

# State of Michigan Attorney Grievance Commission Annual Report

January 1, 2017 – December 31, 2017



## **Overview**

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

## **Commission Composition**

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

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

**Victor A. Fitz, III, Chairperson** - term ending 10/1/18

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

**Valerie R. White, Vice-chairperson** - term ending 10/1/18

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

**Megan K. Cavanagh, Secretary** – term ending 10/1/19

Ms. Cavanagh is a shareholder at Garan Luow Miller P.C. in Detroit and has been a member of the firm's appellate department since 2002. She is a graduate of the University of Michigan College of Engineering and Wayne State University Law School. She has been a member of the Attorney Grievance Commission since October of 2016 and has served as Chair of the Appellate Practice Section of the State Bar of Michigan and a council person for the Negligence Section of the State Bar of Michigan. She was recognized by Michigan Lawyers Weekly as a Lawyer of the Year in 2006 and one of the 2017 Women in the Law. She was recognized by Super Lawyers as a "Rising Star" and a "Super Lawyer."

**Cathy Joan Pietrofesa, PHD, Lay person** – term ending 10/1/18

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

Counselor of the year. Dr. Pietrofesa was appointed by the Michigan Supreme Court to a three year term as a non-lawyer member of the Attorney Grievance Commission commencing January, 2016.

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

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

**Latoya M. Willis, Attorney member** – term ending 10/1/18

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

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

Ms. Bush is the majority-owner and founding partner of Bush Seyferth & Paige PLLC (BSP), and handles high-stakes cases across the country. Ms. Bush is a Fellow in both the American College of Trial Lawyers and the International Society of Barristers. She is a Senior Life Fellow of the American Board of Trial Advocates and teaches at its Trial College. She is on the Board of Directors of the Product Liability Advisory Council and is actively involved in the National Association of Minority & Women Owned Law Firms. In addition, She is proud to represent her home state by serving as the only Michigan counsel on the Network of Trial Law Firms' Board of Directors.

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

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

Mr. Kienbaum has over 45 years' experience representing employers nationally in significant labor and employment disputes. He served as President of the State Bar of Michigan, the Metropolitan Detroit Bar Association, and the Barrister's Association. Mr. Kienbaum was appointed by the Supreme Court to the Attorney Discipline Board in 2007,

where he served for six years, including as Chair. In 2017 the Supreme Court appointed him, for a three-year term, to the Attorney Grievance Commission. Mr. Kienbaum graduated *magna cum laude* from Wayne State University Law School in 1968, having served on its Law Review, and was awarded the "Order of the Coif." He graduated from the University of Michigan in 1965. Mr. Kienbaum was born in Berlin, Germany, and immigrated to the United States in 1957. He is fluent in German.

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

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

#### **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 2017, the Grievance Administrator supervised a staff of thirteen attorneys, three investigators, and seventeen administrative and clerical staff. Additionally, the Commission accepts law students for a legal intern program in connection with their respective law schools.

#### **Commission Procedures**

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

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

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

### **Investigations**

During 2017, the Commission docketed **1944** Requests for Investigation [grievances]. This number includes **167** Requests for Investigation generated under the Trust Account Overdraft Notification (TAON) rule, which requires notification to the Grievance Administrator by a financial institution when an attorney has overdrawn his or her client trust account. The Commission received nearly **20,000** phone calls in the year 2017. Appendix A (page 18 of this report) includes a 10-year comparison of the Requests for Investigation filed since 2008.

As shown in Table 1 (next page), 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, 2016 and 2017**

<b>Subject Matter</b>	<b>% of Total Grievances 2017</b>	<b>% of Total Grievances 2016</b>
Criminal law	36.64	33.00
Domestic relations	12.55	14.00
Probate law	10.18	10.00
Commercial litigation	4.15	5.00
Bankruptcy law	2.60	3.00
Real estate transactions	1.35	2.00
Insurance law	.57	1.00
Immigration law	2.60	2.00
Employment/labor law	1.40	2.00
Personal Injury	8.35	11.00
All Others	19.45	15.00

Table 2 (below) compares the final disposition of the grievances resolved by the Grievance Administrator or the Commission in 2017 compared to 2016. In 2017, the Commission received **1944** grievances. The **2033** dispositions in 2017 included **1541** grievances dismissed by the Grievance Administrator pursuant to MCR 9.112(C)(1)(a) and MCR 9.114(A)(1); **197** grievances closed by the Commission; **97** admonitions issued by the Commission; **31** contractual probations approved by the Commission; **149** individual grievances approved by the Commission for the filing of a formal complaint; **18** judgments of conviction were authorized for formal action.

**Table 2 – Disposition of Grievances, 2017 and 2016.**

	<b>2017</b>	<b>2016</b>
Total Grievances Received	1944	2080
Total Grievances Disposed	1738	2265
Rejected by the GA or Closed in Intake	1541	1741
Total Disposed of by the Commission after full investigation	492	524
Closed by the Commission	197	248
Admonishments	97	91
Contractual Probation	31	18
Approved for Formal Complaints	149	160
Approved for Judgment of Conviction	18	7

The dispositions of grievances for a particular year are not necessarily dispositions of all grievances filed for that year. The dispositions for 2017 included grievances filed before January 1, 2017, and some of the grievances filed during the year were pending on January 1, 2017.

