair	Richmond	July 1, 2003	June 30, 2013
R. Anthony Prather, Vice-Chair	Indianapolis	July 1, 2014	June 30, 2014
Catherine A. Nestruck, Secretary	Evansville	July 1, 2009	June 30, 2014
Sally Franklin Zweig, Treasurer	Indianapolis	September 2, 2001	June 30, 2011
Corinne R. Finnerty	North Vernon	July 1, 2003	June 30, 2013
Maureen Grinsfelder	Fort Wayne	July 1, 2005	June 30, 2015
J. Mark Robinson	New Albany	April 11, 2001	June 30, 2011
William A. Walker	Gary	July 1, 2009	June 30, 2014
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 G. Michael Witte, appointed June 21, 2010.

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
 Angie Ordway, Staff Attorney
 Seth T. Pruden, Staff Attorney
 Fredrick L. Rice, Staff Attorney
 Robert C. Shook, Staff Attorney
 Robert D. Holland, Investigator
 Alicia Vitagliano, Office Manager
 Judy E. Whittaker, Secretary
 Sheryl Borszem, Secretary

In addition, the Disciplinary Commission employs part-time law students to assist in its work. Law clerks employed during this reporting period included John Higgins, Jenna Gerber and Kevin Willis.

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 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 2010-2011

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, **1,549** grievances were filed with the Disciplinary Commission. Of this number, the Disciplinary Commission initiated **100** grievances. The total number of grievances filed was about the same as 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 **17,742** Indiana lawyers in active, good-standing status and **4,581** lawyers in inactive, good-standing as of June 30, 2011. 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 **8.7** 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 1,549 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, **963** 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, 2011, 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, Contract, Tort, Bankruptcy, and Personal Misconduct*. 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, Personal Misconduct, and Excessive Fees*, with complaints about poor communications or non-diligence being close to one and a half times 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, 2011, or that had been dismissed during the reporting period:

	<u>DISMISSED</u>	<u>OPEN</u>
Grievances filed before July 1, 2010	315	307
Grievances filed on or after July 1, 2010	1,174	389
Total carried over from preceding year:		625
Total carried over to next year:		696

This represents an increase of **71** files 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 **31** petitions to suspend the law licenses of **7** 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.....31

Dismissed as moot after cooperation before show cause order1

Petition pending on June 30, 2010, without show cause order1

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

- Dismissed after show cause order due to compliance13
- Dismissed due to disbarment, resignation or suspension.....2
- Show cause orders pending on June 30, 20111

Suspensions for non-cooperation.....6

- Non-cooperation Suspensions still in effect on June 30, 20116
- Reinstated due to cooperation after suspension.....3

Non-Cooperation Suspensions Converted to Indefinite Suspensions5

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:

Carried Over from Prior Year41

Overdraft Reports Received.....116

Inquiries Closed116

Inquiries Carried Over Into Following Year.....41

Reason for Inquiries Closed:

- Bank Error.....20
- Deposit of Trust Funds to Wrong Trust Account2
- Disbursement from Trust Before Deposited Funds Collected.....12
- Referral for Disciplinary Investigation34
- Disbursement from Trust before Trust Funds Deposited9
- Overdraft Due to Bank Charges Assessed Against Account3
- Inadvertent Deposit of Trust Funds to Non-Trust Account3
- Overdraft Due to Refused Deposit for Bad Endorsement3
- Law Office Math or Record-Keeping Error.....14
- Death, Disbarment or Resignation of Lawyer0
- Inadvertent Disbursement of Operating Obligation From Trust.....11
- Non-Trust Account Inadvertently Misidentified as Trust Account4
- Fraudulent Office Staff Conduct.....1

D. Litigation

1. Overview

In 2010-2011, the Commission filed **63** Verified Complaints for Disciplinary Action with the Supreme Court, twenty-four 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 **102** separate counts of misconduct during the reporting year.

Including one dismissal, in 2010-2011 the Supreme Court issued **59** final dispositive orders, five more than in the preceding year, representing the completion of **72** separate discipline files, fifteen less than the preceding year. Including three private administrative admonitions, 63 unique lawyers received final discipline in the reporting year, compared to 49 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.....	63
Number Disposed Of By End of Year	52
Number Pending At End of Year.....	11

The Commission also filed **one** Notice 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 **2** cases.

b. Status of All Pending Verified Complaints

The following reports the status of all formal disciplinary proceedings pending as of June 30, 2011:

Cases Filed; Appointment of Hearing Officer Pending.....	5
Cases Pending Before Hearing Officers	44
Cases Pending On Review Before the Supreme Court.....	11
Total Verified Complaints Pending on June 30, 2010.....	72

Of cases decided during the reporting year, **7** were tried on the merits to hearing officers at final hearings, **32** cases were submitted to the Supreme Court for resolution by way of Affidavit for Resignation, Conditional Agreement for Discipline or Consent to Discipline, and **0** cases were 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:

Dismissals of Verified Complaint4

Findings for Respondent on Merits.....0

Private Administrative Admonitions3

Private Reprimands11

Public Reprimands.....12

Suspensions With Automatic Reinstatement.....9

Suspensions With Reinstatement on Conditions.....1

Suspensions Without Automatic Reinstatement10

Accepted Resignations9

Disbarments.....1

Reinstatement Proceedings

 Disposed of by Final Order

 Granted.....4

 Denied.....0

 Petition Withdrawn0

Findings of Contempt1

Emergency Interim Suspension Granted.....1

Emergency Interim Suspension Denied.....1

Temporary Suspensions (Guilty of Felony).....4

V. SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES

	2010-11	2009-10	2008-09	2007-08	2006-07
Matters Completed	1,549	1,542	1,456	1,541	1,463
Complaints Filed	63	40	62	47	34
Final Hearings	7	10	8	12	10
Final Orders	59	60	74	53	60
Reinstatement Petitions Filed	6	6	4	5	11
Reinstatement Hearings	4	2	5	6	6
Reinstatements Ordered	4	3	3	9	1
Reinstatements Deny/Dismiss	1	1	2	3	7
Income	\$2,043,831	\$1,813,703	\$1,715,474	\$1,765,488	\$1,984,450
Expenses	\$1,900,919	\$1,835,452	\$1,915,389	\$1,706,111	\$1,814,736

VI. AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE

A. Admission and Discipline Rules

Admission and Discipline Rule 3

On June 30, 2010, effective August 1, 2010, 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(2)(f)(2) increases a late fee for lawyers who are automatically excluded for failure to timely pay the annual renewal fee from one hundred and fifteen dollars (\$115) to one hundred and thirty dollars (\$130).

The amendment to Admis. Disc. R. 3(2)(a)(4)(i) now requires an attorney applying for temporary admission include an office telephone number and an electronic mail address in the verified petition, in addition to the previously required residential address, office address, and the name and address of the attorney's law firm or employer (if applicable).

Admission and Discipline Rule 23

On August 25, 2010, effective January 1, 2011, the Supreme Court amended Admis. Disc. R. 23, section 11(c), to clarify that when the parties reach a conditional agreement and the respondent executes an affidavit consenting to the discipline, statements of witness attesting to the character or reputation of the respondent shall not be "submitted" to the court in said affidavit. This is a change from the word "filed" since conditional agreements are always submitted to the Court, and not filed.

The Court amended Section 11.1 to be entitled “Interim and Summary Suspensions” from the previous section title of “Summary Suspensions.”

It amended Section 16 to increase the fee to two hundred and fifty dollars (\$250) that is payable to the clerk as reimbursement for the Clerk’s processing of a discipline case. The previous fee was one hundred dollars (\$100).

Finally, the Court amended Section 17.4 to have a title of “Immediate Suspension,” replacing the previous title of “Interim Suspension.” Appropriate changes to the body of Section 17.4 were made to reflect the change from “interim” to “immediate.”

B. Rules of Professional Conduct

On September 21, 2010, effective January 1, 2011, the Supreme Court amended Prof. Cond. R. 6.6 to establish fourteen *pro bono* districts that previously were referred to as “judicial districts” and cross-referenced with judicial districts described in Administrative Rule 3(A). Administrative Rule 3(A) increased the number of judicial districts from fourteen (14) to twenty-six (26), but the *pro bono* districts remained as they had been prior to the change for Administrative Rule 3(A). The changes to Prof. Cond. R. 6.6 reflect these changes in districting and reflect the changes in how to select a chair for each district’s committee.

On October 14, 2010, effective January 1, 2011, the Supreme Court amended Prof. Cond. R. 7.1, 7.2, 7.3, 7.4, and 7.5. These collectively are known as the advertising rules.

Rule 7.1, previously reserved, applies to “Communications Concerning A Lawyer’s Services.” It provides that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services, and broadly defines how a communication may fall into that category. The Commentary to Rule 7.1 applies this rule to all types of communications about the lawyer’s services, including advertising. The Commentary also states that the Rule prohibits a lawyer from making truthful but misleading or deceitful statements in order to protect the probable targets of a communication. The Commentary in Subsection 2 incorporates language from the prior version of Rule 7.2, describing how a truthful statement may be misleading or deceitful.

Rule 7.2 has been amended to address “Advertising”; previously, the Rule covered “Publicity and Advertising.” In part (a), the Rule grants lawyers and law firms authority to advertise professional services, but part (b) restricts lawyers from giving anything of value for recommending or advertising the lawyer’s services, except for four classes of payments. Those are: paying reasonable costs of the advertisement or communication, paying for a legal service plan or qualified lawyer referral service, paying for a law practice, or referring a client to another. Each of these arrangements must meet the requirements under all of the other professional conduct rules. Rule 7.2(c) imposes the requirement that any communications under the advertising rules must include the name and office address of at least one lawyer responsible for the advertising’s content, and the lawyer or firm must keep a copy of each advertisement or communication for a minimum of six years after dissemination. The Commentary to Rule 7.2 lists permissible subjects of a lawyer or law firm’s advertisement, but does not restrict nor prohibit communications authorized by law, such as notice to class members in class action litigation.

