

# New Hampshire Supreme Court

## Attorney Discipline System



2015 Annual Report

## I. OVERVIEW

In 2015, the Attorney Discipline Office (ADO) consisted of five attorneys, one staff forensic auditor, one part-time bookkeeper, and three legal assistants. Additionally, 30 attorney volunteers and 19 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).

Janet F. DeVito was the General Counsel; James L. Kruse was the Deputy General Counsel and Brian R. Moushegian was the Assistant General Counsel. They are referred to collectively as General Counsel or GC in this report. 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 or DC. Craig A. Calaman, CPA, was the staff forensic auditor.

There were two major changes to the attorney discipline system in 2015. Beginning July 1, 2015, the ADO receives a copy of all Overdraft Notices (ODN) for Client Trust Accounts that are sent to the attorneys or firms holding the accounts. This brought New Hampshire into a practice consistent with the majority of jurisdictions. While most ODNs result from mathematical or clerical errors, some are signs of serious misconduct. Receiving the ODNs is a valuable tool to help alert the ADO to financial misconduct at an early stage.

The second major change, also effective July 1, 2015, was the elimination of warnings. For decades, the PCC and CSC have had the option to dismiss a complaint with a finding of no professional misconduct, but with a warning that certain behaviors warranted attention and must change in the future. After July 1, 2015, cases are either dismissed outright or have formal charges brought. Past matters that were dismissed with a warning are now treated as if they had been dismissed. The ADO website ([www.nhattyreg.org](http://www.nhattyreg.org)) now includes only matters that resulted in findings of misconduct since 2004. Information regarding all public cases continues to be available by calling or visiting the Attorney Discipline Office itself.

## II. ATTORNEY DISCIPLINE OFFICE OPERATIONS

### A. Informal Proceedings

Grievances must be filed under oath, and must certify that a copy has been sent to the attorney. If asked, the ADO sends callers the forms that fulfill those requirements. There is no form for the grievance itself. Some grievants obtain the forms from the ADO website. Referrals are received from attorneys who are complying with their obligation under Rule of Professional Conduct (Rule) 8.3, and from judges and marital masters who bring attorney behavior to our attention. In all, the ADO received 235 grievances, ODNs and referrals during 2015.

General Counsel conduct an initial review of the grievances to determine if they should be docketed. After reviewing the 235 grievances received in 2015, and the grievances remaining from 2014, 62 grievances were docketed as 58 cases requiring further investigation. The decision was made to non-docket 219 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. All docketed cases are indexed and, once they reach certain procedural milestones, are available to the public at the ADO. The respondent (attorney) is required to answer the complaint. The complainant may, and usually does, submit further comments. General Counsel gathers sufficient information pertinent to the conduct in question in order to report to the Complaint Screening Committee. The work product and reports, as well as the deliberations of the CSC, are not public. GC may dismiss a docketed matter without reporting to the CSC. In 2015, General Counsel dismissed 15 matters with a finding of no professional misconduct. GC also referred one matter directly to Disciplinary Counsel and filed a stipulation for findings and sanction directly with the PCC.

The CSC is comprised of five attorneys and four lay members, appointed by the Supreme Court. This Committee met 12 times in 2015. Hon. Peter Fauver served as CSC Chair in 2015, and Peter Kiriakoutsos, CPA, served as non-lawyer Vice-Chair.

The CSC is tasked with considering and acting on requests for reconsideration of General Counsel's decision not to docket grievances. Out of the 219 grievances non-docketed in 2015, and 4 grievances non-docketed in late 2014, the CSC reviewed 35 requests for reconsideration.

The CSC also considers the reports of General Counsel's investigation of docketed complaints. In 2015, the CSC referred 33 cases to Disciplinary Counsel for further action, finding a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence; dismissed 10 docketed cases with a finding of no professional misconduct; approved a diversion agreement for one docketed matter, and dismissed one case with a finding of no professional misconduct, but with a warning (prior to July 1, 2015). In 2015, the CSC also considered two requests to reconsider its own dismissals. One request was denied and the other was granted.

## B. Formal Proceedings

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 meets 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. In 2015, DC issued four Notices of Charges and negotiated a stipulation to facts and Rules, which was scheduled for a hearing on sanction. The HC Chair, Attorney Philip H. Utter, appoints members from that Committee, comprised in 2015 of 17 attorney members and 11 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, 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 filed four motions to dismiss cases that had been referred by the CSC, but that DC determined did not have clear and convincing evidence of a Rule violation. Diversion was requested in three cases; two were approved by the PCC. Three matters were closed without prejudice by the PCC after the Supreme Court disbarred an attorney. Disciplinary Counsel reached six stipulations with respondents to resign during the discipline process; five were approved and one was denied by the Supreme Court. Disciplinary Counsel reached two stipulations to disbarment, one of which was granted and the other of which was still pending at the Supreme Court at the end of 2015. DC participated in four pre-hearing conferences, one sanction hearing, and one hearing on a negotiated stipulation before Hearing Panels, and one oral argument before the PCC in 2015.

