

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

2013 ANNUAL REPORT

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2013 ANNUAL REPORT

OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF OHIO

The position of Disciplinary Counsel and the Office of Disciplinary Counsel ("ODC") have been established by The Supreme Court of Ohio pursuant to Gov. Bar Rule V(3)(B). In accordance with that rule, Disciplinary Counsel is authorized to investigate allegations of misconduct, mental illness or substance abuse by attorneys and judges under the *Ohio Rules of Professional Conduct*, the *Code of Judicial Conduct*, and rules governing the Unauthorized Practice of Law ("UPL"). Disciplinary Counsel also has the authority to initiate complaints based upon its investigations, to certify bar counsel designated by certified grievance committees and to develop and offer an education curriculum for bar counsel and certified grievance committee members, in consultation with the Board of Commissioners on Grievances and Discipline and representatives of certified grievance committees.

STAFF OVERVIEW

The twenty-three (23) person staff of the ODC is comprised of the following positions:

- One Disciplinary Counsel
- One Chief Assistant Disciplinary Counsel
- Eight 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
- One Clerical Support Staff

The office also contracts with two part-time field investigators who provide investigative services as needed in northeastern and southwestern portions of Ohio.

There was unprecedented turnover in the ODC between the end of 2012 and the beginning of 2014. The Disciplinary Counsel, the Chief Assistant Disciplinary Counsel, and four of the eight Assistant Disciplinary Counsel in ODC left between December 31, 2012 and September 20, 2013. In addition, one of the two full-time Investigators retired and both the Executive Administrative Assistant and the Clerical Support Staff person resigned in the summer of 2013. Thus, nine of the twenty-three members of the ODC staff (including five attorneys and the new Disciplinary Counsel) commenced work in the ODC on or after January 1, 2013.

GRIEVANCES

In 2013, ODC received a total of 3,020 new matters. This figure 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, retirements and resignations. Of that total, 2,109 represented grievances originally filed with ODC against attorneys and 570 represented grievances originally filed against judges.

A total of 1,500 grievances were dismissed on intake or after initial review, of which 1,050 were against attorneys and 450 were against judges. For administrative reasons, 104 grievances that were initially received by ODC were transferred to local bar associations for investigation. Under that same rationale, another 54 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). The remaining 1,228 grievances were opened for investigation. For a detailed analysis of those grievances

which were received in 2013 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 grievances and reporting trends in the state. Table 5 represents a geographic distribution by Ohio County of the matters filed with ODC in 2013, based on the location of the Respondents' principal offices.

One violation category, "*Failure to maintain funds in a trust*", had experienced a dramatic increase in the previous five years following adoption of a 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 338 in 2012. However, there was a significant drop in the number of such mandated reports in 2013, with only 254 IOLTA overdrafts being reported in 2013. The possible causes for this significant reduction in IOLTA overdraft reports are currently being analyzed.

At the beginning of 2013, there were 632 grievances pending with ODC. As of December 31, 2013, there were 650 grievances pending and/or under investigation.

FORMAL COMPLAINTS and DISMISSALS

In 2013, ODC filed 31 formal complaints with the board, of which five alleged judicial misconduct. This represented a substantial reduction from the number of complaints filed in previous years but is attributable to the unprecedented turnover in ODC staff, especially among attorneys during 2013. In 2013, seven complaints were dismissed at various stages of the process: four at the hearing panel stage, two by the board, and one dismissed by the Supreme Court. Two of the hearing panel dismissals were based upon the imposition of indefinite suspensions following earlier default suspensions. One of the Board's dismissals was based on ODC's Motion to Dismiss.

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 within which to appeal that dismissal to the Secretary of the Board who shall refer the request for review to ODC. ODC is authorized to open a new case and to conduct a separate investigation. For details, see Gov. Bar Rule V (4)(l)(5).

