

**2011-2012  
ANNUAL REPORT  
OF THE  
DISCIPLINARY COMMISSION  
OF THE  
SUPREME COURT OF INDIANA**

**PUBLISHED BY THE**

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION  
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# INDIANA SUPREME COURT DISCIPLINARY COMMISSION

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	HISTORY AND STRUCTURE OF THE DISCIPLINARY COMMISSION .....	1
III.	THE DISCIPLINARY PROCESS.....	2
	A. The Grievance Process .....	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 .....	4
	H. Final Orders of Discipline .....	5
	I. Resolution by Agreement.....	6
	J. Temporary Suspension .....	7
	K. The License Reinstatement Process .....	7
	L. Lawyer Disability Proceedings .....	8
IV.	COMMISSION ACTIVITY IN 2011-2012.....	8
	A. Grievances and Investigations.....	9
	B. Non-Cooperation .....	9
	C. Trust Account Overdraft Reporting .....	10
	D. Litigation .....	11
	1. Overview .....	11
	2. Verified Complaints for Disciplinary Action.....	11
	3. Final Dispositions.....	12
V.	SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES .....	13
VI.	AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE .....	13
VII.	OTHER DISCIPLINARY COMMISSION ACTIVITIES .....	14
VIII.	FINANCIAL REPORT OF THE DISCIPLINARY COMMISSION .....	14
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, 2011 and ending June 30, 2012. 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 \$145.00. 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 \$130 annual registration fee, after the Clerk's expenses for collecting fees, 68.03% was distributed to the Disciplinary Commission, 18.23% to the Continuing Legal Education Commission and 13.74% to the Judges and Lawyers Assistance Committee.

The annual registration fee for inactive status lawyers this fiscal year was \$72.50. 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 \$145 registration fee for each year they are participating as counsel in an Indiana case.

On June 1, 2012, the Supreme Court issued an order suspending **216** lawyers on active and inactive status, effective June 22, 2012, 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>
R. Anthony Prather, Chair	Indianapolis	July 1, 2004	June 30, 2015
Maureen Grinsfelder, Vice-Chair	Fort Wayne	July 1, 2005	June 30, 2015
Catherine A. Nestruck, Secretary	Evansville	July 1, 2009	June 30, 2014
Andrielle M. Metzler, Treasurer	Indianapolis	July 1, 2011	June 30, 2016
Fred Austerman	Richmond	July 1, 2003	June 30, 2013
Nancy L. Cross	Carmel	July 1, 2011	June 30, 2016
Corinne R. Finnerty	North Vernon	July 1, 2003	June 30, 2013
Trent A. McCain	Merrillville	July 1, 2011	June 30, 2016
William A. Walker	Gary	July 1, 2009	June 30, 2014

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 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 the grievance does not raise a substantial question 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. Resignation is a discipline sanction. It is not the equivalent of retirement. It is not a graceful avoidance of discipline. 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 pending misconduct allegations may not seek reinstatement of his or her license until a period of at least five years has elapsed. Reinstatement after resignation is a very steep burden to overcome. It requires the attorney to prove to the Court worthiness of reinstatement despite the dark shadow of the misconduct previously admitted.

In a similar manner, a lawyer charged with misconduct may submit to the mercy of the Court by fully admitting the allegations and consenting 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 reserved for cases of the most 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. Generally, finding of guilt by a trial court in these instances does not occur until the sentencing hearing. 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. Additionally, the lawyer must 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. After hearing evidence, the hearing officer 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 2011-2012**

#### **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, **1,730** grievances were filed with the Disciplinary Commission. Of this number, the Disciplinary Commission initiated **73** grievances. The total number of grievances filed was an 11.6% increase over 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 **17,857** Indiana lawyers in active, good-standing status and **2,935** lawyers in inactive, good-standing as of June 30, 2012. In addition, **3,281** 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 **9.7** 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 1,730 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, **996** 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, 2012, 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, 2012, or that had been dismissed during the reporting period:

	<u>DISMISSED</u>	<u>OPEN</u>
Grievances filed before July 1, 2011	187	240
Grievances filed on or after July 1, 2011	809	494
Total carried over from preceding year:	696	
Total carried over to next year:	734	

This represents an increase of **38** 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 **37** petitions to suspend the law licenses of **24** 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.....37**

**Dismissed as moot after cooperation before show cause order .....0**

**Petition pending on June 30, 2012, without show cause order .....0**

**Show cause orders with no suspension.....20**

- Dismissed after show cause order due to compliance .....10
- Dismissed due to disbarment, resignation or suspension.....7
- Show cause orders pending on June 30, 2012 .....0

