

REPORT OF THE OFFICE OF BAR COUNSEL

The Virginia State Bar's fiscal year runs from July 1 to June 30. Each month, and at the end of every fiscal year, the clerk of the disciplinary system compiles attorney discipline statistics. These statistics help the Office of Bar Counsel and the Standing Committee on Lawyer Discipline assess the efficiency of the attorney disciplinary process, discern trends and identify future needs. Reviewing the numbers on a monthly and annual basis is an integral part of the ongoing effort to maintain and enhance the fairness of the attorney disciplinary process by improving efficiency. What follows is an overview of the year-end statistics for fiscal year 2003, with comparative information from prior years.

On June 30, 2003, there were 24,197 attorneys active and in good standing to practice law in the Commonwealth of Virginia. On June 30, 1993, there were only 18,948 attorneys active and in good standing to practice law in Virginia. In fiscal year 1993, the bar received 2,422 complaints, compared with 3,990 complaints in fiscal year 2003. These numbers demonstrate that over a ten year period the number of complaints received has outstripped the increase in the number of bar members active and in good standing to practice law.

As the size of the bar and the annual tally of bar complaints have grown, the number of sanctions imposed has increased. 394 sanctions were imposed in fiscal year 2003, compared with 266 sanctions in fiscal year 1993. On the other hand, last fiscal year only 37 lawyers surrendered their Virginia law licenses with disciplinary charges pending, whereas in fiscal year 1993 there were 58 surrenders. The decline in the number of surrenders is consistent with lawyers' growing propensity to contest disciplinary charges to the bitter end. The number of revocations increased from 11 in fiscal year 2002 to 17 in fiscal year 2003.

As the number of complaints received has grown, there has also been a steady increase in the number of bar complaints dismissed with no action taken. Matters dismissed with no action taken range from complaints against judges or other court appointed officials acting in their official capacity, allegations that a guilty plea in a criminal matter was not voluntary (unless a court set the plea aside), fee disputes and other matters over which the bar has no jurisdiction. Complaints dismissed with no action taken also include contentions that lawyers were rude, employed the wrong strategy in handling a legal matter and/or committed legal malpractice. 2,746 complaints were dismissed with no action taken last fiscal year. In fiscal year 1993, 996 complaints were dismissed with no action taken.

The bar sends every complainant whose complaint is dismissed with no action taken a letter explaining why their complaint was dismissed. Last fiscal year, at complainants' request, 701 complaints were reviewed a second time, and some for a third or fourth time, to ensure that the proper procedures were followed and that dismissal with no action taken was the appropriate disposition under the Rules of Court. In cases where new evidence is discovered, or it is determined that important facts were overlooked, the bar reopens complaints dismissed with no action taken. In fiscal year 2003, 69 such cases were re-opened.

As the number of bar complaints has escalated, the bar has implemented procedures to resolve certain types of complaints outside the formal disciplinary process. Resolution of complaints via proactive intervention has been the most successful of these procedures. In a proactive situation, intake counsel asks the lawyer against whom a complaint has been made to address, usually directly with the client, the situation that led to the complaint. The lawyer is requested to provide the bar written confirmation of client contact within ten days. If the lawyer's response demonstrates that he or she has made an acceptable effort to address the client's concerns, intake closes the file and notifies both the complainant and the respondent of the disposition of the complaint.

Over the last five years, intake has closed about 80% of proactive matters without opening a disciplinary file and with no additional investigation. Proactive cases account for between 15 and 19 percent of total complaints the bar receives. Due to the proactive process, bar counsel investigates between 12 and 15 percent fewer cases each year.

In fiscal year 2003, as has been the case for at least ten years, the practice of criminal law generated the most bar complaints. Complaints generated by the practice of family law ranked second, and for the first time in several years, real estate matters led to more complaints than personal injury matters. The most common type of complaint remains failure to communicate, followed by failure to file and failure to pay amounts due from trust account funds.

Last fiscal year, the bar hired one additional investigator, so that there are now 11 staff investigators. The average caseload of each of the nine trial attorneys in the office of bar counsel last fiscal year consisted of 132 new files, plus 113 files opened in prior years and carried over, for an average total caseload of 245 files per bar counsel. Each trial attorney closed an average of 145 files in fiscal year 2001. Bar counsel closed more files than were opened, helping

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the department achieve its goal of eliminating older cases from the docket. The number of cases carried forward in fiscal year 2003 is the lowest since fiscal year 1998.

As the bar graphs that follow demonstrate, trial activity at the district committee and post-committee levels was brisk in fiscal year 2003, in part because the number of agreed dispositions decreased. There were 29 district committee trials, and 92 post committee trials. 208 cases awaited trial at year end.

Each bar counsel's goal in fiscal year 2003 was to close all complaints on their docket received by the bar before July 1, 2001. This goal was met in seven of 17 dockets. The goal was not met in 77 cases. Bar counsels' goal in fiscal year 2004 will be to close all pre-fiscal year 2003 complaints before year-end.

At the end of fiscal year 2003, 21.5% of the inventory of pending bar complaints was more than six months old, down from 26.3% in fiscal year 2002 and 32.5% in fiscal year 2001. New substantive and procedural rules addressing lack of attorney cooperation, as well as denial of late requests for continuances, have helped expedite the hearing process.

Fairness and efficiency are the twin goals of the attorney disciplinary process. The office of bar counsel realizes that efficiency without fairness would be meaningless but also recognizes that efficiency is a fundamental component of fairness. For the benefit of the public and members of the bar, the office of bar counsel will continue to strive for both fairness and efficiency, reallocating available resources where possible and seeking rule changes that will further enhance the attorney disciplinary process.