

# MAINE STATE LEGISLATURE

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MAINE BOARD OF OVERSEERS OF THE BAR

BAR COUNSEL'S ANNUAL REPORT  
2003

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# BOARD OF OVERSEERS OF THE BAR

## Bar Counsel's 2003 ANNUAL REPORT

### INTRODUCTION

The Board of Overseers of the Bar consists of six attorneys appointed by the Maine Supreme Judicial Court (the Court) and three lay persons appointed by the Court on the recommendation of the Governor. It performs its duties and responsibilities under the Maine Bar Rules through its staff of three attorneys and six additional staff. The Board appoints members to three other public service agencies under its governance: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission (22 members) and the Grievance Commission (23 members) conduct their functions under the Maine Bar Rules by three-member panels. Each grievance panel is comprised of two attorneys and one lay (public) member, while the fee panels are so comprised or may instead use two lay members and only one attorney. The Professional Ethics Commission has eight (8) attorney members. Information concerning the responsibilities and functions of the Board and each of its commissions is contained in informational pamphlets available at the office of the Board of Overseers of the Bar, 97 Winthrop Street, P.O.Box 527, Augusta, ME. 04332-0527. Tel. # (207) 623-1121; Fax: (207) 623-4175. Certain public information may also be accessed at the Board's website address: [www.mebaroverseers.org](http://www.mebaroverseers.org) and e-mail may be addressed to [board@mebaroverseers.org](mailto:board@mebaroverseers.org). Please also note the respective membership lists within the attached Appendix to this Report.

## I. GRIEVANCE COMMISSION

### **A. Complaints**

In 2003 the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF) 146 written grievance complaints which, upon being screened by an attorney in the office of Bar Counsel, were initially deemed to allege at least some form of a *prima facie* claim of professional misconduct by Maine attorneys in violation of the Code of Professional Responsibility (Code). That was a fairly significant decrease (38%) from the number so filed and docketed in 2002 (235). By comparison, there were an additional 169 matters received in 2003 that were instead docketed as Bar Counsel Files because they were deemed by Bar Counsel to not state any Maine attorney's violation of the Code. It should be noted that at this BCF complaint level in 2003, contrary to the decrease in the number of docketed GCF filings, there was an increase of 27% of those BCF matters docketed in 2002 (133). Please generally refer to Maine Bar Rule 7.1(c),(d), to page 9 of this report and pages 34-35 of its Appendix for more information concerning BCF matters in 2003.

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

1. Case Reviews -- Panels of the Grievance Commission met on 38 occasions to conduct preliminary reviews of 172 GCF complaints under M. Bar R. 7.1(d). Each of these meetings consisted of a panel consulting with Bar Counsel or Assistant Bar Counsel to review the contents of GCF investigative files. Such reviews are not hearings, and neither the respective complainants nor the respondent attorneys are ever present. In fact, the majority of the reviews generally occur by telephonic conference call. Although there is no confidentiality requirement applicable to either the involved complainants or respondent attorneys, under M. Bar R. 7.3(k)(1) Bar Counsel's

investigation and the Grievance Commission's review process through this preliminary phase are generally<sup>1</sup> kept confidential by the Board, the Commission and the Board's staff under M. Bar R. 7.3(k)(1). However, any subsequent Grievance Commission panel disciplinary hearing is always open to the public and its resulting decision (report) concerning such complaints – regardless of the result – is also always open and made available to the public.

As a result of those 172 reviews, 149 complaints were closed at that point by issuance of either a dismissal (122) (no finding of any attorney misconduct) or a dismissal with a warning (27) (minor misconduct) issued against those involved attorneys. See M. Bar R. 7.1(d)(3),(4). Review panels also found probable cause that professional misconduct warranting some disciplinary sanction had occurred in 23 of those matters so reviewed. For 21 of those complaints, disciplinary petitions were directed to be filed by Bar Counsel for formal disciplinary hearings open to the public before another panel of the Commission under M. Bar R. 7.1(e), with the remaining 2 matters to be filed directly with the Court due to the fact that the involved attorney(s) already had pending disciplinary matters in that forum. See M. Bar R. 7.2(b)(7).

2. Disciplinary proceedings – Grievance Commission panels also conducted public disciplinary hearings resulting in nineteen (19) decisions being issued in 2003, including nine (9) reprimands of attorneys, and another seven (7) dismissals with a warning being issued. In three (3) other matters heard, Bar Counsel was directed to file further *de novo* proceedings before a single justice of the Court seeking suspension or

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<sup>1</sup> There are exceptions to that confidentiality rule to allow Bar Counsel to properly and thoroughly investigate all grievance complaints. See M. Bar R. 7.3(k)(5).

disbarment of the involved attorneys. Finally, after hearing Panel E recommended the Court reinstate a Maine attorney who had been suspended since August 11, 1995 (See p.11 below).

a. REPRIMANDS

Panel C of the Grievance Commission found an attorney violated Maine Bar Rule 3.6(a)(neglect) by being inattentive and causing delays to the processing of a probate estate. Specifically, he was found to have delayed in filing of the estate's tax returns and in the liquidation of stock certificates, and to have failed to adequately articulate his firm's billing practices. *Board of Overseers of the Bar v. David N. Fisher, Esq.*, GCF# 02-60 (April 7, 2003).

