BAR COUNSEL'S 1995 ANNUAL REPORT

J. Scott Davis
Bar Counsel
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This document and the attachments comprise Bar Counsel's 1995 Annual Report summarizing the operations of the Board of Overseers of the Bar's three agencies: the Grievance Commission, the Fee Arbitration Commission and the Professional Ethics Commission. A brief discussion of certain issues studied or considered by the Board in 1995 is also included.

The Grievance Commission consists of five geographically distributed three-member panels, each consisting of two lawyers and one public member. The Fee Arbitration Commission also consists of five geographically distributed three-member panels, which may conduct hearings with either two lawyer members and one public member, or two public members and one lawyer member. The Professional Ethics Commission consists of eight lawyers. A complete listing of the 1995 membership of the Board and these Commissions is included at the end of this report.
public.

District attorney hearings and the dispositions issued are open to the investigation and review process is confidential. Although the investigation by bar counsel, see M. Bar R. 7.1(d), and the contents of grievances complained of which have been either in person or by conference call, reviews with bar counsel, respondent attorneys are present as grievance commission panels, in 1994. These are not hearings, and neither complaints nor 188 complaints, compared with 33 such meetings for 259 complaints on 29 occasions for the purpose of conducting preliminary reviews of I. Case Reviews - Panels of the Grievance Commission met on.

B. Panel Meetings and Hearings.

from a registration base of 3,062 resident Maine active attorneys. These 225 different attorneys complained about came complainants. Those 225 different attorneys involved a total of 66 (usually unrelated) multiple complaints. Those 225 attorneys who had more than one complaint filed against them in total were 62 attorneys who had more than one complaint filed against them. In fact, there were instances where more than one complaint was filed against an individual attorney. In fact, these 251 complaints were in the context of the entire attorney population. What is of

I. Grievance Commissions.

A. Complainants
From those 29 panel reviews, 167 complaints were closed by either issuance of dismissals (142), or dismissals with a warning to the respective attorneys (25).

2. Disciplinary proceedings - Grievance Commission panels also conducted public disciplinary or related hearings resulting in 24 dispositions, including nine (9) reprimands of attorneys. After hearing of six (6) matters, Bar Counsel was directed to file further court proceedings (informations) seeking to impose sanctions of either suspension or disbarment. The Commission conducted one (1) reinstatement hearing which resulted in an order of the Court later in 1995.

i. REPRIMANDS

A brief description of the proven misconduct in the nine reprimands issued by the Grievance Commission is listed below.

For a more detailed review of these or other public disciplinary decisions, copies are available at the Board of Overseers of the Bar's office, 97 Winthrop Street, P.O. Box 1820, Augusta, Maine 04332-1820 ((207) 623-1121).

1. Lawyer engaged in a conflict of interest by representing both a buyer and a current client who was the seller in a real estate transaction, and by failing to withdraw from representation of the seller upon learning of that client's misrepresentations to the buyer. Conduct was found to have been in violation of former Bar Rule 3.4(c) concerning multiple employment.
Rule 3.2(f) was violated by the attorney's former client. The panel also found that without consent from the client, violation was found of that the information was part of a public record, and confidentiality client information, being that incorrectly checking his client's file, an attorney revealed without investigating integrity, without

4. In response to an investigative inquiry, without

S-258 4/11/95

of overseers of the bar v. Phillip L. Ingenier, GCP # 92
and was in violation of the bar rule 3.6(a)(3). Board
were months was found to be more than a mere discourtesy
failure to respond at all to such reasonable requests for over
information as able in a reasonable time period. Failure
exists to at least respond and/or provide such
consulted to provide information, a reasonable obligation
relationship? When requested by the former client's new
continue beyond termination of the attorney/client
termination of the attorney/client

3. An attorney's obligation to a client was found to

Stephan A. Little, Esq., GCP # 43-K-14 3/29/95.
(former client's), Board of Overseers of the Bar v.
transactions, in violation of former bar rule 3.4(e)
opposing party reference relevant real estate
matter because he had previously been counsel to the

2. Lawyer engaged in a conflict of interest in a divorce


Board of Overseers of the bar v. Richard L. Rhodes, Esq.
misrepresentation to his client of the nature of his conversation with that investigator. Board of Overseers of the Bar vs. David S. Turesky, GCF #93-S-124 4/26/95. 

5. Client went to the attorney's office requesting her file be sent to her new counsel. Attorney became angry and responded to the client in a loud and profane manner, indicating that the file would not be forwarded until he had been through it. He also followed her out the office door, continuing to yell at her demanding payment of his fee, threatening suit and using more profane language. Panel found that an attorney has a duty to accept a discharge of employment in a professional manner and to cooperate with the client and successor counsel in transferring the matter without prejudice to the client. Those duties during discharge apply whether or not the attorney has been paid. This conduct was found to have been unworthy of an attorney and prejudicial to the administration of justice. Maine Bar Rules 3.1(a) and 3.2(f)(4). Board of Overseers of the Bar vs. Julio V. DeSanctis, GCF #94-S-5 10/16/95.

6. Failure to commence suit against a contractor until shortly after the statute of limitations had run (resulting in the court's dismissal of that action), was in violation of Maine Bar Rule 3.6(a); attorney's transfer of his interests in his residence to his wife was found to have been prompted at least in part by an
intent to defraud creditors, in violation of Maine Bar Rule 3.2(f)(3).

7. Drafting of a mortgage and note from a corporation, of which the attorney was clerk, to that attorney's client, being a 50% shareholder of the corporation, without the consent of all shareholders and which potentially favored that client over the corporation, was in violation of former Maine Bar Rule 3.4(c). Evidence also indicated that the interests of the other 50% shareholder, the corporation and the attorney's client were so divergent that the attorney should have withdrawn or obtained specific consent to his continued representation; his failure to do so was in violation of former Rule 3.4(c). Board of Overseers of the Bar v. Richard L. Currier, GCF #93-G-164 11/20/95.

