

**MASSACHUSETTS OFFICE OF THE BAR COUNSEL
OF THE SUPREME JUDICIAL COURT**

**ANNUAL REPORT
TO THE
SUPREME JUDICIAL COURT
FISCAL YEAR 2016**

SEPTEMBER 1, 2015 - AUGUST 31, 2016

**99 High Street
Boston, MA 02110**

**Phone: (617) 728-8750
Fax: (617) 482-2992
www.mass.gov/obcbbo**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW	2
FISCAL YEAR 2016 CASELOAD	3
ACAP Contacts	3
Complaints Docketed	5
Case Processing	9
Diversion	13
Disciplinary Proceedings And Sanctions	14
Reinstatements	18
Commissioners	19
Full Bench Decisions	21
RELATED ACTIVITIES	21
WEBSITE UPDATE	23
FACILITATING CONTINUOUS IMPROVEMENT	24

LIST OF TABLES

TABLE 1:	ACTIVE REGISTERED LAWYERS IN MASSACHUSETTS (2011-2016)	3
TABLE 2:	CLASSIFICATION OF 764 COMPLAINTS RECEIVED BY PRIMARY LEGAL AREA	6
TABLE 3:	CLASSIFICATION OF 764 COMPLAINTS RECEIVED BY MISCONDUCT ALLEGED	7
TABLE 4:	COMPLAINTS: RECEIVED, DISPOSED, AND INVENTORY(2009; 2012-2016)	09
TABLE 5:	AGE OF FILES NOT IN PETITION	10
TABLE 6A:	RESPONDENTS WITH PENDING FILES NOT IN PETITION OVER 3 YEARS OLD	11
TABLE 6B:	RESPONDENTS WITH PENDING FILES NOT IN PETITION OVER 2.5 YEARS OLD	12
TABLE 6C:	RESPONDENTS WITH PENDING FILES NOT IN PETITION OVER 2 YEARS OLD	12
TABLE 6D:	RESPONDENTS WITH PENDING FILES NOT IN PETITION OVER 18 MONTHS OLD	13
TABLE 7:	CLASSIFICATION OF LAWYERS DISCIPLINED BY PRIMARY AREA OF LAW	15
TABLE 8:	CLASSIFICATION OF LAWYERS DISCIPLINED BY TYPE OF MISCONDUCT	16
TABLE 9:	COMPARISON OF PETITIONS, HEARINGS, AND HEARING DAYS (2010-2016)	18
TABLE 10:	REINSTATEMENT HEARINGS AND HEARING DAYS ...	19

Bar Counsel's Report to the Supreme Judicial Court

Fiscal Year 2016

Executive Summary

This is a summary of the key points in the report that follows for the fiscal year that ended on August 31, 2016:

- The Office of Bar Counsel filed 105 petitions for discipline including affidavits of resignation. In addition, bar counsel filed 11 petitions for reciprocal discipline directly with the Supreme Judicial Court for Suffolk County and 11 suspended or disbarred lawyers filed petitions for reinstatement in circumstances that require reinstatement hearings.
- At the end of the fiscal year, there were only 3 lawyers as to whom the Office of Bar Counsel had files over 18 months old that were not in petition and that had not been deferred.
- Bar counsel's diversion program for minor disciplinary violations concluded cases involving 29 lawyers.
- Bar counsel's Attorney and Consumer Assistance Program screened and resolved 86% of all telephone and written contacts with ACAP without referral to bar counsel for investigation.
- Bar counsel's ethics helpline handled approximately 1900 calls from lawyers seeking information and assistance on issues of professional conduct.

- Bar counsel continues to provide a free monthly trust account program, first instituted eleven years ago. The program provides lawyers with training on the record-keeping requirements of Mass. R. Prof. C. 1.15.

Overview

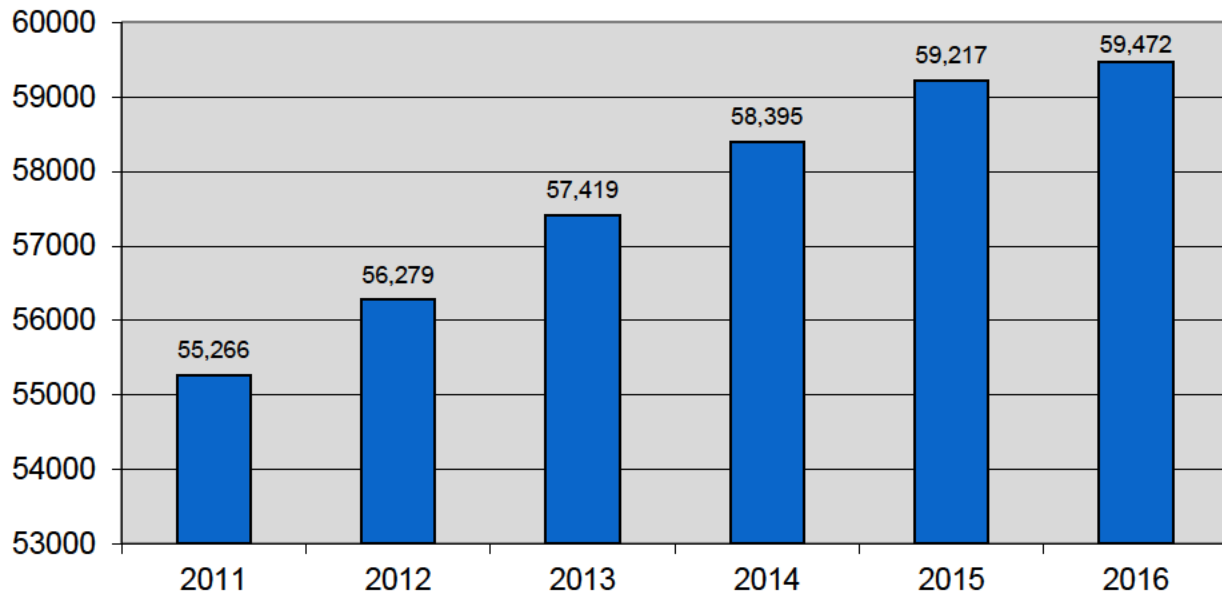
The Justices of the Supreme Judicial Court established the Board of Bar Overseers, the Office of Bar Counsel, and the Clients' Security Board by rule in 1974. The bar counsel, an independent prosecutor who serves at the pleasure of the Court, investigates complaints alleging professional misconduct against lawyers, and prosecutes formal charges against lawyers before the Board of Bar Overseers. The Board of Bar Overseers may dismiss charges, impose minor discipline, or recommend suspension or disbarment to the Court. In addition, the Board hears petitions for reinstatement to the bar.

The Board of Bar Overseers also collects annual registration fees and uses them to fund its operations and those of the Office of Bar Counsel and the Clients' Security Board. Registration fees also fund Lawyers Concerned for Lawyers, a statewide lawyers' assistance program that is not part of the BBO, as well as LCL's affiliate, the Law Office Management Assistance Program (LOMAP). Since 2010, the Board has been collecting the \$51 "access to justice" opt-out fee that is managed by the IOLTA Committee and used in the administration of justice and provision of legal services to those who cannot afford them. As of September 2012, the Board is also collecting pro hac vice registration fees on behalf of the IOLTA Committee.

