

FEB - 1 2018

SCBD # 6622

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, 2017 THROUGH DECEMBER 31, 2017

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
FEB - 1 2018

SCBD # 6622

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, 2017 THROUGH DECEMBER 31, 2017

INDEX

<u>INTRODUCTION</u>	2
The Professional Responsibility Commission	2
Responsibilities	2
<u>VOLUME OF GRIEVANCES</u>	3
<u>DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION</u>	4
1. Formal Charges	4
2. Private Reprimands	5
3. Letters of Admonition	5
4. Dismissals	6
5. Diversion Program	6
<u>SURVEY OF GRIEVANCES</u>	8
<u>DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT</u>	10
1. Disbarment	10
2. Resignation Pending Disciplinary Proceedings Approved by Court.....	11
3. Disciplinary Suspensions	11
4. Public Censure	11
5. Dismissals	12
<u>REINSTATEMENTS</u>	12
<u>TRUST ACCOUNT OVERDRAFT REPORTING</u>	13

<u>UNAUTHORIZED PRACTICE OF LAW</u>	14
1. Requests for Investigation	14
2. Practice Areas	14
3. Referral Sources	15
4. Respondents	15
5. Enforcement	16
<u>CLIENTS' SECURITY FUND</u>	16
<u>CIVIL ACTIONS (NON-DISCIPLINE)</u>	
<u>INVOLVING THE OBA</u>	18
<u>ATTORNEY SUPPORT SERVICES</u>	18
1. Out of State Attorney Registration	18
2. Certificates of Good Standing	20
<u>ETHICS AND EDUCATION</u>	20
<u>CONCLUSION</u>	21

INTRODUCTION:

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 2017 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. Terms expire on December 31st at the conclusion of the three-year term.

Lawyer members serving on the Professional Responsibility Commission during 2017 were R. Richard Sitzman, Oklahoma City; Richard Stevens, Norman; David Swank, Norman; Phillip J. Tucker, Edmond; and Sidney K. Swinson, Tulsa. The Non-Lawyer member was Rick Koch, Weatherford. R. Richard Sitzman served as Chairperson and Richard Stevens 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 to effectuate the purposes of the Rules Governing Disciplinary Proceedings. 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:

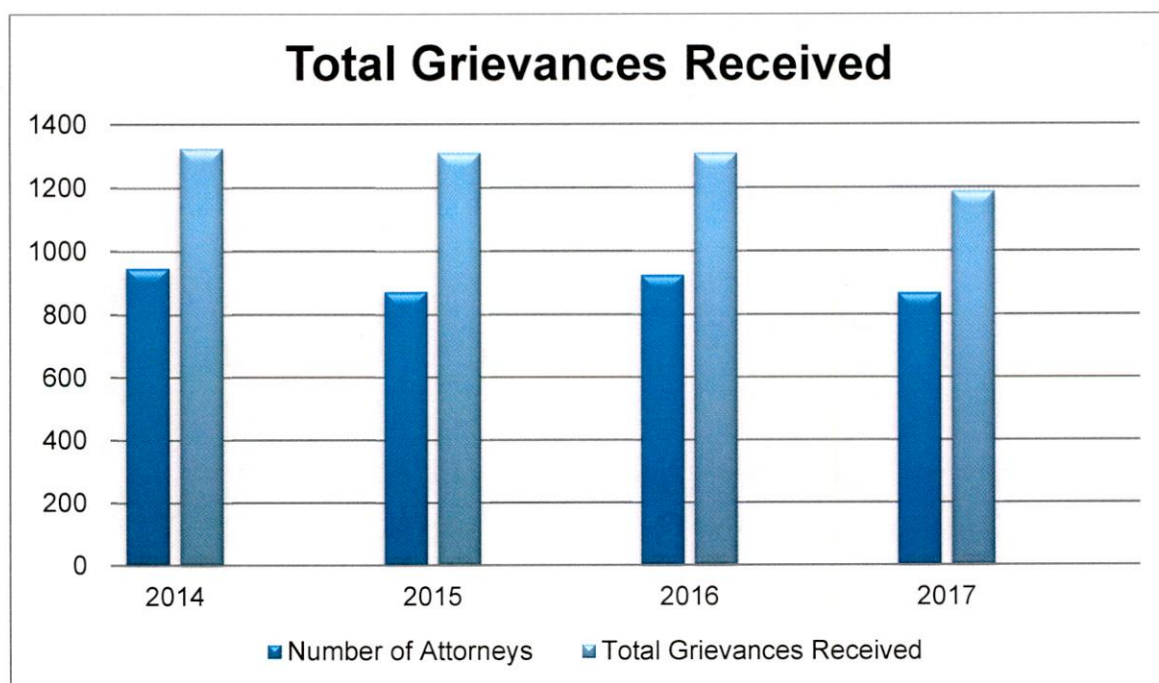
During 2017, the Office of the General Counsel received 214 formal grievances involving 165 attorneys and 973 informal grievances involving 701 attorneys. In total, 1187 grievances were received against 866 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 264 items of general correspondence, which is mail not considered to be a grievance against an attorney.¹

On January 1, 2017, 239 formal grievances were carried over from the previous year. During 2017, 214 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 453 formal investigations pending throughout 2017. Of those grievances, 312 investigations were completed by the Office of the

¹ The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to a formal grievance after investigation.

General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 141 investigations were pending on December 31, 2017.

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.

