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HEADLINE: Secret sanctions, second chances; Discipline: Ever wonder what happens to unscrupulous lawyers in Maryland? Sometimes, not much.

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BODY:

As the attorney for GeneSys Data Technologies Inc. of Hunt Valley, Mark M. Tomaino's duty was to protect the interests of the \$ 24 million company.

But in May 1996, a jury in Baltimore County concluded that instead of protecting GeneSys, Tomaino had secretly engineered its demise.

Two judges involved in the case were so chagrined by Tomaino's conduct that they reported him to the Maryland Attorney Grievance Commission and demanded an investigation. One judge, Dana Levitz, later called Tomaino's behavior "shocking."

Seven years have passed since the case began. Yet Tomaino is still licensed to practice law in Maryland. And if you called the grievance commission -- the group which is supposed to protect the public from unscrupulous lawyers -- no one would warn you about Tomaino's troubling past.

The Tomaino case is a prime example of Maryland's problems in weeding out bad lawyers. A five-month investigation by The Sun, which included a review of virtually every lawyer punished for misconduct since 1993, has found:

That Maryland often is slow to discipline lawyers who neglect clients' cases and act unethically, sometimes taking more than four years to levy punishment while the lawyer keeps practicing.

That the grievance commission focuses largely on "silver platter" cases, those in which the lawyer's misdeeds are easy to document and hard to refute.

That when Maryland lawyers finally are disciplined, they often misbehave again. A case in point: A year after he

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was reprimanded for the way he handled clients' money, Silver Spring lawyer Zenas Moreno then stole hundreds of thousands of dollars from real estate transactions in Montgomery County's Latino community. His thefts were discovered one month after a fellow lawyer -- assigned by the grievance commission to monitor Moreno -- ended his supervision.

That even lawyers arrested and prosecuted by state's attorneys -- and convicted in criminal court of stealing huge sums from their clients -- rarely have to serve much time in prison. Instead, they are ordered to repay what they've stolen, but often fail to do so.

The second chances granted by the system of discipline can have disastrous consequences for people who unwittingly hire those lawyers. Bar counsel Melvin Hirshman, who has the job of policing fellow Maryland attorneys, is acutely aware of the pattern of repeat offenders. "My favorite expression," he says, "and my assistants know it, and everyone else knows it, is: If you've got a bad lawyer, he will be back."

How many of Maryland's lawyers break the law or violate their ethics code? In fiscal year 1997, the grievance commission got 2,135 complaints, one for every 12 attorneys in the state. Nearly three quarters of those were thrown out, often without an investigation.

Altogether only 24 lawyers -- out of a statewide total of 26,278 -- were disbarred that year. But while the number of lawyers disciplined may be small, their impact can be wrenching to the clients they have wronged.

"It's been devastating, that's for sure," said Desiree Johnson of Baltimore, whose now-disbarred lawyer, Raymond A. Tubman, gambled away her \$ 27,000 settlement for an automobile accident. Four years after Tubman was released from prison because he said he wanted to work to replace what he had stolen, he has paid little to Johnson and other victims, forcing Johnson to sue to get her money back.

Disciplinary complaints that aren't dropped right away wind their way through a secretive, lengthy process involving decisions from as many as four tribunals.

An "inquiry panel," made up of lawyers and nonlawyers, holds a hearing to determine the facts. If not dismissed, the complaint goes to the Review Board, a standing committee that decides whether to file charges in public. Then a trial judge holds another hearing, this one public. Finally, the state's highest court, the Maryland Court of Appeals, decides what, if any, punishment to impose.

The process can take as long as four years, and occasionally longer -- more time than is required to try the most complicated murder case.

Defenders of system

Defenders of the system say lawyers are tougher on themselves than virtually any other profession. And it is true that self-policing does much to keep lawyers honest, including requiring attorneys to blow the whistle on colleagues or risk getting into trouble themselves. Attorneys also pay into a fund that compensates victims of lawyers for some of their losses.

