

New Hampshire Supreme Court

Attorney Discipline System



2010 Annual Report

I. Overview

The attorney discipline system, restructured in 2004, completed its seventh year in 2010. In 2010, the attorney discipline office consisted of five attorneys, one certified public accountant, one administrative coordinator and four secretaries. Additionally, 33 attorney volunteers and 20 lay-member volunteers participated in the three committees in processing attorney discipline complaints: Complaint Screening, Hearings and Professional Conduct.

Our major accomplishment in 2010 was the development and implementation of the Attorney Discipline System website: www.nhattyreg.org. This project was made possible in part by a talented student from Franklin Pierce Law Center who volunteered to work with our staff to design the website to our specifications. The website has made it possible for the public to access information on how to file a complaint and to obtain needed forms. It has also made the disciplinary history of New Hampshire attorneys accessible by posting on the website all final disciplinary decisions, and non-disciplinary dismissals with warnings, issued since 2004. A search function allows searches by last name of attorney, types of discipline (or dismissals with warnings), year issued, complaining party, and docket number. The website also contains sections that provide Attorney Discipline Office (ADO) office contact information, answers to frequently asked questions, annual reports, and provides helpful links to rules and procedures along with links to other related organizations. The general response has been very positive.

II. Attorney Discipline Office Operations

On January 1, 2010, the caseload included 36 docketed matters in the investigation stage (35 of which were docketed in 2009 and one from 2007), and 26 docketed matters referred to Disciplinary Counsel for further action, for a total of 62 pending matters.

During 2010, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. There were 1,844 calls taken by General Counsel James L. DeHart, Deputy General Counsel Thomas V. Trevethick and Assistant General Counsel Janet F. DeVito. This volume was a 30% increase over the call volume of 2009. The above attorneys also held 130 meetings with respondents, complainants and witnesses during the year. This represented a 36% increase in the number of meetings held in the prior year. There were 338 packets of information mailed to the public describing how to file a grievance, a 9% increase from 2009.

General Counsel evaluated 220 grievances, and after a preliminary investigation, determined that 137 did not meet the criteria for docketing. It was determined that 83 of the 220 grievances filed met the requirements for docketing, as they alleged conduct that, if proven, would violate the Rules of Professional Conduct and appeared to otherwise satisfy the criteria for docketing as set forth in the Supreme Court Rules. The percentage of grievances docketed as complaints was 38%, an increase from 33% in 2009, and 25% in 2008. The staff continued to devote a significant amount of time to investigation and analysis of grievances before determining which matters warranted docketing.

Our first Disciplinary Counsel, Landya B. McCafferty, was appointed Magistrate Judge to the U.S. District Court, District of New Hampshire. Jennifer Brooke Sargent was hired as Disciplinary Counsel. James L. Kruse continued on as Assistant Disciplinary Counsel. They held 47 meetings with respondents, counsel, witnesses and the Lawyers Assistance Program to negotiate stipulations and prepare for trial. Additionally, they conducted nine teaching seminars on various topics related to ethics.

Figure A illustrates the types of underlying legal matters giving rise to docketed complaints in the past three years.

Figure A

| Underlying Legal Matters | 2010 | Percentage In 2010 | Percentage In 2009 | Percentage In 2008 |
|------------------------------------|-------------|---------------------------|---------------------------|---------------------------|
| Family Law/ Adoption | 19 | 23% | 36% | 25% |
| Criminal | 10 | 12% | 19% | 28% |
| Real Estate/Loan Modification | 24 | 29% | 9% | 7% |
| Probate/ Estate Planning | 4 | 5% | 11% | 7% |
| Personal Injury | 3 | 4% | 5% | 5% |
| Bankruptcy | 7 | 8% | 5% | 5% |
| Other | 11 | 13% | 6% | 8% |
| Workers Compensation | 0 | 0% | 3% | 0% |
| Business Law/ Contracts/ Corporate | 3 | 4% | 0% | 3% |
| Collection/ Consumer Protection | 0 | 0% | 3% | 0% |
| Civil Suit / Litigation | 2 | 2% | 3% | 11% |
| Small Claims | 0 | 0% | 0% | 1% |
| Total | 83 | 100% | 100% | 100% |

Grievances in 2010 were filed by a variety of individuals associated with the underlying legal matters, including 64% by the respondent's client, 14% by the opposing party, 11% by referral, 4% self-reporting, and 7% from other sources.

Figure B shows the number of years the respondent was admitted to practice in New Hampshire at the time the complaint was docketed.

