

BAR COUNSEL'S 1994 ANNUAL REPORT

**J. Scott Davis
Bar Counsel**

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BAR COUNSEL'S 1994 ANNUAL REPORT

INTRODUCTION

This document and the attached exhibits comprise Bar Counsel's 1994 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.

For 1994, the Grievance Commission was comprised of 24 members - 13 lawyers and 11 public members. The Commission conducts case reviews and hearings by panels, each consisting of two lawyers and one public member. By consent of the parties, hearings may be conducted by a two-member panel, comprised of one lawyer and one public member. See M. Bar R. 7(b)(6). The Fee Arbitration Commission consists of 18 members - 10 lawyers and 8 public members. The Professional Ethics Commission consists of 8 lawyers. A complete listing of the 1994 membership of the Board and its Commissions is included as part of the Appendix attached to this report.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

208 grievance complaints alleging professional misconduct by Maine attorneys were docketed by Bar Counsel in 1994, a significant decrease from the complaints filed in the past several years - 1993 (297), 1992 (313), and 1991 (311).

B. PANEL MEETINGS AND HEARINGS

1. Case reviews - Panels of the Grievance Commission met for a combined total of 33 occasions¹ for the purpose of conducting preliminary reviews of complaints, compared with 39 such meetings in 1993, and 36 in 1992. This process involves a panel's review² with Bar Counsel of the contents of grievance complaint files which have been investigated by the office of Bar Counsel, with a panel determining the appropriate disposition of complaints as being 1) dismissal, 2) dismissal with a warning to the attorney (private non-discipline), 3) further investigation by Bar Counsel, or 4) directing Bar Counsel to pursue a public disciplinary proceeding before another panel of the Grievance Commission. Although the investigation and review process is confidential, all disciplinary hearings are open to the public.

As a result of the total of the 33 panel and Board review meetings, 228 grievance complaints were closed by either issuance

¹ At one of its monthly meetings, the Board also reviewed a complaint under authority of M. Bar R. 7.1(b).

² These reviews may occasionally be conducted by telephone conference call. See Maine Bar Rule 7(b)(7).

of a dismissal (199), or a dismissal with a warning to the respective attorneys (29). The total of 259 reviewed complaints is a decrease from the number of complaints reviewed in 1993 (294).

2. Disciplinary proceedings - Grievance Commission panels also conducted 17 public disciplinary hearings. As seen by the attached statistical table in the attached Appendix, seven (7) attorneys were reprimanded by the Commission in 1994, representing an identical match with the number of attorney reprimands issued in 1993. After hearing of five (5) other complaints, Bar Counsel was directed to file further court proceedings to impose suspension or disbarment of the involved attorneys, representing an increase from the number of such matters in 1993 - 3 complaints. Those 17 complaints heard by the Grievance Commission in 1994 compare to 16 complaints heard in 1993.

i. REPRIMANDS

A brief discussion of the facts concerning each of the seven reprimands is now provided as follows, the earlier anonymous attorney format being eliminated based upon the Board's determination that publication of the respective Respondents' names is necessary and appropriate public information:

Attorney was reprimanded for representing two different clients in a real estate acquisition and development matter and failing to disclose to one of the clients that certain lease restrictions had been agreed to for that property which directly

benefitted the other client by enhancing the marketability of other property owned by that client, violating M. Bar R. 3.4(d); 3.6(a). (Board of Overseers of the Bar v. Robert B. Patterson, Jr., Esq, GCF#91-S-3.)

Attorney was reprimanded because he participated in a threat involving criminal prosecution solely to obtain an advantage in a civil matter. Although the attorney asserted at hearing that neither he nor his client intended to threaten prosecution and that he did not believe his written language at issue to constitute a threat, the panel decided otherwise believing that the highly charged context within which the communication was sent and received, and the fact that his client had actually complained to the police, should be interpreted as a threat prohibited by the language of Maine Bar Rule 3.6(c). (Board of Overseers of the Bar v. James B. Smith, GCF#92-G-22.)

Reprimand was issued for attorney's neglect of a collection matter entrusted to him and for not keeping the client informed about the status of the case. Although a more serious sanction was urged by Bar Counsel, the panel resolved the case in favor of a reprimand because the attorney fully acknowledged and admitted his misconduct, appeared genuinely contrite and remorseful, and on his own initiative and at his own expense undertook through the employment of other counsel to have the work completed for which he was retained (Board of Overseers of the Bar v. Peter S.

