

Departmental Disciplinary Committee

Supreme Court, Appellate Division

First Judicial Department

61 Broadway

New York, New York 10006

(212) 401-0800

(212) 287-1045 FAX

HOW TO FILE A COMPLAINT

INTRODUCTION

When you hire a lawyer you have the right to have your legal matter handled in a professional and ethical manner.

Unfortunately, there may be times when you feel that you have not received the treatment you deserve. Most of the time such problems can be settled between you and your lawyer, either by talking it over or by dismissing the lawyer and hiring a new one. However, on occasion a lawyer's conduct may appear so improper that you feel a complaint to a local disciplinary authority is warranted. Most complaints are filed by clients. However, you may file one even if you are not that lawyer's client.

I. WHERE TO SEND YOUR COMPLAINT

If you believe a lawyer has behaved in an unethical or dishonest manner, you may file a complaint with:

Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
61 Broadway, 2nd Floor
New York, New York 10006

Telephone (212) 401-0800

Hours: Monday-Friday, 9 A.M.-5 P.M.

The Committee only handles complaints against lawyers whose offices are in

Manhattan or the Bronx. Similar disciplinary committees exist in the other counties of New York State. If you call us, we will be happy to furnish you with addresses for the other disciplinary committees in the state.

II. WHAT IS THE DEPARTMENTAL DISCIPLINARY COMMITTEE?

The Committee is composed of lawyers and a smaller number of non-lawyers appointed by the Appellate Division of the Supreme Court, First Judicial Department (the "Court"). Each member is selected by the Court because of his or her knowledge of the law and reputation for integrity and fairness. They serve voluntarily and without pay, and the Committee has no affiliation with a bar association. The Committee is assisted by a full-time paid staff of about 45 which includes lawyers, investigators, paralegals and clerical assistants. The staff screens and investigates complaints and prosecutes those complaints that may warrant disciplinary action.

III. WHAT THE COMMITTEE DOES

The purpose of the Committee is to protect the public and the legal profession by ensuring that lawyers adhere to the ethical standards set forth in the Rules of Professional Conduct (the "Rules"). The Committee protects the public by reviewing and investigating complaints against lawyers and by recommending sanctions against

those who are proven to have violated the Rules. It protects the legal profession by enforcing high standards of conduct, while at the same time ensuring that complaints are dealt with fairly.

The Committee has the authority to take the following actions, depending upon the seriousness of the lawyer's conduct and the circumstances surrounding it:

Refer the complaint to a special Mediation Program, in which a trained volunteer mediator meets with the lawyer and the client to assist them in resolving the complaint privately;

Issue a private sanction to the lawyer (a "Letter or Admonition");

Recommend to the Court that the lawyer receive a public condemnation ("censure");

Recommend to the Court that the lawyer's right to practice law be taken away for a specified period of time ("suspension"); or

Recommend to the Court that the lawyer's license to practice law be taken away ("disbarment").

IV. WHAT THE COMMITTEE CANNOT DO

In response to complaints, the Committee is limited to disciplining the offending lawyer or referring the matter to a mediator (as outlined above). The Committee cannot:

Give you legal advice or represent you in a civil suit against your lawyer, including a suit for legal malpractice or any other claim. If you wish to obtain money from your lawyer on your claim of improper conduct, you should consult an attorney knowledgeable in that field for advice and representation. There are time limits for making certain claims, so you should seek legal advice promptly, whether or not you file a complaint.

Determine fee disputes between you and your lawyer. Lawyers are required to participate in mandatory arbitration of fee disputes subject to certain conditions.

Collect money for you. If an attorney owes you money, and you have not obtained a judgment, you should consider hiring a lawyer to collect your money.

Generally speaking, immediately act on your complaint if there is pending litigation as to the same material and substantial issues.

If you are in doubt as to whether the Committee can help you, you may contact the Committee for guidance:

Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
61 Broadway, 2nd Floor
New York, New York 10006

Telephone (212) 401-0800

Hours: Monday-Friday, 9 A.M.-5 P.M.

