

New Hampshire Supreme Court

Attorney Discipline System



2004 Annual Report

Table of Contents

I. Introduction	1
II. Office Operations	1
III. Composition of Committees.....	2
IV. Statistics	5
V. Disposal of Matters by the New Hampshire Supreme Court	10
VI. Conclusion	10

I. Introduction

January 1, 2004, marked the beginning of the new attorney discipline system as defined by Supreme Court Rules 37 and 37A. The new rules expanded the authority of the Professional Conduct Committee (PCC) to issue discipline ranging from a reprimand to a suspension of up to six months. The changes also reduced the number of Professional Conduct Committee members from 16 to 12 volunteers by establishing the Complaint Screening Committee (9 members) and the Hearings Committee (35 members) to redistribute functions. The former PCC staff became the staff of the Attorney Discipline Office (ADO), the fourth component of the new system. The new system was designed to streamline the processing of complaints by utilizing additional volunteers; creating boundaries between the investigatory, prosecutorial and adjudicative functions of the system; creating a degree of consistency in the presentation of charges through in-house disciplinary counsel at hearings; and adding a diversion component to the discipline system.

New staff included Disciplinary Counsel Landya B. McCafferty; Administrative Coordinator Holly Fazzino; and Secretaries Lyne Schwarzer, and Melody Spear.

The pending caseload for the attorney discipline system as of January 1, 2004, included 35 cases, which had been voted by the PCC under the former system to warrant a hearing, and 114 docketed matters pending investigation from prior years, for a total of 149 matters.

On November 1, 2004, the Supreme Court approved revisions to Rules 37 and 37A, which clarified and made permanent several rules that had been previously implemented on a temporary basis.

II. Office Operations

During 2004, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. A total of 2,323 calls were taken by General Counsel James L. DeHart, Deputy General Counsel Thomas V. Trevethick and Assistant General Counsel Janet F. DeVito.

Staff attorneys also assisted several complainants who were unable, for various reasons, to write their own grievance. One complaint file was translated from French to English.

A total of 169 letters that were intended to be complaints were received by the ADO. The staff determined that 103 of these met the requirements for docketing, as they alleged conduct that violated the Rules of Professional Conduct and appeared to otherwise satisfy the criteria for docketing as set forth in the Supreme Court Rules. The percentage docketed in 2004 as complaints was 74%, an increase from 56.5% in 2003, and 67% in 2002.

The ADO attorneys served on various New Hampshire Bar Association committees, including the Ethics Committee; Delivery of Legal Services Committee; and the Diversion Task Force.

Staff attorneys also served as faculty in a variety of educational programs, including Pro Bono Divorce Camp; Inns of Court, Hanover; New Hampshire Bar Association Annual and Mid-winter meetings; Ethics segment of Guardian Ad Litem Training; Ethics Training at several NH Public Defender offices; two Practical Skills CLEs; Merrimack County Superior Court Marital Bar Luncheon meeting; Ethics CLEs sponsored by the NHBA; and Franklin Pierce Law Center, as part of a course on Professional Responsibility.

The ADO's professional staff also includes a Certified Public Accountant. Craig A. Calaman conducted audits during 2004 pursuant to orders of the Court, as well as client trust account compliance reviews. In addition, he responded to numerous requests for information about completing trust account compliance certificates.

III. Composition of Committees

The **Complaint Screening Committee (CSC)** was established with five attorney members and four lay members. Attorney members include Martha Van Oot, Chair, of Concord; David M. Rothstein, of Concord; Ronna F. Wise, of Concord; Richard J. Daschbach, of Westmoreland; and Michael P. Hall, of Manchester. Lay members include Martha F. Dyner, Vice Chair, of Concord;

Jules J. Brayman, of Nashua; Stephen A. Bartlett, of Concord; and William F. Lynch, of Keene. One orientation session and eleven meetings were held during 2004.

The CSC processed the following matters in 2004:

Requests to Reconsider Matters Not Docketed	7
Matters Referred For A Hearing	32
Requests to Reconsider Dismissals or Referrals for a Hearing	9
Dismissals With No Professional Misconduct	24
Dismissals With No Professional Misconduct with Warning	11
Matters Closed Without Prejudice	3
<hr/> Total	<hr/> 86

Pursuant to Rules 37 and 37A, grievants may request reconsideration of decisions not to docket their grievance. Once docketed, complainants and attorneys may request reconsideration of decisions made by the CSC. When there is a request for reconsideration, ADO attorneys present a written report to the CSC regarding the complaint, and any new information received with the request for reconsideration.

