

Inside the Bar Counsel's Office

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The Virginia State Bar's fiscal year runs from July 1 to June 30. At the end of each fiscal year, the Clerk of the Disciplinary System compiles year-end statistics for professional regulation. These statistics are used to assess the efficiency of the disciplinary process and to forecast future staffing needs. What follows is an overview of the year-end statistics for fiscal year 1999.

On June 30, 1994, there were 19,541 attorneys active and in good standing to practice law in the Commonwealth of Virginia. On June 30, 1999, there were 22,135 members of the Virginia State Bar, active and in good standing to practice law, an increase of almost 9%. During the same period, the total complaints received rose from 2,599 to 3,147, an increase of over 8%. Discipline was imposed on 189 of the lawyers active and in good standing to practice law in Virginia in fiscal year 1995, compared to 198 in fiscal year 1999. These figures suggest that the increase in complaints is proportionate to the increase in the attorney population, rather than the product of a dramatic increase in the number of unethical or incompetent lawyers.

Since fiscal year 1995, there has been a marked increase in the number of complaints dismissed with no action taken. These dismissals include complaints against judges or other court appointed officials acting in their official capacity, fee disputes, allegations that a guilty plea in a criminal matter was not voluntary (unless a court has set the plea aside), civil disputes with lawyers and other matters over which the bar has no jurisdiction. In fiscal year 1994, the bar dismissed 1,295 complaints for lack of jurisdiction. In fiscal year 1999, 2,065 such complaints were dismissed.

This fiscal year, for the fourth year in a row, the practice of criminal law generated the most bar complaints, followed by family law and personal injury law. In fiscal years 1994 and 1995, the practice of family law, followed by criminal law and personal injury law, triggered the largest percentage of complaints. Solo and small firm attorneys, many of whom practice in these areas, continue to be the most frequent targets of bar complaints. Factors that contribute to complaints against solo and small firm practitioners are overwork, lack of readily available mentors and inattention to law office administration.

The most common complaints last fiscal year were failure to communicate and general neglect, in that order. These types of complaints have been the most common complaints over the last five years. The surest way to draw a bar complaint is to ignore a client matter and/or fail to communicate with a client. Many such complaints can be remedied if the lawyer will contact the complaining client or by having a third party help the lawyer and disaffected client work out their differences. For example, in fiscal year 1999, 437 bar complaints, many of which involved neglect or failure to communicate, were resolved through the proactive and diversion programs that Intake Counsel oversees, rather than through the formal disciplinary process.

Last fiscal year, each trial counsel was responsible for handling an average of 151 new cases, coupled with an average of 152 cases carried over from the previous fiscal year. During the same period, trial counsel closed an average of 141 cases. Between fiscal year 1994 and fiscal year 1999, the number of cases closed each year has decreased by an average of 5.2%. This trend reflects the steadily growing number of formal complaints assigned to each bar counsel, the increased complexity of bar complaints that survive the Intake process and a backlog in disciplinary investigations.

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 so, the respondent is given 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. If so, the complaint is usually assigned to a staff investigator; although in fiscal year 1999, in order to help reduce the investigative backlog, district committee members handled approximately 2% of the investigations completed. 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 proceeding 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 1996 from 234 cases to 340 cases, or 25.7% of the investigative inventory in fiscal year 1999.

The number of discipline trials decreased between fiscal year 1994 and fiscal year 1999 from 117 to 55. This decrease is offset by a corresponding increase in the number of Agreed Dispositions, from 69 in fiscal year 1994 to 102 in the last fiscal year. The number of sanctions imposed has remained relatively stable during this time period, only growing from 253 in fiscal year 1994 to 263 in fiscal year 1999.

Numbers never tell the whole story. For example, the statistics presented here do not include the UPL investigations overseen by Ethics Counsel, the extraordinary number of receiverships initiated by bar counsel, or the thousands of requests for information that the Clerk of the Disciplinary System received from the public, attorneys and the media during the last fiscal year. The numbers also do not reflect the scores of complaints that Intake, Bar Counsel and the Oversight Committee of the Standing Committee on Lawyer Discipline re-review each year, upon request, to ensure that the complaints were handled in an appropriate manner. What the numbers do say is that the workloads of the Office of Bar Counsel and the Clerk of the Disciplinary System have increased significantly, along with the expectations of the public and members of the bar with regard to fairness and efficiency. The challenge facing the bar in the new millennium will be maximizing efficiency to keep up with the numbers without sacrificing fairness. 🙏