

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

**ANNUAL REPORT
TO THE
SUPREME JUDICIAL COURT
FISCAL YEAR 2017**

SEPTEMBER 1, 2016 - AUGUST 31, 2017

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Bar Counsel's Report to the Supreme Judicial Court

Fiscal Year 2017

Executive Summary

This is a summary of the key points in the report that follows for the fiscal year ending August 31, 2017:

- Disciplinary action was taken by the Board of Bar Overseers and the Supreme Judicial Court against a total of 118 lawyers, including 25 by (private) admonition and 93 by public discipline.
- The Office of Bar Counsel filed 65 petitions for discipline, including affidavits of resignation, with charges based on 108 complaints. In addition, bar counsel filed 18 petitions for reciprocal discipline directly with the Supreme Judicial Court for Suffolk County and 9 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 21 lawyers.
- Bar counsel's Attorney and Consumer Assistance Program screened and resolved 88% of all telephone and written contacts with ACAP without referral to bar counsel for investigation.
- Bar counsel's ethics helpline handled approximately 1700 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 twelve years ago. The program provides lawyers with training on the record-keeping requirements of Mass. R. Prof. C. 1.15.

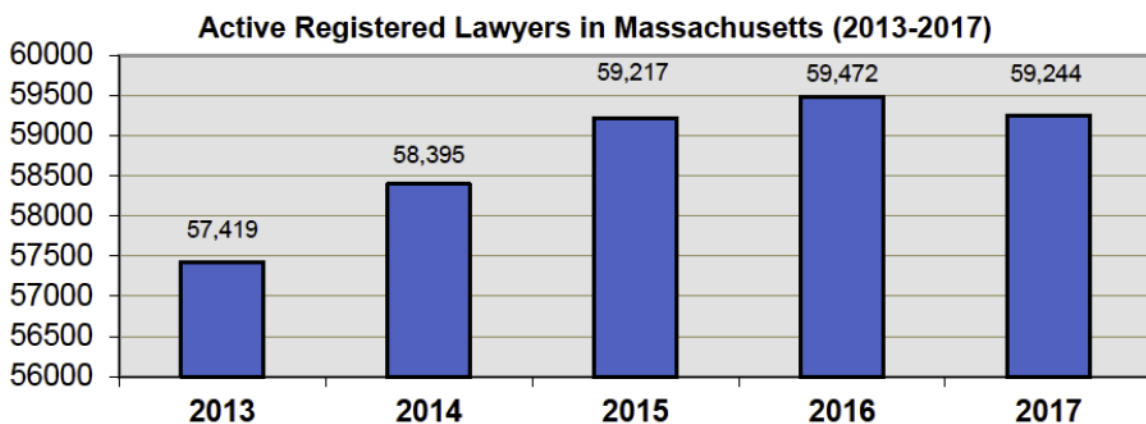
Overview

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 provision of civil 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 FY2017, there were 59,244 Massachusetts lawyers registered on active status and another 11,807 lawyers on inactive status.

TABLE 1



Fiscal Year 2017 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 93,974 inquiries. During FY2017, ACAP responded to 3585 new inquiries, plus an additional 1101 calls and letters on matters that had previously been resolved by ACAP on which the consumers either had new concerns or were seeking additional information, explanation, or assistance. Approximately 87% of first-time ACAP inquiries were received as telephone calls; the remainder were in writing. ACAP resolved more than 88% of inquiries without referral for investigation. Consistent with time standards agreed upon with the Supreme Judicial Court, 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's initial undertaking is to determine whether the complaint could be 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 obtain additional information or documentation and see if the problem can be worked out. Common results might be that the lawyer returns a legal file requested by a client, refunds an unearned retainer, completes a promised undertaking 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 22% of all inquiries in FY2017 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 produced the most inquiries to ACAP are domestic relations and criminal defense, each comprising approximately 13% of all contacts in FY2017. Issues involving trusts and estates, civil litigation including personal injury, and real estate accounted for approximately 12%, 12% and 7%, respectively, of the ACAP caseload. Approximately 4% of the calls to ACAP involved questions about legal fees, a percentage that has been decreasing in recent years perhaps as a result of the 2013 amendments to Mass. R. Prof. C. 1.5 requiring that almost all fee arrangements be in writing.

Inquiries to ACAP fall along a continuum. ACAP immediately sends a complaint form to callers, or refers a written inquiry for further investigation, when serious professional conduct might be involved. At the other end of the spectrum, effective September 1, 2009, 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 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 impact of these changes is described further in the next section of this report. In the middle range are the several thousand matters that the ACAP staff seeks to, and usually does, resolve.

Complaints Docketed

The Office of Bar Counsel opened 725 complaints against attorneys in FY2017. 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, fall outside the Board's jurisdiction, or do not warrant further action. In FY2017, bar counsel declined to open as complaints 231 written inquiries deemed to fall within these guidelines. In 73 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. In none of these matters did the Board member determine that a file should be opened.

