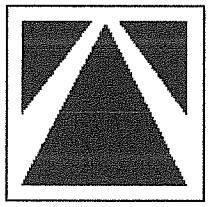


The North Carolina State Bar

# Office of Counsel

# 2011 Annual Report

# *OFFICE OF COUNSEL STAFF*

## *LAWYERS*

| | |
|---|---|
| L. Thomas Lunsford, II, Executive Director | Ext. 244 |
| Katherine E. Jean, Counsel | Ext. 276 |
| Margaret T. Cloutier, Sr. Deputy Counsel | Ext. 239 |
| A. Root Edmonson, Deputy Counsel | Ext. 229 |
| Fern Gunn Simeon, Deputy Counsel | Ext. 258 |
| David R. Johnson, Deputy Counsel | Ext. 230 |
| Jennifer A. Porter, Deputy Counsel | Ext. 262 |
| Nichole P. McLaughlin, Deputy Counsel | Ext. 238 |
| Carmen Hoyme Bannon, Deputy Counsel | Ext. 283 |
| Brian P.D. Oten, Deputy Counsel | Ext. 226 |
| Leanor Bailey Hodge, Deputy Counsel | Ext. 299 |
| William B. Farrell, Deputy Counsel | Ext. 293 |
| Barry M. McNeill, Deputy Counsel | Ext. 298 |
| Mary D. Winstead, Deputy Counsel | Ext. 204 |
| Peter Bolac, Trust Account Compliance Counsel | Ext. 282 |

## *INVESTIGATORS*

| | |
|---|---|
| Joe Commisso, Director of Investigations | Ext. 200 |
| Tim Batchelor, Investigator | Ext. 274 |
| Roger Allen, Investigator | Ext. 265 |
| Eddie Capel, Investigator | Ext. 294 |
| Ed White, Investigator | Ext. 263 |
| Scott Perry, Investigator | Ext. 259 |
| Fred Patton, Investigator | Ext. 266 |
| George Muench, Investigator | Ext. 284 |
| Randy Ross, Investigator, Client Security Fund | Ext. 201 |
| Bruno DeMolli, Auditor | Ext. 224 |

## *PARALEGALS AND ADMINISTRATIVE ASSISTANTS*

| | |
|---|---|
| Heather Pattle, Administrator | Ext. 227 |
| Sonya Sells, Paralegal | Ext. 277 |
| Becky Carroll, Paralegal | Ext. 234 |
| Wondella Payne, Paralegal | Ext. 296 |
| Melanie Kincaid, Paralegal | Ext. 233 |
| Jessica McKeever, Paralegal | Ext. 280 |
| Lori Reams, Administrative Assistant | Ext. 232 |
| Joshua Hoffman, Administrative Assistant | Ext. 295 |
| Dawn Whaley, Administrative Assistant | Ext. 278 |
| Chris Woods, Investigative Clerk | Ext. 222 |
| Sonja Puryear, Investigative Assistant | Ext. 203 |

*ATTORNEY/CLIENT ASSISTANCE PROGRAM STAFF*

| | |
|---|---|
| Luella Crane, Director & Certified Mediator | Ext. 251 |
| Krista Bathurst, Mediator | Ext. 228 |
| Sandra Saxton, Public Liaison | Ext. 264 |
| Judy Treadwell, Public Liaison | Ext. 260 |
| Diane Melching, Administrative Assistant | Ext. 287 |

# *OFFICE OF COUNSEL*

The Office of Counsel is the legal department of the North Carolina State Bar. The office consists of disciplinary staff, the authorized practice staff, the investigations department, the Attorney/Client Assistance Program (ACAP) staff and trust account compliance counsel. The disciplinary staff reports upon all grievance files opened by the State Bar against North Carolina lawyers. It investigates and tries claims of professional misconduct and disability. The office assists the Authorized Practice Committee by investigating and resolving complaints concerning the unauthorized practice of law, including representing the State Bar in lawsuits to obtain injunctions prohibiting the unauthorized practice of law. It represents the State Bar in federal and state trial and appellate courts. The office provides legal counsel to the Client Security Fund Board of Directors, pursues subrogation actions for recovery of funds paid by the CSF, and disburses funds from the trust accounts of deceased, disabled and disbarred lawyers. It arranges for appointment of trustees to wind down the practices of deceased, disbarred or disabled lawyers. The office also provides legal opinions on issues of interest to all departments and committees of the State Bar.

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

The Office of Counsel includes thirteen lawyers, one administrator, five paralegals, one investigative clerk, five administrative assistants, nine investigators, one random auditor, one trust account compliance counsel, the ACAP director, who is also a fee dispute resolution facilitator, a second fee dispute resolution facilitator and two public liaisons.

The Office of Counsel is located in the State Bar Building, 208 Fayetteville Street, Raleigh, N.C. 27601. It 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 pages two and three of this report.

# 2011 ANNUAL REPORT
# OFFICE OF COUNSEL
# THE NORTH CAROLINA STATE BAR

## Attorney Client Assistance Program

The Attorney/Client Assistance Program ("ACAP") is comprised of five staff members: two public liaisons, two fee dispute resolution facilitators, one of whom is also a certified mediator, and one administrative assistant. In 2011, the staff responded to approximately 14,000 calls from members of the general public, a slight decrease over the 14,017 received in 2010. As a result of those calls, ACAP contacted approximately 3,300 lawyers. It also responded to approximately 2,350 letters and 550 email messages.

In 2011, the State Bar opened 621 fee dispute resolution files. Of those, 110 were addressed by the fee dispute committees of judicial district bars and the remaining 511 files were addressed, when appropriate, by the State Bar's fee dispute resolution facilitators. Judicial district bars reported that they received 38 requests for fee dispute resolution, all of which were addressed locally but monitored by the State Bar's fee dispute resolution facilitators.

## Authorized Practice Committee

The Authorized Practice Committee opened 103 files in 2011, compared to the 132 files opened in 2010. The committee resolved 102 files during 2011.

In June 2011, the office completed its civil action against a Charlotte real estate broker, Dianne Carter, who purports to "represent" a private party in his dispute with a homeowner's association, by obtaining a permanent injunction.

In November 2010, the office filed a civil action against Steven Glenn Johnson. The lawsuit alleges that, in a purported effort to assist people facing foreclosure, Johnson prepares "land trusts" naming himself as trustee. After several attempts to serve Johnson, he was located in a prison and served in March 2011. Johnson moved for an extension of time to file an answer, but did not succeed. The office has moved for a default judgment.

In May 2011, the office filed a civil action against an Illinois company, Lienguard, Inc. The complaint alleges that Lienguard prepared and offered to prepare mechanics and materialmen's liens for filing in North Carolina. The office has been negotiating a consent injunction with the company's principals.

