BAR COUNSEL'S 1990 ANNUAL REPORT

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Bar Counsel

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INTRODUCTION

This document and the attached exhibits comprise Bar Counsel's 1990 Annual Report therein summarizing the operations of the Board of Overseers of the Bar's three agencies: the Grievance Commission, the Fee Arbitration Commission and the Professional Ethics Commission.

The Grievance Commission is currently comprised of 17 members - 12 lawyers and 5 non-lawyers. The Commission conducts case reviews and hearings by panels, each consisting of two lawyers and one non-lawyer. By consent of the parties, hearings may be conducted by a two-member panel, comprised of one lawyer and one non-lawyer. See Maine Bar Rule 7(b)(2). The Fee Arbitration Commission consists of 18 members - 10 lawyers and non-lawyers. The Professional Ethics Commission consists of 8 lawyers. A complete listing of the current membership of the Board and its commissions is included as part of the Appendix attached to this report.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

289 grievance complaints alleging professional misconduct by Maine attorneys were docketed by Bar Counsel in 1990, continuing the growing increase in the past two years - 1989 (236) and 1988 (140).

B. PANEL MEETINGS AND HEARINGS

1. Case reviews - Panels of the Grievance Commission, met for a combined total of 43 occasions for the purpose of conducting case reviews, compared with 30 such meetings in 1989 and 20 in 1988. This process involves the respective panel's meeting[1] and reviewing with Bar Counsel the contents of grievance complaint files which have been investigated by the office of Bar Counsel. It is from this review process that a panel initially determines the appropriate disposition of complaints as being 1) dismissal, 2) admonition (private non-discipline), 3) further investigation by Bar Counsel, or 4) directing Bar Counsel to file a disciplinary proceeding before the Grievance Commission.

There is a continuing tendency of the Grievance Commission panels to authorize hearings open to the public rather than the confidential hearing format. See Maine Bar Rule 7(e)(2)(A). Of the 32 complaints (involving 20 lawyers) authorized for

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[1] On certain occasions these reviews occur by telephone conference call.

disciplinary hearings, all but one was authorized to be a hearing open to the public before another panel of the Commission. That matter involved an attorney who already had matters pending before the Court, and therefore the reviewing panel directed that an additional Information be filed directly with the Court. See Maine Bar Rule 7(e)(6)(H).

As a result of the 43 panel meetings, 277 grievance complaints were closed by either dismissal (246) or the issuance of a confidential admonition of the attorney (31). These 309 reviewed complaints represented a dramatic increase (86%) over the number of complaints reviewed in 1989 (166).

2. Disciplinary proceedings - In addition to the 43 case review meetings, panels of the Grievance Commission met to conduct 14 disciplinary hearings of 24 complaints involving 17 attorneys. As seen by the attached statistical table, eight reprimands[2] (involving 7 attorneys) were issued by the Commission, with an additional 3 complaints (involving 2 attorneys) being directed for further court proceedings seeking suspension or disbarment of those attorneys. These 24 complaints disposed of through hearing compare with 17 complaints heard in 1989, an increase of 41%.

A discussion of some of the complaints heard by the Grievance Commission in 1990 follows.

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[2] Including one matter heard in 1989, but decided in 1990.

a. REPRIMANDS

1. Parents of their deceased son met with an attorney to discuss potential legal matters involving their son's estate, including the fact that at the time of his death his girlfriend was pregnant. The parents later terminated services with that attorney, and his subsequent representation of the girlfriend in her Petition for Appointment as Personal Representative of the son's estate was found to violate rules 3.4(a),(b),(c),(e) and 3.6(l). Grievance Commission File No. 88-K-94. Upon appeal, this reprimand was upheld by the Court. BAR-90-11.

2. In a jury trial on a criminal matter defense counsel commented to the jury in his closing argument that it "is alright to be prejudiced and it's alright to be emotional", and was reprimanded for conduct in violation of Rule 3.2(f)(4), 3.7(e)(1)(i) and 3.7(e)(2)(ii). Grievance Commission File No. 87-S-161.

3. In a hearing involving neglect of two clients and being inaccessible to those clients, counsel was disciplined on two complaints for violation of Rule 3.6(a)(2),(3). Grievance Commission File Nos. 89-K-3 and Grievance Commission File No. 89-S-16. Based upon a combination of factors including lack of proof, but also due to the candid manner in which the Respondent attorney conducted herself at the hearing and the steps that she had taken to reorganize the administrative operations of her law office, the hearing panel dismissed five other matters.

4. An attorney was reprimanded for neglecting a patent matter entrusted to him, violation being found of Rule 3.6(a)(3) because the attorney not only neglected that patent matter, but particularly bothersome to the panel was his complete failure to keep the client advised of the non-action status of that matter. The panel noted that contrary to the attorney's claim at the hearing that his neglect should be overlooked because of his physical incapacitation for a substantial period of time, the evidence indicated during that period the attorney had taken on many new cases rather than attending to matters in which he was already behind and neglectful. Grievance Commission File No. 88-K-133.

