

MAINE STATE LEGISLATURE

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2005 Annual Report



**Board of Overseers of the Bar
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Board of Overseers - Past Chairs

Marvin H. Glazier, Esq.	11/1/2004 - 10/31/2005
Karen B. Lovell, Esq.	11/1/2003 - 10/31/2004
Robert L. McArthur Ph.D.	11/1/2002 - 10/31/2003
Jon S. Oxman, Esq.	11/1/2001 - 10/31/2002
Mary C. Tousignant, Esq.	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, Esq.	1/1/1996 - 10/31/1997
Curtis Webber, Esq.	11/1/1994 - 10/31/1996
Barbara Chesley*	11/1/1992 - 10/31/1994
Peter B. Webster, Esq.	11/1/1990 - 10/31/1992
Chadbourn H. Smith, Esq.	11/1/1988 - 10/31/1990
Louise P. James.	11/1/1986 - 10/31/1988
John W. Ballou, Esq.*	11/1/1984 - 10/31/1986
Robert F. Preti, Esq.	11/1/1982 - 10/31/1984
Madeline Freeman	11/1/1980 - 10/31/1982
Franklin G. Hinckley, Esq.*.	11/1/1978 - 10/31/1980

*Deceased



Maine Supreme Judicial Court Photograph (c) by Martha Mickles 2006.

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Introduction

The Maine Board of Overseers of the Bar was created by the Maine Supreme Judicial Court in 1978 to govern the conduct of lawyers as officers of the Court. The Board consists of six lawyers and three lay members. The lawyers are appointed by the Court, and the lay members are appointed by the Court on recommendations by the Governor.

The Board regulates the conduct of lawyers by enforcing the Maine Bar Rules adopted by the Court. The purpose of the Maine Bar Rules is to provide appropriate standards for attorneys with respect to their practice of the profession of law, including but not limited to their relationship with their clients, the general public, other members of the legal profession, the courts and other agencies of this state.

Under the Maine Bar Rules, the Board appoints Bar Counsel, Deputy Bar Counsel, and Assistant Bar Counsel (hereinafter Bar Counsel) who investigate alleged misconduct by lawyers and, when authorized to do so by a reviewing panel of the Grievance Commission, litigate grievance complaints at disciplinary proceedings that are open to the public. In addition to Bar Counsel J. Scott Davis, the Board's staff consists of Deputy Bar Counsel Nora Sosnoff, Assistant Bar Counsel Aria eee, Administrative Director Jacqueline Rogers, Grievance Commission Clerk and Fee Arbitration Secretary Jaye Malcolm Trimm, Assistant to Bar Counsel Donna Spillman, CLE Coordinator Susan Adams, Administrative Assistant Nancy Hall Delaney, and Registration Clerk Linda Hapworth.

The Board appoints volunteer members to three commissions established by the Maine Bar Rules: the Grievance Commission, the Fee Arbitration Commission, and the Professional Ethics Commission. The Fee Arbitration Commission (22 members) and the Grievance Commission (24 members) conduct their functions under the Maine Bar Rules by three-member panels. Each panel comprises two attorneys and one lay member, while the fee panels are usually so comprised or may instead use two lay members and only one attorney. The Professional Ethics Commission has eight attorney members.

Information concerning the responsibilities and functions of the Board and each of its commissions is contained in informational pamphlets available at the Board's office. Certain public



information may also be accessed at the Board's web site at www.mebaroverseers.org. Please also note the respective membership lists contained within this report.

The Board met 10 times over the course of the year to conduct business pursuant to the Maine Bar Rules. During the course of the year, the Board reviewed and approved amendments to a variety of Board Regulations and policies. Additionally, a number of amendments were proposed and submitted to the Maine Supreme Judicial Court for its consideration. In 2005 the Board launched a new and improved web site, approved the funding for necessary improvements to the Board's office building, and with the Court's approval, appointed Attorney Ariane to serve as its Assistant Bar Counsel.

Under the Maine Bar Rules, the Board proposes an annual budget to the Maine Supreme Judicial Court for its approval, for the operation of the registration of attorneys, the disciplinary system, the fee arbitration system, and the mandatory continuing legal education requirement. The budget's main source of funding is the mandatory annual assessment paid by each attorney admitted to the Maine bar. The Board also collects the Court's annual mandatory assessment fee for the Lawyers' Fund for Client Protection and forwards the same to the Fund.

The Board maintains a register of all lawyers who are members of the bar of the State of Maine as well as records of the termination or suspension of the right of any lawyer to practice law in Maine. The number of attorneys admitted to active practice in Maine as of December 31, 2005 was 4,760.

