

MAINE BOARD OF OVERSEERS OF THE BAR

**BAR COUNSEL'S ANNUAL REPORT  
2001**

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## BOARD OF OVERSEERS OF THE BAR

## **Bar Counsel's 2001 ANNUAL REPORT**

### **INTRODUCTION**

The Board of Overseers of the Bar consists of 6 lawyers and 3 lay persons. It performs its duties and responsibilities under the Maine Bar Rules through its staff of 3 lawyers and 6 additional staff. There are, in addition to the Board, three agencies: the Fee Arbitration Commission, the Grievance Commission and the Professional Ethics Commission. The Fee Arbitration Commission and the Grievance Commission (21 and 26 members, respectively) normally conduct their functions by three-member panels. Each grievance panel is comprised of two attorneys and one lay (public) member. The fee panels may be so comprised or instead consist of two lay members and one attorney. Information concerning the responsibilities and functions of the Board and each of its commissions is contained in informational pamphlets available at the office of the Board of Overseers of the Bar, 97 Winthrop Street, P.O.Box 527, Augusta, ME. 04332-0527. Tel. # (207) 623-1121; Fax: (207) 623-4175. Certain public information may also be accessed at the Board's web site address: [www.mebaroverseers.org](http://www.mebaroverseers.org), and e-mail may be addressed to [board@mebaroverseers.org](mailto:board@mebaroverseers.org). Please also note the respective membership lists, within the attached Appendix.

### **I. GRIEVANCE COMMISSION**

## **A. COMPLAINTS**

In 2001, the office of Bar Counsel received, screened and docketed as Grievance Commission Files (GCF) 183 written grievance complaints. This means that upon screening by an attorney in the office of Bar Counsel these matters were deemed to initially allege at least some *prima facie* claim of misconduct by Maine attorneys in violation of the Code of Professional Responsibility (Code). That was a 4.2% decrease from the number filed in 2000 – (191). There were another 136 filings that were docketed instead as Bar Counsel Files, meaning that upon screening, these complaints were deemed not to state any Maine attorney’s violation of the Code. See M. Bar R. 7.1(c) and 7.1(d) and pp.7-8 of this report.

## **B. PANEL MEETINGS AND HEARINGS**

1. **Case Reviews** -- Panels of the Grievance Commission met on 38 occasions to conduct preliminary reviews of 193 GCF complaints under M. Bar R. 7.1(d). These meetings consist of a panel consulting with Bar Counsel or an Assistant Bar Counsel to review the contents of GCF investigative files. Such reviews are not hearings; neither the complainant nor the respondent attorney is present and, in fact, the majority of the reviews occur by telephonic conference call. Although the Rule’s requirements are inapplicable to either complainants or respondent attorneys, the entire investigation and review process through this preliminary phase is kept confidential by the Board, its Commission and its Staff under M. Bar R. 7.3(k)(1). However, any subsequent disciplinary hearing and the resulting decision (report) are always open and available to the public.

As a result of those 193 reviews, 159 complaints were closed by issuance of either a dismissal (136) (no finding of any attorney misconduct) or a dismissal with a warning (23) (minor misconduct) to the involved attorneys. See M. Bar R. 7.1(d)(3)(4). Review panels also found probable cause that professional misconduct warranting some disciplinary sanction had occurred in 31 of the reviewed matters. As a result, for those complaints disciplinary petitions were directed by review panels to be filed by Bar Counsel for formal disciplinary hearings open to the public before another panel of the Commission under M. Bar R. 7.1(e). While this was a major increase in the number of complaints so authorized for hearing in 2001 (10), eight of the 2001 matters involved one attorney, with another attorney having four matters filed against him. Three (3) additional grievance matters were authorized to be filed directly with Court. See M. Bar R. 7.2(b)(7).

**2. Disciplinary proceedings** – Grievance Commission panels conducted public disciplinary hearings resulting in 18 decisions in 2001. Panel decisions included two reprimands and three dismissals with warnings of attorneys. Brief descriptions of the proven misconduct in those two public reprimand matters are presented below at page 6. In 11 hearing panel discussions, Bar Counsel was directed to file further *de novo* proceedings before the Supreme Judicial Court (Court), i.e., the panels found probable cause for issuance of the more serious disciplinary sanctions of either suspension or disbarment of the respective attorneys. While these two 2001 reprimands (involving the same attorney in different matters) represented a 67% decrease in the number (6) so issued in 2000, the 11 court-referred matters in 2001 represented a very significant – and disturbing – increase (550%) compared to the number of GCF matters (2) heard and directed for suspension/disbarment proceedings in 2000. Copies of all public

disciplinary decisions issued after hearing are available to the public at the Board's office at 97 Winthrop Street, Augusta, and all such decisions (issued after January 2000) are available at the Board's web site: [www.mebaroverseers.org](http://www.mebaroverseers.org).

#### **a. Reprimands**

1. A Panel of the Grievance Commission reprimanded an attorney because he had a conflict of interest, did not employ reasonable care and skill and improperly disclosed client confidences or secrets as a result of his *pro bono* activities on behalf of immigrant workers. *Board of Overseers of the Bar v. John M. Whalen, Esq.*, GCF# 98-109 (October 3, 2001).

2. A Grievance Commission hearing panel reprimanded an attorney because in a conservatorship proceeding he improperly signed three acknowledgments on waivers of notice without the respective affiants ever having appeared before him to acknowledge their signatures and affirm under oath that they each had read and signed the waivers. The parties stipulated and agreed to a proposed reprimand which, after a public hearing where the complainant(s) were allowed to voice their objections, the Grievance Commission Panel made minor amendments and adopted. *Board of Overseers of the Bar v. John M. Whalen, Esq.*, GCF# 00-143 (November 8, 2001).

