

# On The Record . . .

Official Newsletter of BERTOLINO LLP

March 2024



[Click here to share with a friend or colleague](#)

## Our Firm

Tony R. Bertolino, Esq.  
*Managing Partner*

Sheri L. Middlemas  
*Chief Operating Officer*

Troy Beaulieu, Esq.  
*Director of Legal Services*

LaJuana Acklin, Esq.  
*Senior Associate Attorney*

Kerry Bloodsaw, Esq.  
*Associate Attorney*

London de la Teja  
*Accounts Receivable Manager*

Melissa Hooper  
*Certified Paralegal*

Cimone Murphree  
*Administrative Assistant*

Jasen Dalus  
*Client Success Liaison*

## Defense Strategies in Your Professional Disciplinary Proceedings

by Tony Bertolino, Esq.

As a licensed professional in Texas, you are subject to various laws and rules that your licensing agency or board enforces. Failure to follow these laws may result in complaints against you, which, in turn, may lead to disciplinary proceedings against you. The sanctions you can receive because of these proceedings can be severe and devastating for your career and livelihood. The most serious cases may impair your ability to work in your profession in the future.



## Seek a Dismissal of the Complaint at the Outset of Your Case

One of the most effective ways to defend against a disciplinary complaint is to aggressively push for dismissal before your licensing board files formal disciplinary proceedings against you. If you can provide sufficient evidence from the outset of your case that you did not violate the rules or laws as alleged in the complaint, the licensing board may be more apt to dismiss the complaint without further investigation.

In contrast, once your licensing board has spent time and resources investigating the complaint, gathering evidence, and filing a formal disciplinary complaint against you, the licensing board may be less likely to dismiss the complaint summarily.

## **Get Legal Advice Before Responding to the Board Complaint**

One mistake that many licensees make is to immediately respond to a complaint against them on their own without getting legal advice. These professionals often assume they can easily overcome the allegations against them without legal assistance. However, proceeding on your own is rarely the best course of action.

Even when the allegations in the complaint appear far-fetched, you should still take the complaint seriously. As a result, you should contact an experienced license defense attorney as soon as you become aware of the complaint. By allowing an attorney to advise you and help you formulate an answer, you can put yourself in a better position to resolve the complaint before your licensing board formally files disciplinary charges against you. You can avoid providing details or evidence to your licensing board that they may not already possess and refrain from inadvertently admitting to a violation of the rules or law.

## **Know What to Expect at an Informal Conference**

Many licensing boards that pursue disciplinary action against licensees start by holding an informal conference to try and resolve the matter without needing a formal hearing. In many cases, the board, or a panel of the board, will prepare a proposed finding of violation(s) and sanction(s) based on the recommendations of board staff. The licensee, their attorney, board staff, and other board representatives will meet to discuss the case and determine whether the proposal is appropriate to resolve the complaint. The board can still dismiss the complaint at this point or request an administrative hearing for resolution if the parties cannot reach an agreement.

In any event, having the assistance of an attorney to help you present your case and the evidence to support your position

before the board can be crucial. Even at this point in the disciplinary process, you may be able to avoid formal proceedings and obtain a dismissal of the case.

### **Focus on the Sanctions Rather than the Violation**

If the evidence is clear that you violated a rule or law governing your profession, you may want to focus your efforts on minimizing the resulting sanctions you may face.

For example, most board rules or laws list aggravating and mitigating factors that the licensing board must weigh in determining the appropriate sanction for a particular violation. Many licensing boards follow a schedule of sanctions that is designed to let licensees know what sanctions to expect if they commit specific violations. However, licensing boards almost always have some discretion regarding the sanctions they impose for most violations, so presenting evidence of mitigating factors can be highly effective in reducing the sanctions you may face. While licensing boards likely have to explain any deviations they make from the schedule of sanctions, you can make it easier for them to do so by providing strong evidence of mitigating factors that may justify a lesser sanction in your case.

