

# Complaints Against Lawyers

When you hire a lawyer to handle a particular matter, you are a consumer of legal services, and as in any consumer relationship, you and your lawyer have rights and responsibilities to one another. If you feel as though your rights as a consumer have been violated, you can take necessary steps to file a complaint against your lawyer. However, most of the time, complaints can be settled on your own, either by talking directly to your attorney, or if you choose, by dismissing him or her and hiring a new lawyer.

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## Complaints About Professional Misconduct

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If you believe that the actions of your attorney are in violation of the New York Lawyer's Code of Professional Responsibility, your lawyer may be subject to discipline by the appropriate government agencies, which operate under the state court system.

### Kinds of Complaints

Many complaints fall into the following categories:

#### *Delay or Neglect*

Perhaps the most common kinds of complaints against lawyers involve delay or neglect. This doesn't mean that occasionally you've had to wait for a phone call to be returned. It means there has been a pattern of the lawyer's failing to respond or to take action over a period of months. In some instances, this may result in your losing a case or losing the right to bring a case where there are time limits involved.

### ***Misrepresentation***

Sometimes lawyers will misrepresent to clients whether or not they have taken certain actions. For example, you might discover that your lawyer has told you that he or she has begun a lawsuit or taken other actions, when in fact no action has been taken. In other words, the misrepresentation may be a cover-up for neglect.

### ***Mishandling of Money***

If you have given money to your lawyer to hold, or to use for a particular purpose, he or she must not do anything else with that money. A lawyer who is reluctant to answer your questions regarding that money may have misused your money.

### ***Conflict of Interest***

Your lawyer is supposed to be on your side, and only on your side. That means he or she should not be representing someone who is against you in the legal matter, unless both you and the person on the other side have agreed to it.

### ***Fees***

In general, complaints about fees are not grounds for disciplinary actions. Occasionally a problem relating to the fee will amount to an ethical violation. This violation is usually where the lawyer has taken a fee and then essentially not performed the services that he or she has agreed to perform, or where the lawyer has taken a non-refundable retainer. For more information on resolving fee disputes, see page 12.

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## **How to File a Complaint**

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If you believe a lawyer may have violated the Code of Professional Responsibility, you may file a complaint even if you are not that lawyer's client.

### ***The Complaint Committees***

In New York City there are two Committees which handle complaints, depending on the location of the lawyer's office. You may telephone the appropriate Committee and a complaint form will be mailed to you.

If your lawyer's office is located in **Manhattan** or **The Bronx**, complain to

Departmental Disciplinary Committee  
Supreme Court, Appellate Division  
First Judicial Department  
61 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10006  
(212) 401-0800, fax: (212) 401-0810

If your lawyer's office is located in **Brooklyn**, **Queens** or **Staten Island**, complain to

Grievance Committee for the  
2<sup>nd</sup> and 11<sup>th</sup> Judicial Districts  
Renaissance Plaza  
335 Adams Street - Suite 2400  
Brooklyn, NY 11201  
(718) 923-6300

Composed of lawyers and non-lawyers, these Committees are appointed by the New York State courts and are not affiliated with the New York City Bar Association or any other bar association.

### ***The Complaint***

Your complaint may be submitted in a letter, or you may fill out a form provided by the

Committee, which is generally the preferred method. Please be sure to sign your complaint regardless of whether it is a letter or form. The information you provide should include the following:

- **General information**, such as your home address and telephone number; the lawyer's name, address and telephone number; etc.
- **Your complaint**. You should be as clear, specific and detailed as you can in explaining your complaint. Tell the whole story. Include dates and names of anyone involved.
- **Copies of any documents**, papers, letters, etc. that relate to your complaint (do not send originals).

### ***The Complaint Process***

***Initial Review:*** Every complaint is reviewed. If the Committee determines that the facts of your complaint do not describe a possible violation of the Code, it will advise you that an investigation is not warranted.

***Investigation:*** If the Committee determines that your complaint may involve a violation of the Code of Professional Responsibility, it will begin an investigation. The Committee will seek a response from the lawyer, send you a copy of the lawyer's answer and give you a chance to send in a reply. The Committee may also seek other information relating to your complaint. The Committee's review may take several months. If that much time has gone by and you have not been notified of the results of the investigation, you may contact the Committee to ask the status of your case.

***Committee Action:*** After investigation, which could include a hearing or other proceeding, the Committee may do one of the following:

- **Dismiss** the complaint if it finds that the lawyer's conduct was not a violation of the Code of Professional Responsibility;
- Issue a **sanction** saying what the lawyer did was improper and should not be done again. This sanction is confidential; or
- Determine that there were ethical violations and recommend discipline, which could include censure, suspending the lawyer's license to practice law or taking away the lawyer's license entirely (disbarment). In this event, the matter is then referred to a court, where the final disciplinary decision is made.

You will be notified of the action taken.

### ***New Evidence***

If you obtain some new evidence or information which you did not include in your original complaint, you should contact the Committee and request a reevaluation (even if your complaint was originally dismissed).

