

# **State of Michigan**

## **Attorney Grievance Commission**

### **Annual Report**

**January 1, 2014 – December 31, 2014**

#### **Overview**

The Attorney Grievance Commission was established by the Michigan Supreme Court on October 1, 1978, succeeding the former State Bar Grievance Board. The Commission acts as the prosecutorial arm of the Supreme Court for the discharge of its constitutional responsibility to supervise and discipline Michigan attorneys. The Commission exercises state-wide jurisdiction and is located in the city of Detroit.

#### **Commission Composition**

The Commission consists of nine members, who serve without compensation. The six lawyers and three non-lawyers are each appointed by the Michigan Supreme Court for a term of three years. A member may not serve more than two terms.

The Commission's Chairperson and Vice-Chairperson are appointed to one-year terms by the Michigan Supreme Court. The Commission's Secretary is elected by its members. The Commission's Officers that have been reappointed commencing October 1, 2014 and ending September 30, 2015, are Chairperson Barbara B. Smith of Bloomfield Hills, and Vice-chairperson Charles S. Kennedy, III of Royal Oak, Attorney members Secretary Jeffrey T. Neilson and Charles s. Kennedy III and lay person member Pastor R. B. Ouellete are reappointed to the Attorney Grievance Commission for terms ending October 1, 2017.

## **The Grievance Administrator's Staff**

The Grievance Administrator and Deputy Administrator are appointed by the Supreme Court pursuant to MCR 9.109. The Grievance Administrator is empowered under MCR 9.111 to hire legal and support staff, with the approval of the Commission. During the year 2014, the Grievance Administrator supervised a staff of eleven attorneys, two investigators and twelve administrative and clerical staff. Additionally, the Commission accepts law students for a legal intern program in connection with their respective law schools.

## **Commission Procedures**

The attorney discipline process is governed by Subchapter 9.100 of the Michigan Court Rules. The disciplinary process is normally initiated when a Request for Investigation is filed with the Administrator against an attorney, or when the Administrator commences an investigation in his/her own name.

Upon the filing of a Request for Investigation, the Grievance Administrator must determine whether there exists a *prima facie* allegation of professional misconduct. The Request for Investigation may be rejected by the Grievance Administrator after preliminary investigation and/or analysis by the Intake Unit, or it may be assigned to a staff counsel for a full investigation. Common investigative procedures include legal research and analysis, witness interviews, and/or the procurement of court records or banking records. When such an investigation is concluded, the Grievance Administrator must submit the investigative file to the Commission for its review and disposition.

In each investigative file referred to the Commission, the Grievance Administrator may recommend to the Commission that: (1) the matter be closed as there is insufficient evidence of professional misconduct; (2) the respondent attorney be placed on contractual probation, a diversion program where minor misconduct is significantly related to alcohol or other substance abuse, or other impairment, pursuant to MCR 9.114 (C), (3) the respondent attorney be admonished MCR 9.114 (B), a confidential disposition requiring the attorney's consent or (4) authority be granted to file a formal complaint against the respondent attorney for allegations of professional misconduct MCR 9.108 (E) (2). The Administrator must inform the complainant and the respondent, if the respondent answered the Request for Investigation, of the final disposition of every Request for Investigation MCR 9.112 (C).

## Investigations

During 2014, the Commission docketed **2,872** Requests for Investigation [grievances]. This number includes **215** Requests for Investigation generated under the Trust Account Overdraft Notification (TAON) rule, which requires notification to the Grievance Administrator by a financial institution when a lawyer has overdrawn his or her client trust account. Appendix A (page 9 of this report) includes a 10 year comparison of the Requests for Investigation filed since 2005.

As shown in Table 1 (below), the areas of practice most likely to lead to a grievance are criminal law, domestic relations, probate, and personal injury law.

**Table 1 – Nature of underlying legal matter in grievances filed, 2014 and 2013**

Subject Matter	% of Total Grievances 2014	% of Total Grievances 2013
Criminal law	29.5	38
Domestic relations	15.93	14
Probate law	9.88	8
Commercial litigation	9.17	6
Bankruptcy law	9.11	5
Real estate transactions	6.92	4
Insurance law	4.74	2
Employment/labor law	4.50	2
All Others	10.24	14

Table 2 (below) compares the final disposition of the grievances resolved by the Grievance Administrator or the Grievance Commission in 2014 compared to 2013. The **2,945** dispositions in 2014 included **2,243** grievances dismissed by the Grievance Administrator pursuant to MCR 9.112(C)(1)(a) and MCR 9.114(A)(1); **405** grievances closed by the Commission; **137** admonitions issued by the Commission; **25** contractual probations approved by the Commission; and **135** individual grievances approved by the Commission for the filing of a formal complaint.

