

## Annual Report of the Professional Responsibility Program for FY 2005

September 30, 2005

The Professional Responsibility Board is required by Administrative Order 9, Rule 1 E.(2) to provide to the Supreme Court “an annual report, including statistics and recommendations for any rule changes, which report shall be public.” The following is the sixth annual report submitted in accordance with this mandate.

### I. Report of Activities of Board

Pursuant to A.O. 9, Rule 1.A., the Board is appointed by the Supreme Court and consists of seven members; three of the members of the bar of this state, three public members and one judge or retired judge. The members of the Board for FY2005 were:

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

The Board is responsible for overseeing the program and implementing, coordinating and periodically reviewing its policies and goals.

#### A. Policies

The Board amended six policies to reflect language that more accurately described the processes in which complaints are handled. No new policies were adopted this fiscal year. The complete list of policies adopted and/or amended by the Board, can be found online at: <http://www.vermontjudiciary.org/Committees/boards/PRBPoliciesAdopted.mht>, and is also attached here as Attachment A.

#### B. Proposed Revision of Administrative Order 9

Last fiscal year, the Board appointed a study committee to take on the task of proposing revisions to A.O. 9 which would transform the Board from an administrative body to an adjudicatory one. However, as the fiscal year ended, the Board had not received a report from that study committee.

#### C. Proposed Amendments to the Rules of Professional Conduct

In September 2004, the Board voted to support a proposed amendment to Rule 1.15, and the proposed amendment was forwarded to the Supreme Court. The Supreme Court eventually adopted the

proposal and Rule 1.15, as amended, became effective in March of 2005. For more information, see Disciplinary Counsel Section III.E.2.

The Board continued to keep abreast of the work of the study committee of the Civil Rules Committee through reports from Bar Counsel. On March 4, 2005, numerous proposed amendments to Rules of Professional Conduct were circulated to members of the Bar for comment. The Civil Rules Committee reviewed the comments, and it is anticipated that a final draft will be sent to the Supreme Court for promulgation in the fall.

#### D. Appointment of Hearing Panels

The Board had ten active hearing panels this fiscal year. This was necessary to address the fact that several hearing panel members will be completing their final term at the end of 2005. The following individuals served on hearing panels:

Hearing Panel No. 1	Hearing Panel No. 2 (Probable Cause Panel)
Barry Griffith, Esq. - Chair Christina Pollard, Esq Stephen Anthony (Tony) Carbine	Lawrin Crispe, Esq. - Chair Jesse Corum, Esq. Michael Filipiak
Hearing Panel No. 3	Hearing Panel No. 4
Robert O'Neill, Esq., S. Stacy Chapman, Esq. Ruth Stokes	Chair Paul Ferber, Esq., Chair Robert M. Butterfield, Esq. George Coppentrath
Hearing Panel No. 5	Hearing Panel No. 6
Mark Sperry, Esq., Chair Jane Woodruff, Esq. Sara Gear Boyd	Judith Salamandra Corso, Esq., Chair James Gallagher, Esq. Toby Young
Hearing Panel No. 7	Hearing Panel No. 8
Richard H. Wadhams, Esq., Chair Keith Kasper, Esq. Sam Hand	Eileen Blackwood, Esq., Chair Peter Bluhm, Esq. Tim Volk
Hearing Panel No. 9	Hearing Panel No. 10
Stephen Dardeck, Esq., Chair Mary Gleason Harlow, Esq. Barbara Carris	Lon T. McClintock, Esq., Chair Marianne Kennedy, Esq. Donald Keelan

#### E. Compliance Audits of Trust Accounts

At the direction of the Vermont Supreme Court, the Professional Responsibility Program increased its activities in oversight of attorney trust accounts. Approximately 100 lawyers were selected to respond to a questionnaire relating to their trust accounts. The answers were reviewed; 20% were found not to be in compliance and ten lawyers and firms were selected for audit by an accounting firm retained by the Professional Responsibility Board.

#### F. Annual Training Meeting

The Professional Responsibility Board held its annual meeting in South Royalton on Thursday, June 16 with approximately 45 board members, staff, hearing panel members and assistance panel members attending. The morning agenda included presentations regarding the “Successes and Challenges in Lawyer Regulation” and “Procedural Issues” regarding dilemmas that crop up in the course of disciplinary proceedings. In addition, the hearing panel members participated in a presentation regarding an overview of the different approaches to the sanction decision while the assistance panel members participated in a discussion regarding challenges with the impaired lawyer. Chief Justice Paul Reiber, the Board’s liaison, delivered the luncheon address. Attorneys attending this annual training were eligible for 3.5 CLE ethics credits.

#### G. Supervision of the Program’s Case Docket and Review of Case Management Procedures

Each month the Program Administrator provided the Board with a caseflow statistics report. The Board reviewed the caseflow reports at each Board meeting.

#### H. Requests from the Supreme Court

1. In November of 2004 the Supreme Court temporarily suspended a lawyer who admitted to diverting a very large amount of money from client trust accounts to personal use. This was the first of three cases of attorney defalcation involving significant client funds which became public and resulted in attorney disbarment.

Immediately thereafter, then acting Chief Justice John Dooley solicited suggestions as to what regulatory steps the Court might take to prevent or minimize a recurrence of improper use of client money by attorneys holding those funds in trust. The Court specifically requested the Professional Responsibility Board, the Vermont Bar Association, the Vermont Bankers Association, the Attorney General, the Executive Director of the State's Attorney's and Sheriff's Department and the Auditor of Accounts to collaborate in developing those recommendations.

The Chair of the Professional Responsibility Board took the leadership role in organizing conferences and discussions among the representatives from these various offices. In December of 2004, the chair authored a response to the Supreme Court with a number of suggested steps the Court might take which would provide protection to clients and to attorneys whose partners may engage in dishonest and unethical behavior.

2. In January of 2005, after review of the report submitted to the Court in December, the Supreme Court asked the Professional Responsibility Board to develop a proposal for an effective program to audit attorneys' trust accounts. In response to the Court's request, the Board Chair formed a committee to develop such a proposal and to forward it to the Board for review. The Committee consisted of two Professional Responsibility Board members, Joan Loring Wing, Esq. and George Nostrand, Esq., Disciplinary Counsel, Michael Kennedy, Esq., two representatives of the Vermont Bar Association, S. Stacy Chapman, Esq. and Sam Hoar, Esq. (who was also representing the Vermont Bar Foundation), Robert Minto, President/CEO of ALPS Corporation, Jeff Fothergill, CPA, Hal Miller, Esq. of First American Title Insurance, the Hon. Sally Cook, Probate Court Judge and James Dumont, Esq. That Committee met five times between February 7th and March 18th 2005 and submitted a report and proposed audit program to the Court in June of 2005. The proposal is currently being considered by the

Supreme Court. The Professional Responsibility Board reviewed and unanimously approved the proposed audit program and the recommendations made to the Court.

