



ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

ADMINISTRATIVE AND PROCEDURAL GUIDELINES

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**ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
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Our Mission

The Attorney Grievance Commission of Maryland is dedicated to protecting the public and maintaining the integrity of the legal profession. The Commission, through the Office of Bar Counsel, seeks to encourage and promote the ethical practice of law and the highest standards of professionalism by members of the Bar. In carrying out their functions of evaluating complaints and enforcing ethical standards for lawyers, the Commission and Bar Counsel strive for fairness and equity.

SECTION 1. Definitions.

- 1.1.** The terms used in these Administrative and Procedural Guidelines have the same meaning as those in Maryland Rules, Title 19, Chapter 700 (the “Maryland Rules”).
- 1.2.** The following terms have the meaning set forth hereunder, except as expressly otherwise provided or as may result from necessary implications:
 - 1.2.1.** “Recommendation” means the recommendation made to the Commission by Bar Counsel pursuant to Maryland Rule 19-714 or the Peer Review Panel pursuant to Maryland Rule 19-720(e).
 - 1.2.2.** “Respondent” has the same meaning as “attorney” as defined in Maryland Rule 19-701(b).

SECTION 2. Purpose and Policies.

- 2.1.** These Administrative and Procedural Guidelines are adopted by the Commission and approved by the Court of Appeals.
- 2.2.** These Administrative and Procedural Guidelines shall be read in conjunction with the Maryland Rules. In case of conflict, the Maryland Rules prevail.
- 2.3.** No member of the Commission nor any partner, associate, or attorney affiliated with a law firm of a member of the Commission may represent a Respondent or a Complainant during the Commission member's term.
- 2.4.** No member of the Peer Review Committee, nor any partner, associate, or attorney affiliated with a law firm of a member of the Peer Review Committee may represent a Respondent in connection with a disciplinary proceeding during the Peer Review Committee member's term. No member of the Peer Review Committee may represent a Complainant in connection with any disciplinary proceeding during the member's term. If a partner, associate, or attorney affiliated with a law firm of a member of the Peer Review Committee represents a Complainant in connection with a disciplinary proceeding, the member shall not participate directly or indirectly in the representation or proceeding.
- 2.5.** No member of the Commission or the Peer Review Committee may participate as a member of the Commission or the Peer Review Committee with respect to any complaint which may be filed against him or her, his or her associates or partners, or any attorney affiliated with his or her law firm.
- 2.6.** A member of the Peer Review Committee who is the subject of an open docketed complaint shall not serve on a Peer Review panel until final resolution of the complaint.
- 2.7.** No person shall be deemed ineligible to serve on the Commission or the Peer Review Committee on account of such person's race, color, religion, age, sex, marital status, national origin, physical or mental disability, marital or family status, genetic information, gender identity or expression, sexual orientation, political affiliation, or any other characteristic protected by state or federal law.
- 2.8.** Pursuant to Maryland Rule 16-806, the Commission, Bar Counsel, and the Executive Counsel and Director are subject to the following Maryland Judicial Branch policies: (1) Policy Prohibiting Discrimination, Harassment and Retaliation; (2) Policy on Accommodations of Disabilities; (3) Policy on Religious Accommodation; (4) Policy on Employment of Relatives; and (5) Policy on Confidentiality.
- 2.9.** Salaries and benefits accruing to all employees shall be established by the Commission on the recommendation of Bar Counsel and the Executive Counsel and Director as to his or her staff, respectively. Salaries and benefits shall be consistent with the standards and guidelines promulgated by the State Court Administrator and the Court of Appeals and

shall be submitted with the annual budget or an amendment to the budget.

- 2.10.** Subject to the approval of the Commission, Bar Counsel and the Executive Counsel and Director shall establish policies as to work hours, holidays, leave, and job descriptions for their employees consistent with the standards and guidelines promulgated by the State Court Administrator and the Court of Appeals.
- 2.11.** Subject to approval of the Court of Appeals, the Commission shall determine the location of its offices and shall lease or otherwise procure office space.
- 2.12.** Policy decisions shall be reviewed and approved by the Commission and implemented by Bar Counsel and the Executive Counsel and Director under the supervision of the Commission.

SECTION 3. The Attorney Grievance Commission.

