

**STATE OF MICHIGAN**  
**ATTORNEY GRIEVANCE COMMISSION**

**Annual Report**

**January 1, 2015 to December 31, 2015**

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

# **Attorney Grievance Commission Staff**

(As of 12/31/15)

Alan M. Gershel, Grievance Administrator

Robert E. Edick, Deputy Administrator  
Cynthia C. Bullington, Assistant Deputy Administrator

Grace M. Cooley, Office Manager  
Gina M. Jaafar, Deputy Office Manager

## Associate Counsel:

Ruthann Stevens	Dina P. Dajani
Stephen P. Vella	Todd A. McConaghy
Rhonda Spencer Pozehl	John K. Burgess
Frances A. Rosinski	Charise L. Anderson
Emily A. Downey	Sarah C. Lindsey
Kimberly L. Uhuru	

Investigators: Rhonda Warner  
Jason Miciuda

Investigative Specialist: Yulanda Burgess

Paralegals: Erin Farler  
Kimberly Billings

Investigative Assistant: Natasha Kakish

Legal Assistants: Rosa Fernandez  
Charlene Varacalli  
Jane Brown  
Sheri Galofaro-Mendez  
Jeanne Shatter  
Louise Arzooyan

Intake Assistants: Demetra Eason  
Monica Garza  
Barbara Todd

Administrative Assistant: Yulette Barnes

Receptionist: Margarita Kipreos

File Clerk: Consuelo Gonzalez

# State of Michigan

## Attorney Grievance Commission

### Annual Report

January 1, 2015 – December 31, 2015

#### Overview

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

#### Commission Composition

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

The Commission's Chairperson and Vice-Chairperson are appointed to one-year terms by the Michigan Supreme Court. The Commission's Secretary is elected by its members.

- **Barbara B. Smith, Chairperson** - term ending 10/1/16
- **Charles S. Kennedy, III, Vice-chairperson** - term ending 10/1/16
- **Jeffrey T. Neilson, Secretary** – term ending 10/1/17
- **Rev. Douglas Ward Gallagher, Lay person** – term ending 10/1/16
- **Pastor R. B. Ouellette, Lay person** – term ending 10/1/17
- **Valerie R. White, Attorney member** – term ending 10/1/18
- **Victor Fitz, Attorney member** – term ending 10/1/16
- **Kenyetta N. Stanford, Attorney member** – term ending 10/1/18
- **Cathy Joan Pietrofesa, Lay person** – term ending 10/1/18

## 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 2015, the Grievance Administrator supervised a staff of thirteen attorneys, two investigators and eighteen 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 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 Grievance Administrator commences an investigation in his/her own name.

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

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

## Investigations

During 2015, the Commission docketed **2208** Requests for Investigation [grievances]. This number includes **194** 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. Appendix A (page 13 of this report) includes a 10 year comparison of the Requests for Investigation filed since 2006.

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, 2015 and 2014**

Subject Matter	% of Total Grievances 2015	% of Total Grievances 2014
Criminal law	37.8	29.5
Domestic relations	13.83	15.93
Probate law	9.02	9.88
Commercial litigation	3.8	9.1
Bankruptcy law	4.21	9.11
Real estate transactions	1.64	6.92
Insurance law	1.0	4.74
Immigration law	1.63	n/a
Employment/labor law	2.0	4.50
Personal Injury	9.63	n/a
All Others	15.44	10.32

Table 2 (below) compares the final disposition of the grievances resolved by the Grievance Administrator or the Grievance Commission in 2015 compared to 2014. The **2208** dispositions in 2015 included **1,819** grievances dismissed by the Grievance Administrator pursuant to MCR 9.112(C)(1)(a) and MCR 9.114(A)(1); **293** grievances closed by the Commission; **163** admonitions issued by the Commission; **27** contractual probations approved by the Commission; **158** individual grievances approved by the Commission for the filing of a formal complaint; **22** judgment of convictions were filed by the Commission.

