ESSAY

David Bright

Avoiding Grievances: 25 Things You Can Do

Abstract. Despite the high probability lawyers face of having grievances filed against them, there are best practices a lawyer can follow to lower the risk of facing a charge. The purpose of this Essay is to identify the most common situations that give rise to grievances against conscientious, skilled lawyers; to suggest ways that those lawyers can avoid grievances; and to suggest a sensible approach for practitioners facing a grievance.

Author. David Bright is Of Counsel at the law firm of Sico, Hoelscher, Harris & Braugh LLP in Corpus Christi, Texas. Mr. Bright has served as Chairman of the State Bar of Texas District 11-A Grievance Committee, President of the Corpus Christi Bar Association, Chairman of its Continuing Legal Education Committee, Course Director of its Annual Advanced Civil Trial Law Seminar, and is a member of the Pro Bono College of the State Bar of Texas. Mr. Bright earned his undergraduate degree from the University of Texas in 1983 and graduated from St. Mary's University School of Law in 1986, where he served as Associate Editor of the *St. Mary's Law Journal*. Mr. Bright's publications and continuing legal education presentations cover a broad spectrum of litigation and attorney ethics topics. His full biography and bibliography can be found at http://www.swhhb.com/david-bright-bio.

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I. INTRODUCTION

In any given year, more than 8,000 written complaints are filed against Texas lawyers with the Office of the Chief Disciplinary Counsel.[1] Fewer than five percent of those grievances ultimately result in any sanction.[2] A review of Texas State Bar statistics and my own experience as Chairman of the District 11-A Grievance Committee have taught me that a very small percentage of grievances involve incompetent lawyers and an even smaller percentage involve morally bad conduct.[3] In fact, the vast majority of grievances concern good lawyers in situations that could have easily been

1. *See* Betty Blackwell, *Ethics in Client Relations*, VOICE FOR THE DEF., June 2010, at 28, 29, http://www.voiceforthedefenseonline.com/newsletters/2010/June10.pdf ("On the average for the last ten years[,] the State Bar of Texas has received approximately 8[,]700 complaints about lawyer misconduct."); *see also* STATE BAR OF TEX., COMM'N FOR LAWYER DISCIPLINE, ANNUAL REPORT: JULY 31, 2014–MAY 31, 2015, at 17 (2015) [hereinafter COMM'N FOR LAWYER DISCIPLINE] (reporting 6,200 ethics contacts were handled by the State Bar Ethics Helpline).

2. *See* COMM'N FOR LAWYER DISCIPLINE, *supra* note 1, at 17–18 (reporting there were 318 disciplinary sanctions arising from the 7,512 grievances filed during the 2014–2015 bar year).

3. *See id.* at 18 (indicating grievances are dismissed for a variety of reasons).

avoided.[4]

The purpose of this Essay is to identify the most common situations that give rise to grievances against conscientious, skilled lawyers; to suggest ways those lawyers may avoid grievances; and to suggest a sensible approach for practitioners facing a grievance.

II. THE MOST COMMON GRIEVANCES AND HOW TO AVOID THEM

According to State Bar of Texas, the most commonly alleged rule violations in grievance claims concern communication, neglect, integrity, declining or terminating representation, safeguarding property, and fees.[5]

Furthermore, if you practice family law, criminal law, or represent plaintiffs in personal injury cases, you are statistically more likely to have a grievance filed against you.[6]

A. *Communicating with Your Clients*

Historically, client communication problems have been the basis of many categories of grievances.[7] In Texas, these grievances often cite Texas Rules of Professional Conduct 1.03(a) and (b).[8] Time and time again, the grievance panel hears from clients who claim they have called their attorney on a daily basis and the attorney never returned any of those calls.[9] A conscientious lawyer can prevent many of these grievances by simply doing the following:

1. Keep copies (or carbons) of incoming call slips. This not only helps the lawyer return calls but also provides evidence of the actual number of calls from the client.[10]

2. Have your paralegal or secretary call people back if you have not

4. *See id.* (revealing grievances are often filed because of a case's outcome instead of a specific ethics rule violation, resulting in dismissals of grievance complaints).

