

# PROFESSIONALISM IN ADMINISTRATIVE LAW

Mid-America Regulatory Conference  
Kansas City, Missouri  
June 8, 2010

# The Disciplinary System

Missouri  
Supreme  
Court

- Jurisdiction over all attorney licensing and disciplinary matters

Supreme  
Court  
Advisory  
Committee

- Supervisory role over the OCDC
- Review authority for dismissed complaints

Office of  
Chief  
Disciplinary  
Counsel

- Investigates complaints of attorney misconduct
- “Protect the public and maintain the integrity of the profession”

# The Disciplinary System

- ◎ 2,362 complaints in 2008
- ◎ 757 investigations opened
- ◎ Jurisdiction declined in 2/3 of complaints
  - fee dispute
  - trial strategy
  - other available remedies

# The Disciplinary System

- ◎ Of the 757 complaints opened for investigation:
  - 434 involved communications
  - 384 involved diligence
  - 90 involved excessive fees
  - 84 involved dishonesty, fraud, deceit or misrepresentation

# The OCDC Process

## ◎ Intake

- OCDC lacks jurisdiction
- Referred to alternative resolution program
- Addressed through Informal Resolution Program
- Opened for investigation

# The OCDC Process

## ⦿ Investigation

- The Office of Chief Disciplinary Counsel
- Regional Disciplinary Committee

## ⦿ Disposition

- Close the complaint
- Diversion
- Admonition
- Information

# The OCDC Process

- ◎ Disciplinary Hearing
  - No violation of the Rules
  - Admonition
  - Recommendation for discipline
    - Public Reprimand
    - Suspension, actual or stayed with probation
    - Disbarment
  
- ◎ Post Hearing-Acceptance or Rejection

# The OCDC Process

- ◎ In 2008
  - 25 attorneys disbarred
  - 21 attorneys suspended
  - 15 attorneys publically reprimanded
  - 107 attorneys admonished

MISSOURI HAS  
GOOD  
PRACTITIONERS

# Jurisdiction and Disciplinary Authority

- ⦿ Attorneys not licensed in Missouri are only subject to Missouri disciplinary authority if the attorney provides or offers to provide legal services in Missouri
  - May be subject to discipline in both jurisdictions for the same conduct
  - Application of particular rules of conduct are specific to the facts
- ⦿ Lay persons not subject to the Rules

# Duties of an Attorney

- ⦿ To the client
- ⦿ To the public
- ⦿ To the legal system
- ⦿ To the profession

# Duty to the Client

- ◎ Competence (Rule 4-1.1)
- ◎ Diligence
  - Scope of Representation (Rule 4-1.2): *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009)
  - Diligence (Rule 4-1.3)
  - Communication (Rule 4-1.4)

# Duty to the Client

## ⦿ Loyalty

- Preserving client property (Rule 4-1.15)
- Maintaining client confidences (Rule 4-1.6)
- Avoiding conflicts of interest (Rules 4-1.7-1.13, 2.2, 3.7, 5.4(c), 6.3)

## ⦿ Candor (Rule 4-8.4(c))

# Duty to the Public

“[T]he lawyer also owes duties to the general public. Members of the public are entitled to be able to trust lawyers to protect their property, liberty, and their lives. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice.” (Rules 4-8.2, 8.4)

# Duty to the Legal System

## ⦿ Meritorious Claims and Contentions (Rule 4-3.1)

- Lawyer shall not bring or defend action or assert or controvert an issue therein without basis in law and fact that is not frivolous.
- *In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997)

# Duty to the Legal System

- ⦿ Expediting Litigation (Rule 4-3.2)
  - Lawyer shall make reasonable efforts to expedite litigation.
  
- ⦿ Candor Toward the Tribunal (Rule 4-3.3)
  - Generally, a lawyer shall not make false statements, fail to correct false statements or offer authority or evidence known to be false.
  - *In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003)

# Duty to the Legal System

- ◎ Fairness to Opposing Party and Counsel (Rule 4-3.4)-A lawyer shall not:
  - Obstruct another party's access to evidence
  - Falsify evidence or counsel others to do so
  - Knowingly disobey an obligation of the tribunal
  - Make a frivolous discovery request or fail to provide diligent response to a proper request
  - Allude in trial to an irrelevant or inadmissible issue
  - Request another person (besides client) refrain from giving relevant information to another party, unless it is a relative or employee or agent of client and the person's interests will not be adversely affected.

# Duty to the Legal System

- Impartiality and Decorum of the Tribunal (Rule 4-3.5)
  - Prohibits attempts to influence a judge or juror, ex parte communication and conduct intended to disrupt a tribunal
  - *In re Madison*, 282 S.W.3d 350, (Mo. banc 2009)

# Duty to the Legal System

- ◎ Trial Publicity (Rule 4-3.6)
  - General Rule: “A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”

# Trial Publicity (Rule 4-3.6)

- ⦿ Exceptions-A lawyer may state:
  - The claim, offense or defense involved and, except when prohibited by law, the names
  - Information in the public record
  - That an investigation is in progress
  - The scheduling or result of any step
  - A request for assistance in obtaining evidence
  - A warning of danger when there is reason to believe that there is a likelihood of substantial harm to an individual or the public interest
  - Or specific information in a criminal case

# Duty to the Legal System

- ⦿ Advocate in Nonadjudicative Proceedings (Rule 4-3.9): Lawyers are bound to make truthful statements when testifying before the Legislature or other nonadjudicative proceedings
- ⦿ Truthfulness in Statements to Others (Rule 4-4.1)
  - An attorney may not make false statements of material fact to a third person
  - *In re Zink*, 278 S.W.3d 166 (Mo. banc 2009)

# Duty to the Legal System

- ⦿ Communication with Person Represented by Counsel (Rule 4-4.2)
- ⦿ Dealing With Unrepresented Person (Rule 4-4.3)
- ⦿ Respect for Rights of Third Person (Rule 4-4.4)
  - Cannot use means designed to embarrass, delay or burden a third person or to obtain evidence
  - If lawyer receives a document inadvertently sent it must be returned

# Duty to the Legal System

- ⦿ Judicial and Legal Officials (Rule 4-8.2)
  - Lawyer shall not make a statement known to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, public legal officer or candidate for election or appointment
  - Back to *In re Madison*
  - Attorney opinions matter

# Supervising Subordinate Attorneys and Non-Attorney Staff

- If subordinate attorneys and non-attorney staff are completing tasks at the direction of the attorney then the attorney is responsible for compliance
- Attorney can be held accountable
- Must supervise at all stages of the case

# Duty to the Profession

- ⦿ Restrictions on advertising
- ⦿ Reasonable fees
- ⦿ Prohibition on assisting in the unauthorized practice of law
- ⦿ Proper acceptance or termination of representation
- ⦿ Maintaining the integrity of the profession

# Conclusion

- Legal Ethics Counsel, Sara Rittman,  
573-638-2263
- [www.courts.mo.gov](http://www.courts.mo.gov)

# Questions and Comments