

Professional Responsibility Program FY 20 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 submitted in accordance with this mandate.

PROFESSIONAL RESPONSIBILITY BOARD

Michael F. Hanley, Esq., Chair
Carolyn Anderson, Esq., Vice-Chair
Hon. David Howard (Retired Judge)
Mr. Christopher Chapman
Mr. Kevin O’Donnell
Ms. Lisa Ventriss
Ms. Elizabeth Miller, Esq.

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Board Activity Report

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.

POLICIES

On March 24, 2020, the Supreme Court amended Emergency Order A.O. 49, suspending in-person committee meetings and authorizing the submission documents by parties to the PRB through email. Evidentiary hearings were also suspended. A link to the amendment was posted on the Professional Responsibility Board page of the Judiciary [website](#).

ANNUAL TRAINING MEETING

In accordance with A.O. 49 paragraph 15(c), The Professional Responsibility Program did not hold its annual meeting due to the COVID-19 emergency.

SUPERVISION OF THE PROGRAM'S CASE DOCKET & REVIEW OF CASE MANAGEMENT PROCEDURES

The Program Administrator provided the Board with a monthly 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.

TRUST ACCOUNTS

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

In FY 2020 Professional Responsibility Board member Justice Brian Burgess resigned from his position, and was replaced by retired Judge David Howard.

APPOINTMENT OF HEARING PANELS & HEARING PANEL COUNSEL

During FY20, Mark DiStefano served as Hearing Panel Counsel. In general, he attends hearings and phone conferences and writes a first draft of any opinion or order for the panel. He is also available to provide research, pre-hearing memos or other legal assistance to the Hearing Panels.

PRB Hearing Panels issued seven decisions in FY20. The decisions can be viewed [here](#). Several panels had matters under consideration as the fiscal year ended. The public hearing calendar is [here](#).

As FY20 ended, the following individuals served as members of Hearing Panels:

Hearing Panel No. 1

Anthony Iarrapino, Esq.
Emily Tredeau, Esq.
Mr. Scott Hess

Hearing Panel No. 2

James Valente, Esq., Chair
Amelia Darrow, Esq.
Ms. Deedee Jones

Hearing Panel No. 3

Gary Karnedy, Esq., Chair
Ashley Taylor, Esq.
Mr. Peter Zuk

Hearing Panel No. 4

Mary Parent, Esq., Chair
Cara L. Cookson, Esq.
Mr. Thad Richardson

Hearing Panel No. 5

Stephanie Foley, Esq., Chair
Bonnie Badgewick, Esq.
Ms. Traci Cherrier

Hearing Panel No. 6

David Berman, Esq., Chair
Rick Goldsborough, Esq.
Nicole Junas Ravelin

Hearing Panel No. 7

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

Hearing Panel No. 8

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

Hearing Panel No. 9

Karl C. Anderson, Esq., Chair
Kate Thomas, Esq.
Mr. Thomas J. Sabotka

Hearing Panel No. 10

Jonathan M. Cohen, Esq., Chair
Mary Welford, Esq.
Ms. Kelley Legacy

ASSISTANCE PANELS

In addition to Board members, all of whom may serve on Assistance Panels, the following volunteers served as Assistance Panel members during FY20:

Attorneys

Steven Adler, Esq.
Shannon Bertrand, Esq.
Amy Butler, Esq.
Joseph F. Cahill, Jr., Esq.
Liz Ryan Cole, Esq.
Philip R. Danielson, Esq.
Hon. Thomas S. Durkin
Robert Fairbanks, Esq.
Stephanie Foley, Esq.
Edward French, Esq.
Leslie Hanafin, Esq.
Deborah Kirchwey, Esq.
Thea Lloyd, Esq.
Lon McClintock, Esq.
Robert O'Neill, Esq.
Susan Palmer, Esq.
Alan Rome, Esq.

Janet Shaw, Esq.
Martha Smyrski, Esq.
Joshua L. Simonds, Esq.
Caryn E. Waxman, Esq.

Public Members

Lynn Dunton
Susan Fay
Jennifer Guarino
Judith Lidie
Holly Poulin
Neal Rodar
R. Brownson Spencer II
Susan Terry
Eric Wheeler

Activity Reports

The following Reports of Bar Counsel and Disciplinary Counsel cover activities from July 1, 2019 through June 30, 2020. Throughout the report, that time period will be referred to as “FY20.”

