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Parenting Time

Submitted by Bryan Lee Ciyou

written by Bryan L. Ciyou and Julie C. Dixon

III. PARENTING TIME.

As a broad threshold matter, the topics of this NBI seminar are engaged by motion practice. Thus, depending upon the orientation of the case and who you represent, the relevant standing, authority and scope of rights will attach.

They vary widely from no parenting time to being a custodial caregiver. It is thus critical to understand the controlling law and apply it to the facts of your client's situation. For this reason, the introductory paragraph of many of the sample forms provided will contain a reference to the relevant statutes.

A. Petition for Visitation.

The term "visitation" was closely aligned with sole physical custody in one parent with the other parent receiving "visitation". Most counties followed something akin to the Marion County Visitation Guidelines before the Supreme Court adopted the Indiana Parenting Time Guidelines. With this "visitation", the non-custodial parent typically received one night during the week and every other weekend.

It may be the case with older orders, a practitioner still finds "visitation" utilized. However, this is an outdated legal term and not found in current statutory provisions. Instead "[a] parent not granted [physical] custody of the child is entitled to reasonable parenting time rights unless the court finds, after hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development." Ind.Code § 31-17-4-1(a).

Parenting time is now indexed to age and set out by the Indiana Parenting Time Guidelines. There is a presumption they apply, and any deviation from them must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case. Scope of Application, Number 2.

Notwithstanding, a grandparent may file a petition for visitation under the Grandparent Visitation Act, which is address *infra*.

B. Petition for Custody.

For the most part, a petition for custody would arise initially in a paternity case after a father establishes paternity. In divorce cases, such a petition would occur at of subsequent to the time of filing of a divorce. Ind.Code § 31-15-4-1(a)(2). However, often times, the initial custody or modifications during the pendency of a divorce are determined by an Agreed Entry approved and ordered by a trial court.

Custody terms of "a provisional order may be revoked or modified before the final decree on a showing of the facts appropriate to revocation or modification." Ind.Code §

31-15-4-15. A provisional custody order terminates when "the final decree is entered subject to right of appeal . . .or the petition for dissolution or legal separation is dismissed." Ind.Code § 31-15-4-14.

Where new practitioners should take caution is with stability and continuity aspect of any preliminary order or agreement for custody. Courts and psychologists like to maintain this post decree, and the initial legal issue over who actually has physical custody is a legal matter whose importance should not be understated.

This is incongruous with the provisional order statutory scheme which indicates the following:

> "The issuance of a provisional order is without prejudice to the rights of the parties or the child as adjudicated at the final hearing in the proceeding."

Ind.Code § 31-15-4-13.

Notwithstanding, the initial pendente custody arrangement seems to carry significant weight by trial court. At least in theory, a provisional custody order entered by a trial court is easier to modify than a custody order issued at the time of a decree, upon a showing "of facts appropriate to revocation or modification." Ind.Code § 31-15-4-15.

C. Motion for a Change of Custody or Visitation.

Once custody has been decide in a paternity or divorce case, it is not easy to modify under the legal standard. New practitioners should be cognizant that the General Assembly relaxed the custody modification statute a few years ago, which required a showing of a "substantial and continuing" change in facts to modify custody.

The current law directs a showing of a "substantial change". Nevertheless, the substantial and continuing change provision is still cited to in petitions or response. Older caselaw also will have this statement of the evidentiary standard before the statutory change. It is debatable if the newer standard equated to any perceptible change in how courts apply the law.

Post decree the legal standard is set forth as follows:

> "(a) The Court may not modify a child custody order unless: (1) the modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.
>
> (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

© The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter.

Ind.Code § 31-17-2-21.

Under the Paternity Act, the legal standard is relatively similar and also focuses ultimately on the child's best interests, as follows:

"The court may not modify a child custody order unless: (1) modification is in the best interest of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 2 and, if applicable, section 2.5 of this chapter."

Ind.Code § 31-14-13-6.

D. Questions of Paternity.

Under the Paternity Act, it specifies the precise way paternity may be established for children who are born out of wedlock:

"A man's paternity may only be established: (1) in an action under this article; or (2) by executing a paternity affidavit in accordance with IC 16-37-2-2.1."

Ind.Code § 31-14-2-1.

When distilled down to actual application, there are three (3) ways to legally establish paternity, one outside the court system–the hospital–and two (2) within it, as follows:

1. Hospital Paternity Affidavit.

Under the Vital Statistics provision of the Code, it provides for parties to enter into an affidavit at a child's birth to establish paternity, set forth, in pertinent part, as follows:

"(a) A paternity affidavit may be executed as provided in this section . . . .(b) Immediately before or after the birth of a child who is born out of wedlock, a person who attends or plans to attend the birth, including personnel of all public or private birthing hospitals, shall (1) provide an opportunity for: (A) the child's mother; and (B) a man who reasonably appears to be the child's biological father; to execute an affidavit acknowledging paternity of the child; and (2) verbally explain to the individuals listed in subdivision (1) the legal effect of an executed paternity affidavit as described in subsection (h).

. . . .

(h) A paternity affidavit executed under this section: (1) establishes paternity; gives rise to parental rights and responsibilities of the person described . . . .

. . . ."

Ind.Code § 16-37-2-2.1.

Unlike the traditional way legal rights are established or determined, a paternity affidavit is done totally outside the legal system and establishes paternity as a matter of law at the time in which it is entered.

2. Blood or Genetic Testing.

Where paternity is not established pursuant to a paternity affidavit provided for under the Vital Statistics provision, a party may file a paternity action and seek blood or genetic testing to establish probabilities a man is a child's biological father.

As it relates to the right to motion for blood or genetic testing, the statutory provision to request this is set forth, as follows:

> "Upon the motion of any party, the court shall order all of the parties to a paternity action to undergo blood or genetic testing. A qualified expert approved by the court shall perform the tests."

Ind.Code § 31-14-6-1.

The statutory provisions for this are very specific and care must be followed to correctly file the paternity action and prepare a motion for blood or genetic testing. In addition, where DNA testing is hand there are a significant number of additional statutory provisions that apply, along with evidentiary concerns. Understanding these in advance and complying is the way pre-empt problems down the road. Ind.Code § 31-14-6-1 *et seq.*

3. Written Stipulation.

A concept found throughout the Paternity and Dissolution Acts is the ability to enter into a written agreement to have a court review and approve. This is also the case as it relates to establishing paternity.

To the extent the parties need to establish paternity, and they are unable under the Vital Statistics provisions of the Code, paternity may be found without a hearing by stipulation:

> "The court may enter a finding that a man is the child's biological father without first holding a hearing on the matter if: (1) the mother and the alleged father in the paternity issue execute and file with the court a verified written stipulation; or (2) the parties have filed a joint petition alleging; that the man is the child's biological father."

Ind.Code § 31-14-8-1.

Inasmuch, where there are questions about paternity, the Paternity Act provide the sole and exclusive legal mechanism to determine paternity and corollary rights and responsibilities.

E. Termination of Parental Rights.

For the most part, a termination of parental right is a very complex process and largely handled by the State. They typically follow CHINS or juvenile delinquency findings. An adoption may also be involved whereby it terminates the biological parents' rights.

A good place to start with this topic is understanding the jurisdictional component to conceptualize the process, which is set forth, as follows:

> "The probate court has concurrent original jurisdiction with the juvenile court in proceedings on a petition to terminate the parent-child relationship involving a delinquent child or a child in need of services."

Ind.Code § 31-35-2-3.

Except in an open adoption, the termination of parental rights terminates the right to parenting time, the topic of this NBI section of the materials. Moreover, since this seminar involves forms, a prudent place to being if you face a TPR matter is with the contents required in the petition, set forth at Ind.Code § 31-35-2-4.

F. The Rights of Grandparents and Other Relatives.

A legal area of some complexity and confusion amongst litigants stems from the right of parenting time by grandparents with grandchildren and where other relatives are involved in a child's life. A grandparent may obtain parenting time in one (1) of two (2) ways.

The first is by grandparent visitation. Ind.Code § 31-17-5-1 *et seq.* This is a very narrow statutory right, with constitutional dimensions. Specifically SCOTUS has determined that a parent's right to raise his or her child free of most state interference is a fundamental right protected by the Constitution and applicable to the states by the Due Process Clause of the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57 (2000).

The statutory provision for is known as the Grandparent Visitation Act and followed the *Troxel* decision. As applied by the Indiana appellate courts, while a discretionary call, "[t] Grandparent Visitation Act contemplates only 'occasional, temporary visitation' that does not substantially infringe on a parent's fundamental right 'to control the upbringing, education, and religious training of their children'" *In the Paternity of K.L.*, 903 N.E.2d 453, 462 (Ind.2009), citing *Hoeing v. Williams*, 880 N.E.2d 1217, 1221 (Ind.Ct.App.2008) (quoting *Swartz v. Swartz*, 720 N.E.2d 1219, 1221 (Ind.Ct.App.1999)).

This is the exclusive legal mechanism for grandparents to seek visitation with their grandchildren.

Notwithstanding, a grandparent or other relative or third party may qualify as a de facto custodial and overcome natural parents' rights. The Paternity Act and Dissolution Act, as applied by caselaw, allows a de facto custodian to bring an independent action seeking custody or intervene in such proceedings. Ind.Code § 31-14-13-2.5 (paternity), 31-17-2-8.5 (dissolution).

G. Checklist of Necessary Documents and Sample Forms.

1. Checklist of Potential Necessary Documents for Parenting Time.

- Journals.
- Photographs.
- School records (sign-in sheets, records of attendance at parent-teacher conferences).
- Timeline.
- Medical and dental records.
- Church records.
- Social media records.
- Receipts and records of support-type records of and for the children.
- Witness lists (who can verify the time any given person has spent with the children).
- Police reports.

2. Sample Forms.

Three (3) sample forms are provided that cover most of the mainstream topics practitioners may face consistent with the introductory level of this NBI:

- Petition to Modify Custody Post-Decree (EXHIBIT "A").
- Petition to Determine De Facto Custodian (EXHIBIT "B").

EXHIBIT "A": POST-DECREE MODIFICATION

STATE OF INDIANA	)	IN THE_____ SUPERIOR COURT
	)SS:	
COUNTY OF _____	)	CAUSE NO.: _____

IN RE THE MARRIAGE OF:)
)
SALLY SMITH,)
Petitioner,)
)
and)
)
BOBBY SMITH,)
Respondent.)

VERIFIED MOTION TO MODIFY PHYSICAL CUSTODY

Comes now Sally Smith (herein "Mother"), by counsel, Bryan L. Ciyou, and files her Verified Motion to Modify Physical Custody, pursuant to Ind. Code § 31-17-2-21, and in support thereof, shows this Court as follows:

1. That it is the child of the marriage, S.S.'s, now age 9, best interests to have father's physical custody modified to mother as there substantial change in circumstances such physical and custody be modified solely into her.

2. That S.S. is failing in school and father recently had left S.S. at the store unsupervised until contacted by police.

3. That this noted, Bobby refuses to provide the first right of refusal to Mother, but routinely delegates and relegates his parental caregiving of S.S. to third-parties, even on school nights, causing him not to complete his homework and be tired for school the next day, and in blatant disregard of Mother's request to provide the care and transportation.

4. That all of this is a part of a broader pattern and a representation of how Bobby provides insufficient care for S.S.., who is inattentive to his needs and this living in an

unsupervised adult world that is not appropriate for S.S.'s physical or psychological well-being as a 6 year old child; and is one of the reasons that Mother is tendering herewith a request for a Ph.D. custody evaluation to aid in assessing these changing familial dynamics.

5. That while Mother understands any one shortfall in parenting may not amount to anything, the wholly inappropriate way Bobby parents on a daily basis is reflected by some of the following examples:

6. That since the prior modification of physical custody to Bobby, in addition to his general inability to raise S.S. in a complete lack of an age-appropriate environment, he has intentionally undermined his relationship with Mother in numerous ways other than denying the FROR, but also by threatening physical harm to her boyfriend, Tom Dry.; exposing S.S. to alcohol and partying; and otherwise exposing him to situations that will impair his proper maturation, such as showering with S.S. and making S.S. sleep in the same bed with him.

7. That while any one of these factors may not individually equate to a substantial change, the facts and circumstance that occurred since the prior Order on July 1, 2010 collectively demonstrate a substantial change circumstances in the factors this Court may consider and a modification is in the child's best interests.

WHEREFORE, Sally Smith, by counsel, Bryan L. Ciyou, prays for a modification of physical custody and for all other relief just and proper in the premises.

Respectfully submitted,

CIYOU & DIXON, P.C.

_____

Bryan L. Ciyou

Bryan L. Ciyou
Attorney Number: 17906-49
CIYOU & DIXON, P.C.

320 North Meridian Street
Suite 600
Indianapolis, Indiana 46204
Telephone: (317) 972-8000
Fascimile: (317) 955-7100

VERIFICATION

I, Sally Smith, swear under penalty of perjury the foregoing is true.

_____
Sally Smith

CERTIFICATE OF SERVICE

I, Bryan L. Ciyou, certify that a true and accurate copy of the foregoing was served upon the following counsel of record this ___ day of _____, 2011:

Your Counsel
123 Dream Way
Indianapolis, Indiana 46204

_____
Bryan L. Ciyou

EXHIBIT "B": DE FACTO GRANDPARENTS

STATE OF INDIANA	)	**IN THE _____ COUNTY COURT**
	)SS:	
COUNTY OF _____	)	**CAUSE NO._____**

IN RE THE MATTER OF CUSTODY OF :	)
JOHN DOE (minor child)	)
	)
BOB and SALLY SMITH,	)
Petitioners(Proposed Defacto Custodians),	)
vs.	)
	)
MIKE AND TAMMY JONES,	)
Respondents.	)

VERIFIED MOTION TO ESTABLISH/MODIFY CUSTODY IN THE PERSON OF DE FACTO CUSTODIANS

Comes now Sally Smith (herein "Maternal Grandmother") and Bob Smith (herein " Maternal Grandfather", or collectively "Maternal Grandparents"), in person and by Counsel, by counsel, Bryan L. Ciyou, and file their Verified Motion to Establish/Modify Custody in the Person of De Facto Custodians, and in support thereof, show the Court, as follows:

1. That at the birth of John Doe (hereinafter "J.D." or "Child"), whom is now almost four (4) years of age, her biological mother, Tammy Jones (hereinafter "Mother") and father Mike Jones (hereinafter "Father"), effectively abandoned her at maternal grandparents' home, as they were unwilling and unable to care for the Child; and the maternal grandparents have been the primary care-givers since that time and are the ones with whom the Child is primarily bonded. See attached Affidavit of Bob Smith, which is incorporated by reference herein.

