

MAINE STATE LEGISLATURE

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MAINE BOARD OF OVERSEERS OF THE BAR

BAR COUNSEL'S ANNUAL REPORT
2000

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BOARD OF OVERSEERS OF THE BAR

Bar Counsel's 2000 ANNUAL REPORT

INTRODUCTION

The Board of Overseers of the Bar performs its duties and responsibilities under the Maine Bar Rules via its staff of nine (9) individuals and its three agencies: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission and the Grievance Commission (21 and 25 members, respectively) conduct their functions by three-member panels. Each grievance panel is comprised of two attorneys and one lay (public) member. The fee panels may be so comprised or instead consist of two lay members and one attorney. Information concerning the responsibilities and functions of the Board and each of 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; Fax: (207) 623-4175. Certain public information may also be accessed at the Board's web site address: www.mebaroverseers.org, and e-mail may be addressed to board@mebaroverseers.org. Please also note the respective membership lists, within the attached Appendix.

I. GRIEVANCE COMMISSION

A. COMPLAINTS

In 2000, the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF), 191 written grievance complaints that initially alleged at least some *prima facie* claim of misconduct by Maine attorneys in violation of the Code of Professional Responsibility (Code). That was a 16.5% increase from the number filed in 1999 – (164). There were also 108 filings that were docketed instead as Bar Counsel Files, meaning that upon screening by an attorney in the office of Bar Counsel, these complaints were deemed not to state any violation of the Code. See M. Bar R. 7.1(c) and 7.1(d) and pp.8-9 of this Report. Under Maine Bar Rule 7.1(c)(1), such complaints may be dismissed either with or without investigation.

B. PANEL MEETINGS AND HEARINGS

1. **Case Reviews** -- Panels of the Grievance Commission met on 36 occasions to conduct preliminary reviews of 181 GCF 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 remains 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 181 reviews, 171 complaints were closed by issuance of either a dismissal (147) or a dismissal with a warning (24) to the involved attorneys. See M. Bar R. 7.1(d)(3)(4). Panels found probable cause that professional misconduct subject to sanction had occurred in 10 of the reviewed matters. As a result, formal disciplinary

petitions were directed to be filed for those complaints for the conducting of formal 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 12 decisions issued in 2000, including six (6) reprimands and two (2) dismissals with warnings of attorneys. Brief descriptions of the proven misconduct found in those 6 public reprimands are presented below. As a result of hearings in two (2) other matters, Bar Counsel was directed to file further *de novo* proceedings before the Maine Supreme Judicial Court (Court), which means the panels found probable cause for issuance of the more serious disciplinary sanctions of either suspension or disbarment of the respective attorneys. Copies of all public disciplinary decisions issued after hearing are available to the public at the Board's office at 97 Winthrop Street, Augusta. Commencing in January 2000 onward, all such decisions are available at the Board's web site www.mebaroverseers.org.

a. Reprimands

1. On January 19, 2000 Panel A of the Grievance Commission reprimanded an attorney because he violated Maine Bar Rules 3.6(a)(2)(3), by not timely and properly handling a collection matter for a debtor client. Board of Overseers of the Bar v. Frank B. Walker, Esq., GCF# 99-42 (January 19, 2000).

2. By stipulation and agreement of the parties, a panel of the Grievance Commission found that an attorney engaged in a conflict of interest by preparing a deed reserving fee simple title to a right of way owned by a former client. The client had previously attempted to purchase the subject property and the attorney had represented him in that attempt. The attorney failed to disclose to the client that his law firm

represented the eventual purchaser of the property in other matters. The panel reprimanded the attorney for his violations of Maine Bar Rules 3.1(a) (Conduct Unworthy of an Attorney); 3.4(a), (b) and (c) (Disclosure of and Engaging in Conflicts of Interest). Board of Overseers of the Bar v. Charles R. Oestreicher, Esq., GCF# 96-K-181 (May 25, 2000).

3. In a matter where prior to hearing Bar Counsel and the Respondent 's attorney agreed to a stipulation of the facts, the panel approved their proposed sanction and reprimanded the attorney for making inappropriate personal comments to his client while representing her on a domestic matter and while attempting to explain to her that her relationship with her current domestic partner was a detriment to her legal goals. After a court hearing, he had also made similar remarks that he should have perceived would be interpreted in a disturbing manner by the client given her vulnerable domestic situation. All of the above conduct violated Maine Bar Rules 3.1(a) (Conduct Unworthy of an Attorney) 3.2(f)(4) (Conduct Prejudicial to the Administration of Justice). Board of Overseers of the Bar v. Thomas J. Pelletier, Esq. GCF# 99-26 (July 27, 2000).

