

New Hampshire Supreme Court

Attorney Discipline System



2008 Annual Report

I. Overview

As 2008 drew to a close, the revised attorney discipline system ended its fifth year of operation. The system began with a large backlog of cases inherited from the previous single committee structure. It was the workload and the backlog that created the need to change the system.

Although the early days of the new system were somewhat slow to show results, the passage of time and some adjustments have effectively eliminated the backlog. Some matters are able to be concluded without undue delay. However, there are always a number of cases in which, because of complexity or other reasons, much more time is necessary to bring them to a conclusion.

II. Attorney Discipline Office Caseload

On January 1, 2008, the caseload for the Attorney Discipline Office (ADO) included 45 docketed matters in the investigation stage, and 58 matters referred to Disciplinary Counsel for further action, for a total of 103 pending docketed matters. During the year, ADO staff attorneys also evaluated 241 grievances, and after a preliminary investigation, determined that 180 did not meet the criteria for docketing. There were 61 matters docketed in 2008. As of December 31, 2008, there were 24 matters pending in the investigation stage, and 51 matters referred to Disciplinary Counsel, for a total of 75 pending matters.

III. Office Operations

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

During 2008, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. Almost 1,500 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 121 meetings during the year. More than 365 packets of information were mailed to the public describing how to file a grievance, a 14.7% increase from 2007.

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

FIGURE A

Underlying Legal Matters	2008	Percentage In 2008	Percentage In 2007	Percentage In 2006
Family Law/ Adoption	15	25%	35%	29%
Criminal	17	28%	21%	14%
Real Estate	4	7%	7%	8%
Probate/ Estate Planning	4	7%	4%	11%
Personal Injury	3	5%	7%	10%
Bankruptcy	3	5%	3%	0%
Other	5	8%	7%	8%
Workers Compensation	0	0%	0%	4%
Business Law/ Contracts/ Corporate	2	3%	2%	2%
Collection/ Consumer Protection	0	0%	2%	2%
Municipal/ Zoning, Eminent Domain	0	0%	0%	2%
Civil Suit / Litigation	7	11%	10%	4%
Small Claims	1	1%	2%	4%
Reciprocal Discipline	0	0%	0%	2%
Total Legal Matters	61	100%	100%	100%

The General Counsel determined that 61 of the 241 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 grievances docketed as complaints was 25%, a decrease from 34% in 2007, and an increase from 26% in 2006. The staff continues to devote significant amounts of time on investigation and analysis to determine which grievances warrant docketing.

Grievances were filed by a variety of individuals associated with legal matters, including 66% by the Respondent's client, 16% by the opposing party, 7% by a third party, 5% by referral, and 6% from other sources.

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

FIGURE B

	2008	Percentage In 2008	Percentage In 2007	Percentage In 2006
1 – 5 years in practice	4	7%	9%	16%
6 – 10 years in practice	10	18%	14%	11%
11 – 15 years in practice	6	10%	14%	20%
16 – 20 years in practice	15	26%	20%	23%
21 – 25 years in practice	7	12%	13%	9%
26 – 30 years in practice	8	14%	14%	12%
31 – 35 years in practice	2	3%	10%	5%
36+ years in practice	6	10%	6%	4%
Total Attorneys	58*	100%	100%	100%

* One attorney had four complaints in 2008.

Pursuant to an amendment to Rule 37(A) in 2007, General Counsel dismissed 18 docketed matters in 2008. Any complainant whose matter was dismissed by the General Counsel had an opportunity to request that the matter be reconsidered by the Complaint Screening Committee. One matter was reconsidered, and as a result, it was referred to Disciplinary Counsel.

IV. Complaint Screening Committee

The **Complaint Screening Committee (CSC)** is comprised of nine members: five attorneys and four lay members. This Committee met 12 times in 2008, including one meeting via telephone conference.

The CSC processed the following matters in 2008 as compared to the two previous years:

	2008	2007	2006
Requests to Reconsider Matters Not Docketed (denied)	38	32	15
Matters Docketed upon Reconsideration of Non-docket	1	2	1
Requests to Reconsider General Counsel Dismissal	1	n/a	n/a
Requests to Reconsider CSC Dismissals	1	17	0
Matters Referred To Disciplinary Counsel	32	37	40
Dismissals With No Professional Misconduct	18	39	59
Dismissals With No Professional Misconduct with a Warning	10	12	14
Matters Closed Without Prejudice	0	1	2
Total	101	140	131

V. Hearings Committee

The Hearings Committee is comprised of 22 attorney members and 13 lay members. The Hearings Committee chair appointed 15 hearing panels that were each comprised of three attorney members and two lay members, an increase from 11 panels in 2007, and 14 hearing panels in 2006. There were eight pre-hearing conferences in seven matters. Twelve matters went to a hearing, eight of which occurred in one day, three of which occurred over two days, and one of which occurred during three days. Additionally, three hearing panels convened on an additional date for deliberations. Hearings were held at two locations: the Administrative Office of the Courts, and Merrimack County Superior Court.

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

VI. Professional Conduct Committee

The Professional Conduct Committee (PCC) is comprised of eight attorney members and four lay members. James J. Tenn, Jr., Esquire, of Manchester, completed his one year term on the Committee, while serving as the New Hampshire Bar Association Vice President. Marilyn Billings McNamara, Esquire, of Concord, began her term as the New Hampshire Bar Association Vice President and was appointed to the Committee on August 1, 2008. Non-attorney Susan R. Chollet of Peterborough was appointed to replace David N. Page.

