

MAINE BOARD OF OVERSEERS OF THE BAR

BAR COUNSEL'S ANNUAL REPORT
2002

J. SCOTT DAVIS
BAR COUNSEL

P.O. BOX 527 97 WINTHROP STREET AUGUSTA, MAINE 04332-0527
TELEPHONE 207/623-1121 FAX 207/623-4175
www.mebaroverseers.org
E-mail: board@mebaroverseers.org

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BOARD OF OVERSEERS OF THE BAR

Bar Counsel's 2002 ANNUAL REPORT

INTRODUCTION

The Board of Overseers of the Bar consists of 6 lawyers and 3 lay persons. It performs its duties and responsibilities under the Maine Bar Rules through its staff of 3 lawyers and 6 additional staff. There are, in addition to the Board, three other public service agencies: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission (22 total members) and the Grievance Commission (24 total members) normally conduct their functions by three-member panels. Each grievance panel is comprised of two attorneys and one lay (public) member. The fee panels may be so comprised or instead consist of two lay members and one attorney. 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: www.mebaroverseers.org, and e-mail may be addressed to board@mebaroverseers.org. Please also note the respective membership lists, within the attached Appendix to this Report.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

In 2002, the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF) 235 written grievance complaints. This means that upon screening by an attorney in the office of Bar Counsel these matters were deemed to initially allege at least some form of a *prima facie* claim of professional misconduct by Maine attorneys in violation of the Code of Professional Responsibility (Code). That was a fairly significant increase (28%) from the number so filed and docketed in 2001 – (183). By comparison, there were another 132 matters filed in 2002 that were instead initially docketed as Bar Counsel Files, meaning that upon screening, these complaints were deemed not to state any Maine attorney’s violation of the Code. See M. Bar R. 7.1(c) and 7.1(d) and pp.7-8 of this report.

B. PANEL MEETINGS AND HEARINGS

1. Case Reviews -- Panels of the Grievance Commission met on 29 occasions to conduct preliminary reviews of 204 GCF complaints under M. Bar R. 7.1(d)(including one matter actually so reviewed by a panel of the Board). These meetings consisted of a panel consulting with Bar Counsel or Assistant Bar Counsel to review the contents of GCF investigative files. Such reviews are not hearings. Neither the respective complainants nor the respondent attorneys were present. In fact, the majority of the reviews occurred by telephonic conference call. Although the Rule’s requirements are

inapplicable to either the involved complainants or respondent attorneys, under Maine Bar Rule 7.3(k)(1) Bar Counsel's entire investigation and the Grievance Commission's review process through this preliminary phase are kept confidential by the Board, its Commission and its staff 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 204 reviews, 154 complaints were closed by issuance of either a dismissal (136) (no finding of any attorney misconduct) or a dismissal with a warning (18) (minor misconduct) to the involved attorneys. See M. Bar R. 7.1(d)(3)(4). Review panels also found probable cause that professional misconduct warranting some disciplinary sanction had occurred in 50 of those matters so reviewed. For 47 of those complaints, disciplinary petitions were directed to be filed by Bar Counsel for formal disciplinary hearings open to the public before another panel of the Commission under M. Bar R. 7.1(e), with the remaining 3 matters to be filed directly with the Court due to the fact that the involved attorney already had pending disciplinary matters in that forum. See M. Bar R. 7.2(b)(7). While 50 "hearing matters" was a major increase in the number of complaints so authorized for disciplinary hearing in 2001 (31), 28 of those 50 matters in 2002 involved just two attorneys, with another attorney having three matters filed against him.

2. Disciplinary proceedings – Grievance Commission panels also conducted public disciplinary hearings resulting in nine (9) decisions being issued in 2002, including two (2) reprimands of attorneys. From four (4) of those hearings – involving 21 complaint matters, Bar Counsel was directed to file further proceedings before the Maine Supreme Judicial Court (the Court) seeking suspension or disbarment of the

attorney, i.e. the hearing panels in each instance found that a reprimand was not a sufficient or appropriate result given the aggravating factors relating to the misconduct involved. See M. Bar R. 7.1(e)(3)(C). Finally, after receiving testimony in a proceeding under M. Bar R. 7.3(j)(5)(Reinstatement), a Grievance Commission panel recommended to the Board that it recommend the Court impose a conditional reinstatement for a former Maine lawyer who had resigned in April, 1987 in lieu of disciplinary action.

a. Reprimands

1. After a contested hearing, the Grievance Commission panel reprimanded an attorney because he improperly engaged in a conflict of interest by entering into in a real estate business transaction with a client that he was representing on a personal injury matter without meeting certain of the specific provisions of M. Bar R. 3.4(f)(2)(Avoiding Adverse Interest). See *Board of Overseers of the Bar v. Paul K. Marshall, Esq.*, GCF# 01-41 (April 22, 2002).

2. By approval of the stipulated agreement between Bar Counsel and Respondent's counsel, a panel of the Grievance Commission reprimanded a lawyer because he had failed to adequately pursue collection of past due accounts for a creditor, did not sufficiently inform that client about the status of the cases entrusted to him, and upon being dismissed from representation did not then timely turn over his client's files to his replacement counsel. *Board of Overseers of the Bar v. Peter D. Faulkner, Esq.*, GCF# 02-03 (December 3, 2002).

