

Professional Responsibility Program

FY 2013 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 fourteenth annual report submitted in accordance with this mandate.

<https://www.vermontjudiciary.org/LC/attydiscipline.aspx>



Professional Responsibility Program

FY 2013 Annual Report

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 during FY 2013. The 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 during FY13:

Hearing Panel No. 1

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

Hearing Panel No. 2

Jean Brewster Giddings, Esq., Chair
Joseph F. Cook, Esq.
Mr. Greg Worden

Hearing Panel No. 3

Oreste Valsangiacomo, Jr., Esq., Chair
Lawrence Myer, Esq.
Mr. Mitchell Jay

Hearing Panel No. 4

William Piper, Esq., Chair
Jill Lanman Broderick, Esq.
Mr. David Tucker

Professional Responsibility Board

Jan Eastman, Esq., Chair
Donald Keelan, Vice-Chair
Hon. Alan Cheever (Retired Judge)
Michael Hanley, Esq.
Larry Novins, Esq.
Linda O'Brien
Randolph Rowland

Office of Bar Counsel

Michael Kennedy, Esq.
Bar Counsel

Mailing Address:

32 Cherry Street, Suite 213
Burlington, VT 05401
Telephone: 802-859-3000

Office of Disciplinary Counsel

Beth DeBernardi, Esq.
Disciplinary Counsel

Kimberly Rubin, Esq.
Deputy Disciplinary Counsel

Brandy Sickles
Administrative Assistant

Mailing Address:

32 Cherry Street, Suite 213
Burlington, VT 05401
Telephone: 802-859-3000

Program Administrator

Deb Laferriere
Program Administrator

Mailing Address:

Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0703
Telephone: 802-828-3204



Hearing Panel No. 5

Erin Gilmore, Esq., Chair
Cara Cookson, Esq.
Mr. Chris Bray

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. 6

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

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.
Mr. Roger Preuss

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 the Hearing Panels. A comprehensive [Manual](#), adopted by the Board in 2008, is available as a resource for 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. 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.

D. Annual Training Meeting

The Professional Responsibility Program held its annual meeting on June 5, 2013, at the Costello Courthouse in Burlington, Vermont. There were 44 Professional Responsibility Program members and guests who attended the full day educational program. Attorneys who attended the entire Program earned 4.75 CLE credits.

E. 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.



F. 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 FY 2013:

Attorneys

Steven Adler, Esq.
Joseph F. Cahill, Jr., Esq.
Jesse M. Corum, IV, Esq.
Leslie Hanafin, Esq.
Emily Gould, Esq.
Robert Fairbanks, Esq.
Katherine Mosenthal, Esq.
Robert O'Neill, Esq.
John Pacht, 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. Susan Fay
Ms. Judith Lidie
Mr. Peter Keelan
Mr. Kevin O'Donnell
Mr. Neal Rodar
Ms. Rachel Siegel
Mr. R. Brownson Spencer II

A comprehensive [Assistance Panel Handbook](#), adopted by the Board in 2008, is available for the use of Assistance Panel members.

G. Joint Meeting of Boards

On September 19, 2012, members and staff of the Professional Responsibility Board, Mandatory Continuing Legal Education Board, Board of Bar Examiners, Character and Fitness Committee and Judicial Conduct Board met for their annual joint meeting. Topics of common interest were discussed.

II. Report of Activities of Bar Counsel

Bar Counsel is responsible for several aspects of the Professional Responsibility Program. Bar Counsel screens complaints, responds to inquiries from lawyers and members of the public regarding professional conduct, and administers the Dispute Resolution Program. Additional duties include publishing decisions, consulting with outside agencies concerned with the professionalism of lawyers, presenting continuing legal education programs, and attending to miscellaneous administrative duties.

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



A. Screening

Upon receipt, an ethics complaint is “screened” by Bar Counsel. 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. Bar Counsel may attempt to resolve any complaint that does not require formal action by an Assistance Panel or the disciplinary program. **A.O. 9, Rule 10(B).**

If Bar Counsel concludes that a complaint alleges misconduct which might require the imposition of a sanction against a lawyer’s license, the complaint is referred to Disciplinary Counsel for a formal investigation. Otherwise, complaints are either dismissed or referred to the Dispute Resolution Program. If a complaint is dismissed by Bar Counsel, the Complainant may request that the Board Chair review Bar Counsel’s decision.

