

In the

SUPREME COURT OF MISSOURI

En Banc

May Session, 2011

**Report of the Office of the Chief Disciplinary Counsel for the year
2010 together with the Financial Report of the Treasurer of the
Advisory Committee Fund for 2010**

**ALAN D. PRATZEL
Chief Disciplinary Counsel**

IN THE
SUPREME COURT OF MISSOURI

EN BANC

MAY SESSION, 2011

REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR
2010 TOGETHER WITH THE FINANCIAL REPORT OF THE TREASURER OF THE
ADVISORY COMMITTEE FUND FOR 2010

To the Honorable Judges of The Supreme Court:

Comes now the Office of Chief Disciplinary Counsel, and respectfully reports to
the Court on matters concluded during calendar year 2010 or pending on December 31,
2010.

I.

**THE FOLLOWING DISCIPLINARY ACTIONS WERE TAKEN BY
THE COURT DURING 2010 BASED ON PROCEEDINGS
PROSECUTED BY THE OFFICE OF
CHIEF DISCIPLINARY COUNSEL¹**

BACA, CESAR A., Aurora, CO, Missouri Bar #60148

Disbarment: Rule 5.21 (Criminal Conviction); Violation of Rule 4-8.4(b).
Date of Order: October 26, 2010.

BALDWIN, JAMES E., Lebanon, MO, Missouri Bar #19267

Interim suspension from the practice of law pursuant to provisions of Rule 5.21(a).
Date of Order: June 14, 2010.

BAUER, LARRY MICHAEL, St. Louis, MO, Missouri Bar #28835

Interim suspension from the practice of law pursuant to provisions of Rule 5.21(a).
Date of Order: June 8, 2010.

BOBRINK, JEANNIE M., Kansas City, MO, Missouri Bar #36685

Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order:
December 30, 2010.

(Order of default disbarment issued on December 30, 2010, vacated.
Respondent's motion to set aside order of default disbarment sustained.
Respondent granted thirty days to file an answer with the Chair of the Advisory
Committee. Date of Order: March 21, 2011.)

BROADUS, VALENCIA JEALANA, Kansas City, MO, Missouri Bar #47275

Suspended from the practice of law and no petition for reinstatement will be
entertained by the Court for a period of six months: Violation of Rules 4-1.1, 4-
1.3, 4-1.4, 4-1.5(a), 4-1.16(d), and 4-8.1(c). Date of Order: February 26, 2010.

BROOKRESON, MICHAEL K., Poplar Bluff, MO, Missouri Bar #48411

Surrendered license and disbarred: Violation of Rule 4-1.15(c). Date of Order:
June 7, 2010.

BUIE, DAVID R., Kansas City, MO, Missouri Bar #44867

Interim suspension from the practice of law pursuant to provisions of Rule 5.21(a).
Date of Order: June 17, 2010.

¹ Often there are attorneys with the same or similar names. It is important to note the bar number and location of the individual.

CAPPIELLO, ROBERT A., St. Louis, MO, Missouri Bar #25833

Interim suspension from the practice of law pursuant to provisions of Rule 5.24. Date of order: November 15, 2010.

COHEN, ALAN S., St. Louis, MO, Missouri Bar #39896

Surrendered license and disbarred: Violation of Rule 4-1.15. Date of Order: February 26, 2010.

CRAIG, SANDRA L., Pacific, MO, Missouri Bar #34625

Default Disbarment: Violation of Rules 4-5.5, 4-8.1(c), and 4-8.4(c). Date of Order: May 11, 2010.

DAVIS, F. PATRICK, Cape Girardeau, MO, Missouri Bar #32153

Suspension, suspension stayed, placed on probation for two years: Violation of Rule 4-8.4(b). Date of Order: April 21, 2010.

DEPEW, CHAUNCEY M., Kansas City, MO, Missouri Bar #42079

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of one year: Rule 5.20 (Reciprocal – Kansas); Violation of Rule 4-8.4(d). Date of Order: December 3, 2010.

DILL, SUSAN, Kansas City, MO, Missouri Bar #33279

Public Reprimand: Violation of Rules 4-1.15(a)(c) and (d). Date of Order: January 4, 2010.

DUNNE, GERALD MICHAEL, St. Louis, MO, Missouri Bar #29150

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of six months: Violation of Rule 4-8.4(d). Date of Order: May 13, 2010.

EHLER, RENAE, Keytesville, MO, Missouri Bar #46793

Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15, 4-8.4(a), and 4-8.4(c). Date of Order: September 16, 2010.

ENGLAND, WILLIAM S., Kansas City, MO, Missouri Bar #37845

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-5.5(e), 4-8.1(c), 4-8.4(c), 6.05(c), and 15.06. Date of Order: September 21, 2010.

FISCHER, RICHARD WILLIAM, O'Fallon, MO, Missouri Bar #39058

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.5, 4-1.16, 4-5.5(c), 4-8.1(c), and 4-8.4(d). Date of Order: November 12, 2010.

FLUHR, AURORA MOZELLE, St. Louis, MO, Missouri Bar #52490

Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-1.16. Date of Order: March 2, 2010.

FOX, GEORGE RICHARD, St. Louis, MO, Missouri Bar #20120

Interim suspension from the practice of law pursuant to provisions of Rule 5.21(a). Date of Order: March 23, 2010. Supreme Court No. SC90733

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: June 10, 2010. Supreme Court No. SC90910

GARTENBERG, STEVEN PETER, St. Louis, MO, Missouri Bar #37456

Interim Suspension from the practice of law pursuant to provisions of Rule 5.24. Date of Order: March 22, 2010. Amended Interim Suspension Order: March 31, 2010.

GENTRY, WILLIAM MICHAEL, Platte City, MO, Missouri Bar #45242

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of one year: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.15 and 4-8.1(c). Date of Order: June 22, 2010.

GRECCO, FRANCES ELEANOR, St. Louis, MO, Missouri Bar #34307

Default Disbarment: Violation of Rules 4-1.3, 4-8.1(c), and 4-8.4(d). Date of Order: May 11, 2010.

