

# On The Record . . .

Official Newsletter of BERTOLINO LLP

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## I Got a Complaint Notice. Do I Really Need a Lawyer or Can I Just Represent Myself?

The straight answer is yes. You should definitely contact a lawyer for assistance if you receive notice of a complaint against your license.



The rules and laws that relate to professional disciplinary proceedings can be very complex. Disciplinary proceedings can progress to an administrative hearing (i.e., “Contested Phase”) if you cannot resolve the complaint informally (i.e., “Investigative Phase”). Attending a hearing before an administrative law judge requires knowledge of the unique rules that apply to these administrative disciplinary proceedings.

While you can represent yourself in professional disciplinary proceedings, doing so is NOT in your best interest, for several reasons.

You could end up in a worse position than you are to begin with, and you already have a lot at stake in disciplinary proceedings. No matter how foolish you believe the allegations against you to be, the outcome of a disciplinary complaint can be devastating for your personal and professional life. As a result, you must take these proceedings seriously, no matter the circumstances, to avoid an unwanted result.

## Hire a Professional When You Need a Professional

When you are facing a complaint that threatens your professional or occupational license or certification, you likely are experiencing some high degree of stress about its resolution. This stress may cause you to overestimate your abilities and make poor decisions. When you are under stress, you are not operating at an optimum level, and your emotions may negatively impact your ability

to properly represent your interests. Moreover, you are not an expert in representing people during disciplinary proceedings, and in most cases, you are not a lawyer. If you have a cavity, you go see your dentist. If you have a broken leg, you go to a doctor. If your car breaks down, you call a mechanic. If you need help with your taxes, you see an accountant. And if a complaint has resulted in disciplinary proceedings that may threaten your professional or occupational license, then you hire a license defense lawyer. No one else has the skill and knowledge necessary to understand or represent you in disciplinary proceedings before your licensing board and agency. You may be able to read the statutes and rules that apply to your profession and disciplinary proceedings, but that doesn't mean that you understand how they work in practice.

### **Don't Take a Chance When the Stakes Are High**

In most occupations and professions, minor violations of rules and laws can result in warning letters and reprimands. However, repeated minor violations and more serious violation can have more severe repercussions, including the suspension and revocation of your license or certification. Even if your suspension is probated, you may be subject to ongoing unwanted conditions, including restrictions on your area of practice, periodic reporting to your licensing agency, commission, or board, undergoing drug or alcohol treatment or testing, or be subject to supervision by another professional. You may have to undergo mental health evaluations or counseling and complete additional continuing education requirements. You also may be assessed administrative penalties or fees.

With the stakes so high in disciplinary proceedings, you cannot afford to represent yourself. You will need the benefit of the professional advice that only an experienced attorney can give you. Absent this advice and guidance, you risk losing your ability to support yourself, your career, and in some cases, the business and client or patient base that you have sought to build over many years.

### **You May End Up Making Matters Worse**

Particularly if the complaint against you seems to be unfounded or far-fetched, your first inclination

may be to immediately respond to explain your side of the story to the disciplinary board or commission to quickly resolve the matter. But don't give in to such a knee-jerk reaction. Unfortunately, an attempt to explain yourself may be the worst possible step that you could take in this situation. Allowing an attorney to draft a compelling response and/or review any response that you make to a complaint or any communications that you have with a licensing board or agency ensures that you will not inadvertently worsen your position. For instance, in speaking to agency staff directly, you may give them more evidence to use against you in your disciplinary proceedings by providing them with previously unknown information. You also may unknowingly admit to some action that violates a rule or law, even if you weren't aware of it. Doing so can lead to additional allegations of violations against you.

No matter how friendly agency staff or investigators may seem, or how honest they encourage you to be about your situation, their role is not to help you. Their only interest is in investigating the complaint and determining whether you broke a rule or violated a law. They are not there to defend you or help you in any way, and they are not on your side. In short, you need legal representation by a professional who is on your side from the outset of your disciplinary proceedings and will guide you throughout every step of the proceedings.

## A Quick Poll!

Which of the following topics would you like to see in future newsletters?

