



TO: The Vermont Supreme Court
Honorable Paul L. Reiber, Chief Justice
Honorable John A. Dooley, Associate Justice
Honorable Denise R. Johnson, Associate Justice
Honorable Marilyn S. Skoglund, Associate Justice
Honorable Brian L. Burgess, Associate Justice

FROM: The Professional Responsibility Board

RE: Annual Report of the Professional Responsibility Program for FY 2010

DATE: September 21, 2010

The Professional Responsibility Board is required by Administrative Order 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 eleventh 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 members of the Board as FY 2010 (June 30, 2010) closed were:

George Nostrand, Esq. – Chair
Mr. Donald Keelan, CPA – Vice-Chair
Honorable Alan Cheever
Jan Eastman, Esq.
Larry Novins, Esq.
Ms. Linda O’Brien
Mr. Randolph Rowland

The Board is responsible for overseeing the program and implementing, coordinating and periodically reviewing its policies and goals.

A. Policies

The complete list of [Policies](#) adopted and/or amended by the Board, can be found on the Judiciary website.

B. Appointment of Hearing Panels

The following individuals served as members of standing Hearing Panels:

Hearing Panel No. 1

Larry Miller, Esq., Chair
Sue Ritter, Esq.
Ms. Diane Drake

Hearing Panel No. 3

Leo Bisson, Esq., Chair
Oreste Valsangiacomo, Jr., Esq.
Mr. Mitchell Jay

Hearing Panel No. 5

Robert P. Keiner, Esq., Chair
Elizabeth Miller, Esq.
Dr. Kim Montgomery

Hearing Panel No. 7

Harland L. Miller III, Esq., Chair
Mark Hall, Esq.
Mr. Stephen V. Carbone

Hearing Panel No. 9

Stephen Dardeck, Esq., Chair
Shannon Aldridge Bertrand, Esq.
Ms. Barbara Carris

Hearing Panel No. 2

Jesse M. Corum, Esq., Chair
Theodore C. Kramer, Esq.
Mr. Christopher G. Chapman

Hearing Panel No. 4

Bruce C. Palmer, Esq., Chair
William Piper, Esq.
Ms. Florence Chamberlin

Hearing Panel No. 6

Alison J. Bell, Esq., Chair
Eric A. Johnson, Esq.
Ms. Lisa Ventriss

Hearing Panel No. 8

John T. Leddy, Esq., Chair
Joseph Obuchowski, Esq.
Mr. Tim Volk

Hearing Panel No. 10

Lon T. McClintock, Esq., Chair
Kristina Pollard, Esq.
Dr. Bob Bergman

In addition, the following individuals were appointed by the Chair of the Professional Responsibility Board to serve on Hearing Panels to either replace individuals whose terms had expired or to serve as substitutes:

R. Joseph O'Rourke, Esq.
John J. Kennelly, Esq.
Jean Brewster Giddings, Esq.
Ms. Ashley Perry
Ms. Jeanne Collins
Alan P. Biederman, Esq.
Mr. William Scranton
Danielle Fogarty, Esq.
Joseph O'Dea, Esq.

Leslie Black, Hearing Panel Counsel, provides assistance to Hearing Panels. In general, she attends hearings and phone conferences and writes a first draft of any opinion or order for the panel. She is also available to provide research, pre-hearing memos or other legal assistance to Hearing Panels.

In September of 2008, the Board, with the assistance of Leslie Black, Esq., adopted a comprehensive [Hearing Panel Manual](#) for the use of both attorney and lay member Hearing Panel members.

C. 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. The purpose of the booklet is to provide attorneys with the basic rules, highlight the areas that will always require an attorney's best judgment because there are no absolute rules, and dispense some practical experience provided by years of answering lawyers' questions.

