

# State of Michigan Attorney Grievance Commission Annual Report

January 1, 2018 – December 31, 2018

## 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 investigative and 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.

### **Victor A. Fitz, III, Chairperson** - term ending 10/1/19

Mr. Fitz has been the elected Cass County Prosecutor since 2004. He operated as a Senior Assistant in Muskegon from 1988-2003, concentrating on homicide and narcotics prosecutions. He also served in Tuscola County as the Chief Assistant Prosecutor. He also Chairs Michigan's Crime Victims Services Commission, is an appointee to the Governor's Council on Law Enforcement & Reinvention (CLEAR) and is past President of the Prosecuting Attorneys Association of Michigan (PAAM). He is the current President of St. Paul Lutheran Church, Cassopolis, has served as an athletics coach and is active in numerous local/state organizations.

### **Valerie R. White, Vice-chairperson** - term ending 10/1/20

Ms. White is the Chief Assistant Prosecutor for Branch County, after having served as Chief Assistant /Assistant Prosecutor in Hillsdale County for nearly 17 years. She is a 1987 graduate of Michigan State University and a 1993 graduate of Cooley Law School. She has been married to John for 28 years and they have two daughters. In her spare time, she is active in the Kiwanis Club of Hillsdale, the First United Methodist Church, and as a 4-H Leader. She is currently on the Board of Education for the Hillsdale County

Intermediate School District and the Board of Directors for Reading Emergency ambulance service.

**Latoya M. Willis, Attorney member** – term ending 10/1/21

Mrs. Willis is the Lead Attorney of the Wayne County Prosecutor's Mortgage and Deed Fraud Unit where she specializes in the prosecution of criminal activity involving fraudulent real property transactions. She graduated from Western Michigan University in 1997, and earned her law degree from the University of Detroit-Mercy Law in 2002. She has worked with the Wayne County Prosecutor's Office since 2000, where she began as an intern in the Forfeiture Unit. Since that time, she has practiced throughout the Office including within the Felony Exam Unit; Felony Trial Unit, and Special Victims Unit where she prosecuted crimes committed against elder and vulnerable adults. She was appointed to the Attorney Grievance Commission in January of 2017.

**Cathy Joan Pietrofesa, PHD, Lay person** – term ending 10/1/21

Dr. Pietrofesa is a State Board Licensed Psychologist and a Licensed Professional counselor. Dr. Pietrofesa received her doctorate from the University of Michigan and has been in clinical practice over 30 years. She has been the co-owner of Affiliated Psychologists of Michigan for 27 years, and has been an Adjunct Professor at Wayne State University. In addition, she was part of the Employee Assistance Program for National Football League, assigned to the Detroit Lions for a number of years and has been a consultant/EAP psychologist for Plante and Moran for nearly 30 years. She is a frequent presenter at professional meetings, as well as co-author of a number of professional articles. She has been elected to several state and county-wide leadership positions in professional organizations and was a recipient of the Oakland County Counselor of the year. Dr. Pietrofesa was appointed by the Michigan Supreme Court to a three year term as a non-lawyer member of the Attorney Grievance Commission commencing January, 2016.

**Jeffrey J. Sakwa, Lay person** – term ending 10/1/19

Mr. Sakwa is the President of Noble Realty, Inc. He is also the President and founder of Defeat the Label, an advocacy organization dedicated to raising awareness of bullying and people with autism. Jeff serves as a Board Member on the Oakland Schools Education Foundation, is former Co-Chair of the Michigan Republican Party, and current Deputy Chair. He is a past board member of the Anti-Defamation League, Temple Shir Shalom, and the West Bloomfield Education Foundation. He received a Bachelor of Arts Degree in Accounting from Michigan State University

**Cheryl A. Bush, Attorney member** – term ending 10/1/20

Ms. Bush is the majority-owner and founding partner of Bush Seyferth & Paige PLLC (BSP), and handles high-stakes cases across the country. Ms. Bush is a Fellow in both the American College of Trial Lawyers and the International Society of Barristers. She is

a Senior Life Fellow of the American Board of Trial Advocates and teaches at its Trial College. She is on the Board of Directors of the Product Liability Advisory Council and is actively involved in the National Association of Minority & Women Owned Law Firms. In addition, she is proud to represent her home state by serving as the only Michigan counsel on the Network of Trial Law Firms' Board of Directors.

She earned her Juris Doctor, *cum laude*, from the University of Michigan Law and her Bachelor of Arts in English, *magna cum laude*, from Wayne State University.

