

ANNUAL REPORT

2003

OFFICE OF LAWYER REGULATION



State Bar of Arizona Office of Lawyer Regulation • 111 W. Monroe St., Suite 1800 • Phoenix, Arizona 85003



**2003 ANNUAL REPORT – STATE BAR OF ARIZONA  
OFFICE OF LAWYER REGULATION**

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## 2003 ANNUAL REPORT – STATE BAR OF ARIZONA OFFICE OF LAWYER REGULATION

### SUMMARY OF STATISTICAL DATA

In summary, this report shows at the end of 2003:

- There was an overall net decrease of 48% in total cases pending at all levels. This demonstrates a significant improvement in keeping cases moving through channels. (See chart entitled Total Matters Pending by Status and by Year Received, page 3)
- There was a decrease of 50% in cases in investigation due to cases being disposed of in 2003. (See chart entitled Total Matters Pending by Status and by Year Received, page 3)
- There was a significant increase in the number of total telephonic inquiries handled by A/CAP in 2002. There was a decrease from 2002, yet still an increase over 2001. (See chart entitled Comparison by Matters by Status and by Year Received, page 2)
- The number of written inquiries received by the State Bar remains consistent.
- There was a significant increase in the number of dismissals by Bar Counsel and the Panelist (670 in 2001 and 910 in 2003), due to many older cases being completed. This has resulted in the fewer cases being “in investigation.”
- Historically, the client and opposing client have been the first and second leading sources of charges. In 2003, banking institutions reporting of trust account overdrafts replaced opposing clients as the second leading source of charges.
- Family law continues to lead in the area of law with the most charges.
- There was a decrease in the number of formal complaints filed with the Disciplinary Clerk of the Supreme Court. However, there has been an increase in the average number of charges included in the filed formal complaints. (See chart entitled Charges in Filed Formal Complaints, page 6)
  
- Discipline sanctions imposed in 2003:
  - 7 attorneys disbarred
  - 37 attorneys suspended
  - 27 attorneys censured
  - 32 attorneys informally reprimanded

These figures do not include probation, diversion, restitution, disability, interim suspensions or reinstatements.

## **TERMINOLOGY**

### **1. Charge**

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

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

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

### **2. Complaint**

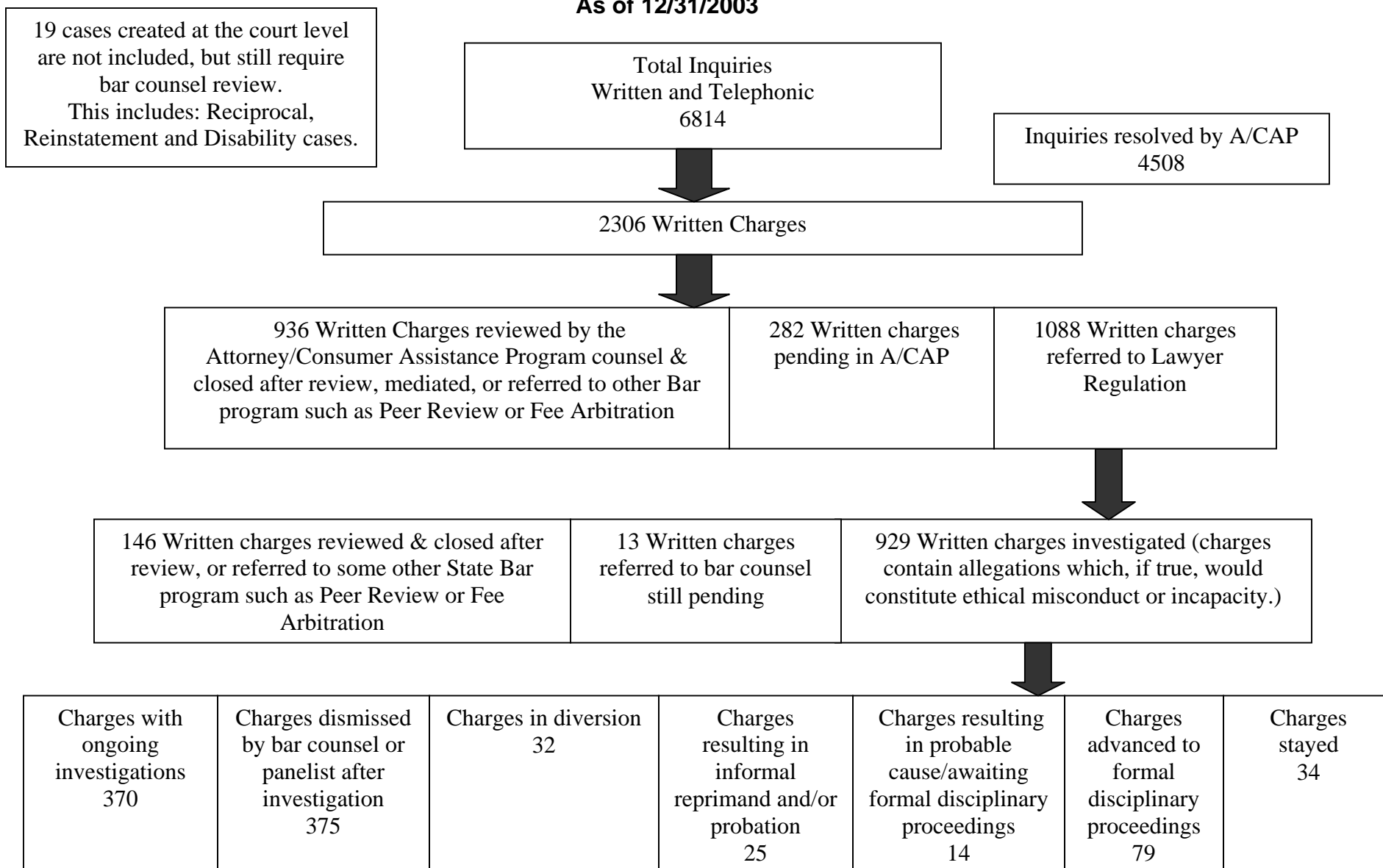
“Complaint” means a formal complaint prepared by the State Bar and filed with the Disciplinary Clerk pursuant to Rule 46(f)(6), Ariz.R.S.Ct. Complaints will often consist of multiple charges, following a finding of probable cause after completion of investigation of those charges.

