

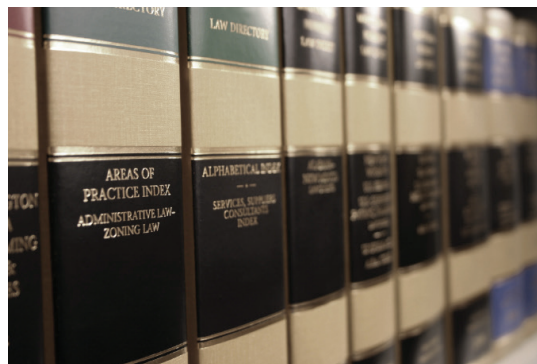


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How to Deal with State Bar Disciplinary Matters



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Part One: Responding to Bar Complaints

Receiving a Bar complaint can be one of the most traumatic experiences in an attorney's professional career. I've spent a lot of time writing about how to avoid Georgia State Bar complaints, but what do you do if you receive one? How you respond, and the type of assistance you seek, is absolutely critical in minimizing the disruption as well as disposition.

Here's a quick summary of Bar complaint filing volume from the 2011-2012 OGC Annual Report. 3,584 clients contacted the State Bar, and of those 2,105 actually filed complaints. 1,733 grievances were dismissed, and 268 were reviewed for further investigation. While some are still in process, the results included everything from dismissal through confidential or public discipline.

Pursuant to the Bar's procedural Rules, the 2,105 complaints were sent to the attorney for a response. Once the initial shock wears off, most attorneys tend to follow one of three paths:

1. Do nothing. I'm going to ignore this [expletive] thing. There's no merit.
2. Spill their guts. I'll overwhelm the Bar and the grievant by discussing every minute detail.
3. Respond effectively. Keep reading below.

The Bar Complaint Response Process

Your initial response will not only improve your chances of a quick dismissal, but will also minimize the possibility and severity of discipline should the complaint have merit. Using the appropriate format, tone, workflow, and advocacy can improve your chances of success and minimize the potential damage. After working with hundreds of attorneys through this process, here is the most effective way to react and respond:

- **Get over it.** This really did happen. Compartmentalize it and deal with it.
- **Read it cover to cover.** Most are only a few pages. Also review the client file to refresh your memory. I hope you kept a copy if the client requested their file back.
- **Respect the deadline.** In most cases, you have about 2 weeks to initially respond. You don't want to get a phone call reminding you that you have missed a deadline.
- **Draft your response.** Try to link each complaint to the applicable Bar Rule and then respond based on that Rule. This is how the complaints are reviewed. Submit whatever supporting evidence you have, even unsigned drafts and notes.
- **Contact your E&O carrier.** Many carriers require you to report everything, and many also cover the cost of the attorney you choose. If your carrier does not provide cost of defense or indemnity for attorney's fees, it is well worth including this type of coverage in your renewal discussion.

Always Seek Independent Advice

My good friend Warren Hinds often mentions Abraham Lincoln's famous quote, "He who represents himself has a fool for a client." Just like you tell your clients every day, you need an advocate – someone else responding on your behalf. Your advocate may be a peer who can offer neutral advice, or someone with specific experience in these matters along with established Bar relationships. It is also easier for the Bar to communicate with counsel rather than the accused.

Part Two: Investigative Panel Review

If the grievance screening members, after the initial response, believe there has been a violation, they will send the grievance to the Investigative Panel (IP) or an IP subcommittee. At the same time, the named attorney (respondent) is served with a Notice of Investigation. This documents the acknowledgment of the charge, the alleged Rule violations, the Panel Member (and staff investigator if applicable) assigned, and the opportunity to respond in writing under oath. A list of active Panel Members is provided, and the respondent also receives notification of the right to challenge the competency, qualifications or objectivity of any Panel Member.

Responding to the Georgia Bar Investigative Panel

Once service of the Notice of Investigation is acknowledged, the clock starts running for what is normally a 30 day window to file a verified response. Here are four general themes in responding to the Investigative Panel:

1. I didn't violate any Rules.
2. I may have technically violated Rules, but not the spirit in which they were created or intended.
3. There were extenuating circumstances.
4. I did violate the Rules. Have mercy upon my soul.

As the respondent, this is your last opportunity to keep the matter confidential. Remember, this doesn't mean that you are tried and convicted. If there was a communication breakdown at the initial stage, fix it now and ensure that the response is 100% accurate. If you get caught in a misstatement or dishonest action, you could be charged with additional Rule violations, like Rule 8.4(a)(4) for professional misconduct involving dishonesty, fraud, deceit or misrepresentation. If you and/or your counsel determine that your acts or omissions did violate a Rule, this may be the time to admit it and suggest appropriate punishment. The IP may look favorably upon what is known as a Voluntary Petition for Discipline, particularly if there are mitigating factors, no aggravating factors, and no prior disciplinary history.

Based on the verified response, the Investigative Panel has several options:

1. **Dismiss the Notice of Investigation** – no action taken.
2. **Refer it to the Arbitration Committee** – often the case with fee disputes.
3. **Refer it to the Committee on Lawyer Impairment** – if the lawyer requires medical or psychological treatment.
4. **Issue a letter of instruction** – helps the attorney avoid future situations. This is not considered discipline
5. **Issue a formal letter of admonition** – a letter outlining the Rules violated and the findings of the IP. This is the lowest level of confidential discipline, and remains on your record.
6. **Issue an IP Reprimand** – in-person admonition before the members of the IP.
7. **Issue a Notice of Discipline** – failure to formally reject this Notice may result in the loss of right to an evidentiary hearing. Following rejection of the Notice of Discipline by the respondent, the Investigative Panel may consider new evidence and take appropriate action, or it may direct the Office of General Counsel to file a Formal Complaint and Petition for Appointment of a Special Master. If the respondent fails to reject the Notice, the respondent is in default and is subject to further public proceedings as may be determined by the GA Supreme Court.

