

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

2008 ANNUAL REPORT

**by
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2008 ANNUAL REPORT

OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF OHIO

The position of Disciplinary Counsel and the Office of Disciplinary Counsel ("ODC") are established by The Supreme Court of Ohio pursuant to Gov. Bar R. V(3)(B). Under that rule, Disciplinary Counsel is authorized to investigate allegations and initiate complaints concerning misconduct and/or mental illness of judges or attorneys under the *Code of Professional Responsibility*, the *Ohio Rules of Professional Conduct*, the *Code of Judicial Conduct*, and rules governing the Unauthorized Practice of Law, pursuant to The Ohio Supreme Court Rules for the Government of the Bar and the Government of the Judiciary. The ODC staff of 2008 was comprised of ten attorneys (one Disciplinary Counsel, one First Assistant Disciplinary Counsel and eight Assistant Disciplinary Counsels), one administrative officer, one executive administrative assistant, two and a half paralegals, two full-time investigators, four legal secretaries, one receptionist and one clerical support.

This report to The Supreme Court of Ohio and the Board of Commissioners on Grievances and Discipline ("Board") concerning the activities for calendar year 2008 (*Tables 1-5*) and FY2008 expenses (*Table 6*) of ODC is made pursuant to the requirements of Gov. Bar R. V(3)(B)(3).

At the beginning of 2008, there were 795 grievances pending with ODC. As of December 31, 2008, there were 621 grievances pending and/or under investigation.

A total of 3,392 new matters for consideration were received by ODC in 2008. That includes all relevant categories such as grievances filed against Attorneys and Judges, Appeals from Certified Grievance Committees, Board cases, Unauthorized Practice of Law investigations, UPL Board cases, Child Support, Reciprocals and Resignations. Of that total, 2,385 represented grievances originally filed with ODC against Attorneys and 555 grievances filed against Judges, but does not include Appeals.

In 2008, a total of 1,538 grievances were dismissed on intake or after initial investigation, and 1,264 were opened for investigation. For procedural reasons, 103 grievances which were initially received by ODC, were transferred to local bar associations for investigation. Under that same rationale, another 28 grievances were forwarded to the Board for reassignment and six were forwarded pursuant to Gov. Jud. R. II(2)(B)(1). A geographic distribution by Ohio county of the matters filed with ODC in 2008, based on the location of the Respondents' principal offices is provided. (*Table 5*). For a detailed presentation of those grievances which were received in 2008 and opened for investigation, please refer to Table 2. The data identifies the alleged primary violation. Table 2 also includes data from the

prior three calendar years to assist in tracking trends in the state. One violation category, "Failure to maintain funds in a trust", has experienced a dramatic increase in the past four years since the new statutory requirement in the Fall of 2005 mandating that banks must notify ODC in each instance where an IOLTA account is overdrawn. The number of such grievances reported in 2005 was 110, increasing to 243 in 2006, 289 in 2007 and most recently 319 in 2008.

A total of thirty-eight formal complaints were filed by ODC in 2008 with the Board, of which two alleged judicial misconduct. In the past five years (2004-2008), 194 formal complaints have been filed with the Board by ODC.

Appeals received by ODC in 2008 totaled 290, a decrease of 47 from the 2007 figure. Coincidentally 290 Appeals were closed during the year. As of December 31, 2008, 57 Appeals were pending.

The number of UPL grievances received by ODC in 2008 totaled 91, a rather large increase contrasted to the 67 received in 2007. During the year, 99 UPLs were closed and as of December 31, 2008, there were 37 UPL grievances pending in the ODC office. In other categories, four Reciprocal grievances were received by our office in 2008, two were pending at the end of the year and three were sanctioned by the Court. No Child Support grievances were filed with our office in 2008, and none were pending at the close of the year.

Twenty-nine resignation applications were received for review by ODC in 2008. There were 23 resignations announced by the Court during 2008, nine of which were Resignations with Discipline Pending and 14 were regular Resignations, now referred to as Retirements (*Table 3*).¹ There was a total of 21 resignations in 2007.

In 2008 ODC attorneys appeared in 33 hearings before the Board and participated in eleven oral arguments before The Supreme Court of Ohio. As of December 31, 2008, there were 19 cases awaiting hearing dates before the Board and 14 cases awaiting reports from the Board; five cases pending oral argument before the Supreme Court; and 15 cases pending decision by the Supreme Court of Ohio (*Table 4*). In 2008, The Supreme Court of Ohio issued formal sanctions in 40 cases represented by ODC. (*Tables 1 & 3*).

Respectfully submitted,

Jonathan E. Coughlan
Disciplinary Counsel

¹ In September 2007 the Court repealed Gov. Bar Rule V, Section 11(G) and replaced it with Gov. Bar Rule VI, Section 6, which eliminated “regular resignations” and made retirement permanent.

