**When Formal Charges Are Filed Against Me, What Should I Do?**

1. It has been said that the lawyer who represents himself has a fool for his client. Take that advice to heart. Yes, representing yourself is cheaper in the short run. But losing your license is a high price to pay in the end. It is virtually impossible for a lawyer to represent himself or herself properly. There are many top-notch lawyers who represent other attorneys in the disciplinary system.
2. **Notify your malpractice carrier promptly of the complaint.** Your policy may cover all or part of your legal expenses.
3. **Answer the charges within the prescribed time limit of 20 days.** If you need additional time, request an extension of time from the committee chair. The disciplinary counsel and committee chair will rarely oppose reasonable requests for additional time. If you fail to answer, the charges can be deemed admitted against you.
4. **Cooperate and participate in discovery.** Under Louisiana Supreme Court Rule XIX, there are at least 60 days in which to utilize discovery before the matter gets to trial. Few respondents utilize discovery and, as a result, they do not know what evidence disciplinary counsel has against them.
5. **Comply** with the provisions of Louisiana Supreme Court Rule XIX concerning submissions and time limitations. Hearing committee chairs are very similar to judges. They don’t appreciate or respect late answers, dilatory and incomplete discovery, and missing pre-hearing memoranda. Under Rule XIX, both parties are obligated to file pre- hearing memoranda within 10 days of the hearing. Disciplinary counsel always submits it. Respondents often do not. However, the pre-hearing memorandum is one of the first places where respondents can get their side of the story before the hearing committee.
6. **Utilize evidence of mitigation as much as possible.** Mitigating factors can be:

## Absence of a prior disciplinary record.

* + Absence of dishonest or selfish motive.
  + Personal or emotional problems.
  + Timely good faith effort at restitution or rectifying consequences of misconduct.
  + Cooperation with disciplinary proceedings.
  + Inexperience in the practice of law.
  + Character or reputation.
  + Physical or mental disability.
  + Delay in disciplinary proceedings.
  + Interim rehabilitation.
  + Imposition of other penalties or sanctions.
  + Remorse.
  + Remoteness of prior offenses.

**Remorse and restitution are especially important.**

1. Soften aggravating factors as much as possible. Aggravating factors can be:

## Prior disciplinary record.

* + Dishonest or selfish motive.
  + Patterns of misconduct.
  + Multiple offenses.
  + Bad faith obstruction of disciplinary proceedings,
  + Submission of false evidence during the disciplinary process.
  + No remorse.
  + Vulnerability of victim.
  + Substantial experience in the practice of law.
  + No restitution.

**Again, if possible, give restitution and show remorse.**

1. **Consider consent discipline.** Consents can often be worked out with disciplinary counsel provided the respondent will admit to all or part of the misconduct. If the evidence is clearly against you, consent may be a way to get a slightly better sanction.
2. **Show up.** It is amazing how many respondents:

## Fail to file an initial response.

* + Fail to file an answer.
  + Fail to show up for the hearing.

Hearing committees, the Board and the Court take very dim views of the attorney who clearly has abandoned his or her practice. The lawyer who does not care enough about his or her license to participate in the process will not keep that license for long.

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**CHAPTER 8** Ethics and Professionalism