

A BRIEF DESCRIPTION OF MICHIGAN'S ATTORNEY DISCIPLINE SYSTEM

HISTORY

Michigan's system for attorney discipline has existed in its current form since 1978. With the creation of the State Bar of Michigan in 1935, the State Bar assumed the duty of conducting disciplinary proceedings against attorneys, a task which had been undertaken by the State's Attorney General since the latter part of the 19th century. The State Bar was responsible for attorney discipline for the next 35 years and it would be fair to say that Michigan's system was probably no better or worse than the systems in other states during that period. This may be considered faint praise, however, in light of the 1970 report of the ABA's Special Committee on Evaluation of Disciplinary Enforcement ("The Clark Committee") which concluded that the state of attorney discipline in this country was "scandalous¹." Following a widely publicized investigation into alleged corruption in Livingston County, the Michigan Supreme Court stepped in and created an entirely new disciplinary body, the **State Bar Grievance Board**, in 1970.

Although nominally under the supervision of the Supreme Court, the State Bar Grievance Board, as its name suggests, received both its funding and administrative support from the State Bar. Nevertheless, the Grievance Board represented a sharp break from the past by giving investigative and prosecutorial authority to an independent Grievance Administrator answerable directly to the Grievance Board. The 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. The State Bar Grievance Board was similar to the model envisioned in the ABA's Model Rules for Lawyer Disciplinary Enforcement in that it was a unitary, permanent, statewide agency which performed both prosecutorial and adjudicative functions. The prosecutorial functions were directed by the Grievance Administrator and a full-time staff; public hearings were conducted before local hearing panels consisting of three lawyers; and there was appellate review, by right, to the Grievance Board and then to the State Supreme Court. The prosecutorial and adjudicative functions were separated within the agency, insofar as practicable, to avoid unfairness. Two features of the Grievance Board system were particularly innovative in 1970. The first was the inclusion of non-lawyer members on the Grievance Board. The second was giving the hearing panel the authority to order (not recommend) all levels of discipline. Then, as now, a three-member hearing panel could enter an order of reprimand, suspension, or disbarment and, unless appealed, the order was a final order of discipline, with no further review by a higher body or court.

BIFURCATION

In 1978, responding to criticism of the dual prosecutorial and adjudicative functions of the State Bar Grievance Board, the Michigan Supreme Court established a new, bifurcated disciplinary system consisting of an investigation and prosecution agency - the **Attorney Grievance Commission** - and a separate adjudicative agency - the **Attorney Discipline Board**. Both agencies are supervised by the Supreme Court and both share administrative functions with the State Bar of Michigan, including employee participation in the State Bar's retirement plan, group insurance plans, and certain human resource services. In other respects, however, the agencies, which are located in separate buildings in Detroit, operate independently.

¹ The author of that report was the Clark Committee's official reporter, Michael Franck. In 1970, Mr. Franck began his 24 year tenure as Executive Director of the State Bar of Michigan. It is not coincidental that Michigan's discipline system was one of the first to incorporate many of the recommendations made by the Clark Committee and, later, by the ABA's Model Rules for Disciplinary Enforcement.

ATTORNEY GRIEVANCE COMMISSION

The Attorney Grievance Commission consists of six lawyers and three non-lawyers, all appointed by the Supreme Court. Members may serve no more than two three-year terms. The Commission has two primary functions. First, it supervises the Grievance Administrator and his/her full-time professional staff which currently consists of 15 attorneys and 17 support staff. In its administrative/policy-making role, the Commission reviews and proposes court rule amendments, submits an annual budget to the Supreme Court and files quarterly and annual activity reports with the Court. The Commission's other primary function is to approve the disposition of the investigations completed by the Grievance Administrator and his/her staff. The Grievance Commission meets monthly to review the recommended dispositions submitted by the Administrator. All formal [public] complaints filed with the Attorney Discipline Board must be approved by the Commission.

