

ANNUAL REPORT

2006

OFFICE OF LAWYER REGULATION





**2006 ANNUAL REPORT – STATE BAR OF ARIZONA
OFFICE OF LAWYER REGULATION**

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2006 Annual Report – Office of Lawyer Regulation

The annual report reflects the final disposition of those cases resolved during 2006. The report also indicates the status of all cases in the system as of December 31, 2006. From these figures, general trends can be determined and resolutions within timeframes can be measured.

Lawyer Regulation saw an overall net decrease of 7% in cases pending at all levels at the end of 2006. The number of written inquiries received by the Attorney Consumer Assistance Program (“A/CAP”) also decreased in 2006. However, 62.9% of the written inquiries received in A/CAP were referred to Lawyer Regulation for investigation. This was an increase of 3.2% over 2005. At the close of 2006, approximately 37% of the written inquiries received by A/CAP had been resolved at that initial level.

The overall increase of referrals to Lawyer Regulation was due to the staff shortages in A/CAP. In order to resolve cases in a timely manner, Lawyer Regulation attorneys were assigned more cases for pre-screening, a function that is generally assigned to A/CAP lawyers.

Communication, Diligence and “Misconduct” remain the top three areas of alleged misconduct.¹ Clients continue to generate the vast majority of complaints against lawyers followed by opposing parties. Criminal law and family law continue to see the largest number of complaints.

In 2006, sixty-seven formal complaints were filed.² Those complaints included one hundred thirty-two separate charges of attorney misconduct. The Supreme Court of Arizona disbarred fourteen lawyers, suspended twenty-nine lawyers, and censured twenty-two lawyers. Forty-one lawyers were informally reprimanded; twenty of the lawyers reprimanded also received a term of probation. Thirty-three lawyers were placed on probation.³

These numbers are consistent with figures from the prior three years. Thus, despite staff shortages in both A/CAP and Lawyer Regulation, a similar number of cases were disposed of during 2006 as in prior years.

The regulatory department seeks to resolve many cases without going through the formal disciplinary process. These cases involve poor law office management issues or issues relating to personal problems which do not implicate issues of integrity or self-dealing. Recognizing that there are many lawyers who can improve the level and quality of the service they provide to the public, the State Bar of Arizona offers a wide range of opportunities that serve to educate Arizona lawyers, assist Arizona lawyers in improving their law office procedures and helping Arizona lawyers who are experiencing personal issues that affect their practice of law.

¹ Misconduct includes conduct that constitutes a crime, conduct involving dishonesty, fraud or misrepresentation and conduct prejudicial to the administration of justice.

² This number include formal complaints and direct consent agreements that by-passed the filing of a formal complaint.

³ This includes the lawyers that received probation as a sole sanction and lawyers who were reprimanded and placed on probation.

In keeping with this philosophy, the State Bar may recommend that a lawyer be placed in a diversion program after a finding of what may be termed a low-level violation of the rules. Diversion is not a form of discipline. Diversion is recommended when the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through appropriate educational courses or programs, mentoring or practice monitoring services, dispute resolution programs or medical, psychological or other professional treatment or assistance. In 2006, the Probable Cause Panelist issued 98 orders of diversion in an effort to provide education and assistance to Arizona lawyers. These numbers are consistent with prior years and indicate that the program is being utilized in an appropriate manner.

In addition to providing diversion for 84 lawyers, the State Bar issued 260 letters to lawyers that included a detailed educational comment regarding their conduct. Comments generally convey to the lawyer the specific conduct that was problematic and provides information on how to implement best practices. Comments may also refer the lawyer to specific programs that can further educate and assist the lawyer.

In the year 2007, the Lawyer Regulation Department will focus on increasing the number of cases resolved through the A/CAP process. This will result in more timely dispositions of the lower-level violations. As a result, bar counsel will be better able to focus their efforts on the investigation and prosecution of more serious allegations of misconduct.

TERMINOLOGY

1. **Charge**

“Charge” means any allegation of misconduct or incapacity brought to the attention of the State Bar. Rule 46(f)(3), Ariz.R.S.Ct. A charge is investigated only if it contains allegations which, if true, would be grounds for discipline or transfer to disability inactive status. (*See the Overview of the Disciplinary Process* at the end of this report).

The State Bar of Arizona investigates allegations of misconduct or incapacity brought to its attention. A complaining party usually initiates a charge against a lawyer. Records maintained by the State Bar are based upon individual charges. Often times, individual attorneys will be the subject of more than one charge, depending on the number of individual complainants who file such charges with the state bar.

If probable cause is found against an attorney following an investigation of each charge, the state bar makes every effort to consolidate all charges into one formal complaint. Sanctions are issued depending on the severity of the misconduct and other relevant factors present in the formal proceeding.

2. **Complaint**

“Complaint” means a formal complaint prepared by the State Bar of Arizona and filed with the Disciplinary Clerk of the Supreme Court pursuant to Rule 46(f)(6), Ariz.R.S.Ct. Complaints will often times consist of multiple charges, following a finding of probable cause after completion of investigation of those charges.

3. **Formal Disciplinary Proceedings**

Formal disciplinary proceedings generally begin with the State Bar filing a complaint or agreement for discipline by consent with the disciplinary clerk after investigation of the charge(s) resulting in a finding of probable cause. *See*, Rules 56 and 57(a), Ariz.R.S.Ct. Formal proceedings usually include subsequent review by a settlement officer, a hearing officer, the Disciplinary Commission of the Supreme Court and the Supreme Court of Arizona. Review by the Supreme Court is discretionary.

STATUS OF MATTERS RECEIVED IN 2006

As of 12/31/2006

Cases created at the court level,
includes: Reciprocal, Reinstatement
and Disability cases.
13

