

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

**ANNUAL REPORT  
TO THE  
SUPREME JUDICIAL COURT  
FISCAL YEAR 2015**

SEPTEMBER 1, 2014 - AUGUST 31, 2015

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

## **Fiscal Year 2015**

### **Executive Summary**

This is a summary of the key points in the report that follows for the fiscal year that ended on August 31, 2015:

- Continuing the progress in eliminating the backlog that has been made in the last decade, the Office of Bar Counsel at the end of the fiscal year had only 2 lawyers with files over 18 months old that were not in petition and that had not been deferred.
- The Office of Bar Counsel filed 95 petitions for discipline including affidavits of resignation. In addition, 8 petitions for reciprocal discipline were filed directly with the Supreme Judicial Court for Suffolk County and 10 suspended or disbarred lawyers filed petitions for reinstatement in circumstances that require reinstatement hearings.
- Bar counsel's diversion program for minor disciplinary violations concluded cases involving 25 lawyers.
- Bar counsel's Attorney and Consumer Assistance Program screened and resolved 91% of all telephone and written contacts with ACAP without referral for investigation.
- Bar counsel's ethics helpline handled approximately 1850 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 ten years ago. The program provides lawyers with training on the record-keeping requirements of Mass. R. Prof. C. 1.15.

## **Overview**

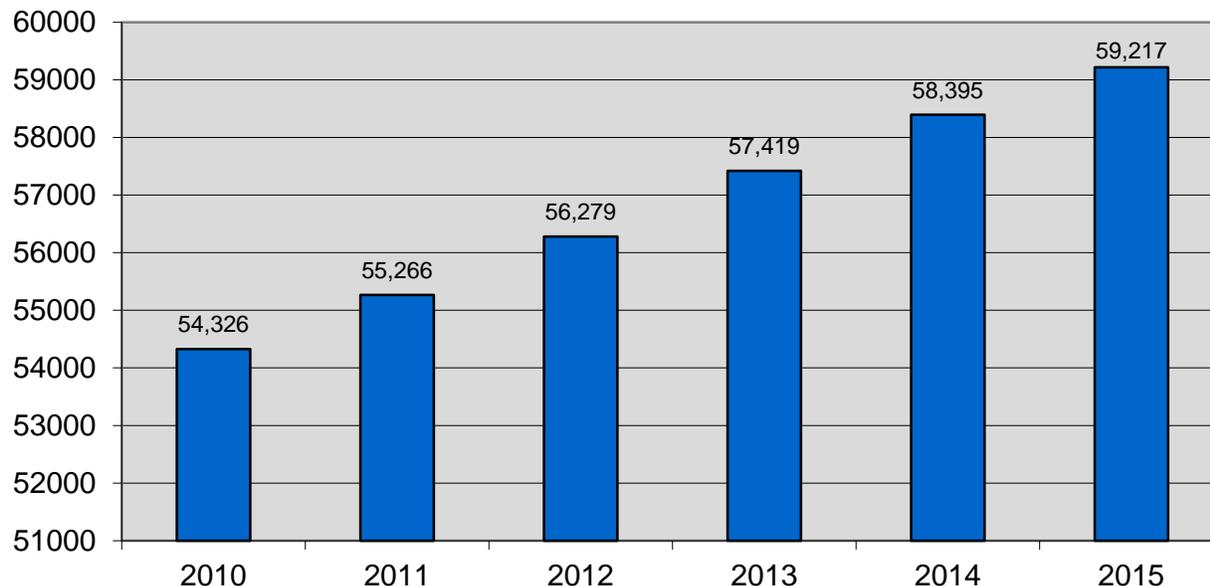
The Justices of the Supreme Judicial Court established the Board of Bar Overseers, the Office of Bar Counsel, and the Clients' Security Board by rule in 1974. The bar counsel, an independent prosecutor who serves at the pleasure of the Court, investigates complaints alleging professional misconduct against 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 administered 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 FY2015, there were 59,217 Massachusetts lawyers registered on active status and another 11,668 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 (2010-2015)**



**Fiscal Year 2015 Caseload**

**ACAP Contacts**

The Attorney and Consumer Assistance Program (ACAP) is the intake unit of the Office of Bar Counsel. ACAP screens inquiries from consumers both 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 86,590 inquiries. During FY2015, ACAP responded to 3796 inquiries. Approximately 86% of these inquiries were received as telephone calls; the remainder were in writing. ACAP resolved more than 91% of inquiries without referral for investigation. Consistent with time standards

agreed upon with the Supreme Judicial Court, nearly 99% of ACAP contacts reached final disposition (whether referral for investigation or resolution) within 45 days and over 96% of contacts were processed within 30 days of receipt.

ACAP's first undertaking with any new inquiry is to determine whether the problem is within the jurisdiction of the Board. ACAP resolves many consumer 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. At the consumer's request, ACAP may also act as an intermediary by telephoning the attorney. Some typical results are that the lawyer returns a legal file requested by a client, or refunds an unearned retainer, or calls the client to give an update on case status.

The problems prompting inquiries to ACAP do not vary much from year to year. Approximately 23% of all inquiries in FY2015 concerned lawyers' neglect including lack of diligence and 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 17%, 13% and 12%, respectively, of all contacts in FY2015. 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 in particular, this year and generally, comprises a larger percentage of matters ultimately docketed as complaints. Approximately 9% of the calls to ACAP involved questions about legal fees, a percentage generally consistent with prior years.

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 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. On the other end of the spectrum, a complaint form is sent immediately when serious professional misconduct might be involved. In the middle are the several thousand matters that the ACAP staff seeks to resolve.