Harriet R. Tobin, Chair



Bar Counsel Files

Bar Counsel Files (BCF) comprise those written grievance complaints that upon initial review or after brief informal investigation by Bar Counsel are deemed not to allege any professional misconduct subject to sanction under the Maine Bar Rules. Maine Bar Rule 7.1(c) requires Bar Counsel's unilateral dismissal of such matters, either with or without investigation. A total of 157 complaint matters received in 2005 were docketed as BCF matters. By comparison, the number of such BCF complaints filed in 2004 was 164. 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 then performed by a lay member of either the Board or the Grievance Commission. In such dismissed matters, Bar Counsel always provides the involved attorney with copies of the complaint filing, the dismissal letter, any resulting

request for review, and the lay reviewer's decision. Bar Counsel dismissed 155 Bar Counsel Files in 2005, with 41 complainants requesting review of those actions. Lay members decided and affirmed all 41 of those dismissals (with one of those decisions being issued after December 31, 2005), and therefore did not vacate or modify any of those BCF matters so dismissed by Bar Counsel in 2005.

2005 Bar Counsel File Summary

Bar Counsel Files Pending at Start of Period ..2	
New Bar Counsel Files Docketed.....	157
Bar Counsel Files Dismissed (without any review requested)	114
Bar Counsel Files Dismissals Reviewed and Affirmed by Lay Members.....	41
Bar Counsel Files Dismissals Vacated by Lay Members	0
Bar Counsel Files Finally Dismissed in the Period	155
Bar Counsel Files Pending at End of Period ...	4

Grievance Commission

Complaints

In 2005, Bar Counsel received, screened and docketed 158 written grievance complaints as Grievance Commission Files (GCF) which, upon being screened, were initially deemed to allege at least some form of a prima facie claim of professional misconduct by Maine attorneys in violation of the Code of Professional Responsibility (the Code). That was a slight decrease (3.5%) from the number so filed and docketed in 2004 (164).

Panel Meetings and Hearings

Case Reviews – Panels of the Grievance Commission met on 41 occasions to conduct preliminary reviews of 171 GCF complaints under Maine Bar Rule 7.1(d). Those meetings consist of a panel consulting with 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 preliminary review process are generally kept confidential by the Board, the Commission and the Board's staff under Maine Bar Rule 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. Once issued, and not subject to appeal, reprimands are then placed on the Board's web site (see Maine Bar Rule 7.1(e)(2)(B)).

Upon completion of Bar Counsel investigations and after Grievance Commission panel review, 135 GCF complaints were closed by issuance of either a dismissal or a dismissal with a warning (see Maine Bar Rules 7.1(d)(3),(4)). In the remaining 36 matters reviewed, panels found probable cause that professional misconduct appeared to have occurred, warranting hearing by another panel (or the Court) to determine if any disciplinary sanction should be imposed upon the respective attorneys. Thirty-one of those complaints resulted in disciplinary petitions filed by Bar Counsel for formal disciplinary hearings open to the public before a new panel of the Commission under Maine Bar Rule 7.1(e). The remaining five matters were filed directly with the Court due to the fact that the attorneys involved already had disciplinary matters pending in that forum (see Maine Bar Rule 7.2(b)(7)).

Reprimands

Board of Overseers of the Bar v. Thomas J. Peterson, Esq. (Windham) GCF #03-266

In 1996 this attorney initially represented both a wife (W) and husband (H) by drafting their wills and discussing the creation of a joint tenancy regarding property that had been conveyed to W many years before their marriage. As a result of Peterson's "joint representation" of them, W conveyed her property to W and H as joint tenants with warranty covenants. In early 1999, H executed a significantly revised will that Peterson had prepared for him to sign. Later that year, Peterson also prepared two deeds for only W to sign which had the net effect of converting the couple's joint tenancy into a tenancy in common with no right of survivorship. H was told nothing by Peterson or by W about her unilateral

Grievance Commission Complaint Summary

Complaints Pending at Start of Period.....	58
New Complaints Docketed	158
Total Complaints Pending During Period	216
 Total Complaints Finally Closed by Review or Hearing. 147	
 Total Complaints Pending at End of Period.....	69

breaking of their joint tenancy, as assisted and orchestrated by "their" attorney. Peterson failed to file any Answer to the Board of Overseers of the Bar's Disciplinary Petition which acted as his de facto default to Bar Counsel's allegations that his conduct violated inter alia Maine Bar Rules 3.4(d)(1) (conflict of interest: successive representation; interests of former clients) and 3.5(b)(2)(ii) (mandatory withdrawal). As a result, he was reprimanded for that misconduct.