Conservatorships opened in 2006
4

Total Inquiries
Written and Telephonic
4977

Written Charges
2076

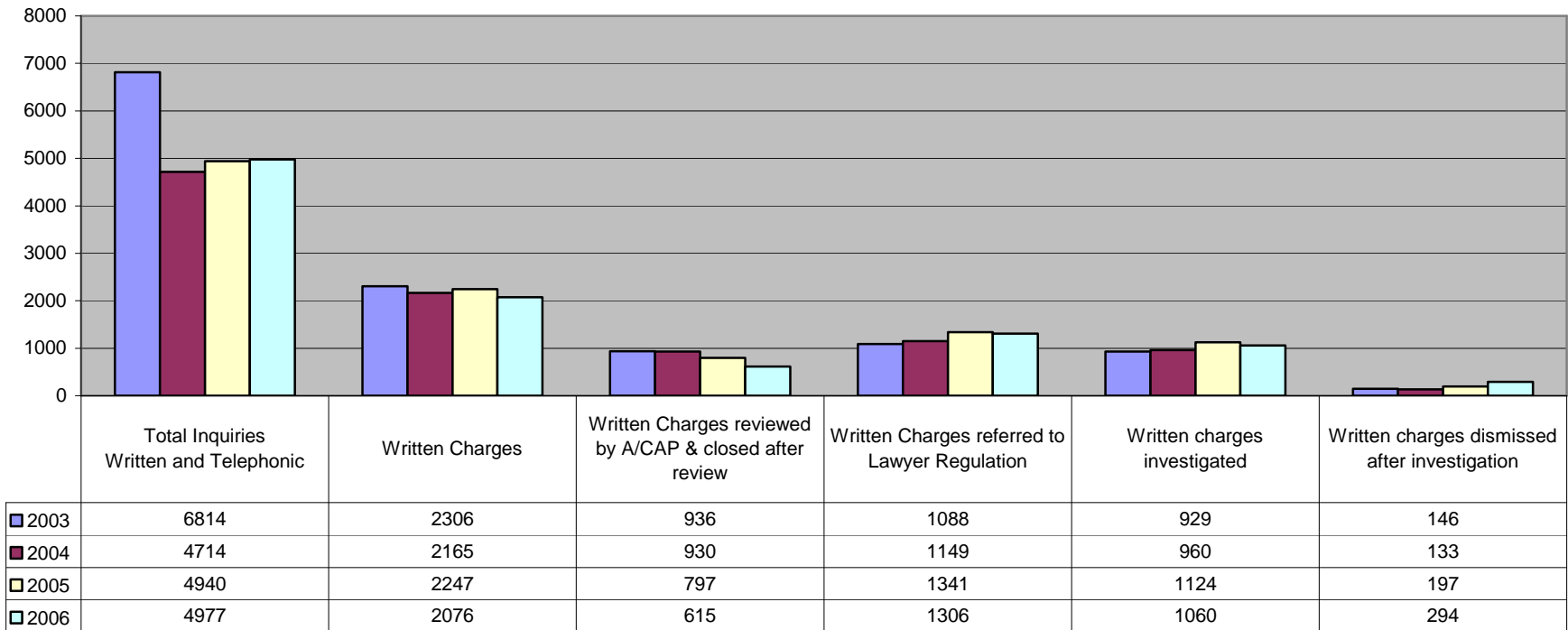
Written Charges reviewed by the Attorney/Consumer Assistance Program counsel & closed after screening, mediated, or referred to some other State Bar program such as Peer Review or Fee Arbitration 615	Written charges pending in A/CAP 155	Written charges referred to Lawyer Regulation 1306
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Written charges reviewed & dismissed or referred to some other State Bar program such as Peer Review or Fee Arbitration. 209	Written charges referred to bar counsel still pending 37	Written charges investigated (charges contain allegations which, if true, would constitute ethical misconduct or incapacity.) 1060
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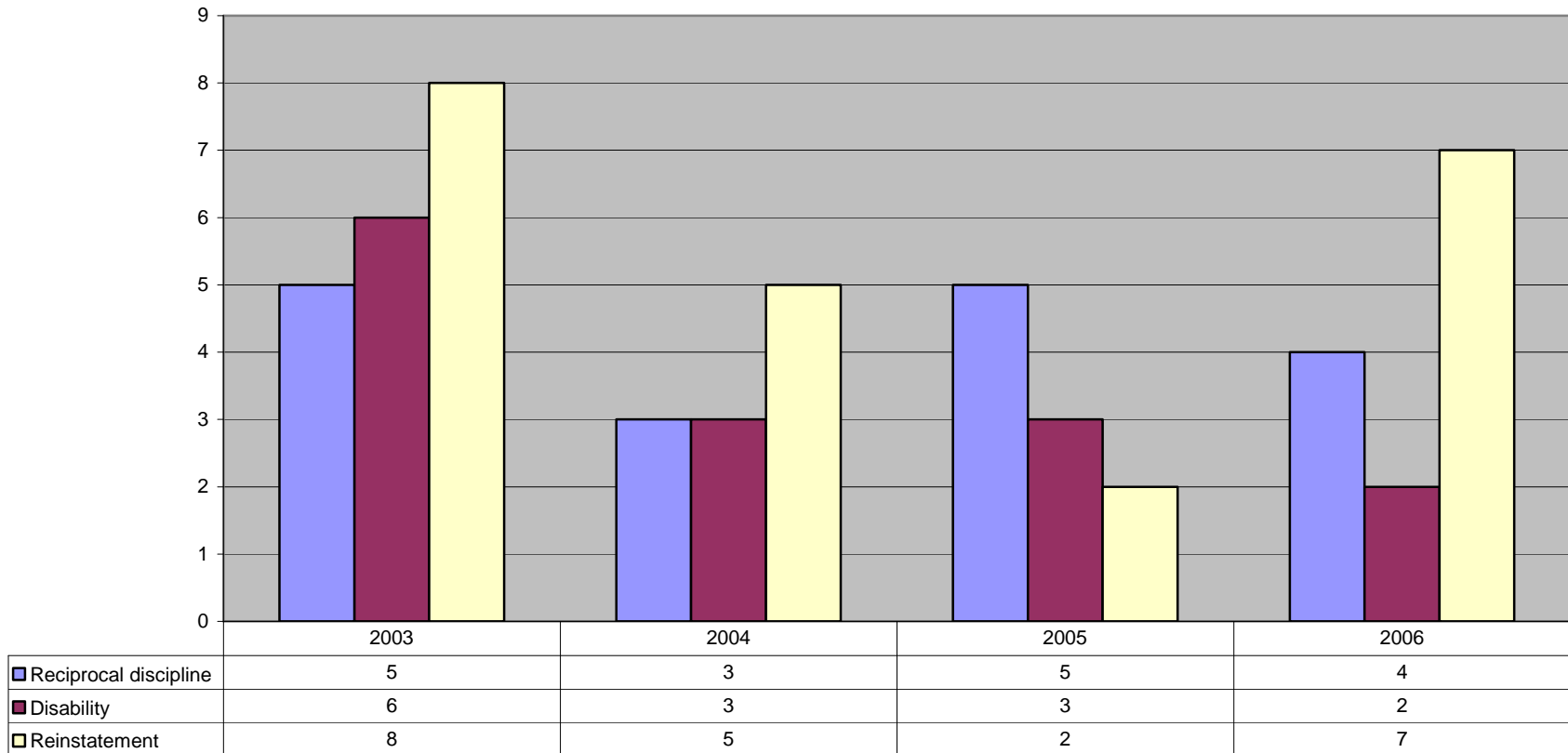
Charges with ongoing investigations 592	Charges dismissed by bar counsel or panelist after investigation 294	Charges resulting in Orders of Diversion 41	Charges resulting in Informal Reprimand/ Probation or Restitution 36	Charges resulting in probable cause/awaiting formal disciplinary proceedings 20	Charges advanced to formal disciplinary proceedings 67	Charges stayed 10
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Status of matters received in 2006



Comparison of files originating at the Supreme Court in 2006





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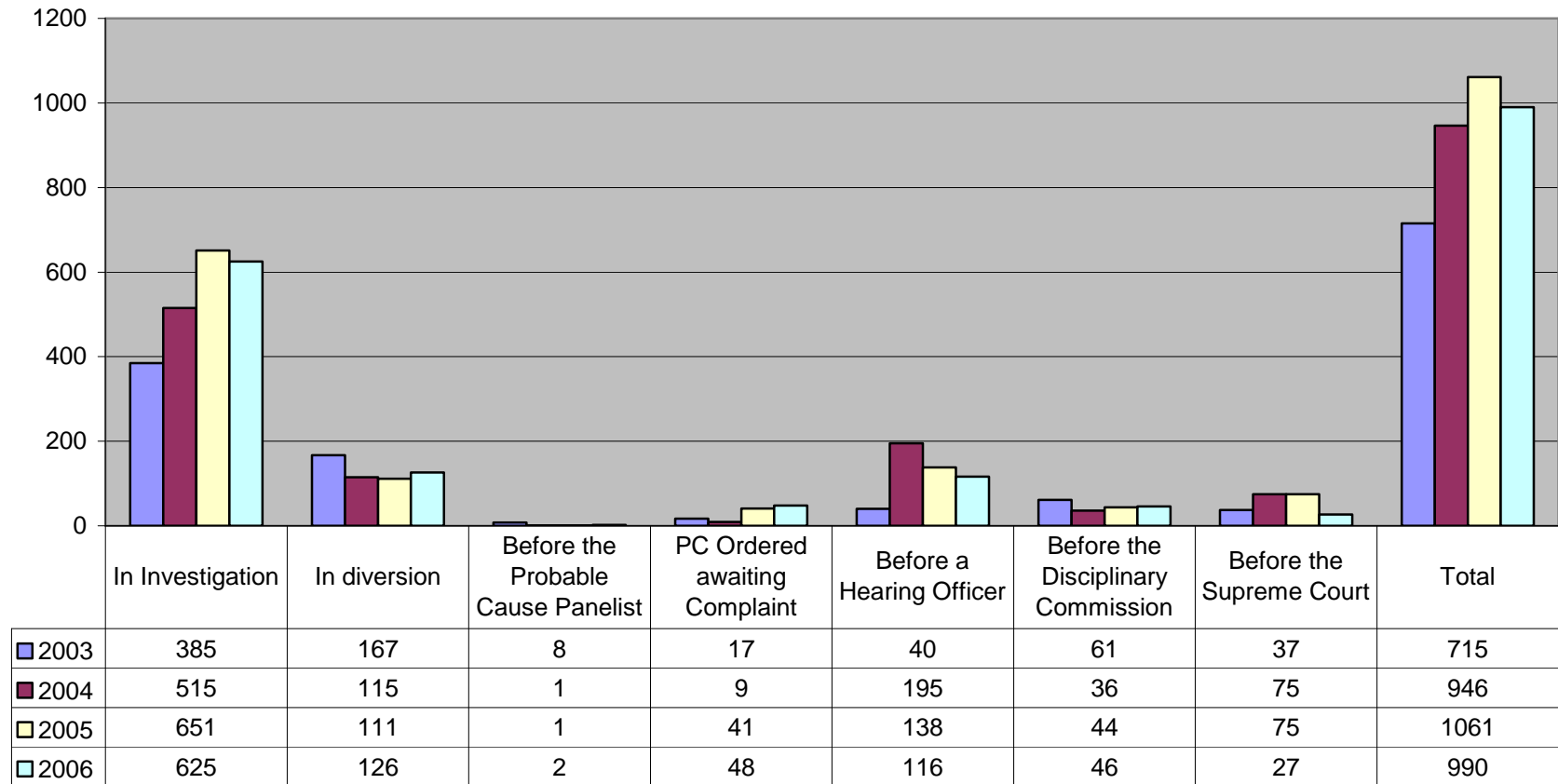
CHARGES PENDING AT EACH LEVEL BY YEAR RECEIVED

Year Rec'd	In Investigation		In Diversion		Before Panelist		PC Ordered – Awaiting Complaint		Before Hearing Officer		Before Disciplinary Commission		Before Supreme Court		TOTALS EACH YEAR	
	12/31		12/31		12/31		12/31		12/31		12/31		12/31		12/31	
	2005	2006	2005	2006	2005	2006	2005	2006	2005	2006	2005	2006	2005	2006	2005	2006
1976	0	0	0	0	0	0	0	0	1*	0	0	0	0	0	1	0
1994	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1995	0	0	1	1	0	0	0	0	0	0	0	0	0	0	1	1
1996	0	0	5	0	0	0	0	0	0	0	0	0	0	0	5	0
1997	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	0
1998	0	0	4	0	0	0	0	0	0	0	0	0	0	0	4	0
1999	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	0
2000	0	0	5	0	0	0	0	0	1	1	0	0	0	0	6	1
2001	0	0	7	4	0	0	0	0	0	0	0	0	0	0	7	4
2002	0	0	3	1	0	0	0	0	2	1	1	2	1	0	7	4
2003	6	2	6	1	0	0	1	1	15	2	7	2	28	0	63	8
2004	23	4	43	29	0	0	7	6	63	10	21	7	45	4	202	60
2005	622	29	33	56	1	0	33	21	56	50	15	32	1	18	761	206
2006	--	590	--	34	--	2	--	20	--	52	--	3	--	5	--	706
Total	651	625	111	126	1	2	41	48	138	116	44	46	75	27	1061	990
		-4%		14%		100%		17%		-16%		5%		-64%		-7%

Chart compares number of matters by status which were pending on 12/31/2005 and 12/31/2006, and the year in which matters were received by the State Bar of Arizona. Also indicates percentage of increase or decrease in the total matters pending at each level.