Many attorneys interviewed said that while no state's system is perfect, Maryland's does a good job of protecting the public. "I think they do a nice job at an impossible task," said Baltimore lawyer Andrew Radding, who serves on disciplinary panels. Hirshman, bar counsel for the grievance commission for 17 years, said that while the system can be improved, it works well on the whole.

"I think the Maryland disciplinary system is a pretty good one," Hirshman said in an interview. "Maybe I'm prejudiced because I and the rest of my staff work in it and we have awfully good volunteer lawyers and public members. I think we work perhaps as well as any other jurisdiction, maybe better than others."

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But Hirshman acknowledged that he is often thwarted in his pursuit of discipline by the private panels that can dismiss the cases he brings.

"We are, as discipline counsel, not always happy with the results we get from the inquiry panels," he said.

Some who have worked in the system say its probes are less than complete.

"What they choose to investigate sometimes is a total mystery to me," said Paula Junghans, a Baltimore lawyer who served on the Review Board from 1992 to 1995. "They will put a lot of time into something that seems minor and not enough into something that seems major. We would get a case and it would look like the charges were the tip of the iceberg. We would say, 'Didn't they look at this, that, or the other?' And usually the answer would be no."

Often, lawyers who have been through this system once come back again. Sometimes it is with a vengeance -- and a string of newly wronged clients.

In the late 1970s, Baltimore attorney Jay Seth Engerman had people literally chasing ambulances for him. In one instance, a lookout brought two men who had been in an auto accident from the scene to Engerman's office. When the men later said they didn't want to hire the lawyer, Engerman's staff endorsed insurance forms and, later, settlement checks for them anyway, according to a Court of Appeals opinion.

The grievance commission began investigating in 1977. It took four years, until 1981, for Engerman to receive his punishment: a 30-day suspension, which one Court of Appeals judge thought was too harsh.

When Engerman got in trouble again in 1994, he lost his license -- for admitting the theft of more than \$ 180,000 from clients in his personal injury practice. Again, he was accused of settling cases without clients' consent. Prosecutors, who convicted him of theft, said at the time that they believed Engerman had stolen as much as \$ 400,000 from 60 people. He was sentenced to a year in prison.

Moreno, the Silver Spring attorney who made off with settlement funds in 1993, had agreed to a public reprimand in 1992 for mishandling money from two escrow accounts and failing to properly license his practice in Virginia. His attorney, Stuart H. Grozbean, said at the time of the reprimand that Moreno was spending the money to pay tax liens and bills for the clients that they simply hadn't approved, and that he did not profit from his actions.

A year later, Moreno was missing -- and, with him, \$ 2.3 million siphoned from hundreds of real estate deals in which he was the settlement agent, according to a federal court judgment against him. He has since turned himself in, agreed to disbarment and been sentenced to two years in prison. He was released Jan. 9 under the supervision of federal probation agents in California.

Steven H. Hofberg, a Rockville attorney, was assigned to watch over Moreno from April 1992 to April 1993. Interviewed recently, he refused to discuss in detail his monitoring job, which ended a month before Moreno's thefts were discovered. But Hofberg did say that he considered the scope of his role "too limited to do the job," and commented so at the time. "We all had 20-20 hindsight," he said.

But Grozbean, Moreno's former lawyer, says today that nothing in Moreno's initial infractions -- which he described as minor and extremely technical -- could have foreshadowed what happened a year later. Furthermore, he said he felt Hofberg's monitoring role was adequate, and that up until a short time before Moreno disappeared, there still was no evidence the former lawyer was taking money.

"You can't look into a crystal ball," Grozbean said. "There was no evidence that he would be inclined to steal."

Courtroom evidence

Sometimes evidence of a lawyer's alleged misconduct comes from his own mouth, under oath in court. But even

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those cases can take years to surface in the public arena of lawyer discipline, if they get there at all.

More than six years ago, Baltimore County Circuit Judge Dana Levitz was preparing for a routine injunction hearing, a request to void the private sale of stock in an upstart technology company called GeneSys. He could not believe what he heard next.

