

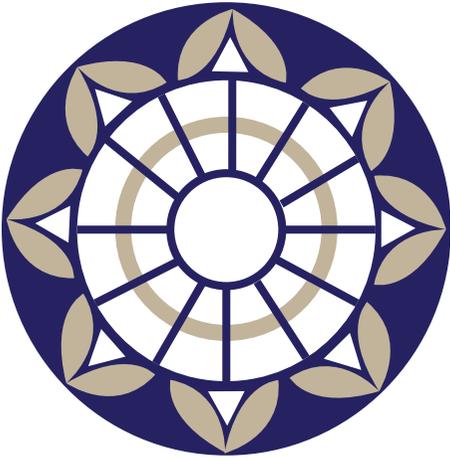


Ohio Board of Professional Conduct  
2016 Annual Report

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Dear Chief Justice O'Connor and Justices of the Supreme Court:

On behalf of the commissioners and staff of the Board of Professional Conduct, I am pleased to provide you with a copy of 2016 Annual Report of the Board of Professional Conduct. This report summarizes the activity of the Board in 2016 and provides an accounting of the funds allocated to the Board in fiscal year 2016.

This year, the Board of Professional Conduct celebrates the 60th anniversary of its creation by the Supreme Court. Since the Board's inception, 272 judges, lawyers, and members of the public have been appointed by the Supreme Court to serve as volunteer commissioners. Each commissioner is charged with the considerable responsibility of measuring the conduct of their colleagues against established standards of professional ethics and recommending discipline for those whose conduct has fallen short of those standards. The women and men who served as commissioners have volunteered countless hours in furtherance of this responsibility, and each has approached his or her duties with a degree of devotion commensurate to the task. The work summarized in this report is a brief glimpse into the service that commissioners and staff have provided the Supreme Court, both in the most recent year and for the past six decades.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Dove". The signature is fluid and cursive, with a large initial "R" and "D".

Richard A. Dove, Esq.  
Director



# Commissioners

The Board consists of 28 commissioners who are appointed by the Supreme Court. The membership includes four nonlawyer professionals, seven trial and appellate judges, and 17 lawyers from a wide range of practice backgrounds.

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## Chairman

**Paul M. De Marco** served his second term as chairman of the Board of Professional Conduct in 2016. He previously served two terms as vice chair and as chair

of the Disciplinary Counsel Search Committee and Advisory Opinion Committee. Chairman De Marco is a founding member of the Cincinnati firm of Markovits, Stock & De Marco.



## Vice Chairman

**William J. Novak** was elected to serve a second year as vice chairman of the Board. He also chaired one of the Board's two Probable Cause Panels. Vice

Chairman Novak is the managing partner of the Novak Law Firm in Cleveland.

**Front Row (L-R):** Vice-chair William J. Novak and Chair Paul M. De Marco

**Middle Row (L-R):** Charles J. Faruki, Heidi Wagner Dorn, Richard A. Dove, Peggy L. Schmitz, James D. Caruso, David W. Hardymon, Judge John W. Wise, Patricia A. Wise, William H. Douglass, Faith L. Long, Judge Rocky Coss, Teresa Sherald, Judge Pamela A. Barker, Lisa A. Eliason, Michele L. Pennington

**Third Row (L-R):** Keith A. Sommer, Robert B. Fitzgerald, Sanford E. Watson, McKenzie K. Davis, Judge William A. Klatt, Roger S. Gates, David L. Dingwell, Frank C. Woodside, Lawrence A. Sutter III, Tim L. Collins, Hon. John R. Willamowski, Dr. John R. Carle, D. Allan Asbury

**Not Pictured:** Judge C. Ashley Pike, Jeff M. Davis, Judge Karen D. Lawson

Judge **Pamela A. Barker** is serving her first term as a judge-commissioner from the Eighth District. Judge Barker has been a member of the Cuyahoga County Court of Common Pleas since 2011. Judge Barker was a member of the Rules Committee.

Dr. **John R. Carle** is a dentist from Sylvania and has served since 2015 as one of four public members of the Board. Dr. Carle served on the Budget and Personnel Committee.

**James D. Caruso** was appointed to the Board in 2016 and serves as general counsel for the Roman Catholic Diocese of Toledo. While in private practice, Commissioner Caruso devoted a portion of his practice to professional ethics.

**Tim L. Collins** is serving his first term on the Board and was a member of the Advisory Opinion Committee. Commissioner Collins is a partner with the Cleveland firm of Collins & Scanlon, where he heads the firm's litigation group.

Judge **Rocky Coss** was appointed in June to fill a judicial vacancy on the Board. Judge Coss has served on the Highland County Court of Common Pleas since 2008. Prior to taking the bench, Judge Coss was engaged in the private practice of law and served six terms as the Highland County prosecuting attorney.

**Jeff Davis** is serving his first term as a public member and was a member of the Budget and Personnel Committee. Commissioner Davis is government relations director for the Ohio Provider Resource Association and a Grove City councilman.

**McKenzie K. Davis** is a lawyer specializing in government relations with the Success Group in Columbus. Commissioner Davis is serving his third term on the Board and served on the Budget and Personnel Committee and as an alternate member of a Probable Cause Panel.

**David L. Dingwell** is a partner in the Canton law firm of Tzangas Plakas Mannos. Commissioner Dingwell is serving his second term on the Board and chaired one of the Board's two Probable Cause Panels.

**William H. Douglass** is a first-term commissioner and served on the Budget and Personnel Committee. Commissioner Douglass is a businessman, real estate agent, and franchisee from Ashtabula County.

**Lisa A. Eliason** is serving her first term as a lawyer member from the Fourth District and was a member of one of the Probable Cause Panels. Commissioner

Eliason is the law director for the City of Athens.

**Charles J. Faruki** is a first-term commissioner and served on the Rules Committee. Commissioner Faruki is a founding member of the Dayton law firm of Faruki Ireland & Cox, where his practice focuses on business litigation.

**Robert B. Fitzgerald** is a partner in the Lima law firm of Fitzgerald, Reese & Van Dyne. Commissioner Fitzgerald was reappointed to his second term on the Board in 2016 and served on the Advisory Opinion Committee.

**Roger S. Gates** is an assistant prosecuting attorney in Butler County. Commissioner Gates is serving his third term on the Board and was a member of the Rules Committee.

**David W. Hardymon** is a retired partner with the Columbus firm of Vorys, Sater, Seymour & Pease. Commissioner Hardymon served on the Advisory Opinion Committee and as an alternate on one of the Probable Cause Panels.

Judge **William A. Klatt** is serving his first term as a judge-commissioner from Franklin County and served on the Advisory Opinion Committee. Judge Klatt has been a judge on the Tenth District Court of Appeals since 2002.

Judge **Karen D. Lawson** has served on the Board since 2014 and was a member of the Rules Committee. Judge Lawson has served on the Lake County Court of Common Pleas, Juvenile Division since 2009.

# Commissioners, continued

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Judge **C. Ashley Pike** is serving his second term on the Board and was a member of the Advisory Opinion Committee. Judge Pike has served on the Columbiana County Court of Common Pleas since 1991.

Judge **Robert P. Ringland** was a trial judge in Clermont County for 32 years and has been a judge on the Twelfth District Court of Appeals since 2009. Judge Ringland served on a Probable Cause Panel.

