

BOARD OF OVERSEERS OF THE BAR
1986 ANNUAL REPORT

This document and the attached exhibits comprise the Board of Overseers of the Bar's 1986 Annual Report, for the purpose of summarizing the total operations of the Board including the office of Bar Counsel and the Board's three agencies: the Grievance Commission, the Fee Arbitration Commission and the Professional Ethics Commission.

By way of background, the duties and responsibilities of these three Commissions are as follows:

- 1) The Grievance Commission reviews and may approve or modify recommendations to it by Bar Counsel (see discussion below regarding case reviews), and also conducts hearings on formal charges of misconduct, making findings and issuing its recommendations with respect thereto. The Grievance Commission may reprimand attorneys for misconduct, and in those cases where it recommends the discipline of an attorney by the Court (suspension or disbarment), shall cause an information to be filed with the Court by Bar Counsel.

- 2) After initial review by Bar Counsel, complaints regarding legal fees paid to or charged by an attorney admitted

to the bar of this State, are processed by the Secretary to the Fee Arbitration Commission and then heard by a panel of the Fee Arbitration Commission.

3) The Professional Ethics Commission renders advisory opinions to the Court, the Board, Bar Counsel, the Grievance Commission and attorneys on matters involving the interpretation and application of the Code of Professional Responsibility (Maine Bar Rule 3).

I. GRIEVANCE COMMISSION

A. COMPLAINTS

A total of 267 new complaints alleging professional misconduct by attorneys were docketed by Bar Counsel in 1986, representing a nine percent increase from the figure for 1985. Although this increase is significantly less than the corresponding figure for 1984 and 1985 (40 percent), the combined number of cases in 1985 (37) and 1986 (69) which the Grievance Commission authorized for disciplinary proceedings, continues to mandate increased work for Board staff, as well as for the Grievance Commission. That is, to the extent that Bar Counsel's and the Grievance Commission's time and duties are necessarily devoted to addressing complaints from earlier years

that have now reached the hearing stage, the smaller increase in the number of formal complaints received by the Board in 1986, although encouraging, is most probably a trend from which the Board and the profession will not totally benefit until some point in the future.

There were 53 meetings of various panels (a panel consisting of two lawyers and one non-lawyer member) of the Grievance Commission in 1986, as well as three meetings of the entire Grievance Commission.

Twenty of the Commission panel meetings were for the purpose of conducting disciplinary proceedings. These 20 hearings related to 25 complaints involving 21 Maine attorneys. The Commission's dispositions of these 25 complaints reflected a 47 percent increase in the number of complaints heard in 1985. Perhaps of more significance is the fact that 12 of these complaints, involving eight attorneys, resulted in the Commission directing Bar Counsel to file an information instituting formal disciplinary proceedings before the Maine Supreme Judicial Court (Court). In all but one of these complaints, the basis for the Commission's referral to Court was a finding of probable cause that the respondents should be suspended or disbarred from the practice of law in

the State of Maine. Accordingly, it must be noted that the matters heard by the Commission involved more serious cases of misconduct, thus continuing the trend of 1985. The total dispositional breakdown of Commission disciplinary proceedings is as follows: a) Proceedings authorized to be filed in the Maine Supreme Judicial Court - 13; b) (Public) reprimands issued by the Commission - 2; c) Probable cause found for the issuance of a reprimand (requiring a further proceeding open to the public before a different panel of the Commission) - 4; d) Private reprimand - 1; e) Admonition - 6; f) Dismissal - 1. A brief discussion of certain of the complaints heard by the Commission is set forth immediately below. Those complaints involving matters which were heard by the Commission and also disposed of by the Court in 1986 will be discussed later in the context of Court matters.

B. DISCIPLINARY PROCEEDINGS

The Grievance Commission recommended proceedings before the Court for the purpose of suspending counsel concerning facts in a particular post-divorce judgment matter involving a motion for a change of custody. After hearing, a panel found that the respondent-counsel's telephone call to his client's spouse (who had been subpoenaed by opposing counsel to the custody hearing)

was deceptive and calculated to prevent the client's wife from attending the court hearing. The basis for the panel's determination centered around the fact that counsel knew that this witness was opposed to her husband's motion for custody, and he also knew that she had been subpoenaed by opposing counsel. The panel therefore found that the telephone call was motivated by counsel's desire to procure his client's custody of the children, and that his choice of words that she should not come to court for that custody hearing (scheduled to take place within an hour of the telephone call) until she had heard back from him was conduct unworthy of an attorney, conduct involving dishonesty, and conduct prejudicial to the administration of justice. Accordingly, the panel directed Bar Counsel to file an information with the Court seeking counsel's suspension from the practice of law. This matter proceeded to hearing before the Court on March 6, 1987, and on May 19, 1987 the Court issued its Opinion and Order, finding that counsel did engage in conduct involving deceit and misrepresentation, and in conduct that was prejudicial to the administration of justice, in violation of Maine Bar Rules 3.2(f)(3) and (4). Therefore, the Court ordered respondent's suspension from the practice of law for 30 days. Court Docket No. BAR-86-18.

