

What Texas Lawyers Need to Know About the Texas Grievance Process

Part three: avoiding common violations.

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Parts one and two of this series covered the basics of the attorney grievance process, from classification and investigation of complaints, through early resolution by Summary Disposition Panels, or SDP, and Investigatory Panels, or IVH, and finally with the ultimate disposition of disciplinary cases through litigation. Part three of this article wraps up the series by addressing the most common rule violations that result in discipline and how attorneys can avoid them.

While no lawyer's bucket list includes a "get grieved" entry, the reality is that no attorney is immune from a grievance. However, of the more than 108,000 attorneys licensed to practice law in Texas, only a small percentage are grieved each year and an even smaller number are sanctioned for professional misconduct. That being said, for solo or small firm practitioners,¹ having a grievance filed against them is not a matter of *if* but *when*.²

During 2021-2022, the Office of Chief Disciplinary Counsel, or CDC, received 7,175 grievances against Texas lawyers, with 1,928 of them ultimately classified as "complaints" requiring investigation.³ The CDC also conducted over 413 investigatory hearings relating to complaints against lawyers.⁴ During the period it resolved 559 complaints through 400 sanctions, ranging from disbarments (21), acceptance of resignations in lieu of discipline (27), suspensions (120), public and private reprimands (133), and referrals to the Grievance Referral Program (99).⁵

Of the more than 7,100 grievances filed with the CDC in 2021-2022, the vast majority were ultimately dismissed (6,526) or resolved with an agreed sanction (238) without the need for evidentiary hearings or a district court trial. Most grievances (about 70%) were dismissed as "inquiries" at classification, requiring no imposition on the respondent attorney. Another 73% of complaints that survived dismissal at the classification stage resulted in dismissal by an SDP, requiring nothing more from the respondent attorney than a timely, written response to the complaint.

While approximately 89% of cases in the grievance process will be dismissed without the respondent attorney having to attend a hearing, many of the remaining cases that head toward expensive and time-consuming litigation reveal predictable patterns of misconduct. Knowledge of those patterns can help the careful and prudent attorney undertake steps to minimize exposure to discipline by the State Bar of Texas, either by avoiding the grievance process altogether or by participating in the grievance process in a manner that

reduces the likelihood that a more severe sanction might be imposed. This article focuses on common mistakes attorneys make while delivering legal services to the public, the types of complaints that come before the Commission for Lawyer Discipline with the greatest frequency, and the sanctions that could have been avoided along the way. It concludes by highlighting resources that can help attorneys avoid grievances in the first place.

Failure to respond to a grievance

One of the most common sanctionable violations, and by far the easiest to avoid, involves the failure to respond to a complaint. Rule 8.01(b) of the Texas Disciplinary Rules of Professional Conduct, or TDRPC, provides that "[a] lawyer in connection with . . . a disciplinary matter, shall not: (b) . . . knowingly fail to respond to a lawful demand for information from an admission, reinstatement, or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.05." Likewise, TDRPC Rule 8.04(a)(8) provides that "[a] lawyer shall not . . . (8) fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so."

Throughout the disciplinary process, notwithstanding efforts by CDC staff to encourage a respondent's participation in the process and despite the favorable odds for dismissal based on the attorney's response, too many respondents fail to respond to the grievance, appear for an IVH, make an election to choose the forum to defend against allegations of professional misconduct, or show up at trial to defend against allegations that could result in the suspension or loss of their law license. By failing to respond, the attorney becomes subject to sanctions on grounds independent of any underlying professional misconduct alleged by the complainant and instead for professional misconduct for violating rules 8.01(b) and 8.04(a)(8). Disciplinary proceedings involving a failure to respond go forward to sanction even if the underlying complaint lacks merit, the complainant no longer wishes to participate in the process, or the lawyer ultimately prevails on the merits of the original complaint. This is not a trivial matter.

Texas, unlike some jurisdictions, does not automatically impose the penalty of disbarment for failing to reply to a grievance; however, at least one Texas appellate court recognized that a pattern of failing to respond to grievances warranted a district court's order of disbarment:

The record reflects the appellant flagrantly disregarded the entire grievance committee process. The outright refusal in four proceedings to acknowledge the power of the bar to regulate its members, with no justifying circumstances, was serious misconduct. Allowing complaining clients to see lawyers fail to respond to disciplinary proceedings without any serious consequence to the attorney could seriously damage the credibility of the profession and its ability to police itself. Needless to say, appellant's failure to respond warranted serious discipline to maintain respect for the profession. Disbarment was appropriate to avoid further repetition after disregard of four different proceedings, and to deter other attorneys from similarly refusing to respond to requests for information in connection with the disciplinary proceedings.⁶

The bottom line is that attorneys who fail to respond to a grievance, or who ignore efforts by the CDC to secure their cooperation before trial, do so at their own peril.

