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The Attorney Grievance Commission:

ITS PURPOSE AND OBJECTIVE

Melvin Hirshman*

The Attorney Grievance Commission of Maryland was created in 1975 by the Court of Appeals of Maryland¹ in response to the report of the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, which was extremely critical of existing procedures for disciplining attorneys.² The Committee, headed by former Associate Supreme Court Justice Tom C. Clark, reported, among other things, that local processing of disciplinary complaints against attorneys "hampers uniform discipline,"³ and that close professional, personal and political relationships among members of the local bar often bias investigations. The Committee therefore recommended the adoption of statewide centralized procedures under the control of the state's highest court.⁴

The Basis and Structure of the Commission

The Rules governing attorney discipline in Maryland are found in Chapter 1100 of the Maryland Rules of Procedure, Rules BV1 through BV18. The Commission, itself, is composed of ten members: eight attorneys and two laypersons.⁵ The Commission's function is to select a Bar Counsel (whose job is to investigate and prosecute disciplinary complaints),⁶ to prepare and administer an operating budget, to oversee the Office of Bar Counsel and the handling and disposition of all complaints by Inquiry Panels and the Review Board, to suggest needed Rule changes, and to generally administer the disciplinary systems.⁷ The Commission meets monthly at its Annapolis office.

The Office of Bar Counsel consists of a Bar Counsel (who is the "principal executive officer of the disciplinary system");⁸ four Assistant Bar Counsels; three full-time investigators; five secretaries; and an office manager. In addition to prosecuting disciplinary complaints, the Bar Counsel writes timely articles in the Maryland Bar Journal to alert attorneys to possible areas of conduct in which disciplinary violations may occur, addresses continuing legal education programs upon

request, and addresses and provides speakers for citizens groups and local bar associations to assure the bar and others that the disciplinary system is being administered fairly and impartially.

Every complaint is investigated.⁹ Those complaints that are found to be without merit or that involve conduct not warranting discipline may be dismissed; although, the Bar Counsel may accompany the dismissal with a warning to the attorney against future misconduct.¹⁰ The more serious complaints are referred to Inquiry Panels composed of both lawyers and laypersons.¹¹

Inquiry Panels have the power to issue subpoenas and to take testimony under oath.¹² They can recommend that the complaint be dismissed, that the attorney be reprimanded, that public charges be filed against the attorney, or that he is incompetent.¹³ Should the Panel recommend a reprimand or the filing of charges, the Bar Counsel then transmits the case to the Review Board. The Review Board is composed of eighteen members: fifteen lawyers and three laypersons.¹⁴ Its task is to review each case and then to decide whether to approve the Inquiry Panel's recommendation, to remand the case for further proceedings, to dismiss it, to direct the filing of public charges or to issue a private reprimand.¹⁵ With some exceptions, all records and proceedings of the Inquiry Panel and Review Board and all reprimands are required to be "private and confidential."¹⁶

Whenever the Bar Counsel is directed to file public charges against an attorney, the case is filed in the Court of Appeals of Maryland, which then appoints a circuit court judge to conduct a non-jury hearing to determine, by clear and convincing evidence,¹⁷ whether a Disciplinary Rule has been violated. The circuit court judge then makes findings of facts and conclusions of law and refers the matter back to the court of appeals for review. Within fifteen days, the attorney or Bar Counsel may file exceptions to the circuit court judge's report. After oral argument on the exceptions, the court of appeals may order (i) disbarment, (ii) suspension, (iii) reprimand, (iv) placing the attorney on inactive status, (v) dismissal of charges, or it may

remand the case for further proceedings. The decision of the court of appeals is final.¹⁸

Commission At Work

The Commission and the Office of Bar Counsel have recently published a brochure, prepared by a committee of laypersons and written in plain English, which advises the citizens of Maryland about the existence and function of the Attorney Grievance Commission and how and where to file disciplinary complaints. These brochures have been widely distributed throughout the state in an effort to assure citizens that no complaint, valid or otherwise, is overlooked. In addition, the Commission and Bar Counsel maintain a toll-free number, (800) 492-1660.

During the past several years, the number of inquiries about attorneys' conduct or misconduct has averaged between 1,000 to 1,300 per year. Of that number, approximately one-third result in formal docketed complaints.

