



*Paul Koning*

An envelope arrives bearing the seal of the Texas State Bar. A grievance has been filed against you. No matter how false or frivolous the claim, you are knocked for a loop. It comes as cold comfort to hear that most lawyers receive at least one grievance during their career. Someone is attacking your reputation as a prudent professional and threatening your very livelihood.

Do you know what is even worse than receiving a state bar grievance? Losing one. And the difference between dismissal and disbarment often comes down to how you react after you open the envelope. Here are some suggestions to avoid making a bad surprise much, much worse:

1. Don't blow it off. The worst mistake you can make is to bury your head in the sand. (This happens far more often than you would expect.) The grievance is not going away on its own, even if it seems meritless to you.
2. Don't blindly insist on self-representation. Some lawyers handle their own grievances. In most cases, however, a lawyer should seriously consider hiring experienced outside grievance counsel. Outside grievance counsel will bring perspective, expertise, and familiarity with the ethics rules and disciplinary procedures. Consider what is at stake as well as the value of your own time. There is a good reason for the old adage that "he who represents himself has a fool for a client."
3. Respond on time. A failure to file a timely response is an automatic violation of Texas Disciplinary Rule 8.04(8). If you miss the deadline, the State Bar will tack on an additional grievance that may survive even if the original complaint is ultimately dismissed.
4. Do a thorough investigation. Treat the grievance as you would treat a claim against an important client. Immediately investigate all of the facts and circumstances underlying the complaint. Don't just rely on your memory. Your investigation should include gathering and preserving all relevant paper and electronic documents, preparing chronologies, obtaining witness statements (if applicable), and researching the applicable rules and law.
5. Treat the investigators as your allies. Cooperate fully with the State Bar's investigators and attorneys. Help them reach the correct conclusion by laying out the facts, organizing the evidence, and answering their questions promptly and courteously.
6. Prepare a well-organized response to all of the issues. Under the current Texas system, the State Bar will decide whether to prosecute the grievance based solely on the written complaint, the written response, and any evidence independently developed by the investigators. Because there is no hearing at this initial stage, it is essential for the lawyer to submit a clear, persuasive written response that systematically addresses every aspect of the client's complaint. If you decide to represent yourself, at the very least have a colleague review and edit your draft. A sloppy grievance response subliminally signals sloppy client work.
7. Don't attack the client or the system. A common mistake is for the lawyer-respondent to disparage the client's character or conduct. Unless there is a direct link between the client's misconduct and the alleged violation, ad hominem attacks reflect poorly on the lawyer and often backfire. The issue is whether you

violated the disciplinary rules, not whether the client is a good person or “deserved what she got.” Similarly, avoid railing against judges, opposing counsel or the disciplinary system in general. Anger is not your friend.

8. Tell the truth. Don’t misstate the facts – even a little. It is not only totally wrong, but almost always counterproductive. And don’t even think about backdating or reconstructing documentary evidence, unless you are tired of having a law license.

9. Don’t obsess. Remember that a grievance is merely a complaint, not a finding of professional misconduct. As important as it may be, you will not help yourself, your partners or your other clients by agonizing over the matter or becoming paralyzed. If you find yourself slipping into depression or substance abuse (whether due to a grievance or something else), help is available. Among other options, the [Texas Lawyers' Assistance Program](#) is there 24-7 to provide confidential help to lawyers with substance abuse and/or mental health issues. 1-800-343-8527.

10. Make lemonade. As painful as it may be, a grievance almost always reveals room for improvement. For example, if the complaint arises from alleged non-responsiveness, consider how you can improve and better track client communications. And if you conclude that the complaining client was completely at fault for the situation, perhaps the experience will motivate you to revisit your client screening process!

*Paul Koning* has concentrated his practice on professional liability litigation and legal ethics counseling for more than thirty years. He previously served as panel chair on the District 6A Grievance Committee and is currently a member of the Professional Ethics Committee for the State Bar of Texas. He regularly represents lawyers in state bar disciplinary proceedings and legal malpractice lawsuits.