

# Professional Responsibility Program

## FY 2015 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 sixteenth annual report submitted in accordance with this mandate.

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



# Professional Responsibility Program

FY 2015 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

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 FY 15:

**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**  
Jill L. Broderick, Esq., Chair  
Mary Parent, Esq.  
Mr. David Tucker

## *Professional Responsibility Board*

Jan Eastman, Esq., Chair  
Michael Hanley, Esq., Vice-Chair  
Hon. Alan Cheever (Retired Judge)  
Carolyn Anderson, Esq.  
Ms. Linda O'Brien  
Mr. Christopher Chapman  
Ms. Lisa Ventriss

## *Bar Counsel*

Michael Kennedy, Esq.

32 Cherry Street, Suite 213  
Burlington, VT 05401  
Telephone: 802-859-3004  
Michael.Kennedy@vermont.gov

## *Office of Disciplinary Counsel*

Beth DeBernardi, Esq.  
Disciplinary Counsel

Kimberly Rubin, Esq.  
Deputy Disciplinary Counsel

Brandy Sickles  
Administrative Assistant

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32 Cherry Street, Suite 213  
Burlington, VT 05401  
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## *Program Administrator*

Deb Laferriere  
Program Administrator

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

## Professional Responsibility Program



### Hearing Panel No. 5

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

### Hearing Panel No. 7

Jesse Bubgee, Esq., Chair  
Vanessa Kittell, Esq.  
Mr. Carl J. Rosenquist

### Hearing Panel No. 9

Alan Biederman, Esq., Chair  
Carolyn Anderson, Esq.  
Mr. William Scranton

### Hearing Panel No. 6

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

### Hearing Panel No. 8

Beth Novotny, Esq., Chair  
Andrew D. Manitsky, Esq.  
Ms. Jeanne Collins

### Hearing Panel No. 10

Joseph O'Dea, Esq., Chair  
Jonathan Cohen, 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 3, 2015, at the Rutland Superior Court. Thirty-six Professional Responsibility Program members and guests attended the full day educational program. Attorneys who attended the entire program earned 4.50 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 2015:

### Attorneys

Steven Adler, Esq.  
Joseph F. Cahill, Jr., Esq.  
Leslie Hanafin, Esq.  
Emily Gould, 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  
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, 2014 through June 30, 2015. Throughout the report, that period of time will be referred to as "FY 15."

### B. Screening Complaints

The Professional Responsibility Program opened 208 new files in FY 15. Bar Counsel screened 166.<sup>1</sup>

#### 1. Results of Screening

Closed at Screening	96
Referred to Non-Disciplinary Resolution	9
Referred to Disciplinary Counsel for Investigation	61
<b>Total</b>	<b>166</b>

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.

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<sup>1</sup> Bar Counsel does not screen bank's reports of overdrafts to attorney trust accounts as they 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 15, 39 cases went to investigation without being screened and 3 cases were assigned to Conflict Counsel.



## 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. Five files were carried over from FY14. Sixteen new complaints were referred to the Dispute Resolution Program in FY 15.

Referred by Bar Counsel	9
Referred by Disciplinary Counsel	7
<b>Total</b>	<b>16</b>

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 21 complaints at the end of FY 15 was:

Resolved by Bar Counsel	10	
Resolved – Assistance Panel Hearing	1	
Conditionally Closed by Assistance Panel	4	
Resolved – Assistance Panel – No Hearing	2	
Referred to Disciplinary Counsel	1	
<i>Pending and carried over to FY16</i>		3

## C. Inquiries

By rule, Bar Counsel responds to ethical inquiries. Bar Counsel received and resolved 827 inquiries in FY 15.