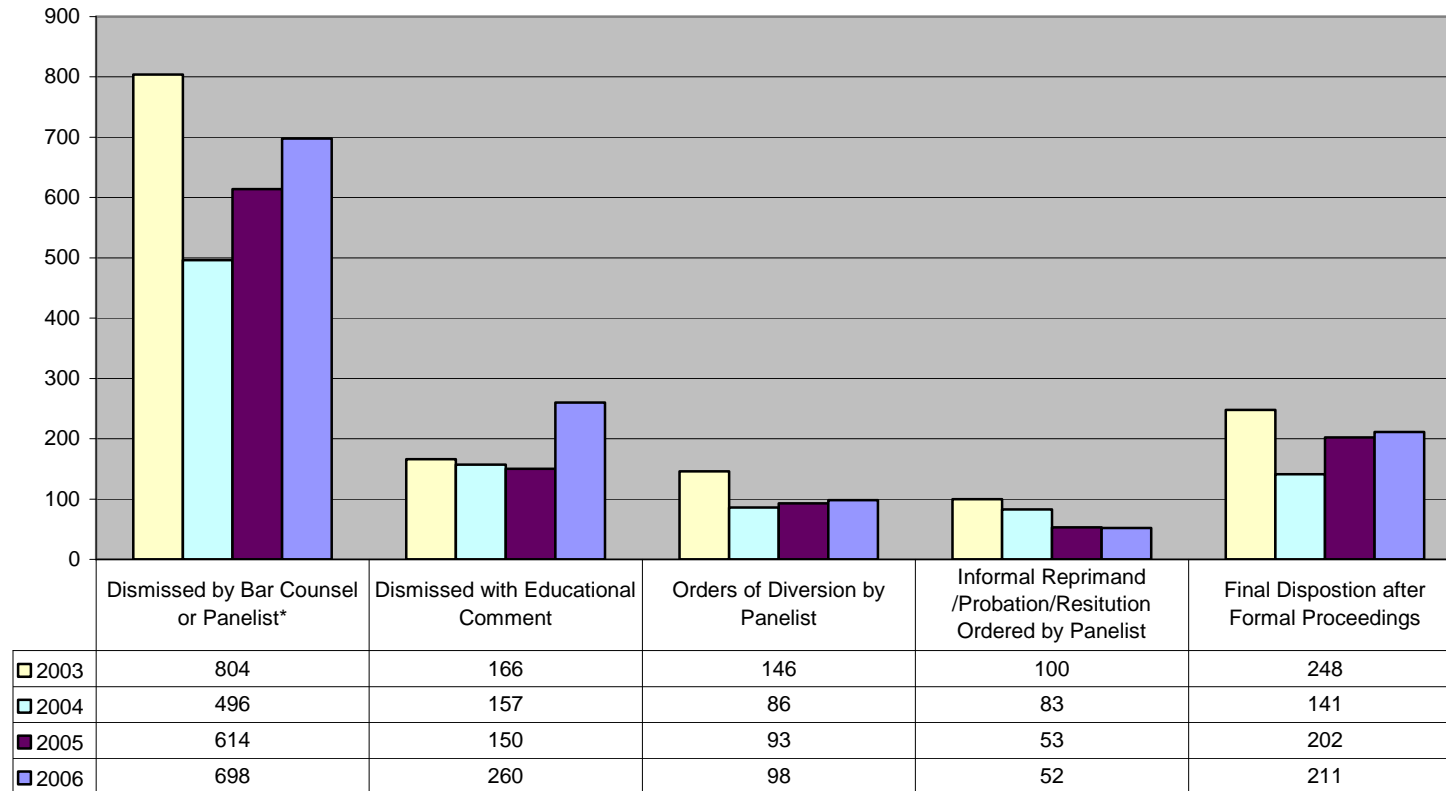
ALL CHARGES PENDING BY STATUS



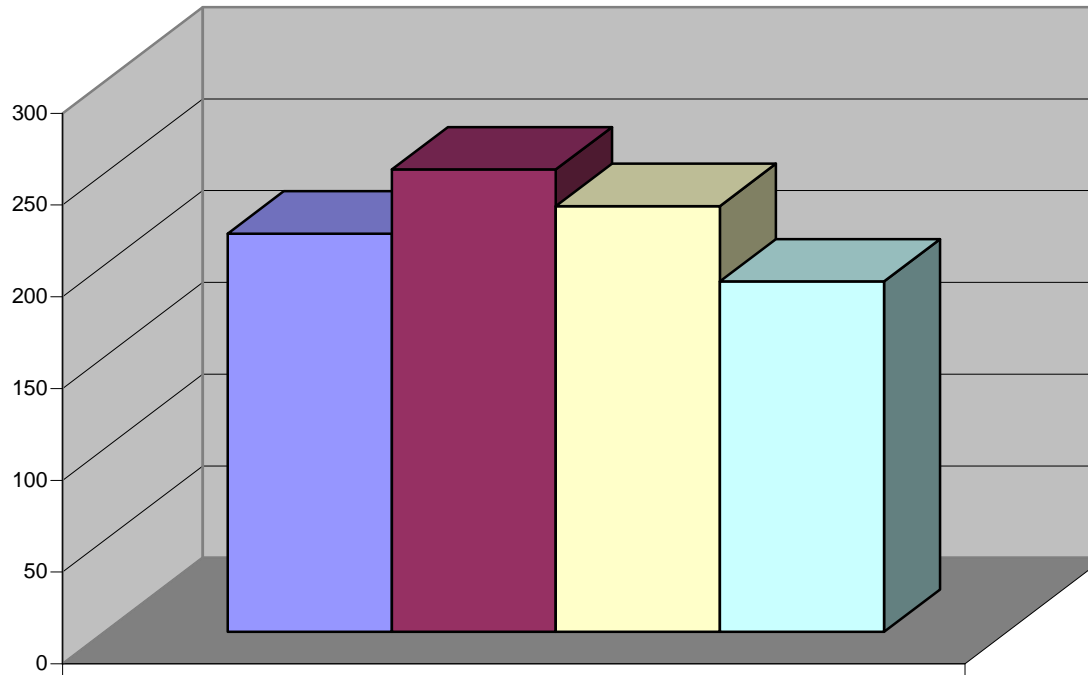


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Final Disposition of Charges During the Year Indicated

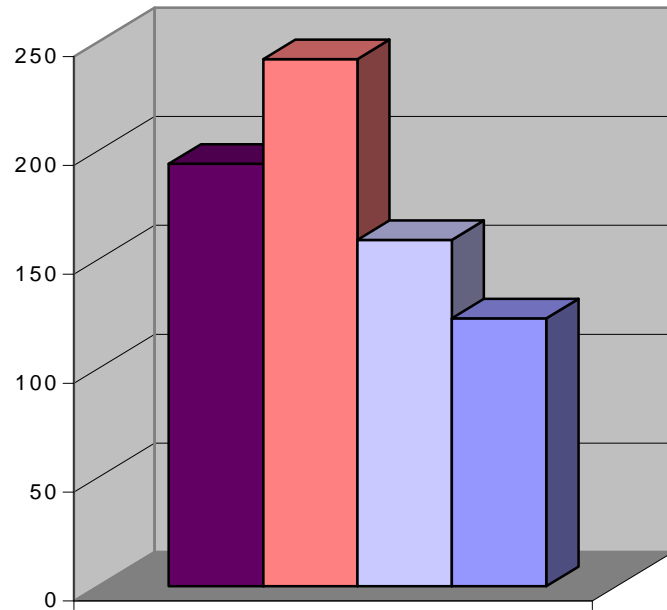


Total Probable Cause Orders Issued



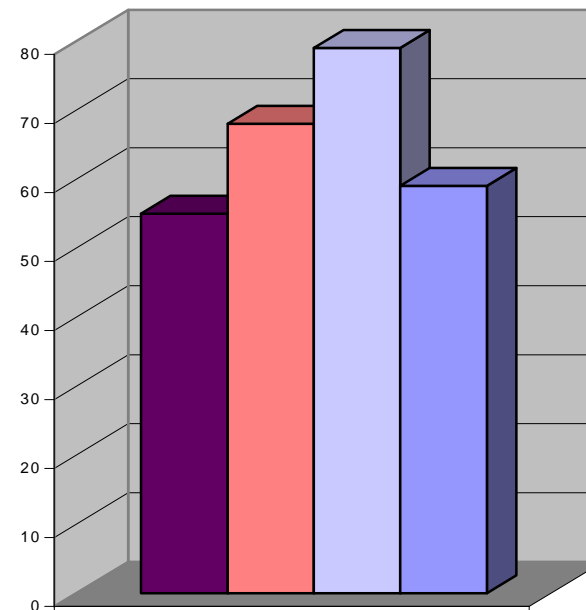
■ 2003	217
■ 2004	252
■ 2005	232
■ 2006	191

