

Professional Responsibility Program

FY 2014 Annual Report



The Professional Responsibility Board is required by Administrative Order No. 9, Rule 1.E.(2) to provide to the Supreme Court “an annual report, including statistics and recommendations for any rule changes, which report shall be public.” The following is the fifteenth annual report submitted in accordance with this mandate.

<https://www.vermontjudiciary.org/LC/attydiscipline.aspx>



Professional Responsibility Program

FY 2014 Annual Report

I. Report of Activities of the Board

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

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

A. Policies

Policies 14, 15 and 16 were amended during FY 2014. The complete list of [Policies](#) is listed on the Judiciary website.

B. Appointment of Hearing Panels

The following individuals served as members of standing Hearing Panels during FY14:

Hearing Panel No. 1

R. Joseph O'Rourke, Esq., Chair
John J. Kennelly, Esq.
Ms. Joanne Cillo

Hearing Panel No. 2

Jean Brewster Giddings, Esq., Chair
Joseph F. Cook, Esq.
Mr. Greg Worden

Hearing Panel No. 3

Lawrence Myer, Esq., Chair
Sheila Ware, Esq.
Mr. Mitchell Jay

Hearing Panel No. 4

William Piper, Esq., Chair
Jill L. Broderick, Esq.
Mr. David Tucker

Professional Responsibility Board

Jan Eastman, Esq., Chair
Michael Hanley, Esq., Vice-Chair
Hon. Alan Cheever (Retired Judge)
Larry Novins, Esq.
Ms. Linda O'Brien
Mr. Randolph Rowland
Mr. Christopher Chapman

Office of Bar Counsel

Michael Kennedy, Esq.
Bar Counsel

Mailing Address:

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

Office of Disciplinary Counsel

Beth DeBernardi, Esq.
Disciplinary Counsel

Kimberly Rubin, Esq.
Deputy Disciplinary Counsel

Brandy Sickles
Administrative Assistant

Mailing Address:

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

Program Administrator

Deb Laferriere
Program Administrator

Mailing Address:

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



Hearing Panel No. 5

Erin Gilmore, Esq., Chair
Michele B. Patton, Esq.
Mr. Christopher Bray

Hearing Panel No. 7

Harland L. Miller III, Esq., Chair
Mark Hall, Esq.
Mr. Stephen V. Carbone

Hearing Panel No. 9

Shannon Bertrand, Esq., Chair
Alan Biederman, Esq.
Mr. William Scranton

Hearing Panel No. 6

Caryn E. Waxman, Esq., Chair
John P. Cain, Esq.
Mr. William Schubart

Hearing Panel No. 8

John T. Leddy, Esq., Chair
Joseph Obuchowski, Esq.
Ms. Jeanne Collins

Hearing Panel No. 10

Danielle Fogarty, Esq., Chair
Joseph O’Dea, Esq.
Mr. Roger Preuss

Leslie Black, Hearing Panel Counsel, provides assistance to Hearing Panels. In general, she attends hearings and phone conferences and writes a first draft of any opinion or order for the panel. She is also available to provide research, pre-hearing memos or other legal assistance to the Hearing Panels. A comprehensive [Manual](#), adopted by the Board in 2008, is available as a resource for Hearing Panel members.

C. Trust Accounts

The Vermont Professional Responsibility Board has published a guide entitled "[Managing Client Trust Accounts, Rules, Regulations and Tips](#)" to assist both new and experienced lawyers in dealing with trust accounting questions. The purpose of the booklet is to provide attorneys with the basic rules, highlight the areas that will always require an attorney's best judgment because there are no absolute rules, and dispense some practical experience provided by years of answering lawyers' questions.

The Professional Responsibility Board also publishes an [Audit Questionnaire](#). The questionnaire is intended to serve as a tool to which Vermont attorneys can turn for self-assessment of the procedures by which their trust accounting systems are managed. Completion of the questionnaire is not a substitute for complying with the Vermont Rules of Professional Conduct. However, the questionnaire provides a starting point for self-education on trust account management.