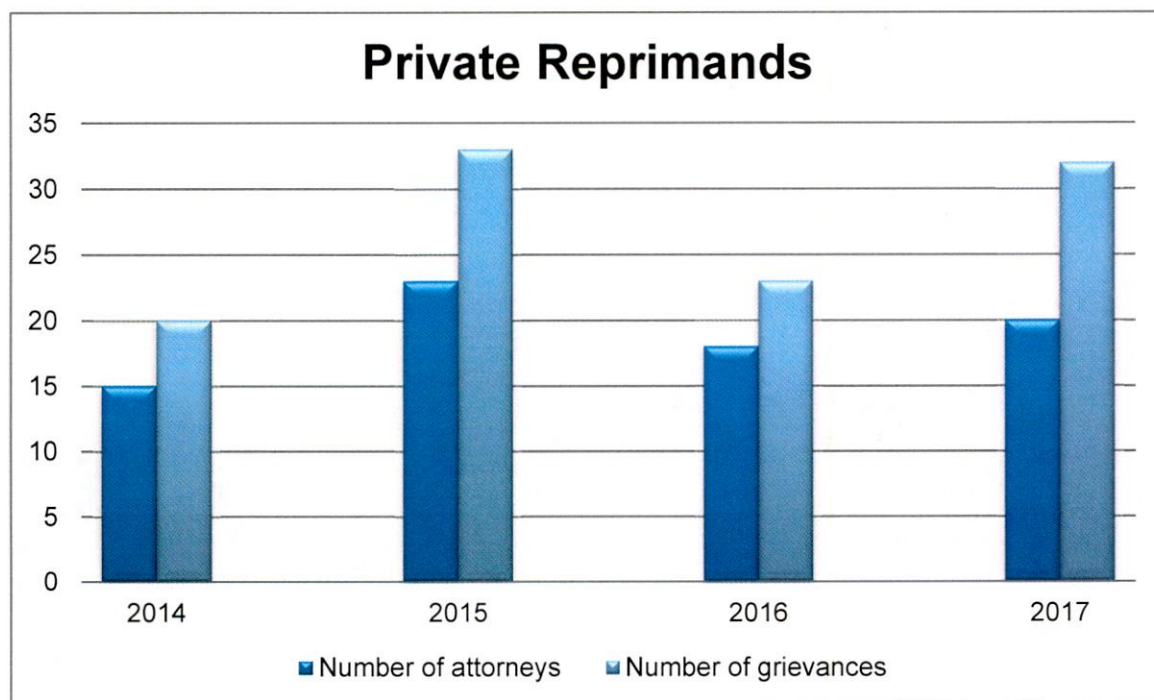


DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION:

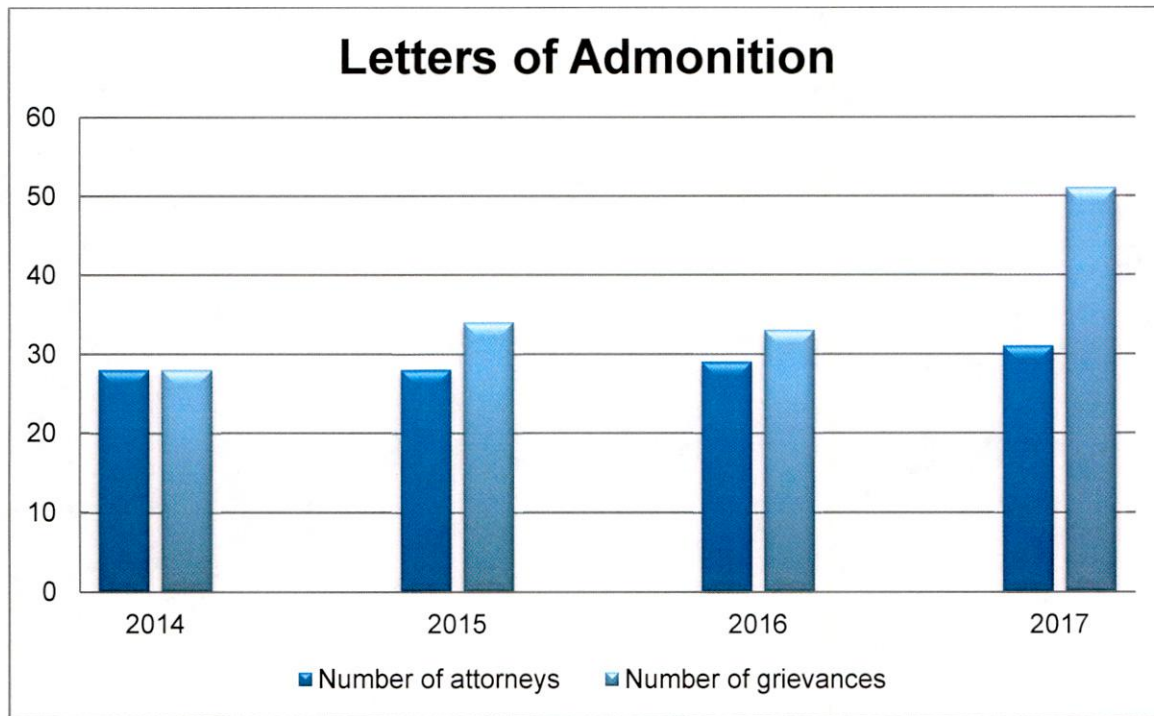
1. **Formal Charges.** During 2017, the Commission voted the filing of formal disciplinary charges against six lawyers involving 31 grievances. In addition, the Commission also

oversaw the investigation of five Rule 7, RGDP 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 2017, the Commission issued private reprimands to 20 attorneys involving 32 grievances.