Rule 7.3, previously “Recommendation or Solicitation of Professional Employment” now addresses “Direct Contact with Prospective Clients.” The Rule clarifies whom a lawyer may solicit when the motive is primarily for the lawyer’s pecuniary gain, and includes exemptions and restrictions. The Rule now includes a thirty-day cooling period to restrict an attorney from contacting a person in regards to a personal injury or wrongful death action, and limits contact with individuals when the lawyer knows or reasonably should know that the individual is represented in the matter.

VII. OTHER DISCIPLINARY COMMISSION ACTIVITIES

Outreach to the bar and to the public is an important function of the Commission staff. In the past fiscal year staff of the Disciplinary Commission appeared more than 40 times as faculty at continuing education programs and as speakers at other events. These outreach opportunities occurred both in-state and out-of-state. Staff is encouraged to serve in these capacities.

VIII. FINANCIAL REPORT OF THE DISCIPLINARY COMMISSION

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

X. 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 second five-year term on the Disciplinary Commission, ending on June 30, 2013, and served as Chair of the Commission during the reporting year.

Corinne R. Finnerty, a Jennings County native, practices law in the partnership of McConnell Finnerty 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. She was originally appointed on July 1, 2003, and is currently serving her second five-year term on the Indiana Supreme Court Disciplinary Commission. Ms. Finnerty has previously served as Chair, Vice-Chair, and Secretary of the Disciplinary Commission.

Maureen I. Grinsfelder, a native of Whitley County, retired on January 31, 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 second five-year term on the Disciplinary Commission, which will expire on June 30, 2015.

Catherine A. Nestricks is a partner in the Evansville office of Bamberger, Foreman, Oswald & Hahn, LLP. She concentrates her practice on commercial and business litigation, with an emphasis on lender liability defense, contracts, business torts, foreclosures and UCC disputes. She serves as co-chair of her law firm's litigation section. Cathy is a registered Indiana civil mediator. She was appointed by the Indiana Supreme Court to serve as a member of the Indiana Pro Bono Commission. She is a former president of the Evansville Bar Association, the Legal Aid Society of Evansville, and the Vanderburgh County Law Library Foundation. She has served on the Board of the Volunteer Lawyer Program of Southwestern Indiana. She is a member of the Indiana State Bar Association's Litigation Section and the Defense Trial Counsel of Indiana Commercial Litigation Committee. Cathy graduated from Hanover College in 1990 and from Indiana University School of Law in 1993. She is admitted to practice law in both Indiana and

Kentucky. Ms. Nestruck is serving her first five-year term on the Disciplinary Commission, which will expire on June 30, 2014.

R. Anthony Prather is a partner in the Indianapolis, Indiana office of Barnes & Thornburg LLP. He has a full-service practice representing management interests exclusively in all aspects of labor and employment law and litigation including workplace investigations, audits, supervisory training, defense of discrimination and retaliation claims, preparation of and defense of affirmative action plans. Mr. Prather also negotiates and drafts executive employment, separation and non-compete agreements for clients. Mr. Prather defends management in federal and state courts, before the Equal Employment Opportunity Commission, the Indiana Civil Rights Commission, the Department of Labor, and the National Labor Relations Board. He provides legal advice and counsel to management regarding laws and regulations that impact employment relationships, such as Title VII of the Civil Rights Act, the Americans with Disabilities, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Occupational Safety and Health Act, state wage payment statutes, and other federal and state employment discrimination statutes. 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. Mr. Prather has significant trial experience representing employers in both individual and class action litigation. Most recently, he was lead counsel in *Scott v. Wabash National Corporation*, which involved an individual claim of violation of the Americans With Disabilities Act. In June of 2009, Mr. Prather was appointed by the Indiana Supreme Court to a second five-year term as a member of the Indiana Supreme Court Disciplinary Commission. He was elected as the Vice-Chair of the Indiana Supreme Court Disciplinary Commission in July, 2010. The Disciplinary Commission is an agency of the Indiana Supreme Court charged with investigating and prosecuting charges of attorney misconduct. 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 for Appeals for the 7th Circuit. Mr. Prather is a member of the Board of Visitors at Indiana University Maurer School of Law.

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 thirty-three 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 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 fourteen 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.

