

What to Expect When You're the Subject of a Disciplinary Complaint

By: Matthew C. Brunelli

Often, the first question posed by a client involved in an ethics-related matter is, “how does the disciplinary process work?” The following is an overview of the general procedural framework underlying this process in Pennsylvania.



The Office of Disciplinary Counsel (“ODC”) prosecutes potential ethical rule violations. Just as Pennsylvania state prosecutors investigate and prosecute potential crimes, ODC also performs this function albeit with any eye towards potential ethical rule violations.

In my experience, ODC’s initial investigation stems from its receipt of a complaint submitted by a former disgruntled client. Complaints may, however, be filed by current clients, other attorneys or even a judge. Regardless, the process is the same.

The complaint sets forth basic information regarding the representation. If, for example, a former client was dissatisfied with his/her lawyer because the attorney routinely neglected the client’s requests for status updates, a complaint could be filed that essentially notes, “I retained Attorney X to handle my divorce. After two years, my divorce is still pending. I’ve tried to contact my lawyer on numerous occasions to obtain a status update, but have yet to receive a response.”

After reviewing the complaint, ODC begins its investigation by contacting the complainant to obtain more detailed information. In some instances, ODC may contact the attorney directly to request certain information. After reviewing the available information, if,

in the eyes of ODC it believes that the complaint has merit, ODC will issue a DB-7 Request for Statement of Respondent's Position ("DB-7") to the attorney levying one or more potential rule violations.

An attorney generally has 30 days to admit or deny the DB-7 allegations. Receipt of a DB-7 must be taken seriously because an attorney who ignores this document commits, by that fact alone, an ethical rule violation subjecting him/her to discipline. Various strategies can be used when crafting a DB-7 Response. I highly recommend that you, at a minimum, consult with an attorney that regularly practices in this area before you submit any response to ODC. After the DB-7 stage is closed, the underlying complaint may be dismissed. Alternatively, ODC and the attorney may arrive at some form of compromise regarding discipline known as "discipline on consent." Discipline falls into two categories – private and public. Private discipline does not affect a lawyer's ability to practice law. Some forms of public discipline, however, will bar a lawyer from practicing.

Where there is no dismissal or discipline on consent, the matter will continue by ODC filing a Petition for Discipline, and the case will become a matter of public record. Here again, the lawyer will generally have 30 days to respond. Thereafter, the case will proceed before a hearing committee (or possibly a special master). That proceeding operates similar to a bench trial with ODC having the ultimate burden of proof to establish the alleged rule violations.

The Hearing Committee will ultimately issue a Report and Recommendations. This document will detail the Hearing Committee's finds of fact, conclusions of law and, if necessary, the recommended punishment. Both sides will have an opportunity to file "exceptions" to the Hearing Committee's findings. Eventually, the Disciplinary Board will receive the entire record and the parties' briefings. If requested, the Board may hear oral argument. Thereafter, the Board will file its Report and Recommendation with the Pennsylvania Supreme Court wherein it will recommend the final outcome. In most instances, this will conclude the matter.

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Though this summarizes the disciplinary process in its most basic form, each case presents unique facts and has no "one size fits all" solution when it comes to defending alleged ethical rule violations. A lawyer cannot, however, simply play ostrich and hope that the matter will go away. It will not. I strongly encourage any lawyer caught in ODC's crosshairs to secure defense counsel. Depending on the outcome of the complaint, you could be precluded from the practice of law.

About the Author

Matthew C. Brunelli is a member of the White Collar Defense and Investigations Group at Stevens & Lee, a full-service law firm with more 185 lawyers serving clients from 17 offices. He has substantial experience in representing and counseling lawyers on ethics- related matters, including assisting lawyers when responding to complaints filed with the Office of Disciplinary Counsel and representing them at disciplinary hearings.