The office has reached a consent agreement with the principal of Slate Title Company. Slate Title has stopped its operations.

During 2011, the office was authorized to seek injunctions against two other defendants, Craig McGannon and Grover P. Jones. The lawsuits have not yet been filed. The office is also pursuing a contempt action against Dennis Lockett for violating an injunction the office obtained in 2006.

The office continues to work with the Consumer Protection Division of the North Carolina Attorney General's Office to prevent a number of debt adjusting and loan modification firms from offering the services of lawyers who are not licensed to practice law in North Carolina. The services of these lawyers constitute the unauthorized practice of law. Debt adjusting is illegal in North Carolina. The office and the Consumer Protection Division are also working to stop several business entities that offer to prepare living trusts for senior citizens.

In 2011, the rules and policies regarding prepaid legal plans were updated. Currently, 67 prepaid plans are registered with the office. The plans must file annual registrations, which are reviewed to ensure compliance with the rules.

## Trust Account Compliance Program

At the end of 2011, 12 lawyers are participating in the Trust Account Compliance Program. The trust account compliance counsel reviews random audits quarterly to identify and evaluate potential participants in the program.

## Grievance Committee Actions

During calendar year 2011, the State Bar opened 1,499 grievance files, compared with 1,317 files opened in 2010.

Also in 2011, the office reviewed 17 direct mail solicitation letters. Ten of the reviewed letters involved minor violations of advertising ethics rules. Three contained violations that resulted in grievance files. The office reviewed 10 direct mail solicitation letters in 2010.

All grievances received by the State Bar must be considered and acted upon by one or more members of the Grievance Committee. The committee considered a total of 1,385 grievances during 2011. Of those, 1,121 were dismissed. Thirty-one files were dismissed and retained because the respondent lawyers had been disbarred. Three files were abated because the respondent lawyers had been transferred to disability inactive status. These files represent approximately 83 percent of the grievances considered by the committee. In addition to the grievances that were dismissed outright in 2011, 29 files were dismissed with letters of caution and 43 were dismissed with letters of warning.

In 2011, the Grievance Committee issued admonitions in 39 files, reprimands in 22 files and censures in 14 files. Eighty-two files, involving 51 lawyers, were referred for trial before the Disciplinary Hearing Commission (DHC). The Grievance Committee imposed reciprocal discipline on one lawyer. A total of 158 grievances resulted in either imposition of discipline by the Grievance Committee or referral to the DHC. That figure represents approximately 11 percent of the grievances considered by the committee in 2011. The Chair of the Grievance

Committee also transferred four lawyers to disability inactive status. The committee referred five lawyers to the Lawyer's Assistance Program. At the end of 2011, 12 files had been continued for further investigation.

## Cases Before the Disciplinary Hearing Commission

1. Disciplinary and Disability Cases

The DHC is the independent tribunal which hears lawyer disciplinary cases. The 20-member commission hears cases involving alleged violations of the Rules of Professional Conduct, cases in which it is alleged that a lawyer is disabled, petitions from disbarred and suspended lawyers seeking reinstatement to the practice of law and show cause petitions alleging that a lawyer has violated a prior DHC order. Each case is heard by a panel of three consisting of two lawyers and one layperson.

During 2011, the Office of Counsel completed a total of 38 disciplinary, reinstatement and show cause cases before the DHC, representing 73 files referred by the Grievance Committee. Of those, 21 were resolved by trial or default judgment and 17 were resolved by consent. In 2010, the office completed 47 such cases. Of those, 22 were resolved by trial and 25 were resolved by consent.

In 2011, the DHC entered 11 orders of disbarment. In six cases, the lawyers misappropriated funds from a client or law firm. In three cases, the lawyers facilitated fraudulent real estate transactions by making false representations on HUD-1 Settlement Statements. One lawyer was convicted of attempted murder. One lawyer neglected clients, made false representations to clients about the status of their cases, collected excessive fees and did not timely respond to the Bar.

In 2011, the DHC imposed two active suspensions, five suspensions in which the lawyer could seek a stay after serving some period of active suspension, and 11 suspensions entirely stayed upon the lawyer's compliance with various conditions. After a show cause hearing, one lawyer's stayed suspension was activated. The DHC censured one lawyer and transferred one lawyer to disability inactive status.

2. Reinstatement Cases

In 2011, the DHC reinstated one lawyer from disability inactive status and dismissed a disabled lawyer's petition for reinstatement because he did not comply with the requirements for such a petition. The DHC recommended that the Council deny a disbarred lawyer's petition for reinstatement.

## Actions Before the State Bar Council

1. Tenders of Surrender of License

In 2011, three lawyers surrendered their law licenses to the State Bar Council and were disbarred. Two misappropriated entrusted funds and the third pled guilty to the felony offense of federal income tax evasion in violation of 26 U.S.C. § 7201. Two lawyers surrendered their law licenses and were disbarred by the Council during 2010.

2. Reinstatement Proceedings

The Council did not consider any reinstatement petitions in 2011.

## Actions Before the Secretary

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

Seven suspended lawyers filed reinstatement petitions with the Secretary in 2011. The Secretary reinstated all seven lawyers.

## Actions Before the State Trial Courts

1. Judicial Disbarments

In 2011, seven lawyers were disbarred by superior courts. Six lawyers surrendered their law licenses and were disbarred by the Wake County Superior Court. One pled guilty to nine misdemeanor charges including seven counts of assault on a female; one was convicted in federal court in the Eastern District of North Carolina of one count of conspiracy, four counts of mail fraud, and one count of the sale of unregistered securities; one failed to report a foreign bank account to the Internal Revenue Service; and three misappropriated entrusted funds. One lawyer was disbarred by the Wayne County Superior Court after pleading no contest to two counts of criminal contempt. In 2010, nine lawyers surrendered their licenses to superior courts and were disbarred.

2. Injunction Proceedings

During 2011, the Office of Counsel obtained injunctions prohibiting 28 lawyers from handling entrusted funds. The office obtained injunctions against nine lawyers in 2010.

3. Appointment of Trustees for Law Practices of Missing, Deceased, Disabled & Disbarred Lawyers

In 2011, the Office of Counsel petitioned the courts to appoint trustees to wind down the law practices of 11 lawyers. Of that number, two lawyers were disabled, one lawyer had abandoned his practice and eight lawyers had died. The State Bar filed eight trustee petitions in 2010.

4. Disciplinary and Disability Cases in the State Trial Courts

The office did not prosecute any lawyers before the State trial courts in 2011.

