

MAINE STATE LEGISLATURE

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BAR COUNSEL'S 1993 ANNUAL REPORT

**J. Scott Davis
Bar Counsel**

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BAR COUNSEL'S 1993 ANNUAL REPORT

INTRODUCTION

This document and the attached exhibits comprise Bar Counsel's 1993 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 20 members - 13 lawyers and 7 public members. The Commission conducts case reviews and hearings by panels, each consisting of two lawyers and one public member. By consent of the parties, hearings may be conducted by a two-member panel, comprised of one lawyer and one public member. See M. Bar R. 7(b)(6). The Fee Arbitration Commission consists of 18 members - 10 lawyers and 8 public members. The Professional Ethics Commission consists of 8 lawyers. A complete listing of the 1993 membership of the Board and its Commissions is included as part of the Appendix attached to this report.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

297 grievance complaints alleging professional misconduct by Maine attorneys were docketed by Bar Counsel in 1993, indicating a decrease in the number of complaints so filed in the past two years -1992 (313), 1991 (311), and a slight increase from 1990 (289). By further comparison, 236 such allegations were docketed in 1989.

B. PANEL MEETINGS AND HEARINGS

1. Case reviews - Panels of the Grievance Commission, met for a combined total of 39 occasions¹ for the purpose of conducting preliminary reviews of complaints, compared with 36 such meetings in 1992, and 37 in 1991. This process involves a panel's review² with Bar Counsel of the contents of grievance complaint files which have been investigated by the office of Bar Counsel. It is from this review process that a panel initially determines the appropriate disposition of complaints as being 1) dismissal, 2) dismissal with a warning to the attorney (private non-discipline), 3) further investigation by Bar Counsel, or 4) directing Bar Counsel to file a public disciplinary proceeding before another panel of the Grievance Commission. All disciplinary hearings are open to the public.

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

² On certain occasions, these reviews occur by telephone conference call.

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² On certain occasions, these reviews occur by telephone conference call.

As a result of the total of the 39 panel and Board case review meetings, 243 grievance complaints were closed by either dismissal (207), or the issuance of a dismissal with a warning to the attorney (36). The total of 294 reviewed complaints represented a small decrease of the number of complaints reviewed in 1992 (300).

2. Disciplinary proceedings - In addition to the 39 case review meetings, panels of the Grievance Commission met to conduct 16 disciplinary hearings. As seen by the attached statistical table, seven attorneys were reprimanded by the Commission. Concerning 3 complaints, Bar Counsel was directed to file further court proceedings seeking suspension or disbarment of those attorneys, representing a marked decrease from the number of such matters in 1992 - 8 complaints, involving 5 attorneys. Those 16 complaints heard by the Grievance Commission, compare to 24 complaints heard in 1992.

i. REPRIMANDS

A detailed discussion of the facts concerning each of the seven reprimands imposed by panels of the Grievance Commission is not provided. The reports issued in each instance have been earlier published in the Maine Bar Journal and are available at the office of the Board in Augusta. The misconduct involved in those cases may be briefly summarized as follows:

Three attorneys were reprimanded in unrelated matters

concerning neglect of the respective clients' cases in violation of Maine Bar Rule 3.6(a)(2),(3) (GCF Nos. 91-J-57; 92-S-32; and 93-K-61); one attorney was sanctioned for engaging in a contractual relationship with a client without informing her that she should seek independent legal advice before doing so, in violation of Maine Bar Rule 3.6(i)(2) (GCF No. 92-K-20); one attorney violated Maine Bar Rule 3.6(d) by threatening to present criminal charges solely to obtain an advantage in a civil matter, i.e., pursuit of a small claims action to collect a debt of \$97.56 (GCF No. 92-S-42); one attorney was reprimanded for engaging in conduct unworthy of an attorney in violation of Maine Bar Rule 3.1(a) when, at the conclusion of his evening meeting with a client, he suggested that she remove her clothes, (GCF No. 91-S-277); and one attorney was sanctioned for providing misleading information to the court as to the efforts she had actually personally engaged in to obtain discovery from opposing counsel, violating Maine Bar Rules 3.2(f) and 3.7(e) (GCF No. 92-S-230).

