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Responding to Bar Counsel

It has been some twenty four years since the late Robert Conrad addressed, in these pages, questions arising from the client grievance. Since then, a new generation of lawyers has been called to the Bar and they, too, must face inquiries from Bar Counsel. As we receive about two thousand complaints a year, it is unlikely that during her career, a private practitioner who serves the legal needs of individuals, as opposed to businesses, will escape the obligation to respond to at least one letter from the Attorney Grievance Commission.

The good news: the overwhelming majority of complaints result in no finding of a violation of the Rules of Professional Conduct and are dismissed. Fee disputes and complaints about results usually (although by no means, never) result in dismissals, as an attorney's charges are violative of the rules only when "unreasonable" and results are judged in the context of the appropriateness of the overall representation. Nevertheless, only in the most frivolous or incomprehensible case, do we not ask for a response from the attorney whose actions are questioned. Most attorneys should appreciate the opportunity to correct the record and explain any misunderstanding, satisfy the client or correct an underlying non-disciplinary problem. In any case, pursuant to Rule 8.1 of the Rules of Professional Conduct, the attorney is obliged to respond.

Often, we receive letters from clients who simply do not understand what is expected of them. They may not understand the need or purpose for a release or waiver. They may not understand the need to maintain funds in trust until the check that will fund their recovery clears. They may not understand the delays to which litigation is often subject and they may not understand the nature of an attorney's preparation that goes on "behind the scenes." The need to respond to an inquiry presents the attorney with an opportunity to educate her client and to foster better communication and even respect between the lawyer and client.

Usually, Bar Counsel's initial letter forwarding the complaint is sent to the attorney before the case is formally "docketed" for investigation. We seek to understand what caused the individual, usually, although not always, the client, to complain. The attorney should reply succinctly and respond to the issues raised. The complaint almost always deals with a specific matter; the attorney's track record in similar matters is often irrelevant to our decision-making. The reply should not be argumentative. There is little to be gained in attacking the complainant (or Bar Counsel) and often, much that can be lost. At the very least, it reflects poorly on the profession.

Although it is important to respond on a timely basis (and extensions are routinely granted), do not respond to a complaint immediately -- it's best to allow time to cool. The initial response to a complaint is often crucial, especially if the matter is serious, destined to be fully investigated and litigated. The attorney's response should be lawyerly, not

overly passionate. A second set of eyes on the attorney's response, before it is forwarded to Bar Counsel, is usually a good idea. The attorney who represents herself in responding to Bar Counsel's inquiry should permit a trusted attorney to review her response for content and tone. An attorney subject to a complaint should certainly consider retaining counsel experienced in disciplinary matters. Such counsel can be invaluable in assessing the attorney's disciplinary exposure and can assist in composing a response that addresses the complaint squarely and objectively. Malpractice insurance policies often permit the insured to retain counsel to address a disciplinary matter with no deductible and generally, if a complaint is concluded at an early stage, the attorney will pay nothing for the representation.

A complaint from a client does not mean that the attorney cannot communicate with the client unless the circumstances so dictate. If the individual is still represented by the lawyer and the complaint comes from a misunderstanding or confusion, the attorney and client would be well served to communicate and solve their mutual problem. Often the attorney client relationship will survive a complaint to Bar Counsel. It is clear, however, that there should never be a quid pro quo for "dropping the complaint." Lawyers in Maryland have been sanctioned for this very conduct. We invariably advise complainants who withdraw their complaints prior to a response from the attorney, that we will not dismiss the complaint, absent an answer, because such complaint (even though confidential) is of concern not only to the complainant, but to the Bar and public generally.

Remember, candor is essential. The response will, in most cases, be forwarded to the complainant. If the attorney's response is less than accurate (there should be no need to say "truthful"), we will hear of it and the complaint will become, as we say, "of continuing concern."

Finally, because the response is usually forwarded to the complainant, the attorney should carefully proofread her response. The detriment to the reputation of the attorney and to lawyers generally cannot be denied when a complainant receives a response with obvious and unnecessary mistakes. I have received letters from more than one complainant who will reiterate that his attorney did not handle his case appropriately and then furnish the attorney's sloppy response to the complaint as "exhibit A."

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