

# **MAINE BOARD OF OVERSEERS OF THE BAR**

## **BAR COUNSEL'S ANNUAL REPORT 1999**

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# **BOARD OF OVERSEERS OF THE BAR**

## **Bar Counsel's 1999 ANNUAL REPORT**

### **INTRODUCTION**

This is my Annual Report for 1999 concerning the Board of Overseers of the Bar and its three agencies: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission and the Grievance Commission (21 and 25 members, respectively) conduct their responsibilities and duties under the Maine Bar Rules by three-member panels. Each grievance panel is comprised of two lawyers and one lay (public) member. The fee panels may be so comprised or may instead consist of two lay members and one lawyer. Information concerning the responsibilities and functions of the Board and each of its commissions is contained in informational pamphlets available at the office of the Board of Overseers of the Bar, 97 Winthrop Street, P.O.Box 527, Augusta, ME. 04332-0527. Tel. # (207) 623-1121; Fax: (207) 623-4175. Certain public information may also be accessed at the Board's web site address: [mebaroverseers.org](http://mebaroverseers.org) and e-mail may be addressed to [board@mebaroverseers.org](mailto:board@mebaroverseers.org). Please also note the respective membership lists, attached as part of the Appendix below.

## I. GRIEVANCE COMMISSION

### A. COMPLAINTS

In 1999, the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF), 164 written grievance complaints that initially stated at least some *prima facie* claim of misconduct by Maine attorneys in violation of the Code of Professional Responsibility (Code). That was nearly a 15.5% decrease from the number filed in 1998 – (194). As discussed later, there were another 122 filings that were docketed instead as Bar Counsel Files, meaning that the office of Bar Counsel screened and docketed them as not stating any violation of the Code. See M. Bar R. 7.1(c) and 7.1(d) and p.9 of this Report.

### B. PANEL MEETINGS AND HEARINGS

1. **Case Reviews** -- Panels of the Grievance Commission met on 30 occasions and concluded preliminary reviews of 177 GCF complaints under M. Bar R. 7.1(d). These meetings consist of a panel consulting with Bar Counsel or an Assistant Bar Counsel to review the contents of grievance complaint (GCF) investigative files. Such reviews are not hearings, and the entire investigation and review process through this phase remains confidential under M. Bar R. 7.3(k)(1). However, any subsequent disciplinary hearing and the resulting decision (report) are always open and available to the public. As a result of those 177 reviews, 146 complaints were closed by issuance of either a dismissal (129) or a dismissal with a warning (17) to the involved attorneys. See M. Bar R. 7.1(d)(3)(4). In addition, review panels found probable cause that professional misconduct subject to sanction had occurred in 24 matters, and thereby directed those

complaints be processed for formal disciplinary hearings open to the public before another panel of the Commission.

**2. Disciplinary proceedings** – Grievance Commission panels conducted such public disciplinary hearings resulting in 17 decisions being issued in 1999, including six (6) reprimands and three (3) dismissals with warnings of attorneys. Brief descriptions of the proven misconduct found in those 6 public reprimands are presented below. In six (6) additional matters, Bar Counsel was directed to file *de novo* proceedings before the Maine Supreme Judicial Court (Court), because the panels found probable cause for issuance of the more serious disciplinary sanctions of either suspension or disbarment of the respective attorneys. Copies of all public disciplinary decisions are available at the Board's office.

**a. Reprimands**

1. A panel of the Grievance Commission found that an attorney improperly delayed paying a Deputy Sheriff \$34.72 for serving legal process for him, but that he had made matters much worse by failing to cooperate with Bar Counsel's investigation of the Deputy's grievance complaint. The panel reprimanded the lawyer for his violation of Rule 2(c)(not cooperating with Bar Counsel), and issued only a dismissal with a warning for his violation of 3.6(a)(neglect) concerning the Deputy's underlying grievance matter. Board of Overseers of the Bar v. Jeffrey J. Fairbanks, GCF# 98-154 (July 12, 1999).

2. In a matter where prior to hearing Bar Counsel and the Respondent attorney's lawyer agreed to a stipulation of the facts, the panel also approved the proposed sanction and reprimanded the attorney for failing to answer her client's requests for information in two separate probate matters for which he was Personal Representative. When the client hired new counsel, the attorney also failed to turn over requested documents and gave different and inconsistent explanations for not doing so. When ordered by the court to provide an accounting of the estates, she continued to not return the client's files despite repeated requests from the client and new counsel, nor did she ever provide the accounting. She admitted that because of poor law office management practices she had lost the documents. Ultimately, the client had to hire an accountant to reconstruct the file from the few documents provided. The attorney later did make a settlement payment to the client to cover his added expenses occasioned by her failure to maintain adequate accounts and files. All of the above conduct violated M. Bar R. 3.1(a), 3.2(f)(4), 3.6(a)(3) and 3.6(e)(2)(iv). Board of Overseers of the Bar v. Patti Davis Brewer, GCF# 98-125 (July 19, 1999).

3. A lawyer represented a client in two separate collection cases. In the first case he established liability in the defendant and in late 1995 notified the court that the matter was settled. His client received partial payment in early 1996 but nothing further. He had no written documents, settlement agreements or correspondence between counsel confirming the agreement or any notes in the file indicating the settlement terms. He took no further action to enforce the settlement. In another collection case for the same client, although the lawyer received a settlement offer, the client rejected it. The lawyer did no further work on the case and had nothing in writing except a letter to

the court saying the case was settled. The case was later dismissed under Rule 41(b), M.R.Civ.P. The panel issued a reprimand for violations of M. Bar R. 3.6(a)(3). Board of Overseers of the Bar v. Ronald L. Bishop, GCF# 98-145 (July 21, 1999).