3.1. *Meetings.*

- 3.1.1.** Pursuant to Maryland Rule 19-702(g), the presence of seven (7) members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven (7) members is required for all actions, including all decisions, taken by the Commission other than adjournment of a meeting for lack of a quorum.
- 3.1.2.** The Chair shall preside at all meetings of the Commission and shall perform duties prescribed by the Maryland Rules and these Guidelines.
- 3.1.3.** The Vice-Chair shall perform the duties of the Chair in his or her absence and shall perform other duties as the Chair or the Commission directs.
- 3.1.4.** The Treasurer shall be members of the Commission and shall be elected by the Commission.
- 3.1.5.** The Executive Counsel and Director shall keep a record of Commission proceedings, shall be the custodian of all Commission records and shall perform such other duties as the Chair or the Commission directs.
- 3.1.6.** The Commission shall meet regularly, either in-person or by telephone or video conference, at least ten times each year at a time and place determined by the Chair or Commission.
- 3.1.7.** Special meetings may be called by the Chair or by any four (4) members, provided reasonable notice is given to all members by U.S. mail, telephone, or electronic mail.
- 3.1.8.** Robert's Rules of Order Newly Revised (most recent edition) shall govern the conduct of all meetings.

3.2. *Commission Funds.*

- 3.2.1.** The Commission shall prepare and maintain an up-to-date Accounting Manual. The Accounting Manual shall contain all policies regarding Commission Funds including accounting, bookkeeping, payroll, employee benefits and liabilities, reconciliations, financial reporting, budgeting, audits, procurement and other financial policies adopted by the Commission.
- 3.2.2.** The Commission, on the recommendation of the Treasurer, shall review and approve annually any amendments to the Accounting Manual.

3.3. Recommendations, Action by the Commission.

- 3.3.1. Submission to the Commission.** For purposes of this Section, submission of a recommendation to the Commission shall mean: (1) Bar Counsel's recommendation and submission to the Executive Counsel and Director of such parts of the file as Bar Counsel deems necessary pursuant to Maryland Rule 19-714, or (2) the Peer Review Panel's recommendation submitted pursuant to Maryland Rule 19-720(e).
- 3.3.2. Timing.** Unless the time is extended by the Commission Chair for good cause, within sixty (60) days of the submission, the Commission shall take such action as it deems appropriate pursuant to the Maryland Rules. Only one extension may be granted, not to exceed thirty (30) days.
- 3.3.3. Dismissal.** If the Commission rejects the recommendation that the complaint be dismissed or dismissed with a letter of cautionary advice or letter of admonition, it may: (1) direct Bar Counsel to take other action pursuant to Rule 19-714; or (2) take any other action permitted by Maryland Rule 19-720(f). If the Commission determines that a dismissal with a letter of cautionary advice or letter of admonition is appropriate but rejects the text of the proposed letter of cautionary advice or letter of admonition, it may amend the text or direct Bar Counsel to amend the text.
- 3.3.4. Reprimand.** If the Commission rejects the recommendation of a proposed reprimand, it may: (1) direct Bar Counsel to file a statement of charges pursuant to Rule 19-718; or (2) take any other action permitted by Maryland Rule 19-720(f). If the Commission determines that a reprimand is appropriate but rejects the text of the proposed reprimand, it shall notify Bar Counsel and/or the Respondent, as appropriate, of any amendment(s) to the reprimand required as a condition for approval. If the amendment(s) are not accepted within fourteen (14) days of the Commission's notification, the reprimand will be deemed rejected.
- 3.3.5. Conditional Diversion Agreement.** If the Commission rejects the recommendation of a proposed Conditional Diversion Agreement, with or without a reprimand, it may: (1) direct Bar Counsel to take other action pursuant to Rule 19-714; or (2) take any other action permitted pursuant to Maryland Rule 19-720(f). If the Commission determines that a Conditional Diversion Agreement is appropriate but rejects the text or terms of the Agreement proposed, it shall notify the Respondent and Bar Counsel of any amendment(s) to the Agreement required as a condition for approval. If, within fourteen (14) days of the Commission's notification, either party rejects the amendment(s), the Conditional Diversion Agreement will be deemed rejected.
- 3.3.6. Permanent Retired Status.** If the Commission rejects the recommendation that the Respondent be placed on permanent retired status, it shall direct Bar Counsel to take other action pursuant to Rule 19-714. If the Commission determines that

permanent retired status may be appropriate but requires additional information or documentation, it shall notify the Respondent and Bar Counsel. If, within the time set by the Commission, the additional information or documentation is not submitted, the recommendation will be deemed rejected.

