

**TO: The Vermont Supreme Court**  
Honorable Jeffrey L. Amestoy, Chief Justice  
Honorable John A. Dooley, Associate Justice  
Honorable James L. Morse, Associate Justice  
Honorable Denise Johnson, Associate Justice  
Honorable Marilyn Skoglund, Associate Justice

**FROM: The Professional Responsibility Board**  
Robert P. Keiner, Esq. - Chair  
Joan L. Wing, Esq. - Vice-Chair  
Steven Adler, Esq.  
Mary Ann Carlson  
Honorable Shireen Avis Fisher  
Sandra Gartner  
Neal Rodar

**RE: Annual Report of the Professional Responsibility Program for FY 2000**

**Date: September 1, 2000**

The Professional Responsibility Board is required by A.O. 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.

## **A. Introduction and Overview**

This is the first annual report to be issued by the newly constituted Professional Responsibility Program which began on September 1, 1999. The Program replaces the former Professional Conduct Board which continued to operate until April of 2000.<sup>1</sup> While its predecessor’s mission was focused solely on lawyer discipline, the Professional Responsibility Program has a wider mandate. It is:

(1) to resolve complaints against attorneys through fair and prompt dispute resolution procedures, (2) to investigate and discipline attorney misconduct,

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<sup>1</sup> The Professional Conduct Board was established in 1972 for the purpose of enforcing the Code of Professional Responsibility which had been adopted two years before. Before 1972, enforcement of ethical standards had been managed by the Ethics Committee of the Vermont Bar Association.

and (3) to assist attorneys and the public by providing education, advice, referrals, and other information designed to maintain and enhance the standards of professional responsibility.

Administrative Order 9, Preamble.

To accomplish these goals, the Professional Responsibility Program devoted this fiscal year to:

- (1) eliminating the backlog of dormant cases and reducing the size of the docket,
- (2) bringing formal disciplinary proceedings in older, pending cases,
- (3) providing prompt screening of all incoming complaints through implementation of a Central Intake Office,
- (4) recruiting and training new hearing panel and assistance panel members,
- (5) resolving minor complaints through an alternative to discipline program;
- (6) providing formal educational programs to members of the bar on the new Rules of Professional Responsibility, which became effective on September 1, 1999,
- (7) providing information to the public and the bar on practice issues, and
- (8) establishing guidelines, policies and procedures for the program's operations.

## **B. Report of Program Efforts in Meeting Goals**

### **1. Elimination of the Backlog and Reduction of the Size of the Docket**

At the beginning of FY 2000, Disciplinary Counsel's docket of pending cases included 12 dormant cases.<sup>2</sup> By the end of FY 2000, Disciplinary Counsel had not only initiated investigations into all of these cases, but had also filed petitions in or dismissed all but one of the previously dormant cases. Investigation is ongoing in the one remaining older case. Thus, there are no longer any dormant cases.

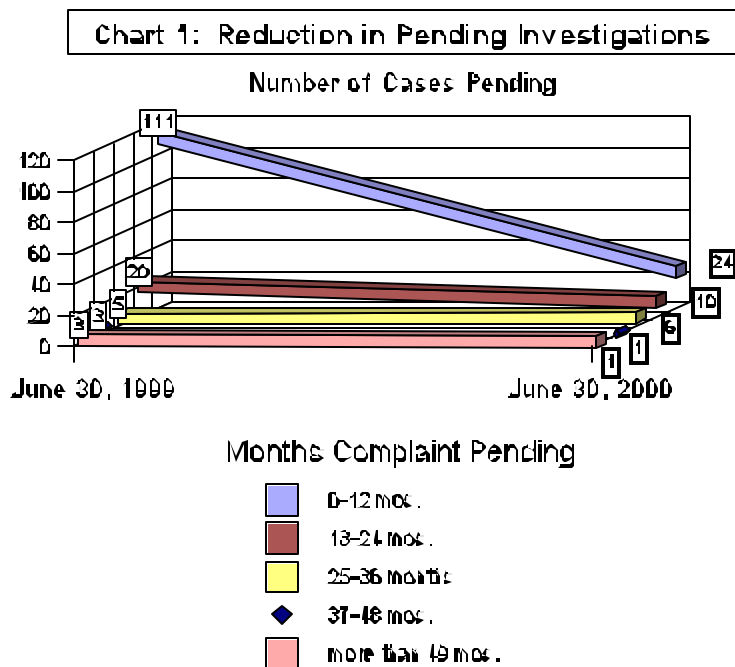
At the beginning of FY 2000, the docket consisted of 174 pending complaints. Many of these were cases where initial investigation had been completed by a staff investigator. However, due to a lack of sufficient legal resources, Disciplinary Counsel had been unable to bring those cases to a conclusion. The Professional Responsibility Board addressed this problem by reallocating resources. The use of a full time investigator was eliminated, and the use of a contract Deputy Disciplinary Counsel was increased.