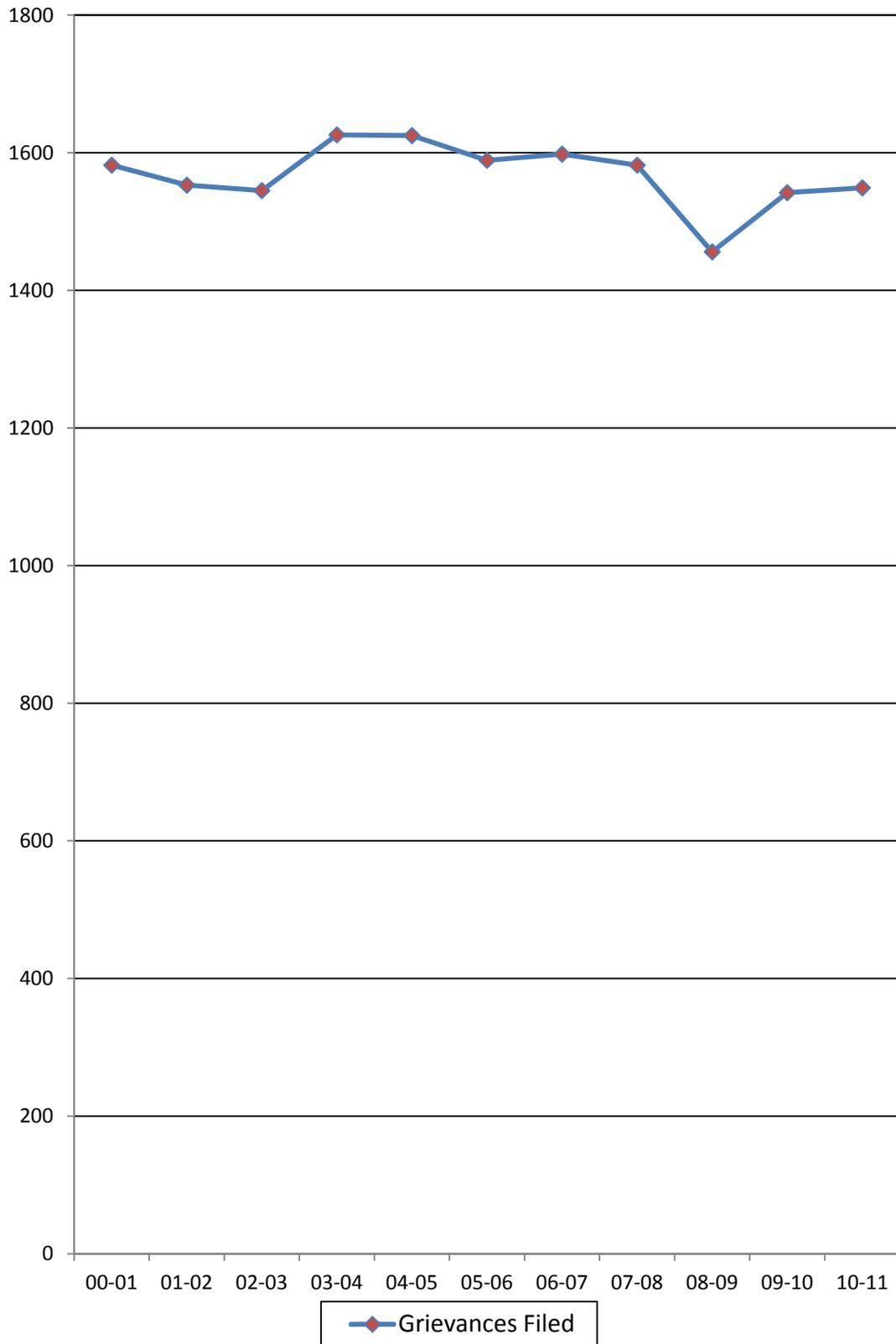
Tony Walker has been practicing law for 17 years. He is the Managing Attorney of The Walker Law Group, P.C., a firm of four attorneys, based in Gary, Indiana with an additional office in Michigan City, Indiana. Attorney Walker specializes in representing churches, schools, and government agencies. He is a graduate of the University of Massachusetts-Amherst where he received a degree in Social Thought and Political Economy. Attorney Walker continued his post-baccalaureate education studying political science at Clark Atlanta University and then law at DePaul University College of Law in Chicago. After completing law school, Attorney Walker clerked for Indiana Supreme Court Justice Robert D. Rucker, then of the Indiana Court of Appeals, and later entered private practice with the firm Meyer, Lyles & Godshalk in Northwest Indiana. Attorney Walker served as Legislative Counsel to the late Congresswoman Julia Carson in her Washington D.C. Office. He has previously been Chief of Staff of Radio One, Inc., a national broadcasting company targeting urban listeners, and Chief Operating Officer and Vice-President of Business and Legal Affairs for its gospel recording label, Music One. Attorney Walker presently serves as the Executive Producer of several radio programs airing on WLTH Radio in Merrillville, Indiana, and he hosts a weekly public affairs talk show. The Indiana Supreme Court appointed Attorney Walker as a Commissioner of the Supreme Court Attorney Disciplinary Commission in 2009, and in 2011 the Governor appointed him to represent the First Congressional District on the State Board of Education. Attorney Walker also serves on the boards of the Gary Public Library and is a past chairman of the Urban League of Northwest Indiana. He is also a former member of the Gary Police Foundation and Second Chance Foundation boards. He belongs to various professional organizations including the American Bar Association, National Bar Association, Chicago Bar Association, the District of Columbia Bar Association, Indiana State Bar Association and is a former board member of the Lake County (Indiana) Bar Association.