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, three (3) such matters resulting in dismissals with a warning for minor violations.

The attached tables provide the various statistics in categories such as the respective areas of law, characterization, age and county of practice concerning the GCF matters received and docketed in 2002. The Appendix also includes a table, indicating the particular portions of the Code which the Grievance Commission and Court found violated in those matters where discipline or a lesser sanction (warning) was imposed after a public disciplinary hearing.

c. BAR COUNSEL FILES

As referenced above at page 4, Bar Counsel Files are those complaints that upon initial review by Bar Counsel were deemed not to allege any professional misconduct subject to sanction under the Maine Bar Rules. In such matters, M. Bar R. 7.1(c) requires Bar Counsel's unilateral dismissal of such matters, either with or without investigation. There were 133 such filings in 2002, nearly identical to the number so docketed in 2001 (136). As a result, by combination of those new matters with all unrelated formal grievance complaints (GCF) discussed above, the number of written complaints about claimed attorney misconduct filed with Bar Counsel in 2002 totaled 368, a 15% increase in the total of such matters filed in 2001 (319).

When a Bar Counsel File is dismissed, the complainant is always notified by Bar Counsel of the reason for the dismissal and of a right within the subsequent 14 days to request that the dismissal be reviewed. That review will be performed by a lay member

of either the Board or the Grievance Commission. The involved attorney is always informed by Bar Counsel of the dismissal, any resulting request for review, and the reviewer's decision. Bar Counsel dismissed 133 Bar Counsel Files in 2002, with 30 complainants requesting review of those actions, as allowed by Rule 7.1(c)(1). Lay members decided and approved 24 of those requests in 2002, with four (4) reviews pending and two (2) dismissals being vacated by the reviewer and then re-docketed as a Grievance Commission File (See Appendix).

II. COURT MATTERS

Eighteen (18) disciplinary or related matters were acted on by the Court in 2002, with the dispositions as follows: Disbarments – 5; Suspensions – 7; Resignation – 1; Reprimand – 1; Reinstatements – 4. A brief summary of many of those matters follows below. In that regard, it is worth noting that many of those Court disciplinary sanctions were imposed upon approval of a proposed stipulation of the parties.

A. DISBARMENTS

1. Justice Rudman disbarred a lawyer for abandoning her real estate law practice (and leaving the State of Maine), neglecting legal matters entrusted to her, failing to properly account for client trust funds and not repaying legal fees that had been ordered by the Fee Arbitration Commission be refunded. By an earlier order, that same court had appointed counsel to inventory the attorney's files and protect the interests of her current and former clients. *Board of Overseers of the Bar v. Lenore Anderson (f / k / a Lenore Grant)* Docket No. BAR 01-04 (November 12, 2002).

2. Justice Alexander disbarred an attorney for practicing law after being earlier suspended by the Court for disciplinary reasons, for neglecting several family law and probate cases including not communicating with the clients in those matters, for not accounting to clients for funds entrusted to him and for failing to respond to many of Bar Counsel's inquiries about his misconduct. *Board of Overseers of the Bar v. Ronald L. Bishop*, Docket No. BAR 00-06 (June 6, 2002).

3. Justice Caulkins disbarred a lawyer for failing to inform a divorce client about her case and for not properly withdrawing from a guardianship matter pending in the Probate Court. The Court's disbarment order was by default as the attorney did not answer or otherwise respond to the information filed and served upon him by the Board. *Board of Overseers of the Bar v. Jeffrey J. Fairbanks*, Docket No. BAR 01-07 (March 25, 2002).

4. Justice Dana disbarred an attorney based on an earlier disbarment order entered by the Supreme Judicial Court of Massachusetts. In the Maine reciprocal discipline case, the lawyer failed to show that his disbarment in Massachusetts was fundamentally unfair or otherwise violated his constitutional rights to due process of law. *Board of Overseers of the Bar v. Wayne B. Hollingsworth*, Docket No. BAR 01-02 (April 22, 2002).

5. Justice Rudman disbarred a lawyer because of his egregious misconduct as set forth within the 1994 civil complaint entitled *Lori D'Amico v. Guy P. Seaberg* filed in the Androscoggin County Superior Court. See also *Lori D'Amico v. John W. Childs*, 634 A.2d 1271 (Me. 1993). Justice Rudman's disbarment order was by default as the lawyer did not answer or otherwise respond to the Information filed and served upon him by the Board. *Board of Overseers of the Bar v. Guy P. Seaberg*, Docket No. BAR 02-01 (February 22, 2002).

B. RESIGNATION

After hearing where Bar Counsel argued for the Board of Overseers of the Bar that resignation was an insufficient result for the seriousness of the underlying alleged misconduct of the attorney, Justice Caulkins ruled for the attorney and accepted his resignation in lieu of disciplinary action. The Court accepted the lawyer's resignation because of his age, poor health and representation to the Court that he would never seek future reinstatement to the Maine bar. *Board of Overseers of the Bar v. Joseph F. Holman*, Docket No. BAR 02-02 (April 22, 2002).