**Thomas G. Kienbaum, Attorney Member** – term ending 10/1/20

Mr. Kienbaum has over 45 years' experience representing employers nationally in significant labor and employment disputes. He served as President of the State Bar of Michigan, the Metropolitan Detroit Bar Association, and the Barrister's Association. Mr. Kienbaum was appointed by the Supreme Court to the Attorney Discipline Board in 2007, where he served for six years, including as Chair. In 2017 the Supreme Court appointed him, for a three-year term, to the Attorney Grievance Commission. Mr. Kienbaum graduated *magna cum laude* from Wayne State University Law School in 1968, having served on its Law Review, and was awarded the "Order of the Coif." He graduated from the University of Michigan in 1965. Mr. Kienbaum was born in Berlin, Germany, and immigrated to the United States in 1957. He is fluent in German.

**James Webb, Attorney Member** – term ending 10/1/20

Mr. Webb retired from the insurance business in July 2017 after a 46 year career. He was a Property Underwriter for USF&G, and a Risk Manager at Masco, the Budd Company, and Republic Steel Corporation. During the last 36 years, he was an Insurance Agent with Aon Risk Solutions where he concluded his career as Chairman of the Michigan Corporation. Mr. Webb holds an AA Degree in Business Administration from the College of the Sequoias, BBA and MBA Degrees from Eastern Michigan University. He is Chairman of the Board of Trustees at Eastern Michigan University. He also is a board member of the Michigan Property and Casualty Guaranty Association. Mr. Webb also sits on the board of F.D.I. Insurance Company in Dublin, Ireland.

**Mary Chartier, Attorney Member** – term ending 10/1/20

Mary Chartier is a criminal defense litigator and founding partner of Chartier & Nyamfukudza, P.L.C. She litigates throughout the state, including practicing in federal court. Mary's criminal defense experience is extensive. She has served as lead counsel in numerous cases. She has represented clients accused of white collar crimes, such as health care fraud, mortgage fraud, and money laundering, as well as clients accused of drug dealing, crimes against the United States, human rights violations, bank robbery, criminal sexual conduct, and homicide. She recently was the leader of a team that exonerated a man who was wrongfully imprisoned for 9 years. She presents nationally on issues related to criminal defense, and she has been named a 2018 Leader in the Law by Michigan Lawyers Weekly.

## **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 2018, the Grievance Administrator supervised a staff of thirteen attorneys, three investigators, and seventeen 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 grievance and 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 Attorney Grievance Commission against an attorney, or when the Grievance Administrator commences an investigation in his/her own name.

Upon the filing of a Request for Investigation, the Grievance Administrator determines 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 under 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 pursuant to MCR 9.114(A)(2). The Grievance Administrator must inform the Complainant and the Respondent of the final disposition of every Request for Investigation MCR 9.114(F).

## **Investigations**

During 2018, the Commission docketed **1894** Requests for Investigation [grievances]. This number includes **239** Requests for Investigation generated under the Trust Account Overdraft Notification (TAON) rule, which requires notification to the Grievance Administrator by a financial institution when an attorney has overdrawn his or her client trust account. The Commission received nearly **20,000** phone calls in the year 2018.

Appendix A (page 19 of this report) includes a 10-year comparison of the Requests for Investigation filed since 2009.

Table 1 (below) compares the final disposition of the grievances resolved by the Grievance Administrator or the Commission in 2018 compared to 2017. In 2018, the Commission received **1894** grievances. The **1894** dispositions in 2018 included **1107** grievances dismissed by the Grievance Administrator pursuant to MCR 9.112(C)(1)(a) and MCR 9.114(A)(1); **227** grievances closed by the Commission; **92** admonitions issued by the Commission; **27** contractual probations approved by the Commission; **97** individual grievances approved by the Commission for the filing of a formal complaint; **15** judgments of conviction were authorized for formal action.

**Table 1 – Disposition of Grievances, 2017 and 2018.**

	<b>2017</b>	<b>2018</b>
Total Grievances Received	1944	1894
Total Grievances Disposed	1738	1615
Rejected by the GA or Closed in Intake	1541	1107
Total Disposed of by the Commission after full investigation	492	524
Closed by the Commission	197	248
Admonishments	97	92
Contractual Probation	31	27
Approved for Formal Complaints	101	112
Approved for Judgment of Conviction	18	15

The dispositions of grievances for a particular year are not necessarily dispositions of all grievances filed for that year. The dispositions for 2018 included grievances filed before January 1, 2018, and some of the grievances filed during the year were pending on January 1, 2018.