Board of Overseers of the Bar v. Philip Desfosses, Esq. (Portsmouth, NH) GCF #03-349

This matter was initiated by Bar Counsel on a *sua sponte* basis as a result of the Law Court's decision in *Scott Douglas v. Seth Martel et al* 2003 ME 132. The Court found that "...the record contains substantial evidence from which the trial court could have concluded that Douglas, and his attorney, acted with a lack of regard for the deadlines set by the court. Douglas' complaint was dismissed after over a year of discovery, the expiration of several deadlines

Board of Overseers of the Bar v. Jennifer Raymond, Esq. (Boston, MA) GCF #04-270

This grievance involved problems related to the attorney's neglect of a client's real estate case. Although Raymond agreed to accept the case pro bono, she performed no work for the client. Upon moving to Massachusetts, Raymond further failed to perform work or notify the client of the actual case status. The client's case was ultimately dismissed with prejudice by the Court. Raymond received a reprimand for her violation of *inter alia* Maine Bar Rules

Complaints Reviewed

Action Taken by Review Panels	
Dismissal	118
Dismissal with Warning (minor misconduct).....	17
Disciplinary Hearing Authorized	31
Proceed Directly to Court – Maine Bar Rule 7.2(b)(7)	5
Total Complaints Reviewed	171

(two of which included the Court's warnings to Desfosses that failure to comply would result in a dismissal with prejudice), four extensions and two conferences." Desfosses had initially defended this grievance by claiming that his failure to comply with the trial court's discovery deadlines was caused by Douglas's failure to respond to his many mailings about discovery requests. However, through counsel, he later agreed and stipulated with Bar Counsel that he should have better monitored his many letters to that client and used better case management skills. He stipulated that he had neglected his client's legal action by failing to comply with the court's many discovery deadlines, and by not properly informing the client about those deadlines and the likely dismissal for his failure to comply. Desfosses agreed to a reprimand for violation of Maine Bar Rules 3.6(a) (neglect) and 3.13(c) (responsibilities for non-lawyer assistants).

3.2(f)(3) (misrepresentation); 3.6(a)(3) (neglect of a client's matter); and 3.6(e)(2)(iv) (failure to return client's property).

Board of Overseers of the Bar v. Robert J. Levine, Esq. (Rockland) GCF #04-381

This grievance concerned problems caused by Levine's attempted assistance with a Guardian ad Litem's proposed fee collection. While Levine was not actually involved in the underlying litigation, his firm was, and Levine's attempts to assist the GAL with obtaining payment for her fees was

Dispositions after Public Hearing

Dismissals	2
Dismissals with Warning	4
Reprimands	6
Final Dispositions Issued After Hearing	12

unjustified and not authorized by any order from the District Court. Levine was reprimanded for violating Maine Bar Rule 3.2(f)(4) (conduct prejudicial to the administration of justice).



Board of Overseers of the Bar v. Christopher L'Hommedieu, Esq. (Lewiston) GCF #05-41

This grievance involved L'Hommedieu's representation of an out-of-state client in post-divorce proceedings. Despite the District Court's order to file child support affidavits, L'Hommedieu failed to do so until months after the prescribed time period. As a result, the proceeding took longer to resolve. Due to his failure to comply with the District Court's orders, L'Hommedieu agreed to be reprimanded for violation of several Maine Bar Rules, including Maine Bar Rules 3.2(f)(3) (misrepresentations); 3.2(f)(4) (conduct prejudicial to the administration of justice); 3.7(b) (improper concealment, statement or evidence); and 3.7(e)(1)(i) (misleading the judge or tribunal).

Board of Overseers of the Bar v. Warren Shay, Esq. (Skowhegan) GCF #05-098

This grievance resulted from Shay's multiple representation of the seller and buyer in the same real estate transaction, without the clients' prior informed and written consents. Once a dispute arose between seller and buyer, Shay failed to withdraw from the simultaneous representation and instead, represented seller's interests against the buyer's complaint. After a contested hearing, Shay was reprimanded for his failure to obtain consent for the simultaneous representation violating Maine Bar Rule 3.4(c)(2) (conflict of interest).

Court Matters

Disbarments

The following two attorneys were disbarred as a result of totally separate testimonial hearings before different single justices of the Court, one matter occurring in 2004 (Charles Williams) and the other in 2005 (Richard Slosberg). They each appealed their respective disbarments, but also each failed to properly pursue their appeals. In each instance, the Law Court dismissed the appeals and each disbarment remains in place.

Board of Overseers of the Bar v. Charles G. Williams III (Albany, GA) BAR-02-05

Disbarment Order issued April 7, 2004; Williams' Appeal was dismissed by Chief Justice Saufley's Order on July 20, 2005 due to Williams' failure to pursue his appeal.

Board of Overseers of the Bar v. Richard B. Slosberg (Portland) BAR-04-07

Disbarment Order issued February 22, 2005; appeal was dismissed in 2006 due to Appellant's failure to prosecute his appeal.

