# TEN MOST COMMON COMPLAINTS FROM CLIENTS

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### INTRODUCTION

The following is an informal summary of the ten most common client complaints received in the office of the Michigan Attorney Grievance Commission. Recognizing your clients' "hot-button" issues is one step further toward tailoring your legal practice in such a way so that your clients are satisfied with your representation regardless of the outcome. Clients who believe that they have been dealt with fairly and honestly typically do not file Requests for Investigation. Reducing or eliminating grievances means less down-time and worry for you.

# 1. My attorney won't respond to my questions and will not keep me informed. MRPC 1.4(a) and (b)

- My attorney would not answer questions about the fee agreement.
- My attorney will not return my phone calls or never calls me.
- My attorney won't respond to my letters or e-mails.
- My attorney missed our scheduled office appointment.
- I have to ask repeatedly for an itemized statement of costs and attorney fees, or for copies of important documents.
- My attorney did not respond to complaints about his services or attorney fees.
- My attorney contacted me at the last minute regarding a deadline.
- My attorney did not tell me about a court date.
- My attorney did not explain what was happening in my case.
- My attorney went into the judge's chambers without me.
- My attorney does not give me copies of pleadings, motions, briefs, or orders.

### 2. My attorney disclosed confidential information. MRPC 1.6(a)-(d)

- My attorney disclosed to the opposing attorney confidential information about me during a conversation, court appearance, or in discovery.
- My attorney told another client about my settlement.
- My attorney told a mutual friend about the details of my case.
- My attorney disclosed my Social Security number or private medical information.
- My attorney is speaking to family members about my Will.

### 3. My attorney over-charged me for his/her services. MRPC 1.5(a(-(e)

- When I paid my attorney a "retainer", she said that is all it would cost, and now
   I'm getting billed for more.
- My neighbor said she paid much less for her divorce.
- My attorney took a non-refundable retainer and now that I fired him, he won't give any of it back.
- I told my attorney when he was retained that I didn't have any more money, and now they have sent me bills that I cannot pay.
- My attorney did not give me an accounting/itemized invoice of the time she spent, services rendered, attorney fees, and costs.
- I fired my attorney but he continues to bill me attorney fees.
- My attorney put a lien on my house for fees.
- My attorney is charging me to obtain a copy of my file.

### 4. My attorney stole my money. MRPC 1.15(a)-(j)

- The settlement occurred weeks ago, and I haven't seen the money.
- My funds were supposed to be held in the attorney's trust account.
- My attorney said that she would borrow the funds for only a short while and pay me back with interest.
- My attorney took his fee out of my settlement without an agreement to do so.
- My attorney won't disburse the funds until I pay their fee, until my medical bill is paid, or until Medicare is reimbursed.

### 5. My attorney is neglecting my case. MRPC 1.1(a)-(c); 1.3; 3.2; and 3.4(d)

- My attorney did not obtain any records or did not contact my witnesses.
- My attorney has had my file for months and hasn't filed my case.
- My attorney missed a filing deadline.
- Now that my attorney has been paid a fee, she won't do anything.
- My attorney showed up late for court, or not at all.
- My attorney left the court room, left me all alone, and went to different courtroom.
- My attorney only reacts to what the other side is doing.
- My attorney sent someone else in his place to my hearing or deposition.
- My attorney did not fight for me.

# 6. My attorney gave me bad advice or is incompetent. MRPC 1.1(a)-(c);1.2(a)-(d); and 3.1

- My attorney should have advised me that the law was not favorable, and my case would not be successful, before I paid an attorney fee.
- My attorney's strategy was incorrect.
- My attorney changed his mind about the strength of my case and forced me into a settlement.
- My attorney promised I'd win, and now I have lost everything.
- My attorney recommended an unfavorable plea for me because he didn't want to try my case.
- My attorney settled the case without my knowledge and permission.

### 7. My attorney lied to me or to someone else. MRPC 4.1 and 8.4(b)

- My attorney told me my case (or motion) was filed when it wasn't.
- My attorney did not tell me that she missed a filing or discovery deadline.
- My attorney did not tell me that the statute of limitations had run on my case before it was filed.
- My attorney did not tell me that my case was dismissed or that the real reason for the dismissal was his fault.

