

OFFICE OF DISCIPLINARY COUNSEL
for the State of Montana
P.O. Box 1099
Helena, Montana 59624-1099
406.442.1648

ANSWERS TO COMMON QUESTIONS ON FILING A GRIEVANCE AGAINST A MONTANA ATTORNEY

1. What is the Office of Disciplinary Counsel?

ODC performs central intake functions and processes, investigates, and prosecutes complaints (grievances) against lawyers licensed within Montana. The Disciplinary Counsel is appointed and supervised by the Supreme Court.

2. What are the Montana Rules of Professional Conduct?

The Montana Rules of Professional Conduct (“MRPC”) are the rules that govern the ethical conduct of all attorneys in the State of Montana. A grievance lodged with our office alleges violations of these Rules.

3. Are there rules governing ODC?

The Montana Rules for Lawyer Disciplinary Enforcement govern ODC and the lawyer disciplinary process. These Rules explain how a grievance is filed, what ODC is required to do, how attorneys cooperate with ODC and the Commission on Practice, and how attorney disciplinary is imposed.

4. What is the Commission on Practice?

The Commission on Practice (“COP”) is a panel of nine lawyers and five non-lawyers. These members are appointed and under direct supervision of the Supreme Court. These are volunteer members who approve ODC to file a formal Complaint with the Court and hear disciplinary cases. The COP can make recommendations for attorney discipline.

5. How do I file a grievance against an attorney?

The attorney must be licensed to practice in Montana to file a grievance. Your grievance must be submitted in writing and include a detailed explanation of the reasons you believe the attorney has committed misconduct. Include as much factual data as possible (i.e., dates, names, phone numbers, amounts of money involved, witnesses, etc.). Attach copies of any documents or correspondence that will help explain your complaint; do not send any original documents. If more information is needed, we will contact you.

6. Does filing a grievance cost any money?

There is no fee for filing a grievance with our office. If you submit your grievance to ODC and thereafter request copies of the file, you will be charged a copy cost. Our charge for copying documents is \$25 for 50 pages or less, or for more than 50 pages, 25¢ per page, plus an administrative fee of \$25. We will not duplicate the material until the balance is paid in full.

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7. What is attorney misconduct?

Attorney misconduct is any violation of the Montana Rules of Professional Conduct.

Some examples of things that may not constitute violations of the Rules of Professional Conduct, though they may be irritating to the client, include, but are not limited to, the following:

- ▶ Losing a lawsuit;
- ▶ Not fulfilling a client's expectations;
- ▶ Making an unintentional error in preparing a document; and
- ▶ Personality conflicts between a lawyer and client.

It may be that what the lawyer has done, or failed to do, constitutes malpractice but may not be a violation of the rules. In that event, the client should consult with another lawyer about pursuing a claim for malpractice.

Some examples of unethical conduct that violate the Rules of Professional Conduct, include, but are not limited to, the following:

- ▶ Conflicts of interest;
- ▶ Intentionally failing to keep a client reasonably informed of the status of the client's matter;
- ▶ Misappropriation of client funds; and
- ▶ Other forms of dishonesty, fraud, or deceit.

8. Is there a time limit within which a grievance must be filed?

With certain exceptions, a formal Complaint must be filed within six years from the date the alleged misconduct was discovered or should have been discovered. This means your grievance should be lodged with ODC as soon as practicable, but not later than six years from the date of the alleged misconduct.

9. What is a formal Complaint?

A formal Complaint is a Complaint filed by ODC, typically after a grievance has been lodged, with the Montana Supreme Court. The Court is the only entity that may discipline a lawyer for ethical misconduct. These Complaints are public record and can be found on the Court's online docket. You may find the link on our Resources page.

10. What happens after my grievance is filed?

When a grievance is received, it is reviewed by the ODC to determine if a violation of the Rules of Professional Conduct is stated. You will receive a letter from our office informing you (1) the complaint does not appear to involve conduct that is within the disciplinary jurisdiction of the Court; (2) more information is needed; (3) an investigation has been initiated, or (4) that the matter is dismissed because, on its face, the matter does not warrant disciplinary action. If an investigation is

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initiated, the attorney will receive a copy of the complaint and he/she is required to respond in writing to the allegations.