In FY 2013, the Program opened 286 new files. Three of the new files were opened upon receipt of a *petition for reinstatement* filed by lawyer who had previously had his or her license suspended. Bar Counsel took no action on the petitions for reinstatement, as such files are handled by Disciplinary Counsel.

Thus, the Program received 283 complaints in FY 2013. Bar Counsel reviewed each complaint and disposed of them as follows:

Referred to Disciplinary Counsel:	133
Closed at screening:	131
Referred to Dispute Resolution:	17
Referred to Conflict Counsel:	2 ¹

1. Complaints Dismissed at Screening

Bar Counsel is authorized to close complaints at screening. Complaints are closed at screening for various reasons. Some are closed after being resolved by Bar Counsel, while others are closed as a result of Bar Counsel’s conclusion that there is no reason to believe that it might be appropriate to impose a sanction against the lawyer’s license. *See A.O. 9, Rule 10.* Each complaint closed at screening is assigned a “dismissal code.” The dismissal code reflects the reason behind decision to close the complaint. In FY 2013, Bar Counsel closed 131 complaints at screening. They were closed for the following reasons:

<u>Code</u>	<u>Definition</u>	<u>Total</u>
CBC-1	Resolved by Bar Counsel	15
CBC-2	No violation	101
CBC-3	Insufficient Evidence of a Violation	12
CBC-4	Referred to VBA Fee Dispute Program	1
CBC-5	PCR Issue	2
CBC-6	Request for New Lawyer	0
CBC-7	No Disciplinary Jurisdiction	2

¹ If Bar Counsel has a conflict of interest, the complaint is referred to Conflict Counsel for screening.



If a complaint is dismissed at screening, Bar Counsel informs the Complainant, in writing, of the reasons for the dismissal. Bar Counsel also informs the Complainant of his or her right to request that the Chair review Bar Counsel’s decision. **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 2013, 40 Complainants appealed Bar Counsel’s decision to dismiss a complaint at screening. Two cases were referred back to Bar Counsel for additional screening and one case was referred to Disciplinary Counsel for further investigation. All of the cases were eventually dismissed.

2. Complaints Referred to the Dispute Resolution Program

Bar Counsel administers the Dispute Resolution Program. (“DRP”) *A.O. 9, Rule 3(B)(1)*. The program resolves complaints in a confidential manner that does not involve the imposition of discipline against a lawyer’s license. The DRP includes both formal and informal methods of dispute resolution. Convening an Assistance Panel is an example of a formal method. Informal methods generally involve Bar Counsel working with the Complainant and Respondent to reach a satisfactory resolution.

In FY 2013, 18 complaints were referred to the DRP. Bar Counsel referred 17, while Disciplinary Counsel referred 1. In addition, 3 complaints were pending in the DRP when the fiscal year began.

The DRP resolved 18 complaints during FY 2013. Three remained pending resolution at end of the fiscal year. Of those that resolved:

Formal Resolution by Assistance Panels:	4
Informal Resolution by Bar Counsel:	14

3. Conclusion

The numbers appear to reflect that the Board’s decision to appoint a full-time Bar Counsel keeps less serious complaints from clogging Disciplinary Counsel’s docket. For example, in FY 2013, 52.3% of the new complaints were disposed of at screening², thus freeing Disciplinary Counsel to focus on the more serious complaints. By comparison, in FY 2012, only 36.7% of the new complaints were disposed at screening.

This increased efficiency cannot be attributed to more complaints being dismissed. In FY 2012, 92.7% of the complaints that were resolved at screening were dismissed. In FY 2013, however, only 74.8% of the complaints resolved at screening were dismissed. The remaining 25.2% of the complaints were either resolved by Bar Counsel, referred to the Dispute Resolution Program, or referred to the Vermont Bar Association’s Fee Arbitration Committee.

² Either closed or referred to Dispute Resolution.



B. Inquiries

Bar Counsel is required to “respond to inquiries from lawyers regarding ethics and law practice.” *A.O. 9, Rule 3(B)(1)*. Upon receiving an inquiry, Bar Counsel is authorized to provide “preventive advice and information to assist attorneys to achieve and maintain high standards of professional responsibility.” *A.O. 9, Rule 9*. In addition, the PRB has directed Bar Counsel to respond to inquiries from non-attorneys. Bar Counsel does not provide non-attorneys with legal advice. Rather, Bar Counsel attempts to explain to a non-attorney the options available when faced with a dispute with an attorney.