In 2013, ODC received 205 Appeals, a decrease of 16 from the 2012 figure. One of those 205 Appeals resulted in ODC filing a formal complaint with the Board. During the year, 187 Appeals were closed. As of December 31, 2013, 55 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 engage in 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 ODC's 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 2013 totaled 34, a decrease of 14 from the 48 received in 2012. During the year, 47 UPLs were closed and as of December 31, 2013, there were 15 UPL investigations pending in the ODC office. In 2013 ODC filed three 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 is required to notify both ODC and the Clerk of the Supreme Court of Ohio of that action. In addition, ODC frequently learns of the imposition of discipline in other jurisdictions from the disciplinary agency itself. 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 ten reciprocal matters and closed eleven in 2013. There were three reciprocal discipline matters pending at the end of the year. The Court sanctioned five attorneys on reciprocal complaints in 2013. (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, ODC is authorized under Gov. Bar Rule V (5)(A)(1)(b) to pursue an Interim Suspension. No Child Support matters were filed with ODC in 2013, 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 proceeding(s). 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 2013, 32 retirement or resignation applications were received for review by ODC. In 2013, the Court announced six Resignations with Disciplinary Action Pending and 20 Retirements. (see Table 3).¹

INTERIM SUSPENSIONS

There were ten interim suspensions entered by the Court in 2013: two for Felony Convictions, seven for Default and one for a Mental Health suspension. None were for an Interim Remedial suspension.

HEARINGS and ORAL ARGUMENTS

In 2013, ODC attorneys appeared at twenty-eight (28) hearings before panels of the Board and participated in nine (9) oral arguments before The Supreme Court of Ohio. As of December 31, 2013, there were: 20 cases awaiting hearing dates before the Board and four cases awaiting reports from the Board; eight cases were pending oral argument before the Supreme Court; and 21 cases were pending decision by the Supreme Court. (Table 4). In 2013, The Supreme Court of Ohio issued formal sanctions in 44 cases in which ODC was the relator. (Tables 1 & 3).

Respectfully submitted,

**Scott J. Drexel
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 (2009-2013)

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
<u>Disposition of Grievances:</u>					
Dismissed on Intake or after Investigation	2578	2723	2658	2601	2466
Pending at End of Year	673	653	708	632	650
<u>Caseload Comparison:</u>					
Number of Grievances Received	2843	2929	2950	2744	2679
Number of Appeals Received	257	258	206	221	205
Number of UPLs Received	63	75	66	48	34
Number of Formal Complaints Filed	51	45	57	46	31
<u>Sanctions Issued:</u> <i>(Table 3 for details)</i>					
Public Reprimands	4	3	1	0	2
Six-Month Suspensions	6	4	5	11	3
One-Year Suspensions	5	10	3	10	6
Eighteen-Month Suspensions	0	1	2	2	0
Two-Year Suspensions	7	9	3	9	2
Indefinite Suspensions	8	14	9	5	7
Interim Default Suspensions					7
Interim Felony Suspensions					2
Interim Remedial Suspensions	0	0	0	0	0
Mental Health Suspensions	0	0	0	0	1
Disbarments	4	1	5	4	3
Reciprocal Disciplines	4	9	3	10	5
Resignations with Disciplinary Action Pending	17	16	12	20	6
Retirements	3	10	9	15	20

2013 is the first year we began to track Interim Default and Interim Felony suspensions

TABLE 2**GRIEVANCES
RECEIVED AND OPENED
FOR INVESTIGATION****A Five Year Comparison (2009-2013)**

<u>Alleged Primary Violation</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Neglect/Failure to protect interests of the client	292	318	317	256	320
Failure to account or turn over file	42	41	43	70	61
Improper withdrawal (refusal to withdraw)	8	5	4	9	8
Excessive fees	90	83	68	76	75
Personal misconduct	94	125	118	88	126
Misrepresentation/false statement/concealment	26	38	37	18	14
Criminal conviction	11	12	15	5	14
Failure to file income tax returns	0	0	0	0	0
Commingling of funds	1	2	1	0	0
Conversion	23	1	29	25	18
Embezzlement	3	3	3	1	2
Failure to maintain funds in trust	338	382	353	338	254
Breach of client confidence	8	7	10	9	7
Conflict of lawyer's interest	26	32	21	36	34
Conflict of client's interest	58	50	74	55	35
Communication with adverse party represented by counsel	5	8	10	13	7
Trial misconduct	73	91	100	82	71
Failure to register	1	2	2	0	10
Practicing while under suspension	10	8	12	20	11
Assisting in the Unauthorized Practice of Law	3	10	8	5	6
Advertising/Solicitation	9	13	20	21	16
Judicial misconduct	88	97	108	106	134
Mental illness	44	1	3	0	0
Substance abuse	5	5	5	4	5
Other	0	1	5	2	0
TOTAL	<u>1,218</u>	<u>1,362</u>	<u>1,365</u>	<u>1,239</u>	<u>1,228</u>