4. A lawyer improperly withdrew from representing a client in a consumer litigation matter, and did not diligently handle a divorce appeal to the Superior Court. The hearing panel reprimanded the attorney, finding that he had violated Rule 3.6(a) (neglect of a legal matter), that reprimand having been stipulated and agreed to by the parties, subject to the panel's approval. Board of Overseers of the Bar v. Stephen H. MacKenzie, GCF# 97-7; 97-98 (August 16, 1999).

5. Assuming jurisdiction over a matter pursuant to M. Bar R. 7(d), a hearing panel of the Board reprimanded a lawyer for allowing the initial complaint in his client's divorce action to be dismissed under Rule 41(b), M. R. Civ. P. (lack of prosecution), failing to timely inform the client of that dismissal or keep various appointments with her and failing to adequately and sufficiently keep her informed about the lack of progress of the case. Board of Overseers of the Bar v. Richard S. Emerson, Jr., GCF# 98-168 (August 20, 1999).

6. A panel reprimanded an attorney for violating M. Bar R. 3.2(f)(4) and 3.6(a)(3) in a divorce matter when her secretary failed to follow the attorney's directions in filing an original divorce complaint with the court after the defendant had been served. When the attorney discovered the error, she promptly notified the court, but failed to inform her client of the mistake in the hope that she could obtain an expedited case management conference. In another case with a different client, on two occasions the attorney failed to appear for a case management conference resulting in the case management officer

imposing fines on her client. At hearing, the attorney admitted her responsibility for both complaints and explained that due to lack of organization in her law practice, she had made docketing errors and had problems handling her mail. She had also failed to file a supplemental statement of change of address with the Board in violation of M. Bar R. 6(a)(1). Board of Overseers of the Bar v. Mary Beth Crocket, GCF# 98-22 and GCF# 98-122 (October 14, 1999).

#### **b. OTHER GRIEVANCE COMMISSION DISPOSITIONS**

Certain other complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or proceedings before the Court. One (1) matter was dismissed for lack of proof of any violation of the Code, and three (3) other cases resulted in dismissals with a warning for minor violations. See M. Bar R. 7.1(e)(3)(B).

The attached tables provide the various statistics in categories such as the respective areas of law, characterization of misconduct, attorneys' age and county of practice concerning all the GCF matters received and docketed in 1999. The Appendix also includes a table indicating the rules the Grievance Commission and Court found violated in those matters in which some type of sanction was imposed after hearing.

#### **C. BAR COUNSEL FILES**

As referenced above at page 4, Bar Counsel Files are those matters that upon initial review and approval by Bar Counsel were deemed not to allege any professional misconduct subject to sanction under the Maine Bar Rules. See M. Bar R. 7.1(c). There were 122 such final filings in 1999, being a slight decrease (14%) from the number docketed in 1998 (142). As a result, by combination of those matters with all unrelated formal grievance complaints (GCF) discussed above, the number of written

allegations of complained about attorney conduct filed with Bar Counsel in 1999 totaled 286, a 14.9% decrease from the 336 such matters filed in 1998.

If Bar Counsel's screening and review results in finding no allegation of misconduct subject to sanction under the Code being made, Maine Bar Rule 7.1(c) requires Bar Counsel's unilateral dismissal of such matters - docketed as Bar Counsel Files - with or without investigation. When that occurs, the complainant is always notified by Bar Counsel of the reason for the dismissal and of a right within 14 days to request that dismissal be reviewed. That review will be done by a lay member of the Board or Grievance Commission. The involved attorney is always informed by Bar Counsel of those dismissals, any resulting requests for review, and the reviewer's decision.

Bar Counsel dismissed 128 Bar Counsel Files in 1999, with 42 complainants requesting review of those actions. Lay members decided 38 of those requests in 1999, resulting in approvals of 37 dismissals, and 1 dismissal being vacated and docketed for a Grievance Commission panel's review under M. Bar R. 7.1(d) (See Appendix at p.33).

## II. COURT MATTERS

### A. DISBARMENTS

1. In a reciprocal discipline matter, an attorney who had been disbarred by the Massachusetts Supreme Judicial Court in December of 1998 for numerous instances of misappropriation of client funds agreed to disbarment by the Maine Supreme Judicial Court. Board of Overseers of the Bar v. Andrew R. Puglia, Docket No. BAR 98-9 (Dana, J.)(May 4, 1999).

2. The Court (Calkins, J.) disbarred an attorney for, *inter alia*, violating M. Bar R. 3.1(a) (conduct unworthy of an attorney), 3.4(b),(c),(d),(f) (conflict of interest) and 3.6(a) (neglect) for representing a woman and also her estranged husband in their financial affairs and transactions while the couple's divorce was pending, assisting them a number of times in obtaining loans based on the husband's lottery winnings and having a personal relationship with the woman during that representation. The lawyer did not contest, answer, or otherwise respond to the allegations, thereby resulting in a judgment of disbarment by default being issued against him. Board of Overseers of the Bar v. Brian L. Datson, Docket No. BAR 99-2 (September 7, 1999).

3. The information in this matter alleged violations of the Maine Bar Rules in the course of the Defendant attorney's practices relating to eight (8) separate cases or client relationships. Based upon the evidence presented at the contested testimonial hearing, the Court noted several common problems that had been proven by the Board:

1) Telephone contact problems where various people including clients had significant difficulty in their efforts to contact the attorney by telephone, where many such calls

went unanswered; 2) Failure to acknowledge receipt of regular mail or to appropriately respond to letters from or on behalf of clients, opposing counsel, from the Board of Overseers, and notices and orders from the District Court, Superior Court and the Supreme Court; 3) Failure to respond to court orders and requirements of court rules; 4) Practicing law after having been suspended by the Board for failure to register; and 5) Minimization of problems by attempting to shift the blame of her failures to others. As a result, the Court found the attorney had violated M. Bar R. 2(c), by failing to respond to and choosing to avoid notices and inquiries mailed to her proper address by the Board and Bar Counsel; M. Bar R. 3.2(f)(1), by refusing to claim or accept certified mail and avoiding or ignoring regular mail; M. Bar R. 3.2(f)(3) by deceiving and making misrepresentations to a client regarding the status of his negligence action and by claiming not to have received mail that the Court found was in fact received from clients, other counsel, the Board, and the courts; M. Bar R. 3.2(f)(4) by electing to make herself unavailable and unwilling to receive, accept, acknowledge, or respond appropriately to regular mail, certified mail, and telephone calls from clients, other counsel, the Board and the Courts; and M. Bar R. 3.6(a) by failing to employ reasonable care, skill, and good judgment in the performance of professional services in several instances.