At the end of a typical year, between ten and twenty attorneys will be disbarred, others will be suspended for varying lengths of time, and several more will be publicly reprimanded. Attorneys whose misconduct has resulted from alcoholism, mental illness, or other cause which renders their conduct non-volitional, will be placed on inactive status or indefinite suspension. Disbarred or suspended attorneys or those on inactive status may petition the court of appeals for reinstatement.¹⁹

Disciplinary Objective

The Court of Appeals of Maryland has often stated that the purpose of disciplining attorneys is to protect the public.²⁰ In carrying out this purpose, the court must discipline attorneys who violate the Maryland Code of Professional Responsibility. Serious criminal conduct by an attorney²¹ or misappropriation of clients' funds—not attributable in whole to a mental illness, alcoholism, or other debilitating disease—will result in disbarment.²² Other cases involving misappropriation,²³ neglect,²⁴ incompetence,²⁵ conflict of interest,²⁶ improper conduct before a court,²⁷ unauthorized practice of law,²⁸ breaches of confidence of a client, and other acts of misconduct,²⁹ generally result in suspensions or reprimands depending upon the severity of the misconduct, the injury to the client, and whether or not the attorney was previously disciplined for any ethical breach.³⁰

The Attorney Grievance Commission of Maryland, the Office of Bar Counsel, and the court of appeals considers the disciplining of attorneys to be a necessary function that must be performed in an

even-handed manner and prosecuted in a timely fashion. Throughout the years, the legal profession has been criticized for the actions of a few of its members. Therefore, discipline, firmly meted out to those members of the bar whose conduct fails to conform to required ethical standards, is a catharsis not only for the public, but for the legal profession as well.

* Melvin Hirshman is Bar Counsel, Chief Disciplinary Officer of the State of Maryland.

Footnotes

- ¹ Order (1975) reprinted in Vol. 9B Md. ANN. CODE at page 45 (1977).
- ² A. B. A. SPECIAL COMMITTEE ON EVALUATION OF DISCIPLINARY ENFORCEMENT, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT (1970).
- ³ *Id.* at 27.
- ⁴ *Id.* at 24.
- ⁵ Md. R. P. BV2b (Supp. 1982).
- ⁶ *Id.* at BV4b (1977).
- ⁷ *Id.* at BV2a, BV3b (1977).
- ⁸ *Id.* at BV1c (1977).
- ⁹ *Id.* at BV6a1 (Supp. 1982).
- ¹⁰ *Id.* at BV6a2 (Supp. 1982).
- ¹¹ *Id.* at BV5c1 (Supp. 1982).
- ¹² *Id.* at BV6d3 (Supp. 1982).
- ¹³ *Id.* at BV6d4(a) (Supp. 1982).
- ¹⁴ *Id.* at BV5d (Supp. 1982).
- ¹⁵ *Id.* at BV7b (Supp. 1982).
- ¹⁶ *Id.* at BV8a (1977).
- ¹⁷ *Id.* at BV10d (1977).
- ¹⁸ *Id.* at BV11 (Supp. 1982).
- ¹⁹ *Id.* at BV14 (1977).
- ²⁰ See, e.g., *Bar Ass'n of Baltimore City v. Posner*, 275 Md. 250, 255, 339 A.2d 657, 660, cert. denied, 423 U.S. 1070 (1975); *Attorney Grievance Commission v. Green*, 278 Md. 412, 414-15, 365 A.2d 39, 40 (1976).
- ²¹ *Maryland State Bar Association, Inc. v. Agnew*, 271 Md. 543, 318 A.2d 811 (1973); *Maryland State Bar Association, Inc. v. Rosenberg*, 273 Md. 351, 329 A.2d 106 (1974).
- ²² *Attorney Grievance Commission v. Crowther*, 295 Md. 23, 453 A.2d 140 (1982).
- ²³ *Attorney Grievance Commission v. Flynn*, 283 Md. 41, 387 A.2d 775 (1978).
- ²⁴ *Maryland State Bar Association, Inc. v. Phoebus*, 276 Md. 353, 347 A.2d 556 (1975); *Attorney Grievance Commission v. Montgomery*, 295 Md. 113, 460 A.2d 597 (1983).
- ²⁵ *Attorney Grievance Commission v. Harrison*, 292 Md. 81, 437 A.2d 228 (1981).
- ²⁶ *Attorney Grievance Commission v. Baker*, 285 Md. 45, 399 A.2d 1347 (1979).
- ²⁷ *Attorney Grievance Commission v. Harrison*, 292 Md. 81, 437 A.2d 228 (1981).
- ²⁸ *Attorney Grievance Commission v. Klauber*, 289 Md. 446, 423 A.2d 528 (1981).
- ²⁹ *Rheb v. The Bar Association of Baltimore City*, 186 Md. 200, 46 A.2d 289 (1946).
- ³⁰ *Attorney Grievance Commission v. Sherman*, 295 Md. 229, 454 A.2d 359 (1983).

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