

THE NORTH CAROLINA STATE BAR

OFFICE OF COUNSEL

2006 ANNUAL REPORT

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Margaret Cloutier, Deputy Counsel	Ext. 239
Nicole McLaughlin, Deputy Counsel	Ext. 238
Carmen K. Hoyme, Deputy Counsel	Ext. 283
Robert A. Crabill, Deputy Counsel	Ext. 279
Thomas Lambeth, Deputy Counsel	Ext. 226
Donald H. Jones, Director of Investigations.....	Ext. 222
Harry B. Warren, Investigator.....	Ext. 235
David Frederick, Investigator	Ext. 225
Edward White, Investigator.....	Ext. 263
Reginald Shaw, Investigator	Ext. 266
Walter Harlow, Investigator	Ext. 282
Steve Annis, Investigator	Ext. 284
Tim Batchelor, Investigator	Ext. 274
Glenn Sexton, Investigator	Ext. 292
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OFFICE OF COUNSEL

The Office of Counsel is the department of the North Carolina State Bar which receives and handles complaints concerning attorney misconduct and the unauthorized practice of law. Within the Office of Counsel are the grievance staff and the Client Assistance Program (CAP) staff. The grievance staff receives, investigates and, where necessary, litigates claims of misconduct and disability against North Carolina attorneys. It also assists the Authorized Practice Committee to investigate and resolve complaints concerning the unauthorized practice of law by non-lawyers.

The CAP staff helps members of the public resolve problems with attorneys other than matters involving potentially serious violations of the Revised Rules of Professional Conduct. The CAP staff also provides information about the grievance process, the courts and justice system and helps resolve disputes between lawyers and their clients regarding fees.

The grievance staff includes ten attorneys, three paralegals, two administrative assistants, one auditor and ten investigators. The Client Assistance Program staff includes its director, a fee dispute mediator, an administrative assistant and three public liaisons. The Office of Counsel is located on the third floor of the State Bar Building, 208 Fayetteville Street, Raleigh, N.C. 27611.

The Office of Counsel is open from 9 a.m. until 5 p.m. on weekdays and may be reached at 919-828-4620. Each staff person's telephone extension appears on page 2 of this report.

2006 ANNUAL REPORT OFFICE OF COUNSEL THE NORTH CAROLINA STATE BAR

Client Assistance Program

During 2006, the CAP staff responded to 17,956 calls from the general public, which was down by more than three thousand from the 21,166 calls the staff handled in 2005. The staff also contacted 2,554 attorneys to resolve problems that had arisen between the attorneys and their clients. Meanwhile, the staff answered 868 electronic messages and 1,941 letters from inmates and the general public. A graph summarizing call data for the last several years appears at page 17.

In 2006, 727 petitions for resolution of disputed fees were filed with the State Bar, which was down from the 764 petitions filed in 2005. The staff handled 588 of the petitions filed in 2006, while the remaining 139 petitions were referred to the various district bars. A graph summarizing the number of fee dispute cases handled by the State Bar since 1995 appears at page 18.

Authorized Practice Committee

The Authorized Practice Committee opened 113 files in 2006, contrasted with the 142 files opened in 2005. With the assistance of staff, the Committee completed 103 files in 2006.

Among the matters handled by staff at the direction of the Authorized Practice Committee were the entry of injunctions by the Wake County Superior Court against three parties. Those matters were:

- *North Carolina State Bar v. Leapfrog Enterprises, et al (We the People)*. On July 14, 2006, the Bar obtained a consent order of permanent injunction prohibiting a business known as We the People Forms and Documents Centers, and its franchisees, from advertising that it could prepare legal documents for others and from acting as anything other than a scrivener service in providing form documents.
- *North Carolina State Bar v. The Closing Place*. On October 4, 2006, the court entered a consent permanent injunction against a business entity that was providing services in connection with residential real estate closings named the Closing Place. The defendants agreed not to provide legal documents, title abstracts, and title opinions directly to the parties in residential real estate transactions.
- *State of North Carolina and the North Carolina State Bar v. American Family Legal Plans*. In conjunction with the Attorney General's office, the State Bar sued a business known as American Family Legal Plans for an injunction to prohibit unfair and deceptive trade practices, including the unauthorized practice of law, in the marketing of a purported prepaid legal service plan that targeted seniors with a sales pitch to convince them to purchase a revocable living trust. After a contested hearing, the court entered a preliminary injunction on October 16, 2006.

In addition, at the end of the year there was another pending action before the Wake County Superior Court involving a web based document preparation service known as Law Online.

Grievance Committee Actions

During calendar 2006, a total of 1,398 grievances were filed with the North Carolina State Bar and the district bar offices, compared with the 1,392 grievances filed in 2005. A chart summarizing the number of grievances filed each year since 1986 appears at page 19.

All grievances received by the North Carolina State Bar must be considered and acted upon by one or more members of the Grievance Committee of the North Carolina State Bar, which serves as the grand jury of the attorney disciplinary system in our state. The Committee considered a total of 1,494 grievances during 2006. Of those grievances, 1,101 or about 72%, were dismissed. In addition to the grievances that were dismissed outright in 2006, 33 grievances were dismissed with letters of caution and another 68 grievances were dismissed with letters of warning.

In other activity during calendar 2006, the Grievance Committee issued 37 admonitions, 37 reprimands and 16 censures to North Carolina attorneys. A total of 125 cases were referred for trial before the Disciplinary Hearing Commission (DHC). Consequently, for the year, a total of 215 grievances resulted in imposition of discipline by the Grievance Committee or referral to the DHC. That figure represents approximately 15% of the grievances considered by the Committee in 2006. An itemized report detailing the disposition of the grievances considered by the Committee in 2006 appears at page 16.

Completed Disciplinary Hearing Commission Actions

1. Disciplinary, Disability Cases

The Disciplinary Hearing Commission is the trial arm of the North Carolina State Bar. The 20-member Commission, which sits in panels of three, hears disciplinary matters involving alleged violations of the Revised Rules of Professional Conduct, cases in which it is alleged that an attorney is disabled, petitions from disbarred attorneys seeking reinstatement to the practice of law and show cause petitions alleging that an attorney has violated a prior DHC order.

