

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

Annual Report

January 1, 2013 to December 31, 2013

Attorney Grievance Commission
535 Griswold St., Suite 1700
Detroit, MI 48226-3259

Attorney Grievance Commission Members

Barbara B. Smith, Chairperson
Bloomfield Hills, MI

Charles S. Kennedy, III, Vice-Chairperson
Royal Oak, MI

Jeffrey T. Neilson, Secretary
Bloomfield Hills, MI

Rozanne Sedler, Member*
Oak Park, MI

Rev. Douglas Ward Gallagher, Member*
Beverly Hills, MI

Pastor R. B. Ouellette, Member*
Saginaw, MI

Wanda M. Stokes, Member
Lansing, MI

Valerie R. White, Member
Coldwater, MI

Victor Fitz, Member
Cassopolis, MI

*denotes non-lawyer member

Attorney Grievance Commission Staff

(As of 12/31/13)

Robert L. Agacinski, Grievance Administrator

Robert E. Edick, Deputy Administrator

Cynthia C. Bullington, Assistant Deputy Administrator

Marissa LaRocque, Office Manager

Associate Counsel:

Ruthann Stevens
Stephen P. Vella
Patrick K. McGlinn
Frances A. Rosinski
Emily A. Downey
Kimberly L. Uhuru

Nancy R. Alberts
Dina P. Dajani
Rhonda Spencer Pozehl
Todd A. McConaghy
John K. Burgess

Investigators:

Roger Schutter
Thomas Turkaly
Rhonda Warner

Administrative Assistant:

Gina Jaafar

Paralegal:

Erin Farler

Investigative Assistants:

Corinne Adcock
Jason Miciuda

Secretaries:

Jane Brown
Yulanda Burgess
Misty Primeau
Demetra Eason
Charlene Varacalli

Clerks:

Rosa Fernandez
Monica Garza
Barbara Todd

Receptionist:

Margarita Kipreos

State of Michigan

Attorney Grievance Commission

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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 prosecution 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, 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.

On September 30, 2013, Board Chairperson David L. Porteous of Reed City, Michigan, completed his second, three-year term as a member of the Commission. The members and staff of the Commission are indebted to Mr. Porteous for his dedication and leadership.

The Commission's Chairperson and Vice-Chairperson are appointed to one-year terms by the Michigan Supreme Court. The Board's Secretary is elected by its members. The Board's Officers for one-year terms commencing October 1, 2013 and ending September 30, 2014, are Barbara B. Smith of Bloomfield Hills, Chairperson; Charles S. Kennedy, III of Royal Oak, Vice-Chairperson and Jeffrey T. Neilson of Bloomfield Hills, Secretary.

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 under MCR 9.111 to hire legal and support staff, with the approval of the Commission. During the year 2013, the Grievance Administrator supervised a staff of thirteen attorneys, three investigators and fourteen administrative and clerical staff. Additionally, the Commission accepts law students for a legal intern program in connection with their respective law schools.

Commission Procedures

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

Upon the filing of a Request for Investigation, the Grievance Administrator must determine whether there exists a *prima facie* allegation of professional misconduct. The Request for Investigation may be rejected by the Grievance Administrator after preliminary investigation and/or analysis by the Intake Unit, or it may be assigned to a staff counsel for a full investigation. Common investigative procedures include legal research and analysis, witness interviews, and/or 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 pursuant to MCR 9.114 and MCR 9.115, a diversion program where minor misconduct is significantly related to alcohol or other substance abuse, or other impairment; (3) the respondent attorney be admonished, 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. The Administrator must inform the complainant and, if the respondent answered the Request for Investigation, the respondent of the final disposition of every Request for Investigation.

Investigations

During 2013, the Commission docketed **2,837** Requests for Investigation [grievances]. This number includes **318** Requests for Investigation generated under the Trust Account Overdraft Notification (TAON) rule, which requires notification to the Grievance Administrator by a financial institution when a lawyer has overdrawn his or her client trust account. Appendix A (page 9 of this report) includes a 10 year comparison of the Requests for Investigation filed since 2004.

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

Table 1 – Nature of underlying legal matter in grievances filed, 2013 and 2012

Subject Matter	% of Total Grievances 2013	% of Total Grievances 2012
Criminal law	38	29
Domestic relations	14	14
Probate law	8	7
Commercial litigation	6	5
Bankruptcy law	5	4
Real estate transactions	4	3
Insurance law	2	2
Employment/labor law	2	2
All Others	14	28

Table 2 (below) compares the final disposition of the grievances resolved by the Grievance Administrator or the Grievance Commission in 2013, compared to 2012. The **2,773** dispositions in 2013 included **2,241** grievances dismissed by the Grievance Administrator pursuant to MCR 9.112(C)(1)(a) and MCR 9.114(A)(1); **265** grievances closed by the Commission; **128** admonitions issued by the Commission; **27** contractual probations approved by the Commission; and **112** individual grievances approved by the Commission for the filing of a formal complaint.