## **AGC CASE SUMMARIES**

### **Assistant Deputy Grievance Administrator: Cynthia C. Bullington**

*Grievance Administrator v Jill A. Tucker*, ADB Case No. 17-71-JC

Notice of Discipline: Respondent was convicted in *People of the State of Michigan v Jill Ann Tucker*, 44th Circuit Court Case No. 16-023886-FH, of the following offenses: interference with the reporting of a crime, in violation of MCI 750.483A2B, a felony; unlawful posting of messages through electronic medium without consent, in violation of a felony; lying to a police officer regarding a serious misdemeanor, in violation of MCI 750.479C2A, a misdemeanor; tampering with evidence, in violation of MCI 750.483A6A, a felony; failure to stop at the scene of a property accident, in violation of MCI 257.618, a misdemeanor; failure to stop at the scene of an accident involving serious personal injuries, in violation of MCI 257.617A, a misdemeanor; use of a computer to commit a crime, in violation of MCI 752.7973E, a felony; and operation of a motor vehicle in violation of a license restriction, in violation of MCI 257.312, a misdemeanor. Respondent was disbarred

Free Press account: Testimony at Tucker's March trial revealed she failed to stop for other motorists who had stopped at the intersection of M-36 and Lemen Road in Green Oak Township on June 4. Tucker's Dodge Ram pickup struck motorcyclist Brian Drake hard enough that it shot the motorcycle forward nearly the length of a football field. Drake went airborne, landing in the middle of the intersection next to a Chrysler 300. "This crash could have ended very differently for me," said Drake, who suffered a bruised backside and elbow injuries. "Looking back, it's hard for me to believe how Miss Tucker could have known she was responsible for this crash and still fled the scene, not knowing if I or others were seriously injured or possibly dead," he added. "Her selfish actions, both prior to and especially after the crash, have demonstrated a complete lack of regard for the well-being of the people involved and the law."

The pickup – which Tucker purchased and insured through her then-employer, DXRacer, avoiding an interlock device on her personal vehicle for a prior drunken driving conviction – also rear-ended the Chrysler 300 hard enough to push the trunk up to the rear window. The Chrysler driver, Donald Mayville, said he continues to feel apprehension when a motorist is behind him or tailgates.

Testimony also indicated that Tucker lied to a Green Oak Township police officer, whom she was dating and who initially investigated the crash. Gadd took the officer and Rose to task for their handling of the case. He accused the officer of destroying evidence and participating in "some of the alleged criminal conduct."

Gadd accused Rose of withholding evidence and providing discovery materials late. He also accused Rose of making "inappropriate accusations during the case," which likely referenced Rose's questioning at an earlier hearing about whether Gadd and his client were intimately involved. Gadd denied that accusation in March. "I believe these public officials should be held to a higher standard, and I know they are going to walk away from



here and high five because they won and got the defendant convicted of various offenses,” Gadd said Thursday.

Rose said Gadd’s comments reflected the defense’s position throughout the case: accusing others of wrongdoing and blaming the victim while ignoring Tucker’s criminal behavior, including allegations she broke into her estranged husband’s house the day after the jury verdict and stole two rifles and two shotguns.

“The one thing you notice is missing from (Gadd’s) argument is ... the people she harmed,” Rose said. Rose said Tucker’s behavior has shown her ability to manipulate and deceive others. He called her behavior premeditated, from getting a second vehicle to avoid detection when she drank alcohol while on probation for her second drunk driving conviction to procuring a replacement bumper to hide the crash evidence, as well as leaving two injured people in the middle of an intersection. Tucker also tore out computer cords to disable security cameras so she wouldn’t be caught returning the damaged pickup and she retaliated against the woman who placed her behind the wheel by sending naked photographs of the woman to her co-workers.

“She didn’t even do what a decent human being, even (one) making a mistake would do, and check on the two men she injured,” Rose said. “Instead, she hit the gas to save her own skin. ... “She blamed all of those around her to shift focus from her undeterred lawlessness. I don’t have to tell you she’s going to hurt someone with her criminal behavior. She’s already done that.”

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

*Grievance Administrator v Timothy H. McCarthy, Jr., ADB Case No. 15-72-GA*

Respondent was disbarred for a lack of diligence and neglect resulting in his client’s potential medical malpractice case being time-barred by the applicable statute of limitations. The Respondent’s misconduct, however, was not limited to Rules 1.1 and 1.3. the hearing panel found that he intentionally made misrepresentations to his client, the staff of the Grievance Administrator/Commission and to hearing panel regarding his actions. His misrepresentations were verbal as well as written, and rose to the level of a scheme of deception. Former staff counsel conducted the hearing before the panel. Mr. Vella handled the matter thereafter. Respondent pursued an unsuccessful appeal to the Attorney Discipline Board. An application for leave to the Michigan Supreme Court was also denied. The focal point of both appeals was a claim of ineffective assistance of counsel. This argument was expressly rejected by the Board, which ruled that there is no right to counsel in an attorney discipline matter, and therefore, no defense of ineffective assistance of counsel.