As a result, the Court found the attorney presently unfit for the practice of law and immediately disbarred her from practicing in Maine as of the date of that order, November 16, 1999. Board of Overseers of the Bar v. Donna L. Zeegers, Docket No. BAR-99-4 (Alexander, J).

4. The Court (Rudman, J.) disbarred a lawyer for violating M. Bar R. 3.3(a), 3.6(a)(3), and 3.6(e)(2)(iv) by taking a retainer in a divorce case and then not doing any work on the matter. The attorney also failed to return the client's file when requested to do so, and did not cooperate with Bar Counsel's investigation of the resulting grievance complaint. The lawyer did not contest, answer or otherwise respond to the allegations, thereby resulting in a default judgment of disbarment being issued against him. Board of Overseers of the Bar v. Andrew W. Chassé, Docket No. BAR 99-9 (December 1, 1999).

### **B. SUSPENSION**

1. Attorney Lawrence Merrill and Chase Third Century Leasing Co. ("Chase Leasing" ) settled a dispute between them whereby Merrill agreed to pay Chase Leasing \$4,750 and the parties agreed to execute mutual releases. The attorney for Chase Leasing prepared the settlement documents which were forwarded to Merrill's then counsel. Merrill then directly communicated with opposing counsel and returned to him signed copies of documents purporting to be documents that counsel had earlier prepared, together with a check in the amount of \$4,750 drawn on his personal account after borrowing an equal amount from Chase Manhattan Bank ("Chase Bank") by drawing against an existing line of credit. In actuality, Merrill artfully had changed critical language in the settlement documents. Merrill then threatened to report that attorney to the District Attorney and Bar Counsel, and threatened to sue Chase Leasing when the altered release signed by Chase Leasing was not promptly returned to him. After a contested hearing with the *pro se* Defendant attorney's position being that he should only be reprimanded, the Court (Rudman, J.) issued a six-month suspension upon finding that the attorney had violated M. Bar R. 3.2(f)(3),(4) by surreptitiously

amending settlement documents presented to him for signature; M. Bar R. 3.6 by threatening opposing counsel and his client; and M. Bar R. 3.7(b),(e) by his lack of complete candor before the Grievance Commission hearing panel (implying that he had satisfied his obligations to the opposing party in full, when in fact he had not) and before the Superior Court (by failing to notify that court prior to its entry of a final judgment that he had filed a petition under Chapter 7 of the Bankruptcy Act). Board of Overseers of the Bar v. Lawrence E. Merrill, Docket No. BAR-98-8, February 1, 1999.

2. A Chair of a Grievance Commission hearing panel had indefinitely continued the hearing of a disciplinary matter based upon statements from the Respondent attorney's doctor that the attorney was physically unable to participate in trial proceedings. Consequently, in accordance with proceedings initiated by Bar Counsel under M. Bar R. 7.3(e)(3) (suspension while a disciplinary proceeding is pending), the Court (Clifford, J.) indefinitely suspended the attorney until he becomes able to demonstrate that he is medically fit to resume the practice of law. Board of Overseers of the Bar v. Richard B. Slosberg, Docket No. BAR-99-9 (April 12, 1999).

### **C. RESIGNATION**

After contested hearing where Bar Counsel took the position that an attorney's criminal conviction for two counts of gross sexual assault in violation of 17-A M.R.S.A. §253 warranted the sanction of disbarment, the Court (Dana, J.) instead accepted and ordered the attorney's resignation pursuant to M. Bar R. 7.3(g). Board of Overseers of the Bar v. J. Henry Lyons, III, Docket No. BAR-97-5 (October 25, 1999).

### **D. REINSTATEMENT**

1. Upon a former attorney's second attempt at reinstatement to the Maine Bar, a Grievance Commission Panel conducted an extensive testimonial hearing and issued its report recommending that reinstatement be denied. That recommendation was adopted by the Board, and upon review of the record and consideration of the arguments of counsel, the Court (Rudman, J.) accepted that recommendation, i.e. that the petitioner had failed to meet his burden of presenting clear and convincing evidence warranting reinstatement, and thereby denied reinstatement. Board of Overseers of the Bar v. James S. Horton, Docket No. BAR-98-2 January 19, 1999.

2. The Court (Saufley, J.) reinstated an attorney after the Board had summarily suspended him pursuant to M. Bar R. 6(b)(1); 10(b)(failure to register or pay fee). However, the Court conditioned the attorney's reinstatement subject to a number of conditions including a mentoring lawyer's supervision of his practice and resulting mentoring reports provided to the Court on a quarterly basis. Board of Overseers of the Bar v. Jeffrey J. Fairbanks, Docket No. BAR 99-3 (June 25, 1999)(See also §I (B)(2)(a)(1) above.

3. Attorney had been suspended from practice in Maine since December of 1987 and then disbarred from practice altogether in July of 1989 based upon a drug-related conviction in Federal Court. In 1993 he filed his first Petition for Reinstatement, which was denied by the Court (Dana, J.) after hearing, the appeal of which was affirmed by the Maine Law Court. *Board of Overseers of the Bar v. Andrews B. Campbell*, 663 A.2d 11(Me. 1995).

