BAR COUNSEL'S 1991 ANNUAL REPORT

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Bar Counsel

TABLE OF CONTENTS

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INTRODUCTION

This document and the attached exhibits comprise Bar Counsel's 1991 Annual Report summarizing the operations of the Board of Overseers of the Bar and its three agencies: the Grievance Commission, the Fee Arbitration Commission and the Professional Ethics Commission.

The Grievance Commission is comprised of 17 members[1] - 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 M. Bar R. 7(b)(2).[2] The Fee Arbitration Commission consists of 18 members - 10 lawyers and 8 non-lawyers. The Professional Ethics Commission consists of 8 lawyers. A complete listing of the 1991 membership of the Board and its Commissions is included as part of the Appendix attached to this report.

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[1] As of May, 1992, the membership was increased to 20 members.

[2] As seen below (Section V(A), p. 19), significant procedural amendments to the Maine Bar Rules were promulgated by the Court effective March 30, 1992. Unless otherwise indicated, all Rule references within this report relate to the respective language prior to those amendments.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

311 grievance complaints alleging professional misconduct by Maine attorneys were docketed by Bar Counsel in 1991, continuing the growing increase in the past three years - 1990 (289), 1989 (236) and 1988 (140).

B. PANEL MEETINGS AND HEARINGS

1. Case reviews - Panels of the Grievance Commission, met for a combined total of 37 occasions[3] for the purpose of conducting case reviews, compared with 43 such meetings in 1990, and 30 in 1989. This process involves the respective panel's meeting[4] 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.

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[3] At three of its monthly meetings, the Board also conducted reviews of four complaints under authority of M. Bar R. 5(b)(1) and 7(d).

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

All of the disciplinary hearings in 1991 were open to the public. Further, of the 36 complaints (involving 23 lawyers) authorized for disciplinary hearings, only one was authorized to be a confidential hearing before another panel of the Commission. As noted within the statistical appendix, the confidentiality of that hearing was later waived by the respondent, a hearing open to the public occurred, with a reprimand being imposed.

As a result of the total of 40 panel and Board case review meetings, 251 grievance complaints were closed by either dismissal (228) or the issuance of a confidential admonition of the attorney (23). The total of 293 reviewed complaints represented a small decrease (5%) of the number of complaints reviewed in 1990 (309).

2. Disciplinary proceedings - In addition to the 37 case review meetings, panels of the Grievance Commission met to conduct 22 disciplinary hearings resulting from 35 complaints involving 22 attorneys. As seen by the attached statistical table, ten attorneys were reprimanded[5] by the Commission. Concerning 16 complaints (involving 7 attorneys), Bar Counsel was directed to file further court proceedings seeking suspension or disbarment of those attorneys, representing a marked increase from the number of such matters in 1990 - 3 complaints, involving 2 attorneys. Those 35 complaints heard by the Grievance Commission, compare to 24 complaints heard in 1990, an increase of 42%, and more than a 100% increase from the 17 complaints heard in 1989.

[5] Including one matter heard in 1990, but decided in 1991.

A discussion of some of the complaints heard by panels of the Grievance Commission in 1991 follows.

a. REPRIMANDS

1. An attorney's "emotional involvement in the domestic battleground" of her client's case was found to be no excuse for her direct written communication to the opposing parties in that action. It was also irrelevant that she had copied the parties' counsel with that communication, particularly when she acknowledged at hearing that her direct contact was largely motivated to cause the parties to do what opposing counsel had been disinclined to do. The panel imposed a reprimand for violation of Rule 3.6(j). GCF No. 88-K-131.

