

# MAINE STATE LEGISLATURE

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# **2004 Annual Report**



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# Introduction



J. Scott Davis

The Board of Overseers of the Bar consists of six attorneys appointed by the Maine Supreme Judicial Court (the Court) and three lay persons appointed by the Court on the recommendation of the Governor. It performs its duties and responsibilities under the Maine Bar Rules through its staff of three attorneys and six support staff.

To fulfill its mission, the Board appoints members of the bar and lay persons to three commissions: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission (23 members) and the Grievance Commission (25 members) conduct their functions under the direction of the Maine Bar Rules by three-member panels. Grievance panels are comprised of two attorneys and one lay member. Similarly, fee panels are comprised of three members, however, fee panels may be comprised of two attorneys and one lay member or two lay members and one attorney. The Professional Ethics Commission has eight attorney members.

Information describing the responsibilities and functions of the Board and each of its commissions is contained in informational pamphlets available at the Board's office. You may also access this information on the Board's web site at [www.mebaroverseers.org](http://www.mebaroverseers.org). Rosters for the Board and each of its commissions are included at the end of this report.

J. Scott Davis  
Bar Counsel



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## Bar Counsel Files

Bar Counsel Files (BCF) are those complaints that upon initial review by Bar Counsel or an Assistant Bar Counsel are deemed to not allege any professional misconduct subject to sanction under the Maine Bar Rules. A total of 164 complaint matters received in 2004 were docketed as BCF matters. The number of BCF complaint filings in 2004 was virtually the same as 2003 (169). Maine Bar Rule 7.1(c) requires Bar Counsel's unilateral dismissal of such matters, either with or without investigation, i.e. requesting clarification from the named attorney.

When a BCF matter is dismissed by Bar Counsel, the complainant is always notified in writing by Bar Counsel of the reason(s) for that dismissal and of a right within the subsequent 14 days to file a written request for that dismissal to be reviewed. Such reviews are performed by a lay member of either the Board or the Grievance Commission. In such dismissal matters, Bar Counsel always provides the involved attorney with copies of the complaint filing, the dismissal letter, any resulting request for review, and the reviewer's decision. Bar Counsel dismissed 168 Bar Counsel Files in 2004, with 35 complainants requesting review of those actions. Lay members decided and affirmed 31 of these dismissals and vacated two dismissals. Those matters were then redocketed as Grievance Commission Files. As of December 31, 2005, two reviews remained pending (see chart on below).

### Total Complaints Filed

Those 164 "lower level" BCF complaint matters and the unrelated 164 formal grievance complaints (GCF) discussed below resulted in a total of 328 written complaints regarding alleged attorney misconduct. All the complaints were filed with and

### 2004 Bar Counsel File Summary

Bar Counsel Files Pending at Start of Period ..	6
New Bar Counsel Files Received .....	164
Total Bar Counsel Files on Docket.....	170
Bar Counsel Files Finally Dismissed.....	168
Bar Counsel Files Pending Investigation .....	2
Dismissals Appealed .....	35
<i>(Requests for Review Filed)</i>	
Dismissals Affirmed by Lay Member..	31
Dismissals Vacated by Lay Member.....	2
Reviews Pending Decision as of 12/31/04.....	2

docketed by Bar Counsel in 2004, resulting in a 4% increase from the total filed in 2003 (315).



# Grievance Commission

## Complaints

In 2004 the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF) 164 written grievance complaints. Those complaints, as screened by an attorney in the office of Bar Counsel, were initially deemed to allege at least some form of a prima facie claim of professional misconduct by a Maine attorney in violation of the Code of Professional Responsibility (Code). Accordingly, there was an 11% increase from the number filed and docketed in 2003 (146).

## Panel Meetings and Hearings

Case Reviews — Panels of the Grievance Commission met on thirty occasions to conduct preliminary reviews of 138 GCF complaints under M. Bar R. 7.1(d). Panel meetings consist of a panel consulting with Bar Counsel or Assistant Bar Counsel to review the contents of GCF investigative files. Such reviews are not hearings, and neither the respective complainants nor the respondent attorneys are ever present or involved at the reviews, which usually occur by telephonic conference calls.

Although there is no confidentiality requirement applicable to complainants or respondent attorneys, Bar Counsel's investigation and the Grievance Commission's preliminary review process are generally kept confidential by the Board, the Commission and the Board's staff under M. Bar R. 7.3(k)(1). However, any Grievance Commission panel disciplinary hearing is always open to the public and the panel's resulting decision (report) concerning such

complaints – regardless of the result – is also always made available to the public upon request. In addition, upon becoming final decisions, i.e., no appeal being filed, reprimands are then placed on the Board's web site (See M. Bar R. 7.1(e)(2)(B)).

Upon completion of Bar Counsel's investigations and after review by panels of the Grievance Commission, 111 of the 138 GCF complaints were closed by issuance of either a dismissal (84) (no finding of any attorney misconduct) or a dismissal with a warning (27) (minor misconduct). See M. Bar R. 7.1(d)(3),(4). In the remaining 27 matters reviewed, panels found probable cause that professional misconduct appeared to have occurred warranting some disciplinary sanction. Twenty-five of those complaints resulted in

## Complaints Reviewed

Action	
Dismissal .....	84
Dismissal with Warning.....	27
Disciplinary Hearing Authorized .....	25
Directly to Court - Rule 7.2(b)(7) .....	2
Total Complaints Reviewed: .....	138

disciplinary petitions filed by Bar Counsel for formal disciplinary hearings open to the public before a new panel of the Commission under M. Bar R. 7.1(e). The remaining two matters were filed directly with the Court due to the fact that the attorneys involved already had disciplinary matters pending in that forum. See M. Bar R. 7.2(b)(7).





## Disciplinary Proceedings

Grievance Commission panels conducted 14 public disciplinary hearings involving 23 different complaints. As a result, seven reprimands were issued, five of which occurred upon the panel's approval and adoption of the parties' proposed stipulated reprimand orders. Two dismissals with a warning were also issued. In 12 other matters, Bar Counsel was directed to file further de novo proceedings before a single justice of the Court seeking suspension or disbarment of the involved attorneys. Lastly, one matter heard was ordered dismissed due to a finding that no attorney misconduct had been proven.

