Katie McAfee,
Assistant Disciplinary Administrator

MEET THE ODA: PARTNERS IN PROTECTION

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Who is the ODA?

Gayle B. Larkin
Disciplinary Administrator

Matthew J. Vogelsberg
Chief Deputy
Disciplinary
Administrator

Kate Duncan Butler
Deputy
Disciplinary
Administrator

Kathleen J. Lippert
Deputy
Disciplinary
Administrator

Alice L. Walker
Deputy
Disciplinary
Administrator

Julia A. Hart
Deputy
Disciplinary
Administrator

Amanda Voth
Deputy
Disciplinary
Administrator

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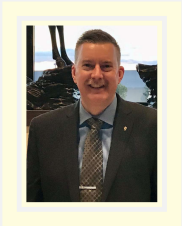
Who is the ODA?

Crystalyn Ellis
Director of Investigations

Jeff Baker
Attorney Trust Account Auditor

Katie McAfee
Assistant Disciplinary Administrator

Royetta Rodewald
Special Investigator



Tim Schilling
Special Investigator

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CASE STATISTICS

- 5 attorneys surrendered their licenses, and one attorney disbarred by Supreme Court
- 3 petitions for reinstatement were submitted and granted by SC
- 839 complaints were received in FY 2025 (between 60-90 a month)
  - 474 were dismissed or referred elsewhere
  - 157 were dismissed after an attorney response
  - 110 were docketed for investigation
    - 50 dismissed by review committee after investigation

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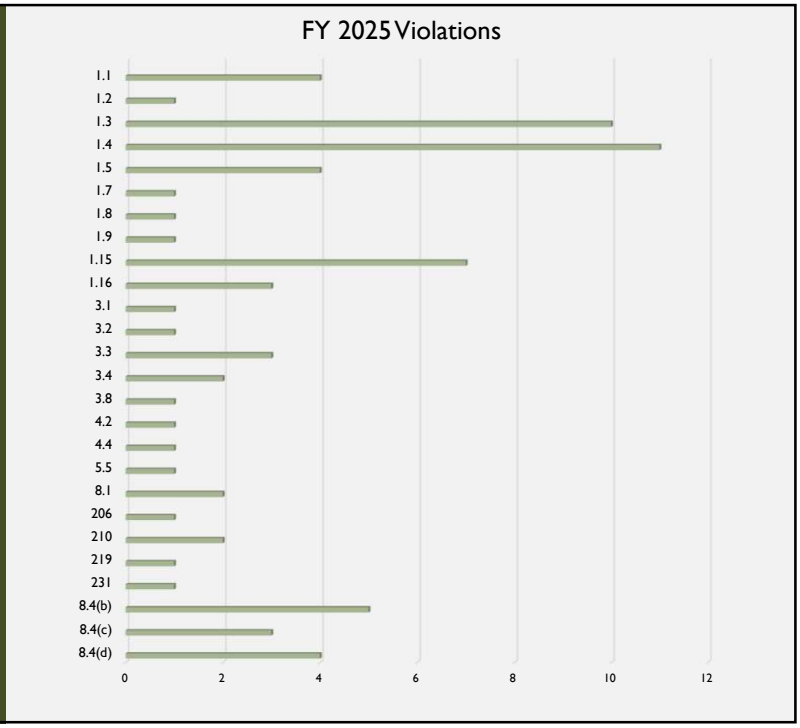
CASE STATISTICS



