

New Hampshire Supreme Court

Attorney Discipline System



2014 Annual Report

I. OVERVIEW

In 2014, the Attorney Discipline Office (ADO) consisted of five attorneys, one staff auditor who is a Certified Public Accountant, one administrator, and three legal assistants. Additionally, 37 attorney volunteers and 23 lay-member volunteers participated in the three committees that process attorney discipline complaints: Complaint Screening Committee (CSC), Hearings Committee (HC) and Professional Conduct Committee (PCC).

II. ATTORNEY DISCIPLINE OFFICE OPERATIONS

A. Investigations and Informal Proceedings

In 2014, Janet F. DeVito was the General Counsel and James L. Kruse was the Deputy General Counsel. Brian R. Moushegian began as Assistant General Counsel in July 2014. They are referred to collectively as General Counsel in this report.

General Counsel field hundreds of calls from members of the public asking how to file a grievance. Callers are told that they must file their letter under oath, and must certify that they have sent a copy to the attorney. If asked, we send them the forms for those requirements. There is no form for the grievance itself.

Some grievances arrive from people who have found the forms on the ADO website (www.nhattyreg.org). Others are referrals from attorneys who are complying with their obligation under Rule of Professional Conduct (Rule) 8.3, or from judges and marital masters who bring attorney behavior to our attention. In all, we received 187 grievances and referrals during 2014.

General Counsel review the grievances to determine if they comply with the requirements for docketing. After reviewing the 187 grievances received in 2014, and grievances remaining from 2013, 48 grievances were docketed as 45 cases for further investigation. The decision was made to non-docket 106 of the remaining grievances received and pending. Pursuant to Supreme Court Rule 37A(IV)(a)(2), non-docketed grievances do not appear on attorneys' discipline records and are not indexed. After two years, they are destroyed.

After a case is docketed, grievances are called complaints. The respondent (attorney) is required to answer the complaint, and the complainant may, and usually does, submit further comments. In 2014, General Counsel's investigations included meetings with the complainants and the attorneys; reviewing pleadings, depositions and correspondence; listening to audio recordings of court hearings; and gathering other information that was pertinent to the conduct in question. At the conclusion of an investigation, General Counsel report a summary of the investigation to the CSC. Those reports, as well as the deliberations of the CSC, are not public. General Counsel may also dismiss a docketed matter without reporting to the CSC. In 2014, General Counsel dismissed two matters, and dismissed two others with a finding of no misconduct, but with a warning.

The CSC is comprised of nine members: five attorneys and four lay members, appointed by the Supreme Court. This Committee met nine times in 2014. Hon. Peter Fauver served as CSC Chair in 2014.

The CSC considers and acts on requests for reconsideration of grievances not docketed by General Counsel. Out of the 106 grievances non-docketed in 2014, and 3 grievances non-docketed in late 2013, the CSC reviewed 23 requests for reconsideration. The Committee affirmed 21 of the decisions, and instructed General Counsel to docket two of them.

The CSC also considers the reports of investigations by General Counsel. In 2014, the CSC referred 10 cases to Disciplinary Counsel for further action, finding a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence; dismissed 12 docketed cases; and dismissed five cases with a finding of no professional misconduct, but with a warning. In 2014, the CSC also considered two requests to reconsider its own dismissals, both of which were denied.

B. Formal Proceedings

In 2014, Sara S. Greene was Disciplinary Counsel and Elizabeth M. Murphy was Assistant Disciplinary Counsel. They are referred to collectively in this report as Disciplinary Counsel. When matters are referred to Disciplinary Counsel, each case is carefully reviewed to determine what best serves the goals of the discipline process: protecting the public and the integrity of the legal profession. As part of the assessment, Disciplinary Counsel met with respondents, their counsel, witnesses (including the complainants), and NH Lawyers Assistance Program (NHLAP) representatives if issues of mental health or substance abuse were alleged.