8. Attorney neglected a client's case for nearly two years and even after receiving a complaint from Bar Counsel never did anything else on the case, with it eventually being dismissed by the court. He also failed to notify the client of that dismissal. Violations were found of Bar Rules 2(c) (failure to respond to the Petition); 3.1(a) (conduct unbecoming an attorney); and 3.6(a)(2), (3) (lack of preparation and neglect of a matter). Board of Overseers of the Bar vs. Daniel H. Reich, GCF #94-G-56 11/27/95.
9. Lawyer was reprimanded for his participation in the contemptuous conduct of his wife in a custody matter and for filing disciplinary complaints against two adverse counsel and two participating judges in that matter, in violation of Bar Rule 3.2(f)(4). Board of Overseers of the Bar v. Arthur B. LaFrance, Esq., GCF # 92-S-270 12/21/95.

ii. OTHER GRIEVANCE COMMISSION DISPOSITIONS

Certain other complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or further court proceedings. After hearing, seven (7)\(^1\) other matters were dismissed for lack of proof of any violations of the Maine Bar Rules, and one (1) dismissal with a warning was issued.\(^2\)

C. CHARACTERIZATION AND AREA OF LAW

As the attached statistics indicate, 86 (34\%) of the 251 grievance complaints received in 1995 alleged misconduct relating to Maine Bar Rule 3.6(a)(2),(3), and that percentage compares to

\(^1\)One such matter was dismissed at the unilateral request of Bar Counsel without hearing of any evidence, upon Bar Counsel being informed by the complainant that she requested that dismissal and that she had earlier filed the complaint as the result of pressure from another. (GCF #94-S-44).

\(^2\) Upon agreement of both Bar Counsel and Respondent's counsel, the result in this instance was affirmed by the Board reference Bar Counsel's objection to the panel's report under Bar Rule 7.1(e)(5)(B).
another attorney.

With an adverse party and 33 (13%) filed by a court or of an attorney, with 134 (22%) being of that type, followed by 75 fact that most complaints are filed by present or former attorneys.

The attached Appendix demonstrates the expected and continuing D. SOURCE OF COMPLAINTS SIZE OF LAW OFFICE

Complaints with 24 (9.5%) and being 38 (12.5%), followed by real property with 33 (12%).

latter comprised the second highest number of complaints in 1995, matters comprising the second highest number of complaints in 1995, complaints arising in tort decided as to that of 1994 (31%), of the 25 complaints, at most complaints are filed, being 80 (22%) of the 350 complaints, arising from the most frequent law area, which is divorce/family law.

As has consistently occurred over the years, divorce/family interest.

Commission, three (3%) resulted in a finding of a conflict of commission, three (3%) resulted in a finding of a conflict of interest. By comparison, of those matters that went to hearing in 1995 and resulted in by the grievance matters, 25 (20%) matters were 25 (20%) matters alleging a conflict of interest.

There were 25 (20%) with matters involving interference with justice totaling 50 (20%) with matters involving interference with justice.

Complaints dealing with misrepresentation, deceit or fraud.

Referral, suspension or discipline - either heard in 1995 that resulted in some form discipline - either heard in 1994. An suggested by the attached additional data, a
Sole practitioners were the focus of 106 (42%) of the complaints filed, being a very slight decrease from those of 1994 (44%). Complaints filed against offices comprised of two (2) attorneys increased to twenty-one (21%), compared with 17% from 1994, with complaints against offices of three to six attorneys remaining virtually the same, twenty-one (21%) compared to 1994 (22%).

E. BAR COUNSEL FILES

Bar Counsel Files constitute matters which upon initial review by Bar Counsel do not appear to allege professional misconduct subject to any sanction under the Maine Bar Rules. See M. Bar R. 7.1(c). There were 179 such filings in 1995, representing a marked increase from the number docketed in 1994 (134). As a result, by combination of such matters with all unrelated formal grievance complaints discussed above, the number of written allegations of attorney misconduct filed with Bar Counsel in 1995 totalled 430, a 26% increase from 1994 (340). Maine Bar Rule 7.1(c) provides for Bar Counsel's unilateral dismissal of Bar Counsel Files with or without investigation, with a complainant having the right to request review by a Grievance Commission Panel Chair for the initial half of the reporting period, January 1 - June 30, 1995. That is, by Rule amendments effective on July 1, 1995, such requests are now reviewed on a rotating basis by lay members of the Board or Grievance Commission.

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3 See Appendix, Bar Counsel Files, specifically Footnote 13.
notifying the client of that fact, and was less than
patent application was delayed, the attorney delayed
client when he inquired about those delays. When the
in filing the application and was non-responsive to the
2. Attorney was retained to obtain a patent, but delayed
1/18/95.
of the bar, Martin R. Johnson, Docket No. BAR-92-2
exceeds of $100,000 of clients' funds. Board of Overseers
the case demonstrated a pattern of misappropriation in
answer the information filed by the Board. The facts of
1. Lawyer was defrauded and disbursed after failing to

A. DISPARATE

1. tilt and distemps

1) Contempt - 3) nonparticipation in hearings
2) Appointment - 3) Of a representative - 4) Of a representative
5) Suspension - 2) Suspension of Suspension - 1) Disbarment
- 2) Disbarment - 3) Disbarment - 4) Disbarment
- 5) Disbarment - 6) Disbarment - 7) Disbarment

II. COURT MATTERS

December 31, 1995. (see Appendix)
commission panel's review, and 3 matters remained under review on
disbarment, 1 disbarment was vacated and docketed for a grievance
that action. 2 of those requests resulted in affirmative or the
by Bar Counsel in 1995, with 5 complaints requesting review of
one hundred forty-two (142) bar complaints were dismissed
diligent in filing an amendment to the patent application. When the amended application was denied, he again failed to properly notify the client of that denial. Attorney never informed client of the appeal options and did no further work for client despite leading the client to believe he would do so. Disbarment issued for violations of Maine Bar Rules 3.1(a), 3.2(f)(1),(4); 3.3; 3.6(a)(2),(3) and 9(f). Board of Overseers of the Bar v. David F. Gould, Docket No. BAR-95-3 5/10/95.

