

ANNUAL REPORT

2009

OFFICE OF LAWYER REGULATION





**2009 ANNUAL REPORT – STATE BAR OF ARIZONA
OFFICE OF LAWYER REGULATION**

TABLE OF CONTENTS

TABLE OF CONTENTSi

SUMMARY.....iii

YEAR IN REVIEWiv

TERMINOLOGYv

STATUS OF NEW MATTERS RECEIVED IN 20091

COMPARISON OF NEW MATTERS WHEN RECEIVED2

COMPARISON OF FILES ORIGINATING AT THE SUPREME COURT3

CHARGES PENDING AT EACH LEVEL BY YEAR CHARGE WAS RECEIVED4

COMPARISON OF CHARGES PENDING IN THE SYSTEM AT EACH LEVEL5

DISPOSITION OF CHARGES DURING THE YEAR INDICATED6

DISPOSITION OF DISMISSALS DURING THE YEAR INDICATED7

PROBABLE CAUSE ORDERS ISSUED8

FORMAL COMPLAINTS FILED.....9

CONSENT AGREEMENTS FILED.....10

CHARACTERIZATION OF COMPLAINTS BY AREA OF PRACTICE.....11

CHARACTERIZATION OF COMPLAINTS BY IDENTITY OF COMPLAINANT	12
CHARACTERIZATION OF COMPLAINTS BY TYPES OF ALLEGED MISCONDUCT.....	13
TRUST ACCOUNT VIOLATIONS BY CATEGORY	14
DISPOSITION/STATUS OF TRUST ACCOUNT CHARGES	15
ATTORNEY/CONSUMER ASSISTANCE PROGRAM	16
MISCELLANEOUS STATISTICS FOR DISCIPLINARY MATTERS	17
ATTORNEYS SANCTIONED, ATTORNEYS TRANSFERRED TO DISABILITY INACTIVE STATUS, AND ATTORNEYS REINSTATED	18
OVERVIEW OF THE DISCIPLINARY PROCESS	25



Executive Summary – 2009 Annual Report

The State Bar of Arizona is a non-profit organization that operates under the supervision of the Arizona Supreme Court for the purpose of advancing the administration of justice, protecting the public, and providing for the regulation and discipline of persons engaged in the practice of law. The State Bar is responsible for the regulation of approximately 16,198 active attorneys in Arizona and offers programs to advance the welfare of the membership and the public. As part of the regulation of legal services in Arizona, the State Bar provides education and assistance programs that strengthen both the skill and professionalism of the legal community.

Goals of the Office of Lawyer Regulation:

One important goal is to help the public and lawyers solve problems that left unresolved could become the basis of a charge of ethical misconduct. Resolving allegations of minor misconduct at the earliest stage of the process serves the public and the profession. The public is encouraged to call staff lawyers to help determine whether problems can be addressed through intervention, education or office assistance. Charges of serious misconduct are referred for investigation and when necessary prosecution of the lawyer for an appropriate sanction. The Office is responsible for maintaining the high quality of legal service in Arizona by regulating all lawyer conduct.

Overview:

- In 2009 4,224 charges initiated in the Office of Lawyer Regulation raising concerns about the conduct of Arizona lawyers. These charges include both written and telephonic.
- 1,715 were received telephonically and resolved. By resolving these matters telephonically, the State Bar ensured that the public and Arizona's attorneys received quick resolution to their concerns.
- 71% of all charges were resolved at Intake. Dispositions included review and dismissal, mediation or agreement to participate in another State Bar education or assistance program.
- 2509 written charges were received in 2009 and of those charges 44% were referred for full investigation.
- For the year, 62% of all pending charges were dismissed. An additional 10% of pending charges were dismissed with an educational or instructional comment. 94 orders of diversion and 104 orders of informal reprimand, probation or restitution were issued.¹
- 54 formal cases were filed during the year.
- In 2009, 15 lawyers were disbarred, 30 lawyers were suspended, and 27 lawyers were censured.

¹ These figures include the 408 pending charges at the end of 2008.

Year in Review:

The Supreme Court regulates the judicial system and the legal profession. Over the past several years the Court has made the improvement of the disciplinary process part of the strategic agenda, “Good to Great.” For many years the Court and the Bar have made efforts to review and modify rules and procedures that would make the disciplinary process more efficient and effective. Although many noteworthy improvements were accomplished it was time to consider whether structural changes would further the Court’s goals in the established system of lawyer regulation. In 2009, the Court created a Task Force to focus on the structure and process to achieve an efficient system that enhances the equality and impartiality of the process. In December 2009 the Task Force concluded its work and a petition to change the rules consistent with the Task Force’s recommendations was filed. The primary changes include additional focus on the intake function, the use of a committee in place of a single probable cause panelist, the appointment of a paid presiding disciplinary judge who can impose all sanctions, the use of hearing panels, the elimination of the Disciplinary Commission in favor of a direct appeal to the Supreme Court and the inclusion of public participation on the committee and hearing panels. The Court will consider the petition in September 2010.

The Supreme Court invests the authority to regulate lawyers in the State Bar of Arizona. The State Bar has an Office of Lawyer Regulation to carry out those functions. In 2009, the office made a concerted effort to direct more focus and attention to the front end of the process known as the “Attorney Consumer Assistance Program” or “Intake.” Intake lawyers review charges in an effort to resolve matters and determine which charges are referred to the litigation lawyers for a full investigation. The intake lawyers saw an increase of 38% in the number of charges they reviewed and a decrease of 9.5% in the number of charges that were referred to litigation for full investigation. The effect was that more matters received greater attention at the Intake stage and were resolved without the need for a full investigation. The streamlined process of intake along with the reallocation of resources should promote this continued focus and enhance this result.

Fewer charges received a probable cause order directing the filing of a formal complaint. Consistent with that factor was a decline in the number of formal complaints filed. This represents a decline from years past but does not necessarily create an expectation that the number of probable cause orders and resulting formal complaints will remain consistent with 2009 figures. This is based on the number of probable cause orders filed in the first quarter of 2010. The use of educational comments increased from 2008. The use of diversion programs and imposition of informal sanctions remains consistent with years past.

Clients continue to file the vast majority of charges against lawyers practicing in the area of criminal and family law. This again represents a consistent history with the identity of the complaining party and the area of law concerned.

The expectation is that the process will recognize a number of changes in 2010 and along with those changes Lawyer Regulation would anticipate resolution of more matters through the intake process with enhanced opportunities to work with respondent lawyers and complainants.

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.Sup.Ct. A charge is investigated if the information alleges facts, which, if true, would constitute misconduct or incapacity.

A complaining party usually initiates a charge against a lawyer. Records maintained by the State Bar are based upon individual charges. Often times, individual attorneys will be the subject of more than one charge, depending on the number of individual complainants who file such charges with the state bar.

2. Complaint

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

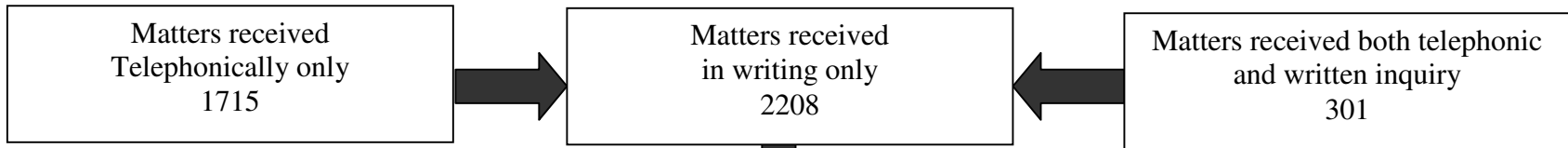
3. Formal Disciplinary Proceedings

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.Sup.Ct. Formal proceedings usually include subsequent review by a settlement officer, a hearing officer, the Disciplinary Commission of the Supreme Court and the Supreme Court of Arizona. Review by the Supreme Court is discretionary.