**Suspensions for non-cooperation.....17**

- Non-cooperation Suspensions still in effect on June 30, 2012 .....4
- Reinstated due to cooperation after suspension.....10

**Non-Cooperation Suspensions Converted to Indefinite Suspensions .....4**

**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 Year .....41

Overdraft Reports Received.....100

Inquiries Closed .....112

Inquiries Carried Over Into Following Year.....29

Reason for Inquiries Closed:

- Bank Error.....12
- Deposit of Trust Funds to Wrong Trust Account .....2
- Disbursement from Trust Before Deposited Funds Collected.....18
- Referral for Disciplinary Investigation .....22
- Disbursement from Trust before Trust Funds Deposited .....14
- Overdraft Due to Bank Charges Assessed Against Account .....7
- Inadvertent Deposit of Trust Funds to Non-Trust Account .....1
- Overdraft Due to Refused Deposit for Bad Endorsement .....4
- Law Office Math or Record-Keeping Error.....18
- Death, Disbarment or Resignation of Lawyer .....2
- Inadvertent Disbursement of Operating Obligation From Trust.....10

- Non-Trust Account Inadvertently Misidentified as Trust Account .....1
- Fraudulent Office Staff Conduct.....1

**D. Litigation**

**1. Overview**

In 2011-2012, the Commission filed **34** Verified Complaints for Disciplinary Action with the Supreme Court, twenty-nine less than in the previous year. These Verified Complaints, together with amendments to pending Verified Complaints, represented findings of reasonable cause by the Commission in **82** separate counts of misconduct during the reporting year.

Including five dismissals, in 2011-2012 the Supreme Court issued **61** final dispositive orders, two more than in the preceding year, representing the completion of **95** separate discipline files, twenty-three more than the preceding year. Including five private administrative admonitions, **67** individual lawyers received final discipline in the reporting year, compared to **63** 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.....	<b>34</b>
Number Disposed Of By End of Year .....	<b>28</b>
Number Pending At End of Year.....	<b>6</b>

The Commission filed **0** 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 **4** cases.

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

The following reports the status of all formal disciplinary proceedings pending as of June 30, 2012:

Cases Filed; Appointment of Hearing Officer Pending.....	<b>5</b>
Cases Pending Before Hearing Officers .....	<b>43</b>
Cases Pending On Review Before the Supreme Court.....	<b>11</b>
Total Verified Complaints Pending on June 30, 2012.....	<b>59</b>

Of cases decided during the reporting year, **13** were tried on the merits to hearing officers at final hearings, **41** 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 Complaint .....5**

**Findings for Respondent on Merits.....1**

**Private Administrative Admonitions .....5**

**Private Reprimands .....6**

**Public Reprimands.....14**

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

**Suspensions With Reinstatement on Conditions.....9**

**Suspensions Without Automatic Reinstatement .....7**

**Accepted Resignations .....8**

**Disbarments.....2**

**Reinstatement Proceedings**

    Disposed of by Final Order

        Granted.....2

        Denied .....3

        Petition Withdrawn .....3

**Findings of Contempt .....5**

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

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

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

## V. SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES

	2011-12	2010-11	2009-10	2008-09	2007-08
Matters Completed	1,730	1,549	1,542	1,456	1,541
Complaints Filed	34	63	40	62	47
Final Hearings	13	7	10	8	12
Final Orders	61	59	60	74	53
Reinstatement Petitions Filed	9	6	6	4	5
Reinstatement Hearings	5	4	2	5	6
Reinstatements Ordered	2	4	3	3	9
Reinstatements Deny/Dismiss	6	1	1	2	3
Income	\$2,272,827	\$2,043,831	\$1,813,703	\$1,715,474	\$1,765,488
Expenses	\$2,168,690	\$1,886,243	\$1,835,452	\$1,915,389	\$1,706,111

## VI. AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE

### A. Admission and Discipline Rules

#### Admission and Discipline Rule 2

On July 28, 2011, effective August 1, 2011, the Supreme Court amended Admis. Disc. R. 2(b) to increase the annual fee for active attorneys from one hundred thirty dollars (\$130) to one hundred forty-five dollars (\$145). The delinquent fee increased from eighty dollars (\$80) to ninety-five dollars (\$95) when paid after October 1 and on or before October 15. The delinquent fee increased from one hundred thirty dollars (\$130) to one hundred forty-five dollars (\$145) if it is paid after October 15 and on or before December 31. The delinquent fee increased from two hundred and eighty dollars (\$280) to two hundred ninety-five dollars (\$295) when paid after December 31 of each year. The timely registration fee for new attorneys increased from one hundred thirty dollars (\$130) to one hundred forty-five dollars (\$145).

