

SCBD #6099

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA



ANNUAL REPORT
OF THE
PROFESSIONAL RESPONSIBILITY COMMISSION
AS COMPILED BY THE
OFFICE OF THE GENERAL COUNSEL
OF THE
OKLAHOMA BAR ASSOCIATION

January 1, 2013 through December 31, 2013

Filed with the Oklahoma Supreme Court, February 6, 2014

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011 ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2013 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION:

The Commission is composed of seven persons - five lawyer and two non-lawyer members. The attorney members are nominated for rotating three-year terms by the President of the Association subject to the approval of the Board of Governors. The two non-lawyer members are appointed by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, respectively. No member can serve more than two consecutive terms. Terms expire on December 31st at the conclusion of the three-year term.

Lawyer members serving on the Professional Responsibility Commission during 2013 were Melissa Griner DeLacerda, Stillwater; Angela Ailles Bahm, Oklahoma City; William R. Grimm, Tulsa; Jon K. Parsley, Guymon; and Stephen D. Beam, Weatherford. Non-Lawyer member was Tony R. Blasier, Oklahoma City.¹ William R. Grimm served as Chairperson and Tony R. Blasier served as Vice-Chairperson. Commission members serve without compensation but are reimbursed for actual travel expenses.

RESPONSIBILITIES:

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any lawyer called to its attention, or upon its own motion, and takes such action as deemed appropriate, including holding hearings, receiving testimony, and issuing and serving subpoenas.

¹ One non-lawyer term remained unfilled during 2013.

Under the supervision of the Professional Responsibility Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel by grievance or otherwise, and reports to the Professional Responsibility Commission the results of investigations made by or at the direction of the General Counsel. The Professional Responsibility Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged misconduct or personal incapacity of an attorney. The attorneys in the Office of the General Counsel prosecute all proceedings under the Rules Governing Disciplinary Proceedings, supervise the investigative process, and represent the Oklahoma Bar Association at all reinstatement proceedings.

VOLUME OF GRIEVANCES:

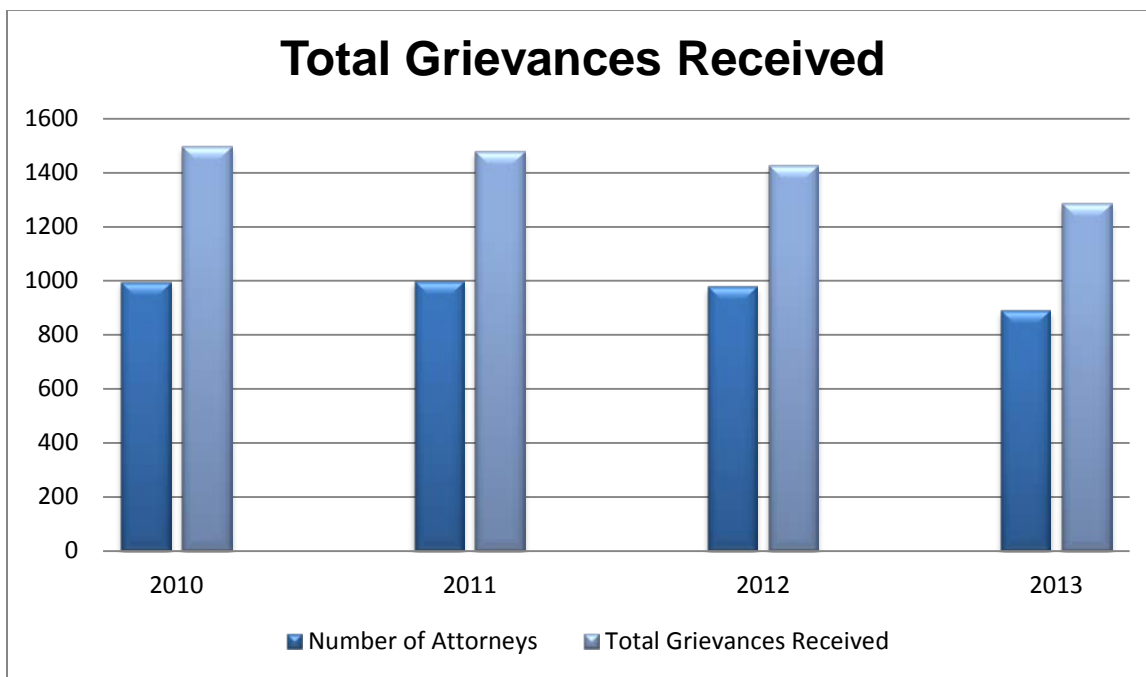
During 2013, the Office of the General Counsel received 230 formal grievances involving 163 attorneys and 1055 informal grievances involving 797 attorneys. In total, 1285 grievances were received against 890 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 407 items of general correspondence, which is mail not considered to be a grievance against an attorney.²

On January 1, 2013, 257 formal grievances were carried over from the previous year. During 2013, 230 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 487 formal investigations pending throughout 2013. Of those grievances, 281 investigations were completed by the Office

² The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to a formal grievance after investigation.

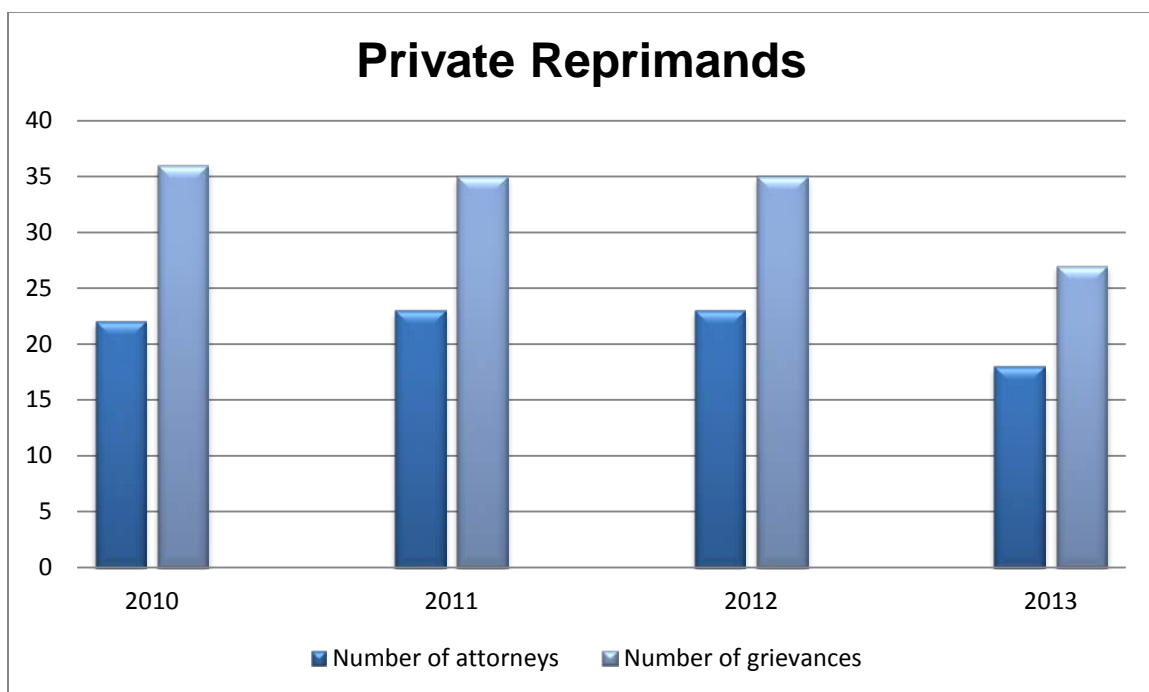
of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 206 investigations were pending on December 31, 2013.

