

New Hampshire Supreme Court

Attorney Discipline System



2011 Annual Report

I. Overview

In 2011, the Attorney Discipline Office (“ADO”) consisted of five attorneys, one certified public accountant, one administrative coordinator and four legal assistants. Additionally, 34 attorney volunteers and 18 lay-member volunteers participated in the three committees that process attorney discipline complaints: Complaint Screening, Hearings and Professional Conduct.

II. Attorney Discipline Office Operations

On January 1, 2011, the caseload of the ADO included a total of 75 pending matters. There were 26 docketed matters in the investigation stage (5 of which were docketed in 2010 and one from 2007), and 49 docketed matters that had been referred to Disciplinary Counsel by the Complaint Screening Committee (“CSC”) for further action.

During 2011, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. There were 1,620 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 12% decrease over the call volume of 2010. The decrease may be due in part to the launch of the ADO website in 2010 (www.nhattyreg.org), and the availability of information, decisions and forms on line. The above attorneys also held 91 meetings with respondents, complainants and witnesses during the year. This represented a 30% decrease in the number of meetings held in the prior year, due in part to the retirement of General Counsel DeHart at the end of May 2011, after 28 years of service. Mr. Trevethick was appointed Acting General Counsel by the Professional Conduct Committee (“PCC”) on June 1, 2011. There were 219 packets of information mailed to the public, describing how to file a grievance, a 35% decrease from 2010. This decrease is also presumably attributable to the launch of the website in 2010.

General Counsel evaluated 256 grievances, and after a preliminary investigation, determined that 173 did not meet the criteria for docketing. It was determined that 83 of the 256 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 32%, a decrease from 38% in 2010, and 33% in 2009. The staff continued to

devote a significant amount of time to investigation and analysis of grievances before determining which matters warranted docketing.

Jennifer Brooke Sargent left the position of Disciplinary Counsel and was replaced by Julie A. Introcaso in June. James L. Kruse continued on as Assistant Disciplinary Counsel. They held 40 meetings with respondents, counsel, witnesses and Lawyers Assistance Program representatives to negotiate stipulations and prepare for trial.

The American Bar Association Standing Committee on Professional Discipline was asked by the Court to conduct an evaluation of the lawyer discipline system in New Hampshire in early 2011. A five member team visited New Hampshire for a week in July, and held a series of interviews with the Court, Bar leadership, members of the public, respondents, counsel that frequently appear before the PCC, volunteers from each of the three committees of the attorney discipline system, and the staff of the ADO. A total of 34 interviews were conducted. Their report was issued in the last week of December, and is currently being reviewed by the Court, bar membership, ADO volunteers and the ADO.

Staff attorneys served as faculty in a variety of educational programs including: the New Hampshire Bar Association's Professionalism Day and Practical Skills Workshop, a continuing legal education program on Avoiding the Problems & Pitfalls of Lawyers' Trust Accounting, several classes on Professional Responsibility and one class on Character and Fitness at the University of New Hampshire School of Law. The ABA Ethics & Professional Responsibility Committee recruited and funded Disciplinary Counsel's presentation at a seminar on Ethical Dilemmas Posed by Lateral Hiring at the Midwinter Meeting in Puerto Rico. Acting General Counsel Trevethick served on the NHBA Delivery of Legal Services Committee, and the Full and Reduced Fee Subcommittee.

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

Figure A

Underlying Legal Matters	2011	Percentage In 2011	Percentage In 2010	Percentage In 2009
Family Law/ Adoption	20	25%	23%	36%
Criminal	10	13%	12%	19%
Real Estate/Loan Modification	6	8%	29%	9%
Probate/ Estate Planning	6	8%	5%	11%
Personal Injury	0	0%	4%	5%
Bankruptcy	26	32%	8%	5%
Other	5	6%	13%	6%
Employment/Workers Compensation	1	1%	0%	3%
Business Law/ Contracts/ Corporate	1	1%	4%	0%
Collection/ Consumer Protection	0	0%	0%	3%
Civil Suit / Litigation	5	6%	2%	3%
Small Claims	0	0%	0%	0%
Total	80	100%	100%	100%

Grievances and referrals in 2011 were filed by a variety of individuals associated with the underlying legal matters, including 57% by the respondent’s client, 14% by the opposing party, 11% by the court, 9% by attorneys, and 3% by employees of the respondent. The remaining 6% were ADO generated or 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

	2011	Percentage In 2011	Percentage In 2010	Percentage In 2009
1 – 5 years in practice	6	11%	7%	12%
6 – 10 years in practice	7	12%	19%	9%
11 – 15 years in practice	9	16%	21%	25%
16 – 20 years in practice	13	23%	19%	16%
21 – 25 years in practice	8	14%	17%	14%
26 – 30 years in practice	7	12%	4%	10%
31 – 35 years in practice	3	5%	8%	5%
36+ years in practice	4	7%	5%	9%
Total Attorneys	57*	100%	100%	100%

*One attorney was not licensed to practice in New Hampshire, five attorneys had two docketed matters, one attorney had 20 docketed matters in 2011. One case included two respondents.

