

# REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL

IN THE  
SUPREME COURT OF MISSOURI  
EN BANC

MAY SESSION, 2008

REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR 2007 TOGETHER WITH THE FINANCIAL  
REPORT OF THE TREASURER OF THE ADVISORY COMMITTEE FUND FOR 2007

To the Honorable Judges of The Court:

Comes now the Office of Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar  
year 2007 or pending on December 31, 2007.

## I.

### THE FOLLOWING DISCIPLINARY ACTIONS WERE TAKEN BY THE COURT DURING 2007 BASED ON PROCEEDINGS PROSECUTED BY THE OFFICE OF CHIEF DISCIPLINARY COUNSEL<sup>1</sup>

**AFFHOLTER, ERIC S., St. Louis, MO, Missouri Bar #47249.** Interim suspension: Violation of Rule 4-8.4(b). Date of Order: September 21, 2007. Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of two years from November 20, 2007.

**ALLEN, JOHN J., St. Louis, MO, Missouri Bar 324080.** Public Reprimand: Violation of Rules 4-1.3 and 4-1.4. Date of Order: May 11, 2007.

**ANNAMALAI, ANGAYURKANNI, Creve Coeur, MO, Missouri Bar #46592.** Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of two years: Violation of Rules 4-8.4(c), 4-8.4(d) and 4-1.1. Date of Order: May 1, 2007.

**BEEAMAN, PATRICK D., Liberty, MO, Missouri Bar #30033.** Interim Suspension: Violation of Rule 4-8.4(b). Date of Order: June 6, 2007. Disbarment: Violation of Rule 4-8.4(b). Date of Order: November 9, 2007.

**BELCHER, STEVEN R., St. Louis, MO, Missouri Bar #56075.** Suspension, suspension stayed, placed on probation for six months: Violation of Rules 4-1.6(a), 4-4.4, 4-8.4(a) and 4-8.4(d). Date of Order: October 23, 2007.

**BITTING, CYNTHIA H., Chesterfield, MO, Missouri Bar #228965.** Public Reprimand: Violation of Rule 4-8.4(d). Date of Order: October 30, 2007.

**BROWN, NORVEL E., JR., Kirkwood, MO, Missouri Bar #26503.** Disbarment: Violation of Rule 4-8.4(b). Date of Order: July 5, 2007.

**COOPER, NATHAN D., Cape Girardeau, MO, Missouri Bar #51443.** Interim Suspension: Violation of Rule 4-8.4(b). Date of Order: August 17, 2007.

**DANIELS, JAMES LEE, Kansas City, MO, Missouri Bar #49263.** 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 4-1.1, 4-1.3, 4-1.4(a), 4-1.15(b), 4-1.16(d), 4-3.2, 4-7.1(a), 4-8.4(c), and 4-8.1(b). Date of Order: September 5, 2007.

**DAUGHERTY, TROY L., Olathe, KS, Missouri Bar #39734.** Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of one year and further, no petition for reinstatement shall be entertained prior to Respondent having made full restitution as required by the Illinois Supreme Court: Rule 5.20 (Reciprocal-Illinois); Violation of Rules 4-3.1, 4-3.3(a) (1), 4-3.3(a)(4), 4-3.4(b), 4-8.2(b), 4-8.4(c) and 4-8.4(d). Date of Order: May 29, 2007.

**DESSELLE, ROBERT L., Grain Valley, MO, Missouri Bar #39490.** 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 4-8.4(a), 4-8.4(c), 4-8.4(d), 6.01(a), 6.01(f), 4-5.5, 4-1.3, 4-3.2, 4-1.16(d) and 4-1.4. Date of Order: May 29, 2007.

**DIBLER, DENNIS E., Grandview, MO, Missouri Bar #24237.** Public Reprimand: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-8.4(d). Date of Order: January 16, 2007.

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

**DORSEY, ELBERT, St. Louis, MO, Missouri Bar #23079.** Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: January 29, 2007. Public Reprimand (Order of disbarment set aside): Violation of Rules 4-1.3, 4-4, 4-8.4(c) and 4-1.15. Date of Order: May 1, 2007.

**EARNSHAW-HOBBS, CATHERINE, Lee's Summit, MO, Missouri Bar #23452.** Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-8.4(a), 4-8.4(d), 4-1.1, 4-1.3, 4-1.4(a), 4-1.4(b) and 4-3.2. Date of Order: December 17, 2007.

**ESPOSITO, VINCENT M., Kansas City, MO, Missouri Bar #31586.** Public Reprimand: Violation of Rule 4-8.4(d). Date of Order: October 30, 2007.

**FABBRI, FRANK R., III, St. Louis, MO, Missouri Bar #23023.** Disbarment: Violation of Rule 4-8.4(b). Date of Order: November 20, 2007.

**FINGAL-GRIFFIN, CHRISTI S., St. Louis, MO, Missouri Bar #33527.** Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of three years: Violation of Rules 4-1.7(b), 4-1.8(a), 4-1.8(b), 4-8.4(c), 4-8.4(d), 4-1.2(a), 4-1.4, and 4-1.16(a). Date of Order: May 29, 2007.

**FORCK, NATHAN J., Columbia, MO, Missouri Bar #58206.** Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-8.4(d) and 4-8.1(b). Date of Order: December 7, 2007.

