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STATE OF MAINE  
BOARD OF OVERSEERS OF THE BAR  
1987 ANNUAL REPORT

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# BOARD OF OVERSEERS OF THE BAR

## 1987 ANNUAL REPORT

### INTRODUCTION

This document and the attached exhibits comprise the Board of Overseers of the Bar's 1987 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. Upon receipt by the Board and initial review by Bar Counsel, written petitions setting forth disputes 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 187 new complaints alleging professional misconduct by attorneys were docketed by Bar Counsel in 1987, representing a 30 percent decrease from the figure for 1986 (267). A review of the statistical analysis of Grievance Commission dispositions from the attached sheets, indicates that this significant decrease in the number of formal complaints filed with the Board and its Grievance Commission, has allowed the Commission to address the pending disciplinary hearing backlog of 1986. For example, having heard nearly 90 percent more complaints in 1987 (51) as compared to the previous year (27), the Commission was left at the end of 1987 with 50 percent fewer (46) pending disciplinary matters than the number pending at the conclusion of 1986 (92).

There were 46 meetings of various panels (a panel consisting of two lawyers and one non-lawyer member) of the Grievance Commission in 1987, as well as two meetings of the entire Grievance Commission.

Of these 46 panel meetings, 29 were for the purpose of conducting disciplinary proceedings. These 29 hearings related to 53 complaints involving 28 Maine attorneys. The Commission's disposition of these 53 complaints reflects more than a 100 percent increase in the number of complaints heard in 1986 (25). Of much greater significance, however, is the fact that the earlier trend of 1986 continued on a much larger scale with 33 of these complaints, involving 11 attorneys, resulting in the Commission directing Bar Counsel to file an information instituting formal disciplinary proceedings before the Maine Supreme Judicial Court (Court). The basis for the Commission's referral to Court in such cases, was a finding of probable cause that the respondents should be either suspended or disbarred from the practice of law in the State of Maine. The total dispositional breakdown of Commission disciplinary hearings is as follows: a) Proceedings (complaints) authorized to be filed in the Maine Supreme Judicial Court - 33; b) Reprimands issued by the Commission - 8; c) Probable cause found for the issuance of a reprimand (requiring a further proceeding open to the public before a different panel of the

agreed to review and evaluate the matters, performed the work, and thereupon supplied respondent with very detailed written reports, specifically responding to each point of inquiry that had been raised by respondent. The doctor forwarded to respondent his bill, which he voluntarily tabulated at one-half his normal billing rate. After approximately seven months of forwarding statements to respondent counsel, and receiving no response whatsoever, the doctor finally sued respondent in Small Claims Court. Respondent failed to appear at Court, and a default judgment was entered against him. A disclosure hearing was subsequently scheduled, at which respondent again failed to appear, and a capias was issued for his arrest. Three hours prior to the scheduled time of the capias hearing (being some 14 months after the doctor's original bill), the doctor received respondent's check, tendered as payment in full of the default judgment.

The Commission concluded that respondent had violated Maine Bar Rule 3.1(a) (conduct unworthy of an attorney), as well as the Code of Cooperation of the Maine State Bar Association and the Maine Medical Association, and that his actions had a bearing and effect on the practice of law in the State of Maine. The Commission further found that since the doctor's testimony could have been quite important to the cases being handled by respondent, those cases quite conceivably could have

in violation of Maine Bar Rules 3.1(a), 3.4(a),(b),(c) and 3.6(i)(1). Respondent did not cause his client to consent to this business transaction in writing, nor did he inform him of his right to have it reviewed by independent counsel. Further, when the client died, counsel recorded the deed and did not notify the Probate Court of his ownership. Board File No. 83-3.

d. Respondent violated Maine Bar Rule 3.5(b)(2) by closing her law practice, and failing to take steps to protect her clients' interests from being prejudiced thereby, and by the demonstration of her marked lack of punctuality and cooperation during portions of the disciplinary process. Board File No. 84-155.

e. A reprimand was imposed for respondent's violation of Maine Bar Rule 3.6(a)(3) reference his failure to keep his client adequately informed and advised of the status of her divorce, and by failing to secure the necessary information for terms of a property settlement. His conduct was also found to have been unworthy of an attorney, in violation of Maine Bar Rule 3.1(a), by his initiation of conversations with the client of a sexual nature, as well as his pursuit of a social relationship with her despite her negative reaction to such attempts. Board File No. 85-179.



been prejudiced by respondent's treatment of the doctor. Board File No. 85-55.

b. A respondent was found to have engaged in conduct unworthy of an attorney by his attempts to secure alimony and child support arrearages, which were already the subject of pending litigation, by withholding from the other party the proceeds of the sale of the marital property. Respondent also spoke to the adverse party-spouse concerning the subject matter of the arrearage litigation at a time when he knew that party to be represented by counsel. The Grievance Commission found that respondent impermissibly delayed in returning the proceeds to the other spouse, and only did so after obtaining an agreement from that party that no complaint would be filed with the Board. His conduct was found to be in violation of Maine Bar Rules 3.1(a), 3.4(d) and 3.6(j). Board File No. 85-234.

c. Counsel's representation of a criminal defendant in a drug matter where prior to the client's commencing a jail sentence, and in order to secure legal fees, counsel caused him to sign over to counsel full and unconditional title to the client's residence with no security or other trust arrangement to protect the client's interest in the title, was found to be

Commission) - 14; d) Admonitions (not discipline) - 3; f) Dismissals - 9. A brief discussion of certain of the complaints heard by the Commission is set forth below. Those complaints involving matters which were both heard by the Commission and also disposed of by the Court in 1987 will be discussed later in the context of Court matters.

