

SCBD #5831

FILED
SUPREME COURT BAR DOCKET
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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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, 2011 through December 31, 2011

Filed with the Oklahoma Supreme Court, January 31, 2012

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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 2011 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 2011 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 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.

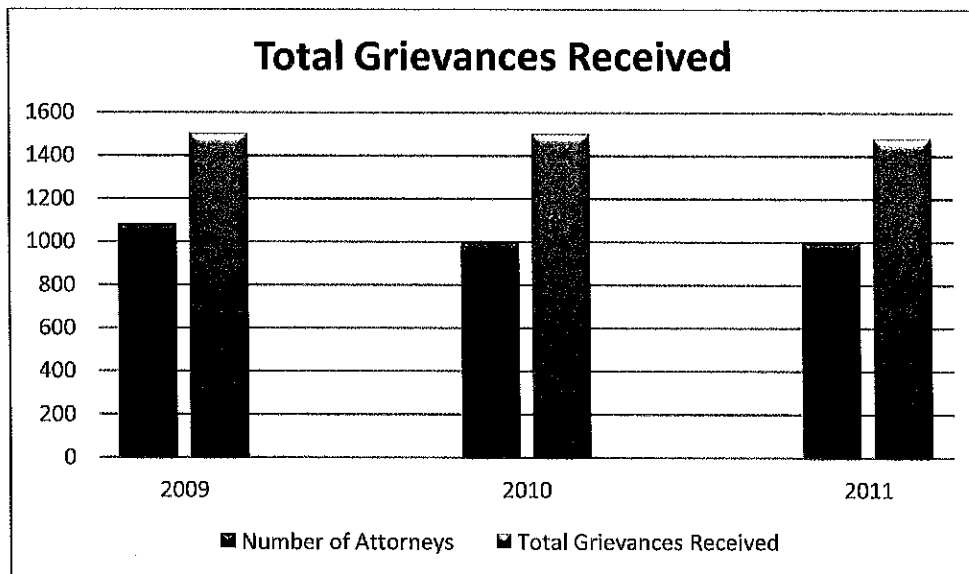
VOLUME OF GRIEVANCES:

During 2011, the Office of the General Counsel received 265 formal grievances involving 200 attorneys and 1214 informal grievances involving 907 attorneys. In total, 1479 grievances were received against 999 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 448 items of general correspondence, which is mail not considered to be a grievance against an attorney.

On January 1, 2011, 302 formal grievances were carried over from the previous year. During 2011, 265 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 567 formal investigations pending throughout 2011. Of those grievances, 316 investigations were completed by the Office

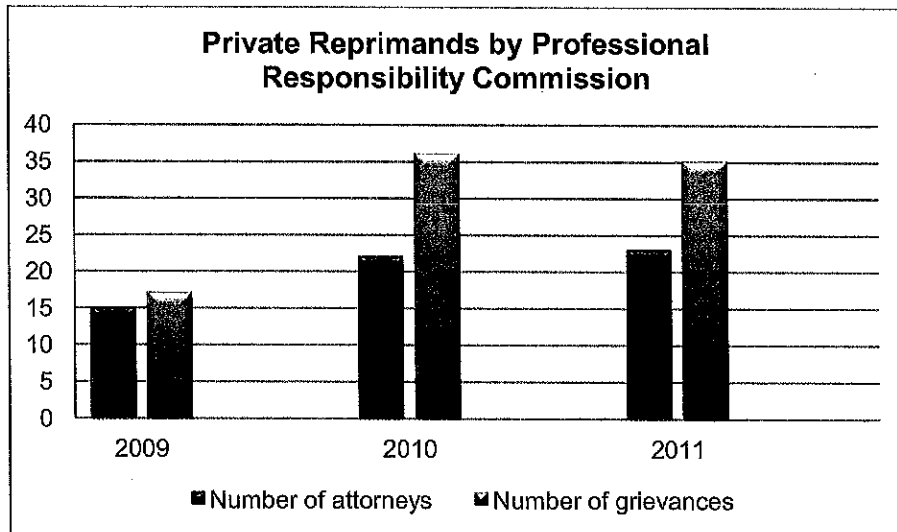
of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 251 investigations were pending on December 31, 2011.

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.