The Professional Responsibility Board also publishes an [*Audit Questionnaire*](#). The questionnaire is 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. The questionnaire is the result of several years of input from the Professional Responsibility Board, Bar Counsel, Disciplinary Counsel, and Certified Public Accountants. Completion of the questionnaire is not a substitute for complying with the Vermont Rules of Professional Conduct. However, the questionnaire provides a starting point for self-education on trust account management.

The questionnaire and handbook were approved by the Board in the fall of 2008. All members of the Bar were notified of their availability and both documents are available on the Judiciary website. Since publication of the Guide and Audit Questionnaire, the number of IOLTA related overdrafts complaints has substantially decreased.

D. Annual Training Meeting

The Professional Responsibility Program held its annual meeting on June 8, 2010, at the Capitol Plaza in Montpelier, Vermont. Board Chair George Nostrand welcomed approximately 44 Professional Responsibility Program members and guests who attended the full day program. Hearing Panel Counsel Leslie Black provided a summary of the decisions that issued during the past year. Disciplinary Counsel Michael Kennedy and Deputy Disciplinary Counsel Beth DeBernardi presented a review of Rules 4.1, 8.4(c) and 5.3. Board Members Randolph Rowland and Donald Keelan presented a one hour workshop on “*Active Participation and Discussion of Various Case Studies on Lawyer Deception.*” The meeting also included a one hour presentation on “*One Judge’s Suggestions Regarding How to Improve Attorney Awareness and Compliance with Ethical Rules*” by the Hon. Christina Reiss, U.S. District Court Judge. Eileen Blackwood, Esq., a former Hearing Panel member and President of the Vermont Bar Association, discussed “*Judicial Reorganization “Where Are We Now?”*” Chief Justice Reiber, the Board’s liaison, also addressed the group and thanked the attendees for their contribution to the success of the Program. Attorneys who attended the entire Program earned 4.25 CLE Credits (2.75 Ethics, 1 Professionalism and .5 General).

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

Each month the Program Administrator provided the Board with a caseload statistics report. In addition, Disciplinary Counsel provided the Board, on a quarterly basis, with a detailed summary and status of each case pending. The Board reviewed the reports at their Board meetings.

F. Search Engine for PRB Decisions

During the past year, the Board, spearheaded by Board Member Larry Novins, Esq., has worked closely with the Department of Libraries to develop a search engine so that decisions of the Professional Responsibility Program would be searchable. Our decisions are currently searchable in Casemaker, a system that members of the Vermont Bar Association have access to, but the general public does not.

As the fiscal year ended, Mr. Novins reported that progress was continuing to be made and that he anticipated that it would not be long until PRB decisions would be uploaded to a database of the Department of Libraries, at no cost to the Program, and that the decisions would be searchable.

G. Assistance Panels

In addition to Board members, all of whom may serve on Assistance Panels, the following additional volunteers were appointed to the roster of Assistance Panels during FY 2010:

Attorneys

Steven Adler, Esq.
Joseph F. Cahill, Jr., Esq.
Leslie Hanafin Cota, Esq.
Emily Gould, Esq.
Robert Fairbanks, Esq.
Larry Mandell, Esq.
Katherine Mosenthal, Esq.
Susan Palmer, Esq.
Alan Rome, Esq.
Thomas Rounds, Esq.
Janet Shaw, Esq.
Peter Van Oot, Esq.
John Webber, Esq.

Public Members

Ms. Irene Carbine
Ms. Judith Lidie
Mr. Kevin O'Donnell
Mr. Neal Rodar
Ms. Rachel Siegel
Mr. R. Brownson Spencer II

In 2008, the Board, with the assistance of Bar Counsel, adopted a comprehensive [Assistance Panel Handbook](#) for the use of both attorney and lay member Assistance Panel members.

H. Joint Advisory Committee to Consider Amendments to the Rules of Professional Conduct Re: Investigatory Misrepresentations

On January 14, 2010, George Nostrand, Esq., Chair and Donald Keelan, Vice-Chair were appointed by the Vermont Supreme Court to the Joint Advisory Committee to Consider Amendments to Rules of Professional Conduct Re: Investigatory Misrepresentations. Along with Mr. Nostrand and Mr. Keelan, the Committee, chaired by Associate Justice Marilyn Skoglund consisted of representatives of the Civil Rules Committee, the Criminal Rules Committee, an Assistant Attorney General, a U.S. District Attorney and two attorneys.

