

**OFFICE OF DISCIPLINARY COUNSEL
OF THE
SUPREME COURT OF OHIO**

2009 ANNUAL REPORT

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2009 ANNUAL REPORT

OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF OHIO

The position of Disciplinary Counsel and the Office of Disciplinary Counsel ("ODC") are established by The Supreme Court of Ohio pursuant to Gov. Bar R. V(3)(B). Under that rule, Disciplinary Counsel is authorized to investigate allegations and initiate complaints concerning misconduct and/or mental illness of judges or attorneys under the *Code of Professional Responsibility*, the *Ohio Rules of Professional Conduct*, the *Code of Judicial Conduct*, and rules governing the Unauthorized Practice of Law, pursuant to The Ohio Supreme Court Rules for the Government of the Bar and the Government of the Judiciary. The ODC staff of 2009 was comprised of ten attorneys (one Disciplinary Counsel, one Chief Assistant Disciplinary Counsel, two Senior Assistant Disciplinary Counsel and six Assistant Disciplinary Counsel), one administrative officer, one executive administrative assistant, two and a half legal research analysts, two full-time investigators, four legal secretaries, one receptionist and one clerical support assistant.

This report to The Supreme Court of Ohio and the Board of Commissioners on Grievances and Discipline ("Board") concerning the activities for calendar year 2009 (*Tables 1-5*) and FY2009 expenses (*Table 6*) of

ODC is made pursuant to the requirements of Gov. Bar R. V(3)(B)(3).

At the beginning of 2009, there were 621 grievances pending with ODC. As of December 31, 2009, there were 673 grievances pending and/or under investigation.

A total of 3,247 new matters for consideration were received by ODC in 2009. That includes all relevant categories such as grievances filed against Attorneys and Judges, Appeals from Certified Grievance Committees, Board cases, Unauthorized Practice of Law investigations, UPL Board cases, Child Support, Reciprocals and Resignations. Of that total, 2,317 represented grievances originally filed with ODC against Attorneys and 526 grievances filed against Judges, but does not include Appeals.

In 2009, a total of 1,624 grievances were dismissed on intake or after initial investigation, and 1,218 were opened for investigation. For procedural reasons, 87 grievances which were initially received by ODC were transferred to local bar associations for investigation. Under that same rationale, another 66 grievances were forwarded to the Board for reassignment and none were forwarded pursuant to Gov. Jud. R. II(2)(B)(1). A geographic distribution by Ohio county of the matters filed with ODC in 2009, based on the location of the Respondents' principal offices is provided. (*Table 5*). For a detailed presentation of those grievances which were received in 2009 and opened for investigation, please refer to Table 2. The data

identifies the alleged primary violation. Table 2 also includes data from the prior four calendar years to assist in tracking trends in the state. One violation category, "*Failure to maintain funds in a trust*", has experienced a dramatic increase in the past four years since the new statutory requirement in the Fall of 2005 mandating that banks must notify ODC in each instance where an IOLTA account is overdrawn. The number of such grievances reported in 2005 was 110, increasing to 243 in 2006, 289 in 2007, 319 in 2008 and most recently 338 in 2009.

A total of fifty-one formal complaints were filed by ODC in 2009 with the Board, of which three alleged judicial misconduct.

Appeals received by ODC in 2009 totaled 257, a decrease of 33 from the 2008 figure. During the year 267 Appeals were closed. As of December 31, 2009, 55 Appeals were pending.

The number of UPL grievances received by ODC in 2009 totaled 63, a rather large decrease contrasted to the 91 received in 2008. During the year, 34 UPLs were closed and as of December 31, 2009, there were 39 UPL grievances pending in the ODC office. In other categories, six Reciprocal grievances were received by our office in 2009 and four were pending at the end of the year. The Court sanctioned four attorneys on Reciprocal complaints. One Child Support grievance was filed with our office in 2009, and one was pending at the close of the year.