When Disciplinary Counsel concludes there is sufficient evidence to prosecute a matter, she prepares a Notice of Charges (NOC) and requests the appointment of a Hearing Panel by the Hearings Committee Chair. Disciplinary Counsel issued two Notices of Charges in 2014. The HC Chair, Attorney James T. Boffetti, appoints members from that Committee, comprised in 2014 of 24 attorney members and 15 lay members, to serve on Hearing Panels as needed. Although the Hearing Panel is required to consist of at least two attorneys and one non-attorney, panels are generally comprised of three attorney members and two lay members. After hearing evidence or reviewing stipulations that are filed after a NOC is issued, 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. Those reports are public.

Respondents and Disciplinary Counsel may stipulate to all or part of the facts, Rule violations and sanction. In five cases involving four attorneys, the respondents signed stipulations as to facts, Rules and sanction *prior* to the issuance of a NOC, and the cases were considered directly by the PCC instead of proceeding to a hearing. Disciplinary Counsel also filed six motions to dismiss cases that had been referred by the CSC, but that Disciplinary Counsel determined did not have clear and convincing evidence of a Rule violation. Diversion was requested in one case and was approved by the PCC. Two matters were closed without prejudice after the Supreme Court approved an agreement for a medical disability suspension. Disciplinary Counsel reached three stipulations with respondents to resign during the discipline

process, which were approved by the Supreme Court. Disciplinary Counsel also participated in one pre-hearing conference, one evidentiary hearing, and two sanction hearings before Hearing Panels, and four oral arguments before the PCC in 2014.

The HC Chair appointed two hearing panels in 2014. Those matters went to a hearing on sanction only. In both of the matters, the respondent had signed a stipulation as to facts and Rule violations. One hearing on the merits, involving two cases, was held on a matter in which the Hearing Panel was appointed in the fall of 2013. A sanction hearing was held in a matter that had been heard on the merits in 2013. Hearings were held at the Administrative Office of the Courts and the Attorney Discipline Office.

The final outcome of a case is the responsibility of the PCC, subject to approval by the Supreme Court (Court) as described below. The PCC, which is comprised of eight attorney members and four lay members, met seven times in 2014. By Court Rule, the New Hampshire Bar Association Vice President serves on the PCC during his or her term as Vice President. Attorney Mary E. Tenn completed her term on the PCC on July 31, 2014. Vice President David W. Ruoff began his term on the PCC on August 1, 2014. Attorney members Benette Pizzimenti (August 1997- August 2002, Vice Chair 2002 -2014) and Alan J. Cronheim (November 4, 1998 to December 31, 2014) retired from the PCC at the end of 2014 due to term limits. Attorney Peter G. Beeson and non-attorney Georges Roy were appointed to the PCC on February 4, 2014 and March 10, 2014 respectively.

The PCC considers Hearing Panel reports and the entire record in disciplinary matters. In most cases, it hears oral arguments as to whether the Hearing Panel's recommendations should be affirmed, and determines whether there is clear and convincing evidence of violations of the Rules of Professional Conduct. The PCC heard oral argument in four cases in 2014. The PCC 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 exceeding six months. In addition, the PCC is the administrative arm of the discipline system responsible, *inter alia*, for the hiring of the ADO professional staff and review of the budget.

When the PCC determines that a sanction greater than a six month suspension is warranted, it directs Disciplinary Counsel to file a Petition with the Court. Following acceptance of the case by the Court, Disciplinary Counsel writes the brief and presents oral argument. During 2014, Disciplinary Counsel filed one Petition, requesting a two-year suspension.

Some outcomes determined by the PCC or the Court involve monitoring the respondent attorney for a time certain following the end of a case. Among their other responsibilities, Disciplinary Counsel and staff track compliance with CLE requirements, mental health therapy, and substance abuse treatment, and alert the PCC to any non-compliance with the terms of the conditions. In 2014, eight cases were being monitored.

III. THE STATISTICS

On January 1, 2014, the caseload of the ADO included a total of 116 pending docketed matters. There were 36 docketed matters in the investigation stage, 6 of which were docketed in

2012. There were 80 docketed matters that had been previously referred to Disciplinary Counsel by the CSC for further action, 37 of which were related to two attorneys.