#### **b. OTHER GRIEVANCE COMMISSION DISPOSITIONS**

Certain complaints heard before panels of the Grievance Commission resulted in dispositions other than reprimands or further court proceedings. Two matters were dismissed for lack of proof of any violation of the Code, and three other cases resulted in dismissals with a warning for minor violations. See M. Bar R. 7.1(e)(3)(B). The attached tables at pps. 29-36 provides the various statistics in categories such as the

respective areas of law, characterization of misconduct, attorney's age and county of practice concerning all GCF matters received and docketed in 2001. In addition, the Appendix includes a table indicating the rules that the Court and Grievance Commission panels found had been violated in those matters in which some type of sanction – from dismissal with a warning to disbarment - was imposed after hearing (page 35). I have also included a demographic information sheet showing the number of attorneys in the firm, the attorneys' respective ages and years of practice for all cases resulting in a finding of a violation after hearing (page 36).

### **C. BAR COUNSEL FILES**

As referenced above at page 4, Bar Counsel Files are those complaints that upon initial review by Bar Counsel were deemed not to allege any professional misconduct subject to sanction under the Maine Bar Rules. M. Bar R. 7.1(c) requires Bar Counsel's unilateral dismissal of such matters, either with or without investigation. There were 136 such filings in 2001, representing a 25.9% increase from the number docketed in 2000 (108). As a result, by combination of those matters with all unrelated formal grievance complaints (GCF) discussed above, the number of written complaints about claimed attorney misconduct filed with Bar Counsel in 2001 totalled 319, a 6.7% increase from the total of such matters filed in 2000 (299).

When a Bar Counsel File is dismissed, the complainant is always notified by Bar Counsel of the reason for the dismissal and of a right within the subsequent 14 days to request that the dismissal be reviewed. That review will be performed by a lay member of either the Board or the Grievance Commission. The involved attorney is always informed by Bar Counsel of the dismissal, any resulting request for review, and the reviewer's decision. Bar Counsel dismissed 121 Bar Counsel Files in 2001, with 30

complainants requesting review of those actions, as allowed by Rule 7.1(c)(1). Lay members decided and approved 21 of those requests in 2001, with eight (8) reviews pending and one (1) dismissal vacated and re-docketed as a Grievance Commission File<sup>1</sup> (See page 38).

## **II. COURT MATTERS**

Eight (8) disciplinary or related matters were acted on by the Court in 2001, with the dispositions as follows: Disbarment – 1; Suspensions – 4; Resignation – 1; Reinstatement – 1; and Incapacity – 1. A brief summary of those matters follows below. In that regard, it is worth noting that all but one of the Court’s disciplinary sanctions was entered by approval of a proposed stipulation of the parties.

### **A. DISBARMENT**

1. In June 1998, after a jury trial, an attorney was convicted of one felony count of perjury (Class) pursuant to 17-A M.R.S.A. § 451 (1983 & Supp. 2000). The perjury resulted from the attorney’s having made one or more false material statements to the Court under oath during the course of a prior disciplinary hearing. At the time of the conviction the Court suspended the attorney’s license to practice law. In addition, in an unrelated matter, the York County Probate Court found that the same attorney while acting as conservator of a client’s estate had misappropriated a sizeable sum of the client’s money in breach of his fiduciary duties. A disbarment order was issued upon the Court’s (Clifford, J.) finding that the attorney had violated the following Maine Bar

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<sup>1</sup> One (1) case filed against a member of the Grievance Commission was filed and reviewed by a member of the Board and remained pending as of December 31, 2001.

Rules: 3.1(a)[conduct unworthy of an attorney]; 3.2(f)(2), (3), and (4) [illegal conduct, conduct involving dishonesty, fraud or deceit, and conduct prejudicial to the administration of justice]; 3.6(a)(2), (3) [handling a matter without proper preparation, and neglect of a legal matter]; 3.6(e)(2)(iii) [failure to keep appropriate records or render prompt accounting of a client's property]; 3.7(b) and (e)(1) [participating in the creation of false evidence and seeking to mislead a tribunal by making false statements of fact or law. *Board of Overseers of the Bar v. Albert P.C. Lefebvre*, Docket No. BAR 98-4, January 24, 2001.

## **B. SUSPENSIONS**

1. An attorney represented a client as Plaintiff in a personal injury matter. The action was settled in 1998 for \$30,000. After payment of the attorney's fee and a deduction for certain medical bills, the client received \$15, 550.24. The attorney, however, failed to pay many of her medical bills. When Plaintiff learned of this she notified the attorney, yet more than a year after the settlement, there was still over \$1,000 remaining to be paid. The Court found the attorney's actions to be dilatory and grossly neglectful of payment of his client's medical bills, that he had failed to segregate and account for her funds and had failed to deliver to her a balance of over \$3,000 he had kept from her settlement. His misconduct involved violations of Maine Bar R. 3.2(f)(2), (3), (4); 3.6(a)(2), (3) and 3.6(e)(1), (2). By agreement, the Court (Alexander, J) found this misconduct to be serious and imposed a one-year suspension with all but 90 days of that period itself suspended with other conditions to be in place before resuming the practice of law, including the monitoring of his practice by another approved attorney and a certified public accountant. *Board of Overseers of the Bar v. Ronald L. Bishop*, Docket No. BAR-00-6, February 7, 2001.