Table 2 – Disposition of Grievances, 2013 and 2012

	2013	2012
Total Grievance Received	2,869	2,943
Total Grievances Disposed ¹	2,773	2,980
Rejected by the GA or Closed in Intake	2,241	2,335
Total Disposed of by the Commission after full investigation	532	625
Closed by the Commission	265	228
Admonishments	128	162
Contractual Probation	27	30
Approved for Formal Complaint ²	112	205

There were **993** open investigative files pending with the AGC on January 1, 2013. On December 31, 2013, the open investigative caseload was **1,029**.

¹ The dispositions of grievances for a particular year are not necessarily dispositions of all grievances filed for that year. The dispositions for 2013 included grievances filed before January 1, 2013, and some of the grievances filed during the year were pending on January 1, 2014.

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

Prosecutions and Other Litigation

A. Proceedings Before Hearing Panels of the Attorney Discipline Board.

When the Commission authorizes that a prosecution be commenced, a formal complaint is filed with the Attorney Discipline Board (ADB) setting forth the alleged misconduct, pursuant to MCR 9.115. The matter is scheduled before a hearing panel of three volunteer lawyers appointed by the ADB. Upon the conclusion of the hearing, the panel must issue an order dismissing the complaint or imposing public discipline which may include probation, reprimand, license suspension or disbarment. The Administrator filed **81** formal complainants in 2013, compared to **91** filed in 2012. Appendix A (page 9) includes a 10 year comparison of the Formal Complaints filed with the Attorney Discipline Board.

The Grievance Administrator is also empowered by MCR 9.120 to initiate Judgment of Conviction (JOC) proceedings against attorneys who are convicted of a crime. These proceedings are show cause proceedings in which the level of discipline is the principal issue. Attorneys who are convicted of a felony are automatically suspended from the practice of law until a hearing panel of the ADB has issued a final order of discipline. Attorneys who are convicted of misdemeanors are not automatically suspended. The Grievance Administrator will regularly file a JOC proceeding for a felony conviction, while exercising discretion to initiate a JOC proceeding for a misdemeanor conviction. The Administrator filed **24** new matters in 2013 based on an attorney's criminal convictions, compared to **18** convictions filed in 2012.

Attorneys who are disciplined in other jurisdictions (state or federal) will be subject to a reciprocal discipline proceeding initiated by the Grievance Administrator pursuant to MCR 9.120(C). These proceedings, like JOC proceedings, resemble a show cause proceeding in which the principal issues are whether the attorney received due process in the underlying litigation and whether a reciprocal discipline should be imposed. Reciprocal proceedings were instituted in **11** cases in 2013, compared to **10** in 2012.

The Grievance Administrator is also 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. In those cases, the Grievance Administrator must conduct an investigation and file a written report with the hearing panel. The Grievance Administrator is a party to a reinstatement proceeding and may contest the petitioner's eligibility for reinstatement. Eleven (**11**) reinstatement petitions were filed in 2013, compared to **10** in 2012.

Finally, the Grievance Administrator may seek an order from the ADB declaring that an attorney is incapacitated to continue the practice of law because of mental or physical infirmity or disability, or because of addiction to drugs or intoxicants, either by filing proof that the attorney has been judicially declared incompetent or by alleging incapacity in a complaint to be adjudicated by a hearing panel. The Administrator instituted **5** such proceedings in 2013, compared to **2** in 2012.

B. Appeals and Other Proceedings.

Review by the Attorney Discipline Board:

The Grievance Administrator, as well as the respondent attorney and the complainant, may file a petition with the Attorney Discipline Board (ADB) seeking review of the hearing panel's decision. During the year 2013, the ADB ruled on **10** petitions for review following briefing and oral arguments presented by the Administrator and the respondent. The Administrator, the respondent and the complainant may also appeal a decision by the Board to the Supreme Court which may, in its discretion grant leave to appeal.

Appeals to the Supreme Court:

The Grievance Administrator is also a party in complaints for superintending controls filed with the Michigan Supreme Court by complainants who disagree with the decisions of the Administrator or the Grievance Commission to reject or close an investigative file. The Grievance Administrator filed an appearance in **32** matters filed with the Supreme Court in 2013.