Kelley, GCF92-G-238.)

Attorney was reprimanded for his neglect to file a response to a discovery objection in a divorce matter leading to prejudice to his client's case. M. Bar R. 3.6(a)(3). In addition, when the client terminated the representation, the attorney failed to withdraw pursuant to M. Bar R. 3.5(a)(3) and failed to return the client's file pursuant to M. Bar R. 3.5(a)(3) and 3.6(3)(2)(iv). Respondent appealed the matter to a single justice of the Maine Supreme Judicial Court, and the matter remained pending at the end of the 1994 reporting period. (Board of Overseers of the Bar v. Jacob Apuzzo, GCF# 93-K-36.)

Attorney was reprimanded for reading a letter addressed to a former employee from that employee's counselor, copying the letter before sending it to the employee, and then using it in a future proceeding where the employee was an adverse party. M. Bar R. 3.1(a) and 3.2(f)(3),(4). The attorney also acquired a security interest in property owned by a client and thereby obtained a pecuniary interest adverse to his client in violation of M. Bar R. 3.6(i) without complying with the disclosure and consent requirements of that rule. (Board of Overseers of the Bar v. Thomas S. Carey, Esq., GCF# 93-K-129; 93-K-232.)

Attorney received a reprimand for accepting a personal injury case and deciding that it was not worth pursuing after it had been

reviewed by a medical screening committee. The client was shocked to be billed for expenses and disbursements, i.e., there was no written contingent fee agreement and the client thought she would owe nothing if she recovered nothing. M. Bar R. 3.2(f)(1) and 8(d), (e). In addition, the attorney undertook another personal injury case for the same client, failed to communicate with her for nearly four years (during which the client was being treated by a chiropractor), and again decided not to proceed with the case but failed to so inform the client. By the time the client learned that no complaint had actually been filed, the statute of limitations had run. M. Bar R. 3.6(a)(2), (3). (Board of Overseers of the Bar v. Martha J. Harris, GCF# 93-S-136.)

Reprimand issued for attorney's neglect of an elderly client's legal affairs in failing to establish a trust for the purpose of protecting her mentally disabled daughter, although the attorney had assured the proposed trustees that it had been done. The attorney knew the client had no will, and thus, when she died intestate, her property did not pass through a trust for the benefit of her daughter as she had directed. As a result, litigation ensued over the property (Board of Overseers of the Bar v. Donald L. Philbrick, GCF# 93-S-240.)

ii. OTHER GRIEVANCE COMMISSION DISPOSITIONS

Certain other complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands.

Five (5) other matters were heard, and based upon the total evidence, dismissed for lack of proof of any violations of the Maine Bar Rules.

As indicated earlier, the five (5) remaining complaints were referred by the hearing panels to the Court for further disciplinary proceedings.

C. CHARACTERIZATION AND AREA OF LAW

Client neglect or failure to adequately keep a client informed continue to remain the most frequently alleged misconduct for investigation by Bar Counsel and consideration by the Grievance Commission. As the attached statistics indicate, 78 (38%) of the 208 grievance complaints docketed in 1994 alleged misconduct relating to Maine Bar Rule 3.6(a)(2), (3). That percentage compares to 31.5% in 1993.

Complaints involving the interference with justice, e.g., improper communication with an opposing party, failure to appear at court or non-compliance with orders or rules of court, totaled 46 (22%) of the complaints, with allegations relating to some form of attorney misrepresentation, deceit or fraud continuing to remain

as a relatively large number, 25 (12%). Rules 3.2(f)(3), 3.7(b) and 3.7(e)(1) are usually involved in such allegations.

Family law remains the most frequent area of law in which grievance complaints arise, being 64 (31%) of the 208 complaints, compared to lower comparative figures for 1993, 66 of 297 complaints (22%). Complaints arising in representation of criminal law matters comprised the second highest number of complaints received in 1994, being 35 (17%), replacing the usual second place category, real property, which was third with 27 (13%).

D. SOURCE OF COMPLAINTS/SIZE OF LAW OFFICE

The attached statistical tables within the Appendix demonstrate that clients filed a significant number of the grievance complaints, 129 (62%), with 59 (28%) being filed by an adverse or other party, and 14 (7%) by a court or other counsel.