**Table 2 – Disposition of Grievances, 2015 and 2014**

	2015	2014
Total Grievances Received	2208	2872
Total Grievances Disposed	2482	2945
Rejected by the GA or Closed in Intake	1819	2243
Total Disposed of by the Commission after full investigation	663	702
Closed by the Commission	293	405
Admonishments	163	137
Contractual Probation	27	25
Approved for Formal Complaints	158	135
Approved for Judgment of Conviction	22	20

There were **724** open investigative files pending with the AGC on January 1, 2015. On December 31, 2015, the open investigative caseload was **586**. The dispositions of grievances for a particular year are not necessarily dispositions of all grievances filed for that year. The dispositions for 2015 included grievances filed before January 1, 2015, and some of the grievances filed during the year were pending on January 1, 2016.

## **AGC CASE SUMMARIES**

*Grievance Administrator v Mark R. VanderMolen, ADB Case No: 15-93-AI*

Assistant Deputy Grievance Administrator: Cynthia C. Bullington

Respondent VanderMolen, a former assistant prosecuting attorney, received a three year suspension from the practice of law due to his conviction for aggravated stalking which had been filed in the Kent County Circuit Court. Respondent was originally charged with sexual assault, but Respondent pled to two charges of criminal sexual conduct. In arriving at its determination, the panel noted that Respondent did not have a history of prior discipline.

*Names subject to confidentiality, companion files both resulting in admonishments.*

Senior Associate Counsel: Stephen P. Vella

Respondents were co-counsel for a plaintiff who suffered a substantial assault and battery by the corporate defendant's employee. Respondents obtained an impressive settlement for the client notwithstanding substantial challenges in showing liability on the part of the corporate defendant. The issue, however, was whether their costs of \$60,000 were excessive. The costs included expenditures that are traditionally considered part of a law office's overhead, such as secretarial expenses, rental of office space, and time spent conducting research. In addition, some of the expenses were estimates without supporting documentation. Respondents agreed to reimburse the client over \$30,000 of costs previously deducted from the gross amount of the settlement.

*Grievance Administrator v Wayne Kristall, ADB Case No. 14-73-GA*

Senior Associate Counsel: Rhonda S. Pozehl

Investigation of a trust account overdraft notification revealed that Respondent improperly handled and misused his IOLTA. Respondent wrote checks from his IOLTA that were either personal or business related and unrelated to any client matter that Respondent was handling. Additionally, Respondent kept monies in his IOLTA that were personal in nature, i.e. monies from the sale of a property jointly owned by Respondent and his wife. The hearing panel found that Respondent held funds other than client and third person funds in a IOLTA, in violation of MRPC 1.15(a)(3); and deposited his own funds in the client trust account in excess of an amount reasonably necessary to pay for financial institution service charges or fees or to obtain a waiver of service charges or fees, in violation of MRPC 1.15(f).

*Grievance Administrator v Marvin Barnett*, ADB Case No. 14-8-GA; 14-26-GA; 14-53-GA

Senior Associate Counsel Frances A. Rosinski

On September 11, 2015, an Order of Suspension and Restitution was issued suspending Respondent Barnett for three years and requiring a total of \$67,500 in restitution to be paid within 30 days of the effective date of November 3, 2015 for a wide of range of misconduct in three separate client representations, including intimidating a witness during a federal criminal trial, mistreating a Wayne County prosecutor during a trial, engaging in misrepresentation and deceit, neglect, commingling, failing to use a client trust account for the advance payment of fees and failing to communicate with his clients. The Grievance Administrator's prosecution was presented over the course of six hearings.

*Grievance Administrator v Gary Fields*, 15-66-GA

Senior Associate Counsel Frances A. Rosinski

On October 22, 2015, an Order of Disbarment and Restitution was issued disbarring Respondent Fields and requiring a total of \$49,775.60 to be paid by November 13, 2015 for a range of misconduct, primarily misappropriation of client funds, neglect and failing to refund unearned fees in eight client matters while he was employed first at the law firm of Eisenberg, Benson and Fields and then at the law firm of Johnson Law Firm. Respondent Fields did not answer the formal complaint and was defaulted. The hearing convened on August 24, 2015 with the Grievance Administrator ready to present his case. Respondent Fields appeared at the hearing with counsel and signed a stipulation to disbarment and restitution, which the panel accepted on the record.