3. The Board sought to have the Court suspend or disbar a current attorney from the practice of law for fraudulent conduct which occurred while he was a District Court Judge. That conduct occurred between May 1986 and July 1987 (while he was a judge and not practicing law) dealing with fraudulent misrepresentations he and others made in order to obtain easements across real estate owned by a Milton Ferrell. After a trial in July 1990, the Superior Court entered judgment on a jury verdict against him, finding him jointly and severally liable for $250,000.00 in compensatory damages and personally liable for $75,000.00 in punitive damages. See Ferrell v. Cox, 617 A.2d 1003 (Me. 1992). The Board's information was

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4Having been disbarred on May 10, 1995, Gould failed to satisfy his obligations under M. Bar R. 7.3(i). After hearing, the Court approved the Board's Motion for Contempt. Finding was made that although he had since filed the affidavits, he had been in contempt from June 9, through October 20, 1995, but the imposition of further sanctions would serve no purpose.
dismissed by the court because the respondent was found to not be properly subject to attorney discipline procedures concerning his conduct during any period of judicial service. Board of Overseers of the Bar, v. David M. Cox, Docket No. BAR-94-5 1/3/95. Several months later, however, pursuant to matters processed and reported by the Committee on Judicial Responsibility and Disability, the court imposed its authority to discipline Cox for his "avaricious and dishonest conduct" that occurred while he was a judge. In that context, the court concluded that the restoration of public confidence will be better served by Cox's disbarment from the practice of law." (In re: David M. Cox, Docket No. JUD-93-1 5/22/95).

4. The Board brought a motion for contempt and disbarment, and on the last business day prior to the scheduled hearing, the defendant advised the Board via fax from North Carolina that he would not attend the hearing and stated his "consent to any order (the Court) chooses to enter." The Court found that the defendant's ineffective attempt to resign and by correspondence with the Court had concealed his inability to comply with acceptable standards of professional conduct. Board of Overseers of the Bar, v. Thomas F. Malone, Jr., Docket Nos. BAR-90-13; BAR-91-33; and BAR-
5. Attorney found to have violated Bar Rules 2(c), 3.1(a), 3.5(a)(2), 3.5(a)(3), 3.6(a)(2) and (3) concerning matters that he neglected while employed as an Assistant Attorney General and on other matters later in private practice. In addition to being neglectful, he had also engaged in deceit and failed to take steps to mitigate client problems he had created. Upon analysis of the American Bar Association's Model Standards for Imposing Lawyers' Sanctions, the Court found that the attorney's conduct caused potentially serious injury to the State of Maine, that he engaged in a pattern of neglect with respect to client matters and knowingly deceived a client with the intent to benefit himself. Disbarment was issued with several conditions being required to be met should he seek reinstatement to practice law in Maine. Board of Overseers of the Bar v. Terrance J. Brennan, Docket No. BAR-95-6 12/26/95.

B. SUSPENSIONS

1. The New Hampshire Supreme Court suspended an attorney for 6 months, and upon motion of the Board for reciprocal discipline a six month suspension was also issued in Maine. Board of Overseers of the Bar v. Teresa DeNafia, Docket No. BAR-94-7 1/30/95.

2. Attorney neglected a matter involving her agreement
with substantial conditions to be satisfied should
conduct, suspension issued for a period of one (1)
year and 3.6(a)(c). It was further found that there
was a significant psychological component to his neglect
of his law practice, this condition being diagnosed as
a "disorder or disease with disturbances of emotions ...
3.1(a), 3.6(a)(1), (2), (3) and 3.6(h)(1) and 3.6(h)(2) of
judgment was entered, finding violations of Bar Rules 2(c),
also failed to plead or otherwise defend the disciplinary
matter. At hearing, she admitted her neglect and offered
matter. She also was determined in an unrelated probate
repeated requests for information about the status of the
trust, and also neglected to respond to the client's
requests for review documents for the creation of an inter vivo

A. Granter, F/K/A Tenero A. Houck, Bar-95-7 7/24/95.

client matters, Board of Overseers of the Bar v. Tenero
objectively and expeditiously identifying determinative
court and bar counsel's review and approval, for
including the establishment of a method, subject to the
two-year period with several probatorily conditional
90-day suspension, suspending all that suspension for
3.1(a), 3.6(a)(1), (2), (3) and 3.6(h)(1) and 3.6(h)(2) of
judgment was entered, finding violations of Bar Rules 2(c),
also failed to plead or otherwise defend the disciplinary
matter. At hearing, she admitted her neglect and offered
matter. She also was determined in an unrelated probate
repeated requests for information about the status of the
trust, and also neglected to respond to the client's
requests for review documents for the creation of an inter vivo
reinstatement be sought. Board of Overseers of the Bar

C. PROBATIONARY CONDITIONS

Attorney convicted by plea of guilty in the U.S. District
for conspiring to defraud the Interstate Commerce
Commission and the Department of Defense of the United
States in violation of 18 U.S.C. §371. The thrust of
the charge involved unlawful conduct to obtain contracts
for the interstate transportation of military property.
Earlier indefinite suspension of July 25, 1994 was
terminated by the Court's order of June 14, 1995, subject
to a two-year period of probation-like conditions on the
attorney, including supervision of his practice by
another attorney, completion of a minimum of 15 hours of
continuing legal education in each year, and in the fall
semester of 1995 to enroll in the University of Maine
School of Law's class on the Maine Code Professional
Responsibility. Board of Overseers of the Bar v. Brian
L. Datson, Docket Nos. BAR-94-3; 95-4 6/14/95.

D. REINSTATEMENT HEARINGS

1. Upon Petitioner's second petition seeking
reinstatement to the Maine Bar the Court found that the
petitioner had now "acknowledged the wrongfulness of (his
earlier) conduct to some of the witnesses who testified
of proof of clear and convincing evidence applies to all
law court. Therein confirming that a petitioner’s burden
petitioner’s reinstatement was heard and affirmed by the
petitioner’s reinstatement was heard and affirmed by the
denial of

3. The single justice’s (Judge, J.) denial of
responsibility examination, Board of overseers of the
satisfactory completion of the multistate professional
within six months of re-admission he submitted proof of
monitor the petitioner’s practice for one year, and
petitioner submit a letter from an attorney willing to
so order reinstatement subject to conditions that the
recommendations approving reinstatement. The court did
by a report from the board adopting that panel’s
recommendations by that panel earlier in 1995, followed
recommendations with detailed findings and
cravance commission with hearing before a panel of the

2. A matter proceeded to hearing before a panel of the
Syracuse v. State of Maine, Board of overseers of the
interest amounts as earlier ordered. Judge A.
determine an amount of reinstatement and also pay said to former clients of
expenses incurred in connection with that petition for
payment to the Board of overseers for all necessary
reinstatement was appropriated and so ordered subject to
statements. The court was therefore persuaded that
explanations for the inconsistent findings in its prior
on his behalf. Moreover, in his testimony he offered
matters under Bar Rule 7.3(j) and that a petitioner's conduct during the reinstatement process is an appropriate factor for consideration and assessment of whether reinstatement should be approved. Board of Overseers of the Bar v. Andrews B. Campbell, 663 A.2d 11 (Me. 1995).