During 2006, the staff attorneys completed 46 disciplinary, disability and show cause cases before the Disciplinary Hearing Commission. Three cases involved two defendant-attorneys. The staff completed 51 such cases in 2005. Of the 46 cases completed in 2006, 44 involved disciplinary charges and two involved disability claims. One case was heard as a disability matter but no disability was found and this case is pending as a disciplinary matter. Disbarment was ordered in nine of the disciplinary cases. In five of the disbarment cases heard by the Commission, the attorney embezzled or misappropriated client funds. Two of the disbarment cases involved wire fraud, one of the disbarments cases involved an attorney engaged in the practice of law while suspended who also commingled funds, and one of the disbarment cases involved a conviction in federal court of failure to file and pay taxes.

In other work during 2006, the Commission reprimanded two attorneys and censured one attorney for less serious violations of the Rules of Professional Conduct. Two cases were voluntarily dismissed by staff when the defendant-attorneys accepted the discipline originally imposed by the Grievance Committee. A third case was dismissed when the attorney surrendered his law license to the Council. A fourth case involving two defendant-attorneys was dismissed by the Commission and is on appeal. In the

remaining 28 cases, the attorney's law license was suspended and the suspension was stayed in part or whole upon compliance by the attorney with various conditions.

A chart summarizing the numbers of DHC cases filed each year since 1985 appears at page 20.

2. Reinstatement Cases

The Disciplinary Hearing Commission considered one petition filed by a disbarred attorney in 2006. The Commission denied the petition after a hearing.

The Commission also heard the reinstatement petition filed by a suspended attorney in 2006. In that matter, the DHC reinstated the attorney.

Only one reinstatement petition was filed by a disbarred attorney with the Disciplinary Hearing Commission in 2006. Only one such petition was filed in 2005, two such petitions were filed in 2004. A chart summarizing the outcome in reinstatement cases in recent years appears at page 21.

Actions Before the Council of the N.C. State Bar

1. Tenders of Surrender of License

In 2006, ten North Carolina attorneys surrendered their law licenses to the Council. Two attorneys were disbarred by the Council after they were convicted of serious felonies. In the remaining eight cases, the attorney admitted misappropriating client funds (two of these cases will be heard at the January 2007 Council meeting.)

Seven North Carolina attorneys surrendered their law licenses and were disbarred by the Council during 2005.

A chart summarizing the number of surrenders and disbarments for each year since 1985 appears at page 22.

2. Reinstatement Proceedings

The Council of the State Bar did not hear any reinstatement proceedings in 2006. The last time the Council considered a reinstatement case was in 2000.

Actions Before the Secretary

The Secretary receives reinstatement petitions from attorneys whose licenses are suspended for disciplinary violations and enters reinstatement orders in uncontested cases. Contested cases are referred to the DHC for trial.

Five North Carolina attorneys filed reinstatement petitions with the Secretary in 2006. Three petitions were granted without opposition and without a hearing. One was heard before the DHC and the petition was granted. One case is pending before the DHC.

Actions Before the State Trial Courts

1. Appointment of Trustees of Law Practices of Missing, Deceased, Disabled & Disbarred Attorneys

In 2006, the Office of Counsel prepared seven petitions to the courts to appoint trustees to wind down the practices of nine attorneys. Of that number, two of the attorneys were missing or had abandoned their practices and seven attorneys had died or became disabled. The State Bar filed 28 trustee petitions in 2005.

2. Disciplinary Proceedings in the State Trial Courts

In 2006, the State Bar's staff attorneys were not called upon to handle any disciplinary actions in the state trial courts. The office did initiate one disability case in Gaston County Superior Court. In 2005, the staff handled no disciplinary actions and no disability actions in the state courts.

3. Injunction Proceedings

During calendar 2006, the Office of Counsel sought injunctions barring 10 different North Carolina attorneys from handling client funds. The Office of Counsel filed injunction proceedings against 13 attorneys in 2005.

4. Miscellaneous

As usual, the staff attorneys appeared in a variety of litigation matters in the state trial courts in 2006.

During 2006, the staff represented the State Bar in trial level and appellate proceedings involving Willie Gilbert. Gilbert, whose law license was suspended by the DHC in 2000, filed a lawsuit in state court seeking to enjoin the State Bar from proceeding with a second DHC case on a separate issue of misconduct. Gilbert alleged that the Bar had violated his constitutional rights by filing the second disciplinary action. The trial court entered a permanent injunction prohibiting the Bar from pursuing its disciplinary action and reserved judgment on monetary damages and attorneys' fees. The Court of Appeals dismissed the Bar's appeal as interlocutory. The case was recently remanded to the trial court for further proceedings. The State Bar will petition for discretionary review.

Alan Pugh, who initiated a lawsuit against the State Bar in 2005, took a voluntary dismissal of that lawsuit in 2006. Pugh, a licensed North Carolina attorney, had asserted claims in Randolph County Superior Court against Ed Ward, who is employed by the

In 2006, the 4th Circuit Court of Appeals affirmed the trial court's dismissal of a lawsuit filed by former lawyer Michael McGee against the Disciplinary Hearing Commission, the State Bar, its officers and various employees. McGee has petitioned for rehearing en banc. McGee's lawsuit sought damages under 42 U.S.C. 1983 for discipline imposed upon McGee by the DHC in two separate proceedings. In his federal lawsuit, McGee claimed that the disciplinary proceedings were brought in retaliation for McGee's actions in suing the State Bar in the year 2000 and in publishing self-help divorce books. McGee sought injunctive relief, damages, return of his law license, destruction of his disciplinary records and an apology.

SUMMARIES OF
DISCIPLINARY, DISABILITY & REINSTATEMENT ACTIONS

BEFORE THE COUNCIL

Tenders of Surrender of License

<u>Attorney Name</u>	<u>File No.</u>	<u>Date of Council Disbarment</u>
Sherrie R. Hodges	06 BCS 1	April 21, 2006
Donald A. Parker	06 BCS 2	July 21, 2006
Joseph W. Morton	06 BCS 3	July 21, 2006
Dwayne A. Bennett	06 BCS 4	July 21, 2006
Charles Medlin	06 BCS 5	July 21, 2006
Samuel T. Currin	06 BCS 6	October 20, 2006
James T. Conrad	06 BCS 7	October 20, 2006
Katherine McDiarmid	06 BCS 8	October 20, 2006
John Lee	06 BCS 9	Pending January 2007
D. Scott Turner	06 BCS 10	Pending January 2007

BEFORE THE DISCIPLINARY HEARING COMMISSION

Reinstatement Cases Completed in 2006

<u>Attorney Name</u>	<u>File No.</u>	<u>Disposition</u>
Alice L. McNeer	06 BSR 1	Reinstated
Willie D. Gilbert, II	06 BSR 2	Reinstated
Jacob E. Setzer	06 BSR 4	Reinstated
Robert Winfrey	06 BCR 1	Denied