Board of Overseers of the Bar v. Richard G. Cervizzi (Scarborough) BAR-04-04

Disbarment Order issued April 4, 2005; in July 2003, this attorney had been summarily suspended by the Board for his failure to comply with his tax obligations. However, he failed to inform his clients, courts or opposing counsel of his suspension from practice. He also failed to assist clients to obtain new counsel, simply closed his office, removed all clients' files and abandoned his practice and his clients. Many clients were unaware that they had no attorney, where he was, where to find him or their files, or in what status their legal affairs had been left. Although he had abandoned countless clients, Cervizzi also continued to represent two clients in court after July 30, 2003, in direct violation of the Board's suspension notice. Cervizzi also initially failed to comply with the Court's Order for Custody of Files, and only partially complied some eight months later after he had already lost all or



parts of many clients' files. He filed no response to Bar Counsel's charges before the Court (and therefore admitted them all by default), never provided any justification for his misconduct, never indicated any remorse for the harm he caused to many clients and failed to appear at the Court's disciplinary hearing. He was ordered disbarred and may not seek reinstatement for at least five years (April 4, 2010), and prior to that date must make certain court-ordered "restitution" including \$2,212.55 to the Board for its expenses incurred in taking custody of and other actions regarding his clients' files.

Suspensions

Board of Overseers of the Bar v. Thomas F. Adams, Esq. (Caribou) BAR-04-05

This case involved Adams' conflicts and standards of care during his representation of both a couple (who were clients) and a former client, who was a family member of the wife. The Court determined that Adams violated several conflict of interest provisions of the Code. Maine Bar Rule 3.4(b)(1) was violated when Adams counseled the wife not to divorce her husband. Adams also violated Maine Bar Rules 3.4(b)(1) and 3.4.(d)(1)(i) when he acted on behalf of the father-in-law and himself at a Creditors' Meeting (associated with his former client's bankruptcy) and in his subsequent, related letter about his former client to the IRS. That letter was a violation of Maine Bar Rule 3.6(h) because Adams revealed his former client's confidence and then used such confidence to the advantage of himself and the father-in-law.

The Court suspended Adams from the practice of law for six months and that suspension itself was suspended for six months on the condition that before December 31, 2005 Adams attend 12 hours of professional ethics continuing legal education approved by Bar Counsel (Adams complied with that condition.)

Board of Overseers of the Bar v. Thomas R. Acker, Esq. (Cumberland) BAR-05-08

Acker was immediately suspended on a temporary basis by the Court's Order dated December 23, 2005. That Order was based upon Bar Counsel's motion for such immediate suspension without full testimonial hearing due to multiple complaints related to Acker's role in a questionable investment scheme largely funded from his client base. A final hearing on the Board's request for his disbarment and Acker's request for resignation remained pending before the Court as of December 31, 2005.

Reprimand

Board of Overseers of the Bar v. Christopher J. Whalley, Esq. (Ellsworth) BAR-04-11

This case involved Whalley's treatment of client confidences. Whalley failed to obtain his former client's written permission to represent a

new client in a different family matter. Maine Bar Rule 3.6(h) (subsequently amended) specifically covers more than privileged information and when the new representation involves information which could prejudice a former client, there is likely a conflict. Since Whalley obtained information which was "embarrass-

2005 Supreme Court Disciplinary Docket

Disbarments	3
Suspensions	2
Resignations	3
Reprimand	1

Pending as of 12/31/05

Disciplinary Proceedings (Informations) on File	5
Appeals	
Law Court	1
Single Justice	2



ing or detrimental” to his former client, he had a duty to not later use that information in the new representation. As a result of that finding of misconduct, the Court imposed a public reprimand upon Whalley for his violation of Maine Bar Rules 3.4(d)(1) (conflict of interest; interests of former clients) and 3.6(h)(1) (confidentiality of information).

Resignations

The Court accepted the resignations of the following attorneys in the below referenced cases pursuant to Maine Bar Rule 7.3(g). Each attorney had a disciplinary proceeding(s) pending before the Court, and under the impoundment/confidentiality requirements of that resignation rule, the Board is prohibited from

releasing or describing any factual details of the pending disciplinary actions as described in the attorneys’ respective Affidavits.

Board of Overseers of the Bar v. Laurie Anne Miller (Orrington) BAR-03-08: Order dated March 21, 2005.

Board of Overseers of the Bar v. Stanley E. Sproul (Augusta) BAR-05-01: Order dated June 1, 2005.

Board of Overseers of the Bar v. Earle S. Tyler (Bangor) BAR-05-04: Order dated October 14, 2005.

Fee Arbitration Commission

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 a panel hearing, but is not usually involved in the fee arbitration process after performing that initial screening (see Maine Bar Rule 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 Grievance Commission may and usually do share respective investigative materials concerning related matters simultaneously pending before each body.

In 2005, 63 new Petitions for Arbitration of Fee Dispute were filed with the Secretary to the

Fee Arbitration Commission. With 17 petitions already pending, a total of 80 matters were on file, representing a decrease from the previous year (91). Thirty-nine of those pending fee dispute matters were dismissed, settled or withdrawn prior to any hearing before a panel of the Commission (see Maine Bar Rule 9(e)(3)). The five Fee Arbitration Commission Panels conducted hearings involving 22 fee

2005 Petition Summary

Pending at Start of Period.....	17
Docketed During Period	63
Total Open Petitions	80
Dismissed, Settled, Withdrawn.....	39
Heard and Closed by Awards.....	22
Heard and Awaiting Award.....	1
Total Petitions Closed During Period	60
Total Petitions Pending Hearing at Close of Period	19



disputes. As a result, 61 fee disputes were either dismissed or heard, leaving a pending docket of 19 matters at year's end.

