

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. The 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 2001, with comparative information from prior years.

On June 30, 2001, there were 23,212 attorneys active and in good standing to practice law in the Commonwealth of Virginia, compared with 16,912 such attorneys as of June 30, 1990. While the number of Virginia attorneys has skyrocketed over the last decade, escalating numbers of bar complaints have outstripped the growth in bar membership. In fiscal year 1990, the Virginia State Bar received 1,881 complaints. Last fiscal year, the bar received 3,248 complaints—a staggering number, but actually 129 fewer complaints than the bar received in fiscal year 2000.

As the size of the bar and the annual tally of bar complaints have grown, so have the sanctions imposed, albeit not nearly as dramatically. One hundred sixty-seven sanctions were imposed in fiscal year 1990. Two hundred seventy-two sanctions were imposed in fiscal year 2001, an increase of eight percent over fiscal year 2000. In addition to the sanctions imposed, last year 16 lawyers surrendered their licenses to practice law in the Commonwealth of Virginia with disciplinary charges pending, compared to 14 lawyers in fiscal year 2000, and ten in fiscal year 1990.

A steady increase in the number of bar complaints dismissed with no action taken, and the bar's implementation of procedures to resolve complaints outside the formal disciplinary process, are two reasons the number of attorneys sanctioned has not grown in direct proportion to the number of complaints received. 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.

In fiscal year 1990, the bar dismissed 663 complaints with no action taken; in fiscal year 2001, 2,235 complaints were dismissed with no action taken. The bar sends every complainant whose complaint is dismissed with no action taken a letter explaining why his or her complaint was dismissed. Last fiscal year, at complainants' request, scores of 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 rare 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 2001, 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 2001 were failure to communicate and general neglect, in that order.

Many neglect and failure to communicate complaints can be remedied without opening formal discipline files, if prospective respondents will take proactive action and contact complaining clients, or if prospective respondents and complainants will consent to diversion, whereby third persons selected by the bar help prospective respondents and complainants work out their differences. In fiscal year 2001, at intake counsel's instigation, 512 complaints were resolved proactively or through diversion, rather than through the formal disciplinary process.

In fiscal year 2001, the bar hired an additional assistant ethics counsel, another trial attorney, one new investigator and an additional intake assistant. The office of bar counsel now has two full-time and two part-time ethics counsel, whose job is to keep attorneys out of the disciplinary process; nine trial attorneys, who prosecute misconduct cases; ten investigators; two intake counsel, who review every complaint the bar receives; and two intake assistants, who answer queries about the complaint process and shepherd complaints through the intake process.

The average caseload of each trial attorney in the Office of Bar Counsel last fiscal year consisted of 109 new files, plus 142 files opened in prior years and carried over, for an average total caseload of 151 files per attorney. Each trial attorney closed an average of 105 files in fiscal year 2001. Since fiscal year 1998, the number of files carried over each year has increased. This trend reflects the growing number of formal complaints assigned to each trial attorney, the increased complexity of bar complaints that survive the intake process, a back log in investigations, and an increase in the number of cases set for trial at committee and post-committee levels.

REPORT
OF THE OFFICE OF BAR COUNSEL

Trial activity at the district committee and post-committee levels continued to be brisk in fiscal year 2001. There was a significant increase in the number of agreed dispositions, many of which were effected shortly before trial, increasing from 87 in fiscal year 2000 to 116 in fiscal year 2001. In fiscal year 2000, there were 51 district committee trials; in fiscal year 2001, there were 53 district committee trials. In fiscal year 2000, there were 58 post-committee trials; in fiscal year 2001, there were 52 post-committee trials. In addition to the cases tried, at the end of fiscal year 2001, 76 cases awaited trial before district committees, and 180 cases were in line to be heard by the disciplinary board. The total number of cases awaiting trial at the end of fiscal year 2001—256—compared to 183 cases awaiting trial at the end of fiscal year 2000.

Each bar counsel's goal in fiscal year 2001 was to close all complaints on their docket received by the bar before July 1, 1999. While not every pre-2000 docket number case was closed, most were. Bar counsel have been assisted in this effort by special assistant bar counsel—volunteer prosecutors appointed to help resolve unusually complex, difficult or old cases. Six sets of cases were assigned to special assistant bar counsel in August 2000. One special assistant bar counsel case was tried, and another was resolved by agreed disposition. Two more groups of cases assigned to special assistant bar are set for trial in fiscal year 2002; two other special assistant bar counsel cases are still in the pretrial stage.

Despite ongoing efforts to resolve old cases, at the end of fiscal year 2001, 32.5% of the inventory of pending bar complaints was more than six months old. In fiscal year 2002, the bar plans to employ several contract investigators to help reduce the investigative backlog. Unfortunately, delays in investigating complaints are not the only obstacle to efficiency. Lack of attorney or witness cooperation can bring disciplinary investigations to a standstill, as can delays occasioned early in disciplinary proceedings by requests for extensions to respond to complaints, obtain counsel or gather documentary evidence, and frequent requests that hearings be continued. These types of delays, coupled with the increasing number and complexity of attorney disciplinary investigations, have contributed to an unsatisfactory number of cases lingering on district committee and board dockets longer than they should.

As one of his presidential initiatives, outgoing Virginia State Bar President Joseph A. Condo constituted a Task Force on Public Access to the Attorney Disciplinary Process, chaired by Benjamin J. DiMuro, to study whether the disciplinary process should be further opened to the public. The task force recommended opening district committee hearings to the public and limiting the number of private sanctions an attorney can receive. The Standing Committee on Lawyer Discipline drafted rules implementing these recommendations, and the Virginia State Bar Council voted on the proposed rule amendments in June 2000. The proposed rule amendments passed with some modifications. If the Supreme Court of Virginia adopts the proposed rule amendments, district committee hearings will be opened to the public, and there will be a rebuttable presumption that an attorney should not receive more than two private sanctions within a ten-year period.

Fairness and efficiency continue to be 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.