Old Republic Lawyers Professional

When the Disciplinary Bar Comes Calling

By Sean Ginty, AVP of Risk Control, Old Republic Lawyers Professional, Inc.

Law firms face a constant risk of legal malpractice claims. Malpractice-insurance data indicate that such claims are not uncommon: one frequently cited estimate suggests that approximately 1% to 2.6% of lawyers face a malpractice claim in any given year. The American Bar Association's most recent study of legal malpractice claims, drawing on data from most major legal malpractice insurers, reported that more than 38,000 professional-liability claims were filed between 2020 and 2023.[1]

An even more common risk for lawyers, however, is a disciplinary grievance.[2] The ABA also reported disciplinary data from 38 jurisdictions for 2023. More than 83,000 disciplinary grievances were filed during that year.[3] In other words, the number of disciplinary grievances filed in a single year was more than double the number of reported legal malpractice claims filed over the four-year period from 2020 through 2023.

What Should a Lawyer Do Upon Receiving Notice of Disciplinary Grievance

The steps lawyers should take to reduce the risk of disciplinary grievances largely mirror those used to prevent legal malpractice claims. Sound risk-management practices—such as using engagement letters, communicating regularly with clients, avoiding conflicts of interest, and maintaining manageable caseloads—help minimize exposure to both malpractice claims and disciplinary grievances.

Even lawyers who follow sound risk-management practices may face a disciplinary grievance during their careers. When that occurs, they should have a clear response protocol in place. Many lawyers do not realize that most lawyer professional liability ("LPL") policies provide coverage for disciplinary matters. Accordingly, one of the first steps should be to promptly notify the LPL carrier of the disciplinary grievance because failure to provide timely notice may jeopardize coverage, including the assigning of counsel to defend the policyholder.

Insureds may forfeit other important benefits of their LPL policy by failing to report disciplinary grievances promptly. For example, a typical Lawyers Professional Liability policy provides some coverage for defense costs in connection with a disciplinary proceeding. The admitted Old Republic Lawyers Professional policy[4] provides up to $50,000[5] for attorney fees and other reasonable costs incurred in such a proceeding. This coverage does not require the policyholder to pay a deductible and does not reduce the policyholder's limits of liability. In addition, if it is determined that the insured has no liability, Old Republic Lawyers Professional will reimburse disciplinary fees exceeding the $50,000 cap.[6]

[1] American Bar Association Profile of Legal Claims: 2020-2023, p.10.
[2] The ABA defines a disciplinary grievance as the initial complaint submitted to a lawyer disciplinary authority alleging possible misconduct by a lawyer. It is not the same thing as a formal disciplinary complaint; rather it is the complaint that starts the screening/investigatory process.
[3] American Bar Association 2023 Survey on Lawyer Discipline Systems (S.O.L.D.), "Lawyer Population and Agency Caseload Volume," pp. 1-4.
[4] Policies underwritten by Pennsylvania Manufacturers' Association Insurance Company, Manufacturers Alliance Insurance Company, and Pennsylvania Manufacturers Indemnity Company.
[5] In no event shall the amount payable exceed $100,000 regardless of the number of Insureds or the number of such proceedings.
[6] *Id.*

Coverage Highlight

- Up to $50,000 in disciplinary-proceeding defense costs.
- No deductible.
- Does not reduce limits of liability.

Excuses for Not Reporting

Although many insureds fail to report disciplinary complaints because they do not realize that most LPL policies provide coverage for such matters, that is not the only explanation. Other common reasons are:

The disciplinary grievance has no merit.

In many cases, that may be true. As the ABA disciplinary data cited above reflect, more than 83,000 disciplinary complaints were filed in 2023, yet only a small fraction resulted in public sanctions. That disparity suggests that the overwhelming majority of complaints end without formal discipline. Even so, the fact that the odds may favor the lawyer does not mean the grievance should go unreported to the lawyer's insurance carrier.

Disciplinary complaints are often a precursor to legal malpractice claims. The fact that most complaints do not result in discipline does not prevent malpractice litigation. For example, suppose a lawyer with no prior disciplinary history misses the statute of limitations in a personal injury matter, leaving the client time-barred from filing suit and unable to recover a judgment or settlement.

A disciplinary authority, exercising prosecutorial discretion, might view that neglect as an isolated error and decline to pursue formal charges. However, because the burden of proof in disciplinary proceedings is typically clear and convincing evidence—higher than the preponderance-of-the-evidence standard in civil litigation—the absence of discipline would not forclose the client from bringing a malpractice claim based on the same underlying facts.

In that situation, prompt notice to the insurance carrier is the better practice for at least two reasons. First, delayed notice may jeopardize coverage, particularly if significant time passes between notice of the disciplinary complaint and the filing of a civil action. Second, involving counsel at the grievance stage or later, if circumstances warrant it, may help reduce the lawyer's exposure in both the disciplinary matter and any related professional-liability claim.

