

# Lawyer Discipline

## 2006 REPORT CARD



### MONTANA

Overall Grade:

D+

**← What's New Since 2002:** Montana's disciplinary system has changed less than any disciplinary body in the country, holding firm at an abysmal 49th in the nation overall. The state's system continues to withhold information and still threatens complainants with criminal contempt charges if they choose to publicly disclose any information about a disciplinary matter.

**About Montana's Lawyer Discipline System:**

Ranked 49th in the nation overall.

↓ Less than seven percent of investigated cases lead to public discipline in Montana.\*

↓ Received an *Incomplete* for Openness of the Process category because State Bar of Montana refused to confirm HALT's data.

↓ A lawyer may not be found guilty of misconduct unless Bar Counsel can prove violation of the Rules of Professional Conduct through "clear and convincing" evidence—a more onerous standard than applied in civil court.

↓ Only one out of every three members of a Montana adjudicatory panel is a non-lawyer.\*

\* According to the most recent statistics from the American Bar Association, which derive from the 2004 ABA Survey on Lawyer Discipline Systems.

Adequacy of Discipline Imposed	D+
Publicity and Responsiveness	D+
Openness of the Process	INCOMPLETE
Fairness of Disciplinary Procedures	D
Public Participation	C
Promptness	C+
<b>Overall Grade</b>	<b>D+</b>



To file a complaint against an attorney licensed in Montana, download a complaint form from [www.montanacourts.org/Supreme/odc/filing.asp](http://www.montanacourts.org/Supreme/odc/filing.asp) or obtain a Complaint Cover Sheet by calling the Office of Disciplinary Counsel at (406) 841-2980 or by writing to: Office of Disciplinary Counsel of the State of Montana, P.O. Box 203007, Helena, Montana 59620-3007.

## About the 2006 Report Card

**H**ALT's **Lawyer Discipline Report Card** compiled during 2005, evaluates the state of lawyer discipline systems across the country. HALT called each state's disciplinary agency, carefully reviewed the Web site, brochure and annual report of each agency, analyzed data compiled by the American Bar Association Survey on Lawyer Discipline, and assessed the rules and regulations that govern each state disciplinary agency.

Based on this analysis, HALT assigned a grade to each of six categories:

**Adequacy of Discipline Imposed**—Does the disciplinary agency investigate at least 90 percent of all grievances? Do at least 33 percent of investigated cases result in public sanctions (i.e., disbarment, suspension or public censure)? Do at least 33 percent of investigated cases result in private discipline (i.e., private admonition or reprimand)?

**Publicity and Responsiveness**—Does the disciplinary agency publicize its services sufficiently? Does the agency host a comprehensive, clear and easy-to-find Web site? Is the agency's staff informative and accommodating when consumers call with grievances against their lawyers or questions about the disciplinary process?

**Openness of the Process**—May grievants attend lawyer disciplinary hearings? Are hearings open to the general public? Can consumers easily find out whether grievances have ever been filed against their attorneys? Are names of sanctioned attorneys publicized in places to which the general public has access?

**Fairness of Disciplinary Procedures**—Does the state have a "gag rule" that holds grievants in contempt of court if they do not keep secret the fact that they have filed grievances against their attorneys? Are consumers granted civil immunity for allegations they make against their lawyers, such that they do not have to fear that their lawyers may later sue them? Is the standard for proving lawyer misconduct fair?

**Public Participation**—Do non-lawyers make up the majority of members serving on the disciplinary agency's hearing panels?

**Promptness**—How quickly does the disciplinary agency follow up on consumers' grievances? On average, does the agency file formal charges within three months of receiving a grievance? Are sanctions imposed within six months?

After assessing these categories, HALT assigned an overall grade to each state.

## About HALT

**HALT—An Organization of Americans for Legal Reform** pursues an aggressive education and advocacy program that challenges the legal establishment to improve access and to reduce costs in the civil justice system. HALT is known for its extensive collection of self-help law books and its advocacy to hold the legal profession accountable.

## GRADING SCALE

The following are the grading criteria for each category. The number in brackets after each category is the percent of the overall grade comprised of that category.

### **Adequacy of Discipline Imposed** [35%]\*

What percentage of grievances does the agency investigate?

A = 90% or more    B = 75-89%    C = 50-74%  
D = 20-49%        F = less than 20%

What percentage of investigations result in public sanctions and what percentage lead to private sanctions?

A = 33% or more    B = 25-32%    C = 15-24%  
D = 5-14%         F = less than 5%

### **Publicity and Responsiveness** [15%]

Does the disciplinary agency publicize itself sufficiently?

A = advertises in yellow pages, in at least one local newspaper, through flyers in courthouses, and on the internet

B = 3 of the above    C = 2 of the above    D = 1 of the above  
F = does not advertise its services to the public

Does the agency meet HALT's criteria for a comprehensive, clear, and consumer-friendly Web site and telephone system?\*

A = at least 95% of criteria  
B = 85%                    C = 75%                    D = 65% or less  
F = no Web site, no telephone system or no brochure

### **Openness of the Process** [15%]

Can a grievant attend hearings?

A = yes                    C = not unless a witness    F = never

Can the general public attend hearings?

A = yes                    C = only if case reaches public sanctions stage  
F = never

Where does the agency publish names of publicly sanctioned lawyers?

A = agency's Web site **and** at least one local newspaper

B = agency's Web site **or** at least one local newspaper

C = only in publications distributed to lawyers

D = only in the agency's annual report

F = nowhere

Can a consumer find out whether a grievance has ever been filed against her attorney?

A = yes – information about a grievance can be provided

B = no – but information is available once the case reaches the formal charges stage

C = no – but information is available once the case reaches the informal or formal sanctions stage

D = no – but information is available once the case reaches the formal sanctions stage

F = no – information about a disciplinary case may be released

### **Fairness of Disciplinary Procedures** [15%]

Does the state have a "gag rule"?

A = no

C = yes, the agency requests that individuals keep their grievances confidential

F = yes, grievants will be held in contempt of court if they speak about grievance

Are grievants granted civil immunity?

A = yes                    C = qualified immunity    F = no

What is the standard of proof in discipline hearings?

A = "preponderance of the evidence" or its equivalent

C = "clear and convincing evidence" or its equivalent

F = "beyond a reasonable doubt"

### **Public Participation** [15%]

What percentage of nonlawyers serve on hearing panels?

A = majority nonlawyers    B = 50% nonlawyers

C = 33-49% nonlawyers    D = less than 33% nonlawyers

F = no nonlawyers

### **Promptness** [5%]\*

On average, how long does it take before the agency brings formal charges against an attorney?

A = less than 3 months    B = 3-5 months

C = 6-8 months            D = 9 months – 1 year

F = more than 1 year

On average, how long does it take before the agency imposes sanctions on an attorney?

A = less than 6 months    B = 6 months – 1 year

C = 1 year – 1-1/2 years    D = 1-1/2 years – 2 years

F = more than 2 years

\* Data based on most recent statistics from the American Bar Association, which derive from the 2000 ABA Survey on Lawyer Discipline Systems.

\*\* HALT's detailed list of criteria is available upon request.

# HALT

An Organization of  
Americans for Legal Reform

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