- 3.3.7.** *Petition for Disciplinary or Remedial Action.* If the Commission rejects a recommendation that a Petition for Disciplinary or Remedial Action be filed, it may take any other action permitted pursuant to Maryland Rule 19-720(f).

SECTION 4. Bar Counsel.

- 4.1. Bar Counsel shall prepare and maintain an up-to-date employee handbook, which shall contain, in addition to material selected in the discretion of Bar Counsel, all employment policies adopted by the Commission.
- 4.2. Bar Counsel shall prepare each Annual Report of the Commission to be completed for presentation and approval by the Commission on or before September 30 each year.
- 4.3. Bar Counsel shall maintain a confidential record and file for each complaint. Each complaint file shall have a docket indicating the date and nature of each action taken thereon. Bar Counsel also shall maintain a confidential database of the names of attorneys against whom complaints are filed referenced by the complaint number. Statistical data shall be accumulated in a manner prescribed by the Commission. All records shall be maintained in a secure location and shall be handled with confidentiality.
- 4.4. For purposes of this section, destruction of paper files after such files have been transferred to electronic storage is permitted immediately after such transfer. Unless otherwise authorized by the Commission Chair, complaint files shall be destroyed pursuant to the following schedule:
 - 4.4.1. Except for complaints involving allegations of the unauthorized practice of law, complaints closed by Bar Counsel pursuant to Maryland Rule 19-711(b)(2) or (3) or dismissed by the Commission pursuant to Maryland Rule 19-715: 3 years from the date of the last action on the file.
 - 4.4.2. Complaints dismissed with a warning, a letter of cautionary advice, or a letter of admonition: 6 years from the date of the last action on the file.
 - 4.4.3. Reports of overdrafts or dishonored instruments received by Bar Counsel pursuant to Maryland Rule 19-413: 5 years from the date of the last action on the file.
 - 4.4.4. In all other cases, including complaints involving the unauthorized practice of law, the files shall not be destroyed.
- 4.5. In addition to the duties of Bar Counsel specified in the Maryland Rules and in these guidelines, Bar Counsel shall conduct his or her office in accordance with policies established by the Commission.
- 4.6. Bar Counsel shall report in the manner prescribed by the Commission at each Commission meeting on the status of all pending docketed complaints and charges.
- 4.7. Bar Counsel shall give special attention to all cases which are not being processed with reasonable dispatch and shall regularly report thereon to the Commission or Commission Chair.

4.8. *Review of Complaint, Initial Inquiry.*

- 4.8.1.** Bar Counsel may provide assistance to an individual desiring to file a complaint pursuant to Maryland Rule 19-711(a) and may furnish forms for that purpose.
- 4.8.2** Bar Counsel may, but is not required to, investigate any complaint which does not meet the strict requirements of Maryland Rule 19-711.
- 4.8.3.** Bar Counsel may defer an inquiry under Maryland Rule 19-711(b)(1) or a determination as to whether to docket a complaint pursuant to Maryland Rule 19-711(b)(3) if Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency. Bar Counsel shall notify the complainant and the Commission of that decision. Bar Counsel shall report to the Commission on the status of deferred inquiries every six (6) months.
- 4.8.4.** Bar Counsel's determination that there is an insufficient basis to demonstrate misconduct or incapacity or that the overall circumstances do not warrant an investigation pursuant to Maryland Rule 19-711(b)(3) is final. Upon receipt of additional information, Bar Counsel may, but is not required to, review and/or reopen the complaint.

4.9. *Docketed Complaints.*

- 4.9.1.** Upon request of Bar Counsel, the Commission may order that a docketed complaint be placed on the deferred docket pursuant to Maryland Rule 19-711(b)(5). Bar Counsel shall report to the Commission every ninety (90) days the status or resolution of the other action or investigation—Bar Counsel or the Commission may remove a complaint from the deferred docket at any time. If Bar Counsel removes a matter from the deferred docket, Bar Counsel shall notify the Commission. Subject to Maryland Rule 19-711(b)(4), Bar Counsel shall complete the investigation within 120 days after removal from the deferred docket.
- 4.9.2.** Upon completion of Bar Counsel's investigation, Bar Counsel shall take such action as is set forth in Maryland Rule 19-714 within thirty (30) days unless an extension of time is approved by the Commission Chair.
- 4.9.3.** Unless the time is extended by the Commission Chair for good cause, within ninety (90) days of the receipt by Bar Counsel of the direction from the Commission to file charges against a Respondent, Bar Counsel shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Maryland Rule 19-721 or a Joint Petition pursuant to Maryland Rule 19-736.

