



FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
FEB - 4 2011
MICHAEL S. RICHIE
CLERK

ANNUAL REPORT
OF THE
PROFESSIONAL RESPONSIBILITY COMMISSION
AS COMPILED BY THE
OFFICE OF THE GENERAL COUNSEL OF THE OKLAHOMA BAR ASSOCIATION
January 1, 2010 through December 31, 2010

SCBD # 5718

(Filed with Oklahoma Supreme Court, February 4, 2011)

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RPDP), 5 O.S. 2001 ch. 1, app. 1-A, this is the Annual Report of grievances and complaints received and processed for 2010 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

Historically, this document reflected the combined Annual Reports of the Professional Responsibility Commission and the Professional Responsibility Tribunal. The Professional Responsibility Tribunal has opted to file a separate report for 2010. Therefore, the following is submitted by the Office of the General Counsel on behalf of the Professional Responsibility Commission.

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 2010 were Melissa Griner DeLacerda, Stillwater; Michael E. Smith, Oklahoma City; William R. Grimm, Tulsa; Jon K. Parsley, Guymon; and Stephen D. Beam, Weatherford. Non-Lawyer members were Tony R. Blasier, Oklahoma City and Debra Thompson, Carney. Melissa Griner DeLacerda 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.

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 with the Oklahoma Supreme Court. 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 2010, the Office of the General Counsel received 287 formal grievances involving 195 attorneys and 1210 informal grievances involving 894 attorneys. In total, 1497 grievances were received against 996 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 611 items of general correspondence, which is mail not considered to be a grievance against an attorney.

On January 1, 2010, 361 formal grievances were carried over from the previous year. During 2010, 287 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 648 formal investigations pending throughout 2010. Of those grievances, 346 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 302 investigations were pending on December 31, 2010.

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.

TRUST ACCOUNT OVERDRAFT REPORTING:

Over the past 18 months, the Office of the General Counsel under the supervision of the Commission has implemented the Trust Account Overdraft Reporting requirements of Rule 1.15(j), Oklahoma Rules of Professional Conduct, 5 O.S. Supp. 2008, ch. 1, app. 3-A. Trust Account Overdraft Reporting Agreements have been submitted by and approved for depository institutions. In 2010, 284 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.

DISCIPLINE BY THE PROFESSIONAL RESPONSIBILITY COMMISSION:

1. **Formal Charges.** During 2010, the Commission voted the filing of formal disciplinary charges against 16 lawyers involving 56 grievances.
2. **Private Reprimands.** Pursuant to Rule 5.3(c) of the Rules Governing Disciplinary Proceedings, 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 2010, the Commission issued private reprimands to 22 attorneys involving 36 grievances.

3. **Letters of Admonition.** During 2010, the Commission issued letters of admonition to 25 attorneys involving 29 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 226 grievances where the investigation revealed lack of merit or loss of jurisdiction over the respondent attorney. Loss of jurisdiction included the death of the attorney, 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 dues.
5. **Diversion Program.** The Commission may also refer matters 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 2010, the Commission referred 19 attorneys to be admitted into the Diversion Program for conduct involving 41 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: Client Trust Account Procedures, Professional Responsibility/Ethics Training, Law Office Management, Communication and Client Relationship Skills, Civility in the Practice of Law, In Office Procedures Review, Lawyers Helping Lawyers, and Mentor/Peer Referral.

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2010, 10 public disciplinary cases were acted upon by the Oklahoma Supreme Court. The public sanctions are as follows:

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

<u>Respondent</u>	<u>Effective Date</u>
Pope, Eddie Michael	01/11/10
Waller, Katherine T.	03/08/10
Singletary, M. Benjamin	04/21/10
Robinson, James T.	11/15/10

Disciplinary Suspensions:

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Wilburn, Rhett Henry	2 years + 1 day	03/16/10
McCoy, Gloyd Lynn	2 years + 1 day	09/21/10
Whitebook, Merl Alan	2 years + 1 day	10/12/10
Offill Jr., Phillip W.	Rule 7/ Indefinite	11/22/10

