

**MAINE BOARD OF  
OVERSEERS OF THE BAR**

**BAR COUNSEL'S ANNUAL REPORT  
1997**

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## TABLE OF CONTENTS

INTRODUCTION	3
I. GRIEVANCE COMMISSION	3
A. Complaints	3
B. Panel Meetings and Hearings	4
1. Case Reviews	4
2. Disciplinary Proceedings	4
i. Reprimands	5
ii. Other Grievance Commission Dispositions	6
C. Bar Counsel Files	7
II. COURT MATTERS	8
A. Disbarment	8
B. Suspensions	9
C. Contempt	13
D. Reprimand	13
E. Resignations	13
III. FEE ARBITRATION COMMISSION	14
IV. PROFESSIONAL ETHICS COMMISSION	15
Opinions	15 - 17
V. MISCELLANEOUS MATTERS	17
A. The Maine Lawyers' Fund for Client Protection	17
B. Amendments to the Maine Bar Rules	18
C. Informal Advisory Opinions	19
D. Telephonic Screening of Complaints	19
E. Assistance to the Maine State Bar Association	20
F. Election as NOBC Treasurer	20
G. Additional Matters Considered by the Board	21
CONCLUSION	22
APPENDIX	23-35

# **BOARD OF OVERSEERS OF THE BAR**

## **Bar Counsel's 1997 ANNUAL REPORT**

### **INTRODUCTION**

I enclose my Annual Report for 1997 reference the Board of Overseers of the Bar and its three agencies: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission (18 total members) and the Grievance Commission (25 total members) conduct their respective duties under the Maine Bar Rules by three-member panels. Each grievance panel is comprised of two lawyers and one lay (public) member. The fee panels may be so comprised or alternatively consist of two public members and one lawyer. Information concerning the responsibilities and duties of the Board and 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 1820, Augusta, ME. 04332-1820. Tel. # (207)623-1121. Please also note the respective membership lists, attached as part of the Appendix herein.

### **I. GRIEVANCE COMMISSION**

#### **A. COMPLAINTS**

Two hundred twenty-eight (228) written grievance complaints that initially stated some *prima facie* claim of misconduct by Maine attorneys in violation of the

Code of Professional Responsibility (Code) were received, screened and so docketed as Grievance Commission Files (GCF) by the office of Bar Counsel in 1997. That was a slight decrease from the number so filed in 1996 – (232). As discussed later, there were also an additional 150 filings that were docketed as Bar Counsel Files, being matters which the office of Bar Counsel screened as not stating any violation of the Code. See M. Bar R. 7.1(c) and 7.1(d).

## **B. PANEL MEETINGS AND HEARINGS**

1. **Case Reviews** -- Panels of the Grievance Commission met on 28 occasions and conducted final preliminary reviews of 244 complaints. These meetings consist of a panel consulting with Bar Counsel or an Assistant Bar Counsel to review the contents of grievance complaint (GCF) investigative files. These are not hearings, and the investigation and review process is by rule confidential. Any subsequent disciplinary hearing and the disposition issued are always open and available to the public. From those 244 reviews, 221 complaints were closed by issuance of either a dismissal (194) or a dismissal with a warning (27) to the involved attorney. See M. Bar R. 7.1(d)(3), (4). The respective review panels found probable cause that professional misconduct subject to sanction had occurred in 23 matters, and thereby directed those complaints be processed for disciplinary hearings open to the public.

2. **Disciplinary proceedings** – Grievance Commission panels also conducted public disciplinary hearings resulting in 20 decisions being issued in 1997, including 4 reprimands of attorneys. On 5 of the matters heard, Bar Counsel was directed to file *de novo* proceedings before the Maine Supreme Judicial Court

(Court) seeking to impose the more serious disciplinary sanctions of either suspension or disbarment of the respective attorneys. A brief description of the proven misconduct in those 4 reprimands issued by the Grievance Commission is presented below. Copies of those and all other public disciplinary decisions are available at the Board of Overseers of the Bar's office at the address and telephone number on the title page of this Annual Report.

**i. Reprimands**

1. An attorney represented an older client in several matters including a personal injury claim. In reprimanding the attorney, the hearing panel of the Grievance Commission found that he had violated M. Bar R. 8(d) by failing to execute a written contingency fee agreement with the client. The panel also found that the lawyer violated M. Bar R. 3.1(a) and 3.6(a)(3) by not reporting and accounting to the medical providers in a timely manner. Board of Overseers of the Bar v. Thomas M. Mangan, GCF# 96-G-41 (August 1, 1997).

