

RULES GOVERNING DISCIPLINARY PROCEEDINGS,
RULES 6 AND 7; BAD BEHAVIOR AND HOW IT CAN
CAUSE YOU TO LOSE YOUR LICENSE

THE OKLAHOMA BAR ASSOCIATION - GENERAL COUNSEL

The General Counsel of the Oklahoma Bar Association has jurisdiction to investigate alleged misconduct against attorneys licensed to practice in the state of Oklahoma.

They report misconduct to the Professional Responsibility Commission. The PRC consists of seven members, 5 lawyers and two non-lawyers. The PRC determines the disposition of those grievances, and can refer a case for formal proceedings with the Supreme Court.

The General Counsel prosecutes all proceedings under the Rules Governing Disciplinary proceedings. If the discipline action results in a tribunal hearing, the Professional Responsibility Tribunal, or PRT, holds the hearing.

The PRT then makes a recommendation to the Oklahoma Supreme Court. The Supreme Court makes the decision if a case is dismissed, the attorney is privately reprimanded, or receives a public censure, or is suspended, or the ultimate punishment, disbarment.

My experience with the General Counsel has been overall pretty positive, I don't think of them so much as prosecutors, but more like regulating attorney's conduct to ensure the protection of the public, and they are there to assist lawyers when they have issues.

Disciplinary Rule 7 cases

Rule 7.1 of the RGDP, 5 O. S. Ch. 1, App. 1-A, states that "A lawyer who has been convicted or who tenders a plea of guilty or nolo contendere pursuant to a deferred sentence plea agreement in any jurisdiction of a crime which demonstrates such lawyer's unfitness to practice law ... ***shall be subject to discipline.***"

In the past, it took some lawyers several DUI's, for example, to even be a blip on the OBA's radar. I've seen some only lose their license after 9 DUI's and a prison sentence before they got disciplined.

Now, if a lawyer pleads guilty or no contest to ANY crime, even if they receive a deferred sentence, the Supreme Court will open a SCBD, or Supreme Court Bar Docket case against you. This is even BEFORE they decide if you will receive an interim suspension. Anyone can look it up and it stays there even if it is dismissed.

The primary purpose of these interim suspensions is to protect the public. The Court gives the Oklahoma Bar Association through the Office of the General Counsel the authority to investigate these matters.

Since late 2015, the Supreme Court has directed all county clerks in Oklahoma to send a copy of the judgment and sentences of all lawyer's pleas to the Supreme Court within five days of receipt. This is considered the start of a Rule 7 case. The Oklahoma Bar Association through the General Counsel no longer has discretion in whether the criminal case is brought before the Supreme Court. As a result, every case in which there is a plea or conviction will get a Supreme Court Bar Docket (SCBD) case number and will now become a matter of public record. This not only means all felony cases, as has been the standard in the past, but ***all misdemeanor cases*** as well.

The Lumpkin form now has a place asking whether this Defendant is a practicing attorney. The Court Clerk then SHALL send the J&S to the Supreme Court for their review.

Only after the bar docket case is publicly filed does the Supreme Court, through Order the Chief Justice, make a cursory interlocutory decision as to the lawyer's fitness to practice law. The Court has three options:
to dismiss the case,

to ask the lawyer to show cause why an interim suspension should not be entered,
or to immediately suspend the lawyer.

The Supreme Court makes no distinction between a guilty or no contest plea, and even a deferred sentence is treated as a conviction for purposes of handing down an interim suspension.

An interim suspension can have a huge impact on the way a lawyer's professional life unfolds. The suspended lawyer has to notify all current clients of the suspension, withdraw from all pending cases, and shut down their practice for an indeterminate period of time. Most of these cases can take from six months to a year for a final resolution.

An interim suspension is not a discipline, but through briefing and a three-judge tribunal hearing, the Court will make a final decision based on the evidence presented by the lawyer and General Counsel as to the lawyer's fitness to practice law. The end result is a final discipline such as a reprimand, public censure, a term of suspension and a diversion program specific to that lawyer's transgression, or disbarment.

The lawyer has an opportunity to brief why the interim suspension should be set aside. If they do not lift the suspension, the lawyer can then file a brief in mitigation of discipline. The lawyer has a right to testify at the three-judge tribunal and call witnesses on his behalf. The General Counsel can call witnesses who have been harmed by the conduct. The Professional Tribunal will then make a written recommendation to the Court for their consideration. It is a high burden for the lawyer, but the mitigating evidence through briefing and the tribunal hearing go a long way to helping the Court determine the outcome.

The Court does look at a lawyer's pattern of arrests and convictions to determine whether he will harm the public if he continues to practice because he may pose a substantial threat of harm to his clients. In my experience, it is common for a lawyer to receive a deferred or reduced sentence for a first time misdemeanor DUI, (for example,) and those cases tend to be dismissed by the Court without disruption of his practice. If, however, there is a serious bodily injury, the consequence may be more severe.

Not all interim suspensions are a result of a conviction or guilty plea. A Rule 6 Supreme Court Bar Docket case can be filed if the lawyer engaged in bad conduct, such as misappropriating funds, engaging in inappropriate

relations with a client, or other conduct that is prejudicial to the administration of justice. The same procedure is followed in these cases.

These immediate interim suspensions are brought on very short notice and the briefing schedule is very quick. This creates substantial negative consequences for the lawyer, his clients, third parties, and to the entire legal system while giving that lawyer little time to put together a defense.