Short videos that provide legal tips

Select

Trending news about the legal world

Select

Getting to know the Bertolino team more

Select

None of these 😊

Select

## Texas Medical Board v. LL



**Facts:** Our client LL, hired firm to represent her legal interests after she received a complaint from Texas Medical Board regarding a positive drug screen. The positive screen was a result of a random drug test with her employer. She reported to work and submitted to the random drug screen. After the screen she admitted that her test would come back positive. The screen would eventually come back positive for marijuana. LL was terminated for her conduct.

**Outcome:** After a response was submitted by BERTOLINO LLP, TMB set the matter for an informal conference. During the conference the firm argued that this positive test was an isolated incident. They argued that there was no evidence that LL had any substance abuse disorders and that there was no evidence that she was impaired in any way on the date of the screen. Character evidence was also provided to show that she was still fit to practice and that she regretted the mistake she made. After Texas Medical Board heard all the evidence they dismissed her case and did not issue any sanctions.

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## Texas Education Agency v. FFA



**Facts:** Our client FFA, hired firm to assist her in responding to a notice of investigation filed by TEA alleging that FFA abandoned her teaching contract. The investigation stemmed from FFA's resignation in February of 2022. She resigned in the middle of her contract due to a change in circumstance. Her mother, who took care of her children while she was at school, contracted COVID in January of 2022 and after contracting the virus was unable to fully recover. She therefore advised FFA that she could no longer watch her children. Due to this abrupt change in circumstance, FFA resigned without notice.

**Outcome:** After consultation with FFA, BERTOLINO LLP, submitted a response to the allegations. Within the response we argued that FFA did not violate any code section related to contract abandonment because she had cause to resign. We argued that her lack of childcare was an immediate need that arose after the time that she signed her contract. We provided witness statements from her mother and her mother's physician as well as documentation of her positive COVID results and her urgent care records. After analysis of the response and consultation with TEA staff, TEA dismissed the complaint and closed the investigation.

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## Texas Appraiser Licensing and Certification Board v. KD

**Facts:** Our client, KD, hired the firm to defend against ethical allegations by the Texas Appraiser

Licensing and Certification Board that he was completing a high volume of appraisals across a large distance of travel in a single day. Client is a certified residential appraiser whose been in the business for 12 years. The complaint alleges failure to inspect / complete scope of work on appraisals consistent with representations in the appraisal reports due to high volume of work completed and listed specific addresses.



**Outcome:** The firm submitted a thorough written response addressing the claims, and included photographic evidence, cell phone data evidence and eyewitness evidence. We drafted a spreadsheet with each of the addresses of the subject property and included data on who inspected and filled out the reports. As a result of the response and attached exhibits, the complaint investigation was closed.

## What Are The Reputational Consequences Of Receiving Disciplinary Action From Your Government Regulator

by Troy Beaulieu, Esq.



License holders who receive a complaint are looking to avoid disciplinary action against their license for a variety of reasons. While there are several factors at play, one key element is reputation. One's reputation is a valuable asset, so people want to keep their professional or occupational name clear of any findings of wrongdoing. This article will discuss the consequences that can come from receiving disciplinary action against your license and stresses the importance of finding an attorney who has the knowledge and skill to navigate these reputation-impacting dynamics to provide you with the best possible outcome to your complaint matter.

### You Are Innocent Until Proven Guilty

Generally, a complaint filed against you is just that – an allegation that you somehow violated the laws connected to your professional or occupational license. The complaint is not a finding that you are guilty of violating the law. Many times, the law allows a wide variety of people to file a complaint against you even if they have little or no connection to the event at issue in the complaint. The filing of a complaint or your receipt of a complaint notice is not a determination that you are guilty of the accusations because the complaint has not been investigated yet. Plus, usually, you will have the opportunity to address the allegations and provide evidence and written argument demonstrating why the complaint lacks merit and should be dismissed. If you dislike the investigation's outcome, you are usually given the opportunity to take the matter to court to clear your name. Until your regulatory agency completes their investigation, gives you your day in court and formally resolves the complaint by determining whether you violated the law in connection with the complaint allegations, you have no disciplinary record. During this time many state regulatory agencies have confidentiality provisions that make the existence and details of the complaint unavailable to

the public, which is good for your reputation as a license holder.