The amendment to Admis. Disc. R. 2(j) increased the education fee for non-attorney judges from thirty dollars (\$30) to forty-five dollars (\$45). The delinquent fee paid for payments made after October 1 increased from thirty dollars (\$30) to forty-five dollars (\$45).

On September 20, 2011, effective January 1, 2012, Admis. Disc. R. 2(c) was amended to clarify the annual registration fee for inactive attorneys applies to both attorney currently active in good standing or attorneys wishing to remain in inactive standing.

#### Admission and Discipline Rule 3

On July 28, 2011, effective August 1, 2011, the Supreme Court amended Admis. Disc. R. 3(2)(f)(2) to increase the delinquency fee for attorneys practicing under a temporary

admission from one hundred thirty dollars (\$130) to one hundred forty-five dollars (\$145).

On September 20, 2011, effective January 1, 2012, Admis. Disc. R. 3(2) was amended to clarify that any court of the State may grant temporary admission at its discretion for any case or proceeding before it. Temporary admission for administrative proceedings must be approved by the Supreme Court.

### **Admission and Discipline Rule 23**

On September 20, 2011, effective January 1, 2012, the Supreme Court amended Admis. Disc. R. 23(3) to include additional judges who should receive notice of any suspension, reinstatement, revocation of probation, release from probation, or public reprimand of an attorney who practices in the judges' county, or in a contiguous county.

On September 20, 2011, effective immediately, the Supreme Court amended Admis. Disc. R. 23(27) to update and clarify how an attorney is to designate an attorney surrogate.

### **Rules Governing Attorney Trust Account Overdraft Reporting**

On September 20, 2011, effective January 1, 2012, the Supreme Court amended its rules regarding Attorney Trust Account Overdraft Reporting to modify where the public listing of all approved financial institutions would be found. Instead of being published annually in *Res Gestae*, the list is now to be maintained on the Disciplinary Commission's website.

## **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 45 times as faculty at continuing education programs and as speakers at other events. These outreach opportunities occurred both in-state and out-of-state, including one national audience program. Staff is encouraged to serve in these capacities.

Staff has expanded its outreach to in-state law schools with presentations in courses teaching professional responsibility and law practice management. Additionally, Disciplinary Commission staff have joined with the staff of the Commission on Continuing Legal Education, the Board of Law Examiners, and the Judges and Lawyers Assistance Program to develop and present a program titled "A Life in the Law". The program instructs the audience on the functions of these bar regulatory agencies and also advises on the benefits that the bar and the public receive from these agencies. To date, the program has been presented six times and will continue to be a staple in this agency's continuing education inventory.

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

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

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

**Nancy L. Cross** is a senior partner of the firm, a Certified Family Law Specialist-Family Law Certification Board, a Registered Family Law Mediator, and has been a fellow of the American Academy of Matrimonial Lawyers since 1993. In 2011 she was appointed by the Supreme Court as a Commissioner on the State of Indiana Disciplinary Commission, is currently serving on the Legislative Committee of the Indiana State Bar Association, has served on the Board of Governors, and is a former Chairperson of the Family Law Section of the Indianapolis Bar Association. Ms. Cross has written numerous articles and lectured at family law seminars throughout her career. Ms. Cross is listed in *The Best Lawyers in America* (Woodward/White) and has been featured in *Indianapolis Monthly* magazine as one of the top ten divorce attorneys in Indianapolis. Beginning in 2005 and continuing to date, she has been recognized by *Indianapolis Monthly* as one of the 25 foremost female attorneys in Indiana and has consistently been named one of the state's Super Lawyers by *Indianapolis Monthly* since 2004. Ms. Cross has restricted her practice to family law, including divorce litigation, mediation and appellate work for more than 30 years. She is a 1979 graduate of the University of Nebraska College of Law and resides with her two sons in Zionsville, Indiana. Ms. Cross began her first five-year term on the Disciplinary Commission on July 1, 2011.