**Peggy J. Schmitz** joined the Board in 2016 as an attorney-commissioner from Wayne County. Commissioner Schmitz is a member of the Wooster firm of Critchfield, Critchfield & Johnston where her practice focuses on labor and employment law.

**Teresa Sherald** was reappointed to the Board in 2016 and serves as one of four commissioners who represent the public. Commissioner Sherald previously served as a commissioner from 2012 to 2014 and is CEO of the Diversity Search Group in Columbus.

**Lawrence A. Sutter III** is a partner in the Cleveland firm of Sutter O'Connell. A resident of Portage County, Commissioner Sutter was reappointed to his second term in 2016 and was a member of a Probable Cause Panel.

**Keith A. Sommer** is a sole practitioner in Martins Ferry. Commissioner Sommer is in his third term on the Board and was a member of the Rules Committee and a Probable Cause Panel.

**Sanford E. Watson** is a partner with the Cleveland firm Tucker Ellis and formerly served as public safety director for Cleveland. Commissioner Watson chaired the Advisory Opinion Committee and has been a commissioner since 2011.

Judge **John R. Willamowski** serves on the Third District Court of Appeals and previously served five terms in the Ohio House of Representatives. Judge Willamowski is in his second term on the Board and chaired the Rules Committee.

Judge **John W. Wise** has served on the Fifth District Court of Appeals since 1995, was a trial judge for five years, and was a private practitioner for 10 years. Judge Wise has been a commissioner since 2012 and served on a Probable Cause Panel.

**Patricia A. Wise** was appointed to the Board in 2014 and chaired the Budget and Personnel Committee. Commissioner Wise is a partner with the Toledo firm of Niehaus Wise & Kalas where her practice focuses on labor and employment law.

**Frank C. Woodside III** was appointed to the Board in 2016 as a lawyer member from Cincinnati. Commissioner Woodside is of counsel with Dinsmore & Shohl and also is a licensed physician.

## Former Commissioners

The following former commissioners continued to serve the Board by completing pending case assignments or accepting appointments to review judicial campaign conduct grievances:

**Lawrence Elleman, Sharon Harwood, Steve Rodeheffer, David Tschantz, Janica Pierce Tucker,** and Judge **Beth Whitmore** completed hearings in several cases and presented reports to the Board in 2016.

**Bernard Bauer, Judge Thomas Bryant,** and **Jean McQuillan** were assigned to review judicial campaign complaints to determine the existence of probable cause. Former Commissioner Bauer also was appointed as a master pursuant to Board regulation.

# Board Staff

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## **Richard A. Dove**

*Director of the Board*

Mr. Dove has served as secretary and director of the Board since July 2011 and is the chief legal, administrative, and fiscal officer.

Prior to joining the Board, he was a member of the administrative staff of the Supreme Court for more than 22 years, the last four of which were as assistant administrative director. Mr. Dove is recognized in Ohio and nationally for his work in the area of judicial ethics, with a focus on judicial campaign conduct. In 2016, he completed a one-year term as president of the National Council of Lawyer Disciplinary Boards and has been a member of the NCLDB board of directors since 2012. Mr. Dove is a graduate of Wittenberg University and Capital University Law School and is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, and the United States Supreme Court.



## **D. Allan Asbury**

*Senior Counsel*

Since joining the staff in September 2014, Mr. Asbury's work has focused on researching and drafting advisory opinions,

providing ethics advice to Ohio judges, lawyers, and judicial candidates, and leading the Board's education efforts. His extensive legal experience includes more than nine years on the administrative staff of the Supreme Court and 12 years as an associate counsel and senior employment and labor counsel for a regional transit authority in Central Ohio. Mr. Asbury received his undergraduate and law degrees from Capital University, and he is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, and the United States Supreme Court.



## **Heidi Wagner Dorn**

*Counsel*

Ms. Dorn has served as counsel to the Board since February 2014. She conducts legal research for commissioners, provides ethics

advice to Ohio judges, lawyers, and judicial candidates, presents at education seminars, and assists in the review and preparation of advisory opinions. Ms. Dorn previously served for three years as an Assistant Ohio Attorney General, was engaged in private practice for three years, and served three years as a magistrate and staff attorney for the Delaware County Court of Common Pleas. Ms. Dorn is a graduate of the University of Dayton and Capital University Law School, and she is admitted to practice in Ohio, Michigan, the United States District Court for the Southern District of Ohio, and the United States Supreme Court.



## **Michele L. Pennington**

*Deputy Clerk*

Ms. Pennington is responsible for processing case filings, maintaining the Board's case docket and files, assisting

commissioners in scheduling hearings, and assisting in the preparation of Board meeting agendas, meeting materials, and minutes. She also provides fiscal support services, including the processing and payment of all invoices and reimbursement requests from commissioners and certified grievance committees and preparing monthly budget reports.



## **Faith Long**

*Administrative Secretary*

Ms. Long provides clerical support to the Board staff, prepares materials for review by the Board's probable cause

panels, prepares subpoenas, and maintains records of more than 1,800 financial disclosure statements filed annually by judges, magistrates, and judicial candidates.

## Responsibilities of the Board

The Supreme Court established the Board of Commissioners on Grievances and Discipline in 1957 to assist the Supreme Court in executing its plenary and constitutional responsibilities to regulate the practice of law in Ohio. The Board consists of 28 commissioners who are appointed by the Supreme Court. The membership includes four nonlawyer professionals, seven trial and appellate judges, and 17 lawyers from a wide range of practice backgrounds. The Board was renamed the Board of Professional Conduct in 2014.

The Board derives its legal authority from Rule V of the Supreme Court Rules for the Government of the Bar of Ohio and Rules II and III of the Supreme Court Rules for the Government of the Judiciary of Ohio. The primary responsibility of the Board is to adjudicate allegations of professional misconduct on the part of lawyers and judges and make recommendations to the Supreme Court regarding the appropriate sanction to be imposed when a lawyer or judge is found to have engaged in professional misconduct. The Board also considers petitions from lawyers who are seeking to be reinstated to the practice of law following indefinite or impairment suspensions and conducts proceedings in expedited judicial campaign misconduct cases. In any one case, commissioners are asked to make factual findings, reach legal conclusions,

and evaluate expert testimony from medical professionals and treatment providers. In crafting the appropriate sanction to be recommended to the Supreme Court, commissioners must balance the competing interests of protecting the public, sanctioning a lawyer who has strayed from his or her professional obligations, and charting a path by which a suspended lawyer may return to the competent, ethical, and professional practice of law.

A flowchart that outlines the disciplinary process appears in *Appendix A* of this report.

The Board also plays a significant role in promoting and enhancing compliance with the standards of professional ethics by members of the Ohio Bench and Bar. The Board has authority to issue nonbinding advisory opinions regarding prospective or hypothetical application of the rules governing the professional conduct of lawyers and judges. The legal staff of the Board makes regular presentations at bar and judicial association meetings and continuing education seminars and responds daily to telephone and email inquiries from lawyers, judges, judicial candidates, the media, and members of the public.

