

Alabama State Bar

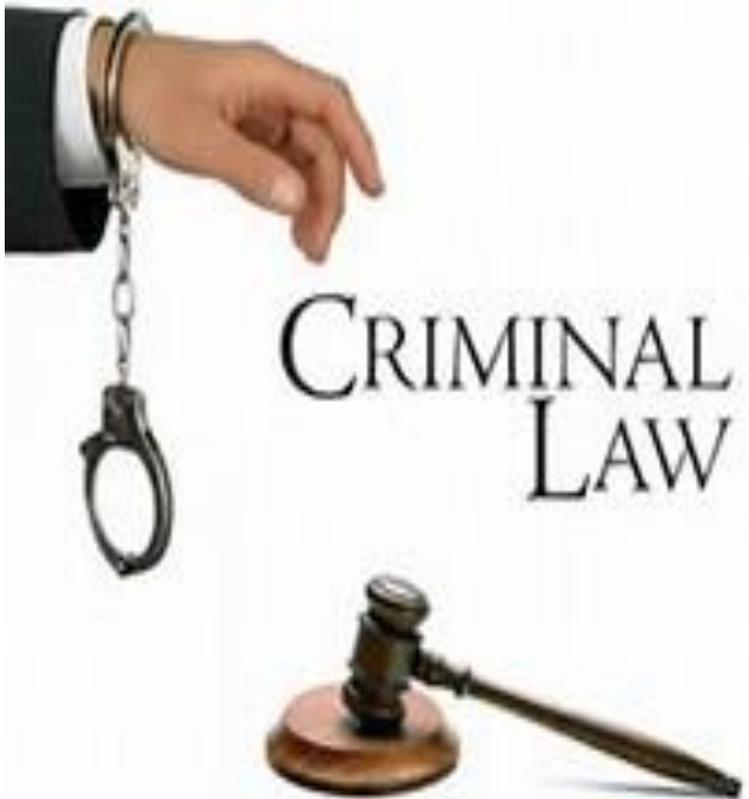




HOW TO AVOID A LETTER FROM THE OFFICE OF GENERAL COUNSEL?

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Avoid Criminal and Family Law?



Disciplinary Statistics

Complaints Received	1149
Complaints Screened Out	839
Formal Investigation Files Opened	168
Private Reprimands	24
Public Reprimands	14
Suspensions	20
Disbarments	4
Consent to Disbarment	4
Transfer to Disability Inactive	7
Probation (in connection with discipline)	4

Don't Rely on Your Friends for Ethics Advice



A photograph showing a shovel digging into the ground in a grassy field. The shovel is on the left side, and the ground is being turned over, revealing brown soil. The background is a green field with a fence line visible in the distance. The text "CALL BEFORE YOU DIG" is overlaid in white, bold, sans-serif font in the center-right of the image.

**CALL BEFORE
YOU DIG**

Ethics Opinions

Alabama Rules of Disciplinary Procedure Rule 18.

Conduct not subject to disciplinary action.

If, before engaging in a particular course of conduct, a lawyer makes a full and fair disclosure, to the Office of General Counsel, said inquiry shall be considered confidential. Additionally, if said lawyer receives a formal or informal opinion from the Office of General Counsel that the proposed conduct is permissible, such conduct shall not be subject to disciplinary action.

Informal Opinions

What Our Office Can Do:

Give you a confidential opinion regarding the ethical propriety of your own prospective conduct based upon a verifiable set of facts.

Informal Opinions

What Our Office Cannot Do:

- Provide legal advice or conclusions
- Comment or opine on your past conduct
- Comment or opine on the conduct of another lawyer
- Answer hypothetical questions

Screen Your Potential Clients



Rule 1.7

Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.9

Conflict of Interest: Former Clients

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation; or

(b) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

Remember!