ii. OTHER GRIEVANCE COMMISSION DISPOSITIONS

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

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

Three other complaints were referred by the hearing panel to

further disciplinary proceedings, recommending either suspension or disbarment of the respective attorneys. This matter resulted in the panel's imposition of a suspension with a warning to the attorney concerning conduct in violation of Maine Bar Rules 3.1(a) and 3.6(a), by his 1) failing to inform his incarcerated client that he had assumed responsibility (from other counsel) for the appeal of the client's criminal conviction, 2) further failing to keep the client informed of the status of that appeal, 3) using foul language with the client, and 4) characterizing Bar Counsel's investigation of the matter as a "witch-hunt". The panel analyzed the requirements of Maine Bar Rule 7.1(e)(3)(B) and issued a dismissal with a warning (GCF No. 92-G-264).

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, 94 (31.5%) of the 297 grievance complaints docketed in 1993 set forth allegations of misconduct relating to Maine Bar Rule 3.6(a)(2), (3). That percentage compares to 37% in 1992.

Complaints characterized as involving the interference with justice, e.g., improper communication with an opposing party,

failure to appear at court or non-compliance with orders or rules of court, constitute the next highest number, 80 (27%), of complaints, with allegations relating to some form of attorney misrepresentation, deceit or fraud remaining as a relatively large number as well, 45 (15%). Rules 3.2(f)(3), 3.7(b) and 3.7(e)(1) are usually involved in such allegations.

Family law remains the most frequent area of law in which grievance complaints arise, being 66 (22%) of the 297 complaints, compared to slightly higher figures for 1992, 76 (24%). As with last year, real property matters comprised the second highest number of complaints received in 1993, being 58 (20%).

D. SOURCE OF COMPLAINTS/SIZE OF LAW OFFICE

The attached statistical tables demonstrate that clients filed the vast majority of the grievance complaints, 159 (54%), with 93 (31%) being filed by an adverse or other party, and 45 (15%) 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 1992 (38%). The comparative complaints filed against offices comprised of two attorneys increased somewhat (15%) from that of last year (13%), while complaints concerning offices comprised of three to six attorneys decreased slightly (26%) from 1992 (31%).

E. BAR COUNSEL FILES

Bar Counsel Files as authorized by Maine Bar Rule 7.1(c) constitute matters which upon initial review by Bar Counsel do not appear to allege professional misconduct subject to sanctions. There were 157 such filings in 1993, representing a marked increase from the number docketed in 1992 (111). Maine Bar Rule 7.1(c) provides for Bar Counsel's unilateral dismissal of such matters with or without investigation, with a complainant having the right to request review by a Grievance Commission Panel Chair. 153 such matters were dismissed in 1993.

II. COURT MATTERS

Twenty four attorney discipline related orders were issued by the Court in 1993 including the following categories: a) disbarments - 2; b) suspensions - 6; c) suspended suspensions - 1; d) resignations - 2; e) dismissals - 1; f) reinstatements - 2; and g) contempt -2. A very brief discussion of some of those matters is set forth below.

A. DISBARMENTS

Among those attorneys sanctioned by the Court, disbarments were issued for one attorney's violation of Maine Bar Rules 3.2(f), 3.6(e) and 3.7(b), (e) for his commingling of clients' funds (Docket

Nos. BAR-93-12; BAR-93-18) and for another's violation of Maine Bar Rules 3.1(a) and 3.2(f)(2), (3) and (4) relating to his convictions of fraud and wire fraud in the United States District Court, District of Maine (Docket No. BAR-91-25).

B. SUSPENSIONS

Violations of the client neglect rule, Maine Bar Rule 3.6(a)(2), (3), were so serious in three separate matters as to require suspension of each attorney (Docket Nos. BAR-92-12; BAR-93-9; and BAR-93-6). A temporary (indefinite) suspension was also issued for conduct relating to an attorney's defalcation of a large amount of money in a bankruptcy proceeding (Docket No. BAR-93-7). The Court also imposed a "suspension with conditions", wherein the attorney was suspended from practice for a one year period, with all but three months of that suspension suspended upon the condition that the attorney submit to a court-approved plan for professional supervision of his practice after that suspension, so as to avoid neglect of client affairs (Docket Nos. BAR-92-13; BAR-93-3).