FIGURE B

| | 2010 | Percentage In 2010 | Percentage In 2009 | Percentage In 2008 |
|---------------------------|-------------|-------------------------------|-------------------------------|-------------------------------|
| 1 – 5 years in practice | 4 | 7% | 12% | 7% |
| 6 – 10 years in practice | 10 | 19% | 9% | 18% |
| 11 – 15 years in practice | 11 | 21% | 25% | 10% |
| 16 – 20 years in practice | 10 | 19% | 16% | 26% |
| 21 – 25 years in practice | 9 | 17% | 14% | 12% |
| 26 – 30 years in practice | 2 | 4% | 10% | 14% |
| 31 – 35 years in practice | 4 | 8% | 5% | 3% |
| 36+ years in practice | 3 | 5% | 9% | 10% |
| Total Attorneys | 53* | 100% | 100% | 100% |

*One attorney was not licensed to practice in New Hampshire, five attorneys had two docketed matters, one attorney had three docketed matters, one attorney had four docketed matters, two attorneys had five docketed matters and one attorney had 13 docketed matters in 2010.

Pursuant to an amendment to Rule 37(A) in 2007, General Counsel dismissed eight docketed matters in 2010. Any complainant whose matter was dismissed by the General Counsel had an opportunity to request that the matter be reconsidered by the Complaint Screening Committee. One matter was reconsidered, and as a result, the matter was dismissed with a warning.

The **Complaint Screening Committee (CSC)** is comprised of nine members: five attorneys and four lay members. This Committee met 12 times in 2010. The CSC considers and acts on requests for reconsideration of matters not docketed by General Counsel. The CSC also considers the results of investigation by General Counsel and Assistant General Counsel and dismisses complaints with or without warnings, diverts attorneys out of the attorney discipline system when appropriate, subject to terms of diversion, and refers complaints to Disciplinary Counsel for further action where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

The CSC processed the following matters in 2010 as compared to the two previous years:

| | 2010 | 2009 | 2008 |
|--|------------|-----------|------------|
| Requests to Reconsider Matters Not Docketed (denied) | 27 | 40 | 38 |
| Matters Docketed upon Reconsideration of Non-docket | 0 | 0 | 1 |
| Requests to Reconsider General Counsel Dismissal | 0 | 1 | 1 |
| Requests to Reconsider CSC Dismissals | 0 | 3 | 1 |
| Matters Referred To Disciplinary Counsel | 38* | 21 | 32 |
| Dismissals With No Professional Misconduct | 28 | 17 | 18 |
| Dismissals With No Professional Misconduct with Warning(s) | 10 | 10 | 10 |
| Matters Closed Without Prejudice | 5 | 0 | 0 |
| Total | 108 | 92 | 101 |

* One case included two respondents

Of the matters that were referred to Disciplinary Counsel in 2010, and matters that were pending from prior years, Disciplinary Counsel issued eight notices of charges. In three of those cases, the Respondent stipulated to the sanction. In four cases the Respondent signed a stipulation as to facts, rules and sanction prior to the issuance of a Notice of Charges, and the case was considered by the Professional Conduct Committee instead of proceeding to a hearing. Disciplinary Counsel also filed three motions to dismiss with a warning with the Professional Conduct Committee that were granted. Six Motions to Close without Prejudice were filed and granted. Additional outcomes as processed through the subsequent committees are detailed below.

The **Hearings Committee** is comprised of 24 attorney members and 12 lay members. The Hearings Committee Chair appoints members to serve on hearing panels for each matter. Hearing panels make findings of fact by clear and convincing evidence, and submit written reports to the Professional Conduct Committee. The Hearings Committee Chair appointed six hearing panels that were each comprised of three attorney members and two lay members, a decrease from 16 panels in 2009, and also a decrease from 15 panels in 2008. There were six pre-hearing conferences held in three matters. Eight matters went to a hearing, seven of which were conducted in one day, one matter took place over two days. Hearings were held at the Administrative Office of the Courts, Merrimack County Superior Court, and the Attorney Discipline Office.

The **Professional Conduct Committee (PCC)** is comprised of eight attorney members and four lay members. The PCC assigns outside Bar Counsel when needed to investigate and prosecute complaints. One matter was assigned to outside Bar Counsel in 2010 due to a conflict of interest with the ADO staff. The PCC also considers hearing panel reports and the entire record in disciplinary matters, conducts oral arguments, and determines whether there is clear and convincing evidence of violations of the Rules of Professional Conduct. The Committee has the power and authority to issue protective orders, dismissals with or without a warning, reprimands, public censures or suspensions not to exceed six months.

New Hampshire Bar Association Vice President Jennifer L. Parent, Esquire, completed her one year term on the Committee. Lawrence A. Vogelmann, Esquire, was appointed to a one year term on the Committee on August 1, 2010, as the 2010-2011 New Hampshire Bar Association Vice President.