**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.

**Trent A. McCain** is a native of Gary, Indiana. In 1995, he graduated *cum laude* from Florida A&M University in Tallahassee where he earned a Bachelor of Science degree in Business Administration. While in college, like most of America, McCain was captivated by the O.J. Simpson Trial and the unparalleled advocacy of the late Johnnie L. Cochran, Jr. Little did he know then that their paths would cross years later. After college, McCain went to work for Eastman Kodak Company as an Account Executive. In 1998, he returned to Northwest Indiana to work for the local utility company as an Industrial and Commercial Sales Representative. In 1999, McCain started law school at Valparaiso University School of Law. During his time at "Valpo," McCain was awarded the Charles R. Gromley Memorial Scholarship for service to the university for two consecutive years. In his second year, he was elected President of the Black Law Students Association and in his last year, he served on the Executive Board of the Midwest BLSA. In March 2000, Johnnie L. Cochran, Jr. announced his partnership with legal powerhouse, James D. Montgomery of Chicago. This announcement captured McCain's attention and he began his quest to work for the man he so admired five years earlier. After one solid year of persistent telephone calls and letter writing, Cochran's Chicago partner hired McCain as a law clerk in the Summer 2001. After a stellar summer, The Cochran Firm offered McCain a permanent position when he graduated the following year. Six months after the passing of his legal mentor, McCain left the Cochran Firm to establish his own practice. Now, McCain practices in both Northwest Indiana and Chicago and is the principal of McCain Law Offices. McCain's firm concentrates on permanent and catastrophic personal injury, wrongful death, medical negligence, police misconduct, and civil rights cases. On January 1, 2012, McCain co-founded McCain & White, P.C. with attorney, Kelly White Gibson. McCain is also a founding member of the National Law Group, LLC and serves as the organization's secretary. In May 2011, McCain was admitted to practice before the Supreme Court of the United States. In the same month, the Indiana Supreme Court appointed McCain to a five-year term as Commissioner on its attorney Disciplinary Commission. The Commission consists of seven (7) attorneys statewide and two (2) lay people. McCain is a Past President (2009-10) of the James C. Kimbrough Bar Association. McCain is also a member of the Indiana State, Illinois State, and Chicago Bar Associations; the Illinois and Indiana Trial Lawyers Associations; and the Chicago Inn of Court. McCain is married to Akilia McCain, an opera singer and speech language pathologist. They reside in the Miller Beach section of Gary, Indiana with their infant daughter, Nina Lauren. Mr. McCain began his first five-year term on the Disciplinary Commission on July 1, 2011.

**Andrielle M. Metzel** is a partner at Benesch Law in the firm's Litigation; Real Estate & Environmental; Transportation & Logistics; and China Practice Groups. She represents corporate and individual clients in state and federal courts and before local and state administrative bodies and agencies. Ms. Metzel has extensive experience negotiating resolutions in complex business, personal and transactional disputes. She handles employment, dispute resolution and supply chain litigation matters for her clients. Ms. Metzel is actively involved in land use, development and strategic consulting for businesses seeking to invest and grow in Indiana. Ms. Metzel is a frequent public speaker and participant in numerous seminars concerning labor and employment law issues. Ms. Metzel also provides customized, in-house training on a variety of employment law subjects. Ms. Metzel is a 1996 graduate of Robert H. McKinney School of Law. She is admitted to practice law in Indiana, the U.S. District Court for the Northern District of Indiana, U.S. District Court for the Southern District of Indiana, and U.S. Court of Appeals for the Seventh

Circuit. She is a member of the Indiana State Bar Association, American Bar Association, and Indianapolis Bar Association. Ms. Metzel has served on the Board of Directors, Indianapolis Bar Association; Legal Ethics Committee, Indiana State Bar Association; the Development Chair, Indianapolis Bar Foundation; Board of Governors, District 11 Representative, Indiana State Bar Association; Board of Directors, D.A.R.E. Indiana Board of Governors; Secretary, Indiana State Bar Association; Chair-Women in the Law Division, Indiana State Bar Association; Executive Committee - Land Use Section, Indianapolis Bar Association; Advisory Panel Member, American Bar Association; Member, IndyCREW Network of Commercial Real Estate Women; Alcohol Beverage Subcommittee Member, Indiana State Bar Association; Land Use & Zoning Section Member, Indiana State Bar Association; Employment & Labor Section Member, Indiana State Bar Association; Litigation Section member, Indiana State Bar Association; Corporate Counsel Section Member, Indiana State Bar Association; Employment & Labor Relations Committee Member, American Bar Association; Women Advocate Committee Member, American Bar Association; and International Council of Shopping Centers. Ms. Metzel is currently serving her first five-year term on the Disciplinary Commission as Treasurer since July 1, 2011.