The 725 files docketed in FY2017 involved 643 attorneys: 586 of the respondent lawyers had one complaint filed against them, 45 had two complaints, and 12 had three or more complaints filed in the fiscal year. Bar counsel initiated the investigation on 96 lawyers, not including dishonored check matters; these files generally were opened based on news reports, court decisions, or information received from judges, district attorneys' offices, and other public agencies.

The legal areas that produced the most complaints in FY2017 were real estate, civil litigation including personal injury, domestic relations 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.

TABLE 2

Classification of 725 Complaints Received by Primary Legal Area

Administrative Law	16.....2%	Industrial Accidents	0.....0%
Bankruptcy	12.....2%	Insurance	0.....0%
Civil Litigation	72.....10%	Intellectual Property	1.....<1%
Collections.....	9.....1%	Employment.....	3.....<1%
Commercial Transactions	5.....<1%	Landlord/Tenant	11.....2%
Consumer Law	1.....<1%	Malpractice	4.....<1%
Conviction of Crime.....	29.....4%	Municipal Law	1.....<1%
Corporations.....	5.....<1%	Personal Injury.....	51.....7%
Criminal Defense	64.....9%	Reciprocal Discipline	13.....2%
Criminal Prosecution.....	4.....<1%	Real Estate	88.....12%
Domestic Relations	72.....10%	Small Claims.....	0.....0%
Escrow Accounts	2.....<1%	Support	0.....0%
Estates	36.....5%	Taxation	2.....<1%
Fiduciary.....	12.....2%	Torts.....	1.....<1%
Immigration	30.....4%	Trusts.....	11.....2%
		No Legal Area or Unknown	193.....27%

TABLE 3
Classification of 725 Complaints Received by Misconduct Alleged

Rules	Type of Misconduct	Complaints Received*	
1.1	Failure to provide competent representation	96	13%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	72	10%
1.3	Neglect or lack of diligence	172	24%
1.4	Failure to communicate adequately with client	122	17%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	77	11%
1.6 and 1.9(c)	Failure to preserve client confidences or secrets	6	<1%
1.7 and 1.13	Conflicts of interest between current clients or between client and attorney	26	4%
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	6	<1%
1.9 and 1.11	Conflicts of interest with former clients, including former government employment	26	4%
1.14	Conflicts of interest or other violations as to client under disability	0	0%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	208	29%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	59	8%
3.1, 3.2, 3.3(b)-(e), 3.5 and 3.6	Improper trial conduct	18	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	88	12%
3.4, 3.9 and 4.4	Unfair conduct to opposing party or non-adjudicative body	27	4%
3.8	Special responsibilities of prosecutors	1	<1%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	17	2%
5.1 and 5.3	Failure to supervise subordinates	19	3%
5.4 and 5.6	Failure to maintain professional independence including partnership or sharing fees with non-lawyer	2	<1%
5.5	Unauthorized practice of law or assisting in unauthorized practice	3	<1%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	3	<1%
8.1	False statements in a bar admission or disciplinary matter	3	<1%
8.4(a)	Misconduct through acts of another	12	2%
8.4(b)	Criminal conviction or conduct of attorney	32	4%
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	62	9%
	No Disciplinary Violation or Summary Dismissal	147	20%

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

Specifically, mandatory notices from financial institutions of dishonored checks drawn on attorney trust accounts resulted in the opening of 133 of the files docketed in FY2017. The number of these notices received from banks has fluctuated in the years since the rule was first enacted but has generally decreased in the last five years. The 133 notices received in FY2017 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, and slightly higher than FY2016, in which 128 files were opened.

As always, very few dishonored checks in FY2017 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).

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 have consolidated and simplified trust account record keeping and may help with the problems that lead to dishonored checks.

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 any lawyer, whether or not a BBA member, and to support staff. This course is further described on page 18 of this report.