The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Professional Responsibility Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Professional Responsibility Commission.

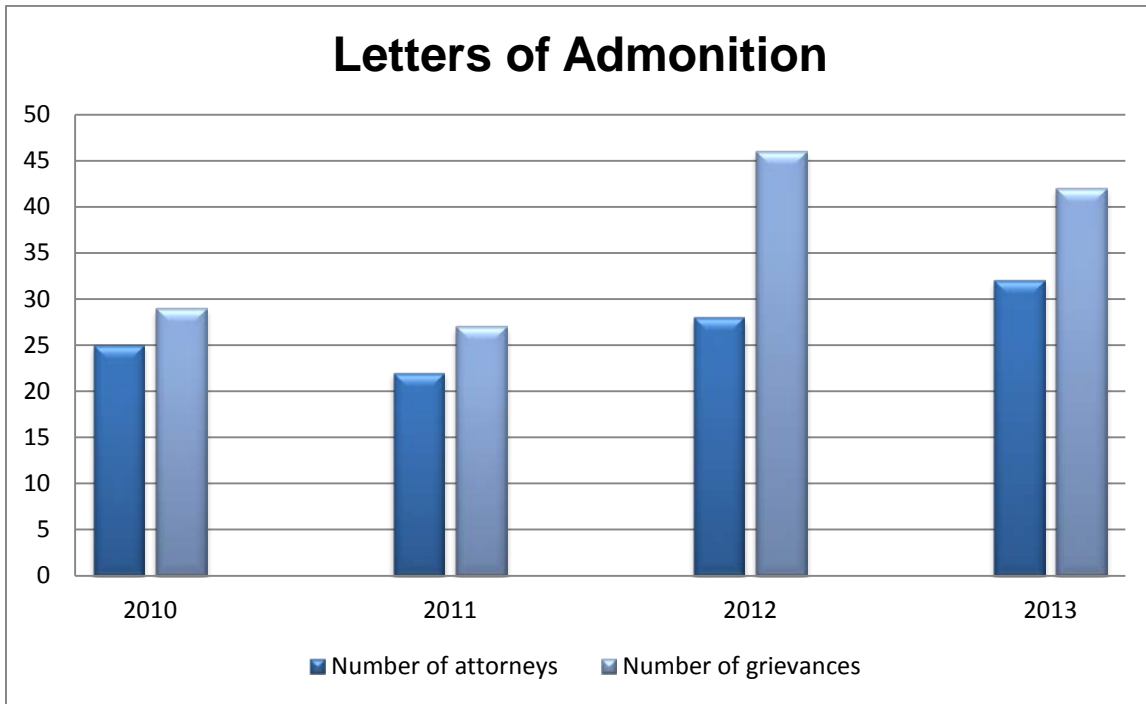


DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION:

1. **Formal Charges.** During 2013, the Commission voted the filing of formal disciplinary charges against 11 lawyers involving 21 grievances. In addition, the Commission also oversaw the investigation of six Rule 7 matters filed with the Chief Justice of the Oklahoma Supreme Court.
2. **Private Reprimands.** Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of the attorney, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2013, the Commission issued private reprimands to 18 attorneys involving 27 grievances.



3. **Letters of Admonition.** During 2013, the Commission issued letters of admonition to 32 attorneys involving 42 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule wherein the Commission believed warranted a warning rather than discipline.



4. **Dismissals.** The Commission dismissed 145 grievances where the investigation could not substantiate the allegations by clear and convincing evidence. The Commission dismissed 29 grievances due to the resignation of the attorney pending disciplinary proceedings, a continuing lengthy suspension or disbarment of the respondent attorney, or due to the attorney being stricken from membership for non-compliance with MCLE requirements or non-payment of membership dues. Furthermore, the Commission dismissed three grievances due to death of an attorney and two grievances upon successful completion of a diversion program.

5. **Diversion Program.** The Commission may also refer respondent attorneys to the Discipline Diversion Program where remedial measures are taken to ensure that any deficiency in the representation of a client does not occur in the future. During 2013, the Commission referred 26 attorneys to be admitted into the Diversion Program for conduct involving 35 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating attorney and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program Director involved in programming. Program options include: Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills, and Professionalism in the Practice of Law class. Instructional courses are taught by OBA Ethics Counsel Travis Pickens and OBA Management Assistance Program Director Jim Calloway.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is now able to monitor when attorneys encounter difficulty with management of their IOLTA accounts. Upon recommendation of the Office of the General Counsel, the Professional Responsibility Commission may place those individuals in a tailored program designed to address basic trust accounting procedures.

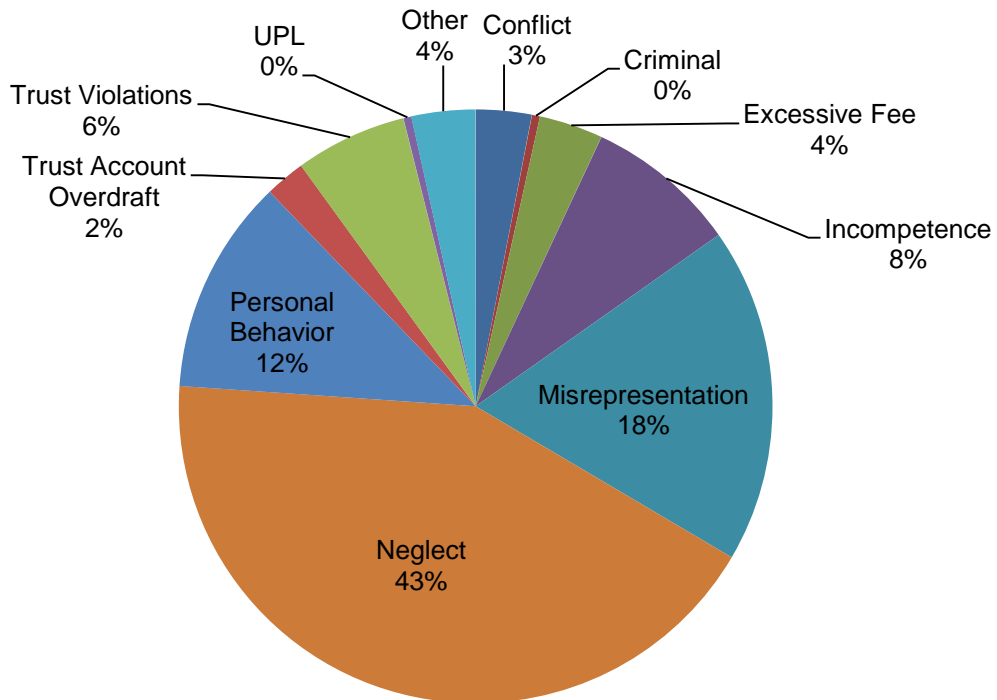
2013 Attorney Participation in Diversion Program Curriculum	
Law Office Management Training:	21 Attorneys
Communication and Client Relationship Skills:	14 Attorneys
Professionalism in the Practice of Law:	7 Attorneys
Professional Responsibility / Ethics School:	12 Attorneys
Client Trust Account School:	10 Attorneys

SURVEY OF GRIEVANCES:

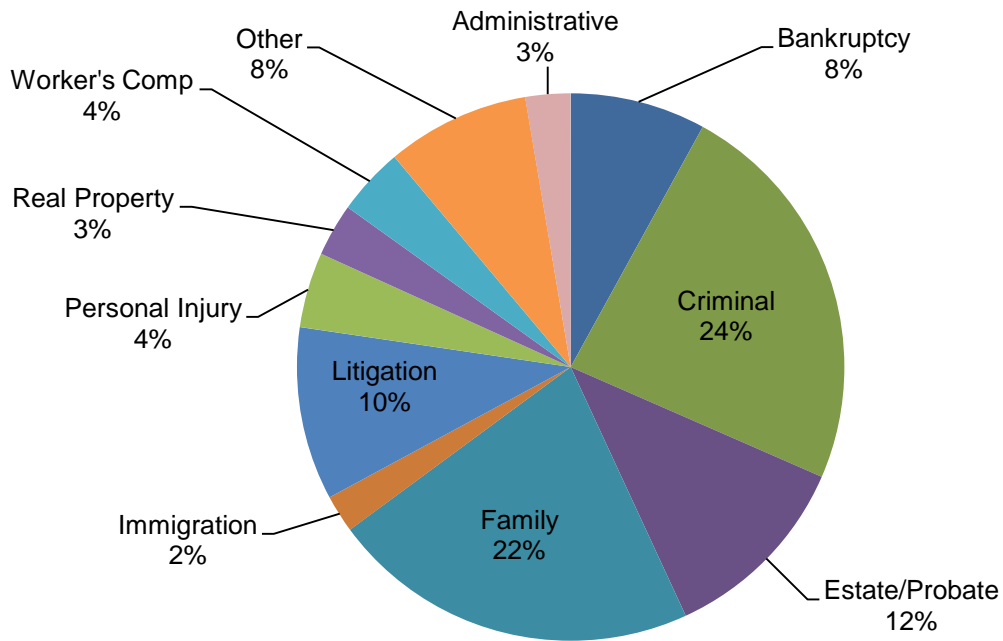
In order to better inform the Supreme Court, the bar and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Total membership of the Oklahoma Bar Association as of December 31, 2013 was 17,628 attorneys. The total number of members include 12,004 males and 5,624 females. Formal and informal grievances were submitted against 890 attorneys. Therefore, approximately five percent of the attorneys licensed to practice law by the Oklahoma Supreme Court received a grievance in 2013.

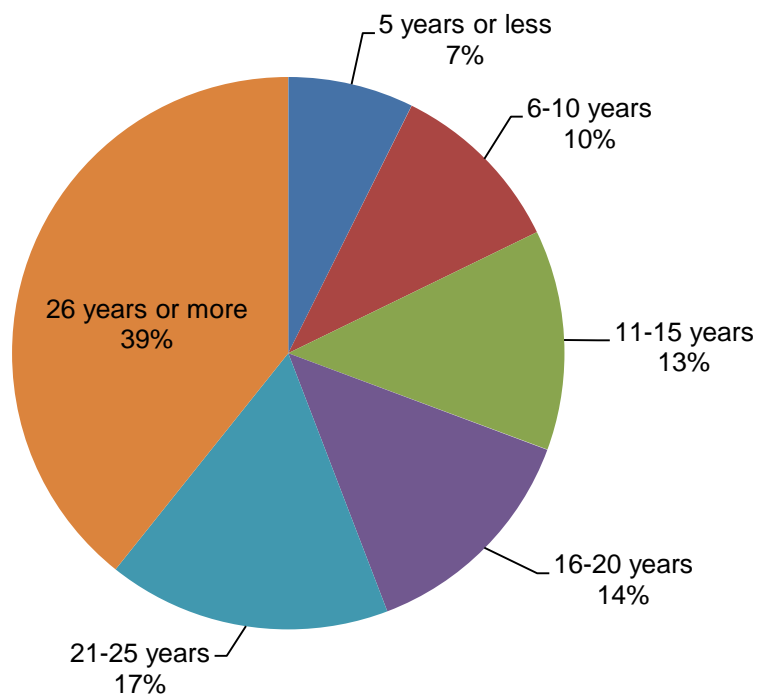
A breakdown of the type of attorney misconduct alleged in the 230 formal grievances received by the Office of the General Counsel in 2013 is as follows:



Of the 230 formal grievances, the area of practice is as follows:



The number of years in practice of the 163 attorneys receiving formal grievances is as follows:



The largest number of grievances received were against attorneys who have been in practice for 26 years or more. Considering the total number of practicing attorneys, the largest number have been in practice 26 years or more.

Of the 230 formal grievances filed against 163 attorneys in 2013, 80 are attorneys who practice in urban areas and 76 are attorneys who practice in rural areas.³ Seven of the grievances were filed against attorneys licensed in Oklahoma but practicing out of state.

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2013, 28 disciplinary cases were acted upon by the Oklahoma Supreme Court. The Court consolidated one of those cases and the public sanctions are as follows:

1. Disbarment:

<u>Respondent</u>	<u>Effective Date</u>
Lewis B. Moon	01/22/13
Joan Godlove	06/11/13
Gale Eugene McArthur II	09/24/13
Mark Anthony Clayborne	10/28/13

2. Resignations Pending Disciplinary Proceedings Approved by Court: (Tantamount to Disbarment)

<u>Respondent</u>	<u>Effective Date</u>
Amy Lynn McTeer	01/14/13
Michael Wayne Jackson	02/25/13
Gray M. Strickland	04/02/13
Craig Steven Key	05/06/13
Roy Marion Lewis Calvert	10/28/13

³ Statistics based upon official roster address of attorney.

Darick Chaka Morton

11/04/13

3. Disciplinary Suspensions:

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Lagailda F. Barnes	2 years	04/02/13
Alexander Louis Bednar	1 year	04/02/13
Robert Bradley Miller	180 days	06/25/13
Christopher M. Cooley	Until 2/16/18	06/25/13
James David Ogle (Rules 6 and 7 Consolidated)	2 years + 1 day	08/22/12
Nathaniel Keith Soderstrom	2 years + 1 day	11/26/13
Stephen Eric McCormick	18 months	12/17/13

4. Public Censure:

<u>Respondent</u>	<u>Effective Date</u>
Philip M. Kleinsmith	03/12/13
Jon Edward Brown	06/18/13

5. Dismissals:

<u>Respondent</u>	<u>Effective Date</u>
Sandra L. Tolliver	05/20/13

In addition to the public discipline imposed in 2013, the Court also issued the following non-public sanctions:

6. Disciplinary Suspensions:

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Rule 10 Confidential	Indefinite	05/13/13

Rule 10 Confidential	Indefinite	11/04/13
Rule 10 Confidential	Indefinite	11/12/13
Rule 10 Confidential	Indefinite	11/18/13
Rule 10 Confidential	Indefinite	12/16/13

There were 19 attorney discipline cases pending with the Supreme Court of Oklahoma as of January 1, 2013. During 2013, 11 new formal complaints, six Rule 7 Notices, and three Resignations Pending Disciplinary Proceedings were filed for a total of 39 cases filed and/or pending during the year. On December 31, 2013, 12 cases remained pending before the Oklahoma Supreme Court.