2. That de facto status has never been formally adjudicated to Maternal Grandparents, pursuant to Ind. Code §31-9-2-35.5, but that the Maternal Grandparents have been the primary (and effectively sole) caregivers for, and financial support of J.D., who has

resided with them for well over a year, and for almost the last four (4) years at the time of this action.

3. That recently Mother and Father have had only minimal contact with J.D. since birth; and only recently, within the last six (6) months, has she spent approximately a day a week.

4. That due to the Maternal Grandparent's not proceeding previously to legally determine defacto custodian status, they have not been established as such, and do not have any present legal custody rights.

5. That on November 1, 2011, the Grandparent's received a call from the police who informed them that Mother relayed they had effectively kidnapped J.D. from her and refused to return him.

6. That on November 2, 2011, the Grandparents complied, as they could not legally protect the Child from this occurring.

7. That the Maternal Grandparents/Defacto Custodians, have only had visitation time with the Child on one (1) instance, since November 1, 2011, causing sever bonding problems.

8. That in addition, what precipitated Mother's request of law enforcement was to mask she had been allowing the child to be intentionally harmed during the limited time she spent with him by Father.

9. That the Defacto Custodians submit that this relief requested, pursuant to the statutory scheme under Ind. Code §31-14-13-2.5 (paternity) or Ind. Code §31-17-2-8.5(dissolution) for Defacto Custodians, is exactly what is necessary and required for the emotional well being of this child, as he is primarily bonded with the Maternal Grandparents and is in the child's best interests.

WHEREFORE, the Maternal Grandparents, in person and by Counsel, pray this Court set this matter for a temporary custody hearing, find the Maternal Grandparents to be the Defacto Custodians, and award custody to the Defacto Custodians all relief just and proper in the premises therefrom.

Respectfully submitted,

CIYOU & DIXON, P.C.

_____
Bryan Lee Ciyou

Bryan L. Ciyou
Attorney Number: 17906-49
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320 North Meridian Street
Suite 600
Indianapolis, Indiana 46204
Telephone: (317) 972-8000
Fascimile: (317) 955-7100

CERTIFICATE OF SERVICE

I, Bryan L. Ciyou, certify that a true and accurate copy of the foregoing was served upon the following counsel of record this ___ day of _____, 2011:

Your Counsel
123 Dream Way
Indianapolis, Indiana 46204

_____
Bryan L. Ciyou

Ethics

Submitted by Bryan Lee Ciyou

VI. ETHICS.

An underlying point of consideration with any ethics discussion, training, or issue is to look at the Supreme Court Disciplinary Commission Report. This is instructive in "reverse engineering" any ethics issue by looking at actual grievances by type and alleged misconduct. The most current version of this report for 2008-2009 will be discussed in this section of the NBI. It is attached as Exhibit "1".

A. Client/Lawyer Relationship.

1. Introduction.

In virtually all aspects of legal representation, the power balance between attorney and client are draw along lines of ***objectives*** versus the ***means***. It is this aspect of representation which must be understood to be an effective and ethical advocate. Here is hypothetical from criminal and civil practice to make the point:

a. Criminal Model.

Client. I am not guilty and want the case dismissed or to be acquitted. This is the objective. ***Attorney.*** We need a polygraph. Expert witness. Fill in the blank:_____. These are the means.

b. Civil Model.

Client. I am not getting along with my spouse and want a divorce and custody of my children. ***Attorney.*** We need a custody evaluation. Property valuations. Fill in the blank:_____. These are the means.

Client. I have been injured in an accident and want money damages.
Attorney. You need a vocational expert to quantify the impact of your injury and an economist to extrapolate this over your expected life span and reduce it to the time value of money. These are the means.

2. Ethical Rule Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

> "(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation . . . ."

3. Conclusion.

A hallmark of the attorney-client relationship is drawn from the objectives of the litigation–the reason the client hired the attorney–and the means, which the lawyer, in consultation with the clients decides.

B. Representing Both Sides.

1. Introduction.

Broadly, a conflict of interest is a legal term used to describe public officials and fiduciaries and their relationship to matters of private interest or gain to them. *See, e.g., Black's Law Dictionary* (6th ed.), p. 299. While certainly such could exist in a domestic relations case, the focus of this subsection, and of typical concern to the family lawyer, is a conflict of interest as set forth in the Rules of Professional conduct for actual or potential conflicts of interest between attorney and client.

2. Controlling Ethical Rules.

Under the Rules of Professional Conduct, there are three (3) major rules and areas of topical coverage governing conflict of interest: (1) conflicts of interest with current clients, (2) specific conflicts with current clients, and (3) conflicts of interest due to a prior attorney-client relationship.

With the topic of representing both sides comes the issues becomes is there a direct conflict of interest. The controlling rule is set forth, in pertinent part, as follows:

> "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interests. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

3. Commentary.

In all but the rarest of cases, it appears this joint representation is a prohibited representation. This is because consent cannot be obtained because the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.

There is an older case on point with representing both sides. The case involved a husband and wife who had known and consulted with an attorney for years. When the couple decided to get divorced, the attorney tried to represent both parties and the wife signed blank deeds without further legal advice before she left town. The deeds were used by the husband (fraudulently) to sell off her interests in shared property. The deeds signed by the wife were notarized fraudulently and she lost all property and money she had. The attorney claimed he knew he couldn't adequately represent both husband and wife in the divorce. The Court held "when an attorney attempts to represent both parties in litigation, he perpetrates a fraud on the court. He cannot serve two masters". *Bizik v. Bizik*, 111 N.E.2d 823, 830-831 (Ind.Ct.App. 1953).

4. Practice Standards.

Where there are cases with complete agreement, and particularly childless marriages, there is ability for a lawyer to represent one party, draft the documents that they may have agreed to, and then advise the other litigant to obtain counsel to review prior to executing. However, this may invite future scrutiny.

5. Conclusion.

Representing both parties in a divorce is a concurrent direct conflict of interest and one that should be avoided to comply with the Rules of Professional Conduct. In addition, where there are significant assets at stake, this may be tantamount to inviting a malpractice case.

C. Attendance at Client Conferences by Friends or Family of Client.

As a practical matter, adult children sometimes have their parents involved in their client meetings, significant others, or close friends. This is a delicate balance for the attorney. If this third party facilitates the client's participate in the process, this trade off may be worth it. As a corollary, a third party may pay, but he or she is not entitled to any confidential information or to set forth the objectives of the case.

Where this will occur, a written acknowledgment may be a good legal practice. Informed consent is a hallmark to complying with ethical balances. In addition, the client must aware this waives confidentiality and may impair the attorney-client evidentiary privilege.

There do not seem to be any cases on the point exactly. There are cases of confidentiality issues with lawyer's agents and people who have been appointed by the client to speak to the attorney for them.

D. Attorneys' Fees.

Fee related matters account for a statistically significant amount of grievances filed against lawyers. If the lawyer is to ethically charge and collect his/her fee, and avoid unnecessary liability, the rules, disciplinary statistics, cases, and concepts from all must be understood and practically applied.

1. Text of the Controlling Rule: Rule of Professional Conduct 1.5.

The Rule of Professional Conduct governing fee arrangements is Rule 1.5, which is set forth, in full, as follows:

> "(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular

employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expense to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:
(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or upon the amount of maintenance, support, or property settlement, or obtaining custody of a child; or
(2) a contingent fee for representing a defendant in a criminal case.
This provision does not preclude a contract for a contingent fee for legal representation in a domestic relations post-judgment collection action, provided the attorney clearly advised his or her client in writing of the alternative measures available for the collection of such debt and, in all other particulars, complies with Professional Conduct Rule 1.5 (c).

(e) A division of a fee between lawyers who are not in the same firm may be made only if:
(1) the division is proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation.
(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
(3) the total fee is reasonable."

2. Disciplinary Commission Statistics on Grievances Filed Over Fees.

Some insight into how attorneys may run afoul of Rule 1.5 is found in the annual reports of Disciplinary Commission. In this material, the 2008-09 Annual Report of the Disciplinary Commission of the Supreme Court of Indiana is referenced for statistics.

Precisely, statistically significant Grievances by case type and misconduct alleged are set forth as follows to orient fees in the context of ethical rule violations:

- Criminal: 413 or 31.3%
- Domestic Relations: 262 or 19.8%
- Tort: 120 or 9.1%

—

- Communications/Non-Diligence: 607 or 30.2%
- Conversion: 47 or 2.3%
- Excessive Fee: 99 or 4.9%
- Minor Fee Dispute: 46 or 2.4%

3. Recent Caselaw on Fees.

In the Matter of Everett E. Powell, III: Attorney removed trustee of special needs trust set up for client and dissolved the trust in exchange for one-third of the trust funds. The contingency fee ended up being $14, 815.55 paid to the attorney, but involved no complex or time-consuming issues as originally thought. *Respondent suspended for 120 days without automatic reinstatement for collecting an unreasonable and exploitive fee from a vulnerable client.*

-*In re Powell,* 953 N.E.2d 1060 (Ind. 2011).

In the Matter of Robert W. Hammerle: Attorney charged a "retainer/flat fee" of $35,000 plus an hourly fee of $250 if the trial last more than 5 days. The attorney was convinced the client would be convicted, so after several months, the parties renegotiated for an additional flat fee of $20,000 and dropped the hourly billing (attorney did not advise client to confer with another attorney regarding the fee change). Soon after, the client accepted a plea on attorney's advice. *Attorney was found to have charged an unreasonable fee and was publicly reprimanded.*

-*In re Hammerle*, 952 N.E.2d 751 (Ind. 2011).

In the Matter of Heather McClure O'Farrell: Attorney charged 2 clients nonrefundable "engagement" fees in cases with an Hourly Fee Contract and a Flat Fee Contract. The Court found that while a retainer could be used to secure an attorney's availability, just calling a fee a retainer or nonrefundable doesn't make it automatically fall

into the retainer realm. Not allowing the client a refund goes against public policy as it then makes it difficult/impossible for the client to fire the attorney. *The Court concluded that by charging nonrefundable flat fees, the attorney violated Rule 1.5 for unreasonable fees and imposed a public reprimand.*

-In re O'Farrell, 942 N.E.2d 799 (Ind. 2011).

In the Matter of Kenneth E. Lauter: Attorney and client entered into a contract which provided for a contingency fee payment (1/3 if settled before trial, 40% otherwise) and an engagement fee of $750. There was then added a handwritten note allowing for additional retainer fee if the client and attorney agreed to file federal court litigation-the client initialed this. They went to federal court and the attorney charged the client $4250 under the handwritten addition (no calculations or advice to talk to another attorney), the case settled, and the attorney took the 1/3 contingency fee. *The Court found Rule 1.5 had been violated because the attorney didn't adequately communicate the basis of his fee to the client, and the attorney was publicly reprimanded.*

-In re Lauter, 933 N.E.2d 1258 (Ind. 2010).

In the Matter of Stephen A. Kray: Attorney asked client to advance $3000.00 toward legal expense, but the attorney didn't put the money in a trust account (in fact, he didn't have one at all). *The Court found Rule 1.5 was violated in that there was a failure to communicate the basis or rate of the fee and a contingent fee agreement was used in a dissolution case. The attorney received a public reprimand.*

-In re Kray, 938 N.E.2d 218 (Ind. 2010).

In the Matter of Charles W. Beacham: Written fee agreement required a nonrefundable retainer of $5000.00 and a term that the attorney would get $200/hour or 25% of the net recovery-whichever was greater. Despite this agreement, the client just paid $1000.00/month, but the work the attorney did wasn't providing any value to the client (poor quality, rambling). Attorney sent a bill to the client (who had sought new counsel and settled the case) for $233, 484. *The Court found the attorney violated Rule 1.5 by charging a nonrefundable retainer and a fee that is unreasonable in amount and suspended him for a period of not less than 180 days without automatic reinstatement.*

-In re Beacham, 934 N.E.2d 735 (Ind. 2010).

In the Matter of Curtis E. Shirley: Attorney represented a client and the client's corporation (in potential and direct conflict with each other). The attorney charged substantial fees to the corporation without obtaining the knowing consent of necessary principals of the corporation (in fact, he helped his other client oust the siblings and other board members of the corporation and tried to get the corporation held in contempt). *The attorney was found to have charged an unreasonable fee and was given a 30 day suspension with automatic reinstatement.*

-In re Shirley, 930 N.E.2d 1135 (Ind. 2010).

In Re Marriage of Stephanie Reeder v. John Reeder: Firm represented wife and charged her $245,000 in attorney's fees. Through other court proceedings, the husband was ordered to pay the wife's attorney's fees, but in doing so, wife wasn't getting money from him for living expenses because the attorney payments took up all his income. The firm filed a "Notice of Intent to Hold Lien for Attorney's Fees and Motion to Assert Attorney's Lien".

The wife then argued at the hearing on the Notice and Motion from the firm that the fees were unreasonable. *The Court found that when the wife thought the husband would pay off the fees, she found them reasonable, and they found the fees to be reasonable and needed to be paid.*

-*Reeder v. Reeder*, 917 N.E.2d 1231 (Ind.Ct.App. 2009).

In the Matter of Daniel E. Moore: Attorney took case for minimum non-refundable retainer fee of $15,000. Then the attorney requested another $5000, and another $1,500, but never did the attorney advise the client to consult with independent counsel regarding the new fees. *The Court found the attorney charged an unreasonable fee and he was given a public reprimand.*

-*In re Moore*, 915 N.E.2d 973 (Ind. 2009).

In the Matter of Frederick A. Zirkle: Attorney filed a huge omnibus motion in regards to his disciplinary matter that the court concluded should all be denied. The attorney had multiple infractions including multiple violations resulting in improper fee arrangements, use of nonrefundable retainers, improper billing practices, failure to refund unearned fees, charging a minimum of 1/4 hour for any work (including reviewing a short e-mail), and charging inappropriately for work. *The attorney was found to have charged an unreasonable fee and was suspended from practicing law for 2 years without automatic reinstatement.*

-*In re Zirkle*, 911 N.E.2d 572 (Ind. 2009).

In the Matter of Robert M. Holland, III: Attorney allowed balance in his attorney trust account (on more than one occasion) to drop below the amount of client funds he was supposed to hold and even overdrew the account. The attorney also commingled the funds, allowing contingent fees to remain in the account too long. *The attorney was found to have collected an unreasonable fee and was suspended for a period of at least 12 months, without automatic reinstatement.*

-*In re Holland*, 911 N.E.2d 574 (Ind. 2009).

Stewart v. TT Commercial One, LLC: The main crux of the case involved a lease disagreement, but the court ordered the Stewarts to pay attorneys fees of TTCO as part of the findings. The trial court awarded to TTCO $32, 792 plus another $3569.41, but there was no information regarding hours spent by attorneys working or their hourly rates. The attorneys only drafted a complaint and some discovery and summary judgment motions and responses. *The Court found that based on the record, they could determine whether the fees charged were reasonable and remanded.*

-*Stewart v. TT Commercial One, LLC*, 911 N.E.2d 51 (Ind.Ct.App. 2009).