5. While a discrimination complaint was pending before and had been deferred by the Maine Human Rights Commission therein alleging certain employment discrimination by the complainant's employer, a bank, that bank's counsel on the discrimination matter met with the complainant/employee and two other supervisory bank employees, but without the complainant's counsel. The panel reprimanded counsel for violation of Rule 3.6(j). Grievance Commission File No. 89-K-14.

6. An attorney represented a client in a personal injury matter, but failed to obtain a signed contingency fee agreement from her. The case was settled for an amount in excess of $300,000.00 dollars. When the client became dissatisfied with his handling of the disbursements, he refused to turn over the balance

of her money and her file unless she signed documents expressing complete satisfaction with the settlement and his services. At hearing, Bar Counsel and Respondent's counsel stipulated to certain facts, including Respondent's violation of Rules 3.2(f)(1), 3.6(a)(3), 3.6(b) and 8, and that he should be reprimanded for that conduct. Grievance Commission File No. 86-102.

7. An attorney undertook representation of the Personal Representative of an estate, although he had no particular experience in this area of the law. He relied upon the expertise and advice of other attorneys involved who were representing other parties. The Grievance Commission panel found that the attorney should have associated himself with competent counsel, and upon stipulation of the parties, the panel reprimanded the attorney for violation of Maine Bar Rules 3.1(a) and 3.6(a) to the extent that he failed to employ reasonable care, skill and apply his best judgment in the performance of his duties. Grievance Commission File No. 89-K-10.

b. RECOMMENDATIONS FOR COURT PROCEEDINGS

Discussion of certain matters heard before the Grievance Commission resulting in a recommendation for further Court proceedings is set forth below.

1. Counsel handled the probate of an estate on behalf of the personal representative. While that estate was pending, the personal representative also died. Prior to the personal

representative's death, counsel failed to account for the location of or the proceeds from the sale of an asset of the first estate, a motor vehicle. This matter proceeded to hearing before the Grievance Commission panel in 1990, and pursuant to the panel's recommendation is presently pending before a single justice of the Court. Grievance Commission File No. 89-S-72; Docket No. BAR-91-4.

2. Respondent is an attorney as well as a real estate broker. In his capacity as broker, he sold a piece of property on a land contract, but failed to obtain one seller's name on the contract thereby making it unlikely that he could secure a warranty deed for the buyers at the end of the contract period. That same counsel also plead guilty and was found guilty for failure to file his income taxes with the Bureau of Taxation, State of Maine. The matters remain before the Law Court upon the attorney's appeal of a twelve-month suspension. Docket No. BAR-90-16.

C. CHARACTERIZATION AND AREA OF LAW

Neglect of a client's affairs or a failure to adequately keep a client informed as to the status of those affairs remain the most frequent allegation of misconduct for investigation by Bar Counsel and consideration by the Grievance Commission. As the attached statistics indicate, 114 (39%) of the 289 grievance complaints docketed in 1990 set forth allegations of conduct relating to Maine Bar Rule 3.6(a)(2) and 3. This is only a modest decrease from last year's figures (43%).

Complaints characterized as involving the interference with justice, e.g., improper communication with the opposing party, failure to appear at court or non-compliance with orders or rules of court, constitute the next highest number (46) of the 289 complaints received in 1990. Issues relating to some form of attorney misrepresentation, deceit or fraud remain as a relatively large number, 37 (13%), of the total complaints received in 1990. Rules 3.2(f)(3), 3.7(b) and 3.7(e)(1) are relevant to such allegations.

Family law continues to be the most frequent area of law in which grievance complaints arise, being 58 (20%) of the 289 complaints, compared to similar figures for 1989 54 (23%). As in 1989, real property matters comprised the second highest number of complaints received in 1990, being 51 (18%).

D. SOURCE OF COMPLAINTS/SIZE OF LAW OFFICE

As expected, the attached statistical tables regarding grievance complaints received in 1990 continue to demonstrate that clients filed the majority of the complaints, 189 (65%), with 62 (22%) being filed by an adverse party, and a total of 29 (10%) by a court or other counsel.

The historical trend for the majority of the complaints to be filed against sole practitioners (38%) continues, representing only a slight decrease compared to those received in that category in 1989 (43%). The comparative complaints filed against offices comprised of two attorneys, rose somewhat (18%) from that of last year (14%).

As noted in last year's report, the trend continues with the majority (53%) of the 17 attorneys that appeared before a panel of the Grievance Commission for disciplinary hearings in 1990, being sole practitioners. Reference those hearings, all but two of the attorneys that were either disciplined by the Grievance Commission or referred for further action before the Court were sole practitioners. Consistent with the events of 1989, all of the matters resulting in disciplinary action before a single justice of the Court in 1990 involved sole practitioners.

E. BAR COUNSEL FILES

Bar Counsel Files as authorized by Maine Bar Rule 5(b)(2) constitute those matters which upon initial review by Bar Counsel do not appear to allege professional misconduct. There were 101 such filings in 1990, representing a decrease (25%) in the number filed in 1989 (148). In all instances, Bar Counsel's screening and closing of such matters is subject to review by either Grievance Commission Chair Gerald F. Petruccelli, Esq. of Portland, or Vice Chair William F. Hufnagel, Esq. of Winthrop, and

through their diligent efforts, 137 such matters were reviewed and approved for dismissal in 1990.