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 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.

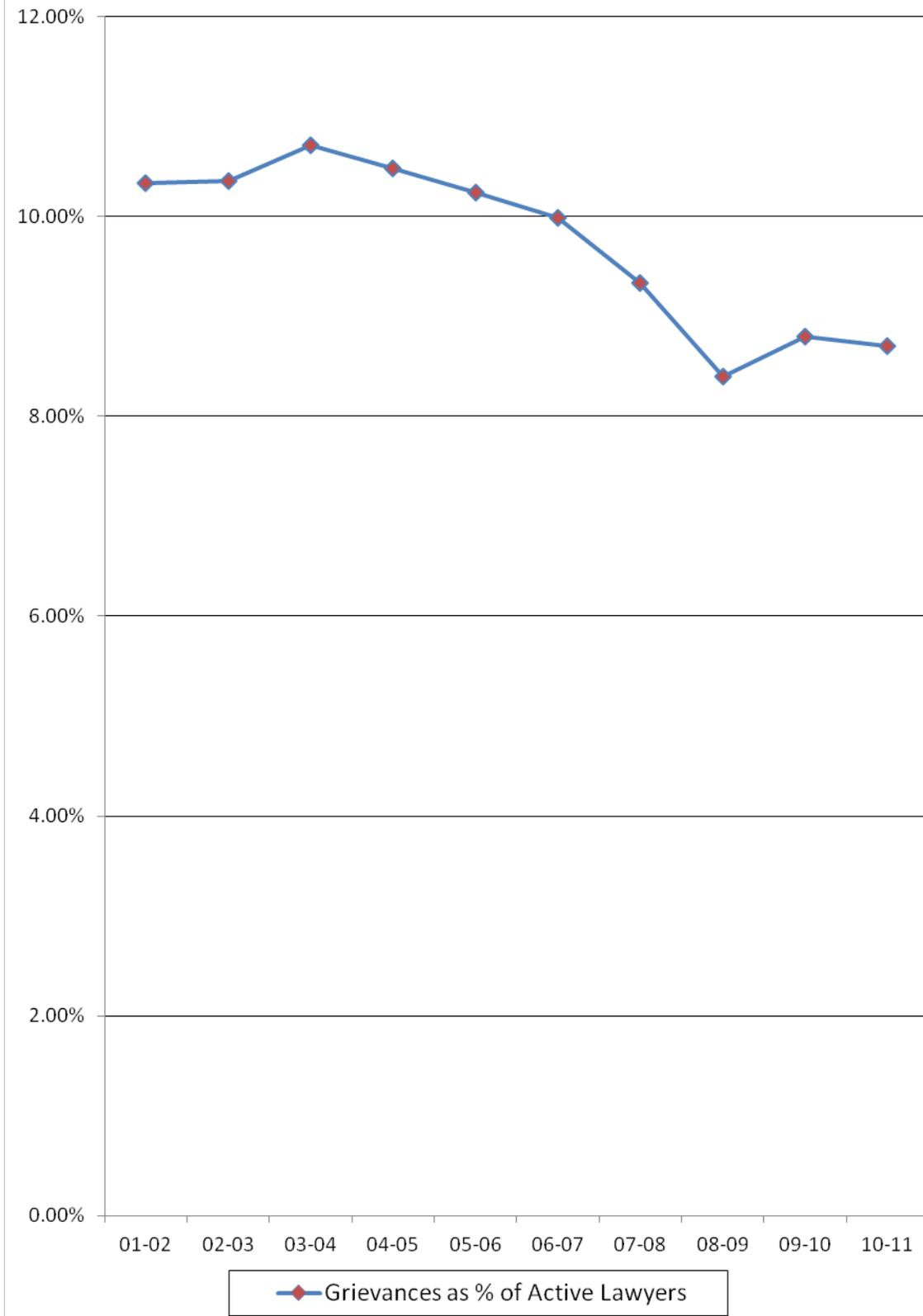
Sally Franklin Zweig is a partner of the law firm of Katz & Korin P.C. in Indianapolis. She obtained her undergraduate degree from Washington University in St. Louis in 1971 and received her law degree from Indiana University School of Law at Indianapolis in 1986 and was admitted to practice that same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

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 board of directors of the Festival Musical Society. 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. Ms. Zweig has served as Chair, Vice-Chair, Secretary, and Treasurer of the Commission.

