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**MAINE BOARD OF
OVERSEERS OF THE BAR**

**BAR COUNSEL'S ANNUAL REPORT
1998**

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BOARD OF OVERSEERS OF THE BAR

Bar Counsel's 1998 ANNUAL REPORT

INTRODUCTION

I enclose my Annual Report for 1998 reference the Board of Overseers of the Bar and its three agencies: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission (18 total members) and the Grievance Commission (25 total members) conduct their respective duties under the Maine Bar Rules by three-member panels. Each grievance panel is comprised of two lawyers and one lay (public) member. The fee panels may be so comprised or alternatively may consist of two lay members and one lawyer. Information concerning the responsibilities and duties of the Board and its commissions is contained in informational pamphlets available at the office of the Board of Overseers of the Bar, 97 Winthrop Street, P.O.Box 527, Augusta, ME. 04332-0527. Tel. # (207)623-1121. Please also note the respective membership lists, attached as part of the Appendix herein.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

In 1998, the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF), one hundred ninety-four (194) written grievance complaints that initially stated some *prima facie* claim of misconduct by Maine attorneys in violation of the Code of Professional Responsibility (Code). That was nearly a 15% decrease from the number filed in 1997 – (228). As discussed later, there were another 142 filings that were docketed instead as Bar Counsel Files, meaning that the office of Bar Counsel screened and docketed them as not stating any violation of the Code. See M. Bar R. 7.1(c) and 7.1(d).

B. PANEL MEETINGS AND HEARINGS

1. **Case Reviews** -- Panels of the Grievance Commission met on 27 occasions and concluded preliminary reviews of 199 complaints under M. Bar R. 7.1(d). These meetings consist of a panel consulting with Bar Counsel or an Assistant Bar Counsel to review the contents of grievance complaint (GCF) investigative files. Such reviews are not hearings, and the entire investigation and review process through this phase is confidential under M. Bar R. 7.3(k)(1). However, any subsequent disciplinary hearing and the resulting decision (report) are always open and available to the public. As a result of those 199 reviews, 177 complaints were finally closed by issuance of either a dismissal (156) or a dismissal with a warning (21¹) to the involved attorneys. See M. Bar R. 7.1(d)(3)(4). Alternatively,

¹ One additional matter resulted in a dismissal with warning that was later vacated by the attorney's request for hearing under M. Bar R. 7.1(d)(4)(C). As a result, that matter is included among the 22 matters directed for disciplinary hearing.

the review panels found probable cause that professional misconduct subject to sanction had occurred in 22 matters, and thereby directed those complaints be processed for formal public disciplinary hearings open to the public before another panel of the Commission.

2. Disciplinary proceedings – Grievance Commission panels conducted such public disciplinary hearings resulting in 21 decisions in 1998, resulting in seven (7) reprimands and five (5) dismissal with warnings of attorneys. Brief descriptions of the proven misconduct found in those 7 reprimands issued by the Grievance Commission are presented below. In eight (8) additional matters, Bar Counsel was directed to file *de novo* proceedings before the Maine Supreme Judicial Court (Court) for the more serious disciplinary sanctions of either suspension or disbarment of the respective attorneys. Copies of all public disciplinary decisions are available at the Board of Overseers of the Bar's office at the address and telephone number listed on the title page of this Annual Report.

i. Reprimands

1. A panel of the Grievance Commission reprimanded an attorney for refusing to return a client's file despite repeated requests from the client to do so. Ultimately, the attorney did not turn over the file until an order was entered by the District Court for return of the file. The grievance complaint filed by the client had arisen after a lawsuit had been filed by the lawyer for unpaid attorney fees. Board of Overseers of the Bar v. David L. Brooks, GCF# 97-28 (January 23, 1998).

2. A lawyer in a personal injury case improperly obtained an affidavit from the adverse party without the knowledge or consent of that party's attorney in violation of M. Bar R. 3.6 (f). The hearing panel reprimanded the lawyer for that misconduct and also for wrongdoing associated with her own related grievance complaint against opposing counsel, which was dismissed after public hearing. Board of Overseers of the Bar v. Elizabeth Kelly Ebitz GCF# 96-G-146 (May 26, 1998).
3. Panel B of the Grievance Commission reprimanded an attorney because the lawyer violated M. Bar R. 3.6(a) by allowing the statute of limitations to lapse in a personal injury matter thereby failing to use reasonable care and skill in handling the client's case. In its report, the panel noted that neglect of a file to the point where the statute of limitations expires is not minor misconduct. Board of Overseers of the Bar v. Mark S. Kierstead, GCF# 98-9 (October 28, 1998).
4. Panel A reprimanded a lawyer for violating Maine Bar Rule 3.6(a) due to her failure to a.) timely settle a client's employment dispute; b.) keep the client adequately informed about the status of that and another matter; and c.) be sufficiently candid in her response to the grievance complaint. This reprimand was stipulated to between the lawyer and the office of Bar Counsel. Board of Overseers of the Bar v. Laurie Anne Miller, GCF# 97-106 (March 31, 1998).
5. Bar Counsel initiated a *sua sponte* grievance complaint based upon a Law Court post conviction review case that had reversed the criminal convictions of an attorney's client because of ineffective assistance of counsel. A Grievance Commission hearing panel reprimanded the attorney for violations of Maine Bar Rules 3.6(a)(2),(3) (handling a legal matter without preparation adequate in the