Twenty-one resignation applications were received for review by ODC in 2009. There were 20 resignations announced by the Court during 2009, 17 of which were Resignations with Disciplinary Action Pending and three were regular Resignations, now referred to as Retirements (*Table 3*).¹ There was a total of 23 resignations in 2008.

In 2009 ODC attorneys appeared in 33 hearings before the Board and participated in nine oral arguments before The Supreme Court of Ohio. As of December 31, 2009, there were 30 cases awaiting hearing dates before the Board and 12 cases awaiting reports from the Board; eight cases pending oral argument before the Supreme Court; and 17 cases pending decision by the Supreme Court of Ohio (*Table 4*). In 2009, The Supreme Court of Ohio issued formal sanctions in 55 cases represented by ODC. (*Tables 1 & 3*).

Respectfully submitted,

Jonathan E. Coughlan
Disciplinary Counsel

¹ In September 2007 the Court repealed Gov. Bar Rule V, Section 11(G) and replaced it with Gov. Bar Rule VI, Section 6, which eliminated “regular resignations” and made retirement permanent.

TABLE 1

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
<u>Disposition of Grievances Received:</u>					
Dismissed on Intake or after Investigation	2603	2698	2862	2794	2791
Pending at End of Year	515	678	795	621	673
<u>Caseload Comparison:</u>					
Number of Grievances Received	2720	2937	3031	2940	2843
Number of Appeals Received	359	331	337	290	257
Number of UPLs Received	86	66	67	91	63
Number of Formal Complaints Filed	39	42	35	38	51
<u>Sanctions Issued:</u> (Table 3 for details)					
Public Reprimands	1	5	2	2	4
Six-Month Suspensions	2	4	4	5	6
One-Year Suspensions	2	4	4	5	5
Eighteen-Month Suspensions	2	0	1	1	0
Two-Year Suspensions	5	8	7	2	7
Indefinite Suspensions	3	7	7	7	8
Interim Remedial Suspensions ¹	1	0	1	1	0
Mental Health Suspensions ²	--	1	0	2	0
Disbarments	5	9	1	3	4
Reciprocal Disciplines	9	8	4	3	4
Resignations (includes Resignations with Disciplinary Action Pending)	10	15	21	9	17
Retirements ³				14	3

¹ 2005 is the first year Interim Remedial Suspensions were included in the ODC Annual Report

² 2006 is the first year Mental Health Suspensions were included in the ODC Annual Report.

³ 2008 is the first full year during which time Resignations without a Pending Disciplinary Action are referred to as Retirements.

TABLE 2**GRIEVANCES RECEIVED AND OPENED FOR INVESTIGATION**

<u>Alleged Primary Violation</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Neglect/Failure to protect interests of the client	343	351	303	278	292
Failure to account or turn over file	57	43	41	55	42
Improper withdrawal (refusal to withdraw)	9	13	10	8	8
Excessive fees	60	90	84	81	90
Personal misconduct	115	92	108	101	94
Misrepresentation/false statement/concealment	39	54	42	40	26
Criminal conviction	12	5	4	12	11
Failure to file income tax returns	2	0	1	1	0
Commingling of funds	2	2	1	3	1
Conversion	18	25	27	29	23
Embezzlement	3	2	1	4	3
Failure to maintain funds in trust ¹	110	243	289	319	338
Breach of client confidence	9	6	9	9	8
Conflict of lawyer's interest	23	40	26	30	26
Conflict of client's interest	52	43	63	48	58
Communication with adverse party represented by counsel	14	8	9	13	5
Trial misconduct	70	65	77	81	73
Failure to register	2	8	2	4	1
Practicing while under suspension	8	16	14	16	10
Assisting in the Unauthorized Practice of Law	9	7	9	4	3
Advertising/Solicitation	34	18	6	15	9
Judicial misconduct	89	104	74	106	88
Mental illness	2	3	4	0	4
Substance abuse	8	4	4	3	5
Other	8	7	8	4	0
TOTAL	1,098	1,249	1,216	1,264	1,218

¹ Increases in "Failure to maintain funds in trust" violation are due to legislation effective in the Fall of 2005 which requires banks holding IOLTA accounts to file reports with ODC anytime these accounts are overdrawn.