2. For nearly three years after the filing of a mechanic's lien on behalf of a client, the attorney took no further action, and at hearing testified that the collection file had "slipped through the cracks" and was "lost and not pursued". Upon notification from Bar Counsel that the client had filed a grievance, the attorney sent the client payment indicating that it represented "collection of the amount due". In fact, there had been no collection under the lien. The attorney's replies to Bar Counsel's investigative inquiries were consistently late, unresponsive or misleading. Although the hearing panel found that the attorney had neglected the matter, it stressed the fact that

if he had candidly communicated with Bar Counsel from the outset, the matter might never have resulted in the need for a disciplinary hearing. Finding that it is essential that communication between attorney and client, and between attorney and Grievance Commission investigations be timely, accurate and professional, a reprimand was imposed for violations of Rules 2(c), 3.2(f)(3) and 3.6(a)(3). GCF No. 90-K-187.

3. An attorney had earlier represented a husband and wife for various legal matters. When the wife subsequently sought a divorce, he represented her against the husband without his consent in violation of M. Bar R. 3.4(e). He also represented both the buyer and seller in a real estate transaction, and when disputes arose, he advised one client to the detriment of another in violation of M. Bar R. 3.4(c), for which he received a reprimand. GCF No. 90-K-68.

4. An attorney represented both buyer and seller in a real estate transaction and failed to inform the buyer that the property he was buying was not as described in the purchase and sale agreement, and also failed prior to closing to make full disclosure of the multiple client representation and its possible effect on his professional judgment. He was reprimanded for conduct in violation of M. Bar R. 3.4(c) and (d). GCF No. 90-S-28.

5. An attorney represented his client in various legal matters in reference to foreclosure on certain equipment loans. The client wanted the attorney to file a lawsuit. However, not wishing to tell the client that he did not have a viable case, the attorney told him the lawsuit had been filed over a period of several years, when in fact, no suit had been filed. The attorney was reprimanded for violation of M. Bar R. 3.6(a). GCF No. 90-K-172.

6. An attorney mailed a letter to tenant's counsel in a commercial real estate case stating that certain actions and remedies would be taken if the tenant persisted in his current course of action. On the same day of that mailing, the attorney caused a copy of the letter to be first hand-delivered to the tenant in violation of M. Bar R. 3.6(j), for which he was reprimanded. GCF No. 90-K-29.

b. RECOMMENDATIONS FOR COURT PROCEEDINGS

Examples of certain matters heard before the Grievance Commission resulting in a recommendation for Court proceedings are set forth below.

1. Counsel was hired by two individuals facing Federal criminal charges related to their illegal entry into the United

States from Canada. The clients testified before the Commission that when the attorney was hired, they had agreed upon a set fee for all matters relating to the criminal charges, including obtaining the return of large amounts of money seized from them at the time of their arrests. Subsequent to trial and obtaining an acquittal of both clients, the attorney acquired the seized money from the government, but then claimed an excessive "collection fee" for his efforts, and refused to return the clients' money unless allowed to retain that fee. As a result, this matter was filed in Court in January of 1992. GCF Nos. 89-S-204, 89-S-205; Docket No. BAR 92-1.

2. In a hearing involving one attorney with five unrelated complaints of client neglect, upon receiving testimony and evidence from the attorney on the issue, the panel denied his claim that a medical condition had rendered him physically and mentally incapable of filing a timely answer to certain of those charges, particularly in light of the fact that he had previously appeared and adequately represented himself on related charges before the Court. GCF Nos. 91-S-21, 91-S-67, 91-S-92, 91-S-146 and 91-S-196. The Court later issued two suspension orders in those matters, the second being based upon a finding of mental and physical incapacity. (See also Section II(B) below - Docket No. BAR-91-15).

3. After hearing, a panel directed court proceedings concerning an attorney's admitted unexplained neglectful conduct

in three unrelated domestic relation matters and one appeal to the Law Court of a criminal conviction. Shortly after the filing of that court disciplinary pleading, the attorney became physically disabled, and the Court thereupon enlarged the time for him to file an answer thereto, and also appointed counsel to inventory the professional files of that attorney pursuant to M. Bar R. 7(k)(1). GCF Nos. 90-S-93, 90-S-154, 90-S-224 and 91-S-2; See also Section II(B) below - Docket No. BAR-91-18.