The historical trend for the highest percentage of complaints being filed against sole practitioners (44%) continues, representing a slight increase compared to 1993 (40%). The comparative complaints filed against offices comprised of two attorneys increased somewhat (17%) from that of 1993 (15%), while complaints concerning offices comprised of three to six attorneys decreased slightly (22%) from 1993 (26%).

E. BAR COUNSEL FILES

Bar Counsel Files as authorized by Maine Bar Rule 7.1(c) 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. There were 134 such filings in 1994, representing a marked decrease from the number docketed in 1993 (157). As a result, by combination of such matters with all unrelated³ formal grievance complaints discussed above, the number of written inquiries regarding alleged attorney misconduct filed with Bar Counsel in 1994 totalled 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 Chair⁴. 116 Bar Counsel Files were dismissed by Bar Counsel in 1994, with 33 complainants requesting review of that action. 28 of those requests resulted in affirmance of the dismissals, with 5 reviews pending on December 31, 1994.

³ See Appendix, Bar Counsel Files, specifically Footnote 8.

⁴ By the Court's promulgation of amendments effective on July 1, 1995, such requests for review of Bar Counsel dismissals are now to be reviewed on a rotating basis by the several lay members of the Board and Grievance Commission.

II. COURT MATTERS

Ten (10) attorney discipline related orders were issued by the Court in 1994 including the following categories: a) disbarments - 5; b) suspensions - 2; c) suspended suspensions - 1; and d) denial of reinstatements - 2. A very brief discussion of some of those matters is set forth below.

A. DISBARMENTS

Attorney was disbarred after pleading guilty to two counts of failure to pay withheld income tax pursuant to 36 M.R.S.A. §5331. He also wrote directly to an adverse party without that party's counsel's consent. In addition, he commingled monies collected on behalf of a client with his own personal funds and failed to account for same, made cash loans to a client for living expenses and while still representing that client brought an eviction action against him on behalf of another client. The entire gamut of misconduct was found to be in violation of Maine Bar Rules 3.1(a); 3.2(f)(2), (3), (4); 3.4(c); 3.6(e)(1), (f); and 3.7(c),(d). (Board of Overseers of the Bar v. Bruce S. Billings, DOCKET NO. BAR-94-2.)

In April of 1990, the Court suspended the Respondent for a one year period for violations of more than a dozen provisions of the Maine Bar Rules relating to misconduct in his legal representation

of a minor in a personal injury action. That suspension was for the period May 10, 1990 through May 10, 1991. In May of 1993, Bar Counsel initiated proceedings against the Respondent for alleged misappropriation of funds in the approximate amount of \$11,186.00 from the trust established by the Superior Court for that minor. In August of 1993, the Court indefinitely suspended the Respondent by reason of his failure to comply with the Court's earlier order to provide a full accounting of said trust funds. The Respondent was charged and criminally convicted on guilty pleas concerning charges of theft by unauthorized taking of the property of that minor, and additional unrelated matters including client theft in excess of \$5,000.00, forgery of a check in the amount of \$150,000, and the unauthorized practice of law. Finding the Respondent's misconduct to be "flagrant" and "particularly egregious", the Court issued an order of disbarment to take effect as of the date of that order, May 23, 1994. (Board of Overseers of the Bar v. Thomas E. Audet, DOCKET NO. BAR-93-S and BAR-93-22.)

In his representation of a client in the creating and management of a subdivision project, the attorney agreed to act as the treasurer of two corporations formed for the purpose of handling the subdivision business. Without the consent or knowledge of the client, the attorney signed and cashed checks totalling in excess of \$6,000.00 for the attorney's own personal use. The attorney also wrongfully retained certain assets and fiduciary funds he had in his possession relating to ten (10)

pending bankruptcy cases. In relation to that matter, the attorney pleaded guilty in the United States District Court to the charge of Embezzlement by Bankruptcy Trustee, receiving a thirteen (13) month sentence of incarceration, and probation requiring payment of in excess of \$90,000.00 restitution. As a result, upon motion of Bar Counsel, the Court's earlier 1993 temporary suspension order was replaced by a final judgment of disbarment due to "the egregious nature" of the attorney misconduct. (Board of Overseers of the Bar v. Mark S. Freme, DOCKET NO. BAR-93-7.)