4. Relevant Considerations Distilled from Ethical Rules, Grievances, Caselaw.

a. Written or oral agreement as to fees.

- **Time for Notification:** Scope of representation and basis of rate commenced within a reasonable time after commencing representation. Rule 1.5(b).

- **Commentary**: "Generally, it is desirable to furnish that client with at

least a simple memorandum or copy of the lawyer's customary fee arrangements that states the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding." Comment 2.

b. Contingent fees must be in writing and are prohibited where they violate public policy.

c. Proposed/potential contractual language in non-contingent fees cases.

- **Expenses.**
- **Draw-down provision.**
- **Emergencies.**
- **Billing increments.**
- **Billable events (e.g., time).**

d. A lawyer shall not charge an unreasonable amount of expenses.

Note: This rule change effective January 1, 2005 is focused on in-house expense.

e. A lawyer shall relate not only the rate of the fee, but also the scope of the representation.

Commentary: "The scope of the representation . . . shall be communicated with the client." Rule 1.5(b).

f. Local rules, as being ethical is hinged upon following rules of tribunal.

In domestic cases in particular, many courts have local rules governing fees awards. By way of example the Marion County Local Rule 509 is set forth:

A. Preliminary Attorneys Fees. Attorney fees may be awarded based on evidence presented by affidavit or oral testimony at a preliminary hearing. Affidavits shall be admissible subject to cross-examination. The following factors may be considered:

1. The number and complexity of the issues;
2. The nature and extent of discovery;
3. The time reasonably necessary for the preparation and conduct of contested

hearings;
4. The attorney's hourly rate; and
5. The amount counsel has received from all sources.

B. Preliminary Appraisal and Accountant Fees. Appraisal and accounting fees may be awarded based on evidence presented by affidavit or oral testimony at a preliminary hearing. The following factors may be considered.
1. An itemized list of property to be appraised or valued; and
2. An estimate of the cost of the appraisals and the retainer required

C. Contempt Citation Attorney Fees. There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation. An attorney may submit the requested fee by affidavit or oral testimony, which may be accompanied by an itemized statement.

5. Conclusion.

To avoid unnecessary peril, legal fees should be considered in the context of the ethical rules, caselaw, and local rules. In addition, a better practice is to have a contract, in confirmed in writing even if not specifically required.

E. Communication With Adverse Party.

1. Introduction.

Pro se parties in domestic litigation can create a number of procedural, legal, and factual difficulties for lawyers in resolving a matter or trying the case to the fact-finder. Generally, the net effect is delay of the matter or obscuring the legal issues. In this section of these NBI materials, the relevant rules of ethics and law are enumerated, followed by legal tools that may be employed to mitigate and address such circumstances.

2. Controlling Ethical Rules.

The Indiana Rules of Professional Conduct (herein "Rule(s))" set forth the boundaries for the attorney in addressing pro se parties; such is found under the section titled, "Transactions with Persons Other than Clients." In any circumstance, it important for the lawyer not only to consider the controlling Rule(s), but also remember that Commentary to these Rules provide practical examples that may be of assistance. The central Rules are set forth as follows:

a. Rule 4.1: Truthfulness in Statements to Others.

"In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6."

b. Rule 4.3. Dealing with Unrepresented Persons.

"In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of a client."

c. Rule 4.4. Respect for Rights of Third Persons.

"(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person. (b) A lawyer who received a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender."

3. Legal Standards.

The point of differentiation between the Rules and the lawyer in dealing with a pro se party is only the lawyer is bound by them. That said, however, it well settled law the *pro se litigants* are held to the same trial practice standard as are licensed attorneys. *See, e.g., Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind.Ct.App.2005) (citing *Hess v. Hess*, 679 N.E.2d 153, 155 (Ind.Ct.App.1997). This rule applies across the spectrum of civil.

4. Practical Approaches.

a. Communications (Written).

In most situations, the Author controls the communications with *pro se* parties by limiting this to written form. With today's virtually instantaneous electronic communications, such as fax and e-mail, there is not a delay that makes phone communications always necessary. If this technique is utilized, the means should be considered on a case-by-case basis.

For instance, if a question arises to what was sent or received, it is difficult (and expensive) to authenticate e-communications. An e-mail may need to be followed up by mail copy. Where there is a reasonable dispute in the foreseeable future, certified mail may be employed. Finally, in special cases, personal service may need to occur, either by the "civil sheriff", if available, and can meet the time requirements, or a private process server may be hired for this.

b. Notice.

Certain *pro se* litigants are *pro se* because they utilize the status merely to "harass" the opposing party, the proceeding, or indefinitely protract the legal matter and finality. A very common, and frustrating, situation occurs when the litigant protests a lack of notice of an

event or hearing. One effective, and inexpensive, way this may be addressed is to ask this litigant at a hearing his or her address and ask the trial court to issue an order on the address for notice and duty to keep same current.

Operationally, the lawyer orally in court, or in written form before or after a hearing, motions the court to order that party to keep the court notified in advance of any move and the official address for service of any pleading, motion, or paper. This can be broader to include other related matters (telephone number, e-mails, etc).

This specific order is likely to carry more enforcement weight than notice sent by the lawyer using the legal fictions of a "current address" for notice by serving the last address of the *pro se* party. This legal fiction is embodied in certain local rules and accounted for in some regard in the trial rules. *See* Ind. Rule Trial Procedure 3.1(E). However, it invites challenge by a litigious pro se party: "I moved judge, and didn't know I was supposed to change my address–never knew about the hearing".

Finally, in appropriate cases, the attorney may file a motion setting forth the problems, or perceived future issues, and request the court issue a more detailed order or set of directions. This order may specify the method(s) of notice the court desires. Such is particularly useful if service will be a question and it is unclear what the court deems proper notice: publication, mail, certified mail, etc. Such may have particular use in minimizing the ability of the pro se litigant to seek a last-minute continuance or future challenges to a default.

However, with initial filings of matters, and other circumstances, the lawyer should always consult the "Process" protocols of Indiana Rule of Trial Procedure 4.

c. Case Management.

One of the vexing problems associated with a *pro se* litigant is the disjointed nature of the process that may occur by failure to understand and follow local rules and trial rules. This may manifest itself in innumerable ways. The random, obscure, or improperly timed motion or discovery request is a common (and classic) example.

There are no quick or necessarily inexpensive fixes for this problem. However, such may be blunted by a pre-trial conference and directions from the court or a case management plan and order. Indiana Rule of Trial Procedure 16. Where a hearing or trial is forthcoming, witness and exhibit exchange may be of use.

d. Attorney's Fees and Contempt.

A fee award request or contempt motion may also be considered. However, with certain *pro se* litigants, legal merits aside, this may fuel his or her actions/inactions. The breadth of these rules and remedies for fees and contempt is addressed in following portions of these NBI materials.

e. Atypical Measures.

Practical and effective solutions to matters raised by *pro se* litigants may be addressed

by proper assessment of the legal, emotional dynamics of the actor and his or her objectives. That is a cookie-cutter approach, some of which are fee and contempt filings, may not work, but with proper assessment, the lawyer may consider the following atypical measures in specific circumstances:

- Requests for Admission. Indiana Rule of Trial Procedure 36.
- Special Findings. Indiana Rule of Trial Procedure 52(A).
- Summary Judgment. Indiana Rule of Trial Procedure 56.
- Offer of Judgment. Indiana Rule of Trial Procedure 68.
- Appellate Pre-Appeal Conference, Motion to Dismiss or Strike (appellate matters). Indiana Rules of Appellate Procedure 19, 36.

5. Conclusion.

In conclusion, the attorney, assuming proper assessment of the operational dynamics of the case may find a legal remedy in the trial or appellate rules. A thorough (and frequent) review of the Indiana Rules of Trial Procedure will be engaged on a consistent basis by the successful practitioner.

F. Malpractice Concerns.

1. Introduction.

The legal malpractice landscape continues to see dramatic changes since it became an area of study by the American Bar Association more than twenty (20) years ago. Two (2) trends/statistics are noteworthy. First, since at least 2002, there has been a dramatic increase in the number of malpractice claims settled for $2,000,000 or more. Second, the most malpractice claims are lodged nationally against the plaintiffs and defense personal injury bar, with real estate law following close behind. For instance, by percent of all claims according to the ABA's figures for 2003, 20% were plaintiffs' personal injury, 10% defense personal injury, and 16% were real estate. *See ABA* studies.

The clearest example of the "why" they occurred, for a large number of these claims, is because a lawyer missed a deadline (such as a statute of limitation). Unfortunately, still, the root cause of increase for the bulk of the claims is not readily identifiable. As with the nature of law, working in "grey areas", instead of black and white, may account for some novel theories of claim, damages, and recovery and/or settlement. A number of excellent seminars and written materials are widely available, and it would behoove every lawyer to stay abreast of this area of the law. *Id.*

Family law malpractice cases are a mixed bag. The number of claims is a staggering ten (10) percent of all claims by all areas of law. The basis of these claims is not as clearly defined and identified, but appear to be fueled by the fact that the lawyer failed them in an already emotional dissolution matter. Moreover, the inherent nature of a domestic matter, wherein the laws are tantamount to empowering the trial court judge with more equitable

powers and ability to judicially decree good common sense, make benchmarks of sound practice hard to identify. Often this is further blurred by almost purely strategic courses of action in sole fashion, since exploring and preparing for all courses of action is financially not possible (perhaps unlike most other civil litigation).

The up side, save for the big asset case, may be that the overall claim ceiling, claims settled, and judgments may be expected to be lower. This noted, on the other hand, it may be expected for defense costs to be higher because of sorting out the facts to ascertain the underlying claim. Unless dismissed for failure to state a claim under Rule 12, it may be expected to take a great deal of legal time and resources to hone in on the "disgruntled" client's claim. And consistent with the vast majority of family law attorneys and practice models, a majority of all malpractice claims are filed against firms with five (5) or fewer attorneys. *Id.*

Although the types of disciplinary pitfalls noted *infra* may also be instructive of the reasons for family law malpractice claims (and hence by inductive reasoning provide insights as to protective measures), it is clear that with the fact-sensitivity of domestic cases, coupled with the sometimes extreme emotional dynamics defining most of such, it makes the nuisance of any given pitfall likely to cause malpractice and/or ethical issues difficult to identify with any great deal of precision. The Author would like nothing more than to provide a "laundry list" of cases or issues to avoid. The complex, unique dynamics of family law cases unfortunately preclude this.

All is not lost, however. This Author has reviewed a good number of discipline cases, researched the scholarly materials, reviewed malpractice trade papers, considered a vast number of cases from his own practice (over 3,000 in over a decade plus in practice), and worked with a significant number of outside attorneys on highly complex domestic cases. In these, a pattern emerges of behaviors and factual dynamics that are reflective of cases that have a higher potential to breed malpractice claims and ethical grievances.

Stated differently, there are a number of consistent "red flags" that the legal research, scholarly works, civil case law, disciplinary data, and common experiences of domestic practitioners (operating at advanced levels), demonstrate are associated with cases likely to have malpractice traps or have clients associated therewith who make such claims or file grievances (which are assumed for purposes of this model do not raise a substantial issue of misconduct).

2. Red Flag Cases.

In fact, these "red flags" are typically applicable to the opposing party as well. Inasmuch, a lawyer considering accepting a case would do well to seriously consider "yes" answers to the following questions in contemplating whether to accept the case. "Yes" answers are "red flags". And in the event that these dynamics come to be operational in an existing case, the lawyer would do well to consider whether continuing in the case is prudent. The following are the ten (10) red flag questions:

- **Question One.** The client has had multiple, prior and well-regarded counsel? This can be further explored by:

- Contacting prior counsel (properly and with the client's consent). Has the counsel been paid? Has there been a recent adverse order?
- Reviewing the court's trial file (particularly of importance in active cases, as opposed to new modification in an archived case).
- Contacting opposing counsel.

■ **Question Two.** The client has active companion cases? These may included, but not be limited to, the following:

- CPS Investigation/CHINS Matter. Have there been multiple unsubstantiated CPS investigations? Were these in multiple counties?
- Pending Protective Orders?
- Pending Criminal Cases?
- Pending Mental Health Commitment Case?

■ **Question Three.** The client(s) insists on a "collective client" in the form of parent(s) and/or significant others. Inquiries/consideration:

- Written waivers.
- Independence of relationship.
- Author's case of SK.

■ **Question Four.** The client has crossed, is, or plans on crossing state lines with the children regardless of any court order?

■ **Question Five.** The client has a "ghost attorney" who has allegedly told them to tell you what to do? Who are they?

- Counsel out-of-state? Counsel domestic?
- 50 South Alabama Counsel?

■ **Question Six.** The client has a documented substance abuse issue and is within eighteen (18) months of sobriety or mental illness for which he/she has historically not been medically compliant. Considerations:

- Relapse rate.
- Mental health where patients are chronically non-compliant.
- Settlement/payment issues and impaired condition.

- **Question Seven.** The client has an emergency matter or perceives a matter or the entire case to be an emergency?

- **Question Eight.** The client is in denial of the nature and scope of the proceedings and the types of likely relief available?

- **Question Nine.** The client has been severely emotionally abused, or has been sexually or physically abused?

- **Question Ten.** The client calls and leaves messages to the messages? Inquires:

    - Time of call.

    - How far apart the calls come.

Where there are affirmative answers to these questions, further research and reflection needs to be conducted by the attorney in making the decision to accept or continue with the case (if withdrawal is an option).

3. Relationship Between Legal Ethics and Malpractice.

The Scope of the Rules of Professional Conduct sets forth the linkage between a breach of professional ethics and a malpractice matter. One or both or neither may lie, as follows:

> "[20] Violation of a Rules should not itself give rise to any cause of action against a lawyer, nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability, but these Rules may be used as non-conclusive evidence that a lawyer has breached a duty owed to a client. . . . ."

4. Conclusion.

Malpractice and/or ethical concerns are a part of the job risk we take on as lawyers. However, with understanding the distinctions between legal ethics and professional malpractice a step is taken toward risk mitigation. This, plus and understanding of the "red flag cases" and correspondingly, the case types and allegations made to the Disciplinary Commission, a degree of certainty as to proper courses of action and risk management is achieved.