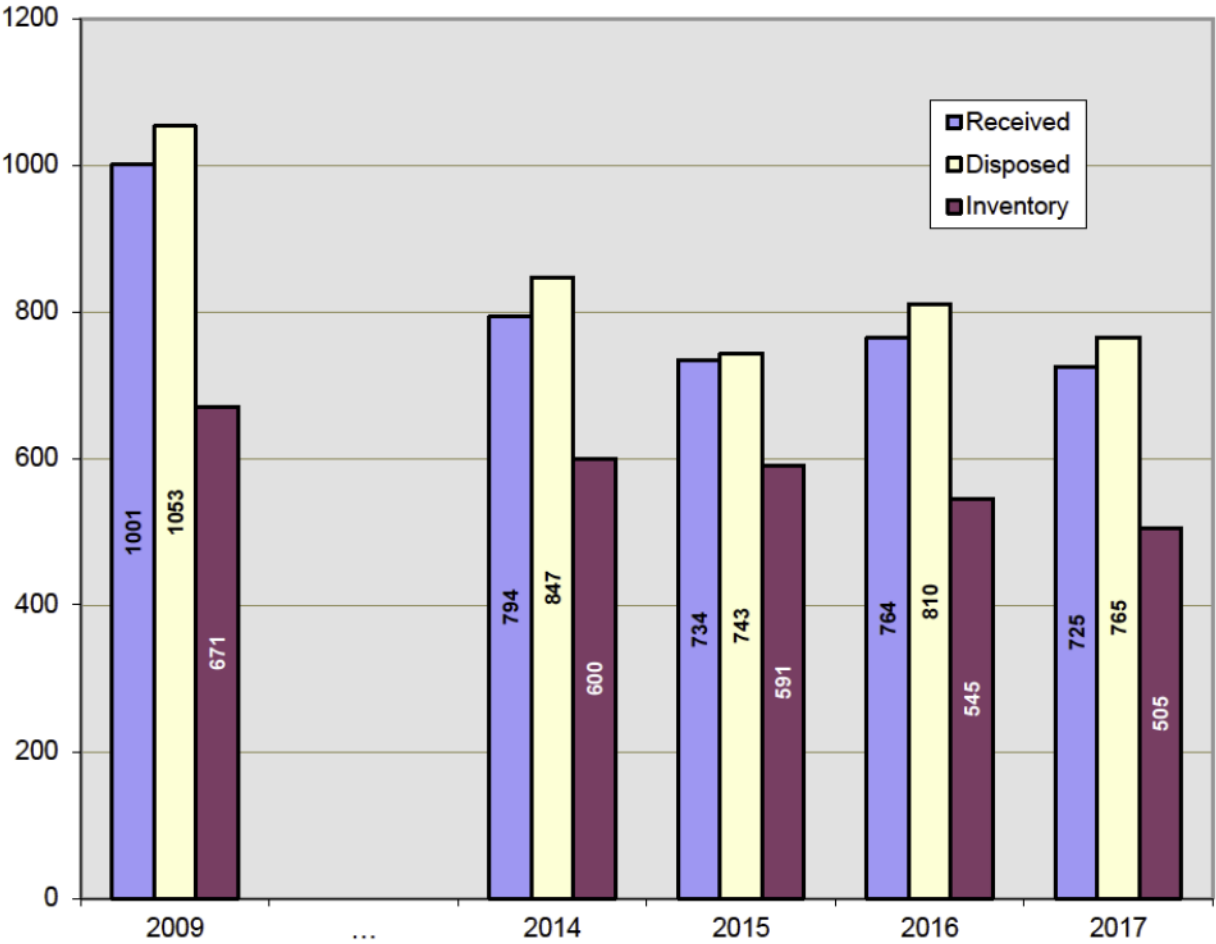
Case Processing

The Office of Bar Counsel had 505 files pending at the end of the fiscal year, including files in which a petition for discipline had been filed and disciplinary proceedings were ongoing, as well as files still under investigation. This number has generally declined over the last decade, at least in part as a result of the 2009 rules amendment, described previously, that gave bar counsel discretion to decline to open frivolous files. A total of 765 files were brought to an end result by the Office of Bar

Counsel in FY2017 either by closing, diversion, or discipline. This figure is a number that necessarily fluctuates; there were thus 810 files concluded in FY2016 and 743 in FY2015.

Table 4 compares, for FY2009 and then FY2014 through FY2017, 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 (2009-2017)



