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WORKING WITH A CLIENT WHO HAS REPORTED YOU

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Introduction

You have received a letter from the Office of the Bar Counsel informing you that your client has filed a complaint against you. Along with the letter, there's a copy of your client's complaint and you have twenty days to answer. In addition to preparing your answer, or retaining counsel to do so, should you withdraw from the representation? And what else should you do to address the issues that gave rise to the complaint?

Some lawyers feel that a complaint to the Office of Bar Counsel creates a per se conflict between the lawyer and client. They believe that the first action a lawyer must take is to file a motion to withdraw in the underlying matter. This is not necessarily the case. Whether or not a conflict is created, and whether or not a lawyer should move to withdraw, depends on the nature of the client's allegations. Often, problems occur because of a misunderstanding or poor communication. Many of these problems are susceptible to being repaired.

Representation Must Continue

Lawyers may believe that they are not permitted to communicate with a client after the client has filed a complaint and that they should take no action on the client's case until the complaint is resolved. However, Mass. R. Prof. C. 1.3 obligates a lawyer to act with reasonable diligence and promptness in representing a client. This means that, unless or until a lawyer has been discharged or has formally withdrawn, the lawyer must continue to take whatever actions are necessary to zealously represent the client. Moreover, withdrawal may not even be an option: Mass. R. Prof. C. 1.16(b)(1) provides for permissive withdrawal from a representation only if it can be accomplished "without material adverse effect on the interests of the client." Accordingly, a lawyer whose client was facing an imminent hearing date or filing deadline would likely not be at liberty to withdraw from the matter merely because the client had submitted a complaint to Bar Counsel.

Salvaging the Relationship

A lawyer faced with a disciplinary complaint from a current client should carefully review it and, in view of the nature of the grievance and the facts alleged, make a preliminary determination whether the relationship with the client can continue. If it can, then the lawyer is encouraged to contact the client, discuss the problems or perceptions that prompted the complaint, and take whatever remedial steps are necessary and practicable to salvage the lawyer-client relationship.

[1] A version of this article was first published by the Office of Bar Counsel in 1998.

Many complaints to the Office of Bar Counsel include the refrains, "My lawyer doesn't return my phone calls," "My lawyer hasn't come to speak to me at the jail," "I haven't received copies of the papers I've requested," or "I don't know what's happening with my case." Mass. R. Prof. C. 1.4(a)(3) requires the lawyer to keep the client reasonably informed about the status of the client's case; and Rule 1.4(a)(4) requires prompt compliance with the client's reasonable requests for information. Accordingly, if a lawyer has not recently communicated with the client, the lawyer should write a letter, send copies of requested documents, schedule a meeting, or get on the telephone. Naturally, the lawyer should acknowledge any delay in the communication and give the client an update on the current status of the case.

Many complaints to the Office of Bar Counsel also include the refrain, "My lawyer hasn't done anything on my case since last month/last season/last year." Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. If a lawyer has been putting off writing a letter, filing suit, conducting legal research in support of a motion, contacting potential witnesses, calling counsel for the other party, calculating a financial statement, preparing a probate account, filing an estate tax return, obtaining an M-792 tax lien release, or taking any other steps needed to move the client's case forward, the lawyer should take immediate action and report to the client what has been done.

Sometimes a client complains that the lawyer's bills are excessive, lack detail, or are outpacing actual progress in moving the case forward. In response to such concerns, the lawyer should look more closely at the items on the bill that the client specifically questions and offer to go over and explain the bill with the client. In addition to possibly resolving any dispute over the amount of the charges, such a discussion should provide an opportunity for the lawyer to outline the likely future course of the matter, so that the client has realistic expectations going forward.

Whatever the nature of the client's grievance may be, it is important for a lawyer who has received notice of a current client's disciplinary complaint, and who wishes to carry on with the representation if possible, to act quickly in assuring the client that the problems that led up to the filing of the complaint have been or will be corrected. If the lawyer can sincerely offer such assurances, and the client is likewise open to continuing the relationship, then it is not uncommon for the client to ask the Office of Bar Counsel to refrain from pursuing the matter further. Although the Office of Bar Counsel is not required to cease the investigation in such a scenario, the lawyer's sincere efforts to remediate the problems that prompted the complaint, and the client's expressed desire for the lawyer to continue with the representation, may well result in a decision to close the file without disciplinary action, in Bar Counsel's discretion. Even if that is not the result, however, the lawyer's post-complaint efforts to repair the relationship may be weighed as a mitigating factor if it is subsequently determined that the lawyer's conduct violated the rules of professional conduct.