**GODFREY, DAVID C., St. Louis, MO, Missouri Bar #15389.** Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.5(c), 4-1.15(a), 4-1.15(b), 4-1.4(b) and 4-8.4(a). Date of Order: July 26, 2007.

**GOTTLIEB, ADRIENNE GAY, Overland Park, KS, Missouri Bar #21858.** Probation revoked, suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of two years. Date of Order: March 6, 2007.

**HALEY, LANCE M., Kansas City, MO, Missouri Bar #37896.** Suspended from the practice of law and no petition for reinstatement will be entertained by the Court until Respondent has been reinstated to practice in the United States Court of Appeals for the Eighth Circuit: Rule 5.20 (Reciprocal-United States Court of Appeals for the Eighth Circuit); Violation of Rules 4-1.3, 4-3.2, and 4-8.4(d). Date of Order: January 30, 2007.

**HAMBRICK, JOHN C., JR., Branson, MO, Missouri Bar #28165.** Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.5, 4-1.15, 4-3.3(a)(1), 4-3.3(a)(2), 4-5.5, 4-8.4(c), 4-8.4(d), and 5.27. Date of Order: February 27, 2007.

**HANSON, MICHAEL R., O'Fallon, MO, Missouri Bar #35436.** Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.3, 4-1.4(a) and 4-8.1(b). Date of Order: December 18, 2007.

**HASS, WILLIAM T., Thayer, MO, Missouri Bar #48948.** Public Reprimand: Violation of Rules 4-1.3, 4-1.4(a) and 4-8.1(b). Date of Order: October 30, 2007.

**HELDER, JAN P., JR., Butler, MO, Missouri Bar #39666.** Disbarment: Violation of Rule 4-8.4(b). Date of Order: February 27, 2007.

**HICKS, JAMES R., St. Louis, MO, Missouri Bar #24923.** Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-3.4, and 4-8.1(b). Date of Order: August 21, 2007.

**HOSKINS, RONALD G., JR., Kansas City, MO, Missouri Bar #48199.** Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of eighteen months: Violation of Rules 4-1.15(b), 4-1.16(d), 4-1.3 and 4-1.4. Date of Order: December 14, 2007.

**HUSER, JEFFERY H., Shawnee, KS, Missouri Bar #50690.** Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: November 6, 2007.

**KAISER, CHARLES B., III, Chesterfield, MO, Missouri Bar #34406.** Suspension (previous), conviction now final; it is further ordered by the Court that the time the Court will not entertain a petition for reinstatement is extended until January 23, 2010. Date of Order: August 21, 2007.

**LaSALLE, JAMES L., Kansas City, MO, Missouri Bar #45485.** Public Reprimand, placed on probation for a period of two years: Violation of Rule 4-8.4(d). Date of Order: July 12, 2007.

**LaTOURETTE, BRAINERD W. III, St. Louis, MO, Missouri Bar #30570.** Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: July 3, 2007.

**LAWRENCE, MICHAEL I., SR., St. Louis, MO, Missouri Bar #38863.** Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15, 4-3.2 and 4-8.4(d). Date of Order: October 30, 2007.

**LAZZO, MICHAEL E., Wichita, KS, Missouri Bar #35256.** Public Reprimand: Rule 5.20 (Reciprocal-Kansas); Violation of Rules 4-3.3(d) and 4-8.4(d). Date of Order: May 1, 2007.

**LEWIS, COLLETTE N., St. Louis, MO, Missouri Bar #50820.** 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 4-3.3(a)(1), 4-3.3(a)(3), 4-3.4(b) and 4-8.4(c). Date of Order: November 9, 2007.

**LIM, EDGAR E., St. Louis, MO, Missouri Bar #24838.** Public Reprimand: Violation of Rule 4-1.16(d). Date of Order: January 25, 2007.

**MASK, TRAVIS J., West Plains, MO, Missouri Bar #44544.** Suspension, suspension stayed, placed on probation for two years: Violation of Rule 4-8.4(b). Date of Order: May 2, 2007.

**McKEON, CHARLES M., Kansas City, MO, Missouri Bar #31316.** Suspension, suspension stayed, placed on probation for two years: Violation of Rule 4-8.4(b). Date of Order: November 20, 2007.

**MICHEL-SETZER, JILLANA, Little Elm, TX, Missouri Bar #54041.** 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(b). Date of Order: July 19, 2007.

**MIRABILE, SALVATORE J., Kansas City, MO, Missouri Bar #30660.** Public Reprimand: Violation of Rule 4-8.4(d). Date of Order: October 30, 2007.

**NOONAN, THOMAS J., St. Louis, MO, Missouri Bar #30210.** Suspension, suspension stayed, placed on probation: Violation of Rules 4-4.8(a), 4-4.8(b), 4-4.8(c), and 4-4.8(d). Date of Order: May 1, 2007. Probation terminated: December 5, 2007.

**O'LEARY, TIMOTHY J., St. Louis, MO, Missouri Bar #44941.** Public Reprimand: Violation of Rules 4-8.3(a) and 4-8.4(c). Date of Order: November 9, 2007.