### **3. Formal Disciplinary Proceedings**

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

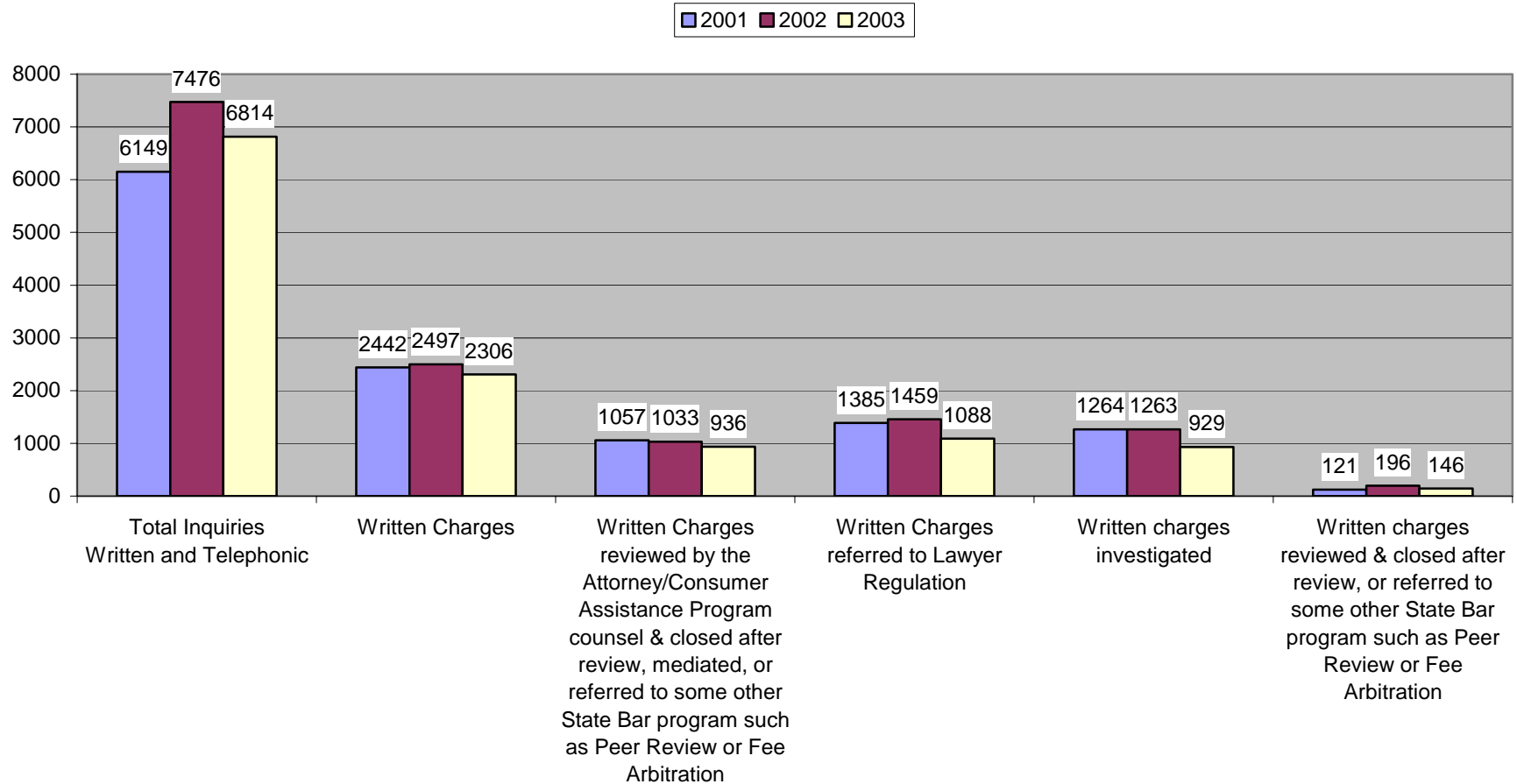
## STATUS OF MATTERS RECEIVED IN 2003

As of 12/31/2003



This chart reports on only matters received from 1/1/03 – 12/31/03 and does not report on the status of matters received in prior years. The status of *all* pending matters is contained on the chart “Total Matters Pending by Status and by Year Received.” on page 3.

### COMPARISON OF MATTERS BY STATUS AND BY YEAR RECEIVED



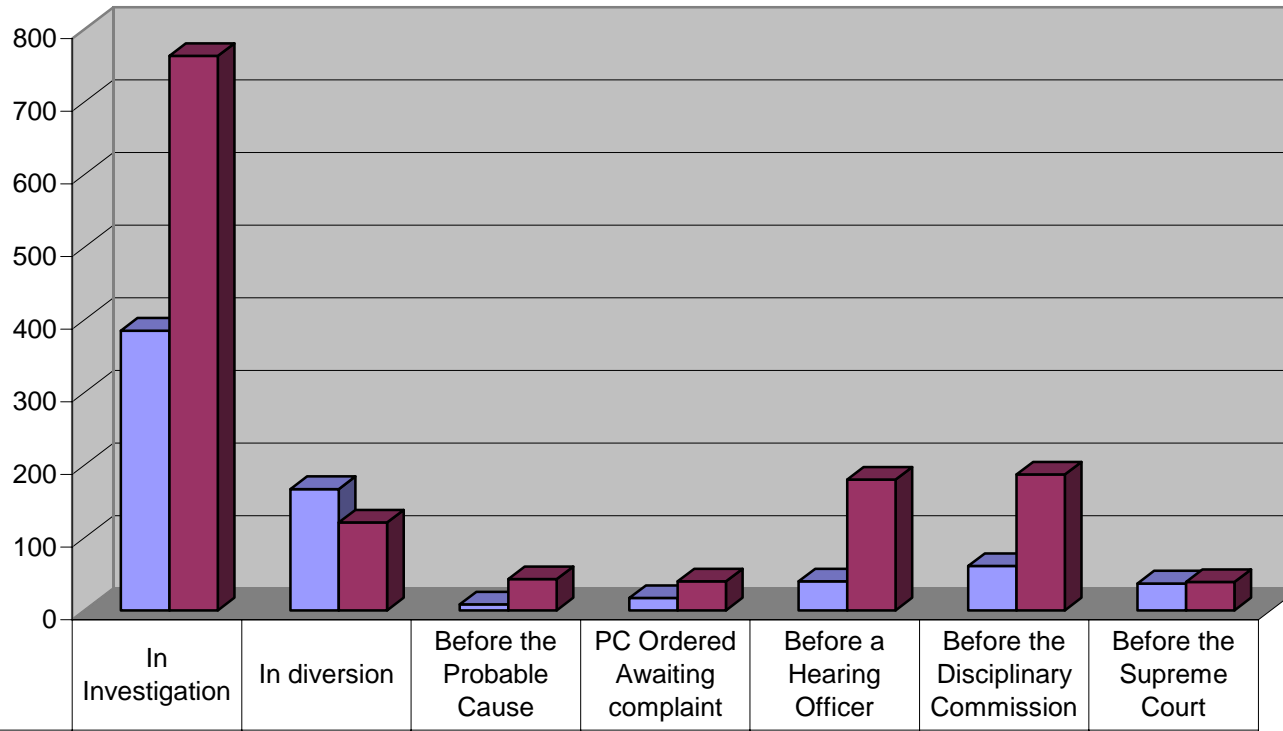
- The status of 2002 cases is reported as of 12/31/03.