TABLE 1

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<u>Disposition of Grievances Received:</u>					
Dismissed on Intake or after Investigation	2747	2603	2698	2862	2794
Pending at End of Year	381	515	678	795	621
<u>Caseload Comparison:</u>					
Number of Grievances Received	2683	2720	2937	3031	2940
Number of Appeals Received	346	359	331	337	290
Number of UPLs Received	82	86	66	67	91
Number of Formal Complaints Filed	40	39	42	35	38
<u>Sanctions Issued:</u> (Table 3 for details)					
Public Reprimands	2	1	5	2	2
Six-Month Suspensions	5	2	4	4	5
One-Year Suspensions	2	2	4	4	5
Eighteen-Month Suspensions	1	2	0	1	1
Two-Year Suspensions	8	5	8	7	2
Indefinite Suspensions	5	3	7	7	7
Interim Remedial Suspensions ¹	--	1	0	1	1
Mental Health Suspensions ²	--	--	1	0	2
Disbarments	5	5	9	1	3
Reciprocal Disciplines	9	9	8	4	3
Resignations (includes Resignations with Discipline Pending)	20	10	15	21	9
Retirements ³					14

¹ 2005 is the first year Interim Remedial Suspensions were included in the ODC Annual Report

² 2006 is the first year Mental Health Suspensions were included in the ODC Annual Report.

³ 2008 is the first full year during which time Resignations without a Pending Disciplinary Action are referred to as Retirements.

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

<u>Alleged Primary Violation</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Neglect/Failure to protect interests of the client	343	351	303	278
Failure to account or turn over file	57	43	41	55
Improper withdrawal (refusal to withdraw)	9	13	10	8
Excessive fees	60	90	84	81
Personal misconduct	115	92	108	101
Misrepresentation/false statement/concealment	39	54	42	40
Criminal conviction	12	5	4	12
Failure to file income tax returns	2	0	1	1
Commingling of funds	2	2	1	3
Conversion	18	25	27	29
Embezzlement	3	2	1	4
Failure to maintain funds in trust ¹	110	243	289	319
Breach of client confidence	9	6	9	9
Conflict of lawyer's interest	23	40	26	30
Conflict of client's interest	52	43	63	48
Communication with adverse party represented by counsel	14	8	9	13
Trial misconduct	70	65	77	81
Failure to register	2	8	2	4
Practicing while under suspension	8	16	14	16
Assisting in the Unauthorized Practice of Law	9	7	9	4
Advertising/Solicitation	34	18	6	15
Judicial misconduct	89	104	74	106
Mental illness	2	3	4	0
Substance abuse	8	4	4	3
Other	8	7	8	4
TOTAL	1098	1249	1216	1264

¹ Increases in "*Failure to maintain funds in trust*" violation are due to legislation effective in the Fall of 2005 which requires banks holding IOLTA accounts to file reports with ODC anytime these accounts are overdrawn.

TABLE 3

**SANCTIONS ISSUED IN 2008 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

PUBLIC REPRIMANDS — 2

Timothy Alan Ita 2007-2298
Harry Arthur Sargeant, Jr. 2007-2294

SIX MONTH SUSPENSIONS — 5

Thomas Joel Manning 2008-0037
Ned Stevens Newcomer 2008-0765
Kevin John O'Brien 2008-0812
Scott Richard Roberts 2007-1090
John Alfred Sabol 2007-1952

ONE YEAR SUSPENSIONS — 5

Henry Roosevelt Freeman 2008-0395
Michael Patrick McNamee 2008-0400
Kurt Lawrence Niermeyer 2008-0388
Frank James Simmons, Jr. 2008-1152
Philip Paul Taylor 2008-0820

EIGHTEEN MONTH SUSPENSIONS — 1

Lawrence Michael Maley 2008-0038

TWO YEAR SUSPENSIONS — 2

Thomas Henry Vogtsberger 2008-0397
Donald Lewis Walker 2007-2380

INDEFINITE SUSPENSIONS — 7

Thomas John Broschak 2007-1975
Jay Alan Goldblatt 2007-1961
Eric Kyle Heiland 2007-1111
Brian Patricc Higgins 2007-1953
Kenneth Levon Lawson 2008-0107
Steven Lewis Lo Dico 2007-2378
John Richard Tomlan 2007-1595

INTERIM REMEDIAL SUSPENSIONS — 1

Steven Charles Gittinger 2008-1845

TABLE 3 (continued)

**SANCTIONS ISSUED IN 2008 BY THE SUPREME COURT OF OHIO
PURSUANT TO CASES FILED BY DISCIPLINARY COUNSEL**

Name of Respondent and Supreme Court Case Number

MENTAL HEATH SUSPENSIONS — 2

Iduna Depweg Borger 2002-0288
Richard Aaron Olivito 2007-1582

DISBARMENTS — 3

Jeffrey Jay Hoskins 2008-0352
John Robert Lentes 2008-1709
Steven Earl Zigan 2007-1973

RECIPROCAL DISCIPLINES — 3

Eric Lamar Emerson 2008-1874
James David Leckrone 2008-1112
Randall James Knuth 2008-0682