C. SUSPENSIONS

1. Justice Alexander indefinitely suspended an attorney for: failing to perform legal work requested by clients, misleading the clients with regard to the status of his work, abandoning his practice without notice to the clients, failing to keep clients' funds secure in a trust account, and for failing to repay clients after he had abandoned them without doing any legal work. *Board of Overseers of the Bar v. James P. Boone, Esq.*, Docket No. BAR 01-05 (May 14, 2002).

2. Justice Clifford suspended an attorney for six (6) months for filing a frivolous appeal after neglecting a collection matter, and for neglecting and mishandling several other cases, including a complicated Chapter 13 Bankruptcy Petition. Justice Clifford ordered that the attorney not resume practicing law without further order of the Court concerning appropriate conditions to be imposed upon him and his practice. *Board of Overseers of the Bar v. Ralph W. Brown, Esq.*, Docket No. BAR 01-6 (October 17, 2002).

3. Justice Clifford suspended a lawyer for 180 days because of his Federal conviction for loan and credit card application fraud. At the end of his suspension, the attorney will then register with the Board as an inactive attorney, and he will not later resume his practice without first having complied with all of the requirements of M. Bar R. 6(a),(c)(3). *Board of Overseers of the Bar v. Francis P. Daughan, Esq.*, Docket No. BAR 02-6 (July 9, 2002).

4. Justice Dana suspended an attorney for 60 days because of his neglectful behavior in a post divorce case, that suspension itself being suspended for a period of one year. During the attorney's suspended suspension, Justice Dana ordered that the lawyer submit his practice to supervision by a monitor who shall file quarterly confidential reports with the Court and Bar Counsel regarding the attorney's practice. *Board of Overseers of the Bar v. Joseph R. Hunt, Esq.*, Docket No. BAR 02-03 (May 10, 2002).

5. Justice Clifford suspended a lawyer for three months because of the lawyer's neglectful behavior and verbal abuse of an adversary, that suspension itself being suspended for a period of one year. *Board of Overseers of the Bar v. Richard B. Slosberg, Esq.*, Docket No. BAR 02-07 (November 21, 2002)

6. After hearing, Justice Rudman suspended an attorney for a year for neglectful behavior and conflicts of interest in several matters, with that suspension being suspended for a period of one year. During the attorney's suspended suspension, Justice Rudman ordered that he submit his practice to supervision by a monitor who shall file quarterly confidential reports with the Court concerning the attorney's practice. *Board of Overseers of the Bar v. Brian E. Swales, Esq.*, Docket No. BAR 01-08 (May 21, 2002)

7. Upon the Motion of the Board of Overseers of the Bar under M. Bar R. 7.1 (Justice Rudman indefinitely suspended an attorney upon the Board's motion alleging there was substantial probability that the lawyer had committed numerous violations of the Code of Professional Responsibility involving different clients' matters thereby threatening irreparable injury to those clients, the public or to the administration of justice. The motion was not responded to by the attorney. *Board of Overseers of the Bar v. Charles G. Williams, III, Esq.*, Docket No. BAR 02-05 (April 16, 2002).

D. REPRIMAND

1. On October 21, 2002 Justice Levy reprimanded an attorney because the lawyer neglected a consumer transaction and also did not timely respond to the client's or Bar Counsel's inquiries about the case. *Board of Overseers of the Bar v. Julio DeSanctis*, Docket No. BAR 02-04 (October 21, 2002).

E. REINSTATEMENT

1. After hearing, Justice Dana reinstated an attorney (whom the Court had indefinitely suspended in April 1986) subject to certain terms and conditions including submission of his practice to supervision by a monitor who shall file confidential reports with the Court every four (4) months concerning the attorney's practice. See *Board of Overseers of the Bar v. Jeffrey Pickering*, Docket No. BAR 87-01 (June 25, 2002).

2. By stipulation of the parties, Justice Clifford reinstated a lawyer subject to certain terms and conditions including submission of his practice to supervision by a monitor who shall file confidential reports with the Court quarterly concerning the lawyer's practice. CLE conditions were also agreed to and imposed since this former attorney had been disbarred since April 16, 1993. See *Board of Overseers of the Bar v. George F. Wood*, Docket No. BAR 91-025 (February 12, 2002).

III. FEE ARBITRATION COMMISSION

The Board received 157 requests for petitions for arbitration of fee disputes, 80 of which were returned and filed by December 31, 2002 with Jaye Malcolm Trimm, Secretary to the Fee Arbitration Commission. With 25 petitions already pending, and two additional matters re-opened for hearing after earlier dismissals had been vacated by the Commission Chair, the total number of matters on file before the Commission in 2002 was 107, a 14% decrease from the previous year. With preliminary screening by Bar Counsel and Assistant Bar Counsel, Commission Secretary Trimm and with final approval by Commission Chair Bruce C. Mallonee, Esq., 41 of those pending fee dispute matters were dismissed, settled or withdrawn by consent of the parties prior to hearing. See M. Bar R. 9(e)(3). Arbitration panels met 32 times to hear 48 petitions. As a result, 89 fee disputes were heard or settled, leaving a pending docket of 18 matters (See Appendix).