Comparison of New Cases Docketed

2003 - 70
2004 - 67
2005 - 63

Fee Arbitration Commission Breakdown of Hearing Dates

Panel IA.....	3
York County	
Panel IB.....	2
Cumberland County	
Panel II.....	3
Androscoggin, Franklin, Lincoln, Oxford & Sagadahoc Counties	
Panel III.....	3
Kennebec, Knox, Somerset and Waldo Counties	
Panel IV.....	6
Aroostook, Hancock, Penobscot, Piscataquis & Washington Counties	

Professional Ethics Commission

The eight attorney members of the Professional Ethics Commission and Deputy Bar Counsel Sosnoff met six times in 2005. The Commission issued two formal written advisory opinions on ethical questions presented, Opinions No. 188 and No. 189. These opinions are briefly summarized below. The Commission also responded by informal letter(s) to inquiries from attorneys and county bar associations concerning a variety of ethical queries.

Opinion No. 188 – February 2, 2005

On February 2, 2005, the Professional Ethics Commission issued Opinion #188 in response to a request from an attorney in private practice who had been appointed to a municipal planning board. The opinion, which answered seven hypothetical questions, offers guidance to Maine lawyers concerned about conflicts of interest while holding public office.

Opinion No. 189 – November 15, 2005

On November 15, 2005, the Professional Ethics Commission issued Opinion #189 in response to a request from Bar Counsel on whether two specific scenarios constituted the unauthorized practice of law ("UPL") in violation of Maine Bar Rule 3.2(a). Both scenarios involved lawyers who were admitted to practice law in other jurisdictions, but who were not admitted in Maine. This is the first occasion on which the Commission has addressed UPL issues and is important reading for lawyers practicing law in Maine.



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 liaison. The study of possible rule amendments to other portions of the Maine Bar Rules is generally done by the Board and then proposed by it to the Court. In 2005, the Court amended several sections of the Code and other Maine Bar Rules as follows:

Maine Bar Rule 2-A (February 1, 2005) Aspirational Goals for Lawyer Professionalism

This amendment contains aspirational goals for lawyer professionalism. Specifically, section (a) of the amendment offers guidance and encouragement in appropriate advertisements for provision of legal services. Section (b) of the amendment offers a range of options for provision of public interest legal services, including pro bono or reduced rate legal services to persons of limited means directly or by means of an attorney referral program, as well as provision of legal service to charitable organizations.

Maine Bar Rule 5(d) (February 1, 2005) Bar Counsel's Records Retention

This amendment clarifies the requirement that complaint filings resulting in sanctions of disbarment, suspension or resignation shall be kept by Bar Counsel for 10 years after the date of disposition, while filings concerning matters resulting in reprimand or dismissal with a warning shall be kept for a period of six years.

Maine Bar Rules 6(d), 10(a) and 12(a)(1) (February 1, 2005) Emeritus Attorney Registration Status

These amendments operate collectively to permit lawyers who have discontinued the practice of law to provide legal services as

volunteers with entities, public and private, who offer legal assistance to the general public.

Maine Bar Rule 12(a)(2) (February 1, 2005) Continuing Legal Education Requirement

This amendment reduces the number of surplus CLE credits that may be carried forward in a given year from 11 to a maximum of 10.

Maine Bar Rule 7.3(d)(6) (July 1, 2005) Duty to Notify Bar Counsel of Criminal Conviction

This amendment places the requirement of providing appropriate notice to Bar Counsel of an attorney's criminal conviction upon that attorney rather than the court clerks as provided by the prior terms of this rule. Under this amendment, attorneys are required to provide written notification of any criminal conviction to Bar Counsel within 30 days of the entry of the judgment of conviction.

Maine Bar Rule 6(e) (July 1, 2005) Official Attorney Address Record Availability to Public

This amendment clarifies that a Post Office Box is an acceptable registration address in lieu of an identifiable street address, in order that both the Board of Overseers and the public have sufficient information to contact a particular attorney. The clarification was issued to insure public accessibility while at the same time addressing privacy concerns raised by members of the bar in light of recent advancement in the Board of Overseers of the Bar's web site technology that allows users to search for attorney contact information.

Maine Bar Rule 3.6(b) (July 1, 2005) Confidentiality of Information

This amendment redesignates Maine Rule 3.6(b) to become part of the current Maine



Bar Rule 3.6(h) (confidentiality of information) because the issue of when a lawyer may or shall disclose information obtained in the course of representation of a client (or potential client) should be consolidated in one location in the Maine Bar Rules.