The **Hearings Committee (HC)** was established with 22 attorney members and 13 lay members under the direction of Attorneys Robert C. Varney, Chair, of Wolfeboro; and Patrick F. Harrigan, Vice Chair, of Portsmouth. Additional attorney members included:

James T. Boffetti, of Stratham
William E. Brennan, of Manchester
Kenneth M. Brown, of Nashua
Christopher Cole, of Manchester
Eric D. Cook, of Portsmouth
W. Wright Danenbarger, of Manchester
William R. Drescher, of Milford
Richard E. Fradette, of Manchester
Melissa Countway Guldbrandsen, of Alton
Cecile B. Hartigan, of Concord
Peter E. Hutchins, of Manchester
Henrietta W. Luneau, of Concord
Julie A. Introcaso, of Kingston
Alexander M. Lachiatto, of Kennebunkport, Maine
Joseph M. McDonough, of Manchester
Paul S. Moore, of Nashua
Mary Anne Mueller, of Londonderry

Jennifer B. Sobel, of South Royalton, Vermont
George H. Thompson, Jr., of Nashua
Philip R. Waystack, of Colebrook

Lay members appointed to the HC included:

Richard H. Darling, of Hollis
Craig E. Evans, of Sanbornville
Christopher K. Hodgdon, of Nashua
Elaine Holden, of Peterborough
John C. Madden, of Hopkinton
Kimberly Mark, of Concord
Vahrij Manoukian, of Hollis
Karen L. Robertson, of Weare
Nancy G. Spater, of Hopkinton
James W. Squires, M.D., of Hollis
Alva H. Swanson, of New Durham
Susan Palmer Terry, of Concord
Benjamin Thompson, Jr., of Hanover

Five attorney members of the HC served on the PCC under the old system, and brought significant experience to the process. These members took a leadership role in the first cases assigned. Two orientation sessions were held to accommodate the size of the Committee.

The HC formed hearing panels that were comprised of three attorney members and two non-attorney members in 16 matters. There were six pre-hearing conferences, 12 one-day hearings, and one two-day hearing. Hearing panels convened at various locations around the State, including the Administrative Office of the Courts, Concord; Concord District Court; Portsmouth District Court; Rockingham County Superior Court, Brentwood; and the Attorney Discipline Office, in Concord.

The PCC continued under the leadership of Margaret H. Nelson, Chair, of Concord. Benette Pizzimenti, of Laconia, continued as the attorney Vice Chair, while Toni Gray, of Hopkinton, continued as layperson Vice Chair. Richard Y. Uchida of Concord completed his one-year term on the Committee, while serving as New Hampshire Bar Association Vice President. Richard B. McNamara of Manchester began his term as the New Hampshire Bar Association Vice President and was appointed to the Committee on August 1, 2004. After serving nine and one-half years on

the PCC, Morgan A. Hollis, of Nashua, concluded his term in December. Additional attorney members included David N. Cole, of Hanover, Thomas P. Connair, of Claremont, Alan J. Cronheim, of Portsmouth, and James R. Martin, of Brookfield. Non-attorney members included David N. Page, of Sunapee, Stephen B. Stepanek, of Amherst, and Nancy R. Hacking, of Canterbury, who was appointed in December to replace Aine Donovan, of Hanover. The PCC held eleven meetings, and one orientation session.

Due to the implementation of the new attorney discipline system, there was an initial lag before matters reached the PCC. This was caused by complaints being initially processed through the earlier stages of the system. The PCC concluded 5 matters in the first 5 months of 2004, compared to 11 matters in the latter 7 months of 2004.

	<u>Concluded 2004</u>	<u>Concluded 2003</u>	<u>Concluded 2002</u>
Dismissal	5	0	0
Dismissal w/ Warning	3	0	0
No Misconduct after Hearing	0	17	16
No Misconduct without Hearing	0	117	115
Misconduct on the Merits	7	26	15
Reciprocal Discipline	1	0	0
Total	16	160	146

IV. Statistics

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

FIGURE A

<u>Underlying Legal Matters</u>	<u>2004</u>	<u>Percentage in 2004</u>	<u>2003</u>	<u>2002</u>
Family Law/ Adoption	27	26%	32	34
Criminal	23	22%	23	34
Real Estate	17	16%	12	10
Probate/ Estate Planning	10	10%	12	16
Personal Injury	9	9%	6	7
Bankruptcy	4	4%	7	5
Unrelated to a Particular Matter	4	4%	5	4
Employment Law	2	2%	0	3
Professional Malpractice	2	2%	2	0
Workers Compensation	2	2%	1	3

<u>Underlying Legal Matters Cont.</u>	<u>2004</u>	<u>Percentage in 2004</u>	<u>2003</u>	<u>2002</u>
Business Law/ Contracts/ Corporate	1	1%	6	3
Collection/ Consumer Protection	1	1%	0	3
Municipal/ Zoning, Eminent Domain	1	1%	1	1
Tax	0	0%	1	1
Landlord/ Tenant	0	0%	0	8
Total Legal Matters	103	100%	108	132

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

FIGURE B

	<u>2004</u>	<u>2003</u>	<u>2002</u>
1 – 5 years in practice	8	9	17
6 – 10 years in practice	19	12	25
11 – 15 years in practice	22	18	20
16 – 20 years in practice	21	19	13
21 – 25 years in practice	18	16	28
26 – 30 years in practice	12	10	13
31 – 35 years in practice	1	5	8
36+ years in practice	1	4	4
Total Attorneys	102	93	128

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 the finding. 2004 findings were significantly lower, due to the changes in the attorney discipline system.