C. REINSTATEMENT HEARINGS

By petition dated June 16, 1992, a former attorney sought reinstatement in accordance with Maine Bar Rule 7.3(j). Upon proper notice under that rule, hearing was held before a panel of

the Grievance Commission on March 11, 1993. From the testimony as presented by the petitioner and several of his witnesses, the panel found that there was insufficient evidence to prove that the petitioner had the requisite honesty and integrity to practice law, and thereby recommended that his petition for reinstatement be denied. The Board of Overseers then filed with the Court its recommendation for denial of the petition, and without hearing the Court accepted the recommendation and ordered that the petition for reinstatement be denied (Docket Nos. BAR-88-15; BAR-89-12; BAR-90-12).

Two other unrelated petitions for reinstatement were heard by other panels of the Grievance Commission, and various stages of proceedings before the Board in one instance (Docket No. BAR-92-1) and a Grievance Commission panel in the other (Docket No. BAR-87-15), remained pending at the end of the period.

III. FEE ARBITRATION COMMISSION

In 1993, the Board received 249 requests for petitions for arbitration of fee disputes, 111 (45%) of which were later returned and filed with the Secretary to the Fee Arbitration Commission, Jaye M. Trimm.

With 42 petitions pending at the close of 1992, the 111 new petitions created a total docket of 153 petitions in 1993. The ve designated panels met for a combined total of 39 occasions to use of 71 petitions. With the assistance and involvement of

Bar Counsel and the Secretary, and with approval by Fee Arbitration Commission Chair Peter M. Garcia, Esq., 53 fee disputes were either dismissed, settled, or withdrawn by consent of the parties prior to hearing. See M. Bar R. 9(e)(3). At the end of 1993, there were 29 petitions awaiting hearing by panels of the Fee Arbitration Commission. A vast majority of the disputes heard by the Commission continue to involve the lack of any written fee agreement between the 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 processed by the Grievance Commission, or does not involve any fee dispute. Bar Counsel may attempt to promote and assist in the informal resolution of fee disputes prior to hearing by a panel. See M. Bar R. 9(e)(2).

IV. PROFESSIONAL ETHICS COMMISSION

The Professional Ethics Commission, comprised of eight attorney members, continued to meet monthly in 1993 to discuss, draft and issue formal advisory opinions on ethical questions posed by Bar Counsel, the Grievance Commission and Maine attorneys. These opinions provide assistance and guidance to attorneys concerning situations involving the proper interpretation and application of the Code of Professional Responsibility.

During 1993 the Commission issued eight additional formal advisory opinions, totaling 137 through the end of the year. Those opinions issued are briefly summarized below:

Opinion No. 130 (February 3, 1993)

At issue here was whether the Bar Rules would disqualify a law firm from representing client municipalities before County Commissioners if associates of the law firm were serving as Assistant District Attorneys, assisting the District Attorney of that County in the prosecution of criminal cases. The Commission concluded that, under this arrangement, the law firm would not be disqualified from representing client municipalities in matters before the County Commissioners. In so opining, the Commission relied on the Reporter's Notes to Bar Rule 3.4(k), which state that "(a)s used in this Rule the term 'lawyer affiliated with him or his firm' does not include... common employment in a governmental agency..." The Commission further concluded that under that analysis, an associate of the law firm serving as an Assistant District Attorney could not be said automatically to represent every other "client" of the District Attorney's Office. The Commission Chair recused himself in this matter, and one member of the Commission dissented from the Commission's Opinion.

Opinion No. 131 (March 26, 1993)

This matter involved two lawyers who practice law together in a professional corporation. One of the lawyers was recently elected Register of the Probate Court. The second lawyer represents "clients" of the Department of Human Service before the

Probate Court. At issue was whether the second lawyer would be prohibited by Bar Rule 3.4(g) from such representation under these circumstances. That Rule prohibits representation of a client in a matter upon the merits of which the lawyer has acted in a judicial capacity and Bar Rule 3.4(k) extends that prohibition to affiliated lawyers. In an earlier opinion (Opinion No. 80) the Commission concluded that Bar Rule 3.4(g) prohibited a law firm from representing a party in a probate court proceeding where, prior to his recusal, the Probate Judge, who was a member of the law firm, had made rulings in the case on matters that the Commission deemed to be "upon the merits" in the matter within the meaning of Bar Rule 3.4(g). In Opinion No. 131, the Commission distinguished Opinion No. 80 on the basis that a Register of Probate, unlike a Probate Judge, has no statutory authority to act "upon the merits" of the matters at issue. At the same time, the Commission noted the importance of the Register of Probate avoiding conduct that might implicate Bar Rule 3.2(f)(4) (prohibiting conduct "prejudicial to the administration of justice") or that might create the appearance of impropriety.