TABLE 3**SANCTIONS ISSUED IN 2013 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

PUBLIC REPRIMANDS — 2

Dale Elmer Bricker 2012-1713
Phillip Douglas Lehmkuhl 2012-1719

SIX MONTH SUSPENSIONS — 3

Marc Edward Dann 2011-2026
Jason Todd Lorenzon 2011-2184
Bruce Davis Taubman 2012-1715

ONE YEAR SUSPENSIONS — 6

Edward Royal Bunstine 2012-2049
William Jeffrey Detweiler 2012-1711
Ernest Alfred Eynon 2011-1422
Earl Darren McNeal 2011-1732
Mattheuw William Oberholtzer 2012-2073
Arica Lynn Underwood 2012-1709

EIGHTEEN MONTH SUSPENSIONS — 0**TWO YEAR SUSPENSIONS — 2**

Anthony James DeGidio 2012-1697
Leo Johnny Talikka 2012-1324

INDEFINITE SUSPENSIONS — 7

Mark Allen Anthony 2013-0226
April Marie Bogdanski 2013-0195
Thomas John Leksan 2012-2055
Joseph Patrick O'Malley 2012-2070
David Alan Raines 2013-0309
Ronald Robinson 2012-2176
Stephen Michael Weiss 2012-0314

INTERIM DEFAULT SUSPENSIONS — 7

April Marie Bogdanski 2013-0195
Scott Monroe Calaway 2013-1635
Nathan Clinard 2013-0666
Robert Christopher Cordrick 2013-1597
Wayne Lewis Kerek 2013-1423
Sharri Una Rammelsberg 2013-0312
Ronald Robinson 2012-2176

INTERIM FELONY SUSPENSIONS — 2

Rosel Charles Hurley III 2013-0358
Harry Earl Jackson 2013-1803

**SANCTIONS ISSUED IN 2013 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number
(Continued)

INTERIM REMEDIAL SUSPENSIONS — 0

MENTAL HEALTH SUSPENSIONS — 1

Maureen Frances Gechter 2013-0225

DISBARMENTS — 3

Peter F. Fletcher 2012-1695
Jeffrey Lee Terbeek 2012-2056
William Leonard Tomson 2012-2068

RECIPROCAL DISCIPLINES — 5

Barbara D. Bonar 2013-1790
Public Reprimand (Kentucky)
Dale Anthony Brinker 2012-1881
One year Suspension (Kentucky)
John Martin Coyne 2012-1847
Public Reprimand (Massachusetts)
Asad Sadallah Farah 2013-1755
Indefinite Suspension (Michigan)
Thomas Charles Nicotera 2012-1886
Seven year Suspension (New York)

RESIGNATIONS WITH DISCIPLINARY ACTION PENDING — 6

E. Earl Miller 2013-1579
William Mitchell 2013-0178
Dick Wilson Mount 2013-1737
Joseph David Ohlin 2013-0232
James Walter Westfall 2013-0938
Lawrence John White 2012-1991

RETIREMENTS — 20

David Lee Barnes
Martha Post Baxter
Thomas Edward Bookwalter
Jeremy William Brockwell
Stanley Morris Chesley
William Jenkins Corzine
Myron Ybor Davis

James Frederick Dettinger
Ralph Dean Dye
Ernest John Essad
Thomas Earl Fennell
Barry Morton Hill
Alan Edward Johnson
William George Kohlhepp

