

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

2011 ANNUAL REPORT

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2011 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 2011 (*Tables 1-5*) and FY2011 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 2011 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

A total of 3,335 new matters for consideration were received by ODC in 2011. 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, 2,409 represented grievances originally filed with ODC against Attorneys and 541 grievances originally filed against Judges.

In 2011, a total of 1,429 grievances were dismissed on intake or after initial review and 1,369 were opened for investigation. For procedural reasons, 89 grievances that were received by ODC were transferred to local bar associations for investigation. Under that same rationale, another 66 grievances were forwarded to the Board for reassignment and none were forwarded 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 2011, based on the location of the Respondents' principal offices, is provided. (*Table 5*). For a detailed presentation of those grievances which were received in 2011 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, 382 in 2010 and most recently to 362 in

2011. At the beginning of 2011, there were 653 grievances pending with ODC. As of December 31, 2011, there were 708 grievances pending and/or under investigation.

FORMAL COMPLAINTS

A total of 57 formal complaints were filed by ODC in 2011 with the Board, of which one alleged judicial misconduct. In 2011, three complaints were dismissed at the hearing panel stage, four were dismissed by the Board, and one was dismissed by the Supreme Court. Six of these eight dismissals were due to Resignation with Disciplinary Action Pending determinations; one was a dismissal because the respondent was disbarred in a separate case and one was based on relator'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 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)(I)(5).

In 2011 ODC received 206 Appeals, a decrease of 52 from the 2010 figure. None of those 206 Appeals resulted in ODC filing formal complaints with the Board. During the year, 249 Appeals were closed. As of December 31, 2011, 33 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 2011 totaled 66, a decrease of nine from the 75 received in 2010. During the year, 77 UPLs were closed and as of December 31, 2011, there were 27 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). Five Reciprocal matters were received by ODC in 2011 and two were pending at the end of the year. The Court sanctioned three attorneys on Reciprocal complaints. (*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 2011, 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-nine resignation applications were received for review by ODC in 2011. There were 21 resignations announced by the Court during 2011, 12 of which were Resignations with Disciplinary Action Pending and nine were Retirements (*Table 3*).¹ There were 26 resignations in 2010.

INTERIM SUSPENSIONS

There were twelve Interim suspensions entered by the Court in 2011, all for Felony Convictions. No Interim Suspensions were based upon a Mental Health suspension or an Interim Remedial suspension.

HEARINGS and ORAL ARGUMENTS

In 2011, ODC attorneys appeared at 31 hearings before panels of the Board and participated in 14 oral arguments before The Supreme Court of Ohio. As of December 31, 2011, there were: 30 cases awaiting hearing dates before the Board and 6 cases awaiting reports from the Board; three cases pending oral argument before the Supreme Court; and 25 cases pending decision by the Supreme Court of Ohio (*Table 4*). In 2011, The Supreme Court of Ohio issued formal sanctions in 43 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 (2007-2011)

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<u>Disposition of Grievances Received:</u>					
Dismissed on Intake or after Investigation	2862	2794	2791	2883	2890
Pending at End of Year	795	621	673	653	708
<u>Caseload Comparison:</u>					
Number of Grievances Received	3031	2940	2843	2929	2950
Number of Appeals Received	337	290	257	258	206
Number of UPLs Received	67	91	63	75	66
Number of Formal Complaints Filed	35	38	51	45	57
<u>Sanctions Issued:</u> <i>(Table 3 for details)</i>					
Public Reprimands	2	2	4	3	1
Six-Month Suspensions	4	5	6	4	5
One-Year Suspensions	4	5	5	10	3
Eighteen-Month Suspensions	1	1	0	1	2
Two-Year Suspensions	7	2	7	9	3
Indefinite Suspensions	7	7	8	14	9
Interim Remedial Suspensions	1	1	0	0	0
Mental Health Suspensions ¹	0	2	0	0	0
Disbarments	1	3	4	1	5
Reciprocal Disciplines	4	3	4	9	3
Resignations <i>(includes Resignations with Disciplinary Action Pending)</i>	21	9	17	16	12
Retirements ²	-	14	3	10	9

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

² 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
A Five Year Comparison (2007-2011)