Pursuant to the Vermont Supreme Court's recent consolidated decision in *In re PRB Docket No. 2007-046* and *In re PRB Docket No. 2007-047*, 2009 VT 115 ¶ 19, the Committee was specifically charged to consider whether the Rules of Professional Conduct should be amended to allow for some investigatory misrepresentations, and if so, by whom and under what circumstances. The Advisory Committee was also charged with reporting its views and recommendations to the Supreme Court no later than September 15, 2010.

Chair Nostrand formed a sub-committee consisting of the full Board of the Professional Responsibility Program. Leslie Black was retained to facilitate and serve as a scribe for the Board. The Board reviewed all of the briefs and position papers, including the Government Practice Sub-Committee, the Criminal Defense Subcommittee and the Civil/Family Subcommittee. With the assistance of Leslie Black, a draft position paper was adopted and distributed to all members of the Program at the Professional Responsibility Board's annual meeting. The Board then considered the comments made from the attendees at the annual meeting.

After a few modifications to the draft, it was the unanimous decision of the Board members and the Program's staff to adopt the report as amended. On June 9, the Professional Responsibility Board reported to Justice Skoglund and the Joint Advisory Committee that the Professional Responsibility Board does not support amending Rules 4.1, 5.3 or 8.4(c) of the Vermont Rules of Professional Conduct so as to create situations in which lawyers are exempt from the general prohibition of conduct that involves dishonesty, deceit, misrepresentation and fraud.

It is expected that the Advisory Committee will report its views and recommendations to the Supreme Court in September.

I. Joint meeting of other boards in September 09

On September 22, 2009, members and staff of the Professional Responsibility Board, Mandatory Continuing Legal Education Board, Board of Bar Examiners and Character and Fitness Committee met for a joint meeting.

Chair Nostrand led a discussion that focused on increasing cooperation between the Court's various Boards that oversee attorney licensing, attorney conduct, and attorney education. Each of the Chairs of the respective boards introduced their members that were present and provided a brief summary of their Board's/Committee's mission, objectives, purpose and major issues that they are struggling with.

The general consensus was that the joint meeting was very successful and therefore, the four Boards/Committees agreed to make it an annual event. The next meeting will be held on September 21, 2010.

J. Proposed Rules

At the request and recommendation of Disciplinary Counsel, the Board considered a proposed amendment to Vermont Rules of Professional Conduct 1.15B(d). In December 2009,

the Board forwarded the proposed amendment to the Supreme Court, and the Court subsequently forwarded the rule to the Civil Rules Committee for review.

On July 19, 2010, the [proposed amendment](#) was sent out for comment to members of the Bar. The proposed amendments to Rule 1.15B(d) would modernize and clarify the operation of the rule. The proposed amendment would make clear that institutions must notify Disciplinary Counsel, rather than the Board, not only when an instrument presented against insufficient funds is honored or dishonored, but whenever any transaction—whether electronic, paper, wire, or other—causes an overdraft to an attorney trust account. The proposed amendment reflects the evolving nature of banking practices and the fact that some newer types of transactions do not involve an instrument being presented against an account: for example, Automated Clearing House (ACH) transactions. Conforming changes were also made in Rule 1.15B(e).

The proposed rule changes are currently posted on the Vermont Judiciary website. Comments on these proposed amendments can be sent by September 20, 2010 to the Chair of the Civil Rules Committee:

William Griffin, Esq.
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001
bgriffin@atg.state.vt.us

II. Report of Activities of Disciplinary Counsel

A. Introduction

Disciplinary Counsel administers the disciplinary side of the Professional Responsibility Program. In FY 2010, the administration of the disciplinary program included the screening of new complaints, the formal investigation of complaints that were not resolved at the screening phase, and the prosecution of disciplinary cases. In addition, Disciplinary Counsel continued to spend a significant amount of time working with both the Professional Responsibility Board and the Bar on issues related to attorney ethics.