Bar Counsel

INTRODUCTION

Bar Counsel’s goal is proactive regulation: working with attorneys to address risk and avoid problems. To that end, bar counsel responds to ethics inquiries, teaches continuing legal education seminar, and engages in other forms of outreach. Bar Counsel’s activities are designed to assist lawyers to develop and maintain the tools necessary to provide competent representation in a way that meets the high standards of professionalism and civility expected of attorneys admitted to the bar of the Vermont Supreme Court. Bar Counsel also screens disciplinary complaints.

ETHICS INQUIRIES

Rule 9 of Administrative Order 9 states:

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

Bar Counsel received 1,272 inquiries in FY 2020.

Fiscal Year	Inquiries
2020	1,217
2019	1,265
2018	1,263
2017	1,109
2016	1,100
2015	827
2014	750
2013	627

Most of the inquiries come from lawyers. However, bar counsel also received inquiries from non-lawyers, judges, law students, law professors, and members of the media.

Source	Inquiries
Lawyer	1,091
Non Lawyer	103
Media	1
Law Student	8
Judge	11
Law Professor	3

Nearly half of the inquiries involve conflicts or client confidences. Most inquiries involve more than one of the topic areas covered by the Rules of Professional Conduct. The rules/topic areas that arise most often, measured as percentage of total inquiries that included the topic area:

Topic Area	% of Total Inquiries
Conflicts of Interest	33%
Client Confidences	16%
Withdrawal	12%
Communicating with a Represented Person	7%
Duty to Report Another Lawyer	6%

Most inquiries are resolved on the same day that they are received. Time to resolve:

Business Days	Percent of Total Resolved
Same	73%
1-2	19%
3-5	2%
More than 5	4%
Caller never returned bar counsel's call	2%

CONTINUING LEGAL EDUCATION

Bar Counsel presented 30 CLE seminars for a total of 40.75 credit hours. Bar Counsel presented at seminars sponsored or arranged by:

Attorney General's Office
Chittenden County Bar Association
Defender General's Office
International Legal Technology Association
Joan Loring Wing Inn of Court
Lamoille County Bar Association
Rutland County Bar Association
Shelburne Rotary club
Vermont Association for Justice
Vermont Attorneys Title Corporation
Vermont Bar Association
Vermont Law School
Windham County Bar Association

BLOG/SOCIAL MEDIA

Bar Counsel uses social media (blog, Twitter, LinkedIn, YouTube) to engage in proactive regulation and to raise awareness on issues related to legal ethics.

The blog is <https://vtbarcounsel.wordpress.com> .

	FY 2020	FY 2019	FY 2018
Posts	202	218	226
Visits	21,270	21,944	16,554
Page Visits	42,733	43,407	34,533

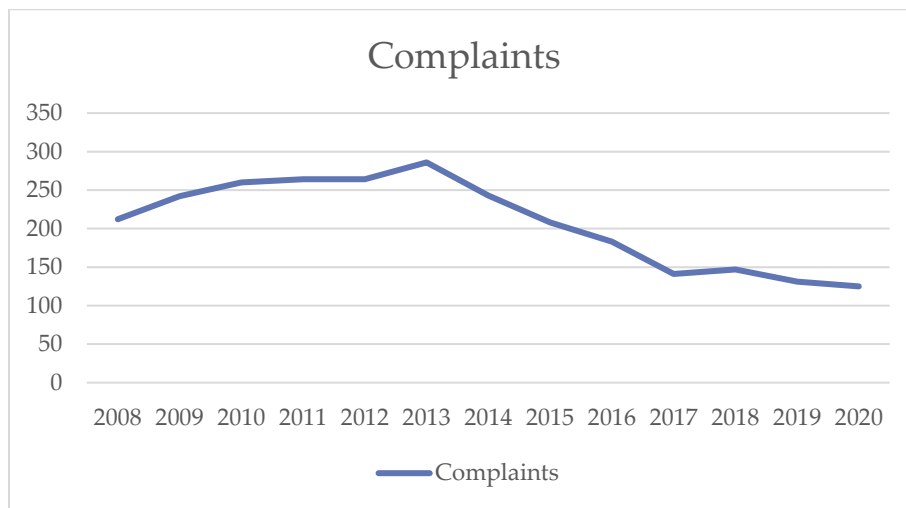
The YouTube channel is @vtbarcounsel. In response to the pandemic, Bar Counsel recorded and uploaded 18 CLE videos.

SCREENING DISCIPLINARY COMPLAINTS

A goal of proactive regulation is to reduce the number of complaints filed against lawyers. For the last several years, the Professional Responsibility Program has done exactly that.

Fiscal Year	New Disciplinary Complaints
FY 2020	125
FY 2019	131
FY 2018	147
FY 2017	141
FY 2016	183
FY 2015	208
FY 2014	243
FY 2013	283

The number of complaints received in FY 2020 represents an all-time low. Since the PRP restructured in 2012 to focus on proactive regulation, complaints have declined at a significant and steady pace ever since.



