

## REPORT OF THE OFFICE OF BAR COUNSEL

Mark Twain declared that there are three types of lies: lies, damned lies and statistics. Fairness and efficiency are the twin goals of the attorney disciplinary process. Statistics measure the efficiency of the process. Efficiency is important because, as the old saying goes, "justice delayed is justice denied." On the other hand, a process can be very efficient but unfair. Thus, Mark Twain's quip rings true to the extent that statistics never tell the whole story.

What the latest attorney discipline statistics do tell us is that in fiscal year 2002 attorney disciplinary matters were resolved more efficiently than in recent years, despite the fact that the bar received a record number of bar complaints. While that is only part of the story, and may be small consolation to a complainant who is unhappy because his/her bar complaint was dismissed or to a respondent who is exceedingly anxious for a complaint filed six months ago to be resolved, the statistics speak well for the attorney disciplinary process overall.

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 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 2002 and, for comparison purposes, statistics from prior fiscal years.

On June 30, 2002, there were 23,746 attorneys active and in good standing to practice law in the Commonwealth of Virginia, compared with 18,289 such attorneys as of June 30, 1992. While the number of Virginia attorneys has increased by 30% over the last decade, the number of bar complaints has greatly exceeded the growth in bar membership. In fiscal year 1992, the Virginia State Bar received 2,270 complaints. Last fiscal year, the bar received 3,965 complaints—717 more complaints than the bar received in fiscal year 2001 and 75% more complaints than the bar received in fiscal year 1992.

As the size of the bar and the annual tally of bar complaints have grown, so have the number of sanctions imposed. 252 sanctions were imposed in fiscal year 1992 and 393 sanctions were imposed in fiscal year 2002, an increase of 56% over a ten year period. In addition to the sanctions imposed, last fiscal year 14 lawyers surrendered their licenses to practice law in the Commonwealth of Virginia with disciplinary charges pending, compared with 20 lawyers who surrendered with charges pending ten years ago.

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 the main reasons the number of attorneys sanctioned has not grown in direct proportion to the increased number of bar complaints.

Last fiscal year intake counsel dismissed 2,836 bar complaints with no action taken. In each instance, the bar sent the complainant a letter explaining why the complaint was dismissed. At the request of disappointed complainants, 637 complaints were reviewed a second time, and some for a third or fourth time, to ensure that the complaints were properly dismissed. These reviews resulted in 55 disciplinary files being opened, usually because complainants provided additional information with their requests for review.

Matters dismissed with no action taken range from complaints against judges or other court-appointed officials acting in their official capacity, to allegations that a guilty plea in a criminal matter was not voluntary (unless a court set the plea aside), to 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.

Bar complaints that lend themselves to proactive resolution include reports that an attorney will not communicate with clients or respond to client requests for information. In these and other instances, intake counsel contacts the attorney complained about and requests the attorney to remedy the complaint before a disciplinary file is opened. 714 bar complaints were resolved last fiscal year through intake's proactive efforts, thereby obviating the need to open disciplinary files.

In fiscal year 2002, for at least the sixth 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 types of complaints in fiscal year 2002 were failure to communicate and general neglect, in that order. Failure to file and failure to pay amounts due from trust accounts were the third and fourth most common types of bar complaints.

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The Virginia State Bar has a professional regulation staff of 32: two full time and one part time intake counsel, nine bar counsel, three ethics counsel and 10 investigators, plus two intake assistants, four secretaries and two legal assistants. In October 1994, following the recommendation of an outside group that studied the attorney disciplinary process, the Virginia State Bar Council approved new positions that would have brought the professional regulation staff to 38. Eight years later, that level of staffing has never been achieved, despite a significant increase in the number of bar complaints received and the bar's redoubled efforts to resolve the complaints in a more timely manner.

This year each investigator's and bar counsel's goal was to complete all pre-fiscal year 2001 cases. The investigators reached their goal with few exceptions. Bar counsel made excellent progress toward achieving their goal, resulting in increased trial activity at the district committee and post-committee levels. In fiscal year 2002, there were 54 district committee hearings compared with 27 in fiscal year 1998. There were 65 post committee trials in fiscal year 2002 compared with 33 in fiscal year 1998. So, in the past five years, the number of hearings has roughly doubled. In addition to the increase in hearings, agreed dispositions rose from 123 in fiscal year 1998 to 174 in fiscal year 2002.

In fiscal year 2002, district committee hearings were opened to the public for the first time. Despite criticism of the veil of secrecy that formerly cloaked district committee hearings, lifting the veil has not increased public attendance. What has apparently caught the public's attention is the posting of public hearing dockets, public discipline and malpractice insurance information on the Virginia State Bar's Web site.

In the past 12 months, there have been 20,000 hits on the Professional Regulation portion of the Virginia State Bar's Web site, which includes postings of public hearing dockets and summaries of public discipline. In the past 12 months, there have been 93,000 hits on the portion of the bar Web site that allows users to search attorneys by name and find out whether the attorneys have been publicly disciplined and whether they have certified that they do not have legal malpractice insurance.

The year-end statistics do not tell us whether opening district committee hearings to the public and making attorney disciplinary information more readily available to the public has heightened public awareness of the attorney disciplinary process and, thereby, increased the number of bar complaints. What the latest statistics do say is that, despite the burgeoning numbers of attorneys and complaints, the efficiency of the attorney disciplinary process has increased. And notwithstanding Mark Twain's denunciation of statistics, that is no lie.