

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
Joan L. Wing, Esq. - Chair
Steven A. Adler, Esq. - Vice-Chair
Ms. Mary Ann Carlson
Honorable Stephen B. Martin
Ms. Marion Milne
Paul Reiber, Esq.
Mr. Neal Rodar

RE: Annual Report of the Professional Responsibility Program for FY 2002

DATE: November 20, 2002

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.

I. INTRODUCTION AND OVERVIEW

This is the third annual report to be issued by the Professional Responsibility Program which came into existence on September 1, 1999. The Program replaced the former Professional Conduct Board which operated from 1972 until April of 2000. 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,
- 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.

In its first year of operation, the Professional Responsibility Program succeeded in eliminating a backlog of cases, reducing its docket through prompt and speedy resolution of pending disciplinary cases, creating a Central Intake Office, recruiting and training members of its hearing and assistance panels, resolving minor complaints through an alternative to discipline program, providing formal educational programs to members of the bar on the new Rules of Professional Responsibility, providing information to the public and the bar on practice issues, and establishing guidelines, policies and procedures for the program's operations.

In its second year, the Professional Responsibility Program continued to consolidate its gains in these areas, although some fundamental personnel changes created unavoidable delays in case resolution. By the end of its second year, the Professional Responsibility Program employed a new Disciplinary Counsel and new Deputy Disciplinary Counsel. It also has in place new resources to attend to wider responsibilities than heretofore addressed.

In its third year, the Program concentrated on addressing lingering challenges created at when the new rules of operation were created. These included improving data collection and Board supervision of the informal dispute resolution program, appointment of a hearing panel counsel on a contract basis to assist with continuity in hearing panel decisions, securing formal Supreme Court liaison with the Program, streamlining the probable cause process and other policy issues. In addition, chair Robert P. Keiner retired and Joan Loring Wing was appointed to serve in his stead.

II. REPORT OF ACTIVITIES OF THE PROGRAM

A. Report of Activities of Bar Council

Bar Council's powers and duties are set forth at Rule 3.B. of Administrative Order 9:

Bar Council shall administer the dispute resolution program; respond to inquiries from lawyers regarding ethics and law practice; consult and coordinate with state and local bar associations, the Judicial Conduct Board, the Board of Bar Examiners and other related organizations regarding matters concerning attorney conduct and professional responsibility; confer periodically with the Board to review program operations; provide administrative and legal support to the Board and assistance panels; and perform such other functions as are necessary to accomplish the goals of the program.

Rule 10 requires that "all inquiries concerning attorney conduct will be directed to the Professional Responsibility Program" and "[a]ll complaints will be screened by counsel" for the Program. For the past three years, Bar Council has been the program counsel who has

assumed responsibility for screening all of the formal complaints.

1. Screening of Formal Disciplinary Complaints

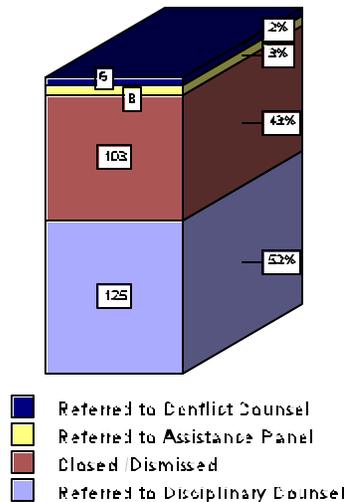
All written complaints are initially filed in the Office of Disciplinary Counsel where they are processed by administrative staff, then directed to Bar Counsel for screening. This is intended to be a central intake process as recommended by the ABA.

Bar Counsel tries to complete screening of complaints within 30 to 45 days of receipt, a process which usually involves speaking to the complainant, the respondent, or both parties. The vast majority of cases were screened within that time frame. Twenty-four cases were screened within 60 to 89 days and three cases required more than 90 days to screen. This is well within the ABA guidelines.

This fiscal year the program received 247 new cases, up 17.5% from last year's total of 204. Bar Counsel was able to screen 242 cases this year, which included 2 unscreened cases held over from the previous year. Of these 242 cases, 125 were referred to Disciplinary Counsel for further investigation, 8 were sent to Assistance Panels for mediated resolutions, 6 were sent to conflict counsel, and 103 were dismissed. These results are graphically represented at Chart 1.

Chart 1: Disposition At Initial Screening

242 Cases Screened

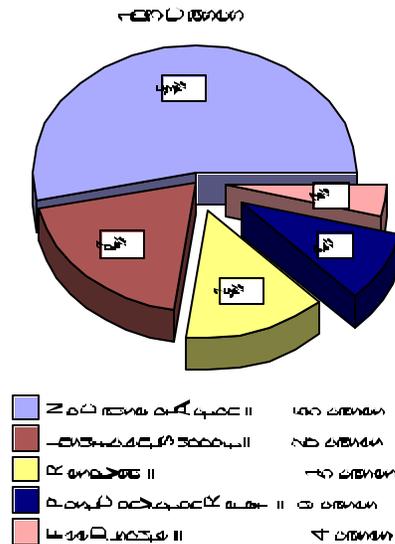


For the second year, Bar Counsel tracked the reasons for closing cases at initial screening to give a better sense of the kind of cases that do not go on to the disciplinary or mediation stage. Of the 103 cases closed by Bar Counsel, 75 cases - or 72% - were dismissed because they alleged conduct which did not constitute a violation of the Rules of Professional Conduct or because there was insufficient support for the complained of conduct after inquiry by Bar Counsel. Bar Counsel resolved and closed 15 of the cases - or

15% of the cases - without the need to refer the matter to an Assistance Panel for more formal mediation. Nine cases - 9% - were dismissed that were essentially motions from inmates for post conviction relief, matters over which the Board has no jurisdiction. Four cases - 4% - were cases involving only disputes over fees. These complainants were advised of the availability of the Vermont Bar Association Fee Arbitration Committee and were encouraged to contact the Chair of that Committee for information on how to file their complaints there.

If a complaint is closed without referral to disciplinary counsel or to assistance panels, each complainant is advised, in writing, of the reason for that decision. The complainant is also advised of the right to appeal the decision, within 60 days, to the Chair of the Board.

Chart 2: Cases Dismissed by Bar Counsel



During FY 2002, appeals of Bar Counsel’s decisions to dismiss cases were down somewhat from FY2001. Last year, approximately 38% of those complainants whose cases were dismissed by Bar Counsel (or 35 complainants) appealed that decision to the Chair. This year, 28 complainants or 27% of those whose cases were dismissed, appealed to the Chair. The Chair, in turn, upheld Bar Counsel’s decision in all but one case. That case was sent to Disciplinary Counsel for further review. After review, Disciplinary Counsel dismissed the case without further action.

2. Informal Resolution of Telephone/E-mail Inquiries

This is the first full year in which Bar Counsel was able to keep statistical records of the number of informal telephone inquiries received and how the inquiries were resolved in order to measure the demand for services in this part of the program. These are inquiries made prior to the filing of any formal complaint. They generally are received by telephone and occasionally by e-mail; they come from members of the public and members of the bar alike, although the inquiries from the members of the bar will be discussed in more detail below at subsection 4.

Last fiscal year, during the eleven months that these statistics were kept, Bar Counsel received 127 informal inquiries. This year, Bar Counsel received inquiries from and responded to 201 people who had questions or concerns about attorney conduct.

To the extent that Bar Counsel responds to inquiries from members of the public, this program essentially mirrors a CAP or Consumer Assistance Program operated by an increasing number of jurisdictions around the country.