The HC Chair appointed seven hearing panels in 2015. One matter went to a hearing on sanction only, because the respondent did not respond to the Notice of Charges. Another hearing was held on a stipulation that was negotiated prior to the scheduled hearing on the merits. Hearings were held at 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 ten times in 2015. By Court Rule, the New Hampshire Bar Association Vice President serves on the PCC during his or her term as Vice President. Attorney David W. Ruoff completed his term on the PCC on July 31, 2015. Vice President Scott H. Harris began his term on the PCC on August 1, 2015.

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 one case in 2015. The PCC has the power and authority to accept diversion agreements, issue protective orders, dismiss matters, and issue reprimands, public censures or suspensions not exceeding six months. In addition, the PCC is 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 submits its recommendation to the Supreme Court. During 2015, the Committee filed a recommendation for a one-year suspension, a recommendation for an 18-month suspension, a recommendation for a two-year suspension, two recommendations for disbarment, and four recommendations to accept a request to resign during a disciplinary matter. In one matter the PCC recommended that the Supreme Court deny a request to resign.

Some outcomes determined by the PCC or the Court involve monitoring the respondent attorney for a time certain following the resolution of a case. Among their other responsibilities, Disciplinary Counsel and staff track compliance with CLE requirements, office management improvement parameters, mental health therapy, and substance abuse treatment, and alert the PCC to any non-compliance with the terms of the conditions. During 2015, 10 cases were being monitored. During the year, four of those cases were closed following compliance with the orders issued.

### III. THE STATISTICS

On January 1, 2015, the caseload of the ADO included a total of 124 pending docketed matters. There were 48 docketed matters in the investigation stage, 13 of which were docketed in 2013 and 35 of which were docketed in 2014. There were 76 docketed matters that had been previously referred to Disciplinary Counsel by the CSC for further action, 37 of which were related to two attorneys. In addition, there were seven matters that were being monitored for compliance with conditions imposed by previous orders.

Although there were 62 grievances docketed in 2015, there were 58 docket numbers issued. In each of four docketed matters, two similar complaints were combined into one docket number.

**Figure A** illustrates the types of underlying legal matters giving rise to docketed complaints in the past three years. Criminal and civil litigation matters led the docketed complaints this year. There is a new category for Overdraft Notifications, because of the new rule effective July 1, 2015, referenced above.

FIGURE A

<b>Underlying Legal Matters</b>	<b>2015</b>	<b>Percentage In 2015</b>	<b>Percentage In 2014</b>	<b>Percentage In 2013</b>
Criminal	14	22.6%	9%	15%
Civil Suit / Litigation	12	19.4%	9%	15%
Overdraft Notification	9	14.5%	0%	0%
Family Law	8	12.9%	47%	33%
Probate/ Estate Planning	7	11.3%	7%	9%
Bankruptcy	3	4.9%	4%	4.5%
Real Estate/Loan Modification	2	3.2%	7%	15%
Business Law/ Contracts/ Corporate	2	3.2%	4%	0%
Other	2	3.2%	7%	4.5%
Personal Injury	1	1.6%	2%	0%
Landlord/ Tenant	1	1.6%	2%	0%
Debt Resolution/Finances	1	1.6%	0%	0%
Employment/Workers Compensation	0	0%	2%	2%
Small Claims	0	0%	0%	2%
<b>Total</b>	<b>62</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Figure B** shows the distribution of the sources of the matters docketed in 2015. Clients remain the most common source, but the percentage went down substantially from last year when factoring in the ODN referrals. Most other categories remained stable.

FIGURE B

<b>Docketed Complaint Filed By</b>	<b>2015</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
Client	17	27%	38%	30.5%
Court Referral	11	18%	15.5%	17.5%
Opposing Party	11	18%	15.5%	24%
Bank Referral/ ODN	9	15%	0%	0%
Attorney Referral	7	11%	15.5%	13%
Other	3	5%	11%	11%
Self-report	2	3%	4.5%	4%
ADO Generated	2	3%	0%	0%

**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

	<b>2015</b>	<b>Percentage in 2015</b>	<b>Percentage in 2014</b>	<b>Percentage in 2013</b>
1 – 5 years in practice	6	9.75%	7%	11%
6 – 10 years in practice	6	9.75%	20%	20%
11 – 15 years in practice	14	22.5%	16%	11%
16 – 20 years in practice	5	8%	13%	16%
21 – 25 years in practice	7	11.25%	20%	7%
26 – 30 years in practice	8	13%	7%	18%
31 – 35 years in practice	5	8%	4%	4%
36+ years in practice	11	17.75%	13%	13%
<b>Total Attorneys</b>	<b>62</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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