Throughout FY 2010, Disciplinary Counsel's office consisted of two full-time attorneys, Disciplinary Counsel and Deputy Disciplinary Counsel, and a part-time administrative assistant. The office worked closely with the Board, Bar Counsel, and the Board's Program Administrator.

B. The Investigation and Prosecution of Ethics Complaints

Disciplinary Counsel's core function is to investigate and prosecute disciplinary complaints. In FY 2010, Disciplinary Counsel received or otherwise opened 260 complaints, compared to 242 in FY 2009.

C. Screening

Upon receipt, an ethics complaint is “screened” by Disciplinary Counsel or Deputy Disciplinary Counsel. [See A.O. 9, Rule 10.](#) The screening process is rather informal and is intended to determine the nature of the complaint and whether it can be resolved through non-disciplinary methods. Indeed, the screening attorney may attempt to resolve any complaint that does not require formal action by an Assistance Panel or the disciplinary program.

Most disciplinary investigations begin with a complaint directly to Disciplinary Counsel, Michael Kennedy. Sometimes an investigation may begin in response to a newspaper, radio, or television story about an attorney. Many assume that the Disciplinary Counsel is aware of stories that appear in the media. This is not always the case, especially when the stories appear in some of the state’s smaller news outlets. ***Anyone concerned about attorney discipline should feel free to forward news stories about Vermont attorneys to Mr. Kennedy.***

In general, if a complaint alleges misconduct that might require a disciplinary sanction, the complaint is referred for a formal investigation by Disciplinary Counsel. Otherwise, the screening attorney either dismisses the complaint or refers it to an Assistance Panel for non-disciplinary resolution.

In FY 2010, 260 files were assigned docket numbers for screening by Counsel for the Professional Responsibility Program. Disciplinary Counsel screened 265 (which included 5 cases from FY 09); 3¹ cases were assigned to Conflict Counsel for screening, and no cases were at screening stage at the end of the fiscal year. Of the 262 complaints screened by Disciplinary Counsel, 102 were dismissed at screening. One was referred to an Assistance Panel and the other 159 were referred for formal disciplinary investigations.

1. Complaints Dismissed at Screening

If a complaint does not allege conduct that appears to require a disciplinary sanction, it is dismissed at screening. Upon dismissal, each complaint is assigned a “dismissal code.” Each dismissal code represents a different reason for the decision to dismiss a particular complaint. The 102 complaints that were dismissed at screening in FY 2010 were dismissed for the following reasons:

Table 1

Cases Dismissed at Screening Stage	
Resolved	5
No Cause of Action	81
Insufficient/No Evidence	14
Post Conviction Relief Issue	2
Total	102

¹ If Disciplinary Counsel has a conflict that prohibits his office from screening a particular complaint, the Board’s Program Administrator refers the complaint to private counsel for screening.

If a complaint is dismissed at screening, the complainant is advised, in writing, of the reason for the decision to dismiss and of his or her right to appeal the decision to dismiss to the Chair of the Professional Responsibility Board within sixty days. [See A.O. 9, Rule 10\(D\)](#). By contrast, if Disciplinary Counsel dismisses a complaint after the conclusion of a formal investigation, the complainant has no right to appellate review.

In FY 2010, 28 complainants appealed Disciplinary Counsel's decision to dismiss a complaint at screening; all of the appeals were upheld by the chair.

D. Formal Investigations by Disciplinary Counsel

As mentioned, a complaint is referred for a formal investigation by Disciplinary Counsel if it alleges misconduct that appears to require a disciplinary sanction. The first step in the investigation is to require the attorney who is the subject of the complaint to file a written response to the allegations. Disciplinary Counsel reviews the response and then conducts whatever additional investigation is appropriate.