EXHIBIT "1": 2008-09 DISCIPLINARY COMMISSION REPORT

2008-2009
ANNUAL REPORT

OF THE

DISCIPLINARY COMMISSION

OF THE

SUPREME COURT OF INDIANA

PUBLISHED BY THE

INDIANA SUPREME COURT DISCIPLINARY COMMISSION
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INDIANA SUPREME COURT DISCIPLINARY COMMISSION

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RONDA JOHNSON SHARON F. SCHOLL JUDY E. WHITTAKER
INVESTIGATOR:

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I. INTRODUCTION

This is the annual report of the activities of the Disciplinary Commission of the Supreme Court of Indiana for the period beginning July 1, 2008 and ending June 30, 2009. The Disciplinary Commission is the agency of the Supreme Court of the State of Indiana charged with responsibility for investigation and prosecution of charges of lawyer misconduct. The Indiana Rules of Professional Conduct set forth the substantive law to which lawyers are held accountable by the Indiana lawyer discipline system. The procedures governing the Indiana lawyer discipline system are set forth in Indiana Supreme Court Admission and Discipline Rule 23. The broad purposes of the Disciplinary Commission are to "protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct." Admission and Discipline Rule 23, section 1.

The Disciplinary Commission is not a tax-supported agency. It is funded through an annual fee that each lawyer admitted to practice law in the State of Indiana must pay in order to keep his or her license in good standing. The current annual registration fee for lawyers in active status is $115.00.

After paying the costs of collecting annual fees, the Clerk of the Supreme Court distributes the balance of fees to the Disciplinary Commission, the Commission for Continuing Legal Education and the Indiana Judges and Lawyers Assistance Committee to support the work of those Court agencies. In this fiscal year, of each $115 annual registration fee, after the Clerk's expenses for collecting fees, 66.37% was distributed to the Disciplinary Commission, 18.9% to the Continuing Legal Education Commission and 14.73% to the Judges and Lawyers Assistance Committee.

The annual registration fee for lawyers in inactive status is $57.50. The annual registration fee is due on or before October 1 st of each year. Failure to pay the required fee within the established time subjects the delinquent lawyer to suspension of his or her license to practice law until such time as the fee and any delinquency penalties are paid.

Out-of-state lawyers who received court permission to practice law temporarily in the state of Indiana are required to pay a $1 15 registration fee for each year they are participating as counsel in an Indiana case.

On May 5, 2009. the Supreme Court issued an order suspending **131** lawyers on active and inactive status, effective June 5, 2009, for failure to pay their annual attorney registration fees.

II. HISTORY AND STRUCTURE OF THE DISCIPLINARY COMMISSION

The Indiana Supreme Court has original and exclusive jurisdiction over the discipline of lawyers admitted to practice law in the State of Indiana. Ind.Const. art. 7, § 4. On June 23, 1971, the Indiana Supreme Court created the Disciplinary Commission to function in an investigatory and prosecutorial capacity in lawyer discipline matters.

The Disciplinary Commission is governed by a board of commissioners, each of whom is appointed by the Supreme Court to serve a term of five years. The Disciplinary Commission consists of seven lawyers and two lay appointees.

The Commission meets monthly in Indianapolis, generally on the second Friday of each month. In addition to acting as the governing board of the agency, the Disciplinary Commission considers staff reports on claims of misconduct against lawyers and must make a determination that there is reasonable cause to believe that a lawyer is guilty of misconduct which would warrant disciplinary action before formal disciplinary charges can be filed against a lawyer.

The officers and members of the Disciplinary Commission during the reporting year were:

Name	*Hometown*	*First Appointed*	*Current Term Expires*
Sally Franklin Zweig, Chair	Indianapolis	September 2, 2001	June 30, 2011
Corinne R. Finnerty, Vice-Chair	North Vernon	July 1, 2003	June 30, 2013
Fred Austerman, Secretary	Richmond	July 1, 2003	.June 30, 2013
Diane L. Bender	Evansville	July 1, 1999	June 30, 2009
Maureen Grinsfelder	Fort Wayne	July 1, 2005	June 30, 2010
Robert L. Lewis	Gary	July 1, 1999	June 30, 2009
R. Anthony Prather	Indianapolis	July 1, 2004	June 30, 2009
.1. Mark Robinson	New Albany	April 11, 2001	June 30, 2011
Anthony M. Zappia	South Bend	September 9, 2001	June 30, 2011

Biographies of Commission members who served during this reporting year are included in **Appendix A.**

The Disciplinary Commission's work is administered and supervised by its Executive Secretary, who is appointed by the Commission with the approval of the Supreme Court. The Executive Secretary of the Commission is Donald R. Lundberg.

The staff of the Disciplinary Commission during this year included:

Greg N. Anderson, Staff Attorney
Allison S. Avery, Staff Attorney Rom Byron, Staff Attorney
David B. Hughes, Trial Counsel (part-time)
Laura B. Iosue, Staff Attorney
Charles M. Kidd, Staff Attorney

Carol Kirk, Staff Attorney/Investigator
Dennis K. McKinney, Staff Attorney Seth T. Pruden, Staff Attorney Fredrick L. Rice, Staff Attorney Robert C. Shook, Staff Attorney Robert D. Holland, Investigator Sharon F. Scholl, Office Manager Judy E. Whittaker, Secretary Ronda Johnson, Secretary

In addition, the Disciplinary Commission employs part-time law students to assist in its work. Law clerks employed during this reporting period included Donald E. Thomas, Jr., Caroline Richardson, Sara A. Vorndran, Amber Malcolm and Lauren E. Berger.

The Disciplinary Commission's offices are located at 30 South Meridian Street, Suite 850, Indianapolis, Indiana 46204.

III. THE DISCIPLINARY PROCESS

A. The Grievance Process

The purpose of the Disciplinary Commission is to inquire into claims of attorney misconduct, protect lawyers against unwarranted claims of misconduct, and prosecute cases seeking attorney discipline when merited. Action by the Disciplinary Commission is not a mechanism for the resolution of private disputes between clients and attorneys, but rather is independent of private remedies that may be available through civil litigation.

An investigation into lawyer misconduct is initiated through the filing of a grievance with the Disciplinary Commission. Any member of the bench, the bar or the public may file a grievance by submitting to the Disciplinary Commission a written statement on a form prescribed by the Disciplinary Commission. There are no formal standing requirements for the filing of a grievance. Any individual having knowledge about the facts relating to the complaint may submit a grievance. A Request for Investigation form for submission of grievances is readily available from the Commission's office, from bar associations throughout the state, and on the Internet.

The Disciplinary Commission may also initiate an inquiry into alleged lawyer misconduct in the absence of a grievance from a third party. Acting upon information that is brought to its attention from any credible source, the Disciplinary Commission may authorize the Executive Secretary to prepare a grievance to be signed and issued by the Executive Secretary in the name of the Commission.

B. Preliminary Investigation

The Commission staff reviews each newly filed grievance to initially determine whether the

allegations contained therein raise a substantial question of misconduct. If a grievance does not present a substantial question of misconduct, it may be dismissed by the Executive Secretary with the approval of the Commission, and written notice of dismissal is mailed to the grievant and the lawyer.

A grievance that is not dismissed on its face is sent to the lawyer involved, and a demand is made for the lawyer to submit a mandatory written response within twenty days of receipt. Additional time for response is allotted in appropriate circumstances. Other investigation as appropriate is conducted in order to develop the facts related to a grievance. The Executive Secretary may call upon the assistance of bar associations in the state to aid in the preliminary investigation of grievances. The bar associations that maintain Grievance Committees of volunteer lawyers to assist the Disciplinary Commission with preliminary investigations are: the Allen County Bar Association, the Evansville Bar Association, the Indianapolis Bar Association, the Lake County Bar Association, and the St. Joseph County Bar Association. Upon petition by the Commission, the Supreme Court may suspend the law license of a lawyer who fails to respond in writing to a grievance that has been opened for investigation.

Upon completion of the preliminary investigation and consideration of the grievance and the lawyer's response, the Executive Secretary, with the approval of the Commission, may dismiss the grievance upon a determination that there is not reasonable cause to believe that the lawyer is guilty of misconduct. The grievant and the lawyer are notified in writing of the dismissal.

Lawyers must cooperate with the Commission's investigation by answering grievances in writing and responding to other demands for information from the Commission. The Commission may seek an order from the Supreme Court suspending a non-cooperating lawyer's license to practice until such time as he or she cooperates. If after being suspended for noncooperation, the lawyer does not cooperate for a period of six months, the Court may indefinitely suspend the lawyer's license. An indefinitely suspended lawyer will be reinstated only after successfully completing the reinstatement process described in paragraph K below.

C. Further Investigation

Those grievances that the Executive Secretary determines present reasonable cause are docketed for further investigation and, ultimately, for full consideration by the Disciplinary Commission. Both the grievant and the lawyer are notified of this step in the process. Upon completion of the investigation, the results of the investigation are summarized in written form by Commission staff, and the matter is presented to the Disciplinary Commission for its consideration at one of its monthly meetings.

D. Authorizing Charges of Misconduct

After a grievance has been investigated, the Executive Secretary reports on it to the Disciplinary Commission, together with his recommendation about the disposition of the matter. The Commission makes a determination whether or not there is reasonable cause to believe the lawyer is guilty of misconduct that would warrant disciplinary action. If the Commission finds that there is not reasonable cause, the matter is dismissed with written notice to the grievant and the lawyer. If the Commission finds that reasonable cause exists, it directs the Executive Secretary to prepare and file with the Clerk of the Supreme Court a verified complaint charging the lawyer with misconduct.

E. Filing Formal Disciplinary Charges

Upon a finding by the Disciplinary Commission that there is reasonable cause to believe the lawyer is guilty of misconduct that would warrant disciplinary action, the Executive Secretary files a verified complaint with the Clerk of the Supreme Court setting forth the facts related to the alleged misconduct and identifying those provisions of the Rules of Professional Conduct that are alleged to have been violated by the lawyer's conduct. The respondent must file an answer to the verified complaint, or else the allegations set forth in the complaint will be taken as true.

F. The Evidentiary Hearing

Upon the filing of a verified complaint, the Supreme Court appoints a hearing officer who will preside over the case and who will submit recommended findings to the Supreme Court. The hearing officer must be an attorney admitted to practice law in the State of Indiana and is frequently a sitting or retired judge. Typically, the hearing officer is from a county close to the

county in which the respondent lawyer practices law. The hearing officer's responsibilities include supervising the pre-hearing development of the case including discovery, conducting an evidentiary hearing, and reporting the results of the hearing to the Supreme Court by way of written findings of fact, conclusions of law and recommendations. A hearing may be held at any location determined to be appropriate by the hearing officer.

G. Supreme Court Review

After the hearing officer has issued a report to the Supreme Court, either or both of the parties may petition the Court for a review of any or all of the hearing officer's findings, conclusions and recommendations. In every case, even in the absence of a petition for review by one of the parties, the Court independently reviews the matter and issues its final order in the case.

H. Final Orders of Discipline

The conclusion of a lawyer discipline proceeding is an order from the Supreme Court setting out the facts of the case, determining the violations (if any) of the Rules of Professional Conduct that are supported by the facts, and assessing a sanction in each case where it finds misconduct. The sanction ordered by the Court is related to the seriousness of the violation and the presence or absence of mitigating or aggravating circumstances. The available disciplinary sanctions include:

- **Private Administrative Admonition.** A private administrative admonition is a disciplinary sanction that is issued by the Disciplinary Commission as an administrative resolution of cases involving minor misconduct. A private administrative admonition is issued as a sanction only when the Disciplinary Commission and the respondent lawyer agree to that disposition of a case. Unlike other disciplinary sanctions, the Supreme Court does not directly issue the admonition. However, the Court receives advance notice of the parties' intent to resolve a case by way of a private administrative admonition and may act within a period of 30 days to set aside such a proposed agreement. There is a public record made in the Office of the Clerk of the Supreme Court of every case resolved by a private administrative admonition, although the facts of the matter are not included in the public record.

- **Private Reprimand.** A private reprimand consists of a private letter of reprimand from the Supreme Court to the offending lawyer. The case does not result in a publicly disseminated opinion describing the facts of the case. The Court's brief order resolving the case by way of a private reprimand is a public record that is available through the office of the Clerk of the Supreme Court. In rare cases where a private reprimand is assessed, the Court may issue *a*

per curiam opinion for publication styled *In the Matter of Anonymous.* While the published opinion does not identify the offending lawyer by name, the opinion sets out the facts of the case and the violations of the Rules of Professional Conduct involved for the edification of the bench, the bar and the public.

- **Public Reprimand.** A public reprimand is issued in the form of a publicly disseminated opinion or order by the Supreme Court setting forth the facts of the case

and identifying the applicable Rule violations. A public reprimand does not result in any direct limitation upon the offending lawyer's license to practice law.

- **Short Term Suspension.** The Court may assess a short-term suspension of a lawyer's license to practice law as the sanction in a case. When the term of suspension is six months or less, the lawyer's reinstatement to the practice of law is generally automatic upon the completion of the term of suspension. The Court may, and does from time to time, require that a lawyer who is suspended for a period of six months or less be reinstated to practice only after petitioning for reinstatement and proving fitness to

practice law. The procedures associated with reinstatement upon petition are described later in this report. Even in cases of suspension with automatic reinstatement, for proper cause, the Disciplinary Commission may enter objections to the automatic reinstatement of the lawyer's license to practice law.

- **Long Term Suspension.** The Court may assess a longer term of suspension, which is a suspension for a period of time greater than six months. Every lawyer who is suspended for more than six months must petition the Court for reinstatement and prove fitness to re-enter the practice of law before a long-term suspension will be terminated.

- **Disbarment.** In the most serious cases of misconduct, the Court will issue a sanction of disbarment. Disbarment revokes a lawyer's license to practice law permanently, and it is not subject to being reinstated at any time in the future.

The lawyer discipline process in Indiana is not a substitute for private and other public remedies that may be available, including criminal sanctions in appropriate cases and civil liability for damages caused by lawyer negligence or other misconduct. Accordingly, the sanctions that are issued in lawyer discipline cases do not generally provide for the resolution of disputed claims of liability for money damages between the grievant and the offending lawyer. However, a suspended lawyer's willingness to make restitution may be considered by the Court to be a substantial factor in determining whether or not the lawyer will be reinstated to the practice of law at the conclusion of a term of suspension.

From time to time, the Court includes in a sanction order additional provisions that address aspects of the lawyer's misconduct in the particular case. Examples of these conditions include participation in substance abuse or mental health recovery programs, specific continuing legal education requirements, and periodic audits of trust accounts.

I. Resolution By Agreement

In cases of minor misconduct, if the Disciplinary Commission and the respondent lawyer agree before the filing of a formal complaint charging misconduct, a case may be disposed of by way of the issuance of a private administrative admonition. Unlike other disciplinary sanctions, this is an administrative sanction that is issued by the Disciplinary Commission rather than by the Supreme Court, although the Supreme Court does receive notice of a proposed administrative admonition and

may act to set it aside.