*In Re Petition for Reinstatement of Lamont M. Walton, ADB Case No. 14-112-RP*

In 2011, Lamont Walton had been suspended retroactively, for two years and eleven months, commencing in July 2008 for misappropriation/conversion of funds that he held in trust in his capacity as the Treasurer of the Ingham County Black Lawyers Association. He has been continuously suspended in Michigan since then. In 2015, Mr. Walton applied for reinstatement to practice law in Michigan. The hearing panel and the Attorney Discipline Board denied his petition for reinstatement. The Board relied on the following factual findings by the panel. First, Mr. Walton had a rather continuous and long-term history of domestic violence for which he had not shown adequate rehabilitation. In addition, while Respondent was suspended from the practice of law in Michigan, he improperly obtained admission to the State Bar of Illinois without examination (by reciprocity) pursuant to the application process that required him to have been in good standing in his home state of Michigan, and to have actively practiced law in Michigan four of the previous seven years prior to his admission to the Illinois Bar Association. Mr. Walton had not met either condition. He failed to supplement his pending application for admission with this information. Though he informed the Illinois admissions office of his suspension of two years and eleven months, he failed to inform it that the suspension did not automatically terminate, but rather remained in effect until and unless he successfully petitioned for reinstatement. Accordingly, he was not eligible for admission to practice law in Illinois. He benefited from this lack of full disclosure and received his license to practice in Illinois. He did not seek a further appeal to the Michigan Supreme Court.

*In Re Petition for Reinstatement of Dennis P. Mikko, ADB Case No. 17-6-RP*

Dennis Mikko was a juvenile court referee in Traverse County Circuit Court when he was arrested in September 2009 for possession of pornography that possibly involved underaged girls. He successfully defended himself against the criminal charges, which were dismissed by the court. However, his license to practice law was suspended in Michigan for one year, effective June 27, 2014. The panel who heard the original matter in 2014 found that not only had Mr. Mikko been using his court computer to look at online pornography, he had also kept a brief case in his office in the court house that contained pornographic videos, magazines and books. The briefcase also contained four booklets of incest-themed short stories collected by Mr. Mikko. He included pornographic pictures therein, which he had cut out of magazines. Most significantly, he also created several pages of collages containing dozens of face-shot photographs of juvenile girls who had appeared before him and his co-referee in juvenile court proceedings, and inserted these collages in his booklets of incest stories.

Mr. Mikko applied for reinstatement in January 2017. The hearing panel denied his petition for reinstatement on the basis that he had not met his burden of proof, that he had not had sufficient therapy and treatment for his sexual addiction, and that he did not have a sufficient plan in place to reasonably ensure that he would not relapse in the future. Mr. Mikko also admitted that the incest story books with the collages of the juvenile defendants' photos, produced at the hearing by our witness, Det. Nathan Ritter, were the books he had put together, and were in the same original condition as when he kept them

in his briefcase. In a motion for reconsideration, as well as in an appeal to the Attorney Discipline Board, Mr. Mikko unsuccessfully argued that the panel's findings did not have sufficient support. He also raised evidentiary issues, challenging in particular certain contents of the briefcase being permitted in evidence which he claimed were not in the briefcase when it was seized by the sheriff's department. The panel expressly held that it did not rely on or consider these materials in the briefcase, so any possible error in allowing their admission in evidence was harmless. The Board agreed. The Board affirmed the hearing panel's decision denying Mr. Mikko's Petition for Reinstatement.

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

*Grievance Administrator v Dane P. Bays*, ADB Case Nos. 17-98-JC; 17-99-GA; 17-110-JC

This matter concerned a combined Notice of Filing of a Judgment of Conviction and a Formal Complaint filed in August 2017 based on Respondent's guilty plea to and convictions of a felony drug offense and a second offense of operating while intoxicated and his neglect of several client matters.

An Order of Disbarment and Restitution (By Consent) was entered, retroactive to October 26, 2016 (the date of Respondent's interim Order of Suspension) entered as to the criminal convictions.

The stipulation for consent discipline included Bays' admissions that he was convicted of operating while intoxicated, second offense; felony possession of a controlled substance, i.e., narcotic/cocaine, greater than 25 grams; and probation violation. It also included Bays' admissions that he "committed professional misconduct in his representation of three separate clients in bankruptcy matters; in his representation of another client in resolving an outstanding business matter; and that he failed to respond to four requests for investigation." Bays was ordered to pay a total of \$25,200 in restitution.

*Grievance Administrator v Chad M. Lucia*, ADB Case No. 17-72-GA

This matter concerned the Respondent's improper use of an IOLTA account. Based upon Respondent's admissions and the stipulation of the parties, the panel found, *inter alia*, that Respondent held funds other than client or third person funds relating to a representation in an IOLTA, in violation of MRPC 1.15(a)(3); deposited his own funds into an IOLTA in an amount more than reasonably necessary to pay financial institution charges or fees, in violation of MRPC 1.15(f); failed to provide a full and fair explanation of the cause of the overdraft and how it was corrected, in violation of MRPC 1.15A(f); and in connection with a disciplinary matter, knowingly made a false statement of material fact, in violation of MRPC 8.1(a). Respondent Lucia's law license was suspended for a period of thirty (30) days.