Completed Show Cause Cases

<u>Attorney Name</u>	<u>File No.</u>	<u>Disposition</u>
Theodore F. Cummings	04 DHC 18	Stayed suspension extended 2 yrs.
Mark A. Key	02 DHC 22	Stay lifted; 90 days active suspension (on appeal)

BEFORE THE DISCIPLINARY HEARING COMMISSION

Completed
Discipline & Disability Cases

<u>File No.</u>	<u>Case Caption</u>	<u>Type of Misconduct</u>	<u>Action</u>
04 DHC 47	JAMES A. BEALES	Failure to respond to SB & Fee Dispute, neglect, failure communicate	5 yr suspension
05 DHC 5	MARK F. REYNOLDS	Neglect, misleading federal judges, failing appear for federal SC hearing	5 yr suspension
05 DHC 7	MCARTHUR MITCHELL	Pled guilty to wire fraud in fed court	Disbarred
05 DHC 19	JOHN MCNEIL	Conviction possession cocaine	3 yr suspension, may stay last 21 months
05 DHC 21	FRED MOUTOS	Failure to file tax returns, technical T/A violations	5 yr suspension, may apply after 1 yr
05 DHC 25	ASSATA K. BUFFALOE	Voluntarily dismissed	
05 DHC 26	ALLEN ROGERS	Neglect, false fee application to court, drug possession	3 yr suspension, may seek 2 yr stay
05 DHC 27	KENNETH DARTY	Lied to court; took property as fee	2 yr suspension, stayed 5 yrs
05 DHC 28	RANDAL MARSH	T/A violations, filed false accounting w/ court	3 yr suspension stayed 3 yrs
05 DHC 37	SCOTT BREWER	Failure to disclose concessions given to witness in criminal case	Dismissed by chair with prejudice
05 DHC 37	KENNETH HONEYCUTT	Failure to disclose concessions given to witness in criminal case	Dismissed by chair with prejudice
05 DHC 41	NATE PENDLEY	Failing to respond to SB, Fee Dispute, fail return files	2 yr suspension stayed 2 yrs
05 DHC 42	FREDERICK PIERCE	Neglect; failure participate in Fee Dispute Resolution program	2 yr suspension stayed 3 yrs
05 DHC 44	WM AGAPION	Held out as lawyer after	Reprimand

		inactive	
05 DHC 46	MILTON MOORE	Failure to file & pay taxes	Disbarred
05 DHC 46	REGINA MOORE	Failure to file & pay taxes	Suspended 3 yrs
05 DHC 47	DAVID L. HARRIS	Embezzlement	Disbarred
05 DHC 49	ROBERT FRIEND	Transferred to disability inactive	Disability Inactive Status
05 DHC 50	ROBERT FLOYD	Failure to file tax returns	2 yr suspension stayed 2 yrs
05 DHC 51	MARSHALL DOTSON	Neglect	1 yr suspension stayed 2 yrs
05 DHC 52	DAVID CRAFT	DWI, DWLR, contempt	1 yr suspension, stayed 3 yrs
05 DHC 53	ROBERT A. MILLER	Embezzlement	Disbarred
05 DHC 54	RANDY CARTRETTE	Drug possession (no conviction)	1 yr suspension stayed 3 yrs
05 DHC 55	DAVID ROGERS	Practiced after suspension	5 yr suspension
06 DHC 1	RICHARD BADGETT	Conflict of interest	Censure
06 DHC 2	BOUNTHAI VONGXAY	False HUD and misuse of client funds	3 yr suspension, eligible for stay after 1 yr
06 DHC 3	LYNETTE HICKS	Failure to maintain trust account leading to employee theft	3 yr suspension stayed 3 yrs
06 DHC 4	BENJAMIN BROWN	Trust account violations	2 yr suspension stayed 2 yrs
06 DHC 5	GEORGE HAGOOD	Voluntarily dismissed	Surrendered
06 DHC 7	ROBERT HOWES	Neglect in real estate transactions and failure maintain trust account	2 yr suspension stayed 5 yrs
06 DHC 8	ED ZOTIAN	Practicing after suspension	5 yr suspension (after 04 DHC 1)
06 DHC 9	WAYNE FOUSHEE	Embezzlement	Disbarred
06 DHC 10	MARK REYNOLDS	Failure participate in Fee Dispute Resolution and respond to LON	5 yr suspension
06 DHC 12	FRANK PINKSTON	Practiced while suspended; failure respond to Bar	2 yr suspension, eligible for stay after 6 months
06 DHC 13	PAUL SCHELL	Misappropriated client funds; excessive fees	Disbarred
06 DHC 14	RON COOLEY	Failure participate in Fee Dispute Resolution; charging nonrefundable fee; false statements to Grievance Committee	Reprimand
06 DHC 15	MARK RANDOLPH	Failed to protect client funds	2 yr suspension stayed 3 yrs
06 DHC 16	CHARLES EAKES	Practiced after suspension; commingled funds; failed to respond to Bar	Disbarred
06 DHC 17	TERRY ZICK	Excessive fee; neglect	Continued 5 yr suspension of 03 DHC 19
06 DHC 18	TOM LOFLIN	Failure file/pay income taxes	3 yr suspension stayed 3

06 DHC 18	ANN LOFLIN	Failure file/pay income taxes	yrs 30 days active 2 yr suspension , stayed 2 yrs
06 DHC 19	DOUGLAS SUTTON	Transferred to disability inactive status	Disability Inactive Status
06 DHC 22	JAMES ETHRIDGE	Embezzled fiduciary funds	Disbarred
06 DHC 23	ARCH SCHOCK, V	Possession/use of crack cocaine	3 yr suspension
06 DHC 24	RICHARD BROADNAX	Failed to file/pay income taxes; failure to reconcile; failure to respond to Bar	5 yrs added to current suspension possible 2 yr stay
06 DHC 25	BRENT WOOD	Convicted of mail fraud and wire fraud	Disbarred
06 DHC 26	ALAN SMITH	Practiced after suspension; neglect	5 yr suspension
06 DHC 27	DWAYNE BENNETT	Convicted of mortgage fraud in federal court	Disbarred by surrender – 06 BCS 4
06 DHC 28	JACOB SETZER	Convicted of misdemeanor larceny	2 yr suspension possible 18 month stay

Reinstatement Cases Pending as of 12/31/06

<u>File Number</u>	<u>Case Caption</u>	<u>Hearing Date</u>
06 BSR 3 (combined w/ 06 DHC 32)	Marva McKinnon	3/2/07

