

REPORT OF THE OFFICE OF BAR COUNSEL

This annual report pertains to the 2006 fiscal year, from July 1, 2005, to June 30, 2006.

OVERVIEW:

The Office of Bar Counsel [OBC] consists of the following component parts: intake, ethics and discipline. The intake department initially receives and screens all inquiries to the bar about attorney conduct and proactively handles inquiries, which involve minor misconduct. The ethics department provides ethics advice to Virginia lawyers via the bar's ethics hotline; it supports the Standing Committee on Lawyer Advertising with respect to the issuance of advertising opinions and the review of lawyer advertising; it supports the Standing Committee on Legal Ethics in the issuance of legal ethics opinions; and it supports the Standing Committee on the Unauthorized Practice of Law in issuance of UPL opinions as well as investigation of allegations of UPL. The discipline department receives complaints, which have been forwarded from the intake department, and conducts the investigation and prosecution of complaints before district committees, the Disciplinary Board and three-judge circuit courts.

Generally, FY 2006 was a year in which the OBC experienced an unusual number of personnel changes. It was also a period by the end of which the bar had received one of the highest number of inquiries about attorney conduct in at least the last nine years, and yet the number of cases in the disciplinary system had dropped to one of the lowest levels in at least the last six years.

PERSONNEL:

In January 2006, Bar Counsel Barbara Ann Williams resigned after having served in that position for eight years, to take a position with McGuireWoods LLP. During Ms. Williams's tenure, the disciplinary system was improved in several ways. The disciplinary process became more open to the public. The OBC increased in staff, resulting in an increase in the number of cases completed and a reduction in the number of older cases, while emphasis was placed on the continuing goals of increased efficiency with fairness.

Deputy Bar Counsel Harry M. Hirsch was appointed as interim bar counsel during the search for a new bar counsel.

George W. Chabalewski became bar counsel effective June 15, 2006. Mr. Chabalewski's experience includes eighteen years as an assistant Virginia attorney general, preceded by seven years as a public defender in Illinois.

The OBC uncharacteristically experienced a number of other personnel changes. An attorney in the ethics department resigned; a new trial attorney was hired; three investigators resigned or retired; four new investigators were hired, one filling the position of an investigator who had resigned in the prior fiscal year; and the Northern Virginia office experienced turnover in its support staff.

As of June 5, 2006, the bar's investigative function was fully staffed at ten.

STATISTICS:

The number of active members of the bar in good standing continued its annual increase. As of the end of FY '06 there were 24,710 active members of the bar in good standing.

There were 833 cases in the disciplinary system at the end of the fiscal year. This compares to 913 cases, which were in the system at the end of the prior fiscal year. At the district committee level, the number of cases in the system over 180 days old at the end of FY '06 was 247, compared to 217 at the end of FY '05, which reflects the effect of the reduced investigative staff during the year. The number of cases to be tried at the end of FY '06 was 155, compared to 154 at the end of FY '05. Cases tried by the end of FY '06 totaled 98, of which 82 were post-district committee cases. This compares to 85 cases tried by the end of FY '05, of which 63 were post-district committee cases. Agreed dispositions for FY '06 totaled 177, compared to 175 in FY '05.

The areas of law in which the most inquiries were received by the bar were, first, criminal law, and second, family law. Most of the types of complaints made to the bar fell into three categories: first, failure to communicate; second, failure to file; and third, failure to pay amounts due from a trust account. This is generally consistent with the observation that most bar complaints arise out of situations involving the necessity of the attorney and client to communicate directly, and breakdown of that communication.

During FY '06, the ethics staff attorneys handled an average of 349 calls per month from Virginia lawyers seeking legal ethics advice.

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PROCEDURAL RULE CHANGES:

The bar's disciplinary system operates pursuant to Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13 [Paragraph 13], as well as other statutes and case law.

Paragraph 13.I.8 was amended, effective September 1, 2005, to require an attorney who seeks reinstatement after revocation, or after a disciplinary suspension for more than one year, to demonstrate that he or she has reimbursed the bar for any sums of money incurred as a result of a receivership involving the attorney's law practice. Prior to this rule change, the only avenue for the bar to recoup its receivership costs from the attorney required court action.