**TOTAL MATTERS PENDING BY STATUS  
AND BY YEAR RECEIVED**

Year Rec'd	In Investigation		In Diversion		Before Panelist		PC Ordered – Awaiting Complaint		Before Hearing Officer		Before Disciplinary Commission		Before Supreme Court		TOTALS EACH YR	
	12/31		12/31		12/31		12/31		12/31		12/31		12/31		12/31	
	2003	2001	2003	2001	2003	2001	2003	2001	2003	2001	2003	2001	2003	2001	2003	2001
1992	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
1992	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
1993	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1994	0	0	0	0	0	0	0	0	0	0	1	0	2	2	3	2
1995	0	0	2	3	0	0	0	0	0	0	1	3	1	3	4	9
1996	0	0	6	13	0	0	0	0	0	4	0	2	0	8	6	27
1997	0	0	4	12	0	0	0	0	0	3	1	6	1	4	6	25
1998	0	0	6	16	0	1	0	2	0	16	0	15	1	3	7	53
1999	0	2	3	22	0	3	0	2	0	34	0	46	1	7	4	116
2000	0	20	14	34	0	8	0	8	0	102	2	98	3	9	19	279
2001	3	741	29	21	1	31	0	28	0	21	5	17	10	2	48	861
2002	12	--	71	--	1	--	3	--	0	--	28	--	11	--	126	--
2003	370	--	32	--	6	--	14	--	40	--	23	--	7	--	492	--
Total	385	763	167	121	8	43	17	40	40	180	61	187	37	39	715	1373
	-50%		+38%		-81%		-58%		-78%		-67%		-5%		-48%	

This chart compares the number of matters by status that were pending on 12/31/2001 and 12/31/2003, and by the year in which the matters were received by the State Bar of Arizona. The chart also indicates the percentage of increase or decrease in the total matters pending at each level. The status of matters pending at the end of 2002 is not currently available.

**MATTERS PENDING BY STATUS  
2001 V. 2003**

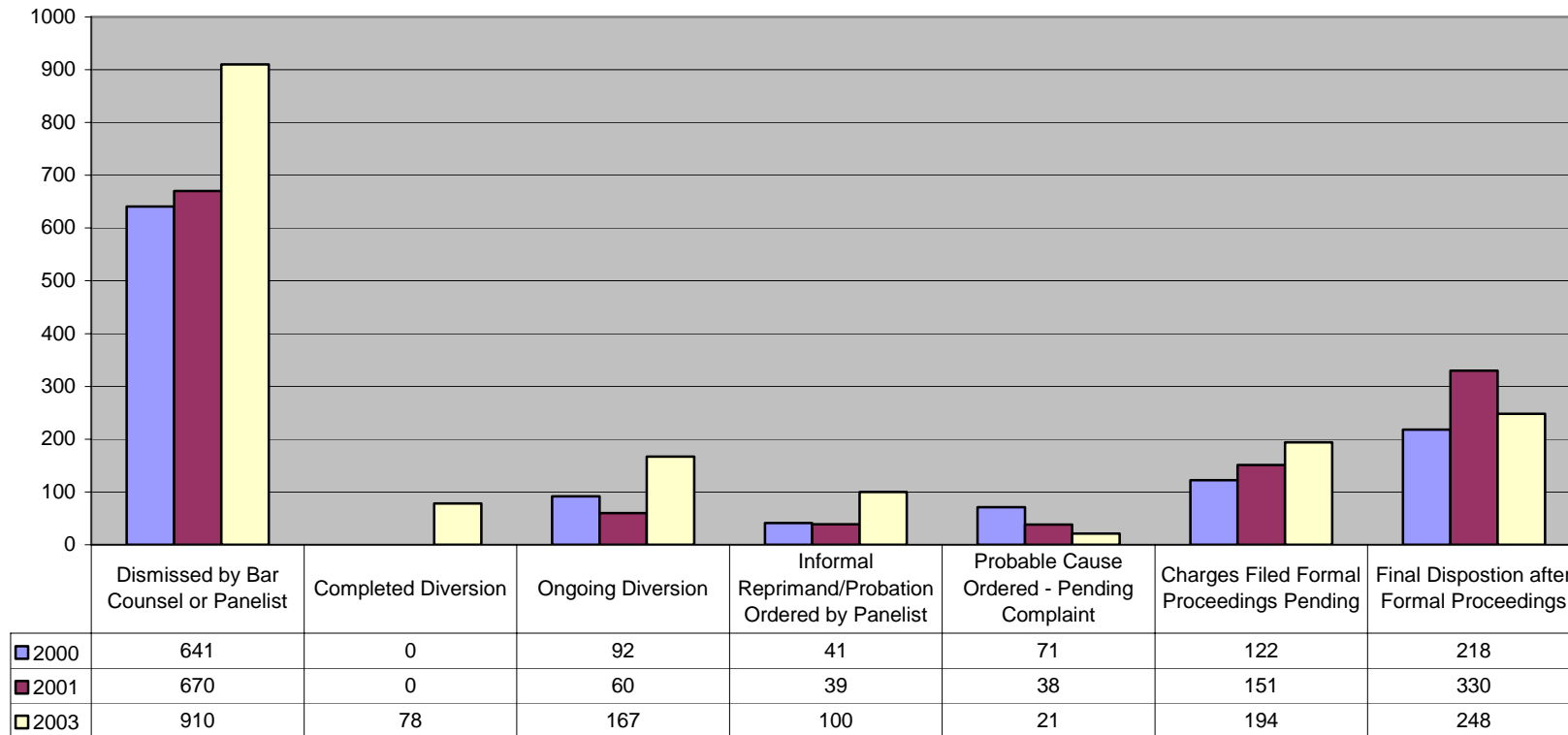


■ Pending as of 12/31/2003	385	167	8	17	40	61	37
■ Pending as of 12/31/2001	763	121	43	40	180	187	39