4. Panel E of the Grievance Commission reprimanded an attorney for violating Maine Bar Rule 3.6(a) (applying the lawyer's best judgment in the performance of professional services), by failing to promptly pay a client's former attorneys their fees and costs to which the client had already consented. Board of Overseers of the Bar v. Mark S. Kierstead, Esq., GCF# 99-37 (July 28, 2000).

5. After a confidential factual hearing, Panel D of the Grievance Commission reprimanded an attorney for violating Maine Bar Rules 3.1(a) (Conduct Unworthy of an

Attorney) and 3.2(f)(3) (Conduct involving dishonesty, fraud, deceit, or misrepresentation) by not timely disclosing to his law firm legal fees he paid himself for work he performed as conservator and guardian of the estates of various veterans. Board of Overseers of the Bar v. Robert H. Avaunt, Esq., GCF# 98-141 (August 22, 2000).

6. In another matter where prior to hearing Bar Counsel and the Respondent's attorney agreed to a stipulation of the facts, the Panel also approved the proposed sanction and reprimand. The attorney undertook to represent a client in a bankruptcy matter for which the client paid a \$600 retainer to initiate the process. The attorney stated it would take approximately four to five months to finalize the matter. A year went by with no communication from the attorney to the client, and his creditors continued to contact him directly. Eventually a creditor notified the client to appear for a disclosure hearing. The attorney said he would appear in court on his behalf, but failed to and an arrest warrant was issued against the client. Although the attorney then had the client sign papers for a bankruptcy filing, he never filed the papers. The Panel found that the attorney was neglectful and did not act with reasonable diligence in representing his client. Board of Overseers of the Bar v. John P. Frankenfield, Esq., GCF# 99-135 (September 22, 2000).

b. OTHER GRIEVANCE COMMISSION DISPOSITIONS

Certain other complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or proceedings before the Court. Two (2) matters were dismissed for lack of proof of any violation of the Code, and two (2) other cases resulted in dismissals with a warning for minor violations. See M. Bar R. 7.1(e)(3)(B).

The attached tables at pps. 24-33 provide the various statistics in categories such as the respective areas of law, characterization of misconduct, attorneys' age and county of practice concerning all the GCF matters received and docketed in 2000. In addition, the Appendix includes a table indicating the rules that the Court and Grievance Commission found had been violated in those matters in which some type of sanction was imposed after hearing (page 29). I have also now included a new demographic information sheet showing the number of attorneys in the firm, the attorneys' respective ages and years of practice for all cases resulting in a finding of a violation after hearing (page 30).

C. BAR COUNSEL FILES

As referenced above at page 4, 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 108 such filings in 2000, being a decrease (11.5%) from the number docketed in 1999 (122). As a result, by combination of those matters with all unrelated formal grievance complaints (GCF) discussed above, the number of written complaints about claimed attorney misconduct filed with Bar Counsel in 2000 totalled 299, a 4.5% increase from the total of such matters filed in 1999 (286).

If Bar Counsel's screening and review finds no allegation of misconduct subject to sanction under the Code being made in a complaint, Maine Bar Rule 7.1(c) requires Bar Counsel's unilateral dismissal of such matters - docketed as Bar Counsel Files. When that dismissal occurs, the complainant is always notified by Bar Counsel of the reason for the dismissal and of a right within the subsequent 14 days to request that the dismissal be reviewed. That review will be performed by a lay member of the Board or Grievance Commission. The involved attorney is always informed by Bar Counsel of the dismissal, any resulting request for review, and the reviewer's decision. Bar Counsel dismissed 111 Bar Counsel Files in 2000, with 22 complainants requesting review of those actions. Lay members decided and approved 21 of those requests in 2000, with one (1) review pending.