Commissioners are assigned to one of five standing committees or panels that facilitate the adjudicatory and administrative responsibilities of the board. Two **Probable Cause Panels** are responsible for reviewing the sufficiency of formal misconduct allegations and certifying new complaints to the board. The **Advisory Opinion Committee** considers requests for written advice on application of professional conduct standards and reviews draft advisory opinions prior to their presentation to the full board. The **Rules Committee** reviews and recommends proposed amendments to rules governing disciplinary procedures and the conduct of Ohio lawyers and judges. The **Budget and Personnel Committee** adopts an annual budget to fund the operation of the Board and provide reimbursements to certified grievance committees and periodically reviews the performance of disciplinary counsel and the Board director.



Commissioners James D. Caruso, Tim L. Collins, and Hon. William A. Klatt take the bench during a December 2016 disciplinary hearing.

## 2016 Overview

For the fourth time in the past five years, the Board of Professional Conduct disposed of more cases than were filed or reopened. The Board opened or reopened 76 cases and totaled 83 dispositions, leaving 57 active cases pending as of Dec. 31.

The Board staff significantly enhanced education and compliance efforts in 2016 by making 41 presentations to lawyers, judges, judicial candidates, and law students. The Board undertook the review and reissuance of several outdated advisory opinions and issued its first ethics guide that sets forth a series of best practices for client file retention. Legal staff responded to approximately 2,000 telephone and email inquiries from lawyers, judges, and judicial candidates who sought information regarding compliance with the Rules of Professional Conduct and Code of Judicial Conduct.

The Board continued its prudent expenditure of allocated funds by increasing its expenditures by less than 1 percent, including a 20 percent reduction in nonpersonnel operating expenses.

In a continuing partnership with the Ohio Ethics Commission, the Board fully transitioned to electronic filing of annual financial disclosure statements for judicial branch filers. Electronic filing has facilitated compliance with the annual disclosure requirements and significantly reduced the administrative costs associated with processing and retaining the disclosure statements.

## Adjudicatory Responsibilities

For the second consecutive year and fourth time in the past five years, the Board's pending caseload declined. The Board received 77 matters for adjudication in 2016, including 72 new formal complaints certified to the Board. Three of the new complaints alleged misconduct by current or former judges or candidates for judicial office. The Supreme Court remanded two cases to the Board for further proceedings and referred three petitions from lawyers seeking reinstatement to the practice of law.

Three-commissioner hearing panels conducted formal hearings in 34 cases, spanning 35 hearing days. The Board

conducted six bimonthly meetings to consider reports from hearing panels and to review and approve recommendations from Board committees. The standing committees of the Board met in person or via teleconference on multiple occasions throughout the year.

The Board disposed of 83 cases, categorized as follows:

### 2016 Case Dispositions

51	Reports certified to the Supreme Court
42	Submitted following a hearing or waiver of a hearing
7	Submitted upon recommendation to accept consent to discipline agreement
2	Submitted upon consideration of a petition for reinstatement to the practice of law
15	Dismissals due to Supreme Court acceptance of respondent's resignation from the practice of law with disciplinary action pending
11	Dismissals following Supreme Court's imposition of an indefinite suspension against respondent in default
3	Dismissals upon motion of the relator or the death of the respondent
2	Dismissals based on a finding that the respondent did not engage in misconduct as alleged in the complaint
1	Consolidation of two pending cases

### 83 TOTAL DISPOSITIONS

*Appendix B* of this report is a list of 2016 case dispositions.

As of Dec. 31, the Board had 57 active cases pending on its docket. Seven of the pending cases were submitted to the panels for decision after Dec. 1 and will be presented to the Board in early 2017, and an additional 14 cases are scheduled for hearing. Twenty

cases will be scheduled for hearing in early 2017, six cases are awaiting answers, and five cases involve respondents who are in default for failing to answer the complaint. The five remaining pending cases are stayed due to pending criminal proceedings involving the respondent.

## Cases Pending as of Dec. 31, 2016

### 57 Total Active Cases Pending

- 7 Submitted to panels for decision after Dec. 1, 2016, and presented to Board in early 2017

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- 14 Scheduled for hearing

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- 20 To be scheduled for hearing in early 2017

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- 6 Awaiting answers

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- 5 Involving respondents who are in default for failing to answer complaint

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- 5 Stayed due to pending criminal proceedings involving respondent.

The Board places a pending case on inactive status when the respondent's default is certified to the Supreme Court and an interim default suspension is imposed pursuant to Gov.Bar R. V, Section 14. The case remains inactive until the Supreme Court remands the matter for adjudication upon motion of a party or imposes an indefinite suspension. Four cases were pending on inactive status at the end of 2016.

When a lawyer is convicted of a felony offense under state or federal law, the Board is required to certify the conviction to the Supreme Court. The Court then imposes an interim felony suspension against the lawyer that remains in effect during the pendency of subsequent disciplinary proceedings. The Board certified 12 felony convictions to the Supreme Court in 2016.

## Budget

The Board of Professional Conduct receives two annual budgetary allocations from the Supreme Court Attorney Services Fund, a fund that consists primarily of the biennial registration fees paid by Ohio lawyers. No state general revenue funds are expended in direct support of the operation of the Board.

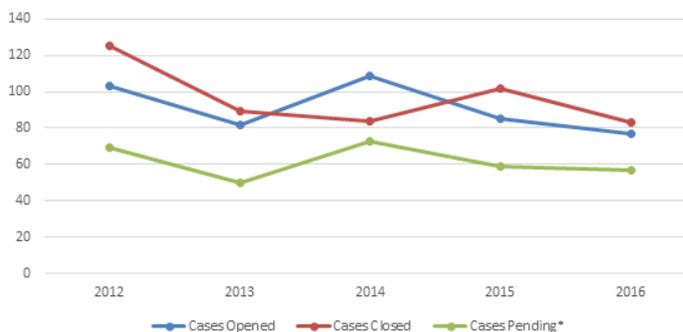
In fiscal year 2016 (July 1, 2015 through June 30, 2016), the Board expended a total of \$682,474 to support its day-to-day operations. This amount represented 7.6 percent of the total annual expenditures from the Supreme Court Attorney Services Fund. For that same period, payments to certified grievance committees from the Reimbursement Budget totaled \$1,810,419, an amount that equaled 20.7 percent of the total Attorney Services Fund expenditures.

## Operations Budget

The Operations Budget funds the costs associated with day-to-day functions of the Board of Professional Conduct, including staff salaries and benefits, expenses associated with Board hearings and meetings, commissioner per diems, and travel reimbursements to commissioners and staff, and miscellaneous office expenses such as telephone, postage, supplies, and equipment.

Operations expenditures increased by just 0.9 percent in fiscal year 2016. Personnel

Board Cases Opened, Closed, and Pending  
2012-2016



\* Excludes cases on inactive status at the end of the year.



Commissioners Hon. Pamela A. Barker (left) and Patricia A. Wise listen to counsel during a 2016 disciplinary hearing.

expenses increased by 11.4 percent, due to increases in employee benefit costs and the hours worked by a parttime staff member. However, the increase in personnel expenditures was largely offset by a 20 percent reduction in other operating costs. Since fiscal year 2012, the Board has reduced its operating costs by 7.9 percent.