Panel E of the Grievance Commission reprimanded an attorney for violation of Maine Bar Rule 3.7(e)(1)(i)(false statements to a court) because she misrepresented to the U.S. Bankruptcy Court her reasons for filing an untimely pleading concerning a pending Chapter 7 Bankruptcy Petition. *Board of Overseers of the Bar v. Amy B. McGarry, Esq.*, GCF# 02-105 (April 9, 2003).

Panel A of the Grievance Commission reprimanded an attorney for violation of Maine Bar Rules 3.4(c),(d),(f) ( conflicts of interest) concerning improper and conflicting representations he served in certain real estate transactions. He also violated Maine Bar Rule 3.5(b)(2)(i)(improper withdrawal) by not timely withdrawing from representation of the clients. *Board of Overseers of the Bar v. Richard L. Rhoda, Esq.*, GCF# 98-40 (June 19, 2003).

Panel D of the Grievance Commission reprimanded an attorney for his neglect (Maine Bar Rule 3.6(a)(3)) of his client's action to quiet title, which the District Court had

dismissed with prejudice due to his failure to timely pursue the action for his client.

*Board of Overseers of the Bar v. Frank D. Walker, Esq.*, GCF# 02-159 (July 11, 2003).

Panel B of the Grievance Commission reprimanded an attorney because he inadequately and insufficiently supervised his support staff thereby violating Maine Bar Rule 3.13(c)(1),(2)(lack of supervision) in three (3) different client complaint matters. The attorney's supervisory failures resulted in his staff member's providing false and misleading information to clients on their cases, including the status of matters supposedly – but in fact not – being litigated for them. The panel specifically found: “When an attorney delegates appropriate tasks to a non-lawyer assistant, there must be corresponding oversight and supervision by the attorney of the non-lawyer assistant”(emphasis added). *Board of Overseers of the Bar v. James J. MacAdam, Esq.*, GCF# 01-178, 01-181 and 01-182 (December 1, 2003).

Panel B of the Grievance Commission reprimanded an attorney for not being diligent by failing to file his client's motion to vacate a small claims default judgment, thereby engaging in violation of Maine Bar Rule 3.6(a)(3)(neglect). *Board of Overseers of the Bar v. Peter E. Rodway, Esq.*, GCF# 02-185 (December 1, 2003).

Panel E of the Grievance Commission reprimanded an attorney because he improperly had practiced law and held himself out as an actively practicing attorney while registered with the Board as an inactive practitioner who had not been properly reinstated to active practice. As a result, his conduct was in violation of Maine Bar Rules 3.2(a)(1), 3.2(f)(1), 6(c)(1) and 7.3(i)(2)(A). *Board of Overseers of the Bar v. Richard W. Gerrity, Esq.*, GCF# 03-208 (December 2, 2003).

Panel E of the Grievance Commission reprimanded an attorney for neglecting real estate litigation, and then misrepresenting to her clients her lack of progress on the



matter by falsely telling them she had filed a lawsuit. Her conduct violated Maine Bar Rule 3.2(f)(3)(deceit, dishonesty, misrepresentations) and 3.6(a)(neglect). She also did not timely turn over the clients' file to successor counsel in violation of Maine Bar Rule 3.6(e)(2)(iv). *Board of Overseers of the Bar v. Jennifer R. Raymond, Esq.*, GCF# 03-191 (December 2, 2003).

#### b. OTHER GRIEVANCE COMMISSION DISPOSITIONS

Certain other complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or proceedings before the Court, with seven (7) non-disciplinary – but now public – dismissals with a warning being issued for minor violations of the Code.

The attached tables in the Appendix 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 2003. The Appendix also includes a table listing the various applicable rules the Court and Grievance Commission found had been violated in those matters where sanctions (including non-disciplinary warnings) were imposed after hearing (See Appendix @ pp. 26-31).

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

Bar Counsel Files are those complaints that upon initial review by Bar Counsel or an Assistant Bar Counsel are deemed to not allege any professional misconduct subject to sanction under the Maine Bar Rules. Maine Bar Rule 7.1(c) requires Bar Counsel's unilateral dismissal of such matters, either with or without investigation. There were 169

Bar Counsel File (BCF) matters so docketed in 2003, an increase of 27% of those matters so received the previous year.

When a BCF matter is dismissed by Bar Counsel, the complainant is always notified in writing by Bar Counsel of the reason(s) for that dismissal and of a right within the subsequent 14 days to file a written request for that dismissal to be reviewed. Such reviews are performed by a lay member of either the Board or the Grievance Commission. In such dismissal matters, Bar Counsel always provides the involved attorney with copies of the complaint filing and the dismissal, any resulting request for review, and the reviewer's decision. Bar Counsel dismissed 157 Bar Counsel Files in 2003, with 45 complainants requesting review of those actions. Lay members decided and affirmed 39 of those dismissals (with six (6) of those reviews pending on December 31, 2003), and therefore did not vacate or modify any of those matter(s) so dismissed by Bar Counsel (See Appendix @ p.35).