Disciplinary & Disability Cases Pending as of 12/31/06

<u>Attorney Name</u>	<u>File No.</u>	<u>Trial Date</u>
William Butner	01 DHC 2	TBA
Ralph E. McLaurin	05 DHC 39	TBA
Christopher Livingston	06 DHC 11	TBA
E. Elizabeth Lefler	06 DHC 20	TBA (Interim Disability Inactive)
Rick F. Shumate	05 DHC 56	TBA (Interim Suspension)
Charles D. Blackwell, II	06 DHC 6	TBA (Interim Suspension)
Jonathan M. Brooks	06 DHC 29	TBA
Clyde G. Triggs	06 DHC 30	TBA

Michael P. Hugo	06 DHC 33	TBA
Elizabeth Hickmon	05 DHC 15	2/22-23/07
Teresa L. Smallwood	05 DHC 45	1/11-12/07
Garey M. Ballance	05 DHC 48	3/8-9/07
Lawrence U. Davidson, II	06 DHC 21	1/25-26/07
Janet P. Reed	06 DHC 31	2/16/07
Marva McKinnon (combined with 06BSR3)	06 DHC 32	3/2/07
John G. McCormick	06 DHC 34	3/30/07
Michael B. Nifong	06 DHC 35	5/11/07

Show Cause Cases Pending as of 12/31/06

<u>Attorney Name</u>	<u>File No.</u>	<u>Trial Date</u>
	None	

BEFORE THE STATE TRIAL COURTS

Appointment of Trustees Completed in 2006

<u>Name of Missing, Disabled, Deceased Attorney</u>	<u>Reason Trustee Sought</u>
David Duke	Deceased
John Martin	Disabled
Donald Parker	Disabled
William Palmer	Deceased
Douglas Sutton	Disabled
Robert Miller	Abandonment
John McCormick	Abandonment
Jay Stroud	Disabled
Roger Edwards	Deceased

BEFORE THE STATE TRIAL COURTS

Injunction Proceedings in 2006

Joseph Morton
Katherine McDiarmid
Robert Miller
John McCormick
Joseph Conrad
William Myers
Scott Turner
John Lee
Michelle Mallard
Donald A. Parker

BEFORE THE GRIEVANCE COMMITTEE

Totals for 2006

Total Grievances Filed – 1398
Total Cases Considered by Committee – 1494

Dismissed – 1,101
Dismissed with letters of caution – 33
Dismissed with letters of warning – 68
Referred to LAP, LMAP or both – 22
Cases in which reconsideration was denied – 7
Admonitions – 37
Reprimands – 37
Censures – 16
Cases involving referred to DHC – 125
Cases continued – 25
Cases dismissed & retained – 16
Cases abated – 7

Grievance Totals for January 2006

There were 328 items considered this quarter.

During the quarter, pursuant to .0105(19) and (20), the following cases were concluded by the 3 subcommittees, or on vote of the Chair or the Chair and Vice Chair:

- 238 Dismissed
- 4 Dismissed and Retained
- 3 Abated
- 3 Letters of Caution
- 10 Letters of Warning
- 1 Case in which reconsideration was requested was reconsidered and continued for further investigation.
- 3 Referred to LAP, LMAP or both
- 7 Continued for further investigation
- 4 Admonitions
- 7 Reprimands
- 5 Censures
- 43 Cases referred to the Disciplinary Hearing Commission

Grievance Totals for April 2006

There were 413 cases considered this quarter.

During the quarter, pursuant to .0105(19) and (20), the following cases were concluded by the 3 subcommittees, or on vote of the Chair or the Chair and Vice Chair:

- 281 Dismissed
- 10 Dismissed and Retained
- 3 Abated
- 12 Letters of Caution
- 23 Letters of Warning
- 3 Previously issued Reprimands were denied reconsideration
- 1 Previously issued Censure was denied reconsideration
- 5 Lawyers referred to LAP, LMAP or both
- 7 Continued for further investigation
- 14 Admonitions
- 7 Reprimands
- 3 Censures
- 44 Cases referred to the Disciplinary Hearing Commission

Grievance Totals for July 2006

There were 343 cases considered this quarter.

During the quarter, pursuant to .0105(19) and (20), the following cases were concluded by the 3 subcommittees, or on vote of the Chair or the Chair and Vice Chair:

- 258 Dismissed
 - 1 Dismiss and Retain
 - 1 Abated due to the Lawyer's disability
- 14 Letters of Caution
- 19 Letters of Warning
- 8 Referred to LAP, LMAP or both
- 6 Continued for further investigation
- 5 Admonitions
- 12 Reprimands
- 5 Censures
- 14 Cases referred to the Disciplinary Hearing Commission