circumstances and neglect of a legal matter) for his failure to obtain the office records of his client from the client's medical doctor, since that was evidence that might have established a partial alibi for the client. This reprimand was imposed by the Commission upon being submitted by proposed stipulation of the respondent attorney's attorney and the office of Bar Counsel. Board of Overseers of the Bar v. Robert M. Napolitano, GCF# 95-G-117 (February 12, 1998).

6. An attorney represented a client throughout a contentious post-divorce custody proceeding, and the client never paid the outstanding balance of the bill. When he asked the attorney to represent him on a second divorce, the attorney took as security for the past and future bills a promissory note for \$8,000 and a mortgage on a residence about which there was a significant dispute as to its marital or non-marital character. The attorney did not advise the client that he should seek independent legal advice concerning the financial transaction. The Grievance Commission hearing panel found the attorney had violated M. Bar R. 3.4(f)(2) [formerly 3.6(i)(1)] and 3.7(c). Board of Overseers of the Bar v. John L. Carver, Esq., GCF#97-38 (June 11, 1998)

7. An attorney represented a client in a post-divorce matter. The client was out of state, and despite efforts by the client to communicate with the attorney, the latter never responded nor did he advise the client of a hearing in the matter for which the client did not appear. The attorney did appear at that hearing, and indicated to the court the client's uncontested agreement with facts related to arrearages in payments to the former spouse. In fact, the attorney had never discussed those issues with the client, did not have the client's consent to the

amount of arrearages and never notified the client of the court's order in favor of the former spouse. The hearing panel adopted the proposed stipulation of the parties, and found the attorney had violated M. Bar R. 3.6(a)(2), (e) and 3.7(e)(1). Board of Overseers of the Bar v. Peter M. Weatherbee, Esq., GCF#98-4 (November 16, 1998).

ii. OTHER GRIEVANCE COMMISSION DISPOSITIONS

As indicated above, certain of the complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or further proceedings before the Court. After hearing, four (4) matters were dismissed for lack of proof of any violation of the Code, and five (5) other complaints resulted in issuance of dismissals with a warning for minor violations of the Code.

The Grievance Commission also heard three (3) reinstatement petitions in 1998, with each matter resulting in the respective Grievance Commission hearing panel issuing written findings and recommendations that each former attorney not be reinstated to practice in Maine. Pursuant to M. Bar R. 7.3(j)(5)(6) in all cases the Board adopted and filed the panel's recommendations with the Court. In two (2) of the matters, reinstatement was thereafter withdrawn without any hearing before the Court. In the third reinstatement case heard by the Commission in 1998, after consideration of the record and written comment from the petitioner's counsel and Bar Counsel, the Court (Rudman,J.) (in a decision actually issued in January of 1999) affirmed the panel's recommended denial of reinstatement. Board of Overseers of the Bar vs. James S. Horton, Docket No. BAR 98-2

The attached tables provide the various statistics in categories such as the respective areas of law, characterization, age and county of practice concerning the GCF matters received and docketed in 1998. The Appendix also includes a

table indicating the various rules that the Grievance Commission and/or the Court found had been violated in those matters where either discipline or an informal warning was imposed after hearing.

C. BAR COUNSEL FILES

As referenced above at page four, Bar Counsel Files are those matters that upon initial review and approval by Bar Counsel were deemed not to allege any professional misconduct subject to sanction under the Maine Bar Rules. See M. Bar R. 7.1(c). There were 142 such final filings in 1998, being a slight decrease (5%) from the number docketed in 1997 (150). As a result, by combination of those matters with all unrelated formal grievance complaints (GCF) discussed above, the number of written allegations of complained about attorney conduct as filed with Bar Counsel in 1998 totaled 336 filings. That number constituted an 11% decrease from the corresponding total of 378 matters filed in 1997. Maine Bar Rule 7.1(c) requires Bar Counsel's unilateral dismissal of Bar Counsel Files with or without investigation, with a complainant having the right to request a dismissal be reviewed by a lay member of the Board or Grievance Commission. Bar Counsel approved the dismissal of 150 Bar Counsel Files in 1997, with 28 complainants requesting review of those actions. Lay members decided 21 of those requests in 1998, resulting in approvals of 20 dismissals, and 1 dismissal being vacated and docketed for a Grievance Commission panel's review under M. Bar R. 7.1(d) (See Appendix at p.32).