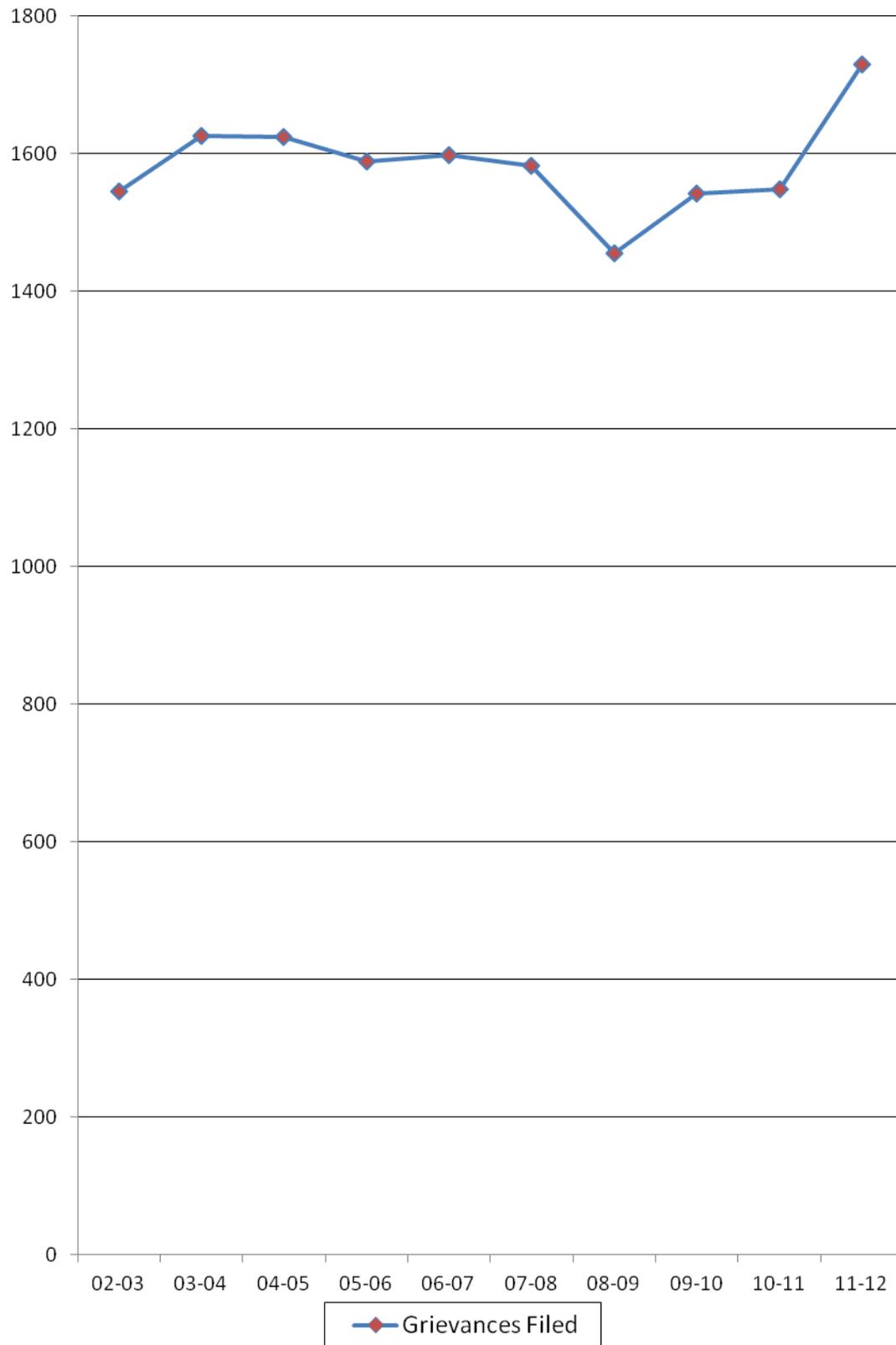
**Catherine A. Nestricks** is a partner in the Evansville office of Bamberger, Foreman, Oswald & Hahn, LLP. She concentrates her practice on commercial and business litigation, with an emphasis on lender liability defense, contracts, business torts, foreclosures and UCC disputes. She serves as co-chair 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. Nestricks 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