KIELER, BENJAMIN, Kansas City, KS, Missouri Bar #37962

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of one year: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.3, 4-1.4, and 4-1.7. Date of Order: August 20, 2010.

LOVELACE, DALE E., Kansas City, MO, Missouri Bar #39123

Surrendered license and disbarred: Violation of Rules 4-5.5, 4-8.4(a)(c) and (d). Date of Order: July 16, 2010.

MERRYMAN, WILLIAM R., Kansas City, MO, Missouri Bar #26302

Interim suspension from the practice of law pursuant to provisions of Rule 5.24. Date of order: September 9, 2010. Supreme Court No. SC91153

Disbarment: Rule 5.21 (Criminal Conviction); Violation of Rule 4-8.4(b).
Date of Order: October 29, 2010. Supreme Court No. SC91185

MILLER, GEORGE SPENCER, Maryville, MO, Missouri Bar #22510

Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.3, 4-1.4, 4-1.7, and 4-1.9. Date of Order: December 21, 2010.

MOORE, MATTHEW J., Lithia, FL, Missouri Bar #44939

Surrendered license and disbarred. Date of Order: December 21, 2010.

MULLER, DENNIS, Kansas City, MO, Missouri Bar #15448

Public Reprimand: Violation of Rules 4-1.4(a)(1), 4-1.15(f), 4-1.16(a) and (d).
Date of Order: July 13, 2010.

NIEHOFF, TERENCE W., St. Louis, MO, Missouri Bar #36151

Public Reprimand: Violation of Rules 4-1.3 and 4-1.4(a). Date of Order: April 20, 2010.

O'SULLIVAN, TIMOTHY, St. Louis, MO, Missouri Bar #26584

Default Disbarment: Violation of Rules 4-5.5(c) and 4-8.1(c). Date of Order: August 19, 2010.

OSWALD JR., THOMAS R., Chesterfield, MO, Missouri Bar #14506

Interim suspension from the practice of law pursuant to provisions of Rule 5.21(a).
Date of Order: February 5, 2010. Supreme Court No. SC90612

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: May 10, 2010.
Supreme Court No. SC90837

PAWLOSKI, JOHN FRANCIS, Collinsville, IL, MO, Missouri Bar #50661

Disbarment: Rule 5.20 (Reciprocal – Illinois); Violation of Rules 4-1.3, 4-1.4, 4-1.15(c), 4-5.5(a), 4-8.4(c) and (d). Date of Order: July 7, 2010.

PHILLIPS, ANTHONY LEE, Columbia, MO, Missouri Bar #56968

Surrendered license and disbarred. Date of Order: June 25, 2010. Supreme Court No. SC90904

Pending Rule 5.21(c) final discipline case dismissed as moot on June 25, 2010. Supreme Court No. SC90792

Pending Rule 5.21(a) interim suspension case dismissed as moot on April 20, 2010. Supreme Court No. SC90721

SCHMID, MARK, Kansas City, MO, Missouri Bar #30861

Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: February 17, 2010.

Respondent's motion to set aside default disbarment order sustained. Default disbarment order dated February 17, 2010, set aside. Respondent granted until May 3, 2010, to file an answer with the Chair of the Advisory Committee. Respondent's license remains suspended based on his failure to meet Rule 15 CLE requirements and Respondent is subject to the reinstatement provisions of Rule 5.28. Date of Order: April 1, 2010.

SCHUETZ, JAMES ANTHONY, St. Louis, MO, Missouri Bar #38567

Suspension, suspension stayed, placed on probation for one year. Suspension with stay and probation effective on the date of any reinstatement from current suspension for failure to comply with Rule 5.245 (Failure to Pay State Tax): Violation of Rules 4-1.3, 4-1.4, and 4-1.5(c). Date of Order: June 28, 2010.

SMITH, BRYAN W., Topeka, KS, Missouri Bar #43916

Suspension, suspension stayed, placed on probation for two years: Rule 5.20 (Reciprocal – Kansas); Violation of Rule 4-8.4(b). Date of Order: August 9, 2010.

STODDARD, MITCHELL B., St. Louis, MO, Missouri Bar #38311

Public Reprimand: Violation of Rule 4-1.7. Date of Order: March 25, 2010.

TAYLOR, DAVID LESLIE, Branson, MO, Missouri Bar #51928

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, and 4-8.1. Date of Order: May 11, 2010.

TOLEN, ERIC T., St. Louis, MO, Missouri Bar #33260

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: June 2, 2010.

WISEMAN, LE ANNE, Columbia, MO, Missouri Bar #49382

Surrendered license and suspended until further order of the Court: due to mental incapacity to practice law. Date of Order: January 13, 2010.

YUNGWIRTH, JOSEPH J., Columbia, MO, Missouri Bar #43637

Interim suspension from the practice of law pursuant to provisions of Rule 5.23(b).
Date of Order: August 23, 2010.

ZIEGLER, JAMES MICHAEL, Kansas City, MO, Missouri Bar #35746

Default Disbarment: Violation of Rules 4-1.15(c), 4-8.1(c), and 4-8.4(d). Date of Order: January 6, 2010.

II.

**THE FOLLOWING DISCIPLINARY ACTIONS WERE PENDING
BEFORE THE COURT AT THE CLOSE OF 2010 BASED ON PROCEEDINGS
PROSECUTED BY THE OFFICE OF
CHIEF DISCIPLINARY COUNSEL**

DEGROOT, THOMAS JAMES, St. Louis, MO, Missouri Bar #30291

Pending.

HOWELL, WILLIAM CRAIG, Omaha, NE, Missouri Bar #51768

(Disbarment: Rule 5.20 (Reciprocal – Nebraska); Violation of Rules 4-1.15(c) and 4-8.4(c). Date of Order: January 7, 2011.)

LOPEZ, MARIA TERESA, Kansas City, KS, Missouri Bar #59483

(Disbarment: Rule 5.20 (Reciprocal – Florida); Violation of Rules 4-1.15 and 4-8.4(c). Date of Order: February 16, 2011.)