Maine Bar Rule 3.6(h) (July 1, 2005) **Confidentiality of Information**

This amendment changes Maine Bar Rule 3.6(h)(1) in several respects. First, it adopts the formulation of ABA Model Rule 1.6(a), “information relating to representation of a client” in place of the former “confidences or secrets.” Second, this amendment permits disclosure when “authorized and ordered to carry out the

representation.” Third, the requirement that consent to disclosure be in writing is deleted. Fourth, this amendment qualifies the extent of information that may be disclosed without the consent of that client to that information that is “generally known.” Fifth, it sets forth four qualifications to restricted disclosure of information (see Maine Bar Rule 3.6(h)(1)(i)(iv)).

Maine Bar Rule 3.15 (July 1, 2005) **Definitions**

This amendment adds to the existing list of defined terms the following: “client,” “prospective client” and “former client” because those terms are employed in the revisions to Maine Bar Rules 3.4 and 3.6.

Telephonic Screening of Complaints

In 2005, the office of Bar Counsel 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).

Bar Counsel 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 in order to be properly addressed and processed under the provisions of the Maine Bar Rules, all grievance complaints must be signed and submitted in writing – not by email – for any action to be taken by Bar Counsel. If alternative options or services unrelated to the Board’s governance functions are better suited to address the inquiry, e.g., the Lawyer Referral Service and Information Service or the Lawyers’ Fund for Client Protection, Bar Counsel so informs and assists the caller as appropriate. In addition, those callers who raise concerns focusing solely on judgments made by Guard-

ians ad Litem 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 do 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 the governance functions of the Grievance Commission or Bar Counsel’s duties, and serves to properly 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.



Informal Advisory Opinions

In 2005, the office of Bar Counsel continued to provide daily assistance to Maine attorneys through the issuance of informal advisory opinions, most usually by the so-called “ethics hotline.” Pursuant to Board Regulation No. 28, Bar Counsel provide inquiring attorneys with an assessment of the apparent propriety or prohibition under the Code of the described conduct of that inquiring attorney or another member of that attorney’s law firm. However,

under that Regulation, Bar Counsel are prohibited from advising an inquiring attorney about another attorney’s supposed or “hypothetical” conduct. See also Advisory Opinions #67 and #171. In 2005, Bar Counsel answered approximately 500 such “ethics hotline” inquiries. Several written informal and confidential advisory opinion letters were also issued by Bar Counsel.

Informal Interventions

Seventeen new Informal Intervention matters were docketed in 2005. The Board’s and Bar Counsel’s bar governance functions are not limited to processing grievance complaints. Bar Counsel’s outreach services such as the Ethics Hotline and Continuing Legal Education presentations have as a corollary a category of service that is now recorded in the Board’s records as “Informal Intervention.” These

matters pertain to staff attorneys’ extended involvement with professional responsibility dilemmas or problems brought to Bar Counsel’s attention by attorneys, courts or members of the public. They do not meet the criteria for the attention of any of the Board’s three Commissions, but call upon staff attorneys’ expertise and were successfully resolved on account of such involvement.

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 2005. There were 23 summary suspensions for non-compliance with CLE for calendar year 2004. Subsequently, 13 of those 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 Maine Bar Rule 12.

Any application that the CLE Coordinator does not approve is then reviewed by the Board’s CLE Committee, and the full Board if an appeal of the CLE Committee’s decision is requested. The Board has approved over 10,000 courses presented by more than 1,100 providers since 2001.

Use of the MCLE section of the Board’s web site appears to be quite helpful to Maine attorneys, giving them the ability to log in using their bar number and PIN to check credits, view available courses, and link directly to the providers of CLE programming.



CLE Presentations

Throughout 2005, Bar Counsel participated in several CLE panel presentations concerning ethical or professional responsibility issues for the following organizations:

- MSBA Subcommittee on Protective Custody & Juvenile Law
- MSBA Annual Meeting
- National Association of Legal Secretaries
- Maine Employment Lawyers' Association Quarterly Meeting
- MSBA Ethics Training for Staff
- Attorney General's Office/Child Protection Prosecutors
- MSBA Real Estate Institute
- Pro Bono Domestic Violence Project
- Franklin County Bar Association
- MSBA Bridging The Gap
- The John Waldo Ballou American Inns of Court
- Edward T. Gignoux Inns of Court
- University of Maine School of Law
- Somerset County Bar Association
- Cumberland County Bar Association
- Lincoln County Bar Association
- Kennebec County Bar Association
- Pine Tree Legal Assistance Retreat
- Law Publisher's Comp Summit
- Brann & Isaacson
- Waterville Bar Association

If you would like Bar Counsel to take part in CLE panel presentations related to ethical and professional responsibility issues, please let Bar Counsel know.