- There is a rebuttable presumption that a lawyer obtains confidential information during any attorney-client relationship.
- Limit intake of information until officially hired by the client.
- Always perform a conflicts check prior to undertaking representation of a client.

Know Your Caseload Threshold



"Frankly, I feel that his caseload is too heavy."

Rule 1.3

Diligence

A lawyer shall not willfully neglect a legal matter entrusted to him.

- Proof of willful neglect does not require evidence of specific intent. *Haynes v. Alabama State Bar*, 447 So. 2d 675 (Ala. 1984). Lawyers must be responsive to clients and communicate with them regarding the status of the matter and the scope of the representation. Failure to do so will give the appearance that the lawyer is not exercising reasonable diligence on behalf of a client. Lawyers should not procrastinate; this also gives the appearance of a lack of diligence and often results in poor preparation. Lawyers must, in addition to the substantive areas of law, be attentive to office management. A systematic approach to law office management is essential, and must include systems for intake and engagement, conflicts checks, calendaring, case tracking and filing, accounting, and disengagement or termination of representation. A heavy workload is never a justification for lack of diligence.

Communication is the Key

The single biggest problem
in communication
is the illusion
that it has taken place.

George Bernard Shaw

Rule 1.4

Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- Set reasonable expectations for communicating with the client.
- Important communications (settlement offers, court dates, discovery deadlines, etc.) should be memorialized in some form of written communication.
- Any authorization for communicating with a relative or friend of the client should be in writing and signed by the client.
- When using electronic forms of communication, remember three letters - CYA.

Confidentiality and the Dangers of Technology

Rule 1.6.

Confidentiality of Information.

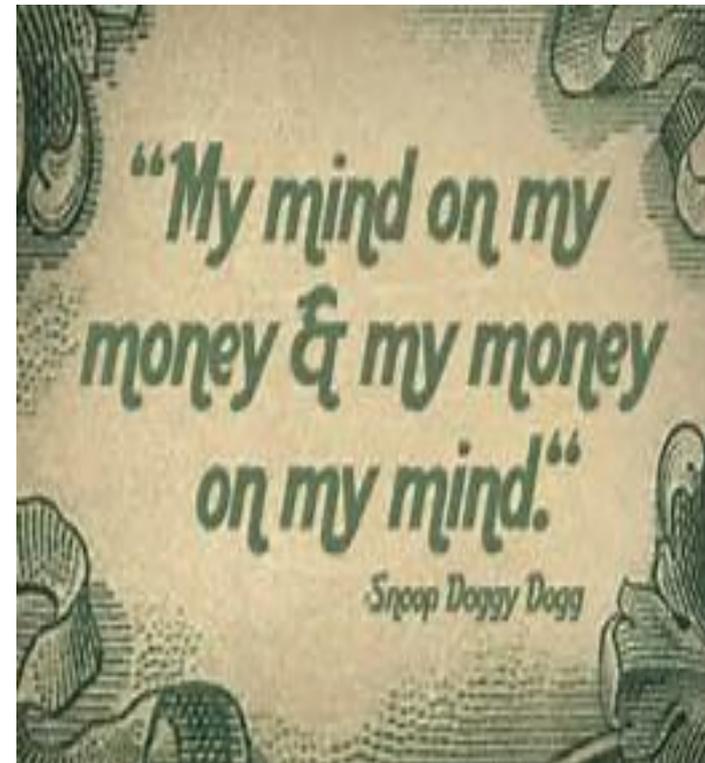
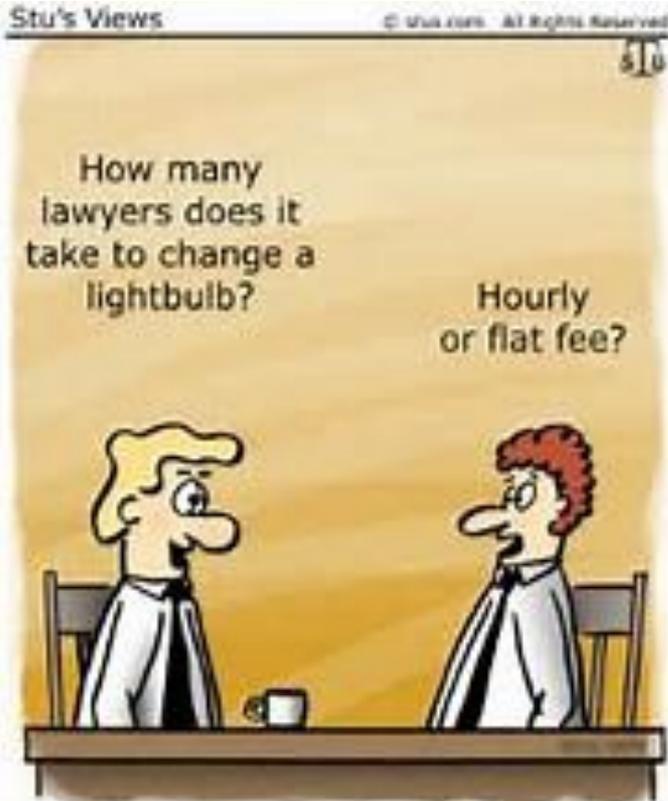
(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) To prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Fee Agreements