3. **Letters of Admonition.** During 2017, the Commission issued letters of admonition to 31 attorneys involving 51 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule which the Commission believed warranted a warning rather than discipline.



4. **Dismissals.** The Commission dismissed 24 grievances due to the resignation of the attorney pending disciplinary proceedings, a continuing lengthy suspension or disbarment of the respondent attorney. Furthermore, the Commission dismissed nine grievances upon successful completion of a diversion program by the attorney. The remainder were dismissed where the investigation did not substantiate the allegations by clear and convincing evidence.
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 2017, the Commission referred 41 attorneys to be admitted into the Diversion Program for conduct involving 69 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 2017, instructional courses were taught by OBA Ethics Counsel Joe Balkenbush, OBA Management Assistance Program Director Jim Calloway, and OBA Practice Management Advisor Darla Jackson.

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 instruct on basic trust accounting procedures. In 2017, the OBA Management Assistance Program opened its trust account diversion classes to all OBA members.

2017 Attorney Participation in Diversion Program Curriculum

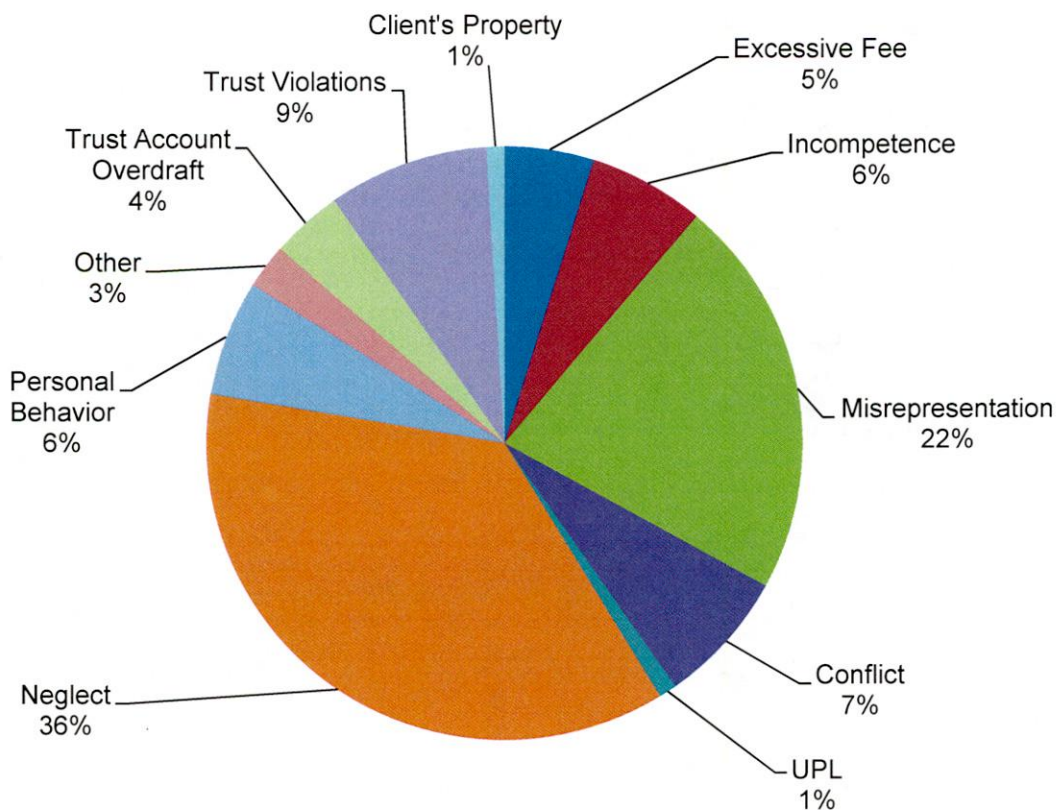
Law Office Management Training:	4 Attorneys
Communication and Client Relationship Skills:	15 Attorneys
Professionalism in the Practice of Law:	5 Attorneys
Professional Responsibility / Ethics School:	29 Attorneys
Client Trust Account School:	15 Attorneys
Law Office Consultations:	10 Attorneys

SURVEY OF GRIEVANCES:

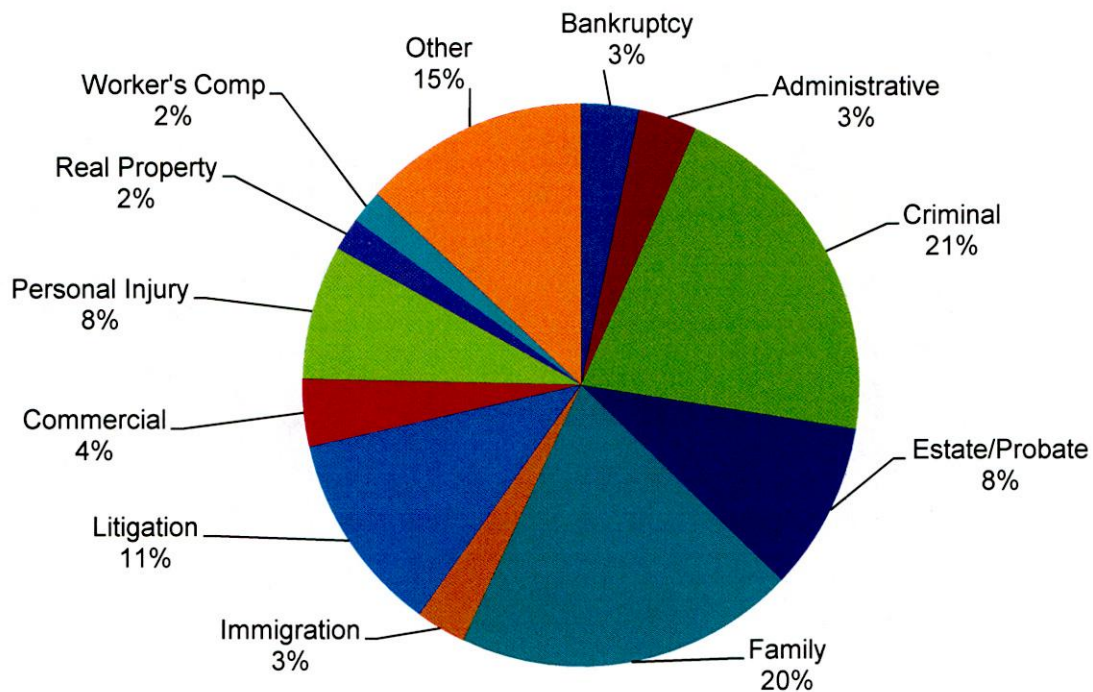
In order to better inform the Oklahoma Supreme Court, the bar, and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Total membership of the Oklahoma Bar Association as of December 31, 2017 was 17,859 attorneys. The total number of members include 11,946 males and 5,913 females. Formal and informal grievances were submitted against 921 attorneys. Therefore, approximately five percent of the attorneys licensed to practice law in Oklahoma received a grievance in 2017.

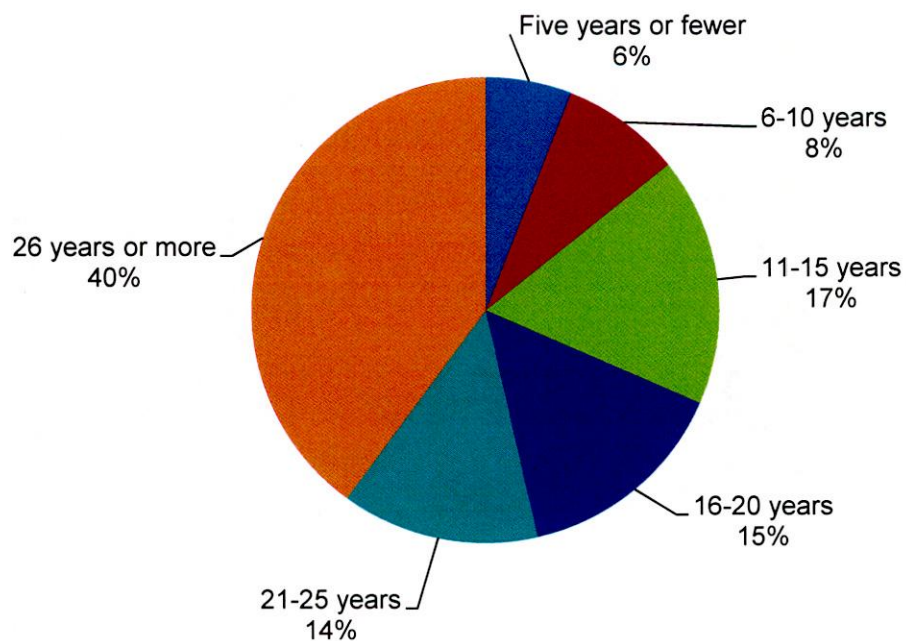
A breakdown of the type of attorney misconduct alleged in the 214 formal grievances opened by the Office of the General Counsel in 2017 is as follows:



Of the 214 formal grievances, the area of practice is as follows:



The number of years in practice of the 165 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. The age of attorneys involved in the disciplinary system is depicted below.

<i>Type of Complaint Filed</i>	Rule 6, RGDP	Rule 7, RGDP	Rule 10, RGDP	Rule 8, RGDP
<i>Number of Attorneys Involved</i>	3	11	0	7
<i>Age of Attorney</i>				
21-29 years old	0	0	0	0
30-49 years old	2	7	0	5
50-74 years old	1	4	0	2
75 or more years old	0	0	0	0

<i>Type of Discipline Imposed</i>	Dismissals	Public Censure	Disciplinary Suspension	Resignation Pending Disciplinary Proceedings	Disbarment
<i>Number of Attorneys Involved</i>	4	5	3	7	1
<i>Age of Attorney</i>					
21-29 years old	0	0	0	0	0
30-49 years old	3	4	0	5	1
50-74 years old	1	1	3	2	0
75 or more years old	0	0	0	0	0

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT:

In 2017, 36 disciplinary cases were acted upon by the Oklahoma Supreme Court.

The public sanctions are as follow:

1. Disbarment.

Respondent

Drummond, L. Caroline

Order Date

3/28/17

2. Resignations Pending Disciplinary Proceedings Approved by Court.

(Tantamount to Disbarment)

<u>Respondent</u>	<u>Order Date</u>
Nachimson, Jeffrey David	1/17/17
Harrison, Amy Elizabeth	6/26/17
Kerr, Robert Samuel IV	11/6/17
Mitchell, Allan E.	11/14/17
Foard, Jean Lea	11/20/17
Solis, Margarita	12/5/17
Corrales, Michael Joseph	12/18/17

3. Disciplinary Suspensions.

<u>Respondent</u>	<u>Length</u>	<u>Order Date</u>
Hastings, John Christopher	2 years	5/16/17
Hixson, W. Mark	6 months	6/20/17
Hyde, Martha Lynne	6 months	6/27/17

