Some statistics  (FY2019)

- 40,393 attorneys licensed to practice in Maryland
- 1,657 complaints received
- 278 complaints docketed for investigation
- 26 disbarments
- 20 suspensions
- 30 reprimands
- 9 conditional diversion agreements
Most Common Rule Violations

Rule 1.1 (competence): An attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 (diligence): An attorney shall act with reasonable diligence and promptness in representing a client.
Most Common Rule Violations

Rule 1.4 (communication): An attorney shall
• Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required;
• Keep the client reasonably informed about the status of the matter;
• Promptly comply with reasonable requests for information;
• Explain a matter to the extent reasonably necessary to permit the client to make informed decisions.
Tips Relating to Competence, Diligence and Communication

- Screen difficult clients;
- Screen cases that are beyond your practice area or get competent co-counsel;
- Make lists, keep calendars, keep up with filing, keep track of your time;
- When, and how, to respond to clients;
- Set expectations early and be consistent;
- Tips for dealing with the demanding client.
Second Most Common Rule Violations

**Rule 1.5 (fees):** An attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.

**Rule 1.15 (safekeeping property):** An attorney shall hold property of clients or third persons that is in an attorney’s possession in connection with a representation separate from the attorney’s own property.
Tips for Setting and Collecting Fees

• Communication
• Retainer Agreements
• Communication
• Regular billing practices
• Communication
• Replenishment of retainer amounts when appropriate
• Communication
Flat Fees

• What are the benefits? Risks?
• Are they deposited in your trust account or operating account?
• When is the fee earned?
• What's the difference between a flat fee and an engagement fee?
Flat Fees Belong in Your Trust Account Unless...

- **Rule 1.15 (a):** An attorney shall hold property of clients or third persons that is in an attorney’s possession in connection with a representation separate from the attorney’s own property.

- **Rule 1.15 (c):** Unless the client gives informed consent, confirmed in writing, to a different agreement, an attorney shall deposit legal fees and expenses that have been paid in advance into a trust account and withdraw only when the fees are earned or expense incurred.
Flat Fees and Informed Consent

- **Informed consent** denotes the agreement by a person to a proposed course of conduct after the attorney has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. Rule 1.0(f)

- What are the material risks?
- What are the available alternatives?
When are Flat Fees Earned?

- Upon receipt (nonrefundable)?
- When milestones are reached?
- When date has past?
- When hours are spent?
- When the case is concluded?
How and When Can a Fee be Split?

A division of a fee between attorneys who are not in the same firm may be made only if:

• The division is in proportion to the services performed by each attorney or each attorney assumes joint responsibility for the representation; and

• The client agrees to the joint representation and the agreement is confirmed in writing; and

• The total fee is reasonable.
What to do when there is a fee dispute

• Get advice;
• Communicate with the client (or their attorney);
• Attend fee arbitration or mediation;
• When and how to file suit: Interpleader actions and collection cases.
Safekeeping/Recordkeeping

- Rule 1.15 addresses safekeeping requirements
- Maryland Rules 19-407 through 19-410 cover record-keeping:
  - Creation and maintenance of records;
  - Monthly reconciliations;
  - Commingling prohibited;
  - Cash withdrawals prohibited;
Best Practices for Your Trust Account

• Do not authorize a non-attorney to make disbursements
• Do not use a signature stamp
• Do not sign blank checks
• Use different colored checks for your IOLTA and operating accounts
• Daily/weekly/monthly review of account and related records
Other Common Violations: The Cover-up

- Rule 8.4(c): States that it is professional misconduct for an attorney to . . . Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
- Rule 8.1(b): Provides that an attorney, in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.
The Cover-up

- Misrepresentations to the client
- Failure to respond to the client
- Misrepresentations to the Court
- Misrepresentations to Bar Counsel
- Falsification of evidence/documents
Private Conduct and Rule 8.4

• Rule 8.4 provides that it is misconduct for an attorney to:
  (b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney 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
Private Conduct and Rule 8.4

- Examples of private conduct that constitutes a violation of the Rules of Professional Conduct:
  - Certain (most?) types of criminal conduct
  - Tax issues: failure to file, failure to pay, failure to withhold
  - Failure to pay child support
  - Drug use
  - Road rage
  - Misrepresentations on your resume
  - Misrepresentations on campaign materials
Responding to Bar Counsel

• If you receive a letter from Bar Counsel, check your malpractice insurance under the “Supplemental Payment” provision
• Representation provided with **NO** deductible up to a limit
Responding to Bar Counsel

- Wait at least 1 day before doing anything
- Request an extension if needed
- Review all relevant documents, do not rely on your memory
- Write a draft response and have it fully vetted by another attorney who is not involved
- Proofread. Then proofread. Finally, proofread again.
- Respond timely and completely with copies of any relevant documents
- Do not attack the complainant or Bar Counsel or blame others
Other consideration:

• Professionalism and civility
• Issues relating to the youngest/newest members of our bar
• Issues relating to the oldest members of our bar
• Mental health and substance abuse issues
Questions?