

Lawyer Discipline And Malpractice

If you have a complaint against a lawyer and all efforts to resolve it informally have failed, you have two options: a disciplinary complaint and a malpractice suit. It's important to note that you can use *both* options. Using one does not prevent you from also using the other, but keep in mind that your state will have a statute of limitations for malpractice suits and some states have one for filing a disciplinary complaint, too.

(Both options are distinct from fee arbitration, which you can use to resolve a fee dispute with your lawyer. Fee arbitration panels are created and run by state or local bar associations and usually are composed mostly of lawyers. Despite this, if you have a fee dispute you cannot resolve on your own, we recommend fee arbitration because it is inexpensive and quicker than litigation. We have found no evidence that a consumer is more likely to receive better treatment from a court than from an arbitration panel.)

If you have a problem with your lawyer, you can file a grievance with the state bar association or you can file a lawsuit, either in small claims court or in regular civil court. The major difference between a complaint and a lawsuit is that the courts can award you money and the state bar usually can't. The bar's authority is *disciplinary*. The goal of a malpractice case in court, on the other hand, is to be paid for damages that resulted from your lawyer's misconduct.

HALT encourages people to file complaints even though they result in discipline only 5 percent of the time. We encourage this because the number of complaints filed and the lack of action taken is often used by HALT and other reformers to illustrate the need for reform. Also, being informed about your complaint may make your lawyer more conscientious with future clients, or yours may be the latest in a string of 20 complaints against your lawyer, finally inspiring the bar association to take notice.

However, don't file a complaint just to get your lawyer moving on your case. If you and your lawyer are having problems, filing a complaint may destroy any chance you have of working together again, on your present case or any other. For suggestions on how to manage your relations with your lawyer, refer to HALT's manual, [Using a Lawyer](#).

Attorney Discipline

Your state or local bar association can only take action on certain types of wrongdoing by lawyers. Most of the rules are set down in your state's "Code of Professional Conduct" or a similarly named document, probably based on model rules put together by the lawyers who work with the American Bar Association. You can get a copy of the rules by writing your bar association.

Your state or local bar association can tell you how to file a complaint. Often, all that is required is a letter to the bar's attorney discipline committee or filling out a simple form. It bears repeating, however, that these committees almost always have no authority to

award monetary relief, so determine your goals first. If your only goal is to get money back, the state bar disciplinary committee is probably not the place for you.

When you file a complaint, be detailed but brief. Include all the relevant data and copies of any documents that support your claim. More than half of all complaints are dismissed after the bar committee merely reads the complaint letter and the lawyer's answering letter. You want to give the committee your best evidence and description of events at the outset; you may not get another chance.

If your complaint is not dismissed, the panel may ask for more information. It will also schedule a hearing. The hearing is usually confidential. You will be asked to give your side of the story and the lawyer will be asked to respond. The lawyer is usually permitted to ask you questions, but in some states you are not given the right to question the lawyer. Sometimes the lawyer also has the right to hear you tell your side of the story, but you can't hear the lawyer's version.

If the panel does decide against your lawyer, however, it has several options. It can recommend that the lawyer's license to practice be taken away temporarily or permanently taken away (disbarment). This is the most severe sanction available and the one least often used. Alternatively, the committee can suspend the attorney's license to practice for a specified number of months or years. The difference between a suspension and a temporary disbarment is that the disbarred lawyer must reapply for a license and the suspended lawyer's license is automatically reinstated at the end of the suspension.

Instead of disbarment or suspension, the panel can recommend a public or private reprimand of the lawyer. If the reprimand is public, the lawyer's name and the facts of the case will be published in the bar's journal or a local newspaper. If the reprimand is private, it is never made public, not even to the lawyer's other clients.

Attorney Malpractice

The other recourse against lawyer misconduct is a malpractice suit. If you win a malpractice action, you can receive monetary damages, sometimes including any lawyers' fees you had to pay to bring the suit. However, don't bring a malpractice action without first considering several factors.

The first of these is the difficulty of winning. To win a malpractice action, you must first prove your lawyer guilty of misconduct or negligence, then show you were harmed monetarily because of the misconduct or negligence. Often, this means you have to prove you would have won your original case if not for your lawyer's error. Needless to say, this is not an easy task.

Malpractice cases can be brought in small claims court if you ask for an award that is within the small claims court limits. Taking such a case to small claims court allows you to handle the case yourself and avoid lawyer's fees. It is also quick. If you decide to take

this route, refer to HALT's manual, *Small Claims Court*. It lists the dollar limits for awards in such courts in all states.

If you do not sue in small claims court, more likely than not you will need a lawyer. Look for one who specializes in attorney malpractice and who doesn't have any conflict of interest in representing you against the attorney you're suing. Unfortunately, it is often difficult to find lawyers willing to sue their colleagues, so you may need to look outside your area, especially if you live in a small city or town. Also, just because your new lawyer is outraged about your previous lawyer's conduct, remember to be careful how you manage your relationship with the second attorney, or you may find yourself complaining about lawyer misconduct again.

A final caution: Prepare for a long and bitter fight. You will be fighting on your original lawyer's own turf, where lawyers are most familiar with the rules and the other players, from the judge on down. Lawyers do not take kindly when accusations about their professional conduct are placed before their bar and bench colleagues.

For further information, see HALT's Manual, [*If You Want to Sue a Lawyer*](#).