In the past, anyone who contacted the Professional Conduct Board or Professional Responsibility Program with a concern about a lawyer was directed to file a written complaint. Now when someone calls with a telephonic inquiry, the administrative staff, briefly interviews that person, reduces the caller's concern to writing, and sends it to Bar Counsel, who either briefs staff with an answer to give the caller or, more commonly, contacts the caller directly.

The types of inquiries received are varied as are the resources needed to respond to them.

It is common to receive a call from a client who is concerned about the attorney's bill or about the way an attorney handled a meeting or some other matter but is unsure of how to approach the attorney about the problem without jeopardizing the relationship. Sometimes the client is calling because she wants to find a new attorney but needs help making the transition and retrieving her file. Bar Counsel responds by working with both parties to mediate a resolution whenever possible.

Less typical, Bar Counsel receives inquiries from members of the public where a little more active intervention is necessary to help. As an example, this year, Bar Counsel received an inquiry from a client who, due to a misunderstanding, had simply lost track of client funds as successor attorneys moved from firm to firm and then eventually out of state. Bar Counsel located a former Vermont attorney, now on the West coast, who helped track down the funds and restore them to the client within days.

These telephone calls are generally more time consuming for Bar Counsel than the screening of formal complaints because the work is more akin to mediation than investigation. However, the work is often more productive than screening formal complaints because at the pre-complaint stage, the parties are often at a point where each is working to salvage the

attorney-client relationship.

Not all informal inquiries can or should be resolved. Some raise disciplinary issues, some cannot be resolved informally without written material, some require more resources than are available to Bar Counsel.

Last year, approximately 30% of all callers (public and lawyers) were advised to file formal complaints. The remainder - 70% - were successfully resolved. That represents 89 of 127 total inquiries successfully resolved.

This year, with a total of 201 inquiries from all sources, 111 of those inquiries were resolved - a significant increase in the total number of informal inquiries successfully resolved. However, if one examines just the inquiries from members of the public, Bar Counsel was unable to resolve their concerns in most of the cases. Of the 137 public callers, Bar Counsel resolved 54 of those queries and referred callers to Disciplinary Counsel's Office. She advised the other 81 callers that a formal complaint would be necessary to help. In most cases, these callers did not follow through with the formal complaint.

In other words, the overall resolution rate fell from 70% last year to 55% this year, although Bar Counsel resolved 20 more cases than last year. If limited just to callers from the public, the resolution rate was significantly lower.

The decrease in the percentage of successfully resolved complaints appears to be a resource issue. Bar Counsel recommends that the docket could be better maintained in accordance with the Board's goals of efficient case management, if Bar Counsel's position be funded at 25 to 30 hours per week. With the 13% increase in formal disciplinary complaints to be screened and the more than 60% increase in number of informal inquiries received, Bar Counsel nevertheless succeeded in responding to more complainants and callers than in the previous year.

The Board supervises Bar Counsel's work by reviewing her notes of each of the informal inquiries to which she responds. Given the significant number of complaints that ultimately do not belong in the disciplinary system, and given the success of the informal dispute resolution program when it is adequately resourced, the Board is presently examining its options to keep up with the demand for this service.

TABLE 1: Resolution of Informal Inquiries

	<i>2001</i>	<i>2002</i>
Total Inquiries from All Sources	127	201
From Public	*	137
From Lawyers	*	64
Disposition:		
Resolved All Sources	89	111
From Public	*	54
From Lawyers	*	57
Advised to File Complaints	38	84
From Public	*	81
From Lawyers	*	3
Other Disposition	0	6

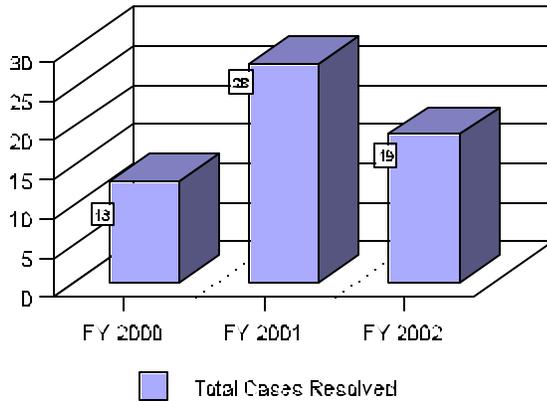
3. Formal Non-Disciplinary Resolution Program: Assistance Panels

Rule 3 requires Bar Counsel to administer the dispute resolution program which informally includes the telephonic inquiries and formally includes the work of the Assistance Panels. The Assistance Panels, established by Rule 4, are comprised of volunteers trained in mediation throughout the state of Vermont.

One Board member serves on each Assistance Panel. Bar Counsel attempts to schedule cases for the geographical convenience of the complainants and of the respondents, and always with various conflicts of interests in consideration.

The demands on this program were light in the first year it was created and greatly expanded in FY 2000. The use of the Assistance Panels to resolve cases contracted somewhat during FY 2002 as indicated in Chart 3.

Chart 3: Assistance Panel Activity



The Assistance Panels held 16 hearings during FY 2002, disposing of 19 cases. One was closed without a hearing, one case was, upon further review, referred to Disciplinary Counsel for further proceedings. Eighteen were dismissed after mediation.

Cases are referred to Assistance Panels from Bar Counsel and from Disciplinary Counsel. Bar Counsel referred eight cases last year, Disciplinary Counsel referred six and Conflict Counsel referred one. Based upon referrals already made during the first quarter of fiscal 2003, the Board anticipates that case flow to the Assistance Panels will be equal to or greater than it was in FY 2002. No decrease is anticipated.

4. Prevention and Education

In addition to the other rules cited previously, Rule 9 of Administrative Order 9 states:

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

Bar Counsel receives telephonic and e-mail contacts from lawyers in Vermont and outside the jurisdiction whose questions range from requests for simple information to consultations over various ethical dilemmas. The numbers of these contacts increased significantly during the year.

During FY 2000 the calls were minimal as the new program began. During FY 2001, Bar Counsel fielded telephone calls from 42 different attorneys, providing them with educational material and guidance. During FY 2002, the calls increased by 22% to 64 lawyers. Bar Counsel responded to all 64 lawyers and felt that she was able to assist 57 of them in satisfactorily resolving their concerns. Others required further intervention.

Bar Counsel presented two Continuing Legal Education Programs during FY 2002, one to a section of the Vermont Trial Lawyers' Association and one to the annual meeting of the Vermont Association of State's Attorneys. More educational programs next year would be desirable as there are recurring issues that require more educational, preventative work in coordination with such agencies as the VBA as is anticipated at Administrative Order 9, Rule 3 B. (1). At present, there are insufficient resources to provide such programs.

5. Publication of Decisions

Rule 13 provides that Bar Counsel is responsible for notifying various national disciplinary, state and federal agencies of the imposition of public discipline. The rule also requires Bar Counsel to notify the courts within the State of Vermont and the local newspaper when a lawyer has been publicly disciplined. Bar Counsel's office also publishes each hearing panel decision through VALS (Vermont Automated Library Systems). The public can access these decisions through the Judiciary's homepage at www.vermontjudiciary.org. Bar Counsel distributes the decisions to other publishers and maintains a loose-leaf binder of these decisions for public access as required by Rule 13 E. This year, 18 decisions were published. In addition, Bar Counsel maintains a digest of these decisions, also available for viewing on the Judiciary's homepage. The digest is attached hereto as *Appendix A*.

