

- **Bar Counsel's Report to the Supreme Judicial Court**

**Fiscal Year 2008**

**Executive Summary**

This is a summary of the key points in the report that follows for the fiscal year that ended on August 31, 2008:

- The median time elapsed between the filing of an initial complaint and the filing of a petition for discipline decreased substantially during the fiscal year.
- The Office of Bar Counsel in fiscal 2008 filed 106 petitions for discipline including affidavits of resignation, an increase of 23% from the previous year.
- Bar counsel's Attorney and Consumer Assistance Program screened and resolved without referral for investigation 81% of all telephone and written contacts with ACAP. ACAP disposed of over 93% of all such contacts within thirty days, and over 97% within 45 days, either by resolving the inquiries or referring the matter for investigation.
- Bar counsel's ethics helpline provided guidance on issues of professional conduct to 2100 lawyers.
- Bar counsel continued this year to conduct a free monthly "trust account school" to provide lawyers with training on the record-keeping requirements of Mass. R. Prof. C. 1.15. Bar counsel and assistant bar counsel in total made 45 presentations on professional conduct to law schools, bar associations, and continuing legal education organizations.

- Bar counsel created and implemented a diversion program for minor disciplinary violations that went into effect in the summer of 2008. Diversion disposes of complaints involving minor rule violations without discipline by referral to an alternative educational, remedial, or rehabilitative program.
- In November 2007, bar counsel and the Board of Bar Overseers submitted comprehensive proposals to the Supreme Judicial Court on amendments to Supreme Judicial Court Rule 4:01 and the Rules of the Board of Bar Overseers to address recommendations from the October 2005 American Bar Association report on the Massachusetts disciplinary system. The proposals were reviewed and revised by the Court and were published for comment in August 2008.

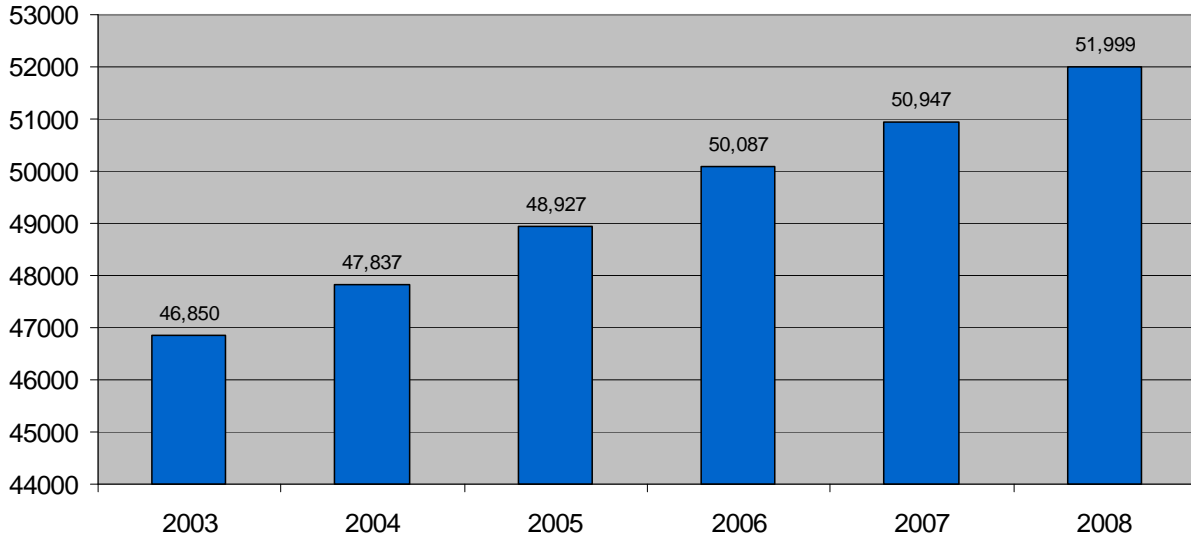
## **Overview**

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 Board of Bar Overseers collects annual registration fees and uses them to fund its operations and those of the Office of Bar Counsel and the Clients' Security Board. At the close of fiscal year 2008, there were 51,999 lawyers registered on active status and another 10,812 lawyers on inactive status.

Table One illustrates the continued growth in the number of attorneys admitted to the bar in Massachusetts and registered for active practice over the last six years.

**TABLE 1**

**Active Registered Lawyers in Massachusetts (2003-2008)**



The bar counsel, an independent prosecutor who serves at the pleasure of the Court, investigates grievances 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. The Board also hears petitions for reinstatement to the bar.

**Fiscal Year 2008 Caseload**

**ACAP Contacts**

The Attorney and Consumer Assistance Program is the intake arm of the Office of Bar Counsel and plays a critical gatekeeper role by addressing and attempting to resolve consumer concerns, thus screening minor complaints from becoming files opened

against attorneys. Since its inception in March 1999, ACAP has handled a total of 56,095 matters.

When the Office of Bar Counsel is contacted about a grievance concerning a lawyer, a member of the ACAP staff responds promptly to that inquiry. The first, and often most difficult, step is to identify whether there in fact is a problem within the jurisdiction of the Board of Bar Overseers. ACAP resolves many inquiries 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. When ACAP intervenes by calling the lawyer, ACAP often obtains itemized bills, status reports, and the return of files and unearned retainers to clients.