**Table 2 – Disposition of Grievances, 2014 and 2013**

	2014	2013
Total Grievance Received	2872	2869
Total Grievances Disposed <sup>1</sup>	2945	2773
Rejected by the GA or Closed in Intake	2243	2241
Total Disposed of by the Commission after full investigation	702	532
Closed by the Commission	405	265
Admonishments	137	128
Contractual Probation	25	27
Approved for Formal Complaint <sup>2</sup>	135	112

There were **658** open investigative files pending with the AGC on January 1, 2014. On December 31, 2014, the open investigative caseload was **724**.

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<sup>1</sup> The dispositions of grievances for a particular year are not necessarily dispositions of all grievances filed for that year. The dispositions for 2014 included grievances filed before January 1, 2014, and some of the grievances filed during the year were pending on January 1, 2015.

<sup>2</sup> The number of individual grievances approved by the Commission for the filing of a formal complaint does not necessarily correlate directly to the number of new formal complaints filed with the Attorney Discipline Board. Multiple grievances against a single Respondent, all of which have been approved for prosecution, may be, and often are, consolidated in a single complaint for purposes of efficiency and judicial economy.

## Prosecutions and Other Litigation

### **A. Proceedings before Hearing Panels of the Attorney Discipline Board.**

When the Commission authorizes that a prosecution be commenced, a formal complaint is filed with the Attorney Discipline Board (ADB) setting forth the alleged misconduct, pursuant to MCR 9.115. The matter is scheduled before a hearing panel of three volunteer lawyers appointed by the ADB. Upon the conclusion of the hearing, the panel must issue an order dismissing the complaint or imposing public discipline which may include probation, reprimand, license suspension or disbarment. The Administrator filed **75** formal complainants in 2014, compared to **81** filed in 2013. Appendix A (page 9) includes a 10 year comparison of the Formal Complaints filed with the Attorney Discipline Board.

The Grievance Administrator is also empowered by MCR 9.120 to initiate Judgment of Conviction (JOC) proceedings against attorneys who are convicted of a crime. These proceedings are show cause proceedings in which the level of discipline is the principal issue. Attorneys who are convicted of a felony are automatically suspended from the practice of law until a hearing panel of the ADB has issued a final order of discipline. Attorneys who are convicted of misdemeanors are not automatically suspended. The Grievance Administrator will regularly file a JOC proceeding for a felony conviction, while exercising discretion to initiate a JOC proceeding for a misdemeanor conviction. The Administrator filed **20** new matters in 2014 based on an attorney's criminal convictions, compared to **24** convictions filed in 2013.

Attorneys who are disciplined in other jurisdictions (state or federal) will be subject to a reciprocal discipline proceeding initiated by the Grievance Administrator pursuant to MCR 9.120(C). These proceedings, like JOC proceedings, resemble a show cause proceeding in which the principal issues are whether the attorney received due process in the underlying litigation and whether a reciprocal discipline should be imposed. Reciprocal proceedings were instituted in **5** cases in 2014, compared to **11** in 2013.

The Grievance Administrator is also a party in ADB reinstatement proceedings initiated by attorneys who have been suspended for 180 days or more. The burden of proof is on the attorney to establish his or her fitness by clear and convincing evidence. In those cases, the Grievance Administrator must conduct an investigation and file a written report with the hearing panel. The Grievance Administrator is a party to a reinstatement proceeding and may contest the petitioner's eligibility for reinstatement. Eight (**8**) reinstatement petitions were filed in 2014, compared to **11** in 2013.

Finally, the Grievance Administrator may seek an order from the ADB declaring that an attorney is incapacitated to continue the practice of law because of mental or physical infirmity or disability, or because of addiction to drugs or intoxicants, either by filing proof that the attorney has been judicially declared incompetent or by alleging incapacity in a

complaint to be adjudicated by a hearing panel. The Administrator instituted **2** such proceedings in 2014, compared to **5** in 2013.

## **B. Appeals and Other Proceedings.**

### **Review by the Attorney Discipline Board:**

The Grievance Administrator, as well as the respondent attorney and the complainant, may file a petition with the Attorney Discipline Board (ADB) seeking review of the hearing panel's decision. During the year 2014, the ADB ruled on **13** petitions for review following briefing and oral arguments presented by the Administrator and the respondent or the complainant. The Administrator, the respondent or the complainant may also appeal a decision by the Board to the Michigan Supreme Court which may, in its discretion grant leave to appeal.

### **Appeals to the Supreme Court:**

The Grievance Administrator is also a party in complaints for superintending controls filed with the Michigan Supreme Court by complainants who disagree with the decisions of the Administrator or the Grievance Commission to reject or close an investigative file. The Grievance Administrator filed an appearance in **11** matters filed with the Supreme Court in 2014.

