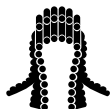




# **You've Just Received a Bar Complaint – Now What?**



**On Demand**

Presented by:  
The Kentucky Bar Association  
Continuing Legal Education Commission

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**Published October 2025**

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***The Kentucky Bar Association would like to give special thanks to the volunteer authors who contributed to these program materials.***

## YOU'VE JUST RECEIVED A BAR COMPLAINT – NOW WHAT?

Kentucky Bar Association Office of Bar Counsel

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It's Friday morning. You are sitting at your desk, going over the list of files needing your attention before you head out for the weekend. Motions to file, clients to call, letters to send – you prioritize and prepare to dig in, when the telephone rings. You're needed up front to sign for something. You wonder what it could be, but you don't panic; you get certified mail all the time, right? You reach the receptionist's desk, and the postman hands you an envelope, green card side up, of course. You sign for it, and he takes the card and hands the envelope back to you. You flip it over, and you see those four terrible words – Office of Bar Counsel.

Your first bar complaint has arrived. Whether it happens after five years in practice, or 25 years in practice, it is no less upsetting. After your heart resumes beating and your stomach stops churning, you head back to your office to find the file. You may make a quick run through the Kubler-Ross five stages of grief: denial, anger, bargaining, depression, and acceptance. Once you hit the last stage, you're ready to say, "Ok, maybe I messed up. Now what?"

### I. EDUCATE YOURSELF

If you violated the [Kentucky Supreme Court Rules of Professional Conduct](#), you may receive discipline in the form of a public reprimand, a suspension for a specific period of time with or without conditions, or permanent disbarment. See [SCR 3.380\(1\)](#).

Most disciplinary cases are now resolved at, or even before, the Inquiry Commission level. Of the 835 disciplinary files closed during the 2024-2025 fiscal year, 756 were dismissed, either by the Inquiry Commission, pursuant to [SCR 3.160\(3\)](#), which provides an informal diversion method for addressing less serious alleged violations, or simply because they were insufficient complaints. Private admonitions were issued in 37 other complaint cases. The Kentucky Supreme Court issued renditions in the other 42 cases. Statistically speaking, you are likely to fall into one of those categories. The best way to avoid panic, however, is to know what you are facing – educate yourself about the disciplinary system.

### II. THE FRAMEWORK OF THE DISCIPLINARY SYSTEM

#### A. Constitutional Authority

The Supreme Court of Kentucky has exclusive authority to discipline lawyers in the Commonwealth, pursuant to [Section 116](#) of the [Kentucky Constitution](#).

The Supreme Court has adopted [Supreme Court Rules](#) which establish both the substantive rules by which a lawyer's conduct is to be measured and the procedures to be followed in determining whether the substantive rules have been violated.

Specifically, the KBA acts as an agent of the Supreme Court in the disciplinary process, pursuant to [SCR 3.025](#).

## B. The Disciplinary Process

### 1. Inquisitorial original proceeding.

The function of the OBC, the Trial Commissioner, and the Board of Governors is to prepare the case for review by the Court and make appropriate recommendations to it through the findings of fact and conclusions of law determined by the Trial Commissioner and the Board of Governors. The action is an original action in the Supreme Court.

"A disciplinary matter is one involving the investigative process between the KBA and the lawyer, not an adversarial proceeding... There is no rule permitting an appeal of that decision (dismissal by the Inquiry Commission). Consequently, [the complainant] has no standing to appeal to this Court." *Woodard v. Kentucky Bar Ass'n*, 156 S.W.3d 256 (Ky. 2004) (parentheses added).

### 2. Immunity of participants.

Pursuant to [SCR 3.160\(4\)](#), all participants in the disciplinary process are protected by immunity. Furthermore, the filing of a bar complaint is absolutely privileged.

### 3. Confidentiality.

Initial proceedings are confidential. [SCR 3.150](#) makes discipline matters confidential until a verified answer is filed with the Disciplinary Clerk or in cases of default, 30 days following proper service on the Respondent. At that point, the matter is public.