2. An attorney was reprimanded for a violation of M. Bar R. 2(c) for failing without good cause to respond to an inquiry by Bar Counsel. The hearing panel rejected the attorney's explanation that he thought the client's complaint was simply one of excessive fees. Instead, it found that the attorney's failure to respond to Bar Counsel's inquiry was an attempt to circumvent Commission review of the entire grievance complaint. Board of Overseers of the Bar v. Thomas E. Powers, GCF# 96-G-104 (April 23, 1997).

3. Although there was no formal attorney-client relationship between the respondent-attorney and his former wife, and despite lack of any prior disciplinary record, the hearing panel reprimanded the attorney for conduct involving dishonesty and deceit in violation of M. Bar R. 3.2(f)(3). It found that the attorney had given inaccurate and incomplete advice to his ex-wife in connection with her investment in a business venture. Board of Overseers of the Bar v. Hercules E. Ruffolo, Esq., GCF#96-S-79 (April 2, 1997).

4. The respondent-lawyer had acted as the personal representative of an estate. One of the beneficiaries of the decedent's will visited the lawyer both at his office and at the decedent's home on more than one occasion to arrange for the distribution of certain estate property to herself and her mother. On at least one of those occasions the lawyer inappropriately touched her and made remarks of a sexual nature to her. The hearing panel found that lawyer also inappropriately used his position as personal representative in his professional dealings with that beneficiary in terms of which property she would be allowed to receive. The panel found that his misconduct violated both M. Bar R. 3.1(a) and 3.2(f)(2). Board of Overseers of the Bar vs. Homer Waterhouse, GCF#96-S-225 (April 17, 1997).

## **ii. OTHER GRIEVANCE COMMISSION DISPOSITIONS**

Certain other complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or further proceedings before the Court. After hearing, 7 matters were dismissed for lack of proof of any violation of

the Code, and 1 matter resulted in issuance of a dismissal with a warning for minor violations of the Code.

The Grievance Commission also heard two reinstatement petitions in 1997, each resulting in the respective Grievance Commission Panels (with one of those reports actually being issued in 1998) recommending that each former lawyer not be reinstated to the Maine bar.

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 1997. The Appendix also includes a table indicating the various rules which the Grievance Commission and Court found violated in those matters where discipline was imposed after hearing.

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

As referenced above at page four, Bar Counsel Files constitute matters which upon initial review and approval by Bar Counsel were deemed not to allege any professional misconduct subject to sanction under the Maine Bar Rules. See M. Bar R. 7.1(c). Ultimately, there were 150 such final filings in 1997, a decrease from the number so docketed in 1996 (163). 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 1997 totaled 378 compared to 395 so filed in 1996. 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 a review by a lay member of the Board or Grievance Commission. 162 Bar Counsel Files were

approved by Bar Counsel for dismissal in 1997, with 40 complainants requesting review of that action. 35 of those requests were decided in 1997, resulting in approval of 33 dismissals, and 2 dismissals being vacated and docketed for a Grievance Commission panel's review. (See Appendix).

## **II. COURT MATTERS**

After conducting hearings in 17 matters, single justices of the Maine Supreme Court issued 19 sanctions, which are briefly summarized below.

### **A. DISBARMENT (1)**

1. An attorney was appointed conservator of the estate of an older person who was a patient and resident of a nursing home. During his conservatorship, the attorney withdrew over seventy-nine thousand dollars (\$79,000) from his ward's accounts, never explaining or accounting to the Court for those withdrawals. The attorney invoked his Fifth Amendment privilege against self-incrimination numerous times, and refused to answer questions about how he may have handled or managed his ward's estate. Although the attorney was constitutionally entitled to invoke that privilege, the Court drew adverse inferences against the lawyer for relying on the privilege and disbarred him. Board of Overseers of the Bar v. Charles Kadish, Docket No. BAR 96-17 (Lipez, J.) (June 27, 1997).

### **B. SUSPENSIONS (9)**

1. A buyer of certain land complained to the Board about her attorney concerning a real estate transaction gone awry, and the attorney responded to that complaint. The attorney, however, then also shared that response with the seller's real estate agent thereby revealing confidences entrusted to her by her



former clients at a time when the attorney's clients were seeking a return of their deposit. The Court found that misconduct to be a violation of M. Bar R. 3.6(h), reprimanded the lawyer and also suspended her for a period of 60 days, that suspension itself being suspended for a period of one year. Board of Overseers of the Bar v. Lenore A. Grant, Docket No. BAR-96-11 (Rudman, J.) (January 14, 1997).

2. An attorney kissed or attempted to kiss a female client at least three times while she was working for him in his office. Although the attorney testified that the purpose of the kissing was not sexual, the Court found that he had intended at least some of the kissing to be sexual and that his client considered the acts as unwanted advances. The Court suspended the attorney for 30 days. Board of Overseers of the Bar v. Thomas M. Mangan, Docket No. BAR-96-15 (Clifford, J.) (January 31, 1997).