II. COURT MATTERS

A. DISBARMENT

An attorney undertook to pay disbursements from a female client's workers' compensation settlement. He failed to finally account to her about the amounts paid from the settlement. He then started a long-term consensual sexual relationship with that client during which the attorney undertook to search for fathers of two of the client's daughters. This undertaking occurred in such a circumstance and manner that the client reasonably believed he was doing the work as her attorney. Over a period of six or more years he misrepresented the status of this matter to her. He finally did find one father but, having come to the end of their personal relationship, he discarded the information. During that same time he referred the client to another attorney to handle her legal separation from her husband. In order to pay a retainer for the client, the attorney

commingled his personal funds in his trust account, a violation of Maine Bar Rule 3.6(e)(1), (2)(Preserving Identity of Funds and Property). The single justice (Saufley, J.) also found that by neglecting to account properly for his client's monies and failing to diligently search for the two fathers, he had violated M. Bar R. 3.6(a)(3) (neglecting a legal matter entrusted to the lawyer) and 3.6(e)(2)(iii) (maintaining complete records of all funds). By engaging in a sexual relationship with a client he violated M. Bar R. 3.2(f)(3),(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaging in conduct that is prejudicial to administration of justice), and 3.4(b)(1) (conflict of interest). The single justice found, in general, that the attorney had engaged in conduct unworthy of an attorney. Upon consideration of a number of aggravating factors, including his failure to perceive and comprehend the seriousness of his behavior, the attorney was disbarred. Board of Overseers of the Bar v. Thomas M. Mangan BAR-99-5, February 28, 2000 (Findings) and March 10, 2000 (Sanctions)¹.

¹ This matter was appealed and by decision dated January 16, 2001, the disbarment was affirmed by the Law Court. 2001 ME 7 (2001).

B. SUSPENSION

An attorney represented the Plaintiff in a personal injury matter before the U.S. District Court, District of Maine in Portland. Prior to trial Chief Judge D. Brock Hornby was informed that the attorney's current office manager had previously been involved in that case when she had been employed by the Court as a case manager. Chief Judge Hornby asked that counsel for the parties review the file to ensure there were no confidentiality issues concerning the *in camera* settlement papers that had earlier been filed by each party. From that review, it appeared from the file that a different Court employee had managed the case. As a result, at the commencement of the trial, Chief Judge Hornby confirmed on the record his understanding of the lack of any earlier case involvement of that office manager and asked both counsel if they wanted to add any additional or different information. The attorney responded "No, your honor", and made no further comment. In fact, the attorney's office manager had viewed the settlement papers while working for the Court, and the attorney knew that fact. Bar Counsel and the attorney agreed upon stipulated facts and violations of the Maine Bar Rules, specifically Rule 3.1(a) (Conduct Unworthy of an Attorney); Rule 3.2(f)(4) (Conduct Prejudicial to the Administration of Justice); Rule 3.7(b) (Improper Concealment of Information); and Rule 3.7(e)(1)(i) (Improper Adversarial Conduct). The Court (Clifford, J.) found this misconduct to be serious and imposed a 90-day suspension with all but 45 days suspended. Board of Overseers of the Bar v. William A. Fogel, Docket No. BAR-99-7, March 10, 2000.

C. REPRIMAND

The Board charged an attorney with violations of Maine Bar Rules 3.1(a); 3.2(f)(2-4); 3.3(a); 3.4(f)(2)(I); 3.6(a)(1), (2) and (3) and 3.7(b) and (e)(1)(I) in representing three separate clients. The Court found that with respect to her misstatements to the Bankruptcy Court regarding fee and other financial disclosures in a bankruptcy case, she had violated Maine Bar Rule 3.2(f)(4) and that her conduct was the product of negligence. With respect to faulty title work that she had done for another client, the Court found that she had violated Maine Bar Rule 3.6(a)(2), for not having done adequate preparation under the circumstances. The Court reprimanded the attorney for the above violations. Board of Overseers of the Bar v. Karen M. Burke, Esq. Docket No. BAR-99-6 (September 15, 2000).

D. RESIGNATION

An attorney petitioned for resignation and the Board recommended that he be allowed to resign. After the Court (Rudman, J.) found that he had tendered the appropriate affidavit pursuant to Maine Bar Rule 7.3(g), the attorney was allowed to resign, and his affidavit was ordered impounded pursuant to that Rule. Board of Overseers of the Bar v. Peter A. Anderson, Docket No. BAR-00-2 (May 23, 2000).

E. REINSTATEMENTS

1. Upon agreement of the parties, The Court (Saufley, J.) amended an order of reinstatement dated June 25, 1999 to extend the time for a mentoring arrangement until June 25, 2001. Board of Overseers of the Bar v. Jeffrey J. Fairbanks, Docket No. BAR 99-3 August 2, 2000.