B. Report of Activities of Disciplinary Counsel

1. Introduction

Pursuant to Rule 3(B)(2) of Administrative Order 9, Disciplinary Counsel administers the disciplinary program, investigates and litigates disciplinary and disability matters, and confers periodically with the Professional Responsibility Board. In FY 2002, the Office of Disciplinary Counsel ("ODC") consisted of Disciplinary Counsel, Deputy Disciplinary Counsel, and an Administrative Assistant to Disciplinary Counsel. For the purposes of this report, the staff is collectively referred to as "Disciplinary Counsel." This is the report of Disciplinary Counsel's activities in FY 2002.

2. The Investigation & Prosecution of Complaints: An Overview of the Process

Disciplinary Counsel's core function is to investigate and prosecute disciplinary matters. In FY 2002, Disciplinary Counsel investigated approximately 187 complaints.

The vast majority of Disciplinary Counsel's investigations were opened upon the referral of a complaint from Bar Council. Typically, when Bar Council refers a complaint to Disciplinary Counsel, the respondent is given three weeks to file a written response with Disciplinary Counsel. Upon receipt of the response, the matter is reviewed and is assigned to Disciplinary Counsel or Deputy Disciplinary Counsel. At that point, the matter is considered "under investigation." The investigation of a disciplinary matter begins with a simple question: if the allegations in the complaint are true, did the respondent violate the Vermont Rules of Professional Conduct? If the answer is "no," the case is dismissed. If the answer is "yes," the matter is investigated further.

Disciplinary Counsel typically contacts both the respondent and the complainant with questions and/or requests for information. Other witnesses are interviewed and, in most cases, documents related to the underlying representation are reviewed. Most interviews are informal. However, in some instances, Disciplinary Counsel requests an investigatory subpoena and, if one is granted, interviews a particular witness under oath.¹ Upon the conclusion of an investigation, a complaint is either dismissed, referred to an Assistance Panel, or prosecuted.

A complaint can be dismissed for a variety of reasons. *Appendix B*. Section E(7) of this report discusses the cases that Disciplinary Counsel dismissed in FY 2002.

When Disciplinary Counsel refers a complaint to an Assistance Panel, it is usually a case in which the lawyer has not violated the Rules of Professional Conduct, but has acted in such a manner as to indicate that a dialogue with an Assistance Panel would assist the lawyer in improving his or her practice and/or communication skills. Frequently there has been a breakdown in communication between the lawyer and the client that, hopefully, can be resolved by an Assistance Panel. Section E(7) discusses the cases that Disciplinary Counsel referred to Assistance Panels in FY 2002.

If Disciplinary Counsel decides to prosecute a complaint, the prosecution begins with Disciplinary Counsel asking a hearing panel to review for probable cause the decision to file

¹ See Administrative Order 9, Rule 15(A)(1).

formal disciplinary charges.² If probable cause is found, Disciplinary Counsel files a petition of misconduct, unless the parties stipulate to misconduct.³

Upon the filing of a petition of misconduct, the respondent has twenty days to file a formal answer.⁴ Within twenty days of the filing of an answer, the parties must exchange witness lists.⁵ Within sixty days of the filing of an answer, the parties may take depositions and make requests for production.⁶ At trial, Disciplinary Counsel must prove its case by clear and convincing evidence.⁷

The process is a bit different when a case is submitted by stipulation. Typically, the parties stipulate to misconduct and join to recommend a particular sanction. However, it is not uncommon for the parties to stipulate to misconduct and then submit argument as to the appropriate sanction. In either case, the hearing panel to which a stipulation is assigned can either reject the stipulation or accept it and impose whatever sanction it deems appropriate.⁸

A hearing panel has sixty days from the conclusion of any hearing to issue its decision.⁹ Hearing Panel decisions may be appealed by the respondent or Disciplinary Counsel. Even if neither party appeals, the Vermont Supreme Court is free to order a review of a particular decision on its own motion.¹⁰

That is the process. It is difficult to quantify the work that goes into an “investigation” or a “prosecution.” For example, it is not uncommon for a case that ends up being dismissed to involve more work than a case that results in a stipulation to misconduct. Nonetheless, previous Annual Reports have focused on statistics and Disciplinary Counsel’s caseload. The remainder of this report is intended to provide a statistical review of the cases handled by Disciplinary Counsel in FY 2002.

² See A.O. 9, Rule 11(C)

³ See A.O. 9, Rule 11(C); A.O. 9, Rule 11(D)

⁴ A.O. 9, Rule 11(D)(3)

⁵ A.O. 9, Rule 15(B)(1)

⁶ Id.

⁷ A.O. 9, Rule 11(D)(5)(b)

⁸ A.O. 9, Rule 11(D)(5)(a)

⁹ A.O. 9, Rule 11(D)(5)(c). It is not uncommon for a panel to accept a stipulation without having a hearing. Thus, in FY 2002, the PRB adopted a policy requiring hearing panels to issue decisions within sixty days of the receipt of a stipulation.

¹⁰ A.O. 9, Rule 11(E)

3. The Docket

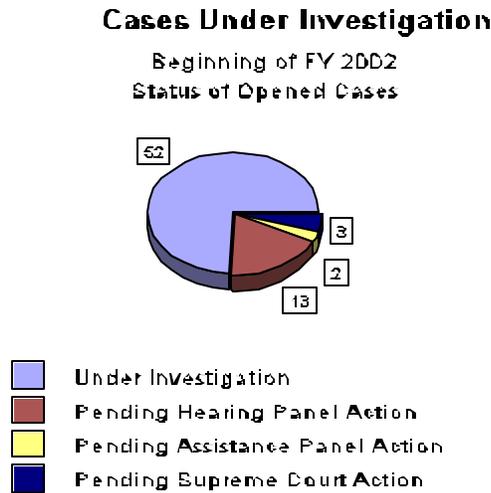
A. Overview

As FY 2002 opened, Disciplinary Counsel had 70 open cases. During the course of the year, 129 other complaints arrived in the office. Thus, to one degree or another, Disciplinary Counsel worked on approximately 200 cases in FY 2002. This report will address the following areas: (1) Disciplinary Counsel's docket as FY 2002 began; (2) what happened to the cases on the docket as FY 2002 began; (3) the cases that were referred to Disciplinary Counsel during the course of FY 2002; (4) formal action taken by Disciplinary Counsel in FY 2002; and (5) Disciplinary Counsel's docket as FY 2002 closed.

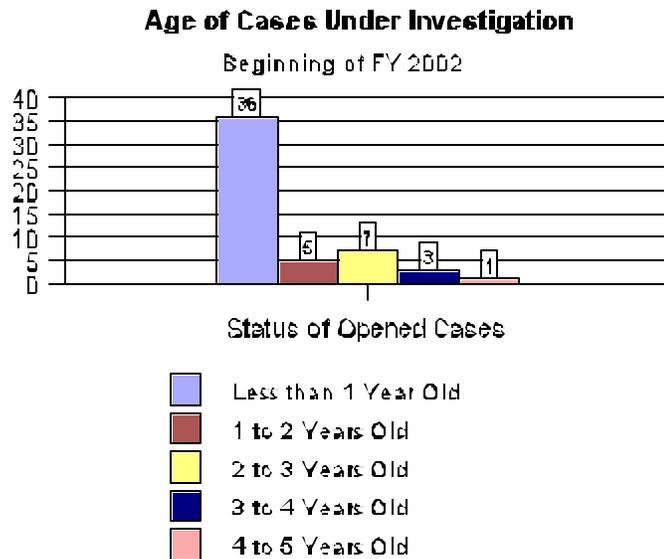
If nothing else, the statistics from FY 2002 indicate that the "backlog" of cases under investigation has been virtually eliminated. As both FY 2001 and FY 2002 began, 21% the cases under investigation by Disciplinary Counsel were more than two years old. As FY 2002 closed, only 5% of the cases under investigation by Disciplinary Counsel were more than two years old.

