

Information

Lawyer's Role as Opposing Counsel

Learn about a lawyer's obligations if they are opposing counsel on a legal matter. Opposing counsel is the lawyer who represents the other party.

What you should know

Opposing lawyer has a duty to their own client

If you are not represented by your own lawyer but the opposing party is, it is important to note that their lawyer has no obligation to protect your interests or to explain the law or its processes to you. A lawyer acting as opposing counsel has a duty only to their client and that involves an obligation to pursue their client's interests vigorously using every legal remedy or defence.

If you require legal advice, consider hiring your own lawyer or speaking to a lawyer of your own.

Communications

Opposing counsel have a limited duty to respond to you as a self-represented litigant. Generally, they have a duty to respond, when a response is necessary. This does not mean that opposing counsel is required to respond to all your communications; there may be occasions where some of your communications will not require a response. There also may be situations where opposing counsel will not have instructions from their client to respond to you. While it may be a good idea for them to let you know that they do not have instructions to respond, they are not required to respond to your requests unless a reply is warranted. The cost of litigation can increase when a lawyer must respond to multiple communications from an opposing side and it is not a professional conduct concern if the lawyer has been instructed not to respond to every email.

Once you retain a lawyer to represent you in a legal matter, opposing counsel must communicate with your lawyer and not directly with you.

If the lawyer acting for the other party contacts you and not your lawyer to discuss the legal matter at issue, this may be cause for filing a complaint. For example, a lawyer cannot contact you directly to discuss settlement when they are aware you have counsel to assist you.

Rudeness

Lawyers have a professional obligation in all cases to treat others with fairness and courtesy, including opposing parties and lawyers. A lawyer must not allow a client's feelings or their own, personal feelings and prejudices to detract from the lawyer's professional conduct. Rudeness may be considered unprofessional, although an investigation may not be warranted unless there is evidence that it is "beyond mere rudeness", which is the legal test for these types of complaints.

For example, if a lawyer has called you names or used an excessive elevated tone (yelling) in a professional setting, this may be cause for filing a complaint.

Threatening

It is understandable to feel concerned when you get a letter or other communication from a lawyer that sets out the consequences of your actions or inactions. Lawyers are often required, as part of providing quality legal services to their client, to write demand letters to other parties whom the client contends are acting improperly from a legal perspective. In such cases, lawyers are required to use firm language to make clear the client's position including what further steps the lawyer is authorized to take on the client's behalf.

A lawyer setting out their client's view and potential next steps (i.e. filing a lawsuit or seeking legal costs) are not matters of professional misconduct.

However, lawyers are not allowed to threaten to report you to a criminal (police) or regulatory authority as a means of trying to gain a benefit for their own client. Some examples may be threatening to report you to the police if you do not pay your support obligations or threatening to report you to the tax authorities if you do not pay the opposing party money in a separate legal action.

Litigation

If you have concerns about whether an opposing lawyer has complied or not with service requirements, forms or other procedural concerns, you may wish to address that within the forum you are in first. For example, if you feel a lawyer should have served you a certain way we will not investigate the matter unless you have a court order setting out the method of service.

Our complaint process is not a substitute for legal proceedings or for any right or remedy a party wishes to pursue in the court or other forum.