## Reprimands

1. Panel C of the Grievance Commission reprimanded a lawyer who violated M. Bar R. 3.2(f)(3),(4) in a personal injury case because the lawyer had improperly obtained a release from the adverse party's insurance carrier by falsely representing that he would provide the carrier with a bank check, money order or other proper settlement check drawn on his office's escrow account. The lawyer also violated M. Bar R. 2(c) by not responding to Bar Counsel's initial inquiry about the matter. *Board of Overseers of the Bar v. Charles R. Bean, Esq.*, GCF# 03-233 (May 10, 2004).

2. After a contested hearing, Panel D of the Grievance Commission reprimanded a lawyer who violated M. Bar R. 3.2(f)(4) and 3.6(a)(3) by neglecting a probate matter for a client who had wished to negotiate a settlement with her adult stepchildren rather than contest the will of her deceased husband. *Board of Overseers of the Bar v. Stephen T. Hayes, Esq.*, GCF# 03-305 (July 23, 2004).

3. After a contested hearing, Panel E of the Grievance Commission reprimanded an attorney who violated M. Bar R. 3.2(f)(4), 3.6(a) and 3.7(a). The attorney had personally visited the location of a boundary dispute between his client

## Dispositions after Public Hearing

### 14 Hearings Involving 23 Complaints

Dismissals .....	1
Dismissals with Warning .....	2
Reprimands* .....	8
Complaints Authorized to be Filed with the Court by Information .....	12

*\*One reprimand was later vacated by the Court.*

and her neighbor, the latter of whom had engaged a landscape contractor to construct a low retaining wall. The attorney then threatened the workers with criminal trespass and assured them that he would personally "destroy with my bare hands" any work they did. He then followed that promise by pulling out both grade stakes and the line they had installed. Police officers were called to the scene, quieted the situation and then left, as did the attorney. However, the attorney then reappeared and immediately confronted the work crew in a violent demeanor "saturated with obscenities". *Board of Overseers of the Bar v. Neal L.*

## Grievance Commission Complaint Summary

Complaints at Start of Period.....	43
New Complaints Docketed .....	164
Total Complaints Pending During Period .....	207
Total Complaints Finally Closed by Review or Hearing .....	149
Complaints Pending Investigation, Review or Hearing as of December 31, 2004.....	58

*Weinstein, Esq.*, GCF# 03-252 (July 30, 2004).



4. Panel B of the Grievance Commission reprimanded an attorney who failed to protect his clients from numerous acts of deceit and misrepresentation by his former non-lawyer assistant. That assistant intercepted client, court, opposing counsel and other significant communications directed to the attorney. The attorney had improperly isolated himself from managing his calendars and case materials. Clients were harmed because the attorney made no independent inquiries and relied excessively upon his legal assistant. This attorney had previously received a reprimand for similar misconduct in connection with other client cases during the same time period. Panel B found violations of M. Bar R. 3.6(a), 3.6(a)(3) and 3.13(c). *Board of Overseers of the Bar v. James J. MacAdam, Esq.*, GCF #03-320 (November 18, 2004).

5. Panel A of the Grievance Commission reprimanded an attorney who neglected the sexual harassment claims of two clients, possibly allowing the applicable statute of limitations to expire, thereby violating M. Bar R. 3.6(a). The attorney had also misrepresented his neglect of the cases to his clients. *Board of Overseers of the Bar v. Allan W. Hanson, Esq.*, GCF# 04-161 (December 7, 2004).

6. Panel E of the Grievance Commission reprimanded a lawyer who violated M. Bar R. 3.6(a)(3) by failing to serve the adverse party with a post-divorce judgment motion for modification of child support after having filed the motion with the court. Additionally, the lawyer did not turn over the client's file to successor counsel, thereby again violating M. Bar R. 3.6(a) as well as 3.6(e)(2)(iv). *Board of Overseers of the Bar v. Vanessa A. Bartlett, Esq.*, GCF# 04-079 (December 10, 2004).

7. Panel D of the Grievance Commission reprimanded an attorney after that attorney plead guilty to two counts of Class D Reckless Conduct and completed conditions of probation requiring counseling and a batterers' intervention education program. The attorney's wrongful behavior involved a domestic incident and although it did not directly impact a client or involve the practice of law *per se*, the conduct was damaging to the public perception of the profession and violated duties the attorney owed to the legal system and the profession. *Board of Overseers of the Bar v. David A. Soley, Esq.*, GCF #02-198. (December 20, 2004).

## Court Matters

### Disbarments

1. Justice Rudman disbarred Charles G. Williams III for violating a multitude of Bar Rules. The evidence presented by the Board's many witnesses established a pattern of client neglect, excessive fees, incompetency, unauthorized disclosure of confidential information, failure to comply with orders of the Fee Arbitration Commission or to inquiries from Bar Counsel. *Board of Overseers of the Bar v. Charles G. Williams, III*, Docket No. BAR 02-5 (April 7, 2004). (Note: *Williams immediately filed an appeal with the Law Court. That appeal remained pending at the end of calendar year 2004, but Williams' disbarment remained in effect throughout.*

2. Justice Dana disbarred John P. Frankenfield for violating M. Bar R. 3.2(f)(2)(3)(4) and 3.6(a), (e)(1)(2)(3) by converting funds from his grandfather's probate estate and failing to keep adequate records concerning the disposition of those estate funds. He also converted funds in an unrelated real estate transaction. *Board of Overseers of the Bar v. John P. Frankenfield*, Docket No. BAR 04-1 (September 2, 2004).

### Suspensions

1. Justice Clifford suspended Philip L. Ingeneri for six months, of which three months was suspended upon the condition that Ingeneri comply with a monitoring program for the period of





one year. Ingeneri was found to have violated M. Bar R. 3.2(f)(3),(4) and 3.6(a)(2) by mishandling and neglecting his client's collection action, failing to provide timely discovery, allowing a default judgment to be entered against the client in the amount of approximately \$50,000, and then not informing his client about that default judgment. Ingeneri then declared Bankruptcy, apparently to avoid having to pay the client's malpractice claim against him. He also failed to timely respond to Bar Counsel's inquiries in violation of M. Bar R. 2(c). *Board of Overseers of the Bar v. Philip L. Ingeneri*, Docket No. BAR 03-06 (May 18, 2004).

2. Justice Calkins imposed reciprocal discipline on a Hawaiian attorney by suspending him for a year and a day pursuant to Maine Bar Rule 7.3(h)(3). *Board of Overseers of the Bar v. Lunsford Dole Phillips*, Docket No. BAR 04-06 (July 27, 2004).