The Attorney and Consumer Assistance Program in FY2008 screened and resolved without referral for investigation 81% of all telephone and written contacts with the Office of Bar Counsel that were handled in ACAP. ACAP disposed of over 93% of all contacts within thirty days, and over 97% within 45 days, either by resolving the inquiries or referring the matter for investigation.

During fiscal year 2008, ACAP responded to 4983 potential complainants. Approximately 22% of these inquiries were received in written form; the remainder came from telephone calls. A complaint form is sent immediately where serious unethical conduct might be involved.

Not surprisingly, the areas of law underlying ACAP inquiries tend to remain constant from year to year. As in past years, client concerns as to lawyers' neglect, lack of diligence, or failure to return client calls were the leading causes of inquiries to ACAP, accounting for

almost 27% of all contacts. As in prior years, the areas of law that produce the most inquiries to ACAP are domestic relations, civil litigation, criminal defense, real estate, personal injury and trusts and estates.

Another 9% of the calls to ACAP involved questions about legal fees. The Supreme Judicial Court is studying the feasibility of requiring mandatory arbitration of fee disputes at the election of the client, as recommended in the ABA report on the Massachusetts disciplinary system. Bar counsel's position is that mandatory fee arbitration provides a low-cost forum for resolving fee disputes between lawyers and clients, as well as a satisfactory means to address fee disputes outside the disciplinary system.

### **Complaints Docketed**

The Office of Bar Counsel opened 997 complaints against attorneys in fiscal year 2008, compared to 969 files opened in fiscal year 2007.

The 997 files involved 814 attorneys: 693 of the respondent lawyers had one complaint filed against them, 65 had two complaints, and 37 had three or more complaints filed in the fiscal year. Of the 997 complaint files docketed, bar counsel initiated the investigation in 116 matters involving 99 attorneys. The largest numbers of opened complaints continue to allege neglect or incompetence by the attorney or trust account violations. The legal area generating the most complaints is real estate, with civil litigation, personal injury, domestic matters and criminal defense also producing high numbers of inquiries.

Also part of the 997 total, 153 files were opened as to 150 lawyers arising from mandatory notices sent by financial institutions of dishonored checks drawn on attorney trust

accounts. This number is a 28% reduction from the 211 dishonored check files opened against 207 lawyers in FY2007 but is consistent with 154 notices received in FY2006.

Most of the dishonored check notices are caused by inadequate record keeping. To address this problem, on the first Thursday of each month, bar counsel, in cooperation with the Boston Bar Association, presents a free training program on proper maintenance of trust accounts to all lawyers, whether or not a BBA member. This program is further described on page 18 of this report.

Tables Two and Three report the classification of complaints docketed in fiscal 2008 based on an initial assessment of the primary legal area from which the facts arose and of the nature of the misconduct alleged, if any.

**TABLE 2**

**Classification of 997 Complaints Received by Primary Legal Area**

Administrative Law.....	6.....	<1%	Industrial Accidents .....	8.....	<1%
Bankruptcy.....	25.....	3%	Insurance.....	1.....	<1%
Civil Litigation.....	116.....	12%	Intellectual Property.....	2.....	<1%
Collections .....	21.....	2%	Labor.....	19.....	2%
Commercial Transactions.....	7.....	<1%	Landlord/Tenant .....	16.....	2%
Consumer Law.....	9.....	<1%	Malpractice .....	5.....	<1%
Conviction of Crime .....	28.....	3%	Municipal Law .....	4.....	<1%
Corporations .....	12.....	1%	Personal Injury.....	67.....	7%
Criminal Defense.....	114.....	11%	Real Estate .....	149.....	15%
Criminal Prosecution.....	8.....	<1%	Taxation.....	2.....	<1%
Domestic Relations.....	114.....	11%	Torts.....	4.....	<1%
Estates.....	71.....	7%	Trusts.....	11.....	1%
Fiduciary .....	10.....	1%	No Legal Area or Unknown .....	117.....	12%
Immigration .....	51.....	5%			

**TABLE 3**  
**Classification of 997 Complaints Received by Misconduct Alleged**

Rules	Type of Misconduct	Complaints Received	
1.1	Failure to provide competent representation	160	7%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	72	3%
1.3	Neglect or lack of diligence	292	13%
1.4	Failure to communicate adequately with client	284	13%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	109	5%
1.6 and 1.9(c)	Failure to preserve client confidences or secrets	20	1%
1.7 and 1.13	Conflicts of interest between current clients or between client and attorney	47	2%
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	25	1%
1.9	Conflicts of interest with former clients	13	1%
1.14	Conflicts of interest or other violations as to client under disability	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	342	16%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	140	6%
3.1, 3.2, 3.3(b)-(e), 3.5 and 3.6	Improper trial conduct	44	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	281	13%
3.4 and 4.4	Unfair conduct to opposing party	49	2%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	19	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 nonlawyer	1	<1%
5.5	Unauthorized practice of law or assisting in unauthorized practice	23	1%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	12	1%
8.1	False statements in a bar admission or disciplinary matter		
8.3	Failure to report professional misconduct when required	27	1%
8.4(a)	Misconduct through acts of another	11	<1%
8.4(b)	Criminal conviction or conduct of attorney	62	3%
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	90	4%
	No Disciplinary Violation or Summary Dismissal	77	3%