### **Reconsideration:**

Apart from the formal review or appeal processes, the Grievance Administrator has a long-standing policy of accepting requests for reconsideration of files closed by the Administrator through the Intake Unit. This process acts as a quality control measure while providing further accountability to complainants. Upon the receipt of a request for reconsideration, a senior attorney will review the file and determine whether an issue or a relevant fact was overlooked by the Intake Unit or the Commission, or whether new information has been provided that could change the analysis or outcome of the matter. If such information is provided, the file may be reopened for further investigation.

### **Receiverships:**

Under MCR 9.119(G), if an attorney leaves the practice of law, (whether or not for disciplinary reasons), disappears, or is deceased and there is no person capable of conducting the attorney's affairs, the Grievance Administrator may file a petition for receivership with the circuit court in the county where the attorney maintained his or her office. In those cases the Grievance Administrator acts as receiver, or co-receiver with the assistance of a local attorney, and must undertake a work intensive process that includes cataloging and prioritizing the abandoned files, contacting clients, courts and opposing parties if there is a pending matter and taking other action in order to protect the interests of clients. The Grievance Administrator opened **13** new receivership files

in 2014. Five (5) receiverships were closed during the year-end, and twenty-nine (29) open receivership files were pending at the end of the year.

### **Federal Reinstatement Proceedings:**

The Grievance Administrator may be requested to participate in discipline or reinstatement proceedings in a federal district court. For example, the District Court of the Eastern District of Michigan regularly appoints the Administrator as an interested party in reinstatement proceedings involving lawyers who have been suspended from practice under the local rules of that court. In 2014, the Administrator appeared in 6 discipline or reinstatement proceedings conducted in the U.S. District Court for the Eastern District.

### **Pro Hac Vice (PHV) Administration:**

Under the current provisions of MCR 8.126, the AGC is tasked with processing requests for temporary admission in Michigan by out-of-state attorneys on a pro hac vice basis. In 2014, each pro hac vice applicant was required to file the proper documentation along with a fee of \$125.00 (a fee equal to the discipline and client protection portions of the annual dues paid by a Michigan attorney. Effective October 1, 2014, the fee was reduced to \$105.00). For each applicant, the AGC must, within 7 days, determine whether the applicant has been granted limited admission in the last 365 days and provide said information to the appropriate court administrative agency or tribunal. In 2014, the AGC processed 703 pro hac vice motions with total costs charged to the applicants in the amount of **\$85,250.00**. There is a proposal pending with the Michigan Supreme Court seeking PHV admission be transferred to the Michigan State Bar.

### **Funding**

The Attorney Grievance Commission receives no public funds. The Grievance Commission and the Attorney Discipline Board are funded primarily from the discipline portion of the mandatory dues paid by all active members of the State Bar of Michigan. In 2014, annual dues for active members were **\$305.00**, of which **\$110.00** (36%) was specifically allocated to the two discipline agencies. Effective fiscal year 2015, the discipline portion of the dues will be \$90.00 (32% of the annual dues assessment). For the fiscal year, which ended September 30, 2014, the combined operating expenses of the Attorney Grievance Commission and the Attorney Discipline Board were **\$4,798,171**. The AGC's operating expenses for the fiscal year 2014 were **\$3,813,373**.

**Contact Information**

For further information regarding the Attorney Grievance Commission, please contact:

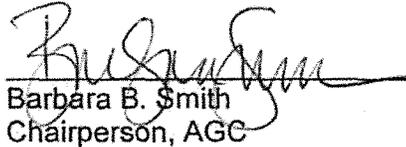
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Alan M. Gershel  
Grievance Administrator