Charges Filed in Formal Complaints



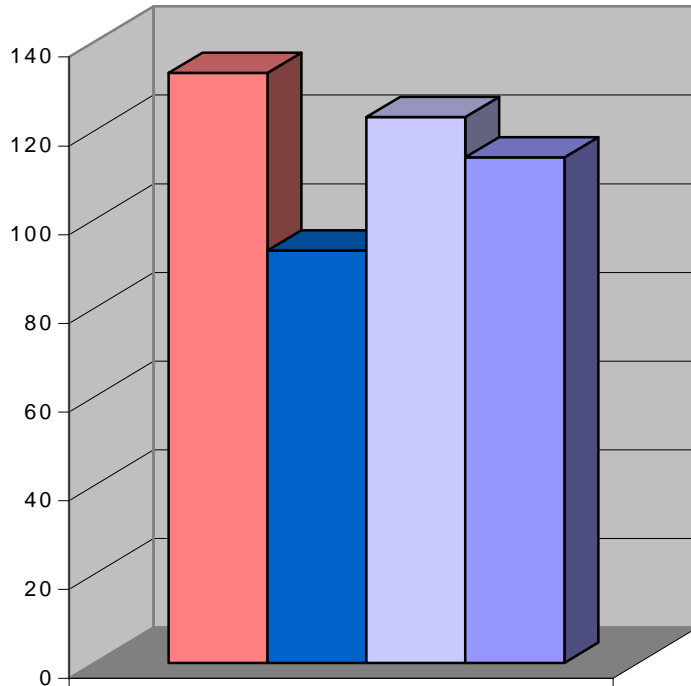
2003	194
2004	242
2005	159
2006	123

Total Number of Complaints Filed



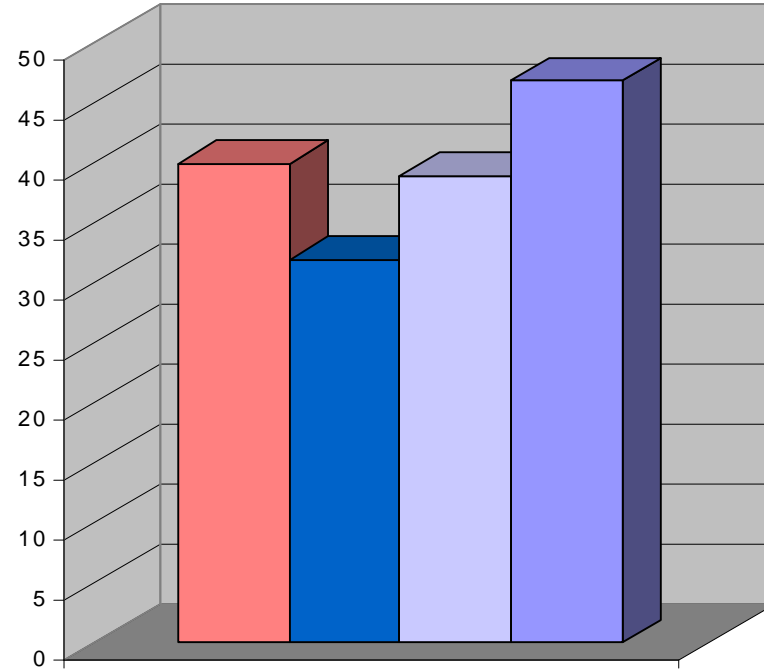
2003	55
2004	68
2005	79
2006	59

Charges in Consent Agreements



2003	133
2004	93
2005	123
2006	114

Total Number of Consent Agreements Filed



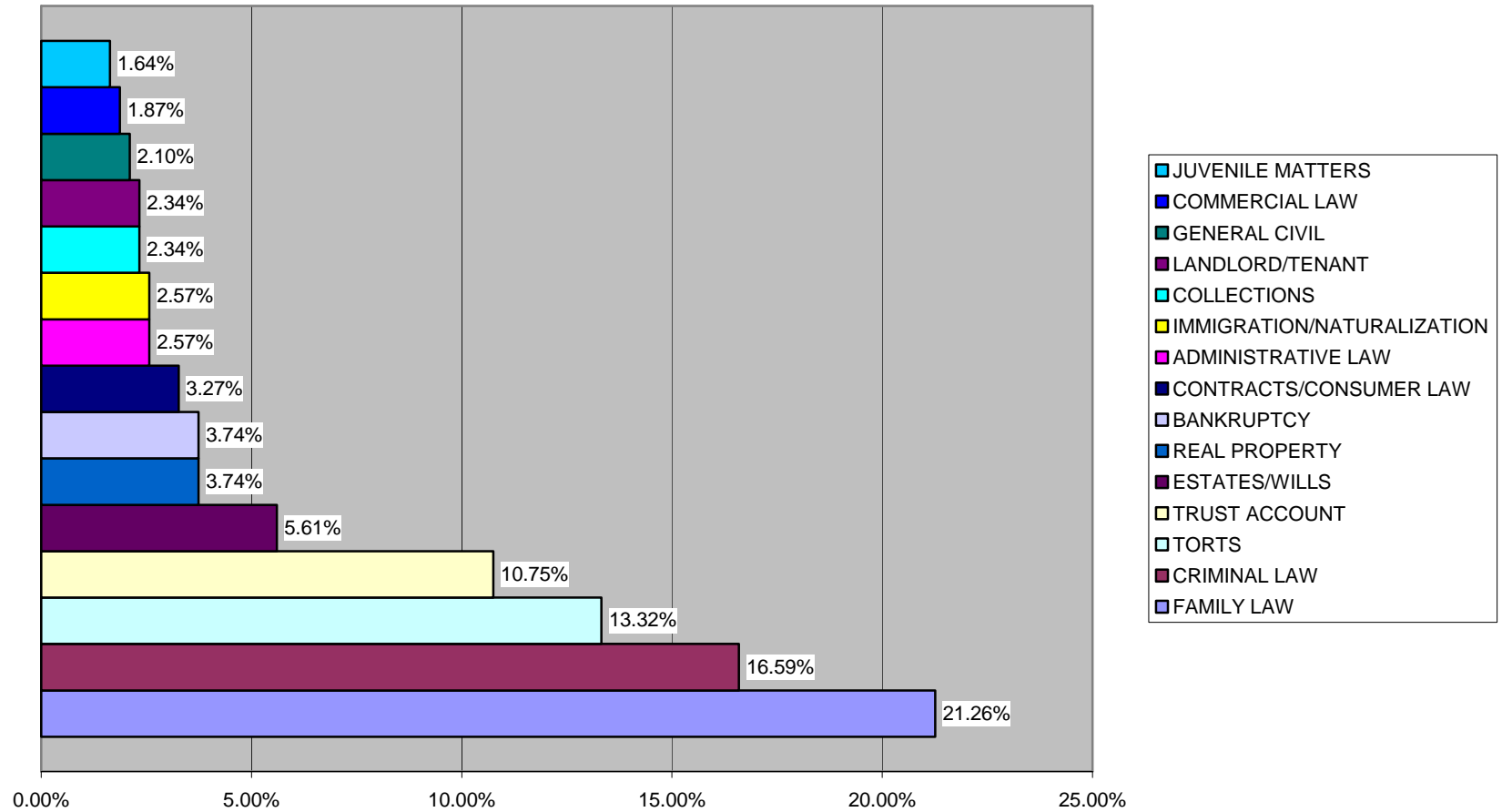
2003	40
2004	32
2005	39
2006	47

Total Consent Agreements includes eight (8) “Direct Agreements”. Direct Agreements are charges that, would result in a formal complaint, absent the filing of the direct agreement.