SELF REPORTING

Often I get calls from lawyers that get arrested for a crime, and they feel they must report it to the General Counsel's office. **You do NOT have a duty to report. REPEAT. You do NOT have a duty to report.** If you call the General Counsel's office, the first thing they will tell you is — **you do NOT have a duty to report.**

The best course of action after an arrest for a crime is to first utilize **assessments, treatment programs, AA classes, batterers classes**, etc, anything that will tend to mitigate the trouble that you are in. You have plenty of time to complete a treatment program before your anticipated plea or trial. You are not under a duty to report a guilty plea or no contest plea, (resulting in a J&S,) but this is the time that you would want to self report, when you have taken steps to mitigate the problem and that you are certain a plea is in the future.

When there is a plea, of course the Supreme Court is going to find out about it. The Court will not know about the self-report until after they make a decision about whether to immediately interim suspend that lawyer. But that self-reporting becomes mitigating evidence for the brief in support of lifting that interim suspension.

You wouldn't necessarily want to self-report if the case gets dismissed, for instance.

I've actually had an assistant general counsel tell me that had my client NOT self reported, they would not have been on the radar and would not have received a suspension because that tiny town's clerk doesn't usually follow this rule. Of course he self-reported before he had hired me.

DISCIPLINARY RULE 6 - BAD BEHAVIOR

The Oklahoma Rules of Professional Conduct in Title 5 govern Oklahoma attorney's behavior.

When an attorney has received a grievance or has exhibited behavior such that the General Counsel would deem that behavior sufficient evidence that the attorney in question is unfit to practice law. The General Counsel then files a Rule 6, which is a Supreme Court Bar Docket case, or SCBD.

[quote Rule 6]

A Rule 6 case CAN be triggered by a criminal case, but rather than wait for a guilty plea, (which can take too much time for the OBA to wait for,) the behavior has risen to a level where the OBA General Counsel believes that an interim suspension could be warranted.

Some behavior that has caused **Rule 6 filing's**, but before a guilty plea, are:

1. your criminal behavior made the news;
2. you did something extra colorful like flip off a cop;

3. you gave your client a phone in jail;
4. bribe a cop;
5. leave the scene of an injury accident;
6. have sexual relations with your client;
6. you have a pattern of behavior of multiple criminal charges.

Rule 6 proceedings do not necessarily arise out of criminal charges.

7. misuse of trust account;
8. sever neglect of client matters;
9. complete failure to keep clients informed;
10. failure to respond to a lawful demand for investigation;
11. failure to make full and fair disclosure;
12. consistently ignoring requests for responses to the OBA General

Counsel;

13. failure to notify the OBA of imposition of discipline in another jurisdiction;

14. any conduct that is prejudicial to the administration of justice.

Lying to the General Counsel is grounds for discipline, and well, it's just a really bad idea. They require your full cooperation and honesty.

Within the last year, under Rule 6 cases, lawyers in Oklahoma have received Immediate Interim Suspensions for:

1. failing to report being disciplined by the Bankruptcy Court;
2. failing to report discipline by the Colorado Bar Association;
3. swearing at/verbally abusing client;
4. not refunding unearned fees;
5. conversion, embezzlement;

6. soliciting a client for sex;
7. backdating motions once they have missed a filing deadline.

A Rule 6 case filing can be triggered by a grievance, or if the conduct has made the news, or has come to the General Counsel's attention that an immediate interim suspension to practice law may be warranted.

When the Rule 6 case is filed with the Oklahoma Supreme Court, the Court reviews the evidence and makes a decision whether to immediately suspend that lawyer. The Court makes this decision within just a few days. The lawyer can then respond with a brief requesting the lifting of the interim suspension, and if it isn't lifted, they can write a brief to mitigate the outcome of the discipline and/or they have a right to have a tribunal hearing.

In the Oklahoma Rules of Professional Conduct, or ORPC, there is a rule that is kind of a catch-all for bad behavior, RGDP Rule 8.4. Bad behavior can spill into the courtroom. Contentious behavior between opposing parties has resulted in discipline.

You need to treat opposing counsel with respect.

INTERIM SUSPENSIONS

If you receive an interim suspension, you may ask the Supreme Court to lift the suspension. These are your options:

1. you have the right to brief to the court about why it should be lifted;
2. you can brief to the court as to mitigating factors and/or
3. you have the right to a tribunal hearing.

I had a client that had to wait a year after getting an immediate interim suspension, it took that long to get a tribunal and have the court hear the case. The OBA and tribunal recommended a 6 month suspension, retroactively, but the Supreme Court said that was too harsh and gave him a **Public Censure**. A 6 month suspension was too harsh a recommendation, but it took a year, while he was suspended, for the court to give a Public Censure.

TRIBUNAL HEARINGS

In a tribunal hearing, there are not one, but three judges that hear the case.

You have the right to call witnesses, as does the General counsel.

In a **Disciplinary tribunal**, the General counsel presents and call witnesses, including the investigator assigned to the case. Both sides present evidence and exhibits and the three judges also ask questions of the witnesses. The tribunal has 30 days to make a recommendation as to what discipline should be appropriate and that is briefed to the Supreme Court, that ultimately makes the decision.

The court can publicly censure, suspend for 30 days, 90 days, 6 months, a year up to two years without the attorney having to apply for reinstatement after their suspension is over. Two years and one day is tantamount to disbarment.