

Should You Have Counsel in an Attorney Ethics Proceeding?

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Attorney ethics inquiries are unlike the ordinary adversarial proceedings to which attorneys are accustomed. The procedural gamesmanship that often accompanies civil litigation is vastly curtailed by a series of rules designed for the cooperative and efficient disposition of ethics matters.

An attorney ethics inquiry is usually initiated by the filing of a grievance. The responding attorney (“Respondent”) is asked to reply promptly to the specific facts alleged in the grievance. Further, an attorney under investigation must submit on relatively short notice to a recorded interview and produce all documents requested. Also, the answer to a formal ethics complaint may not include general denials, but must admit or deny the substance of the allegations. *Rule 1:20-4(e) (2)* requires “a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint.” Artful pleading is disfavored and will be used against the Respondent as a lack of candor and cooperation. There is no provision for discovery through interrogatories, requests for admission, or depositions other than to preserve testimony from an unavailable witness.

For these reasons and more, advocacy in an attorney ethics proceeding demands a different strategy. It is essential when representing a Respondent that the lawyer marshal the facts and documents quickly and commit early to a theory of the case. Only then is it possible to respond meaningfully and strategically to the grievance and, were necessary, to a formal complaint.

Too often, lawyers who receive a grievance seek to handle it on their own. This is a poor choice. Effective handling of an ethics matter requires intimate knowledge of ethics precedent and the attorney ethics system. Separate counsel can also assume responsibility for potential inaccuracies in any information produced during the early

phases of the investigation where haste can compromise attention to detail, particularly by a nervous Respondent. Ethics authorities also credit remorse and contrition, qualities that become difficult to convey when digging in to defend yourself. The sooner you engage the assistance of experienced ethics counsel, the better they will be able to assist you.

Please contact us should you need to discuss an attorney ethics inquiry.