General Counsel dismissed seven docketed matters in 2011. General Counsel also dismissed three docketed matters with a warning and referred four cases to Disciplinary Counsel by agreement of the parties.

The **Complaint Screening Committee** is comprised of nine members: five attorneys and four lay members. This Committee met 10 times in 2011. 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 dismisses docketed 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 2011 as compared to the two previous years:

	2011	2010	2009
Requests to Reconsider Matters Not Docketed (denied)	45	27	40
Matters Docketed upon Reconsideration of Non-docket	2	0	0
Requests to Reconsider General Counsel Dismissal	0	0	1
Requests to Reconsider CSC Dismissals	2	0	3
Matters Referred To Disciplinary Counsel	44	38	21
Dismissals With No Professional Misconduct	13	28	17
Dismissals With No Professional Misconduct with Warning(s)	9	10	10
Matters Closed Without Prejudice	0	5	0
Total	115	108	92

Of the matters that were referred to Disciplinary Counsel in 2011, and matters that were pending from prior years, Disciplinary Counsel issued six Notices of Charges. In eight cases, the Respondent signed stipulations as to facts, rules and sanction prior to the issuance of a Notice of Charges, and the cases were considered by the PCC instead of proceeding to a hearing. Disciplinary Counsel also filed one motion to dismiss and one motion to dismiss with a warning. Both motions were granted by the PCC. Disciplinary Counsel also proposed diversion in three cases. One diversion agreement was approved and two were pending with the PCC at the end of the year. Additional outcomes as processed through the subsequent committees are detailed below.

The **Hearings Committee** is comprised of 24 attorney members and 11 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, rulings of law, and recommendations as to sanction in written reports to the PCC. The Hearings Committee Chair appointed four hearing panels that were each comprised of three attorney members and two lay members. This was a decrease from six panels in 2010, and also a decrease from 16 panels in 2009. There were five pre-hearing conferences held in four matters. Two matters went to a hearing on the merits. One matter was heard over two days, the first day was at the 10th Circuit Court, Derry, and the second day was at Merrimack County Superior Court. The second matter was heard over two days, the first in late 2010 and the second in early 2011, both at the United States District Court - District of New Hampshire, Concord.

The **Professional Conduct Committee** is comprised of eight attorney members and four lay members, and met 10 times in 2011. New Hampshire Bar Association Vice President Lawrence A. Vogelmann, Esquire, completed his one year term on the Committee. Jaye L. Rancourt, Esquire, was appointed to a one year term on the Committee on August 1, 2011, as the 2011-2012 New Hampshire Bar Association Vice President. The PCC 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 PCC also has the power and authority to accept diversion agreements, issue protective orders, dismiss matters with or without a warning, and issue reprimands, public censures or suspensions not to exceed six months.

The PCC acted on the following matters in 2011:

	2011	2010	2009
Closed Without Further Action	0	1	0
Closed Without Prejudice	8	2	7
Dismissal	1	1	0
Dismissal w/ Warning(s)	3	4	7
Diversion by Agreement	1	0	0
Remand to Hearings Committee (not closed)	1	1	2
Stipulation to Facts or Facts and Rules	0	0	1
Stipulation to Facts, Rules and Reprimand	4	2	6
Stipulation to Facts, Rules and Public Censure	2	5	5
Misconduct after a Hearing on the Merits			
Public Censure	1	0	0
3 mo. Suspension	0	0	1
6 mo. Suspension	1	1	1
6 mo. Suspension with 4 mo. Stayed	0	0	1

	2011	2010	2009
6 mo. Suspension with 3 mo. Stayed	0	1	0
6 mo. Suspension Stayed 1-2 yrs	1	2	4
Recommend 1 yr Susp. Stayed 2 yrs	0	0	2
Recommend 2 yr Suspension	0	0	1
Recommend 3 yr Suspension	2	0	1
Recommend 3 yr Suspension Stayed 3 yrs	0	1	1
Recommend Disbarment	3	1	1
Recommendation to Deny Motion for Reinstatement	1	0	0
Recommendation to Grant Motion for Reinstatement	1	0	0
Motion to Recuse Disciplinary Counsel	0	0	1 denied
Grant Protective Order	3	8	8
Deny Protective Order	1	0	0
Direct Respondent to Provide Info on Compliance	0	0	4
Show Cause Order	0	0	1
Motion to Reconsider	1 granted 1 denied	0	3 denied
Annulment	2	0	2
Reciprocal Discipline	1	2	3
Total	39	37	66

* 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

	2011	Percentage in 2011	2010	2009
1 – 5 years in practice	2	14.25%	1	1
6 – 10 years in practice	1	7%	1	4
11 – 15 years in practice	2	14.25%	2	8
16 – 20 years in practice	2	14.25%	5	2
21 – 25 years in practice	1	7%	1	0
26 – 30 years in practice	1	7%	3	4
31 – 35 years in practice	3	22%	1	1
36 + years in practice	2	14.25%	0	1
Total Findings	14*	100%	14*	21

*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 2011, 2010 and 2009.