2. An attorney represented a defendant charged with criminal threatening and reckless conduct with a dangerous weapon. The matter was specially set for jury selection on a date certain. The attorney filed a Motion to Continue the trial, but that motion was denied and he was ordered to appear for jury selection. Neither he nor his client appeared. As a result, he was assessed \$430 to pay for the cost of the jury. He did not appeal that order. He also did not pay the assessment, resulting in the filing of a criminal complaint by the Clerk of Court. When he did not appear as summoned, a warrant for his arrest issued. When he appeared on the criminal charges he was found in contempt of court and assessed another \$430. He appealed this result but the Law Court denied his appeal, and remarked that this attorney “is living proof of the adage that a lawyer who represents himself has a fool for a client.” The attorney was found to have violated Maine Bar Rules 3.2(f)(4) [conduct prejudicial to the administration of justice], 3.6(a)[failure to be punctual in professional commitments] and 3.7(a) [actions to delay a trial for improper reasons]. Citing the aggravating factor of the attorney’s dismal disciplinary history, the Court (Rudman, J) suspended him for five months. *Board of Overseers of the Bar v. Earle S. Tyler, Jr. Esq.*, Docket No. BAR 00-4 (February 12, 2001).

3. A two-count information was filed with the Court reference the misconduct of an attorney. In the first count the charge was that the attorney drafted a will for a long-time client, which she executed on April 2, 1997. The client left all her property to one individual and nominated the attorney to be the Personal Representative of her estate. The nomination clause recited that the attorney should solely determine the reasonableness of his fees both in his capacity as Personal Representative and as attorney for the estate. This language was placed in the will by the attorney and not at

the request of the client. The attorney's usual practice was to charge a flat fee to an estate based upon a percentage of its value, a practice prohibited by Maine law and by the Bar Rules. The attorney also charged a fee for acting as both Personal Representative and as attorney for the estate, a practice which was deemed to result in excessive and unreasonable fees. The second count related to representation of a wife in a divorce in 1995. After the divorce, the attorney represented the ex-husband in several criminal matters. In 1997 he again represented the ex-wife in post-divorce litigation involving child support by filing a Motion for Contempt against the ex-husband. He did not disclose to the client his simultaneous representation of the ex-husband in the criminal matters, but told her he could not collect child support because he could not locate him. This conduct was a violation of Maine Bar Rule 3.4(a), (b) and (c). Because of mitigating circumstances, the Court (Saufley, J.) suspended the attorney for 60 days with all but 30 days thereof suspended for one year contingent on certain conditions. *Board of Overseers of the Bar v. Richard A. Lord, Esq.*, Docket No. BAR-01-01, July 10, 2001.

4. An attorney undertook to represent a client on a claim for Social Security disability benefits which included filing an appeal. The attorney failed to file any appeal. However, when the client made numerous inquiries to him over the course of the year (2000), the attorney assured him that all steps had been taken and that the reason for delay was the fault of the Social Security Administration. In January 2001 the attorney finally filed the appeal with required documents. He did so by "manufacturing" the client's signature by cutting and photocopying the client's signature from other documents thereby falsely making it appear that the client had actually signed the necessary papers for the appeal. The client terminated the attorney's services due to

the lengthy delay. His misconduct was later discovered by the client's new attorney. The Court (Clifford, J.) found that the attorney had violated Maine Bar Rules 3.1(a) [conduct unworthy of an attorney]; 3.2(f)(3), (4) [conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice]; 3.6(a)(3) [neglect of a legal matter]; and 3.7(e)(1)(I) [conduct which seeks to mislead a tribunal]. He was suspended for 12 months, with all but 60 days of the period itself suspended, and ordered to be mentored by another attorney during the suspended suspension period. *Board of Overseers of the Bar v. E. Christopher L'Hommedieu*, Docket No. BAR-01-03, October 23, 2001.

### **C. RESIGNATION**

An attorney petitioned for resignation and the Board recommended the Court's acceptance. However, the complainants in the underlying grievance matter strongly objected to the attorney's resignation, raising a number of issues outside the purview of Maine Bar Rule 7.3(g). After hearing, the Court (Saufley, J.) found that the attorney had tendered the appropriate affidavit pursuant to Maine Bar Rule 7.3(g) and the Board had recommended that he be allowed to resign. The Court ordered that the attorney be allowed to resign and that the affidavit be impounded pursuant to the Rule. *Board of Overseers of the Bar v. L. John Castner*, Docket No. BAR-00-3 (January 5, 2001).

### **D. REINSTATEMENT**

Upon motion for reinstatement by a former attorney who had been disbarred in 1992, upon the recommendation of the Board and stipulation of the parties, the Court (Clifford, J.) ordered that the attorney be reinstated with specific conditions of law study and use of a lawyer to monitor his practice and file reports with the Board and the Court

for a period of one year. *Board of Overseers of the Bar vs. George Francis Wood*, Docket No. BAR-91-025, December 13, 2001.

### **E. INCAPACITY**

The Court (Calkins, J.) issued an Order on Incapacity allowing an attorney to continue in the practice of law under certain conditions involving supervision by an attorney monitor, attendance at treatment programs and reporting of certain events. *Board of Overseers of the Bar v. Richard S. Emerson, Jr.*, Docket No. BAR-00-5, March 15, 2001.