Reconsideration:

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

Receiverships:

Under MCR 1.119(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 **13** new receivership files in 2013. Two receiverships were closed during the year-end, **22** open receivership files were pending at the end of the year.

Federal Reinstatement Proceedings:

The Grievance Administrator may be requested to participate in discipline or reinstatement proceedings in a federal district court. For example, the District Court of the Eastern District of Michigan regularly appoints the Administrator as an interested party in reinstatement proceedings involving lawyers who have been suspended from practice under the local rules of that court. In 2013, the Administrator appeared in **11** discipline or reinstatement proceedings conducted in the U.S. District Court for the Eastern District.

Pro Hac Vice Administration:

Under the current provisions of MCR 8.126, the AGC is tasked with processing requests for temporary admission in Michigan by out-of-state attorneys on a pro hac vice basis. In 2013, each pro hac vice applicant was required to file the proper documentation along with a fee of \$125.00 (a fee equal to the discipline and client protection portions of the annual dues paid by a Michigan attorney. Effective October 1, 2014, the fee will be reduced to \$105.00). For each applicant, the AGC must, within 7 days, determine whether the applicant has been granted limited admission in the last 365 days and provide said information to the appropriate court administrative agency or tribunal. In 2013, the AGC processed **742** pro hac vice motions with total costs charged to the applicants in the amount of \$92,395.00

Funding

The Attorney Grievance Commission receives no public funds. The Grievance Commission and the Attorney Discipline Board are funded primarily from the discipline portion of the mandatory dues paid by all active members of the State Bar of Michigan. In 2013, annual dues for active members were \$305.00, of which \$110.00 (36%) was specifically allocated to the two discipline agencies. Effective, October 1, 2014, the discipline portion of the dues will be \$90.00 (32% of the annual dues assessment). For the fiscal year, which ended September 30, 2013, the combined operating expenses of the Attorney Grievance Commission and the Attorney Discipline Board were \$4,845,851. The AGC's operating expenses for the fiscal year ending September 30, 2013 were **\$3,842,792**, an increase of less than 1% over the previous fiscal year. A complete itemization of the Board's expenses for the fiscal year is attached as Appendix B.