## II. Report of Activities of Bar Counsel

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

Bar Counsel 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.

### A. Administration of the Dispute Resolution Program

Bar Counsel's first duty is to administer the dispute resolution program which operates informally through the resolution of telephonic and electronic inquiries and formally within the framework of the Assistance Panels. Administrative Order 9, Rule 3 B (1), 4.

#### 1. Informal Resolution of Disputes

The informal method is the first level of non-disciplinary resolution which the public is likely to encounter.

Bar Counsel receives informal inquiries via telephone or email about lawyer conduct from clients, opposing parties, other members of the public, lawyers, and judges. Those who are concerned about a lawyer's conduct but have not yet filed a complaint, may contact Bar Counsel for information and assistance. Where there are minor disputes that can be mediated or resolved easily, Bar Counsel will do so. In all cases, Bar Counsel explains to the caller his or her options and choices, including the filing of a formal complaint, mediation, fee arbitration, private litigation, etc.

##### a. Inquiries From Members of the Public

The handling of telephonic or electronic inquiries from members of the public is essentially a Consumer Assistance Program.

Anyone who calls either the Burlington or Montpelier Office with a concern or complaint about a lawyer's conduct is briefly interviewed by one of the administrative assistants who reduces the caller's concern to writing, and sends it to Bar Counsel. Unless it is clear that the complainant ought to file a complaint promptly, in which case complainant will be so advised, Bar Counsel then contacts the caller personally to discuss the concerns and tries to resolve the matter if appropriate. Bar Counsel's goal is to contact most callers within one or two business days and to close the matter within 5 business days but no later than 30 calendar days from initial contact. Bar Counsel was able to meet these goals in 2004, but because of the increased case load, was not able to sustain that goal consistently in 2005.

The types of inquiries received are as varied as are the resources needed to respond to them. Some are resolved in 20 minutes. Some involve multiple phone conferences over a few weeks.

Common inquiries include a client who is concerned about the attorney's bill or about the way an attorney handled a closing or a telephone call but is unsure of how to approach the attorney 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. The majority of concerns involve neglect and lack of communication. Many callers are either frightened or angry. Bar Counsel responds by working with both parties to mediate a resolution whenever possible.

Bar Counsel also receives inquiries from members of the public where more active intervention is necessary such as tracking down old files from former attorneys or responding to cross-complaints of people in particularly emotional situations: criminal cases, family court, and probate.

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. In these instances, Bar Counsel generally refers the caller to Disciplinary Counsel. Eventually, some of these cases end up in the formal dispute resolution program through the Assistance Panels.

This year Bar Counsel handled 137 inquiries from members of the public. Bar Counsel resolved 65 of these cases. Fifteen cases reached a different disposition, for instance 3 were referred to the VBA Fee Arbitration Committee and the remaining 12 referred to other resources outside the Program. Bar Counsel advised another 57 callers that their problems could only be addressed by filing a formal disciplinary complaint.

b. Inquiries from Members of the Bar

Administrative Order No. 9, Rule 9 Prevention and Education states:

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

Bar Counsel receives many inquiries from members of the bar, most of which involve questions about the attorney's own moral dilemmas and situations where the attorney is seeking advice or confirmation. These touch on every aspect of substantive law. Some of them require immediate attention. This year, a lawyer called Bar Counsel seeking advice because his client had told him a few moments before that she had a gun and was going to go shoot her boyfriend. Others are less time sensitive, such as the lawyer who wanted to know what to do with the overage in an IOLTA account that he intends to close. Some require extensive research; others can be answered and resolved in 10 minutes.

Lawyers also call with questions or complaints about other attorneys' conduct, wondering whether they are obligated to file a formal complaint. Generally, the complained of conduct does not rise to the level requiring a mandatory report to Disciplinary Counsel. Nevertheless, the lawyers and Bar Counsel discuss what action the lawyers might take to address the questioned conduct.

This year the number of lawyer made inquiries jumped significantly. While the previous three years averaged about 60-some lawyers a year, this year there were 108 lawyers who made inquiries. Of these, Bar Counsel resolved the issues to the callers satisfaction in 92 cases. She advised 10 others to file written complaints and reached other dispositions in 6 cases.

Some of the increase in lawyer inquiries appears to be due to the fact that more and more Vermont lawyers are learning, through CLE's and word of mouth, that the Professional Responsibility Program offers this service.

c. Comparison with other years.

Table 1 below shows the available statistics for years 2001 through 2005.

TABLE 1: Resolution of Informal Inquiries

	2001 <sup>1</sup>	2002	2003 <sup>2</sup>	2004 <sup>3</sup>	2005
Total Inquiries from All Sources	169	201	145	119	245
From Public	127	137	84	73	137
From Lawyers	42	64	61	46	108
Disposition: Resolved All Sources	119	111	90	81	157
From Public	89	54	40	45	65
From Lawyers	30	57	50	36	92
Advised to File Complaints	42	84	49	30	67
From Public	38	81	39	25	57
From Lawyers	4	3	10	5	10
Other Disposition	8	6	6	8	21
From Public	0	2	5	3	15
From Lawyers	8	4	1	5	6

If, however, using the available data and assuming all other things being equal, one might extrapolate the rate at which inquires would have been filed for all five years, had the service been fully provided then. This is set forth at Table 2.

TABLE 2: Estimated Rate of Telephonic/Electronic Informal Inquiries

	2001	2002	2003	2004	2005	Avg
Total Inquiries from All Sources	184	201	193	186	245	202
From Public	138	137	112	125	137	130
From Lawyers	46	64	81	61	108	72

Assuming, then an average of some 200 total inquiries a year, 130 being from members of the public and 70 from lawyers, the lawyer inquiries this year exceeded the average rate by about 65%.

2. Formal Resolution: Assistance Panels

<sup>1</sup> Statistics were gathered for 11 months. No statistics were kept for the first month of fiscal 2001.

<sup>2</sup> Statistics for public inquires are for 9 months of FY2003. Bar Counsel was on leave for three months that year and services were suspended due to lack of staff to replace her.

<sup>3</sup> Service not offered to general public for approximately 5 months and not offered to attorneys for approximately 3 months due to staff shortage.

The second part of the alternative dispute resolution program is the Assistance Panel program which exists by virtue of A. O. No. 9, Rule 4. Its process is best described at Rule 4B, which provides:

(1) The assistance panel shall review all complaints referred to it by bar counsel or disciplinary counsel and provide a process to resolve such complaints. The panel may meet with the person filing the complaint and the attorney who is the subject thereof, and, with the concurrence of the attorney, may impose conditions as an alternative to discipline. Any terms or conditions shall be stated in writing, and may include, but shall not be limited to, participation in law office management training, continuing legal education, psychological counseling, substance abuse programs, and referral to fee arbitration.