2. Upon motion for reinstatement of an attorney who had been temporarily suspended for a disability on April 12, 1999, the Court (Clifford, J) after hearing granted the motion and vacated the temporary suspension subject to conditions including having the attorney's trust account monitored pursuant to a previous 1998 order of the Court. Board of Overseers of the Bar v. Richard B. Slosberg, Docket No. BAR-99-1, October 13, 2000.

3. Upon a former attorney's Petition for Reinstatement to the Maine Bar, Bar Counsel did not oppose such reinstatement. The Board, after meeting with the former attorney, his counsel and Bar Counsel, agreed and recommended that the Court grant the reinstatement. The Court (Dana, J.), having found that the attorney had performed the requirements of Maine Bar Rule 7.3(j), accepted that recommendation and ordered his reinstatement. Board of Overseers of the Bar v. Ronald G. Caron, Sr., Docket No. BAR-00-1, November 2, 2000.

III. FEE ARBITRATION COMMISSION

The Board received 206 requests for petitions for arbitration of fee disputes in 2000, 93 of which were returned and filed by year's end with the Secretary to the Fee Arbitration Commission, Ms. Jaye Malcolm Trimm (See Appendix at p.34). With 33 petitions already pending, another matter being re-opened for a re-hearing before a new panel (two of the previous panel's members' terms had expired), the total number of matters on file in 2000 was 127. Arbitration panels met 44 times to hear 60 petitions. With preliminary assistance and review by Assistant Bar Counsel Karen G. Kingsley and Commission Secretary Trimm, plus approval by Commission Chair John H. Rich III, Esq., 40 of those pending fee dispute matters were dismissed, settled or withdrawn by consent of the parties prior to any panel hearing. See M. Bar R. 9(e)(3). As a result, 100 fee disputes were heard or settled, leaving a pending docket of 27 matters.

The office of Bar Counsel screens all fee arbitration petitions that have been filed with the Secretary to determine if the allegations actually warrant the attention of that Commission or should also or instead 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 that initial screening. See M. Bar R. 9(e)(2). Even though both Commissions are otherwise subject to confidentiality restrictions during the investigative processes, pursuant to Board Regulation No. 8, the Fee Arbitration Commission and Grievance Commission may share respective investigative materials concerning related matters.

IV. PROFESSIONAL ETHICS COMMISSION

Requests for formal ethical advisory opinions significantly decreased in 2000, such that the eight attorney members of the Professional Ethics Commission met on five (5) occasions to discuss, draft and approve only three (3) formal advisory opinions on ethical questions presented. Opinion Nos. 172 – 174 were issued and are briefly summarized below. Unlike past years, in 2000 the Commission had no attorney requests for informal advisory opinion letters.

A. OPINION NO. 172 (March 7, 2000)

The Board and Bar Counsel requested the Commission consider vacating or amending Opinion #146 (December 9, 1994) because of the Law Court's discussion of the attorney-client privilege in *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196. The Commission concluded that an attorney engages in conduct prejudicial to the administration of justice in violation of Maine Bar Rule 3.2(f)(4) by failing to return an obviously privileged document inadvertently made available to the lawyer by opposing counsel. As a result, Opinion #146 was overruled and withdrawn by this new opinion.

B. OPINION NO. 173 (March 7, 2000)

Inquiry was made whether an attorney may accept a retainer from a client by credit card if the attorney's bank insists on placing the funds in the attorney's general business account rather than the attorney's IOLTA? The Commission concluded that the attorney first must determine whether the funds that are the subject of the credit card payment are potentially refundable (in which case they are client funds) or not. Having first answered that question, the options available to the attorney are clear. Despite a bank's insistence, client funds may not be placed in a general business account, but rather must go directly into either an IOLTA or other identifiable account.

Once client funds are placed in an IOLTA, any portion of those funds to which an attorney becomes entitled may then be transferred to the attorney's general business account.

C. OPINION NO. 174 (October 10, 2000)

Bar Counsel requested an opinion about ethical issues involving attorneys who accept clients referred to them through various commercial attorney referral websites. Commenting generally, the Commission observed that an attorney's participation in such on line services raises four (4) questions under the Maine Bar Rules. First, to what extent, if any, is an attorney accountable under Maine Bar Rule 3.9(a) for the accuracy of any public communications by a website? Second, to what extent, if any, does an attorney's participation implicate any of the requirements of Maine Bar Rule 3.9(d) applicable to paid advertising? Third, would an attorney violate Maine Bar Rule 3.9(f)(2) regarding paid referrals by accepting clients obtained through a website? Fourth, can an attorney, consistent with Maine Bar Rule 3.5(b), make an unqualified agreement with an on line referrer not to withdraw from representation of a client without the client's consent?