Contact Information

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

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www.agcmi.com



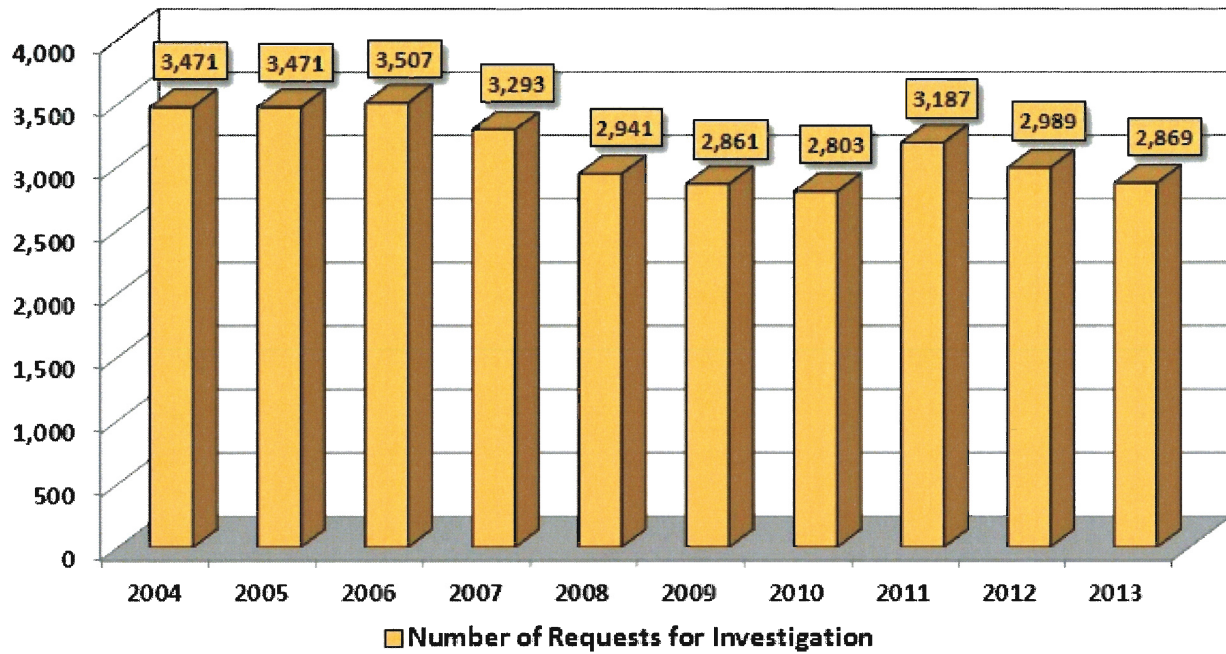
Alan M. Gershel
Grievance Administrator



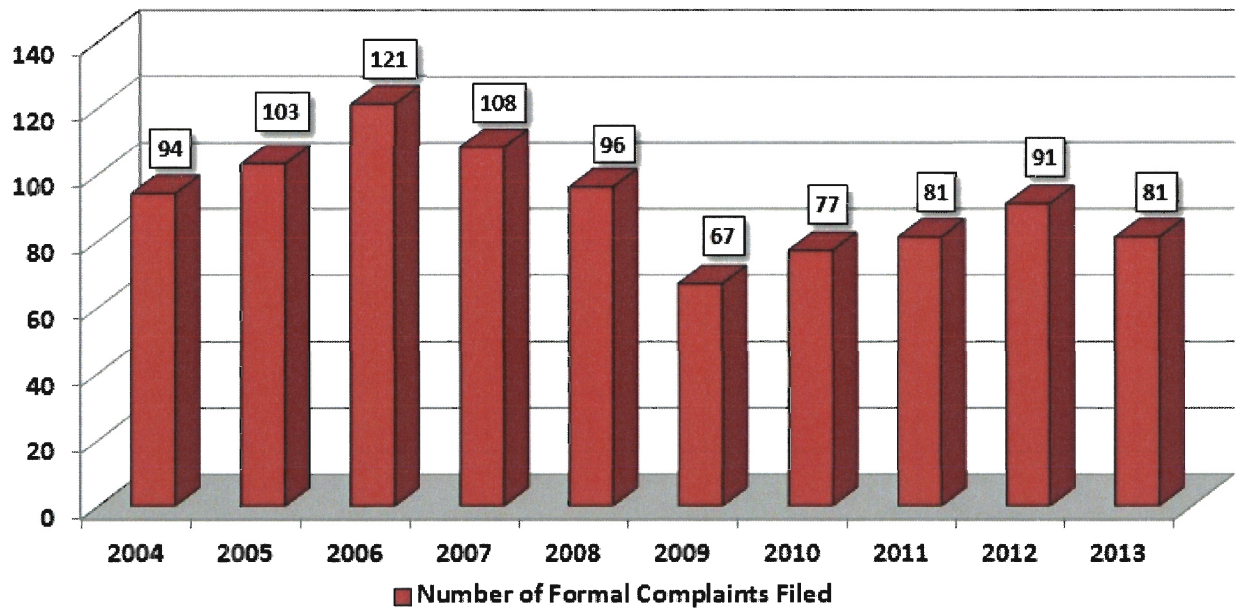
Barbara B. Smith
Chairperson, AGC

APPENDIX A

**2004-2013 - AGC 10-Year Comparison Chart
Requests for Investigation Filed**



**2004-2013 - AGC 10-Year Comparison Chart
Formal Complaints Filed**



APPENDIX B

Attorney Grievance Commission Comparative Statement of Expenses 2012 and 2013

	Year Ended September 30	
	2013	2012
Salaries	\$2,175,609	\$2,061,643
Payroll Taxes	163,065	153,523
Employee Insurance	361,352	444,659
Pension Contribution	341,165	324,092
Payroll Processing Fees	9,672	10,349
Additional Retiree Healthcare Expense	211,920	218,449
Unemployment	-	6,516
Rent	154,609	162,716
Depreciation	47,011	44,371
Electricity	14,410	13,288
Parking	2,481	2,444
Temporary Staff	28,681	8,994
Outside Counsel	-	32,424
SBM Bookkeeping and Audit	29,742	29,609
Technology Services	16,325	25,333
Witness and Subpoena Fees	30,388	43,143
Receivership Expense	1,013	2,417
Machine Rental	42,058	51,802
Meetings	4,865	4,933
Travel	13,941	28,152
Telephone	10,599	10,103
Books and Subscriptions	20,908	18,145
Office Supplies	29,162	28,123
Printing and Stationary	2,897	4,420
Postage	28,439	28,282
Insurance	45,498	46,232
Repairs and Maintenance	17,846	14,062
Dues	5,772	5,463
Office Expenditures	20,410	1,535
Professional Education	8,236	8,211
Miscellaneous	4,718	1,252
Total	3,842,792	3,834,685