In cases where the grievance is not dismissed and where it appears that a Rule violation has occurred, the alleged misconduct of the lawyer involved must be established by clear and convincing evidence.

11. Can I appeal the decision?

If you feel that Disciplinary Counsel's dismissal of your complaint was in error, you may file a written request, within 30 days, to have the decision reviewed by a Review Panel of the COP. If a Review Panel affirms ODC's dismissal, you may make a request to the COP, in writing within 35 days of the date notice was sent, for the Supreme Court to review the disposition. The Supreme Court may, in its sole discretion, review the Panel's disposition.

12. Do ODC and/or COP have any jurisdiction over legal matters?

No. ODC and COP only have jurisdiction over violations of the MRPC. ODC and COP cannot handle matters that involve legal malpractice. If you feel that you have been monetarily damaged by your attorney's actions on your case or if you feel you may have some legal recourse, you should consider discussing the matter with private legal counsel.

ODC cannot represent your individual interest in the matter, nor can we become involved in any legal matter that might relate to your complaint. We cannot answer legal questions or give legal advice.

13. How long does it take to resolve a grievance against an attorney?

Each case varies according to its complexity. Cases that are complex or involve the filing of formal charges will take longer. We make every effort to see that the disposition of each complaint is handled as quickly and as thoroughly as possible.

14. What if I feel that my attorney's fees are too high?

Fee matters are not generally a basis for discipline because they usually do not involve questions of ethics or professional misconduct. If you feel that your attorney's fees are too high, you may wish to enter into FEE ARBITRATION. Please contact the Montana State Bar at (406) 442-7660 for more information on this procedure.

15. Does my complaint relate to "DISHONEST" actions of my lawyer?

The Lawyer's Fund for Client Protection has been created to compensate clients for all or part of any losses caused by the "dishonest" conduct of a lawyer admitted to practice in Montana. Under the program, fees are paid by all lawyers throughout the state to assist in compensating members of the public for a Montana lawyer's dishonest conduct when the claimant has no other recourse to recoup the loss. "Malpractice" is not necessarily dishonest conduct, and the distribution of funds is limited to victims of "dishonest" actions. If you feel that you may qualify, contact the Montana State Bar for further information about the Lawyers' Fund for Client Protection.

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16. My lawyer has discriminated against me. Can I file a grievance with ODC?

A grievance alleging discrimination is better suited before the Human Rights Bureau, which addresses complaints of discrimination on age, sex, gender, race, and more. If your grievance is solely in relation to a human rights violation, your complaint is better suited before the bureau.

IMPORTANT GUIDELINES
FOR PREPARING YOUR GRIEVANCE

- Please do not attempt to file your grievance until you have read all the enclosed information.
- Fill out the Grievance Cover Sheet as completely as possible. If the information does not apply, please leave it blank or indicate, "N/A".

The Grievance Cover Sheet may be copied if more than one form is required. Use one Cover Sheet for each attorney. ODC does not file grievances against law firms, only individual attorneys.

- Do make certain your grievance is **legible**, **one-sided**, and **on standard 8 ½ x 11** paper.

Your grievance must be copied numerous times.
The use of non-standard paper, tabs and staples slows down the process.

There is no charge for filing a grievance. However, ODC staff is not responsible for copying and returning any portion of your file. Please submit copies of original documents. If you require or need copies after your submission, ODC's copy charges will apply.

Charges for copying a file are \$25.00 for less than 50 pages or for more than 50 pages, \$0.25 per page, plus a \$25.00 administrative fee. These charges must be paid in advance.

- If you are a resident of a state institution, please include an alternate address where we may reach you should you be released or transferred to another institution.
- When calling ODC concerning a grievance you have filed, please give the staff the name of the attorney and file number you are inquiring about.

*** PLEASE NOTE ODC'S FORMS AND INFORMATION ARE NOW AVAILABLE ONLINE**
AT www.montanaodc.org