#### B. DISCIPLINARY PROCEEDINGS

1. Reprimands - As discussed in the Board's 1986 Annual Report, the Court's promulgation of Maine Bar Rule 7(e)(2), now requires the Grievance Commission to conduct a hearing open to the public prior to imposing discipline - a reprimand. In this regard, the Commission imposed eight reprimands at the conclusion of disciplinary hearings open to the public concerning the following matters:

a. Respondent was reprimanded in June of 1987 for engaging in conduct unworthy of an attorney by his failure to pay a doctor's bill. Respondent had specifically sought out and hired the doctor for the purpose of evaluating two possible medical malpractice claims, and in his hiring letter stated "I will, of course, expect your bill for your work". The doctor

f. Respondent was reprimanded regarding two complaints involving similar facts, which arose out of his own post-divorce litigation with his former spouse. The respondent engaged in a pattern of suing not only his former spouse, but also her attorneys in the post-divorce matter, resulting in their withdrawal from the case. His conduct was found to be prejudicial to the administration of justice, in violation of Maine Bar Rules 3.2(f)(4) and 3.7(a). Respondent's defense that he was not acting as an attorney, but instead reference his own personal business, was not accepted by the Grievance Commission, which found that by his conduct he had also violated Maine Bar Rules 3.6(j) and 3.7(h)(2). Respondent has petitioned the Court to review these matters, and they presently remain pending before the Court. Board File Nos. 86-5 and 86-65.

g. Respondent represented the plaintiffs in a real estate fraud case in the Superior Court. During the course of the litigation his manner of responding to various discovery requests from defendants, particularly reference interrogatories, was found by the Superior Court to be dilatory and non-responsive. As a result, the Court imposed sanctions, including prohibiting plaintiffs from introducing certain exhibits and expert testimony at the trial. The Court also

directed a verdict against plaintiffs, the Court's action later being upheld by the Law Court. Butler v. Poulin, 500 A.2d 257 (Me. 1985). Respondent's conduct was found to have been in violation of Maine Bar Rules 3.1(a) and 3.6(a)(3). Board File No. 85-246.

2. Recommendations for Court Proceedings - Discussion of certain matters heard before the Grievance Commission resulting in a recommendation for further Court proceedings, involved the following factual situations:

a. The Grievance Commission recommended proceedings before the Court seeking respondent's suspension or disbarment for violation of the Bar Rules reference a multi-count petition involving the following conduct: 1) Counsel's forwarding to the United States Air Force at different times certain documents purporting to be accurate copies of Court records, when certain of those copies contained a critical alteration ostensibly designed to improve counsel's client's position with respect to garnishment of the other party's Air Force salary in satisfaction of a previous divorce judgment; 2) Counsel's knowing failure to appear in Superior Court in response to a proper notice of trial (with the result that his client's lawsuit was dismissed by the Court with prejudice), and his

failure to inform the client of that dismissal; 3) Counsel's false certification on a deed wherein he caused a jurat to indicate that his client had personally appeared and acknowledged that instrument on a particular date, when in fact the client actually appeared and signed the deed some ten days after the date utilized by respondent; and 4) Counsel accepted a new client's retainer on a divorce matter, within five days before counsel physically left the jurisdiction without any notice to the new client. This respondent did leave and apparently remains outside the jurisdiction of the State of Maine, and the office of Bar Counsel has been unable to locate him, will therefore seek to serve him by publication with the information. Board File Nos. 83-141, 84-53, 84-82, and 86-135.

b. In February of 1987, the Grievance Commission heard a matter involving respondent's representation in 1982 of both the husband and wife in a divorce action where he had filed pleadings on behalf of both parties and prepared documents, but did not participate in substantive property settlement negotiations. Based upon counsel's inadequate disclosure to the wife of the possible benefit of her seeking independent counsel, the Grievance Commission found his conduct to be in violation of Maine Bar Rules 3.4(d) and 3.6(m), but standing on its own, determined those violations not to be serious. The

parties later remarried, and in 1984 once again began divorce proceedings. In the 1984 action, respondent represented the husband, and the wife had other counsel, who filed a complaint with the Grievance Commission concerning the prior (1982) improper representation of both parties by the respondent. While the second divorce and the Grievance Commission matter were both pending, respondent prepared a typed release on a printed legal form for the wife to sign, releasing respondent from all claims arising from the grievance complaint, and either caused or permitted the husband to present the release to her for her signature, knowing that the wife was represented by counsel and that counsel was not present. As a result, the Grievance Commission found that the respondent had either caused or permitted the wife to believe that her obtaining the second divorce was directly linked to the release or the withdrawal of her bar grievance against respondent. The Grievance Commission concluded that respondent's actions in this regard constituted serious professional misconduct in violation of Maine Bar Rules 3.2(f) and 3.6(j), and directed that Bar Counsel refer the matter to the Court for further disciplinary proceedings. Board File No. 84-103. This matter was subsequently filed with the Court which accepted the factual findings of the Grievance Commission, and imposed a reprimand upon respondent, and also ordered his payment of \$500

as reimbursement of expenses incurred by the Grievance Commission regarding the disciplinary hearing. Court Docket No. BAR-87-12.

