

ETHICALLY SPEAKING



Studies show that most lawyers will receive at least one complaint of unethical conduct at some point during their legal career. This is true whether you are a lawyer who doesn't practice law or a lawyer who practices with the highest standards of the profession.

THE STATE BAR OF TEXAS LOGGED 7,882 GRIEVANCES FILED AGAINST TEXAS LAWYERS LAST YEAR.

Studies show that most lawyers will receive at least one complaint of unethical conduct at some point during their legal career. This is true whether you are a lawyer who doesn't practice law or a lawyer who practices with the highest standards of the profession. Disciplinary complaints are a fact of life, which is why TYLA embarked on a new project, *TYLA Pocket Guide: Grievance & Malpractice 101*, to help educate lawyers on how the disciplinary process works, provide tips on how to avoid a disciplinary action, and offer guidance on what to do if a disciplinary action is filed against you.

In Texas, the top 10 areas of law that receive ethical claims each year are:

- Criminal
- Non-client relationship
- Family
- Civil
- Personal injury
- Immigration
- Declining or terminating representation
- Safeguarding property
- Probate/wills
- Real estate

In those areas of law, the top 10 violations that are alleged in those ethical claims are:

- Communication
- Neglect
- Integrity
- Declining or terminating representation
- Safeguarding property
- Conflicts
- Tribunals
- Fees
- Non-clients
- Confidentiality

To lessen the chance of an ethical claim, here are a few tips you should remember:

- **Have your client sign a written fee agreement.** Your fee agreement should clearly identify who the client is, what the terms of the engagement are, and what the attorney is retained to do.
- **Get paid a retainer up front.** Get a retainer established at the time the fee agreement is enacted. Set up an accounting system to remind you when the retainers get low and require your clients to replenish their retainers.
- **Control client expectations.** Communicate with your clients what they should expect with regards to their cases, available courses of action, the timeline of the cases, fees that are involved in each action taken, and the effects of all decisions that are made.
- **Document everything.** Document all communications with your client and keep an organized file of all of your correspondence, pleadings and orders, and agreements that are made in the case. Keep a copy of the file for at least seven years from the date the case is finalized.
- **Meet deadlines.** Calendar all of the deadlines in your client's case and communicate these to your client. Don't leave things until the last minute.
- **Return all calls and correspondence.** Return all calls or correspondence from your client within 48 hours.
- **Don't sue for fees.** Suing your client for fees almost always guarantees a counterclaim from your client.
- **Practice malpractice avoidance.** Assign a lawyer in your office to be in charge of malpractice avoidance audits on cases.
- **Look out for issues.** Keep an eye on employees and fellow lawyers and watch for warning signs of substance abuse. If they have an issue, get them off any cases and into treatment.
- **Turn down representation.** Follow your instincts on whether to avoid taking a case. If you reject business, turn it down in writing and send the potential client referrals for other lawyers he can contact.

For a free copy of the *TYLA Pocket Guide: Grievance & Malpractice 101*, go to tyla.org.

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