V. HOW TO FILE A COMPLAINT

It is helpful, but not required that you use our complaint form for your complaint. If you choose not to use the Committee's form, make sure that your written complaint contains the following information:

Your name, address, and telephone number;
The name, address, and telephone number of the lawyer against whom you are making the complaint; and,

A detailed and concise statement of the lawyer's conduct that is the subject of the complaint.

Whether or not you use the Committee's form, your complaint must be signed. Submit any documents (send copies and keep the originals) which are related to, or substantiate your complaint. Send the complaint and related documents to the Committee.

VI. COST

There is no charge for submitting a complaint to the Committee. Review, investigation, and

prosecution of your complaint are paid for by the State of New York. If you hire an attorney to assist you in the complaint process, you are responsible for the lawyer's fee.

VII. HOW COMPLAINTS ARE PROCESSED

A. Initial Screening

Every complaint is given a docket number and initially reviewed by an attorney on the Committee staff. If it is determined that your complaint involves a matter falling outside our Committee's authority, the staff will notify you that your complaint is being rejected. A rejection does not mean we did not believe you. It only means that what you said the attorney did either was not a violation of any specific rule of the Rules or we cannot pursue it for one of the following reasons:

A major portion of your complaint is in essence a fee dispute over which the Committee has no jurisdiction.

The Committee cannot act on your complaint for other reasons having to do with jurisdiction. For example, that the lawyer's registration address is not in Manhattan or the Bronx; the lawyer has already been suspended or disbarred; the lawyer is deceased; or there is a lawsuit pending that involves the same issues.

Your complaint involves collecting a debt that a lawyer owes to you and you have not exhausted available civil remedies.

There appears to be little likelihood that your complaint alleging professional misconduct can be proven due to the passage of time, the unavailability of evidence or applicable law.

B. Initial Investigation

If the initial screening reveals that the complaint is within our Committee's authority and may involve an ethical violation, the legal staff will carry out an initial investigation of the case. During this investigation, the attorney about whom you complained will be sent a copy of your

complaint and will be given the opportunity to respond to it. You, in turn, will be given the opportunity to reply to the lawyer's response.

C. Second Screening

Following the initial investigation of your complaint, including a review of the evidence submitted, the lawyer's response to the complaint, and your reply, our Committee will determine whether additional investigation is needed and, if so, a further investigation is undertaken. At that point an attorney on the Committee staff reviews the entire file again and makes a recommendation as to whether a violation of a rule warranting discipline has occurred. That recommendation is based on an assessment of the merits of the complaint, the evidence offered by both sides and other relevant factors.

D. Dismissal

If the investigation reveals that the lawyer did not violate a specific rule in the Rules, or if it appears that the complaint cannot be proven, the Committee may decide that your complaint should be dismissed. Before a complaint is dismissed, however, the staff recommendation, as well as the entire file, will be reviewed by the Chief Counsel and again independently by at least one Committee member, who is a lawyer, chosen on an alternating basis. If the member agrees, you will be notified in writing that your complaint is to be dismissed, but that you may request reconsideration of that decision by a different Committee member by notifying the Committee within 30 days of the notice of dismissal to you.

E. The Committee's Mediation Program

In some cases that do not involve serious ethical violations and are unlikely to result in a disciplinary sanction against a lawyer, the Committee may decide to send your complaint to mediation, which is a private,

informal way to resolve a dispute. The mediator is a neutral third person who tries to help disputing parties reach a mutually agreeable solution of their differences. In both Manhattan and the Bronx there is a roster of mediators who are trained to deal with disputes between lawyers and their clients. The mediation will involve, at a minimum, telephone contact between you, the lawyer, and the mediator. It may also involve a mediation conference at which you, the lawyer and the mediator will be present. The mediation program has been highly successful in resolving disputes between clients and their lawyers, particularly in cases where the complaint was generated by a failure in communication. Should mediation fail, the Committee will determine how to proceed as reflected above.

F. Further Investigation

If the staff attorney after second screening recommends that it is likely that there has been a violation of a Disciplinary Rule, that recommendation is reviewed by the Chief Counsel or the First Deputy Chief Counsel and if the recommendation is accepted, the case is assigned to one of the staff attorneys to conduct further investigation which may require issuing subpoenas for documents and records as well as interviewing witnesses including at times the complainant as well as the attorney whose conduct is being investigated.