Bar Counsel fielded 627 inquiries in FY 2013. The inquirers:

Lawyers:	449
Non-lawyers:	175
Judges:	3

The top ten topics³:

Conflicts of Interest	100
Trust Account Management	35 ⁴
Disclosure of Client Confidences	34
Communication between Attorney & Client	33
Diligence/Neglect	29
Fees	29
Unauthorized Practice of Law	25
Mandatory Reporting of Attorney Misconduct	23
The Disciplinary Process	16
Contacting a Represented Party	15

The time to resolve the inquiries:

Same Day:	353
1-2 Days:	132
3-5 Days:	69
5 or More:	43
Unresolved ⁵ :	32

C. Trust Accounting Surveys

³ Many inquiries do not fall squarely within a particular topic. In FY 2013, 128 inquiries were categorized as “other.”

⁴ Nearly half of the inquiries on Trust Account Management came in one month from lawyers who were asked to respond to the 2013 Trust Accounting Survey.

⁵ An “unresolved” inquiry is one in which the inquirer leaves a message for Bar Counsel, Bar Counsel leaves a message for the inquirer, and the inquirer never calls back.



In March of 2013, Bar Counsel randomly selected 189 attorneys to respond to a survey of their trust accounting systems.⁶ Attorneys who were selected were directed to return their responses to Bar Counsel. Of the 189, 12 did not file timely responses. Bar Counsel assigned file numbers to each and referred the files to Disciplinary Counsel for investigation. Of the remaining 177:

152	did not raise any concerns
1	was referred to Disciplinary Counsel based on survey response
24	required follow-up by Bar Counsel

Of the 24 that required follow-up by Bar Counsel, 23 satisfactorily addressed the issue that required further review. One did not and was referred to Disciplinary Counsel for an investigation.

D. Continuing Legal Education

Bar Counsel presents Continuing Legal Education (“CLE”) seminars throughout the year. Each seminar is tailored to the specific audience. In FY 2013, Bar Counsel presented seminars for the following groups:

- Addison County Bar Association
- Chittenden County Bar Association (2 programs)
- Lamoille County Bar Association
- Orange County Bar Association
- Rutland County Bar Association
- Washington County Bar Association
- Department of Sheriffs and State’s Attorneys
- Office of the Defender General (2 programs)
- PRB Annual Meeting
- Vermont Association of Criminal Defense Attorneys
- Vermont Association for Justice
- Vermont Attorneys Title Corp.
- VBA: Basic Skill Program (twice)
- VBA: Bridge the Gap Program
- VBA7: Law Office Managers
- VBA Solo & Small Firm Conference (2 programs)
- Tri-State Defense Lawyers Association

⁶ The survey appears at Appendix A.

⁷ “VBA” is the Vermont Bar Association. Under the leadership of its Executive Director Bob Paolini, the VBA is instrumental in developing and presenting CLE programs for Vermont lawyers. Kevin Ryan is the VBA’s Director of Education and Communication. Kevin provides invaluable assistance to Bar Counsel in the context of CLE programming.

E. 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. Eight decisions were published in FY 2013. Bar Counsel receives every decision, briefly summarizes each decision so that readers can locate relevant law by reviewing the digest, and transmits notice of discipline to appropriate courts, government agencies, disciplinary agencies, and media outlets. Much of this work is done together with Program Administrator, Deb Laferriere.

III. Report of Activities of Disciplinary Counsel

A. Introduction

Disciplinary Counsel administers the disciplinary side of the Professional Responsibility Program. In FY 2013, the administration of the disciplinary program included the formal investigation of complaints that were not resolved at the screening phase and the prosecution of disciplinary cases.

The personnel of Disciplinary Counsel's office was restructured in FY 2013. In previous years, the office consisted of one full-time Disciplinary Counsel, one full-time Deputy Disciplinary Counsel, and one part-time Administrative Assistant. As of FY 2013, the Deputy Disciplinary Counsel position became half time. The half-time position was filled at the end of the first quarter, with the hiring of attorney Kimberly Rubin. All members of 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.

C. Formal Investigations by Disciplinary Counsel

When a complaint is referred for an investigation, 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) initiate a formal disciplinary proceeding.

FY 2013 opened with 22 formal investigations pending. During the fiscal year, an additional 134 complaints were referred for formal investigations.



1. Disciplinary Cases before the Supreme Court

a. Cases on Review

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. **A.O. 9, Rule 11(E)**.