**PARMENTER, CHARLESA., Fenton, MO, Missouri Bar #41202.** Interim suspension from the practice of law pursuant to provisions of Rule 5.23(b). Date of Order: October 29, 2007.

**PEEL, GARY E., Glen Carbon, IL, Missouri Bar #30138.** Interim suspension: Violation of Rule 4-8.4(b). Date of Order: May 17, 2007.

**PENNOCK, LISA M., Belleville, IL, Missouri Bar #35804.** Interim suspension: Violation of Rule 4-8.4(b). Date of Order: May 17, 2007. Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of two years and further ordered that on February 14, 2008, the suspension shall thereafter be stayed and Respondent placed on probation for the remaining period: Rule 5.20 (Reciprocal-Illinois); Violation of Rules 4-8.4(a), 4-8.4(b), 4-8.4(c), and 4-8.4(d). Date of Order: August 14, 2007.

**POLLARD, W. SCOTT, O'Fallon, MO, Missouri Bar #19281.** Public Reprimand: Violation of Rules 4-8.4(a), 4-1.1, 4-1.3, 4-1.4, 4-1.5, 4-1.16 and 4-5.5. Date of Order: May 14, 2007.

**QUINN, JOHN M., Kansas City, MO, Missouri Bar #33903.** Public Reprimand: Violation of Rule 4-8.4(d). Date of Order: October 30, 2007.

**RATLIFF-CONNOR, LYNISE, Kansas City, MO, Missouri Bar #39311.** Default Disbarment: Violation – in default pursuant to Rule 5.14. Date of Order: May 3, 2007.

**SCHMIDT, DAVID, O'Fallon, MO, Missouri Bar #36795.** Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of two years and six months: Violation of Rules 4-1.4, 4-1.8, 4-1.1, 4-1.15, 4-4.1, 4-1.7(a), 4-1.7(b) and 4-8.4(c). Date of Order: May 29, 2007.

**SELBY, MICHAEL L., Columbia, MO, Missouri Bar #55174.** Interim suspension: Violation of Rule 4-8.4(b). Date of Order: July 20, 2007.

**SHAUGHNESSY, RYAN S., St. Louis, MO, Missouri Bar #39922.** Public Reprimand: Violation of Rule 4-8.1(b). Date of Order: August 21, 2007.

**SHEPARD, JERRY H., JR., Harrison, AR, Missouri Bar #58439.** Surrendered license and disbarred: Violation of Rules 4-8.4(b), 4-8.4(c), and 4-8.4(d). Date of Order: May 29, 2007.

**SIPE, LAURA, St. Charles, MO, Missouri Bar #43016.** Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: May 29, 2007.

**SMITH, RODERICK E., Kansas City, MO, Missouri Bar #45574.** Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.5(a), 4-3.2, 4-3.3(a), 4-1.15(a), 4-1.16 and 4-8.1(b). Date of Order: May 29, 2007.

**SULLIVAN, THOMAS B., III, Kansas City, MO, Missouri Bar #19773.** Surrendered license and disbarred: Violation of Rules 6.0l, 4-1.16(d), 4-1.15, 4-1.1, 4-1.3, 4-1.4, 4-3.2 and 4-8.1. Date of Order: August 14, 2007.

**SWIMMER, DAVID R., Clayton, MO, Missouri Bar #22827.** Suspension, suspension stayed, placed on probation for twelve months: Violation of Rules 4-1.1, 4-1.4, 4-1.5, 4-8.4(a) and 4-1.16(d). Date of Order: September 25, 2007.

**TODD, WILLIAM G., Nixa, MO, Missouri Bar #33259.** Public Reprimand: Violation of Rules 4-5.5(e), 4-8.4(a) and 4-8.4(b). Date of Order: September 19, 2007.

**TOLEN, ERIC T., St. Louis, MO, Missouri Bar #33260.** Interim suspension from the practice of law pursuant to provisions of Rule 5.24. Date of Order: September 26, 2007.

**TRUE, ROY B., Leawood, KS, Missouri Bar #41958.** Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-7.3(c)(2-3), 4-7.1(a), 4-7.1(b) and 4-8.4(c). Date of Order: October 30, 2007.

**TURNER, RICHARD L., St. Louis, MO, Missouri Bar #17946.** Suspension, suspension stayed, placed on probation from January 30, 2007 through July 29, 2007: Violation of Rules 4-1.15, 4-1.16(d), 4-4.5(1), 4-4.5(3) and 4-7.5(f). Date of Order: January 30, 2007. Probation terminated: July 30, 2007.

**WASHBURN, SCOTTA., Chillicothe, MO, Missouri Bar #52049.** Interim suspension from the practice of law pursuant to provisions of Rule 5.24. Date of Order: December 19, 2007.

**WILKINSON, DONALD R., Lee's Summit, MO, Missouri Bar #42894.** Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: March 12, 2007.

**WILLIAMS, CECIL D., Kansas City, MO, Missouri Bar #29043.** Public Reprimand: Violation of Rule 4-8.4(d). Date of Order: October 30, 2007.

**WILLIAMS, NATHAN T., Green Bay, WI, Missouri Bar #51600.** 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 4-8.4(a), 4-8.4(c) and 4-5.5. Date of Order: April 27, 2007.