V. MISCELLANEOUS MATTERS

A. THE MAINE LAWYERS' FUND FOR CLIENT PROTECTION

The Lawyers' Fund for Client Protection was established by the Court effective on July 1, 1997. Pursuant to the Court's Rules governing that Fund, its Board of Trustees may only pay claims for dishonest conduct occurring after January 1, 1999. Although the Fund's Trustees control the investment of its collected assessments and the general operation of its responsibilities and duties, at the direction of the Court the Board has requested and collected \$20.00 annually for the past four years from all Maine attorneys and judges for deposit in the Fund's account.

A. AMENDMENTS TO THE MAINE BAR RULES

The study and possible proposal of amendments to the Code of Professional Responsibility (Maine Bar Rule 3) are generally the province of the Court's Advisory Committee on Professional Responsibility, not the Board of Overseers. The Board does prepare and propose amendments to the rest of the Maine Bar Rules 1-2, 4-12. At the request of the Board, the Court did amend the following procedural portions of the Maine Bar Rules in 2000.

1. **Maine Bar Rule 1(a)**: amended on December 14, 2000 to become effective on January 1, 2001, clarifying that an attorney admitted to practice in Maine is subject to the Maine Supreme Court's jurisdiction no matter where the conduct occurred. A new paragraph (b) was added providing for choice of law for the jurisdiction where the attorney's predominant practice is located.

2. **Maine Bar Rule 6(a)(1)**: amended effective December 14, 2000, exempting judicial law clerks from the registration requirements of the Bar Rules until after the end of the clerkship;

3. **Maine Bar Rule 11(a)**: amended effective August 24, 2000 to now impose two consecutive four-year term limits on the staggered terms of members of the Professional Ethics Commission.

4. **Maine Bar Rule 12 (Mandatory Continuing Legal Education)**: On May 26, 2000, after approving minor variations, a majority of the Board adopted the recommendation of the MCLE Commission and proposed Maine Bar Rule 12 (Continuing Legal Education) to the Court. An amended version of that proposed Rule was promulgated by the Court on December 14, 2000 to become effective on January 1, 2001.² The first date for attorneys to report the CLE courses taken or presented under this new rule is July 31, 2002 for calendar year 2001.

C. INFORMAL ADVISORY OPINIONS

The office of Bar Counsel continued to provide daily assistance to Maine attorneys through the rendering of informal advisory opinions, usually by the so-called “telephone ethics hotline”. Pursuant to Board Regulation No. 28, Bar Counsel may only provide an attorney with an assessment of either that inquiring attorney's or that attorney's firm's conduct under the Maine Bar Rules. See also Advisory Opinion No. 67. In 2000, attorneys in the office of Bar Counsel answered approximately 381 such

² On January 31st, 2001 the Board mailed a copy of Bar Rule 12 to all registered Maine attorneys to promote widespread knowledge and announcement of its provisions. The Board is in the process of defining policies and processes to administer this Rule.

telephonic "ethics hotline" inquiries. In addition, Bar Counsel provided eighteen (18) written informal advisory opinions in response to attorneys' requests.

D. TELEPHONIC SCREENING OF COMPLAINTS

2000 was the fourth full year of the Board's policy of having attorneys in the office of Bar Counsel, as time and resources allow, personally screen telephonic inquiries from potential complainants. Approximately 429 callers spoke to Bar Counsel or an Assistant Bar Counsel, a 8.33% increase from the number of callers in 1999 (396). From that group of 429 callers, 52 people actually followed up and filed written grievance complaints or fee arbitration petitions (or in some cases both). Therefore, roughly 12% of the people that called and spoke with a Board staff attorney actually later filed a written complaint. The percentage of returns in 1999 was 8.5%. Some callers did not have a complaint about an attorney, but rather were seeking legal advice. Bar Counsel certainly cannot and does not provide any legal advice. Staff attorneys also do not provide callers with any opinions as to the ethical conduct of a mentioned attorney.

This screening of calls continues to be helpful in deflecting at least some complaints or inquiries that do not relate at all to Grievance Commission or Bar Counsel 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. This screening project is encouraged by the Board and Bar Counsel and continues in 2001.