II. COURT MATTERS

After conducting hearings in 10 matters, single justices of the Supreme Judicial Court of Maine issued 9 sanctions, briefly summarized as follows:

A. DISBARMENT

1. An attorney failed to timely file a post conviction review matter in Federal Court, and did not communicate with his client about the status of the case or his lack of progress in the matter. Following the attorney's admission to all the relevant facts and his waiver of a hearing in the matter, the Court disbarred the attorney for several violations of the Maine Bar Rules including M. Bar R. 3.6(a)(3) (neglect of a legal matter). Since that attorney was already disbarred, that subsequent disbarment was ordered retroactive to December 26, 1995 the date of his earlier disbarment for similar misconduct. Board of Overseers of the Bar v. Terrance J. Brennan, Docket No. BAR 98-5.

B. SUSPENSIONS

1. An attorney engaged in multiple violations of the bar rules involving client trust accounts. The Court suspended him for 30 days and conditioned the attorney's reinstatement on his adoption of proper trust accounting procedures to be reviewed and approved by Bar Counsel. Board of Overseers of the Bar v. Richard B. Slosberg, Docket No. BAR-96-16 (April 30, 1998).

2. An attorney charged an excessive fee in a probate case and committed other violations of the bar rules causing injury to his client. He continued to fail to acknowledge the wrongfulness of his conduct through fee arbitration, a

disciplinary hearing before a single justice and on successful appeal thereof. The Law Court vacated the single justice's suspension order and remanded the matter for imposition of an appropriate sanction reference bar rule violations that were not reversed. A different single justice then found that because of the attorney's continued belief that he did not violate any bar rules, there remained a need for protection of the public, and a five-month suspension was imposed. Board of Overseers of the Bar v. Albert P. C. Lefebvre, Docket No. BAR-96-8 (May 21, 1998). By separate order, and without objection, that same former attorney was later indefinitely suspended by the Court under M. Bar R. 7.3(d)(1) based upon his being convicted by a jury on June 17, 1998 for the crime of perjury. Board of Overseers of the Bar vs. Albert P.C. Lefebvre, Docket No. BAR 98-4 (October 20, 1998).

3. By stipulation with Bar Counsel, an attorney admitted ethical misconduct arising from a series of serious conflicts of interest. The Court found that the attorney had violated Maine Bar Rules 3.2(f)(3), (4); 3.4(b)(1),(c)(2),(f)(1); 3.6(d); and 3.7(e)(1)(i). The court ordered a suspension retroactive to August 1, 1995 ending on November 1, 1998 with no requirement for reinstatement proceedings because of her earlier voluntary cessation of the practice of law since 1995 and her cooperation in bringing the matter to the attention of Bar Counsel. Board of Overseers of the Bar v. Rita M. Farry, Docket No. BAR-98-7 (November 2, 1998).

4. In August of 1990 an attorney filed a foreclosure action for his client in the Cumberland County Superior Court. After appropriate notice to that attorney, the court dismissed that matter with prejudice in December of 1994 due to the

attorney's failure to file the Report of Conference of Counsel. The attorney failed to inform his client of that dismissal, and instead misrepresented the status thereof to the client by affirming that it was to be scheduled for trial. He finally told the client about the dismissal in April of 1995, as he was terminating his association with his law firm. The Court approved the parties' proposal for a 60-day suspension from practice, with the Court also understanding that the attorney would then discontinue the active practice of law and file as inactive under Bar Rule 6(c). Board of Overseers of the Bar vs. J. Michael Huston, Docket No. BAR 98-6 (December 23, 1998).

C. REPRIMANDS

1. A lawyer neglected a family law matter, did not properly communicate with his client about the status of the case, and failed to respond promptly to her efforts to terminate his representation. The attorney also sent the client a written fee agreement which stated that the retainer previously paid by the client was non-refundable. The Court reprimanded the attorney for violations of M. Bar R. 3.5(a)(3), 3.5(b)(2)(iv) and 3.6 (a). Board of Overseers of the Bar v. Francis M. Jackson, Docket No. BAR-97-14 (May 26, 1998).