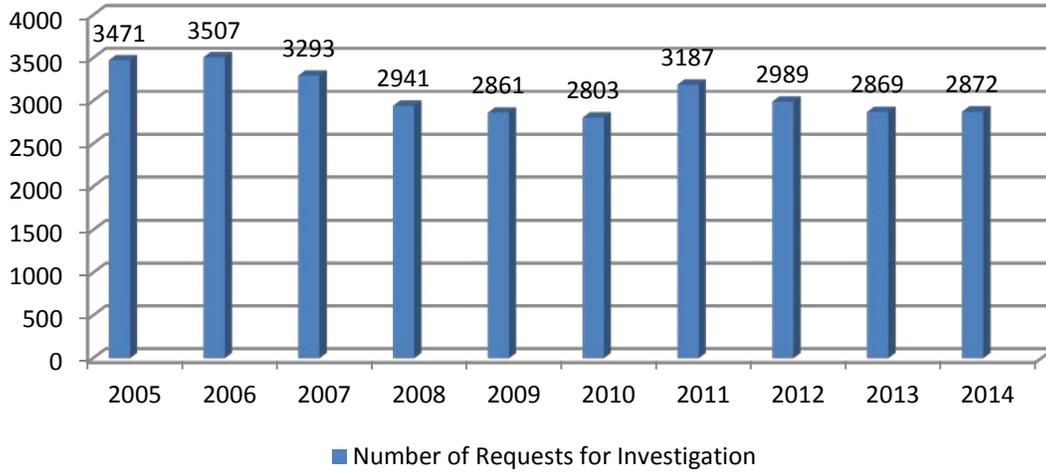


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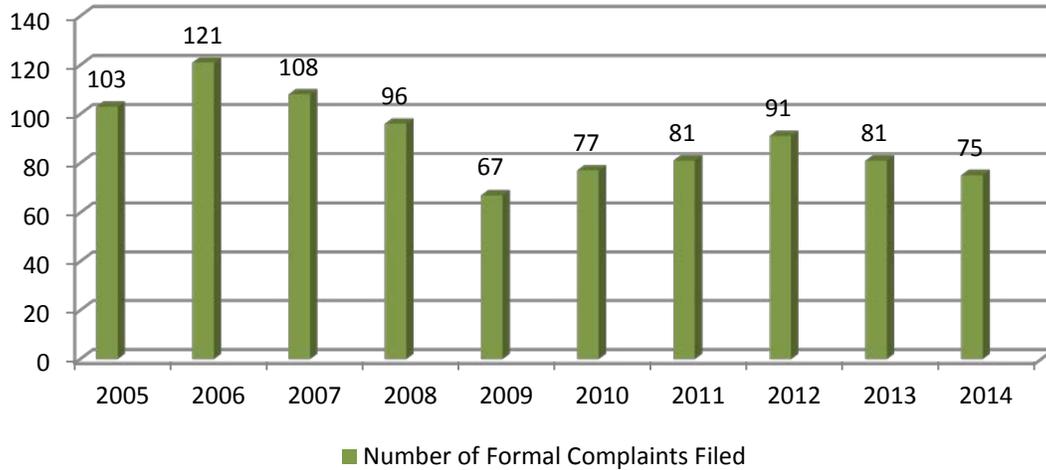
Barbara B. Smith  
Chairperson, AGC

## Appendix A

### 2005-2014 AGC 10-Year Comparison Chart Requests for Investigation



### 2005-2014 AGC 10-Year Comparison Chart Formal Complaints Filed



## Appendix B

### Attorney Grievance Commission Comparative Statement of Expense 2013 and 2014

Year	2013	2014
Salaries	\$ 2,175,609.00	\$ 1,945,017.00
Payroll Taxes	\$ 163,065.00	\$ 146,435.00
Employee's Insurance	\$ 361,352.00	\$ 318,738.00
Pension Contributions	\$ 341,165.00	\$ 339,450.00
Payroll Processing Fee	\$ 9,672.00	\$ 9,394.00
Retiree Healthcare Expense	\$ 211,920.00	\$ 206,071.00
Unemployment		\$ 7,964.00
Rent	\$ 154,609.00	\$ 159,134.00
Depreciation	\$ 47,011.00	\$ 35,660.00
Electricity	\$ 14,410.00	\$ 12,510.00
Parking	\$ 2,481.00	\$ 3,736.00
Temporary Staff	\$ 28,681.00	\$ 130,665.00
Outside Counsel		\$ 169,938.00
State Bar Bookkeeping Fee	\$ 29,742.00	\$ 30,733.00
Technology Services	\$ 16,325.00	\$ 35,553.00
Witness and Subpoena Fees	\$ 30,388.00	\$ 25,932.00
Receivership Expenses	\$ 1,013.00	\$ 4,425.00
Machine Rental	\$ 42,058.00	\$ 47,464.00
Meetings	\$ 4,865.00	\$ 5,363.00
Travel	\$ 13,941.00	\$ 18,148.00
Telephone	\$ 10,599.00	\$ 11,203.00
Books, Dues and Subscription	\$ 20,908.00	\$ 25,708.00
Office Supplies	\$ 29,162.00	\$ 16,745.00
Printing and Stationery	\$ 2,897.00	\$ 865.00
Postage	\$ 28,439.00	\$ 28,661.00
Directors and Officers Insurance	\$ 45,498.00	\$ 48,555.00
Repairs and Maintenance	\$ 17,846.00	\$ 5,675.00
Dues	\$ 5,772.00	\$ 5,357.00
Continuing education	\$ 8,236.00	\$ 3,025.00
Capital (office) Expenditures	\$ 20,410.00	\$ 10,566.00
Miscellaneous	\$ 4,718.00	\$ 4,683.00
<b>Total</b>	<b>\$ 3,842,792.00</b>	<b>\$ 3,813,373.00</b>

