

Dealing With an ARDC Letter of Complaint: What Do I Do Now?

By Daniel Purdom

According to the 2004 Annual Report by the Attorney Registration & Disciplinary Commission (ARDC), approximately 60,000 attorneys practice and live in the State of Illinois. Each year approximately 5% of those attorneys receive a complaint from the ARDC. Mishandling of that complaint can cost you your license. Now that I have your attention ... read on.

The System

Pursuant to the Supreme Court Rules on Admission and Discipline of Attorneys, attorney discipline is handled by the ARDC which employs approximately 35 lawyers. Some of these attorneys are assigned to intake and screen incoming complaints. Those intake attorneys perform the initial inquiry into the facts of most cases.

Intake staff makes the initial determination of whether the submission describes some misconduct by the attorney. If the complaint does not fall within one of the categories of discipline, it will be closed by intake staff.

If some inquiry is warranted, that inquiry usually begins with a letter addressed to the attorney named in the complaint enclosing a copy of the complainant's submission with the request that the attorney submit a written response within 14 days. The attorney's written response is usually forwarded to the complainant for review. After the complainant's reply is received, the file will be reviewed by the intake personnel. If the intake staff determines that the attorney's conduct did not violate any professional standard, the file will be closed. If intake staff concludes that additional investigation is warranted, the file will be transferred to litigation staff.

What Do I Do Now?

If you receive an ARDC letter of complaint, you must give it your complete attention. Rule 8.1 of the Rules of Professional Conduct provides:

A lawyer ... in connection with a lawyer disciplinary matter shall not ... fail to respond to a lawful demand for information from disciplinary authority ... This obligation to respond extends not only to the attorney being disciplined but any other attorney who may be asked for information concerning discipline of any attorney. A failure to respond to an initial complaint will result in issuance of a subpoena pursuant to Rule 754. A failure to respond to these requests can result in contempt of court. (See Rule 754(d))

Obviously, you cannot put your head in the sand and ignore the letter. It will not go away. A failure to respond will result in a follow-up subpoena and probably a required sworn statement (similar to a deposition). A failure to adequately respond may heighten sanctions and may result in a contempt proceeding.

Your initial reaction to the letter of complaint is probably to lash out at the complainant and make personal attacks. This is not only ineffective, but counterproductive. Your response will be forwarded to the complaining witness and any venom in your response will certainly motivate the complainant to make a strong reply to your response. The first step in responding is to determine exactly what is being alleged. This step in the process involves a dangerous determination. If the allegations in the complainant's letter are unclear, your response may provide further information for inquiry into other areas. An inadequate response will result in the opening of a full-scale investigation. Further, you should always keep in mind that these complaints do not occur in a vacuum. Oftentimes, ARDC complaints accompany a civil lawsuit or a referral of matters to criminal or administrative agencies. Anything you say can be an admission in those other proceedings.

If the subject matter of the complaint is problematic and may result in a malpractice claim or, more significantly, a federal or state criminal investigation, it must be handled very skillfully. The Administrator is reasonable in staying ARDC

proceedings when appropriate. In this way, the underlying civil or criminal case can be addressed with a subsequent focus on the ARDC matter.

Should I Get an Attorney?

As an attorney who handles matters before the ARDC, the author obviously has a vested interest in telling you that you should immediately contact me. Perhaps a better approach is to quote Mary Robinson, the Administrator for the ARDC:

Should the Lawyer Retain Counsel to Handle a Response? ARDC staff are often asked if it is important for a lawyer to secure representation when responding to a disciplinary inquiry. The answer depends both on the nature of the inquiry and the comfort level of the lawyer who has become the unhappy subject.

If a lawyer knows an inquiry involves something serious, he or she should retain counsel at the earliest possible opportunity. Examples of potentially serious problems include instances where lawyers (1) have allowed a cause of action to be lost, a default judgment to be entered against a client, or an appeal to be dismissed because of their failure to take appropriate action; (2) have become involved in business transactions with clients without appropriate disclosures or independent representation for the client; (3) have been convicted of a criminal offense, whether misdemeanor or felony; (4) have been accused of mishandling funds; or (5) have been accused of fraud or dishonest conduct, including false statements to a court, client, or some other party, or fraudulent or deceitful conduct that does not involve the practice of law.

Some fee matters are potentially serious, including allegations of billing fraud, cases where a lawyer has taken a contingency fee where there was no element of risk to the recovery, and cases where a lawyer has taken fees beyond what was allowed by statute or court order.