Written requests for investigation (grievances) submitted to the Grievance Commission may be rejected or dismissed after a preliminary investigation by the Grievance Administrator's staff. Matters warranting further investigation may be assigned to a staff attorney and then referred, with a recommendation, to the nine member Commission. The Commission may direct that a file be closed without further action; closed with a private admonition to the lawyer; or the Grievance Commission may direct the Grievance Administrator to institute formal public proceedings before a hearing panel by filing a formal complaint. In cases in which an attorney's relatively minor misconduct is substantially related to drug or alcohol problems, the Commission may utilize a diversion program, known in Michigan as "contractual probation." Additional information about the Attorney Grievance Commission and its procedures is available at www.agcmi.com.

Grievance Administrator

The Grievance Administrator is appointed by, and serves at the pleasure of, the Supreme Court. The Grievance Administrator has authority to undertake an initial review of an incoming grievance and to reject a grievance which does not state professional misconduct or which does not warrant investigation. A complainant who is unhappy with a decision by the Grievance Administrator or the Grievance Commission to reject or close an investigation without filing formal charges may seek review by the Supreme Court in the form of a complaint for superintending control.

In addition to prosecuting formal complaints as authorized by the Grievance Commission, the Grievance Administrator may also institute public discipline proceedings based upon an attorney's conviction of a crime, or by filing proof that the attorney was disciplined in another jurisdiction. The Grievance Administrator may also seek to have an attorney transferred to inactive status as the result of physical or mental disability. The Grievance Administrator is charged with the responsibility of conducting an investigation when an attorney has petitioned for reinstatement following disbarment or a suspension of 180 days or more. The Grievance Administrator is authorized to enforce discipline orders through the institution of contempt proceedings in a circuit court.

ATTORNEY DISCIPLINE BOARD

Once the Attorney Grievance Commission has authorized the Grievance Administrator to institute formal proceedings, the Administrator files a formal complaint with the Attorney Discipline Board, a separate agency. The structure of the Discipline Board is similar to that of the Commission, that is, the Board consists of six lawyers and three non-lawyers appointed by the Supreme Court to a maximum of two three-year terms. The Board oversees a professional staff of two lawyers, including its Executive Director, and five support staff. Like the Commission, the

Board performs Court authorized administrative functions including the appointment and supervision of its Executive Director and staff, submission of an annual budget, the filing of quarterly and annual activity reports, review and submission of proposed court rules, and the appointment and supervision of volunteer attorney hearing panelists who comprise the trial level of the discipline system.

In the discharge of its adjudicative function, the Board serves as the intermediate appellate level of the discipline system. (Appellate proceedings before the Board are described below).

Hearing Panels

Once a complaint or other action is filed by the Grievance Administrator, it is assigned to a hearing panel consisting of three volunteer attorneys appointed by the Board. If possible, the hearings are conducted in the county where the respondent attorney practices. The Board currently maintains a roster of over 440 panelists. The Board's 125 regularly constituted panels sit in about half of Michigan's 83 counties. In accordance with the Michigan Court Rules, an initial hearing before a panel is scheduled within 56 days after the Grievance Administrator's complaint is filed. The pleadings, transcripts and hearings before a panel are all open to the public.

Hearings before a three-member panel are conducted under the Michigan Court Rules and the Michigan Rules of Evidence. Effective September 1, 2011, a respondent attorney who possessed actual notice of the proceeding, but who still failed to appear in person before the panel is subject to a suspension effective seven days from the entry of the panel's interim order.

The Grievance Administrator must establish the misconduct charged in the complaint by a preponderance of the evidence. If the evidentiary threshold is not met, the complaint must be dismissed. If the hearing panel finds that misconduct has been established, it must conduct a separate hearing to establish the level of discipline. Under a decision of the Michigan Supreme Court, the level of discipline must be based upon application of the American Bar Association Standards for Imposing Lawyer Sanctions. Hearing panels are directed to submit a written report and order within 35 days after the filing of the transcript or the closing of the record.