Figure A illustrates the types of underlying legal matters giving rise to docketed complaints in the past three years. As in the past, family law and criminal matters dominated the docketed complaints.

FIGURE A

Underlying Legal Matters	2014	Percentage In 2014	Percentage In 2013	Percentage In 2012
Family Law/ Adoption	21	47%	33%	37%
Criminal	4	9%	15%	14.3%
Real Estate/Loan Modification	3	7%	15%	16.35%
Probate/ Estate Planning	3	7%	9%	4%
Personal Injury	1	2%	0%	2%
Bankruptcy	2	4%	4.5%	2%
Other	3	7%	4.5%	0%
Employment/Workers Compensation	1	2%	2%	0%
Business Law/ Contracts/ Corporate	2	4%	0%	2%
Landlord/ Tenant	1	2%		
Civil Suit / Litigation	4	9%	15%	16.35%
Small Claims	0	0%	2%	4%
Misuse of Client Trust Funds	0	0%	0%	2%
Total	45	100%	100%	100%

Figure B shows the distribution of the sources of the docketed matters in 2014. Reversing a trend, complaints from clients showed a sharp increase. There was a corresponding decrease in complaints from opposing parties. Other sources stayed fairly level.

FIGURE B

Docketed Complaint Filed By	2014	2013	2012
Client	38%	30.5%	33%
Opposing Party	15.5%	24%	29%
Court Referral	15.5%	17.5%	12%
Attorney Referral	15.5%	13%	12%
Self-report	4.5%	4%	2%
Other (including 2 employees)	11%	11%	12%

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

FIGURE C

	2014	Percentage in 2014	Percentage in 2013	Percentage in 2012
1 – 5 years in practice	3	7%	11%	10%
6 – 10 years in practice	9	20%	20%	15%
11 – 15 years in practice	7	16%	11%	12.5%
16 – 20 years in practice	6	13%	16%	12.5%
21 – 25 years in practice	9	20%	7%	17%
26 – 30 years in practice	3	7%	18%	15%
31 – 35 years in practice	2	4%	4%	10%
36+ years in practice	6	13%	13%	8%
Total Attorneys	45	100%	100%	100%

Shown in **Figure D** 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 D

	2014	% in 2014	2013	2012
1 – 5 years in practice	0	0%	1	0
6 – 10 years in practice	0	0%	1	1
11 – 15 years in practice	0	0%	2	2
16 – 20 years in practice	1	25%	2	1
21 – 25 years in practice	1	25%	1	2
26 – 30 years in practice	2	50%	0	1
31 – 35 years in practice	0	0%	0	2
36 + years in practice	0	20%	1	1
Total Findings	4	100%	8	10

The CSC considered 52 matters in 2014 with the outcomes shown in **Figure E**.

FIGURE E

	2014	2013	2012
Requests to Reconsider Matters Not Docketed (denied)	21	43	40
Matters Docketed upon Reconsideration of Non-docket	2	1	4
Requests to Reconsider General Counsel Dismissal	0	1	3
Requests to Reconsider CSC Dismissals	2	5	1
Matters Referred To Disciplinary Counsel	10	24	22
Dismissals With No Professional Misconduct	12	10	22
Dismissals With No Professional Misconduct with Warning(s)	5	1	10
Matters Closed Without Prejudice	0	0	3
Total	52	85	105

Figure F is a listing of the Rules of Professional Conduct violations found in 2014, compared to 2013 and 2012. Despite our anecdotal perception that poor client communication and an unexpected balance on a final bill are the catalysts for a majority of our calls, the most common Rule violation found was 1.15 (Safekeeping Property).