<u>Alleged Primary Violation</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Neglect/Failure to protect interests of the client	303	378	292	318	317
Failure to account or turn over file	43	55	42	41	43
Improper withdrawal (refusal to withdraw)	10	8	8	5	4
Excessive fees	84	81	90	83	68
Personal misconduct	108	101	94	125	118
Misrepresentation/false statement/concealment	42	40	26	38	37
Criminal conviction	4	12	11	12	15
Failure to file income tax returns	1	1	0	0	0
Commingling of funds	1	3	1	2	1
Conversion	27	29	23	28	29
Embezzlement	1	4	3	3	3
Failure to maintain funds in trust	289	319	338	382	353
Breach of client confidence	9	9	8	7	10
Conflict of lawyer's interest	26	30	26	32	21
Conflict of client's interest	63	48	58	50	74
Communication with adverse party represented by counsel	9	13	5	8	10
Trial misconduct	77	81	73	91	100
Failure to register	2	4	1	2	2
Practicing while under suspension	14	16	10	8	12
Assisting in the Unauthorized Practice of Law	9	4	3	10	8
Advertising/Solicitation	6	15	9	13	20
Judicial misconduct	74	106	88	97	108
Mental illness	4	0	4	1	3
Substance abuse	4	3	5	5	5
Other	8	4	0	1	5
TOTAL	<u>1,216</u>	<u>1,264</u>	<u>1,218</u>	<u>1,362</u>	<u>1,366</u>

TABLE 3

SANCTIONS ISSUED IN 2011 BY THE SUPREME COURT OF OHIO PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL

Name of Respondent and Supreme Court Case Number

PUBLIC REPRIMANDS — 1

Jeffrey Raymond Dundon 2011-0339

SIX MONTH SUSPENSIONS — 5

Tom John Karris 2010-1898

Lynn Ann Lape 2011-1024

Frank Anthony Raso 2010-2203

Gordon Pearce Shuler 2011-0307

Michael Howard Siewert 2011-1400

ONE YEAR SUSPENSIONS — 3

David John Gerchak 2011-0700

Fitzgerald Terrance Murraine 2011-1042

Thomas John Simon 2010-1763

EIGHTEEN MONTH SUSPENSIONS — 2

Stephanie Gunter Grigsby 2010-2126

Vincent Arthur Stafford 2010-1601

TWO YEAR SUSPENSIONS — 3

Rebecca Susan Blair 2010-1862

Norman Lee Folwell 2010-2251

Kevin Paul Hallquist 2010-2169

INDEFINITE SUSPENSIONS — 9

Brian Jeffrey Butler 2010-1794

Doreen Marie Cantrell 2011-0281

Sherry Darlene Davis 2010-1081

William Scott Medley 2010-1793

David Nittskoff 2010-2245

Carolyn Kane Ranke 2011-0379

Joseph Harold Smith 2010-1888

Percy Squire 2010-2021

SaKeya MonCheree Stubbs 2010-1803

INTERIM REMEDIAL SUSPENSIONS — 0

MENTAL HEATH SUSPENSIONS — 0

DISBARMENTS — 5

Dea Lynn Character 2010-1693

Kenneth Levon Lawson 2011-0131

Shondra Collette Longino 2010-1646

Joseph Norman Williams 2011-1015

Bruce Allan Zaccagnini 2011-0283

**SANCTIONS ISSUED IN 2011 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number
(Continued)

RECIPROCAL DISCIPLINES — 3

Eric Lamar Emerson 2010-2054
30 Day Suspension (Kentucky)
David Marlborough Lynch 2011-1190
Public Reprimand (Arizona)
Thomas Vincent Malorzo 2011-0813
Four Year Suspension (Texas)

RESIGNATIONS with DISCIPLINARY ACTION PENDING — 12

Lindsey Taylor Burt 2011-0461
Michael Thomas Butts 2010-2249
Robert Anthony Ferreri 2011-0466
Willard Kemp Hanner, Jr. 2011-0870
Richard Dean Koch 2011-1490
Charles Hudson Manning 2011-1166
Francis Michael Pignatelli 2011-0598
George Bernard Quatman III 2011-1116
William Bonsall Schatz 2011-0345
Eric Jason Strawser 2011-1645
Myron Daniel Wheatley 2011-0721
Jeffery Alan Zapor 2011-1452