3. A lawyer was convicted in Federal District Court of the crime of aiding and abetting the violation of Federal currency reporting requirements. Although after hearing the Maine Court found that the attorney's conviction was more than a technical violation of Federal law, it also determined that his actions were not motivated by personal gain or by gain for his client. The Court issued a reprimand and also suspended the lawyer for 90 days, that suspension itself being suspended on the condition that he commit no further violation of the Code of Responsibility for a period of two years. Board of Overseers of the Bar v. Daniel W. Mooers, Docket No. BAR-97-6 (Wathen, C.J.) (August 22, 1997).

4. An attorney engaged in varying degrees of neglect of several different clients' legal matters involving real estate, personal injury, assault and post-divorce in violation of M. Bar R. 3.1(a), 3.2(f)(4) and 3.6(a) in each instance. The attorney also failed to provide a file to replacement counsel in violation of M. Bar R. 3.6(e)(2)(iv). During the investigation and prosecution of the various complaints the attorney also totally ignored all inquiries from Bar Counsel in three instances in violation of M. Bar R. 2(c). The Court found her misconduct serious and suspended her license to practice law in Maine for 90 days with no future reinstatement being allowed absent petitioning the Court for reinstatement pursuant to M. Bar R. 7.3(j). Upon filing of any petition for reinstatement, she must demonstrate compliance with certain conditions imposed by the Court. Board of Overseers of the Bar vs. Sue A. Bushey, Docket No. Bar-97-10 (Rudman, J.) (September 17, 1997).

5. An attorney gave false sworn testimony as a witness in a deposition in a bankruptcy proceeding relating to his late father. Even though the attorney was not providing professional services at the time, the Court found such conduct to be unworthy of any attorney in violation of M. Bar R. 3.1(a) and prejudicial to the administration of justice in violation of M. Bar R. 3.2(f)(4). The Court suspended the attorney for 90 days, and suspended that suspension subject to certain conditions including the respondent-attorney receiving the services of a Monitor attorney. Board of Overseers of the Bar v. Richard K. Dubois, Docket No. BAR-96-12 (Rudman, J.)(April 18, 1997).

6. The attorney knew the adverse party to be represented by counsel and that counsel had previously informed the attorney in writing to have no contact with his client. Nevertheless, the attorney welcomed that represented adverse party to his office, communicated with her, and had her sign a settlement agreement, a waiver of counsel and a stipulation of dismissal all in the absence of the adverse party's counsel. The Court concluded violations of M. Bar R. 3.6(j) and 3.2(f)(4) had occurred and imposed a 60-day suspended suspension. The Court found certain mitigating circumstances and also appointed an attorney Monitor for the attorney's practice. Board of Overseers of the Bar v. John J. Lynch, Docket No. BAR-97-2 (Lipez, J.) (June 30, 1997).

7. The attorney was subject of a two-count disciplinary information under the Bar Rules. In the first count, he had undertaken to represent the personal representative of an estate. The attorney wrote checks to cash from the Estate account and deposited them to his own account. He told the personal representative that he would charge \$5,000 to do the probate work, but ended up charging \$13,000. He did not render an accurate final accounting and charged a percentage fee. After hearing, the single justice found that the attorney had violated M. Bar R. 3.1(a), 3.3(a), 3.4(f)(2)(ii) and 3.6(e)(2)(iii) and imposed an eight month suspension. (However, upon appeal the Law Court in January of 1998 issued its decision and vacated the single justice's findings of misconduct in Count II due to lack of fair notice to the attorney that he could possibly be sanctioned for lack of good moral character or intemperate conduct. The matter was thereby reversed and remanded to a single justice for hearing as to the appropriate

sanction to be imposed for the proven misconduct involved in Count I. Board of Overseers of the Bar vs. Albert P.C. Lefebvre, BAR-96-8 (Glassman, J.)(February 3, 1997); reversed and remanded on appeal @ 707 A.2d 69 (Me. 1998.)

8. An attorney improperly borrowed money from a client, improperly handled client funds and was not punctual in attending to client business and keeping the client informed. The Court found that the attorney had violated M. Bar R. 3.1(a), 3.4(f)(2), 3.6(a) and 3.6(e) and imposed a suspension of six months and one day which will require the former attorney to petition and be approved for reinstatement. Board of Overseers of the Bar vs. James W. Millett, Docket No. BAR-96-10 (Roberts, J.)(January 29, 1997).

