



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

FROM: The Professional Responsibility Board

RE: Annual Report of the Professional Responsibility Program for FY 2011

DATE: December 9, 2011

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 twelfth 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 2011 (June 30, 2011) closed were:

Jan Eastman, Esq. – Chair
Mr. Donald Keelan, CPA – Vice-Chair
Honorable Alan Cheever
George Nostrand, 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

During FY 2011, the Professional Responsibility Board reviewed the list of Policies that had been adopted since 1999. On March 16, 2011, the Professional Responsibility Board adopted a revised list of Policies. The revised list of [Policies](#) 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

R. Joseph O'Rourke, Esq., Chair
John J. Kennelly, 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

Shannon Bertrand, Esq., Chair
Alan Biederman, Esq.
Mr. William Scranton

Hearing Panel No. 2

Theodore C. Kramer, Esq., Chair
Jean Brewster Giddings, 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.
Ms. Jeanne Collins

Hearing Panel No. 10

Danielle Fogarty, Esq., Chair
Joseph O'Dea, Esq.
Dr. Bob Bergman

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 7, 2011, at the Capitol Plaza in Montpelier, Vermont. Board Chair Jan Eastman welcomed approximately 41 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. Chief Justice Reiber, the Board’s liaison, also addressed the group and thanked the attendees for their contribution to the success of the Program. In particular, Chief Justice Reiber thanked out-going Board Member George Nostrand, Esq. for his years of service as both a board member and former chair of the Professional Responsibility Board. Attorney Emily Gould, a volunteer Assistance Panel member, presented a workshop for hearing panel and assistance panel members on “*Rule 1 and Effective Communication.*” Guest Speaker Attorney General William Sorrell spoke on “*Ethical Challenges for Government Lawyers Attorneys.*” Attorney Susan Palmer, another volunteer Assistance Panel member, presented a workshop for assistance panel members on “*How Your Values Can Enhance your Role.*” Disciplinary Counsel Michael Kennedy presented an ethics seminar for Hearing Panel members on “*Developments in Ethics.*” Attorneys who attended the entire Program earned 4.25 CLE Credits (3.25 Ethics credits and 1 Professionalism credit).

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

In September 2010, following two years of working closely with the Department of Libraries, a search engine mechanism was developed to enable decisions of the Professional Responsibility Program to 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 2011:

Attorneys

Joseph F. Cahill, Jr., Esq.
Leslie Hanafin, Esq.
Emily Gould, Esq.
Robert Fairbanks, Esq.

Public Members

Ms. Irene Carbine
Mr. Kevin O’Donnell
Mr. Neal Rodar
Ms. Rachel Siegel

Attorneys *(continued)*

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 *(continued)*

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, 2010, 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.

Justice Skoglund's Committee expanded its membership, continued its review and discussions through February of this year and eventually adopted the Program's suggestion

(with minor language changes). On June 27, 2011, a proposed Comment [3] to be added to Rule 4.1 designed to address concerns expressed by government lawyers that the Supreme Court's decision in *In re PRB Docket No. 2007-046*, 2009 VT 115, 187 Vt. 35, 989 A.2d 523, might be understood as affecting the traditional use of deception as an investigative mechanism in the enforcement of criminal or other laws was sent out to the bar for a 60 day comment period.

I. Joint meeting of other boards in September 2010

On September 21, 2010, members and staff of the Professional Responsibility Board, Mandatory Continuing Legal Education Board, Board of Bar Examiners and Character and Fitness Committee met for their second annual joint meeting. Each of the Board Chairs presented an overview of issues facing their respective boards. Other issues discussed included the clerkship requirement for admission to the bar and the professionalism requirement. Chief Justice Reiber presented his proposal for a Joint Committee of the Boards.

J. 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 proposed rule to the Civil Rules Committee for review.

On July 19, 2010, a proposed amendment was sent out for comment to members of the Bar. The amendment, promulgated on December 21, 2010, and effective February 21, 2011, modernized and clarified Rules 1.15B(d) and (e) by making clear that depository 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 promulgated amendment can be found on the Judiciary website:

[http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAmendmentVRPCRrule1.15B\(d\)\(e\).pdf](http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAmendmentVRPCRrule1.15B(d)(e).pdf)

Attorneys who were respondents had expressed concern that, read strictly, Rule 12.F. prohibited them from informing their malpractice carriers and/or the presiding judge that a client has filed an ethics complaint against them. Attorneys who were respondents had also expressed concern that, read strictly, Rule 12.F. prohibited them from telling their clients that the opposing side had filed an ethics complaint against them. Finally, attorneys had been prohibited from disclosing the fact that a complaint had been dismissed. On October 27, 2010, a proposed amendment to A.O. 9, Rule 12 F. which would allow complainants and respondents to disclose to anyone if a complaint had been filed and what the disposition, if any, of the complaint, was sent to members of the Bar for a comment period. On December 21, 2010, the amendment was promulgated, with an effective date of February 21, 2011, allowing complainants and respondents to disclose to anyone if a complaint has been filed and what the disposition, if any, of the complaint was. The promulgated amendment can be found on the Judiciary website:

<http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATEDAmendmenttoAO9Rule12F.pdf>

II. Report of Activities of Disciplinary Counsel

A. Introduction

Disciplinary Counsel administers the disciplinary side of the Professional Responsibility Program. In FY 2011, 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 the first half of FY 2011, Disciplinary Counsel's office consisted of two full-time attorneys, Disciplinary Counsel and Deputy Disciplinary Counsel, and a part-time administrative assistant. In February 2011, the administrative assistant position became vacant and a recruitment process to fill that position began in early spring. As the fiscal year closed, the position remained vacant and under recruitment. 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 2011, Disciplinary Counsel received or otherwise opened 264 complaints, compared to 260 in FY 2010.

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 lawyers 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.

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 2011, 264 files were assigned docket numbers for screening by Counsel for the Professional Responsibility Program. Disciplinary Counsel screened 260; 4¹ cases were assigned to Conflict Counsel for screening, and no cases were at screening stage at the end of

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.

the fiscal year. Of the 260 complaints screened by Disciplinary Counsel, 90 were dismissed at screening and the other 169 cases were referred for formal disciplinary investigations. One case was opened upon receipt of a suspended attorney’s petition for reinstatement.

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 90 complaints that were dismissed at screening in FY 2011 were dismissed for the following reasons:

Table 1

| Cases Dismissed at Screening Stage | |
|---|-----------|
| Resolved | 4 |
| No Cause of Action | 74 |
| Insufficient/No Evidence | 3 |
| Fee Dispute | 6 |
| Post-Conviction Relief | 3 |
| Total Dismissed at Screening | 90 |

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 2011, 34 complainants appealed Disciplinary Counsel’s decision to dismiss a complaint at screening; all but 2 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.

As FY 2011 opened, Disciplinary Counsel was conducting 58 formal investigations. During the fiscal year, another 169 complaints were referred for formal investigations.

1. Disciplinary Cases before the Supreme Court

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, had ordered review of the hearing panel's decision. In either situation, the Rules of Appellate Procedure apply. **A.O. 9, Rule 11(E)**.

As FY 2011 began, three disciplinary cases were pending in the Supreme Court. Two had been appealed by the Respondent, while the Supreme Court ordered review of the third on its own motion. Each of three was argued during FY 2011. The Court suspended one attorney and publicly reprimanded two others.

a. 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 Supreme Court along with a proposed order for the interim suspension of the attorney's license to practice law. In FY 2011, Disciplinary Counsel filed one petition for an interim suspension. It was granted.

b. Reciprocal Discipline

Upon learning that a lawyer subject to the PRB's jurisdiction has been disciplined in another jurisdiction, Disciplinary Counsel is required to notify the Supreme Court. **A.O. 9, Rule 20(A)**. The Court then issues an order giving the parties 30 days to indicate whether the imposition of identical discipline in Vermont is warranted. **A.O. 9, Rule 20(C)**. In FY 2011, Disciplinary Counsel filed one petition for reciprocal discipline. It was granted.

2. 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 2011, there were three cases in which Disciplinary Counsel commenced formal disciplinary proceedings by filing a petition of misconduct. One of the cases resulted in a hearing panel imposing an admonition. Another resulted in a hearing panel concluding, as a matter of law, that the respondent had violated the Rules of Professional Conduct. This case was awaiting a hearing on the appropriate sanction. The third case commenced via the filing of a petition of misconduct was awaiting a hearing as the fiscal year closed.

3. 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 2011, there were five cases in which Disciplinary Counsel joined with a respondent to commence formal proceedings via stipulated facts. Three of the cases resulted in a hearing panel approving an Admonition by Disciplinary Counsel. **See PRB Decision Nos. 134, 138, and 140.** One case resulted in a public reprimand. **See PRB Decision No. 136.** One case remained under advisement with the hearing panel as the fiscal year closed.

4. Disability Proceedings

Disciplinary Counsel also prosecutes disability cases. In FY 2011, Disciplinary Counsel commenced formal proceedings that resulted in three separate lawyer’s licenses being transferred to disability inactive status. **A.O. 9, Rule 21.** The disability cases involved ten underlying complaints.