At the close of FY2016, there were 59,472 Massachusetts lawyers registered on active status and another 11,719 lawyers on inactive status. Table 1 illustrates the continued growth in the number of attorneys registered for active practice over the last six years.

TABLE 1

Active Registered Lawyers in Massachusetts (2011-2016)



Fiscal Year 2016 Caseload

ACAP Contacts

The Attorney and Consumer Assistance Program (ACAP) is the intake and screening unit of the Office of Bar Counsel. ACAP handles inquiries by attempting to resolve routine concerns or minor disciplinary issues without opening a disciplinary file and by promptly referring matters for investigation that raise issues of more serious misconduct.

Since its inception in 1999, ACAP has evaluated and processed a total of 90,389 inquiries. During FY2016, ACAP responded to 3,799 inquiries. Approximately 89% of these inquiries were received as telephone calls; the remainder were in writing. ACAP resolved more than 86% of inquiries without referral for investigation; the percentage is slightly smaller

than in previous years because bar counsel has recently adopted a more precise method of making the calculation. Consistent with time standards agreed upon with the Supreme Judicial Court, nearly 99% of ACAP contacts reached final disposition (whether resolution or referral for investigation) within 45 days and over 98% of contacts were processed within 30 days of receipt.

Upon receipt of a new consumer inquiry, ACAP first ascertains whether the complaint is arguably a disciplinary matter within the jurisdiction of the Board. ACAP resolves many consumer concerns by providing information; discussing reasonable expectations and timetables in legal cases; suggesting alternative ways of dealing with the dispute; or making referrals to lawyer referral services, fee dispute resolution services, and legal services organizations. With the consumer's consent, ACAP may also telephone the attorney to attempt to resolve the problem. Typical outcomes include that the lawyer returns a legal file requested by a client, refunds an unearned retainer, or provides the client with an update on case status.

The problems prompting inquiries to ACAP do not vary much from year to year. Approximately 26% of all inquiries in FY2016 concerned lack of diligence or neglect by the attorney of the client or case, often including failure to return client calls. The areas of law that always produce the most inquiries to ACAP are domestic relations, criminal defense, and civil litigation, comprising approximately 16%, 13% and 13%, respectively, of all contacts in FY2016. Issues involving trusts and estates, personal injury, and real estate accounted for approximately 11%, 7% and 7%, respectively, of the ACAP caseload, although real estate, this year and historically, comprises a larger percentage of matters ultimately docketed as complaints. Approximately 6% of the calls to ACAP involved questions about legal fees, a percentage somewhat lower than in prior years that may be attributable to the 2013 amendments to Mass. R. Prof. C. 1.5 requiring that almost all fee arrangements be in writing.

ACAP immediately sends a complaint form to callers when serious professional conduct might be involved. Effective September 1, 2009, however, Supreme Judicial Court Rule 4:01, § 8.1(a) and section 2.1(b)(1) of the Rules of the Board of Bar Overseers provide that a matter need not be pursued if the Office of Bar Counsel, in its discretion, determines the complaint to be frivolous, outside the Board's jurisdiction, or to involve allegations that do not warrant further action; the effects of these changes are described further in the next section of this report. In the middle are the several thousand matters that the ACAP staff seeks to, and often does, resolve.

Complaints Docketed

The Office of Bar Counsel opened 764 complaints against attorneys in FY2016. The number of complaints formally docketed has decreased since FY2009, when 1001 complaints were opened. This decrease is largely a function of the 2009 amendment described above that gives bar counsel discretion not to open files on matters that are frivolous, outside the Board's jurisdiction, or do not warrant further action. In FY2016, bar counsel declined to open as complaints 209 written inquiries deemed to fall within these guidelines. In 83 of these matters, the complainants, pursuant to SJC Rule 4:01, § 8.1(a) and section 2.8(a)(1) of the Rules of the Board of Bar Overseers, requested and received review of bar counsel's decision by a member of the Board of Bar Overseers. In none of these matters did the Board member determine that a file should be opened.

The 764 files docketed in FY2016 involved 652 attorneys: 587 of the respondent lawyers had one complaint filed against them, 41 had two complaints, and 24 had three or more complaints filed in the fiscal year. Bar counsel initiated the investigation on 110 lawyers, not including dishonored check matters; these files generally were opened based on news reports or information received from judges, district attorneys' offices, and other public agencies.

The legal areas that produced the most complaints in FY2016 were civil litigation including personal injury, real estate, domestic relations and estates, followed by immigration and criminal defense. As has been true in prior years, the misconduct most often cited was incompetence or neglect by the attorney, including failure to communicate, and trust account violations, including notices of dishonored checks.

Tables 2 and 3 report the classification of complaints opened in FY2016 based on an initial assessment of the primary legal area from which the facts arose and on the nature of the misconduct alleged.

TABLE 2

Classification of 764 Complaints Received by Primary Legal Area

Administrative Law.....	14.....	2%	Industrial Accidents	2.....	<1%
Bankruptcy	13.....	2%	Insurance	0.....	0%
Civil Litigation.....	94.....	12%	Intellectual Property	1.....	<1%
Collections	5.....	<1%	Labor.....	8.....	1%
Commercial Transactions	6.....	1%	Landlord/Tenant	16.....	2%
Consumer Law	2.....	<1%	Malpractice	3.....	<1%
Conviction of Crime	44.....	6%	Municipal Law	1.....	<1%
Corporations	5.....	<1%	Personal Injury.....	43.....	6%
Criminal Defense	45.....	6%	Reciprocal Discipline	6.....	1%
Criminal Prosecution.....	9.....	1%	Real Estate	109.....	14%
Domestic Relations.....	90.....	12%	Small Claims.....	1.....	<1%
Escrow Accounts	0.....	0%	Support	0.....	0%
Estates	53.....	7%	Taxation	0.....	0%
Fiduciary	5.....	<1%	Torts.....	0.....	0%
Immigration	46.....	6%	Trusts.....	14.....	2%
			No Legal Area or Unknown	129.....	17%

TABLE 3
Classification of 764 Complaints Received by Misconduct Alleged

Rules	Type of Misconduct	Complaints Received*	
1.1	Failure to provide competent representation	110	14%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	39	5%
1.3	Neglect or lack of diligence	232	30%
1.4	Failure to communicate adequately with client	159	21%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	110	14%
1.6 and 1.9(c)	Failure to preserve client confidences or secrets	9	1%
1.7 and 1.13	Conflicts of interest between current clients or between client and attorney	46	6%
1.8	Conflicts of interest: prohibited transactions with clients including business transactions, financial assistance, and preparation of instruments of which lawyer or relative is beneficiary	17	2%
1.9 and 1.11	Conflicts of interest with former clients, including former government employment	7	1%
1.14	Conflicts of interest or other violations as to client under disability	2	<1%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	219	29%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	66	9%
3.1, 3.2, 3.3(b)-(e), 3.5 and 3.6	Improper trial conduct	12	2%
3.3(a), 4.1, 8.4(c), and 1.2(d)	Fraudulent or deceptive activity, including lying to clients, knowing use of false evidence or making a misrepresentation to a tribunal or third party	29	4%
3.4, 3.9 and 4.4	Unfair conduct to opposing party or non-adjudicative body	24	3%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	6	1%
5.1 and 5.3	Failure to supervise subordinates	4	<1%
5.4 and 5.6	Failure to maintain professional independence including partnership or sharing fees with non-lawyer	1	<1%
5.5	Unauthorized practice of law or assisting in unauthorized practice	9	1%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	2	<1<1%
8.1	False statements in a bar admission or disciplinary matter	3	<1%
8.4(a)	Misconduct through acts of another	5	<1%
8.4(b)	Criminal conviction or conduct of attorney	48	6%
8.4(d) and 8.4(h)	Conduct prejudicial to the administration of justice, including conduct that is the subject of a contempt finding or court sanction	33	4%
	No Disciplinary Violation or Summary Dismissal	57	7%

*Total may exceed number of complaints filed and total percentage exceeds 100% because, in many matters, more than one type of misconduct was alleged.

