

New Hampshire Supreme Court

Attorney Discipline System



2009 Annual Report

I. Overview

The attorney discipline system, restructured in 2004, completed its sixth year in 2009. The attorney discipline office consists of five attorneys, four secretaries, one administrative coordinator, and one certified public accountant. Additionally, 37 attorney volunteers and 20 lay-member volunteers comprise three committees: Complaint Screening, Hearings and Professional Conduct.

II. Attorney Discipline Office Operations

On January 1, 2009, the caseload for the Attorney Discipline Office (ADO) included 24 docketed matters in the investigation stage, and 48 docketed matters referred to Disciplinary Counsel for further action, for a total of 72 pending matters.

During 2009, the ADO staff continued to field hundreds of hours of telephone calls from members of the public. There were 1,414 calls taken by General Counsel James L. DeHart, Deputy General Counsel Thomas V. Trevethick and Assistant General Counsel Janet F. DeVito. The above attorneys held 95 meetings with respondents, complainants and witnesses during the year.

There were 319 packets of information mailed to the public describing how to file a grievance, a 12% decrease from 2008.

ADO staff attorneys evaluated 195 grievances, and after a preliminary investigation, determined that 131 did not meet the criteria for docketing.

General Counsel determined that 64 of the 195 grievances filed 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 33%, an increase from 25% in 2008, and slightly down from 34% in 2007. The staff continues to devote a significant amount of time to investigation and analysis of grievances before determining which warrant docketing.

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

Figure A

Underlying Legal Matters	2009	Percentage In 2009	Percentage In 2008	Percentage In 2007
Family Law/ Adoption	23	36%	25%	35%
Criminal	12	19%	28%	21%
Real Estate	6	9%	7%	7%
Probate/ Estate Planning	7	11%	7%	4%
Personal Injury	3	5%	5%	7%
Bankruptcy	3	5%	5%	3%
Other	4	6%	8%	7%
Workers Compensation	2	3%	0%	0%
Business Law/ Contracts/ Corporate	0	0%	3%	2%
Collection/ Consumer Protection	2	3%	0%	2%
Civil Suit / Litigation	2	3%	11%	10%
Small Claims	0	0%	1%	2%
Total Legal Matters	64	100%	100%	100%

Grievances were filed by a variety of individuals associated with legal matters, including 61% by the respondent's client, 5% by the opposing party, 5% by a third party, 20% by referral, 1% self-reporting, and 8% from other sources.

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

	2009	Percentage In 2009	Percentage In 2008	Percentage In 2007
1 – 5 years in practice	7	12%	7%	9%
6 – 10 years in practice	5	9%	18%	14%
11 – 15 years in practice	14	25%	10%	14%
16 – 20 years in practice	9	16%	26%	20%
21 – 25 years in practice	8	14%	12%	13%
26 – 30 years in practice	6	10%	14%	14%
31 – 35 years in practice	3	5%	3%	10%
36+ years in practice	5	9%	10%	6%
Total Attorneys	57*	100%	100%	100%

*six attorneys had two docketed matters, and one attorney had three docketed matters in 2009.

Pursuant to an amendment to Rule 37(A) in 2007, General Counsel dismissed 6 docketed matters in 2009. 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 dismissed with a warning.

The **Complaint Screening Committee (CSC)** is comprised of nine members: five attorneys and four lay members. This Committee met 12 times in 2009. The CSC considers and acts on requests for reconsideration of matters not docketed by General Counsel, removes complaints from the docket if they are not within the jurisdiction of the attorney discipline system or if the grievance does not meet the requirements for docketing. The CSC also dismisses complaints with or without warnings, diverts attorneys out of the attorney discipline system when appropriate, subject to terms of diversion, and refers complaints to Disciplinary Counsel for further action where there is a reasonable likelihood that professional misconduct could be proven by clear and convincing evidence.

