



**Information
About
GRIEVANCE
PROCEDURES
and
DISCIPLINE
OF LAWYERS**

This pamphlet has been prepared for the information of people who have filed a grievance or who may wish to file a grievance against a lawyer. Please read it carefully. It explains the procedures and is designed to prevent misunderstanding.

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**OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY
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**HOTLINE FOR ETHICS
AND FEE ARBITRATION FORMS
1-800-406-8594**

Office of Attorney Ethics Website
www.judiciary.state.nj.us/oea/index.htm

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OVERVIEW

When they enter the practice of law, all lawyers obligate themselves to uphold the law and to abide by the Rules of Professional Conduct adopted by the Supreme Court of New Jersey. Those who violate these standards for professional conduct are subject to discipline, ranging from admonition to disbarment.

Because disciplining a lawyer is a serious matter, it takes evidence -- proof of unethical conduct -- to justify disciplinary action. Just as it takes proof before any member of society may be penalized for wrongdoing, the action of the lawyer must constitute unethical conduct before the lawyer is disciplined. An honest disagreement about how a case should be handled -- or should have been handled -- does not constitute unethical conduct, even if the outcome of the case is disappointing.

A mistake does not necessarily constitute unethical conduct either. If a mistake causes a loss, the client may be able to recover the loss in a civil suit against the lawyer for money damages. But a simple mistake or error in judgment by itself is not unethical conduct.

There are situations that a client may find most annoying, but that do not constitute unethical conduct. An example would be the lawyer's failure to consult with the client prior to writing every letter or prior to filing every document in the client's case, or perhaps the lawyer's failure to respond to all of the client's telephone calls inquiring about the progress of the case. If you have a problem that may be the result of inadequate communications or some misunderstanding, it may be that the problem can best be resolved by a frank talk with your lawyer. Tell your lawyer of your dissatisfaction, and ask for a full explanation of the matter involved. Such a discussion will often either eliminate the problem or lead to its solution.

Finally, the disciplinary process cannot correct a lawyer's personality problems. Allegations that a lawyer was rude, used bad language, or failed to pay a bill cannot generally be investigated by the disciplinary system.

While it is impossible to list all of the acts or omissions which may constitute unethical conduct, here are a few examples of prohibited conduct which, if proven, may be cause for discipline.

- A lawyer cannot or will not give you money that he or she is holding on your behalf and to which you are entitled, or will not provide you a complete written accounting for that money.
- A lawyer **continually** fails to respond at all to inquiries about your case, to tell you about court dates, or to appear in court. Where the problem is simply a lack of communication, **first** try your best to resolve the problem yourself.
- A lawyer advises you or anyone else to lie, or lies himself or herself in the course of a case. Lawyers pride themselves on their honesty. The profession does not need those who feel they must resort to deception to conduct their practice.
- A lawyer represents one party to a transaction while also the attorney for the other side. This is a conflict of interest and is generally prohibited unless both parties are fully aware of the situation and consent to it.

If you believe that your lawyer has engaged in unethical conduct, you should call the toll free hotline number [1-800-406-8594]. If you enter the five-digit zip code of the attorney's office, you will be connected to the district ethics secretary to request an Attorney Grievance Form.

FEE DISPUTES

Fee matters are not ordinarily a basis for discipline of a lawyer because they usually do not involve questions of unethical conduct. Furthermore, our court rules **require** that fee disputes first be pursued with district fee arbitration committees before they can be considered by ethics committees.

Some fee disputes may be the result of an overcharge by the lawyer. Others, however, may result from your misunderstanding the basis for the fee and the various factors that go into the charge made by a lawyer for services. Today all lawyers are required to explain in writing to new clients the basis or rate of the fee to be charged. This must be done near the time the lawyer first accepts the case. Both you and your lawyer should discuss any questions regarding fees at the initial conference so that you both have a clear understanding of what will happen in your case and how much the case will cost. Despite discussions as to the basis or rate of fee, sometimes misunderstandings develop and a controversy arises. Fees, like any other disputes over the value of services, may be resolved by court actions.

As an alternative to court action, the Supreme Court of New Jersey has created 17 district fee arbitration committees, which will resolve, at the clients request, through binding arbitration, disputes concerning alleged unreasonable fees. If you desire assistance by a fee arbitration committee in determining whether the fee charged by your lawyer was reasonable, call the toll free hotline number [1-800-406-8594] and

you will be connected to the district fee arbitration secretary to request fee arbitration forms.