Conservatorships
3 opened in 2009

STATUS OF MATTERS RECEIVED IN 2009

As of 12/31/2009



Total matters received *
4224

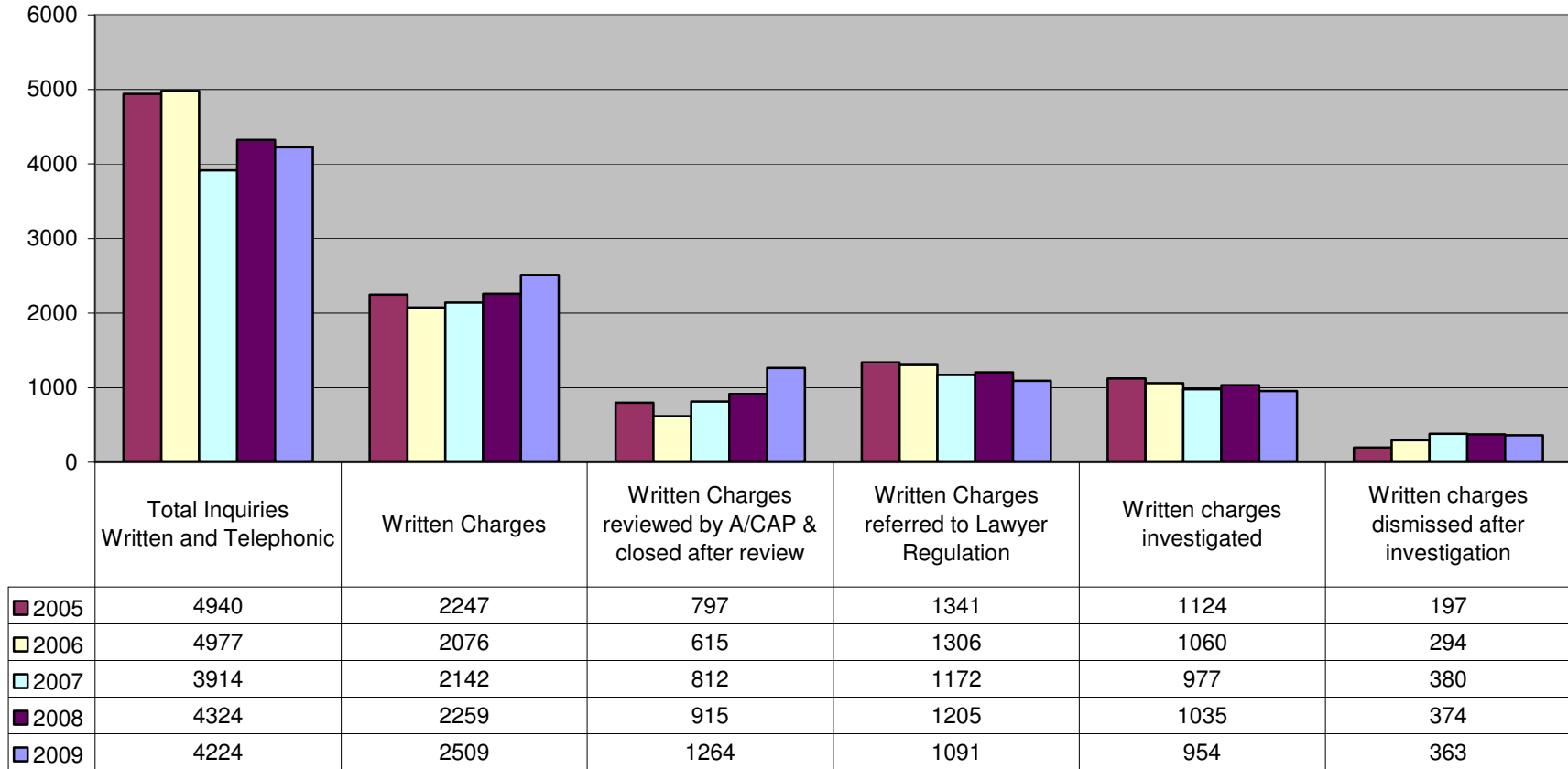
Telephone and Written Charges reviewed by the Attorney/Consumer Assistance Program counsel & closed after screening, mediated, or referred to some other State Bar program such as Peer Review or Fee Arbitration 2979	Written charges pending in A/CAP 154	Written charges referred to Lawyer Regulation 1091
---	---	---

Written charges reviewed & dismissed or referred to some other State Bar program such as Peer Review or Fee Arbitration. 126	Written charges referred to bar counsel still pending 11	Written charges investigated (charges contain allegations which, if true, would constitute ethical misconduct or incapacity.) 954
---	---	--

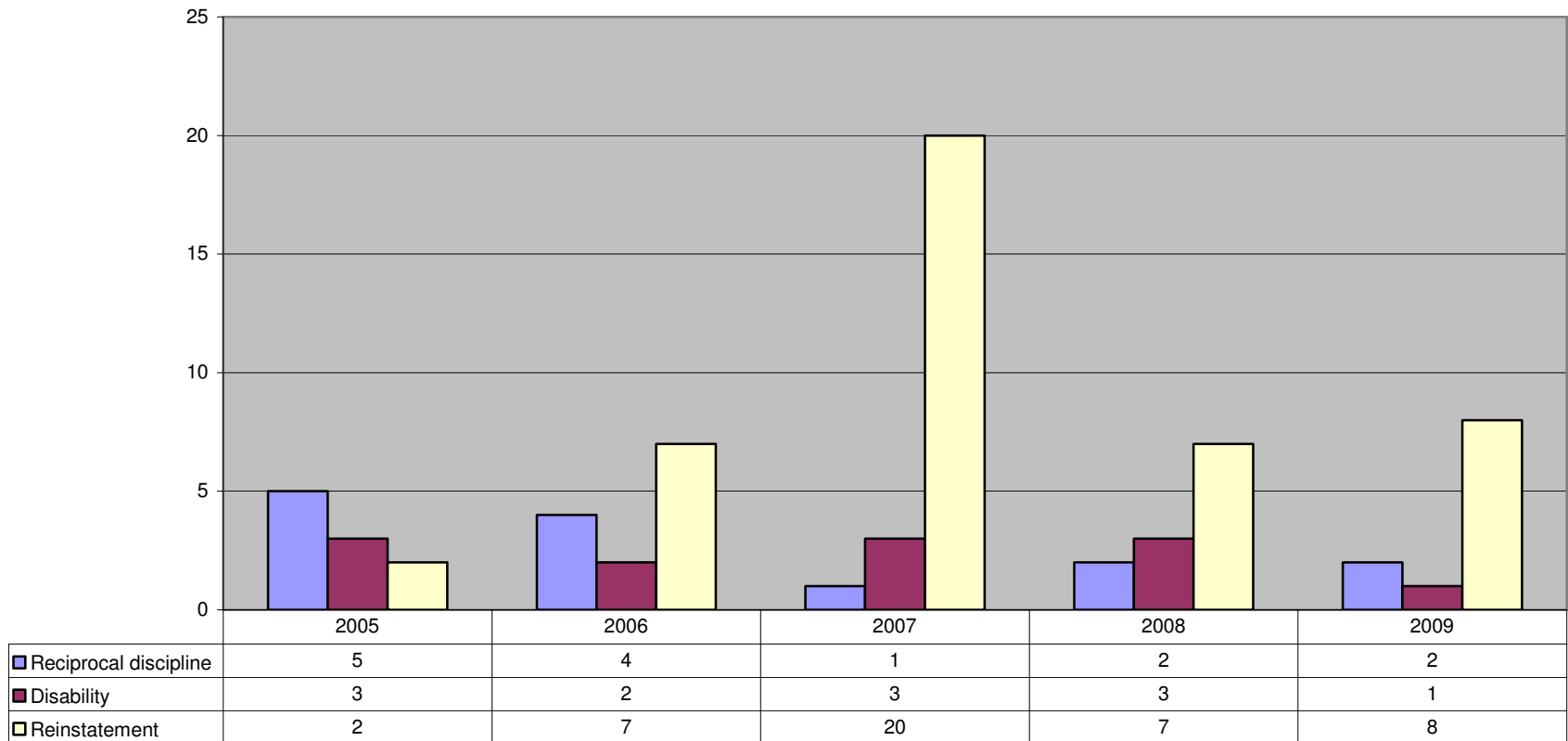
Charges with ongoing investigations 455	Charges dismissed by bar counsel or panelist after investigation 363	Charges resulting in Order of Diversion 50	Charges resulting in informal reprimand and/or probation &/or restitution 38	Charges resulting in probable cause/awaiting formal disciplinary proceedings 0	Charges advanced to formal disciplinary proceedings 44	Charges stayed 4
--	---	---	---	---	---	---------------------

*Accounts for 2509 written charges

Status of matters received in 2009



Comparison of files originating at the Supreme Court in 2009





2009 Annual Report – Office of Lawyer Regulation

CHARGES PENDING AT EACH LEVEL BY YEAR RECEIVED

Year Rec'd	In Investigation		In Diversion		Before Panelist		PC Ordered – Awaiting Complaint		Before Hearing Officer		Before Disciplinary Commission		Before Supreme Court		TOTALS EACH YEAR	
	12/31		12/31		12/31		12/31		12/31		12/31		12/31		12/31	
	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008	2009
1995	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1996	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1997	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1998	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1999	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2000	0	0	0	0	0	0	0	0	1	1	0	0	0	0	1	1
2001	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2002	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2003	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2004	0	0	5	3	0	0	0	0	1	1	0	1	0	0	6	5
2005	0	0	7	1	0	0	0	0	5	1	3	2	1	0	16	4
2006	4	1	11	4	0	0	1	0	16	3	6	5	2	0	40	13
2007	14	1	42	2	0	0	5	0	66	2	19	34	13	0	159	39
2008	390	28	44	38	0	0	8	1	79	24	33	18	4	1	558	109
2009		453		34		2		0		35		5		0		533
Total	408	483	109	82	0	2	14	1	168	65	61	65	20	1	780	699
		18%		-25%		--		-93%		-61%		7%		-95%		-10%

Chart compares number of matters by status which were pending on 12/31/2008 and 12/31/2009, and the year in which matters were received by the State Bar of Arizona. Also indicates percentage of increase or decrease in the total matters pending at each level.