3. Justice Levy approved counsel's proposed stipulated recommendation and suspended Laurie Ann Miller for six months, of which four months was suspended upon the condition that Miller comply with a monitoring program for the period of one year. Miller had violated M. Bar R. 3.2(f)(3),(4) and 3.6(a)(1-3) by allowing the court to dismiss her client's personal injury case due to Miller's failure to respond to the court's demand to show cause why the matter should not be dismissed under M.R. Civ. P. 41(b), which resulted in the court's dismissal of the action. Miller then flagrantly misrepresented that dismissal status to her client for well after a year from the date of the dismissal. *Board of Overseers of the Bar v. Laurie Ann Miller*, Docket No. BAR 03-08 (August 23, 2004).

4. Justice Calkins approved counsel's proposed stipulated recommendation and suspended William S. Wilson, Jr. for a period of two years. All but three and half months of that suspension

was suspended upon the condition that he comply with a monitoring program. This sanction was imposed because of Wilson's violation of M. Bar R. 3.2(f)(1),(4) and 3.6(a)(3). Wilson's misconduct involved having allowed a client's workers' compensation benefits

## 2004 Supreme Court Disciplinary Docket

Disbarments .....	2
Suspensions .....	5
Resignations .....	0
Reprimands .....	0
Reinstatements .....	2
Miscellaneous (e.g. storage of files) .....	2
Dismissals (issued based upon respondent's appeal of Reprimand) .....	1

to be terminated and by failing to follow through on another client's wrongful employment termination matter. He also failed to respond to Bar Counsel's inquiries in violation of M. Bar R. 2(c). *Board of Overseers of the Bar v. William S. Wilson, Jr.*, Docket No. BAR 03-07 (September 15, 2004).

5. After a contested hearing, upon the Board's oral motion, Justice Clifford immediately suspended Richard B. Slosberg from the practice of law. *Board of Overseers of the Bar v. Richard B. Slosberg*, Docket No. BAR 04-07 (November 23, 2004). (Note: After review of counsel's written arguments submitted in December 2004, in February 2005, the Court issued its detailed order of disbarment.)

## Reinstatements

1. Justice Alexander reinstated an attorney who had filed under inactive status in 1995 pursuant to M. Bar R. 6(c)(1). In reinstating the attorney, the Court waived all reinstatement fees recognizing the attorney intended to voluntarily



provide pro bono legal services to Legal Services for the Elderly. *In the matter of Petition for Reinstatement of Donald A. Spear*, Docket No. BAR 04-02 (May 24, 2004). (Note: As a direct result of this reinstatement, effective February 1, 2005, the Court amended M. Bar R. 6(d), 10(a) and 12(a)(1), to permit lawyers who have discontinued the practice of law to provide legal services as a volunteer under the supervision of various approved legal service providers.)

2. Justice Levy reinstated Patricia A. Danisinka-Washburn based upon her having previously satisfied certain court-ordered terms and conditions, including submission of her practice to supervision by a monitor who had filed confidential reports with the Court concerning the attorney's practice. *Board of Overseers of the Bar v. Patricia A. Danisinka-Washburn, Esq.*, Docket No. BAR 03-04 (August 9, 2004).

#### Other Court Matters

1. Chief Justice Saufley ordered that the files of clients or former clients of Richard G. Cervizzi be turned over to the Board of Overseers of the Bar so that Bar Counsel could inform the affected clients of the location of their files and thereby arrange for them to take possession of the files. *Board of Overseers of the Bar v. Richard G. Cervizzi*, Docket No. BAR 04-04 (April 28, 2004).

2. Justice Rudman vacated a Grievance Commission Panel's reprimand that was imposed due to an attorney's failure, acting solely as a conservator,

to seek a reduction of his ward's mortgage payment obligations to his former spouse in accordance with their divorce decree. Justice Rudman found that because the attorney was acting only as a conservator in accordance with 18-A M.R.S.A. Section 5-425(a)(2), he was not required to seek modification of his ward's mortgage or to amend his divorce judgment. *Board of Overseers of the Bar v. William J. Smith, Esq.*, Docket No. BAR 04-08 (August 5, 2004).

3. Justice Alexander authorized District Court Judge Jane S. Bradley to appoint an attorney or attorneys to inventory the professional files of Carolee T. Howes, Esq., and to take such other further action as necessary to protect the interests of the deceased attorney and of her clients. The deceased attorney was a solo practitioner who had no partner, associate or other person capable of conducting her professional affairs and protecting the interests of her clients. *In Re: Carolee T. Howes, Esq.*, Docket No. BAR 04-09 (August 17, 2004).

4. The United States First Circuit Court of Appeals affirmed U.S. District Judge D. Brock Hornby's dismissal of a civil action brought by a disbarred attorney against Bar Counsel J. Scott Davis, Esq., and former Assistant Bar Counsel, Karen G. Kingsley, Esq. The Court based its decision upon application of the so-called Rooker-Feldman doctrine. *Thomas M. Mangan v. J. Scott Davis, Esq., et al.*, Civil Action No. 103-1839 (December 30, 2004).

### Total Disciplinary Matters Pending or to be Filed before the Court as of December 31, 2004

Grievance Complaints Concerning Pending Informations.....	19*
Informations Authorized but not yet Filed.....	0

\*Involving a total of seven attorneys.





## Fee Arbitration Commission

In 2004, 67 new Petitions for Arbitration of Fee Disputes were filed with the Secretary to the Fee Arbitration Commission, Jaye Malcolm Trimm. With 22 petitions already pending and two additional matters re-opened for hearing after earlier dismissals had been vacated by the

representing a 23% decrease compared to calendar year 2003.

The office of Bar Counsel screens all fee arbitration petitions as filed to determine if the stated allegations actually warrant the attention of that Commission or should also (or instead) be processed by the Grievance Commission. Bar Counsel may sometimes attempt to promote and assist in the parties' informal resolution of fee disputes prior to hearing by a panel but is not usually involved in the fee arbitration process after performing that initial screening process. See M. Bar R. 9(e)(2). Although both commissions are otherwise subject to confidentiality restrictions during their respective investigative processes, pursuant to Board Regulation No. 8, the Fee Arbitration Commission and the Grievance Commission may and usually do share respective investigative materials concerning related matters simultaneously pending before each body.