Upon concluding an investigation, Disciplinary Counsel has three options: (1) dismiss the complaint; (2) refer the complaint to an Assistance Panel for non-disciplinary resolution; or (3) ask a Hearing Panel to review for probable cause Disciplinary Counsel's decision to file formal disciplinary charges against the attorney.

On July 1, 2009, Disciplinary Counsel was investigating 50 complaints. Another 160 cases were referred for formal investigations during the fiscal year.

1. Formal Disciplinary Proceedings

By rule, formal disciplinary proceedings can be commenced in one of two ways: the filing of a petition of misconduct, or, the filing of a stipulation of facts. [See A.O. 9, Rule 11\(D\)\(1\)](#). In FY 2010, Disciplinary Counsel commenced formal disciplinary proceedings in 6 cases.

a. Formal Hearings in Cases filed prior to FY 2010

In FY 2010, Disciplinary Counsel appeared at five formal hearings in cases that were commenced the previous fiscal year.

Three of the hearings were "sanctions hearings." In each, Disciplinary Counsel and the respondent presented evidence and argument as to the appropriate sanction, if any, that should issue. Two of the hearings resulted in public reprimands – PRB Decisions 126 and 127 – while the third resulted in a one year suspension of the respondent's license. *PRB Decision No. 119*.

The two other formal hearings at which Disciplinary Counsel appeared were trials at which the parties tried the facts and, from there, presented argument as to whether the facts established violations of the Rules of Professional Conduct and, if so, the sanction that should issue. One trial resulted in a hearing panel suspending the lawyer's license for six months.

PRB Decision No. 128. The other resulted in a hearing panel publicly reprimanding the lawyer. *PRB Decision No. 130.* As the fiscal year ended, each case was pending appellate review in the Supreme Court.

b. Appellate Work

When a hearing panel issues a decision, either party may appeal to the Supreme Court. Even if neither party appeals, the Court may, on its own motion, order review of the hearing panel's decision. In either situation, the Rules of Appellate Procedure apply. *See, A.O. 9, Rule 11(E).*

In FY 2010, two respondents appealed hearing panel decisions. *See PRB Decisions 130 and 119.* Disciplinary Counsel filed an appellate brief in response to the appeal that was taken from Decision 119. As the Fiscal Year ended, the appeal was pending in the Supreme Court. In the other case, PRB Decision 130, briefs were not due prior to the conclusion of FY 2010.

In addition to the appeals taken by respondents, there were two cases in which the Court, acting on its own motion, ordered review of hearing panel decisions. *See PRB Decisions 122 and 128.* During FY 2010, Disciplinary Counsel filed appellate briefs in each case. In PRB Decision 122, the Court upheld the hearing panel's decision to suspend the respondent for six months. In the other case, Supreme Court review of PRB Decision 128, the matter remained pending before the Court as the fiscal year ended.

c. Petitions for Interim Suspension

Rule 18 of Administrative Order No. 9 requires Disciplinary Counsel, upon the "receipt of sufficient evidence" showing that an attorney has violated the ethics rules and presently poses a substantial threat of harm to the public, to transmit the evidence to the Court along with a proposed order for the interim suspension of the attorney's license to practice law. Disciplinary Counsel filed one Petition for Interim Suspension in FY 2010. After a hearing at which both Disciplinary Counsel and the Respondent appeared, the Court denied the Petition. However, the Court imposed several restrictions on the Respondent's license to practice law.

d. Petitions of Misconduct

Disciplinary Counsel's charging document is known as a "Petition of Misconduct." The petition must be sufficiently clear so as to notify the attorney of the alleged misconduct and the rules allegedly violated. An attorney has twenty days to answer a petition. Once an Answer is filed, each party has the right to conduct discovery in advance of a disciplinary hearing. In FY 2010, Disciplinary Counsel filed 1 petition of misconduct.