Public Censure:

<u>Respondent</u>	<u>Effective Date</u>
Martin, Jeffrey Allen	09/21/10

Dismissals:

<u>Respondent</u>	<u>Effective Date</u>
Fournerat, Wayne Morris	01/15/10

In addition to the public discipline imposed in 2010, the Court also issued four Rule 6/10 Confidential Interim Suspensions as follows:

Interim Suspension

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Rule 6/10 Confidential	Indefinite	02/22/10
Rule 6/10 Confidential	Indefinite	03/25/10
Rule 10 Confidential	Indefinite	10/18/10
Rule 10 Confidential	Indefinite	11/08/10

There were 17 discipline cases filed with the Supreme Court on January 1, 2010. During 2010, 14 new formal complaints, two Rule 7 Judgments and two Resignations Pending Disciplinary Proceedings were filed for a total of 35 cases. On December 31, 2010, 24 cases remained pending.

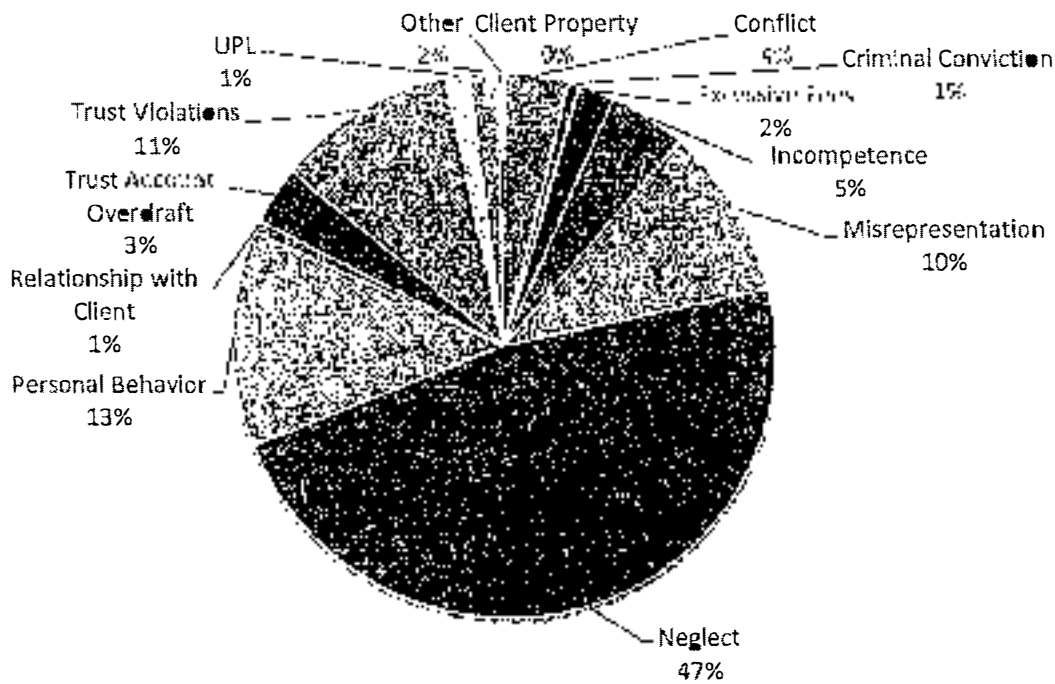
There were 11 active reinstatement cases filed with the Oklahoma Supreme Court as of January 1, 2010. There were 12 new petitions for reinstatement filed in 2010. In 2010, the Supreme Court approved 10 reinstatements, denied two, and one was withdrawn. On December 31, 2010, there were 10 petitions for reinstatement pending before the Oklahoma Supreme Court.