In some cases that have resulted in the filing of a formal complaint charging misconduct, the respondent lawyer and the Disciplinary Commission are able to reach an agreement concerning the facts of a case, the applicable rule violations and an appropriate sanction for the misconduct in question. In these instances, the parties submit their agreement to the Supreme Court for its consideration. Any such agreement must include an affidavit from the lawyer accepting full responsibility for the agreed misconduct. The Court is free to accept the agreement of the parties and issue a final order of discipline in conformity with the agreement, or reject the agreement if the Court does not concur with the proposed sanction.

A lawyer charged with misconduct may also tender his or her written resignation from the practice of law. A resignation is not effective unless the lawyer fully admits his or her misconduct and the Court accepts the resignation as tendered. A lawyer who has resigned with misconduct allegations pending may not seek reinstatement of his or her license until a period of at least five years has elapsed and only after successfully petitioning the Court.

In a similar manner, a lawyer charged with misconduct may fully admit the allegations and consent to such discipline as the Court deems appropriate under the circumstances.

J. Temporary Suspension

While a disciplinary complaint is pending against a lawyer, the Disciplinary Commission may seek the temporary suspension of the lawyer's license to practice law pending the outcome of the proceeding. Temporary suspensions are generally reserved for cases of serious misconduct or on-going risk to clients or the integrity of client funds. The hearing officer is responsible for taking evidence on a petition for temporary suspension and making a recommendation to the Supreme Court. The Court then issues an order granting or denying the petition for temporary suspension.

In addition to the temporary suspension procedure described above, whenever a lawyer licensed to practice law in Indiana is found guilty of a crime punishable as a felony, the Executive Secretary must report the finding of guilt to the Supreme Court and request an immediate temporary suspension from the practice of law. The Court may order the temporary suspension without a hearing, but the affected lawyer has the opportunity to submit to the Court reasons why the temporary suspension should be vacated. A temporary suspension granted under these circumstances is effective until such time as there is a resolution of related disciplinary charges or further order of the Court. Trial judges are required to send a certified copy of the order adjudicating criminal guilt of any lawyer to the Executive Secretary of the Commission within ten days of the date of the order.

Finally, the Executive Secretary is required to report to the Supreme Court any time he receives notice that a lawyer has been found to be delinquent in the payment of child support as a result of an intentional violation of a support order. After being given an opportunity to respond, the Supreme Court may suspend the lawyer's license to practice law until the lawyer is no longer in intentional violation of the support order.

K. The License Reinstatement Process

When any lawyer resigns or is suspended without provision for automatic reinstatement, the lawyer may not be reinstated into the practice of law until he or she successfully petitions the Supreme Court. The petitioning lawyer must successfully complete the Multi-State Professional Responsibility Examination, a standardized examination on legal ethics, prove by clear and convincing evidence that the causes of the underlying misconduct have been successfully addressed, and demonstrate that he or she is otherwise fit to re-enter the practice of law.

Lawyer reinstatement proceedings are heard in the first instance by a member of the Disciplinary Commission appointed as hearing officer by the Court, who after hearing evidence, makes a recommendation to the full Disciplinary Commission. The Disciplinary Commission, acting upon the recommendation of the hearing officer, makes its recommendation to the Supreme Court. The Court reviews the recommendation of the Disciplinary Commission and ultimately issues its order granting or denying the petition for reinstatement.

L. Lawyer Disability Proceedings

Any member of the public, the bar, the Disciplinary Commission, or the Executive Secretary may file with the Commission a petition alleging that a lawyer is disabled by reason of physical or mental illness or chemical dependency. The Executive Secretary is charged with investigating allegations of disability and, if justified under the circumstances, prosecuting a disability proceeding before the Disciplinary Commission or a hearing officer appointed by the Court. The Court ultimately reviews the recommendation of the Commission and may suspend the lawyer from the practice of law until such time as the disability has been remediated.

IV. COMMISSION ACTIVITY IN 2008-2009

A. Grievances and Investigations

An investigation into allegations of lawyer misconduct is commenced by the filing of a grievance with the Disciplinary Commission. During the reporting period, 1,456 grievances were filed with the Disciplinary Commission. Of this number, the Disciplinary Commission initiated 53 grievances. The total number of grievances filed was about one-hundred less than the number filed the previous year. **Appendix B** presents in graphical form the number of grievances filed for each of the past ten years.

There were 17,187 Indiana lawyers in active, good-standing status and 2,755 lawyers in inactive, good-standing as of June 30, 2009. In addition, 1,245 lawyers regularly admitted to practice in other jurisdictions were granted temporary admission to practice law by trial court orders in specific cases during the year, pursuant to the provisions of Indiana Admission and Discipline Rule 3. The total grievances filed represent 8.47 grievances for every one-hundred actively practicing lawyers. **Appendix C** presents in graphical form the grievance rate for each of the past ten years.

Distribution of grievances is not even. Far fewer than 1,456 separate lawyers received grievances during the reporting period, because many lawyers were the recipients of multiple

grievances. It is important to note that the mere filing of a grievance is not, in and of itself, an indication of misconduct on the part of a lawyer.

During the reporting period, **949** of the grievances received were dismissed without further investigation upon a determination that, on their face, they presented no substantial question of misconduct.

Upon receipt, each grievance that is not initially dismissed is classified according to the type of legal matter out of which the grievance arose and the type of misconduct alleged by the grievant. The table in **Appendix D** sets forth the classification by legal matter and by misconduct alleged of all grievances that were pending on June 30, 2009, or that were dismissed during the reporting year after investigation. Many grievances arise out of more than one type of legal matter or present claims of more than one type of alleged misconduct. Accordingly, the total numbers presented in Appendix D represent a smaller number of actual grievances.

Ranked in order of complaint frequency, the legal matters most often giving rise to grievances involve *Criminal, Domestic Relations, Tort, Personal Misconduct, Bankruptcy and Contract. To* understand the significance of this data, it is important to keep in mind that criminal cases make up the largest single category of cases filed in our trial courts. With the exception of civil plenary filings, domestic relations cases account for the next highest category of cases filed. Thus, in part, the high rates of grievances filed that pertain to criminal and domestic relations matters reflect the high number of cases of those types handled by lawyers in Indiana. The predominant types of legal matters out of which grievances arose during the reporting period are presented graphically in **Appendix E.**

Ranked in order of complaint frequency, the alleged misconduct types most often giving rise to grievances are *Poor Communications or Non-Diligence, Improper Withdrawal, Not Acting With Competence, Exercising Improper Influence, Misinforming, Excessive Fees and Conflicts of Interest,* with complaints about poor communications or non-diligence being close to twice as frequent as the next category of alleged misconduct. The predominant types of misconduct alleged in grievances during the reporting period are presented graphically in **Appendix F.**

The following is the status of all grievances that were pending before the Disciplinary Commission on June 30, 2009, or that had been dismissed during the reporting period:

	IIICM1CCFTI		(IPI=TAI
Grievances filed before July 1, 2008	337		441
Grievances filed on or after July 1, 2008	1,173		283
Total carried over from preceding year:		938	
Total carried over to next year:		724	

This represents a reduction of more than 200 files in the number of grievances carried over into the following year

B. Non-Cooperation

A lawyer's law license may be suspended if the lawyer has failed to cooperate with the disciplinary process. The purpose of this is to promote lawyer cooperation to aid in the effective

and efficient functioning of the disciplinary system. The Commission brings allegations of non-cooperation before the Court by filing petitions to show cause. During the reporting year, the Disciplinary Commission tiled 23 petitions to suspend the law licenses of **19** lawyers with the Supreme Court for failing to cooperate with investigations. The following are the dispositions of the non-cooperation matters that the Commission filed with the Court during the reporting year or that were carried over from the prior year:

Showcause petitions filed **23**

Name	City of Practice	Date of Admission
Barrett, Timothy D.	Spring Lake, MI	October 20, 2006
Beach, Steven A., Jr.	Anderson	May 20, 2005
Bowlin, Jimmie, D., Jr.	Crawfordsville	October 25, 1991
Corbin, Timothy L.	Indianapolis	October 31, 1994
Crotty, Brien P.	South Bend	November 9, 1998
Denney, Louis W.	Anderson	October 9, 1978
Doyle, Timothy A.	Indianapolis	December 21, 1999
Doyle, Timothy A.	Indianapolis	December 21, 1999
Engebretsen, Kjell P.	Lebanon	January 7, 2005
Engebretsen, Kjell P.	Lebanon	January 7, 2005
Gantz, D. Charles	Greenwood	September 22, 1971
Gifford, Ronald D.	Plymouth	October 13, 1976
Harris, Ronald D.	Jeffersonville	October 9, 1981
Harshey, Kenneth A.	Indianapolis	May 26, 1999
Kauffman, Gregory P.	Elkhart	January 23, 2001
Kias, Michael J.	Greenwood	September 19, 1962
Kilburn, James R.	Austin	October 9, 1981
Moore, Thomas C., II	Indianapolis	October 10, 1986
Moore, Thomas C., II	Indianapolis	October 10, 1986
Rawls, William J.	Indianapolis	October 18, 1985
Zakrzewski, Daniel M.	New Carlisle	June 1, 1984
Zirkle, Frederick Anthony	Crown Point	November 3, 1997
Zirkle, Frederick Anthony	Crown Point	November 3, 1997

Dismissed as moot after cooperation before show cause order I

Kauffman, Gregory P.

Petition pending on June 30, 2009, without show cause order 0

Showcause orders with no suspension 24

Dismissed after show order due to compliance
cause 15

Beach, Steven A., Jr.

Burch, Mark A. (from prior year)
Burch, Mark A. (from prior year)
Clark, Andrew E.

Denney, Louis W. Doyle, Timothy A. Doyle, Timothy A.

Doyle, Timothy A. (from prior year) Engebretsen, Kjell P. Gantz, D. Charles
Gifford, Ronald D. Kilburn, James R. Moore, Thomas C., 11 Rawls, William J.
Zirkle, Frederick Anthony

Dismissed due to disbarment, resignation or suspension

Burch, Mark A. (from prior year) Burch, Mark A. (from prior year) Burkett,
Bradley K. (from prior year) Harshey, Kenneth A.

Powell, Kimberly O. (from prior year) Powell, Kimberly O. (from prior year)

Roberts, Robert E. (from prior year)

Show cause orders pending on June 30, 2009

Moore, Thomas C., II Zirkle, Frederick Anthony

7

.....2

Suspensionsfor non-cooperation 9

Non-cooperation Suspensions still in effect on June 30, 2009 5

Barrett, Timothy D.
Corbin, Timothy L.
Crotty, Brien P.
Harris, Ronald D.
Zakrzewski, Daniel M.

Reinstated due to cooperation after suspension 4

Bowlin. Jimmie D., Jr.
Engebretsen, Kjell P.
Kelly, Daniel S. (from prior year petition) Kilburn, James R. (from prior year petition)

Non-Cooperation Suspensions Converted to Indefinite Suspensions 8

Name	City of Practice	Date of Admission
Burkett, Bradley K. (from prior year petition)	Portland	January 24, 1984
Harshey, Kenneth J. (from prior year petition)	Indianapolis	May 26, 1999
Johnson, Theodore J. (from prior year petition)	Valparaiso	October 22, 1993

Johnson, Theodore J. (from prior year petition)	Valparaiso	October 22, 1993
Johnson, Theodore J. (from prior year petition)	Valparaiso	October 22, 1993
Kias, Michael J.	Greenwood	September 19, 1962
Molin, Emil J. (from prior year petition)	Tucson, AZ	October 14, 1988
Smith, Michael J.	Wabash	October 8, 1993

C. Trust Account Overdraft Reporting

Pursuant to Admis.Disc.R. 23, section 29, all Indiana lawyers must maintain their client trust accounts in financial institutions that have agreed to report any trust account overdrafts to the Disciplinary Commission. Upon receipt of a trust account overdraft report, the Disciplinary Commission sends an inquiry letter to the lawyer directing that the lawyer supply a documented, written explanation for the overdraft. After review of the circumstances surrounding the overdraft, the investigation is either closed or referred to the Disciplinary Commission for consideration of filing a disciplinary grievance.

The results of inquiries into overdraft reports received during the reporting year are:

InquiriesCarried Over From Prior Year	36
Overdraft Reports Received In Current Year	125
InquiriesClosed In Current Year	130

Reasons for Closing:

Bank Error	37
Deposit of Trust Funds to Wrong Trust Account	2

Disbursement from Trust Before Deposited Funds Collected 16
Referralfor Disciplinary Investigation 12
Disbursement from Trust Before Trust Funds Deposited 17
Overdraft Due to Bank Charges Assessed Against Account 2
Inadvertent Deposit of Trust Funds to Non-Trust Account 9
Overdraft Due to Refused Deposit for Bad Endorsement 3
LawOffice Math or Record-Keeping Error 22
Death, Disbarment or Resignation of Lawyer 1
Inadvertent Disbursement of Operating Obligation From Trust.....6
Non-Trust Account Inadvertently Misidentified as Trust Account.....2
FraudulentOffice Staff Conduct 1
InquiriesCarried Over Into Following Year 31

D. Litigation

1. Overview

In 2008-2009, the Commission filed 62 Verified Complaints for Disciplinary Action with the Supreme Court, fifteen more than in the previous year. These Verified Complaints, together with amendments to pending Verified Complaints, represented findings of reasonable cause by the Commission in **81** separate counts of misconduct during the reporting year.

Including two dismissals and one finding for the respondent, in 2008-2009, the Supreme Court issued 74 final dispositive orders, compared to 53 in the previous year, representing the completion of **110** separate discipline files compared to the completion of 66 discipline files by court order in the previous year. Including six private administrative admonitions, 76 unique

lawyers received final discipline in the reporting year, compared to 61 in the previous year. **Appendix G** provides a comparison of disciplinary sanctions entered for each of the past ten years.

2. Verified Complaints for Disciplinary Action

a. Status of Verified Complaints Filed During the Reporting Period

The following reports the status of all new verified complaints filed during the reporting period:

Verified Complaints Filed During Reporting Period 62
NumberDisposed Of By End of Year 20
NumberPending At End of Year 45

In addition, the Disciplinary Commission authorized the filing of **10** verified complaints during the reporting period that had not yet been filed by June 30, 2009.

The Commission also filed 5 Notices of Foreign Discipline and Requests for Reciprocal Discipline with the Supreme Court pursuant to Admission and Discipline Rule 23, §28(b).

During the reporting year, the Disciplinary Commission filed Notices of Felony Guilty Findings and Requests for Suspension pursuant to Admission and Discipline Rule 23, Sec. 11.1(a) in 7 cases.

b. Status of All Pending Verified Complaints

The following reports the status of all formal disciplinary proceedings pending as of June 30, 2009:

Cases Filed; Appointment of Hearing Officer Pending 7
CasesPending Before Hearing Officers .....30 Cases Pending On Review Before the Supreme Court..... 5 Total Verified Complaints Pending on June 30, 2009 42

Of cases decided during the reporting year, 8 were tried on the merits to hearing officers at final hearings, 45 cases were submitted to the Supreme Court for resolution by way of Affidavit for Resignation, Conditional Agreement for Discipline or Consent to Discipline, and 5 cases was submitted by hearing officer findings on an Application for Judgment on the Complaint.

