

Ethics Resources and Lawyer Discipline

An Overview for Oklahoma Lawyers

Agenda

- **Ethics Resources for Oklahoma Lawyers**
 - OBA Office of Ethics Counsel
 - OBA Standards of Professionalism
 - Oklahoma Rules of Professional Conduct
 - OBA Legal Ethics Panel Opinions

- **Lawyer Discipline**
 - Office of the General Counsel
 - Professional Responsibility Commission
 - Professional Responsibility Tribunal
 - Summary Disciplinary Proceedings
 - Suspension for Personal Incapacity to Practice Law
 - Council on Judicial Complaints and Court on the Judiciary
 - Discipline In Action

Ethics Resources

- OBA Office of Ethics Counsel
 - Specific and confidential, privileged ethical guidance
 - Informal oral and written advice and interpretation
 - Receives 10-20 calls or contacts each day regarding ethics questions
 - www.okbar.org/ec

Ethics Resources

- OBA Standards of Professionalism
 - Approved by OBA Board of Governors and Judicial Conference in 2002
 - “...represent the level of behavior we expect from each other and the public expects from us...” - Preamble to the Standards
 - Aspirational in nature. Not a basis for discipline or civil liability

Ethics Resources

- OBA Standards of Professionalism
 - Sections
 - **Lawyers responsibilities** to the public
 - ...to clients
 - ...to each other
 - ...to courts and public agencies
 - **Judges responsibilities to** lawyers
 - ...to each other

Ethics Resources

- Oklahoma Rules of Professional Conduct (ORPC)
 - Title 5 O.S., Ch. 1, App. 3-A
 - Promulgated by the Oklahoma Supreme Court (per Title 5 O.S. § 13)
 - Based on ABA Model Rules of Professional Conduct
 - Basis of lawyer discipline
 - disbarment, suspension, public censure, private reprimand

Ethics Resources

- OBA Legal Ethics Panel
 - Made up of OBA members
 - Provides advisory opinions
 - Has issued 330 formal written opinions since 1931
 - Topical index available on OBA Office of Ethics Counsel's [website](#)
 - Panel [rules](#) also available on the website.

Discipline - The Rules Governing Disciplinary Proceedings

- The Supreme Court of Oklahoma has the exclusive power and authority to discipline attorneys. Title 5 O.S. § 13
- The Court enacts the Rules Governing Disciplinary Proceedings
 - Codified as Appendix 1-A to Title 5 of the Oklahoma Statutes

Discipline - Office of the General Counsel

- The OBA Office of General Counsel investigates alleged misconduct or incapacity of any lawyer called to its attention (by a complaint filed with its office or otherwise)
- Reports its findings to the Professional Responsibility Commission

Discipline - Office of the General Counsel

- In any given year, the Office of the General Counsel will receive a complaint on around 5% of the OBA's members.
 - Only about 20% of complaints result in a formal grievance being filed and an investigation opened
- Types of misconduct alleged in formal grievances
 - Approximately 45% of all grievances allege neglect
 - The next most common grievances involve misrepresentation/fraud (~15%) and personal behavior (~10%)
 - The next most common grievances are trust account overdrafts, incompetence, conflicts and excessive fees

Discipline - Professional Responsibility Commission

- The PRC is composed of seven members - five lawyers and two non-lawyers
 - Lawyer members nominated by the OBA president subject to approval of the Board of Governors
 - One non-lawyer member is appointed by each of the speaker of the Oklahoma House of Representatives and the president pro tempore of the Oklahoma Senate
 - Members serve for a term of three years and may serve up to two terms

Discipline - Professional Responsibility Commission

- The PRC determines the appropriate disposition of the allegations
 - Filing of formal charges
 - Complaint filed with the Clerk of the Oklahoma Supreme Court
 - Complaint assigned to a trial panel of the Professional Responsibility Tribunal
 - Private reprimand (require consent of the lawyer)
 - Less serious misconduct or mitigating factors

Discipline - Professional Responsibility Commission

- Letter of Admonition
 - Conduct dangerously close to a violation of a disciplinary rule
- Dismissal
 - Allegations could not be substantiated, resignation or death of the lawyer
- Diversion Program
 - Training to correct a deficiency in the representation of clients
 - Oversight by OBA Ethics Counsel and OBA Management Assistance Program

Discipline - Professional Responsibility Tribunal

- The PRT is composed of 21 members (called “Masters”) - 14 lawyers and seven non-lawyers
 - Lawyer members nominated by the OBA president subject to approval of the Board of Governors
 - Non-lawyer members are appointed by the Governor
 - Members serve for a term of three years

Discipline - Professional Responsibility Tribunal

- Formal complaints are heard by a trial panel of three Masters
 - Each trial panel must include one non-lawyer
 - Proceedings are governed by the rules of civil procedure and are open to the public
- The panel files a report with the Oklahoma Supreme Court containing its finding of fact, conclusions of law, and a recommendation regarding discipline
- The PRT also hears applications for reinstatement

Discipline - Summary Disciplinary Proceedings

- Certain disciplinary proceedings begin in the Oklahoma Supreme Court without passing through the PRC or the PRT
 - Lawyer has been convicted or entered a plea of guilty or no contest to a crime which demonstrates unfitness to practice law
 - Lawyer has discipline imposed on him or her in another jurisdiction
 - Lawyer willfully violates an order of support

Discipline - Suspension for Personal Incapacity to Practice Law

- A lawyer may be deemed incapable of practicing law due to:
 - Mental or physical illness
 - Active misfeasance or repeated neglect of duty
 - Habitual use of alcohol or other drugs
- Allegations generally handled in the same matter as disciplinary proceedings (through the PRC and PRT)
 - However, unless the allegations include misconduct the proceedings and disposition are confidential

Discipline - The Council on Judicial Complaints

- Complaints against judges related to the performance of judicial duties are investigated by the Council on Judicial Complaints
- The Council is an agency of the Executive branch
- The Council has powers similar to a grand jury
- If removal from office or forced retirement are indicated, the case goes to the Court on the Judiciary

Discipline - The Court on the Judiciary

- The Court on the Judiciary is established in the Oklahoma Constitution
- Exclusive jurisdiction over cases involving potential removal or forced retirement
- Decisions are not reviewable by the Oklahoma Supreme Court
- No power over Justices of the Oklahoma Supreme Court

The Discipline Process in Action

- 2023 OK 34
 - Rule 6 case
 - Result: Disbarment

The Discipline Process in Action

- 2023 OK 87
 - Rule 7 case
 - Result: Suspension for Two Years + One Day

The Discipline Process in Action

- 2023 OK 98
 - Combined Rule 6 and Rule 7 case
 - Result: Disbarment

Recap

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