Grievance Totals for October 2006

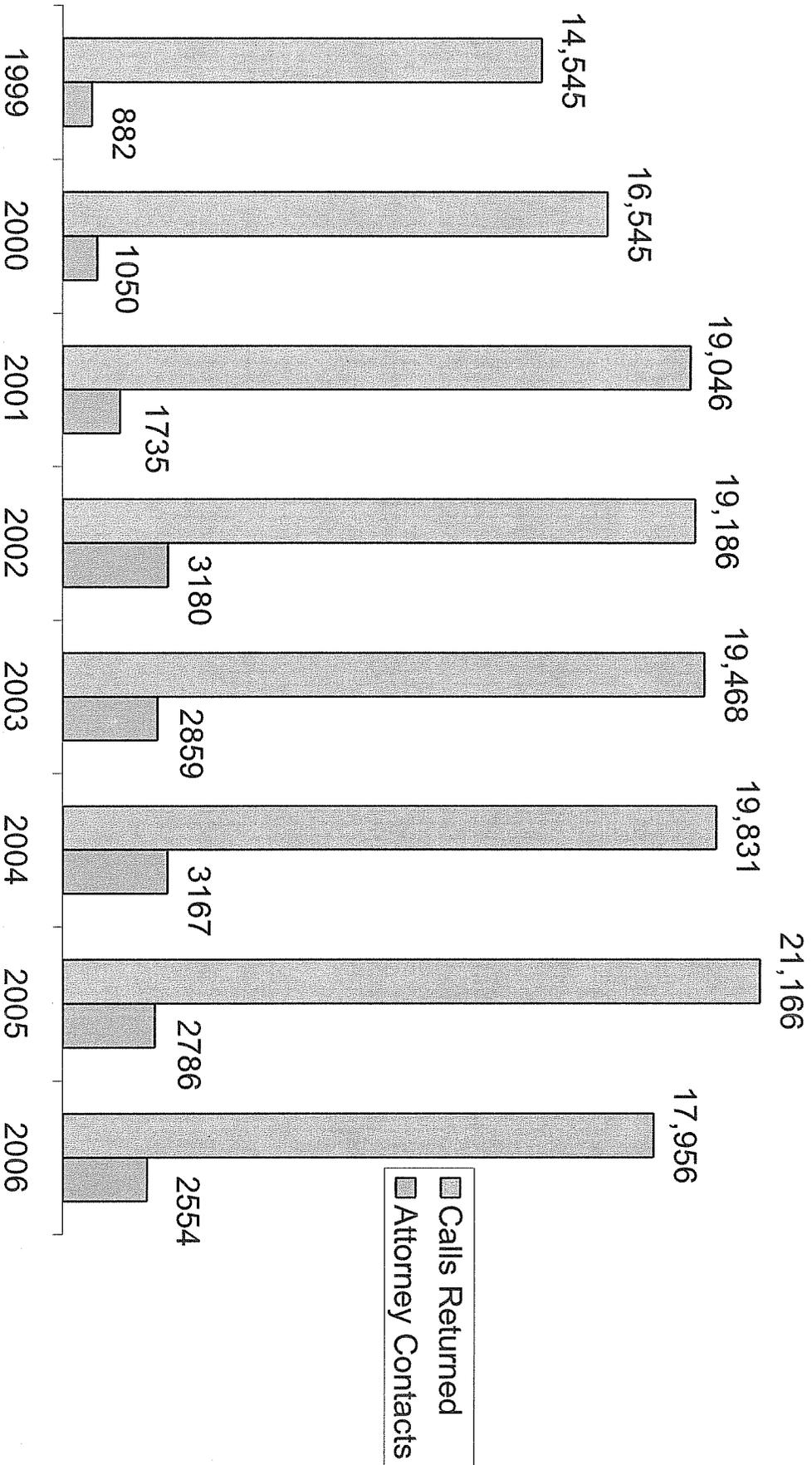
There were 410 cases considered this quarter.

During the quarter, pursuant to .0105(19) and (20), the following cases were concluded by the 3 subcommittees, or on vote of the Chair or the Chair and Vice Chair:

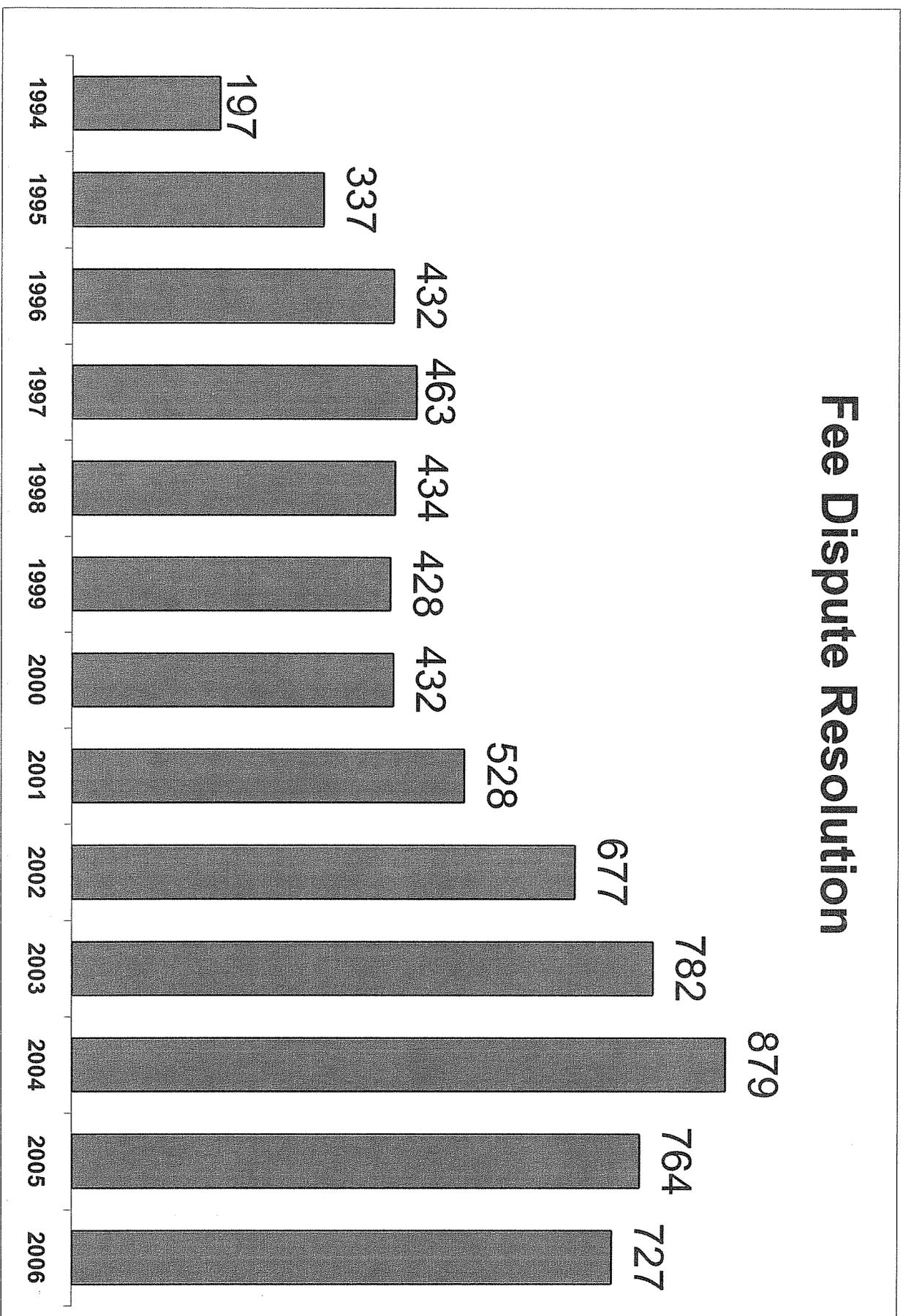
- 324 Dismissed
 - 1 Dismiss and Retain
- 4 Letters of Caution
- 16 Letters of Warning
- 6 Referred to LAP, LMAP or both
- 3 Previously issued Reprimands were denied reconsideration
- 11 Reprimands
- 14 Admonitions
- 4 Continued for further investigation
- 3 Censures
- 24 Cases referred to the Disciplinary Hearing Commission

