

**ETHICS: RESOURCES AND DISCIPLINE**  
***AN OVERVIEW FOR OKLAHOMA LAWYERS***

Updated in April 2024 by:



## 1. Ethics Resources

### a. Office of Ethics Counsel

When it comes to ethics guidance, there are several resources available to Oklahoma lawyers.

One such resource is the Oklahoma Bar Association's Office of Ethics Counsel.

“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, confidential communication and is not shared with the office of General Counsel (unless at the lawyer's request in responding to a bar complaint).”

Gina Hendryx & Travis Pickens, *Frequently Asked Ethics Questions*, 80 OKLA. B.J. 2535 (2009)

The Office of Ethics Counsel has reported that it receives, on average, 10-20 calls or contacts regarding ethics questions each day. *Id.*

The Office of Ethics Counsel's website (<https://www.okbar.org/ec>) is an excellent starting point for Oklahoma lawyers researching an ethics question. The website features links to the OBA Standards of Professionalism, Oklahoma Rules of Professional Conduct, and all Ethics Opinions issued by the Oklahoma Bar Association Legal Ethics Panel.

The Office of Ethics Counsel is staffed by an attorney whose job is to assist members of the Oklahoma Bar Association with questions concerning ethics. The guidance provided by the Ethics Counsel is privileged, confidential communication and is not shared with the Office of General Counsel unless at the lawyer's request. In responding to a bar complaint. However, in the event that a lawyer does contact the ethics counsel and receives guidance that is followed and the conduct results in a bar complaint, the fact that the lawyer communicated in advance with the Ethics Counsel could be mitigating evidence in any disciplinary proceeding. Contact information for the Ethics Counsel is located on the Office of General Counsel's page on the Bar Association website.

### b. Standards of Professionalism

First approved by the Oklahoma Bar Association Board of Governors and the Oklahoma Judicial Conference in 2002, the Preamble to the OBA Standards of Professionalism declares that the Standards, “represent the level of behavior we expect from each other and the public expects from us in our dealings with the public, the courts, our clients and each other.” However, the Standards are aspirational in nature and are not to be used as a basis for lawyer discipline or civil liability. “[The OBA Standards of Professionalism] were promulgated by the OBA Board of Governors to articulate the high ideals and civil behavior that every Oklahoma lawyer should emulate and honor. They were not intended as a basis for discipline or to establish standards of conduct in an action brought against a lawyer.” *Id.*

The standards are quite long and are divided into six different sections. The first section covers a lawyer's responsibility to the public. This section discusses a lawyer’s duty to conduct himself or herself with honesty, to perform pro-bono services, and other responsibilities that lawyers have to the public at large. The second section covers a lawyer's responsibility to his or her clients. This section that lawyers are to readily stipulate to undisputed facts to avoid needlessly incurring costs or delay. The third section covers a lawyer's responsibility to other lawyers. This is the longest section of the standards and covers admonitions to be civil, courteous and respectful. This section also provides detailed guidance on how to handle discovery and scheduling with other lawyers. The fourth section covers a lawyer's responsibility to courts and public agencies. This section includes guidance to be punctual and prepared for hearings and meetings. The fifth section covers a judge's responsibility to lawyers that appear before them. One of the dictates in this section is a judge's responsibility to make decisions promptly .Finally, section six addresses a judge's responsibilities to other judges. This section directs judges to

refrain from disparaging or criticizing other judges, and provides other guidance for the behavior of judges when it comes to dealing with other judges.

c. Rules of Professional Conduct

Located in Title 5 O.S., Ch. 1, App. 3-A, the Oklahoma Rules of Professional Conduct are promulgated by the Oklahoma Supreme Court under the authority of Title 5 O.S. § 13, which states as follows:

The Supreme Court of the State of Oklahoma shall have the exclusive power and authority to discipline attorneys and counselors at law or revoke the permit to practice law granted to attorneys and counselors at law and the rules of conduct of attorneys and counselors at law in this state shall be such as are now or may hereafter be prescribed by the statutes of Oklahoma and the rules of the Supreme Court.

The Oklahoma Rules of Professional Conduct are based on the American Bar Association's Model Rules of Professional Conduct, as further modified by the Oklahoma Supreme Court. OK ST DISC P Sec. 1.5. The Rules are the standard of professional conduct of all Oklahoma lawyers and violations of the Rules subjects a lawyer to professional discipline. *Id.* The types of discipline handed down by the Oklahoma Supreme Court can include disbarment, suspension from the practice of law for a definite term or until the further order of the Court, public censure, or private reprimand. OK ST DISC P Sec. 1.7.

