

New Hampshire Supreme Court

Attorney Discipline System



2006 Annual Report

I. Introduction

On January 1, 2006, the caseload for the Attorney Discipline Office (ADO) included 40 matters determined to warrant a hearing and 173 docketed matters pending investigation, for a total of 213 matters. Forty percent of the cases pending investigation had been docketed prior to January 1, 2005. During the year, ADO staff attorneys evaluated 196 grievances, and determined that 145 of them did not meet the criteria for docketing. As of December 31, 2006, there were 107 matters pending in the investigative stage, only three of which were docketed before January 1, 2005, and 41 awaiting prosecution, for a total of 148 matters.

II. Office Operations

During 2006, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. A total of 2,163 calls were taken by General Counsel James L. DeHart, Deputy General Counsel Thomas V. Trevethick and Assistant General Counsel Janet F. DeVito. The above attorneys held 241 meetings during the year. More than 398 packets of information were mailed to the public about how to file a complaint.

The staff determined that 51 of the 196 grievances 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 2006 as complaints was 26%, a decrease from 47% in 2005, and 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 June 1, 2006, Assistant Disciplinary Counsel James L. Kruse's hours were increased from 20 to 30 hours per week, to further assist Disciplinary Counsel Landya B. McCafferty in the prosecution of matters referred for a hearing. The attorney discipline system 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 two audits during 2006 pursuant to orders of the Supreme Court and worked on four others. He also conducted ten client trust account compliance reviews. In addition, he responded to numerous requests for information about completing trust account compliance certificates. A substantial amount of time was devoted to an audit that resulted in the criminal conviction and disbarment of one attorney.

The ADO attorneys served on the New Hampshire Bar Association Ethics Committee and Delivery of Legal Services Committee.

Staff attorneys also served as faculty in a variety of educational programs, including: New Hampshire Bar Association (NHBA) Practical Skills sessions; Professionalism Day, Mid-year Meeting, CLEs on Ethics and Domestic Violence; 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, Merrimack and Hillsborough Counties; Franklin Pierce Law Center classes and National Trial Competition, NH Judicial Council, and the Attorney General's Office.

III. Committee Composition Update and Outcomes

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

The Complaint Screening Committee processed the following matters in 2006:

	2006	2005	2004
Requests to Reconsider Matters Not Docketed (denied)	15	23	7
Matters Docketed upon Reconsideration of Non-docket	1	3	0
Matters Referred For A Hearing	40	27	32
Requests to Reconsider Dismissals or Referrals for a Hearing	0	0	9
Dismissals With No Professional Misconduct	59	46	24
Dismissals With No Professional Misconduct with a Warning	14	12	11
Matters Closed Without Prejudice	2	10	3
Total	131	121	86

The **Hearings Committee** is comprised of 22 attorney members and 13 lay members.

The Hearings Committee Chair appointed 14 hearing panels that were each comprised of three attorney members and two lay members, consistent with 2005 and 2004. There were six pre-hearing conferences in six matters, seven one-day hearings and one three-day hearing. Hearing panels convened at various locations around the State, including: the Administrative Office of the Courts, Concord; Hillsborough County Superior Court- North, Manchester and Concord District Court.

The hearings committee process was waived by the parties by stipulation in six matters.

The **Professional Conduct Committee (PCC)** is comprised of eight attorney members and four lay members. Eleanor Wm. Dahar of Manchester completed her one-year term on the Committee, while serving as New Hampshire Bar Association Vice President. Ellen L. Arnold of Lebanon began her term as the New Hampshire Bar Association Vice President and was appointed to the Committee on August 1, 2006.

A retreat was held on July 17, 2006, 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 professional staff, attended the session. The PCC met monthly except in August, 2006.

The PCC acted on the following matters in 2006:

	2006	2005	2004
Closed without Prejudice	2	4	0
Dismissal without a Hearing	3	12	5
Dismissal w/ Warning without a Hearing	13	9	3
Diversion by Agreement	4	0	0
Referred for a Hearing (not closed)	0	1	0
No Misconduct after Hearing	0	1	0
Stipulation to Misconduct and Public Censure	2	3	0
Misconduct on the Merits after Hearing	18	16	7
Reprimand- 2			
Public Censure- 6			
6 mo. Suspension- 5			
Recommend Disbarment- 5			