ALL CHARGES PENDING BY STATUS

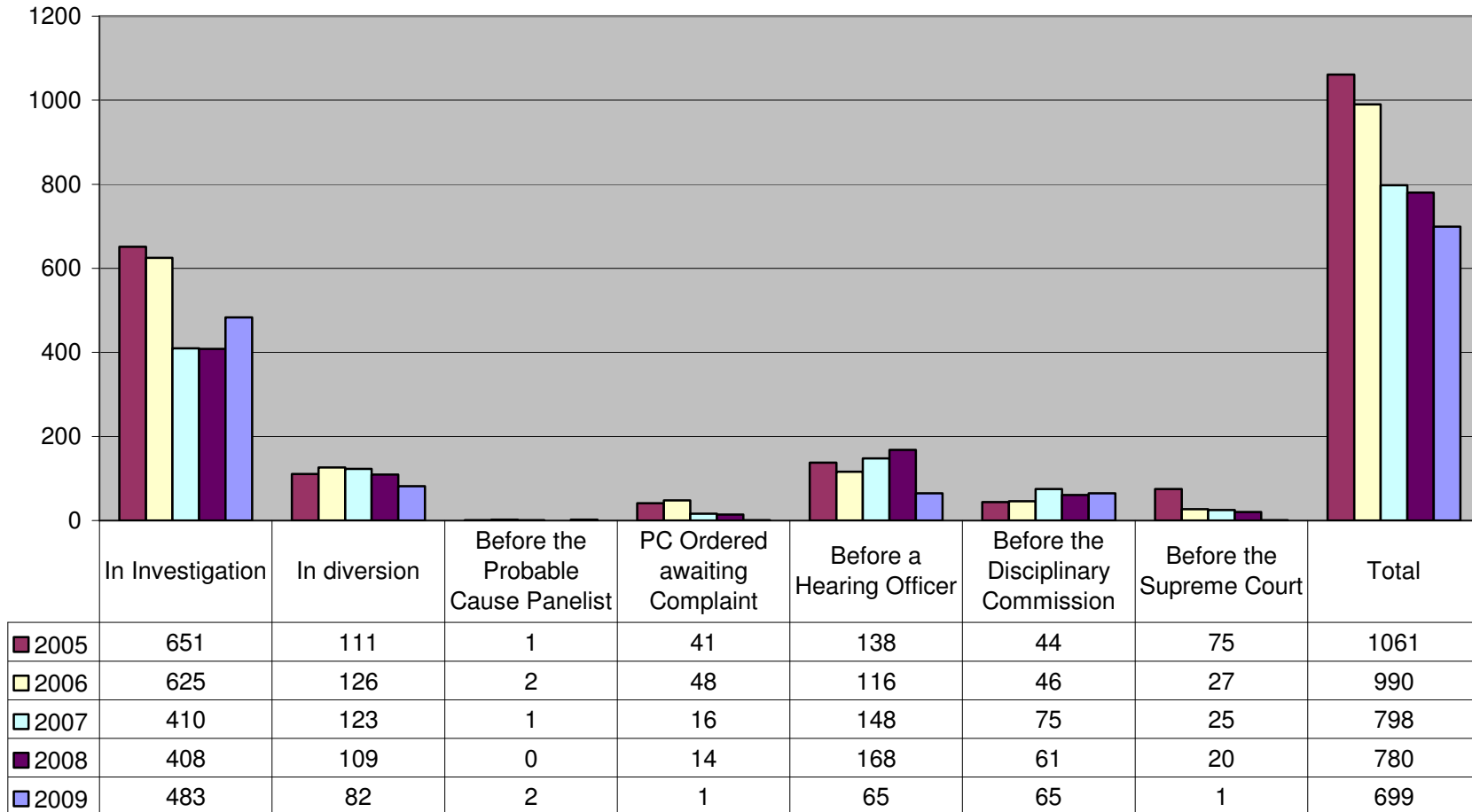
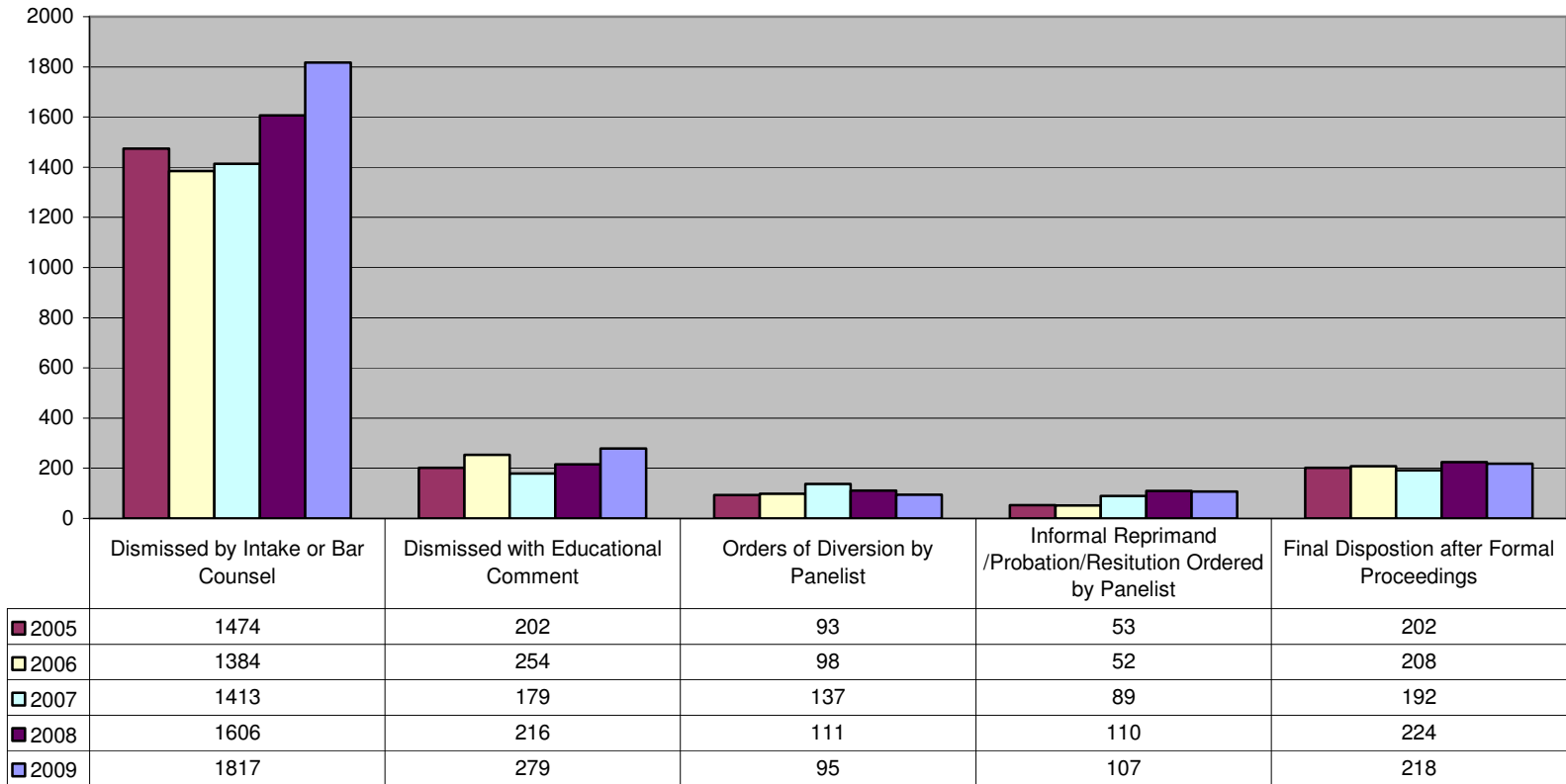


Chart compares number of matters, by status, which were pending at the end of each year indicated.

