



ETHICS:
*Pre-trial considerations
in juvenile cases*

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- Information on Grievance process provided by Betty Blackwell, Chair of the Commission For Lawyer Discipline
- Video editing by SoulFull Studio, Georgetown, Texas

OVERVIEW

- **Common ethical issues**
- **Most common grievances**
- **How to prevent grievances**
- **How to handle grievances**

COMMON ETHICAL ISSUES

COMPETENCY

- TDRPC 1.01 – A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer’s competence.
- Exceptions:
 - Associate with competent lawyer
 - Emergency necessitates representation.



PARENTS

- TDRPC Preamble – The defense lawyer in juvenile cases is charged with the responsibility of representing his/her client zealously within the bounds of the law.
- TFC 51.02 – Definition of “party”
- TDRPC 201 – Lawyer’s duty to exercise independent judgment and render candid advice.



THE PROSECUTOR

- TCCP 2.01 – It shall be the primary duty of all prosecuting lawyers, including any special prosecutors, not to convict, but to see that justice is done.
- TDRPC 3.07: A lawyer shall not make a public statement expressing an opinion as to the guilt or innocence of a defendant or suspect or any information the lawyers should know is inadmissible.



PHYSICAL EVIDENCE

- TPC 37.09 – A person commits a third degree felony if, knowing that an investigation or official proceeding is pending or in progress, he destroys or conceals evidence.
- TDRPC 1.01 – Lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.

A lawyer may, however, discuss the legal consequences of any proposed course of conduct.



THE PROSECUTOR

- TDRPC 3.09 – It is the duty of the prosecutor to:

(a) refrain from prosecuting or threatening to prosecute a charge the prosecutor knows is not supported by probable cause;

(b) conducting or assisting in a custodial interrogation unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to a lawyer and been given opportunity to obtain one.



CONFLICTS

- TDRPC 1.06 - A client is entitled to undivided loyalty in a lawyer's representation.

A lawyer must not represent a client if that client's interests are materially and directly adverse to the interest of another client represented by the same lawyer.

Conflict can be waived with consent and full disclosure if the lawyer can adequately represent the interest of each client.



**MOST
COMMON
GRIEVANCES**

Grievances Statistics 2009

84,183 Active Lawyers

Grievances received	7108
Classified as complaints	1759
Dismissed as inquiries	5169
Total number of disciplines	335
Disbarments	32

Grievances Statistics 2009

Broken down by area of practice:

Criminal (*)	2907
Family	1107
Personal Injury	465
Non-Client Relationship	959
Worker's Comp	49

(*) Juvenile cases are included in this area of practice.
The number of grievances filed in juvenile cases constitute less than 1 % of the total.

Number One Complaint

Neglect (811)

- TDRPC 1.01(b)(1):
 - A lawyer shall not neglect a legal matter or frequently fail to carry out completely the obligations owed to the client
- Malpractice is not always a violation of the Rules of Professional Conduct
- Ineffective Assistance of counsel is not the same as a violation of the Rules of Professional Conduct

Number Two Complaint

Failure To Communicate (713)

- TDRPC 1.03:
 - A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
 - RETURN PHONE CALLS!

HOW TO PREVENT GRIEVANCES

Why Is This Important?

**8% of Attorneys Will
Get a Grievance Filed
Against Them This
Year**

WRITTEN CONTRACTS

*Cluck vs. Commission for
Lawyer Discipline, 214 S.W.3d
736 (Tex. App.-Austin)*

- Non-refundable retainer fee was \$15,000.00 billed at \$150/hour.
- The fee is not earned simply because it is designated as non-refundable.
- Fees not earned must be deposited into a trust account.

HANDLING SUBPOENAS

- TCCP 24.04 - subpoenas may be served by:
 - (1) Reading the subpoena in the hearing of the witness;
 - (2) Delivering a copy of the subpoena to the witness;
 - (3) Electronically transmitting a copy of the subpoena, receipt requested, to the last known electronic address of the witness; or
 - (4) Mailing a copy of the subpoena by certified mail, return receipt requested, to the last known address of the witness.

AVOIDING A SUBPOENA

- **TDRPC 3.04**
 - (a) A lawyer shall not obstruct another's access to evidence
 - (e) A lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information
 - (c)(5) a lawyer shall not engage in conduct intended to disrupt the judicial proceedings
- **TPC 36.05**

A person commits the crime of Tampering With a Witness if they coerce a witness to withhold testimony, elude legal process or absent himself from a proceeding.

COMMON SENSE

- Communicate with clients through bills, letters, phone, emails
- Return files upon termination
- Keep address current with the State Bar
- Do not represent co-respondents
- Have a trust account for all fees that are advance fees

HOW TO HANDLE GRIEVANCES

GRIEVANCE PROCESS

- COMPLAINANT:**
- CLIENT
 - FORMER CLIENT
 - *FAMILY MEMBER*
 - SBOT
 - JUDGES
 - ANYONE

- RESPONDENT:**
- LAWYER AGAINST WHOM GRIEVANCE IS FILED

GRIEVANCE PROCESS

Classification as a Complaint:

- lawyer receives notice by certified mail.
- 30 days to respond to the CDC
- CDC must decide if “just cause” exists
- If not, Summary Disposition by local grievance committee. But local committee can refuse to dismiss.

GRIEVANCE PROCESS

- Includes Rules Violations
- Election of District court, with or without a jury
- Or Election for the local Grievance committee

Private Reprimand available here only!

FAILURE TO RESPOND

- TDRPC 8.04 – It is misconduct to fail to timely furnish to the CDC or district grievance committee a response, or other information as required by the Rules of Disciplinary Procedure.

BIGGEST “NO-NO” OF ALL



Not responding to the grievance!

CAAP

CLIENT lawyer ASSISTANCE PROGRAM
800-204-2222 ext. 1777

ETHICS HOTLINE
800-532-3947

LAW OFFICE MANAGEMENT
512-427-4100

RESOURCES

**OFFICIAL WEBSITE OF THE
STATE BAR OF TEXAS**

<http://www.texasbar.com>

lawyer ACCESS ONLY

<http://www.mytexasbar.com>