SURVEY OF GRIEVANCES:

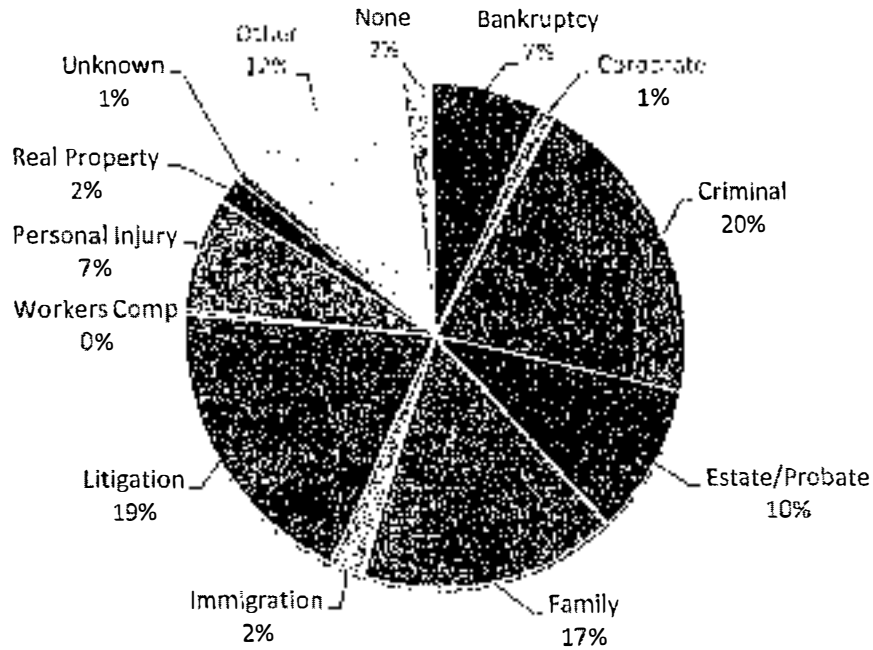
In order to better inform the Supreme Court, the bar and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Total membership of the Oklahoma Bar Association as of December 31, 2010 was 16,712 attorneys. Considering the total membership, the receipt of 1497 formal and informal grievances during 2010, involving 996 attorneys, constituted approximately six percent of the attorneys licensed to practice law by the Oklahoma Supreme Court.

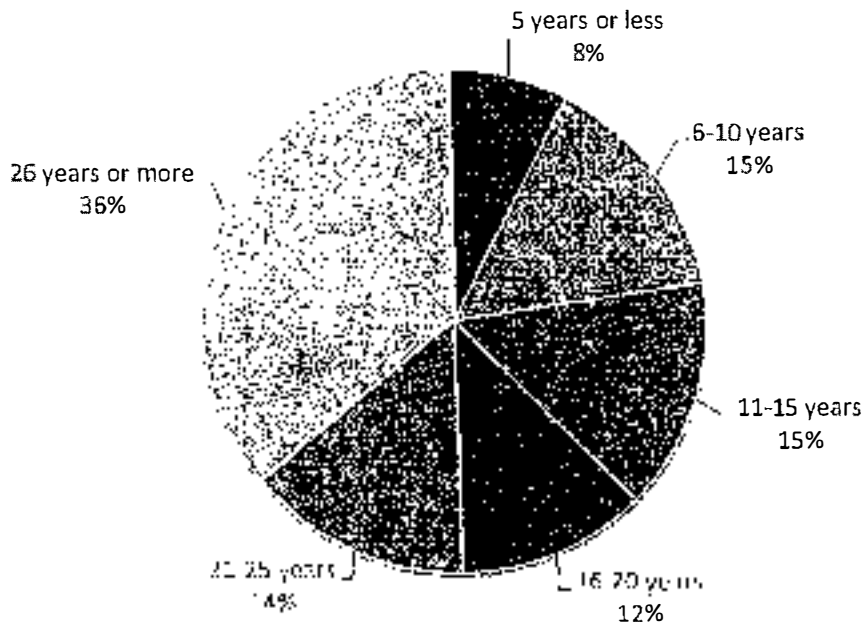
A breakdown of the type of attorney misconduct alleged in the 287 formal grievances received by the Office of the General Counsel in 2010 is as follows:



Of the 287 grievances registered, the area of practice is as follows:



The number of years in practice of the 195 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 287 formal grievances filed against 195 attorneys in 2010, 158 are attorneys in urban areas and 118 attorneys live and practice in rural areas. Eleven of the grievances were filed against attorneys licensed in Oklahoma but practicing out of state.