Opinion No. 132 (April 12, 1993)

In this matter, the Commission concluded that Bar Rule 3.9(b) requires dropping the name of a suspended lawyer from all "public communications" of the law firm with which the lawyer is affiliated, including the law firm's letterhead, until such time as the lawyer has been authorized to resume the practice of law.

Opinion No. 133 (June 18, 1993)

The Lawyer Referral Service of the Maine State Bar Association may ask referral lawyers to disclose fees charged to clients referred by the Service. The Referral Service may also charge referral lawyers a percentage of the fees earned by the lawyers from the referred clients.

Opinion No. 134 (September 21, 1993)

Disclosure of confidential information by a lawyer's secretary may subject an attorney to discipline if it is established that the lawyer failed to exercise reasonable care to prevent improper disclosure or use of confidential client information. Under Maine Bar Rule 3.6(h)(2), attorneys have a responsibility to adequately train, monitor, and discipline staff members in such a manner as to guard against breaches of client confidentiality.

Opinion No. 135 (November 10, 1993)

A majority of the Commission (two members dissenting) concluded that a lawyer may participate in a national network of lawyers although dues are paid to the network by lawyer-members thereof. The majority concluded that the arrangement is permissible under Maine Bar Rule 3.9(f)(2), provided that 1) the lawyer's directory information furnished to the network does not violate any other provision of Maine Bar Rule 3.9 and 2) as long as the network publicizes only the names and directory information of the network's lawyers and does not otherwise recommend the employment of network lawyers.

Opinion No. 136 (December 1, 1993)

Despite the passage of ten months since closure of the divorce action, an attorney may not communicate with the adverse party without the consent of counsel in a post-divorce action. Instead, the attorney should initially direct communications in the matter to the adverse party's lawyer to confirm that representation has not ceased.

Opinion No. 137 (December 1, 1993)

A lawyer-mediator may draft documents ancillary to a settlement agreement, such as a divorce judgment, promissory note, and deed, to reflect the parties' resolution of a dispute, provided the conditions of Maine Bar Rule 3.4(b) are met and the parties are encouraged to consult with counsel or seek independent legal advice if they are not already represented.

V. MISCELLANEOUS MATTERS

A. AMENDMENTS TO THE MAINE BAR RULES

Substantial amendments were promulgated by the Court effective July 1, 1993 to Maine Bar Rule 3.2(d) and 3.6 with replacement of Maine Bar Rule 3.4.

The major revision to Maine Bar Rule 3.4 was done to simplify and clarify the standards for identifying and evaluating conflicts of interest. New Rule 3.4 attempts to improve accessibility to the principles on which conflicts of interest should be analyzed in a

manner eliminating certain of the difficulties of the earlier conflict rule.

The Board gave attention to drafting proposed Maine Bar Rule 4(d)(24) therein providing for the processing of applications of organizations for approval to recognize, designate or certify attorneys admitted to practice in the State of Maine as having expertise in one or more areas of law.

In conjunction with the Executive Secretary to the Committee on Judicial Responsibility and Disability, the Board and Bar Counsel prepared proposed amendments to facilitate coordination of handling complaints that may relate to the jurisdiction of both the Board and the Committee.

In September of 1993, effective July 1, 1994, the Court amended Maine Bar Rules 3.6(e), 6(a) and 6(b) to provide that all funds of any client held by a Maine lawyer or law firm expected to not earn net interest as defined by Rule 3.6(e)(7) shall be deposited in one or more pooled, insured, interest-bearing accounts subject to certain conditions stated within the rule. A lawyer or law firm may "Opt-Out" of that requirement by proceeding under amended Rule 3.6(e)(5), but absent that election is required to deposit such funds in an interest-bearing account. Rule 6(a) has been amended to require, commencing in July of 1994, that all lawyers or law firms must provide the Board with a list of such accounts, with a failure to do so subjecting the lawyer to automatic suspension under amended Rule 6(b).