### 1. Source of Inquiries

Attorney	645
Non-Attorney	175
Judge	2
Media	5
<b>Total</b>	<b>827</b>

Professional Responsibility Program



**2. Type of Resolution**

Resolved – Guidance from Bar Counsel	494
Resolved by Bar Counsel	212
Resolved – Guidance & Complaint Brochure	51
Referred Elsewhere	15
Resolved – Diverted	9
Resolved – Will file Complaint	11
No call back from Inquirer	19
Resolved - Other	2
Resolved before Bar Counsel called back	14
<b>Total</b>	<b>827</b>

**3. Time to Resolve**

Same Business Day	611
2 Business Days	146
3-5 Business Days	16
More than 5 Business Days	35
No Call Back -- N/A	19
<b>Total</b>	<b>827</b>

**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 15.

Conflicts of Interest	175
Client Confidences	98
Other	92
Administrative Order 9 & the Disciplinary Process	80
Trust Account Management	58
Communication	32
Withdrawal from Representation	31
Fees	27
Unauthorized Practice of Law	26
Advertising	24
Mandatory Reporting Rule	23
Duties of a Prosecutor	19
Communicating with a Represented Party	19
File Retention/Delivery/Destruction	19
Fairness to the Opposing Party	17
Safekeeping Client Property	16
Candor to a Tribunal	14
Diligent & Prompt Representation	12
Solicitation of Clients	12
Firm Name/Letterhead	11
Competent Representation	10
Client under a Disability	10



#### **D. Continuing Legal Education Seminars**

Bar Counsel presented 32 continuing legal education seminars in FY 15. The seminars totaled 52.75 hours of CLE credit. Bar Counsel presented at seminars organized by the following groups:

Addison County Bar Association  
Chittenden County Bar Association  
Lamoille County Bar Association  
Orange County Bar Association  
Rutland County Bar Association  
Windham County Bar Association  
Windsor County Bar Association  
Central Vermont Inns of Court  
Chittenden County Public Defender  
Chittenden County State's Attorney  
National Organization of Bar Counsel  
Office of the Attorney General  
Office of the Defender General  
Office of the Sheriffs and State's Attorneys  
Professional Responsibility Board  
Vermont Association for Justice  
Vermont Association of Criminal Defense Lawyers  
Vermont Bar Association  
VBA Young Lawyers' Division

#### **E. Other Seminars**

In August, Bar Counsel attended the meeting of the National Organization of Bar Counsel. It was held in Boston in conjunction with the American Bar Association's annual meeting. Bar Counsel attended seminars on (1) helping government and corporate lawyers identify "who is the client?" (2) Multi-jurisdictional practice and cross-border discipline; (3) Current Developments in Ethics; (4) Processing ethics complaints against public defenders; (5) Ethics of Immigration Law; (6) Ethical issues related to aging lawyers and lawyers with mental health/substance abuse problems; and (7) Ethical issues related to Metadata.

In February, Bar Counsel attended the meeting of the National Organization of Bar Counsel. It was held in Houston in conjunction with the American Bar Association's mid-year meeting. Bar Counsel was co-presenter at the opening seminar on a "cradle to grave, one-stop licensing program." Bar Counsel attended seminars on (1) Alternate Regulatory Structures; (2) Current Developments in Ethics; (3) Ethics of Appellate Practice; (4) Ethics of Virtual Law Practices; (5) Ethical issues related to trust accounting; (6) Burnout & Stress in the Legal Profession; and (7) Analyzing respondents' responses to ethics complaints.



## **F. Attorney Licensing, Bar Admissions, MCLE**

During the fiscal year, Bar Counsel assumed duties related to other aspects of attorney licensing. Those duties included supervising and administering the attorney licensing office and providing legal and administrative support to the Court Administrator, the Board of Bar Examiners, the Character & Fitness Committee, and the Continuing Legal Education Board. Among other things, Bar Counsel administered the July and February bar examinations, supervised the process by which attorneys apply for admission without examination, supervised the license renewal process, and staffed meetings of the Court's boards and committees.

## **G. Lawyers Assistance Program**

The Court authorized the Professional Responsibility Board to explore the creation of a formal Lawyers Assistance Program. Bar Counsel worked with the Board and stakeholders to study (1) where to house such a program; (2) how to fund it; and (3) to whom to make it available. As the fiscal year ended, a rough proposal had emerged.

## **H. Boards and Committees**

Bar Counsel continued to serve on the Vermont Bar Association's Board of Managers. In FY 2015, Bar Counsel chaired the Board's membership committee and, in March, was elected President-Elect of the Association.

In September, Bar Counsel was named to the Vermont Commission on the Future of the Legal Professional. Bar Counsel chaired the sub-committee on the Future of Legal Education.

# **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 for non-disciplinary resolution; or (3) initiate a formal disciplinary or disability proceeding.