Mandatory notices from financial institutions of dishonored checks drawn on attorney trust accounts resulted in the opening of 128 of the files docketed in FY2016. The number of dishonored check notices received this fiscal year is a substantial decrease from FY2013, in which 216 such files were opened and a slight decrease from FY2014, in which 140 were opened. It is higher, however, than FY2015, in which 115 dishonored check files were opened. The number of these notices received from banks has gone up and down over the years since the rule was first enacted but it is to be hoped that the generally lower numbers for recent years will continue.

As always, very few dishonored checks in this fiscal year resulted from bank error or other anomalous problems. The primary reason why trust account checks are dishonored remains inadequate record keeping that does not comply or fully comply with the requirements of Mass. R. Prof. C. 1.15(f). In the conveyancing field in particular, inadequate record keeping alone can lead to large deficits in a trust account. *Matter of Scola*, 460 Mass. 1003 (2011).

An amendment to Mass. R. Prof. C. 1.15 effective July 1, 2015 clarifies longstanding law that advance fees and retainers must be held in a trust account until earned and, for the first time, provides that advances for expenses must also be held in a trust account until paid. These changes should simplify trust account record keeping and thus help with the problems that lead to dishonored checks. In addition, another helpful measure is that Supreme Judicial Court Rule 3:16, effective as of 2014, requires newly admitted attorneys to take a full-day education course on practicing with professionalism, with law office management as part of the curriculum.

Bar counsel in cooperation with the Boston Bar Association presents a free training program on trust account maintenance on the first Thursday of each month between October and May. It is open to all lawyers, whether or not a BBA member, and to support staff. This course is further described on page 22 of this report.

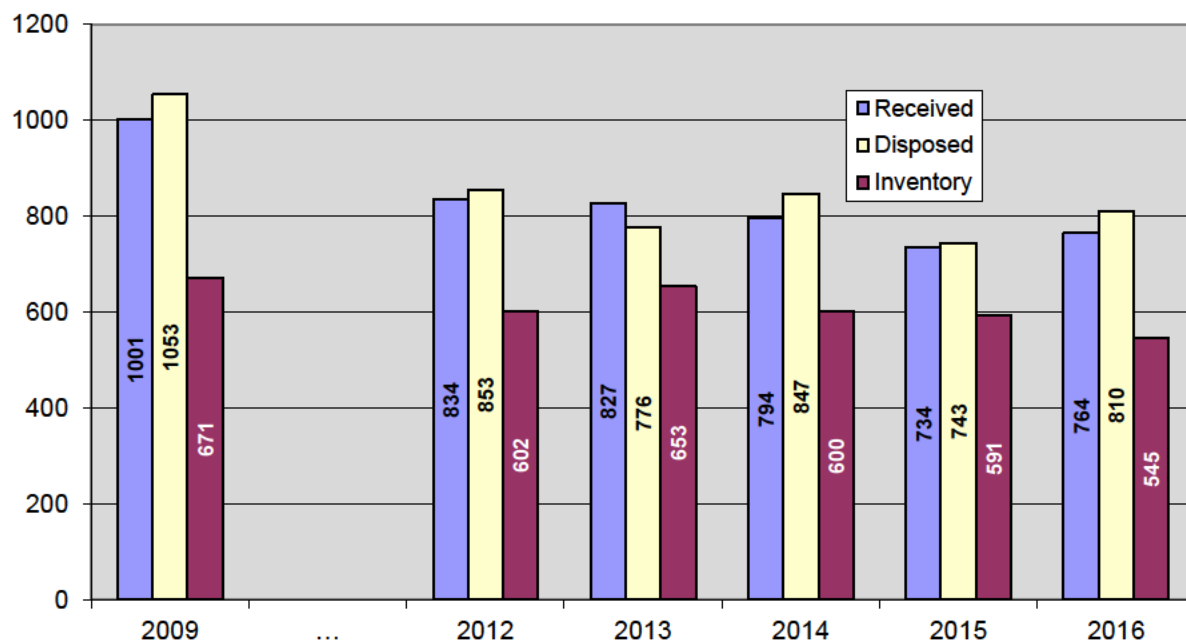
Case Processing

The Office of Bar Counsel had 545 files pending at the end of the fiscal year, including files in which a petition for discipline has been filed and disciplinary proceedings are ongoing as well as files still under investigation. Although this number is likely to fluctuate, it is lower than both the 591 files pending at the end of FY2015 and the 600 files pending at the end of FY2014; all three are a decrease from the FY2013 number of 653. A total of 810 files were brought to an end result by the Office of Bar Counsel in FY2016 either by closing, diversion, or discipline. This figure is a number that also necessarily goes up and down, albeit modestly; there thus were 743 files concluded in FY2015, 847 in FY2014, and 776 such files in FY2013.

Table 4 compares, for FY2009 and then FY2012-2016, the number of files received to the number disposed of by closing, diversion or discipline and to the inventory number of open files remaining at the end of the fiscal year.

TABLE 4

Complaints: Received, Disposed, and Inventory (2009; 2012-2016)



