

REPORTS OF STANDING COMMITTEES

STANDING COMMITTEE ON LAWYER DISCIPLINE

Ray W. King, chair

The Standing Committee on Lawyer Discipline (COLD) oversees the attorney disciplinary process, including the bar's investigation and prosecution of complaints. The COLD also formulates and presents proposed amendments to Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, which govern the attorney disciplinary process, to the Virginia State Bar Council, which in turn decides whether to petition the Court to adopt the proposed rule amendments.

COLD held the twenty-fifth annual Disciplinary Conference on July 10 and 12, 2004, in Williamsburg. All attorney and lay volunteers serving on district committees, the Disciplinary Board and the COLD were invited to attend the conference. The program included an overview of the disciplinary system, presentation and discussion of case vignettes, and separate break-out sessions for new members, lay members and officers of district committees.

Eric F. Shell, the COLD's immediate past chair, headed the Oversight Subcommittee in fiscal year 2005. Subcommittee members randomly reviewed approximately 245 case files to ensure that bar counsel handled them in a procedurally correct fashion. The random reviews did not reveal any instances where bar counsel had handled cases inappropriately. In addition to the random case file reviews, the Oversight Subcommittee responded to complaints about the way in which particular attorney disciplinary matters were handled and resolved.

Howard W. Martin continued to chair the COLD Rules Subcommittee during fiscal year 2005. The subcommittee proposed, and the COLD approved, nine amendments to Paragraph 13, which were presented to the VSB Council for consideration at its February 18, 2005, and June 16, 2005, meetings. One of the proposed rule changes would give the bar a limited right of appeal in attorney disciplinary matters.

The council approved the amendments, and the bar subsequently petitioned the Supreme Court to adopt them. The Court adopted four of the amendments; the other five are still pending before the Court. During fiscal year 2005, the Court also adopted ten rule amendments that the COLD presented and the council approved in fiscal year 2004.

Deputy Bar Counsel Harry M. Hirsch, working with the Rules Subcommittee, developed a bench book for three-judge panel proceedings. The bench book has been submitted to the Supreme Court's Bench Book Committee for possible inclusion in the bench book that the Court disseminates to all circuit court judges. The Clerk of the Disciplinary System is currently distributing the VSB bench book to judges appointed to serve on three-judge panels.

The COLD appointed a special subcommittee, chaired by Andrew H. Goodman, to review how the bar receives and processes complaints against attorneys. The subcommittee's assignment was to make the system more user-friendly and accessible to the public. The subcommittee recommended some modest improvements to the system, including securing a toll-free telephone number to provide information about how to make a bar complaint and accepting complaints via e-mail. The bar implemented both recommendations. The subcommittee also recommended that bar complaints not falling within the jurisdiction of the attorney disciplinary process be classified as "inquiries" and not counted as "complaints" for statistical purposes. This change was implemented in January 2005.

In fiscal year 2005, the number of bar complaints increased, largely due to a rash of complaints stemming from procedural defaults in criminal appeals. The increased number of procedural default complaints resulted in part from a series of editorials in the *Washington Post* and discussions with the Virginia Court of Appeals and Supreme Court about how to address the problems identified in the editorials. As in previous years, neglect and failure to communicate remained the most common complaints in fiscal year 2005, and criminal law is still the practice area most likely to give rise to bar complaints.

In an effort to keep attorney and lay volunteers who serve on district committees and the Disciplinary Board better informed about rule changes and other attorney disciplinary developments, the COLD e-mailed newsletters in November 2004 and June 2005. The newsletters were well received, and the committee plans to disseminate newsletters three or four times each year.

In fiscal year 2005, Ray W. King, COLD Chair, and VSB Counsel Barbara A. Williams began meeting regularly with the Chief Justice to identify and discuss attorney disciplinary issues. These meetings have facilitated a helpful exchange of information between the COLD and the Court.