## **AGC CASE SUMMARIES**

### **Grievance Administrator: Alan M. Gershel**

*Grievance Administrator v Ralph Kimble, II, ADB Case No. 18-49-GA*

Based on the stipulation of the parties, a hearing panel found that respondent committed professional misconduct in his position as the Branch County Prosecutor by sexually harassing and/or by failing to treat several employees of the Branch County Prosecutor's Office, Circuit Court and the Friend of the Court with courtesy and respect. The stipulation called for a suspension of 180 days and his resignation as the Prosecutor.

The panel found that respondent engaged in conduct that violated a criminal law, MCL 750.520e (fourth-degree criminal sexual conduct), in violation of MCR 9.1 04(5); engaged in conduct that involved a violation of the criminal law where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b); and failed to treat with courtesy and respect all persons involved in the legal process and failed to take particular care to avoid treating such persons discourteously because of a person's race, gender, or other protected personal characteristic, in violation of MRPC 6.5(a).

### **Senior Associate Counsel: Stephen P. Vella**

*Grievance Administrator v Harold C. MacDonald, ADB Case No. 17-59-GA*

Respondent was disbarred for misappropriating client funds in two separate, unrelated, decedent estates of a combined total of a \$143,023.38. Respondent misappropriated the funds, then loaned them to an acquaintance with the expectation that he would then be paid a very high interest rate. The funds were never returned and the interest rate was never paid. In addition to the order of disbarment, the Attorney Discipline Board ordered that Respondent had forfeited his attorney fees totaling \$10,290.25 as a result of his misconduct. The Attorney Discipline Board also ordered Respondent to pay the rental fees for the off-site storage of his client files, on a monthly basis, from the date of the order of disbarment until such time as the client files were transferred to successor counsel or returned to the clients.

### **Senior Associate Counsel: Rhonda S. Pozehl**

*Grievance Administrator v Jonathan S. Baker, ADB Case No. 18-84-GA*

Baker stipulated to a suspension for 179 days and a requirement that he attend the Tips and Tools For a Successful Practice Workshop and the seminar titled, "Lawyer Trust Accounts: Management Principles and Recordkeeping Resources, after admitting to commingling funds in his IOLTA account. The parties stipulated that Respondent's cooperation in the proceedings was a mitigating factor.

**Senior Associate Counsel: Emily A. Downey**

*Grievance Administrator v Jason P. Ronning, ADB Case No. 18-12-GA*

On January 18, 2018, a Formal Complaint was filed against Respondent. He was charged with neglect, failure to communicate with his client, failure to act with reasonable diligence, and failure to refund an unearned fee in a civil matter. Respondent also failed to answer the Request for Investigation and additional attempts at communication by the Attorney Grievance Commission. A default was entered against Respondent for his failure to answer the Formal Complaint. However, Respondent appeared and testified at the hearing on March 29, 2018. On May 10, 2018, the hearing panel entered an order suspending Respondent's license to practice law for a period of 180 days, together with \$1,000 restitution to his client.

*Grievance Administrator v Paul F. Condino, ADB Case No. 17-149-GA*

On December 11, 2017, an eight-count Formal Complaint was filed against Respondent. Respondent was charged with neglecting multiple client matters, failing to act with reasonable diligence, engaging in dishonest conduct, failing to promptly notify or pay a client when funds were received, and frequently failing to refund unearned fees. Respondent entered into a Stipulation for Consent Discipline admitting the factual statements in the Formal Complaint. On August 6, 2018, the hearing panel entered an order suspending Respondent's license for a period of 3 years, and ordering him to pay \$55,524 in restitution to 16 clients. The hearing panel's report also noted that Respondent will not be eligible to petition for reinstatement unless he has made restitution in full and provided proof of restitution to the Attorney Discipline Board and the Attorney Grievance Commission.

**Senior Associate Counsel: Kimberly L. Uhuru**

*Grievance Administrator v Terry Price, ADB Case No. 16-142-GA*

The respondent was retained and paid \$9,000 to represent a long-time client in criminal proceedings. Respondent filed an appearance and appeared at the preliminary examination. Upset that he did not receive additional payment from the client, Respondent refused to appear for trial in Kent County, thus delaying the trial and causing the trial to show cause him. Respondent also did not appear for the show cause hearing, resulting in a bench warrant being issued against him. Respondent received a 300-day suspension. Reinstatement is conditioned upon repayment of the \$9,000 retainer and resolution of the bench warrant.

*Grievance Administrator v Mark A. Chaban, ADB Case No. 15-151-GA*

Respondent interfered with a court-ordered eviction, lied to judges in the case about the eviction, and engaged in frivolous appeals of the eviction order. Respondent received a one-year suspension and was ordered to pay approximately \$31,000 in restitution to

opposing counsel (representing Respondent's unpaid sanctions in the land-lord tenant matter). The Attorney Discipline Board affirmed the suspension and restitution on appeal, finding that "respondent is a danger to the public, the courts, and the legal process."