### **Complaints Docketed**

The Office of Bar Counsel opened 734 complaints against attorneys in FY2015. The number of complaints formally docketed has decreased since FY2009, when 1001 complaints were opened. This decrease is attributed primarily to 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 FY2015, bar counsel declined to open as complaints 210 written inquiries deemed to fall within these guidelines. In 79 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 734 files docketed in FY2015 involved 645 attorneys: 582 of the respondent lawyers had one complaint filed against them, 46 had two complaints, and 17 had three or more complaints filed in the fiscal year. Bar counsel initiated the investigation on 104 lawyers, not including dishonored check matters; some of these files were opened based on news reports, others because of information received from judges, district attorneys' offices, or other public agencies.

The legal areas that produced the most complaints in FY2015 were civil litigation including personal injury, real estate, domestic relations and criminal defense, followed by immigration and estates. 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 FY2015 based on an initial assessment of the primary legal area from which the facts arose and on the nature of the misconduct alleged, if any.

**TABLE 2**

**Classification of 734 Complaints Received by Primary Legal Area**

Administrative Law.....	8..... 1%	Industrial Accidents .....	3..... <1%
Bankruptcy.....	8..... 1%	Insurance.....	0..... 0%
Civil Litigation.....	87..... 12%	Intellectual Property.....	1..... <1%
Collections .....	12..... 2%	Labor.....	10..... 1%
Commercial Transactions.....	4..... <1%	Landlord/Tenant .....	4..... <1%
Consumer Law.....	2..... <1%	Malpractice .....	1..... <1%
Conviction of Crime .....	40..... 5%	Municipal Law .....	2..... <1%
Corporations .....	5..... 1%	Personal Injury.....	48..... 7%
Criminal Defense .....	63..... 9%	Reciprocal Discipline .....	5..... 1%
Criminal Prosecution.....	7..... 1%	Real Estate .....	93..... 13%
Domestic Relations.....	87..... 12%	Small Claims.....	1..... <1%
Escrow Accounts .....	5..... 1%	Support .....	0..... 0%
Estates .....	43..... 6%	Taxation .....	1..... <1%
Fiduciary .....	6..... 1%	Torts.....	0..... 0%
Immigration .....	43..... 6%	Trusts.....	11..... 1%
		No Legal Area or Unknown .....	134..... 18%

**TABLE 3**  
**Classification of 734 Complaints Received by Misconduct Alleged**

Rules	Type of Misconduct	Complaints Received*	
		Count	Percentage
1.1	Failure to provide competent representation	128	17%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	41	6%
1.3	Neglect or lack of diligence	223	30%
1.4	Failure to communicate adequately with client	179	24%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	93	13%
1.6 and 1.9(c)	Failure to preserve client confidences or secrets	13	2%
1.7 and 1.13	Conflicts of interest between current clients or between client and attorney	34	5%
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	8	1%
1.9 and 1.11	Conflicts of interest with former clients, including former government employment	9	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	216	29%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	75	10%
3.1, 3.2, 3.3(b)-(e), 3.5 and 3.6	Improper trial conduct	6	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	20	3%
3.4, 3.9 and 4.4	Unfair conduct to opposing party or non-adjudicative body	26	4%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	8	1%
5.1 and 5.3	Failure to supervise subordinates	5	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	8	1%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	2	<1%
8.1	False statements in a bar admission or disciplinary matter	0	0%
8.4(a)	Misconduct through acts of another	3	<1%
8.4(b)	Criminal conviction or conduct of attorney	47	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	35	5%
	No Disciplinary Violation or Summary Dismissal	73	10%

\*Total exceeds 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 115 of the files docketed in FY2015. It has been 20 years since the Supreme Judicial Court first enacted the dishonored check notification rule and 11 years since significant changes were implemented to the record-keeping requirements of Mass. R. Prof. C. 1.15. The number of dishonored check notices received this fiscal year is a substantial decrease from FY2013, in which 216 such files were opened and even a decrease from FY2014, in which 140 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 lower numbers in the last two years are a trend.

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).

Members of the bar also continue to be confused as to proper handling of advances for fees and expenses. See *Matter of Sharif*, 459 Mass. 558 (2011); *Matter of Pudlo*, 460 Mass. 400 (2011). Several recent rules changes may assist with reducing problems with trust account record keeping. First, consistent with the ABA Model Rules of Professional Conduct, Rule 1.15(b)(3) now requires that legal fees and expenses paid in advance be deposited to a trust account and withdrawn only as fees are earned and expenses incurred. The prior exception permitting advances for costs and expenses to be deposited to a business account has been deleted.

Second, effective January 1, 2013, an amendment to Mass. R. Prof. C. 1.5 requires arrangements with clients as to fees and expenses to be in writing in most situations not involving

regularly represented clients. These revisions help reduce misunderstandings between attorneys and clients over whether the lawyer has received a flat fee or a retainer against which fees are to be charged and as to how funds advanced for expenses will be treated. In addition, effective January 2014, Supreme Judicial Court Rule 3:16 requires newly admitted attorneys to take a full-day education course on practicing with professionalism. Law office management is part of the curriculum.

Members of the bar may also continue to take advantage of a free training program provided by bar counsel in cooperation with the Boston Bar Association on trust account maintenance held on the first Thursday of each month between October and May. The program addresses record-keeping issues both prior to and after problems arise. It is open to all lawyers, whether or not a BBA member, and to support staff. This course is further described on page 23 of this report.

