

# Professional Responsibility Program

## FY 22 Annual Report

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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. Susan Fey**  
**Ms. Elizabeth Miller, Esq.**

#### OFFICE OF BAR COUNSEL

**Michael Kennedy, Esq.**  
Bar Counsel

**Mailing Address:**

32 Cherry Street, Suite 213  
Burlington, VT 05401  
Telephone: 802-859-3004

[Michael.Kennedy@vermont.gov](mailto:Michael.Kennedy@vermont.gov)  
<https://vtbarcounsel.wordpress.com>

#### OFFICE OF SCREENING COUNSEL

**Andrew Strauss, Esq.**  
Bar Counsel

**Mailing Address:**

32 Cherry Street, Suite 213  
Burlington, VT 05401  
Telephone: 802-859-3004

[Andrew.Strauss@vermont.gov](mailto:Andrew.Strauss@vermont.gov)

#### OFFICE OF DISCIPLINARY COUNSEL

**Sarah Katz, Esq.**  
Disciplinary Counsel

**Mailing Address:**

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

[Sarah.Katz@vermont.gov](mailto:Sarah.Katz@vermont.gov)

#### *Program Administrator*

**Merrick Grutchfield**  
Program Administrator

**Mailing Address:**

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

[www.vermontjudiciary.org](http://www.vermontjudiciary.org)

**Brandy Sickles**  
Administrative Assistant  
Telephone: 802-859-3000

## Board Activity Report

In 1999, the Vermont Supreme Court promulgated Administrative Order 9: Permanent Rules Governing Establishment And Operation Of The Professional Responsibility Program. The order, A.O. 9, created the Professional Responsibility Board (Board). Rule 1.E sets out the Board’s power and duties. Pursuant to the rule, the Board “shall oversee the program, and implement, coordinate, and periodically review its policies and goals.” Rule 1.E.2 requires the Board to make “an annual report, including statistics and recommendations for any rule changes, which report shall be public.” This is the Board’s annual report for Fiscal Year 2022.<sup>1</sup>

### I. STAFF & VOLUNTEERS

The Board acknowledges its staff and volunteers. But for the members of the Board’s hearing and assistance panels and their steadfast commitment, the program’s goals would not be met. The Board expresses its gratitude for each member’s service, as well as for the service provided by contract and conflict counsel.<sup>2</sup>

In FY22, the Board is compelled to note two people: Mark DiStefano and Michael Hanley. For many years, Mark DiStefano served as counsel to the Board’s hearing panels. Mark’s dedication, intellect, and wisdom proved invaluable in guiding the panels as they presided over disciplinary hearings and issued opinions. More than a lawyer, Mark was a thoughtful advisor, trusted confidant, and good friend. Mark passed in March of 2022. Mark’s service, counsel, and nature is deeply appreciated and will be long valued and remembered.

Michael Hanley joined the Board in 2011. He was appointed Chair in 2018 and served in that capacity until the end of FY22. Mike was scheduled to term off the Board shortly after the fiscal year ended. Mike’s dedication to protecting the public and improving the legal profession was obvious. As was his interest in cultivating an inclusive and cooperative environment in which the Board, the program, and its members worked. The Board thanks Mike for his years of service, a tenure that included both overseeing significant changes to the program as well as a pandemic. Mike’s consistent and pragmatic leadership eased transitions and steadied the program in difficult circumstances.

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<sup>1</sup> July 1, 2021, through June 30, 2022

<sup>2</sup> Appendix A is a list of hearing panel members, assistance panel members, and lawyers who served as contact or conflict counsel in FY22.

## II. BOARD WORK

The Board met five times in FY22. Much of the Board's work involved its supervisory role over the staff attorneys and their respective workloads. Their reports are adopted as part of this one. The Board's additional work is summarized below.

**A. Admonitions.** Early in the fiscal year, the Board began a discussion of the continued utility of the admonition as a disciplinary sanction. A.O. 9 authorizes two types of admonition: one issued by Disciplinary Counsel prior to formal charges being filed against a lawyer, and another that is imposed by a hearing panel after formal charges have been presented. The Board studied whether to recommend that the Court amend A.O. 9 to eliminate the latter.

Over a series of meetings, the Board heard from Hearing Panel Counsel, Disciplinary Counsel, and Bar Counsel. The Board solicited and reviewed comments from more than 40 current and former hearing panel members. The Board's discussion included thoughts on transparency, fairness, and public perception of the bar. Much of the focus was on the appropriate balance between the duties of a self-regulating profession and the disciplinary response to conduct that, by definition, is minor, with little or no injury or chance of repetition.<sup>3</sup>

In the end, a motion was made and seconded to recommend that the Court eliminate the availability of an admonition as a disciplinary sanction after formal charges have been filed. The motion did not carry.

**B. Malpractice Insurance Disclosure.** In FY21, the Professional Responsibility Board and the Vermont Bar Association formed a joint committee to study whether to adopt a rule that would require lawyers (1) to carry professional liability insurance; or (2) to notify clients that they do not; or (3) to disclose their liability insurance status on the attorney licensing statement.

In FY22, the Committee proposed that the Court amend Administrative Order 41 to require lawyers to disclose their insurance status on the licensing statement and to make the disclosure publicly available. The Committee proposed to exempt government attorneys, in-house counsel, and attorneys not on active status. The Board voted to support the Committee's proposal. As FY22 ended, the notice and comment period had closed, and the Committee had recommended that the Court promulgate the rule as proposed.