5. TEX. YOUNG LAWYERS ASS'N, TYLA POCKET GUIDE: GRIEVANCE AND MALPRACTICE 101, at 1–2 (2013), http://www.tyla.org/tyla/assets/File/Grievance%20Malpractice%20101.pdf.

6. COMM'N FOR LAWYER DISCIPLINE, *supra* note 1, at 20.

7. *See id.* at 1 (indicating communication problems are the top rule violation alleged in grievance claims against attorneys).

8. TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 1.03(a)–(b), *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9).

9. Attorney-discipline systems are set up "to improv[e] and advanc[e] the quality of legal services to the public, protect[] the public through the discipline system, and foster[] integrity and ethical conduct in the legal profession." COMM'N FOR LAWYER DISCIPLINE, *supra* note 1, at 17. For an overview of the attorney discipline process in Texas, see *id.* at 17–19.

10. *See* MODEL RULES OF PROF'L CONDUCT r. 1.4 cmt. 1 (AM. BAR ASS'N 2013) ("Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.").

called them back within one or two days. It is important to note that many client calls concern small matters or situations that will resolve themselves, so a callback by your secretary or paralegal can be reassuring to your client.[11] Of course, it is essential to keep track of these calls as well.[12]

3. For clients who need more attention, have your secretary or paralegal set up meetings with those clients periodically. A one-hour meeting is generally plenty of time. If the client does not want to do it, that is fine as well, but make the offer. When you *do* call or visit with your client, talk his ear off. You are not likely to draw a grievance for inattentiveness if the client thinks, "Man, this guy won't shut up!" And remember, the *quality* of communication is really more important than the *quantity*.[13] Learn to listen.[14]

B. *Managing Client Expectations*

Be brutally straight with clients from the outset.[15] You are a good lawyer and your time and skill are valuable. Act like it. Instead of spending your client conferences wooing the client and telling the client what he wants to hear, give him the bad news as well as the good.[16] Clients expect good lawyers to be honest with them.[17]

11. *See id.* r. 1.4 cmt. 4 ("A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation."); *id.* r. 5.3(b) ("[A] lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer . . . .").

12. *See id.* r. 5.3 (describing the responsibilities of lawyers with managerial or supervisory authority over nonlawyer employees).

13. Eureste v. Comm'n Lawyer Discipline, 76 S.W.3d 184, 200 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

14. *See* DALE CARNEGIE, HOW TO WIN FRIENDS AND INFLUENCE PEOPLE 150 (Gallery Books ed. 1998) (1936) ("Most people trying to win others to their way of thinking do too much talking themselves. Let the other people talk themselves out. They know more about their business and problems than you do. So ask them questions. Let them tell you a few things."); *see also* MODEL RULES r. 1.4(a)(4) ("A lawyer shall promptly comply with reasonable requests for information . . . .").

15. *See* MODEL RULES r. 2.1 ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.").

16. *E.g.*, Gretchen G. Viney, *How to Give Clients Bad News—Without a Spoonful of Sugar*, 88 WIS. LAW., Mar. 2015, http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=88&Issue=3&ArticleID=23933 (outlining a three-step technique for delivering bad news to clients: forecasting the bad news from the beginning, getting to the bottom line, and carefully tailoring a longer explanation for the bad news).

17. *See* MODEL RULES r. 1.8 (providing specific rules regarding lawyers and conflicts of

1. Tell the client how long the litigation or legal matter is going to take, and do not underestimate.[18] Believe it or not, clients expect legal matters to take time. Too many lawyers underestimate the length of time a matter will take, either because they do not want to disappoint the client or because they are considering a best-case scenario. This simply leads to unreasonable expectations and unnecessary disappointment.

