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, 2011 through December 31, 2011

Filed with the Oklahoma Supreme Court, January 31, 2012

**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.

<table>
<thead>
<tr>
<th>2010-2011 Participation in Diversion Program Curriculum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Office Management Training:</td>
</tr>
<tr>
<td>Communication and Client Relationship Skills:</td>
</tr>
<tr>
<td>Professionalism in the Practice of Law:</td>
</tr>
<tr>
<td>Professional Responsibility / Ethics School:</td>
</tr>
<tr>
<td>Client Trust Account School:</td>
</tr>
</tbody>
</table>

**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. Formal and informal grievances were submitted against 999 attorneys. Therefore, six percent of the attorneys licensed to practice law by the Oklahoma Supreme Court received a grievance in 2011.

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:

- Bankruptcy: 3%
- Corporate: 0%
- Criminal: 20%
- Estate/Probate: 9%
- Family: 25%
- Immigration: 2%
- Litigation: 17%
- Workers Comp: 2%
- Real Property: 1%
- Personal Injury: 6%
- Unknown: 10%
- Other: 2%
- Administrative: 2%
- None: 3%

The number of years in practice of the 200 attorneys receiving formal grievances is as follows:

- 5 years or less: 7%
- 6-10 years: 15%
- 11-15 years: 12%
- 16-20 years: 14%
- 21-25 years: 13%
- 26 years or more: 39%
- None: 3%
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:**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gordon Jr., George David</td>
<td>05/03/11</td>
</tr>
<tr>
<td>Passmore II, Joe Richard</td>
<td>10/25/11</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woolverton, Daniel Allen</td>
<td>05/02/11</td>
</tr>
<tr>
<td>Taylor, Michael C.</td>
<td>05/02/11</td>
</tr>
<tr>
<td>Noland, Rhonda Virginia</td>
<td>05/24/11</td>
</tr>
<tr>
<td>Merritt, John Milton</td>
<td>06/27/11</td>
</tr>
<tr>
<td>Cathey, William Reeves</td>
<td>06/27/11</td>
</tr>
<tr>
<td>Lewis, Donald Reagan</td>
<td>06/28/11</td>
</tr>
<tr>
<td>Schraeder, Fred M.</td>
<td>11/14/11</td>
</tr>
</tbody>
</table>
Disciplinary Suspensions:

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

Public Censure:

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith, Tracy</td>
<td>01/31/11</td>
</tr>
<tr>
<td>Strickland, Gray M.</td>
<td>06/14/11</td>
</tr>
<tr>
<td>Neeld, James Charles</td>
<td>06/27/11</td>
</tr>
<tr>
<td>Cox, Ronald D.</td>
<td>07/06/11</td>
</tr>
</tbody>
</table>

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

Suspension

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Length</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 10 Confidential</td>
<td>Indefinite</td>
<td>02/15/11</td>
</tr>
</tbody>
</table>
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.

![Clients' Security Fund Graph]

**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.

   - **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.


3. **Fournerat v. Wisconsin Law Review et al.**, United States Supreme Court, Case No. 11-5273.


5. Gather v. OKARNG, et al., Tenth Circuit Court of Appeals, Case No. 11-6212.


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.


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.

![Certificates of Good Standing](chart)

**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