II. COURT MATTERS

Nine discipline-related orders were issued or affirmed by the Court[3] in 1990 in the following categories: 1) disbarments - 4; 2) suspensions - 2; 3) resignation - 1; reprimand - 2; and deferral - 1. A brief discussion of some of those matters is set forth below.

A. DISBARMENTS

1. In a matter discussed in detail within the Board's 1989 Annual Report (at pages 14, 15) the Law Court affirmed the 1989 disbarment of the Respondent. See Board of Overseers of the Bar v. Daniel J. Murphy, 570 A2d 1212 (Me. 1990).

2. Respondent was alleged to have filed disciplinary charges against other counsel for the sole purpose of gaining an advantage in a civil matter. After hearing, the single justice dismissed the former charge but did find evidence supporting the latter allegation, and given the respondent's previous disciplinary record, he was ordered disbarred. Respondent appealed to the Law Court, but upon failing to properly perfect that appeal, Bar Counsel's motion to dismiss the appeal was granted, and Respondent

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[3] Including the Law Court as well as single justices.

is currently disbarred from the practice of law in the State of Maine. Docket No. BAR-90-9; Law Docket No. CUM-90-381.

2. Bar Counsel filed 3 separate Informations against Respondent involving a total of 5 different charges, 1 of which involved allegations that his earlier representations to a single justice were in fact misrepresentations of the true status of his gross neglect of a probate matter. All of the complaints alleged a pattern of gross neglect and deception in the Respondent's representation of clients. The Court found the allegations to be correct, and ordered Respondent disbarred from the practice of law in Maine. He had also been previously disbarred from the practice of law in the State of New Hampshire. Docket Nos. BAR-89-9, BAR-89-11, BAR-89-13.

3. Although not formerly consolidated, 3 separate proceedings with one Respondent were heard on the same day resulting in a joint order by the single justice. In its order, the Court found that the Respondent displayed a "regrettable lack of candor and honesty. His demeanor during the hearing evidences an enmity towards his former clients and an arrogance inconsistent with the duties of an attorney." He was disbarred. Docket Nos. BAR-88-15, BAR-89-12, BAR-90-12.

B. SUSPENSIONS

1. Relating to two complaints involving an attorney already under a temporary, indefinite suspension pursuant to Rule 7(e)(7) (See 1989 Annual Report, Page 19), the Court imposed a 3 month suspension for Respondent's failure to maintain adequate communications with two separate clients, failure to turn over documents to one of those client's new counsel or render a prompt accounting for his fees, and failing on one matter to cooperate with the investigation of Bar Counsel. His conduct was found in violation of Rules 2(c), 3.5 and 3.6. Docket No. BAR-88-2.

2. A one year suspension was imposed on Respondent for his mishandling of his application for court-approval of a settlement on behalf of a minor child reference injuries she suffered when she was struck by a school bus. The Superior Court complained to Bar Counsel. It was discovered from testimony taken from Respondent at the Grievance Commission hearing that although he had belatedly indicated to the Superior Court that he had taken no fee from a settlement check, Bar Counsel's tracking of Respondent's bank accounts indicated that in fact he had taken an excessive fee and misrepresented that fact to the Superior Court. Docket No. BAR-90-5.

C. RESIGNATION

One resignation was considered and ordered by the Court in 1990. That resignation was submitted pursuant to Maine Bar Rule 7(l) while disciplinary investigations and proceedings were pending against that attorney. Docket Nos. BAR-90-15.

D. REPRIMAND

Counsel had been previously suspended by the Court from the practice of law for an eighteen month period. During that time he nonetheless used his attorney's office letterhead to correspond with various courts and also with Bar Counsel. Upon motion by Bar Counsel, the Court found counsel in contempt of the earlier suspension order, publicly reprimanded him and imposed costs of $500.00. Upon appeal, the Law Court affirmed the single justice's reprimand of counsel. Board of Overseers of the Bar v. MacKerron, 581 A2d 424 (Me.1990).

III. FEE ARBITRATION COMMISSION

In 1990, the Board's Secretary to the Fee Arbitration Commission received 170 requests for petitions for arbitration of fee disputes, 72 (42%) of which were actually later returned and filed with the Secretary.

With 22 petitions pending at the close of 1989, the 72 new petitions created a total docket of 94 petitions in 1990. The five designated panels met for a combined total of 25 occasions throughout 1990 to dispose of 41 petitions. 25 other fee disputes were either dismissed, settled, or withdrawn by consent of the parties. These informal resolutions were accomplished with the assistance and involvement of Bar Counsel and the Secretary, and approved by Fee Arbitration Commission Chair M. Donald Gardner. See Maine Bar Rule 9(e)(3). At the end of 1990, there were 28 petitions awaiting hearing by a panel of the Fee Arbitration Commission.

The role of the office of Bar Counsel in the fee arbitration process is one of reviewing and screening petitions upon filing with the Secretary for the purpose of determining if the matter truly warrants the attention of that Commission, should be also or only addressed by the Grievance Commission, or does not in fact allege or involve any factual fee dispute. Where warranted Bar Counsel attempts to promote and assist in the informal resolution of fee disputes prior to hearing by a panel. See Maine Bar Rule 9(e)(2).