5. Miscellaneous

As usual, in 2011 the State Bar was a party to numerous actions in the State courts. The Office of Counsel represented the State Bar in many of these actions. In two cases, the State Bar is represented by the North Carolina Attorney General.

At the end of 2011, the office had six pending cases in district and superior courts seeking reimbursement from disbarred lawyers for payments made by the Client Security Fund.

The office appeared in Wake County Superior Court to obtain permission to disburse funds from the trust accounts of four disbarred, deceased or disabled lawyers.

The following are state trial court cases in which the State Bar was a party during 2011:

**LegalZoom.com, Inc. v. North Carolina State Bar (North Carolina Business Court).** LegalZoom, a national online legal document preparation service, commenced this action against the State Bar on September 30, 2011. In 2008, the AP Committee sent LegalZoom a cease and desist letter advising it to cease engaging in the unauthorized practice of law in North Carolina. In 2010, LegalZoom filed an application to register a purported prepaid legal service plan. The AP Committee declined to register the plan as failing to meet the definition of a prepaid legal service plan. The committee sent LegalZoom written notice of its reasons and asked LegalZoom to address the issues that were of concern to the committee. LegalZoom declined to do so. As a result, the committee has not yet made a final decision about registering the purported plan. In this lawsuit, LegalZoom alleges that the State Bar is violating the anti-monopoly and equal protection clauses of the North Carolina Constitution and seeks declaratory and injunctive relief. On the State Bar's motion, and over LegalZoom's objection, the case has been designated by the Chief Justice and by the Chief Judge of the North Carolina Business Court as a Mandatory Complex Business Case under N.C. Gen. Stat. §7A-45.4. The State Bar's motion to dismiss is pending. The Attorney General represents the State Bar.

**LegalZoom.com, Inc. v. North Carolina State Bar (Wake County Superior Court)** On December 16, 2011, LegalZoom's counsel in the Business Court litigation, described above, served on the Executive Director something denominated a public records request

which demands production of at least hundreds of thousands of pages of documents in the State Bar's possession. The State Bar had not delivered the demanded documents to LegalZoom one month later. It had filed a motion with the Business Court requesting delay in the State Bar's response until the Business Court ruled on the State Bar's motion to dismiss the complaint. The basis for the motion to delay response is that the "public records request" is really an attempt to obtain discovery while avoiding the Business Court's supervision and control. LegalZoom filed this second lawsuit in Wake County Superior Court alleging that the State Bar denied its request for production of public records, which is not true, and seeking to compel production of those records. There is a hearing scheduled in this action on January 30.

**Christopher Livingston v. Carolin Bakewell, Margaret Cloutier, Carmen Bannon and the North Carolina State Bar (Wake County Superior Court).** Christopher Livingston was admonished by the Disciplinary Hearing Commission in 2008 for practicing law in other jurisdictions in which he was not admitted and for making disrespectful assertions about a federal district court judge in a pleading. On January 3, 2011, he filed this lawsuit seeking damages, injunctive relief and attorney fees. The pleading asserts various theories of recovery but does not allege facts which would give rise to liability under any such theories. The defendants' motion to dismiss is pending.

**Elizabeth Wolfenden v. State Bar et al (Wake County Superior Court).** Wolfenden was the defendant in a DHC action. Originally, the State Bar pled that Wolfenden was disabled and sought a psychiatric evaluation. In the alternative, the State Bar sought imposition of discipline for professional misconduct. After a psychiatrist opined that Wolfenden is not disabled, the State Bar dismissed its disability claim and proceeded with the disciplinary case. Wolfenden brought this action in Wake County Superior Court against the State Bar and several Orange County lawyers and judges. She alleged that the Orange County lawyers and judges conspired to make false reports to the State Bar of her erratic behavior, alleged disability and professional misconduct. She also alleged that the State Bar violated various of her rights by alleging that she is disabled. She sought to enjoin the DHC action, contending that any disciplinary proceedings should occur in Wake County Superior Court. However, the disciplinary hearing was concluded and Wolfenden was disbarred in July 2010, so the injunction claim was moot. Wolfenden also sought damages, interest, costs and attorney fees. The Attorney General's Office, which represented the State Bar, removed the case to federal court. The federal court found that Wolfenden's claims under § 1983 were deficient and remanded the remaining claims to Wake County Superior Court. The case was designated as exceptional and a judge from out of district was assigned to hear the defendants' motions to dismiss. The claims against the State Bar were dismissed because they are barred by sovereign immunity. About the time the court allowed the remaining defendants' motion to dismiss In October 2011, Wolfenden died. The court extended the time for the plaintiff to appeal the dismissals while a public administrator of the estate is appointed to evaluate whether to pursue the case.

**Gene H. Kendall v. North Carolina State Bar (Wake County Superior Court).** In 2008, Kendall petitioned for reinstatement from disbarment. On January 27, 2009, the DHC recommended that the Council deny his petition. Kendall appealed to the Council. Kendall sought an extension of time to file the record with the Council. On January 14, 2011, the

Secretary dismissed Kendall's appeal because Kendall did not file a record on appeal. Kendall sought superior court review of that dismissal and entry of an order of reinstatement. On May 27, 2011, the court granted the State Bar's motion to dismiss Kendall's petition for review. Kendall gave notice of appeal but failed to prosecute the appeal. The appeal was dismissed on December 16, 2011.

**Shuford and Hunter, P.L.L.C. v. Thomas Brown et al. (Cabarrus County Superior Court).** The State Bar intervened in this lawsuit. When the State Bar became a party, the trial court had already authorized seizure of the assets of Thomas D. Brown of Charlotte, a disbarred lawyer, and his wife. Brown embezzled over $1,000,000.00 from his former law firm's trust account. The original plaintiffs were Brown's former law partners. Brown's and his wife's assets were liquidated to generate funds with which to compensate clients whose entrusted funds were embezzled. The State Bar intervened to assert its claim to a sufficient amount of those liquidated assets to reimburse it for sums it paid to satisfy Client Security Fund claims. Lawyers for Brown's former law partners proposed a plan by which Lawyers Mutual would pay an arbitrator to consider and make recommendations to the court on each claim to the liquidated assets. Several interested parties objected and progress was stalled for over a year. Eventually, all parties consented and the court entered an order approving the plan. The CSF received its share of the liquidated assets.