At the beginning of FY 2013, a Hearing Panel decision recommending a public reprimand in three cases, involving the same attorney, was pending the 30 day appeal period before the Supreme Court. On July 10, 2012, the Supreme Court found that the Hearing Panel decision presented a well-reasoned discussion of a problem common in the legal practice, particularly for small firms and solo practitioners. Accordingly, the Court ordered review of the decision on its own motion, adopted the Hearing Panel decision in its entirety as a final order of the Court, waived briefing and oral argument, and ordered that the decision be published in the Vermont Reports.

Another case, in which parties had appealed the Hearing Panel's recommendation for a six month suspension, was also pending before the Supreme Court as FY 2013 began. Briefs were filed, and the parties presented oral arguments before the Supreme Court in November 2012. Disciplinary Counsel argued for disbarment, and the Respondent's attorney argued for a public reprimand. On June 28, 2013, the Supreme Court declined to accept the Hearing Panel's recommendation for a six-month suspension, imposing a three-month suspension instead.

b. 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 2013, Disciplinary Counsel's Office filed two petitions for an interim suspension. Both petitions, involving separate attorneys, were granted.

c. 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 2013, Disciplinary Counsel filed one petition for a reciprocal disbarment. It was granted.

2. Probable Cause Review

Unless the parties file a Stipulation of Facts, Disciplinary Counsel's decision to proceed with a petition of misconduct shall be reviewed for probable cause by a Hearing Panel assigned by the Chair of the Board pursuant to a fixed rotation, and such review shall be based upon



written application and affidavit setting forth a factual basis for the charges. If the Panel finds probable cause to believe that a violation has occurred, Disciplinary Counsel shall present formal charges to a different Hearing Panel assigned by the Chair of the Board, unless a stipulation to misconduct is earlier submitted. In FY 2013, Disciplinary Counsel filed three Requests for Probable Cause. **A.O. 9, Rule 11(C)**. Probable Cause was granted, in whole or in part, in all of the cases.

3. Petitions of Misconduct and Stipulations

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 respond to the Petition. Once an Answer is filed, each party has the right to conduct discovery in advance of a disciplinary hearing.

In FY 2013, no formal disciplinary proceedings were commenced by the filing of a Petition of Misconduct.

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 2013, six complaints resulted in Disciplinary Counsel and a Respondent stipulating to a violation of the rules. Five of those complaints involved lawyers who agreed to admonitions by Disciplinary Counsel. In one complaint, the parties stipulated to a violation, but not to a sanction.

4. Disability Proceedings

Disciplinary Counsel also prosecutes disability cases. Although Disciplinary Counsel did not initiate any new cases in FY 2013, Special Disciplinary Conflict Counsel is continuing to handle one formal disability proceeding and that file remained pending as the fiscal year ended. **A.O. 9, Rule 21**.

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 FY2013, three petitions for reinstatement were filed. In **PRB Decision 157**, a Hearing Panel recommended that Petitioner's license to practice law be reinstated. The Supreme Court approved the Hearing Panel's recommendation. The other two cases remain open as the end of the fiscal year.



