

# Questions & Answers About Filing a Complaint Against A Lawyer

## What are Ethics Rules?

The American legal system and the attorney-client relationship are founded on trust. Although few attorneys ever betray that trust, when a breach occurs, damage to individuals and the entire system may result. The lawyers of Kentucky and the Kentucky Supreme Court recognize that action should be taken to prevent unethical conduct and to restore confidence and trust should misconduct occur. To that end, the Kentucky Supreme Court has created ethics rules for all lawyers licensed to practice law in Kentucky to follow. These rules are called "The Kentucky Rules of Professional Conduct." If you want to review the ethics rules, they can be found on the Kentucky Bar Association (KBA) website (<http://www.kybar.org/Default.aspx?tabid=237>).

## What should I do if I think a lawyer has violated the rules?

Lawyers who practice in Kentucky are required to abide by the ethics rules of the Supreme Court of Kentucky. If you think that your lawyer or another lawyer has committed an act that you believe is a violation of the ethics rules, you may report it to the KBA for an investigation by filing a bar complaint. However, even if your complaint does not result in a charge of misconduct, it is still important that the matter is reported.

The KBA depends on the public to report possible ethics rule violations, otherwise, attorneys could continue to violate the ethics rules and harm future clients and possibly other members of the public, without being held accountable.

## How do I file a Bar Complaint?

A complaint must be a sworn written statement. The KBA cannot accept a complaint by telephone, email, or fax. A complaint can be hand written or typed. It must indicate the name of the attorney you are filing against, your name and address, and include your notarized signature. The KBA will not accept a copy of your signature. Our office does offer a complaint form you can use that lists all of the instructions for filing a complaint. You can call our office at 502-564-3795 ext 297 and request the form be mailed to you. It can also be found on our website at <http://www.kybar.org/Default.aspx?tabid=235>.

If you are a *client* of the lawyer against whom you are considering filing a bar complaint, and you are unsure whether to file a bar complaint, perhaps KBA Consumer Assistance could mediate the matter with your lawyer, and resolve the issues you have without the need to file a complaint. Please contact Consumer Assistance at (502) 564-3795 ext. 297, if you are interested in that process. If the matter cannot be mediated through Consumer Assistance, you will be sent a complaint form upon request.

## Tips for writing out your Bar Complaint:

- First, review all of the complaint instructions on the complaint form. If you are not using our complaint form, the complaint instructions can be found on our website, or by contacting the Office of Bar Counsel.
- Make it clear what it is that you think the lawyer did that you believe is unethical. You are not required to list specific rule numbers. You should explain the action the lawyer took that you think constitutes a violation of the rules.
- Attach only documentation that you think is relevant to the ethical rule violation. It is not necessary to attach the entire case file. Attaching documents that have no relevance will only slow down the process of reviewing your complaint. Do not send your original documents with your complaint. The documents you send us will not be returned.
- Each complaint is confidential. If you have a complaint against more than one lawyer, you must file a separate complaint for each. You should not make a specific reference in any complaint that you have filed a complaint against another lawyer, or your complaint will be returned to you.
- The KBA staff cannot give you legal advice of any kind or tell you what legal action to take in your civil or criminal case, tell you what is or is not an ethical rule violation, or tell you that you should or should not file a bar complaint. Our office will not influence or deter you from filing a complaint.

## Who reviews Bar Complaints against lawyers?

The Office of Bar Counsel, acting as an agency of the Supreme Court, is responsible for investigating complaints against lawyers practicing in this Commonwealth. This office also prosecutes charges of ethical misconduct issued by the Inquiry Commission.

## What will happen after I file a Bar Complaint?

Your complaint will first go through an initial review to determine whether it alleges an ethical rule violation that we can investigate. Sometimes the complaint is referred to the CAP, dismissed without investigation because it does not allege an ethical rule violation that can be investigated, or assigned to an OBC attorney to conduct a preliminary review. You will be notified if your complaint is processed in this manner.

If your complaint is recommended for further investigation, it will be assigned to a lawyer in the Office of Bar Counsel. This lawyer will act as an investigator. The Bar Counsel lawyer does not represent either party in the matter. Your complaint will be forwarded to the lawyer that the complaint is against (now referred to as the Respondent) for a written response to the alleged violations. You will receive notification from the Disciplinary Clerk that your complaint is being forwarded to the Respondent for a response. You, as the complaining party, (now referred to as the Complainant), might receive a copy of the Respondent's response for any additional comments you may want to make.

The disciplinary process takes time to allow for an investigation, and in some instances, a rather long time. Your patience with the process will be greatly appreciated.

You may be asked to provide more information upon request by the investigating Bar Counsel.

Once the Bar Counsel lawyer concludes that the investigation of the complaint is complete, it will be presented to the Inquiry Commission of the Kentucky Supreme Court for review.

The Inquiry Commission (IC) is an independent body appointed by the Kentucky Supreme Court to make judgments on all complaints presented to them by the office of Bar Counsel. The IC is divided into panels of two lawyers and one non-lawyer. The IC will review each complaint investigated by the Office of Bar Counsel and decide whether there is probable cause to believe that the Respondent is guilty of an ethical rule violation; and if so, whether the violation is serious enough to justify a formal disciplinary charge. The IC may decide that a charge is not appropriate, and may dismiss the complaint. They could also require a further investigation, or issue a letter of private admonition to the Respondent.

If a Charge is issued against the Respondent, and the Respondent disputes the violations, an evidentiary hearing may be held. In that case, your testimony may be required.

## **What kind of disciplinary action can be taken against an attorney?**

The Kentucky Supreme Court has the power to discipline a lawyer who is guilty of an ethics rule violation. For example it can:

- Privately admonish or warn a lawyer through the actions of the Inquiry commission.
- Issue a private or public reprimand, or privately admonish the lawyer.
- Suspend the lawyer's license to practice in the state of Kentucky for period of months or years, or grant probation with conditions.
- Enter an order of disbarment prohibiting the lawyer from practicing law in the Commonwealth of Kentucky.

Of course, the sanction in a particular case will depend on the nature of the misconduct and the surrounding circumstances.

The sanction only affects the lawyer's right to practice law. It is not a ruling that the lawyer is guilty of malpractice, or a decision in favor of any person making a claim against the lawyer. A disciplinary proceeding will not have any direct effect on the case in which the misconduct occurred.

The KBA does not have any authority to interfere in the court system.

This process is not a substitute for your remedies in court. You should not expect any award of damages or reimbursement of loss as a result of the disciplinary process, although, occasionally the court will order restitution of fees. You will need to seek legal counsel of your own choosing if you want advice on what legal actions that you can take, if any.

For your protection, do not wait for the results of your bar complaint to seek out any other relief to which you maybe entitled. The Office of Bar Counsel cannot give you any legal advice about these other rights you may have.

All decisions made by the Inquiry Commission, Inquiry Commission Chair, and the Kentucky Supreme Court are final. The Office of Bar Counsel is not authorized to give detailed explanations as to why your complaint was handled a certain way by any of these decision-making bodies.