E. CONTEMPT

1. The Court's earlier order in 1994 obligated an attorney to file a timely affidavit attesting to his compliance with Bar Rule 7.3(i) (notifying clients, attorneys, courts and agencies of his suspension status) and he was found to have failed to file that material in accordance with that order. He was found in contempt of the Court but in light of the fact that at the time of hearing he was otherwise properly practicing law under conditions set forth by the Court's order, no further sanction was imposed. Board of Overseers of the Bar v. Earle S. Tyler, Jr., Docket No. BAR-93-14; 94-4 4/5/95.

2. Lawyer was found in contempt of a disbarment order for engaging in the practice of law by giving opinions on the status of real estate titles. Board of Overseers of the Bar v. Richard S. Edwards, Docket Nos. BAR-93-12 and BAR-93-18 10/10/95.
The role of the office of bar counsel in the fee arbitration agreement or engagement letter between the parties concerning fees.

recovery of fees and expenses when there is no written fee agreement or engagment, or other basis for now bears the burden of proof of an agreement, or other basis for R. 9(g)(11) effective January 1, 1995, requiring that the attorney result at the request of the board, the court promulgated M. Bar

Jack of any written fee agreement between the parties. As a most disputes heard by the commission continue to involve the prior to hearing. See M. bar R. 9(e)(3).

either dismissed, settled, or withdrawn by consent of the parties commission chair Peter M. Garcia, Esq., 48 other fee disputes were commission secretary Trimm, and with approval by fee arbitration commission assistant bar counsel Karen C. Knagey and dispose of 41 petitions. With preliminary assistance and arbitration panels met for a total of 25 occasions to hear and created a total docket of 166 petitions for 1995. Various with 19 petitions already pending, the 87 new petitions

Trimm. (see Appendix).

with the secretary to the fee arbitration commission, Jaye M.

of the disputes, 87 (34.3%) of which were later returned and filed at the board received 254 requests for petitions for arbitration

III. FEE ARBITRATION COMMISSION
Grievance Commission, or does not involve any fee dispute. Bar Counsel may attempt to promote and assist in the informal resolution of fee disputes prior to hearing by a panel. See M. Bar R. 9(e)(2). Additionally, pursuant to Board Regulation No. 8, the Fee Arbitration Commission and Grievance Commission are authorized to share respective investigative 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 the issuance of five (5) formal advisory opinions on ethical questions presented. As a result, Opinion Nos. 148 - 152 were issued by the Commission, and are briefly summarized below:

Opinion No. 148 (March 30, 1995)

Bar Counsel asked the Commission to review a provision of the Judicial Department's Contract for Criminal Defense Services requiring the contracting attorney to: 1) inform the presiding judge of any non-privileged information concerning the financial status of clients; and 2) advise clients that financial information pertaining to their eligibility for appointed counsel would not be privileged information unless at the same time it were probative of guilt or innocence. It was concluded that compliance with such a contractual obligation would not violate the Maine Bar Rules if it
required by Rule 3.3(d), and a further disclosure arrangement at the expense of the Bar Rules to these would be no violation of the Bar Rules. The Commission concluded there were aggravated assault claims. The Commission concluded there were property division issues in the divorce action and the attorneys negotiated a total settlement of both the violate the Bar Rules and whether it would do so if the agreement pertaining to the assault claim was substantiality question concerned whether a contingent fee damages from her husband for an aggravated assault. A undertaken representation of the same client to recover could accept a referral fee from another attorney who has attorney representing a client in a divorce proceeding the Commission dealt with the issue of whether the

**Opinion No. 150 - (May 12, 1995)**

mediation services.

non-lawyers from sharing fees received solely from concluded that the Bar Rules do not prohibit lawyers and providing mediation services. The Commission also being co-owners of an enterprise that engages solely in Bar Rules do not prohibit lawyers and non-lawyers from In this opinion the Commission concluded that the

**Opinion No. 149 - (May 10, 1995)**

to the charges for which counsel had been appointed. Innocence of the client was not intended to be implied as assumed that the phrase "prophylactic of the guilt or
pursuant to Rule 3.4(f)(2) were made with respect to the interest of divorce counsel in a share of the referral fee, as it might conflict with a divorce client's interest in a favorable division of marital property. The Commission observed that a marital property division might reduce the assets available to satisfy a judgment for damages and attorney fees in the aggravated assault action.

**Opinion No. 151 (May 12, 1995)**

This opinion deals with two related questions: 1) do the Bar Rules prohibit agreements between lawyer and client to submit future fee disputes to binding arbitration conducted under AAA rules outside the procedures of Bar Rule 9; and 2) do the Bar Rules prohibit an agreement requiring client to submit future fee disputes to binding arbitration but allowing the client to choose between Rule 9 and some other procedure? It was concluded that the first variation would violate the Bar Rules, because Rule 3.3(c) requires resolution of a fee dispute in accordance with Rule 9 at the request of the client. The second variation was found not in violation of the Bar Rules because, although some arbitration would be required, the client could elect to proceed under Rule 9.
service of the new increased membership of the grievance
grievance commission. With the growing experience and
public and two attorneys - also be members of the
requirement that at least three board members - one
commission, there had been a preference and resulting
of the bar rules and creation of the board and grievance
of the bar. In the early days following the promulgation
required to include any members of the board of overseers
members be on the grievance commission is no longer
1. bar rule 4(d) (9) was amended to provide that
proceedings see page 18. Other amendments are as follows:
9(g) (1) concerning the burden of proof in fee arbitration
reference has earlier been made to the amendment to bar rule

A. AMENDMENTS TO THE MAIN BAR RULES

A. MISCELLANEOUS MATTERS

mandatory fee arbitration, bar rule 3.3(c).
and the right of citizens to instigate
Rule 3.6(h), ' and the right of citizens to instigate
be in violation of attorney-client confidentiality, bar
payment. This practice was found by the commission to
payment to the bank even if there was no default in
of citizens and the right to notify creditors to make
bank all its receivables including names and addresses
with a bank which required that the law firm assign the
A law firm assigned as to establish a credit line
Option No. 152 - October 6, 1995
Commission, such a duality requirement was deemed no longer necessary for the voluntary membership of either the Board or the Grievance Commission.