IV. PROFESSIONAL ETHICS COMMISSION

The Professional Ethics Commission, comprised of eight attorney members, normally met monthly in 1990 to render advisory opinions on ethical questions as posed by Bar Counsel, the Grievance Commission and various Maine attorneys. These opinions continue to provide valuable insight and guidance on problematic situations involving the proper interpretation and application of the Code of Professional Responsibility (Rule 3).

In 1990, the Professional Ethics Commission issued 13 additional advisory opinions, a marked increase in the number (8) issued in 1989. The total of such opinions issued by the respective advisory commissions of the Board through December 31, 1990 is now 113. The opinions issued in 1990 are briefly summarized below:

No. 101: Although partners in the same law firm may not represent both the buyer and seller in a real estate transaction, such representation would not necessarily be prohibited in situations where the attorneys are married. If the facts of a case render it "obvious" that 1) the married attorneys may "adequately represent" their respective clients; 2) the interests of the married attorneys are disclosed; and 3) client consent is obtained, Maine Bar Rule 3.4(b) is not violated.

No. 102: The vicarious prohibitions of employment provisions of Maine Bar Rule 3.4(k) apply to student-lawyers practicing in law-school related clinic programs.

No. 103: As long as a client is fully informed and consents to the fee agreement, and the fee is reasonable, Maine Bar Rule 3.3(d) is not violated by a fee agreement that allows the referring attorney to receive a fee based on a percentage of recovery, despite the lack of any legal services being performed by the referring attorney.

No. 104: A lawyer member of the Board of Overseers of the Bar or that member's firm may accept or continue representation adverse to a lawyer who is under disciplinary investigation or subject to disciplinary proceedings before the Grievance Commission if the lawyer member is not privy to any confidential disciplinary information and is otherwise disqualified and removed from any involvement with the disciplinary matter.

No. 105: Maine Bar Rule 3.4(a) is not violated if an attorney fails to disclose to a prospective client that in the past the attorney provided general legal advice to a real estate brokerage firm, and that pursuant thereto the attorney developed the form Purchase and Sale Contract now used by the brokerage firm in the present transaction between the attorney's client (buyer) and the seller. If there is a reasonable likelihood, however, that this connection might affect the prospective client's selection of the lawyer as his attorney, then disclosure must be made under that rule.

No. 106: Maine Bar Rule 3.4(c) will bar a law firm from acting as an "escrow agent" /legal advisor to both the buyer and seller in a business transaction. Disclosure and consent to such representation will not satisfy Maine Bar Rule 3.4(d) as it is not "obvious" that the law firm can adequately represent the interests of both buyer and seller in this transaction.

No. 107: An attorney who serves as a director of a corporation may not disclose to the corporation information relating to a client's financial problems if such information was gained "in the professional relationship". Maine Bar Rule 3.6(1), however, does not prohibit the attorney from disclosing public information.

No. 108: Maine Bar Rule 3.4(j) is not violated when a witness-lawyer remains substantially involved in the lawyer's firm's preparation of the case, as long as a non-witness-lawyer, and not the witness-lawyer, exercises control over the litigation.

No. 109: Maine Bar Rule 3.2(d)(2) does not bar a lawyer/mayor from representing clients before a public body of the city unless the lawyer/mayor is a member of that body. A lawyer/mayor's associates may appear before the City Council and other city bodies, as long as they comply with the disclosure provisions of Maine Bar Rule 3.2(d)(2). Pursuant to Opinion No. 73, however, neither the lawyer/mayor nor members of the lawyer/mayor's firm may litigate against the city while the lawyer remains mayor thereof.

No. 110: Representation of a group of "Potentially Responsible Parties" or "PRPs" in Superfund litigation poses no conflict, as the attorney's duty of loyalty is to the group - not to the individual PRP. If the attorney, however, also represents an individual PRP, the attorney must comply with Maine Bar Rule 3.4(d).

No. 111: Maine Bar Rule 3.4(g) will bar an attorney or any associate of the attorney's firm from appearing before the state administrative agency board on which the attorney served prior to accepting private employment in matters 1) that were before the Board during the attorney's tenure for adjudication; and 2) as to which the attorney acted on the merits. If, however, the attorney did not represent the government as an attorney during tenure on the Board, Maine Bar Rule 3.4(h)(1) will apply only if the attorney's present employment involves 1) the same "matter" as encountered while a member of the Board; and 2) the attorney's "personal and substantial" participation as a government official; or 3) the possession of confidential information.

No. 112: Maine Bar Rule 3.9 is not violated if a law firm/ title company lists the firm in the yellow pages of the telephone directory under "title companies", as long as the advertisement is a true statement and is not false, fraudulent, misleading or deceptive as to the services actually rendered by the firm.

No. 113: Pursuant to Maine Bar Rule 3.4(j)(1) an attorney/witness (A) may not act as an "associate counsel" and participate in a contingent fee agreement with litigation counsel (B) when A referred the matter to B, and B is not associated with the referring attorney A's law firm.

