

STATE OF WEST VIRGINIA
Office of Disciplinary Counsel
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**INFORMATION ABOUT:
The West Virginia Lawyer Disciplinary Board,

The Discipline of Lawyers, and
How to File a Lawyer Ethics Complaint.**

This pamphlet has been prepared for the information of persons who wish to make or have made a complaint to The Lawyer Disciplinary Board about a lawyer. Please read it carefully. It explains the disciplinary procedures and is designed to help persons with complaints.

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BY THE OFFICE OF DISCIPLINARY COUNSEL

LAWYER DISCIPLINARY BOARD

The Lawyer Disciplinary Board, with the assistance of the Office of Disciplinary Counsel, has jurisdiction to investigate complaints regarding violations of the Rules of Professional Conduct; to hold hearings; and to make recommendations with respect to disciplinary action to be taken against lawyers. The Board consists of two-thirds practicing lawyers and one-third non-lawyers, all appointed by the President of the Board of Governors of The West Virginia State Bar. The Board is divided into an Investigative Panel, which reviews complaints, and a Hearing Panel, which presides over hearings and makes recommendations to the Supreme Court of Appeals of West Virginia. The Office of Disciplinary Counsel consists of four lawyers [a Chief Lawyer Disciplinary Counsel and three Lawyer Disciplinary Counsel] and four support staff. The Lawyer Disciplinary Board and the Office of Disciplinary Counsel are funded by The West Virginia State Bar from dues paid by West Virginia lawyers.

COMPLAINTS AGAINST JUDGES, MAGISTRATES, AND FAMILY COURT JUDGES

The Lawyer Disciplinary Board does not handle complaints against Judges, Magistrates, or Family Court Judges. However, the Judicial Investigation Commission does handle those complaints and may be reached by calling (304) 558-0169.

LAWYERS' RULES ARE STRICT

Most lawyers are reputable and sincere. West Virginia lawyers have adopted high standards of ethics and professional competence and they strive to maintain those standards. One of the ways they do this is by following the procedures adopted for their discipline. No trade or

profession has rules of conduct that are more exacting or more vigorously enforced.

GENERAL CONSIDERATIONS

When they enter practice in West Virginia, all lawyers obligate themselves to uphold the law and to abide by the Rules of Professional Conduct which regulate the professional conduct of lawyers. Those who violate these professional obligations are subject to discipline.

However, lawyers are human. Some are more competent than others. Sometimes they make mistakes. A lawyer may lose the trust and confidence of a client for various reasons. In many cases where a client becomes dissatisfied, grounds for discipline do not exist. Lawyers may be disciplined only if they have violated the Rules of Professional Conduct. Mere dissatisfaction with, or disappointment in, the results of litigation or other legal business is not grounds for disciplinary action against a lawyer.

A formal complaint of unprofessional conduct against a lawyer is a serious matter. It puts into action the disciplinary process of The Office of Disciplinary Counsel and the Supreme Court of Appeals of West Virginia. The lawyer inevitably suffers from the accusation regardless of whether he or she is ultimately found to be at fault.

If you believe your complaint is well-founded, by all means make it.

On the other hand, if you feel that your grievance may be the result of inadequate communications--lack of sufficient agreement or some misunderstanding--it may be that the problem can be solved by a frank talk with the lawyer. Tell him or her of your dissatisfaction, and ask for a full explanation of the matter involved.

Such a discussion will often eliminate, or lead to a solution of, the problem. A lawyer who receives an ethics complaint from his or her client may attempt to withdraw from representation, if you are the lawyer's client. It is the Board's strong preference, therefore, that you attempt to discuss your dissatisfaction with the lawyer, face to face, before you file a complaint.

TIME LIMIT ON FILING COMPLAINTS

The Board cannot investigate complaints about conduct occurring more than two years ago, unless you only discovered the conduct more recently.

INFORMAL COMPLAINTS

If you have a problem concerning a lawyer which might be resolved quickly, such as the refusal of a lawyer to return your file or a lawyer's failure to communicate, you may call the Office of Disciplinary Counsel for assistance at (304) 558-7999 without filing a complaint form.

FEE DISPUTES

Fee matters ordinarily are not a basis for discipline of a lawyer because they usually do not involve questions of ethics.

