I've Received the Dreaded Letter from the Attorney Grievance Commission: Now What?

By Michael V. Goetz

You arrive at the office to begin another day of preparing motions, answering telephone calls, and appearing in court. You've barely had your first cup of coffee when you begin opening the mail from the previous day and *there it is*—an envelope from an organization you've never received correspondence from but are all too familiar with.

"Attorney Grievance Commission, Personal and Confidential."

You take a moment to ponder the contents as you reach for the letter opener. It's like coming upon a horrific accident—you don't want to see the carnage, yet you can't help but look. The trepidation and anxiety build as you slide the opener beneath the flap of the envelope and slowly tear through it to expose the contents.

You slide the folded document from the envelope and realize that the trifold piece of paper is what you suspected: a request for investigation directed at you! You draw in a deep breath and begin to absorb the letter's contents. You ask yourself, "What could I possibly have done to deserve this?"

The Michigan Rules of Professional Conduct (MRPC) provide a roadmap that attorneys are required to follow from the beginning of their law school careers until retirement, and possibly beyond. Often, there is no GPS to guide our day-to-day ethical decision-making other than referring to the rules. But some of those rules may be clear as mud while others are straightforward. This article is not intended as a primer for professional responsibility, nor is it a replacement for competent research. Rather, it serves as a brief overview of the internal workings of the Attorney Grievance Commission (AGC) and is intended to dissipate the shroud of mystery that coexists with its function. Regular review of the MRPC is not only advisable but required to maintain a healthy law practice.

Whether you've been practicing law for a week or 50 years, what may not be clear is how the AGC functions. The path that the AGC takes is governed by Chapter 9 of the Michigan Court Rules, which specifies the procedures of professional disciplinary proceedings: "Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts and the legal profession."[1]

It must be remembered that "the license to practice law in Michigan is…a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court."[2] This is not only an honor but a huge continuing obligation to serve the public. As one famous Marvel comic superhero was once told, "With great power comes great responsibility."

A complaint against an attorney can come from anywhere—a client, the court, an opposing attorney, the general public, or the grievance administrator.[3] Upon receiving a complaint against an attorney, the AGC's first step is intake review. This is the procedure where many complaints can be summarily denied without any further fanfare because of insufficient or incomplete information. If the intake attorney determines that more information is warranted or it appears as though there may be merit to the claim, it will be assigned to staff counsel who will begin an investigation and may send a request for investigation to the attorney.[4] An attorney has 21 days to answer the request but may seek an extension of time from the AGC in which to file a response.[5]

Amazingly, many attorneys fail to answer the request for investigation. MCR 9.113(B)(2) states:

> The failure of a respondent to answer within the time period required under these rules other than as permitted in subrule (B)(1), or as further permitted by the administrator is misconduct.

Conceivably, an attorney could be exonerated from any type of wrongful conduct after providing information to the AGC but face having the conduct placed on his or her permanent record because of failure to answer the request for investigation.

Lawyers must avoid asking clients to abstain from filing grievances or to withdraw grievances, or conditioning a client's refund on such agreements, as this constitutes misconduct under MCR 9.104(10).

It should be noted that "the Attorney Grievance Commission is the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys and those temporarily admitted to practice" in this state.[6]

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The AGC's decision-making body is comprised of six attorneys and three nonattorneys who meet monthly to determine how cases should proceed.[7] Discipline for attorney misconduct, which is a function of the Attorney Discipline Board, can be disbarment, suspension, reprimand, or probation and restitution.[8] These determinations are made by formal complaints, which are matters of public record.[9]

In addition to public sanctions, there are private sanctions that are not part of the public record. The AGC can recommend a straight closing of a case, a closing with caution, an admonishment, or a consensual contractual probation. These remedies save the attorney from public scrutiny for relatively minor infractions.

