



Karen Stromeyer

MURPHY, PEARSON, BRADLEY & FEENEY



Peter Weber

MURPHY, PEARSON, BRADLEY & FEENEY



You received an investigation letter from the State Bar

DON'T PANIC. HERE'S YOUR GAME PLAN

Usually the only mail you receive from the State Bar of California is a bill for payment of your dues. However, this time, it's much more serious. You've received a letter stating a client has filed a complaint against you and the State Bar wants your response. What do you do?

Take a deep breath

The State Bar is a consumer protection agency whose job it is to investigate complaints. Simply because a complaint has been filed against you does not mean that disciplinary charges will be brought, or that the State Bar sees any merit in the complaint.

The California Bar has approximately 180,000 active members, and the ethics

board receives over 15,000 complaints per year. Last year the Office of the Chief Trial Counsel, the State Bar prosecutorial arm, filed formal charges in 672 cases, and formal discipline was imposed in 444 cases, resulting in the disbarment or suspension of 393 lawyers. While it is likely that at some point in your career you will receive an investigation letter, the State Bar does understand that not all complaints are legitimate and are interested in hearing your side of the story.

Do not ignore the letter and hope it will go away

Even if you believe that the complaint has absolutely no merit, you cannot do nothing and assume the prosecutor's

investigator will see the matter the same way, and that the complaint will just vanish. This is your opportunity to respond to the complaint and forestall any further action by the bar. More importantly, you have a statutory duty to cooperate in the investigation (Bus. & Prof. Code 6068(i)), and if you do not timely comply with the investigator's request, additional charges will be added for your failure to cooperate.

The first thing you should do is reach out to the investigator, introduce yourself, and state that you intend to fully comply with the investigation. You should also request an extension to respond if you think you need time to prepare an adequate response.

See Stromeyer & Weber, Next Page

Consider hiring counsel

Needless to say, this is a highly emotional situation. Your former client misunderstood your relationship, took statements out of context, or outright lied about a material fact. Your license, livelihood, and professional reputation are at stake. You will be understandably upset and defensive, and this does not bode well for a thoughtful and well-reasoned response. There are numerous specialists who practice regularly before the State Bar and understand the unique requirements and personalities. You should also notify your malpractice carrier, as many policies include endorsements for defense in a licensing board action.

Prepare a responsive response

The initial letter will state an investigation has begun and identify the complaining client. The letter will generally summarize the allegations, and will likely request specific documents, and an explanation of the behavior complained of by the client. Do not give in to the temptation to over-explain the situation, or dump your entire file on the investigator. The discipline system is an adversarial system, and a blow-by-blow account of the entire case is just as likely to uncover additional areas of inquiry that can prolong the process.

Rather, your response should be in letter form and serves two purposes: (1) explain your side of the story, and (2) respond point by point to the allegations set forth by the client. Your letter should include those exhibits necessary to answer the allegations and no more. You will need to consult your client file, especially your communications with the client, and you should gather all of your emails, notes of conversations and, if necessary, records of phone calls and faxes.

If the matter involves trust account discretions, you will need to gather all pertinent bank records. Do not be afraid

to be in constant communication with the investigator assigned to the file. Your goal is to cooperate and prepare a comprehensive response because the State Bar's decision to proceed further will be dependent on your response.

Familiarize yourself with the law

It should be obvious that this is a serious matter that requires your attention. Should your case proceed to trial, your response could be an exhibit in the State Bar's case against you. Therefore, treat the response as you would an opposition to a summary judgment motion.

In order to understand the specific charges the prosecutors are contemplating bringing, you will need to review the authority governing lawyer conduct including the State Bar's Rules of Practice and Rules of Procedure, the Rules of Professional Conduct and relevant sections of the Business & Professions Code. There are also opinions available on the State Bar Court's website, your local bar association website and case law. As with any legal brief, you should set forth the rule that governed your conduct, and how you complied with that rule.

A good start is to review any Rule of Professional Conduct or Business & Professions Code (section 6068) that may be relevant. For example, if an allegation is based on the failure to keep the client informed, you will want to review Rule 3-500 and Business & Professions Code § 6068(m) and any opinions interpreting the rule. "The Standards for Attorney Sanctions for Professional Misconduct" discuss "the means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." In particular, the State Bar will look at aggravating circumstances in order to justify discipline. You will be able to argue

mitigating circumstances. The factors are outlined in the Standards.

Your initial response is part of the investigation phase and it does not require a points and authorities on the law. However, there is nothing wrong with showing the State Bar that you intend to vigorously defend yourself against the allegations. Identifying and discussing authority on your side at the investigation stage can convince the prosecutor that he or she need do no further investigation to find in your favor.

Conclusion

The State Bar's initial role in disciplinary actions is fact gathering. When you receive a letter from the State Bar advising you of a complaint, remember, only the client's side has been heard. The initial letter to you is more or less a request for information; however, this does not undermine the importance of your response. Devote the time necessary to prepare a concise response, or seek qualified counsel familiar with State Bar disciplinary actions.

Karen Stromeier is a senior associate attorney at Murphy, Pearson, Bradley & Feeney with a practice emphasizing general civil litigation including defending lawyers against claims of professional liability. Prior to joining Murphy, Pearson, Bradley & Feeney, she spent several years as an associate at a prominent plaintiffs' firm in San Francisco where she represented catastrophically injured individuals.

Peter Weber is a Director at Murphy, Pearson, Bradley & Feeney and handles all aspects of civil litigation, with a particular emphasis in the area of professional liability defense. He attended Thomas Jefferson School of Law, where he earned his J.D. He has been selected as a Northern California Super Lawyer every year since 2013.