B. SUSPENSIONS

Attorney was found in contempt and suspended in the State of New Hampshire after he had failed to appear before the New Hampshire Court and produce documents. He was then indefinitely suspended by the Maine Court after a hearing on a petition for reciprocal discipline. The Court found that he had not established any of the affirmative defenses set forth in M. Bar R. 7.3(h)(3). (Board of Overseers of the Bar v. James M. Papatones, DOCKET NO. BAR-93-11.)

On October 24, 1994, the Court suspended an attorney for one year with all but one month of the suspension itself suspended for a two year period under certain conditions, most important of which was that he submit his practice of law to monitoring by two other

attorneys. In the suspension order, the Court found that he had engaged in chronic neglect of matters causing injuries to clients and failure to cooperate with Bar Counsel's investigation and the disciplinary process. (Board of Overseers of the Bar. v. Earle S. Tyler, DOCKET NO. BAR-93-14 and BAR-94-4.)

C. REINSTATEMENT HEARINGS

In November of 1994, the Law Court affirmed the single justice's (Wathen, C.J.) denial of Petition for Reinstatement reinforcing the notion that reinstatement proceedings before a single justice must be *de novo* simply because the ultimate decision whether to admit or reinstate an individual to the Bar is for the Court, and cannot be delegated to another agency, e.g., the Grievance Commission or the Board of Overseers of the Bar. The Law Court further found that the inconsistencies within Petitioner's own version of events, and not his unwillingness to accept the single justice's version, formed the basis of the conclusion for the Court to remain unpersuaded that the Petitioner had clearly and convincingly demonstrated the requisite honesty and integrity required of those admitted to practice law in Maine. (Board of Overseers of the Bar v. Torrey A. Sylvester, LAW DOCKET NO. ARO-94-290.)

Having been disbarred in 1987 upon conviction in the United States District Court of conspiracy and possession with intent to distribute illegal drugs, the former attorney petitioned for reinstatement in 1993. Hearings thereon occurred before a panel of the Grievance Commission, resulting in a 2-1 majority opinion recommending that Petitioner be reinstated. Upon hearing argument of counsel, a majority of the Board of Overseers concluded that the petitioner had failed to meet his burden of presenting clear and convincing evidence warranting reinstatement, and recommended that he not be reinstated. In August of 1994, a *de novo* hearing occurred before a single justice of the Court. Reinstatement was thereupon denied by the Court based upon findings *inter alia* that the Petitioner had failed to meet his burden of proof and had engaged in conduct throughout the reinstatement proceeding which, viewed in its entirety, prevented the Court from concluding that his reinstatement would not be detrimental to the integrity and standing of the Bar, the administration of justice, or the public interest. Reinstatement was thereupon denied, the petitioner appealed that decision to the Law Court, with the matter remaining in that stage at the end of the reporting period for this report. (Board of Overseers of the Bar v. Andrews B. Campbell, DOCKET NO. BAR-87-15.)

III. FEE ARBITRATION COMMISSION

In 1994, the Board received 201 requests for petitions for arbitration of fee disputes, 89 (44.2%) of which were later returned and filed with the Secretary to the Fee Arbitration Commission, Jaye M. Trimm.

With 29 petitions pending at the close of 1993, the 89 new petitions created a total docket of 118 petitions for 1994. The five designated panels met for a combined total of 28 occasions to hear and dispose of 45 petitions. With the assistance and involvement of Assistant Bar Counsel Karen G. Kingsley and Commission Secretary Jaye M. Trimm, and with approval by Fee Arbitration Commission Chair Peter M. Garcia, Esq., 54 fee disputes were either dismissed, settled, or withdrawn by consent of the parties prior to hearing. See M. Bar R. 9(e)(3). At the end of 1994, there were 19 petitions awaiting hearing by panels of the Fee Arbitration Commission. A vast majority of the disputes heard by the Commission continue to involve the lack of any written fee agreement between the parties⁵.

The role of the office of Bar Counsel in the fee arbitration process is one of reviewing and screening petitions upon filing with the Secretary for the purpose of determining if the matter

⁵ To help address that problem, at the request of the Board, the Court promulgated M. Bar R. 9(g)(13) effective January 1, 1995, requiring that the attorney bear the burden of proof of an agreement, or other basis for recovery of fees and expenses when there is no written fee agreement or engagement letter between the parties concerning fees.

warrants the attention of that Commission, should be also processed by the 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 may share investigative materials concerning related matters.