### Petition Summary January 1, 2004 - December 31, 2004

Pending at Start of Period.....	22
Docketed During Period* .....	69
Total Open Petitions .....	91
Dismissed, Settled, Withdrawn.....	42
Heard and Closed by Awards.....	32
Heard and Awaiting Award.....	0
Total Petitions Closed During Period .....	74
Total Petitions Pending Hearing at Close of Period .....	17

\*Includes two matters re-opened after earlier dismissal.

Commission Chair, a total of 91 matters were on file, a negligible increase from the previous year (90). With preliminary screening by Bar Counsel, Commission Secretary Trimm and with final approval by Commission Chair Bruce C. Mallonee, Esq., 42 of those pending fee dispute matters were dismissed, settled or withdrawn by consent of the parties without any hearing by panels of the Commission (See M. Bar R. 9(e)(3)). Panels heard 32 fee disputes. As a result, 74 fee disputes were closed, leaving a pending docket of 17 matters at the end of 2004 (see above table)

### Fee Arbitration Commission Breakdown of Hearing Dates

Panel IA.....	2
York County	
Panel IB.....	6
Cumberland County	
Panel II.....	4
Androscoggin, Franklin, Lincoln, Oxford & Sagadahoc Counties	
Panel III.....	6
Panel IV.....	5
Total Hearing Dates:	23

### Comparison of New Cases Docketed

2002 - 80    2003 - 70    2004 - 67





# Professional Ethics Commission

The eight attorney members of the Professional Ethics Commission and Assistant Bar Counsel Nora Sosnoff met monthly in 2004. The Commission issued five (5) formal, written advisory opinions on ethical questions presented, numbered as Opinions 183, 184, 185, 186 and 187. These opinions are briefly summarized below. The Commission also responded by informal letters to inquiries from attorneys and county bar associations concerning a variety of ethical queries.

## **Opinion No. 183 - January 28, 2004**

In this opinion, the Commission answered an inquiry about electronically preserved documents. Specifically, the opinion addresses whether paper copies of an attorney's correspondence must be maintained in a tangible client file or if an attorney may instead retain copies of the correspondence in an electronic format. The Commission answered, with certain qualifications, that electronic storage of client information is sufficient to meet an attorney's responsibilities under the Code. The qualifications noted by the Commission focus on the duties to keep the client informed and maintain client files in ways that are accessible and comprehensible to the client. The Commission highlighted the need for attorneys utilizing electronic archives to recognize the inevitability of advances in technology that may affect future access to electronically preserved documents. In all cases, the method of retention must allow for meaningful future access by the client and the attorney.

## **Opinion No. 184 - March 30, 2004**

The Commission answered an inquiry about whether it would violate the Code for an attorney to receive compensation from an independent investment advisory firm in exchange

for the attorney's referral of clients to the investment advisor. The compensation envisioned would be a portion of the financial advisor's management fee and, as such, would be contingent on the value and growth of the portfolio entrusted to the financial advisor. The proposed arrangement envisioned a full written disclosure of the agreement to the client at the time of the referral. The Commission answered that this sort of arrangement would violate the Code in two ways.

First, the Commission found that the proposed arrangement amounted to the attorney acquiring a pecuniary interest adverse to the client that was neither fair nor reasonable to the client. See M. Bar R. 3.4(f)(2)(i). The Commission concluded that the "singular purpose and design of [the] arrangement [would be] to influence the lawyer to make recommendations to the lawyer's client for the benefit of an investment advisor who [would be] paying the lawyer to do so..."

Second, the Commission found that the proposed arrangement would constitute an agreement to charge an excessive fee to a client in violation of Maine Bar Rule 3.3(a). The Commission viewed the proposed arrangement as providing "potentially significant compensation" to the attorney despite virtually no expenditure of time, effort, skill or judgment on the part of the attorney.

## **Opinion No. 185 - April 1, 2004**

In this opinion, the Commission answered an inquiry about a business model envisioned by an attorney who would provide a service to other attorneys by scanning materials in law office files to a space-saving electronic format. The first question presented to the Commission asked whether the original files could be destroyed once the contents had been duplicated electronically and the intrinsically valuable documents had



been identified and preserved. The Commission answered the first inquiry in the affirmative with certain qualifications.

The second question presented to the Commission sought clarification of the roles non-attorneys could perform in regard to the scanning of the documents and the review and certification of the electronic documents as true records of the originals. The Commission answered that in this scenario, as in other circumstances constituting “law related services” under M. Bar R. 3.2(h)(2), the attorney’s work is subject to the Code. Therefore the supervising attorney has all the usual duties with respect to non-attorney assistants under M. Bar R. 3.13(c), and all other Bar Rules that would necessarily be implicated, such as 3.6(h) (Confidentiality); and 3.4 (Conflicts of Interest). The Commission also noted that a client’s attorney is ultimately responsible for the proper and ethical storage of clients’ files regardless of whether the proprietor of the storage company was an attorney.

#### **Opinion No. 186 - July 22, 2004**

The Commission answered an inquiry from Bar Counsel about whether non-attorney assistants employed by law offices could ever be “screened” to prevent generating a conflict of interest for the employing attorney or the law firm. The Commission answered that such screening was generally permissible. The Commission concluded that the imputed disqualification rules contained in M. Bar R. 3.4(b)(3)(i) and 3.4(d)(1)(ii) were intended only to apply to attorneys and that the later introduction of M. Bar R. 3.13(c) concerning non-attorney assistants was not intended to extend the scope of imputed disqualification. The Commission further explained that effective “screening” means shielding the non-attorney staff person from any personal participation in the matter and

taking additional steps to avoid any violation by that person of an attorney’s obligations under the Code of Professional Responsibility.” The Commission explained that the screened assistant should be instructed to avoid all discussion about facts known to the assistant concerning the legal matter and to avoid inadvertent disclosure of the former employer’s related work product and client confidences.