c.. The Grievance Commission recommended that an information be filed with the Court reference a matter wherein the respondent appeared at a deposition with a suspended attorney in regard to a matter in which the respondent had entered his appearance to replace the suspended attorney. Respondent appeared at that deposition totally unprepared to interrogate the witness, and in fact, intended not to do so. Instead, he allowed the suspended counsel to conduct the entire cross-examination of the deponent, in much the same manner as if that attorney was still the attorney of record and still authorized to practice law despite his suspension. The Commission found the testimony and exhibits in this matter made it clear that the respondent's appearance at the deposition was nothing short of a subterfuge to allow the suspended attorney to continue to practice law notwithstanding that suspension. His conduct was found to be in violation of Maine Bar Rules 3.1(a), 3.2(a)(3) and 3.6(a)(2). The Commission further found such conduct to be most serious, and determined that probable cause existed for the filing of an information seeking the suspension or disbarment of the respondent for the purpose of

the protection of the public interest as well as the administration of justice. Board File No. 86-57. This matter proceeded to hearing before the Court early in 1988, whereupon the Court imposed a six month suspension upon respondent. Court Docket No. BAR-87-23.

d. In a manner exhibiting the need and requirement of an attorney's cooperation with Bar Counsel's investigation, the Commission heard a matter in December, where it dismissed the initial complaint filed before the Commission, but based upon respondent's failure to respond to and cooperate with Bar Counsel, recommended further Court proceedings.

The basis of the original complaint had been that the respondent had made allegedly improper statements to a prosecutor that the respondent had received information indicating that a key witness for the State in the prosecution against respondent's client was having an affair with the mother of the State's complaining witness. Respondent's suggestion was obviously one indicating bias on the part of that principal witness, who might therefore be embarrassed on cross-examination at trial. The entire testimony at hearing revealed that respondent had not violated any ethical provisions in the manner in which he discussed these rumors with the prosecutor, as he had no obligation to conduct any



investigation into the rumors before discussing them. In the course of his investigation, however, Bar Counsel communicated by letter on two occasions with respondent, seeking answers and information relating to respondent's previous written response to the complaint. Neither letter was ever answered by respondent. Although at hearing respondent submitted certain reasons why he had not responded to the letters, the Commission found that he should have made some form of earlier response to Bar Counsel, at least stating the reasons for his refusal to furnish the substantive requested information. His failure to do so constituted a violation of Rule 2(c), and based upon respondent's previous suspension for an earlier violation of that same rule, the Commission found probable cause for the filing of an information limited to the Rule 2(c) violation, in order that the matter may be placed before the Court to determine whether suspension or disbarment is the appropriate sanction. Board File No. 87-S-55. This matter remains pending before the Court at this time.

e. The Grievance Commission found probable cause for the institution of Court proceedings regarding a respondent reference several different complaints. Two of these complaints concerned his neglect of cases and failure to file timely lawsuits, as well as his failure to properly communicate

with his clients as to the status of their respective lawsuits, and his further misrepresentations thereof to the clients. Another of the matters involved was respondent's apparent false statements to the District Court about another attorney's conduct, as well as the respondent's failure without good cause to appear before the District Court for a previously scheduled trial. Other matters involving this same respondent relate to his failure to timely file the affidavit as required by Maine Bar Rule 7(n)(1)(B) reference a previously Court imposed period of suspension, as well as evidence which indicated that during that suspension period he represented clients in another state where he was not admitted, using a letterhead with a non-Maine address, and also describing himself therein as an "attorney and counselor at law". Pursuant to the Commission's directive, in 1987, all these matters were filed with the Court, and were heard by the Court in July of 1988, and are currently under advisement by the Court. Board File Nos. 83-6, 85-47, 86-215, 87-S-87.

f. A multiple count information remains pending before the Court reference several unrelated complaints against one attorney, which were heard and decided by the Grievance Commission in 1987. The allegations relate to respondent's

conduct as follows: 1) his initiation of a property damage claim for his clients against an insurance company upon a contingent fee basis, without any written fee agreement, and upon his clients' obtaining new counsel, his refusal to deliver their file absent being paid \$300 by the clients. The file was only finally returned to the clients after requests from new counsel and Bar Counsel over a three month period of time; 2) his sexual advances to a young woman he had bailed out of the county jail in his capacity as a bail commissioner; 3) his ex parte communication with adverse parties at a time when he knew they were represented by counsel and failing to copy opposing counsel in his correspondence with that party or the Court; and 4) his conduct regarding somewhat lengthy and complex litigation in which he, as a party, was both sanctioned and reprimanded by different courts for his conduct, wherein the Grievance Commission concluded that the Law Court's finding that he had assisted a client in fraudulently concealing assets, warranted discipline. Board File Nos. 84-38, 84-80, 84-141, 85-188 and 85-197.

g. Another information currently remains pending with the Court, after having proceeded to hearing before the Grievance Commission in 1987 reference two unrelated charges of neglect by the same respondent. In one case, he had been

retained to assist a financially-troubled client, in order to formulate a composition of creditors to help avoid bankruptcy. Respondent was often unavailable to communicate with the client, despite the fact that immediate action was necessary. Substitute counsel was engaged by the client, and a request for the client's file material was not accommodated by respondent in a timely manner, despite repeated oral and written requests by the client and the new counsel. The other matter involved a divorce client's considerable difficulty in receiving communications from the respondent, as well as respondent's failure to respond to Bar Counsel's attempts to investigate this matter. Board File Nos. 85-143 and 86-146.

h. Another respondent listed and sold a house for certain clients. Although acting as a real estate broker at the time, he also prepared legal documents for them, and acted as their agent at closing. Although he knew that the Veterans' Administration (VA) prohibited buyers from borrowing closing costs, he had the sellers raise the price of the house, and thereby concealed from the VA and the closing agent the fact that due to the increased selling price, the buyers were financing their closing costs. The Grievance Commission's hearing of this matter in August of 1987, resulted in a recommendation for suspension or disbarment of respondent,

based partly on his prior disciplinary record. An information was filed with the Court in 1988, and in June of 1988 the Court issued its opinion and order reprimanding respondent for conduct in violation of Maine Bar Rule 3.2(f)(3). Board File No. 86-34; Court Docket No. BAR-88-3.