*Grievance Administrator v Mickey Larson, ADB Case No. 17-111-GA*

Respondent failed to advise a client regarding her right to appeal a dismissal of her federal lawsuit, and in separate matter, neglected discovery and pre-trial proceedings. Respondent was found in contempt of court due to several missed hearings and a bench warrant was issued. Respondent received a 180-day suspension and was required to seek counseling and therapy as a condition of his reinstatement.

**Senior Associate Counsel: Dina P. Dajani**

*Grievance Administrator v Scott Hess, ADB Case No. 18-53-JC and  
Grievance Administrator v Craig Hilborn, ADB Case No. 18-70-JC*

In these companion cases, the Respondents, who were co-conspirators in a criminal matter, were convicted by guilty pleas of two counts of wire fraud (felonies) each in the United States District Court for the Eastern District of Wisconsin in April 2018. On the basis of these felony convictions, disciplinary proceedings were initiated against them. The convictions arose out of scheme devised by Hess. Hess complained to Hilborn, a longtime friend, that he was overworked at his company. Beginning in mid-2000 and continuing through mid-2015, Hilborn would "bill" the company where Hess worked for legal work actually done by Hess or other outside counsel. Hess, in his capacity as in-house counsel, would then approve the bills and cause the company to pay the invoices to Hilborn's law firm.

Hess and Hilborn split the proceeds of the payments by two-thirds and one-third, respectively. Over the fifteen-year time period, the respondents defrauded the company of more than \$4.7 million. Following their convictions, judgment of conviction actions were initiated against both the respondents. Although Respondent Hilborn had resigned his State Bar membership effective April 3, 2018, which pre-dated the conviction date, a judgment of conviction action was initiated because the resignation did not deprive the Commission of jurisdiction. Respondent Hess agreed to a disbarment, which was approved by the hearing panel. Respondent Hess was disbarred effective April 26, 2018, the date of his felony convictions. Likewise, Respondent Hilborn agreed to disbarment, which was approved by the hearing panel. Respondent Hilborn was disbarred effective April 3, 2018, the date of his resignation from the State Bar.

**Senior Associate Counsel: John K. Burgess**

*Grievance Administrator v. Marvin Barnett, ADB Case Nos. 16-97-GA; 16-118-GA*

Respondent was charged with a conflict of interest in the first matter and violations of an order of discipline in the second matter wherein he organized a “shadow” firm comprised of non-lawyers to continue practicing law while suspended. Both matters, the second in particular, were heavily litigated cases with the Formal Complaint alleging the more serious misconduct spanning 8 days of testimony and arguable including sanction hearings. Nearly sixty exhibits were introduced in the matters combined. In the first matter, Respondent was suspended for 18 months, a significant sanction for a one-count conflict case. Respondent was disbarred in the second matter. This case also included a circuit court contempt filing in which a Permanent Injunction was issued against Respondent.

*Grievance Administrator v. Marcellus Long ADB Case No. 18-44-JC*

Respondent was convicted of mail fraud in the Oakland County Circuit Court due to his receipt and use of his IOLTA account in depositing third party funds for a fraudulent investment venture. Despite there being no actual proof that Respondent had knowledge of the full extent fraudulent enterprise throughout, the Panel nonetheless disbarred Respondent for depositing and distributing funds to the organizer of the fraudulent enterprise due to his knowledge that such funds were being reported to the unknowing participants as being investment returns when they were in fact merely payments from other victims. Respondent sought a three year suspension but the Panel was persuaded that Respondent’s conduct was knowing and intentional and ordered his license revoked.

**Associate Counsel: Charise L. Anderson**

*Grievance Administrator v Hussian Saleh, ADB Case Nos. 17-131-AI; 18-52-JC*

This matter concerned a Notice of Filing of Judgment of Conviction filed in May 2018, based on Respondent’s guilty plea in *United States of America v Hussian Ali Saleh*, United States District Court, Eastern District of Michigan, Case No. 17-CR-20541. Respondent was convicted of Conspiracy to Obtain a United States Passport by False Statement. The factual basis of Respondent’s guilty plea was set out in a Rule 11 Plea Agreement. In summary, that agreement stated that Respondent was retained to obtain a passport for the minor child of his client.