*Grievance Administrator v George Cassar*, ADB Case No. 15-16-GA

Senior Associate Counsel: Emily A. Downey

Tri-county Hearing Panel #63 issued an order of Disbarment, effective October 21, 2015. Respondent admitted to misappropriating approximately \$198,000 from an estate. Respondent moved the money between various personal accounts. He eventually returned the money, resigned from his firm, and self-reported to the Attorney Grievance Commission. The panel found that the mitigating factors cited by Respondent had no real mitigating effect and found that disbarment was the appropriate sanction.

*Grievance Administrator v Donna Jaaskelainen*, ADB Case No. 14-105-GA

Senior Associate Counsel: Kimberly L. Uhuru

Upper Peninsula County Hearing Panel #1 issued an Order of Suspension and Restitution with Conditions suspending Respondent for 179 days, effective March 18, 2015. Respondent, while serving as the elected Keewenaw County Prosecutor, neglected several civil matters, causing three client's cases to be dismissed in court. Respondent also failed to answer a Request for Investigation. Respondent was ordered to make restitution to her client and to return client files. On September 2, 2015, the Attorney Discipline Board increased the suspension to 180 days, requiring Respondent to prove to a hearing panel by a preponderance of the evidence her fitness to return to the practice of law. As a result of the order of discipline, Respondent has participated in an evaluation and treatment through the Lawyers and Judges Assistance Program.

*Grievance Administrator v Michael Aho Kennedy*, ADB Case No. 14-68-GA

Senior Associate Counsel: Dina P. Dajani

Emmet County Hearing Panel #2 issued an Order of Disbarment, effective March 13, 2015. In his capacity as a trustee of his elderly client's trust, Respondent embezzled more than \$1,000,000 and used the money for his personal benefit. For this conduct, Respondent was sentenced on February 22, 2016, to 6 to 20 years of imprisonment for embezzlement in excess of \$100,000 in the Emmet County Circuit Court. Additionally, Respondent pleaded guilty to mail fraud and making and subscribing to a false amended U.S. individual tax return (2009) for which he will be sentenced by the U.S. District Court for the Western District of Michigan on April 11, 2016.

*Grievance Administrator v Kevin J. Reiman*, ADB Case No. 15-9-GA

Senior Associate Counsel: Dina P. Dajani

A formal complaint was filed against Respondent alleging, among other things, that he misappropriated money from a client. The Bay County Prosecutor, at about the same time the formal complaint was filed, also brought criminal charges against Respondent involving allegations of theft from other clients. Because of the concurrent prosecutions, and in the effort to protect the public, a Petition for Injunction was sought in the Supreme Court to preclude Respondent from practicing law while the criminal prosecutions remain pending. On September 18, 2015, the Supreme Court issued an order granting the injunction enjoining Respondent from practicing law in the State of Michigan until the felony charges pending against him have concluded.

*Grievance Administrator v Edward L. Johnson, ADB Case No. 15-47-GA*

Senior Associate Counsel: Todd A. McConaghy

Effective November 8, 2015, Respondent was disbarred following a determination that he violated an order of discipline as well as failed or refused to appear or give evidence, to be sworn or affirmed, or to answer a proper question after being ordered to do so. It was also determined that Respondent failed to notify active clients in writing of the suspension of his license, failed to notify tribunals/parties in litigated matters of the suspension of his license (as well as withdraw), failed to file proof of compliance with MCR 9.119, practiced law following the suspension of his license, had contact with clients following the suspension of his license and held himself out as an attorney following the suspension of his license.

*Grievance Administrator v Richard Meier, ADB Case No. 12-29-GA*

Senior Associate Counsel: John K. Burgess

Respondent was found to have neglected two legal matters after collecting “non-refundable” fees. The Panel found that Respondent’s contracts were ambiguous as to whether the fees were actually non-refundable or just advanced flat fees. Respondent was suspended for 30 days. While the Attorney Discipline Board modified the Order of Discipline to a reprimand and found that Respondent’s fee was actually non-refundable, the Board ordered restitution of \$4,000 to the complainant as a sanction for the misconduct committed. The Board’s finding in this regard was notable, as it is distinguishable from the Board’s established power to order fee forfeiture where collection of the fee resulted in part from the misconduct itself. The Board’s finding that restitution can be ordered as a sanction even in the case of a non-refundable fee alleviates any impediment from the Grievance Administrator effectively seeking and obtaining orders of discipline in such cases.