B. MAINE MANUAL ON PROFESSIONAL RESPONSIBILITY

The Board continues its arrangement with Butterworth Legal Publishers of Salem, New Hampshire for publication of the Maine Manual on Professional Responsibility for 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 as amended 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 rule indices, and 4) the Board's Regulations.

A second volume of the Maine Manual, entitled Attorney Discipline Decisions, contains the Court's and Grievance Commission's decisions from 1987 to date.

C. BOARD REGULATIONS

Pursuant to Maine Bar Rule 4(d)(18), the Board revised its Regulations in 1993, so as to include therein all matters concerning the various operations and processes of the Board, and eliminating an earlier version of internal rules of the Board. As a result of those revisions to the Regulations, and the Board's earlier adoption of a Personnel and Financial Policies Manual, there are no longer any such internal rules.

Although no new Regulations were adopted by the Board in 1993, an amendment was issued concerning Regulation No. 32 (sharing

information with the Committee on Judicial Responsibility and Disability) to facilitate the sharing of information between Bar Counsel and the Committee's Executive Secretary, subject to certain approval by agents of the Board. Board Regulation No. 44 (Board and Commission members prohibited from representing parties) was also amended therein prohibiting any member of the Board or Grievance Commission, or any partner or associate of such member, from being counsel to a respondent attorney after a disciplinary proceeding has been authorized pursuant to Maine Bar Rule 7.1(d)(5).

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, comprising approximately 20% of Bar Counsel's and Assistant Bar Counsel's weekly time and duties. These opinions may be provided both in writing and over the telephone, and usually relate to an attorney's inquiry as to whether certain professional conduct 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. Bar Counsel continues to decline providing opinions requested in "hypothetical

situations" without adequate prior disclosure by the inquirer 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 and local county bar associations involving ethical issues. Bar Counsel also attends meetings of the Association's Substance Abuse Committee and assists its Chair, William B. Cote, Esq., in addressing issues of concern to both the Board and the Association.

F. BOARD OF BAR EXAMINERS

The Board and Bar Counsel continued 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.

Pursuant to that agreement, Bar Counsel assisted the Bar Examiners concerning a matter raising issues under the Americans with Disabilities Act (ADA). Upon hearing, the Court (Clifford, J.) found in favor of two bar examination applicants and ruled that the Bar Examiners' inquiries into certain mental health histories were not in compliance with the ADA. Although the Court found that

it is certainly permissible for the Bar Examiners to fashion questions on the bar application related to behavior that may affect the practice of law, the questions as objected to by the applicants were found contrary to the ADA, and the applicants were not required to answer the questions or sign any medical authorization relating thereto. See *In re: Applications of Anne Underwood and Judith Ann Plano for Admission to the Bar of the State of Maine*, Court Docket BAR-93-21.³

G. DIRECTOR AT LARGE

At the August, 1993 meeting of the National Organization of Bar Counsel (NOBC), Bar Counsel Davis was elected to a two-year term as Director At Large and currently serves in that position along with the Officers and one other Director at Large of the NOBC. Bar Counsel Davis also served as a member of the American Bar Association's Evaluation Team concerning a critical study of the attorney disciplinary enforcement system in the State of Montana.

³ As the Underwood et al matter was pending, and subsequent to the Court's decision, certain amendments were made by the Bar Examiners to questions on the bar application form.

H. CONTINUING LEGAL EDUCATION

In 1993, with the unsparing assistance of University of Maine School of Law Professor L. Kinvin Wroth, the Board continued its formulation of a proposed continuing legal education rule for submission to the Court.

At a public forum at the January meeting of the Maine State Bar Association, members of the Board received comment and criticism from members of the Bar concerning its 1992 draft of the proposed rule. Extensive written comments were also received by the Board. The Board made numerous changes in response and upon revision, the proposed rule was approved by the Board at its meeting of July 23, 1993 by a vote of six in favor, two opposed, with one member absent. It was then submitted to the Court on September 17, 1993 for its consideration.