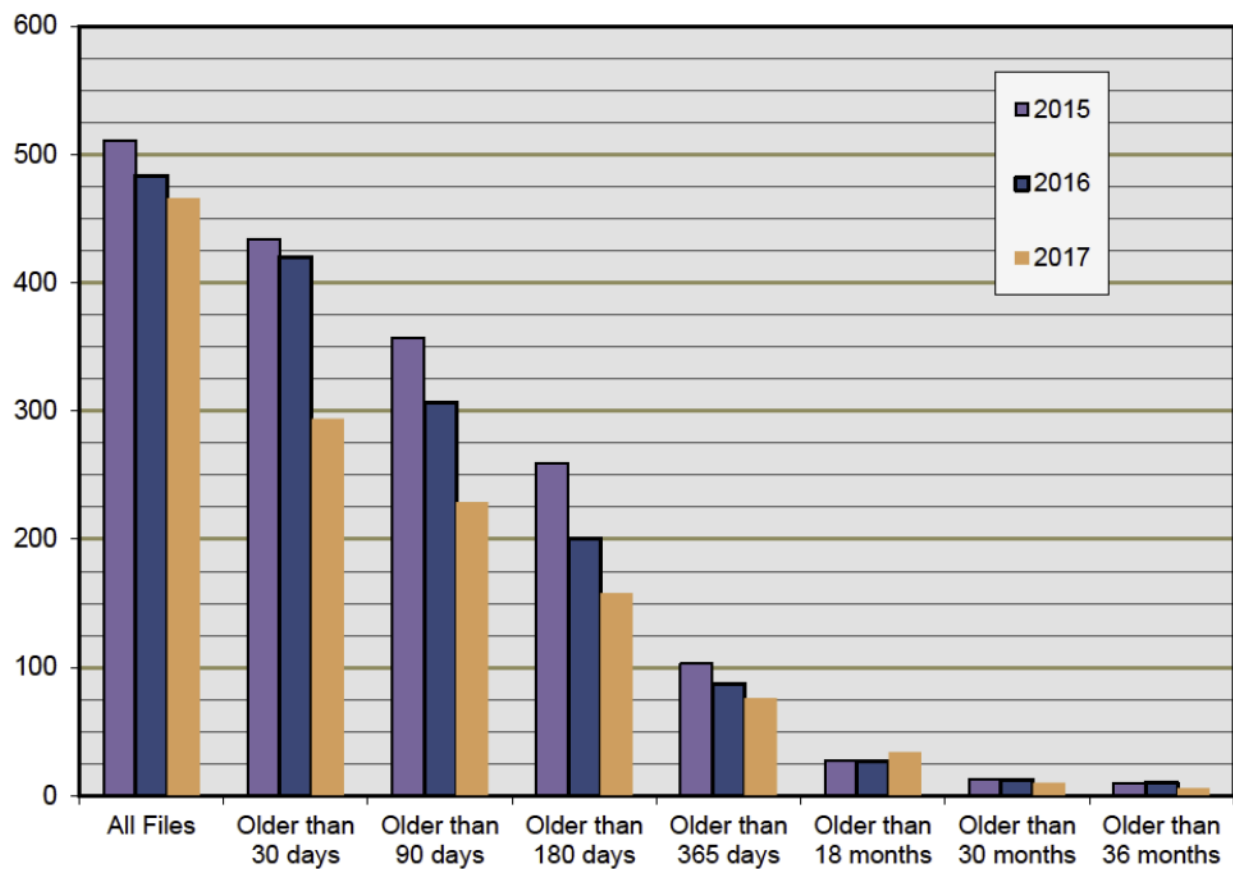
Discipline was imposed on 118 lawyers on 181 files. In addition, 5 lawyers were placed on disability status. Another 21 attorneys were referred to the voluntary remedial diversion program. Again, these are figures that will vary from year to year.

The following table shows the numbers of files pending (including deferred files) that are not in petition at the end of FY2017, compared to FY2015 and FY2016.

TABLE 5

Age of Files Not in Petition*

***Includes Deferred Files**



At the end of FY2017, there were only 3 lawyers as to whom the Office of Bar Counsel had pending files over 18 months old that were not in petition and that had not been deferred. Bar counsel closed 558 files against 502 attorneys in FY2017 without discipline.