**C. Proposed Amendments to Administrative Order 9.** The Board voted to recommend that the Court amend Rules 7, 8, 20, and 26 of Administrative Order 9. As the fiscal year ended, the proposed amendments had been published for notice and comment.

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<sup>3</sup> See, A.O. 9, Rule 15.A.5.b.

Near the end of the fiscal year, the Board proposed an amendment to Rule 13.E of Administrative Order 9. As the fiscal year ended, the proposal was before the Court.

**D. Proposed Amendments to the Vermont Rules of Professional Conduct.** The Board voted to recommend that the Court amend several of the Rules of Professional Conduct.<sup>4</sup> As the fiscal year ended, the proposed amendments had been published for notice and comment. to reflect the 2021 amendments to Administrative Order 9 and to make the policies gender neutral.

**E. Amendments to Board Policies.** The Board adopted Policy 25. It states that when bar, disciplinary, or screening counsel has a conflict, the Board chair will appoint an alternate. Later in the year, the Board amended or repealed its policies.

**F. Hearing Panel Decisions.**

The Board’s hearing panels issued six decisions in FY22. By rule, either Disciplinary Counsel or the respondent can appeal to the Supreme Court. Even if no appeal is taken, the Court can order review of a hearing panel decision on its own motion. The panel decisions issued in FY22:

<a href="#">PRB Decision 238</a>	9-month suspension	No appeal or review
<a href="#">PRB Decision 240</a>	3-month suspension	Pending review by Supreme Court as FY22 ended
<a href="#">PRB Decision 242</a>	30-day suspension	Pending appeal as FY22 ended
<a href="#">PRB Decision 244</a>	Public Reprimand	No appeal or review
<a href="#">PRB Decision 245</a>	Stipulated Dismissal	No appeal or review
<a href="#">PRB Decision 246</a>	15-month suspension	Pending review by Supreme Court as FY22 ended

**III. CONCLUSION**

All participants in the Professional Responsibility Program look forward to continuing to work to serve the Supreme Court, the legal profession, and the public.

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<sup>4</sup> Rules 1.2(d), 1.6, 1.15A, 3.1, 4.4(b), 5.3, 5.5, and 8.4(d).

# Bar Counsel's Report

## I. INTRODUCTION

As bar counsel,<sup>5</sup> I have long believed in [proactive attorney regulation](#). The goal of proactive regulation is for the regulator to work with the regulated to reduce risk and avoid problems. I view my job as to assist lawyers to comply with their professional responsibilities.<sup>6</sup>

I perform my job through the administration of the Bar Assistance Program. Everything that I do is meant to assist lawyers to develop and maintain the tools necessary to provide competent representation and to meet the high standards of professionalism and civility expected of attorneys admitted to the bar of the Vermont Supreme Court.

This is the report of my activities in Fiscal Year 2022.<sup>7</sup>

## II. THE BAR ASSISTANCE PROGRAM

### 1. History & Purpose.

The Bar Assistance Program (BAP) grew out of the Vermont Supreme Court's 2019 decision to make clear that [wellbeing is an aspect of a lawyer's duty of competence](#). The Court's decision followed several years of study, reflection, and discussion in response to the troubling findings reported in 2016 by the American Bar Association and Hazelden Betty Ford Clinic.<sup>8</sup> The findings prompted formation of the National Task Force on Lawyer Well-Being. In 2017, the Task Force [The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#). *In it, the Task Force acknowledged that:*

“To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. [Studies] reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance abuse. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence.”

The Task Force recommended that each state supreme court create its own commission to study ways to address (and improve) the legal profession's wellbeing.

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<sup>5</sup> The position of bar counsel exists pursuant to Rule 2 of [Supreme Court Administrative Order 9](#), with the incumbent's duties set out in Rules 4, 5, 6, and 7.

<sup>6</sup> See, Administrative Order. 9, Purpose, (1): A purpose of the Professional Responsibility Program is “to assist attorneys and the public by providing education, guidance, referrals, and other information designed to achieve, maintain, and enhance professional competence and professional responsibility.”

<sup>7</sup> The Judiciary's fiscal year ran from July 1, 2021, thru June 30, 2022.

<sup>8</sup> I first blogged about the findings [here](#).

In response, the Court created the Vermont Commission on the Well-Being of the Legal Profession. In 2018, the Commission issued a [State Action Plan](#). The plan played a significant role in the eventual creation of the Bar Assistance Program.

Nationally, the consensus is that many disciplinary violations involve lawyers with behavioral health issues.<sup>9</sup> BAP's goal is to reach lawyers before a complaint is filed. BAP stresses:

1. It is okay to seek help.
2. Help is available.

BAP began on April 1, 2021. Before then, bar counsel screened complaints, responded to ethics inquiries, and presented continuing legal education seminars. When BAP began, bar counsel's duties expanded to include assisting lawyers to address behavioral health issues. Reflecting a concern that lawyers in need of assistance would be wary of contacting bar counsel, BAP's creation resulted in a decision to remove bar counsel from the process by which disciplinary complaints are screened.

The Court created BAP as a temporary program. Recommendations on whether to continue, modify, or eliminate BAP are due on April 1, 2023.

As bar counsel, I am committed to the notion that low-level or benign misconduct should be diverted from the disciplinary process. I am as committed to the positions that help-seeking behavior should be destigmatized, and that behavioral health assistance must be decoupled from both the disciplinary process and the bar admission process.