B. Disciplinary Counsel's Docket as FY 2002 Opened

As FY 2002 opened, Disciplinary Counsel had 70 open cases. Their status was:



In recent years, there has been some concern related to the age of the cases under investigation. As was alluded to above, a case that is “under investigation” is one in which Disciplinary Counsel has not decided whether to dismiss it, refer it to an assistance panel, or prosecute it. As FY 2002 opened, the age of the cases under investigation was:



In previous Annual Reports, the PRB has defined an “old” case as one that has been under investigation for more than two years. As FY 2002 opened, 21% of the cases under investigation by Disciplinary Counsel were “old” cases.¹¹

C. What Happened to the 52 Cases that were Under Investigation as the Fiscal Year Opened?

As mentioned, 52 cases were under investigation as FY 2002 opened. As FY 2002 closed, the status of the “original 52” was as follows:

¹¹ Eleven of fifty-two cases.

Dismissed by Disciplinary Counsel:	24
Remained Under Investigation:	12
Closed – Discipline Resulted:	4
Pending Hearing Panel Action:	4
Referred to Assistance Panel:	2
Probable Cause Found, Pending Formal Charges:	2
Dismissed by Hearing Panel:	2
Closed – Lawyer Reinstated:	1
Pending Supreme Court Action:	1

Thus, of the 52 cases that were under investigation as FY 2002 opened, formal action was taken in 77% of them.¹² This is not to say that nothing was done in the twelve that remained under investigation. Rather, the investigations in those twelve simply were not completed in FY 2002.

D. Cases that Came to Disciplinary Counsel in FY 2002

During FY 2002, 129 new cases came to Disciplinary Counsel. They arrived via four routes:

Referred by Bar Counsel:	125
Referred by an Assistance Panel:	1
Appeal of Dismissal by Bar Counsel ¹³ :	1
Returned by Conflict Counsel: ¹⁴	2

E. Formal Action taken by Disciplinary Counsel in FY 2002

For the purposes of this report, “formal action” is deemed to have occurred when Disciplinary Counsel took any of the following steps: (1) stipulated to a disbarment on consent; (2) filed a petition for an interim suspension; (3) filed a petition of misconduct; (4) filed a request for review for probable cause; (5) filed a stipulation to misconduct; (6)

¹² Forty of fifty-two cases.

¹³ See A.O. 9, Rule 10(D) which authorizes a complainant to appeal counsel’s decision to dismiss a case without a formal investigation.

¹⁴The cases were returned to Disciplinary Counsel after it became apparent that the office no longer had a conflict that necessitated assigning the cases to outside counsel.

referred a case to an assistance panel; or (7) dismissed a case. In FY 2002, the number of cases in which each type of formal action took place was as follows:

Disbarment on Consent:	2
Petitions for Interim Suspension:	2
Petitions of Misconduct:	8
Stipulations to Misconduct:	9
Requests for Review for Probable Cause:	20
Referred to an Assistance Panel:	6
Dismissed:	66

1. **Disbarment on Consent – 2**

Rule 19 of Administrative Order sets out the procedure by which an attorney who is the subject of a disciplinary investigation can resign. If the resignation is accepted, the Supreme Court enters an order disbarring the attorney on consent. In FY 2002, two attorneys were disbarred on consent.¹⁵ One was disbarred after Disciplinary Counsel learned that he had been convicted of embezzlement in the United States District Court for the District of Maine. The other agreed to resign after Disciplinary Counsel filed a petition of misconduct charging him with (a) neglecting a legal matter entrusted to him by a client; and (b) violating the terms of his disciplinary probation.

2. **Petitions for Interim Suspension – 2**

When Disciplinary Counsel receives evidence indicating that a lawyer has violated the Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Rule 18 of Administrative 9 requires Disciplinary Counsel to transmit the evidence to the Supreme Court along with a proposed order for an interim suspension of the attorney’s license to practice law. In FY 2002, Disciplinary Counsel filed two petitions for an interim suspension.¹⁶ After hearing argument, the Court denied both petitions.

3. **Requests for Review for Probable Cause – 20**

Upon concluding an investigation and deciding to file formal disciplinary charges, Disciplinary Counsel is not permitted to file a petition of misconduct.

¹⁵ By comparison, one affidavit of resignation was filed in FY 2001.

¹⁶ By comparison, one petition for an interim suspension was filed in FY 2001.

Rather, Disciplinary Counsel must file a request asking a hearing panel to review for probable cause the decision to file formal charges.¹⁷ A request for probable cause review usually includes both an affidavit describing the investigation and a memorandum of law in support of Disciplinary Counsel's decision to file formal charges. In FY 2002, Disciplinary Counsel filed twenty (20) requests for probable cause review. Nineteen (19) of the requests were granted.¹⁸ In other words, in 95% of the cases that Disciplinary Counsel decided to file formal disciplinary charges against an attorney, an independent hearing panel found that the decision was supported by probable cause.

4. **Petitions of Misconduct – 8**

Once a hearing panel finds that the decision to file formal charges is supported by probable cause, Disciplinary Counsel is authorized to file a Petition of Misconduct. In the disciplinary system, a Petition of Misconduct is, in effect, a complaint that outlines the facts supporting the charged violation. In FY 2002, Disciplinary Counsel filed eight (8) petitions of misconduct. The petitions involved five (5) respondents.¹⁹ As FY 2002 closed, three of the cases had been resolved and five were pending trial.²⁰

5. **Stipulations to Misconduct – 9**

It is not uncommon for a respondent to stipulate to misconduct. In most cases involving stipulations, Disciplinary Counsel and the respondent submit a Stipulation of Facts, a Joint Recommendation as to Conclusions of Law, and a Joint Recommendation as to Sanction. In FY 2002, there were nine (9) cases in which stipulations of misconduct were filed. The cases involved seven (7) attorneys.²¹ Five of the stipulations resulted in hearing panels approving the

¹⁷ A.O. 9, Rule 11(C).

¹⁸ By comparison, twenty-seven (27) requests for review for probable cause were filed in FY 2001. Of those, probable cause was found in twenty-five (25) cases.

¹⁹ By comparison, in FY 2001, Disciplinary Counsel filed thirteen (13) petitions of misconduct. The petitions involved six (6) attorneys. Thus, while FY 2002 saw a decrease in the number of petitions that were filed, the number of attorneys who were the subject of a petition of misconduct remained approximately the same.

²⁰ Of the three that were resolved, one resulted in a hearing panel entering summary judgment in favor of the respondent, another was closed after the respondent filed an affidavit of resignation, and another was dismissed after the respondent, who had been charged with failing to cooperate with disciplinary authorities, produced an affidavit indicating that severe medical problems had prevented him from responding to repeated requests for information.

²¹ By way of comparison, in FY 2001, eight (8) stipulations of misconduct were filed. The stipulations involved eight (8) attorneys.

imposition of admonitions by Disciplinary Counsel.²² Two of the cases involved the same attorney and resulted in him being suspended for four months and placed on disciplinary probation for two years. One case was filed as a stipulation in which the parties joined to recommend a suspension. However, after a hearing, the parties withdrew the recommended sanction and, in its stead, filed a joint recommendation for a public reprimand. The Panel accepted the new recommendation and reprimanded the respondent. Finally, one stipulation remained pending before a hearing panel as FY 2002 closed. It involved a case in which the parties joined to recommend the imposition of a public reprimand.