#### D. Total Complaints Filed

Those 169 "lower level" BCF complaint matters and the unrelated 146 formal grievance complaints (GCF) discussed above resulted in a total of 315 written complaints about claimed attorney misconduct being filed with and docketed by Bar Counsel in 2003, only a 14% decrease from the total filed in 2002 (368).

## II. COURT MATTERS

Eleven (11) disciplinary or related matters were acted on by the Court in 2003, with the dispositions as follows: Suspensions – 3; Resignation – 1; Reciprocal Discipline – 1; Reinstatements – 3; and Miscellaneous actions – 3 (all relating to the storage of client files involving three different disbarred attorneys). A brief summary of certain of

those matters follows below, with many of those Court disciplinary sanctions or related orders imposed upon approval of the parties' proposed stipulation.

### **A. Suspensions**

On January 29, 2003 Justice Alexander temporarily and indefinitely suspended an attorney pursuant to Maine Bar Rule 7.3(e)(3) until he is medically able to participate in a pending disciplinary matter. *Board of Overseers of the Bar v. Wallace A. Bilodeau, Esq.*, Docket No. BAR 03-01.

On September 5, 2003 Justice Dana suspended an attorney for three months, because of *inter alia* his neglect in several litigation matters. That suspension itself was suspended for a period of one year. During the attorney's "suspended suspension", he was ordered to submit his practice to supervision by a monitor (attorney) who is to file quarterly confidential reports regarding the attorney's handling of his cases and law practice. *Board of Overseers of the Bar v. Christopher J. Whalley, Esq.*, Docket No. BAR 03-3.

On September 26, 2003 Justice Levy suspended an attorney for a year because of the attorney's improper former client conflict of interest and wrongful retention of an excessive fee (after withdrawal from representation due to that conflict) in a post-divorce family law matter. That suspension was likewise suspended for one year, during which time Justice Levy ordered that the attorney submit her practice to supervision by a monitor (attorney) for one year. *Board of Overseers of the Bar v. Patricia A. Danisinka-Washburn, Esq.*, Docket No. BAR 03-04 (September 26, 2003).

On October 27, 2003 Justice Calkins imposed reciprocal discipline against a Massachusetts attorney by indefinitely suspending him pursuant to Maine Bar Rule 7.3(h)(3). *Board of Overseers of the Bar v. Albert Ira Gould*, Docket No. BAR 03-05.

## **B. Resignation**

After hearing on September 3, 2003 Justice Clifford accepted the resignation of an attorney in lieu of disciplinary action under Maine Bar Rule 7.3(i). The order conditioned the attorney's future reinstatement, if sought, on certain conditions, but ordered those conditions to remain confidential until any future reinstatement hearing. *Board of Overseers of the Bar v. Richard S. Bach*, Docket No. BAR 03-02.

## **C. Reinstatements**

On February 28, 2003 Justice Rudman reinstated an attorney (who had received a disciplinary suspension on October 15, 1997) subject to certain terms and conditions, including submission of the lawyer's practice to supervision by a monitor (attorney) who shall file quarterly confidential reports with the Court concerning the attorney's practice. *Board of Overseers of the Bar v. Sue A. Bushey*, Docket No. BAR 97-10.

Likewise, after a testimonial hearing was conducted, on December 10, 2003 Justice Levy reinstated an attorney (who had been suspended since August 11, 1995) subject to similar terms and conditions including supervision by a monitor (attorney). *In The Matter of Gordon P. Gates*, Docket No. BAR 95-1.

## **D. Miscellaneous Matters**

At the Board's request, on May 5, 2003 Justice Rudman ordered the Board to publish a notice in a local newspaper that former clients of a recently disbarred attorney could make arrangements to pick up their files at the office of a local attorney, Ellen S. Best, who had authorized access to those abandoned files under the terms of the Court's earlier Order of Appointment. As a service to the bar, Ms. Best worked many unsparing hours to gather those files and assist the disbarred attorney's many former clients both to obtain their files and to consider pursuit of appropriate claims against that

former attorney. *Board of Overseers of the Bar v. Lenore Anderson (f / k / a Lenore Grant)* Docket No. BAR 01-04. Two similar “file custody” orders were also issued by the Court. See *Board of Overseers of the Bar vs. Charles G. Williams* (Rudman, J.) May 1, 2003 and *Board of Overseers of the Bar vs. Ronald L. Bishop*, Docket No. BAR-00-06 (Alexander, J.), May 15, 2003.

On May 8, 2003 U.S. District Judge D. Brock Hornby dismissed a civil action brought by a disbarred attorney against Bar Counsel Davis and other individuals. The Court dismissed the lawsuit for reasons which included claim preclusion since the disbarred attorney/plaintiff had previously unsuccessfully litigated his claim in another action against one of the defendants. *Thomas M. Mangan v. J. Scott Davis, Esq. et al* Civil Action No. 03-CV-057-P-H.