Mr. Campbell again petitioned for reinstatement and a hearing before a Grievance Commission Panel occurred in May, 1999. After extensive testimony, that

panel issued its report recommending reinstatement subject to conditions. Pursuant to M. Bar R. 7.3(j)(6), that matter was then heard by the Court (Saufley, J.). Reinstatement was ordered by the Court subject to several conditions, including: complete abstention from alcohol and illegal drugs; submission to random chemical testing to assure compliance with the above condition; regular attendance and participation in a 12-step program to address substance abuse; continuation in individual therapy to address substance abuse and behavior control issues; not engaging in the practice of law as a sole practitioner unless or until allowed by the Court; subject to other Court-approved mentoring restrictions on his practice; and the Court's retention of direct jurisdiction over him in the event that any complaint is filed against him alleging a violation of any Maine Bar Rule. Board of Overseers of the Bar v. Andrews B. Campbell, Docket No. BAR-98-1, Oct. 19, 1999.

### **III. FEE ARBITRATION COMMISSION**

The Board received 202 requests for petitions for arbitration of fee disputes in 1999, 95 of which were later returned and actually filed with the Secretary to the Fee Arbitration Commission, Jaye Malcolm Trimm (See Appendix at p.33). With 36 petitions already pending, those 95 new petitions created a total docket of 131 for the year. Arbitration panels met 30 times to hear and dispose of 44 petitions (plus 4 matters heard in 1998 had decisions (awards) rendered in 1999). With preliminary assistance and review by Assistant Bar Counsel Karen G. Kingsley and Commission Secretary Trimm, and approval by Commission Chair Valerie Stanfill, Esq., 50 pending fee dispute

matters were dismissed, settled or withdrawn by consent of the parties prior to any panel hearing. See M. Bar R. 9(e)(3).

The office of Bar Counsel screens all fee arbitration petitions that have been filed with the Secretary to determine if the matters actually warrant the attention of that Commission or should also be processed by the Grievance Commission. Bar Counsel may attempt to promote and assist in the informal resolution of fee disputes prior to hearing by a panel but is not otherwise usually involved after the initial screening. See M. Bar R. 9(e)(2). Even though both Commissions are otherwise subject to confidentiality restrictions during the investigative processes, pursuant to Board Regulation No. 8, the Fee Arbitration Commission and Grievance Commission may share respective investigation materials concerning related matters.

#### **IV. PROFESSIONAL ETHICS COMMISSION**

The eight attorney members of the Professional Ethics Commission met on six occasions to discuss, draft and approve five (5) formal advisory opinions on ethical questions presented. Opinion Nos. 167 – 171 were issued in 1999 and are briefly summarized below. With assistance from Assistant Bar Counsel Geoffrey S. Welsh, the Commission also responded by letter with informal advice to attorneys on the following issues: Retention or disposition of a lawyer's notes when forwarding a client's file to successor counsel; the handling, maintenance and disposition of the funds, securities or other properties of clients; affiliation by Maine lawyers with lay organizations that may provide legal services to members; and out of state law firms wishing to open branch offices in Maine.

**A. OPINION NO. 167 (January 6, 1999)**

Bar Counsel requested an opinion about whether limitation of an attorney's practice to only referring cases to other attorneys was a permissible fee sharing arrangement under Maine Bar Rules 3.3(d) or 3.9(f)(2). The Commission concluded that the proposal violated the latter rule because the referring attorney would receive part of the fee solely for the referral, not as compensation for any past or contemporary services, thereby constituting the operation of a lawyer referral service not sponsored or approved by a bar association. The Commission also opined that attorneys who compensate the lawyer for such referrals would themselves violate Maine Bar Rule 3.9(f)(2),(3).

**B. OPINION NO. 168 (March 9, 1999)**

Bar Counsel inquired whether an attorney violates the Maine Bar Rules by tape-recording telephone conversations, including those with clients and opposing counsel, without informing those parties that the such secret recording was being done. The Commission determined that the Bar Rules (including Maine Bar Rule 3.2(f)(3) [conduct involving dishonesty, fraud, deceit or misrepresentation]) do not *per se* prohibit the practice. The Commission did, however, caution that such recording must be undertaken with care because whether such conduct is deceptive or unethical may actually depend upon the precise facts and circumstances of each particular case.

**C. OPINION NO. 169 (September 9, 1999)**

Bar Counsel asked what are the ethical responsibilities of the “remaining lawyer” when an associate leaves the lawyer’s employ taking some litigation matters with her, and later discovers that she is unable to bear the costs and expenses for trial of the matters. The Commission opined that by becoming a party to the contingent fee (CFA) agreement, the lawyer assumed some responsibility for the client’s case (even if earlier shared with the departing associate) and is not free to withdraw from representation without first complying with Maine Bar Rule 3.5(a),(c). The Commission noted that its opinion neither expressed nor intended to suggest any opinion on the contractual rights any of the parties under the CFA.

**D. OPINION NO. 170 (December 23, 1999)**

A request was made for an opinion about whether an attorney may use an engagement letter that provides for binding arbitration of the client’s possible malpractice claims against the attorney. A majority of the Commission concluded that there is nothing in the language of Maine Bar Rule 3.4(f)(2)(v), or its history, supporting the proposition that a mutual agreement on a neutral forum within which to adjudicate an attorney’s future liability is an agreement “limiting the lawyer’s liability.” Three Commission members, however, dissented on the basis that the Bar Rule should not be read in an overly narrow, technical manner. Pursuant to that dissent, the real substance of the proposed arrangement actually limits the client’s ability to prove a case against the lawyer, i.e., incomplete record, different rules of evidence and discovery, etc.