## II.

### THE FOLLOWING DISCIPLINARY ACTIONS WERE PENDING BEFORE THE COURT AT THE CLOSE OF 2007 BASED ON PROCEEDINGS PROSECUTED BY THE OFFICE OF CHIEF DISCIPLINARY COUNSEL

**ALIG, DAVID R., Overland Park, KS, Missouri Bar #29219.** (Public Reprimand: Rule 5.20 (Reciprocal-Kansas); Violation of Rules 4-1.1, 4-1.5(a), 4-8.4(d) and 4-5.5(a). Date of Order: January 9, 2008.)

**BELZ, MARK, St. Louis, MO, Missouri Bar #27420.** Pending

**DUCEY, CORNELIUS T., JR., Belleville, IL, Missouri Bar #40865.** (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-Illinois); Violation of Rules 4-1.3, 4-1.4(a) (b), 4-1.9(a), 4-8.4(c), and 4-8.4(d). Date of Order: January 8, 2008.)

**LAWSON, MICHAEL S., Lee's Summit, MO, Missouri Bar #47711.** (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 4-8.4(c), and 4-8.4(d). Date of Order: January 2, 2008.)

**MANDELBAUM, DAVID B., Leawood, KS, Missouri Bar #35420.** (Public Reprimand: Violation of Rules 4-1.8(b) and 4-1.7(a). Date of Order: January 4, 2008.)

**MARTIN, FREDERICK W., III, West Plains, MO, Missouri Bar #26573.** (Disbarment: Violation of Rules 4-1.3, 4-1.4 4-1.15(a), 4-1.15(b) and 4-8.4(c). Date of Order: April 15, 2008.)

**MERRYMAN, WILLIAM R., Kansas City, MO, Missouri Bar #26302.** (Suspended, suspension stayed, placed on probation for two years: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15(b), 4-1.16(d) and 4-4.5. Date of Order: February 19, 2008.)

## III.

### REINSTATEMENT PROCEEDINGS

#### A. DISCIPLINARY MATTERS

At the beginning of the year, 10 Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel. During the year 9 additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing. The OCDC processed a total of 19 disciplinary reinstatement applications during 2007.

The status of those 19 applications is as follows:

Reinstated	6
Denied	3
Dismissed	3
Pending with OCDC	7

#### **Six Disciplined Petitioners Were Reinstated By The Supreme Court**

1) Richard G. Hughes, Florissant, MO, Missouri Bar #26640, reinstated on July 25, 2007, and placed on probation for a period of one year. Petitioner was suspended on August 21, 2001.

2) Lona L. Webb, Lake Waukomis, MO, Missouri Bar #52519, reinstated on May 29, 2007. Petitioner was suspended on November 24, 2003.

3) Valerian Clyde Cahill, St. Louis, MO, Missouri Bar #31770, reinstated on December 10, 2007. Petitioner was suspended on December 28, 1998.

4) H. David Shaver, Leawood, KS, Missouri Bar #30211, reinstated on December 18, 2007, and placed on probation for one year. Petitioner was suspended on February 26, 1996.

5) Anthony R. Johnson, Ankeny, Iowa, Missouri Bar #43958, reinstated on January 23, 2007. Petitioner was suspended on July 3, 2003.

6) Del F. Phillips, St. Charles, MO, Missouri Bar #39419, reinstated on July 6, 2007. Petitioner was suspended on August 22, 2006.

### **Three Disciplined Petitioners Were Denied Reinstatement By The Supreme Court**

1) Eric E. Vickers, Missouri Bar #31784, denied reinstatement. Petitioner was suspended on September 24, 2002. (Reinstated by order of the Court and placed on probation for one year on June 24, 2008.)

2) Russell A. Willis, III, Missouri Bar #27691, denied reinstatement. Petitioner was suspended on November 26, 2002.

3) Kevin D. Coan, Missouri Bar #47216, denied reinstatement. Petitioner was disbarred March 2, 2005.

### **Three Petitions Were Dismissed By The Supreme Court**

1) Thomas M. Utterback, Missouri Bar #23288, cause dismissed on January 30, 2007. Petitioner was disbarred on June 30, 1998.

2) Charles B. Kaiser, III, Missouri Bar #34406, cause dismissed on August 6, 2007. Petitioner was suspended on November 23, 2004.

3) Stanley L. Wiles, Missouri Bar #21807, cause dismissed on October 4, 2007. Petitioner was suspended on September 20, 2005.

### **B. NON-DISCIPLINARY REINSTATEMENTS**

Lawyers may be automatically 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 2007, the OCDC investigated and processed 10 applications for reinstatement by those lawyers. All were reinstated. Three applications remained pending at the end of 2007.

Lawyers may elect to become inactive under Rule 6.03. Per Rule 6.06, the OCDC investigated and processed 16 inactive lawyers' applications who were returned to active status. Two applications were dismissed by order of the Court and two applications remained pending at the end of 2007.

Lawyers may be automatically suspended for state tax issues under Rule 5.245. During 2007, the OCDC investigated and processed 8 tax suspension applications for reinstatement and all were reinstated. One application remained pending at the end of 2007.

