

I do solemnly swear:
I will support the Constitution
of the United States and the
Constitution of the State of
Michigan;
I will maintain the respect due
to courts of justice and judicial
officers;

MICHIGAN'S DISCIPLINE SYSTEM

Yours, Mine, Ours

By John F. Van Bolt

Quick. What's written on the back of your State Bar membership card? (Don't peek.)

Is it:

A) "No organization of lawyers can long survive which has not for its primary object the protection of the public."

—Roberts P. Hudson, first president of the State Bar of Michigan

B) Group discount rates for car rental companies

C) Contact numbers for State Bar benefits and programs

If you answered "A," you may remember when lawyer discipline was handled directly by the State Bar of Michigan or by the pre-1978 discipline agency known as the State Bar Grievance Board.

If you answered "B," you haven't looked at your Bar card for a while.

The correct answer is "C." There is a good deal of information there, including the numbers for the Ethics Hotline and the Lawyers and Judges Assistance Program, but we'll get back to that shortly.

First, the quotation from the first president of the State Bar, Roberts P. Hudson. While no longer imprinted on every card, it is in every issue of the *Michigan Bar Journal* and is displayed on a marble wall at the State Bar's building in Lansing.

While Michigan's attorney discipline system has evolved, the goal of public protection has not changed.

Attorney Discipline History

Before the creation of the State Bar of Michigan in 1935, discipline proceedings against errant attorneys were entrusted to the state's attorney general. The State Bar held that responsibility for the next 35 years with the creation of the State Bar Grievance Board.

The Grievance Board entrusted investigative and prosecutorial authority to an independent grievance administrator answerable directly to the Grievance Board. That board, in turn, was composed of lawyers and non-lawyers appointed by the Supreme Court, together with two lawyer members appointed by the State Bar.

In 1978, responding to criticism of dual prosecutorial and adjudicative functions being performed by a single grievance board, the Michigan Supreme Court established an entirely new, bifurcated discipline system. It featured an investigation and prosecution agency—the Attorney Grievance Commission (AGC)—and a separate adjudicative body—the Attorney Discipline Board (ADB). That bifurcated system, one of the first in the country with an entirely separate and independent adjudicative branch, has seen relatively few structural changes since 1978.

Since 1991, the membership of both the AGC and the ADB has been six lawyers and three non-lawyers, with all of the members appointed by the Supreme Court. Michigan's discipline system, with a current annual

budget of approximately \$4.2 million, is funded entirely by the dues-paying lawyers of Michigan and receives no government funds.

Disciplinary Procedures

When addressing local bar associations or law school classes, I notice that eyes glaze over and heads nod when I launch into a particularly detailed description—as riveting and fascinating as it may be to me—of disciplinary procedures in Michigan. On the other hand, audience interest and participation, especially among law students, increases markedly when I describe real-life situations or show videotaped interviews with disciplined lawyers.

Suffice it to say, then, that the relevant procedural rules governing investigations are described in detail in Subchapter 9.100 of the Michigan Court Rules, and a great deal of information, including frequently asked questions, statistical reports, and research tools, is found at the websites of the AGC (<http://www.agcmi.com>) and the ADB (<http://www.adbmich.org>).

Attorney Grievances

So, what lands lawyers before a hearing panel? What leads to them being listed in a notice of discipline in the *Michigan Bar Journal*? (With no disrespect to the *Michigan Bar Journal*, it is commonly accepted wisdom, albeit anecdotal, that more lawyers read the notices of discipline than any other section.)

First, a majority of the 3,500 or so written grievances (also known as "requests for investigation") submitted each year to the AGC contain some variation of the complaint, "I don't know what is going on" or, worse, "My lawyer won't return my phone calls." Of these, in 2004, over half arose from criminal or domestic relations matters. In emotionally charged cases like these, the lawyer is often perceived as the client's champion; literally, a "knight in shining armor." To expand upon an old adage, "hell hath no fury like a client whose knight in shining armor is too busy slaying someone else's dragons to return phone calls."

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Hell hath no fury like a client whose knight in shining armor is too busy to return phone calls.

Inadequate client communication, fee disputes, and unreasonable client expectations are all common complaints, which, while important to the client, may not rise to the level of professional misconduct.

Neglect of client matters, which might otherwise result in a public reprimand, is likely to result in suspension when accompanied by misrepresentations to the client or failure to answer a request for investigation.