Upon written request, the respondent and the Grievance Administrator must disclose in advance the names and addresses of witnesses who will be called and exhibits which will be offered. In addition, the parties must, within 21 days after the filing of the respondent's answer, exchange the names and addresses of all persons having knowledge of relevant facts and must comply with reasonable requests for non-privileged information and evidence relevant to the charges. Depositions are generally limited to witnesses who live outside the state or who are physically unable to attend the hearing.

A hearing panel's order of discipline must be accompanied by a transcript of the proceeding, a report summarizing the panel's factual findings and legal conclusions, and, if applicable, a separate report discussing the level of discipline, including reference to the ABA Standards for Imposing Lawyer Sanctions.

Orders of Discipline

A discipline order entered by a hearing panel constitutes a final order of discipline unless review by the Board is sought within 21 days. If misconduct has been established, a panel may enter an order of **reprimand**; **probation** (under closely defined conditions); **suspension** for a specified period (minimum 30 days); or **disbarment**. A discipline order may include conditions such as continuing legal education, practice under the supervision of a monitor, or treatment for alcohol/substance abuse. An annual summary of the public discipline orders issued by the Attorney Discipline Board and its hearing panels is available online at [ADB Annual Reports](#).

Appeals to the Board

Within 21 days after the filing of a hearing panel's order of dismissal or discipline, the Grievance Administrator, the respondent, or the complainant(s) may file a petition for review with the Attorney Discipline Board. A hearing is then set before the Board which meets approximately monthly to conduct oral arguments and review cases. The parties are directed to file briefs. Oral arguments are generally conducted before the full Board, although the rules allow presentation of arguments to a sub-board of as few as three members. The Board's standard of review is whether or not there is proper evidentiary support in the record for the panel's findings. Review of legal conclusions is conducted *de novo*. The Board has broad discretion to modify the level of discipline based upon its "overview function," but often defers to the panel when the discipline imposed is within the range articulated by prior Board opinions and the ABA Standards. The Board may affirm a hearing panel decision without comment, but must explain its reasons for modifying a panel decision. The Board's written orders and opinions are posted on its website www.adbmich.org.

Appeals to the Supreme Court

Within 28 days after the Board issues an order affirming, reversing, or modifying a hearing panel decision, the Grievance Administrator, the respondent, or the complainant(s) may file an application for leave to appeal in the Michigan Supreme Court. If leave is granted, the case is briefed and argued before the Court. In most cases, leave to appeal is denied, although the Court may, on occasion, enter an order in lieu of granting leave which remands the matter to the Board on a specific issue or which summarily modifies the Board's decision.

Costs

An order of discipline must include an order that the respondent reimburse the discipline agencies for the actual costs of the proceedings (typically, court reporting and transcript costs, subpoena fees, mileage, etc.). An order of discipline must also include assessment of a fixed administrative cost of \$1,500.00 for discipline resulting from a hearing before a panel or \$750.00 if the matter was resolved by a stipulation for consent discipline. Costs are generally ordered to be paid within 21 days after entry of the order. Extensions and payment plans may be requested. Unpaid costs will accrue interest at the civil judgment rate. Costs must generally be paid before an attorney may be reinstated. Failure to pay the costs as ordered will result in automatic suspension if the costs are not paid within seven days after a certification of non-payment.

Eligibility for Reinstatement

All suspension orders are for a fixed term. For suspensions of 179 days or less, the attorney may be reinstated by filing an affidavit with the Supreme Court showing that he/she did not practice law and complied with all terms of the order. For suspensions of 180 days or more, the attorney must petition for reinstatement. The petition must be accompanied by a lengthy affidavit including personal and financial information for the period of suspension. Reinstatement proceedings include: publication of a notice in the Michigan Bar Journal; an investigation by the Grievance Administrator into the attorney's eligibility for reinstatement; the submission of the Administrator's written investigative report; and a public hearing before a hearing panel assigned to consider the attorney's petition.