## 2. Ethics Inquiries

Bar Counsel responds to ethics inquiries.<sup>10</sup> Inquiries are confidential and bar counsel is exempt from the mandatory reporting rule.<sup>11</sup> Here are my [Policies on Ethics Inquiries](#).

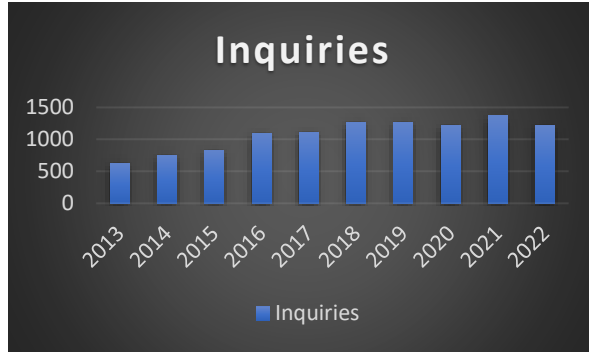
I received 1,217 inquiries in FY22, a slight decline from FY21.

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<sup>9</sup> See, Jerome M. Organ, [The Relationship between Attorney Discipline and Attorney Impairment: The Need for Better Information to Protect Clients and to Help Attorneys](#), 17 U. ST. THOMAS L.J. 941, 942-946 (2022)

<sup>10</sup> *A.O. 9, Rule 6*. Rule 6 includes the following language: “**(A) Legal Ethics Inquiries**. In response to an inquiry related to the Rules of Professional Conduct, law practice management, or a lawyer or judge’s professionalism or professional responsibilities, Bar Counsel will provide the inquirer with: (1) the appropriate referral, educational materials, or guidance; or (2) the preventive advice and information necessary to assist lawyers and judges to achieve, maintain, and enhance professional competence and professional responsibility.” (emphasis in the original).

<sup>11</sup> See, *A.O. 9, Rule 8, and V.R.Pr.C. 8.3(c)*.

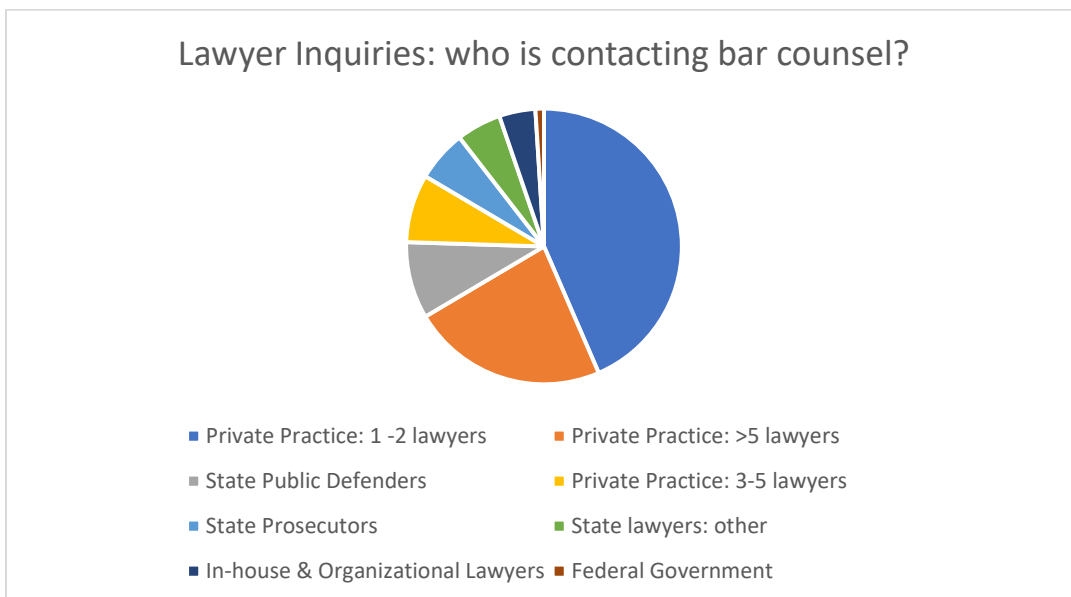


Appendix A is a summary of the 1<sup>st</sup>, 25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> inquiry received each month in FY22. The sample is representative of inquiries received throughout the fiscal year.

Most of the inquiries came from lawyers:

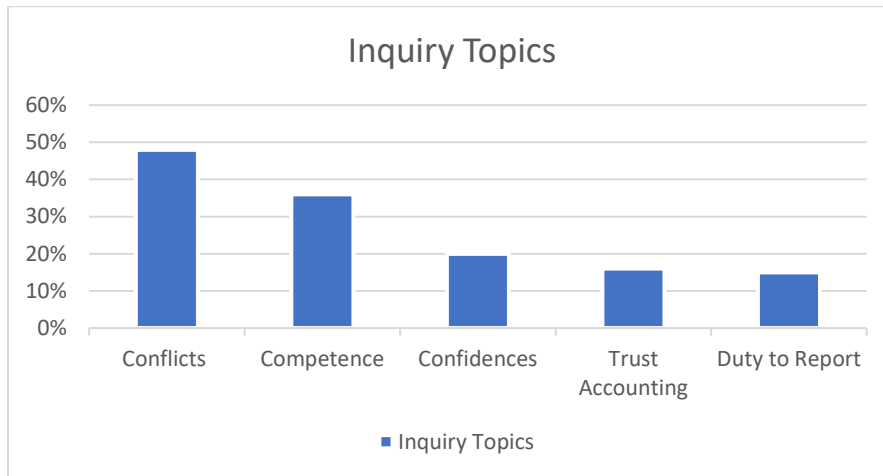
Lawyers	1115
Non-Lawyers	80
Judges	14
Law Professors	4
Law Students	3
Media	1

This chart shows where the lawyers who made inquiries work:



Many inquiries involve more than one topic or rule. For instance, inquiries about conflicts of interest often include discussion of the duty of confidentiality. Similarly, it is not uncommon for questions related to tech competence to include a reminder of the duty to act competently to safeguard client information.