#### **Opinion No. 187 - November 5, 2004**

This opinion contains valuable interpretative guidance for Maine attorneys in almost all types of practices, with the Commission answering an inquiry on the scope of an attorney’s obligation to provide a client with the contents of the client’s file. The Commission established functional classifications to distinguish between the various types of documents and property that might be contained in a client file; documents or property that are clearly client property by virtue of their origins with the client; documents that are the final product of representation and prepared specifically for the benefit of the client; documents generated in the course of representation that could foreseeably further the cause of the client; and documents generated by the attorney such as administrative records, that would be unlikely to further the cause of the client. The Commission recommended that attorneys develop file retention and disposition policies and clearly communicate such policies to the client at the outset of the representation. The Commission also addressed how an attorney should handle the attorney’s notes, internal research memoranda and administrative documents, as well as other material created or obtained during the course of representation. *See also amendments to M. Bar R. 3.4(a)(4) at p. 14.*





## Amendments to Maine Bar Rules

The study and proposal of amendments to the Code of Professional Responsibility (Maine Bar Rule 3) is the province of the Court's Advisory Committee on Professional Responsibility to which Bar Counsel is a liaison. The study of possible amendments to other portions of the Maine Bar Rules is generally done by the Board and then proposed by it to the Court. In 2004, the Court amended several sections of the Code and other Maine Bar Rules as follows:

### **Maine Bar Rule 5(d) (February 1, 2004)**

#### *Bar Counsel – Records*

This amendment expands the matters that the Board and Bar Counsel are required to keep for six years after disposition to now include the complaint filings in matters that result in the non-disciplinary sanction of a dismissal with warning, issued either after confidential review or public hearing by a Grievance Commission panel.

### **Maine Bar Rules 3.4(a)(2),(3) (July 1, 2004)**

#### *Conflict of Interest – Commencement and Termination*

The amendments address the previous gap created by the absence of provisions defining what is the “commencement” of representation. The amendments also define the termination of representation consistent with the withdrawal conditions of M. Bar R. 3.5. Additionally, the amendments clarify attorney obligations concerning when information must be deemed confidential, and when a lawyer may or shall disclose information gained during the professional representation.

### **Maine Bar Rule 3.4(a)(4) (August 1, 2004)**

#### *Conflict of Interest – Retention of Files*

This amendment provides lawyers with a safe harbor for the retention and destruction of client files after the representation has ended by establishing two time periods. Client information and records in the lawyer's possession that have intrinsic value must be retained indefinitely until they are clearly out of date and no longer of

consequence. All other client records and information must be kept for eight (8) years from the termination of the representation after which they may be destroyed.

### **Maine Bar Rule 6(a) (July 1, 2004)**

#### *Registration Statement*

The amendment adds a paragraph authorizing the Board of Overseers of the Bar to invite voluntary contributions to the Campaign For Justice as part of its notification regarding filing of annual registration statements and to receive payments of such contributions as part of its receipt of attorneys' payments of the annual fee.

### **Maine Bar Rule 6(d) (July 1, 2004)**

#### *Register of Attorneys*

The amendment provides a corrected procedure so that the Board no longer is prohibited from releasing residential address information concerning inactive attorneys. The Board now may provide public information about addresses for those inactive lawyers, and upon filing inactive, such attorneys must designate whether that public address is their residential address or some other alternate address. *(Note: Given the redesign of the Board's web site which publishes attorney contact information, this rule was amended further and renumbered effective on July 1, 2005, to make it clear that attorneys may use a post office address in place of a street address.)*

### **Maine Bar Rule 9(e)(2) (July 1, 2004)**

#### *Informal Arbitration*

The amendment provides that the normal fee arbitration hearing process before members of the Fee Arbitration Commission should not be used when the disputed fee involves a member of that Commission as the respondent attorney. In such cases, the hearing panel instead will be comprised of members of the Board, analogous to the procedure already in place with grievance complaints filed against attorney members of the Grievance Commission.





## Informal Advisory Opinions

In 2004, the office of Bar Counsel continued to provide daily assistance to Maine attorneys. This assistance occurred through the issuance of informal advisory opinions, generally known as the “ethics hotline”. Pursuant to Board Regulation No. 28, Bar Counsel provides the inquiring attorney with an assessment of the apparent propriety or prohibition under the Code of the described conduct of that attorney or another member of that attorney’s law firm. However,

under that regulation, Bar Counsel is prohibited from advising an inquiring attorney about any other attorney’s “supposed” or “hypothetical” conduct. See Advisory Opinion #67 and #171. In 2004, attorneys in the office of Bar Counsel answered approximately 650 such telephonic “ethics hotline” inquiries throughout the year. Several written informal and confidential advisory opinion letters were also issued by attorneys at the office of Bar Counsel.

## Telephonic Screening of Complaints

In 2004, Bar Counsel and staff attorneys responded to many calls from members of the public who were inquiring about attorney conduct and had not yet filed any “formal” complaint about their matter(s).

Staff attorneys do not provide those callers with any opinions or answers as to the propriety of any alleged attorney misconduct, making it clear to callers that all grievance complaints must be signed and submitted in writing - not by email - for any action to be taken by Bar Counsel under the Maine Bar Rules. If alternative options or services unrelated to the Board’s governance functions are apparently better suited to address the inquiry, e.g., the Lawyer Referral Service and Information Service or Lawyers’ Fund for Client Protection, Bar Counsel so informs and assists the caller as appropriate. In addition, those callers that raise concerns focusing solely on judgments made by

*Guardian ad Litem*s are directed to contact the office of the Chief Judge of the District Court. Lastly, callers alleging misconduct by members of the judiciary, are advised to contact the Executive Director of the Committee on Judicial Responsibility and Disability.

As in years past, some of those callers did not actually have a complaint about an attorney, but rather were seeking legal advice. Those individuals were informed that Bar Counsel cannot and does not provide any legal advice. This screening of calls continues to help, or at least tries to correctly divert a significant number of complaints or inquiries, that appear not to relate to Grievance Commission or Bar Counsel matters to avoid an inappropriate use of the Board’s grievance process. In any event, callers are always given the option to proceed and file a written complaint if they so choose.



