


THE LAWYER DISCIPLINE PROCESS IN SOUTH CAROLINA

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WHO ARE THE PLAYERS?

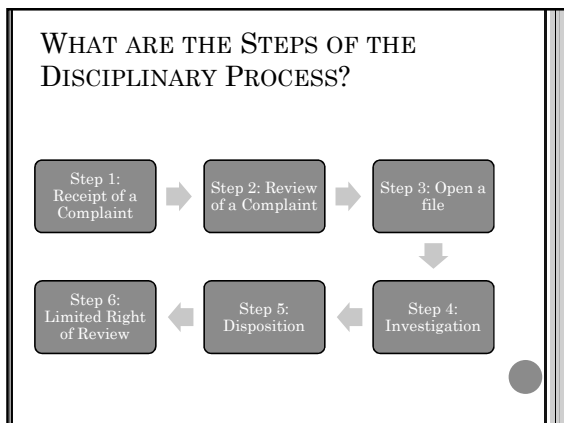
<ul style="list-style-type: none"> ◦ Commission on Lawyer Conduct (CLC) <ul style="list-style-type: none"> • Volunteers <ul style="list-style-type: none"> ◦ 34 lawyer members ◦ 16 lay members • Professional staff <ul style="list-style-type: none"> ◦ Commission Counsel ◦ Administrative support ◦ Court Reporter 	<ul style="list-style-type: none"> ◦ Office of Disciplinary Counsel (ODC) <ul style="list-style-type: none"> • 9 attorneys • 2 investigators • 1 paralegal • 2 support staff • 70 ATAs
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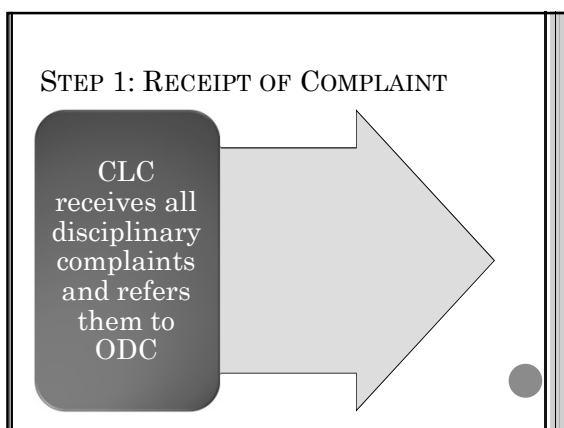


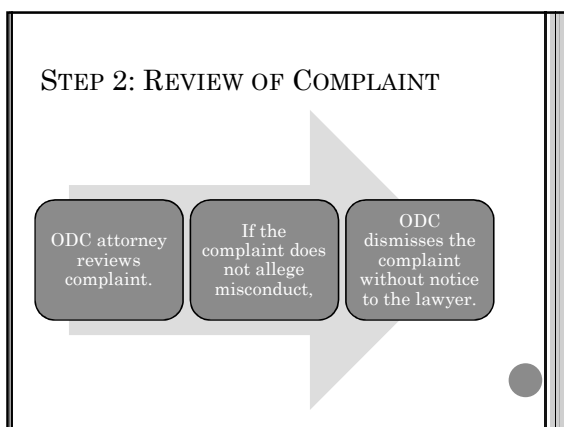
OVER WHOM DOES CLC AND ODC HAVE JURISDICTION?

- Lawyers who are or have previously been licensed in S.C.
- Out-of-state lawyers who advertise in S.C.
- Out-of state lawyers who practice pro hac vice in S.C.
- Out of state lawyers who otherwise practice law in S.C.

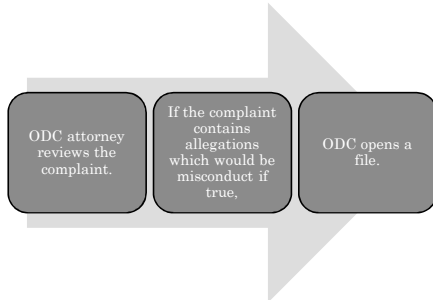




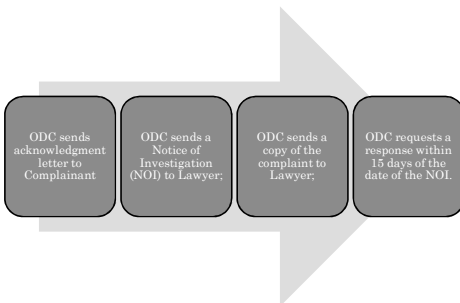




STEP 2: REVIEW OF A COMPLAINT



STEP 3: OPENING A FILE



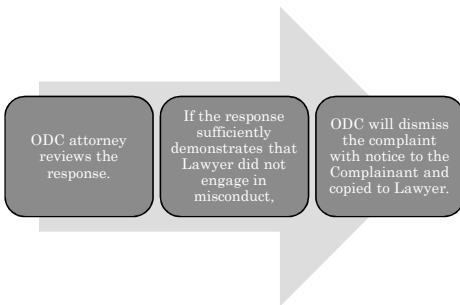
WHAT ARE SOME TIPS FOR LAWYERS WHO HAVE TO RESPOND TO NOIS?

1. Respond.
2. Respond in a timely manner. If you have any questions about the due date or need an extension, call ODC immediately. Anybody at ODC can grant an initial 15 day extension and the attorneys can grant up to an additional 15 days. In certain limited exceptions extensions are not granted.
3. Respond completely. Failure to respond to all allegations or responding simply with admit/deny will require follow-up from ODC and/or an on-the-record interview.
4. Don't take it personally.
5. Don't attack the Complainant.