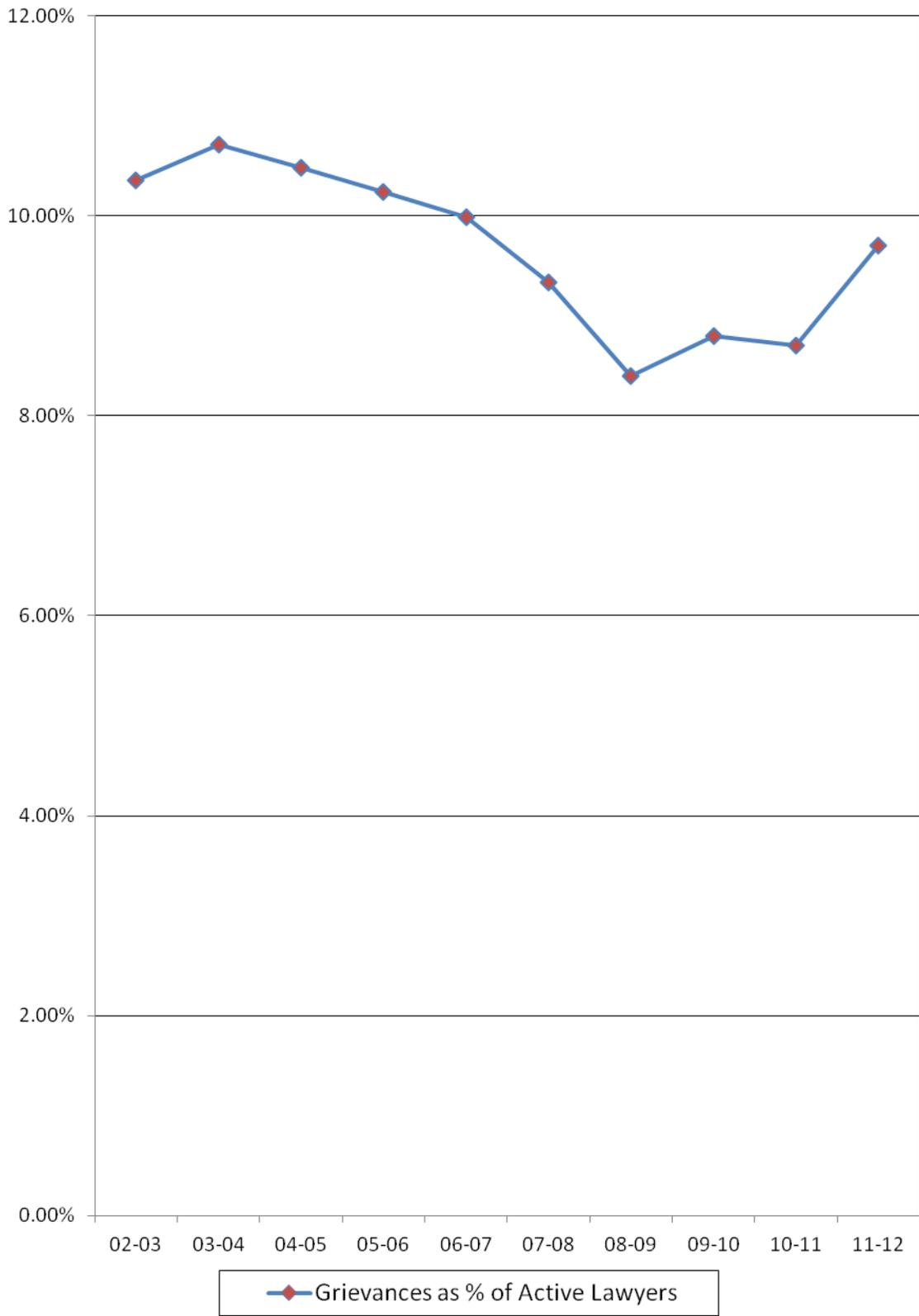
an agency of the Indiana Supreme Court charged with investigating and prosecuting charges of attorney misconduct. Mr. Prather received his B.A. from Indiana University in 1980 and his J.D. from Indiana University School of Law – Bloomington in 1983. He is admitted to practice before the U.S. District 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.

