

## IF YOU GET A LETTER FROM BAR COUNSEL

One of the most unnerving of letters a practitioner can receive is a notice of a complaint from a client or from bar counsel. Bar Counsel's letter sets forth the basis of the complaint and allows up to 20 days in which to respond to the letter. What should you do?

First, do not panic. You can usually get more time if needed. Begin thinking of the evidence and information you will need to respond but I recommend that you take a reasonable amount of time to consider your response and consult with counsel. A quick response before you have thought things through carefully is often counterproductive.

It may be some reassurance to know that many investigations are closed without any disciplinary action. Some are even closed soon after you respond to the letter. Even where the investigation is not immediately closed, the investigation may be still end up being terminated without any formal discipline.

Some investigations are closed with a letter cautioning the attorney about certain aspects of the person's practice and advice as to how to avoid future issues. Sometimes, the investigation is resolved through a diversion process. In these circumstances, the attorney is required to take steps to address and correct the issues raised by the investigation and then report back to bar counsel that the issues have been addressed by the conclusion of the diversion period. If the issues are satisfactorily addressed, the investigation will be closed without formal disciplinary proceedings. Issues that can be resolved through diversion often involve recordkeeping practice issues, relations with clients and other minor potential problems with the attorney's practice.

If the case is not closed without discipline, cases involving minor violations of the Rules of Professional Practice may be resolved without public discipline by the issuance of an

Admonition. An Admonition discusses the facts surrounding the investigation and the specific Rules of Professional Conduct that may have been violated. The admonition does not contain identifying information about the attorney receiving the admonition and there is no public disclosure of the attorney's name or practice.

For cases involving more serious violations of the Rules, the case may still be resolved without an interruption in the attorney's practice. A case may result in a Public Reprimand without a suspension of practice. Public Reprimands set forth the facts underlying the investigation and the Rules of Professional Conduct affected and describe how the conduct violated those sections of the Rules. The Public Reprimand must be approved by the Board of Bar Overseers before it is published. Once approved, the Reprimand is published on the Board's website and in the Massachusetts Lawyer's Weekly. A Reprimand may be issued as a sanction even after a formal evidentiary hearing before the Board of Bar Overseers.

If a case cannot be resolved by Public Reprimand, it may be possible to obtain resolution by a suspension for a term with the implementation of the term suspended so long as the attorney complies with the terms of the suspension order and provides a timely report of compliance to Bar Counsel. In such cases, there is no interruption in the attorney's practice.

For cases involving more serious conduct, a sanction of suspension for a particular time or in particularly serious cases for an indefinite period can be imposed. Such a sanction can result from a negotiated resolution with Bar Counsel and approval from the Board of Bar Overseers and from the Supreme Judicial Court. The sanction may also be imposed after a formal contested proceeding and hearing before the Board and briefing before the Supreme Judicial Court. The most serious violations of the Rules, often involving intentional misuse of client funds or misrepresentations to a court or tribunal, can result in formal disbarment.

In every case, the attorney who receives the letter should strongly consider retaining legal counsel. Because of the potential consequences of an investigation and because the allegations generally relate to the own conduct and practice, independent, thoughtful advice is essential. Again, not every case will lead to a formal proceeding, disciplinary hearing and serious sanction. A frank discussion with the attorney can provide the attorney with a valuable assessment of the possible risk. The practitioner and the attorney should remember to discuss any evidence which may provide for mitigation of the sanction to be imposed. Such evidence could include, issues of physical or mental health, stresses in the life and any compelling evidence helping to explain why the possible violations occurred.

The costs of representation may be covered by the attorney's malpractice policy under the hearing disciplinary proceedings or coverage. Many malpractice policies permit the attorney to retain counsel of their choice subject to approval by the insurer.

Responding to a letter from Bar Counsel timely and thoughtfully is critical to the development of the investigation and case. Receiving the letter can be alarming for sure. Preparing a good compelling response is a necessary first step.