IV. PROFESSIONAL ETHICS COMMISSION

The Professional Ethics Commission, comprised of eight attorney members, continued to meet monthly in 1994 to discuss, draft and issue formal advisory opinions on ethical questions posed by Bar Counsel, the Grievance Commission and Maine attorneys. These opinions provide assistance and guidance to attorneys concerning situations involving the proper interpretation and application of the Code of Professional Responsibility.

During 1994 the Commission issued ten additional formal advisory opinions, totaling 147 through the end of the year. Those opinions issued in 1994 are briefly summarized below:

Opinion No. 138 (March 25, 1994)

An attorney may extend credit and finance clients through a finance company which will then bill the clients on an installment basis as long as the client may assert defenses based on the lawyer's failure to perform, and provided that the client's right to submit a fee dispute to arbitration under Maine Bar Rule 9 is

not impaired.

Opinion No. 139 (June 1, 1994)

A lawyer's fee agreement with a client may not include a provision requiring the client to pay the lawyer for the cost of the defense of the lawyer (professional time and disbursements) in a grievance proceeding instituted by the adverse party. Such an agreement is "unreasonable" and impermissible under Maine Bar Rule 3.3.

Opinion No. 140 (June 23, 1994)

The opinion considered defense counsel's obligation in a criminal case to disclose a client's false testimony to the Court and concluded that under the facts presented, the Maine Bar Rules do not require counsel to take the additional step of disclosing the client's false testimony to the Court. The opinion observed, however, that the Supreme Judicial Court has in the past invoked the attorney's oath to impose discipline for a failure to inform the Court of a client's perjury, but that interpretation of the oath was beyond the scope of the Commission's authority.

Opinion No. 141 (June 30, 1994)

Real estate escrow accounts used exclusively to hold funds generated by real estate closings, are subject to the provisions of Maine Bar Rules 3.6(e) and 6. These accounts must, therefore, be considered together with other trust accounts of the firm or lawyer for the purpose of complying with the requirement of Rules 3.6(e)(4) and (5) that all such accounts either be IOLTA or non-IOLTA and that the reporting requirements of Rule 6 applied in

either case.

Opinion No. 142 (August 19, 1994)

An attorney may enter into practice as a mediator remaining "of counsel" with a law firm not otherwise related to the inquiring lawyer's mediation practice, while being married to one of the partners in the firm. The Commission also concluded that the law firm would be disqualified from representing any party to a mediation conducted before the lawyer or any member of the mediation organization in any matter relating to the mediation and that the mediators would be required to disclose the lawyer's affiliation with the firm in any case in which a party to mediation was or had been represented by that law firm.

Opinion No. 143 (July 26, 1994)

This opinion responded to a broad inquiry about the obligation of sole practitioners to arrange in advance for possible termination of their practice through death or disability. Although the Maine Bar Rules do not provide a step by step recipe, the Commission concluded that a plan adopted in advance of any disabling event was highly desirable and suggested the elements of such a plan.

Opinion No. 144 (August 22, 1994)

The Maine Bar Rules are not violated by obtaining a mortgage or security interest in property of a client securing the payment of a note for legal fees, provided that the property is not involved in any litigation being conducted by the lawyer for the client.

Opinion No. 145 (September 27, 1994)

An attorney may not accept a referral share in fees paid by a client when the client has been referred to other counsel because representation by the referring attorney is precluded by a conflict of interest.

Opinion No. 146 (December 9, 1994)

Bar Counsel requested the opinion and asked the Commission to assume that a lawyer has received documents in the course of pretrial discovery, that among them is a copy of a document "clearly privileged", and that the receiving lawyer knew or should have known that delivery of the document was inadvertent. Bar Counsel then asked whether the receiving lawyer could use the privileged document or the information it contained in representing the client and whether the receiving counsel was required to notify delivering counsel of the error.

The Commission concluded that the Maine Bar Rules do not prohibit receiving counsel from using the document and the information contained in it, to the extent permitted by the rules of procedure and evidence, but that the receiving lawyer should disclose to opposing counsel that the document was received and provide a copy on request. Four members of the Commission concurred in the opinion; one member concurred in the result, and three members of the Commission dissented.

The opinion has obtained sufficient notoriety that the Advisory Committee on the Code of Professional Responsibility is now considering an amendment designed to reverse the result

reached.