The law requires that a minor child under age 16 must apply in person with their parents. As a result, a document must be filled out with the US Passport Agency Department of State in which both parents must appear and sign, or the absent parent may complete an affidavit asserting that they acknowledge that the child will obtain a passport. Respondent assisted in the completion of the affidavit, despite having never contacted the other parent. The signature of the absent parent was forged and Respondent found a former employee to notarize the affidavit fraudulently. When the

client submitted the documents to the Passport Agency, irregularities were found. Respondent assisted in the completion of a second set of documents, which also included a forged signature. The Department of State took issue with those documents and requested a court order. Respondent obtained what was later deemed an invalid court order. The passport application was denied. Respondent later provided false statements to the investigating officers about the circumstances surrounding the passport application.

An Order of Suspension with Conditions (By Consent) was entered in September 2018, suspending Respondent from the practice of law for 35 months effective October 31, 2017, the effective date of Respondent's interim suspension. Respondent must also attend three continuing legal education courses and complete fifteen hours of community service.

*Grievance Administrator v Scott William Neal, ADB Case Nos. 17-73-AI; 17-88-JC*

This matter concerned a Notice of Filing of Judgment of Conviction filed in August 2017, based on Respondent's guilty plea in *People v Scott William Neal*, Macomb County Circuit Court Case No. 2017-000943-FH. Respondent was convicted, upon entering a no contest plea for assault with a dangerous weapon. The factual basis for the no contest plea was set out in the warrant request. In summary, that request stated that Respondent had a verbal confrontation which led to Respondent threatening another individual with a handgun. An Order of Suspension with Conditions (By Consent) was entered in March 2018, suspending Respondent for one year effective May 15, 2017, the effective date of Respondent's interim suspension.

**Senior Associate Counsel: Sarah C. Lindsey**

*Grievance Administrator v David M. Kipley, ADB Case No. 17-7-GA*

A hearing panel determined that Respondent David Kipley committed professional misconduct when, as conservator, he donated \$100,000 of the estate's funds to a charity on which Respondent sat on the board of directors. Respondent did not obtain court approval, which was required by the letters of authority issued by the court. Respondent also drafted a will for his client, making a bequest to himself of \$40,000, which had been paid. The panel also determined he collected an excessive fee as conservator and failed to respond to requests for information from the Grievance Administrator. The hearing panel determined that Respondent committed the following misconduct: collected a clearly excessive fee, in violation of MRPC 1.5(a); represented a client when the representation was materially limited by his own interests, in violation of MRPC 1.7(b); prepared a will which bequeathed himself a substantial gift from his client, in violation of MRPC 1.8(c); knowingly disobeyed an obligation of the rules of a tribunal, in violation of MRPC 3.4(c); knowingly failed to respond to a lawful demand for information, in violation of MRPC 8.1(a)(2); committed multiple violations of the Estate and Protective Individuals Code; and violated MCR 9.104(1)-(3).

Respondent was suspended for a period of four years, effective February 2, 2018, and he was ordered to repay \$95,980 in restitution to the estate. The restitution included the \$40,000 bequest that Respondent received in violation of the rules of professional conduct.

*Grievance Administrator v Michael A. Capuzzi, ADB Case No. 17-65-JC*

Respondent Michael Capuzzi was suspended from the practice of law for 90 days, effective April 2, 2018, and ordered to continue in treatment during that time with a qualified anger management professional. The sanction was based on Respondent's conviction of two counts of misdemeanor assault and one count of malicious use of a telecommunications device, also a misdemeanor. The charges stemmed from Respondent's assault of a woman who he had dated, as well as his repeated contact with the victim after the assault, in violation of the a no contact order. The hearing panel determined, "respondent's actions constituted a pattern of attempts to interfere with the witness, and are contrary to the lawyer's obligation to uphold the administration of justice." (Hearing Panel Report, at 7). Further, the use of the phone arose out of a selfish motive, calculated to convince the witness to stop cooperating with the prosecution. As such, Respondent "tried to interfere with the administration of justice and thus violated his duty to promote justice, not subvert it." Finally, the panel agreed that "repeated contact with a victim in a criminal matter in violation of a court order must require condemnation by the profession." (*Id.*). The panel found several mitigating factors applied, but concluded that the "factors of remorse, a clean record, fear of prosecution, and overwhelming emotional upset cannot outweigh the seriousness of the breach of professional duty before us." (*Id.* at 8).

*Grievance Administrator v Kenneth S. Karasick, ADB Case No. 18-77-GA*

Respondent Kenneth Karasick was disbarred from the practice of law, effective December 5, 2018, and ordered to pay \$1,750 in restitution. The hearing panel determined that Respondent intentionally and knowingly violated a prior disciplinary order when he accepted payment to represent a client and continued to practice law after the period of a prior suspension order. Specifically, the panel concluded Respondent practiced law after the period of his suspension, in violation of MCR 9.119(E)(1), had contact with clients after the period of his suspension, in violation of MCR 9.119(E)(2), and held himself out as an attorney after the period of his suspension, in violation of MCR 9.119(E)(4). The panel also determined that Respondent neglected a legal matter entrusted to the lawyer, in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3; knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c); practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, in violation of MRPC 5.5(a); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b), as well as violations of MCR 9.104(1)-(3).