G. Private Letter of Admonition

In some cases, the investigation reveals that a lawyer has behaved unethically and deserves to be disciplined, but that the violation is not serious enough to warrant formal, public discipline. In such cases, our Committee will send the lawyer a "Letter of Admonition." This is a private sanction which states that the Committee finds the lawyer's conduct to be in violation of the Rules. For example, such letters are sent to first-time offenders who neglect a legal matter or fail to return client property promptly. If a Letter of

Admonition is sent to the lawyer about whom you complained, by law we are not permitted to show you a copy of that letter, but you will receive a notice informing you that such a letter was sent, that it will be kept in the lawyer's permanent file and that it may be used against the lawyer should there be any future ethical violation.

H. Formal Charges

In a case involving an allegation of serious unethical conduct that can be proven, or a case against a lawyer having a history of other repeated provable offenses, it may be determined that formal charges should be brought against the lawyer. Formal charges (the first step required for the imposition of public censure, suspension or disbarment) are initially prepared by the legal staff, and require the approval of at least two Policy Committee members.

I. Hearing and Review by the Court

If formal charges are brought against a lawyer, the Court will appoint a Referee to conduct the hearing. Staff attorneys under the supervision of the Chief and Deputy Counsels develop and prosecute the case against the offending lawyer before the Referee. You may be asked to testify along with other witnesses. After the hearing, which is similar to a formal trial, the Referee issues a Report and Recommendation as to whether the charges have been proven, and recommends an appropriate sanction. The entire proceeding is then reviewed by a Hearing Panel assigned by the Chairman of the Committee. It generally consists of five or six Committee members, one of whom is a public member. If the Hearing Panel finds that the charges have been proven, its Report and Determination as to sanction (click here for the options) the hearing transcript, the evidence introduced at the hearing, and the Referee's Report and Recommendation are then sent to the Court. The Court, after its review, may confirm, reject or modify the Referee's findings and/or the Hearing Panel's

recommendation. Only the Court has the authority to impose public discipline on the lawyer, including censure, suspension or disbarment.

VIII. CONFIDENTIALITY

During the investigation and resolution of a disciplinary complaint, the entire disciplinary proceeding, including the existence of your complaint, is, by law, confidential and the Committee may not disclose this to the public [New York Judiciary Law, Section 90(10)]. However, if a recommendation for a public sanction is forwarded to, and upheld by, the Court, the Court's written decision and the entire record of the proceedings are available to the public for inspection.

IX. HOW LONG YOU CAN EXPECT THE PROCESS TO TAKE

Generally speaking, the initial screening of a complaint will take about four to six weeks. You may contact the Committee in writing to review the status of the complaint. Because of Section 90(10) of the Judiciary Law and the Committee's limited resources, telephone inquiries cannot be processed. After the initial screening it is difficult to predict the length of time a case will take because that depends on the gravity of the complaint. If a recommendation is made to dismiss the complaint after receipt of the lawyer's answer and your reply to that answer, generally you will be notified within six months of the filing of your complaint. If the recommendation is that a violation probably occurred, the time required for the additional investigation and prosecution phase varies with the seriousness and complexity of the case, the availability of witnesses and documentary evidence, the number of complaints being handled, and other factors. If your complaint results in formal charges and a hearing, and involves claims of attorney misconduct sufficient to justify suspension or disbarment, it may take a number of months before the proceedings

are complete. On the other hand, if the charge is less serious and does not require a hearing (for example, if the result is mediation or a Letter of Admonition), the entire process is often completed more quickly. Every effort is made to act on each complaint quickly and efficiently. Consideration of a complaint may ultimately result in depriving a lawyer of the ability to practice his or her profession. Given its responsibility to you, as well as to the lawyer in question, the Committee must act with care.