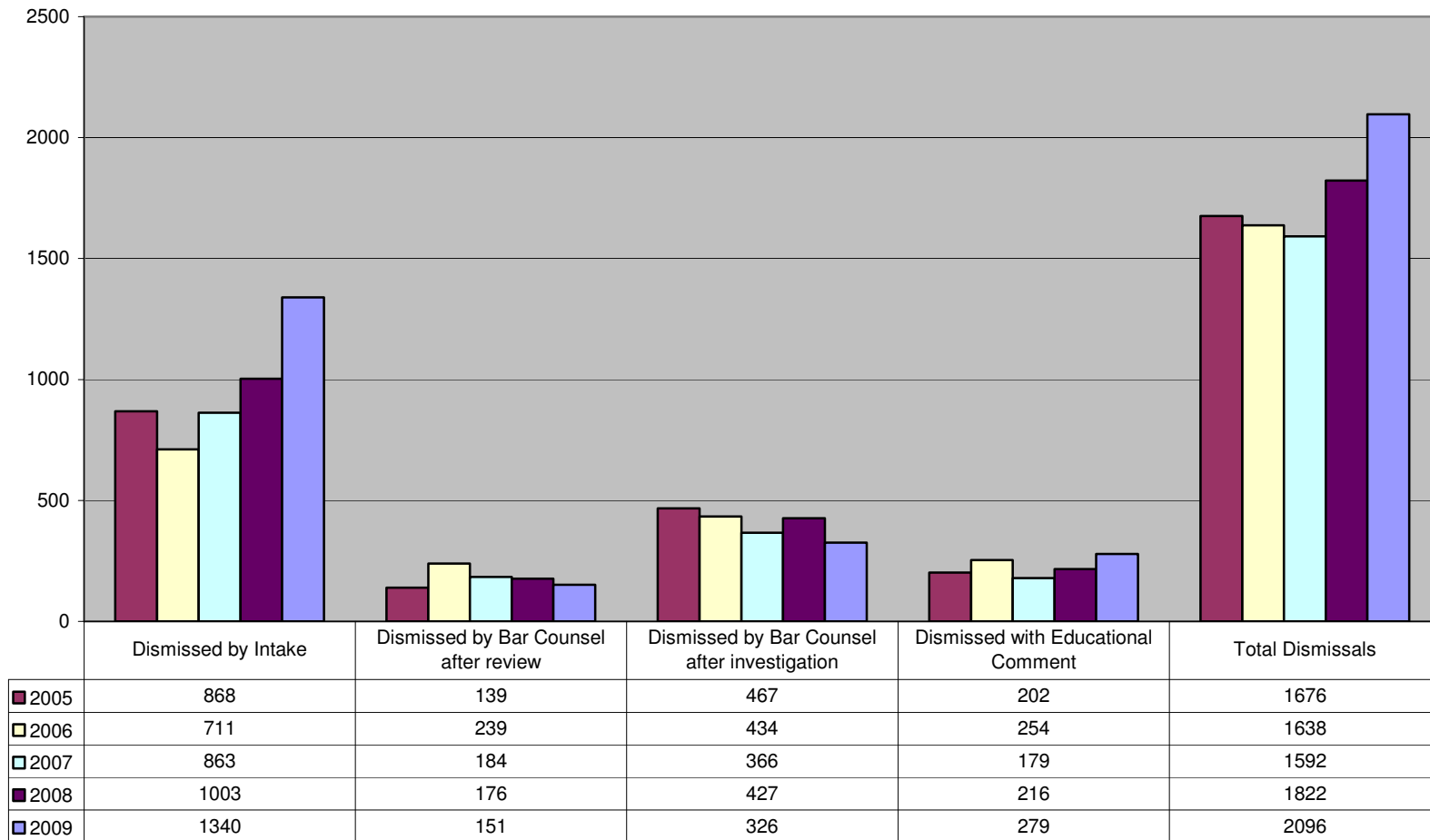


2009 Annual Report – Office of Lawyer Regulation

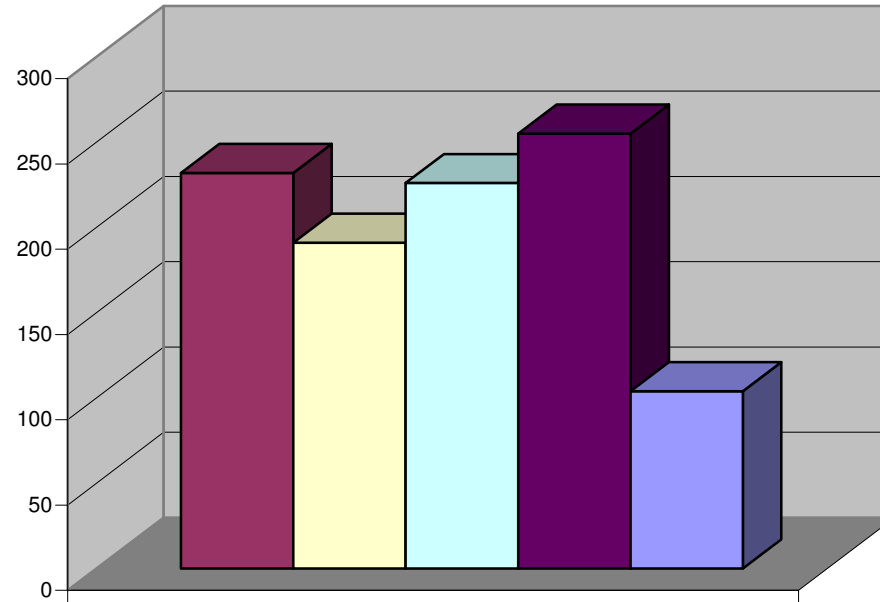
Final Disposition of Charges During the Year Indicated