FAST FACTS



to the level of professional misconduct. In fact, only about six percent of the 3,500 or so grievances received by the AGC warrant an authorization for the filing of public discipline charges. Another four percent result in the issuance of a confidential admonishment and, increasingly, the AGC may impose a confidential “contractual probation” in lieu of discipline proceedings when the attorney agrees to seek treatment for an alcohol or other substance abuse problem that substantially contributed to relatively minor misconduct. (These and other statistics are contained in the Grievance Commission’s most recent annual report posted at <http://www.agcni.com>.)

Once formal charges have been authorized, the grievance administrator prepares a formal complaint, which is filed with the ADB and assigned to a three-member hearing panel. Last year, there were 112 new complaints filed with the ADB, along with 14 new cases based solely on the lawyer’s conviction of crime; 2 cases based on the lawyer’s discipline in another jurisdiction; and 13 “miscellaneous” matters, usually involving a lawyer’s failure to comply with the terms of a prior discipline order. Finally, the ADB processed 11 petitions for reinstatement filed by lawyers subject to suspension orders of 180 days or more.

A panel proceeding is an adjudicative proceeding that incorporates the rules of evidence, is open to the public, and is presided over by three volunteer lawyers from a wide range of backgrounds: solo practitioners, large firm partners, public defenders, prosecutors, professors, and government lawyers.

Last year, in about 40 percent of the cases, there was no public hearing. Under MCR 9.115(F)(5), the grievance administrator and the respondent may enter into a stipulation for consent discipline, which is then subject to approval by both the AGC and a hearing panel. The remaining 60 percent were tried before one of the 120 regularly constituted local hearing panels throughout Michigan in a two-stage process, involving separate hearings on misconduct and the resulting assessment of discipline.

Hearing panels and the ADB use the American Bar Association’s 1986 Standards for Imposing Lawyer Sanctions in determin-

ing the appropriate type of discipline (probation, reprimand, suspension, and disbarment), and they may look to prior ADB opinions and the Supreme Court for guidance. (All of the ADB’s written appellate opinions since 1978 are available online.) Within the broad category of suspension, which can range in length from 30 days to five years, there are two significant milestones. An attorney suspended for 179 days or less may be automatically reinstated by fulfilling the applicable conditions and filing an affidavit with the Supreme Court and the two discipline agencies. However, if the suspension is for six months or more, the attorney must undergo an investigation and must reestablish his or her fitness to practice law to the satisfaction of a hearing panel in a separate reinstatement proceeding. In addition, an attorney suspended three years or more (or disbarred) must also be recertified by the Board of Law Examiners.

As shown by the chart on the next page, cases involving simple neglect or lack of diligence are at the lower end of the discipline spectrum: 18 of the 25 cases in that category resulted in a public reprimand, usually as the result of a stipulation for consent discipline. However, when an attorney’s pattern of neglect was accompanied by a failure to answer requests served by the grievance administrator, 22 of 23 resulted in either a suspension (17 cases) or disbarment (5 cases). Where there is evidence of a cover-up, the results are more severe. In 2005, there were five cases in which the attorney’s failure to properly handle client matters was accompanied by outright misrepresentations to the client or to court. All five of those cases resulted in license suspension, with only one for less than six months.

Sixteen Michigan lawyers were disciplined for violating state or federal criminal laws, accounting for 15 percent of the discipline orders issued in 2005. By court rule, a lawyer’s felony conviction results in an automatic interim license suspension. All criminal convictions, felony or misdemeanor, must be reported to the AGC and the ADB within 14 days. The grievance administrator may decline to commence public discipline proceedings. For example, impaired driving convictions do not generally result in public

discipline, absent aggravating factors or a pattern of prior offenses. However, once proof of a conviction is filed, the Supreme Court has ruled that a hearing panel or the ADB *must* enter an order of discipline regardless of whether the conviction, on its face, reflects adversely on the attorney’s honesty, trustworthiness, or fitness as a lawyer.¹

In cases based on criminal convictions, Michigan’s discipline system, like virtually every other state’s, takes into account the nature of the conduct and its relation to an attorney’s fitness to engage in the practice of law. Six lawyers were disbarred or suspended for three years or more in 2005 following their convictions for felonies, including criminal contempt, bank fraud, and possession of controlled substances with intent to deliver. Six other lawyers convicted of felonies received suspensions from 180 days to three years; five were consent involving Operating Under the Influence of Liquor (OUIL) third convictions and assaultive behavior not directly related to the individual’s practice of law.

