

COMPLAINTS REGARDING THE PERFORMANCE AND CONDUCT OF ASSIGNED ATTORNEYS

I. PREAMBLE

Section 10 of G.L. c. 211D provides that the Committee for Public Counsel Services (“Committee”) shall “monitor and evaluate compliance with the standards and the performance of counsel in its divisions in order to insure competent representation of defendants in all courts of the commonwealth.” Section 10 also provides that the Committee “shall establish a procedure for the review and disposition of client complaints.” In accordance with these mandates, the Committee has established the following procedures for the investigation and disposition of complaints or other allegations regarding inadequate attorney representation, attorney misconduct, or an attorney’s noncompliance with Committee performance standards, guidelines, policies, and other requirements.

II. SCOPE

These procedures apply to a private attorney who is certified to accept assignments under G.L. c. 211D and who is the subject of any of the following:

- A. A complaint that the attorney has failed to provide competent representation to a client to whom he or she is or was assigned.
- B. An allegation that the attorney has engaged in misconduct.
- C. An allegation that the attorney is unable to or has failed to comply with performance standards, guidelines, policies, or other requirements that are contained in the Assigned Counsel Manual or are otherwise promulgated by the Committee, provided that the allegation relates to the attorney’s representation of or relationship with one or more of his or her Committee clients.

(All such complaints and allegations shall hereafter be referred to collectively as “complaints.”) These procedures are not available to an attorney who is not fully certified, or whose certification is provisional, probationary, or temporary.

Notwithstanding these procedures, service on all panels is at the discretion of the Chief Counsel.

III. INVESTIGATION PROCEDURE

A. Complaint Investigations

The Committee staff shall consider any complaint, regardless of the manner in which or the person (including Committee staff) by whom it is submitted. Complaints shall be investigated to the extent and in the manner deemed appropriate by the Chief Counsel or his or her designee.

Subject to staff availability, complaints alleging that an attorney is rendered unable to provide proper client representation due to illness, physical or mental, or substance abuse, or is charged with a crime or is subject to a decision by the Board of Bar Overseers to impose discipline, will be investigated within 15 days, with investigation beginning on the same day as the complaint, except for extension for good cause.

Complaints alleging neglect by failure to communicate with the client will be investigated within 15 days, except for extension for good cause.

All other complaints will be investigated within 30 days, except for extension for good cause. Extensions may be allowed by the Deputy Chief Counsel or Director of Mental Health Litigation.

Notice shall be provided promptly to any attorney subject to a complaint if it is determined that investigation requires consultation with a third party outside CPCS.

B. Interim Remedial Measures

If, at any time, the Chief Counsel or his or her designee determines that interim remedial measures are warranted to ensure that clients are adequately represented, he or she may take any action under subsection D on a temporary basis pending final resolution of the complaint.

C. Attorney Cooperation

The subject attorney shall cooperate fully with requests and inquiries from the Chief Counsel or his or her designee regarding the investigation.

1. If the attorney fails to respond to the complaint, the Chief Counsel or his or her designee may treat such non-response as a voluntary resignation from any panel of which the attorney is a member.
2. If the attorney fails to cooperate fully with the investigation, the Chief Counsel or his or her designee may take any action under subsection D.

D. Complaint Dispositions

Following the complaint investigation, the Chief Counsel or his or her designee may do any of the following:

1. Conclude that no further action is warranted, in which case the matter shall be closed and shall remain confidential.
2. Require remedial action, including but not limited to requiring the attorney to work with a mentor, requiring the attorney to attend continuing legal education programs, or limiting the attorney's caseload or the types of cases to which the attorney can be assigned.
3. Suspend the attorney for a term or remove the attorney from one or more panels, while permitting the attorney to retain some or all of his or her current cases.
4. Suspend the attorney for a term or remove the attorney from one or more panels and reassign some or all of the attorney's cases to other counsel.

The Chief Counsel or his or her designee may not finally dispose of a matter under paragraphs 2, 3, or 4 without first providing the attorney the opportunity to respond to the complaint and notice, under subsection E, of the proposed disposition. This requirement does not apply to interim remedial measures under subsection B.