6. Referrals to Non Disciplinary Resolution

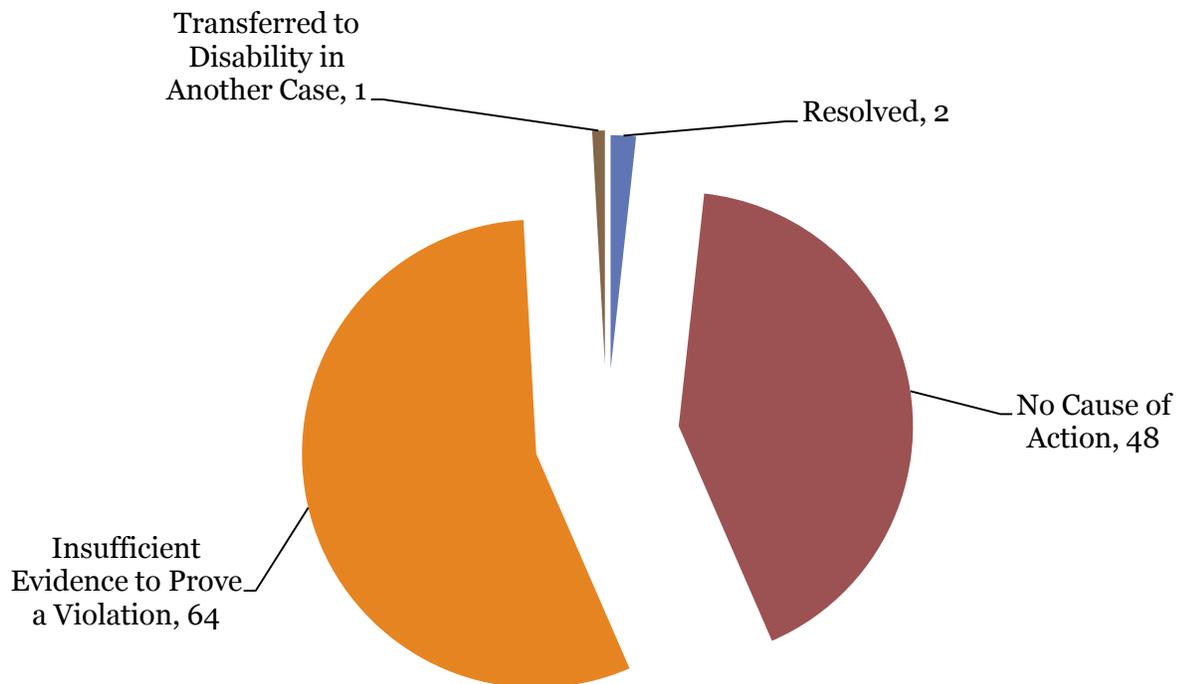
Upon concluding an investigation, and as an alternative to commencing formal disciplinary proceedings, Disciplinary Counsel may refer cases for non-disciplinary resolution. In FY 2013, two cases were referred to Bar Council for assignment to an Assistance Panel.

7. Dismissals

If Disciplinary Counsel's investigation indicates that neither formal charges nor a referral to an Assistance Panel or Dispute Resolution is appropriate, a case is dismissed. In FY 2013, Disciplinary Counsel investigated and dismissed 115 complaints. The reasons for the dismissals are set out in the following table:

Table 3

115 Investigations Resulting in Dismissals



8. Docket at End of FY 2013

As the fiscal year closed, 35 complaints were under investigation by Disciplinary Counsel. Six other cases were before Hearing Panels.



9. Continuing Legal Education Seminars

In FY 2013, Disciplinary Counsel appeared and co-presented two Continuing Legal Education seminars at the Professional Responsibility Board's Annual Meeting. In addition, the Deputy Disciplinary Counsel joined Bar Counsel to present in Montpelier a Continuing Legal Education seminar on ethical issues on property law.

10. Probation

In FY 2013, Disciplinary Counsel monitored five attorneys who were on disciplinary probation. Two of them successfully completed their probation during the fiscal year. At the close of the fiscal year, three attorneys remained on probation.

11. Compliance with the Trust Accounting Rules

In June of 2012, Disciplinary Counsel randomly selected 10 attorneys for trust account compliance reviews, for the upcoming fiscal year. After consulting with a Certified Public Accountant, the list was culled to 7 names. The CPA performed the compliance reviews in FY 2013, reporting to Disciplinary Counsel that he found compliance issues in four of the reviews. Those matters were opened as disciplinary investigations in FY 2013. To date, one of those cases has resulted in disciplinary charges, three remain under investigation, and one additional file was opened in the name of the law partner of one of the attorneys being investigated.

In FY 2013, Disciplinary Counsel also opened 31 cases as the result of notification from a bank that an attorney had an overdraft in the attorney's trust account. Each of those cases resulted in an investigation; none resulted in discipline.

Based on the recommendation of the Board made late in FY 2013, Disciplinary Counsel plans to expand the number of compliance reviews conducted in FY 2014. In preparation for the next round of compliance reviews, Disciplinary Counsel worked closely with the State Department of Buildings & General Services, to publish a formal Request for Proposals from Certified Public Accountants, to perform a number of compliance reviews in the next fiscal year. The Request for Proposals was posted on June 18, 2013, and was advertised in Seven Days, the Rutland Herald, the Times Argus, the Brattleboro Reformer, and the Valley News.

12. Approved Financial Institutions

Rule 1.15B.(a)(1) of the Vermont Rules of Professional Conduct requires lawyers to maintain their trust accounts only in financial institutions approved by the Professional Responsibility Board. Financial institutions which have not been so approved may obtain information as to how to become certified by contacting the Office of Disciplinary Counsel (802) 859-3000.