## III. PERSONS AND ENTITIES INVOLVED

### A. Initial Investigation

#### 1. Complainant.

A bar complaint can be initiated by anyone who files a sworn complaint, or by the Inquiry Commission if it becomes aware of potential misconduct from any source. The *Complainant* is a witness, not a party to the proceeding; the KBA is the named Complainant once the Inquiry Commission issues a charge.

#### 2. Respondent.

The attorney sought to be disciplined is the *Respondent*.

3. Office of Bar Counsel.

The attorneys in the Office of Bar Counsel (OBC) are appointed by the Board of Governors and are given the authority and direction by the Supreme Court to investigate and prosecute all disciplinary cases. The OBC is presently staffed with eight full-time attorneys and support staff.

4. Inquiry Commission.

The Inquiry Commission consists of nine persons, six attorneys and three non-attorneys, appointed by the Chief Justice with the consent of the Supreme Court.

The Inquiry Commission has adopted administrative regulations to ensure consistent treatment of cases by and among the three panels and provide for overall coordination with the OBC.

The Inquiry Commission determines whether probable cause exists for a charge to be filed against a Respondent ([SCR 3.163](#)) based upon the information obtained by the OBC during the initial review and investigation phase. The Respondent does not appear before the Inquiry Commission but generally files a response and perhaps additional information as well.

B. Post Charge Hearing Proceedings

Trial Commissioners: If the Inquiry Commission authorized a charge and the Respondent files an answer which raises issues of fact, the case is assigned to a member of the Trial Commission to conduct an evidentiary hearing ([SCR 3.230](#) and [SCR 3.240](#)). The Trial Commission is appointed by the Supreme Court under [SCR 3.225](#).

The charge outlines the conduct and specifies the Rule(s) the Respondent has violated. It is a notice pleading, like other civil pleadings.

C. Appellate Proceedings

1. The Board of Governors of the Kentucky Bar Association.

The members of the Board who vote on discipline matters consist of the President, the President-Elect, the Vice President, the 14 elected members of the Board (two from each of the Supreme Court districts), and four lay members who are appointed directly by the Chief Justice. [SCR 3.370\(4\)](#).

If the Respondent fails to file an answer, admits the violation, or agrees that the answer raises only issues of law, the case is submitted directly to the Board of Governors ([SCR 3.210](#)). The absence of a factual dispute alleviates the need for a Trial Commissioner.

However, in a case heard by a Trial Commissioner, either the Respondent or the OBC may take an appeal to the Board of Governors by filing a notice of appeal from the Trial Commissioner's report. If no notice of appeal is timely filed, the case proceeds directly to the Supreme Court ([SCR 3.360](#)). Appeals are routinely filed.

The case is heard by the Board of Governors through briefs and oral arguments ([SCR 3.370\(2\) and \(3\)](#)). No new evidence is taken, but the Board may remand the case for additional evidence if appropriate ([SCR 3.370\(6\)](#)).

In a case on appeal from a Trial Commissioner, the Board determines whether the decision of the Trial Commissioner is supported by substantial evidence or is clearly erroneous as a matter of law. However, it may conduct a *de novo* review of the evidence presented at the hearing held by the Trial Commissioner ([SCR 3.370\(6\)](#)).

The Board issues a written decision which is advisory in nature ([SCR 3.370\(7\)](#)). The Disciplinary Clerk sends it, along with the record of the proceeding, to the Court.

## 2. Supreme Court.

The case can proceed to the Supreme Court in a variety of ways, but ultimately it has plenary authority to review the evidence, decide the case and impose discipline as it deems appropriate. A disciplinary proceeding is an original proceeding in the Supreme Court.

Now that you have an idea of how the disciplinary system functions, and know where in the [Supreme Court Rules](#) to look for information on the system, how should you address the complaint on your desk?

## IV. RESPOND

[SCR 3.130\(8.1\)\(b\)](#) states: "[A] lawyer...in connection with...a disciplinary matter, shall not...knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority..." Still, the number of attorneys who simply ignore bar complaints is surprising. Under [SCR 3.160\(3\)](#), attorneys against whom complaints of a relatively minor rule violation are filed, such as failure to return a file or failure to return calls, receive a letter informing them that they may be contacted by the OBC attorney to whom the file has been assigned. Many issues can be resolved by simply faxing a fee agreement, a pleading, or other document. Often these issues may be addressed in a telephone call alone, so do not ignore a telephone message from the OBC attorney.