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

70 new Petitions for Arbitration of Fee Disputes were filed in 2003 with the Secretary to the Fee Arbitration Commission, Jaye Malcolm Trimm. With 18 petitions already pending, and two additional matters re-opened for hearing after earlier dismissals had been vacated by the Commission Chair, a total of 90 matters were on file before the Commission in 2003, a 12% decrease from the previous year (107). With preliminary screening by Bar Counsel or an Assistant Bar Counsel, Commission Secretary Trimm and with final approval by Commission Chair Bruce C. Mallonee, Esq., 34 of those pending fee dispute matters were dismissed, settled or withdrawn by consent of the parties prior to any hearing by panels of the Commission (See M. Bar R. 9(e)(3)). Panels conducted 22 testimonial hearings of 34 petitions. As a result, 68 fee disputes were settled or heard, leaving a pending docket of 22 matters as of the end of 2003 (See Appendix @ p.36).

The office of Bar Counsel screens all fee arbitration petitions as filed to determine if the stated allegations actually warrant the attention of that Commission or should also (or instead) be processed by the Grievance Commission. Bar Counsel may sometimes attempt to promote and assist in the parties' informal resolution of fee disputes prior to hearing by a panel but is not usually involved in the fee arbitration process after performing that initial screening process. See M. Bar R. 9(e)(2). Although both Commissions are otherwise subject to confidentiality restrictions during their respective investigative processes, pursuant to Board Regulation No. 8 the Fee Arbitration Commission and Grievance Commission may and usually do share respective investigative materials concerning related matters.

#### **IV. PROFESSIONAL ETHICS COMMISSION**

The eight attorney members of the Professional Ethics Commission and Assistant Bar Counsel Nora Sosnoff met monthly in 2003. The Commission issued two (2) formal, written advisory opinions on ethical questions presented, numbered as Opinions 181 and 182. These opinions are briefly summarized below. The Commission also responded by informal letter(s) to inquiries from attorneys and county bar associations concerning a variety of ethical queries.

Opinion No. 181 (January 14, 2003): In this opinion, the Commission answered an inquiry by the Grievance Commission. The question concerned whether an attorney acting as a designated agent under a union's collective bargaining agreement pursuant to the Maine Municipal Public Employee Labor Relations Act may make direct contact with high level municipal officials regarding an employee's grievance proceeding, even when the attorney knows that another attorney represents the municipality with respect

to the particular employee's grievance proceeding and objects to that attorney's direct contact with those municipal employees. In the particular factual circumstances presented, the Commission answered that such communications were prohibited by Maine Bar Rule 3.6(f).

Opinion No. 182 (August 6, 2003): In this opinion, the Commission answered two inquiries from the private bar asking for clarification of certain conclusions set forth by the Commission in Opinion #179 (issued in 2002). The first inquiry concerned whether an attorney providing legal services to a client in a real estate transaction could ethically refer that client to the attorney's or law firm's title insurance company. The Commission answered in the affirmative. However, it stated that if an Attorney engages in that practice, the Code of Professional Responsibility applies to the law-related services provided by the attorney-owned title company. The Commission answered also a second question about whether there are any circumstances in which an attorney may make adequate disclosure to the client that services performed by the attorney's title company are not to be considered legal services entitled to the protections of the Code. The Commission answered that an affirmative response to the second question might be theoretically possible in a very narrow category of circumstances, but in reality the work of a title company would ordinarily be subject to the Code where the attorney-owned title company was providing services to the attorney's client in the same transaction in which the attorney was providing other services.

## **V. MISCELLANEOUS MATTERS**

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

The Lawyers' Fund for Client Protection (LFCP) was established by the Court effective July 1, 1997. Pursuant to the Court's Rules governing that Fund, its Board of Trustees may only approve and pay claims for attorneys' dishonest conduct occurring after January 1, 1999. Although the Fund's Trustees control the investment of its collected assessments and the general operation of its responsibilities and duties, at the direction of the Court the Board of Overseers requests and collects the required \$20.00 annual assessment from all Maine attorneys and judges for deposit in the Fund's account. Although claims were basically non-existent from 1999 through 2002, in 2003 there were 10 claims referred to or received by Bar Counsel for investigation under Rule 12 of the Maine Rules for Lawyers' Fund for Client Protection involving four attorneys, one of whom was alone responsible for four (4) claims. Nine (9) claims – including seven (7) of those filed in 2003 – were paid that same year, with five (5) of those claims also involving that one same (now disbarred) attorney, Lenore Anderson and totaling \$10,986.00 in approved amounts. Further details concerning these claims (as allowed within the confidentiality restrictions of LFCP Rule 17) and the general operation of the Fund may be found in the 2003 Annual Report of the LFCP.

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

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



and proposed to the Court. In 2003, the Court did not amend any sections of the Code, but did amend other Maine Bar Rules as follows, all effective on March 1, 2003:

Maine Bar Rule 5(d) - The amendment addresses record retention issues. It provides that Bar Counsel shall permanently retain certain records of grievance complaint dispositions, but file materials and related documents are no longer to be kept by the Board. Although in 1999 the Court had promulgated the first version of an “expungement” requirement concerning most dismissed grievance complaint matters, this latest amendment goes further and addresses record retention issues allowing only limited permanent document retention in the more serious disciplinary matters, and only retention of summary information in other matters.

Maine Bar Rules 6(b), 7.1(e), 10(b) and 12(c) - The amendments remove the requirement of "restricted delivery" of various forms of notices issued by the Board under each of these Rules. The amendments concerned the method of notice that the Board is required to give in cases of summary suspension, service for petitions for disciplinary action and notices of hearing on disciplinary petitions. Such notices shall be given by the Board by registered or certified mail, but are no longer required to be given by means of “restricted delivery” mail service.