The bulk of the inquiries that I handled in FY22 involved conflicts of interest. Here are the topics that were raised in at least 15% of the inquiries:



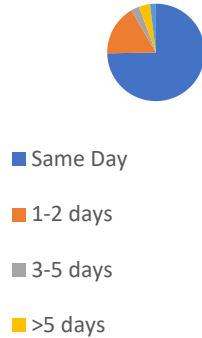
After the “big 5,” there were six other topic areas that arose in at least 5% of the inquiries. They were:

- Wellness & Wellbeing.
- Withdrawal from representation.
- Who decides? Client or Lawyer?
- Communicating with a represented person.
- Issues associated with clients who might lack the capacity to make informed decisions about the representation.
- File delivery & retention.



Finally, most inquires were resolved on the same day that they were received:

### Business Days to Resolve



### III. EDUCATION AND OUTREACH

Rule 5 of Administrative Order 9 requires Bar Counsel to:

...

“D. Develop and present programs related to the Rules of Professional Conduct, legal ethics, and a lawyer’s professional competence and professional responsibilities; and,

E. Develop and present programs concerning lawyer wellness and on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect lawyers’ and judges’ professional competence.”

In FY22, my education and outreach were done through CLE presentations, law firm consults, and my blog.

a. CLE Presentations

In FY22, I presented or co-presented at 31 different seminars that totaled 38.75 credit hours. The seminars were sponsored or arranged by:

- American Bar Association Center for Professional Responsibility
- Chittenden County Bar Association
- National Organization of Bar Counsel
- Office of the Attorney General
- Office of the Defender General
- Office of the State’s Attorneys & Sheriffs
- South Royalton Legal Clinic
- VATC/CATIC – Vermont Attorney’s Title Corporation

- Vermont Association for Justice
- Vermont Bar Association
- Vermont Bar Association Bankruptcy Section
- Vermont Bar Association Incubator Project
- Vermont Bar Association Young Lawyers Division
- Vermont Judiciary Guardian Ad Litem Program
- Vermont Law School
- Vermont Paralegal Organization
- Vermont Probate Judges Association
- Washington County Bar Association
- Windham County Bar Association

b. Law Firm Consults

A few years ago, I started a project that melds ethics inquiries with a CLE presentation. I visit law firms or offices to discuss legal ethics and professional responsibility with both the lawyers and the non-lawyer staff.

I begin with a short presentation that is identical to a CLE. Then, given that the lawyers and non-lawyers work together, attendees can ask questions as if making a confidential ethics inquiry. In FY22, I provided in-house CLE/ethics consults for 6 firms and offices.

c. Blog

I created [Ethical Grounds](#) in 2015. I use it to raise awareness on issues related to legal ethics and professional responsibility.

In FY22, I authored 134 posts. There were 17,535 distinct visits to the site, with the visitors combining for 37,271 page views. During the fiscal year, I created a new page that aggregates my posts related to [trust accounting, fees, and safeguarding client funds](#). I also regularly updated the page that includes links to [wellness resources](#).

Generally, the most popular posts are, by far, [the Friday quizzes](#) and the [Was That Wrong?](#) posts. The most read posts in FY22 were:

- [Remembering Joan Wing](#)
- [There are reasons to consider not copying a client on an email to opposing counsel](#)
- [The importance of setting reasonable client expectations & providing candid legal advice](#)
- [Law Firms and Disaster Planning](#)
- [Judge Peter Hall](#)

### 3. BAP Referrals

Administrative Order 9 contemplates three types of referrals to BAP: (a) informal behavioral health referrals; (b) formal behavioral health referrals; and (c) referrals for the non-disciplinary resolution of disciplinary complaints that have nothing to do with behavioral health.

### 4. Informal Behavior Health Referrals.

Informal behavioral health referrals are governed by Rule 6.B of Administrative Order 9. The rule authorizes bar counsel to provide guidance, advice, and referrals to the lawyer who is the subject of the informal referral and, if the lawyer consents, to refer the matter to an Assistance Panel. The rule also allows the lawyer to enter a “compliance agreement” with bar counsel.

In FY22, there were 17 informal referrals to BAP. Ten were self-referrals, while 7 were referred by others who requested that bar counsel perform a wellness check.<sup>12</sup> I provided each of the 17 with guidance, advice, and referrals, sometimes over the course of several discussions. One of the lawyers accepted a referral to an Assistance Panel.<sup>13</sup> None of the lawyers opted to enter into a compliance agreement with bar counsel.

Remember: it is okay to ask for help and help is available. There is a list of resources [here](#). There are even more resources on the [VBA’s Attorney Well-Being page](#)

#### a. Formal Behavioral Health Referrals.

Formal behavioral health referrals are governed by Rule 6.C of Administrative Order 9. The rule authorizes screening counsel, disciplinary counsel, a hearing panel<sup>14</sup>, the Character and Fitness Committee, and the Judicial Conduct Board to make behavioral health referrals to BAP. If made, bar counsel must assign the matter to an Assistance Panel for resolution consistent with Rule 7.