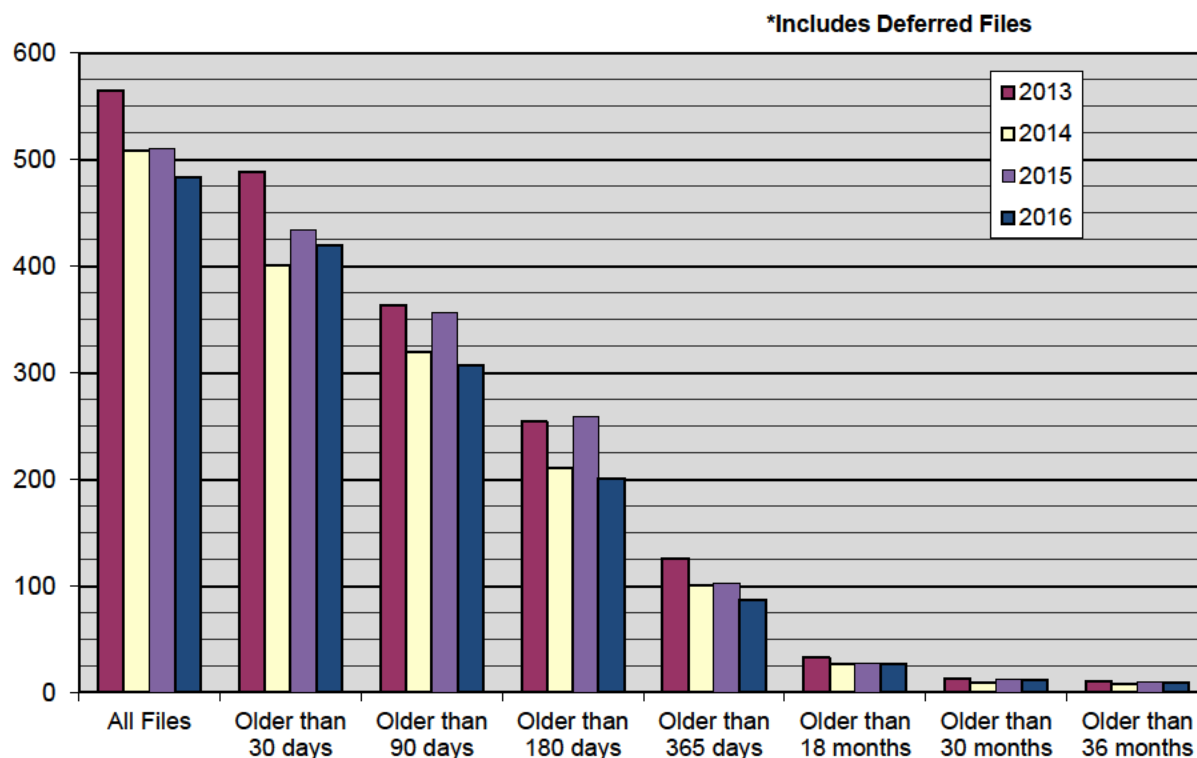
Bar counsel closed 605 files against 550 attorneys in FY2016 without discipline. Discipline was imposed on 125 lawyers on 172 files. In addition, 5 lawyers were placed on disability status. Another 29 attorneys were referred to the voluntary remedial diversion program. All of these numbers are an increase over FY2015, although again, these are figures that will vary from year to year.

Investigations on 28% of the files opened were concluded in under 100 days and 63% within a year of the date received, either by closing the file, diversion, imposition of a disciplinary sanction or the filing of a petition for discipline. The one-year period is the time standard agreed upon with the Court.

The following table shows the numbers of files pending (including deferred files) that are not in petition at the end of FY2016 compared to FY2015, FY2014, and FY2013.

TABLE 5

Age of Files Not in Petition*



The Office of Bar Counsel has made progress in reducing the time that matters remain under investigation before a petition for discipline is filed. Although there has been some fluctuation over the years, the median age of all files pending in the Office of Bar Counsel on which petitions for discipline have not been filed decreased from 193 days in FY2008 (173 days if files deferred pending the outcome of related criminal or civil cases are omitted) to 134 days in FY2016 (125 days if deferred files are omitted). The average (as opposed to median) age of such files for FY2016 was 222 days or 166 days if deferred files are omitted. As of the end of this fiscal year, 2 lawyers had files over 2 years old at the end of the fiscal year that were not in petition and never deferred; one was resolved by admonition, and the other was put into petition, in September 2016. Only these same 2 lawyers plus one more (3 total) had files over 18 months old at the end of the fiscal year that were not in petition or deferred.

Tables 6A through 6D provide a series of snapshots for FY2006 and then FY2012-FY2016, showing the number of lawyers under investigation without a petition for discipline being filed for more than 3 years, 2 ½ years, 2 years, and 18 months, respectively.