The panel may transfer any matter to disciplinary counsel which, in its view, is more appropriate for disciplinary proceedings.

(2) Upon the imposition of conditions, the complaint may be conditionally closed. Upon motion of the attorney and proof of successful completion of any terms or conditions, the complaint will be dismissed.

(3) If an attorney refuses to participate in the assistance program, or fails to comply with any terms or conditions, the complaint may be referred to disciplinary counsel for further action.

The Assistance Panels are comprised of volunteers from across the state of Vermont. Each has received education about mediation through the Program's annual meetings; many are trained mediators. One Board member serves on each Assistance Panel as does at least one member of the public. There are 10 lawyers and six non-lawyers who are available to serve on these panels of three, in addition to the seven Board members.

When a referral is made by the Disciplinary Counsel to the Assistance Panel, Bar Counsel confers with the participants and provides information about the process. Bar Counsel composes the panel and schedules the cases to be heard at different locations throughout the state for the geographical convenience of the complainants and of the respondents, and always with various conflicts of interests in consideration.

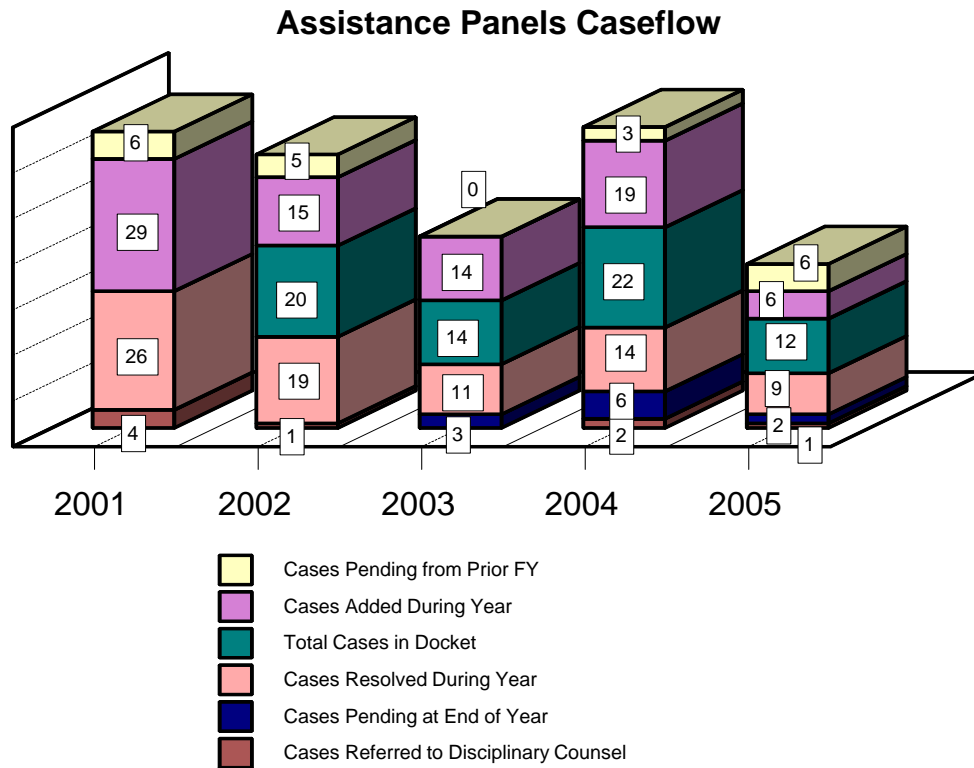
FY2005 began with six cases pending from the previous year. Six other cases were referred by Disciplinary Counsel during the year, for a total docket of 12 cases.

Ten Assistance Panels were convened this year. They heard and disposed of 10 cases. Nine were resolved by resolution reached at the hearing. In the tenth case, which was originally conditionally closed pending the attorney's completion of terms set forth in an agreement reached at the hearing, the case was referred back to Disciplinary Counsel when the attorney failed to meet the conditions.

The remaining two cases were awaiting hearing at the close of the fiscal year.

As shown in Chart 1, there was a decrease in the Assistance Panel docket over previous years. With only 12 cases on the docket, it was the least active year for Assistance Panels over the past 5 years.

CHART 1: ASSISTANCE PANEL CASEFLOW



At the conclusion of each hearing, a questionnaire is distributed to each participant. This year 16 questionnaires were distributed, of which seven were returned. Five Respondents and two Complainants responded. The majority of them reported being satisfied or very satisfied with the impartiality and skill of the panel at moving the parties toward agreement. All of the questionnaires and the comments received were reviewed by the entire Board.

In addition to Board members, the following volunteers<sup>4</sup> are members of Assistance Panels:

- |                              |                     |
|------------------------------|---------------------|
| Joseph F. Cahill, Jr., Esq.* | Janet Shaw, Esq.    |
| Emily Gould, Esq.*           | Irene Carbine       |
| Robert Fairbanks, Esq.       | Alice Estey*        |
| Honorable Ellen Maloney*     | Susan Fay*          |
| Larry Mandell, Esq.          | Rachel Siegel       |
| Katherine Mosenthal, Esq.*   | R. Brownson Spencer |
| Susan Palmer, Esq. *         | John Webber, Esq.   |
| Alan Rome, Esq.              |                     |

#### B. Liaison with other Organizations and Attorney Education

<sup>4</sup> The asterisk denotes the volunteers who participated in hearings during FY2005.



Bar Counsel is also charged with the responsibility for working with other organizations regarding matters concerning attorney conduct and professional responsibility. In carrying out that responsibility, Bar Counsel continued working with a sub-committee of the Supreme Court's Civil Rules Committee which is reviewing the 2002 - 2003 changes which the ABA made to the Model Rules of Professional Conduct. Bar Counsel attended the subcommittee's meetings and worked with its members in crafting proposed rules to suit Vermont's particular needs. Those proposed rules were forwarded to the Civil Rules Committee at the end of fiscal year.

Bar Counsel also worked with the state and local professional organizations to present continuing legal education programs to Vermont lawyers. She proposed to the VBA's executive director that a practical ethics course for the beginning solo or small firm practitioner be presented to the bar. Working with an experienced solo practitioner, Bar Counsel presented such a course at the VBA's first solo and small firm conference. Bar Counsel also organized an annual training meeting for members of the Professional Responsibility Program which concerned a wide range of disciplinary enforcement and mediation issues.

Bar Counsel also provided legal support to the Board during the year. This included, among other items, a report on mandatory reporting of ethics violations and an analysis of the audit program proposed by a special committee requested by Chief Justice Reiber and chaired by Professional Responsibility Board Chair Joan Loring Wing.