### C. CASE REVIEWS

In addition to the matters discussed above relating to disciplinary proceedings conducted by the Grievance Commission, the Commission reviewed 221 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 17 occasions for the

purpose of conducting case reviews of pending grievance complaints. Although these 17 case review meetings constituted only nearly 50 percent of the total case reviews conducted by Grievance Commission panels in 1986 (33), it should be noted that the 221 complaints which were reviewed in 1987 totaled only eleven percent fewer than the total amount reviewed at those 33 meetings in 1986 (249). Thus, by having conducted nine additional disciplinary hearings in 1987, constituting a 45 percent increase compared to 1986, and by reviewing more cases at each of its case review meetings, the Commission was able to quite adequately address case review matters as well as the pending hearing backlog as discussed above (page 3). Thus, the Commission has benefited from the Court's 1987 amendments, whereby the membership was increased above the previous 12 members, and currently has 17 members (11 lawyers, 6 non-lawyers).

#### D. CHARACTERIZATIONS/AREAS OF LAW

Attorney neglect continues to be the one most significant area resulting in not only the highest number of complaints received in 1987, but also in the highest number of complaints

reviewed and disposed of by the Commission. For example, the attached tables indicate that 69 (37%) of the 187 complaints received by the Board were docketed as neglect matters, and that 38 percent (103) of the matters disposed of by the Commission (either by hearing or case review) were neglect-related matters. Of those dispositions, 26 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, 40 percent were neglect items. Therefore, although only 26 percent of the neglect complaints resulted in hearings being authorized, that number of hearings (27) constituted 40 percent of the total matters authorized for hearing, indicating that neglect matters continue to far outweigh other categories in terms of the characterization of complaints resulting in disciplinary hearings.

It should be further noted that whereas in 1986 attorney misconduct involving either misrepresentation or fraud ranked fifth (constituting 7 percent) in terms of the number of formal complaints docketed in that area, fraudulent accusations constituted 15 percent of the complaints received in 1987, being second only to neglect matters. Further, nearly one-fourth of the complaints referred for disciplinary proceedings involved either fraudulent, deceitful or other

intentional conduct which was deemed to interfere with justice.

In 1987, although the number of complaints relating to matters arising in the context of family law and torts were virtually identical, the attached dispositional table indicates that as to matters reviewed or heard by the Commission, family law once again represented the one area of law totaling the highest number (13) and percentage (19) of matters resulting in the authorization of disciplinary proceedings before the Commission and Court.

#### E. SIZE OF LAW OFFICE/SOURCE OF COMPLAINTS

The attached statistics concerning the nature of the source of the complaints filed in 1987, indicate that clients continue to file the overwhelming number of complaints (59%), with complaints arising from a court, another attorney, as well as on a sua sponte basis from either the Board, the Grievance Commission or Bar Counsel, having increased to a very small extent. 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 1986, the statistics for 1987 indicate a 10 percent decrease in the percentage of complaints filed against sole practitioners (70), corresponded with a three percent increase in the percentage of complaints filed against attorneys practicing law in a two-attorney law office.

#### F. 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 168 filed in 1987, representing a 67 percent increase over the total number filed in 1986. This substantial increase, coupled with the minor decrease in the number of formal grievances alleged against attorneys, continues to represent the attempt of the office of Bar Counsel, as well as the Chairman and Vice Chairman of the Grievance Commission, to initially docket ambiguous letters of complaint as Bar Counsel Files, until additional investigation and information can be received to determine if formal allegations of misconduct should properly be docketed.

As discussed above, it is worth noting the distinctive difference between matters which are docketed as Bar Counsel Files, as opposed to formal Board grievance matters. Bar Counsel Files may result in the office of Bar Counsel contacting the complained of attorney for the purpose of seeking clarification or explanation regarding what appear to be at least somewhat ambiguous client claims. If such an inquiry is made of the attorney by the office of Bar Counsel, that inquiry specifically notes that the matter is not initially being treated as a complaint involving an allegation of professional misconduct. To the contrary, the purpose is to attempt to gain additional information which may well deter the matter from being further presented to the Grievance Commission, and with the approval of either the Chairman or Vice Chairman of the Grievance Commission, may be dismissed with no further action.

## II. COURT MATTERS

Thirteen discipline related orders were issued by the Court in 1987, in the following different categories: 1) disbarments - 2; 2) suspensions - 6; 3) resignations - 3; 4) reprimands - 1; and 5) remands to the Grievance Commission - 1. A brief

discussion of certain of these matters is set forth below.

#### A. DISBARMENTS

1. An attorney convicted of three counts of income tax evasion in violation of 26 U.S.C.A. Section 7201 (Supp. 1986) was disbarred by the Court for conduct unworthy of an attorney and in violation of Maine Bar Rules 3.2(f)(2), (3) and (4). The Court found that the conduct of the respondent established by the record involved moral turpitude, fraud and dishonesty within the meaning of the Maine Bar Rules, in that he had been convicted of willful attempted evasion "by preparing, signing and mailing false and fraudulent income tax returns". Court Docket No. BAR-86-11.

2. In November, the Court disbarred counsel regarding a multiple count information involving various violations of the Maine Bar Rules, including neglect of legal matters, collection of excessive fees, advising violation of law, improper withdrawal from employment, mishandling of clients' funds, commencing improper legal actions, failure to comply with orders of the Board, and failure to respond to inquiries of Bar Counsel. Respondent was served in the State of Florida in September of 1987 with the pleading, but failed to provide an

answer or otherwise defend the charges. Bar Counsel sought the entry of judgment by default against the respondent, whereupon the Court entered the respondent's default, and disbarred him from the practice of law in the State of Maine. Court Docket No. BAR-87-22.