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<sup>2</sup>A dormant case is defined as a complaint 12 months or older which, pursuant to the 1989 operating rules, had been reviewed by Disciplinary Counsel and provided to the respondent, but had not yet been investigated .

The results were dramatic. By the end of FY 2000, Disciplinary Counsel was able to reduce the docket by 45% to only 78 cases. Together, the two disciplinary lawyers investigated, prosecuted, otherwise resolved over 100 complaints.

The speed with which new complaints were addressed was also increased. With the application of new Central Intake procedures, Disciplinary Counsel and staff were able to reduce the amount of time it takes to review incoming complaints. This should prevent the creation of a new backlog in the future. The chart below illustrates their success in promptly addressing new cases while steadily decreasing the number of older cases.

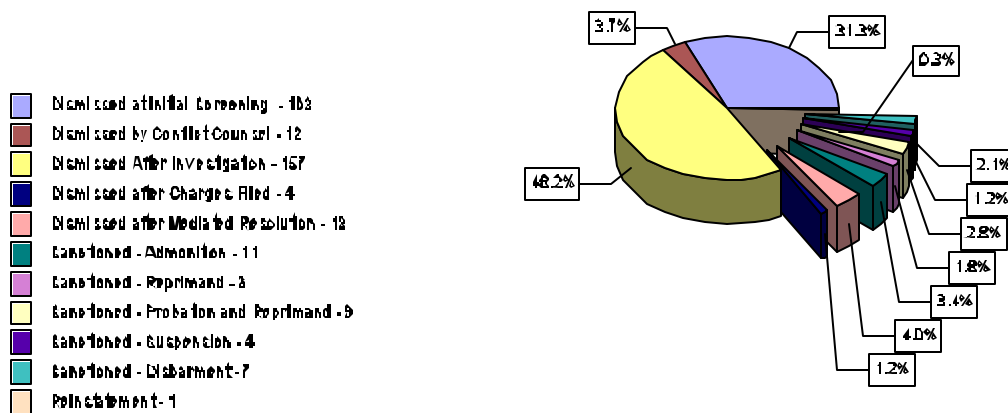


The docket currently contains fewer cases than it did a year ago. However, the docket contains a much higher percentage of serious and time-consuming cases than it did a year

ago. At the beginning of the fiscal year, disciplinary proceedings had been commenced in only 12% (21 cases) of all the cases on the docket. At the end of the fiscal year, formal disciplinary proceedings were pending in 46% (36 cases) of the docketed cases.

This represents a 71% increase in pending litigation. During the year Disciplinary Counsel initiated formal disciplinary proceedings in a record number of cases: a total of 39 cases against 20 lawyers. Clearly, substantial legal resources will be required in the coming

**Chart 2: Dispositions at a Glance**  
Total of 328 Cases Resolved



year to litigate these cases while continuing to investigate and process new ones.

## 2. Disposition of Cases

During FY 2000, the Professional Responsibility Program and the Professional Conduct Board resolved a record number of complaints. This section addresses how those cases were resolved.

As indicated above, 88% of the cases which were resolved were done so without imposition of discipline, either because the complaint was resolved through mediation or because the complaint did not constitute an ethical violation for which discipline should be imposed. Table A details these dismissals.