MANRING, JOHN, St. Joseph, MO, Missouri Bar #32204

(Surrendered license and disbarred. Date of Order: January 21, 2011.)

MORSE, MINDY J., Kansas City, MO, Missouri Bar #41258

(Suspension, suspension stayed, placed on probation for eighteen months: Violation of Rules 4-1.4(a), 4-1.15(b), 4-1.16(a)(1), 4-5.5(b), 4-7.3(b), 4-8.1(b), 4-8.4(d), and 6.05(c). Date of Order: January 25, 2011.)

PAWLOSKI, JOHN J., St. Louis, MO, Missouri Bar #38059

(Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.15(c) and 4-8.4(c). Date of Order: May 17, 2011.)

PERSLEY, KATHRYN R., Kansas City, MO, Missouri Bar #44380

(Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-1.3, 4-1.4, 4-1.15(c), and 4-5.5(a). Date of Order: April 26, 2011.)

ROMIOUS, D. CARLOS, Kansas City, MO, Missouri Bar #46749

(Disbarment: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.1, 4-1.5, 4-3.4, 4-3.5, and 4-4.4. Date of Order: January 18, 2011.)

SHUMAKER, SETH, Kirksville, MO, Missouri Bar #36654

(Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-1.7(b) and 4-1.8(a). Date of Order: January 25, 2011.)

STEWART, BYRON G., Independence, MO, Missouri Bar #30511

(Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of six months: Violation of Rule 4-8.4(b). Date of Order: July 14, 2011.)

III. REINSTATEMENT PROCEEDINGS

A. DISCIPLINARY MATTERS

At the beginning of the year, 8 Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel.** During the year 8 additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing. The OCDC processed a total of 16 disciplinary reinstatement applications during 2010.

The status of those 16 applications is as follows:

Reinstated	3
Denied	3
Dismissed	1
Pending with OCDC	9

Three Disciplined Petitioners Were Reinstated By The Supreme Court

1. Aurora Mozelle Fluhr, St. Louis, MO, Missouri Bar #52490, reinstated on October 4, 2010, and placed on probation for a period of two years. Petitioner was suspended on March 2, 2010.
2. David Scott Schmidt, O'Fallon, MO, Missouri Bar #36795, reinstated on July 29, 2010. Petitioner was suspended on May 29, 2007.
3. Harry M. Stockman, St. Louis, MO, Missouri Bar #28083, reinstated on May 25, 2010. Petitioner was suspended on October 22, 2002.

Three Disciplined Petitioners Were Denied Reinstatement By The Supreme Court

1. John Lyng, Missouri Bar #22635, denied reinstatement. Petitioner was disbarred on June 29, 1993.
2. Stanford L. Sipple, Missouri Bar #38590, denied reinstatement. Petitioner was suspended on July 22, 2003.
3. Edward F. Walsh, IV, Missouri Bar #45046, denied reinstatement. Petitioner was suspended on September 30, 2008.

One Petition Was Dismissed By The Supreme Court in 2010

1. Stanley L. Wiles, Missouri Bar #21807, cause dismissed on December 21, 2010. Petitioner was suspended on September 20, 2005. (SC91100)
- ** Stanley L. Wiles, Missouri Bar #21807, cause dismissed on December 22, 2009. Petitioner was suspended on September 20, 2005. (SC90468) This matter was not reported in the 2009 Annual Report.

B. OTHER REINSTATEMENTS

Tax

Lawyers may be suspended for state tax issues under Rule 5.245. During 2010, the OCDC investigated and processed 12 tax suspension applications for reinstatement. Ten were reinstated. Two applications remained pending at the end of 2010.

Fee

Lawyers may be suspended under Rule 6.01(f) upon non-payment of annual enrollment fees. If their non-payment exceeds three years, they must apply for reinstatement under Rule 5.28. In 2010, the OCDC investigated and processed 12 applications for reinstatement by those lawyers. Six were reinstated. Six applications remained pending at the end of 2010.

Returns to Active Status

Lawyers may elect to become inactive under Rule 6.03. Per Rule 6.06, the OCDC investigated and processed 56 inactive lawyers' applications for reinstatement. Forty were returned to active status. One application was withdrawn by Petitioner, and 15 applications remained pending at the end of 2010.

MCLE

Lawyers may be suspended for non-compliance with Mandatory Continuing Legal Education requirements under Rule 15.06(f). During 2010, the OCDC investigated and processed three MCLE suspension applications for reinstatement. All three applications remained pending at the end of 2010.

IV. COMPLAINTS RECEIVED AND ACTED UPON IN 2010

2,278 complaints of attorney misconduct were received in 2010.

During 2010, the following actions were taken on complaints received:

- 870** Formal Investigations opened
 - 486** Cases investigated by Regional Disciplinary Committees
 - 384** Cases investigated by OCDC

- 77** Cases placed in the OCDC's Informal Resolution Program
[*See Paragraph A (below)]

- 1,013** Investigations not opened (*In certain instances, OCDC does not open an investigation until after related litigation is completed.*) Approximately 115 complaints were provided a further review and response by senior OCDC staff, following complainants' requests. Some of those reviews led to an investigation being opened.

- 120** Insufficient information to proceed

- 77** Referred to Fee Dispute Committees

- 45** Referred to Complaint Resolution Committee (**See Missouri Bar Complaint Resolution Activity Report attached.*)

- 33** Placed in "Inquiry" status (*These cases were not opened but were monitored to determine whether an investigation should be opened in the future.*)

A. Informal Resolution Program

In this program, intake counsel assigns appropriate cases to a paralegal to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. The program is used most often in response to complaints that the client has not had adequate communication from the lawyer or where the client has been unable to obtain file documents. It may also be used in a case where the complainant has trouble articulating the nature of the complaint, or seems confused about the lawyer's responsibilities or the legal process. The program has been successful in reducing complaint processing time while preserving the attorney/client relationship. Most cases in the program were resolved without opening an investigation.