The Grievance Commission also heard a complaint from a Superior Court justice that an attorney had misrepresented

facts to opposing counsel and to the court within his affidavit filed in opposition to opposing counsel's motion to dismiss based upon the respondent's failure to file a pretrial scheduling statement. The respondent had indicated in his affidavit that he had on several occasions attempted to contact opposing counsel by telephone as required by the Superior Court's Order based upon the Supreme Judicial Court's Administrative Order relating to expedited trials. The Superior Court found that respondent's telephone records did not corroborate the representations he had made to the Court concerning his efforts to contact defense counsel, and monetary sanctions were imposed by the Superior Court upon respondent in the amount of \$250. Respondent filed no answer to the Board's petition, and although he presented a defense at the Commission's disciplinary hearing, the Commission panel found that his misrepresentations to the Court raised a substantial question regarding his ability to practice law. Accordingly, the panel recommended the filing of an information before the Maine Supreme Judicial Court seeking the suspension or disbarment of respondent. This information was filed with the Court in May of 1987, and is presently pending.

In another disciplinary proceeding, a panel was presented with a petition based upon a complaint that raised questions as

to whether or not an attorney-client relationship had actually commenced concerning the matter alleged to have been neglected by the respondent. However, based upon the fact that respondent never responded to Bar Counsel's initial inquiry concerning the grievance, failed to answer the petition, and did not attend the hearing, all of the material allegations of the petition were deemed admitted. Thus, based upon respondent's total disregard for his obligations in connection with the Maine Bar Rules as they relate to the disciplinary process and hearing, the panel concluded that an information should be filed with the Court for the purpose of seeking the respondent's suspension or disbarment from the practice of law. The information concerning this matter was filed with the Court in August of 1986, and although originally scheduled for hearing in November of 1986, was continued generally until the spring of 1987 based upon the complainant's absence from the State of Maine during the winter months. Furthermore, this information will now most likely be joined with a subsequent information filed with the Court against the same respondent concerning two additional unrelated matters heard by the Grievance Commission in 1987 based upon similar conduct by counsel regarding his ignoring and avoiding his obligations under the Maine Bar Rules. Court Docket Nos. BAR-86-14 and BAR 87-5.

In December of 1986, a panel of the Grievance Commission heard a case involving four petitions including five separate grievances against one attorney. Although the facts of the grievances were unrelated, Bar Counsel established that a pattern of conduct with respect to each was quite similar wherein respondent had accepted retainers from clients and then simply ignored them, refused to return clients' telephone calls, and in effect deprived them of their rights for redress. In at least two instances, the clients had also applied to the Fee Arbitration Commission which awarded them a finding directing respondent to refund retainers, which he continued to fail to do. Respondent had further in most instances failed to respond to any inquiries from Bar Counsel including persistent follow-up attempts by Bar Counsel to secure such responses. Respondent had also refused to accept certified mail containing the petitions and notice of the hearing. Accordingly, pursuant to court order, the four petitions were served upon the respondent in the manner that civil process would be served. In spite of such service, respondent failed to answer or otherwise appear at the disciplinary proceedings. The panel found that respondent had deliberately ignored his clients in a wholesale manner and turned his back on the Maine Bar Rules, as well as on the Board of Overseers of the Bar. The panel further found that his

behavior clearly mandated that the public be protected from such conduct, and that an information should be filed with the Court seeking counsel's disbarment from the practice of law. Respondent in this matter has departed from the State of Maine, and the Board is presently in the process of attempting to determine his location for the purpose of serving him with the information in this matter.

In September of 1986, a Grievance Commission panel held a hearing open to the public (at respondent's request) based upon a Superior Court Justice's finding that respondent-counsel had acted in contempt of court, and the court's subsequent complaint to the Board of Overseers of the Bar. This conduct involved counsel's obstruction of the administration of justice, demonstrated by various conduct, including standing mute in defiance of the court and openly challenging the integrity of the court by his demeanor, upon the court's having removed his client from the court room due to the client's own acts in contempt of court. After a lengthy disciplinary proceeding, the panel imposed a reprimand. Pursuant to the Maine Bar Rules, respondent filed a timely petition for review of this reprimand, and his petition is presently pending before the Maine Supreme Judicial Court. Court Docket No. BAR-86-24.

