

Lawyer Discipline

2006 REPORT CARD



WEST VIRGINIA

Overall Grade: C

← What's New Since 2002: West Virginia's general standing has remained the same. While the Office of Disciplinary Counsel is investigating more cases, the state is not publicizing its attorney discipline system as widely as it did four years ago.

About West Virginia's Lawyer Discipline System:

Ranked 22nd in the nation overall.

↓ Imposes discipline in less than two percent of investigated cases—the lowest percentage in the nation.*

↓ According to the state bar, West Virginia does not widely publicize its attorney discipline services.

↓ Until the bar formally files a complaint against a lawyer, complainants are threatened with criminal contempt charges if they publicly disclose information about a disciplinary matter.

↑ Individuals who bring complaints against West Virginian attorneys receive absolute civil immunity, meaning that they may not be sued for filing complaints against their lawyers.

↓ Processes cases less efficiently than most disciplinary bodies, taking more than a year to impose sanctions against an attorney after a complaint is received.*

* 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	C
Publicity and Responsiveness	D+
Openness of the Process	C+
Fairness of Disciplinary Procedures	C
Public Participation	C
Promptness	D+
Overall Grade	C



To file a complaint against an attorney licensed in West Virginia, download a form at www.wvbar.org/barinfo/ODC/complaintform.htm or write to: Office of Disciplinary Counsel, 2008 Kanawha Boulevard, East Charleston, West Virginia 25311.

About the 2006 Report Card

HALT'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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