# 8. My attorney, or my former attorney, has a conflict of interest. MRPC 1.7(a) and (b); 1.8 (a)-(i); 1.9(a) and (b); and 1.10

- My attorney did my estate planning and drafted my Will and is now representing my wife in our divorce.
- My husband's attorney in our pending divorce represented my husband and me in a Chapter 7 Bankruptcy three years ago.
- The attorney who represented our business and gave me personal advice over the years is now helping my partners to force me out of the business.
- My attorney is only interested in lining his own pockets.
- My attorney is helping the other side more than me.

### 9. My attorney was rude. MRPC 6.5(a)-(b)

- My attorney used profane language.
- My attorney yelled at me, belittled me, or made me feel stupid.
- My attorney lost control of himself for no reason.
- My attorney made inappropriate sexual advances or comments.
- My attorney made an ethnic or racial slur.
- My attorney smelled like alcohol.
- My attorney keeps me waiting a long time when I come to the office.

### 10. My attorney is withdrawing from my case. MRPC 1.16(a)-(d)

- My attorney says she investigated my case for 7 months and then she sent me a letter telling me she was no longer interested.
- My attorney threatened to withdraw if I didn't pay his/her bill.
- My attorney withdrew when I complained about his poor service.
- My attorney threatened to withdraw when I refused to accept the other side's settlement offer.
- My attorney threatened to withdraw when I filed a Request for Investigation against her with the Attorney Grievance Commission.

**END** 

### PROFESSIONAL DISCIPLINARY PROCEEDINGS

### I OVERVIEW

A. MCR 9.100 et seq.

Creates the disciplinary system for attorneys.

### B. MCR 9.102(A)

These rules are to be liberally construed for the protection of the public, the courts, and the legal profession. MCR 9.102(A).

### II OFFICE OF THE ATTORNEY GRIEVANCE COMMISSION

### A. MCR 9.108

Creates the Attorney Grievance Commission.

- 1. The Commission is the prosecution arm of the Supreme Court for the discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.
- 2. The Commission meets once a month to decide matters brought before it, including whether to close a file, issue a caution letter, offer an admonishment, authorize the filing of a formal complaint, approve settlements, formal disciplinary proceedings, and authorize appeals to the Attorney Discipline Board and Michigan Supreme Court.

### B. MCR 9.109

Creates position of the Grievance Administrator.

- 1. The Grievance Administrator runs day-to-day activities in the office. Sets policies. Attends monthly Commission meetings.
- 2. May close grievances summarily.

# III MAKING (FILING A "REQUEST FOR INVESTIGATION" (R/I) BY A COMPLAINANT"

## A. Who Has Standing to Request an Investigation Against an Attorney.

- 1. All members of the public (MCR 9.112(A).
- 2. Clients.
- 3. Opposing parties.
- 4. Other attorneys.
- 5. Judges.
- 6. The Grievance Administrator (MCR 9.109(B)(5).

### B. Form of Request For Investigation (MCR 9.112(B).

- 1. In writing.
- 2. Must name an attorney; not a firm, or other entity.
- 3. No jurisdiction over current judges.
- 4. Signed by complainant.
- 5. Describes alleged misconduct.

## IV AGC OFFICE INTAKE PROCEDURE MCR 9.112(C)(1)

# A. Staff Attorney Reviews Request For Investigation (R/I) For Form and Substance.

- 1. If inadequate, staff requests more information.
- 2. If adequate, staff counsel has discretion to recommend to Grievance Administrator to close summarily; or,
- 3. Perform limited, time sensitive investigation, or,
- 4. Serve the R/I on the Respondent attorney at his/her "Rule 2" address for an answer by regular mail and when necessary certified mail return receipt requested. (See MCR 9.112(C)(1)(b); and Rules Concerning State Bar of Michigan, Rule 2).

# B. Respondent Attorney Files An Answer at the Office of the Attorney Grievance Commission (MCR 9.113(A)

- 1. Within 21 days of the date of the mailing by the Attorney Grievance Commission office.
- 2. "Fully and fairly" disclosing all facts and circumstances pertaining to the allegations of misconduct.
- 3. A short extension may be given if requested timely.
- 4. Refusal to answer on expressed constitutional grounds and/or grounds of professional privilege. See MCR 9.113(B)(1)-(3).
- 5. If the Complainant is/was the client of Respondent, the attorney/client privilege is waived "as to matters relating to the Request for Investigation for the purpose of the Commission's investigation." See MCR 9.113(C).