The rule as proposed, requires each registered Maine attorney to complete 12 credit hours of continuing legal education in each calendar year, commencing January 1, 1994. After careful consideration of more than a year, including study of the various arguments offered in support of and in opposition to a continuing legal education requirement, a majority of the Board concluded that the proposed rule articulated a policy that would advance the interest of the Bar and the public in continuing and strengthening a high level of competence, skill, and professionalism among Maine lawyers, and further enhance public confidence in the Bar. A public hearing was held before the Court on November 17, 1993 at

which time the Board's Chair and Immediate Past Chair spoke in support of the rule. Various attorneys also appeared and presented their respective arguments in favor of and in opposition to the proposed rule. The matter was taken under consideration and advisement by the Court and remained pending at the end of the period.⁴

I. OFFICE RELOCATION

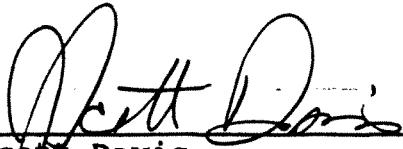
Commencing in 1993, the members of the Board, Board Financial Consultant Marc V. Schnur and Assistant Bar Counsel Karen G. Kingsley studied appropriate alternatives concerning the growing need for the Board to acquire new office space in Augusta. The small size, location and potential problems with requirements of the ADA resulted in the Board's need to search for alternative space prior to the expiration of its current lease in January of 1995. After thorough study and analysis, including consultation with the Court, the Board determined that the proper and most cost effective approach was to search for an appropriate and feasible building to purchase, rather than continuation or replacement of its current lease arrangement.

⁴ By order effective February 15, 1994, the Court did not yet adopt proposed Maine Bar Rule 12, and instead promulgated Bar Rule amendments requiring attorneys to provide with their annual registration statement information concerning the formal continuing legal education in which they have participated during the preceding calendar year. The Court also stated that attorneys should continue to study the law throughout their careers and should endeavor to complete twelve (12) hours annually of continuing legal education with at least one (1) hour being primarily concerned with issues of professional responsibility. See M. Bar R. 6(a) and 3.11.

Accordingly, upon study and research by a sub-committee of the Board, Mr. Schnur, private legal counsel, Ms. Kingsley, and after discussion with the Court, the Board executed an option agreement concerning the purchase of a building located at 97 Winthrop Street, Augusta, Maine.⁵

Respectfully submitted,

Dated: August 12, 1994



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⁵ In 1994 the Board purchased the building with renovations expected to be completed by September of that year. See M. Bar R. 4(d)(14) as amended.

VII. APPENDIX

**STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS
AND FEE DISPUTES**

MEMBERSHIP LISTS

GRIEVANCE COMMISSION 1993

COMPLAINT AND HEARING SUMMARY

January 1, 1993 to December 31, 1993

I. Complaints Reviewed - 294⁶

ACTION:

Dismissals:	207
Dismissals with warning to attorney:	36
Disciplinary Hearings Authorized:	50
Directly to Court re: Rule 7.2(b)(7)	1

II. Dispositions After Public Hearing - 16 complaints

ACTION:

Dismissals:	5
Dismissals with warning:	1
Reprimands Issued:	7
Complaints authorized to be filed with Court by information:	3

III. Grievance Complaints Closed

A. Complaints pending at start of period:	142
B. New complaints docketed:	297
C. Total complaints pending:	439
D. Total complaints closed by review or hearing:	260
E. Complaints pending investigation, review or hearing:	179

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

IV. Court Matters

A. Actions pending at start of period:	8
B. New actions filed:	21
C. Total Court pleadings on docket:	29
D. Disciplinary Orders Issued:	
1. Disbarments	2
2. Suspensions	6
3. Suspensions w/ Conditions	1
4. Resignations	2
a. Withdrawn	1
5. Reprimands	0
6. Dismissals	1
7. Contempt ⁷	2
8. Reinstatement	1
a. Denied	1
Total:	17

E. Preliminary Orders Issued	6
F. Actions on docket pending at end of period:	17

V. Total Disciplinary Matters Pending - 12/31/93

A. Grievance Commission	
1. Complaints to be investigated and reviewed:	135
2. Complaints awaiting Grievance Commission disciplinary proceedings:	39
3. Complaints heard - decisions pending:	0
4. Reinstatement matters pending:	2
B. Maine Supreme Judicial Court	
1. Pending informations or actions	17
2. Informations authorized, but not yet filed:	1
TOTAL:	194
(Comparative total for 1992 - 156)	

⁷ Issued against two (2) attorneys who were also suspended by the Court.