3. Final Dispositions

During the reporting period, the Disciplinary Commission imposed administrative sanctions and the Supreme Court imposed disciplinary sanctions, made reinstatement determinations, or took other actions as follows:

Dismissalsof Verified Complaint .....2 **Findingsfor**

Respondent on Merits .....**1** PrivateAdministrative

Admonitions .....**6** **PrivateReprimands**

.....4

PublicReprimands 24

Name	City of Practice	Date of Admission
Benkie, Scott A.	Indianapolis	October 18, 1985
Brewer, Tia R.	Marion	January 6, 2004
Burns, Leo T., Jr.	Logansport	May 30, 1986
Campiti, Vincent M.	South Bend	November 3, 1997
Collins, David A.	Bloomington	October 16, 1987
Cook, Gary A.	Kokomo	December 11. 1998
Crawford, Douglas A.	Indianapolis	October 10, 1986
Denmure, Douglas R.	Aurora	May 18, 1966
Drake, MacArthur	Gary	May 5, 1976
Edwards, Antonio P.	Martinsville	May 19, 2003
Eslinger, Stephen L.	South Bend	May 30, 1980
Grubbs, Robert A.	Fort Wayne	October 18, 2004
Hagedorn, Michael H.	Tell City	October 9, 1974
Kahre, Gregory A.	Evansville	October 12, 1978
Litz, Steven C.	Monrovia	October 12, 1984
Loomis, J. Michael	Fort Wayne	June 4, 1982
Marshall, Kevin W.	Hobart	.tune 8. 1987
Miller, Roger L.	Frankfort	May 17. 1967
Price, Jeffry G.	Peru	October 10, 1973
Rader, Carolyn W.	Indianapolis	May 29, 1981
Smith, C. Jerome	Hammond	December 4, 1957
Toland, Shane A.	Indianapolis	June 18, 2001
Warr, Alistair J.	Indianapolis	June 7, 1991
Wray, Robert J.	Fort Wayne	January 21, 1980

SuspensionsWith Automatic Reinstatement 4

Name	City of Practice	Date of Admission	Suspension
Baylor, Paul E.	Anderson	November 9, 1998	30 days
Blaising, Thomas R.	Battle Creek, MI	May 1, 1974	215 days

Doyle, Ricky D.	Greenwood	June 9, 1991	30 days
Shaw, Douglas L.	Schererville	May 12, 2006	30 days

SuspensionsWith Reinstatement on Conditions 13

Name	City of Practice	Date of Admission	Suspension
Boyd, Elaine P.	Indianapolis	October 10, 1980	90 days'
Bryan, Lon D.	Muncie	June 9, 1989	1 year2
Butsch, David R.	Connersville	October 4, 1979	6 months3
Earls, William W.	Terre Haute	November 4, 1996	180 days4

90-day suspension, all stayed conditioned on compliance with terms of probation for 1 year.

[2] year suspension, all stayed conditioned on compliance with terms of probation for 2 years.

[3]6-month suspension, 4 months stayed conditioned on compliance with terms of probation for 36 months.

180-day suspension, all stayed conditioned on compliance with terms of probation for 24 months.

Falls, Margaret S.	Fort Wayne	October 18, 1985	90 days5
Followell, Douglas S.	Sullivan	May 1, 1974	180 days'
Green, James R.	Greenwood	October 9, 1974	90 days?
Holbrook, Neil E.	South Bend	October 7, 1983	6 months8
Katic, Peter	Munster	October 11, 1977	180 days9
Spielman. Kim H.	Fort Wayne	June 8, 1987	30 days1°
Stites, Michael G.	Rockville	November 8, 2002	6 months"
Tolliver, Jason W.	Indianapolis	November 19, 2001	180 days12
Woods, Alexa L.	Indianapolis	November 8, 1999	120 days13

[5] 90 day suspension, all stayed conditioned on compliance with terms of probation for 24 months.

[6] 180-day suspension, 150 days stayed conditioned on compliance with terms of probation for 36 months. 90-day suspension, all stayed conditioned on compliance with terms of probation for 2 years.

[8]6-month suspension, 2 months stayed conditioned on compliance with terms of probation for 18 months. ~ 180-day suspension, 120 days stayed conditioned on compliance with terms of probation for 30 months. [10] 30-day suspension, all stayed, conditioned on compliance with terms of probation for 1 year.

" 6-month suspension, 2 months stayed conditioned on compliance with terms of probation for 36 months.

[12] 180-day suspension, all stayed conditioned on compliance with terms of probation for 30 months.

[13] 120-day suspension, all stayed conditioned on compliance with terms of probation for 30 months.

SuspensionsWithout Automatic Reinstatement 19

Name	City of Practice	Date of Admission	Suspension
Beach, Steven A., Jr.	Anderson	May 20, 2005	90 days
Buehner, Constance L. Runner	Louisville, KY	October 15, 1990	Indefinite'
Burkett, Bradley K.	Portland	January 24, 1984	Indefinite
Evans, Fara P.	Pittsburgh, PA	October 20, 1989	2 years
Forbush-Moss. Bethanni E.	Louisville. KY	May 30, 2000	Indefinite2
Gifford, Ronald Dean	Plymouth	October 13, 1986	9 months
Graham, Craig W.	Jeffersonville	June 12, 1992	90 days
Harshey, Kenneth A.	Indianapolis	May 26. 1999	Indefinite
Jackel, Katherine E.	Ann Arbor, MI	November 3, 1997	2 years
Jarrett, Ray W.	Brazil	May 19, 2003	90 days
Johnson, Theodore J.	Valparaiso	October 22, 1993	Indefinite
Johnson, Theodore J.	Valparaiso	October 22, 1993	Indefinite
Johnson, Theodore J.	Valparaiso	October 22, 1993	Indefinite

Kias, Michael J.	Greenwood	September 19, 1962	Indefinite
Laterzo, Marc C.	Gary	October 22, 1999	180 days
Rosales, Leigia R.	Indianapolis	June 9, 2000	2 years
Molin, Emil J.	Tucson, AZ	October 14, 1988	Indefinite
Patheja, Jaipal	Valparaiso	December 29, 1997	6 months
Smith, Michael .l.	Wabash	October 8, 1993	Indefinite

[1] Not eligible to seek reinstatement until readmitted in Kentucky. [2] Not eligible to seek reinstatement until readmitted in Kentucky.

Acce p tedResi g nations 4

Name	City of Practice	Date of Admission
Crabtree, William G., **11**	Schererville	October 25, 1991
Collesano, Stanley F.	Indianapolis	June 4, 1999
Auger-Marchand, Ruben	Indianapolis	June 9, 2000
Kauffman, Gregory P.	Elkhart	January 23, 2001

Disbarments.....3

Name	City of Practice	Date of Admission
Powell, Kimberly O.	Indianapolis	May 19, 2003
Lehman, Robert E.	Indianapolis	May 31, 1977
Ucherek, David M.	Chicago, IL	December 29, 1997

Reinstatement Proceedings

Disposedof by FinalOrder

Granted.....4

Cloyd, Casey D., Indianapolis (w/ Scott, Vincent L., Carmel — 2 years probation)

Rayle, Merrick Scott, Pacific Grove, CA

Webb, Scott L., Anderson

Denied..... I

McLin, William C., Indianapolis

PetitionWithdrawn..... 1

Marlowe, Stuart Clay, New Albany

Findingsof Contempt 1

Name	City of Practice	Date of Admission
Patterson, Douglas W.	Evansville	June 9, 1989

Emer g encyInterim Suspension 0

TemporarySuspensions (Guilty of Felony) 7

Name	City of Practice	Date of Admission

Auger-Marchand, Ruben	Indianapolis	June 9, 2000
Lehman, Robert E.	Indianapolis	May 31, 1977
Recker, James R., II	Indianapolis	November 3, 1997
Record, Terry J.	Indianapolis	October 20, 2006
Riga, Deborah A.	Schererville	September 28, 1993
Snyder, Ryan W.	Indianapolis	September 26, 2005
Wallingford, Anthony J.	New Albany	October 23, 1995

V. SUMMARY OF DISCIPLINARY COMMISSION ACTIVITIES

	2008-09	2007-08	2006-07	2005-06	2004-05
Matters Completed	1,456	1,541	1,463	1,599	1,692
Complaints Filed	62	47	34	42	41
Final Hearings	8	12	10	15	8
Final Orders	74	53	60	52	60
Reinstatement Petitions Filed	4	5	11	8	4
Reinstatement Hearings	5	6	6	3	4
Reinstatements Ordered	3	9	1	1	4
Reinstatements Deny/Dismiss	2	3	7	2	2
Income	$1,715,474	$1,765,488	$1,984,450	$1,870,208	$1,785,247
Expenses	$1,915,389	$1,706,111	$1,814,736	$1,766,748	**$1,629,153**

VI. AMENDMENTS TO RULES AFFECTING LAWYER DISCIPLINE

A. Admission and Discipline Rules

Admission and Discipline Rule 3

On September 9, 2008, effective January 1, 2009, the Supreme Court amended Admis. Disc. R. 3, dealing with temporary admission of out-at-state lawyers, i.e., *pro hac vice* admissions. When an out-of-state lawyer is temporarily admitted, admission must be renewed by payment of an annual fee in January of each calendar year that participation in the matter continues. Failure to renew results in automatic exclusion of the foreign lawyer from practice in Indiana, after which reinstatement is upon petition to the Supreme Court. The amendment to Admis. Disc. R. 3(f)(2) implements a late fee for lawyers who are automatically excluded for failure to timely pay the annual renewal fee (currently $115). The amount of the late fee is $1 15.

Admission and Discipline Rule 23

On September 9, 2008, effective January 1, 2009, the Supreme Court amended Admis. Disc. R. 23, section 27, to make some clarifications to the section dealing with surrogate attorneys. It amended section 27(b)(2) to indicate that lawyers who practice in "fiduciary entities" (in effect, law firms) are required to designate an attorney surrogate. They were previously "deemed" to have appointed their firms as the attorney surrogates. With this amendment, lawyers who practice in firms must

designate their firms as their attorney surrogate designees in the designated place on the annual attorney registration statement.

B. Rules of Professional Conduct

The Supreme Court made no changes to the professional conduct rules in the reporting year.

VII. OTHER DISCIPLINARY COMMISSION ACTIVITIES

Members of the Disciplinary Commission and its staff spent many hours during the reporting year engaged in education efforts related to the lawyer discipline process and professional responsibility. Some of those activities are highlighted in **Appendix H.**

VIII. FINANCIAL REPORT OF THE DISCIPLINARY COMMISSION

A report setting forth the financial condition of the Disciplinary Commission Fund is attached as **Appendix I.**

IX. APPENDICES

BIOGRAPHIES OF DISCIPLINARY COMMISSION MEMBERS

Fred Austerman is from Wayne County, Indiana. He is one of two non-lawyer members of the Disciplinary Commission. He is the President and CEO of Optical Disc Solutions, Inc. in Richmond, a company that provides DVD and compact disc replicating services and project management for a wide variety of media developers. Mr. Austerman attended Indiana University East and graduated from Indiana University/Purdue University in Indianapolis in 1983 receiving an undergraduate degree in business, specializing in accounting. He is married and has twin sons. He is serving his first five-year term on the Disciplinary Commission, ending on June 30, 2008, and served as Secretary of the Commission during this year.

Diane L. (Wolf) Bender is a sole practitioner in Evansville, Indiana. She received a B.B.A. degree, with highest honors, from the University of Notre Dame in 1977. She received her law degree, cum laude, from the Notre Dame Law School in 1980. Ms. Bender was admitted to practice law in the State of Indiana in 1980 and is also admitted to practice in the United States District Court for the Southern District of Indiana and the Supreme Court of the United States. She is a member of the Evansville Bar, Indiana State Bar, and American Bar Associations. She served as president of the Evansville Bar Association in 1992 and was recipient of the Evansville Bar Association's James Bethel Gresham Freedom Award in 1991. She served as Chair of the Probate, Trust and Real Property Section of the Indiana State Bar Association in 1996. Ms. Bender is a Fellow of the Indiana Bar Foundation and a Fellow of the American College of Trust and Estate Counsel. She was initially appointed to a five-year term on the Disciplinary Commission effective July 1, 1999 and was reappointed to a second term expiring on June 30, 2009. She has previously served as Secretary, Vice-Chair and Chair of the Commission.

Corinne R. Finnerty, a Jennings County native, practices law in the partnership of McConnell Finnerty Waggoner PC in North Vernon. She received her undergraduate degree from Indiana University in Bloomington. In 1981, she graduated magna cum laude from Indiana University School of Law in Bloomington, where she was selected for membership in the Order of the Coif. She was admitted to practice law in Indiana that same year. She is also admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Seventh Circuit, and the United States District Courts for the Northern and Southern Districts of Indiana. Her bar association memberships include the Jennings County Bar Association, of which she is a past president, the Indiana State Bar Association, and the American Bar Association. Other professional memberships include the Indiana Bar Foundation, of which she is a Patron Fellow, the Indiana Trial Lawyers Association, and the American Association for Justice. Ms. Finnerty has previously been employed as Chief Deputy Prosecuting Attorney for Jennings County and the city attorney for North Vernon. In 1993, she was selected as one of forty-three outstanding women in the law at the annual meeting of the Indiana State Bar Association. Effective July 1, 2003, she was appointed by the Indiana Supreme Court to serve a five-year term on the Indiana Supreme Court Disciplinary Commission. Ms. Finnerty served as Vice-Chair of the Disciplinary Commission during this reporting year, having previously served as Secretary.

Maureen I. Grinsfelder, a native of Whitley County, retired on January 1, 2009 after fourteen years as Executive Director of the Questa Foundation for Education, Inc., a non-profit foundation that helps finance college for Allen County students. She is a graduate of the University of Michigan, where she was selected for membership in Scroll and Wyvern women's honor societies. For twenty-two years, she was employed by NBD Bank, NA and its predecessor banks

in Fort Wayne, administering trusts, guardianships and estates. She was appointed to the Board of Trustees of the Indiana State Museum and Memorials and has served numerous boards of social service and arts organizations in Fort Wayne. She is a past president of Congregation Achduth Vesholom in Fort Wayne and a past vice-president of the Union for Reform Judaism Northeast Lakes Regional Council. She and her husband, Alan Grinsfelder, have four sons and nine grandchildren. She is serving her first five-year tern on the

Disciplinary Commission, which will expire on June 30, 2010.