SECTION 5. Executive Counsel and Director.

- 5.1.** The Executive Counsel and Director shall be a member of the Maryland Bar for no less than five (5) years and shall have the powers and duties set forth in Maryland Rule 19-702(e) and in the position description on file with the Commission.
- 5.2.** The Executive Counsel and Director shall not represent any Respondent or Complainant with respect to any disciplinary proceeding.
- 5.3.** The Executive Counsel and Director shall prepare and present at each Commission meeting a written agenda and report, as directed by the Commission, on recommendations filed with the Commission pursuant to Maryland Rules 19-714 and 19-720. The Executive Counsel and Director may include in his or her report a recommendation of approval or disapproval of the action sought to be taken by the Commission and the reasons therefor. A copy of the agenda and all reports shall be provided to each member of the Commission, if practicable, no later than ten (10) days before the Commission meeting.
- 5.4.** The Executive Counsel and Director shall receive on behalf of the Commission the recommendations of Bar Counsel filed pursuant to Maryland Rule 19-714 and each Peer Review Panel filed pursuant to Rule 19-720. The Executive Counsel and Director shall provide a copy of each recommendation to each member of the Commission, if practicable, no later than ten (10) days prior to the Commission meeting.
- 5.5.** The Executive Counsel and Director may immediately destroy paper files in his or her possession after such files have been transferred to electronic storage. All other files and documents may be destroyed one (1) year after the date of the last action by the Commission or the Executive Counsel and Director, whichever is later.

SECTION 6. Peer Review.

- 6.1.** Bar Counsel shall serve a copy of this section of the Administrative and Procedural Guidelines with the Statement of Charges on the Respondent or provide the Respondent with the link to the Administrative and Procedural Guidelines maintained on the Commission's website.
- 6.2.** Forms used by the Peer Review Committee shall be prepared in consultation with and shall be approved by the Chair of the Peer Review Committee and by the Commission. All forms used by Bar Counsel shall be approved by the Commission in advance of use.
- 6.3.** The Peer Review Committee Chair may immediately destroy paper files in his or her possession after such files have been transferred to electronic storage. All other files and documents may be destroyed one (1) year after the date of the last action by the Commission or the Executive Counsel and Director, whichever is later.
- 6.4.** *Extension Requests.*
 - 6.4.1.** If the Peer Review Committee Chair determines that the appointment of a Peer Review Panel cannot occur within thirty (30) days after receipt of the Statement of Charges, he or she shall request an extension of time from the Commission Chair. If the Commission Chair grants an extension of time within which to appoint a Peer Review Panel, said extension shall not be for a period greater than thirty (30) days.
 - 6.4.2.** If the Peer Review Committee Chair or the Peer Review Panel Chair determines that the meeting cannot be held within sixty (60) days after appointment of the Panel, he or she shall request an extension of time from the Commission Chair. If the Commission Chair grants an extension of time within which to hold the Panel Meeting, said extension shall not be for a period greater than sixty (60) days.
 - 6.4.3.** If the Panel determines that it cannot submit its recommendation to the Commission within thirty (30) days after conclusion of its meeting, the Panel Chair shall request an extension of time from the Commission Chair. If the Commission Chair grants an extension of time within which to submit the Panel recommendation, said extension shall not be for a period greater than thirty (30) days.
 - 6.4.4.** The Executive Counsel and Director shall receive all extension requests on behalf of the Commission Chair. The extension request shall contain a brief explanation for the request and specify the extension sought.
- 6.5.** *Meeting.*
 - 6.5.1.** Except under extraordinary circumstances, the Panel shall not hear from any person other than the Respondent, the complainant and Bar Counsel, unless Bar Counsel or the Respondent has requested, in writing, at least ten (10) days prior to the Panel

Meeting, that the Panel hear from such person(s). The Panel need not grant such request(s).

6.5.2. At the commencement of the Peer Review Meeting, the Panel Chair shall state:

a. The meeting is held pursuant to Maryland Rules 19-719 and 19-720 and that it is informal in nature.

b. There is and shall be no record, recording, or transcription of the proceedings.

c. Bar Counsel, Respondent and each complainant present are permitted to explain their positions and to offer such information and documents as the Panel finds relevant.

d. The Panel is not bound by the rules of evidence, that any questioning of the Respondent and the complainant(s) shall be at the Panel's discretion and that the Panel shall respect all lawful privileges.

e. If the Panel determines that the Statement of Charges has a substantial basis, it shall take such action as is permitted by Maryland Rule 19-720(c)(2).

f. If the Respondent has not filed a timely response to the Statement of Charges and is not present, the Panel may accept as true, the information provided by Bar Counsel and/or the complainant.

g. The meeting is confidential and that nothing which transpires during the course of the meeting shall be disclosed, except by members of the Panel consistent with their obligations pursuant to the Maryland Rules.

