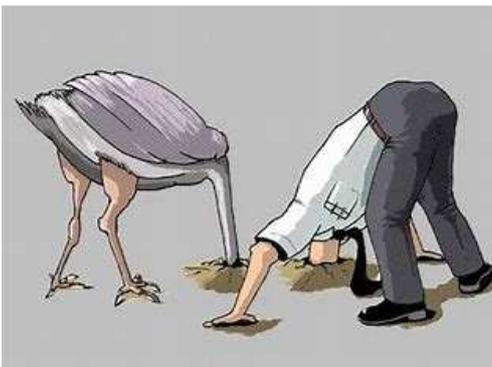


THE OSTRICH, THE PEACOCK, AND THE ROOSTER: HOW NOT TO HANDLE YOUR BAR COMPLAINT

The Ostrich, the Peacock and the Rooster may be characters from Aesop's Fables, but the charm of anthropomorphic or human-like characters—and our peril, is that far too many of my clients facing bar complaints act like these characters. They reach out to me only after responding—or not responding to a bar complaint. I like and admire my attorney clients as well-educated, interesting, accomplished, and generous individuals. I write this only to point out the very human frailties brought out by the stresses of a bar complaint and the dangers they can pose to YOU.

First, a reality check. If you are a solo or small firm practitioner in typical practice areas, at some point you will have a bar complaint. Year in and year out, attorneys in high volume, “retail” practices of criminal defense, family law, and personal injury suffer some of the highest rates of bar complaints. It's not that they are bad lawyers, and in fact I am generally impressed at just how proficient so many are; rather, their practice areas are more susceptible to generating bar complaints--dealing with high numbers of clients who are highly stressed and distressed. The numbers don't favor you: the Virginia State Bar annually receives more than 3,000 inquiries a year and of those, the bar proceeds formally with some 20%-25%. Formal proceedings start with a preliminary investigation announced in a *Miranda*-like letter demanding an answer, a referral for an extended investigation that includes an on-the-record interview, and then either dismissal, a plea bargain offer, or formal charges before a district disciplinary committee or the Disciplinary Board.

The Ostrich



At the approach of trouble, ostriches lie low and press their long necks to the ground in an attempt to become less visible, giving the appearance that they have buried their heads in the sand. <https://www.nationalgeographic.com/animals/birds/o/ostrich/>

Like the Ostrich, nearly half of my clients have ignored the bar complaint, hoping that in not opening much less answering it, it will go away. That might work in a children's fable, but the bar cannot be wished away. Failing to answer the bar complaint almost guarantees the bar will refer it for a full investigation typically spanning 4-6 months after the 2-3 months it has already pended in the preliminary stage, and leaving you with the uncertainty of a bar complaint hanging over you. In addition to sleepless nights, an open bar complaint will lead to your suspension from the Virginia Lawyer Referral Service and requires a report to your malpractice insurance carrier.

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The Peacock



[Photo by Bradley Feller on Unsplash](#)

Decked in his finery, the Peacock struts about convinced that he is unsurpassed in his beauty. Yet at the sign of danger, unlike his more humble friends, he is weighed down and unable to fly from danger and to safety and freedom.

In my 15 years as a bar prosecutor, I was always struck at the tone deafness of *pro se* Peacocks who filled the majority of their answers to bar complaints with recitations of their law school credentials and practice awards and triumphs--and even pedigree. I enjoy and admire well-credentialed clients. But I also know that spices should be used sparingly or else they overwhelm and distract from the main course.

The Rooster



[Photo by Kazi Faiz Ahmed Jeem on Unsplash](#)

The Rooster is in awe of his power. He is sure of his ability to make the sun rise each morning, proud of his top spot in the coop—usually on the roof, and reflexively pugnacious.

A typical Rooster has already engaged the bar vigorously with *ad hominem* attacks on the client, sarcasm to the bar, and flippancy as to the utter ridiculousness of the complaint. Even if the Rooster has eventually addressed the merits of the complaint, the reviewer—the Assistant Bar Counsel deciding whether to proceed to a full investigation or the subcommittee volunteers deciding whether to formally charge the attorney may be persuaded

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that the truth can only be reached through the crucible of full litigation—a formal hearing where the Respondent’s demeanor can be better reviewed.

The Rooster also struts alone into an on-the record and often recorded interview with an investigator of the Virginia State Bar. What attorney would allow a client to be deposed without disciplined and thorough preparation and without being defended at the deposition? Yet the Rooster struts into the interview poorly if at all prepared as to the facts and legal peril ahead.

Avoid the Fable and Deal with Reality

- Retain experienced professional responsibility counsel at the onset—don’t wait for the complaint to proceed. In my practice, many bar complaints are dismissed at the preliminary stage through a detailed, documented, and reasoned answer. (Of course each case rests on its own facts and circumstances.)
- Never allow yourself to be interviewed without competent professional responsibility counsel—you need to be prepared on the facts, warned of the legal hazards, and defended at the interview.
- Can’t afford counsel? Check your malpractice insurance policy. Most legal malpractice insurance policies provide reimbursement for legal defense costs in a bar complaint. The Virginia State Bar’s endorsed carrier, ALPS, provides a bar defense benefit starting at \$5,000.
- Penny-wise and pound foolish? A mishandled bar defense—typically by a *pro se* respondent or one represented by inexperienced counsel can be even more expensive. The cost could include damage to your reputation, steep bar-assessed case costs which must be paid before you can resume practicing, and the potential of a license suspension and months of not being able to work and earn a living.