e. Stipulations

As an alternative to a Petition of Misconduct, Disciplinary Counsel and a respondent may commence formal disciplinary proceedings by filing a Stipulation of Facts. From there, the parties may either join to recommend a particular sanction or present argument as to the appropriate sanction. In FY 2010, there were three cases in which Disciplinary Counsel joined

with a respondent to commence formal proceedings via stipulated facts. Each case resulted in a hearing panel approving an Admonition by Disciplinary Counsel. *See PRB Decision Nos. 129, 130, and 131.*

f. Disability Proceedings

In FY 2010, there were two cases, involving one Respondent, in which the attorney and Disciplinary Counsel stipulated that the attorney should be transferred to disability inactive status. *PRB Decision No. 124.*

g. Reinstatement Petitions

In FY 2010, no reinstatement petitions were filed.

2. Referrals to Non Disciplinary Resolution

Upon concluding an investigation, and as an alternative to commencing formal disciplinary proceedings, Disciplinary Counsel may refer a case to an Assistance Panel for non-disciplinary resolution. In FY 2010, Disciplinary Counsel referred only 3 cases to an Assistance Panel (one at screening and 2 after investigation).

3. Dismissals

If Disciplinary Counsel’s investigation indicates that neither formal charges nor a referral to an Assistance Panel is appropriate, a case is dismissed. In FY 2010, Disciplinary Counsel investigated and dismissed 144 complaints. The reasons for the dismissals are set out in the following table:

Table 2

Complaints Dismissed by Disciplinary Counsel After Investigation	
Resolved	10
No Cause of Action	71
Insufficient Evidence to Prove a Violation	49
Refer to Fee Dispute	5
Chair Granted Appeal; Dismissed After Investigation	1
Disciplined in Another File	4
PCR Issue	3
Retired	1
TOTAL	144

4. Docket at End of FY 2010

In sum, Disciplinary Counsel completed 152 investigations in FY 2010. As the fiscal year closed, 58 complaints were under investigation by Disciplinary Counsel.

5. Continuing Legal Education Seminars

In FY 2010, Disciplinary Counsel appeared at several Continuing Legal Education seminars. While most of the seminars were sponsored by the Vermont Bar Association, Disciplinary Counsel also presented at seminars sponsored by the Office of the Defender

General, Vermont Association of Criminal Defense Attorneys, the Windham County Bar Association, the Department of Sheriffs and State's Attorneys, the Professional Responsibility Board.

6. Other

Disciplinary Counsel worked with the Board on numerous issues, the most significant being the Board's work on the issue of whether to amend the Rules of Professional Conduct so as to authorize attorneys to "lie" in certain situations.

III. Report of Activities of Bar Counsel

Bar Counsel is employed part-time and is responsible for several aspects of the Professional Responsibility Program. Most of Bar Counsel's time is spent responding to inquiries from both lawyers and members of the public regarding professional conduct. Additional responsibilities include administering the Assistance Panel program, publishing decisions, consulting with outside agencies concerned with the professionalism of lawyers, presenting continuing legal education programs for lawyers, and attending to miscellaneous administrative duties.

Below is a summary of what was accomplished as to each of these responsibilities.

A. Lawyer Education A.O. 9, Rules 9, 3B. (1)

1. Specific Questions: Inquiries from individual lawyers.

Bar Counsel provides informal, confidential information and assistance to lawyers who have questions regarding their own professional conduct or that of another attorney. This service, provided on a one-to-one basis and usually by telephone, is Bar Counsel's top priority.

This fiscal year Bar Counsel received 210 inquiries from Vermont lawyers, Bar Counsel resolved 92% of all inquiries. Of the remaining 8%, she referred half of the lawyers to other agencies such as the VBA's fee dispute program or the regulatory authority of another state and advised the other half to file disciplinary complaints. Three cases remained open at the close of the fiscal year and were carried over to FY 2011.