C. CHARACTERIZATION AND AREA OF LAW

Neglect of a client's matter or failure to adequately keep a client informed as to the status thereof remain the most frequent allegations of misconduct for investigation by Bar Counsel and consideration by the Grievance Commission. As the attached statistics indicate, 124 (39%) of the 311 grievance complaints docketed in 1991 set forth allegations of conduct relating to M. Bar R. 3.6(a)(2) and (3). That percentage is identical to 1990.

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, 56 (18%), of complaints, with issues relating to some form of attorney misrepresentation, deceit or fraud remaining as a relatively large number as well, 45 (14%). Rules 3.2(f)(3), 3.7(b) and 3.7(e)(1) are usually involved in such allegations.

Family law continues to be the most frequent area of law in which grievance complaints arise, being 80 (25%) of the 311 complaints, compared to slightly lower figures for 1990, 58 (20%). As in 1990, real property matters comprised the second highest number of complaints received in 1991, being 62 (19%).

D. SOURCE OF COMPLAINTS/SIZE OF LAW OFFICE

The attached statistical tables demonstrate that clients filed the majority of the complaints, 188 (60%), with 90 (29%) being filed by an adverse party, and 21 (7%) by a court or other counsel.

The historical trend for the majority of the complaints to be filed against sole practitioners (40%) continues, representing a slight increase compared to 1990 (38%). The comparative complaints filed against offices comprised of two attorneys, decreased somewhat (16%) from that of last year (18%), while complaints concerning offices comprised of three to six attorneys remained unchanged (28%).

Contrary to the indications in the past two years' reports, of the attorneys appearing before a panel of the Grievance Commission for a disciplinary hearing in 1991, a minority were sole practitioners. By comparison, however, of the single justice disciplinary matters heard in 1991, all but two involved sole practitioners, similar to 1990 and 1989.

E. BAR COUNSEL FILES

Bar Counsel Files as authorized by M. Bar R. 5(b)(2) constitute those matters which upon initial review by Bar Counsel do not appear to allege professional misconduct. There were 124 such filings in 1991, representing an increase (23%) in the number filed in 1990 (101). In all instances, Bar Counsel's screening and closing of such matters was subject to review by either then Grievance Commission Chair Gerald F. Petruccelli, Esq. of Portland, or Vice Chair William F. Hufnagel, Esq. of Winthrop, and through their unsparing efforts, 119 such matters were reviewed and approved for dismissal in 1991.

II. COURT MATTERS

Ten attorney discipline orders were issued by the Court in 1991 in the following categories: 1) disbarment - 1; 2) suspensions - 5; 3) resignations - 2; 4) reprimand - 1; and 5) contempt -1. A brief discussion of some of those matters is set forth below.

A. DISBARMENT

1. Upon entering a plea of guilty to a two-count Information in the U.S. District Court, District of Maine, an attorney was convicted of embezzlement of funds belonging to a bankrupt estate. The attorney's conduct involved the unauthorized withdrawal from

clients' funds which he had held as an escrow agent while serving in the capacity as attorney for the debtor in possession in two Chapter 11 reorganization cases in Bankruptcy Court. Based upon that conviction, disciplinary charges were filed, the misconduct admitted by the attorney, and he agreed to the entry of an order of disbarment. Docket No. BAR-89-10.

B. SUSPENSIONS

1. An attorney was notified by the Board of his non-disciplinary suspension pursuant to M. Bar R. 6(b)(2), having been found delinquent in his tax obligations to the State of Maine in accordance with the provisions of 36 M.R.S.A. Section 175 et seq. Bar Counsel then initiated contempt proceedings, based upon the attorney's failure to file with the Clerk of the Supreme Judicial Court and with the Board, the affidavit as required by M. Bar R. 7(n)(2), and because the attorney had continued the legal representation of clients subsequent to the effective date of the suspension. Upon hearing, he was found in contempt of court and thereupon suspended from the practice of law for thirty (30) days, and directed to take certain action in compliance with the Rules within 15 days of the Court's order. Due to the failure of the attorney to comply with the terms of that initial suspension order, Bar Counsel initiated a second contempt action. Based upon the evidence at that second hearing, the court found the attorney to be suffering from a mental and physical illness, making it