The West Virginia State Bar maintains a voluntary fee mediation program. If you and your attorney are willing to participate, a lawyer will attempt to resolve your fee dispute informally. Please write the details of your fee dispute to Anita R. Casey, Executive Director, The West Virginia State Bar, 2006 Kanawha Boulevard, East, Charleston, West Virginia 25311. Attach copies of any receipts, bills or other pertinent documents.

There are some cases in which fee matters do involve questions of ethics,

and in those cases discipline may follow. Such cases include charging a fee in violation of a fee statute, failing to provide an accounting or settlement statement, or failing to distribute proceeds promptly. If you file a complaint which contains a fee dispute matter not involving a question of ethics, the Office of Disciplinary Counsel may refer the fee dispute to the State Bar for voluntary mediation.

When the parties are not able to resolve their dispute through other means, the fee matter, like any other dispute over the value of goods or services, may be resolved by court action.

THE PURPOSE OF DISCIPLINE

The purpose of a disciplinary proceeding is to administer discipline to the lawyer when it is deserved. The Lawyer Disciplinary Board does not and cannot give individual legal service or advice to any person making a complaint, nor can it provide a lawyer to any person. If you need assistance in finding a lawyer, you may call the West Virginia State Bar's Lawyer Referral Service at (304) 558-7991.

Further, any loss the client may have sustained as a result of the matter involved cannot usually be recovered through disciplinary proceedings. Even though the lawyer may be punished, the complaining party who believes he or she has been damaged must enforce his or right by the usual legal methods. **The statute of limitations for bringing a legal action against a lawyer is not stayed during the time your ethics complaint is pending.**

The West Virginia State Bar does maintain a Client Protection Fund from which restitution can be made in certain cases involving a lawyer's misuse of client funds. Information about this fund may be obtained from The West Virginia State

Bar at (304) 558-1044.

DISCIPLINE OF LAWYERS

Discipline of lawyers in West Virginia may take on several forms, depending on the particular circumstances and the severity of the offense: probation, restitution, limitation on nature or extent of practice, admonishment, supervised practice, community service, public reprimand, suspension from practice for a specified time, disability suspension or disbarment.

The procedures that are followed in filing and processing a complaint against a lawyer are outlined here so that you may understand what is involved.

HOW TO FILE A COMPLAINT

Anyone who feels his or her lawyer has engaged in professional misconduct may file a complaint with the Office of Disciplinary Counsel by submitting an affidavit setting forth the facts on which the complaint is based. No special form or language is necessary. A typed letter of complaint the truth of which is sworn to before a notary public will be sufficient. The Office of Disciplinary Counsel will provide you with a form upon request.

In the complaint, you should write out or type out in detail the circumstances of your complaint. Provide pertinent names, dates and facts known to you or to others to show the improper action. You should state whether the attorney represents you and, if so, give all details concerning the agreement of representation, including details about the fee and about any prepaid retainers. If the attorney does not represent you, explain your connection to the attorney. Attach copies of any documents, letters, or other materials that pertain to your complaint.

You must swear to the truth of matters in your complaint by signing the complaint

before a notary public, who will also sign the complaint and place the notary's seal. If you have questions about preparing your complaint, call the Office of Disciplinary Counsel.

REVIEW OF COMPLAINTS

Once a complaint is received, it is reviewed by the Office of Disciplinary Counsel to determine if it alleges a violation of any of the Rules of Professional Conduct. If a complaint is meritless on its face, or fails to allege a violation of the Rules of Professional Conduct, the lawyer will not be asked to respond, and you will be notified that the complaint will not be investigated. The Office of Disciplinary Counsel may determine that your complaint would be better handled by another program or committee of The West Virginia State Bar, such as the voluntary fee mediation program, and your complaint may be referred to the other program or committee. An employee of the Office of Disciplinary Counsel may also attempt to resolve your complaint informally, as described in the section "Informal Complaints," above.

INVESTIGATION OF COMPLAINTS

If the complaint alleges a violation on its face, then the Office of Disciplinary Counsel will investigate the complaint. Investigations are primarily done by mail. The lawyer is asked to provide a response to the complaint, and you will usually have an opportunity to reply. The Office of Disciplinary Counsel will then determine if other witnesses need to be contacted or documents reviewed.