BAP did not receive any formal referrals in FY22. I find this concerning. Absent formal referrals, I do not think it makes sense to continue to keep bar counsel from the screening process.

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<sup>12</sup> I try to keep requests for wellness checks anonymous. Sometimes, however, the lawyer who is the subject of the request can determine who contacted me.

<sup>13</sup> See, *Administrative Order 9, Rule 7*. In this case, the lawyer self-referred due to increased stress and anxiety that resulted after the lawyer left a law firm to open a sole practice and, around the same time, endured a series of setbacks in the lawyer’s personal life.

<sup>14</sup> A “hearing panel” is the Professional Responsibility Board’s version of a “trial court.” Hearing panels consider and decide matters in which formal disciplinary or disability charges are commenced against a lawyer’s license. See, *A.O. 9, Rule 14*. There are 10 standing panels.

b. Nonbehavioral Health Referrals.

A nonbehavioral health referral is when Screening Counsel or Disciplinary Counsel refers a disciplinary complaint to BAP for non-disciplinary dispute resolution and for reasons that, as the label suggests, have nothing to do with behavioral health. The process is like “diversion,” with many of the referrals being assigned to an assistance panel. These types of referrals are most often complaints that are too serious to dismiss out of hand but that are not serious enough to warrant a disciplinary prosecution. The Reporter’s Notes to the 2021 Amendments to A.O. 9 indicate that “[t]he Court and Board support the notion that Assistance Panels play an important role in building and maintaining the public’s confidence in the legal profession.”

In FY22, BAP did not receive any nonbehavioral health referrals from Disciplinary Counsel. BAP received 8 such referrals from screening counsel.<sup>15</sup> Of those, I resolved 5, assistance panels resolved two, and 1 was pending assignment to an assistance panel when the fiscal year closed.

c. Wellbeing Week in Law

Wellbeing Week in Law began on May 2, 2022. Conceived and promoted by the Institute for Well-Being in Law (IWIL), the event’s goals were “to raise awareness about mental health and to encourage action and innovation across the profession to improve well-being.”

Each day focused on a different aspect of wellness:



<sup>15</sup> Bar Counsel is not involved with screening disciplinary complaints. However, due to a staffing issue, in FY22, the Board and Court Administrator assigned me to screen 41 disciplinary complaints. Of those, 15 were pending screening as FY 22 began. Then, I screened the first 26 complaints filed during the fiscal year. See, Section C(4), *infra*.

IWIL's [participation guide](#) included dozens of suggestions for each day, breaking the suggestions into things to read, things to watch or listen to, and things to do.

I encouraged Vermont's legal community to participate. Then, I participated by posting blogs and videos relevant to each day's theme:

- [Stay Strong](#)
- [Spiritual Wellbeing: align](#)
- [Intellectual Wellbeing: I made bread!](#)
- [Social Wellbeing: connect & contribute](#)
- [Emotional Intelligence & The Kentucky Derby](#)

The week was a success. As I blogged [here](#), more than 30 law offices, lawyers, and legal professionals contacted me to indicate that they had participated. The post includes a quote that, to me, perfectly captures the importance of tending to our own well-being.

[Patty Turley](#) is General Counsel for the Vermont State Colleges. Here's part of Patty's reply to the email I sent encouraging participation in WWIL:

- a. "Hi Mike – This was such a good reminder for wellness! It was a crazy busy week; they are all busy but this one was exceptionally crazy. At first I thought: "It is such a busy week, I don't have time to take this on." Then I decided to switch my thinking: "It is such a busy week, it is more important than ever to make time for wellness." It worked. I often did 2-3 shorter activities (walks, yoga, strength-training, meditation, reading for pleasure) each day."

Here, here!

#### **IV. SUPPORTING THE PROFESSIONAL RESPONSIBILITY BOARD**

- a. [Rule Requiring Malpractice Insurance Disclosure](#)

In FY21, the Professional Responsibility Board and the Vermont Bar ASSOCIATION formed a joint committee to study whether to adopt a rule that would require lawyers (1) to carry professional liability insurance; or (2) to notify clients that they do not; or (3) to disclose their liability insurance status on the attorney licensing statement. Along with Teri Corsones, Executive Director of the VBA, Bar Counsel staffed the committee.

In FY22, the Committee proposed that the Court amend Administrative Order 41 to require lawyers to disclose their insurance status on the semi-annual licensing statement. The Committee proposed to exempt government attorneys, in-house counsel, and attorneys not on

active status. Both the PRB and the VBA Board of Managers voted to support the Committee’s proposal. As FY22 ended, the notice and comment period had closed, and the Committee had recommended that the Court promulgate the rule as proposed. [This blog post](#) outlines the Committee’s work.

b. Proposed Amendments to Administrative Order 9

In FY22, I asked the Board to propose that the Court amend Rules 7, 8, 20, and 26 of Administrative Order 9. The Board agreed. As the fiscal year ended, [the proposed amendments](#) had been published for notice and comment.

c. Proposed Amendments to the Vermont Rules of Professional Conduct

In FY22, I asked the Board to propose that the Court amend several of the Rules of Professional Conduct. The Board agreed. As the fiscal year ended, [the proposed amendments](#) had been published for notice and comment.

d. Screening Disciplinary Complaints

When the Court amended Administrative Order 9 to implement the Bar Assistance Program, it made clear that bar counsel is not to be involved with screening disciplinary complaints.<sup>16</sup> As such, I stopped screening complaints on April 1, 2021.