THE OFFICE OF ATTORNEY ETHICS

In October 1983, the Supreme Court of New Jersey established the Office of Attorney Ethics (OAE) to manage all district ethics and fee arbitration committees throughout the state. In addition to broad-ranging administrative and managerial powers, the OAE also has jurisdiction to investigate and prosecute complex and some other ethics matters. It handles exclusively all ethics cases in which the lawyer is also a defendant in any criminal proceeding. Additionally, the OAE takes any emergent action that may be necessary to protect the public by applying to the Supreme Court for immediate temporary suspensions. This may occur, for example, when a lawyer has been convicted of a serious criminal violation, or where there is substantial proof that client trust money has been stolen. Likewise, the OAE manages statewide all district fee arbitration committees, which hear client disputes over lawyers' bills for services. The OAE also administers the Supreme Court's Random Audit Compliance Program, which conducts audits of attorneys' trust and business accounts to see that proper records of clients' funds and attorneys' fees are maintained by all lawyers. Finally, the OAE manages the Trust Overdraft Notification Program, which provides for the active review of overdrafts of attorney trust accounts as reported by New Jersey financial institutions.

THE PURPOSE OF DISCIPLINE

The primary purpose of attorney disciplinary proceedings is to protect the public by imposing discipline on a lawyer who has behaved in an unethical manner in handling a client's case. Neither the Office of Attorney Ethics (OAE) nor any of the district ethics committees can provide private legal service or advice to any person filing a grievance. Furthermore, if you have lost money as a result of the matter involved, the money cannot be recovered through disciplinary proceedings. If you seek to recover money damages, you should consult another attorney to discuss bringing a civil suit against the original lawyer for money damages. Ethics committees are empowered to recommend that an attorney who is guilty of unethical conduct be disciplined; however, these committees are not courts and cannot award money damages to any party.

DISCIPLINE OF LAWYERS

Discipline of lawyers may take one of several forms, depending on the particular circumstances and the severity of the offense: admonition, reprimand, censure, suspension from practice for a period of time, or disbarment.

The procedures that you must follow in processing a grievance against a lawyer are outlined here so that you may understand what is involved. You should know that the cost of the disciplinary system is financed totally by annual fees paid by lawyers. No taxpayers' monies are used. You should also be aware that members of the district ethics and fee arbitration systems, both attorneys and public members, are volunteers who donate their time and services to improve the profession.

FILING A GRIEVANCE

By Supreme Court rule, all grievances must be in writing and filed with the secretary of the district ethics committee for the district in which the lawyer has his or her main law office. In the event the committee determines that an actual conflict of interest exists in any case, either the member who has the conflict may be disqualified from participating in the case or, in appropriate cases, the matter may be transferred to another district. Ethical conduct is a personal obligation of a lawyer and therefore a grievance must be filed against a specific lawyer and not against a law firm. Since there are currently 18 district ethics committees throughout the state, you are advised to telephone 1-800-406-8594. After you enter the zip code of the attorney's office, you will be transferred to the appropriate ethics secretary to request grievance forms.

When you complete and file an Attorney Grievance Form, you must provide sufficient detail about the **facts** of your grievance such as names and addresses of all witnesses, dates, and pertinent documentation to serve as a basis for further investigation. Failure to provide important **facts** and copies of important documents may result in a delay in the consideration of the grievance while the documentation is obtained.

INVESTIGATION

After receiving an Attorney Grievance Form the secretary will review the form to determine whether the grievance should be docketed. To help evaluate the matter the secretary may speak or write to you or the lawyer for further information. If the secretary determines that the grievance involves a substantial fee dispute,

involves pending civil or criminal litigation, or meets other specific criteria outlined in our court rules, the secretary will decline to docket the case. If the facts alleged in the grievance would not constitute unethical conduct even if proven (for example, where the lawyer is simply alleged to have been rude or used bad language, or where the lawyer did not pay a bill), after consultation with a designated public member of the Committee, the secretary will decline to docket the case. There is no right of appeal from these determinations. In such event the secretary will notify you of the reason that the case was declined and the specific court rule or other authority mandating declination.