In December of 1986 a Grievance Commission panel heard evidence involving a matter wherein respondent was hired to defend a tax claim filed by the Bureau of Taxation for the State of Maine. After evaluation of the case and an investigation into the State's position concerning its claim against the client, respondent acquiesced in the granting of the State's Motion for Summary Judgment against the client. However, respondent never notified or communicated with the client in connection with the Summary Judgment, and his conduct was therefore found to be in violation of Maine Bar Rule 3.6(a)(3), and he was reprimanded. Board File No. 86-46.

C. CASE REVIEWS

In addition to the matters discussed above relating to disciplinary proceedings conducted by the Grievance Commission, it must be also realized that the Commission reviewed 249 additional grievance complaints. This process, referred to by the Commission as its case review of pending grievances, involves the respective panel's deliberation with Bar Counsel or Assistant Bar Counsel for the purpose of reviewing the contents of various files which have been investigated by the

office of Bar Counsel. It is from this review process that the panels initially determine the disposition of complaints as being either 1) dismissal, 2) admonition (private non-discipline), 3) directing Bar Counsel to conduct further investigation, or 4) directing Bar Counsel to file a disciplinary proceeding before the Commission. Various panels of the Commission met on 33 occasions for the purpose of conducting case reviews of pending grievance complaints.

D. RULES AMENDMENTS

An important and major change to the Maine Bar Rules in February of 1986 was the Court's promulgation of Rule amendments, particularly Rule 7(e)(2), whereby discipline may not now be imposed in any form against an attorney without either the Commission or the Court first conducting a hearing open to the public. That is, the only form of discipline that the Commission may issue is a reprimand, and it may only do so after first making a finding of probable cause (either at case review or after a confidential hearing) that a reprimand should issue, and then directing that a disciplinary hearing open to the public be conducted for the issuance of the reprimand or

whatever alternate disposition the hearing panel determines to be appropriate. In the event that the hearing panel finds that the grievance warrants a harsher disciplinary sanction than a reprimand, then the panel will direct Bar Counsel to file an information before the Maine Supreme Judicial Court for the purpose of seeking the respondent's suspension or disbarment. An important and necessary element of this hearing process, as evidenced by the Grievance Commission dispositional tables attached hereto, is that contrary to prior procedures grievances may now result in two Grievance Commission hearings before different panels of the Commission prior to any hearing before the Court. Four matters heard in 1986 in a confidential hearing format, either did or will now result in a second Grievance Commission hearing open to the public.

E. CHARACTERIZATIONS/AREAS OF LAW

As has been evidenced by the conduct and statistics of past years, attorney neglect continues to be the area resulting in not only the highest number of complaints received in 1986 but also in the highest number of complaints reviewed and disposed of by the Commission. For example, the attached tables indicate that 106 (40%) of the 267 complaints received by the

Board were docketed as neglect matters, and that 37 percent of the matters disposed of by the Commission (either by hearing or case review) were neglect-related matters. Of those neglect-related dispositions, 29 percent were deemed to be of such seriousness to warrant disciplinary proceedings either before the Court or the Commission. Of all Court and Commission hearings authorized, an average of 37.5 percent were neglect items. Therefore, although less than 30 percent of the neglect complaints resulted in hearings being authorized, that number of hearings (30) constituted 37.5 percent of the matters authorized for hearing, indicating that neglect matters once again far outweigh other categories in terms of the characterization of complaints resulting in disciplinary hearings.

In 1986, although complaints received relating to matters arising in the context of family law and torts were virtually identical, the attached dispositional table indicates concerning matters reviewed by the Commission, family law once again represented the one area of law totaling the highest number (21) and percentage (30) of matters resulting in the authorization of disciplinary proceedings before the Commission. By way of comparison, although only four real property complaints were authorized for disciplinary

proceedings before the Court, that number represented the highest percentage (31) for one single area of law regarding the total number (13) of complaints authorized for Court proceedings. Although only five percent of the total number of torts-related complaints heard by the Commission resulted in the initiation of Court proceedings, those two complaints represented 15 percent of the total number of Court authorized proceedings.

F. SIZE OF LAW OFFICE/SOURCE OF COMPLAINTS

The attached statistics concerning the nature of the source of the complaints filed in 1986, indicate that although clients continue to file the overwhelming number of complaints, those complaints arising from either a court or an attorney, as well as on a sua sponte basis from either the Board or Bar Counsel, have all increased fairly significantly. The historical trend for the complaints to be filed predominately against either sole practitioners or offices containing two attorneys has continued. However, as compared with 1985, the statistics for 1986 indicate a 49 percent increase in the number of complaints filed against sole practitioners in 1986, corresponded with a 26 percent decrease in the number of

complaints filed in 1986 against attorneys practicing law in a two attorney law office.