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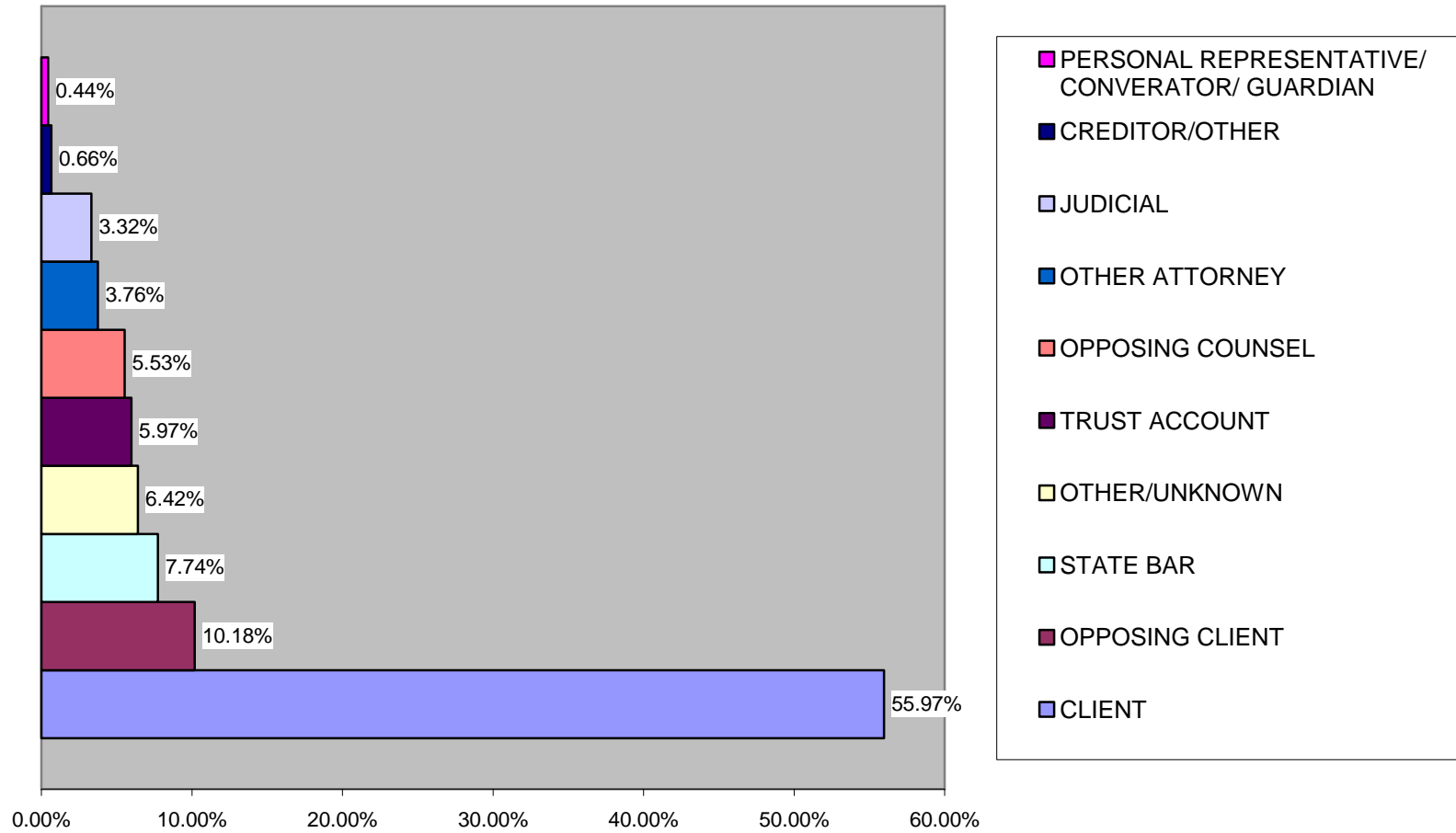
Characterization of Most Common Complaints by Area of Practice





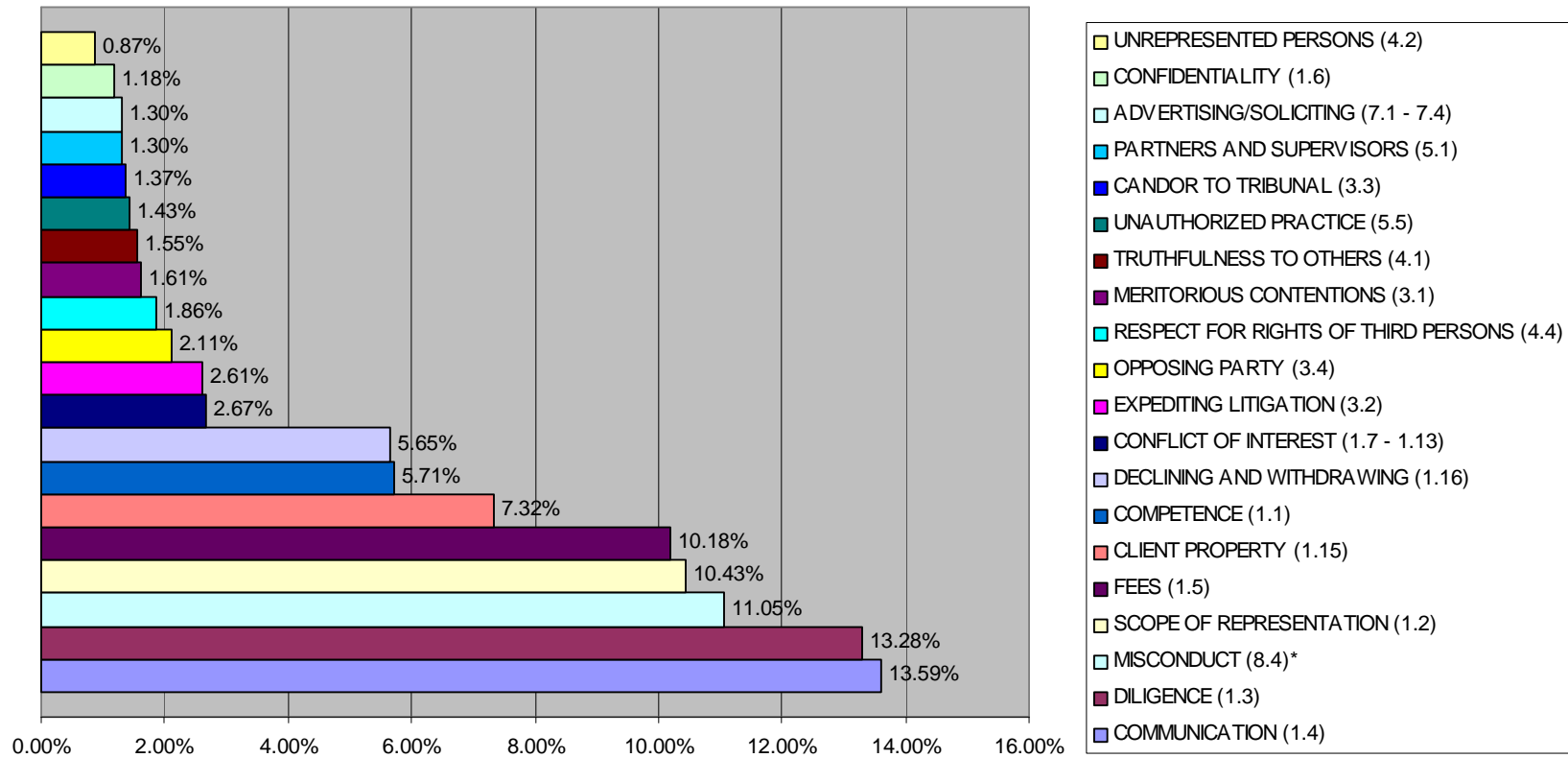
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Characterization of Most Common Complaints by Identity of Complainant