The PCC acted on the following matters in 2010:

| | 2010 | 2009 | 2008 |
|--|------|------|------|
| Closed without further Action | 1 | 0 | 0 |
| Closed without Prejudice | 2 | 7 | 3 |
| Dismissal | 1 | 0 | 6 |
| Dismissal w/ Warning(s) | 4* | 7 | 9 |
| Dismissal Denied | 0 | 0 | 2 |
| Diversion by Agreement | 0 | 0 | 3 |
| Remand to Hearings Committee (not closed) | 1 | 2 | 1 |
| No Misconduct after Hearing | 0 | 0 | 0 |
| Stipulation to Facts or Facts and Rules | 0 | 1 | 8 |
| Stipulation to Facts, Rules and Reprimand | 2 | 6 | 2 |
| Stipulation to Facts, Rules and Public Censure | 5 | 5 | 2 |
| Consent to Disbarment | 0 | 0 | 2 |
| Misconduct after a Hearing on the Merits | | | |
| Reprimand | 0 | 0 | 4 |
| Reprimand with Conditions | 0 | 0 | 2 |
| Public Censure | 0 | 0 | 4 |
| Public Censure with Conditions | 0 | 0 | 3 |
| 3 mo. Suspension | 0 | 1 | 0 |
| 6 mo. Suspension | 1 | 1 | 0 |
| 6 mo. Suspension with 4 mo. Stayed | 0 | 1 | 0 |
| 6 mo. Suspension with 3 mo. Stayed | 1 | 0 | 0 |
| 6 mo. Suspension Stayed 1-2 yrs | 2 | 4 | 4 |
| Recommend 1 yr Susp. Stayed 2 yrs | 0 | 2 | 0 |
| Recommend 2 yr Suspension | 0 | 1 | 2 |

| | 2010 | 2009 | 2008 |
|---|-----------|-----------|------------------|
| Recommend 3 yr Suspension | 0 | 1 | 0 |
| Recommend 3 yr Suspension Stayed 3 yrs | 1 | 1 | 0 |
| Recommend Disbarment | 1 | 1 | 3 |
| Recommendation to Deny Motion for Reinstatement | 0 | 0 | 1 |
| Motion to Recuse Disciplinary Counsel | 0 | 1 denied | 0 |
| Grant Protective Order | 8 | 8 | 3 |
| Deny Protective Order | 0 | 0 | 0 |
| Direct Respondent to Provide Info on Compliance | 0 | 4 | 0 |
| Show Cause Order | 0 | 1 | 1 |
| Motion to Reconsider | 0 | 3 denied | 1 denied |
| Annulments | 0 | 2 | 12 (1 denied) |
| Reciprocal Discipline | 2 | 3 | 0 |
| Total | 37 | 66 | 80 |

* One case included two respondents

Shown in **Figure C** is the distribution of misconduct findings for the past three years, sorted by the number of years the attorney was in practice at the time of docketing the complaint.

FIGURE C

| | 2010 | Percentage in 2010 | 2009 | 2008 |
|---------------------------|------------|--------------------|-----------|-----------|
| 1 – 5 years in practice | 1 | 7% | 1 | 2 |
| 6 – 10 years in practice | 1 | 7% | 4 | 3 |
| 11 – 15 years in practice | 2 | 14% | 8 | 4 |
| 16 – 20 years in practice | 5 | 36% | 2 | 1 |
| 21 – 25 years in practice | 1 | 7% | 0 | 1 |
| 26 – 30 years in practice | 3 | 22% (1 atty had 2) | 4 | 4 |
| 31 – 35 years in practice | 1 | 7% | 1 | 1 |
| 36 + years in practice | 0 | 0% | 1 | 1 |
| Total Findings | 14* | 100% | 21 | 17 |

*One attorney was not admitted in New Hampshire.

Figure D is a listing of the Rules of Professional Conduct that were found to have been violated in 2010, 2009 and 2008.

FIGURE D

| | 2010 | 2009 | 2008 |
|--|------|------|------|
| Rule 1 Violations: Client-Lawyer Relationship | | | |
| 1.1 Competence | 1 | 6 | 3 |
| 1.2 Scope of Representation | 1 | 1 | 0 |
| 1.3 Diligence | 3 | 4 | 3 |
| 1.4 Communication | 3 | 10 | 8 |
| 1.5 Fees | 1 | 1 | 2 |