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

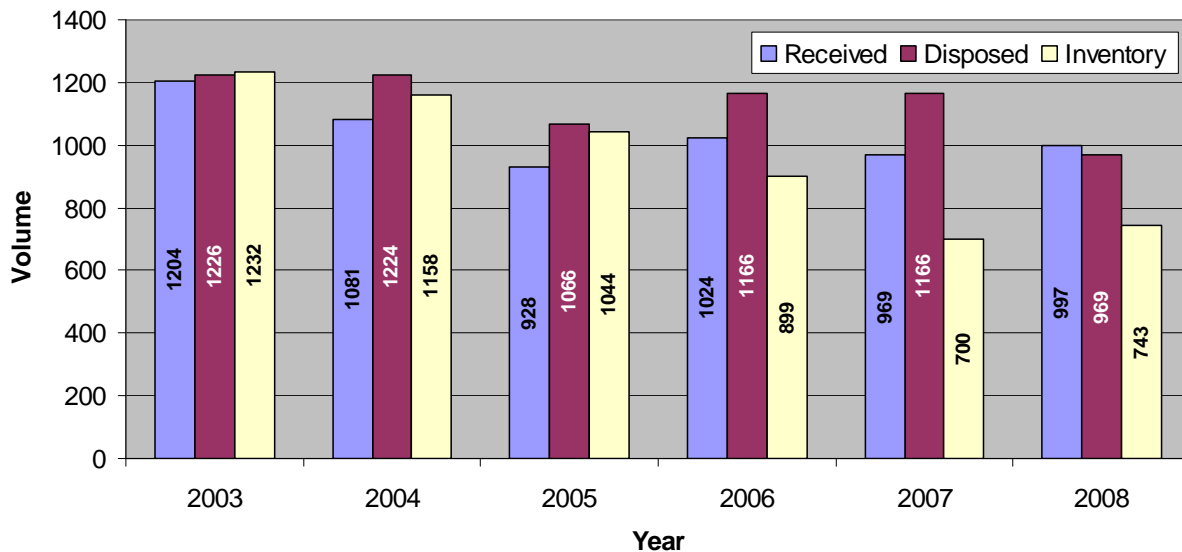
## Case Processing

The Office of Bar Counsel disposed of 969 files in FY2008, both by closing or dismissal and by discipline. The staff concentrated their efforts this year on continuing to reduce the remaining backlog of older files. The number of files disposed of by closing/dismissal or discipline is the same number of files opened in the previous fiscal year and is only slightly less than the number of files (997) received in the current fiscal year.

**TABLE 4**

**Complaints: Received, Disposed, and Inventory (2003-2008)**

**NOTE: Numbers from past fiscal years may vary from those presented on previous annual reports due to a recently discovered computer programming error.**

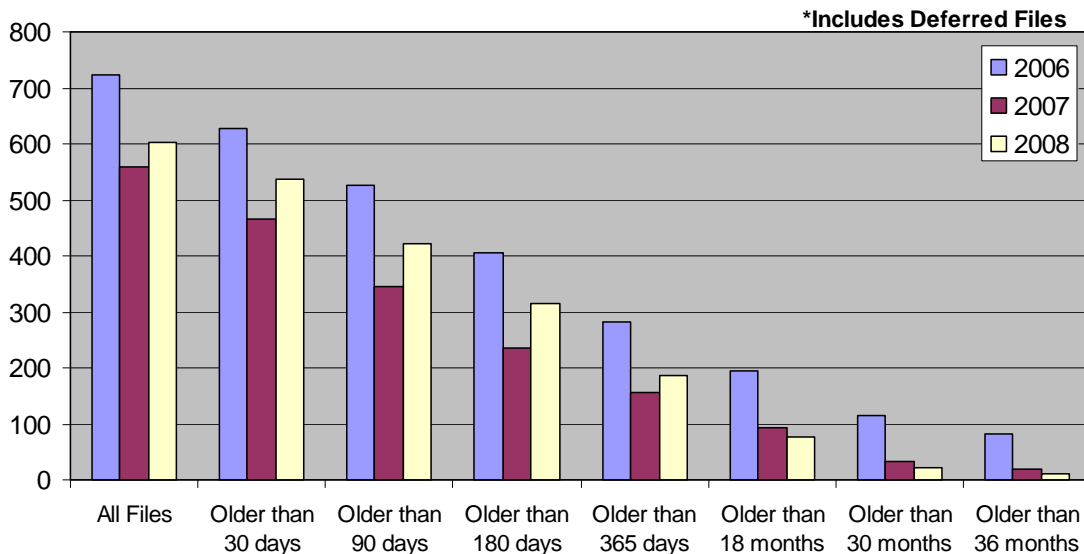


Disciplinary action was taken against 135 lawyers on 191 files. In addition, four lawyers were placed on disability status and two attorneys had their cases diverted to the remedial program instituted in July 2008. Bar counsel closed 701 files against 612 attorneys without docketing as formal complaints. An additional 11 lawyers had complaints dismissed with a warning.

Bar counsel disposed of 34% of the files opened for investigation within ninety days and 73% of the files within a year of the date received, both by taking disciplinary action and closing files without disciplinary action. Equally important, investigation was completed on 84% of all files within a year of the date received; these files were either disposed of by closing or discipline or had a petition for discipline filed within that time frame. The following table shows the numbers of pending files not in petition, by age in days, in fiscal 2008 compared to fiscal 2007 and 2006.

**TABLE 5**

**Age of Files Not in Petition\***



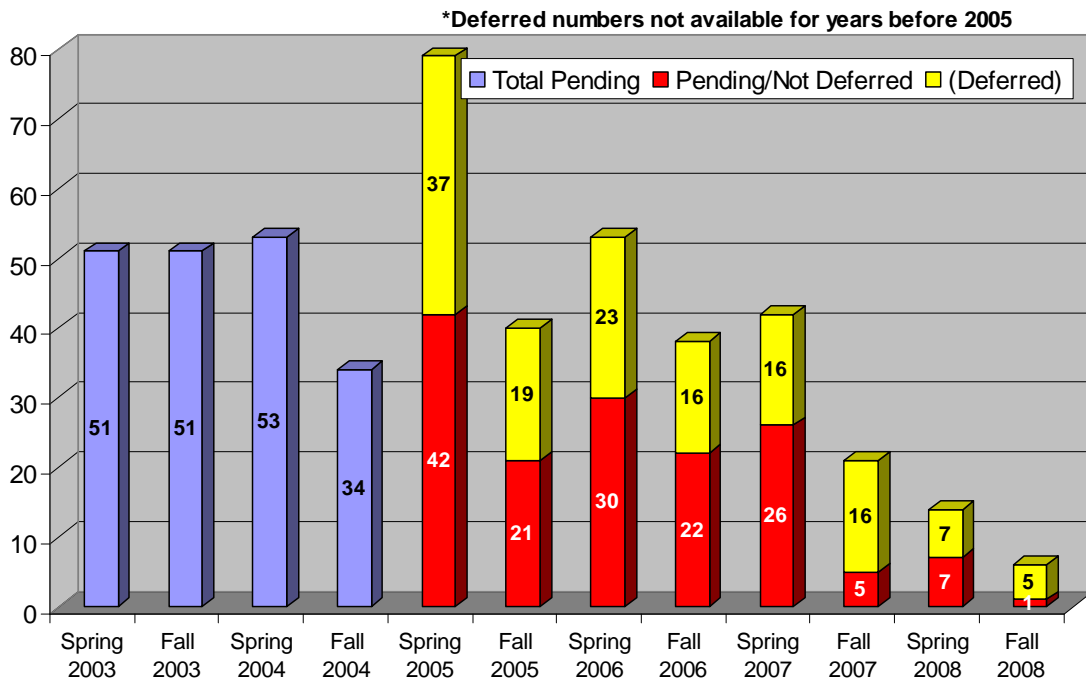
The Office of Bar Counsel has made substantial progress in reducing the time it takes to file a petition for discipline. The median time from receipt of a complaint to the filing of formal charges seeking public discipline decreased from 16 months in FY2007 to 1 year in FY2008. As of the end of the fiscal year, there remained one lawyer with a pending file over 3 years old not in petition or deferred status pending the outcome of related criminal or civil

cases; that file, however, had previously been in deferred status for two years. Only another 6 lawyers had files over 2½ years old not in petition and not deferred.

The table below provides a series of snapshots for each fiscal year since 2003 showing the number of lawyers under investigation for more than three years without a petition for discipline being filed and, for each fiscal year since 2006, showing the same statistics for lawyers under investigation for more than 2½ years.

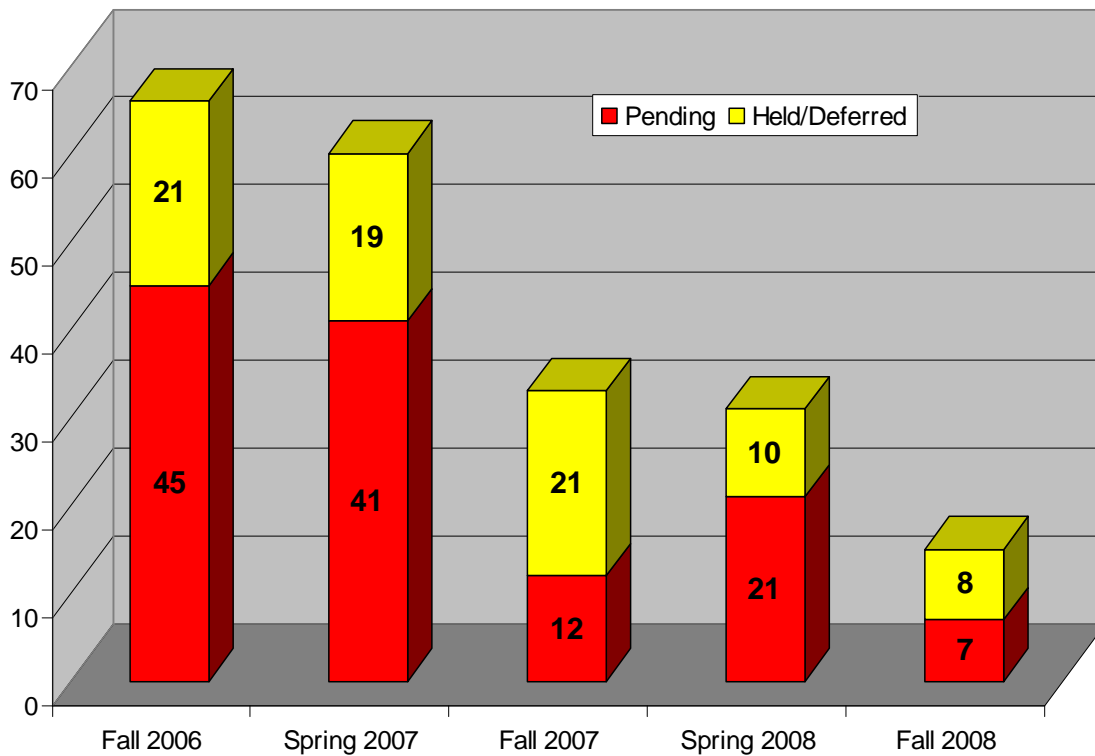
**TABLE 6**

**Respondents with Pending Files Over Three Years Old\*†**



† Corrected October 2011

**Pending Files Not In Petition  
Over 2.5 Years Old†**



† Corrected October 2011

**Disciplinary Proceedings and Sanctions**

For the fiscal year ending August 31, 2008, there were 135 lawyers disciplined by the Board and the Court. Of these, 28 attorneys received (private) admonitions, with 12 of those attorneys also required to attend a continuing legal education course. An additional 107 lawyers received public discipline: 29 lawyers were publicly reprimanded (including 3 reprimands reciprocal to actions taken in other jurisdictions), 34 received a term suspension, 12 were indefinitely suspended, 2 submitted a disciplinary resignation, and 30 were disbarred or resigned and were disbarred. Another 24 lawyers were temporarily suspended from the practice of law pending formal disciplinary proceedings. A further

5 lawyers were placed on disability inactive status and 2 lawyers were diverted in lieu of discipline to remedial programs under procedures in effect as of July 2008.

Tables Seven and Eight below show the primary legal area from which the facts arose in the cases on which lawyers were disciplined in fiscal 2008 and the types of misconduct found. Almost all lawyers disciplined had been admitted to the bar for 5 years or more; approximately 2/3 of the disciplined attorneys described themselves as solo practitioners.

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

Legal Area	Disbarment		Suspension		Public Reprimand		Admonition	
<b>Administrative Law</b>					3	4%		
<b>Bankruptcy</b>			4	8%	2	3%	1	3%
<b>Civil Litigation</b>	1	3%	4	8%	9	13%	3	9%
<b>Collections</b>			1	2%	1	1%	1	3%
<b>Commercial Law</b>	2	6%			3	4%		
<b>Criminal Defense</b>	1	3%	3	6%			3	9%
<b>Criminal Conviction</b>			2	4%	4	6%	2	6%
<b>Domestic Relations</b>	9	27%	6	12%	4	6%	4	12%
<b>Estates</b>	1	3%	5	10%	4	6%	4	12%
<b>Industrial Accidents</b>			1	2%				
<b>Immigration</b>	3	9%	1	2%	2	3%	1	3%
<b>Insurance</b>					1	1%		
<b>Intellectual Property</b>			1	2%				
<b>Landlord/Tenant</b>	1	3%			1	1%	1	3%
<b>Labor</b>	1	3%						
<b>Malpractice</b>					1	1%		
<b>Personal Injury</b>	5	15%	4	8%	13	19%		
<b>Reciprocal Discipline</b>			2	4%	3	4%		
<b>Real Estate</b>	4	12%	11	22%	14	20%	8	24%
<b>Trusts</b>							2	6%
<b>Non-Legal, Misc.</b>	5	15%	4	8%	5	7%	3	9%

**TABLE 8**  
**Classification of Lawyers Disciplined by Type of Misconduct\***

Rules	Type of Misconduct	Disbarment		Suspension		Public Reprimand		Admonition	
		Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
1.1	Failure to provide competent representation	8	4%	33	8%	11	11%	10	10%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	11	5%	38	10%	11	11%	8	8%
1.3	Neglect or lack of diligence	13	6%	38	10%	12	12%	14	14%
1.4	Failure to communicate adequately with client	21	9%	37	9%	15	15%	17	18%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	7	3%	17	4%	8	8%	2	2%
1.6 and 1.9(c)	Failure to preserve client confidences or secrets			2	1%	1	<1%	1	1%
1.7	Conflicts of interest between current clients or between client and attorney			4	1%	6	6%	3	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			2	1%	3	3%	1	<1%
1.9 & 1.11	Conflicts of interest with former clients, including former government employment			1	<1%			2	2%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	67	30%	88	23%	20	20%	10	10%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	9	4%	33	8%	5	5%	8	8%
3.1, 3.2, 3.3(b)-(e), 3.5, 3.6, & 3.8	Improper trial conduct	4	2%					1	<1%
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	34	15%	49	13%	5	5%	8	8%
3.4, 3.9 and 4.4	Unfair conduct to opposing party or non-adjudicative body	13	6%	8	2%	3	3%	1	<1%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	1	<1%						
5.1 and 5.3	Failure to supervise subordinates			6	2%			1	<1%
5.4 and 5.6	Failure to maintain professional independence including partnership or sharing fees with nonlawyer							1	<1%
5.5	Unauthorized practice of law or assisting in unauthorized practice	1	<1%	2	1%				
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	1	<1%						
8.1	False statements in a bar admission or disciplinary matter	4	2%	11	3%				
8.3	Failure to report professional misconduct when required			1	<1%				
8.4(b)	Criminal conviction or conduct of attorney	6	3%	10	3%	1	1%		
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	23	10%	11	3%			9	9%

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

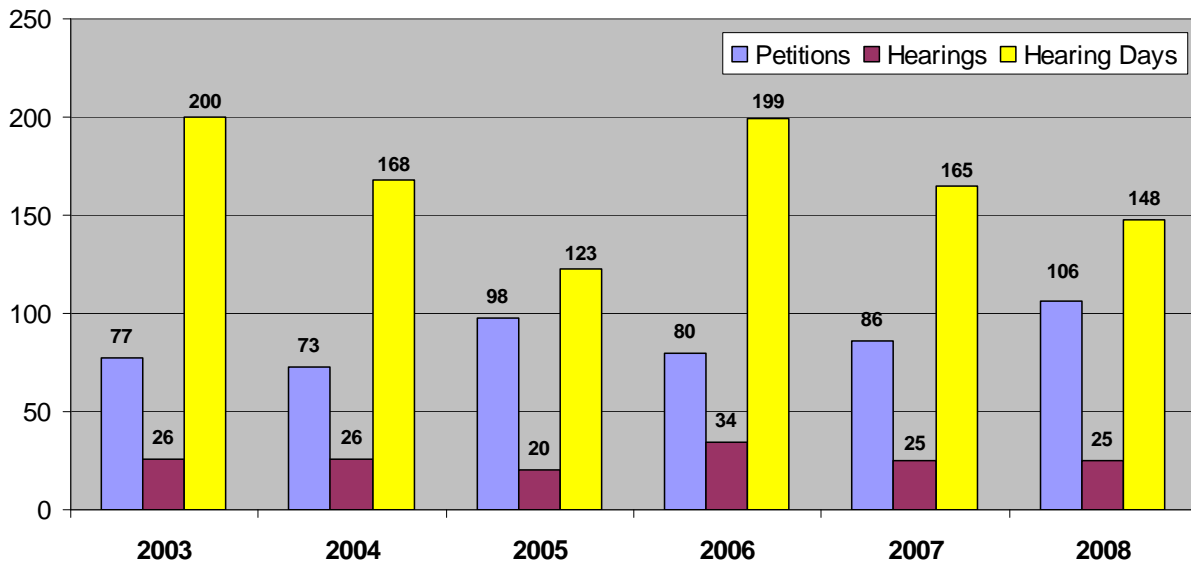
The Office of Bar Counsel filed 106 petitions for discipline (including affidavits of resignation) requesting formal hearings before the Board, an increase of 23% from a year earlier. In addition, 10 petitions for reciprocal discipline (petitions based on public discipline in another jurisdiction where the attorney is admitted) were filed directly with the Court.

A total of 148 hearing dates were held before hearing committees, the Board, and the Court. Evidentiary hearings were conducted in 25 cases, with 48 days of evidentiary hearings. Bar counsel filed 57 post-hearing requests for findings and rulings or appeal briefs, including 10 briefs to the full bench of the Supreme Judicial Court.

The table below provides a comparison of number of petitions filed, matters heard, and hearing dates for this year and the preceding five years.

**TABLE 9**

**Comparison of Petitions, Hearings, and Hearing Days  
(2003-2008)**



Of the petitions pending during the fiscal year and not deferred, 31 matters were awaiting evidentiary hearing at the end of the fiscal year. Another 6 cases had evidentiary hearings either in progress or concluded and awaiting hearing reports.

In addition to petitions for discipline, there were also 10 petitions for reinstatement filed during FY2008 by suspended or disbarred attorneys. After hearing, 6 lawyers (some of whom had petitions pending at the start of the fiscal year) were reinstated to practice and 2 lawyers were denied reinstatement. Following short suspensions, 16 lawyers were reinstated to practice without petition or hearing.

Staff at the Office of Bar Counsel also acted to ensure the orderly closing of lawyers' practices following suspension, disbarment, death or disability. In 6 matters where commissioners were appointed for this purpose pursuant to Supreme Judicial Court Rule 4:01, § 14 or § 17(2), the staff worked closely with the commissioners in returning files to clients, notifying courts and opposing counsel, and effecting disbursement of trust funds. In numerous other matters, the staff assisted suspended or disbarred attorneys in fulfilling these same obligations themselves. Bar counsel staff also provided information and documentation to the Clients' Security Board when claims were filed.

The Justices issued six full court opinions on bar discipline cases:

- *Matter of the Discipline of an Attorney*, 451 Mass. 131 (2008), holding, among other issues, that lawyers should explain specifically the meaning of any terms in a contingent fee agreement that differ from the model agreement and obtain the client's written consent.
- *Matter of David P. Brauer*, 452 Mass. 56 (2008), reaffirming the offensive use of issue preclusion (collateral estoppel) to prevent an attorney in a bar discipline case from challenging the factual allegations set forth in the petition, where those facts had been established adversely to the attorney in a prior civil action against him and upheld on appeal.

- *Matter of Kevin P. Curry*, 450 Mass. 503 (2008), holding that disbarment was the appropriate sanction for an attorney who violated the former disciplinary rules by persuading dissatisfied litigants, without any factual basis, that a trial court judge had “fixed” their case and by developing and participating in an elaborate subterfuge to obtain statements by the judge's law clerk that the attorney intended to use to discredit that judge in a still ongoing case; the SJC rejected the attorney’s argument that the deception of the law clerk was a permissible tactic akin to those used by undercover investigators or discrimination testers.
- *Matter of Gary C. Crossen*, 450 Mass. 533 (2008), companion case to *Matter of Curry*, above, holding that disbarment was warranted for an attorney’s participation in and taping of a sham interview of a judge’s law clerk, attempts to threaten the law clerk into making statements to discredit the judge, and denial of involvement in, or awareness of, surveillance of the law clerk that the attorney had participated in arranging; the SJC again rejected the argument that the deception of the law clerk was a permissible investigative tactic.
- *Matter of Barbara Johnson*, 450 Mass. 165 (2008), affirming disbarment of an attorney who posted impounded materials concerning allegations of child abuse on her website, holding that the attorney could not challenge the underlying orders for the first time in a disciplinary proceeding, and rejecting the attorney’s claim that her posting the information in one case was protected by the First Amendment. The Court also affirmed a finding of contempt against the attorney for failure to comply with the single justice’s order of disbarment and his incarcerating her for four days until she completed her compliance; in particular, the Court rejected claims that the sanction was criminal rather than civil and that the single justice lacked jurisdiction while the disbarment order was on appeal. See also *Johnson v. Board of Bar Overseers*, summarized below.
- *Matter of Demetrios Kafkas*, 451 Mass. 1001 (2008), affirming the order of a single justice holding a suspended attorney in contempt for preparing divorce pleadings for an individual to file pro se; the Court held that the suspended attorney’s actions constituted the practice of law, as well as paralegal work, in contempt of the suspension order and Rule 4:01 and increased the original term of suspension pursuant to Supreme Judicial Court Rule 4:01, § 17(8).

In a decision related the disciplinary process, the Appeals Court in *Johnson v. Board of Bar Overseers*, 70 Mass. App. Ct. 1113 (2008), further appellate review denied 450 Mass. 1111 (2007), upheld dismissal of a disbarred attorney’s claims of defamation and interference with contractual relations against bar counsel, assistant bar counsel, the Office of Bar Counsel, the Board of Bar Overseers, and the Commonwealth of Massachusetts. The decision was based on the defendants’

judicial immunity as arms of the Supreme Judicial Court and sovereign immunity as public employers.

Two additional full bench Supreme Judicial Court decisions involved procedural issues as to Clients' Security Board matters. In *Indeck v. Clients' Security Board*, 450 Mass. 379 (2008), the Court held that a decision by CSB concerning reimbursement of lost funds is not subject to certiorari review. In *Audoire v. Clients' Security Board*, 450 Mass. 388 (2008), the Court held that a decision by CSB to condition a reimbursement award from the Clients' Security Fund on an applicant's execution of an assignment agreement is similarly not subject to judicial review.

### **Related Activities and Other News of Note**

#### **Proposed Rules Changes**

In April 2007, the Court asked the Office of Bar Counsel and the Board of Bar Overseers to submit proposals to implement certain recommendations made by a team from the American Bar Association's Standing Committee on Lawyer Discipline of the American Bar Association. The ABA recommendations arose from its evaluation of the Massachusetts lawyer discipline system in June 2005. The ABA issued a report in October 2005, <http://www.mass.gov/courts/abareport06.pdf>. The Supreme Judicial Court in January 2006 requested comments and, in response, received submissions from bar counsel (<http://www.mass.gov/obcbbo/proposals.htm>), the Board, and bar associations. Bar counsel and the Board in November 2007 submitted proposed amendments to Supreme Judicial Court Rule 4:01 and the Rules of the Board of Bar Overseers in accordance with the Court's directives. After further review and revision by the Court, the proposed amendments were published for

comment in August 2008, <http://www.mass.gov/obcbbo/comment.htm>, with responses due November 15.

### **Ethics Helpline and CLE Presentations**

In addition to the ACAP program and CLE presentations, the Office of Bar Counsel helps lawyers to avoid preventable ethical problems or to fix minor difficulties by answering questions from the bar three afternoons each week.

Assistant bar counsel in FY2008 fielded approximately 2100 calls on the ethics helpline. Many of these questions showed both the bar's awareness of complex issues of professional responsibility and the importance of seeking assistance.

In addition, in order to help lawyers with the trust account record-keeping requirements of Mass. R. Prof. C. 1.15 and to reduce the number of complaints raising record-keeping issues (whether from notices of dishonored checks or from clients or other affected parties), bar counsel continued the free one-hour "trust account school" held monthly at the Boston Bar Association. Now in its fourth year, at least 186 attorneys and their bookkeepers attended in FY2008. At the request of local bars, bar counsel also offered two additional trust account training programs in Springfield and Worcester. One assistant bar counsel, who concentrates exclusively on handling dishonored check notices and outreach to the bar on record keeping, presents these programs. Trust accounting is also included as part of a comprehensive full day program on ethics and law office management offered twice a year in Boston by the Office of Bar Counsel and MCLE. Materials on trust accounts, including a comprehensive booklet prepared by the IOLTA Committee, are also available at the Office of Bar Counsel website, <http://www.mass.gov/obcbbo/rpc1.htm#Rule%201.15>.

