

Professional Responsibility Program

FY 2017 Annual Report

The Professional Responsibility Board is required by Administrative Order No. 9, Rule 1.E.(2) to provide to the Supreme Court “an annual report, including statistics and recommendations for any rule changes, which report shall be public.” The following is the eighteenth annual report submitted in accordance with this mandate.

I. Report of Activities of the Board

Pursuant to A.O. 9, Rule 1.A., the Board is appointed by the Supreme Court and consists of seven members: three members of the bar of this state, three public members and one judge or retired judge. The Board is responsible for overseeing the program and implementing, coordinating and periodically reviewing its policies and goals.

A. Policies

No new policies were adopted in FY17. The complete list of Policies is listed on the Judiciary [website](#).

B. Annual Training Meeting

The Professional Responsibility Program held its annual meeting on May 31, 2017, in Burlington. Thirty-nine Professional Responsibility Program members and invited guests attended the full day educational program. Attorneys who attended the entire program earned 4.25 CLE credits.

C. Supervision of the Program’s Case Docket and Review of Case Management Procedures

Each month the Program Administrator provided the Board with a case flow statistical report. In addition, Disciplinary Counsel and Bar Counsel each provided the Board, on a quarterly basis, with a detailed summary of their caseloads. The Board reviewed the reports.

Professional Responsibility Board

Jan Eastman, Esq., Chair
Michael Hanley, Esq., Vice-Chair
Hon. Brian Burgess (Retired Justice)
Carolyn Anderson, Esq.
Mr. Christopher Chapman
Mr. Kevin O’Donnell
Ms. Lisa Ventriss

Office of Bar Counsel

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32 Cherry Street, Suite 213
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Program Administrator

Deb Laferriere
Program Administrator

Mailing Address:
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0703



D. Trust Accounts

The Vermont Professional Responsibility Board has published a guide entitled "*Managing Client Trust Accounts, Rules, Regulations and Tips*" to assist both new and experienced lawyers in dealing with trust accounting questions and an *Audit Questionnaire* intended to serve as a tool to which Vermont attorneys can turn for self-assessment of the procedures by which their trust accounting systems are managed. Both documents are available on the Judiciary [website](#).

E. Rule Amendments

On August 25, 2016, the Supreme Court promulgated Comment 14 to Rule 1.2 of the Vermont Rules of Professional Conduct. The [amendment](#), authorizing lawyers to provide legal advice on certain issues related to marijuana, became effective October 31, 2016.

The Board also recommended to the Court an amendment to A.O. 9., Rule 1. The [Order](#), promulgated on May 8, 2017, effective July 10, 2017, added paragraph (4) to Rule 1(E) to make clear that the Professional Responsibility Board has the responsibility to review the Rules of Professional Conduct and to make proposals to the Court to amend those rules. The amendment reiterates the obligation under Administrative Order 11 to provide the proper notice and opportunity to comment on amendment proposals and notifies individuals that requests for changes should be directed to the Board.

F. Staffing Update

As a part of a broader Judiciary-wide review of staffing, the State Court Administrator consulted with the Professional Responsibility Board regarding staffing levels in support of the disciplinary docket. This review of staffing issues indicated that, over time, the non-disciplinary processes for providing support to Vermont attorneys have increased in nature and time. Rule changes, especially those affecting admission to the Vermont Bar, have necessitated additional legal support for other Supreme Court committees including the Board of Bar Examiners, the Character and Fitness Committee

and the Mandatory Continuing Legal Education Committee. The traditional disciplinary docket has shrunk. This is typical of most jurisdictions around the country.

As a result of the staffing review and the changes in workload among the different programs, as well as the resignations of Disciplinary Counsel and Deputy Disciplinary Counsel, certain staffing changes were made in FY2017. In the interim, several members of the Bar accepted appointments as Special Disciplinary Counsel to process in a timely manner the critical cases that were currently on the docket. We want to thank all of the judicial staff and members of the Bar who have helped make these changes. A new full-time Disciplinary Counsel commenced employment in April 2017. We expect that now that we are fully staffed, our committees and staff will continue to provide the highest standards of practice for their work on behalf of the Supreme Court and the Vermont Bar.