RETIREMENTS¹ — 9

Mary Caroline Backsman
Paul Thomas Ferri
Jack Edwin Gallon
Stephen Leve
James Gurney Lutz
Janet Fogle McKim
Jon Paul Sawyer
George John Tzangas
John Ernest Vuillemin

¹ Resignation applications received in 2008 or after, and 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, 2011**

Reinstatements 3

Before the Probable Cause Panel

Awaiting Certification to Board 0

Appeal of Panel Dismissal to Full board 0

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

Awaiting Hearing 30

Awaiting Board Report 6

Before The Supreme Court of Ohio

Awaiting Oral Argument 3

Awaiting Supreme Court Decision 25

TOTAL PENDING 67

TABLE 5

**MATTERS RECEIVED BY ODC IN THE YEAR 2011
Based on County of Respondent's Principal Ohio office location**

Adams _____	7	Hamilton _____	214	Noble _____	0
Allen _____	49	Hancock _____	15	Ottawa _____	8
Ashland _____	33	Hardin _____	5	Paulding _____	2
Ashtabula _____	18	Harrison _____	6	Perry _____	5
Athens _____	16	Henry _____	0	Pickaway _____	8
Auglaize _____	6	Highland _____	0	Pike _____	6
Belmont _____	12	Hocking _____	11	Portage _____	26
Brown _____	20	Holmes _____	0	Preble _____	4
Butler _____	47	Huron _____	0	Putnam _____	3
Carroll _____	4	Jackson _____	28	Richland _____	39
Champaign _____	25	Jefferson _____	19	Ross _____	0
Clark _____	14	Knox _____	13	Sandusky _____	10
Clermont _____	28	Lake _____	39	Scioto _____	22
Clinton _____	4	Lawrence _____	12	Seneca _____	4
Columbiana _____	16	Licking _____	44	Shelby _____	0
Coshocton _____	13	Logan _____	4	Stark _____	100
Crawford _____	14	Lorain _____	106	Summit _____	127
Cuyahoga _____	605	Lucas _____	106	Trumbull _____	26
Darke _____	4	Madison _____	1	Tuscarawas _____	21
Defiance _____	14	Mahoning _____	107	Union _____	0
Delaware _____	96	Marion _____	0	Van Wert _____	7
Erie _____	54	Medina _____	38	Vinton _____	4
Fairfield _____	80	Meigs _____	5	Warren _____	27
Fayette _____	15	Mercer _____	0	Washington _____	7
Franklin _____	416	Miami _____	21	Wayne _____	1
Fulton _____	2	Monroe _____	3	Williams _____	0
Gallia _____	9	Montgomery _____	123	Wood _____	27
Geauga _____	37	Morgan _____	7	Wyandot _____	2
Greene _____	35	Morrow _____	13		
Guernsey _____	9	Muskingum _____	28	TOTAL _____	3,160

This list does not include all Ohio matters received in 2011.

TABLE 6

**FISCAL YEAR 2011
REPORT OF OPERATIONAL EXPENSES
OF THE OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO**

I.	Payroll (Salaries & Benefits)	\$ 1,993,043.86
II.	Personal Services (Consultants, Independent Contractors, Temporary help)	\$ 57,611.00
III.	Education, Tuition and Training	\$ 3,879.11
IV.	Supplies and Materials	\$ 44,506.96
V.	Automobile and Parking	\$ 5,284.24
VI.	Travel and Conferences (In-State & Out-of-State)	\$ 27,631.68
VII.	Postal and Shipping Expenses	\$ 21,685.97
VIII.	Communication Expenses	\$ 10,303.65
IX.	Maintenance and Repair Services	\$ 15,848.54
X.	Building, Utilities and Facilities	\$ 226,253.09
XI.	Insurances, Licenses and Permits	\$ 984.60
XII.	Dues and Memberships	\$ 3,500.00
XIII.	Books and Subscriptions	\$ 28,092.91
XIV.	Investigation and Discovery	\$ 42,603.46
XV.	Equipment	\$ 34,880.64
	Less credit adjustments	\$ (1,013.51)
	ODC - Operational Expenses for Fiscal Year 2011	<u>\$ 2,515,096.20</u>

***Jonathan E. Coughlan,
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