G. BAR COUNSEL FILES

Bar Counsel files, which pursuant to Maine Bar Rule 5(b)(2) relate to matters which upon their initial review by Bar Counsel do not appear to constitute allegations of professional misconduct, totaled 110 filed in 1986, representing a 49 percent increase over the total number filed in 1985. Thus, although this is indicative of and corresponds in some respect to the increased number of formal complaints filed in 1986, it also represents an increasing attempt and awareness on the part of the office of Bar Counsel to initially review and investigate, with the unsparing assistance of Grievance Commission Chairman Peter B. Webster, many more of the inquiries reviewed, for the purpose of clarifying any ambiguous letters of complaint prior to docketing them as formal complaints charging the respective attorney with a prima facie allegation of professional misconduct.

II. COURT MATTERS

A. DISBARMENTS

The first of the disbarment matters (as discussed in the Board's Annual Report of 1985) involved an attorney's neglect of two clients' cases coupled with his supplying to one of the clients an order of continuance of that client's litigation, allegedly signed by a District Court judge. Upon the judge being presented with this document in Court, he (as did the client) complained to Bar Counsel, resulting in the Court's order of disbarment of counsel. Court Docket Nos. BAR-84-41 and 85-102.

Another matter related to a complaint that a previously suspended attorney had engaged in the practice of law, i.e., conducted and participated in a deposition on behalf of a client, during the period of his suspension. Upon Bar Counsel's filing of an information with the Court, the defendant counsel failed to file an answer within the appropriate time. Upon the Board's filing of a Motion for Default, and upon conducting a testimonial hearing relating thereto including receiving defendant counsel's testimony as to his explanation for not filing a timely answer, the Court granted the Board's motion and ordered the disbarment of

counsel. Court Docket No. BAR-86-10.

Multiple grievance complaints were filed by Bar Counsel with the Court against counsel in the form of two informations, the consistent theme of which related to counsel's neglect of several client matters. Counsel left the State of Maine, but was found by the Board's investigative efforts, and was duly served with the informations, but in both cases failed to file any answers with the Court. Upon the Board's filing of a Motion for Default, the Court conducted a hearing which defendant also failed to attend and the Court thereupon granted the Board's motion and entered a disbarment order against this attorney. Court Docket Nos. BAR-86-1 and 86-12.

B. SUSPENSIONS

Counsel's six month suspension from the practice of law (based upon the Court's finding of a conflict of interest on his part), which had initially been imposed in January of 1985, but had been stayed pending his appeal first to the Maine Law Court and then to the United States Supreme Court, commenced in June of 1986, subsequent to the United States Supreme Court's denial of his petition for a writ of certiorari. See Board of

Overseers of the Bar v. James M. Dineen, 262 A.2d 1321 (Me. 1985).

As referenced in the Board's 1985 Annual Report, another attorney was suspended for a 12 month period relating to a probate matter which he had attributed to his alcoholism. Effective May 26, 1987, this attorney has resigned from the practice of law in the State of Maine. Court Docket No. BAR-86-9.

After conducting a detailed and lengthy testimonial hearing, the Court issued a six-month period of suspension against an attorney based upon her failure to keep her client informed as to the status of a case which he had been led to believe was filed in Court but which had not been. The ruling was also based upon counsel's office procedures which the Court found to be both ineffective and irresponsible resulting in her failure to mail to the office of the Board her answers and responses to Bar Counsel. Based upon receipt of the Supreme Court of New Hampshire's suspension of this attorney for two years, on May 28, 1987 the Maine Court (subsequent to the termination of the initial six-month period of suspension) suspended this attorney from practicing law in the State of Maine until March 31, 1989. Court Docket Nos. BAR-86-103 and BAR-87-2.

C. REPRIMANDS

In a matter which the Court had taken under advisement and continued to review with respect to its preliminary order dated May 25, 1983 for the reasons expressed therein, the Court continued the disposition of that discipline matter for successive six months periods "until the Court deems ... further hearings unnecessary ...". The Court concluded its review of this matter in 1986 and imposed a reprimand based upon counsel's neglect of a legal matter entrusted to him in violation of Maine Bar Rule 3.6(8)(3). Court Docket No. BAR-83-14.

In two other matters referenced in the Board's 1985 Annual Report (due to the fact that they were filed with the Court in 1985), reprimands were issued by the Court in 1986 relating to 1) counsel's failure to properly communicate with his client that he had not filed a counterclaim as he had led the client to believe, and additionally due to the fact that at an early stage of Bar Counsel's investigation of this complaint, counsel had misled Bar Counsel as to the non-existence of any efforts to pursue a counterclaim. Court Docket No. BAR-85-99, and 2) a case involving counsel's neglect of a relatively simple estate

matter despite the continued insistence of the complainant, several other beneficiaries, the Probate Court and Bar Counsel. Court Docket No. BAR-85-104.