6. **Referrals to Assistance Panels – 6**

Disciplinary Counsel may refer a case to an Assistance Panel. Typically, Disciplinary Counsel refers to an Assistance Panel cases in which the lawyer has not violated the Rules of Professional Conduct, but has acted in such a manner as to indicate that a dialogue with an Assistance Panel would assist the lawyer in improving his or her practice and/or communication skills. Frequently there has been a breakdown in communication between the lawyer and the client that, hopefully, can be resolved by an Assistance Panel. In FY 2002, Disciplinary Counsel referred six (6) cases to Assistance Panels.²³

7. **Dismissals – 66**

If, upon concluding an investigation, Disciplinary Counsel decides not to file formal disciplinary charges, a complaint is dismissed. In FY 2002, Disciplinary Counsel dismissed sixty-six (66) complaints. **Appendix B** sets out the various reasons for which a complaint is dismissed. Here is a breakdown of the 66 cases dismissed by Disciplinary Counsel in FY 2002:

CDC-1	7	CDC-5	2
CDC-2	33	CDC-6	2
CDC-3	17	CDC-8	1
CDC-4	2	CDC-9	2

F. Disciplinary Counsel’s Docket as FY 2002 Closed

As FY 2002 closed, Disciplinary Counsel had 106 open cases.²⁴ As of June 30, 2002,

²² See A.O. 9, Rule 8(5)(a).

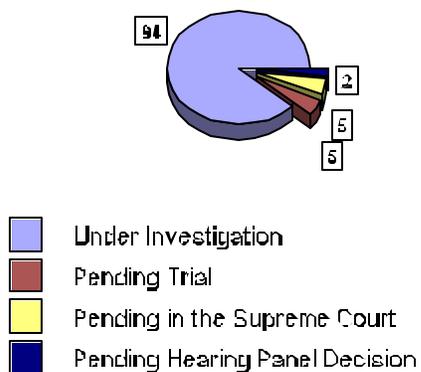
²³ By comparison, seven (7) cases were referred to Assistance Panels in FY 2001.

²⁴ The net increase of thirty-six cases from the beginning of the fiscal year does not necessarily signal a rise in the number of ethics complaints that are being filed. Rather, it appears to be a statistical anomaly that

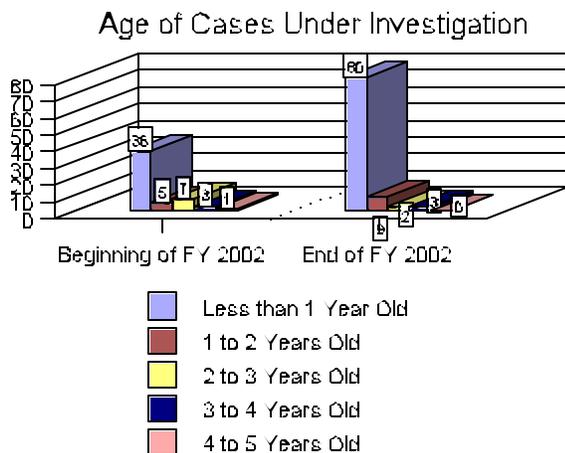
the status of those cases was as follows:

Status of Open Cases End of FY 2002

Total: 106 Cases



The ages of the 94 cases that were under investigation as FY 2002 closed:



resulted from a particularly large number of complaints that were filed against a single attorney.

Thus, as FY 2002 closed, only 5.3% of the cases under investigation by Disciplinary Counsel were more than 2 years old.²⁵ When compared to the close of FY 2000 and FY 2001, each of which ended with 21% of the cases under investigation being more than two years old, the relative “youth” of the cases under investigation as FY 2002 closed shows not only that the older cases were addressed, but also that significant strides were made in resolving new cases before they became “old.”

4. Staff

For the first time in several years, Disciplinary Counsel’s staff remained relatively constant throughout the fiscal year. Indeed, there was only one change among the staff. Disciplinary Counsel’s administrative assistant left for private practice in February. She was replaced in April by Cathy Janvier. Ms. Janvier, who is fluent in both French and English, provided Disciplinary Counsel with outstanding service throughout the remainder of FY 2002.

5. Miscellaneous

Disciplinary Counsel performs several tasks in addition to its core function of investigating and prosecuting disciplinary matters. The work below represents some of the additional tasks that Disciplinary Counsel performed in FY 2002:

- A. Disciplinary Counsel worked with the PRB to draft a proposed amendment to Administrative Order 9 that would allow attorneys to resign from the bar for non-disciplinary reasons. The draft followed an in-depth review of the rules used by other states. In October of 2001, the PRB voted to recommend the rule change to the Supreme Court.
- B. Disciplinary Counsel worked with the PRB to formulate a job description for the oft-discussed position of Paralegal/Auditor.
- C. Disciplinary Counsel met with a representative of the Japanese Bar to explain Vermont’s lawyer-discipline system. Japan is in the process of overhauling its lawyer discipline system and is studying each state’s lawyer-discipline system.
The representative from Japan informed Disciplinary Counsel that Vermont’s lawyer discipline system seemed more attuned to arriving at a fair result than did many other states’ systems.
- D. Disciplinary Counsel’s administrative assistant worked extensively with Bar Counsel and the PRB’s Administrative Assistant to docket phone inquiries and new complaints. When a new complaint is filed, Disciplinary Counsel’s

²⁵ Five of ninety-four cases.

administrative assistant creates a file and forwards hard copies and electronic copies to Bar Counsel and the PRB's administrative assistant.

- E. Disciplinary Counsel attended the annual meeting of the National Organization of Bar Counsel and, throughout the fiscal year, remained active in the NOBC's discussions of issues related to lawyer discipline.
- F. Disciplinary Counsel served as a panel member at a CLE on trust-account management.
- G. Disciplinary Counsel lectured at the Vermont Law School on ethical issues related to the use of the internet and e-mail.

6. Conclusion

With significant assistance from the PRB and Bar Counsel, Disciplinary Counsel was able to continue the fair, efficient, and effective investigation of ethics complaints filed against Vermont attorneys. As a result of the work done in FY 2002, it appears that FY 2003 will mark the first time in several years that both complainants and respondents can realistically expect ethics investigations to be completed in a timely and fair fashion.

C. Report of Activities of Board

The Board held seven business meetings during FY 2002 plus an annual meeting for all program members. The highlights of its accomplishments are as follows:

1. Annual Training Meeting

On June 27 the Board hosted its annual training meeting for all 52 members of the program. It was well attended. Topics of discussion ranged from ethical issues in the management of trust accounts to the value of mediated versus litigated settlements to a review of disciplinary decisions handed down in the past year. Retiring Chair Robert Keiner was honored by the group at a special luncheon and Justice Morse was the luncheon speaker.

The Board wishes to note here again its appreciation to Mr. Keiner for his many years of service to the lawyer disciplinary system. It also looks forward to working under the new leadership of Joan Loring Wing.

2. New policies

The Board adopted seven additional new policies, each of which is set forth below. In addition, all of the policies which have been adopted in the prior two years of the Board's existence are published in *Appendix C* attached at the back of this annual report.