	<b>2015</b>	<b>% in 2015</b>	<b>2014</b>	<b>2013</b>
1 – 5 years in practice	0	0%	0	1
6 – 10 years in practice	5	28%	0	1
11 – 15 years in practice	5	28%	0	2
16 – 20 years in practice	3	16.5%	1	2
21 – 25 years in practice	1	5.5%	1	1
26 – 30 years in practice	2	11%	2	0
31 – 35 years in practice	0	0%	0	0
36 + years in practice	2	11%	0	1
<b>Total Findings</b>	<b>18</b>	<b>100%</b>	<b>4</b>	<b>8</b>

The CSC considered 82 matters in 2015 with the outcomes shown in **Figure E**.

FIGURE E

	2015	2014	2013
Requests to Reconsider Matters Not Docketed (denied)	35	21	43
Matters Docketed upon Reconsideration of Non-docket	0	2	1
Requests to Reconsider General Counsel Dismissal	0	0	1
Requests to Reconsider CSC Dismissals (denied)	1	2	5
Cases Referred upon Reconsideration of CSC Dismissals	1		
Matters Referred To Disciplinary Counsel	33	10	24
Dismissals With No Professional Misconduct	10	12	10
Dismissals With No Professional Misconduct with Warning	1	5	1
Diversion	1		
<b>Total</b>	<b>82</b>	<b>52</b>	<b>85</b>

**Figure F** is a listing of the Rules of Professional Conduct violations found in 2015. (Some matters resulted in multiple Rule violations.) Supporting 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 second-most common Rule violation found was 1.4 (Communication).

FIGURE F

	2015	2014	2013
Rule 1: Client-Lawyer Relationship			
1.1 Competence	4	0	1
1.2 Scope of Representation	1	0	0
1.3 Diligence	8	0	3
1.4 Communication	7	0	4
1.5 Fees	1	0	0
1.7 Conflict	5	0	1
1.8 Other Conflict	2	0	0
1.15 Safekeeping Property	2	4	6
1.16 Terminate Relationship with Client	1	0	1
Rule 2: Counselor			
Rule 3: Advocate			
3.1 Meritorious Claims and Contentions	1		
3.3 Candor to Court	1	1	1
3.4 Fairness to Opposing Party	1	0	1
Rule 4: Transactions with Persons other than Clients			
4.1 Truthfulness in Statements to Others	2	1	0
Rule 5: Law Firms and Associations			
5.3 Responsibilities Regarding Non-lawyer Assistants	2	1	1
5.5(a) Unauthorized Practice	2	0	0
Rule 7: Information about Legal Services			
Rule 8: Integrity of the Profession			
8.1(a) False Statement of Material Fact	0	0	2
8.1(b) Failure to Correct a Misapprehension	1	0	1

	2015	2014	2013
8.4(b) Criminal Act	2	0	0
8.4(c) Dishonesty, Fraud, Deceit, or Misrepresentation	6	2	3
Supreme Court Rule 50	1	0	0
<b>Total Violations</b>	<b>50</b>	<b>9</b>	<b>24</b>

**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

	2015	2015	2014	2013
Rule 1	31	62%	44.5%	64%
Rule 2	0	0%	0%	0%
Rule 3	3	6%	11.1%	8%
Rule 4	2	4%	11.1%	0%
Rule 5	4	8%	11.1%	4%
Rule 7	0	0%	0%	0%
Rule 8	9	18%	22.2%	24%
Sup. Ct. R. 50	1	2%	0%	0%
Total	50	100%	100%	100%

The PCC made the determinations and findings shown in **Figure H** in 2015. The PCC considers the Rule(s) violated, and balances mitigating and aggravating factors, when deciding the outcome of a case.

FIGURE H

	2015	2014	2013
Closed Without Prejudice	3	2	1
Dismissal	5	6	3
Dismissal based on Period of Limitations	0	0	1
Dismissal w/ Warning(s)	0	0	4
Diversion by Agreement	1	1	1
Remand to Hearings Committee (not closed)	0	0	1
Stipulation to Facts or Facts and Rules	0	0	1
Stipulation to Facts, Rules and Reprimand	4	0	2
Stipulation to Facts, Rules and Public Censure	4	0	0
Stipulation to Facts, Rules and 6 Mo. Suspension	2	0	1
Stipulation to Facts, Rules and 1 Yr. Suspension	1	0	0
Stipulation to Facts, Rules and 18 Mo. Suspension	1	0	0
Stipulation to Facts, Rules and 2 Yr. Suspension	0	1	1
Stipulation to Facts, Rules and 3 Yr. Suspension	0	0	1
Stipulation to Facts, Rules and Disbarment	1	0	1
Misconduct after a Hearing on the Merits			