TABLE 6A
Respondents With Pending Files Not In Petition
Over 3 Years Old

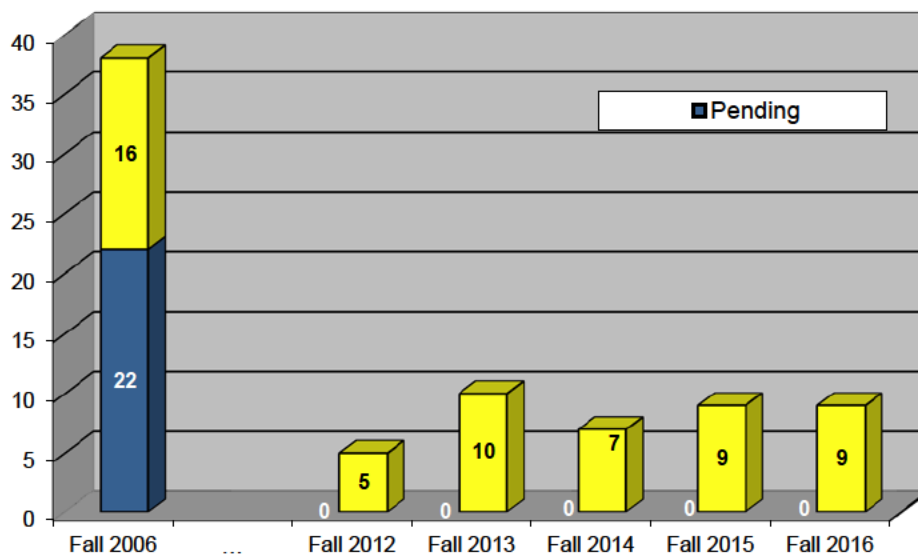


TABLE 6B
Respondents With Pending Files Not In Petition
Over 2.5 Years Old

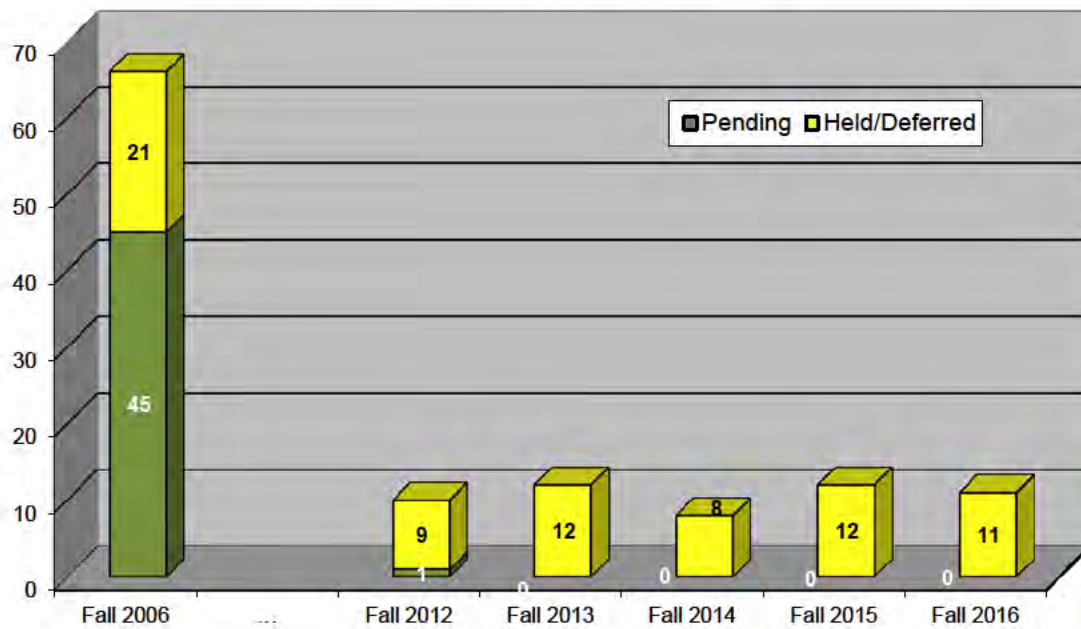


TABLE 6C
Respondents With Pending Files Not In Petition
Over 2 Years Old

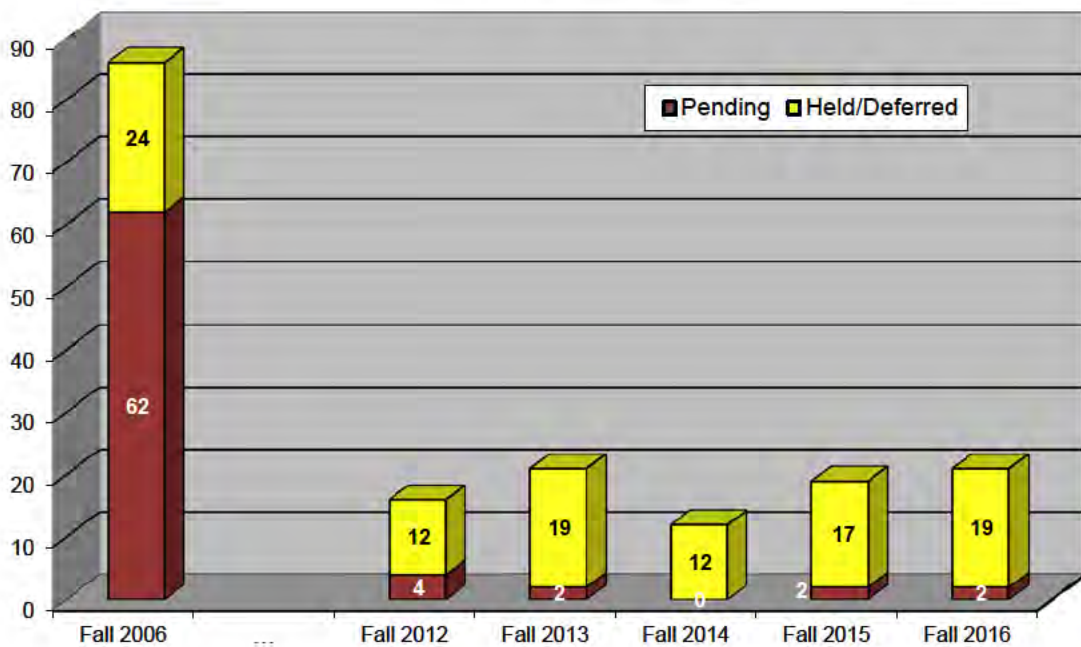
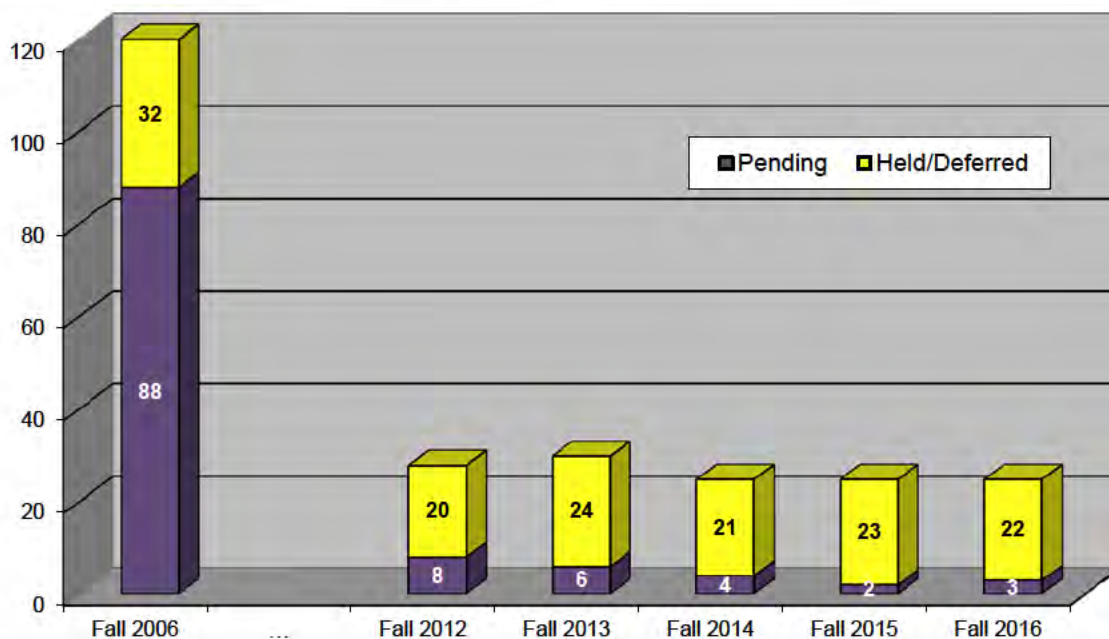


TABLE 6D
Respondents With Pending Files Not In Petition
Over 18 Months Old



Diversion

The diversion program in the Office of Bar Counsel, in effect since 2009, has as its purpose to protect the public by improving the professional competence of members of the bar through educational, remedial and rehabilitative programs. The concept is that certain types of low level misconduct may be better and more permanently addressed by remediation than discipline.

Diversion in lieu of discipline is voluntary on the part of the lawyer. A lawyer who assents to diversion signs an agreement with the Office of Bar Counsel, describing the lawyer's undertakings and obligations. The agreement is then submitted to a Board member for approval.

During the fiscal year, 29 lawyers executed diversion agreements in lieu of discipline. Of these, 17 matters arose from bar counsel's receipt of notices of dishonored checks that revealed comparatively minor problems with the lawyer's trust account record keeping. Lawyers who agreed to diversion because of record-keeping problems were required, among other undertakings, to attend

bar counsel's monthly trust account training and to document afterwards that their trust account records were fully compliant with Rule 1.15. Attorneys diverted for reasons other than record-keeping problems may be referred, among other options, to fee arbitration, to substantive CLE courses, to LOMAP for an evaluation of practice management problems, or to LCL or other service providers for substance abuse, mental health or stress-related issues. Lawyers referred to a service provider such as LCL or LOMAP also sign a separate agreement with the provider.

Disciplinary Proceedings and Sanctions

The Board and the Supreme Judicial Court together sanctioned 125 lawyers in FY2016, an increase over the 109 lawyers disciplined in FY2015 and the 110 lawyers sanctioned in FY2014, but again a number that necessarily will vary. Of these, 29 attorneys received (private) admonitions. An additional 96 lawyers received public discipline, although one lawyer was disciplined in two separate cases (a suspension, then a later disbarment) so the number of disciplinary sanctions imposed is 97: 21 lawyers were publicly reprimanded (including 4 reprimands reciprocal to actions taken in other jurisdictions), 45 received a term suspension including stayed suspensions, 8 were indefinitely suspended, 3 submitted a disciplinary resignation, and 20 were disbarred or resigned and were disbarred. Public reprimands, stayed suspensions, and reinstatement from suspensions of a year or less (i.e., those eligible for automatic reinstatement without hearing) may be subject to conditions such as monitoring by LCL, an evaluation by LOMAP, or a trust account record-keeping reporting requirement. Another 15 lawyers were temporarily suspended from the practice of law pending formal disciplinary proceedings. Although not a sanction as such, 5 lawyers were placed on disability inactive status.