B. Advisory Committee Review

Rule 5.12 permits complainants to seek review by the Advisory Committee in cases in which the OCDC or a Regional Disciplinary Committee investigates and finds no probable cause that a violation occurred. In 2010, 62 complainants requested review. The Advisory Committee upheld the findings on 19 of these files but issued cautionary letters to 4 lawyers. The Committee assigned 14 of the review files for further investigation. Twenty-five of these review files were pending with the Committee at the end of the year.

C. Fee Disputes

The Missouri Bar, Kansas City Metropolitan Bar Association and the Bar Association of Metropolitan St. Louis continued to provide fee dispute resolution programs. These programs are valuable to lawyers and legal consumers by providing a forum for fee-related complaints to be addressed through a non-disciplinary structure. During the year, 77 complainants were referred to Fee Dispute Committees.

V. DISCIPLINE ACTION INITIATED

A. Admonitions

The OCDC administered 68 written admonitions and the Regional Disciplinary Committees administered 43 written admonitions to Missouri lawyers. (Total: 111 admonitions). In addition, 239 cautionary letters were sent to lawyers by OCDC and the Regional Committees. Cautionary letters are not disciplinary action, but are used to educate the attorney on ethical responsibilities or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

B. Investigation Summary

Region	Investigations Pending 1/1/10	Investigations Referred 2010	Investigations Disposed in 2010
IV	65	128	119
X	61	200	190
XI	34	87	98
XV	34	71	70
OCDC	128	461*	428*

* Includes Informal Resolution

Region	Admonitions Issued in 2010	Cautionary Letters Issued in 2010
IV	11	16
X	10	32
XI	8	9
XV	14	5
OCDC	68	177

C. Filed Hearing Matters

FILING INFORMATION

In 2010, the OCDC and the Regional Disciplinary Committees filed Informations (the formal charging document) on 66 files. “Files” indicate individual complaints against attorneys. An Information against one attorney may include charges involving multiple files.

Twenty-two Informations, representing 36 complaint files, were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2010. Disciplinary Hearing Panels conducted 24 hearings involving 44 files. Default Informations were filed directly in the Supreme Court against 8 attorneys. Of these 8 defaults, one was later set aside on motion of the attorney.

D. Cases filed at the Supreme Court

RULE 5.19

Informant’s briefs were filed pursuant to Rule 5.19(d), in the Supreme Court in five cases in 2010. Of those five cases, two were heard because the Respondent did not concur in a DHP’s recommended sanction; two were heard because the Informant did not concur in a DHP’s recommended sanction; and one was heard after the Court rejected a joint stipulation. In addition, Informant’s reply briefs were filed in four cases. Three disciplinary cases appeared on the Court’s oral argument calendar in 2010. The Court published one disciplinary opinion in 2010: *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010).

RULE 5.20

Four reciprocal discipline cases, based on adjudication of misconduct in other jurisdictions, were filed in 2010: *In re Gentry*, SC90909; *In re Kieler*, SC91038; *In re Pawloski*, SC90863; and *In re Smith*, SC91039.

RULE 5.21

In 2010, six Informations were filed under Rule 5.21(a) against attorneys who had pled guilty, had been found guilty, or pled nolo contendere to violations of criminal laws: *In re Baldwin*, SC90871; *In re Bauer*, SC90879; *In re Buie*, SC90926; *In re Fox*, SC90733; *In re Oswald*, SC90612; and *In re Phillips*, SC90721. The *Phillips* case was dismissed as moot because that attorney surrendered his license under Rule 5.25.

Also in 2010, Informations were filed under Rule 5.21(c) against six attorneys whose criminal cases were finally disposed: *In re DeGroot*, SC90720; *In re Fox*, SC90910; *In re Merryman*, SC91185; *In re Oswald*, SC90837; *In re Phillips*, SC90792; and *In re Tolen*, SC90927.

RULE 5.23

In 2010, an Information was filed under Rule 5.23(b) against one attorney, based on the inability to competently represent the interest of clients by reason of physical or mental condition: *In re Yungwirth*, SC91102.

RULE 5.24

Three Informations requesting interim suspension for substantial threat of irreparable harm were filed in 2010: *In re Cappiello*, SC91271; *In re Gartenberg*, SC90765; and *In re Merryman*, SC91153.

RULE 5.25

In 2010, five attorneys applied to surrender their licenses under Rule 5.25: *In re Brookreson*, SC90919; *In re Cohen*, SC90622; *In re Lovelace*, SC90938; *In re Manring*, SC91281; and *In re Phillips*, SC90904. The OCDC filed Reports and Recommendations in each of these cases.

VI. LAWYER MONITORING

OCDC staff monitor lawyers' practice in four circumstances, all intended to improve the lawyers' likelihood of maintaining a successful practice and protecting the public. In 2010, the office monitored 20 lawyers in the disciplinary diversion program established by Rule 5.105. The diversion program was created to help first offenders who have engaged in relatively minor rule violations.

Twenty-seven lawyers were monitored in 2010 while on probation under Rule 5.225, the rule permitting probation for suspended lawyers whose conduct did not warrant disbarment. Also, the office was asked by the Missouri Supreme Court and Missouri Board of Law Examiners in 2010 to monitor the practice of 8 newly admitted lawyers. Finally in 2010, the office monitored the practice of 5 lawyers who have been reinstated subject to an order of probation.