CLIENT ASSISTANCE PROGRAM

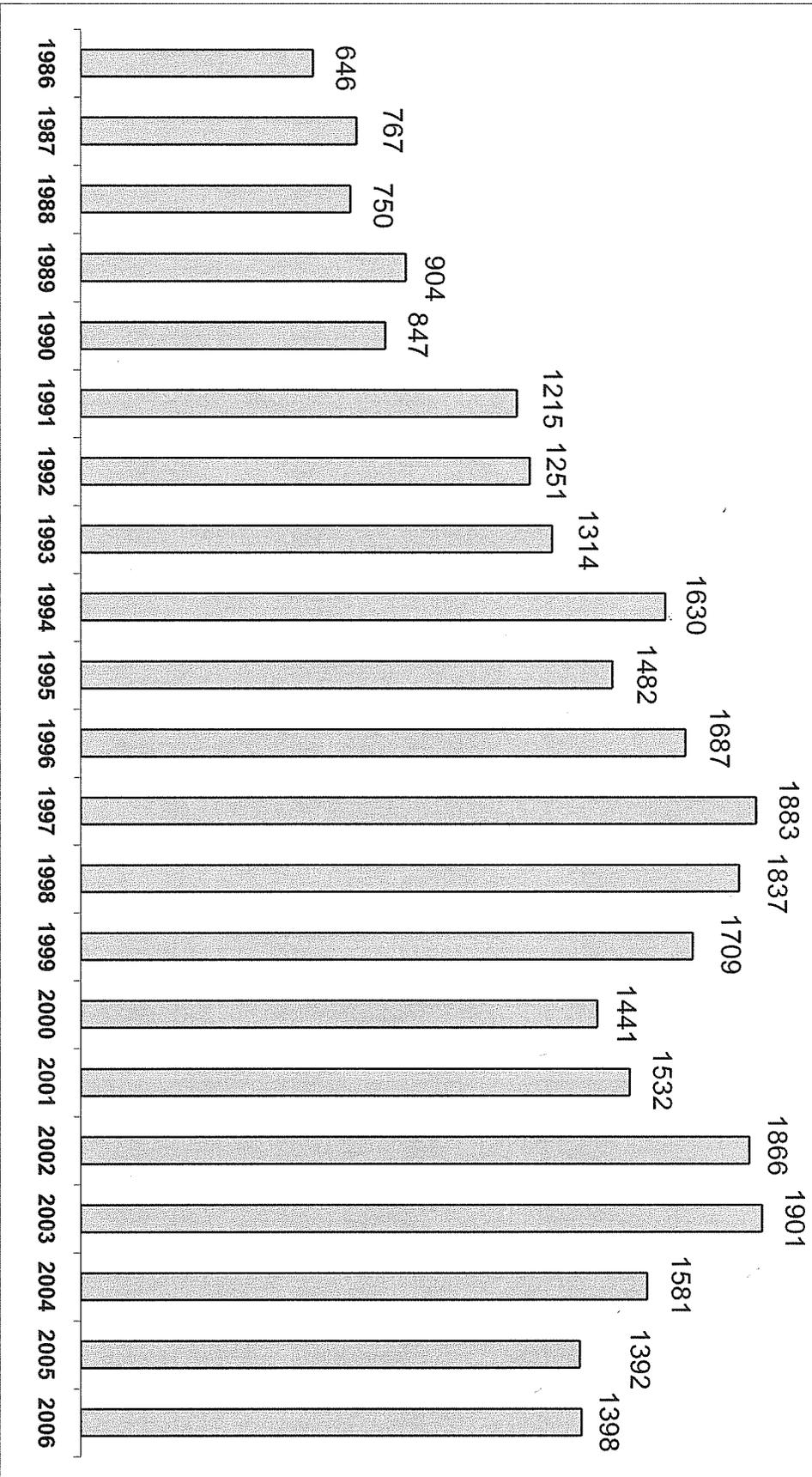
Total Calls Returned (January - December)