“The Oklahoma ORPC closely tracks the [American Bar Association's] (ABA) model rules, making ABA ethics opinions a helpful research resource. The Oklahoma modifications to the ABA rules are set out in the comments that follow each Rule of Professional Conduct.” Gina Hendryx & Travis Pickens, *Frequently Asked Ethics Questions*, 80 OKLA. B.J. 2535 (2009). The ABA Model Rules of Professional Conduct are available on the website of the ABA's Center for Professional Responsibility at [https://www.americanbar.org/groups/professional\\_responsibility/](https://www.americanbar.org/groups/professional_responsibility/).

#### d. Legal Ethics Panel Opinions

The OBA Legal Ethics Panel is made up of OBA members and provides advisory opinions to Oklahoma lawyers concerning compliance with the Oklahoma Rules of Professional Conduct. While the Panel's opinions are intended to guide responsible professional behavior, they are non-binding; the Oklahoma Supreme Court is the exclusive authority for the interpretation and application of the Rules of Professional Conduct. That being said, following the Panel's guidance can be used as a mitigating factor in the event of disciplinary scrutiny. *Id.* The rules regarding the work of the Panel (e.g., how to request an opinion, publication of opinions) are available on the OBA's website at <https://www.okbar.org/ec/advisoryrules/>.

The OBA Legal Ethics Panel began issuing formal written opinions in 1931. Since then, the Panel has issued 330 formal written opinions, the last of which was issued in 2013. A topical index of opinions is available for download on the Office of Ethics Counsel's website.

The Legal Ethics Panel is made up of 18 members, all of whom have been admitted to practice law in Oklahoma for ten or more years. Members are appointed OBA President and serve a three-year term. Oklahoma lawyers can submit a request to the panel for an opinion. A majority of the panel must vote to issue an opinion. The panel generally only takes on questions that raise a serious ethical issue of general application or concern. While the panel's opinions are advisory only and non-binding, relying on an opinion of the panel could be mitigating evidence in any disciplinary proceeding.

## 2. Lawyer Discipline

### a. Rules Governing Disciplinary Proceedings

Title 5 O.S. § 13 states that, “[t]he Supreme Court of Oklahoma shall have the exclusive power and authority to discipline attorneys...” Pursuant to that authority, the Rules Governing

Disciplinary Proceedings are enacted by the Oklahoma Supreme Court and codified as Appendix 1-A to Title 5 of the Oklahoma Statutes.

b. Complaints and the Office of the General Counsel

The Oklahoma Bar Association investigates allegations of unethical conduct and incapacity against lawyers practicing in Oklahoma. Anyone may file a complaint against a lawyer practicing in Oklahoma through the Association's Office of the General Counsel. Rule 3 of the Rules Governing Disciplinary Proceedings establishes the role of the Office of the General Counsel in the disciplinary process. The primary purpose of the lawyer disciplinary system is to protect the public and the Office of the General Counsel does not investigate every complaint that it receives. For example, the Association has no jurisdiction over issues pending in court or situations occurring in a lawyer's personal life, such as disagreements with neighbors, creditors or spouses. The Association also cannot investigate malpractice complaints.

By law, any complaint made against an attorney must be in writing and must be signed to be investigated. A copy of all complaints will be sent to the attorney that is the subject of the complaint. If the Office of the General Counsel determines it is appropriate to open an investigation into the complaint, the subject attorney will be asked to respond to the complaint in writing. If the Office of the General Counsel determines that no investigation is warranted, the subject attorney will still be provided a copy of the complaint, but will not be asked to provide a response. All investigations of the Office of the General Counsel are confidential. Upon the conclusion of its investigation, the Office of the General Counsel reports its findings to the Professional Responsibility Commission for disposition or further action. The attorneys in the Office of the General Counsel prosecute all proceedings under the Rules Governing Disciplinary Proceedings and represent the Oklahoma Bar Association at all reinstatement proceedings.