## **IV.**

### **COMPLAINTS RECEIVED AND ACTED UPON IN 2007**

**2,359** complaints of attorney misconduct were received in 2007.

During 2007, the following actions were taken on complaints received:

**816** Formal Investigations opened

**594** Cases investigated by Regional Disciplinary Committees

**222** Cases investigated by OCDC

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

**1,167** Investigations not opened (*In certain instances, OCDC does not open an investigation until after related litigation is completed.*) Approximately 156 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.

**175** Insufficient information to proceed

**34** Referred to Fee Dispute Committees

**46** Referred to Complaint Resolution Committee (*\*See Missouri Bar Complaint Resolution Activity Report attached.*)

**31** 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 2007, 70 complainants requested review. The Advisory Committee upheld the findings on 38 of these files but issued cautionary letters to 3 lawyers. The Committee assigned 15 of the review files for further investigation. Seventeen 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, 34 complainants were referred to Fee Dispute Committees.

## V.

### DISCIPLINE ACTION INITIATED

#### A. Admonitions

The OCDC administered 58 written admonitions and the Regional Disciplinary Committees administered 91 written admonitions to Missouri lawyers. (Total: 149 admonitions). In addition, 100 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 1/1/07	Investigations Referred 2007	Investigations Disposed in 2007
IV	133	176	158
X	115	216	176
XI	35	102	80
XV	46	100	84
OCDC	126	317*	278*

\* Includes Informal Resolution

Region	Admonitions Issued in 2007	Cautionary Letters Issued in 2007
IV	40	30
X	28	13
XI	13	4
XV	10	14
OCDC	58	39

#### C. Filed Hearing Matters

##### FILING INFORMATION

In 2007, the OCDC and the Regional Disciplinary Committees filed 47 Informations (the formal charging document) on 114 files. "Files" indicate individual complaints against attorneys. An Information against one attorney may include charges involving multiple files.

Eighteen Informations, representing 56 complaint files, were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2007. Disciplinary Hearing Panels conducted 21 hearings involving 48 files. Default Informations were filed directly in the Supreme Court against 6 attorneys.

#### 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 seven cases in 2007. Of those seven cases, four were heard because the Respondent did not concur in a DHP's recommended sanction and three were heard after the Court rejected a joint

stipulation. In addition, Informant's reply briefs were filed in three cases. Six disciplinary cases appeared on the Court's oral argument calendar in 2007.

#### **RULE 5.20**

Six reciprocal discipline cases, based on adjudications of misconduct in other jurisdictions, were filed in 2007: *In re Bentivoglio*, SC88284, *In re Lazzo*, SC88335, *In re Pennock*, SC88431, *In re Daugherty*, SC88432, *In re Daniels*, SC88659, and *In re Alig*, SC88915.

#### **RULE 5.21**

Informations were filed under Rule 5.21 against eleven attorneys who had pled guilty, had been found guilty, or pled nolo contendere to violations of criminal laws: *In re Noonan*, SC88349, *In re Peel*, SC88481, *In re Beeman*, SC88517 and SC88883, *In re Michel-Setzer*, SC88610, *In re Brown*, SC88622, *In re Selby*, SC88639, *In re Kaiser*, SC88683, *In re Cooper*, SC88729, *In re Affholter*, SC88745 and SC88896, *In re McKeon*, SC88868, and *In re Fabbri*, SC88889.

#### **RULE 5.24**

Two Informations requesting interim suspensions for threat of harm were filed in 2007: *In re Tolen*, SC88831, and *In re Washburn*, SC89008.

#### **RULE 5.25**

In 2007, two attorneys applied to surrender their licenses under Rule 5.25. The OCDC filed Reports and Recommendations on each of these in 2007: *In re Shepard*, SC88362, and *In re Sullivan*, SC88591.

### **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 2007, the office monitored 22 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-six lawyers were monitored in 2007 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 2007 to monitor the practice of 7 newly admitted lawyers. Finally in 2007, the office monitored the practice of 7 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 20 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 2007, OCDC staff gave 41 presentations at Continuing Legal Education (CLE) seminars. The OCDC staff gave presentations to the following organizations: Bar Association of Metropolitan St. Louis; Bar Association of Eastern Jackson County; Federal Law Clerks; Kansas City Bench and Bar; Missouri Department of Social Services; Missouri School Boards Association; Missouri Paralegal Association; Regional Committee Training Meetings; Springfield Metropolitan Bar Association; St. Joseph Bar Association; St. Louis University; University of Missouri-Kansas City; United States Bankruptcy Trustees; and William Woods University. The OCDC staff also spoke at The Missouri Bar Annual Meeting, several Missouri Bar telephone CLEs; the Solo and Small Firm Conference, and many other Missouri Bar CLE presentations, sponsored by The Missouri Bar and other organizations..

## IX. SIGNIFICANT ACTIVITIES IN 2007

### **Staff Changes**

The Missouri Supreme Court named Alan D. Pratzel as the new Chief Disciplinary Counsel, effective April 2, 2007. Prior to his appointment, Mr. Pratzel was in private practice in the City of St. Louis. He also served for twenty-two years as the Special Representative for the Region X and XI Disciplinary Committees, with administrative responsibility for the investigation and prosecution of disciplinary cases in St. Louis County and the City of St. Louis.

### **Disciplinary Case Processing**

The OCDC previously established a timeline standard for pending investigation cases that seeks to complete 75% of investigations within six months and 90% within one year. The OCDC and the disciplinary system met the timeline standard throughout 2007.