Maine Bar Rule 7.3(j)(5)(F) - This amendment specifically addresses a former attorney's continuing legal education requirement under M. Bar R. 12(a) as a factor that must be addressed upon any attempt at seeking reinstatement to practice law in Maine. With this amendment, the reinstatement rule now specifically refers to and incorporates the CLE requirements of M. Bar R. 12(a), with a cap of 22 hours (two years) as the maximum amount required no matter how many years the (former) attorney was absent

from active practice. This amendment adopted the previous policy used by the Board of Overseers of the Bar's CLE Committee.

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

The office of Bar Counsel continued to provide daily assistance to Maine attorneys through the issuance of informal advisory opinions, most usually by the so-called "telephone ethics hotline". Pursuant to Board Regulation No. 28, Bar Counsel provides the inquiring attorney with an assessment of the apparent propriety or prohibition under the Code of the described conduct of that inquiring attorney or another member of that attorney's law firm. However, under that Regulation, Bar Counsel is prohibited from advising an inquiring attorney about another attorney's supposed or "hypothetical" conduct. See also Advisory Opinion #67 and #171. In 2003, attorneys in the office of Bar Counsel answered approximately 379 such telephonic "ethics hotline" inquiries. At least a dozen written informal and confidential advisory opinion letters were also issued by the office of Bar Counsel that year.

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

2003 was the seventh full year of the Board's policy of having attorneys in the office of Bar Counsel, as time and resources allow, review and screen telephonic inquiries from potential complainants, i.e. callers that discuss issues or ask questions about attorney conduct but have not yet filed any "formal" complaint about their matter(s). Approximately 315 callers spoke with Bar Counsel/Assistant Bar Counsel in 2003, a 13% decrease from the number of callers in 2002 (363). Some of those callers did not actually have a complaint about an attorney, but rather were seeking legal

advice, so those individuals were always informed that Bar Counsel certainly cannot and does not provide any legal advice. Staff attorneys do not provide those callers with any opinions or answers as to the propriety of any alleged attorney misconduct, making it clear to callers that all grievance complaints must be signed and submitted in writing for any action to be taken by Bar Counsel under the Maine Bar Rules. If options or services other than those involved with Board's the governance functions are apparent to address the stated problems or issues, e.g., The Lawyer Referral Service or LFCP, Bar Counsel so informs the caller.

This screening of calls continues to help divert a significant number of complaints or inquiries that appear to not relate to Grievance Commission or Bar Counsel matters and therefore are inappropriate for any investigation through the grievance process. In any event, the callers are always given the option to proceed and file a written complaint if they so choose. This telephone – and “walk-in” screening – project is strongly encouraged by the Board and Bar Counsel, and remains well in place in 2004.

#### **E. MAINE STATE BAR ASSOCIATION**

In April 2003, the Board also continued its annual practice of conducting a joint business meeting with the Maine State Bar Association's Board of Governors. Discussion focused on CLE items including a follow-up report of the Overseers' amendment (as a result of discussion at the Boards' joint meeting in 2003) of its “administrative fee” policy for pre-approved and non pre-approved CLE providers. A discussion as to the status of lawyers' compliance with Rule 12 in its first year was favorable, and amendments to Rule 12 were also discussed.

Lawyer advertising was also discussed and debated as there continues to be both positive and negatives positions expressed concerning the proposed changes to Maine Bar Rule 3.9 pending before the Court.

At the suggestion of the Board's Court liaison, Justice Paul Rudman, the members also discussed at some length Advisory Opinion #143 concerning the necessity – particularly for sole practitioners – for attorneys to provide a plan for the maintenance and disposition of their clients' files upon the closing of a practice or the death of the attorney.

#### **F. PARTICIPATION AS CLE PANELISTS**

Throughout 2003, Bar Counsel/Assistant Bar Counsel participated in several CLE panel presentations concerning ethical or professional responsibility issues, including the following:

- Litigation Institute – Maine State Bar Association
- 2003 Bridging the Gap – Maine State Bar Association
- Ethics Program – York Bar Association
- The Ethics Telephone Seminar – Maine State Bar Association
- Ethics Problems Relevant to Assistant Attorneys General - Department of Attorney General
- Ethics Program – Somerset County Bar Association
- Ethics Program – Franklin County Bar Association
- Contract Attorney Seminar – Department of Human Services

- Workers' Compensation Summit
- Fall Meeting – Androscoggin Bar Association
- Legal Ethics – Edward Thaxter Gignoux Inn of Court
- Maine State and Municipal Administrative Law – Maine State Bar Association
- Ethics Program – Knox County Bar Association
- Legal, Financial, and Long-Term Care Issues – Maine State Bar Association  
As indicated from that list above and as has been our continuing policy and

practice, particularly with the Court's adoption and the Board's administrative role concerning Maine Bar Rule 12 (Mandatory CLE), each of the Board's three staff attorneys are willing to take part in CLE panel presentations related to ethical and professional responsibility issues.