On receipt of your grievance alleging facts about the conduct by a lawyer which, if proven, would be unethical, the secretary of the committee docket the case and assigns the matter to a lawyer-member for investigation necessary to determine the validity of the allegations. The Court's goal is to complete standard investigations within six months and complex ones within nine months of the date assigned. A written report of investigation is then submitted to the Chair of the committee, who determines whether there is adequate proof of unethical conduct. If the Chair finds that there is no reasonable prospect of proving unethical conduct by clear and convincing evidence, the Chair directs the secretary to dismiss the matter and to provide you with a copy of the report of investigation. In such event, the investigative stage of the matter is at an end. You have the right, however, to appeal the dismissal to the statewide Disciplinary Review Board. The Board's address is provided in the secretary's letter of dismissal. If, however, the Chair determines that there is a reasonable prospect of proving unethical conduct by clear and convincing evidence, a formal complaint is prepared. The complaint is served on the lawyer, who is required to file an answer within 21 days of service. This step begins what is known as the hearing stage.

Additionally, in cases where both the Committee and the OAE agree that the attorney is guilty of "minor unethical conduct," and the attorney admits to the unethical conduct, the case may be diverted, *i.e.*, treated as a non-disciplinary matter, in order to correct or remedy the cause of the "minor unethical conduct." There is no appeal from the OAE's decision to divert a case

HEARINGS

Complaint cases are generally tried before a hearing panel consisting of three members, composed of two lawyers and one public member. The procedure in disciplinary hearings is similar to that in court trials. A court reporter makes a record of the entire proceeding. Testimony is given under oath. Attendance of witnesses and the production of records may be compelled by subpoena. The hearing is open to the public.

After the hearing is concluded, the panel deliberates and takes one of the following actions:

1. dismisses the complaint, if it finds that the lawyer has not committed unethical conduct; or
2. determines that the lawyer has been guilty of unethical conduct for which discipline, *i.e.*, admonition, reprimand, suspension or disbarment, is required.

DISCIPLINARY REVIEW BOARD

In the event that your docketed grievance has been dismissed by a committee after the investigative or hearing stage, you have the right to appeal by requesting appeal forms in writing from the statewide Disciplinary Review Board (referred to as the "Board") at P.O. Box 962, Trenton, NJ 08625. There is no charge for an appeal. The Board is composed of nine members (both lawyers and members of the public), who donate their time on a voluntary basis. The Board may uphold the action of the local committee, reverse the decision and impose discipline or return the matter for further proceedings.

When a hearing panel finds unethical conduct warranting discipline, the panel's report and recommendation are forwarded to and considered by the Board. If after reviewing a matter in which an admonition or reprimand has been recommended, the Board determines that an admonition is adequate discipline, it issues an appropriate letter of admonition. When a hearing panel has filed a report recommending stronger discipline, oral argument is routinely scheduled before the Board. The lawyer may appear in person and may be represented by counsel. A representative of the committee appears in support of the hearing panel report. No witnesses are permitted at this oral argument and no testimony is taken. However, the argument is open to the public. If the Board determines that an admonition, reprimand, censure, suspension, or disbarment should be imposed, its written decision must be reviewed by the Supreme Court of New Jersey. The Board forwards a copy of its decision to you and to the lawyer.

REVIEW BY SUPREME COURT

Disbarment can be ordered only by the Supreme Court of New Jersey. In all other matters, the

recommendation of the Board becomes final on entry of an Order by the Supreme Court, unless the Supreme Court has granted one of the parties leave to appeal. In cases where the Supreme Court grants oral argument, the Office of Attorney Ethics represents the public interest before the Court, which issues a final order disciplining the attorney or determining that no discipline is required.

INVESTIGATIVE CONFIDENTIALITY

The Supreme Court of New Jersey has held that persons who file grievances "may speak publicly regarding the fact that a grievance was filed, the content of that grievance, and the result of the process." Since disciplinary officials are required by *Rule 1:20-9(h)* to maintain the confidentiality of the investigation process and may neither speak about the case nor release any documents, until and unless a formal complaint is issued and served, you must also keep confidential any documents you may receive during the course of the investigation of your grievance.