From the witness stand, Levitz recalled, lawyer Mark Tomaino failed to contradict charges that he had given conflicting information to different parties in the sale. According to a transcript of a later deposition, Tomaino admitted engaging in "charades" on behalf of a client in the GeneSys matter and acknowledged that at one point: "It's difficult to say who I was and wasn't representing."

Levitz sent a transcript of the injunction hearing to the grievance commission. "Quite frankly, I was sitting in court, it was supposed to be a routine matter, all of a sudden I'm hearing this testimony and I said, 'Oh my God,' " Levitz said recently.

"I'm hearing allegations that were shocking. And the testimony that was given was, yes, this is what happened. It wasn't disputed. It wasn't contradicted. It was just like, isn't there something wrong with that?"

But Levitz heard nothing about the progress of any disciplinary action against Tomaino, even as related litigation against the lawyer and against his former firm, Weinberg & Green, dragged on for four more years.

In 1996, a county jury sitting before Circuit Judge Lawrence Daniels found Tomaino had breached the contractual relationship with his clients and his fiduciary duty, and committed fraud.

The jury found both Tomaino and Weinberg & Green liable for \$ 24 million, the value of GeneSys. The parties settled before the jury could decide on punitive damages, wiping out the first amount as well.

This time, Daniels alerted the disciplinary system, sending along the jury's verdict sheets. "I wrote to them to say, 'In case you haven't read about this in the papers, here's an official complaint,' " Daniels said.

"I'm very bemused by the fact that no action has been taken, given the alacrity with which the Attorney Grievance Commission has acted in cases where much less egregious activity has been found."

According to sources, Hirshman's office has been pursuing sanctions against Tomaino, who left Maryland to join the legal department of Bausch & Lomb Inc. in New York. But no disciplinary charges have surfaced in public. Tomaino's lawyer is reportedly trying to negotiate a punishment short of disbarment, so that his client can keep his job.

Tomaino did not respond to requests for an interview. Said Gerard P. Martin, Tomaino's lawyer: "My only comment is no comment."

Hirshman's response was the same.

Confidential proceedings

But the bar counsel said that, in general, he often has to wait until the end of a criminal investigation or civil lawsuit to start his own probe. Discovery and confidentiality laws keep him from getting other information, Hirshman said.

When he does get it, the hearing panels sometimes prevent him from taking things further.

"I can tell you hearing panels don't always agree with what a trial court has done to a lawyer," Hirshman said. "I think sometimes they feel maybe the lawyer did something wrong, but they might be in the same position, and they think a warning is sufficient and it doesn't go any further."

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But Hofstra University law Professor Monroe H. Freedman, a nationally known legal ethics expert who testified for the plaintiffs in the Tomaino trial, said litigation should not delay investigations. For such investigations to languish in confidential proceedings for years, Freedman said, "is totally unacceptable."

Sometimes harsh, swift

When it wants to be, Maryland's system can be harsh and swift, going after lawyers for tax violations that have nothing to do with clients.

The Court of Appeals indefinitely suspended Frederick lawyer Willie Mahone -- the most severe punishment before disbarment -- for failing to file and pay employee withholding tax, and for not keeping it in trust for the state. In the end, the judges forbade Mahone from applying for reinstatement for three years, even though the lawyer had never been criminally prosecuted for his violations.

Hirshman's office argued that Mahone had shown dishonesty by asking his brother to open an account to pay expenses for the law practice. But a Frederick County judge who heard the case found no deceitfulness -- only gross negligence. She recommended that Mahone not be disciplined, but monitored by a host of local character witnesses who praised his work and commitment to civil rights cases.

The Court of Appeals disagreed. "We have often noted that sanctions represent the fulfillment by this Court of its responsibility to insist upon the maintenance of the integrity of the bar and to prevent the transgressions of an individual lawyer from bringing its image into disrepute," the higher court wrote in explanation of Mahone's punishment.

John M. Spiridon, a lawyer from Ocean Pines on the Eastern Shore, also received harsh punishment for conduct that didn't involve clients.