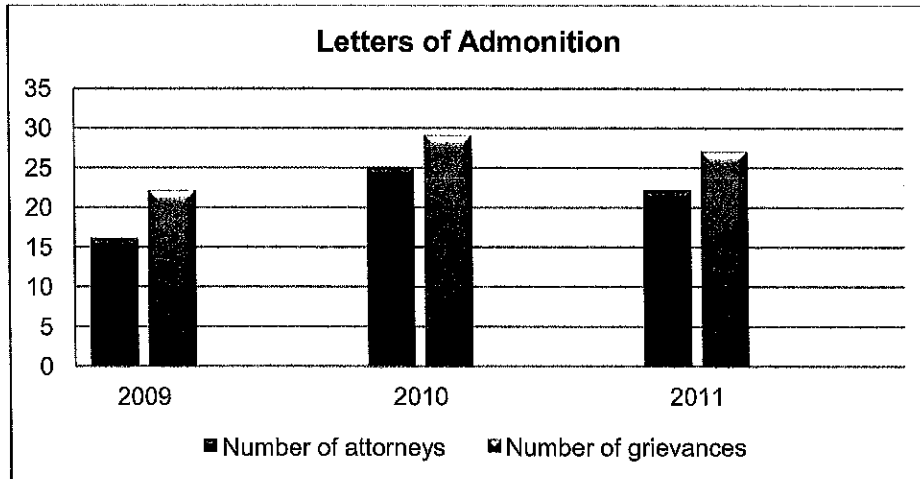


DISCIPLINE BY THE PROFESSIONAL RESPONSIBILITY COMMISSION:

1. **Formal Charges.** During 2011, the Commission voted the filing of formal disciplinary charges against 16 lawyers involving 48 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 2011, the Commission issued private reprimands to 23 attorneys involving 35 grievances.



3. **Letters of Admonition.** During 2011, the Commission issued letters of admonition to 22 attorneys involving 27 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 205 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 2011, the Commission referred 42 attorneys to be admitted into the Diversion Program for conduct involving 65 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. In addition to one or more of these instructional classes, the following resources can be made a part of the individual's Diversion Program Agreement: Management Assistance Program Office Review, Lawyers Helping Lawyers Assistance Program, Medical/Psychological Monitoring and Mentor/Peer Referral. 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 basic accounting procedures and 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 account issues.

2010-2011 Participation in Diversion Program Curriculum

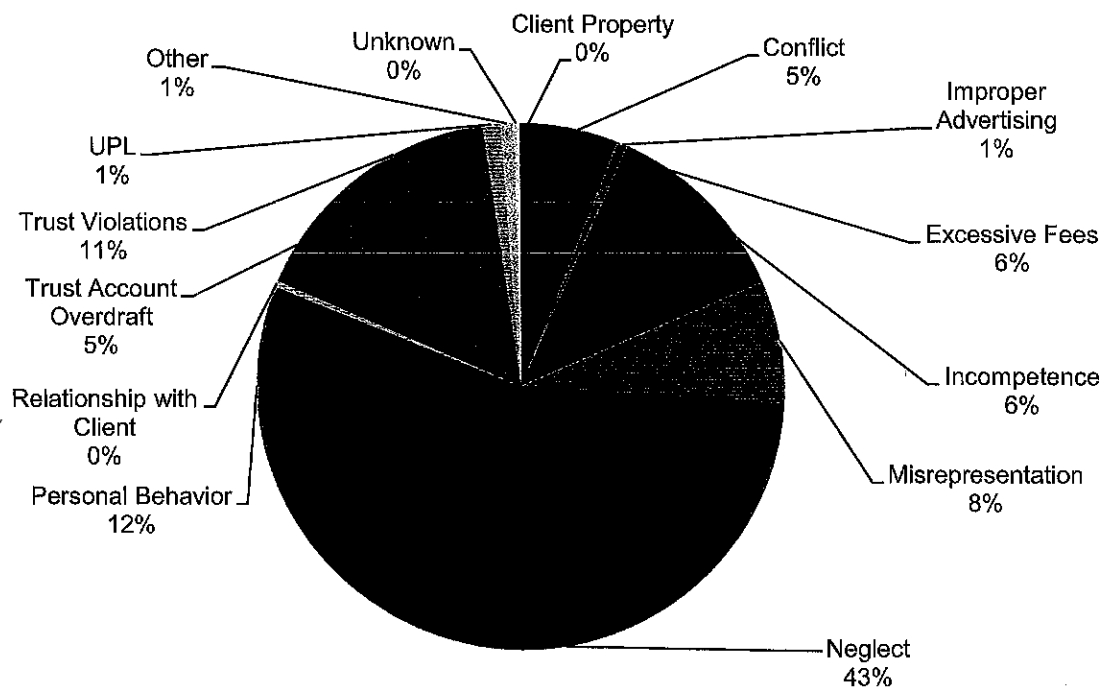
Law Office Management Training:	31 Attorneys
Communication and Client Relationship Skills:	30 Attorneys
Professionalism in the Practice of Law:	5 Attorneys
Professional Responsibility / Ethics School:	28 Attorneys
Client Trust Account School:	31 Attorneys

SURVEY OF GRIEVANCES:

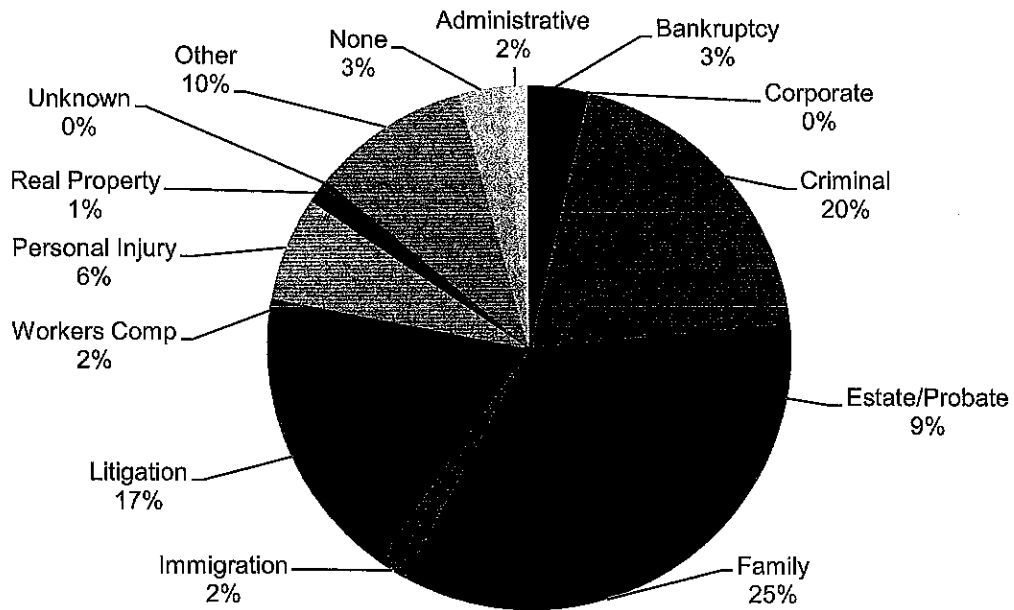
In order to better inform the Supreme Court, the bar and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Total membership of the Oklahoma Bar Association as of December 31, 2011 was 16,955 attorneys. Considering the total membership, the receipt of 1479 formal and informal grievances during 2011, involving 999 attorneys, constituted approximately seven percent of the attorneys licensed to practice law by the Oklahoma Supreme Court.

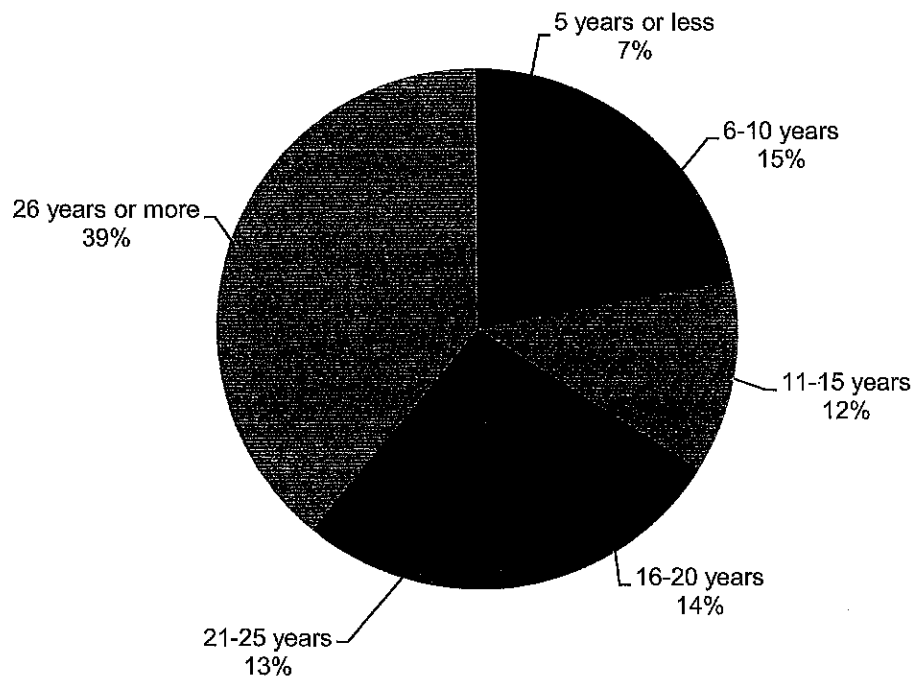
A breakdown of the type of alleged attorney misconduct alleged in the 265 formal grievances received by the Office of the General Counsel in 2011 is as follows:



Of the 265 formal grievances, the area of practice is as follows:



The number of years in practice of the 200 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 265 formal grievances filed against 200 attorneys in 2011, 137 are attorneys in urban areas and 117 attorneys live and practice in rural areas. Eleven of the grievances were filed against attorneys licensed in Oklahoma but practicing out of state.