The CSC processed the following matters in 2009 as compared to the two previous years:

	2009	2008	2007
Requests to Reconsider Matters Not Docketed (denied)	40	38	32
Matters Docketed upon Reconsideration of Non-docket	0	1	2
Requests to Reconsider General Counsel Dismissal	1	1	n/a
Requests to Reconsider CSC Dismissals	3	1	17
Matters Referred To Disciplinary Counsel	21	32	37
Dismissals With No Professional Misconduct	17	18	39
Dismissals With No Professional Misconduct with Warning(s)	10	10	12
Matters Closed Without Prejudice	0	0	1
Total	92	101	140

Of the matters that were referred to Disciplinary Counsel in 2009, and which were pending from prior years, Disciplinary Counsel issued thirteen notices of charges, stipulated to sanctions in 11 matters, and filed seven motions to dismiss with a warning with the Professional Conduct Committee that were granted. Additional outcomes as processed through the subsequent committees are detailed below.

The **Hearings Committee** is comprised of 24 attorney members and 12 lay members. The Hearings Committee Chairperson appoints members to conduct hearings. Hearing panels make findings by clear and convincing evidence, and submit written reports to the Professional Conduct Committee. The Hearings Committee Chair appointed 16 hearing panels that were each comprised of three attorney members and two lay members, an increase from 15 panels in 2008, and also from 11 panels in 2007. There were 12 prehearing conferences in eight matters. Eleven matters went to a hearing, six of which were conducted in one day, four of which took place over two days, and one matter that was held over the course of six days. Hearings were held at the Administrative Office of the Courts, Merrimack County Superior Court, Carroll County Superior Court, and the Attorney Discipline Office.

The **Professional Conduct Committee (PCC)** is comprised of eight attorney members and four lay members. The PCC assigns independent bar counsel when needed, to investigate and prosecute complaints. One matter was assigned to outside Bar Counsel in 2009 due to a conflict with the entire staff. The PCC also considers hearing panel reports and the entire record in disciplinary matters, conducts oral arguments, and determines whether there is clear and convincing evidence of violations of the Rules of Professional Conduct. The Committee has the power and authority to issue protective orders, dismissals with or without a warning, reprimands, public censures or suspensions not to exceed six months.

New Hampshire Bar Association Vice President Marilyn Billings McNamara, Esquire, of Concord, completed her one year term on the Committee. Jennifer L. Parent, Esquire, was appointed to a one year term on the Committee on August 1, 2009, as the 2009-2010 New Hampshire Bar Association Vice President.

The PCC acted on the following matters in 2009:

	2009	2008	2007
Closed without Prejudice	7	3	4
Dismissal	0	6	13
Dismissal w/ Warning(s)	7	9	1
Dismissal Denied	0	2	0
Diversion by Agreement	0	3	0
Remand to Hearings Committee (not closed)	2	1	0
No Misconduct after Hearing	0	0	1
Stipulation to Facts or Facts and Rules	1	8	0

Stipulation to Facts, Rules and Reprimand	6	2	0
Stipulation to Facts, Rules and Public Censure	5	2	3
Consent to Disbarment	0	2	0
Misconduct on the Merits after Hearing			
Reprimand	0	4	9
Reprimand with Conditions	0	2	
Public Censure	0	4	5
Public Censure with Conditions	0	3	2
3 mo. Suspension	1	0	3
6 mo. Suspension	1	0	0
6 mo. Suspension with 4 mo. Stayed	1	0	0
6 mo. Suspension Stayed 1-2 yrs	4	4	0
Recommend 1 yr Susp. Stayed 2 yrs	2	0	0
Recommend 2 yr Suspension	1	2	1
Recommend 3 yr Suspension	1	0	0
Recommend 3 yr Suspension Stayed 3 yrs	1	0	0
Recommend Disbarment	1	3	0
Recommendation to Deny Motion for Reinstatement	0	1	0
Motion to Recuse Disciplinary Counsel	1 denied	0	0
Grant Protective Order	8	3	10
Deny Protective Order	0	0	1
Direct Respondent to Provide Info on Compliance	4	0	0
Show Cause Order	1	1	0
Motion to Reconsider	3 denied	1 denied	0
Annulments	2	12 (1 denied)	4
Reciprocal Discipline	3	0	0
Total	66	80	58

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

	2009	Percentage In 2009	2008	2007
1 – 5 years in practice	1	5%	2	0
6 – 10 years in practice	4	19% 1 atty had 2	3	3
11 – 15 years in practice	8	37%	4	3
16 – 20 years in practice	2	10% 1 atty had 2	1	5
21 – 25 years in practice	0	0%	1	3

26 – 30 years in practice	4	19%	4	2
31 – 35 years in practice	1	5%	1	3
36 + years in practice	1	5%	1	1
Total Findings	21	100%	17	20

Figure D is a listing of the Rules of Professional Conduct that were found to have been violated in 2009, 2008 and 2007. All matters involved findings of at least two rules, including Rule 8.4(a): Misconduct.