Paragraph 13.F. was amended, effective January 1, 2006, to require a respondent attorney to sign his or her written response to any complaint, charge of misconduct, or certification, even if the respondent attorney is represented by counsel. There have been instances in prior disciplinary cases in which a respondent attorney has disavowed the written representations to the bar made by his or her attorney on behalf of the respondent. The rule change is intended to prevent such situations from occurring.

CHANGE TO THE VIRGINIA RULES OF PROFESSIONAL CONDUCT

A new Comment [4] was added to Rule 1.3 [Diligence] to clarify that a lawyer's duty of diligence to the client should embrace planning for client protection in the event of the attorney's death or disability. The Supreme Court of Virginia approved this change on February 28, 2006.

CHANGES TO RULES OF COURT, PART 1A: 5 [CORPORATE COUNSEL PRO BONO AMENDMENT]

The amendment permits lawyers certified as in-house counsel under Part I of the rule to provide pro bono legal services under the direct supervision of a Virginia-licensed attorney employed by a licensed legal aid society, or a fully licensed Virginia attorney serving as a volunteer in a licensed legal aid society pro bono program. The amendment also increases the application fee under both Part I and Part II of the rule from \$50 to \$150. The Supreme Court of Virginia approved these changes effective May 1, 2006.

REJECTED OR PENDING AMENDMENTS:

A number of proposed amendments to Paragraph 13 were submitted together to the Supreme Court of Virginia in June 2005 and were subsequently rejected. These included changes to Paragraph 13 that would have given bar counsel a limited right of appeal; that would have required filings pertaining to three-judge circuit court trials to be made with the Clerk of the Disciplinary System; and that would have amended Paragraph 13.M. [notice required after suspension or revocation], Paragraph 13.E.6 [limitation on the filing of a motion to dismiss] and Paragraph 13.A. [definition of "certification"]. With the exception of the proposal regarding the limited right of appeal, the above proposals were resubmitted to the Court in January.

A proposed change to Rule 7.4 [Communication of Field of Practice and Certification] was rejected by the Court on February 28, 2006. This change would have permitted a lawyer to advertise certain certifications or accreditations related to organizations accredited by the American Bar Association.

Proposed amendments to Rule 1.2 [Scope of Representation], Rule 4.2 [Communication with Persons Represented by Counsel] and Rule of the Supreme Court of Virginia 1:5 [Counsel] would have permitted an attorney to provide discrete task representation to a client when both the client and the attorney had agreed the attorney would only perform the discrete tasks and the client would perform the remaining tasks. The Court rejected these amendments, which pertain to the concept of "unbundling."

Other proposed amendments related to multijurisdictional practice issues are pending at the Supreme Court of Virginia. These include:

Rule 5.5 [Temporary Practice by a Foreign Lawyer]—This proposal would allow non-Virginia licensed lawyers to provide legal services in Virginia on a temporary and occasional basis within the limits of the proposed rule. The proposal would also subject foreign lawyers to the Virginia disciplinary system.

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Rule 8.5 [Disciplinary Authority and Choice of Law]—The amendments address disciplinary authority and choice of law issues in disciplinary cases and provide enforcement authority for proposed Rule 5.5.

Rule of Court 1A:4 [*Pro Hac Vice*]—the proposal would require, among other things, the applicant to be licensed and in good standing to practice in a United States jurisdiction; require the filing of a verified application, a written motion and an application fee of \$250; require consent to the disciplinary jurisdiction of the Virginia State Bar and limit the number of appearances in one year to twelve.

Rule of Court 1A:7 [Certification of Foreign Legal Consultants]—the amendment would allow a non-United States attorney to practice in Virginia within the limits of the rule and would subject the foreign legal consultant to the Virginia disciplinary system.

SUMMARY:

With the anticipated startup of a new computer system for the OBC, its staff looks forward to new challenges and opportunities in its primary responsibilities: protecting the public from the misconduct of lawyers and providing support to lawyers to enable them to better practice their profession.

