

# When Disciplinary Counsel Knocks on Your Door, How Do You Respond?

An understanding of the disciplinary process is essential to successfully defending against a disciplinary action, and can mean the difference between your ability to continue practicing law or needing to find a new job.

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When faced with a potential disciplinary action, an attorney should immediately consider the tools available to defend against the action. An attorney disciplinary matter is not civil litigation, and one must recognize the differences and the unique nuances to disciplinary practice when proceeding. Best practices include securing defense counsel experienced in Disciplinary Board representation immediately to best protect you and your license throughout the process; this is not an area where you want a “fool for a client.” Most attorney professional liability insurance policies provide some level of coverage for disciplinary matters. It is worthwhile now to check your policy, understand your coverage, and make arrangements to ensure you will have sufficient support if faced with a disciplinary action. Failure to understand the process can make the difference between dismissal or relatively mild discipline and more serious sanctions.

When a complaint is made to the Disciplinary Board, it is investigated by Disciplinary Counsel. Following investigation, most complaints are dismissed as frivolous or for other reasons, and you as the attorney

may never know that a complaint was even filed regarding your conduct. If the complaint survives this initial investigation, you will receive a DB-7 request for statement of respondent’s position. This is the time to engage defense counsel. A response to a DB-7 is not an answer to a complaint, and it should not be approached in the same way. Candor, remorse, and mitigating factors are equally, and often more, important than contesting the facts alleged. With an appropriate response, lesser discipline may sometimes be offered before the formal complaint process begins, keeping the matter out of the public record, or the matter can even be dismissed where appropriate.

If the response to the DB-7 does not resolve the matter, a petition for discipline will be prepared by Disciplinary Counsel. This is the beginning of formal disciplinary proceedings. Again, the answer to the petition for discipline should be carefully prepared, taking into consideration all of the factors which are relevant to assess whether discipline is appropriate. The outcome of formal disciplinary proceedings can range from dismissal of the petition all the way through disbarment. Each level of

discipline carries with it different consequences, and you should fully understand these consequences as you defend against the matter. For example, informal admonitions and private reprimands do not become part of your public record. On the other hand, public reprimand, public censure, and any suspension or disbarment will become publically available information. Suspension for one year or less automatically concludes at the end of the term and allows you to immediately begin practicing law again. Suspension for one year and a day, or more, requires that you petition for reinstatement before you may begin practicing law again. The reinstatement process can be arduous, and it is certainly another area where you should engage experienced counsel to guide you. Failure to do so can result in unintended negative consequences. Attorneys are denied reinstatement with some regularity based, at least in part, on failing to follow the rather complicated reinstatement process to the letter.

In a recent matter before the Disciplinary Board of the Pennsylvania Supreme Court, an attorney petitioned for reinstatement following a suspension of one year and one day. In the *Matter of William James Helzlsouer*, No. 197 D.B. 2018 (December 7, 2022). Representing himself pro se, the petitioner submitted a reinstatement questionnaire rife with inaccuracies and omissions. He then failed to timely respond to the pre-hearing order, and did not timely produce exhibits or witness lists. At the reinstatement hearing, The petitioner was precluded from offering witnesses or exhibits due to his failure to timely identify them. He appeared pro se and testified on his own behalf. Following the hearing, the petitioner failed to timely

submit a post hearing brief. The hearing committee did accept his untimely brief in support of his reinstatement, but would not accept a later filed supplemental brief. The Office of Disciplinary Counsel opposed his reinstatement, and the hearing committee recommended that his reinstatement be denied. The petitioner, again proceeding pro se, did not file exceptions to the committee's recommendation.

Unsurprisingly, the Disciplinary Board of the Pennsylvania Supreme Court found that the petitioner failed to meet the burden of proving that he should be reinstated, and recommended that the petition for reinstatement be denied. The board explained:

The reinstatement process is a searching inquiry focused on the nature and extent of the petitioner's rehabilitative efforts made since the time that the sanction was imposed and the degree of success achieved in the rehabilitative process. See *Philadelphia Newspapers v. Disciplinary Board of the Supreme Court*, 363 A.2d 779, 780-781 (Pa. 1976). This inquiry involves thorough examination of a wide range of issues relevant to a petitioner's fitness to resume the practice of law.

The board found that the petitioner had provided false and inaccurate answers in his reinstatement questionnaire, failed to divulge his involvement in certain legal matters during the pendency of his suspension, appeared unprepared for his reinstatement hearing, failed to comply with deadlines in connection with the reinstatement process, and produced no

evidence of rehabilitative efforts (likely because his failure to comply with deadlines precluded him from offering exhibits and witnesses other than himself). The board noted “the record is absent of any genuine expression by the petitioner of remorse or acceptance of responsibility for the wrongdoing that led to his suspension, and any understanding by the petitioner as to the ramifications of his professional misconduct on the public and integrity of the legal profession.” The Supreme Court agreed, and ordered that the petition for reinstatement was denied. The petitioner was not permitted to resume practicing law, and was required to pay the expenses incurred by the Disciplinary Board in investigating and processing the petition for reinstatement.

An outcome such as this is not uncommon when a practicing attorney, inexperienced in disciplinary matters, proceeds pro se. Essentially, The petitioner treated the process as a regular civil litigation matter, where denial of the allegations is paramount and deadlines may be extended. On the contrary, the disciplinary process takes into account numerous other factors and, most importantly, views the attorney’s overall fitness to practice law as the ultimate question. Had the petitioner involved experienced counsel in this pro-

cess, many of these mistakes may have been avoided and the outcome of his petition for reinstatement may have been different.

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