**Earl Holmes and Moneen Allen v. Leanor Bailey Hodge, Deputy Counsel (Mecklenburg County District Court).** Holmes and Allen were the buyer and real estate broker in a real estate transaction closed by (now disbarred) lawyer Sybil Barrett. Barrett was a defendant in a DHC action. The State Bar subpoenaed Allen's real estate file and a list of the transactions in which Allen participated with Barrett as the closing lawyer. The State Bar also subpoenaed the lender's file and sent notice of its subpoena to Holmes as required by the North Carolina Right to Financial Privacy Act. Holmes and Allen sued Deputy State Bar Counsel Leanor Hodge for alleged intentional infliction of emotional distress in connection with service of these subpoenas. The court granted Ms. Hodge's motion to dismiss.

## Actions Before the State Appellate Courts

The office represented the State Bar in several appellate cases in 2011.

**Brent Wood** of Cary was convicted on federal felony charges. The DHC entered an order of disbarment based on the conviction. When the federal district court set aside the criminal conviction, the DHC set aside the disbarment order. When the 4th Circuit reinstated the conviction, the DHC reinstated the disbarment order. Wood appealed, contending that he could not be disciplined until he was sentenced by the federal court. While awaiting the Court of Appeals' decision, the federal court sentenced Wood. On February 1, 2011, the Court of Appeals affirmed the DHC order of disbarment.

In March, 2008, the DHC suspended Highlands lawyer **Creighton Sossomon** for one year. Sossomon appealed both the underlying disciplinary order and an order dismissing his appeal for failure to file the record timely. The Court of Appeals affirmed all but one of the rule violations and remanded for additional findings of fact on that rule violation and additional findings of fact with respect to discipline. On remand, the DHC again ordered a one-year suspension. Sossomon again appealed. The Court of Appeals affirmed. Sossomon petitioned

for discretionary review and received a temporary stay. On March 10, 2011, the Supreme Court denied discretionary review and dissolved the temporary stay.

The DHC censured **Mark A. Key** of Lillington for filing documents in court while his law license was suspended. He filed notice of appeal but did not perfect the appeal. The DHC allowed the State Bar's motion to dismiss the appeal.

**Elizabeth J. Wolfenden** appealed a DHC order disbarring her. Wolfenden was found to have engaged in a number of rule violations while representing multiple clients. Among the violations were the filing of frivolous and disruptive pleadings and accusing opposing counsel and presiding judges of misconduct and bias without factual basis. The case was tried for two days in April and continued until July. In July, Wolfenden did not appear. She contended that the DHC proceedings were unconstitutional and that the Office of Counsel acted unethically in prosecuting her. The Court of Appeals and the Supreme Court both denied her petitions to stay the disbarment pending appeal. The Court of Appeals denied her motion for pauper status. The Supreme Court denied her petition for *certiorari* to review the denial of her motion for pauper status. Wolfenden did not perfect the appeal. She withdrew all of her appeals and filed a Rule 60 motion in the DHC, which was denied. Wolfenden filed a motion under Rule 59 alleging that one of the panel members had a conflict. The Chair appointed a new panel to hear Wolfenden's Rule 59 motion. The new panel denied Wolfenden's Rule 59 motion. She did not appeal.

**Mark Badgett** of Pinnacle appealed a DHC order of disbarment. Badgett was a district court judge in District 17B. In a Judicial Standards Commission proceeding, the Supreme Court found that while he was a judge, Badgett engaged in conduct involving deceit, made false statements to the district attorney, attempted to influence the recollection of potential witnesses, was untruthful in the JSC hearing and lied to an SBI agent. The Supreme Court removed him from office. The DHC entered summary judgment on all of the rule violations, holding that Badgett was collaterally estopped to relitigate the factual issues that were resolved in the JSC. On June 7, 2011, the Court affirmed the DHC order of disbarment in an unpublished opinion.

The DHC censured **Pamela A. Hunter** of Charlotte for neglecting two clients. Hunter appealed. On December 6, 2011, the Court of Appeals affirmed the DHC order in a published opinion. Hunter has served a notice of appeal to the Supreme Court based on an alleged constitutional question. The Supreme Court will decide whether to accept the appeal.

Former Charlotte lawyer **Michael McGee** was suspended for 5 years in 2004. At the end of 5 years, McGee's petition for reinstatement was denied because he failed to show compliance with the conditions for reinstatement. McGee filed something called Motion to Strike Portions of the Record and Restore Petitioner's Active Status, asserting that any conditions cannot extend a suspension beyond the 5 year statutory limit. His motion was denied and he appealed to the Court of Appeals. On December 6, 2011, the Court of Appeals affirmed the denial of his reinstatement in a published opinion. McGee petitioned the Supreme Court for discretionary review. The State Bar awaits the Supreme Court's decision on that petition.

**Sybil Barrett** of Charlotte appealed the DHC order of disbarment. The case is scheduled for oral argument at Wake Forest University Law School on February 7.

The DHC suspended Asheville lawyer **Porter Staples** for 3 years. Staples failed to properly handle and account for funds mistakenly wired into his trust account. The case is on the court's January 10 calendar without oral argument.

## Actions Before the Federal Courts

**Donna Pilch v. Katherine Jean, Melissa Brumback and Fred Morelock (U.S. District Court, Eastern District NC).** Pilch sued each defendant individually and in their official capacities as, respectively, the counsel, a former member of the 10th Judicial District Grievance Committee, and the former Chair of that committee. Pilch filed a grievance, which was investigated by the 10th and ultimately dismissed by the Grievance Committee. In this action, Pilch alleged that the defendants had a duty under the Preamble to the Rules of Professional Conduct to cultivate and advance the science of jurisprudence, promote reform in the law and in judicial procedure, facilitate the administration of justice, and uphold and elevate the standards of honor, integrity and courtesy in the legal profession. She alleged that she brought to the State Bar's attention her contention that hundreds of criminal defendants were trapped in the Wake County court system's improper procedures and that the State Bar defendants should have "informed the North Carolina State Bar's legislative liaison to take action and contact the North Carolina General Assembly." Morelock was also alleged to have erred in assigning Brumbeck to investigate this grievance because she is a contract lawyer and is therefore not familiar with criminal law. Pilch sought injunctive relief, damages and punitive damages. The court allowed the defendants' motion to dismiss. Pilch did not appeal so the case is concluded.