## CLE Presentations

Throughout 2004, Bar Counsel/Assistant Bar Counsel participated in several CLE panel presentations concerning ethical or professional responsibility issues, including the following:

- MSBA Annual Meeting - Presentation on Conflicts of Interest
- Rule 3.13 – Responsibility for Compliance with the Maine Bar Rules (presentation of the Maine State Bar Association)
- Ethical Hypotheticals – presentation at the John Waldo Ballou American Inn of Court (Bangor)
- Lemons and Lemonade: Recognizing, Preparing and Improving Cases (presentation of the Maine Trial Lawyers Association)
- Maine State Bar Association Bridging-the-Gap program for new bar admittees
- Ethics presentation to the Oxford County Trial Lawyers' Association
- “Ethics: Avoid the Frequent Pitfalls” – presentation of York County Bar Association
- “Advance Medical Directives” – presentation of the Franklin County Bar Association
- Ethics for Child Protection Assistant Attorney Generals
- MSBA Summer Meeting - Overview of Board Operations and its Commissions
- Ethics presentation to Pine Tree Legal Services' Staff Retreat
- Member of ethical issues panel at the Comp Summit for workers' compensation attorneys
- Discussion of recent amendments to Rule 3.4 to the Androscoggin County Bar Association
- Ethics Program: Grievance Complaint Process and Updates – Franklin County Bar Association
- Ethics review to the Professional Responsibility Class at the University of Maine School of Law

As indicated from that list above and as has been our continuing policy and practice, particularly with the Court's adoption and the Board's administrative role concerning Maine Bar Rule 12 (Mandatory CLE), each of the Board's three staff attorneys are willing to take part in CLE panel presentations related to ethical and professional responsibility issues.

## Continuing Legal Education

The Board of Overseers of the Bar administers the process through which attorneys report compliance with Maine Bar Rule 12 - Continuing Legal Education created in 2001. Attorney compliance remained high in 2004. Only 14 attorneys were summarily suspended for non-compliance for calendar year 2003. Subsequently, nine of those suspended attorneys fulfilled their requirements and were reinstated.

The Board's CLE Coordinator reviews each course accreditation application in order to determine whether the course content meets the standards of Rule 12. Throughout the year, over 8,500

courses, submitted by more than 1,000 providers, were approved for credit.

The Board significantly redesigned its web site ([www.mebaroverseers.org](http://www.mebaroverseers.org)) by including CLE content (formerly located at an independent web site). Attorneys may now search two CLE calendars, one for displaying courses approved for live credit and one for self-study credit; review our FAQs; and link directly to the providers of courses for more information. The site also allows attorneys to log in using their respective bar number and assigned PIN number to check credits.





## Significant Issues Considered by the Board of Overseers

The Board also discussed and commenced consideration of the following topics at various points in 2004:

- As a result of a discussion initiated at a meeting with the Board of Governors of the Maine State Bar Association and then direction from the Court, the Board included within its Registration Statement for FY 2005 (issued to attorneys in June 2004) an inquiry as to whether attorneys carry malpractice insurance coverage. Further discussion also occurred as to whether Maine attorneys should be required to disclose to clients if they lack malpractice insurance coverage.
- Keeping with its past practice, the Board provided copies of its informational brochures generally describing the operations of the Board of Overseers of the Bar, the Fee Arbitration Commission and the Grievance Commission to members of the 121st Maine Legislature.
- The respective staffs of the Board of Overseers and the Maine State Bar Association reminded members of the bar through “email blasts” and their respective web sites of the requirement that attorneys keep the Board of Overseers properly informed of attorney address changes.
- At the request of the Court, the Board initiated placement of public attorney registration information received by the Board through its registration process on its web site pursuant to M. Bar R. 6(a)(d).
- The Board created a descriptive topic index on its web site of the Advisory Opinions issued by the Professional Ethics Commission.
- The Board of Overseers included a link to the Lawyers’ Fund for Client Protection on the Board’s web site.
- At the request of Chief Justice Saufley, the Board initiated discussion and consideration of whether an active study and comparison of the American Bar Association’s Model Rules of Professional Conduct (Ethics 2000) and the Maine Bar Rules should take place (which was formalized into a committee in 2005).





## Conclusion

As in the past, the generous work and time provided by the many volunteer members of the Board of Overseers of the Bar and its three commissions is greatly appreciated. Their great work certainly facilitates the general policy, disciplinary, fee arbitration and ethical advisory processes of the Board of Overseers of the Bar's duties and responsibilities under the Maine Bar Rules.

I would also like to take this opportunity to recognize the Board's new Administrative Director, Jacqueline Rogers. Jackie was hired by the Board mid-year to oversee the Board's finances and administrative operations. In welcoming Jackie to the staff, Board Chair Karen Lovell stated: "We had an outstanding applicant pool for the Administrative Director position. Jackie has a wealth of experience gained from her 20 years in a variety of positions at the Maine State Bar Association. Her background will be invaluable in addressing issues raised by the Board of Overseers as we work to improve policies, procedures, controls and operations." Jackie's service at the MSBA included having served as Director of its Lawyer Referral and Information Service (1984-1997), CLE Director (1997-2002) and then as Assistant Executive Director (2002-2004). She also brought to her new position with the Board a keen knowl-

edge and understanding of a variety of computer software programs which she immediately used to improve the Board's web site and improve operations.

I would also like to take this opportunity to acknowledge the hard work and dedication of the staff of the Board of Overseers of the Bar, without whom the work of the Board would not be possible. I am very fortunate to have such hard-working and dedicated individuals on my staff.

The Board of Overseers continues to invite written suggestions for improvements or appropriate changes to the Board's policies and operations to be submitted to the Board Chair, Jackie Rogers or to me for the Board's consideration. The Board's conference room also remains available for Maine attorneys to use for depositions, court/attorney committee meetings, etc. Please call our office at 623-1121 or e-mail us at [board@mebaroverseers.org](mailto:board@mebaroverseers.org) to request a date to schedule use of the Board's conference room for such a purpose.

Thank you.

J. Scott Davis  
Bar Counsel



# Board of Overseers of the Bar

## Board Chair

Marvin H. Glazier  
Vafiades, Brontas & Kominsky - Bangor

## Vice Chair

Harriet R. Tobin  
Harpwell

## Board Members

Patricia M. Ender, Esquire  
Pine Tree Legal Assistance - Augusta

Christine Holden, Ph.D.  
Lewiston

Susan E. Hunter, Esquire  
MittelAsen, LLC - Portland

Andrew J. Pease, Jr.  
Brooklin

William J. Schneider, Esquire  
U.S. Attorney's Office - Portland

Paul H. Sighinolfi, Esquire  
Rudman & Winchell, LLC

Charles W. Smith, Jr., Esquire  
Smith, Elliott, Smith & Garmey P.A.