**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.

## NUMBER OF GRIEVANCES FILED 2002-2012



## GRIEVANCES RATES 2002-2012



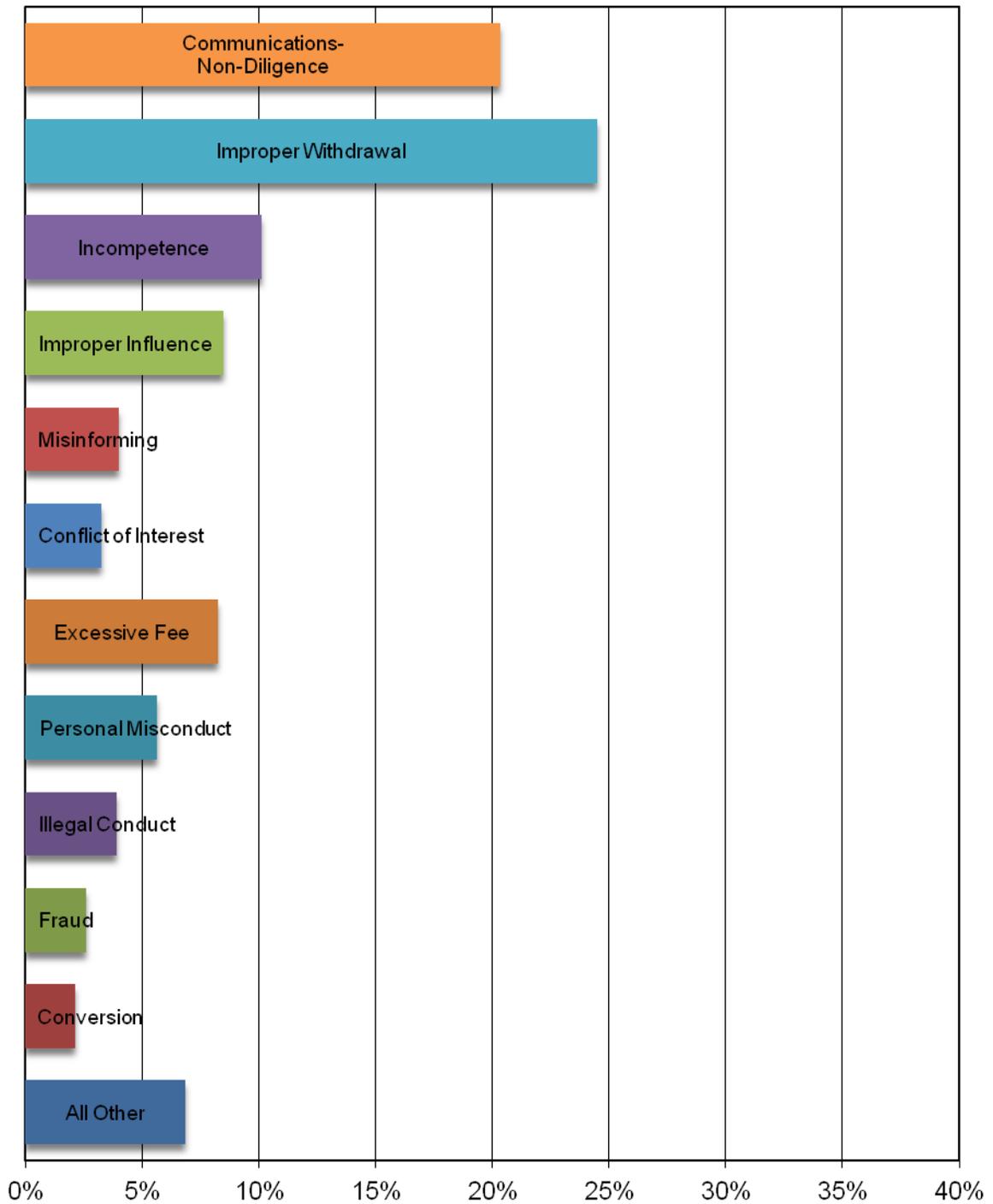
## GRIEVANCES BY CASE TYPE AND MISCONDUCT ALLEGED 2011-2012

	<b>Number</b>	<b>% of Total</b>
Administrative Matters	69	6.80%
Adoption	5	0.49%
Bankruptcy	84	8.28%
Collection	34	3.35%
Condemnation	0	0.00%
Contracts	65	6.40%
Corporate	6	0.59%
Criminal	306	30.15%
Domestic Relations	67	6.60%
Guardianship	31	3.05%
Other Judicial Action	7	0.69%
Patent, Copyright	2	0.20%
Personal Misconduct	61	6.01%
Real Estate	39	3.84%
Tort	66	6.50%
Probate	37	3.65%
Unauthorized Practice of Law	3	0.30%
Worker's Compensation	6	0.59%
Zoning	1	0.10%
Other	126	12.41%
<b>TOTAL</b>	<b>1015</b>	<b>100%</b>
<b>Alleged Misconduct</b>	<b>Number</b>	<b>% of Total</b>
Action in Bad Faith	12	0.86%
Advertising	35	2.52%
Bypassing Other Attorney	17	1.22%
Communications/ Non-Diligence	276	19.87%
Conflict of Interest	44	3.17%
Conversion	29	2.09%
Disclosure of Confidences	14	1.01%
Excessive Fee	112	8.06%
Fraud	35	2.52%
Illegal Conduct	53	3.82%
Improper Influence	115	8.28%
Improper Withdrawal	332	23.90%
Incompetence	137	9.86%
Minor Disagreement	1	0.07%
Minor Fee Dispute	18	1.30%
Misinforming	54	3.89%
Overreaching	18	1.30%
Personal Misconduct	76	5.47%
Solicitation	11	0.79%
<b>TOTAL</b>	<b>1389</b>	<b>100%</b>