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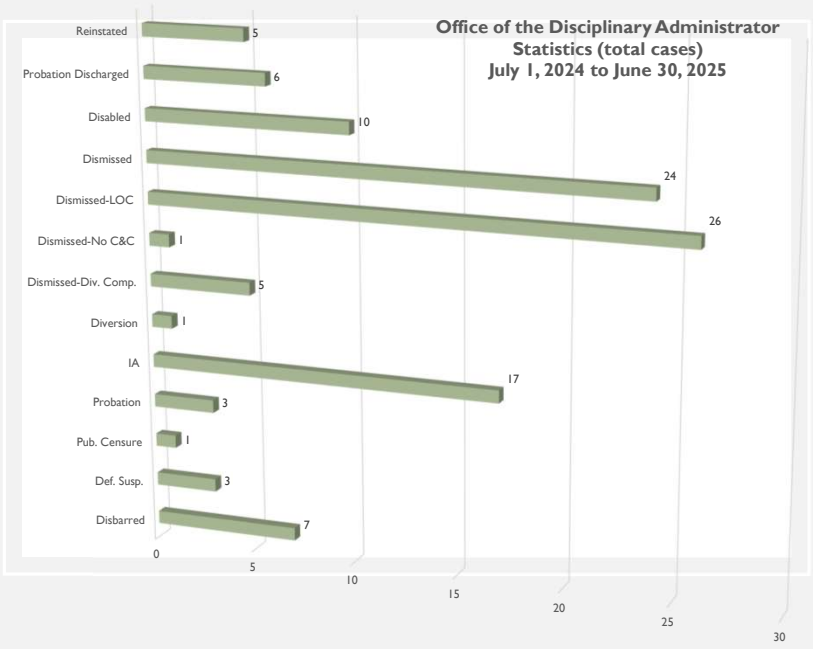
CASE STATISTICS



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WHAT HAPPENS AFTER THE DISCIPLINARY ADMINISTRATOR RECEIVES A COMPLAINT?

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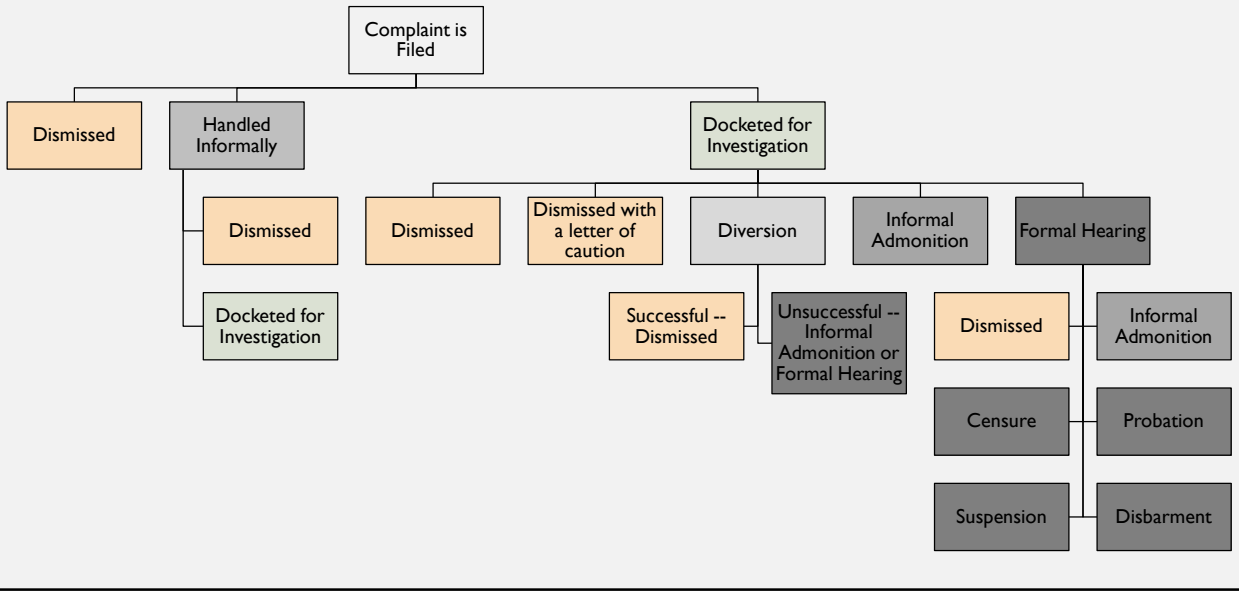
The Anatomy of a Complaint



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PURPOSE OF THE LAWYER DISCIPLINARY SYSTEM

"Disciplinary proceedings are for the protection and benefit of the public at large."

In re Hawver, 300 Kan. 1023, 1045, 339 P.3d 573 (2014), quoting *State v. Callahan*, 232 Kan. 136, 142, 652 P.2d 708 (1982); KRPC 203.