TABLE 3

SANCTIONS ISSUED IN 2009 BY THE SUPREME COURT OF OHIO PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL

Name of Respondent and Supreme Court Case Number

PUBLIC REPRIMANDS — 4

Christopher Dean Becker 2008-1237
David Brian Shaver 2008-2402
Justin Martus Smith 2009-1144
John Mason Stuard 2008-1237

SIX MONTH SUSPENSIONS — 6

James Frederick Dettinger 2008-2440
Peter F. Fletcher 2008-1691
George Lawrence Forbes 2008-2103
Morris Herman Laatsch III 2009-0399
Lawrence Burr LaRue 2009-0389
David Allen Rohrer 2009-0719

ONE YEAR SUSPENSIONS — 5

Lisa Lorraine Johnson 2009-0398
Wesley Alton Johnston 2008-2447
Thomas William Kimmins 2009-0469
John Harold Large 2009-0041
John Thaddeus Willard 2009-0465

TWO YEAR SUSPENSIONS — 7

Todd A. Brenner 2008-2438
William Matthew Crosby 2009-1172
Sherry Darlene Davis 2008-1729
Lee Howard 2009-0407
Timothy John Jarabek 2008-1768
Eugene Francis McShane 2007-1918
Reese Mark Wineman 2008-2405

INDEFINITE SUSPENSIONS — 8

Merrie Maurine Frost 2009-0069
Kristen Lynn Kelly 2008-1198
Michael McCord 2008-1785
Aaron Anthony Ridenbaugh 2008-2493
Glenn Michael Schiller 2009-0692
Andrew Fraser Siehl 2009-1233
John Stanley Wolanin 2008-2098
Martha Virginia Yeager (aka Martha V. Kim) 2009-0458

**SANCTIONS ISSUED IN 2009 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

INTERIM REMEDIAL SUSPENSIONS — 0

MENTAL HEALTH SUSPENSIONS — 0

DISBARMENTS — 4

Charles Edmund Bursey II 2009-1255
Karan Marie Horan 2009-0394
Don Stephen McAuliffe 2008-1200
Brett Mark Sabroff 2009-0467

RECIPROCAL DISCIPLINES — 4

Eric Lamar Emerson 2009-0234
Eric Lamar Emerson 2009-0235
Grady L. Pettigrew, Jr. 2008-2082
Timothy Andrew Shimko 2009-1957

RESIGNATIONS WITH DISCIPLINARY ACTION PENDING — 17

Darrell Brown 2009-0700
Cornell Phillip Carter 2008-2489
William Joseph DiPalma 2008-2488
Martin Wayne Elson 2008-2309
John Anthony Frenden 2009-1367
William Allen Gardner 2009-0861
James Edward Gray 2009-1836
Katryna Lynette Johnson 2009-1011
Barry Alan Mentser 2008-2281
Mary Biggins Picciano 2009-0829
Dennis Bernard Pollard 2009-1883
Katharine Kyle Powell 2009-0202
Joseph Farid Rafidi 2009-1004
John Wesley Slagle 2009-0201
Robert Byrn St. Clair 2009-0780
John Richard Tomlan 2009-1117
Louis Martin Vettel 2009-0504

RETIREMENTS¹ — 3

Jean Cooper Garrett
John Niles Sponseller
Brian Russell Walker

¹ Resignation applications received in 2008 and after and found to have no disciplinary action pending, are processed as Retirements and are not assigned Supreme Court case numbers.