FIGURE F

	2014	2013	2012
Rule 1: Client-Lawyer Relationship			
1.1 Competence	0	1	2
1.2 Scope of Representation	0	0	0
1.3 Diligence	0	3	4
1.4 Communication	0	4	3
1.5 Fees	0	0	0
1.7 Conflict	0	1	0
1.8 Other Conflict	0	0	0
1.9 Former Client Conflict	0	0	0
1.14 Client with Diminished Capacity	0	0	0
1.15 Safekeeping Property	4	6	4
1.16 Terminate Relationship with Client	0	1	3
Rule 2: Counselor	0	0	0
Rule 3: Advocate			
3.3 Candor to Court	1	1	1
3.4 Fairness to Opposing Party	0	1	1
3.5 Decorum of the Tribunal	0	0	1
Rule 4: Transactions with Persons other than Clients			
4.1 Truthfulness in Statements to Others	1	0	1
4.4 Respect for Rights of Third Persons	0	0	1
Rule 5: Law Firms and Associations			
5.1 Responsibilities of Partners, Managers and . . .	0	0	1
5.3 Responsibilities Regarding Non-lawyer Assistants	1	1	1
5.5(a) Unauthorized Practice	0	0	3
Rule 7: Information about Legal Services			
7.1(a) Communications contain misrepresentations	0	0	2
7.5(c) Identification of lawyers in firm	0	0	1
Rule 8: Integrity of the Profession			
8.1(a) False Statement of Material Fact	0	2	1
8.1(b) Failure to Correct a Misapprehension	0	1	4
8.4(b) Criminal Act	0	0	1
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	2	3	3
Rule 37(9)(b): Conviction of Serious Crime	0	0	1
Total Violations	9	24	39

Figure G illustrates violations of the Rules (by category) 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 G

	2014	2013	2012
Rule 1	44.5%	64%	41%
Rule 2	0%	0%	0%
Rule 3	11.1%	8%	8%
Rule 4	11.1%	0%	5%
Rule 5	11.1%	4%	13%
Rule 7	0%	0%	8%
Rule 8	22.2%	24%	23%
Rule 37(9)(b)	0%	0%	2%
Total	100%	100%	100%

The PCC made the determinations and findings shown in **Figure H** in 2014. As is clear by the number of differing descriptions, the PCC tailors each outcome to most appropriately suit the type of misconduct and the balancing of mitigating and aggravating factors, rather than having a “one size fits all” approach to sanctions.

FIGURE H

	2014	2013	2012
Closed Without Prejudice	2	1	2
Dismissal	6	3	2
Dismissal based on Period of Limitations	0	1	
Dismissal w/ Warning(s)	0	4	4
Diversion by Agreement	1	1	3
Remand to Hearings Committee (not closed)	0	1	0
Stipulation to Facts or Facts and Rules	0	1	2
Stipulation to Facts, Rules and Reprimand	0	2	3
Stipulation to Facts, Rules and 6 Mo. Suspension	0	1	
Stipulation to Facts, Rules and 2 Yr. Suspension	1	1	
Stipulation to Facts, Rules and 3 Yr. Suspension	0	1	
Stipulation to Facts, Rules and Disbarment	0	1	
Misconduct after a Hearing on the Merits			
Reprimand	0	0	1
Public Censure	2	1	1
Public Censure with Conditions	0	0	2
6 mo. Suspension	0	1	5
Recommend 2 yr Suspension, 1 yr. stayed	0	1	1
Recommend 2 yr Suspension	0	0	1

	2014	2013	2012
Recommendation to Approve Resignation	3	0	1
Grant Protective Order	0	4	6
Deny Protective Order	0	0	0
Motion to Reconsider	0	1 granted	2 granted 3 denied
Extension of Suspended Sentences	0	3	
Dismissal following compliance with diversion or monitoring	3	2	
Annulment	0	2 granted	1 granted 1 denied
Approval of Motion to Vacate Stay	0	1	
Act on Reciprocal Discipline	5	3	3
Total	23	37	44

Figure I 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 2014, 2013 and 2012. Matters were concluded by the Complaint Screening Committee (17); General Counsel (4); the PCC (10); and the Supreme Court (4).