## B. SUSPENSIONS

1. In response to nine unrelated complaints, the Grievance Commission found probable cause for the filing of an information against a respondent, where all nine of those matters indicated a complete neglect and failure of respondent to meet the needs of or respond to any inquiries of her clients. An information was thereupon filed with the Court, and based upon the entire record before the Court, it was ordered pursuant to Maine Bar Rule 7(j)(3) that the respondent be suspended from the continued practice of law until a determination has been made concerning her capacity to continue to practice law. Court Docket Nos. BAR-87-8 and BAR-87-18.

2. In another matter where the Court accepted the testimony of a clinical psychologist that respondent suffered from a generalized anxiety disorder with a depression component

manifesting itself in avoidant behavior, the Court imposed a one year period of suspension. This suspension related to conduct in violation of Maine Bar Rules 2(c), 3.2(f)(4), 3.6(a)(3), 3.6(f)(2)(iii) and (iv), reference three separate complaints, involving real estate and two probate matters. The conduct of respondent, particularly in relation to the probate matters - failing to properly account for the funds in an estate, failing to turn over the records and assets of the estate to the successor personal representative, and failing to use due diligence to locate a missing beneficiary - were found to be typical of respondent's anxiety disorder, rather than resulting from defiance or an intentional disregard of legal duties. The suspension in this matter provides that after 90 days of that suspension, respondent may petition the Court to lift the remaining period of suspension, upon respondent's satisfaction of certain conditions, including a demonstration that he has undergone and continues to participate in a treatment program for his anxiety disorder, and that he shall arrange to undertake future legal matters only with co-counsel. Court Docket Nos. BAR-86-14, BAR-87-5 and BAR-87-16.

3. The Board initiated proceedings against a respondent upon his conviction of two counts of failure to file Federal

income tax returns in violation of 26 U.S.C.A Section 7203, (West Supp. 1987). Upon this matter being filed with the Court, the parties agreed that these convictions constituted conduct unworthy of an attorney, and that the only issue before the Court was the appropriate sanction to be imposed. The Court found that respondent's failure to file tax returns was not motivated by greed or venality, but occurred as a consequence of financial pressures and family problems with which he was unable to cope. As a result of what the Court termed an isolated lack of judgment, the Court concluded that the appropriate sanction was a 90-day period of suspension, qualified to allow respondent during that period of suspension to comply with a special condition of probation contained in the United States District Court's Judgment and Commitment Order in which respondent was to perform 1,500 hours of legal services on a totally uncompensated basis. Court Docket No. BAR-87-20.

4. In a matter relating to respondent's conviction of two drug violations in the U.S. District Court, the Court ordered his temporary suspension from the practice of law pending the disposition of already filed disciplinary proceedings relating to those criminal convictions. Court Docket No. BAR-87-15.

5. In a matter somewhat related to a case reported within the Board's 1986 Annual Report regarding Court Docket No. BAR-86-103, Bar Counsel initiated further proceedings against the same respondent, upon her having been subsequently suspended from the practice of law in the State of New Hampshire for her sworn misrepresentations to the New Hampshire grievance authorities. Given that respondent was licensed to practice law in both Maine and New Hampshire, and pursuant to Maine Bar Rule 7(m), Bar Counsel initiated reciprocity proceedings with the Court. As a result, and after hearing, the Court ordered a two year period of suspension in the State of Maine, concurrent to that imposed by the New Hampshire Court. Court Docket No. BAR-87-2.

### C. REPRIMANDS

1. The Court reviewed one reprimand that had been previously imposed by the Grievance Commission in 1986, and by decision issued in August of 1987, a single justice of the Court affirmed the Grievance Commission's reprimand, finding that respondent had acted in contempt of court and did obstruct the administration of justice by standing mute in defiance of the Superior Court and openly challenging the integrity of the

Superior Court by his demeanor subsequent to the Court's having removed his client from the courtroom due to his own acts in contempt of the Court. The single justice's affirmance of the Grievance Commission reprimand was appealed to the Law Court, and in 1988 the Law Court issued its decision upholding the reprimand. Court Docket No. BAR-86-24; Board of Overseers of the Bar v. Andrews B. Campbell, Law Docket No. CUM-87-390, decided March 29, 1988.

### III. FEE ARBITRATION COMMISSION

In 1987, the Secretary to the Fee Arbitration Commission received 111 requests for fee arbitration petitions, of which 65 were completed and returned for filing by the Secretary, representing a 14 percent increase in the number of petitions filed in 1986 (57). In 1987, 47 petitions were heard by the various panels of the Fee Arbitration Commission, compared to 34 petitions heard in 1986, representing a 27 percent increase.

Of concern to both the Board and the Court, has been an increasing number of pending arbitration matters in Cumberland and York Counties. As a result, although not effective until February 15, 1988, upon the Board's recommendation the Court has promulgated amendments to the



Maine Bar Rules creating an additional panel of the Fee Arbitration Commission, now providing for two panels in the Cumberland and York Counties area. (Although not in place until 1988, this additional panel has already made substantial headway in addressing this backlog problem.)

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 the matters warrant the attention of the Commission or should be more appropriately addressed by another forum, e.g., the Grievance Commission. To the extent that resources allow and where warranted, Bar Counsel also attempts to promote informal resolutions of these petitions prior to hearing.