D. Annual Training Meeting

The Professional Responsibility Program held its annual meeting on June 4, 2014, at the historic Hildene estate in Manchester, Vermont. Arrangements for the PRB to hold their annual meeting at Hildene were arranged by Donald Keelan, former Board member of the Professional Responsibility Board. Forty-six Professional Responsibility Program members and guests attended the full day educational program. Attorneys who attended the entire program earned 4.25 CLE credits.



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

Each month the Program Administrator provided the Board with a case flow statistical report. In addition, Disciplinary Counsel and Bar Counsel each provided the Board, on a quarterly basis, with a detailed summary of their caseloads. The Board reviewed the reports.

F. Assistance Panels

In addition to Board members, all of whom may serve on Assistance Panels, the following volunteers were appointed to the roster of Assistance Panels during FY 2014:

Attorneys

Steven Adler, Esq.
Joseph F. Cahill, Jr., Esq.
Jesse M. Corum, IV, Esq.
Leslie Hanafin, Esq.
Emily Gould, Esq.
Robert Fairbanks, Esq.
Katherine Mosenthal, Esq.
Robert O’Neill, Esq.
John Pacht, Esq.
Susan Palmer, Esq.
Alan Rome, Esq.
Thomas Rounds, Esq.
Janet Shaw, Esq.
Peter Van Oot, Esq.
John Webber, Esq.

Public Members

Ms. Irene Carbine
Ms. Susan Fay
Ms. Judith Lidie
Mr. Peter Keelan
Mr. Kevin O’Donnell
Mr. Neal Rodar
Ms. Rachel Siegel
Mr. R. Brownson Spencer II

A comprehensive [Assistance Panel Handbook](#), adopted by the Board in 2008, is available for the use of Assistance Panel members.

II. Report of Activities of Bar Counsel

A. Introduction

This report covers Bar Counsel’s activities from July 1, 2013 through June 30, 2014. Throughout the report, that period of time will be referred to as “FY 14.”

B. Screening Complaints

The Professional Responsibility Program opened 243 new files in FY 2014. Bar Counsel screened 197.¹

¹ Bar Counsel does not screen bank’s reports of overdrafts to attorney trust accounts. Overdraft notices go straight to investigation by Disciplinary Counsel. There are also other instances in which a complaint goes straight to investigation without being screened. In FY 14, 46 cases went to investigation without being screened.

Professional Responsibility Program



1. Results of Screening

Closed at Screening	92
Referred to Non-Disciplinary Resolution	21
Referred to Disciplinary Counsel for Investigation	84
TOTAL	197

By rule, if a file is closed at screening or resolved in the dispute resolution program, the complainant has thirty days to appeal to the Chair of the Professional Responsibility Board.

2. Dispute Resolution

Bar Counsel administers the Dispute Resolution Program (“DRP”). Complaints that are referred to the DRP are resolved in a manner that does not involve a disciplinary sanction. A referral can be made by Bar Counsel at screening or by Disciplinary Counsel after an investigation. Twenty-four complaints were referred to the Dispute Resolution Program in FY 2014.

Total Referred to DRP	24
Referred by Bar Counsel	21
Referred by Disciplinary Counsel	3

There are different methods to resolve complaints that are referred to DRP. Each complaint referred to DRP by Disciplinary Counsel is assigned to an assistance panel. With respect to the complaints referred to DRP at screening, Bar Counsel resolves some, while assistance panels resolve others.

When a complaint in DRP is assigned to an assistance panel, the panel may choose to resolve the complaint with or without a hearing. *A.O. 9, Rule 4(B)(1)*. The panel may also choose to impose conditions as an alternative to discipline. If conditions are imposed, the complaint is “conditionally closed.” *A.O. 9, Rule 4(B)(2)*. A complaint that is conditionally closed is dismissed upon motion of the attorney demonstrating successful completion of any terms or conditions. *Id.* An Assistance Panel has the discretion to transfer a matter to Disciplinary Counsel if it concludes that the matter is more appropriate for disciplinary proceedings.