E. MAINE STATE BAR ASSOCIATION

I participated in two continuing legal education (CLE) seminars sponsored by the Maine State Bar Association (MSBA) at its summer meeting: *1. A Changing Market for Law Services: New Rules for a New Game*; and *2. MCLE – The Future of Continuing Legal Education*. In April of 2000, the Board also continued its annual practice of meeting with the MSBA's Board of Governors, where discussion included the expected likelihood that the Mandatory Continuing Legal Education Commission would recommend and the Board of Overseers would propose a mandatory continuing legal education (CLE) rule to the Supreme Judicial Court (see page 18). The two Boards agreed to continue to so meet each year.

F. SERVED AS PRESIDENT OF THE NATIONAL ORGANIZATION OF BAR COUNSEL

In August of 1999, I commenced a one-year term as the President of the National Organization of Bar Counsel (NOBC) and presided over the NOBC's Mid-year and Annual CLE and business meetings in Dallas (February) and New York City (July), respectively. In conjunction with the ABA's second portion of its July meeting in London, I also participated in a panel presentation in Cambridge, England comprised of members of NOBC and APRL (Association of Professional Responsibility Lawyers) dealing with issues concerning multidisciplinary practice (MDP). I also continued to serve as the NOBC's liaison to the ABA's Standing Committee on Professional Discipline.

G. ADDITIONAL MATTERS CONSIDERED BY THE BOARD

The Board also gave consideration or took action on the following matters at various points in 2000:

- Through the fine pursuits of Administrative Director Dan E. Crutchfield, the Board completed the upgrading of its computer systems and development of its website.
- The Board's Continuing Legal Education Committee, which along with the Court's liaison to the Board, Associate Justice Howard H. Dana, Jr., Bar Counsel, the Administrative Director and the CLE Coordinator, will implement and administer the mandatory CLE Rule, M. Bar R. 12 (see page 18).
- Commencing with January 1, 2000, all Grievance Commission Reprimand decisions – which are always issued as a result of a disciplinary hearing open to the public – are now available on the Board's web site (www.mebaroverseers.org).
- Effective May 30, 2000, the Board elected to terminate its Services Agreement with the Board of Bar Examiners. As a result, the Bar Examiners now has its own separate office and an Executive Director, June Zellers, Esq. In addition, by the Court's amendments to Maine Bar Admission Rule 9, the Bar Examiners may now select its own legal counsel to assist in the investigation and prosecution of moral character hearings.

- The Board amended its Regulation # 18 (Fees for Board Witnesses), to clarify that only witnesses called by Bar Counsel at disciplinary proceedings are to be reimbursed by the Board for an appearance fee and travel expenses.
- The Board created Regulation #53 (Submission of Electronic Evidence in Board, Grievance Commission and Fee Arbitration Commission Proceedings) stating that all electronic recordings, including any form of audio, video, telephonic or photographic tapes, disks or other forms of electronic reproduction which are not already otherwise available in written form, shall be inadmissible in all Board, Grievance Commission or Fee Arbitration Commission proceedings. However, at the discretion of the Panel Chair, after a review of a written transcription thereof, the Chair may admit as evidence the electronic recordings along with the transcription thereof.

CONCLUSION

My staff and I thank all of the many volunteer members of the Board and its Commissions for their time and hard work to facilitate the general policy and disciplinary, fee arbitration and ethical advisory processes of the Maine Bar Rules. I always encourage and invite suggestions for improvements or appropriate changes to the Board's operations by submission to the Board Chair, Administrative Director Dan Crutchfield or me for the Board's consideration. The Board also continues its practice of providing use of its conference room by Maine attorneys for depositions, court/attorney committee meetings, etc. Please telephone either Dan Crutchfield or Administrative Clerk Donna L. Dubois at 623-1121 or e-mail us at board@mebaroverseers.org to schedule use of the Board's conference room for that purpose.

Thank you.

Respectfully submitted,

DATED: June 13, 2001

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APPENDIX

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

MEMBERSHIP LISTS

January 1, 2000 to December 31, 2000

GRIEVANCE COMMISSION COMPLAINTS

I.	<u>Complaints Reviewed</u>	181
	<u>ACTION:</u>	
	Dismissal:	147
	Dismissal with warning to attorney:	24
	Disciplinary hearing authorized:	10
	Directly to Court - Rule 7.2(b)(7)	0
II.	<u>Dispositions After Public Hearing</u>	12 matters considered
	<u>ACTION:</u>	
	Dismissals:	2
	Dismissals with warning:	2
	Reprimands:	6
	Complaints authorized to be filed with the Court by information:	2
	Matters heard directly by Board Panels	2
III.	<u>Grievance Complaint Summary</u>	
A.	Complaints pending at start of period:	84
B.	New complaints docketed:	191
C.	Total complaints pending during period:	275
D.	Total complaints reviewed or heard:	195
E.	Complaints pending investigation, review or hearing:	80