2. Bar Rules 4(e) and 5(g) have been added to now clearly provide for immunity from liability for any conduct by members of the Board, Bar Counsel, Assistant Bar Counsel, Board and Bar Counsel staff and the Board's Commissions in the course of their official duties under any provision of the Maine Bar Rules.

3. LD 237 was presented to the Legislature in 1995 involving a proposed additional grievance complaint process through the Department of the Attorney General. Although the bill eventually was withdrawn, and in fact Attorney General Andrew Ketterer himself spoke against its passage and in favor of keeping the Board's complaint process in its present form, related amendments were made to the Bar Rules to provide for more public involvement at the leadership and decision-making levels. In that regard, Rule 4(a) was amended to require that lay members of the Board of Overseers shall now be appointed by the Court on the recommendation of the Governor. Further, Bar Rules 7(b)(3) and 7.1(c)(1) were amended to provide that on a rotating basis lay members of both the Board and the Grievance Commission shall review those matters where a complainant files a written request for review of Bar Counsel's dismissal of a matter under Rule 7.1(c),
as an example of that discussion, bar counsel and the
in which the grievance complaint process might be detrimented to
Hunter engaged in discussions to understand and develop better ways
In early 1995, bar counsel Dave and MPA president Susan
meetings and workshops of the MPA's substance abuse committee
other organizations involving ethical issues, and also attended
the Maine State Bar Association, local county bar associations and
appear on panels at various continuing legal education seminars of
bar counsel and assistant bar counsel continued to assist and
C. ASSISTANCE TO THE MAINE STATE BAR ASSOCIATION

property of an attorney's counsel.
26 from opining to anyone else - including a client - as to the
protected by both advisory opinion No. 67 and board regulation No.
regrettably attorney's own situation, because bar counsel is
advice without first considering that the conduct relates to the
without the Maine Bar Rules. Bar counsel will not provide any such
under the Maine Bar Rules, bar counsel will not provide any such
of either that attorney's or the attorney's firm's proposed conduct
assistance is limited to providing an attorney with an assessment
advisory opinions, usually over the telephone. Bar counsel's
assistance to Maine attorneys through the rendering of informal
The office of bar counsel continues to provide daily
B. INFORMAL ADVISORY OPINIONS

professional misconduct by an attorney.
the matters deemed by bar counsel not to allege
Board revised the format and language of the initial grievance complaint docketing letter as mailed to attorneys. That approach was used further later in the year when Bar Counsel Davis spoke to a meeting of the MSBA Family Law Section to explain and receive complaints about the processing of grievance complaints in the context of ongoing divorce litigation.

Bar Counsel Davis also co-authored with Augusta Attorney Malcolm L. Lyons an article published in the July 1995 edition of the Maine Bar Journal entitled, How to Avoid Making a Bad Situation Worse - Responding to a Complaint to the Board of Overseers of the Bar. In that article, the authors presented their respective suggestions from both sides of the grievance complaint process as to the proper and most professional manner in which to respond to grievance complaints.

D. CONTINUING LEGAL EDUCATION - BAR RULE 6(a)

In filing their registration statements, Maine attorneys continue to be required by Bar Rule 6(a) to list all formal continuing legal education in which they participated in the preceding calendar year. Accordingly, through the efforts of Board member Craig A. McEwen, Ph.D., the Board has filed with the Court its Report on Voluntary Continuing Legal Education by 1995 Maine Bar Registrants. Although that report was completed and filed in 1996, because it directly relates to the educational activities of Maine attorneys in 1995, it is attached herein as a part of Bar Counsel's 1995 Annual Report. As indicated, it is noted that
Summer meeting of the Maine State Bar Association on June 14, 1996, the Board of the 8-2-1. The Committee filed a draft proposal of the committee.

Deeply involved in promoting the public interest, the board may establish such a committee to assist the study as it shall deem advisable.

...commissions, agencies, or persons, to assist the study as it shall deem advisable. The board may establish such a committee to assist the study as it shall deem advisable...
F. visiting committee

Acting under those same responsibilities set forth in Bar Rule 4(d)(17), the Board also appointed a Visiting Committee to conduct a study of the operations of the Grievance Commission, the Fee Arbitration Commission, and the Professional Ethics Commission with a goal of gauging the effectiveness, fairness and public perception of the disciplinary process. To reach that goal, the Committee proposed at least four methods:

1. To visit and observe meetings of Grievance and Fee Arbitration Commission panels;
2. To conduct a survey using written questionnaires and telephonic interviews with members of the Bar and public.
3. To review the content and availability of information relating to the disciplinary process.
4. To have a sub-committee examine the process by which formal and informal ethics opinions are administered and delivered.

As a result of its involvement and review activities, substantial changes were made to the Fee Arbitration Commission's informational pamphlet resulting in a more readable and helpful publication being issued. It was also understood that at the conclusion of its study, the Committee would issue a formal written

In July of 1996 by a vote of 6-1 (two members absent), the Board voted to recommend that the Court establish a client protection fund rule. That draft rule presently remains under study by the Court.
The fee arbitration commission, by board of overseers, was requested by board staff for utilization by board of overseers. A visiting committee member and charter member of the conference concerning the fee arbitration commission as authorized by Robert F. Visiting committee's inquiry, an earlier and similar guide as a result of the authors' work in this regard and the

Because the committee assumed more projects to study than

Committee and Financial Consultant.

The grantee committee resignation, the client protection fund advisory committee of the board of overseers, the fee arbitration committee, unprepared service to make's bar and public as a member of various term (of the board of overseers) was filled and is now available for that term, the committee's more than 17 years of voluntary and committee. Mr. Schum's position has been replaced by a board finance board. His position has been replaced by a board finance consultant to the service as the court-appointed financial consultant to the board also accepted with regret Mr. Schum's resignation.

Important booklet.