### **G. CONTINUING LEGAL EDUCATION**

On December 31, 2003, the Board completed its third calendar year of mandatory Continuing Legal Education (CLE). Based upon the Court's amendment of the Bar Rule, this was the first year where summary suspensions were imposed for attorneys' failure to comply with Maine Bar Rule 12 for calendar years 2001 and/or 2002.

On October 7<sup>th</sup>, 2003, a total of 28 Maine attorneys were suspended for failure to so comply with M. Bar R. 12. 13 of those attorneys complied with the Rule and were later reinstated by the Board to practice law in Maine.

The CLE website, [www.mecle.com](http://www.mecle.com), continues to be very helpful to attorneys in tracking their CLE attendance, and more enhancements to the website are planned in 2004. It is anticipated that one of those improvements will be automatic notification (via e-mail) to attorneys when a CLE course has been entered into their attendance record.

The Board also anticipates being able to allow approved providers the ability to submit course attendance rosters via the website, which would automatically be recorded in attorney records, thus reducing the current lag time of up to 30 days that has often been experienced in the past.

#### **H. SIGNIFICANT ADDITIONAL MATTERS CONSIDERED BY THE BOARD**

The Board also gave consideration or took action on the following matters at various points in 2003:

- In the completion of the Board's third full calendar year of administration of Maine Bar Rule 12, Continuing Legal Education, members worked many hours at both Committee and Board meetings to continue to develop and adjust the operating policies and procedures to provide the interpretation and support needed to administer the rule. The Board continues to be able to utilize a proven software system to track the CLE compliance of members of the Maine bar. Additionally, its CLE website, [www.mecle.com](http://www.mecle.com), continues to provide a secure record of each Maine attorney's CLE efforts, and also includes the text of Bar Rule 12 with a listing of many upcoming approved CLE sessions. The CLE reporting date for calendar year 2003 will be July 31, 2004, and individualized CLE progress reports for 2004 for each active Maine attorney are now to be included with the annual registration packet mailed to all members of the bar on or about July 1, 2004, and at that annual date hereafter.
- Website Developments:  
Advisory Opinions issued by the Grievance Commission and (later by) the Professional Ethics Commission from 1979 through 1999 (Opinion Nos. 1-171) were added to the earlier opinions from 2000 already on the Board's website. As

a result of this project being completed in 2003, all of the Commissions' Advisory Opinions are now available on the Board's website @ [www.mebaroverseers.org](http://www.mebaroverseers.org).

- The Court's disciplinary orders remain available through the Board's link to the Court's website under Supreme Court Opinions – Bar Discipline Decisions at [www.courts.state.me.us](http://www.courts.state.me.us)., and also at the Recent Decisions section of the Board's website. All reprimands imposed by the Grievance Commission since January 2000 are also included in that section of the Board's website.
- As a result of participation in legislative hearings and discussions concerning LD 1077 (“Resolve, to Create the Committee to Conduct a Review of the Board of Overseers of the Bar”), with that LD not being adopted by the legislature, changes were made by the Board. In that regard, as a result of comments voiced by members of the Legislative Judiciary Committee, the Board made specific amendments to its informational brochure “*Legal Fee Arbitration Rules and Steps to follow in Fee Arbitration*” to better explain the operations of that Commission as well as which rights were normally waived and obtained by petitioners as a result of their utilization of that process.
- The Board on three (3) occasions continued its deliberations and discussions as to the appropriate approach to be used in its custody, retention and distribution of the many files of three (3) now abandoned files of disbarred attorneys.
- The Board confirmed its agreement and adoption of the policy and approach utilized by Bar Counsel in not accepting grievance complaints submitted only by e-mail, given the requirement of Maine Bar Rule 7.1(a) that all complaints must be “signed” by the complainant to be in proper form.

## CONCLUSION

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

Thank you.

DATED: September 10, 2004

Respectfully submitted,

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

### STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS AND FEE DISPUTES



### MEMBERSHIP LISTS

January 1, 2003 to December 31, 2003

## GRIEVANCE COMMISSION COMPLAINTS

I.	<u>Complaints Reviewed</u>	172
	<u>ACTION:</u>	
	Dismissal:	122
	Dismissal with warning to attorney:	27
	Disciplinary hearing authorized:	21
	Directly to Court - Rule 7.2(b)(7)	2
II.	<u>Dispositions After Public Hearing</u>	<u>19 hearings</u>
	<u>ACTION:</u>	
	Dismissals:	0
	Dismissals with warning:	7
	Reprimands:	9
	Complaints authorized to be filed with the Court by information:	3
III.	<u>Grievance Complaint Summary</u>	
A.	Complaints pending at start of period:	62
B.	New complaints docketed:	146
C.	Total complaints pending during period:	208
D.	Total complaints closed by review or hearing:	165
E.	Complaints pending investigation, review or hearing as of 12/31/03:	43

SUPREME COURT DISCIPLINARY DOCKET

2003

Disciplinary orders issued:

1. Disbarment	0
2. Suspensions	4
3. Resignation	1
4. Reprimand	0
5. Reinstatements	3
6. Miscellaneous (e.g. storage of files)	3
Total:	<u>11</u>