**Willie Gilbert v. North Carolina State Bar and A. Root Edmonson (Federal District Court for the Eastern District of North Carolina).** In 2003, the State Bar filed a disciplinary action against Willie D. Gilbert in the Disciplinary Hearing Commission (DHC), alleging that Gilbert misappropriated entrusted funds and seeking to impose professional discipline. In 2004, Gilbert obtained an order in Wilson County Superior Court enjoining prosecution of the DHC case. After several years in the state appellate courts, that injunction was finally dissolved in 2009. Almost immediately, Gilbert brought this action in federal court seeking again to enjoin the DHC action. Gilbert alleged that the State Bar's disciplinary action was brought in bad faith and violated his alleged constitutional right to practice law. Gilbert also sued the State Bar's employee, A. Root Edmonson, who was prosecuting the disciplinary case. Gilbert sought damages, costs and attorney fees. Under *Younger v. Harris*, 401 U.S. 37 (1971), the federal district court dismissed all of the claims against Edmonson in his official capacity and against the State Bar and stayed the claims against Edmonson in his individual capacity. Gilbert appealed to the 4th Circuit, which denied Gilbert's motion for an emergency stay of the disciplinary trial and dismissed Gilbert's appeal, effectively returning the case to the federal district court. The disciplinary case was tried and discipline was imposed on April 7, 2010. The remaining claims against Edmonson in his individual capacity remained dormant until Gilbert filed a notice of voluntary dismissal on July 15, 2011 after the court inquired about the status of the case.

# SUMMARIES OF DISCIPLINARY, DISABILITY & REINSTATEMENT ACTIONS

## COUNCIL DISBARMENTS

| Lawyer | File No. | Date of Disbarment |
|---|---|---|
| Larry Overton | 11 BCS 1 | 04/22/2011 |
| Charles Ruffin Poole | 11 BCS 2 | 07/15/2011 |
| Jason Price | 11 BCS 3 | 10/21/2011 |

## JUDICIAL DISBARMENTS

| Lawyer | File No. | Date of Disbarment |
|---|---|---|
| Joel E. Brewer | 11CV001200 | 01/26/2011 |
| Gregory Bartko | 11CV001961 | 02/08/2011 |
| R.C. Hunter | 11CV007225 | 05/09/2011 |
| Don. S. Neill | 11CV007694 | 05/13/2011 |
| W. Rickert Hinnant | 11CVS02618 | 06/15/2011 |
| Jennifer Green-Lee | 11CVS07948 | 08/19/2011 |
| Robert Morgan Smith | 11CRS004607 | 09/29/2011 |

## BEFORE THE GRIEVANCE COMMITTEE

## RECIPROCAL DISCIPLINE

| Lawyer | File No. | Discipline |
|---|---|---|
| James M. Kernan | 09G0999 | 5 yr. suspension or duration of federal probation |

## TRANSFERS TO DISABILITY INACTIVE STATUS

| Lawyer | File No. | Date of Transfer |
|---|---|---|
| Jimmy Joyner | 10G1138, 10G1163 11G0249, 11G0684 11G0718, 11G0749 11G0865, 11G0968 11G0969 | 10/06/2011 |
| William K. Hinton | 10G0740 | 11/07/2011 |
| Heather Anne Shade | 11D0001 | 07/05/2011 |
| Ralph B. Strickland, Jr. | 11D0002 | 07/14/2011 |

## BEFORE THE DISCIPLINARY HEARING COMMISSION

### Completed Discipline & Disability Cases

| Lawyer | File No. | Outcome |
|---|---|---|
| Sybil Barrett | 10 DHC 18 | Disbarred (trial) |
| Holly Stevens | 10 DHC 27 | Disbarred (default) |
| Kelton Brown | 10 DHC 28 | Disbarred (trial) |
| David Rogers | 10 DHC 40 | Disbarred (default) |
| Mark Jenkins | 10 DHC 41 | Disbarred (default) |
| Tonya Ford | 10 DHC 38 | Disbarred (consent) |
| David Bayard | 10 DHC 42 | Disbarred (consent) |
| Samuel Thomas | 11 DHC 1 | Disbarred (trial) |
| Brian Daniels | 11 DHC 5 | Disbarred (trial) |
| W. Ray Hudson | 11 DHC 8 | Disbarred (default) |
| Lisa Arnold | 11 DHC 22 | Disbarred (default) |
| Charles M. Feagan | 10 DHC 32 | 5 year suspension (default) |
| Porter Staples | 10 DHC 35 | 3 year suspension (trial) |
| Robert Hensley, Jr. | 11 DHC 11 | 4 year suspension; possible stay after 18 months (consent) |
| Kimberly Jordan | 10 DHC 34 | 3 year suspension; possible stay after 18 months (default) |
| William Noel, III | 11 DHC 4 | 3 year suspension; possible stay after 1 year (default) |
| LeeAnne Quattrucci | 11 DHC 12 | 3 year suspension; possible stay after 6 months (trial) |
| John M. Kirby | 11 DHC 15 | 2 year suspension; possible stay after 6 months (consent) |
| Pauline Makia | 10 DHC 27 | 5 year suspension; stayed 5 years (consent) |

## Completed Discipline & Disability Cases Continued

| Lawyer | File No. | Outcome |
|---|---|---|
| Jamie Faye Newsom | 10 DHC 27 | 5 year suspension; stayed 5 years (consent) |
| Carmen Battle | 10 DHC 27 | 5 year suspension; stayed 5 years (consent) |
| Perry Martin | 10 DHC 29 | 3 year suspension; stayed 3 years (trial) |
| Cabell Regan | 10 DHC 12 | 3 year suspension; stayed 2 years (trial) |
| Robert Burford | 11 DHC 3 | 2 year suspension; stayed 5 years (trial) |
| William Anthony | 11 DHC 24 | 2 year suspension; stayed 3 years (consent) |
| Edgar Bogle | 11 DHC 24 | 2 year suspension; stayed 3 years (consent) |
| Laura Johnson | 11 DHC 18 | 2 year suspension; stayed 3 years (consent) |
| Deborah Williams | 11 DHC 17 | 1 year suspension; stayed 3 years (trial) |
| Phillip Rose | 10 DHC 17 | 1 year suspension; stayed 2 years (trial) |
| Joe Biesecker | 11 DHC 2 | censure (consent) |
| L. Patten Mason | 10 DHC 23 | dismissed (trial) |
| Annette Exum | 10 DHC 8 | disability inactive (consent) |

## Completed Show Cause Hearings

| Lawyer | File No. | Outcome |
|---|---|---|
| William Brown | 09 DHC 33 | 6 month suspension activated |

## Completed Reinstatement Cases

| Lawyer | File No. | Outcome |
|---|---|---|
| John S. Austin | 09 DHC 23 & 11 BSR 1 | reinstated by Secretary |
| Nikita Mackey | 09 DHC 18 & 11 BSR 2 | reinstated by Secretary |
| Jack McLamb | 10 DHC 10 & 11 BSR 3 | reinstated by Secretary |
| S. Vann Sauls | 10 DHC 11 & 11 BSR 4 | reinstated by Secretary |
| Mohammed Shyllon | 03 DHC 12, 10 DHC 9 & 11 BSR 5 | reinstated by Secretary |
| Garey Balance | 05 DHC 48 & 11 BSR 6 | reinstated by Secretary |
| John Kirby | 11 DHC 14 & 11 BSR 7 | reinstated by Secretary |
| Phillip Banks, III | 11 RD 1 | dismissed |
| Jacqueline Morris-Goodson | 11 RD 2 & 02G0742 | reinstated by DHC |
| Larry Linney | 11 BCR 1 | reinstatement denied |

