

**State of Michigan**  
**Attorney Grievance Commission**

**Annual Report**

**January 1, 2008 - December 31, 2008**

**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 Detroit.

**Commission Composition**

The Commission consists of nine members, all appointed by the Supreme Court, who serve on a voluntary basis. There are six attorneys and three laypeople. As of October 1, 2008, Richard B. Poling, Jr. and Kent J. Vana were the Chairperson and Vice Chairperson of the Commission, respectively. Other members were Martha D. Moore (Secretary), and Russell E. Mohny, M.D., Michael Murray, Esq., Karen Dunne Woodside, Esq., David L. Porteous, Esq., Pastor Deborah Butler, and Jan A. Brandon, members.

### The Grievance Administrator's Staff

The Grievance Administrator and Deputy Administrator are appointed by the Supreme Court pursuant to MCR 9.111. The Grievance Administrator is empowered by MCR 9.111 to hire legal and support staff. Grievance Administrator Robert L. Agacinski and Deputy Administrator Robert E. Edick have thirteen experienced trial attorneys under their supervision, and a complement of 17 support staff. Additionally, the Commission accepts law students for the legal intern program in connection with their law school.

The Grievance Administrator, his staff, and the Commission note the untimely passing of staff attorney James W. Metz in 2008. Mr. Metz is fondly remembered and missed by all.

The Grievance Administrator possesses a staff of experienced trial attorneys, with eight of the thirteen having been on staff more than ten years. The staff attorneys bring a wide variety of criminal and civil experience to their work on disciplinary matters. The Grievance Administrator similarly enjoys an experienced support staff providing a wide range of administrative, secretarial, technical, and investigative assistance.

### Commission Procedure

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 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 on its face or 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 procurement of court records or banking records. When the investigation is concluded, the Grievance Administrator submits the investigative file to the Commission for their review and disposition.

On each investigative file, the Grievance Administrator, through his/her staff attorneys, recommends to the Commission that: (1) the matter be closed as there is insufficient evidence of professional misconduct to sustain the burden of proof at a disciplinary proceeding; (2) the respondent attorney be placed on contractual probation pursuant to MCR 9.114 and MCR 9.115; (3) the respondent attorney be admonished, with his or her acceptance and consent; or (4) authority be granted to file a formal complaint against the respondent attorney for allegations of professional misconduct.

### Investigations

During 2008, the Commission docketed 2,907 requests for investigation, or grievances. Table 1 below details the number of grievances docketed for the years 1998-2008, with a breakdown of the disposition of files by the Commission for the same time frame. The dispositions include grievances dismissed by the Grievance Administrator pursuant to MCR 9.112(C)(1)(a) and MCR 9.114(A)(1); grievances closed by the Commission; admonitions issued by the Commission; contractual probations approved by the Commission; and individual grievances approved by the Commission for the filing of a formal complaint.

**Table 1 - Dispositions of grievances, 1997-2008**

Year	grievances received	grievances disposed	rejected by the GA or closed in Intake	closed by the AGC	admon-ishments	contractual probation	grievances approved for formal complaint
2008	2,907	2,802	2,141	347	102	45	167
2007	3,293	2,905	2,219	355	128	52	151
2006	3,575	3,280	2,654	275	118	30	203
2005	3,541	3,265	2,667	461	129	36	172
2004	3,475	3,315	2,382	533	178	15	207
2003	3,583	3,629	2,696	540	143	9	241
2002	3,557	3,551	2,477	739	132	3	200
2001	3,575	3,294	1,569	1,166	125	n/a	171
2000	3,373	3,195	1,132	1,333	185	n/a	227
1999	3,505	3,413	1,074	1,578	189	1	215
1998	3,935	3,796	1,358	1,676	179	n/a	241

The dispositions of grievances for a particular year are not necessarily dispositions of the

grievances filed for that year. The dispositions for 2008 may include grievances from previous years, and some of the 2008 grievances will be pending on January 1, 2009.

The number of individual grievances approved by the Commission for the filing of a formal complaint will not 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.

Table 2 reflects that the areas of practice most likely to lead to a grievance are criminal law, domestic relations, probate, and personal injury law.

**Table 2 - Subject matter most prevalent in grievances, 2008**

<b>subject matter</b>	<b>% of total grievances</b>
criminal law	40
domestic relations	15
probate law	7
bankruptcy law	6
commercial litigation	5
personal injury law	4
real estate transactions	4
employment/labor law	3
immigration law	3

## Prosecutions and Other Litigation

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 the ADB. Upon the conclusion of the hearing, the Grievance Administrator, the respondent, and the complainant all possess the right to appeal to the ADB. Further appeals may be taken by leave to the Supreme Court.

The Grievance Administrator alone is empowered by MCR 9.120 to initiate Judgment of Conviction (JOC) proceedings against attorneys who are convicted of a crime. When an attorney is convicted of a crime, the court rules require that the prosecutor, the defense attorney, and the defendant/attorney must all report the conviction to the AGC and the ADB. Through significant outreach efforts, the Grievance Administrator has substantially increased compliance with the reporting requirement. These JOC 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 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 in initiating a JOC proceeding for a misdemeanor conviction.