Dismissal Disposition of Charges During the Year Indicated



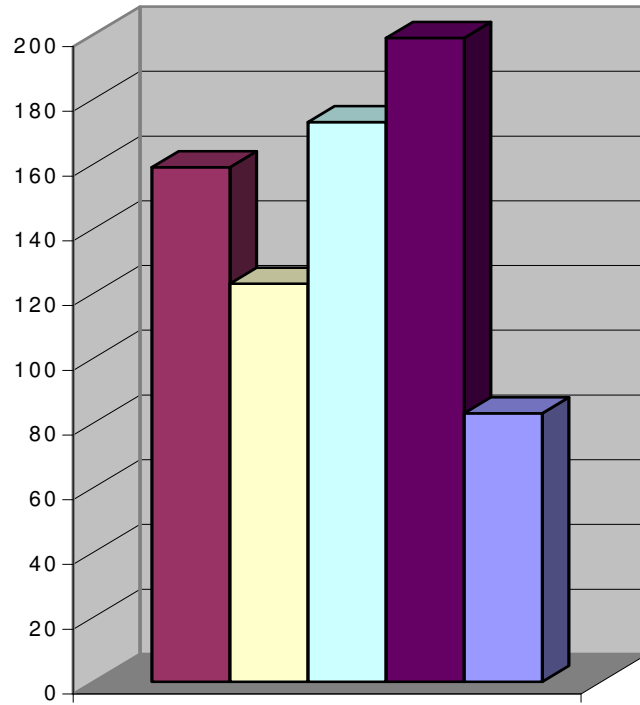
Total Probable Cause Orders Issued



■ 2005	232
■ 2006	191
■ 2007	226
■ 2008	255
■ 2009	104

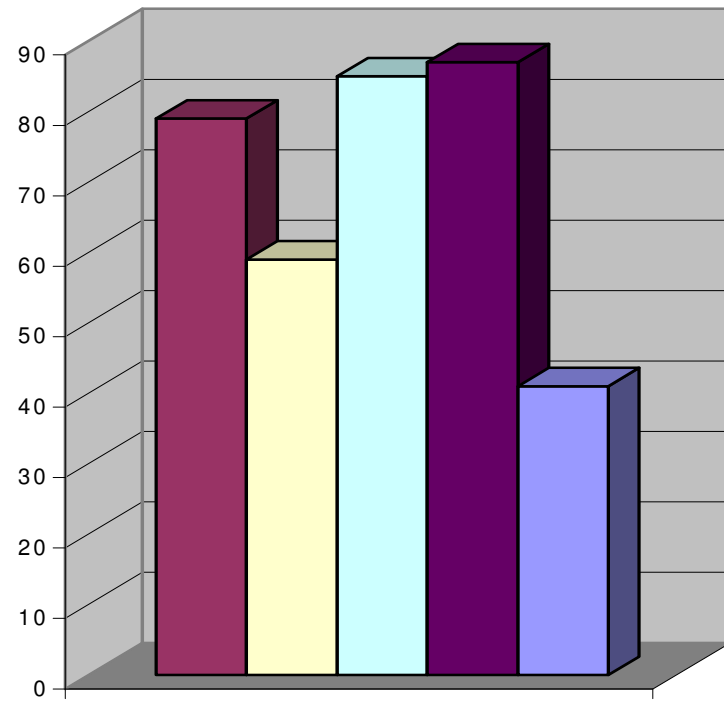


Total Charges Filed in Formal Matter



2005	159
2006	123
2007	173
2008	199
2009	83

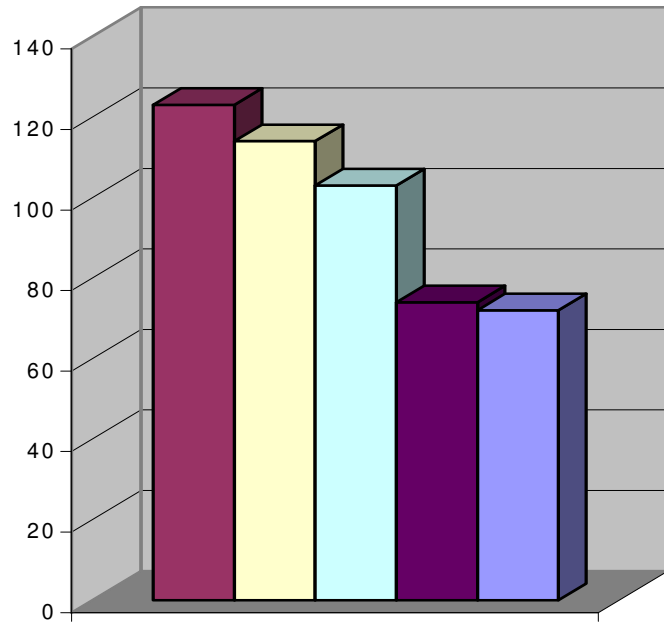
Total Formal Matters Filed



2005	79
2006	59
2007	85
2008	87
2009	41

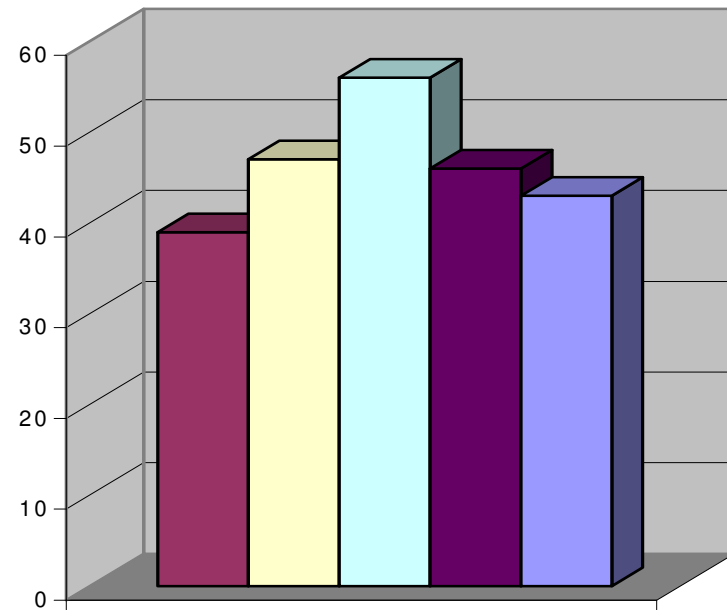


Charges in Consent Agreements



2005	123
2006	114
2007	103
2008	74
2009	72

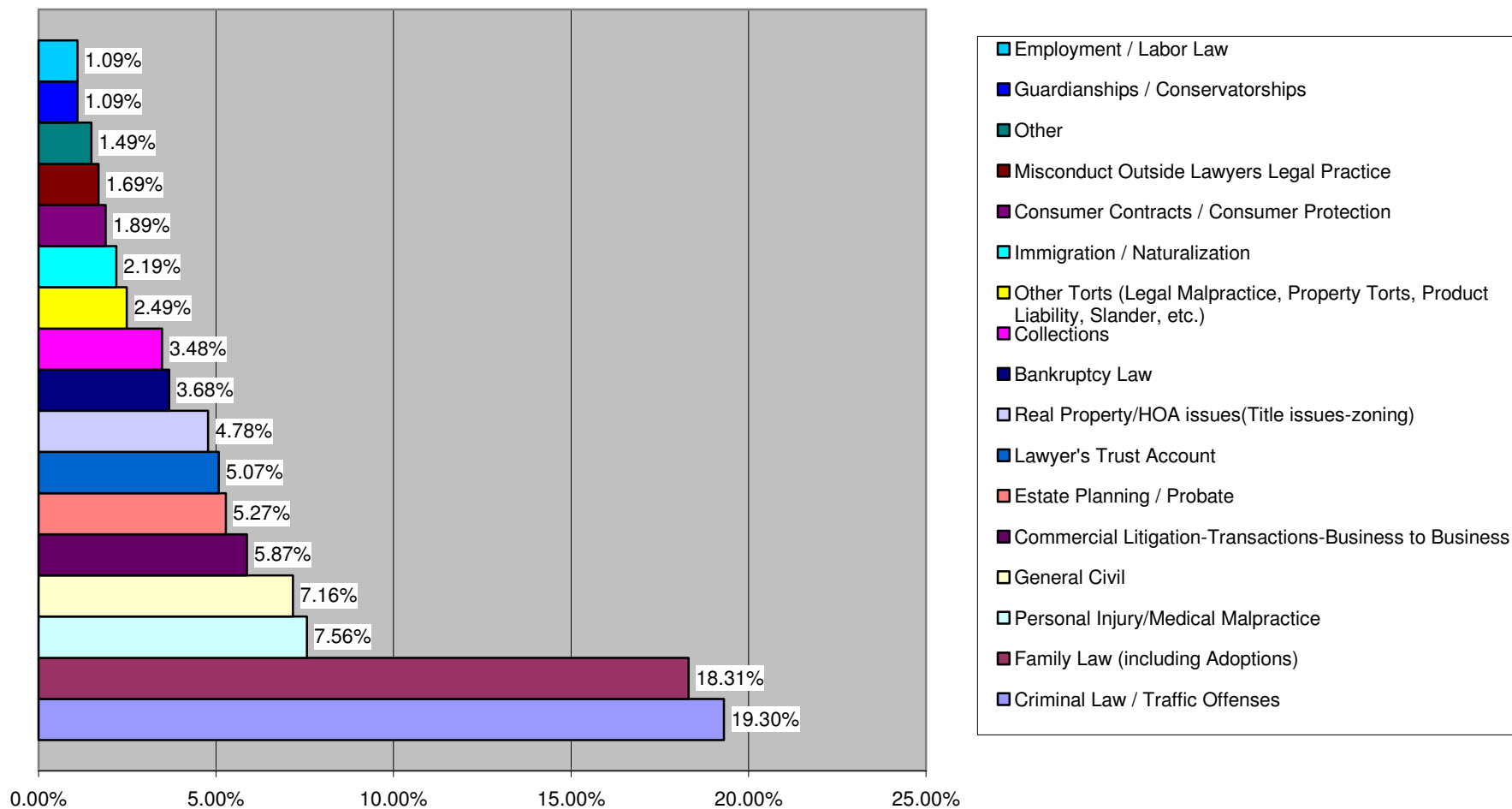
Total Number of Consent Agreements Filed



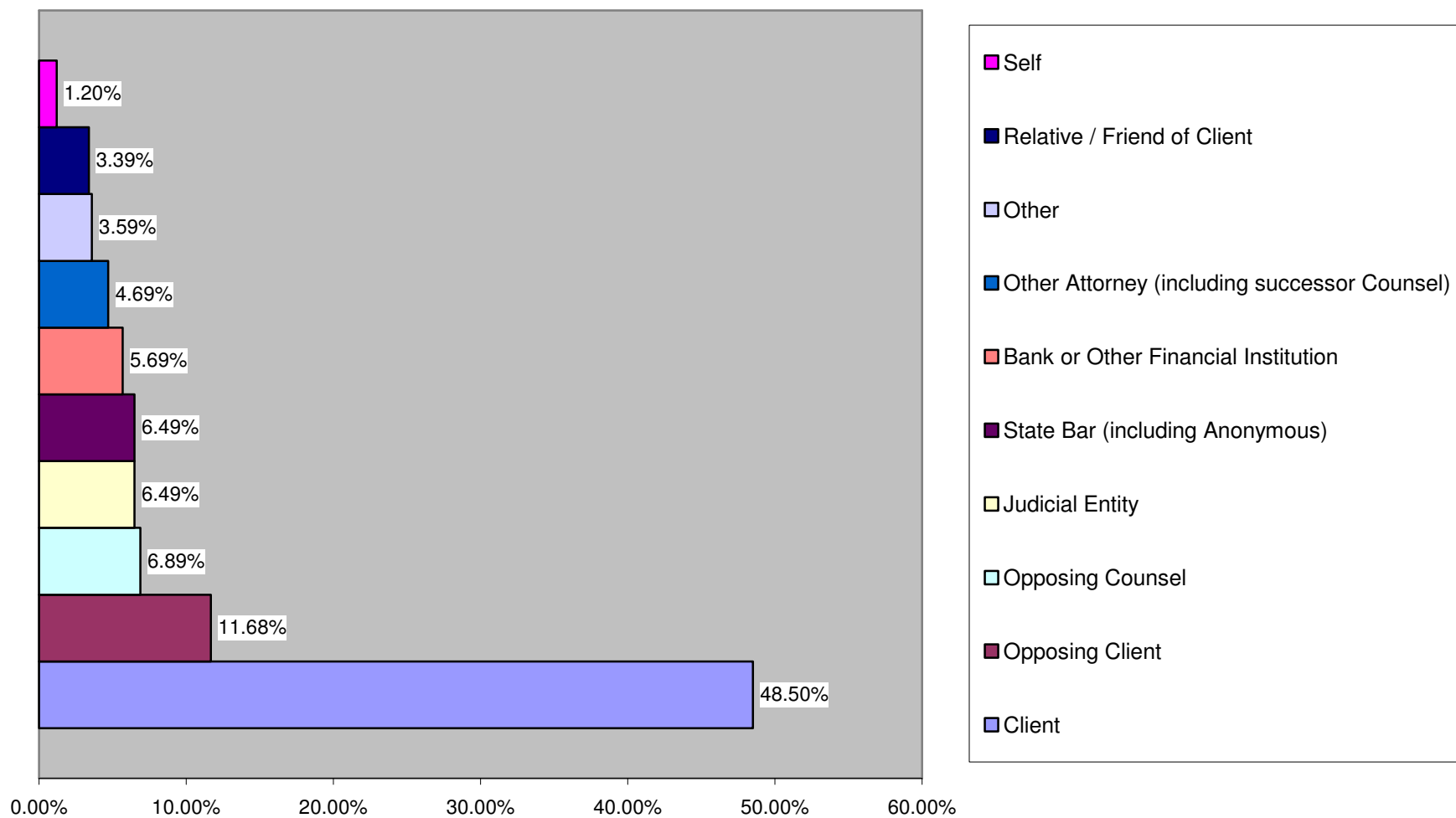
2005	39
2006	47
2007	56
2008	46
2009	43

Total Consent Agreements include three (13) “Direct Agreements”. Direct Agreements are sometimes filed in lieu of filing a formal complaint.