By rule, bar counsel screens all complaints. The screening rule authorizes Bar Counsel to conduct a limited investigation to determine the nature of a complaint and whether it can be resolved via non-disciplinary means. Upon concluding the limited investigation, bar counsel may dismiss or resolve the complaint, refer the complaint for non-disciplinary dispute resolution, or refer the complaint to disciplinary counsel for an investigation.

There are exceptions to the rule. Bar Counsel does not screen notices that a trust account has been overdrawn. Overdraft notices are automatically referred to Disciplinary Counsel for investigation. In addition, Disciplinary Counsel has the authority to open an investigation into any conduct that comes to her attention. Finally, Bar Counsel is prohibited from screening a complaint in which Bar Counsel has a conflict of interest.

Of the 125 new files opened in FY 20, Bar Counsel screened 99. The 26 that Bar Counsel did not screen:

Trust Account Overdraft Notices	14
Opened by Disciplinary Counsel	7
Referred to conflict screener	4
Self-Report to Disciplinary Counsel	1

The results of the 99 complaints screened by Bar Counsel

Dismissed after a limited investigation	66
Referred to Disciplinary Counsel for formal investigation	17
Referred for non-disciplinary resolution	7
Pending screening when fiscal year ended	9

OTHER

In FY 2020, Bar Counsel:

- Worked with the PRB to recommend that the Court amend Administrative Order 9 to create a Bar Assistance Program that would be administered by Bar Counsel.
- Served on the National Organization of Bar Counsel's ad hoc Wellness Committee.
- Served as the Chair of the Vermont Bar Association's Pro Bono Committee.
- Served on the Vermont Bar Association's COVID-19 Committee. The Committee's focus is on providing lawyers with information and resources related to the phased relaxation of the Court's Judicial Emergency Order and the Governor's "Stay Home/Safe" order.

- Participated in a series of seminars that will continue into FY 2021 and that focus on re-regulating the practice of law. Associate Justice Cohen is also participating in the program that is presented by the Institute for the Advancement of the American Legal System and its Unlocking Legal Regulation Project. The project focuses on whether to (1) repeal the prohibition on referral fees; (2) repeal the prohibition on non-lawyer ownership of law firms; and, (3) authorize non-lawyer to provide services that, currently, only lawyers are allowed to provide.
- Served as an acting judge in Chittenden Small Claims Court.

Disciplinary Counsel

INTRODUCTION

Disciplinary counsel administers the disciplinary side of the Professional Responsibility Program, pursuant to A.O. 9, Rule 3(B)(2). The office of disciplinary counsel is staffed by one full-time attorney and one part-time administrative assistant. Occasionally, disciplinary counsel utilizes additional contract resources, such as an investigator, certified public accountant and contract Special Appointed Disciplinary Counsel.

Disciplinary counsel's core function is to investigate, charge, and litigate disciplinary complaints and disability matters from the stage of an initial complaint up to and including appeals before the Vermont Supreme Court. Numerical statistics do not necessarily provide an accurate snapshot of resource allocation or enforcement priorities in a given year in the office of disciplinary counsel. One primary reason for this is that a single investigation may take anywhere from a few hours by a single attorney to several months of work with the invaluable help of contract investigative support. The length of time a matter takes to investigate may not necessarily correlate to whether or not a lawyer is ultimately charged with a violation of the Rules of Professional Conduct.

INVESTIGATION

Complaints come to disciplinary counsel for investigation in three main ways. The majority are written complaints received by the program, which are screened by bar counsel and referred to disciplinary counsel for investigation. Disciplinary counsel also receives and investigates all automated notices from approved financial institutions of any overdrafts in attorney trust (IOLTA) accounts. Finally, disciplinary counsel may open an investigation on any other matter that comes to her attention which, if true, might constitute a violation of the Rules of Professional Conduct.

When a complaint requires investigation, disciplinary counsel will generally first request a written response from the attorney under investigation. Disciplinary counsel then reviews the written response and conducts whatever additional investigation is appropriate. In the vast majority of investigations, disciplinary counsel performs an in-person interview of the lawyer under investigation, ordinarily at that lawyer's location of practice.

A portion of matters are investigated but no charge or disability proceeding results from the investigation. Some matters may be referred to non-disciplinary resolution and some are closed out

without further action. In the vast majority of cases, complainants and respondents are interviewed as part of the investigative process. In all instances, complainants and respondents are notified in writing of the disposition of the matter with a brief explanation.

