

MISSOURI'S LAWYER DISCIPLINE SYSTEM

Discipline System

Clients have a right to expect a high level of professional service from their lawyer. In Missouri, lawyers follow a code of ethics — known as the Rules of Professional Conduct — which guides their practices and their relationships with clients. When lawyers fail to meet the ethical standard, they are subject to disciplinary action.

Contrary to common belief, it is the Supreme Court of Missouri — not The Missouri Bar — which is in charge of the state's lawyer discipline system. In order to protect the public, the Supreme Court oversees a mechanism for investigation and, where necessary, discipline of lawyers who fail to meet their professional obligations. Examples of misconduct which may draw disciplinary action are: neglect (failure to communicate, failure to perform agreed upon duties, delay, etc.); trust violations (embezzlement of funds entrusted to a lawyer by or for a client); conflict of interest; and improper advertising.

Who Is Involved in the Disciplinary Process?

Depending on the stage of the complaint, up to five different groups may be involved in the investigation and/or disciplining of a lawyer. These are:

- *Office of Chief Disciplinary Counsel* — This office was established by the Supreme Court of Missouri to investigate ethical complaints against lawyers.

- *Regional Disciplinary Committees* – These local committees, composed of both local lawyers and non-lawyers, are authorized to investigate ethical complaints against lawyers. These committees investigate complaints sent to them by the Chief Disciplinary Counsel.

- *The Advisory Committee* — This group, appointed by the Supreme Court and also composed of both lawyers and non-lawyers, serves as the administrative body for assigning cases to Disciplinary Hearing Panels. It also reviews decisions to close complaint files made by the Office of Chief Disciplinary Counsel or Regional Disciplinary Committees.

- *Disciplinary Hearing Panel* — This panel of two lawyers and one non-lawyer is selected from a larger panel appointed by the Supreme Court of Missouri. A Disciplinary Hearing Panel hears evidence about allegations of lawyer misconduct in a setting similar to a court proceeding and recommends what discipline, if any, to impose.

- *The Supreme Court of Missouri* — The state’s highest court has the authority to review all decisions made by the Disciplinary Hearing Panels and impose appropriate discipline on a lawyer.

The Complaint Process

Anyone who believes that a lawyer has engaged in unethical conduct may file a complaint with the Office of Chief Disciplinary Counsel in Jefferson City. The complaint will be screened to determine whether the matter is the proper subject for a disciplinary investigation. If the complaint can be easily and quickly resolved, but is not necessarily appropriate for a disciplinary investigation, it may be placed into the Office of Chief Disciplinary Counsel’s Informal Dispute Resolution program. If the Office of Chief Disciplinary Counsel lacks jurisdiction to investigate the matter or if there is no probable cause to believe that an ethics violation has occurred, then the complaining person (the complainant) will be notified and no file will be opened.

In some instances it is appropriate to refer the complainant to the Complaint Resolution Program administered by The Missouri Bar or a fee dispute resolution program. The local bar association in Kansas City operates a fee dispute resolution program serving this area, while The Missouri Bar administers such a program for the rest of the state.

Once a complaint file is opened, the complaint will be investigated by the Office of Chief Disciplinary Counsel or by a Regional Disciplinary Committee. The investigation may be entirely in writing, or it may involve telephone calls and personal interviews.

Based on the results of the investigation, the Chief Disciplinary Counsel (or a Regional Disciplinary Committee) will take one of the following four actions:

- Close the complaint file upon a finding that no violation occurred;
- Enter into a diversion contract with a lawyer who has no disciplinary history, but may have committed a low-level violation that can be remedied through education;
- Issue a written admonition (becoming part of the lawyer’s record) if it is determined that a minor violation occurred; or
- File a legal document, called an Information, if it is believed that a serious violation by the lawyer has occurred. The Information sets out the charges being made against a lawyer.

The complainant will be notified of the action taken.

The complainant may challenge a decision to close a file. The complainant has 30 days to request a review by the Advisory Committee.

If a lawyer fails to respond to notice of an Information within 30 days, the Supreme Court may enter an order imposing discipline by default. However, if the lawyer timely requests a hearing on the Information, the Advisory Committee will appoint a Disciplinary Hearing Panel.

The Hearing Process

The Advisory Committee will assign the case to a Disciplinary Hearing Panel. The Disciplinary Hearing Panel will hear evidence presented by the Chief Disciplinary Counsel and any evidence submitted by the lawyer charged. It is likely that the complainant may be asked to testify under oath at this hearing, as in a regular court proceeding.

After this hearing, the Disciplinary Hearing Panel will decide whether a violation of the Rules of Professional Conduct has occurred and recommend any of the following actions:

- Dismissal of the case if it finds no violation has occurred;
- Written admonition (becoming part of the lawyer's record);
- Reprimand;
- Suspension or disbarment.

Either the lawyer or the Office of Chief Disciplinary Counsel may appeal any recommendation of the Disciplinary Hearing Panel to the Supreme Court of Missouri.

Review by the Supreme Court

If there is no agreement between the Office of Chief Disciplinary Counsel and the lawyer, the Supreme Court of Missouri will review the recommendation of the Disciplinary Hearing Panel. This may include the preparation of written briefs and oral arguments. The Court then will impose appropriate discipline on the lawyer.

Even when the parties agree with the recommendation of the Disciplinary Hearing Panel, the Supreme Court will review any recommendation for public reprimand, suspension or disbarment. The matter is not final until the Supreme Court issues an order of discipline.