## Pending Disciplinary & Disability Cases

| Lawyer | File No. | Trial Date |
|---|---|---|
| Theophilus Stokes | 10 DHC 27 | 03/1-2/2012 (interim suspension) |
| Albert Neal, Jr. | 10 DHC 39 | not scheduled (disability inactive) |
| Stephen Philo | 11 DHC 6 | reschedule |
| Clyde Gary Triggs | 11 DHC 9 | reschedule |
| Gary Scarzafava | 11 DHC 10 | 02/16-17/2012 |
| Benjamin Small | 11 DHC 13 | 04/12-13/2012 |
| Robert Schoch | 11 DHC 16 | 02/10/2012 |
| Dean Humphrey | 11 DHC 19 | 02/10/2012 |
| Billy Friende | 11 DHC 20 | 01/27/2012 |
| Randolph Shelton | 11 DHC 25 | not scheduled |
| Thomas Norwood | 11 DHC 26 | 03/09/2012 |
| Cameron Ferguson | 11 DHC 27 | 02/24/2012 |
| Louie Wilson | 11 DHC 28 | 03/09/2012 |
| Michael Lea | 11 DHC 29 | 03/16/2012 |
| Creighton Sossomon | 11 DHC 30 | 03/22-23/2012 |
| David Vesel | 11 DHC 31 | 03/29-30/2012 |
| Russell Crump | 11 DHC 32 | not scheduled (interim suspension) |
| Dennis Sullivan | 12 DHC 1 | not scheduled |
| Gary Lawrence | 12 DHC 2 | not scheduled |
| Roydera Hackworth | 12 DHC 3 | not scheduled |

| | | |
|---|---|---|
| Reid James | 12 DHC 4 | not scheduled |
| Robert Mebane | 12 DHC 5 | not scheduled |
| Ladd Gasparovic | 12 DHC 6 | not scheduled |
| Charles Busby | 12 DHC 6 | not scheduled |
| Jodi Ernest | 12 DHC 7 | not scheduled |
| Charles Oldham | 12 DHC 8 | not scheduled |

**Pending Reinstatement Cases**

| Lawyer | File No. | Hearing Date |
|---|---|---|
| David S. Harless | 11 RD 3 & 05 DHC 4 | 04/13/2012 |

**Pending Show Cause Hearings**

| Lawyer | File No. | Trial Date |
|---|---|---|
| Mark Bibbs | 09 DHC 05 | not scheduled |
| Susan E. Hyatt | 08 DHC 16 | not scheduled |

## BEFORE THE STATE TRIAL COURTS

**Trustees Appointed in 2011**

| Lawyer | Reason Trustee Sought |
|---|---|
| Bruce H. Robinson, Jr. | Deceased |
| Timothy C. Cole | Deceased |
| Cynthia Carroll | Deceased |
| Kenneth Robert Davis | Disabled |
| Mark Jenkins | Deceased |
| Douglas Jones | Deceased |
| Jeremy Wilson | Deceased |
| John F.E. Turnage | Deceased |
| James Lovett | Deceased |
| Kurt David Majka | Disabled/Missing |
| Nicholas Stratas | Disabled |

**TROs and Preliminary Injunctions Obtained in 2011**

| Lawyer | Date of Injunction |
|---|---|
| Robert H. Gourley, Sr. | 01/26 & 02/07/2011 |
| Larry Overton | 02/02/2011 |
| Robert Mebane | 02/03/2011 |

## TROs and Preliminary Injunctions Obtained in 2011 Continued

| Lawyer | Date of Injunction |
|---|---|
| Valderia Brunson | 02/18/2011 |
| W. Rickert Hinnant | 02/18/2011 |
| Laura Johnson | 03/10/2011 |
| Creighton Sossomon | 03/31/2011 |
| Don Sam Neill | 05/16/2011 |
| William Britt | 05/19/2011 |
| Jennifer Green-Lee | 05/20/2011 |
| Robert Morgan Smith | 06/18/2011 |
| Semeka Battle Bennerman | 07/13/2011 |
| Karen Zaman | 07/19/2011 |
| Jason Price | 08/19/2011 |
| Willis Harper, Jr. | 08/19/2011 |
| Todd Peebles | 09/16/2011 |
| Melissa Goldsmith | 09/19/2011 |
| Jimmy Joyner | 09/22/2011 |
| Victor Morgan, Jr. | 09/29/2011 |
| John E. Tate, Jr. | 11/08/2011 |
| Robert Clements II | 11/27/2011 |
| Wilbur Linton, Jr. | 11/18/2011 |
| Kevin Byrnes | 11/18/2011 |
| Nicholas Stratas | 12/05/2011 |
| Tina Patrick-Broadway | 12/21/2011 |
| Cory Williams | 12/23/2011 |
| Lewis E. Waddell, Jr. | 12/28/2011 |
| Bambi Walters | 12/28/2011 |

## BEFORE THE GRIEVANCE COMMITTEE

### Totals for 2011

Total Grievance Files Opened – 1,499
Total Files Considered by Committee – 1,385

Dismissals – 1,121
Files dismissed & retained – 31
Files abated - 3
Files Dismissed with Letters of Caution – 29
Files Dismissed with Letters of Warning – 43
Files issued Admonitions – 39
Files issued Reprimands – 22
Files issued Censures – 14
Files issued reciprocal discipline – 1
Files referred to DHC – 82

## Grievance Totals for January 2011*

301 files were dismissed
4 files were dismissed and retained
3 files were abated
1 file was continued
2 lawyers were referred to the Lawyers' Assistance Program
6 lawyers received letters of caution
11 lawyers received letters of warning
7 lawyers received admonitions
6 lawyers received reprimands
8 lawyers received censures
8 lawyers were referred to the Disciplinary Hearing Commission

**January 2011 totals include files dismissed in the 4th quarter of 2010 that are not included in the 2010 numbers listed in this report.*

## Grievance Totals for April 2011

254 files were dismissed
8 files were dismissed and retained
0 files were abated
14 files were continued
2 lawyers were referred to the Lawyers' Assistance Program
9 lawyers received letters of caution
14 lawyers received letters of warning
9 lawyers received admonitions
6 lawyers received reprimands
4 lawyers received censures
14 lawyers were referred to the Disciplinary Hearing Commission

