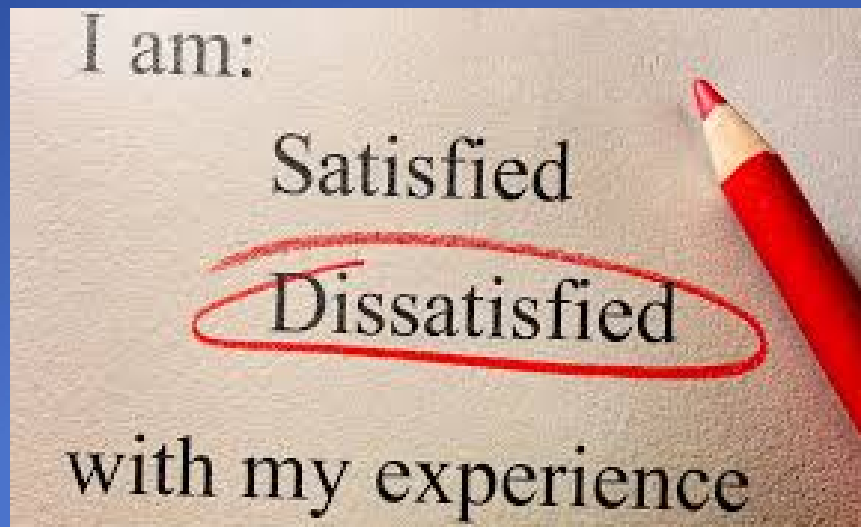


Avoiding Complaints and Navigating the Disciplinary Process



Introduction

- ❑ Approximately 23,000 lawyers in Louisiana
- ❑ Approximately 3,000 - 3,200 complaints are filed each year
- ❑ Most lawyers will get a complaint within 8 - 10 years of practice

Our Panel

- William King, LSBA Professional Programs Counsel, LSBA (Moderator)
- Susan Kalmbach, Deputy Disciplinary Counsel, Office of Disciplinary Counsel
- Richard Lemmler, Ethics Counsel, LSBA
- Damon Manning, Respondent's Counsel, Schiff, Scheckman & White, LLC

Ethics Advisory Service

- Ethics Opinions
- Advertising Opinions
- Published Opinions
- **Contact Ethics Counsel**
 - Richard Lemmler 504-619-0144
rlemmler@lsba.org
 - or
 - Eric Barefield 504-619-0122
ebarefield@lsba.org



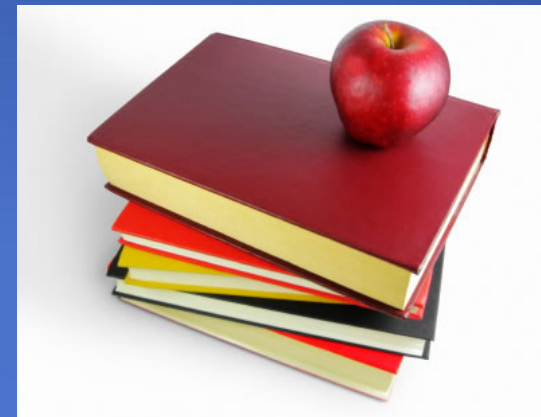
Office of Disciplinary Counsel

Deputy Disciplinary Counsel

- Receives and Screens Complaints
 - Conducts investigations into complaints alleging unethical conduct
 - Makes recommendations at conclusion of investigations
 - Prosecutes cases

Respondent's Counsel

- Introduction
- Type of Practice
- Experience



Disciplinary System



What is a Complaint?

“A complaint can be any information coming to the attention of the Office of Disciplinary Counsel concerning a lawyer subject to the jurisdiction of the agency.”

What's the best way not to get a complaint?

- Advice -
- From Ethics Counsel
- From Disciplinary Counsel
- From Respondent's Counsel

What are the most common complaints/Issues seen?

- As Investigated by ODC Deputy Disciplinary Counsel?
- As defended by Respondent's Counsel?
- As Opinions/Advice sought from LSBA Ethics Counsel?

The Complaint has been made: Screening (Options)

- 1) Dismiss administratively
- 2) Request more information
- 3) Refer to LSBA as a “Relational Referral”
- 4) Refer to LSBA as a “Screening Diversion”
- 5) Open and assign as investigation

At the Initial Complaint.... Do I need Counsel?