| | 2010 | 2009 | 2008 |
|--|-----------|-----------|-----------|
| 1.6 Confidentiality of Information | 0 | 0 | 2 |
| 1.7 Conflict | 4 | 3 | 4 |
| 1.8 Other Conflict | 2 | 0 | 0 |
| 1.9 Former Client | 0 | 1 | 1 |
| 1.14 Client with Diminished Capacity | 1 | 0 | 0 |
| 1.15 Safeguarding Client Funds | 2 | 6 | 1 |
| 1.16 Terminate Relationship with Client | 0 | 0 | 3 |
| Rule 3 Violations: Advocate | | | |
| 3.1 Meritorious Litigation | 0 | 0 | 1 |
| 3.3 Candor to Court | 1 | 1 | 5 |
| 3.4 Fairness to Opposing Party | 1 | 1 | 1 |
| Rule 4.4 Violations: Persons Other Than Clients | 0 | 0 | 2 |
| Rule 5.3 Violations: Responsibility Re: Non-lawyer Assistants | 2 | 5 | 0 |
| Rule 8 Violations: Integrity of the Profession | | | |
| 8.1(a) False Statement of Material Fact | 1 | 2 | 0 |
| 8.1(b) Failure to Correct a Misapprehension | 2 | 2 | 0 |
| 8.1(c) Failure to Attend Hearing When Ordered by Disciplinary Authority | 0 | 1 | 0 |
| 8.4(c) Deceit | 3 | 4 | 2 |
| Rule 50 Violations: Trust Accounts | 0 | 0 | 0 |
| Total Violations | 29 | 48 | 38 |

Figure E illustrates violations of the Rules as a percentage of total violations. All matters necessarily also include a violation of Rule 8.4(a), which is not calculated in the percentage.

FIGURE E

| | 2010 | 2009 | 2008 |
|--------------|-------------|-------------|-------------|
| Rule 1 | 65% | 44% | 50% |
| Rule 3 | 7% | 3% | 13% |
| Rule 4 | 0% | 2% | 4% |
| Rule 5 | 7% | 7% | 0% |
| Rule 7 | 0% | 0% | 0% |
| Rule 8 | 21% | 44% | 33% |
| Rule 50 | 0% | 0% | 0% |
| Total | 100% | 100% | 100% |

Figure F shows a breakdown of the number of docketed complaints that were concluded by the attorney discipline system, arranged by the year the complaint was docketed, for the years 2010, 2009 and 2008.

FIGURE F

| Year of Complaint | Concluded 2010 | Concluded 2009 | Concluded 2008 |
|--------------------------|---------------------------|---------------------------|---------------------------|
| 2004- and earlier | 0 | 4 | 8 |
| 2005 | 1 | 3 | 12 |
| 2006 | 0 | 4 | 10 |
| 2007 | 2 | 11 | 30 |
| 2008 | 7 or 8* | 32 | 28 |
| 2009 | 28 or 29* | 20 | n/a |
| 2010 | 19 | | |
| Total | 57 or 59 | 54 | 88 |

* One case included two respondents

III. Audits

Craig A. Calaman, CPA, completed two audits during 2010, pursuant to orders of the Supreme Court, with four in progress at year's end. In addition, he assisted the New Hampshire Attorney General's Office on one additional audit. He also completed four client trust account compliance reviews, with six in progress at year's end. In addition, Mr. Calaman responded to numerous requests for information about completing trust account compliance certificates.

IV. Other

Three interns from Franklin Pierce Law Center (now the University of New Hampshire School of Law) provided free assistance to the Attorney Discipline Office in 2010. In addition to website development, common tasks of the interns included providing legal research, interviewing of various parties, drafting documents and reports and presentations to the Complaint Screening Committee. It is a valuable service to the ADO and a useful experience for the law students.

Staff attorneys served as faculty in a variety of educational programs, including: the New Hampshire Bar Association's Professionalism Day and Practical Skills Workshop, several classes on Professional Responsibility and one class on Character and Fitness at the University of New Hampshire School of Law, plus three additional CLE's taught at various locations. An

ADO attorney also served on the NHBA Delivery of Legal Services Committee, and the Full and Reduced Fee Subcommittee.

V. Matters at the Supreme Court

In 2010, the Supreme Court issued orders of interim suspensions in three matters, issued a one year suspension, a two year suspension, a three year suspension, and disbarred five attorneys. Two of the disbarments were issued as reciprocal discipline. One attorney was reinstated after a six month suspension. In addition, four matters were pending at year's end (one appeal of a decision, two requests for reinstatement and one matter related to a PCC decision).

VI. Conclusion

As of December 31, 2010, there were 75 pending matters at the ADO. Of those, 26 matters were pending in the investigation stage, 2 of which were docketed in 2009, and one from 2007. There were 49 pending matters at the Disciplinary Counsel level, up from 26 matters pending at the close of 2009. Of those pending matters, 20 cases could not be acted upon because they were on hold pending the completion of an audit, the disposition of a criminal case or disposition of a prior disciplinary case against the same respondent. One matter was pending that was docketed in 2007, five matters were pending from 2008 (one of which had been reopened and remanded for another hearing), 17 matters were pending from 2009 and 26 cases were pending from 2010.