### **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 attempt to address this issue, the OCDC adopted a policy in July 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 meetings are intended to inform the FCR attorney regarding the disciplinary process and the system of progressive discipline adhered to by the OCDC. The FCR policy is underway and is currently being evaluated by the OCDC.

### **Practice Management Course**

In 2007, with the 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 two-day Practice Management Course which will be staffed by a distinguished faculty of lawyers from around the state. The course will initially be offered in two sessions in Kansas City and St. Louis in fall 2008. At the close of the two-day program, the participants will be asked to prepare a business plan tailored to meet any known weaknesses in their office practices. The OCDC will provide ongoing support for the participants.

### **Scanning/Paperless Office Project**

In an effort to increase system efficiency and to reduce investigative expenses, the OCDC began a significant planning effort in 2007 to institute a paperless system of complaint processing by the OCDC and the Regional Disciplinary Committees in Kansas City, St. Louis and Springfield. Under the proposed system, complaints and other externally-received documents would be scanned as they entered the OCDC and case files would be maintained and transmitted in a secure, electronic format. The OCDC expects to implement this important project during fall 2008.

### **Financial Needs**

Increased expenses incurred at the end of a dues cycle led to depleting reserves over the past years. In support of a requested dues increase, the Advisory Committee and the Chief Disciplinary Counsel completed a two-year budget and three-year financial projection in July 2007. Pursuant to Rule 6.01, the Missouri Supreme Court set the Advisory Committee portion of the annual attorney fees at \$101, effective in 2008.

### **Physical Facilities**

The following building projects have been proposed for the OCDC building, to be completed in 2008:

- Provide ADA access to the building's only meeting area;
- Add adequate parking space for existing staff, visitors, and proposed staff increases (the building currently has 13 parking spaces for 16 employees);
- Add carpet over concrete, add dropped ceiling to cover exposed insulation, complete wiring, and paint walls in an unfinished area of the lower level to provide additional office space; and
- Repair or replace front door unit and front decorative columns that have rotted.

With regard to the building's long term viability, after careful consideration and with regard to the somewhat speculative nature of the projections, we believe that we will be able to remain in the existing OCDC facility without additional space during the next four years. It is likely, however, that we will be required to consider during the latter part of the current 5-year projection period whether the existing facility will be adequate after 2012.

## **Regional Disciplinary Committee Training**

The OCDC is an accredited MCLE provider. In 2007, we continued to host training sessions and MCLE presentations for the benefit of lawyer and non-lawyer volunteers and special representatives who participate in the disciplinary system at the Regional Disciplinary Committee level. The OCDC presented CLE presentations on current issues in the disciplinary system at luncheons honoring the Regional Disciplinary Committee members in Kansas City, St. Louis and Springfield.

## **Staff Training**

In 2007, 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.

## **Significant Amendments to Supreme Court Rules 4, 5 and 6**

The ABA promulgated its latest version of the Model Rules of Professional Conduct through its Ethics 2000 project. Following a thorough review of the ABA model rules by a special committee of The Missouri Bar, the Supreme Court Advisory Committee and the OCDC staff, the Missouri Supreme Court adopted a new Rule 4, effective July 1, 2007. The OCDC staff and The Missouri Bar have made numerous presentations to the bar, highlighting the most significant amendments to the Rule 4. Among those significant amendments are the following:

- The comments to Rule 4-4.2 clarify attorney’s authority with regard to contact with former employees of an opposing party;
- Requirements that a client’s waiver of a conflict under Rules 4-1.7, 4-1.9 and 4-1.11 be “confirmed in writing”;
- A broader range of options available to lawyers having clients with diminished capacity under Rule 4-1.14;
- A new Rule 4-1.18 regarding contacts with prospective clients;
- New requirements under Rule 4-4.4(b) with regard to the receipt of inadvertently sent documents; and
- A specific prohibition on sexual relations between an attorney and a client under Rule 4-1.8(j).

## Rule 5 Amendments

The Supreme Court, on October 25, 2007, adopted changes to Rules 5.14, 5.16, 5.19, 5.27 and 5.28, effective January 1, 2008:

- (a) Rule 5.14 added provisions for peremptory challenges to members of a disciplinary hearing panel, and for the appointment of special masters in lieu of disciplinary hearing panels in certain situations;
- (b) Rules 5.16 and 5.19 were reorganized to place all disciplinary proceedings prior to action by the Supreme Court in 5.16 and all disciplinary proceedings pending before the Supreme Court in 5.19. Decisions of disciplinary hearing panels now are deemed to be accepted by Informants and Respondents unless affirmatively rejected within 30 days of the date of the panel decision. In addition to court costs, specific discipline fees have been set: \$750 for Reprimand; \$1,000 for Suspension, and \$2,000 for disbarment;
- (c) Rule 5.27 now has an effective date of 15 days after a Supreme Court order for suspension or disbarment, unless the Court orders otherwise;
- (d) Rule 5.28 sets a reinstatement fee of \$500 for all disciplinary reinstatements.