4. Public Censure.

<u>Respondent</u>	<u>Order Date</u>
Shahan, Ian Michael	2/7/17
McMillen, Mary Elaine Gillen	3/28/17
Hunt, John Marshall	4/11/17
Moody, Chad Ward	4/11/17
Helton, Scott Robert	4/18/17

5. Dismissals.

<u>Respondent</u>	<u>Order Date</u>
Swartz, Robert Louis (Felony Conviction; Rule 7, RGDP)	2/21/17
McVay, Dalen Dee (Misdemeanor Conviction; Rule 7, RGDP)	3/27/17
Jordan, Eric Michael (Misdemeanor Conviction; Rule 7, RGDP)	9/11/17
Stillwell, Jeremy Brent (Misdemeanor Conviction; Rule 7, RGDP)	12/18/17

There were 12 discipline cases filed with the Supreme Court as of January 1, 2017. During 2017, five new formal complaints, notice of 11 Rule 7, RGDP, Convictions, and six Resignations Pending Disciplinary Proceedings were filed for a total of 34 cases pending with the Supreme Court during 2017. On December 31, 2017, 19 cases remain filed and pending before the Oklahoma Supreme Court².

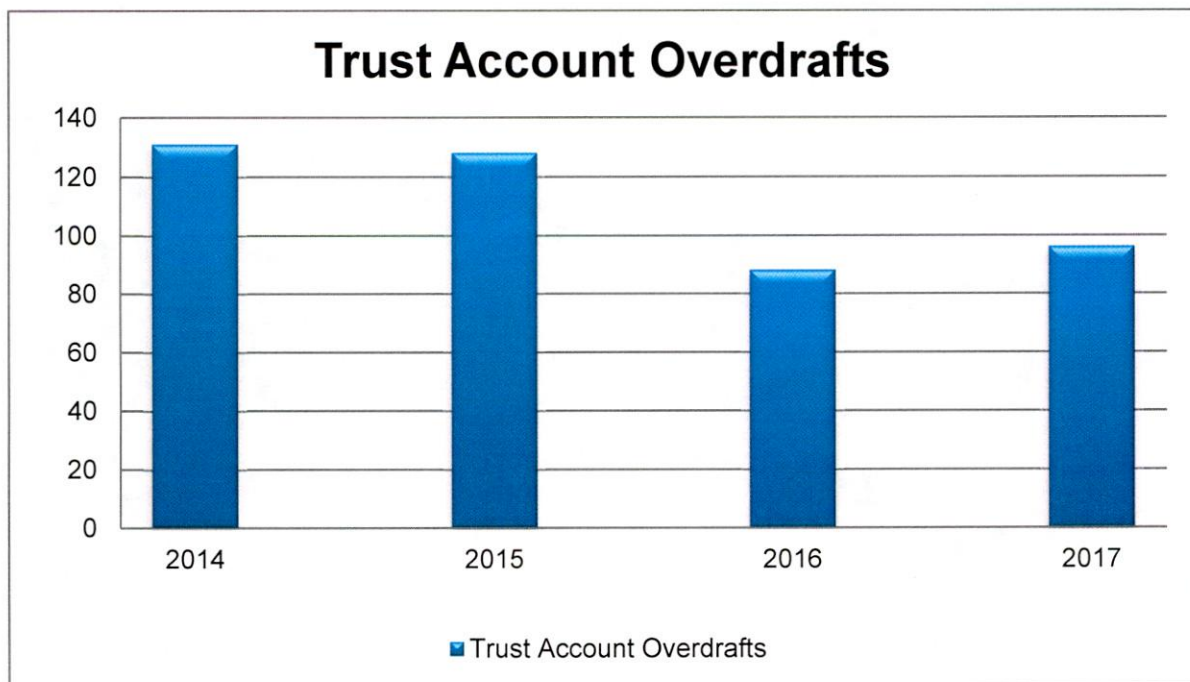
REINSTATEMENTS:

There were two petitions for reinstatement pending before the Professional Responsibility Tribunal and one petition for reinstatement pending with the Supreme Court as of January 1, 2017. There were ten new petitions for reinstatement filed in 2017. In 2017, the Supreme Court granted two reinstatements and two were withdrawn by the Petitioner. On December 31, 2017, there were six petitions for reinstatement pending before the Professional Responsibility Tribunal and three petitions for reinstatement pending before the Oklahoma Supreme Court.

² Five cases were stayed by the Court and are still considered pending by the Office of the General Counsel: SCBD 6318, Rule 7, RGDP; SCBD 6354, Rule 7, RGDP; SCBD 6512, Rule 7, RGDP; SCBD 6553, Rule 7, RGDP; and one Rule 10 Confidential matter, OBAD 2071.

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 (ORPC). Trust Account Overdraft Reporting Agreements are submitted by depository institutions. In 2017, 96 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 and supporting bank documents for the deficient account. Based upon the response, an investigation may be commenced. Repeated overdrafts due to negligent accounting practices may result in referral to the Discipline Diversion Program for instruction in proper trust accounting procedures.