FIGURE C

	<u>2004</u>	<u>2003</u>	<u>2002</u>
1 – 5 years in practice	0	2	1
6 – 10 years in practice	0	5	5
11 – 15 years in practice	3	6	6
16 – 20 years in practice	2	4	2
21 – 25 years in practice	1	3	1
26 – 30 years in practice	1	2	0
31 – 35 years in practice	0	3	0
36 + years in practice	0	1	0
Total Findings	7	26	15

Figure D is a breakdown of the Rules that were found to have been violated in 2003 and 2004.

FIGURE D

<u>Rules Violated</u>	<u>2004</u>	<u>2003</u>
<u>A. Rule 1 Violations</u>		
(Client-Lawyer Relationship)		
1.1(a)	3	7
1.1(b)(1)	0	1
1.1(b)(2)	1	0
1.1(b)(4)	1	0
1.1(b)(5)	0	6
1.1(c)(1)	0	1
1.1(c)(4)	2	5
1.2(a)	0	1
1.2(d)	0	2
1.3(a)	4	5
1.4(a)	6	8
1.4(b)	3	1
1.4(c)	4	0
1.5(a)	0	1
1.5(c)	0	0
1.5(f)	0	0
1.7(a)	1	1
1.7(b)	1	9
1.8(a)	0	3
1.8(b)	0	1
1.8(g)	0	1
1.8(j)	0	1
1.9(a)	1	3
1.9(c)	0	1
1.15(a)	2	4
1.15(b)	1	1
1.15(c)	0	1
1.16(a)(3)	4	0
1.16(d)	0	5
Total Rule 1 Violations	34	69
<u>Rule 2 Violations</u>		
(Counselor)		
Rule 2.1	0	1
Total Rule 2 Violations	0	1

Rule 3 Violations	2004	2003
(Advocate)		
3.1	0	1
3.3(a)	2	2
3.4(b)	0	1
Total Rule 3 Violations	2	4

Rule 4 Violations		
(Persons Other Than Clients)		
4.1(a)	1	0
4.2	0	1
4.4	1	1
Total Rule 4 Violations	2	2

Rule 5 Violations		
(Responsibilities Regarding Non-lawyer Assistants)		
5.3(b)	1	0

Rule 7 Violations		
(Information about Legal Services)		
7.1(a)	0	1
7.5(d)	1	0
Total Rule 7 Violations	1	1

Rule 8 Violations		
(Maintaining the Integrity of the Profession)		
8.1(b)	1	3
8.4(a)	7	26
8.4(c)	2	4
Total Rule 8 Violations	10	33

Rule 50 Violations		(Not Tracked in 2003)
(Trust Accounts)		
50(2)(A)	1	
50(2)(B)	1	
50(2)(C)	1	
50(2)(F)	1	
Total Rule 50 Violations	4	

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

FIGURE E

	2004	2003
Rule 1	78%	83%
Rule 2	0%	1%
Rule 3	5%	5%
Rule 4	5%	2%
Rule 5	2.5%	0%
Rule 7	2.5%	1%
Rule 8	7%	8%
Total	100%	100%

Figure F shows a breakdown of the number of complaints that were concluded by the Attorney Discipline System, arranged by the year the complaint was docketed, for the years 2002 through 2004.

FIGURE F

Type of Complaint	<u>Concluded 2004</u>	<u>Concluded 2003</u>	<u>Concluded 2002</u>
Prior Years Complaints	62	119	105
Current Year Complaints	1	41	46
Total Complaints	63	160	151

V. Disposal of Matters by the Supreme Court

Disciplinary Counsel filed one petition for a two-year suspension and one petition for disbarment in 2004. The Supreme Court concluded two matters under the old system, currently has eight matters pending from prior years, and two matters pending from the new system.

VI. Conclusion

The CSC referred 32 new matters for a hearing in 2004. Approximately one-third of each meeting is devoted to matters previously considered but not docketed. The CSC reviews volumes of materials in preparation for each meeting, and conducts a debate in consideration of each matter.

In 2004, the HC processed 16 matters. With the exception of one volunteer, all (HC) members served on at least one hearing panel, 25 served on two hearing panels, and one served on three hearing panels.

The PCC concluded, on average, two matters per month during the second half of the year. Four oral arguments were conducted; 16 orders issued; and the Committee deliberated on several complicated issues. The entire record in each matter is reviewed by each Committee member prior to oral argument. In addition, each committee member participates in the deliberations and review of written opinions prior to their issuance. There were seven matters with findings of professional misconduct and discipline imposed.

The attorney discipline system's work in 2004 focused on addressing the backlog of outstanding cases docketed from 2003 and earlier. As of December 31, 2004, there were 97 outstanding matters at various stages from 2003 and earlier, and 102 matters outstanding from 2004, for a total of 199 matters.

Disciplinary Counsel took action on 31 matters in 2004, closed 15 matters, and received 32 new matters for a hearing. As of December 31, 2004, there were 52 matters that have been recommended for a hearing. The office utilized three interns from Franklin Pierce Law Center who assisted in research, writing and trial preparation.

Parties interfacing with the new system report that they are very pleased with the thoroughness in which matters are handled. The ADO continues to work towards reducing the backlog of cases. The goal is to reduce the backlog to no more than one year.