TOTAL PENDING ON 12/31/2003 = 715

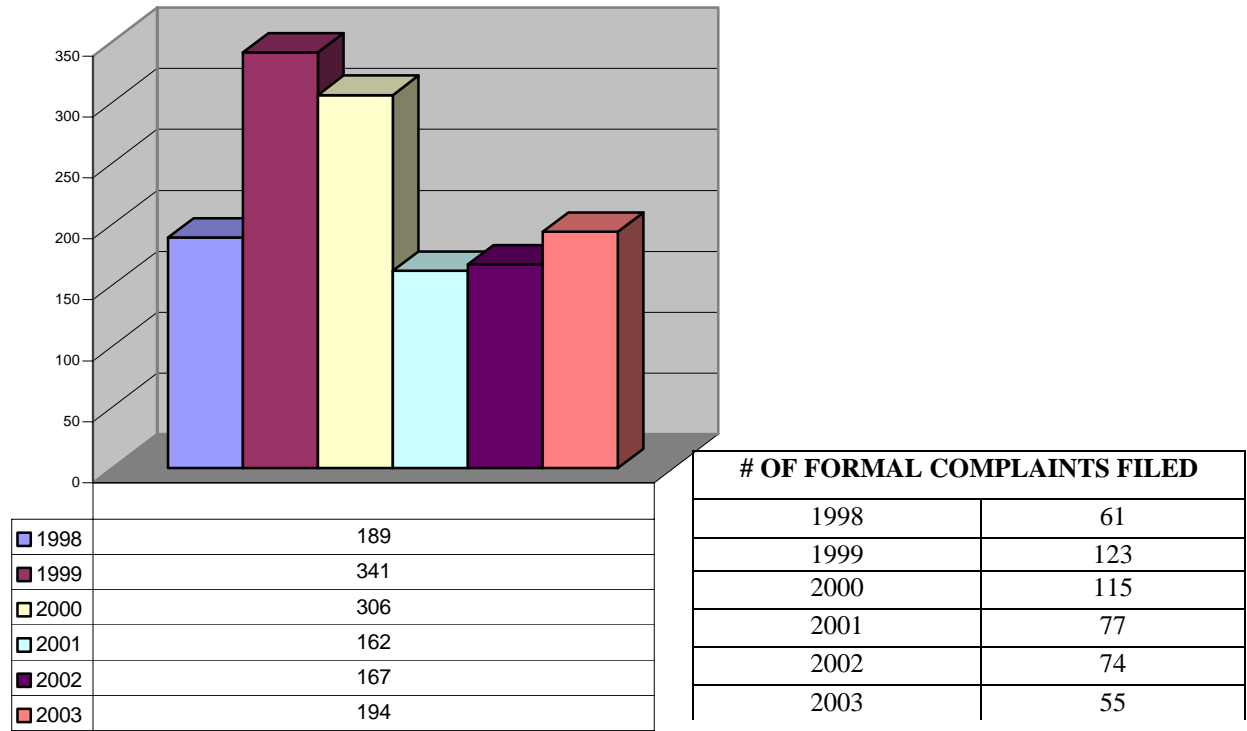
TOTAL PENDING ON 12/31/2001 = 1373

**DISPOSITION OF CHARGES DURING THE YEAR INDICATED**



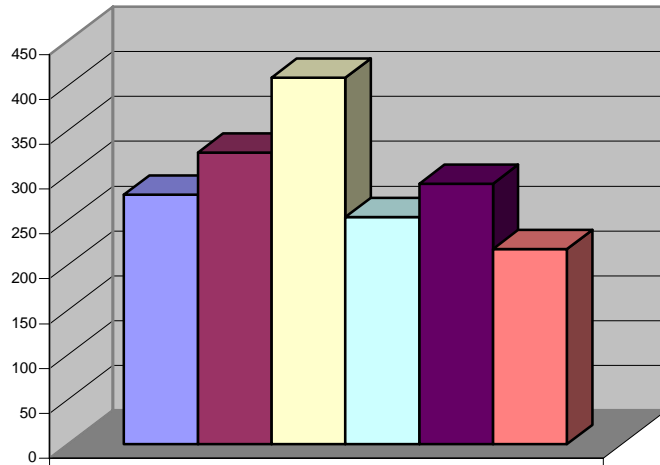
Completed diversion statistics were not captured in 2000 and 2001.

**CHARGES INCLUDED IN FILED  
FORMAL COMPLAINTS**



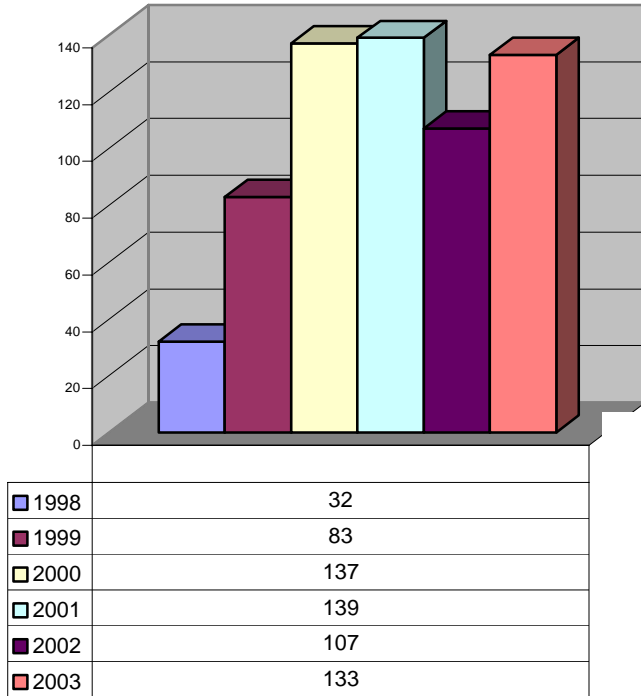
# OF FORMAL COMPLAINTS FILED	
1998	61
1999	123
2000	115
2001	77
2002	74
2003	55