**Associate Counsel: Jordan Paterra**

*Grievance Administrator v Michael L. Kalis, ADB Case No. 17-150-GA*

On December 12, 2017, the Grievance Administrator filed a formal complaint against Respondent alleging that Respondent misappropriated funds while he was a trustee and personal representative of the Michael and Libby Medichkos trust and estate. On June 5, 2018, a week before the misconduct hearing was to take place, the Grievance Administrator and Respondent filed a stipulation for consent discipline. In the stipulation, Respondent pleaded no contest to the allegations of misappropriation and consented to revocation of his law license.

As part of the stipulation, Respondent requested that the hearing panel conduct a hearing to determine the appropriate amount of restitution. On June 12, 2018, the parties appeared for a hearing. The hearing panel questioned Respondent about the stipulation. At the hearing, Respondent agreed to an immediate interim disbarment, effective June 12, 2018. The hearing panel entered the order on that date. The parties appeared for a restitution hearing on October 1, 2018. At that hearing, the Grievance Administrator requested that Respondent pay \$164,145.56 in restitution. Respondent requested an offset of \$16,437, based on quantum merit. The hearing panel denied Respondent's request, and ordered that Respondent pay \$164,145.56 in restitution. On November 7, 2018, the hearing panel issued its misconduct and sanction report, officially disbarring Respondent from the practice of law.

*Grievance Administrator v Celia B. Washington, ADB Case Nos. 18-2-AI; 18-80-JC*

A judgment of conviction and stipulation for consent discipline was filed against Respondent on July 31, 2018, after Respondent pleaded guilty to conspiracy to violate 18 USC 666 (theft or bribery concerning programs receiving federal funds), in violation of 18 USC 371 and 666(a), a felony, on January 2, 2018. Respondent was automatically suspended on January 2, 2018. The underlying guilty plea related to events in 2015, when Respondent was employed as a legal advisor to the Chief of the Detroit Police Department. Part of Respondent's job responsibilities included providing advice to the officer in the Detroit Police Department who was acting as the liaison to private towing companies.

In or about February 2015, an owner of multiple towing companies, which held towing permits in the City of Detroit, met with Respondent. During the meeting, the owner gave Respondent approximately \$3,000 to \$4,000 cash in an envelope. Respondent knew that one of the reasons that the owner was giving the defendant this money was to influence and reward Respondent in connection with the police department's consideration of the distribution of permits to towing companies. The owner hoped that Respondent would provide official assistance in securing a favorable rotation of towing companies for the owner. Respondent accepted the money and did not pay the owner back. In the plea agreement, Respondent maintained that she accepted the money from the owner as a loan, which she intended to pay back, and that when she accepted the money from the owner, she never intended to assist the towing owner with his rotations, and she did not

do so. In the discipline proceedings, the Grievance Administrator and Respondent submitted a consent discipline for a 54-month suspension. After initial concerns by the hearing panel that the suspension was not long enough, the hearing panel conducted a hearing on the consent discipline, ultimately accepted the consent discipline, and suspended Respondent for 54 months, which retroactively began on January 2, 2018, the date of Respondent's automatic suspension.

*Grievance Administrator v Bart R. Frith, ADB Case No. 18-103-GA*

On September 6, 2018, the Grievance Administrator filed a formal complaint against Respondent alleging that, in Respondent's capacity as a court-appointed attorney through the Michigan Appellate Assigned Counsel System (MAACS), Respondent neglected and failed to communicate with a significant number of clients, violating the Michigan Rules of Professional Conduct and the MAACS Minimum Standards for Indigent Criminal Appellate Defense Services. Also on September 6, 2018, the parties filed a stipulation for consent discipline. With the consent discipline stipulation, Respondent admitted to the factual allegations of neglect and the majority of the misconduct allegations. Respondent consented to a one-year suspension. On October 23, 2018, the hearing panel approved the stipulation for consent discipline and suspended Respondent for one year, effective November 1, 2018.

