

ETHICS IN CRIMINAL LAW:

TEN TIPS FOR AVOIDING THE MOST COMMON GRIEVANCES

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“What we have here is a failure to communicate.” Cool Hand Luke

1. Keeping the Client Informed:

We get ourselves into more trouble over poor communications with clients than we do over any other single factor.

Tip #1: CALL, CALL, CALL THEN CALL SOME MORE

When I served on the Grievance Committee, we'd meet two Thursdays a month from about 2:00 to 5:30 p.m. Having heard complaints all afternoon about how this or that lawyer, “never returned my phone calls,” I'd get back to the office, pick up the phone and start calling: “Hi, howya doin? Good, just wanted to say hi. I know the case ended six months ago, but I thought I'd just check in. O.K. Good deal. Call me if anything comes up. Bye.” For three years, I had a serious case of happy phone fingers every other Thursday night.

Bottom Line: Return all phone calls, and answer the mail. Far and away THE NUMBER ONE defense against complaints.

Tip #2: CLIENTS HANDLE BAD NEWS BETTER THAN WE THINK THEY WILL

Ever get to the point where you feel like you've got to hit a homer with each case? There's nothing wrong with *high* expectations, so long as they're tempered with a realistic and candid view of the client's situation. When news is less than favorable the phone can get awfully heavy, and heavy phones have a tendency to get left in the cradle. Solution? Make the call anyway – and make it promptly. Ironically, clients often *thank us* for taking time to deliver less than favorable news quickly. And a client who expresses gratitude in such situations rarely files a complaint.

Tip #3: CLIENTS LIKE TO HEAR FROM US EVEN IF NOTHING
SPECIAL'S GOING ON – OR PUT ANOTHER WAY --
CLIENTS ALWAYS HANDLE NO NEWS WORSE THAN WE
THINK THEY SHOULD

Call to update a case even when nothing much has happened since the last report. A tickler system really helps. Have your secretary or paralegal tickle you on cases weekly. Usually the tickle is for a month out. So every thirty days or so, you'll be reminded to look at a given file. Simply handling the file and reviewing activity promotes client calls. Invariably, clients appreciate the unexpected contact and they get the message that we care. Clients who get that message generally don't file complaints with the State Bar.

Tip #4: TELL 'EM WHAT YOU'RE GOIN' TO TELL 'EM—
TELL 'EM –
TELL 'EM WHAT YOU TOLD 'EM --

-- Old Army Teaching Principle

I like the phone. I like talk. Writing's a chore. Drafting letters, fee contracts, motions – that's work. That's a fact.

But letters, contracts and documents do very good things for a practice, and they also come in handy to rebut the odd complaint or grievance. Documents formalize and professionalize the phone call and virtually all other aspects of the case. The adage, "it didn't really happen unless it's written down," is true even in a criminal practice.

A simple three-tiered approach to letter writing pays dividends. First, in a letter of engagement (or fee contract), tell the client what you'll do for them and how much that'll cost. Second, during the course of representation, write a letter or two telling the client what you've done and what they can expect next. Third and finally, write a close-out letter, telling them what happened, congratulating them for their part in the outcome, and expressing gratitude that they placed their faith and trust in you.

Two added bonuses: Nothing impresses a grievance panel or investigator more than an organized file containing a fee contract and letters to the client. Nothing. And weeks, months or years later, your former client – who's recently been asked by a friend for the name of a good lawyer – can open a desk drawer, pull out one of your letters, and read your phone number to that friend right off your letterhead. We never know, right? Write!

2. Neglecting the Client's Case:

Right after his cries that the lawyer wouldn't return any calls, the aggrieved client's next most popular complaint is that the lawyer (usually the same lawyer in the same complaint) didn't do anything but cash his (i.e. the client's) check.

Without belaboring the point, regular client communication goes a long way to protect against neglect complaints. There are times, however, when we just get bogged down. So what can we do when, for whatever reason, we're stuck?

Here are some suggestions.

Tip #5: ASK FOR HELP FROM SOMEONE WHO'S BEEN THERE

It helps to surround yourself with smart people. It also helps to admit that we can usually benefit from another's experience, especially when we're bogged down. Files, which have been gathering dust, have a strange way of righting themselves after a phone call or meeting with a friend.

The key is to ask. It sounds easy, but for many of us, asking for help isn't an automatic reflex. We've got to work at it, especially when we're having a problem with a case.

Tip#6: TRIAL NOTEBOOK

Little things can make a big difference. However many cases we've had, there comes that time to gird up once more. A trial notebook with preprinted tabs helps. Tabs outline every part of a case, from pretrial investigation through closing argument and appeal. Not only does it help in preparing thoroughly, it's also all there in one, organized, easy-to-find format at trial. Linus has his blanket. I've got my trial notebook with preprinted tabs.

Tip#7: JAIL VISITS

Jail visits are inconvenient. But they're necessary, and they're also one of the best antidotes to a grievance. Willingness to spend time with a client in jail pays huge dividends. It simply emphasizes that we care, and that we're taking care of business.

3. Money Matters:

The first line of defense at the grievance committee when money's an issue – especially in a criminal matter – is that it's a fee dispute. Fee dispute committees are the proper venue to hear most of those matters. Nevertheless, money gets us into a lot of trouble with grievance committees through the back door.

Aside from a relatively few cases of outright theft, one of the greatest problems we face as defense lawyers is a tendency to undervalue our services. Failure to set a fee, which compensates us fully and fairly for the difficult things we do day in and day out, has landed more than a few before the grievance committee. Here's how it happens.

An attorney sets a low fee, below what he and his services are worth, afraid that something higher will drive clients away, and he'll go broke. He continues to take on more for less. He gets overloaded and develops a resentment towards his profession and his clients. He becomes tired and mean, or disenchanted and disheartened. When these and similar feelings are directed over time towards clients, the tribunal or to fellow practitioners, the lawyer is asking for trouble. Therefore:

Tip #8: LEARN TO VALUE WHAT YOU BRING TO THE TABLE

It's not easy, and it takes time. It also takes courage and commitment. But once we learn how to value our services properly, the benefits are immediate, positive and far-reaching.

Tip #9: VALUE PEOPLE FIRST, THE MONEY WILL FOLLOW

Focus on service. While money's important, if it becomes the primary focus or worry, grievances are much more likely. Conversely, when our primary focus is on taking care of a client's business, not only does the money invariably take care of itself, the likelihood of that client filing a complaint is remote.

4. And the Best Piece of Advice for Avoiding Grievances:

Bill Sowder is the District Attorney in Lubbock. He and I met when we served together in an Army Reserve unit in Lubbock in 1993, the same year I started my practice. Bill was still in private practice at that time, and his dad had been a lawyer in Lubbock for many years. Bill told me two things. The first dealt with money, and is incorporated in large part in Tips 8 and 9. The second thing he told me I've found to be true without exception in every matter I've handled since 1993:

Tip #10: CLIENTS CARE MORE ABOUT HOW THEY'VE BEEN TREATED ALONG THE WAY THAN ABOUT THE END RESULT IN THEIR CASE.

Patience, kindness and courtesy – what a concept!