In any given year, the Office of the General Counsel will receive more than 1,000 complaints involving around 700 to 900 lawyers. However, only approximately 20% of those complaints will cause the Office of the General Counsel to open a formal grievance. Each year, around 1% of the members of the Oklahoma Bar Association are the subject of a formal grievance. The basis for 70% of formal grievances are consistently neglect (approximately 45%), misrepresentation or fraud (approximately 15%), and personal behavior (approximately 10%). The next most common bases for formal grievances are mishandling of trust accounts (approximately 8%), incompetence, conflict, and excessive fee (each approximately 5% of formal grievances).

c. The Professional Responsibility Commission

The Professional Responsibility Commission is established by Rule 2 of the Rules Governing Disciplinary Proceedings. The PRC considers and investigates any alleged ground for professional discipline or alleged incapacity of any lawyer called to its attention by the Office of the General Counsel, or upon its own motion. The PRC also investigates applications for reinstatement. The PRC's investigations are governed by Rule 5 of the Rules Governing Disciplinary Proceedings. The Commission consists of seven members, five of whom are lawyers and two of whom are non-lawyers. The lawyer members are appointed by the President of the Oklahoma Bar Association subject to the approval of the Board of Governors. The non-lawyers are appointed one each by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate. Members are appointed for three years.

In the course of its investigations, the Professional Responsibility Commission may hold hearings, administer oaths or affirmations, receive testimony and other evidence, and issue and

serve or cause to be served subpoenas requiring testimony or the production of books, records, papers, documents or other tangible evidence. Upon conclusion of a complete investigation, the Professional Responsibility Commission may (1) recommend that a formal complaint be filed with the Oklahoma Supreme Court asking that the attorney be disbarred or suspended, or otherwise disciplined; (2) dismiss the matter entirely; (3) issue a letter of an admonition (conduct dangerously close to a violation of a disciplinary rule) or, with the consent of the lawyer involved, issue a private reprimand (less serious misconduct or mitigating factors); or (4) refer the attorney to the Discipline Diversion Program.

Of the attorneys appearing before the Professional Responsibility Commission, typically less than 10% will be referred by formal complaint to the Oklahoma Supreme Court. Around one-third of all cases will be dismissed by the Professional Responsibility Commission because the investigation does not substantiate the allegations by clear and convincing evidence. The remainder of the cases will either be referred to the Discipline Diversion Program (approximately 20%) or receive a private reprimand or admonishment (approximately 30%). In addition a handful of formal grievances are dismissed each year due to the subject attorney resigning.

In a case where the PRC process results in a formal complaint being filed with the Oklahoma Supreme Court, the Office of the General Counsel, with the concurrence of the chairperson or vice-chairperson of the PRC, may request interim suspension and/or other appropriate interim relief. Such a request is limited to situations where the subject of the complaint's conduct poses an immediate threat of substantial and irreparable public harm. The PRC also investigates applications for reinstatement



d. The Professional Responsibility Tribunal

Rule 4 of the Rules Governing Disciplinary Proceedings establishes the Professional Responsibility Tribunal (PRT). The PRT conducts hearings on formal complaints filed with the Oklahoma Supreme Court by the PRC and on applications for reinstatement to the practice of law. Rule 6 of the Rules Governing Disciplinary Proceedings governs the proceeding of the PRT. The PRT consists of 21 members (called “Masters”), 14 of whom are lawyers and seven of whom are non-lawyers. The President of the Oklahoma Bar Association appoints the lawyer members subject to Board of Governors approval. The Governor of the State of Oklahoma appoints the non-lawyer members. Members serve three-year terms.

Upon the filing of a formal complaint by the PRC with the Oklahoma Supreme Court, three Masters from the PRT are designated to serve as a trial panel to hear the complaint. Each panel must consist of two lawyers and one non-lawyer. The proceedings are open to the public and governed generally by the rules for civil proceedings. Within 30 days of the conclusion of a proceeding, the panel files with the Clerk of the Supreme Court a written report containing findings of fact and conclusions of law and a recommendation as to discipline to be imposed, if any. In a reinstatement case, the panel makes a recommendation regarding whether reinstatement should be granted. While the number of reports filed by panels varies from year to year, four to six reinstatement reports and eight to ten disciplinary reports would be a typical year. The panel’s report and recommendations are advisory as the Oklahoma Supreme Court has exclusive jurisdiction over all disciplinary and reinstatement matters. Discipline imposed by the Oklahoma Supreme Court ranges from public censure, to suspension (confidential or public), to disbarment. The Court may also approve the resignation of an attorney who is pending disciplinary proceedings, which is tantamount to disbarment.

e. Summary Disciplinary Proceedings

Under certain circumstances, disciplinary proceedings begin in the Oklahoma Supreme Court without passing through the PRC or the PRT. For example, a lawyer who has been convicted or has entered a plea of guilty or no contest pursuant to a deferred sentence plea agreement of a crime which demonstrates unfitness to practice law shall be subject to summary disciplinary proceedings pursuant to Rule 7 of the Rules Governing Disciplinary Proceedings. Upon the filing with the Oklahoma Supreme Court of a certified copy of such a conviction or plea, the Court shall order the immediate suspension of the lawyer from the practice of law until further order of the Court. Upon the conviction becoming final, the lawyer will be directed to show cause why a final order of discipline should not be made. Rule 7 does not prevent the Professional Responsibility Commission from initiating and conducting disciplinary proceedings upon charges identical to those that form the basis of the conviction or plea.

Rule 7.7 creates an affirmative duty on all lawyers licensed in Oklahoma to notify the Office of the General Counsel anytime discipline is imposed on him or her in another jurisdiction; Failure to self-report shall itself be grounds for discipline. Upon notice to the Oklahoma Supreme Court that a lawyer licensed in Oklahoma has been adjudged guilty of misconduct in a disciplinary proceedings in another jurisdiction, the lawyer will be directed to show cause why he or she should not also be subject to discipline imposed by the Oklahoma Supreme Court.

Rule 7.8 subjects lawyers who violate orders of support to discipline. Specifically, Rule 7.8 provides that a lawyer who has been determined by a judicial finding to be in willful noncompliance with an order of support pursuant to Title 43 O.S. §139.1 may be subject to summary disciplinary proceedings at the Oklahoma Supreme Court.

f. Suspension for Personal Incapacity to Practice Law

Rule 10 of the Rules Governing Disciplinary Proceedings provides that a lawyer may be deemed personally incapable of practicing law due to (1) mental or physical illness, (2) active misfeasance or repeated neglect of duty, or (3) habitual use of alcohol or other drugs. Proceedings to determine whether a lawyer is personally incapable of practicing law are generally handled in the same manner and upon the same procedure as disciplinary proceedings (e.g., through the PRC and PRT).. However, unless the allegations include conduct which would also justify the imposition of discipline, Rule 10 proceedings are confidential and not a matter of public record. Whenever it has been determined that a lawyer is personally incapable of practicing law, his or her license shall be suspended until further order of the Oklahoma Supreme Court.

g. The Council on Judicial Complaints and the Court on the Judiciary

Any complaints against judges related to the performance of his or her judicial duties are investigated by the Council on Judicial Complaints, and not by the Office of the General Counsel. Likewise, neither the Professional Responsibility Commission nor the Professional Responsibility Tribunal have any role in the handling of complaints against judges related to the performance of his or her judicial duties (complaints against a judge for misconduct unrelated to the performance of his or her judicial duties may be handled as complaints against any other lawyer are handled). The Council on Judicial Complaints is established in Title 20 of the Oklahoma Statutes as an agency of the Executive branch of the State government with investigative powers similar to a grand jury. The Council receives on average 150 to 200 complaints a year and all investigations are confidential.

The Council is a three member panel (one of whom must be a non-lawyer) appointed one each for a five-year term by the President Pro Tempore of the Oklahoma Senate, the Speaker of the Oklahoma House of Representatives, and the President of the Oklahoma Bar Association. When the Council believe that proceedings before the Court on the Judiciary are warranted, the Council may forward the findings of its investigations to either the Supreme Court or the Chief Justice thereof, the Governor, the Attorney General, the Executive Secretary of the Oklahoma Bar Association, or the House of Representatives. The recipient of the Council's report must then invoke the jurisdiction of the Court on the Judiciary to take up the matter. The Rules Governing Complaints on Judicial Conduct as promulgated by the Oklahoma Supreme Court and codified as Appendix 4A to Title 5 of the Oklahoma Statutes also require that in cases where the Council finds evidence of misconduct that does not warrant removal from office, disqualification from holding future judicial office, or compulsory retirement by the Court on the Judiciary, it shall forward its findings to the Chief Justice of the Oklahoma Supreme Court for review and possible discipline short of removal or forced retirement from office.

The Court on the Judiciary is established in Article VII-A of the Oklahoma Constitution and has exclusive jurisdiction to adjudicate cases involving the potential removal or forced retirement of a judge from office. The judges of the Court on the Judiciary are appointed by either the Oklahoma Supreme Court, the Oklahoma Bar Association, the Court of Criminal Appeals, or the Secretary of State. There are nine judges that sit on the trial division and nine judges that sit on the appellate division. There are no appeals from the appellate division's decisions, and not even the Oklahoma Supreme Court may change its rulings. The Court on the Judiciary has no jurisdiction over the Justices of the Oklahoma Supreme Court. However, the

Justices of the Oklahoma Supreme Court are subject to impeachment proceedings under Article VIII of the Oklahoma Constitution.