In the final quarter of FY20, in-person interviews and investigative activities were moderately impacted by the COVID-19 pandemic. The Judicial branch already had in place appropriate technology resources to allow disciplinary counsel to continue to advance the disciplinary docket. Even so, in accordance with CDC health guidelines and the Judiciary's A.O. 49 adjustments, in-person interviews shifted to secure, nonpublic videoconferencing platforms during the last quarter of FY20, which changed the nature of investigation-related work and required some adaptation. A secondary impact upon the pace of investigative work resulted from respondents requiring time to adjust their work practices and technology access. As a result, many respondents requested and were granted lengthy extensions in responding to disciplinary counsel's requests for investigative material in the last quarter of FY20.

a. Referrals to Non-Disciplinary Resolution

Upon concluding an investigation, and as an alternative to commencing formal disciplinary or disability proceedings, disciplinary counsel may refer cases for non-disciplinary resolution. In FY20, four cases were referred to bar counsel for assignment to an Assistance Panel. None were referred to dispute resolution.

b. Dismissals

Disciplinary counsel investigated and dismissed 24 complaints in FY20. The reasons for the dismissals usually relate to inability to prove a specific rule violation by clear and convincing evidence or other considerations such as enforcement priorities or development of the law in the area of lawyer discipline.

c. Investigative Docket Status

FY20 opened with 11 formal investigations pending. During the fiscal year, an additional 39 files were opened for investigation. At the close of the fiscal year, there were 18 investigations pending.

LITIGATION

When disciplinary counsel charges a lawyer, the case begins by filing either in the Supreme Court or with the program administrator for assignment to a hearing panel, depending on the type of action. Matters assigned to a hearing panel are subject to direct appeal to the Supreme Court. Procedure in lawyer discipline matters is governed by A.O. 9. Proceedings are neither civil nor criminal. Violations must be proved by clear and convincing evidence.

Supreme Court Original Jurisdiction Matters

Several types of lawyer discipline matters begin by original jurisdiction in the Supreme Court. These categories are set out below.

a. Consent to Disbarment under A.O. 9, Rule 19

In cases where an attorney consents to disbarment under A.O. 9, Rule 19, disciplinary counsel sends documentation to the Board for review, and the Board makes a recommendation to the Supreme Court. The Court then issues a decision. In FY20, there were no consents to disbarment.

b. Petitions for Reciprocal Discipline under A.O. 9, Rule 20

Vermont-licensed attorneys who are disciplined in other jurisdictions are subject to reciprocal discipline in Vermont. A.O. 9 requires that disciplinary counsel file notice of any discipline of a Vermont attorney. The Court then generally provides opportunity for briefing on whether identical discipline should be imposed. In FY20, disciplinary counsel received two notices of Vermont-licensed attorneys disciplined in other jurisdictions and accordingly filed two petitions for reciprocal discipline with the Supreme Court. In each instance identical discipline was reciprocally imposed.

c. Petitions for Interim Suspension under A.O. 9, Rule 18

Upon the receipt of sufficient evidence showing that an attorney has either committed a violation of the ethics rules or is under a disability as set forth in Rule 21.A. and presently poses a substantial threat of serious harm to the public, disciplinary counsel is required 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 FY20, disciplinary counsel filed one petition for interim suspension, which was granted..

d. Trustee proceedings under A.O. 9, Rule 24

The Court or the Civil Division in the county where a lawyer is located may appoint a lawyer to act as a trustee of a deceased, suspended or disabled lawyer's practice to inventory files and to protect the interests of the lawyer's clients. In FY20, one trustee was appointed to an attorney who was found to have violated the terms of her probation.

e. Disability Proceedings under A.O. 9, Rule 21

Disciplinary counsel did not file any new disability cases in FY20.

f. Reinstatement Petitions under A.O. 9, Rule 22

There was one reinstatement petition was filed and granted in FY20.

Hearing Panel Matters

All other types of lawyer discipline and disability matters begin by filing with the program administrator and assignment to hearing panels.

a. Probable Cause Review, A.O. 9, Rule 11.C

Before a case is charged publicly by petition of misconduct, disciplinary counsel must file a nonpublic request for finding of probable cause. One hearing panel serves as the probable cause panel for a term of one year. At the beginning of FY20 one Probable Cause Request was pending. Three additional requests for finding of probable cause were filed. Probable cause was found in all four matters.

b. Petitions of Misconduct, Stipulations, and Hearings

Disciplinary counsel may charge a case by filing either a petition of misconduct or a stipulation of facts. The matter is assigned to a hearing panel by rotation, and the panel may take evidence on violations, sanction, or both. Charges, hearing notices, and pleadings are posted to the Board's webpage under the tab [Pending Public Disciplinary Matters](#).