However, early in FY22, an issue resulted in the Board and Court Administrator assigning me as temporary screener. During that time, I screened 41 disciplinary complaints: 15 that were pending when FY21 closed and the first 26 filed in FY 22. This chart shows the results:

Dismissed	28
Referred to Disciplinary Counsel	9
Referred to Bar Assistance Program	4

**V. OTHER**

In FY22, I served as a member of the:

- Vermont Commission of the Well-Being of the Legal Profession (Chair, Regulators Committee)

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<sup>16</sup> A.O. 9, Rule 5, Reporter’s Note to the 2021 Amendments

- Vermont Bar Association COVID-19 Response Committee
- Vermont Bar Association Pro Bono Committee (Chair)
- National Organization of Bar Counsel Website Committee

Outside the law, I served as a member of the Run Vermont Board of Directors and was an assistant coach on the South Burlington High School varsity girls basketball team. I sought wellness via running, logging 2,615 miles in FY22. Alas, I demonstrated an utter lack of competence at [registering](#) for an important race.

## Screening Counsel's Report

By rule, Screening Counsel screens complaints. The screening process involves conducting 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, Screening 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. Screening 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, Screening Counsel is prohibited from screening a complaint in which Screening Counsel has a conflict of interest.

In FY 2022, we opened 142 new files. The results of screening those files are as follows:

- IOLTA Overdraft Notices (referred directly to Disciplinary Counsel): 9
- Referred to Conflict Screening Counsel: 4
- Referred to the Bar Assistance Program for Non-Disciplinary Resolution: 6
- Resolved or Dismissed after Limited Investigation by Screening Counsel: 87
- Referred to Disciplinary Counsel for Investigation: 33
- Disability matter referred to Disciplinary Counsel: 1
- Withdrawn by complainant: 2

## **Disciplinary Counsel**

### **I. INTRODUCTION AND YEAR IN REVIEW**

Disciplinary counsel administers the disciplinary side of the Professional Responsibility Program, pursuant to A.O. 9, Rule 9. The office of disciplinary counsel is staffed by one full-time attorney and one part-time administrative assistant. Disciplinary counsel utilizes additional contract resources as necessary, such as an investigator, certified public accountant, Special Appointed Disciplinary Counsel, and court-appointed trustees for deceased, suspended or disabled attorneys.

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.

FY22 saw the continuation of remote hearings using Webex before hearing panels and before the Vermont Supreme Court. Most participants in hearings were able to participate fairly seamlessly with the support of the Judiciary's operations assistants.

### **II. INVESTIGATION**

Complaints come to disciplinary counsel for investigation in three main ways. The majority are written complaints received by the program. These complaints are screened initially by licensing counsel. 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 is referred for 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 majority of investigations, disciplinary counsel performs an in-person interview or video interview of the lawyer under investigation.

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. Complainants and respondents are generally 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.

### **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 to bar counsel for non-disciplinary resolution, including an assistance panel or the Bar Assistance Program. In FY22, no cases were referred to bar counsel for assignment to an Assistance Panel. One case was referred to the Bar Assistance Program. No cases were referred to dispute resolution.

### **Dismissals**

Disciplinary counsel investigated and dismissed 29 matters in FY22. 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.

### **Investigative Docket Status**

During the fiscal year, 30 new files were referred by screening counsel to disciplinary counsel based upon an evaluation of a written complaint. Six files were referred to disciplinary counsel for investigation by the Board Chair following screening counsel's initial dismissal. An additional nine files were opened related to bank reports or self-reports, and one file was opened by disciplinary counsel. In total, 46 files were opened as new investigations.

The table below shows a numerical breakdown of general categories of issues raised in new investigations opened in FY22.

Issue	Number of matters*
Competence, diligence, and/or communication	10
Trust accounting related	9
Misrepresentation to court or other party	9
Billing related	4
Conflicts of interest	3
Incivility/harassment	3
Unauthorized practice of law	3
Failure to appear in court	2
Disability-related	5
Breach of confidentiality	1
Mishandling of funds	1

\* Note the sum exceeds 46 because some matters raised multiple issues.

### **III. 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 23**

In cases where an attorney consents to disbarment under A.O. 9, Rule 23, 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 FY22, there were no consents to disbarment.

##### **b. Petitions for Reciprocal Discipline under A.O. 9, Rule 24**

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 FY21, disciplinary counsel received one notice of a Vermont-licensed attorney disciplined in another jurisdiction and filed it with the Supreme Court. In FY22, the Court dismissed that matter without imposing discipline.

##### **c. Petitions for Interim Suspension under A.O. 9, Rule 22**

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 25 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 FY22, disciplinary counsel filed three petitions for interim suspension. Hearings were held by Webex in the Supreme Court and all three petitions were granted.

##### **d. Trustee proceedings under A.O. 9, Rule 28**

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 FY22, two trustees were appointed to assist attorneys who were suspended.

### **Disability Proceedings under A.O. 9, Rule 25**

Two nonpublic disability matters were initiated in FY22. One resulted in Respondent being transferred to disability status and one remained pending at the close of FY22.

### **Reinstatement Petitions under A.O. 9, Rule 26**

There were no reinstatement petitions filed in FY22.