Bernard Gabe Lancione
James George Meimaris
Thomas Charles Nicotera
George Ronald Royer
Jason Vern Shugart
Lawrence Allen Wilkins

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, 2013**

Reinstatements	<u>2</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>20</u>
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Awaiting Board Report	<u>4</u>
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Before The Supreme Court of Ohio

Awaiting Oral Argument	<u>8</u>
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Awaiting Supreme Court Decision	<u>21</u>
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TOTAL PENDING	<u>55</u>
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TABLE 5

MATTERS RECEIVED BY ODC IN THE YEAR 2013
Based on County of Respondent's Principal Ohio office location

Adams _____	6	Hamilton _____	212	Noble _____	3
Allen _____	28	Hancock _____	16	Ottawa _____	6
Ashland _____	10	Hardin _____	10	Paulding _____	1
Ashtabula _____	20	Harrison _____	6	Perry _____	5
Athens _____	12	Henry _____	4	Pickaway _____	27
Auglaize _____	5	Highland _____	14	Pike _____	2
Belmont _____	6	Hocking _____	5	Portage _____	25
Brown _____	7	Holmes _____	0	Preble _____	6
Butler _____	65	Huron _____	8	Putnam _____	3
Carroll _____	1	Jackson _____	6	Richland _____	43
Champaign _____	3	Jefferson _____	20	Ross _____	22
Clark _____	19	Knox _____	11	Sandusky _____	8
Clermont _____	25	Lake _____	48	Scioto _____	33
Clinton _____	6	Lawrence _____	21	Seneca _____	17
Columbiana _____	23	Licking _____	33	Shelby _____	8
Coshocton _____	5	Logan _____	15	Stark _____	92
Crawford _____	3	Lorain _____	51	Summit _____	138
Cuyahoga _____	547	Lucas _____	114	Trumbull _____	45
Darke _____	6	Madison _____	3	Tuscarawas _____	22
Defiance _____	9	Mahoning _____	92	Union _____	2
Delaware _____	37	Marion _____	11	Van Wert _____	2
Erie _____	32	Medina _____	37	Vinton _____	2
Fairfield _____	37	Meigs _____	2	Warren _____	44
Fayette _____	11	Mercer _____	4	Washington _____	11
Franklin _____	435	Miami _____	15	Wayne _____	6
Fulton _____	10	Monroe _____	2	Williams _____	2
Gallia _____	5	Montgomery _____	127	Wood _____	19
Geauga _____	11	Morgan _____	3	Wyandot _____	2
Greene _____	15	Morrow _____	8		
Guernsey _____	4	Muskingum _____	9	TOTAL _____	<u>2,906</u>

This list does not include all Ohio matters received in 2013.

TABLE 6

**FISCAL YEAR 2013
REPORT OF OPERATIONAL EXPENSES
OF THE OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO**

I.	Payroll (Salaries & Benefits)	\$ 1,998,202.55
II.	Personal Services (Consultants, Independent Contractors, Temporary help)	\$ 141,215.73
III.	Education, Tuition and Training	\$ 21,637.60
IV.	Supplies and Materials	\$ 42,192.29
V.	Automobile and Parking	\$ 4,620.05
VI.	Travel and Conferences (In-State & Out-of-State)	\$ 29,223.70
VII.	Postal and Shipping Expenses	\$ 28,803.10
VIII.	Communication Expenses	\$ 10,030.82
IX.	Maintenance and Repair Services	\$ 15,609.17
X.	Building, Utilities and Facilities	\$ 234,256.35
XI.	Insurances, Licenses and Permits	\$ 1,290.73
XII.	Dues and Memberships	\$ 3,785.00
XIII.	Books and Subscriptions	\$ 26,636.93
XIV.	Investigation and Discovery	\$ 34,768.13
XV.	Equipment	<u>\$ 6,127.81</u>
	Less credit adjustments	\$ (6,034.15)
	ODC - Operational Expenses for Fiscal Year 2013	<u>\$ 2,592,365.81</u>