Of most significance is Bar Counsel's work with Program member John B. Webber, Esq. in following up on the 2003 Vermont Lawyer Assistance Program Review by the ABA Commission on Lawyer Assistance Programs. Mr. Webber brought this issue to the Supreme Court's attention during fiscal 2005. The Chair of the PRB asked Bar Counsel to work with Mr. Webber to fashion recommendations regarding the Supreme Court establishing a Court funded LAP in lieu of the current Vermont Bar Association program chaired by Mr. Webber. Bar Counsel committed considerable time to studying the issue and the programs of other states in preparing a report for the PRB to be delivered in FY2006.

### C. Publishing of Decisions

Rule 13 provides that Bar Counsel is responsible for notifying various 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 online at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The decisions are also distributed to other publishers and are maintained in a loose-leaf binder for public access as required by Rule 13 E. This year, Bar Counsel published 14 decisions. In addition, Bar Counsel published a digest, with each decision summarized, also available for viewing on the Judiciary's homepage. The digest can be found online at [http://dol.state.vt.us/GOPHER\\_ROOT4/PROF\\_CONDUCT\\_BD/summaryb.txt](http://dol.state.vt.us/GOPHER_ROOT4/PROF_CONDUCT_BD/summaryb.txt) and is also attached here as Attachment B.

## III. Report of Activities of Disciplinary Counsel

### A. Introduction

Disciplinary Counsel administers the disciplinary side of the Professional Responsibility Program. In FY 2005, the administration of the disciplinary program included the screening of new complaints, the formal investigation of complaints that were not resolved at the screening phase, and the prosecution of disciplinary cases. In addition, Disciplinary Counsel spent a significant amount of time working with both the Professional Responsibility Board and the Bar on issues related to attorney ethics.

Throughout FY 2005, Disciplinary Counsel's office consisted of two full-time attorneys, Disciplinary Counsel and Deputy Disciplinary Counsel, and a part-time administrative assistant. The office worked closely with the Board, Bar Counsel, and the Board's Program Administrator.

#### B. The Investigation and Prosecution of Ethics Complaints

Disciplinary Counsel's core function is to investigate and prosecute disciplinary complaints. In FY 2005, the Professional Responsibility Program opened 264 new files, compared to 268 in FY2004. The files were opened for the following reasons:

1. 217 were opened upon the receipt of a written complaint against an attorney licensed to practice law in Vermont;
2. 38 were opened upon the receipt of a notice of overdraft to an attorney trust account<sup>5</sup>;
3. 7 were opened by Disciplinary Counsel
4. 1 was opened after an attorney who had previously been on Disability/Inactive status filed a Petition for Reinstatement;
5. 1 was opened after an attorney failed to fulfill the terms of an agreement entered into with an Assistance Panel.

#### C. Screening

Upon receipt, an ethics complaint is "screened" by Disciplinary Counsel or Deputy Disciplinary Counsel. See A.O. 9, Rule 10. The screening process is rather informal and is intended to determine the nature of the complaint and whether it can be resolved through non-disciplinary methods. Indeed, the screening attorney may attempt to resolve any complaint that does require formal action by an assistance panel or the disciplinary program.

In general, if a complaint alleges misconduct that might require a disciplinary sanction, the complaint is referred for a formal investigation by Disciplinary Counsel. Otherwise, the screening attorney either dismisses the complaint or refers it to an Assistance Panel for non-disciplinary resolution.

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<sup>5</sup> Attorney trust accounts must be maintained in financial institutions approved by the PRB. See *V.R.P.C. 1.15C(a)*. In order to be on the list of approved institutions, a bank must execute an agreement with Disciplinary Counsel in which it agrees to notify Disciplinary Counsel whenever an instrument is presented against a trust accounts that does not contain sufficient funds to honor the instrument. See *V.R.P.C. 1.15C(b)*.

In FY 2005, 258 complaints were screened by counsel for the Professional Responsibility Program.<sup>6</sup> Disciplinary Counsel screened 249, and 97 cases were assigned to Conflict Counsel for screening.

As FY 2005 ended, 7 cases had not yet been screened, 162 cases were referred for a formal investigation by Disciplinary Counsel; a Petition for Reinstatement was assigned to a hearing panel and 86 cases were dismissed at the screening level.

### 1. Complaints Dismissed at Screening

If a complaint does not allege conduct that appears to require a disciplinary sanction, it is dismissed at screening. Upon dismissal, each complaint is assigned a “dismissal code.” Each dismissal code represents a different reason for the decision to dismiss a particular complaint. The 86 complaints that were dismissed at screening in FY 2005 were dismissed for the following reasons:

CBC-1:	1	--	Resolved by Screening Attorney
CBC-2:	72	--	No Cause of Action
CBC-3:	8	--	Insufficient Evidence to Open Investigation
CBC-4:	1	--	Referred to Fee Dispute Program
CBC-5:	2	--	Petition for Post-Conviction Relief
CBC-6:	0	--	Complainant Seeks New Attorney
CBC-7:	1	--	Lack of Disciplinary Jurisdiction
CBC-8:	1	--	Disciplined in Another File

If a complaint is dismissed at screening, the complainant may appeal the dismissal to the Chair of the Professional Responsibility Board. A.O. 9, 10(D). The complainant is advised, in writing, of the reason for the decision to dismiss. The complainant is also advised of his or her right to appeal the decision, within 60 days, to the Chair of the Board. By contrast, if Disciplinary Counsel dismisses a complaint after the conclusion of a formal investigation, the complainant has no right to appellate review.

In FY 2005, 34 complainants appealed Disciplinary Counsel’s decision to dismiss a complaint at screening; 31 of the appeals were upheld by the chair; 2 cases were referred to Disciplinary Counsel for further investigation. Of those 2, Disciplinary Counsel dismissed one and the other remains pending as the fiscal year closed.

### D. Formal Investigations by Disciplinary Counsel

As mentioned above, a complaint is referred for a formal investigation by Disciplinary Counsel if it alleges misconduct that appears to require a disciplinary sanction. The first step in the investigation is to require the attorney who is the subject of the complaint to file a written response to the allegations.

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<sup>6</sup> The total includes 258 of the 264 new files that were opened in FY 2005, as well as 1 file that was opened in FY 2004 but was not screened until FY 2005. In addition, 2 files - a petition for reinstatement filed by an attorney who was on disability/inactive status and a file opened against an attorney who did not comply with an agreement reached at an assistance panel hearing, were not assigned for “screening”.

<sup>7</sup> If Disciplinary Counsel has a conflict that prohibits his office from screening a particular complaint, the Board’s Program Administrator refers the complaint to private counsel for screening.

Disciplinary Counsel reviews the response and then conducts whatever additional investigation is appropriate.