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2011, 27 disciplinary cases were acted upon by the Oklahoma Supreme Court. The Court consolidated one case and the public sanctions are as follows:

Disbarment:

<u>Respondent</u>	<u>Effective Date</u>
Gordon Jr., George David	05/03/11
Passmore II, Joe Richard	10/25/11

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

<u>Respondent</u>	<u>Effective Date</u>
Woolverton, Daniel Allen	05/02/11
Taylor, Michael C.	05/02/11
Noland, Rhonda Virginia	05/24/11
Merritt, John Milton	06/27/11
Cathey, William Reeves	06/27/11
Lewis, Donald Reagan	06/28/11
Schraeder, Fred M.	11/14/11

Disciplinary Suspensions:

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Edwards, Timothy Charles	2 years + 1 day	01/25/11
Clayborne, Mark Anthony	Rule 7/ Indefinite	06/20/11
Wilcox, Tom J.	Rule 7/ Indefinite	06/30/11
Hayes, John McPherson	30 days	07/06/11
Running, Jon R.	2 years + 1 day	08/17/11
Clark Jr., William Louis	Rule 7/ Indefinite	08/17/11
Latimer, Caesar Cooleridge	2 years + 1 day	09/20/11

Public Censure:

<u>Respondent</u>	<u>Effective Date</u>
Smith, Tracy	01/31/11
Strickland, Gray M.	06/14/11
Neeld, James Charles	06/27/11
Cox, Ronald D.	07/06/11

In addition to the public discipline imposed in 2011, the Court also issued the following non-public sanctions:

Suspension

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Rule 10 Confidential	Indefinite	02/15/11

Rule 6/10 Confidential	Indefinite	03/21/11
Rule 6/10 Confidential	Indefinite	04/25/11
Rule 6/10 Confidential	Indefinite	04/25/11

Interim Suspension

<u>Respondent</u>	<u>Length</u>	<u>Effective Date</u>
Rule 10 Confidential	Indefinite	01/11/11

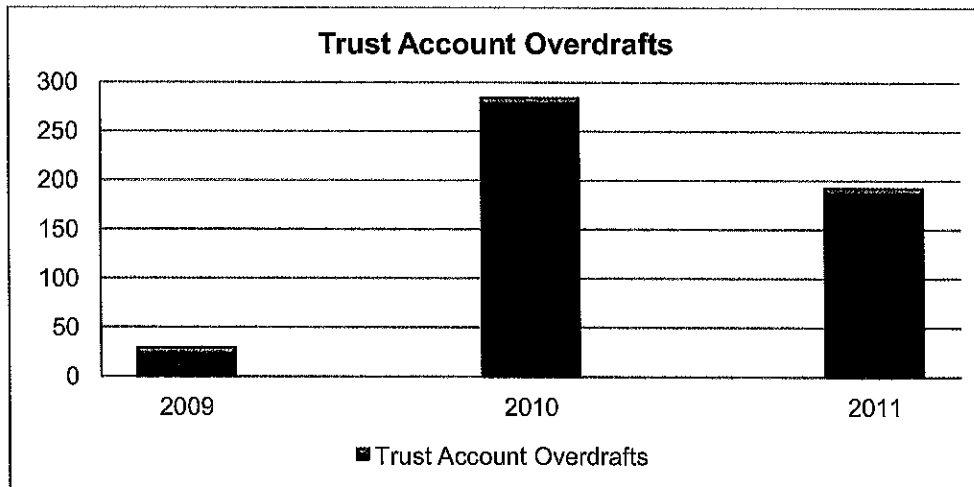
There were 24 discipline cases filed with the Supreme Court on January 1, 2011. During 2011, 16 new formal complaints, three Rule 7 Judgments and four Resignations Pending Disciplinary Proceedings were filed for a total of 47 cases. On December 31, 2011, 19 cases remained filed and pending before the Oklahoma Supreme Court.

There were 10 active reinstatement cases filed with the Oklahoma Supreme Court as of January 1, 2011. There were nine new petitions for reinstatement filed in 2011. In 2011, the Supreme Court approved four reinstatements, dismissed two and three were withdrawn. On December 31, 2011, there were 10 petitions for reinstatement filed and pending before the Oklahoma Supreme Court.

TRUST ACCOUNT OVERDRAFT REPORTING:

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 2011, 192 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:

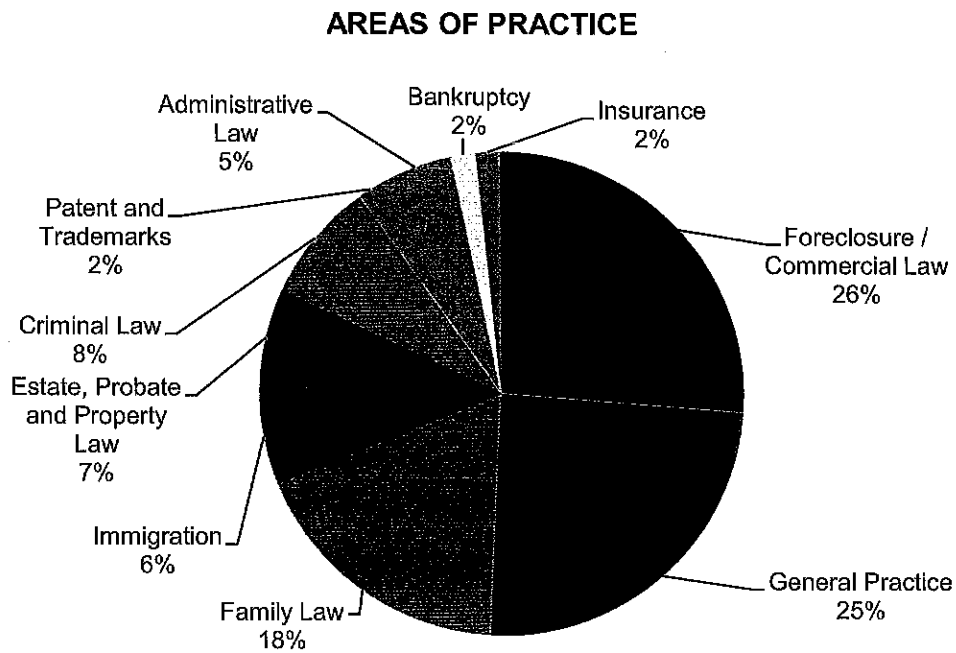
Rule 5.1(b), Rules Governing Disciplinary Proceedings, 5. O.S. 2001 ch. 1 app. 1-A, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers.