On January 1, 1988, Frederick G. Taintor assumed the Chairmanship of the Fee Arbitration Commission upon appointment of the Board. Mr. Taintor succeeds Chadbourn H. Smith, Vice Chairman of the Board, who had served as Commission Chairman for the past seven years, and remains as Chairman of Panel IV of the Commission. Mr. Taintor has served on the Commission since 1982, and retains his position as Chairman of Panel II.

#### IV. PROFESSIONAL ETHICS COMMISSION

In 1987 the Professional Ethics Commission met six times, and as a result issued six additional advisory opinions, bringing the total of such opinions issued by the respective advisory agencies of the Board through December 31, 1987 to 82. The opinions issued in 1987 continue to provide a resource for guidance and answers to ethical problems for attorneys, and dealt with the following areas:

- No. 77 - It is not a violation of the advertising provisions of the Code of Professional Responsibility for a law firm to retain a deceased partner's name in the name of the law firm, but the firm may not otherwise list his/her name without indicating that the attorney is deceased.
- No. 78 - An attorney representing a mortgagee in a foreclosure action need not withdraw from representation if called upon as a witness concerning evidence as to attorney's fees to be included in the foreclosure judgment. The attorney's conduct is not seen to be in violation of Maine Bar Rule 3.4(j).
- No. 79 - An attorney may not be involved in a business relationship with non-attorneys where any of the services provided by that business are legal in nature, as the attorney would then be involved in the division of legal fees with non-attorneys in violation of Maine Bar Rules 3.3.
- No. 80 - Where a county probate judge has a

pending case, and renders a judgment on the merits, that judge's law firm may not thereafter represent any parties to that probate matter even though the judge may have recused himself. To do otherwise, was determined to involve conduct in violation of Maine Bar Rule 3.4(g).

No. 81 - A contingent fee may properly be taken by an attorney in an action brought under a statute providing for the award of attorney's fees to the prevailing party at the judge's discretion, and that fee may be taken from the gross recovery (judgment plus court ordered attorney's fees), as long as the fee is not excessive or unreasonable in light of all the circumstances.

No. 82 - In a personal injury action, there is no ethical violation from a defendant's attorney discussing plaintiff's medical treatment and condition with the plaintiff's treating physician, even absent plaintiff's counsel's consent, and whether such conduct may be permissible as a matter of law in the State of Maine, has not yet been decided.

After serving as the charter Chairman of both the Grievance Commission's Subcommittee on Professional Responsibility, and later as the Chairman of the Board's Professional Ethics Commission, Curtis Webber voluntarily stepped down from that position effective December 31, 1987. With much appreciation for Mr. Webber's service, the Board accepted his resignation, and appointed another charter member, Hugh G.E. MacMahon, to serve as Chairman of the Commission, effective January 1, 1988. Mr. Webber remains a member of the Commission.

## V. MISCELLANEOUS MATTERS

### A. Maine Manual on Professional Responsibility

1. The Board has continued its cooperation with Tower Publishing Company in the updating of the Maine Manual on Professional Responsibility, which 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. 1-82 (including a subject matter index), and 4) the Regulations of the Board. The Board and Tower Publishing intend that commencing in 1989, future publications will be updated in the early spring of each year, to properly coincide with any Court promulgated amendments to the Maine Bar Rules.

### B. Board Regulations

The Board issued four regulations in 1987, with two being of particular significance to the Bar. In Regulation 28, the Board officially adopted the position earlier stated by the Professional Ethics Commission in Advisory Opinion No. 67,

thereby prohibiting the office of Bar Counsel from issuing informal advisory opinions concerning past or present attorney conduct, regarding any situations involving the conduct of an attorney other than the requesting attorney or his/her law firm. In reference to this regulation, an ever increasing service of the office of Bar Counsel is that of providing informal ethical advice to attorneys, either over the telephone or in response to written inquiry. This aspect of the Board's service now constitutes approximately 25 percent of Bar Counsel and Assistant Bar Counsel's daily operations and appears to have become better known and appreciated by the general legal bar.

In Regulation 31, the Board set forth the manner in which at the conclusion of the disciplinary hearing, Bar Counsel will supply the Grievance Commission with a sealed manila envelope. Pursuant to the regulation, that envelope, will include any prior disciplinary record of the respondent attorney, but will not be reviewed by the hearing panel until after it has decided the facts concerning the pending conduct. The respondent attorney, or his/her counsel must be made aware of the contents of that envelope at least ten days prior to the hearing.

C. Grievance Commission Vice Chairman

Pursuant to the Court's promulgation of amendments to the Maine Bar Rules, the Board now has a Vice Chairman to the Grievance Commission. Although these amendments did not take effect until February 15, 1988, and thus Vice Chairman Diane S. Cutler's official duties did not commence until then, it is significant to note that the increased workload of Grievance Commission Chairman Peter B. Webster, particularly regarding the review of Bar Counsel Files pursuant to Maine Bar Rule 5(b)(2), related to activity and matters pending during 1987 that invoked the Board's and Court's rationale in adding this new position.

D. Hearing Deferral - Board Regulation No. 12

Reference one complaint presently pending for a public disciplinary hearing before a panel of the Grievance Commission, the respondents are also the subject of corresponding civil litigation instituted by the same complainant, involving substantially similar allegations and issues as the grievance. In September of 1987, and upon

the request of the complainant/plaintiff, the Grievance Commission panel deferred the disciplinary hearing until March 1, 1988, upon the premise and representation that by that date the litigation would most likely have concluded.

Pursuant to Maine Bar Rule 7(h)(1) and Board Regulation No. 12, the panel found that initial resolution of factual disputes in the civil trial forum would enhance the panel's subsequent ability to narrow the issues, contrasted with a prior panel determination of the ethical issues most likely having an unwarranted effect on the outcome of the litigation, given the public nature of the entire matter.