It is just a disciplinary grievance—I do not need to report it unless the disciplinary authority files a formal disciplinary complaint.

Most LPL insurance policies require insureds to provide notice to the carrier as soon as practicable after becoming aware of a disciplinary proceeding in which they are the subject. Moreover, most policies define a disciplinary proceeding to include an initial inquiry arising from a disciplinary grievance. In some cases, several months—or even more than a year—may pass between the initial grievance and the filing of a formal disciplinary complaint.

Failing to notify the carrier at the outset may jeopardize coverage not only for the disciplinary matter itself but also for any later professional-liability claim arising from the same underlying facts.

Aside from the notice requirement, there are other sound reasons to report a disciplinary grievance promptly. Upon receiving a grievance, a disciplinary authority may request a written response, subpoena client files, trust-account records, billing statements, and other documents, and require sworn statements from the insured and other relevant witnesses before deciding whether to file a formal complaint. As discussed below, insureds benefit from having experienced disciplinary defense counsel advise and represent them throughout the process.

I can represent myself without my insurer's help.

Many lawyers, particularly litigators, believe they can represent themselves as well as—or better than—counsel who concentrate in lawyer discipline and professional liability.

However, self-represented lawyers often lack experience with the disciplinary process and may not know the procedural rules and substantive law necessary to mount the strongest possible defense.

Even when they devote substantial time and effort to defending themselves, self-representation is no substitute for the judgment that comes from years of handling disciplinary matters, working with disciplinary counsel, and appearing before hearing officers and courts that decide these cases.

Disciplinary proceedings can also impair the judgment of the lawyers who face them. An accusation by a client or third party of negligence, fraud, or other misconduct can be deeply unsettling. For some lawyers, professional identity is closely tied to good standing with the bar, and a perceived threat to that status may provoke reactions that undermine an effective defense. In those circumstances, experienced disciplinary counsel can be invaluable from the earliest stage of an ethics grievance and may help determine whether a close matter is closed or proceeds to a formal complaint.

Moreover, if misconduct is ultimately established by clear and convincing evidence, the disciplinary body and reviewing courts will weigh both mitigating and aggravating factors in determining the appropriate sanction. A lawyer who refuses to acknowledge wrongful conduct, shows no remorse, advances frivolous arguments, or makes false statements during the disciplinary process is likely to face more severe discipline than one who does not.

The disciplinary body received an ethics grievance against me and informed me that it closed the investigation without requiring my response. Should I report this to my insurance carrier?

Yes. Even if an ethics grievance is summarily dismissed, the lawyer who was the subject of the matter should still report it to her insurance carrier. Prompt notice helps preserve coverage for any later professional-liability claim arising from the same underlying facts. In addition, disciplinary authorities may reopen closed matters if new evidence emerges that alters the initial analysis.

If a lawyer reports a disciplinary grievance to the insurer, the lawyer's premium will increase, or the policy renewal will be at risk.

According to the ABA data cited above, the likelihood that an ethics grievance will mature into a formal disciplinary proceeding is low. A lawyer's premium ordinarily will not increase, nor is the policy likely to be canceled or non-renewed, merely because the lawyer reported being the subject of a disciplinary grievance to the LPL insurance carrier.

If the grievance has substance, however, that is precisely when experienced disciplinary counsel is most valuable in defending against the allegations. In lawyer-discipline matters, minimizing exposure and protecting the lawyer's license should be the paramount concerns, regardless of whether the outcome of the disciplinary proceeding results in premium increases or a non-renewal.

Conclusion

Disciplinary grievances arise far more often than professional-liability claims, and lawyers should report them promptly upon receiving notice that a disciplinary authority is reviewing their conduct. Because most lawyer professional-liability policies provide coverage for disciplinary matters, policyholders should take advantage of that protection when it is available. Early involvement of experienced disciplinary counsel, coupled with truthful and professional responses to allegations of misconduct, can help reduce a lawyer's exposure and better protect the lawyer's license.

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Risk Management Takeaways

- **Notify your professional liability carrier immediately.** Prompt notice helps preserve available coverage and avoids disputes over late reporting.
- **Review your policy for disciplinary-proceeding coverage and related benefits.** Confirm whether the policy provides defense-cost coverage, assigned counsel, reimbursement rights, and any notice or reporting requirements.
- **Treat the grievance seriously, even if it appears meritless or is dismissed early.** A grievance that seems weak or is closed at an early stage may still have consequences, including later reopening or related civil claims arising from the same facts.
- **Consult experienced disciplinary counsel as early as possible.** Early guidance can help protect the lawyer's position, improve the response strategy, and reduce the risk of avoidable missteps.
- **Respond carefully, truthfully, and strategically from the outset.** Initial reactions matter. The lawyer should avoid impulsive communication, inaccurate statements, frivolous arguments, or conduct that could aggravate the matter.

For more information, contact your broker or Old Republic Lawyers Professional representative.

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