**PROBABLE CAUSE ORDERS ISSUED**



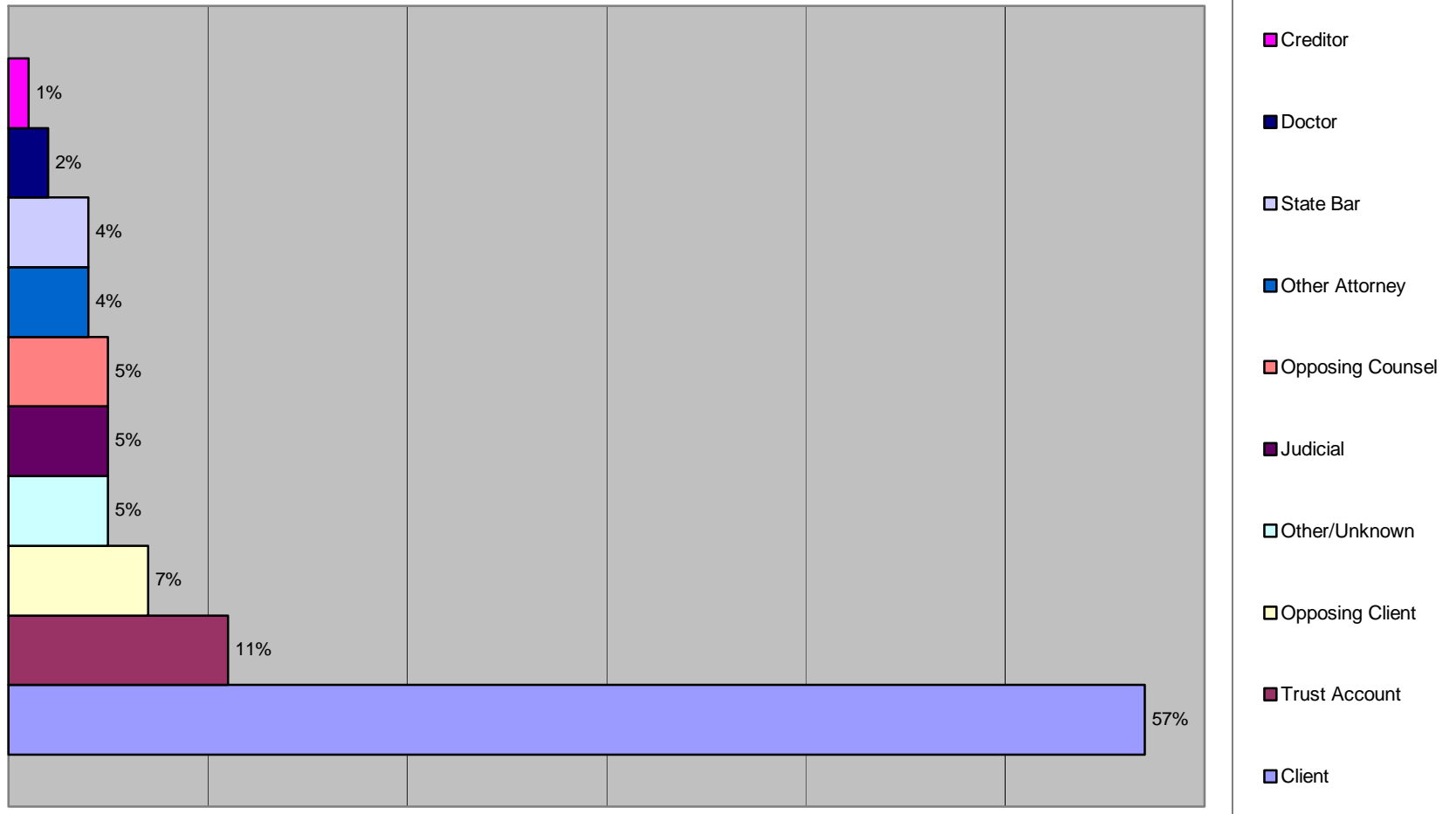
■ 1998	278
■ 1999	325
■ 2000	408
■ 2001	253
■ 2002	290
■ 2003	217