In FY20, disciplinary counsel charged one cases (involving two matters) by petition of misconduct and one case (involving one matter) by stipulation of facts.

Three merits hearings were held in locations around the state. Hearings are open to the public and are usually held in courthouses. On March 24, 2020, the Supreme Court issued an emergency order suspending evidentiary hearings in PRB matters as a result of the pandemic and the suspension remained in effect at the close of the FY20. (A.O. 49, ¶ 15(d)(ii). Of the three new cases filed in FY20, two cases remained pending before hearing panels into the next fiscal year.

c. Hearing Panel Decisions

During FY20, hearing panels issued seven decisions involving twelve matters. PRB Decision Nos. 225a, 226, 227, 228, 229, 231 and 233. PRB Decision No. 229 (involving three matters) was later vacated by the Supreme Court. All decisions are posted to the [webpage](#). If no appeal is taken, the decisions become final.

d. Appeals

When a Hearing Panel issues a decision, either party may appeal that decision to the Supreme Court. The Court may also, upon its own motion, order review of the Hearing Panel's decision whether or not either party appeals. Of the hearing panel decisions issued in FY20, one appeal was filed, *In re Robert Bowen*, PRB Decision No. 233 by the respondent. The Court ordered a review upon its own motion for two cases. In *In re Sigismund Wysolmerski*, PRB Decision No. 226, the Court changed the sanction of twelve-month suspension to disbarment by its decision 2020 VT 54. In *In re Jasdeep Pannu*, PRB Decision No. 229, the Court vacated and dismissed the sanction of nine-month suspension in light of the respondent's death during the time the appeal was pending. The Court also issued its opinion from a FY19 review in *In re Stacey Adamski*, 2020 VT 7, in which it changed the sanction of public reprimand from PRB Decision No. 221 to a fifteen-day suspension.

TRAINING

In FY20, Disciplinary Counsel attended three days of training provided by the National Organization of Bar Counsel.

PROBATION

Under A.O. 9, a hearing panel may order probation terms in connection with another sanction imposed for violations of the Rules of Professional Conduct. Disciplinary counsel is responsible for monitoring these attorneys. As FY20 opened, disciplinary counsel was monitoring three attorneys on disciplinary probation. No additional attorneys were placed on probation by a hearing panel in FY20. In December

2019, a Hearing Panel ruled that one attorney had violated the conditions of her probation and suspended the Attorney for six months from the date of the decision. At the close of the fiscal year, disciplinary counsel was monitoring two attorneys on probation.

COMPLIANCE WITH THE TRUST ACCOUNT RULES

In FY20, upon receiving notification from a bank that an attorney had an overdraft in the attorney's trust account, disciplinary counsel opened 12 IOLTA overdraft related cases. Three additional cases were opened after an attorney self-reported a violation. All 15 cases were investigated.

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. Disciplinary counsel oversees the written agreements with all approved financial institutions on an annual basis, whereby the institutions agree to the notice and other requirements set forth in the rules. The current list of [Approved Financial Institutions](#) is updated as needed.

CONTRACT CERTIFIED PUBLIC ACCOUNTANTS

Disciplinary counsel assigns trust account compliance exams to contract CPAs. The attorneys who are examined are generally selected at random. The CPAs are also assigned to conduct compliance exams when need becomes apparent as part of a disciplinary or disability investigation, and they consult with disciplinary counsel on an ongoing basis. For each exam, the CPA examines the lawyer's records, conducts inquiry, and produces a written report analyzing compliance with trust accounting rules. In FY20, existing contracts for two Certified Public Accountants were renewed.

CONTRACT INVESTIGATORS

From time to time, disciplinary investigations arise in which disciplinary counsel requires contract investigator services. In FY20, existing contracts for investigative services were renewed.

OTHER TASKS

A.O. 9, Rule 3(B)(2) provides that disciplinary counsel shall confer periodically with the Board to review operations and perform other assigned tasks. In FY18, at the request of the Board, disciplinary counsel began the process of revising the Hearing Panel Manual. This project is still ongoing.

Conclusion

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

All participants in the Professional Responsibility Program are pleased to be of service to the Supreme Court, to the legal profession, and to the public. The Board acknowledges with gratitude the work of the

staff and the many volunteers serving on Hearing and Assistance Panels and as Conflict Counsel, who have contributed significantly to the overall success of the Program.

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

The Board would like to recognize and thank the following attorneys who served as special counsel, including:

Edward Adrian
Hon. Brian Burgess
Samantha Lednicky
Michelle Kainen
Daniel McCabe
Renee Mobbs
Navah Spero
Andy Strauss