

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

2012 ANNUAL REPORT

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2012 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 2012 (*Tables 1-5*) and FY2012 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 2012 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 full-time and one part-time legal research analysts, two 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

In 2012 ODC received a total of 3,131 new matters. 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, 2,178 represented grievances originally filed with ODC against attorneys and 566 grievances originally filed against judges.

In 2012, a total of 1,347 grievances were dismissed on intake or after initial review and 1,239 were opened for investigation. For administrative reasons, 82 grievances that were received by ODC were transferred to local bar associations for investigation. Under that same rationale, another 74 grievances were forwarded to the Board for reassignment and none were forwarded to the Chief Justice of the Ohio Court of Appeals, pursuant to Gov. Jud. Rule II (2)(B).

Table 5 represents a geographic distribution by Ohio County of the matters filed with ODC in 2012, based on the location of the Respondents' principal offices. For a detailed presentation of those grievances which were received in 2012 and opened for investigation, please refer to Table 2. The data identifies the alleged primary violation and 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 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, 382 in 2010, 353 in 2011 and most recently 338 in 2012. At the beginning of 2012, there were 708 grievances pending with ODC. As of

December 31, 2012, there were 632 grievances pending and/or under investigation.

FORMAL COMPLAINTS

In 2012, ODC filed 46 formal complaints with the board, of which one alleged judicial misconduct. In 2012, 12 complaints were dismissed at the hearing panel stage, four were dismissed by the board, and none were dismissed by the Supreme Court. Thirteen of the 16 dismissals were due to Resignation with Disciplinary Action Pending determinations; two were dismissed because the respondents were disbarred in reciprocal cases; and one was based on relator's Motion to Dismiss due to the respondent's death.

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 2012 ODC received 221 Appeals, an increase of 15 from the 2011 figure. None of those 221 Appeals resulted in ODC filing formal complaints with the Board. During the year, 218 Appeals were closed. As of December 31, 2012, 37 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 any state. 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 2012 totaled 48, a decrease of 18 from the 66 received in 2011. During the year, 47 UPLs were closed and as of December 31, 2012, there were 28 UPL investigations pending in the ODC office. In 2012 ODC filed two UPL Board cases.

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). ODC received 13 reciprocal matters in 2012 and four were pending at the end of the year. The Court sanctioned ten attorneys on reciprocal complaints. (see *Table 3 for sanction and original state of determination*)

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 2012, 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 or retire from the practice of law which, once approved, is final and irrevocable. The application contains both an affidavit and written waiver permitting ODC to conduct a review of the application to determine whether the application will be classified as a retirement or a resignation with disciplinary action pending.

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". Retirement or Resignation applicants found to have no pending discipline are approved as Retirements. For details, please see Gov. Bar Rule VI (6). In 2012, 31 retirement or resignation applications were received for review by ODC. In 2012, the Court announced 20 Resignations with Disciplinary Action Pending and 15 Retirements. In 2011 the Court announced 12 Resignations with Disciplinary Action Pending and 9 Retirements (see *Table 3*).¹

INTERIM SUSPENSIONS

There were six Interim suspensions entered by the Court in 2012, all for Felony Convictions. No Interim Suspensions were based upon a Mental Health suspension or an Interim Remedial suspension.

HEARINGS and ORAL ARGUMENTS

In 2012, ODC attorneys appeared at twenty-one hearings before panels of the Board and participated in eight oral arguments before The Supreme Court of Ohio. As of December 31, 2012, there were: 28 cases awaiting hearing dates before the Board and seven cases awaiting reports from the Board; six cases pending oral argument before the Supreme Court; and 11 cases pending decision by the Supreme Court of Ohio (*Table 4*). In 2012, The Supreme Court of Ohio issued formal sanctions in 71 cases in which ODC was the relator. (*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 a permanent status.

TABLE 1
A Five Year Comparison (2008-2012)

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
<u>Disposition of Grievances:</u>					
Dismissed on Intake or after Investigation	2794	2791	2883	2890	2783
Pending at End of Year	621	673	653	708	632
<u>Caseload Comparison:</u>					
Number of Grievances Received	2940	2843	2929	2950	2744
Number of Appeals Received	290	257	258	206	221
Number of UPLs Received	91	63	75	66	48
Number of Formal Complaints Filed	38	51	45	57	46
<u>Sanctions Issued:</u> <i>(Table 3 for details)</i>					
Public Reprimands	2	4	3	1	0
Six-Month Suspensions	5	6	4	5	11
One-Year Suspensions	5	5	10	3	10
Eighteen-Month Suspensions	1	0	1	2	2
Two-Year Suspensions	2	7	9	3	9
Indefinite Suspensions	7	8	14	9	5
Interim Remedial Suspensions	1	0	0	0	0
Mental Health Suspensions	2	0	0	0	0
Disbarments	3	4	1	5	4
Reciprocal Disciplines	3	4	9	3	10
Resignations with Disciplinary Action Pending	9	17	16	12	20
Retirements	14	3	10	9	15

TABLE 2**GRIEVANCES
RECEIVED AND OPENED
FOR INVESTIGATION****A Five Year Comparison (2008-2012)**

<u>Alleged Primary Violation</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Neglect/Failure to protect interests of the client	378	292	318	317	256
Failure to account or turn over file	55	42	41	43	70
Improper withdrawal (refusal to withdraw)	8	8	5	4	9
Excessive fees	81	90	83	68	76
Personal misconduct	101	94	125	118	88
Misrepresentation/false statement/concealment	40	26	38	37	18
Criminal conviction	12	11	12	15	5
Failure to file income tax returns	1	0	0	0	0
Commingling of funds	3	1	2	1	0
Conversion	29	23	1	29	25
Embezzlement	4	3	3	3	1
Failure to maintain funds in trust	319	338	382	353	338
Breach of client confidence	9	8	7	10	9
Conflict of lawyer's interest	30	26	32	21	36
Conflict of client's interest	48	58	50	74	55
Communication with adverse party represented by counsel	13	5	8	10	13
Trial misconduct	81	73	91	100	82
Failure to register	4	1	2	2	0
Practicing while under suspension	16	10	8	12	20
Assisting in the Unauthorized Practice of Law	4	3	10	8	5
Advertising/Solicitation	15	9	13	20	21
Judicial misconduct	106	88	97	108	106
Mental illness	0	4	1	3	0
Substance abuse	3	5	5	5	4
Other	4	0	1	5	2
TOTAL	<u>1,264</u>	<u>1,218</u>	<u>1,362</u>	<u>1,366</u>	<u>1,239</u>

TABLE 3**SANCTIONS ISSUED IN 2012 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

PUBLIC REPRIMANDS — 0**SIX MONTH SUSPENSIONS — 11**

Edward Royal Bunstine 2011-0647
 Marc Edward Dann 2011-2026
 Edward Joseph Elum 2012-0277
 Joshua Adam Engel 2011-1722
 Dean Edward Hines 2012-1759
 Mark William Koehler 2011-2059
 Jason Todd Lorenzon 2011-2184
 Michael Motylinski 2011-1016
 Frank Paul Nagorney 2011-1047
 Philip Lucas Proctor 2011-0295
 William Lawrence Summers 2011-0464

ONE YEAR SUSPENSIONS — 10

James Alexander, Jr. 2011-2046
 Christopher Thomas Cicero 2012-0278
 Gerald Wayne Cowden 2011-1047
 Michael Brian Dockry 2012-0287
 Peggy Maguire 2011-1739
 Thomas Arthur McCormack 2011-2055
 Earl Darren McNeal 2011-1732
 James Walter Schmidt 2012-1013
 Timothy Andrew Shimko 2012-1002
 Joseph Gregory Stafford 2011-0408

EIGHTEEN MONTH SUSPENSIONS — 2

Regina Lynn Hilburn 2012-0678
 Rebecca Christine Gee Meyer 2012-1001

TWO YEAR SUSPENSIONS — 9

Christopher James Burchinal 2011-1426
 Steve J. Edwards 2012-0681
 George Cook Ford III 2011-2042
 Eva Catherine Gildee 2012-1011
 Eric Dorman Hall 2011-1017
 Frederick Bruce Johnson 2010-2199
 Michael Patrick Meehan 2011-2045
 Eric Maurice Seabrook 2011-2049
 Christine M. Simon-Seymour 2011-1406

INDEFINITE SUSPENSIONS — 5

Lilian Antwiwaa Asante 2010-1782
 Gerald Thomas Noel, Jr. 2012-0656
 Paul Nickolas Peterson 2012-0996
 David John Scacchetti 2011-1409
 Vinh Chi Trieu 2011-2034

INTERIM REMEDIAL SUSPENSIONS — 0**MENTAL HEALTH SUSPENSIONS — 0**

**SANCTIONS ISSUED IN 2012 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number
(Continued)

DISBARMENTS — 4

Barry Frederick Brickley 2011-1728
William Matthew Crosby 2011-1453
Robert Leon Schwartz 2012-0644
Michelle Wickerham 2011-2032

RECIPROCAL DISCIPLINES — 10

John Peter Antony 2012-1181
90 day Suspension (Florida)
Kenneth Louis Golden 2012-0764
2 year Suspension, 2 stayed (California)
Joel David Joseph 2012-1107
Indefinite Suspension (Maryland)
Henry James Koehler IV 2011-0321
Indefinite Suspension (California)
Erika Howland Klie Kolenich 2012-1106
Public Reprimand (West Virginia)
Meredith Lynn Lawrence 2012-1973
Suspension for Felony Conviction (Kentucky)
James Warren Margulies 2012-1054
Disbarment (New York)
Lawrence Todd Newman 2012-0228
18 month Suspension (Indiana)
Brian Richard Rayve 2012-0534
3 year Suspension, 2 stayed (U.S. Patent & Trademark Courts)
Donald Lynn Richardson 2012-0366
Disbarment (Kentucky)

RESIGNATIONS WITH DISCIPLINARY ACTION PENDING — 20

Frederick Leslie Baker 2011-2182	Charles Rocco Laurie 2012-1366
Thomas Floyd Bean 2012-0260	Thomas James Mirras 2011-2083
Kenneth Ray Boggs 2012-1355	John Gregory Neal 2012-1672
Gregory Alan Carroll 2012-0661	Frank Eugene Platenak 2012-1215
Patrick James Donlin 2012-0804	David Richard Rhodehamel 2011-2086
Michael Elliott Finucane 2012-0486	Raymond Allen Sinclair 2012-0749
Nicholas W. Gardner 2012-1508	Marty Joel Stillpass 2012-0864
Justin Daniel King 2011-2084	Robert Neil Trainor 2012-0854
Alan William Koehler 2012-0297	Benjamin John Viloski 2012-0298
Richard James LaCivita 2012-1768	Richard Hackney Ward 2012-1467

RETIREMENTS — 15

Frederick Wilkinson Crow III	David Earl Grossman	Joseph Mitchell Oser
Joseph Scott Doran	James Loughridge Hamilton	Peter Michael Pencheff
Santiago Feliciano, Jr.	James Stewart Kaiser	Henry Edward Seibert
John Edward Foxx	Gerald Louis King	Carol Gale Stebbins
Harold Gregg	Steven Sibley Nelson	David Robert Weichel

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

TABLE 4**STATUS OF FORMAL MATTERS PENDING
AS OF DECEMBER 31, 2012**

Reinstatements	<u>1</u>
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Before the Probable Cause Panel

Awaiting Certification to Board	<u>0</u>
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Appeal of Panel Dismissal to Full board	<u>0</u>
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**Before the Board of Commissioners
on Grievances and Discipline**

Awaiting Hearing	<u>28</u>
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Awaiting Board Report	<u>7</u>
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Before The Supreme Court of Ohio

Awaiting Oral Argument	<u>6</u>
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Awaiting Supreme Court Decision	<u>11</u>
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TOTAL PENDING	<u>53</u>
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TABLE 5

MATTERS RECEIVED BY ODC IN THE YEAR 2012
Based on County of Respondent's Principal Ohio office location

Adams _____	9	Hamilton _____	224	Noble _____	2
Allen _____	17	Hancock _____	16	Ottawa _____	20
Ashland _____	8	Hardin _____	9	Paulding _____	1
Ashtabula _____	8	Harrison _____	3	Perry _____	5
Athens _____	15	Henry _____	0	Pickaway _____	5
Auglaize _____	9	Highland _____	6	Pike _____	2
Belmont _____	11	Hocking _____	6	Portage _____	24
Brown _____	5	Holmes _____	0	Preble _____	5
Butler _____	51	Huron _____	12	Putnam _____	1
Carroll _____	3	Jackson _____	11	Richland _____	28
Champaign _____	9	Jefferson _____	20	Ross _____	7
Clark _____	24	Knox _____	10	Sandusky _____	9
Clermont _____	29	Lake _____	38	Scioto _____	19
Clinton _____	7	Lawrence _____	32	Seneca _____	5
Columbiana _____	15	Licking _____	39	Shelby _____	6
Coshocton _____	7	Logan _____	13	Stark _____	90
Crawford _____	12	Lorain _____	62	Summit _____	168
Cuyahoga _____	580	Lucas _____	110	Trumbull _____	37
Darke _____	4	Madison _____	12	Tuscarawas _____	16
Defiance _____	5	Mahoning _____	79	Union _____	7
Delaware _____	49	Marion _____	14	Van Wert _____	3
Erie _____	28	Medina _____	36	Vinton _____	3
Fairfield _____	38	Meigs _____	3	Warren _____	40
Fayette _____	10	Mercer _____	3	Washington _____	13
Franklin _____	516	Miami _____	12	Wayne _____	12
Fulton _____	4	Monroe _____	2	Williams _____	0
Gallia _____	7	Montgomery _____	142	Wood _____	11
Geauga _____	22	Morgan _____	4	Wyandot _____	6
Greene _____	14	Morrow _____	9		
Guernsey _____	17	Muskingum _____	24	TOTAL _____	<u>3,029</u>

This list does not include all Ohio matters received in 2012.

TABLE 6

**FISCAL YEAR 2012
REPORT OF OPERATIONAL EXPENSES
OF THE OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO**

I.	Payroll (Salaries & Benefits)	\$ 1,961,295.34
II.	Personal Services (Consultants, Independent Contractors, Temporary help)	\$ 42,549.19
III.	Education, Tuition and Training	\$ 360.06
IV.	Supplies and Materials	\$ 45,452.03
V.	Automobile and Parking	\$ 4,371.89
VI.	Travel and Conferences (In-State & Out-of-State)	\$ 29,202.61
VII.	Postal and Shipping Expenses	\$ 22,931.99
VIII.	Communication Expenses	\$ 9,433.21
IX.	Maintenance and Repair Services	\$ 12,345.43
X.	Building, Utilities and Facilities	\$ 232,509.89
XI.	Insurances, Licenses and Permits	\$ 986.69
XII.	Dues and Memberships	\$ 3,525.00
XIII.	Books and Subscriptions	\$ 25,523.80
XIV.	Investigation and Discovery	\$ 43,4246.40
XV.	Equipment	<u>\$ 53,523.98</u>
	Less credit adjustments	\$ (252.00)
	ODC - Operational Expenses for Fiscal Year 2012	<u>\$ 2,487,183.51</u>