1993 GRIEVANCE COMPLAINTS - CHARACTERIZATION

	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Trust Violation	1	.5
2. Conflict of Interest	29	9.5
3. Neglect	94	31.5
4. Relationship w/Client	23	7.5
5. Misrepresentation/Fraud	45	15
6. Excessive Fee	9	3
7. Interference w/Justice	80	27
8. Improper Advertising/ Soliciting	6	2
9. Criminal Conviction	2	1
10. Personal behavior	0	0
11. No cooperation/invest.	0	0
12. Medical	0	0
13. Incompetence	2	1
14. Jurisdiction	0	0
15. Conduct Unworthy of Attorney	3	1
16. Other	3	1
TOTAL	297	100

1993 GRIEVANCE COMPLAINTS - AREA OF LAW

	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
A. Family	66	22
B. Juvenile	2	.5
C. Criminal	44	15
D. Traffic	0	0
E. Probate/Wills	13	4
F. Guardianship	2	1
G. Commercial	7	2.5
H. Collections	6	2
I. Landlord/Tenant	5	2
J. Real Property	58	20
K. Foreclosure	0	0
L. Corporate/Bank	7	2
M. Torts	31	10
N. Administrative Law	4	1.5
O. Taxation	3	1
P. Patent	1	.5
Q. Immigration	0	0
R. Anti Trust	0	0
S. Environmental	0	0
T. Contract/Consumer	12	4
U. Labor	3	1
V. Worker's Comp	10	3
W. Other/None	21	7
X. Bankruptcy	2	1
Y. Municipal	<u>0</u>	<u>0</u>
	297	100

1993 GRIEVANCE COMPLAINTS

<u>SOURCE OF COMPLAINT</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Client	159	54
2. Adverse Party	93	31
3. Lawyer or Judge	30	10
4. Board or Staff	15	5
	<u>297</u>	<u>100</u>

TOTAL COMPLAINTS BY SIZE OF LAW OFFICE

1. Sole Practitioner	118	40
2. 2	46	15
3. 3-6	76	26
4. 7-10	16	5
5. 11 or more	28	10
6. Government and Other	10	3
7. Unknown ⁸	<u>3</u>	<u>1</u>
	297	100

TOTAL COMPLAINTS BY AGE OF ATTORNEYS

1. 24-29	3	1
2. 30-39	63	21
3. 40-49	135	46
4. 50-59	66	22
5. 60+	27	9
6. Unknown	3	1
	<u>297</u>	<u>100</u>

⁸ Identity of attorney never provided by complainant.

1993 GRIEVANCE COMPLAINTS

<u>YEARS OF PRACTICE IN MAINE BAR</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. 40-61 years	15	5
2. 30-39 years	20	7
3. 20-29 years	49	17
4. 10-19 years	131	44
5. 2-9 years	79	26
6. Less than 2 years	0	0
7. Unknown	<u>3</u>	<u>1</u>
	297	100

COMPLAINTS BY COUNTY

1. Androscoggin	29	10
2. Aroostook	21	7
3. Cumberland	69	23
4. Franklin	1	.5
5. Hancock	6	2
6. Kennebec	41	14
7. Knox	9	3
8. Lincoln	11	3.5
9. Oxford	10	3
10. Penobscot	41	14
11. Piscataquis	3	1
12. Sagadahoc	8	3
13. Somerset	6	2
14. Waldo	3	1
15. Washington	6	2
16. York	24	8
17. Out of State	6	2
18. Unknown	<u>3</u>	<u>1</u>
	297	100