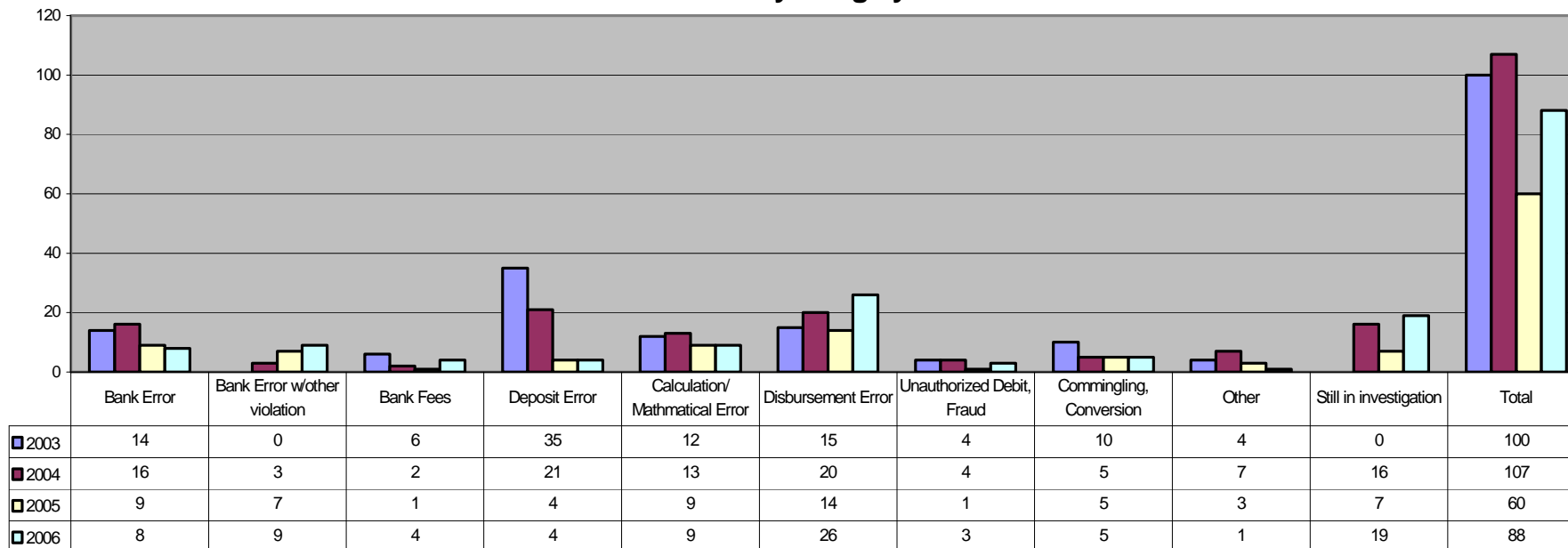


Characterization of Most Common Charges by Types of Specific Alleged Conduct



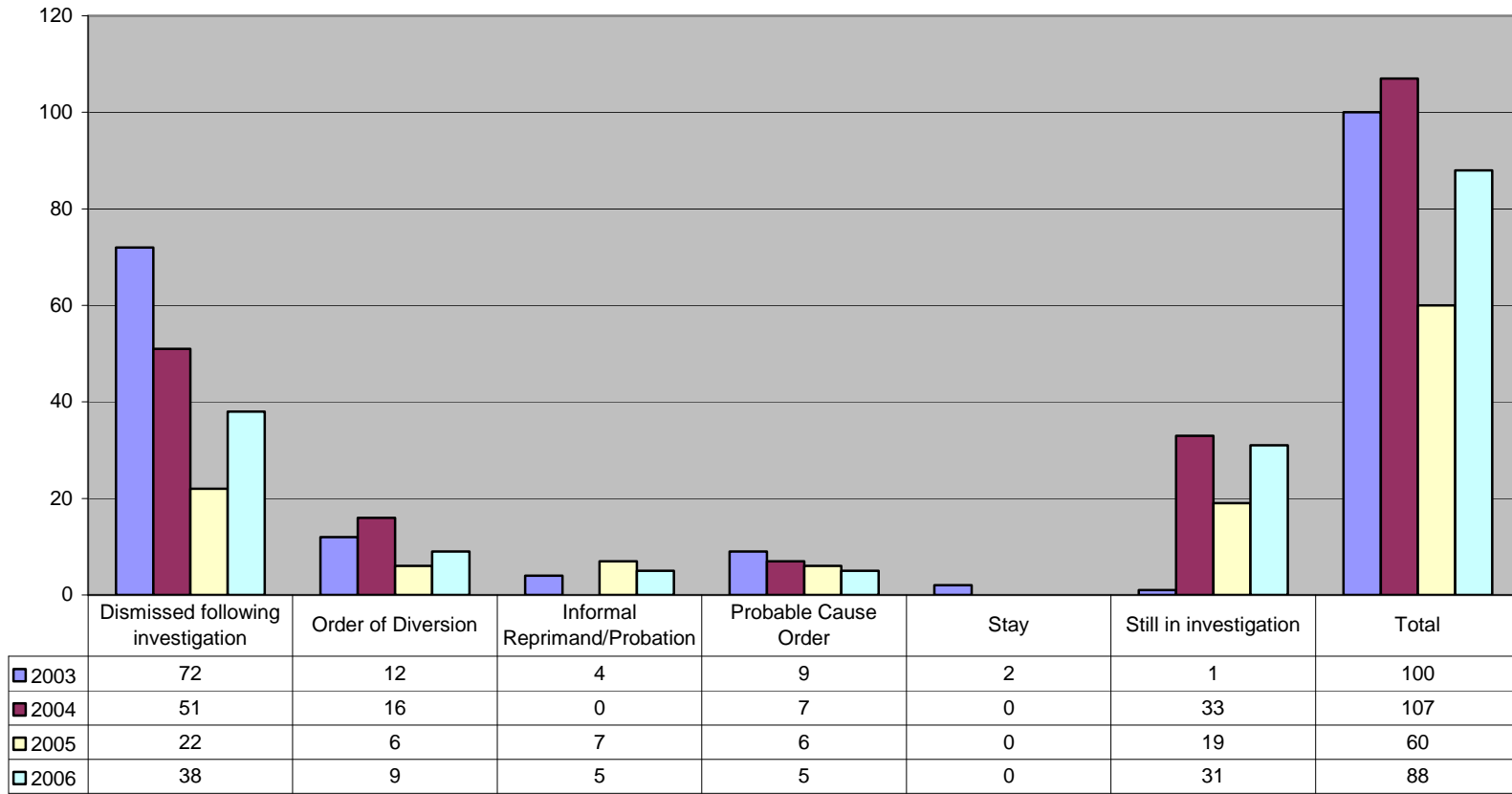
*Misconduct (ER 8.4) includes conduct that constitutes a crime that reflects adversely on the lawyer’s honesty, trustworthiness or fitness; conduct involving dishonesty, fraud, deceit or misrepresentation; and conduct prejudicial to the administration of justice.

Trust Account Violations by Category of Year Received



- Bank Error: Overdraft caused by a bank error.
- Bank Error with other rule violations: The original overdraft was a bank error; however, when reviewing records other trust account violations were identified.
- Bank Fees: Overdraft occurred due to the lawyer’s failure to maintain sufficient funds in the trust account to cover administrative fees.
- Deposit Error: Overdraft was due to a deposit error. For example, lawyer deposited funds into the wrong account by utilizing wrong deposit slip or lawyer failed to make the deposit and offsetting funds cleared the account.
- Calculation/mathematical error: Overdraft occurs due to a bookkeeping error.
- Disbursement error: Overdraft is caused by the lawyer writing a check against uncollected funds.
- Unauthorized debit, Fraud: Overdraft occurs due to unauthorized use by third party.
- Commingling: Personal funds were placed in trust account or client funds were placed in operating account.
- Conversion: Money belonging to a client or third party, was taken, that was not otherwise authorized to take.

Disposition/Status of Trust Account Charges During the Year Indicated





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ATTORNEY/CLIENT ASSISTANCE PROGRAM

	2003	2004	2005	2006
Total # of Telephonic and Written Inquiries	6814	4714	4940	4977
Total Written charges	2306	2158	2247	2076
Referrals for Disciplinary Investigation	1087	1149	1341	1306
Percentage of Charges referred for investigation	47.1% of written charges	53.2% of written charges	59.7% of written charges	62.9% of written charges



MISCELLANEOUS STATISTICS FOR DISCIPLINARY MATTERS

<u>AVERAGE ONGOING WORKLOAD PER STAFF BAR COUNSEL</u>		
Year	Average	Average number of charges ongoing in investigation and in formal disciplinary proceedings.
2004	201	
2005	234	
2006	305	

<u>PROBABLE CAUSE PANELIST</u>				
Year	2003	2004	2005	2006
Number of charges reviewed by Probable Cause Panelist	413	263	243	452
Number of orders signed by Probable Cause Panelist (includes dismissal appeals, stays, requests for confidentiality, referrals to diversion)	1020	978	1065	1053

<u>ETHICS/TRUST ACCOUNT DIVERSION</u>				
Year	2003	2004	2005	2006
Number of Ethics/Trust Account Enhancement Program Attendees	62	58	35	65

<u>DISCIPLINARY COMMISSION</u>				
Year	2003	2004	2005	2006
Matters heard by Disciplinary Commission of the Supreme Court	87	66	78	86

<u>REVENUE</u>				
Year	2003	2004	2005	2006
Discipline Case Cost Recovery	\$134,058.23	\$85,225.01	\$74,271.34	\$133,457.20
Ethics/Trust Account School	\$24,076.60	\$17,700.00	\$12,650.00	\$20,700.00



2006 ATTORNEYS SANCTIONED,
ATTORNEYS TRANSFERRED TO DISABILITY INACTIVE STATUS,
and ATTORNEYS REINSTATED

INFORMAL REPRIMANDS

<i>Name</i>	<i>Date Issued</i>	<i>Includes Probation</i>	<i>Number of Charges in each Informal Reprimand</i>
Alavez, Erin M.*	09/01/06	√	1
Baker, Thomas M.*	05/18/06		1
Ball, Richard T.	03/30/06	√	1
Biles, C. Dunham	12/13/06		1
Christof, Kevin F.*	05/31/06		1
Collins, Joseph E.*	05/16/06		1
Cook, Robert M.	02/10/06	√	1
Cookson, Kirk S.*	02/14/06	√	1
Coughlon, Robert E.*	10/25/06	√	1
DiCampli, Nicki*	10/04/06		1
Emanuel, Reuben M. *	04/28/06	√	1
Engle, Darryl*	09/22/06		1
Franklin, Charles P.*	12/21/06	√	1
Gravina, John A.*	09/06/06	√	1
Gulinson, Gene G.*	04/28/06	√	1
Jennings, J. Douglass*	02/03/06		1
Kabateck, Brian S.* (non-member)	08/02/06		1
LaCambra, Edward V.*	04/03/06	√	1
Lee, Joseph W.*	02/15/06	√	1
Martinez, Richard M.*	02/12/06	√	1
McAuliffe, Christine Meis*	12/27/06		1
Molin, Emil J.*	12/15/06		1
Mulligan, Clarence W., III*	02/14/06		1
Neuheisel, Richard G.	12/18/06	√	1
Petersen, Nancy D.*	10/30/06	√	1
Pincus, Steven H.*	09/18/06	√	1
Prakel, Judith M.*	12/27/06		1
Robbins, Merrill W. *	04/20/06	√	1
Romero, Raymond Daniel*	12/21/06	√	1
Shapiro, Michael A.*	01/18/06		1
Shaw, Augustus H. IV*	08/16/06	√	1
Shew, Michael J.*	06/09/06		1
Siirtola, Jeffrey S.*	02/15/06		1

INFORMAL REPRIMANDS cont.