NUMBER OF GRIEVANCES FILED 2001-2011



GRIEVANCES RATES 2001-2011

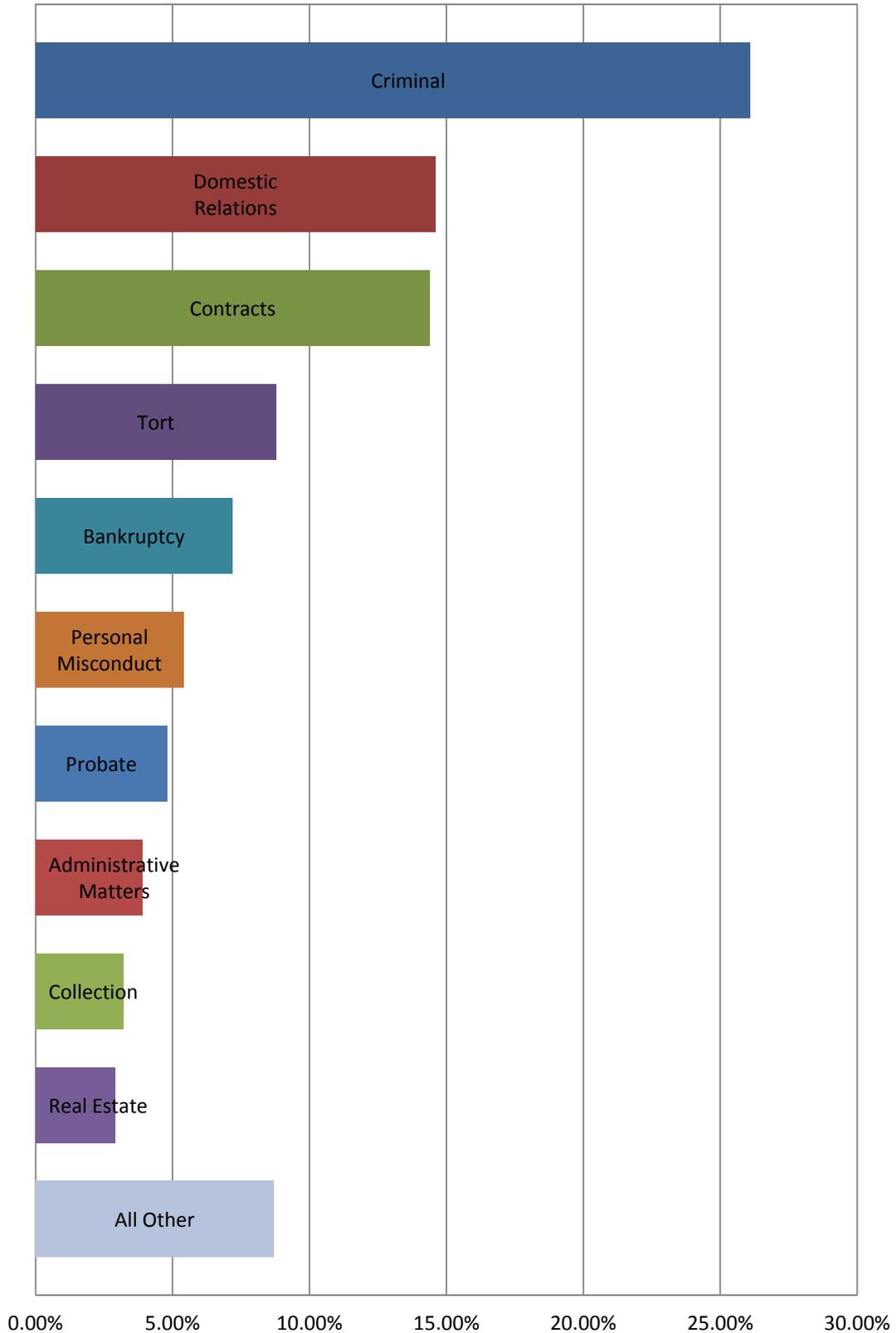


	Number	% of Total
Administrative Matters	55	3.9%
Adoption	10	0.7%
Bankruptcy	101	7.2%
Collection	44	3.2%
Condemnation	0	0.0%
Contracts	201	14.4%
Corporate	25	1.8%
Criminal	365	26.1%
Domestic Relations	204	14.6%
Guardianship	12	0.9%
Other Judicial Action	8	0.6%
Patent, Copyright	7	0.5%
Personal Misconduct	75	5.4%
Real Estate	41	2.9%
Tort	123	8.8%
Probate	67	4.8%
Unauthorized Practice of Law	3	0.2%
Worker's Compensation	8	0.6%
Zoning	1	0.1%
Other	46	3.3%
TOTAL	1396	100.0%