The petitioner must establish eligibility for reinstatement by clear and convincing evidence under specific criteria which appear in the court rules. The panel must file a report and order which may be appealed to the Discipline Board by the petitioner or the Grievance Administrator. The Grievance Administrator participates in the reinstatement hearing and may oppose the petition. If

the attorney has not practiced law for three years or more following an order for a suspension of 180 days or more, he/she must also be recertified by the Board of Law Examiners.

Public Proceedings

Investigations conducted by the Attorney Grievance Commission are not open to the public and, unless authorized by the Supreme Court, the Commission may not disclose the existence of an ongoing investigation or its decisions to dismiss a grievance or close an investigation with an admonition, cautionary letter, or contractual probation. However, a formal complaint filed with the Attorney Discipline Board, and all further pleadings, transcripts, exhibits and orders before a hearing panel or the Board are matters of public record. All hearings before a hearing panel or the Board are open to the public. Requests to record, photograph or televise a discipline hearing are regulated by a Supreme Court administrative order governing such requests.

Availability of Disciplinary Information

The Board's website maintains a list of all Michigan attorneys publicly disciplined since 1978, with links to the appropriate notice and/or opinion. Notices of discipline or reinstatement, summarizing the nature of the misconduct and the action taken, are posted on the Board's website and are published in the monthly Michigan Bar Journal. All public disciplines in Michigan are reported to the ABA Center for Professional Responsibility, as well as to the Supreme Court and the courts in the county where the disciplined attorney practices or resides.

Criminal Convictions

When a Michigan lawyer is convicted of any crime, the conviction must be reported in writing to the Grievance Administrator and the Attorney Discipline Board by the convicted attorney, defense counsel, and the prosecutor. The Grievance Administrator may forgo a filing of a formal complaint based upon the criminal conduct by filing a certified copy of the conviction. Once filed, a judgement of conviction constitutes irrefutable evidence of misconduct which must result in the entry of 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. A hearing panel or the Board does not have authority to dismiss such a proceeding where the Grievance Administrator has proffered a valid judgment of conviction. *Grievance Administrator v Deutch*, 455 Mich 149; 565 NW2d 369 (1997).

Upon conviction of a felony, an attorney is automatically suspended on an interim basis until entry of a hearing panel's final order. "Conviction" is deemed to have occurred upon the return of a guilty verdict or the acceptance of a plea of guilty or no contest.

Reciprocal Discipline

A certified copy of a final adjudication of misconduct entered by a court or a court authorized discipline agency in another state, or in a federal court, is sufficient to establish the misconduct in a reciprocal discipline proceeding instituted in Michigan. If neither the lawyer nor the Grievance Administrator request a hearing within 21 days after the entry of the Board's order to show cause, the Board may issue an order imposing comparable discipline. If either the lawyer or the Grievance Administrator requests a hearing, the matter is assigned to a hearing panel for a hearing limited to the issues of due process in the original proceeding and whether comparable discipline in Michigan would be clearly inappropriate.

Funding

The legal profession, through the mandatory dues paid to the State Bar of Michigan by all active and inactive members, is responsible for the funding of Michigan's system of lawyer discipline. All active members of the Bar are required to pay annual dues of \$315.00, which includes \$120.00 specifically earmarked for the Discipline System. Those funds are administered by the State Bar of Michigan, but it is the Supreme Court which approves the budget requests submitted by the Grievance Commission and the Discipline Board. (Effective October 1, 2012, annual lawyer dues will be reduced to \$305.00 based upon a determination that a ten dollar reduction in the dues earmarked for lawyer discipline will provide sufficient funding for the foreseeable future.) The attorney discipline agencies in Michigan receive no taxpayer or other public funds.

Further information about the Attorney Grievance Commission and Attorney Discipline Board, including information regarding their annual intake, disposition of investigations, and public discipline imposed is available online at www.agcmi.com and www.adbmich.org.