The letter accompanying the complaint form may indicate a need to file a written response. In that event, you should do so within the time frame specified in your letter. If you need additional time to respond, it can be made available. Just call the OBC attorney assigned to the file. Should you try to ignore the complaint or the telephone message in the event no

written response was required, you may find yourself facing another violation of your own creation, for which the proof is clear.

Additionally, [SCR 3.380\(2\)](#) provides that the Court may suspend you from the practice of law for an indefinite period of time if you fail to answer a charge filed, or if you fail to further participate in the disciplinary process after you file an answer.

Moreover, without a response, the Inquiry Commission, and possibly the Board of Governors and the Kentucky Supreme Court, does not have the benefit of your point of view and insight. They must rely on the information in the complaint and the information uncovered in the investigation. The solution is to respond.

A. What Makes a Good Response?

1. Full and complete information.

Responses should focus on the allegations raised in the complaint and provide a clear, objective narrative of the facts relevant to those allegations. Candor and honesty are critical. You may include any information which could be considered a mitigating factor, such as a drug or alcohol problem which might be addressed through the [Kentucky Lawyer Assistance Program \(KYLAP\)](#).

2. Copies of relevant documents from the file or court.

Often, responses can and should be supported by documents to paint the most complete factual picture of the attorney's explanation. Examples include, but are not limited to, contracts, fee agreements, and client correspondence.

3. Relevant background on Complainant.

While responses should not focus too heavily on Complainants, some facts may be important to an evaluation of the complaint. History with Complainant, issues with collecting unpaid fees, or difficulties working with Complainant during representation are all factors to be considered in reviewing the case.

4. Seek independent review of your response.

The decision on whether to retain counsel is, of course, entirely yours. Attorneys in the Office of Bar Counsel are not permitted to give legal advice, procedural or otherwise. If you would like an attorney and cannot afford one, [SCR 3.300](#) allows for the Inquiry Commission to appoint one for you.

B. What Shouldn't You Argue?

1. Standing.

Bar complaints may be filed by anyone; the ability to do so is not restricted to clients or former clients alone. Frequently, in fact, complaints are filed by opposing parties. They may be filed by judges or other attorneys, or they may be Inquiry Commission complaints arising from reports in the local news. Under the [Supreme Court Rules](#), attorneys owe certain duties to their clients, along with certain duties to other parties and to the profession. An argument that a Complainant lacks standing to make a complaint is not a helpful argument.

2. Statute of limitations.

There is no statute of limitations contained in the [Supreme Court Rules](#). Certainly, delay in bringing the complaint is worth noting in the response, particularly if the passage of time has resulted in loss of information.

3. Character attacks on Complainant.

While relevant information regarding a Complainant is helpful, demonizing a Complainant is not. Your response should not simply be, "Complainant is crazy (or a criminal) so I shouldn't have to respond to this ridiculous complaint."

4. Motions to dismiss complaint.

While a motion to dismiss for failure to state a claim may be appropriate in a civil action, such is not the case here. Making such a motion as opposed to simply responding to the complaint will not speed up the dismissal of the complaint, and a failure to address any issues will prolong the investigation. The better course of action is to use the response to show why the complaint should be dismissed.

5. Pleas for mercy.

Arguing that the malpractice judgment you've already paid or the criminal sentence you are about to serve should be punishment enough will not work. Ethical violations are independent of any civil or criminal remedies. Likewise, arguing the financial consequences of suspension as a reason to dismiss the complaint will not score any points. The better tack is always to address the merits of the complaint itself.

6. You people in Frankfort...

With complaints that require a written response, the Inquiry Commission makes the determination of how to proceed. Do not spend time in your



response insulting the OBC or the KBA or questioning the investigating attorney's background or qualifications. Respond to the issues.