The office of Bar Counsel screens all fee arbitration petitions that have been filed with the Secretary to determine if the allegations actually warrant the attention of that Commission or should also (or instead) 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 usually involved in the fee arbitration process after that 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 and do share respective investigative materials concerning related matters.

IV. PROFESSIONAL ETHICS COMMISSION

The eight attorney members of the Professional Ethics Commission met on nine (9) occasions resulting in Advisory Opinion Nos. 178, 179 and 180 as briefly summarized below. Additionally, the Commission issued informal “opinion letters” to attorneys on a variety of topics including: a lawyer’s representation of a close corporation in civil litigation; office staff being allowed to sign checks written on the attorney’s trust account; carrying over the name of a deceased lawyer into a successor law firm’s name; and a criminal defendant’s attorney’s contacts with a victim-witness whom another lawyer already represents in a separate civil action against the same defendant.

A. OPINION NO. 178 (March 8, 2002)

Bar Counsel inquired whether Maine Bar Rule 3.14 allows attorneys, who can no longer practice law in Maine because of disciplinary reasons, to sell their practice to other Maine lawyers? The Commission stated that such a sale was proper as a lawyer who is suspended or disbarred also “has ceased to engage in the private practice of law” within the meaning of Maine Bar Rule 3.14 and because nothing in that or any other Bar Rule prohibited the transaction.

B. OPINION NO. 179 (July 18, 2002)

An attorney asked if Maine Bar Rule 3.6(e)(1)(4),(5) or any other Bar Rule, prohibited a lawyer from receiving escrowed funds in the name of a title company – which the attorney owns or has a proprietary interest in – with that lawyer retaining the net interest so generated and not following the IOLTA provisions of the Bar Rule? The Commission opined that the proposed arrangement was permissible because the IOLTA provisions of Bar Rule 3.6(e), by their express terms, apply only to “funds of

clients paid to a lawyer or law firm. . . .”, not funds separately paid to and held by a title company. Thus, assuming that that the provisions of Bar Rule 3.2(h) are complied with, this arrangement does not violate Maine Bar Rule 3.6(e) or any other provision of the Bar Rules.

C. OPINION NO. 180 (November 14, 2002)

A lawyer requested an opinion whether the Maine Bar Rules allow an attorney to represent bankruptcy clients as a salaried employee of a private, non-profit corporation (which is not a law firm) that provides credit counseling services and arranges debt repayment plans for those clients. The clients would pay fees to the corporation in exchange for bankruptcy legal services provided by the staff attorney. The Commission stated that the arrangement would violate Maine Bar Rule 3.2(a)(2) (aiding or assisting a person, association or corporation in the unauthorized practice of law) and Bar Rule 3.12(a) (sharing legal fees with a non-lawyer).

V. MISCELLANEOUS MATTERS

A. THE MAINE LAWYERS' FUND FOR CLIENT PROTECTION

The Lawyers' Fund for Client Protection was established 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. 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 the Board of Overseers continues to request and collect the required \$20.00 annual assessment from all Maine attorneys and judges for deposit in the Fund's account. Although claims were basically non-existent from 1999 through 2001, in 2002 there were 47 claims

referred to or received by Bar Counsel for investigation under Rule 12 of the Maine Rules for Lawyers' Fund for Client Protection involving 4 attorneys, one of whom was alone responsible for 33 claims. Further details as to these claims and the general operation of the Fund may be found in the 2002 Annual Report of the LFCP.

B. AMENDMENTS TO THE MAINE BAR RULES

The study and proposal of amendments to the Code of Professional Responsibility (Maine Bar Rule 3) is the province of the Court's Advisory Committee on Professional Responsibility (ACPR), to which Bar Counsel is a liaison. The study of possible amendments to all other portions of the Maine Bar Rules is generally made by the Board and proposed to the Court. The Court amended several portions of the Maine Bar Rules in 2002:

2. Maine Bar Rule 4(d)(11) was abrogated effective on September 1, 2002.

This amendment removes the earlier required biannual reporting by Bar Counsel to the Court of all dismissals with warnings issued by the Grievance Commission. The Board suggested and the Court adopted this amendment because there is no current use being made by the Court of such information which – except for such warnings issued after a public disciplinary hearing – otherwise normally remains confidential under the Maine Bar Rules.

3. Maine Bar Rule 6(a)(1) was amended effective on October 1, 2002. This amendment deletes the earlier requirement for attorneys to report non-mandatory CLE and synchronizes the provisions of Rule 6(a)(1) with the reporting requirement within the mandatory CLE rule, specifically Bar Rule 12(b)(1).

