

**Inquiry
Concerning A
Florida Lawyer**



This pamphlet provides general information relating to the purpose and procedures of the Florida lawyer discipline system. It should be read carefully and completely before any inquiry is filed with The Florida Bar.

WHO REGULATES THE CONDUCT OF LAWYERS?

The Supreme Court of Florida created The Florida Bar as its investigating arm to enforce the standards of ethical conduct of our lawyers. All Florida lawyers must be members of The Florida Bar. They pay membership fees that fund the total cost of the lawyer discipline system. The Florida Bar acts as a prosecutor in lawyer discipline cases, much like the state attorney's office does in criminal cases. The Florida Bar does not and cannot represent any participant in a lawyer disciplinary case, other than the Bar.

WHAT CAN THE LAWYER DISCIPLINE SYSTEM DO?

The Florida Bar's Role: The Florida Bar's lawyer discipline system protects the public by providing a means to address lawyer misconduct. The Florida Bar, as a prosecutorial agency, cannot and does not give individual legal service or advice to any person making allegations against a lawyer.

Civil Actions: The losses a client may have sustained as a result of the matter involved cannot be recovered through disciplinary proceedings. If the complaining person has suffered a financial or property loss, that person's rights must be enforced by usual legal methods (such as a civil court action) against the person responsible for the loss. Further, The Florida Bar has no authority to review a court decision on a particular matter—and the bar's discipline system may never be used as a substitute for an appeal of such cases.

Fee Disputes: Disagreements about whether the lawyer charged too much are generally not handled by The Florida Bar's discipline system because of restrictions placed on the Bar by decisions of the United States Supreme Court related to antitrust. The Florida Bar may only consider a fee-related inquiry as a disciplinary matter when the fees are clearly excessive, prohibited by ethical rules, or illegal. The Bar does, however, have a statewide fee arbitration program available to try to resolve fee disputes. Information regarding the fee arbitration program may be obtained by calling (866) 352-0707.

Court Review: The lawyer discipline system's primary focus is on ensuring that lawyers act ethically in dealing with their own clients. If you are involved in a contested legal matter, and you believe the opposing lawyer has acted improperly, the matter should be addressed through court proceedings prior to making an inquiry with the Bar, if possible.

WHAT ARE THE STANDARDS FOR LAWYER DISCIPLINE?

When lawyers enter the practice of law in Florida, they obligate themselves to uphold the law and to abide by the Rules Regulating The Florida Bar. These rules of the Supreme Court of Florida specifically regulate the professional conduct of lawyers. Those who violate these professional standards are subject to discipline.

However, lawyers are human. Sometimes they make mistakes. Some are more competent than others. Some are better communicators than others. A lawyer may lose the trust and confidence of a client for various reasons. Client dissatisfaction is not, by itself, grounds for discipline. A lawyer may be disciplined only for violating the standards of conduct set forth in the Rules Regulating The Florida Bar.

For lawyers, The Florida Bar operates an ethics hotline to offer guidance when a lawyer is unsure of the ethical obligations in a particular situation. For clients who are unsure if their lawyer has acted ethically or who are dissatisfied and wish to consider whether filing a complaint may be appropriate, The Florida Bar operates the Attorney Consumer Assistance Program (ACAP). The ACAP personnel cannot give you an opinion as to whether an attorney's conduct is proper, but in many situations they can help resolve problems between lawyers and clients so that a complaint is not necessary. The ACAP telephone number is toll-free, (866) 352-0707.

SHOULD I DO ANYTHING BEFORE MAKING AN INQUIRY?

Yes. Before making an inquiry, and even before contacting ACAP, you should write to the lawyer and explain your dissatisfaction. It is not helpful to threaten the lawyer, either with a Florida Bar inquiry or legal action. If you make such a threat, it may be grounds for the lawyer to withdraw from representing you in your case, and depending on the nature of the threat, it could even result in the lawyer bringing legal action against you. In your letter to the lawyer, explain your concern as politely and thoroughly as possible, and ask the lawyer to take the corrective action desired.

Although this attempt to resolve your matter may be unsuccessful, your letter will document that you've made a good faith effort to resolve your matter without filing a formal complaint against the lawyer. Inquiries and complaints about a lawyer's conduct, even if dismissed will be reflected in Bar records for 12 months after the files are closed. Inquiries and complaints about a lawyer's conduct are serious matters and should be undertaken only after other available ways to resolve the problem have been unsuccessful.

If you were unable to resolve the issue through your efforts, you should call ACAP for information and assistance. ACAP administrative personnel will talk with you about the nature of your dispute. This information will then be forwarded to an ACAP staff attorney, and you will be connected with or receive a return telephone call from one of those attorneys to discuss your inquiry in greater detail. If appropriate, the ACAP attorney will assist you in trying to resolve this dispute by contacting the lawyer.