REQUESTS FOR INVESTIGATION:

The Office of the General Counsel has processed over 61 requests for investigation of the unauthorized practice of law requests for investigations since 2010. In 2011, this office received 27 complaints concerning 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. This Office investigates only those complaints alleging harm to the public caused by the unauthorized practice of law.

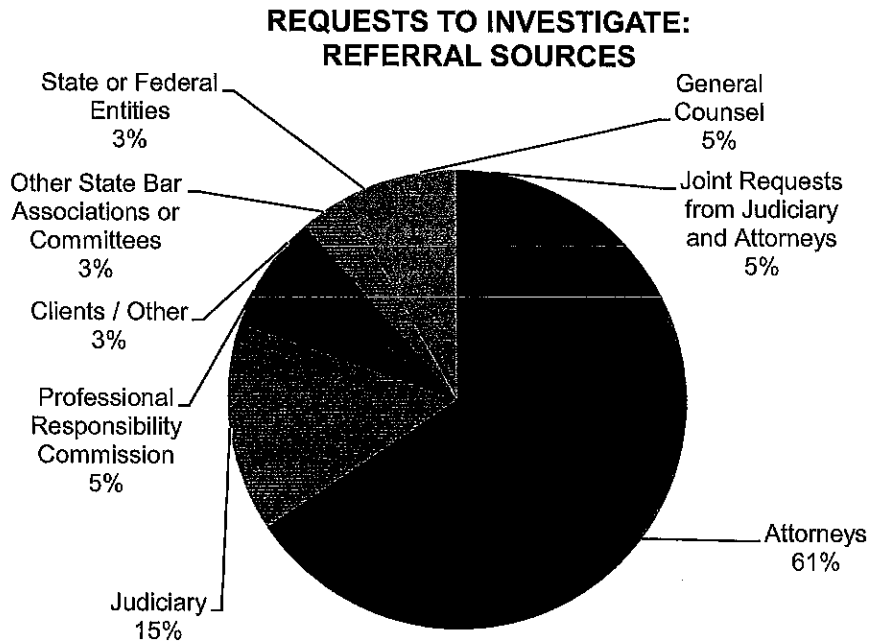
PRACTICE AREAS:

Allegations of the unauthorized practice of law encompass various areas of law. Most complaints concern individuals assisting *pro se* litigants defending foreclosure actions. In the chart below, the "General Practice" category denotes non-lawyer individuals that advertise or allegedly perform legal services relating to family law, criminal law (including appellate relief), civil rights, guardianships, small claims, wills, trusts, estate matters, business entities, property issues and name change petitions. The remaining categories are reserved for non-lawyer individuals that advertise or allegedly perform legal services in a specific area of law.



REFERRAL SOURCES:

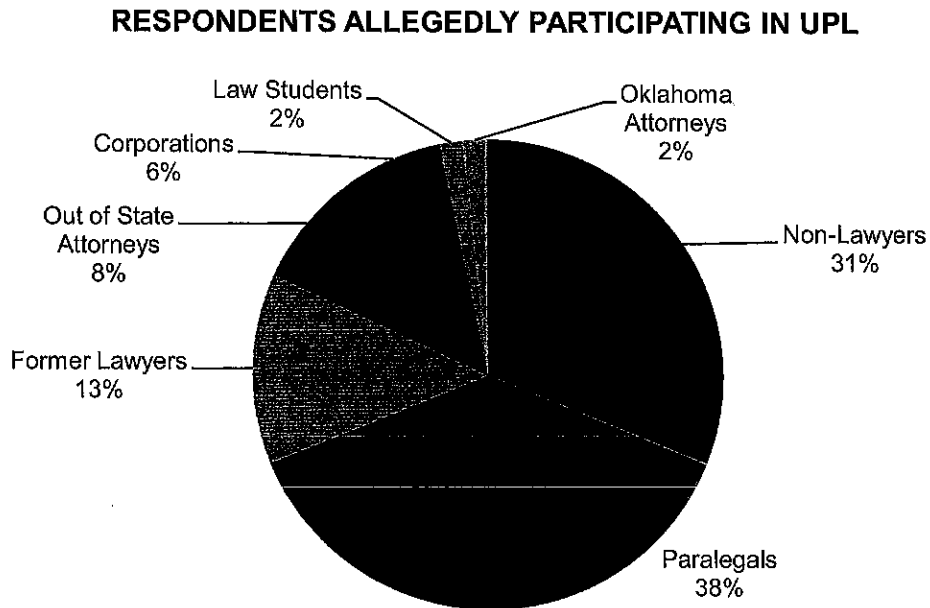
Requests for investigations of allegations of the unauthorized practice of law stem from multiple sources. Oklahoma attorneys and attorneys from other jurisdictions are the most frequent source for requests for investigation. Judicial referrals, requests from State and Federal agencies, harmed members of the public, the Professional Responsibility Commission and the Office of the General Counsel also report alleged instances of individuals engaging in the unauthorized practice of law.



