

The State Bar and Lawyer Regulation

How To Avoid Meeting Us



Since assuming the responsibilities of Executive Director, I have visited lawyers throughout the state, learning what issues you have with your Bar and how we may better serve you. A consistent comment is, “You know, I really just don’t know much about what you do. You should tell us.” That is my intention—to let you know more about what we are doing in the State Bar offices, in partnership with your Board of Governors, to serve each of you. Your needs, the ways in which you want to hear from us, and your questions vary. In the coming months, my hope is that you will have a better sense of the programs and services available to you, and that you will let me know what you need and how we can assist.

I would like to meet and get to know each of you, though I would prefer that introduction happen outside the lawyer regulation arena. I also know your preference is to know that a strong and fair system is in place, and to avoid an intimate knowledge of the process.

The following are ways to avoid the most common behaviors and/or violations that often result in the filing of complaints and sanction of varying degrees of severity:

1. Return client phone calls and e-mails.

Periodically communicate with your clients, even if nothing new is happening on the case. Historically, this is the number-one type of complaint filed. We are all busier than ever and running as fast as we can to keep up with the workload, and client communication can suf-

fer. It often does not meet the client’s expectations and leads to the perception that the case is not being managed.

2. Monitor your caseload. Learn to say no, and don’t accept more work than

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you can diligently handle. Taking cases you don’t have time to handle or cases that are outside your area of expertise not only leads to discipline complaints but malpractice suits as well.

3. Use a written fee agreement.

Although not required by ethical rule, this is a step that can be taken when a new client relationship is established that will prevent future problems. In the event there is a disagreement over fees, do not sue your clients. This is an invitation for an almost certain counterclaim for malpractice.

4. Conflicts. Use a formal conflict check system, and don’t enter into business

partnerships/relationships with your clients.

5. Have an appropriate diary or tickler system to track important dates and deadlines. Periodically perform a self-audit of all your active matters to make sure nothing falls through the cracks.

6. Know and understand Supreme Court Rules 43 and 44. Read the ethical rules (ER 1.15 and 1.16) regarding client property and Rules 43 and 44 of the Supreme Court along with the Trust Account Guidelines. Perform a monthly reconciliation of your trust account and oversee its handling.

7. Don’t be a generalist. Don’t take cases outside your area of expertise. Focus on a few areas and take cases in those areas in which you are truly competent. (And see 2 above.)

8. Know and understand ER 1.16. If a client terminates your relationship, review the Rule, stop working on the case, and return any unearned fees and client property.

9. Communicate all plea and settlement offers to your client. No need to say anything else.

10. Training and supervision. Adequately train and supervise all your nonlawyer personnel.

If you need information about the conflict programs available today or other office management tools and resources, call Diane Ellis at 602.340.7313 or Susan Traylor at 602.340.7355 for suggestions and advice.

More information or prospective ethics advice and assistance are also available. Please let us know how we can help you better serve your clients, and enjoy your practice. ▲