Upon concluding an investigation, Disciplinary Counsel has three options: (1) dismiss the complaint; (2) refer the complaint to an Assistance Panel for non-disciplinary resolution; or (3) ask a hearing panel to review for probable cause Disciplinary Counsel's decision to file formal disciplinary charges against the attorney.

As FY 2005 began, Disciplinary Counsel was investigating 65 complaints. Another 1658 were referred to Disciplinary Counsel during the fiscal year. Thus, Disciplinary Counsel conducted 230 formal investigations during FY 2005.

Disciplinary Counsel commenced action against 21 Vermont attorneys in FY 2005. Of those 21 attorneys, 10 were the subject of formal disciplinary charges, while another 9 were referred to Assistance Panels for the non-disciplinary resolution of complaints that had been filed against them. The remaining 2 attorneys were the subjects of Requests for Review for Probable Cause.

### 1. Requests for Review for Probable Cause

Upon concluding an investigation, Disciplinary Counsel does not have the unilateral authority to file formal disciplinary charges against an attorney. Rather, if Disciplinary Counsel decides that formal charges are appropriate, he must ask a hearing panel to review his decision for probable cause.

By rule, a Request for Review for Probable Cause must be in writing and must include an Affidavit from Disciplinary Counsel that recaps the investigation and sets forth the factual basis for the decision to file formal charges. The process is *ex parte* in that the responding attorney does not submit material or argument directly to the panel. Moreover, Disciplinary Counsel does not appear or otherwise participate when a panel convenes to consider a Request for Review for Probable Cause.

If a panel finds that Disciplinary Counsel's decision to file formal charges is supported by probable cause, Disciplinary Counsel is authorized to file a Petition of Misconduct. If a panel finds that there is no probable cause to file formal charges, Disciplinary Counsel dismisses the complaint. Per Board rule, if a probable cause request is denied, Disciplinary Counsel may not submit the case for probable cause review again unless he discovers new evidence that was not available when the first request was submitted.

In FY 2005, Disciplinary Counsel filed 8 new Requests for Review for Probable Cause.<sup>9</sup> The 8 cases involved 5 attorneys. All of the requests were granted. In addition, 2 Requests for Review for Probable Cause filed in FY 2004 and pending as FY 2004 closed, were also granted.

### 2. Formal Disciplinary Proceedings

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<sup>8</sup>This total includes the Motion for Reinstatement and 2 cases that reopened upon referral by the chair.

<sup>9</sup> As compared to 17 in FY2004, 14 in FY 2003 and 20 in FY 2002.

Formal disciplinary proceedings can be commenced in one of several ways. In FY 2005, Disciplinary Counsel commenced formal disciplinary proceedings in 12 cases. The 12 cases involved 10 different attorneys.

a. Petitions for Interim Suspension

Rule 18 of Administrative Order 9 requires Disciplinary Counsel, upon the “receipt of sufficient evidence” showing that an attorney has violated the ethics rules and presently poses a substantial threat of harm to the public, to transmit the evidence to the Court along with a proposed order for the interim suspension of the attorney’s license to practice law.

In FY 2005, Disciplinary Counsel filed three petitions for an interim suspension. The petitions involved three attorneys and five disciplinary files. In two of the cases, the respondents consented to have their licenses suspended on an interim basis. In the third, the Supreme Court granted Disciplinary Counsel’s petition following oral argument.

b. Petitions of Misconduct

Disciplinary Counsel’s charging document is known as a “Petition of Misconduct.” The petition must be sufficiently clear so as to notify the attorney of the alleged misconduct and the rules allegedly violated. An attorney has twenty days to answer a petition. Once an Answer is filed, each party has the right to conduct discovery in advance of a disciplinary hearing. In FY 2005, Disciplinary Counsel did not file any Petitions of Misconduct.<sup>10</sup>

c. Stipulations

As an alternative to a Petition of Misconduct, Disciplinary Counsel and a respondent may commence formal disciplinary proceedings by filing a Stipulation of Facts. From there, the parties may either join to recommend a particular sanction or present argument as to the appropriate sanction.

In FY 2005, there were 8 cases in which Disciplinary Counsel joined with a respondent to commence formal proceedings via stipulated facts. The cases involved 8 different lawyers. In 6 of the cases, the parties also joined to recommend a particular sanction. In the other two, the parties did not agree on the resolution and argued for different sanctions.

d. Hearings

Hearing panels of the Professional Responsibility Program held 7 hearings in FY 2005. The hearings broke down as follows:

Disciplinary Trial:	1
Sanctions Hearing:	5
Reinstatement Hearing	1

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<sup>10</sup> As compared to 10 petitions in FY04, 7 petitions in FY 2003 and 8 in FY 2002.

Disciplinary Counsel appeared at each of the seven hearings.

### 3. Referrals for Non-Disciplinary Resolution

Upon concluding an investigation, and as an alternative to commencing formal disciplinary proceedings, Disciplinary Counsel may refer a case to an Assistance Panel for non-disciplinary resolution. In essence, the Assistance Panels are the Professional Responsibility Program's version of court diversion. In FY 2005, Disciplinary Counsel referred six cases to Assistance Panels,<sup>11</sup> involving six different lawyers.

### 4. Dismissals

If Disciplinary Counsel's investigation indicates that neither formal charges nor a referral to an Assistance Panel is appropriate, a case is dismissed. In FY 2005, Disciplinary Counsel investigated and dismissed 131 complaints.<sup>12</sup> The reasons for the dismissals are set out in below:

CDC1: 13	--	Resolved
CDC2: 63	--	No Cause of Action
CDC3: 42	--	Insufficient Evidence
CDC4: 4	--	Refer to Fee Dispute
CDC5: 0	--	Lack of Jurisdiction
CDC6: 1	--	Screener Dismissal Affirmed
CDC7: 0	--	Transferred to Disability/Inactive
CDC8: 0	--	Denial of Probable Cause
CDC9: 7	--	Disciplined in Another File
CDC10: 1	--	Post Conviction Relief Issue

### 5. Summary

Disciplinary Counsel completed 160 investigations in FY 2005. Of those, 29 resulted in some sort of formal action intended to address attorney misconduct.<sup>13</sup> The other 131 were dismissed. As the fiscal year closed, 84 cases remained under investigation by Disciplinary Counsel.<sup>14</sup>

#### E. Other

Throughout FY 2005, Disciplinary Counsel devoted time and resources towards projects outside the investigation and prosecution of ethics complaints.

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<sup>11</sup> As compared to 19 in FY2004, 9 in FY 2003 and 6 in FY 2002.

<sup>12</sup> As compared to 123 in FY 2004 and 179 in FY 2003.

<sup>13</sup> Meaning there were 29 cases in which Disciplinary Counsel either filed a petition for an interim suspension, commenced formal disciplinary proceedings, filed a request for review for probable cause, or made a referral to an Assistance Panel.