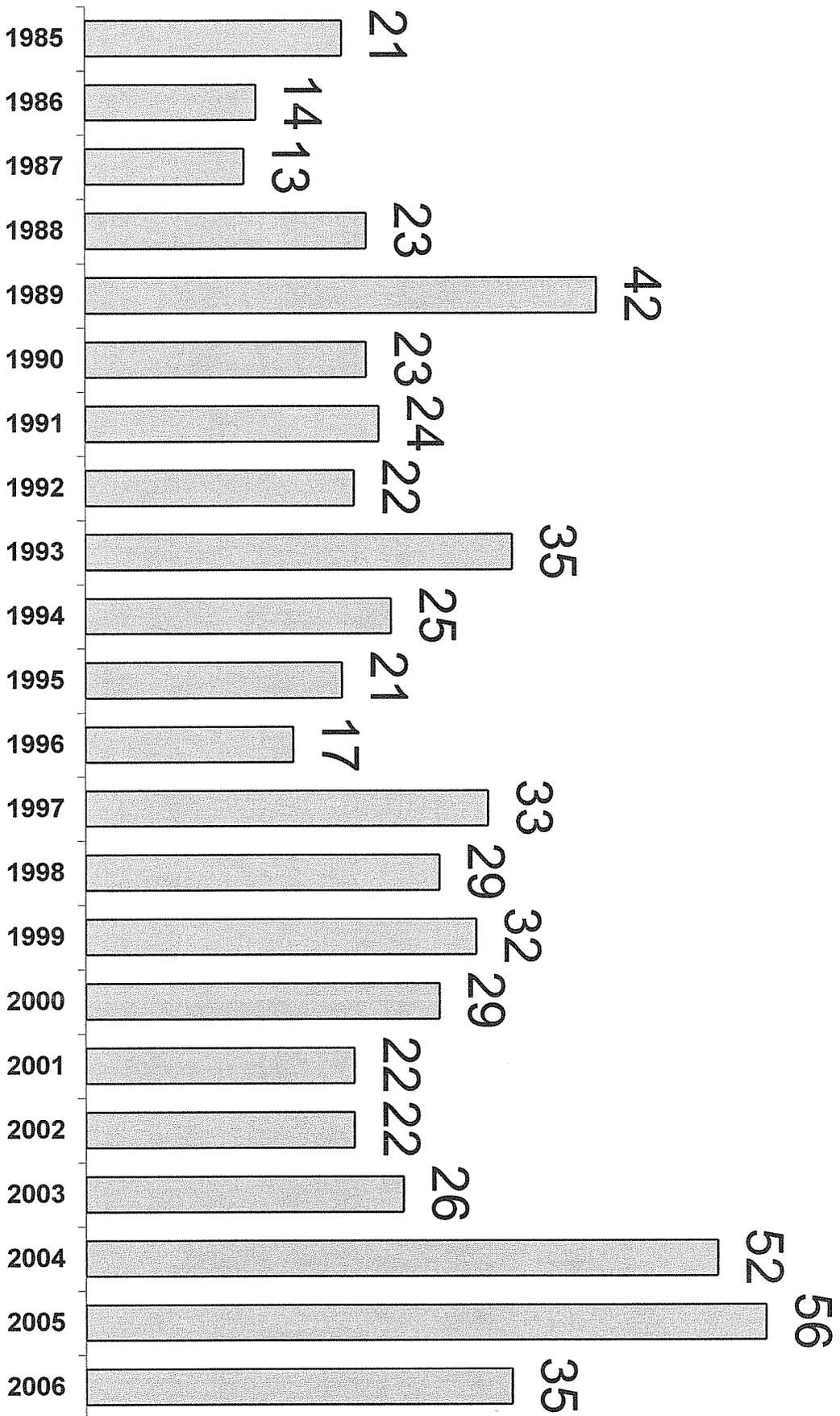
Fee Dispute Resolution



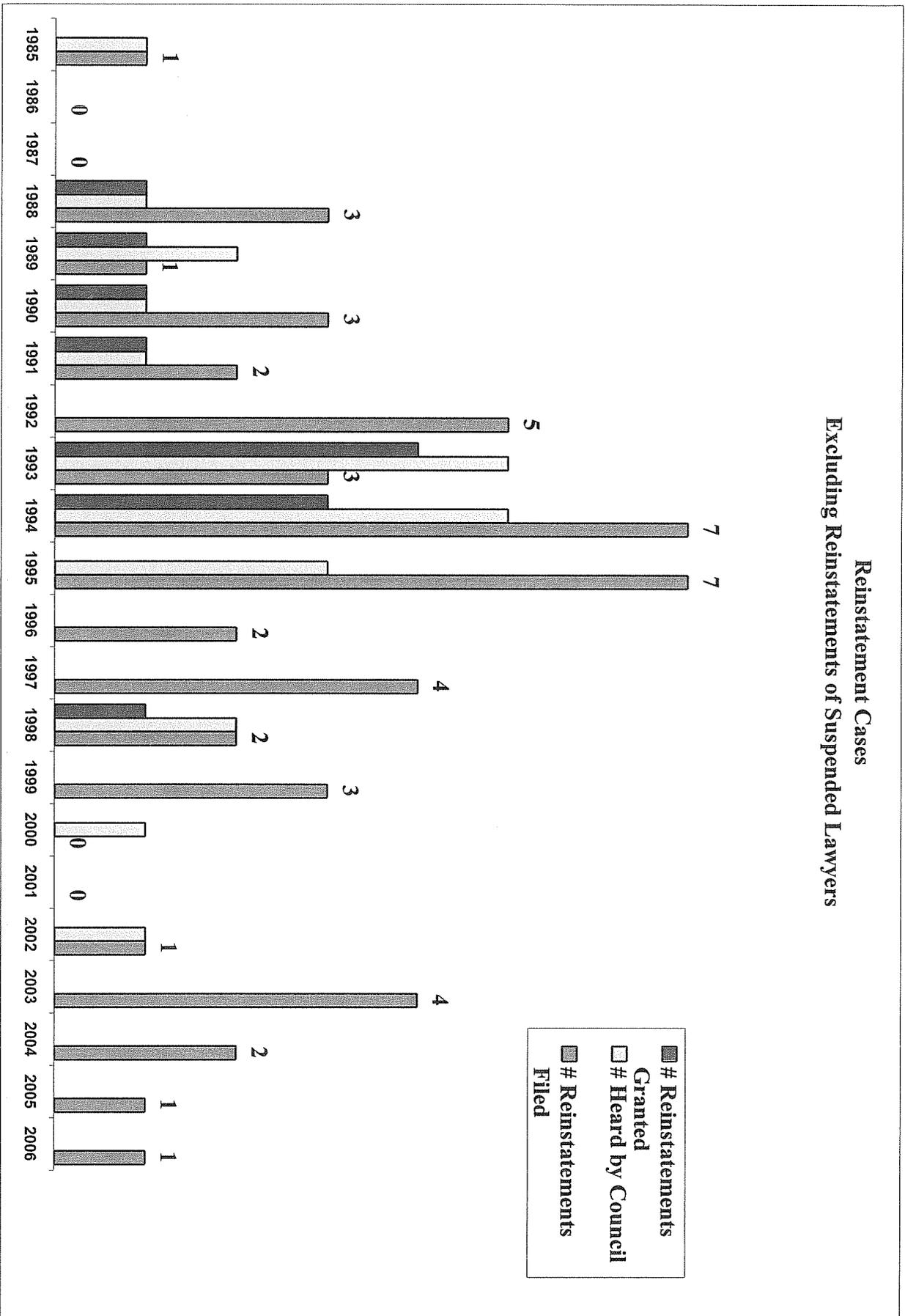
Grievances Filed Annually



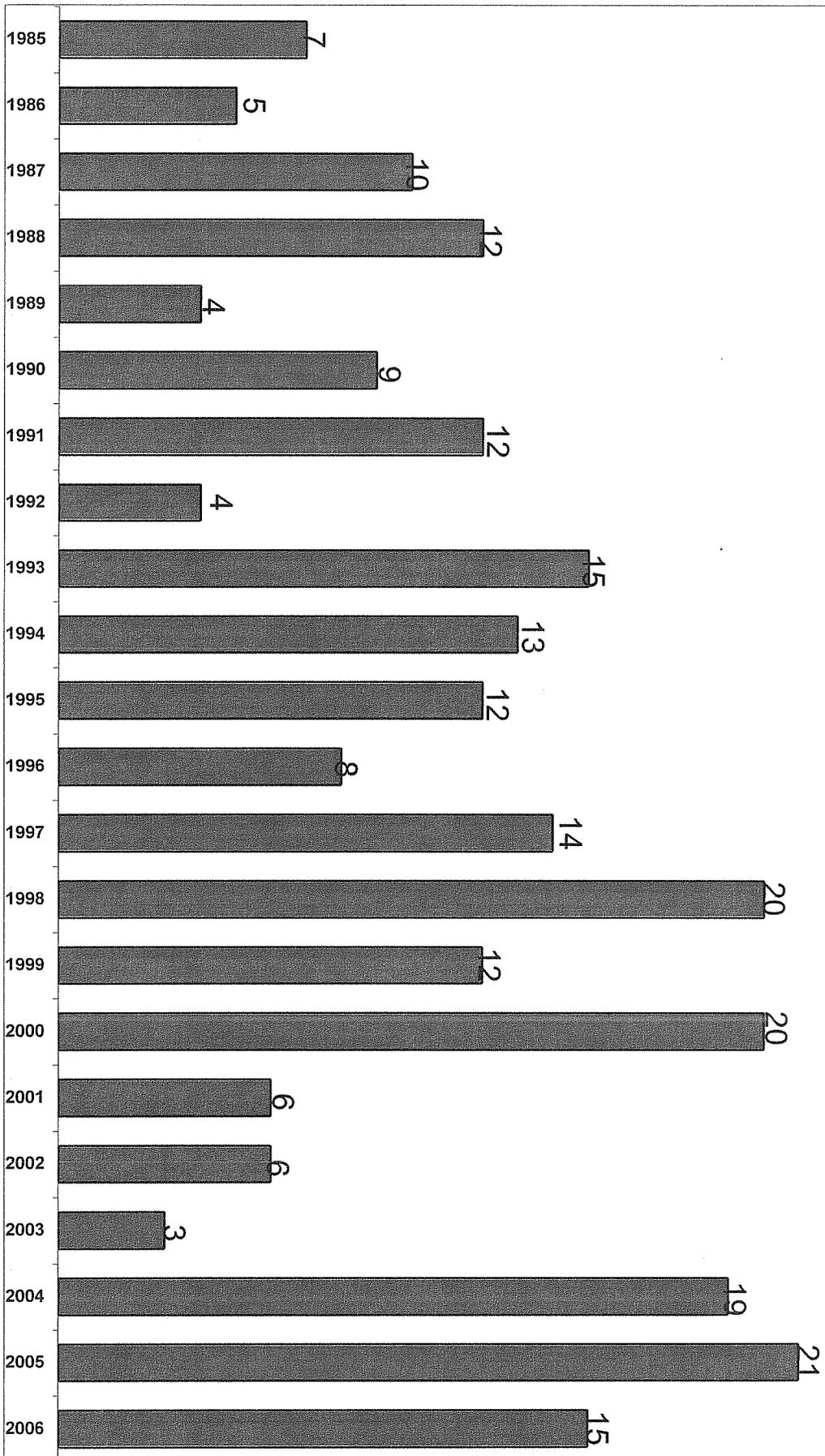
DHC Cases Filed Per Year