1993 BAR COUNSEL FILES

<u>CHARACTERIZATION</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
1. Conspiracy	4	3
2. Disagreement over conduct of case	20	13
3. Habeas Corpus	11	7
4. Insufficient Information	9	6
5. Lack of Professionalism	21	13
6. Malpractice	0	0
7. Personal Life	0	0
8. Request for legal assistance	76	48
9. Other	<u>16</u>	<u>10</u>
Total Bar Counsel Files Docketed:	157 ⁹	100%
Bar Counsel Files pending at start of period	19	
Total Bar Counsel Files on docket	<u>176</u>	
Bar Counsel Files closed during period	<u>153</u>	
Bar Counsel Files pending at end of period	23	

⁹Includes 7 matters originally docketed as Bar Counsel Files, and later transferred to formal grievance complaint status prior to December 31, 1993.

1993 BAR COUNSEL FILES

<u>AREA OF LAW</u>	<u>NUMBER</u>	<u>PERCENT OF TOTAL</u>
A. Family	28	17
B. Criminal	34	22
C. Probate/Wills	23	15
D. Commercial	6	4
E. Collections	9	6
F. Landlord/Tenant	1	1
G. Real Property	14	9
H. Corporate/Bank	3	2
I. Torts	9	6
J. Labor	1	1
K. Worker's Comp	5	3
L. Bankruptcy	3	2
M. Municipal	4	2
N. Other/None	<u>17</u>	<u>10</u>
	157	100%

FEE ARBITRATION COMMISSION
 PETITION SUMMARY
 January 1, 1993 through December 31, 1993

PETITIONS:

Pending at start of period:	42	
Docketed during period :		111
Total open petitions during period:		<u>153</u>
Dismissed, settled, withdrawn:	52	
Heard and closed:	70	
Heard and awaiting awards:	<u>2</u>	
Total petitions closed during period:	124	
Total petitions pending at close of period:		29

BREAKDOWN OF MEETINGS BY PANEL:

Panel IA:	(York)	8	
Panel IB:	(Cumberland)	9	
Panel II:	(Androscoggin, Franklin Lincoln, Oxford & Sagadahoc)	7	
Panel III:	(Kennebec, Knox, Somerset & Waldo)	6	
Panel IV:	(Aroostook, Hancock, Penobscot, Piscataquis, & Washington)	<u>9</u>	
TOTAL:		39	

Comparison of Petitions docketed:

1991: 102
 1992: 115
 1993: 111

- 1993 -
BOARD AND COMMISSION MEMBERS

BOARD OF OVERSEERS OF THE BAR:

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Curtis Webber, Esq. of Auburn, Vice-Chair
Richard C. Engels, Esq. of Presque Isle
John P. Foster, Esq. of Eastport
Doris Hayes of Manchester
H. Cabanne Howard, Esq. of Augusta
Craig A. McEwen, Ph.D. of Brunswick
Keith A. Powers, Esq. of Portland
Peter B. Webster, Esq. of Portland

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Kathryn Monahan Ainsworth, Esq. of So. Portland
Frederick J. Badger, Jr., Esq. of Bangor
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Louise P. James of Portland
Susan R. Kominsky, Esq. of Bangor
Carroll Lee of Bangor
Donald A. Leeber, M.D. of Portland
Robert E. Mittel, Esq. of Portland
Gerald F. Petruccelli, Esq. of Portland
Marc V. Schnur of Islesboro
Paula D. Silsby, Esq. of Portland
David B. Soule, Jr., Esq. of Wiscasset
Lois Wagner of Lewiston

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John M. R. Paterson, Esq. of Portland
Gordon H. S. Scott, Esq. of Augusta
Curtis Webber, Esq. of Auburn

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Doris Hayes of Manchester
Richard Ladner of Lisbon Falls
Bruce E. Leddy, Esq. of Portland
Stephen G. Morrell, Esq. of Brunswick
James E. Patterson, Esq. of Ellsworth
Anne C. Pomroy, Esq. of Old Orchard Beach
Clifford A. Purvis of Saco
Rachel Armstrong of Falmouth
Peter W. Schroeter, Esq. of Saco
Lee Young of Auburn

BAR COUNSEL:

J. Scott Davis, Esq.

ASSISTANT BAR COUNSEL:

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

JUDICIAL LIAISON:

Hon. Paul L. Rudman