Spiridon was an Ocean City bus driver when Hirshman filed charges against him. His offense: Stealing \$ 18 in bus fares, for which he pleaded guilty to misdemeanor theft and was sentenced to a week in jail and 18 months of probation. Spiridon consented to an indefinite suspension from practice in 1996.

Well-known attorneys

In other examples, well-known attorneys and politicians have suffered from public scrutiny of questionable dealings. But as lawyers, they avoided discipline for years.

Ellis J. Koch, a Rockville attorney, was indicted on charges of conspiracy and bank fraud in federal court in October. But allegations against him, and against the Prince George's County developers he represented, surfaced four years earlier, in a lawsuit against Koch and developers Dennis A. Laskin and Daniel I. Colton.

Koch, still a practicing attorney, did not return a reporter's phone call.

Laskin also was an attorney. But despite a publicized grand jury investigation into some of his deals and civil suits against him, Laskin also escaped discipline as a lawyer until he pleaded guilty to bank fraud in October 1996. So far, Laskin has been temporarily suspended as a result of his conviction, while the disciplinary proceedings continue.

Ira C. Cooke, one of Maryland's top-earning lobbyists, was convicted twice in one year of possessing marijuana. The second time, he violated a probation sentence that would have left him without a criminal record, had he stayed clean. After the second conviction, his attorney said he "assumed the Attorney Grievance Commission will review this case and investigate."

It did -- and took no action against Cooke, dispensing with the matter at a private inquiry panel hearing. "I would say it was a personal indiscretion on my part and it's in my past," Cooke said recently. "I had a full and frank hearing in which no witnesses were called against me, and after hearing all the evidence, I have been able to continue on

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successfully with my personal and professional life."

By contrast, Baltimore lawyer William H. Proctor was suspended for a year in 1987 for possession of cocaine. Hirshman recommended that he be disbarred, even though Proctor, like Cooke, had received a sentence of probation before judgment. (Ten years later, Proctor consented to disbarment -- for taking money from an estate and forging bank documents to make it appear that he had not.)

Out of politics, not law

Ethical questions derailed former Baltimore County Councilman Gary Huddles' political career. But not his legal one.

Huddles wasn't disciplined in 1985, when it was disclosed that he had taken an unsecured \$ 60,000 loan arranged by Jeffrey Levitt, an occasional client later convicted of stealing millions from depositors in his thrift, Old Court Savings and Loan. Huddles had failed to disclose the loan on financial disclosure forms, and had made no payments for three years. After receiving the loan, Huddles gave Levitt a favorable vote on the zoning for a Pikesville development. The FBI investigated the link, but did not pursue charges.

Huddles wasn't disciplined in 1991, when he was criminally prosecuted for theft and misappropriation of campaign funds for allegedly using \$ 50,000 in unused campaign donations to cover margin calls on personal investments during the stock market crash of 1987. He was acquitted after reimbursing his campaign fund and belatedly reporting the transaction.

Those incidents posed potential violations of Maryland's rules for lawyers, legal experts say. But only after Huddles pleaded guilty last year to illegally handling \$ 840,000 for a drug-dealing client was he disciplined by the Court of Appeals. So far, he has been temporarily suspended. The U.S. District Court for Maryland, by contrast, barred Huddles from practicing there after his conviction.

Hirshman would not comment on why no other charges had ever surfaced against Huddles. Huddles' longtime lawyer, Joshua Treem, said that Huddles was investigated in connection with the Levitt loan and the campaign transactions. At most, he was privately reprimanded. Treem would say only that the matter was "resolved" -- in private.

Asked if Huddles had other grievances dispensed with in private over the years, Treem replied: "I'm not going to answer that one."

Mandel aide

Michael S. Silver, a lawyer who was a top aide to former Gov. Marvin Mandel, in 1985 avoided the tax sale of properties in Fells Point by paying his \$ 84,000 obligation with an Old Court check that would be frozen days later. He had failed to pay property taxes for several years.