Total Disciplinary Matters Pending or to be Filed Before Court – 12/31/03

1. Grievance complaints concerning pending informations	31 (4 attorneys)
2. Informations authorized, but not yet filed	2
Total	<u>33</u>

2003

GRIEVANCE COMPLAINTS FILED

CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
Trust violation	0	0
Conflict of interest	26	18
Neglect	56	38
Relationship w/client	13	9
Misrepresentation / fraud	16	11
Excessive fee	4	2.5
Interference with justice	20	13.5
Improper advertising / solicitation	0	0
Criminal conviction	0	0
Personal behavior	1	1
No cooperation w/Bar Counsel	0	0
Medical	0	0
Incompetence	3	2
Jurisdiction	0	0
Conduct unworthy of an attorney	2	1.5
Other	5	3.5
<u>TOTAL</u>	146	100%

2003  
GRIEVANCE COMPLAINTS

SIZE OF LAW OFFICE

	NUMBER	PERCENT OF TOTAL
Sole Practitioner	72	49
2	20	14
3-6	36	25
7-10	3	2
11-49	8	5.5
Over 50	1	.5
Government / state /other	6	4
<u>TOTAL</u>	146	100

AREA OF LAW

	NUMBER	PERCENT OF TOTAL
Family	51	35
Juvenile	0	0
Criminal	29	20
Traffic	0	0
Probate/Wills	12	8.5
Guardianship	0	0
Commercial	8	5.5
Collections	3	2
Landlord/Tenant	1	.5
Real Property	15	10
Foreclosure	0	0
Corporate/Bank	0	0
Tort	12	8
Administrative Law	2	1.5
Taxation	0	0
Patent	0	0
Immigration	0	0
Anti-Trust	0	0
Environmental	1	.5
Contract/Consumer	0	0
Labor	2	1.5
Workers' Comp	2	1.5
Other/None	5	3.5
Bankruptcy	2	1.5
Municipal	0	0
Elder Law	1	.5
<u>TOTAL</u>	146	100

2003

GRIEVANCE COMPLAINTS

SOURCE OF COMPLAINT

	NUMBER	PERCENT OF TOTAL
Client	89	61
Other Party	50	34
Judge	2	1.5
Lawyer	2	1.5
Sua sponte	3	2
<u>TOTAL</u>	146	100

YEARS IN PRACTICE

	NUMBER	PERCENT OF TOTAL
40-61 years	1	.5
30-39 years	12	8
20-29 years	51	35
10-19 years	42	29
2-9 years	40	27.5
Less than 2 years	0	0
<u>TOTAL</u>	146	100

AGE OF ATTORNEY

	NUMBER	PERCENT OF TOTAL
24-29	2	1.5
30-39	29	20
40-49	52	35
50-59	46	31.5
60+	17	12
<u>TOTAL</u>	146	100

## 2003 GRIEVANCE COMPLAINTS FILED

COUNTY	NUMBER	PERCENT OF TOTAL
Androscoggin	6	4
Aroostook	9	6
Cumberland	48	33
Franklin	0	0
Hancock	6	4
Kennebec	13	9
Knox	7	4.5
Lincoln	2	1.5
Oxford	1	1
Penobscot	16	11
Piscataquis	0	0
Sagadahoc	2	1.5
Somerset	3	2
Waldo	2	1.5
Washington	3	2
York	22	15
Out of State	6	4
TOTAL	146	100

2003 SUMMARY OF SANCTIONS ISSUED AFTER HEARING  
Bar Rules Found to Have Been Violated  
(Certain decisions cited multiple rule violations)

Grievance Commission Reprimands – 9

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	3
3.2	Admission, disclosure and misconduct	1
3.2(a)(1)	Unauthorized practice of law	1
3.2(f)(1)	Other Misconduct	1
3.2(f)(3)	Misrepresentation / deceit	2
3.2(f)(4)	Conduct prejudicial to the administration of justice	1
3.4(c)(d)	Conflict of interest – simultaneous representation; former client	1
3.4(f)(1)	Conflict of interest; Lawyer's own interest	1
3.4(f)(2)	Conflict; avoid adversarial interest	1
3.5(b)(2)(ii)	Mandatory withdrawal	1
3.6(a)	Neglect of client matter	2
3.6(a)(3)	Failure to use reasonable care and skill	3
3.6(e)(2)(iv)	Failure to promptly return funds or possessions to client	1
3.7(e)(1)(i)	Improper adversarial conduct; misleading / false statement to tribunal	1
3.13(c)(1)	Responsibilities regarding non-lawyer assistants	1
6(c)(1)	Notification of discontinuance of practice of law	1
7.3(i)(2)(A)	Action by attorney suspended for failure to pay annual registration	1
	TOTAL	23

Grievance Commission Dismissal w/warnings – 7

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	2
3.2	Admission, disclosure and misconduct	1
3.2(f)(4)	Conduct prejudicial to administration of justice	3
3.4(c)(2)	Conflict of interest - simultaneous representation	1
3.4(d)(1)(i)	Conflict of Interest; interest of former clients	1
3.5(a)(2)(c)	Improper withdrawal	1
3.5(b)(1)	Mandatory withdrawal	1
3.6(a)(3)	Neglect of client matter	1
3.6(a)	Failure to use reasonable care and skill	1
3.7(e)(1)(i)	Improper adversarial conduct; misleading / false statement to tribunal	1
3.13(a)(3)(i)	Responsibility of a partner or supervisor	1
	TOTAL	14