**E. OPINION NO. 171 (December 24, 1999)**

The Board inquired whether lawyers must obtain client consent prior to consulting another unaffiliated lawyer, or Bar Counsel, for advice pertaining to representation of a client. The Commission determined that although consultations should proceed whenever possible in a hypothetical context without identifying clients, lawyers may properly consult other lawyers and disclose client confidences and secrets as necessary because they have implied authority to do so in carrying out the representation. The Commission, however, made a distinction between consulting with another attorney for the benefit of the client and consulting with other counsel for the attorney's own benefit. In the latter case, no attorney-client privilege is created between the client and the consulted attorney. In any event, an attorney may not make a disclosure that may risk a waiver of the attorney-client privilege without the client's consent.

## **V. MISCELLANEOUS MATTERS**

### **A. THE MAINE LAWYERS' FUND FOR CLIENT PROTECTION**

As described in my Annual Reports for both 1997 and 1998, the Lawyers' Fund for Client Protection was established through rules promulgated by the Court effective on July 1, 1997. Pursuant to the Court's Rules governing that Fund, its Board of Trustees may only pay claims for dishonest conduct occurring after January 1, 1999. Effective July 1, 1999 the Board and the Fund executed a Services Agreement whereby the Board appointed a Client Protection Fund Administrator to assist the Trustees with certain specified administrative and financial duties that the Board seems able to perform given its already existing infrastructure. In that regard, although the Fund's Trustees control the investment of its collected assessments and the general operation

of its responsibilities and duties, at the direction of the Court for the past three years the Board has requested and collected \$20.00 annually from all Maine attorneys and judges for deposit in the Fund's account.

### **B. AMENDMENTS TO THE MAINE BAR RULES**

The study and possible proposal of amendments to the Code of Professional Responsibility (Maine Bar Rule 3) are generally the province of the Court's Advisory Committee on Professional Responsibility and not the Board. At the request of the Board, the Court did amend several procedural sections of the Maine Bar Rules in 1999, including the following:

1. Maine Bar Rules 5(d) and 7.1(c) were amended to require that all dismissed Grievance Commission Files and Bar Counsel Files be expunged by Bar Counsel after two years have passed since the date of dismissal. Complaint files that resulted in discipline (whether public or private), and dismissals with warnings may not be expunged. When dismissed matters are subject to being so expunged, all Board records of those complaints are destroyed.

2. The Court amended Maine Bar Rule 6(c) effective March 16, 1999 to allow attorneys previously registered in Maine to withdraw from Maine practice if they intend to have no further involvement with any practice in Maine. Upon withdrawal they must provide their current address to the Board, but are not required to pay any further fee. If they later wish to return to practice in Maine, however, they will be required to take the Modified Bar Exam.

3. Maine Bar Rule 6(d) was amended to provide that the Board's staff may not reveal or provide to the public an attorney's social security number, residence address

or residence telephone number. The latter information is publicly available, however, if it is the same as the attorney's business address/telephone number.

### **C. INFORMAL ADVISORY OPINIONS**

The office of Bar Counsel continues to provide daily assistance to Maine attorneys through the rendering of informal advisory opinions, usually over the telephone. Pursuant to Board Regulation No. 28 Bar Counsel may only provide an attorney with an assessment of either that inquiring attorney's or that attorney's firm's conduct under the Maine Bar Rules. See also Advisory Opinion No. 67. In 1999, attorneys in the office of Bar Counsel answered approximately 454 such telephonic "ethics hotline" inquiries. In addition, Bar Counsel provided thirty (30) written informal advisory opinions in response to attorneys' requests.

### **D. TELEPHONIC SCREENING OF COMPLAINTS**

1999 was the third full year of the Board's policy of having attorneys in the office of Bar Counsel, as time resources allowed, personally screen telephonic inquiries from potential complainants. In that year, approximately 396 callers spoke to Bar Counsel or an Assistant Bar Counsel, a 21.7% decrease from the number of callers in 1998 (506). From that group of 396 callers, 34 people actually then followed up and filed grievance complaints or fee arbitration petitions (or in some cases both). Therefore, roughly 8.5% of the people that called and spoke with a Board staff attorney actually later filed a written complaint. The amount in 1997 was 9%. Some callers did not have a complaint about an attorney, but rather were seeking legal advice. Bar Counsel certainly cannot and does not provide any such legal advice. As in the case of informal advisory

opinions, staff attorneys also do not provide callers with any opinions as to the ethical conduct of a caller's mentioned attorney.

This screening of calls has perhaps resulted in the reduction of written complaints actually received by the Board. It also seems to have been helpful in deflecting at least some complaints or inquiries that do not relate to Grievance Commission or Bar Counsel matters and therefore would not have been at all appropriate for any investigation through the grievance process. In any event, the callers are always given the option to proceed and file a written complaint if they so choose. This screening project is encouraged by the Board and Bar Counsel and continues in 2000.

#### **E. ASSISTANCE TO THE MAINE STATE BAR ASSOCIATION**

Bar Counsel and Assistant Bar Counsel participated in continuing legal education (CLE) seminars of the Maine State Bar Association (MSBA), including: 1. *Risk Management: Legal Malpractice Recognition & Prevention*; 2. *Balancing the Needs of the Solo & Small Firm Practice* and 3. *Evidence: The Tools of the Trade*. The Board also continued its annual practice of meeting with the MSBA's Board of Governors in April of 1999, where discussion focused mainly on both Boards' agreement that a renewed study should be made as to whether a mandatory continuing legal education (CLE) rule should be proposed to the Supreme Judicial Court. The two Boards will continue to so meet.

In addition, the Board was most pleased to have MSBA President Ann Courtney be its featured keynote speaker at the Board's annual Recognition Dinner honoring the

dedicated and unsparing service of the volunteer members of the Board and its three Commissions.