<sup>14</sup> As compared to 65 at the beginning of the fiscal year.

## 1. Random Audits of Trust Accounts

In FY 2005, approximately one hundred attorneys were randomly selected to respond to surveys related to trust account management. Along with Bar Counsel, Disciplinary Counsel reviewed each of the responses and, from there, chose ten attorneys to be subjected to a formal audit of their trust accounting procedures.

The task proved fruitful in that one attorney, on the eve of an audit, self-reported to Disciplinary Counsel the fact that the attorney had misappropriated approximately \$35,000 from his trust account. As the Fiscal Year ended, the CPA's reports of the other nine audits were being reviewed by Disciplinary Counsel.

## 2. Rule 1.15

A hot topic in FY 2005 was the issue of when, exactly, an attorney may write trust account checks against funds that have been deposited to the trust account, but might not constitute "collected funds". The discussion was driven by two hearing panel decisions in which lawyers were admonished as well as by an advisory opinion issued by the VBA's Advisory Ethics Opinion Committee.

In response to the decisions, Disciplinary Counsel served on a committee that drafted a proposed amendment to Rule 1.15 of the Vermont Rules of Professional Conduct. The Supreme Court eventually adopted the proposal and Rule 1.15, as amended, became effective in March of 2005.

## 3. Audit Committee

In January of 2005, the Supreme Court asked the Professional Responsibility Board "to develop a proposal for an effective program to audit attorneys' trust accounts." In response to the Court's request, Joan Loring Wing, the Board Chair, formed a committee to develop such a proposal and forward it to the Board for review. Disciplinary Counsel was appointed to the Committee. The Committee met several times and after much discussion and research drafted a proposed Audit Program that was forwarded to the Court for review.

## 4. Education/Continuing Legal Education

In FY 2005, Disciplinary Counsel presented at eight CLE seminars. Disciplinary Counsel's presentations involved a variety of topics and totaled 15 hours of ethics review. Disciplinary Counsel appeared at six seminars for the Vermont Bar Association, one for the National Business Institute, and one for the state's Probate Judges. In addition, Disciplinary Counsel spoke twice to classes at the Vermont Law School. Finally, Disciplinary Counsel designed and led three presentations at the Professional Responsibility Board's Annual Meeting.

## IV. CONCLUSION

In spite of the unfortunate and unexpected circumstances of very public incidences of attorney defalcation in this fiscal year, and despite the consequent taxing of the resources of the Program both budgetary and in increased responsibility and duties for some of our staff, the Program has functioned well, has maintained its services to the Bar, to the Court and to the clients our profession serves. The

Program welcomes the additional and expanded responsibilities it would undertake should the Court adopt the recommendations sent to it in June of 2005.

However, without the many hours the volunteers on hearing panels and assistance panels have contributed to the Program, we could not meet our charge. The Board acknowledges, with gratitude, their very great contribution to the Program and to our profession.



ATTACHMENT A

POLICIES ADOPTED  
FOR FISCAL YEAR 2000

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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 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. (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 COUNSEL. Files pertaining to these complaints will be destroyed after one year. Counsel will so advise complainants so that complainants can request return of documents prior to destruction. (September 17, 2004; Amended to reflect "Counsel.")
  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 7, 1999).
4. The Board will review all decisions of the hearing panels, but not before those decisions are filed. 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 21, 2000). (September 17, 2004; Amended to reflect "filed" rather than "published.")
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 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." This policy was rescinded by the Board on January 30, 2003.

6. All proceedings before Assistance Panels pursuant to Rule 4.B.(1) are confidential. If Counsel refers a file to an Assistance Panel, the panel will receive the intake sheet, Counsel's notes, annotations, and all information that is in the file. (January 21, 2000). (September 17, 2004; Amended to reflect "Counsel" and changes instituted by rescinding of Policy No. 5).
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 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. (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. (May 8, 2000).
10. All correspondence and decisions by Hearing Panels are to be on Professional Responsibility Program stationery. (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. (May 8, 2000).

POLICIES ADOPTED  
FOR FISCAL YEAR 2001

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12. Complainants will be allowed sixty days to appeal Counsel's dismissal of their complaint. 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 Counsel. (November 30, 2000). (September 17, 2004; Amended to reflect "Counsel.")
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. (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. (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. (April 26, 2001).
16. Respondent will be notified when the Complainant appeals Counsel's decision to dismiss. (June 14, 2001). (September 17, 2004; Amended to reflect "Counsel.")

POLICIES ADOPTED  
FOR FISCAL YEAR 2002

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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). The Board amended this policy to also include the Board's liaison. (October 29, 2002).

18. Each Assistance 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 Counsel refers a complaint to Disciplinary Counsel's office, the Respondent will be given 20 days in which to respond. (December 7, 2001). (September 17, 2004; Amended to reflect "Counsel.")

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).

POLICIES ADOPTED  
FOR FISCAL YEAR 2003

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24. The Board agreed, and it was decided, that assistance panels will not have access to a respondent's disciplinary history. (September 19, 2002).

25. The Board amended Policy No. 17 so as to authorize distribution of its Minutes to the Chief Justice, the Court's liaison to the Board, and the Court Administrator. (October 29, 2002).

26. The Board repealed Policy No. 5. All information obtained during the screening process may be shared with Disciplinary Counsel. (January 30, 2003).

POLICIES ADOPTED  
FOR FISCAL YEAR 2004

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27. Disciplinary Counsel may investigate any conduct that comes to his or her attention that appears to constitute misconduct that might require a disciplinary sanction. (September 12, 2003).

28. Hearing panel members are prohibited from representing respondents. (March 31, 2004).

NO NEW POLICIES ADOPTED  
FOR FISCAL YEAR 2005

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No new policies were adopted; however, amendments were made to Policies 3, 4, 6, 12, 16 and 20 to reflect language that more accurately described the processes in which complaints are handled.

September 17, 2004

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

*Decisions of the Hearing Panels are subject to appeal or Supreme Court review within 30 days of issue.*

<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.
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.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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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.
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.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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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.
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.

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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.
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. No review by Court undertaken.
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. No review by Court undertaken.
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.



## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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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.
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.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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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.
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> 2001.200	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.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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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	Respondent neglected five client matters and failed to file claims in court, thereby allowing the statute of limitations to expire in two cases. In addition, Respondent also made misrepresentations to three of his clients. Supreme Court Entry Order filed December 19, 2002.
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.
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.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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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 who did not return her client's calls regarding the status of a six-month overdue QDRO in a post-divorce matter was disciplined for failing to keep her client reasonably informed. No review by Court undertaken.
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. No review by Court undertaken.
38	<i>Unidentified Attorney</i> 2002.214	Rule 7.3	Admonition by Disciplinary Counsel	07/30/02	Respondent sent written solicitations for legal work not identified as advertising material. No review by Court undertaken.
39	<i>In re Raymond Massucco</i> 1998.050	DR 6-101(A)(3) DR 2-106	Public Reprimand	08/14/02	Respondent neglected an estate matter that caused the heirs to experience unnecessary stress, anxiety and emotional turmoil as well as extensive litigation in the probate court. In addition, Respondent charged excessive fees. No review by Court undertaken.
40	<i>Unidentified Attorney</i> 2002.201	Rule 1.4(a)	Admonition by Disciplinary Counsel	9/17/02	Respondent failed to comply with his client's reasonable request for an accounting of his fee. No review by Court undertaken.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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41	<i>In re Robert Andres</i> 2002.110	Rule 1.3	Two Months Suspension	9/18/02	Respondent failed to act with reasonable diligence and promptness in a criminal case by failing to attend a pretrial hearing and he intentionally abandoned his client's case by failing to respond to a motion for summary judgment. Supreme Court Entry Order 2002-428 dated August 6, 2004, adopts hearing panel's ruling. 2004 VT 71
42	<i>In re Frederick S. Lane III</i> 2002.205	Rule 8.4(b)(c) & (h)	Disbarment	10/09/02	While serving as Treasurer of the Chittenden County Democrats, Respondent temporarily used the Party's funds under his control for personal purposes. Supreme Court Entry Order 2002-431 accepts resignation on 10/9/02.
43	<i>In re Howard Sinnott</i> 2001.190	Rule 1.5(a)	Public Reprimand & Restitution	10/22/02 04/07/03	Respondent, who voluntarily left the practice of law, was reprimanded and ordered to reimburse to \$1200 to his client for charging an unreasonable fee when he used a standard flat rate but did nothing to advance his client's cause. Supreme Court E.O. 2003-170 dated 2/12/04 declined to reach the issue of whether respondent's fee agreement was a nonrefundable fee.
44	<i>In re Robert DiPalma</i> 2002.031	Rule 1.3 DR 6-101(A)(3)	Public Reprimand 2 Years Probation	10/29/02	Respondent neglected a client litigation matter for several months, resulting in the suit being dismissed, and failed to keep his client informed about the status of his case. No review by Court undertaken.
45	<i>Anonymous Attorney</i> 1999.065 and 2000.122	DR 7-102(A)(1)	Admonition by Disciplinary Counsel	10/29/02	Respondent filed pleadings containing intemperate language which was unprofessional, uncivil and intended solely to harass and embarrass the opposing party and her counsel. No review by Court undertaken.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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46	<i>Anonymous Attorney</i> 2001.165	Rule 4.3	Admonition by Disciplinary Counsel	11/20/02	Respondent interviewed a municipal employee against whom he knew he might bring a tort action. Based on Respondent's assurances that he wasn't going to sue the town, the employee obviously understood that there was no liability on his own part either, a misunderstanding which Respondent did not correct. The employee made several incriminating statements which Respondent later used in a suit against the employee personally. No review by Court undertaken.
47	<i>Anonymous Attorney</i> 2002.203	Rule 1.3	Admonition by Disciplinary Counsel	12/12/02	Respondent completed a real estate closing, withheld tax funds, but forgot to file the tax withholding with the Tax Department for seven months until his client brought the error to his attention. No review by Court undertaken.
48	<i>In re Norman Blais</i> 2002.108	Rule 1.3 Rule 1.4(a)	Six Month Suspension 12 Month Probation (Minimum) concurrent with sanction imposed in PRB 31	12/30/02	Respondent neglected a client's personal injury case and failed to keep his client reasonably informed about the status of her case. No review by Court undertaken.
49	<i>In re Thomas Daly</i> 2002.042	Rule 8.4(d)	3 Year Suspension <i>Effective May 21, 2003</i>	03/07/03	Respondent engaged in conduct prejudicial to the administration of justice by failing to supplement his Petition for Admission to the Vermont Bar to reveal that he was the defendant in a consumer fraud complaint and that his firm was the subject of an inquiry by the New York Committee on Professional Standards. No review by Court undertaken.

## DIGEST OF PROFESSIONAL RESPONSIBILITY BOARD DECISIONS

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50	<i>In re Anne Whitten</i> 2000.040	None	Dismissed	3/13/03	A Petition of Misconduct alleging a violation of DR 7-104(A)(1) (causing another to communicate with a represented party) was dismissed upon motion of Special Disciplinary Counsel due to failure to meet burden of clear and convincing evidence.
51	<i>In re Charles Capriola</i> 1999.035 & 1999.036	DR 5-104(a) DR 1-102(A)(7)	Public Reprimand	4/7/03	Respondent borrowed money from two different clients without advising either client that his interests in the loan differed from their interests. No review by Court undertaken.
52	<i>In re Robert Andres</i> 2002.043 & 2003.031	Rule 8.4(h)	3 Year Suspension effective 4/28/03	4/7/03	Respondent engaged in conduct adversely reflecting on his fitness to practice law in violation of Rule 8.4(h) because his conduct of engaging in simple assault, disregarding terms of his probation and violating a court order demonstrated a pattern of disregard for the law. Supreme Court Entry Order 2003-171 dated September 29, 2004, adopts hearing panel's ruling.
53	<i>In re Lance Harrington</i> 2002.144	DR1-102(A)(3) Rule 8.4(b)	3 Year Suspension effective 1/9/03	4/14/03	Respondent entered into fee agreements that led to a federal investigation. Respondent was convicted of submitting false information to the Social Security Administration stating that his fee agreements complied with the law, when in fact he knew they did not. No review by Court undertaken.
54	<i>In re Arthur Heald</i> 2003.141 & 2003.142	Rule 8.4(d)	30 Day Suspension, commencing 45 days from date of decision	5/5/03	Respondent, who has a significant disciplinary history, was suspended after he failed to respond to a complaint filed against him and then failed to file an answer to a petition of misconduct. No review by Court undertaken.

