

**2016-2017  
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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## I. INTRODUCTION

This is the annual report of the activities of the Disciplinary Commission of the Indiana Supreme Court for the period beginning July 1, 2016 and ending June 30, 2017. The Disciplinary Commission is the agency of the Indiana Supreme Court 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 § 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 their license in good standing. The annual registration fee in this reporting year for lawyers in active status is \$180.00. 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, **57.05%** of the annual fees designated for distribution went to the Disciplinary Commission. **22.73%** went to the Continuing Legal Education Commission and the remaining **20.22%** went to the Judges and Lawyers Assistance Program. This is the last budget year in which the apportionment ratio will be applied to determine the percentage shares for these three agencies. Beginning with the 2017-18 fiscal year, the budgets of these three agencies will not be dependent on each other.

The annual registration fee for inactive status lawyers in this reporting year was \$90.00. The annual registration fee is due on or before October 1st of each year. Failure to pay either 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 (*pro hac vice* admission) were required to pay a \$180.00 registration fee for each year they are participating as counsel in an Indiana case.

On **June 7, 2017**, the Supreme Court issued an order suspending **168** lawyers on active and inactive status, effective **June 30, 2017**, 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>
Nancy L. Cross	Carmel	July 1, 2011	June 30, 2021
Andrielle M. Metzel, Chair	Indianapolis	July 1, 2011	June 30, 2021
Trent A. McCain, Vice Chair	Merrillville	July 1, 2011	June 30, 2021
Leanna K. Weissmann, Secretary	Aurora	July 1, 2013	June 30, 2018
Kirk White, Treasurer	Bloomington	July 1, 2013	June 30, 2018
Brian K. Carroll	Evansville	July 1, 2014	June 30, 2019
John L. Krauss	Indianapolis	July 1, 2014	June 30, 2019
William A. Walker	Gary	July 1, 2009	June 30, 2019
Molly Kitchell	Zionsville	July 1, 2015	June 30, 2020

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 Director, who is appointed by the Commission with the approval of the Supreme Court. The Executive Director of the Commission is G. Michael Witte, appointed June 21, 2010.

The Disciplinary Commission's offices are located at 251 North Illinois Street, Suite 1650, 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 meritorious cases seeking attorney discipline. Action by the Disciplinary Commission is not a mechanism for the resolution of private disputes between clients and attorneys. Disciplinary action 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 an affirmed written statement on a Request for Investigation (RFI) form. Any individual having knowledge about facts

relating to a complaint may submit a grievance. An RFI form is readily available from the Commission's office, from bar associations throughout the state, and on the Internet at <http://www.in.gov/judiciary/discipline/2373.htm>.

The Disciplinary Commission may also initiate a grievance concerning 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 Director to prepare a grievance in the name of the Commission. This is known as a Commission Grievance.

## **B. Preliminary Inquiry**

The Commission staff screens 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 Director with the approval of the Commission. 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 thirty (30) days of receipt. Additional time for response is allotted in appropriate circumstances, but strictly limited. Other investigation as appropriate is conducted to develop the facts related to a grievance.

The Executive Director may call upon the assistance of bar associations in the state to aid in the preliminary investigation of grievances. Larger bar associations maintain volunteer Grievance Committees to assist the Disciplinary Commission with preliminary investigations. These bar associations include 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. 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 inquiry.

Upon completion of the initial inquiry and consideration of the grievance and the lawyer's response, the Executive Director may

- Dismiss the grievance, with approval by the Commission, upon a determination that a substantial question of misconduct has not been raised;
- Determine that a substantial question of misconduct has been raised and issue a caution letter with instructions for corrective action; or
- Determine that a substantial question of misconduct has been raised, open the matter for an inquiry, and demand a written response to the allegations from the lawyer.

The grievant and the lawyer are notified in writing of each of the above actions.

Lawyers must cooperate with the Commission's inquiry 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 the lawyer cooperates. If after being suspended for non-

cooperation, the lawyer does not cooperate for a period of 90 days, 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**

A grievance that the Executive Director determines has reasonable cause to believe that a lawyer is guilty of misconduct is 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 composed in a written summary, and the matter is placed on the monthly agenda of the Disciplinary Commission for consideration.

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

After a grievance has been investigated, it moves to the agenda of the full Disciplinary Commission. The Executive Director makes a report to the Commission, together with recommendation about the disposition of the matter. The Commission makes a final 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 Director to prepare and file with the Clerk of the Supreme Court a Disciplinary Complaint charging the lawyer with misconduct.

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

The Executive Director files the Disciplinary Complaint with the Clerk of the Supreme Court setting forth the facts related to the alleged misconduct. The Disciplinary Complaint also identifies the provisions of the Rules of Professional Conduct that the lawyer is alleged to have violated. The respondent must file an answer to the Disciplinary Complaint. Failure to answer the allegations will be taken as true.

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

Upon the filing of a Disciplinary Complaint, the Supreme Court appoints a hearing officer who will preside over the case. The hearing officer must be an attorney admitted to practice law in the State of Indiana and is frequently a sitting or retired judge. The hearing officer's responsibilities include supervising the pre-hearing development of the case including discovery, conducting an evidentiary hearing, and submitting a written report to the Supreme Court with findings of fact, conclusions of law and recommendations. The hearing officer is not a final arbiter of the facts and the law. That determination rests with the Supreme Court. A hearing may be held at any location selected by the hearing officer.