### C. Staff Attorney Reviews the Respondent's Answer

- 1. Review for proper form: in writing, bears Respondent's original signature, includes two sets (i.e. an original and one copy), and "fully and fairly discloses."
- 2. If form is improper, staff counsel may request in writing that Respondent provide a more complete answer which comports with MCR 9.113(A), within a stated deadline; or,
- 3. If form is proper, staff counsel may recommend to Grievance Administrator to close R/I summarily; or
- 4. Assign the file to other staff counsel for further investigation and decision by the Attorney Grievance Commission; or,
- 5. Perform limited, time sensitive investigation, following which the file will either be summarily closed or assigned to other staff counsel for further investigation and decision by the Attorney Grievance Commission.
- 6. If file is closed, a letter briefly stating the reason for the closure is sent to Complainant and Respondent. If Respondent filed an answer, the answer is sent to Complainant with the closing letter.

## V ASSIGNMENT TO STAFF COUNSEL FOR INVESTIGATION

- A. Respondent's answer sent to Complainant for reply comments.
- B. Investigation is confidential: no disclosure of reply comments, office notices, statements, documents, records, etc. See MCR 9.126(A).
- C. Request for informal interviews by telephone or in person.
- D. Sworn statements, voluntarily or by subpoena. See MRPC 8.1(a).
- E. Subpoena power for witnesses and production of documents. See MCR 9.112(D).
- F. Contempt for failure to comply with subpoena may be pursued in circuit court. See MCR 9.112(D)(2).

### VI REVIEW BY ATTORNEY GRIEVANCE COMMISSION (AGC)

- A. Informal Confidential Review at Monthly Meeting (Not a Hearing).
- B. AGC Generally has Five Options:
  - 1. If investigation is incomplete, refer file back to staff counsel for further work;
  - 2. Dismiss R/I and close the file;
  - 3. Offer an admonishment. See MCR 9.114(B);
    - a) If Respondent accepts admonishment, or <u>fails to file at office of the AGC an objection within 21 days</u> of the date of the admonishment letter, the admonishment becomes effective. See MCR 9.114 (B)(2) and 9.115 (J)(3);
    - b) If Respondent files timely objection, the admonishment is vacated; and the matter is resubmitted to AGC for further review and decision to either close or file a formal complaint.
  - 4. File a formal complaint: drafted by staff counsel and filed with the Attorney Discipline Board (ADB);
  - 5. Offer a contractual confidential probation for less serious misconduct substantially related to an alcohol/substance abuse problem. See MCR 9.114 (C) and 9.115(J)(3).

### VII FORMAL COMPLAINT FILED WITH ATTORNEY DISCIPLINE BOARD (ADB)

- A. Commences formal discipline proceedings, a matter of public record, and adversarial in nature.
- B. ADB gives matter a case number, assigns a hearing panel, schedules a hearing date.
- C. AGC serves formal complaint on Respondent pursuant to MCR 9.115(c). Service is effective upon mailing, not when or if received.

### VIII RESPONDENT'S ANSWER TO THE FORMAL COMPLAINT

- A. Must be filed at office of AGC within 21 days after date of service (ie: mailing) of the formal complaint. MCR 9.115(D)(1).
- B. Default will be entered if answer not timely filed. MCR 9.115(D)(2).
- C. Failure to timely answer is a separate act of misconduct.

### IX HEARING PROCEDURE

- A. Pre-hearing Procedure: extensions, adjournments, amendments, motions, identification of witnesses and hearing exhibits, production of witness statements. MCR 9.115(F).
- B. Hearings conducted pursuant to MCR 9.115(A)-(M), and the civil rules of procedure for a bench trial, per MCR 9.115(A).
- C. Panel consists of 3 members, and two members constitute a quorum. MCR 9.111(A).
- D. Respondent must appear at hearing. MCR 9.115(H).
- E. Hearings are conducted in two phases:
  - 1. The first phase is the misconduct hearing wherein the panel determines whether Respondent committed misconduct as alleged, or whether the formal complaint should be dismissed;
  - 2. If there is a finding of misconduct, the second phase, known as the aggravation/mitigation hearing, or the sanction hearing, is conducted to determine the level of discipline;
    - a. Mitigating and aggravating factors are described in the ABA Standards for Imposing Lawyer Sanctions, (Standard 9.1 et seq);
    - b. The level of discipline is determined on a case by case basis pursuant to the type of misconduct involved, prior discipline and admonishments, prior contractual probations, aggravating and/or mitigating factors, the applicability of the ABA Standards for Imposing Lawyer Sanctions, and prior case decisions of the Attorney Discipline Board and the Michigan Supreme Court.
- F. Imposition of Discipline.
  - 1. The hearing panel's findings and conclusions, set forth in a written report and accompanied by the appropriate order, are served by the ADB upon the parties.
  - 2. The panel's discipline options are:
    - a. No discipline;
    - b. Probation, separately or with other discipline, MCR 9.106(4) and 9.121(C);
    - c. Reprimand;
    - d. Suspension: 30 days to 5 years, but always subject to "reinstatement;"

