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 statistics relating to attorney discipline. These statistics help the Office of Bar Counsel and the Standing Committee on Lawyer Discipline (COLD) 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 bar's 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 2005, with comparative information from prior years.

On June 30, 2005, there were 25,193 attorneys active and in good standing to practice law in the commonwealth. On June 30, 1996, there were only 20,713 attorneys active and in good standing to practice law in Virginia. In fiscal year 1996, the bar received 1,585 inquiries and 1,092 complaints, for a total of 2,677 contacts. By comparison, the bar received 2,640 inquiries and 2,074 complaints, for a total of 4,714 contacts, in fiscal year 2005.

The surge in the number of complaints the bar received in fiscal year 2005 is largely due to increased scrutiny of procedural defaults in criminal appeals to the Virginia Court of Appeals and the Supreme Court of Virginia. In the summer of 2004, the *Washington Post* ran a series of editorials focusing on the high rate of dismissal of criminal appeals due to procedural defaults in Virginia. A review of procedural defaults in Court of Appeals cases between January 1, 2002, and August 31, 2004, plus regular reporting of such matters on a go-forward basis, produced a significant influx of complaints arising from procedural defaults.

The COLD and the Office of Bar Counsel continue to focus on more efficiently resolving inquiries concerning attorneys' conduct and disciplinary cases. Although significant progress has been made in this area, the bar has not reached its aspirational goal of investigating and either dismissing or referring for hearing all complaints on which disciplinary files are opened within six months of the bar's first receipt of each complaint. During fiscal year 2006, software will be developed that can calculate the average time it takes the bar to resolve a complaint after it is received. This tool will help the bar explain why it takes longer than six months to decide whether some complaints should be dismissed or set for hearing.

In the meantime, the available statistics show that the bar's ongoing effort to resolve complaints more expeditiously is bearing fruit. At the close of fiscal year 2003, the bar carried over 1,018 matters to the new fiscal year. That number decreased to 777 in fiscal year 2004 and remained stable at 781 in fiscal year 2005, even though the number of contacts the bar received in fiscal year 2005 increased by 932 from fiscal year 2004.

As the size of the bar and the annual tally of bar complaints have grown, the number of attorney disciplinary sanctions imposed has also increased. Three hundred six sanctions were imposed in fiscal year 2005, compared with 248 sanctions in fiscal year 1996.

Along with increased number of sanctions imposed, there has been a steady increase in the number of matters brought to the bar's attention on which no action was taken. The bar has adopted the term "inquiries" to describe these matters, which present issues over which the bar has no jurisdiction. Inquiries closed with no action taken range from grievances about 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) and fee disputes. In most instances, inquiries alleging that lawyers employed the wrong strategy in handling a legal matter and/or committed legal malpractice are also closed with no action taken. Two thousand six hundred forty such inquiries were closed in fiscal year 2005 because they involved issues outside the scope of the bar's jurisdiction.

The bar writes every correspondent whose inquiry is closed with no action taken and explains why no action was taken on the matter. Some inquiries are reviewed a second time and some a third or fourth time, to ensure that the bar followed the proper procedures and that closing the inquiry with no action taken was the appropriate disposition under the Rules of Court. In instances in which new evidence is presented or it is determined that important facts were overlooked, the bar opens a disciplinary file.

As the number of inquiries has grown, the bar has implemented procedures to resolve some inquiries outside the formal disciplinary process. Resolution of inquiries by proactive intervention has been the most successful of the procedures. In a proactive situation, intake counsel asks the lawyer about whom an inquiry has been made to address, usually directly with the client, the situation that led to the inquiry. The lawyer is requested to provide the bar written

confirmation of client contact within ten days. If the lawyer's response demonstrates that he or she has made an acceptable effort to address the client's concerns, intake closes the file and notifies both the complainant and the respondent of the disposition of the inquiry.

In fiscal year 2005, as has been the case for more than ten years, the practice of criminal law generated the most bar complaints. Complaints generated by the practice of family law ranked second, and complaints related to personal injury matters ranked third. The most common type of complaint remains failure to communicate, followed by failure to file and failure to pay amounts due from trust account funds.

The trend toward increased election of three-judge panels continued in fiscal year 2005. Pursuant to *Virginia Code* § 54.1-3915, respondents can elect three-judge panels to hear disciplinary matters in lieu of a district committee or the disciplinary board. Over the last three years, the number of respondents electing three-judge panels has dramatically increased from four respondents involved in ten cases in fiscal year 2002 to seven respondents involved in seven cases in fiscal year 2003, to eighteen respondents involved in twenty-eight cases in fiscal year 2005.

The election of three-judge panels may be due in part to a perception that recent three-judge panel determinations favor respondents. Unlike district committee or disciplinary board proceedings, three-judge panels do not include nonlawyers as decision makers.

In past years, it has also taken longer to schedule a three-judge panel proceeding than a district committee or disciplinary board hearing because three-judge panels do not have regular hearing dates, and the Supreme Court of Virginia cannot appoint panel members until the respondent, respondent's counsel and bar counsel agree upon a hearing date. Sometimes circuit courts are unable to provide a courtroom on the date the respondent, counsel and judges are available. Continuances cause additional delays. Delay benefits respondents whose licenses may be suspended or revoked, not the public or the bar.

To address this issue, effective November 1, 2004, the Court amended Part Six, Section IV, Paragraph 13.H. and I. of the Rules of Court to require a respondent to provide available dates for a hearing within four months of the respondent's election of a three-judge panel.

Effective January 1, 2005, the Court also amended Paragraph 13 to require a respondent who elects a three-judge panel to answer charges of misconduct presented in a notice of hearing or certification when making the election.

Other proposed amendments to Paragraph 13, still pending before the Court, would provide the bar a limited right of appeal in instances in which a determination is plainly contrary to law. The amended rule would permit the bar to challenge the propriety of a procedural or substantive ruling that allegedly leads to an erroneous determination, but not whether a hearing panel imposed an appropriate disciplinary sanction based upon the evidence presented.

The proposed rule changes would also require all three-judge court filings to be made with the clerk of the disciplinary system, who would be responsible for forwarding the record to the clerk of the court in which the three judges have been appointed to sit. This change will ensure that three-judge court members receive motions, briefs and voluminous trial records before the judges convene to hear the matter in question.

Finally, the proposed rule changes would permit the disciplinary board to dismiss appeals to three-judge courts when a respondent or bar counsel fails to perfect an appeal in a timely manner. In the past, resolution of attorney disciplinary matters has been significantly delayed when a three-judge court had to be appointed and convened solely to dismiss an appeal that was not perfected in a timely manner.

Fairness and efficiency are 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 in order to enhance the fairness and efficiency of the attorney disciplinary process.