ATTORNEY SUPPORT SERVICES:

In 2010, the Office of the General Counsel prepared 1332 Certificates of Good Standing/Discipline History at the request of Oklahoma Bar Association members. There is no fee to the attorney for preparation of same.

In 2010, the Office of the General Counsel processed 576 new applications and 448 renewal applications submitted by out of state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. 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."

UNAUTHORIZED PRACTICE OF LAW:

Rule 5.1(b), Rules Governing Disciplinary Proceedings, 5. O.S. 2001 ch. 1 app. 1-A, empowers the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers. In 2010, the office investigated 29 complaints of UPL. Voluntary responses have been requested from each of the alleged

participants. The findings of the investigations are presented to the Commission. The Office of the General Counsel filed for and was granted civil injunctive relief in three UPL matters and the investigative process is ongoing as to several others.

CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA:

The Office of the General Counsel has represented the Oklahoma Bar Association in three civil (non-discipline) matters during 2010.

1. *Foumerat v. Wisconsin Law Review, et. al.*, Case No. 10-6131, is currently briefed and pending decision before the United States Court of Appeals for the Tenth Circuit.
2. *Mothershead v. State of Oklahoma ex rel. Oklahoma Bar Association*, was filed in the United States District Court for the Western District of Oklahoma wherein the Court dismissed the plaintiff's complaint. Plaintiff appealed to the United States Court of Appeals for the Tenth Circuit where his appeal was denied. Plaintiff then filed a Petition for Writ of Certiorari with the United States Supreme Court, Case No. 10-6816. Certiorari was denied on November 29, 2010.
3. The Office of the General Counsel is currently representing the OBA in the matter of *Fent v. Henry, et. al.* filed in 2010 and currently pending before the Oklahoma Supreme Court.

ETHICS AND EDUCATION:

During 2010, the General Counsel, Assistant General Counsels, and the Professional Responsibility Commission members continued to speak to county bar association meetings, Continuing Legal Education classes, law school classes and

various civic organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. 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*.

RESPECTFULLY SUBMITTED this 4th day of February, 2011, 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

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Introduction

The Professional Responsibility Tribunal (PRT) was established by order of the Supreme Court of Oklahoma in 1981, under the Rules Governing Disciplinary Proceedings, 5 O.S. 2001 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 petitions for reinstatement to the practice of law. A formal disciplinary proceeding¹ is initiated by written complaint,² which is a specific pleading filed with the Chief Justice of the Supreme Court. Petitions 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 seven 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, but limited to two terms. Terms end on June 30th of the last year of a member's service.

¹ Formal disciplinary proceedings, which occasionally incorporate allegations of personal incapacity to practice law, arise in matters involving alleged misconduct by lawyers. Typically, charges include alleged violations of the Oklahoma Rules of Professional Conduct, 5 O.S. Ch.1, App. 3-A., and the RGDP. Unless and until a formal complaint is authorized by the Professional Responsibility Commission and filed by the General Counsel, the matter will not come before the PRT.

² The complaint in this context should not be confused with a grievance (commonly termed a "bar complaint") or request for investigation, both of which are lodged with the General Counsel of the Oklahoma Bar Association.

Pursuant to rule,³ members are required to meet annually to address organizational and other matters touching upon the PRT's purpose and objectives. They also elect a Chief Master and a Vice-Chief Master, both of whom serve for a term of one-year. 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 2010 were: Martha Rupp Carter, Tulsa; Dietmar K. Caudle, Lawton; Lorenzo T. Collins, Ardmore; Patrick T. Cornell, Clinton; Steven Dobbs, Oklahoma City (term ended June 30); Luke Gaither, Henryetta; Robert H. Gilliland, Jr., Oklahoma City; Diane S. Goldschmidt, Oklahoma City; Cody B. Hodgden, Woodward; Andrew E. Karim, Oklahoma City; William G. LaSorsa, Tulsa (term began June 30); Kieran D. Maye Jr., Oklahoma City; Stephen R. McNamara, Tulsa; F. Douglas Shirley, Watonga; James M. Sturdivant, Tulsa.