2. The Court reprimanded a lawyer for assisting a non-lawyer in the unauthorized practice of law, failing to advise a client to seek the independent professional advice of counsel before entering into a business transaction with the client, and failing to use reasonable care and skill. The misconduct resulted from the attorney's long time representation of an older client, and included the preparation

of that client's last will by the lawyer's former legal secretary. Board of Overseers of the Bar v. Charles B. Rodway, Jr., Docket No. BAR-97-16 (August 5, 1998).

D. RESIGNATION

The Court accepted the resignation of one attorney pursuant to M. Bar R. 7.3(g) after hearing. Board of Overseers of the Bar v. Lowell D. Weeks, Docket No. BAR-97-12 (July 7, 1998).

III. FEE ARBITRATION COMMISSION

In 1998 the Board received 236 requests for petitions for arbitration of fee disputes, 88 (37%) of which were later returned and actually filed with the Secretary to the Fee Arbitration Commission, Jaye M. Trimm (See Appendix). With 33 petitions already pending, those 88 new petitions created a total docket of 121 for the year. Various arbitration panels met on 27 occasions to hear and dispose of 45 petitions (plus 4 other matters were heard in 1997 with Awards being rendered in 1998). With preliminary assistance and involvement of Assistant Bar Counsel Karen G. Kingsley and Commission Secretary Trimm, and approval of Fee Arbitration Commission Chair Valerie Stanfill, Esq., 38 other fee disputes were dismissed, settled or withdrawn by consent of the parties prior to any panel hearing. See M. Bar R. 9(e)(3).

The office of Bar Counsel screens fee arbitration petitions that have been filed with the Secretary to determine if the matters warrant the attention of that Commission or should also be processed by the Grievance Commission. Bar Counsel may attempt to promote and assist in the informal resolution of fee

disputes prior to hearing by a panel but is not otherwise usually involved after the initial screening. See M. Bar R. 9(e)(2). Pursuant to Board Regulation No. 8, the Fee Arbitration Commission and Grievance Commission may and often do share respective investigation materials concerning related matters.

IV. PROFESSIONAL ETHICS COMMISSION

The eight attorney members of the Professional Ethics Commission met on seven occasions to discuss, draft and approve six (6) formal advisory opinions on ethical questions presented and issued in Opinion Nos. 161 - 166 as briefly summarized below. The Commission also responded by informal letter to many attorneys' requests on a variety of issues including: contingent fees, conflicts of interest, sharing office space with lay persons, withdrawal from representation in ongoing litigation and affiliation by Maine lawyers with out of state law firms wishing to open branch offices in Maine.

A. OPINION NO. 161 (January 21, 1998)

A lawyer requested an opinion about the propriety of an attorney accepting an invitation to become a contributing member of the Associates of Justice Program of the National Judicial College (College) and soliciting funds for the College. The Commission concluded that while the facts differed from those presented in Opinion No. 129, the proposal was not permissible because of the prohibition of Maine Bar Rule 3.7(h)(1) against giving, directly or indirectly, anything of value to a judge or tribunal.

B. OPINION NO. 162 (October 14, 1998)

An attorney inquired about his obligations, if any, to withdraw as trial counsel under Maine Bar Rule 3.5 (b) (1). The Commission determined that due to a typographical error or latent ambiguity in the attorney witness rules (Maine Bar Rules 3.4 (g) (1) and 3.5 (b) (1)), i.e. because of an apparent inadvertent failure by the Court and the publisher to correctly renumber or designate those provisions of the bar rules, the lawyer's firm could continue representation of the client. The attorney himself, however, had to withdraw from the case because the lawyer was likely to be called as a witness. The Commission's opinion also discussed the attorney's obligations to consider the possible application of Maine Bar Rules 3.4 (b), (f) on conflicts of interest reference the lawyer's prior representation of and work product for the client.

C. OPINION NO. 163 (November 4, 1998)

In collection matters involving worthless checks, an attorney asked whether informing debtors that the attorney would be referring cases for criminal prosecution was a violation of Maine Bar Rule 3.6 (c) (presentation of criminal charges solely to gain an advantage in a civil matter). A majority of the Commission decided that based on the specific facts presented for its consideration, merely reporting a bad check violation to the criminal authorities would not violate the bar rule, but notifying the debtor that his conduct is being reported would violate the rule. A minority of the Commission concurred in the result reached by the majority, but determined that an attorney would violate

Maine Bar Rule 3.6(c) only when the lawyer's **sole** purpose for presenting or threatening to present charges was to obtain an advantage in a civil matter.