Robert L. **Lewis** is a member of the three-person law firm of Robert L. Lewis & Associates, in Gary, Indiana. Two other attorneys in the office are of counsel. He attended Indiana University in Bloomington where he received his B.A. in 1970 and his law degree in 1973. He also obtained a Masters in Public Administration from Western Kentucky University in 1980. He is a retired JAG Corps Lieutenant Colonel in the U.S. Army Reserves with prior active duty service in Viet Nam as a U.S. Marine. He is admitted to practice before the U.S. Supreme Court, the U.S. Seventh Circuit Court of Appeals, the Northern and Southern U.S. District Courts of Indiana, and the U.S. Court of Military Appeals. He is also a member of the Indiana and Kentucky Bars. He served as a part-time public defender in the Lake Superior Court, Criminal Division, for nine years before becoming a Magistrate in the same Superior Court system. He served there for four years and is currently a civil referee in the Gary City Court. He is a life member of the NAACP, Phi Alpha Delta Legal Fraternity, Omega Psi Phi Fraternity, Indiana University Alumni Association and the U.S. Reserve Officer's Association. Mr. Lewis is also a member of the American Bar Association, National Bar Association, Indiana State Bar Association, Lake County Bar Association, the James Kimbrough Bar Association, and the American and Indiana Trial Lawyers Associations. He was commissioned a Kentucky Colonel by former Kentucky Governor Julian Carroll. He was initially appointed to a five-year term on the Disciplinary Commission effective July 1, 1999, and was reappointed to a second term expiring June 30, 2009. He has previously served as Secretary, Vice-Chair and Chair of the Disciplinary Commission.

R. Anthony Prather is a partner in the Indianapolis office of Barnes & Thornburg LLP. He represents management interests exclusively in both labor and employment law and litigation matters in state courts and federal courts, including charges of employment discrimination. He handles matters that include alternative dispute resolution, discovery, bench and jury trials, and appeals. He also advises employers on various employment laws. Prior to joining Barnes & Thornburg, Mr. Prather was in-house counsel for Ameritech Corporation, Firestone Building Products Company, Firestone Industrial Products Company, and Firestone Polymers. Additionally, Mr. Prather served as the media relations spokesperson for Bridgestone/Firestone, Inc., in all federal class action and personal injury litigation against Bridgestone/Firestone, Inc. consolidated before Judge Sarah Evans Barker, and Ford Motor Company in the United States District Court for the Southern District of Indiana. Mr. Prather received his B.A. from Indiana University in 1980 and his J.D. from Indiana University School of Law—Bloomington in 1983. He is admitted to practice before the U.S. District Courts for the Northern and Southern Districts of Indiana and the U.S. Court of Appeals for the Seventh Circuit. He is a member of the American Corporate Counsel Association, the Indiana State Bar Association, and the National Bar Association. He was appointed to a five-year term on the Disciplinary Commission effective July 1, 2004.

APPENDIX A

J. Mark Robinson is the managing attorney of the New Albany office of Indiana Legal Services, Inc. He received his B.S. in Civil Engineering from Purdue University in 1969, his law degree from the University of Louisville School of Law in 1973, and a Master of Divinity from the Louisville Presbyterian Theological Seminary in 1974. He was admitted to practice in the Commonwealth of Kentucky in 1974, the State of Indiana in 1975, and the United States District Courts for the Southern District of Indiana and the Western District of Kentucky. Mr. Robinson has served as in-house counsel to Chemetron Corporation, a staff attorney for the U.S. Army Corps of Engineers, and has spent the past twenty-nine years with Indiana Legal Services. His professional memberships include the Clark and Floyd County Bar Associations; the Indiana State, Kentucky, and American Bar Associations. He is the current president of the Clark County Bar Association, past president of the Clark County Board of Public Defenders, has served Clark County in the Indiana State Bar Association House of Delegates for the past ten years, and has served on the Indiana State Bar Association Board of Governors (2004-2006). He is also a Master Fellow of the Indiana Bar Foundation and present member of its board of directors. He was appointed a Sagamore of the Wabash in 1999. In his civic life, he serves as President of the Board of Directors of the River Ridge Development Authority, and is past trustee of the Southern Indiana Economic Development Council. As a Presbyterian minister, Mr. Robinson served small rural parishes in

southeastern Indiana for thirty-two years. He served for six years on the Indiana Pro Bono Commission, and was appointed to a five-year term as a member of the Disciplinary Commission that expired on June 30, 2006. He was re-appointed to a second term on the Commission beginning July 1, 2006. He has previously served as Secretary, Vice-Chair and Chair of the Disciplinary Commission.

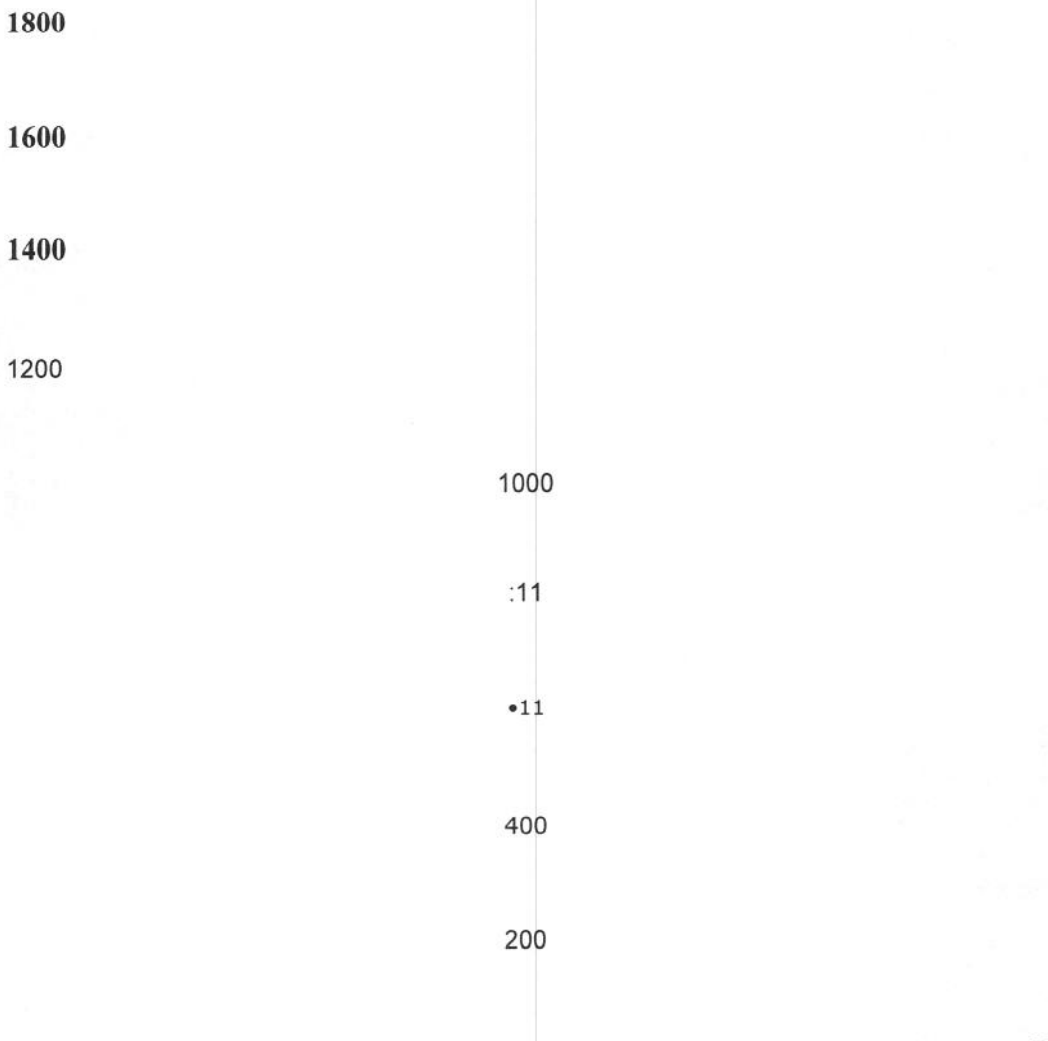
Anthony M. Zappia is the senior member of the 4-person law firm of Zappia Zappia & Stipp, located in South Bend, Indiana. He attended the University of Notre Dame where he received his B.A. in 1972. cum laude, in the School of Economics, and earned his law degree in 1976 from Valparaiso University. He is admitted to practice before the Supreme Court of Indiana and the United States District Court for the Northern District of Indiana. Mr. Zappia was a Deputy Prosecuting Attorney in St. Joseph County from 1976 to 1986. He was also the attorney for the Mishawaka City Council from 1981 to 1986. He has served St. Joseph County as its County Attorney from 1986 until the present. He has been a member of the St. Joseph County Judicial Nominating Committee on two separate occasions, and presently serves on the St. Joseph County Public Defender's Advisory Committee, and is a member of the Indiana Supreme Court Committee on Character and Fitness. Mr. Zappia was President-Elect in 1989-1990 and President in 1990-1991 of the St. Joseph County Bar Association. He is a member of the Indiana State and American Bar Associations, Indiana Trial Lawyers Association, and Association of Trial Lawyers of America. Mr. Zappia's principal areas of practice are personal injury, criminal defense, domestic relations and civil litigation. He was appointed to an initial five-year term on the Disciplinary Commission that expired on June 30, 2006, and was reappointed to a second term beginning July 1, 2006. He is a former Chair, Vice-Chair and Secretary of the Disciplinary Commission.

Sally Franklin Zweig is a partner of the law firm of Katz & Korin P.C. in Indianapolis. She obtained her undergraduate degree from Washington University in St. Louis in 1971 and received her law degree from Indiana University School of Law at Indianapolis in 1986 and was admitted to practice that same year. Prior to her current affiliation she was a partner at Johnson Smith LLP where she chaired the Health Care Practice Group. She is admitted to practice in all Indiana state courts and both Indiana federal court districts, as well as the Seventh Circuit Court of Appeals

and the Supreme Court of the United States. Ms. Zweig is a past President of the Board of Directors of the Indiana University-Indianapolis Law School Alumni Association and a past President of the Indianapolis Chapter of the American Inns of Court. She has been recognized as a Distinguished Fellow of the Indianapolis Bar Foundation and has served as a lecturer for the Bar Review presented by the Indianapolis Bar Association. She is also a Fellow of the Aspen Institute [1997] and the Oxford Center for Social Justice [1998]. Her civic service includes mayoral appointments to the Executive Board of the Greater Indianapolis Progress Committee and as past co-chair of the Race Relations Leadership Counsel of Indianapolis. She also presently serves on the boards of directors of the Festival Musical Society and At Your School Services. She was appointed to a first five-year term as a member of the Disciplinary Commission expiring on June 30, 2006, and reappointed to a second term beginning July 1, 2006. A former Secretary and Vice-Chair of the Disciplinary Commission, Ms. Zweig served as Chair of the Commission in this reporting year.

APPENDIX A

NUMBER OF GRIEVANCES FILED 1999-2009



APPENDIX B

GRIEVANCE RATES 1999-2009

APPENDIX C
GRIEVANCES BY CASE TYPE AND MISCONDUCT ALLEGED (2008-2009)

Type of Legal Matter	Number	% of Total
Administrative Law	62	4.7%
Adoption	6	0.5%
Bankruptcy	76	5.8%
Collection	27	2.0%
Condemnation	0	0.0%
Contracts	73	5.5%
Corporate	20	1.5%
Criminal	413	31.3%
Domestic Relations	262	19.8%
Guardianship	10	0.8%
Other Judicial Action	22	1.7%
Patent, Copyright	5	0.4%
Personal Misconduct	76	5.8%
Real Estate	41	3.1%
Tort	120	9.1%
Probate	54	4.1%
Worker's Compensation	12	0.9%
Zoning	2	0.2%
Other	39	3.%
TOTAL	1320	100.0%

Alleged Misconduct	Number	% of Total
Action in Bad Faith	9	0.4%
Advertising	14	0.7%
Bypassing Other Attorney	16	0.8%
Communications/ Non-Diligence	607	30.2%
Conflict of Interest	98	4.9%
Conversion	47	2.3%
Disclosure of Confidences	16	0.8%
Excessive Fee	99	4.9%
Fraud	48	2.4%
Illegal Conduct	66	3.3%
Improper Influence	131	6.5%
Improper Withdrawal	346	17.2%
Incompetence	238	11.8%
Minor Disagreement	0	0.0%
Minor Fee Dispute	46	2.3%
Misinforming	108	5.4%
Overreaching	39	1.9%
Personal Misconduct	78	3.9%
Solicitation	5	0.2%
TOTAL	2011	100.0%