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A FEW REMINDERS…

- Attorney misconduct must be established by clear and convincing evidence. *In re Foster*, 292 Kan. 940 at 945 (2011).
  - C&C evidence "causes the factfinder to believe that 'the truth of the facts asserted is highly probable'." *In re Lober*, 28 Kan. 498 at 505 (2009) (quoting *In re Dennis*, 286 Kan. 708, at 725 (2008)).
  - Kansas Supreme Court Rule 226(a)(1)(A)
- Prosecutors' "client" is the public at large.
  - *In the Matter of Kline*, 298 Kan. 96
  - K.S.A. 74-7333

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A FEW REMINDERS…

- Attorneys have a duty to assist in the investigation and prosecution of a complaint.
  - Kansas Supreme Court Rule 210.
  - Applies whether attorney is complainant, respondent or a witness.
  - Failure to participate can result in additional violations/discipline.

- Attorneys that have "knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority." KRPC 8.3(a)
  - Comment 1: "An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense."

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INITIAL COMPLAINTS

- Dismissal – Rule 208(b)
  - Allegations do not constitute misconduct
  - Facially frivolous, lacks adequate factual detail, or is duplicative
  - Outside the Board's jurisdiction
- Informal Inquiry – Rule 208(c)(1)
  - To determine whether to dismiss or docket
- Docket Complaint – Rule 208(c)(2)

RULES 208 & 209

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WHERE INITIAL COMPLAINTS COME FROM

- Clients
- Citizens
- Judges or attorneys
- Self-Report

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INVESTIGATION OF DOCKETED COMPLAINT

Investigations are assigned in-house, to state or local bar association ethics and grievance committees, or to individual attorneys. Rule 209(a).

The investigator prepares an Investigative Report after completing the investigation. Rule 209(c).

The disciplinary administrator prepares a summary and recommendation of appropriate disposition to the review committee. Rule 209(d).

RULE 209

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REVIEW COMMITTEE

Consists of two Board of Discipline members:

Board Chair **John Gatz** (Colby) and Vice Chair **Derrick Roberson** (Manhattan),

and an at large member appointed by the Supreme Court:

Joy Springfield (Topeka)

RULE 211

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RULE 211

The Review Committee reviews:

Complaint(s)	Response(s)	Investigative report	Any relevant attachments	Disciplinary Administrator's summary and recommendation

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After review, Review Committee may direct:

- Dismissal for lack of probable cause
- Dismissal for lack of clear and convincing evidence, with or without a letter of caution
- Referral to attorney diversion program (Rule 212)
- Informal admonition
- Hearing on a formal complaint before a hearing panel

RULE 211(A)

[Direction of diversion, informal admonition, or hearing require a finding of probable cause to believe the respondent engaged in misconduct. Rule 211(b).]

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Dismissal Not Justified If:

No complainant cooperation

Settlement with complainant

Restitution by respondent

RULE 214

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TEMPORARY SUSPENSION

While a disciplinary board proceeding is pending, the Supreme Court for good cause may temporarily suspend a respondent's license to practice law. Good cause exists if:

(1) The respondent failed to timely file an answer to the formal complaint – Rule 215(b)(1), or

(2) The respondent poses a substantial threat of harm to clients, the public, or the administration of justice – Rule 215(b)(2).

Automatic temporary suspension for a respondent who has been convicted of a felony – Rule 219(g).

RULES 213 & 219

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PLEADINGS AND MOTIONS

- Formal Complaint – due to be filed at least 45 days prior to the formal hearing
- Answer to Formal Complaint – due to be filed 21 days after service of the formal complaint on the respondent
- Motions – hearing panels may schedule deadlines for filing motions, otherwise due no later than 14 days prior to formal hearing

Pleadings and motions are filed in person or by mail at 701 SW Jackson Street, First Floor, in Topeka, Kansas or by email at kbda@kscourts.org.

All filings must be served on the opposing party and on each member of the hearing panel.