**CHARGES INCLUDED IN FILED  
CONSENT AGREEMENTS**



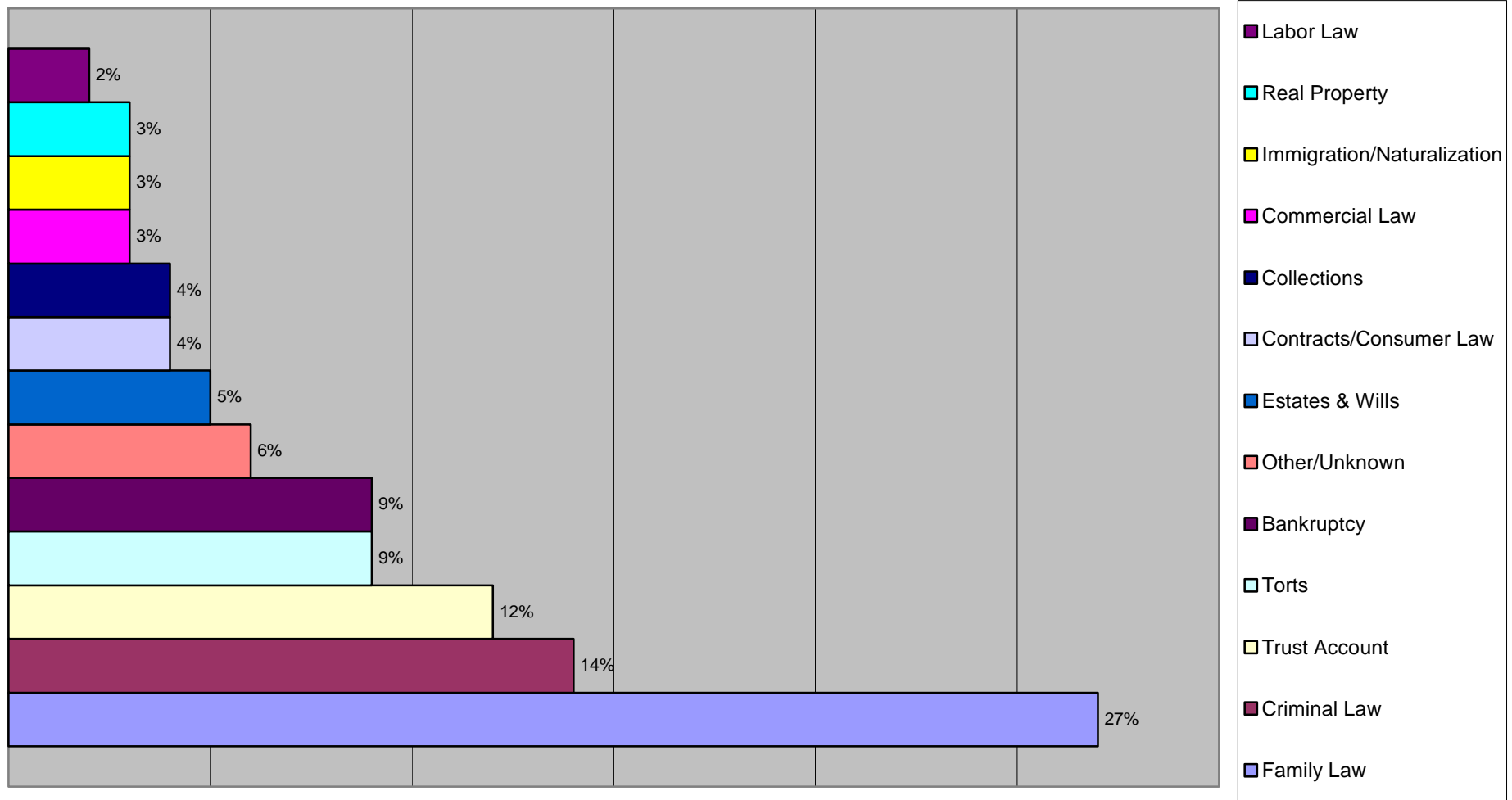
# OF CONSENTS FILED	
1998	N/A
1999	N/A
2000	N/A
2001	N/A
2002	39
2003	40

**CHARACTERIZATION OF MOST COMMON CHARGES  
BY IDENTITY OF COMPLAINANT**



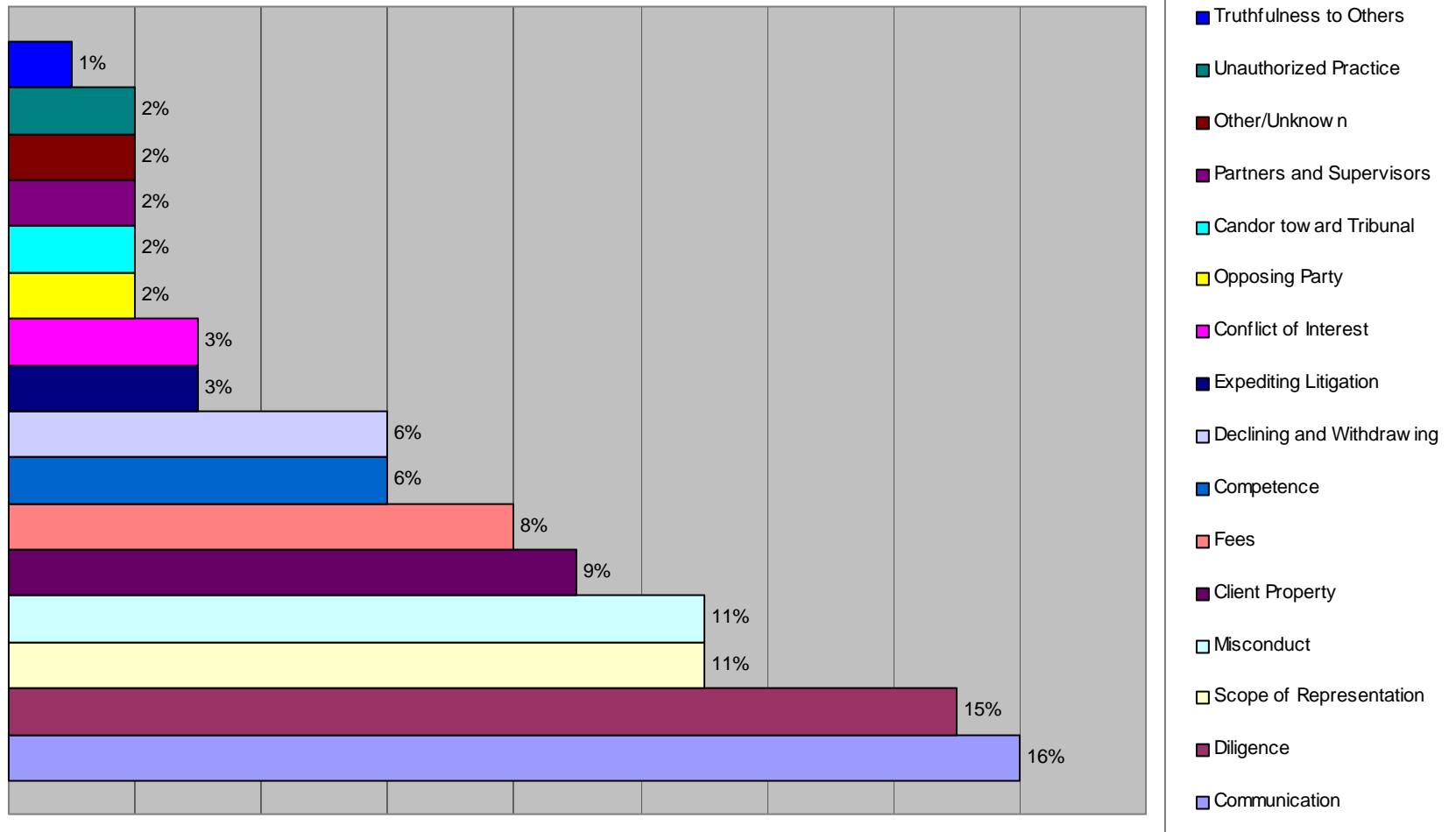
Completed Investigations – Charges Received in 2003