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

*Grievance Administrator v Mark S. Demorest, ADB Case No. 16-138-GA*

A Formal Complaint was filed against Respondent charging him with improperly maintaining funds owed to a client in his firm's IOLTA. Respondent and the Grievance Administrator filed a stipulation for a consent order of discipline, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based upon Respondent's admissions and pleas of no contest in his answer to the Formal Complaint and in the stipulation of the parties, the panel found that respondent committed professional misconduct in relation to the handling of client funds deposited into his firm's IOLTA account. Specifically, the panel found that respondent failed to promptly pay or deliver funds that a client or a third person was entitled to receive, in violation of MRPC 1.15(b)(3); and engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1). Respondent was also found to have violated MRPC 8.4(a) and MCR 9.104(2)-(4). In accordance with the stipulation of the parties, the panel ordered that respondent's license to practice law be suspended for a period of 180 days, effective August 31, 2017.

*Grievance Administrator v Stuart Lee Sherman, ADB Case No. 15-89-GA*

A Formal Complaint was filed against Respondent charging him with knowingly disobeying an obligation under the rules of a tribunal, failing to promptly pay or deliver funds that a client or third person is entitled to receive, and engaging in dishonest conduct. In a December 3, 2012 court proceeding in Oakland County Probate Court, the judge made a verbal ruling that no additional attorney fees were to be paid. Before the court reduced the decision to a written document, Respondent instructed his assistant to back date deposit slips and deposit approximately \$394,000 in funds that had been received at his office. He did not disclose this information to the court at the time. Respondent later took approximately \$112,000 from his firm's account as funds to which he believed he was entitled as compensation.

The hearing panel found that Respondent deceived the judge and violated the court's order, in violation of MRPC 3.4(c); and engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of a criminal law, where such conduct reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The panel also found that Respondent violated MCR 9.104(1)-(4) and MRPC 8.4(a) and (b). The hearing panel did not find that Respondent committed misconduct when he took the funds from the firm. The panel ordered Respondent's license to practice law be suspended for a period of one year, effective July 28, 2017.

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

*Grievance Administrator v Michael E. Tindall*, ADB Case No. 14-36-GA

Michael Tindall was disbarred on September 20, 2017 for a pattern of frivolous and abusive filings in several courts over a period of approximately 5 years. He is also filed misleading and deceptive pleadings in court and filed an improper lien against real property. Although courts had threatened to sanction Mr. Tindall, none had actually done it and his conduct continued unabated. The disciplinary proceeding finally put an end to years of misconduct by Mr. Tindall which had resulted in a waste of time and resources by parties and courts.

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

Mark Chaban was given a one-year suspension in an unrelated case for filing frivolous pleadings in a landlord tenant case which took several years to resolve as a result of Respondent's frivolous conduct. He also engaged in deceptive conduct to prevent the eviction of his client, including telling a court officer that the eviction was stayed due to an appeal when in fact no stay had been granted. This was Respondent's first discipline. He has been suspended since October 31, 2017.

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

*Grievance Administrator v Wade Harper McCree*, Case No. 14-59-GA

The Michigan Supreme Court removed Judge McCree from the bench of the Wayne County Circuit Court in an order entered on March 26, 2014. In its opinion, the Supreme Court found that respondent had a sexual relationship with a complaining witness in case pending before him without recusing himself for several months; engaged in numerous ex parte communications with her concerning the case, as well as another case in which one of her relatives was a party; violated various policies of the courthouse by permitting his mistress to enter the facility through an employee entrance without going through security, allowing her to remain also in his chambers while he was on the bench, arranging for her to park her vehicle in an area reserved for judges, and sneaking her cell phone in the courthouse for her; transmitted numerous text messages to her while he was on the bench that contained inappropriate and derogatory references to those appearing before him; lied about when and why he finally did recuse himself from the case in which his mistress was the complaining witness; sought to use the prosecutor's office as leverage against his ex-mistress by concocting charges of stalking and extortion against her; and lied under oath during the Judicial Tenure Commission proceedings. As a result of the order of removal, the grievance administrator filed a formal complaint against respondent on June 6, 2014. After finding that respondent engaged in professional misconduct as a lawyer, Tri-County Hearing Panel #2 issued an Order of Suspension, ordering that respondent be suspended for 2 years, effective January 22, 2016. Both parties filed petitions for review to the Attorney Discipline Board. On May 4, 2017, the Board issued

an opinion in which it affirmed the findings of misconduct and increased discipline to a 3-year suspension.

*Grievance Administrator v Clifford Woodards, Case No. 17-84-GA*

Respondent was charged with violating MRPC 6.5(a) and MCR 9.104(2) arising out of his conduct toward a Wayne County probation officer during their appearance for a matter in court. MRPC 6.5(a) prohibits treating a person involved in the legal process discourteously and disrespectfully because of that person's race and gender. While in court, after disagreeing about the sentence and conditions imposed on respondent's client, respondent told the probation officer that she had "angry black women's syndrome" or "black women's disease." Later, respondent accused the probation officer of not listening to him, called her an "angry black woman", and told her, "that's why you don't have a husband." Respondent consented to a reprimand, which was accepted by the hearing panel and imposed effective October 17, 2017.

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

*Grievance Administrator v. James Catipay, ADB Case No. 17-75-JC*

Respondent was licensed in both Michigan and California. Respondent was convicted of Conspiracy to Commit Securities Fraud for his involvement with a national scheme to defraud investors using his law firm, Prometheus Law. Respondent's license to practice law was revoked and he was ordered to pay restitution.