### **Reimbursement Budget**

The Reimbursement Budget is used to compensate the 32 certified grievance committees for expenses incurred in performing their disciplinary responsibilities under Gov.Bar R. V. Committees are reimbursed throughout the year for direct expenses incurred in connection with a specific disciplinary investigation or prosecution. Committees may request and receive reimbursement on a quarterly or annual basis for 10 categories of indirect expenses including personnel costs, costs of bar counsel, postage, telephone, books and subscriptions, equipment, and a portion of overhead expenses attributable to

performance of disciplinary activities.

For the first time since 2010, the total reimbursements to certified grievance committees declined in fiscal year 2016. Certified grievance committee reimbursements totaled \$1,810,419 in fiscal year 2016, a 5.5 percent reduction compared to the preceding year.

*Appendix C* includes information regarding the Board's annual operating expenditures for the past three fiscal years, an accounting of fiscal year 2016 expenditures, and the budget allocations for fiscal year 2017.

### **Education and Outreach**

Since 2011, the Board has placed increased emphasis on promoting a greater understanding of the rules governing the professional conduct of Ohio judges and lawyers. This emphasis was apparent in 2016 as the Board significantly expanded its education and training program and launched two new initiatives.

# Advisory Opinions

The Board's regulations set forth guidelines that govern the Board's consideration of advisory opinion requests. These guidelines provide that a request should:

- Pose a question of broad interest or importance to the Ohio Bar or Judiciary;
- Not involve the proposed conduct of someone other than the person requesting the opinion;
- Not involve completed conduct, questions of law, questions pending before a court, questions that are too broad, questions that lack sufficient information, or questions of narrow interest.

Advisory opinions issued by the Board are published on the Board's web site and distributed to an array of legal and professional organizations within and outside Ohio.

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## Noteworthy 2016 Advisory Opinions

**Advisory Opinion 2016-3** addresses participation by Ohio lawyers in on-line lawyer referral services. The opinion advises lawyers to evaluate the elements of referral services to ensure that their participation does not limit their exercise of professional judgment on behalf of clients, violate prohibitions on fee splitting with nonlawyers, or violate lawyer advertising standards. The opinion also reminds lawyers who participate in a referral service that they are responsible for the conduct of nonlawyer employees of the service.

**Advisory Opinion 2016-6** addresses the ethical implications for lawyers under Ohio's Medical Marijuana law that took effect in September. The advisory opinion discusses the ability of a lawyer to provide legal services to clients who seek to establish and operate a medical marijuana enterprise, whether a lawyer may have an ownership interest in a medical marijuana enterprise, and the ethical consequences of prescription use of medical marijuana. Portions of Advisory Opinion 2016-6 were superseded by subsequent rule amendments adopted by the Supreme Court.

**Advisory Opinion 2016-8** advises that the Rules of Professional Conduct adopted in 2007 permit a lawyer to include a client testimonial in advertising, provided the testimonial does not constitute a false, misleading, or nonverifiable communication or create unjustified expectations for prospective clients. The opinion finds that settlement or verdict amounts are inherently misleading and advises against their inclusion in client testimonials. The Board also concludes that a lawyer is responsible for removing nonconforming client testimonials and reviews from websites over which the lawyer has control. Advisory Op. 2016-8 replaces advisory opinions from 1989 and 2000 in which the Board held that client testimonials were prohibited under the former Code of Professional Responsibility.

## Advisory Opinions—Addressing New Requests and Reissuing Prior Opinions

In 2016, the Board continued to fulfill its responsibility to issue nonbinding advisory opinions that address prospective or hypothetical questions involving application of the Supreme Court Rules for the Government of the Bar of Ohio, Supreme Court Rules for the Government of the Judiciary of Ohio, Ohio Rules of Professional Conduct, Ohio Code of Judicial Conduct, and the Attorney Oath of Office. The Revised Code also provides authority for the Board to issue advisory opinions regarding application of the Ohio Ethics Law to judicial branch officers. The Board issued five new opinions in 2016.

In addition to responding to requests for new opinions, the Board undertook a project in 2016 to review and update advisory opinions previously issued by the Board. Many of the Board's prior opinions continue to provide appropriate advice. However, the opinions were rendered under the former Code of Professional Responsibility or prior versions of the Code of Judicial Conduct, thus making it difficult to correspond the Board's advice with current conduct rules. Staff identified several prior opinions that are most frequently referenced in response to inquiries, produced updated versions that cite to the current Rules of Professional Conduct, and presented the revised opinions for possible reissuance. The Board approved seven revised opinions in 2016, and these opinions replaced nine previously issued advisory opinions.

## Staff Letters

When a request for written advice does not satisfy the criteria for issuance of a formal advisory opinion, the Board may direct the staff to respond via letter. Staff letters are most often used when the response is dictated by Supreme Court case law or prior Board opinions, or where advice is sought on a narrow issue of concern to the requesting party. Staff letters are not published but are

maintained in the Board office. Fifteen staff letters were authored and issued in 2016.

### **Ethics Guides**

In March, the Board issued the first in a series of ethics guides that will address issues of concern to a broad segment of the Ohio bench and bar. The Board's ethics guides will compile, in a single document, standards set forth in professional conduct rules, advice from advisory opinions, and best practices relative to the practice of law.

The initial ethics guide addressed the subject of client file retention. This ethics guide provides Ohio lawyers with recommendations on the length of time a lawyer should maintain closed client files, which documents should be returned to the client, and the development of a retention policy for client files. The ethics guide is available on the Board's web page and was reproduced in several local bar association publications.

Future ethics guides will address succession planning for solo- and small-firm practitioners and issues faced by lawyers who are leaving the practice of law to become judges or magistrates.

### **Compliance and Training**

In addition to written advice, the Board's legal staff are regular presenters at professional education seminars and devote a significant portion of each day to responding to telephone and email inquiries from lawyers, judges, and judicial candidates.

Board staff participated in 41 professional education offerings in 2016, compared with 26 the previous year. Included among these presentations were programs for bar associations, prosecutors, legal aid attorneys, and public practice attorneys. Staff also conducted five judicial candidate seminars, made ten education presentations for judges, magistrates, retired judges, and newly elected judges, and spoke to law students at three Ohio law schools.

The Board continued its co-sponsorship of the Miller-Becker Seminar held in October each year. This seminar is hosted for the benefit of the employees and volunteers of the local bar association grievance committees, the Office of Disciplinary Counsel, and other professional responsibility lawyers. The October 21 seminar featured a presentation from a licensed psychiatrist regarding impairment in the legal profession and disciplinary process and panel discussions on a variety of procedural issues in

disciplinary cases. Approximately 150 individuals attended the seminar.

The Board's legal staff also responds to written and telephone questions from lawyers, judges, and judicial candidates regarding compliance with the Rules of Professional Conduct and Code of Judicial Conduct. The legal staff received and responded to approximately 2,000 telephone inquiries and email requests for advice. Some inquiries are easily resolved, while others require research and documentation. The staff also responded to public inquiries regarding the disciplinary process and inquiries from attorneys, the public, and media regarding cases pending before the Board.

### **Financial Disclosure**

State law and the Code of Judicial Conduct require each judge, magistrate, and candidate for judicial office to file an annual financial disclosure statement with the Board of Professional Conduct. The Board receives and retains more than 1,800 statements each year.