Recommendation to Deny Motion for Reinstatement	0	1	0
Approve Payment Plan (not closed)	0	1	0
Recommendation to Accept Resignation	0	1	0
Grant Protective Order (not closed)	3	1	0
Deny Protective Order (not closed)	1	1	0
Filing of notice of discipline by other jurisdictions	0	0	1
Annulments (7 cases for 2 separate attorneys)	7	0	0
Total Closed	53	51	16

IV. Statistics

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

FIGURE A

Underlying Legal Matters	2006	Percentage In 2006	2005	Percentage In 2005	2004
Family Law/ Adoption	15	29%	46	42%	27
Criminal	7	14%	26	23%	23
Real Estate	4	8%	7	6%	17
Probate/ Estate Planning	6	11%	6	5%	10
Personal Injury	5	10%	8	7%	9
Bankruptcy	0	0%	2	2%	4
Other	4	8%	4	4%	4
Employment Law	0	0%	0	0%	2
Professional Malpractice	0	0%	1	1%	2
Workers Compensation	2	4%	1	1%	2
Business Law/ Contracts/ Corporate	1	2%	8	7%	1
Collection/ Consumer Protection	1	2%	2	2%	1
Municipal/ Zoning, Eminent Domain	1	2%	0	0%	1
Civil suit / Litigation	2	4%	0	0%	0
Small Claims	2	4%	0	0%	0
Reciprocal Discipline	1	2%	0	0%	0
Total Legal Matters	51	100%	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. *Five matters identified two attorneys.

FIGURE B

	2006	Percentage in 2006	2005	Percentage in 2005	2004
1 – 5 years in practice	9	16%	15	13%	8
6 – 10 years in practice	6	11%	21	18%	19

11 – 15 years in practice	11	20%	17	14%	22
16 – 20 years in practice	13	23%	29	25%	21
21 – 25 years in practice	5	9%	9	8%	18
26 – 30 years in practice	7	12%	12	10%	12
31 – 35 years in practice	3	5%	5	4%	1
36+ years in practice	2	4%	9	8%	1
Total Attorneys	56*	100%	117*	100%	102

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 filing. 2004 findings were significantly lower, due to the implementation of rule changes in the attorney discipline system that year.

FIGURE C

	2006	2005	2004
1 – 5 years in practice	2	1	0
6 – 10 years in practice	5	7	0
11 – 15 years in practice	1	4	3
16 – 20 years in practice	7	2	2
21 – 25 years in practice	0	2	1
26 – 30 years in practice	3	1	1
31 – 35 years in practice	0	2	0
36 + years in practice	0	1	0
Total Findings	18	20	7

Figure D is a description of the Rules that were found to have been violated in 2006, 2005 and 2004.

Figure D

Rule 1 Violations: Client-Lawyer Relationship	2006	2005	2004
Competence	1	10	7
Diligence	3	4	4
Communication	7	12	13
Fees	1	2	0
Conflict	1	2	2
Other Conflict	0	1	0
Former Client	1	0	1
Safeguarding Client Funds	8	10	3
Terminate Relationship with Client	2	5	4

Rule 3 Violations: Advocate			
Meritorious Litigation	0	1	0
Candor to Court	0	6	2
Rule 4 Violations: Persons Other Than Clients	0	3	2
Rule 5 Violations: Responsibility Re: Non-lawyer Assistants	1	3	1
Rule 7 Violations: Info about Legal Services	0	0	1
Rule 8 Violations: Integrity of Profession	11	6	3
Rule 37 Violations: Atty. Discipline System	3	0	0
Rule 50 Violations: Trust Accounts	0	8	4
Total Violations	39	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

	2006	2005	2004
Rule 1	61%	63%	72%
Rule 3	0 %	11%	4 %
Rule 4	0 %	4 %	4 %
Rule 5	3 %	4 %	2 %
Rule 7	0 %	0 %	2 %
Rule 8	28%	8 %	7 %
Rule 37	8 %	0 %	0 %
Rule 50	0 %	10%	9 %
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 2004, 2005 and 2006.

FIGURE F

Year of Complaint	Concluded 2006	Concluded 2005	Concluded 2004
2004- and earlier	73	84	63
2005	28	4	0
2006	5	0	0
	106	88	63

V. Disposal of Matters by the Supreme Court

Disciplinary Counsel filed one petition for an interim suspension, and two petitions for disbarment in 2006. The Supreme Court concluded two matters originating from the attorney discipline system, both of which were disbarments.

VI. Conclusion

The attorney discipline system's work in 2006 continued to focus on reducing the number of cases outstanding from 2004 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 is further streamlined and becomes more efficient.