It's Time to Get Help with Your Georgia Bar Grievance

If you haven't engaged counsel during the initial grievance review, do it now. Depending on the result of this investigation, report and the IP's decision, you could face serious discipline, or even the ultimate sanction—disbarment. Do you really want to go at this alone? Find an attorney with specific experience in these disciplinary matters and with established State Bar relationships.

Part Three: Why Clients File Bar Complaints

As attorneys, we've certainly made mistakes. A quick review of Bar complaint filing volume from the 2011-2012 Georgia Office of General Counsel (OGC) Annual Report shows that 3,584 clients contacted the State Bar and 2,105 actually filed complaints. The Georgia Bar does a great job of screening and disposing of frivolous complaints by disgruntled clients (and opposing counsel), but about 20% of complaints are not dismissed.

Understanding why Bar complaints are filed can help us avoid them. I talked to members of the OGC Office staff who monitor grievance communications, and also drew upon my own experience defending lawyers facing Bar complaints, to create a partial list of situations that resulted in clients filing Bar complaints. Some of these may seem humorous, but all should be taken seriously as they can have a major impact on your reputation and law practice.

Situations that resulted in clients filing State Bar complaints

1. My former attorney will not return my file to me.
2. My attorney will not return my phone calls. I always get the paralegal.
3. My attorney represented my partner and me when we started the business. Then he represented by partner against me when our business dissolved.
4. My attorney's paralegal gave me the wrong advice.
5. My attorney settled my case without my authority, or for too little money.
6. My attorney represented my ex-spouse a few years back in a similar matter.
7. My attorney did not tell me that there was a potential conflict of interest or advise me to get an independent professional opinion.
8. My attorney charged me too much for the work performed.
9. The opposing counsel threatened to report me to the IRS if I did not resolve the matter.
10. My attorney disclosed confidential information to the media which caused the business deal to fail.
11. My attorney made advances to me during a time when I was emotionally vulnerable / owed him a lot of money.
12. My attorney told me that he could negotiate that Medicare lien to zero.
13. My attorney compromised my case just to avoid trial.
14. My attorney prepared the contract which later became the focus of the litigation, and then told me that he could represent me in the litigation too!
15. The attorney allowed an improper notary / forged a signature on case critical documents.

Once you are done chuckling and asking yourself whether things like these really happen, think back to your own unique experiences. As the saying goes, perception is reality – and perception is what sometimes guides client decisions. Have you acted in a similar fashion at one point in time, or could a client have misperceived your actions? You probably provided an explanation, corrected the problem, improved a relationship, or even disengaged from the client. Imagine if you had instead received a Bar complaint.

With this knowledge you can improve your internal processes to ensure clients won't even perceive that these activities are occurring. Think about ways you can improve communication, better document client procedures, promptly return files, and regularly train your staff to help prevent client misperception. Then you can ask me to lunch to share your war story, rather than asking me to represent you.

Part Four: What to Expect if the Complaint Against You Ends Up in Front of the Georgia Supreme Court

For a small percentage (about 3%) of Bar complaints, the Investigative Panel finds probable cause (Rule 4-204.4) and refers the case to the Office of General Counsel (OGC) to file a Formal Complaint before the GA Supreme Court. At this point, the named attorney's professional career and reputation are on the line, and the attorney can expect to receive some sort of public discipline. The respondent-attorney is served with Notice, a Petition for Special Master (acting as the trial judge), and a copy of the Formal Complaint. Hopefully, the respondent has already retained an attorney who will acknowledge service and avoid the embarrassment of service by the Sheriff.

Unless there is a negotiated agreement by the filing of a Voluntary Petition for Discipline, which must be ultimately approved by the GA Supreme Court, the attorney-respondent is now involved in full-blown litigation. This includes an Answer to the Formal Complaint, written discovery, witness identification, depositions, motions, hearings and ultimately trial. The office, data, clients, and peers are all fair game for the OGC prosecutors, which can disrupt the respondent-attorney's practice and drain financial resources. What's worse, the information is available to peers and the general public.

Potential Georgia State Bar Complaint Sanctions

At this point, the respondent-attorney is going to get punished publically. The only dismissal examples I've seen at this point were for internal procedural mistakes. Punishment options include:

- Review Panel Reprimand
- Public Reprimand before a trial judge
- Suspension
- Disbarment

Respondent-attorneys still have a chance to negotiate a resolution, but it depends on the issue(s) and is greatly influenced by the involved member(s) of the State Bar and the make-up of the GA Supreme Court. The goal of the OGC is to protect the public, so they will aggressively pursue each case. Generally, the most effective negotiation option is for the respondent-attorney to quickly get to the central issues and offer a realistic resolution based on supporting disciplinary case precedent, mitigating factors, and aggravating circumstances.

Real Life Bar Complaint Example

Here is an example. My client's law firm was under attack after federal agents uncovered a network of runners/cappers getting an illegal piece of the settlement. My client admitted responsibility and requested a 6-month suspension. The State Bar and the Supreme Court agreed. Other attorneys entangled in the same runner network held out, dragged out the proceedings, and were ultimately disbarred.

Normally Bar complaints should be resolved well before the Georgia Supreme Court gets involved. If you ever receive a complaint, immediately seek experienced counsel, respond quickly and accurately, and work toward a fair resolution to the situation.