### **F. OTHER MATTERS**

The disbarment order reported in Bar Counsel's Annual Report for 2000 (in Docket No. BAR-99-5) was upheld by the Law Court on appeal. *Board of Overseers of the Bar v. Thomas M. Mangan*, 2001 ME 7, 763 A.2d 1189. The Law Court held that

...an attorney-client relationship is created when " '(1) a person seeks advice or assistance from an attorney, (2) the advice or assistance sought pertains to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agrees to give or actually give the desired advice or assistance.' "<sup>2</sup>

The Court also discussed the fact specific nature of determining what actually constitutes the practice of law. Finding there was competent evidence in the record to support the single justice's findings, the Court affirmed its holding that Mr. Mangan had engaged in the practice of law while searching for his client's daughters' fathers.

That same Defendant then filed a Motion for Relief from Judgment pursuant to M.R. Civ. P. 60(b). The Court (Saufley, J.) denied that motion finding that the

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<sup>2</sup> *Mangan* 2001 ME 7 at ¶19 citing *State v. Gordon*, 692 A.2d 505, 506 (N.H. 1997) (quoting *McCabe v. Arcidy*, 138 N.H. 20, 25, 635 A.2d 446, 449 (1993)).

Defendant had failed to present an appropriate basis to set aside the original judgment, including his offers of proof on claimed newly discovered evidence. *Board of Overseers of the Bar v. Thomas M. Mangan*, Docket No. BAR-99-5, April 19, 2001. In addition, based upon his failure to comply with the notification requirements to former clients, opposing counsel and courts under Maine Bar Rule 7.3(i), upon the Board's motion – and agreement of the parties at hearing - Mr. Mangan was found in contempt. No further sanction was imposed, but he was ordered to comply with specific notification procedures ordered by the Court.

### **III. FEE ARBITRATION COMMISSION**

The Board received 193 requests for petitions for arbitration of fee disputes in 2001, 96 of which were returned and filed by year's end with the Fee Arbitration Commission. With 29 petitions already pending, and another matter re-opened for re-hearing before a new panel (two of the initial panel's members' terms had expired), the total number of matters on file in 2001 was 125, nearly identical to the number (127) from the previous year. Arbitration panels met 36 times to hear 48 petitions. With preliminary screening by Assistant Bar Counsel Karen G. Kingsley and Commission Secretary Jaye Malcolm Trimm and final approval by Commission Chair E. James Burke, Esq., 52 of those pending fee dispute matters were dismissed, settled or withdrawn by consent of the parties prior to hearing. See M. Bar R. 9(e)(3). Another 54 matters were heard. As a result, 106 fee disputes were heard or settled, leaving a pending docket of 19 matters (See the Appendix at p.39).

The office of Bar Counsel screens all fee arbitration petitions that have been filed with the Secretary to determine if the allegations actually warrant the attention of that Commission or should also (or instead) be processed by the Grievance Commission.

Bar Counsel may attempt to promote and assist in the informal resolution of fee disputes prior to hearing by a panel but is not usually involved in the fee arbitration process after that initial screening. See M. Bar R. 9(e)(2). Even though both Commissions are otherwise subject to confidentiality restrictions during the investigative processes, pursuant to Board Regulation No. 8, the Fee Arbitration Commission and Grievance Commission may and do share respective investigative materials concerning related matters.

#### **IV. PROFESSIONAL ETHICS COMMISSION**

##### **A. OPINION NO. 175 (April 12, 2001)**

An attorney asked whether it is proper to simultaneously have an “of counsel” relationship with a law firm and also have a separate, independent legal practice in another firm. Generally concurring that the proposed arrangement was permissible with adequate disclosures and consents of clients where required, the Commission’s opinion explained the term “of counsel” and emphasized that because of the attorney’s dual practice status, the attorney and the law firm must carefully apply the conflict of interest rules.

##### **B. OPINION NO. 176 (July 10, 2001)**

Bar Counsel inquired whether there was an improper conflict of interest if an attorney, acting as a complaint justice, approves and issues a warrant to search an automobile that was owned by a person whom the attorney did not then realize was already a client of the attorney. Because of Opinion No. 67<sup>3</sup>, which established that the Grievance Commission and Bar Counsel, not the Professional Ethics Commission, are

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<sup>3</sup> Issued by the Commission on January 7, 1986.

empowered to investigate and act on questions about the past conduct of an attorney, the Commission only considered what Maine Bar Rules potentially might be controlling. In its discussion, the Commission agreed that whatever the applicability of the Code of Judicial Conduct to complaint justices, persons serving in that capacity must be admitted to practice law in Maine pursuant to 4 M.R.S.A. § 161.

### **C. OPINION NO. 177 (December 14, 2001)**

The question presented was whether an attorney may finance litigation through lines of credit from a financial institution wherein the client pays the interest associated with such loans on the theory that they are a client's expenses of litigation, not an attorney's cost of doing business. The Commission determined that while the arrangement was permissible, the attorney cannot jeopardize the client's right to fee arbitration under Maine Bar Rule 9, and that the terms for the loan, including the interest charged, must be reasonable.

## **V. MISCELLANEOUS MATTERS**

### **A. THE LAWYERS' FUND FOR CLIENT PROTECTION**

The Lawyers' Fund for Client Protection was established by the Court effective on July 1, 1997. Pursuant to the Court's Rules governing that Fund, its Board of Trustees may only pay claims for dishonest conduct occurring after January 1, 1999. Although the Fund's Trustees control the investment of its collected assessments and the general

operation of its responsibilities and duties, at the direction of the Court the Board has requested and collected \$20.00 annually for the past five years from all Maine attorneys and judges for deposit in the Fund's account. There were no claims referred to or received by Bar Counsel for investigation under Lawyers' Fund for Client Protection – Rule 12 in 2001.