## 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 Grievance Administrator filed **85** formal complaints in 2015, compared to **77** filed in 2014. Appendix A (page 13) 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 **31** new matters in 2015 based on an attorney's criminal convictions, compared to **17** convictions filed in 2014.

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 **0** cases in 2015, compared to **6** in 2014.

The Grievance Administrator is also a participant in ADB reinstatement proceedings initiated by attorneys who have been suspended for more than 180 days 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. Fifteen (**15**) state reinstatement petitions were filed in 2015, compared to **15** in 2014.

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 Grievance Administrator instituted **6** such proceedings in 2015, compared to **2** in 2014.

## **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 2015, the ADB ruled on **21** petitions for review following briefing and oral arguments presented by the 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 **22** matters filed with the Supreme Court in 2015.

### **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 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 whether new information has been provided that could change the analysis or outcome of the matter. If such information is provided, the file may be reopened for further investigation.

### **Receiverships:**

Under MCR 9.119(G), if an attorney leaves the practice of law (whether or not for disciplinary reasons), disappears, or is deceased and there is no person capable of conducting the attorney's affairs, the Grievance Administrator may file a petition for receivership with the circuit court in the county where the attorney maintained his or her office. In those cases, the Grievance Administrator acts as receiver, or co-receiver with the assistance of a local attorney, and must undertake a work-intensive process that includes cataloging and prioritizing the abandoned files, contacting clients, courts and opposing parties if there is a pending matter, and taking other action in order to protect the interests of clients. The Grievance Administrator opened **12** new receivership files in 2015, **15** receiverships were closed during the year, **26** 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 2015, the Administrator appeared in **9** 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 2015, each pro hac vice applicant was required to file the proper documentation along with a fee of \$105.00 (a fee equal to the discipline and client protection portions of the annual dues paid by a Michigan attorney). 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 2015, the AGC processed **628** pro hac vice motions with total costs charged to the applicants in the amount of **\$63,280.00**.

### **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 2015, annual dues for active members were **\$305**, of which **\$110** (36%) was specifically allocated to the two discipline agencies. Effective fiscal year 2015, the discipline portion of the dues will be \$90.00 (32% of the annual dues assessment). For the fiscal year, which ended September 30, 2015, the combined operating expenses of the Attorney Grievance Commission and the Attorney Discipline Board were **\$5,062,695**. The Attorney Grievance Commission's operating expenses for the fiscal year 2015 were **\$3,980,016**.


**Contact Information**

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

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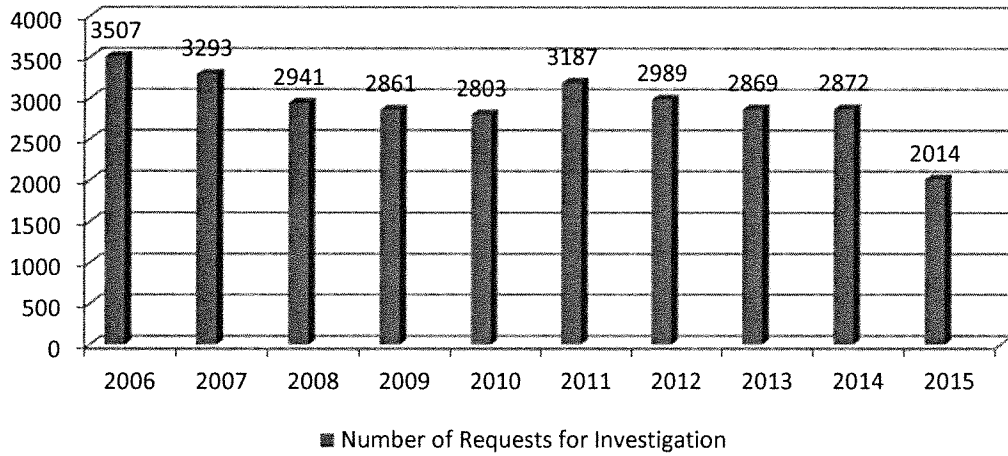
[www.agcmi.com](http://www.agcmi.com)

  
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Alan M. Gershel  
Grievance Administrator