**CHARACTERIZATION OF MOST COMMON CHARGES BY AREA OF PRACTICE**



Completed Investigations - Charges Received in 2003

**CHARACTERIZATION OF MOST COMMON CHARGES  
BY TYPES OF SPECIFIC ALLEGED CONDUCT**



Completed Investigations – Charges Received in 2003

**2003**  
**ATTORNEYS SANCTIONED,**  
**ATTORNEYS TRANSFERRED TO DISABILITY INACTIVE STATUS,**  
**and ATTORNEYS REINSTATED**

**INFORMAL REPRIMANDS**

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Informal Reprimand</i>
ACER, JOHN	9/3/03	1
BLUEMLE, ROBERT	8/13/03	1
BROWN, CHARLES G.*	12/10/03	1
CAPLINGER, JAMES	7/23/03	1
CLAUSSEN, PETER*	3/17/03	1
DAVIDON, ALAN	10/6/03	1
DEAN, MARGARET	10/28/03	1
EUSTACE, JAMES	11/21/03	1
FLEMING, LAWRENCE	4/20/03	1
FORSYTH, GARY F.	12/8/03	1
HOWELL, WILLIAM D.	10/8/03	1
JORDAN, GREGORY R.	12/5/03	1
KIRKLAND, CHARLES	9/19/03	1
LENKOWSKY, PAUL	11/3/03	1
MARTINEZ, RICHARD	4/10/03	1
MCARTHUR, JAMES	4/20/03	1
MORGAN, KENT	3/9/03	1
NEUHEISEL, RICHARD	5/14/03	1
O'QUINN, KATHY M	11/7/03	1
PHILLIPS, JAMES	5/14/03	1
RAY, C KENNETH	4/14/03	1
RYAN, JOHN	7/22/03	1
RYAN, RONALD	11/10/03	1
SEIDBERG, KENNETH	11/20/03	1
SERRANO, JOHN	3/10/03	1
STADELMAN, H	5/26/03	1
STONE, CARL RANDALL	7/7/03	1
TITLA, STEVE	5/26/03	1
WATTEL, DAVID	12/18/03	1
WEINERT-LANDRITH, DIANA	11/10/03	1
WESTBY, PETER	4/5/03	1
YANCEY, BRUCE	2/5/03	1

\* Indicates non-member

## **CENSURES**

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Censure</i>
ADAIR, MARC A.	8/11/03	1
BASKERVILLE, CAL	01/23/03	1
BAYLESS, DENNIS P.	6/30/03	1
BLAKE, LEE P.	3/7/03	2
BROWN, BRADFORD T.	12/9/03	1
CROCKER, ERIC	6/16/03	2
FLATER, RONALD W.*	11/17/03	9
FORTNER, WILLIAM	12/8/03	4
FRIEDLANDER, HARRY	3/26/03	1
GLIEGE, JOHN G.	2/20/03	2
GOLLIN, MORTON*	6/30/03	1
GWILLIAM, DALE	01/22/03	1
HINEMAN, PHILLIP	01/08/03	4
KAZRAGIS, GARY W.	8/7/03	1
LAMM, JASON D.	3/26/03	1
LOPEZ, ANTHONY R., JR	2/21/03	1
MCVAY, J. DOUGLAS	2/25/03	3
MIRESCU, CLAUDIA	8/7/03	1
MOTHERSHED, GEORGE*	9/15/03	1
SAMMONS, RANDALL M	12/29/03	3
SCHWARTZ, KEVIN	6/13/02	2
STEVENS, LAURENCE B.	12/29/03	3
STIGLER, TRACY D.	2/20/03	6
SUSMAN, ALAN	01/23/03	1
VICE, GEORGE III	12/23/03	1
YOUNGLOVE, DOUGLAS	4/21/03	3
ZAKRAJSEK, CONNIE R.*	7/2/03	6

\* Indicates non-member

## **INTERIM SUSPENSIONS**

<i>Name</i>	<i>Date Issued</i>
DOWNEY, WILLIAM	1/10/03
GRONDIN, MICHAEL	12/11/03
HILL, STEVEN EDWARD	9/23/03
PICCIOLI, THOMAS	6/16/03
SUZENSKI, ROBERT	3/20/03
TORRE, MARK AARON	8/11/03
WASSON, GORDON	10/20/03

## **SUSPENSIONS**

<i>Name</i>	<i>Term of Suspension/Date Issued</i>	<i>Number of Charges in each Suspension</i>
ALCORN, RICHARD	3 mos.; effective 5/4/03	1
APKER, DAVID	6 mos. and 1 day; effective 4/23/03	1
BOLDING, EDWARD	1 year; effective 1/6/03	2
CARR, SANDRA	2 years; effective 7/2/03	1
CIMINO, ROBERT	6 mos.; effective 7/1/03	6
CLARK, CARROL A.	60 days; effective 12/19/03	3
CORD, CHADWICK M	6 mos. 1 day; effective 7/31/03; issued 7/1/03	2
COUNCE, DAVID	6 mos., 1 day, effective 7/2/03; issued 6/2/03	1
COZIER, CLIFFORD	9 mos.; effective 01/08/03	2
CROWN, THAINE M. JR.	6 mos. and 1 day; effective 10/29/03	4
DECKER, CRAIG	6 mos. and 1 day; effective 4/23/03	1
FORQUER, ROBERT C.	4 mos.; effective 11/30/03	1
GEARE, PATRICK	90 days; effective 12/5/03	6
GILES, CHARLES	120 days; effective 1/15/03	3
HART, DONALD W.	30 days; effective 8/13/03	1
HOFFMAN, RICHARD	6 mos.; effective 3/26/02; issued 1/13/03	1
JOHNSON, STEPHEN M.	6 mos.; and 1 day; effective 9/11/03	14
KEITH, BRIAN	90 days; effective 1/3/03	1
KELLY, MICHAEL E.	45 days; effective 11/30/03	7
KIRKLAND, CHARLES	4 years; effective 3/20/03	11
MACDONALD, RAND	30 days; effective 8/13/03	2
MARQUEZ, O. MARK	30 days; effective 7/1/03	1
MENDOZA, RAMON	18 mos.; effective 10/14/03	11
MOAK, WALTER E.	6 mos.; effective 7/11/03	2
MUSSELMAN, D. JOHN	90 days; effective 8/27/02; issued 01/08/03	2
OAKLEY, J.J.	1 year; effective 6/2/03	3
PALMER, JOSEPH DARRYL	60 days; effective 2/13/03	1
POZGAY, JON R.	4 years; effective 8/13/03	2
ROSE, MERYL D.	3 years; effective 2/19/03	1
SAIDEL, SCOTT	6 mos.; effective 3/12/01; issued 10/29/03	1
SIRLIN, RANDI	6 mos.; effective 9/18/01; issued 10/30/03	5
SKIVINGTON, STEVE	4 years; effective 12/17/97; issued 2/24/03	4
TANNER, MARTIN S.	5 years; effective 11/1/02; issued 12/15/03	1
TURLEY, MARK E.	1 year; effective 3/21/03	1
WEIDNER, ROBERT	6 mos. and 1 day; effective 3/20/03	1
WHITEHEAD, KENNETH J.	9 mos.; effective 7/1/03	25
WITTGES, TIMOTHY J.	6 mos. 1 day; effective 10/29/03	1