G. Appointment of Hearing Panels & Hearing Panel Counsel

In December 2016, Mark DiStefano was appointed by the Board to serve as Hearing Panel Counsel. Attorney DiStefano was admitted to the Vermont Bar in 1984, and has 25 years of litigation experience from his work in the Office of Attorney General. In general, he attends hearings and phone conferences and writes a first draft of any opinion or order for the panel. He is also available to provide research, pre-hearing memos or other legal assistance to the Hearing Panels.

As FY17 ended, the following individuals served as members of Hearing Panels:

Professional Responsibility Program



Hearing Panel No. 1

Currently Vacant

Hearing Panel No. 2

Joseph F. Cook, Esq., Chair
James Valente, Esq.
Mr. Greg Worden

Hearing Panel No. 3

Sheila Ware, Esq., Chair
Jeffrey S. Marlin, Esq.
Mr. Kevin O'Donnell

Hearing Panel No. 4

Jill L. Broderick, Esq., Chair
Mary Parent, Esq.
Mr. David Tucker

Hearing Panel No. 5

Erin Gilmore, Esq., Chair
Michele B. Patton, Esq.
Mr. Christopher Bray

Hearing Panel No. 6

Caryn E. Waxman, Esq., Chair
John P. Cain, Esq.
Mr. William Schubart

Hearing Panel No. 7

Jesse Bugbee, Esq., Chair
Vanessa Kittell, Esq.
Mr. Carl Rosenquist

Hearing Panel No. 8

Beth Novotny, Esq., Chair
Andrew D. Manitsky, Esq.
Mr. Patrick Burke

Hearing Panel No. 9

Karl C. Anderson, Esq., Chair
Kate Thomas, Esq.
Ms. Joanne Cillo

Hearing Panel No. 10

Jonathan M. Cohen, Esq., Chair
Mary Welford, Esq.
Mr. Roger Preuss

H. Assistance Panels

In addition to Board members, all of whom may serve on Assistance Panels, the following volunteers were appointed to the roster of Assistance Panels during FY17:

Attorneys

Steven Adler, Esq.
Joseph F. Cahill, Jr., Esq.
Emily Gould, Esq.
Robert Fairbanks, Esq.
Leslie Hanafin, Esq.
Katherine Mosenthal, Esq.
Robert O'Neill, Esq.
Susan Palmer, Esq.
Alan Rome, Esq.
Janet Shaw, Esq.
Peter Van Oot, Esq.

Public Members

Ms. Susan Fay
Ms. Judith Lidie
Mr. Peter Keelan
Mr. Neal Rodar
Mr. R. Brownson Spencer II
Mr. Peter Zuk

The following Reports of Bar Counsel and Disciplinary Counsel cover activities from July 1, 2016 through June 30, 2017. Throughout the report, that period of time will be referred to as "FY17."



II. Report of Activities of Bar Counsel

A. Introduction

FY 2017 marked the third consecutive year in which Bar Counsel performed the tasks expected of Bar Counsel while simultaneously managing the day-to-day operations of the Court’s attorney admission and licensing programs, including the activities of Board of Bar Examiners, Character & Fitness Committee, and Board of Continuing Legal Education. Bar Counsel’s continued focus on proactive regulation resulted in another significant drop in the number of disciplinary complaints filed against attorneys.

B. Proactive Regulation

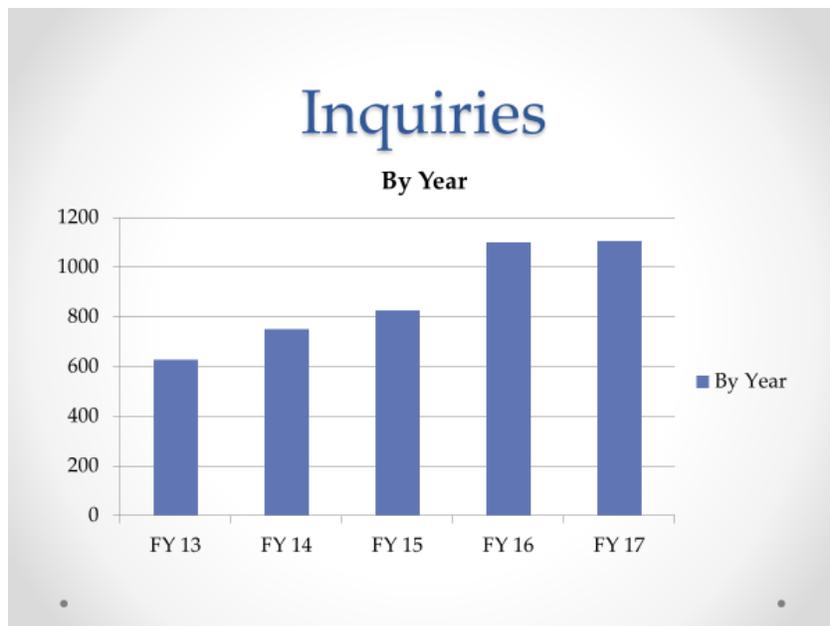
Rule 9 of Administrative Order 9 states:

“Inquiries from attorneys who have ethical issues or practice questions shall be referred to bar counsel, who may provide referrals, educational materials, and preventive advice and information to assist attorneys to achieve and maintain high standards of professional responsibility.”

Bar Counsel’s proactive regulation consists mainly of inquiries, continuing legal education, and blog posts.

Inquiries

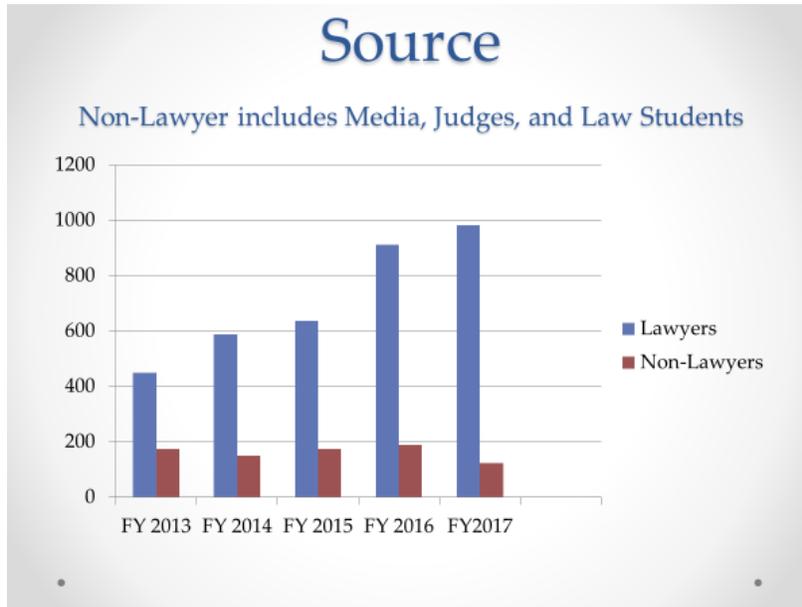
Inquiries rose for the fourth consecutive year. Bar Counsel received and resolved 1106 inquiries. Seven were carried to FY18, with 7 having been pending when FY17 opened.



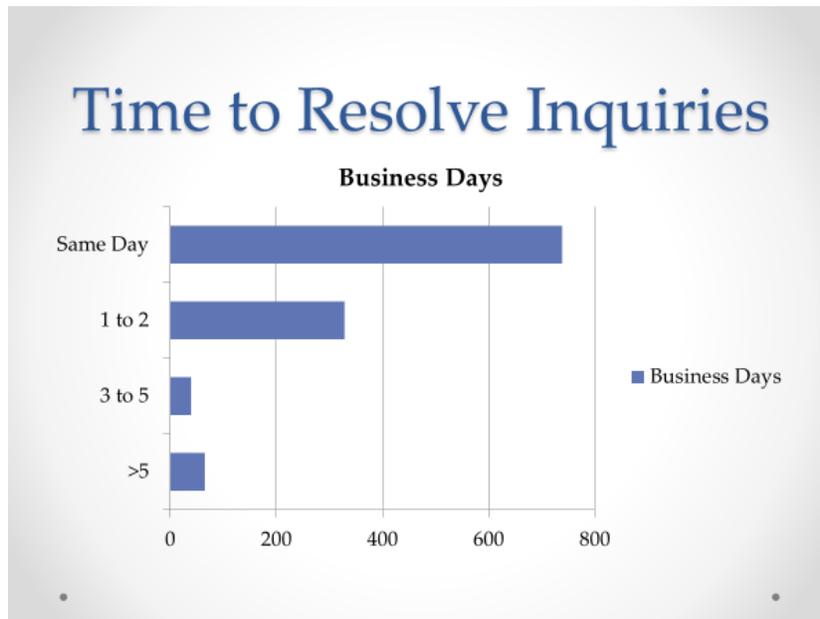
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Bar Counsel fielded inquiries from lawyers, non-lawyers, judges, law professors, law students, and media. Most were made by phone call, but Bar Counsel also received inquiries by cell phone, text message, e-mail, letter, and in-person.