FY 15 opened with 53 formal investigations pending. During the fiscal year, an additional 103 complaints were referred for formal investigations. At the close of the fiscal year, there were 32 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. **A.O. 9, Rule 11(E)**.

At the beginning of FY 15, an appeal filed by Disciplinary Counsel in FY 2014 was pending. Oral argument was heard in September 2014, and on April 3, 2015, the Supreme Court issued a decision affirming the hearing's panel's decision.

During FY 15, Hearing Panels issued 13 decisions. Each of those decisions was subject to appeal by either party, as well as a 30 day review period by the Supreme Court. In FY 15, the Supreme Court ordered review of three decisions (Approvals of Admonition by Disciplinary Counsel) on its own motion. The Court subsequently adopted those hearing panel decisions as final decisions of the Supreme Court and ordered that the decisions be published in Vermont Reports. Eight more decisions resulted in an Admonition by Disciplinary Counsel; and one case resulted in an Admonition by Disciplinary Counsel with Probation. A hearing panel decision imposing a Public Reprimand (*In re John Burke*) also issued in FY 15.

### 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 15, Disciplinary Counsel's Office filed one petition for an interim suspension (*In re Christopher Sullivan*). The petition was 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)**.

During FY 15, a previously filed and still pending Petition for Reciprocal Suspension was brought to a conclusion. In that matter, the Supreme Court imposed a reciprocal two-year suspension on an attorney who had received a two-year suspension from the practice of law in New York based on a conviction of the offense of identity theft in the third degree, a class A misdemeanor. (*In re Katherine Pope*).



## 2. Probable Cause Review

In FY 15, Disciplinary Counsel filed three Requests for Probable Cause. **A.O. 9, Rule 11(C)**. Probable Cause was denied in one case and granted in another case. In the third case, the request for probable cause was still pending as FY15 ended. In January of every year, the Chair of the Board designates one 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 to a hearing panel as to the appropriate sanction.

At the beginning of FY 15, five disciplinary proceedings, which had been filed in the previous fiscal year, were pending before hearing panels. During FY 15, one formal disciplinary proceeding was commenced by the filing of a Petition of Misconduct (*In re Christena Obregon*), and eleven disciplinary proceedings were commenced by Stipulation.

## 4. Disability Proceedings

Disciplinary Counsel also prosecutes disability cases. Disciplinary Counsel did not initiate any new disability cases in FY 15, and there were none pending at the end of FY 15.

## 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.

No petitions for reinstatement were filed in FY 15.

## 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. Disciplinary Counsel assigned three cases to Bar Counsel for non-disciplinary Dispute Resolution in FY 15, and an additional four cases were referred to Bar Counsel for assignment to an Assistance Panel.