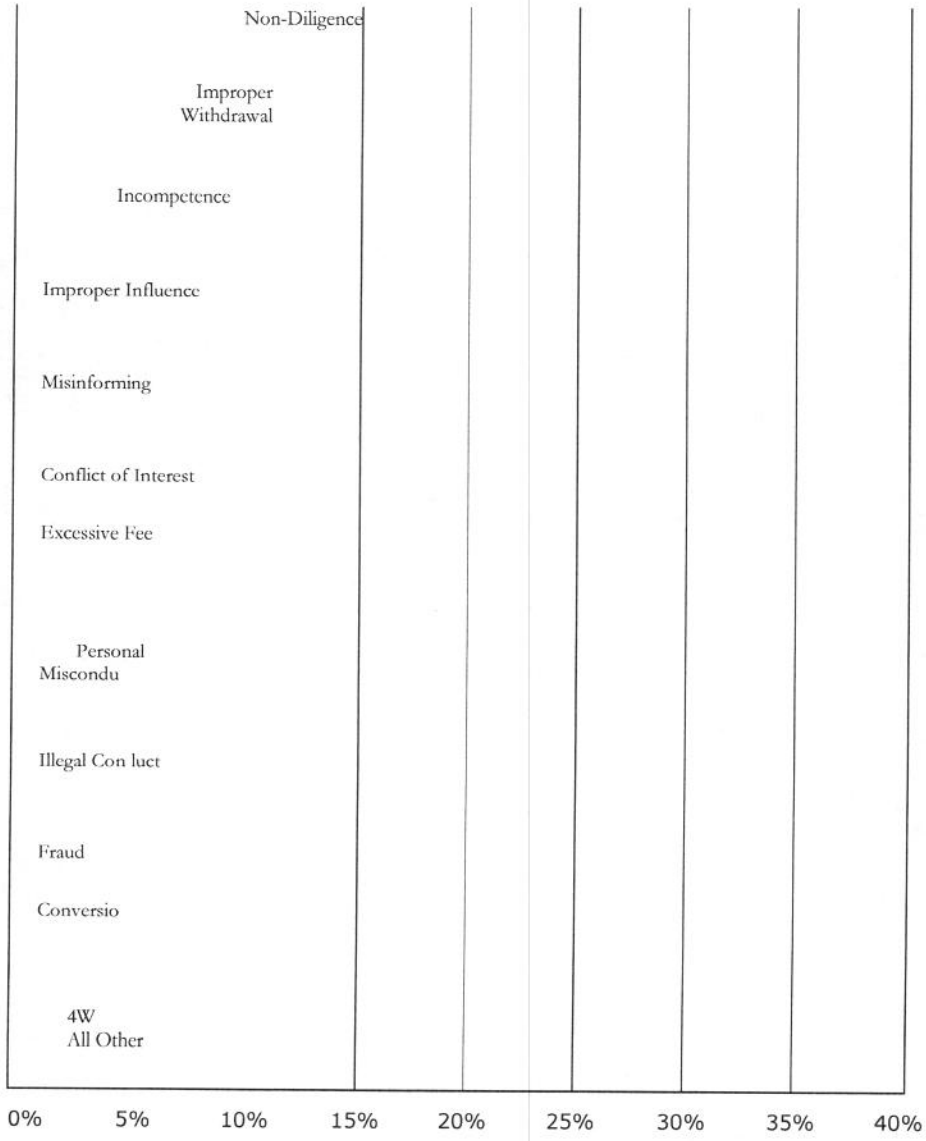
APPENDIX D

GRIEVANCES BY CASE TYPE 2008-2009

APPENDIX E

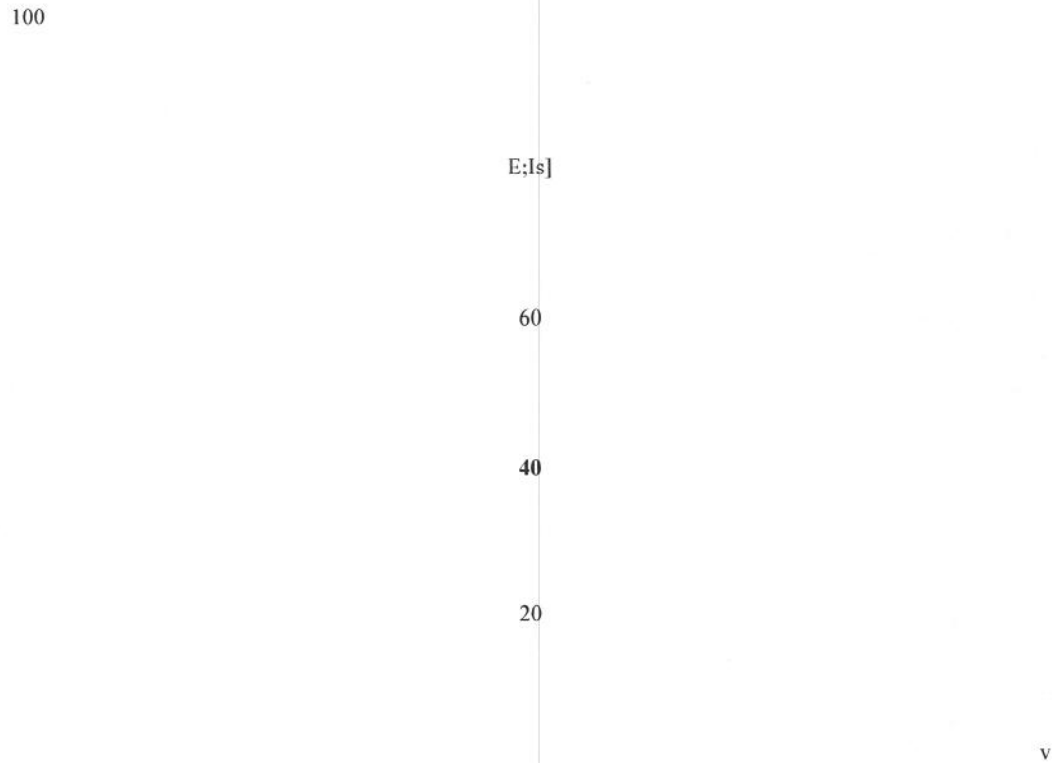
GRIEVANCES BY MISCONDUCT ALLEGED 2008-2009

Communication	-				



APPENDIX F
SANCTIONS ORDERED 1999-2009

120



APPENDIX G

PUBLIC AND BAR IMPROVEMENT AND EDUCATION ACTIVITIES 2008-2009

Author	*How Unappealing: Ethics Issues In Appointed Appellate Representation,* Vol. 52, No. 1 RES GESTAE 37 (July/August 2008)	Lundberg
Author	*Trust Accounts in a Time of Bank Failures,* Vol. 52, No. 2 RES GESTAE 33 (September 2008)	Lundberg
Author	*Divided Duty: Reporting Misconduct (Part 1),* Vol. 52, No. 3 RES GESTA[: 29 (October 2008)	Lundberg
Author	*Divided Duty: Reporting Misconduct (Part II),* Vol. 52, No. 4 RES GESTAE 36 (November 2008)	Lundberg

Author	*Warning! Scam Artists At Work,* Vol. 52, No. 5 RES GESTAE 21 (December 2008)	Lundberg
Author	*Top Ten 2008 Professional Responsibility Stories,* Vol. 52, No. 6 RES GESTAE 23 (Januar^{y}/Februar^{y} 2009)	Lundberg
Author	*Dancin' With Them What Brung Ya: Electing Appellate Judges,* Vol. 52, No. 7 RES GESTAE 31 (March 2009)	Lundberg
Author	*What's In Your Trust Account? When Clients Pay By Credit Card,* Vol. 52, No. 8 RES GESTAE 26 (April 2009)	Lundberg
Author	*Sex and Intimacy: Emotional Entanglements With Clients,* Vol. 52, No. 9 RES GESTAE 33 (May 2009)	Lundberg
Author	*Will You Take Fries For That? Bartering for Legal Services,* Vol. 52, No. 10 RES GESTAE 32 (June 2009)	Lundberg
Author	*2008 Survey of the Law of Professional Responsibility,* 42 INDIANA LAW REVIEW (2009)	Kidd
JUL 25, 2008	Presenter: "Ethics in Workers Compensation Cases," Indiana Trial Lawyers Association, Indianapolis	Kidd
JUL 30, 2008	Panelist: State Lawyer Discipline Counsel Panel, Professional Responsibility Officers' Conference, U.S. Department of Justice, National Advocacy Center, Columbia, SC	Lundberg
AUG 6, 2008	Panelist: "Use and Abuse of an Ethics Expert in Disciplinary Proceedings," Annual Meeting, National Organization of Bar Counsel, New York, NY	Lundberg
AUG 14, 2008	Presenter: "Ethics for Neutrals," School of Public and Environmental Affairs, Indianapolis	Kidd
AUG 19, 2008	Presenter: "Ethics for Neutrals," Indiana University School of Law—Indianapolis	Kidd
AUG 20. 2008	Presenter: "Ethical Issues for Paralegals," Indiana Paralegal Association, Indianapolis	Kidd
AUG 21. 2008	Co-Presenter: "Legal Ethics Issues for 2008 and Beyond," Fulton County Bar Association, Rochester	Lundberg

APPENDIX H

AUG 22, 2008	Presenter: "Update on Ethics Cases," Indiana Trial Lawyers Assoc. Women's Seminar. Indianapolis	Kidd
SEP 9, 2008	Co-Presenter: "Professional Responsibility," Annual Law Update, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
SEP 18, 2008	Presenter: "Avoiding Trouble in the First Place," Marion County Public Defender Agency, Indianapolis, IN	losue
SEP 25, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, South Bend	Kidd
SEP 27, 2008	Guest Lecturer, Civil Practice Clinic, Prof. Wolf, Indiana UniversitySchool of Law, Indiana olis	Lundberg
OCT 2, 2008	Panelist: "Ethics in Problem Solving Courts," Indiana Judicial Center. Indianapolis	Pruden
OCT 3, 2008	Presenter: "Ethical Concerns for Business Lawyers,"	Kidd

	Annual Mt g., Indiana State Bar Association, Indianapolis	
OCT 6, 2008	Presenter: "Legal Ethics and the Federal Prosecutor," U.S. Attorney's Office. Northern District of Indiana, South Bend	Lundberg
OCT 6, 2008	Presenter: "Ethics Update," Evansville Bar Association, Evansville	Pruden
OCT 8, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
OCT 10, 2008	Presenter: "Ethics Review for Bankruptcy Trustees," Indianapolis	Pruden
OCT 13, 2008	Presenter: "Ethics for Family Law Practitioners," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
OCT 16, 2008	Co-Presenter: `Legal Malpractice and Grievances: Understanding the Causes of Malpractice," Family Law Institute, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
OCT 17, 2008	Presenter: "Attorney Surrogates," Indiana Public Defender Council. Indianapolis	Rice
OCT 17, 2008	Co-Presenter: "Ethics Issues in Federal Criminal Defense," North Dist. Public Defenders Office, Plymouth	Kidd
OCT 21, 2008	Co-Presenter, "Time Mastery for Lawyers," Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
OCT 28, 2008	Presenter: "Ethics: Listen, Do You Want to Know a Secret?," Advanced Appellate Skills, Indiana Continuing Le al Education Forum, Indiana olis	Lundberg
OCT 29, 2008	Presenter: "Ethical Issues for Business Lawyers," Business Law Section, Lake County Bar Association, Merrillville	Lundberg
NOV 3, 2008	Co-Presenter: "Legal Advertising Ethics Webinar," Law & Politics, Indianapolis	Kidd
NOV 5, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Terre Haute	Kidd
NOV 6, 2008	Co-Presenter: "Vignettes of Legal Ethics," Indiana Continuing Legal Education Forum, Evansville	Kidd

APPENDIX H

NOV 12, 2008	Presenter: "Ethical Issues, Ex Parte and Bypass Communications," Annual Real Estate Institute, Indiana Continuing Legal Education Forum	McKinney
NOV 14, 2008	Presenter: "Recent Developments in Conflicts of Interest, Trust Accounting and Attorney Fees," 14`N Annual CLE Program, Boone Circuit Court/Boone County Bar Association, Lebanon	Lundberg
NOV 21, 2008	Presenter: "Trust Accounts," Applied Professionalism, Indiana Continuing Legal Education Forum, Indianapolis	Lundberg
NOV 21, 2008	Co-Presenter: "Vignettes of Legal Ethics," Applied Professionalism Course, Indiana Continuing Legal Education Forum Indianapolis	Pruden
DEC 1, 2008	Presenter: "Ethical Issues for Government Attorneys," Legal & Ethics Conference, Office of Inspector General and State Ethics Commission, Indianapolis	Lundberg

DEC 2, 2008	Presenter: "Ethics in Family Law Matters," Indiana CoContinuing Legal Education Forum, Indianapolis	Kidd
DEC 4, 2008	Co-Presenter: "Ethics Year In Review," Indiana Continuing Legal Education Forum, Indianapolis	Kidd
DEC 5, 2008	Co-Presenter: "First Amendment Rights of Lawyers," American Civil Liberties Union of Indiana, Indianapolis	Lundberg
DEC 5, 2008	Presenter: "Unbundling Legal Services," Heartland Pro Bono Services, Franklin, Indiana	losue
DEC 9, 2008	Presenter: "Trust Account Management," Applied Professionalism Course, Lake County Bar Association, Merrillville	Pruden
DEC 10, 2008	Presenter: "Conflicts of Interest 101: A Flyover from 30,000 Feet", Marion County Bar Association, Indianapolis	Lundberg
DEC 12, 2008	Presenter: " Disciplinary Process," Marion County Public Defender Agency, Indianapolis, IN	losue
JAN 8, 2009	Presenter: "Ethics for Neutrals," Indiana University School of Law—Indianapolis	Kidd
JAN 20, 2009	Presenter, "Ethics in Trial Court Practice," Bar Leadership Series, Indianapolis Bar Association, Indianapolis, IN	Lundberg
FEB 3, 2009	Guest Lecturer: The Lawyer Discipline System"," Course in The Legal Profession, Maurer School of Law at Indiana University, Prof. Frohman, Bloomington	Lundberg
FEB 14, 2009	Panelist: "Strict Liability vs. Scienter: Filling the Mental State Gaps in the Model Rules," National Organization of Bar Counsel and Association of Professional Responsibility Lawyers, Boston, MA	Lundberg
FEB 20, 2009	Co-Presenter: "Ethics Update," Bingham McHale, Indianapolis	Kidd
MAR 6, 2009	Presenter: "Hey! Could We Have a Little Civility In Here?," Women's Bench-Bar Conference, Indiana State Bar Association, Culver	Lundberg

APR 24, 2009	Panelist: "Current Topics in Legal Ethics," Bench-Bar Conference, Allen County Bar Association, Fort Wayne	Lundberg
MAY 27, 2009	Presenter: "Professional Responsibility Review," Allen County Bar Association, Fort Wayne	Kidd
MAY 29, 2009	Panelist: "Discretion in Discipline: How Much Room Do Bar Counsel Have and How Do They Use It?," 35th Annual Conference on Professional Responsibility, Center for Professional Responsibility, American Bar Association, Chicago, IL	Lundberg
JUN 5, 2009	Panelist: "Ethics of Fee Agreements and Billing," Solo and Small Firm Conference, Indiana State Bar Association, Bel Terra Resort	Lundberg
JUN 17, 2009	Presenter: "Lawyer Discipline In Mortgage Foreclosure Mediation." Indiana Supreme Court, Evansville, IN	losue
JUN 19, 2009	Panelist: "Attorney Professionalism and Civility—The Role of the Judiciary," Indianapolis Bar Association Bench-Bar	Rice

	Conference, French Lick	

APPENDIX H

INDIANA SUPREME COURT DISCIPLINARY COMMISSION FUND
Statement of Revenues and Expenses (Unaudited)
Fiscal Year Ending June 30, 2009

BEGINNING DISCIPLINARY FUND BALANCE		$1,343,171
REVENUES:		
TOTAL REGISTRATION FEES COLLECTED		$1,677.010
REVENUE FROM OTHER SOURCES:		
Court Costs	$18,582	
Reinstatement Fees	2,000	
Investment Income	6,330	
Rule 7.3 Filing Fees	10,350	
Other	1,203	
TOTAL REVENUE FROM OTHER SOURCES		$38,465

TOTAL REVENUE		$1,715,474
EXPENSES:		
OPERATING EXPENSES:		
Personnel	$ 1.613,710	
Investigations/Hearings	38,198	
Postage and Supplies	21,840	
Utilities and Rent	139,095	
Travel	40,636	
Equipment	27,834	
Other Expenses	34,076	
TOTAL OPERATING EXPENSES		$1,915,389
TOTAL EXPENSES		$1,915,389
NET INCREASE (DECREASE) IN FUND BALANCE		($199,915)
ENDING DISCIPLINARY FUND BALANCE		$1,143,256

APPENDIX