Tables 7 and 8 show the primary legal area involved in the cases resulting in sanctions in FY2016 and the types of misconduct found.

TABLE 7
Classification of Lawyers Disciplined by Primary Area of Law*

Legal Area	Disbarment/ Resignation		Suspension		Public Reprimand		Admonition		All (Public) Discipline	
Administrative Law	0	0%	1	1%	0	0%	1	1%	2	2%
Bankruptcy	1	1%	2	2%	2	2%	0	0%	5	4%
Civil Litigation	1	1%	4	3%	4	3%	4	3%	13	10%
Collections	0	0%	1	1%	0	0%	0	0%	1	1%
Commercial Law	0	0%	1	1%	0	0%	0	0%	1	1%
Consumer Law	0	0%	0	0%	0	0%	0	0%	0	0%
Corporations	0	0%	1	1%	0	0%	0	0%	1	1%
Criminal Defense	1	1%	7	6%	1	1%	5	4%	14	11%
Criminal Conviction	2	2%	8	6%	0	0%	0	0%	10	8%
Criminal Prosecution	0	0%	0	0%	0	0%	0	0%	0	0%
Domestic Relations	1	1%	5	4%	2	2%	4	3%	12	10%
Escrow Accounts	0	0%	0	0%	0	0%	0	0%	0	0%
Estates	3	2%	1	1%	1	1%	5	4%	10	8%
Fiduciary	1	1%	3	2%	1	1%	0	0%	5	4%
Immigration	1	1%	2	2%	1	1%	1	1%	5	5%
Industrial Accidents	0	0%	1	1%	0	0%	0	0%	1	1%
Insurance	0	0%	0	0%	0	0%	0	0%	0	0%
Intellectual Property	0	0%	0	0%	0	0%	0	0%	0	0%
Labor	0	0%	0	0%	0	0%	0	0%	0	0%
Landlord/Tenant	0	0%	1	1%	0	0%	0	0%	1	1%
Malpractice	0	0%	0	0%	0	0%	0	0%	0	0%
Municipal Law	0	0%	0	0%	0	0%	0	0%	0	0%
Personal Injury	3	2%	6	5%	2	2%	2	2%	13	10%
Reciprocal Discipline	3	2%	4	3%	0	0%	0	0%	7	6%
Real Estate	5	4%	6	5%	3	2%	2	2%	16	13%
Small Claims	0	0%	0	0%	0	0%	0	0%	0	0%
Support	0	0%	0	0%	0	0%	0	0%	0	0%
Taxation	0	0%	0	0%	0	0%	0	0%	0	0%
Torts	0	0%	0	0%	0	0%	0	0%	0	0%
Trusts	1	1%	1	1%	0	0%	1	1%	3	2%
Non-Legal, Misc.	2	2%	4	3%	4	3%	3	2%	13	10%

*Totals may exceed number of sanctions imposed and percentage may exceed 100% because some lawyers had multiple files with different primary legal areas.

TABLE 8
Classification of Lawyers Disciplined by Type of Misconduct*

Rules	Type of Misconduct	Disbar/ Resign		Susp		Public Reprimand		Admon		All Discip	
1.1	Failure to provide competent representation	5	4%	13	10%	10	8%	8	6%	36	29%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	1	1%	7	6%	3	2%	5	4%	16	13%
1.3	Neglect or lack of diligence	3	2%	16	13%	12	10%	14	11%	45	36%
1.4	Failure to communicate adequately with client	6	5%	13	10%	11	9%	15	12%	45	36%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	3	2%	8	6%	1	1%	6	5%	18	14%
1.6, 1.9(c)	Failure to preserve client confidences or secrets	0	0%	2	2%	0	0%	2	2%	4	3%
1.7, 1.13	Conflicts of interest between current clients or between client and attorney	0	0%	2	2%	1	1%	1	1%	4	3%
1.8	Conflicts of interest: prohibited transactions with clients including business transactions, financial assistance, and preparation of instruments of which lawyer or relative is beneficiary	1	1%	2	2%	1	1%	0	0%	4	3%
1.9, 1.11	Conflicts of interest with former clients, including former government employment	0	0%	0	0%	0	0%	1	1%	1	1%
1.14	Conflicts of interest or other violations as to client under disability	0	0%	0	0%	0	0%	1	1%	1	1%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	12	10%	16	13%	3	2%	3	2%	34	27%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	1	1%	9	7%	4	3%	5	4%	19	15%
3.1, 3.2, 3.3(b) - (e), 3.5, 3.6, 3.8	Improper trial conduct	2	2%	2	2%	0	0%	0	0%	4	3%
3.3(a), 4.1, 8.4(c), 1.2(d)	Fraudulent or deceptive activity, including lying to clients, knowing use of false evidence or making a misrepresentation to a tribunal or third party	0	0%	4	3%	0	0%	0	0%	4	3%
3.4, 3.9, 4.4	Unfair conduct to opposing party or non-adjudicative body	4	3%	8	6%	1	1%	0	0%	13	10%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	0	0%	0	0%	0	0%	1	1%	1	1%
5.1, 5.3	Failure to supervise subordinates	0	0%	0	0%	0	0%	0	0%	1	0%
5.4, 5.6	Failure to maintain professional independence including partnership or sharing fees with nonlawyer	0	0%	0	0%	0	0%	0	0%	0	0%
5.5	Unauthorized practice of law or assisting in unauthorized practice	1	1%	1	1%	1	1%	2	2%	5	4%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	1	1%	0	0%	0	0%	0	0%	1	1%
8.1	False statements in a bar admission or disciplinary matter	3	2%	2	2%	0	0%	0	0%	5	4%
8.4(a)	Misconduct through acts of another	2	2%	1	1%	3	3%	0	0%	6	5%
8.4(b)	Criminal conviction or conduct of attorney	6	5%	8	6%	1	1%	0	0%	15	12%
8.4(d), 8.4(h)	Conduct prejudicial to the administration of justice, including conduct that is the subject of a contempt finding or court sanction	4	3%	12	10%	4	3%	2	2%	22	18%

*Totals may exceed number of sanctions imposed and percentage exceeds 100% because more than one rule was violated.

As in prior years, almost all lawyers disciplined had been admitted to the bar for at least 5 years and most for over 10. Again consistent with earlier years, the majority of lawyers disciplined were between the ages of 40 and 70. Over 77% described themselves as solo practitioners. Approximately 30% had prior discipline and roughly 50% did not have malpractice insurance.

The Office of Bar Counsel filed 105 petitions for discipline (including affidavits of resignation) seeking public sanctions. This number is higher than the 95 petitions filed in FY2015 or the 76 petitions filed in FY2014 but similar to the 103 petitions filed in FY2013. Bar counsel also filed 24 post-hearing requests for findings and rulings with hearing committees, or appeal briefs with the Board and the Court, including one full court brief.