Court Liaison  
The Honorable Paul L. Rudman\*  
Maine Supreme Judicial Court - Bangor

The Honorable Warren M. Silver  
Maine Supreme Judicial Court - Bangor

\*Retired from the Court effective July 1, 2005.

## Board Staff

### Bar Counsel

J. Scott Davis

### Assistant Bar Counsel

Nora Sosnoff

### Assistant Bar Counsel

Geoffrey S. Welsh

### Administrative Director

Jacqueline M. Rogers

### Assistant to Bar Counsel

Donna L. Spillman

### Grievance Commission Clerk and Fee Arbitration Commission Secretary

Jaye Malcolm Trimm

### Administrative Assistant

Nancy Hall Delaney

### CLE Coordinator

Susan E. Adams

### Registration Clerk

Linda Hapworth



## 2004 Board of Overseers Commission Members

### Grievance Commission

Patricia M. Ender, Esq. of Augusta, Chair  
Charles W. Smith, Jr., Esq. of Saco, Vice Chair  
David S. Abramson, Esq. of Portland  
Nancy Butland of Portland  
Paul F. Cavanaugh II, Esq. of Calais  
Raymond J. Cota of Bangor  
Donald A. Fowler, Esq. of Kingfield  
Theodore K. Hoch, Esq. of Bath  
Christine Holden, Ph.D. of Lewiston  
Susan P. Jones of Yarmouth  
Caroline S. Macdonald of York  
Elizabeth A. McCullum, Esq. of Augusta  
Cindy McInerney of Kents Hill  
John A. Mitchell, Esq. of Calais  
Stephen E. Morrell, Esq. of Brunswick  
David Nyberg, Ph.D. of Bath  
Joseph R. Reisert, Ph.D. of Waterville  
John H. Rich III, Esq. of Portland  
Stephen J. Schwartz, Esq. of Portland  
Valerie Stanfill, Esq. of Portland  
Lois Soule of Orono  
Harold L. Stewart II, Esq. of Presque Isle  
Harriet R. Tobin of Harpswell  
Benjamin P. Townsend, Esq. of Augusta  
David R. Weiss, Esq. of Bath

### Fee Arbitration Commission

Bruce C. Mallonee, Esq. of Bangor, Chair  
James W. Carignan of Harpswell  
Peter Clifford, Esq. of Kennebunk  
Thomas Cumler of Manchester  
Richard Dickson of Ellsworth  
Candace Gibbons of Bridgton  
Matthew S. Goldfarb, Esq. of Portland  
Sheldon F. Goldthwait of Bar Harbor  
Frank Gooding of Saco  
Terence M. Harrigan, Esq. of Bangor  
Susan P. Herman, Esq. of Augusta  
Jack Hunt, Esq. of Kennebunk  
William D. Johnson of Saco  
Heidi Pulkkinen Jordan, Ph.D. of Farmington  
John H. King, Esq. of Portland  
Michael K. Knowles of Saco  
Richard J. O'Brien, Esq. of Auburn  
Dawn M. Pelletier, Esq. of Bangor  
Thomas P. Peters, II, Esq. of Lewiston  
Steven C. Peterson, Esq. of Rockport  
Gregory A. Tselikis, Esq. of Scarborough  
Milton R. Wright of Readfield  
O. Lewis Wyman of Orono

### Professional Ethics Commission

Phillip E. Johnson, Esq. of Augusta, Chair  
Joel A. Dearborn, Esq. of Brewer  
Judson Esty-Kendall, Esq. of Bangor  
Rebecca Cayford, Esq. of Skowhegan  
Terrence D. Garmey, Esq. of Portland  
Jeffrey R. Pidot, Esq. of Augusta  
Barbara T. Schneider, Esq. of Portland  
Kathryn L. Vezina, Esq. of Saco





## Statistical Analysis of Disciplinary Matters

Resident	
Active	3,172
New Applicant (Less than 3 Years)	229
Licensed Over 50 Years	54
Inactive (Less than 3 Years)	70
<i>Sub-Total:</i>	3,525

Non-resident	
Active	1,108
New Applicant (Less Than 3 Years)	45
Licensed Over 50 Years	9
Inactive (Less than 3 Years)	133
<i>Sub-Total:</i>	1,295

**Total:** 4,820

Characterization	#	%
Advertising/Solicitation	1	1
Advising Violation of Law	2	1
Conflict	15	9
Conspiracy	1	1
Disagreement over conduct during representation	17	10
Disagreement over fee	2	1
Disagreement over handling client funds and property	8	5
Failure to communicate	1	1
Habeas Corpus	1	1
Illegal Conduct	3	2
Improper Conduct before Tribunal	5	3
Incompetence	9	5
Interference with Justice	14	8.5
Lack of preparation	4	2
Misrepresentation/Fraud/Dishonesty	19	11.5
Neglect	54	33
Other Conduct Unworthy	7	4
Prejudicial Withdrawal	1	1
Threatening Prosecution	0	
<b>Total:</b>	<b>164</b>	<b>100</b>

Area of Law	#	%
Administrative/Municipal	7	4
Antitrust	0	0
Banking	0	0
Bankruptcy	3	2
Collections	1	1
Commercial/Business	11	7
Contracts/Consumer	1	1
Corporate	1	1
Criminal	19	12
Elder Law	5	.5
Environmental	0	0
Family	39	24
Foreclosure	1	1
Guardians Ad Litem	2	1
Immigration	0	0
Intellectual Property	2	1
Juvenile	0	0
Labor	2	1
Landlord/Tenant	1	1
Law Related Services	3	2
Other	9	5.5
Probate	16	10
Real Estate	22	13.5
Taxation	4	2.5
Torts	10	6
Workers Compensation	5	3
<b>Total:</b>	<b>164</b>	<b>100</b>



### Size of Law Firm

Size of Law Firm	#	%
Sole Practitioner	85	52
Two	25	15
3 - 6	29	17.5
7 - 10	3	2
11-49	16	10
Over 50	1	.5
Government/State/Other	3	2
<b>Total:</b>	<b>164</b>	<b>100</b>

### Years in Practice

Years in Practice	#	%
40 - 61 Years	6	3.5
30 - 39 Years	31	19
20 - 29 Years	48	29
10 - 19 Years	54	33
2 - 9 Years	22	.5
Less Than 2 Years	1	.5
Other (Not Admitted in Maine)	2	1
<b>Total:</b>	<b>164</b>	<b>100</b>