In 1994 he was in contempt of a Baltimore County judge's order to pay more than \$ 25,900 in back child support, according to court records. He later made some payments, but a prosecutor asked that Silver be jailed last year when the lawyer again stopped paying. He also failed to file a 1994 income tax return, for which he was prosecuted.

But Silver escaped any stain on his practice until last year -- three years after he had stolen \$ 180,000 from clients while closing two real estate transactions. Shortly after his disbarment for those thefts last August -- in disciplinary complaints he did not contest -- he was convicted of wire fraud in federal court.

Silver's lawyer, Steven A. Allen, declined to comment on attorney grievance matters involving his client.

In an interview, bar counsel Hirshman said he vigorously pursues charges when a lawyer is in prolonged contempt of court -- including cases in which the lawyer is also a child support scofflaw.

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That doesn't mean he's successful.

For a year, Baltimore Sheriff John W. Anderson considered lawyer Joseph Lee Friedman his "No. 1 delinquent parent."

Sheriff's deputies pasted posters of Friedman's face around his South Baltimore neighborhood, trying to collect the more than \$ 100,000 in child support and alimony that Friedman owed his ex-wife. Friedman left the state shortly after being found in contempt of court in June 1996, writing his children a note that said, "If I stay in Baltimore, I will be sent to jail."

When a judge issued a warrant for Friedman's arrest that August, Anderson ordered two deputies to work full time to track him down.

"Him being a lawyer, we felt he should be acting in a lawful fashion," the sheriff said recently. "When he walked away from that, he snubbed his nose at the courts here."

Friedman resurfaced last July, paying \$ 163,000 to his ex-wife, Marcia Friedman, through his lawyer. The bench warrant was quashed.

Friedman said the grievance commission did not write to him until the following month, asking for a response to a newspaper article about the fact that he had paid the money. At that point, it had been a year since the sheriff's hunt for Friedman was initially reported in the media.

In his written response to the grievance commission and in a recent interview, Friedman said the warrant was never served on him, "so there was no evasion." He said he felt free to leave the state because his wife had moved to Florida with their children without notifying him.

Friedman said he is still having financial problems and, though still a lawyer, has not been practicing much law. "After all this great publicity, you can imagine what my practice is like," he said.

Hirshman would not comment on the Friedman investigation. "If any lawyer is to found to violate a court order, we will investigate the matter," he said. "Where it goes from there, I can't tell you. At any particular period of time, things may be in the system. They may die in the system."

Hirshman said he could not recall a single example in Maryland in which a lawyer who evaded child support had gotten even so much as a public reprimand. The Illinois courts, by contrast, have disciplined several lawyers who have fallen behind in child support, according to Mary Robinson, administrator of that state's Attorney Registration and Disciplinary Commission.

Cases neglected

Cases that do make it through Maryland's system to the public eye may not reflect the full range of the lawyer's misbehavior, even when that misconduct would be easy for investigators to document.

Consider the example of Monroe Jon Mizel, a Kensington lawyer.

When Mizel fell into a deep depression in 1990, he began to neglect his work, and several clients suffered.

One of them, Steven M. Stout, had waited more than two years before he learned that Mizel had taken no action on his automobile accident case. By that time, the insurance claim had long since been closed. When Mizel tried to pay Stout \$ 1,000 toward the \$ 4,000 he thought the matter was worth, the check bounced. Mizel paid only after Stout sued him in Montgomery County District Court -- and won \$ 8,000.

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After Stout and another client complained, Mizel was charged with misconduct. It wasn't the first time: Mizel had been censured in the District of Columbia, where he also is licensed to practice, for neglect of a client in 1975. Maryland, by contrast, took no action in that case, even though it often adopts the disciplinary findings of another jurisdiction where a Maryland lawyer is licensed.

Mizel argued that depression caused his negligence in the 1990s, and that he should not be disciplined. The lawyer said that with medication, he had recovered and was once again able to competently represent clients.

Montgomery County Circuit Judge DeLawrence Beard, who held a hearing on the allegations against Mizel in 1996, wrote that "there was no evidence before the court that Mr. Mizel had any problems with any other client matters during the years 1990 to 1993." The Court of Appeals concurred, suspending Mizel for three months on the condition that he continue therapy and consent to monitoring after he returned to practice.