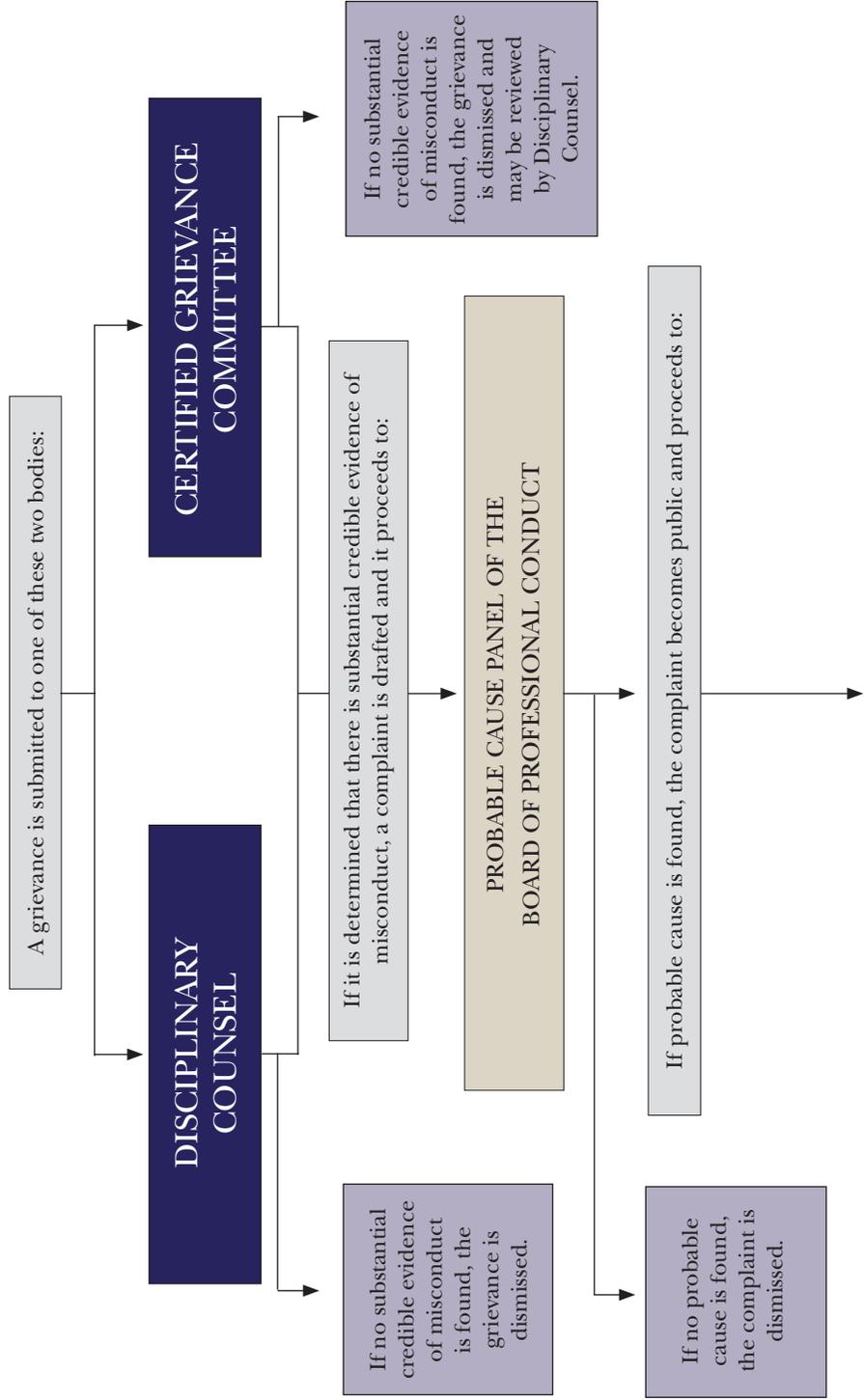
Working in collaboration with the Ohio Ethics Commission, the Board has offered an electronic option to judicial branch filers since 2013. In 2016, the Board required all filers to submit their financial disclosure statement in electronic format. Electronic filing has increased compliance with the filing requirements, reduced costs associated with administering the filing requirements, and facilitated responses to public records requests.