9. An attorney had serious cash flow problems in his law firm resulting in an arrears to the Internal Revenue Service of some \$40,000 in payroll taxes. The IRS was threatening a levy, and the attorney transferred the balances in his operating account to his client trust account in clear violation of M. Bar R. 3.6(e)(1). The attorney engaged in other misconduct with respect to improving his cash flow situation including changing the employment status of a paralegal employee to that of independent contractor without her knowledge or consent. The Court found that the attorney showed remorse, had acknowledged the wrongfulness of his actions and had taken successful steps to correct his financial difficulties. The Court imposed and suspended a 60 day suspension with conditions. Board of Overseers of the Bar vs. John M. Whalen, Docket No. BAR-96-5 (Clifford, J.)(February 10, 1997).

### **C. CONTEMPT(1)**

On March 3, 1997, the Court ordered an attorney to submit his client trust accounts to an audit for the period July 1, 1995 to October 31, 1996. He failed to obey that order and on October 22, 1997 the Court found him in contempt and suspended the attorney indefinitely. That suspension itself was suspended provided that he submit his client trust accounts and his office operating account to an audit for the period January 1, 1997 to June 30, 1997 inclusive. Board of Overseers of the Bar v. Richard B. Slosberg, Docket No. BAR-96-16 (Clifford, J.) (October 22, 1997).

### **D. REPRIMAND**

An attorney gave advice to clients about their property rights in a real estate transaction. The attorney later represented another client in a quiet title action brought by those former clients. He did not obtain the former clients' informed written consent thereby violating M. Bar R. 3.4(d)(1). The Court imposed a reprimand and assessed costs of \$500. Board of Overseers of the Bar v. Earle S. Tyler, Jr., Docket No. BAR-97-7 (Rudman, J.) (December 19, 1997). \_\_

### **E. RESIGNATIONS (2)**

The Court accepted the resignation of two attorneys pursuant to M. Bar R. 7.3(g). Board of Overseers of the Bar v. Richard M. Reamer, Docket No. BAR-96-9 (Roberts, J.) (January 29, 1997); Board of Overseers of the Bar v. Geoffrey Brown, Docket No. BAR-97-4 (Dana, J.) (May 23, 1997).

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

In 1997 the Board received 239 requests for petitions for arbitration of fee disputes, 96 (40.17%) of which were later returned and actually filed with the Secretary to the Fee Arbitration Commission, Jaye M. Trimm (See Appendix). With 37 petitions already pending, those 96 new petitions created a total docket of 133. Various arbitration panels met on 32 occasions to hear and dispose of 52 petitions (4 of which were heard in 1996 with Awards being rendered in 1997). With preliminary assistance and involvement of Assistant Bar Counsel Karen G. Kingsley and Commission Secretary Trimm, and approval of Fee Arbitration Commission Chair Valerie Stanfill, Esq., 50 other fee disputes were dismissed, settled or withdrawn by consent of the parties prior to any panel hearing. See M. Bar R. 9(e)(3).

The role of the office of Bar Counsel in the fee arbitration process is one of reviewing and screening petitions that have been filed with the Secretary to determine if the matter warrants the attention of that Commission or should also be processed by the Grievance Commission. Bar Counsel may attempt to promote and assist in the informal resolution of fee disputes prior to hearing by a panel but is not otherwise usually involved after the initial screening. See M. Bar R. 9(e)(2). Pursuant to Board Regulation No. 8, the Fee Arbitration Commission and Grievance Commission may and do share respective investigation materials concerning related matters.

## **IV. PROFESSIONAL ETHICS COMMISSION**

The eight (8) attorney members of the Professional Ethics Commission met on seven occasions to discuss, draft and approve the issuance of six (6) formal advisory opinions on ethical questions presented and issued Opinion Nos. 155-160 as briefly summarized below. In addition to these six formal opinions, the Commission also responded by informal letter to many attorneys' requests on a variety of issues including: attorney fees, conflicts of interest, attorney advertising, acceptance of referrals and communications with an adverse party.

### **A. OPINION NO. 155 (January 15, 1997)**

Bar Counsel requested an opinion from the Commission concerning "positional" conflicts of interest in litigation where an attorney argues opposite sides of the same legal issue for different clients in unrelated proceedings. With one member dissenting, the Commission concluded that an "issue conflict" standing alone was not a conflict within the meaning of Maine Bar Rule 3.4(b). In reaching that conclusion, the Commission considered but declined to follow ABA Formal Opinion #93-377, indicating instead that an attorney in this situation must comply with Maine Bar Rule 3.6(a) and use reasonable care, skill and employ best judgment in performing professional services.