## G. Supreme Court Review

After the hearing officer has issued a report to the Supreme Court, the parties may petition the Court for a review of any or all of the hearing officer's findings, conclusions and recommendations. The Court independently reviews every case, even in the absence of a petition for review by either party. The Court then 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, 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 (PAA).** A PAA is a disciplinary sanction that is an administrative resolution of a case involving minor misconduct. A PAA is issued as a sanction only when the Disciplinary Commission and the respondent lawyer agree to the PAA. Unlike other disciplinary sanctions, the Supreme Court does not directly issue the admonition. Instead, the Executive Director admonishes the lawyer. However, the Court receives advance notice of the parties' intent to resolve a case by way of a PAA and may reject 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 PAA, 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. Sometimes where a private reprimand is assessed, the Court may issue a *per curiam* opinion for publication bearing the caption *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 impose 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, but not always, automatic upon the completion of the term of suspension. If a short-term suspension is ordered without automatic reinstatement, then the lawyer may 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, the Disciplinary Commission may enter objections to the automatic reinstatement of the lawyer's license to practice law.

- **Long Term Suspension.** The Court may impose a longer term of suspension, which is a suspension 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 or 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. 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 license reinstatement upon conclusion of suspension.

Occasionally, 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 Disciplinary Complaint, 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 may accept or reject the agreement.

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 must wait five years before

seeking license reinstatement. 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.

A lawyer charged with misconduct may also 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 lawyer's Disciplinary Complaint is pending, 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. A hearing officer is responsible for taking evidence on a petition for temporary suspension and making a recommendation to the Supreme Court. The Court may grant or deny the petition for temporary suspension.

A separate temporary suspension procedure applies whenever an Indiana licensed lawyer is found guilty of a crime punishable as a felony. The Executive Director must report the finding of guilt to the Supreme Court and request an immediate temporary suspension from the practice of law. Generally, a 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 may submit to the Court reasons why the temporary suspension should be vacated. A temporary suspension granted under these circumstances is effective until 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 for *any crime, misdemeanor or felony*, to the Executive Director of the Commission within ten days of the finding of guilt.

Finally, the Executive Director is required to report to the Supreme Court any time the Commission receives notice that a lawyer has been found to be *intentionally* delinquent in the payment of child support. 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 the lawyer meets his or her burden of proof. 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. Additionally, the lawyer must successfully complete the Multi-State Professional Responsibility Examination, a standardized examination on legal ethics.

Lawyer reinstatement proceedings are heard by a hearing officer appointed by the Court. A past member of the Commission may serve as a hearing officer. After hearing evidence,

the hearing officer makes a recommendation to the Supreme Court. The Court reviews the recommendation of the Commission and may either grant or deny reinstatement.

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

Any member of the public, the bar, the Disciplinary Commission, or the Executive Director 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 Director 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 the disability has been remediated.

### **IV. COMMISSION ACTIVITY IN 2016-2017**

#### **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, **1,485** grievances were filed with the Disciplinary Commission. Of this number, **101** were Commission Grievances. The total number of grievances filed was a **3.2%** 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 **18,517** Indiana lawyers in active, good-standing status and **3,490** lawyers who were inactive, good-standing as of June 30, 2017. In addition, **1,081** 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 (commonly known as *pro hac vice* admission). The total grievances filed represent **12.5** 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 **1,485** individual lawyers received grievances during the reporting period. 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, **1,479** of the grievances either received or carried over from previous years 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, 2017, 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, Probate, Tort, Real Estate, Administrative Matter, Personal Misconduct, and Collections*. 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. Except for civil plenary filings, domestic relations cases account for the next highest category of cases filed. The high rates of grievances arising from 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 *Incompetence, Improper Influence, Neglect, Failure to Communicate, Communication/Non-diligence, Improper Withdrawal 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, 2017, or that had been dismissed during the reporting period:

	<u>DISMISSED</u>	<u>OPEN</u>
Grievances filed before July 1, 2016	<b>1,308</b>	<b>37</b>
Grievances filed on or after July 1, 2016	<b>1,298</b>	<b>2</b>
Total carried over from preceding year:	<b>358</b>	
Total carried over to next year:	<b>45</b>	

This represents an increase of **30** 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 **42** petitions to suspend the law licenses of **25** 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.....42**  
**Dismissed as moot after cooperation before show cause order .....0**  
**Petition pending on June 30, 2017, without show cause order .....0**  
**Show cause orders with no suspension.....40**

- Dismissed after show cause order due to compliance .....16
- Dismissed due to disbarment, resignation or suspension.....13
- Show cause orders pending on June 30, 2017 .....11

**Suspensions for non-cooperation.....18**

- Non-cooperation Suspensions still in effect on June 30, 2017 .....4
- Reinstated due to cooperation after suspension.....0

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

**C. Trust Account Overdraft Reporting**

Pursuant to Admis. Disc. R. 23 § 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 .....10  
 Overdraft Reports Received.....83  
 Inquiries Closed .....70  
 Inquiries Carried Over Into Following Year.....8

Reason for Inquiries Closed:

- Bank Error.....14
- Deposit of Trust Funds to Wrong Trust Account .....2
- Disbursement from Trust Before Deposited Funds Collected.....3
- Referral for Disciplinary Investigation .....14
- Disbursement from Trust before Trust Funds Deposited .....3
- Overdraft Due to Bank Charges Assessed Against Account .....2
- Inadvertent Deposit of Trust Funds to Non-Trust Account .....0
- Overdraft Due to Refused Deposit for Bad Endorsement .....1
- Law Office Math or Record-Keeping Error.....13
- Death, Disbarment or Resignation of Lawyer .....1
- Inadvertent Disbursement of Operating Obligation From Trust.....3
- Non-Trust Account Inadvertently Misidentified as Trust Account .....0
- Fraudulent Office Staff Conduct.....4

**D. Litigation**

**1. Overview**

In 2016-2017, the Commission filed **30** Disciplinary Complaints for Disciplinary Action with the Supreme Court, **3** less than in the previous year. These Disciplinary Complaints, together with amendments to pending Verified Complaints, represented findings of reasonable cause by the Commission in **53** separate counts of misconduct during the reporting year.