impossible for him to present an adequate defense. He was thereupon again suspended from the practice of law until a determination is made concerning his capacity to practice law, and also until he has secured a certificate issued by the State Tax Assessor that he is in good standing with respect to any and all returns and tax liability due. The Court also appointed counsel to secure the attorney's professional files and make an inventory thereof pursuant to M. Bar R. 7(k)(1). Docket No. BAR-91-15.

2. At hearing before the Court, an attorney admitted that he had neglected a client's matter entrusted to him in violation of the Bar Rules, based upon the fact that when he ceased the active practice of law in 1989, he had failed to recall that he had a civil case for that client pending in court, and neglected to maintain contact with the client. The Court imposed a three month suspension, but ordered the execution be suspended, on the condition that before he resumes representing any clients, the attorney first inform Bar Counsel of the arrangements that he has made for conducting his practice and obtain the Court's written approval. Docket No. BAR-91-11.

3. A one year suspension was imposed upon an attorney for his involvement in a real estate transaction whereby the buyers were to receive a warranty deed after a series of monthly payments over five years. The attorney 1) failed to secure the signature of one of the sellers on the real estate contract; 2) collected the

payments but failed to pay required utility costs and taxes in accordance with the agreement; 3) failed to disburse amounts collected to the owners; and 4) later accepted an assignment of two of the owners' equity in lieu of his fees. He was also convicted of failure to file his Maine income tax. Docket No. BAR-90-16.

C. RESIGNATIONS

Two unrelated resignations were considered and ordered by the Court in 1991. Each resignation was submitted pursuant to M. Bar R. 7(l) while disciplinary investigations and proceedings were pending against the respective attorneys. Docket No. BAR-91-9; Docket No. Bar-91-19.

D. REPRIMAND

The allegations in this matter involved an attorney's role in the sale of an automobile belonging to a decedent's estate and the questioned disposition of the proceeds amounting to $3,100.00. Although the Court found that the attorney's conduct generated an appearance of a more serious impropriety, it was impressed that he now takes such matters seriously and will not in the future disregard appropriate inquiries of counsel or Bar Counsel, and imposed a reprimand. Docket No. BAR-91-4.

E. CONTEMPT

While still disbarred from the practice of law in Maine, an attorney went to the law offices of another attorney knowing that she was on vacation. Without that absent attorney's consent, he asked her secretary to type two wills and a deed which he had drafted on behalf of persons who had formerly been his clients. The Court found that it was apparent that he undertook this task with a firm expectation that he would be rewarded in the future by representing the estate concerning the wills, and entered a judgment of contempt against the attorney for engaging in the practice of law in defiance of the terms of the Court's earlier disbarment order - (Docket No. BAR-88-4).

F. OTHER

In a matter arising under the Court's responsibility for superintendence of the bar and the implementation of the Maine Bar Rules, and in response to a request by Bar Counsel for instructions in the circumstances, the Court issued an order providing interpretive guidance concerning M. Bar R. 7(p)(1) relating to the confidentiality of attorney discipline matters. Bar Counsel had been ordered by the U.S. District Court for the District of Maine to produce certain otherwise confidential Board records concerning a Maine attorney who was a defendant in a pending criminal action in that court. As a result, Bar Counsel initiated an action for

declaratory judgment before the Maine Supreme Judicial Court, based upon concern for complainants and others whose privacy interests might be threatened by such disclosure, as well as concern for the integrity of the bar disciplinary process. Balancing the purposes and protected interests to be served by that confidentiality rule, the Court provided a most helpful and instructive order upon which Bar Counsel was to proceed to both comply with the Maine Bar Rules as well as the order of the U.S. District Court. Docket No. BAR - 91-20.