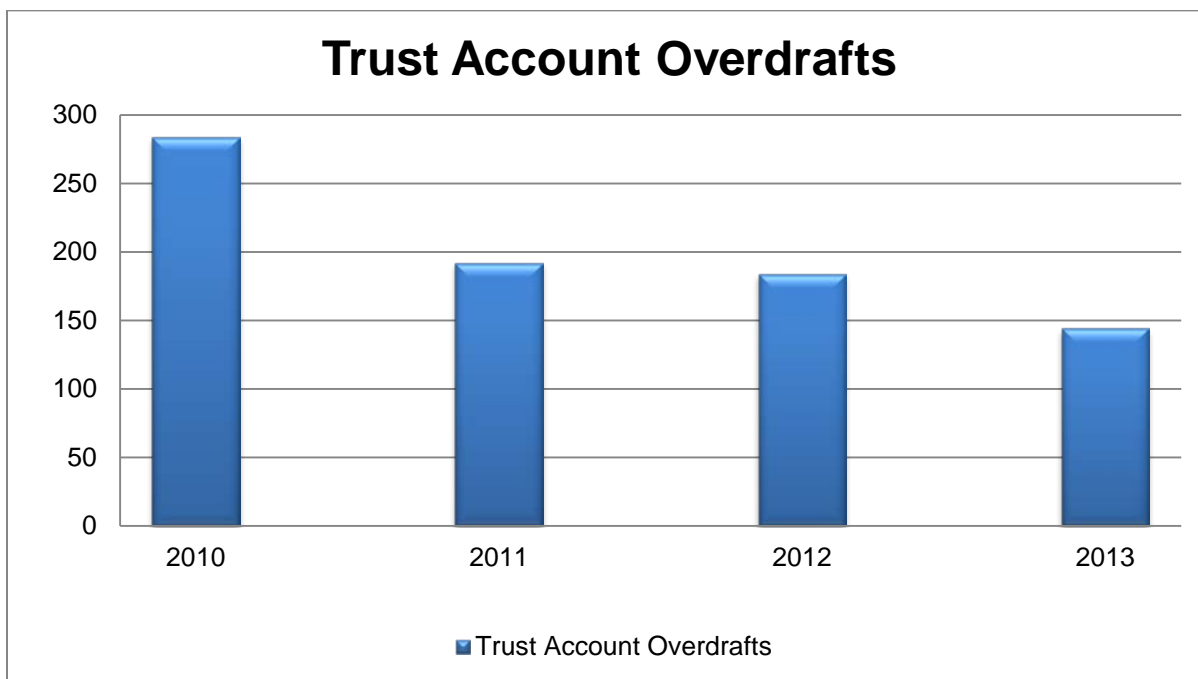
REINSTATEMENTS:

There were four reinstatement cases filed with the Oklahoma Supreme Court and pending before the Professional Responsibility Tribunal as of January 1, 2013. There were 10 new petitions for reinstatement filed in 2013. In 2013, the Oklahoma Supreme Court approved five reinstatements, denied one reinstatement, and two applications for reinstatement were withdrawn. On December 31, 2013, there were six petitions for reinstatement pending before the Professional Responsibility Tribunal.

TRUST ACCOUNT OVERDRAFT REPORTING:

The Office of the General Counsel, under the supervision of the Professional Responsibility Commission has implemented the Trust Account Overdraft Reporting requirements of Rule 1.15(j), Oklahoma Rules of Professional Conduct, 5 O.S. 2011, ch. 1, app. 3-A. Trust Account Overdraft Reporting Agreements are submitted by depository institutions. In 2013, 144 notices of overdraft of a client trust account were received by the Office of the General Counsel. Notification triggers a general inquiry to

the attorney requesting an explanation for the deficient account. Based upon the response, an investigation may be commenced. Repeated overdrafts due to negligent accounting practices have resulted in referral to the Discipline Diversion Program for instruction in proper trust accounting procedures.



UNAUTHORIZED PRACTICE OF LAW:

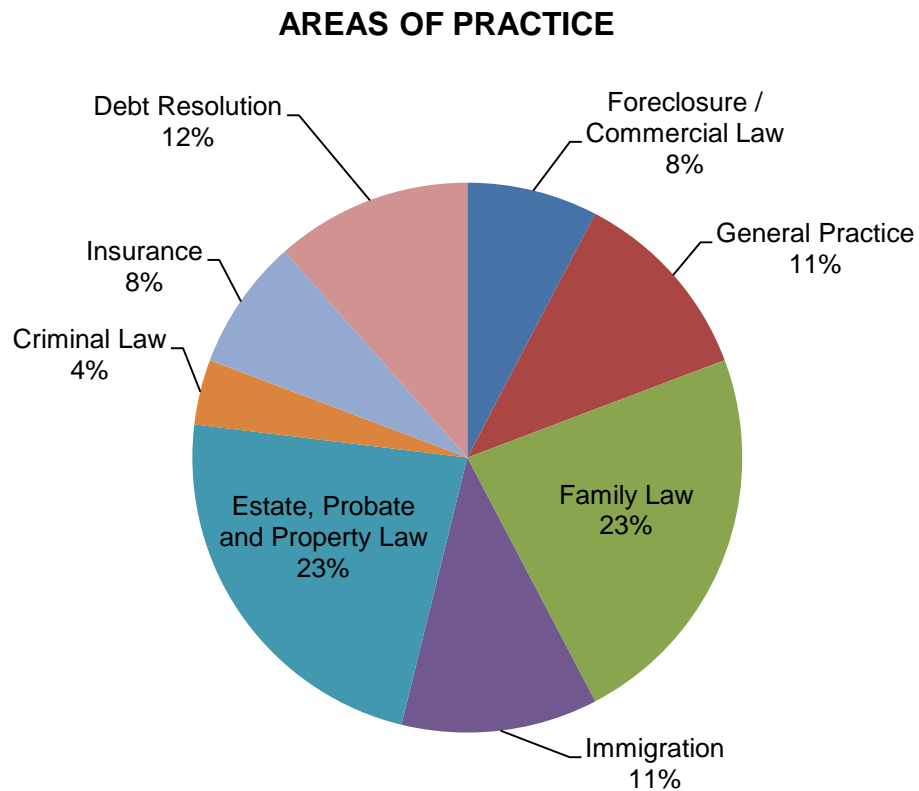
Rule 5.1(b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers.

1. Requests for Investigation.

In 2013, the Office of the General Counsel received 26 complaints for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

2. Practice Areas.

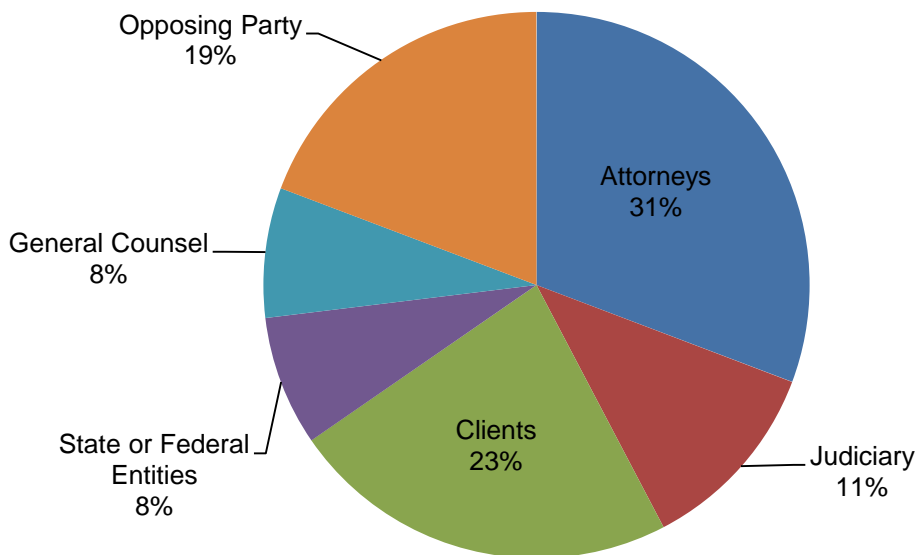
Allegations of the unauthorized practice of law encompass various areas of law. Individuals assisting *pro se* litigants in divorce actions remains the largest area of practice. However, in 2013, the complaints received reflect an increase in specialized areas of practice by non-lawyers. Examples of such areas of practice investigated in 2013 include oil & gas, debt resolution and mechanic lien services. General practice denotes non-lawyers that offer legal services in more than one practice area.