Additionally, because of substance abuse or mental health issues that some attorneys face, the State Bar of Michigan's Lawyers and Judges Assistance Program (LJAP) can be added to a consensual contractual probation for drunk driving and simple drug offenses or when there is a need for mental health counseling or therapy. LJAP is open to all members of the bar and law students who believe they may have a substance abuse or mental health issue that could affect their ability to practice law.[10]

Other forms of diversion that are open to the entire bar and not just those who are the subject of misconduct allegations are the "Tips and Tools for a Successful Practice" and "Lawyer Trust Accounts: Management Principles and Recordkeeping Resources" seminars provided by the State Bar of Michigan.

If a private sanction is not agreed to by an attorney and a formal complaint is warranted, the next step is a hearing before the Attorney Discipline Board, which is handled in the same fashion as a nonjury civil bench trial.[11] The hearing is conducted by a panel of three volunteer attorneys who will hear the evidence in a bifurcated proceeding. The first phase is a hearing to determine if the attorney has committed misconduct. If misconduct is found, then the sanction or the mitigation and aggravation phase is conducted to determine if any aggravating or mitigating factors should be considered before imposing discipline. Finally, after all the information is gathered, the panel will review the evidence in its entirety, consult with one another privately, and then consult the American Bar Association Model Standards of Lawyer Discipline before discipline is ultimately imposed.[12]

How do you avoid receiving the dreaded letter? It has been said that a lawyer's unwillingness or inability to make client satisfaction within ethical bounds the primary goal of representation is at the root of most grievances. This translates to customer satisfaction. Your client may be one of a hundred clients that you have; however, when that client has paid you thousands of dollars to do a job, he or she expects to be treated like your *only* client. For you, it's your day-to-day living; for your client, it may be a once-in-a-lifetime contact with the legal profession. There is truth to the adage that if your client likes you, he or she will be less likely to grieve you.

The AGC is *not* a mysterious "cloak and dagger" organization working in the shadows, lying in wait for unwary attorneys and ready to pounce on the most unsuspecting practitioner. The AGC should be embraced as a fact-finding barrier between frivolous and unsubstantiated allegations by a difficult client and the continued self-policing function that protects the sanctity of the profession from unscrupulous opportunists who fail to recognize that the oath they took to enter this profession is not mere words but a standard by which each attorney strives to raise the bar for its members.

The AGC receives *more than 2,500* complaints and requests for investigation each year. Its office staff of 14 full-time attorneys, four investigators, and two paralegals work diligently to comb through the voluminous amounts of material to complete an investigation within a reasonable time. Many requests are extremely complex. It must be remembered that unlike attorney malpractice, there is no statute of limitations on attorney misconduct. The AGC may receive a complaint from an occurrence many years ago, and as such, it may take an uncharacteristically long time to investigate. Every complaint, no matter how old, will be thoroughly investigated to ensure that integrity is maintained within the practicing legal community. The profession, the courts, and the people of the state of Michigan deserve no less. ■

Michael V. Goetz is the grievance administrator at the Michigan Attorney Grievance Commission.

ENDNOTES

1. MCR 9.105(A).
2. MCR 9.103(A).
3. *How to File a Request for an Investigation*, Attorney Grievance Commission, State of Michigan <https://www.agcmi.org/for-the-public/investigation> and MCR 9.112(A). All websites cited in this article were accessed April 4, 2020.
4. *The Investigative Process*, Attorney Grievance Commission, State of Michigan <https://www.agcmi.org/for-the-public/the-investigative-process>.
5. MCR 9.113(A).
6. MCR 9.108(A).
7. MCR 9.108(B)
8. MCR 9.106.
9. For a listing of formal complaints and orders, see *Attorney Information*, Attorney Discipline Board, State of Michigan <https://www.adbmich.org/attorney-information/recent-notices>.
10. MCR 9.114 (C) and *Lawyers and Judges Assistance Program*, State Bar of Michigan <https://www.michbar.org/generalinfo/ljap/home>.
11. MCR 9.115(A) and *Attorney Discipline System Overview*, Attorney Discipline Board, State of Michigan <https://www.adbmich.org/about-us/graphic-overview>.
12. MCR 9.115.