

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

**2010 ANNUAL REPORT**

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## 2010 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 Rule V(3)(B). Under that rule, Disciplinary Counsel is authorized to investigate allegations and initiate complaints concerning misconduct, mental illness or substance abuse by attorneys and judges 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 ("UPL"), pursuant to The Ohio Supreme Court Rules for the Government of the Bar (Gov. Bar) and the Rules for the Government of the Judiciary (Gov. Jud.).

This report to the Supreme Court of Ohio and the Board of Commissioners on Grievances and Discipline ("Board") concerning the activities for calendar year 2010 (*Tables 1-5*) and FY2010 expenses (*Table 6*) of ODC is made pursuant to the requirements of Gov. Bar Rule V(3)(B)(3).

#### **STAFF OVERVIEW**

The ODC staff of 2010 was comprised of 10 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. The office also contracts with two part-time field investigators to cover northeastern and southwestern Ohio.

## GRIEVANCES

A total of 3,371 new matters for consideration were received by ODC in 2010. That includes all relevant categories such as grievances filed against Attorneys, Judges, Magistrates and Justices, Appeals from Certified Grievance Committees, Felony Convictions, Board cases, Unauthorized Practice of Law investigations, UPL Board cases, Child Support, Reciprocals and Resignations. Of that total, 2,401 represented grievances originally filed with ODC against Attorneys and 528 grievances filed against Judges, but does not include Appeals.

In 2010, a total of 1,569 grievances were dismissed on intake or after initial review and 1,359 were opened for investigation. For procedural reasons, 129 grievances that were received by ODC were transferred to local bar associations for investigation. Under that same rationale, another 50 grievances were forwarded to the Board for reassignment and eight were forwarded to the Chief Justice of the Ohio Court of Appeals, pursuant to Gov. Jud. Rule II (2)(B).

A geographic distribution by Ohio County of the matters filed with ODC in 2010, based on the location of the Respondents' principal offices, is provided. (*Table 5*). For a detailed presentation of those grievances which were received in 2010 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 five years since the new statutory requirement in the Fall of 2005 mandating that banks must notify ODC in each instance where an IOLTA is overdrawn. The number of such grievances reported in 2005 was 110, increasing to 243 in 2006, 289 in 2007, 319 in 2008, 338 in 2009 and most recently to 382 in 2010. At the

beginning of 2010, there were 673 grievances pending with ODC. As of December 31, 2010, there were 653 grievances pending and/or under investigation.

A total of 45 formal complaints were filed by ODC in 2010 with the Board, of which two alleged judicial misconduct. Of the 45 complaints filed, four were dismissed at the hearing panel stage and three were dismissed by the Board.

### **APPEALS**

In Ohio, both ODC and 33 Certified Grievance Committees, which are associated with local bar associations across the state, are authorized to receive, investigate and prosecute grievances. If a grievance is initially submitted to and dismissed by any of the Certified Grievance Committees, the grievant has 14 days to appeal that determination to the Secretary of the Board who shall refer the request for review to ODC. ODC is authorized to open a new case and conduct a separate investigation. For details, see Gov. Bar Rule V (4)(l)(5).

In 2010 ODC received 258 Appeals, an increase of one from the 2009 figure. Two of those 258 Appeals have resulted in ODC filing formal complaints with the Board. During the year, 280 Appeals were closed. As of December 31, 2010, 43 Appeals were pending.

### **UNAUTHORIZED PRACTICE OF LAW (UPL)**

ODC is authorized to receive grievances against an individual or organization who/that is not authorized to conduct the practice of law in Ohio. See Gov. Bar Rule VII. The respondent may be a former attorney who no longer is currently licensed under Ohio rules, an attorney licensed in another jurisdiction but not Ohio or someone who has never been admitted to the practice of law in Ohio. Also subject to our investigatory powers are businesses or other entities that offer legal services without the authority to do so.

The number of UPL grievances received by ODC in 2010 totaled 75, a modest increase over the 63 received in 2009. During the year, 78 UPLs were closed and as of

December 31, 2010, there were 38 UPL investigations pending in the ODC office.

### **RECIPROCAL**

Attorneys may be licensed to practice law in multiple state jurisdictions. When an attorney admitted to the practice of law in Ohio has been sanctioned by another state the attorney shall notify both ODC and the Clerk of the Supreme Court of Ohio of that action. Once a certified copy of the original disciplinary order has been received, the Court may impose a sanction upon that attorney with either identical or comparable discipline. For details, please see Gov. Bar Rule V (11)(F). Nine Reciprocal matters were received by ODC in 2010 and two were pending at the end of the year. The Court sanctioned nine attorneys on Reciprocal complaints.

### **CHILD SUPPORT**

If an Ohio Attorney, Justice or Judge has been found in a final and enforceable determination to be in default of a Child Support order, this office is authorized under Gov. Bar Rule V, (5)(A)(1)(b) to pursue an Interim Suspension. No Child Support matters were filed with our office in 2010, and none were pending at the close of the year.

### **RESIGNATIONS and RETIREMENTS**

Attorneys may submit an application to the Supreme Court of Ohio to resign from the practice of law which, once approved, is unconditional, final and irrevocable. The application contains both an affidavit and written waiver permitting ODC to conduct a review of the application to determine how such a resignation will be classified.

During the investigation, ODC seeks to determine whether the applicant is currently the subject of any disciplinary proceedings. If disciplinary action is pending, ODC prepares a sealed report to the Office of Attorney Services indicating that the applicant may resign but with the added phrase appended "With Disciplinary Action Pending". Resignation applicants found to have no pending discipline are approved as Retirements. For details,

please see Gov. Bar Rule VI (6).

Twenty-six resignation applications were received for review by ODC in 2010. There were 26 resignations announced by the Court during 2010, 16 of which were Resignations with Disciplinary Action Pending and 10 were Retirements (*Table 3*).<sup>1</sup> There were 20 resignations in 2009.

### **INTERIM SUSPENSIONS**

There were three Interim suspensions entered by the Court in 2010, all for Felony Convictions. No Interim Suspensions were based upon a Mental Health suspension or an Interim Remedial suspension.

### **HEARINGS and ORAL ARGUMENTS**

In 2010, ODC attorneys appeared at 25 hearings before panels of the Board and participated in five oral arguments before The Supreme Court of Ohio. As of December 31, 2010, there were: 19 cases awaiting hearing dates before the Board and 13 cases awaiting reports from the Board; 10 cases pending oral argument before the Supreme Court; and nine cases pending decision by the Supreme Court of Ohio (*Table 4*). In 2010, The Supreme Court of Ohio issued formal sanctions in 67 cases in which ODC was the relator. (*Tables 1 & 3*).

**Respectfully submitted,**

**Jonathan E. Coughlan  
Disciplinary Counsel**

<sup>1</sup> 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 a permanent status.

**TABLE 1**

|  | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> |
|--|-------------|-------------|-------------|-------------|-------------|
| <b><u>Disposition of Grievances Received:</u></b>                        |             |             |             |             |             |
| Dismissed on Intake or after Investigation                               | 2698        | 2862        | 2794        | 2791        | 2883        |
| Pending at End of Year   | 678         | 795         | 621         | 673         | 653         |
| <b><u>Caseload Comparison:</u></b>                                       |             |             |             |             |             |
| Number of Grievances Received  | 2937        | 3031        | 2940        | 2843        | 2929        |
| Number of Appeals Received   | 331         | 337         | 290         | 257         | 258         |
| Number of UPLs Received  | 66          | 67          | 91          | 63          | 75          |
| Number of Formal Complaints Filed  | 42          | 35          | 38          | 51          | 45          |
| <b><u>Sanctions Issued:</u></b> <i>(Table 3 for 2010 details)</i>        |             |             |             |             |             |
| Public Reprimands  | 5           | 2           | 2           | 4           | 3           |
| Six-Month Suspensions  | 4           | 4           | 5           | 6           | 4           |
| One-Year Suspensions   | 4           | 4           | 5           | 5           | 10          |
| Eighteen-Month Suspensions   | 0           | 1           | 1           | 0           | 1           |
| Two-Year Suspensions   | 8           | 7           | 2           | 7           | 9           |
| Indefinite Suspensions   | 7           | 7           | 7           | 8           | 14          |
| Interim Remedial Suspensions   | 0           | 1           | 1           | 0           | 0           |
| Mental Health Suspensions <sup>1</sup>                                   | 1           | 0           | 2           | 0           | 0           |
| Disbarments  | 9           | 1           | 3           | 4           | 1           |
| Reciprocal Disciplines   | 8           | 4           | 3           | 4           | 9           |
| Resignations<br>(includes Resignations with Disciplinary Action Pending) | 15          | 21          | 9           | 17          | 16          |
| Retirements <sup>2</sup>   | -           | -           | 14          | 3           | 10          |

<sup>1</sup> 2006 is the first year Mental Health Suspensions were included in the ODC Annual Report.

<sup>2</sup> 2008 is the first full year during which time Resignations without Disciplinary Action Pending are referred to as Retirements.

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

| <b><u>Alleged Primary Violation</u></b>                 | <b><u>2006</u></b> | <b><u>2007</u></b> | <b><u>2008</u></b> | <b><u>2009</u></b> | <b><u>2010</u></b> |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|
| Neglect/Failure to protect interests of the client      | 351                | 303                | 378                | 292                | 318                |
| Failure to account or turn over file                    | 43                 | 43                 | 55                 | 42                 | 41                 |
| Improper withdrawal (refusal to withdraw)               | 13                 | 10                 | 8                  | 8                  | 5                  |
| Excessive fees  | 90                 | 84                 | 81                 | 90                 | 83                 |
| Personal misconduct                                     | 92                 | 108                | 101                | 94                 | 125                |
| Misrepresentation/false statement/concealment           | 54                 | 42                 | 40                 | 26                 | 38                 |
| Criminal conviction                                     | 5                  | 4                  | 12                 | 11                 | 12                 |
| Failure to file income tax returns                      | 0                  | 1                  | 1                  | 0                  | 0                  |
| Commingling of funds                                    | 2                  | 1                  | 3                  | 1                  | 2                  |
| Conversion  | 25                 | 27                 | 29                 | 23                 | 28                 |
| Embezzlement  | 2                  | 1                  | 4                  | 3                  | 3                  |
| Failure to maintain funds in trust <sup>1</sup>         | 243                | 289                | 319                | 338                | 382                |
| Breach of client confidence                             | 6                  | 9                  | 9                  | 8                  | 7                  |
| Conflict of lawyer's interest                           | 40                 | 26                 | 30                 | 26                 | 32                 |
| Conflict of client's interest                           | 43                 | 63                 | 48                 | 58                 | 50                 |
| Communication with adverse party represented by counsel | 8                  | 9                  | 13                 | 5                  | 8                  |
| Trial misconduct  | 65                 | 77                 | 81                 | 73                 | 91                 |
| Failure to register                                     | 8                  | 2                  | 4                  | 1                  | 2                  |
| Practicing while under suspension                       | 16                 | 14                 | 16                 | 10                 | 8                  |
| Assisting in the Unauthorized Practice of Law           | 7                  | 9                  | 4                  | 3                  | 10                 |
| Advertising/Solicitation                                | 18                 | 6                  | 15                 | 9                  | 13                 |
| Judicial misconduct                                     | 104                | 74                 | 106                | 88                 | 97                 |
| Mental illness  | 3                  | 4                  | 0                  | 4                  | 1                  |
| Substance abuse   | 4                  | 4                  | 3                  | 5                  | 5                  |
| Other   | 7                  | 8                  | 4                  | 0                  | 1                  |
| <b>TOTAL</b>  | <b>1,249</b>       | <b>1,216</b>       | <b>1,264</b>       | <b>1,218</b>       | <b>1,362</b>       |

<sup>1</sup> Increases in "Failure to maintain funds in trust" violation are due to legislation effective in the Fall of 2005 that requires banks to notify ODC anytime IOLTAs are in overdraft status.

**TABLE 3**

**SANCTIONS ISSUED IN 2010 BY THE SUPREME COURT OF OHIO  
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

**PUBLIC REPRIMANDS — 3**

Larry Roger Bowling 2010-1103  
William Jeffrey Detweiler 2010-1104  
Ronald Lee Mason 2009-2245

**SIX MONTH SUSPENSIONS — 4**

Daniel Gaul 2010-0062  
Samuel Jay Mamich 2009-2010  
Richard Todd Ricketts 2010-0806  
Thomas Fairchild Vivyan 2009-1548

**ONE YEAR SUSPENSIONS — 10**

Edward Paul Brueggeman 2010-1220  
Phil William Campbell 2009-2034  
John Joseph Chambers 2008-1991  
Norbert Mark Doellman, Jr. 2010-0805  
David Henry Landis 2009-2263  
Joseph Anthony Pfundstein 2010-1243  
John Joseph Plough 2009-2341  
Albert Loron Potter II 2010-0288  
David Jerome Robinson 2009-2267  
Joseph Russo 2008-2360

**EIGHTEEN MONTH SUSPENSIONS — 1**

F. Benjamin Riek III 2009-2244

**TWO YEAR SUSPENSIONS — 9**

Debbie Kay Horton 2009-1501  
Stanley Jackson, Jr. 2010-0735  
Bradley M. Kraemer 2009-2336  
John Michael Nicks 2009-1544  
Lisa Jane Niles 2010-0034  
Gerald Thomas Noel, Jr. 2009-2301  
Patrick Joseph O'Malley 2009-1444  
Dennis Aaron Rathburn 2010-0661  
Kenneth Norman Shaw 2010-0316

**INDEFINITE SUSPENSIONS — 14**

John Robert Andrews 2009-1993  
Marc Benjamin Bandman 2009-2316  
Clyde Bennett II 2009-1100  
Doreen Marie Cantrell 2009-2339  
Henry Roosevelt Freeman 2010-0346  
Steven Charles Gittinger 2009-2290  
George Latham Hoff 2009-1510  
Karen Kaye Meade 2010-1494  
Wayne Donald Miller 2009-2283  
Donald Cameron Mitchell II 2009-1502  
Christopher Peter Muntean 2010-1463  
Joseph David Ohlin 2010-0287

**SANCTIONS ISSUED IN 2010 BY THE SUPREME COURT OF OHIO  
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

**(Indefinite Suspensions, continued)**

**Scott Allan Pullins 2010-0851**

**Jeffery Alan Zapor 2010-1234**

**INTERIM REMEDIAL SUSPENSIONS — 0**

**MENTAL HEATH SUSPENSIONS — 0**

**DISBARMENT — 1**

**James Russell Henry 2010-1507**

**RECIPROCAL DISCIPLINES — 9**

**Donald Henry Barnes 2010-0754**

**Richard William Erpenbeck 2009-2248**

**Robert Natole Farinacci 2010-0067**

**Jay Phillip Goodman 2010-1318**

**James Lee Lindon 2009-2207**

**Jerry LaVaughn Maynard 2010-0783**

**Robert Neil Trainor 2010-1441**

**Thomas Lawrence Whiteside 2010-1151**

**Elliott Lavoy Wood 2010-0901**

**RESIGNATIONS WITH DISCIPLINARY ACTION PENDING — 16**

**Philip Lon Allen 2010-0177**

**Timothy John Armstrong 2010-1612**

**Rebecca Elizabeth Bobb 2010-1409**

**Walter Peter Bubna 2010-2035**

**Maureen Ann Cronin 2010-1249**

**Thomas Craig Eschrich 2010-1649**

**Van Abraham Gander 2010-1135**

**William Anthony Garrett 2010-1723**

**Robert Kendal Larson, Jr. 2010-1424**

**Andrew Craig Lockshin 2010-1804**

**Eric John Moesle 2010-1613**

**Kevin Francis Payne 2010-1508**

**Perry Raynard Silverman 2009-2161**

**Anthony Carl Sinagra 2010-0852**

**Gregory Glenn Spitz 2010-2033**

**Darrell Vernon Van Horn 2010-0149**

**RETIREMENTS<sup>1</sup> — 10**

**Jean Murrell Capers**

**James Ddumba**

**Richard Stephen Hunter**

**Thomas L. Kaplin**

**Roger August Kimmel**

**Grady Lee Pettigrew**

**Terrence Lee Ryan**

**David Lou Simiele**

**Eugene Stevens**

**Martin Louis Wade**

<sup>1</sup> 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, 2010**

Reinstatements 2

**Before the Probable Cause Panel**

Awaiting Certification to Board 3

Appeal of Panel Dismissal to Full board 0

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

Awaiting Hearing 19

Awaiting Board Report 13

**Before The Supreme Court of Ohio**

Awaiting Oral Argument 10

Awaiting Supreme Court Decision 9

**TOTAL PENDING 56**

TABLE 5

**MATTERS RECEIVED BY ODC IN THE YEAR 2010**  
**Based on County of Respondent's Principal Ohio office location**

|                  |     |                  |     |                    |              |
|------------------|-----|------------------|-----|--------------------|--------------|
| Adams _____      | 11  | Hamilton _____   | 211 | Noble _____        | 0            |
| Allen _____      | 29  | Hancock _____    | 11  | Ottawa _____       | 15           |
| Ashland _____    | 6   | Hardin _____     | 4   | Paulding _____     | 4            |
| Ashtabula _____  | 20  | Harrison _____   | 1   | Perry _____        | 1            |
| Athens _____     | 15  | Henry _____      | 2   | Pickaway _____     | 6            |
| Auglaize _____   | 1   | Highland _____   | 4   | Pike _____         | 1            |
| Belmont _____    | 6   | Hocking _____    | 9   | Portage _____      | 27           |