### **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 13.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. In FY22, two requests for finding of probable cause were filed. One request involved seven counts and 12 total rule violations. The other involved three rule violations. Probable cause was found in both 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 FY22, disciplinary counsel charged one new case by petition of misconduct and one new case by stipulation of facts.

In FY22, three merits hearings were held by Webex over five dates. Hearings are open to the public and are ordinarily held in courthouses, but public access for FY22 was provided through broadcast to the Judiciary's youtube channel. At the close of FY22, four cases remained pending before hearing panels into the next fiscal year.

### **Hearing Panel Decisions**

During FY22, hearing panels issued seven decisions involving seven contested matters. All decisions are posted to the [webpage](#). If no appeal is taken, the decisions become final. Below is a chart listing decision numbers, rule violations, and sanctions resulting.

Decision Number	Title	Rule violations found	Sanction
238	2020-102 In re Carrie Legus	8.1(b)	9 month suspension
240	2020-066 In re Paul Kulig	1.7(a)(2); 1.8(c)	3 month suspension*
241	2020-007, 2021-099 In re Stuart Robinson	N/A	Transfer to disability inactive based upon inability to properly defend against disciplinary proceeding
242	2021-018 In re Melvin Fink	4.2	30 day suspension*
244	2021-101 In re Jean Pagliughi	1.1, 1.15A, 1.15(a)(1), (2) & (4)	Reprimand
245	File 2020-064 In re Carolyn Adams	N/A (Dismissal without prejudice)	No additional sanction
246	Files 2020-099, 2020-101 In re William Cobb	1.1; 1.3; 1.6; 8.4(c), (d)	15 month suspension*

\*Pending on appeal at close of FY22

### 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. One appeal of a FY22 decision was initiated by a Respondent. The Court ordered review upon its own motion of two other FY22 Hearing Panel decisions. At the close of FY22, all three matters remained pending in the Supreme Court.

## IV. TRAINING AND OTHER ACTIVITIES

In FY22, Disciplinary counsel attended three days of training provided by the National Organization of Bar Counsel. Disciplinary counsel also served as a regional reporter for disciplinary cases for the Eastern region. At the request of the Board, disciplinary counsel revised and updated the Hearing Panel Manual. The new manual is available publicly on the PRB web page.

## **V. 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 FY22 opened, disciplinary counsel was monitoring three attorneys on disciplinary probation. All three remained on probation at the close of FY22.

## **VI. COMPLIANCE WITH THE TRUST ACCOUNT RULES**

In FY22, disciplinary counsel opened nine IOLTA overdraft related cases. All nine cases were investigated.

## **VII. 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. By agreement, approved institutions agree to the 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 FY22, a new request for proposals was published for Certified Public Accountants. At the close of FY22, evaluation of bids was in progress.

### **Contract Investigators**

From time to time, disciplinary investigations arise in which disciplinary counsel requires contract investigator services. In FY22, a new request for proposals was published for investigative services. At the close of FY22, evaluation of bids was in progress.

## Appendix A

### 2022 PROFESSIONAL RESPONSIBILITY BOARD VOLUNTEERS

In addition to our Board Member, the Professional Responsibility Program is comprised of other volunteers. The program is indebted to their contribution of time and expertise.

### HEARING PANELS

As FY22 ended, the following individuals served as members of Hearing Panels:

Panel 1: Anthony Iarrapino	Emily Tredeau	Scott Hess
Panel 2: James Valente	Amelia Darrow	Brian Bannon
Panel 3: Gary Karnedy	Ashley Taylor	Peter Zuk
Panel 4: Mary Parent	Cara Cookson	Thad Richardson
Panel 5: Stephanie Foley	Bonnie Badgewick	Traci Cherrier
Panel 6: Dave Berman	Rick Goldsborough	Nicole Junas Ravelin
Panel 7: Jesse Bugbee	Vanessa Kittell	Carl Rosenquist
Panel 8: Jennifer McDonald	Jonathan Rose	Patrick Burke
Panel 9: Karl Anderson	Kate Thomas	TJ Sabotka
Panel 10: Jon Cohen	Mary Welford	Kelly Legacy

The following attorneys served as panelists on a Hearing Panel when there was a conflict or as Hearing Panel Counsel:

Eric Johnson	Ed Adrian
James Murdoch	Steve Adler
Shannon Bertrand	

### ASSISTANCE PANELS

In addition to Board members, all of whom may serve on Assistance Panels, the following volunteers served as Assistance Panel members during FY22:

#### Attorney Members

Alan Rome	Gavin Boyles
Alfonso Villegas	Honorable David Howard
Amy Butler	Honorable Thomas Durkin
Andrew Manitsky	Jennifer Emens-Butler
Bob O'Neill	Joe Cahill
Carolyn Anderson	Josh Simonds
Caryn Waxman	Leslie Hanafin
Deb Kirchwey	Liz Miller
Ed French	Liz Ryan Cole
Fred Bethel	Lon McClintock

Mark Oettinger  
Martha Smyrski  
Michael Hanley  
Phil Danielson  
Sandra Bevans

Shannon Bertrand  
Steve Adler  
Susan Palmer  
Thea Lloyd

**Lay Members**

Chris Chapman  
Erik Wheeler  
Holly Poulin  
Kevin O'Donnell  
Linda Joy Sullivan  
Lori Cohen

Lucia White  
Lynn Dunton  
Neal Rodar  
Peter Zuk  
Quaron Pinckney  
Susan Fay

**CONTRACT COUNSEL**

The following Attorneys served the program as screening and/or disciplinary counsel as needed in FY 22.