## SUMMARY OF DISCIPLINE ACTIONS

During 2007:

Fifteen lawyers were disbarred;

Thirty-five lawyers were suspended; **twelve** of those suspensions were stayed and attorneys placed on probation with conditions;

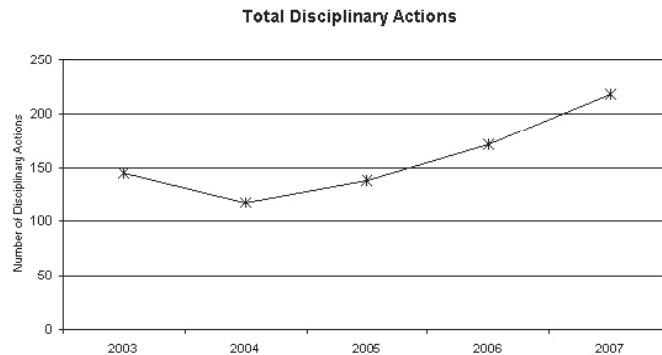
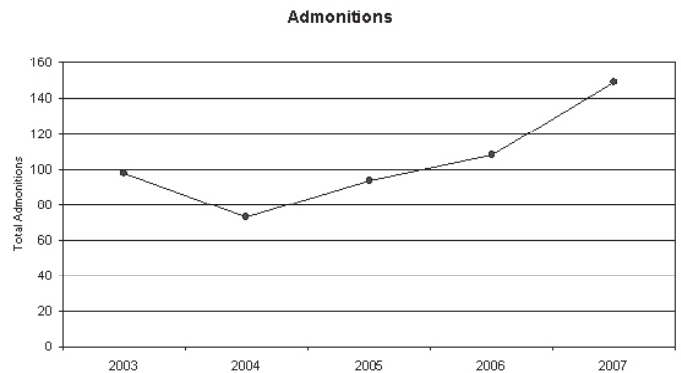
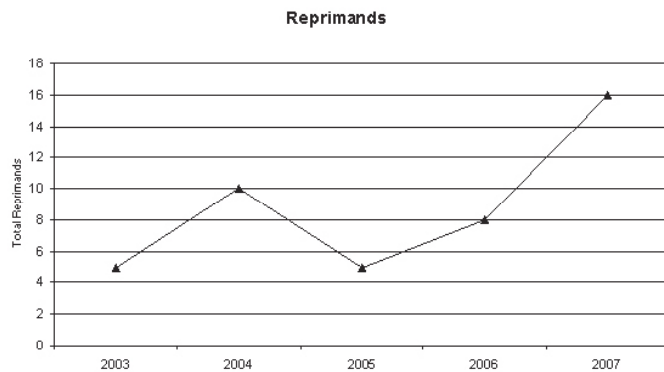
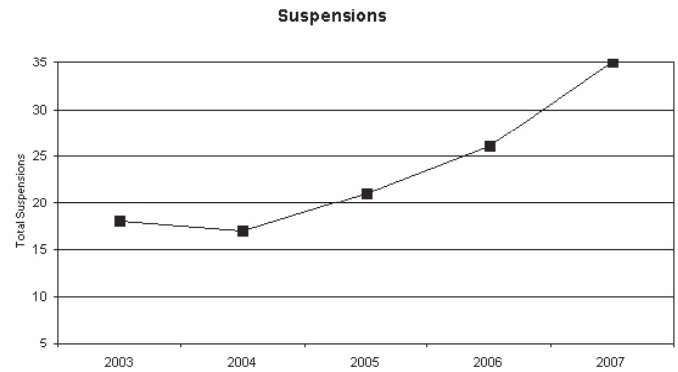
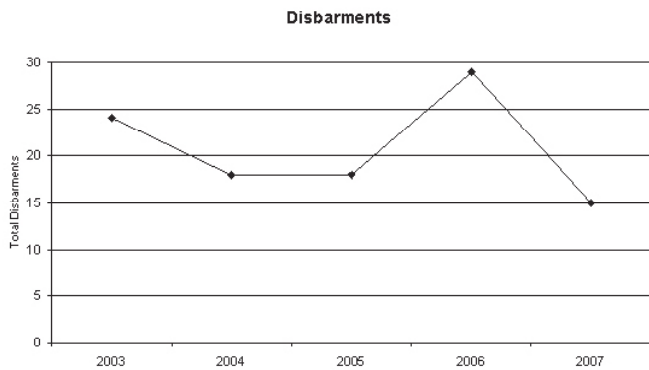
Sixteen lawyers received public reprimands;

One-hundred forty-nine written admonitions were administered by the Regional Disciplinary Committees and the OCDC; and

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.