**TABLE A: Dismissals and Non-Disciplinary Resolutions**

Cases Dismissed by Bar Counsel at Initial Screening	103
Cases Dismissed by Disciplinary Counsel after Investigation	157
Cases Dismissed by Special Conflict Counsel	12
Cases Dismissed by Panel or PCB After Charges Filed	4
Cases Resolved by Assistance Panels or Non-Disciplinary Resolution Panels	13
Total	290

Discipline was imposed in a total of 37 cases involving 18 lawyers. One lawyer was reinstated to practice after his period of suspension had been served and after demonstrating fitness to resume practice. These resolutions are detailed in Table B.

**TABLE B: Disciplinary Resolutions**

TYPE OF SANCTION	NUMBER OF CASES	NUMBER OF LAWYERS
Private Admonition	11	10
Public Reprimand	6	3
Probation and Public Reprimand	8	2
Suspension from Practice	4	1
Disbarment (by Affidavit)	7	2
Transfer to Disability or Inactive Status	0	0
Reinstatement to the Bar	1	1
<b>Total</b>	<b>37</b>	<b>19</b>

At the end of the fiscal year, there were 28 disciplinary cases pending: 4 were on appeal, 12 were before the Supreme Court, and 12 were awaiting action by hearing panels.

### **3. Intake of New Complaints and the Establishment of a Central Intake Office**

Under previous practice, there was dissatisfaction with both the amount of time it took for complaints to be screened and the results of the screening. The great majority of complaints received about Vermont attorneys concern relatively minor matters that do not rise to violations of the applicable ethical rules, e.g., complaints about difficulties in communicating with lawyers, obtaining access to files, lack of attention to clients' concerns, etc. Eventually, these complaints were dismissed, usually without any remedial action taken. Because only one lawyer - the Disciplinary Counsel - was responsible for screening, investigating, and litigating all complaints, it took months, often years, for complaints to be reviewed, investigated, and eventually closed. This created a hardship not only for

complainants, but also for lawyers who had to live for long period of time with outstanding complaints filed against them, when most complaints were eventually deemed unfounded.

This fiscal year, the efforts of two lawyers working full-time and one lawyer working part-time were committed to case work, with one half-time lawyer working exclusively on screening of incoming complaints and troubleshooting minor problems.

Pursuant to A.O. 9, Rule 10, all complaints regarding lawyer misconduct are directed to the Professional Responsibility Program for screening.<sup>3</sup> The Board has decided that, unless there is a conflict, initial screening of all complaints will be conducted by Bar Counsel, who operates the Central Intake Office. Bar Counsel reviews the complaints and endeavors to speak directly to each complainant about his or her concerns. During FY 2000, Bar Counsel spoke directly to an estimated 90% of the complainants. Bar Counsel also interviews each lawyer about the complaint. So as to encourage lawyers to be forthcoming with Bar Counsel, any communication a lawyer has with Bar Counsel is not provided to Disciplinary Counsel. If the matter warrants a formal investigation, Bar Counsel refers the matter to the disciplinary program.

As a result, in more than half the cases, Disciplinary Counsel no longer reviews and investigates complaints, allowing her to spend more time on litigation. Most cases were closed by Bar Counsel at the initial screening stage, either because Bar Counsel was able to informally resolve the matter or because the complaint did not involve facts which, if proven by clear and convincing evidence, would constitute grounds for imposition of sanctions. Where a more structured method of resolution is required, short of the disciplinary system, Bar Counsel refers the complaints to Assistance Panels.

During fiscal 2000, beginning on September 1, 1999, Bar Counsel screened 192 cases and resolved or closed 54% of them, without referral to Disciplinary Counsel or an Assistance Panel. In each case, the complainant received a detailed letter explaining what action had been taken, explaining why the matter was being closed, and informing each complainant of his or her right to appeal Bar Counsel's decision to the Chair of the Professional Responsibility Board. Only 10 of the complainants, about 5% of them, expressed their dissatisfaction with Bar Counsel's decision by seeking independent review from the Chair.