#### **F. ELECTION AS NATIONAL ORGANIZATION OF BAR COUNSEL PRESIDENT**

In August of 1999, I was elevated from President-Elect to serve a one-year term as President to the National Organization of Bar Counsel (NOBC). I also continue to serve as the NOBC's liaison to the ABA's Standing Committee on Professional Discipline. I participated on a CLE panel at the ABA's 25<sup>th</sup> National Conference on Professional Responsibility concerning "Life After Birbrower". As NOBC's President-Elect and Program Committee Chair in 1999, I also organized and help monitor all of the several CLE panel presentations that occurred both at the mid-year and annual NOBC meetings for that year.

## **G. ADDITIONAL MATTERS CONSIDERED BY THE BOARD**

The Board also gave consideration or action to the following matters at various points in 1999:

- The Board acquired its own web site, and that matter remained in the development stage at the conclusion of 1999 (and is now in place);
- The Board, formalizing discussions begun in 1998, engaged a management-consulting firm to perform a personnel assessment/audit of the Board's staff. The goal of the study was to determine the adequacy and efficiency of the staffing structure and identify areas needing functional adjustment. Recommendations from the study were approved and implemented in late 1999, establishing the position of Administrative Director and restructuring various responsibilities. As a result, in December of 1999, Dan E. Crutchfield commenced service as the Board's new Administrative Director, allowing Bar Counsel to focus more time on preparation for litigation and related duties under Bar Rule 5 as well as for addressing various policy initiatives of the Board;
- Appointed a Mandatory Continuing Legal Education Commission, comprised of representatives from various segments of the attorney population in Maine including the Board of Overseers of the Bar, the Maine State Bar Association, the Department of the Attorney General, the judiciary, the University of Maine School of Law, the

Maine Trial Lawyers Association and the Maine Association of Criminal Defense Lawyers;

- Approved the National Board of Trial Advocacy's request for Family Law Certification; and
- Revised Board Regulation No. 28 re: Bar Counsel's providing informal advisory opinions to attorneys.

### **CONCLUSION**

My staff and I again thank all of the many volunteer members of the Board and its Commissions for their time and hard work to facilitate the disciplinary, fee arbitration and ethical advisory processes of the Maine Bar Rules. We always encourage any suggestions for improvements or appropriate changes for submission to the Board Chair, Administrative Director Dan Crutchfield or me for consideration by the Board as a whole. We also continue our practice of providing use of the Board's conference room for any Maine attorneys needing it for a deposition or other form of meeting in the Augusta area. To do so, telephone either Dan Crutchfield or Office Manager Linda Hapworth @ 623-1121 or e-mail us at [board@mebaroverseers.org](mailto:board@mebaroverseers.org) to schedule use of the Board's conference room for that purpose.

Respectfully submitted,

DATED: May 30, 2000

J. Scott Davis, Bar Counsel  
Board of Overseers of the Bar  
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Augusta, Maine 04332-0527  
(207) 623-1121 FAX: (207) 623-4175

**APPENDIX**

**STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS**

**AND FEE DISPUTES**

**MEMBERSHIP LISTS**

**January 1, 1999 to December 31, 1999**

**GRIEVANCE COMMISSION COMPLAINTS**

|      |  |                       |
|------|--|-----------------------|
| I.   | <u>Complaints Reviewed</u>                                       | 171                   |
|      | <u>ACTION:</u>   |                       |
|      | Dismissal:   | 129                   |
|      | Dismissal with warning to attorney:                              | 17                    |
|      | Disciplinary hearing authorized:                                 | 24                    |
|      | Directly to Court - Rule 7.2(b)(7)                               | 1                     |
| II.  | <u>Dispositions After Public Hearing</u>                         | 19 matters considered |
|      | <u>ACTION:</u>   |                       |
|      | Dismissals:  | 1                     |
|      | Dismissals with warning:   | 3                     |
|      | Reprimands:  | 6                     |
|      | Complaints authorized to be filed with the Court by information: | 6                     |
|      | Matters pending before the Board                                 | 1                     |
|      | Information to be filed directly with Court                      | 0                     |
|      | Matters heard with Decisions pending as of 12/31/99:             | 2                     |
| III. | <u>Grievance Complaint Summary</u>                               |                       |
| A.   | Complaints pending at start of period:                           | 110                   |
| B.   | New complaints docketed:   | 164                   |
| C.   | Total complaints pending during period:                          | 274                   |
| D.   | Total complaints reviewed or heard:                              | 190                   |
| E.   | Complaints pending investigation, review or hearing:             | 84                    |

**COURT MATTERS – 1999**

Disciplinary orders issued:

|                 |   |
|-----------------|---|
| 1. Disbarments  | 4 |
| 2. Suspensions  | 2 |
| 3. Resignations | 2 |
| Total           | 8 |

Total Disciplinary Matters Pending or to be Filed Before Court – 12/31/99

|   |                    |
|---|--------------------|
| 1. Complaints concerning pending informations | 5<br>(3 attorneys) |
| 2. Informations authorized, but not yet filed | 4<br>(3 attorneys) |
| TOTAL:  | 9                  |

**1999 SUMMARY OF SANCTIONS ISSUED**  
**Bar Rules Found to Have Been Violated**

(Certain decisions cited multiple rule violations)

**Grievance Commission Reprimands - 6**

| RULE      | MISCONDUCT   | NUMBER |
|-----------|--|--------|
| 3.1(a)    | Conduct unworthy of an attorney                      | 3      |
| 3.2(f)(3) | Misrepresentation / deceit                           | 2      |
| 3.2(f)(4) | Conduct prejudicial to the administration of justice | 2      |
| 3.5(a)(1) | Withdrawal from employment                           | 1      |
| 3.5(a)(2) | Due Notice of withdrawal to client                   | 1      |
| 3.6(a)(3) | Neglect of client matter                             | 5      |

|         |  |    |
|---------|--|----|
| 6(a)(1) | Required Registration Filing                   | 2  |
| 6(c)    | Notification of discontinuance to practice law | 1  |
|         |  |    |
|         |  |    |
|         | TOTAL  | 17 |