## **B. AMENDMENTS TO THE MAINE BAR RULES**

The study and possible proposal of amendments to the Code of Professional Responsibility (Maine Bar Rule 3) are generally the province of the Court's Advisory Committee on Professional Responsibility (ACPR), to which Bar Counsel is a liaison. The Board reviews and prepares all other portions of the Maine Bar Rules. At the request of ACPR and the Board respectively, the Court amended several portions of the Maine Bar Rules in 2001:

1. Maine Bar Rule 12 (Mandatory Continuing Legal Education) became effective on January 1, 2001. The Board is in the process of defining policies and processes to administer the Rule.
2. Maine Bar Rule 1(a). This amendment now provides that a lawyer admitted to or engaging in practice in Maine is subject to the Court's jurisdiction no matter where the conduct occurred. A new paragraph was added as Rule 1(b) providing for choice of law for the jurisdiction where the lawyer has a predominant practice.
3. Maine Bar Rule 3.4(i), the major portion of the so-called "unbundling" rule, was added and became effective on July 1, 2001. This Rule allows lawyers

to provide limited representation to clients and provides a sample form for an appropriate limited representation agreement.

4. Maine Bar Rule 3.5(a)(4) was added to complement the “unbundling” rule, and makes clear that it is not a violation of the rules on withdrawal to cease or limit representation in accordance with Maine Bar Rule 3.4(i).
5. An amendment to Maine Bar Rule 3.6(a)(2) makes clear that an attorney may reasonably rely on the (limited) information provided by a limited representation client.
6. Maine Bar Rule 3.6(f) was amended to allow lawyers to communicate directly with a party to whom limited representation is being or has been provided.
7. The addition of Maine Bar Rule 3.4(j) limits the applicability and requirements of the normal conflict rules in cases where limited representation is being provided by a lawyer “under the auspices of a non-profit organization or a court –annexed program”.
8. Maine Bar Rule 3.14 became effective September 1, 2001. This new rule describes the circumstances and required procedures under which attorneys may sell and/or purchase a law practice.
9. Maine Bar Rule 3.3(d) was amended effective September 1, 2001 to complement new Maine Bar Rule 3.14 by allowing payment to the lawyer who has sold his or her law practice.
10. Maine Bar Rule 12(a)(5) was amended effective September 6, 2001 and provides that Maine attorney legislators and members of Congress are exempt from the mandatory Continuing Legal Education rule.
11. Maine Bar Rule 3.11 (Continuing Legal Education). This aspirational

CLE Rule was abrogated effective January 1, 2001 in light of the promulgation of Maine Bar Rule 12 (mandatory CLE). (See Paragraph 1 above).

### **C. INFORMAL ADVISORY OPINIONS**

The office of Bar Counsel continued to provide daily assistance to Maine attorneys through the rendering of informal advisory opinions, most usually by the so-called "telephone ethics hotline". Pursuant to Board Regulation No. 28, Bar Counsel provides an attorney with an assessment of the professional conduct of either that inquiring attorney's or the conduct of another member of that attorney's firm under the Maine Bar Rules. See also Advisory Opinion No. 67. In 2001, attorneys in the office of Bar Counsel answered approximately 494 such telephonic "ethics hotline" inquiries. That total represents 113 more hotline calls than in 2000, for a 29.6% increase. Bar Counsel provided twenty-two (22) written informal advisory opinions in response to attorneys' requests.

### **D. TELEPHONIC SCREENING OF COMPLAINTS**

2001 was the fifth full year of the Board's policy of having attorneys in the office of Bar Counsel, as time and resources allow, personally screen telephonic inquiries from potential complainants. Approximately 452 callers spoke to Bar Counsel or an Assistant Bar Counsel, a 5% increase from the number of callers in 2000 (429). Of those 452 callers, only 28 people actually followed up and filed written grievance complaints or fee arbitration petitions (or in some cases both). Therefore, only 6% of the people that called and spoke with a Board staff attorney actually later filed a written complaint. The

percentage of such return filings in 2000 was 12%. Some callers did not have a complaint about an attorney, but rather were seeking legal advice. Bar Counsel certainly cannot and does not provide any legal advice. Staff attorneys also do not provide these callers with any opinions as to the propriety of the claimed ethical conduct of any involved and/or specifically mentioned attorney.

This screening of calls continues to help divert a significant number of complaints or inquiries that appear not to relate to Grievance Commission or Bar Counsel matters and therefore are inappropriate for any investigation through the grievance process. In any event, the callers are always given the option to proceed and file a written complaint if they so choose. This telephone – and “walk-in”-screening project is strongly encouraged by the Board and Bar Counsel and remains well in place in 2002.

#### **E. MAINE STATE BAR ASSOCIATION**

In May of 2001, the Board also continued its annual practice of meeting with the MSBA's Board of Governors. Discussion included administration issues and policies concerning the new Mandatory CLE Rule, the anticipated proposed Rules for the Maine Assistance Program for Lawyers, multi-jurisdictional practice, unauthorized practice of law, mandatory malpractice insurance and a need for a state disaster response program. The two Boards agreed to continue to so meet each year.

#### **F. PARTICIPATION AS CLE PANELIST**

Throughout 2001, I participated in several CLE panel presentations concerning ethical or professional responsibility issues, including the following:

- A Maine Trial Lawyers Association (MTLA) panel: “Dealing with the Difficult Client”;
- A MTLA panel presented twice (Portland and Lewiston): “Ethical Issues”;

- Cumberland Bar Association’s Ethics Seminar;
- Northern New England Law Publishers, Inc.: “Legal Ethics Matter: Workers’ Comp Dilemmas; and
- John Waldo Ballou American Inn of Court (Bangor): panel presentation of dilemmas in attorney advertising.