3. Referral Sources.

Requests for investigations of the unauthorized practice of law stem from multiple sources. Oklahoma attorneys and attorneys from other jurisdictions are the most frequent source for requests for investigation. In 2013, the Office of the General Counsel received a substantial number of complaints from the opposing party to the action in which the non-lawyer was participating. Judicial referrals, requests from State and Federal agencies, harmed members of the public, and the Professional Responsibility Commission also report alleged instances of individuals engaging in the unauthorized practice of law.

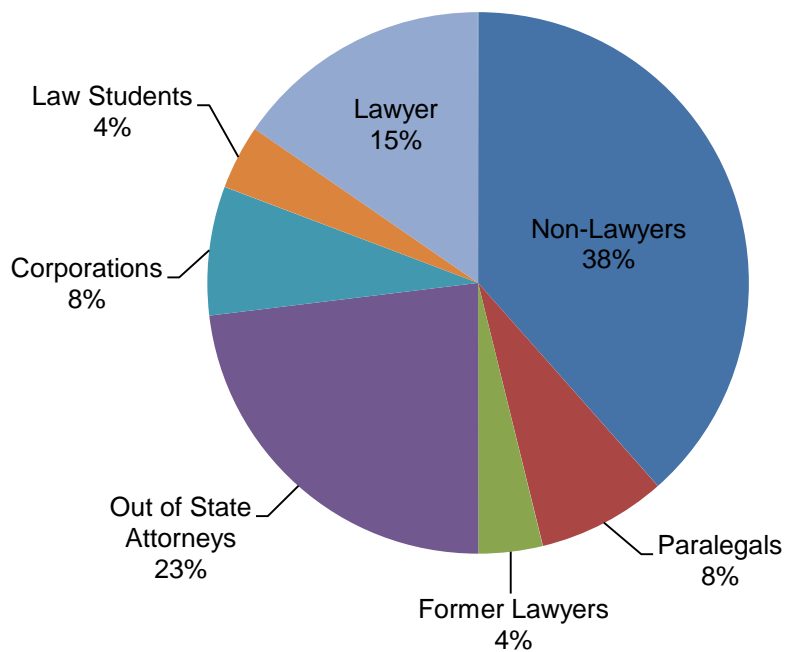
REQUESTS TO INVESTIGATE: REFERRAL SOURCES



4. Respondents.

Most requests for investigation into allegations of the unauthorized practice of law concern non-lawyers. For purposes of this summary, the category “non-lawyer” refers to an individual who does not advertise as a paralegal, but performs various legal tasks for their customers. Recently, most “non-lawyers” claim to have expertise in very specialized areas of practices as discussed above. The “Former Lawyers” category includes lawyers who have been disbarred, stricken, resigned their law license pending disciplinary proceedings, or otherwise voluntarily surrendered their license to practice law in the State of Oklahoma. Also this year, the Office of the General Counsel took action against an attorney licensed in Oklahoma that was assisting a non-lawyer in the unauthorized practice of law.

RESPONDENTS ALLEGEDLY PARTICIPATING IN UPL



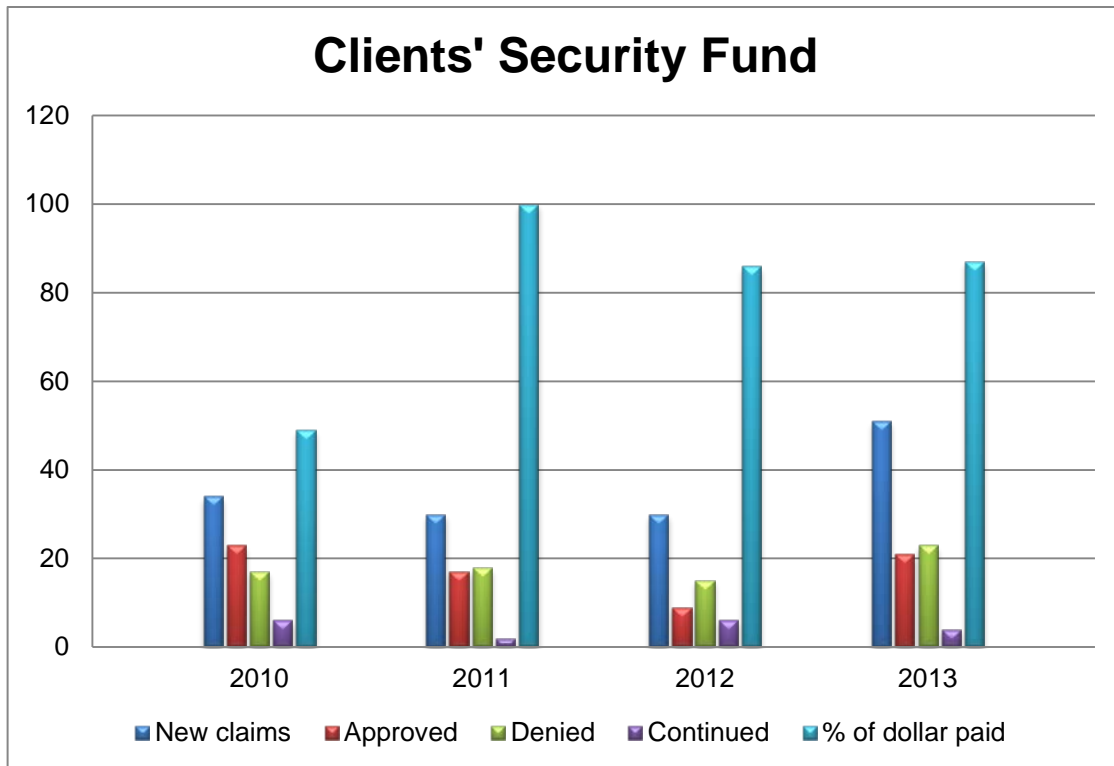
5. Enforcement.

In 2013, of the 26 cases opened, the Office of the General Counsel took formal action in 19 matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, and referring a case to an appropriate state and/or federal enforcement agency. The remainder of the cases were closed for no finding of UPL or are still pending.

CLIENTS' SECURITY FUND:

The Clients' Security Fund was established in 1965 by Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee which is comprised of 15 members, 12 lawyer members and 3 non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2013, the Committee was chaired by lawyer member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers. It is also intended to protect the reputation of lawyers in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates \$100,000.00 each year to the Clients' Security Fund for payment of approved claims. In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a prorata basis until the total amount paid for all claims in that year is \$100,000.00. The Office of the General Counsel provides staff services for the Committee. In 2013, the Office of the General Counsel investigated and presented to the Committee 42 new claims and six continued claims. The Committee

approved 21 claims, denied 23 claims and continued 4 claims into the following year for further investigation.



CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA:

The Office of the General Counsel has represented the Oklahoma Bar Association in the following civil (non-discipline) matters during 2013:

1. *State of Oklahoma ex rel. Oklahoma Bar Association v. Mothershed*, Oklahoma Supreme Court, SCBD 4687.
 - *Mothershed v. Justices of the Supreme Court of Oklahoma*, et al. United States Supreme Court, Case No. 12-8347, docketed January 10, 2013. Mothershed filed Petition for Writ of Certiorari with the United States Supreme Court regarding Ninth Circuit Court of Appeals Case Number 12-16671, Arizona District Court Case No. CIV-12-0549-PHX-FM. OBA filed waiver of right to respond on January 28, 2013. Case was distributed for conference of February 22, 2013. Certiorari was denied February 25, 2013. Petition for rehearing filed March 20, 2013, Distributed for Conference April 19, 2013. Petition for rehearing denied April 22, 2013.

- *Mothershed v. Justices of the Supreme Court of Oklahoma*, et al. U.S. District Court for the Western District of Oklahoma, Case No. CIV-13-435. Mothershed filed a Complaint and Motion on April 29, 2013. OBA filed Motion to Dismiss May 24, 2013. Dismissed with Prejudice and Order of Sanctions (Pre-filing restrictions) on December 20, 2013. Mothershed filed Motion to Reconsider on December 22, 2013. *Pending*.
2. *Gather v. OKARNG, et al.*, United States District Court for the Western District of Oklahoma, Case no. CIV-12-166.
- *Gather v. OKARNG, et al.*, United States District Court for the Western District of Oklahoma, Case No. CIV-12-166, filed February 14, 2012. *Dismissed* February 16, 2012. Transmitted notice of appeal.
 - *Gather v. OKARNG, et al.*, Tenth Circuit Court of Appeals, Case No. 12-6048, filed February 24, 2012 (appealing dismissal of CIV-12-166). *Dismissal affirmed* May 7, 2012.
 - *Gather v. OKARNG, et al.*, United States Supreme Court. Case No. 12-6118, filed May 22, 2012. OBA filed Waiver of Reply to initial petition. Certiorari denied November 13, 2012. Gather has filed two petitions for rehearing. Rehearing denied January 14, 2013.
3. *Kerchee et al., v. Smith et al.*, Western District of Oklahoma Case No. CV-11-459-C.
- *Kerchee et al., v. Smith et al.*, Western District of Oklahoma, Case No. CV-11-459-C, filed April 26, 2011. The Kerchees filed suit against approximately 40 defendants, including the OBA, Loraine Farabow, John M. Williams and others. *Dismissed* and Judgment entered on February 1, 2012.
 - *Kerchee et al. v. Smith et al.*, Tenth Circuit Court of Appeals, Case No. 12-6080, filed March 28, 2012. OBA defendants filed Motion to Dismiss for lack of appellate jurisdiction. OBA Defendants filed Answer Brief. *Dismissal affirmed* on June 4, 2013.
 - *Kerchee et al. v. Smith et al.*, United States Supreme Court, Case No. 13A464, filed October 2, 2013. Appellant filed Application to extend the time to file Petition for Writ of Certiorari. *Denied November 6, 2013*.
4. *Gerald R. Smith v. Gary Newberry et al.*, Comanche County Case No. CJ-2006-507, filed June 12, 2006. Motion for Summary Judgment granted on August 11, 2006 in favor of OBA Defendants. Plaintiff filed Motion to Reinstate Dismissed Defendants on April 25, 2013. Response on behalf of OBA and Mike Speegle filed May 8, 2013. *Motion Pending*.

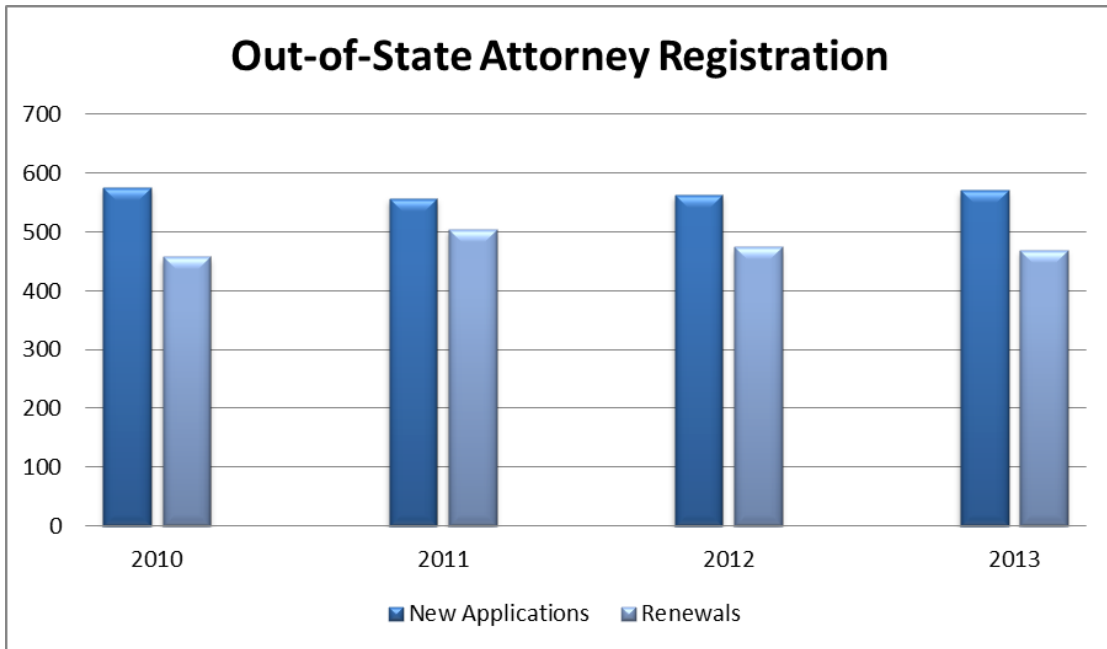
5. *Pemberton v. Melisa DeLacerda*, Oklahoma County Case No. CV-2012-158, filed January 1, 2012. *Dismissed* February 6, 2012.
 - *Pemberton v. DeLacerda*, Oklahoma Supreme Court Case No. MA-110441, filed March 2, 2012. Application to Assume Original Jurisdiction denied. OBA filed response to Petition in Error. Consolidated with Case Nos. 110,169 and 110,968 and assigned to the Court of Appeals when at issue on August 22, 2012. *Dismissal Affirmed* on November 21, 2013. Petition for Rehearing filed December 5, 2013, and Denied December 18, 2013.
6. *State of Oklahoma v. William Anton and Fred Schraeder*, Tulsa County Case CF-2009-5279. James Jedrey submitted a claim to the Client Security Fund and received \$44,704.80 as a result of the misconduct by Anton and Schraeder. Subsequently, Jedrey executed a subrogation agreement wherein he assigned any and all claims he had against these two former attorneys to the OBA. The OBA discovered Jedrey was receiving regular restitution payments from the above criminal matter and requested Jedrey to comply with the subrogation agreement. Jedrey refused. With the assistance of the Attorney General's Office and the District Attorney's Office, the OBA obtained an Order modifying the restitution schedule in the criminal matter. This Order effectively substitutes the OBA in place of Jedrey in the distribution of restitution collected. The Motion was filed March 19, 2013 and the Order was entered April 3, 2013.
7. *Bower v. Oklahoma Bar Association*, United States District Court for the Western District of Oklahoma, Case No. CIV-12-1253, filed November 13, 2012. OBA NOT SERVED. Bower did not cure IFP deficiency by deadline. Order adopting Report and Recommendation (denying IFP and advising Plaintiff that action will be dismissed unless filing fees are paid w/n 20 days) entered April 18, 2013. Case Dismissed May 9, 2013.
8. *Demetrius Rogers v. Oklahoma Bar Association and Gina Hendryx*, United States District Court for the Western District of Oklahoma, Case No. CIV-13-121, filed February 1, 2013. On February 12, 2013, Plaintiff was ordered to cure deficiencies in *In Forma Pauperis* Motion by March 5, 2013. As of February 19, 2013, no summons issued. Report and Recommendation issued recommending suit be dismissed against Hendryx and OBA for lack of standing and finding suit was frivolous. Order adopting Report and Recommendation and Judgment filed May 14, 2013.
9. *Bashant v. Oklahoma Bar Ass'n and Gina Hendryx*, Oklahoma Supreme Court Case No. MA 111790, filed May 22, 2013. Application to Assume Original Jurisdiction Denied June 24, 2013.