Rule 1.5

Fees

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. **A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.** Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm, including a division of fees with a referring lawyer, may be made only if:

(1) Either (a) the division is in proportion to the services performed by each lawyer, or (b) by written agreement with the client, each lawyer assumes joint responsibility for the representation, or (c) in a contingency fee case, the division is between the referring or forwarding lawyer and the receiving lawyer;

(2) The client is advised of and does not object to the participation of all the lawyers involved;

(3) The client is advised that a division of fee will occur; and

(4) The total fee is not clearly excessive.

No Naked Referrals for Non-Contingency Matters

Prohibited Fee Contract Provisions



*"Do you promise to pay the bill,
the whole bill and nothing but the bill?"*

Prohibited Fee Contract Provisions

- Any language in the contract that indicates that the legal fee is non-refundable.
- Any language in the contract that authorizes the attorney to negotiate and settle the matter on client's behalf for an amount deemed reasonable by the attorney or at the attorney's discretion.
- Any language that chills the right of the client to accept or reject a settlement offer.

Prohibited Fee Contract Provisions

- Any fee provision that charges a one-time administrative fee for non-itemized expenses.
- Any charge for expenses must be tied to the actual expense incurred by the lawyer.
- A lawyer cannot charge the client for an initial or first-time copy of their file.

Prohibited Fee Contract Provisions

Formal Opinion 2015-01

Lien Reduction and Double Dipping

Absent extraordinary circumstances, a lawyer may not enter into an agreement for, charge, or collect an attorney's fee based on the gross recovery or settlement of a matter, and in the same matter charge an additional contingent fee for the negotiation of a reduction of third party liens or claims, where the liens or claims are related to, and to be satisfied from, the gross settlement proceeds from that matter.

Trust Accounts



The Quickest Way to Lose Your License is to
Mismanage Your IOLTA Account

Trust Account Management

Rule 1.15

Money and Property - Rule 1.15 covers any property belonging to a client or third party that is delivered to the lawyer. (Client files, documents, photos, physical evidence, videotapes and audiotapes, etc.)

What goes in my trust account?

Ownership at Receipt - Whether funds are deposited into a trust account or regular account depends on who owns the funds at the time they are received by the lawyer.

No Commingling

Money and property must be kept separate from the lawyer's personal or business property. Only client and third-party funds should be deposited into the trust account.

My Money

No Personal or Business Funds - A lawyer must not deposit personal or business funds into an IOLTA account, except that the lawyer must deposit: (1) unearned attorney's fees that the lawyer expects to earn; and (2) funds sufficient to cover account charges (credit card charges, NSF fees, stop payment charges, wire transfer charges, check charges).