The status of the 24 complaints that were referred during the fiscal year:

Resolved by Bar Counsel	15
Resolved – Assistance Panel Hearing	2
Conditionally Closed by Assistance Panel	2
Resolved – Assistance Panel – No Hearing	1
Referred to Disciplinary Counsel	1
Pending Hearing by Assistance Panel	1
Pending Action by Bar Counsel	2

Professional Responsibility Program



C. Inquiries

By rule, Bar Counsel responds to ethical inquiries. Bar Counsel received and resolved 750 inquiries in FY 14.

1. Source of Inquiries

Attorney	587
Non-Attorney	160
Judge	2
Media	1
Total	750

2. Type of Resolution

Resolved – Guidance from Bar Counsel	502
Resolved by Bar Counsel	93
Resolved – Guidance & Complaint Brochure	60
Referred Elsewhere	28
Resolved – Diverted	20
Resolved – Will file Complaint	18
No call back from Inquirer	22
Bar Counsel opened as a Project	2
Resolved before Bar Counsel called back	4
Bar Counsel Files Rule 24 Petition	1
TOTAL	750

3. Time to Resolve

Same Business Day	545
2 Business Days	129
5 Business Days	30
More than 5 Business Days	24
No Call Back -- N/A	22
TOTAL	750



4. Inquiry Topics

Most inquiries concern a topic covered by a particular Rule of Professional Conduct. Some inquiries involve more than one topic. Some inquiries do not fit within a specific topic and are categorized as “other.” The chart below lists the topics about which Bar Counsel received at least 10 inquiries in FY 14.

Conflicts of Interest	106
Client Confidences	50
Trust Account Management	33
Fees	29
Communication	27
A.O. 9 & the complaint process	26
Diligence/Neglect	22
Competence	18
Unauthorized Practice of Law	18
Mandatory Reporting Rule	17
Advertising & Solicitation	15
Withdrawal from Representation	14
Contacting a Represented Person	13
Candor/Honesty Issues	10
File Delivery	10

D. Continuing Legal Education Seminars

Bar Counsel presented more than 40 hours of CLE credit in FY 14. Bar Counsel presented at seminars organized by the following groups:

Professional Responsibility Board
 Addison County Bar Association
 Chittenden County Bar Association
 Rutland County Bar Association
 Office of the Defender General
 Vt. Assoc. of Criminal Defense Lawyers
 VBA Young Lawyers’ Division
 Vermont Attorneys Title Corp.
 Office of the Attorney General

Vermont Bar Association
 Bennington County Bar Association
 Orange County Bar Association
 Washington County Bar Association
 Office of the Sheriffs and State’s Attorneys
 Vermont Association for Justice
 Northern Vermont Inns of Court
 Vermont Paralegal Organization



III. Report of Activities of Disciplinary Counsel

A. Introduction

Disciplinary Counsel administers the disciplinary side of the Professional Responsibility Program. Disciplinary Counsel's core function is to investigate and prosecute disciplinary complaints and disability matters.

B. Formal Investigations by Disciplinary Counsel

When a complaint is referred for an investigation, 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. 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) initiate a formal disciplinary or disability proceeding.

FY 2014 opened with 35 formal investigations pending. During the fiscal year, an additional 130 complaints were referred for formal investigations. At the close of the fiscal year, there were 53 formal investigations pending.

1. Disciplinary Cases before the Supreme Court

a. Cases on Review by the Court

When a Hearing Panel issues a decision, either party may appeal that decision to the Supreme Court. If neither party appeals, the Court may, on its own motion, order review of the Hearing Panel's decision. In either situation, the Rules of Appellate Procedure apply. **A.O. 9, Rule 11(E).**

At the beginning of FY 2014, a motion was pending in the Supreme Court whereby a Respondent was seeking relief from an Entry Order of the Court whereby the Court had suspended the Respondent for three months. On July 5, 2014, the Supreme Court denied the Respondent's motion and ordered the three month suspension to take effect immediately.