D. OPINION NO. 164 (December 2, 1998)

An attorney requested an opinion about the extent to which a lawyer with an insurance defense practice may provide information and documentation from firm and client files to the carrier for use by the insurance company in auditing the billing practices of the attorney's firm. The Commission concluded that the provisions of Maine Bar Rule 3.6 (h) (preservation of confidences and secrets of a client by a lawyer) fully apply to the relations between an attorney and an insurance company's insured and that without client consent, the attorney may not provide, or agree to provide, information containing confidences or secrets of a client-insured, either to the insurance company, or to an agent of the company such as a retained auditing company. The Commission did not state, however, that the attorney may not cooperate with the insurance company or its auditing company in providing information to justify the lawyer's bills. The Commission's opinion only means that, in providing such information, the attorney must take care not to release any confidence or secret that the lawyer may have obtained from the insured.

E. OPINION NO. 165 (December 2, 1998)

A lawyer inquired about his ethical obligations conducting real estate closings and issuing title insurance. In answering several hypothetical questions, the Commission decided that a closing attorney employed by a lender should take

reasonable steps to avoid misreliance by non-represented borrowers concerning certain provisions of the loan documentation or title policy that they might not be aware of or fully understand. Such other steps may include pointing out that while the borrowers ultimately bear the cost of the lawyer's fees, these fees have been billed to the attorney's client, the lender.

F. OPINION NO. 166 (December 2, 1998)

An attorney asked about his possible affiliation with an entity that is in the business of selling inter vivos trusts and his participation in that organization's referral program. The Commission decided that although the proposed arrangement may be a proper use of an outside source for document preparation, it also might be an impermissible fee sharing arrangement with a non-lawyer.

V. MISCELLANEOUS MATTERS

A. THE MAINE LAWYERS' FUND FOR CLIENT PROTECTION

As described in Bar Counsel's Annual Report for 1997, the Court promulgated the Maine Rules For Lawyers' Fund For Client Protection, effective on July 1, 1997. The Fund's Board of Trustees, however, shall pay only claims for dishonest conduct occurring after January 1, 1999. Thus, with the assistance of the Board's staff the Fund has been receiving assessments for the past two years. In that regard, although separate and distinct from the Fund, and at the direction of the Court, the Board of Overseers continues to request and collect the \$20.00 annual assessment from all Maine attorneys and judges for deposit in the Fund's account.

B. AMENDMENTS TO THE MAINE BAR RULES

The study and possible proposal of amendments to the Code of Professional Responsibility (Maine Bar Rule 3) are the province of the Advisory Committee on Professional Responsibility and not the Board. However, at the request of the Board, the Court did amend several procedural sections of the Maine Bar Rules in 1998, including the following:

- M. Bar R. 6(d) was amended to establish that every Maine attorney is to be assigned a Maine Bar Registration Number, and that changes in an attorney's address information must now be provided to the Administrative Office of the Courts in addition to the Board;
- M. Bar R. 7.1 (e)(3) was amended to make clear that the Grievance Commission's and Bar Counsel's description of a dismissal with warning issued after hearing is different than one issued after preliminary review. As a result of the amendment, public warnings issued after hearing are available in their entirety to everyone, whereas the procedure remains that complainants are to receive only a brief explanation as to the reasons a warning is issued after case review under Bar Rule 7.1 (d)(4);
- M. Bar R. 7.2(c) and 7.3(e)(2) were both amended to change the format and procedures utilized when the Board or Bar Counsel have evidence which raise issues about an attorney's current mental capacity to practice law. Upon Bar Counsel's request and with the Board Chair's approval thereof, a panel of the

Board may be designated in such instances to conduct a hearing to determine the issue of capacity, or in instances involving a substantial threat of irreparable harm to the public, may result in a direct and immediate filing before the Court;

- M. Bar R. 7.3(m)(2) was promulgated to provide for the use of another jurisdiction's proper subpoena to allow a subpoena to be issued by a member of the Board or of the Grievance Commission to compel the attendance of a witness or the production of documents in Maine for that other jurisdiction;
- M. Bar R. 9(a)(1) was amended to now allow the alternate members of the Fee Arbitration Commission to include lawyers and not only lay members; and
- M. Bar R. 9(e)(5)(G) was added to provide that the Secretary to the Fee Arbitration Commission is required to dismiss petitions for arbitration when either the petitioner so requests prior to the filing of the attorney's reply or both parties file a signed stipulation of dismissal.