Counsel was reprimanded by the Court when he filed a motion to withdraw from his representation of his client on a divorce matter, this motion being filed subsequent to his being informed that she had filed both a grievance and a fee arbitration petition against him with the Board of Overseers of the Bar. This motion was filed and supplied to the Court by mail three days prior to the scheduled hearing of the divorce, and on the morning of that hearing counsel had his motion acted on and granted by the Court without offering the client a sufficient opportunity to obtain replacement counsel, in violation of Rule 3.5(a)(2). Court Docket No. BAR-85-100.

The Court also reviewed a matter involving counsel's having informed his client that upon settlement and acceptance of a \$25,000 payment on a medical malpractice claim (reduced by counsel's fee), counsel would pay his client's \$1,100 obligation to his former attorney. At the disciplinary hearing, counsel agreed that he had assumed the obligation to pay this amount in order to receive the client's acceptance to the settlement offer. However, counsel did not make the payment,

despite having been ordered to do so by an Award and Determination of the Fee Arbitration Commission of the Board of Overseers of the Bar. Upon the adoption of an interesting and unique approach, the Court initially determined not to impose a reprimand as recommended by the Commission, but to proceed to hear the matter de novo. However, upon counsel's having paid in full the obligation that he had assumed on his client's behalf (within one week of the Court's earlier order), the Court determined a reprimand to be appropriate and accordingly reprimanded counsel for neglect of a legal matter entrusted to him in violation of Maine Bar Rule 3.6(a)(3). Court Docket No. BAR-86-16.

III. FEE ARBITRATION COMMISSION

In 1986 the Secretary to the Fee Arbitration Commission received 86 requests for fee arbitration petitions, of which 63 were completed and returned for filing by the Secretary, representing an 11 percent increase as compared to the number of petitions filed in 1985 (57). Of those 63 petitions, 59 were processed by the Secretary, representing a 23 percent increase in the number of petitions processed in 1985 (48). In 1986, 42 petitions were heard by the various panels of the

Fee Arbitration Commission, compared to 32 petitions heard in 1985, representing a 31 percent increase.

The role of Bar Counsel in the fee arbitration process continues to be one of reviewing and screening petitions upon filing with the Commission for the purpose of determining if these matters warrant the attention of the Commission or should be more appropriately diverted to another forum, e.g., the Grievance Commission. To the extent that resources allow and where warranted, Bar Counsel has also attempted to promote informal resolutions of petitions for fee arbitration prior to hearing.

IV. PROFESSIONAL ETHICS COMMISSION

In 1986 the Professional Ethics Commission continued to issue several beneficial and extremely helpful advisory opinions. It issued 14 additional opinions bringing the total of such opinions issued by the respective advisory agencies of the Board through December 31, 1986 to a total of 76. The opinions issued in 1986 continued to provide a resource for answers to ethical problems for attorneys, and dealt with the following issues:

- No. 63: Who is the attorney's client or whom may the attorney represent when an insurance company retains counsel to provide a defense to its insured under a so called "reservation of rights" policy, and the company has requested the attorney to represent all of its insureds reference claims which are both within and outside the scope of the policy's coverage?
- No. 64: The ethical propriety of an arrangement whereby a client and attorney executed a document entitled "Retainer Agreement" which provided that client would convey the real estate involved in litigation to a corporation in which the attorney would hold 1/3 of the capital stock and the client would hold the remaining 2/3.
- No. 65: A discussion of any limitations imposed by the Maine Bar Rules upon the representation of criminal defendants by an attorney whose spouse is a sibling of the local District Attorney.
- No. 66: Whether a provision within the settlement agreement of a legal malpractice suit whereby the plaintiff undertakes to "withdraw" his pending grievance before the Grievance Commission against defendant-attorney and not to pursue that grievance at any time in the future would be violative of the Maine Bar Rules.
- No. 67: Whether the Professional Ethics Commission will issue advisory opinions concerning past conduct of an attorney other than the one seeking the opinion.
- No. 68: Whether upon withdrawal of representation of a client due to a subsequently learned conflict of interest, counsel may refuse to return a portion of the retainer regarding that representation for the purpose of

satisfying monies owed by the client concerning an earlier unrelated representation, and also whether a release from professional negligence is authorized pursuant to the Maine Bar Rules.