Failure to communicate

One of the most important obligations owed to clients is the duty to keep them informed throughout the course of the representation.⁷ Specifically, TDRPC Rule 1.03(a) provides that “[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” Similarly, TDRPC Rule 1.03(b) requires that “[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

While it may seem obvious that the health of any relationship depends on good communication, the number of grievances filed against attorneys for allegedly failing to adequately communicate with their clients remains surprisingly high. One reason for this may turn on what constitutes “reasonableness” on a case-by-case basis. For example, a “high maintenance” client may expect communication every time something is filed in a case, while other clients may be satisfied with periodic updates only when there is a significant event or deadline. The bottom line is to manage client expectations as early as possible surrounding what is a “reasonable” level of communication and document that understanding in the contract to avoid any confusion down the line.

Neglect

Another fundamental obligation owed to a client is to perform the work for which the attorney was hired. TDRPC Rule 1.01(b) provides in pertinent part that “a lawyer shall not: (1) neglect a legal matter entrusted to the lawyer; or (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.”⁸

Neglect can take on many characteristics. It could involve missed deadlines; a failure to pursue the correct remedy; a failure to file the appropriate applications, pleadings, or appellate briefs; a failure to respond to a dispositive motion; a failure to appear for a hearing; or a failure to prepare for trial. In some cases, these failures may be caused by the attorney's inexperience, impairment issues, or limited access to resources such as mentors, support staff, law practice management

software, or failure to use other docket-control protocols. These obstacles likely explain why solo and small firm practitioners tend to receive a higher percentage of grievances and sanctions.

Violations of TDRPC Rule 1.01(b) are surprisingly common and, along with failure to communicate, result in a majority of grievances filed, referrals to the Client-Attorney Assistance Program and the Grievance Referral Program, and sanctions issued. Too often, an attorney who has neglected a case will stop communicating with the client out of fear, shame, or embarrassment. Unfortunately, the inability to have a candid and humble conversation with the client disclosing where the attorney fell short in their duties only compounds problems for the attorney once a grievance is filed. The lesson here is that if attorneys became better at delivering bad news to clients, they not only could prevent a grievance, but could also salvage the attorney-client relationship.

Failure to safeguard client property

It should not be controversial that attorneys charged with holding money or property in trust for their clients must not use those funds for their own benefit. Once caught, even attorneys with “good intentions” to replenish the money in their trust accounts before the client comes calling recall that they ignored the voice in their head telling them “this is wrong” or “if something can go wrong, it will.” Nobody would disagree that misappropriating client funds is conduct that violates the duty, trust, and integrity upon which the attorney-client relationship is built. It not only violates that trust, but it also undermines public trust in the legal profession as a whole. It is because of this threat to public trust, and the State Bar's commitment to public protection, that an attorney's failure to uphold their ethical obligation to safeguard client funds will often result in the most severe sanction—disbarment.

State Bar Resources

The purpose of attorney discipline is to protect the public and the administration of justice. To that end, the Commission for Lawyer Discipline and the CDC must ensure that the process is fair and efficient, providing access and protections for the public and for respondents. One way to achieve this goal is for the State Bar to be proactive and provide Texas attorneys with support, education, grievance diversion programs, and law practice management resources to assist them with improving their professionalism, law practices, and compliance with their ethical obligations under the rules.

Website resources available at texasbar.com

The State Bar's website contains extensive information that can be extremely useful for attorneys. Hover over the “For Lawyers” tab on the navigation bar on the homepage and then trace down the drop-down menu to “Grievances and Ethics.” Click on “Grievances and Ethics,” which brings up a tertiary menu that features links to a number of topics providing an overview of the disciplinary process, access to source materials, and other information that would be useful to members in connection with the grievance process.

Hover over the “For the Public” tab on the navigation bar on the homepage and then click on “Public Home,” which is the homepage for the “For the Public” section. On that homepage, click on the link titled “Find Grievance and Ethics Information.” That page, though identified as being “For the Public,” contains useful links to information for attorneys as well.⁹

Collectively, these online resources, along with on-demand webinars and online classes offered by TexasBarCLE, provide a go-to compendium of articles and publications to help lawyers avoid, and if necessary, more successfully navigate, the grievance process.