### ***Referral to Other Agencies***

Whether or not your complaint has been dismissed, the Committee will refer you to any other agencies that may play a role in resolving your complaint. For example, if your lawyer has wrongfully taken money from you, you will be referred to the Lawyers' Fund for Client Protection for possible reimbursement. The agencies to which you may be referred are reviewed in the sections which follow.

Please note that the Committee generally does not pursue complaints that lawyers are not paying debts. If a lawyer owes you money, you may bring an action in court to collect the debt, just as you would against any other debtor. However, if you bring an action and get a judgment against a lawyer which has not been adhered to, you should file a complaint with the Committee.

If you suspect your lawyer has done something criminal, you may go directly to the District Attorney's office in the borough in which the lawyer has an office or is doing business. If the District Attorney determines that your lawyer may have committed a federal offense, he may refer you to the appropriate United States Attorney.

If a criminal case is brought against the lawyer, the Committee will usually wait for it to be completed because any state felony conviction, and many federal felony convictions, result in automatic disbarment. The Committee may also wait for the outcome of a civil suit you may have brought against the lawyer.

The Committee does not have the jurisdiction to address complaints against non-lawyers, even in the context of a legal matter. You should consider contacting licensing agencies or professional organizations that may oversee the conduct of the person or firm whose misconduct is the subject of your complaint.

### ***Limitations of the Disciplinary Process***

Please understand that the Committee can only act with regard to your lawyer; it cannot take any action with regard to your underlying case, and cannot undo legal problems (such as expired time limits) created by your lawyer's conduct. You may want to retain another lawyer to assist you with your case.

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## ***Fee Disputes***

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### ***Fee Disputes in Cases Begun in 2002 or after***

If you retained a lawyer for a matter on or after January 1, 2002, you have the right to arbitration of the dispute concerning the fee your lawyer is charging, where the amount in dispute is between \$1,000 and \$50,000. The following are exceptions:

- criminal matters;
- disputes where your lawyer has not provided services for you for more than two years;
- disputes where your lawyer does not practice in New York, or where the services were for the most part not provided in New York; or
- where the fee was set by law, a court rule, or a court.

If you and your lawyer have a dispute about your lawyer's fee, your lawyer must send you a notice advising you that you have 30 days from your receipt of the notice to elect to use this arbitration procedure, along with instructions for how to do so and the necessary forms. You can also contact the appropriate agency directly to begin the process. Your lawyer may ask you to agree that either you or the lawyer can submit a fee dispute to arbitration.

Once you have started the process and your lawyer responds to your complaint, you cannot cancel the arbitration. In the arbitration proceeding, the lawyer has the burden of justifying his/her fee. Either you or your lawyer can challenge the result of the arbitration in court within 30 days after the arbitration decision is mailed.

These dispute resolution services are generally provided by your local bar association. The relevant arbitration program is the one covering the county where most of the legal work was done (generally, the county in which your lawyer's office is located). The organizations running the arbitration program may ask you if you want to mediate the dispute. In mediation, you and your lawyer meet with a mediator to try to settle the dispute. If that procedure is unsuccessful, you can proceed to arbitration.

The arbitration programs in New York City are as follows:

*For Manhattan and The Bronx:*

**Joint Committee on Fee Disputes and Conciliation**

New York County Lawyers' Association  
14 Vesey Street  
New York, New York 10007  
(212) 267-6646 x217

*For Brooklyn:*

**Brooklyn Bar Association**

123 Remsen Street  
Brooklyn, New York 11201  
(718) 624-0675

*For Staten Island:*

**Richmond County Bar Association**

152 Stuyvesant Place  
Staten Island, New York 10301  
(718) 442-4500

*For Queens:*

**District Administrative Judge's Office**

Eleventh Judicial District  
88-11 Sutphin Boulevard, Room 511  
Jamaica, NY 11435  
(718) 298-1100

For more information, you can contact the general office of the Fee Dispute Resolution Program at the following address:

**Attorney-Client Fee Dispute Resolution Program**

Board of Governors  
Office of Court Administration  
25 Beaver Street, Room 855  
New York, New York 10004  
1-877-FEES-137  
[www.nycourts.gov/admin/feedispute](http://www.nycourts.gov/admin/feedispute)

### **Fee Disputes in Cases Begun Prior to 2002**

If you have a fee dispute in a case in which you retained your lawyer before January 1, 2002, or your fee dispute is otherwise not covered by one of the above programs, you may still get help from the bar association in the borough in which your lawyer's office is located. Under these circumstances, the lawyer is not required to participate in the fee conciliation or arbitration processes. For more information, contact the agencies listed on page 14.

### **Fee Disputes with Attorneys Referred through Lawyer Referral Services**

If you originally found your lawyer through a lawyer referral service, you should contact that referral service. Often there are requirements that any fee disputes be resolved through arbitration by the organization that sponsors the service.