TABLE 6A

**Respondents With Pending Files Not In Petition
Over 2 Years Old**

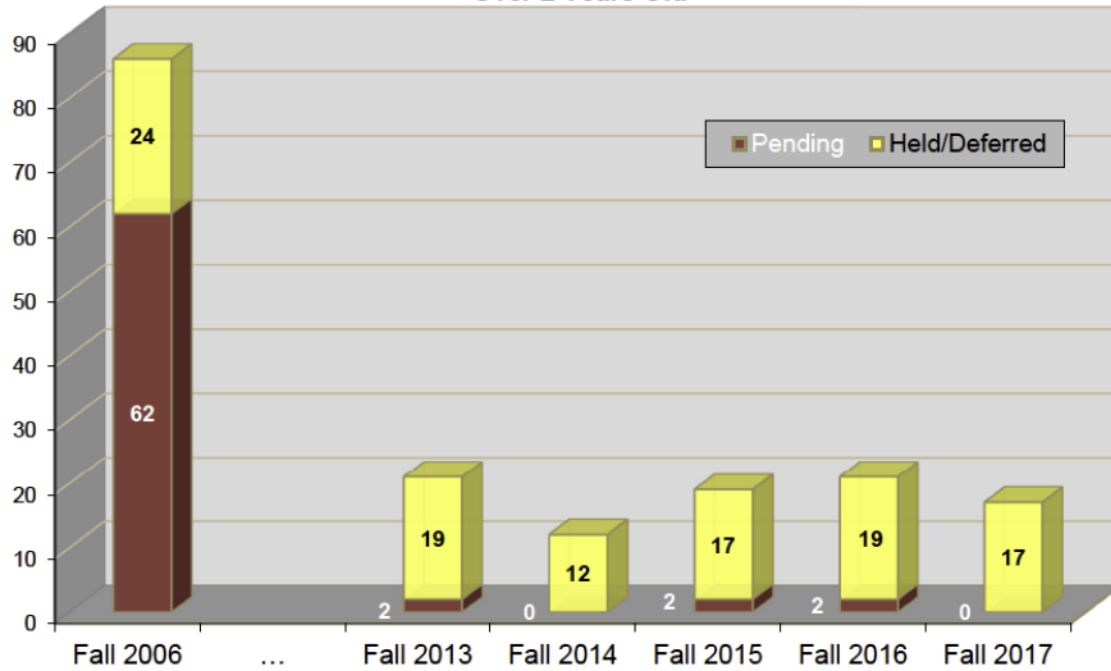
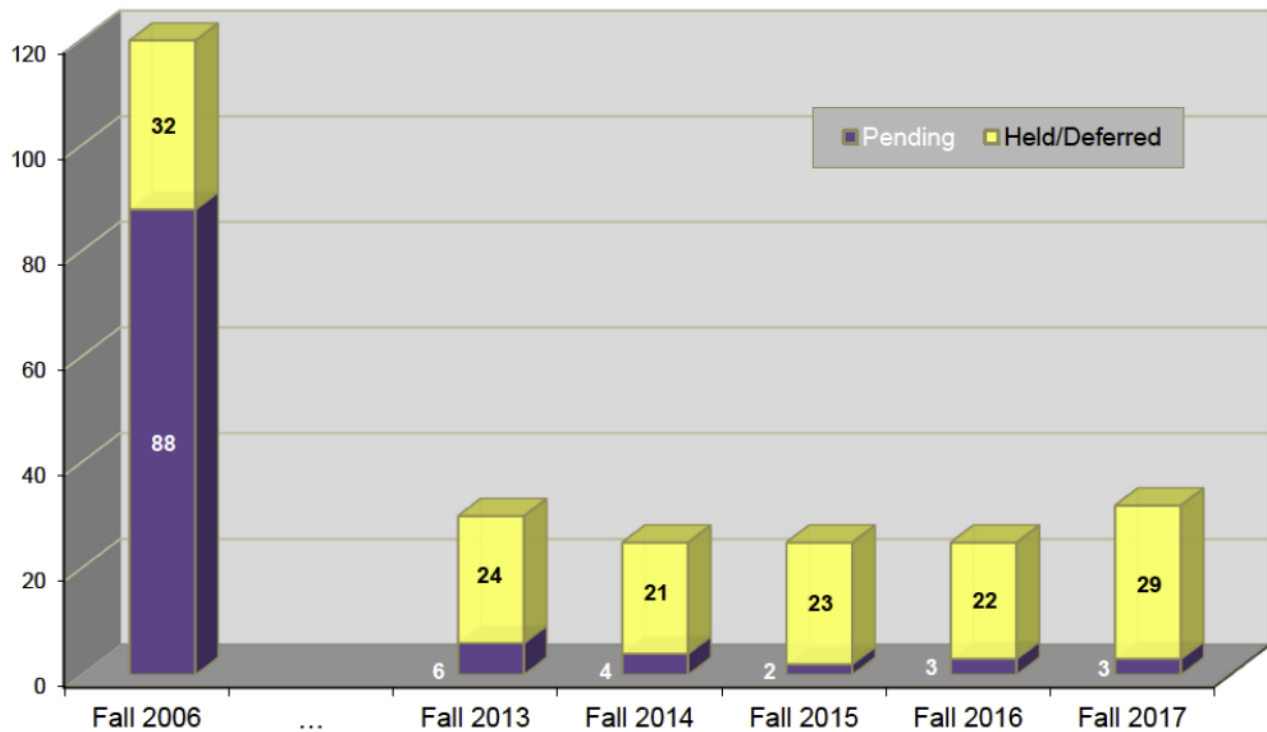


TABLE 6B

**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, 21 lawyers executed diversion agreements in lieu of discipline. Of these, 5 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 are 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 118 lawyers in FY2017, fewer than the 125 lawyers disciplined in FY2016 but an increase over the 109 lawyers disciplined in FY2015 and the 110 lawyers sanctioned in FY2014. Of the lawyers sanctioned in FY2017, 25 attorneys received (private) admonitions. An additional 93 lawyers received public discipline;

22 lawyers were publicly reprimanded (including 9 reprimands reciprocal to actions taken in other jurisdictions), 39 received a term suspension including stayed suspensions, 4 were indefinitely suspended, 6 submitted a disciplinary resignation, and 22 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 11 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.

The legal areas that produced the most discipline in FY2017 were civil litigation including personal injury, real estate, and criminal defense. The misconduct found most frequently was neglect by the attorney including failure to communicate, trust account violations, and conduct prejudicial to the administration of justice.