In 2016-2017 the Supreme Court issued **93** final dispositive orders, **6** less than in the preceding year, representing the completion of **93** separate discipline files, **6** less than the preceding year. Including **0** private administrative admonitions, **75** individual lawyers received final discipline in the reporting year, compared to **73** in the previous year. **Appendix G** provides a comparison of disciplinary sanctions entered for each of the past ten years.

**2. Disciplinary Complaints for Disciplinary Action**

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

The following reports the status of all new Disciplinary Complaints filed during the reporting period:

Verified Complaints Filed During Reporting Period.....	<b>30</b>
Number Disposed Of By End of Year .....	<b>7</b>
Number Pending At End of Year.....	<b>23</b>

The Commission filed **2** Notice of Foreign Discipline and Requests for Reciprocal Discipline with the Supreme Court pursuant to Admission and Discipline Rule 23 §20(b) and (d).

During the reporting year, the Disciplinary Commission filed Notices of Felony Guilty Findings and Requests for Suspension pursuant to Admission and Discipline Rule 23 § 11.1(a) in **6** cases.

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

The following reports the status of all formal disciplinary proceedings pending as of June 30, 2017:

Cases Filed; Appointment of Hearing Officer Pending.....	<b>1</b>
Cases Pending Before Hearing Officers .....	<b>22</b>
Cases Pending On Review Before the Supreme Court.....	<b>5</b>
Total Verified Complaints Pending on June 30, 2017 .....	<b>30</b>

Of cases decided during the reporting year, 19 were tried on the merits to hearing officers at final hearings, 22 cases were submitted to the Supreme Court for resolution by way of Affidavit for Resignation, Conditional Agreement for Discipline, or Consent to Discipline, and 1 case was submitted by hearing officer findings on an Application for Judgment on the Complaint.

**3. Final Dispositions**

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

**Dismissals of Disciplinary Complaint .....1**

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

**Caution Letters.....16**

**Private Administrative Admonitions .....0**

**Private Reprimands .....1**

**Public Reprimands.....6**

**Suspensions With Automatic Reinstatement.....3**

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

**Suspensions Without Automatic Reinstatement .....10**

**Accepted Resignations .....5**

**Disbarments.....4**

**Reinstatement Proceedings**

    Disposed of by Final Order

        Granted.....2

        Denied.....3

        Petition Withdrawn .....0

**Findings of Contempt .....2**

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

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

**Temporary Suspensions (Guilty of Felony).....3**

## V. SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES

	2016-17	2015-16	2014-15	2013-14	2012-13
Matters Completed	1,485	1,437	1,715	1,678	1,474
Complaints Filed	30	33	32	35	53
Final Hearings	19	2	10	18	14
Final Orders	93	99	120	81	92
Reinstatement Petitions Filed	2	4	6	6	5
Reinstatement Hearings	5	3	3	7	5
Reinstatements Ordered	2	3	2	3	1
Reinstatements Deny/Dismiss	3	1	2	4	4
Income	\$2,312,026	\$2,267,417	\$2,611,327	\$2,244,172	\$2,211,324
Expenses	\$2,219,778	\$2,332,029	\$2,253,684	\$2,129,670	\$2,165,547

## VI. AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE

- A complete re-write of Admission and Discipline Rule 23, the procedural rules for a lawyer discipline cause of action, took effect on January 1, 2017. The re-write was extensive. A comprehensive narrative is too lengthy for this report. The highlights of the amendments include: re-structuring, re-positioning, captioning, and a table of contents
- Acceleration of the docketing process
- Acceleration of the non-cooperation process
- Caution letter as a method of case disposition
- Acceleration of the reinstatement process and qualifications for reinstatement hearing officer appointment
- Application of the Rules of Evidence
- Time limit on the length of an investigation

## 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.

Staff actively engage in outreach to in-state law schools with course presentations on 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 advises on the benefits that the bar and the public receive from these agencies. To date, the program has been presented seventeen (17) 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

**Nancy L. Cross** is a senior partner of the Cross, Pennamped, Woolsey & Glazier, P.C. 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.

**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 the law office of recognized Chicago attorney James D. Montgomery. 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 which began July 1, 2011.

**Tony Walker** has been practicing law for 21 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. Mr. Walker served as Vice Chair for the Commission this reporting year.

**Leanna K. Weissmann** is a native of Aurora, IN. She graduated from Indiana University-Bloomington in 1991 with a double major in journalism and English, and then earned her law degree from Indiana University Robert H. McKinney School of Law in 1994. From 1993-1995 she served as a law clerk for Court of Appeals Judge Robert D. Rucker (now Justice Rucker of the Indiana Supreme Court). Ms. Weissmann then engaged in the private practice of law in Rising Sun, Indiana until 1998, and served as Referee of Dearborn Superior Court No. 1 from 2000-2007. She now maintains a solo law practice in Lawrenceburg, Indiana, focused entirely on appellate practice. A veteran of appellate advocacy, Ms. Weissmann has briefed over 150 cases and participated in more than 20 oral arguments before the Indiana Court of Appeals and the Indiana Supreme Court. In 2005 Ms. Weissmann was appointed by Governor Mitch Daniels to serve on the Indiana Criminal Justice Institute Board of Trustees for a three (3) year term. She has served as appellate counsel in the following notable cases: Louallen v. State, 778 N.E.2d 794 (Ind. 2002); Tyler v. State, 903 N.E.2d 463 (Ind. 2009); Gallagher v. State, 925 N.E.2d 350 (Ind. 2010); Ripps v. State, 968 N.E.2d 323 (Ind. 2012); and Conley v. State, 972 N.E.2d 864 (Ind. 2012). Ms. Weissmann teaches fitness and is active in youth ministry programs at her church. She founded SamieSisters.com, an Internet ministry for “tween” girls. She was appointed to the Indiana Supreme Court Disciplinary Commission in 2013.