C. INFORMAL ADVISORY OPINIONS

The office of Bar Counsel continues to provide daily assistance to Maine attorneys through the rendering of informal advisory/opinions, usually over the telephone. Bar Counsel may only provide an attorney with an assessment of

either that inquiring attorney's or that attorney's firm's proposed conduct under the Maine Bar Rules. See Advisory Opinion No. 67 and Board Regulation No. 28. In 1998, attorneys in the office of Bar Counsel answered approximately 494 such telephonic "ethics hotline" inquiries. In addition, Bar Counsel provided twenty-three (23) written informal advisory opinions in response to attorneys' requests.

D. TELEPHONIC SCREENING OF COMPLAINTS

1998 was the second full year of the Board's policy for attorneys in the office of Bar Counsel, as time resources allowed, to personally screen telephonic inquiries from potential complainants. During 1998 approximately 506 callers spoke in detail to Bar counsel or an Assistant Bar Counsel, an increase of 34% from the number of callers in 1997. From that group of 506 callers, 48 people actually followed up and filed grievance complaints or fee arbitration petitions (or in some cases both), being a similar (37%) increase from that of 1997. Therefore, roughly 9% of the people that called the Board and spoke with an attorney actually later filed a written complaint. The amount in 1997 was 11%. Some callers did not have a complaint about an attorney, but rather were seeking legal advice. Board staff certainly cannot and does not provide any legal advice. As in the case of informal advisory opinions, staff attorneys do not provide those callers with any opinions as to the ethical conduct of a caller's attorney or any other attorney. This screening of calls has perhaps resulted in the reduction of written complaints actually received by the Board. It also seems to have been helpful in deflecting at least some complaints or inquiries that did not relate to Grievance Commission

matters and therefore would not have been at all appropriate for any investigation through the grievance process. In any event, the callers are always given the option to proceed and file a written complaint if they so choose. The project continues in 1999.

E. ASSISTANCE TO THE MAINE STATE BAR ASSOCIATION

Bar Counsel and Assistant Bar Counsel participated in continuing legal education (CLE) seminars of the Maine State Bar Association, including ethical issues involved in the sale of a small law practice. To promote discussion and receive suggestions for improvements, the Board also continued its practice of meeting with the MSBA's Board of Governors. It did so in April of 1998 by having a policy luncheon meeting that focused discussion on issues and trends relating to the unauthorized practice of law. The two Boards will continue to so meet.

F. ELECTION AS NOBC PRESIDENT-ELECT

In August of 1998, I was elected to serve a one-year term as President-Elect to the National Organization of Bar Counsel (NOBC), and also served as the NOBC's liaison to the ABA's Standing Committee on Professional Discipline. I participated in CLE panels at the ABA's 24th National Conference on Professional Responsibility on "Settling Grievance Cases", and at the NOBC's summer meeting on a panel topic entitled "The Lives of Bar Counsel".

G. ADDITIONAL MATTERS CONSIDERED BY THE BOARD

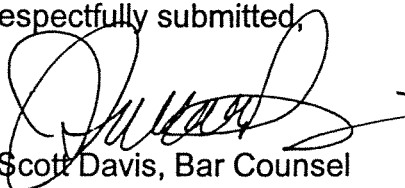
The Board also gave consideration or action to the following matters at various points in 1998:

- A continuing study of determining if there exists an adequate need for the Board to acquire its own web site, and if so, the appropriate form and purposes for it to accomplish. That matter remained under consideration by the Board at the conclusion of 1998;
- Through the efforts of Assistant Bar Counsel Karen G. Kingsley, the Board completed the revision and republication of the two-volume edition of the Maine Manual on Professional Responsibility;
- The Board gave preliminary consideration to the drafting of a proposed amendment to the Bar Rules to provide for dismissed grievances files to be expunged after a certain period of time; and
- The Board commenced discussion of having a personnel/ management study performed of its internal structure and operations.

CONCLUSION

My staff and I again thank all of the many volunteer members of the Board and its Commissions for their time and hard work to facilitate the disciplinary, fee arbitration and ethical advisory processes of the Maine Bar Rules. We continue to encourage any suggestions for improvements for submission to either me or to the Board Chair for consideration by the Board. Any Maine attorneys needing a conference room for a deposition or other form of meeting in the Augusta area may certainly telephone me or the Board's Administrative Clerk, Linda Hapworth, @ 623-1121 or e-mail us at bdoverseer@aol.com to schedule use of the Board's conference room for that purpose.