4. Maine Bar Rule 7.1(b) was amended effective on September 1, 2002. This amendment's purpose is to clarify that when the Board's Chair or Vice Chair performs investigative and other necessary functions because a grievance complaint has been filed against an attorney member of the Board or Grievance Commission, or against Bar Counsel or Assistant Bar Counsel, the Chair/Vice chair is then acting as and taking the place of Bar Counsel.
5. Maine Bar Rule 7.2(b)(9) was abrogated effective on October 1, 2002. This amendment deletes the requirement previously imposed upon Bar Counsel to notify the Attorney General of disciplinary proceedings as filed before the Court.
6. Maine Bar Rule 7.3(i)(2)(A) was amended effective on September 1, 2002. This amendment is for the purpose of making Rule 7.3(i)(2)(A) consistent with Rule 12(c). Under this amendment, an attorney who has been suspended for failing to satisfy the mandatory CLE requirements imposed by Rule 12, shall not accept any new retainer or engage as attorney in any new case or legal matter of any nature.
7. Maine Bar Rule 7.3(j)(6) was amended effective on September 1, 2002. This amendment eliminates the past practice of conditional reinstatements being issued with no definitive date by which conditions precedent to reinstatement must be satisfied. With indefinite terms, many earlier conditional reinstatement matters remained indefinitely pending for years. The amended language requires the Court's future reinstatement orders to include specific dates by which such conditions shall be met.

8. Maine Bar Rule 9(e)(4)(C) was amended effective on September 1, 2002.

This amendment pertains to cases where a petition is filed to start the fee arbitration process before the Fee Arbitration Commission "by any source" other than the subject attorney's client, as provided by Rule 9(e)(1). This amendment seeks to clarify the initial procedural steps to be followed by the Secretary and/or Chair of the Commission when the petition is filed by a non-client of the respondent attorney.

9. Maine Bar Rule 12(a)(4) was amended effective on September 1, 2002. The

amendment informs non-resident lawyers that Maine's CLE requirement is satisfied by compliance with the requirements of the non-resident attorney's state of residence *only* if that state of residence has a mandatory CLE requirement. If the non-resident attorney's state of residence does not mandate CLE, the non-resident attorney must satisfy Maine's requirement.

10. Maine Bar Rule 12(b)(1) was amended effective on October 1, 2002. This

amendment is intended to make it clear that an attorney's submitted annual report on CLE compliance must be by a signed written report.

11. Maine Bar Rule 12(c) was amended effective on September 1, 2002. This

amended language tracks that of Bar Rule 6(b)(1). As a result, the identical automatic, non-disciplinary suspension procedure is used for both failure to file a timely annual registration statement and failure to annually report full compliance with CLE requirements.

C. INFORMAL ADVISORY OPINIONS

The office of Bar Counsel continued to provide daily assistance to Maine attorneys through the rendering of informal advisory opinions, most usually by the so-called “telephone ethics hotline”. Pursuant to Board Regulation No. 28, Bar Counsel provides an attorney with an assessment of the propriety under the Maine Bar Rules of the professional conduct of that inquiring attorney or another member of that attorney's law firm. Bar Counsel is prohibited from advising one attorney about another attorney's supposed or “hypothetical” conduct. See also Advisory Opinion No. 67. In 2002, attorneys in the office of Bar Counsel answered approximately 318 such telephonic "ethics hotline" inquiries. At least a dozen informal and confidential advisory opinion letters were also issued by the office of Bar Counsel in 2002.

D. TELEPHONIC SCREENING OF COMPLAINTS

2002 was the sixth full year of the Board's policy of having attorneys in the office of Bar Counsel, as time and resources allow, review and screen telephonic inquiries from potential complainants, i.e. callers that raise issues but have not yet filed any “formal” complaint about attorney conduct. Approximately 363 callers spoke to Bar Counsel or an Assistant Bar Counsel in 2002, nearly a 20% decrease from the number of callers from 2001 (452). Some of those callers did not actually have a complaint about an attorney, but rather were seeking legal advice, so those individuals were always informed that Bar Counsel certainly cannot and does not provide any legal advice. Staff attorneys also did not provide these callers with any opinions as to the propriety of the claimed ethical conduct of any involved and/or specifically mentioned attorney. If other options were apparent to address the stated problems or issues, Bar Counsel so informed the caller.

This screening of calls continues to help divert a significant number of complaints or inquiries that appear not to relate to Grievance Commission or Bar Counsel matters and therefore are inappropriate 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 telephone – and “walk-in”-screening project is strongly encouraged by the Board and Bar Counsel and remains well in place in 2003.

E. MAINE STATE BAR ASSOCIATION

In 2002, the Board also continued its annual practice of meeting with the MSBA's Board of Governors. Discussion focused on possible changes that could be implemented in the administration of the mandatory CLE Rule. As a result of that exchange of thoughts and suggestions from the MSBA Governors, the Board of Overseers of the Bar determined that a registration fee increase rather than a per credit hour CLE fee (as it had earlier planned to propose) would be a more appropriate recommendation to propose for the Court's consideration to defray the Board's added costs associated with its administration of Bar Rule 12.