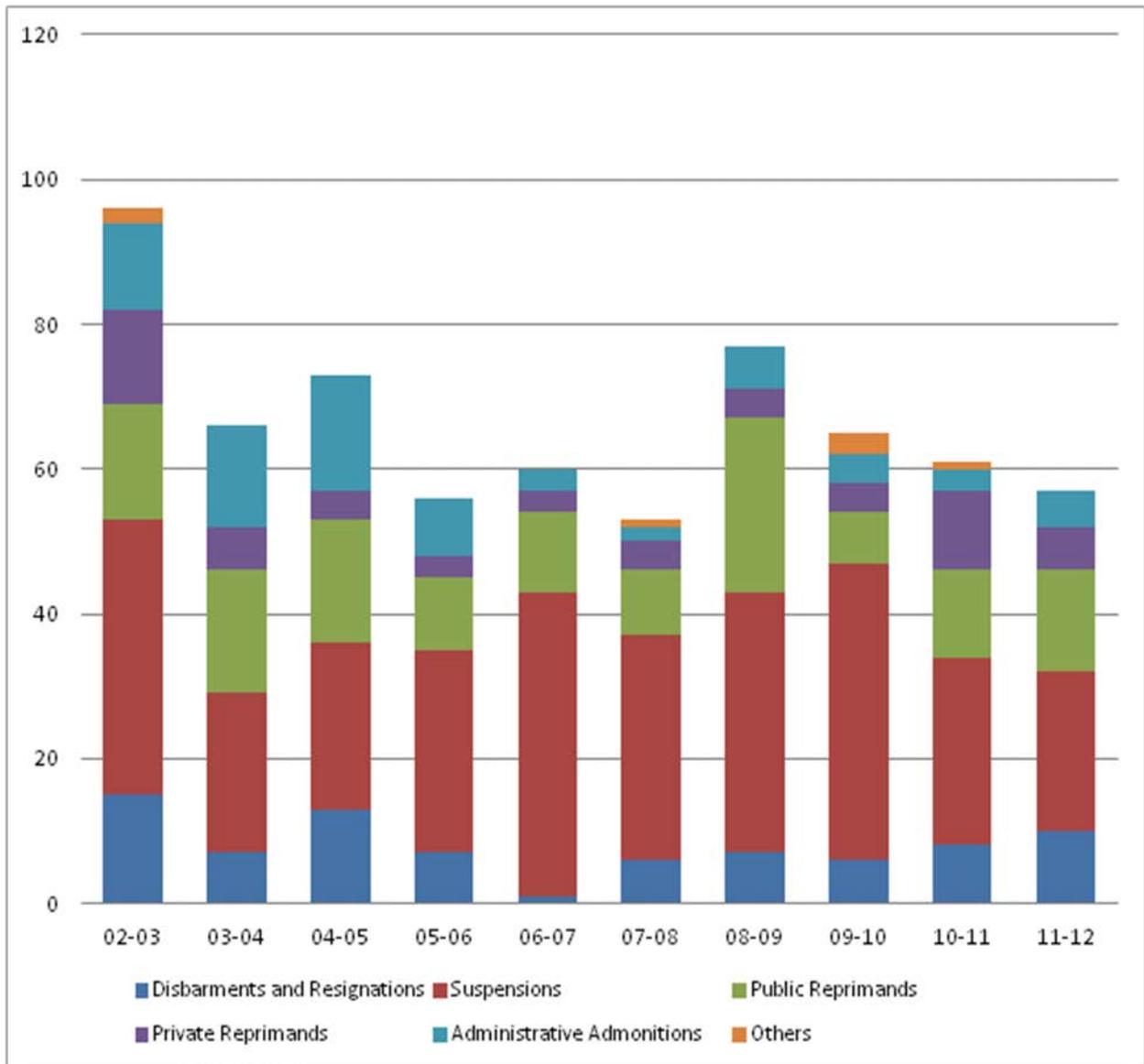
## GRIEVANCES BY CASE TYPE 2011-2012



## GRIEVANCES BY MISCONDUCT ALLEGED 2011-2012



## DISCIPLINE BY SANCTION 2002-2012



**INDIANA SUPREME COURT DISCIPLINARY COMMISSION FUND**  
**Statement of Revenues and Expenses (Unaudited)**  
**Fiscal Year Ending June 30, 2012**

BEGINNING DISCIPLINARY FUND BALANCE		\$1,295,250
REVENUES:		
TOTAL REGISTRATION FEES COLLECTED		\$2,232,915
REVENUE FROM OTHER SOURCES:		
Court Costs	21,089	
Reinstatement Fees	5,011	
Investment Income	2,752	
Rule 7.3 Filing Fees	10,400	
Other	660	
TOTAL REVENUE FROM OTHER SOURCES		\$39,912
TOTAL REVENUE		\$2,272,827
EXPENSES:		
OPERATING EXPENSES:		
Personnel	1,674,889	
Travel	56,527	
Investigations/Hearings	63,638	
Dues and Library	17,257	
Postage and Supplies	22,588	
Utilities and Rent	139,439	
Maintenance	29,804	
Equipment	4,177	
Other Expenses	14,391	
TOTAL OPERATING EXPENSES		\$2,168,690
TOTAL EXPENSES		\$2,168,690