*Grievance Administrator v. Marcellus Long ADB Case No. 17-4-GA*

On August 5, 2017, Respondent was suspended for a period of one year after the Panel found that he neglected multiple client matters and failed to provide competent representation. Respondent was also placed under Interim Suspension in July, 2017, when he plead guilty in federal court to Conspiracy to Commit Wire Fraud. Disciplinary charges are pending against Respondent for that offense as well.

**Associate Counsel: Charise L. Anderson**

*Grievance Administrator v Tonya Myers Phillips, ADB Case No. 16-64-GA*

Respondent was charged with failing to take remedial measures after learning that her client intended to engage in criminal or fraudulent conduct relative to an adjudicative proceeding. Respondent and the Grievance Administrator filed a stipulation for order of reprimand. The Attorney Discipline Board considered a petition for review filed by Complainant, on the grounds that the stipulation for consent order of reprimand accepted by the hearing panel resulted in insufficient discipline. After reviewing the record before the hearing panel, consideration of briefs and arguments of the parties at a hearing, the board concluded that the panel made an informed decision to accept the stipulation for consent order of reprimand in this matter. The board further stated that it had previously

and consistently held that it “will not review the inherently prosecutorial decisions of the Attorney Grievance Commission. The authority to investigate allegations of misconduct, make recommendations to the Commission, and ultimately determine the charges to bring is inherent in the Commission as the prosecution arm of the Supreme Court.”

**Associate Counsel: Sarah C. Lindsey**

*Grievance Administrator v Sandra J. Budnick (Crutchfield)*, ADB Case No. 16-65-GA

Respondent was disbarred effective February 17, 2017, for converting an arbitration award to which her clients were entitled. Respondent failed to deposit the funds into a trust account, and she failed to pay the award to her clients. In addition, Respondent misappropriated funds that her clients advanced to her for expenses. Respondent also neglected the legal matter, failed to communicate with her client, and failed to return funds belonging to her clients at the conclusion of the engagement, among other violations. In addition to disbarment, the panel ordered that Respondent pay restitution of more than \$16,000. This amount included the misappropriated funds as well as fee forfeiture.

*Grievance Administrator v Trevor M. Robinson*, ADB Case Nos. 16-73-AI; 16-109-JC

Respondent was convicted in Eaton County Circuit Court of one count of embezzlement by a public official, five counts of stealing or retaining a financial transaction device without consent, four counts of uttering and publishing, and one count of performing an occupation without a license. Respondent’s license was automatically suspended upon his conviction of the felony counts. After a hearing to determine the appropriate level of discipline, Respondent was disbarred. The panel also ordered that before Respondent can be reinstated to the practice of law, he must demonstrate that he has repaid the restitution ordered in the criminal matters as well as restitution owed from two previous orders of suspension.

**Associate Counsel: Jordan Paterra**

*Grievance Administrator v Nader W. Nassif*, ADB Case No. 17-137-GA.

This matter concerned a relationship—a friendship—between Respondent and a former judge of the 15<sup>th</sup> District Court in Ann Arbor, Christopher Easthope. Respondent was a member of the firm that held Ann Arbor’s indigent defense contract. Respondent was the attorney that appeared in front of Judge Easthope more than any other attorney. The formal complaint, filed in November 2017, charged Respondent with violations of the Rules of Professional Conduct based on the content of the text messages relating to cases and clients and the context of the text messages, which revealed the close friendship between Respondent and Mr. Easthope.

A 179-day Order of Suspension (By Consent) was entered, retroactively effective June 1, 2017 because Respondent had not practiced law since a 180-day suspension in 2014. The stipulation for consent discipline included Respondent's admissions that he engaged in ex parte communications with Mr. Easthope. These ex parte communications included text messages related to: case scheduling and scheduling favors, sentence lengths before sentencing hearings, requests for probation, concealing discussions from the Washtenaw County Prosecutor, and favors. The ex parte communications also included text messages that showed a relationship between Respondent and Mr. Easthope, a friendship, which required disclosure or disqualification.

The hearing panel found that Respondent violated or attempted to violate MRPC 3.5(a) by seeking to influence Mr. Easthope by means prohibited by law; violated or attempted to violate MRPC 3.5(b) by having an ex parte communication with Mr. Easthope regarding a pending matter without being authorized by law or court order; violated, or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a); failed to report Mr. Easthope's violation of the Code of Judicial Conduct, in violation of MRPC 8.3(b); and violated or attempted to violate MRPC 8.4(e), by knowingly assisting a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law. The hearing panel also found that Respondent violated MCR 9.104(1)-(4), and MRPC(b) and (c).

*Grievance Administrator v Michael J. Pelot*, ADB Case No. 17-31-GA.

A formal complaint was filed against Respondent Michael J. Pelot charging him with contacting a party that was represented by counsel, in violation of MRPC 4.2. An Order of Reprimand (By Consent) was entered, effective May 26, 2017. The stipulation for consent discipline included Respondent's admissions that he contacted a complainant in a conciliation meeting for a discrimination claim in an attempt to resolve the matter when he knew that that client was represented by counsel. The hearing panel found that Respondent violated MRPC 4.2, MCR 9.104(1)-(3) and MRPC 8.4(a) and (c).