Attorneys who are disciplined in other jurisdictions (state or federal) will be subject to a reciprocal discipline proceeding initiated by the Grievance Administrator [MCR 9.104(B)]. These proceedings, like JOC proceedings, are similar to a show cause proceeding in which the principal issues are whether the attorney received due process in the initial litigation and whether a reciprocal discipline should be imposed.

Michigan judges who have discipline recommended against them by the Judicial Tenure Commission (JTC) may be subject to a formal complaint under MCR 9.116. The discretion to file such a complaint rests with the Commission.

The Grievance Administrator also is a party in ADB reinstatement proceedings initiated by attorneys who have been suspended for more than 180 days. The burden of proof is on the attorney to establish his or her fitness by clear and convincing evidence. These proceedings are often contested.

The above-recited proceedings, which are similarly reported in the ADB's annual report, are only part of the full picture.

The Grievance Administrator may be involved in federal district court reinstatement proceedings. The district court for the Eastern District of Michigan automatically suspends any lawyer who receives a suspension or revocation and who is also a member of its bar. That attorney must petition for reinstatement, regardless of the length of suspension. The court routinely appoints the Commission as an interested party to provide information and

assistance to the court in their consideration of the reinstatement petition. In 2008, there were 6 new federal reinstatement proceedings for the Eastern District of Michigan.<sup>1</sup>

The Grievance Commission is a party in superintending control<sup>2</sup> filings with the Michigan Supreme Court by complainants who take issue with the Administrator's or the Commission's decision on an investigative file. For 2008, 23 such complaints were filed with the Court. The Grievance Administrator also has a long-standing policy of accepting requests for reconsideration of files concluded by the Intake Unit or the Commission. This process acts as a quality control measure while also providing further accountability to complainants. Upon the receipt of a request for reconsideration, a senior attorney will review the file and the request to determine whether an issue or a relevant fact was overlooked by the Intake Unit or the Commission, or whether new information is provided that could change the analysis or outcome of the matter. If such information is provided, then the file may be reopened for further investigation and analysis. For the year 2008, approximately 450 such requests were received.

Respondent-attorneys who fail to comply with their orders of discipline may be faced with a show cause proceeding filed by the Grievance Administrator in circuit court, pursuant to MCR 9.115(I)(2). Increasingly, these proceedings have been the result of respondent-attorneys who fail to pay the restitution and costs that were contained in the order of discipline.

Receiverships, under MCR 9.119(G), to protect clients of deceased, incapacitated, and absconded attorneys have increased over the last few years. The Grievance Administrator may file with a circuit court a petition for a receivership. When there is no potential conflict, the Grievance Administrator acts as receiver for the files of the subject attorney. A very work-intensive process follows in which the files are identified, cataloged, and prioritized between pending and closed. Letters and/or phone calls are then sent and placed to clients advising of the receivership, and advising that the attorney is no longer available and that the file will be provided, at their request. Courts, in which matters are identified as pending, are contacted so that the attorney's non-appearance does not prejudice the client. Mail is received and forwarded to the appropriate file and client. When necessary, bank accounts are taken so that claims may be made for refunds or distributions. For 2008, the Grievance Administrator commenced 4 new receiverships and provided substantial

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<sup>1</sup> The Western District of Michigan has a similar disciplinary and reinstatement process. However, the Grievance Administrator does not take part in the proceeding as with the Eastern District.

<sup>2</sup> MCR 7.304(A) provides that a petition for superintending control may be filed to implement the Court's superintending control over the Board of Law Examiners, the Attorney Discipline Board, or the Attorney Grievance Commission.

assistance and guidance in numerous matters so as to avoid the necessity of commencing a receivership.

### Funding

The Attorney Grievance Commission is entirely funded by a yearly assessment paid by each Michigan lawyer with their State Bar dues. The yearly assessment is set by the Supreme Court. In the fiscal year ending September 30, 2008, the Commission's actual expenditures were \$3,901,727.

### Looking forward

2009 will bring the continued efficiency of the internal goals for efficient, thorough, and prompt investigations. The Grievance Administrator and members of his attorney staff continue to cooperate with the State Bar in presenting the ethics seminars to improve the knowledge and professionalism of the Bar. The Grievance Administrator will continue to speak to the Bar and civic groups to improve the communication and understanding of the attorney discipline process and will continue to participate in various State Bar Committees focusing on the good of the profession. Given the stress of the practice of law and the difficult economic times of the state and the country, increases in problems involving substance abuse, depression, and other mental conditions are expected.

The Supreme Court continues to review substantial proposed changes to the Michigan Rules of Professional Conduct, as well as revisions to chapter 9.100 of the Michigan Court Rules. The Commission and the Grievance Administrator are fully participating in the ongoing discussion of those proposed changes.

Conclusion

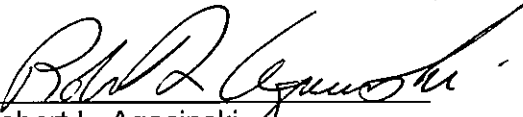
The past year reflected the ongoing changes in the attorney discipline process. The mission continues to be to protect the public and improve the quality of the bar. To accomplish this, the work of the Commission, the Grievance Administrator, and the staff goes well beyond the investigation and prosecution of attorneys.

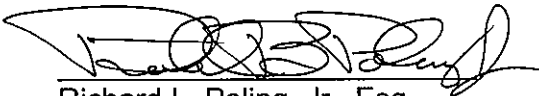
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