

Don't Panic: First Steps to Take if Faced With an Ethics Complaint

BY KIRALYN J. LOCKE AND ARAM V. DESTIEAN

As attorneys, we have a duty to comply with the Rules of Professional Conduct. But what happens when someone alleges you have violated these rules? This article, while not a substitution for legal advice, will highlight some of the important steps an attorney should take when faced with an ethics complaint.

TAKE A DEEP BREATH

Pause. Take a deep breath. This can happen to anyone. The mere fact that somebody has filed a complaint does not mean that you are going to be disciplined.

In law school, many professional responsibility courses focus on blatantly unethical situations. Should you sleep with a client? No. Should you steal money from a client? No. Should you sleep with a client and then steal their money? A resounding no.

In reality, ethical issues are not always that simple. What do you do when you believe the interests of your joint clients are no longer aligned? How do you represent a client who has declining capacity? It is not shameful to have questions on how to handle these types of issues.

Even if you try your best to do everything right, you are not immune from an ethics complaint. Perhaps you have a client who is unhappy with you despite your gold-star ethical representation. If they decide to file a complaint against you, you could be the subject of an ethics investigation.

Despite all of this, there is likely no need to panic. The vast majority of ethics investigations are concluded without discipline or with private discipline. Private discipline means there will not be a public record of the investigation or the outcome. The only parties who are made aware of the private discipline are the complainant, the respondent and the Office of Lawyers Professional Responsibility. So, while private discipline is still discipline, it generally does not become public knowledge.

CONSULT YOUR INSURANCE POLICY AND YOUR ATTORNEY

Once you get over the initial shock of the situation, you should consult with your professional liability insurance policy. This is important for several reasons.

Many policies require attorneys to notify their carrier anytime they become aware of facts or circumstances that could lead to a malpractice claim. Additionally, many policies include assistance for attorneys facing ethics complaints. This assistance oftentimes comes in the form of legal representation.

You may be thinking, “why should I hire an attorney if I am an attorney?” Well, as the old adage goes, “a lawyer who represents himself has a fool for a client.” This is true, but especially so when it comes to an ethics investigation.

In an ethics investigation, an attorney’s conduct is questioned. What do many of us do when our own conduct is questioned? We get defensive. It can be hard to remain impartial and deliver the facts without getting emotional.

An unbiased third party can advocate for you in a way you may be unable to do yourself. Moreover, some attorneys dedicate their entire practice to the law of professional responsibility. Having someone on your side who is familiar with the process can take away a lot of the stress surrounding an already stressful situation. Even if your insurance policy does not cover legal representation, the guidance of an experienced ethics attorney is invaluable.

REVIEW THE COMPLAINT

Regardless of whether you are represented, it is crucial to review and understand the complaint. In an ethics investigation, you have an opportunity to respond to the complaint and tell your side of the story. By understanding who the complainant is and what they are alleging, you will be in a better position to provide a comprehensive response to the investigation.

REVIEW YOUR DOCUMENTATION

Once you have identified the complainant and the specific allegations, gather all documentation related to the situation. This could include emails with the complainant, notes you may have taken during meetings, documents you have drafted on behalf of a client, or even billing statements. The nature of the complaint may guide you on the specifics of what you are looking for.

Situation 1: Let's imagine complainant is a former client, and they are alleging you did not respond to their emails in a timely manner. Here, you would want to focus your review on the communications you had with your client. Have a comprehensive understanding of when they asked you questions and when you provided responses. It may make sense to create a timeline of communication, so you have this information readily available for the investigator.

Aram Desteian is a shareholder with Bassford Remele. Aram represents businesses in complex commercial litigation and counsels and defends lawyers against professional liability claims, including lawsuits, investigations, board proceedings, and hearings involving legal ethics, legal malpractice, and other areas relating to the law of lawyering. Aram is chair of the MSBA professionalism and ethics section and serves as Bassford Remele's general counsel. adesteian@bassford.com; 612.746.1088. Kiralyn Locke is an attorney with Bassford Remele. Kira focuses her practice in the areas of employment law, trust and estate litigation, and professional liability. She counsels her clients on how to navigate and prevent lawsuits. klocke@bassford.com; 612.376.1631.

Participating in an ethics investigation can be an intimidating process.

It is important to remember you do not have to do it alone. If you ever find yourself in this situation, consult with an ethics attorney and take the necessary steps to protect your license.

Situation 2: Let's imagine complainant is your opposing counsel, alleging you were dishonest in your representations to the court. Here, creating a detailed timeline of client communications will not be as helpful as it was in the previous situation. Instead, you would want to review the allegedly false representation made to the court and find documentation to support your representation.

If you are represented by counsel, these are the documents you will want to share with your attorney. If you are unrepresented, these are the documents you should rely upon when responding to the complaint.

COOPERATE WITH THE INVESTIGATION

Finally, the most important thing to do when faced with an ethics investigation is to cooperate with the investigation. This means being forthcoming

with information and being timely in your responses. Generally, an attorney is given two weeks to respond to a notice of investigation. You must respond, even if you think the allegations are unfounded.

Under Rule 8.1(b), an attorney shall not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority." In other words, even if the allegations against you are completely false, you can still be subject to discipline if you fail to adequately participate in the investigation.

Participating in an ethics investigation can be an intimidating process. It is important to remember you do not have to do it alone. If you ever find yourself in this situation, consult with an ethics attorney and take the necessary steps to protect your license.



ARAM DESTIEAN



KIRALYN LOCKE