**Kirk White** is Assistant Vice President for Strategic Partnerships at Indiana University. He joined the IU Office of the Vice President for Engagement in 2010 and is responsible for coordinating national defense and homeland security partnerships with state and federal government agencies and IU’s mutually beneficial relationships with economic development organizations in southwest Indiana. He holds additional appointments as Military Liaison for the IU Office of the President and as a member of the IU Emergency Management incident management team. Kirk joined the professional staff of IU in 1984 after completing the Bachelor of Science degree from the Indiana University School of Public and Environmental Affairs. He has served IU in several external, alumni and government relations assignments including: Assistant to the Vice President, Director of Alumni Chapters, Assistant Director and Director of Hoosiers for Higher Education, Coordinator of IU’s Critical Incident Communications Team and most recently as Director of Community Relations. In June 2013, Kirk was appointed by the Indiana Supreme Court to serve a five-year term on the court’s attorney disciplinary commission. A former elected official, Kirk served eight years as a member of the Bloomington City Council (1988-95), and one term as Monroe County Commissioner (1997-2000). In city and county office he focused on land use planning, improving public works, utilities, public safety, emergency management, animal control and fleet management. The Association of Indiana Counties awarded Monroe County the 2001 Local Government Cooperation Award for an emergency communications system project that Commissioner White directed. Lt. Colonel White is a Field Artillery officer in the Indiana Army National Guard and currently serves as Operations Officer for 81<sup>st</sup> Troop Command, headquartered in Terre Haute. In 24 years of service, he has been assigned as Battery Fire Direction Officer, Battery Commander, Battalion Executive Officer and Battalion Commander at Headquarters, 2<sup>nd</sup> Battalion, 150<sup>th</sup> Field Artillery Regiment and G5/Chief of Plans for the 38<sup>th</sup> Infantry Division. He was called to active duty in support of Operation Enduring Freedom and served as chief of an Embedded Training Team with a light infantry battalion of the Afghanistan National Army (2004-05) where he was awarded the Meritorious Service Medal and Combat Action Badge. He served a second tour in Afghanistan (2009-10) as commander of a provisional task force responsible for base operations and force protection in Kabul and was awarded the Bronze Star Medal. Kirk serves as a member of the Monroe County Economic Development Commission and a board member of the Bloomington Economic

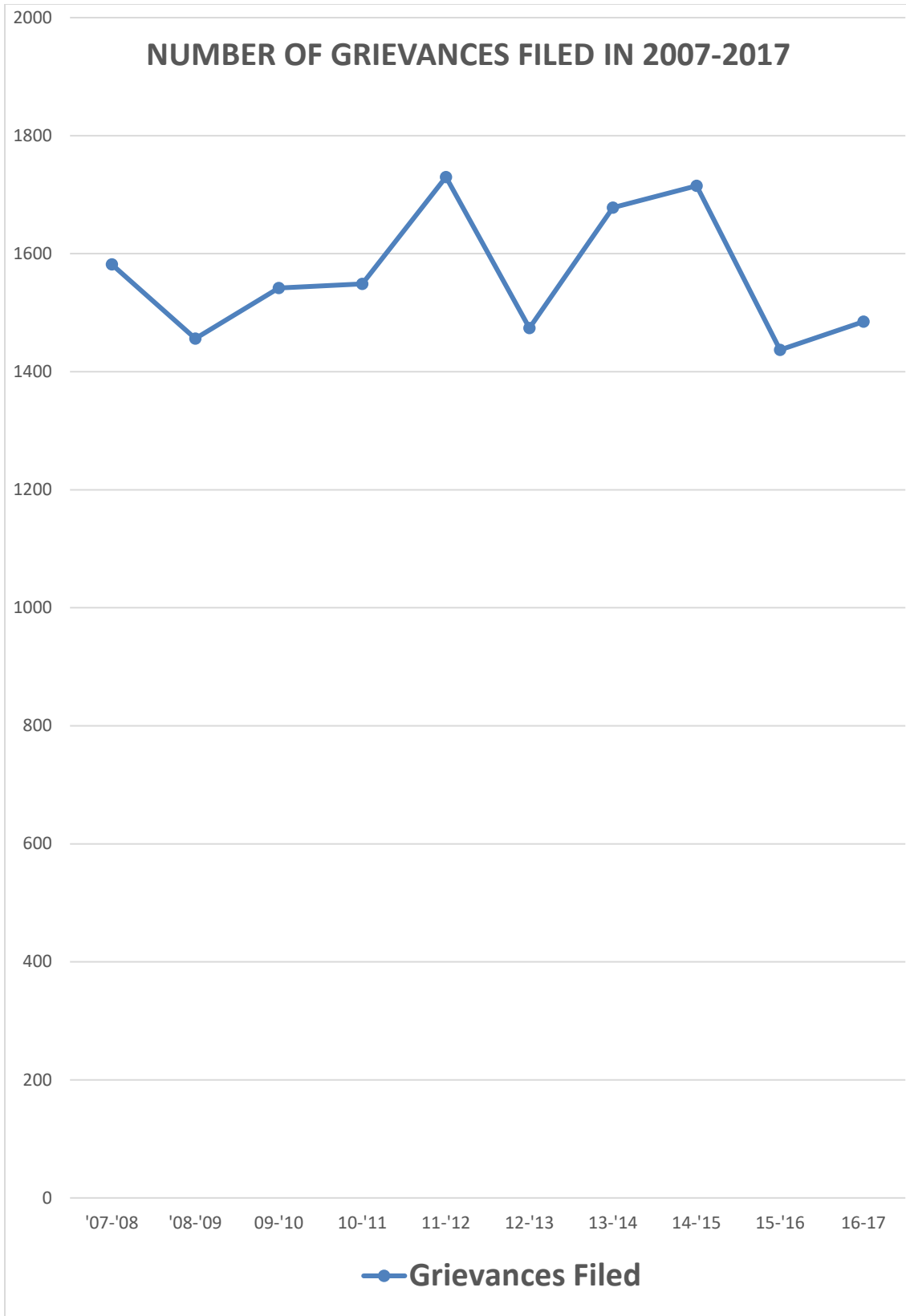
Development Corporation. He is a former board member of the Greater Bloomington Chamber of Commerce, former chairman of the board of trustees at First United Methodist Church in Bloomington and is Past President of the Rotary Club of Bloomington North. He and his wife Janice have two daughters.