Bar Counsel resolved inquiries in a timely fashion.



The topics most frequently raised in by inquiry:

- Conflicts of Interest
- Client Confidences
- Trust Account Management/Client Property
- Duty to Report Misconduct
- Candor/Fairness to Opposing Party

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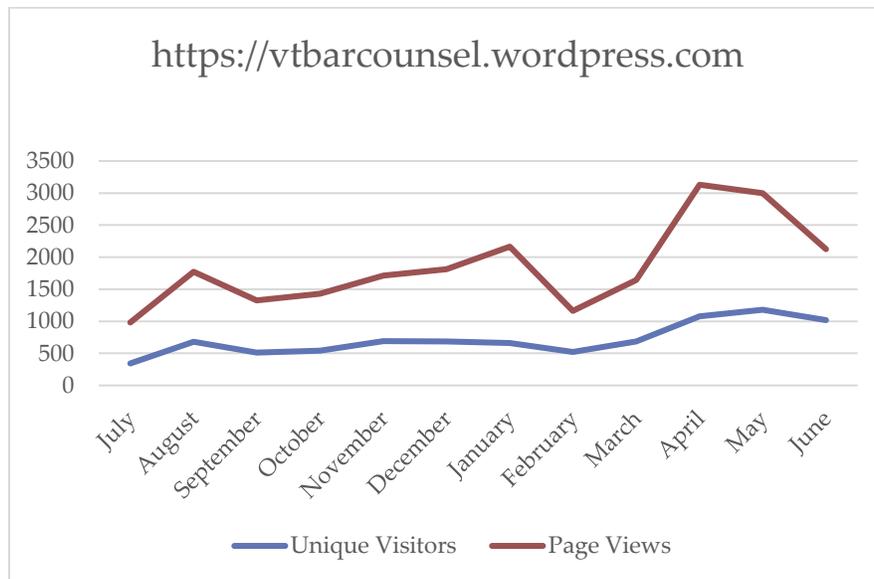
Continuing Legal Education

Bar Counsel presented 32 continuing legal education seminars for a total of 48.5 credit hours. Bar Counsel presented at seminars sponsored or arranged by:

Chittenden County Bar Association
Joan Loring Wing Inn of Court
Lamoille County Bar Association
Northern Vermont Inn of Court
Office of the Attorney General
Office of the Defender General
Department of State's Attorneys and Sheriffs
Rutland County Bar Association
Vermont Association for Justice
Vermont Association of Criminal Defense Lawyers
Vermont Bar Association
Vermont Municipal Attorneys Association
Washington County Bar Association
Windham County Bar Association

Blog/Social Media

Bar Counsel uses the Ethical Grounds blog to engage in proactive regulation.