### **If You Receive Discipline, It will Contain Details About What Was Violated**

If, after the regulatory process is complete, disciplinary action is taken, the final agency document that reflects this will contain some form of factual findings and legal conclusions which spell out the nature of the infractions you were found to have committed. This will give you both the factual basis (who, what, when, where, why and how etc.) and the legal citation the agency is relying upon for the disciplinary sanctions against you (i.e. what law do these factual circumstances run afoul of?). A good license defense attorney will know the specific facts in your case, the specific law impacting your case and the important interplay between them to help you achieve the best results possible.

### **Sometimes Disciplinary Action May Be Avoided Despite Violations Of The Law**

Many regulatory agencies have specific laws that give them the discretion to resolve certain infractions with a non-disciplinary outcome even though the law was violated. Agencies call these mechanisms a variety of things (non-disciplinary warnings, advisory letters, remedial plans etc.), but they all boil down to a way for the agency to resolve certain kinds of violations without imposing traditional disciplinary action against your license. This has a distinct advantage when it comes to your reputation because the outcome avoids the stigma and negative publication-related consequences associated with a formal disciplinary action which are discussed below. Each agency has its own requirements for making certain types of cases eligible for these non-disciplinary outcomes, so it's important that your attorney knows the ins and outs of the regulatory laws and rules related to your complaint case.

## **Publication of Discipline, Reciprocity & Notification Obligations**

### **Publication of Discipline Impacts Your Reputation**

Most regulatory agencies are required by law to publish disciplinary actions they take against license holders. These formal publications take a variety of forms, with some agencies publishing it on their website, others publishing it periodically in a newsletter issued to license holders. Most regulators are also required to report the discipline to a nation-wide databank, registry, or shared information portal so that other regulators (and sometimes even employers or clients) are aware of the disciplinary action. This can have a profound impact on your reputation as a license holder, so it's important that your attorney is familiar with this process and the specific laws at play before your regulatory agency to obtain the best results for your situation.

### **Receiving Discipline Can Lead to More Discipline and Reporting Obligations**

In addition to publication, when disciplinary action takes place, it also often triggers a license holder's obligation to notify others about the matter. If a license holder is licensed in more than one state or jurisdiction, the license holder typically has an obligation to report the discipline to the other jurisdictions where they are licensed. Each state is unique so you'll want to check with a local attorney, but many have a specific timeframe in which the matter must be reported, otherwise it becomes a separate violation of the law that can be acted upon by your regulator. In addition to notification obligations, most state regulators can take disciplinary action against you for what's known as "reciprocal discipline". As an example, if you are disciplined

in Texas, but also hold a license in Oklahoma, your Oklahoma regulator may be able to take discipline against your Oklahoma license simply because you were disciplined in Texas.

### **What Should I Remember About The Impact Discipline Has On My Professional or Occupational Reputation?**

Your reputation as a license holder is important to your livelihood and the success of your business. Making sure you are well-represented by an attorney who knows the ins and outs of protecting your reputation during a regulatory complaint is key to protecting the license you worked hard to obtain. You are innocent until proven guilty, and any disciplinary action should spell out the specific facts and laws violated. Even if there are violations, many agencies have options for resolving complaints without formal disciplinary action, which you should take advantage of if possible. If you do end up with formal disciplinary action, recognize that it will probably be published and may require you to disclose the outcome to other states, jurisdictions, or agencies where you hold a license, and those agencies may take separate disciplinary action against you merely because you were sanctioned. Having the right attorney at your side throughout the complaint process is key to protecting your professional and occupational reputation and the livelihood connected to it. At Bertolino LLP we focus on defending clients against regulatory complaints, protecting their license and safeguarding the important reputation you have developed in your field. We are eager to defend aggressively your reputation as well.

## **Side Bar ...**



### **Why we gave away our clothes!**

You're probably wondering why everyone is wearing PJ'S in this photo... 😊 Well last month all the gals at Bertolino decided to donate as much of their professional work clothes as they could for an awesome program called Dress for Success. As everyone knows, formal work wear can be extremely expensive and not everyone has the luxury to just jump to the store and grab new clothes for their job interview.

The organization helps empower women by providing them with everything they need in order to be successful in the work world. They provide trained image consultants to help dress each woman for the job, financial education, career consultations and much more!

As the whole Bertolino team works from home these days, most of our professional clothes remain in closets gathering dust. So what better way to help and empower our community than donating to Dress for Success. So if you have any old work clothes just sitting around, please **DO NOT** toss them in the trash. Make sure to visit their website, and see how you can help today!

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