

## **Michigan Supreme Court's Flawed System for Attorney Discipline**

The most compelling reason to enact the *Golden Legal Oversight Amendment* is the fact that the Michigan Attorney Grievance Commission's (MAGC) annual reports state that about 3,600 complaints are filed each year against attorneys in Michigan. The MAGC annually initiates serious formal disciplinary action on about 100 of the complaints, which is an astonishing low number of disciplinary actions considering the number of complaints.

What about the majority of the complaints that are secretly filed away? The public knows nothing about the nature of any of these complaints, because the Michigan Supreme Court has formulated rules to keep all files confidential unless the Commission proceeds to take formal action against an errant attorney. The public will never know how many times the Michigan Supreme Court has allowed the integrity of the legal system to be breached without proper disciplinary action being applied, because the files are buried. The Michigan Attorney Grievance Commission's 2009 annual report stated that 500 requests for reconsideration were filed with the Commission to open arbitrarily closed cases in 2009. The annual reports state that senior staff members perform in house quality control by reviewing selected cases in which a reconsideration was filed. There are no objective results published from the biased in house reviewers. In 2009 sixteen unsatisfied complainants filed an appeal costing a filing fee of \$375, plus attorney fees to the Michigan Supreme Court for superintending control of the case by the Michigan Supreme Court. Again, no figures are given concerning what happened with these appeals. A Supreme Court Clerk told me that in her thirty years she had not seen an appeal for superintending control win. She told me not to file an appeal. I did and she was right. Furthermore, the rules of secrecy prevent the public from scrutinizing any of the reconsideration requests or Michigan Supreme Court appeals along with the information contained in the individual files of cases that the complainant felt were handled improperly by the Attorney Grievance Commission.

I have published on my web site [www.tagolden.com](http://www.tagolden.com) the two complaints that I filed, and the inadequate and dishonest responses that I received from the Attorney Grievance Commission. My appeal to the Michigan Supreme Court is on my web site. The public should decide if my complaints were handled properly. A very good attorney belittled my efforts and told me my complaints were ignored because I did not have an attorney file my complaints. That would be a very expensive process.

The Michigan Supreme Court has confused the public with the name Michigan Attorney Grievance Commission and the role of the Attorney Grievance Board the Supreme Court appoints to the Commission. The Board of the Attorney Grievance Commission does not have any power to run the Attorney Grievance Commission or its professional staff. The Michigan Supreme Court keeps control by retaining the authority to appoint the grievance administrator and his staff, which have control over all of the complaints that are filed against errant attorneys. The members of the Board are lackeys and yes men of the Michigan Supreme Court. Their role is to automatically approve cases the Grievance Administrator wants to prosecute.

The 2005 annual report of the Attorney Grievance Commission stated, “The Supreme Court also accepted for oral argument and has heard a case on appeal from the ADB (Attorney Discipline Board) involving issues of civility and criticism of judges, and the applicable Michigan Rules of Professional Conduct. The Court’s decision in this matter will undoubtedly provide clarity and assistance in evaluating future analogous matters.” This statement was in reference to a vendetta the Michigan Supreme Court had against attorney Geoffrey Fieger concerning derogatory comments he made in 1999 about some judges who ruled against him. This complaint dragged on for years. Many resources were expended by the Attorney Grievance Commission, Attorney Discipline Board, Michigan Supreme Court, and the Michigan Attorney General at the expense of the public, taxpayers, and legitimate breaches of the legal system. In 2007 a Federal Judge ruled that the Michigan Supreme Court acted unconstitutionally on the matter of how the Michigan Supreme Court mandated respect for the Michigan legal system. This case concerning Fieger clearly demonstrates the inappropriate priorities and conflicts of interest of the Michigan Supreme Court in disciplining attorneys in Michigan.

The 2006 annual report of the Attorney Grievance Commission stated, “Desiring to increase the attention given to the more serious files, and maximizing the efficiency and expediency given to the less serious files became a fundamental goal.” This is the explanation why the vast majority of complaints are quickly closed. The priority of the grievance administrator is to close 90% of the complaints without due process. The web site of the Attorney Grievance Commission states that the professional staff consists of 13 attorneys and 15 support staff including three investigators. A little math reveals that with about 3,600 complaints received annually each staff attorney would handle about 280 complaints per year or about 1.25 per working day.

The Attorney Grievance Commission is entitled to assess disciplined attorneys for the actual expenses incurred during the disciplinary process of that attorney. Actual expenses are to be logged by MAGC’s staff attorneys. The web sites of the various boards and commissions involved in the disciplinary process do not reveal any logs or the hourly rate for staff attorneys. The Attorney Discipline Board’s **2006** Annual report stated that 93 attorneys were disciplined and the Board collected \$109,484 from the disciplined group to cover incurred expenses. At \$100 per hour the \$109,484 would equal 1,095 hours of billed attorney time, at \$150 per hour 730 hours would be billed, and at \$200 per hour 548 hours would be billed. The number of hours billed seems to indicate that one staff attorney could have done all of the work while working part time. The average cost assessed per disciplined attorney was \$1,177. The Attorney Discipline Board’s **2010** Annual report indicates the average cost assessed per disciplined attorney was 1,037. The cost assessment per case seems rather low considering legal fees in general. Is the Attorney Grievance Commission undercharging disciplined attorneys? The figures and explanations given in the annual reports are a disgrace, and show the Michigan Supreme Court’s lack of respect for the citizens of Michigan.

The MAGC’s annual reports indicate that formal action is taken against approximately 200 attorneys a year. The ADB’s 2006 report stated that 93 attorneys were disciplined,

or about half of the number stated by the MAGC. This is because in half of the cases reported by the MAGC the discipline consisted of a confidential reprimand, a meaningless slap on the wrist. Only the most *severe* cases are sent to the Attorney Discipline Board for *meaningful* discipline.

**Michigan Court Rule 9.105 states, “Discipline for (attorney) misconduct is not intended for punishment of wrongdoing.” It is strange that in a legal system that punishes lawbreakers the Michigan Supreme Court exempts errant attorneys that break the rules from punishment. Fines are not levied against disciplined attorneys.**

The discipline is too light in many of the cases where the attorney is actually disciplined by the Attorney Discipline Board (ADB). The ADB is where the most serious ethical offenders are sent for trial, judgment, and discipline. A recent example is the light discipline the attorneys in the Kwame Kilpatrick scandal received. The scandal exposed very serious breaches concerning the integrity of the Michigan legal system. In this scandal the actions of the legal folks the Michigan Supreme Court appointed to protect *we the people* were a farce. It is interesting that Kwame Kilpatrick’s judge made Kwame resign from the Michigan Bar Association immediately upon his felony conviction for perjury because he feared the Michigan Attorney Grievance Commission would not automatically revoke Kwame’s law license as required by court rules.

The Michigan Supreme Court is responsible for protecting the integrity of the Michigan legal system, but does a miserable job because of conflicts of interest. Attorneys cannot police other attorneys. They have never done an adequate job policing themselves, and never will. Unfortunately, the Michigan Constitution does a great disservice to the people of Michigan concerning this matter. The Michigan Supreme Court through its rules of secrecy and absolute control is able to shelter the individual Justices from all scrutiny concerning their role in frustrating the public’s desire to have an ethical legal system. The public is helpless in changing the legal climate with the present Michigan Constitution. The only solution that will give us an honest and ethical legal system is the adoption of the ***Golden Legal Oversight Amendment***. The main feature of the ***Golden Legal Oversight Amendment*** is that an independently elected board will police the legal system.

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