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, most lawyers disciplined were between the ages of 40 and 70. Over 80% described themselves as solo practitioners. Approximately 30% had prior discipline and roughly 50% did not have malpractice insurance.

Tables 7 and 8 show the primary legal area involved in the cases resulting in sanctions in FY2017 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	1	1%	0	0%	1	1%	0	0%	2	2%
Bankruptcy	1	1%	1	1%	2	2%	0	0%	4	3%
Civil Litigation	4	3%	12	10%	4	3%	2	2%	22	18%
Collections	0	0%	0	0%	0	0%	0	0%	0	0%
Commercial Law	1	1%	1	1%	0	0%	0	0%	2	2%
Consumer Law	0	0%	0	0%	0	0%	0	0%	0	0%
Corporations	0	0%	0	0%	0	0%	0	0%	0	0%
Criminal Defense	1	1%	2	2%	5	4%	3	3%	11	9%
Criminal Conviction	0	0%	5	4%	0	0%	0	0%	5	4%
Criminal Prosecution	0	0%	0	0%	0	0%	0	0%	0	0%
Domestic Relations	3	3%	5	4%	3	3%	5	4%	16	13%
Escrow Accounts	0	0%	0	0%	0	0%	0	0%	0	0%
Estates	4	3%	4	3%	1	1%	2	2%	11	9%
Fiduciary	0	0%	0	0%	1	1%	1	1%	2	2%
Immigration	1	1%	1	1%	0	0%	3	3%	5	4%
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%	1	1%	1	1%
Labor	0	0%	0	0%	0	0%	1	1%	1	1%
Landlord/Tenant	0	0%	0	0%	0	0%	0	0%	0	0%
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	5	4%	5	4%	3	3%	3	3%	16	13%
Reciprocal Discipline	5	4%	5	4%	0	0%	0	0%	10	8%
Real Estate	7	6%	5	4%	2	2%	3	3%	17	14%
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	0	0%	1	1%	0	0%	1	1%	2	2%
Non-Legal, Misc.	3	3%	6	5%	2	2%	2	2%	13	11%

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

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	4	3%	12	10%	6	5%	5	4%	27	23%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	3	3%	9	8%	4	3%	2	2%	18	15%
1.3	Neglect or lack of diligence	4	3%	15	13%	6	5%	13	11%	38	32%
1.4	Failure to communicate adequately with client	6	5%	14	12%	7	6%	7	6%	34	29%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	3	3%	8	7%	2	2%	5	4%	18	15%
1.6, 1.9(c)	Failure to preserve client confidences or secrets	0	0%	1	1%	1	1%	0	0%	2	2%
1.7, 1.13	Conflicts of interest between current clients or between client and attorney	0	0%	3	3%	3	3%	2	2%	8	7%
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%	1	1%	2	2%	0	0%	4	3%
1.9, 1.11	Conflicts of interest with former clients, including former government employment	0	0%	0	0%	0	0%	0	0%	0	0%
1.14	Conflicts of interest or other violations as to client under disability	1	1%	1	1%	2	2%	1	1%	5	4%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	16	13%	11	9%	7	6%	8	7%	42	35%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	2	2%	6	5%	1	1%	3	3%	12	10%
3.1, 3.2, 3.3(b) - (e), 3.5, 3.6, 3.8	Improper trial conduct	1	1%	4	3%	3	3%	0	0%	8	7%
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	14	12%	18	15%	3	3%	3	3%	38	32%
3.4, 3.9, 4.4	Unfair conduct to opposing party or non-adjudicative body	2	2%	11	9%	1	1%	0	0%	14	12%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	0	0%	1	1%	0	0%	0	0%	1	1%
5.1, 5.3	Failure to supervise subordinates	1	1%	0	0%	1	1%	0	0%	2	2%
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	0	0%	0	0%	0	0%	0	0%	0	0%
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	0	0%	2	2%	3	3%	0	0%	5	4%
8.4(a)	Misconduct through acts of another	1	1%	1	1%	5	4%	0	0%	7	6%
8.4(b)	Criminal conviction or conduct of attorney	2	2%	6	5%	0	0%	0	0%	8	7%
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	10	8%	19	16%	6	5%	3	3%	38	32%