You should expect the investigation will take time. Filing a complaint is not a "quick fix."

Once the investigation is complete, the Chief Lawyer Disciplinary Counsel may

dismiss the complaint if the investigation did not disclose evidence of a violation of the ethics rules. If the Chief Lawyer Disciplinary Counsel dismisses the complaint, you may request a review by the Investigative Panel. When there is evidence of a violation, or if there is a question as to whether a violation occurred, then the complaint will be reviewed by the Investigative Panel.

INVESTIGATIVE PANEL ACTION

When the Investigative Panel reviews the matter it may: (1) dismiss the complaint if there is no or insufficient evidence of a violation; (2) find a violation of the ethics rules, but determine further action is not warranted; (3) issue a written admonishment to the attorney; (4) require additional investigation; (5) refer to mediation; or (6) issue formal charges against the lawyer and direct that a formal hearing be held.

PUBLIC HEARING

When the Investigative Panel issues formal charges against the lawyer, a Hearing Panel Subcommittee will preside over a public hearing. The Hearing Panel Subcommittee usually consists of three members of the Lawyer Disciplinary Board, one of whom must be a non-lawyer.

The procedure in disciplinary hearings is similar to that in non-jury court trials. A record is kept by a reporter. Testimony is given under oath. The rules of evidence are observed. Attendance of witnesses may be compelled by subpoena. The hearing is open to the public and proceedings before the Hearing Panel Subcommittee thereafter are public.

Based upon the facts developed at the hearing before it, the Hearing Panel Subcommittee may recommend that the accused attorney should be disciplined or

it may recommend that discipline is not warranted and recommend dismissal of the complaint.

The decision of the Hearing Panel Subcommittee is made in the form of written findings and recommendations, which are served upon the accused attorney and must be filed with the Supreme Court of Appeals of West Virginia.

ACTION BY THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Once the Hearing Panel Subcommittee files its decision on the formal charges with the Supreme Court of Appeals of West Virginia, the accused attorney is given the opportunity to be heard by the Court in the form of written briefs and oral argument. Based upon the facts brought out in the hearing before the Hearing Panel Subcommittee, the Court then determines what, if any, discipline to impose. Only the Supreme Court of Appeals of West Virginia may discipline an attorney.

INVESTIGATIONS ARE CONFIDENTIAL

Disciplinary investigations are confidential. The reason for this is that the complaint against the lawyer usually arises out of his or her transactions with a client, which are confidential. This confidence would be violated and the private affairs of the client exposed if disciplinary investigations were made public. Also, an attorney's reputation and standing could be injured as the result of charges that have no basis in fact or have not been established by evidence. We request that all correspondence or that all material you receive from the Office of Disciplinary Counsel or the lawyer you've complained about be kept confidential. If the complaint is closed, a written

explanation will be made public. Any formal charges filed and any proceedings thereafter will also be public.

WHAT YOU MAY EXPECT

You may expect that the Lawyer Disciplinary Board will be genuinely concerned with your complaint. It will receive full attention. No complaint is ever "swept under the rug." The Lawyer Disciplinary Board includes non-lawyer members and does not exist to "whitewash" lawyer misconduct.

You may be asked for additional information or be interviewed by a lawyer or an investigator, if necessary.

You may expect to be called as a witness and to testify under oath if a public disciplinary hearing is held concerning your complaint. You may also be called upon to give a deposition prior to the hearing.

You may expect that the procedures involved will take time, and in some instances a rather long period of time.

You may expect to be notified of the outcome of your complaint and the Board's findings and conclusions.

WHAT YOU SHOULD NOT EXPECT

You should not expect to receive any money damages in the disciplinary proceedings.

You should not expect to receive any individual legal advice or services from the Office of Disciplinary Counsel. The lawyers do not represent you.

You should not expect to be given all investigative materials or documents of the Board relating to your complaint.

CONCLUSION

The Lawyer Disciplinary Board and the Office of Disciplinary Counsel wish to insure you of the integrity of the disciplinary process and hope this pamphlet has helped you understand our system.