V. MISCELLANEOUS MATTERS

A. EVALUATION OF THE MAINE DISCIPLINARY SYSTEM

Upon the recommendation of the Court and the Board in 1990, a four person team from the American Bar Association's Standing Committee on Professional Discipline performed an evaluation of Maine's Attorney Disciplinary System. This evaluation involved the team's initial background study and review of the provisions of the Maine Bar Rules and the operations of the Board of Overseers and the office of Bar Counsel. The team then visited Maine in late August, 1990 and met and interviewed various members of the Court, Board, Grievance Commission, complainants, respondents, independent attorneys, and the entire staff of the office of Bar Counsel. The team formulated a draft report in December of 1990, and the final report was filed with the Court in March, 1991. The Report presented a generally favorable summary of Maine's disciplinary operations, and included thirteen specific recommendations for changes to the Maine Bar Rules as well as certain operations of Bar Counsel. With the assistance of a duly-appointed ad hoc committee, the Court is currently in the process of reviewing those recommendations.[4]

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[4] One of those recommendations relates to difficulties experienced by the Grievance Commission over the past years in terms of the use of a confidential admonition under the restrictions of Maine Bar Rules 5(b)(2), 7(e)(2) and 7(p)(1). Both the Board and the Grievance Commission have had that matter under

B. MAINE MANUAL ON PROFESSIONAL RESPONSIBILITY

The Board's arrangement with Butterworth Legal Publishers for the publication of the Maine Manual on Professional Responsibility continued to be of assistance to Maine attorneys. This publication includes: 1) membership lists of the Board and all three of its commissions, 2) all of the Maine Bar Rules with Reporter's Notes and Advisory Committee Notes reference the history of those rules, 3) the text of all Advisory Opinions with a subject matter index, and 4) the Board's Regulations. Bar Counsel is in the process of arranging to have the publisher include Court and Grievance Commission discipline decisions in future editions of this publication.

C. AMENDMENTS TO THE MAINE BAR RULES [5]

Effective October 15, 1990, Maine Bar Rule 6(b)(2) was amended to include an attorney's failure to pay any overdue tax liability as a reason for the State Tax Assessor to notify the Board of the Assessor's finalized determination to prevent renewal or reissuance of the attorney's license by the Board.

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study and brought their concerns in that regard to the attention of the evaluation team.

[5]Other than Rule 3, which is amended by the Court upon request of the Advisory Committee on the Code of Professional Responsibility.

This amendment was needed to make Rule 6(b)(2) consistent with a recent amendment to Title 36 M.R.S.A. Section 175.

Effective on that same date, Maine Bar Rule 7(e)(5) was amended to make the processing of Bar Counsel's objection to a report of the Grievance Commission consistent with the normal appellate process. That is, partly as a result of the Board's dissatisfaction with the requirements of the previous rule as put in place by an objection filed by Bar Counsel in 1989 (see Board's 1989 Annual Report at page 24), the Board recommended to the Court that the rule now provide for Bar Counsel and Respondent to be directly involved in the processing of the objection and consideration of it by the Board. The rule was so amended, and the Grievance Commission hearing panel is now completely removed from the objection process. Both amendments are attached in the Appendix.

D. INFORMAL ADVISORY OPINIONS

In addition to the formal advisory opinions discussed above with respect to the Professional Ethics Commission, informal advisory opinions are provided by the office of Bar Counsel to Maine attorneys on a daily basis, comprising approximately at least 10% of the attorneys' weekly time. These opinions may be provided both in writing and over the telephone depending upon the issues involved and the preference of the inquiring attorney, and usually relate to an inquiry as to whether certain professional conduct,

generally prospective in nature, is appropriate under the Maine Bar Rules. Such opinions are limited by both Advisory Opinion No. 67 as well as Board Regulation 28 to discuss only conduct regarding the inquiring attorney or that attorney's law firm, and will not be provided regarding inquiries as to the propriety of another attorney's conduct. Opinions requested of "hypothetical situations" will not be provided without adequate prior disclosure of compliance with Opinion 67 and Regulation 28.

E. ASSISTANCE TO THE MAINE STATE BAR ASSOCIATION

Bar Counsel continued to assist and appear on panels of various continuing legal education seminars of the Maine State Bar Association. Either Bar Counsel or Assistant Bar Counsel took part in such meetings involving ethical issues relating to problem criminal cases and legal malpractice, as well as Lawyers With Class. In this same regard, Bar Counsel and Assistant Bar Counsel each made a presentation regarding ethical issues to meetings of legal secretaries associations of Maine.

Bar Counsel continued to cooperate and assist the Maine State Bar Association's Substance Abuse Committee including confidentially bringing to the attention of that committee the names of attorneys Bar Counsel believes are in need of the committee's assistance. See Maine Bar Rule 3.2(e)(3).