Bigger loss

But evidence that Mizel had more problems was just a short drive from the bar counsel's Crownsville office -- sitting in the federal courthouse in Greenbelt, a public record available to anyone who cared to look.

There, the lawsuit of Rosgen vs. Mizel showed that Mizel had wronged another client -- costing him more than 18 times what he had cost Stout -- and still had not paid that client back, three years after a judge ordered him to.

David Rosgen, who runs Wildland Hydrology Inc., a Pagosa Springs, Colo., company that restores rivers, hired Mizel to sue a client Rosgen said had failed to pay him for a job in Maryland. The job, and the suit, were worth about \$ 145,000.

But Mizel never told Rosgen that Rosgen needed to be deposed. Mizel didn't respond to requests for information from the other side. He did, in the end, very little of anything. When a judge threw out Rosgen's suit and barred him from bringing it again, Mizel didn't even tell his client.

Mizel paid back \$ 12,000 of what Rosgen would have gotten out of the contract in November 1992. Then, according to Rosgen, Mizel stopped communication. When Rosgen sued, Mizel did not even answer the complaint. A federal judge awarded Rosgen \$ 133,000 on June 9, 1994.

Rosgen said he was loath to complain about Mizel's conduct because "we thought that if we had his license pulled, he would have no way to pay us back."

But even though he has retained his license and completed the three-month suspension, Mizel has paid nothing more toward the Rosgen judgment in three years. In a confidential hearing, the lawyer admitted that he carried no malpractice insurance that might have reimbursed Rosgen and other wronged clients.

"This is one of those things where it's just something that's hard to believe, but it happens," Rosgen said recently from his Colorado home.

"We have an attorney who writes him letters every two months. Month after month, no payment. All I know is we've had to pay attorneys and all of this, and we've never been reimbursed."

Mizel said in a telephone interview that he was trying to revive his practice and his psyche from the embarrassment of suspension, so that he can pay Rosgen back. "I've done my time in hell," he said. "I'm doing the best I can. I'm doing a good job for my clients. I think they were over rough on me considering it was a real, demonstrated ailment that resulted in my problems."

Hirshman, who handled the Mizel charges, said he did not recall knowing about the Rosgen suit. "That might have been something that never came to our attention," he said. "Normally, we would have somebody complain."

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Dealing with abuses

"Few vocation offer as great a spectrum for good and honorable works as does the legal profession. The attorney is entrusted with the life savings and investments of his clients. He becomes the guardian of the mentally deficient, and potential savior for the accused. He is a fiduciary, a confidant, an advisor, and an advocate.

However, the great privilege of serving in all of these capacities does not come without the concomitant responsibilities of truth, candor and honesty, In fact, it can be said that the presence of these virtues in members of the bar comprises a large portion of the fulcrum upon which the scales of justice rest. Consequently, an attorney's character must remain beyond reproach.

Maryland Court of Appeals Judge J. Dudley Diggs, in an opinion disbaring former Vice President Spiro T. Agnew for tax evasion in 1974.

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GRAPHIC: COLOR PHOTO, AMY DAVIS : SUN STAFF, Policing lawyers: Melvin Hirshman, Maryland's bar counsel, says that while he thinks the disciplinary system works, he expects repeat offenders.; PHOTO 1, AMY DAVIS : SUN STAFF, Took action: Baltimore County Circuit Judge Dana Levitz contacted the Attorney Grievance Commission after hearing some startling testimony from a lawyer.; PHOTO 2, JOESPH L. FRIEDMAN; PHOTO 3, ANDREW COUNCILL : SPECIAL TO THE SUN, Wronged client: David Rosgen, who runs a Colorado company that restores rivers, hired a Maryland lawyer and ended up losing more \$ 130,000.; CHART, SOURCE: ATTORNEY GRIEVANCE COMMISSION OF MARYLAND, ANNUAL REPORT 1996-1997, SUN STAFF, Lawyer discipline: a long road

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