### **B. OPINION NO. 156 (February 5, 1997)**

An attorney inquired if in a family law matter it is proper to represent either spouse who, when the attorney is out of the office, each separately call for an appointment with that attorney. The Commission decided that the attorney may represent either party unless, as a result of the initial communications, the

attorney obtained confidential information or a secret that is material to the representation disclosed in good faith by an adverse party.

**C. OPINION NO. 157 (March 5, 1997)**

An attorney asked whether M. Bar R. 8(c) prohibits a contingent fee agreement in post-divorce proceedings to enforce the division of property set forth in the decree. Finding that such a proceeding was neither the procurement of a divorce nor a case where the method of determination of attorney fees is otherwise expressly provided for by statute or administrative regulations, the Commission answered the question in the negative and allowed use of such a fee agreement.

**D. OPINION NO. 158 (April 3, 1997)**

An attorney inquired if it would be a violation of the Maine Bar Rules to have a partnership with a non-lawyer to provide lobbying and other governmental related consulting services. The Commission concluded that the attorney could do as proposed if the attorney assumed inactive status under Rule 6(c) and there were adequate disclosures made of the attorney's altered status and consequent inability to practice law. In reaching this conclusion, the Commission determined that new Maine Bar Rule 3.2(h) relating to law related services did not alter the analysis of or the result reached in the opinion.

**E. OPINION NO. 159 (November 6, 1997)**

An attorney asked several questions about possible conflicts of interest when an attorney represents an adoption agency and also is paid by the agency to represent the birth mother. The Commission concluded that if there was a



conflict, it was waivable citing Maine Bar Rule 3.4(c)(2) and Opinion No. 90-6 of the Vermont Bar Association in an analogous situation.

**F. OPINION NO. 160 (November 26, 1997)**

Bar Counsel requested an opinion from the Commission and asked if an attorney in employment cases may have a contingent fee agreement with a client which provides that if the attorney is successful (re-employment or other court or administratively ordered relief), the attorney may choose whether to be paid on an hourly or on a percentage basis, whichever is greater. The issue arises in employment cases because frequently the only relief obtained is re-employment, and plaintiffs' attorneys would like to charge an hourly rate if there is no monetary recovery otherwise providing a source from which to collect a contingent fee. The Commission concluded that while the proposed agreement was proper, an attorney may not include as part of a fee calculated on a percentage basis any court awarded costs for which the client has separately reimbursed the attorney.

**V. MISCELLANEOUS MATTERS**

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

Upon receipt of the Board's written request in support of the majority report of the Client Protection Fund Advisory Committee and upon study, formal hearing and revision, the Court promulgated the Maine Rules For Lawyers' Fund For Client Protection. Although those Rules became effective on July 1, 1997, the Fund's Board of Trustees shall pay only claims for dishonest conduct occurring after January 1, 1999. Although the Fund is separate and apart from the Board of

Overseers, at the direction of the Court, the Board of Overseers does request and collect the \$20.00 annual assessment from all Maine attorneys for deposit in the Fund's account.

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

At the request of the Board of Overseers, the Court amended the following Maine Bar Rules in 1997:

- M. Bar R. 4(c) was amended to provide that the Board's meetings are open to the public subject to three categories of confidentiality exceptions;
- M. Bar R. 7.3(k) was amended to still require the Board (and Bar Counsel) to keep the initial processing of grievance complaints confidential, but to remove earlier language suggesting that complainants or witnesses were subject to a confidentiality requirement;
- M. Bar R. 6(b)(6) and 9(i) were amended to provide possible Court disciplinary action for attorneys that fail to issue refunds of monies within 30 days of receipt of an award of the Fee Arbitration Commission ordering that refund; and
- M. Bar R. 9(e)(5)(E) and (F) were added to require attorneys, within 30 days of filing suit for a fee, to mail to the involved client written notice of the right to initiate arbitration of the fee dispute before the Fee Arbitration Commission.

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

The office of Bar Counsel continues to provide daily assistance to Maine attorneys through the rendering of informal advisory opinions, usually over the telephone. In those instances, Bar Counsel may only provide an attorney with an assessment of either that inquiring attorney's or that attorney's firm's proposed conduct under the Maine Bar Rules. See Advisory Opinion No. 67 and Board Regulation No. 28. In 1997, attorneys in the office of Bar Counsel answered approximately 650 such telephone inquiries. In addition, Bar Counsel provides written informal advisory opinions upon the request of an attorney inquiring about his or her conduct or proposed course of action. Bar Counsel's attorney staff provided seventeen (17) such written informal opinions in 1997.