WHAT IF I DECIDE TO MAKE AN INQUIRY ABOUT THE CONDUCT OF A LAWYER?

You should use the Bar's form for making inquiries. Otherwise your allegations must be in writing. A form may be downloaded from our Web site at www.FloridaBar.org or you may obtain the form by calling ACAP. Because information provided will become public and is subject to disclosure to the lawyer about whom you inquire, your address and telephone number cannot be withheld. If your address and telephone number are not known to the lawyer, and you want it to stay that way, you should provide an alternative means for the Bar to contact you (such as a post office box or business address and telephone number, if proper). In addition to reading all of the information in this pamphlet, you must carefully read all of the instructions on the back of the inquiry form.

HOW MUCH TIME DO I HAVE TO FILE A COMPLAINT?

- (a)** Time for Inquiries and Complaints. Inquiries raised or complaints presented by or to The Florida Bar under these rules shall be commenced within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered.
- (b)** Exception for Theft or Conviction of a Felony Criminal Offense. There shall be no limit on the time in which to present or bring a matter alleging theft or

conviction of a felony criminal offense by a member of The Florida Bar.

- (c) Tolling Based on Fraud, Concealment or Misrepresentation. In matters covered by this rule where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint, the limitation of time in which to bring an inquiry or complaint within this rule shall be tolled.
- (d) Constitutional Officers. Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar shall be commenced within 6 years after the constitutional officer vacates office.

WHAT HAPPENS AFTER I MAKE AN INQUIRY?

When your inquiry is received it will be reviewed by a staff lawyer in the intake and ACAP department. That Bar lawyer's first responsibility is to review the inquiry to determine if jurisdiction exists over the lawyer involved and, if true, are the issues raised in the inquiry violations of Supreme Court rules governing Florida lawyer conduct. If jurisdiction over the lawyer does not exist or if the circumstances of the inquiry do not raise an issue concerning disciplinary misconduct, the inquiry will be forwarded to ACAP for a determination as to whether other ways to resolve concerns are available.

Bar jurisdiction does not exist about inquiries concerning judges who are currently holding a judicial office.

If jurisdiction to investigate exists; if the issues constitute disciplinary violations that warrant further proceedings; and if ACAP cannot resolve, or is not an appropriate means to resolve, the inquiry is considered to be a disciplinary complaint and may be sent to an appropriate Bar branch office for further investigation.

The first stage in investigating a complaint usually consists of a letter to the lawyer requesting a response with a copy provided to you. The rules provide the lawyer must respond to the Bar's request for information and that the lawyer must do so within 15 days. Short extensions are usually granted for good cause. After the lawyer has responded you will have an opportunity to provide further information.

Whether the matter is investigated as a complaint depends on the nature of the allegations. Many times facts are clarified based on the complaint and the lawyer's re-

sponse. In other cases, substantial additional investigation is required. The time from the making of an inquiry to a final decision varies greatly from case to case.

Bar counsel may close the file; may recommend diversion to remedial programs; or may refer the matter to a grievance committee for further consideration. The Bar has remedial programs to resolve issues concerning fee disputes and to mediate other matters that do not require disciplinary intervention.

WHAT IF THE FILE IS CLOSED WITHOUT DISCIPLINE?

The Florida Supreme Court has said the discipline imposed on lawyers must be fair to society, fair to the lawyer, and severe enough to deter others from similar misconduct. The goal of the discipline system is to protect the public. Therefore, discipline is not automatically imposed in all cases in which some evidence of misconduct is present.

The investigation of a complaint frequently has deterrent value in and of itself. Most lawyers who have been the subject of a complaint take immediate steps to prevent similar situations. Others need assistance in determining appropriate remedial actions and may find assistance in the intake and ACAP process.

The purposes of lawyer discipline are frequently served in cases in which the complaint is closed by Bar counsel, but are referred for remedial or educational opportunities.

There is no right to appeal a decision to close the file. Your role in a disciplinary complaint is that of the complaining witness, similar to the role of a victim in a criminal proceeding. As such, you are not a party to the adjustment proceeding in that the Bar counsel does not represent you as your lawyer.

You will be notified of decisions concerning your inquiry and complaint and given sufficient information to understand those decisions. Please understand that Bar counsel makes decisions based on the nature and weight of all relevant evidence and testimony and how that evidence and testimony affects our burden of proof and ability to prove the case.

CAN THE FLORIDA BAR HELP ME RECOVER MONEY?

In most instances, the answer is no. You should not expect to receive a refund of money paid to your lawyer. Even though refunds sometimes occur, the discipline system was not created as a means to recover your money. For fee disputes, you may request fee arbitration.