10. *West v. Denman, Hendryx and Grimm*, Oklahoma Supreme Court Case No. O-111918 filed June 26, 2013. Application to Assume Original Jurisdiction Denied September 16, 2013.
11. *Gore v. Sanfellipo, Dutcher, et al.*, Oklahoma Supreme Court Case No. DF-111012. The OBA is not a named party. On July 3, 2013, Gore filed pleading entitled, "Appellant's Suggestion Concerning [sic] the Oklahoma Bar Association," in response to the OBA not investigating a grievance filed by Gore. Pleading stricken by July 29, 2013 Order.

ATTORNEY SUPPORT SERVICES:

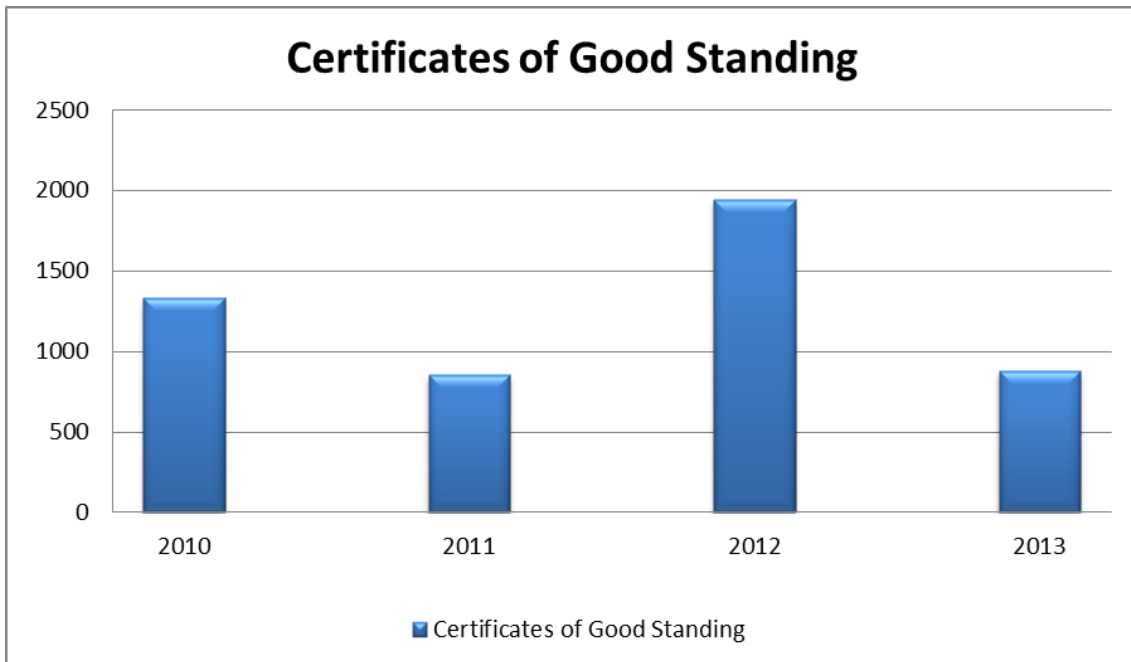
1. Out of State Attorney Registration.

In 2013, the Office of the General Counsel processed 571 new applications, 469 renewal applications, and \$3,500.00 in renewal late fees submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys appearing pro bono to represent criminal indigent defendants, or on behalf of persons who otherwise would qualify for representation under the guidelines of the Legal Services Corporation due to their incomes, may request a waiver of the application fee from the Oklahoma Bar Association. In 2013, the Office of the General Counsel also processed two waiver requests of the application fee. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in his/her licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or Tribunal as an exhibit to a "Motion to Admit Pro Hac Vice."



2. Certificates of Good Standing.

In 2013, the Office of the General Counsel prepared 848 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members. There is no fee to the attorney for preparation of same.



ETHICS AND EDUCATION:

During 2013, the General Counsel, Assistant General Counsels, and the Professional Responsibility Commission members presented more than 50 hours of continuing legal education programs to county bar association meetings, attorney practice groups, OBA programs, law school classes and various legal organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. These included presentations at all three state law schools, a discussion regarding attorney regulation with a delegation from a Russian law school, participation in movie night, as well as speaking to non-lawyer groups. This effort directs lawyers to a better understanding of their ethical requirements and the disciplinary process, and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. In addition, the General Counsel was a regular contributor to *The Oklahoma Bar Journal*.

The attorneys, investigators, and support staff for the General Counsel's office also attended continuing education programs in an effort to increase their own skills and training in attorney discipline. These included trainings by the National Organization of Bar Counsel (NOBC), Organization of Bar Investigators (OBI), National Institute of Trial Advocacy (NITA), and the America Bar Association (ABA.)

RESPECTFULLY SUBMITTED this ___th day of February, 2014, on behalf of the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

Gina Hendryx, General Counsel
Oklahoma Bar Association

PROFESSIONAL RESPONSIBILITY TRIBUNAL

ANNUAL REPORT

January 1, 2013 – December 31, 2013

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA

FEB 6 2014

MICHAEL S. RICHIE
CLERK

SCBD No. 6100

Introduction.

The Professional Responsibility Tribunal (PRT) was established by order of the Supreme Court of Oklahoma in 1981, under the Rules Governing Disciplinary Proceedings, 5O.S. 2011, ch. 1, app. 1-A (RGDP). The primary function of the PRT is to conduct hearings on complaints filed against lawyers in formal disciplinary and personal incapacity proceedings, and on petitioners for reinstatement to the practice of law. A formal disciplinary proceeding is initiated by written complaint which a specific is pleading filed with the Chief Justice of the Supreme Court. Petitioners for reinstatement are filed with the Clerk of the Supreme Court.

Composition and Appointment.

The PRT is a 21-member panel of Masters, 14 of whom are lawyers and 7 whom are non-lawyers. The lawyers on the PRT are active members in good standing of the OBA. Lawyer members are appointed by the OBA President, with the approval of the Board of Governors. Non-lawyer members are appointed by the Governor of the State of Oklahoma. Each member is appointed to serve a three-year term, and limited to two terms. Terms end on June 30th of the last year of a member's service.

Pursuant to Rule 4.2, RGDP, members are required to meet annually to address organizational and other matters touching upon the PRT's purpose and objective. They also elect a Chief Master and Vice-Chief Master, both of whom serve for a one-year term. PRT members receive no compensation for their services, but they are entitled to be reimbursed for travel and other reasonable expenses incidental to the performance of their duties.