2. Tell the client the *downside* of his case. Naturally, it is flattering that the client came to you, and too many lawyers try to "reward" that with optimistic prognostications. Instead, do not try selling the client on your services. Show that you know what you are talking about, and be *conservative* about the results.[19] Ultimately, the client will respect you more. On the other hand, if a realistic assessment makes a client run away, he or she is a problem client.

3. If a legal matter is clearly outside of your skill area, you are asking for trouble.[20] Tell prospective clients what you are good at, and do *that*. If the legal matter is something outside of your area, send the client to another lawyer or have the client agree for you to associate with additional counsel.[21] To facilitate this, keep a list of competent lawyers **to whom** you can refer matters that are outside of your area of expertise and have it handy.[22]

C. *Avoiding Problem Clients*

There are many signs of a problem client that the practitioner should learn to recognize. For example, a client that comes to you after he has

interests with current clients); *id.* r. 2.1 (mandating lawyers to use their independent professional judgment and be candid with clients); *id.* r. 1.2(a) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.").

18. *See id.* r. 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").

19. *Id.*; *see also id.* r. 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

20. *See id.* r. 1.1 ("A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field of question.").

21. *See id.* r. 1.1 cmt. 6 (advising prior to retaining or contacting lawyers from outside one's "own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client").

22. *Cf. id.* r. 7.2(b)(4) (allowing lawyers under certain circumstances to "refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer").

fired his former lawyer should at least raise a red flag that some investigation is warranted.[23] Likewise, when a new client is badmouthing his previous lawyer, similar alarms should go off. Other important clues of a potential problem client arise when a new client appears to have unrealistic expectations or refuses to listen or accept your professional advice.

D. *Case Neglect Issues*

1. Case Selection. Many attorney grievances can be traced to poor case selection. An old adage that rings truest in the law is, "No good deed goes unpunished."[24] I cannot count the number of grievances I have heard that grew out of a "favor" case or a simple attempt by a lawyer to do a good deed. When you take a weak case just to do someone a good turn, or because you assume it will be resolved quickly, beware.

2. Tell clients what you are good at, and do *that.* Again, it is important to do the type of work that you are skilled at. Attorneys tend to procrastinate work they either are not good at or do not enjoy.[25] If a case is out of your area of practice, send the client to someone who handles that type of case.[26]

3. Delegate. You cannot create more hours in the workday, but you can perform more work by delegating.[27] If you have difficulty delegating tasks to co-workers or you refuse to delegate, you are headed for trouble. Of course, this requires knowing to whom you can delegate various tasks and making sure those people are sufficiently trained.[28]

23. At any time, clients can discharge a lawyer with or without cause. *Id.* r. 1.16 cmt. 4.

24. Although it is sometimes attributed to Oscar Wilde, this famous quote was first written in a book by Letitia Balridge, who was quoting her boss Clare Booth Luce. LETITIA BALRIDGE, ROMAN CANDLE 129 (1956).

25. *See* MODEL RULES r. 1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client.").

26. *See id.* r. 1.1 cmt. 1 ("In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.").

27. When delegating tasks, it is important to remember the responsibilities lawyers have over nonlawyers associated with the lawyer or under the lawyer's employment. *Id.* r. 5.3. Partners in a firm and lawyers with managerial authority over other lawyers also have responsibilities to consider when delegating tasks. *Id.* r. 5.1.

28. *See* Amy Gallo, *Why Aren't You Delegating?*, HARV. BUS. REV. (July 26, 2012), https://hbr.org/2012/07/why-arent-you-delegating (emphasizing delegation "remains one of the most underutilized and underdeveloped management capabilities" and asserting the importance of

4. Do not let tasks linger unattended. Nearly everyone has some tendency to procrastinate.[29] The key is to be honest with yourself and deal with your own tendencies. If possible, delegate the things that you cannot seem to get around to doing. For example, many hardworking lawyers have trouble getting around to preparing and sending bills.[30] In such instances, try assigning timekeeping tasks to an employee. Another possible way of addressing this issue is to look at the layer of work on your desk that you just cannot ever seem to get around to. The fact is someone else could probably make short work of it. Talk to that person. Finally, set up a tickler system[31] in your office to force you do things you have difficulty getting around to, such as periodic file reviews.