Although, as discussed above, it may be both appropriate and mutually desirable for a lawyer to try to repair the attorney-client relationship, thereby possibly vitiating the need for an investigation of the client's disciplinary complaint, it is clearly unethical and grounds for the imposition of discipline for a lawyer to negotiate any sort of settlement or compromise with the client that is conditioned upon the latter's withdrawal of the complaint (or the initial filing of a complaint, if one has not yet been filed). See S.J.C. Rule 4:01, § 10. Accordingly, the lawyer's focus in these situations should be on placing the attorney-client relationship on the right path going forward, assuming there is a mutual desire for the engagement to continue and a sincere commitment to pursue that path. There can be no *quid pro quo* agreement or understanding that the lawyer will only agree to continue the representation if the client agrees to forego pursuit of the disciplinary complaint.

When You're Discharged

If in fact the client has discharged you, Mass R. Prof. C. 1.16(a)(3) requires you to withdraw from the representation. Where court permission for withdrawal is required (which is generally the case when the matter is in litigation and no successor counsel has appeared), Rule 1.16(c) requires lawyers to file a motion for leave to withdraw. As indicated above, unless and until the motion is allowed, the lawyer remains subject to Rule 1.3 (Diligence) and must continue to protect the client's interests in the matter, such as by meeting (or obtaining extensions on) any impending court or discovery deadlines. This means the lawyer must continue the representation as usual.

Bear in mind that, even if a lawyer has been *unfairly* discharged by the client, the lawyer must take all reasonable steps to mitigate the consequences to the client. See Comment [9] to Mass. R. Prof. C. 1.16. In particular, Rule 1.15A requires the lawyer to comply with the client's request for his or her file within a "reasonable time"; and Rule 1.16(d) requires a refund of any unearned fees or expenses.

If the client has retained successor counsel, Mass. R. Prof. C. 4.2 prohibits the lawyer from having any further direct communication with the client concerning the subject matter of the representation without that counsel's consent. To avoid running afoul of this rule, if the lawyer seeks to present the client with a final bill, or make demand for payment of prior invoices, the lawyer should ask successor counsel whether he or she is representing the client in regard to such matters rather than contacting the client directly in the first instance.

The termination of the representation does not mean that the lawyer no longer owes any further duties toward the client. Specifically, Mass. R. Prof. C. 1.15A requires the lawyer to retain the client file and to make it available to the client upon request (subject to certain limitations and qualifications, which readers are encouraged to review). And Mass. R. Prof. C. 1.16(d) requires the lawyer to return any papers, property, and unearned fees to the client in a prompt fashion, whether or not so requested.

Conclusion

Naturally, the mere fact that a client has submitted a complaint to Bar Counsel does not mean that the grievance has substantive merit or will result in disciplinary charges.[2] However, a disciplinary complaint may be an appropriate occasion for a lawyer to assess whether there are ways to better manage the duties and demands of his or her practice, including by engaging in more frequent and informative client communications. An excellent resource to assist lawyers in this task is Lawyers Concerned With Lawyers (LCL), which, along with its affiliated organization, the Law Office Management and Assistance Program (LOMAP), provides a range of supportive services for lawyers working in all manner of practice settings.

It is, of course, far better for lawyers to make warranted changes in the way they practice law *before* any deficiencies in their practices have the chance to manifest themselves in a disciplinary complaint. Repairing and reviving an attorney-client relationship in the wake of the complaint may be both possible and desirable, but there is no assurance that it will be easy to restore the

[2] Many complaints are closed, following investigation, without disciplinary action. For a variety of reasons, some are even determined not to require former investigation. For a detailed description of the investigatory and disciplinary process, see Bar Counsel's article, "What If I Am the Subject of a Complaint Accusing Me of Unethical Conduct?"" (March 2025).

mutual trust and confidence that existed at the relationship's inception. However, walking away from a representation without having achieved the client's agreed-upon objectives can have its own dispiriting effects on both parties. Alas, the best cure for a BBO complaint is prevention.

For additional guidance on this or any other ethical issues you may encounter in your practice, the Office of Bar Counsel encourages you to call its Ethics Helpline at 617-728-8750. The Helpline is open Mondays, Wednesdays, and Fridays from 2:00 p.m. to 4:00 p.m.

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