VII. UNAUTHORIZED PRACTICE OF LAW

The Office of Chief Disciplinary Counsel opened complaint files on approximately 18 individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

Due to the workload and staff resources of OCDC, the office limited its efforts to conducting in-depth investigations only when there appeared to be widespread consumer fraud occurring. Where appropriate, the office conducted investigations of complaints, and the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

VIII. PRESENTATIONS BY OCDC STAFF

During 2010, OCDC staff gave 47 presentations at Continuing Legal Education (CLE) seminars. The OCDC staff gave presentations to the following organizations: Audrain County Bar Association; the Bar Association of Metropolitan St. Louis; Jefferson County Women Lawyers Association; the Kansas City Metropolitan Bar Association; Missouri Department of Revenue; Missouri Department of Social Services; Missouri Division of Workers' Compensation; Missouri Paralegal Association; Missouri Public Service Commission; NAACP; St. Louis County Bar Association; U. S. Attorney's Office – Kansas City; United States Arbitration & Mediation; University of

Missouri – Kansas City; and William Woods University. The OCDC staff also spoke at the Missouri Bar’s Solo and Small Firm Conference, several Missouri Bar telephone CLEs and webinars, and many other CLE presentations sponsored by the Missouri Bar and other organizations.

IX. SIGNIFICANT ACTIVITIES IN 2010

Disciplinary Case Processing

The Supreme Court previously established a timeline standard for the disposition of pending cases that seeks to complete 75% of investigations within six months and 90% of investigations within one year. The OCDC and the disciplinary system substantially met these timeline standards throughout 2010.

Policy regarding Frequent Complaint Recipients

The OCDC devotes a significant amount of its resources to complaints against attorneys who are frequent complaint recipients (FCR attorneys). In an effort to address this issue, the OCDC adopted a policy in 2007 intended to identify and meet with FCR attorneys in order to discuss and address law practice management issues and other issues affecting the FCR attorney that might be contributing to client complaints. In addition, the FCR meetings are intended to inform the attorney regarding the disciplinary process and the system of progressive discipline adhered to by the Supreme Court and the OCDC. During 2010, the Chief Disciplinary Counsel continued to meet with subject lawyers pursuant to the FCR policy.

Law Practice Management Course

In 2007, with the support and approval of the Missouri Supreme Court, the OCDC began working with The Missouri Bar to develop a comprehensive program to address the issues raised by the lack of law practice management skills among a few members of the Bar whose clients have repeatedly complained. This cooperative effort resulted in the development of a Practice Management Course staffed by a distinguished faculty of lawyers from around the state. In 2010, the course was offered through a series of webinars as well as a full-day in-person session in Columbia, Missouri. Thirty-two (32) lawyers attended the course in 2010

Scanning/Paperless Office Project

In an effort to increase system efficiency and to reduce investigative expenses, the OCDC instituted a paperless system of complaint processing utilized by the OCDC and the Regional Disciplinary Committees in Kansas City, St. Louis and Springfield. Under

the system, initiated in October 2008, complaints and other externally-received documents are scanned by staff at the OCDC for processing. To the extent that the investigative files are being processed by a regional disciplinary committee, the case files are transmitted in a secure, electronic format to the regions. In those cases where the Supreme Court Advisory Committee is conducting a requested review pursuant to Rule 5.12, the files are transmitted securely in an electronic format to the Committee. In 2010, the OCDC continued to successfully implement and refine the paperless document management system.

Physical Facilities

In 2009, the OCDC completed a capital improvement project at the OCDC facility located at 3335 American Avenue, Jefferson City, Missouri. With regard to the building's long term viability, after careful consideration and recognizing the somewhat speculative nature of the projections, we believe that we will be able to remain in the existing OCDC facility without additional space through 2012. With the approval of the Supreme Court, the OCDC is currently having a facility analysis performed to determine the long-term suitability and functionality of the OCDC building.

Regional Disciplinary Committee Training

The OCDC is an accredited MCLE provider. In 2010, we continued to host a training session and MCLE presentation for the benefit of special representatives who participate in the disciplinary system at the Regional Disciplinary Committee level throughout the state.

Staff Training

In 2010, the OCDC attorney staff participated in training by attending conferences offered by The Missouri Bar, the National Organization of Bar Counsel and the American Bar Association – Center for Professional Responsibility. Paralegals in the office attended and presented training through the Missouri Paralegal Association and the nationwide Organization of Bar Investigators, an affiliate of the National Organization of Bar Counsel.

Supreme Court Rule 4

Effective January 1, 2010, the Supreme Court adopted an amendment to Rule 4-1.15 of the Rules of Professional Conduct that requires financial institutions holding lawyer trust accounts to notify the OCDC in cases where the trust account is overdrawn. The overdraft provision is intended as an early warning system for attorney trust account violations, permitting the OCDC to intervene when problems first occur in order to

provide client and third party protection from theft and to have a deterrent effect on attorneys who might be engaged in sloppy trust accounting practices and procedures.

In 2010, the OCDC received 281 overdraft notifications. Many of these involved negligent or careless management of trust accounts, which were often handled by education and follow-up monitoring without discipline. Some overdrafts were more serious, either by scope of the problem or by the intention of the attorney. Various levels of discipline were necessary in these matters in order to protect the public and the integrity of the profession. Of the 281 cases in 2010, admonitions were issued to 29 attorneys and formal discipline commenced or issued in 26 cases.

Effective July 1, 2010, the Supreme Court adopted an amendment to Rule 4-7.1 to provide that some restrictions on advertising would not apply to legal aid or pro bono services provided by a not-for-profit organization, a court-annexed program, a bar association or an accredited law school. Additional comments were added to Rule 4-7.1 discussing the danger of using such pricing terms that may be misleading unless the price comparison could be factually sustained.

Effective July 1, 2010, the Supreme Court adopted an amendment to Rule 4-7.2 by adding a definition of what would be considered “conspicuous” as required for certain advertising disclaimers. “Conspicuous” means that the required disclosure must be of such size, color, contrast, location, duration, cadence, or audibility that an ordinary person can readily notice, read, hear or understand it. The Rule also states that disclaimers must appear in the same language as the advertisement. As with Rule 4-7.1, this rule does not apply to legal aid or pro bono services provided by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school.

Effective July 1, 2010, the Supreme Court adopted an amendment to Rule 4-7.3 to provide that some restrictions on solicitations would not apply to legal aid or pro bono services provided by a not-for-profit organization, a court-annexed program, a bar association or an accredited law school.