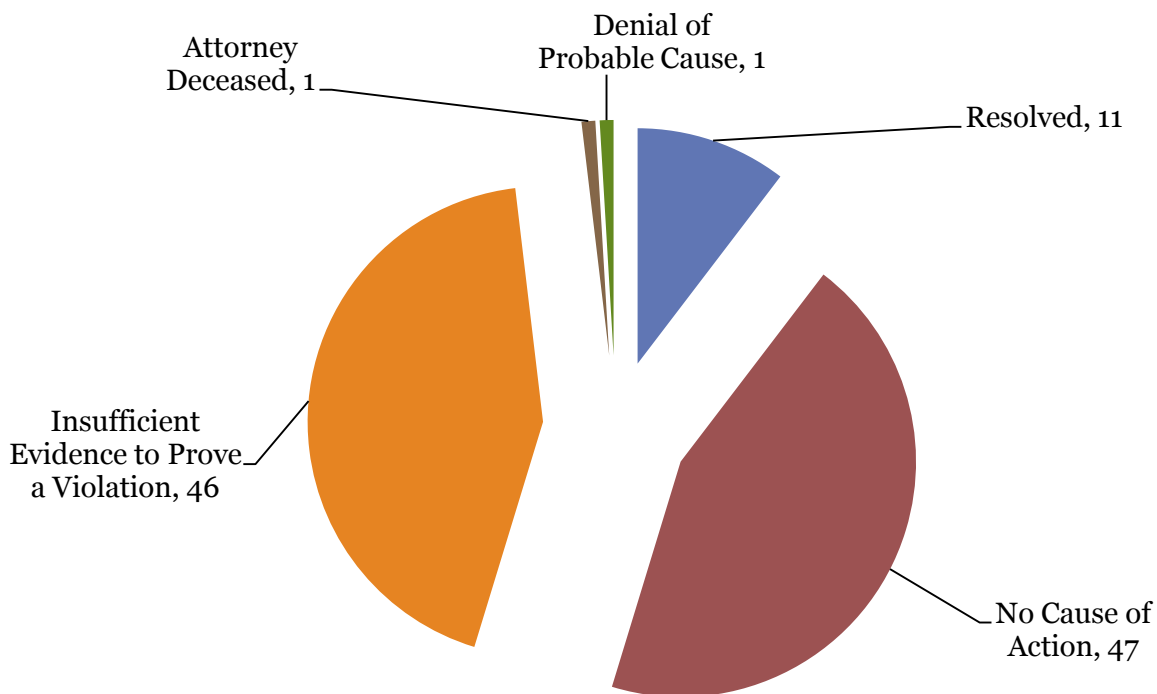


## 7. Dismissals

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 15, Disciplinary Counsel investigated and dismissed 106 complaints. The reasons for the dismissals are set out in the following table:

**Table 3**

### 106 Investigations Resulting in Dismissals



## 8. Docket at End of FY 15

As the fiscal year closed, 32 complaints were under investigation by Disciplinary Counsel, and two cases were awaiting decisions by Hearing Panels. No matters were pending before the Supreme Court.

### C. Continuing Legal Education Seminars

In FY 15, Disciplinary Counsel appeared and co-presented two Continuing Legal Education seminars at the Professional Responsibility Board’s Annual Meeting. Deputy Disciplinary Counsel appeared and co-presented one Continuing Legal Education seminar at the Professional Responsibility Board’s annual meeting.



#### **D. Probation**

In FY 15, Disciplinary Counsel monitored four attorneys who were on disciplinary probation. One of the attorneys successfully completed his probation during the fiscal year. At the close of the fiscal year, three attorneys remained on probation.

#### **E. Compliance with the Trust Account Rules**

In FY 15, Disciplinary Counsel sent out approximately 100 trust accounting system surveys to a group of randomly selected Vermont lawyers. Disciplinary Counsel received and reviewed all responses. None of the responses raised any concerns about compliance with the rules, although a number of those responses will receive follow up compliance examinations on a random basis in FY 16.

In FY 15, Disciplinary Counsel also selected 15 attorneys for trust account compliance examinations. Two CPAs performed the compliance reviews for the program in FY 15, reporting to Disciplinary Counsel that they found no substantial compliance issues in those 15 exams. The minor issues raised in four of those exams were resolved informally, and no disciplinary proceedings resulted from the FY 15 compliance exams.

In FY 15, Disciplinary Counsel opened 27 cases upon notification from a bank that an attorney had an overdraft in the attorney's trust account. Each of those cases resulted in an investigation, and all issues were resolved informally, without discipline. In addition, 4 more IOLTA related cases were opened as a result of attorneys self-reporting problems with their trust accounts. All of those cases were investigated and ultimately resolved as well.

#### **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 2014, 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. Disciplinary Counsel did not enter into any new contracts with financial institutions which had not previously been a part of the program during FY 15.

In January 2015, the current list of approved financial institutions was sent to all 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 15, Disciplinary Counsel conferred with the Board to review operations in September, December, March, and May. Disciplinary Counsel also worked with a subcommittee of the Board to review caseload and operations in March of 2015.



#### 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.

The Board would also like to acknowledge the incredible amount of time and effort and the professionalism of Mike Kennedy in this last year as he has not only maintained his high standards with his work for our Board but has taken on the many additional responsibilities to insure that all of the Supreme Court committees were supported in their vital work. Thanks Mike!

We also wish to give special thanks to Attorney Larry Novins and Randy Rowland whose final terms expired on August 31, 2015. Both of these individuals served for many years as dedicated members of the PRB.

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.

The Program plans to continue to work with the Court's other attorney regulatory boards and committees in an ongoing efforts to improve staffing, efficiency, and service to both the bar and the court's goals for the profession.