Bar Counsel established a target date of 30 days for completing screening of each case. Given the resource drain of operating both the Professional Responsibility Program and the Professional Conduct Board through most of the fiscal year, and the time required for initial start up of the Professional Responsibility Program, it required Bar Counsel to work

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<sup>3</sup>This excludes notices of IOLTA overdrafts which are handled exclusively by Disciplinary Counsel. Eighteen overdraft notices were received during the fiscal year, none of which were docketed as complaints and all of which were resolved.

three quarters time instead of half time to meet that goal. That goal was achieved in April. Screening is now current and there is no backlog at the intake stage. There are, however, no additional funds allocated for Bar Counsel to continue to work more than half-time, and we will closely monitor Bar Counsel’s continued ability to meet the 30-day target over the coming year.

The “raw” statistics for Bar Counsel’s screening efforts in FY 2000 are set forth below. Note that a total of 217 complaints were filed during the fiscal year, but only 192 were filed during the existence of the Professional Responsibility Program. The other 25 cases were handled by Disciplinary Counsel under former rules.

**Table 3: Results of Initial Screening by Bar Counsel**

ACTION TAKEN	NUMBER OF CASES	PERCENTAGE OF CASES
Cases Closed After Initial Screening	103	54
Cases Reopened by Chair upon Appeal of Complainant	2	1
Referred to Disciplinary Counsel	52	27
Referred to Conflict Counsel	5	3
Referred to Assistance Panels for Non-Disciplinary Resolution	14	7
Screening in Progress	4	2
Cases Awaiting Screening	12	6
Total Cases Received During FY 2000	192	100%

**4. Assistance Panels**

The Professional Responsibility Board appointed the following people to serve on its hearing and assistance panels:

Barry Griffith, Esq. - Rutland  
 Martha Smyrski, Esq. - Rutland  
 Stephen Anthony Carbine - Rutland  
 Paul Ferber, Esq. - White River  
 Robert Bent, Esq. - St. Johnsbury  
 Toby Young - Putney  
 Mark Sperry, Esq. - Burlington

Douglas Richards, Esq. - Springfield  
 Lawrin P. Crispe, Esq. - Brattleboro  
 Michael Filipiak - Springfield  
 Robert O’Neill, Esq. - Burlington  
 S. Stacy Chapman III, Esq. - Rutland  
 Ruth S. Stokes - Williston  
 Judith Salamandra Corso, Esq. - St. Johnsbury

Jane Woodruff, Esq. - Greensboro	George Coppenrath - West Barnet
Sara Gear Boyd - Burlington	James Gallagher, Esq. - St. Johnsbury
Steven A. Adler, Esq. - St. Johnsbury	Robert M. Butterfield, Esq. - St. Johnsbury
Hon. Ellen Maloney - East Dorset	Rachel Siegel - St. Johnsbury
John Webber, Esq. - Rutland	Mary Ann Carlson - Arlington
Hon. Shireen Fisher - Montpelier	Katherine Mosenthal, Esq. - Londonderry
Reverend Esther Brown - Hardwick	Alice Estey - Guilford
Robert Fairbanks, Esq. - Montpelier	Sandra Gartner - Rutland
Robert P. Keiner, Esq. - Middlebury	Larry Mandell, Esq. - Montpelier
Janet P. Shaw, Esq. - Middlebury	Alan Rome, Esq. - Montpelier
Ted Davis - Middlebury	Neal Rodar - Charlotte
Joan Loring Wing, Esq. - Rutland	Joseph F. Cahill, Jr., Esq. - St. Albans
Irene Carbine - Rutland	Susan Fay - Fairfax
R. Brownson Spencer II - North Clarendon	

The hearing panels assumed the previous responsibilities of both the Professional Conduct Board and its hearing panels to conduct hearings, issue published decisions, and impose sanctions. Unlike their predecessors, these panels do not have the benefit of legal support from the former General Counsel. Thus, the demand on their time and abilities is significant.

The Assistance Panels are the focal point of our non-disciplinary resolution program. These panels, supported in their work by Bar Counsel, hear cases which involve either minor misconduct by the lawyer or a lack of communication between lawyer and client. Assistance panels mediate disputes between lawyers and clients, assisting both parties to reach a satisfactory resolution to their problems.