During FY 2014, Hearing Panels issued 14 decisions. Each of those decisions was subject to appeal by either party, as well as a 30 day review period by the Court. In FY 2014, the Court ordered review of one decision on its own motion. The Court subsequently adopted the hearing panel decision as a final decision of the Supreme Court and ordered that the decision be published in Vermont Reports. Also in FY 2014, Disciplinary Counsel filed an appeal to the Court in one case. The appeal was pending as the fiscal year ended.

b. Petitions for Interim Suspension

Rule 18 of Administrative Order No. 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 Supreme Court along with a proposed order for the interim suspension of the attorney's license to practice law. In FY 2014, Disciplinary Counsel's Office filed two petitions for an interim suspension. Both petitions were granted by the Court.

c. Petitions for Reciprocal Discipline

Upon learning that a lawyer subject to the PRB's jurisdiction has been disciplined in another jurisdiction, Disciplinary Counsel is required to notify the Supreme Court. **A.O. 9, Rule 20(A)**. The Court then issues an order giving the parties 30 days to indicate whether the imposition of identical discipline in Vermont is warranted. **A.O. 9, Rule 20(C)**. In FY 2014, Disciplinary Counsel filed one petition involving reciprocal discipline. The Court's decision in that matter was still pending as the fiscal year ended.

Also during FY 2014, another previously filed and still pending Petition for Reciprocal Suspension was brought to a conclusion. In that matter, the Respondent's discipline in New Hampshire had been stayed on a temporary basis, which automatically stayed the reciprocal Vermont proceeding on a temporary basis. During FY 2014, New Hampshire made the stay of discipline permanent; accordingly, Disciplinary Counsel informed the Supreme Court that the Vermont proceeding should be dismissed under the rules, and the Court so ordered.

2. Probable Cause Review

In FY 2014, Disciplinary Counsel filed four Requests for Probable Cause. **A.O. 9, Rule 11(C)**. Probable Cause was granted in two cases, denied in one case, and partially granted in the fourth case. The Probable Cause Panel rotates in January; the Chair of the Board designates a hearing panel to serve as the Probable Cause Panel for a term of one year.

3. Petitions of Misconduct and Stipulations

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 respond to the Petition. Once an Answer is filed, each party has the right to conduct discovery in advance of a disciplinary hearing.

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.

At the beginning of FY 2014, six disciplinary proceedings were still pending with hearing panels which had been filed in the previous fiscal year.

During FY 2014, one formal disciplinary proceeding was commenced by the filing of a Petition of Misconduct, and eight disciplinary proceedings were commenced by Stipulation. Six of those stipulations involved Respondents who agreed to admonitions by Disciplinary



Counsel. In one complaint, the parties stipulated to a violation, but not to a sanction, and the remaining stipulation resulted in an affidavit of resignation.

4. Disability Proceedings

Disciplinary Counsel also prosecutes disability cases. Although Disciplinary Counsel did not initiate any new disability cases in FY 2014, Special Disciplinary Conflict Counsel is continuing to handle one formal disability proceeding, and that file remained pending as the fiscal year ended. **A.O. 9, Rule 21.**

5. Reinstatement Petitions

A lawyer who is transferred to disability inactive status, disbarred, or suspended for more than six months must petition for reinstatement to active status. **A.O. 9, Rule 22.** The lawyer bears the burden of proving that he or she should be reinstated. Disciplinary Counsel conducts discovery, cross-examines witnesses, and presents evidence, if any, in response to the reinstatement petition.

In FY2014, two petitions for reinstatement carried over from FY2013. In addition, one new Petition for Reinstatement from Disability/Inactive Status was filed.

In **PRB Decision 161**, a Hearing Panel recommended that Petitioner's license to practice law be reinstated. The Petitioner's license had been reciprocally suspended in Vermont. The Supreme Court agreed with the Hearing Panel's recommendation and issued a reinstatement Entry Order on July 31, 2013.