Particular caution is warranted whenever an inquiry involves the manner in which a lawyer has handled funds belonging to a client or third party. This is an area where the discipline system is rigid. Any suggestion that a lawyer has used another's funds for the lawyer's own business or personal purposes, whether intentionally or inadvertently, will be vigorously pursued, and if the investigation supports the allegations, ARDC staff will seek to file formal charges. A lawyer facing inquiry concerning his handling of funds in which a client or another has an interest would be wise to consult counsel experienced in representing lawyers in ARDC matters.

Even in cases that are not likely to result in disciplinary charges, many lawyers are well served by securing representation. A fair number of lawyers who represent themselves make their problems worse by not admitting the obvious, being afraid to acknowledge an error where the acknowledgement is all the ARDC staff needs to close the file, or obstinately avoiding answering questions that have to be resolved. Representation can help avoid those problems while providing the respondent lawyer with some peace of mind upon receiving informed legal advice on what is likely to happen. At a minimum, it would be wise to ask a trusted colleague to review a response to a disciplinary inquiry before it is submitted.

What if I Still Represent the Complaining Witness?

An important consideration in any situation involving a client complaint to the ARDC is whether that complaint creates a conflict of interest between the lawyer and the client that requires the lawyer to withdraw. Counsel should carefully review the facts and the Rules of Professional Conduct. Under Rule 1.16, it is appropriate for an attorney to withdraw when a client's conduct renders it unreasonably difficult for the attorney to carry out the employment effectively. Rule 1.7(b) prohibits an attorney from representing a client when that representation may be materially limited by the attorney's own interest. The attorney must carefully consider whether the dispute or his feelings of hostility toward the client might materially limit his or her representation of the client.

Significantly, even if a withdrawal is required you must provide a complete response to the complaint and cooperate with the ARDC in its investigation. An aggravating fact found in most cases of severe sanctions is failure to cooperate with the ARDC or providing false or misleading information in the course of any investigation.

Responding to the Complaint

As set forth above, it may be in your best interest to retain counsel to respond to the complaint. Even if counsel is retained, your complete attention and involvement is vitally important. You know the background of your relationship with the client and any specific areas of sensitivity or trouble with that client. This matter could affect your ability to practice law and requires your undivided attention.

After carefully reviewing the specific allegations in the complainant letter, you should determine if additional time is necessary. The Administrator is generally reasonable in allowing additional time. Indeed, additional time often works to everyone's benefit. In this way, you can gather specific documents and supporting information to address all concerns of the Administrator.

In drafting the response, if the allegation is clear, you should address it specifically and provide documents which support your position. There will be factual disputes in most complaints. Contemporaneous documents which support your position are vitally important. Pursuant to Rule of Professional of Conduct 1.6(c)(3) a lawyer may use or reveal confidences or secrets necessary to defend the lawyer or lawyer's employees or associates against an accusation of wrongful conduct. It is also important to bear in mind that matters appearing before the Inquiry Board and at the intake stages are all confidential pursuant to Rule 766, which provides:

(a) *Public Proceedings*. Proceedings under Rules 751 through 780 shall be public with the exception of the following matters, which shall be private and confidential:

- (1) investigations conducted by the Administrator;
- (2) proceedings before the Inquiry Board;
- (3) proceedings pursuant to Rule 753 before the Hearing Board prior to the service of a complaint upon the respondent ...

If you determine that the matter does not require retention of an attorney, it is still important that you step back and remove emotion from any response. A trusted friend or colleague is a valuable resource to review any proposed response. That person should be able to give an independent perspective which hopefully reveals that your letter has adequately responded to all of the allegations.

A common mistake made by angry attorneys is to "kill the messenger." Remember ARDC staff has an obligation to respond to the public's complaints. Most of these complaints are disposed of at the initial stages as being without merit. Do not exacerbate the problem by viewing the prosecutor as your mortal enemy. That person is going to make a recommendation with respect to the handling of the inquiry and there is no need to fuel the fire.

If a determination is made to close the matter, the ARDC attorney will have to inform the complainant. A non-emotional, well-organized and properly documented response makes that attorney's job easier and your life less stress filled.

Conclusion

A letter received from the ARDC attaching a complaint can be a harrowing experience. It is important that you give that complaint serious and careful attention. With or without retained counsel, a response must remove emotion and methodically demonstrate, with as much supporting documentation as possible, the merits of your position. The worst approach is to ignore or not take seriously such a complaint. If you do, you may be seeking a job in a different profession.

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