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

1997 was the first full year of the Board's pilot project whereby attorney staff of the office of Bar Counsel, as time resources allowed, screened telephonic inquiries from potential complainants. During 1997 approximately 377 callers spoke in detail to Bar Counsel or an Assistant Bar Counsel. From that group, 35 people followed up and filed grievance complaints or fee arbitration petitions (or in some cases both) for a total of 43 of the complaints or petitions filed. Therefore, roughly 11% of the people who called the Board and spoke with an attorney, actually later filed a written complaint. Where appropriate, these callers were referred to other organizations, agencies or resources for help with their problem. Some callers did not really have a complaint about an attorney, but rather were seeking legal advice. Of course, Board staff cannot and does not provide legal advice. As in the case of informal advisory opinions, staff attorneys may not opine as to the ethical conduct of a caller's attorney or any other attorney. This approach has not necessarily

resulted in a reduction of complaints received by the Board. However, it does seem to have been helpful in deflecting at least some complaints or inquiries that did not relate to Grievance Commission matters and therefore would not have been appropriate for investigation through the grievance process. Callers are never discouraged from filing a complaint no matter what Bar Counsel may suggest to them as to the nature of their concern, and they are always given the option to proceed and file a written complaint if they so choose. The project is continuing in 1998.

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

Bar Counsel and Assistant Bar Counsel participated in continuing legal education (CLE) seminars of the Maine State Bar Association, including common ethical issues involved in real estate purchase and sale agreements. To promote discussion and receive suggestions for improvements, the Board continued its practice of meeting with the MSBA's Board of Governors at the 1997 Winter Bar Meeting in Portland. At that meeting, mention was made as ways to promote joint study of small law office issues and problems. The two Boards plan on continuing to so meet in the future.

#### **F. ELECTION AS NOBC TREASURER**

In August of 1997, I was elected to serve a one-year term as Treasurer to the National Organization of Bar Counsel (NOBC) and also served as the NOBC's liaison to the ABA's Standing Committee on Ethics and Professional Responsibility. I also participated in CLE panels at NOBC meetings, including one entitled *Complaints Against Bar Counsel*.

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

The Board also gave consideration or action to the following matters at various points in 1997:

- A continuing study of determining if there exists an adequate need for the Board to acquire its own web site, and if so, the appropriate form and purposes for it to accomplish. That matter remained under consideration by the Board at the conclusion of 1997;
- Continuation of an open dialogue with the Maine Legislature, including mailing to all of its members informational pamphlets as to the nature and workings of the Board and the services by its Commissions. In that regard, members of the Board and Bar Counsel met with the Judiciary Committee on January 15, 1997 concerning a pending bill relating to attorney discipline issues. As a result of questions posed at that meeting by members of the Committee, the Board subsequently proposed and the Court duly promulgated amendments to the Maine Bar Rules, e.g., to clarify that Board meetings are generally open to the public and that complainants are not subject to confidentiality restrictions concerning grievances filed with the Board (See page 18 above);
- Through the efforts of Assistant Bar Counsel Karen G. Kingsley with the publisher, the Board continued to bring the revised two-volume edition of the Maine Manual on Professional Responsibility closer to completion. Publication was expected to occur in early to mid 1998; and

- The Board agreed to direct Bar Counsel and the Grievance Commission that grievance complaints relating to “old conduct” of an attorney but received by Bar Counsel after an attorney has been suspended or disbarred, are to be currently processed under the normal procedures of the Maine Bar Rules and not deferred for later hearing at the time reinstatement may be sought.

### **CONCLUSION**

My staff and I again thank all of the many volunteer members of the Board and its Commissions for their time and hard work to facilitate the disciplinary, fee arbitration and ethical advisory processes of the Maine Bar Rules. We continue to encourage any suggestions for improvements. Such comments should be submitted to either me or to the Board Chair for consideration by the Board. Any Maine attorneys needing a conference room for a deposition or other meeting in the Augusta area should telephone me or the Board’s Administrative Secretary, Jaye Trimm, to schedule use of the Board’s conference room for that purpose.

Respectfully submitted,

DATED: September 3, 1998

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**APPENDIX**

**STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS**

**AND FEE DISPUTES**

**MEMBERSHIP LISTS**

January 1, 1997 to December 31, 1997

**GRIEVANCE COMMISSION COMPLAINTS**

I.	<u>Complaints Reviewed</u>	244
	<u>ACTION:</u>	
	Dismissal:	194
	Dismissal with warning to attorney:	27
	Disciplinary hearing authorized:	23
II.	<u>Dispositions After Public Hearing</u>	20 decisions issued
	<u>ACTION:</u>	
	Dismissals:	7
	Dismissal with warning:	1
	Reprimands:	4
	Complaints authorized to be filed with the Court by information:	5
	Information to be filed directly with Court	2
	Reinstatement Denied	1
	Decision pending:	1
III.	<u>Grievance Complaint Summary</u>	
A.	Complaints pending at start of period:	173
B.	New complaints docketed:	228
C.	Total complaints pending during period:	401
D.	Total complaints reviewed or heard:	264
E.	Complaints pending investigation, review or hearing:	137