TABLE 4

**STATUS OF FORMAL MATTERS PENDING
AS OF DECEMBER 31, 2009**

Reinstatements 2

Before the Probable Cause Panel

Awaiting Certification to Board 1

Appeal of Panel Dismissal to Full board 0

**Before the Board of Commissioners
on Grievances and Discipline**

Awaiting Hearing 30

Awaiting Board Report 12

Before The Supreme Court of Ohio

Awaiting Oral Argument 8

Awaiting Supreme Court Decision 17

TOTAL PENDING 70

TABLE 5

ALL MATTERS RECEIVED BY ODC FROM OHIO COUNTIES IN THE YEAR 2009

Based on County of Respondent's Principal Ohio office location

Adams _____	4	Hamilton _____	197	Noble _____	1
Allen _____	20	Hancock _____	18	Ottawa _____	11
Ashland _____	3	Hardin _____	6	Paulding _____	3
Ashtabula _____	30	Harrison _____	5	Perry _____	12
Athens _____	25	Henry _____	3	Pickaway _____	4
Auglaize _____	6	Highland _____	16	Pike _____	5
Belmont _____	17	Hocking _____	8	Portage _____	20
Brown _____	3	Holmes _____	1	Preble _____	9
Butler _____	44	Huron _____	11	Putnam _____	4
Carroll _____	6	Jackson _____	8	Richland _____	30
Champaign _____	12	Jefferson _____	17	Ross _____	22
Clark _____	37	Knox _____	21	Sandusky _____	13
Clermont _____	22	Lake _____	49	Scioto _____	17
Clinton _____	9	Lawrence _____	12	Seneca _____	17
Columbiana _____	27	Licking _____	27	Shelby _____	5
Coshocton _____	1	Logan _____	16	Stark _____	122
Crawford _____	4	Lorain _____	56	Summit _____	183
Cuyahoga _____	541	Lucas _____	87	Trumbull _____	51
Darke _____	2	Madison _____	10	Tuscarawas _____	34
Defiance _____	4	Mahoning _____	70	Union _____	5
Delaware _____	23	Marion _____	6	Van Wert _____	4
Erie _____	18	Medina _____	40	Vinton _____	4
Fairfield _____	38	Meigs _____	3	Warren _____	30
Fayette _____	8	Mercer _____	3	Washington _____	9
Franklin _____	427	Miami _____	11	Wayne _____	9
Fulton _____	1	Monroe _____	0	Williams _____	8
Gallia _____	11	Montgomery _____	148	Wood _____	15
Geauga _____	22	Morgan _____	4	Wyandot _____	4
Greene _____	14	Morrow _____	8		
Guernsey _____	7	Muskingum _____	9	TOTAL _____	<u>2,907</u>

TABLE 6

**FISCAL YEAR 2009
REPORT OF OPERATIONAL EXPENSES
OF THE OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO**

I.	Payroll (Salaries & Benefits)	\$ 1,831,890.62
II.	Personal Services (Consultants, Independent Contractors)	\$ 67,201.92
III.	Education, Tuition and Training	\$ 7,797.45
IV.	Supplies and Materials	\$ 39,598.61
V.	Automobile and Parking	\$ 3,077.42
VI.	Travel and Conferences (In-State & Out-of-State)	\$ 38,751.40
VII.	Postal and Shipping Expenses	\$ 20,205.26
VIII.	Communication Expenses	\$ 8,635.36
IX.	Maintenance and Repair Services	\$ 18,007.47
X.	Building, Utilities and Facilities	\$ 282,639.21
XI.	Insurances, Licenses and Permits	\$ 678.71
XII.	Dues and Memberships	\$ 3,674.25
XIII.	Books and Subscriptions	\$ 27,696.57
XIV.	Investigation and Discovery	\$ 71,594.35
XV.	Equipment	<u>\$ 37,191.19</u>
	ODC - Operational Expenses for Fiscal Year 2009	<u>\$ 2, 458,639.79</u>

Jonathan E. Coughlan, Disciplinary Counsel