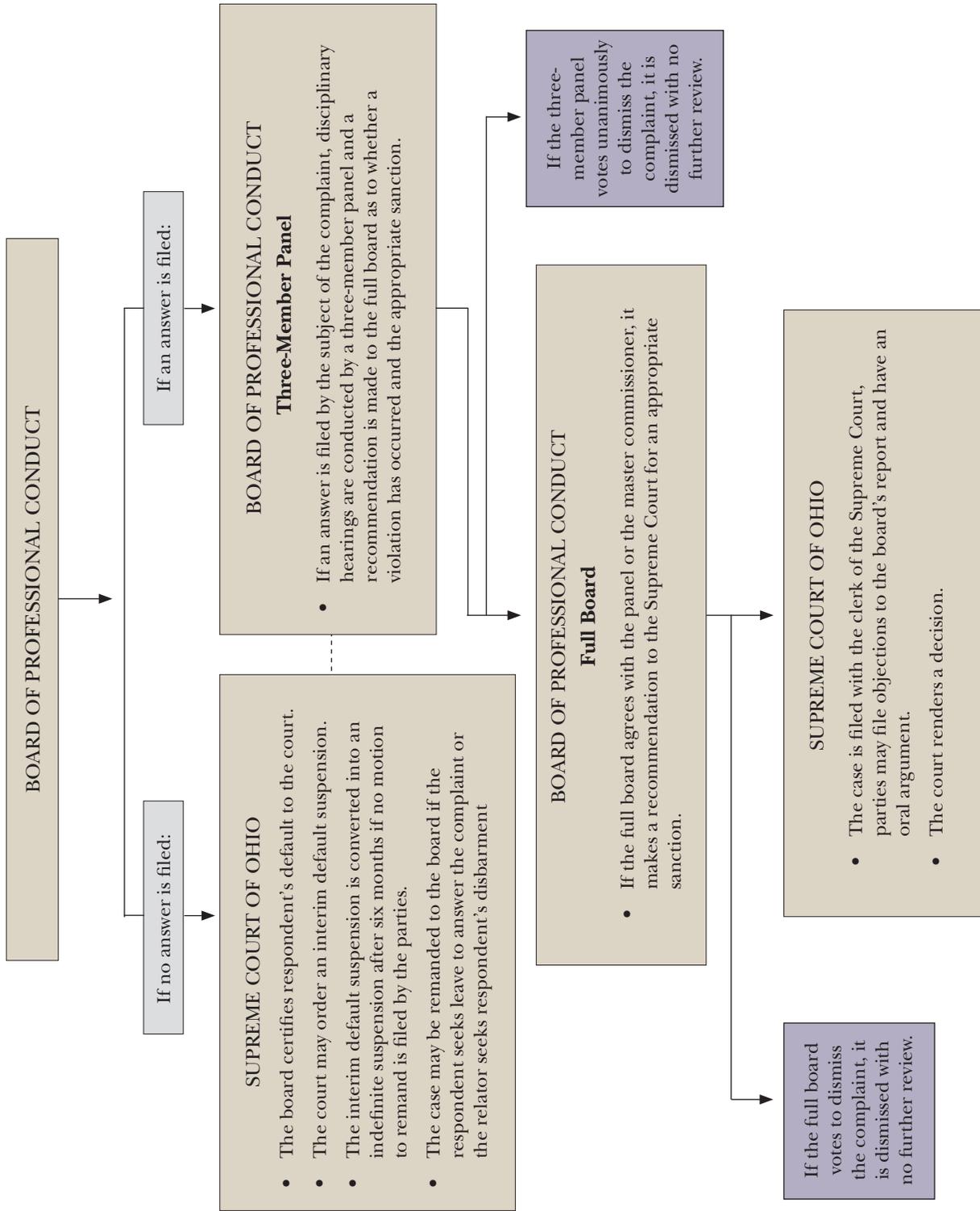
### **Conclusion**

The accomplishments outlined in this annual report are a credit to the commissioners and staff who are privileged to serve the Supreme Court, the legal profession, and the public. Members and staff of the Board of Professional Conduct are ever mindful of the significant responsibility delegated by the Supreme Court strive to approach that responsibility with a commensurate degree of diligence, fairness, and compassion.

# DISCIPLINARY PROCESS

A grievance against a judge or attorney may be submitted to the Disciplinary Counsel or a certified grievance committee of a local bar association. If either of those bodies determines that substantial credible evidence of professional misconduct exists, a formal complaint is drafted. It then moves to a probable cause panel of the Board of Professional Conduct, which determines if there is probable cause. If the panel determines that there is probable cause, the formal complaint becomes public and is filed with the Board of Professional Conduct. Hearings are then conducted by the board and if it finds a violation, a recommendation is made to the Supreme Court of Ohio. The Supreme Court of Ohio makes the final decision as to findings of misconduct, and issues an appropriate sanction.





APPENDIX B | CASE DISPOSITION INDEX

Case Name and Numbers	County	Board Disposition Type	Board Disposition or Recommendation	Supreme Court Disposition or Status
<i>Disciplinary Counsel v. Hon. Angela R. Stokes, 13-057</i>	Cuyahoga	Dismissal (other)	Dismissed upon application of parties	N/A
<i>Disciplinary Counsel v. Sean P. Ruffin, 15-010</i>	Franklin	Dismissal (default)	Dismissal	Indefinite suspension (default); 2016-Ohio-89
<i>Cleveland Metro. Bar Assn. v. Marvin H. Schiff, 14-070</i>	Cuyahoga	Dismissal (default)	Dismissal	Indefinite suspension (default); 2016-Ohio-97
<i>Columbus Bar Assn. v. Lawrence E. Winkfield, 02-030</i>	Franklin	Probation revocation	Recommend finding of probation violation and modification of conditions	Conditions of probation modified; respondent found in contempt for violation of probation; 2016-Ohio-1555
<i>Mahoning Cty. Bar Assn. v. Frank N. Fagnano, 15-007</i>	Mahoning	Dismissal (default)	Dismissal	Indefinite suspension (default); 2016-Ohio-358
<i>Trumbull Cty. Bar Assn. v. David K. Roland, 14-054</i>	Trumbull	Hearing	Disbarment	Disbarment; 2016-Ohio-5579
<i>Cincinnati Bar Assn. v. Christopher D. Wiest, 14-095</i>	Hamilton	Hearing	Two-year suspension, 18 months stayed	Two-year suspension, one year stayed; 2016-Ohio-8166
<i>Cincinnati Bar Assn. v. John W. Hauck, 14-098</i>	Hamilton	Hearing	Indefinite suspension	Two-year suspension, one year stayed; 2016-Ohio-7826
<i>Cleveland Metro. Bar Assn. v. John B. Frenden, 15-015</i>	Cuyahoga	Hearing	Disbarment	Disbarment; 2016-Ohio-7198
<i>Disciplinary Counsel v. Benjamin Joltin, 15-022</i>	Mahoning	Hearing	Two-year suspension, 18 months stayed	Two-year suspension, one year stayed; 2016-Ohio-8168
<i>Disciplinary Counsel v. Linda L. Kendrick, 15-038</i>	Delaware	Hearing	One-year suspension, stayed	One-year suspension, stayed; 2016-Ohio-5600
<i>Warren Cty. Bar Assn. v. Parker L. Clifton, 15-040</i>	Warren	Hearing	Public reprimand	Public reprimand; 2016-Ohio-5587
<i>Disciplinary Counsel v. Rasheed A. Simmonds, 15-047</i>	Hamilton	Stipulations; hearing waived	One-year suspension, stayed	One-year suspension, stayed; 2016-Ohio-5599
<i>Medina Cty. Bar Assn. v. Steven B. Beranek, 15-049</i>	Medina	Stipulations; hearing waived	Public reprimand	Public reprimand; 2016-Ohio-5595
<i>Disciplinary Counsel v. Kenneth J. Warren, 15-035</i>	Franklin	Consent to discipline	Two-year suspension with no credit for interim felony suspension	Two-year suspension; 2016-Ohio-7333
<i>Disciplinary Counsel v. Darren L. Courtney, 15-066</i>	Warren	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-833
<i>Disciplinary Counsel v. Dennis M. McGrath, 15-081</i>	Out-of-state	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-1024

Case Name and Numbers	County	Board Disposition Type	Board Disposition or Recommendation	Supreme Court Disposition or Status
<i>Columbus Bar Assn. v. Keith J. Nowak, 15-056</i>	Franklin	Dismissal (other)	Dismissed on motion of relator	n/a
<i>Cleveland Metro. Bar Assn. v. Nancy A. Zoller and Edward J. Mamone, 13-060</i>	Cuyahoga	Remand; hearing waived	Recommendation regarding restitution on remand; reaffirm original recommendation of one-year stayed suspension for Zoller and six-month stayed suspension for Mamone	One-year suspension for each respondent; 2016-Ohio-7639
<i>Lorain Cty. Bar Assn. v. Gerald M. Smith, 15-031</i>	Lorain	Hearing	Public reprimand	Public reprimand; 2016-Ohio-7469
<i>Mahoning Cty. Bar Assn. v. Dennis A. DiMartino, 15-060</i>	Mahoning	Hearing	Indefinite suspension	Indefinite suspension; 2016-Ohio-5665
<i>Disciplinary Counsel v. Gerald R. Walton, 15-054</i>	Cuyahoga	Consent to discipline	Public reprimand	Public reprimand; 2016-Ohio-7468
<i>Cleveland Metro. Bar Assn. v. Nancy C. Finan, 16-002</i>	Cuyahoga	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-1533
<i>Disciplinary Counsel v. Timothy E. Bellew, 14-069</i>	Trumbull	Dismissal (default)	Dismissal	Indefinite suspension (default); 2016-Ohio-1534
<i>Disciplinary Counsel v. Jennifer L. Coriell, 15-037</i>	Delaware	Dismissal (default)	Dismissal	Indefinite suspension (default); 2016-Ohio-2923
<i>Disciplinary Counsel v. G. Timothy Marshall, 14-019</i>	Cuyahoga	Dismissal (other)	Dismissal; death of respondent	n/a
<i>Cleveland Metro. Bar Assn. v. Kenneth R. Donchatz, 14-085</i>	Franklin	Hearing	Two-year suspension, six months stayed	Pending, Case No. 2016-0859
<i>Toledo Bar Assn. v. Joan M. Crosser, 15-029</i>	Lucas	Hearing	One-year suspension, stayed	One-year suspension, stayed; 2016-Ohio-8257
<i>Columbiana Cty. Bar Assn. v. Virginia M. Barborak, 15-030</i>	Columbiana	Hearing	Indefinite suspension	Disbarment; 2016-Ohio-8167
<i>Geauga Cty. Bar Assn. v. Carly L. Snavely, 15-034</i>	Geauga	Consent to discipline	Two-year suspension, eighteen months stayed	Two-year suspension, eighteen months stayed; 2016-Ohio-7829
<i>Cleveland Metro. Bar Assn. v. Matthew J. King, 15-046</i>	Cuyahoga	Hearing	Six-month suspension, stayed	Six-month suspension, stayed; 2016-Ohio-8255
<i>Disciplinary Counsel v. Charles G. Mickens, 15-051</i>	Mahoning	Stipulations; hearing waived	Public reprimand	Public reprimand; 2016-Ohio-8022
<i>Disciplinary Counsel v. Judge Edward J. Elum, 15-069</i>	Stark	Hearing	One-year suspension, stayed	One-year suspension, stayed; 2016-Ohio-8256