- No. 69: Whether counsel's fee agreement with a public interest litigation organization under which a percent of the attorney's fees which may be awarded by the Court to be paid by the adversary party would then be paid to a foundation affiliated with the organization is in violation of the Code of Professional Responsibility.
- No. 70: Whether or not a criminal defense counsel whose spouse is a member of the District Attorney's Office may defend matters handled by that office as long as the spouse is not involved in any way with the prosecution and the defense counsel's clients consent.
- No. 71: Whether a law firm may offer and advertise the service of being consultants to both parties in a divorce proceeding, including reviewing their case in depth and preparing a proposed draft settlement agreement.
- No. 72: The ethical responsibilities of a lawyer retained by an insurance company to defend its insured, being the husband of plaintiff who was a passenger in his automobile and injured through his alleged negligence, when there are viable defenses to husband's liability, but he instructs the attorney not to plead them.
- No. 73: Where a city charter prohibits individual members of the city council, on pain of punishment and loss of office from interfering with the executive functions of the city (which include the discipline of and

establishment of compensation amounts of individual city employees), whether an attorney (who is a city councilor) or the partners and associates of his firm may represent (1) private litigants against the city and/or (2) persons charged with criminal offenses in cases where a city employee may be a witness.

No. 74: Whether a law firm may return a closed file to a client absent a request from the client, and if the client refuses the file whether the firm may dispose of it or charge for storage.

No. 75: Whether an attorney undertaking pro bono representation in a divorce proceeding may, if a marital asset is later sold, then charge and receive a fee from the proceeds of the sale assuming that is the understanding of the client at the outset of the representation.

No. 76: Whether attorneys who have either an active or non-active criminal practice may refuse to accept court appointment in criminal cases, or if not, whether a formerly active criminal defense attorney may take no more retained criminal cases and thereafter decline acceptance of such court appointed cases.

V. MAINE MANUAL OF PROFESSIONAL RESPONSIBILITY

In November of 1986, through the combined efforts of Tower Publishing Company and Board staff, particularly Assistant Bar Counsel Karen G. Kingsley, the first edition of the Maine Manual on Professional Responsibility was published. This book replaces the 1983 edition of Advisory Opinions of the Grievance

Commission, and now comprises one source where the various operations of the Board of Overseers of the Bar relating to professional responsibility matters may be found. The book includes: 1) a membership list of the Board and its Commission members, 2) all of the Maine Bar Rules (including Reporter's Notes and Advisory Committee Notes to provide the history of the rules), 3) the text of Advisory Opinions Nos. 1-73 (including a subject matter index), and 4) the Regulations of the Board. This publication will be updated in the fall of each year to keep it current with the latest developments relating to professional responsibility in Maine.


CONCLUSION

From the above discussion as well as a review of the attached statistical tables, the continued contribution and ever-increasing workload of all three of the Board's Commissions is obvious. As the Board's processes continue to grow both in the number of items required for processing, as well as the increasing complexities relating thereto, the Board's various Commissions have responded by conducting more meetings or hearings, resulting in an increased output of decisions and opinions.

Further, to meet the increasing growth in the quantity and complexity of grievance complaints, the Board proposed (and the Court adopted in early 1987) an amendment to the Maine Bar Rules authorizing an increase in the size of the membership of the Grievance Commission. The enlarged Commission may well engender an increased workload thus warranting the Board's future consideration of additions to staff.

Thank you.

Dated: June 16, 1987



J. Scott Davis, Bar Counsel
Board of Overseers of the Bar

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS

REPORTING PERIOD: 1986

I. Complaints docketed and reviewed:

A. Complaints pending at start of period:	110
B. Complaints docketed and activated during period:	267
C. Total complaints to be reviewed during period:	377
D. Total complaints reviewed during period:	255
E. Complaints pending review at end of period:	122

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS (continued)

II. Grievance Commission disposition
of formal complaints:

	NUMBER	PERCENT
A. Dismissals:		
1. By case review	150	
2. After hearing.....	1	54
B. Admonitions:		
1. By case review.....	40	
2. After hearing.....	6	16
C. Private Reprimands:		
1. By case review.....	0	
2. After hearing.....	1	.1
D. Hearings open to public		
1. Probable cause found for public disciplinary hearing		
a. By case review or by Board approval.....	23	
b. After initial confidential hearing	4	
2. Reprimand issued after public hearing.....	2	
E. Confidential disciplinary hearings authorized.....	42	
F. Informations authorized for Court disciplinary proceedings.....	13*	5
G. Total complaints heard by Commission.	27	
H. Total disciplinary proceedings authorized	69	24
I. Total proceedings both authorized and heard this period	8	
J. Total Grievance Commission dispositions this period.....	282	
K. Total Grievance Commission disciplinary proceedings awaiting hearing at end of period.....	92**	

*Includes one matter where Grievance Commission proceeding was waived by respondent, and matter proceeded directly to Court.