Supreme Court Rule 5

The Supreme Court approved a technical amendment to Rule 5.19(c), which changes the triggering mechanism for filing a the record of a Disciplinary Hearing Panel proceeding from when the decision of the DHP is received by the Chair of the Advisory Committee to the date when the decision of the DHP is mailed by the Advisory Committee Chair. The amendment permits the Advisory Committee Chair to specifically designate the date that the timeline begins to run.

In 2010, the Supreme Court adopted a new Rule 5.285 addressing the procedure for raising issues of mental disorder in an attorney discipline case and the proper consideration of mental disorders in determining discipline and reinstatement. The Rule defines what a mental disorder is and includes substance abuse or dependency within that mental disorder definition. It states that a mental disorder is not a defense to allegations of professional misconduct, but that it may be considered as a mitigating factor in determining appropriate discipline. The respondent attorney must identify the mental disorder no later than the time of filing an answer or amended answer. A mental disorder cannot be considered a mitigating factor in a disciplinary proceeding unless an independent, licensed mental health professional provides evidence that the mental disorder caused or had a direct and substantial relationship to the professional misconduct. The respondent must demonstrate that the respondent has the ability to manage the mental disorder for a meaningful and sustained period of successful functioning, and that recurrence of the misconduct is unlikely. The Rule lists twelve relevant factors for consideration in mitigation. Other requirements are imposed by the Rule on an attorney seeking to rely on a mental disorder in mitigation in a disciplinary case.

Aging Attorney Task Force

The aging of the “baby boom” generation of lawyers has created challenges within the legal profession and the discipline system. For example, for a variety of reasons, many attorneys are continuing to practice law beyond an age when other professionals have retired. In order to begin to address issues related to the aging lawyer population, the Supreme Court approved the creation of an Aging Attorney Task Force which has begun to examine important questions related to this issue, such as the need to encourage attorneys to develop transition plans for their practices. The Task Force is continuing to meet and will ultimately make recommendations to the Court and to the Bar.

SUMMARY OF DISCIPLINE ACTIONS

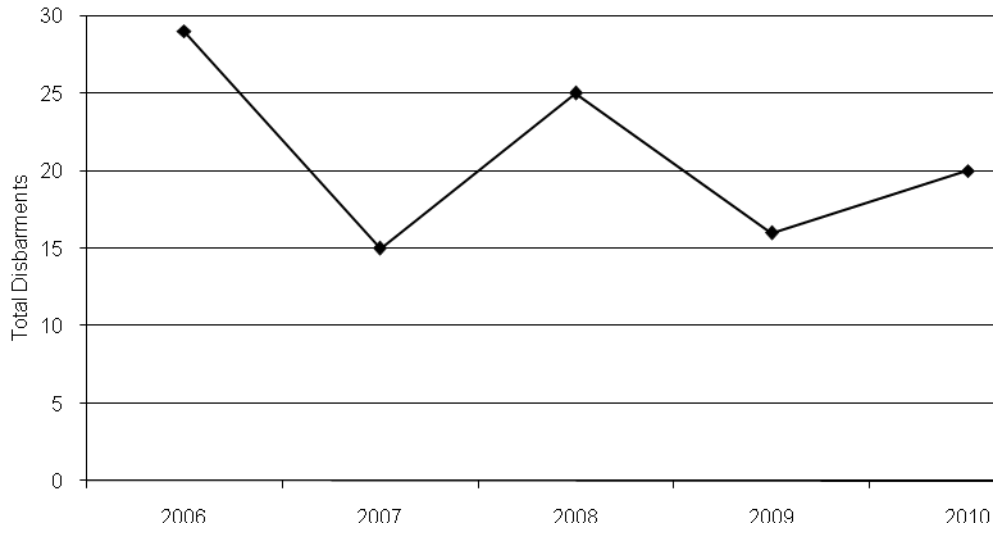
During 2010:

- **20** Twenty lawyers were disbarred;
- **21** Twenty-one lawyers were suspended; **five** of those suspensions were stayed and attorneys placed on probation with conditions;
- **4** Four lawyers received public reprimands;
- **111** One hundred eleven written admonitions were administered by the Regional Disciplinary Committees and the OCDC; and
- **3** Three additional matters were dismissed by the Court.

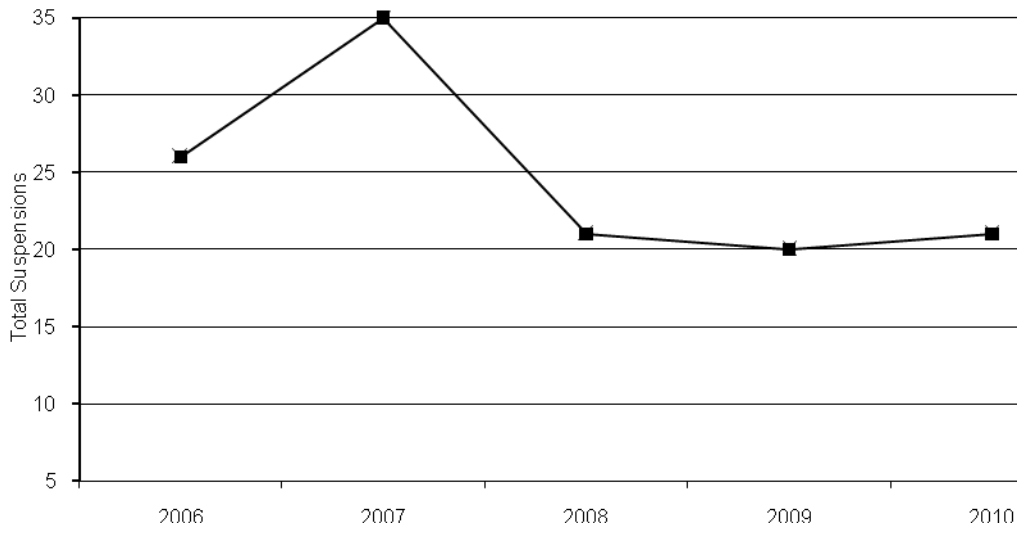
These figures include proceedings initiated by Regional Committees and the OCDC.

