

New Hampshire Supreme Court

Attorney Discipline System



2005 Annual Report

I. Introduction

On January 1, 2005, the caseload for the Attorney Discipline Office (ADO) included 52 matters determined to warrant a hearing and 199 docketed matters pending investigation, for a total of 251 matters. Almost half of the cases pending investigation had been docketed prior to January 1, 2004. During the year, ADO staff attorneys evaluated 235 grievances, and determined that 124 of them did not meet the criteria for docketing. As of December 31, 2005, there were then 173 matters pending in the investigative stage, only one of which was docketed before January 1, 2004, and 40 awaiting prosecution, for a total of 213 matters.

II. Office Operations

During 2005, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. A total of 1,995 calls were taken by General Counsel James L. DeHart, Deputy General Counsel Thomas V. Trevethick and Assistant General Counsel Janet F. DeVito. There were 217 meetings with the public. More than 690 packets of information were mailed to the public about how to file a complaint.

The ADO received 235 grievance letters in 2005. The staff determined that 111 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 of matters docketed in 2005 as complaints was 47%, a decrease from 74% in 2004. The marked decrease in docketed complaints was due in large part to the staff requesting more information from grievants and voluntary responses from attorneys prior to determining whether to docket each matter.

On August 1, 2005, James L. Kruse was hired as Assistant Disciplinary Counsel, on a part time basis, to assist Disciplinary Counsel Landya B. McCafferty in the prosecution of matters referred for a hearing. The office now consists of a total of five attorneys, four secretaries, one administrative coordinator and one certified public accountant. The office also utilized two interns from Franklin Pierce Law Center, who assisted in research, writing, trial preparation and examination of witnesses at hearings.

Craig A. Calaman, CPA, completed three audits during 2005 pursuant to orders of the Supreme Court and worked on several others. He also conducted six client trust account compliance reviews. In addition, he responded to numerous requests for information about completing trust account compliance certificates.

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. Additional committees include the Supreme Court Committee on Bar Admissions, and the New Hampshire Committee on Lawyer Assistance Programs.

Staff attorneys also served as faculty in a variety of educational programs, including: New Hampshire Bar Association (NHBA) Annual and Mid-winter meetings; two Practical Skills sessions; CLEs on Ethics and Domestic Violence; NHBA Statewide Professionalism Day; and The Nuts and Bolts of Criminal Defense Practice in New Hampshire. In addition, they gave presentations at the Guardian Ad Litem Training; Inns of Court, Hanover; and Franklin Pierce Law Center.

III. Committee Composition Update and Outcomes

The **Complaint Screening Committee** is comprised of nine members: five attorneys and four lay members. Because a lay member (Stephen A. Bartlett of Concord) temporarily became unavailable to serve, Virginia C. Beecher was temporarily appointed during his absence. This Committee met once each month, except in July and August.

The Complaint Screening Committee processed the following matters in 2005:

	2005	2004
Requests to Reconsider Matters Not Docketed (denied)	23	7
Matters Docketed upon Reconsideration of Non-docket	3	0
Matters Referred For A Hearing	27	32
Requests to Reconsider Dismissals or Referrals for a Hearing	0	9
Dismissals With No Professional Misconduct	46	24
Dismissals With No Professional Misconduct with a Warning	12	11
Matters Closed Without Prejudice	10	3
Total	121	86

The **Hearings Committee** is comprised of 22 attorney members and 13 lay members. Although they generally only meet as hearing panels, the entire Committee met as a group on November 16, 2005, to participate in a session focused on writing uniform Hearing Panel reports.

The Hearings Committee Chair appointed hearing panels that were each comprised of three attorney members and two lay members in 14 matters, consistent with 2004. There were two pre-hearing conferences in one matter and one pre-hearing conference in one matter, ten one-day hearings, one two-day hearing, and one four-day hearing. Hearing panels convened at various locations around the State, including: the Administrative Office of the Courts, Concord; Concord District Court; Rockingham County Superior Court, Brentwood, and the Attorney Discipline Office, Concord.

Hearing panels were convened for two fewer matters in 2005 than in 2004, because Disciplinary Counsel settled the matters by stipulation. There were two matters pending at the Hearings Committee stage that were referred to the Professional Conduct Committee by stipulation in 2005.

The **Professional Conduct Committee (PCC)** is comprised of eight attorney members and four lay members. Richard B. McNamara of Manchester completed his one-year term on the Committee, while serving as New Hampshire Bar Association Vice President. Eleanor Wm. Dahar of Manchester began her term as the New Hampshire Bar Association Vice President and was appointed to the Committee on August 1, 2005. One lay member resigned before the end of her term.

The PCC convened a meeting on July 8, 2005, to discuss how the new system was working thus far, from each Committee's perspective. The chairs and vice chairs of each committee, as well as ADO staff, attended the session. Feedback was brought to each Committee, either at their monthly meeting or, in the case of the Hearings Committee, at the session held on November 16, 2005. One immediate change, implemented as a result of the meeting, was that stronger communication channels between committees have been opened. The PCC met monthly except in August, 2005.