Non-lawyer members who served during all or part of 2010 were: Norman Cooper, Norman; Glo Henley, Oklahoma City (resigned November 13); Kenneth D. Mitchell, Guthrie (term ended June 30); Bill Pyeatt, Norman; Jason Redd, Elk City; John Thompson, Nichols Hills; and Mary Lee Townsend, Tulsa. As of December 31, two non-lawyer member vacancies existed.

The annual meeting was held on June 30, 2010, at the Oklahoma Bar Association offices. Agenda items included a visit by the General Counsel,⁴ appointment of a committee to review procedural rules, recognition of new members and members whose terms had ended, and discussions concerning the work of the PRT. Andrew E. Karim was elected Chief Master and Kieran D. Maye, Jr., was elected Vice-Chief Master, each to serve a one-year term.

³ Rule 4.2, RGP.

⁴ The General Counsel of the Oklahoma Bar Association customarily makes an appearance at the annual meeting for the purpose of thanking members for their service and to answer any questions PRT members may have. Given the independent nature of the PRT, all other business is conducted in the absence of the General Counsel.

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 PRT members (two lawyers and one non-lawyer) to serve as a Trial Panel of Masters. The Chief Master designates one of the two lawyer-members to serve as Presiding Master. Two of the three 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 petitions 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 Chief 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,⁵ 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.

Respondents in disciplinary or incapacity proceedings and petitioners in reinstatement proceedings are entitled to be represented by counsel.

Trial Panel Reports

After the conclusion of a hearing, the Trial Panel prepares a written report to the Supreme Court. The report includes findings of fact 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 petition, 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 a respondent or petitioner. Also filed in the case are all pleadings, transcript of proceeding, and all exhibits offered at the hearing.

⁵ As a practical matter, all parties usually participate by telephone conference in matters involving scheduling issues.

Trial Panel reports and recommendations are advisory only. The Supreme Court has exclusive jurisdiction over all disciplinary and reinstatement matters. It has the constitutional and nondelegable power to regulate both the practice of law and legal practitioners. Accordingly, the Supreme Court is bound by neither the findings nor a 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. Annual reports, however, are based on the calendar year. Hence, this Annual Report covers the activities of the PRT for the preceding year, 2010.

Activities in 2010

At the beginning of the calendar year, five disciplinary and six 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 12 disciplinary complaints, four of which included allegations of personal incapacity;⁶ one complaint filed solely on the basis of alleged personal incapacity (but later consolidated with its previously filed companion disciplinary proceeding);⁷ and 12 reinstatement petitions. Trial Panels

⁶ Allegations of personal incapacity to practice law that are made under Rule 10, RGDP, remain confidential, unless otherwise ordered by the Supreme Court.

⁷ The Trial Panel assigned to hear the disciplinary proceeding was assigned to hear the personal incapacity proceeding.

conducted a total of 17 hearings; seven in disciplinary and ten in reinstatement proceedings. A total of 16 Trial Panel reports were filed during the year.

On December 31, a total of 15 matters, seven disciplinary and eight reinstatement proceedings, were pending before the PRT.

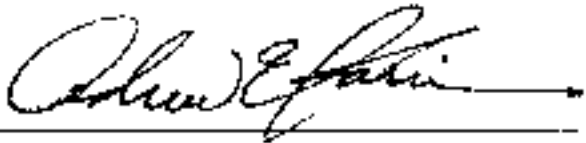
Proceeding Type	Pending Jan 1, 2010	New Matters in 2010	Hearings Held 2010	Reports Filed 2010	Other Disposition	Pending Dec 31, 2010
Disciplinary	5	12	7	6	4	7
Reinstatement	6	12	10	10	-	8
Total	11	24	17	16	4	15

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' sense of commitment to the purpose and responsibilities of the PRT is carried forward from year to year.

Dated this 3rd day of February, 2011.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

By 

Andrew E. Karim, Chief Master