

# WASHINGTON STATE BAR ASSOCIATION

Office of Disciplinary Counsel

## RESPONDING TO A GRIEVANCE

The Washington State Bar Association is the organization in Washington state that regulates lawyers under delegated authority from the Washington Supreme Court.

The following are frequently asked questions about responding to a grievance in the lawyer discipline system.

### **Can a lawyer submit a preliminary response by email?**

Yes. You can submit a preliminary response and other file-related information to us by email. If the response is less than 100 pages, you can send a response as an email attachment to [caa@wsba.org](mailto:caa@wsba.org). The attachment can be PDF, Excel, or Word compatible up to 10 megabytes total. If you submit a response by email, do not send us a hard copy. If you have documents that you want us to consider when we review your response and you cannot attach them, we suggest that you submit your response to us by mail instead of electronically. You can also refer to the documents in your response and say that they are available upon request.

### **Should a lawyer submit original documents with a written preliminary response?**

No. We will scan and then destroy the documents that a lawyer submits.

### **Should a lawyer submit an electronic recording with a written preliminary response?**

No. We do not accept electronic audio or video recordings, or cassette tapes, discs, or flash drives that contain such recordings, at this initial stage of the grievance process. You may submit a written transcript of an audio recording or still images from a video.

### **How much time can a lawyer expect to have for submitting a preliminary response?**

Generally, disciplinary counsel will not extend deadlines for a lawyer to submit a preliminary written response. Under [Rule 5.3](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct, a lawyer has a duty to furnish a prompt response to a request by disciplinary counsel for information relevant to grievances. If disciplinary counsel does not receive a lawyer's preliminary written response to a grievance within 30 days of asking for it, disciplinary counsel will send a letter giving the lawyer 10 more days to respond.

### **Can a lawyer ask disciplinary counsel not to send the preliminary response, or portions of the response, to the grievant?**



Yes. Under [Rule 5.1\(c\)\(3\)](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct, disciplinary counsel may withhold all or a portion of a response from the grievant if the response refers to information protected by [Rule 1.6](#) or [Rule 1.9](#) of the Washington Supreme Court's Rules of Professional Conduct to which the grievant is not privy, information of a personal and private nature about the respondent or others, or if the interests of justice would be better served by not releasing the response.

**What is the best way for a lawyer to ask disciplinary counsel to send a redacted response?**

To make sure disciplinary counsel sees a request for redaction and redacts the appropriate information, submit two responses: (1) a redacted response that is clearly marked as appropriate for transmittal to the grievant, and (2) a separate un-redacted response that clearly indicates it is to be withheld from the grievant. Disciplinary counsel reviews a high volume of correspondence and it is otherwise easy to miss a request to withhold information, particularly if it's in a footnote, in the middle of a paragraph, or in the last line of a response. Make sure any request for redaction is clear and obvious.

**Can a lawyer assert any privileges to a response?**

Yes. Under [Rule 5.4](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct, a lawyer's duty to cooperate is subject to the lawyer's privilege against self-incrimination, where applicable. Although a lawyer may not assert the attorney-client privilege or other prohibitions on revealing information relating to the representation of a client as a basis for refusing to provide information, nothing in the ELC waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

**Can ODC refer a lawyer's response to other authorities?**

Yes. With some exception, ODC can release information from its files to authorities in any jurisdiction authorized to investigate alleged criminal or unlawful activity, judicial or lawyer misconduct, or disability. See [Rule 3.4\(h\)](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct.

**Can a lawyer choose to be represented by counsel for a preliminary response?**

Yes. Under [Rule 2.13](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct, a lawyer may be represented by counsel.

**Can a lawyer charge a client for the time it takes to respond to a grievance?**

No. Generally, under [Rule 2.13](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct, a lawyer may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance.

**Can a lawyer sue a grievant for statements in the grievance that the lawyer considers harmful?**

No. Under [Rule 2.12](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct, communications to disciplinary counsel acting under authority of the ELC are absolutely privileged and no resulting lawsuit may be filed against a grievant providing information.

**Is a lawyer's response to a grievance public information?**

ODC will keep a lawyer's response to a grievance confidential at the time it is submitted, although it might become public depending on the disposition of the grievance. Nevertheless, ODC cannot restrict a lawyer's ability or a grievant's ability to communicate about the grievance or the lawyer's response to the grievance to third parties. See [Rule 3.2](#) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct.

**If ODC dismisses a grievance and the grievant requests review, how and when should a lawyer respond?**

A lawyer is not required to respond if the grievant requests review. If a lawyer chooses to respond, ODC will transmit the response to the grievant and review committee. If a lawyer asks to withhold information from the grievant, ODC will transmit the response to the review committee and notify the review committee that it contains a request to withhold. In those circumstances, the review committee will generally refer the grievance back to ODC for further consideration. Accordingly, a lawyer should carefully evaluate whether to submit information accompanied by a request that it be withheld from the grievant.