Trust Account Labeling

Trust Designation - A trust account, checks and deposit slips must be designated as a trust account by use of terms such as “trust account,” “fiduciary account,” or “escrow account.”

How do I get it out?

Withdrawals shall be made only by check payable to a named payee or by authorized electronic transfer. Rule 1.15(f)(3) Checks may not be made out to cash.

Disputed Funds

When the ownership of funds is in dispute, the amount in dispute shall be held separately until there is an accounting and severance of the interests. Any amount not in dispute should be promptly disbursed.

Recordkeeping

- **Complete Records** - Complete records of the account must be maintained. *Complete records include:*
 - Receipt and disbursement journals
 - Ledger records for all client trust accounts
 - Copies of Retainer and Compensation agreements
 - Copies of Accounting Statements to clients or third persons
 - Copies of Bills for legal fees and expenses rendered to clients
 - Copies of Bank Statements, canceled checks and deposits

Who signs the checks?

Direct Supervision Required – Only a lawyer or a person under the direct supervision of the lawyer may be an authorized signatory on a client trust account.

Remember: Rule 5.3 [Responsibilities Regarding Nonlawyer Assistants], Ala. R. Prof. C.

Do's and Don'ts

- Maintain a General Ledger for all Accounts
- Do not withdraw funds with an ATM card or with a withdrawal slip at the teller window.
- Do not write checks payable to “Cash.”
- Do not make split or cash-back deposits.
- Make copies of all items received and deposited.
- Transfer earned fees to the general account regularly with adequate notation or documentation to show the source of the fees.

- Pay all expenses not related to the client representation out of the general account.
- Reconcile the trust account monthly, or at the very least, quarterly.
- All firm bank statements should be delivered unopened to you each month for review.
- Secure bank statements and trust account records and limit access to them.
- Keep a running list of outstanding checks and review it monthly. No check should remain outstanding for more than two months without investigation and resolution.
- If there is an irregularity in the account, then you are responsible to investigate and resolve it.



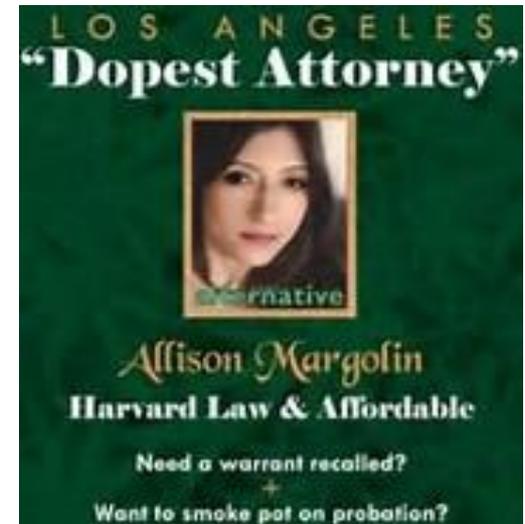
Rule 1.16(d)

Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

- Return the client's file unless a valid attorney's lien exists.
- Issue a termination of representation letter.

If you are going to advertise, know the rules.





Rule 7.1.

Communications Concerning a Lawyer's Services.

- This rule applies to any form of marketing
- Focus is on the content of the information, rather than the means of dissemination (RO-96-07)
- Generally, any information communicated about a lawyer's services is subject to the following regulations or limitations:
 - False or misleading information about the lawyer or the lawyer's services
 - Information that would create unjustified expectations
 - Endorsements or testimonials
 - Damage awards, past results and testimonials are permitted if "extended disclaimer" is used (RO-03-01)
 - Self-laudatory statements
 - Comparative language

Rule 7.2.