- 1. 30 days to 179 days, Respondent is automatically reinstated by filing with the Supreme Court Clerk, the ADB, and the Grievance Administrator, a true affidavit showing full compliance with all terms and conditions of the discipline order, MCR 9.123(A);
- 2. 180 days or more requires Respondent to file a reinstatement petition and to prevail at a reinstatement hearing, otherwise suspension remains in effect, MCR 9.123(B) and 9.124(A-E);
- e. Revocation (disbarment);
  - 1. Minimum period of 5 years;
  - 2. Requires reinstatement and recertification.
- 3. Recertification (taking the Bar Exam) will be required by the Board of Law Examiners if an attorney is suspended from the practice of law and does not practice within 3 years of the effective date of the suspension, whether due to the period of the discipline order or voluntarily. MCR 9.123(C).
- 4. Panel may impose additional conditions in the order of discipline, which include restitution, ethics course, law practice management seminars, counseling, A.A., etc. The suspension remains in effect if all conditions are not satisfied.
- 5. Administrative Costs: imposed against Respondent in all orders of discipline. The suspension remains in effect until all costs are paid. The ADB may summarily increase a reprimand to a suspension if the costs are not paid before the deadline for doing so. See MRC 9.128(B)(1)(a) and (b).
- 6. Respondent's administrative fees must accompany a petition for reinstatement. MCR 9.128(B)(1)(c).

## X CONVICTION OF CRIMINAL OFFENSES

- 1. The attorney who is convicted of a crime, the prosecutor, and defense attorney, whether a misdemeanor or felony, must notify the Grievance Administrator, in writing, within 14 days after the conviction. MCR 9.120(A).
- 2. Upon the occurrence of a conviction of a <u>felony</u>, an attorney's license to practice law is automatically suspended until a further entry of an order from a hearing panel. There is no automatic suspension for misdemeanor convictions.
- 3. The certified copy of the judgment of conviction is conclusive proof of the crime having occurred, and therefore, that misconduct occurred. MCR 9.104 (5). The Grievance Administrator may file the judgment of conviction with the ADB. If this occurs, the ADB will order the attorney to appear and show cause why a final order of discipline should not be entered. Accordingly, there is no misconduct hearing, but rather only an aggravation, mitigation hearing to determine the length of the suspension, or if revocation is warranted.

## XI APPEALS

- A. Petition For Review Filed With the ADB:
  - 1. Must be filed with the ADB within 21 days from the date of service of the order of discipline.
  - 2. The ADB schedules cutoff dates for the filing of written briefs and oral argument, pursuant to an order to show cause. (MCR 9.118).
  - 3. Procedure for stay of discipline order while appeal is pending:
    - a. Automatic stay ordered by the ADB if suspension is for 179 days or less, or if a reprimand, or if probation.
    - b. A petition setting forth good cause is required to stay an order which provides for a suspension of 180 days or more, or a revocation (disbarment). MCR 9.115(K).
- B. Application For Leave To Appeal to the Michigan Supreme Court.
  - 1. Following a final order of discipline or dismissal by the ADB on review under MCR 9.118.
  - 2. Application must comply with MCR 7.302.
  - 3. Application must be filed within 28 days of the ADB's final order of discipline or dismissal. MCR 9.122(A)(1).
  - 4. Same rules and procedure for an automatic stay/petition for stay of the order of discipline apply when Respondent files a timely application for leave. MCR 9.122(C).

### XII COMPLAINANT'S RIGHTS

- A. If the Grievance Administrator or the AGC closes/dismisses a Request for Investigation, a Complainant may file a complaint for superintending control, requesting the Michigan Supreme Court to review the decision and to reopen the file. MCR 7.304 and 9.122(A)(2).
- B. Complainants may file a claim for review with the ADB pursuant to MCR 9.118 when not satisfied the decision of a hearing panel in a formal disciplinary matter.
- C. Complainants may file an application for leave to appeal with the Michigan Supreme Court, pursuant to MCR 9.122(A)(1) when not satisfied with an opinion and order of the ADB following its review of a panel decision.

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