6.5.3. The Panel Chair, in consultation with the other members of the Panel, shall determine when the meeting is concluded. Upon the conclusion of the meeting, the Panel may meet in private to deliberate.

6.6. *Recommendation.*

6.6.1. If the Panel determines, by a majority vote of its members, that the Statement of Charges has a substantial basis and that there is reason to believe that the Respondent has committed professional misconduct or is incapacitated, and that a reprimand and/or conditional diversion agreement is the appropriate recommendation, it shall:

a. *Reprimand.* If the Panel determines that a reprimand is the appropriate recommendation, , the Panel shall inform Bar Counsel and the Respondent. If Bar Counsel and the Respondent agree, then the contents of the proposed reprimand shall be presented to the Panel, and if satisfactory to the Panel, the recommendation

of the Panel to the Commission shall include and incorporate the contents of the proposed reprimand. If Bar Counsel and the Respondent reject the Panel's determination that a reprimand is the appropriate recommendation, the Panel shall not make said recommendation to the Commission. If Bar Counsel rejects but the Respondent accepts the Panel's determination that a reprimand is the appropriate recommendation, the Panel shall make said recommendation to the Commission with the contents of the proposed reprimand executed by the Respondent.

b. *Conditional Diversion Agreement.* If the Panel determines, by a majority vote of its members, that the attorney should enter into a Conditional Diversion Agreement, either with or without a reprimand, the Panel shall inform Bar Counsel and the Respondent. If Bar Counsel or the Respondent rejects the determination that a Conditional Diversion Agreement be adopted, the Panel shall not make said recommendation to the Commission. If Bar Counsel and the Respondent agree to a Conditional Diversion Agreement, then the contents of the Conditional Diversion Agreement, and any proposed reprimand, shall be presented to the Panel, and if satisfactory to the Panel, the recommendation of the Panel to the Commission shall include and incorporate the contents of the Conditional Diversion Agreement.

c. The Panel may allow up to ten (10) working days for the parties to present to the Panel an executed proposed reprimand or Conditional Diversion Agreement. If the parties fail to present an executed proposed reprimand or Conditional Diversion Agreement within ten (10) working days, the Panel shall not recommend a Conditional Diversion Agreement but may recommend a reprimand with the agreement of the Respondent or take such other action as it deems appropriate consistent with the Maryland Rules and these Guidelines.

6.6.2. The recommendation of the Peer Review Panel and any dissent shall be in writing and directed to the Executive Counsel and Director who shall receive the recommendation on behalf of the Commission. Upon receipt of the recommendation the Executive Counsel and Director shall provide a copy of the recommendation and any dissent to Bar Counsel and the Respondent.

6.6.3. The recommendation of the Panel shall contain its recommendation for action on each complaint addressed by the Panel and shall state:

a. *Dismissal.* In the case of a recommended dismissal, the reason for the dismissal.

b. *Dismissal with Letter of Cautionary Advice or Letter of Admonition.* In the case of a recommended dismissal with a letter of cautionary advice or letter of admonition, the nature of the misconduct for which the Respondent should be advised or admonished and the Rule or Rules of Professional Conduct determined to have been violated by the Respondent.

c. *Reprimand.* In the case of a recommended reprimand, the nature of the

misconduct for which the Respondent should be reprimanded and a copy of any proposed reprimand executed by the Respondent, and when both parties are in agreement, by the Respondent and Bar Counsel.

d. *Conditional Diversion Agreement.* In the case of a recommended Conditional Diversion Agreement, a copy of a proposed Conditional Diversion Agreement executed by the Respondent and Bar Counsel.

e. *Petition for Disciplinary or Remedial Action.* In the case of a recommendation that a Petition for Disciplinary or Remedial Action be filed, a brief description of the Respondent's alleged misconduct. The Panel may, but need not, designate the Rules of Professional Conduct violated by the Respondent .

f. *Incapacity.* In the case of any determination that the Respondent is incapacitated, the nature of such incapacity.