The civil litigation did not, however, start or conclude before March of 1988, and as a result, a subsequent order was issued by the panel, further deferring the disciplinary hearing until December 1, 1988.

## VI. CONCLUSION


From the above discussion as well as a review of the attached statistical tables, the continued contribution and public service of all three of the Board's Commissions is well demonstrated. As the quantity and quality of the Board's

operations continue to grow, these Commissions have correctly responded by conducting more meetings or hearings in order to address and minimize respective workload and backlog problems.

The increased membership of both the Fee Arbitration Commission and the Grievance Commission, as well as the continued frequent meetings of the Professional Ethics Commission, have all contributed to the diligent overseeing, regulating, advisory and arbitration services of the Board's entire public service processes.

Respectfully submitted,

Dated: August 9, 1988



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



VII. APPENDIX

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS

REPORTING PERIOD: 1987

I. Complaints docketed and reviewed:

A. Complaints pending at start of period:	122
B. Complaints docketed and activated during period:	187
C. Total complaints to be reviewed during period:	309
D. Total complaints reviewed during period:	221
E. Complaints pending review at end of period:	88

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS

II. Grievance Commission disposition  
of formal complaints: 1987

	NUMBER	
A. Dismissals:		
1. By case review .....	137	
2. After hearing.....		9
B. Admonitions:		
1. By case review.....	42	
2. After hearing.....		3
3. In lieu of hearing.....	1	
C. Hearings open to public		
1. Probable cause found for disciplinary hearing open to the public		
a. By case review or by Board approval.....	14	
b. After initial confidential hearing .....		0
2. Reprimand issued after public hearing.....		8
D. Confidential disciplinary hearings authorized after case review.....	21	
1. Number of respondent attorneys involved.....		15
E. Informations authorized after hearing for further Court proceedings.....	33	
1. Number of respondent attorneys involved.....		11
F. Total complaints heard by Commission.	53	
G. Total Grievance Commission disciplinary proceedings authorized .....	35	
H. Total Grievance Commission proceedings both authorized and heard this period.....	6	
I. Total Grievance Commission dispositions this period.....	268	
J. Total Grievance Commission disciplinary proceedings awaiting hearing at end of period.....		46

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS (continued)

III. Matters before Supreme Judicial Court:

A.	Matters pending at start of period:	5
B.	New information, petitions, motions:	14
C.	Dispositions:	
1.	Disbarments	2
2.	Resignations	3
3.	Suspensions	6
4.	Reprimands	1
5.	Remanded to Board	1
6.	Dismissals	-
7.	Reinstatements	-
		<hr/>
	TOTAL	13
D.	Matters pending at end of period	6

IV. Total disciplinary matters pending at end of period:

A.	Complaints to be reviewed	88
B.	Grievance Commission disciplinary proceedings	46
C.	Maine Supreme Judicial Court informations	6
		<hr/>
		140

FORMAL COMPLAINTS

REPORTING PERIOD: 1987

<u>CHARACTERIZATION:</u>	<u>NUMBER:</u>	<u>PERCENT OF TOTAL:</u>
1. Trust Violation	2	1
2. Conflict of Interest	13	7
3. Neglect	69	37
4. Relationship w Client	21	12
5. Misrepresentation/Fraud	28	15
6. Excessive Fee	10	5
7. Interference w Justice	25	13
8. Improper Advertising/ Soliciting	8	4
9. Criminal Conviction	1	.5
10. Personal behavior	1	.5
11. Willful failure to cooperate	--	--
12. Medical Incapacity	--	--
13. Incompetence	7	4
14. No Jurisdiction	--	--
15. Conduct Unworthy of Attorney	1	.5
16. Other	1	.5
	<hr/>	<hr/>
TOTAL	187	100

<u>AREA OF LAW:</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
A. Family	36	19
B. Juvenile	--	--
C. Criminal	17	9
D. Traffic	3	2
E. Probate/Wills	16	9
F. Guardianship	--	--
G. Commercial	10	5
H. Collections	4	2
I. Landlord/Tenant	2	1
J. Real Property	45	24
K. Foreclosure	--	--
L. Corporate/Bank	4	2
M. Torts	25	13
N. Administration	2	1
O. Taxation	--	--
P. Patent/Trademark	--	--
Q. Immigration	--	--
R. Antitrust	--	--
S. Environment	--	--
T. Contract/Consumer	1	1
U. Labor	1	1
V. Workers' Comp	4	2
W. Other/None	14	7
X. Bankruptcy	3	2
Y. Municipal	--	--
	<hr/>	<hr/>
TOTAL	187	100

<u>SOURCE OF COMPLAINT</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Client	111	59
2. Other Party	26	14
3. Lawyer or Judge	24	13
4. Board or Staff	26	14

TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

1. Sole practitioner	70	38
2. 2	36	19
3. 3-6	53	28
4. 7-10	6	3
5. 11 or more	16	9
6. Government and Other	0	0
7. Unknown	6	3

TOTAL COMPLAINTS BY AGE OF ATTORNEYS

1. 24-29	3	1
2. 30-39	69	37
3. 40-49	61	33
4. 50-59	23	12
5. 60+	24	13
6. Unknown	7	4

DATE OF ADMISSION TO MAINE BAR

1. 1928-1949	8	4
2. 1950-1959	22	11
3. 1960-1969	17	9
4. 1970-1979	89	48
5. 1980-1987	46	25
6. Unknown	5	3