The Answer is:

1) YES

2) No

3) Maybe so

The Complaint Process

- **Complaint Received**
 - Letter sent to attorney to respond to complaint
 - attorney responds within 15 days; or, if no response
 - attorney subpoenaed to elicit response
 - **Response Letter Extremely Important**
 - **Never Not Respond!**
 - **What Makes a Good Response?**
 - **What makes a Bad Response?**
 - **Sworn Statements = Danger**

Counsel Recommendations

- After investigation, Office of Disciplinary Counsel may recommend:
 1. Dismissal
 2. Diversion
 3. Probation
 4. Admonition
 5. Formal Charges

The Appeal Process

- Rule XIX, Sec. 11B(3)
 - Complainant's appeal along with copies of record is assigned to a hearing committee for review.

Rule XIX, Sec. 30(A)

- Complainant may appeal the decision of the hearing committee to a panel of the Disciplinary Board within 30 days

Rule XIX, Sec. 30(C)

- Complainant may appeal the decision of the Board Panel to the Supreme Court within 30 days

The Initial Investigation remains open
and they are contemplating some kind of
action...

Do I need Counsel?

The Answer is: YES

Diversion

- Complainant may not appeal
- Not reviewed by Hearing Committee
- Respondent must agree
- Contract required
- Unsuccessful Diversion/subsequent violations may be referred to Office of Disciplinary Counsel.
- Always try to get your client placed in diversion if possible if there is any inkling of provable misconduct.

Admonition

- Respondent notified of proposed disposition
- 14 days to demand formal proceeding
- Failure to respond = consent
- Reviewed by Hearing Committee Chair or Lawyer Member
- Admonition Issued (private sanction)
- If they offer an admonition see if they would consider Diversion.

Request for Permission to File Formal Charges

- Reviewed by Hearing Committee Chair or Lawyer Member
- When does Disciplinary Counsel know it is time to file charges?

Standard: Probable Cause

Formal Charges (Deemed Admitted)

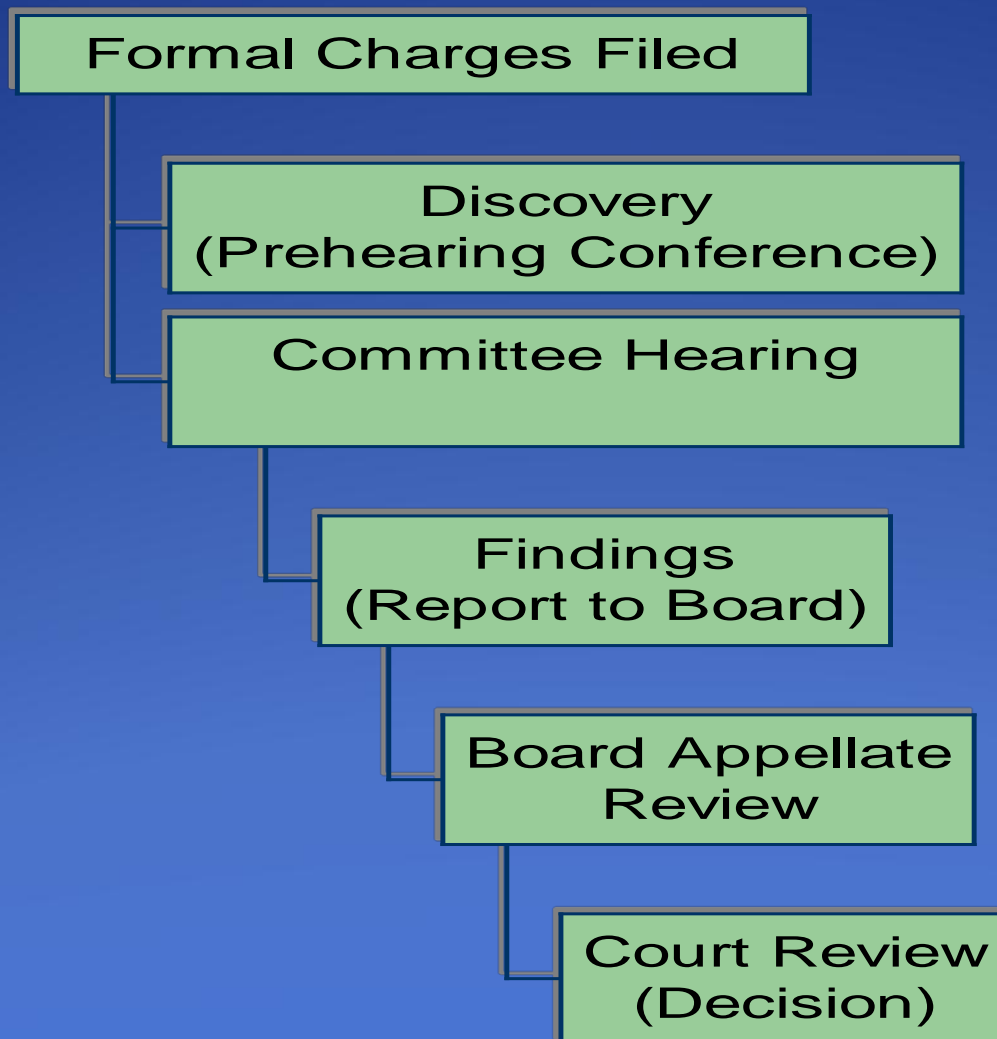
- Formal Charges filed with Board Clerk
- Charges Served on Respondent
- **Respondent Fails to Answer Within the 20-Day period**
 - ODC files Deemed Admitted Motion
 - Order Served on Respondent
 - Respondent has 20 days to request order to recall
 - If recalled, conduct hearing in mitigation
 - Factual Allegations "Deemed Admitted"