Respectfully submitted,

Dated: June 3, 1991

J. Scott Davis
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Board of Overseers of the Bar
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VII. APPENDIX

STATISTICAL ANALYSIS OF DISCIPLINE, DISCIPLINARY MATTERS, AND FEE DISPUTES

BOARD AND COMMISSION MEMBERS

BOARD OF OVERSEERS OF THE BAR:

Peter B. Webster, Esq. of Portland, Chair
Barbara E. Chesley of Durham, Vice-Chair
Diane S. Cutler of Bangor
Roger S. Elliott, Esq. of Saco
Richard C. Engels, Esq. of Presque Isle
Susan R. Kominsky, Esq. of Bangor
Richard A. McKittrick, Esq. of Camden
Marc V. Schnur of Islesboro
Curtis Webber, Esq. of Auburn

GRIEVANCE COMMISSION:

Gerald F. Petruccelli, Esq. of Portland, Chair
William F. Hufnagel, Esq. of Winthrop, Vice-Chair
John P. Foster, Esq. of Eastport
Lawrence Hadley of Bar Harbor
Susan R. Kominsky, Esq. of Bangor
Roger S. Elliott, Esq. of Saco
Robert E. Mittel, Esq. of Portland
Louise P. James of Portland
David B. Soule, Jr., Esq. of Wiscasset
Jon S. Oxman, Esq. of Auburn
Marc v. Schnur of Islesboro
Craig A. McEwen of Brunswick
Charles H. Abbott, Esq. of Auburn
Kathryn Monahan Ainsworth, Esq. of So.Portland
Donald A. Leeber, M.D. of Portland
Charles A. Harvey, Jr., Esq. of Portland
Carroll Lee of Bangor

PROFESSIONAL ETHICS COMMISSION:

Hugh G. E. MacMahon, Esq. of Portland, Chair
Sandra H. Collier, Esq. of Ellsworth
Nathan Dane, III, Esq. of Bangor
Robert S. Hark, Esq. of Lewiston
H. Cabanne Howard, Esq. of Augusta
John M. R. Paterson, Esq. of Portland
Gordon H. S. Scott, Esq. of Augusta
Curtis Webber, Esq. of Auburn

FEE ARBITRATION COMMISSION:

Roger R. Therriault, Esq. of Bath, Chair
Joan C. LaBrique, Esq. of Biddeford
Peter W. Schroeter, Esq. of Saco
Clifford A. Purvis of Saco
Bruce E. Leddy, Esq. of Portland
Kevin F. Gordon, Esq. of Portland
John M. Daigle of Old Orchard Beach
Peter M. Garcia, Esq. of Auburn
Lee Young of Auburn
Gregory J. Farris, Esq. of Gardiner
Matthew Dyer, Esq. of Augusta
Doris Hayes of Manchester
Stephen G. Morrell, Esq. of Bangor
James E. Patterson, Esq.
Patricia S. Curtis of Bar Harbor
Frank Bean of Bar Harbor
Richard Ladner of Lisbon Falls
Harriet R. Dawson of Yarmouth

BAR COUNSEL:

J. Scott Davis, Esq.

ASSISTANT BAR COUNSEL:

Karen G. Kingsley, Esq.

TEMPORARY ASSISTANT BAR COUNSEL:

Jeanne A. Foy, Esq.

JUDICIAL LIAISON:

Associate Justice David G. Roberts

SPECIAL CONSULTANT:

John W. Ballou, Esq.

GRIEVANCE COMMISSION 1990
COMPLAINT AND HEARING SUMMARY
January 1, 1990 to December 31, 1990

I. COMPLAINTS REVIEWED - 309

ACTION:	
Dismissals:	246
Admonitions:	31
Disciplinary Hearings Authorized:	
confidential:	0
open to the public:	31
authorized to proceed directly to court:	1

II. DISPOSITIONS AFTER HEARING - 24 complaints (14 hearings, 17 attorneys)

A. CONFIDENTIAL HEARINGS - 3 complaints

ACTION:	
Dismissals:	0
Admonitions:	0
Reprimand Hearing Authorized:	2
Informations to be filed with Court:	1

B. HEARINGS OPEN TO THE PUBLIC - 21 complaints

ACTION:		
Dismissals:	12	(6 attorneys)
Admonitions:	0	
Reprimands Issued:	8	(7 attorneys)
Informations directed to be filed with Court:	2	(1 attorney)

Includes 2 complaints heard in 1990, with dismissals issued in January, 1991.

Includes 1 matter heard in 1989, with reprimand being issued in March, 1990.

III. Grievance Complaints docketed and reviewed

A.	Complaints pending review at start of period:	122
B.	New complaints docketed or submitted for rereview:	289
C.	Total complaints docketed or activated:	411
D.	Total complaints reviewed or closed	309
E.	Complaints pending investigation and review at end of period:	102

IV. Matters before Single Justices

A.	Matters pending at start of period:	6
B.	New informations or resignations filed:	8
C.	Total Court pleadings docketed:	14

D. Dispositions:

1.	Disbarments:	3	(Involving 5 informations)
2.	Suspensions:	2	
3.	Resignations:	1	
4.	Reprimands:	2	(Involving 3 informations)
5.	Dismissals	0	
6.	Deferrals:	1	

Total pleadings closed: 12

E.	Matters pending at end of period:	2

V. Total disciplinary matters pending at end of period

A.	Grievance Commission:	
	1. Complaints to be investigated and reviewed:	102
	2. Complaints awaiting Grievance Commission disciplinary proceedings:	31
B.	Maine Supreme Judicial Court:	
	1. Pending informations:	2
	2. Complaints authorized for information but not yet filed	1
C.	Federal District Court:	1
	TOTAL:	137
	(Comparative total for 1989 - 169)	

