

Complaint Considerations

When and How You Can Complain About a Lawyer or Judge

How many times have you heard one lawyer say of another: “I’m going to report him to the Disciplinary Board”? Or, a lawyer griping about a judge and wondering out-loud who to report him to?

For example, suppose you believe your adverse counsel in a case had an *ex parte* communication with a judge, or made a misrepresentation to the court? Suppose you’ve learned that the judge who tried your case or motion had a conflict of interest that was not disclosed.

When and how can you complain about another lawyer’s conduct to the Disciplinary Board, an arm of the Supreme Court of Pennsylvania? How and to whom can you complain about a judge’s conduct?

Pennsylvania Rule of Professional Conduct 8.4 sets forth what constitutes misconduct by a lawyer to do:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The Comments remind us that a lawyer cannot do these things, or help someone else to do it. Illegal conduct



reflects adversely on a lawyer’s fitness to practice law, such as offenses involving fraud or moral turpitude. A pattern of offenses can indicate indifference to legal obligation.

Rule 8.3 says when professional misconduct has to be reported (in other words, when it is mandatory, not permissive):

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall inform the appropriate authority.

Note that subsection (c) says disclosure is not required if information is obtained when a judge or lawyer is participating in an approved lawyers assistance program (such as for substance or gambling abuse).

The Comments speak of a lawyer’s obligation to report, so it can be said that the failure to report might itself be a violation. Making a report may violate the lawyer’s duties of confidentiality under Rule 1.6. Hence, the client’s informed consent must be obtained. This means you must explain all the ramifications to the client, and the client must approve your making the complaint.

To avoid minor complaints, or the use of a complaint as leverage while handling a matter, the duty to report involves only misconduct that raises a substantial question as to the lawyer’s

honesty, trustworthiness or fitness as a lawyer. There must be actual knowledge of the misconduct.

The duty to self-report (for example, if you clearly missed an applicable statute of limitations), or to report a violation by an attorney not on active status (particularly if under suspension or disbarment), are set forth in the Pennsylvania Rules of Disciplinary Enforcement.

Experience demonstrates that the Disciplinary Board is not likely to investigate a complaint, or will defer investigation, if the matter complained of is in litigation between the complaining and the complained-of lawyers, or if the conduct is before a court for adjudication (such as on a motion for sanctions).

As for judges, there is a Pennsylvania Code of Judicial Conduct, with seven canons, and a Court of Judicial Discipline, with a Judicial Conduct Board that initiates proceedings for formal charges, and many official rules for those proceedings, the members and appeals.

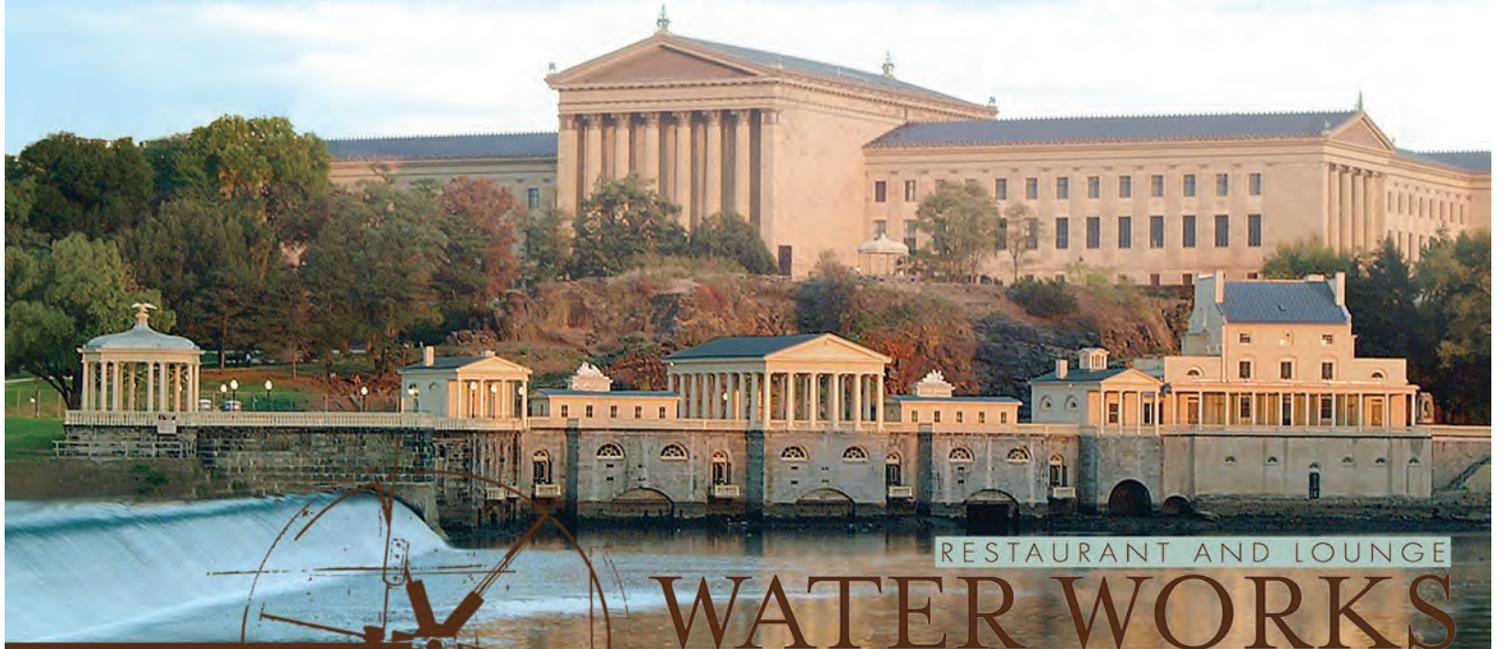
Your complaint goes to the Judicial Conduct Board. Keep in mind the R.1.6 constraint, so that client informed consent may be needed. Although the Board and court take these seriously, response and disposition are not swift, so filing a complaint should take into consideration possible ongoing proceedings before that judge.

Yes, there are remedies for your grievances, but all of the above factors should be taken into account before doing anything rash. ■

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