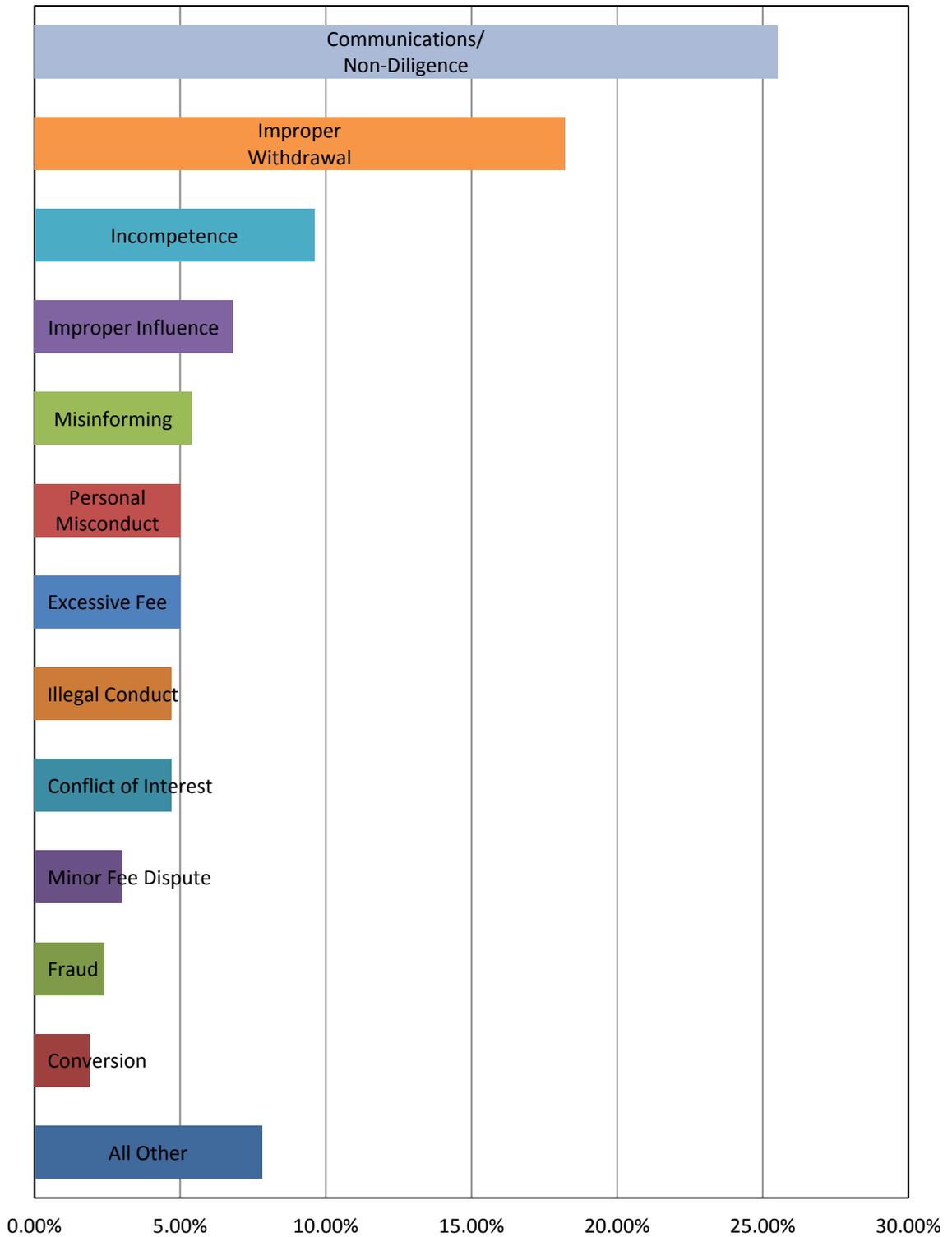
Alleged Misconduct	Number	% of Total
Action in Bad Faith	17	0.9%
Advertising	31	1.6%
Bypassing Other Attorney	23	1.2%
Communications/ Non-Diligence	493	25.5%
Conflict of Interest	92	4.7%
Conversion	38	1.9%
Disclosure of Confidences	16	0.8%
Excessive Fee	96	5.0%
Fraud	46	2.4%
Illegal Conduct	92	4.7%
Improper Influence	132	6.8%
Improper Withdrawal	352	18.2%
Incompetence	187	9.6%
Minor Disagreement	1	0.5%
Minor Fee Dispute	59	3.0%
Misinforming	104	5.4%
Overreaching	30	1.5%
Personal Misconduct	96	5.0%
Solicitation	25	1.3%
TOTAL	1930	100.0%