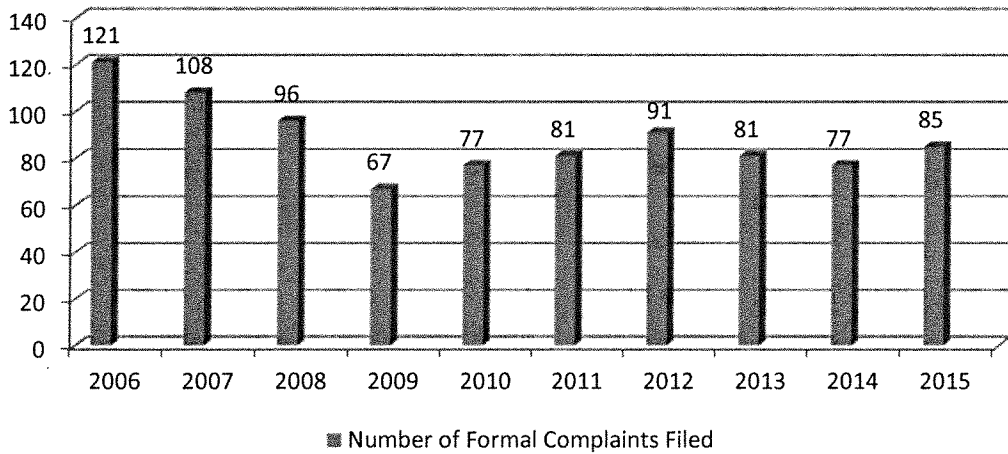
  
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Barbara B. Smith  
Chairperson, AGC

## Appendix A

### 2006-2015 AGC 10-Year Comparison Chart Requests for Investigation



### 2006-2015 AGC 10-Year Comparison Chart Formal Complaints Filed



## Appendix B

### Attorney Grievance Commission Comparative Statement of Expense 2015 and 2014

Line Items	2015	2014
Salaries	\$ 2,234,132.00	\$ 2,192,266.00
One Time Distribution (.5%)	\$ 454.00	\$ 10,961.00
Payroll Taxes	\$ 170,712.00	\$ 168,547.00
Employee's Insurance	\$ 440,000.00	\$ 440,000.00
Retiree Health Care	\$ 211,915.00	\$ 211,915.00
Pension Contributions	\$ 306,150.00	\$ 326,150.00
Rent	\$ 154,656.00	\$ 160,800.00
Electricity	\$ 15,510.00	\$ 15,510.00
Parking	\$ 5,000.00	\$ 5,000.00
State Bar Bookkeeping Fee	\$ 31,540.00	\$ 32,486.00
Payroll Processing Fee	\$ 10,700.00	\$ 11,021.00
Witness and Subpoena Fees	\$ 46,690.00	\$ 46,690.00
Receivership Expenses	\$ 10,000.00	\$ 10,000.00
Machine Rental	\$ 40,920.00	\$ 45,920.00
Meetings	\$ 4,700.00	\$ 5,200.00
Travel	\$ 22,000.00	\$ 22,000.00
Telephone	\$ 14,000.00	\$ 14,000.00
Books, Dues and Subscription	\$ 15,500.00	\$ 16,000.00
Office Supplies	\$ 30,000.00	\$ 30,000.00
Printing and Stationery	\$ 4,000.00	\$ 4,000.00
Postage	\$ 38,000.00	\$ 30,000.00
Directors and Officers Insurance	\$ 42,368.00	\$ 44,063.00
Liability Insurance	\$ 5,252.00	\$ 5,462.00
Technology Expenses	\$ 30,000.00	\$ 30,000.00
Repairs and Maintenance	\$ 14,000.00	\$ 15,000.00
Dues	\$ 5,900.00	\$ 5,900.00
Continuing Education	\$ 4,000.00	\$ 8,000.00
Capital (office) Expenditures	\$ 25,000.00	\$ 25,000.00
Miscellaneous	\$ 3,000.00	\$ 3,000.00
Total	\$ 3,936,099.00	\$ 3,934,891.00
Depreciation	\$ 44,371.00	\$ 50,000.00
Total	\$ 3,980,016.00	\$ 3,984,891.00