COURT MATTERS – 2000

Disciplinary orders issued:

1. Disbarments		1
2. Suspensions		2
3. Resignations	1	
4. Reprimand		1
	Total	5

Total Disciplinary Matters Pending or to be Filed Before Court – 12/31/00

1. Law Court		1
2. Complaints concerning pending informations		9 (8 attorneys)
3. Informations authorized, but not yet filed		2
	TOTAL:	12

2000

GRIEVANCE COMPLAINTS FILED

CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
Trust violation	5	2.5
Conflict of interest	43	22.5
Neglect	83	43.5
Relationship w/client	3	1.5
Misrepresentation / fraud	32	17
Excessive fee	1	.5
Interference with justice	21	11
Improper advertising / solicitation	1	.5
Criminal conviction	0	0
Personal behavior	0	0
No cooperation w/Bar Counsel	0	0
Medical	0	0
Incompetence	1	.5
Jurisdiction	0	0
Conduct unworthy of an attorney	1	.5
Other	0	0
TOTAL	191	100

2000
GRIEVANCE COMPLAINTS

SIZE OF LAW OFFICE

	NUMBER	PERCENT OF TOTAL
Sole Practitioner	91	47.5
2	31	16
3-6	36	19
7-10	10	5.5
11 and over	21	11
Government / state /other	2	1
<u>TOTAL</u>	191	100

AREA OF LAW

	NUMBER	PERCENT OF TOTAL
Family	51	27
Juvenile	1	.5
Criminal	22	11.5
Traffic	1	.5
Probate/Wills	16	8
Guardianship	0	0
Commercial	1	.5
Collections	8	4
Landlord/Tenant	4	2
Real Property	21	11
Foreclosure	2	1
Corporate/Bank	11	6
Tort	16	8
Administrative Law	4	2
Taxation	1	.5
Patent	0	0
Immigration	0	0
Anti-Trust	0	0
Environmental	0	0
Contract/Consumer	1	.5
Labor	5	3
Workers' Comp	7	4
Other/None	8	4
Bankruptcy	7	4
Municipal	4	2
Elder Law	0	0
<u>TOTAL</u>	191	100

2000

GRIEVANCE COMPLAINTS

SOURCE OF COMPLAINT

	NUMBER	PERCENT OF TOTAL
Client	109	57
Other Party	54	28
Judge	5	2.5
Lawyer	13	7
Adverse Party	1	.5
Sua sponte	9	5
TOTAL	191	100

YEARS IN PRACTICE

	NUMBER	PERCENT OF TOTAL
40-61 years	1	.5
30-39 years	17	9
20-29 years	73	38
10-19 years	61	32
2-9 years	39	20.5
Less than 2 years	0	0
TOTAL	191	100

AGE OF ATTORNEY

	NUMBER	PERCENT OF TOTAL
24-29	0	0
30-39	25	13
40-49	63	33
50-59	80	42
60+	23	12
<u>TOTAL</u>	191	100

**2000
GRIEVANCE COMPLAINTS FILED**

COUNTY	NUMBER	PERCENT OF TOTAL
Androscoggin	10	5
Aroostook	11	6
Cumberland	51	27
Franklin	1	.5
Hancock	8	4
Kennebec	23	12
Knox	5	2.5
Lincoln	2	1
Oxford	9	4.5
Penobscot	30	16
Piscataquis	0	0
Sagadahoc	3	1.5
Somerset	10	5
Waldo	2	1
Washington	1	.5
York	22	12
Out of State	3	1.5
TOTAL	191	100

2000 SUMMARY OF SANCTIONS ISSUED AFTER HEARING

Bar Rules Found to Have Been Violated

(Certain decisions cited multiple rule violations)

Grievance Commission Reprimands - 6

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	4
3.2(f)(3)	Misrepresentation / deceit	1
3.2(f)(4)	Conduct prejudicial to the administration of justice	1
3.4(a),(b),(c),(d)	Conflict of interest	1
3.6(a)(3)	Neglect of client matter	3
	TOTAL	10

Grievance Commission Dismissal w/warnings - 2

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	2
3.3(a)	Charging and collecting excessive fee	1
3.5(b)(2)(ii)	Mandatory withdrawal	1
3.6(a)	Standards of care and judgment	1
	TOTAL	5