2. General educational services.

Bar Counsel presented Continuing Legal Education programs at the mid-year meeting of the Vermont Bar Association, the annual meeting of the Windham County Bar Association, and at the annual training meeting of Vermont Legal Services Corporation. All of these presentations concerned the significant rule changes in the new Rules of Professional Conduct enacted in September 2009. In each of these sessions, there was an emphasis upon the ethical issues concerning conflicts of interest.

B. Alternative Dispute Resolution A.O. 9, Rules 3.B.1., 4, 10

1. Informal Program: Inquiries from Members of the Public

The Vermont Professional Responsibility Program receives calls daily at its offices in Montpelier and Burlington from members of the public who have complaints or questions about the conduct of particular Vermont lawyers. Where appropriate, these telephone inquiries are referred to Bar Counsel who endeavors to resolve the matter with the lawyer in issue, assist the caller in structuring a formal complaint where warranted, or provide the caller with information as to where help might be obtained if the matter is not properly within the lawyer disciplinary system. The goal is to solve minor problems between lawyers and their clients as simply as possible while guiding those matters which raise serious ethical concerns to the Office of Disciplinary Counsel.

Because Bar Counsel was without an office for one quarter of the fiscal year, services to the public were substantially curtailed. Only 96 inquiries from the public were accepted this fiscal year, a decrease of 38 % over the previous fiscal year. Callers were generally advised to file complaints rather than wait for the opportunity to speak with Bar Counsel. Of the 94 public inquiries which Bar Counsel addressed and closed in FY2010, approximately 58% were resolved to the caller's satisfaction. Of the remaining matters, 20 matters were closed when Bar Counsel referred callers to other agencies to assist them with fee disputes or with finding counsel, or they were closed when the callers could not be reached. Bar Counsel advised the remaining 20 callers to file complaints with the Office of Disciplinary Counsel. Seven matters could not be resolved by the end of the fiscal year and were carried over to FY2011.

1. Formal Program: Assistance Panels

Bar Counsel is responsible for the administration of the formal program for alternative dispute resolution. This work is carried out by the Assistance Panels which are comprised of volunteer lawyers and members of the public. In situations where neither informal resolution by Bar Counsel nor formal processing by Disciplinary Counsel is appropriate, Assistance Panels resolve disputes in confidential meetings with Respondents and Complainants. Bar Counsel provides support for this program in such areas as communicating with the parties, monitoring probationary terms, and providing information to panel members.

There was little need for formal alternative dispute resolution this fiscal year; only three new cases were referred and three remained from the previous fiscal year. Of these six cases, five were resolved and one was referred back to Disciplinary Counsel without a hearing.

A. Co-ordination with Other Agencies

A.O. 9, Rules 9, 3B. (1)

Throughout the year, Bar Counsel was in regular communication with various representatives and staff of the Vermont Bar Association on a number of ethical issues of mutual concern including the revisions to the Vermont Rules of Professional Conduct. Additionally, Bar Counsel responded to various requests for information from other state regulatory agencies, bar associations, law schools, federal courts, and members of the media.

B. Dissemination of Disciplinary Information.

AO 9, Rule 13

Bar Counsel is responsible for publishing the final decisions of the Professional Responsibility Program and ensuring that they are properly distributed to other courts and agencies both within and without Vermont. Ten decisions were published in FY 2010. Bar Counsel receives every decision, writes to all appropriate parties of the decisions, and writes a digest of each decision so that readers can locate relevant law by reviewing these synopses. All of the technical work required in disseminating disciplinary information is performed by the Program Administrator, Deb Laferriere.

IV. CONCLUSION

This past year, 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. The Board is always looking at new ways to expand available assistance to the inquiring public as well as the new practitioner.

During FY 2010, the Program worked closely with the Department of Libraries to create a mechanism so that PRB decisions can be searchable. It is the hope of the Board that in the not too distant future, this goal will be accomplished.

The Board continues to support an annual joint meeting with members of the MCLE, BBE and Character and Fitness Committees to coordinate their respective programs.

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