Has invaluable time and expertise in the preparation of that the commission are most thankful to the author, Marc V. Schum, for complaint through court proceedings. In that regard, the board and familiar with the grantees complaint process, from filling of the

Grievance Commission's Orientation Guide, wherein new members to the Grievance Commission now have a quite detailed booklet to become

1995 saw the authorship and board approval of the Grievance

28
H. PROPOSED MAINE BAR RULE AMENDMENTS

Although not formally submitted to the Court in calendar year 1995, the Board did give extensive consideration and eventual approval in that year to proposed amendments in two areas of the Maine Bar Rules.

First, having become concerned as to the extensive time and hearing levels involved in the reinstatement process under Bar Rule 7.3(j), the Board gave final approval to a proposal for an amendment to that rule to provide for petitioners to submit a filing fee and completed Board questionnaire at the time any petition for reinstatement is filed. The petition and questionnaire are then reviewed by Bar Counsel who will decide whether to approve or oppose the petition. If Bar Counsel indicates approval, the matter is considered by the Board with the petitioner present to confirm the Board's agreement with that assessment. If the Board disagrees, or if in the first instance Bar Counsel files an opposition to the petition, the matter is set for hearing before a panel of the Grievance Commission.9

The Board also gave extensive study and approved proposed amendments of the registration and fee payment rules, Bar Rules 6 and 10. The Board acted in response to criticisms often presented mostly by non-resident Maine attorneys conducting an active practice elsewhere. Under the earlier (1995) language and

9Effective April 15, 1996, the Court adopted and promulgated this rule amendment as proposed by the Board.
interpretation of the Bar Rules, any registered Maine attorney actively practicing elsewhere was required to pay an annual registration fee, even if conducting no practice in the State of Maine. Pursuant to the Board's proposed amendments, any inactive Maine attorney is to be required to register and pay one-half of the active fee in the applicable active registration category for the first three years of inactive status. After that three year period, no fee or registration statement need be filed, but upon petitioning for reinstatement, a reinstatement fee and an arrearage amount is required from all such inactive attorneys seeking to resume active status.\footnote{Effective April 15, 1996 the amendments as submitted by the Board were approved by the Court.}

**CONCLUSION.**

Maine's disciplinary system and its related fee arbitration and ethics components could not operate successfully without the dedication of its many public and attorney volunteers, all of whom serve without pay. Bar Counsel and staff wish to thank all of those many volunteers for their support of and contribution to that disciplinary system.
The Board of Overseers and Bar Counsel are interested in providing improvement and becoming more effective in protecting the public and the integrity of the Maine bar, and any suggestions are welcome. Also, any attorney needing a conference room for a meeting or a deposition in the Augusta area is invited to make use of the Board's conference room.

Respectfully submitted,

Dated: August 13, 1996

J. Scott Davis, Bar Counsel
Board of Overseers of the Bar
97 Winthrop St., P.O.Box 1820
Augusta, Maine 04332-1820
TEL: 623-1121 FAX: 623-4175
BAR COUNSEL'S 1995 ANNUAL REPORT

VII. APPENDIX

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS
AND FEE DISPUTES

REPORT ON VOLUNTARY CONTINUING LEGAL EDUCATION BY 1995
MAINE BAR REGISTRANTS

MEMBERSHIP LISTS
III. Grievance Complaint Summary

IV. Dispositions After Public Hearing - 23 complaints

I. Complaints Reviewed - 188

GRIFVANCE COMMISSION

January 1, 1995 to December 31, 1995
DISCIPLINARY COMPLAINT AND HEARING SUMMARY
Disciplinary orders issued:

1. Disbarments 5
2. Suspensions 2
3. Suspended Suspensions 1
4. Resignation 0
5. Reprimand 1
6. Dismissal 1
7. Reinstatements
   a. approved 3
   b. denied 1
8. Contempt found 3
9. Probation w/o suspension 1

Total: 18

Total Disciplinary Matters Pending - 12/31/95

A. Grievance Commission

1. Complaints to be investigated and reviewed: 112
2. Complaints awaiting Grievance Commission disciplinary proceedings: 20
3. Complaints heard - decisions pending: 3

B. Supreme Judicial Court of Maine

1. Attorneys involved in pending informations or actions 10
   (15 complaints)
2. Informations authorized, but not yet filed 5
   (7 complaints)

TOTAL: 150

(Comparative total for 1994 - 158)

11Includes one matter initiated and processed by the Committee for Judicial Responsibility and Disability against a former judge.
<table>
<thead>
<tr>
<th>Number</th>
<th>Rule</th>
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<tbody>
<tr>
<td>1</td>
<td>Violation of client confidences 3.6(h)</td>
</tr>
<tr>
<td>2</td>
<td>Neglect of client matter 3.6(a)</td>
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<td>2</td>
<td>Excessive fees 3.3(a)</td>
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<tr>
<td>2</td>
<td>Predjudicial to the admin. of justice 3.2(f)(4)</td>
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<td>2</td>
<td>IIlegal conduct 3.2(f)(2)</td>
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<tr>
<td>2</td>
<td>Conduct unworthy of an attorney 3.1(a)</td>
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<tr>
<td>2</td>
<td>Failure to cooperate w/bar counsel 2(c)</td>
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<tr>
<td>2</td>
<td>Misconduct 2(a)</td>
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Court Suspensions / Disbarments - 6:

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<tr>
<th>Number</th>
<th>Rule</th>
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<td>Violation of client confidences 3.6(f)</td>
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<td>2</td>
<td>Neglect of client matter 3.6(a)</td>
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<tr>
<td>2</td>
<td>Conflict of interest 3.4(c)(e)</td>
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<tr>
<td>2</td>
<td>Predjudicial to the admin. of justice 3.2(f)(4)</td>
</tr>
<tr>
<td>2</td>
<td>Misrepresentation / deceit 3.2(f)(3)</td>
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<tr>
<td>3</td>
<td>Conduct unworthy of an attorney 3.1(a)</td>
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<tr>
<td>2</td>
<td>Failure to answer charges 2(c)</td>
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Grievance Commission Requirements - 9:

Bar Rules found to have been Violated:

1995 Summary of Disciplinary Impositions
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<tr>
<th>Characterization</th>
<th>Number</th>
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<tr>
<td>2. Conflict of interest</td>
<td>25</td>
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<tr>
<td>3. Neglect</td>
<td>86</td>
<td>34</td>
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<td>4. Relationship w/client</td>
<td>15</td>
<td>6</td>
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<tr>
<td>5. Misrepresentation/fraud</td>
<td>53</td>
<td>21</td>
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<td>6. Excessive fee</td>
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<td>5</td>
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<tr>
<td>7. Interference w/justice</td>
<td>50</td>
<td>20</td>
</tr>
<tr>
<td>8. Improper advertising/soliciting</td>
<td>0</td>
<td>0</td>
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<tr>
<td>9. Criminal conviction</td>
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<td>10. Personal behavior</td>
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<td>1</td>
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<tr>
<td>11. No cooperation w/Bar Counsel</td>
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<td>12. Medical</td>
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<td>13. Incompetence</td>
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<td>14. Jurisdiction</td>
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<td>15. Conduct unworthy of attorney</td>
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<td>16. Other</td>
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<p>| Total                                          | 251    | 100             |</p>
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**Key:**
- X. Bankruptcy
- W. Worker's Comp
- U. Labor
- T. Contract/Consumer
- S. Environmental
- R. Anti-Trust
- Q. Immigration
- P. Patent
- O. Taxation
- N. Administrative Law
- M. Torts
- I. Corporate/Bank
- K. Foreclosure
- J. Real Property
- I. Landlord/Tenant
- H. Collections
- G. Commercial
- F. Guardianship
- E. Probate/Will
- D. Traffic
- C. Criminal
- B. Juvenile
- A. Family
### 1995 GRIEVANCE COMPLAINTS

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<th>SOURCE OF COMPLAINT</th>
<th>NUMBER</th>
<th>PERCENT OF TOTAL</th>
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<td>1. Client</td>
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<td>2. Adverse Party</td>
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<td>3. Lawyer or Judge</td>
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<td>4. Board or Staff</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>251</strong></td>
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### TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

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<td>1. Sole Practitioner</td>
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<td>3. 3-6</td>
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<td>4. 7-10</td>
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<td>5. 11 or more</td>
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<td>6. Government and Other</td>
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<td><strong>Total</strong></td>
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### TOTAL COMPLAINTS BY AGE OF ATTORNEYS

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<td>4. 50-59</td>
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<td>5. 60+</td>
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<td>PERCENT OF TOTAL</td>
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Complaints by County

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</tbody>
</table>

1. Woodville
2. Penobscot
3. Hancock
4. Franklin
5. Cumberland
6. Kennebec
7. Knox
8. Lincoln
10. Penobscot
11. Sagadahoc
12. Somerset
13. Washington
14. Waldo
15. York
16. Out of state

7. Not admitted in ME
6. Less than 2 years
5. 2-9 years
4. 10-19 years
3. 20-29 years
2. 30-39 years
1. 40-61 years
## 1995 BAR COUNSEL FILES

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<th>CHARACTERIZATION</th>
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<th>PERCENT OF TOTAL</th>
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<td>2. Disagreement over</td>
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<td>7</td>
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<tr>
<td>conduct of case</td>
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<tr>
<td>3. Habeas Corpus</td>
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<tr>
<td>4. Insufficient information</td>
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<td>8</td>
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<tr>
<td>5. Lack of professionalism</td>
<td>25</td>
<td>14</td>
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<td>6. Malpractice</td>
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<td>0.5</td>
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<tr>
<td>7. Personal life</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>8. Request for legal assistance</td>
<td>82</td>
<td>46</td>
</tr>
<tr>
<td>9. Other</td>
<td>13</td>
<td>7</td>
</tr>
</tbody>
</table>

Total Bar Counsel Files Docketed: 179\(^{13}\) 100%

Bar Counsel Files pending at start of period: 41

Total Bar Counsel Files on docket: 220

Bar Counsel Files closed during period: 199

Bar Counsel Files pending at end of period: 21

Bar Counsel Files Dismissed: 142

Dismissals appealed: 36

Action on review of those appeals:

- Dismissals affirmed: 32
- Dismissals vacated: 1
- (re-docketed for Grievance Commission Panel review):
- Reviews open as of 12/31/95: 3

\(^{13}\)Includes 7 matters originally docketed as Bar Counsel Files, and later transferred to formal grievance complaint status prior to December 31, 1995.
<table>
<thead>
<tr>
<th>Percentage of Total</th>
<th>Number</th>
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<tr>
<td>100</td>
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<tr>
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</table>

N. Other/None
M. Municipal
L. Bankruptcy
K. Worker's Comp
J. Labor
I. Torts
H. Corporate/Bank
G. Real Property
F. Landlord/Tenant
E. Collections
D. Commercial
C. Probate/Will
B. Criminal
A. Family

Area of Law

1995 Bar Counsel Files
FEE ARBITRATION COMMISSION
PETITION SUMMARY
January 1, 1995 through December 31, 1995

PETITIONS:

Pending at start of period: 19
Docketed during period: 87
Total open petitions during period: 106
Dismissed, settled, withdrawn: 48
Heard and closed: 41
Heard and awaiting awards: 0
Total petitions closed during period: 89
Total petitions pending at close of period: 17

BREAKDOWN OF HEARING DATES BY PANEL:

Panel IA: (York) 3
Panel IB: (Cumberland) 7
Panel II: (Androscoggin, Franklin Lincoln, Oxford & Sagadahoc) 5
Panel III: (Kennebec, Knox, Somerset & Waldo) 6
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis, & Washington) 4
TOTAL: 25

Comparison of Petitions docketed:
1993: 111
1994: 89
1995: 87
In their 1995 registrations, 68.8% of all active Maine bar registrants reported engaging in

Voluntary participation in CLP was higher in 1995 than 1994, although the reasons for that higher
reported continuing legal education in the second year of the Rule. It shows that self-reports
their voluntary participation in continuing legal education. This report briefly summarizes self-
to wait at least a year to see whether, with all knowledge of the Rule, Maine lawyers increased
calendar year of activity already nearly complete. Any long-term effects of the Rule would have
in the initial year many lawyers were unaware of the Rule, and its effective date applied to a
implementation year of this new Rule. Among those reporting participation was the observation that
Voluntary continuing legal education participation by Maine bar registrants is the initial
Voluntary continuing legal education by 1994 Maine Bar Registrants describes the pattern of
when the prior calendar year. An earlier report to the Supreme Judicial Court (Rogerson
required to complete a statement describing their participation in continuing legal education
Beginning in 1994, all attorneys registering as active members of the Maine bar were