RESPONDENTS:

Most requests for investigation into allegations of the unauthorized practice of law concern paralegals (or paralegal firms) and 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-

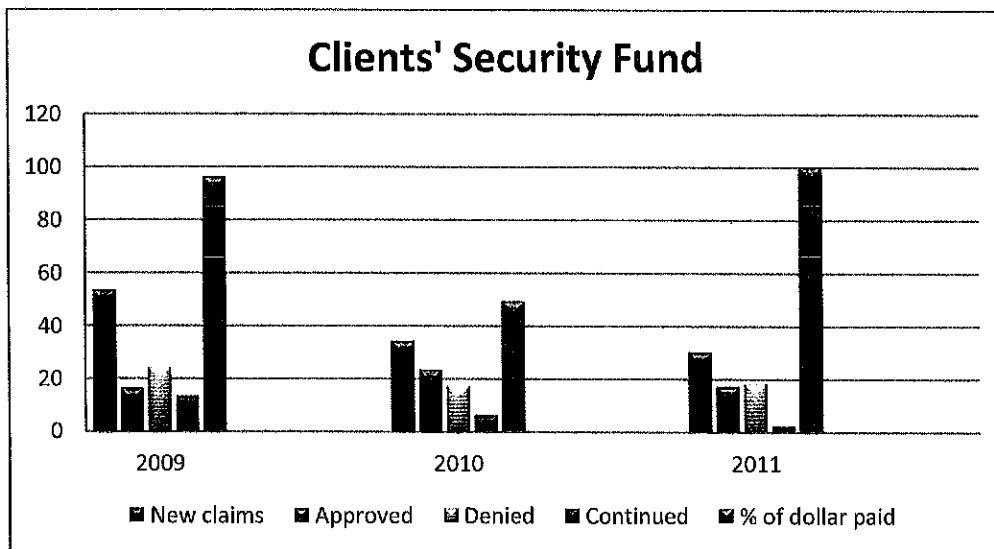
lawyers” claim to have expertise in the foreclosure process. The “Former Lawyers” category includes lawyers who have been disbarred, stricken, resigned their law license pending disciplinary proceedings or otherwise voluntarily surrendered their license to practice law in the State of Oklahoma.



CLIENT 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 16 members (13 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. 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 small 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 2011, the Office of the General Counsel investigated and presented to the Committee 30 new claims. The Committee approved 17 claims, denied 18 claims and continued 2 claims to 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 2011:

1. *Fent v. Henry et al.*, Oklahoma Supreme Court, Case No. 109026, filed December 20, 2010. Fent filed an application to assume original jurisdiction and petition against Governor Henry, Oklahoma Bar Association and the Judicial Nominating Commission. On February 8, 2011, the Court heard oral argument. The petition was *denied* on February 15, 2011.

