



COMPLAINTS ABOUT ATTORNEYS

Disagreements between attorneys and their clients can happen for a variety of reasons. Not every disagreement requires action, but clients should be aware of their rights.

WHAT ARE MY RIGHTS AS A CLIENT?

A formal Statement of Client's Rights is put out by the Departments of the Appellate Division of the Supreme Court. Knowing your rights will help you better understand when a complaint may be necessary. To summarize, you are entitled to the following:

- Courtesy and consideration, from the lawyer and everyone in the lawyer's office
- Competent and diligent service, and if you do not feel you are receiving it, you may "fire" your attorney
- Independent professional judgment and undivided loyalty
- Reasonable fees and expenses, as well as an explanation of those fees; you may also have the right to arbitration in a fee dispute
- Prompt replies to questions and concerns
- Information about the current status of your matter
- Have your legitimate objectives respected by the attorney, including decisions regarding settlement
- Confidentiality, to the extent required by law
- An attorney's ethical conduct
- Freedom from discrimination based on race, creed, color, religion, sexual orientation, age, national origin or disability

WHAT DO THOSE RIGHTS MEAN?

Although clients have many rights, reasonable people can disagree over the meaning. For example, while you are entitled to have concerns addressed promptly, "prompt" isn't defined.

Communicate with your lawyer, and ask about setting expectations in advance. Knowing that it may take your lawyer several days to return phone calls may prevent confusion and conflict.

Competency can be another area of concern. Competency in any given field does not guarantee a successful outcome, and a lawyer's failure to achieve a desired result doesn't necessarily indicate incompetency. You should discuss possible outcomes with your attorney, as well as his or her opinion about the likelihood of each.

CAN I GET A SECOND OPINION ON MY ATTORNEY'S ADVICE?

Generally, no. Due to ethical, professional and confidentiality considerations, an attorney is generally unable to communicate with a person regarding a matter they are already being represented on.

In addition to various rules restricting communication with represented clients, it would be difficult for an attorney to offer an opinion on another attorney's advice without understanding the context. One attorney's logic, history and knowledge is not going to be immediately obvious to another attorney.

Also, a disagreement between two attorneys about how to approach a situation does not mean either attorney is "right" or "wrong".

SHOULD I FIRE MY ATTORNEY?

There are several things you should consider before firing your attorney, including the availability of other representation and if your concerns can be reasonably addressed.

In order to operate efficiently, legal services providers often avoid offering services that overlap with another organization. This means that if you were receiving pro bono or reduced fee service on a matter, your options for another attorney may be limited. The organization may be unable to assign another attorney, and you may be unable to find another organization to assist you.

Your first step should be attempting to directly resolve your concerns with the attorney. A legal services provider can provide you with a copy of their grievance policy that will outline your next steps for seeking resolution. If you are dealing with a private law firm, they likely have an internal complaint process even if it is as informal as complaining to the attorney's supervisor.

While you may have a right to counsel in some circumstances, you do not necessarily have the right to your choice of counsel.

WHERE DO I FILE A COMPLAINT?

The process for filing a complaint against an attorney can be complicated, and will depend on what you are complaining about. Various entities oversee different aspects of the legal profession. You may have to file complaints with multiple entities, and the time you have to respond will depend on which option or options you choose to pursue. Below are the most common issues that arise between attorneys and clients.

WHAT DO I DO ABOUT A FEE DISPUTE?

Communicating about fees, both before the matter begins and as it ends will reduce the chances of a fee dispute. Before you begin a relationship with an attorney, make sure you understand the following:

- Is the fee a flat rate for the service or an estimate of the total hourly cost?
- Is the fee contingent on success?
- How often will you be billed?
- If it's a pro bono or sliding scale fee, does that include fixed costs such as photocopying, travel or filing fees?
- Is there a minimum or maximum fee?

In New York, there is a statewide Fee Dispute Resolution Program (FDRP) which may resolve disputes either through arbitration or mediation. In arbitration, both you and the attorney present your side and a decision regarding the fees will be handed down by the arbitrator. In mediation, you and the attorney will work together with a mediator to hopefully arrive at a mutually agreeable resolution.

The Fee Dispute Resolution Program does not prevent you from taking the dispute to court, however it can be cheaper and more efficient.

If your issue goes beyond fees and involves accusations of malpractice, then you should consider alternatives to the FDRP. The FDRP has no authority to try malpractice issues, and an unfavorable arbitration decision could impact your later efforts to sue on malpractice claims.

You may contact the FDRP at:

New York State Attorney-Client Fee Dispute Resolution Program
C/O UCS Office of ADR & CI Programs
25 Beaver Street, 8TH Floor
New York, NY 10004
Phone: 1-877-FEES137

WHAT IF THE ATTORNEY ACTED IMPROPERLY?

There are two options when faced with an attorney acting improperly. First, you may file a complaint with the appropriate attorney disciplinary or grievance committee. These committees operate throughout New York State, and each Judicial District has its own particular procedure for filing a complaint. These committees can conduct investigations, educate and discipline attorneys that have acted improperly or in violation of the various rules that guide attorney conduct. The grievance committee cannot change an attorney's fees or reimburse a client. The purpose of these committees is to make sure that an attorney is acting is upholding his or her duties and prevent future harm from occurring.

You may see a list of the committees, as well as the areas covered by each, at <http://www.nycourts.gov/attorneys/grievance/complaints.shtml>.

Depending on the issue, you may also consider suing the attorney for malpractice. Examples of malpractice include failing to file documents before a deadline, or failing to disclose a conflict of interest. A malpractice lawsuit may include a claim for monetary damages based on the attorney's actions.

The line between misconduct and malpractice is hard to identify. In general, both require more than just bad "bedside manner".

WHAT DO I DO IF I LOST MONEY OR PROPERTY DUE TO AN ATTORNEY'S IMPROPER CONDUCT?

The Lawyers' Fund for Client Protection of the State of New York may be able to reimburse clients who have lost money or property as a result of lawyer's dishonest conduct. There is a maximum limit to the amount of money that can be reimbursed by the Lawyers Fund, and it is a remedy for those that cannot otherwise get reimbursed for their loss.

Examples include misappropriating funds from real estate escrow transactions, client estates, or investment transactions.

Claims made to the Lawyers Fund must be within two years of discovering your loss. Although the Lawyers Fund can reimburse you for the loss, you must also report the misuse of funds to the appropriate Attorney Disciplinary or Grievance Committee, and to the District Attorney in which the lawyer maintained law offices.

You may contact the Lawyers' Fund at:

The Lawyers' Fund for Client Protection
119 Washington Avenue
Albany, New York 12210
Phone: (800) 442-3863
(518) 434-1935
Fax: (518) 434-5641
E-mail: info@nylawfund.org

WHY WON'T MY ATTORNEY GIVE ME MY FILE?

In some situations, an attorney may be able to retain your client file until they have been paid any money they are owed. If you are asking for additional copies or for documents to be delivered, you may be responsible for those fees. There are some exceptions, such as when a client can show that the documents are necessary, they are unable to pay the fees, and they may face a negative impact without the documents.

DISABILITY RIGHTS NEW YORK CONTACT INFORMATION

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Albany, New York 12207
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25 Chapel Street, Suite 1005
Brooklyn, New York 11201
Fax: 718-797-1161

Rochester:

44 Exchange Blvd., Suite 110
Rochester, New York 14614
Fax: 585-348-9823

Mail@DRNY.org • www.DRNY.org

Toll free: 1-800-993-8982 • Voice: 518-432-7861 • TTY: 518-512-3448

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