	2015	2014	2013
Public Censure	0	2	1
6 mo. Suspension	0	0	1
Recommend 2 yr. Suspension, 1 yr. stayed	0	0	1
Recommend 2 yr. Suspension	1	0	0
Recommend Disbarment	1	0	0
Recommendation to Approve Resignation Request	4	3	0
Recommendation to Deny Resignation Request	1	0	0
Grant Protective Order	1	0	4
Motion to Reconsider	0	0	1 granted
Deny request for further hearing	1		
Extension of Suspended Sentences	0	0	3
Dismissal following compliance with diversion or monitoring	3	3	2
Annulment	5	0	2 granted
Approval of Motion to Vacate Stay	0	0	1
Act on Reciprocal Discipline	3	5	3
Request for readmission closed without action	2		
<b>Total</b>	<b>44</b>	<b>23</b>	<b>37</b>

**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 2015, 2014 and 2013. Matters were concluded by the Complaint Screening Committee (11); General Counsel (16); the PCC (16); and the Supreme Court (10).

FIGURE I

Year of Complaint	Concluded 2015	Concluded 2014	Concluded 2013
2008	0	0	1
2009	0	2	2
2010	2	0	3
2011	1	6	10
2012	5	10	18
2013	12	13	11
2014	19	4	
2015	14		
<b>Total</b>	<b>53</b>	<b>35</b>	<b>45</b>

#### IV. AUDITS

The staff forensic auditor, Craig A. Calaman, CPA, completed two full audits and one supplemental audit during 2015. Mr. Calaman conducted one client trust account (CTA) compliance review, and evaluated six financial self-reports from attorneys who had made errors in their CTA accounting. Mr. Calaman worked with General Counsel to review many Overdraft Notifications received as a result of the new Rule, to determine if they required further investigation. Mr. Calaman continued to respond to numerous requests for information about

completing the annual Trust Accounting Compliance Certificates (TACC), as well as assisting lawyers with trust accounting compliance and software questions throughout the year. Together with General Counsel, he attended meetings with New Hampshire Bar Association and Court personnel to develop the electronic TACC that will be used in the 2016 reporting year.

## V. OTHER

Staff attorneys served as faculty in a variety of educational programs in 2015, including both the June and December Practical Skills Ethics Workshops and a presentation that included a demonstration of a sanction argument to the Professional Responsibility class at the UNH School of Law. The attorneys were members of CLE panels on Ethics for Public Sector Lawyers, Labor & Employment Law, The Ninth Annual Ethics CLE, and Client Trust Accounting. Deputy General Counsel James Kruse spoke to the combined Concord / Manchester Inns of Court meeting, and Assistant General Counsel Brian Moushegian gave a presentation to the New Hampshire Paralegal Association.

The ADO had two interns from the UNH School of Law in 2015, including one who received course credit for the experience. Common tasks of law students include conducting legal research, participating in interviews of complainants and respondents, drafting pleadings, and submitting written and oral reports to the CSC.

## VI. ATTORNEY DISCIPLINE MATTERS AT THE SUPREME COURT

Pursuant to Supreme Court Rule 37(9), General Counsel must notify the Court when lawyers have been indicted or convicted of serious crimes, and may file petitions for interim suspension or disbarment as appropriate in those cases. In 2015, General Counsel notified the Supreme Court that one lawyer had been convicted of crimes. General Counsel also filed three requests for reciprocal discipline stemming from discipline in other jurisdictions. The Supreme Court disbarred one attorney, remanded one matter to the PCC for issuance of a public censure, and remanded the third to the PCC for sanction proceedings.

In addition, after reviewing matters filed by the PCC, the Supreme Court issued one 18-month suspension; one two-year suspension; allowed four attorneys to resign during a discipline matter pursuant to Supreme Court Rule 37(11); denied one request to resign; and disbarred three attorneys. The Court also reinstated one attorney and denied one request for reinstatement. There was one disciplinary matter pending at the Court at year's end related to a PCC recommendation for a one-year suspension, and one matter pending related to a previous year's criminal conviction which is under appeal.

The Supreme Court also closed one matter upon the request of Disciplinary Counsel, based on the medical condition of the respondent, and closed one matter after the attorney complied with the monitoring conditions.

## VII. CONCLUSION

As of December 31, 2015, there were 136 pending docketed matters at the ADO. Of those, 40 docketed matters were in the investigation stage with General Counsel, three of which were docketed in 2014 and 37 of which were docketed in 2015. Six cases were pending with the CSC for consideration, and one diversion case was being monitored by General Counsel. There were 89 cases under investigation by Disciplinary Counsel, of which 23 were related to a pending request for disbarment. Three cases were pending with the Hearings Committee, five cases were pending at the PCC, one case was pending with the Supreme Court and six cases were being monitored by Disciplinary Counsel for compliance with conditions in previous orders issued.