Court Suspensions / Reprimands / Disbarments - 3

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	2
3.2(f)(2)	Trustworthiness / fitness as an attorney	1
3.2(f)(3)	Misrepresentation / deceit	1
3.2(f)(4)	Prejudicial to the administration of justice	3
3.6(a)(2)	Handling a legal matter without adequate preparation	1
3.6(e)(2)(iv)	Failure to return property	1
3.7(b)	Improper concealment of information	1
3.7(e)(1)(i)	Improper adversarial conduct	2
	TOTAL	12

DEMOGRAPHICS FOR:

DISCIPLINARY COURT ORDERS ISSUED - 2000

	<u>Age of Attorney</u>	<u>Years in Practice</u>	<u>Size of Law Firm</u>
DISBARMENT: (1)	47	16	1
SUSPENSIONS: (2)	42 52	18 27	1 2
RESIGNATION: (1)	60	35	2
REPRIMAND (1)	54	13	1
AVERAGE	51	22	1

GRIEVANCE COMMISSION

	<u>Age of Attorney</u>	<u>Years in Practice</u>	<u>Size of Law Firm</u>
DISMISSALS WITH a WARNING: (2)	58 55	32 11	1 3
<u>REPRIMANDS: (6)</u>	65 53 44 55 52 31	38 38 18 27 23 3	1 Over 50 3 1 1 1
AVERAGE	52	24	8

2000 BAR COUNSEL FILES

AREA OF LAW	NUMBER	PERCENT OF TOTAL
FAMILY	30	27.8
JUVENILE	0	0
CRIMINAL	23	21.0
TRAFFIC	4	3.7
PROBATE WILLS	7	6.5
GUARDIANS	1	.9
COMMERICAL	0	0
COLLECTIONS	8	7.4
LANDLORD/TENANT	4	3.7
REAL ESTATE	12	11.1
FORECLOSURE	0	0
CORPORATE / BANKING	0	0
TORTS	2	1.9
ADMINISTRATIVE LAW	2	1.9
TAXATION	0	0
PATENTS / COPYRIGHT	0	0
IMMIGRATION	0	0
ANTITRUST	0	0
ENVIRONMENTAL	2	1.9
CONTRACT / CONSUMER	1	.9
LABOR LAW	2	1.9
WORKERS COMPENSATION	0	0
OTHER	6	5.6
BANKRUPTCY	2	1.9
MUNICIPAL LAW	2	1.9
ELDER LAW	0	0
TOTALS	108	100%

2000 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
Conspiracy	8	7.4
Disagreement over conduct of case	38	35.2
Habeas Corpus	7	6.5
Inquiry Only	6	5.6
Insufficient information	11	10.2
Lack of professionalism	12	11.0
Malpractice	1	.9
Personal life	2	1.9
Request for legal assistance	21	19.4
Interference with justice	0	0
Other	2	1.9
TOTAL BAR COUNSEL FILES DOCKETED	108	100%

Bar Counsel Files pending at start of period	5
New Bar Counsel Files Received	<u>108</u>
Total Bar Counsel Files on Docket	113
Bar Counsel Files Finally Dismissed	111
Bar Counsel Files pending at end of period	2
Dismissals appealed (Request for review filed)	22
Action on review of those appeals:	
Dismissals affirmed by lay member	21
Dismissals vacated by lay member (re-docketed as Grievance Commission File)	0
Reviews open as of 12/31/00	1

FEE ARBITRATION COMMISSION

Petition Summary
January 1, 2000 – December 31, 2000

PETITIONS:

Pending at start of period:	33
Docketed during period:	94*
Total open petitions during period:	127
Dismissed, settled, withdrawn:	40
Heard and closed by awards:	58
Heard and awaiting awards:	2
Total petitions closed during period:	100
Total petitions pending at close of period:	27

*Represents one matter re-opened and processed.

BREAKDOWN OF HEARING DATES BY PANEL:
(County/Counties)

Panel IA: (York)	4
Panel IB: (Cumberland)	11
Panel II: (Androscoggin, Franklin, Lincoln, Oxford & Sagadahoc)	10
Panel III: (Kennebec, Knox, Somerset & Waldo)	10
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis & Washington)	9
<hr/>	
TOTAL HEARING DATES:	44

Comparison of new Petitions docketed:

1998 - 88
1999 - 95
2000 - 94

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