FIGURE D

	2011	2010	2009
Rule 1 Violations: Client-Lawyer Relationship			
1.1 Competence	4	1	6
1.2 Scope of Representation	1	1	1

	2011	2010	2009
1.3 Diligence	3	3	4
1.4 Communication	2	3	10
1.5 Fees	0	1	1
1.7 Conflict	3	4	3
1.8 Other Conflict	0	2	0
1.9 Former Client	1	0	1
1.14 Client with Diminished Capacity	0	1	0
1.15 Safeguarding Client Funds	3	2	6
1.16 Terminate Relationship with Client	1	0	0
Rule 2 Violations: Counselor	1	0	0
Rule 3 Violations: Advocate			
3.3 Candor to Court	1	1	1
3.4 Fairness to Opposing Party	2	1	1
Rule 4.4 Violations: Persons Other Than Clients	2	0	0
Rule 5.3 Violations: Responsibility Re: Non-lawyer Assistants	0	2	5
Rule 8 Violations: Integrity of the Profession			
8.1(a) False Statement of Material Fact	2	1	2
8.1(b) Failure to Correct a Misapprehension	1	2	2
8.1(c) Failure to Attend Hearing When Ordered by Disciplinary Authority	0	0	1
8.4(b) Criminal Act	1	0	0
8.4(c) Deceit	3	3	4
Rule 37(9)(b) Conviction of Serious Crime	1	0	0
Total Violations	32	29	48

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

	2011	2010	2009
Rule 1	56%	65%	44%
Rule 2	3%	0%	0%
Rule 3	10%	7%	3%
Rule 4	6%	0%	2%
Rule 5	0%	7%	7%
Rule 8	22%	21%	44%
Rule 37(9)(b)	3%	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 2011, 2010 and 2009.

FIGURE F

Year of Complaint	Concluded 2011	Concluded 2010	Concluded 2009
2004- and earlier	0	0	4
2005	0	1	3
2006	0	0	4
2007	1	2	11
2008	3	8	32
2009	8	29	20
2010	31	19	0
2011	13	0	0
Total	56	59	54

III. Audits

During 2010 and 2011, the ADO was faced with an unusually large number of complaints involving client trust accounting issues. Those matters involved 12 different attorneys and 48 different complaints. The Committee’s Auditor, Craig A. Calaman, CPA, completed one audit during 2011, and 10 were in progress at year’s end. He also was monitoring the progress of one audit being performed at the request of an attorney by an independent CPA, based upon a self-reported matter. Because of the large amount of audit work pending during the second half of 2011, steps were taken by the ADO to request approval for the hiring of a temporary Audit Assistant. The recruiting and hiring process for that position was completed in March, 2012, and other steps have been taken to address the backlog of audit work.

In addition to the audit work that he performed relating to complaints pending in the lawyer disciplinary system, Mr. Calaman also assisted the Hillsborough County Attorney with one audit, and the Cheshire County Attorney with one audit, both relating to criminal charges brought against an attorney. He also completed two client trust account compliance reviews with three in progress at year’s end. Mr. Calaman continued, as he has done in the past, to respond to numerous requests for information about completing trust accounting compliance certificates, and to routine questions concerning trust accounting issues.

IV. Other

Three interns from the University of New Hampshire School of Law provided volunteer assistance to the ADO in 2011. Common tasks of the interns include providing legal research, interviewing various parties, drafting documents and reports, and giving presentations to the CSC. It is a valuable service to the ADO and a useful experience for the law students.

V. Attorney Discipline Matters at the Supreme Court

In 2011, the Supreme Court issued a six month suspension and disbarred two attorneys. In addition, a one year suspension was issued as reciprocal discipline. One attorney was reinstated after a suspension issued in 2007 and one request for reinstatement was denied. There were seven matters pending at year's end: one appeal of a PCC decision, four reciprocal discipline matters, and two matters in which Disciplinary Counsel, on behalf of the PCC, filed Petitions requesting sanctions greater than six months suspension.

VI. Conclusion

As of December 31, 2011, there were 99 pending matters at the ADO. There were also nine matters pending at the PCC, after oral argument, or a request for approval of a stipulated finding. Of the 99 pending matters at the ADO, 41 matters were in the investigation stage with General Counsel. There were 58 matters being processed by Disciplinary Counsel to determine if formal charges would be issued. Of those, 49 cases involving 11 respondents could not go forward, because they were undergoing an audit, or they were awaiting the disposition of a criminal case or disposition of a prior disciplinary case against the same respondent.