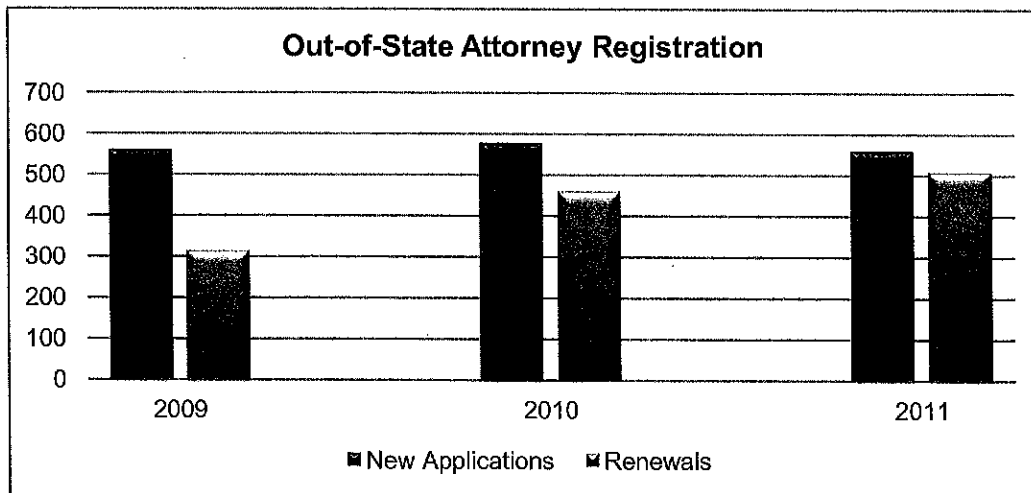
2. *State of Oklahoma ex rel. Oklahoma Bar Association v. Mothershed*, Oklahoma Supreme Court, SCBD 4687.
 - *State ex rel. Oklahoma Bar Association v. Mothershed*, Oklahoma Supreme Court, SCBD No. 4687, December 2010. Mothershed filed Petition to Vacate and Motion for Order Nunc Pro Tunc under the closed SCBD disciplinary case number with the Oklahoma Supreme Court. This Office filed its Response on January 5, 2011. Petition *denied* on October 11, 2011. Mothershed filed Petition for Rehearing on October 13, 2011 that was *denied* on November 21, 2011.
 - *Mothershed v. Justices of the Supreme Court of Arizona, et al.*, U.S. District Court for Arizona, Case No. CIV-02-2375-PHX-RCB. On December 1, 2011, Mothershed filed Notice of Grounds for this Court's Nondiscretionary Duty to Upon its *Sua Sponte* Motion to Partially Vacate Judgments and Reinstate Federal Plaintiff's Claims. On December 2, 2011, the Court ordered Mothershed's Motion/Notice stricken from the record.
 - *Mothershed v. State of Oklahoma ex rel. Oklahoma Bar Association*, U. S. District Court for the Western District of Oklahoma, Case No. CIV-10-199-F. Mothershed filed "Notice of Grounds for this Court's Nondiscretionary Duty to Upon its *Sua Sponte* Motion to Vacate Judgment and Reinstate Federal Plaintiff's Claims" on November 28, 2011. Motion/Notice was *denied* on November 29, 2011. On December 5, 2011, Mothershed filed a Motion for Reconsideration with Supplement. The Motion was *denied* on December 7, 2011.
 - *Mothershed v. State of Oklahoma ex rel. Oklahoma Bar Association*, Tenth Circuit Court of Appeals, 11-6329. On December 12, 2011, Mothershed filed a Docketing Statement, Entry of Appearance, Motion for Summary Reversal and Application for Electronic Filing. *Pending*.
3. *Fournerat v. Wisconsin Law Review et al.*, United States Supreme Court, Case No. 11-5273.
 - *Fournerat v. Wisconsin Law Review, et al.*, United States District Court for the Western District of Oklahoma, Case No. CIV-09-391-M, Tenth Circuit Court of Appeals, Case No. 10-6131, filed June 3, 2010. Fournerat appealed the dismissal of his claims to the Tenth Circuit. *Affirmed* April 12, 2011.
 - *State of Oklahoma ex rel. Oklahoma Bar Association v. Fournerat*, Oklahoma Supreme Court, SCBD No. 4613. On December 7, 2010, Fournerat filed Motion to Re-Open his disciplinary case. OBA responded on January 18, 2011. The Court denied Respondent's motion on February 28, 2011.

- *Fournerat v. Wisconsin Law Review, et al.*, United States Supreme Court, Case No. 11-5273, docketed July 14, 2011. Certiorari denied October 3, 2011.
4. *Antone Knox v. Hendryx et al.*, Pittsburg County District Court, Case No. CV-2010-152, filed January 11, 2011. Knox filed petition against Hendryx, Williams and certain directors of the Oklahoma Health Department. *Dismissed* on February 16, 2011 as to defendants Hendryx and Williams.
 5. *Gather v. OKARNG, et al.*, Tenth Circuit Court of Appeals, Case No. 11-6212.
 - *Gather v. OKARNG, et al.*, United States District Court for the Western District of Oklahoma, Case No. CIV-11-260-F, filed March 10, 2011. *Dismissed* May 18, 2011.
 - *Gather v. OKARNG, et al.*, Tenth Circuit Court of Appeals, Case No. 11-6212, filed August 15, 2011. *Dismissed* August 19, 2011.
 - *Gather v. OKARNG, et al.*, United States Supreme Court, Case No. 11-7176, docketed November 3, 2011. Certiorari *denied* January 9, 2012.
 6. *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. Motions to Dismiss filed for Farabow, Williams and OBA. Court approved report and recommendation dismissing defendants – final judgment to be entered at conclusion of case. Unidentified employees of OBA to be dismissed with prejudice.
 7. *State of Oklahoma ex rel. Oklahoma Bar Association v. Butler et al.*, Tulsa County Case No. CV-2010-592. (Unauthorized Practice of Law). Permanent Injunction entered on October 17, 2011.
 8. *State of Oklahoma ex rel. Oklahoma Bar Association v. Metcalfe*, Pontotoc County Case No. CV-2010-163. (Unauthorized Practice of Law). Temporary Injunction in effect.
 9. *Antone Lamandingo Knox v. Hendryx*, Oklahoma Supreme Court Case No. MA-110,182, filed December 9, 2011. Petitioner's Application for Writ of Mandamus and Application to Assume Original Jurisdiction was *denied* on January 17, 2012.

