

Help!: Ethics Assistance from Bar Counsel

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As the opening stanza of the Beatles' classic *Help!* suggests, time and experience teach us that we can't do it all alone. For lawyers, half the battle can be recognizing what you don't know. We all want to avoid taking an action heedlessly only to find out too late that there is a problem.

To assist lawyers with their ethics questions, the Office of Bar Counsel has, for over 25 years, staffed a "helpline" on issues of professional responsibility. Over the past decade, OBC has averaged approximately 2000 calls a year. Assistant bar counsel, assigned on a rotating basis, take calls at (617)728-8750 on Monday, Wednesday and Friday afternoons.

On any given day, the assistant bar counsel on duty may receive 15 or 20 inquiries; there may therefore be some delay in returning a call. We also, of course, will take emergency calls at any time. It is probably fair to say that the helpline is one service provided by bar counsel that pleases even those lawyers who are otherwise leery of interactions with our office.

The nature of the calls we receive varies considerably. Some common areas of inquiry include conflicts of interest (which probably generate the most difficult questions), withdrawal from representation, fees, and trust accounts. The facts underlying the caller's questions may be straightforward or extremely convoluted. The ethical issues sometimes are relatively simple. However, they can also be so complex or idiosyncratic that we advise the caller that the question cannot be answered without research, which is not a service provided by the helpline, and that the caller may wish to do his or her own research or seek a written

ethics opinion from a bar association. Most questions fall somewhere in the middle in terms of degree of difficulty and the assistant bar counsel will talk the problem through with the caller.

There are, of course, certain ground rules that lawyers seeking assistance from the helpline should understand:

- First, it is not required, but is useful to the conversation if attorneys seeking advice have, before calling, reviewed any applicable rules of professional conduct as found in [Supreme Judicial Court Rules 3:07](#), including the comments to the rules. Answers to some questions can also be found on the [FAQ](#) and [Articles](#) pages of the BBO/OBC website.
- Second, the Office of Bar Counsel generally will not accept anonymous calls. This policy enables us to confirm that the caller is in fact an attorney. It also provides us with a record of the fact that a call from the lawyer or firm was received if a question arises down the road. However, although we ask that callers to the helpline identify themselves, a caller does not need to provide us with identifying information concerning the client or matter that is the subject of the call.
- Third, the purpose of the helpline is to assist lawyers in clarifying ethical responsibilities that apply to the situation at issue. In this regard, it is also important to understand that the helpline is separate and distinct from bar counsel's [Attorney and Consumer Assistance Program](#). If your object is to get information as to filing a complaint about another lawyer's conduct rather than to ask a question about lawyers' ethical obligations given certain facts, you should be calling ACAP, not the helpline.

Similarly, if you yourself have a pending complaint assigned to one assistant bar counsel, you cannot call the ethics helpline to discuss the matter with another assistant bar counsel.

- Fourth, bar counsel will not disclose the content of a call to third parties. Bar counsel also generally will not act on any information provided by a caller except to offer guidance on the caller's ethical responsibilities. Of course, if the inquiry concerns serious misconduct by another lawyer, the caller may be advised that he or she is required to report the problem to bar counsel under Mass. R. Prof. C. 8.3, i.e., violations of the rules of professional conduct that attorneys are required to report because the problems raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness. See Stacey Best, *The Snitch Rule and Beyond: Mandatory and Permissive Reports of Lawyer Misconduct*. It is, however, rare that any helpline call falls within the parameters of Rule 8.3.
- Finally, the guidance provided by OBC in response to a caller's inquiries is informal advice and is not binding on either the caller or us. This qualification is necessary because the set of facts the assistant bar counsel is given may be disputed or incomplete. Moreover, although OBC investigates and prosecutes attorney misconduct, it does not speak for the adjudicators, namely, the Board of Bar Overseers and the Supreme Judicial Court.

The ethics helpline is a service to the bar that is rewarding to both the Office of Bar Counsel and the attorney callers. We look forward to talking with you when you call.