## **V. FACE THE MUSIC**

The key point to glean from this is the importance of fully responding to bar complaints. Ignoring them will not make them go away. Filing motions to dismiss will not make them go away. Remember that this is an inquisitorial process on behalf of the Kentucky Supreme Court, the licensing entity. It is not criminal in nature. Your response is critical; without it, the Inquiry Commission will only know the Complainant's side of the story. They will not know yours and may have no choice but to move forward with a charge for a violation of [SCR 3.130\(8.1\)\(b\)](#), if for nothing else. Violation of [SCR 3.130\(8.1\)\(b\)](#) is sufficient, in and of itself, to warrant public discipline. *Kentucky Bar Ass'n v. Beal*, 169 S.W.3d 860 (Ky. 2005). If you face the music, you may be surprised how soon the band stops playing.

## **VI. ETHICS HOTLINE/UPL COMMITTEE**

### **A. Ethics Hotline**

If you have a question about how to ethically proceed in a situation, you can contact the Ethics Hotline. [SCR 3.530](#). The Ethics Hotline Committee members' information is on the Kentucky Bar Association's [website](#). When you contact a committee member by phone, he or she will attempt to give you a prompt telephonic answer. It is always advisable to follow up by submitting the request and factual information in writing to obtain a written hotline opinion regarding your contemplated professional act.

You must call about your own conduct that has not yet occurred. You cannot contact the hotline and ask about your past conduct or someone else's conduct.

These opinions are advisory only, but you will not be disciplined for any professional act you perform in compliance with the opinion provided pursuant to your written request, provided that your written request clearly, fairly, accurately, and completely states your contemplated professional act. See [SCR 3.530\(2\) and \(5\)](#).

### **B. Unauthorized Practice of Law (UPL) Committee**

Under this same rule, if you have a question about whether certain conduct may constitute the unauthorized practice of law, you may seek an advisory opinion from the UPL Committee.

As with the Ethics Hotline, when you contact the committee member by phone, he or she will attempt to give you a prompt telephonic answer and a written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law.

Your communications with UPL Hotline members in these situations are confidential.

If the Ethics Committee or the UPL Committee determines the issue presented to be of sufficient importance, they may present the issue to the Board of Governors to render a formal opinion. Formal opinions will be published in the [Bench and Bar](#) and are available on the KBA [website](#).

C. Duty to Self-Report

Pursuant to [SCR 3.130\(8.3\)](#), you have a duty to report misconduct. This is a self-policing profession. If you know that another lawyer has committed a violation of the [Rules of Professional Conduct](#) that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, you shall inform the OBC. [Rule 8.3](#) does not require that you file a formal complaint.

This is a mandatory reporting obligation, and you can be disciplined for your failure to report another attorney's misconduct. You are not, however, required to report information that is confidential and protected by [Rule 1.6](#).

Although you cannot seek an Ethics Hotline opinion relating to another lawyer's conduct, you can seek an opinion relating to your reporting obligation regarding that other attorney's conduct.

## VII. COMMON RULE VIOLATIONS

In the 2024-2025 fiscal year, 905 disciplinary files were opened.

The most common rule violation recorded in disciplinary files as opened was communication ([SCR 3.130\(1.4\)](#)), followed by diligence ([SCR 3.130\(1.3\)](#)) and termination of the representation ([SCR 3.130\(1.16\)](#)).

Most of these files were closed at the Inquiry Commission level either with informal procedures or a private admonition.

Also, in the 2024-2025 fiscal year, the Kentucky Supreme Court issued renditions in 42 cases.

Of the bar complaints that made it past the Inquiry Commission level and were reviewed by the Kentucky Supreme Court, most related to dishonest conduct ([SCR 3.130\(8.4\)\(c\)](#)), criminal conduct ([SCR 3.130\(8.4\)\(c\)](#)), diligence ([SCR 3.130\(1.3\)](#)), candor in the discipline process ([SCR 3.130\(8.1\)](#)), and terminating the attorney-client relationship ([SCR 3.130\(1.16\)](#)).

All this being said, in the 2023-2024 fiscal year, only 1.86 percent of the 19,993 lawyers licensed to practice law in Kentucky even had a bar complaint filed against them. Of those complaints, only 0.49 percent of those lawyers received a disciplinary charge.