C. Screening Disciplinary Complaints

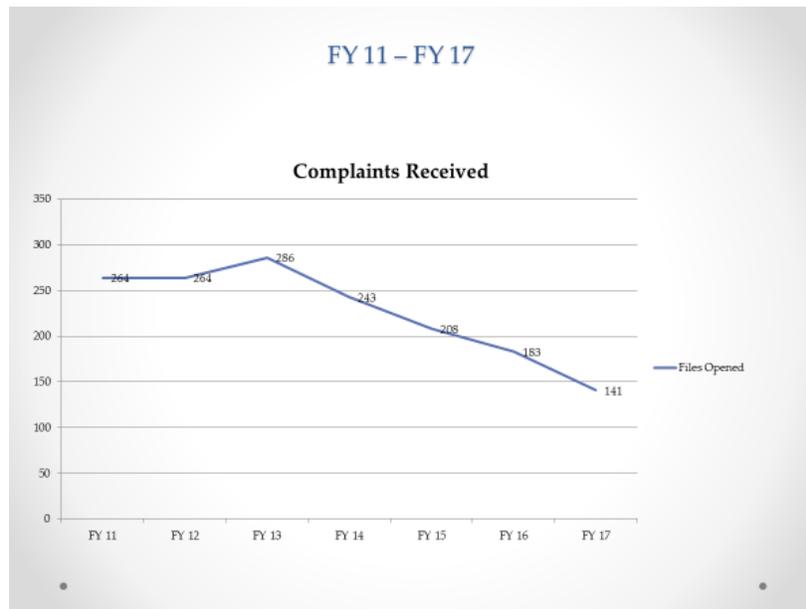
Rule 10 of Administrative Order 9, requires Bar Counsel to screen disciplinary complaints. The process includes reviewing a complaint to determine whether it can be resolved via non-disciplinary dispute resolution methods and, if not, whether to dismiss the complaint or refer it to Disciplinary Council for an investigation.

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Since 2012, Bar Counsel has focused on proactive regulation, with a goal being to create a culture of compliance that helps to keep lawyers from violating the Rules of Professional Conduct. As measured by the number of disciplinary complaints filed, the focus is paying dividends as, yet again, complaints fell by a significant margin.

The Professional Responsibility Program opened 141 complaints in FY 2017. Over the past 20 years, that is an all-time low. It represents a 23% drop from the previous low for a fiscal year, which was last year. It represents a 50.6% reduction in the number of complaints filed in FY 2013, the first year that Bar Counsel began to focus on proactive regulation.



III. Report of the Activities of Disciplinary Counsel

It was a year of significant change in the Office of Disciplinary Counsel (“ODC”).

For the first time in many years, ODC was staffed with a single full-time attorney instead of two. The change resulted from a realization that resources were most needed, and best used, in other areas of the Court’s attorney licensing programs.

Then, in October 2016, Disciplinary Counsel Beth DeBernardi took a position as an Administrative Law Judge with the Department of Labor. Attorney DeBernardi worked as Deputy Disciplinary Counsel from 2002-2012, and as Disciplinary Counsel from June 2012 thru October 2016. The Board recognizes Beth for her long-time dedication and commitment to ODC, the Professional Responsibility Program, and Vermont’s legal profession.

The position of disciplinary counsel remained vacant until early April when Sarah Katz was named as Beth’s replacement. Attorney Katz came to ODC highly recommended and after many years as an Assistant Attorney General. The Board looks forward to working with Disciplinary Counsel Katz as she leads ODC into the future.

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During the months that the position remained vacant, investigations and prosecutions were assigned to a host of private attorneys who answered the call to duty. The Board would like to recognize and thank all who served as special counsel, including:

Edward Adrian
Bridget Asay
Christopher Davis
Samantha Lednický
Renee Mobbs
Owen McClain
Craig Nolan
Robert Simpson
Mark Sperry
Dan Richardson

Given the changes that took place in FY 2017, this section of the report will not go into additional detail. Rather, the section will conclude with two statements. First, when FY 2017 opened, ODC had **34** active files. As the fiscal year ended, there were **26** active files. Second, and finally, to review the cases prosecuted during FY 2017, please click [here](#)

IV. CONCLUSION

The Professional Responsibility Program continued to administer the lawyer discipline program and to assist attorneys and the public to maintain and enhance the highest standards of professional responsibility.

All participants in the Professional Responsibility Program are pleased to be of service to the Supreme Court, to the legal profession, and to the public. The Board acknowledges with gratitude the work of the staff and the many volunteers serving on Hearing and Assistance Panels and as Conflict Counsel, who have contributed significantly to the overall success of the Program.

We continue to provide an annual education and training opportunity for all participants in our program including Board members, Hearing Panel members, Assistance Panel members, Conflict Counsel and staff.

The Board would also like to welcome Mark DiStefano, who assumed the duties of our new Hearing Panel Counsel in January 2017, and to thank Linda O'Brien, who served as a Board member for 10 years.