*Grievance Administrator v Dana F. Wilson*, ADB Case No. 17-134-GA.

In this matter, Respondent Dana F. Wilson instructed his assistant to sign Respondent's criminal client's name to a waiver of arraignment. Respondent had not requested or received authority to sign his client's name. Respondent also sent an associate to attend a hearing without informing or seeking the consent of his client. The Grievance Administrator filed a formal complaint and a stipulation for consent discipline pursuant to MCR 9.115(F)(5) in November 2017.

An Order of Reprimand (By Consent) was entered, effective February 14, 2018. The stipulation for consent discipline included Respondent's admissions that he did not inform or seek consent from his client to have his associate attend a hearing instead of Respondent and that he did not seek consent from his client to have his assistant sign his client's name.



The hearing panel found that Respondent failed to seek the lawful objectives of his client, in violation of MPRC 1.2(a), failed to conduct himself with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3, failure to keep his client reasonably informed about the status of a matter, in violation of MRPC 1.4(a), and failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions, in violation of MRPC 1.4(b). The hearing panel also found that Respondent violated MCR 9.104(1)-(3) and MRPC 8.4(a) and (c).

**Associate Counsel: Nathan C. Pitluk**

*Grievance Administrator v Matthew John Stephens*, ADB Case Nos. 16-136-GA; 17-79-GA

Respondent was suspended for 180 days effective in May, 2017. Respondent failed to answer or appear in that matter and failed to pay restitution or costs. After the date of his suspension, evidence came to light that Respondent had engaged in additional misconduct. In a two-count formal complaint, Respondent was charged with failing to participate in the defense of his client in a contractual dispute and converting unearned fees. After accepting a retainer and filing an appearance, Respondent neglected the case and abandoned his client. Respondent's actions resulted in a default judgement against his client. Respondent did not advise his client of the default after it occurred, but instead advised his client not to attend a sanction hearing ordered by the court, which could have resulted in sanctions against his client. Subsequently, a Request for Investigation was filed, which Respondent failed to answer. A formal complaint was filed against Respondent, which he also failed to answer.

By way of Respondent's default, the panel found the misconduct admitted. On January 2, 2018, an Order of Disbarment and Restitution was issued. Highlighting the importance of the public's trust in the legal profession and its protection, the panel thoughtfully found:

Public trust is important when it comes to handling client property and in terms of performance, competency and basic representation. There was no representation here. Respondent used his professional license to scam unwary and trusting clients. This pattern of gross misconduct can only be successfully remedied by the disciplinary process. Once that process was invoked, Respondent ignored it. He failed to respond to the request for investigation. He failed to answer the formal complaint. He refused any attempts at restitution. He failed to appear for the hearing. Given this attitude, there is no other way that we, as a profession, are capable of getting through to Respondent because he does not care about us or what we do. The only way that we can be sure that he will not do this again is to impose the most serious sanction of disbarment.

## Prosecutions and Other Litigation

### **A. Proceedings before Hearing Panels of the Attorney Discipline Board.**

When the Commission authorizes that a prosecution be commenced, a formal complaint is filed with the Attorney Discipline Board (ADB) setting forth the alleged misconduct, pursuant to MCR 9.115. The matter is scheduled before a hearing panel of three volunteer lawyers appointed by the ADB. Upon the conclusion of the hearing, the panel must issue an order dismissing the complaint or impose public discipline, which may include probation, reprimand, license suspension or disbarment. The Grievance Administrator filed **83** formal complaints in 2017, compared to 85 filed in 2016. Appendix A (page 18) 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 2017 based on an attorney's criminal convictions, compared to **31** convictions filed in 2016.

Attorneys who are disciplined in other jurisdictions (state or federal) will be subject to a reciprocal discipline proceeding initiated by the Grievance Administrator pursuant to MCR 9.120(C). These proceedings, like JOC proceedings, resemble a show cause proceeding in which the principal issues are whether the attorney received due process in the underlying litigation and whether a comparable discipline should be imposed. Reciprocal proceedings were instituted in **10** cases in 2017, compared to **6** in 2016.

The Grievance Administrator is also a participant in ADB reinstatement proceedings initiated by attorneys who have been suspended for more than 180 days or were disbarred, in accordance with MCR 9.124(C). The burden of proof is on the attorney to establish his or her fitness by clear and convincing evidence. In those cases, the Grievance Administrator must conduct an investigation and file a written report with the hearing panel. The Grievance Administrator may contest the petitioner's eligibility for reinstatement. Eleven (**11**) state reinstatement petitions were filed in 2017, compared to three (**3**) in 2016.

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 **4** such

proceedings in 2017, compared to 1 in 2016. In addition, there were 7 miscellaneous filings with the ADB, which include Motion for Order to Show Cause, or Motion to Quash Subpoena.

## **B. Appeals and Other Proceedings.**

### **Review by the Attorney Discipline Board:**

The Grievance Administrator, as well as the Respondent attorney and the complainant, may file a petition with the Attorney Discipline Board seeking review of the hearing panel's decision. During the year 2017, the ADB ruled on 20 petitions for review following briefing and oral arguments presented by the Grievance Administrator and the Respondent. The Grievance Administrator, the Respondent, and the complainant may appeal a decision by the Attorney Discipline Board to the Supreme Court which may, in its discretion grant leave to appeal.