## **DISBARMENTS**

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Disbarment</i>
BERTZ, JAMES	4/23/03	11
BLASINGIM-STENZEL, ARLA	10/29/03	44
GARCIA, MAXIMILLIANO S	3/28/03	8
HULL, HUGH	8/14/03	3
KLAHR, GARY	01/08/03	1
TARASKA, MICHAEL	9/11/03	1
TURNAGE, DENNIS	4/23/03	13

## **REINSTATEMENTS**

<i>Name</i>	<i>Date Issued</i>
D'ANTONIO, GREGORY	10/27/03
GILES, CHARLES	6/13/03
HOFFMAN, RICHARD L.	3/12/03
KEITH, BRIAN M.	6/25/03
MARQUEZ, O. MARK	11/13/03
MOORE, WILLIAM E.	10/29/03
SCOTT, RICHARD	3/20/03
SIRLIN, RANDI S.	12/13/03
SKIVINGTON, STEVE T.	2/24/03
VELEZ, JOSEPH A.	4/15/03

## **TRANSFER TO DISABILITY INACTIVE**

<i>Name</i>	<i>Date Issued</i>
DOWNEY, WILLIAM	7/25/03
HANSEN, LAMONTE L.	7/10/03
HART, BARRY	11/21/03
MOTHERSHEAD, ROBERT	9/10/03
WITASICK, KEVIN	3/10/03
WITASICK, KEVIN	4/14/03

TOTAL SANCTIONS ORDERED IN 2003 = 108

(Does not include attorneys reinstated or transferred to disability)

TOTAL CHARGES RESULTING IN SANCTIONS AGAINST ATTORNEYS = 320

**ATTORNEY/CONSUMER ASSISTANCE PROGRAM**

	<b>2001</b>	<b>2002</b>	<b>2003</b>
Total # of Telephonic and Written Inquiries	6149	7476	6814
Total Written charges	2442	2497	2306
Referrals for Disciplinary Investigation	1385	1033	1087
Percentage of Charges referred for investigation	22.5% of total inquiries 56.7% of written charges	13.8% of total inquiries 41.4% of written charges	15.9% of total inquiries 47.1% of written charges

**MISCELLANEOUS STATISTICS FOR DISCIPLINARY MATTERS**

<b>PROBABLE CAUSE PANELIST</b>				
Year	2000	2001	2002	2003
Number of cases reviewed by Probable Cause Panelist	677	514	545	413
Number of orders signed by Probable Cause Panelist (includes dispositions, stays, requests for confidentiality, referrals to diversion)	1243	1189	1300	1020

<b>ETHICS/TRUST ACCOUNT DIVERSION</b>					
Year	1999	2000	2001	2002	2003
Ethics/Trust Account Enhancement Program Attendees	41	66	70	57	62

<b>DISCIPLINARY COMMISSION</b>				
Year	2000	2001	2002	2003
Matters heard by Disciplinary Commission of the Supreme Court	105	129	93	87

<b>REVENUE</b>					
Year	1999	2000	2001	2002	2003
Discipline Case Cost Recovery	\$40,658.01	\$55,724.82	\$121,202.79	\$116,332.79	134,058.23
Ethics/Trust Account School	\$16,600.00	\$24,960.00	\$23,478.00	\$21,300.00	24,076.60

## **An overview of the Disciplinary Process**

### **I. INTAKE AND PRESCREENING**

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

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

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

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

## **II. SCREENING**

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

### **A. The Response**

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

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

### **B. The Reply**

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

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

### **C. Additional Investigation**

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

#### **D. Probable Cause Review**

Once bar counsel has sufficient information to make a disposition recommendation, he or she prepares a summary of the file for the probable cause panelist to review or enters a dismissal of the matter. *See* Rule 54(b)(2) and 54(b)(4), Ariz.R.S.Ct. Recommendations may include one or more of the following:

- Dismissal (often with an educational comment)
- Diversion
- Stay
- Informal Reprimand
- Probation
- Restitution
- Assessment of Costs/Expenses
- Probable Cause to file a complaint
- Probable Cause to file a disability petition

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

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

#### **E. Diversion**

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

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

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

### **III. FORMAL PROCEEDINGS**

#### **A. Hearing Officer**

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

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

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

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

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

If no consent to discipline is reached an evidentiary hearing will be conducted. Following an evidentiary hearing, the hearing officer prepares and files with the disciplinary clerk, a written report containing findings of fact, conclusions of law and recommendations regarding discipline. If no timely appeal is filed, the decision of the hearing officer is final

as to any dismissal, diversion, informal reprimand, assessment of costs and expenses, probation and restitution, if not part of a sanction which includes disbarment, suspension or censure. Rule 57, Ariz.R.S.Ct.

## **B. Disciplinary Commission**

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

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

## **C. Supreme Court of Arizona**

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