COURT MATTERS – 1997

Disciplinary orders issued: 19 sanctions (involving 17 complaints)

1. Disbarment	1
2. Suspension	4
3. Suspended suspension	5
4. Resignation	2
5. Reprimand	3
6. Dismissal	1
7. Contempt found	1
8. Reinstatement granted	2

**Total Disciplinary Matters Pending – 12/31/97**

A. Grievance Commission

1. Complaints to be investigated and reviewed:	75
2. Complaints awaiting Grievance Commission disciplinary proceedings:	20
3. Complaints heard – decisions pending:	3
	98

B. Supreme Judicial Court of Maine

1. Complaints concerning pending informations	18
	(13 attorneys)
2. Informations authorized, but not yet filed	0

C. Law Court

1. Appeal argued with decision pending	1
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TOTAL: 117

(Comparative total for 1996 – 131)  
(decrease of 11%)

**1997 SUMMARY OF DISCIPLINARY IMPOSITIONS**

**Bar Rules Found to Have Been Violated<sup>1</sup>**

Grievance Commission Reprimands - 4

RULE	MISCONDUCT	NUMBER
2(c)	Failure to respond to Bar Counsel	1
3.1(a)	Conduct unworthy of an attorney	2
3.2(f)(2)	Illegal conduct	1
3.2(f)(3)	Misrepresentation / deceit	1
3.6(a)(3)	Neglect of client matter	1
	TOTAL	6

Court Suspensions / Reprimands / Disbarments -19

RULE	MISCONDUCT	NUMBER
2(c)	Failure to cooperate w/Bar Counsel	1
3.1(a)	Conduct unworthy of an attorney	6
3.2(f)(2)	Illegal conduct	2
3.2(f)(3)	Misrepresentation / deceit	1
3.2(f)(4)	Prejudicial to the administration of justice	5
3.3(a)	Excessive Fee	1
3.4	Conflict of Interest	3
3.6(a)(3)	Neglect of client matter	3
3.6(e)(1)	Failure to preserve client funds	3
3.6(e)(2)(iii)	Failure to render prompt accounts	1
3.6(e)(2)(iv)	Failure to return property	2
3.6(h)	Breach of client confidences	1
3.6(j)	Communication with adverse party	1
	TOTAL	30

<sup>1</sup>Certain disciplinary decisions cite multiple rule violations.

## 1997 GRIEVANCE COMPLAINTS

### CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
Trust violation	2	1
Conflict of interest	31	13.5
Neglect	96	42
Relationship w/client	3	1.5
Misrepresentation / fraud	50	22
Excessive fee	3	1.5
Interference with justice	36	15.5
Improper advertising / solicitation	1	.5
Criminal conviction	1	.5
Personal behavior	3	1
No cooperation w/Bar Counsel	0	0
Medical	0	0
Incompetence	1	.5
Jurisdiction	0	0
Conduct unworthy of an attorney	0	0
Other	1	.5
<b>TOTAL</b>	<b>228</b>	<b>100</b>

### SIZE OF LAW OFFICE

	NUMBER	PERCENT OF TOTAL
Sole Practitioner	111	49
2	38	17
3-6	43	19
7-10	8	3.5
11 and over	23	10
Government / state /other	3	1.5
<b><u>TOTAL</u></b>	<b>228</b>	<b>100</b>

## 1997 GRIEVANCE COMPLAINTS

### AREA OF LAW

	NUMBER	PERCENT OF TOTAL
Family	64	28
Juvenile	0	0
Criminal	38	16.5
Traffic	0	0
Probate/Wills	22	9.5
Guardianship	0	0
Commercial	4	1.5
Collections	7	3
Landlord/Tenant	2	1
Real Property	24	10.5
Foreclosure	0	0
Corporate/Bank	8	3.5
Tort	13	5.5
Administrative Law	0	0
Taxation	1	.5
Patent	0	0
Immigration	0	0
Anti-Trust	0	0
Environmental	0	0
Contract/Consumer	10	4.5
Labor	3	1.25
Workers' Comp	11	5
Other/None	11	5
Bankruptcy	3	1.25
Municipal	4	1.5
Elder Law	3	1.25
TOTAL	<b>228</b>	<b>100</b>

## 1997 GRIEVANCE COMPLAINTS

### SOURCE OF COMPLAINT

	NUMBER	PERCENT OF TOTAL
Client	134	59
Other Party	62	27.25
Adverse Party	4	1.75
Judge	5	2
Lawyer	14	6
Adverse opponent	1	.5
Sua sponte	7	3
Adverse person	1	.5
<b>TOTAL</b>	<b>228</b>	<b>100</b>