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

The Grievance Administrator is a party in complaints for superintending controls filed with the Michigan Supreme Court by complainants who disagree with the decisions of the Grievance Administrator or the Commission to reject or close an investigative file. The Grievance Administrator filed an appearance in 4 matters filed with the Supreme Court in 2017. In addition to the complaints for superintending control filed, there were 6 applications for leave to appeal with the Supreme Court.

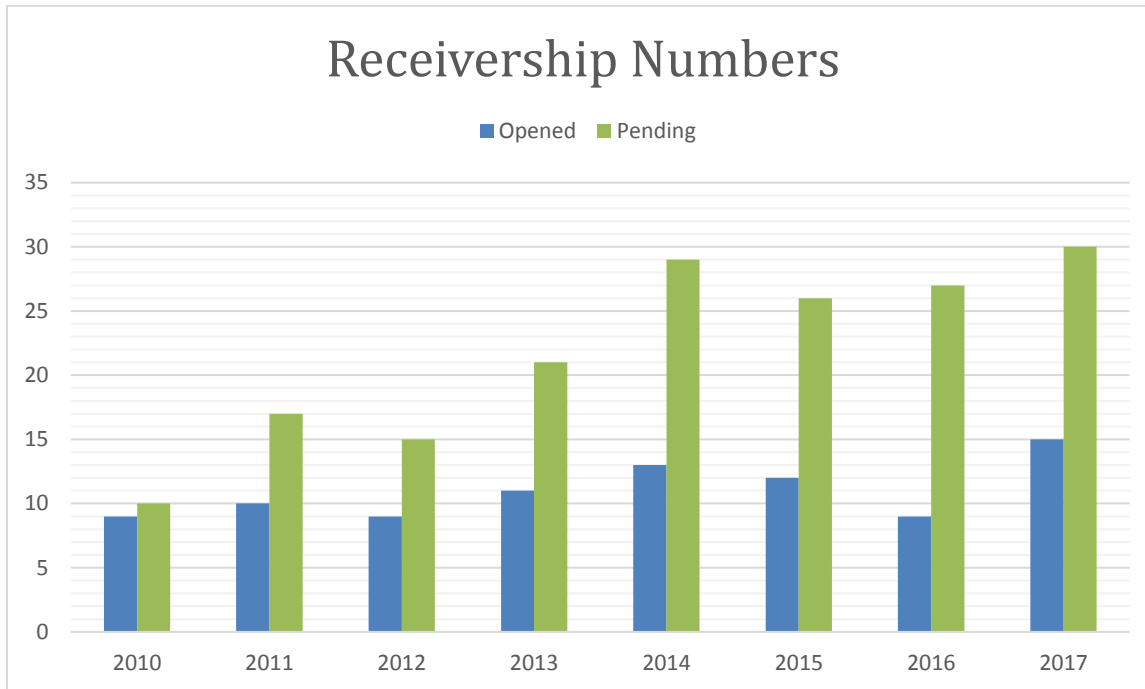
### **Reconsideration:**

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

### **Receiverships:**

Under MCR 9.119(G), if an attorney leaves the practice of law (whether or not for disciplinary reasons), disappears, or dies and there is no person capable of conducting the attorney's affairs, the Grievance Administrator may file a petition for receivership with the circuit court in the county where the attorney maintained his or her office. In those cases, the Grievance Administrator acts as receiver or co-receiver with the assistance of a local attorney, and must undertake a work-intensive process that includes cataloging and prioritizing the abandoned files, contacting clients, courts and opposing parties if

there is a pending matter, and taking other action in order to protect the interests of clients. The Grievance Administrator opened **15** new receivership files in 2017, compared to **9** new receivership files in 2016. **9** receiverships were closed during the year 2017 compared to **11** in 2016. **30** open receivership files were pending at the end of 2017 compared to **27** 2016.



**Federal Court Proceedings:**

The Grievance Administrator may be requested to participate in discipline or reinstatement proceedings in a federal district court. For example, the District Court of the Eastern District of Michigan regularly appoints the Grievance Administrator as an interested party in reinstatement proceedings involving lawyers who have been suspended from practice under the local rules of that court. In 2017, the Administrator appeared in **2** discipline or reinstatement proceedings conducted in the U.S. District Court for the Eastern District.

**Funding**

The Attorney Grievance Commission receives no public funds. The Commission and the Attorney Discipline Board are funded primarily from the discipline portion of the mandatory dues paid by all active members of the State Bar of Michigan. In 2017, annual dues for active members were **\$300**, of which **\$90** was specifically allocated to the two discipline agencies. For the fiscal year, which ended September 30, 2017, the combined approved operating expenses of the Attorney Grievance Commission and the Attorney Discipline Board were **\$5,188,837** The Attorney Grievance Commission’s approved operating expenses for the fiscal year 2017 were **\$3,989,483**.