F. PARTICIPATION AS CLE PANELIST

Throughout 2002, I participated in several CLE panel presentations concerning ethical or professional responsibility issues, including the following:

- Maine Trial Lawyers Association (MTLA) panel: “Ethical Issues for Trial Lawyers: Real Life Problems, Real Life Solutions”;
- Maine State Bar Association panel: “The Ethics Seminar”;
- Pine Tree Legal Assistance: “Retreat at Rockcraft” – Panel on Ethical Issues;

- Pierce Atwood's 11th Annual Seminar for Referring Attorneys – Panel on Ethical Hypotheticals

As has been our continuing policy and practice, and especially now with the Court-mandated M. Bar R. 12 (Mandatory CLE), any of the Board's three staff attorneys are willing to take part in CLE panel presentations related to ethical issues and practices.

G. CONTINUING LEGAL EDUCATION – Administrative Report

On December 31, 2002, the Board completed its second calendar year of mandatory Continuing Legal Education. Under Bar Rule 12, an attorney's final reporting of CLE hours for the prior calendar occurs seven months later, i.e. by July 31st. Therefore, in July 2002 one full cycle of compliance reporting was tallied for calendar year 2001. Of 3,056 Maine attorneys registered in resident active status, only 31 (1%) failed to report or complete the required 11 CLE hours for the first year under Maine Bar Rule 12.

Non-resident active attorneys are permitted to self-certify their compliance with the Rule. All 1,066 attorneys so registered provided such written representation to the Board for calendar year 2001.

The Board's CLE website, www.mecle.com, is being utilized frequently by Maine attorneys to securely track their attendance record online as well as to preview upcoming approved courses being offered. Additional enhancements to the site are planned for 2003 that will add both convenience and interaction to the attendance tracking process.

H. ADDITIONAL MATTERS CONSIDERED BY THE BOARD

The Board also gave consideration or took action on the following matters at various points in 2002:

- The Board completed its second full calendar year of administration of Maine Bar Rule 12, Continuing Legal Education. Members of the Board worked many hours at both Committee and Board meetings to continue to develop and adjust the operating policies and procedures that provide the interpretation and support needed to administer the rule. The Board continues to be able to utilize a proven software system to track the CLE compliance of members of the Maine bar. Additionally, its CLE website, www.mecle.com, continues to provide a secure record of each attorney's CLE efforts, and also includes the text of Rule 12 with a listing of many upcoming approved CLE sessions. The CLE reporting date for calendar year 2002 will be July 31, 2003. Individualized CLE progress reports for 2003 for each Maine active attorney were included with the annual registration packet mailed to all members of the bar on or about July 1, 2003.
- Board Regulation No. 53 was amended to extend the restrictions or prohibition of the use of electronic recordings to now also apply to Bar Counsel's investigation of grievance complaints.
- Budgetary allowance was made to eventually allow for the Advisory Opinions issued by the Grievance Commission and later by the Professional Ethics Commission from 1979 through 1999 (Opinion Nos. 1-171) to be added to the later opinions from 2000 to present that are already on the Board's web site. (This project was completed in 2003, with all advisory opinions now being available at the web site.)

- Upon request, the Board indicated its general agreement with the Court's proposed amendment providing for reciprocity of bar admissions for attorneys already admitted in New Hampshire or Vermont.
- Board Chair Jon S. Oxman, Esq. and I were invited to meet at the Board's office and at the State House with Takafumi Hayano, who as a representative of the government of Japan, had been visiting each state of the United States to become familiar with bar related practices. From our discussions, there appeared to be many parallels between the Japanese system and ours, and Mr. Hayano (through his interpreter) seemed quite impressed and pleased with certain features of the Board's operations, e.g. the extent of lay members' involvement with both Board and Commission governance matters.
- The Court's disciplinary orders remain available through the Board's link to the Court's web site under Supreme Court Opinions – Bar Discipline Decisions at www.courts.state.me.us.

CONCLUSION

As I noted was the case in 2001, and as demonstrated by decisions of both the Grievance Commission and the Court, an increased number of either more serious or repetitive misconduct by Maine attorneys resulted in a significantly higher number of matters being filed before the Court in 2002 to determine whether suspension or disbarment is indeed appropriate. The increased frequency of more serious matters continues in 2003. In addition, of the many matters heard resulting in attorney misconduct being found by either the Court or the Grievance Commission (see Appendix), all but two of the 20 involved attorneys were sole practitioners.

As in the past, the unsparing work and time put forth by the many volunteer members of the Board and its Commissions is much appreciated and serves so well to facilitate the general policy and disciplinary, fee arbitration and ethical advisory processes of the Maine Bar Rules. The Board of Overseers of the Bar invites written suggestions for improvements or appropriate changes to the Board's policies and operations to be submitted to the Board Chair, Administrative Director Dan Crutchfield or me for the Board's consideration. The Board's conference room remains available for Maine attorneys to use for depositions, court/attorney committee meetings, etc. Please telephone either Mr. Crutchfield or Administrative Clerk Donna L. Spillman at 623-1121 or e-mail us at board@mebaroverseers.org to schedule use of the Board's conference room for that purpose.

Thank you.