The Professional Responsibility Board sponsored an all day workshop for all of these panel members on February 7, 2000, at the Costello Courthouse in Burlington. The Board provided extensive training materials including copies of all Professional Conduct and Professional Responsibility Board decisions, a digest of those decisions, copies of the Rules of Professional Conduct, the Code of Professional Responsibility, Administrative Order 9, and the ABA Standards for Imposing Lawyer Sanctions. Various staff and Professional Responsibility Board members presented sections on several matters including hearing panel procedures, how to write decisions, an overview of the disciplinary system, and other “nuts and bolts” topics. Faculty members from Woodbury College donated valuable mediation training to Assistance Panel members and staff.

During the fiscal year, the hearing panels convened on 12 occasions and the assistance panels convened on six occasions, with many more conferences by telephone. The Board estimates that these volunteers, including Board members, donated some 1,011 hours to the



Professional Responsibility Program during FY 2000.

## **5. Educational Programs for Members of the Bar**

Formal educational programs were offered by Disciplinary Counsel to members of the bar on at least 17 occasions during the fiscal year. A complete list of these offerings is set forth at the appendix.

With the new rule changes effective September 1, 1999, the Professional Responsibility Program was able to respond to requests from individual lawyers for ethical guidance. Bar Counsel informally provided educational information to at least 40 lawyers who, either by telephone or e-mail, raised questions regarding practice and procedure. There were so many of these inquiries that the Program will track these numbers for inclusion in next year's report.

In most cases, where non-emergency advice was sought, Bar Counsel referred the callers to the VBA's Professional Responsibility Committee which issues advisory opinions. The Professional Responsibility Program does not in any way wish to supplant the valuable work of that committee which remains the best source for a detailed, thoughtful response to ethical dilemmas.

In emergency situations, Bar Counsel offered ideas on how to approach the problem and directed the caller to appropriate provisions of the Rules of Professional Conduct and to research materials. The area of need ranged widely. Some lawyers had no familiarity with the applicable rules to lawyers. Other lawyers had put a great deal of research and thought into an ethical issue and were merely looking for a second opinion.

## **6. Establishment of Policies**

During the fiscal year, the Board convened on six occasions and addressed various personnel and policy issues as they arose. Pursuant to Rule 1.E (1) it formally adopted eleven policies which are described below. In addition, the Board assigned individual members of the Board to serve as liaison with Disciplinary and Bar Counsel regarding various issues such as personnel, case flow management, and budget.

1. Inasmuch as the open meeting law at 1 V.S.A. §312 does not apply to the Judiciary, the Board concluded that it is not required to open its meetings to members of the press. However, because the PRB would like to educate the public on the function of the Professional Responsibility Program, it granted the request of a member of the media to attend that part of the September meeting in which Disciplinary Counsel and Bar Counsel presented a general overview of the new program. Left unresolved was the issue of access to meeting minutes. September, 1999.

2. All inquiries from lawyers to Bar Counsel regarding ethics and law practice, as envisioned by A.O. 9, Rule 3 B(1) are confidential. October, 1999.
3. The Board amended the record destruction policy first adopted by the Professional Conduct Board in 1998. The new policy is as follows:
  1. COMPLAINTS WHERE NO INVESTIGATION IS INITIATED BY DISCIPLINARY COUNSEL. Files pertaining to these complaints will be destroyed after one year. Bar Counsel will so advise complainants so that complainants can request return of documents prior to destruction.
  2. COMPLAINTS WHICH ARE DISMISSED BY DISCIPLINARY COUNSEL AFTER INVESTIGATION OR REFERRED TO THE ASSISTANCE PANELS. Files regarding these complaints will be sent to public records for storage with an order to destroy after five years.
  3. COMPLAINTS WHICH RESULT IN IMPOSITION OF DISCIPLINE OR TRANSFER TO DISABILITY STATUS. Files regarding these complaints will not be destroyed. October, 1999.
4. The Board will review all decisions of the hearing panels, but not before those decisions are published. When a hearing panel report is sent to the Supreme Court, the Board will be given a copy electronically. Review of decisions will be put on the agenda for the next meeting. January, 2000.
5. After Bar Counsel screens the complaint and makes a determination that the matter shall be referred to Disciplinary Counsel, Disciplinary Counsel will be provided with a copy of the complaint only. Copies of Respondent's response, Bar Counsel's notes, memos, communications, intake sheets, etc. will not be provided to Disciplinary Counsel. January, 2000. The Board agreed to revisit this issue after one year. It reaffirmed this policy in May, 2000, as follows: "Other than the complaint, any communication, written or otherwise, and any investigation performed by Office of Bar Counsel should not be communicated in any way to Disciplinary Counsel Office."
6. All proceedings before Assistance Panels pursuant to Rule 4.B.(1) are confidential. If Bar Counsel refers a file to an Assistance Panel, the panel will receive the intake sheet, Bar Counsel's notes, annotations, and all information that is in the file. If the Assistance Panel should deem that the case should be before Disciplinary Counsel, only the complaint will be given to Disciplinary Counsel. January, 2000.
7. Until the Supreme Court can address the inconsistency in A.O. 9, at Rule 12, Rule 11.D., and Rule 8(A)(5), the Board concludes that all proceedings initiated by a stipulation recommending admonition shall remain under seal. In event the hearing