1990 GRIEVANCE COMPLAINTS - CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
1. Trust Violation	13	4
2. Conflict of Interest	31	11
3. Neglect	114	39
4. Relationship w/Client	29	10
5. Misrepresentation/Fraud	37	13
6. Excessive Fee	4	1
7. Interference w/Justice	46	16
8. Improper Advertising/ Soliciting	3	1
9. Criminal Conviction	2	1
10. Personal behavior	5	2
11. Willful failure to cooperate	--	--
12. Medical Incapacity	3	1
13. Incompetence	1	.05
14. No Jurisdiction	--	--
15. Conduct Unworthy of Attorney	1	.05
16. Other	--	--
TOTAL	289	100

1990 GRIEVANCE COMPLAINTS - AREA OF LAW

		NUMBER	PERCENT OF TOTAL
A.	Family	58	20
B.	Juvenile	--	--
C.	Criminal	36	12
D.	Traffic	1	.05
E.	Probate/Wills	19	7
F.	Guardianship	--	--
G.	Commercial	11	4
H.	Collections	13	5
I.	Landlord/Tenant	4	1
J.	Real Property	51	18
K.	Foreclosure	--	--
L.	Corporate/Bank	7	2
M.	Torts	39	14
N.	Administration	3	1
O.	Taxation	--	--
P.	Patent/Trademark	1	.05
Q.	Immigration	--	--
R.	Antitrust	--	--
S.	Environment	--	--
T.	Contract/Consumer	7	2
U.	Labor	--	--
V.	Worker's Comp	9	3
W.	Other/None	21	7
X.	Bankruptcy	6	2
Y.	Municipal	3	1
		289	100

1990 GRIEVANCE COMPLAINTS

SOURCE OF COMPLAINT	NUMBER	PERCENT OF TOTAL
1. Client	189	65
2. Adverse Party	62	22
3. Lawyer or Judge	29	10
4. Board or Staff	9	3
	289	100

TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

1. Sole Practitioner	110	38
2. 2	51	18
3. 3-6	82	28
4. 7-10	8	3
5. 11 or more	25	9
6. Government and Other	13	4
	289	100

TOTAL COMPLAINTS BY AGE OF ATTORNEYS

1. 24-29	3	1
2. 30-39	89	30
3. 40-49	123	43
4. 50-59	46	16
5. 60+	28	10
	289	100

YEARS OF PRACTICE IN MAINE BAR	NUMBER	PERCENT OF TOTAL
1. 40-61 years	8	3
2. 30-39 years	17	6
3. 20-29 years	40	14
4. 10-19 years	111	38
5. 2-9 years	111	38
6. Less than 2 years	2	1
	289	100

COMPLAINTS BY COUNTY		
1. Androscoggin	27	9
2. Aroostook	20	7
3. Cumberland	87	30
4. Franklin	2	1
5. Hancock	8	3
6. Kennebec	25	9
7. Knox	4	1
8. Lincoln	4	1
9. Oxford	5	2
10. Penobscot	41	14
11. Piscataquis	4	1
12. Sagadahoc	3	1
13. Somerset	13	5
14. Waldo	0	0
15. Washington	3	1
16. York	40	14
17. Out of State	3	1
	289	100

1990 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
1. Conspiracy	3	3
2. Disagreement over conduct of case	1	1
3. Habeas Corpus	11	10
4. Inquiry Only	--	--
5. Insufficient information	12	12
6. Lack of Professionalism	15	15
7. Malpractice	6	6
8. Personal Life	3	3
9. Request for legal assistance	49	49
10. Other	1	1
TOTAL	* 101	100%

Bar Counsel Files pending at start of period:	** 70
New Bar Counsel Files docketed:	101
Total Bar Counsel Files on docket:	171
Bar Counsel Files reviewed by Grievance Commission Chair or Vice Chair during period:	137
Bar Counsel Files pending at end of period:	34

* Includes 11 matters originally docketed as Bar Counsel Files, and later transferred to formal grievance complaint status prior to December 31, 1990.

** Includes 4 matters originally docketed as Bar Counsel Files, before 1990 and transferred to formal grievance complaints in 1990.

BAR COUNSEL FILES

REPORTING PERIOD 1990

		NUMBER	PERCENT OF TOTAL
A.	Family	16	16
B.	Juvenile	-	-
C.	Criminal	23	22
D.	Traffic	1	1
E.	Probate/ Wills	8	8
F.	Guardianship	1	1
G.	Commercial	-	-
H.	Collections	4	4
I.	Landlord/Tenant	1	1
J.	Real Property	20	20
K.	Foreclosure	-	-
L.	Corporate / Bank	-	-
M.	Torts	10	10
N.	Administration	-	-
O.	Taxation	-	-
P.	Patent/Trademark/Copyright	-	-
Q.	Immigration	-	-
R.	Anti-trust	-	-
S.	Environment	-	-
T.	Contracts/Consumer	2	2
U.	Labor	-	-
V.	Workers Comp.	2	2
W.	Bankruptcy	-	-
X.	Municipal	1	1
Y.	Other/None	12	12
		101	100%