E. *Attorney Fee Disputes*

In any given year, attorney fee disputes constitute one of the top alleged rule violations in lawyer grievances claims.[32] Many of these grievances can be headed off by paying attention to them early on.

1. Hourly fee issues. Tell the client up front, before you are hired, what the matter is going to cost, and do not be conservative.[33] People expect that legal representation is expensive and may take time.[34] Send bills

choosing "people who have the necessary skills and are motivated to get the job done right").

29. *See* MODEL RULES r. 1.3 cmt. 3 ("Perhaps no professional shortcoming is more widely resented than procrastination."); *see also* Mendicino v. Magagna, 572 P.2d 21, 23 (Wyo. 1977) ("A member of the legal profession is never justified in delaying his or his client's business by reason of laziness, procrastination, or a cavalier approach to the client's interests.").

30. There is a growing trend where attorneys are having their bills audited as a result of the perception of unscrupulous lawyers inflating or "fudging" the number of hours worked. Claire Hamner Matturro, *Auditing Attorney's Bills: Legal and Ethical Pitfalls of a Growing Trend*, 73 FLA. B.J., May 1999, at 14, 15–16 (1999).

31. *See Tickler and Calendar Systems*, TENN. B. ASS'N, http://www.tba.org/tickler-and-calendar-systems (last visited May 13, 2016) (mentioning a tickler system "assists the lawyer in anticipating future deadlines, planning work and preventing files from being neglected").

32. TEX. YOUNG LAWS. ASS'N, *supra* note 5, at 1–2.

33. *See* MODEL RULES r. 1.5 cmt. 2 ("In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding."). *But see id.* r. 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.").

34. *Cf. 10 Ways Lawyers Rip off Clients*, BUS. INSIDER (July 10, 2013, 11:56 AM), http://www.businessinsider.com/10-ways-lawyers-rip-off-clients-2013-7 (listing ways lawyers have found "questionable ways to squeeze money out of clients"). *But see* Sam Glover, *Why Are Lawyers So Expensive, I'll Tell You Why*, LAWYERIST.COM (Feb. 12, 2016), https://lawyerist.com/77964/lawyers-

regularly and frequently.[35]

2. Contingent fee issues. If you are being hired on a contingent fee basis, explain the contract at the outset and take at least half an hour to do so.[36] Do not wait until a critical moment, such as on the eve of trial, to get the client to sign a contingent fee contract.[37] Contingent fee contracts must be in writing and signed by both attorney and client.[38] Do not, under any circumstances, charge more than the percentage outlined in the contingent fee contract.[39] Finally, be aware that charging a contingency fee in a family law case is prohibited.[40]

F. *Forming the Attorney–Client Relationship*

At the outset of any potential representation, it is essential you be clear

expensive-ill-tell (explaining the factors that go into legal fees, in light of "discussion about the need for lower-cost legal fees").

35. Charles E. Hardy, *Attorneys' Fees (Getting Paid for What You Do)*, 75 TEX. B.J. 680, 683 (2012) ("Send out bills to clients every month, no matter what, without fail. Avoid having clients receive a statement for two or three or more months of work at a time. Clients are entitled to ask you to slow down and your failure to send a statement on a regular basis does not afford them that opportunity."); *see also* Jill Schachner Chanen, *It's Not Just About Money*, A.B.A. J. (May 1, 2004, 5:08 PM), http://www.abajournal.com/magazine/article/its_not_just_about_money ("Sending clients regular fee statements helps emphasize the importance of paying their legal bills."). Additionally, a lawyer helps clients by giving them the opportunity to frequently review and "ask questions about the fees and related matters" when a lawyer sends bills often and in them sets forth smaller amounts per statement. *Id.*

36. *See supra* note 32 and accompanying text.