To protect the integrity of the investigation process, we recommend that you, as well as all witnesses, not speak about the case other than to disciplinary officials while the matter is under investigation. So long as you maintain the confidentiality of the investigation process, you have immunity from suit for anything you say or write to disciplinary officials. However, the Supreme Court has stated that you "are not immune for statements made outside the context of a disciplinary matter, such as to the media or in another public forum." *R.M. v. Supreme Court of New Jersey*, 185 N.J. 208 (2005).

WHAT YOU MAY EXPECT

Grievances against lawyers are not dismissed lightly, nor are they prosecuted without justification. The protection of the public is paramount in considering every grievance filed. You may expect...

- a prompt reply from the secretary of the district ethics committee acknowledging receipt of your grievance.
- a fair and impartial investigation, if the grievance is docketed. This means listening not only to your side of the story, but to the lawyer's side as well. It also means conducting whatever independent investigation may be necessary in order to establish the facts.
- as speedy a disposition as is possible of your grievance. Depending on the complexity of the matter, this can take from a few months in a simple matter to nine months or longer in a complicated case.
- to be called as a witness, if necessary, and to provide additional information for the investigation.
- that even though a matter is resolved between you and your lawyer, your continued cooperation may be necessary to conclude the ethics committee's processing of the case.
- appropriate action, commensurate with the offense, against any lawyer found to have violated the Rules of Professional Conduct.
- to be kept informed of the progress of the investigation and to be notified of the final disposition.

There are no charges or other costs to you by the attorney disciplinary system.

WHAT YOU SHOULD NOT EXPECT

You should not expect that your grievance will be decided solely on the basis of what you claim to have happened, just as, in fairness to you, the lawyer about whom you complained cannot expect that the matter will be decided solely on the basis of his or her version. The final decision must depend upon the weight of all the available evidence and testimony.

You should not expect, as a result of your grievance, that you will receive any money or reimbursement of loss from the ethics committee. You must seek recovery of any monetary loss you may claim was caused by a lawyer, from that lawyer, either voluntarily or as a result of a lawsuit. As explained below in this pamphlet, when money has been lost due to **dishonest** conduct, the Lawyers' Fund for Client Protection may reimburse the client's loss. Attorney disciplinary proceedings, however, are restricted to the question of whether a lawyer's conduct was ethical, and, if it was not, the appropriate level of discipline.

Neither should you expect the disciplinary system to provide you with private legal advice or legal services, either in place of the services you expected from your lawyer, or against the lawyer. The disciplinary system acts only to enforce the Rules of Professional Conduct.

LAWYERS' FUND FOR CLIENT PROTECTION

Occasionally a grievance against a lawyer involves dishonest conduct. If you believe that money or

other property belonging to you has been taken by your lawyer, in addition to filing a grievance, you may also file a claim with the Lawyers' Fund for Client Protection (referred to as the "Fund") after notifying the appropriate county prosecutor and district ethics committee of the incident.

It is important to note that the Fund is a separate committee of the Supreme Court with its own distinct purpose, jurisdiction, and procedures. Just as the district ethics and fee arbitration committees cannot pay claims, the Fund cannot discipline attorneys or settle fee disputes. Nor may the Fund pay claims based upon the negligence or malpractice of an attorney. For such cases you may consult a private attorney to decide if you may bring a civil lawsuit to collect damages. You must prove a loss suffered through the **dishonest** conduct of an attorney with whom you had an attorney-client or fiduciary relationship. The attorney against whom the claim is made must be either suspended or disbarred, unless deceased or otherwise unavailable, for the Fund to have jurisdiction.

The Fund is administered by six Trustees (five attorneys and one public member) all of whom donate their time and talents. The Fund receives no tax revenues but rather pays its awards out of money paid by New Jersey attorneys themselves each year as a demonstration of commitment to maintaining public confidence in the legal system. If you have questions or if you wish to obtain a claim form, please call (609) 292-8008 or write to:

Lawyers' Fund for Client Protection
of the Bar of New Jersey
P.O. Box 961
Trenton, New Jersey 08625

CONCLUSION

Those involved in the attorney disciplinary system appreciate your interest. They seek fair, impartial, and vigorous enforcement of the Rules of Professional Conduct in the interests of the public, clients, and the legal profession.



**PLEASE NOTIFY THE
DISTRICT ETHICS SECRETARY
OF DISABILITY ACCOMMODATION NEEDS.**