As has been our continuing policy and practice, and especially now with the Court-mandated M. Bar R. 12 (Mandatory CLE), any of the Board’s three staff attorneys are willing to take part in CLE panel presentations related to ethical issues and practices.

**G. ADDITIONAL MATTERS CONSIDERED BY THE BOARD**

The Board also gave consideration or took action on the following matters at various points in 2001:

- The Board completed the first full calendar year of administration of Maine Bar Rule 12, Continuing Legal Education. Members of the Board worked many hours at both Committee and Board meetings to develop the operating policies and procedures that provide the interpretation and support needed to administer the rule. The Board was very fortunate to acquire a proven software system to track the CLE compliance of members of the Maine bar. Additionally, a website dedicated to Maine CLE has been established: [www.mecle.com](http://www.mecle.com). The site provides not only a secure record of each attorney’s course CLE efforts, but also the text of Rule 12 and a listing of many upcoming approved CLE sessions. The CLE reporting date for calendar year 2001 will be July 31, 2002. Individualized CLE progress reports for 2001 will be included for each Maine attorney with the

annual registration packet mailed to all members of the bar on or about July 1, 2002.

- The Court's disciplinary orders are available through a link to the Court's web site under Supreme Court Opinions – Bar Discipline Decisions at [www.courts.state.me.us](http://www.courts.state.me.us).
- By Regulation No. 55, the Board established a procedure for its CLE Committee to act on attorneys' requests for exemption from the requirements of M. Bar R. 12(a)(1) or for approval of CLE credit under M. Bar R. 12(e). The regulation also provides for an appeal procedure concerning any denial by the Committee of such requests.
- On a related theme, along with Associate Justice Howard H. Dana, Jr., I attended the Conference of Chief Justices meeting in March 2001, the major purpose being to review and discuss the current status of the Conference's earlier adopted National Action Plan. There were excellent discussions of issues related to trends in the areas of bar discipline, including:
  - Lawyer competence;
  - Professionalism; and
  - Multi-jurisdictional practice
- Board Regulation No. 56 established a Protocol for Publication of Disciplinary Matters to identify several entities to whom the Board shall proactively provide notice and copies of final attorney disciplinary decisions. The regulation provides that no such proactive notice is to be issued until after the applicable appeal period has run and, if exercised, been completed. Although in instances of suspension, disbarment or resignation, the Board shall notify the general

circulation newspaper in the locale of the disciplined attorney's practice, those newspapers are not proactively notified by the Board where the sanction is a reprimand. However, the Board will continue its former practice to always provide a copy of any decision in response to inquiries it receives concerning decisions issued after disciplinary hearings. Maine Bar Rule 7.1(e)(2)(B) provides that all such decisions are to be "made available to the public". The new protocol, however, now provides that if the imposed sanction has been or may still be appealed as of the date of the request, that procedural status shall be explicitly noted when the decision is provided by the Board.

- As a result of at least one respondent's counsel having contacted a member of a hearing panel after hearing but pending issuance of its decision, the Board adopted Regulation No. 57. As a result, once a discipline matter has been assigned to a Grievance Commission panel for a hearing, panel members shall not communicate about the matter with anyone other than a fellow panel member, except Panel Chairs may have pre-hearing procedural discussions with counsel as deemed necessary.
- A majority of the Board (7-2) initially agreed to approve the concept of the then yet to be finalized proposed Rules for Maine Assistance Program For Lawyers (MAP).<sup>4</sup>
- The Board continued to await the Advisory Committee on Professional Responsibility's study and anticipated proposed amendments to the Court

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<sup>4</sup> After further consideration and in light of certain questions, concerns and suggestions the Board had voiced to the Court by its letter of September 28, 2001, the Board's subsequent review of the written proposed rule in 2002 - shortly before the Court's public hearing of March 6, 2002 - resulted in a significant reversal of the Board's earlier vote. By unanimous vote, the Board opposed the proposed

regarding Maine Bar Rule 3.9, concerning further definitional examples of prohibited false advertising by attorneys.

- In conjunction with representative lawyers from two of Maine's larger law firms, and from the Maine State Bar Association, the Board implemented a policy regarding the Lawyers' TV ALI/ABA Satellite Broadcast, to require that any host law firms publicize the availability of such events at least 30-days prior to the viewing by at least two of three notification methods. Those approved methods include publicity by the firms themselves, the Maine State Bar Association and the Board's CLE website, [www.mecle.com](http://www.mecle.com).

### **CONCLUSION**

As demonstrated by decisions of both the Grievance Commission and the Court, an increased number of either more serious or repetitive misconduct by Maine attorneys resulted in a significantly higher number of matters being filed before the Court in 2001 to determine whether suspension or disbarment is indeed appropriate. The increased frequency of more serious matters continues in 2002. In addition, of the 11 matters heard resulting in attorney misconduct being found by either the Court or the Grievance Commission, all but two of the involved attorneys were sole practitioners.

As in the past, the unsparing work and time put forth by the many volunteer members of the Board and its Commissions is much appreciated and serves so well to

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MAP Rule for reasons which were indicated to the Court by the Board's letter of February 26, 2002 submitted to the Court prior to the March 6<sup>th</sup> hearing.

facilitate the general policy and disciplinary, fee arbitration and ethical advisory processes of the Maine Bar Rules. We invite written suggestions for improvements or appropriate changes to the Board's policies and operations to be submitted to the Board Chair, Administrative Director Dan Crutchfield or me for the Board's consideration. The Board's conference room remains available for Maine attorneys to use for depositions, court/attorney committee meetings, etc. Please telephone either Dan Crutchfield or Administrative Clerk Donna L. Spillman at 623-1121 or e-mail us at [board@mebaroverseers.org](mailto:board@mebaroverseers.org) to schedule use of the Board's conference room for that purpose.