panel rejects the recommended admonition, the stipulation can be withdrawn and the file remains sealed. January, 2000.

8. If the Assistance Panel refers a matter to Disciplinary Counsel, Disciplinary Counsel must resolve it. The case may not be referred back to an Assistance Panel a second time. January, 2000.
9. A member of the PRB does not need to be present at every meeting of an Assistance Panel. A designee may be used. Pursuant to Rule 4. A., the Chair of the Board will appoint substitute members of Assistance Panels as necessary and will so notify Respondents and Complainants. May, 2000.
10. All correspondence and decisions by Hearing Panels are to be on Professional Responsibility Program stationery. May, 2000.
11. In the event Disciplinary Counsel brings a new complaint against a respondent who has failed to co-operate in the investigation of an existing complaint, a new docket number will be assigned to that matter while the original complaint would retain its original file number. May, 2000.

### **C. Conclusion**

The first year of implementing the new program was successful, although there are many things that need to be done. These include securing funding for random audits and enforcement of the IOLTA rules, funding for a full time Deputy Disciplinary Counsel, and securing support services for the hearing panels. The Board will address these issues in its budgetary requests to the court during the next few weeks.

cc: Hearing Panel Members  
Assistance Panel Members  
Jessica Porter, Disciplinary Counsel  
Michael Kennedy, Deputy Disciplinary Counsel  
Wendy Collins, Bar Counsel  
Deb Laferriere, Administrative Assistant  
Jill Halstead, Administrative Assistant

## APPENDIX A

### **Appendix A - list of formal education programs presented by Disciplinary Counsel during FY2000.**

Disciplinary Counsel, Jessica Porter, conducted continuing education for Vermont lawyers during FY2000. The average CLE length was 2 - 4 hours, although there were several day-long CLE's. The subject matter of all these CLE's was the new Administrative Order 9 and the new Rules of Professional Conduct. Each CLE consisted of a review of pertinent sections along with skits or hypotheticals for audience participation. Please see below the list of agencies for which these trainings were conducted.

1. Vermont Bar Association - New Rules (Fall and Spring Meeting, Day Long Training in Burlington)
2. Chittenden County Bar Association - New Rules
3. Bennington County Bar Association - Ethics of New Family Law Experimental Rules
4. Vermont Trial Lawyers Association (two presentations) - Two Panels on Ethics and Litigation
5. Attorney General's Office - Ethics and Government Lawyers
6. Family Law Section - Family Law and Ethics
7. Juvenile Law Section - Mediation and Ethics
8. Vermont Bar Association - Rule 1.6
9. Inns of Court - Selected Provisions of New Rules
10. Vermont Bar Associations (Rutland) - New Rules; Board Member Joan Wing participated
11. Professional Responsibility Board - Training on Administrative Order 9
12. National Organization of Bar Counsels - New Rules
13. Public Defenders Annual Meeting- New Rules, Criminal Defense and Ethics
14. State's Attorneys Annual Meeting - Prosecutors and Ethics