On occasion, other pending complaints against a lawyer are dismissed upon that lawyer's disbarment or suspension.

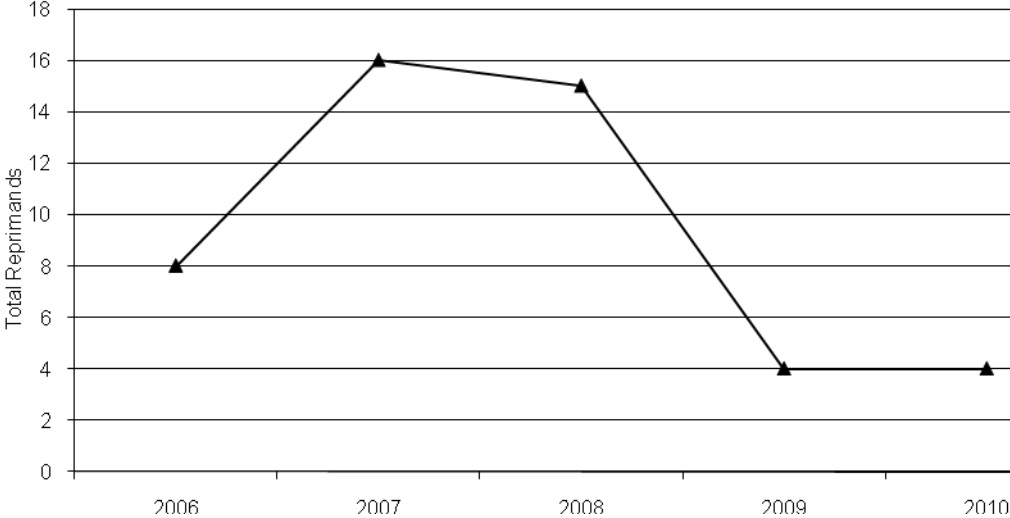
Disbarments



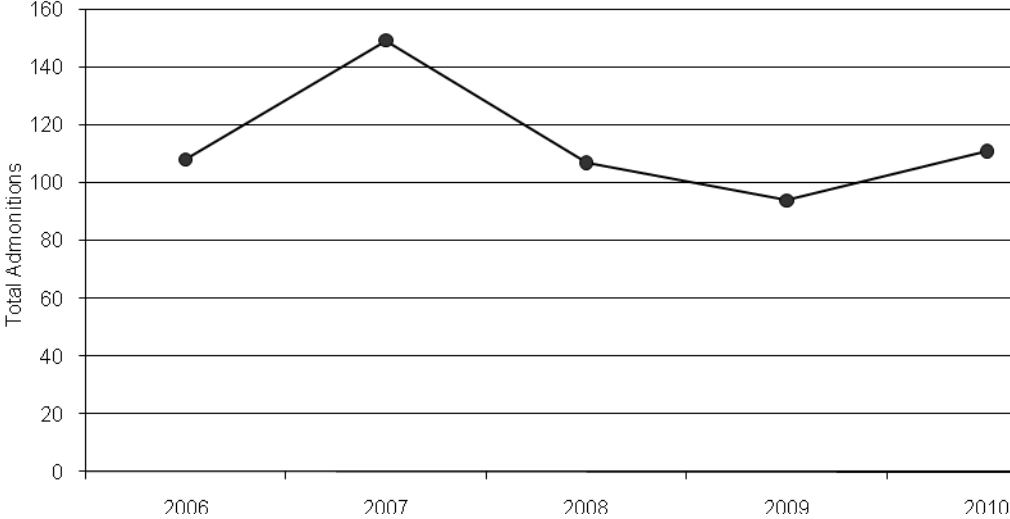
Suspensions



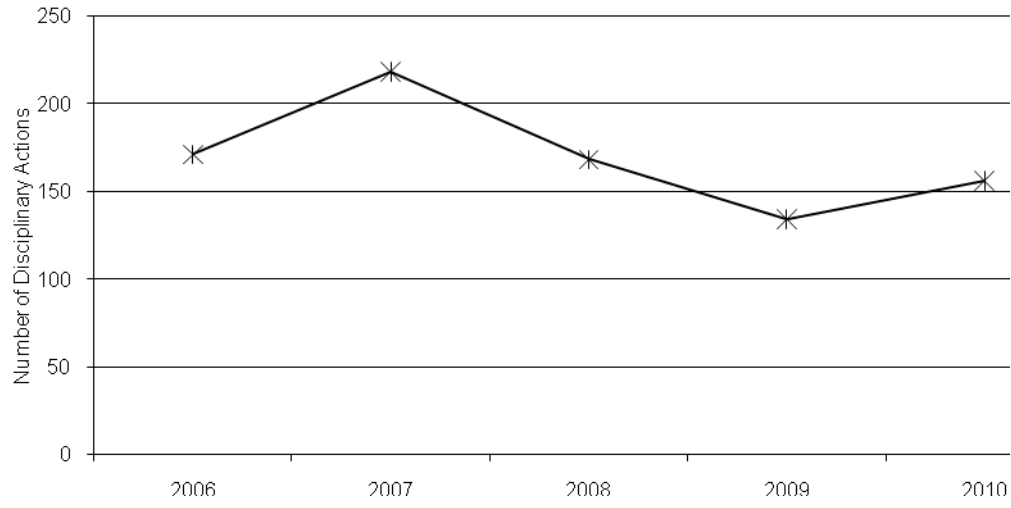
Reprimands



Admonitions



Total Disciplinary Actions



In 2010, there were a total of (156) disciplinary actions including admonitions and formal discipline matters.