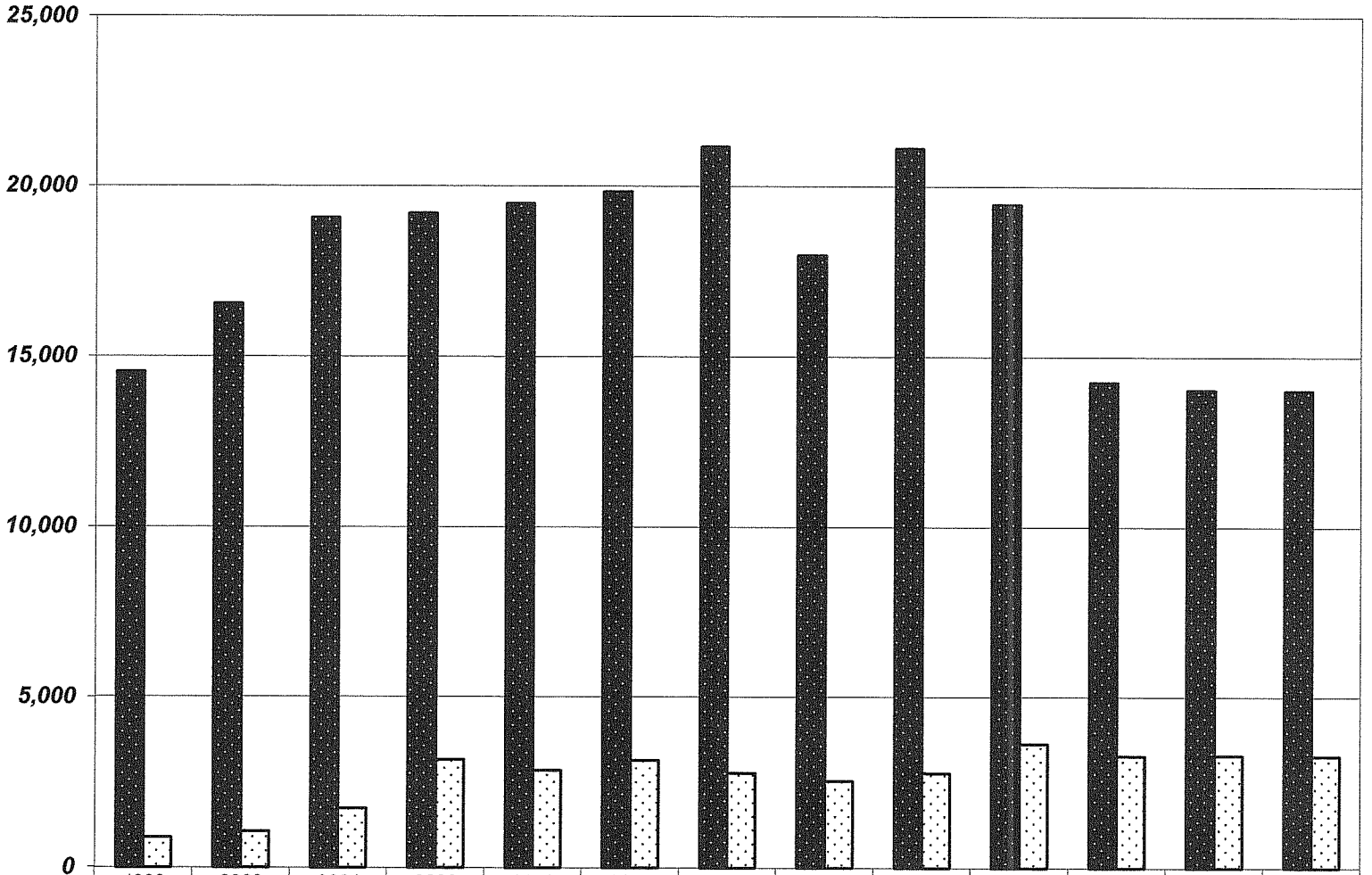
## Grievance Totals for July 2011

293 files were dismissed
1 files were dismissed and retained
0 files were abated
7 files were continued
1 lawyers were referred to the Lawyers' Assistance Program
5 lawyers received letters of caution
15 lawyers received letters of warning
10 lawyers received admonitions
1 Lawyer received an admonition and is required to attend the New Admittees Professionalism Program
4 lawyers received reprimands
0 lawyers received censures
14 lawyers were referred to the Disciplinary Hearing Commission

## Grievance Totals for October 2011

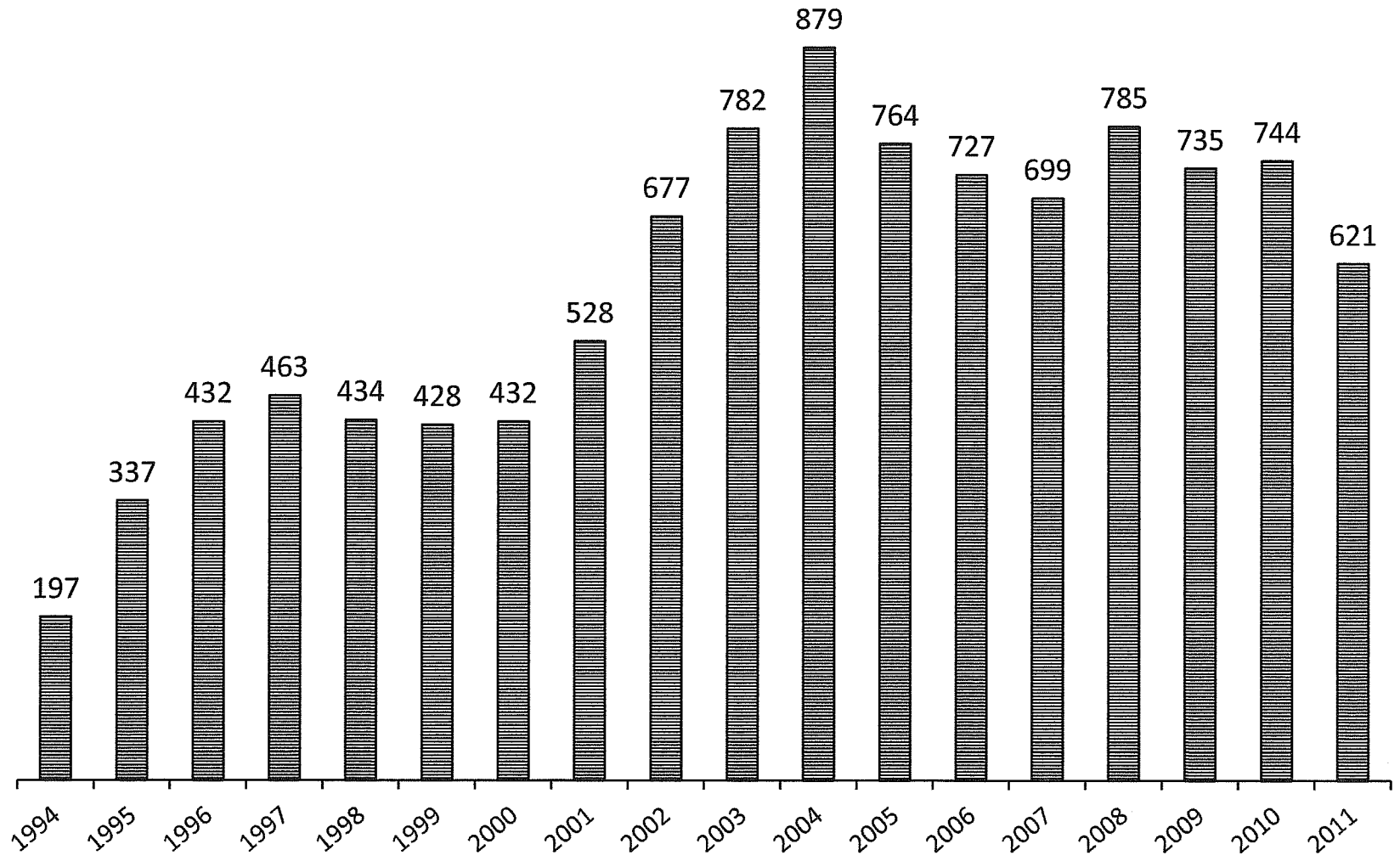
273 files were dismissed
18 files were dismissed and retained
0 files were abated
3 files were continued
1 file was denied reconsideration
1 lawyer was referred to the Lawyers' Assistance Program
3 lawyers received letters of caution
6 lawyers received letters of warning
9 lawyers received admonitions
6 lawyers received reprimands
7 lawyers received censures
17 lawyers were referred to the Disciplinary Hearing Commission

