



OFFICE OF DISCIPLINARY COUNSEL
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Honolulu, Hawai'i 96813
Telephone (808) 521-4591

OFFICE OF DISCIPLINARY COUNSEL HAWAII ATTORNEY COMPLAINT FORM

Information, Instructions, and Explanation

Dear Complaining Witness,

In order to help us evaluate and process your complaint, please complete the attached Hawai'i Attorney Complaint Form. The Office of Disciplinary Counsel will review and evaluate your complaint to determine whether investigation and/or prosecution is appropriate. Please be aware that if the Office of Disciplinary Counsel determines that findings of ethical liability and discipline are not likely, investigation into your grievance will be dismissed. You will be notified of our decision in writing. Thank you for your cooperation.

In addition to completing the attached Hawai'i Attorney Complaint form, please provide **copies (not originals)** of as many of the following items listed below as possible [NOTE: Complaints must be mailed or hand delivered. Electronic submissions will not be accepted. If necessary, you may provide a USB or CD with your complaint and documents in PDF format only. Audio (.mp3) and video (.mp4 or .wmv) are also accepted]

- **A copy of any written fee agreement with the attorney.** If there was no written agreement, please explain your understanding regarding payment to your attorney (*for fees, costs, etc.*)
- **Copies of the front and back sides of all cancelled checks and/or copies of receipts showing payments made by you to the attorney.**
- **Copies of all correspondence between you and the attorney.**
- **A written explanation of the exact nature of your complaint.** Explain what the attorney did or did not do that forms the basis of your complaint. [NOTE: Citations to one or more provisions of the Hawai'i Rules of Professional Conduct you believe the attorney violated are not required.]
- **The last date you were in contact with the attorney and what occurred at the time.**
- **The title of the case, the case number, and the name of the court or administrative agency.**
- **Copies of any pertinent court or administrative documents in your possession [NOTE: ODC has access to non-confidential court records].**
- **Your preferred telephone number.**
- **The number of attorneys in the law firm involved in your complaint.** If you don't know, state "Unknown."

When providing documents to the Office of Disciplinary Counsel, please provide copies only. **PLEASE DO NOT PROVIDE ANY ORIGINAL DOCUMENTS. All documents received, whether originals or copies, become the property of the Office of Disciplinary Counsel, and are subject to future destruction.**

Some Things You Should Know

Below is a list of what this office can and cannot do when it considers a complaint against an attorney:

- The law limits the authority and jurisdiction of the Office of Disciplinary Counsel. It cannot act as your lawyer nor does it handle legal disputes or resolve them. It cannot give you legal advice or other legal services, so it cannot advise you what your rights are in a given situation or what you should do. Additionally, the Hawai'i Supreme Court considers Complainants to be witnesses, not parties, to a disciplinary investigation and proceedings.
- The Office of Disciplinary Counsel can and will consider each grievance carefully. Some grievances, however, take more time than others to consider. Additionally, the Office of Disciplinary Counsel receives hundreds of grievances each year. Therefore, there may be periods of time when you do not hear from this office.
- A finding that an attorney violated a particular ethics provision must be supported by "clear and convincing evidence."
- Should this office require additional information, you will be contacted using the contact information you have listed on the complaint form. If you request an update to the status of your complaint, please understand that due to confidentiality, what can be said to you is limited.
- Although the Office of Disciplinary Counsel has jurisdiction to investigate an ethics grievance, it cannot decide on its own that an attorney violated an ethics provision. Minor discipline (called an Informal Admonition) cannot be imposed without the permission of a member of the Disciplinary Board. Greater discipline cannot be imposed without the permission of the Disciplinary Board or - in the more serious cases - the permission of the Hawai'i Supreme Court
- The Hawai'i Rules of Professional Conduct and the Disciplinary Board rules allow for discontinuance or dismissal of a grievance in a particular case based upon particular circumstances in the case even if a finding of an ethics violation against an attorney is supported by clear and convincing evidence. Thus, even if the evidence before the Office of Disciplinary Counsel supports a finding that an attorney violated an ethics provision, the Office of Disciplinary Counsel has the discretion not to pursue an ethics grievance if it determines that the imposition of discipline is unlikely. *(For example, if the complaint is that an attorney missed a deadline to appeal, but the facts obtained in investigation show that the attorney was later able to appeal successfully, it is unlikely that the Office of Disciplinary Counsel will pursue this grievance absent other facts and circumstances. It is more likely that the Office will instead caution the attorney to comply with their obligation to meet deadlines.*
- The Office of Disciplinary Counsel cannot give you the name of a particular attorney to help you. If you do not have an attorney and wish to hire one, contact the Hawai'i State Bar Association ((808) 537-1868).
- If you are considering a legal action against an attorney, please do so without waiting for the outcome of your ethics grievance. Processing an ethics grievance can take time. There are statutes of limitations which apply to legal claims, and they are not tolled by the filing of an ethics grievance.
- The Office of Disciplinary Counsel cannot advise or otherwise help you in any matters connected with your complaint or in any other dispute in which you may be involved. For example, although the Office of Disciplinary Counsel has jurisdiction to investigate a complaint that a fee is unreasonable, liability and discipline for an unreasonable fee are not common, and the Office of Disciplinary Counsel cannot decide on its own whether an attorney's particular fee is reasonable. *(See above.)* The Hawai'i State Bar Association has a voluntary (but not mandatory) fee arbitration program. Please contact the Hawai'i State Bar Association for further details. If the primary issue of concern is that your attorney's fee is too large, we may request that you contact the Hawai'i State Bar Association to request arbitration of your lawyer's fee.
- The Office of Disciplinary Counsel is not a court that can provide civil remedies to Complainants. *(Thus, for example, if you believe that your attorney committed malpractice, the Office of Disciplinary Counsel cannot obtain malpractice damages for you.)*

- If the Office of Disciplinary Counsel commences formal proceedings against an attorney, and obtains an order of discipline, additional remedies such as restitution may also be ordered. Restitution, however, is not mandated, and if it is believed that an ethical violation which might result in restitution cannot be proven by clear and convincing evidence - the Office of Disciplinary Counsel may not pursue any allegation regarding such rule violation. Additionally, even if the Office of Disciplinary Counsel pursues such an allegation, the trier of fact in a disciplinary proceeding may determine that the Office of Disciplinary Counsel has not met its burden of proof. Disciplinary proceedings are not a substitute for court proceedings. Thus, you are strongly encouraged to consult your own attorney if you believe that the attorney about whom you complain caused damages to you.