III. FEE ARBITRATION COMMISSION

In 1991, the Board received 277 requests for petitions for arbitration of fee disputes, 102 (37%) of which were actually later returned and filed with the Secretary to the Fee Arbitration Commission, Jaye M. Trimm.

With 28 petitions pending at the close of 1990, the 102 new petitions created a total docket of 130 petitions in 1991. The five designated panels met for a combined total of 44 occasions to dispose of 73 petitions. With the assistance and involvement of Bar Counsel and the Secretary, and with approval by Fee Arbitration Commission Chair Roger R. Therriault, 29 fee disputes were either dismissed, settled, or withdrawn by consent of the parties. See M. Bar R. 9(e)(3). As in the previous year, at the end of 1991 there were 28 petitions awaiting hearing by panels of the Fee Arbitration Commission. A large majority of the disputes filed

before the Commission involved the absence of any written fee agreement between the parties.

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 warrants the attention of that Commission, should be also or exclusively addressed by the Grievance Commission, or does not in fact allege or involve any factual fee dispute. Bar Counsel may attempt to promote and assist in the informal resolution of fee disputes prior to hearing by a panel. See M. Bar R. 9(e)(2).

IV. PROFESSIONAL ETHICS COMMISSION

The Professional Ethics Commission, comprised of eight attorney members, normally met monthly in 1991 to render advisory opinions on ethical questions as posed by Bar Counsel, the Grievance Commission and various Maine attorneys. These opinions continue to provide assistance and guidance concerning situations involving the proper interpretation and application of the Code of Professional Responsibility.

In 1991, the Commission issued seven additional advisory opinions, compared to 13 in 1990. The total of such opinions issued by the advisory commissions of the Board through December 31, 1991 is now 120. The opinions issued in 1991 are briefly summarized below:

No. 114: The relationship between attorneys in the Office of Advocacy for the Department of Mental Health and the "clients of the Department" is not an attorney-client relationship and neither M. Bar R. 3.4(a) nor 3.6(j) is applicable to attorneys functioning as advocates in that situation.

No. 115: If a client presents court-appointed counsel with a gratuitous and unsolicited gift of nominal value, acceptance of same does not violate M. Bar R. 3.2(f)(4); however, an attorney should under no circumstances accept a gift of money, no matter how small, in these circumstances.

No. 116: An attorney is not a party to a divorce decree, so that when funds come to the attorney on behalf of a client, the obligation is to disburse the funds to the client pursuant to M. Bar R. 3.6(f)(2), despite a decree ordering the eventual disposition of such funds.

No. 117: An attorney may acquire an interest in former marital property after the divorce is final without violation of M. Bar R. 3.7(c)(2); however, attorneys are warned that if residual issues of possession, sale, continued residence of a spouse, etc., may later be in dispute, a violation of the rule could occur.

No. 118: Attorneys may have ownership interests in corporations or other businesses which provide services which may also be provided by attorneys (such as lobbying), provided that the attorneys are not employed by the business. If legal services are required, the clients of the business may be advised that the attorneys' firm is available. The key is to keep a clear distinction between lawyers providing legal services and non-lawyers providing services which are sometimes provided by lawyers.

No. 119: Assuming proper disclosure to the plaintiff class, an attorney is not prohibited from filing a class action suit against a government agency where the attorney previously received payment from a different agency of that same government for providing legal services to the plaintiff class representatives in somewhat related matters.

No. 120: An attorney's ethical obligation to provide a client's file to the client upon request is normally satisfied by making the file available for the client to obtain at the attorney's office. If that is inconvenient, the client should absorb the cost of delivery.