The Office of Bar Counsel filed directly with the Court a total of 11 petitions for reciprocal discipline (petitions based on suspensions or disbarment in another jurisdiction in which the attorney is also admitted). In 4 other matters, bar counsel filed with the Court and made available orders of (public) reprimands in other jurisdictions.

Hearing committees and special hearing officers completed full hearings on 13 cases during the fiscal year, compared to 17 in FY2015 and 20 in FY2014, and submitted hearing reports on 11 cases. Board decisions were completed on another 13 matters.

Hearing committees, hearing panels, the Board, and the Court held hearings (both evidentiary and non-evidentiary) on 99 dates. Evidentiary hearings were conducted in 22 disciplinary cases and 6 reinstatement matters.

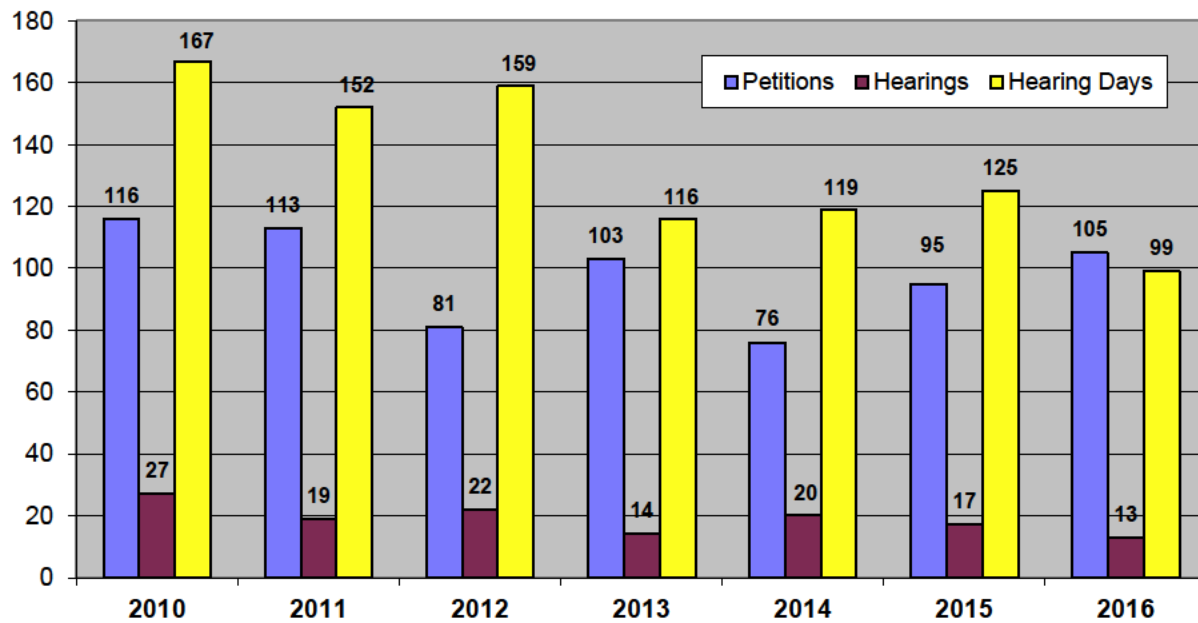
Of the petitions pending during the fiscal year and not deferred, 34 matters were awaiting evidentiary hearing at the end of the fiscal year, compared to 36 matters in FY2015. This figure

includes 4 conviction cases. One case was awaiting a hearing report, with an additional 4 cases on 5 respondents awaiting a Board or panel decision.

Table 9 provides a comparison of number of petitions filed, matters heard, and hearing dates for this year and the preceding six years.

TABLE 9

**Comparison of Petitions, Hearings, and Hearing Days
(2010-2016)**



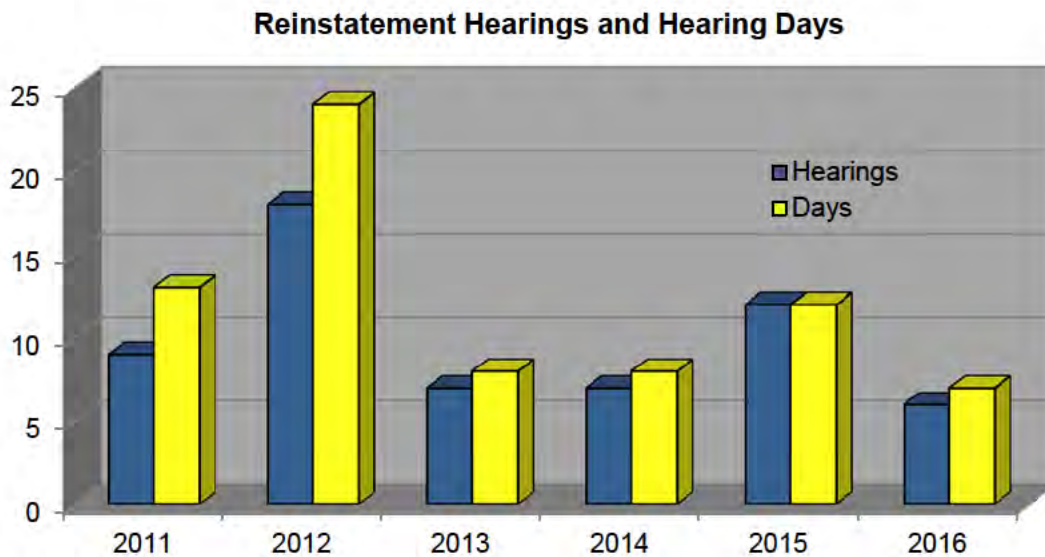
Reinstatements

In addition to petitions for discipline filed by bar counsel, 11 petitions for reinstatement were filed during FY2016 by suspended or disbarred attorneys. After hearing, 10 lawyers (some of whom had petitions pending at the start of the fiscal year) were reinstated to practice and 5 lawyers were denied reinstatement. Following short suspensions, another 8 lawyers were reinstated to practice without petition or hearing.

Hearings were held on 6 petitions for reinstatement over the course of 7 days, similar to the 7 petitions heard over 8 days in FY2014 but fewer than 12 petitions heard

over 12 days in FY2015. The chart below shows the number of reinstatement hearings and hearing days since 2011.

TABLE 10



Commissioners

As in prior years, significant staff resources continue to be spent on issues relating to the closing of lawyers' practices following suspension, disbarment, death or disability.

There were 10 matters open during the fiscal year where members of the bar, either during FY2016 or earlier, were appointed as commissioners pursuant to Supreme Judicial Court Rule 4:01, § 14 or § 17(2). Three of those commissioners were required due to the death of a lawyer. The staff at the Office of Bar Counsel and the commissioners work together to return files to clients, notify courts and opposing counsel, ensure proper disbursement of trust funds, and arrange either for storage of unclaimed files that cannot as yet be shredded or for appropriate destruction of files as approved by the Court. The staff also assists suspended or disbarred attorneys in accomplishing these tasks themselves.

Bar counsel also receives frequent requests for information and assistance from, and provides informal guidance to, personal representatives of lawyers' estates or family members of deceased solo practitioners. In other matters, bar counsel may oversee the return of files of deceased attorneys without the appointment of a commissioner if the quantity of files is limited and there are no other issues.