## **Recovering Funds Wrongfully Taken by Lawyers**

### **Lawyers' Fund For Client Protection**

If your lawyer has wrongfully taken your money or your property and you have been unable to get reimbursement from the lawyer, his or her law firm or insurance company, you may apply to the Lawyers' Fund for Client Protection (formerly known as the Clients' Security Fund) of the State of New York. The Lawyers' Fund for Client Protection is financed by mandatory contributions from all licensed lawyers in New York State. The Fund may grant up to \$300,000 to an eligible claimant.

### **Dishonest Conduct**

The lawyer must have taken your money or property dishonestly in the practice of law. If you lost money because your lawyer didn't do the best job of negotiating for you or representing you in a lawsuit, that would not qualify for the Lawyers' Fund for Client Protection. The fund has no authority to compensate for damages due to alleged negligence or malpractice, or resolve fee disputes. Typical examples of the kind of dishonest conduct that apply are:

1. The lawyer stole assets from an estate.
2. The lawyer stole from money being held for you in escrow.
3. The lawyer kept all or part of a personal injury settlement beyond the agreed-upon fee.
4. The lawyer stole money from the down payment or proceeds in a real estate transaction.

### **The Claim Process**

You must file your claim within two years of discovering your loss. To initiate a claim, you should contact:

Lawyers' Fund for Client Protection  
119 Washington Avenue  
Albany, NY 12210  
(518) 434-1935 or 1-800-442-FUND  
[www.nylawfund.org](http://www.nylawfund.org)

The Fund will send you a form which asks for the facts surrounding your claim. If you have difficulty in filling out the form, you may call the Fund and ask for assistance.

The Fund will review your claim. If it appears that you have not shown the kind of loss due to dishonesty that is reimbursable, your claim will be dismissed. You will receive prompt written notification of a dismissal with an explanation of why your claim is not eligible. If you discover additional facts, you may request a

reconsideration of a dismissal. If it appears that you may have a reimbursable loss, the Fund will investigate. Following the investigation, you may be awarded reimbursement for all or part of your claim, up to the Fund's maximum limit, or your claim may be denied. You may request a reconsideration of a denial of all or part of your claim by filing an application within 30 days of receipt of the determination.

Usually, the Fund will not award the money until any disciplinary proceedings against the lawyer in one of the disciplinary committees, and/or criminal proceedings against the lawyer in the District Attorney's Office, are completed. If you have not already contacted the Committee or the District Attorney at the time you file a claim with the Lawyers' Fund for Client Protection, the Fund will advise you to do so.

You may be eligible for reimbursement even if your lawyer was disbarred or suspended from practice at the time your loss occurred.

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## **Complaints About the Unauthorized Practice of Law**

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As it is a crime to practice law without a license, you may contact the District Attorney's Office in the borough where the person has an office or is doing business.

*For Manhattan:*

**District Attorney's Office**  
One Hogan Place  
New York, New York 10013  
(212) 335-9000

*For The Bronx:*

**District Attorney's Office**  
198 East 161st Street  
Bronx, New York 10451  
(718) 590-2000

*For Brooklyn:*

**District Attorney's Office**

350 Jay St.  
Brooklyn, NY 11201  
(718) 250-2000

*For Queens:*

**District Attorney's Office**

125-01 Queens Boulevard  
Kew Gardens, New York 11415  
718) 286-6000

*For Staten Island:*

**District Attorney's Office**

130 Stuyvesant Place  
Staten Island, New York 10301  
(718) 876-6300

If you suspect that someone has been practicing law even though his or her license has been suspended, or even though he or she has been disbarred, you should contact the appropriate Disciplinary or Grievance Committee listed at the front of this pamphlet.

If you want to check on whether a lawyer is registered to practice law in New York State, contact the Attorney Registration Office of the Office of Court Administration at (212) 428-2800 or search the website at <http://iapps.courts.state.ny.us/attorney/AttorneySearch>. That office can refer you to the appropriate court where you may check on whether the attorney has been suspended or disbarred.

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## **Protecting Your Rights During the Complaint Process**

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### **Hiring Another Lawyer**

You do not need a new lawyer to help you in complaining about another lawyer. All of the agencies that deal with client complaints will assist you in making your way through the complaint process.

You do not have to dismiss the lawyer about whom you are complaining. Of course, you have the right to dismiss him or her at any time. (You may dismiss a lawyer for any reason at any time, even if you have signed a retainer agreement.)

There may be reasons why you might want to hire a new lawyer:

1. You may find it difficult or uncomfortable to continue working with the lawyer after you have filed a complaint.
2. You may need a new lawyer to work on the transaction or case for which you had hired the lawyer about whom you are now complaining. This may be particularly important if there are relevant time limits, and the time has been running out while your first lawyer was neglecting your case.
3. You may want to hire a new lawyer to bring a lawsuit against the lawyer about whom you are complaining.

If you need assistance in obtaining a new lawyer you may call the Legal Referral Service, sponsored jointly by the New York City Bar Association and the New York County Lawyers' Association, at (212) 626-7373 or visit LRS website at the following address:  
<http://www.nycbar.org/LRS/index.htm>.