### YEARS IN PRACTICE

	NUMBER	PERCENT OF TOTAL
40-61 years	3	1.5
30-39 years	6	2.5
20-29 years	48	21
10-19 years	83	36
2-9 years	82	36
Less than 2 years	3	1.5
<b>TOTAL</b>	<b>228</b>	<b>100</b>

### AGE OF ATTORNEY

	NUMBER	PERCENT OF TOTAL
24-29	5	2
30-39	45	20
40-49	79	35
50-59	77	34
60+	19	8
Unknown	3	1
<b>TOTAL</b>	<b>228</b>	<b>100</b>

### 1997 GRIEVANCE COMPLAINTS

COUNTY	NUMBER	PERCENT OF TOTAL
Androscoggin	20	11.4
Aroostook	9	3.94
Cumberland	71	31.1
Franklin	2	.87
Hancock	14	6.14
Kennebec	24	10.5
Knox	9	3.94
Lincoln	0	0
Oxford	2	.87
Penobscot	29	12.28
Piscataquis	1	.43
Sagadahoc	4	1.75
Somerset	10	4.38
Waldo	3	1.31
Washington	2	.87
York	21	9.2
Out of State	7	3.0
<b>TOTAL</b>	<b>228</b>	<b>100</b>

**1997 BAR COUNSEL FILES**

AREA OF LAW	NUMBER	PERCENT OF TOTAL
Family	30	18
Criminal	36	22
Probate/Wills	14	9
Commercial	1	1
Collections	6	4
Landlord/Tenant	3	2
Real Property	14	9
Corporate/Bank	3	2
Torts	11	7
Labor	1	1
Worker's Comp	15	9
Bankruptcy	1	1
Municipal	1	1
Trust Accounts	2	1
Contracts	0	0
Discrimination	1	1
Patent	0	0
OtherNone	19	12
TOTAL	158	100

### 1997 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
Conspiracy	9	6
Disagreement over conduct of case	36	23
Habeas Corpus	4	2.5
Insufficient information	0	0
Lack of professionalism	19	12
Malpractice	3	2
Personal life	2	1
Request for legal assistance	73	46
Interference with justice	0	0
Other	12	7.5
<b>TOTAL BAR COUNSEL FILES DOCKETED</b>	<b>158<sup>2</sup></b>	<b>100</b>

Bar Counsel Files pending at start of period	17
Total Bar Counsel Files on Docket	175
Bar Counsel Files Dismissed	162
Bar Counsel Files pending at end of period	13
<hr/>	
Dismissals appealed	40
Action on review of those appeals:	
Dismissals affirmed by lay member	39 <sup>3</sup>
Dismissals vacated by lay member (re-docketed for Grievance Commission)	2
Panel Review)	
Reviews open as of 12/31/97	5

<sup>2</sup> Includes 8 matters originally docketed as Bar Counsel Files, and later transferred to formal grievance complaint status prior to December 31, 1997.

<sup>3</sup> Includes 6 pending appeals open at the end of 1996



FEE ARBITRATION COMMISSION

Petition Summary  
January 1, 1997 – December 31, 1997

**PETITIONS:**

Pending at start of period:	37
Docketed during period:	96
Total open petitions during period:	133
Dismissed, settled, withdrawn:	50
Heard and closed by award:	52
Heard and awaiting awards:	4
Total petitions closed during period:	106
Total petitions pending at close of period:	27

**BREAKDOWN OF HEARING DATES BY PANEL:**

(County/Counties)	
Panel IA: (York)	5
Panel IB: (Cumberland)	8
Panel II: (Androscoggin, Franklin, Lincoln, Oxcord & Sagadahoc)	8
Panel III: (Kennebec, Knox, Somerset & Waldo)	7
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis, & Washington)	4
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TOTAL HEARING DATES:	32

Comparison of new Petitions docketed:

1995 - 87  
1996 - 103  
1997 - 96

## 1996 BOARD AND COMMISSION MEMBERS

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Meredith Small of Cumberland  
Catherine D. Thorpe of Auburn

JUDICIAL LIAISON: Hon. Paul L. Rudman

BAR COUNSEL: J. Scott Davis, Esq.

ASSISTANT BAR COUNSEL: Karen G. Kingsley, Esq.  
Geoffrey S. Welsh, Esq.

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Nancy Hall Delaney	Administrative Assistant
Debra L. Mazeroll	Bar Admission Administrator & Board Secretary
Jaye M. Trimm	Administrative Secretary & Fee Arbitration Commission Secretary