Opinion No. 147 (December 14, 1994)

The opinion discussed the implications of participating in a prepaid legal services plan developed by a Florida firm entitled "Professional Asset Planning". The agreement proposed by Professional Asset Planning would have limited in significant ways the freedom of participating attorneys to advise clients referred by the organization according to their best professional judgment. It also contained implicit and explicit directions to participating attorneys, supplied, not by clients, but by the organization that was employing them to render services to its members. The Commission therefore concluded that the arrangement would violate Bar Rule 3.4(e)(1) and had the potential for violations of Rule 3.6(a).

V. MISCELLANEOUS MATTERS

A. AMENDMENTS TO THE MAINE BAR RULES

Certain of the Court's amendments to the Bar Rules not previously discussed or referenced in this or an earlier report of Bar Counsel are briefly summarized as follows:

1. Rule 1(a) - Jurisdiction.

The jurisdiction rule was amended to now provide that judges are subject to the provisions of the Maine Bar Rules concerning conduct relevant to that individual's position as an attorney and as to conduct prior to becoming or after ceasing to be a judge.

The Court also provided that there shall be coordination between the Board of Overseers and the Committee on Judicial Responsibility and Disability concerning matters involving related conduct.

2. Rule 3.6(j) - Client with Diminished Mental Capacity.

This rule was added to deal with the problem of the lawyer's duties to a client when, because of that client's diminished mental capacity, the traditional client/lawyer relationship cannot easily be maintained and the client is unable to either protect the client's own interest or direct the lawyer to do so. In that regard, within the defined confines of those situations rendering a normal client/lawyer relationship impossible, the lawyer is allowed to act and consult with others in a manner that would normally be deemed to be prevented by the client/lawyer relationship.

3. Rule 3.8 - Advertising fields of practice.

Rule 3.8 was amended with language intended to eliminate redundancy in the existing rule and to conform with the United States Supreme Court's decision in Peel v. Attorney Registration and Disciplinary Com'n of Illinois, 496 U.S. 91 (1990). As a result, attorneys may now communicate truthful statements identifying fields of practice in which they concentrate or specialize or to which their practice is otherwise limited. Truthful statements are also allowed to be made concerning certification or other recognition of expertise conferred by a named organization that has been approved by the Board of Overseers under newly enacted Rule 4(d)(24) and Board Regulation No. 48.

B. BOARD REGULATIONS

Three new regulations were issued by the Board of Overseers pursuant to Maine Bar Rule 4(d)(18), which are briefly summarized as follows:

1) **Board Regulation No. 48 - Procedure for Organizations and Attorneys Seeking to Certify Expertise** - In accordance with Maine Bar Rules 3.8(b) and 4(d)(24) the Board issued the procedure to be followed by any organization seeking approval to recognize, designate or certify expertise of a Maine attorney in one or more areas of law, or any attorney admitted to practice in Maine seeking an organization's approval for such certification.

2) **Board Regulation No. 49 - Complaints Against Bar Counsel** - The Board set forth a procedure for the Grievance Commission Chair or Vice-Chair to initially review any complaints as to the conduct of Bar Counsel or Assistant Bar Counsel in a format generally consistent with the approach for analysis and processing of attorney complaints under Bar Rules 7.1(c) and 7.1(d).

3) **Board Regulation No. 50 - Procedure for Reinstatement** - The Board set forth the procedure and role for the Board to undertake in reinstatement matters initially heard by panels of the Grievance Commission, when its report is objected to by either the petitioner or Bar Counsel.

C. INFORMAL ADVISORY OPINIONS

In addition to the formal advisory opinions of the Professional Ethics Commission, the office of Bar Counsel continued to provide informal advisory opinions to Maine attorneys on a daily basis, averaging approximately 22 inquiries a month for at least one Assistant Bar Counsel. These matters are usually received and provided over the telephone, relating to an attorney's inquiry as to whether certain professional conduct by that lawyer, the lawyer's law firm or a lawyer-client of the lawyer's law firm is appropriate under the Maine Bar Rules. Bar Counsel will refuse to so advise regarding a claimed "hypothetical" without confirming the full role of the inquirer, because Bar Counsel is limited by both Advisory Opinion No. 67 as well as Board Regulation 28 to advise only concerning conduct of the inquiring attorney or that attorney's law firm, not regarding inquiries as to another attorney's conduct.

D. ASSISTANCE TO THE MAINE STATE BAR ASSOCIATION

Bar Counsel and Assistant Bar Counsel continued to assist and appear on panels of various continuing legal education seminars of the Maine State Bar Association and local county bar associations involving ethical issues, and also attend meetings and workshops of the Association's Substance Abuse Committee.