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

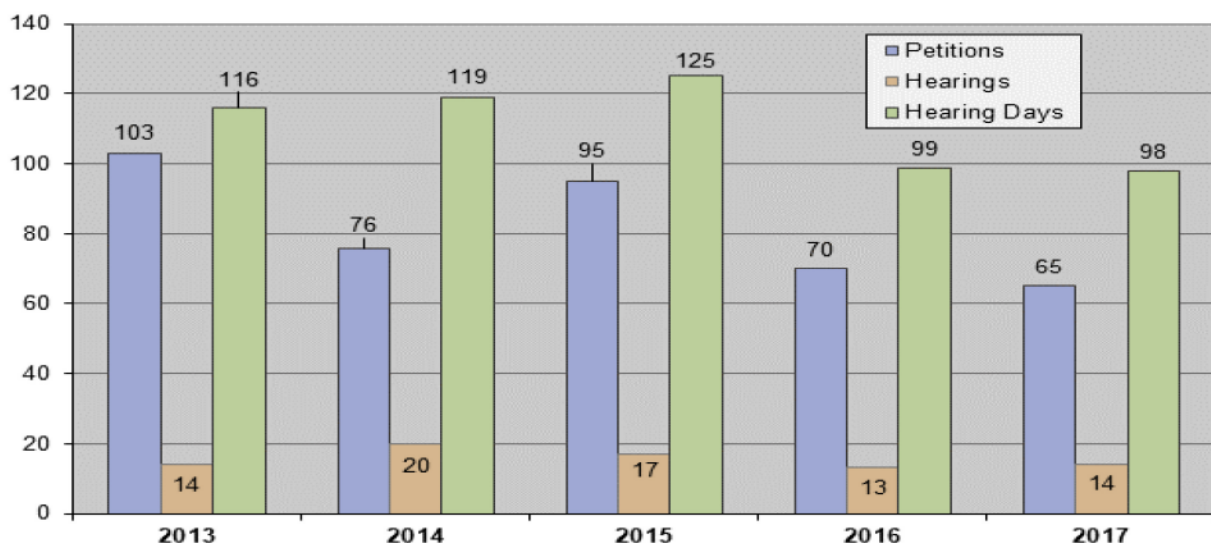
The Office of Bar Counsel filed 65 petitions for public discipline, including affidavits of resignation, with charges based on 108 complaints. Bar counsel filed directly with the Court a total of 18 petitions for reciprocal discipline (petitions based on suspensions or disbarments in another jurisdiction in which the attorney is also admitted). In 9 other matters, bar counsel filed with the Court and made available orders of (public) reprimands in other jurisdictions. Bar counsel also filed a total of 24 post-hearing requests for findings and rulings with hearing committees and appeal briefs with the Board and the Court, including one full court brief.

Hearing committees and special hearing officers completed full hearings on 14 cases during the fiscal year, compared to 11 in FY2016, and submitted hearing reports on 7 cases. The Board issued full decisions on 13 additional matters.

Hearing committees, hearing panels, the Board, and the Court held hearings (both evidentiary and non-evidentiary) on 98 dates. Evidentiary hearings were conducted in 14 disciplinary cases and 6 reinstatement matters.

Of the petitions pending during the fiscal year and not deferred, 36 matters were awaiting evidentiary hearing at the end of the fiscal year, compared to 34 matters in FY2016.

TABLE 9
Comparison of Petitions, Hearings, and Hearing Days
(2013-2017)



Reinstatements

In addition to petitions for discipline filed by bar counsel, 9 petitions for reinstatement were filed during FY2017 by suspended or disbarred attorneys. Hearings were held on 6 petitions for reinstatement over the course of 8 days, similar to the hearings on 6 petitions over 7 days in FY2016.

Following short suspensions, 8 lawyers were reinstated to practice without petition or hearing. One additional lawyer was reinstated from a temporary suspension after a criminal conviction was overturned.

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, disappearance or disability. This work includes assistance to private attorneys who are appointed as commissioners pursuant to Supreme Judicial Court Rule 4:01, § § 14 or 17(2) to act as commissioners to take appropriate action to protect the interests of the lawyer in question and the lawyer's clients.

There were 13 matters active during the fiscal year where members of the bar were appointed, either during FY2017 or earlier, as commissioners. Six of those commissioner appointments were required due to the death of a lawyer. In the other matters, commissioners were appointed because of a lawyer's disappearance, disability, or discipline.

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 from, and provides informal assistance 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.

Whatever the underlying cause of the need for a commissioner, 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.

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. In coming years, the issues relating to files should be eased by the Supreme Judicial Court's adoption on June 7, 2018 of a new rule of professional conduct, Mass. R. Prof. C. 1.15A, that will take effect on September 1, 2018. The rule will allow for the destruction of most closed client files after a set number of years, with the caveat that intrinsically valuable papers (such as wills) must be retained.

Full Bench Decisions

The Justices issued five full court opinions on bar discipline in FY2017:

- *Matter of Diviacchi*, 475 Mass. 1013 (2016). On appeal by the respondent, the Court affirmed the decision of a single justice suspending the respondent for 27 months for numerous disciplinary violations, including failing to adequately explain his contingent fee agreement to his former client; attempting to charge and collect a clearly excessive fee; failing to seek the client's lawful objectives; violating the duties of competence and diligence; and making knowing and material false statements to tribunals in the course of suing the client. The Court specifically rejected the respondent's challenges to the provisions of Mass. R. Prof. C. 1.5(f) requiring explanation and client consent to nonstandard provisions of a contingent fee agreement.
- *Matter of Evan Greene*, 476 Mass. 1006 (2016). On appeal by the respondent, the Court upheld the decision of a single justice imposing an indefinite suspension on the respondent for his participation with his father/law partner (see *Matter of Barry Greene*, below) in a "mortgage rescue" scheme. The Court found that the respondent took advantage of vulnerable homeowners in precarious financial positions, concealed the nature of the transactions from his

lender clients out of a self-interested motive, made misrepresentations on HUD-1 settlement statements, and engaged in repeated conflicts of interest. He was also convicted in federal court of crimes involving kickbacks to a mortgage broker.