**Grievance Commission Dismissal w/warnings - 3**

| RULE      | MISCONDUCT                     | NUMBER |
|-----------|--------------------------------|--------|
| 3.2(a)(1) | Jurisdiction of law            | 2      |
| 3.6(a)    | Standards of care and judgment | 1      |
| 8         | Contingent Fees                | 1      |
|           |                                |        |
|           | TOTAL                          | 4      |

**Court Suspensions / Reprimands / Disbarments - 6**

| RULE          | MISCONDUCT  | NUMBER |
|---------------|---|--------|
| 2(c)          | Failure to cooperate w/Bar Counsel                                | 2      |
| 3.1(a)        | Conduct unworthy of an attorney                                   | 3      |
| 3.2(f)(1)     | Other Misconduct - directly or indirectly violate Maine Bar Rules | 2      |
| 3.2(f)(2)     | Trustworthiness / fitness as an attorney                          | 1      |
| 3.2(f)(3)     | Misrepresentation / deceit  | 1      |
| 3.2(f)(4)     | Prejudicial to the administration of justice                      | 1      |
| 3.3(a)        | Excessive Fee   | 1      |
| 3.4 (former)  | Conflict of Interest  | 4      |
| 3.6(a)        | Standards and Care / Client Informed                              | 3      |
| 3.6(e)(2)(iv) | Failure to return property  | 1      |
| 3.6(f)        | Communicating with Adverse Party                                  | 1      |
| 6(b)          | Failure to File Registration                                      | 2      |
| 7.3(i)(2)(B)  | Notify clients of suspension                                      | 1      |
| 7.3(h)        | Reciprocal Discipline   | 1      |
| 9(i)          | Enforcement of fee award  | 1      |
|               |   |        |
|               | TOTAL   | 25     |

## 1999 GRIEVANCE COMPLAINTS

### CHARACTERIZATION

|                                     | NUMBER     | PERCENT OF TOTAL |
|-------------------------------------|------------|------------------|
| Trust violation                     | 9          | 5.49             |
| Conflict of interest                | 24         | 14.64            |
| Neglect                             | 67         | 40.86            |
| Relationship w/client               | 9          | 5.49             |
| Misrepresentation / fraud           | 24         | 14.64            |
| Excessive fee                       | 6          | 3.67             |
| Interference with justice           | 22         | 13.41            |
| Improper advertising / solicitation | 0          | 0                |
| Criminal conviction                 | 0          | 0                |
| Personal behavior                   | 1          | .6               |
| No cooperation w/Bar Counsel        | 1          | .6               |
| Medical                             | 0          | 0                |
| Incompetence                        | 0          | 0                |
| Jurisdiction                        | 0          | 0                |
| Conduct unworthy of an attorney     | 0          | 0                |
| Other                               | 1          | .6               |
| <b>TOTAL</b>                        | <b>164</b> | <b>100</b>       |

### SIZE OF LAW OFFICE

|                           | NUMBER     | PERCENT OF TOTAL |
|---------------------------|------------|------------------|
| Sole Practitioner         | 66         | 40.24            |
| 2                         | 34         | 20.73            |
| 3-6                       | 32         | 19.51            |
| 7-10                      | 14         | 8.54             |
| 11 and over               | 11         | 6.71             |
| Government / state /other | 7          | 4.27             |
| <b><u>TOTAL</u></b>       | <b>164</b> | <b>100</b>       |

## 1999 GRIEVANCE COMPLAINTS

### AREA OF LAW

|          | NUMBER | PERCENT OF TOTAL |
|----------|--------|------------------|
| Family   | 45     | 27               |
| Juvenile | 0      | 0                |
| Criminal | 25     | 15.2             |

|                    |            |            |
|--------------------|------------|------------|
| Traffic            | 3          | 2          |
| Probate/Wills      | 11         | 7          |
| Guardianship       | 0          | 0          |
| Commercial         | 2          | 1.2        |
| Collections        | 7          | 4          |
| Landlord/Tenant    | 1          | .6         |
| Real Property      | 20         | 12.2       |
| Foreclosure        | 5          | 3          |
| Corporate/Bank     | 2          | 1.2        |
| Tort               | 24         | 15         |
| Administrative Law | 2          | 1.2        |
| Taxation           | 0          | 0          |
| Patent             | 0          | 0          |
| Immigration        | 0          | 0          |
| Anti-Trust         | 0          | 0          |
| Environmental      | 0          | 0          |
| Contract/Consumer  | 0          | 0          |
| Labor              | 2          | 1.2        |
| Workers' Comp      | 4          | 2          |
| Other/None         | 5          | 4          |
| Bankruptcy         | 4          | 2          |
| Municipal          | 2          | 1.2        |
| Elder Law          | 0          | 0          |
| <b>TOTAL</b>       | <b>164</b> | <b>100</b> |

**1999 GRIEVANCE COMPLAINTS**

**SOURCE OF COMPLAINT**

|             | NUMBER | PERCENT OF TOTAL |
|-------------|--------|------------------|
| Client      | 90     | 55               |
| Other Party | 54     | 33               |
| Judge       | 2      | 1                |
| Lawyer      | 12     | 7                |
| Sua sponte  | 6      | 4                |

|       |            |            |
|-------|------------|------------|
| TOTAL | <b>164</b> | <b>100</b> |
|-------|------------|------------|

YEARS IN PRACTICE

|                   | NUMBER     | PERCENT OF TOTAL |
|-------------------|------------|------------------|
| 40-61 years       | 3          | 2                |
| 30-39 years       | 10         | 7                |
| 20-29 years       | 48         | 29               |
| 10-19 years       | 63         | 38               |
| 2-9 years         | 40         | 24               |
| Less than 2 years | 0          | 0                |
| <b>TOTAL</b>      | <b>164</b> | <b>100</b>       |