Ben Battles  
David Seff  
Ed Adrian  
Francesca Bove  
Hannah Waite  
Ian Carleton  
Jack Kennelly  
Jessica Burke

Kevin Lumpkin  
Lisa Shelkrot  
Navah Spero  
Pete Mousseau  
Russell Hillard  
Samantha Lednicky  
Steve Adler  
Tom McCormick

## **Appendix B Inquiries of Bar Counsel**

*This appendix is a representative sample of inquiries of Bar Counsel. It reflects the 1<sup>st</sup>, 25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> inquiry of each month of FY22.*

- 7.1.21** A lawyer contacted me for guidance concerning the lawyer's believe that opposing counsel had a conflict.
- 7.25.21** A lawyer requested guidance on how to respond to a judge's order to disclose additional information in support of the lawyer's motion to withdraw.
- 7.50.21** A lawyer requested guidance on how much the lawyer could disclose in a motion to withdraw.
- 7.75.21** A non-lawyer expressed concern that their lawyer did not attend a hearing.
- 8.1.21** A lawyer represents one spouse in a divorce. The lawyer requested guidance on the couple's request that the lawyer mediate the divorce.
- 8.25.21** A lawyer representing the seller of residential real estate requested guidance related to the fact that the purchase & sale required the buyer to wire funds in advance of closing, but buyer's attorney would only disburse by trust account check.
- 8.50.21** A lawyer requested guidance related to serving on a municipal board before which other lawyers in the same firm often appear on behalf of clients.
- 8.75.21** A lawyer sought guidance related to entering into a business transaction with a former client.
- 9.1.21** A lawyer represented a client in a dispute with family members. The lawyer requested guidance after learning that the lawyer's client had been paying opposing counsel's legal fees.
- 9.25.21** A judge asked that I do a wellness check on an attorney.
- 9.50.21** A lawyer sought guidance after receiving information related to the representation of a client that might be useful to a municipal board that the lawyer is on.
- 9.75.21** A lawyer contacted me to ask me to help to resolve a dispute between the lawyer's clients and their former lawyer.
- 10.1.21** A lawyer requested guidance on a potential conflict of interesting arising from a job that the lawyer had before becoming a lawyer.



**10.25.21** A lawyer asked for tips on how to deal with a lawyer who is constantly rude and belittling.

**10.50.21** A lawyer sought guidance on the lawyer's duties when closing a law practice.

**10.75.21** A lawyer asked for guidance on how long to retain notes of meetings with prospective clients who decide not to hire the lawyer.

**11.1.21** A lawyer represented a divorce client whose spouse was self-represented. The lawyer sought guidance on duties, if any, owed to the unrepresented person.

**11.25.21** A lawyer contacted me to discuss a potential former client conflict.

**11.50.21** A lawyer with a divorce client contacted me for guidance after learning that another client was the other side's expert.

**11.75.21** A lawyer is interviewing for other jobs. The lawyer contacted me to ask whether the lawyer must inform clients about the job search.

**12.1.21** A lawyer sought guidance related to a potential former client conflict.

**12.25.21** A lawyer contacted me to discuss whether the lawyer had a duty to report another lawyer.

**12.50.21** A lawyer asked me to do a wellness check on another lawyer.

**12.75.21** A lawyer opened a new trust account and asked for guidance after learning that the bank required a minimum balance.

**1.1.22** A lawyer applying for another job had a question about listing opposing counsel as a reference.

**1.25.22** A lawyer asked me to help to address opposing counsel's incivility and rudeness.

**1.50.22** A lawyer sought guidance on whether the lawyer had a duty to report another lawyer.

**1.75.22** A lawyer sought guidance on whether the lawyer had a duty to self-report.

**2.1.22** A judge asked me to do a wellness check on a lawyer.

**2.25.22** A lawyer requested guidance related to the lawyer's duties after learning that a client may have lied under oath during a deposition.

**2.50.22** A lawyer sought guidance related to a client with a cognitive impairment.

**2.75.22** A lawyer asked for guidance related to a flat fee.

- 3.1.22** A lawyer contacted me for guidance on closing a law practice.
- 3.25.22** An out-of-state lawyer contacted with questions on Vermont's rule on the unauthorized practice of law.
- 3.50.22** A lawyer contacted me for guidance related to a potential former client conflict.
- 3.75.22** A non-lawyer asked me to have their lawyer contact them.
- 4.1.22** A judge asked me to do a wellness check on a lawyer.
- 4.25.22** A lawyer who is hiring a new associate contacted me after receiving a writing sample that appeared to disclose confidential information.
- 4.50.22** A lawyer asked me to help to resolve issues with another lawyer who is rude and belittling.
- 4.75.22** A lawyer sought guidance on how to handle abandoned funds that the lawyer is holding in trust.
- 5.1.22** A lawyer asked for guidance on the ethics issues associated with working remotely.
- 5.25.22** A lawyer asked whether the lawyer had a duty to report another lawyer.
- 5.50.22** A lawyer asked for guidance related to the duty of confidentiality owed to a former client.
- 5.75.22** A lawyer asked for guidance on the rule on the unauthorized practice of law.
- 6.1.22** A lawyer asked for guidance after receiving an email that appeared to be a trust account scam.
- 6.25.22** A lawyer sought guidance related to representing a client with whom there is a language barrier.
- 6.50.22** A lawyer asked for guidance related to referral fees and fee sharing.
- 6.75.22** A law student asked for guidance related to the duty of candor on the application for admission.