RULES 215 & 216

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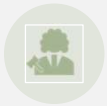
WITNESSES AND EXHIBITS



DISCIPLINARY ADMINISTRATOR'S WITNESS AND EXHIBIT LISTS ARE DUE 14 DAYS AFTER SERVICE OF THE FORMAL COMPLAINT

RESPONDENT'S WITNESS AND EXHIBIT LISTS ARE DUE 14 DAYS AFTER THE ANSWER TO THE FORMAL COMPLAINT IS DUE.

BOTH MUST BE FILED AND SERVED ON OPPOSING PARTY AND EACH MEMBER OF THE HEARING PANEL.

CERTAIN PERSONALLY IDENTIFIABLE INFORMATION MUST BE EITHER REDACTED OR THE ENTIRE DOCUMENT MUST BE SEALED. THE PARTIES MAY FILE A MOTION TO SEAL CERTAIN EXHIBITS.

RULE 224

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SUBPOENAS AND DEPOSITIONS

Subpoenas

- Respondents may request a subpoena from the hearing panel to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at formal hearing. The request must be made at least 30 days prior to hearing.

Depositions

- Either party may make written request to depose a witness. The presiding officer may grant the request under circumstances listed in the rule or if the parties agree.

RULES 217 & 218

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EFFECTS OF OTHER JUDGMENTS

Judgment in a civil action or other proceeding based on substantially similar allegations, or a disciplinary judgment from another jurisdiction, can be considered either prima facie evidence or conclusive evidence of the commission of the conduct, depending on the burden of proof required in the other proceeding.

RULES 220 & 221

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PROBATION

If a respondent wants to be placed on probation, they must create, file, and serve on the disciplinary administrator and each member of the hearing panel a workable detailed plan and be complying with each condition of the plan at least 14 days prior to the formal hearing.

RULE 227

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SUMMARY SUBMISSION

Respondent and ODA may enter into a summary submission agreement if agree on everything, removing the need for a formal hearing.

Both parties still appear before the Supreme Court. The Court is not obligated to follow the parties' agreement and may impose any discipline.

RULE 223

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VOLUNTARY SURRENDER OF LICENSE

- Instead of participating in formal proceedings, a respondent may surrender their license to the ODA.
- A respondent with pending disciplinary complaint who surrenders their license will be disbarred.

RULE 230

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TRANSFER TO DISABLED STATUS

When the Supreme Court transfers an attorney's license to disabled status while a disciplinary board proceeding is pending, the disciplinary proceeding is stayed during the time the attorney's license in in disabled status.

If the Supreme Court reinstates an attorney's license from disabled status, any pending disciplinary board proceeding will resume.

RULE 234

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CONFIDENTIALITY

Once the review committee directs a hearing on a formal complaint, the following documents become available to the public upon request:

- Any formal complaint
- Any answer to formal complaint
- Exhibits admitted during the hearing, unless placed under seal
- Any filing in the case by either party
- Any order issued by the hearing panel
- Any final hearing report
- Any summary submission agreement

RULE 237

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CLIENT PROTECTION FUND

Clients can be compensated through the Client Protection Fund for financial loss due to lawyer's dishonest conduct during attorney-client relationship.

Rule 241 has several requirements, including filing a disciplinary complaint, filling out the CPF commission claim form, and filing claim within one year.

RULE 241

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CLIENT PROTECTION FUND

- Creation in 1993
- SCR 241(a)(1): The purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing the loss to a client caused by the dishonest conduct of a lawyer admitted and licensed to practice law in Kansas when the loss occurs in the course of a lawyer-client relationship between the lawyer and the claimant.
- A commission meets quarterly in Topeka to decide what claims to pay out
  - Commission consists of 1 judge, 4 attorneys, and 2 non-attorney members of the public
- Claim is eligible if the attorney engage in dishonest conduct related to representation of a client and loss occurred in KS
- Funded by attorney registration fees mainly

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PAST CPF CLAIMS SINCE CREATION OF FUND

- Totals
  - 1,296 claims have been filed
  - Total amount of claims received: $2,552,714.73
  - 848 claims granted
  - Smallest claim paid: $50.00
  - Largest claim paid: 125,000.00 (maximum allowed)
  - Average claim paid: $5,137.03
  - Claimants have received a total of $4,356,197.27 in reimbursements

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