

# REPORT OF THE OFFICE OF BAR COUNSEL FOR FISCAL YEAR 1999

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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. This report presents an overview of the year-end statistics for fiscal year 1999, followed by charts setting out end of year statistical comparisons, a historical perspective and number of sanctions imposed, and graphs plotting the receipt and conclusion of formal complaints, complaints received by area of law and types of complaints received.

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%. Virginia is now the sixth largest mandatory bar in country.

Between fiscal year 1994 and fiscal year 1995, the total complaints received by the bar 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 1994, 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 1994, 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 practitioners continue to be the most frequent targets of bar complaints. Complaints against these practitioners often result from overwork, lack of readily available mentors, inattention to law office administration, or a combination of these factors.

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 back log 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 fur-

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ther 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 investigation 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 1995 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.

Although the workload of the Office of Bar Counsel has increased significantly, staffing has remained fairly constant. In fiscal year 1995, there were 23 full time and one part time employees in the Office of Bar Counsel. The Long Range Plan, that Altman Weil Pensa endorsed and the Virginia State bar Council adopted in October 1994, recommended adding 14 additional positions between fiscal year 1996 and last fiscal year. The proposed new hires included 6 lawyers, 2 investigators, 5 paralegal and secretarial employees and 1 research assistant. The Long Range Plan was never implemented. Since its adoption, only 4\_ new employees have been added to the Office of Bar Counsel, bringing the staff total to 28, instead of the contemplated 38. In fiscal year 1999, one trial attorney and one investigator were added to the staff.

The Office of Bar Counsel is broken down into four sections: Trial, Ethics, Intake and Investigations. In fiscal year 1999, there were eight trial attorneys, supported by four secretaries and one legal assistant, in the Trial section; one full-time attorney and two-part time attorneys, supported by one paralegal, in the Ethics section; two attorneys and one assistant in Intake; and nine investigators, all but one of whom work out of their home. The Clerk's Office, which is an integral component of the professional regulation system, is not part of the Office of Bar Counsel.

Numbers standing alone rarely tell the whole story. The statistics by which the productivity of the Office of Bar Counsel is measured do not reflect the scores of potential complaints that were avoided when a bar member sought and took the advice of Ethics counsel; possible trust account problems that were revealed and addressed outside the disciplinary process after a bank notified the bar of an overdraft pursuant to the Trust Account Overdraft Notification Agreement; or members of the public whose interests were protected by the bar's initiation of a receivership proceeding after an attorney got sick, died, abandoned the practice of law or was disciplined. What the numbers do say is that the workload of the Office of Bar Counsel has increased significantly, along with the expectations of the public and members of the bar with regard to the services provided by the Office of Bar Counsel. The challenge facing the bar in the new millennium will be continuing to provide the same level of service and accommodation of the oftentimes conflicting interests of bar members and members of the public, despite limited resources and increasing demands — all without sacrificing fairness. ❁