**Associate Counsel: Michael K. Mazur**

*Grievance Administrator v Todd R. Branch, ADB Case No. 18-11-GA*

Respondent was suspended for his failure to appear at a disciplinary hearing, effective December 14, 2018, and pursuant to MCR 9.115(H)(1). The formal complaint in the underlying hearing had two counts: first, that the Law Society of Ontario had revoked Respondent's Ontario law license for a number of reasons, including practicing while suspended and failing to participate in the Ontario disciplinary process, which reflects poorly on the legal profession even outside Ontario, and second, that Respondent failed to acknowledge or answer the Michigan request for investigation filed against him. This case was unique because Canadian disciplinary orders cannot be used for reciprocal discipline under MCR 9.120. Respondent's failure to participate in the Michigan disciplinary hearing, combined with a number of aggravating factors, led to a Michigan order of disbarment in early 2019.

*Grievance Administrator v Mark G. Pritzlaff, ADB Case No. 18-92-GA*

Respondent faced a formal complaint alleging two separate counts of repeatedly misleading clients about the status of their cases, and a count of failing to answer two requests for investigation. Respondent defaulted but successfully set his default aside. An October 2018 disciplinary hearing was rescheduled because of a "medical emergency" detailed in an emergency motion filed by Respondent. At the December 2018 hearing, Respondent was asked by the hearing panel to provide medical records related to his medical emergency along with his defense to the formal complaint. Respondent

appeared at the hearing, but before it began, he fell to the ground and was carried away on a stretcher. Because a medical incident prevented him from participating in the hearing, Respondent was suspended on an interim basis pursuant to MCR 9.115(H)(2), effective December 11, 2018, while proceedings continue.

## **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 impose public discipline, which may include probation, reprimand, license suspension or disbarment. The Grievance Administrator filed **97** formal complaints in 2018, compared to **83** filed in 2017. Appendix A (page 19) 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 **33** new matters in 2018 based on an attorney's criminal convictions, compared to **34** convictions filed in 2017.

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 comparable discipline should be imposed. Reciprocal proceedings were instituted in **8** cases in 2018, compared to **10** in 2017.

The Grievance Administrator is also a participant in ADB reinstatement proceedings initiated by attorneys who have been suspended for more than 180 days or were disbarred, in accordance with MCR 9.124(C). 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 may contest the petitioner's eligibility for reinstatement. Twelve (**12**) state reinstatement petitions were filed in 2018, compared to eleven (**11**) in 2017.

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 Grievance Administrator instituted **0** such proceedings in 2018, compared to **4** in 2017. In addition, there were **11** miscellaneous filings with the ADB, which include Motion for Order to Show Cause, or Motion to Quash Subpoena.

## **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 seeking review of the hearing panel's decision. During the year 2018, the ADB ruled on **20** petitions for review following briefing and oral arguments presented by the Grievance Administrator and the Respondent. The Grievance Administrator, the Respondent, and the complainant may appeal a decision by the Attorney Discipline Board to the Supreme Court which may, in its discretion grant leave to appeal.

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

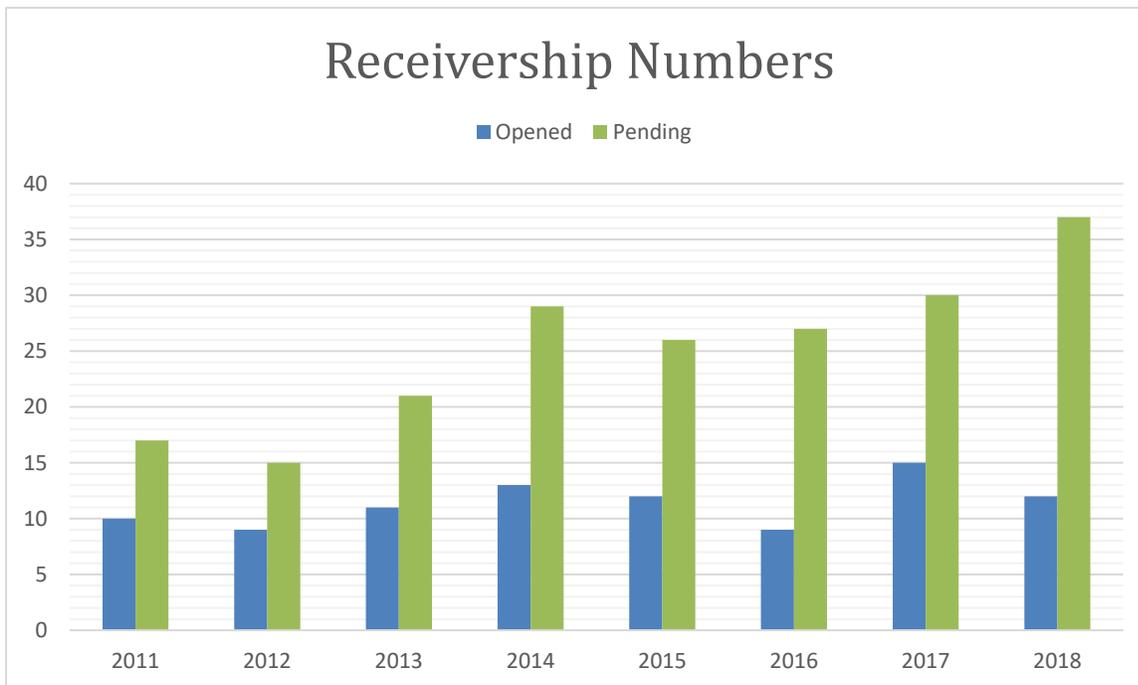
The Grievance Administrator is a party in complaints for superintending controls filed with the Michigan Supreme Court by complainants who disagree with the decisions of the Grievance Administrator or the Commission to reject or close an investigative file. The Grievance Administrator filed an appearance in **4** matters filed with the Supreme Court in 2018. In addition to the complaints for superintending control filed, there were **6** applications for leave to appeal with the Supreme Court.

