

Fall Forum

November 13, 2009

Responding to a Professional Conduct Complaint

One Hour Ethics Credit

Items for Discussion

Overview of the discipline process

What to do if you receive a letter from the OPC

Notices of Informal Complaint (NOIC)

What are they

What should you include in your response

What shouldn't you include in your response

Screening Panel Hearings

What is a Screening Panel

Who serves on the Panel

Authority of the Panel

What happens during the hearing

Submission of written information at the hearing

OPC's role at the hearing

Secretary to the Panel

Burden of proof

Failure to respond to an NOIC or attend a Screening Panel Hearing

Rule 8.1

Rule 14-532

Formal Complaints

Representation

During the initial investigation

NOIC response

At the Screening Panel Hearing

For a Formal Complaint

Settlement

With the OPC

With the Complainant

Diversions

Rule 14-533

Confidentiality of the discipline process

Rule 14-515

Recent Rule changes

Rule 14-510

Appeals

Cross-examination of the Complainant

Rule 8.1. Bar Admission and Disciplinary Matters.

An applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the Bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the Bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and in some cases Rule 3.3.

Rule 14-532. Failure to answer charges.

(a) Failure to answer. If having received actual notice of the charges filed, the respondent fails to answer the charges within 20 days, the respondent shall be deemed to have admitted the factual allegations.

(b) Failure to appear. If the respondent, having been ordered by the Committee to appear and having received actual notice of that order, fails to appear, the respondent shall have been deemed to have admitted the factual allegations which were the subject of such appearance. The Committee shall not, absent good cause, continue or delay proceedings because of the respondent's failure to appear.

(c) Notice of consequences. Any notice within the scope of paragraph (a) or (b) above shall expressly state the consequences, as specified above, of the respondent's failure to answer or appear.

References:

Rules of Professional Conduct

<http://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter 13>

Rules of Lawyer Discipline and Disability

<http://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter 14>

Standards for Imposing Lawyer Sanctions

<http://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter 14>

FAQ About the Lawyer Discipline Process

http://www.utahbar.org/opc/faq_lawyer_discipline.html

Standards of Professionalism and Civility

<http://www.utcourts.gov/resources/rules/ucja/ch14/03%20Civility/USB14-301.html>

Ethics Hotline: (801) 531-9110