The lawyer members of the PRT who served during all or part of 2013 were: Jeremy J. Beaver, McAlester; Joe Crosthwait, Midwest City; Deirdre Dexter, Sand Springs; Tom Gruber,

Oklahoma City; William G. LaSorsa, Tulsa; Susan B. Loving, Edmond; Kelli M. Masters, Oklahoma City; Mary Quinn-Cooper, Tulsa; Louis Don Smitherman, Oklahoma City; Neal E. Stauffer, Tulsa; Charles Laster, Shawnee; Michael E. Smith, Oklahoma City; John B. Heatly, Oklahoma City; and Noel K. Tucker, Edmond.

The non-lawyer members who served during all or part of 2013 were: Steven W. Beebe, Duncan; Christian C. Crawford, Stillwater; James Richard Daniel, Oklahoma City; Kirk V. Pittman, Seiling; James W. Chappel, Norman; Linda C. Haneborg, Oklahoma City; and Mary Lee Townsend, Tulsa.

The annual meeting was held on June 25, 2013, at the Oklahoma Bar Association offices. Invited guest John F. Reif, Vice Chief Justice of the Oklahoma Supreme Court, attended the meeting and, on behalf of the Oklahoma Supreme Court, thanked the members of the tribunal for their service. Agenda items included a presentation by Gina Hendryx, General Counsel¹ of the Oklahoma Bar Association, recognition of new members and members whose terms had ended, and discussions concerning the work of the PRT. William G. LaSorsa was elected Chief Master and M. Joe Crosthwait was elected Vice-Chief Master, each to serve a one-year term.

Governance.

All proceedings that come before the PRT are governed by the RGDP. However, proceedings and the reception of evidence are, by reference, governed generally by the rules in civil proceedings, except as otherwise provided by the RGDP.

The PRT is authorized to adopt appropriate procedural rules which govern the conduct of the proceedings before it. Such rules include, but are not limited to, provisions for requests for disqualification of members of the PRT assigned to hear a particular proceeding.

Action Taken After Notice Received.

After notice of the filing of a disciplinary complaint or reinstatement petition is received, the Chief Master (or Vice-Chief Master if the Chief Master is unavailable) selects three (3) PRT members (two lawyers and one non-lawyer) to serve as a Trial Panel. The Chief Master designates one of the two lawyer-members to serve as Presiding Master. Two of the three

¹ The General Counsel of the Oklahoma Bar Association customarily makes an appearance at the annual meeting for the purpose of welcoming members and to answer any questions of PRT members. Given the independent nature of the PRT, all other business is conducted in the absence of the General Counsel.

Masters constitute a quorum for purposes of conducting hearings, ruling on and receiving evidence, and rendering findings of fact and conclusions of law.

In disciplinary proceedings, after the respondent's time to answer expires, the complaint and the answer, if any, are then lodged with the Clerk of the Supreme Court. The complaint and all further filings and proceedings with respect to the case then become a matter of public record.

The Chief Master notifies the respondent or petitioner, as the case may be, and General Counsel of the appointment and membership of a Trial Panel and the time and place for hearing. In disciplinary proceedings, a hearing is to be held not less than 30 days nor more than 60 days from date of appointment of the Trial Panel. Hearings on reinstatement petitioners are to be held not less than 60 days nor more than 90 days after the petition has been filed. Extensions of these periods, however, may be granted by the Presiding Master for good cause shown.

After a proceeding is placed in the hands of a Trial Panel, it exercises general supervisory control over all pre-hearing and hearing issues. Members of a Trial Panel function in the same manner as a court by maintaining their independence and impartiality in all proceedings. Except in purely ministerial, scheduling, or procedural matters, Trial Panel members do not engage in *ex parte* communications with the parties. Depending on the complexity of the proceeding, the Presiding Master may hold status conferences and issue scheduling orders as a means of narrowing the issues and streamlining the case for trial. Parties may conduct discovery in the same manner as in civil cases.

Hearings are open to the public and all proceedings before a Trial Panel are stenographically recorded and transcribed. Oaths or affirmations may be administered, and subpoenas may be issued, by the Presiding Master, or by any officer authorized by law to administer an oath or issue subpoenas. Hearings, which resemble bench trials, are directed by the Presiding Master.

Trial Panel Reports.

After the conclusion of a hearing, the Trial Panel prepares a written report to the Oklahoma Supreme Court. The report includes findings of facts on all pertinent issues, conclusions of law, and a recommendation as to the appropriate measure of discipline to be imposed or, in the case of a reinstatement petitioner, whether it should be granted. In all

proceedings, any recommendation is based on a finding that the complainant or petitioner, as the case may be, has or has not satisfied the “clear and convincing” standard of proof. The Trial Panel report further includes a recommendation as to whether costs of investigation, the record, and proceedings should be imposed on the respondent or petitioner. Also filed in the case are all pleadings, transcript of proceeding, and exhibits offered at the hearing.

Trial Panel reports and recommendations are advisory. The Oklahoma Supreme Court has exclusive jurisdiction over all disciplinary and reinstatement matters. It has the constitutional and non-delegable power to regulate both the practice of law and legal practitioners. Accordingly, the Oklahoma Supreme Court is bound by neither the findings nor the recommendation of action, as its review of each proceeding is *de novo*.

Annual Reports.

Rule 14.1, RGDP, requires the PRT to report annually on its activities for the preceding year. As a function of its organization, the PRT operates from July 1 through June 30. However, annual reports are based on the calendar year. Therefore, this Annual Report covers the activities of the PRT for the preceding year, 2013.

Activity in 2013.

At the beginning of the calendar year, 11 disciplinary and 1 reinstatement proceedings were pending before the PRT as carry-over matters from a previous year. Generally, a matter is considered “pending” from the time the PRT *receives notice* of its filing until the Trial Panel report is filed. Certain events reduce or extend the pending status of a proceeding, such as the resignation of a respondent or the remand of a matter for additional hearing. In matters involving alleged personal incapacity, orders by the Supreme Court of interim suspension, or suspension until reinstated, operate to either postpone a hearing on discipline or remove the matter from the PRT docket.

In regard to new matters, the PRT received notice of the filing of 17 disciplinary complaints and 10 reinstatement petitions. Trial Panels conducted a total of 20 hearings; 18 in disciplinary proceedings and 2 in reinstatement proceedings.

On December 31, 2013, a total of 9 matters, 3 disciplinary and 6 reinstatement proceedings, were pending before the PRT.

Proceeding Type	Pending Jan. 1, 2013	New Matters In 2013	Hearings Held 2013	Trial Panel Reports	Pending Dec. 31, 2013
Disciplinary	11	17	18	16	3
Reinstatement	1	10	2	3	6

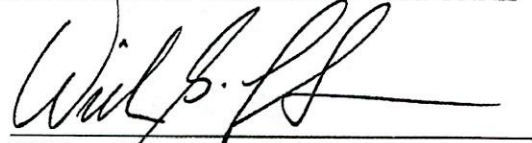
Conclusion.

Members of the PRT demonstrated continued service to the Bar and the public of this State, as shown by the substantial time dedicated to each assigned proceeding. The members' commitment to the purpose and responsibilities of the PRT is deserving of the appreciation of the Bar and all its members, and certainly is appreciated by this writer.

Dated this 6th day of February, 2014.

PROFESSIONAL REPOSIBILITY TRIBUNAL

By:



 William G. LaSorsa, Chief Master