Thank you.

Respectfully submitted,

DATED: March 8, 2002

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## **APPENDIX**

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

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**MEMBERSHIP LISTS**

**January 1, 2001 to December 31, 2001**

**GRIEVANCE COMMISSION COMPLAINTS**

I.	<u>Complaints Reviewed</u>	193
	<u>ACTION:</u>	
	Dismissal:	136 <sup>5</sup>
	Dismissal with warning to attorney:	23
	Disciplinary hearing authorized:	31
	Directly to Court - Rule 7.2(b)(7)	3
II.	<u>Dispositions After Public Hearing</u>	<u>18 matters considered -</u>
	<u>ACTION:</u>	
	Dismissals:	2
	Dismissals with warning:	3
	Reprimands:	2
	Complaints authorized to be filed with the Court by information:	11
III.	<u>Grievance Complaint Summary</u>	
A.	Complaints pending at start of period:	80
B.	New complaints docketed:	183
C.	Total complaints pending during period:	263
D.	Total complaints reviewed or heard:	<u>211</u>
E.	Complaints pending investigation, review or hearing as of 12/31/01:	52

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<sup>5</sup> Includes one matter reviewed by a panel of the Board. See M. Bar R. 4(d)(7); 7.1(b).

**SUPREME COURT DISCIPLINARY DOCKET**

**2001**

Disciplinary orders issued:

1. Disbarment	1	
2. Suspensions	4	
3. Resignations	1	
4. Reprimand		0
5. Reinstatement		1
6. Incapacity		1
Total:	8	<u>        </u>

**LAW COURT DECISIONS – 1**

1. One disbarment affirmed (See 2001 ME 7, 763 A.2d 1189)

**Total Disciplinary Matters Pending or to be Filed Before Court – 12/31/01**

1. Complaints concerning pending informations	8 (5 attorneys)
2. Informations authorized, but not yet filed	10
TOTAL:	<u>        </u> 18

2001

**GRIEVANCE COMPLAINTS FILED**

CHARACTERIZATION

	NUMBER	PERCENT OF TOTAL
Trust violation	6	3.5
Conflict of interest	21	11.5
Neglect	103	56
Relationship w/client	0	0
Misrepresentation / fraud	29	16
Excessive fee	1	.5
Interference with justice	20	11
Improper advertising / solicitation	0	0
Criminal conviction	0	0
Personal behavior	1	.5
No cooperation w/Bar Counsel	0	0
Medical	0	0
Incompetence	0	0
Jurisdiction	0	0
Conduct unworthy of an attorney	2	1
Other	0	0
<b>TOTAL</b>	<b>183</b>	<b>100</b>

**2001  
GRIEVANCE COMPLAINTS**

SIZE OF LAW OFFICE

	NUMBER	PERCENT OF TOTAL
Sole Practitioner	98	53.5
2	25	13.5
3-6	33	18
7-10	8	4.5
11 and over	13	7
Government / state /other	6	3.5
<u>TOTAL</u>	<b>183</b>	<b>100</b>

AREA OF LAW

	NUMBER	PERCENT OF TOTAL
Family	55	30
Juvenile	0	0
Criminal	40	22
Traffic	0	0
Probate/Wills	6	3.5
Guardianship	0	0
Commercial	2	1
Collections	5	3
Landlord/Tenant	2	1
Real Property	17	9
Foreclosure	1	.5
Corporate/Bank	3	1.5
Tort	17	9
Administrative Law	3	2
Taxation	1	.5
Patent	0	0
Immigration	0	0
Anti-Trust	0	0
Environmental	0	0
Contract/Consumer	3	2
Labor	3	2
Workers' Comp	2	1
Other/None	15	8
Bankruptcy	1	.5
Municipal	6	3
Elder Law	1	.5
<u>TOTAL</u>	<b>183</b>	<b>100</b>

**2001**

**GRIEVANCE COMPLAINTS**

**SOURCE OF COMPLAINT**

	NUMBER	PERCENT OF TOTAL
Client	119	65
Other Party	43	23
Judge	6	3.5
Lawyer	10	5.5
Sua sponte	5	3
<b>TOTAL</b>	<b>183</b>	<b>100</b>

**YEARS IN PRACTICE**

	NUMBER	PERCENT OF TOTAL
40-61 years	2	1
30-39 years	11	6
20-29 years	60	33
10-19 years	55	30
2-9 years	55	30
Less than 2 years	0	0
<b>TOTAL</b>	<b>183</b>	<b>100</b>

**AGE OF ATTORNEY**

	NUMBER	PERCENT OF TOTAL
24-29	8	4.5
30-39	31	17
40-49	59	32
50-59	71	39
60+	14	7.5
<b><u>TOTAL</u></b>	<b>183</b>	<b>100</b>

**2001  
GRIEVANCE COMPLAINTS FILED**

COUNTY	NUMBER	PERCENT OF TOTAL
Androscoggin	16	9
Aroostook	12	6.5
Cumberland	50	27
Franklin	1	.5
Hancock	13	7
Kennebec	30	16.5
Knox	6	3
Lincoln	2	1
Oxford	5	3
Penobscot	22	12
Piscataquis	0	0
Sagadahoc	3	2
Somerset	1	.5
Waldo	3	2
Washington	1	.5
York	17	9
Out of State	1	.5
<b>TOTAL</b>	<b>183</b>	<b>100</b>

