



State Bar of South Dakota

Lawyer Discipline

Members of The State Bar of South Dakota have adopted high standards of professional conduct which define proper and improper conduct for a lawyer handling legal matters. To maintain these standards, a system of self-discipline has been created and is administered through the Disciplinary Board of the State Bar, the Attorney General of the State of South Dakota, and the South Dakota Supreme Court.

general considerations

Every member of the legal profession takes an oath to uphold the law and to abide by the Rules of Professional Conduct. A lawyer who violates these standards of conduct may be disciplined and given penalties ranging from a private reprimand to permanent loss of the privilege to practice law.

Lawyers may lose the trust and confidence of a client for various reasons. It is important to realize that in many cases where a client is dissatisfied, grounds for discipline may not exist. A lawyer can be disciplined only if he has violated the standards of professional responsibility.

A formal complaint of unprofessional conduct against a lawyer is a serious matter. A lawyer who is accused of misconduct inevitably suffers whether or not he is finally found to be at fault. More than a claim of misconduct is needed to justify discipline. It takes evidence—proof, just as it does before any member of society can be punished for wrongdoing.

An honest disagreement between lawyer and client about the handling of a case is not misconduct. A mistake or error of judgment is not a cause for discipline.

There are other situations—a failure on the part of a lawyer to clearly explain the case or refusing to respond to his phone calls which may annoy a client. While these situations are not generally considered misconduct, the Disciplinary Board is, nevertheless, anxious to see that they are corrected.

Fee matters are not often a basis for discipline of a lawyer because they generally do not involve questions of ethics or professional misconduct. Further, controversy over fees may be resolved by court action. In some cases, however, such as when the fee charged is either illegal or clearly excessive, ethics are involved. In those cases where the lawyer is found to be at fault, discipline will follow. Most fee disputes come from a lack of understanding as to how a lawyer charges for his services. Clients should never be reluctant or embarrassed to discuss fees with their lawyers.

If you believe your complaint against a lawyer is well founded, by all means file it. If, on the other hand, your grievance could be the result of poor communication, lack of agreement or some misunderstanding, it may be the problem can best be resolved by a frank talk with the lawyer.

discipline of lawyers

The purpose of a disciplinary proceeding is to administer discipline to the lawyer. This may take one of several forms, depending on the circumstances and severity of the offense. Discipline may range from a private reprimand by the board, public censure, suspension from practice for a specified time, placement on probation, to disbarment by the Supreme Court.

The Disciplinary Board does not, and cannot, give individual legal service or advice to any person making a complaint. Further, any loss the client suffers as a result of the matter involved cannot be recovered through disciplinary proceedings. The lawyer may be disciplined, but if the client thinks the lawyer's actions caused the client to lose money or otherwise injured the client, he may be able to sue the lawyer for money damages. This would be a matter to take up with a lawyer in private practice, not the Disciplinary Board.

filing a complaint

A complaint may be filed by sending a signed letter to: Disciplinary Board, The State Bar of South Dakota, 222 E. Capitol, Pierre, SD 57501. Upon the receipt of the written complaint, fully describing all the facts and all sources of information, it will be reviewed by the Board. Names, dates, addresses, and other documentation must be included in the complaint as a basis for investigation.

investigation

If it appears that sufficient grounds exist, the next step is investigation. In simple matters, the investigation is conducted by a member of the Disciplinary Board through correspondence with the client and the lawyer. In more complicated matters, where there may be witnesses involved, accounting problems, or disputed facts, the Disciplinary Board uses an investigator. The investigation provides a factual basis for the Disciplinary Board to determine if cause for discipline exists.

hearings

Disciplinary hearings may be held before the seven member Disciplinary Board. The procedure in disciplinary hearings is similar to that in court trials. A record is kept by a court reporter. Testimony is given under oath. Witnesses and records may be subpoenaed but the hearing is not open to the public.

If the board determines the lawyer has done no wrong, the complaint is dismissed. The board may issue a private reprimand in less serious cases of wrongdoing. More serious violations are

reported to the Supreme Court, which may in turn, refer the matter to a circuit court judge to act as a referee, try the matter, and recommend discipline to the Supreme Court.

confidentiality

Disciplinary proceedings are confidential until they reach the point where the Disciplinary Board or the Attorney General files formal charges at the direction of the Supreme Court. Confidentiality is maintained because the complaint against the lawyer usually arises out of confidential transactions with a client. Also, unfair publicity could result if the complaint were found to lack substance.

what you may expect

You may expect that the South Dakota Disciplinary Board will be genuinely concerned with your complaint. Your complaint will receive full and prompt attention. No complaint is ever swept under the rug.

You may be interviewed by the staff investigator. You may be called as a witness to testify under oath at any disciplinary hearing that is held on your complaint. You may expect the procedure will take time.

You will be notified of the final outcome of your complaint.

You will receive these services without charge. The funds for the operation of the disciplinary system in South Dakota are part of annual State Bar dues paid by every lawyer in this state.

what you should not expect

You should not expect the Disciplinary Board to do work you claim your attorney has failed to do for you.

You should not expect to be given detailed reasons for the final decision made about your complaint unless public discipline (disbarment, suspension, placement on probationary status, or public reprimand) is imposed by the Supreme Court.

Members of the Disciplinary Board appreciate your interest. They seek fair, impartial and vigorous enforcement of the Rules of Professional Conduct in the interests of the public and the legal profession.

**The State Bar of South Dakota
222 E. Capitol
Pierre, SD 57501**