The PCC acted on the following types of matters in 2008:

	2008	2007	2006
Closed without Prejudice	3	4	2
Dismissal	6	13	3
Dismissal w/ Warning	9	1	13
Dismissal Denied	2	0	0
Diversion by Agreement	3	0	4
Remand to Hearings Committee (not closed)	1	0	0
No Misconduct after Hearing	0	1	0
Stipulation to Facts or Facts and Rules	8	0	0
Stipulation to Facts, Rules and Reprimand	2	0	0
Stipulation to Facts, Rules and Public Censure	2	3	2
Consent to Disbarment	2	0	0
Misconduct on the Merits after Hearing			
Reprimand	4	9	2
Reprimand with Conditions	2		
Public Censure	4	5	6
Public Censure with Conditions	3	2	0
Three month Suspension	0	3	5
6 mo. Suspension stayed 1-2 yrs	4	0	0
Recommend 2 year Suspension	2	1	5
Recommend Disbarment	3		
Recommendation to Deny Motion for Reinstatement	1	0	0
Approve Payment Plan/ CLE	2	1	0
Grant Protective Order	3	10	3
Deny Protective Order	0	1	1
Show Cause Order	1	0	0
Motion to Reconsider	1 denied	0	0
Annulments	12 (1 denied)	4	7
Total Closed	80	58	53

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 the complaint.

FIGURE C

	2008	2007	2006
1 – 5 years in practice	2	0	2
6 – 10 years in practice	3	3	5
11 – 15 years in practice	4	3	1
16 – 20 years in practice	1	5	7
21 – 25 years in practice	1	3	0
26 – 30 years in practice	4	2	3

31 – 35 years in practice	1	3	0
36 + years in practice	1	1	0
Total Findings	17	20	18

Figure D is a listing of the Rules that were found to have been violated in 2008, 2007 and 2006. All matters involved findings of at least two Rule violations, including Rule 8.4(a): Misconduct.

FIGURE D

Rule 1 Violations: Client-Lawyer Relationship	2008	2007	2006
Competence	3	3	1
Diligence	3	3	3
Communication	8	7	7
Fees	2	0	1
Confidentiality of Information	2	0	0
Conflict	4	0	1
Other Conflict	0	0	0
Former Client	1	1	1
Safeguarding Client Funds	1	8	8
Terminate Relationship with Client	3	4	2
Rule 3 Violations: Advocate			
Meritorious Litigation	1	0	0
Candor to Court	5	2	0
Fairness to Opposing Party	1	2	0
Rule 4 Violations: Persons Other Than Clients	2	3	0
Rule 5 Violations: Responsibility Re: Non-lawyer Assistants	0	1	1
Rule 7 Violations: Info about Legal Services	0	2	0
Rule 8 Violations: Integrity of Profession	2	8	11
Rule 37 Violations: Convicted of Serious Crimes	0	0	3
Rule 50 Violations: Trust Accounts	0	2	0
Total Violations	38	46	39

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 in the percentage.

FIGURE E

	2008	2007	2006
Rule 1	50%	57%	61%
Rule 3	13%	9%	0%
Rule 4	4%	7%	0%
Rule 5	0%	2%	3%
Rule 7	0%	4%	0%
Rule 8	33%	17%	28%
Rule 37	0%	0%	8%
Rule 50	0%	4%	0%
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 2008, 2007, and 2006.

Figure F

Year of Complaint	Concluded 2008	Concluded 2007	Concluded 2006
2004- and earlier	8	15	73
2005	12	66	28
2006	10	31	5
2007	30	22	
2008	28		
Total	88	134	106

VII. Audits

Craig A. Calaman, CPA, completed three audits during 2008, pursuant to orders of the Supreme Court, and worked on several other audits. He also finished seven random client trust account compliance reviews, with two in progress at year end. In addition, Mr. Calaman responded to numerous requests for information about completing trust account compliance certificates. There were 416 delinquent filers of the annual trust account compliance certificates, ten of whom were ultimately suspended for noncompliance.

VIII. Other

Staff attorneys served as faculty in a variety of educational programs, including: New Hampshire Bar Association (NHBA) Practical Skills sessions, the Vermont Supreme Court

Professional Responsibility Board, Franklin Pierce Law Center and Northeastern University classes. An ADO attorney also serves on the NHBA Delivery of Legal Services Committee.

A retreat for Committee leadership was held on July 7, 2008, to discuss systems issues and coordination of disciplinary system functions, from each Committee's perspective. The Chairs and Vice Chairs of all of the discipline system committees, as well as the ADO professional staff, attended the meeting.

IX. Disposal of Matters by the Supreme Court

In 2008, the Supreme Court concluded three matters originating from the attorney discipline system. The dispositions included two disbarments, and a denial of a Petition for Reinstatement. The Court also issued a two year suspension as reciprocal discipline based on discipline in another jurisdiction.

X. Conclusion

Although the number of new grievances received in 2008 was up slightly from the previous year, the number of pending docketed cases was lower at year's end. It is a pattern that has been repeating itself as the system becomes more efficient.