17. Copies of approved final minutes will be sent to the Court Administrator and to the Chief Justice. The minutes will remain confidential. (July 18, 2001).²⁶
18. Each panel Chair has the discretion of allowing persons other than the parties to the complaint at an assistance panel meeting. If the situation arises wherein a complainant or respondent contacts the program to ask if a support person is allowed at the hearing, that person should be directed to the Chair of the panel so that he/she may make that determination. (August 30, 2001).
19. Filed Hearing Panel Decisions wherein private discipline is imposed will not be redacted to reflect gender neutrality. (August 30, 2001).
20. When Bar Counsel refers a complaint to Disciplinary Counsel's office, the Respondent will be given 20 days in which to respond. (December 7, 2001).
21. All finalized published decisions of the Board will be distributed electronically to assistance and hearing panel members. (March 1, 2002).
22. When formal proceedings are commenced by the filing of stipulated facts and a hearing panel determines that a hearing is not necessary, the hearing panel shall issue a decision containing its findings of fact, conclusions of law, and the sanction imposed, if any, within sixty days of the filing of the stipulated facts. The sixty day time period is directory and not jurisdictional. A hearing panel's failure to observe the sixty day time period does not justify the abatement or dismissal of the disciplinary or disability proceeding. (May 2, 2002).
23. All probable cause requests will be assigned to one panel for the next year. After one year, the hearing panels will rotate and another panel will receive probable cause requests for the following year. The Chair will determine which hearing panel is first in the rotation. (May 2, 2002).

3. Assistance with Hearing Panel Decisions

With the elimination of the Professional Conduct Board, the Court eliminated a two tiered review system where hearing panels made findings of fact and conclusions of law and

²⁶On October 19, 2002, the Board amended this Policy to also include the Court's liaison to the Board.

recommended sanctions to the full Professional Conduct Board. The Board then met to review the case again and give the parties an opportunity to be heard on any of the factual or legal issues below plus the issue of sanctions. It had the authority to impose a private sanction or recommend to the Supreme Court that a public sanction be imposed.

The reason for eliminating this system is that there was a backlog of cases and it was felt that the disciplinary system would be more efficient if the Supreme Court review process would begin upon issuance of the hearing panel decision. Two changes were made. First, decisions no longer go through a Board which sits *en banc* and fashions a final decision after consideration of the hearing panel's work. Two, the Supreme Court no longer affirmatively reviews every public disciplinary matter if neither party takes an appeal.

The result has been that disciplinary cases do move more quickly through the disciplinary system. However, because the hearing panels do not enjoy the professional support of legal counsel that their predecessors enjoyed, the Board has concluded that the hearing panels' ability to issue high quality written decisions has been compromised. Moreover, when there is no opportunity for other colleagues to participate in the review of the case, the contribution of the collective knowledge of the whole is lost.

This has significant consequences upon the quality of ethics case law being generated by the hearing panels. The Professional Conduct Board and the Professional Responsibility Board have published every hearing panel decision that have issued since 1989. A body of case law on many different topics has developed that serves as an educational tool to the practicing lawyer who seeks guidance in understanding the ethical challenges innate within the profession. The Board wishes to maintain the high quality of this case law.

Since the new rule changes went into effect in 1999 and the hearing panels lost the assistance of counsel, the Professional Responsibility Board has grappled with a number of different methods to try to preserve the same consistent quality of decisions experienced in the past. During this fiscal year, the Board finally concluded that it had exhausted its options and concluded that it was placing unreasonable expectations on volunteers working in small groups of three under limited deadlines with no professional outside support.

In response, it retained hearing panel counsel on a part time basis to assist the panels as necessary. It was fortunate to enlist the services of retired lawyer Leslie G. Black, former chair of the Professional Conduct Board and the Judicial Conduct Board, who is one of Vermont's leading experts on the law of ethics. The initial material received from Ms. Black is very positive, and the Board is delighted that she could be of assistance. The Board will be meeting with Ms. Black during the year to discuss her work.

4. Probable Cause Panels

The Board spent considerable time dealing with the many challenges of probable cause

panels and finally concluded that an appropriate fixed rotation would be to return to the model that worked well under the Professional Conduct Board. Therefore, it enacted the policy Number 23 described above at subsection C.2 and set the rotation for the probable cause panel for one year, pursuant to Administrative Order 9, Rule 11. C.

5. Proposed Rule Changes

During FY 2002, the Professional Responsibility Board considered how some of the Rules of the Board of Bar Examiners interfaced with the Rules of the Professional Responsibility Board. The Board perceived that there needs to be more oversight of attorneys who leave the practice of law, particularly while under disciplinary review, by placing their licenses on inactive status. The Board is concerned that these attorneys may later reactivate their licenses, thereby avoiding disciplinary consequences. Administrative Order 9 gives Disciplinary Counsel jurisdiction over attorneys who are on inactive status. However, there is no review of such attorneys continuing fitness to practice law when they return to active status. There is a concern that the temporary withdrawal from practice may be used as a loophole to avoid disciplinary scrutiny.

Therefore, the Board is in the process of proposing that the following rule change be adopted: "An attorney who reactivates his or her license to practice law shall be investigated by the Character and Fitness Committee pursuant to Section 11 of the Rules of Admission to the Bar."

The Board hopes to co-ordinate with the Board of Bar Examiners to discuss this issue of mutual concern.

6. Liaison with Supreme Court

At the close of the fiscal year, the Board was pleased to learn that Justice Morse was designated as the Supreme Court's liaison to the Professional Responsibility Board. The Board, which is given wide latitude to enforce Administrative Order 9, is looking forward to some guidance from Justice Morse on these rules as promulgated by the Court. The Board will be soliciting support from the Court for enforcement of Rule 8 A (4) which requires that all public reprimands be published in Vermont Reports. The lack of publication of all public disciplinary cases in Vermont Reports since inception of the new program is but one issue with which the Board hopes a direct contact on the Supreme Court will benefit the program.

III. CONCLUSION

At its last Board meeting in Fiscal 2002, the Board directed Disciplinary Counsel to summarize the advantages and disadvantages of the audit rule. The Board's goal is to create and implement an affordable audit program in the next year and to properly resource Bar Counsel and Disciplinary Counsel and their staff.

cc: Hearing Panel Members & Assistance Panel Members
Michael Kennedy, Disciplinary Counsel
Beth DeBernardi, Deputy Disciplinary Counsel
Wendy Collins, Bar Counsel
Deb Laferriere, Administrative Assistant
Cathy Janvier, Administrative Assistant

APPENDIX A
DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
1	<i>In re Andrew Lichtenberg</i> PRB 2000.038	Not Applicable	Reinstatement	12/03/99	Upon successful petition of Respondent, previous suspension order lifted by the Supreme Court on January 5, 2000. E.O. 99-533.
2	<i>Unidentified Lawyer</i> PRB 1999.149	DR 1-102(A)(7)	Admonition by Disciplinary Counsel	02/28/00	Respondent possessed marijuana. No review by Court undertaken.
3	<i>Unidentified Lawyer</i> 1998.028	DR 4-101(B)(1)	Admonition by Disciplinary Counsel	04/13/00	Respondent sold a computer to a non-lawyer, knowing that it contained confidential client files. No review by Court undertaken.
4	<i>Unidentified Lawyer</i> 1999.009	DR 4-101(B)(1)	Admonition by Disciplinary Counsel	04/20/00	Respondent disclosed the secrets of one client to a second client without disclosing the first client's name. Respondent provided so many details about the first client's situation that second client was able to identify the first client. When the second client told respondent she thought she knew the person, the Respondent confirmed the first client's identity. No review by Court undertaken.
5	<i>Unidentified Lawyer</i> 1997.049	DR 6-101(A)(3)	Admonition by Disciplinary Counsel	04/21/00	Respondent neglected a legal matter entrusted to him by failing to complete service of a complaint within sixty days of filing, thus resulting in the Court granting a motion to dismiss. Respondent promptly referred client to malpractice carrier. No review by Court undertaken.