In **PRB Decision Nos. 165 and 166**, the Hearing Panels recommended that the Petitioners' licenses to practice law be transferred from disability/inactive to active status with probationary conditions. The Supreme Court approved both of the Hearing Panel's recommendations, and those Respondents commenced their supervised probation during FY 2014.

6. Referrals to Non Disciplinary Resolution

Upon concluding an investigation, and as an alternative to commencing formal disciplinary proceedings, Disciplinary Counsel may refer cases for non-disciplinary resolution. In FY 2014, three cases were referred to Bar Counsel for assignment to an Assistance Panel. All three were successfully resolved during FY 2014 through the non-disciplinary resolution process.

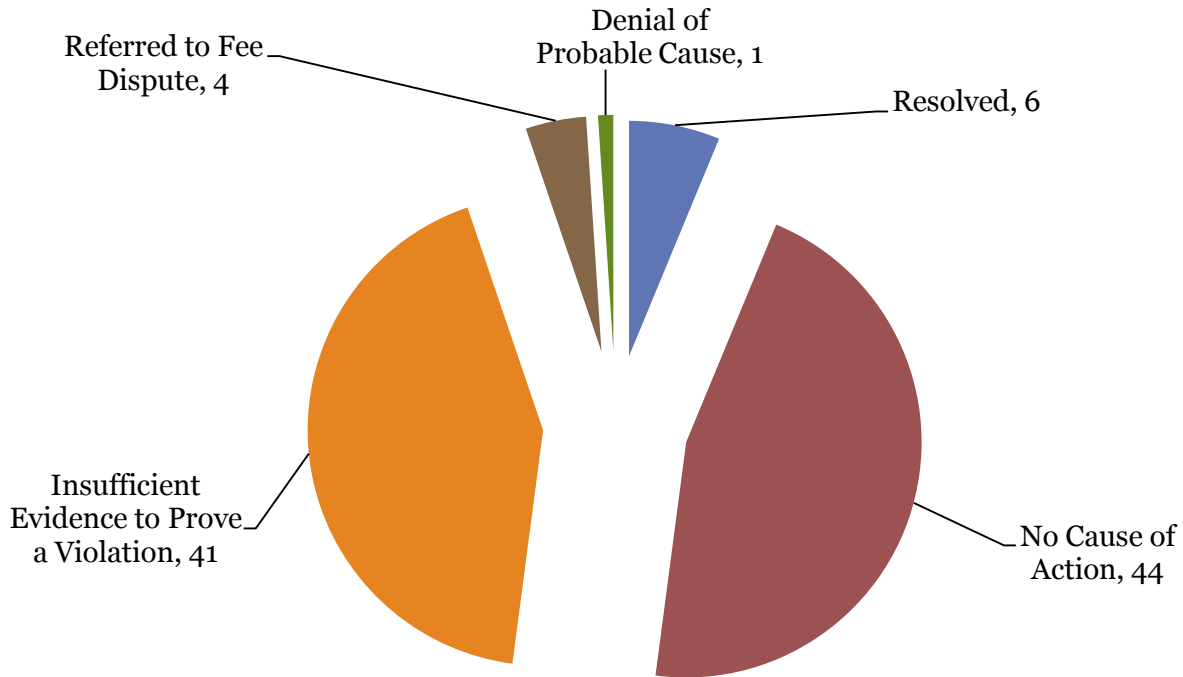
7. Dismissals

If Disciplinary Counsel's investigation indicates that neither formal charges nor a referral to an Assistance Panel or Dispute Resolution is appropriate, a case is dismissed. In FY 2014, Disciplinary Counsel investigated and dismissed 96 complaints. The reasons for the dismissals are set out in the following table:



Table 3

96 Investigations Resulting in Dismissals



8. Docket at End of FY 2014

As the fiscal year closed, 53 complaints were under investigation by Disciplinary Counsel, five cases were being prosecuted before Hearing Panels, and three matters were pending before the Supreme Court.