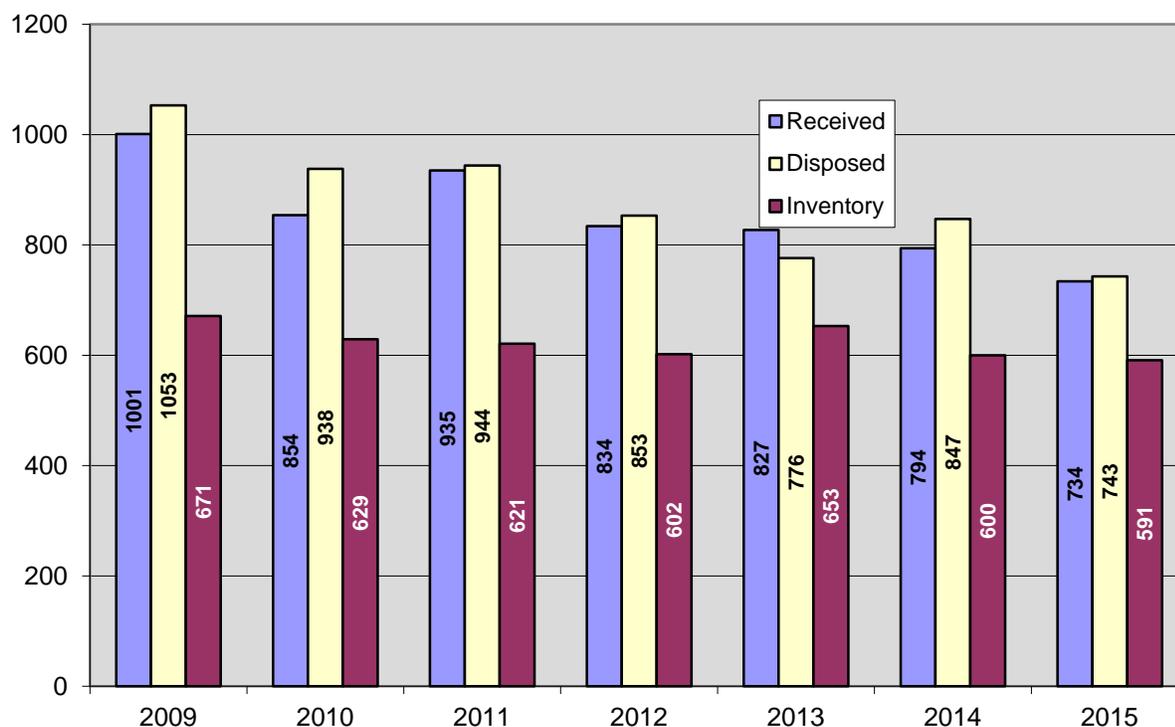
### **Case Processing**

The Office of Bar Counsel had 591 files pending at the end of the fiscal year, including both files where a petition for discipline has been filed and disciplinary proceedings are ongoing as well as files still under investigation. This number is consistent with the FY2014 number of 600 but both numbers are a decrease from the FY2013 number of 653. A total of 743 files were brought to an end result by the Office of Bar Counsel in FY2015 either by closing, diversion, or discipline, compared to 847 files in FY2014 but similar to 776 such files in FY2013.

Table 4 compares, for each of the last 7 fiscal years, 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 (2009-2015)**



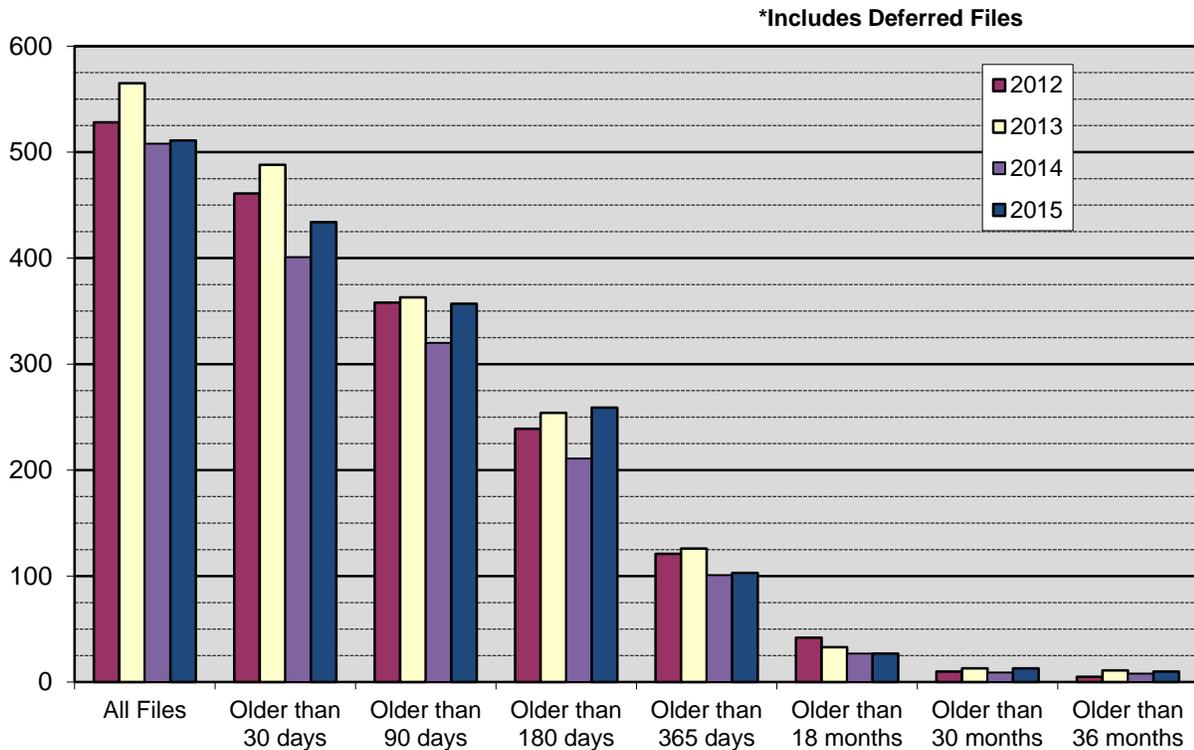
Bar counsel closed 559 files against 512 attorneys in FY2015 without discipline. Discipline was imposed on 109 lawyers on 143 files. In addition, 1 lawyer was placed on disability status. Another 25 attorneys had their cases referred to the voluntary remedial diversion program.

Investigations on 27% of the files opened were concluded in under 100 days and 66% 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 FY2015 compared to FY2014, FY2013, and FY2012.

**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 181 days in FY2015 (167 days if deferred files are omitted).

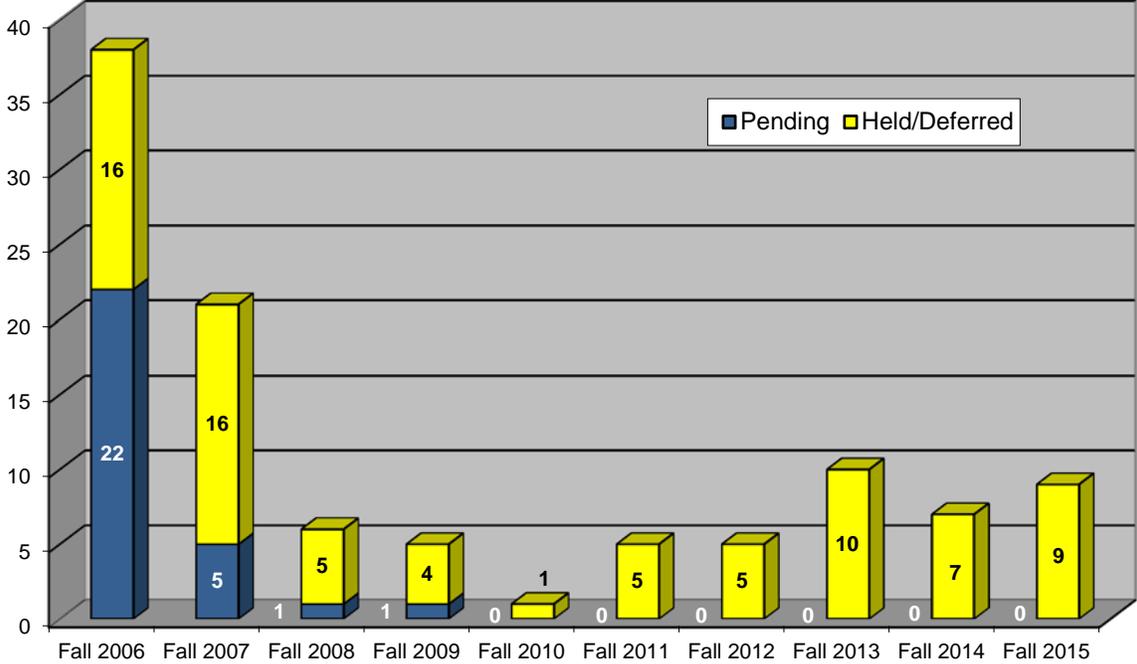
As of the end of this fiscal year, 2 lawyers had files over 2 years old at the end of the fiscal year that were not in petition and never deferred and only these same 2 lawyers had files over 18 months old at the end of the fiscal year that were not in petition or deferred. In one of these matters, there have

been legitimate reasons for delays on the lawyer’s side. The other matter should be in petition before the end of calendar 2015.

Tables 6A through 6D provide a series of snapshots for each fiscal year since 2006 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.

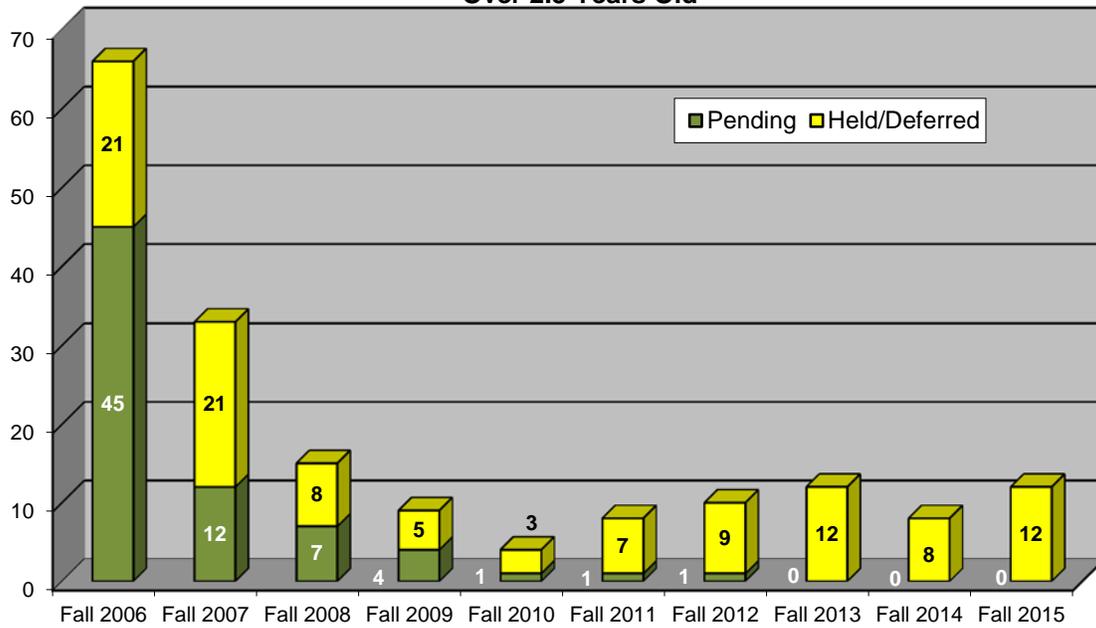
**TABLE 6A**

**Respondents With Pending Files Not In Petition Over 3 Years Old**



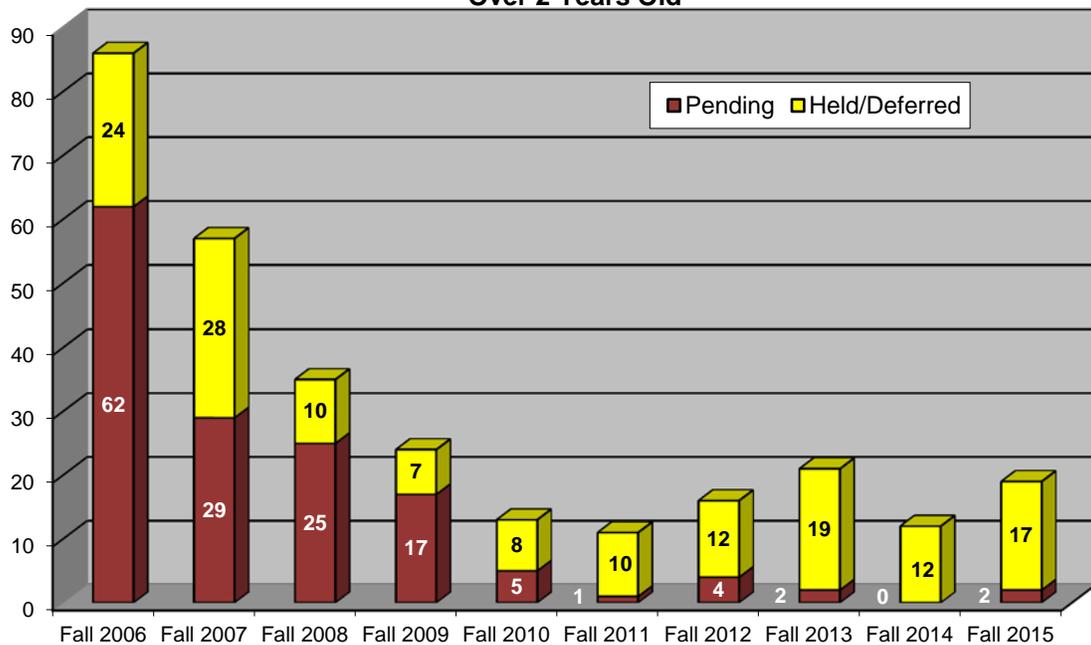
**TABLE 6B**

**Respondents With Pending Files Not In Petition  
Over 2.5 Years Old**



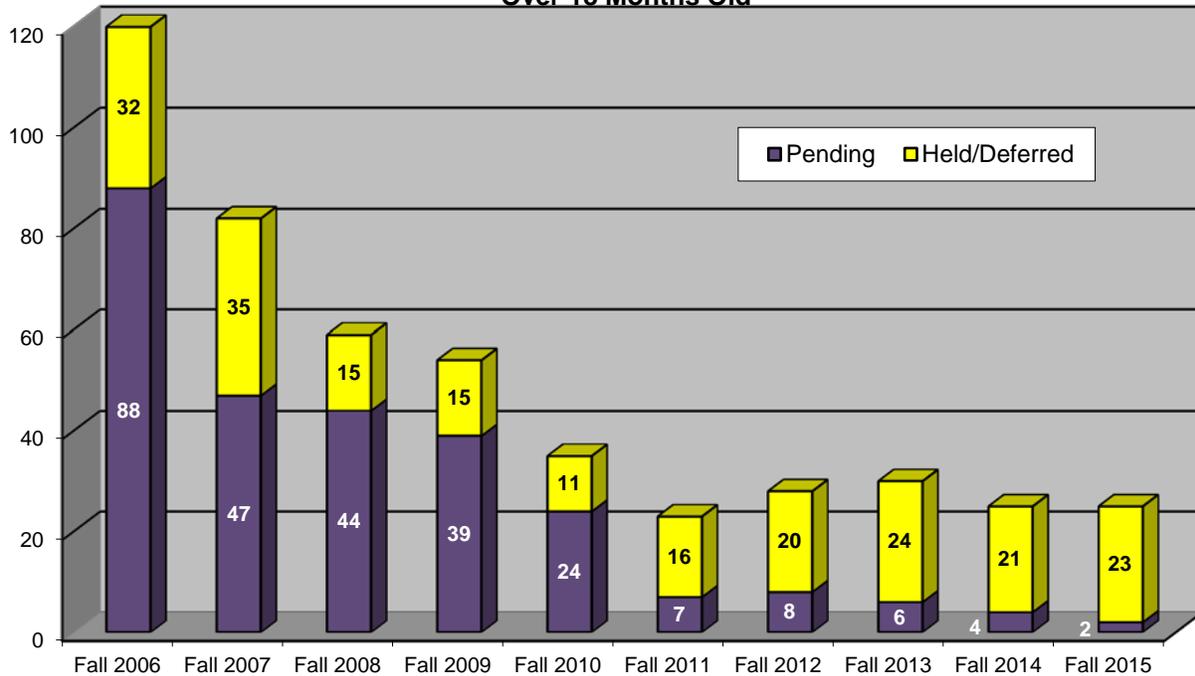
**TABLE 6C**

**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 offer education, evaluation, monitoring or counseling to lawyers to address systemic problems in their practices and to provide training in legal ethics, law practice management, substantive practice areas, and client relations. The concept is that certain types of low level misconduct will be better and more permanently addressed by remediation than 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, describing the lawyer's undertakings and obligations. The agreement is then submitted to a Board member for approval.

During the fiscal year, 25 lawyers executed diversion agreements in lieu of discipline. Of these, 10 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. Those lawyers, among other undertakings, were required to attend bar counsel's monthly trust account training and to document afterwards that their trust account records were fully compliant. One lawyer with record-keeping issues was required to retain an accountant. Other attorneys may be referred either to LOMAP for an evaluation of practice management problems, to LCL or other service providers for substance abuse, mental health or stress-related issues, fee arbitration, or to substantive CLE courses. 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 109 lawyers in FY2015, consistent with the 110 lawyers sanctioned in FY2014. Of these, 26 attorneys received (private) admonitions. An additional 83 lawyers received public discipline: 16 lawyers were publicly reprimanded (including 3 reprimands reciprocal to actions taken in other jurisdictions), 35 received a term suspension including stayed suspensions, 7 were indefinitely suspended, 10 submitted a disciplinary resignation, and 15 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 7 lawyers were temporarily suspended from the practice of law pending formal disciplinary proceedings. Although not a sanction as such, one lawyer was placed on disability inactive status.

Tables 7 and 8 show the primary legal area involved in the cases resulting in sanctions in FY2015 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	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Administrative Law	0	0%	2	2%	0	0%	0	0%	2	2%
Bankruptcy	0	0%	1	1%	1	1%	0	0%	2	2%
Civil Litigation	1	1%	9	8%	3	3%	5	5%	18	17%
Collections	1	1%	0	0%	2	2%	0	0%	3	3%
Commercial Law	2	2%	0	0%	0	0%	0	0%	2	2%
Consumer Law	0	0%	0	0%	0	0%	0	0%	0	0%
Corporations	0	0%	1	1%	0	0%	2	2%	3	3%
Criminal Defense	2	2%	3	3%	1	1%	3	3%	9	8%
Criminal Conviction	1	1%	2	2%	1	1%	0	0%	4	4%
Criminal Prosecution	0	0%	0	0%	0	0%	0	0%	0	0%
Domestic Relations	1	1%	7	6%	1	1%	3	3%	12	11%
Escrow Accounts	0	0%	0	0%	0	0%	0	0%	0	0%
Estates	8	7%	4	4%	1	1%	0	0%	13	12%
Fiduciary	1	1%	1	1%	0	0%	0	0%	2	2%
Immigration	1	1%	2	2%	1	1%	1	1%	5	5%
Industrial Accidents	0	0%	0	0%	0	0%	0	0%	0	0%
Insurance	0	0%	1	1%	0	0%	0	0%	1	1%
Intellectual Property	0	0%	0	0%	0	0%	0	0%	0	0%
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%	1	0%	1	1%
Personal Injury	3	3%	5	5%	0	0%	6	6%	14	13%
Reciprocal Discipline	2	2%	3	3%	0	0%	0	0%	5	5%
Real Estate	2	2%	6	6%	3	3%	3	0%	14	13%
Small Claims	0	0%	1	1%	0	0%	0	0%	1	1%
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%	0	0%	0	0%	1	1%	1	1%
Non-Legal, Misc.	5	5%	4	4%	1	1%	0	0%	10	9%

\*Totals 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 Reprimnd		Admon		All Discip	
1.1	Failure to provide competent representation	5	5%	10	9%	4	4%	9	8%	28	26%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	2	2%	6	6%	4	4%	1	1%	13	12%
1.3	Neglect or lack of diligence	8	7%	18	17%	7	6%	13	12%	46	42%
1.4	Failure to communicate adequately with client	7	6%	20	18%	6	6%	7	6%	40	37%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	3	3%	5	5%	3	3%	5	5%	16	15%
1.6, 1.9(c)	Failure to preserve client confidences or secrets	1	1%	2	2%	0	0%	1	1%	4	4%
1.7, 1.13	Conflicts of interest between current clients or between client and attorney	3	3%	3	3%	3	3%	0	0%	9	8%
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	0	0%	2	2%	2	2%	0	0%	4	4%
1.9, 1.11	Conflicts of interest with former clients, including former government employment	0	0%	1	1%	0	0%	0	0%	1	1%
1.14	Conflicts of interest or other violations as to client under disability	0	0%	0	0%	0	0%	0	0%	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	14	13%	17	16%	3	3%	9	8%	43	39%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	3	3%	11	10%	0	0%	2	2%	16	15%
3.1, 3.2, 3.3(b) - (e), 3.5, 3.6, 3.8	Improper trial conduct	0	0%	1	1%	0	0%	2	2%	3	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	2	2%	7	6%	1	1%	2	2%	12	11%
3.4, 3.9, 4.4	Unfair conduct to opposing party or non-adjudicative body	2	2%	6	6%	0	0%	3	3%	11	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%	0	0%	0	0%
5.1, 5.3	Failure to supervise subordinates	0	0%	1	1%	0	0%	0	0%	1	1%
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%	3	3%	0	0%	2	2%	6	6%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	0	0%	1	1%	0	0%	0	0%	1	1%
8.1	False statements in a bar admission or disciplinary matter	1	1%	3	3%	1	1%	0	0%	5	5%
8.4(a)	Misconduct through acts of another	0	0%	0	0%	1	1%	0	0%	1	1%
8.4(b)	Criminal conviction or conduct of attorney	8	7%	3	3%	2	2%	0	0%	13	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	3	3%	10	9%	2	2%	3	3%	17	16%

\*Totals 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 five 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 70% described themselves as solo practitioners. Approximately one-third had prior discipline and almost 50% did not have malpractice insurance.

The Office of Bar Counsel filed 95 petitions for discipline (including affidavits of resignation) seeking public sanctions. This number is considerably higher than the 76 petitions for discipline filed in FY2014 but similar to the 103 petitions filed in FY2013. Bar counsel also filed 29 post-hearing requests for findings and rulings or appeal briefs with hearing committees, the Board and the Court, including a brief to the full bench of the Supreme Judicial Court in one case.

The Office of Bar Counsel filed directly with the Court a total of 8 petitions for reciprocal discipline (petitions based on suspensions or disbarment in another jurisdiction in which the attorney is also admitted). In 3 other matters, bar counsel filed with the Court and made available orders of (public) reprimands in other jurisdictions.

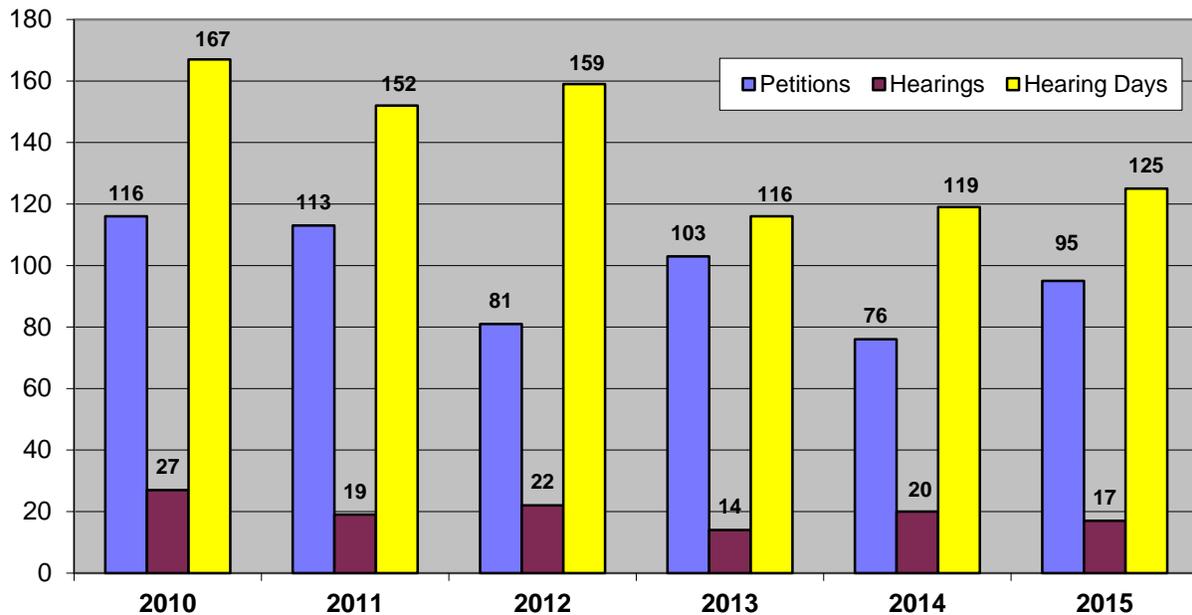
Hearing committees and special hearing officers completed full hearings on 14 cases during the fiscal year, compared to 20 in FY2014, and submitted hearing reports on 14 cases. Board decisions were completed on another 16 matters.

Hearing committees, hearing panels, the Board, and the Court held hearings (both evidentiary and non-evidentiary) on 125 dates. Evidentiary hearings were conducted in 17 disciplinary cases and 12 reinstatement matters, with a combined total of 69 days of evidentiary hearings. The number of days of evidentiary hearings is consistent with the 71 days of evidentiary hearings in FY2014 and higher than the 42 days of evidentiary hearing in FY2013.

Of the petitions pending during the fiscal year and not deferred, 36 matters were awaiting evidentiary hearing at the end of the fiscal year, similar to the 37 matters in FY2014. This figure includes 4 conviction cases. Another 4 cases had evidentiary hearings awaiting hearing reports, with an additional 7 cases awaiting a Board or panel decision or the filing of an information.

Table 9 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**  
**(2010-2015)**



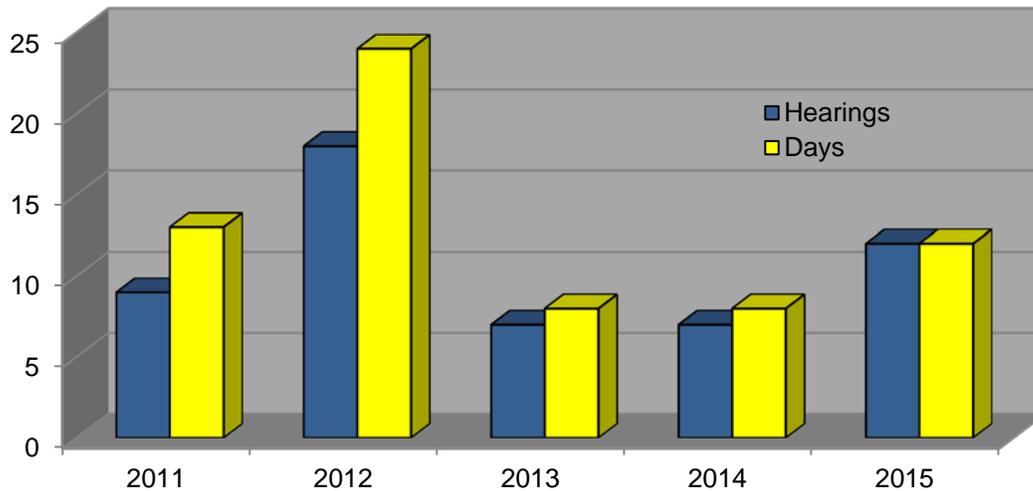
### Reinstatements

In addition to petitions for discipline filed by bar counsel, 10 petitions for reinstatement were filed during FY2015 by suspended or disbarred attorneys. After hearing, 9 lawyers (some of whom had petitions pending at the start of the fiscal year) were reinstated to practice and 3 lawyers were denied reinstatement. Following short suspensions, another 10 lawyers were reinstated to practice without petition or hearing.