### Complaints by County

	#	%
Androscoggin	14	8.5
Aroostook	12	7
Cumberland	51	31
Franklin	1	.5
Hancock	3	2
Kennebec	14	8.5
Knox	10	6
Lincoln	0	0
Oxford	3	2
Penobscot	22	13
Piscataquis	0	0
Sagadahoc	0	0
Somerset	4	2.5
Waldo	4	2.5
Washington	1	1
York	21	13
Out of State	4	2.5
<b>Total:</b>	<b>164</b>	<b>100</b>

### Age of Attorney

Age of Attorney	#	%
24 - 29	3	2
30 - 39	15	9
40 - 49	53	32.5
50 - 59	66	40
60+	25	1.5
Other (Not Admitted in Maine)	2	1
<b>Total:</b>	<b>164</b>	<b>100</b>

### Source of Complaint

Complainant	#	%
Client	97	59
Judge	11	6.5
Opposing Counsel	6	3.5
Opposing Party	15	10
Other	29	17.5
Sua Sponte	6	3.5
<b>Total:</b>	<b>164</b>	<b>100</b>





**2004 Summary of Sanctions Issues After Hearing**  
**Bar Rules Found to Have Been Violated**  
*Certain Decisions Cited Multiple Rule Violations*

**Grievance Commission Reprimands - 7**

<b>Rule</b>	<b>Misconduct</b>	<b>Number</b>
2(c)	Failure to Respond to Bar Counsel	1
3.1(a)	Conduct Unworthy of an Attorney	5
3.2(f)(2)	Other Misconduct	1
3.2(f)(3)	Misrepresentation/Deceit	2
3.2(f)(4)	Conduct Prejudicial to the Administration of Justice	4
3.6(a)	Failure to Use Reasonable Care and Skill	5
3.6(a)(3)	Neglect of a Client Matter	3
3.6(e)(2)(iv)	Failure to Promptly Return Funds or Possessions to Client	1
3.7(a)	Improper Legal Action	1
3.13(c)(1)	Responsibilities Regarding Non-Lawyer Assistants	1

**Grievance Commission Dismissal with Warning - 2**

<b>Rule</b>	<b>Misconduct</b>	<b>Number</b>
3.6(a)	Failure to Use Reasonable Care and Skill	2

**Court - 6**

<b>Rule</b>	<b>Misconduct</b>	<b>Number</b>
2(c)	Failure to Respond to Bar Counsel	3
3.1(a)	Conduct Unworthy of an Attorney	2
3.2(f)(1)	Violate, Circumvent or Subvert Provision of the Bar Rules	1
3.2(f)(2)	Other Misconduct	1
3.2(f)(3)	Misrepresentation/Deceit	4
3.2(f)(4)	Conduct Prejudicial to the Administration of Justice	5
3.3 (a)	Excessive Fees	1
3.4	Conflicts of Interest	1
3.5	Improper Withdrawal	1
3.6(a)(1)	Incompetence	1
3.6(a)(2)	Lack of Preparation	1
3.6(a)(3)	Failure to Employ Reasonable Care and Skill; Neglect	4
3.6(e)	Failure to Return Property/Funds of a Client	1
3.7	Improper Legal Action	1
3.13	Responsibility for Compliance with the Maine Bar Rules	1
6	Registration Statement	1



## 2004 Bar Counsel Files

Area of Law			Characterization of Complaints		
	#	%		#	%
Administrative	3	1.9	Advertising	0	0
Antitrust	0	0	Advising Violation of Law	0	0
Banking	1	.6	Conflict	4	2.5
Collections	4	2.5	Conspiracy	7	4.0
Commercial	4	2.5	Disagreement Over Conduct	54	33
Contracts/Consumer	1	.6	During Representation		
Corporate	1	.6	Disagreement Over Fee	4	2.5
Criminal	52	31.7	Disagreement Over Handling	0	0
Elder Law	0	0	Client Funds and Property		
Environmental	0	0	Failure to Communicate	0	0
Family	28	16.7	Habeas Corpus	9	5.5
Foreclosure	1	.6	Illegal Conduct	0	0
Guardian Ad Litem	11	6.8	Improper Conduct Before	13	8.0
Immigration	1	.6	a Tribunal		
Intellectual Property	0	0	Incompetence	11	6.7
Juvenile	2	1.2	Interference with Justice	32	19.5
Labor Law	5	3.0	Lack of Preparation	2	1.2
Landlord/Tenant	2	1.2	Misrepresentation/Fraud/	3	1.8
Law Related Services	0	0	Dishonesty		
Other	18	10.9	Neglect	12	7.3
Probate	12	7.4	Other Conduct Unworthy	13	8.0
Real Estate	6	3.7	Prejudicial Withdrawal	0	0
Taxation	0	0	Threatening Prosecution	0	0
Torts	9	5.6			
Workers Compensation	3	1.9			
<b>Total:</b>	<b>164</b>	<b>100</b>	<b>Total:</b>	<b>164</b>	<b>100</b>





## Board of Overseers - Past Chairs

Karen B. Lovell, Esquire. . . . .	11/1/2003 - 10/31/2004
Robert L. McArthur Ph.D. . . . .	11/1/2002 - 11/1/2003
Jon S. Oxman, Esquire. . . . .	11/1/2001 - 10/31/2002
Mary C. Tousignant, Esquire . . . .	11/1/2000 - 10/31/2001
Lee Young . . . . .	9/2/1998 - 10/31/2000
The Honorable Keith A. Powers. . . .	11/1/1997 - 9/1/1998
John P. Foster, Esquire . . . . .	1/1/1996 - 10/31/1997
Curtis Webber, Esquire . . . . .	11/1/1994 - 10/31/1996
Barbara Chesley . . . . .	11/1/1992 - 10/31/1994
Peter B. Webster, Esquire . . . . .	11/1/1990 - 10/31/1992
Chadbourn H. Smith, Esquire . . . .	11/1/1988 - 10/31/1990
Louise P. James. . . . .	11/1/1986 - 10/31/1988
John W. Ballou, Esquire. . . . .	11/1/1984 - 10/31/1986
Robert F. Preti, Esquire . . . . .	11/1/1982 - 10/31/1984
Madeline Freeman . . . . .	11/1/1980 - 10/31/1982
Franklin G. Hinckley, Esquire . . . .	11/1/1978 - 10/31/1980