UNAUTHORIZED PRACTICE OF LAW:

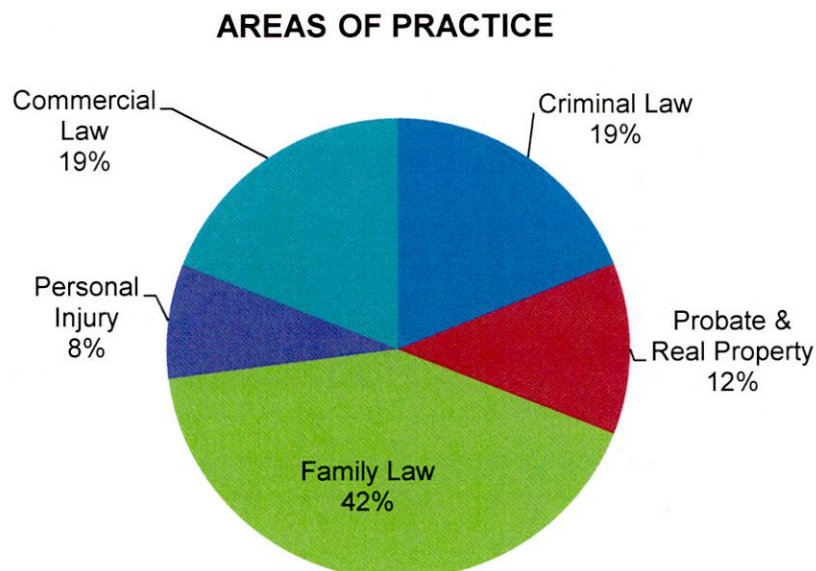
Rule 5.1(b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers, suspended lawyers and disbarred lawyers. Rule 5.5, ORPC, regulates the unauthorized practice of law by lawyers and prohibits lawyers from assisting others in doing so.

1. Requests for Investigation.

In 2017, 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.

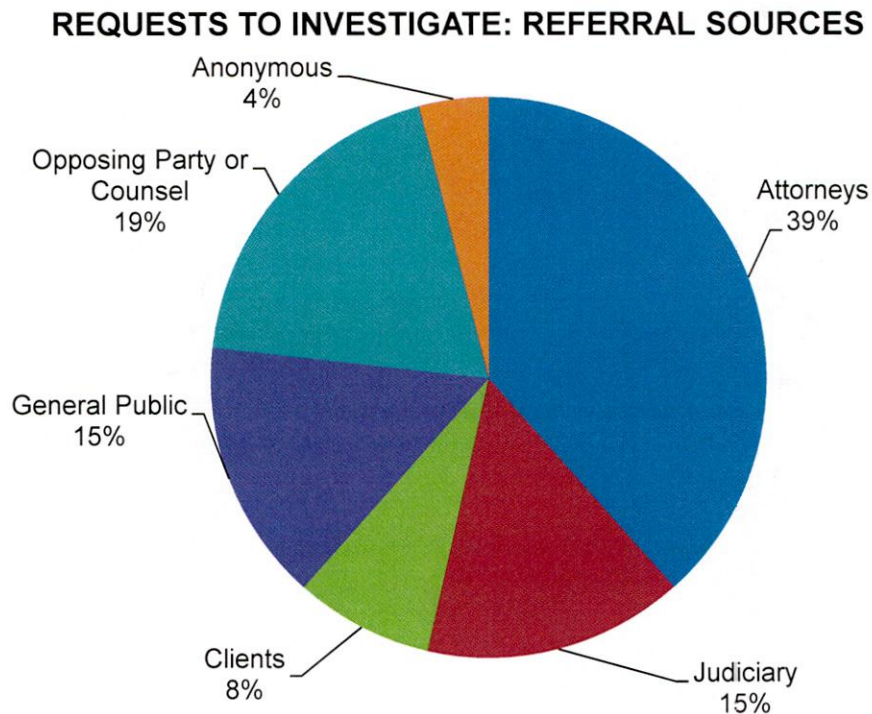
2. Practice Areas.

Allegations of the unauthorized practice of law encompass various areas of law. In previous years, most unauthorized practice of law complaints involved non-lawyers or paralegals handling divorce matters but that trend had declined over the last few years. However, in 2017, a significant number of UPL complaints again involved family law matters.



3. Referral Sources.

Requests for investigations of the unauthorized practice of law stem from multiple sources. In 2017, the Office of the General Counsel received the most complaints from attorneys.

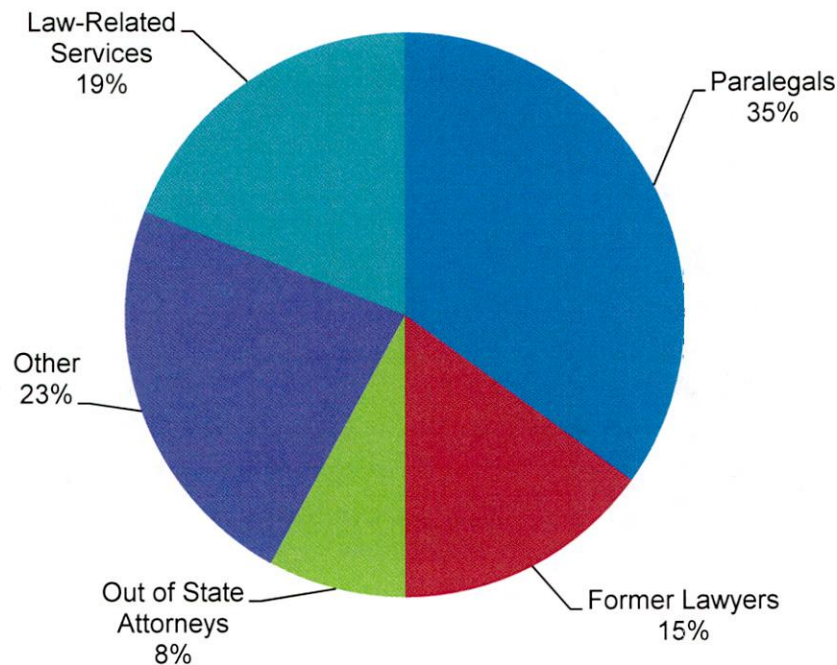


4. Respondents.

For 2017, most requests for investigation into allegations of the unauthorized practice of law related to paralegals.