Ethics Helpline

Another resource for attorneys is the Ethics Helpline. If attorneys are unsure about ethical obligations arising under certain circumstances, they may call the helpline to receive non-binding, informal guidance on which rules, ethics advisory opinions, and caselaw may assist them in determining the correct course of action. During 2021-2022, the Ethics Helpline “returned approximately 5,000 calls from Texas lawyers seeking advice regarding conflicts, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with represented persons, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.”¹⁰ The Ethics Helpline continues to be an indispensable resource to help attorneys avoid ethical issues that could give rise to a grievance.¹¹

Texas Lawyers’ Assistance Program

It is a stark reality that many misconduct cases that come before the Commission for Lawyer Discipline involve attorneys who struggle with impairment issues, mental health challenges, and other personal hardships that affect their ability to provide quality legal services to their clients. The fact is that the practice of law is a high-stress profession that carries with it the dual tensions of having high rates of anxiety, depression, substance use issues, and suicidal thoughts¹² on the one hand, and the stigma surrounding seeking help for these conditions on the other. The inability to overcome the stigma and ask for help can lead to dire consequences, including the impaired attorney’s inability to comply with the ethical obligations owed to clients under the TDRPC.

The Texas Lawyers’ Assistance Program, or TLAP, provides 100% confidential help to lawyers, law students, and judges suffering from a substance use disorder or other mental health issues. TLAP operates a 24-hour hotline for calls or texts at 800-343-TLAP (8527) to provide immediate assistance to those who are suffering, and its website, tlaphelps.org, contains many helpful links to outside resources, and to videos and documents, that attorneys and their families can turn to for help. TLAP saves lives and law practices.

Conclusion

Grievances occur with enough frequency that Texas lawyers need to understand the process and be aware of the common

missteps that most often lead to grievances and sanctions. While it is impossible to control whether a grievance will be filed, attorneys have control, and plenty of tools and resources at their disposal, to minimize their exposure to the most common rule violations along with the most severe disciplinary outcomes. In the end, attorneys need not fear the grievance system, which is in place to protect not just the public, but the profession as a whole. Without a strong, fair, efficient disciplinary system, self-regulation of the legal profession could very well become a relic of the past. **TBJ**

NOTES

1. According to the State Bar of Texas Membership: Attorney Statistical Profile (2021-22), solo and small firm attorneys make up 37% of all active attorneys licensed in Texas. See https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=56197.
2. In the 2021-2022 bar year, solo and small firm (2-5 attorneys) practitioners received 70% of all grievances filed by complainants and 86% of all sanctions issued by the State Bar of Texas.
3. STATE BAR OF TEXAS, COMM’N FOR LAWYER DISCIPLINE ANN. REPORT, JUNE 1, 2021-MAY 31, 2022, at 13 (Annual Report). The *Annual Report*, frequently cited herein, is an extremely useful collection of data about the disciplinary process, the steps involved, raw numbers, and resources available both to the public and to Texas lawyers. See https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&ContentID=57786&Template=/CM/ContentDisplay.cfm. Many other useful resources are found on the Texas Bar website with additional information under the “For the Public” tab at <https://www.texasbar.com/>.
4. *Id.*
5. *Id.*
6. *Rangel v. State Bar of Texas*, 898 S.W.2d 1, 4 (Tex. App.—San Antonio 1995, no writ).
7. TDRPC 1.03(a); 1.03(b).
8. Rule 1.01(c) defines “neglect” to signify “inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.” It should be noted that not every act of negligence violates the TDRPC though it may give rise to a civil action for legal malpractice.
9. See https://www.texasbar.com/AM/Template.cfm?Section=Grievance_and_Ethics_Information1&Template=/CM/HTMLDisplay.cfm&ContentID=46441.
10. Annual Report at 4.
11. The Ethics Helpline number is 800-532-3947.
12. The home page for the Texas Lawyers’ Assistance Program, <https://www.tlaphelps.org/>, reports that: 32% of lawyers 30 years old or younger have drinking problems; 28% of lawyers struggle with some level of depression; 19% of lawyers demonstrate symptoms of anxiety; and 11% of lawyers have had suicidal thoughts during their career.



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