5. Reinstatement Petitions

A lawyer who is transferred to disability inactive status, disbarred, or suspended for more than six months must petition for reinstatement to active status. **A.O. 9, Rule 22.** The lawyer bears the burden of proving that he or she should be reinstated. Disciplinary Counsel conducts discovery, cross-examines witnesses, and presents evidence, if any, in response to the reinstatement petition. In FY 2011, a lawyer who had been suspended for two years petitioned for reinstatement. Disciplinary Counsel took no position on the petition and, following a hearing before a panel of PRB, the petition was granted.

6. 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 2011, Disciplinary Counsel referred 9 cases to an Assistance Panel.

7. 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 2011, Disciplinary Counsel investigated and dismissed 149 complaints. The reasons for the dismissals are set out in the following table:

Table 2

| Complaints Dismissed by Disciplinary Counsel After Investigation | |
|---|------------|
| Resolved | 16 |
| No Cause of Action | 80 |
| Insufficient Evidence to Prove a Violation | 48 |
| Refer to Fee Dispute | 1 |
| Lack of Jurisdiction | 2 |
| Chair Granted Appeal; Dismissed After Investigation | 1 |
| Disciplined in Another File | 1 |
| Total Dismissed After Investigation | 149 |

8. Docket at End of FY 2011

As the fiscal year closed, 52 complaints were under investigation by Disciplinary Counsel. Two other cases were pending action by a hearing panel.

9. Continuing Legal Education Seminars

In FY 2011, 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, the Windham County Bar Association, the Department of Sheriffs and State's Attorneys, the Office of the Attorney General, Professional Responsibility Board.

10. 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 that relate to misrepresentations by attorneys. In addition, Disciplinary Counsel started a project, in conjunction with the Vermont Bar Association's Board of Managers, designed to encourage attorneys to consider creating and implementing succession plans. Finally, throughout the fiscal year, Disciplinary Counsel served on both the VBA's Board of Managers and the Supreme Court's Board of Bar Examiners.

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 236 inquiries from Vermont lawyers and resolved 209 of the issues presented. Of the remaining 27 matters, 14 attorneys were advised to file disciplinary complaints and 12 were referred to other resources or agencies such as the VBA's fee dispute program or the regulatory authority of another state. One matter was carried over to FY 2012.

2. General educational services:

In response to a number of questions from lawyers, particularly from those retiring from law practice, as to the disposition of client files, Bar Counsel authored an article entitled, “*Ethical Considerations in Relinquishing, Copying and Maintaining Client Files*” which was published in the Winter issue of the VBA Journal. Bar Counsel did not participate in presenting any CLE programs in FY 2011.

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.

Bar Counsel received 145 inquiries from members of the public, of which 90 were resolved to the caller’s satisfaction. Of the remaining matters, 35 callers were advised to file formal disciplinary complaints and 16 were closed for other reasons such as referral to other agencies to assist them with fee disputes or with finding counsel. Four matters could not be resolved by the end of the fiscal year and were carried over to FY 2012.

2. 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. Program Administrator Deb Laferriere assists in arranging the logistics for hearings for participants.

This year the Assistance Panels received nine cases from Disciplinary Counsel. Each of these cases was set for hearing before a three-member panel. All responding attorneys participated and all complainants were given an opportunity to be heard. As a result of these hearings, 8 cases were resolved, some involving imposition and monitoring of conditions, and one case was referred back to Disciplinary Counsel.

C. Co-ordination with Other Agencies A.O. 9, Rules 9, 3B. (1)

Bar Counsel communicated with various representatives of the Vermont Bar Association on a number of ethical issues of mutual concern including what topics might be most relevant to future continuing legal education programs. Additionally, Bar Counsel responded to various requests for information from other regulatory agencies, the Vermont Law School, and members of the media.

D. Dissemination of Disciplinary Information A.O. 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. Twelve decisions were published in FY 2011. 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.

In addition, the Board began a general review of the program beginning with our policies. This review resulted in a more usable version of appropriate and necessary policies adopted in March 2011. The Board will continue to review what we do and how we do it, always looking for ways to expand available assistance to the inquiring public as well as practitioners.

The Board also encourages connections to other programs when they can provide needed assistance to practitioners. This past year we were pleased when our concern over the apparent lack of appropriate “succession” planning by Vermont attorney’s dovetailed with a similar concern of the VBA Board of Managers. The resulting legal education programs in part designed and presented by Michael Kennedy is well worth program time. We will also continue to make reasonable efforts to promote the Lawyers Assistance Program.

During FY 2011, the Program, led by Board member Larry Novins, worked closely with the Department of Libraries to create a mechanism so that PRB decisions are now searchable.

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

We are also happy to report that the Professional Responsibility Program is now consolidated in a suite of offices at the Costello Courthouse in Burlington.

All participants in the Professional Responsibility Program were 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.