Respectfully submitted,

DATED: July 23, 2003

J. Scott Davis, Bar Counsel
Board of Overseers of the Bar
97 Winthrop St., P.O. Box 527
Augusta, Maine 04332-0527
TELEPHONE: (207) 623-1121
FAX: (207) 623-4175
E-mail : jscottdavis@mebaroverseers.com

APPENDIX

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS AND FEE DISPUTES

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MEMBERSHIP LISTS

January 1, 2002 to December 31, 2002

GRIEVANCE COMMISSION COMPLAINTS

I.	<u>Complaints Reviewed</u>	204
	<u>ACTION:</u>	
	Dismissal:	136 ¹
	Dismissal with warning to attorney:	18
	Disciplinary hearing authorized:	47
	Directly to Court - Rule 7.2(b)(7)	3
II.	<u>Dispositions After Public Hearing</u>	<u>9 hearings (involving 21 complaints)</u>
	<u>ACTION:</u>	
	Dismissals:	0
	Dismissals with warning:	3
	Reprimands:	2
	Complaints authorized to be filed with the Court by information:	(16 complaint matters) 4
III.	<u>Grievance Complaint Summary</u>	
A.	Complaints pending at start of period:	52
B.	New complaints docketed:	235
C.	Total complaints pending during period:	287
D.	Total complaints reviewed or heard:	225
E.	Complaints pending investigation, review or hearing as of 12/31/02:	62

¹ Includes one matter reviewed by a panel of the Board. See M. Bar R. 4(d)(7); 7.1(b).

SUPREME COURT DISCIPLINARY DOCKET

2002

Disciplinary orders issued:

1. Disbarment	5
2. Suspensions	7
3. Resignation	1
4. Reprimand	1
5. Reinstatement	4
Total:	<u>18</u>

Total Disciplinary Matters Pending or to be Filed Before Court – 12/31/02

1. Complaints concerning pending informations	25 (3 attorneys)
2. Informations authorized, but not yet filed	4
TOTAL:	<u>29</u>

2002

GRIEVANCE COMPLAINTS FILED

CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
Trust violation	9	4
Conflict of interest	18	8
Neglect	116	49.25
Relationship w/client	11	4.5
Misrepresentation / fraud	53	22.5
Excessive fee	6	2.5
Interference with justice	14	6
Improper advertising / solicitation	0	0
Criminal conviction	0	0
Personal behavior	4	1.4
No cooperation w/Bar Counsel	0	0
Medical	0	0
Incompetence	1	.5
Jurisdiction	0	0
Conduct unworthy of an attorney	0	0
Other	3	1.25
TOTAL	235	100

2002
GRIEVANCE COMPLAINTS

SIZE OF LAW OFFICE

	NUMBER	PERCENT OF TOTAL
Sole Practitioner	114	48.5
2	36	15.5
3-6	53	22.5
7-10	7	3
11-49	15	6.5
Over 50	4	2
Government / state /other	6	2
<u>TOTAL</u>	235	100

AREA OF LAW

	NUMBER	PERCENT OF TOTAL
Family	51	21.5
Juvenile	0	0
Criminal	42	18
Traffic	1	.5
Probate/Wills	26	11
Guardianship	1	.5
Commercial	8	.3
Collections	6	2.5
Landlord/Tenant	5	2
Real Property	33	14
Foreclosure	1	.5
Corporate/Bank	2	1
Tort	19	8
Administrative Law	8	3
Taxation	0	0
Patent	0	0
Immigration	0	0
Anti-Trust	0	0
Environmental	1	.5
Contract/Consumer	0	0
Labor	4	2
Workers' Comp	9	4
Other/None	4	2
Bankruptcy	12	5
Municipal	2	1
Elder Law	0	0
<u>TOTAL</u>	235	100

2002

GRIEVANCE COMPLAINTS

SOURCE OF COMPLAINT

	NUMBER	PERCENT OF TOTAL
Client	152	64.5
Other Party	67	28.5
Judge	4	1.75
Lawyer	7	3
Sua sponte	5	2.25
TOTAL	235	100

YEARS IN PRACTICE

	NUMBER	PERCENT OF TOTAL
40-61 years	5	2
30-39 years	16	7
20-29 years	78	33
10-19 years	77	33
2-9 years	57	24
Less than 2 years	2	1
TOTAL	235	100

AGE OF ATTORNEY

	NUMBER	PERCENT OF TOTAL
24-29	0	0
30-39	49	21
40-49	61	26
50-59	104	44
60+	21	9
TOTAL	235	100

2002 GRIEVANCE COMPLAINTS FILED

COUNTY	NUMBER	PERCENT OF TOTAL
Androscoggin	32	13.5
Aroostook	11	4.5
Cumberland	75	32
Franklin	1	.5
Hancock	10	4.25
Kennebec	24	10.5
Knox	7	3
Lincoln	3	1
Oxford	1	.5
Penobscot	18	7.5
Piscataquis	1	.5
Sagadahoc	4	1.75
Somerset	7	3
Waldo	0	0
Washington	5	2
York	23	10
Out of State	13	5.5
TOTAL	235	100