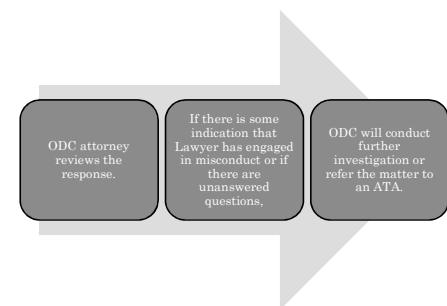
WHAT ARE SOME TIPS FOR LAWYERS WHO HAVE TO RESPOND TO NOIs?

6. Include evidence (e.g., documents) to support your response.
7. Use an appropriate format (e.g., letter, pleading, or simply relate the facts or events of the matter in the complaint).
8. Read the RPC before responding.
9. Review your file before responding.
10. Please make sure your complete verification is included with your response.

STEP 4: LAWYER SUBMITS A RESPONSE, NOW WHAT? INVESTIGATION



STEP 4: INVESTIGATION



STEP 4: INVESTIGATION

People

- On-the-record interview of Lawyer.
- Obtain sworn statements of the Complainant or third parties.

Things

- Subpoena files
- Subpoena bank records
- Subpoena other documents

WARNING!

1. Failure to timely respond to NOI or
2. Failure to comply with a subpoena or
3. Failure to appear after notice

Expose Lawyer to Discipline, Interim Suspension, or Contempt of the Supreme Court

STEP 5: DISPOSITION

<u>Dispositions by ODC</u>	<u>Dispositions by CLC</u>
<ol style="list-style-type: none"> 1. Dismissal 2. Letter of Caution 	<ol style="list-style-type: none"> 1. Dismissal 2. Referral to another agency 3. Letter of Caution 4. Confidential Admonition 5. Authorize Formal Charges 6. Accept an AFDBC or DDA

STEP 5: DISPOSITION

o Confidential Discipline

1. Letter of Caution
2. Confidential Admonition

o Public Discipline

1. Public Reprimand
2. Definite Suspension up to 3 years
3. Disbarment

STEP 5: DISPOSITION

What is an AFDBC?

- Agreement between Lawyer and ODC for discipline by Consent
- Lawyer must admit to certain facts
- Lawyer must admit the conduct violated specific provisions of the RPC

STEP 5: DISPOSITION

What is a Deferred Discipline Agreement?

- No longer a sanction
- Typically used when the misconduct is a result of a mental or physical problem or a lack of adequate management practices
- Lawyer admits to certain facts
- Lawyer admits conduct violated specific provisions of RPC

STEP 5: DISPOSITION

What is a
Deferred
Discipline
Agreement?

- Lawyer agrees to a course of remedial measures to ensure the problems will not recur
 - Counseling or therapy
 - Extra CLE hours
 - Account Monitoring
 - Completion of LEAPP
 - Law Office Management
- Failure to comply with terms of DDA is a separate basis for discipline

STEP 5: DISPOSITION

What does "formal charges" mean when used in the discipline process?

- Upon authorization from the CLC, ODC will file Formal Charges
- Lawyer has 30 days to file an Answer to the formal charges
- 30 days after Lawyer files an answer, the matter is public
- After a short period of limited discovery, a hearing is scheduled

STEP 5: DISPOSITION

What does "formal charges" mean when used in the disciplinary process?

- Discovery includes:
 - the Exchange of documents and names of individuals with information about the matter
 - Notice of exculpatory evidence
 - Witness lists
 - Depositions IF both parties agree or approved by the hearing panel chair

STEP 5: DISPOSITION

What does “formal charges” mean when used in the disciplinary process?

- Failure to answer formal charges will result in a default order
- Failure to appear at the hearing (even if Lawyer filed an answer) deems the Lawyer to have conceded the merits of any motion or recommendation presented by ODC

STEP 5: DISPOSITION

What does “formal charges” mean as used in the discipline process?

- After discovery, the matter proceeds to an evidentiary hearing presided over by a Hearing Panel of the CLC
- Evidentiary hearing is informal
- Rules of Evidence and Civil Procedure apply generally.

STEP 5: DISPOSITION

- What does “formal charges” mean as used in the disciplinary process?
 - After the evidentiary hearing, a transcript is prepared and the parties may submit proposed panel reports.
 - The Hearing Panel prepares its panel report.
 - The report and complete record of the hearing are submitted to the Supreme Court.
 - After oral arguments, the Court issues its decision.

STEP 5: DISPOSITION

Role of Supreme Court of South Carolina

- If AFDBC includes public discipline in the range, the AFDBC must go to the Court for final disposition.
- If Formal Charges are filed, the case must go to the Court for final disposition.

STEP 6: *LIMITED* RIGHT OF REVIEW

- If ODC dismisses a complaint, the Complainant may ask an investigative panel of CLC to review the dismissal.
 - Complainant must seek the review in writing and within 30 days.
 - Responding Lawyer will receive a copy of the Complainant's request for review and may submit a response to the Complainant's request for review.

HALF-STEP: INTERIM SUSPENSION

Under what circumstances may Lawyer be placed on interim suspension?

- Lawyer is charged with or convicted of a serious crime
- Lawyer poses a substantial threat of serious harm to the public or to the administration of justice
- Failure to respond to NOI, subpoena, notice to appear, or other inquiries/directives of CLC or the Court.