APPENDIX B | CASE DISPOSITION INDEX

<b>Case Name and Numbers</b>	<b>County</b>	<b>Board Disposition Type</b>	<b>Board Disposition or Recommendation</b>	<b>Supreme Court Disposition or Status</b>
<i>Disciplinary Counsel v. Timothy H. Champion, 15-071</i>	Summit	Stipulations; hearing waived	One-year suspension, stayed	One-year suspension, stayed; 2016-Ohio-8023
<i>Disciplinary Counsel v. Ronnie M. Tamburrino, 15-078</i>	Ashtabula	Hearing	One-year suspension, six months stayed	One-year suspension, six months stayed; 2016-Ohio-8014
<i>Disciplinary Counsel v. Arthur A. Ames, 15-079</i>	Montgomery	Consent to discipline	Two-year suspension, six months stayed	Two-year suspension, six months stayed; 2016-Ohio-7830
<i>Disciplinary Counsel v. William H. Truax, Jr., 15-080</i>	Franklin	Consent to discipline	Six-month suspension, stayed	Six-month suspension, stayed; 2016-Ohio-7334
<i>Ohio State Bar Assn. v. Joshua S. Albright, 15-016</i>	Shelby	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-3337
<i>Disciplinary Counsel v. Mark A. Thomas, 15-042</i>	Belmont	Dismissal (default)	n/a	Indefinite suspension (default); 2016-Ohio-3337
<i>Disciplinary Counsel v. Susan J. Phillips, 16-018</i>	Seneca	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-3544
<i>Trumbull Cty. Bar Assn. v. Csaba A. Bodor, 16-001</i>	Trumbull	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-5020
<i>Disciplinary Counsel v. Joseph P. O'Malley, 11-113</i>	Cuyahoga	Reinstatement	Grant reinstatement	Reinstatement granted; 2016-Ohio-7387
<i>Disciplinary Counsel v. Marc G. Doumbas, 14-018</i>	Cuyahoga	Hearing	Indefinite suspension	Pending, Case No. 2016-1149
<i>Akron Bar Assn. v. Holly L. Bednarski, 14-094</i>	Summit	Hearing	Two-year suspension, six months stayed	Pending, Case No. 2015-0243
<i>Disciplinary Counsel v. Richard L. Hiatt, 14-100</i>	Hamilton	Hearing	Two-year suspension, six months stayed	Dismissed due to death of respondent; 2016-Ohio-8140
<i>Ashtabula Cty. Bar Assn. v. Thomas C. Brown, 15-063</i>	Ashtabula	Hearing	Six-month suspension, stayed	Pending, Case No. 2016-1147
<i>Disciplinary Counsel v. Richard Barbera, 15-070</i>	Medina	Hearing	One-year suspension, stayed	Pending, Case No. 2016-1159
<i>Disciplinary Counsel v. Amy M. Moore, 16-003</i>	Delaware	Stipulations; hearing waived	Public reprimand	Pending, Case No. 2016-1160
<i>Columbus Bar Assn. v. Stanlee E. Culbreath, 16-005</i>	Franklin	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-5675
<i>Disciplinary Counsel v. James M. Johnson, 16-008</i>	Cuyahoga	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-5676
<i>Disciplinary Counsel v. Paul L. Wallace, 16-022</i>	Franklin	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-5677
<i>Trumbull Cty. Bar Assn. v. Timothy E. Bellew, 15-062</i>	Trumbull	Dismissal (default)	n/a	Indefinite suspension (default); 2016-Ohio-6966

Case Name and Numbers	County	Board Disposition Type	Board Disposition or Recommendation	Supreme Court Disposition or Status
<i>Disciplinary Counsel v. Stephanie G. Gussler, 15-021</i>	Licking	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-6967
<i>Lorain Cty. Bar Assn. v. Kenneth J. Lewis, 16-033</i>	Lorain	Dismissal (consolidation)	n/a	n/a
<i>Disciplinary Counsel v. Scott C. Smith, 11-072</i>	Cuyahoga	Hearing (on remand)	Indefinite suspension	Pending, Case No. 2014-0197
<i>Mahoning Cty. Bar Assn. v. William C. Hebley, Jr., 12-054</i>	Mahoning	Reinstatement	Grant reinstatement	Pending, Case No. 2014-0200
<i>Ohio State Bar Assn. v. Harry J. Jacob III, 15-019</i>	Cuyahoga	Hearing	Two-year suspension, one year stayed	Pending, Case No. 2016-1488
<i>Wood Cty. Bar Assn. v. Robert E. Searfoss III, 15-055</i>	Wood	Hearing	Two-year suspension, one year stayed	Pending, Case No. 2016-1489
<i>Cleveland Metro. Bar Assn. v. Edward J. Heben, Jr., 15-061</i>	Cuyahoga	Hearing	One-year suspension, six months stayed	Pending, Case No. 2016-1495
<i>Disciplinary Counsel v. Gregory L. Peck, 15-067</i>	Butler	Hearing	Six-month suspension, stayed	Pending, Case No. 2016-1490
<i>Disciplinary Counsel v. Alan J. Rapoport, 15-073</i>	Cuyahoga	Dismissal (merits)	n/a	n/a
<i>Disciplinary Counsel v. Thomas P. Maney, Jr., 15-074</i>	Franklin	Hearing	One-year suspension, six months stayed	Pending, Case No. 2016-1494
<i>Disciplinary Counsel v. Robert H. Hoskins, 15-077</i>	Hamilton	Hearing	Disbarment	Pending, Case No. 2016-1496
<i>Disciplinary Counsel v. Jeremiah J. Denslow, 16-014</i>	Warren	Consent to discipline	Six-month suspension, stayed	Pending, Case No. 2016-1487
<i>Disciplinary Counsel v. William L. Summers, 16-042</i>	Cuyahoga	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-7386
<i>In re Judicial Campaign Complaint Against Miday, 16-047</i>	Cuyahoga	Dismissal (merits)	n/a	n/a
<i>Disciplinary Counsel v. Angela M. Whitt, 15-072</i>	Franklin	Dismissal (default)	n/a	Indefinite suspension (default); 2016-Ohio-7530
<i>Disciplinary Counsel v. Guy D. Rutherford, 15-068</i>	Cuyahoga	Dismissal (default)	n/a	Indefinite suspension (default); 2016-Ohio-7532
<i>Disciplinary Counsel v. Noah T. Stacy, 16-006</i>	Butler	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-7533
<i>Dayton Bar Assn. v. Shawn P. Hooks, 15-059</i>	Montgomery	Dismissal (default)	n/a	Indefinite suspension (default); 2016-Ohio-7557