Advertising

- Applies to advertising (i.e., communications concerning a lawyer's services)
- Copy or recording be mailed or delivered to the Office of General Counsel within three days after the first date of dissemination
- The duration, the publisher, or broadcaster of shall be identified within the advertisement or in a communication accompanying
- The responsible lawyer must keep a copy for six years

- Lawyer may not give anything of value to a person for recommending the lawyer's service
- May not establish a separate firm and pay for advertising and other expenses (RO-93-23)
- Lawyer may not pay for advertising of another attorney in exchange for referrals (RO-99-01)
- Lawyer may pay reasonable cost of advertising
- Lawyer may pay usual charges of a not-for-profit referral service

- Advertisement must include the name of a responsible lawyer
- Advertisement must contain disclaimer, “No representation is made that the quality of the legal service to be performed is greater than the quality of legal services performed by other lawyers.”
- Display of the firm name, address and telephone number, along with the scales of justice displayed on the tire cover of a spare tire mounted on the back of a conversion van is advertising and requires the disclaimer. (RO-90-63)
- Advertised fees must be honored for a period of not less than 60 days following the date of the last publication or broadcast of the advertisement, if not prima facie evidence of misleading advertising and deceptive practices

Rule 7.3 Direct Contact with Prospective Clients

- No direct contact with prospective clients where there is no familial or current or prior professional relationship
- Lawyer may not contract with “Welcome Wagon” for Welcome Wagon to include the firm’s brochure and other advertising material to the people on whom they call (RO-91-17)
- Lawyer cannot print firm information on exterior of prescription bags to be disbursed by a pharmacy to its customers (RO-03-01)
- Offer to provide legal services on a pro bono basis is not subject to the rules governing advertising and solicitation (RO-03-01)

- The term “solicit” includes any direct contact in person, by telephone, telegraph, email, electronic message, or facsimile transmission, or by other communication directed to a specific recipient.

- Communications to former clients not covered by Rule 7.3, *A.R.P.C.* (RO-03-01)
- Lawyer's employees and agents prohibited from soliciting on lawyer's behalf
- Lawyer may not enter into an agreement for or charge or collect a fee for professional employment obtained in violation of this rule

- Prohibits contact:
 - In person
 - Telephone
 - Telegraph
 - Facsimile
 - Other communication directed to a specific recipient
- *Email*
- *Chat groups*
- *Discussion forums*

- Written communication not permitted when:
 - Concerns personal injury or wrongful death as a result of accident or natural disaster, unless 30 day waiting period is observed
 - Know or reasonably should person already represented
 - Person has made known to lawyer they do not want to receive
 - Communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence
 - Contains false, fraudulent, misleading, deceptive, or unfair statement or claim, or violates Rule 7.1
 - Knows or reasonably should know person is a minor, or incompetent or person's physical, emotional or mental state makes it unlikely the person would use reasonable judgment in employing a lawyer

- Written communication when permitted, must:
- Copy of communication, envelope and list of names and addresses of intended recipients filed with Office of General Counsel, before or concurrently with dissemination
- List cannot be on computer disk (RO-96-05)
- Lawyer must preserve a copy of the above for six years
- Only regular mail permitted
- No reference to approved by the Alabama State Bar

- Advertisement” in 14-point type, red ink, in lower left-hand corner of envelope and on each page of communication
- No extraneous terms (RO-96-05)
- Should not include contract, but if you do, “SAMPLE” must appear on each page and “DO NOT SIGN” must appear on signature line
- First sentence must say, “If you have already hired or retained a lawyer in connection with [state the general subject matter of the solicitation], please disregard this letter [pamphlet, brochure, or written communication]”
- Must state how the lawyer obtained the information prompting the communication
- May not reveal nature of legal matter on envelope
- Lawyer must be able to prove truthfulness of all the information contained in the communication

Advertising

- May not participate in Groupon or other Deal of the Day Websites
- An attorney may advertise the ability of a nonlawyer employee to communicate in a foreign language if the advertisement makes it clear that the nonlawyer employee and not the attorney will be communicating with the client in the foreign language.
- Additionally, if the advertisement is placed using the foreign language being advertised, then the disclaimer required by Rule 7.2(e) must also be in that same foreign language. If the advertisement being placed uses both English and the foreign language, then the disclaimer must be communicated through both the foreign language and English.
- Finally, any attorney using a nonlawyer employee to communicate with a client in a foreign language assumes all responsibility for the accuracy of the information relayed between the nonlawyer employee and client.