ATTORNEY SUPPORT SERVICES:

1. Registration of Out of State Attorneys:

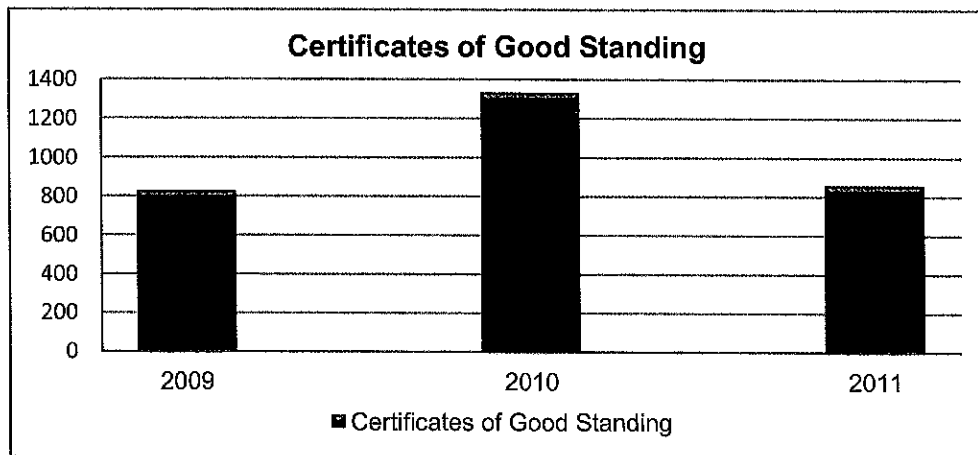
In 2011, the Office of the General Counsel processed 557 new applications, 505 renewal applications and \$3,800.00 in renewal late fees submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys appearing pro bono to represent 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 2011, the Office of the General Counsel also processed 38 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 2011, the Office of the General Counsel prepared 854 Certificates of Good Standing/Discipline History at the request of Oklahoma Bar Association members.

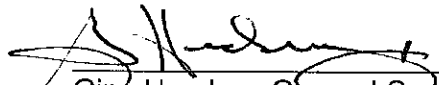
There is no fee to the attorney for preparation of same.



ETHICS AND EDUCATION:

During 2011, 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 31st day of January, 2012, 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

2011

SCBD No. 5832

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
JAN 31 2012
MICHAEL S. RICHIE
CLERK

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 proceeding is initiated by written complaint 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 7 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.

Pursuant to rule 4.2 of the Rules Governing Disciplinary Proceedings ("RDGP"), 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 2011 were: Jeremy J. Beaver, McAlester; Dietmar K. Caudle, Lawton; Lorenzo T. Collins, Ardmore; Patrick T. Cornell, Clinton; Luke Gaither, Henryetta; William G. LaSorsa, Tulsa; Susan B. Loving, Edmond; Kelli M. Masters, Oklahoma City; Stephen R. McNamara, Tulsa; Louis Don Smitherman, Oklahoma City; Neil E. Stauffer, Tulsa; F. Douglas Shirley, Watonga; James M. Sturdivant, Tulsa.

Non-lawyer members who served during all or part of 2011 were: Norman Cooper, Norman; Bill Pyeatt, Norman; Jason Redd, Elk City (resigned September 15, 2011); John Thompson, Nichols Hills; Mary Lee Townsend, Tulsa; James Richard Daniel, Oklahoma City (term began September 30, 2011); and Susan Savage, Oklahoma City. As of December 31, one non-lawyer member vacancy existed.

The annual meeting was held on June 30, 2011, at the Oklahoma Bar Association offices. Agenda items included a visit by the General Counsel,¹ recognition of new members and members whose terms had ended, and discussions concerning the work of the PRT, including approval of new Guidelines and Procedural Rules. F. Douglas Shirley was elected Chief Master and William G. LaSorsa 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.

¹ 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.

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, 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.

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 non-delegable 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. Therefore, this Annual Report covers the activities of the PRT for the preceding year, 2011.

Activities in 2011

At the beginning of the calendar year, 19 disciplinary and 7 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 23 disciplinary complaints and 8 reinstatement petitions. Trial Panels conducted a total of 25 hearings; 19 in disciplinary and 6 in reinstatement proceedings.

On December 31, a total of 22 matters, 15 disciplinary and 7 reinstatement proceedings, were pending before the PRT.

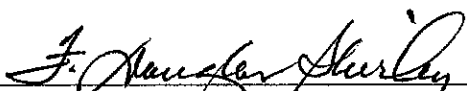
Proceeding Type	Pending Jan 1, 2011	New Matters In 2011	Hearings Held 2011	Other Dispositions	Pending Dec 31, 2011
Disciplinary	19	23	13	27	15
Reinstatement	7	8	6	10	7

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 17th day of January, 2012

PROFESSIONAL RESPONSIBILITY TRIBUNAL

By 
 F. Douglas Shirley, Chief Master