E. CONTINUING LEGAL EDUCATION

As indicated in Bar Counsel's 1993 Annual Report at pages 20 and 21, in 1994 the Court declined to adopt proposed Maine Bar Rule 12, Continuing Legal Education (CLE). It did, however, promulgate Bar Rule amendments requiring attorneys to provide within their annual registration statement, information concerning the formal continuing legal education in which they participated during the preceding calendar year. The Court also stated that attorneys should continue to study the law throughout their careers and should endeavor to complete twelve (12) hours annually of continuing legal education with at least one (1) hour being primarily concerned with issues of professional responsibility. See M. Bar R. 6(a) and 3.11. Based upon the 1995 attorney registration statements filed with the Board, a Report on Voluntary Continuing Legal Education by 1994 Maine Bar Registrants was prepared by Board member Craig A. McEwen, Ph.D., and that report is attached hereto for reference and analysis.

F. OFFICE RELOCATION

The Board's purchase of a building housing its office space, including a hearing room, was finalized in 1994. The background and reasons for this purchase is described in Bar Counsel's 1993 Annual Report, pp. 21,22. In early September of 1994, Board staff moved to the facility located at 97 Winthrop Street in Augusta.

Respectfully submitted,



Dated: August 11, 1995

J. Scott Davis
Bar Counsel
Board of Overseers of the Bar
97 Winthrop St., P.O. Box 1820
Augusta, Maine 04332-1820
Telephone: 623-1121

GRIEVANCE COMMISSION 1994

COMPLAINT AND HEARING SUMMARY

January 1, 1994 to December 31, 1994

I. Complaints Reviewed - 259⁶

ACTION:

Dismissals:	199
Dismissals with warning to attorney:	29
Disciplinary Hearings Authorized:	24
Directly to Court re: Rule 7.2(b)(7)	6
(Administrative Closings ⁷ :	2)

II. Dispositions After Public Hearing - 17 complaints

ACTION:

Dismissals:	5
Dismissals with warning:	0
Reprimands Issued:	7
Complaints authorized to be filed with Court by information:	5

III. Grievance Complaints Closed

A. Complaints pending at start of period:	179
B. New complaints docketed:	208
C. Total complaints pending:	387
D. Total complaints closed by review or hearing:	277
E. Complaints pending investigation, review or hearing:	110

⁶ Includes 1 complaint reviewed by a Board panel, rather than Grievance Commission panel, pursuant to M. Bar R. 7.1(b).

⁷ Matters not reviewed by a Grievance Commission panel under Rule 7.1(d), but directed by entire Grievance Commission to be docketed under Rule 7.1(c) and dismissed.

IV. Court Matters

A. Actions pending at start of period:		17
B. New actions filed:		8
C. Total Court pleadings on docket:		25
D. Disciplinary Orders Issued:		
1. Disbarments	5	
2. Suspensions	2	
3. Suspension w/ Conditions	1	
4. Resignations	0	
5. Reprimands	0	
6. Dismissals	0	
7. Reinstatements denied	2	
	<hr/>	
Total:	10	

E. Preliminary Orders Issued	8
F. Orders Appointing Counsel to review files	3
Actions on docket pending at end of period:	8

V. Total Disciplinary Matters Pending - 12/31/94

A. Grievance Commission		
1. Complaints to be investigated and reviewed:	112	
2. Complaints awaiting Grievance Commission disciplinary proceedings:	33	
3. Complaint heard - decision pending:	1	
4. Reinstatement matter pending:	1	
B. Maine Supreme Judicial Court		
1. Pending informations or actions	8	
2. Informations authorized, but not yet filed:	<u>3</u>	
TOTAL:		158

(Comparative total for 1993 - 194)

1994 GRIEVANCE COMPLAINTS

<u>SOURCE OF COMPLAINT</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Client	129	62
2. Adverse Party	59	28
3. Lawyer or Judge	14	7
4. Board or Staff	6	3
	<u>208</u>	<u>100</u>

TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

1. Sole Practitioner	91	44
2. 2	35	17
3. 3-6	47	22
4. 7-10	14	7
5. 11 or more	14	7
6. Government and Other	7	3
	<u>208</u>	<u>100</u>

TOTAL COMPLAINTS BY AGE OF ATTORNEYS

1. 24-29	1	.5
2. 30-39	47	22.5
3. 40-49	99	48
4. 50-59	43	21
5. 60+	18	8
	<u>208</u>	<u>100</u>