# ATTORNEY CLIENT ASSISTANCE PROGRAM
## Calls Received and Attorney Contacts
### (January - December)

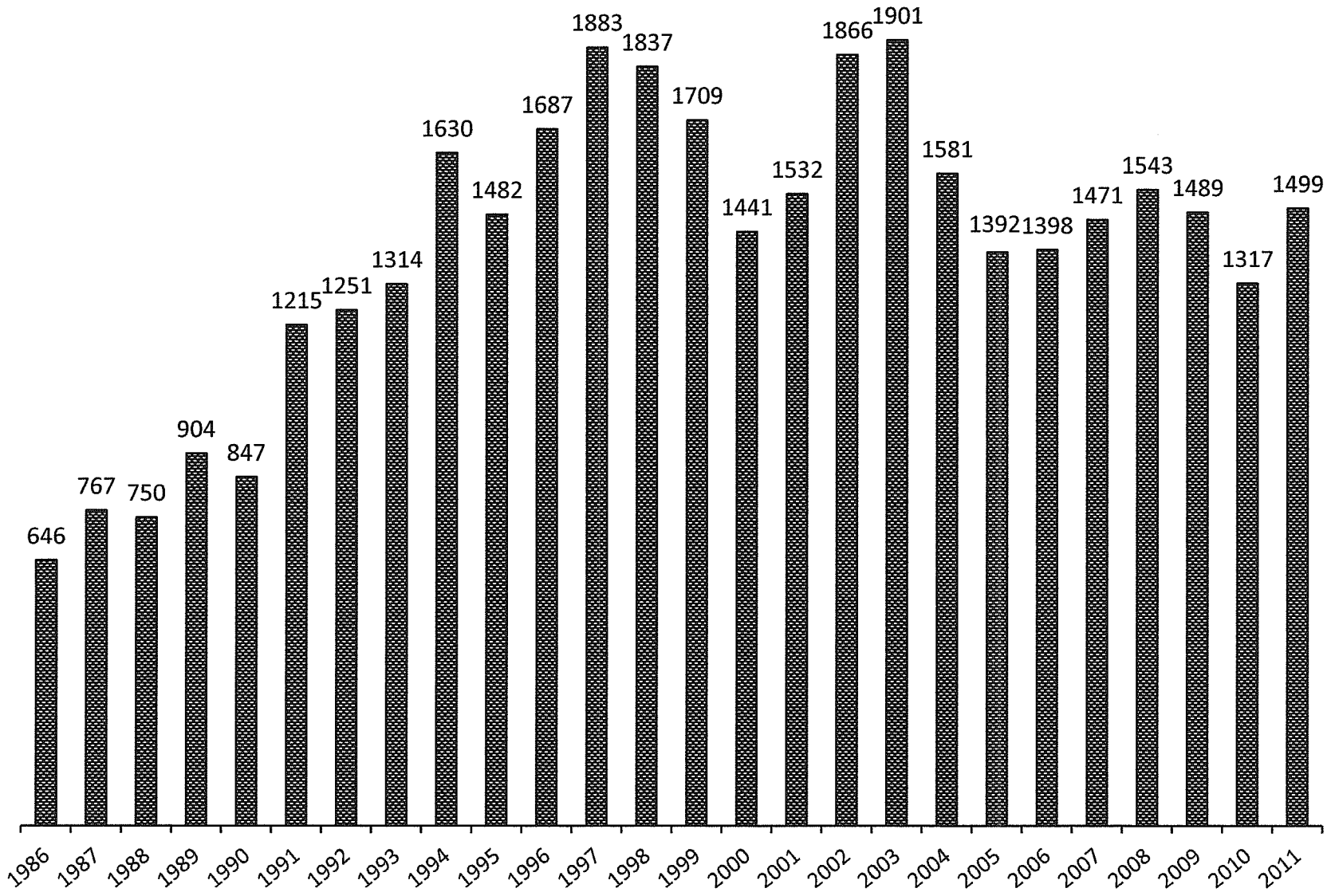



| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Calls Received | 14,545 | 16,545 | 19,046 | 19,186 | 19,468 | 19,831 | 21,166 | 17,956 | 21,110 | 19,452 | 14,237 | 14,017 | 14,000 |
| Attorney Contacts | 882 | 1,050 | 1,735 | 3,180 | 2,859 | 3,167 | 2,786 | 2,554 | 2,789 | 3,646 | 3,286 | 3,314 | 3,300 |

# Fee Dispute Resolution Petitions Filed



# Grievances Filed Annually



# Surrenders and Disbarments
# (DHC, Council and Courts)