FEE ARBITRATION COMMISSION
PETITION SUMMARY
January 1, 1990 through December 31, 1990

PETITIONS:

Pending at start of period:		22
Docketed during period :		72
Total open petitions during period:		94
Dismissed, settled, withdrawn:	25	
Heard and closed:	41	
Heard and awaiting awards:	0	
Total petitions closed during period:	66	
Total petitions pending at close of period:		28

BREAKDOWN OF HEARINGS BY PANEL:

Panel IA:	(York)	7
Panel IB:	(Cumberland)	5
Panel II:	(Androscoggin, Franklin Lincoln, Oxford & Sagadahoc)	6
Panel III:	(Kennebec, Knox, Somerset & Waldo)	4
Panel IV:	(Aroostook, Hancock, Penobscot, Piscataquis, & Washington)	3
TOTAL:		25

Comparison of Petitions docketed:

1988: 57
1989: 72
1990: 72

GRIEVANCE COMMISSION 1990

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. SJC-51

AMENDMENTS TO MAINE BAR RULES

Effective October 15, 1990

All of the Justices concurring therein, the following amendments to the Maine Bar Rules are hereby adopted, prescribed, and promulgated, to be effective on October 15, 1990.

1. Rule 6(b)(2) of the Maine Bar Rules is amended to read as follows:

> (2) *Failure to File State Tax Returns.* Whenever, pursuant to section 175 of Title 36 of the Maine Revised Statutes, the State Tax Assessor notifies the Board of his finalized determination to prevent renewal or reissuance of a "license or certificate of authority" for an attorney to practice law, the Board shall refuse to process any registration statement filed by such attorney after such notification from the State Tax Assessor and such attorney is automatically suspended. The failure to file such a state tax return or to pay any tax liability due as referred to in such notification from the State Tax Assessor shall not be considered a violation of the Code of Professional Responsibility per se and the suspension due to the reported failure to file such return or to pay any overdue tax liability shall not constitute the imposition of discipline. Notice of the receipt of such notification from the State Tax Assessor of such finalized determination and of the suspension shall be given by the Board to the attorney by registered or certified mail, restricted delivery, and return receipt requested, addressed to the office or home address last known to the Board of Overseers of the Bar. Such suspension for reported failure to file the state tax return

or to pay any overdue tax liability shall not be effective until thirty (30) days after the date of mailing the notice thereof. An attorney who, after the date of the mailing of such notice of notification and suspension but before the effective date of such suspension, files with the Board a certificate issued by the State Tax Assessor that the attorney is currently in good standing with respect to any and all returns and tax liability due ~~as of the date of the issuance of the certificate~~ shall be deemed to be in compliance with this rule and shall not be suspended for failure to file such state tax returns or to pay any overdue tax liability; otherwise the attorney shall be subject to Maine Bar Rules 7(n)(2) and 7(o). An attorney aggrieved as a result of a suspension under this subdivision may apply to a justice of the Court with notice to Bbar Ceounsel for summary relief for good cause shown.

2. Rule 7(e)(5) of the Maine Bar Rules is amended to read as follows:

(5) *Bar Counsel's Objection, Board Review.* Upon receipt of a Grievance Commission's report, if there is objection by the Bar Counsel to the findings and recommendations, Bar Counsel may file an objection within 30 days of receipt of the report, with notice to the respondent. Tthe Board shall set dates for submission of oral arguments, unless waived, ~~by that member or those members of the Commission attending the hearing, and~~ by Bar Counsel and the respondent, and shall thereupon, through a panel of at least 3 members of the Board (no one of whom shall have participated in said Commission's report) to be designated by the Board or the Chairman, determine the issue. ~~; and the Board's determination with respect thereto, shall be final.~~ If the Board denies the objection, that action shall be final as to Bar Counsel. If the Board enters a reprimand, the respondent may file a petition for review with the Executive Clerk of the Court pursuant to Rule 7(e)(4). Should the Board determine that the matter should be concluded by suspension or disbarment, Bar Counsel shall file an information pursuant to Rule 7(e)(6).

Such amendments shall be recorded in the *Maine Reporter*.

Board of Overseers Notes to Amendments to
Maine Bar Rules 6(b)(2) and 7(e)(5)

Rule 6(b)(2) is amended consistent with the recent amendment to 36 M.R.S.A. § 175. As a result, the Board notification and automatic suspension provisions of this rule now apply to any overdue tax liability of an attorney once that matter has been processed through the administrative steps by the State Tax Assessor.

Rule 7(e)(5) is amended to conform Bar Counsel's right to object to the Board reference of a Grievance Commission report with the present public hearing format of those Grievance Commission proceedings. As a result, the previous internal objection approach has now been replaced with language that includes the respondent's involvement in the objection procedure and eliminates the hearing panel's involvement. The involvement of the lower level tribunal in the appellate processing of Bar Counsel's objection appeared awkward. The new procedure continues to render the Board's action final as to Bar Counsel's right to object. If, however, the Board either enters discipline or seeks suspension or disbarment, then the respective bar rules that would otherwise be in effect had the Grievance Commission itself entered such a disposition will govern the results of the Board's action as well.