V. MISCELLANEOUS MATTERS

A. EVALUATION OF THE MAINE DISCIPLINARY SYSTEM

As discussed in Bar Counsel's 1990 Annual Report, the Court continued its review of the American Bar Association's Standing Committee on Professional Discipline Evaluation Team's recommendations for procedural changes to the Maine Bar Rules. Upon receipt of the summary of the Court's ad-hoc committee's proposed implementation of certain of those recommendations, University of Maine School of Law Professor L. Kinvin Wroth and Bar Counsel commenced the drafting and formulation of extensive amendments to the Rules for the Board's approval and proposal to the Court for implementation.[6]

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 reflecting the history of those rules, 3) the text of all Advisory Opinions with both subject matter and

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[6]This process was concluded early in 1992, and amendments were duly promulgated by the Court, effective March 30, 1992.

rule indices, and 4) the Board's Regulations.

In 1991, the Board and Bar Counsel completed arrangements to have Butterworth include both Court and Grievance Commission discipline decisions in a second volume of that publication, commencing in 1992.

C. AMENDMENTS TO THE MAINE BAR RULES

Effective February 15, 1991, Maine Bar Rules 1-2 and 4-10 were amended to eliminate all masculine pronouns and other gender references, consistent with similar amendments to other Maine Rules of Court. Future amendments of the Maine Bar Rules will be drafted to avoid all gender references. These gender neutral amendments also included typographical and other housekeeping changes.

D. INFORMAL ADVISORY OPINIONS

In addition to the formal advisory opinions of the Professional Ethics Commission, the office of Bar Counsel continued to provide informal advisory opinions to Maine attorneys on a daily basis, increasing to comprise approximately 15% of Bar Counsel's and Assistant Bar Counsel's 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 and Assistant Bar Counsel continued to assist and appear on panels of various continuing legal education seminars of the Maine State Bar Association involving ethical issues, as well as "Lawyers With Class" and meetings of law librarians. Bar Counsel also continued to cooperate with and attend meetings of the Association's Substance Abuse Committee.

F. REINSTATEMENT HEARING

As authorized by M. Bar R. 7(o)(5), a panel of the Grievance Commission conducted a two-day evidentiary hearing concerning an attorney's petition for reinstatement to practice law. This was the first such hearing before a panel involving a petitioner who had previously resigned due to his addiction to drugs. As a result of that hearing, the panel issued a very detailed and astute report

making specific findings as to its reasons for suggesting that the Board recommend reinstatement to the Court subject to conditions. The Board did so, and by order dated January 3, 1992, the Court ordered the reinstatement of the attorney including therein the conditions as proposed by the hearing panel. Docket No. BAR-88-7.

G. STIPULATED DISPOSITIONS

There were an increasing number of matters presented to panels of the Grievance Commission in 1991, where Bar Counsel and respondent or respondent's counsel agreed that virtually all of the substantive allegations of misconduct had in fact occurred, and further agreed to consent to the hearing panel's imposition of a reprimand. In each instance, Bar Counsel drafted and respondent agreed to the proposed language of the report for the panel to issue. The panel adopted the proposed stipulated report and the respondent was duly reprimanded in the five matters where this procedure was utilized. Prior to reaching agreement in these matters, Bar Counsel notified the complainant of the terms of the proposed report as well as of the right to be present at hearing.

H. BOARD OF BAR EXAMINERS

The Board continued its agreement to provide legal and administrative services to the Board of Bar Examiners. In 1991, the Law Court approved the Bar Examiners' arrangement to be represented by Bar Counsel concerning moral character hearings before the Court.[7] In that regard, Bar Counsel represented the Bar Examiners in two separate matters in 1991 which both proceeded to hearing before a single justice and appeal to the Law Court.[8]

Respectfully submitted,

Dated: July 31, 1992

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[7] Application of Spurling, 595 A.2d 1062, 1064 (Me. 1991).

[8] See Spurling; Application of Hughes, 595 A.2d 1098 (Me. 1991). (Board of Bar Examiners has standing to appeal single justice's order admitting applicant to bar, based upon single justice's contrary finding of good moral character.)