**Brian K. Carroll** is a partner at Johnson Carroll Norton Kent & Goedde P.C. Mr. Carroll practices in the areas of business law, estate and trust planning and administration, real estate and elder law. He is a Certified Elder Law Specialist and a Certified Estate Planning and Administration Specialist. Mr. Carroll is a fellow of the Indiana Bar Foundation as well as a fellow of the American College of Trust and Estate Counsel. Mr. Carroll graduated with a Bachelor of Science degree from Indiana University in 1978 and graduated *Cum Laude* from Indiana University Robert H. McKinney School of Law in 1982 when he was admitted to the Indiana Bar. Mr. Carroll has served as a Member of the Board of Governors and House of Delegates of the Indiana State Bar Association; and as Chair of the Indiana State Bar Association, Young Lawyer, Probate, Trust and Real Property and General Practice, Solo and Small Firm Sections. He also has served as a Director for the Evansville Bar Association and Chair of the Evansville Bar Association Probate Committee. President of the Harlaxton Society of the University of Evansville. Mr. Carroll began his first five-year term on the Disciplinary Commission on July 1, 2014.

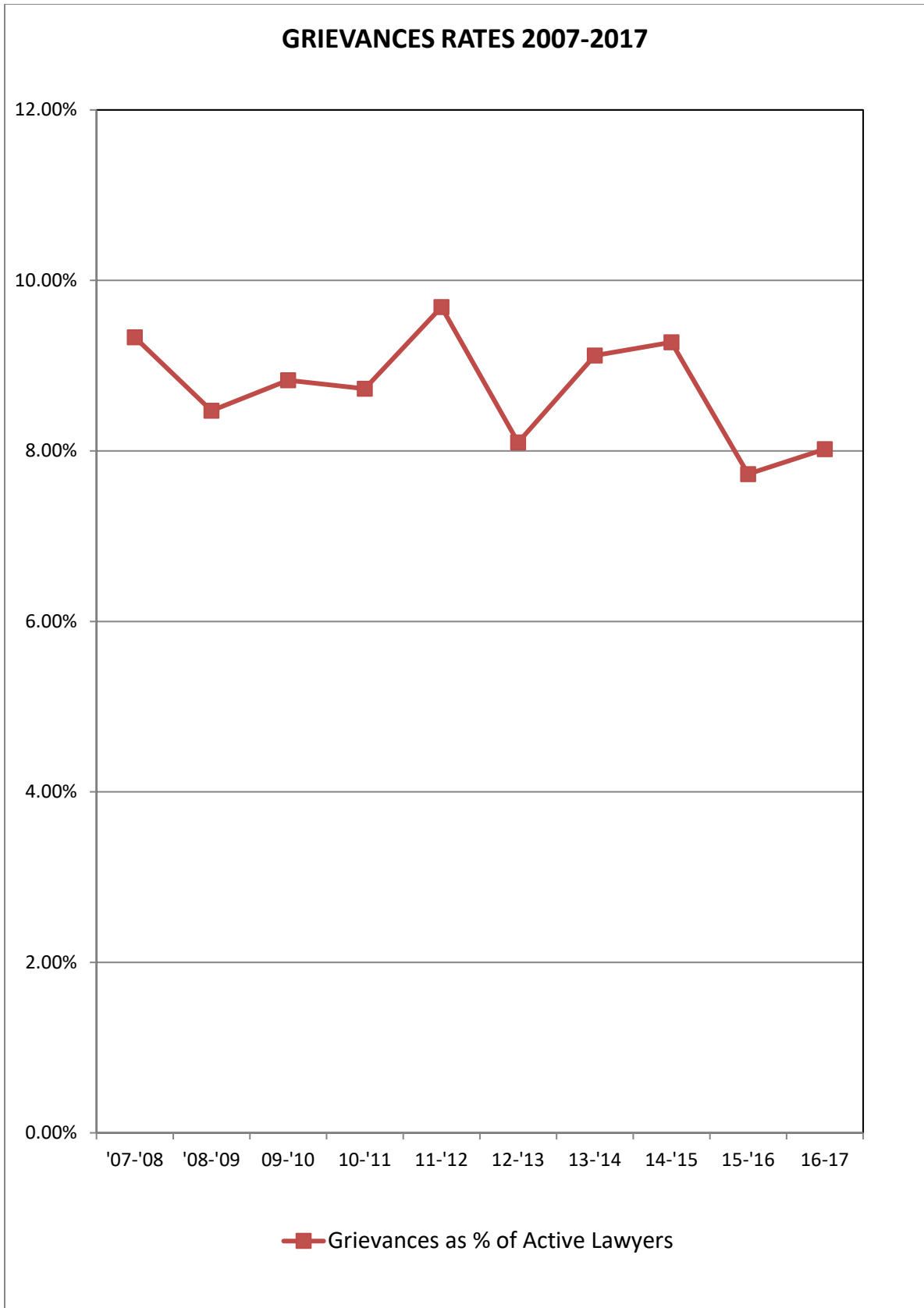
**John L. Krauss** is an attorney, mediator, and arbitrator. He recently retired from Indiana University and IUPUI after 23 years. He served as the founding director of the Indiana University Public Policy Institute and a clinical professor at the IU School of Public and Environmental Affairs. He now is a Clinical Professor Emeritus – SPEA. Previously, Krauss served as Deputy Mayor of Indianapolis (1982-1991). Krauss currently serves as a senior advisor to the Chancellor of IUPUI and as adjunct professor at the Indiana University McKinney School of Law-Indianapolis. He teaches mediation and dispute resolution and has an alternative dispute resolution and mediation consultant practice. Krauss holds leadership positions with a diverse array of civic and corporate organizations, including Indiana Supreme Court Disciplinary Commission, Tourism for Tomorrow, Inc., the President Benjamin Harrison Foundation Advisory Board, Arthur Jordan Foundation and the Indianapolis Museum of Art. Past service included Chair of the Indiana Supreme Court Commission on Continuing Legal Education, Vice Chair and President of the Indianapolis Museum of Art. Krauss is a panel member for the American Arbitration Association, US Postal System, FINRA, US Institute for Environmental Conflict, National Futures Association, US Bankruptcy Court for the Southern District of Indiana. He chaired the Labor Management Committees for the closure of both Fort Benjamin Harrison and US Naval Air Warfare Center – IN and has served as a Special Mediator for the Indiana Attorney General. An avid amateur photographer. Krauss' images are in private collections and national publications.