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Case Name and Numbers	County	Board Disposition Type	Board Disposition or Recommendation	Supreme Court Disposition or Status
<i>Disciplinary Counsel v. Brian H. Richman, 16-049</i>	Cuyahoga	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-7972
<i>Cleveland Metro. Bar Assn. v. Joseph E. Feighan III, 16-012</i>	Cuyahoga	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-7974
<i>Disciplinary Counsel v. Patrick P. Leneghan, 15-076</i>	Cuyahoga	Dismissal (default)	n/a	Indefinite suspension (default); 2016-Ohio-7976
<i>Lorain and Trumbull Cty. Bar Assns. v. Robert L. Johnson, 13-062</i>	Trumbull	Hearing	Indefinite suspension	Pending; Case Nos. 2014-0136 & 2014-1403
<i>Toledo Bar Assn. v. Beauregard M. Harvey, 15-004</i>	Lucas	Hearing	Indefinite suspension	Pending; Case No. 2015-0742
<i>Disciplinary Counsel v. Mohammed N. Alo, 15-057</i>	Franklin	Default disbarment	Disbarment	Pending; Case No. 2015-2053
<i>Columbus Bar Assn. v. Kristina M. Lindner, 15-058</i>	Franklin	Hearing	Indefinite suspension	Pending; Case No. 2016-1820
<i>Lorain Cty. Bar Assn. v. Kenneth A. Nelson II, 16-010</i>	Lorain	Hearing	Two-year suspension, 18 months stayed	Pending; Case No. 2016-1830
<i>Disciplinary Counsel v. Shawn A. Little, 16-011</i>	Franklin	Hearing	Disbarment	Pending; Case No. 2016-1838
<i>Disciplinary Counsel v. Andrew O. Martyniuk, 16-015</i>	Portage	Hearing	Indefinite suspension	Pending; Case No. 2016-1821
<i>Disciplinary Counsel v. Andrew R. Schuman, 16-021</i>	Wood	Hearing	One-year suspension, six months stayed	Pending; Case No. 2016-1834
<i>Disciplinary Counsel v. J. Greg Miller, 16-023</i>	Tuscarawas	Consent to discipline	One-year suspension, stayed	Pending; Case No. 2016-1829
<i>Disciplinary Counsel v. Jennifer L. Coriell, 16-004</i>	Delaware	Dismissal (resignation)	n/a	Resignation accepted; 2016-Ohio-8160

## 2016 Dispositions by Type

<b>83</b>	<b>Total Dispositions</b>
34	Hearing
2	Reinstatement
5	Stipulations; Hearing Waived
7	Consent to Discipline
15	Resignation
2	Dismissal on Merits
11	Dismissal (Default)
3	Dismissal (Other)
1	Consolidation
1	On motion for Default Disbarment
1	On Remand Without Hearing
1	Probation Revocation
0	Mental Illness Adjudication
0	Mental Illness Reinstatement

## Budget and Expenditures

(2014 to 2017)

	FY 2014 (Actual)	FY 2015 (Actual)	FY 2016 (Actual)	FY 2017 (Budgeted)
Board Operations	\$ 615,450	\$ 676,394	\$ 682,474	\$ 845,222
Grievance Committee Reimbursements	\$ 1,818,764	\$ 1,914,883	\$ 1,810,419	\$ 1,950,000

## Operations Budget and Expenditures FY 2016

(July 1, 2015 to June 30, 2016)

	ALLOCATED <sup>1</sup>	SPENT
TOTAL STAFF SALARIES AND BENEFITS	\$ 509,081	\$ 501,122
TOTAL NONPAYROLL PERSONAL SERVICES	\$ 50,000	\$ 21,375
Commissioner Per Diems	\$ 50,000	\$ 21,375
TOTAL MAINTENANCE	\$ 373,000	\$ 159,977
Telephone	\$ 2,000	\$ 1,298
Postage	\$ 10,000	\$ 4,366
Maintenance and Repair	\$ 2,000	\$ 0
Supplies and Materials	\$ 13,000	\$ 2,395
Books, Subscriptions	\$ 1,000	\$ 671
Travel Reimbursement	\$ 100,000	\$ 54,908
Hearing Expenses	\$ 190,000	\$ 64,879
Miscellaneous Expenses	\$ 55,000	\$ 31,460
TOTAL EQUIPMENT	\$ 15,000	\$ 0
<b>GRAND TOTAL</b>	<b>\$ 947,081</b>	<b>\$ 682,474</b>

<sup>1</sup> The Board received a larger than normal budget allocation for fiscal year 2016 in anticipation of incurring costs associated with a significant judicial disciplinary case. The case was stayed in late 2015 and dismissed on motion of the relator in early 2016, and the anticipated costs were not incurred.

## Fiscal Year 2016 Total Reimbursements To Certified Grievance Committees

For Disciplinary-Related Expenses And File Inventories

CERTIFIED GRIEVANCE COMMITTEE	REIMBURSEMENT
Akron Bar Association	\$ 181,120
Allen County Bar Association	\$ 8,615
Ashtabula County Bar Association	\$ 15,237
Butler County Bar Association	\$ 3,382
Cincinnati Bar Association	\$ 251,194
Cleveland Metropolitan Bar Association	\$ 274,519
Columbiana County Bar Association	\$ 6,207
Columbus Bar Association	\$ 317,248
Dayton Bar Association	\$ 177,460
Erie-Huron Certified Grievance Committee	\$ 13,141
Findlay/Hancock County Bar Association	\$ 5,352
Lake County Bar Association	\$ 19,247
Lorain County Bar Association	\$ 111,349
Mahoning County Bar Association	\$ 82,021
Northwest Ohio Grievance Committee	\$ 5,156
Ohio State Bar Association	\$ 92,798
Stark County Bar Association	\$ 31,798
Toledo Bar Association	\$ 176,538
Trumbull County Bar Association	\$ 18,592
Warren County Bar Association	\$ 5,562
Wayne County Bar Association	\$ 0
<b>TOTAL</b>	<b>\$ 1,796,536</b>
<b>FILE INVENTORY</b> [GOV. BAR R. V, SECTION 8(F)]	<b>REIMBURSEMENT</b>
Cleveland Metropolitan Bar Association	\$ 4,146
Lorain County Bar Association	\$ 6,724
Dayton Bar Association	\$ 3,013
<b>TOTAL</b>	<b>\$ 13,833</b>
<b>GRAND TOTAL</b>	<b>\$1,810,419</b>



Ohio Board of  
Professional Conduct

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# Ohio Board of Professional Conduct

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