### **Conclusion**

In navigating the complex terrain of professional disciplinary proceedings in Texas, safeguarding your career and livelihood demands strategic defense measures. The potential ramifications of disciplinary actions underscore the critical importance of proactive defense strategies. Seeking dismissal of complaints at the outset, with a focus on providing compelling evidence to refute allegations, can often lead to favorable outcomes. Equally vital is seeking legal counsel promptly, ensuring a comprehensive and informed response to complaints. Engaging in the informal conference stage armed with legal guidance can significantly influence the trajectory of

proceedings, potentially steering towards resolution without formal hearings. Moreover, when facing clear violations, directing efforts towards mitigating sanctions can mitigate the impact on your professional standing. By emphasizing mitigating factors, you not only demonstrate accountability but also position yourself favorably for a fair and proportionate outcome. In the intricate landscape of professional disciplinary proceedings, a strategic and informed approach is your most potent defense.

## Employee Spotlight: LaJuana Acklin



### Senior Associate LaJuana Acklin Celebrates Her One-Year Anniversary with Bertolino LLP

I am excited to recognize LaJuana Acklin's one-year anniversary with the Bertolino Law Firm. LaJuana is a key member of the firm's legal team who is a dedicated and hard-working advocate for her clients. LaJuana came to us after having spent years working in federal administrative law practice with a focus on social security disability claims. This past year LaJuana has quickly immersed herself in state administrative law matters, effectively representing clients before a variety of regulatory agencies in both complaint and license application related matters. LaJuana brings an upbeat and can-do attitude to the Bertolino Law Firm and is recognized by her co-workers for her dedication to protecting our clients' reputations, careers, and livelihoods through zealous advocacy inside and outside of the courtroom. She has already provided significant contributions to the Bertolino Law Firm by sharing fresh ideas and suggestions, presenting in-house trainings, and giving some of our free trade group presentations to licensed professionals eager to stay out of trouble with their regulator.

Thank you, LaJuana, for your dedication, work ethic, and the positive energy you share with our clients and the Bertolino Law Firm team. Please join me in congratulating LaJuana on her one-year anniversary.

-Tony R. Bertolino, Managing Partner

## Hallmark Achievements

### Texas Appraiser Licensing and Certification Board v. JT

**Facts:** Our client, JT, hired us to defend him against a complaint filed with the Board by a quasi-governmental entity alleging he had violated minimum professional





standards for real estate appraisers. He faced damage to his professional reputation, his ability to obtain work from appraisal management companies, lenders and other clients, potential disciplinary action from the Board and harm to his livelihood because of the false complaint allegations submitted to the Board.

**Outcome:** The Firm gathered and assessed JT's work file material, market data and his appraisal report so we could fend off the false allegations levied against our client. We also assessed the written report prepared by JT's consulting expert so that we could provide the best written response to the complaint. We advocated tenaciously for JT to demonstrate this complaint had to be dismissed because of legal shortcomings and because it had no merit since JT had not violated the Uniform Standards of Professional Appraisal Practice ("USPAP"). We explained why JT had not violated USPAP and state law and why the complaint had to be dismissed without any disciplinary action by the Board. After the Board completed an investigation, the staff agreed the complaint had no merit and needed to be dismissed. The Board dismissed JT's complaint with a non-disciplinary warning letter. The Board took no action against his license, leaving his professional reputation and livelihood intact.

## Confronting Your Complaint Matter: A Reminder About Things to Avoid

by Troy Beaulieu, Esq.



Facing a complaint from your state regulator who issues your license can be a daunting and anxiety-provoking experience. It is very easy to ignore the problem, delay or wait to the last minute to address this significant legal matter. The attorneys at Bertolino LLP are here to help you, but it is important you take key actions so that you and your attorney can confront your complaint matter head on, efficiently and effectively.

### Don't Ignore Your Complaint

Getting a complaint accusing you of misconduct as a license holder can be an overwhelming experience. It is easy to ignore the problem instead of addressing it because of how challenging this experience can be both professionally and emotionally. Resist the urge to ignore and avoid things and invest time in addressing the matter head on. By acting early, time is one of the most valuable commodities you can provide your attorney who is trying to aggressively defend you and protect your livelihood.