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55	<i>Anonymous Attorney</i> 2002-093	Rule 7.1(c) Rule 7.1(b)	Admonition by Disciplinary Counsel	6/4/03 <b>Amended</b> 11/19/03	Respondent placed an advertisement in the Yellow Pages stating that the lawyers in the firm were “ <b>the</b> experts in...” enumerated areas of law, thereby impermissibly comparing their services to those of other lawyers and making a misleading statement that could not be proven. Affirmed by Supreme Court Entry Order 2003-159 on January 11, 2005. 2005 VT 2
56	<i>Anonymous Attorney</i> 2003-183	Rule 1.3	Admonition by Disciplinary Counsel	6/9/03	Respondent, who was the closing agent, failed to disburse three checks following a real estate closing, one of which was to the clients’ credit card company. Such delay resulted in late fees and interest accruing on the clients’ account.
57	<i>Anonymous Attorney</i> 2002-219	Rules 1.3 & 1.4(a)	Admonition & 3 Year Probation	7/7/03	Respondent failed to act with reasonable diligence and promptness in the handling of an application for a building permit and failed to keep her client informed of the status of this matter. No review by Court undertaken.
58	<i>Norman Blais</i> 2004-010	Not Applicable	Reinstatement	10/1/03	Respondent readmitted to the Vermont Bar per Entry Order of the Supreme Court on October 21, 2003. E.O. 2003-444.
59	<i>Anonymous Attorney</i> 2003-271	Rule 7.5(d)	Admonition by Disciplinary Counsel	10/24/03	Respondent used law office letterhead which indicated that he had associates when in fact, he did not. No review by Court undertaken.
60	<i>Anonymous Attorney</i> 2003-202	Rules 1.3, 1.4(a) and 1.5(b)	Admonition by Disciplinary Counsel	10/29/03	Respondent failed to act with diligence, to keep his clients informed of the status of their case and to communicate clearly about his fees in connection with his handling of a collection matter. No review by Court undertaken.



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61	<i>Anonymous Attorney</i> 2004-066	Rules 1.15 and 1.15A	Admonition by Disciplinary Counsel	1/26/04	Respondent deposited client funds in wrong trust accounts and failed to reconcile accounts for over two months. No review by Court undertaken.
62	<i>Anonymous Attorney</i> 2004-082	Rule 1.15(a)	Admonition by Disciplinary Counsel	1/28/04	Respondent disbursed \$95,000 in funds in connection with a real estate closing on the assumption that his client's wire transfer of funds had been received when, in fact, it had not, thus causing the use of other client's funds to cover the overdrafts created by the disbursements. No review by Court undertaken.
63	<i>In re Kenneth Levine</i> 2002-246	Rule 8.4(c) Rule 3.3(a)(1)	3 Year Suspension 30 day Suspension	3/23/04 9/13/04	Respondent filed a false affidavit in connection with an application to appear pro hac vice in a Vermont proceeding. The Hearing Panel initially imposed a 3 year suspension which was reduced to a 30 day suspension following Respondent filing a Motion to Reconsider.
64	<i>In re George Rice</i> 2001-168	Rule 1.2(d) Rule 8.4(c) Rule 4.4	90 Day Suspension	5/3/04 9/13/04	Respondent, who intentionally hid his client's life insurance benefits in his own name to prevent attachment by known creditors, was suspended from practice for 90 days. Upon appeal, the Hearing Panel amended this Decision on September 13, 2004, to provide for the suspension to commence on December 16, 2004.
65	<i>In re Mark Furlan</i> 2003-048 2003-051	Rule 1.3 Rule 1.4(a) Rule 1.4(b)	Public Reprimand 12 Month Probation	5/5/04	Contract public defender who took no action on behalf of two incarcerated clients and who failed to communicate with those clients or otherwise keep them adequately informed as to the status of their cases was publicly reprimanded and placed on probation for one year. No review by Court undertaken.

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66	<i>In re Arthur Heald</i> 2003-041	Rule 1.15(a) Rule 1.15C(a)	Public Reprimand	5/14/04	For over five months, Respondent held escrowed funds in his client's file rather than depositing them in his trust account. No review by Court undertaken.
67	<i>In re Arthur Heald</i> PRB Docket No. 2004-104	Rule 8.4(c) Rule 8.4(h) Rule 8.4(d)	Suspension of 3 years	6/15/04	Respondent failed to file state income tax returns, made a false statement on his licensing statement filed with the Board of Bar Examiners and failed to cooperate with disciplinary authorities. No review by Court undertaken.
68	<i>Unidentified Attorney</i> 2004-062	Rules 1.3 and 1.4(a)	Admonition by Disciplinary Counsel	7/23/04	Respondent neglected to resolve an issue arising out of a real estate closing and failed to communicate with his client in a timely manner. No review by Court undertaken.
69	<i>Unidentified Attorney</i> 2004-206	Rule 3.5(b)(1)	Admonition by Disciplinary Counsel	7/26/04	Respondent had an <i>ex parte</i> conversation with an acting judge on the subject of a pending matter. No review by Court undertaken.
70	<i>Unidentified Attorney</i> 2002-194	Rules 7.1 and 7.5(d)	Admonition by Disciplinary Counsel	7/27/04	Respondent used law office letterhead which indicated that he had associates when in fact, he did not. No review by Court undertaken.
71	<i>In re Mark Stephen</i> 2004-053	DR 6-101(A)(3) Rules 1.3 and 1.4	Public Reprimand	9/8/04	Respondent neglected for several years to resolve benefit issues remaining in a worker's compensation case after resolution of the client's permanent disability and failed to communicate with her. No review by Court undertaken.
72	<i>Unidentified Attorney</i> 2004-007	Rule 3.5(c)	Admonition by Hearing Panel and 1 year probation	12/23/04	Respondent was discourteous to an acting judge during a status conference. New review by Court undertaken.

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73	<i>In re: James P. Carroll</i> 2004-059	Rule 1.3 Rule 1.4(a)	Public Reprimand by Hearing Panel	1/7/05	In a contested estate matter, Respondent failed to pursue his client's case and failed to respond to his client's inquiries and to keep his client informed over a three year period in which Respondent did little or nothing to advance the client's case despite the client's 83 or more phone calls to Respondent's office, most of which were not returned. No review by Court undertaken.
74	<i>Unidentified Lawyer</i> 2005-117	Rule 4.5	Admonition by Disciplinary Counsel	3/28/05	As part of his demand letter in a civil dispute, Respondent threatened to report the matter to the State's Attorney if his settlement demand was not met. No review by Court undertaken.
75	<i>In re: Robert Andres</i> 2004-204	Rule 3.5(c)	Public Reprimand	3/28/05	Respondent made discourteous and inappropriate remarks about a judge in pleadings when he compared her to a crack cocaine user. No review by Court undertaken.
76	<i>In re: Vaughan H. Griffin, Jr.</i> 2004-122	Rule 8.4(c)	30 Month Suspension	5/12/05	During a fee dispute with a former client, Respondent created a fictitious fee agreement and forged his client's signature to it, thereby creating a promise to pay which did not, in fact, exist. No review by Court undertaken.
77	<i>In re: E. Michael McGinn</i> 2005-069, 2005-080 and 20050-094	Rules 8.4(b)(c)(d)(h)	Disbarment	6/16/05	Respondent misappropriated and diverted to his own use and benefit a portion of the funds that were entrusted to him in the course of his real estate practice. In an attempt to cover up these embezzlements, Respondent used funds he received in connection with later transactions to pay out moneys owed on earlier transactions. Supreme Court Entry Order 2005-237 accepts resignation on 6/28/05.