FIGURE I

Year of Complaint	Concluded 2014	Concluded 2013	Concluded 2012
2007	0	0	2
2008	0	1	1
2009	2	2	5
2010	0	3	12
2011	6	10	24
2012	10	18	13
2013	13	11	
2014	4		
Total	35	45	57

IV. AUDITS

The Committee's Auditor, Craig A. Calaman, CPA, completed two audits during 2014. Mr. Calaman also completed two client trust account (CTA) compliance reviews, and reviewed 15 financial self-reports from attorneys who had made errors in their CTA accounting. As he has always done, Mr. Calaman responded to numerous requests for information about completing the annual trust accounting compliance certificates, as well as assisting lawyers with questions concerning trust accounting issues throughout the year. With General Counsel Janet DeVito, he was a guest lecturer at a UNH School of Law class on the accounting requirements and ethics of

running a law practice. He and Ms. DeVito also made a presentation to the NH Bar Association's Solo and Small Firm Discussion Group about CTA requirements and procedures.

V. OTHER

Staff attorneys served as faculty in a variety of educational programs in 2014, including both the June and December Practical Skills Ethics Workshops; the ethics portion of a CLE for real estate lawyers; and a presentation that included a demonstration of a sanction argument to the Professional Responsibility class at the UNH School of Law. Disciplinary Counsel Sara Greene participated in a NHLAP training session to explain the interaction between discipline and LAP issues. Assistant Disciplinary Counsel Elizabeth Murphy spoke to the Daniel Webster Inns of Court. General Counsel DeVito was a member of a panel at the National Organization of Bar Counsel 2014 Annual Meeting in Boston, on the topic of volunteers in discipline systems.

Three interns from the UNH School of Law spent a term volunteering at the ADO in 2014. In addition, the full-time summer intern was a Warren Rudman Fellow. Common tasks of interns include conducting legal research, participating in interviews of complainants and respondents, drafting pleadings, and submitting written and oral reports to the CSC. It is worthwhile for the ADO and a valuable experience for the law students.

VI. ATTORNEY DISCIPLINE MATTERS AT THE SUPREME COURT

General Counsel notifies the Court about lawyers who have been indicted or convicted of serious crimes, pursuant to Supreme Court Rule 37(9), and may file petitions for interim suspension or disbarment as appropriate in those cases. In 2014, General Counsel notified the Supreme Court about one lawyer who had been indicted for serious crimes. General Counsel also filed five requests for reciprocal discipline stemming from discipline in other jurisdictions. The Supreme Court issued one two-year suspension, one three-month suspension and two matters were remanded to the PCC for imposition of a Public Censure. One reciprocal matter resulted in the imposition of no discipline.

In response to petitions filed by Disciplinary Counsel on behalf of the PCC, the Supreme Court issued one two-year suspension, one two-year suspension with the second year stayed, and allowed three attorneys to resign during a discipline matter pursuant to Supreme Court Rule 37(11). The Court also denied a request for reinstatement.

There were six disciplinary matters pending at the Court at year's end, all related to criminal charges against attorneys at various stages of their underlying case.

VII. CONCLUSION

As of December 31, 2014, there were 124 pending docketed matters at the ADO. Of those, 48 docketed matters were in the investigation stage with General Counsel. There were 76 pending cases that had been referred to Disciplinary Counsel. Of those, 43 cases involving eight respondents could not go forward for one or more of the following reasons: the matter was

undergoing an audit; the respondent had left the jurisdiction; the respondent had serious medical issues; the matter was awaiting disposition of a prior disciplinary case against the same respondent; or the case was awaiting disposition by another jurisdiction. Two cases were held in abeyance by the PCC for sanction hearings, which would depend on the respondent's compliance with conditions in a third case. Eight cases were pending at the PCC. The remaining cases were in various stages of investigation by Disciplinary Counsel to determine if formal charges would be issued or if some other outcome would be more appropriate.

The Attorney Discipline Office lawyers were pleased to be more visible in the wider legal community in 2014, increasing awareness of the New Hampshire Attorney Discipline System and providing education to law students and lawyers. By doing so, we furthered our purpose to protect the public and the integrity of the legal profession.