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DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
6	<i>In re David Singiser</i> 1999.020 1999.038 1999.051 1999.054 1999.090 1999.104	DR 1-102(A)(5) DR 1-102(A)(7) DR 1-110(A)(2) DR 6-101(A)(3) DR 9-102(B)(3) DR 1-102(A)(4) DR 2-110(C)	Disbarment	5/31/00	Respondent abandoned his clients, failed to provide accountings of client funds, made misrepresentations to the court, and failed to respond to Disciplinary Counsel. No review by Court undertaken.
7	<i>In re Katherine Kent</i> 1999.039 1999.052 1999.053 1999.094	DR 1-102(A)(5) DR 1-102(A)(7) DR 2-110(A)(2) DR 6-101(A)(3)	2 Year Suspension	05/31/00	Respondent neglected her client, failed to return a file to him, improperly withdrew from representation, and abandoned her client. Respondent failed to respond to a request from Disciplinary Counsel for information and failed to advise the Board of Bar Examiners of a correct and current address. No review by Court undertaken.
8	<i>Unidentified Lawyer</i> 1999.172	DR 6-101(A)(3)	Admonition by Disciplinary Counsel	06/01/00	Respondent failed to file a Quit Claim Deed which awarded to the client the marital residence, free and clear of her ex-husband's interests. No review by Court undertaken.
9	<i>Unidentified Lawyer</i> 2000.015	DR 7-104(A)(1)	Admonition by Disciplinary Counsel	06/08/00	Respondent communicated with an adverse represented party, on the subject matter of the litigation, without receiving permission from opposing counsel. No review by Court undertaken.

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<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
10	<i>In re Sheldon Keitel</i> 1999.121	Hearing Panel found violations of DR 7-10(C)(6) and DR 7-102(A)(1) by default judgment and recommended public reprimand. Supreme Court ordered further review on its own motion.	Dismissed	07/05/00	Supreme Court declined to find that Respondent, a lawyer on inactive status appearing pro se, violated DR 7-102(A)(1) (prohibiting a lawyer from taking any action “on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another”) or DR 7-106(C)(6)(prohibiting a lawyer “appearing in his professional capacity before a tribunal”) when he wrote a letter to the family court stating that the magistrate in his divorce case had his “head up his ass.” The Court, nevertheless, required the Board of Bar Examiners to consider this conduct should Respondent ever choose to reactivate his license to practice law. Supreme Court entry order filed March 2, 2001.
11	<i>Unidentified Lawyer</i> 1998.021	DR 1-102(A)(5)	Admonition by Disciplinary Counsel	07/21/00	Prosecutor failed to disclose to defense counsel or the court that prosecutor’s deputy had previously represented the defendant in a related matter. No review by Court undertaken.
12	<i>Unidentified Lawyer</i> 1997.028	DR 6-101(A)(3)	Admonition by Disciplinary Counsel	07/25/00	Respondent neglected a client’s case for two years, missing a statute of limitations, and causing clients’ to lose their cause of action. No review by Court undertaken.

APPENDIX A
DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
13	<i>In re Joseph Wool</i> 1999.180 1999.189 2000.050 2000.061 2000.077 2000.082 2000.087	DR 1-102(A)(5) Rule 8.4(d) Rule 7(D) of A.O. 9	Public Reprimand	12/04/00	Respondent failed to comply with probationary terms imposed by the Supreme Court in 1999, requiring Respondent to submit written reports to Disciplinary Counsel every 60 days. Respondent failed to co-operate with Disciplinary Counsel's investigation of four new complaints, all filed after the 1999 probation order requiring that no new disciplinary violations be committed. No review by Court undertaken.
14	<i>In re Craig Wenk</i> 1996.050	DR 6-101(A)(3) DR 7-101(A)(2) DR 1-102(A)(4)	Six Month Suspension	10/16/00	Respondent failed to communicate properly with his client over a three year period and gave his client false information about the status of client's case in court when, in truth, Respondent had never filed the law suit. No review by Court undertaken.
15	<i>Unidentified Lawyer</i> 2000.019	Rule 8.4(d)	Admonition by Hearing Panel	10/24/00	Respondent failed to co-operate with Disciplinary Counsel's investigation, ignoring two letters requesting a response to a complaint filed by another lawyer. No review by Court undertaken.
16	<i>Unidentified Lawyer</i> 1995.019	Rule 7(D) of A.O. 9	Admonition by Disciplinary Counsel and 6 Month Probation	01/24/01	Respondent did not respond to request from PCB counsel seeking information about Respondent's compliance with conditions imposed by a PCB hearing panel sitting as an alternative dispute resolution (NDR) panel. In fact, Respondent did not comply with NDR panel's conditions. Hearing Panel found that Respondent violated Rule 7(D) by failing to furnish information to Disciplinary Counsel or a Hearing Panel. No review by Court undertaken.

APPENDIX A
DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
17	<i>In re Joseph Wool</i> 2000.164 2000.171 2000.196 2000.209	Rule 1.15(b) Rule 1.16(d) Rule 8.4(c) Rule 8.4(h) Rule 1.3	Suspension of 1 year & Reimbursement of Retainers	05/24/01	Respondent failed to render an accounting of retainers received from clients, failed to refund advance payments that were not earned, failed to represent clients in a diligent manner and neglected a client's case.
18	<i>Unidentified Lawyer</i> 1997.011	None	Dismissed	05/31/01	Insufficient evidence of misrepresentation or conduct prejudicial to the administration of justice in the way prosecutor answered inquiry from defense counsel re: the identity of person participating in deposition.
19	<i>In re Arthur Heald</i> 2000.197 2001.051	Rule 1.3 Rule 1.4(a) Rule 8.4(d)	Suspension of 2 months & Reimbursement of Legal Fees and Expenses Incurred by Complainant	06/05/01	Respondent publicly reprimanded and ordered to reimburse legal fees after he neglected to remit his client's withholding taxes in a timely manner, resulting in the assessment of an IRS penalty. Respondent failed to respond to his client's requests for help in rectifying this error. Client incurred substantial expenses in bringing suit against Respondent. Per Supreme Court Entry Order, Hearing Panel decision reversed and public reprimand imposed on 1/18/02.
20	<i>Unidentified Lawyer</i> 2000.091	Rule 1.11(c)(1)	Admonition by Disciplinary Counsel	07/13/01	Respondent improperly presided at a Town Board meeting during which that Board considered the merits of a matter in which Respondent had served as private counsel. No review by Court undertaken.
21	<i>Unidentified Lawyer</i> 2000.217	DR 6-101(A)(3)	Admonition by Hearing Panel	07/23/01	Respondent neglected a foreclosure action entrusted to him. No review by Court undertaken.