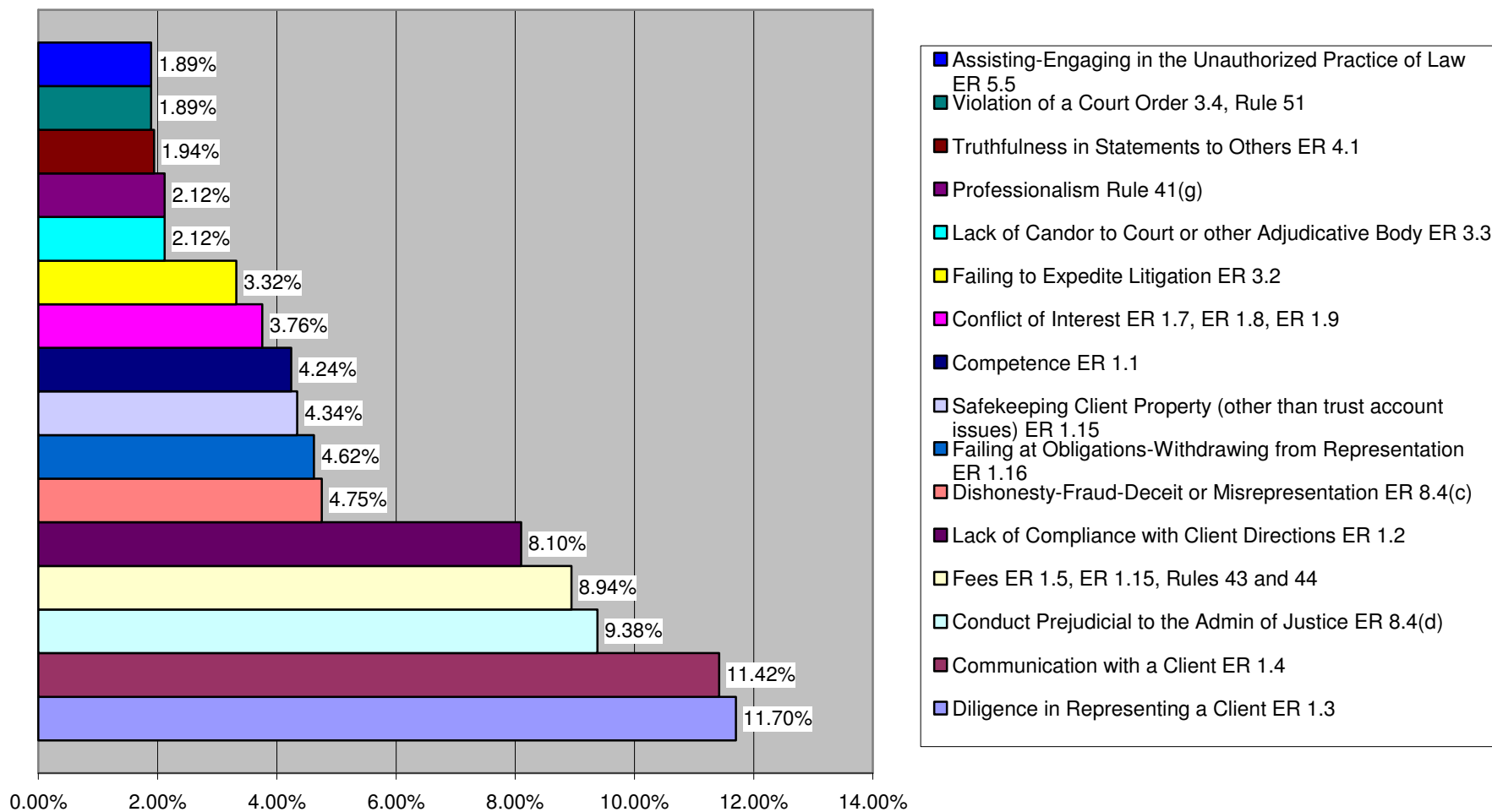
Most Common Area of Practice



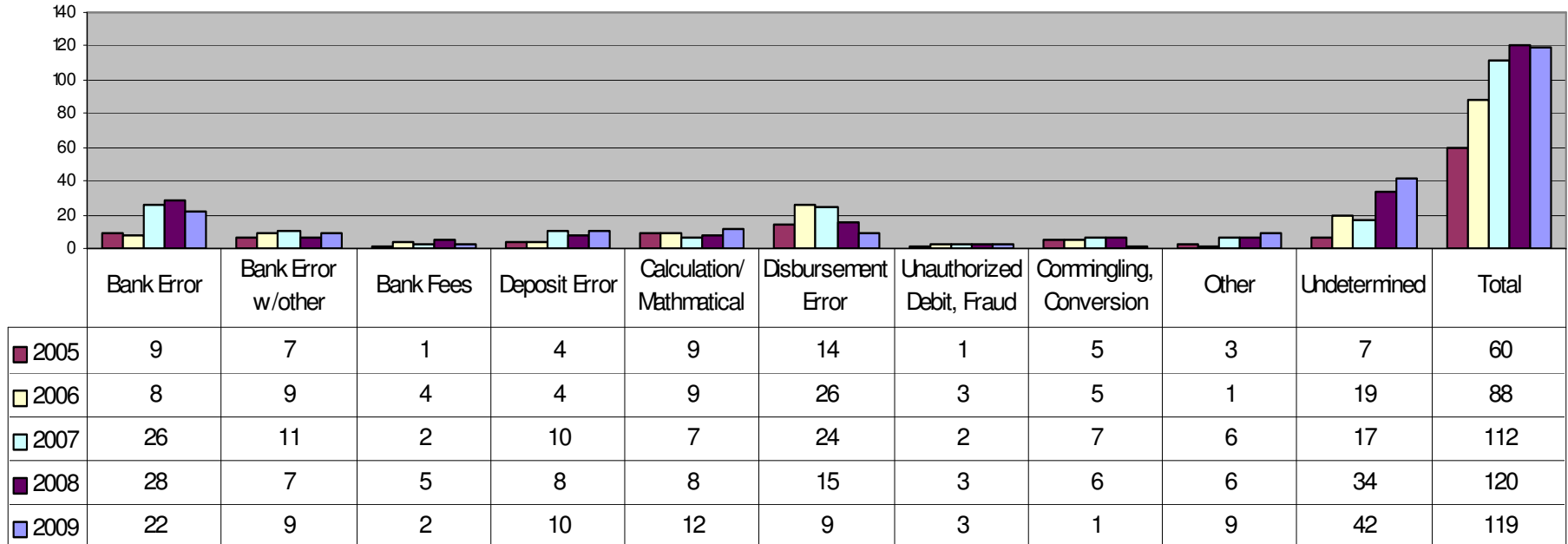
Most Common Identity of Complainant



Most Common Alleged Misconduct

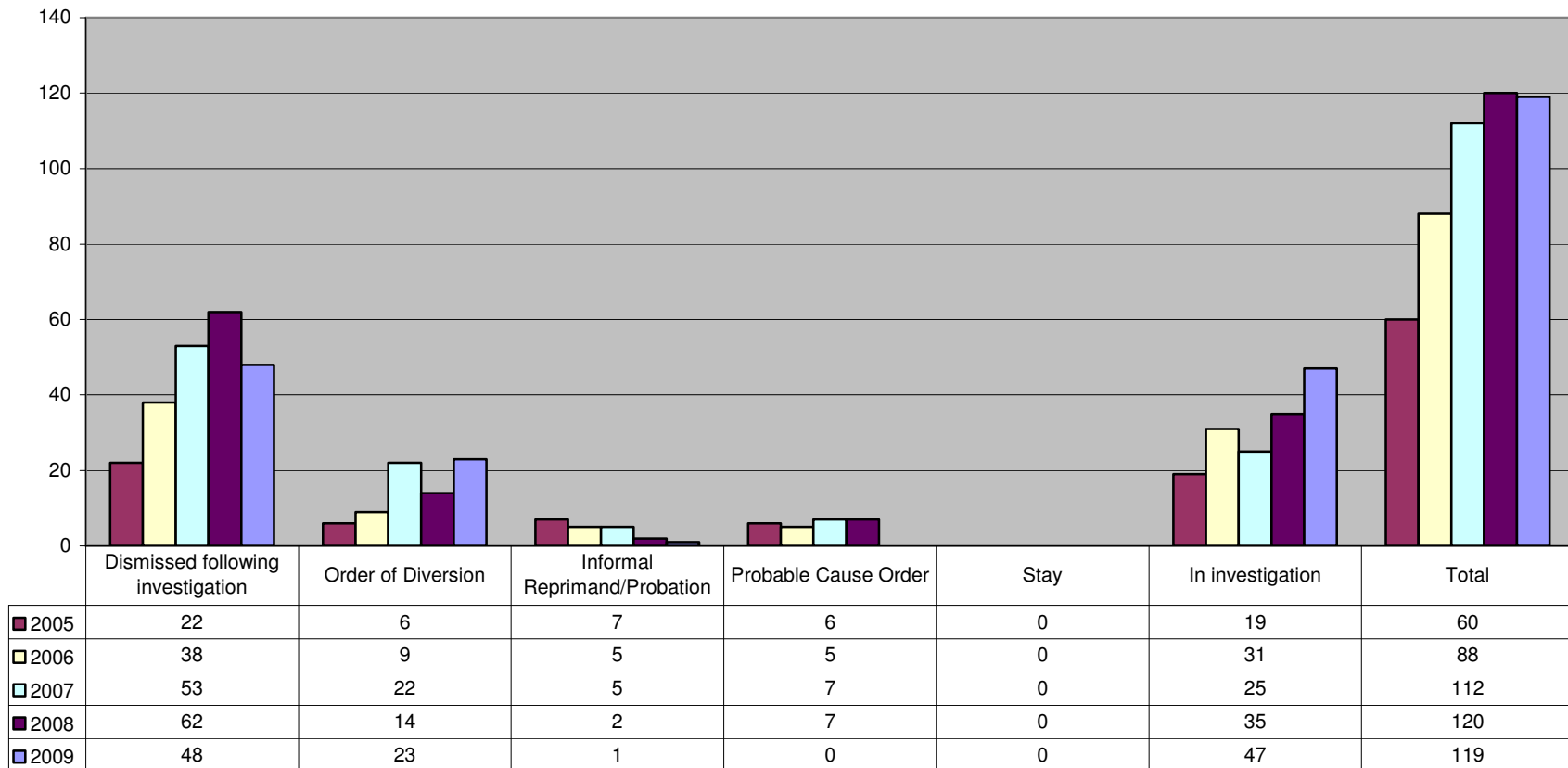


Trust Account Violations by Category of Year Received



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

Disposition/Status of Trust Account Charges During the Year Indicated





Attorney/Client Assistance Program

	2005	2006	2007	2008	2009
Total # of telephonic and written inquiries	4940	4977	3914	4324	4224
Total written charges	2247	2076	2142	2259	2509
Referrals for disciplinary Investigation	1341	1306	1172	1205	1091
Percentage of written charges referred for investigation	59.7% of written charges	62.9% of written charges	54.7% of written charges	53.3% of written charges	44% of written charges



MISCELLANEOUS STATISTICS FOR DISCIPLINARY MATTERS

<u>AVERAGE ONGOING WORKLOAD PER STAFF BAR COUNSEL</u>		
Year	Average	Average number of charges ongoing in investigation and in formal disciplinary proceedings.
2005	234	
2006	305	
2007	270	
2008	198	
2009	160	

<u>PROBABLE CAUSE PANELIST</u>					
Year	2005	2006	2007	2008	2009
Number of charges reviewed by Probable Cause Panelist	243	452	634	525	497
Number of orders signed by Probable Cause Panelist (includes dismissal appeals, stays, requests for confidentiality, referrals to diversion)	1065	1053	949	1047	873

<u>ETHICS/TRUST ACCOUNT DIVERSION</u>					
Year	2005	2006	2007	2008	2009
Number of Ethics/Trust Account Enhancement Program Attendees	35	65	99	55	70

<u>DISCIPLINARY COMMISSION</u>					
Year	2005	2006	2007	2008	2009
Matters heard by Disciplinary Commission of the Supreme Court	78	86	101	103	83

<u>REVENUE</u>					
Year	2005	2006	2007	2008	2009
Discipline Case Cost Recovery	\$74,271.34	\$133,457.20	\$100,332.36	\$136,896.85	\$119,236.14
Ethics/Trust Account School	\$12,650.00	\$20,700.00	\$44,225.00	\$24,725.00	\$17,174.55

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

INFORMAL REPRIMANDS

<i>Name</i>	<i>Date Issued</i>	<i>Includes Probation</i>	<i>Number of Charges in each Informal Reprimand</i>
Adair, Marc A.*	11/19/09	√	1
Adams, Jason C.*	02/10/09	√	1
Adler, Charles*	07/08/09		1
Baggett, James M.*	07/29/09		1
Bowman, Eric R. (non-member)*	01/14/09	√	1
Burdock, William E.*	06/17/09		1
Catanese, David J.*	04/20/09		1
Causey, Wade R.*	10/21/09		1
Cheifetz, Steven W.*	05/08/09		1
Clark, Douglas H.*	11/06/09	√	1
Clark, A. James*	04/02/09		1
Frame, Michael L.*	11/11/09	√	1
Gardner, Stanley E.*	03/19/09		1
Gertell, Michael L.*	04/08/09	√	1
Groves, Richard N.*	11/18/09		1
Hale, John R.*	04/28/09	√	1
Hentoff, Nicholas S.*	6/10/09		1
Hineman, Phillip D.*	03/16/09	√	1
Jackson, Jeff C.*	04/27/09		1
Jensen, Daniel P.*	03/16/09	√	1
Johnson, Steven R.*	09/24/09	√	1
Kelley, Nancy A.*	06/10/09		1