AGE OF ATTORNEY

|                     | NUMBER     | PERCENT OF TOTAL |
|---------------------|------------|------------------|
| 24-29               | 0          | 0                |
| 30-39               | 22         | 13               |
| 40-49               | 66         | 41               |
| 50-59               | 61         | 37               |
| 60+                 | 15         | 9                |
| <b><u>TOTAL</u></b> | <b>164</b> | <b>100</b>       |

**1999 GRIEVANCE COMPLAINTS**

| COUNTY       | NUMBER     | PERCENT OF TOTAL |
|--------------|------------|------------------|
| Androscoggin | 10         | 6.1              |
| Aroostook    | 7          | 4.26             |
| Cumberland   | 50         | 30.49            |
| Franklin     | 0          | 0                |
| Hancock      | 9          | 5.49             |
| Kennebec     | 25         | 15.24            |
| Knox         | 3          | 1.83             |
| Lincoln      | 2          | 1.22             |
| Oxford       | 2          | 1.22             |
| Penobscot    | 23         | 14.02            |
| Piscataquis  | 1          | .61              |
| Sagadahoc    | 5          | 3.05             |
| Somerset     | 4          | 2.44             |
| Waldo        | 4          | 2.44             |
| Washington   | 1          | .61              |
| York         | 15         | 9.15             |
| Out of State | 3          | 1.83             |
| <b>TOTAL</b> | <b>164</b> | <b>100</b>       |

**1999 BAR COUNSEL FILES**

| AREA OF LAW     | NUMBER | PERCENT OF TOTAL |
|-----------------|--------|------------------|
| Family          | 29     | 24               |
| Criminal        | 11     | 9                |
| Probate/Wills   | 23     | 19               |
| Commercial      | 0      | 0                |
| Collections     | 9      | 7                |
| Landlord/Tenant | 1      | 1                |
| Real Property   | 4      | 3                |
| Corporate/Bank  | 7      | 6                |
| Torts           | 5      | 4                |
| Labor           | 10     | 9                |
| Worker's Comp   | 2      | 2                |
| Bankruptcy      | 0      | 0                |
| Municipal       | 3      | 2                |
| Trust Accounts  | 1      | 0                |
| Contracts       | 5      | 4                |
| Discrimination  | 0      | 0                |
| Patent          | 0      | 0                |
| OtherNone       | 12     | 10               |
| TOTAL           | 122    | 100              |

**1999 BAR COUNSEL FILES**

| CHARACTERIZATION                        | NUMBER                 | PERCENT OF TOTAL |
|---|------------------------|------------------|
| Conspiracy                              | 6                      | 5                |
| Disagreement over conduct of case       | 38                     | 31               |
| Habeas Corpus                           | 6                      | 5                |
| Insufficient information                | 4                      | 3                |
| Lack of professionalism                 | 18                     | 15               |
| Malpractice                             | 11                     | 9                |
| Personal life                           | 6                      | 5                |
| Request for legal assistance            | 11                     | 9                |
| Interference with justice               | 21                     | 17               |
| Other                                   | 1                      | 1                |
| <b>TOTAL BAR COUNSEL FILES DOCKETED</b> | <b>122<sup>1</sup></b> | <b>100</b>       |

|  |            |    |
|--|------------|----|
| Bar Counsel Files pending at start of period                                   | 11         |    |
| New Bar Counsel Files Received   | <u>122</u> |    |
| Total Bar Counsel Files on Docket  | 133        |    |
| Bar Counsel Files Finally Dismissed  | 128        |    |
| Bar Counsel Files pending at end of period                                     | 5          |    |
| Dismissals appealed (Request for review filed)                                 |            | 42 |
| Action on review of those appeals:   |            |    |
| Dismissals affirmed by lay member  |            | 38 |
| Dismissals vacated by lay member<br>(re-docketed as Grievance Commission File) |            | 1  |
| Reviews open as of 12/31/99  |            | 3  |

<sup>1</sup> New Bar Counsel Files received.

## FEE ARBITRATION COMMISSION

Petition Summary  
January 1, 1999 – December 31, 1999

### **PETITIONS:**

|   |     |
|---|-----|
| Pending at start of period:                 | 36  |
| Docketed during period:                     | 95  |
| Total open petitions during period:         | 131 |
| Dismissed, settled, withdrawn:              | 50  |
| Heard and closed by awards:                 | 44  |
| Heard and awaiting awards:                  | 7   |
| Total petitions closed during period:       | 101 |
| Total petitions pending at close of period: | 37  |

### **BREAKDOWN OF HEARING DATES BY PANEL:**

|   |    |
|---|----|
| (County/Counties)   |    |
| Panel IA: (York)  | 5  |
| Panel IB: (Cumberland)  | 5  |
| Panel II: (Androscoggin, Franklin,<br>Lincoln, Oxcord & Sagadahoc)      | 6  |
| Panel III: (Kennebec, Knox, Somerset & Waldo)                           | 7  |
| Panel IV: (Aroostook, Hancock, Penobscot,<br>Piscataquis, & Washington) | 7  |
| TOTAL HEARING DATES:  | 30 |

Comparison of new Petitions docketed:

1997 - 96  
1998 - 88  
1999 - 95

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Hon. Howard H. Dana, Jr.

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ADMINISTRATIVE DIRECTOR:

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ASSISTANT BAR COUNSEL:

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Geoffrey S. Welsh, Esq.

Assistant to Bar Counsel:

Nancy Hall Delaney

Office Manager:

Linda Hapworth

Bar Admission Administrator

& Registration Secretary :

Debra M. Swift

Clerk of the Grievance Commission

& Fee Arbitration Commission Secretary : Jaye M. Trimm

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