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<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
22	<i>In re Sigismund Wysolmerski</i> PRB 2001.171	Not applicable	Reinstatement	08/15/01	Respondent readmitted to the Vermont Bar per Entry Order of the Supreme Court on August 30, 2001. E.O. 2001-381.
23	<i>Unidentified Lawyer</i> 2001.022	DR 4-101(B)(1)	Admonition by Hearing Panel	08/20/01	Respondent disclosed to a relative of a murder victim an unsolicited letter from the pre-trial detainee charged with that murder. No review by Court undertaken.
24	<i>Unidentified Lawyer</i> 2001.176	Rule 1.3	Admonition by Disciplinary Counsel	09/12/01	Respondent failed to explore with his client whether there might be any defenses to a collection action. Respondent further acted without diligence or promptness when Respondent neglected to file any opposition to a Motion for Summary Judgment. Little or no injury resulted. No review by Court undertaken.
25	<i>In re Kjaere Andrews</i> 2001.014	Rule 1.5(b) Rule 1.15(a) Rule 1.15(A) Rule 1.16(d)	Suspension of 6 mos. and 1 day; Respondent to reimburse client for unearned fees	10/01/01	Respondent spent client funds for personal use and attempted to double her agreed upon hourly rate retroactively. No review by Court undertaken.
26	<i>In re William Frattini</i> 2001.078		Disbarment	08/31/01	Respondent was convicted of three criminal offenses in the state of Maine for violations of embezzlement from a financial institution, mail fraud and tax evasion. Supreme Court Entry Order 2001-397 accepts resignation on 9/26/01.
27	<i>Unidentified Lawyer</i> 1998.020	DR 1-102(A)(5)	Admonition by Hearing Panel	10/15/01	Respondent negligently failed to disclose to defense counsel or to the Court the fact that Respondent had previously represented the defendant being prosecuted by Respondent's Office. No review by Court undertaken.

APPENDIX A
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<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
28	<i>In re David Sunshine</i> 2001.001 and 2001.075	DR 6-101(A)(3) Rule 1.3 Rule 8.4(d) Rule 8.4(c)	4 month suspension commencing 1/1/02; followed by 2 year probation	12/05/01	Respondent neglected two different client's cases, resulting in the dismissal and barring of the client's claims. Respondent also deceived one client by failing to disclose to him that his case had been dismissed and by leading him to believe that the case would soon go to trial. No review by Court undertaken.
29	<i>Unidentified Lawyer</i> 2002.200	None	Dismissed	12/12/01	A petition of misconduct for failing to respond to Disciplinary Counsel's request for information in violation of A.O. 9, Rule 7D was dismissed after Respondent provided evidence of reasonable grounds to justify his inaction. No review by Court undertaken.
30	<i>Unidentified Lawyer</i> 2000.167	Rule 1.3	Admonition by Disciplinary Counsel	01/15/02	Respondent failed to respond to client or to probate court's many requests for action over a two month period due to conflicting trial court responsibilities. No review by Court undertaken.
31	<i>In re Norman Blais</i> 1998.033, 1999.043 & 2000.042	DR 6-101(A)(3) DR 1-102(4)	5 Month Suspension 18 Month Probation	02/14/02	On Appeal
32	<i>Unidentified Lawyer</i> 2001.184	Rule 8.4(h)	Admonition by Disciplinary Counsel	3/25/02	Respondent was rude and made unjustified comments about another attorney's youth, which presumably implied criticism because of lack of experience. Respondent also inappropriately handled the transfer of a file and the claim of an attorney's lien. No review by Court undertaken.
33	<i>In re Thomas Daly</i> 2001.189	None	Dismissed	5/13/02	A petition of misconduct for violating Rules 1.5 and 1.15(b) of the Vermont Rules of Professional Conduct was dismissed because of lack of jurisdiction over the Respondent for conduct alleged to have occurred prior to his admission to the Vermont Bar. No review by Court undertaken.

APPENDIX A
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<u>Decision Number</u>	<u>Case and PRB Docket Number</u>	<u>Violation Found</u>	<u>Sanction Imposed by Panel</u>	<u>Panel Decision Date</u>	<u>Summary</u>
34	<i>In re Andrew Goldberg</i> 2000.081	DR 6-101(A)(3) DR 6-101(A)(1) DR 1-102(A)(5)	Public Reprimand Transfer to "Inactive" Status for 4 Months If license is reactivated; 2 year probation also imposed	5/14/02	A solo practitioner with only three years experience undertook representation in a products liability case in which he had no experience or expertise. He subsequently neglected the case, causing it to be dismissed. Complainant recovered for damages through a legal malpractice action. A public reprimand was imposed due to several mitigating circumstances including Respondent having left the practice of law with no plans to return to Vermont and with strong probationary conditions imposed in the event he should seek to reactivate his license to practice. No review by Court undertaken.
35	<i>In re Thomas Bailey</i> 2002.118	Rule 1.3 Rule 1.4 Rule 8.4(c) Rule 8.4(d)	Disbarred	5/17/02	Respondent neglected a legal matter entrusted to him by failing to pursue an accident claim for his client, as agreed to, and subsequently allowing the statute of limitations to lapse. Supreme Court Entry Order 02-228 accepts resignation on 5/31/02.
36	<i>Unidentified Attorney</i> 2001.117	Rule 1.4(a) Rule 8.4(d)	Admonition with 18 month Probationary Period	6/14/02	Respondent was negligent in representing a client in a divorce case. Respondent was not diligent in keeping her client updated on status of post-divorce matters.
37	<i>Unidentified Attorney</i> 2000.161	Rule 8.4(d)	Admonition with 18 month Probationary Period	6/14/02	Respondent failed to comply with an agreement reached with a Assistance Panel.

APPENDIX B

**CDC1 - CLOSED DISCIPLINARY COUNSEL - RESOLVED
CDC2 - CLOSED DISCIPLINARY COUNSEL - NO CAUSE OF ACTION
CDC3 - CLOSED DISCIPLINARY COUNSEL - INSUFFICIENT/NO EVIDENCE
CDC4 - CLOSED DISCIPLINARY COUNSEL - REFERRED TO FEE DISPUTE
CDC5 - CLOSED DISCIPLINARY COUNSEL - LACK OF JURISDICTION
CDC6 - CLOSED DISCIPLINARY COUNSEL - BC DISMISSAL AFFIRMED
CDC7 - CLOSED BY DISCIPLINARY COUNSEL - TRANSFERRED TO DISABILITY/INACTIVE
CDC8 - CLOSED BY DISCIPLINARY COUNSEL - DENIAL OF PC
CDC9 - CLOSED BY DISCIPLINARY COUNSEL - DISCIPLINED IN ANOTHER FILE**

APPENDIX C

POLICIES ADOPTED
FOR THE FISCAL YEAR 2000

" " "

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 un- resolved was the issue of access to meeting minutes. (See September 1, 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. (See October 7, 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. (See October 7, 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. (See January 21, 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. (See January 21, 2000). The Board agreed to revisit this issue after one year. It reaffirmed this policy on May 8, 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. (See January 21, 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. (See January 21, 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. (See January 21, 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. (See May 8, 2000).
10. All correspondence and decisions by Hearing Panels are to be on Professional Responsibility Program stationery. (See, May 8, 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. (See May 8, 2000).

POLICIES ADOPTED
FOR THE FISCAL YEAR 2001

" " "

12. Complainants will be allowed sixty days to appeal Bar Counsel's dismissal of their complaint. Bar Counsel informs the Complainant of this deadline and

advises of a deadline in which to respond. This information has been added to the current language used in the dismissal letters sent out by Bar Counsel. (See November 30, 2000).

13. Bar Counsel will inform participants in case referred to Assistance Panels that failure to carry out a directive of the Assistance Panel could be grounds for a separate disciplinary violation. (See February 16, 2001).
14. A probable cause decision will follow the standard form and will only indicate whether or not PC was found. There will be no written decisions. (See April 26, 2001).
15. Second requests for PC are only submitted if the presence of different or new information is to be brought to the panel's attention. The Board agreed. (See April 26, 2001).
16. Respondent will be notified when the Complainant appeals Bar Counsel's decision to dismiss. (See June 14, 2001).