**Includes one matter heard by Grievance Commission, but not yet filed with Court.

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS (continued)

III. Matters before Supreme Judicial Court:

A. Matters pending at start of period:		8
B. New information, petitions, motions:		8
C. Dispositions:		
1. Disbarments	3	
2. Resignations	-	
3. Suspensions	3	
4. Reprimands	5	
5. Remanded to Board	-	
6. Dismissals	-	
7. Reinstatements	-	
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TOTAL	11	
D. Matters pending at end of period		5

IV. Total disciplinary matters pending at end of period:

A. Complaints to be reviewed	122
B. Grievance Commission disciplinary proceedings	92
C. Maine Supreme Judicial Court informations	5
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	219

FORMAL COMPLAINTS

REPORTING PERIOD 1986

<u>CHARACTERIZATION</u>	<u>NUMBER</u>	<u>% OF TOTAL</u>
1. Trust violations	10	4
2. Conflict of interest	31	12
3. Neglect	106	40
4. Relationship with client	33	12
5. Misrepresentation/ Fraud	18	7
6. Excessive fee	18	7
7. Interference with justice	30	11
8. Improper advertising/ soliciting	12	4
9. Criminal conviction	3	1
10. Personal behavior	--	--
11. Willful failure to cooperate	--	--
12. Medical incapacity	--	--
13. Incompetence	4	1
14. No jurisdiction	--	--
15. Conduct unworthy of an attorney	1	.5
16. Other	<u>1</u>	<u>.5</u>
TOTAL	267	100%

FORMAL COMPLAINTS

REPORTING PERIOD 1986

<u>AREA OF LAW</u>	<u>NUMBER</u>	<u>% OF TOTAL</u>
A. Family	50	19
B. Juvenile	1	.5
C. Criminal	21	8
D. Traffic	4	1.5
E. Probate/Wills	22	8
F. Guardianship	1	.5
G. Commercial	7	3
H. Collections	4	1.5
I. Landlord/Tenant	3	1
J. Real Property	43	16
K. Foreclosure	4	1.5
L. Corporate/Bank	8	3
M. Torts	51	19
N. Administration	--	--
O. Taxation	1	.5
P. Patent/Trademark/Copyright	--	--
Q. Immigration	--	--
R. Anti-Trust	--	--
S. Environment	--	--
T. Contract/Consumer	3	1
U. Labor	3	1
V. Workers Comp.	3	1
W. Other/None	25	9
X. Bankruptcy	8	3
Y. Municipal	<u>5</u>	<u>2</u>
TOTAL	267	100%

FORMAL COMPLAINTS

<u>SOURCE OF COMPLAINT</u>	<u>NUMBER</u>	<u>PERCENTAGE</u>
1. Client	162	61
2. Other party	25	9
3. Lawyer or Judge	44	16.5
4. Board or staff	36	13.5

TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

1. Sole practitioner	128	48
2. 2 attorneys	43	16
3. 3-6 attorneys	70	26
4. 7-10 attorneys	4 45	2 17.2
5. 11 or more attorneys	14	5
6. Government and other	5	2
7. Unknown	3	1

PERCENTAGE OF TOTAL COMPLAINTS BY AGE OF ATTORNEYS

1. 24-29	5	2
2. 30-39	117	44
3. 40-49	78	29
4. 50-59	25	9
5. 60+	32	12
6. Unknown	10	4

DATE OF ADMISSION OF ATTORNEYS

1. 1929-1949	10	4
2. 1950-1959	28	10
3. 1960-1969	34	13
4. 1970-1979	128	48
5. 1980-1986	59	22
6. Unknown	8	3

FORMAL COMPLAINTS

<u>TOTAL COMPLAINTS BY COUNTY</u>	<u>NUMBER</u>	<u>PERCENTAGE</u>
1. Androscoggin	17	6
2. Aroostook	26	10
3. Cumberland	95	36
4. Franklin	--	--
5. Hancock	5	2
6. Kennebec	24	9
7. Knox	7	3
8. Lincoln	4	1
9. Oxford	3	1.5
10. Penobscot	27	10
11. Piscataquis	1	0.5
12. Sagadahoc	6	2
13. Somerset	5	2
14. Waldo	4	1
15. Washington	7	3
16. York	33	12
17. Out of State	<u>3</u>	<u>1</u>
TOTALS	267	100%

BAR COUNSEL FILES

REPORTING PERIOD 1986

<u>CHARACTERIZATION</u>	<u>NUMBER</u>	<u>% OF TOTAL</u>
1. Conspiracy	1	0.5
2. Disagreement over conduct of case	7	6
3. Habeas Corpus	4	4
4. Inquiry Only	12	11
5. Insufficient information	19	18
6. Lack of Professionalism	7	6
7. Malpractice	7	6
8. Personal Life	2	1
9. Request for legal assistance	50	47
10. Other	<u>1</u>	<u>0.5</u>
TOTAL	110*	100%

Bar Counsel Files pending at start of period: 16

Bar Counsel Files reviewed by Grievance Commission Chairman during period: 92

Bar Counsel Files pending at end of period: 34

*Does not include matters originally docketed as Bar Counsel Files, and later transferred to formal complaint status prior to December 31, 1986.