Landry, Wm. Troy*	03/04/09	√	1
Martin, Rex L.*	03/20/09		1
Matte, Virginia S.*	03/04/09		1
Moore, John P.	07/15/09		1
Newell, Jeremy*	05/08/09		1
Ogbuji, Anita Chinatu*	09/23/09		1
Pederson, Gary N.*	07/15/09		1
Price, Daniel P.*	08/12/09	√	1
Renard, Stephen J.*	11/11/09		1
Renard, Stephen J.*	11/11/09		1
Ricker, Keith R.*	06/23/09		1
Riebesehl, Gregory A.*	09/23/09		1
Robbins, Merrill W.*	06/03/09		1
Sack, Jonathan Scott (non-member)*	03/19/09		1
Schaffer, Mary V.	09/07/09		1

INFORMAL REPRIMANDS cont.

<i>Name</i>	<i>Date Issued</i>	<i>Includes Probation</i>	<i>Number of Charges in each Informal Reprimand</i>
Schelstraete, Peter H.*	05/20/09	√	1
Schmidt, Eric William*	03/19/09	√	1
Smith, Jacob B.*	03/18/09	√	1
Villarreal, Michael A.*	02/25/09	√	1
Wattel, David E.*	07/29/09		1
Wilcox, Carrie M.*	01/07/09	√	1
Whiting, Dale E.*	02/18/09		1
Whiting, Dale E.*	04/30/09		1
Zenk, W. Ryan (non-member)*	03/19/09		1
Ziman, Meyer L.*	04/30/09	√	1

*Informal Reprimands imposed by Probable Cause Panelist

ORDERS OF PROBATION

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Probation</i>
Beauchamp, Melanie E.*	10/14/09	1
Berg, Earl E.*	03/16/09	1
Bradley, Percival R.*	03/18/09	1
Cook, Rosemary Stathakis*	11/11/09	1
Crowder-Archibald, Pam*	03/19/09	1
Earle, Robert L.*	08/26/09	3
Garcia, Janis Lynn*	02/10/09	1
Gerson, David M.*	10/07/09	1
Hass, Jason D.*	01/07/09	4
Jung, Robert R.*	08/12/09	1
Lamm, Jason D.*	02/04/09	1
Leyh, Cynthia A.*	08/31/09	2
Leyh, Cynthia A.*	11/03/09	1
Osborn, Roy A.*	05/13/09	1
Osborn, Roy A.*	05/13/09	1
Patterson, Rosval A.*	11/03/09	1
Urbano, Michael A.*	07/29/09	1

*Probation Orders imposed by Probable Cause Panelist

ORDERS OF RESTITUTION

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Restitution</i>
Abernathy, Deborah L.*	09/16/09	1
Boyden, Stephen John*	02/18/09	1
Franklin, John T.*	02/18/09	1
Franklin, John T.*	06/10/09	1
Gallego, Rafael F.*	01/21/09	1
Garza, Raul*	01/14/09	1
Garza, Raul*	01/14/09	1
Garza, Raul*	05/20/09	1
Gibbons, Kevin M.*	02/18/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	01/28/09	1
Gregory, James T.*	03/16/09	1
Gregory, James T.*	04/15/09	1
Gregory, James T.*	04/15/09	1
Gregory, James T.*	06/10/09	1
Gregory, James T.*	06/10/09	1
Gregory, James T.*	06/10/09	1
Gregory, James T.*	12/09/09	1
Gregory, James T.*	12/09/09	1
Hentoff, Nicholas S.*	06/23/09	1
Howell, William D.*	04/02/09	1
Jackson, Jeff C.*	06/17/09	1
Keller, Jason J.*	01/28/09	1
Keller, Jason J.*	01/30/09	1
Keller, Jason J.*	01/30/09	1
Keller, Jason J.*	01/30/09	1
Keller, Jason J.*	03/16/09	1
Keller, Jason J.*	03/16/09	1
Keller, Jason J.*	05/06/09	1
Shaw, Michael C.*	10/14/09	1
Shaw, Michael C.*	10/14/09	1
Stevens, Victoria M.*	01/21/09	1
Suplizio, Jesse Paul*	09/23/09	1
Thomas, Charles M.*	09/24/09	1
Whipple, Rory L.*	03/25/09	1