Hearings were held on 12 petitions for reinstatement over the course of 12 days, while, in FY2014, hearings were held on 7 petitions over 8 days. The chart below shows the number of reinstatement hearings and hearing days since 2011.

**TABLE 10**

**Reinstatement Hearings and Hearing Days**



### **Commissioners**

Significant staff resources continue to be spent on issues relating to the closing of lawyers' practices following suspension, disbarment, death or disability.

There were 8 matters open during the fiscal year where members of the bar, either during this fiscal year or earlier, were appointed as commissioners pursuant to Supreme Judicial Court Rule 4:01, § 14 or § 17(2). In the past, bar counsel has had to file the petitions for appointment and find an attorney willing to act as commissioner. For the first time, however, pursuant to an initiative by the Court and the Office of Bar Counsel to get bar associations more involved in this process, a bar association in this fiscal year, 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. Bar counsel hopes that this model will be used in the future and that, as bar associations and their members gain more familiarity with the process, less assistance from the Office of Bar Counsel will be required. Otherwise, bar counsel will, perhaps in the very short term, require more resources to address these matters.

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. The staff also frequently have conversations with the families of deceased solo practitioners to provide guidance in the process of closing the lawyer's practice.

One assistant bar counsel (the same one who coordinates diversion matters) oversees commissioner cases in order to provide more consistency to the process. 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.

Whether the underlying cause is the lawyer's loss of license, death, or disability, the disposition of abandoned client files whose poor condition or large number makes inventorying problematic is a recurring problem without a good solution. Similar problems arise with the IOLTA accounts of these lawyers when inadequate record keeping makes it difficult or impossible to identify the owners of the funds in a trust account.

Although the Court has recently provided some guidance as to retention and destruction of closed client files in commissioner matters, the Court may wish to consider adopting a rule or otherwise providing additional general guidance to practicing or retired

lawyers on this point. Lawyers should be aware of the prophylactic measures that they and their law firms can and should take while still practicing to avoid the need for partners, associates, 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 2 full court opinions on bar discipline in FY2015:

- *Matter of Dwyer-Jones*, 470 Mass. 582 (2015). On appeal by an attorney admitted to practice in both Massachusetts and Maine, the full bench affirmed the single justice's order placing the attorney on disability inactive status here reciprocally based on an order of the Maine Supreme Judicial Court, suspending her as a result of mental health and substance abuse issues. The Court found that the single justice properly concluded that the Maine order was the "practical equivalent" of disability inactive status under Supreme Judicial Court Rule 4:01, § 13(1) and that the lawyer was not entitled to a separate evidentiary hearing in Massachusetts.
- *Matter of the Discipline of an Attorney*, 470 Mass. 1020 (2014). On appeal by an individual from a denial by a single justice of his motion to intervene in a bar discipline case, the full bench found that the appeal was moot because the underlying disciplinary case had already been decided and that, even were that not so, the rules of civil procedure do not apply to a bar discipline case and a private individual has no right to be a party to a bar discipline matter.

### **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, mandating all newly admitted attorneys to attend a one-day course on practicing with professionalism. Staff at both the Board of Bar Overseers and the Office of Bar Counsel continue to participate in the program.

### **Ethics Helpline, CLE Presentations, and Other**

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 aim is to help lawyers think through ethical problems or resolve disputes. Assistant bar counsel in FY2015 received approximately 1850 calls on the ethics helpline, covering a multitude of concerns 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. 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 FY2015, there were 98 attorneys and their bookkeepers who attended the classes in Boston. The same assistant bar counsel also presented two trust account programs to law school classes and members of the bar. 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 2015, 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. Bar counsel staff members also assisted with the ethics commentary for two treatises. Several new articles on ethics, including 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, the Supreme Judicial Court Standing Advisory Committee on the Rules of Professional Conduct and the Court working group described on page 22. Staff also served on the boards of directors of Lawyers Concerned for Lawyers and of Greater Boston Legal Services, as well as a law school alumni/ae board of directors.

### **Website Update**

The website maintained by the Office of Bar Counsel, [www.mass.gov/obcbbo](http://www.mass.gov/obcbbo), 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 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, including online registration and address or other status changes. The site contains detailed 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*. The site also has information on the July 2014 amended address requirements of Supreme Judicial Court Rule 4:02, including the requirement that attorneys provide a business email address when registering, and on Supreme Judicial Court Rule 3:16, mandating as of 2014 a 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 was added following a 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 and to report lapses in coverage. As of the end of FY2015, 75.8% 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 received suspensions 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. A complete [copy](#) of the rules as amended was posted on the Office of Bar Counsel website prior to the effective date, plus the Board used an email blast to notify all members of the bar of the amendments. Staff have also spoken at CLE programs on the amendments, answered helpline and other questions by telephone, and published articles online at the OBC/BBO website and in Lawyers Weekly.

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. Bar counsel works with the bar to ensure public confidence in the disciplinary process. Mutual success in this respect is shown by the exceptional cooperation that ACAP receives from attorneys, bar counsel's and the bar's work together on Court committees, Practicing with Professionalism and other CLE programs, and in the participation of lawyers and other volunteers as hearing officers and Board members for disciplinary proceedings and as commissioners for deceased, disabled or disciplined attorneys.