Bar counsel staff made 45 presentations on professional conduct to law schools, bar associations, and continuing education organizations. Beyond trust accounting, some of the other topics addressed included ethical issues in immigration practice, domestic relations and divorce law, elder law, guardianships, estate planning, insurance law, starting a practice, the disciplinary process, withdrawal and file retention policies, conflicts of interest, and advertising. Attorneys from the Office of Bar Counsel also continue to serve on bar association and court-appointed committees.

### **Website Update**

Another resource for the bar and the public is the website maintained by the Office of Bar Counsel, [www.mass.gov/obcbbo](http://www.mass.gov/obcbbo), which provides access to disciplinary decisions since 1999 and links to all pertinent rules, as well as 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 disciplinary decisions and other ethics-related cases. The office address and registration status of Massachusetts attorneys can also be obtained through a link to the website of the Board of Bar Overseers, <http://massbbo.org/bbolookup.php>.

The Board's website also includes information provided by active status attorneys as to whether or not they carry malpractice insurance. The addition of this information is a result of a June 2006 Supreme Judicial Court order amending S.J.C. Rule 4:02 to require that lawyers certify in their annual registration statements whether or not they are covered by professional liability insurance. Statistics for

FY2008 (the second full year that the requirement has been in effect) suggest that 79% of active status lawyers in private practice maintain malpractice insurance.

## **LOMAP**

Another proposal by the Office of Bar Counsel that has now been realized is the creation of an independent law office management assistance program under the auspices of Lawyers Concerned for Lawyers. As part of a recommendation made by the Office of Bar Counsel in 2005 to the ABA visiting team, former chief bar counsel Daniel Crane suggested to LCL that it add practice management assistance to its array of services. The Office of Bar Counsel and the Board assisted LCL in 2006 to obtain approval from the SJC for funding this program through registration fees. Modeled on similar programs in a number of other jurisdictions, the LOMAP program, [www.masslomap.org](http://www.masslomap.org), was established by LCL in 2007 and Attorney Rodney Dowell was hired as director.

The mission of LOMAP is to assist Massachusetts lawyers practicing in solo and small firms in improving the operations, management, and professionalism of their law offices. The goal is to increase their ability to deliver high-quality legal services, decrease conflicts with clients, and improve their quality of life. The Office of Bar Counsel is referring lawyers needing such assistance to the program, either in addition to discipline, in lieu of discipline as part of the new diversion program, or simply because the attorney might benefit.

LOMAP completed its first full year this past summer. Among the services it provides directly to attorneys are consultations at the attorneys' offices, office visits including follow-ups, and telephone and email consultations. LOMAP provided

substantive services to approximately 78 clients during the first year. Many other attorneys received assistance with a single issue by telephone or email, with the number of such requests steadily rising.

LOMAP also provides resources requested by attorneys, including standardized fee agreements, law practice management books in the LOMAP reference library, and materials and advice on how to start a law firm. LOMAP has also created the first edition of its “Start-up Kit and Checklist” for attorneys opening up their first law office.

In addition to maintaining a website, LOMAP publishes a quarterly e-newsletter and a blog, [www.masslomap.blogspot.com](http://www.masslomap.blogspot.com). Attorney Dowell also makes frequent educational presentations on law office management through MCLE, bar associations, Inns of Court, and attorney networking groups. Bar counsel looks forward to continuing a cooperative relationship with both LCL and LOMAP.

### **Diversion**

The diversion program is another recommendation from the ABA evaluation that the Office of Bar Counsel has now implemented. The purpose of diversion is to provide education, monitoring or counseling to lawyers to address systemic problems in their practices and to increase practical knowledge and understanding of legal ethics, law practice management, and client relations issues. The concept is that certain types of low-level misconduct are better addressed in this manner than by discipline.

An experienced assistant bar counsel from the ACAP staff acts as diversion coordinator. 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, setting forth the lawyer's undertakings and obligations. In addition to the referrals to LOMAP on practice management problems, bar counsel may recommend diversion to LCL or other service providers for substance abuse or mental health issues, trust account training and follow-up, fee arbitration, and substantive CLE courses.

Lawyers referred to a service provider such as LCL or LOMAP also sign a separate agreement with the provider.

### **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.

Consistent with the privilege of self-regulation, the Office of Bar Counsel expects to work 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, as well as the bar's ongoing willingness to call bar counsel's ethics helpline before questions become problems.

The institution of the LOMAP and diversion programs to complement the longstanding services provided by LCL is another big step forward. Public information on whether an attorney is covered by malpractice insurance, available for the last two years, is a service to consumers that makes clients better informed in choosing a lawyer. The undertaking by the Supreme Judicial Court to study the

feasibility of mandatory fee arbitration at the election of the client is another positive move that could decrease the numbers of complaints filed and be an asset to public perception of the bar. Finally, giving bar counsel discretion not to open frivolous complaints, a proposed rule change pending before the court, would improve the functioning of the office. Bar counsel expects that the implementation of the proposed rules changes in the upcoming year will enable the office to make even greater progress in reducing the time spent in investigating allegations of misconduct.