1994 GRIEVANCE COMPLAINTS - CHARACTERIZATION

	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Trust Violation	3	1
2. Conflict of Interest	21	10
3. Neglect	78	38
4. Relationship w/Client	20	10
5. Misrepresentation/Fraud	25	12
6. Excessive Fee	6	3
7. Interference w/Justice	46	22
8. Improper Advertising/ Soliciting	0	0
9. Criminal Conviction	0	0
10. Personal behavior	3	1
11. No cooperation w/Bar Counsel	0	0
12. Medical	0	0
13. Incompetence	4	2
14. Jurisdiction	0	0
15. Conduct Unworthy of Attorney	1	.5
16. Other	1	.5
TOTAL	<u>208</u>	<u>100</u>

1994 BAR COUNSEL FILES

<u>AREA OF LAW</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
A. Family	34	26
B. Criminal	28	21
C. Probate/Wills	15	11
D. Commercial	1	.5
E. Collections	5	4
F. Landlord/Tenant	7	5
G. Real Property	12	9
H. Corporate/Bank	3	2
I. Torts	7	5
J. Labor	3	2
K. Worker's Comp	5	4
L. Bankruptcy	1	.5
M. Municipal	2	1
N. Other/None	<u>11</u>	<u>9</u>
	134	100

1994 BAR COUNSEL FILES

<u>CHARACTERIZATION</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Conspiracy	5	4
2. Disagreement over conduct of case	9	7
3. Habeas Corpus	10	7.5
4. Insufficient Information	11	8
5. Lack of Professionalism	7	5
6. Malpractice	3	2
7. Personal Life	1	.5
8. Request for legal assistance	79	59
9. Other	<u>9</u>	<u>7</u>
Total Bar Counsel Files Docketed:	134 ⁸	100
Bar Counsel Files pending at start of period	23	
Total Bar Counsel Files on docket	<u>157</u>	
Bar Counsel Files closed during period	<u>116</u>	
Bar Counsel Files pending at end of period	41	

⁸Includes 2 matters originally docketed as Bar Counsel Files, and later transferred to formal grievance complaint status prior to December 31, 1994.

FEE ARBITRATION COMMISSION
PETITION SUMMARY
January 1, 1994 through December 31, 1994

PETITIONS:

Pending at start of period:		29
Docketed during period :		89
Total open petitions during period:		<u>118</u>
Dismissed, settled, withdrawn:	54	
Heard and closed:	45	
Heard and awaiting awards:	<u>0</u>	
Total petitions closed during period:	99	
Total petitions pending at close of period:		19

BREAKDOWN OF MEETINGS BY PANEL:

Panel IA:	(York)	3
Panel IB:	(Cumberland)	9
Panel II:	(Androscoggin, Franklin Lincoln, Oxford & Sagadahoc)	6
Panel III:	(Kennebec, Knox, Somerset & Waldo)	4
Panel IV:	(Aroostook, Hancock, y Penobscot, Piscataquis, & Washington)	6
TOTAL:		<u>28</u>

Comparison of Petitions docketed:

1992: 115
1993: 111
1994: 89

FEE ARBITRATION COMMISSION:

Peter M. Garcia, Esq. of Auburn, Chair
Carletta M. Bassano, Esq. of Machias
Rachel Armstrong of Falmouth
Diane S. Cutler of Bangor
Harriet R. Dawson of Yarmouth
Matthew F. Dyer, Esq. of Augusta
Gregory J. Farris, Esq. of Gardiner
Jeffry Fitch of Bangor
Kevin F. Gordon, Esq. of Portland
Doris Hayes of Manchester
Sallie Huot of Saco
Richard Ladner of Lisbon Falls
Bruce E. Leddy, Esq. of Portland
Stephen G. Morrell, Esq. of Brunswick
Anne C. Pomroy, Esq. of Old Orchard Beach
Peter W. Schroeter, Esq. of Saco
Valerie Stanfill, Esq. of Lewiston
Lee Young of Auburn

BAR COUNSEL:

J. Scott Davis, Esq.

ASSISTANT BAR COUNSEL:

Karen G. Kingsley, Esq.
Geoffrey S. Welsh, Esq.

JUDICIAL LIAISON:

Hon. Paul L. Rudman

jmt/1994AnnualRept