X. REINSTATEMENTS

Section 90 of the Judiciary Law and Court Rule 22 NYCRR §603.14 permit attorneys to apply for reinstatement to the practice of law after the period of suspension or disbarment. An attorney who has been disbarred or stricken from the roll of attorneys may not petition for reinstatement until the expiration of seven years from the effective date of disbarment (id.). [Click here for directions on what a petition for reinstatement must contain.](#)

XI. DISCIPLINARY RESIGNATIONS

The Court permits an attorney to resign from the bar during an investigation by the Committee or after the filing of charges if the attorney submits an affidavit in compliance with 22 NYCRR §603.11, acknowledging that the attorney knows the nature of potential charges which are set forth in the affidavit and cannot defend against them. A resignation during the pendency of an investigation or after is the equivalent of disbarment.

XII. OTHER SOURCES OF HELP

There are various agencies that provide assistance in the areas in which our Committee cannot help you, or that can

provide additional relief while your complaint is being processed by the Committee.

1. Lawyer Referral:

If you wish to locate a lawyer to replace the lawyer against whom you have complained, or to counsel you in connection with possible claims you may have against that lawyer, the following bar associations in our area have legal referral services:

For Manhattan:

Association of the Bar of the City
of New York
42 West 44th Street
New York, New York 10036
(212) 626-7373

New York County Lawyer's
Association
14 Vesey Street
New York, New York 10007
(212) 267-6646

For the Bronx:

Bronx County Bar Association
851 Grand Concourse
Room 124
Bronx, New York 10451
(718) 293-5600

2. Misappropriated Funds:

If you believe that a lawyer has misappropriated your money or other assets, you may wish to consult the Lawyers' Fund for Client Protection concerning your right to reimbursement from that fund. Complete information about the fund and its procedures, its contact addresses and numbers, and claim forms may be found on the Lawyers' Fund Website (<http://www.nylawfund.org>). Also, that organization may be reached at:

The Lawyers' Fund for Client

Protection
119 Washington Avenue
Albany, New York 12210
(518) 434-1935 or
(1-800) 442-FUND

3. Fee Disputes:

If you are having a fee dispute with your present attorney and wish to have arbitration of that dispute, you should contact:

Joint Committee on Fee Disputes
14 Vesey Street
New York, New York 10007
(212) 267-6646, Ext. 218

The New York State Court System has established a Statewide Fee Dispute Resolution Program (FDRP) to resolve attorney-client disputes over legal fees through arbitration (and in some cases mediation). Please visit their website to see about whether the FDRP is right for you: <http://www.nycourts.gov/admin/feedispute/index.shtml>

4. Mandatory Resolution of Fee Disputes:

If a fee dispute arises in a civil matter where the representation began after January 1, 2002 and the amount involved is more than \$1,000 and less than \$50,000, resolution of the fee dispute is mandatory and will be conducted by:

Joint Committee on Fee Disputes
14 Vesey Street
New York, New York 10007
(212) 267-6646, Ext. 218

There is no mandatory resolution program for fee disputes in criminal matters. The Committee has no authority to resolve fee disputes in criminal matters.

5. Unauthorized Practice of Law:

If you feel that a non-attorney is improperly holding himself or herself out as an attorney

or otherwise practicing law, you should contact:

For Manhattan:

District Attorney's Office
One Hogan Place
New York, New York 10013
(212) 335-9000

For the Bronx:

District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 590-2000

6. Criminal Conduct:

If you believe that your attorney is engaging in criminal conduct, you should contact:

For Manhattan:

District Attorney's Office
One Hogan Place
New York, New York 10013
(212) 335-8900

For the Bronx:

District Attorney's Office
198 East 161st Street
Bronx, New York 10451
(718) 590-2000

7. Judges:

To lodge a complaint against a judge, you should contact:

State Commission on Judicial
Conduct
61 Broadway, 12th Floor
New York, New York 10006
(212) 809-0566

CONCLUSION

We hope that this is helpful to answering your questions about how to bring a complaint against a lawyer in Manhattan or the Bronx, and what happens after you bring a complaint. The legal profession expects all lawyers to conduct themselves in an honest and ethical manner in accordance with the standards set by the Rules of Professional Conduct. We are committed to giving every complaint against a lawyer full and fair consideration in an expeditious manner, and imposing appropriate disciplinary sanctions against lawyers who do not meet the high ethical standards of the profession.

If you have additional general questions about this process, please contact our staff.