FIGURE D

	2009	2008	2007
Rule 1 Violations: Client-Lawyer Relationship			
1.1 Competence	6	3	3
1.2 Scope of Representation	1	0	0
1.3 Diligence	4	3	3
1.4 Communication	10	8	7
1.5 Fees	1	2	0
1.6 Confidentiality of Information	0	2	0
1.7 Conflict	3	4	0
1.8 Other Conflict	0	0	0
1.9 Former Client	1	1	1
1.15 Safeguarding Client Funds	6	1	8
1.16 Terminate Relationship with Client	0	3	4
Rule 3 Violations: Advocate			
3.1 Meritorious Litigation	0	1	0
3.3 Candor to Court	1	5	2
3.4 Fairness to Opposing Party	1	1	2
Rule 4.4 Violations: Persons Other Than Clients	0	2	3
Rule 5.3 Violations: Responsibility Re: Non-lawyer Assistants	5	0	1
Rule 7 Violations: Info about Legal Services	0	0	2
Rule 8 Violations: Integrity of the Profession			
8.1(a) False Statement of Material Fact	2	0	0
8.1(b) Failure to Correct a Misapprehension	2	0	0
8.1(c) Failure to Attend Hearing When Ordered by Disciplinary Authority	1	0	0
8.4(c) Deceit	4	2	3
Rule 50 Violations: Trust Accounts	0	0	2
Total Violations	48	38	41

Figure E illustrates violations of the 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

	2009	2008	2007
Rule 1	44%	50%	57%
Rule 3	3%	13%	9%
Rule 4	2%	4%	7%
Rule 5	7%	0%	2%
Rule 7	0%	0%	4%
Rule 8	44%	33%	17%
Rule 50	0%	0%	4%
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 2009, 2008, and 2007.

FIGURE F

Year of Complaint	Concluded 2009	Concluded 2008	Concluded 2007
2004- and earlier	4	8	15
2005	3	12	66
2006	4	10	31
2007	11	30	22
2008	32	28	n/a
2009	20	n/a	n/a
Total	54	88	134

III. Audits

Craig A. Calaman, CPA, completed four audits during 2009, pursuant to orders of the Supreme Court, and assisted the U.S. Attorney and New Hampshire Attorney General's Office on two additional audits. He also performed 12 client trust account compliance reviews, with four in progress at year end. In addition, Mr. Calaman responded to numerous requests for information about completing trust account compliance certificates. There were 367 delinquent filers of the annual trust account compliance certificates, ten of whom were ultimately suspended for noncompliance.

IV. Other

Staff attorneys served as faculty in a variety of educational programs, including: the New Hampshire Bar Association's Professionalism Day and Practical Skills Workshop, several classes on Professional Responsibility and one class on Character and Fitness at Franklin Pierce Law Center, presentations at the Nashua Bar and at the Attorney General's Office. An ADO attorney also served on the NHBA Delivery of Legal Services Committee, and the Full and Reduced Fee Subcommittee.

A retreat for Committee leadership was held on July 7, 2009, 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.

V. Matters at the Supreme Court

In 2009, the Supreme Court issued orders of interim suspensions in two matters, and concluded one matter with disbarment. The Court also issued reciprocal discipline in two matters: a three month suspension and a five year suspension. Two attorneys were reinstated after a one year suspension, and one was reinstated after a two year suspension, with conditions. In addition, four matters were pending at year's end.

VI. Conclusion

As of December 31, 2009, there were 66 pending matters at the ADO. Of those, 36 matters were pending in the investigation stage, 35 of which were docketed in 2009, and one from 2007. There were 26 pending matters at the Disciplinary Counsel level, down from 49 matters pending at the close of 2008. Four matters were pending from 2007, eleven matters were pending from 2008, and eleven matters were pending from 2009.