37. *See* McCleery v. Comm'n Lawyer Discipline, 227 S.W.3d 99, 102, 104–05 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (holding a lawyer violated a rule by entering into an unconscionable fee agreement when he previously told the client the matter would be pro bono); *see also* TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 1.04(a), *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9) ("A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.").

38. *See* Enochs v. Brown, 872 S.W.2d 312, 318 (Tex. App.—Austin 1994, no pet.) (holding the purpose of the statute of frauds is satisfied "by requiring the party enforcing the contract to produce a written contract signed by the party to be charged").

39. Onwuteaka v. Comm'n Lawyer Discipline, No. 14-07-00544-CV, 2009 WL 620253, at *5 (Tex. App.—Houston [14th Dist.] Mar. 12, 2009, pet. denied) (mem. op.) (finding a lawyer violated the rules of professional conduct by collecting fees in excess of the percentage agreed upon in the contingent fee agreement). In *Onwuteaka*, the attorney claimed he was entitled to more than the agreed upon percentage because he made "numerous cash advances" to his clients. *Id.* The court held the attorney collected a fee in excess of the agreement, "even after crediting the medical expenses, client cash advances, and other costs." *Id.*

40. *See* Goldstein v. Comm'n Lawyer Discipline, 109 S.W.3d 810, 814 (Tex. App.—Dallas 2003, pet. denied) (holding the contingency fee at issue was unconscionable and not justified); *see also* MODEL RULES OF PROF'L CONDUCT r. 1.5 (d)(1) (AM. BAR ASS'N 2013) (prohibiting contingent arrangements "in a domestic relations matter").

about whether you represent someone.[41] An attorney–client relationship can be implied from the conduct of the parties.[42] Agreeing to "look over" a legal issue or have a casual conversation about a legal matter may lead a person to reasonably believe they are your client.[43] Finally, do not go into business with your client and continue representing them.[44] You are asking for trouble if you do.

G. *Terminating the Attorney–Client Relationship*

Many grievances arise out of the termination of the attorney–client relationship.[45] If you have to withdraw from representation, make sure your client is not facing pending deadlines or a trial.[46] The surest way to

41. *See* Burnap v. Linnartz, 914 S.W.2d 142, 148 (Tex. App.—San Antonio 1995, no writ) ("Even in the absence of an attorney-client relationship, an attorney may be held negligent for failing to advise a party that he is not representing the party."); *see also* Levine v. Bayne, Snell & Krause, Ltd., 40 S.W.3d 92, 95 (Tex. 2001) ("[T]o impose the obligation of clarifying attorney–client contracts upon the attorney 'is entirely reasonable, both because of [the attorney's] greater knowledge and experience with respect to fee arrangements and because of the trust [the] client has placed in [the attorney].'" (alteration in original) (citing Cardenas v. Ramsey Cty., 322 N.W.2d 191, 194 (Minn. 1982))).

42. Sutton v. Estate of McCormick, 47 S.W.3d 179, 182 (Tex. App.—Corpus Christi 2001, no pet.); Vinson & Elkins v. Moran, 946 S.W.2d 381, 405 (Tex. App.—Houston [14th Dist.] 1997, writ dism'd by agr.).

43. *See* Valls v. Johanson & Fairless, LLP, 314 S.W.3d 624, 634 (Tex. App.—Houston [14th Dist.] 2010, no pet.) ("[A]n attorney-client relationship may arise by implication if the lawyer knows a person reasonably expects him to provide legal services but does nothing to correct that misapprehension."); *see also* Kiger v Balestri, 376 S.W.3d 287, 291 (Tex. App.—Dallas 2012, pet. denied) ("But whether the agreement is express or implied, there must be evidence both parties intended to create an attorney-client relationship—one party's subjective belief is insufficient to raise a question of fact to defeat summary judgment.").

44. The Model Rules provide lawyers are prohibited from entering into business transactions with clients unless:

> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
> (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

MODEL RULES r. 1.8 (a).