| Brown _____      | 7   | Holmes _____     | 5   | Preble _____       | 8            |
| Butler _____     | 49  | Huron _____      | 20  | Putnam _____       | 5            |
| Carroll _____    | 3   | Jackson _____    | 7   | Richland _____     | 36           |
| Champaign _____  | 2   | Jefferson _____  | 8   | Ross _____         | 26           |
| Clark _____      | 19  | Knox _____       | 14  | Sandusky _____     | 27           |
| Clermont _____   | 16  | Lake _____       | 40  | Scioto _____       | 20           |
| Clinton _____    | 7   | Lawrence _____   | 17  | Seneca _____       | 14           |
| Columbiana _____ | 18  | Licking _____    | 23  | Shelby _____       | 11           |
| Coshocton _____  | 10  | Logan _____      | 7   | Stark _____        | 109          |
| Crawford _____   | 4   | Lorain _____     | 43  | Summit _____       | 146          |
| Cuyahoga _____   | 599 | Lucas _____      | 128 | Trumbull _____     | 57           |
| Darke _____      | 5   | Madison _____    | 11  | Tuscarawas _____   | 14           |
| Defiance _____   | 7   | Mahoning _____   | 112 | Union _____        | 16           |
| Delaware _____   | 31  | Marion _____     | 12  | Van Wert _____     | 6            |
| Erie _____       | 22  | Medina _____     | 43  | Vinton _____       | 3            |
| Fairfield _____  | 29  | Meigs _____      | 4   | Warren _____       | 31           |
| Fayette _____    | 7   | Mercer _____     | 3   | Washington _____   | 10           |
| Franklin _____   | 458 | Miami _____      | 25  | Wayne _____        | 8            |
| Fulton _____     | 15  | Monroe _____     | 2   | Williams _____     | 6            |
| Gallia _____     | 8   | Montgomery _____ | 110 | Wood _____         | 18           |
| Geauga _____     | 28  | Morgan _____     | 3   | Wyandot _____      | 5            |
| Greene _____     | 19  | Morrow _____     | 10  |                    |              |
| Guernsey _____   | 10  | Muskingum _____  | 20  | <b>TOTAL _____</b> | <b>3,000</b> |

This list does not include all Ohio matters received in 2010.

**TABLE 6**

**FISCAL YEAR 2010  
REPORT OF OPERATIONAL EXPENSES  
OF THE OFFICE OF DISCIPLINARY COUNSEL  
OF THE SUPREME COURT OF OHIO**

|       |  |                                |
|-------|--|--------------------------------|
| I.    | Payroll (Salaries & Benefits)  | \$ 1,876,006.10                |
| II.   | Personal Services (Consultants, Independent Contractors, Temporary help) | \$ 127,383.93                  |
| III.  | Education, Tuition and Training  | \$ 5,997.30                    |
| IV.   | Supplies and Materials   | \$ 43,490.27                   |
| V.    | Automobile and Parking   | \$ 3,364.08                    |
| VI.   | Travel and Conferences (In-State & Out-of-State)                         | \$ 41,845.12                   |
| VII.  | Postal and Shipping Expenses   | \$ 21,078.08                   |
| VIII. | Communication Expenses   | \$ 9,456.31                    |
| IX.   | Maintenance and Repair Services  | \$ 17,305.23                   |
| X.    | Building, Utilities and Facilities                                       | \$ 278,609.85                  |
| XI.   | Insurances, Licenses and Permits   | \$ 878.20                      |
| XII.  | Dues and Memberships   | \$ 3,850.00                    |
| XIII. | Books and Subscriptions  | \$ 27,886.75                   |
| XIV.  | Investigation and Discovery  | \$ 75,571.35                   |
| XV.   | Equipment  | \$ <u>1,108.81</u>             |
|       | <b>ODC - Operational Expenses for Fiscal Year 2010</b>                   | <b><u>\$ 2, 533,891.34</u></b> |

***Jonathan E. Coughlan,  
Disciplinary Counsel***