VI. APPENDIX

MEMBERSHIP LISTS

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS AND FEE DISPUTES

GRIEVANCE COMMISSION 1991

COMPLAINT AND HEARING SUMMARY

January 1, 1991 to December 31, 1991

I. Complaints Reviewed - 293[1]

ACTION:		
Dismissals:		228
Admonitions:		23[2]
Disciplinary Hearings Authorized:		36
confidential	1[3]	
open to the public	31	
authorized to proceed directly to court	4	
Deferrals:		6
pending reinstatement	5	
further investigation	1	

II. Dispositions After Hearing - 35 complaints [4]
(22 hearings, 22 attorneys)

ACTION:		
Dismissals:	9	(7 attorneys)
Reprimands Issued:	10	(10 attorneys)[5]
Complaint authorized to be filed with Court by information:	16	(7 attorneys)

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[1]Includes 4 complaints reviewed by Board pursuant to M. Bar R. 5(b)(1) and 7(d).

[2] Includes one matter initially authorized for hearing, and then processed under M. Bar R. 5(b)(2).

[3]Confidentiality later waived at hearing by Respondent; reprimand imposed.

[4]One matter heard in December 1991, with disposition issued in 1992 is not included.

[5]Includes one matter heard in 1990, with reprimand being issued in January, 1991.

III. Grievance Complaints Reviewed

A.	Complaints pending review at start of period:	102
B.	New complaints docketed:	311
C.	Total complaints docketed or activated:	413
D.	Total complaints reviewed:	293
E.	Complaints pending review:	120

IV. Matters Before Single Justices

A.	Actions pending at start of period:	2
B.	New actions filed:	18
C.	Total Court pleadings docketed:	20

D. Dispositions:

1.	Disbarment	1	
2.	Suspensions	4	(3 attorneys)
3.	Deferred Suspensions	1	
4.	Resignations	2	
5.	Reprimands	1	
6.	Dismissals	0	
7.	Contempt	1	
	Total :	10	

E.	Actions pending at end of period:	10

V. Total Disciplinary Matters Pending

A. Grievance Commission	
1. Complaints to be investigated and reviewed:	120
2. Complaints reviewed and awaiting Grievance Commission disciplinary proceedings:	24
3. Complaints heard - decision pending:	1
B. Maine Supreme Judicial Court	
1. Pending informations or actions	10
2. Informations authorized, but not yet filed:	3
TOTAL:	158

(Comparative total for 1990 - 137)

1991 GRIEVANCE COMPLAINTS - CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
1. Trust Violation	9	3
2. Conflict of Interest	25	8
3. Neglect	124	39
4. Relationship w/Client	20	6
5. Misrepresentation/Fraud	45	14
6. Excessive Fee	11	4
7. Interference w/Justice	56	18
8. Improper Advertising/ Soliciting	1	.5
9. Criminal Conviction	2	1
10. Personal behavior	6	2
11. Incompetence	1	.5
12. Conduct Unworthy of Attorney	8	3
13. Other	3	1
TOTAL	311	100

1991 GRIEVANCE COMPLAINTS - AREA OF LAW

		NUMBER	PERCENT OF TOTAL
A.	Family	80	25
B.	Juvenile	2	1
C.	Criminal	40	12
D.	Traffic	1	.5
E.	Probate/Wills	14	5
F.	Guardianship	1	.5
G.	Commercial	13	4
H.	Collections	10	3
I.	Landlord/Tenant	2	1
J.	Real Property	62	19
K.	Corporate/Bank	5	2
L.	Torts	21	7
M.	Immigration	1	.5
N.	Contract/Consumer	1	.5
O.	Labor	1	.5
P.	Worker's Comp	12	4
Q.	Other/None	34	11
R.	Bankruptcy	7	2
S.	Municipal	4	1.5
		311	100

1991 GRIEVANCE COMPLAINTS

SOURCE OF COMPLAINT	NUMBER	PERCENT OF TOTAL
1. Client	188	60
2. Adverse Party	90	29
3. Lawyer or Judge	21	7
4. Board or Staff	12	4
	311	100

TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

1. Sole Practitioner	127	40
2. 2	50	16
3. 3-6	88	28
4. 7-10	7	3
5. 11 or more	34	11
6. Government and Other	5	2
	311	100

TOTAL COMPLAINTS BY AGE OF ATTORNEYS

1. 24-29	3	1
2. 30-39	89	29
3. 40-49	150	48
4. 50-59	39	12
5. 60+	30	10
	311	100

1991 GRIEVANCE COMPLAINTS

YEARS OF PRACTICE IN MAINE BAR	NUMBER	PERCENT OF TOTAL
1. 40-61 years	9	3
2. 30-39 years	14	5
3. 20-29 years	38	12
4. 10-19 years	147	46
5. 2-9 years	94	31
6. Less than 2 years	9	3
	311	100

COMPLAINTS BY COUNTY		
1. Androscoggin	22	7
2. Aroostook	17	6
3. Cumberland	109	34
4. Franklin	2	1
5. Hancock	2	1
6. Kennebec	27	9
7. Knox	14	5
8. Lincoln	7	2
9. Oxford	4	1
10. Penobscot	38	12
11. Piscataquis	1	1
12. Sagadahoc	6	2
13. Somerset	9	3
14. Waldo	3	1
15. Washington	6	2
16. York	40	12
17. Out of State	4	1
	311	100

1991 BAR COUNSEL FILES

	CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
1.	Conspiracy	1	1
2.	Disagreement over conduct of case	12	10
3.	Habeas Corpus	8	6
4.	Insufficient Information	16	13
5.	Lack of Professionalism	15	12
6.	Malpractice	3	2
7.	Personal Life	2	2
8.	Request for legal assistance	65	52
9.	Other	2	2
	Total	124[6]	100%

Bar Counsel Files pending at start of period	34[7]
New Bar Counsel Files docketed	124
Total Bar Counsel Files on docket	158
Bar Counsel Files reviewed by Grievance Commission Chair or Vice Chair during period	119
Bar Counsel Files pending at end of period	39

[6]Includes 12 matters originally docketed as Bar Counsel Files, and later transferred to formal grievance complaint status prior to December 31, 1991.

[7]Includes 3 matters originally docketed as Bar Counsel Files before 1991 and transferred to formal grievance complaints in 1991.

1991 BAR COUNSEL FILES

AREA OF LAW	NUMBER	PERCENT OF TOTAL
A. Family	26	21
B. Criminal	33	27
C. Probate/Wills	4	3.3
D. Commercial	2	2
E. Collections	1	1
F. Landlord/Tenant	2	2
G. Real Property	15	12
H. Corporate/Bank	1	1
I. Torts	9	6
J. Labor	1	1
K. Worker's Comp	10	8
L. Bankruptcy	3	2.4
M. Municipal	4	3.3
N. Other/None	12	10
	124	100%

FEE ARBITRATION COMMISSION
PETITION SUMMARY
January 1, 1991 through December 31, 1991

PETITIONS:

Pending at start of period:		28
Docketed during period :		102
Total open petitions during period:		130
Dismissed, settled, withdrawn:	29	
Heard and closed:	73	
Heard and awaiting awards:	0	
Total petitions closed during period:	102	
Total petitions pending at close of period:		28

BREAKDOWN OF HEARINGS BY PANEL:

Panel IA:	(York)	12
Panel IB:	(Cumberland)	7
Panel II:	(Androscoggin, Franklin Lincoln, Oxford & Sagadahoc)	11
Panel III:	(Kennebec, Knox, Somerset & Waldo)	5
Panel IV:	(Aroostook, Hancock, Penobscot, Piscataquis, & Washington)	9
TOTAL:		44

Comparison of Petitions docketed:

1989: 72
1990: 72
1991: 102

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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.

ASSISTANT TO BAR COUNSEL:

Claire M. Adami

JUDICIAL LIAISON:

Associate Justice David G. Roberts

SPECIAL CONSULTANT:

John W. Ballou, Esq.