In FY 2013, Disciplinary Counsel investigated whether one of the approved financial institutions might not be in compliance with the terms of its agreement for reporting overdrafts to Disciplinary Counsel, as that institution's overdraft notices did not contain sufficient information to identify the attorney(s) whose accounts were overdrawn. Investigation substantiated the non-compliance, and Disciplinary Counsel worked with the financial institution to remedy the deficiencies.

In December 2012, the list of approved financial institutions was sent to members of the Bar. For a complete list of Approved Financial Institutions, please click on the following link:

<https://www.vermontjudiciary.org/LC/MasterPages/PRB-Attytrusts.aspx>



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.

This past year the Board was pleased with the successful reorganization of our staffing structure that included a full time Bar Counsel, the promotion of our former Deputy Disciplinary Counsel to the position of Disciplinary Counsel and the addition a part-time Deputy Disciplinary Counsel, to replace the former full-time deputy position.

The Board continues to support an annual joint meeting with members of the Mandatory Continuing Legal Education Board, the Board of Bar Examiners, the Character and Fitness Committee and the Judicial Conduct Board to coordinate our respective programs.

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.



APPENDIX A

2013 Trust Accounting System Survey

PART I Funds Held in Connection with a Representation.

The phrase “funds held in connection with a representation” means funds of a client or third party that are in the possession of you or your firm either:

- (a) As a result of a representation in a lawyer-client relationship; or
- (b) As a result of a fiduciary relationship that arises in the course of a lawyer-client relationship or as a result of a court appointment.

1. Do you or your firm hold funds in connection with a representation(s)?

YES or No

2. If so, are the funds held in an account in a financial institution?

YES or No or N/A

3. Are funds that are held as a result of a representation in a lawyer-client relationship in an account or accounts that are clearly identified as a “trust” account(s)?

YES or NO or N/A

4. Are funds that are held as a result of fiduciary relationship or court-appointment in an account or accounts that are clearly identified as a “fiduciary” account(s)?

YES or NO or N/A

5. With respect to your trust and fiduciary accounts, have you or your firm taken all necessary steps to inform your financial institution of the purpose and identity of those accounts?

YES or NO or N/A

6. With respect to your trust and fiduciary accounts, do you or your firm have a trust accounting system that includes, at a minimum, each of the following features:

- a. A system showing all receipts and disbursements from the account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements.



YES or NO

- b. A record for each client or person for whom property is held, which shows all receipts and disbursements, and carries a running account balance for that client or person.

YES or NO

- c. Records documenting timely notice to each client or person of all receipts and disbursements from the account or accounts.

YES or NO

- d. A single source that identifies all trust and fiduciary accounts.

YES or NO

- 7. With respect to your trust and fiduciary accounts, have you or your firm deposited any of your own funds into an account in which client funds are held?**

YES or NO

- 8. If your answer to Question 7 is “yes”, did you or your firm deposit the funds for the sole purpose of paying service charges or fees on that account, and only in an amount necessary for that purpose?**

YES or NO

PART II -- Pooled Interest-Bearing Trust Accounts

- 1. Do you or your firm have a pooled interest-bearing trust account or accounts?**

YES or NO

- 2. Are the funds in the pooled interest-bearing trust account or accounts limited to funds that are not expected to earn net interest or dividends, as defined in paragraph 2 of Rule 1.15B of the Vermont Rules of Professional Conduct, for the client or person for whom you are holding the funds?**

YES or NO

- 3. With respect to pooled interest-bearing trust account or accounts, are they maintained at a financial institution that has been approved by the Professional Responsibility Board to hold such accounts?**



YES or NO

For a list:

<https://www.vermontjudiciary.org/LC/MasterPages/PRB-Attytrusts.aspx>

4. **Are any earnings of pooled-interest bearing trust account or accounts made available to you, to your firm, to your clients, or to the person for whom you are holding the funds?**

YES or NO

5. **Have you or your firm instructed your financial institution that the interest or dividends that accrue on your pooled interest-bearing trust account or accounts, net of any transaction costs, shall be paid over to the Vermont Bar Foundation by the financial institution?**

YES or NO

6. **Does your financial institution transmit to you or your firm a contemporaneous report showing the amount of interest or dividends remitted to the Vermont Bar Foundation?**

YES or NO

Submitted by the following attorney:

Signature

Date

Please print name, firm name, and business address:

If this survey was not completed by the attorney listed above, please identify the name and title of the person who completed it:

