

# **New Hampshire Supreme Court**

## **Attorney Discipline System**



### **2007 Annual Report**

## **I. Introduction**

On January 1, 2007, the caseload for the Attorney Discipline Office (ADO) included 107 docketed matters in the screening stage, and 41 matters referred to Disciplinary Counsel for further action, for a total of 148 docketed matters. During the year, ADO staff attorneys also evaluated 198 grievances, and determined that 130 of them did not meet the criteria for docketing. As of December 31, 2007, there were 45 matters pending in the screening stage, and 58 matters referred to Disciplinary Counsel, for a total of 103 matters.

## **II. Office Operations**

The attorney discipline system consists of five attorneys, four secretaries, one administrative coordinator and one certified public accountant.

During 2007, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. A total of 2,021 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 237 meetings during the year. More than 318 packets of information were mailed to the public about how to file a grievance.

The General Counsel determined that 68 of the 198 grievances met the requirements for docketing, as they alleged conduct that, if proven, would violate 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 2007 as complaints was 34%, an increase from 26% in 2006, and a decrease from 47% in 2005. While the percentage of matters docketed will always be somewhat fluid, the percentages have generally been lower the last two years. The change is the result of increased review, investigation and analysis in determining which grievances warrant being docketed. Some grievances that may have been docketed in the past are now being identified as lacking merit sooner in the process.

After more than 25 years in downtown Concord, the office was relocated at the direction of the Supreme Court to 4 Chenell Drive, Suite 102, in Concord, at the end of May. The new space provides increased parking for the public. The lack of storage space at the new location created the need to store some closed files at Manchester District Court.

Rule 37(A) was amended in March, giving the ADO General Counsel authority to dismiss docketed matters without a vote of the Complaint Screening Committee. The rule change enabled the General Counsel to dismiss 45 docketed matters in 2007. Any complainant whose matter is dismissed by the General Counsel has an opportunity to request that the matter be reconsidered by the Complaint Screening Committee. Three matters of the 45 were reconsidered, resulting in two orders affirming the dismissal, and one reprimand by consent, issued by the Professional Conduct Committee.

The ADO staff developed tracking standards to be implemented in 2008, to provide further information to the Court on the time necessary to thoroughly evaluate and dispose of matters.

Craig A. Calaman, CPA, completed two audits during 2007 pursuant to orders of the Supreme Court, and worked on three others. He also conducted six random client trust account compliance reviews. In addition, Mr. Calaman responded to numerous requests for information about completing trust account compliance certificates. The Client Trust Account Compliance Certificate was revised in 2007.

Staff attorneys served as faculty in a variety of educational programs, including: New Hampshire Bar Association (NHBA) Practical Skills sessions and Recent Temporary Rule Changes to Attorney Discipline System. In addition, they gave presentations to the Guardian Ad Litem Trainings, Inns of Court- Durham; and Franklin Pierce Law Center classes. An ADO attorney also serves on the NHBA Delivery of Legal Services Committee.

### **III. Committee Composition Update and Outcomes**

The **Complaint Screening Committee (CSC)** is comprised of nine members: five attorneys and four lay members. This Committee met eleven times in 2007.

The Complaint Screening Committee processed the following matters in 2007 as compared to the two previous years:

	2007	2006	2005
Requests to Reconsider Matters Not Docketed (denied)	32	15	23
Matters Docketed upon Reconsideration of Non-docket	2	1	3
Requests to Reconsider CSC Dismissals	17	0	0
Matters Referred For A Hearing	37	40	27
Dismissals With No Professional Misconduct	39	59	46
Dismissals With No Professional Misconduct with a Warning	12	14	12
Matters Closed Without Prejudice	1	2	10
<b>Total</b>	<b>140</b>	<b>131</b>	<b>121</b>

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

The Hearings Committee Chair appointed 11 hearing panels that were each comprised of three attorney members and two lay members, a decrease from 14 hearing panels in 2006 and 2005. There was one pre-hearing conference in three matters, four one-day hearings and one three-day hearing. Hearing panels convened at various locations around the State, including: the Administrative Office of the Courts, Merrimack County Superior Court and Concord District Court.

The Hearings Committee process was waived by stipulation of the parties in 12 matters. This allowed the disciplinary matter to proceed directly to the Professional Conduct Committee.

The **Professional Conduct Committee (PCC)** is comprised of eight attorney members and four lay members. Ellen L. Arnold, Esquire, of Lebanon, completed her one-year term on the Committee, while serving as New Hampshire Bar Association Vice President. James J. Tenn, Jr., Esquire, of Manchester, began his term as the New Hampshire Bar Association Vice President and was appointed to the Committee on August 1, 2007. The PCC met monthly.

A retreat was held on July 11, 2007, to discuss systems issues and coordination of the disciplinary system functions, from each Committee's perspective. The chairs and vice chairs of each committee, as well as ADO professional staff, attended the session.

The PCC issued the following decisions in 2007:

	2007	2006	2005
Closed without Prejudice	4	2	4
Dismissal without a Hearing	13	3	12
Dismissal w/ Warning without a Hearing	1	13	9
Diversion by Agreement	0	4	0
Referred for a Hearing (not closed)	0	0	1
No Misconduct after Hearing	1	0	1
Stipulation to Misconduct and Public Censure	3	2	3
Misconduct on the Merits after Hearing	21	18	16
Reprimand	(9)	(2)	(4)
Public Censure	(5)	(6)	(2)
Three month Suspension	(2)	(0)	(0)
6 mo. Suspension	(3)	(5)	(2)
Recommend 1 year Suspension	(1)	(0)	(0)
Recommend 2 year Suspension	(0)	(0)	(2)
Recommend Disbarment	(1)	(5)	(6)
Recommendation to Deny Motion for Reinstatement	0	0	1
Approve Payment Plan	1	0	1
Recommendation to Accept Resignation	0	0	1
Grant Protective Order	10	3	1
Deny Protective Order	1	1	1
Filing of notice of discipline by other jurisdictions	0	0	0
Annulments	4	7	0
<b>Total Closed</b>	<b>59</b>	<b>53</b>	<b>51</b>

#### 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	2007	Percentage In 2007	2006	Percentage In 2006	2005	Percentage In 2005
Family Law/ Adoption	24	35%	15	29%	46	42%
Criminal	14	21%	7	14%	26	23%
Real Estate	5	7%	4	8%	7	6%
Probate/ Estate Planning	3	4%	6	11%	6	5%
Personal Injury	5	7%	5	10%	8	7%
Bankruptcy	2	3%	0	0%	2	2%
Other	5	7%	4	8%	4	4%
Employment Law	0	0%	0	0%	0	0%
Professional Malpractice	0	0%	0	0%	1	1%
Workers Compensation	0	0%	2	4%	1	1%

Business Law/ Contracts/ Corporate	1	2%	1	2%	8	7%
Collection/ Consumer Protection	1	2%	1	2%	2	2%
Municipal/ Zoning, Eminent Domain	0	0%	1	2%	0	0%
Civil suit / Litigation	7	10%	2	4%	0	0%
Small Claims	1	2%	2	4%	0	0%
Reciprocal Discipline	0	0%	1	2%	0	0%
<b>Total Legal Matters</b>	<b>68</b>	<b>100%</b>	<b>51</b>	<b>100%</b>	<b>111</b>	<b>100%</b>

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

**FIGURE B**

	2007	Percentage In 2007	2006	Percentage In 2006	2005	Percentage In 2005
1 – 5 years in practice	6	9%	9	16%	15	13%
6 – 10 years in practice	10	14%	6	11%	21	18%
11 – 15 years in practice	10	14%	11	20%	17	14%
16 – 20 years in practice	14	20%	13	23%	29	25%
21 – 25 years in practice	9	13%	5	9%	9	8%
26 – 30 years in practice	10	14%	7	12%	12	10%
31 – 35 years in practice	7	10%	3	5%	5	4%
36+ years in practice	4	6%	2	4%	9	8%
<b>Total Attorneys</b>	<b>70*</b>	<b>100%</b>	<b>56**</b>	<b>100%</b>	<b>117</b>	<b>100%</b>

\*Two matters identified two attorneys in 2007, \*\*five matters identified two attorneys in 2006.

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 docketing.

**FIGURE C**

	2007	2006	2005
1 – 5 years in practice	0	2	1
6 – 10 years in practice	3	5	7
11 – 15 years in practice	3	1	4
16 – 20 years in practice	5	7	2
21 – 25 years in practice	3	0	2
26 – 30 years in practice	2	3	1
31 – 35 years in practice	3	0	2
36 + years in practice	1	0	1
<b>Total Findings</b>	<b>20</b>	<b>18</b>	<b>20</b>

**Figure D** is a listing of the Rules that were found to have been violated in 2007, 2006 and 2005. All matters involved findings of at least two rules.

**FIGURE D**

<b>Rule 1 Violations: Client-Lawyer Relationship</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>
Competence	3	1	10
Diligence	3	3	4
Communication	7	7	12
Fees	0	1	2
Conflict	0	1	2
Other Conflict	0	0	1
Former Client	1	1	0
Safeguarding Client Funds	8	8	10
Terminate Relationship with Client	4	2	5
<b>Rule 3 Violations: Advocate</b>			
Meritorious Litigation	0	0	1
Candor to Court	2	0	6
Fairness to Opposing Party	2	0	0
<b>Rule 4 Violations: Persons Other Than Clients</b>	3	0	3
<b>Rule 5 Violations: Responsibility Re: Non-lawyer Assistants</b>	1	1	3
<b>Rule 7 Violations: Info about Legal Services</b>	2	0	0
<b>Rule 8 Violations: Integrity of Profession</b>	8	11	6
<b>Rule 37 Violations: Atty. Discipline System</b>	0	3	0
<b>Rule 50 Violations: Trust Accounts</b>	2	0	8
<b>Total Violations</b>	<b>46</b>	<b>39</b>	<b>73</b>

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**

	2007	2006	2005
Rule 1	57%	61%	63%
Rule 3	9%	0%	11%
Rule 4	7%	0%	4%
Rule 5	2%	3%	4%
Rule 7	4%	0%	0%
Rule 8	11%	28%	8%
Rule 37	0%	8%	0%
Rule 50	4%	0%	10%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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 2007, 2006, 2005 and 2004.

**FIGURE F**

Year of Complaint	Concluded 2007	Concluded 2006	Concluded 2005	Concluded 2004
2004- and earlier	15	73	84	63
2005	66	28	4	0
2006	31	5	0	0
2007	22	0	0	0
<b>Totals</b>	<b>134</b>	<b>106</b>	<b>88</b>	<b>63</b>

**V. Disposal of Matters by the Supreme Court**

The Supreme Court concluded eight matters originating from the attorney discipline system in 2007. The dispositions included six disbarments and two two-year suspensions.

**VI. Conclusion**

When the attorney discipline system was restructured effective January 1, 2004, one of the primary goals was to address a substantial backlog and create a more efficient process. As can be seen in Figure F above, the number of matters concluded each year has steadily increased. In 2007, more than twice as many complaints were concluded than was the case in 2004.