APPENDIX D

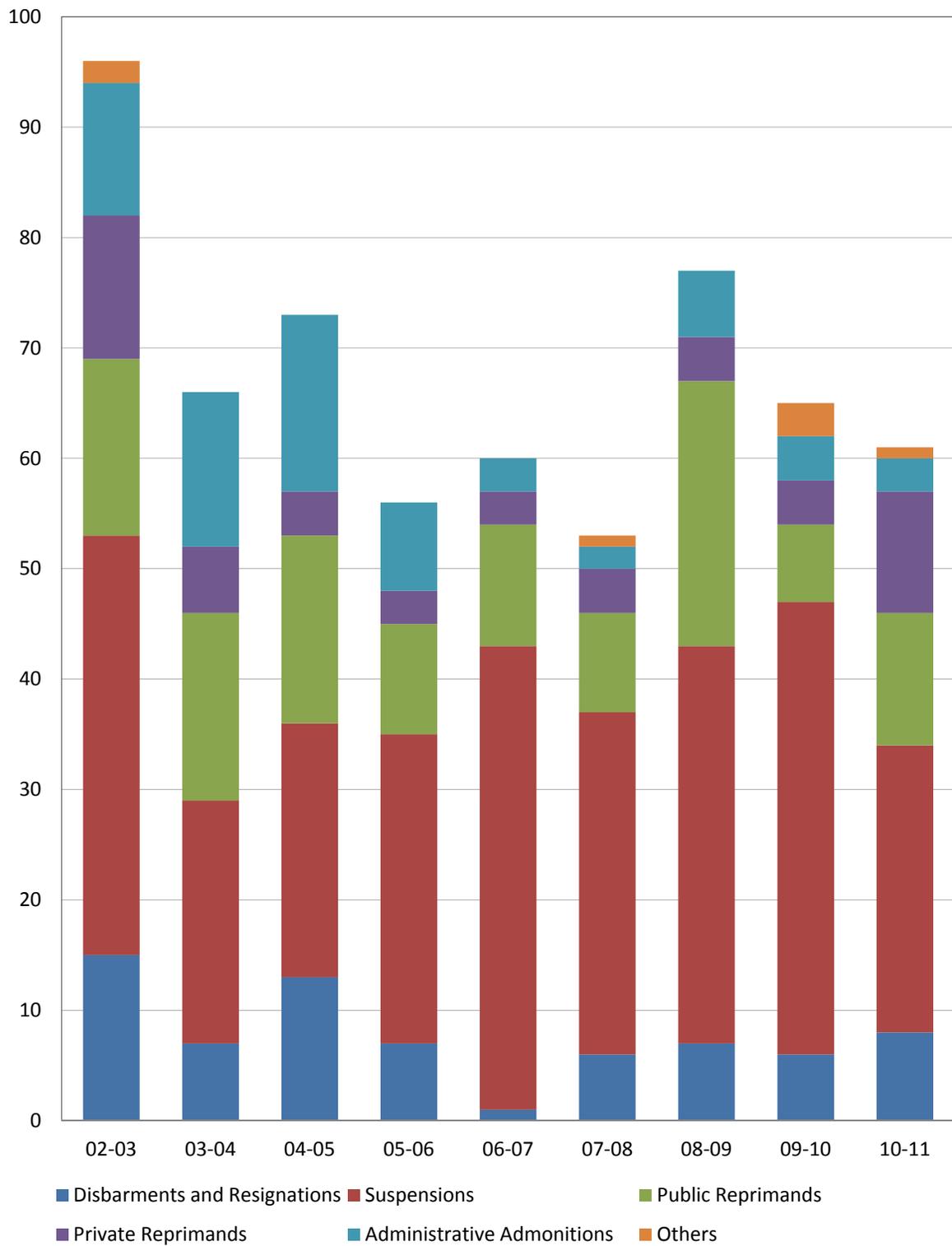
GRIEVANCES BY CASE TYPE 2010-2011



GRIEVANCES BY MISCONDUCT ALLEGED 2010-2011



DISCIPLINE BY SANCTION 2001-2011



INDIANA SUPREME COURT DISCIPLINARY COMMISSION FUND
Statement of Revenues and Expenses (Unaudited)
Fiscal Year Ending June 30, 2011

BEGINNING DISCIPLINARY FUND BALANCE		\$1,152,338
REVENUES:		
TOTAL REGISTRATION FEES COLLECTED		\$1,995,015
REVENUE FROM OTHER SOURCES:		
Court Costs	32,158	
Reinstatement Fees	3,000	
Investment Income	4,231	
Rule 7.3 Filing Fees	8,855	
Other	572	
TOTAL REVENUE FROM OTHER SOURCES		\$48,816
TOTAL REVENUE		\$2,043,831
EXPENSES:		
OPERATING EXPENSES:		
Personnel	1,551,690	
Travel	54,440	
Investigations/Hearings	26,112	
Dues and Library	21,225	
Postage and Supplies	25,610	
Utilities and Rent	138,131	
Maintenance	21,665	
Equipment	21,055	
Other Expenses	40,991	
TOTAL OPERATING EXPENSES		\$1,900,919
TOTAL EXPENSES		\$1,900,919