The PCC acted on the following matters in 2005:

	2005	2004
Closed without Prejudice	4	0
Dismissal without a Hearing	12	5
Dismissal w/ Warning without a Hearing	9	3
Referred for a Hearing (not closed)	1	0
No Misconduct after Hearing	1	0
Stipulation to Misconduct and Public Censure	3	0
Misconduct on the Merits after Hearing	16	7
Reprimand- 3		
Public Censure- 2		
6 mo. Suspension- 2		
Recommend 1 yr Suspension- 1		
Recommend 2 yr Suspension- 2		
Recommend Disbarment- 6		
Recommendation to Deny Motion for Reinstatement	1	0
Approve Payment Plan (not closed)	1	0
Recommendation to Accept Resignation	1	0
Grant Protective Order (not closed)	1	0
Deny Protective Order (not closed)	1	0
Filing of notice of discipline by other jurisdictions	0	1
Total Closed	51	16

IV. Statistics

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

FIGURE A

Underlying Legal Matters	2005	Percentage In 2005	2004
Family Law/ Adoption	46	42%	27
Criminal	26	23%	23
Real Estate	7	6%	17
Probate/ Estate Planning	6	5%	10
Personal Injury	8	7%	9
Bankruptcy	2	2%	4
Other	4	4%	4
Employment Law	0	0%	2
Professional Malpractice	1	1%	2
Workers Compensation	1	1%	2
Business Law/ Contracts/ Corporate	8	7%	1
Collection/ Consumer Protection	2	2%	1
Municipal/ Zoning, Eminent Domain	0	0%	1
Total Legal Matters	111	100%	103

Figure B shows the number of years the attorney was admitted to practice in New Hampshire at the time the complaint was filed. *Six matters identified two attorneys.

FIGURE B

	<u>2005</u>	<u>Percentage in 2005</u>	<u>2004</u>
1 – 5 years in practice	15	13%	8
6 – 10 years in practice	21	18%	19
11 – 15 years in practice	17	14%	22
16 – 20 years in practice	29	25%	21
21 – 25 years in practice	9	8%	18
26 – 30 years in practice	12	10%	12
31 – 35 years in practice	5	4%	1
36+ years in practice	9	8%	1
Total Attorneys	117*	100%	102

Shown in Figure C is the distribution of misconduct findings for the past two years, sorted by the number of years the attorney was in practice at the time of the filing. 2004 findings were significantly lower, due to the changes in the attorney discipline system that year.

FIGURE C

	<u>2005</u>	<u>2004</u>
1 – 5 years in practice	1	0
6 – 10 years in practice	7	0
11 – 15 years in practice	4	3
16 – 20 years in practice	2	2
21 – 25 years in practice	2	1
26 – 30 years in practice	1	1
31 – 35 years in practice	2	0
36 + years in practice	1	0
Total Findings	20	7

Figure D is a description of the Rules that were found to have been violated in 2005 and 2004.

Figure D

Rule 1 Violations: Client-Lawyer Relationship	2005	2004
Competence	10	7
Diligence	4	4
Communication	12	13
Fees	2	0
Conflict	2	2
Other Conflict	1	0
Former Client	0	1
Safeguarding Client Funds	10	3
Terminate Relationship with Client	5	4
Rule 3 Violations: Advocate		
Meritorious Litigation	1	0
Candor to Court	6	2
Rule 4 Violations: Persons Other Than Clients		
	3	2
Rule 5 Violations: Responsibility Re: Non-lawyer Assistants		
	3	1
Rule 7 Violations: Info about Legal Services		
	0	1
Rule 8 Violations: Integrity of Profession		
	6	3
Rule 50 Violations: Trust Accounts		
	8	4
Total Violations	73	47

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

	2005	2004
Rule 1	63%	72 %
Rule 3	11%	4 %
Rule 4	4%	4 %
Rule 5	4%	2 %
Rule 7	0 %	2 %
Rule 8	8 %	7 %
Rule 50	10%	9 %
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 2004 and 2005.

FIGURE F

Year of Complaint	<u>Concluded</u> 2005	<u>Concluded</u> 2004
2004- and earlier	84	63
2005	4	X
	88	63

V. Disposal of Matters by the Supreme Court

Disciplinary Counsel filed one petition for a one-year suspension, two petitions for a two-year suspension, and five petitions for disbarment in 2005. The Supreme Court concluded ten matters (one dismissal, one reprimand, two six-month suspensions, one one-year suspension, three disbarments), and had ten matters pending. Some matters concluded had been filed in previous years.

VI. Conclusion

The attorney discipline system's work in 2005 focused on addressing the backlog of outstanding cases from 2003 and earlier. It is anticipated that the length of time matters are open will continue to decrease in the next year as the functioning of the system becomes more efficient.