2005 Grievance Commission Statistical

Respondents by Age

<i>Age</i>	<i>#</i>	<i>%</i>
30-34	3	1.90%
35-39	28	17.72%
40-44	10	6.33%
45-49	24	15.19%
50-54	27	17.09%
55-59	26	16.46%
60-64	20	12.66%
65+	20	12.66%

Complaint Source

<i>Source</i>	<i>#</i>	<i>%</i>
Attorney	14	8.86%
Client	64	40.51%
Judge	5	3.16%
Opposing Counsel	7	4.43%
Opposing Party	34	21.52%
Sua Sponte	3	1.90%
Other	31	19.62%

Respondents by Admission Date

<i>Admission Year</i>	<i>#</i>	<i>%</i>
1/1/1950 – 12/31/1955	2	1.27%
1/1/1960 – 12/31/1965	2	1.27%
1/1/1966 – 12/31/1969	2	1.27%
1/1/1970 – 12/31/1975	25	15.82%
1/1/1976 – 12/31/1979	18	11.39%
1/1/1980 – 12/31/1985	28	17.72%
1/1/1986 – 12/31/1989	18	11.39%
1/1/1990 – 12/31/1995	36	22.78%
1/1/1996 – 12/31/1999	18	11.39%
1/1/2000 – 12/31/2005	9	5.70%

Complaints by Area of Law

<i>Area of Law</i>	<i>#</i>	<i>%</i>
Administrative/Municipal Law ..	5	3.16%
Banking	2	1.27%
Child Protection	1	0.63%
Collections	10	6.33%
Commercial/Business	12	7.59%
Contracts/Consumer	6	3.80%
Corporate	2	1.27%
Criminal	17	10.76%
Elder Law	1	0.63%
Family	30	18.99%
Foreclosure	1	0.63%
Juvenile	1	0.63%
Other	11	6.96%
Probate	16	10.13%
Real Estate	24	15.19%
Taxation	2	1.27%
Torts	11	6.96%
Workers' Compensation	6	3.80%

Respondent Firm Size

<i>Firm Size</i>	<i>#</i>	<i>%</i>
1	67	42.41%
2-5	61	38.61%
6-9	6	3.80%
10-19	7	4.43%
20-49	2	1.27%
50-99	2	1.27%
N/A	13	8.23%



Complaint Characterization

<i>Source</i>	<i>#</i>	<i>%</i>
Advising Violation of Law	1	0.63%
Conflict	18	11.39%
Conspiracy	1	0.63%
Disagreement over Conduct during Representation	16	10.13%
Disagreement over Fee	1	0.63%
Disagreement over Handling Client Funds & Property	7	4.43%
Failure to Communicate	3	1.90%
Illegal Conduct	5	3.16%
Improper Conduct before a Tribunal	5	3.16%
Incompetence	6	3.80%
Interference with Justice	29	18.35%
Lack of Preparation	5	3.16%
Misrepresentation/Fraud/Dishonesty	15	9.49%
Neglect	29	18.35%
Other Conduct Unworthy	16	10.13%
Threatening Prosecution	1	0.63%

Complaints by County

Androscoggin	10	6.33%
Aroostook	5	3.16%
Cumberland	35	22.15%
Franklin	0	0%
Hancock	7	4.43%
Kennebec	16	10.13%
Knox	3	1.90%
Lincoln	5	3.16%
Oxford	0	0%
Penobscot	15	9.49%
Piscataquis	1	0.63%
Sagadahoc	4	2.53%
Somerset	5	3.16%
Waldo	2	1.27%
Washington	3	1.90%
York	42	26.58%
Out of State	5	3.16%



Rules Cited - Reprimands

Rule	Misconduct	#
3.1(a)	Conduct Unworthy of an Attorney	5
3.2(f)(1)	Other Misconduct	1
3.2(f)(3)	Other Misconduct	2
3.2(f)(4)	Misrepresentation/Deceit	3
3.4(b)(1)	Conflict of Interest	1
3.4(c)(2)(ii)	Representation Permitted with Consent	1
3.4(c)(2)(iii)	Request Withdraw Simultaneous Representation	1
3.4(d)(1)	Interests of Former Clients	1
3.5(b)(2)(ii)	Mandatory Withdrawal	1
3.6(a)	Failure to Use Reasonable Care and Skill	2
3.6(a)(2)	Lack of Preparation	1
3.6(a)(3)	Failure to Use Reasonable Care and Skill/ Neglect	2
3.6(e)(2)(iv)	Failure to Return Property/Funds of Client(s)	1
3.6(f)	Communicating with Adverse Party	1
3.7(b)	Improper Concealment, Statement or Evidence	1
3.7(e)(1)(i)	Improper Legal Action	1
3.13	Responsibility for Compliance with the Maine Bar Rules	1

Rules Cited - Dismissals with Warning

Rule	Misconduct	#
3.1(a)	Conduct Unworthy of an Attorney	1
3.2(f)(3)	Other Misconduct	2
3.2(f)(4)	Misrepresentation/Deceit	1
3.4(a)(1)	Disclosure of Interest	1
3.4(b)(1)	Conflict of Interest	1
3.4(b)(2)	Informed Consent	1
3.4(i)	Limited Representation	1
3.6(a)	Standards of Care and Judgment	1
3.7(e)(2)(ii)	Adversary Conduct Before A Tribunal	1

