

## **FREQUENTLY ASKED QUESTIONS (GENERAL)**

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The following general questions will help you understand the role of Ethics Counsel, General Counsel and the Legal Ethics Advisory Panel, as well as the general applicability of the *Oklahoma Rules of Professional Conduct*.

**1. *What is the difference between the OBA's Offices of General Counsel and Ethics Counsel?***

Generally, under the supervision of the Professional Responsibility Commission, the Office of General Counsel is charged with the investigation and prosecution of alleged misconduct or incapacity of any lawyer. The rules of conduct are the *Oklahoma Rules of Professional Conduct (ORPC)*. The rules of procedure for prosecutions are pursuant to the Rules Governing Disciplinary Proceedings (*ORGDP*).

The Office of Ethics Counsel was created to provide all Oklahoma lawyers a resource for specific and confidential guidance as to ethics questions and to encourage the proactive consideration and handling of ethics issues. The guidance provided is a privileged communication. It is advisory guidance only. It is not to be applied or interpreted as a formal binding opinion or decision on any particular issue.

Communications with the Office of Ethics Counsel are confidential and will not be shared with the Office of General Counsel unless confidentiality is waived or the Ethics Counsel is instructed otherwise by the requesting lawyer. This happens occasionally in the event a complaint is made against the requesting lawyer, and the communication could be helpful to the Office of General Counsel in evaluating the grievance.

**2. *What responsibilities does a managing partner or legal department head have with respect to ensuring their office complies with the ORPC?***

The partner or managing lawyer must make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the ORPC. The word “measures” denotes concrete steps. Those steps could include the following: regular updates and meetings to discuss recent developments in professional ethics; new lawyer and new employee orientations regarding firm policies and systems on such items as conflict controls, docketing, email, client confidentiality and social networking policies; assigning a lawyer to be the ethics “expert,” someone who could be the “first-responder” and who would be directly responsible for initially evaluating ethical issues confronted by the firm and making recommendations.

**3. *Am I responsible for the conduct of nonlawyers such as paralegals, legal assistants and law clerks I supervise?***

Nonlawyers such as student law clerks, legal assistants and paralegals are not directly bound by the ORPC, but their supervising lawyers are and must make reasonable efforts to ensure that the firm has effected precautionary measures and that the nonlawyer assistants’ conduct is compatible with the professional obligations of the lawyer. The supervising lawyer can be held responsible for the *ORPC* violations of the people they supervise.

**4. *Is there a “federal” code of professional conduct?***

There is not a “national” code of professional conduct, although federal courts have their own admission requirements and local rules that must be followed and which

may provide rules of “conduct”. The ABA has promulgated “model” rules of professional conduct that have been widely adopted by various states, with various modifications. The Oklahoma RPC closely tracks the ABA’s model rules, but has some important differences that must be noted in doing research. Every state but California’s rules are based upon the ABA’s model rules.

**5. *With what code of professional conduct am I bound when I am practicing law outside the state of Oklahoma, when in a case pro hac vice for example?***

You are subject to the disciplinary authority of this jurisdiction regardless of where the conduct occurs- as is a lawyer from another jurisdiction practicing in Oklahoma. You may be subject to the disciplinary authorities of both jurisdictions for the same conduct.

Choice of law rules in the *ORPC* seek to limit the exercise of only one set of rules to a lawyer. Generally, with matters pending before a tribunal, the rules of the jurisdiction in which the tribunal sits will control. For any other conduct, the rules of the jurisdiction in which the lawyer’s conduct occurred should control, unless the predominant effect of the conduct is in a different jurisdiction.

**6. *Are the “Standards of Professionalism” and “Lawyer’s Creed” adopted by the OBA’s Board of Governors part of the ORPC?***

No. The “Standards of Professionalism” and “Lawyer’s Creed” are separate from the *ORPC*, and are aspirational. They were promulgated by the OBA’s Board of Governors to articulate the high ideals and civil behavior that every Oklahoma lawyer should emulate and honor.

**7. *Does the violation of a ORPC give rise to a cause of action or a***

***presumption that a legal duty has been breached?***

No. The rules are to regulate attorneys' conduct for disciplinary purposes. They are not intended to be a basis for civil liability.

***8. What resources are available to attorneys on ethics issues through the Office of Ethics Counsel?***

There are a variety of resources:

- Use the "Ethics & Professionalism" tab on the OBA's web-site [www.okbar.org](http://www.okbar.org). The tab has links to applicable rules, comments, opinions, ethics articles, FAQs, advisories and tips.
- Email your question to the Ethics counsel at [travisp@okbar.org](mailto:travisp@okbar.org)
- Call the Ethics counsel at (405) 416-7055, or toll free at 1-800-522-8065.

***9. What should I expect when I call or write the Ethics Counsel with a question?***

The office is primarily a resource for lawyers with questions pertaining to their own practices, policies and cases. The Office of Ethics Counsel is for lawyers only, not the general public. The advice will be advisory in nature, but as direct and specific as the time and facts allow.

The Ethics counsel cannot offer an ultimate opinion on an issue, only guidance. With respect to conduct of another lawyer, ethics counsel may offer guidance or insights, but cannot prejudge the situation as there are most likely other pertinent facts or factors that might affect the answer. The Ethics Counsel does not arbitrate or "decide" ethics issues as between litigants, but endeavors to be equally helpful to all lawyers that call.

On average, ten–twenty substantive calls or contacts with ethics questions are made to the office each day.

**10. *What is the OBA Legal Ethics Advisory Panel?***

The OBA Legal Ethics Advisory Panel serves in an advisory capacity for OBA members seeking written opinions concerning compliance with the *ORPC*. The opinions are intended as a guide to responsible professional behavior. Advisory opinions are simply that and shall only have such force and effect as they are given by the Oklahoma Supreme Court. There are separate rules and procedures for obtaining a written opinion available on the OBA website. Typically, the panel looks for questions that have broad application and prospective effect, as opposed to an issue currently in litigation.