The complaining parties do not participate at this level, but may be present at Supreme Court arguments.

Special Procedures

A lawyer's conviction of a criminal charge may also lead to disciplinary action by the Supreme Court. The Court may issue an order to a lawyer who has been found guilty of a felony, or certain misdemeanors, to show cause why he or she should not be suspended from the practice of law pending the final disposition of the criminal appellate process. This action may be initiated only by the Office of Chief Disciplinary Counsel.

The Chief Disciplinary Counsel and Regional Disciplinary Committees may also conduct investigations of lawyers who may no longer be able to practice law due to physical or mental conditions or because of addiction to alcohol or other drugs. The Supreme Court will immediately suspend any lawyer who is found by a court to be incapacitated or otherwise unable to practice law.

In some cases, a lawyer being investigated for ethical misconduct may voluntarily surrender his or her license. When this happens, the Chief Disciplinary Counsel submits reports and recommendations regarding the matter to the Supreme Court. Similar action is taken by the Chief Disciplinary Counsel when a lawyer who has been suspended or disbarred seeks reinstatement of a law license.

Other Important Information

To assist in the investigatory process, the Chief Disciplinary Counsel has authority to issue subpoenas for documents and witnesses to testify under oath. In order to protect the public, the Chief Disciplinary Counsel also has the power to investigate the unauthorized practice of law by non-lawyers. In connection with that mandate, the Chief Disciplinary Counsel may institute and prosecute proceedings against any party that, after thorough investigation, is suspected of engaging in the unauthorized practice of law. The Chief Disciplinary Counsel also refers many of these situations to the Missouri Attorney General and local prosecuting attorneys.

By calling the Office of Chief Disciplinary Counsel, you can obtain the following information about a specific Missouri attorney:

- (1) whether an attorney is in good standing in Missouri;
- (2) whether an attorney has public discipline in Missouri (but not whether an attorney has had complaints); and
- (3) The last address of an attorney registered with the Supreme Court of Missouri.

How to File a Complaint

Complaints must be in writing. There is a form for filing a complaint at the Office of Chief Disciplinary Counsel's website, which is www.mo-chiefcounsel.org. The form may assist you in preparing your complaint, but is not required. You may prepare a letter instead of, or in addition to, the form. You should send your complaint to OCDC, 3335 American Avenue, Jefferson City, MO 65109-1079. Complaints are also accepted by fax. The fax number is (573) 635-2240. The telephone number is (573) 635-7400. In the complaint, give the name and address of the attorney that your complaint is against, tell what kind of matter the attorney was handling (for example, family law or criminal), state the facts in your own words about what happened, and what your concerns are. Please be sure to include your full name, address, and telephone number.

The Office of Chief Disciplinary Counsel cannot tell you over the telephone whether you have a valid complaint, and cannot give you legal advice.

Complaints Against Judges

The Office of Chief Disciplinary Counsel investigates complaints against attorneys only. It **does not** investigate complaints against judges. To make a complaint against a Missouri judge, write to:

James M. Smith
Administrator and Counsel
Commission on Retirement, Removal and Discipline of Judges
2190 S. Mason Road, Suite 201
St. Louis, MO 63131
For information, call (314) 966-1007.

Fee Dispute Information

The Office of Chief Disciplinary Counsel cannot handle fee disputes. Several bar associations in Missouri have set up programs for this purpose. These programs are free. Participation in these programs is entirely voluntary. If the attorney is in the Kansas City area, call (816) 474-4322. If the attorney is in any other part of the state, call The Missouri Bar at (573) 635-4128.

Lawyer Referral Service Information

The Missouri Bar offers a free Lawyer Search function, located at MissouriLawyersHelp.org. Those seeking representation can use the tool to locate lawyers by practice area, geographic location, and spoken language.

The Missouri Bar or the Office of Chief Disciplinary Counsel cannot provide legal advice or refer you to an attorney. If you would like a referral to an attorney in the Springfield or Greene County area, call (417) 831-2783. The Office of Chief Disciplinary Counsel does not screen the attorneys who are affiliated with this lawyer referral service, and OCDC does not have information on their credentials or abilities.

Hiring a legal professional can be costly, but it is important to remember that you are paying for expertise. If you are unable to afford a lawyer, it might be possible to be represented at a lower rate or on a pro bono basis. In these situations, your quality of representation should not decrease, but your out-of-pocket costs will. The Missouri Bar does not match members of the public with pro bono lawyers, but it maintains a list of available discounted services, which is available at MissouriLawyersHelp.org.

Additionally, some matters, such as an uncontested divorce or traffic ticket, may not call for a lawyer at all. The Missouri Bar produces numerous brochures and blog posts – all available at MissouriLawyersHelp.org – that address general legal questions. While they are not a substitute for a hired lawyer, they are helpful for background information on matters and can help you decide if you need to seek representation.

For more information, go to MissouriLawyersHelp.org or call 573-635-4128.

The Rules of Professional Conduct may be found in Supreme Court Rule 4 in the latest edition of Missouri Rules of Court. This rule explains the obligations of lawyers to the legal system and to their clients.

Missouri's lawyer discipline system is funded by an annual allocation of a portion of the dues paid by each member of The Missouri Bar. No tax money is used to fund the Office of Chief Disciplinary Counsel.