Rules Cited - Court Orders

Rule	Misconduct	#
2(c)	Failure to Respond to Bar Counsel	1
3.1(a)	Conduct Unworthy of an Attorney	4
3.2(f)(1)	Violate, Circumvent or Subvert Provision of the Maine Bar Rules	1
3.2(f)(2)	Other Misconduct	1
3.2(f)(3)	Misrepresentation/Deceit	1
3.2(f)(4)	Conduct Prejudicial to the Administration of Justice	3



2005 Bar Counsel File Statistical Analysis

Area of Law

	#	%
Administrative Law	2	1.27%
Bankruptcy	2	1.27%
Child Protection	5	3.18%
Collections	1	0.64%
Commercial/Business	7	4.46%
Contracts/Consumers	5	3.18%
Criminal	36	22.93%
Elder Law	2	1.27%
Environmental Law	1	0.64%
Family	43	27.39%
Foreclosure	1	0.64%
Juvenile	1	0.64%
Landlord/Tenant	3	1.91%
PFA/Harassment	1	0.64%
Probate	7	4.46%
Real Estate	16	10.19%
Torts	9	5.73%
Workers' Compensation	4	2.55%
Other	11	7.01%
Total:	157	100%

Characterization of Complaints

	#	%
Advertising / Solicitation	1	0.64%
Advising Violation of Law	1	0.64%
Conflict	13	8.28%
Conspiracy	6	3.82%
Disagreement over Conduct		
During Representation	30	19.11%
Disagreement over Fee	2	1.27%
Disagreement over Handling Client		
Funds & Property	1	0.64%
Failure to Communicate	8	5.10%
Guardians Ad Litem	2	1.27%
Habeas Corpus	4	2.55%
Illegal Conduct	5	3.18%
Improper Conduct before		
a Tribunal	11	7.01%
Incompetence	16	10.19%
Interference with Justice	25	15.92%
Lack of Preparation	3	1.91%
Misrepresentation/Fraud/		
Dishonesty	13	8.28%
Neglect	7	4.46%
Other Conduct Unworthy	7	4.46%
Threatening Prosecution	2	1.27%

Total: 157 100%



2005 Registration Statistical Analysis

Registration Demographics

<i>Registration Type</i>	<i>#</i>	<i>%</i>
Resident		
Active	3,507	73.68%
Emeritus	5	0.11%
Judicial	74	1.55%
Non-Resident		
Active	1,161	24.39%
Judicial	13027%

Admission Date Demographics

<i>Admission Date</i>	<i>#</i>	<i>%</i>
1/1/1930 – 12/31/1939	2	0.04%
1/1/1940 – 12/31/1949	11	0.23%
1/1/1950 – 12/31/1959	67	1.41%
1/1/1960 – 12/31/1969	183	3.84%
1/1/1970 – 12/31/1979	877	18.42%
1/1/1980 – 12/31/1989	1,388	29.16%
1/1/1990 – 12/31/1999	1,423	29.89%
1/1/2000 – 12/31/2005	809	17.00%

County Demographics

<i>County</i>	<i>#</i>	<i>%</i>
Androscoggin	197	4.14%
Aroostook	77	1.62%
Cumberland	1,727	36.28%
Franklin	35	0.74%
Hancock	94	1.97%
Kennebec	464	9.75%
Knox	88	1.85%
Lincoln	71	1.49%
Oxford	44	0.92%
Penobscot	327	6.87%
Piscataquis	8	0.17%
Sagadahoc	65	1.37%
Somerset	43	0.90%
Waldo	36	0.76%
Washington	31	0.65%
York	287	6.03%
Out-of-State	1,166	24.50%

Gender Demographics

<i>Gender</i>	<i>#</i>	<i>%</i>
Female	1,455	30.57%
Male	3,305	69.43%

Age Demographics

<i>Age</i>	<i>#</i>	<i>%</i>
29 years or less	100	2.10%
30-34	342	7.18%
35-39	561	11.79%
40-44	582	12.23%
45-49	776	16.3%
50-54	835	17.54%
55-59	772	16.22%
60-64	461	9.68%
65+	331	6.95%

Age/Gender Demographics

<i>Age</i>	<i>#</i>	<i>%</i>
Female		
29 years or less	60	1.26%
30-34	150	3.15%
35-39	220	4.62%
40-44	215	4.52%
45-54	535	11.24%
55-64	256	5.38%
65+	19	0.40%
Male		
29 years or less	40	0.84%
30-34	192	4.03%
35-39	341	7.16%
40-44	367	7.71%
45-54	1,076	22.61%
55-64	977	20.53%
65+	312	6.55%



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