



## **ATTORNEY/CLIENT DISPUTES**

The Monroe County Bar Association is authorized to resolve fee disputes and to investigate professional performance issues such as communications, between a Monroe County attorney and the client. All complaints must be in writing and signed by the client.

The mission of both the Fee Arbitration Committee and the Professional Performance Committee is to resolve disputes whenever possible.

Please read the following information carefully. It explains the authority of each committee and the timetable for processing and resolving the issue.

### **GRIEVANCE COMMITTEE...**

When a complaint against an attorney practicing in Monroe County is sent to the Monroe County Bar Association (MCBA) by a client, it is referred to an appropriate committee:

1. If it is a dispute over an attorney's fees other than domestic relations' cases, it is referred to the MCBA Fee Arbitration Committee for investigation.
2. All other complaints are sent to the Seventh Judicial District Attorney Grievance Committee. The Attorney Grievance Office will either investigate the complaint or they will refer it to the MCBA's Professional Performance Committee. The client and the attorney are notified accordingly.

### **MCBA Committees...**

**The Fee Arbitration and Professional Performance Committees** are composed of lawyers and non-lawyers who are appointed by the President of the Monroe County Bar Association, and approved by its Board of Trustees. The investigators on both committees are attorneys.

When a complaint is sent to the MCBA, the chair of the committee will assign a lawyer to investigate your complaint and will send you and your attorney letters describing procedures in detail, including the name of the investigating attorney.

A copy of your complaint is sent to your lawyer and he/she is required to send a written response to the investigator. A copy of the attorney's response will be forwarded to you.

**The investigating attorney is not assigned for the purpose of providing you with legal advice or counsel, but merely for the purpose of gathering pertinent information; investigating the matter and attempting to resolve the dispute.**

### **Fee Arbitration Committee...**

If a fee dispute cannot be resolved by the investigating attorney, you and your attorney are asked to sign an agreement to submit to binding arbitration. **If either party refuses to sign the Agreement, the Committee can proceed no further.**

When Fee Arbitration Agreements have been signed, the Chair of the Fee Arbitration Committee appoints an arbitrator or a panel of arbitrators to meet with you and your attorney for a mandatory arbitration hearing. If a panel is assigned, it will include one non-attorney. You may wish to have a lawyer present at the arbitration, at your own expense.

Following the arbitration hearing, you and the respondent attorney will be informed in writing, of the full decision of the arbitration panel. **The decision may be binding and may have a preclusive effect on any subsequent claim for legal malpractice See: *Altamore v. Friedman*, (193 AD2d 240)**

### **Professional Performance Committee...**

All lawyers are mandated, when they enter practice, to follow the law and to be guided by the rules of ethics (called the Code of Professional Responsibility) adopted by the Appellate Division of the New York State Supreme Court.

Any lawyer who breaks this code of conduct can be punished. In some cases, this could mean suspension of license to practice law or even permanent loss of license.

It is understandable then, that it takes evidence (proof of unethical conduct) to justify the discipline of a lawyer; just as it takes proof before you or anyone else may be punished for wrongdoing. For example, an honest difference of opinion between you and your lawyer about how a case should or should not be handled does not mean it is unethical conduct.

To determine whether or not your complaint involves wrongdoing; a careful investigation must be conducted. Here's how we do it:

Each written complaint, the attorney's written reply, and the investigator's findings are reviewed by the appropriate Committee during regularly scheduled meetings.

If the Committee determines that the behavior you complained about is actually professional misconduct, the complaint will be referred to the 7<sup>th</sup> District Grievance Committee for further investigation and possible action against your lawyer. You will hear from us in writing regarding the outcome.

### **TIME FRAMES...**

Now that you know what takes place, you will understand that we cannot put a time frame on how long it will take to process any complaint. Much depends on the nature of the complaint, and whether or not the facts are in dispute. For example, a complaint involving the handling of a couple's estate over a period of five years will undoubtedly take more time to investigate than a complaint that a lawyer accepted a retainer fee and then failed to file the client's lawsuit.

We do want to assure you that we will investigate your complaint as quickly as possible and that you will be notified of the outcome.

### **What you CANNOT Expect...**

- You should not expect that you will receive any money or reimbursement for loss simply as a result of your complaint. You must recover this directly from the attorney responsible for the loss.
- When you use the grievance process, the Bar Association cannot provide you with legal advice or representation.

### **What you CAN Expect...**

- You can expect that every attempt will be made to resolve your complaint in a manner that is fair to both you and to the attorney complained about.
- You can expect to receive written notice of the final decision concerning your complaint.

## **TO FILE A COMPLAINT...**

First, be assured that from the moment your complaint has reached our office, it is considered confidential information. The law requires it. You do not have to be an expert on lawyers' ethical standards but **you do have to be a client of the attorney**. If you believe your lawyer has acted unethically, and you cannot resolve the matter satisfactorily, you may file a written complaint with us. No special language or form is necessary.

### **We need...**

1. Your name, address and phone number (complainant).
2. Your attorney's name, address and phone number (respondent attorney)
3. Your letter of complaint, **(not a copy)** and **copies only** of any letters, agreements or other materials that would be helpful to the investigator assigned to your case.

**Mail it to:** Monroe County Bar Association  
1 West main Street – 10<sup>th</sup> Floor  
Rochester, NY 14614

### **We do not accept faxes.**

### **And Finally...**

The Bar Association's grievance process is restricted to the question of a lawyer's ethical conduct. You must realize that your complaint will be decided on the basis of all available evidence, of which your complaint is only one side.

The Bar disputes resolution system is designed to provide an orderly and just way to deal with complaints of misconduct against lawyers. We sincerely hope that the problem which gave rise to your complaint will be resolved in a manner you find to be effective and fair.