Craig McEwen
March 1996

Maine Bar Registrants
Report on Voluntary Continuing Legal Education by 1995
at least some CLE activity, compared to 57.5% the previous year\(^2\). The percentage of active registrants reporting completion of 12 or more hours also increased, from 42.8% in 1994 to 51.2% in 1995. The increases in reported CLE participation occurred in virtually all Maine counties and for all sizes of law firms (see Tables 1 and 2). Participation in CLE remains related to years of practice but has increased for all experience groups. While 66% of lawyers with five or fewer years of experience report CLE in their 1995 registrations (compared to 48% in 1994), roughly 72% of those with 6 to 30 years of practice reported some CLE (compared to about 60% in 1994). Lawyers with over 30 years of experience were least likely to report any CLE — 56% indicated that they had engaged in at least some CLE in 1995 compared to 40% in 1994.

The increase in reported CLE participation was a little bit greater for registrants practicing in Maine than for out-of-state registrants. In 1994, 48.6% of out-of-state registrants reported at least some CLE while 36% indicated completion of 12 or more hours. In 1995, these percentages grew modestly to 56.1% and 42.4% respectively. For lawyers in Maine practice, the percentage reporting completion of at least some CLE grew from 62% in 1994 to 72.9% in 1995 and from 45% reporting 12 or more hours in 1994 to 54.1% in 1995.

In the previous report to the Court, there was no evidence about completion of continuing legal education on issues of professional responsibility. The 1995 registration form clarified questions about such CLE work, so that it is now possible to report on it. In 1995, 35.9% of all

\(^2\) The data on CLE hours were extracted from the Registration statements by Debbie Mazeroll. No effort was made to screen the self-reports for the "legitimacy" of the CLE reported. Some confusion in the way that lawyers were asked to report total CLE hours produced some inconsistency in data entry early in the process of recording the data. Although many of these early errors were corrected, some may remain. These may distort slightly the percentages reported here of lawyers completing 12 or more hours of CLE, but they have no effect on the computation of percentages of lawyers who reported no CLE at all.
active Maine registrants reported at least one hour of CLE on professional responsibility. Out-of-state registrants were somewhat more likely than in-state registrants to report such CLE - 40.0% of out-of-state registrants compared to 34.6% of in-state registrants.

The general self-reported increase in CLE participation in the first full year of the new CLE reporting requirement is consistent with the view that hortatory standards can modify lawyer conduct. However, although these patterns of change appear encouraging, it is not clear whether they represent real increases in CLE participation as a result of the hortatory standard, better record-keeping and fuller reporting of CLE activity once lawyers knew the Rule was in effect, or more imaginative interpretation of what might be counted as CLE. If the second or third year's reporting, 48.8% of all active Maine registrants report completing fewer than 12 CLE hours per year and only 35.4% report at least one hour of CLE work on issues of professional responsibility. Nearly one-third of Maine registrants report no CLE during the previous calendar year.
Table 1. Percent Registered Lawyers Reporting No CLE by Firm Size and Registration Year

<table>
<thead>
<tr>
<th>Size/Character of Law Firm</th>
<th>% No CLE 1994</th>
<th>% No CLE 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole</td>
<td>45.1%</td>
<td>38.9%</td>
</tr>
<tr>
<td>2 person</td>
<td>39.3%</td>
<td>26.5%</td>
</tr>
<tr>
<td>3-6 person</td>
<td>32.2%</td>
<td>20.9%</td>
</tr>
<tr>
<td>7-10 person</td>
<td>26.5%</td>
<td>23.0%</td>
</tr>
<tr>
<td>11-49 person</td>
<td>27.9%</td>
<td>18.9%</td>
</tr>
<tr>
<td>50-99 person</td>
<td>27.7%</td>
<td>43.8%</td>
</tr>
<tr>
<td>100 plus person</td>
<td>45.3%</td>
<td>20.5%</td>
</tr>
<tr>
<td>Public employee</td>
<td>47.1%</td>
<td>34.5%</td>
</tr>
<tr>
<td>Other</td>
<td>63.0%</td>
<td>58.6%</td>
</tr>
<tr>
<td>Location of Practice</td>
<td>1994</td>
<td>1995</td>
</tr>
<tr>
<td>----------------------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Out of State</td>
<td>50.9%</td>
<td>46.5%</td>
</tr>
<tr>
<td>Androscoggin</td>
<td>29.8%</td>
<td>28.4%</td>
</tr>
<tr>
<td>Aroostook</td>
<td>48.5%</td>
<td>29.5%</td>
</tr>
<tr>
<td>Cumberland</td>
<td>34.1%</td>
<td>40.7%</td>
</tr>
<tr>
<td>Franklin</td>
<td>25.0%</td>
<td>36.6%</td>
</tr>
<tr>
<td>Hancock</td>
<td>41.7%</td>
<td>28.2%</td>
</tr>
<tr>
<td>Kennebec</td>
<td>42.1%</td>
<td>25.8%</td>
</tr>
<tr>
<td>Knox</td>
<td>43.9%</td>
<td>34.4%</td>
</tr>
<tr>
<td>Lincoln</td>
<td>47.2%</td>
<td>15.2%</td>
</tr>
<tr>
<td>Oxford</td>
<td>26.3%</td>
<td>22.4%</td>
</tr>
<tr>
<td>Penobscot</td>
<td>35.7%</td>
<td>22.2%</td>
</tr>
<tr>
<td>Piscataquis</td>
<td>50.0%</td>
<td>39.2%</td>
</tr>
<tr>
<td>Sagadahoc</td>
<td>57.8%</td>
<td>33.3%</td>
</tr>
<tr>
<td>Somerset</td>
<td>38.1%</td>
<td>27.3%</td>
</tr>
<tr>
<td>Waldo</td>
<td>40.0%</td>
<td>16.0%</td>
</tr>
<tr>
<td>Washington</td>
<td>33.3%</td>
<td>25.3%</td>
</tr>
<tr>
<td>York</td>
<td>33.3%</td>
<td></td>
</tr>
</tbody>
</table>
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