*Orders of Restitution imposed by Probable Cause Panelist

CENSURES

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Censure</i>
Adelman, Steven A.	06/30/09	1
Berry, Bobbi Anne	03/26/09	1
Bloom, Jay R.	05/21/09	1
Boegemann, Les A.	07/17/09	2
Charles, Joseph W.	06/01/09	3
Charles, Joseph W.	10/15/09	3
Droeger, Gregory L.	12/29/09	1
Eckley, James R.	08/24/09	5
Freeman, Michael L.	02/24/09	1
Johnson, Charna R.	01/06/09	1
Judge-Myers, Valerie K.	12/29/09	1
Labuda, William M.	09/02/09	1
LaGanke, James M.	08/24/09	4
Lassen, Gary L.	12/14/09	1
Luff, Richard Robert, Jr.	09/02/09	1
Messer, Troy L.	09/16/09	1
Moffatt, Jeffrey D.	09/14/09	1
Nesbitt, Edward C.	07/17/09	1
Olcott, Jonathan J.	04/20/09	1
Peskind, Elliot J.	08/21/09	2
Platt, Donna	09/30/09	1
Renard, Stephen J.	10/15/09	1
Shell, Charles K.	06/11/09	1
Shimko, Timothy (non-member)	06/23/09	1
Sorrell, Whitney L.	06/26/09	1
Struble, Charles A.	06/30/09	1
Sweeney, Kevin B.	07/09/09	1
White-Steiner, Janet L.	01/08/09	1

SUSPENSIONS

<i>Name</i>	<i>Term of Suspension/Date Issued</i>	<i>Number of Charges in each Suspension</i>
Abernathy, Deborah L.	10 months eff. 05/20/09: Issued 04/20/09	3
Abernathy, Deborah L.	30 days eff. 03/20/10 (concurrent): Issued 10/28/09	1
Amack, Edward A.	6 months eff. 07/16/09: Issued 06/16/09	1
Ariav, Alan N.	6 months & 1 day eff. 02/01/09 (retroactive): Issued 07/23/09	1
Boyden, Stephen John	6 months & 1 day eff. 07/24/09: Issued 07/24/09	3
Bracamonte, Ricardo A.	30 days eff. 10/23/09: Issued 09/22/09	1
Brinton, Mark F.	6 months eff. 06/02/08 (retroactive): Issued 04/20/09	2
Coker, Tim D.	1 year eff. 08/24/09: Issued 07/24/09	2
Duffy, Ted J.	30 days eff. 12/31/09: Issued 12/01/09	1
Gonzalez, J. Vincent	30 days eff. 03/13/09: Issued 02/11/09	1
Hentoff, Nicholas S.	6 months & 1 day eff. 11/01/08 (retroactive): Issued 01/07/09	2
Hudspeth, Donald W.	30 days eff. 10/23/09: Issued 09/23/09	1
Inserra, Daniel	1 year eff. 02/07/09: Issued 01/07/09	3
Jenkins, James Darrell	18 months eff. 01/04/10: Issued 12/03/09	4
Jung, Robert R.	60 days eff. 01/04/10: Issued 12/03/09	3
Karber, Michael R.	21 months eff. 07/28/08 (retroactive): Issued 08/18/09	4
Keller, Jason J.	3 months eff. 01/24/09 (retroactive): Issued 06/02/09	6
Labuda, William M.	6 months & 1 day eff. 01/04/10: Issued 12/02/09	5
Lenkowsky, Paul	90 days eff. 07/01/08 (retroactive): Issued 01/07/09	1
Lockwood, Chester R.	90 days eff. 05/20/09: Issued 04/20/09	6
May, Christopher L.	1 year eff. 03/17/09: Issued 03/17/09	2
Miranda, Victoria R.	90 days eff. 07/30/09: Issued 06/29/09	1
Proper, Andrew R.	2 years eff. 01/31/09 (retroactive): Issued 10/29/09	1
Risley, Scott K.	30 days eff. 11/28/09: Issued 10/28/09	1
Schlievert, Scott W.	90 days eff. 05/17/07 (retroactive): Issued 01/07/09	1
Simon, Craig J.	60 days eff. 04/20/09: Issued 04/20/09	1
Sodikoff, Arnold M.	2 years eff. 05/20/09: Issued 04/20/09	3
Trull, Michael J.	6 months eff. 03/05/09 (retroactive): Issued 08/18/09	1
Valade Prichard, Laura Anne	30 days eff. 07/30/09: Issued 06/29/09	1
Whipple, Rory L.	6 months & 1 day eff. 07/24/09: Issued 07/24/09	2
Whipple, Rory L.	6 months & 1 day eff. 07/30/09: Issued 06/29/09	1
Whiting, Dale E.	1 year eff. 06/02/09: Issued 06/02/09	1

INTERIM SUSPENSIONS

<i>Name</i>	<i>Date Issued</i>
Jackson, Jeff C.	06/02/09
Proper, Andrew R.	01/16/09 (effective 1/31/09)

DISBARMENTS

<i>Name</i>	<i>Date Issued</i>	<i>Number of Charges in each Disbarment</i>
Alavez, Erin M.	03/17/09	6
Didio, Joseph S.	04/20/09	20
Everett, James J.*	02/25/09	9
Garza, Raul Jr.	06/02/09	8
Howell, William D., III	08/17/09	4
Jackson, Jeff C.	08/18/09	8
Martin, Rex L.	07/24/09	1
May, Christopher L.	06/29/09	2
Mikal, Kenneth J.	04/20/09	1
Pelkey, Bruce A.	09/23/09	1
Slate, Matilde E.	04/20/09	3
Stevens, Victoria M.	06/29/09	18
Suplizio, Jesse Paul	04/20/09	6
Tift, William L.	06/29/09	6
Vice, George, III	03/17/09	1

*Consent to Disbarment

REINSTATEMENTS

<i>Name</i>	<i>Date Issued</i>
Bracamonte, Ricardo A.*	12/17/09
Chandler, Cameron T.	02/11/09
Giles, Bruce A.	03/17/09
Gingras, David S.*	02/19/09
Gonzalez, J. Vincent*	06/02/09
Gregory, Robert M.*	03/10/09
Hansberry, Diette M.	10/27/09
Hudspeth, Donald W.*	12/14/09
Lenkowsky, Paul*	02/11/09
Lockwood, Chester R.*	08/24/09
McIlroy, Daniel F.	03/10/09 (reinstatement to retired status)
Miranda, Victoria R.*	11/24/09
Piccioli, Thomas C.	06/01/09
Schlievert, Scott W.	06/29/09
Simon, Craig J.*	07/20/09
Toldeo, Gustavo	12/02/09
Valade Prichard, Laura Ann*	09/10/09
Weber, Adam P.	01/07/09
Zarkou, Russell J.	01/07/09

*Reinstatement from short-term suspension

TRANSFER TO DISABILITY INACTIVE

<i>Name</i>	<i>Date Issued</i>
Blackwell, Anthony	06/29/09
Finch, Ronald G.	01/13/09

CONTEMPTS

<i>Name</i>	<i>Date Issued</i>
None issued in 2009	

STATE BAR OF ARIZONA**I. Lawyer Regulation - Disciplinary Process****A. INTAKE AND PRESCREENING**

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

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

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

Written complaints are reviewed pursuant to Rule 54(b)(1)(D), Ariz.R.Sup.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.Sup.Ct. If the allegations fail to meet the threshold for investigation, the complainant is advised of this determination by letter explaining why the matter will not be investigated further. The subject attorney will also receive an appropriate letter advising him or her that allegations were received but will not be investigated further. The letter may request that the attorney perform some action, such as contacting the complainant to answer questions posed by the complainant, or returning documents. In any event, the subject attorney will receive a copy of the allegations submitted to A/CAP. Allegations warranting further review are referred to bar counsel for investigation.

B. SCREENING

When a written charge contains allegations that meet the threshold of Rule 54, Ariz.R.Sup.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.Sup.Ct.

(i) The Response

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

Under some circumstances, a lawyer may request confidentiality of all or a portion of a response. *See* Rules 52(b)(1) and 70(g), Ariz.R.Sup.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, excluding 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.Sup.Ct.

(ii) The Reply

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

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

(iii) Additional Investigation

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

(iv) ***Probable Cause Review***

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

Staff bar counsel hold a probable cause review session, prior to review by the panelist, to ensure that all cases are considered uniformly and that all recommendations are consistent. The panelist will review all summaries. The panelist also has access to all files under consideration. The panelist has the discretion to approve, disapprove or modify the recommendation of bar counsel. *See* Rule 54(b)(4), Ariz.R.Sup.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, probation, restitution, or the assessment of costs and expenses, the respondent has the right to oppose the order, pursuant to Rule 54(c) Ariz.R.Sup.Ct. Within 10 days of service of an Informal Reprimand Respondent has the right to demand that a formal proceeding be instituted.

(v) ***Diversion***

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

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

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

C. FORMAL PROCEEDINGS

(i) Hearing Officer

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

The respondent's answer is due within twenty (20) days of service. *See* Rule 57(b), Ariz.R.Sup.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.Sup.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.Sup.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(g), Ariz.R.Sup.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.Sup.Ct.

If consent to discipline is not 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.Sup.Ct.

(ii) ***Disciplinary Commission***

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

The commission is bound by the record on appeal. Evidence not presented to the hearing officer shall not be presented to the commission. *See* Rule 58(a), Ariz.R.Sup.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 Supreme Court of Arizona, if not part of a sanction which includes disbarment or suspension. The Disciplinary Commission reviews questions of law *de novo*. In reviewing findings of fact the commission applies a clearly erroneous standard.

(iii) ***Supreme Court of Arizona***

If the commission recommends censure, suspension or disbarment, reinstatement or denial of reinstatement, either party may seek review by the Supreme Court of Arizona. 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.Sup.Ct.