**2003 SUMMARY OF SANCTIONS ISSUED AFTER HEARING**  
**Bar Rules Found to Have Been Violated**  
**(Certain decisions cited multiple rule violations)**

Court: Suspensions (3)

RULE	MISCONDUCT	NUMBER
3.2(f)(3)	Misrepresentation / deceit	1
3.3(a)	Excessive Fees	1
3.4(c)	Conflict of interest – simultaneous representation	1
3.4(d)(1)(i)	Conflict of interest – interest of former clients	1
3.5(a)(3)	Improper withdrawal	1
3.6(a)(3)	Failure to employ reasonable care and skill; neglect	1
3.6(e)	Failure to preserve Identity of funds and property	1
3.6(e)(2)(iii)	Failure to maintain record of client funds	1
3.6(e)(2)(iv)	Failure to promptly return funds or property to client	1
7.3(e)(3)	Suspension due to medical incompetence	1
7.3(h)	Reciprocal suspension	1
9(i)	Failure to refund fee award	1
	<b>TOTAL</b>	<b>12</b>

2003 BAR COUNSEL FILES

AREA OF LAW	NUMBER	PERCENT OF TOTAL
FAMILY	41	24.3
JUVENILE	4	2.4
CRIMINAL	33	19.5
TRAFFIC	0	.0
PROBATE WILLS	16	9.4
GUARDIANS	2	1.2
COMMERCIAL	4	2.4
COLLECTIONS	4	2.4
LANDLORD/TENANT	8	4.7
REAL ESTATE	19	11.2
FORECLOSURE	0	.0
CORPORATE / BANKING	1	.6
TORTS	9	5.3
ADMINISTRATIVE LAW	4	2.4
TAXATION	0	.0
PATENTS / COPYRIGHT	0	.0
IMMIGRATION	0	.0
ANTITRUST	1	.6
ENVIRONMENTAL	0	.0
CONTRACT / CONSUMER	0	.0
LABOR LAW	1	.6
WORKERS COMPENSATION	4	2.4
OTHER	14	8.2
BANKRUPTCY	1	.6
MUNICIPAL LAW	2	1.2
ELDER LAW	1	.6
TOTALS	169	100%

## 2003 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
Conspiracy	19	11.2
Disagreement over conduct of case	104	61.5
Habeas Corpus	8	4.7
Inquiry Only	0	.0
Insufficient information	4	2.4
Lack of professionalism	8	4.7
Malpractice	4	2.4
Personal life	5	3.0
Request for legal assistance	12	7.1
Interference with justice	1	.6
Other	4	2.4
<b>TOTAL BAR COUNSEL FILES DOCKETED</b>	<b>169</b>	<b>100%</b>

Bar Counsel Files pending at start of period	2
New Bar Counsel Files received	169
Total Bar Counsel Files on Docket	171
Bar Counsel Files finally dismissed	157
Bar Counsel Files pending investigation	8
Dismissals appealed (Request for review filed)	45
Action on review of those appeals:	
Dismissals affirmed by lay member	39
Dismissals vacated by lay member (re-docketed as Grievance Commission File)	0
Reviews pending decision as of 12/31/03	6

## FEE ARBITRATION COMMISSION

Petition Summary  
January 1, 2003 – December 31, 2003

### **PETITIONS:**

Pending at start of period:	18
Docketed during period:	72*
Total open petitions during period:	90
Dismissed, settled, withdrawn:	34
Heard and closed by awards:	34
Heard and awaiting award:	1
Total petitions closed during period:	68
Total petitions pending hearing at close of period:	22

\*Includes two matters re-opened after earlier dismissal

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

Panel IA: (York)	4
Panel IB: (Cumberland)	3
Panel II: (Androscoggin, Franklin, Lincoln, Oxford & Sagadahoc)	4
Panel III: (Kennebec, Knox, Somerset & Waldo)	6
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis & Washington)	5
<b>TOTAL HEARING DATES:</b>	<hr/> 22

Comparison of new Petitions docketed:

2001 - 96  
2002 - 80  
2003 - 70

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JUDICIAL LIAISON:	Hon. Paul L. Rudman
STAFF:	
Bar Counsel :	J. Scott Davis, Esq.
Assistant Bar Counsel:	Nora Sosnoff, Esq. Geoffrey S. Welsh, Esq.
Administrative Director:	Dan E. Crutchfield <sup>2</sup>
Assistant to Bar Counsel:	Nancy Hall Delaney
Clerk of the Grievance Commission & Fee Arbitration Commission Secretary:	Jaye Malcolm Trimm
CLE Coordinator:	Susan E. Adams
Office Manager and Registration Secretary	Linda Hapworth
Administrative Clerk	Donna Spillman

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<sup>2</sup> Mr. Crutchfield resigned his position as Administrative Director effective November 7, 2003; commencing August 16, 2004, Jacqueline M. Rogers (formerly Assistant Executive Director of the Maine State Bar Association) assumed the position of Administrative Director of the Board of Overseers of the Bar.