**2001 SUMMARY OF SANCTIONS ISSUED AFTER HEARING**  
**Bar Rules Found to Have Been Violated**

(Certain decisions cited multiple rule violations)

**Grievance Commission Reprimands – 2**

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	2
3.2(f)(3)	Misrepresentation / deceit	1
3.4(b)(1)	Conflict of interest	1
3.6(a)	Neglect of client matter	2
3.6(h)(1)	Preserving Confidences and Secrets	1
	<b>TOTAL</b>	<b>7</b>

**Grievance Commission Dismissal w/warnings – 3**

RULE	MISCONDUCT	NUMBER
3.4(a)	Disclosure of Interest	1
3.6(c)	Threatening Prosecution	1
3.13(c)	Responsibility for Compliance with the Maine Bar Rules	1
	<b>TOTAL</b>	<b>3</b>

**Court Suspensions / Disbarments - 5**

RULE	MISCONDUCT	NUMBER
3.1(a)	Conduct unworthy of an attorney	2
3.2	Admission, disclosure and misconduct	1
3.2(f)(2)	Trustworthiness / fitness as an attorney	2
3.2(f)(3)	Misrepresentation / deceit	3
3.2(f)(4)	Prejudicial to the administration of justice	2
3.3(a)	Excessive Fees	2
3.4(a)	Disclosure of interest	1
3.4(b)	Conflict of interest	1
3.4(c)	Conflict of interest; simultaneous representation	1
3.6	Conduct during representation	1
3.6(a)(2)	Handling a legal matter without adequate preparation	2
3.6(a)(3)	Employ reasonable care and skill	3
3.6(e)	Preserve identity of funds	1
3.6(e)(1)	Preserve Identity of funds in identifiable account	1
3.6(e)(2)	Failure to identify funds	1
3.6(e)(2)(iii)	Failure to maintain record of all funds	1
3.6(e)(2)(iv)	Promptly return funds or possessions to client	1
3.7	Conduct during litigation	1
3.7(b)	Improper concealment, statement or evidence	1
3.7(e)(1)	Improper adversarial conduct	1
3.7(e)(1)(i)	Improper adversarial conduct; misleading / false statement to tribunal	1
	<b>TOTAL</b>	<b>30</b>

## 2001 BAR COUNSEL FILES

AREA OF LAW	NUMBER	PERCENT OF TOTAL
FAMILY	39	28.9
JUVENILE	0	0
CRIMINAL	37	27.4
TRAFFIC	0	0
PROBATE WILLS	7	5.0
GUARDIANS	1	.7
COMMERICAL	1	.7
COLLECTIONS	4	3.0
LANDLORD/TENANT	0	0
REAL ESTATE	6	4.4
FORECLOSURE	6	4.4
CORPORATE / BANKING	3	2.2
TORTS	11	8.0
ADMINISTRATIVE LAW	0	0
TAXATION	2	1.5
PATENTS / COPYRIGHT	0	0
IMMIGRATION	0	0
ANTITRUST	0	0
ENVIRONMENTAL	3	2.2
CONTRACT / CONSUMER	1	.7
LABOR LAW	5	4.0
WORKERS COMPENSATION	6	4.0
OTHER	0	0
BANKRUPTCY	1	.7
MUNICIPAL LAW	2	1.5
ELDER LAW	1	.7
<b>TOTALS</b>	<b>136</b>	<b>100</b>

## 2001 BAR COUNSEL FILES

CHARACTERIZATION	NUMBER	PERCENT OF TOTAL
Conspiracy	19	14.0
Disagreement over conduct of case	44	32.4
Habeas Corpus	7	5.1
Inquiry Only	11	8.1
Insufficient information	20	14.7
Lack of professionalism	12	8.8
Malpractice	1	.7
Personal life	2	1.5
Request for legal assistance	19	14.0
Interference with justice	1	.7
Other	0	0
<b>TOTAL BAR COUNSEL FILES DOCKETED</b>	<b>136</b>	<b>100</b>

Bar Counsel Files pending at start of period	2
New Bar Counsel Files received	136
Total Bar Counsel Files on Docket	138
Bar Counsel Files finally dismissed	121
Bar Counsel Files pending at end of period	17
Dismissals appealed (Request for review filed)	30
Action on review of those appeals:	
Dismissals affirmed by lay member	21
Dismissals vacated by lay member (re-docketed as Grievance Commission File)	1
Reviews pending decision as of 12/31/01	8

## FEE ARBITRATION COMMISSION

Petition Summary  
January 1, 2001 – December 31, 2001

### **PETITIONS:**

Pending at start of period:	29
Docketed during period:	96
Total open petitions during period:	125
Dismissed, settled, withdrawn:	52
Heard and closed by awards:	48
Heard and awaiting awards:	6
Total petitions closed during period:	106
Total petitions pending at close of period:	19

### **BREAKDOWN OF HEARING DATES BY PANEL:**

(County/Counties)

Panel IA: (York)	4
Panel IB: (Cumberland)	8
Panel II: (Androscoggin, Franklin, Lincoln, Oxford & Sagadahoc)	8
Panel III: (Kennebec, Knox, Somerset & Waldo)	8
Panel IV: (Aroostook, Hancock, Penobscot, Piscataquis & Washington)	8
<hr/>	
TOTAL HEARING DATES:	36

Comparison of new Petitions docketed:

1999 - 95  
2000 - 94  
2001 - 96

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