In FY2015, pursuant to an initiative by the Court and the Office of Bar Counsel to get bar associations more involved in the process of closing out the practices of deceased lawyers with no estates, a bar association, at the request of bar counsel, located an attorney who agreed to be the commissioner for the practice of a deceased lawyer. The attorney then filed his own petition for appointment, a model that bar counsel hopes will be used more frequently in the future. First-time commissioners nonetheless require significant guidance from bar counsel and bar counsel may ultimately require more resources to address these matters.

Whether the underlying cause is the lawyer's death, disability or loss of license, inadequate record keeping often makes it difficult or impossible to identify the owners of funds held in trust by the lawyers. Similarly, bar counsel and commissioners face recurring problems with the disposition of client files whose poor condition or large number makes inventorying problematic. A rule authorizing the destruction of client files a certain number of years after the representation concludes, albeit with necessary exceptions, would assist commissioners, personal representatives, and families, as well as practicing lawyers.

Lawyers should be aware of the prophylactic measures that they and their law firms can and should take while still in active practice to avoid the need for partners, associates, personal representatives, family members or commissioners to have to sort

through storage units or basements full of files after death or disability. See in this respect the article *Talking Trash Recycled (Again): Guidelines for Retention and Destruction of Client Files* on the Office of Bar Counsel website.

Full Bench Decisions

The Justices issued only one full court opinion on bar discipline in FY2016:

- *Matter of Weiss*, 474 Mass 1001 (2016). On appeal by the petitioner from a decision by a single justice denying his third petition for reinstatement from a suspension of a year and a day entered in 2011, the Court held that the single justice properly denied reinstatement. The hearing panel had found that the petitioner had not met his burden of proof and did not show either that he had sufficient understanding of the basis of his discipline to avoid repeating his misconduct or that he had sufficient learning in the law.

In addition, in an important ethics-related decision by the full bench, the Court in *Commonwealth v. Dwayne Moore*, 474 Mass. 541 (2016), clarified the effect of the July 2015 amendments to Mass. R. Prof. C. 3.5(c) on permissible post-verdict communications with jurors, and set out new guidelines to implement the amended rule.

Related Activities

An assistant bar counsel has continued to serve as a member of a Supreme Judicial Court working group charged with implementing and overseeing the administration of Supreme Judicial Court Rule 3:16, which mandates that all newly admitted attorneys attend a one-day course on practicing with professionalism.

As it has done for many years, the Office of Bar Counsel through its ethics helpline continues to answer questions from the bar three afternoons each week, as well as whenever there is a problem that needs an immediate consultation. The staff in this manner assists lawyers in analyzing ethical problems and resolving disputes with clients or other lawyers. Assistant bar counsel in FY2016 received approximately 1900 calls on

the ethics helpline, covering a variety of issues relating to the rules of professional conduct and, in particular, answering questions as to the amendments to the rules that went into effect in July 2015.

As previously described, in a continuing effort to assist lawyers with the trust account record-keeping requirements of Mass. R. Prof. C. 1.15 and to reduce the number of complaints that raise record-keeping issues (whether from notices of dishonored checks or from clients or other affected parties), bar counsel conducts a free one-hour trust account program monthly at the Boston Bar Association between October and May. These programs are presented by an assistant bar counsel who concentrates on handling complaints arising from dishonored check notices and on outreach to the bar on record keeping. In FY2016, there were 113 attorneys and their bookkeepers who attended the classes in Boston. The same assistant bar counsel also presented three trust account programs, one at a law school and two to bar groups. Bar counsel also makes materials on trust accounts, including a booklet prepared by the IOLTA Committee, available online.

Trust accounting and other matters are also discussed in a full-day program on ethics and law office management offered twice a year in Boston by the Office of Bar Counsel and MCLE. Some of the other subjects dealt with in the course are the establishment of an attorney-client relationship including social networking issues, common ethical problems such as withdrawal and return of files, conflicts and conflict management, billing and collecting, and best practice tips from LOMAP, as well as a presentation from LCL on stress management and substance abuse issues.

Bar counsel staff made additional presentations on professional conduct issues at MCLE, law schools and bar associations. In calendar year 2016, staff at the Board of Bar

Overseers and Office of Bar Counsel also made presentations at the practicing with professionalism programs for new attorneys, 21 times in total, throughout the Commonwealth. New and updated articles on ethics, including several articles on the amendments to the Rules of Professional Conduct, were also posted on the website maintained by the Office of Bar Counsel.

Staff from the Office of Bar Counsel and Board of Bar Overseers also continue to participate in Inns of Court and the Supreme Judicial Court Standing Advisory Committee on the Rules of Professional Conduct. Staff also served on the boards of directors of Lawyers Concerned for Lawyers and of Greater Boston Legal Services.

Website Update

The website maintained by the Office of Bar Counsel, www.mass.gov/obcbbo, is expected to be modernized and updated in the coming year to make it more accessible to the bar and the public.

The website currently provides information to the bar and the public on the functions of the Board of Bar Overseers and Office of Bar Counsel, as well as explanations of how to file complaints and of the disciplinary process. The site includes disciplinary decisions, links to rules, and a collection of articles by staff on ethical issues. In addition, a news section includes updates on matters of interest relating to professional responsibility and the disciplinary process, descriptions of and links to rule changes, and synopses of new full-bench disciplinary decisions and other ethics-related cases.

The office address and registration status of Massachusetts attorneys can be obtained through a link to the website of the Board of Bar Overseers, <http://massbbo.org/bbolookup.php>. The Board's website, <http://www.massbbo.org/>, also provides detailed information for attorneys on registration requirements, including

(effective September 2016) FAQs on (now mandatory) online registration, as well as instructions on making online address or other status changes. The site contains information, links, and FAQs on Supreme Judicial Court Rule 3:15, which requires out-of-state attorneys to pay a fee through the Board to the IOLTA Committee prior to filing a motion for admission *pro hac vice*. It also has information on Supreme Judicial Court Rule 3:16, mandating the one-day practicing with professionalism course for newly admitted attorneys.

The Board's website also includes information provided by active status attorneys as to whether or not they carry malpractice insurance. The information is provided consistent with the requirement in Supreme Judicial Court Rule 4:02 that lawyers certify in their annual registration statements whether or not they are covered by professional liability insurance and that they report lapses in coverage. As of the end of FY2016, 76% of active status lawyers in private practice report that they maintain malpractice insurance, essentially the same percentage as the year before. Accurate reporting is critical; lawyers have been suspended for misrepresenting on their registration statements that they carried malpractice insurance when they did not.

Facilitating Continuous Improvement

The Office of Bar Counsel and the Board of Bar Overseers have been actively involved in educating the bar as to the wide-ranging changes to the Massachusetts Rules of Professional Conduct resulting from the major amendments that went into effect July 1, 2015, through CLE presentations, helpline questions, new and updated articles on the website, and ACAP assistance when concerns are raised.

The Office of Bar Counsel remains committed to fairness in all dealings with both lawyers and consumers, while carrying out its mission of preserving and enhancing the

integrity and high standards of the bar and protecting the public from unethical conduct by attorneys. With the assistance of the Board of Bar Overseers and the Court, bar counsel works with the bar to ensure public confidence in the disciplinary process.