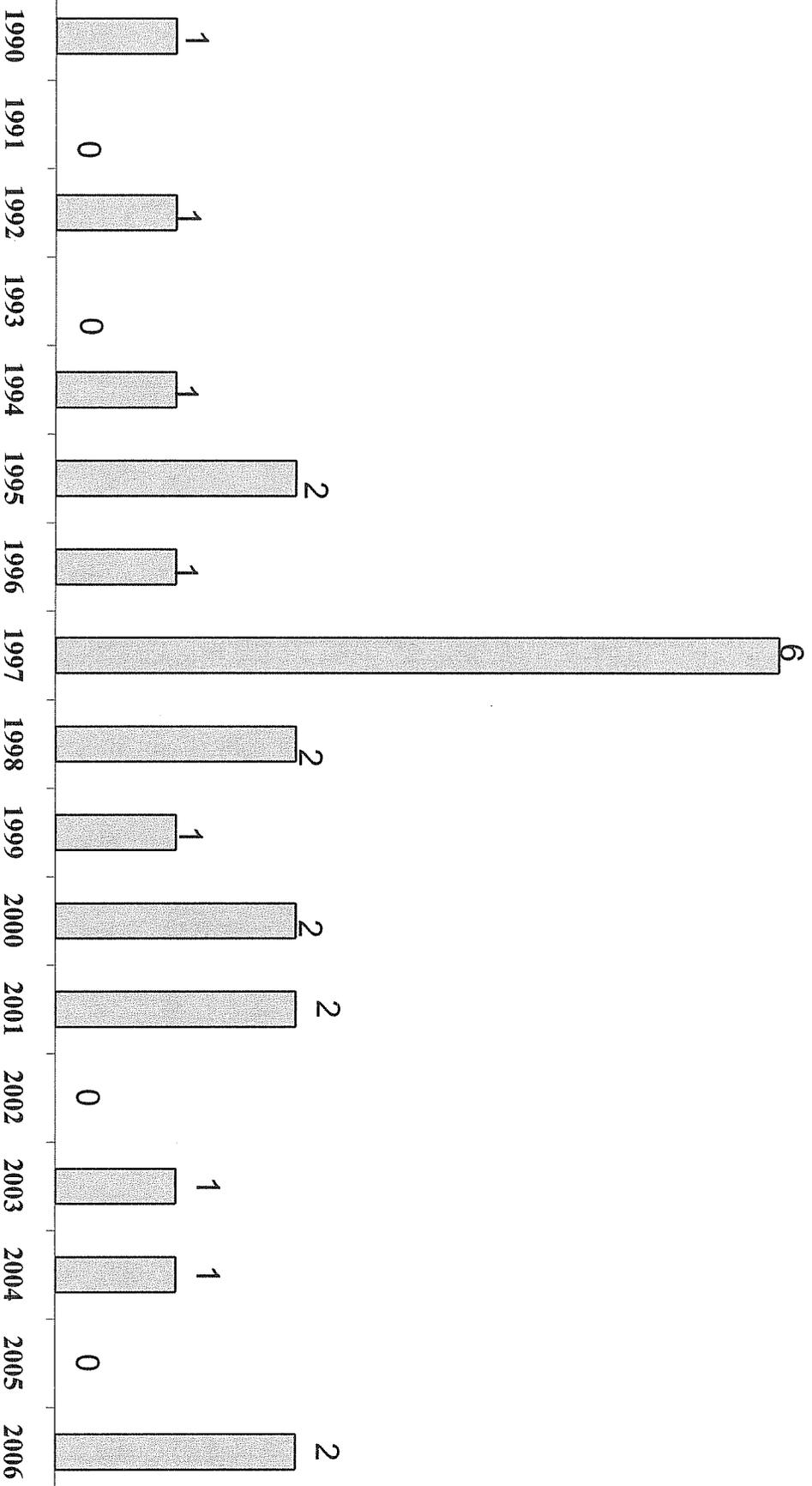
**Reinstatement Cases
Excluding Reinstatements of Suspended Lawyers**



Surrenders and Disbarments (by the Council & DHC)



Disability Cases Heard by DHC



Judicial Disbarments