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

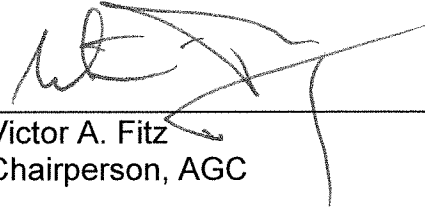
Attorney Grievance Commission  
535 Griswold St., Suite 1700  
Detroit, MI 48226-3259  
Telephone: (313) 961-6585

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



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Alan M. Gershel  
Grievance Administrator

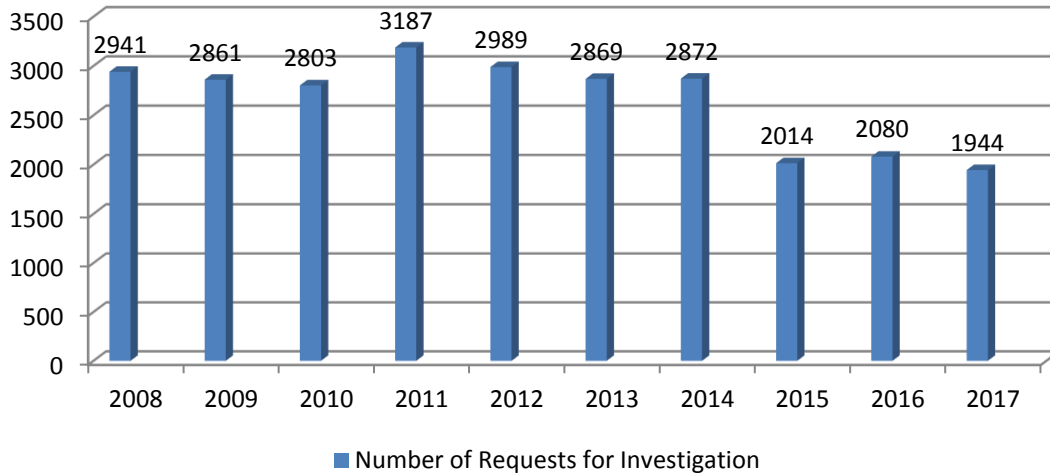


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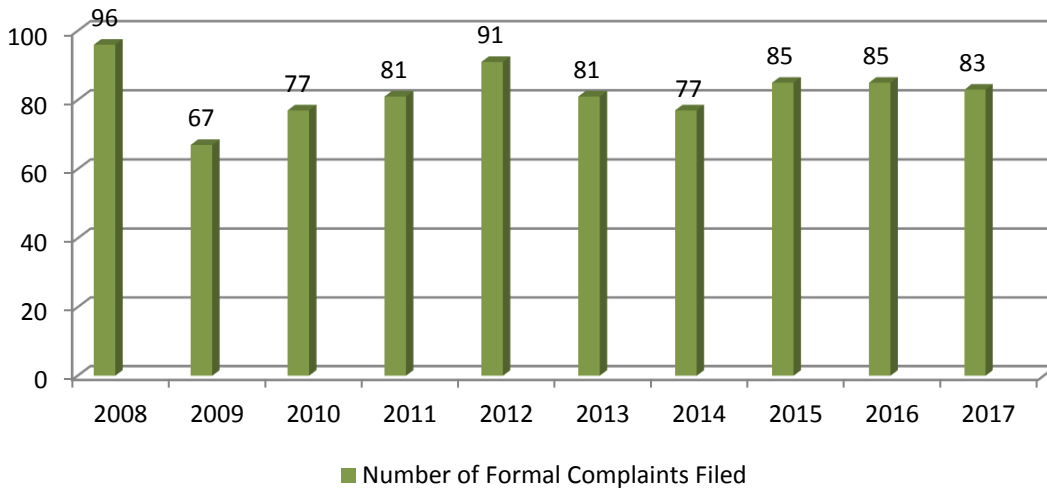
Victor A. Fitz  
Chairperson, AGC

## Appendix A

### 2008-2017 AGC 10-Year Comparison Chart Requests for Investigation



### 2008-2017 AGC 10-Year Comparison Chart Formal Complaints Filed



## Appendix B

### Attorney Grievance Commission Comparative Statement of Expenses 2016 and 2017

LINE ITEM	FY 2016	FY 2017
Salaries	2,333,153	2,405,080
Longevity	7,710	6,870
Payroll taxes	177,021	184,514
Employee Insurance	364,189	389,368
Pension Contributions	287,910	277,647
Retiree Health Care	106,008	107,390
Rent	160,800	160,800
Electricity	15,510	15,510
Parking	5,000	3,000
Outside Counsel		10,000
Payroll processing fees	9,000	10,000
State Bar of Michigan Fees	47,125	49,262
Witness and Subpoena fees	46,690	47,500
Receivership expenses	10,000	5,000
Machine rental	45,920	30,000
Meetings	5,200	9,000
Travel	22,000	30,000
Telephone	14,000	14,000
Legal research and Subscriptions	16,000	20,000
Office supplies	30,000	34,000
Printing and stationery	4,000	1,500
Postage	38,000	30,000
Insurance	51,011	52,542
Technology services	30,000	50,000
Case management system	90,000	
Repairs and Maintenance	15,000	7,000
Dues	6,900	8,000
Professional Education	8,000	6,000
Capital (office) Expenditures	25,000	5,000
Miscellaneous	3,000	3,000
Depreciation	6,500	17,500
<b>Total</b>	<b>3,980,647</b>	<b>3,989,483.00</b>