**Molly (Peelle) Kitchell** was appointed to the Indiana Supreme Court Disciplinary Commission in 2015. Kitchell holds a Bachelor of Arts degree from Purdue University and a Master of Science in Occupational Therapy from the University of Indianapolis, graduating from both institutions with a 4.0 GPA. No longer practicing, her professional career in Occupational Therapy was primarily focused on Neuro rehabilitation. Raised in Kokomo, IN, she and her husband, Ryan Kitchell, returned to Indiana in 2002 after living in New Hampshire. Now residing in Zionsville, her primary role has been caregiver to their four children. She was appointed to Indiana's Interagency Coordinating Council on Infants and Toddlers by Gov. Mitch Daniels as a parent

representative. Kitchell is currently serving her second term on the Judicial Qualifications and Nominating Commission, having been appointed by Gov. Mitch Daniels in 2011 and Gov. Mike Pence in 2017. She is actively involved with the Children's Museum Guild of Indianapolis, the Zionsville Foundations Grants Committee, and her children's schools.



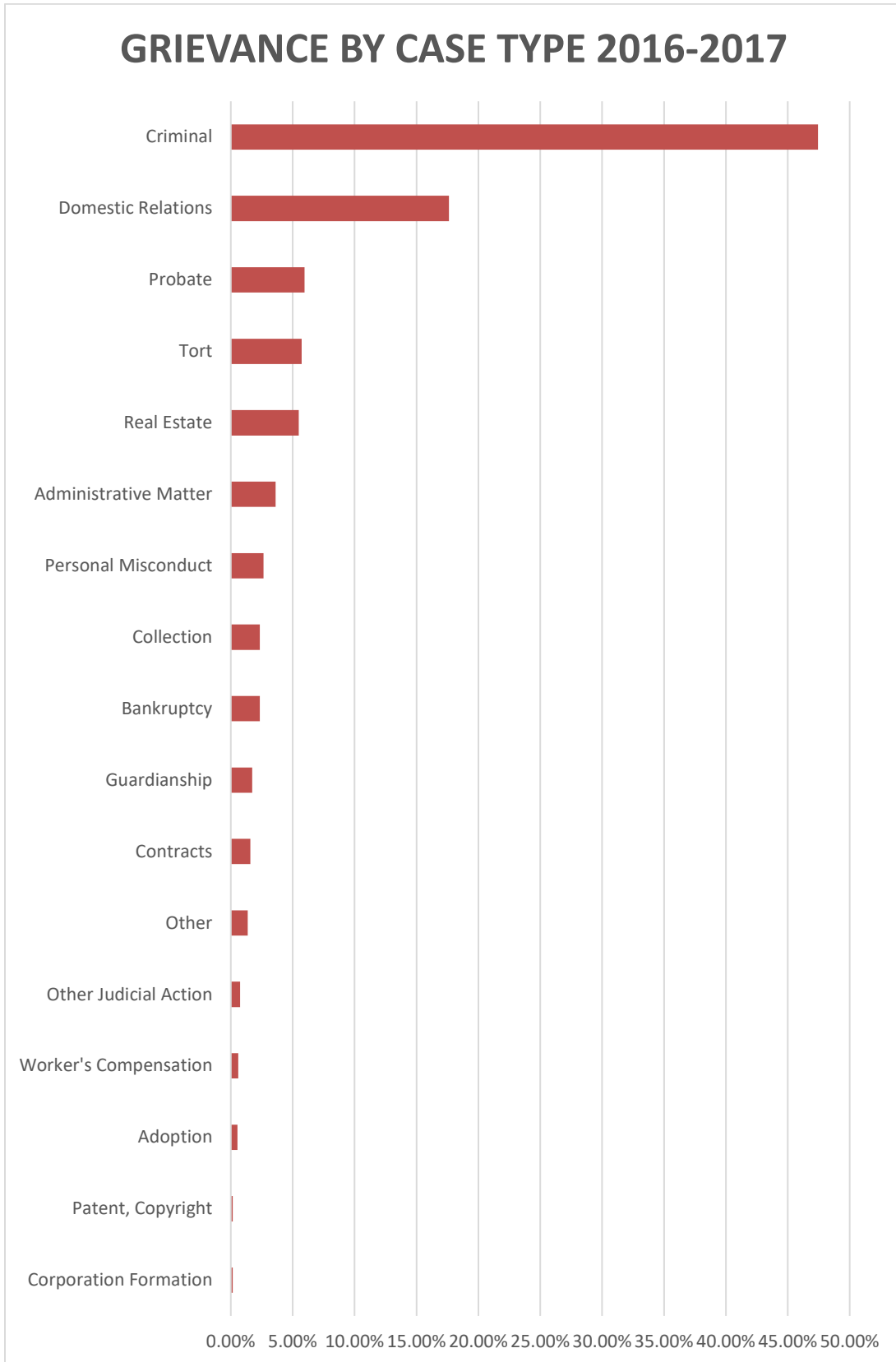


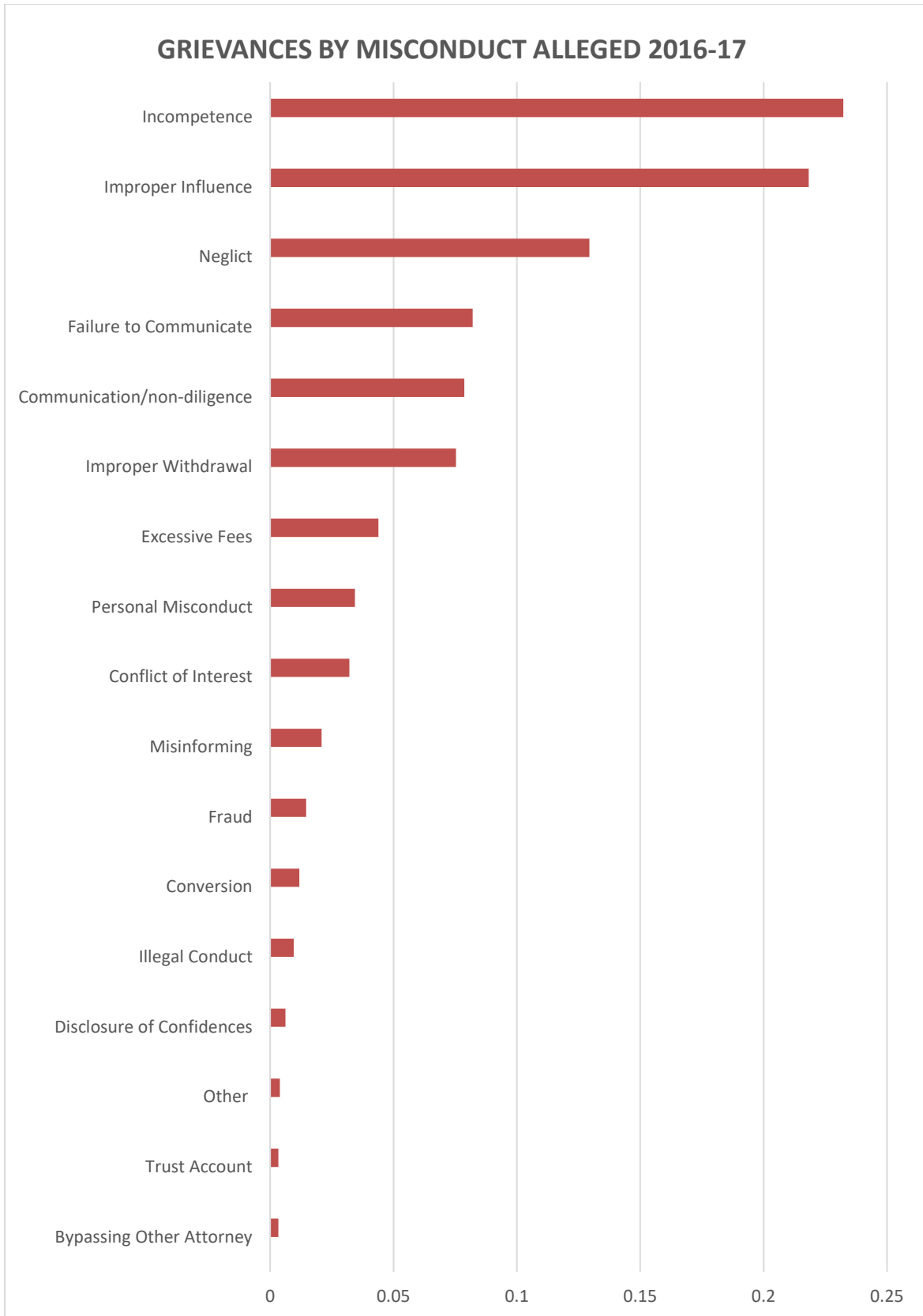


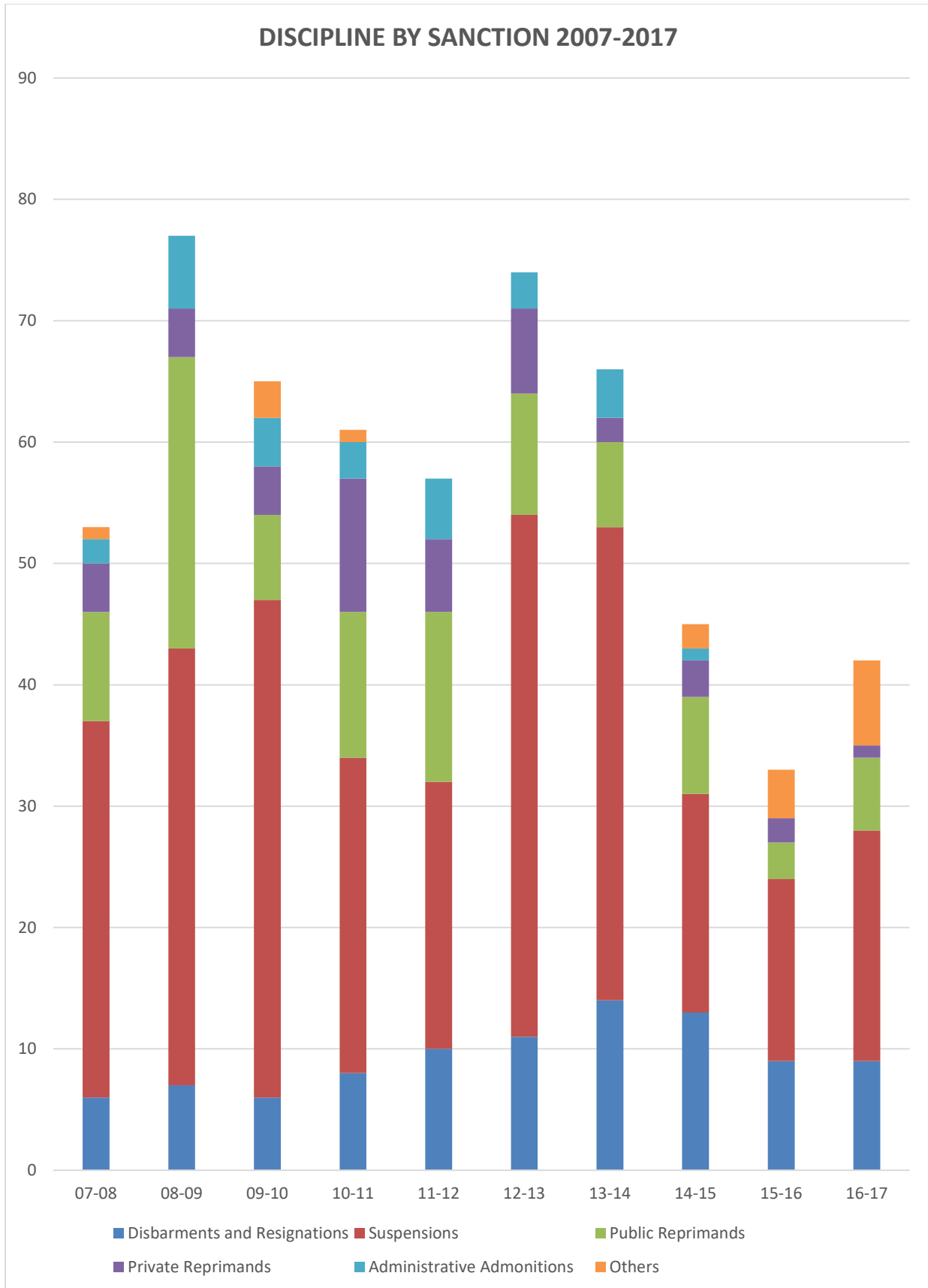
## GRIEVANCES BY CASE TYPE AND MISCONDUCT ALLEGED 2016-2017

<b>Case Type</b>	<b>Number</b>	<b>% of Total</b>
Criminal	630	47.44%
Domestic Relations	234	17.62%
Probate	79	5.95%
Tort	76	5.72%
Real Estate	73	5.50%
Administrative Matter	48	3.61%
Personal Misconduct	35	2.64%
Collection	31	2.33%
Bankruptcy	31	2.33%
Guardianship	23	1.73%
Contracts	21	1.58%
Other	18	1.36%
Other Judicial Action	10	.75%
Worker's Compensation	8	.60%
Adoption	7	.53%
Patent, Copyright	2	.15%
Corporation Formation	2	.15%
<b>TOTAL</b>	<b>1328</b>	<b>100%</b>

<b>Alleged Misconduct</b>	<b>Number</b>	<b>% of Total</b>
Incompetence	413	23.23%
Improper Influence	388	21.82%
Neglect	230	12.94%
Failure to Communicate	146	8.21%
Communication/non-diligence	140	7.87%
Improper Withdrawal	134	7.54%
Excessive Fees	78	4.39%
Personal Misconduct	61	3.43%