Advertising

- The business cards of an attorney can constitute advertising if the cards are distributed to the public in such a way as to, or with the intent to, directly solicit prospective clients.
- An offer to provide legal services on a pro bono basis is not subject to the Rules governing advertising and solicitation.

Advertising

- General mailings to persons not known to need legal services, as well as mailings targeted to specific persons or potential clients, are required to comply with Rule 7.3.
- If an advertisement does not include an area of practice, the disclaimer is not generally required

Advertising

- Testimonials and Endorsements
- “These recoveries and testimonials are not an indication of future results. Every case is different, and regardless of what friends, family, or other individuals may say about what a case is worth, each case must be evaluated on its own facts and circumstances as they apply to the law. The valuation of a case depends on the facts, the injuries, the jurisdiction, the venue, the witnesses, the parties, and the testimony, among other factors. Furthermore, no representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.”

What to Do if You Do Get That Letter?



- Don't Panic. 75% of all complaints are screened out after the attorney's initial response.
- But do respond. Lawyer's are subject to a summary suspension of their law license for failing to respond to a bar complaint.
- Don't get angry at Bar staff. It doesn't help.



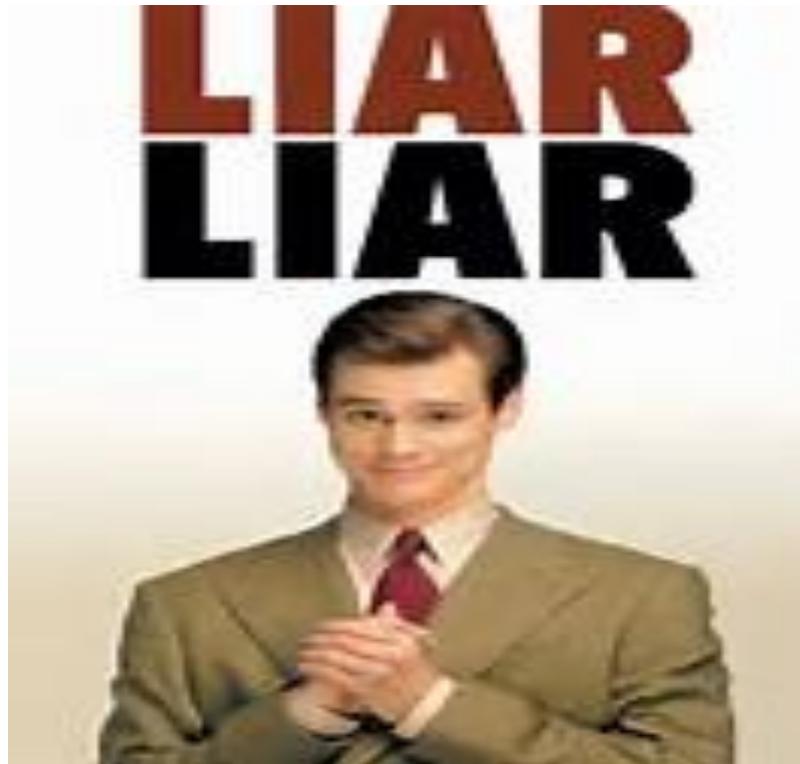
Remember KISS



- Keep your response simple and to the point.
- Address all of the allegations of the complaint.
- Attach any supporting documents.
- Briefly address and explain any relevant portions of the law if necessary to address the complaint.

And Most Importantly!

- Do Not Lie or Mislead in Your Response



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