If it is proven that a lawyer converted or misappropriated

your money, and resigns in lieu of discipline, is suspended or is disbarred, it may be possible for you to get some money back from the Clients' Security Fund of The Florida Bar. If your complaint ultimately results in discipline to the lawyer you should contact the Clients' Security Fund to obtain information about filing a claim.

WHAT IS A GRIEVANCE COMMITTEE?

In additional to the references in this pamphlet, you may have heard of Florida Bar grievance committees. These committees are made up of volunteer members in your community, at least one-third of whom are not lawyers. Each of Florida's 20 judicial circuits has at least one such committee.

If a Bar counsel determines that the allegations in question could constitute a rule violation warranting further proceedings, the matter may be referred to a grievance committee for further consideration. Again, the type of investigation varies with the nature of the case.

The grievance committee reviews complaints with much the same purpose as a grand jury. That is, the committee decides whether there is probable cause to believe a lawyer violated the professional conduct rules imposed by the Supreme Court of Florida and whether discipline against the lawyer appears to be warranted. There is no right to appeal "no probable cause" determinations by grievance committees.

If misconduct is considered minor, or if there are significant mitigating circumstances, the committee might also recommend that a lawyer receive an admonishment or be referred to an alternative program such as ethics school. The grievance committee, like Bar counsel, may make its determination based on the papers submitted by you and the lawyer. If the grievance committee holds proceedings where it will take testimony from the lawyer, you will be given the opportunity to be there, unless it is impractical.

IS THERE A TRIAL?

If the grievance committee finds probable cause to believe that a rule violation occurred and that discipline appears to be warranted, the Bar counsel will file a formal complaint against the accused lawyer with the Supreme Court of Florida. The complaint is much like a complaint in a typical civil case. As in other types of cases, most lawyer discipline cases are settled without a trial.

The lawyer may choose, however, to contest the com-

plaint. In that event, the accused lawyer will file an answer denying the allegations of the complaint that are in dispute. In those circumstances, a circuit or county court judge is appointed as a referee to hold a trial on the complaint.

The referee will hear all relevant evidence, which may include your testimony, that of the accused lawyer and any other witnesses. The referee then makes findings of fact and files a report and recommendation with the Supreme Court of Florida. The court has the final authority to determine the guilt of the lawyer and to decide on the appropriate discipline.

WHAT KINDS OF DISCIPLINE ARE POSSIBLE?

Discipline of lawyers in Florida can range from an admonishment to suspension from the practice of law to disbarment. Admonishments can be issued by grievance committees, referees or the Supreme Court of Florida. Discipline may be imposed after a contested trial and on order of the Supreme Court of Florida. The lawyer accused of misconduct may also enter a guilty plea and consent to discipline.

WHAT DOES IT COST?

There is no charge for making an inquiry about the conduct of a Florida lawyer. Florida's lawyer discipline system is funded by lawyer membership fees and revenue from services to members of the Bar. When the Supreme Court imposes discipline against a lawyer, the lawyer is usually ordered to pay part of the costs associated with the case. This helps to defray the cost of the lawyer disciplinary system.

The Bar charges a modest photocopying charge when someone requests significant amounts of copies of documents of disciplinary records.

A WORD ABOUT CONFIDENTIALITY AND IMMUNITY

The rules of the Supreme Court of Florida require the Bar (staff, investigators, and grievance committee members) to treat inquiries and complaints pending with Bar counsel and grievance committees as confidential matters. You, the lawyer who is subject of the inquiry or complaint, witnesses and other third parties are not required to treat those inquiries and complaints as confidential matters. However, disclosure of the existence of an inquiry or complaint and the contents thereof outside of the disciplinary system may provide a basis for legal action. If however, you limit your inquiry and

communication about it to Bar staff, investigators and grievance committee members; you should not be successfully sued. While, generally, you cannot be successfully sued if you do not act in bad faith or with malice, we emphasize successfully. The Bar cannot guarantee that the lawyer will not attempt to bring legal action against you.

There are things you can do to minimize the chance that you will be sued. You should not threaten the lawyer with a disciplinary inquiry or complaint, civil action, or criminal prosecution.

If you believe any such action should be undertaken you should seek advice of another lawyer, before you write a demand letter.

While you have the right to talk to anyone you want about your Bar inquiry/complaint, you should consider not talking to anyone other than Bar staff, investigators, and grievance committee members, or your new lawyer, until the case is closed or until the matter is decided by a grievance committee and further proceedings are undertaken. At that point, the matter becomes public information and a part of the file defined as the public record that is available to anyone who wishes to see it.

We understand that if you make an inquiry about a lawyer's conduct you feel strongly about the situation in question. Our responsibility is to undertake an appropriate investigation and develop pertinent facts and evidence. By treating all persons involved in the process in a calm, objective and professional fashion, you assist us in resolving the matter more quickly.

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