Conflict of Interest	57	3.21%
Misinforming	37	2.08%
Fraud	26	1.46%
Conversion	21	1.18%
Illegal Conduct	17	.96%
Disclosure of Confidences	11	.62%
Other	7	0.39%
Trust Account	6	0.34%
Bypassing Other Attorney	6	0.34%
<b>TOTAL</b>	<b>1778</b>	<b>100%</b>







**INDIANA SUPREME COURT DISCIPLINARY COMMISSION FUND**  
**Statement of Revenues and Expenses (Unaudited)**  
**Fiscal Year Ending June 30, 2017**

BEGINNING DISCIPLINARY FUND BALANCE		\$547,208
REVENUES:		
TOTAL REGISTRATION FEES COLLECTED		\$2,276,694
REVENUE FROM OTHER SOURCES:		
Court Costs	21,857	
Reinstatement Fees	1,000	
Investment Income	3,325	
Rule 7.3 Filing Fees	7,950	
Other	1,200	
TOTAL REVENUE FROM OTHER SOURCES		\$35,332
TOTAL REVENUE		\$2,312,026
EXPENSES:		
OPERATING EXPENSES:		
Personnel	1,898,000	
Travel	71,579	
Investigations/Hearings	75,732	
Dues and Library	21,754	
Postage and Supplies	15,687	
Utilities and Rent	121,500	
Maintenance	15,142	
Equipment	0	
Other Expenses	384	
TOTAL OPERATING EXPENSES		\$2,219,778
TOTAL EXPENSES		\$2,219,778