OR

Formal Charges - Answered

- Formal Charges Filed with the Board Clerk
- Charges Served on Respondent
- **Respondent Answers Within 20-Day Period**
 - Case Assigned to Hearing Committee
 - What makes a good Answer?

The Proceedings



The Disciplinary Hearing Process -

- What about Discovery?
- Rules of Evidence?
- Mitigation/Aggravation can be big factors

The Disciplinary Hearing Process -

- Should you represent yourself? Why not?
- What is the best advice the panel would give to attorneys defending a fellow attorney facing formal charges brought by ODC?

Consent Discipline

- When should you consider consent?
- Pros and Cons?

Sanction Recommendation

After Formal Charges:

1. Public Reprimand
2. Probation
3. Suspension
4. Disbarment
5. Permanent Disbarment
6. Dismissal

The Board and Supreme Court

- Best Advice for Board and Supreme Court Written Briefs?
- Oral Arguments before the 1) LADB and 2) The LA Supreme Court.
- Best advice for arguing disciplinary matters in front of the Disciplinary Board?
- Best advice for arguing disciplinary matters in front of the LA Supreme Ct?

Guidelines for Permanent Disbarment

Suggested guidelines adopted by Supreme Court

- i. Repeated or multiple instances of intentional conversion of client funds
- ii. Intentional corruption of the judicial process
- iii. Intentional homicide conviction
- iv. Felonious sexual misconduct
- v. Felony involving physical coercion or substantial damage

Guidelines for Permanent Disbarment

- vi. Insurance fraud
- vii. Malfeasance in office which results in felony conviction
- viii. Unauthorized practice of law during suspension or disbarment
- ix. Serious attorney misconduct or conviction of a serious crime, when the conduct is preceded by previous suspension or disbarment

Easy Rule Violations

- What are the easiest Rule violations to prove/prosecute? What are the hardest?
- What are the easiest to defend (if any)? What are the hardest?

Practical Steps to Avoid Complaints

- Screen Your Clients
- Limit and Memorialize the Scope of Representation
- Get a Written Fee Agreement
- Don't Charge (or Collect) a "Non-Refundable" Fee
- Fees Must be Reasonable and the Client Should Get Value for the Fee
- Always Account for the Fee
- Work with the Client When the Client Objects/Disputes Fee
- Manage Client Expectations

More Practical Steps to Avoid Complaints

- Communicate, Communicate, Communicate
- Return the File (i.e., the Entire File) upon Request
- Don't Hold the File Hostage for the Fee (or Any Reason)
- Don't Hold the Case Hostage for the Fee
- Explain Delay (in Writing)
- Good Client Relations (will Negate Complaints)
- Listen to your client – Nip the Complaint
- Pay Your Litigation Bills/Expenses Timely

More Practical Steps to Avoid Discipline

- Avoid Conflicts
- Unearned Fees Must be Returned Promptly
- If There is a Dispute, Segregate the Funds in Trust and try to resolve the dispute

Some Last Advice