45. COMM'N FOR LAWYER DISCIPLINE, *supra* note 1, at 20.

46. *See In re* McCann, 422 S.W.3d 701, 704 (Tex. 2013) (stating emphatically that a "client's file belongs to the client"); *see also* MODEL RULES r. 1.16(d) ("Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or

draw a grievance is to withdraw from representation and leave your client in the lurch.[47] It is important to promptly provide copies of file documents to your client.[48] Do not withhold file documents from your client until he pays for them;[49] doing so is a sure-fire way to get a grievance filed against you. Many grievances are based on an attorney's failure to provide or return copies of file documents.[50]

III. IF A GRIEVANCE IS FILED AGAINST YOU

The following is my best advice, based on the years that I served on the State Bar of Texas Grievance Committee, on how one should properly react to a grievance.

1. Take it seriously. Surprisingly, even good lawyers respond to grievances badly,[51] and that sends the wrong message to the panel. For a variety of reasons, lawyers tend to procrastinate on grievance responses worse than on anything else. Perhaps it is because dealing with the grievance merely brings up bad memories; perhaps it is because responding to a grievance does not generate income; perhaps it is because the lawyer feels that the grievance is frivolous. Regardless of any of these beliefs, you need to take the time to seriously respond to any grievance.[52]

expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.").

47. *See* MODEL RULES r. 1.16 (allowing the withdrawal of attorney if doing so "can be accomplished without material adverse effect on the interests of the client); *id.* r. 1.16 cmt. 9 ("Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client."). Texas Disciplinary Rule of Professional Conduct 1.15(b) tracks the language of Model Rule 1.16. TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 1.15(d), *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9). *But see* Weiss v. Comm'n Lawyer Discipline, 981 S.W.2d 8, 15–16 (Tex. App.—San Antonio 1998, pet. denied) (holding an attorney did not violate a disciplinary rule because there was no evidence to show the client was prejudiced by the attorney's failure to return the entire file to the client).

48. *See In re McCann*, 422 S.W.3d at 706 (rejecting the argument that under Texas Disciplinary Rule 1.15, "the client has a limited possessory interest in his or her own file and that the attorney-lien language of the Disciplinary Rules creates a property right in favor of the attorney").

49. *See id.* (holding the Texas Disciplinary Rules allow attorneys to retain client papers only when a valid attorney lien exists, provided "such retention does not prejudice the client in the subject matter of the representation" (citing TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.15(d))); Blackwell, *supra* note 1, at 2 ("[Rule 1.15(d)] results in a lot of sustained grievances against lawyers who mistakenly believe that they can hold the file hostage for payment of attorney's fees.").

50. *Commonly Asked Legal Questions*, TEX. CTR. LEGAL ETHICS, https://www.legalethicstexas.com/Ethics-Resources/FAQs.aspx?page=2 (last visited May 13, 2016).

51. *See generally* Tanya A. Marcum & Elizabeth A. Campbell, *Legal Marketing Through the Decades: Pitfalls of Current Marketing Trends*, 6 ST. MARY'S J. LEGAL MAL. & ETHICS 244 (2016) (discussing instances when lawyers responded poorly to grievances).

52. *See* Rangel v. State Bar of Tex., 898 S.W.2d 1, (Tex. App.—San Antonio 1995, no writ)

2. Respond. The respondent to a grievance has thirty days to respond to a grievance, unless an extension is obtained.[53] Whatever you do, get a response filed. Failing to respond to an *invalid* grievance can result in an allegation of professional misconduct.[54] Likewise, if you are requested by the state bar to provide an entire copy of your client's file, do so promptly.[55] Failure to do so can result in a finding of professional misconduct, even if the underlying grievance is invalid.[56]

3. Do not represent yourself, if at all possible. You need objective eyes when responding to a grievance.[57] Hire someone who has handled grievances before or who has served on the Grievance Committee, if possible.[58]

4. Do not attack your client or complainant in your response to a grievance. One of the worst mistakes a lawyer can make in responding to a grievance is to attack his former client.[59] This usually does little more than confirm the client's allegations that the attorney did not zealously represent them.