COMPLAINTS BY COUNTYNUMBERPERCENT OF TOTAL

1. Androscoggin	10	5
2. Aroostook	6	3
3. Cumberland	72	39
4. Franklin	2	1
5. Hancock	3	1.5
6. Kennebec	20	11
7. Knox	3	1.5
8. Lincoln	3	1.5
9. Oxford	1	.5
10. Penobscot	22	12
11. Piscataquis	3	1.5
12. Sagadahoc	2	1
13. Somerset	5	3
14. Waldo	2	1
15. Washington	1	.5
16. York	24	13
17. Out of State	8	4

TOTALS

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187

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100

DISPOSITIONAL TABLE - CHARACTERIZATION OF CONDUCT - 1987

CHARACTERIZATION

	TOTAL NUMBER	DISMISSALS		ADMONITIONS		REPRIMANDS		PROCEEDINGS AUTHORIZED			
								Commission		Court	
		146		46		8		35		33	
NEGLECT:	103	57		16		3		12		15	
%this disposition			39		35		37.5		34		46
%this characterization			55		15		3		12		15
REL. W/CLIENT:	34	23		3		1		2		5	
%this disposition			16		7		12.5		6		15
%this characterization			67		9		3		6		15
CONFLICTS:	21	15		5		0		0		1	
%this disposition			10		10		0		0		3
%this characterization			71		24		0		0		5
MISREPRESENTATION:	28	16		3		1		6		2	
%this disposition			11		7		12.5		17		6
%this characterization			57		11		4		21		7
INTERFERENCE W/JUSTICE:	34	19		6		1		6		2	
%this disposition			13		13		12.5		17		6
%this characterization			56		17		3		18		6
EXCESSIVE FEES:	14	7		4		0		1		2	
%this disposition			5		8		0		3		6
%this characterization			50		29		0		7		14
TRUST:	8	0		3		1		3		1	
%this disposition			0		7		12.5		9		3
%this characterization			0		38		12		38		12
ADVERTISING:	8	2		6		0		0		0	
%this disposition			1		13		0		0		0
%this characterization			25		75		0		0		0
OTHER:	18	7		0		1		5		5	
%this disposition			5		0		12.5		14		15
%this characterization			39		0		5		28		28



DISPOSITIONAL TABLE - MAJOR AREAS OF LAW - 1987  
(5 or more complaints in one area)

AREA OF LAW			DISMISSALS		ADMONITIONS		REPRIMANDS		PROCEEDINGS AUTHORIZED	
	TOTAL NUMBER								Commission	Court
		146		46		8		35		33
FAMILY LAW:	56	33		5		5		6		7
%this disposition			22		11		63		17	21
%this characterization			59		9		8		11	12
CRIMINAL LAW:	21	13		2		0		4		2
%this disposition			9		4		0		12	6
%this characterization			61		9		0		19	10
PROBATE/WILLS:	29	13		6		1		6		3
%this disposition			9		13		12		17	9
%this characterization			45		21		3		21	10
COMMERCIAL:	12	9		2		0		0		1
%this disposition			6		4		0		0	3
%this characterization			75		17		0		0	8
REAL PROPERTY:	42	23		10		1		4		4
%this disposition			16		22		12		11	12
%this characterization			55		24		2		9	10
TORTS:	51	26		14		1		4		6
%this disposition			18		30		12		11	18
%this characterization			51		27		2		8	12
BANKRUPTCY:	8	3		3		0		1		1
%this disposition			2		7		0		3	3
%this characterization			38		38		0		12	12
OTHER:*	49	26		4		0		10		9
%this disposition			18		9		0		29	27
%this characterization			53		8		0		20	18
*representing 18 categories										
TOTALS	268	146		46		8		35		33

BAR COUNSEL FILES

REPORTING PERIOD 1987

<u>CHARACTERIZATION</u>	<u>NUMBER</u>	<u>% OF TOTAL</u>
1. Conspiracy	--	--
2. Disagreement over conduct of case	3	2
3. Habeas Corpus	11	6
4. Inquiry Only	3	2
5. Insufficient information	26	15.5
6. Lack of Professionalism	1	.5
7. Malpractice	6	4
8. Personal Life	1	.5
9. Request for legal assistance	116	69
10. Other	<u>1</u>	<u>.5</u>
TOTAL	168*	100%

Bar Counsel Files pending at  
start of period:

34

Bar Counsel Files reviewed by  
Grievance Commission Chairman  
during period:

115

Bar Counsel Files pending at  
end of period:

72

\*Does not include 15 matters originally docketed as Bar Counsel Files, and later transferred to formal complaint status prior to December 31, 1987.

BAR COUNSEL FILES

REPORTING PERIOD 1987

<u>AREA OF LAW</u>	<u>NUMBER</u>	<u>% OF TOTAL</u>
A. Family	35	20
B. Juvenile	--	--
C. Criminal	40	23
D. Traffic	--	--
E. Probate/Wills	17	10
F. Guardianship	--	--
G. Commercial	4	3
H. Collections	2	1.5
I. Landlord/Tenant	3	2
J. Real Property	19	11
K. Foreclosure	--	--
L. Corporate/Bank	--	--
M. Torts	14	8
N. Administration	--	--
O. Taxation	--	--
P. Patent/Trademark/Copyright	--	--
Q. Immigration	1	.5
R. Anti-trust	--	--
S. Environment	--	--
T. Contracts/Consumer	1	.5
U. Labor	1	.5
V. Workers Comp.	3	2
W. Bankruptcy	4	3
X. Municipal	--	--
Y. Other/None	<u>25</u>	<u>15</u>
<b>TOTAL</b>	<b>168</b>	<b>100%</b>