For purposes of this summary, the category “paralegal” refers to an individual who advertises as a paralegal and performs various legal tasks for their customers, including legal document preparation. 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.

RESPONDENTS ALLEGEDLY PARTICIPATING IN UPL



5. Enforcement.

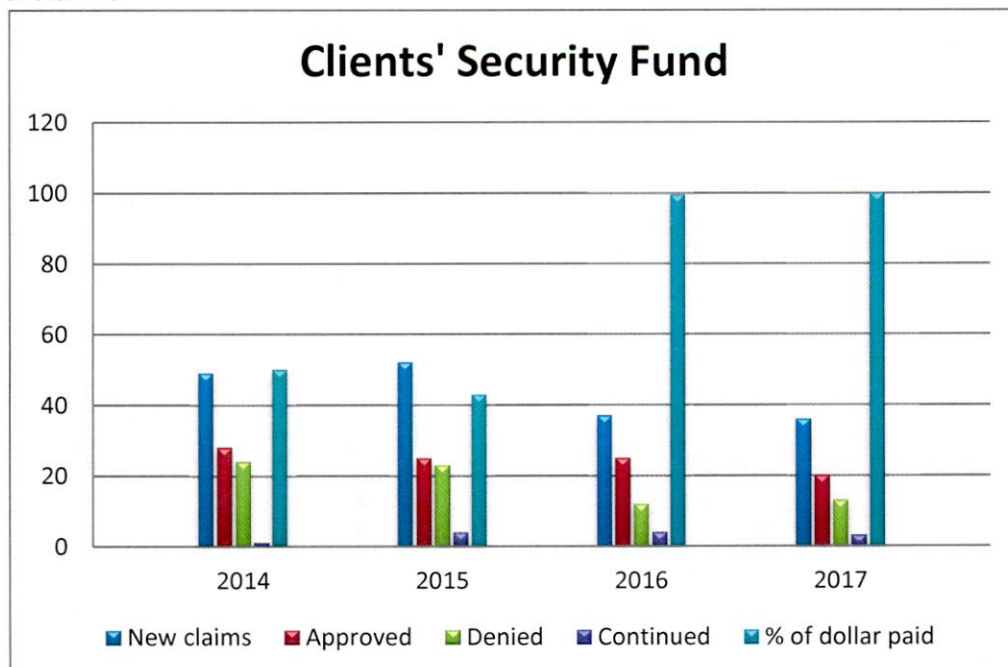
In 2017, of the 26 cases opened, the Office of the General Counsel took formal action in five matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, referring a case to an appropriate state and/or federal enforcement agency, or filing the appropriate district court action. Twelve cases were closed for no finding of the unauthorized practice of law. The remainder of the cases is 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 17 members, 14 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 2017, 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 \$175,000.00 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 \$175,000.00. The Office of the General Counsel reviews, investigates, and presents the claims to the committee. In 2017, the Office of the General Counsel presented 36 new claims to the Committee. The Committee approved 20 claims, denied 13 claims, and continued 3 claims into the following year for further investigation. In 2017, the Clients' Security Fund paid a total of \$57,240.62 on 20 approved claims.



CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA:

The Office of the General Counsel represented the Oklahoma Bar Association in two civil (non-discipline) matters during 2017. One case carried forward into 2018. The following is a summary of all 2017 civil actions against or involving the Oklahoma Bar Association:

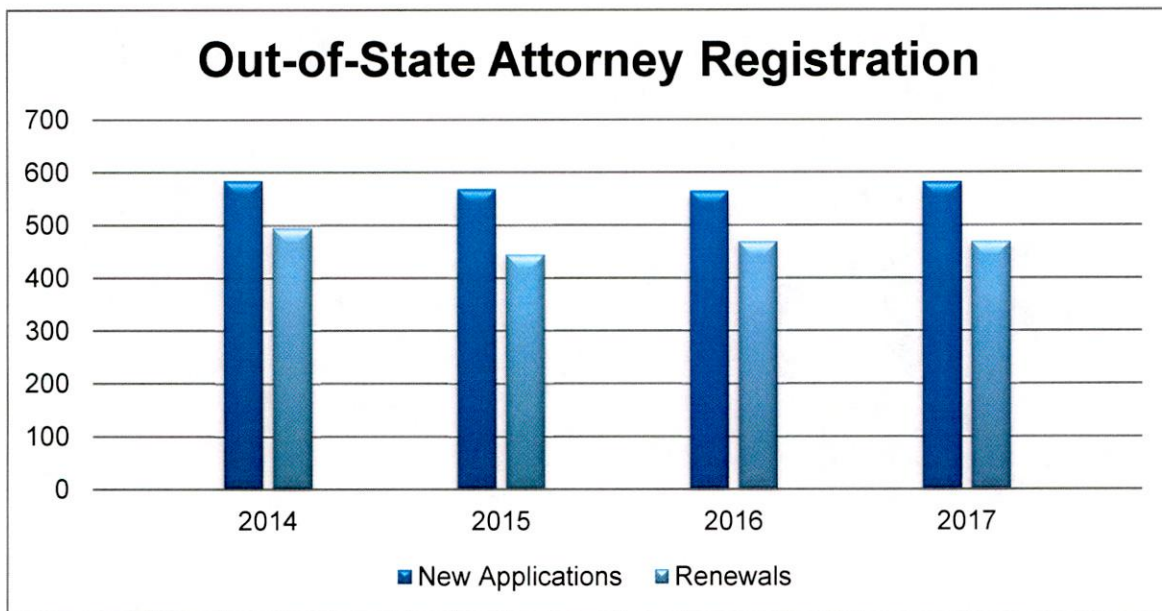
1. *Alexander Bednar v. Farabow, Willis, Blasier and Oklahoma Bar Association*, Oklahoma County Case No. CJ-2017-1192. Bednar filed suit against the OBA Defendants on February 28, 2017, alleging, among other things, that Defendants exhibited a pattern of harassment and attacks against him and requested the district court declare that his prior attorney discipline was not based on ethical violations and enjoin the OBA from further investigating his actions. Bednar also filed a Motion for Special Master to Investigate, Motion to Quash Administrative Subpoenas and for Protective Order, Motion to Seal Confidential Information and a Supplemental Petition. The OBA moved to dismiss the matter and, after argument, an Order of Dismissal with Prejudice was entered by Judge Dixon and filed August 4, 2017. Bednar filed a Motion to Set Aside for Good Cause on September 5, 2017. After the OBA response and argument, the Court allowed Bednar to supplement his filing with a transcript from the motion to dismiss hearing. At the hearing on January 19, 2018, Judge Davis reconsidered Judge Dixon's order and dismissed Bednar's suit *without* prejudice to refile.
2. *State of Oklahoma v. Leroy McRae Jr.*, Kay County District Court case No. CF-2016-552. The State subpoenaed the OBA General Counsel and Assistant General Counsel to appear, produce documents and give testimony concerning a grievance filed by the defendant in this matter. On October 5, 2017, the OBA specially appeared and moved to quash the subpoenas based upon the Rules Governing Disciplinary Proceedings. On October 11, 2017, the district court granted the OBA's motion and the General Counsel and Assistant General Counsel were released from the subpoenas.

ATTORNEY SUPPORT SERVICES:

1. Out-of-State Attorney Registration.

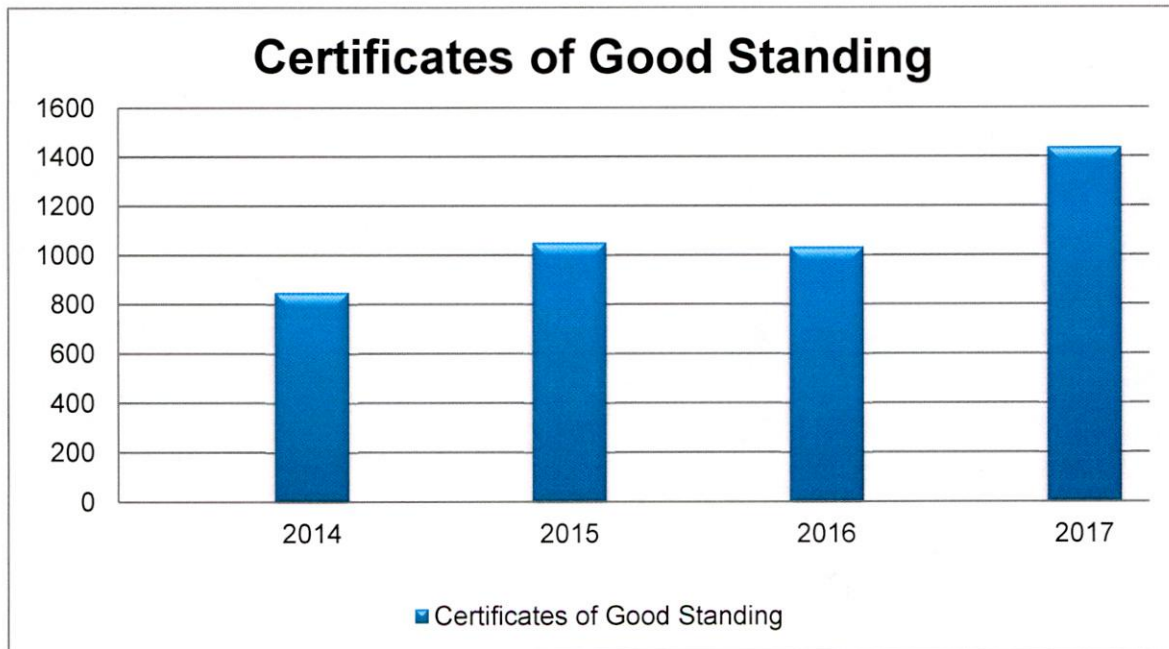
In 2017, the Office of the General Counsel processed 581 new applications and 407 renewal applications submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys appearing pro bono to represent criminal indigent defendants, 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. 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."



2. Certificates of Good Standing.

In 2017, the Office of the General Counsel prepared 1,436 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members.



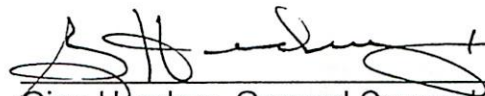
ETHICS AND EDUCATION:

During 2017, the General Counsel, Assistant General Counsels, and the Professional Responsibility Commission members presented more than 60 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 efforts direct 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 Oklahoma Bar Association (OBA), National Organization of Bar Counsel (NOBC), and the Organization of Bar Investigators (OBI).

RESPECTFULLY SUBMITTED this 15th day of February, 2018, 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