2002 SUMMARY OF SANCTIONS ISSUED AFTER HEARING
Bar Rules Found to Have Been Violated
(Certain decisions cited multiple rule violations)

Grievance Commission Reprimands – 2

RULE	MISCONDUCT	NUMBER
3.4(c)(e)(f)	Conflict of interest	1
3.6(a)	Neglect of client matter	1
	TOTAL	2

Grievance Commission Dismissal w/warnings – 3

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	1
3.2(f)(4)	Conduct prejudicial to administration of justice	1
3.6(a)	Neglect of client matter	2
3.6(e)(iii)	Failure to maintain record of all funds	1
	TOTAL	5

Court: Reprimand (1) Suspensions (7) Disbarments (5)

RULE	MISCONDUCT	NUMBER
2(c)	Failure to respond to Bar Counsel	3
3.1(a)	Conduct unworthy of an attorney	10
3.2	Admission, disclosure and misconduct	2
3.2(f)(2)	Trustworthiness / fitness as an attorney/illegal conduct	4
3.2(f)(3)	Misrepresentation / deceit	6
3.2(f)(4)	Prejudicial to the administration of justice	10
3.3(a)	Excessive Fees	6
3.4(b)	Conflict of interest	1
3.5(a)(1)(2)	Improper withdrawal	5
3.6(a)	Conduct during representation	3
3.6(a)(2)	Handling a legal matter without adequate preparation	7
3.6(a)(3)	Failure to employ reasonable care and skill	9
3.6(e)(1)	Preserve Identity of funds in identifiable account	1
3.6(e)(2)	Failure to identify funds	1
3.6(e)(2)(iv)	Failure to promptly return funds or possessions to client	1
3.7(e)(1)	Improper adversarial conduct	1
3.7(e)(1)(i)	Improper adversarial conduct; misleading / false statement to tribunal	2
6(a)(1)	Failure to notify Board of change of address	2
7.2(c)	Temporary Suspension	1
7.3(b)	Improper compromise/restitution	1
7.3 (h)	Reciprocal disbarment	1
9(i)	Failure to refund fee award	1
	TOTAL	78

2002 BAR COUNSEL FILES

AREA OF LAW	NUMBER	PERCENT OF TOTAL
FAMILY	39	29.3
JUVENILE	2	1.5
CRIMINAL	41	30.8
TRAFFIC	0	0
PROBATE WILLS	7	5.3
GUARDIANS	0	.0
COMMERICAL	0	.0
COLLECTIONS	5	3.8
LANDLORD/TENANT	0	0
REAL ESTATE	12	9.0
FORECLOSURE	0	0
CORPORATE / BANKING	1	.8
TORTS	4	3.0
ADMINISTRATIVE LAW	1	.8
TAXATION	0	0
PATENTS / COPYRIGHT	0	0
IMMIGRATION	0	0
ANTITRUST	0	0
ENVIRONMENTAL	1	.8
CONTRACT / CONSUMER	1	.8
LABOR LAW	3	2.3
WORKERS COMPENSATION	6	4.5
OTHER	7	5.0
BANKRUPTCY	3	2.3
MUNICIPAL LAW	0	.0
ELDER LAW	0	.0
TOTALS	133	100%

2002 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
Conspiracy	4	3.0
Disagreement over conduct of case	30	23.0
Habeas Corpus	26	20.0
Inquiry Only	3	2.0
Insufficient information	4	3.0
Lack of professionalism	9	7.0
Malpractice	3	2.0
Personal life	8	6.0
Request for legal assistance	31	23.0
Interference with justice	0	.0
Other	15	11.0
TOTAL BAR COUNSEL FILES DOCKETED	133	100%

Bar Counsel Files pending at start of period	17
New Bar Counsel Files received	133
Total Bar Counsel Files on Docket	150
Bar Counsel Files finally dismissed	148
Bar Counsel Files pending investigation	2
Dismissals appealed (Request for review filed)	30
Action on review of those appeals:	
Dismissals affirmed by lay member	24
Dismissals vacated by lay member (re-docketed as Grievance Commission File)	2
Reviews pending decision as of 12/31/02	4

FEE ARBITRATION COMMISSION

FEE ARBITRATION COMMISSION

Petition Summary
January 1, 2002 – December 31, 2002

PETITIONS:

Pending at start of period:	25
Docketed during period:	82*
Total open petitions during period:	107
Dismissed, settled, withdrawn:	41
Heard and closed by awards:	48
Heard and awaiting awards:	4
Total petitions closed during period:	89
Total petitions pending at close of period:	18

*Represents two matters re-opened after dismissal

BREAKDOWN OF HEARING DATES BY PANEL:
(County/Counties)

Panel IA: (York)	7
Panel IB: (Cumberland)	3
Panel II: (Androscoggin, Franklin, Lincoln, Oxford & Sagadahoc)	6
Panel III: (Kennebec, Knox, Somerset & Waldo)	11
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis & Washington)	5
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TOTAL HEARING DATES:	32

Comparison of new Petitions docketed:

2000 - 94
2001 - 96
2002 - 80

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