The next largest categories of misconduct in 2005 involved attorneys who either mishandled client funds or failed to comply with the terms of a prior discipline order. The intentional theft of client funds will generally result in the revocation of a lawyer’s license, as occurred twice in 2005. In one instance, the lawyer signed his client’s name to a settlement check and misappropriated the entire \$29,270. In the other, the attorney was disbarred and ordered to pay restitution of \$19,600 to the decedent’s estate from which he had misappropriated estate funds.

Not all money offenses involve deliberate misappropriation. One Michigan attorney received a reprimand after pleading “no contest” to a charge that he failed to properly supervise his office manager who made unauthorized withdrawals from the firm’s client trust and business accounts.

Ethics and Discipline Information

Now, back to your Bar membership card and the telephone numbers on the back. The Ethics Hotline and the searchable ethics opinions available on the Bar’s website (<http://www.michbar.org>) are invaluable resources to help ensure that your conduct will



not result in unwelcome correspondence from the AGC. The State Bar Lawyers and Judges Assistance Program offers confidential counseling and support to help lawyers address problems that could lead to contact with the discipline system. Finally, there is the State Bar Client Protection Fund, which since 1966 has honored almost \$4 million in claims for clients who have been victimized by a lawyer's theft or embezzlement.

Even though Michigan's attorney discipline system is directly supervised by the Michigan Supreme Court, and not the State Bar, Michigan lawyers are still involved. The system is entirely funded, to the tune of over \$4 million a year, by the over 37,000 active

and inactive members of the State Bar of Michigan. It is not possible to overestimate the contribution of the unpaid hours volunteered by the members of the AGC and the ADB along with the 480 volunteer hearing panelists throughout Michigan.

It is surely no accident that the admonition of the State Bar's first president to seek protection of the public is echoed in the language of Michigan Court Rule 9.105, which declares that "Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts and the legal profession." Public protection has been, and must be, the shared goal of the Supreme Court, the Attor-

ney Discipline Board, the Attorney Grievance Commission, and all Michigan lawyers who treasure their Bar membership card with the privileges—and duties—it represents. ◆



John F. Van Bolt has been the executive director and general counsel of the Attorney Discipline Board since 1986, following six years as an associate counsel at the Attorney Grievance Commission.

Footnote

1. *Grievance Administrator v Deutch*, 455 Mich 419; 565 NW2d 369 (1997).

SANCTIONS IMPOSED—2005 By Type of Misconduct¹

| | REVOCATION | SUSPEND 3 YRS + | SUSPEND 180 DAYS BUT LESS THAN 3 YRS | SUSPEND 30-179 DAYS | REPRIMAND | PROBATION | NO DISCIPLINE | TOTAL |
|-----------------------------------------------------------------------|------------|--------------------|-----------------------------------------------|---------------------------|-----------|-----------|------------------|-------|
| NEGLECT ² | | | 2 | 5 | 18 | | | 25 |
| NEGLECT (Accompanied by failure to answer R/I) | 5 | 3 | 9 | 5 | | 1 | | 23 |
| NEGLECT (Aggravated by misrepresentation to client or court) | | | 4 | 1 | | | | 5 |
| MISAPPROPRIATION | 2 | 1 | | | | | | 3 |
| OTHER MONEY OFFENSES | 1 | | 2 | 1 | 1 | 1 | | 6 |
| CONVICTION (Felony) | 3 | 3 | 6 | | | | | 12 |
| CONVICTION (Misdemeanor) | 1 | 1 | | 2 | | | | 4 |
| CONFLICT OF INTEREST | | | | 1 | 1 | | | 2 |
| FAIL TO COMPLY/PRACTICE WHILE SUSPENDED | 5 | | 2 | 2 | | | | 9 |
| MISREPRESENTATION/ FRAUD | 2 | 1 | 1 | 1 | 3 | | | 8 |
| FAIL TO ANSWER REQUEST FOR INVESTIGATION | | | 1 | 1 | | | | 2 |
| RECIPROCAL DISCIPLINE/ JUDICIAL DISCIPLINE | 1 | | | | | | | 1 |
| OTHER | | 1 | | 1 | 6 | | 2 | 10 |
| TOTAL: | 20 | 10 | 27 | 20 | 29 | 2 | 2 | 110 |

Footnotes

1. Formal complaints filed by the grievance administrator commonly include multiple charges of misconduct. For this chart, the sanctions are categorized based on the most serious misconduct found by the panel or the ADB.
2. For purposes of this chart, the term "neglect" encompasses the concepts of competence, neglect, diligence, and communication found in MRPC 1.1, 1.2, 1.3, and 1.4.