C. Continuing Legal Education Seminars

In FY 2014, Disciplinary Counsel appeared and co-presented two Continuing Legal Education seminars at the Professional Responsibility Board’s Annual Meeting. Disciplinary Counsel also appeared before and addressed the Vermont Board of Bar Managers, at their March meeting. Deputy Disciplinary Counsel joined Bar Counsel in Montpelier to present a Continuing Legal Education seminar on ethical issues on property law.

D. Probation

In FY 2014, Disciplinary Counsel monitored five attorneys who were on disciplinary probation. Two of the attorneys successfully completed their probation during the fiscal year. At the close of the fiscal year, three attorneys remained on probation.



E. Compliance with the Trust Account Rules

Just prior to the commencement of FY 2014, Disciplinary Counsel published an RFP for proposals from Vermont-licensed CPAs who were interested in conducting trust account compliance examinations for the program. During FY 2014, seven proposals were received, and Disciplinary Counsel entered into contracts with 3 CPAs, in different regions of the state (northern, central, and southern) to conduct trust account compliance examinations for the program.

In late FY 2013, Disciplinary Counsel sent out a number of trust accounting system surveys to a group of randomly selected Vermont lawyers. In early FY 2014, Disciplinary Counsel selected 15 of those attorneys for trust account compliance examinations. The CPAs performed the compliance reviews in FY 2014, reporting to Disciplinary Counsel that they found compliance issues, including minor issues, in ten of the exams. Those matters were opened as disciplinary investigations in FY 2014. To date, two of those cases have resulted in formal disciplinary proceedings; six remained under investigation at the end of the fiscal year; and minor trust account issues were resolved in the other two matters.

In FY 2014, Disciplinary Counsel also opened 29 cases as the result of notification from a bank that an attorney had an overdraft in the attorney's trust account. Each of those cases resulted in an investigation. In two of those cases, the attorney was disciplined with an admonition, and in one case, request for approval of an admonition was still pending as the fiscal year ended. In addition three more IOLTA related cases were opened as a result of the attorneys self-reporting problems with their trust accounts. One case was dismissed; one remains under investigation, and in the last case the parties have stipulated to an admonition, but as the fiscal year ended, the Hearing Panel had not issued its decision yet.

F. Approved Financial Institutions

Rule 1.15B.(a)(1) of the Vermont Rules of Professional Conduct requires lawyers to maintain their trust accounts only in financial institutions approved by the Professional Responsibility Board. Financial institutions which have not been so approved may obtain information as to how to become certified by contacting the Office of Disciplinary Counsel (802) 859-3000.

In December of 2013, Disciplinary Counsel notified each financial institution in the program that their contracts were up for renewal, and Disciplinary Counsel entered into renewal contracts with each of those institutions. In addition, Disciplinary Counsel entered into two new contracts with financial institutions which had not previously been a part of the program.

In January 2014, the current list of approved financial institutions was sent to members of the Bar. For a complete list of Approved Financial Institutions, please click on the following link:

<https://www.vermontjudiciary.org/LC/MasterPages/PRB-Attytrusts.aspx>

G. Projects for the Board

A.O. 9, Rule 3(B)(2) provides that Disciplinary Counsel shall confer periodically with the Board to review operations and perform other assigned tasks. In FY 2014, Disciplinary Counsel conferred with the Board to review operations in December, March, and May. Disciplinary Counsel also worked with a subcommittee of the Board to review the program's approach to trust accounts.



IV. CONCLUSION

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

All participants in the Professional Responsibility Program are pleased to be of service to the Supreme Court, to the legal profession and to the public. The Board acknowledges with gratitude the work of the staff and the many volunteers serving on Hearing and Assistance Panels and as Conflict Counsel, who have contributed significantly to the overall success of the Program.

We also wish to give special thanks to Donald Keelan who served for many years as both a member of the PRB and as its Vice-Chair.

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