5. If you still represent the client while the grievance is pending, do not quit doing your job. Although the situation may be awkward, it is important not to commit disciplinary offenses while a grievance is pending.[60]

("The failure to respond to grievance committee requests to provide information in connection with disciplinary actions clearly warrants disciplinary action." (first citing TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 8.01(b); then citing *id.* R. 8.04(a)(1); and then citing State Bar of Tex. v. Roberts, 723 S.W.2d 233 (Tex. App.—Houston [1st Dist.] 1986, no writ))). The San Antonio court in *Rangel* disbarred the attorney after he "flagrantly disregarded the entire grievance committee process. *Id.* at 3. In doing so, the court commented that "[a]llowing complaining clients to see lawyers 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." *Id.*

53. TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 2.10, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9).

54. *Id.* R. 8.04(a)(8).

55. *See id.* R. 8.01(b) (providing a lawyer in connection with a disciplinary matter shall not "knowingly fail to respond to a lawful demand for information from . . . [the] disciplinary authority").

56. *See supra* note 47 and accompanying text.

57. *See e.g.*, 31 AM. JUR. *Trials* 633, § 20 (2016) ("Grievance committees obviously can deal better with retained counsel than with the accused attorney, and the matter is far more likely to be resolved without the necessity of a hearing.").

58. *Id.* ("An accused attorney should select experienced trial counsel as his lawyer, preferably one older than himself, well regarded by the bar, and, if possible, one with experience in serving on grievance or hearing committees or in representing attorneys before them. A former judge would also be an excellent choice.").

59. *See* Marcum & Campbell, *supra* note 51, at 262–66 (detailing case of Michigan lawyer who was disbarred after talking to the media to discount the claims made by his former clients in their grievance).

60. Ditto v. State, 898 S.W.2d 383, 386 n.4 (Tex. App.—San Antonio 1995, no writ) (stating

IV. WHAT ELSE CAN YOU DO?

Perhaps the single best piece of advice I can give you is this: Volunteer to serve on your local State Bar Grievance Committee. Your local Bar Director makes the nomination.[61] Contact that person. Write them a letter: "I would be interested in serving on one of our local State Bar Grievance Panels." Serving on a State Bar Grievance Panel is guaranteed to make you a better and more conscientious lawyer.

V. CONCLUSION

In case you missed them, the following are the twenty-five suggestions provided in this Essay:

1. Keep records of all incoming calls.
2. Have your staff call clients back if you do not.
3. Have periodic meetings with clients, where appropriate.
4. Tell your client, up front, how long the legal matter will take.
5. Tell your client, up front, the potential downside of his case.
6. If the legal matter is something outside of your area, send the client to another lawyer.
7. Create a list of competent lawyers to whom you can refer matters outside your area of expertise.
8. Avoid problem clients and people who bad mouth their former attorney.
9. Remember: No good deed goes unpunished.
10. Learn how to delegate tasks.
11. Know yourself. Know on what things you tend to procrastinate.
12. Delegate or create a system for the tasks on which you procrastinate.
13. Set up a tickler system in your office.
14. Tell your client, up front, how much the legal matter may cost.
15. Explain the contingent fee contract thoroughly.
16. Do not wait until later to get the contingent fee contract signed.
17. Be clear about whether someone is your client.
18. Do not go into business with your client and keep representing him.
19. If you have to terminate the attorney–client relationship, do not leave your client in the lurch.

attorneys are still on the case until the court grants a motion to withdraw).

61. TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 2.03, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9).

20. Return copies of your client's file promptly when asked.
21. If a client files a grievance against you, take it seriously and respond.
22. Hire someone to represent you in a grievance, if at all possible.
23. Don't attack your client or complainant in your response to a grievance.
24. Be careful if you still represent your client during a grievance.
25. Volunteer to serve on your local State Bar Grievance Committee.