<i>Name</i>	<i>Date Issued</i>	<i>Includes Probation</i>	<i>Number of Charges in each Informal Reprimand</i>
Spears, Rita L. *	04/28/06		1
Sullivan, William P. *	07/24/06		1
Valant, Edwin J. *	07/05/06		1
Viles, James E.*	12/07/06		1
Walraven, Richard *	04/03/06	√	1
Williams, Ondre J. *	08/02/06	√	1
Woods, Winton deRuyter, III *	04/13/06		1
Zoesch, Thomas J.* (non-member)	04/27/06		1

*Informal Reprimands imposed by Probable Cause Panelist

PROBATION

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Probation</i>
Allen, Gove L.	09/26/06	2
Chenal, Carmen A.*	09/18/06	1
Chenal, Carmen A.*	09/18/06	1
DeCosta, David P.*	02/26/06	1
Gillespie Strub, DeeAn*	10/20/06	1
Inserra, Daniel*	10/30/06	1
Lee, Joseph W.*	06/27/06	1
McVay, J. Douglas*	07/23/06	1
Miranda, Victoria R.*	12/21/06	1
Peskind, Elliot J.*	12/21/06	1
Petersen, Nancy D.*	08/02/06	1
Romo Vejar, Jesus R.*	09/18/06	1
Wattel, David E.*	08/16/06	1
Whipple, Rory L.*	02/01/06	1

*Orders of Probation imposed by Probable Cause Panelist

RESTITUTION

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Restitution</i>
Bower, Matthew C.	12/21/06	1
Bower, Matthew C.	12/21/06	1
Bower, Matthew C.	12/21/06	1
Brown, George R.	01/19/06	1
Clark, Carroll A.	01/18/06	1
Nelson, Barry G.	10/04/06	1
Rolph, John Daniel	08/28/06	1

INTERIM SUSPENSIONS

<i>Name</i>	<i>Date Issued</i>
Alexander, Stephen J.	04/17/06
Baffa, Suzanne	09/26/06
Bower, Matthew C.	03/14/06
Crotts, William P.	11/28/06
Grabinski, Thomas D.	11/28/06
Keith, Brian M.	11/28/06
Neumann, Michael	04/14/06
Wintermute, Susan G.	09/06/06

CENSURES

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Censure</i>
Abernathy, Deborah L.	01/04/06	1
Alexander, Arthur B.	06/15/06	1
Bendalin, Sherman R.	12/28/06	1
Bond, Stephanie K.	08/11/06	1
Cochran, Jerry L.	05/16/06	1
Ellett, Ronald J.	11/22/06	1
Finander, Brian E.	02/13/06	2
Gwilliam, Dale R.	02/27/06	1
Harris, John Duke	10/23/06	2
Hentoff, Nicholas S.	10/11/06	2
Larson, Gregory A.	06/16/06	1
Lee, Carl D.	01/10/06	1
Lipartito, David E.	11/27/06	1
Martin, Rex L.	12/28/06	1
McFadden, Kevin P.	08/04/06	1
Nelson, Barry G.	03/20/06	1
Peskind, Elliott J.	10/13/06	1
Robbins, Susan M.	02/27/06	1
Saienni, Joe	10/27/06	1
Shorr, Margo A.	11/21/06	1
Sterman, Susan V.	12/28/06	1
Stevens, Laurence B.	11/28/06	2

SUSPENSIONS

<i>Name</i>	<i>Term of Suspension/Date Issued</i>	<i>Number of Charges in each Suspension</i>
Alikes, Stephen K.	3 years eff. 04/13/06: Issued 03/14/06	3
Banales, Paul S.	6 months eff. 03/09/06: Issued 02/07/06	1
Christof, Kevin F.	2 years eff. 09/22/06: Issued 08/23/06	3
Coe, Sean M.	2 years eff. 05/24/06: Issued 05/24/06	5
Dean, Nancy Elizabeth	6 months eff. (retroactive 09/27/04): Issued 03/16/06	1
Doyle, Michael J.	90 days eff. 07/27/06: Issued 06/27/06	1
Erickson, Richard C.	6 months & 1 day eff. 12/29/06: Issued 11/29/06	2
Everett, James J.	30 days eff. 03/09/06: Issued 02/07/06	1
Gabroy, Stefani J.	2 years eff. 10/26/06: Issued 09/26/06	4
Gieszl, Holly R.	1 year eff. 05/20/06: Issued 04/20/06	1
Gottesman, Frank	3 years eff. 05/24/06: Issued 05/24/06	1
Hampton, David M.	90 days eff. 02/03/06: Issued 01/04/06	21
Hickle, Frederick C.	4 months eff. 06-23-06: Issued 05/24/06	2
Houser, William J., Jr.	6 months eff. 06/27/06: Issued 06/27/06	1
Johnson, Mark L.	6 months & 1 day eff. 05/20/05: Issued 02/07/06	5
Jung, Robert R.	6 months eff. 09/22/06: Issued 08/23/06	2
Kraeger, Dorothea P.	4 years eff. (retroactive) 03/23/05: Issued 03/14/05	18
Lacey, Henry B.	6 months eff. 09/26/06: Issued 09/26/06	1
Lynch, Michael L.	90 days eff. 06/23/06: Issued 05/24/06	2
Masters, Kathleen D.	6 months & 1 day eff. 03/09/06: Issued 02/07/06	10
Masters, Kathleen D.	6 months & 1 day eff. 05/24/06: Issued 05/24/06	1
Morrison, John G.	1 year eff. 07/27/06: Issued 06/27/06	2
Nomura, Edmund Y.	3 years eff. 03/14/06: Issued 03/14/06	2
Nomura, Edmund Y.	3 years eff. 03/14/06: Issued 05/24/06	8
Odneal, Sara Jane	30 days eff. 12/29/06: Issued 11/29/06	1
O'Quinn, Kathy M.	6 months & 1 day eff. 10/26/06: Issued 09/26/06	5
Rolph, John Daniel	90 days eff. 04/13/06: Issued 03/14/06	2
Ryan, John T.	60 days eff. 04/13/06: Issued 03/14/06	1
Shaw, Alan B.	90 days eff. 01/04/06: Issued 01/04/06	3
Sodikoff, Arnold M.	30 days eff. 10/26/06: Issued 09/26/06	1
Spencer, Roger K.	1 year eff. 11/22/06: Issued 10/23/06	1

TRANSFER TO DISABILITY INACTIVE

<i>Name</i>	<i>Date Issued</i>
O'Driscoll, Cornelius J.	09/08/06

CONTEMPTS

<i>Name</i>	<i>Date Issued</i>
Berry, Richard S.	05/25/06

DISBARMENTS

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Disbarment</i>
Bryn, Jason J.	09/26/06	3
Clark, Mark (resigned under disbarment)	05/24/06	1
Dahl, Larry J.	03/21/06 (retroactive to 12/27/05)	1
Duprey, Allen W.	02/16/06 (retroactive to 11/29/05)	2
Hoover, Stewart P.	04/20/06	3
Kirkland, Charles St. George	09/08/06 (retroactive to 04/20/03)	14
Menkveld, Paul G.	09/26/06	2
Miranda, Jesse R.	05/24/06	5
Reiner, John J.	02/07/06	1
Son, David	02/07/06	7
Wade, Alexander	01/05/06 (effective 02/04/06)	1
Wagner, Cindy L.	02/07/06	2
Witt, Lise R.	09/26/06	1
Worischek, Joseph H.	09/15/06	1

REINSTATEMENTS

<i>Name</i>	<i>Date Issued</i>
Alcorn, Richard A.	04/20/06
Banales, Paul S.	09/08/06
Dean, Nancy E.	05/22/06
Doyle, Michael J.	11/13/06
Everett, James J.	05/02/06
Hampton, David M.	05/26/06
Hickle, Frederick C.	11/21/06
Lynch, Michael L.	11/02/06
Sodikoff, Arnold M.	12/21/06
Moak, Walter E.	03/14/06

TOTAL SANCTIONS ORDERED IN 2006 138
(Does not include attorneys reinstated or transferred to disability)

TOTAL CHARGES RESULTING IN SANCTIONS AGAINST ATTORNEYS 254



STATE BAR OF ARIZONA

I. Lawyer Regulation - Disciplinary Process

A. INTAKE AND PRESCREENING

The Attorney/Consumer Assistance Program (A/CAP) serves the intake and prescreening functions of the State Bar's Lawyer Regulation Office. A/CAP allows concerned individuals -- attorneys and consumers -- to speak with an attorney who is trained in dispute resolution and interpersonal communication, and who is also knowledgeable in the Arizona disciplinary process. A/CAP attorneys listen, gather information, inform, and, as appropriate, attempt to resolve concerns brought to their attention. When appropriate, they attempt to rebuild the trust between the complainant, a client or opposing counsel, and the attorney about whom the inquiry is made. Serious complaints are referred to bar counsel for investigation.

Upon receiving a telephone call, A/CAP first attempts to discern whether the complaint is of such a serious nature that it must be referred for investigation. Serious complaints include trust account violations, theft of funds, abandonment, drug and alcohol related complaints, and criminal convictions.