*In 2007, there were a total of (218) disciplinary actions including admonitions and formal discipline matters.*

The total number of complaints opened as formal investigations during 2007 was 816. The most common complaint areas are as follows:

NATURE OF VIOLATIONS *	NO.
Rule 4-1.4 (Communication)	483
Rule 4-1.3 (Diligence)	391
Rule 4-1.5 (Excessive Fees)	97
Rule 4-1.16 (Improper Withdrawal)	72
Rule 4-8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	67
Rule 4-1.7 (Conflicts)	52
Rule 4-1.15 (Safekeeping Property)	48
Rule 4-5.5 (Unauthorized Practice)	39
Rule 4-7.2 (Advertising)	27
Rule 4-1.1 (Competence)	23
Rule 4-5.3(b) (Supervisory Responsibility)	19
Rule 4-1.6 (Confidentiality)	18
Rule 4-4.1 (Truth to 3rd Persons)	13
Rule 4-8.4(b) (Criminal Activity)	12
Rule 4-3.3 (Truth to Tribunal)	12
Rule 4-3.5(b) (Ex Parte Contacts)	4
Rule 4-3.4 (Obstruction/False Evidence)	2
Rule 4-3.6 (Trial Publicity)	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	213
Criminal	126
Torts	101
Other	79
Estate/Probate	56
Bankruptcy/Receivership	44
Workers Compensation	33
Traffic	27
Administrative/Governmental	24
Contracts	20
Real Property	18
Immigration/Naturalization	10
Collections	9
Litigation	9
Labor Law	8
Securities	4
Corporate Banking	3
Civil Rights	2
Consumer Law	2
Landlord/Tenant	2
Commercial Law	1
Guardianship	1

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 16th day of July, 2008.

Respectfully Submitted,  
ALAN D. PRATZEL  
Chief Disciplinary Counsel

## 2007 LEGAL ETHICS COUNSEL ANNUAL REPORT

### LEGAL ETHICS COUNSEL ROLE

#### Informal Advisory Opinions

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

The Legal Ethics Counsel office provided informal advisory opinions in response to 1,334 oral contacts. Some of the contacts involved multiple, separate questions and therefore multiple opinions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are generally not included in this count. Opinions provided at the "Legal Ethics Counsel Booth" at the Solo and Small Firm Conference are included.

The Legal Ethics Counsel also provided 61 written informal advisory opinions. Some of these were summarized and published with the approval of the Advisory Committee.

#### CLE Presentations

The Legal Ethics Counsel prepared and gave 28 CLE presentations for various groups, including: The Missouri Bar, Lawyers Association of Kansas City, University of Missouri at Kansas City Law School, Clay County Bar Association, Boone County Bar Association, Kansas City Metropolitan Bar Association, Association for Women Lawyers of Greater Kansas City, St. Louis University Law School 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 59 review files.

#### Hearings

The Legal Ethics Counsel office provided assistance with arrangements for hearings, as requested, to Disciplinary Hearing Officers. The Legal Ethics Counsel planned and participated in presenting a telephone seminar for DHOs on July 27, 2007.

#### Budget

The Legal Ethics Counsel prepared a proposed budget for the Advisory Committee and LEC for 2008-2009 and projections for 2010-2012.

#### Meetings

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

#### Other matters

The Legal Ethics Counsel maintained a website for the Advisory Committee and Legal Ethics Counsel. 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 and Supreme Court Rules 4 and 5, prepared by the Legal Ethics Counsel.

The Legal Ethics Counsel served on the membership and program committees and the current developments panel of the National Organization of Bar Counsel.

The Legal Ethics Counsel served on The Missouri Bar's Special Committee on Limited Scope Representation. The Advisory Committee had asked The Missouri Bar to study the advisability of rule modifications to facilitate providing legal services through limited scope representation, also known as unbundled legal services.

The Legal Ethics Counsel participated in the preparation and review of the proposals for changes to the hearing process (Rules 5.14, 5.16, 5.19, and 5.195).

The Legal Ethics Counsel worked with the IOLTA program and Court personnel regarding IOLTA related changes to Rule 4-1.15.

The Legal Ethics Counsel met with the Bar's Special Committee on Advertising.

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM ACTIVITY REPORT**

	<b>2007</b>
Total Open Cases in 2007	61
New Cases referred from OCDC	46
2006 Cases carried over	15
Meetings Scheduled/Held	20
Agreements Reached*	25
Agreements Not Reached	3
Complainant Did Not Respond or Consent	9
Respondent Did Not Consent or Respond	1
Respondent Did Not Consent But Did Respond	4
Parties Resolved Without Conference*	8
Complainant Did Not Want to Proceed with Mtg.	2
Complainant Withdrew Complaint	3
Complainant Decided Not to Participate	1
Pending Conference Report	0
Pending Receipt of Consent Forms	2
Cases Closed	56
 Total Resolutions*	 33

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

NATURE OF COMPLAINT	NO.	TYPE OF MATTER	NO.
Client Communication	26	Bankruptcy	3
Client's Directive	4	Collections	1
Diligence	8	Domestic	21
Other	1	Estate/Probate	4
Rude Behavior	2	Guardianship	1
Competence	3	Insurance	1
Conflicts	2	Landlord/Tenant	1
		Litigation	1
		Other	1
		Real Estate	6
		Traffic	1
		Unemployment Benefits	1
		Workers' Compensation	4

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

LOCATION OF ATTY.	NO.	LOCATION OF ATTY.	NO.
Ballwin	1	Lamar	1
Bridgeton	1	Liberty	1
Columbia	3	Memphis	2
Florissant	2	N. Kansas City	2
Fenton	1	Pineville	1
Galena	1	Poplar Bluff	2
Hallsville	1	Raytown	1
Hannibal	3	Springfield	6
Hillsboro	1	St. Louis	4
Independence	2	St. Charles	1
Joplin	5	Stover	1
Kansas City	2	West Plains	1