

Inside the Office of Bar Counsel:

Fiscal Year 2000 Report

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The Virginia State Bar's fiscal year runs from July 1 to June 30. Each month, and at the end of the fiscal year, the Clerk of the Disciplinary System compiles attorney discipline statistics. The numbers 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. What follows is an overview of the year-end statistics for fiscal year 2000, with comparative information from prior years.

On June 30, 2000, there were 22,720 attorneys active and in good standing to practice law in the Commonwealth of Virginia, compared with 16,912 attorneys as of June 30, 1990. While the number of Virginia attorneys has grown considerably during the past decade, the growth in the number of bar complaints has outstripped the growth in bar membership. In fiscal year 1990, the Virginia State Bar received 1,881 complaints. Last fiscal year, the bar received 3,377 complaints—230 more than the bar received in fiscal year 1999.

The number of disciplinary sanctions imposed each year since 1990 has not kept pace with the rising tide of bar complaints. One hundred sixty-seven sanctions were imposed in fiscal year 1990; 231 sanctions were imposed in fiscal year 2000. Thus, about 9% of the complaints received in fiscal year 1990 resulted in sanctions, while about only 7% of the complaints received in fiscal year 2000 resulted in sanctions.

The decline in number of sanctions imposed is largely due to the continuing increase in the number of complaints dismissed with no action taken and to the bar's initiation of procedures to resolve complaints outside the formal disciplinary process. Matters dismissed with no action taken range from complaints against judges or other court appointed officials acting in their official capacity, to fee disputes, allegations that a guilty plea in a criminal matter was not voluntary (unless a court set the plea aside), civil disputes with lawyers and other matters over which the bar has no jurisdiction. Complaints dismissed with no action taken also include complaints that lawyers were rude, employed the wrong strategy in handling legal matters and/or committed legal malpractice.

In fiscal year 1990, the bar dismissed 663 complaints with no action taken; in fiscal year 2000, 2,272 complaints were dis-

missed with no action taken. Every complainant whose complaint is dismissed with no action taken is sent a letter explaining why their complaint was dismissed. Last fiscal year, at complainants' request, 467 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 the Virginia Supreme Court.

In fiscal year 2000, for the fifth year in a row, the practice of criminal law generated the most bar complaints, followed by family law and personal injury law. The most common complaints in fiscal year 2000 were failure to communicate and general neglect, in that order.

Many neglect and failure to communicate complaints can be remedied if the prospective respondent will adopt a proactive approach and contact the complaining client, or if the prospective respondent and complainant will consent to diversion, whereby a third party helps the lawyer and disaffected client work out their differences. In fiscal year 2000, at Intake Counsel's suggestion, 449 bar complaints were resolved either proactively or through diversion, rather than through the formal disciplinary process.

The Office of Bar Counsel lost three experienced trial attorneys last fiscal year. The average caseload of each trial attorney was 154 new files plus 153 pending files opened in prior years and carried over. In fiscal year 2000, each trial attorney closed an average of 131 files. Since fiscal year 1998, the number of files closed each year has decreased. This trend reflects the steadily growing number of formal complaints assigned to each trial attorney, the increased complexity of bar complaints that survive the Intake process, a backlog in disciplinary investigations, and a recent increase in the number of committee and post-committee trials and corresponding decrease in the number of agreed dispositions.

Trial activity at the district committee and post-committee levels increased dramatically in fiscal year 2000. In fiscal year 1999, there were 31 district committee trials; in fiscal year 2000, there were 51 district committee trials. In fiscal year 2000, there were 22 post-committee trials; in fiscal year 2000, there were 58 post-committee trials. The significant increase in the number of trials was accompanied by a corresponding decrease in the number of agreed dispositions, from 102 in fiscal year 1999 to 87 last year.

It remains to be seen whether the trend toward more trials and fewer agreed dispositions will continue. In the short term, the trend means more work for bar counsel.

The Aspirational Timelines adopted by the Standing Committee on Lawyer Discipline provide that no more than 180 days shall elapse from the receipt of a bar complaint until when bar counsel makes a recommendation as to whether the complaint should be dismissed or heard. During the 180 day period, Intake Counsel reviews the complaint and determines whether it should be opened as a formal complaint. If a complaint file is opened, the respondent has 21 days to respond in writing to the complaint. The complainant then has 10 days to rebut the response or provide additional information in writing. Bar counsel reviews this preliminary investigation and decides whether the complaint should be referred for further investigation. After reviewing the investigative report, bar counsel submits a recommendation as to whether a complaint should be dismissed or heard.

Lack of cooperation can bring a disciplinary investigation to a near standstill, as can delays occasioned by requests for extensions to respond to a complaint, obtain counsel or gather documentary evidence. Such delays, compounded with the increasing number and complexity of disciplinary investigations, have contributed to the increased number of formal cases that do not comply with the 180 day aspirational timeline. This number has increased since the timelines were adopted in fiscal year 1996

from 23.4% to 25.5% of the investigative inventory in fiscal year 2000.

The dues increase, which took effect on July 1, 2000, will allow the Office of Bar Counsel to hire one additional investigator, one additional trial lawyer, an assistant in the Intake Department and an additional Ethics Counsel. These additions should help staff cope with the yearly increase in the number of bar complaints received, telephone ethics inquiries, written formal requests for ethical guidance and UPL investigations, and reduce the number of investigations and cases carried over at year-end.

While numbers never tell the whole story, what the year-end statistics do reflect is the tremendous dedication and effort that volunteer lawyers and lay persons, as well as bar staff, devote to the Virginia State Bar's mission of serving the public, the legal profession and the judicial system via the attorney disciplinary process. For more than a decade, Patricia J. Rios, the Clerk of the Disciplinary System, has ably supported the bar's mission. Mrs. Rios resigned at the end of fiscal year 2000. Her remarkable attention to detail, insistence on consistency and extraordinary commitment to the attorney disciplinary process have served the public and the bar well. While Mrs. Rios will be missed, her years of dedicated service have had a lasting, positive impact on the administration of the attorney disciplinary system in the Commonwealth of Virginia. 