RESIGNATIONS / RETIREMENTS¹ — 14

Frederick Herman Bohse
Ralph Emerson Bragg
Henry Benson Bruner
Donald Thomas Ciepichal 2007-0655
Ronald Gilbert Gottlieb
Jerome Lewis Holub
William Edward Howard
Paul G. Klein
Victor Stephan Krupman
Ronald James Lang
Carolyn Ryan Moser
Fredric Lewis Sagan 2007-0703
Michael Douglas Triplett 2007-0370
Victor Wertheimer

RESIGNATIONS WITH DISCIPLINE PENDING — 9

Edward Shehab Asper 2008-1494
John Wesley Edward Bowen 2008-0455
Karyn McConnell Hancock 2008-0546
John Patrick Lesko 2007-2329
Edward Paul Markovich 2008-1773
LeRoy Alvin Nichols 2008-1888
Richard Clement Roderick, Jr. 2008-1493
Michael Scott Russell 2008-1732
James Wilson Wheeler 2008-1654

¹ Resignation applications received in 2008 were processed as Retirements and were not assigned Supreme Court case numbers.

TABLE 4

**STATUS OF FORMAL MATTERS PENDING
AS OF DECEMBER 31, 2008**

Reinstatements 1

Before the Probable Cause Panel

Awaiting Certification to Board 2

Appeal of Panel Dismissal to Full board 0

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

Awaiting Hearing 19

Awaiting Board Report 14

Before The Supreme Court of Ohio

Awaiting Oral Argument 5

Awaiting Supreme Court Decision 15

TOTAL PENDING 56

TABLE 5

ALL MATTERS RECEIVED BY ODC FROM OHIO COUNTIES IN THE YEAR 2008

Based on County of Respondent's Principal Ohio office location

Adams _____	6	Hamilton _____	217	Noble _____	3
Allen _____	34	Hancock _____	18	Ottawa _____	13
Ashland _____	7	Hardin _____	3	Paulding _____	7
Ashtabula _____	17	Harrison _____	6	Perry _____	10
Athens _____	8	Henry _____	7	Pickaway _____	10
Auglaize _____	5	Highland _____	10	Pike _____	2
Belmont _____	12	Hocking _____	16	Portage _____	30
Brown _____	9	Holmes _____	7	Preble _____	9
Butler _____	85	Huron _____	7	Putnam _____	5
Carroll _____	2	Jackson _____	15	Richland _____	32
Champaign _____	13	Jefferson _____	28	Ross _____	13
Clark _____	35	Knox _____	25	Sandusky _____	16
Clermont _____	24	Lake _____	52	Scioto _____	29
Clinton _____	7	Lawrence _____	10	Seneca _____	10
Columbiana _____	36	Licking _____	31	Shelby _____	5
Coshocton _____	6	Logan _____	19	Stark _____	113
Crawford _____	15	Lorain _____	41	Summit _____	180
Cuyahoga _____	607	Lucas _____	152	Trumbull _____	52
Darke _____	7	Madison _____	6	Tuscarawas _____	16
Defiance _____	10	Mahoning _____	92	Union _____	15
Delaware _____	41	Marion _____	5	Van Wert _____	10
Erie _____	24	Medina _____	34	Vinton _____	2
Fairfield _____	25	Meigs _____	2	Warren _____	30
Fayette _____	12	Mercer _____	5	Washington _____	11
Franklin _____	513	Miami _____	20	Wayne _____	2
Fulton _____	9	Monroe _____	2	Williams _____	6
Gallia _____	18	Montgomery _____	147	Wood _____	23
Geauga _____	19	Morgan _____	6	Wyandot _____	7
Greene _____	19	Morrow _____	7		
Guernsey _____	11	Muskingum _____	18	TOTAL _____	<u>3,306</u>

TABLE 6

**FISCAL YEAR 2008
REPORT OF OPERATIONAL EXPENSES
OF THE OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO**

I.	Payroll (Salaries & Benefits)	\$ 1,728,495.94
II.	Personal Services (Consultants, Independent Contractors)	\$ 76,090.89
III.	Education, Tuition and Training	\$ 1,494.00
IV.	Supplies and Materials	\$ 36,658.03
V.	Automobile and Parking	\$ 4,348.69
VI.	Travel and Conferences (In-State & Out-of-State)	\$ 41,273.19
VII.	Postal and Shipping Expenses	\$ 19,725.71
VIII.	Communication Expenses	\$ 10,007.43
IX.	Maintenance and Repair Services	\$ 19,208.56
X.	Building, Utilities and Facilities	\$ 256,919.87
XI.	Insurances, Licenses and Permits	\$ 642.48
XII.	Dues and Memberships	\$ 3,414.25
XIII.	Books and Subscriptions	\$ 27,624.77
XIV.	Investigation and Discovery	\$ 60,050.01
XV.	Equipment	<u>\$ 483.89</u>
	ODC - Operational Expenses for Fiscal Year 2008	<u>\$ 2,286,437.71</u>

Jonathan E. Coughlan, Disciplinary Counsel