BAR COUNSEL FILES

REPORTING PERIOD 1986

<u>AREA OF LAW</u>	<u>NUMBER</u>	<u>% OF TOTAL</u>
A. Family	19	17
B. Juvenile	--	--
C. Criminal	12	11
D. Traffic	2	1
E. Probate/Wills	9	8
F. Guardianship	--	--
G. Commercial	2	1
H. Collections	5	5
I. Landlord/Tenant	2	1
J. Real Property	24	23
K. Foreclosure	--	--
L. Corporate/Bank	1	1
M. Torts	13	12
N. Administration	--	--
O. Taxation	--	--
P. Patent/Trademark/Copyright	--	--
Q. Immigration	1	1
R. Anti-trust	--	--
S. Environment	--	--
T. Contracts/Consumer	--	--
U. Labor	3	3
V. Workers Comp.	3	3
W. Bankruptcy	--	--
X. Municipal	1	1
Y. Other/None	<u>13</u>	<u>12</u>
TOTAL	110	100%

DISPOSITIONAL TABLE - CHARACTERIZATION OF CONDUCT - 1986

CHARACTERIZATION

DISMISSALS ADMONITIONS REPRIMANDS PROCEEDINGS AUTHORIZED
Commission Court

	TOTAL NUMBER	151	46	3	69	13
NEGLECT:	103	55	16	2	25	5
&this disposition	36	35	66	37		
&this characterization	53	16	2	24		5
REL. W/CLIENT:	34	27	3	0	3	1
&this disposition	18	7		4		7
&this characterization	79	9		9		3
CONFLICTS:	36	16	8	0	10	2
&this disposition	11	17		15		15
&this characterization	44	22		28		6
MISREPRESENTATION:	25	13	4	0	5	3
&this disposition	8	9		6		23
&this characterization	54	16		20		12
INTERFERENCE W/JUSTICE:	30	12	8	0	8	2
&this disposition	8	17		12		15
&this characterization	40	27		27		6
EXCESSIVE FEES:	13	10	1	0	2	0
&this disposition	7	2		3		
&this characterization	77	7		15		
TRUST:	14	6	1	0	7	0
&this disposition	4	2		10		
&this characterization	43	7		50		
ADVERTISING:	12	2	4	0	6	0
&this disposition	1	9		8		
&this characterization	17	33		50		
OTHER:	15	10	1	1	3	0
&this disposition	7	2		3		
&this characterization	67	7		7		
TOTALS	282	151	46	3	69	13

DISPOSITIONAL TABLE - MAJOR AREAS OF LAW - 1986
(5 or more complaints in one area)

AREA OF LAW	DISMISSALS			ADMONITIONS			REPRIMANDS			PROCEEDINGS AUTHORIZED		
	TOTAL NUMBER	151	46	3	69	13	Commission	Court				
FAMILY LAW:	62	33	6	1	21	1						
%this disposition	22	13		33		30		8				
%this characterization	53	9		2		34		2				
CRIMINAL LAW:	15	9	5	1								
%this disposition	6	11		33								
%this characterization	60	33		7								
PROBATE/WILLS:	25	18			6		1					
%this disposition	15					8		8				
%this characterization	72					24		4				
COLLECTIONS:	5	4			1							
%this disposition	2					1						
%this characterization	80					20						
REAL PROPERTY:	54	30	10	0	10		4					
%this disposition	20	22				14		31				
%this characterization	55	19				19		7				
CORPORATE/BANKING:	10	3	1	0	6		0					
%this disposition	1	2				9						
%this characterization	30	10				60						
TORTS:	35	17	10	0	6		2					
%this disposition	12	22				9		15				
%this characterization	49	29				17		5				
BANKRUPTCY:	7	3	1	0	3		0					
%this disposition	1	2				4						
%this characterization	43	14				43						
MUNICIPAL:	6	3	1	0	2		0					
%this disposition	1	2				3						
%this characterization	50	17				33						
OTHER:*	63	31	12	1	14		5					
%this disposition	21	26				20		38				
%this characterization	49	21				21		7				
*representing 11 categories												
TOTALS	282	151										