The total number of complaints opened as formal investigations during 2010 was 870. The most common complaint areas are as follows:

NATURE OF VIOLATIONS *	NO.
Rule 4-1.4 (Communication)	375
Rule 4-1.15 (Safekeeping Property)	341
Rule 4-1.3 (Diligence)	314
Rule 4-8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	109
Rule 4-1.5 (Excessive Fees)	82
Rule 4-1.7 (Conflicts)	53
Rule 4-1.16 (Improper Withdrawal)	43
Rule 4-5.5 (Unauthorized Practice)	41
Rule 4-8.4(b) (Criminal Activity)	22
Rule 4-7.2 (Advertising)	15
Rule 4-1.1 (Competence)	13
Rule 4-3.3 (Truth to Tribunal)	12
Rule 4-1.6 (Confidentiality)	8
Rule 4-4.1 (Truth to 3 rd Persons)	8
Rule 4-3.5(b) (Ex Parte Contacts)	2
Rule 4-5.3(b) (Supervisory Responsibility)	2
Rule 4-3.8 (Prosecutorial Responsibility)	1

* Many complaints included more than one allegation.

The most prevalent practice areas which resulted in investigations are as follows:

AREA OF PRACTICE *	NO.
Domestic	155
Torts	103
Criminal	83
Other	68
Estate/Probate	51
Bankruptcy/Receivership	34
Workers Compensation	30
Contracts	25
Real Property	25
Traffic	25
Administrative/Governmental	18
Corporate/Banking	13
Labor Law	11
Collections	9
Immigration/Naturalization	5
Landlord/Tenant	5
Litigation	3
Patent/Trademark	3
Taxation	3
Civil Rights	1
Commercial Law	1
Insurance	1

* Investigations involving trust account overdraft notifications made to the OCDC are not included in this tabulation.

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 10th day of August, 2011.

Respectfully Submitted,

ALAN D. PRATZEL
Chief Disciplinary Counsel

2010 LEGAL ETHICS COUNSEL ANNUAL REPORT

LEGAL ETHICS COUNSEL ROLE

Informal Advisory Opinions

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues nonbinding informal advisory opinions.

The Legal Ethics Counsel office provided informal advisory opinions in response to 1602 oral contacts. Some of the contacts involved multiple, separate questions and therefore multiple opinions. Opinions given in conjunction with contact at bar meetings and CLE programs are generally not included in this count.

The Legal Ethics Counsel also provided 92 written informal advisory opinions.

CLE Presentations

The Legal Ethics Counsel prepared and gave 31 CLE presentations for various groups, including: The Missouri Bar, University of Missouri at Kansas City Law School, Mound City Bar, Boone County Bar, Springfield Metropolitan Bar Association, Legal Services of Southern Missouri, Missouri Association of Trial Attorneys, Joplin Guardians Ad Litem, KC National Employment Lawyers Association, Women Lawyers Association of Mid-Missouri and the National Organization of Bar Counsel.

COUNSEL TO ADVISORY COMMITTEE ROLE

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

Review Summaries

Pursuant to Rule 5.12, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds no probable cause and the complainant requests review. The Legal Ethics Counsel office summarized and distributed 79 review files.

Hearings

The Legal Ethics Counsel office provided assistance to Disciplinary Hearing Officers with arrangements for hearings, as requested.

The Legal Ethics Counsel administered the hearing process to assist the Chair of the Advisory Committee. The Legal Ethics Counsel proposes a hearing panel, provides the file to the hearing panel once the panel has been approved by the Chair, monitors the progress of the hearing, and assists the hearing officers with issues that arise during the course of the process. 33 Informations were filed in 2010.

Rule 5.16 provide, in part:

(e) The written decision of the disciplinary hearing panel shall be filed with the chair of the advisory committee. The chair shall review the panel's decision for the limited purpose of determining that the recommendation for discipline, if any, conforms to this Rule 5 and the sanctions established by the Court. If the chair of the advisory committee determines that the panel's recommendation does not conform, the chair shall direct the disciplinary hearing panel to reconsider its recommendation for discipline. After reconsideration, the panel shall file the revised written decision with the chair of the advisory committee.

(f) The chair of the advisory committee shall serve the written decision of the disciplinary hearing panel by first class United States mail, postage prepaid, on the respondent, the counsel for the informant, and the chief disciplinary counsel.

The Legal Ethics Counsel performs the majority of these duties on behalf of, and in consultation with, the Chair.

Budget

The Legal Ethics Counsel prepared a proposed budget for the Advisory Committee and LEC for 2011.

Meetings

The Legal Ethics Counsel office coordinated arrangements for four Advisory Committee meetings.

Formal Opinions

The Legal Ethics Council provided assistance in relation to drafting Formal Opinion 128 regarding Nonrefundable Fees.

Overdraft Reporting/Financial Institution Approval

Beginning January 1, 2010, Missouri attorneys were required to have their trust accounts at financial institutions “approved” by the Advisory Committee. In order to be approved, the financial institution must enter into an agreement to report insufficient funds situations that arise on attorneys’ trust accounts to the Office of Chief Disciplinary Counsel.

The Legal Ethics Council office prepared a packet of information about the new overdraft reporting provisions and mailed the packet along with an Agreement to each of the approximately 300 financial institutions. The office responded to numerous inquiries from financial institutions and notified financial institutions of approval, once the Agreement was properly executed. The Legal Ethics Council maintains a list of approved banks on the office website.

Other matters

The Legal Ethics Council maintained a website for the Advisory Committee and Legal Ethics Council. The website included a public area and a private area accessible only to Disciplinary Hearing Officers. The public area included articles and CLE materials on legal ethics issues prepared by the Legal Ethics Council.

The Legal Ethics Council served on The Missouri Bar’s Professionalism Committee Council on behalf of the Advisory Committee.

The Legal Ethics Council served on the budget and program committees of the National Organization of Bar Counsel. In August 2010, the Legal Ethics Council was elected President-Elect of the NOBC.

The Legal Ethics Council met with the GAL Standards Sub-Committee of the Supreme Court’s Family Court Committee. The Legal Ethics Council assisted the Sub-Committee with the identification of ethical issues that should be addressed by the proposed standards. The Legal Ethics Council participated in the drafting and revision of such language for the proposed standards.