Less serious complaints are resolved as quickly as possible by answering the complainant's questions and/or facilitating a resolution between that party and the attorney about whom the concern is raised. Often a consumer needs only a referral to an appropriate program or entity, such as the State Bar's Fee Arbitration, Mediation or Peer Review programs, the State Bar Client Protection Fund, Maricopa or Pima County Bar Association Lawyer Referral Service, Commission on Judicial Conduct, or Community Legal Services in Maricopa County. Minor concerns, such as a recent lack of communication from an attorney or questions regarding case status are handled quickly by facilitating communication between the complainant and attorney. A call to the attorney, alerting him or her to the inquiry, and the need for follow up, usually resolves the matter.

Written complaints are reviewed pursuant to Rule 54(b)(1), Ariz.R.S.Ct., which requires that bar counsel conduct a screening investigation if the complaint alleges facts that, if true, would constitute misconduct or incapacity. To determine whether an attorney's conduct would constitute misconduct, A/CAP reviews the applicable rules of professional conduct, in Rule 42, Ariz.R.S.Ct. If the allegations fail to meet the threshold for investigation, the complainant is advised of this determination by letter explaining why the matter will not be investigated further. The subject attorney will also receive an appropriate letter advising him or her that allegations were received but will not be investigated further. The letter may request that the attorney perform some action, such as contacting the complainant to answer questions posed by the complainant, or returning documents. In any event, the subject attorney will receive a copy of the allegations submitted to A/CAP. Allegations warranting further review are referred to bar counsel for investigation.

B. SCREENING

When a written charge contains allegations that meet the threshold of Rule 54, Ariz.R.S.Ct., the matter is placed into screening, the complainant notified, and a copy of the charge sent to the respondent lawyer. A written response is due from the respondent within twenty (20) days. Extensions of time are granted for good cause. Failure to timely respond can result in the respondent being deposed at his or her own expense. It will also often result in the imposition of a sanction for failure to cooperate with the Bar. *See* ER 8.1, Rule 42, and Rule 53(d) and (f), Ariz.R.S.Ct.

(i) The Response

The respondent's initial response is often the dispositive document in disciplinary proceedings. Staff bar counsel collectively screen approximately 1,200 charges annually and agree that the most effective response is a thoughtful, complete, dispassionate narrative, with any supporting documentation.

Under some circumstances, a lawyer may request confidentiality of all or a portion of a response. *See* Rules 52(b)(1) and 70(g), Ariz.R.S.Ct. A request for confidentiality should specifically state the reasons for the request. In most such instances, the respondent will be required to submit a redacted version of the response, deleting the confidential material, which can then be sent to the complainant. An order sealing the record may also be obtained for good cause shown. *See* Rule 70(g), Ariz.R.S.Ct.

(ii) The Reply

Bar counsel will forward a copy of a respondent's response to the complainant, unless it is subject to a protective order. The response is sent, along with a cover letter indicating that the complainant may submit further comments, if desired, within fifteen (15) days.

If the complainant provides a reply, it is forwarded to the respondent. Further comments from the respondent are optional, but are due within fifteen (15) days, absent an extension of time.

(iii) Additional Investigation

In many cases, bar counsel will have all necessary information after the routine screening process. In other cases, however, additional investigation is necessary. Bar counsel and/or staff investigators conduct all appropriate research or investigation necessary to allow formulation of a disposition recommendation. This often includes contacting respondents for additional information or clarification.

(iv) Probable Cause Review

Once bar counsel has sufficient information to make a disposition recommendation, he or she prepares a summary of the file for the probable cause panelist to review or enters a dismissal of the matter. *See* Rule 54(b)(2) and 54(b)(4), Ariz.R.S.Ct. Recommendations may include one or more of the following: Dismissal (often with an educational comment); Diversion; Stay; Informal Reprimand; Probation; Restitution; Assessment of Costs/Expenses; Probable Cause to file a complaint; Probable Cause to file a disability petition.

Staff bar counsel hold a probable cause review session, prior to review by the panelist, to ensure that all cases are considered uniformly and that all recommendations are consistent. The panelist will review all summaries. The panelist also has access to all files under consideration. The panelist has the discretion to approve, disapprove or modify the recommendation of bar counsel. *See* Rule 54(b)(4), Ariz.R.S.Ct.

As a result of the probable cause review session, the panelist will issue the appropriate orders. Within ten (10) days of service of an order of diversion, stay, informal reprimand, probation, restitution, or the assessment of costs and expenses, the respondent has the right to demand that a formal proceeding be instituted, whereupon such order shall be vacated and the matter disposed of in the same manner as any other matter instituted before a hearing officer. *See* Rule 54(b)(5), Ariz.R.S.Ct.

(v) Diversion

Diversion is an alternative to formal discipline. *See* Rule 55, Ariz.R.S.Ct. Diversionary programs focus on education and assistance for minor acts of misconduct. The effort of the diversion program is to provide the lawyer with the information and tools that will prevent similar problems from reoccurring. The diversion program represents an effort to ameliorate the circumstances that caused the ethical impropriety. Those circumstances are often linked to poor law office management, chemical dependency or other behavioral health problems. Diversion is only available in cases involving relatively minor misconduct that is subject to remediation or resolution through alternative programs. Diversion is not appropriate when the professional misconduct was the result of any willful conduct or dishonesty.

Once an order of diversion is issued, the respondent lawyer leaves the discipline system. He or she enters into a diversion memorandum of understanding, which may include some or all of the following diversion options:

- Law Office Management Assistant Program (LOMAP), which addresses management and practice issues.
- Member Assistance Program (MAP), which addresses issues of chemical dependency, stress or other health related matters.
- State Bar's Ethics Enhancement Program (EEP). EEP consists of a full day of intensive ethics instruction.
- Trust Account EEP (TAEPP) is also available for attorneys who have committed low level trust account violations. This option may also include a period of monitoring to ensure that policies and procedures have been implemented in the lawyer's practice to avoid subsequent trust account violations.

C. FORMAL PROCEEDINGS

(i) Hearing Officer

Once probable cause is ordered, bar counsel will prepare a formal complaint and represent the State Bar. Formal proceedings commence with the filing of a complaint with the Disciplinary Clerk of the Supreme Court. The clerk assigns the case to a hearing officer, who has been appointed by the Supreme Court. Each party is entitled as a matter of right to one change of hearing officer. *See* Rule 50(d)(2), Ariz.R.S.Ct.

The respondent's answer is due within twenty (20) days of service. *See* Rule 57(b), Ariz.R.S.Ct. Motions for extension of time to answer must be ruled on by the hearing officer. Bar counsel may not grant extensions of time to file an answer. If no timely answer is filed, the matter will be treated as a default.

Rules 26 and 29 through 37 of the Arizona Rules of Civil Procedure are followed to the extent applicable in disciplinary proceedings. *See* Rule 47(e), Ariz.R.S.Ct. The parties are, however, required to file a disclosure statement in accordance with Rule 26.1, Ariz.R.Civ. P. *See* Rule 57(e), Ariz.R.S.Ct.

After an answer has been filed, the case is assigned to a settlement officer. The settlement officer shall conduct at least one settlement conference for the purpose of facilitating settlement of the case, unless both parties agree otherwise. Rule 57(f), Ariz.R.S.Ct.

The parties may consent to discipline. A tender of admissions and agreement for discipline by consent is filed with the disciplinary clerk and is assigned to a hearing officer. The hearing officer may conduct an evidentiary hearing on the agreement. The hearing officer may accept, reject or recommend the modification of the agreement. The parties may appeal the rejection or recommendation to modify to the disciplinary commission for review. *See* Rule 56, Ariz.R.S.Ct.

If no consent to discipline is reached an evidentiary hearing will be conducted. Following an evidentiary hearing, the hearing officer prepares and files with the disciplinary clerk, a written report containing findings of fact, conclusions of law and recommendations regarding discipline. If no timely appeal is filed, the decision of the hearing officer is final as to any dismissal, diversion, informal reprimand, assessment of costs and expenses, probation and restitution, if not part of a sanction which includes disbarment, suspension or censure. Rule 57, Ariz.R.S.Ct.

(ii) Disciplinary Commission

The Disciplinary Commission of the Supreme Court of Arizona is an intermediate disciplinary entity made up of six lawyers and three non-lawyers. It serves as an appellate body and reviews cases in which appeals have been filed and all cases involving recommendations of censure, suspension or disbarment.

The commission is bound by the record on appeal. Evidence not presented to the hearing officer shall not be presented to the commission. *See* Rule 58(a), Ariz.R.S.Ct. In cases where one of the parties has filed a notice of appeal, the party filing the notice may file an opening brief within twenty (20) days. If the party wishes to present oral argument before the commission they must request it. Decisions of the commission are final as to dismissal, diversion, remand, probation, informal reprimand, restitution, assessment of costs and expenses and censures that are not reviewed by the court, if not part of a sanction which includes disbarment or suspension. The Disciplinary Commission reviews questions of law *de novo*. In reviewing findings of fact the commission applies a clearly erroneous standard.

(iii) Supreme Court of Arizona

If the commission recommends censure, suspension or disbarment, reinstatement or denial of reinstatement, either party may seek review by the Supreme Court. If no timely petition for review of a commission recommendation of suspension or disbarment is filed, the court may, in its discretion, order that the matter be docketed for review. If the court does not exercise *sua sponte* review within sixty days, the matter becomes final with an order signed by the clerk of the court. *See* Rule 59, Ariz.R.S.Ct.