E. Notice

1. Within two business days after any decision under subsection C1, the Chief Counsel or his or her designee shall notify the attorney of the decision and the basis for the decision.

2. Within 14 days after the any decision under subsection D2, the Chief Counsel or his or her designee shall notify the attorney of the decision and the basis for the decision.
3. Within two business days after any decision under subsection D3 or D4, the Chief Counsel or his or her designee shall notify the attorney of the decision and the basis for the decision. If the decision is one that may be reviewed under subsection F2, the notice shall also include a copy of these procedures.
4. Any notice required under this subsection shall be by certified mail and e-mail.

F. Scope of Review

1. A decision under subsection C1, C2, or D2 is final and is not subject to review.
2. Except for suspensions or removals under subsection C2, an attorney who is the subject of a suspension or removal under subsection D3 or D4 may request that the suspension or removal be reviewed by the Training and Qualifications Subcommittee (“Subcommittee”) under section IV.

IV. SUBCOMMITTEE REVIEW

A. Review Process

The following procedures govern matters subject to review under section III, subsection F2:

1. In order to obtain a review of a decision, the attorney must send a letter (“Review Request”) to the Chief Counsel requesting that the Subcommittee review the decision. The Review Request must be sent by certified mail and be postmarked within 20 days after the date of mailing of the notice under section III, subsection E3.
2. Within 20 days after receiving the Review Request, the Chief Counsel or his or her designee shall e-mail the attorney a written summary of the investigation (“Investigation Report”). The

Investigation Report shall include the information that formed the basis of the decision under section III, subsection D3 or D4, including any documentary information.

3. Within 20 days after the date on which the Investigation Report is e-mailed, the attorney shall provide the Chief Counsel or his or her designee a written response (“Attorney Response”) to the Investigation Report. The Attorney Response must state the bases for the attorney’s disagreement with the findings and recommendations of the Investigation Report. The Attorney Response may include any relevant documents. The attorney’s failure to provide a timely Attorney Response shall result in dismissal of the attorney’s Review Request.
4. The Chief Counsel or his or her designee may prepare a Supplemental Report to address issues raised in the Attorney Response. This Supplemental Report shall be e-mailed to the attorney at least ten days before the matter is considered by the Subcommittee.
5. All matters shall be decided by the Subcommittee on the papers described in this section, unless the Chairperson of the Subcommittee determines that a hearing is warranted. If the Chairperson of the Subcommittee determines that a hearing is warranted, the Chairperson shall notify the Chief Counsel or his or her designee, who shall, after consultation with the attorney and the members of the Subcommittee, schedule a date for hearing.

B. Subcommittee Hearing

1. The attorney may be represented by counsel at a hearing before the Subcommittee.
2. Upon request by the Subcommittee, the Chief Counsel or his or her designee shall orally summarize the complaint and the results of the investigation and state the decision made under section III, subsection D3 or D4.
3. The attorney shall limit his or her oral response to the issues raised in the documents submitted under subsection A.

4. The Chief Counsel or his or her designee shall limit his or her rebuttal to the issues addressed by the attorney in his or her oral response.
5. The attorney and the Chief Counsel or his or her designee, at the discretion of the Subcommittee, may present witnesses whose testimony is relevant to the issues raised in the documents submitted under subsection A. The Subcommittee may exclude any witness or proffer if the testimony would be irrelevant or duplicative. The parties may provide affidavits from witnesses in lieu of live testimony, but only if the affidavits have been submitted to the Subcommittee and the opposing party at least ten days before the hearing.

C. Subcommittee Decision

1. Any decision by the Subcommittee must be made by a majority of the members considering the matter. The Subcommittee shall decide the matter within 20 days after receiving the papers or, if a hearing is held, within 20 days after the hearing.
2. The standard of review to be applied by the Subcommittee to actions of the Chief Counsel or his or her designee shall be whether the action has a reasonable basis. The Subcommittee's decision shall be final.
3. The Subcommittee's decision shall be in writing and provided to the attorney and the Chief Counsel.