### Don't Delay Hiring Your Attorney

Remember that time is so important when addressing regulatory complaints. You want to find a good, well-qualified attorney to fight for you, but don't delay in hiring one. Waiting until further along in the process or thinking you can respond initially on your own and then find an attorney is a crucial mistake we often see people make. People who hire effective legal

counsel early typically achieve better complaint outcomes.

## Don't Delay in Providing the Documents Your Attorney Needs

Working with your attorney is an important partnership that requires your assistance to be effective. One of the key ingredients to that partnership is your attorney having all the documents necessary to defend you. If your attorney doesn't know everything and have the material necessary to fight back, your case and the outcome of your matter will likely suffer. Prioritize getting all the documents requested by your attorney delivered immediately. It's easy to say you have other clients or deadlines that need your attention. However, the reality is that if you do not prioritize fighting this complaint, you may not have a license to assist clients in the future.

## Don't Hold Information Back from Your Attorney

Information is power and for your attorney to be an effective advocate, the attorney must know all the pertinent facts. Even if the facts are embarrassing or damaging, it is better for your attorney to know about these issues up front. This allows the attorney time to develop an effective legal strategy for protecting your livelihood. If you withhold information or do not tell your attorney the truth, that information could come back to harm your case down the line when it is discovered by the regulatory investigator. It can be very difficult and oftentimes impossible for your attorney to fix this kind of damage if new information or different facts come out in the middle of a deposition or during testimony. Opportunities to make arguments, raise legal issues, or provide controverting evidence can often be lost when new facts come out later in the process. Remember, your attorney is there to protect your interests and generally is not permitted to share what you tell them with anyone without your permission. So, you do not need to worry about your attorney sharing this information.



### A Free, Informational Bulletin Tailored to Your Regulated Industry

Your industry is constantly changing, and you need to be in the know to stay ahead of your competition. To help license holders meet this challenge, Bertolino LLP is excited to announce it has launched a free, educational update to keep license holders informed of the

### Professional Recognition Days: March Calendar

Team Bertolino is grateful for the expertise and dedication of these professionals. Thank you for your outstanding contributions to your respective industries.

#### March 1:

- National Professional Social Workers Month
- National Employee Appreciation Day

#### March 6:

- National Dentists Day

ever-changing laws, rules, regulations and legal interpretations that impact their livelihood and businesses.

[Subscribe](#) for this free, periodic, informational service to stay current on what's happening in the regulatory world impacting your industry.

COMING SOON ...

### **Know Your Regulator: The Video Podcast**

Presented by BERTOLINO LLP, this is a free, educational podcast to keep professional license holders informed of the ever changing laws, rules, regulations, and legal interpretations that impact their livelihood and businesses.

Know Your Regulator - The podcast that inspires you to engage.

#### **March 11:**

- National Funeral Directors and Morticians Recognition Day

#### **March 13:**

- National Dermatologists Day

#### **March 14:**

- National Legal Assistants Day

#### **March 15:**

- National Preschool Teachers Appreciation Day

#### **March 18:**

- Pediatric Nurse Practitioners Week

#### **March 19:**

- National Certified Nurses Day

#### **March 25:**

- National Physicians Week

#### **March 31:**

- Anesthesia Tech Day
- National Farm Workers Day



## Side Bar ...

On Friday, March 8th, Senior Associate LaJuana Acklin hosted a presentation on Texas Behavioral Health Executive Council Do's and Don'ts to a group of mental health professionals at the Crisis Center of Comal County.

Did you know that Bertolino LLP provides free trade group presentations? If you are a license holder in healthcare, real estate, insurance, accounting, education, or another industry and want to learn more about topics that impact people licensed and regulated by the government, BERTOLINO LLP can provide your group with free legal education. [Contact](#)



[us](#) to speak with a team member about this free opportunity to get educated on the regulatory world that impacts your industry and license.

---

[Contact Us](#)

[Visit Our Website](#)

BERTOLINO LLP | (512) 476-5757 | 823 Congress Avenue, Suite 300, Austin, TX 78701  
[www.bertolinolaw.com](http://www.bertolinolaw.com) | [info@bertolinolaw.com](mailto:info@bertolinolaw.com)