Respectfully submitted,



DATED: September 8, 1999

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APPENDIX

STATISTICAL ANALYSIS OF DISCIPLINARY MATTERS

AND FEE DISPUTES

MEMBERSHIP LISTS

January 1, 1998 to December 31, 1998

GRIEVANCE COMMISSION COMPLAINTS

I. Complaints Reviewed 199

ACTION:

Dismissal: 156

Dismissal with warning to attorney: 21

Disciplinary hearing authorized: 22

II. Dispositions After Public Hearing 22 matters considered

ACTION:

Dismissals: 4

Dismissal with warning: 5

Reprimands: 7

Complaints authorized to be filed
with the Court by information: 8
(4 complaints involved one attorney)

Information to be filed directly with Court 0

Reinstatement Denied 1

Decision pending: 0

III. Grievance Complaint Summary

A. Complaints pending at start of period: 137

B. New complaints docketed: 194

C. Total complaints pending during period: 331

D. Total complaints reviewed or heard: 221

E. Complaints pending investigation, review or hearing: 110

COURT MATTERS – 1998

Disciplinary orders issued: 10 sanctions

1. Disbarment	1
2. Suspension	5
3. Suspended suspension	0
4. Resignation	1
5. Reprimand	2
6. Dismissal	0
7. Contempt	0
8. Preliminary order issued	1
Total	10

Total Disciplinary Matters Pending before Court – 12/31/98

1. Complaints concerning pending informations	10 (9 attorneys)
2. Informations authorized, but not yet filed	6 (3 attorneys)
TOTAL:	16

1998 SUMMARY OF DISCIPLINARY IMPOSITIONS**Bar Rules Found to Have Been Violated**

(Certain decisions cited multiple rule violations)

Grievance Commission Reprimands - 7

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	3
3.2(f)(2)	Illegal conduct	1
3.2(f)(3)	Misrepresentation / deceit	1
3.6(a)(3)	Neglect of client matter	4
3.6(e)(2)(iv)	Preserving Identity of Finds and Property	2
3.6(f)	Communication with Adverse Party	1
3.6(l)(1),(2)	Avoiding misreliance	1
3.7(e)(1)	Adversary conduct	1
	TOTAL	14

Grievance Commission Dismissal w/warnings - 5

RULE	MISCONDUCT	NUMBER
3.4	Conflict of Interest	3
3.6(c)	Threatening Prosecution	1
3.6(f)	Communication with Adverse Party	2
3.6(e)(2)(iv)	Preserving Identity of Funds and Property	1
	TOTAL	7

Court Suspensions / Reprimands / Disbarments -10

RULE	MISCONDUCT	NUMBER
2(c)	Failure to cooperate w/Bar Counsel	1
3.1(a)	Conduct unworthy of an attorney	3
3.2(a)(2)	Unauthorized Practice	1
3.2(f)(3)	Misrepresentation / deceit	5
3.2(f)(4)	Prejudicial to the administration of justice	5
3.3(a)	Excessive Fee	3
3.4	Conflict of Interest	5
3.5	Improper Withdrawal from matter	4
3.6(a)(3)	Neglect of client matter	5
3.6(d)	Advising violation of law	1
3.6(e)(2)(iii)	Failure to render prompt accounts	2
3.6(e)(2)(iv)	Failure to return property	2
3.7	Adversary Conduct	1
6(b)(6)	Failure to Pay Fee Arbitration Award	1
7.3(l)	Failure to notify clients of suspension	1
7.3(n)	Failure to maintain segregated trust account	1
	TOTAL	41

1998 GRIEVANCE COMPLAINTS

CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
Trust violation	14	7.22
Conflict of interest	35	18.04
Neglect	84	43.29
Relationship w/client	0	0
Misrepresentation / fraud	31	15.98
Excessive fee	2	1.03
Interference with justice	22	11.34
Improper advertising / solicitation	0	0
Criminal conviction	1	.52
Personal behavior	1	.52
No cooperation w/Bar Counsel	0	0
Medical	0	0
Incompetence	0	0
Jurisdiction	0	0
Conduct unworthy of an attorney	4	2.06
Other	0	0
TOTAL	194	100

SIZE OF LAW OFFICE

	NUMBER	PERCENT OF TOTAL
Sole Practitioner	95	48.97
2	33	17.01
3-6	38	19.57
7-10	9	4.64
11 and over	16	8.25
Government / state /other	3	1.56
<u>TOTAL</u>	194	100

1998 GRIEVANCE COMPLAINTS

AREA OF LAW

	NUMBER	PERCENT OF TOTAL
Family	56	28.87
Juvenile	0	0
Criminal	25	12.89
Traffic	0	0
Probate/Wills	27	13.91
Guardianship	0	0
Commercial	0	0
Collections	7	3.61
Landlord/Tenant	3	1.55
Real Property	28	14.43
Foreclosure	0	0
Corporate/Bank	7	3.61
Tort	14	7.22
Administrative Law	0	0
Taxation	0	0
Patent	2	1.03
Immigration	0	0
Anti-Trust	0	0
Environmental	0	0
Contract/Consumer	3	1.55
Labor	4	2.06
Workers' Comp	4	2.06
Other/None	7	3.60
Bankruptcy	0	0
Municipal	5	2.58
Elder Law	2	1.03
TOTAL	194	100