- *Matter of Barry Greene*, 477 Mass. 1019 (2017). Companion case to *Matter of Evan Greene*, above. On appeal by the respondent, the Court upheld the propriety of a two-year suspension for the respondent's participation in the same "mortgage rescue" scheme. The respondent did not have the additional federal criminal convictions that Evan Greene had; thus the lesser sanction.
- *Matter of Zak*, 476 Mass. 1034 (2017). On appeal by the respondent, the Court affirmed that disbarment is the appropriate sanction for misconduct arising out of a volume loan modification practice including, among other violations, improper solicitation of clients, sharing fees with nonlawyers, misleading advertisements, and charging illegal or excessive fees.
- *Matter of Hass*, 477 Mass. 1015 (2017). On appeal by the respondent, the Court upheld his two-month suspension for making false statements to two litigation funders to support his client's loan applications and then repaying only one of them from the settlement and remitting the remaining funds to the client. The Court rejected the respondent's argument that his conduct was defensible because the loans, in his view, were void or voidable. The Court found instead that the respondent's ethical obligations were independent of the enforceability of his client's agreements to repay the funds and that his lies were not excused by the possibility that the loans were not valid. At a minimum, the respondent should have held the funds until any dispute was resolved.

Related Activities

An assistant bar counsel has continued to serve as a member of a Supreme Judicial Court Professionalism Committee 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 over 25 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 a problem needs an immediate consultation. Assistant bar counsel in FY2017 received approximately 1700 calls on the ethics helpline, covering a variety of issues relating to the rules of professional conduct. The staff in this manner assists lawyers in clarifying ethical responsibilities that apply to given facts and resolving disputes with clients or other lawyers. The process is described more fully in the article from the Office of Bar Counsel on the BBO/OBC website, [Help!: Ethics Assistance from Bar Counsel](#).

As previously mentioned, bar counsel in FY2017 again conducted a free one-hour trust account program monthly at the Boston Bar Association between October and May. This class is intended 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). The 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 FY2017, 90 attorneys and bookkeepers attended the classes in Boston. The same assistant bar counsel also presented four other trust account programs, one at a law school and three 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. Other subjects covered in the course include the establishment of an attorney-client relationship, social media issues, common ethical problems such as withdrawal and return of files, conflicts and conflict management, billing and collecting, as well as best practice tips from LOMAP and 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, the Social Law Library and bar associations. In FY2017, 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 continue to be posted on the BBO/OBC website, www.massbbo.org.

An assistant bar counsel organized the annual spring Law Day celebration at the Supreme Judicial Court. 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 address of the Board of Bar Overseers and Office of Bar Counsel was changed in FY2017 to www.massbbo.org and the website itself was modernized and updated. It continues to provide 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 new site now includes an improved “look up a lawyer” function, with links to the lawyer’s disciplinary history. This section of the site also includes information provided by active status attorneys as to whether they carry malpractice insurance. The information is provided pursuant to the requirement in Supreme Judicial Court Rule 4:02 that lawyers certify in their annual registration statements whether they are covered by professional liability insurance and that they report lapses in coverage.

Also found on the site are all disciplinary decisions since 1999; the BBO’s new treatise on professional ethics; links to the Rules of Professional Conduct and the procedural rules governing disciplinary proceedings and registration; bar counsel’s annual reports; and the collection of articles by staff on ethical issues mentioned earlier. In addition, a news section includes updates on matters of interest relating to professional responsibility and the disciplinary process, including recent articles and descriptions of and links to rule changes.

Finally, with online registration becoming mandatory at the start of FY2017, the website provides links for registration renewal, registration for new attorneys, registration for in-house counsel, and registration for those seeking admission *pro hac vice*. The website also provides forms for the less frequently used categories of attorneys on *pro bono* inactive and retired status, foreign legal consultants and admission pursuant to Supreme Judicial Court Rule 3:04.

Facilitating Continuous Improvement

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 and the Court, bar counsel works with the bar to ensure public confidence in the disciplinary process. Hallmarks of mutual success in this endeavor include the outstanding cooperation that ACAP receives from attorneys in resolving client concerns before complaints become necessary and the bar's use of bar counsel's ethics helpline to obtain assistance before questions become problems.