### **Reconsideration:**

Apart from the formal review or appeal processes, the Grievance Administrator has a long-standing policy of accepting requests for reconsideration of files dismissed 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, the Deputy Administrator will review the file and determine whether an issue or a relevant fact was overlooked by the Intake Unit, 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 dies 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 **12** new receivership files in 2018, compared to **15** new receivership files in 2017. **5** receiverships were closed during the year 2018 compared to **19** in 2017. **37** open receivership files were pending at the end of 2018 compared to **30** 2017.



## Federal Court 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 Grievance Administrator as an interested party in reinstatement proceedings involving lawyers who have been suspended from practice under the local rules of that court. In 2018, the Administrator appeared in **2** discipline or reinstatement proceedings conducted in the U.S. District Court for the Eastern District.

## **Funding**

The Attorney Grievance Commission receives no public funds. The 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 2018, annual dues for active members were **\$315**, of which **\$120** was specifically allocated to the two discipline agencies. For the fiscal year, which ended September 30, 2018, the combined approved operating expenses of the Attorney Grievance Commission and the Attorney Discipline Board were **\$5,241,431**. The Attorney Grievance Commission's approved operating expenses for the fiscal year 2018 were **\$4,026,793**.

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

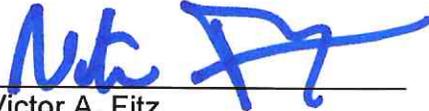
Attorney Grievance Commission  
535 Griswold St., Suite 1700  
Detroit, MI 48226-3259  
Telephone: (313) 961-6585

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Alan M. Gershel  
Grievance Administrator

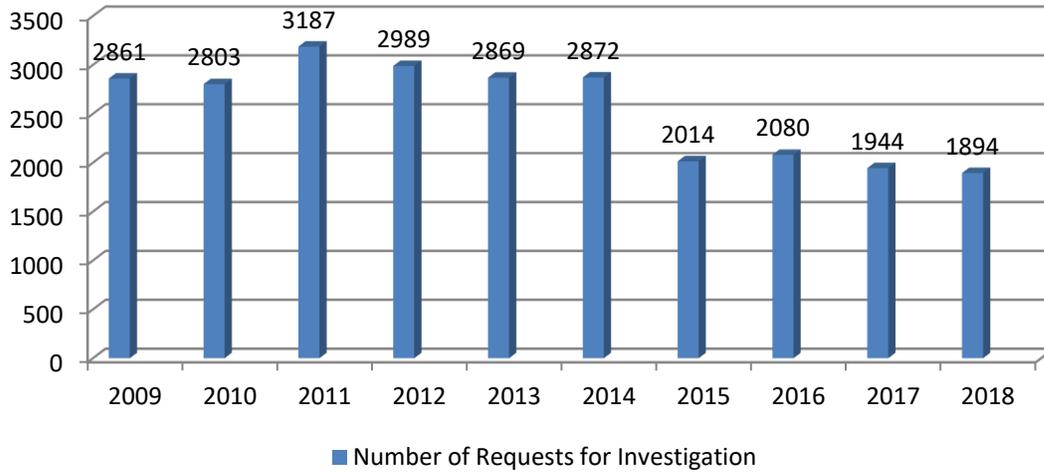


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Victor A. Fitz  
Chairperson, AGC

## Appendix A

### 2009-2018 AGC 10-Year Comparison Chart Requests for Investigation



### 2009-2018 AGC 10-Year Comparison Chart Formal Complaints Filed