1998 GRIEVANCE COMPLAINTS

SOURCE OF COMPLAINT

	NUMBER	PERCENT OF TOTAL
Client	123	63.40
Other Party	46	23.71
Judge	2	1.03
Lawyer	22	11.34
Sua sponte	1	.52
TOTAL	194	100

YEARS IN PRACTICE

	NUMBER	PERCENT OF TOTAL
40-61 years	2	1.03
30-39 years	4	2.07
20-29 years	48	24.74
10-19 years	91	46.91
2-9 years	48	24.74
Less than 2 years	1	.515
TOTAL	194	100

AGE OF ATTORNEY

	NUMBER	PERCENT OF TOTAL
24-29	0	0
30-39	25	12.89
40-49	83	42.78
50-59	66	34.03
60+	20	10.30
<u>TOTAL</u>	194	100

1998 GRIEVANCE COMPLAINTS

COUNTY	NUMBER	PERCENT OF TOTAL
Androscoggin	12	6.18
Aroostook	11	5.67
Cumberland	59	30.41
Franklin	4	2.06
Hancock	4	2.06
Kennebec	24	12.37
Knox	6	3.09
Lincoln	5	2.57
Oxford	1	.51
Penobscot	29	14.94
Piscataquis	0	0
Sagadahoc	4	2.06
Somerset	3	1.54
Waldo	5	2.57
Washington	5	2.57
York	20	10.30
Out of State	2	1.03
TOTAL	194	100

1998 BAR COUNSEL FILES

AREA OF LAW	NUMBER	PERCENT OF TOTAL
Family	39	27
Criminal	45	32
Probate/Wills	6	4
Commercial	1	.7
Collections	6	4
Landlord/Tenant	1	.7
Real Property	8	6
Corporate/Bank	2	1.4
Torts	8	6
Labor	7	5
Worker's Comp	5	3.5
Bankruptcy	0	0
Municipal	7	5
Trust Accounts	1	.7
Contracts	0	0
Discrimination	0	0
Patent	0	0
OtherNone	6	4
TOTAL	142	100

1998 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
Conspiracy	13	9
Disagreement over conduct of case	33	23
Habeas Corpus	11	8
Insufficient information	6	4
Lack of professionalism	15	11
Malpractice	0	2
Personal life	3	35
Request for legal assistance	50	46
Interference with justice	1	.5
Other	10	7.5
TOTAL BAR COUNSEL FILES DOCKETED	142 ²	100

Bar Counsel Files pending at start of period	13
New Bar Counsel Files Received	142
Total Bar Counsel Files on Docket	155
Bar Counsel Files Finally Dismissed	144
Bar Counsel Files pending at end of period	11
Dismissals appealed (Request for review filed)	28
Action on review of those appeals:	
Dismissals affirmed by lay member	21
Dismissals vacated by lay member (re-docketed as Grievance Commission File)	1
Panel Review) Reviews open as of 12/31/98	6

² New Bar Counsel Files received.

FEE ARBITRATION COMMISSION

Petition Summary
January 1, 1998 – December 31, 1998

PETITIONS:

Pending at start of period:	33
Docketed during period:	88
Total open petitions during period:	121
Dismissed, settled, withdrawn:	38
Heard and closed by awards:	45
Heard and awaiting awards:	4
Total petitions closed during period:	87
Total petitions pending at close of period:	34

BREAKDOWN OF HEARING DATES BY PANEL:

(County/Counties)	
Panel IA: (York)	3
Panel IB: (Cumberland)	7
Panel II: (Androscoggin, Franklin, Lincoln, Oxcord & Sagadahoc)	6
Panel III: (Kennebec, Knox, Somerset & Waldo)	6
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis, & Washington)	5
TOTAL HEARING DATES:	<hr/> 27

Comparison of new Petitions docketed:

1996 - 103
1997 - 96
1998 - 88

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BAR COUNSEL: J. Scott Davis, Esq.

ASSISTANT BAR COUNSEL: Karen G. Kingsley, Esq.
Geoffrey S. Welsh, Esq.

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Nancy Hall Delaney	Administrative Assistant
Debra M. Swift	Bar Admission Administrator & Registration Secretary
Jaye M. Trimm	Clerk of the Grievance Commission & Fee Arbitration Commission Secretary